



ELECTRONIC DETERMINATION BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

**Wednesday 30 March 2022
at 4.00pm**



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3 ELECTRONIC - DA/1302/2021 - TORRENS TITLE SUBDIVISION OF AN EXISTING STRATA TITLED PROPERTY - 22 MURRAY ROAD, BEECROFT

EXECUTIVE SUMMARY

DA No:	DA/1302/2021 (Lodged on 3 December 2021)
Description:	Torrens title subdivision of an existing strata titled property comprising two detached dwellings
Property:	Lot 1 and 2 SP 34827, No. 22 Murray Road, Beecroft
Applicant:	Concise Planning Pty Ltd
Owners:	Mrs Alice Wei-Ling Farrell; Ms Linda Jayne Deegan; and Owners Corporation - SP 34827
Estimated Value:	\$5,000.00
Ward:	C Ward

- The proposal does not comply with Clause 4.1 'Minimum subdivision lot size' of the Hornsby Local Environmental Plan 2013 (HLEP). The applicant has made a submission in accordance with Clause 4.6 'Exceptions to development standards' of the HLEP to contravene the 600m² minimum lot size development standard. The submission is considered well founded and is supported.
- The application is required to be determined by the Hornsby Local Planning Panel as the proposal would contravene the HLEP development standard for minimum subdivision lot size by more than 10 percent (15.55% variation).
- A total of 3 submissions have been received in respect of the application.
- It is recommended that the application be approved.

RECOMMENDATION

THAT Hornsby Shire Council Local Planning Panel assume the concurrence of the Secretary of the Department of Planning and Environment pursuant to Clause 4.6 of the Hornsby Local Environmental Plan 2013 and approve Development Application No. DA/1302/2021 for the conversion of a strata title subdivision to a Torrens title subdivision at Lot 1 and 2 SP 34827, No. 22 Murray Road, Beecroft subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP4/22.

BACKGROUND

Site History

On 16 January 1989, Council approved DA/547/1988 for a detached dual occupancy with construction of an additional dwelling house on the site, pursuant to Sydney Regional Environmental Plan No. 12 (SREP12).

On 4 October 1990, Council approved DA/272/1990 for the creation of 2 strata titled allotments, subject to conditions.

On 14 April 1997, Council approved BA/1495/1997 for the construction of a carport and driveway, subject to conditions.

On 10 October 2018, Council approved DA/436/2018 for the construction of a deck and an in-ground swimming pool (56,000L) at No.1/22 Murray Road, Beecroft. Nine trees and shrubs were permitted to be removed to accommodate the swimming pool, subject to conditions of consent.

On 14 August 2020 Council refused DA/349/2020 at No. 1/22 Murray Road for the construction of a first-floor addition to an existing dwelling (detached dual occupancy) and minor alterations to the ground floor. This development application was refused on heritage grounds.

Application History

On 3 December 2021, the subject application was lodged.

On 12 January 2022, Council requested an amended concept stormwater plan and a certificate from a suitably qualified civil engineer confirming that the onsite detention system is functioning in accordance with development consent and building application requirements.

On 28 January 2022, Council requested an update on the provision of the requested information.

On 17 February 2022, Council requested a further update on the provision of the requested information.

On 18 February 2022, the Applicant requested an extension until 28 February 2022 to provide the requested information.

On 4 March 2022, Council's Assessment Officer advised the Applicant that if the requested information was not received by 11 March 2022, the application would be determined based on the information submitted as at that date.

On 11 March 2022, additional stormwater detail was provided to enable a proper assessment of the development application.

SITE

The 1326.6m² site is on the corner of Murray Road and Boronia Avenue and contains a strata titled dual occupancy consisting of two detached dwellings as follows:

- Lot 1 - The 819.9m² corner allotment known as Lot 1 SP 34827 is located on the southern corner of Boronia Avenue and Murray Road Beecroft and contains a dwelling house, swimming pool, a deck, and a carport.
- Lot 2 - The 506.7m² site known as Lot 2 SP 34827 is on the north-western side of Boronia Avenue and contains a single storey dwelling house with an attached single garage.

There is no vehicular access crossing from Boronia Avenue, and vehicle access crossings for both lots are from Murray Road.

The site has a fall of 6 metres towards the rear, south-western corner.

The site is not bushfire prone or flood prone.

The site is benefitted by a drainage easement over No. 22A Boronia Avenue (Lot 1 DP 5129523).

The site is not heritage listed. The site is within the Beecroft-Cheltenham Heritage Conservation Area (HCA) and is in the vicinity to heritage items number 66 and 132 which are of local heritage significance and are listed within Schedule 5 of the Hornsby Local Environmental Plan 2013. Lot 1 of the subject site is of local cultural significance being the former home of Australian Author Miles Franklin.

Adjoining development is characterised by one and two storey dwelling houses.



Figure 1: Aerial photo of the Site (Source: Intramaps)

PROPOSAL

The application proposes Torrens title subdivision of an approved strata titled dual occupancy comprising 2 detached dwellings.

- Proposed Lot 1 would have an area of 819.9m² and would contain the existing dwelling to the north of the site. Vehicular access to this lot will be via the existing driveway off Boronia Avenue.
- Proposed Lot 2 would have an area of 506.7m² and would contain the existing dwelling to the south of the site. Vehicular access to Lot 2 would be via the existing driveway from Murray Road.

No physical works and no amendments to the existing stormwater management system are proposed.

No trees would be removed or impacted by the 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 not be inconsistent with the Greater Sydney Region Plan - A Metropolis of Three Cities and the North District Plan.

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 Permissibility

The approved development is defined as 'dual occupancy (detached)' under the HLEP and is prohibited in the R2 zone.

Notwithstanding, the site is deemed to enjoy existing use rights pursuant to Clause 4.65(a)(i) of the Act as "the use of (the) building, work or land.....for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use". The 'dual occupancy' use comprising a single dwelling-house on each strata lot was approved prior to the gazettal of the HLEP on 11 October 2013.

The proposed Torrens title subdivision would not alter the intensity or scale of the existing development on the site and would convert a prohibited 'dual occupancy' development to a permissible use within the R2 Low density residential zone under the HLEP. Once the Torrens title subdivision is registered, the dual occupancy would be treated as two separate dwelling houses, and therefore the HLEP and HDCP controls pertaining to dwelling houses would apply. The proposed Torrens title subdivision is permitted under the Environmental Planning and Assessment Regulation 2000 with development consent.

2.1.3 Minimum Lot Size

Clause 4.1 of the HLEP prescribes that the minimum subdivision lot size is not to be less than shown for the land on the minimum Lot Size Map, which is 600m².

The proposed subdivision would result in Lot 2 having an area of 506.7m² which would result in a 15.55% variation to the minimum lot size development standard. Proposed Lot 1 would have an area of 819.9m² which would comply with the minimum lot size development standard.

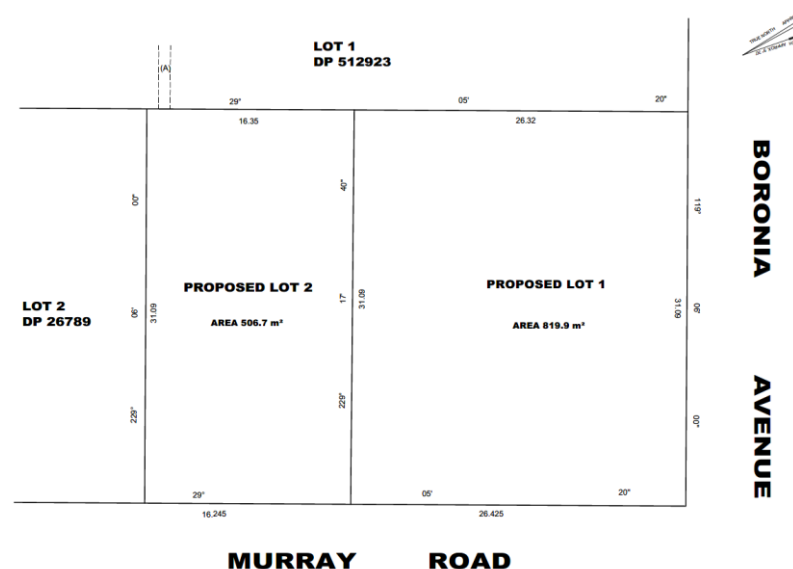


Figure 2: Proposed Plan of Subdivision

The application is supported by a submission pursuant to Clause 4.6 of the HLEP to contravene the minimum 600m² allotment size development standard, which is discussed below in Section 2.1.4 of this report.

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 tender to hinder the attainment of the objectives of the zone.

The proposal does not meet the minimum lot size requirements specified in HLEP Clause 4.1 'Minimum subdivision lot size' which requires a minimum lot size, as per the 'Lot Size Map' of 600m².

The Objectives of Clause 4.1 of HLEP are as follows:

(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.*

The applicant has made a submission in support of the contravention of the development standard in accordance with Clause 4.6 of the HLEP. The development application seeks to contravene the development standard by 15.55% (93.3m²). The applicant states the proposed contravention is considered to be consistent with the objectives of the control and is justified as follows:

- *The dwellings located on the site are existing and are proposed to be retained as part of this application. No physical works to the site is proposed.*
- *The proposed middle boundary between the two proposed dwelling houses will be retained to reflect the existing configuration of the dwellings. That building boundary was formed through the strata subdivision of the site in 1989.*
- *The current use of the site is a detached dual occupancy, which in accordance with the Hornsby Local Environmental Plan 2013 is a prohibited use within the R2 zone. This proposed one into two lots Torrens title subdivision will create two 'dwelling houses', which are a permissible use within the R2 – Low Density Residential zone. Therefore, the proposed development will remove a non-conforming use on the site and subsequently create a conforming use.*
- *The site as currently configured has been inclusive of a detached dual occupancy for a considerable amount of time. Furthermore, the proposal will continue to reflect the existing site conditions, generating no adverse impacts on adjoining properties.*
- *The proposed development will not impact on the residential capacity of the subject site.*
- *Following the subdivision of the site, the two lots can (if so desired) be sold separately which will allow potential home buyers the opportunity for buying land that has proven to be of a suitable size for residential purposes.*
- *The proposed Torrens title subdivision will remove the burden of a Strata scheme that serves no positive effects on the property owners of 1/22 and 22A Murray Road.*
- *There is no consistent subdivision pattern in the area. The site is located within a block that does not contain many rows of lots that are consistent with each other. The only section of the block that possesses a pattern in lot sizes is from 1 Oaklands Avenue to 15 Oaklands*

Avenue. These lots are not adjacent to the subject site and will not be adversely impacted by this proposed subdivision.

State Government Guidelines on contravening development standards recommend considering the provisions of Clause 4.6 of the LEP and the 'five-part test' established by the Land and Environment Court as follows:

1. *The objectives of the standard are achieved notwithstanding noncompliance with the standard.*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
4. *The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
5. *The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

The applicant's submission to vary the minimum lot size development standard is considered well founded for the following reasons:

- The proposal seeks approval for the Torrens title subdivision of an existing dual occupancy (detached).
- The proposal does not seek approval for any physical works with the subdivision limited to a change in the title of the property.
- The granting of consent does not create a precedent on the basis that the construction of a new dual occupancy is prohibited within the R2 zone.
- The existing dual occupancy (attached) is provided with separate services and is ideally suited to the subdivision as proposed. The strata subdivision currently has no common property.
- The proposed subdivision will not result in any detrimental impacts.

In relation to the first objective, the proposed development will continue to meet the housing needs of the community within a low-density residential environment. The subdivision of land will be consistent with the existing density of the site, as no physical works are proposed.

In relation to the second objective, the proposed development will also enable the adjoining properties and other land uses in the area to continue to meet their daily needs. The functioning of the subject site will continue to be for residential purposes, with the existing dwellings also being retained. Therefore, the proposed subdivision of land will in no way affect neighbouring land.

In relation to the functions of the secretary, it is considered that the small scale of the proposal and nature of the contravention sought, are such that no State or Regional level of significance is involved. There is no particular concern arising in relation to the public benefit through the proposed contravention to the development standard, as in this instance there is no adverse impacts created.

The total area of the site is compliant. A minimum total lot size of 1200m² is required. The total lot size of the subject site is 1326m². However, the proposed subdivision will follow the existing strata lot arrangement, being Lot 1 - 819.9m² and Lot 2 - 506.7m². This subdivision layout allows Lot 1 to retain its larger size, as it is of local cultural significance as Miles Franklin's former home. The larger lot size provides space for more landscaping to enhance the character of the home. Further, a larger corner allotment affords more streetscape amenity by allowing larger setbacks.

It would be unreasonable and unnecessary to require the boundary of the two allotments to be adjusted to meet the numerical standard pertaining to minimum lot size. Both lots are established residential properties with dwellings and established landscaping. The stormwater on both allotments functions appropriately. To amend the subdivision boundary would unreasonably disturb the established properties and would not result in a better planning outcome.

Based on this assessment, it is considered that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case. Accordingly, the Clause 4.6 submission is supported.

2.1.5 Heritage Conservation

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire. The property is located within the Beecroft Cheltenham Plateau Precinct of the Beecroft Cheltenham Heritage Conservation Area (HCA), listed under Schedule 5 of the HLEP. Heritage conservation is discussed further in Section 2.7.6 of this report.

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 application does not propose any physical works and is consistent with Clause 6.2 of the HLEP.

2.1.7 Flood Planning

The site is not identified as a flood planning area on the Flood Planning Map and further assessment under Clause 5.21 of the HLEP is not required.

2.2 Assessment of Existing Use Rights - Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71

Due to the proposed use (dual occupancy) not being permissible in the zone, an assessment of the suitability of the development cannot be undertaken in accordance with the prescriptive requirements of the HLEP or most of the Hornsby Development Control Plan (HDCP) (some assessment against the HDCP is possible, this is provided in Part 6.5 of this report). Consequently, a merit assessment is required.

The principles to be considered when undertaking a merit assessment of a proposed redevelopment of a site with existing use rights were dealt with by Roseth SC in *Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71*. Roseth SC found that four questions usually arise in the assessment of existing use rights developments. These four questions comprise the Planning Principle for assessing such developments. An assessment of this application against this planning principle is provided below.

Planning principles: Assessment of proposals on land with existing use rights	
Question	Assessment
How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?	<p>There are no physical works proposed as part of this development application. The floor space and height of the building would not change. The side and rear setbacks comply with minimum setback requirements.</p> <p>Due to low density residential being the prevailing land use in the locality, the existing setbacks, height and floor space would be acceptable as they are generally consistent with the requirements outlined in Part 3 residential of the HDCP.</p> <p>It is therefore considered that the bulk and scale of the proposed development is consistent and acceptable with respect to the surrounding built environment.</p>
What is the relevance of the building in which the existing takes place?	Upon approval of this development application The buildings in which the existing use takes place would be now be treated as a conforming land use being dwelling houses.
What are the impacts on adjoining land?	Impacts arising from the development are likely to be negligible, as there is no physical works proposed and no change to the existing stormwater system. There will be no additional development potential as a result of this development application.
What is the internal amenity?	There will be no impact to the internal site amenity of the site as a result of the development.

2.3 Adopted State Environmental Planning Policies - Transitional and Savings Provisions

On 1 March 2022, the following State Environmental Planning Policies (SEPPs) were gazetted.

- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

These SEPPs now form matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. However general savings provisions apply to development applications that have been made but not yet determined, on or before the commencement date.

As this development application was lodged on 3 December 2021 this development application is considered to have been made prior to the commencement date of the SEPPs. The adopted policies have been considered as a matter for consideration under S4.15 of the *Act*. However, the existing legislation in force at time of lodgement of the development application, prevails to be extent of any inconsistency.

Notwithstanding, the approval of the development application would not adversely affect the objectives of the newly adopted State Environment Planning Policies and is considered to be consistent with this policy.

2.4 State Environmental Planning Policy No. 55 Remediation of Land

The application has been assessed against the requirements of State Environmental Planning Policy No. 55 Remediation of Land (SEPP 55) under which consent must not be granted to the carrying out of any development on land unless the consent authority has considered whether the land is contaminated or requires remediation for the proposed use.

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

An examination of Council's records and aerial photography has determined that 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.

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 3, Clause 9(2) 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 and objectives for tree preservation.

As no physical or engineering works are proposed, no trees or vegetation will be removed or impacted by this development.

The application has been assessed against the requirements of the Vegetation SEPP and it has been determined that the proposal would meet the objectives of the Vegetation SEPP. This matter is addressed further in Section 3.1.1 of this report.

2.6 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The application has been assessed against the requirements of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. This Policy provides general planning considerations and strategies to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained.

Subject to the implementation of installation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would have minimal potential to impact on the Sydney Harbour Catchment.

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

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

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent

authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

2.8 Hornsby Development Control Plan 2013

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

HDCP - Part 6 Subdivision & Part 3.1 Dwellings			
Control	Proposal	Requirement	Complies
Site Area	1326.6m ²	1200m ²	N/A
Lot Size			
- Lot 1	819.9m ²	600m ²	Yes
- Lot 2	506.7m ²	600m ²	No
Minimum Lot Width			
- Lot 1	26.32m	15m	Yes
- Lot 2	16.245m	15m	Yes
Site Coverage			
- Lot 1	34%	50%	Yes
- Lot 2	21%	50%	Yes
Floor Area of Dwelling			
- Lot 1	155m ²	380m ²	Yes
- Lot 2	174m ²	330m ²	Yes
Setbacks Lot 1			
- Front (Murray Rd)	12.4m	6m	Existing
- Secondary (garage)	5.6m	3m	Existing
- Side (south west)	2m	0.9m	Yes
- Rear	5.9m	3m	Existing
Setbacks Lot 2			
- Front (Murray Rd)	5-6.9m	6m	Existing
- Side (north east)	1.097m	0.9m	Yes
- Side (south west)	2.1m	0.9m	Existing
- Rear (north west)	7.9m	3m	Existing

Landscape Area (% of lot size)			
- Lot 1	58%	30%	Yes
- Lot 2	46%	20%	Yes
Private Open Space - Lot 1			
- minimum area	>24m ²	24m ²	Yes
- minimum dimension	>3m	3m	Yes
Private Open Space - Lot 2			
- minimum area	>24m ²	24m ²	Yes
- minimum dimension	>3m	3m	Yes
Car Parking			
- Lot 1	2 spaces	2 spaces	Yes
- Lot 2	2 spaces	2 spaces	Yes

As detailed in the above table, the proposed development complies with the prescriptive requirements within the HDCP, with the exception the minimum lot size control. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant desired outcomes.

2.8.1 Lot Size and Width

The desired outcomes of Part 6.2.1 Residential Subdivision of HDCP 2013 are to ensure “*subdivision design should maintain appropriately shaped lots to accommodate a dwelling and associated development that is compatible with a low-density residential environment*” and “*subdivision design should provide setbacks to developable areas that will complement the streetscape, provide for landscaping, protect landscape features, and provide separation between existing and future dwellings*.”

As discussed under Sections 2.1.1 and 2.1.2 of this report, the existing dual occupancy development demonstrates that the site is of sufficient size and shape to accommodate two dwelling houses. The proposed Torrens title subdivision would not alter the intensity or scale of the existing development on the site and would convert a prohibited ‘*dual occupancy*’ development to a permissible use within the R2 Low density residential zone under the HLEP. Once the Torrens title subdivision is registered, the dual occupancy will be treated as two separate dwelling houses, and therefore the HLEP and HDCP controls pertaining to dwelling houses would apply.

Despite the departure to the minimum lot size control for Lot 2, the development complies with the prescriptive control for minimum lot width. The minimum lot width for a 600m² lot in the R2 zone is 15m². The width of proposed Lot 1 is 26.4m and the width of proposed Lot 2 is 16.2m.

The proposal would not have a detrimental impact on the existing streetscape or the amenity of adjoining properties and is considered acceptable in this regard.

The proposal complies with Part 6.2.1 Residential Subdivision of the HDCP 2013 and is considered acceptable.

2.8.2 Setbacks

The desired outcomes of Part 3.1.2 of HDCP are to encourage “*setbacks that are compatible with adjacent development and complement the streetscape*” and “*setbacks that allow for canopy trees to be retained and planted along the front and rear property boundaries*”.

Notwithstanding the departure to minimum lot size development standard under HLEP, the dwelling houses would comply with all relevant setback controls under Part 3.1.2 Setbacks of HDCP. Both existing properties complement the streetscape, and have sufficient landscaping along the front and rear boundaries.

The proposal complies with Part 3.1.2 Setbacks of the HDCP and is considered acceptable.

2.8.3 Landscaping

The desired outcome of Part 3.1.3 of HDCP are to encourage “*landscaping that integrates the built form with soft canopy and retains and enhances the tree canopy*” and “*development that retains the existing landscape features*”. These desired outcomes are supported by prescriptive controls requiring a minimum of 30% of the site area being landscaped on Lot 1, and a minimum of 20% of Lot 2 being landscaped.

Notwithstanding the departure to minimum lot size development standard under HLEP, both proposed lots comply with their respective minimum landscaping requirements for dwelling houses under Part 3.1.3 of HDCP.

The proposed lot configuration making Lot 1 the larger lot, allows for increased landscaping opportunities to frame and enhance the dwelling house on Lot 1 which is of local cultural significance.

The proposal complies with Part 3.1.3 of HDCP and is considered acceptable

2.8.4 Open Space

The desired outcome of Part 3.1.4 Open Space is “*private open space that functions as an extension to the dwelling house*”. This desired outcome is supported by the prescriptive control that each lot have a minimum of 24m² of private open space, with a minimum width of 3m. Both lots have greater than the required minimum private open space area.

The proposal complies with Part 3.1.4 Open Space and is considered acceptable.

2.8.5 Vehicular Access and Parking

The desired outcome of Part 3.1.7 Vehicle Access and Parking is “*development that provides sufficient and convenient parking for residents with vehicular access that is simple, safe and direct*”. This desired outcome is supported by prescriptive controls requiring that the provision of “*car parking for dwelling houses should be provided behind the front building line*” and “*a paved driveway should be provided between the required on-site car parking area and a public road*”.

Both lots have two car parking spaces and both lots will continue to be served by separate vehicle access crossings. Existing access to No. 1/22 Murray Road is via Boronia Avenue and access to No. 2/22 Murray Road is via Murray Road.

The proposal complies with Part 3.1.7 Vehicle Access and Parking and is considered acceptable.

2.8.6 Heritage

The property is located within the Beecroft Cheltenham Plateau Precinct of the Beecroft Cheltenham HCA, listed under Schedule 5 of the HLEP.

The property is located in the vicinity of heritage listed street trees on Boronia Avenue (Item No. 66).

In 1989 a strata subdivision was registered for the site (SP 34827). Two detached dwellings with separated private open space currently occupy the site. The original Inter-War painted brick dwelling constructed in c1940 is located on the corner lot (No. 1/22 Murray Road) and a c1990 single storey brick and tile dwelling is located on the adjacent lot (No. 2/22 Murray Road).

The two strata plan lots are physically divided by a 1.8m side boundary fence.

Council's heritage assessment has been considered with regards to the submitted material and the relevant heritage provisions of the HDCP.

The proposed subdivision is reflective of the strata subdivision that was approved in 1989. It would have no material impact on the boundaries of the current lots, the existing dwellings, gardens or the characteristic values of the subdivision pattern existent in the surrounding HCA. The proposed Torrens title allotments would also be capable of future development compatible with the established character of the HCA.

Further, the proposal would have no adverse impact on the existing property's contribution to the significant built character of the HCA.

Accordingly, no heritage concerns are raised with the proposal.

2.9 Section 7.11 Contributions Plans

A Section 7.11 Contribution is not applicable as the development would not increase demand for services and no additional dwellings are proposed as the existing dual occupancies are to be retained as approved under DA/547/1988 and DA/272/1990.

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

No trees or vegetation would be removed or impacted by this development. As the site is a heritage conservation area, should trees be required to be removed in the future, approval of Council would be required.

3.1.2 Stormwater Management

On-site stormwater detention (OSD) was installed as part of the strata subdivision approved under DA/272/1990. As per site investigations AT&L acting as professional consulting engineers have provided confirmation that the OSD present on Lot 2 SP 34287 is still operating as per DA/547/1988.

3.2 Built Environment

3.2.1 Built Form

There will no change to the built form of the site as a result of this Torrens title subdivision.

3.2.2 Traffic

The proposal to convert the existing strata subdivision to Torrens title will not generate any additional traffic movements or car parking demand.

3.3 Social Impacts

The residential development would improve housing choice in the locality by providing a range of house hold types. This is consistent with Council's Housing Strategy which identifies the need to provide a mix of housing options to meet future demographic needs in Hornsby Shire.

The location of the development is in close proximity to Beecroft and Cheltenham Railway Stations and the commercial centre of Beecroft which includes a supermarket, medical centre, Public School and childcare centre, as well as other recreational, health and education facilities for future residents. The site is also in close M2 Motorway which provides a further connection to employment and other services.

3.4 Economic Impacts

The proposal would remove the burden of maintaining the cost of a strata scheme and improve the economic value of the property.

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"*.

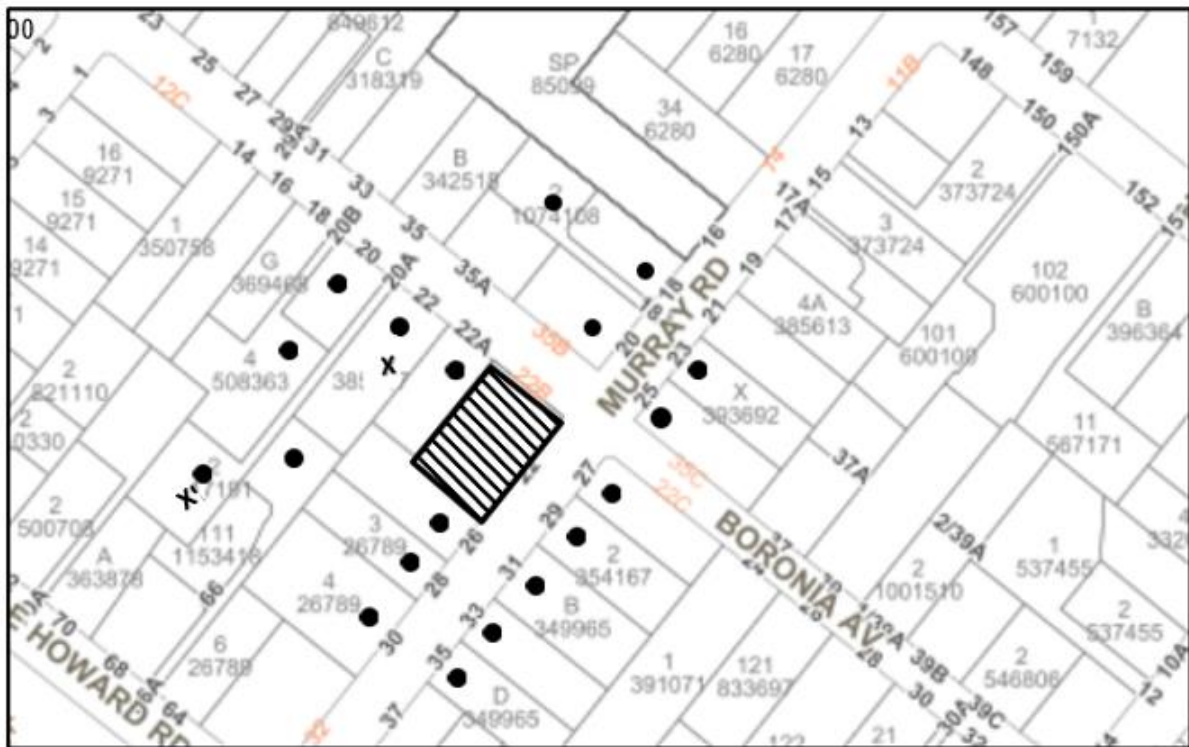
The subject site has not been identified as bushfire prone or flood prone land. The site is considered to be capable of accommodating the proposed development. The scale of the proposed development is consistent with the capability of the site and is considered acceptable.

5. PUBLIC PARTICIPATION



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

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 7 December 2021 and 24 January 2022 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 3 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

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

Three submissions objected to the development, generally on the grounds that:

- The smaller parcel of land will have an unusually small size in comparison with the average land sizes on Murray Road and Boronia Avenue.
- The construction to open area ratio for the smaller piece of land will be too high in comparison.
- The construction of an additional dwelling will lead to loss of trees and green cover- the development will lead to construction, people and vehicular density as well as would negatively impact on the original house and street scape.
- It will lead to loss of visual beauty and the heritage laid back character of the location.
- The Community will need to have some control over the future town planning of our suburb and destroying the natural environment and tree scape in the name of progress is wrong.
- Creating a Torrens title will provide the owner(s) a greater opportunity to redevelop the undersized lot 2 and create a bigger development on this already small - enclosed plot of land with virtually no landscape and compromised privacy.
- The conversion to Torrens title will create greater community, environmental problems and a greater carbon 'footprint' than already exists.
- Creating a Torrens title will provide the owner, or owners, greater opportunity to redevelop on the undersized lot 2 and construct a new dwelling.

- While not an issue in some circumstances, in this case Council will be acknowledging the undersized lot is acceptable.
- Strata title does not prevent separate sale of the existing dwellings.
- The trust acknowledges the conversion to Torrens title will remove the non-conforming use of the two dwellings and therefore has a public benefit. But that alone appears to be the only public benefit. Therefore, there appears to be little public benefit in the conversion, but potential issues may arise in the future that would not be in the public interest.

The merits of the matters raised in community submissions have been addressed in the body of the report. The proposed subdivision would not result in any further development potential, or intensity of development on the respective lots. There are no physical works proposed, and no removal of trees or vegetation. Any works associated with the existing dwelling houses will be subject to separate development applications in the future and assessed on their individual merit. The objectors have not provided evidence to substantiate that the development is not in the public interest. "Carbon Footprint" is not a matter for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

5.2 Public Agencies

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

6. THE PUBLIC INTEREST

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

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

The application is considered to have satisfactorily addressed Council's 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 the Torrens title subdivision of an existing strata titled dual occupancy, comprising two detached dwellings at 22 Murray Road, Beecroft.

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*.

The application does not comply with the HLEP in respect to the minimum 600m² lot size. The applicant submitted a written request in response to Clause 4.6 Exceptions to Development Standard to contravene Clause 4.1 Minimum subdivision lot size development standard. The objection is considered well founded with regard to the approved development on the site and the principles established by the Land and Environment Court.

Council received 3 submissions during the public notification period. The matters raised have been addressed in the body of the report.

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

The reasons for this decision are:

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

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





RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is Katrina Maxwell.

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

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.  Locality Plan
2.  Subdivision Plan
3.  Clause 4.6
4.  Existing Site Survey

File Reference: DA/1302/2021
Document Number: D08318610

SCHEDULE 1**ITEM 3****GENERAL CONDITIONS**

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

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

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

1. Approved Plans and Supporting Documentation

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

Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
18/748 Pro Sub 2	Proposed Subdivision	East West Surveyors Pty Ltd	undated	

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
Heritage Impact Statement	Concise Planning	10/09/21	D08309870
1931 – SKC001 - Stormwater Management Plans Iss P1	AT&L Civil Engineers and Project Managers	11/03/2022	D08367531

REQUIREMENTS PRIOR TO THE ISSUE OF AN SUBDIVISION CERTIFICATE**2. Sydney Water – s73 Certificate**

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

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

3. Smoke Alarm Certification

A certificate must be provided from a licensed electrician prior to the issue of a Subdivision Certificate certifying that the smoke alarms for each dwelling have been connected to the consumer mains power in accordance with Australian Standard AS3786-2014 Smoke alarms and interconnected where there is more than one alarm in accordance with Part 3.7.2 of the Building Code of Australia

4. 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 and outlet works, within the lots in favour of Council in accordance with Council's prescribed wording. The position of the on-site detention system is to be clearly indicated on the title;

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

- 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.

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). (HDCP 1B.6.1.c).

Covenants

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

Asbestos Warning

Should asbestos or asbestos products be encountered during installation of smoke alarms, 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.

Subdivision Certificate Requirements

A subdivision certificate application is required to be lodged with Council containing the following information:

- A surveyor's certificate certifying that all structures within the subject land comply with the development consent in regard to the setbacks from the new boundaries.
- A surveyor's certificate certifying that all services, drainage lines or access are located wholly within the property boundaries. Where services encroach over the new boundaries, easements are to be created.
- Certification that the requirements of relevant utility authorities have been met.
- A surveyor's certificate certifying finished ground levels are in accordance with the approved plans.

Note: Council will not issue a subdivision certificate until all conditions of the development consent have been completed.

Note: At the present time Hornsby Shire Council is the only authority that can be appointed as a PCA for subdivision works within the Shire.

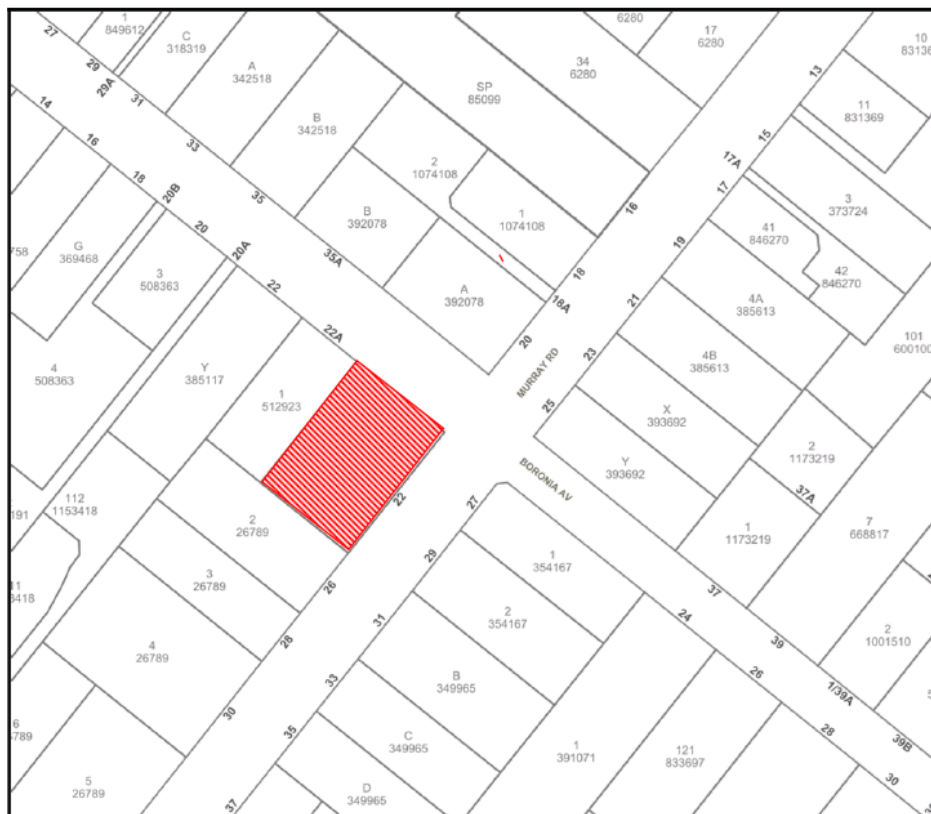
Fees and Charges – Subdivision

All fees payable to Council as part of any construction, compliance or subdivision certificate or inspection associated with the development (including the registration of privately issued certificates) are required to be paid in full prior to the issue of the subdivision certificate. Any additional Council inspections beyond the scope of any compliance certificate required to verify compliance with the terms of this consent will be charged at the individual inspection rate nominated in Council's Fees and Charges Schedule.

House Numbering

The house numbering for this subdivision shall be:

Lot	Street Number	Street Name	Street Type	Locality
Lot 1	22	Murray	Road	Beecroft
Lot 2	24	Murray	Road	Beecroft



LOCALITY PLAN

DA/1302/2021

No. 22 Murray Road, Beecroft



www.conciseplan.com.au

CLAUSE 4.6 WRITTEN REQUEST

22 Murray Road, BEECROFT NSW 2119

Prepared for: Simon de Picot | Project No. 210103

Date: 10 September 2021 | Status: V1.01

Town Planning Consultants

Office 1300 057 046

Email admin@conciseplan.com.au

Address PO Box 603, Engadine NSW 2233

ABN 42 612 150 526





ATTACHMENT 3 - ITEM 3

DOCUMENT CONTROL TABLE

Document Reference:	PR210079		
Date:	Version:	Author:	Checked By:
10 September 2021	V1.01	Matthew Bartinel	Adam Mainey

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1. Introduction

This is a Clause 4.6 written request regarding the proposed one lot into two lots Torrens title subdivision at 1/22 and 22A Murray Road, Beecroft. The written request relates to the minimum subdivision lot size of the proposed development.

The site is located on the corner of Murray Road and Boronia Avenue, consisting of two established dwellings. It is noted that the two dwellings form a detached dual occupancy that is within a Strata plan that was established in 1989. This DA seeks to subdivide the land into two lots and in doing so, change the use of the site from a detached dual occupancy to two dwelling houses, one located on each lot of land.

The proposal is described in plans by Right Angle Design & Drafting Pty Ltd and a Subdivision Plan by East West Surveyors Pty Ltd.

A survey plan has been provided by East West Surveyors, dated 14 April 2020. In addition, a stormwater concept plan has been provided by Right Angle Design & Drafting Pty Ltd.

Part 2 of this written request describes the proposed contravention of the development standard and describes the key elements of Clause 4.6 of HLEP 2013. Part 3 sets out that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Part 4 sets out that there are sufficient environmental planning grounds to justify the contravention of the development standard. Part 5 sets out that the proposed development is in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R2 Low Density Residential zone. Part 5 also addresses the matters to be considered by the Secretary. Part 6 provides a brief conclusion.

2. Proposed Contravention to the Development Standard

Clause 4.1(2) states that 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. As identified in figure 1 below, the subject site is shown on the lot size map.

Clause 4.1(3) of the HLEP 2013 states that 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. The lot size map indicates that the minimum subdivision lot size for the subject site is 600m². See figure 1 below.

As detailed in the site plan and subdivision plan, the proposed Torrens title subdivision will generate two lots. Proposed lot one is 819.9m² and proposed lot 2 is 506.7m². As a result, the degree of contravention to the minimum lot size development standard only applies to proposed lot 2. That variation to the development standard is 15.55%.

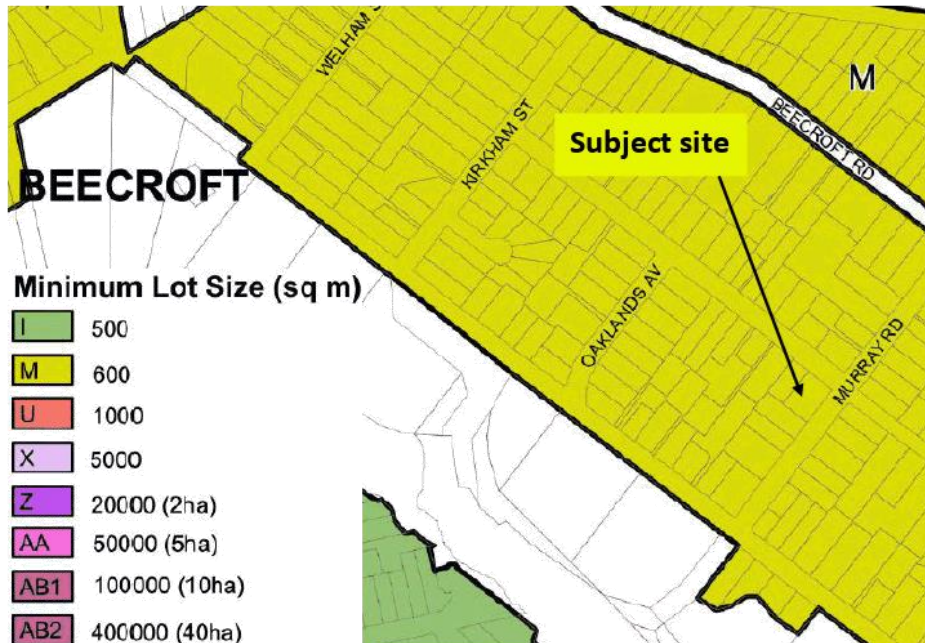


Figure 1: Extract from HLEP2013 Lot Size Map, marked up to indicate the subject site

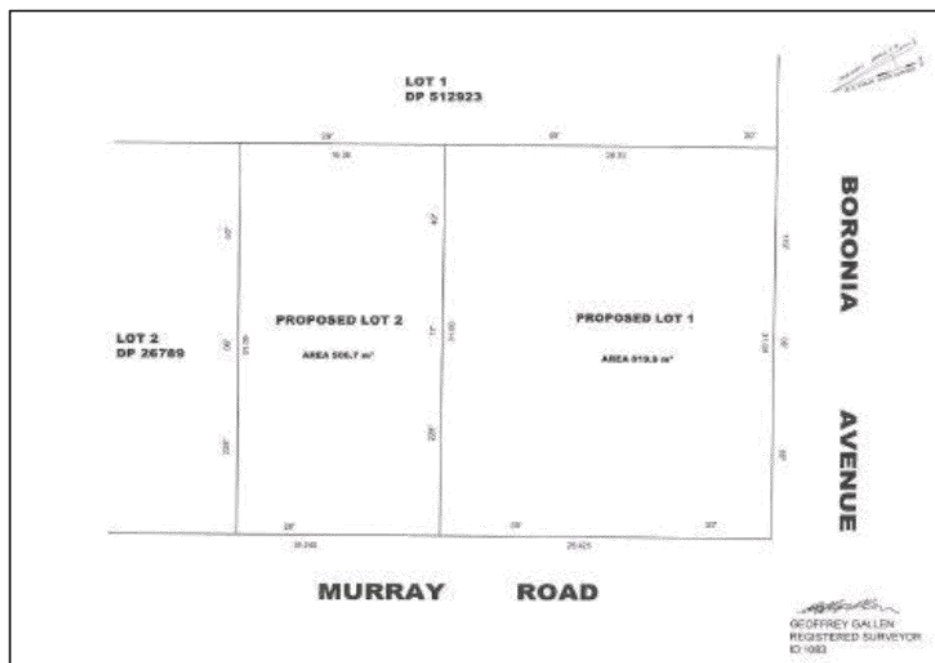


Figure 2: Proposed subdivision plan showing the extent of the contravention to the minimum lot size control. Source: East West Surveyors



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

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

- The dwellings located on the site are existing and are proposed to be retained as part of this application. No physical works to the site is proposed.
- The proposed middle boundary between the two proposed dwelling houses will be retained to reflect the existing configuration of the dwellings. That building boundary was formed through the Strata subdivision of the site in 1989.
- The current use of the site is a detached dual occupancy, which in accordance with the *Hornsby Local Environmental Plan 2013* is a prohibited use within the R2 zone. This proposed one into two lots Torrens title subdivision will create two 'dwelling houses', which are a permissible use within the R2 – Low Density Residential zone. Therefore, the proposed development will remove a non-conforming use on the site and subsequently create a conforming use.
- The site as currently configured has been inclusive of a detached dual occupancy for a considerable amount of time. Furthermore, the proposal will continue to reflect the existing site conditions, generating no adverse impacts on adjoining properties.
- The proposed development will not impact on the residential capacity of the subject site.
- Following the subdivision of the site, the two lots can (if so desired) be sold separately which will allow potential home buyers the opportunity for buying land that has proven to be of a suitable size for residential purposes.
- The proposed Torrens title subdivision will remove the burden of a Strata scheme that serves no positive effects on the property owners of 1/22 and 22A Murray Road.
- There is no consistent subdivision pattern in the area. As identified within figure 3, the site is located within a block that does not contain many rows of lots that are consistent with each other. The only section of the block that possesses a pattern in lot sizes is from 1 Oaklands Avenue to 15 Oaklands Avenue. These lots are not adjacent to the subject site and will not be adversely impacted by this proposed subdivision.



Figure 3: Map indicating the lot size pattern of the surrounding block. Source: Sixmaps. 2020

4. Environmental planning grounds to justify contravening the development standard

The subject site is rectangular in shape and comprises of a total area of 1326.6m². In order to retain the existing dwellings on site and continue to reflect the existing site conditions following the subdivision of land, Proposed Lot 2 will inevitably be of a size that is below the minimum lot size.

The use of the existing detached dual occupancy has existed for a considerable amount of time. Due to no physical works being proposed, the existing character along Boronia Avenue and Murray Road will be retained.

The site is located within an existing heritage conservation area known as C2 – ‘Beecroft - Cheltenham Heritage Conservation Area’. Due to the nature of the proposal and the retention of the existing dwellings and configuration of land, no heritage impacts will be generated by this proposal. Adjoining the site is a heritage item known as ‘Street trees’ (Item no. 66). No works are proposed along the adjoining streets, with the site retaining its existing built and natural features. As a result, no adverse impacts will be generated on surrounding heritage areas from this proposed contravention to the minimum subdivision lot size control.

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

The objects of this Act are as follows—



- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

In accordance with 'objective a' of the EPAA, the proposal will promote the social and economic welfare as the development will continue to present aesthetically to the streetscape, whilst also providing the economic benefits of the removal of an unnecessary Strata scheme that is creating a burden on property owners. The proposal will also conserve the State's natural and other resources.

In accordance with 'objective b', the proposed development has considered ecologically sustainable development principles in the design of the development. No physical works are proposed.

In accordance with 'objective c', the development will promote the orderly and economic use and development of land. The subject site has shown over time its ability to operate suitably and sustainably with two dwellings on site. The proposed subdivision will retain the existing middle boundary and the two proposed Torrens title lots will be the same size as the Strata lots as formed in 1989.

In accordance with 'objective d', the proposed works do not impact on the delivery and maintenance of affordable housing.

In accordance with 'objective e', the proposal will not impact on the conservation of threatened species of animals and plants, ecological communities and their habitat. No physical works are proposed as part of this application.

In accordance with 'objective f', the proposal has no impact on the heritage significance of the heritage conservation area with which the site is located within. The proposal does not result in any physical works and will be reflective of the existing site conditions. No impacts on the existing built and cultural heritage of the area will therefore be generated.



In accordance with 'objective g', the existing built form will be retained and as such will continue to reflect the amenity of the built environment.

In accordance with 'objective h' the proposal will not impact on the existing built form of the two dwellings.

In accordance with 'objective l', the proposal promotes the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State.

In accordance with 'objective j', the proposal will not interfere with the opportunity for community participation within the LGA.

5. Consistency with the objectives of the standard and of the zone

Objectives of the Development Standard

The proposed development would be in the public interest because it is consistent with the objectives of the development standard. Those objectives are:

(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.*

In relation to objective (a), the proposed Torrens title subdivision of land will be appropriate with regard to the site constraints. The site has suitably functioned with regard to the site constraints and the capacity of the land, since the construction of the existing dwellings.

The development potential has already been reflected by the existing dwellings that are located on site, which are proposed to be retained as part of this development application. As a result, it is considered that the existing built form will continue to be appropriate based on the capacity of land and ability for these existing dwellings to function effectively as separate dwelling houses for a considerable amount of time.

In relation to objective (b), both lots have proven to be of a suitable size to accommodate the proposed Torrens title subdivision. No increase in land area of either lots are proposed, with the existing middle boundary to be retained. Effectively, the site will remain the same as is existing and therefore will remain a sufficient size to accommodate the proposed development.

Objectives of the R2 Low Density Residential Zone

The proposed development would also be in the public interest because it is consistent with the objectives of the zone. Those objectives 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.*

In relation to the first objective, the proposed development will continue to meet the housing needs of the community within a low density residential environment. The subdivision of land will be consistent with the existing density of the site, as no physical works are proposed.

In relation to the second objective, the proposed development will also enable the adjoining properties and other land uses in the area to continue to meet their daily needs. The functioning of the subject site will continue to be for residential purposes, with the existing dwellings also being retained. Therefore, the proposed subdivision of land will in no way affect neighbouring land.

In relation to the functions of the secretary, it is considered that the small scale of the proposal and nature of the contravention sought, are such that no State or Regional level of significance is involved. There is no particular concern arising in relation to the public benefit through the proposed contravention to the development standard, as in this instance there is no adverse impacts created.

6. Summary and Conclusion

The proposed development does not comply with the minimum subdivision lot size control. However, it is demonstrated in this written request that compliance with the development standard is unreasonable and unnecessary in the circumstances of the present case. Additionally, it has been demonstrated that there are environmental planning grounds that support the proposed contravention of the development standard.

Approval of the proposal will be in the public interest, notwithstanding the contravention to this development standard because the proposal is consistent with the objectives of the development standard and the zone within which the subject site is located.

Adam Mainey – Director
Bach of Urban and Regional Planning (Hons)
Grad Diploma of Building Surveying



**4 ELECTRONIC - DA/61/2022 - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE -
21 LOWANNA PLACE, HORNSBY**

EXECUTIVE SUMMARY

DA No: DA/61/2022 (Lodged on 21 January 2022)

Description: Alterations and additions to a dwelling house

Property: Lot 16 DP 240146, No. 21 Lowanna Place, Hornsby

Applicant: Concept Architects

Owners: Mr Rory Stuart Tyler and Ms Sabrina Tyler

Estimated Value: \$344,300.00

Ward: B Ward

- The application proposes alterations and additions to a dwelling house.
- The proposal does not comply with the Hornsby Shire Local Environmental Plan 2013 with regard to Clause 4.3 'Height of Buildings'. The applicant has made a submission in accordance with Clause 4.6 'Exceptions to development standards' of the Hornsby Shire Local Environmental Plan 2013 to contravene height of buildings development standard. The submission is considered well founded and is supported.
- No submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Local Planning Panel as the proposal would contravene the Hornsby Shire Local Environmental Plan 2013 development standard for maximum height of buildings by more than 10 percent (28.9%).
- It is recommended that the application be approved.

RECOMMENDATION

THAT Council assume the concurrence of the Secretary of the Department of Planning and Environment pursuant to Clause 4.6 of the Hornsby Local Environmental Plan 2013 and approve Development Application No. DA/61/2022 for alterations and additions to a dwelling house at Lot 16 DP 240146, No. 21 Lowanna Place, Hornsby subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP17/22.

BACKGROUND

On 6 June 2005, DA/548/2005 was approved for alterations and additions to a dwelling house.

On 18 May 2021, a Pre-Lodgement Meeting (PL/29/2021) was held to discuss a lower ground extension to the existing dwelling house.

SITE

The 1529.9m² site is located on northern side of Lowanna Place, Hornsby and contains a split-level pole home.

The site experiences a 48-metre fall to the northern, rear boundary. The site is mapped as being a sloping site with a gradient in excess of 20%

The site is bushfire prone being Bushfire Attack Level Flame Zone (BAL FZ).

The site is a flood control lot.



Figure 1: Aerial Photo of Subject Site

The site contains a 'blue line' water course which runs from the south-eastern, front corner to the north- western, rear corner of the site. The site drains in a northern direction to Waitara Creek.

The site is burdened by 3.05-metre-wide easements for drainage which run along the southern front boundary, eastern side boundary and dissect the site from east to west at the rear of the dwelling house.

An easement for batter with a variable width also runs underneath the house from east to west. A condition has been included in Schedule 1 requiring a 'positive covenant' is to ensure the owner is responsible for maintaining and looking after the easement for batter given the additional load the proposed works would have on it. The positive covenant will be added to the title to ensure any future occupant of the site is fully aware of the works that have been undertaken and their responsibilities in relation to the site if consent is granted.

The site and its surrounds contain native vegetation and species that belong to the Blackbutt Gully Forest community. The site is also adjoining land mapped on the DPIE Sensitive Biodiversity Values Map.

The site is not a heritage item, is not adjacent to a heritage item, and is not within a heritage conservation area.

PROPOSAL

The application proposes alterations and additions to the existing dwelling house as follows.

- A 59.9m² addition to the lower ground floor consisting of a rumpus room and office.
- Demolition and Reconstruction of an existing ground floor deck.
- The ground floor deck will form part of the roof over the lower ground floor addition.
- New pergola roof over the re-constructed ground floor deck.
- No new footings or foundations are proposed.

Five trees would be removed, and 17 trees would be impacted by the proposal. The removal of trees is required to comply with bushfire asset protection zone (APZ) requirements.

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 the North District Plan, by contributing to achieving the dwelling targets for the region.

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 alterations and addition to a ‘dwelling house’, is permissible in the zone with Council’s consent and would meet the objectives of the zone by providing for the housing needs of the community within a low-density residential environment.

2.1.2 Height of Buildings

Clause 4.3 of the HLEP provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5 metres. The proposed development would result in a maximum height of 11.04 metres and does not comply with this provision.

The application is supported by a submission pursuant to Clause 4.6 of HLEP to contravene the maximum height of buildings development standard, which is discussed below in Section 2.1.3 of this report.

2.1.3 Exceptions to Development Standards

The applicant submitted a written request to contravene the height of building development standard contained within Clause 4.3 of the HLEP.

The written request describes the extent of the non-compliance as follows:

*The requested variation is as follows: Permissible maximum building height: **8.5m***

Proposed variation (maximum): 3.276m.

The variation is a direct result of the steep falling nature of the land underneath the existing dwelling and it is worth acknowledging that the existing roof line at the northern edge of the dwelling is 11.04m in height (2.5 m over the height limit).

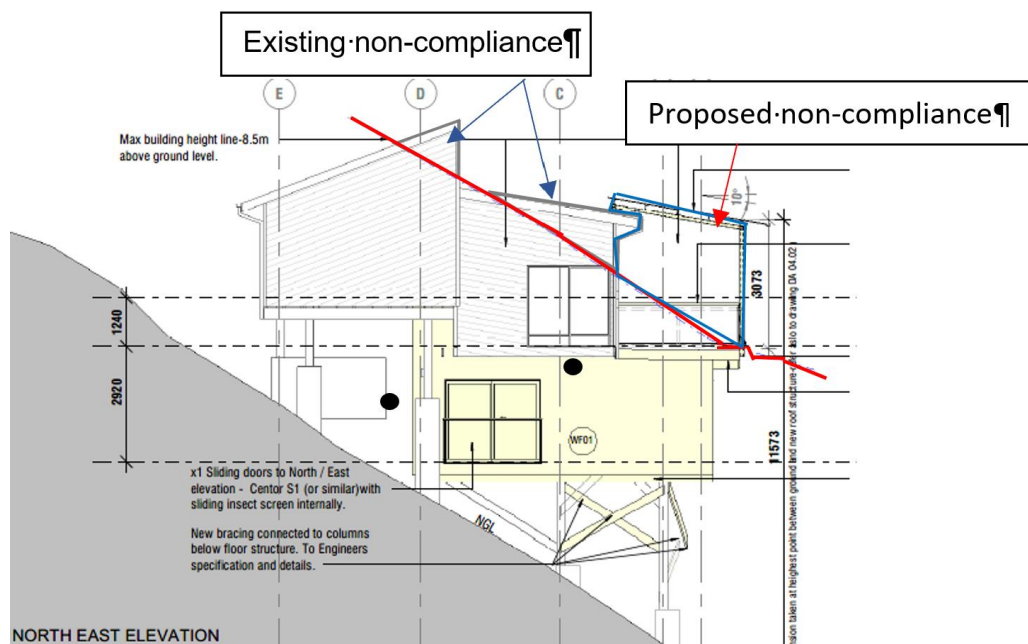


Figure 2: Extract of NE Elevation Plan showing overall building height.

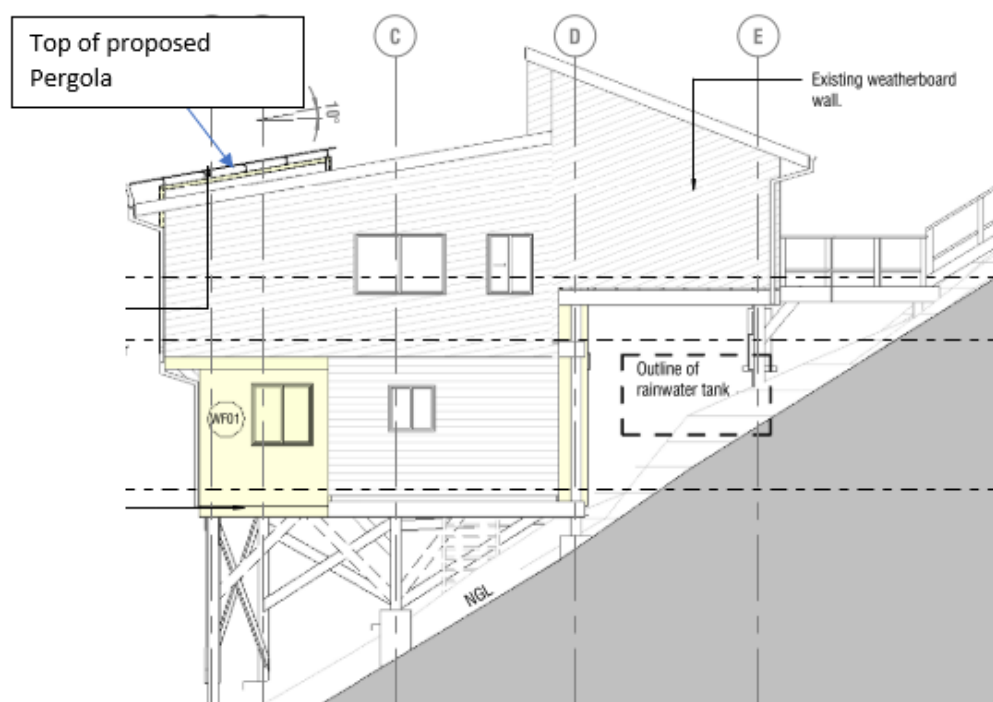


Figure 3: Extract of SW Elevation showing minor change to building height

Figures 2 and 3 depict the extent of the non-compliance with the maximum height standard, being a height of approximately 11.04 metres or 28.9% contravention (max). Further to the figures provided by the applicant above, Council notes that the North-Eastern Elevation Plan clearly details the overall height of the building.

The majority of the contravention of the 8.5 metre building height requirement is within the existing dwelling house (existing skillion roof pitch and walls). There is only a minor additional height contravention as a result of this proposal. The proposed contravention is due to the proposed pergola roof which is a light-weight structure with no enclosing walls.

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 tender to hinder the attainment of the objectives of the zone. In particular, Clause 4.6 provides criteria that must be satisfied prior to a consent authority granting consent to development that contravenes a development standard. These criteria demonstrated under Clause 4.6(3) are as follows:

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

A discussion regarding the criteria provided at Clause 4.6(3), with respect to the original and amended requests is provided below.

2.1.3.1 Unreasonable or Unnecessary Clause 4.6(3)(a)

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 required to demonstrate that a development meets multiple methods as listed above, and the satisfaction of one can be adequate to demonstrate that the development standard is unreasonable or unnecessary.

The written request prepared by Andrew Martin Planning, dated January 2022 provides a detailed assessment of the proposal with respect to the development standard sought to be varied. The request argues that *The objectives of the development standard are achieved notwithstanding non-compliance with the standard* in part 6 of the document, providing reasoning as follows:

Applicants justification

The land across the site falls steeply from the street frontage and underneath the existing dwelling platform before reaching a more gradual decline across the rear, vegetated parts

of the property. Underneath the existing dwelling the land falls by up to 7m from RL147 to RL140.

The existing highest point of the dwelling above the natural ground level is observed at the rear, northern edge to the main roof line. The height measures 11.04m; a 2.54m breach above the 8.5m LEP height standard. The proposal seeks to install a new light-weight roof over the external upper deck at the north-eastern corner of the house which will create a new high point and variation of 3.073m. The height sought is considered to be appropriate given that it is largely consistent with the established height of the dwelling and only occurs due to the falling nature of the land underneath. The variation only allows for a two-storey dwelling because the undercroft area is not enclosed and is not a storey as it has no floor. The two-storey form is compatible with the local area and the built form found on sloping sites.

The design of the alterations and additions will ensure that the dwelling maintains a consistent form and height to other neighbouring dwellings on sloping sites. The height breaches are also observed at the rear of the dwelling where there is no direct consequence or impact to the residential amenity of neighbouring properties. To this end, the proposal has had due regard to the site context and constraints. The use of the pillion type supports limits site excavation and manipulation associated with strip footing and slabs so there are environmental benefits associated with the elevated structure that minimises its footprint on the sloping site.

The alterations and additions proposed are relatively minor and will not drastically alter the existing layout, built form, bulk, scale or height of the dwelling. The proposal will not place any additional stress on existing infrastructure servicing the local area. There are no streetscape impacts associated with the height variation or overshadowing. Overall, the proposal as presented in the plans prepared by Concept Architects achieves the intent of this objective.

Council notes that the objectives of Clause 4.3 of the HLEP are as follows:

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

With reference to the reasoning provided by the applicant above, Council does not object to the conclusion that the proposed additions meet the objectives of Clause 4.3. In reaching this conclusion the following points are noted:

- The site is highly constrained by easements, nature features and constraints such as bushfire. It is not feasible for the footprint of the building to be increased, and therefore the only way to improve the development potential of the site, and the liveability of the dwelling house is to develop the dwelling house vertically.
- The proposed pergola roof will assist in the maintenance of the re-constructed deck by preventing decay from the weather. The pergola roof would also enable appropriate stormwater drainage from the structure.
- There is no ability to re-design the pergola so that it complies with the 8.5 metre maximum height requirement.

The lack of environmental impacts arising from the non-compliance with the development standard, and the largely compliant nature of the development when assessed against the relevant legislative

and Hornsby Development Control Plan requirements (discussed in the body of this report) identifies that the site is suitable for this development.

The proposed development would have negligible impact on the infrastructure capacity of the locality.

For the reasons outlined above, it is considered that the written request to contravene the height of building standard adequately demonstrates that the objectives of the height of buildings development standard contained within Clause 4.3 of the HLEP are achieved, notwithstanding non-compliance with the standard.

2.1.3.2 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 (summarised from *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 [60]).

The applicant provided the following planning grounds for the contravention of the development standard;

- *The existing roof line exceeds the maximum height standard to the rear of the dwelling platform by 2.54m. The existing breach is the direct result of the placement of a standard dwelling footprint over land which falls at a gradient of over 20% and upwards of 7m from the front to the rear of the dwelling platform. As a result, the house has been constructed on large timber and concrete columns.*
- *The footing design minimises site impacts but has the consequence of additional height.*
- *The installation of a new light-weight roof over the upper-level deck to the rear will see a modest increase in the overall height of the building. This is the direct result of the land fall underneath the north-eastern corner of the dwelling. The new roof over the deck will sit below the main dwelling roof line.*
- *The overall elevated built form is two storeys which is expected in a residential area and necessary to support a family especially with work from home area needed due to Covid 19.*
- *The proposed alterations and additions are minor in their overall scale and do not contribute to excessive additional bulk, scale or visual impacts to neighbouring properties. The additions sought are proposed underneath the ground floor to the rear and are contained wholly within the dwelling envelope above.*
- *The HOB exceedance does not unduly add to the overall bulk or scale of the development when viewed from the street or other neighbouring properties as the new roof line over the deck is situated at the rear of the dwelling and is well separated from the closest neighbour to the east (by over 10m).*
- *The introduction of the light-weight roof over the deck will have no direct consequence or adverse impact on the amenity of neighbouring properties with regard to view loss, privacy or overshadowing. Its location and light-weight design over an open deck ensures weather protection and avoidance of in-filling of the upper level which could result in additional bulk.*

- *The development is consistent with the form and height breaches observed on other neighbouring properties in the local area that are situated on raised columns above steeply sloping sites which back onto bushland. The height of the new upper-level deck roof is situated below the height of the main roofline over the first floor. It's extent of height breach above the standard is directly related to the fall away of the natural ground level below.*
- *The development achieves and does not seek to exceed the scale and form anticipated for this site.*
- *The proposal reasonably preserves the residential amenity of the locality.*
- *The proposal has been assessed against the provisions of HLEP 2013 and HDCP 2013. It satisfies the objectives and provisions of both State and Local planning policies.*

Council's further review of the environmental planning grounds presented by the applicant raises no points of contention, and it is considered that the proposed pergola is reasonable built environment outcome, both within the subject site, and to the adjoining residential development.

Council further notes that the technical non-compliance is a result of the existing configuration of the dwelling house, being a pole home construction. Notwithstanding the non-compliance with numerical standards, the proposal does not give rise to any adverse amenity impacts to any adjoining property. The dwelling house continues to respond to the slope of the site, by stepping the design of the dwelling house down the slope.

Council is therefore satisfied that Clause 4.6(3)(b) of the HLEP is adequately addressed.

2.1.3.3 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 (a)(i), the written requests are considered to adequately address the matters required to be demonstrated as outlined above. With regard to (a)(ii), the proposed development is considered to be in the public interest because it is consistent with the objectives of the particular standard and the objectives for height of building contained within the HLEP.

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

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

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

Therefore, the exceedance of the height of buildings development standard is supported in this instance.

2.1.4 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.

2.1.5 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.

Council's assessment of the proposed works and excavation concludes that the impacts would be minimal. The existing bearers and joists of the dwelling house will be utilised as footings for the proposed extension and deck construction. No cut or fill is required to construct the development. The proposal is assessed as satisfactory with regards to Clause 6.2 of the *HLEP*.

2.1.6 Flood Planning

Clause 5.21 of the *HLEP* states development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development is compatible with flood function and behaviour, will not adversely affect flooding on adjoining properties, will not constitute a risk to life or property and will not cause erosion or instability to watercourses.

The finished floor level (FFL) of the lower ground floor meets the minimum FFL (145.53m AHD) required under the Council's Flood Risk Management Study and Plan (FRMSP) for the Shire, and the development is not considered to pose an unacceptable level of risk to property, life or the environment.

2.1.7 Suspension of covenants, agreements, and instruments

Clause 1.9A of the *HELP* states that for the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.

The 88B instrument contains restrictions regarding the external materials and finishes, size of dwelling houses, number of buildings on the site and fencing. However pursuant to Clause 1.9A Council is not obliged to consider these restrictions as part of this development application.

2.2 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The application has been considered against the requirements of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. The Policy provides exempt and

complying development codes that have State-wide application. The Policy also identifies types of development that are of minimal environmental impact that may be carried out without the need for development consent and types of Complying Development (including dwelling houses) that may be carried out in accordance with a Complying Development Certificate.

The site subject to bushfire risk (BAL Flame Zone) and is in exceedance of the maximum building height requirement of 8.5 metres. Therefore, the development is precluded from being approved as Complying Development. The proposed dwelling house additions would otherwise comply with the other numerical standards of Complying Development contained within the SEPP.

2.3 Adopted State Environmental Planning Policies (Savings and Transitional Provisions)

On 1 March 2022, the following State Environmental Planning Policies (SEPPS) were gazetted.

- State Environmental Planning Policy (Resilience and Hazards) 2021.
- State Environmental Planning Policy (Biodiversity and Conservation) 2021.
- State Environmental Planning Policy (Planning Systems) 2021.
- State Environmental Planning Policy (Precincts - Eastern Harbour City) 2021.

These SEPPS now form Matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. However general savings provisions apply to development applications that have been made but not yet determined, on or before the commencement date.

As this development application was lodged on 21 January 2022, this development application is considered to have been made prior to the commencement date of the SEPPs. The aforementioned SEPPs have been considered as a matter for consideration under S4.15 of the Act. However, the existing legislation in force at time of lodgement of the development application, prevails to the extent of any inconsistency; these policies are listed below:

- *State Environmental Planning Policy No. 55 Remediation of Land.*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.*
- *Sydney Regional Environmental Plan No. 20 Hawkesbury-Nepean River.*

Notwithstanding, the approval of the development application would not adversely affect the objectives of the newly adopted State Environmental Planning Policies and is considered to be consistent with this policy.

2.4 State Environmental Planning Policy No. 55 Remediation of Land

The application has been assessed against the requirements of State Environmental Planning Policy No. 55 Remediation of Land (SEPP 55) under which consent must not be granted to the carrying out of any development on land unless the consent authority has considered whether the land is contaminated or requires remediation for the proposed use.

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

An examination of Council's records and aerial photography has determined that 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.

2.5 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The application has been assessed against the requirements of State Environmental Planning Policy (Building Sustainability Index - BASIX) 2004. The proposal includes a BASIX Certificate (No. A427601) for the proposed alterations and additions to the dwelling House.

A condition is recommended in Schedule 1 of this report requiring the recommendations of the BASIX certificate be complied with.

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 3, Clause 9(2) 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 and objectives for tree preservation.

The application has been assessed against the requirements of the Vegetation SEPP and it has been determined that the proposal would meet the objectives of the Vegetation SEPP. This matter is addressed in Section 3.1.1 of this report.

2.7 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.

2.8 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.

2.9 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 3.1 Dwelling Houses			
Control	Proposal	Requirement	Complies
Site Area	1529.9m ²	N/A	N/A
Building Height	11.04m	8.5m	No
No. storeys	2	max. 2 + attic	Yes
Site Coverage	10%	max. 30%	Yes
Floor Area	202.16m ²	max. 430m ²	Yes
Setbacks			
- <i>Front</i>	9.5m	Conform to streetscape	Yes
- <i>Side (north-east)</i>			
<i>Ground floor</i>	4.6m	0.9m	Yes
<i>First floor</i>	1.6m	1.5m	Yes
- <i>Side (south-west)</i>			
<i>Ground floor</i>	1.5m	0.9m	Yes
<i>First floor</i>	Unchanged	1.5m	Yes
- <i>Rear</i>			
<i>Ground floor</i>	>3m	3m	Yes
<i>First floor</i>	>8m	8m	Yes
Landscaped Area (% of lot size)	85%	min. 45%	Yes
Private Open Space			
- <i>minimum area</i>	25.5m ²	24m ²	Yes
- <i>minimum dimension</i>	3.2m ²	3m	Yes
Car Parking	spaces	2 spaces	Yes

As detailed in the above table, the proposed development does not comply with the prescriptive requirements of 3.1.1 Scale within the *HDCP*. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant desired outcomes.

2.9.1 Scale

The desired outcome of Part 3.1.1 of the HDCP is for 'development with a height, bulk and scale that is compatible with a low-density residential environment'.

This is supported by the prescriptive measures which state that '*sites with the maximum building heights under Clause 4.3 of the HLEP should comply with the maximum number of storeys in Table 3.1.1(a).*'

In addition, it is stated that '*buildings should respond to the topography of the site by:*

- *Minimising earthworks (cut and fill).*
- *Siting the floor level of the lowest residential storey a maximum of 1.5 above natural ground level'.*

The proposed pergola roof is situated 11.04 metres above natural ground which does not comply with Part 3.1.1 Scale of the HDCP and Clause 4.3 of HLEP.

In support of this non-compliance, it is noted that the slope of that site is a significant constraint for any development on the site. It is also noted that the proposed addition has been designed to complement the natural slope of the land and avoid cut and fill on the site by utilising pier and beam construction.

The lowest residential storey is between 600mm and 4.8 metres above existing ground level. However, this is consistent on the existing dwelling house. Further, as the site is flood prone, minimum finished floor level (FFL) requirements apply. The proposal complies with FFL required under Council's Flood Risk Management Study and Plan (FRMSP).

The Applicant has submitted a written request pursuant to Clause 4.6 of the HLEP which has adequately addressed this non-compliance which is discussed in detail above under Section 2.1.3.

The proposal meets the desired outcomes of Part 3.1.1 Scale of the HDCP and is considered acceptable.

2.9.2 Privacy

The desired outcome of Part 3.1.6 Privacy of the HDCP is for development '*that is designed to provide reasonable privacy to adjacent properties.*' This is supported by prescriptive measure (c) and (d) where:

- 'c) *a deck, balcony, terrace or the like should be located within 600mm of existing ground level where possible to minimise potential visual and acoustic privacy conflicts'; and*
- d) *'decks and the like that need to be located more than 600mm above existing ground level should not face a window of another habitable room. Balcony or private open space of another dwelling located within 9 metres of the proposed deck unless appropriately screened.'*

The application proposes the re-construction/ refurbishment of an existing deck and the construction of a pergola roof over this deck. The deck will be orientated to the rear of the property. The south western side of the deck will be screened by the existing dwelling house. The deck will be setback 4 metres from the north-eastern boundary and would be approximately 18 metres from the nearest dwelling house to the northeast.

In summary, while the proposed re-constructed deck would be more than 600mm above existing ground level, the deck would not result in any adverse privacy loss impacts and privacy screening is not considered to be warranted.

The proposal meets the desired outcome of Part 3.1.6 Privacy of the HDCP and is considered acceptable.

2.9.3 Bushfire

The desired outcomes of Part 1C.3.1 Bushfire of the HDCP are to encourage *'development that is located and designed to minimise the risk to life and property from bushfire'* and to encourage *'development that balances the conservation of native vegetation and bushfire protection'*.

The Application has provided a Bushfire Assessment Report prepared by Sydney Bushfire Consultants dated 7 December 2021.

The Bushfire Assessment Report recommended any development on the site be built to the requirements of AS3959-2018 Construction of bushfire-prone areas in accordance with the requirements for Bushfire Attack Level (BAL) Flame Zone and the relevant sections of Planning for Bushfire Protection 2019.

In accordance with Council's assessment protocol for development in BAL Flame Zone, the application was referred to the NSW Rural Fire Service (NSW RFS) for review. The NSW RFS raised no objections to the proposal subject to conditions.

Conditions reflecting the NSW RFS requirements have been recommended under Schedule 1 of this report in regard to the utilisation of BAL FZ fire retardation construction materials and the maintenance of the property as an Inner Protection Area (IPA) in perpetuity.

The proposal meets the desired outcomes of Part 1C.3.1 Bushfire of the HDCP and is considered acceptable, subject to conditions.

2.9.4 Earthworks and Slope

The desired outcomes of Part 1C.1.4 Earthworks and Slope are to encourage *'development that is designed to respect the natural landform characteristics and protects the stability of land'* and *'development that limits landform modification to maintain the amenity of adjoining properties and streetscape character'*.

These desired outcomes are supported by the prescriptive control that *"Sloping sites with a gradient in excess of 20% require certification from a geotechnical engineer as to the stability of the slope in regard to the proposed design."*

The application has provided a "Geotechnical Investigation & Landslide Risk Assessment" prepared by Sydney Geotech Consultancy dated 25 August 2021.

Subject to conditions, the proposal meets the desired outcomes of Part 1C.1.4 Earthworks and Slope and is considered acceptable.

2.9.5 Flooding

The desired outcome of Part 1C.3.2 Flooding of the HDCP is to encourage *"development that is located and designed to minimise the risk to life, property and the environment from flooding"*.

The site is not identified as 'flood planning area' on the HLEP Flood Planning Map however is flood prone, with 1% AEP floodwaters impacting the site at elevations ranging from RL 153.5m AHD to RL 107 m AHD.

The proposal has been considered with regard to the Flood Impact Assessment Report prepared by Donovan Associates s dated 26 August 2021. Council's development engineer raised no objections to

the proposal, subject to the imposition of recommended conditions relating to minimum floor levels of 145.53m AHD. The finished floor level of proposed lower ground floor complies with requirement.

The proposal meets the desired outcomes of Part 1C.3.2 Flooding under the *HDGP* and is considered acceptable, subject to conditions.

2.10 Section 7.12 Contributions Plans

Hornsby Shire Council Section 7.12 Contributions Plan 2019-2029 applies to the development as the estimated costs of works is greater than \$100,000. Should the application be approved, an appropriate condition of consent is recommended requiring the payment of a contribution in accordance with the Plan.

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

3.1.1 Tree and Vegetation Preservation

The proposed development would necessitate the removal of 5 trees from the site, numbered T4, T12, T19, T21, and T23 and the pruning of T7, T15, T17, T20, and T22.

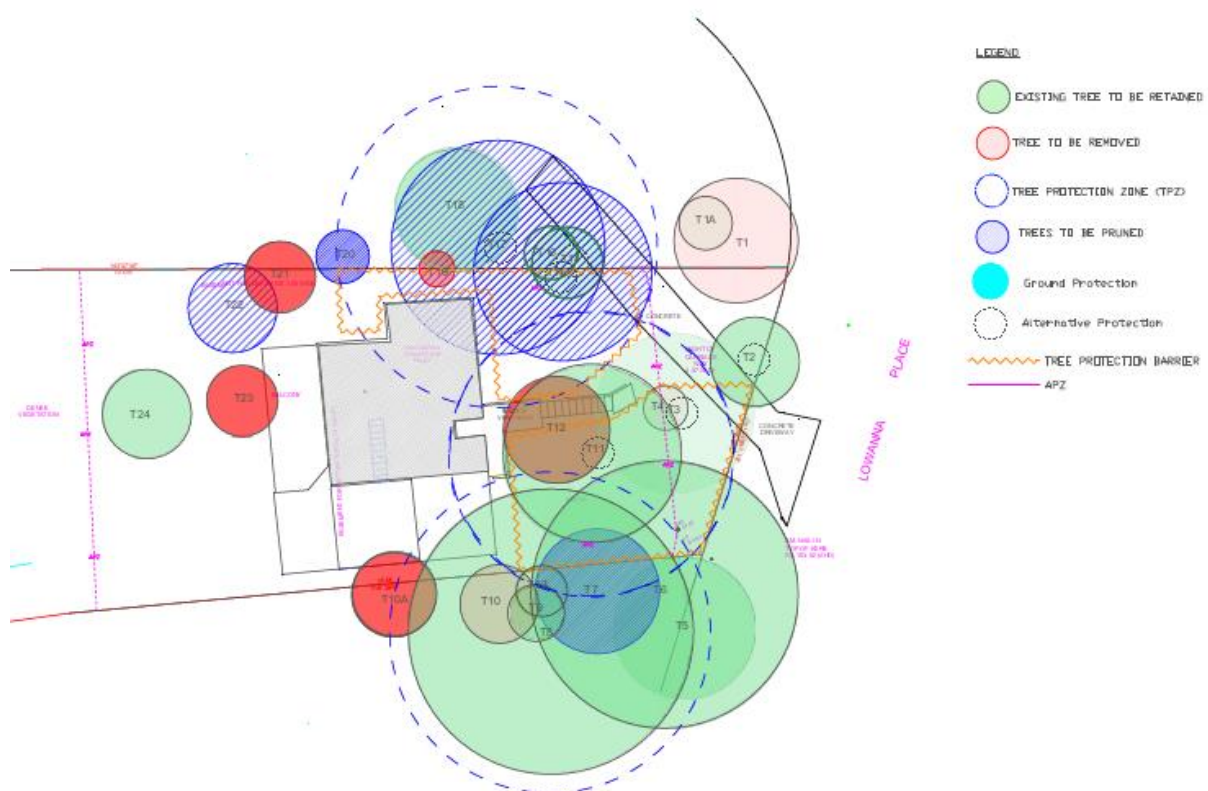


Figure 4 – Extract of Tree Management Plan Showing Trees to be Removed (in red)

The Development Application sought the removal of four trees on adjoining properties (T1, T1a, T10 and T10a). However, no nexus could be established between this development application and the

removal of trees on adjoining properties. Two of these trees T10 and T10a are Camphor Laurel which are exempt from the requirement of approval to remove. The NSW Rural Fire Service advised that the Inner Protection Area (IPA) for bushfire protection only needs to extend to the property boundaries of the subject site. Therefore, a condition has been included in Schedule 1 this report stating that consent is not granted for the removal of trees on adjoining properties.

The application has been supported by an Arboricultural Impact Assessment (AIA) and Tree Management Plan prepared by Arbor Central Tree Care dated 13 September 2021. Most of these trees are weed species or of low retention value, such as camphor laurel and privet. However, some Turpentine and Silky Oak trees are also proposed to be removed.

Overall Council's Arboricultural assessment generally concurs with the findings of the AIA. Council has no objection to the removal of 8 trees. Council also considers that the proposed works would result in minimal and acceptable tree impacts to trees T7, T15, T17, T20, T22. Whilst tree loss is not ideal, there is sufficient space on the site to provide compensatory plantings of locally occurring species to maintain the local amenity.

Conditions are recommended in Schedule 1 of this report requiring the appointment of a Project Arborist, the installation of tree protection measures, and the planting of 8 replacement trees.

Subject to conditions, the proposed development meets the desired outcomes of Part 1B6.1 Tree Preservation of the HDCP and the proposed development would result in acceptable environment impacts.

3.1.2 Biodiversity

The site is located amongst vegetation characteristic of Blackbutt Gully Forest Vegetation community. The proposed development will require the removal of *Syncarpia glomulifera* and *Eucalyptus pilularis* trees in addition to exotic species including environmental weeds.

Areas of remnant vegetation will be retained as a buffer between the development gully bushland downslope of the proposed development. The site is also adjoining land mapped on the DPIE Sensitive Biodiversity Values Map.

The site is mapped as bushfire prone land. The removal of trees is required to comply with bushfire APZ requirements.

A condition is recommended in Schedule 1 of this report requiring a Construction Environmental Management Plan (CEMP) to be submitted for the construction phase of the project.

Subject to conditions, the proposed development meets the desired outcomes of Part 1C.1.1 Biodiversity of the HDCP and the proposed development would result in acceptable environmental impacts.

3.1.3 Stormwater Management

The residential development would have a minor positive impact on the natural environment with all stormwater being directed to the existing internal drainage system which will then be conveyed to the stormwater easement on the site.

3.2 Built Environment

3.2.1 Built Form

The proposal would generally be consistent with the built form of the surrounding low-density residential area which consists of dwelling houses ranging from single storey, split level and two storeys.

3.3 Social Impacts

The residential development would improve housing choice in the locality by providing a range of house hold types. This is consistent with Council's Housing Strategy which identifies the need to provide a mix of housing options to meet future demographic needs in Hornsby Shire.

The location of the development is in approximately 820 metres from the commercial area of Hornsby and approximately 1 kilometre from the Hornsby Railway Station ensuring pedestrian access to shops, services, medical centres, employment and public transport.

3.4 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"*.

4.1 Flooding

Part of the land the subject of the development is identified as being below the 1:100 year flood level. The finished floor level (FFL) of the lower ground floor meets the minimum FFL (145.53m AHD) required under the Council's Flood Risk Management Study and Plan (FRMSP) for the Shire.

4.2 Bushfire Risk

As noted in Section 2.9.3 of this report, the subject site is identified as being bushfire prone, the application was referred to the NSW Rural Fire Service for comment.

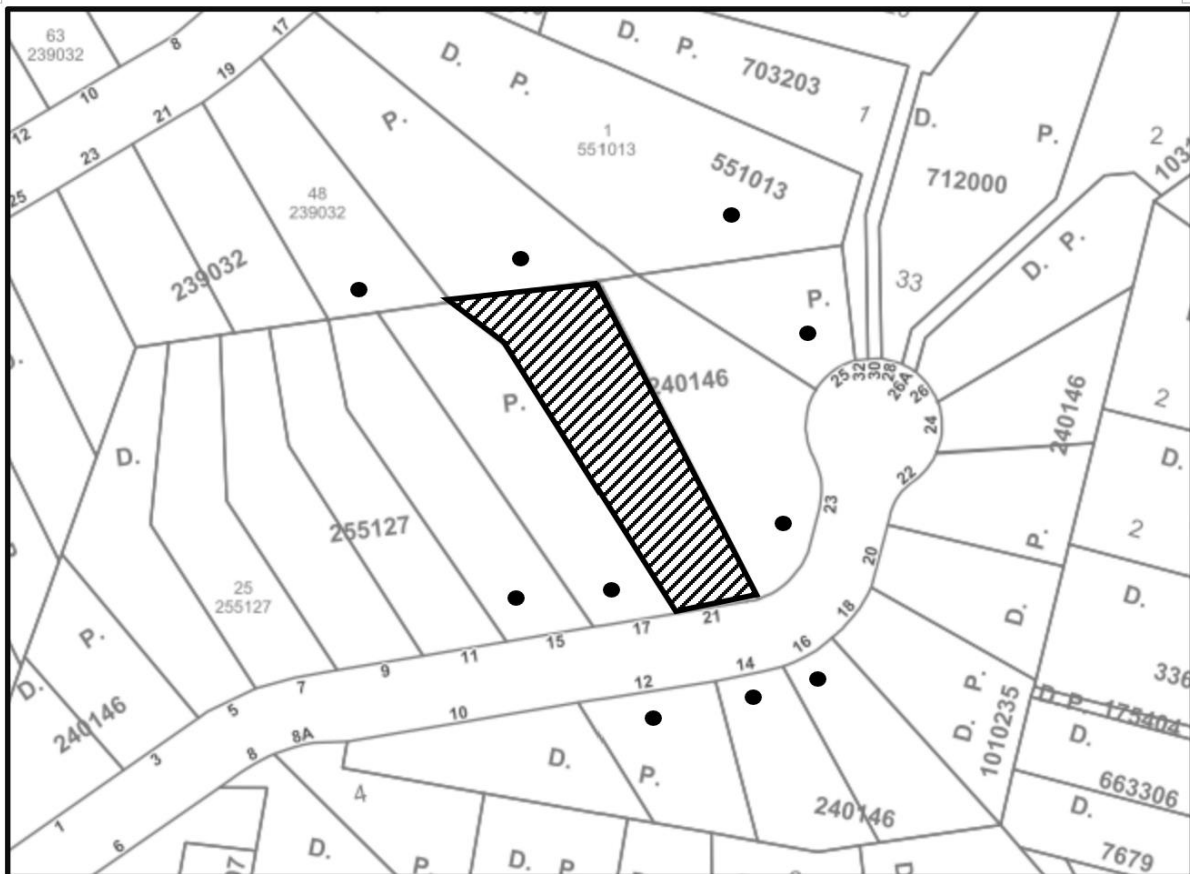
Conditions provided by NSW RFS have been recommended under Schedule 1 of this report with regard to the utilisation of BAL Flame Zone fire retardant construction materials and the maintenance of the property as an Inner Protection Area (IPA) in perpetuity.

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 24 January 2022 and 15 February 2022 in accordance with the Hornsby Community Engagement Plan. During this period, Council received no submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

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

The development application was referred to the following Agencies for comment:

5.2.1 Rural Fire Service

The development application was referred to the NSW Rural Service for comment and no objections were raised to the proposed development subject to the conditions recommended in Schedule 1.

6. THE PUBLIC INTEREST

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

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

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

CONCLUSION

The application proposes alterations and additions to a dwelling house.

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

Council received no submissions during the public notification period. The matters raised have been addressed in the body of the report.

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

The reasons for this decision are:

- The request under Clause 4.6 of Hornsby Local Environmental Plan 2013 to contravene the 'Height of buildings' development standard is well founded. Strict compliance with the development standard is considered unreasonable and unnecessary in the circumstances of the case and sufficient environmental planning grounds have been submitted to justify the contravention to the development standard.
- The proposed development generally complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, overshadowing, solar access, amenity or privacy.

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



RESPONSIBLE OFFICER



The officer responsible for the preparation of this report is Katrina Maxwell.

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

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.  Locality Plan
2.  Architectural Plans

-
- 3.  Landscape Plan
 - 4.  Clause 4.6 Variation

File Reference: DA/61/2022
Document Number: D08358236

ITEM 4

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.

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
1915 – Pre - DA.00	Cover Sheet, Perspectives & Site Location	Concept Architects	06/12/2021	
1915-A.01.01	Site Plan	Concept Architects	13/01/2022	
1915-DA.02	Lower Ground Floor Plan	Concept Architects	06/12/2021	
1915-A.02.02	Ground Floor Plan	Concept Architects	06/12/2021	
1915-DA.04	Elevations	Concept Architects	13/01/2022	
1915-A.04.02	Elevations	Concept Architects	13/01/2022	
1915-A.05.01	Sections	Concept Architects	13/01/2022	
1915-A.07.01	Landscape	Concept Architects	06/12/2021	
TMP_001	Tree Management Plan	Concept Architects	21/09/2021	

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference

Document Title	Prepared by	Dated	Council Reference
BASIX Certificate No. A427601	Concept Architects	05/11/2021	D08334324
Arboricultural Impact Assessment	Arbor Centre Tree Care	13/09/2021	D08334319
Waste Management Plan	Concept Architects	08/12/2021	D08334312
Geotechnical Investigation & Landslide Risk assessment (SGC20-121)	Sydney Geotech Consultancy	25/08/2021	D08334296
Bushfire Assessment Report (BF-79A-1898-2)	Sydney Bushfire Consultants	07/12/2021	D08334288
Flood Impact Assessment Report (Ref: E323535_Flood)	Donovan Associates	26/08/2021	D08334291
D1 - Stormwater Details, Notes & Legend (issue B)	Donovan Associates	01/12/2021	D08334309
D2 - Stormwater Management Plan (issue B)	Donovan Associates	01/12/2021	D08334309
D3 - Sediment Control Plan (issue B)	Donovan Associates	01/12/2021	D08334309
D4 – Sediment Control Details	Donovan Associates	01/12/2021	D08334309
RFS Concurrence Letter (CNR-34458)	NSW Rural Fire Service	04/02/2021	D08342570

2. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any construction works under this consent.
- b) The Construction Certificate plans must be consistent with the Development Consent plans.

3. Removal of Trees

- a) This development consent permits the removal of trees numbered 4, 12, 19, 21, 23, 24 as identified on page 38 in the Arboricultural Impact Assessment prepared by Arbor Central dated 13/09/2021.
- b) No consent is granted for the removal of trees numbered 2, 3, 5, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17, 18, 20, 22 as these trees contribute to the established landscape amenity of the area/ streetscape.

- c) No consent is granted to the removal of trees T1, T1a as these trees are on adjoining properties. Removal of these trees would require separate approval by Council.

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).

4. Tree Pruning

- a) This development consent only permits the pruning of trees numbered 7,15,17,20,22 as identified in the Tree Location Plan Page 38 of the Arboricultural Impact Report prepared by Arbor Central dated 13/09/2021.
- b) Works can be undertaken in the form of canopy modification as follows:

Tree number	Work prescribed
7,15,17,20,22	Crown Modification

- i) All specified pruning works must be less than 15 percent.
- ii) All pruning work must be undertaken by an arborist with minimum AQF3 qualifications.

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

5. Section 7.12 Development Contributions

- a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the *Hornsby Shire Council Section 7.12 Development Contributions Plan 2019 - 2029*, **\$3,443.00** must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of **\$344,300.00**.
- b) The value of this contribution is current as of **3 March 2022**. If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.12 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

c) \$ d) e) f) g)

\$
C
D
C

X

C
P
I

h) i) j) k) l)

Where:

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

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

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

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

The monetary contributions shall be paid to Council:

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

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

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

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

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

6. 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. Contract of Insurance (Residential Building Work)

Where residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, this contract of insurance must be in force before any building work authorised to be carried out by the consent commences.

8. Notification of Home Building Act 1989 Requirements

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being Council) has given Council written notice of the following information:

- a) In the case of work for which a principal contractor is required to be appointed:
 - i) The name and licence number of the principal contractor.
 - ii) The name of the insurer by which the work is insured under Part 6 of that Act.
- b) In the case of work to be done by an owner-builder:
 - i) The name of the owner-builder.
 - ii) If the owner-builder is required to hold an owner-builder's permit under that Act, the number of the owner-builder's permit.

Note: If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being Council) has given Council written notification of the updated information.

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. Stormwater Drainage – Dwelling

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

- a) Connected to the existing internal drainage system.

11. Habitable Floor Level

The habitable floor level for the lower ground level must be at a minimum of 145.53m Australian Height Datum.

12. Structure within an Easement for Batter

- a) Structures within an Easement for Batter are to be designed by a chartered structural engineer, to ensure structures do not cause damage to the existing Easement for Batter, and both the structures and Easement for Batter will function in a safe and efficient manner.
- b) Construction for the proposed development is to be carried out in accordance with the requirements of the Geotechnical Investigation & Landslide Risk Assessment report, prepared by Sydney Geotech Consultancy, dated 25 August 2021.

13. 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.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS
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14. 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.

15. Protection of Adjoining Areas

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

- a) Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic.
- b) Could cause damage to adjoining lands by falling objects.
- c) Involve the enclosure of a public place or part of a public place.
- d) Have been identified as requiring a temporary hoarding, fence or awning within the Council approved Construction Management Plan (CMP).

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

16. Toilet Facilities

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

17. Erosion and Sediment Control

- a) 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.
- b) 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.

18. Installation of Tree Protection Measures

- a) Trees to be retained and numbered 2, 3, 5, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17, 18, 20, 22 as identified on the Tree Location Plan prepared by Tree Central 24/1/2022 D08334319 must have tree protection measures for trunk installed by the project arborist as follows:
 - i) For the duration of construction works, in accordance with Tree Protection Plan prepared by Arbor Central dated 21/09/2021 TRIM: D08334319.
- b) The circumference of the trunk must be wrapped in hessian material to provide cushioning for the installation of timber planks.
- c) Timber planks (50 x100mm) must be spaced at 100mm intervals and must be attached using adjustable ratchet straps.

19. Protection of vegetation, habitat and environmental features during construction

To ensure the protection of vegetation, habitat and environmental features during construction, the applicant must:

- a) Install bushland protection fencing along the management zones identified in the approved Construction Environment Management Plan to retain all native trees to be retained (as recommended by Council's Tree Management Team).
- b) Clean machinery of soil and debris before entering the site to prevent the spread of weeds and fungal pathogens.

REQUIREMENTS DURING CONSTRUCTION

20. Construction Work Hours

- a) All works on site, including any earthworks, must only occur between 7am and 5pm Monday to Saturday.
- b) No work is to be undertaken on Sundays or public holidays.

21. 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.

22. Street Sweeping

- a) During works and until exposed ground surfaces across the site have been stabilised, street sweeping must be undertaken following sediment tracking from the site.
- b) The street cleaning service must utilise a 'scrub and dry' method and be undertaken for the full extent of any sediment tracking.

23. 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.

24. 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.

25. 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.

26. Maintaining the health of trees approved for retention

The appointed project arborist must monitor and record any and all necessary actions required to maintain tree health and condition for trees numbered 2, 3, 5, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17, 18, 20, 22 on the approved plans.

27. Maintaining Tree Protection Measures

Tree Protection Measures must be maintained by the project arborist in accordance with Condition No. 14 and 19 of this consent for the duration of works.

28. 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 40mm.
 - iii) The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
 - iv) 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.
- b) 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.

29. Building materials and Site Waste

The stockpiling of building materials, the parking of vehicles or plant, the disposal of cement slurry, wastewater 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.

30. Geotechnical Report

The recommendations of the Geotechnical Report prepared by Sydney Geotech Consultancy, dated 25 August 2021 must be complied with for the duration of the construction works.

31. Waste Management

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

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

32. Fulfilment of BASIX Commitments

The applicant must demonstrate the fulfilment of BASIX commitments pertaining to the development.

33. Completion of Works and Compliance Certificate

All engineering and geotechnical works identified under this consent are to be completed and a Compliance Certificate issued prior to the release of occupation certificate.

34. Damage to Council Assets

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with AUS-SPEC Specifications

(www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

35. Creation of Easements (Application for The Execution of Legal Documents)

The following easement is to be created on the title of the property under the Conveyancing Act 1919:

- a) The creation of an appropriate "positive covenant" over the constructed structure within the Easement for Batter in favour of Council in accordance with Council's prescribed wording. The position of the additional structure is to be clearly indicated on the title.

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

36. Structural Engineer's Certificate

A chartered structural engineer certificate that structures within an Easement for Batter have been constructed in accordance with the requirements of the structural engineer and they do not cause damage to the existing Easement for Batter, and both the structures and Easement for Batter are functioning in a safe and efficient manner.

37. Replacement Tree Requirements

- a) The trees approved for removal under this consent, being trees numbered 1, 1a , 4, 10, 10a, 12, 19, 21, 23, 24 must be offset through replacement planting of a minimum of 8 trees.
- b) All replacement plantings must be species selected from the 'Trees Indigenous to Hornsby Shire (as of 1 September 2011)' document available for viewing on the Hornsby Council's website <http://www.hornsby.nsw.gov.au/environment/flora-and-fauna/tree-management/indigenous-trees>
- c) The location and size of tree replacement planting must comply with the following:
 - i) All replacement trees must be located in either front or rear setbacks and planted 4 metres or greater from the foundation walls of the approved development.
 - ii) The pot size of the replacement trees must be a minimum 45 litres.
 - iii) All replacement trees must be a minimum of 3 metres in height.
 - iv) All replacement trees must have the potential to reach a mature height greater than 10 metres.

38. Final Certification

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

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

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

39. Certification of RFS Requirements

A Certificate prepared by a BPAD accredited Bushfire Consultant is to be provided to the Principal Certifying Authority (PCA) certifying the completion of all works required by the NSW RFS conditions of concurrence prior to the issue of the Occupation Certificate.

OPERATIONAL CONDITIONS

40. Ongoing Protection of Remnant Trees

All trees on site not approved for removal under this consent are required to be retained for conservation purposes. These trees have a legal obligation for their preservation and are excluded from the clearing provisions of the 10/50 Vegetation Clearing Code of Practice for New South Wales in accordance with Clause 7.8 of the Code.

CONDITIONS OF CONCURRENCE - NSW RURAL FIRE SERVICE

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

41. Asset Protection Zones

From the start of building works, the property around the building must be managed as an inner protection area (IPA) for a distance of 10 metres, or to the property boundary (whichever comes first). in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019. When establishing and maintaining an IPA the following requirements apply:

- a) Tree canopy cover should be less than 15% at maturity.
 - b) Trees at maturity should not touch or overhang the building.
 - c) Lower limbs should be removed up to a height of 2 metres above the ground.
 - d) Tree canopies should be separated by 2 to 5 metres.
 - e) Preference should be given to smooth barked and evergreen trees.
 - f) Large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings;
- Shrubs should not be located under trees.

- g) Shrubs should not form more than 10% ground cover.
- h) Clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice.
- i) The height of the vegetation.
- j) Grass should be kept mown (as a guide grass should be kept to no more than 100mm in height).
- k) Leaves and vegetation debris should be removed.

42. Construction Standards

Construction Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.

New construction must comply with Section 3 (excluding section 3.5) and Section 9 (BAL FZ) of Australian Standard AS3959-2018 Construction of buildings in bushfire-prone areas or the relevant BAL-FZ requirements of the NASH Standard - Steel Framed Construction in Bushfire Areas (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of Planning for Bush Fire Protection 2019.

43. Water and Utility Services

Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.

The provision of water, electricity and gas must comply with the following in accordance with Table 7.4a of Planning for Bush Fire Protection 2019:

- a) Reticulated water is to be provided to the development where available.
- b) All above-ground water service pipes external to the building are metal, including and up to any taps.
- c) Where practicable, electrical transmission lines are underground.
- d) Where overhead, electrical transmission lines are proposed as follows:
- e) Lines are installed with short pole spacing (30 metre), unless crossing gullies, gorges or riparian areas.
- f) No part of a tree is closer to a power line than the distance set out in accordance with the specifications in ISSC3 Guideline for Managing Vegetation Near Power Lines.
- g) Reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014.
- h) Requirements of relevant authorities, and metal piping is used.
- i) All fixed gas cylinders are kept clear of all flammable materials to a distance of 10 metres and shielded on the hazard side.
- j) Connections to and from gas cylinders are metal.
- k) Polymer-sheathed flexible gas supply lines are not used.
- l) Above-ground gas service pipes are metal, including and up to any outlets.

44. Landscaping Assessment

The intent of measures for landscaping. To achieve this, the following conditions shall apply:

Landscaping within the required asset protection zone must comply with Appendix 4 of Planning for Bush Fire Protection 2019. In this regard, the following principles are to be incorporated:

- a) A minimum 1 metres wide area, suitable for pedestrian traffic, must be provided around the immediate curtilage of the building.
- b) Planting is limited in the immediate vicinity of the building.
- c) Planting does not provide a continuous canopy to the building (i.e. trees or shrubs are isolated or located in small clusters).
- d) Landscape species are chosen to ensure tree canopy cover is less than 15% (IPA), and less than 30% (OPA) at maturity and trees do not touch or overhang buildings.
- e) Avoid species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies.
- f) Use smooth bark species of trees species which generally do not carry a fire up the bark into the crown.
- g) Avoid planting of deciduous species that may increase fuel at surface/ ground level (i.e. leaf litter).
- h) Avoid climbing species to walls and pergolas.
- i) Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building.
- j) Locate combustible structures such as garden sheds, pergolas and materials such as timber garden.
- k) Furniture away from the building.
- l) Low flammability vegetation species are used.

- 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 Tree Preservation provisions have been developed under Council's authorities contained in *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* under 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 HDCP.

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

Covenants

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

Dial Before You Dig

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

Asbestos Warning

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

www.environment.nsw.gov.au

www.adfa.org.au

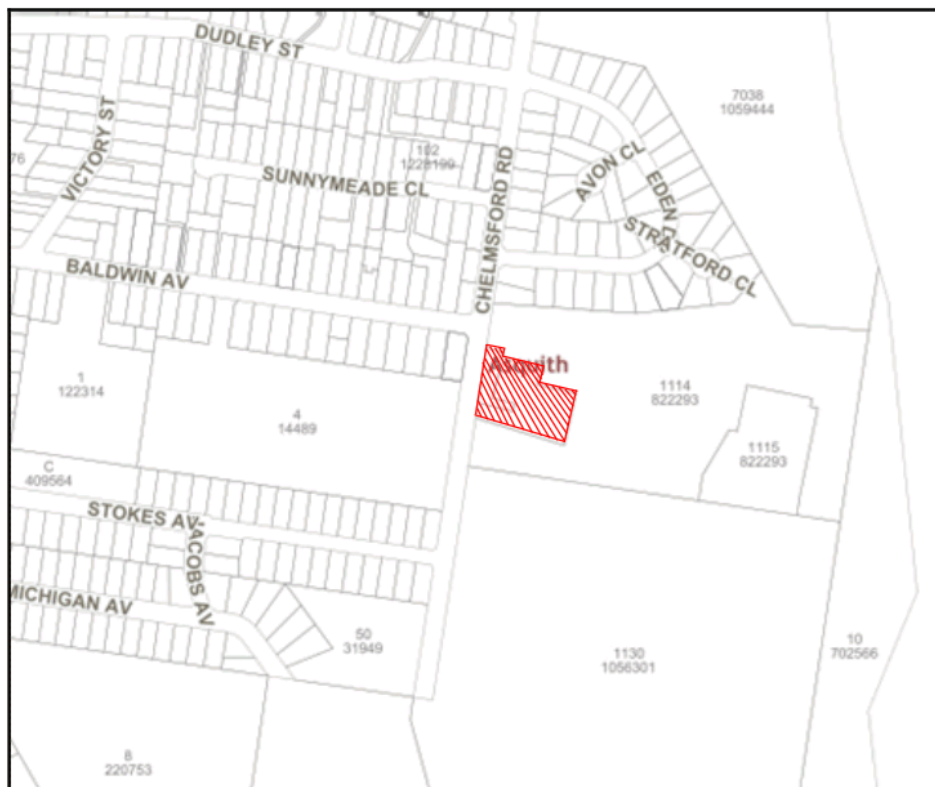
www.workcover.nsw.gov.au

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

Telecommunications Act 1997 (Commonwealth)

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

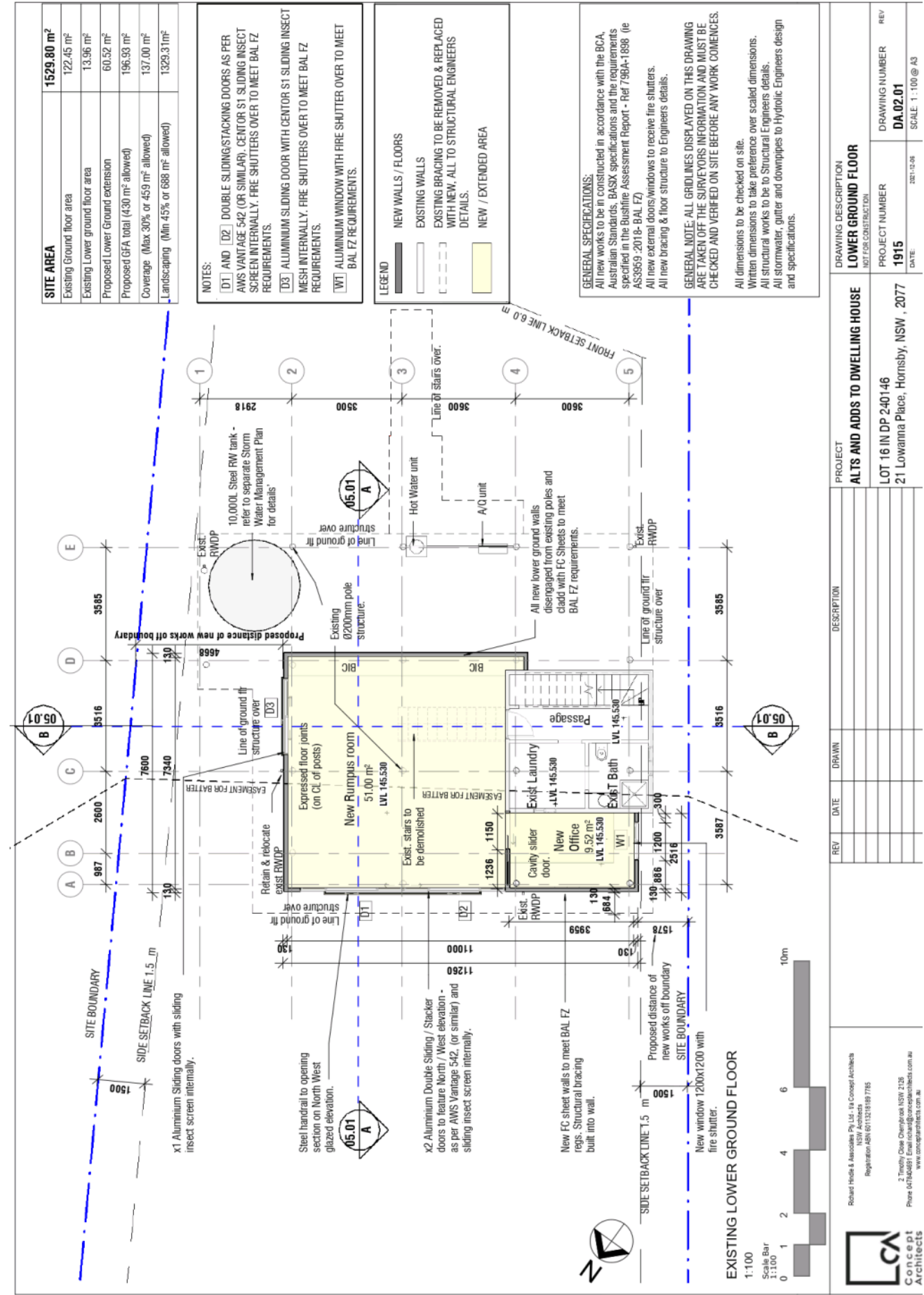
ITEM 4



LOCALITY PLAN

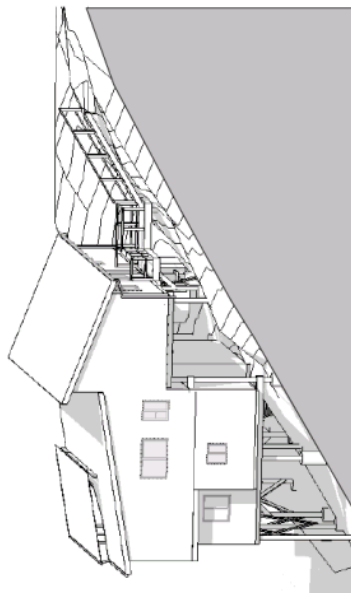
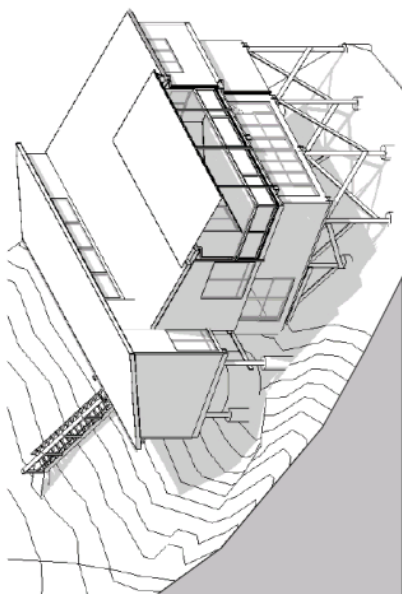
DA/1332/2021

No. 2a Chelmsford Ave, Asquith



ATTACHMENT 2 - ITEM 4

DEVELOPMENT APPLICATION DRAWINGS FOR PROPOSED EXTENSIONS TO 21 LOWANNA PLACE, HORNSBY.



ARCHITECTURAL DRAWINGS				
PROJECT NUMBER	SERIES	DESCRIPTION	DRAWING NO.	SIZE
1915	PRE-DA.00	COVER SHEET, PERSPECTIVES & SITE LOCATION	00	A3
1915	PRE-DA.01	SITE PLAN	01	A3
1915	PRE-DA.02	LOWER GROUND FLOOR PLAN	01	A3
1915	PRE-DA.02	GROUND FLOOR PLAN	02	A3
1915	PRE-DA.04	ELEVATIONS	01	A3
1915	PRE-DA.04	ELEVATIONS	02	A3
1915	PRE-DA.05	SECTIONS	01	A3
1915	PRE-DA.07	LANDSCAPE	01	A3

SURVEY DRAWINGS	
1360-20 DET	A1

BASIX SPECIFICATIONS - CERTIFICATE A427601

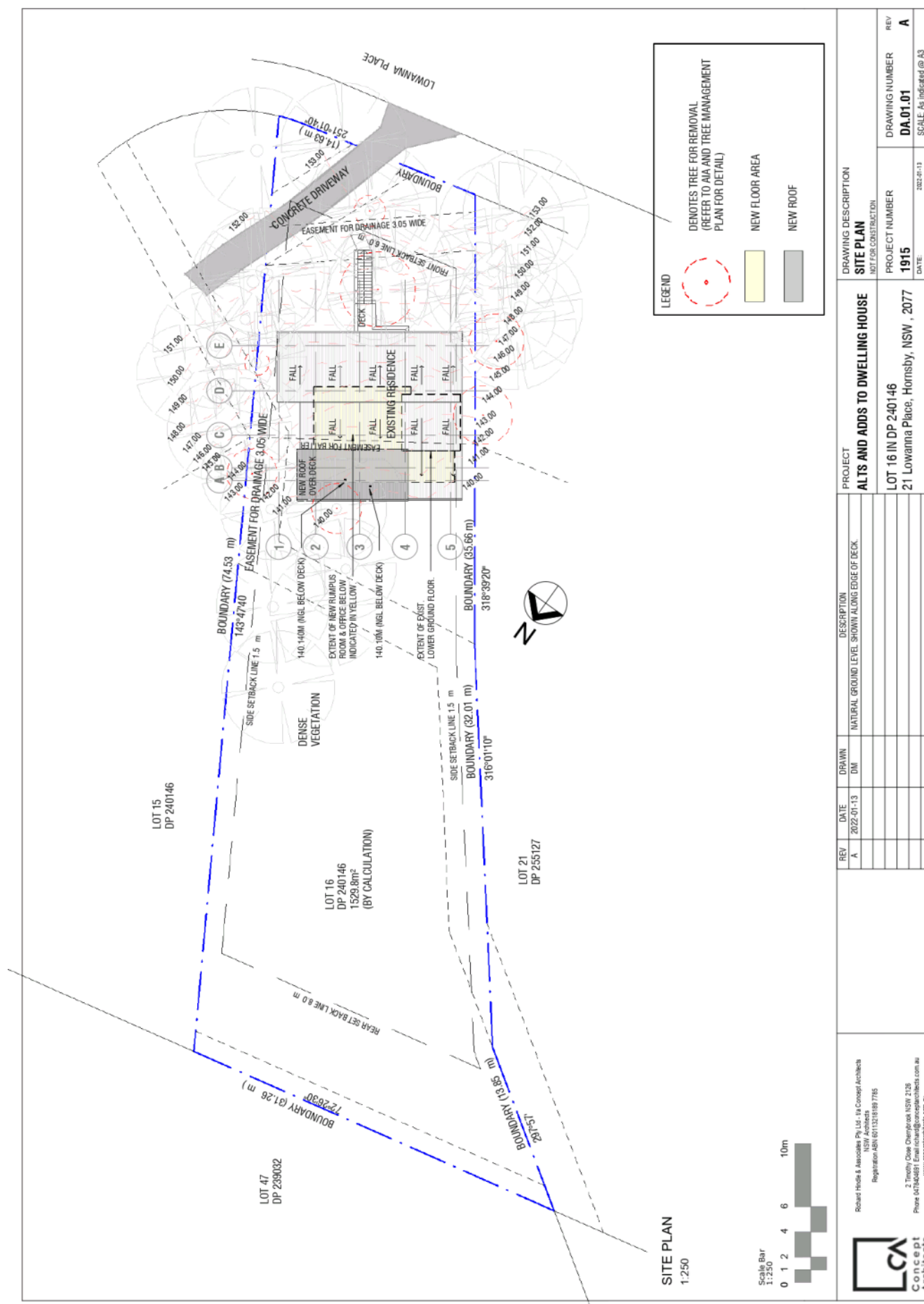
Construction	Additional measures required (R value)	Other specifications
suspended floor with open subfloor: formed (R0.7)	R0.8 (down) (or R1.50 including construction)	
external wall: framed (weatherproof, 100% metal cladding)	R1.30 (or R1.70 including construction)	
flat ceiling, flat roof: framed	ceiling: R3.00 (up), roof: none	light (solar absorbance < 0.475)



SITE AERIAL / LOCALITY

[illegible]

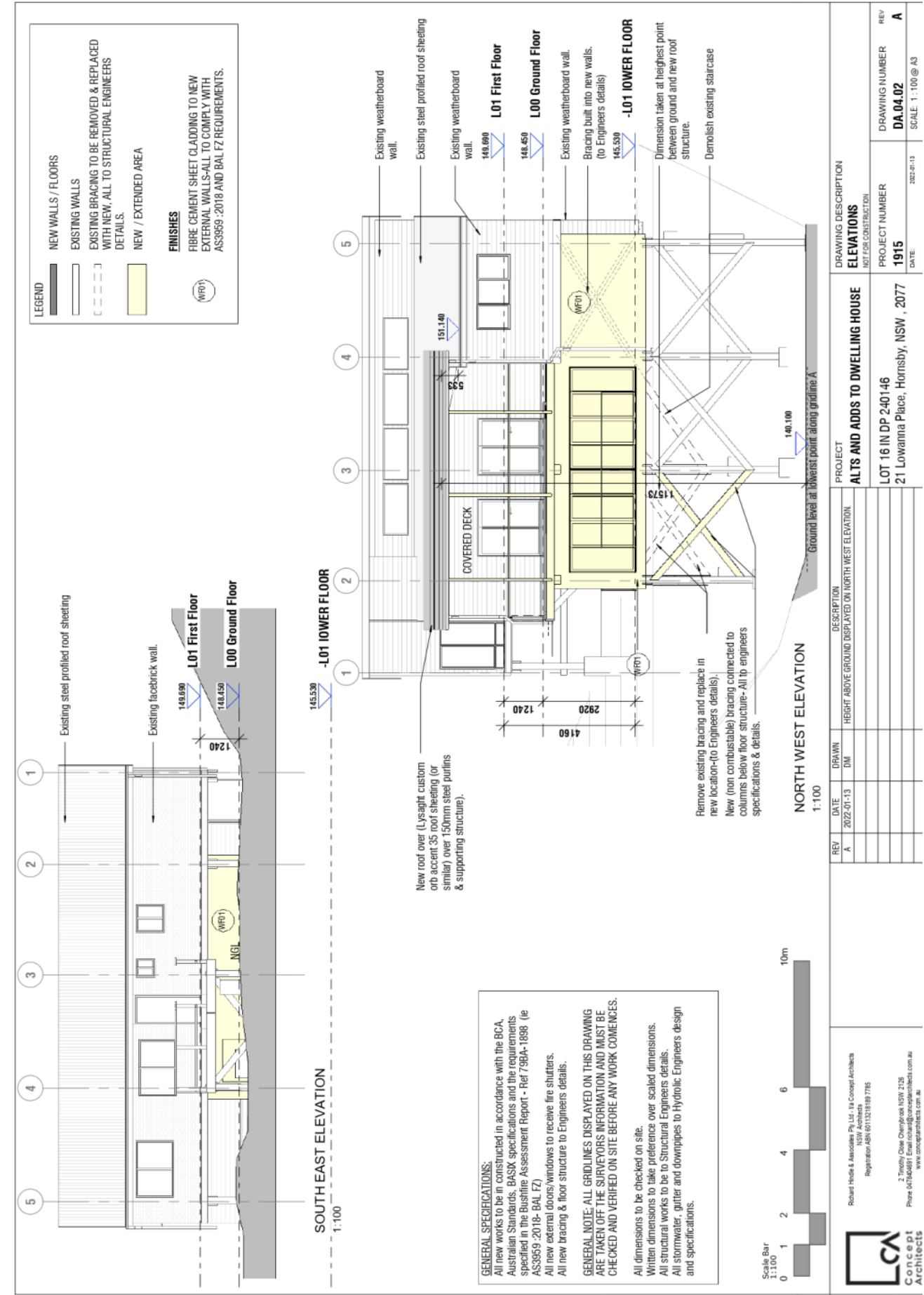
ATTACHMENT 2 - ITEM 4



ATTACHMENT 2 - ITEM 4

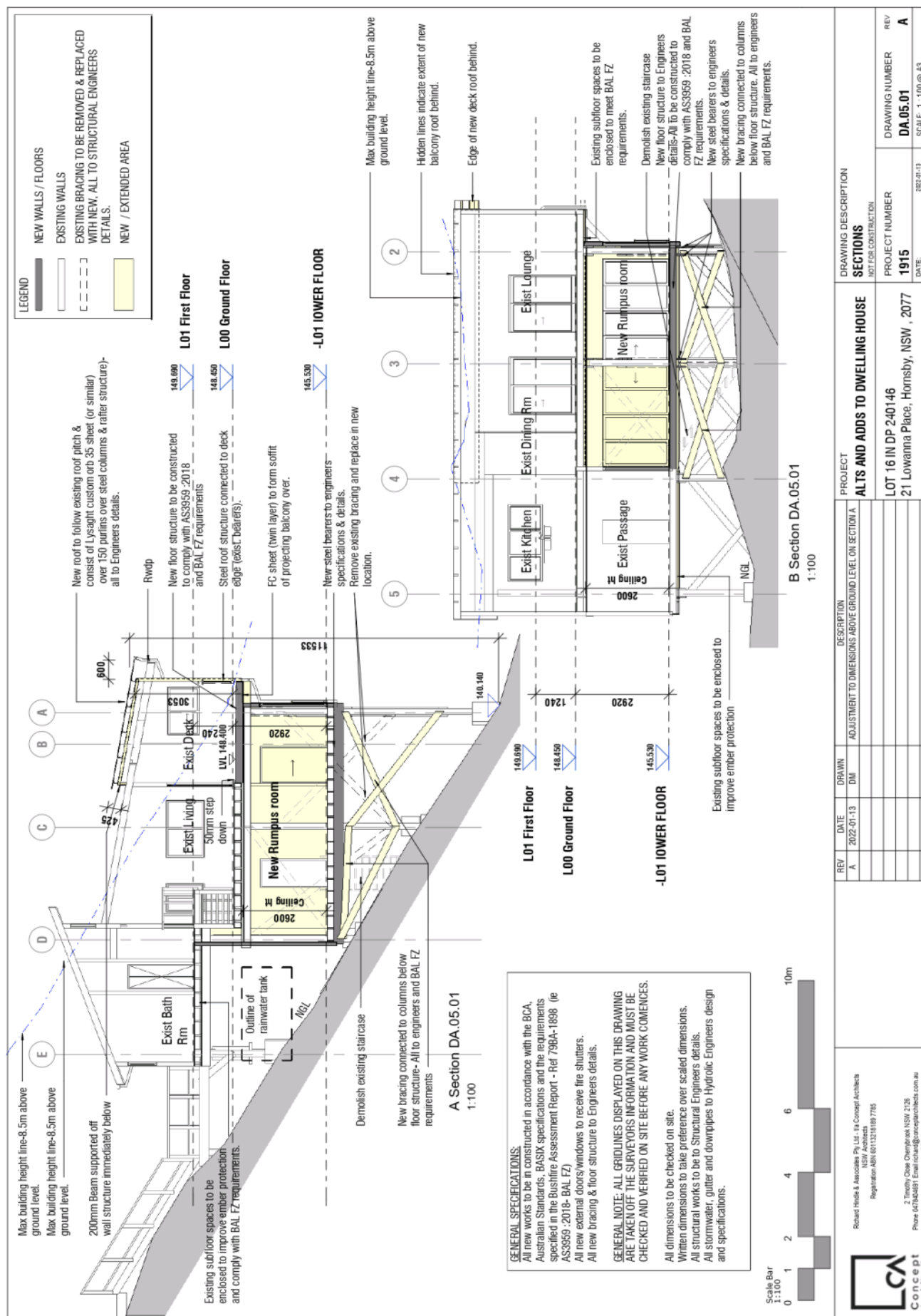






ATTACHMENT 2 - ITEM 4

ATTACHMENT 2 - ITEM 4





ATTACHMENT 3 - ITEM 4



ATTACHMENT 4 - ITEM 4

**CLAUSE 4.6 VARIATION TO
CLAUSE 4.3 (2) (HEIGHT OF BUILDING) UNDER HORNSBY
LOCAL ENVIRONMENTAL PLAN 2013 (HLEP 2013)**

***21 Lowanna Place,
Hornsby***

January 2022

Andrew Martin Planning Pty Ltd - Town | Urban | Environmental

ABN 71 101 798 001

t. 02 9518 4120 m. 0405 449 150 e. amartin@amplanning.com.au p. PO Box 601 Pyrmont NSW 2009
www.amplanning.com.au



Clause 4.6 Height Variation Request
HLEP 2013 – Clause 4.3(2) Height of Buildings
21 Lowanna Place, Hornsby



1.0 Introduction

- This Clause 4.6 variation has been prepared in support of a Development Application for alterations and additions to the existing dwelling at 21 Lowanna Place, Hornsby (the site).
- This is a request to vary a *development standard* pursuant to the provisions of Clause 4.6 of Hornsby Local Environmental Plan 2013 (HLEP 2013) the relevant clause being Clause 4.3(2) (Height of Building).
- The relevant maximum height of building control is **8.5m**.
- The relevant Height of Building control is a *development standard* for the purposes of the *EP&A Act 1979*. This request to vary the height development standard considers the judgment in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ("Initial Action") and *SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112* (SJD DB2).
- The objectives of Clause 4.6 1(a) is to provide an appropriate degree of flexibility in applying certain development standards to particular development. The intent is to achieve better outcomes for and from development by allowing flexibility in particular circumstances in accordance with Clause 4.6 1(b).
- The relevant plans relied upon are those submitted by Concept Architects, Project No. 1915, dated 13 Jan 2022.

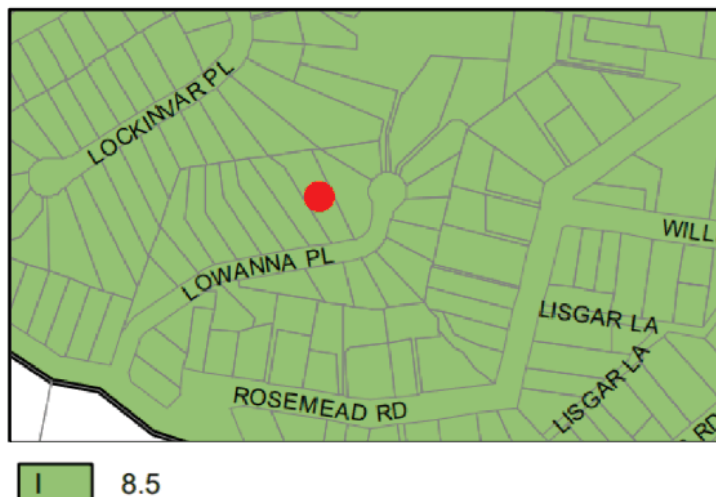
2.0 Development Standard to be Varied – 8.5m Maximum Height

The relevant *development standard* to be varied is the **8.5m** maximum height control under Clause 4.3(2). Clause 4.3 of the **HLEP 2013** relevantly provides:

4.3 Height of buildings

- (1) *The objectives of this clause are as follows—*
- (a) *to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*
- (2A) *Despite any other provision of this Plan, the maximum height of a building on land shown as Area 1 or Area 2 on the Height of Buildings Map is the height of the building on the land as at the commencement of this Plan.*

The relevant height of buildings map is identified below:



Clause 4.6 Height Variation Request
HLEP 2013 – Clause 4.3(2) Height of Buildings
21 Lowanna Place, Hornsby



ATTACHMENT 4 - ITEM 4

3.0 Nature of Variation Sought

The requested variation is as follows:

Permissible maximum building height: **8.5m**

Proposed variation (maximum): 3.276m.

The variation is a direct result of the steep falling nature of the land underneath the existing dwelling and it is worth acknowledging that the existing roof line at the northern edge of the dwelling is 11.04m in height (2.5 m over the height limit).

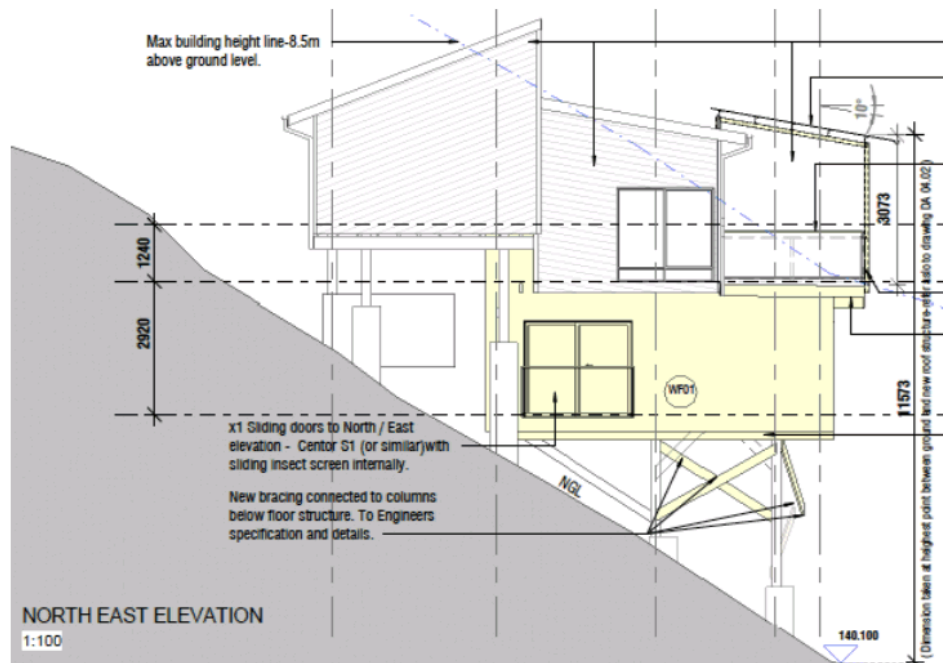


Figure A: Drawing DA.04.01 highlighting the maximum building height above natural ground
(Source: Concept Architects, 13 Jan 2022)

Clause 4.6 Height Variation Request
HLEP 2013 – Clause 4.3(2) Height of Buildings
21 Lowanna Place, Hornsby

andrewmartin
PLANNING

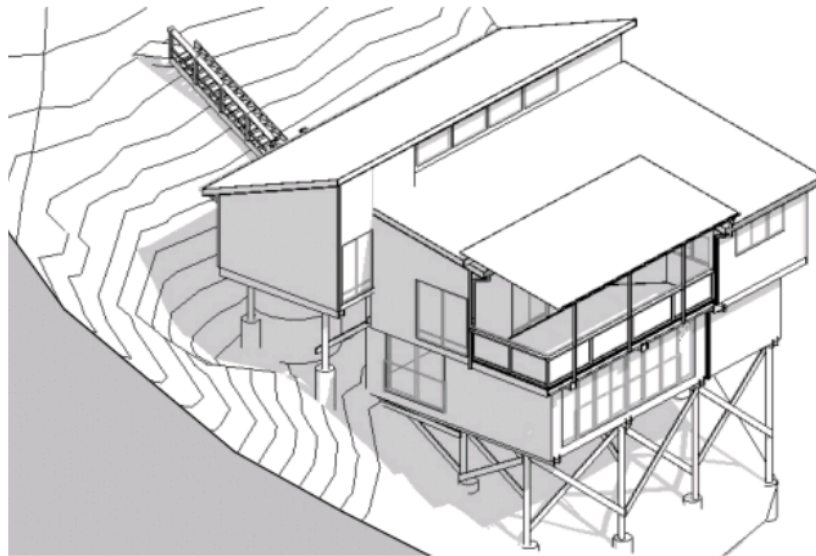


Figure B: North-east elevational drawing of proposed dwelling after improvements
(Source: Concept Architects, 6 December 2021)

4.0 Height – Development Standard

A development standard is defined in S 1.4 of the *Environmental Planning and Assessment Act 1979* ("EPA Act") to mean:

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

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- (b) the proportion or percentage of the area of a site which a building or work may occupy,
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
- (d) the cubic content or floor space of a building,
- (e) the intensity or density of the use of any land, building or work,
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- (h) the volume, nature and type of traffic generated by the development,
- (i) road patterns,
- (j) drainage,
- (k) the carrying out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,
- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) such other matters as may be prescribed."

The **8.5m** maximum height standard is a *development standard* as defined under the *EP&A Act 1979*.

Clause 4.6 Height Variation Request
HLEP 2013 – Clause 4.3(2) Height of Buildings
21 Lowanna Place, Hornsby



5.0 Clause 4.6 of Hornsby Local Environmental Plan 2013 (HLEP 2013)

The following provides a response to relevant Clause 4.6 provisions:

Clause 4.6(2) provides that:

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

The HOB development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify the contravention of a development standard and states:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard. (our emphasis)*

The proposed development does not strictly comply with the **8.5m** HOB development standard pursuant to cl4.3 of the **HLEP 2013**. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed further in this written request.

Sufficient environmental planning grounds exist to justify contravening the development standard as detailed in section 7 of this report. The height variation sought is the direct result of the steep levels of the land underneath the dwelling which fall upwards of 7m from the front of the dwelling to the rear edge. The existing roof line at the northern (rear) edge of the dwelling measures 11.04m above the existing natural ground level. The actual internal area of the dwelling is two storeys and the site levels make it extremely difficult to have anything other than a single level dwelling and. Comply with the height control. The 3.276m variation is essentially a storey.

The elevation in **Figure A** demonstrates the location and extent of the variation.

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

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Secretary has been obtained.*

Clause 4.6 Height Variation Request
HLEP 2013 – Clause 4.3(2) Height of Buildings
21 Lowanna Place, Hornsby



Sections below of this written request address the matters required under cl4.6(4)(a) of the HLEP 2013 and cl4.6(4)(b).

Clause 4.6(5) provides that:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Sections below of this written request address relevant matters required under cl4.6(5) of the HLEP 2013.

Clauses 4.6(6) and (8) are not relevant to the proposed development.

Cl 4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

5.0 Relevant Decisions

Initial Action

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action'), Preston CJ indicated that cl 4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard. The relevant test is whether the environmental planning grounds relied upon and identified in the written request are "sufficient" to justify the non-compliance sought.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "better environmental planning outcome" relative to a development that complies with the development standard.

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

***Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191 Moore J (herein referred to as *Rebel MH*).**

In *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191 Moore J identifies the steps provided in *Initial Action* confirming what the consent authority must do in order to satisfy itself as follows:

"For me to grant development consent for this development as it contravenes the permitted maximum building height development standard, cl 4.6(4)(a) requires me to be satisfied that:

- (1) *The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)); and*

Clause 4.6 Height Variation Request
HLEP 2013 – Clause 4.3(2) Height of Buildings
21 Lowanna Place, Hornsby



(2) *The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)); and*

(3) *The proposed development will be in the public interest because it is consistent with the objectives of the standard in question - set out in cl 4.3 of the LEP (cl 4.6(4)(a)(ii)); and*

(4) *The proposed development will be in the public interest because it is consistent with the objectives of the R4 High Density Residential Zone (cl 4.6(4)(a)(ii)),*

For the first of the above matters, Preston CJ made it clear, in Initial Action at [25], that the Court need not be directly satisfied that compliance is unreasonable or unnecessary and sufficient environmental planning grounds exist, but rather that it “only indirectly form the opinion of satisfaction that the applicant’s written request has adequately addressed those matters.”

SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2).

This appeal sought consent for the construction of a six-storey shop top housing development at 28-34 Cross Street Double Bay (the DA). The Court approved the proposed development, having a height of 21.21m where the control was 14.7m – representing a maximum variation of approximately 44% (or 6.51m) – and a floor space ratio (FSR) of 3.54:1 where the control was 2.5:1 – representing a variation of approximately 41%.

The Court drew from the decisions in *Initial Action* and *RebelMH* in the *SJD DB2* judgment, and noted that although there are a number of ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, it may be sufficient to establish only one way (at [35].) In considering the clause 4.6 variation requests submitted by the Applicant, the Court considered that they could be treated together, as the breaches they related to were fundamentally related, as where there is greater building form with additional height, so too is there greater floor area (at [63].)

Acting Commissioner Clay makes it clear in his judgment, ‘cl 4.6 is as much a part of [an LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome’ (at [73]).

6.0 Clause 4.6(3)(a): Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

In dealing with the “unreasonable and unnecessary” Preston CJ identifies and validates the 5 options available to an applicant in *Wehbe v Pittwater Council* which can be adopted in dealing with the *unreasonable and unnecessary* test under Cl. 4.6(3)(a).

Preston CJ at states as follows:

“As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

Based on the above the subject Clause 4.6 request identifies the first method identified in *Wehbe*:

“Ways of establishing that compliance is unreasonable or unnecessary

42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives

Clause 4.6 Height Variation Request
HLEP 2013 – Clause 4.3(2) Height of Buildings
21 Lowanna Place, Hornsby



of the development standard are achieved notwithstanding non-compliance with the standard:" (our emphasis).

Clause 4.6(3)(a) – UNREASONABLE AND UNNECESSARY

This clause 4.6 responds to the matters required to be demonstrated by sub-clause 4.6(3) namely:

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

COMMENT:

Having considered the above the applicant relies upon the first method demonstrating that compliance is *unreasonable and unnecessary* because the objectives of the development standard are achieved notwithstanding a variation to the numerical standard.

In dealing with the control it is necessary to identify the purpose of the height control and then progress to dealing with the specific height objectives.

Further insight into the purpose of the standard can be obtained by investigating the *Clause 4.3 Height of Buildings* objectives below:

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

The land across the site falls steeply from the street frontage and underneath the existing dwelling platform before reaching a more gradual decline across the rear, vegetated parts of the property. Underneath the existing dwelling the land falls by up to 7m from RL147 to RL140.

The existing highest point of the dwelling above the natural ground level is observed at the rear, northern edge to the main roof line. The height measures 11.04m ; a 2.54m breach above the 8.5m LEP height standard. The proposal seeks to install a new light-weight roof over the external upper deck at the north-eastern corner of the house which will create a new high point and variation of 3.073m. The height sought is considered to be appropriate given that it is largely consistent with the established height of the dwelling and only occurs due to the falling nature of the land underneath. The variation only allows for a two storey dwelling because the undercroft area is not enclosed and is not a *storey* as it has no floor. The two storey form is compatible with the local area and the built form found on sloping sites.

The design of the alterations and additions will ensure that the dwelling maintains a consistent form and height to other neighbouring dwellings on sloping sites. The height breaches are also observed at the rear of the dwelling where there is no direct consequence or impact to the residential amenity of neighbouring properties. To this end, the proposal has had due regard to the site context and constraints. The use of the pillion type supports limits site excavation and manipulation associated with strip footing and slabs so there are environmental benefits associated with the elevated structure that minimises its footprint on the sloping site.

The alterations and additions proposed are relatively minor and will not drastically alter the existing layout, built form, bulk, scale or height of the dwelling. The proposal will not place any additional stress on existing infrastructure servicing the local area. There are no streetscape impacts associated with the height variation or overshadowing.

Clause 4.6 Height Variation Request
HLEP 2013 – Clause 4.3(2) Height of Buildings
21 Lowanna Place, Hornsby



Overall, the proposal as presented in the plans prepared by Concept Architects achieves the intent of this objective.

7.0 4.6(3)(b) – Sufficient Environmental Planning Grounds

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

The variation relates to height and as such calls upon those matters considered to be environmental planning grounds relevant to the subject matter. Justification provided for the variation applies to this particular application and not environmental planning grounds that could apply to all land of the same zoning.

The environmental planning grounds justification for the variation is provided as follows:

- The existing roof line exceeds the maximum height standard to the rear of the dwelling platform by 2.54m. The existing breach is the direct result of the placement of a standard dwelling footprint over land which falls at a gradient of over 20% and upwards of 7m from the front to the rear of the dwelling platform. As a result, the house has been constructed on large timber and concrete columns.
- The footing design minimises site impacts but has the consequence of additional height
- The installation of a new light-weight roof over the upper level deck to the rear will see a modest increase in the overall height of the building. This is the direct result of the land fall underneath the north-eastern corner of the dwelling. The new roof over the deck will sit below the main dwelling roof line.
- The overall elevated built form is two storeys which is expected in a residential area and necessary to support a family especially with work from home area needed due to C19.
- The proposed alterations and additions are minor in their overall scale and do not contribute to excessive additional bulk, scale or visual impacts to neighbouring properties. The additions sought are proposed underneath the ground floor to the rear and are contained wholly within the dwelling envelope above.
- The HOB exceedance does not unduly add to the overall bulk or scale of the development when viewed from the street or other neighbouring properties as the new roof line over the deck is situated at the rear of the dwelling and is well separated from the closest neighbour to the east (by over 10m).
- The introduction of the light-weight roof over the deck will have no direct consequence or adverse impact on the amenity of neighbouring properties with regard to view loss, privacy or overshadowing. Its location and light-weight design over an open deck ensures weather protection and avoidance of in-filling of the upper level which could result in additional bulk.
- The development is consistent with the form and height breaches observed on other neighbouring properties in the local area that are situated on raised columns above steeply sloping sites which back onto bushland. The height of the new upper level deck roof is situated below the height of the main roofline over the first floor. It's extent of height breach above the standard is directly related to the fall away of the natural ground level below.
- The development achieves and does not seek to exceed the scale and form anticipated for this site.
- The proposal reasonably preserves the residential amenity of the locality.
- The proposal has been assessed against the provisions of HLEP 2013 and HDOP 2013. It satisfies the objectives and provisions of both State and Local planning policies.

Clause 4.6 Height Variation Request
HLEP 2013 – Clause 4.3(2) Height of Buildings
21 Lowanna Place, Hornsby



In dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act under S1.3 in order to demonstrate that grounds exist to warrant a variation to height. Clause 1.3 of the EP&A Act 1979 relevantly provides:

“1.3 Objects of Act

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,***
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,***
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,***
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,***
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment. (emphasis added)*

A development, although technically over the height limit can satisfy the objectives of under S1.3 EP&A Act 1979.

The plans by Concept Architects satisfy the objectives in bold given that:

- The proposal can provide a high degree of amenity for the residents of the property by providing all-weather protection to an existing upper level deck, ensuring its increased utilisation and enjoyment. This promotes the orderly development of the land.
- The proposed works are contained within the established footprint of the dwelling and will not detrimentally impact upon any significant environmental features of the site, including most prominently, any native trees, vegetation or habitat contained across the rear northern part of the site.
- The alterations and additions promote good design and amenity outcomes for the residents of the property. The proposal includes maintenance and improvements to the dwelling which will ensure its structural adequacy and longevity as a residential property.
- There is no net adverse impact on the surrounds of the building or immediate neighbourhood.

Based on the above the consent authority can be satisfied that there are sufficient environmental planning grounds to warrant the requested variation.

Notwithstanding the above Preston CJ clarified in Micaul and Initial Action, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts.

In the present circumstances the positive planning benefits associated with the proposal are considered sufficient in their own right to justify the variation to the height control.

Additionally, there is a clear lack of adverse amenity impacts arising from the proposed development as it does not result in adverse overshadowing or privacy impacts to neighbouring residential properties.

Clause 4.6 Height Variation Request
HLEP 2013 – Clause 4.3(2) Height of Buildings
21 Lowanna Place, Hornsby



In summary, the HOB variation is considered to be in the public interest given its ability to limit impacts but also because of its ability to provide site-specific environmental planning grounds demonstrating that strict compliance is unreasonable and unnecessary in the circumstances of this particular case. Not all land in the zone has an aggressive slope like the subject property and therefore the site constraints are unique to this site.

Clause 4.6(4)(a)(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.

Consistency with the Zone Objectives

An enquiry is now made in relation to the ability of the proposal and the identified variation, as one departing from the HOB standard, to reasonably satisfy the stated objectives of the zone.

R2 Low Density Residential

The objectives of the R2 Low Density Residential zone are as follows:

Zone R2 Low Density Residential

1 Objectives of zone

- *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 following provides a review of the zone objectives:

- ***To provide for the housing needs of the community within a low density residential environment***

The HOB variation does not affect the low density scale and character of the existing dwelling. As mentioned the variation supports what is a two storey dwelling with a conservative footprint. The density of the dwelling is 'low density' and is a single residence over two levels.

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

Not relevant.

Based on the above and matters raised in this height variation request the consent authority can be reasonably satisfied that the zone objectives are satisfied.

Clause 4.6 Height Variation Request
HLEP 2013 – Clause 4.3(2) Height of Buildings
21 Lowanna Place, Hornsby



8.0 Other Matters For Consideration

Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl. 64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the HLEP.

As we understand Council has power to grant development consent to the proposed development even though it contravenes the HOB development standard, without obtaining or assuming the concurrence of the Secretary.

Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that in deciding whether to grant concurrence, the Secretary must consider:

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

The proposed contravention of the HOB development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is specific to this site due to specific site based particulars. It is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated in Section 7, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard.

The proposed development contravenes the Height of Building development standard under cl4.3 of **HLEP 2013** and the building control under **cl4.3** of the HLEP 2013 is a *development standard* and is not excluded from the application of cl4.6.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the LEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.3 of the HLEP 2013 and is consistent with the relevant objectives of the R2 Low Density Residential zone and therefore, the proposed development is in the public interest;

Clause 4.6 Height Variation Request
HLEP 2013 – Clause 4.3(2) Height of Buildings
21 Lowanna Place, Hornsby



- Notwithstanding the contravention of the development standard, the proposed minor alterations and additions to the existing dwelling will not result in adverse environmental harm in that the amenity of neighbouring properties will be reasonably maintained.

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the HOB development standard including:

- The non-complaint height relates directly to the fall of the land underneath the existing dwelling. The height of the dwelling already exceeds the 8.5m height standard by up to 2.54m at the rear and the additional floor area facilitated by the height variation is contained within the building footprint.
- There is a lack of adverse environmental amenity impacts such as privacy loss and overshadowing given the extensive separation to neighbouring dwellings.
- The introduction of the new light-weight roof structure over the open rear deck ensures weather protection all year around, improving residential amenity and utilisation of the private external space.
- The development is consistent with the form and height breaches observed on other neighbouring properties in the local area that are situated on raised columns above steeply sloping sites which back onto bushland.
- The development achieves and does not seek to exceed the scale and form anticipated for this site.
- The elevated floor levels of the dwelling have resulted in reduced environmental impact given that the footing system maintains the natural ground levels of the site however this has caused a technical variation to the height control. There are no adverse impacts of the proposal however there are many environmental benefits of maintaining the natural ground levels in terms of limiting site disturbance and natural water flow etc;
- The proposal reasonably preserves the residential amenity of the locality.
- The proposal has been assessed against the provisions of HLEP 2013 and HDCP 2013. It satisfies the objectives and provisions of both planning policies.

A handwritten signature in black ink, appearing to read 'A Martin'.

Andrew Martin *MPIA*
Planning Consultant

5 ELECTRONIC - DA/528/2020 - CONCEPT DEVELOPMENT APPLICATION FOR SHOP TOP HOUSING DEVELOPMENT - 409-411 PACIFIC HIGHWAY, ASQUITH

EXECUTIVE SUMMARY

- DA No:** DA/528/2020 (Lodged on 7 July 2020)
- Description:** Concept Development Application for a shop top housing development comprising of ground floor retail and 31 units over four residential floors.
- Property:** Lot 4 DP 650304, Lot 5 DP 650059, Lot 5 DP 136220, No. 409-411 Pacific Highway, Asquith
- Applicant:** Beraldo Design & Soertsz Property Group Pty Ltd
- Owner:** Soertsz Property Group Pty Ltd
- Estimated Value:** \$9,000,000
- Ward:** A Ward
- The proposal does not comply with the height of buildings development standard contained within Clause 4.3 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. The submission is considered well founded and is supported.
 - A total of 3 submissions have been received in respect of the application.
 - The application is required to be determined by the Hornsby Council Local Planning Panel as State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development applies and the proposal would contravene the Hornsby Local Environmental Plan 2013 development standard for maximum height of buildings by more than 10 percent (16.6%).
 - It is recommended that the application be approved.

RECOMMENDATION

THAT Council assume the concurrence of the Secretary of the Department of Planning and Environment pursuant to Clause 4.6 of the Hornsby Local Environmental Plan 2013 and approve Development Application No. DA/528/2020 for a Concept Development Application for shop top housing development comprising ground floor retail and 31 units over four residential floors at Lot 4 DP 650304, Lot 5 DP 650059, Lot 5 DP 136220, No. 409-411 Pacific Highway, Asquith subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP14/22.

BACKGROUND

The concept development application was lodged on 7 July 2020 for a shop top housing development comprising a ground level restaurant and “drive-thru” with four levels of residential units above. A total of 35 units were proposed.

Council referred the concept development application to the Design Excellence Panel for consideration on 12 August 2020. The Panel supported the overall intention for the site as mixed use, given its corner location across from an existing commercial centre. Concerns were raised to the streetscape presentation of the ground floor, which largely isolated the ground level restaurant by wrapping drive thru lanes around the peripheries of the site. The ground level design was identified to have a detrimental impact on the public domain and significantly compromised any opportunity for street activation. With respect to the residential floors, concerns were raised with the apartment orientation and form and massing of the building.



Figure 1: Isometric view from corner of Pacific Highway and Amor Street showing ground level restaurant with drive-thru sunk below existing ground level.

Council provided the Design Excellence Panel commentary to the applicant and requested that amended plans be supplied that responded to the concerns of the panel.

The applicant undertook further study into site layout and numerous alternative plans were investigated with respect to the ground level layout. It was identified that due to the technical requirements for the drive-thru, it would be difficult to accommodate a drive-thru lane on site in a manner that allowed for streetscape activation and did not cause internal traffic conflict.

Following detailed design review, on 25 January 2021 the applicant submitted amended plans to Council that removed the ground level drive-thru restaurant in preference to general “commercial area”. The amended plans provided 568m² of ground level commercial, with rear parking adjacent to the side boundary. The form of the residential levels above changed substantially, with the floor plate of the residential component split into two distinct buildings sitting on the ground level podium.



Figure 2: Isometric view from corner of Pacific Highway and Amor Street showing ground floor commercial development and redesigned residential floors above.

Following the receipt of the amended plans and documentation, Council publicly renotified the development and sent the proposal to the Design Excellence Panel for further review. The design excellence panel raised a number of concerns with the revised design, including;

- The proposed dual residential towers on a concrete podium does not reflect the desired future character for the area.
- The proposed levels of the ground floor residential do not integrate well with the existing street levels.
- The central open space between the buildings was identified as having numerous deficiencies.

The panel identified that the removal of the drive-thru component was a positive step but considered that a full redesign of the proposal was required. The panel noted that *“The site is in a prominent corner location at the northern end of a local shopping strip on Pacific Highway. A qualified urban designer should be engaged to provide urban design input with regard to the built form, public domain and the design of the ground level street interface.”*

Following the advice from the Panel, Council further requested that the applicant supply amended plans to address the design commentary. Council also requested that the applicant engage the qualified services of an urban designer.

On 9 August 2021, the applicant submitted a redesigned proposal, which amounted to a complete building redesign. Residential units were reduced from 35 to 31 and the ground floor commercial area was redesigned to have improved integration with the streetscape.



Figure 3: Isometric view from corner of Pacific Highway and Amor Street showing redesigned building form.

The updated building form is a single building with significant articulation for the residential storeys. Communal open space was relocated to the roof of the building and the bulk of the development was pushed forward to the Pacific Highway and Amor Street corner to allow for vegetated setbacks to adjoining residential development and to better integrate the building with the public domain at the front of the site.

The design was re-notified and was referred to the Design Excellence Panel for commentary. The panel noted that: *“The inclusion of urban design input has resulted in positive changes for the development proposal that address many issues raised in the most recent submission seen by the Panel.”*

The panel noted that the proposal had their “qualified support” subject to the resolution of a number of more minor items identified in their design review including better resolution of ground floor streetscape presentation and the inclusion of additional basement levels to remove ground level parking.

The applicant submitted amended plans to this effect on 27 January 2022. The primary change to these plans was the inclusion of two additional basement levels, and a more refined streetscape design which included street furniture and amenity trees.



Figure 4: Refined proposal showing street furniture and trees.

On 3 March 2022, Council sent a final request for amended plans to the applicant, requesting the creation of a building form and massing plan and minor amendments to increase landscaped areas in side setbacks.

On 8 March 2022 the applicant provided massing plans and amendments in accordance with Council's request.

SITE

The 2729m² development site comprises four allotments on the corner of Pacific Highway and Amor Street Asquith. The three allotments comprising No. 409 Pacific Highway currently contain a KFC restaurant, with drive-thru facilities and a car park. No. 411 Pacific Highway currently contains a dwelling house and ancillary structures.

Immediately to the south of the site is the Asquith commercial precinct and Asquith Railway Station. To the north and west of the site is high density residential zoned lands. To the east of the site is the Pacific Highway and Main Northern Railway Line.

The site experiences a fall of approximately 5 metres towards the northern side boundary of No. 411 Pacific Highway. The site is not flood prone or bushfire prone and is not burdened or benefitted by any easements or restrictions.

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

PROPOSAL

The application proposes a concept development application for shop top housing development comprising ground floor retail, 31 apartments over four residential levels above and roof top communal open space. A breakdown of the proposed development is as follows:

- *Basement levels*

Three basement levels are proposed, with the lower levels (Basement 2 and 3) being for the residential component of the development the development. The highest basement level

(Basement 1) contains parking and services for the ground level commercial development. 59 residential parking spaces are provided, with 19 spaces allocated for commercial use.

- *Ground Level Commercial*

The ground floor of the development would comprise 2 retail premises with a floor area of 690m² and 273m² respectively.

- *Levels 1-4 Residential*

Levels 1-4 would comprise of 1, 2 and 3 bedroom units within an articulated and varied building form. The building is split into a northern and southern portion, with separate lobbies for each section providing access from basement areas and the street. All residential units are provided with a balcony and are capable of cross ventilation and sunlight access.

- *Roof Level*

The roof of the proposed development would comprise a communal open space area for use by the residential levels.

The communal open space area would have an area of approximately 512m² and would include rooftop planting, BBQ facilities, lobby areas and provision for solar PV panels.

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 the North District Plan, by contributing to achieving the dwelling targets for the region and by providing additional services to support a growing population.

2. STATUTORY CONTROLS

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

2.1 Environmental Planning and Assessment Act 1979 (The Act)

Division 4.4 “Concept Development Applications” of the *Environmental Planning and Assessment Act 1979* (the Act) applies to concept development applications and to consents granted on the determination of those applications. An assessment of the proposal with respect to the requirements of Division 4.4 is provided in the table below.

Division 4.4 Concept Development Applications	
4.22 Concept Development applications	
4.22(1) For the purposes of this Act, a concept development application is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.	The development application satisfies the criteria for a “concept development application” and the supplied statement of environmental effects details that the application is to be treated as a concept application.
4.22(2) In the case of a staged development, the application may set out detailed proposals for the first stage of development.	The application is not proposed to be staged development and the approval of this application would not authorise any works to be undertaken on site.
4.22(3) A development application is not to be treated as a concept development application unless the applicant requests it to be treated as a concept development application.	The applicant has requested that the application be treated as a concept development application
4.22(4) If consent is granted on the determination of a concept development application, the consent does not authorise the carrying out of development on any part of the site concerned unless—	The recommended conditions of consent are structured in a manner that makes it clear and obvious that the consent does not authorise the carrying out of development on site.
(a) consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or	The subsequent grant of a further consent will be required prior to any works being undertaken on site.
(b) the concept development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent. The terms of a consent granted on the determination of a concept development application are to reflect the operation of this	The development application is not staged and it is not considered that the application has provided the requisite development detail to permit consent to any works on site.

subsection.	
4.22(5) The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.	Assessment of the relevant considerations under Section 4.15 in accordance with this clause is contained within the body of this report.
4.23 Concept development applications as alternative to DCP required by environmental planning instruments	
4.23(1) An environmental planning instrument cannot require the making of a concept development application before development is carried out.	N/A - The HLEP does not require a concept approval for shop top housing.
4.23(2) However, if an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a concept development application in respect of that land.	N/A - The HLEP does not require the preparation of a development control plan for this type of development.
4.23(3) Any such concept development application is to contain the information required to be included in the development control plan by the environmental planning instrument or the regulations.	N/A
4.24 Status of concept development applications and consents	
4.24(1) The provisions of or made under this or any other Act relating to development applications and development consents apply, except as otherwise provided by or under this or any other Act, to a concept development application and a development consent granted on the determination of any such application.	Noted
4.24(2) While any consent granted on the determination of a concept development application for a site remains in force, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept	Noted and reinforced in the conditions of development consent recommended in Schedule 1 of this report.

proposals for the development of the site.	
4.24(3) Subsection (2) does not prevent the modification in accordance with this Act of a consent granted on the determination of a concept development application.	Noted.

2.2 Hornsby Local Environmental Plan 2013

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

2.2.1 Zoning of Land and Permissibility

The subject land is zoned R4 High density residential under the HLEP. The objectives of the R4 zone are:

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

The proposed development is defined as *shop top housing* and is permissible in the zone with Council's consent.

2.2.2 Height of Buildings

Clause 4.3 of the HLEP provides that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 17.5 metres.

It is noted that on 4 December 2020, Amendment No. 11 of the HLEP was finalised. One of the amendments to the HLEP was that the Height of Building Map was amended, and areas that previously permitted buildings of up to 17.5 metres in height were reduced to 16.5 metres. This amendment impacts on this development application as the Height of Building Map depicting the subject site was amended to permit a maximum building height of 16.5 metres from the previously permissible 17.5 metre building height.

Despite the above, Amendment No. 11 included a saving provision within Clause 1.8A of the HLEP which reads as follows:

If a development application has been made before the commencement of Hornsby Local Environmental Plan 2013 (Amendment No 11) in relation to land to which that Plan applies and the application has not been finally determined before that commencement, the application must be determined as if that Plan had not commenced.

As this development application was lodged prior to the finalisation of Amendment No. 11, as per the provisions of Clause 1.8A of the HLEP, the change in permissible building height does not apply to this application.

The building proposes a maximum height of 20.4 metres, a variation of 16.6% which does not comply with the height of building development standard. The applicant has submitted a written request to

vary the development standard pursuant to Clause 4.6 of the HLEP. This written request is discussed in detail below.

2.2.3 Exceptions to Development Standards

The applicant submitted a written request to contravene the height of building development standard contained within Clause 4.3 of the HLEP.

The following diagrams demonstrate the extent of the non-compliant building portions, as demonstrated by the red dashed line at 17.5 metres above existing ground level (extract from SEE):



Figure 5: East Elevation (facing Pacific Highway)



Figure 6: South Elevation (facing Amor Street)



Figure 7: North Elevation



Figure 8: West Elevation

As demonstrated in the figures above, the roof top communal area lobbies, lift overruns, and shading/ PV panel structures breach the height limit, with minor parapet/ roof forms also exceeding the limit as the site falls to the north.

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 tender to hinder the attainment of the objectives of the zone. In particular, Clause 4.6 provides criteria that must be satisfied prior to a consent authority granting consent to development that contravenes a development standard. These criteria demonstrated under Clause 4.6(3) are as follows:

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

A discussion regarding the criteria provided at Clause 4.6(3), with respect to the development application is provided below.

2.2.3.1 Unreasonable or Unnecessary Clause 4.6(3)(a)

There are five common methods by which an applicant can demonstrate that compliance with a development standards 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 required to demonstrate that a development meets multiple methods as listed above, and the satisfaction of one can be adequate to demonstrate that the development standard is unreasonable or unnecessary.

The written request prepared by Andrew Martin Planning, dated January 2022, provides a detailed assessment of the proposal with respect to the development standard sought to be varied. The request argues that the objectives of the development standard are achieved notwithstanding non-compliance with the standard in Part 6 of the document, providing reasoning as follows:

The site slopes from south to north and from east to west. Therefore, the highest point of the building is the north-east corner - closest to the northern boundary and the Pacific Highway. The lift overrun with the maximum height variation is located towards the northern end of the building, central to the building footplate. The second lift overrun structure is located towards the southern end of the development, centrally located within the building envelope.

The CDA Concept Plans demonstrate that the site is capable and suitable for the proposed Shop Top Housing (STH) development. The planning provisions allow for the density of development proposed. The infrastructure in the area has the capacity to cater for the development as the site has been operating as a commercial premises for decades. The use of the site for high density residential accommodation is anticipated by the Council. The revised proposal is also now supported by a peer review urban design report prepared by Professor Webber. The review has regard to the plans and the surrounding site constraints and urban design outcomes. The peer review is supportive of the scheme notwithstanding the nominated height departure.

Overall, the CDA Concept for the STH development achieves the objective.

Council notes that the objectives of Clause 4.3 of the HLEP are as follows;

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

With reference to the reasoning provided by the applicant above, Council does not object to the conclusion that the proposed concept application meets the objectives of Clause 4.3. In reaching this conclusion the following points are noted;

- Strict compliance with the height of buildings development standard would likely result in poor level transitions at the ground level (such as those seen in the originally proposed development with a KFC drive-thru, see Figure 1) or result in the loss of a residential floor. The proposed building is highly articulated along the Pacific Highway frontage, which is identified as a desirable design feature. If a reduction in the number of floors was required to achieve compliance with Clause 4.3, the articulation of the building would likely be reduced so each residential floor could cater for further units, which would be undesirable from a design excellence view point.
- The site is strategically located next to both the Asquith commercial centre and Asquith train station. The adjoining Asquith commercial centre provides for mixed-use and commercial development to a height of 32.5 metres. The proposed building would provide an appropriate transition in height from the commercial centre to the high-density residential precinct.
- The height of the building is accentuated by the minimum floor to ceiling height requirements for the ground floor commercial uses, 5.31 metres compared to 3.1 metres for residential.

- The proposed building does respond to site constraints despite its non-compliance, and steps down to the north of the site to reduce the overall building height.
- The proposed development would have negligible impact on the infrastructure capacity of the locality and would assist in reinforcing the adjoining commercial precinct by providing a quality public realm at the ground level.
- The site is zoned for shop top housing which permits ground level retail. As a result of this land use, it can be difficult to provide the required services and access at the ground level for the commercial component whilst providing deep soil landscaping areas and communal open space for “shop top” residents. In the case of this development, commercial has been provided primarily underneath the residential floors above. When deep soil requirements of the HDCP are taken into account, there is insufficient space to provide the required residential communal open space at ground level. This has resulted in the communal open space being provided at the top of the building, which has contributed to the height non-compliance as lifts and lift lobbies are required to provide disabled access to the roof level of the building. Provision of the communal open space on top of the building is considered to be a superior outcome as it allows for the creation of a separated and private space for residents, that meets the minimum area requirements.

For the reasons outlined above, it is considered that the written request to contravene the height of building standard adequately demonstrates that the objectives of the height of buildings development standard contained within Clause 4.3 of the HLEP are achieved, notwithstanding non-compliance with the standard.

2.2.3.2 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 (summarised from *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 [60]).

The applicant provided the following planning grounds for the contravention of the development standard;

- *The orientation of the site (north-south) means that travel path of the sun in winter provides ample sun penetration and solar access to the eastern, northern and western residential units – the additional HOB does not adversely impact on the attainment of minimum solar access requirements to the majority of the residential units.*
- *The proposed HOB variation is a function of the lift overruns needed to service the 5-storey building, otherwise the habitable floor levels of the building envelope are compliant with the height control.*
- *The lift shafts are both centrally located so that the additional height does not cast an additional shadow outside of the building footprint.*
- *The Statement of Environmental Effects addresses the transitional role of this site between the adjoining B2 Local Centre - which has a 32.5m HOB and the R4 High Density Residential zone with a HOB of 17.5m. The land use and built form, comprising a Shop Top Housing development, provides ground level commercial premises with high density residential*

accommodation above. The proposed development sits comfortably between the two height precincts.

- The HOB exceedance does not add to the overall bulk or scale of the development when viewed from the public domain or other nearby properties as it is only the lift shafts and rooftop terrace surrounds that are non-compliant.
- Only from distant viewpoints of the site will the lift overruns be visible. Around the perimeter of the site and along the footpath the lift overruns will be barely discernible and, if seen, are a recessive element.
- The development achieves and does not seek to exceed the scale and form anticipated for this site.
- The proposal reasonably preserves the residential amenity of the locality.
- The fine grain detail of the colours, materials and finishes are not finalised as part of the CDA. The lift overruns are to be integrated into the rooftop, in conjunction with the design of the common open space terrace which is to be edged with landscaping for privacy and amenity of residents.
- The lift shafts provide disable compliant access to the future communal spaces that could not otherwise be achieved without removal of a part level. Removal of a part level is not in the public interest and does not promote the orderly and economic use of the land.
- Suitable urban design outcome as reported in the peer review prepared by Professor Webber. Professor Webber concludes that the development will offer excellent amenity for residents and is of very good quality in relation to urban design issues.
- The proposal has been assessed against the provisions of HLEP 2013 and HDCP 2013. It satisfies the objectives and provisions of both State and Local planning policies.

Council's further review of the environmental planning grounds presented by the applicant raises no points of contention, and it is considered that the written request provides sufficient environmental planning grounds and a reasonable built environment outcome, both within the subject site, and to the adjoining residential development.

As it is considered that the written request demonstrates sufficient environmental planning grounds specific to the development site, no further justification is considered necessary as sound environmental planning grounds for the non-compliance have been established.

Council is therefore satisfied that Clause 4.6(3) of the HLEP is adequately addressed.

2.2.3.3 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 (a)(i), the written requests are considered to adequately address the matters required to be demonstrated as outlined above. With regard to (a)(ii), the proposed development is considered to be in the public interest because it is consistent with the objectives of the particular standard and the objectives for height of building contained within the HLEP. With regard to (b) the concurrence of the Planning Secretary has been obtained.

Therefore, the exceedance of the height of buildings development standard is supported in this instance.

2.2.4 Heritage Conservation

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

2.2.5 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.

Notwithstanding the fact that the approval of the application would not authorise the carrying out of any earthworks, Council's assessment has not identified any reason as to why the three proposed basement levels could not be accommodated on the site in a manner that would be capable of satisfying the requirements of Clause 6.2 of the HLEP.

The proposed earth works are not considered to be of a form that would have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land and conditions of development consent have been recommended in Schedule 1 of this report for the provision of a geotechnical report with any future development application.

2.2.6 Design Excellence

Clause 6.8 of the HLEP provides considerations for the delivery of the highest standard of architectural and urban design. At the time of lodgement, Clause 6.8 of the HLEP did not apply to the application. Notwithstanding this fact, the application was assessed by Council's Design Excellence Panel under *State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development* which is discussed in Part 2.2 of this report.

2.3 State Environmental Planning Policy No. 55 Remediation of Land

The application has been assessed against the requirements of State Environmental Planning Policy No. 55 Remediation of Land (SEPP 55) under which consent must not be granted to the carrying out of any development on land unless the consent authority has considered whether the land is contaminated or requires remediation for the proposed use.

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

An examination of Council's records and aerial photography has determined that the site has been historically used for commercial and residential purposes. A condition of development consent is recommended in Schedule 1 of this report for the provision of a contamination report with any future development application.

2.4 State Environmental Planning Policy (Infrastructure) 2007

The application is subject to assessment under Clause 101(2) of the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) given the proposal has a frontage to a classified road being Castle Hill Road.

Clause 101(2) of the ISEPP states:

- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*
 - (a) *Where practicable, vehicular access to the land is provided by a road other than the classified road.*
 - (b) *The safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) *The design of the vehicular access to the land.*
 - (ii) *The emission of smoke or dust from the development.*
 - (iii) *The nature, volume or frequency of vehicles using the classified road to gain access to the land.*
 - (c) *The development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

In regard to Clause 101(2)a, vehicle access to the site is facilitated via a two-way entry to Amor Street, which satisfies this requirement.

In regard to Clause 101(2)b, Council's Traffic and Road Safety Team assessed the proposed design and raised no objections to the proposed concept application subject to the provision of a traffic report to accompany any future development application and the conditions of development consent outlined in Schedule 1 of this report, including a restriction on right turn into the basement from Amor Street.

Subject to these conditions, Council is satisfied that the safety, efficiency and operation of the classified road would not be adversely impacted by the current proposal.

In regard to Clause 101(2)c, Council's recommended conditions in Schedule 1 of this report includes a requirement for the commissioning of an acoustic report to accompany any future development application.

2.4.1.1 Development Adjacent to Rail Corridors

The development site is located adjacent to the Northern Rail Line, which is located to the east of the site, on the opposite side of the Pacific Highway.

The concept development application does not meet the requirements for concurrence under Clause 85 or 86 of SEPP as it does not involve excavation of any land referenced in Clause 86. With reference to Clause 87, Impact of Noise and Vibration on non-rail development, as mentioned above

Schedule 1 of this report includes a requirement for the commissioning of an acoustic report to accompany any future development application.

2.5 State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development

The Policy provides for design principles to improve the design quality of residential apartment development and for consistency in planning controls across the State. The concept development application is of sufficient detail to enable a full or partial assessment to be carried out against many aspects of SEPP 65.

The application was supported by an Urban Design Review, prepared by Emeritus Professor G.P.Webber, of Planning Architecture and Urban Design supporting the proposal.

Additionally, the application was referred to Council's Design Excellence Panel for design review as outlined in Part 1 of this report as per the requirements of Division 2 of the SEPP. The panel provided comprehensive design advice, and as at the final panel meeting, provided support to the proposed development.

Assessment of the proposal against the design quality principles contained within Schedule 1 of the SEPP is provided below:

SEPP 65 - Schedule 1 Assessment	
Principle	Compliance
1. CONTEXT AND NEIGHBOURHOOD CHARACTER	Yes
<p>Comment: The site is located within a precinct planned for five storey residential flat buildings in close proximity to Asquith Railway Station. The desired future character of the area, as outlined in the <i>Hornsby Development Control Plan 2013</i>, is that of a locality characterised by residential flat buildings of 5-storeys in height in landscape settings with underground car parking. Development should seek to complement and enhance the adjacent public domain environment and building footprints by maintaining landscape corridors around and through development sites.</p> <p>The proposed shop top housing development appropriately responds to the context of the site by proposing a shop top housing development adjacent to the existing Asquith commercial core. The ground level would appropriately integrate with the existing public domain and sufficient landscaping is provided adjacent to side boundaries to ensure green links through the site.</p>	
2. BUILT FORM AND SCALE	Yes
<p>Comment:</p> <p>Despite the height noncompliance, it is considered that the proposed development achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. The building presents as highly articulated and of appropriate proportions and materiality. The concept would contribute to the character of the streetscape and offer residents a high level of amenity.</p>	
3. DENSITY	Yes
<p>Comment:</p> <p>The HLEP does not incorporate floor space ratio requirements for the site. The density of the</p>	

development is governed by the height of the building and the required setbacks. The proposed density is considered to be sustainable as it responds to the regional context, availability of infrastructure, public transport, community facilities and environmental quality and is acceptable in terms of density despite non-compliant setback distances (discussed in further detail in the body of this report).	
4. SUSTAINABILITY	Yes
Comment: Whilst it is noted that the development is at a concept stage, provision has been made for PV panels on the roof top and further sustainable methods, including BASIX compliance would be possible on the subject site under a future development application.	
5. LANDSCAPE	Yes
Comment: Landscaping is provided within side setback areas, with provision for deep soil and planted garden beds. Additionally, landscaping elements including planter beds are provided on elevated levels and the roof top, to further provide greenery along facades. Where extensive landscaping is not possible along the Amor Street and Pacific Highway frontages, feature amenity trees with gardens beds are provided to break up these facades and integrate greenery.	
6. AMENITY	Yes
Comment: The proposed units are designed with appropriate room dimensions and layout to maximise amenity for future residents. The proposal incorporates good design in terms of achieving natural ventilation, solar access and acoustic privacy. All units incorporate balconies accessible from living areas and privacy has been achieved through appropriate design and orientation of balconies and living areas. It is expected that further resolution of internal amenity would be provided at a future development application stage.	
7. SAFETY	Yes
Comment: The design orientates the balconies and windows of individual apartments towards the street, rear and side boundaries, providing passive surveillance of the public domain and communal open space areas. Both the pedestrian and vehicular entry points are secured and visibly prominent from Amor Street and the Pacific Highway. A future development would be capable of compliance with <i>Crime Prevention Through Environmental Design Principles (CPTED)</i> .	
8. SOCIAL DIMENSIONS AND HOUSING AFFORDABILITY	Yes
Comment: The proposal incorporates a range of unit sizes to cater for different budgets and housing needs. The development complies with the housing choice requirements of the Hornsby DCP by providing a component of adaptable housing and a mix of 1, 2 and 3 bedroom dwellings. The proposal responds	

to the social context in terms of providing a range of dwelling sizes with good access to social facilities and services as the site is located in close proximity to Asquith railway station and shops.

10. AESTHETICS

Yes

Comment:

The architectural treatment of the building incorporates indentations and projections in the exterior walls with balcony projections to articulate the facades. The roof is flat to minimise building height and incorporates landscaping and varied elements to break up the roof plane. The articulation of the building, composition of building elements, textures, materials and colours would achieve a built form generally consistent with the design principles contained within the Residential Flat Design Code and the Hornsby DCP.

2.6 Apartment Design Guide

SEPP 65 also requires consideration of the Apartment Design Guide (ADG), NSW Department of Planning and Environment 2015. The ADG includes development controls and best practice benchmarks for achieving the design principles of SEPP 65. The following table sets out the proposal's compliance with the ADG:

Apartment Design Guide			
Control	Proposal	Requirement	Compliance
Deep Soil Zone (3E)	20%	7% of site area	Yes
Communal Open Space (3D)	25% (rooftop)	25% of site area	Yes
Building Separation (3F-1)	Achieved to the west, achievable to the north due to 6m setback	9m Between habitable windows and balconies 4.5m between Non-habitable rooms	Yes
Solar Access (Living rooms and private open space areas) (4A-1)	70% >50% COS	2 hours for 70% of units 2 hours for 50% of COS	Yes
No Solar Access allowable for units (4A-1)	3% (1/31)	15% of units (max)	Yes
Natural Cross Ventilation (4B)	100% Depicted	60%	Yes
Minimum Dwelling Size (4D-1)	Compliant	Studio – 35m ² 1 br – 50m ² 2 br – 70m ² 3 br – 90m ² + 5m ² for additional	Yes

		bathrooms +12m ² for 4 th and additional bedrooms	
Habitable room depth (4D-2)	Complies	2.5x Ceiling height 8m from a window (max)(open plan layouts)	Yes
Minimum Ceiling Height (4C-1)	2.8m	2.7m (habitable rooms) 2.4m (non-habitable rooms)	Yes
Minimum Balcony Size (4E-1)	Compliant	Studio Apartment -4m ² 1 bedroom 8m ² 2m depth 2 bedroom 10m ² 2m depth 3 bedroom 12m ² 2m depth	Yes
Maximum Number of Units on a Single Level (4F-1)	4	8 units off a circulation core	Yes
Car Parking (3J-1)	84 Spaces	76 – As per HDCP	Yes
Total Storage Area (4G-1)	TBC – DA Stage	Studio 4m ³ (Min) 1 bed - 6m ³ (Min) 2 bed - 8m ³ (Min) 3 bed - 10m ³ (Min) Minimum of 50% accessible from within apartments	TBC

As detailed in the above table, the proposed development demonstrates compliance with the prescriptive measures within the ADG is possible for a future development application. Below is a brief discussion regarding the relevant development controls and best practice guidelines.

2.6.1 Communal Open Space

Objective 3D-1 of the ADG is for “*An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping*”. The design criteria for objective 3D-1 is that *Communal open space has a minimum area equal to 25% of the site and Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)*.

Further the ADG provides that “*where communal open space cannot be provided at ground level, it should be provided on a podium or roof*”.

The provision of the communal open space on the rooftop is considered to be a superior outcome to a ground level space, as it is considered that the rooftop allows for privacy, security and separation from the ground level commercial floor. Council’s design review panel noted that the rooftop level terraces

were “generous” and provided for some facilities for the use of residents. Rooftop areas are fringed with garden beds which assists in providing visual separation and breakup of the roof plane. Detailed review and assessment of the communal open space would be possible at a future development application, as no objections are raised to the layout at this concept stage.

2.6.2 Solar Access

The proposal demonstrates that 70% of units would receive at least 2 hours of solar access during the Winter Solstice which complies with the minimum 70% requirement under the ADG. The ADG also requires that no more than 15% of apartments receive zero solar access. The proposal complies with this requirement as all units are depicted as receiving some solar access to internal areas during the winter solstice in the supplied solar view diagrams.

Private and communal open space areas are depicted to be compliant with the 50% solar access requirements of the ADG.

2.6.3 Building Separation

Objective 3F-1 of the ADG is for “*Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy*”.

In the process of assessing the development application, the bulk of the building was moved towards the Amor Street and Pacific Highway corner as it was identified that this would provide for better streetscape presentation and greater side setback areas. As recommended by Council’s Design Excellence Panel on 12 August 2020;

As mentioned above, the restaurant component should move closer to the corner similar to the coffee shop opposite the site on the corner of Amor Street. The proposed shop should read as a continuation of the retail strip to the south of the property with appropriate setback and footpath awning wrapping around the corner.

The opportunity to shift the unit block closer to Pacific Highway and to Amor Street should be explored. This would reduce the size of the roof over the ground floor shop and increase the setback to the rear boundary thereby improving amenity for the residents in the adjacent properties to the west with regard to privacy and overshadowing.

In response to the design advice provided by the panel, the applicant provided amended plans that shifted the building bulk towards the corner of the site and away from adjoining high density residential zoned land.

This provided adequate building separation distances, and in the case of the western side boundary, separation that is generally above the ADG requirements. This would allow a future development application within the proposed footprint to comply with ADG requirements and achieve reasonable levels of external and internal visual privacy.

2.6.4 Minimum Balcony Size

Objective 4E-1 of the ADG is that “*Apartments provide appropriately sized private open space and balconies to enhance residential amenity*”. All proposed balconies would be equal to, or in excess of ADG requirements.

2.6.5 Car Parking

The proposed carparking basement contains 84 spaces, which exceeds the prescriptive requirements for carparking for high density dwellings, as detailed in Part 1C.2.1 Transport and Parking of the HDCP.

Sufficient parking is provided for both residential and commercial land uses over the three basement levels. The basements are of a sufficient design and size to incorporate the required services when these are identified in a future development application.

2.6.6 Facades

Objective 4M-1 of the ADG is for *“Building facades provide visual interest along the street while respecting the character of the area”*.

Council’s design excellence panel identified that *“the overall built form configuration is well resolved to create a modelled frontage that is consistent with the anticipated future development along the highway...”*. The Design Excellence Panel, concluded that *“Overall, the applicant has responded positively to the DEP’s advice. The scheme has improved significantly compared to the earlier proposals and should be supported subject to addressing issues noted”*.

Issues raised by the Panel are noted as minor building elements that can be incorporated at a future development application stage. The Design Excellence Panel commentary is proposed to be provided to the applicant as a supporting document for reference in preparing subsequent development applications, and is included as a document in Schedule 1 of this report.

2.6.7 Storage

The proposal does not show compliance with the storage requirements of Part 4G of the ADG. However it is considered that the size and layout of the basement and apartments are of a sufficient design to permit compliance with this requirement, which will be assessed at a later development application stage.

2.6.8 Deep Soil

The objective of Part 3E-1 of the ADG is for *“Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality”*.

The proposal provides 20% of site area for deep soil. These areas are provided adjacent to the northern and western side boundaries and permit the establishment of canopy trees and vegetated garden beds within setback areas. It is also noted that amenity trees are provided along the Pacific Highway and Amor Street frontages, which would be located within deep soil zones.

The proposal does demonstrates that a future development application would be capable of compliance with the deep soil requirements of the ADG.

2.7 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.

No concerns are raised in relation to the proposed concept development application. A future proposal would be capable of complying with the requirements of the Policy.

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) commenced 25 August 2017 and 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.

Part 3.1 of this report provides an assessment in accordance with Part 1B.6.1 of the HDCP.

2.9 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The application has been assessed against the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. BASIX requirements would apply to a future development proposal and further assessment under this SEPP would be a matter for a future development application.

2.10 Adopted State Environmental Planning Policies

On 1 March 2022, the following State Environmental Planning Policies (SEPPs) were gazetted.

- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Precincts - Eastern Harbour City) 2021

These SEPPs now form matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. However general savings provisions apply to development applications that have been made but not yet determined, on or before the commencement date of the above SEPPs.

As this development application was lodged on 7 July 2020, this development application is considered to have been made prior to the commencement date of the SEPPs. The newly adopted SEPPs have been considered as a matter for consideration under S4.15 of the Act. However the existing legislation, in force at time of lodgement of the development application, prevails to the extent of any inconsistency.

2.11 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.

2.12 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:

Hornsby Development Control Plan 2013			
Control	Proposal	Requirement	Compliance
Site Width	139m	30m	Yes
Height	20.4m (including lift overrun)	17.5m	No
No. of storeys	5 storeys on podium	5 storeys	Yes
Lowest Residential Floor Above Natural Ground Level	2.4m	1.5m (max)	No - as shop top housing
Maximum Floorplate Dimension	55m (N/S) 26m (E/W)	35m 35m	No Yes
Building Indentation	Complies	4m x 4m	Yes
Front Setback	Ground Floor Commercial 5.1 metre setback and Units above setback 3 metres from Pacific Highway and Amor Street	10m 8m < 1/3 building length	No
Side Setback (northern)	Ground Floor 6m with exception of awning structure setback at 3m. First floor setback at 6m with garden extending to 5.3m. All other floors 6m or greater setback.	6m 4.5m < 1/3 building length	No
Side Setback (Western)	All floors setback 6m with exception of first floor which has protruding "pebbled area" setback at 5 metres	6m 4.5m < 1/3 building length	No

Top Storey Setback from Ground Floor	Varied compliance from 0m to 2.4 metres	3m	No
Basement Ramp Setback (landscaping)	5m	2m	Yes
Deep Soil Landscaped Areas	0m front 1-6m variable Side	8m front 4m sides	No Partial
Communal Open Space with Minimum Dimensions 4m	>50m ² (min) 25%	50m ² (min) 25%	Yes Yes
Parking			
- <i>resident spaces</i>	>42 spaces	41 spaces	Yes
- <i>commercial spaces</i>	>34 spaces	34 spaces	Yes
- <i>bicycle racks</i>	16 bike racks	6 bike racks	Yes
- <i>motorbike space</i>	1 space	1 space	Yes
Solar Access	70%	70%	Yes
Housing Choice	10% of each type	10% of each type (min)	Yes
Adaptable Units	TBC (achievable)	10%	TBC

2.12.1 Desired Future Character and Key Design Principles

The site is included in the Lords Avenue, Asquith precinct which is zoned R4 High Density Residential.

The HDCP states that a development should demonstrate compatibility with the “Desired Future Character Statement” which is outlined in Part 3.4.1 of the HDCP. Further detail regarding the future character is also contained within the Key Design Principles contained within Part 3.4.15 of the HDCP.

Generally, the applicable key design principles and desired future character for the Lords Avenue Precinct are as follows:

- Redevelopment should be predominantly five storey residential flat buildings in garden settings, with parking in basements.
- Building should be in landscaped settings with buildings providing broad setbacks to retain existing vegetation and to permit residential flat buildings to be surrounded and screened by canopy trees and shrubs to create landscaped corridors.
- Building facades should be well articulated, with setbacks that contain reasonable sunlight and privacy. Facades incorporate a range of materials and finishes including face brick, walls of windows, steel framed balconies with balustrades of steel or glass and operable louvres for privacy, shade and glare control.

- Balconies provide outdoor living areas which wrap around the corners of the buildings, providing usable open space as well as articulation in built form.
- Developments provide active living options including bicycle storage and parking and prioritized pedestrian entrances.

The proposed development is considered to comply with the desired future character and key design principles. Approval of the concept development application would permit the construction of a building that is consistent with the desired future character of the development site and the wider precinct.

2.12.2 Site Requirements

The desired outcome of Part 3.4.3 Site Requirements of the HDCP is for *“Buildings located on consolidated development sites that provide soft landscaping surrounding the building and limit the number of driveway crossings.”*

The proposed development site would be consistent with the desired outcome by consolidating four allotments, providing soft landscaping in side setback areas and providing one vehicular crossing to the site from Amor Street.

The proposal would also not isolate any adjoining development site or hinder the redevelopment of any other as yet undeveloped allotment within the surrounding high-density precinct.

2.12.3 Height

The proposed development does not comply with the height requirements within the HLEP as discussed in Section 2.1.2 of this report.

As detailed in the body of this report, the proposed building height is considered to be acceptable with respect to the constraints of the site, the development potential and surrounding development.

2.12.4 Setbacks

The desired outcomes of Part 3.4.5 Setbacks of the HDCP is for:

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

The proposed development does not comply with any of prescribed setback distances. A merit based assessment of each setback is provided below

2.12.4.1 Northern side setback

The proposed building envelope is setback 5.8 metres from the northern side boundary, which does not comply with the 6 metre setback requirement. The non-compliant section of the building is limited to a raised garden bed located on the first floor of the development. With the exception of this 200mm wide raised garden bed, the entirety of the building would be located at a compliant 6 metre side setback. No objections are raised to the non-compliant garden bed which would provide visual

separation and building articulation for the northern façade without impacting on building separation, the ability for canopy trees to be provided within the setback area or the amenity of the adjoining residential development to the north.

2.12.4.2 Western side setback

The bulk of the proposed building would be located more than 12 metres from the western side boundary, and the entirety of the building, with the exception of a first-floor level raised planter would be located at a setback of 8 metres from the boundary.

The first floor level planter and driveway cover would be located at a setback of 5 metres for 40% of the first floor façade. No objections are raised to this structure as it would not permit the generation of privacy or amenity impacts to the adjoining high density development, and would not hinder the establishment of landscape setbacks.

2.12.4.3 Amor Street and Pacific Highway Frontages

Part 3.4.5 of the HDCP prescribes that for corner allotments, the front boundary setback requirement of 10 metres applies to all frontages. The proposed development envelope proposes a setback of 3 metres to the Amor Street frontage and the Pacific Highway. With respect to the non-compliant front setback distances the following points are noted:

- On the Pacific Highway frontage, the ground floor is setback at 3 metres, with floors 1-4 setback back between 3 - 13 metres.
- On the Amor Street frontage, all building levels are setback 3 metres.
- The site adjoins B2 Local Centre zoned lands to the south of the site. The B2 zoned lands comprise of the Asquith Local Centre, which is generally located on the western side of the Pacific Highway, opposite the Asquith Railway Station. Whilst these lands are not yet developed, the adjoining local centre has a maximum permissible height of 35.5m and a permissible setback distance of nil metres from the front boundaries (Part 4.4.5 of the HDCP). Therefore, the frontages proposed at 3 metres, whilst they would not comply with the requirements outlined in Part 3.4.5, they would be setback further than adjoining buildings in the business zone and would provide an appropriate transition between the two zones.
- The proposed shop top housing land use has a commercial ground floor level. Bringing this commercial level forward of the 10 metre setback requirement assists in activating the streetscape around the building, and assists in presenting the ground level commercial to the street. This also allows for the creation of appropriate public domain around the front of the site.
- Moving the bulk of the building towards the corner of Amor Street and Pacific Highway allows for greater setbacks to adjoining residential development, which assists in the creation of landscaped setback areas and green corridors.
- The building facades are well articulated, and the non-compliant setback distances are the result of a lengthy design process, with input from Council's Design Excellence Panel and the applicant's Urban Designer. The setbacks are not the result of an overdevelopment of the site.
- The basement levels have been placed under the building bulk and are not interfering with proposed deep soil landscape areas.

- The proposed setbacks still permit the inclusion of appropriate amenity tree coverage to improve the public domain around the frontage of the site and soften the appearance of the building.

For the reasons outlined above, the proposal is considered to be acceptable, with regard to the non-compliant front setbacks.

2.12.4.4 Top Floor Setback

Part 3.4.5 of the HDCP prescribes that the top residential floor should be setback an additional 6 metres from the floor beneath. The HDCP does not directly describe the desired outcome of this additional top floor setback, however the design outcome is that residential flat buildings would have a diminishing form as they achieve additional height. It is also noted that the ADG provides that *“Generally one step in the built form as the height increases due to building separations is desirable.”*

With respect to the proposed non-compliance the following is noted:

- The Amor Street frontage does not propose to have any additional setback for the topmost residential floor, whilst the Pacific Highway frontage and the northern side boundary frontage both have an additional setback provided. As the site adjoining a commercial zoned land on the southern side of Amor Street and residential zoned land to the north, no objections are raised to the transition along the top floor of the building to a more compliant building design in the north of the site. With regard to the Amor Street frontage, it is considered that the non-compliance would have negligible streetscape impact.
- The highest residential floor is not the highest floor of the building as a rooftop communal open space is proposed. This communal open space is setback from the peripheries of Level 4 and contains garden beds and raised parapets. These features would assist in diminishing the rooftop of the building.
- The highly articulated building form along the Pacific Highway greatly breaks up the bulk of the building with balconies that protrude from under the roof line.
- The topmost residential floor is shown in a contrasting and recessive colour when compared to the residential floors below

For the reasons outlined above, no objections are raised to the proposed top residential floor setback.

2.12.5 Building Form and Separation

The desired outcomes of Part 3.4.6 Building Form and Separation is for:

- *Buildings that are limited in width and depth, incorporating articulated facades and separated by garden areas.*
- *Quality architecture that evolves from the guidelines of the Apartment Design Guide.*

Prescriptive measures are provided to support the desired outcomes. Including floorplate controls, building separation and articulation. These matters are discussed below:

2.12.5.1 Building Separation

In regard to building separation, Part 3.4.6 of the HDCP prescribes that building separation should comply with the requirements of the ADG, which as discussed in Section 2.3 of this report.

2.12.5.2 Floorplate

The proposed development does not comply with the maximum floor plate dimension in the north/south building orientation. The HDCP prescribes a maximum floor plate dimension of 35m whilst the proposal has a 55m dimension.

In support of this variation it is noted that the proposed building form is greatly articulated which assists to break up the building mass and effectively hide the length of the building. The proposed building design is considered to have sufficient depth, articulation and vegetated garden areas to be of a quality architectural form. No objections are raised.

2.12.5.3 Articulation

Façade treatments and articulation are considered to be representative of quality design solutions for the following reasons:

- The proposed building envelope is greatly articulated, especially along the eastern and western frontages.
- The proposed building form is broken up landscaping on balconies and rooftop to soften building edges.
- Balconies on all elevations add visual interest and further work to articulate the facades.
- Supplied façade treatments and materials are consistent with the desired future character, including face brick and varied material use. Different building colourations also assist in articulating and breaking up the visual mass of the building.

For the reasons outlined in the sections above, it is considered that the building form and separation is supportable on site, and no objections are raised to the proposed massing.

2.12.6 Landscape

The landscaping provisions of the HDCP prescribe that 8 metre wide landscaped deep soil areas be provided at the front, 7 metre at the rear and a 4 metre wide landscaped area to be provided along the side boundaries.

With reference to the subject site the following points are noted:

- The Amor Street and Pacific Highway frontages do not comply with the 8 metre wide landscaped prescription. However, due to the proposed shop top housing land use, and the reduced setbacks along these frontages, no objections are raised to the non-compliance as providing an 8 metre landscape buffer would frustrate the goals of activating the streetscape and creating an acceptable public domain around the frontage of the site. The proposed design retains landscaping along these frontages, including canopy trees and garden beds, which is seen as an acceptable and desirable outcome.
- The setbacks of the site to the west and north are provided as deep soil landscape areas with minimum dimensions of greater than 4 metres. This allows for visual separation between buildings and the establishment of green linkages and canopies between buildings.

For the reasons outlined above, no objections are raised to the proposed landscaping on site.

2.12.7 Privacy

The proposed concept application is not considered to be of a form that would generate unacceptable privacy to future residents of the site or any residents in adjoining high density residential site.

2.12.8 Solar Access and Natural Ventilation

Part 3.4.11 Sunlight and Ventilation of the HDCP contains prescriptive measures consistent with the requirements of the ADG. As discussed in Section 2.4.2 of this report, the required sunlight access to units is achieved, with all units receiving some sunlight access at the winter solstice.

2.12.9 Housing Choice

Part 3.4.12 Housing Choice of the HDCP prescribes that a mix of 1, 2 and 3 bedroom units should be provided.

The proposal includes a mix of one, two and three bedrooms units, including possible adaptable units.

2.12.10 Vehicular Access and Parking

A Traffic and Parking Assessment Report (TPAR), prepared by Transport and Traffic Planning Associates was provided with the application.

The TPAR identified that additional traffic generation from the site would be minor and additional traffic movements would “*not present any adverse conflict, capacity or safety implications, particularly given the regular gaps which are available in the traffic flows along this section of the highway*”.

Further the TPAR considers that the proposed access from Amor Street would be consistent with the required Australian Standards and would be located in a position where good sight distances are available. Vehicle circulation was also identified to be acceptable at this concept stage.

Council's Traffic and Road Safety team assessed the concept proposal and noted the following:

The TPAR states that the proposed development will generate around 26 vehicle trips at AM peak hours and 25 vehicle trips at PM peak hours, according to TfNSW GTGD.

While no traffic analysis has been undertaken for the adjacent intersection or the operation of the driveway, Council is aware that the site has the potential for queueing to occur in Amor Street westbound when cars attempt to turn right into the driveway. The queueing will likely impact on operation of Amor Street and possibly on the Pacific Highway.

To address this, it is recommended that the right turn from Amor Street into the driveway be prohibited by signage as well as driveway design. It is noted that Council will be constructing a roundabout at the intersection of Amor Street and Lords Avenue, also that Wattle Street will be realigned to form a 4 way intersection as part of the Public Domain Guidelines adopted for Asquith. The new roundabout will provide a suitable alternative for cars destined for the development from the Pacific Highway to turn around.

A condition of development consent reflecting the advice of the Traffic and Road Safety Team regarding turning to the site is outlined in Schedule 1 of this report. Subject to this condition, and further conditions regarding the submission of a TPAR with any future development application, no objections are raised to the development on traffic and parking grounds.

2.12.11 Open Space

Part 3.4.8 Open Spaces of the HDCP provides minimum open space requirements, generally in alignment with the requirements of the ADG. The proposed private open space areas comply with the prescriptive area requirements of the ADG as discussed in the body of this report.

2.12.12 Waste Management

The proposal includes preliminary plans in regards to waste collection which indicates that bin areas would be located in the first basement level.

Conditions of development consent have been recommended in Schedule 1 of this report for the provision of future waste management detail with a future development application, including provision of bin chutes, collection areas and access requirements.

2.13 Section 7.11 Contributions Plans

Hornsby Shire Council Section 94 Contributions Plan 2014-2024 does not apply to the concept development application as no dwellings are able to be constructed under this consent. The requirement for a monetary Section 7.11 contribution would be a matter for a future detailed development application.

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 building footprint would require the removal of 8 trees as outlined in the Arboricultural Impact Assessment, prepared by Susan Stratton, dated 5 August 2021.

Of the trees that would be removed as part of a future development, 5 have very low or low retention values, with the remaining 3 trees having moderate retention values. Of the trees to be removed, only 2 are natives, with the remaining 6 trees being planted exotic species.

Sufficient space would be available on site with the proposed building envelope for the replanting of native tree species to offset the loss of trees. Consequently no objection is raised to the removal at this concept stage.

In addition to trees to be removed, a number of trees are located on the adjoining allotment No. 2C Amor Street which would have tree protection zones which extend into the site. To minimise impacts to these adjoining trees, throughout the assessment and redesign process, the applicant amended the basement levels and ground floor design to provide setbacks from these trees that would allow for their retention. The final proposed building form and massing is considered to be compatible with the retention of these adjoining trees.

A future development application would be required to complete an arboricultural impact assessment and conditions of consent to this effect are included in Schedule 1 of this report.

3.1.2 Stormwater Management

The proposed development slopes to the northern side boundary. Stormwater could be disposed of via the street drainage system and no easements are identified as being required. A condition of development consent requiring a future stormwater systems to be designed by a suitably qualified engineer is included in Schedule 1 of this report.

3.2 Built Environment

3.2.1 Built Form

As outlined in the body of this report, the proposed built form is considered to be acceptable.

3.3 Social Impacts

The residential development would improve housing choice in the locality by providing a range of house hold types as well as additional commercial space. This is consistent with Council's Housing Strategy which identifies the need to provide a mix of housing options to meet future demographic needs in Hornsby Shire.

3.4 Economic Impacts

The proposed development would have a positive economic impact to the locality and shire by permitting the creation of additional commercial space for employment opportunities, and by also creating additional dwellings in the locality.

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 is considered to be capable of accommodating the proposed development. The scale of the proposed development is consistent with the capability of the site, its unique location and the opportunities and constraints of the site.

5. PUBLIC PARTICIPATION

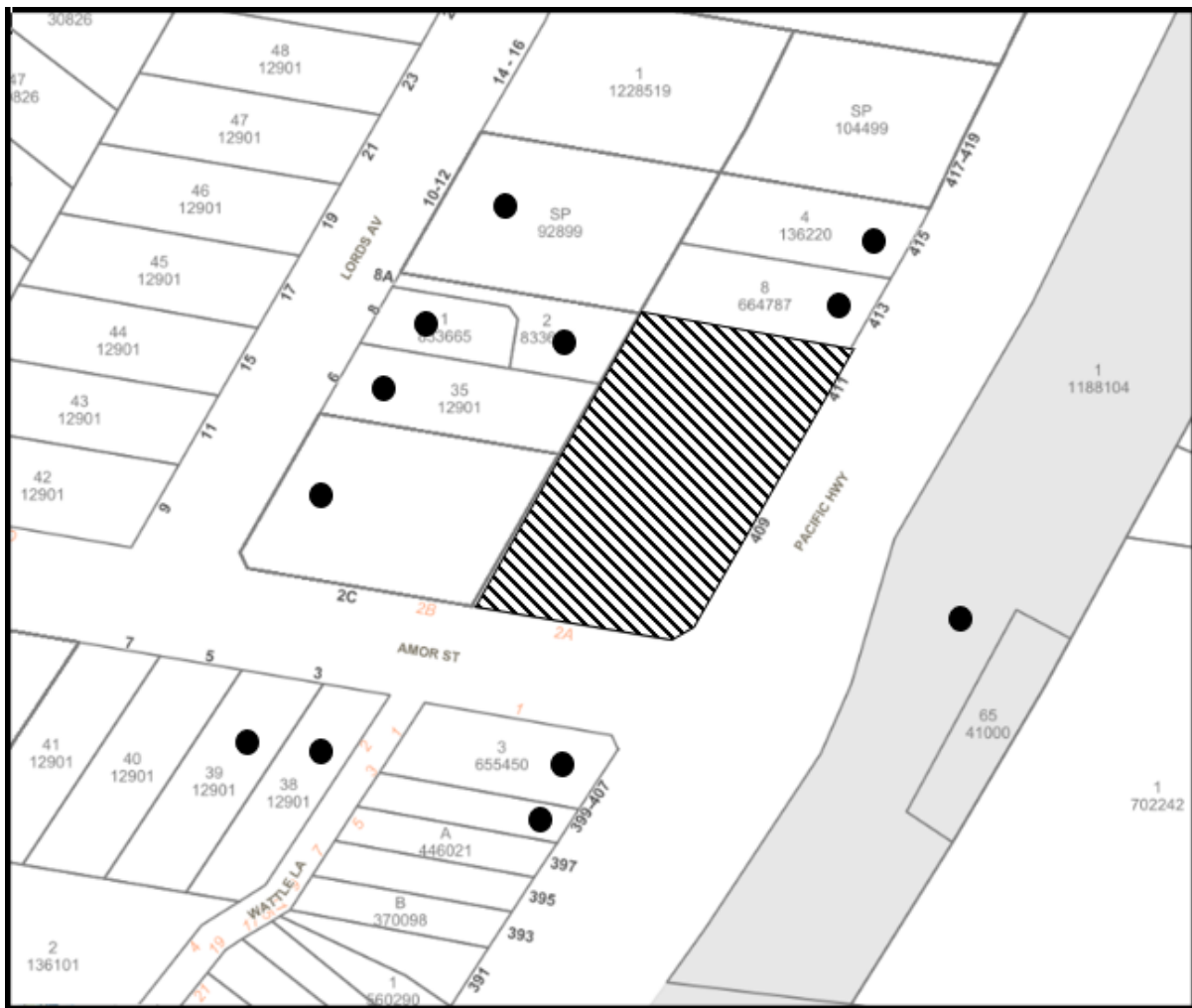
Section 4.15(1)(d) of the Act requires Council to consider *"any submissions made in accordance with this Act"*.

5.1 Community Consultation



Lodged on 13 July 2020, the application has been notified on 4 separate occasions, from 13 July 2020 to 6 August 2020, from 17 February 2021 to 11 March 2021, from 12 August 2021 to 2 September 2021 and from 28 January 2022 to 22 February 2022 in accordance with the Hornsby Community Engagement Plan.

The application has received 3 submissions in the notification periods, with 2 in the initial submission period and 1 in the following period. No submissions were received in the two most recent submission periods.

The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

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

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

- A building of unacceptable height.
- Privacy impacts from the top floor communal open space.
- KFC “smells”.
- Potential for fires from shop top housing development.
- Non-compliant setback distances from the front boundary.

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

5.1.1 Privacy impacts from Rooftop Communal Open Space

A submission raised concerns regarding privacy impacts from the rooftop communal open space.

In addressing these concerns, it is noted that the rooftop communal open space is provided with a planter on all sides which would provide a standoff distance from the edge of the roof and the communal open space. This would effectively prevent views below the horizontal plane. Additionally, the site is located on the crest of a hill, with adjoining residential lands to the north and west sitting lower than the subject site. As a consequence of this topography, and the standoff distance from the roof edge provided by the planter, views from the rooftop communal open space would be over the roof of adjoining development only, and it would be improbable that any views into adjoining private open space or living areas would be possible.

5.1.2 KFC Odours

A submission raised concerns that a ground level KFC development would generate odours to the adjoining sites. The ground level KFC restaurant was removed from the proposed development after the first redesign of the concept development application and no such restaurant is proposed under the final plans submitted for consideration.

5.1.3 Fire Safety

A submission raised concerns regarding fire safety between the ground level commercial, and the residential floors above. In response to this concern it is noted that this matter would be addressed at a future development application and construction certificate stage.

5.1.4 Non-compliant Front Setbacks

A submission raised concerns regarding the front setbacks being inconsistent with residential flat buildings in the vicinity of the site.

As outlined in the body of this report, the proposed development occupies a unique site that is opposite the Asquith local centre and the development would provide an appropriate transition in scale and building setbacks between the two zones. Bringing the building closer to the corner of the site assists in activating the ground level retail, provides a high quality public domain and would reduce impacts to adjoining residential development. A 3 metre front setbacks would be inappropriate on the overwhelming majority of sites in the Asquith precinct, and it is only supported in this instance due to the unique nature of the site.

6. THE PUBLIC INTEREST

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

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

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

CONCLUSION

The application proposes a Concept Development Application for a shop top housing development comprising of ground floor retail and 31 units over four residential floors.

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

The variation to the height of building is supported based upon the requirements to provide roof top structures to provide disabled access to the communal open space, increased floor to ceiling heights for the ground floor commercial uses and the slope of the land. The development would provide an appropriate transition in building height between the Asquith commercial centre and high-density residential zone.

Council received 3 submissions during the public notification periods. The matters raised have been addressed in the body of the report.

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

The reasons for this decision are:

- The request under Clause 4.6 of Hornsby Local Environmental Plan 2013 to contravene the 'Height of buildings' development standard is well founded. Strict compliance with the development standard is considered unreasonable and unnecessary in the circumstances of the case and sufficient environmental planning grounds have been submitted to justify the contravention to the development standard.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, overshadowing, solar access, amenity or privacy.
- Detailed assessment of the impact of the development on the natural and built environment of the locality would be considered under a future development application for building works within the approved building envelope on the site.

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 Ben Jones.

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Assessments
Planning and Compliance Division

ROD PICKLES
Manager - Development Assessments
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Attachments:

1.   Locality Plan
2.   Architectural Plan
3.   Approval Plan
4.   Design Excellence Commentary

File Reference: DA/528/2020

Document Number: D08348346

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 5**1. Approved Concept Plans**

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

Concept Plans

1. Plan No.	2. Rev	3. Drawing Name	4. Drawn by	5. Dated	6. Council Reference
7. A000	8. D	9. Drawing Summaries and Schedules	10. BD Architecture interiors	11. 24.01.22	12.
13. A001	D	14. Site Plan	15. BD Architecture interiors	16. 24.01.22	17.
18. A100	E	19. Basement 3 Plan	20. BD Architecture interiors	21. 8.03.22	22.
23. A101	E	24. Basement 2 Plan	25. BD Architecture interiors	26. 08.03.22	27.
28. A102	E	29. Basement 1 Plan	30. BD Architecture interiors	31. 08.03.22	32.
33. A103		34. Ground Floor Plan	35. BD Architecture interiors	36. 08.03.22	37.
38. A104		39. Level 1 Plan	40. BD Architecture interiors	41. 08.03.22	42.
43. A105	D	44. Typical Floor Plan	45. BD Architecture interiors	46. 24.01.22	47.

48. 06	A1	D	49. Level 4 Plan	50. BD Architecture interiors	51. 24.01. 22	52.
53. 07	A1	D	54. Roof Plan	55. BD Architecture interiors	56. 24.01. 22	57.
58. 00	A2	E	59. Elevatio ns Sheet 1	60. BD Architecture interiors	61. 08.03. 22	62.
63. 01	A2	E	64. Elevatio ns Sheet 2	65. BD Architecture interiors	66. 08.03. 22	67.
68. 03	A2	D	69. Street Elevation	70. BD Architecture interiors	71. 24.01. 22	72.
73. 04	A2	D	74. Section A-A	75. BD Architecture interiors	76. 24.01. 22	77.
78. 10	A4	E	79. Articulat ion Plan – Basement Level 1	80. BD Architecture interiors	81. 08.03. 22	82.
83. 11	A4	E	84. Articulat ion Plan – Ground Floor Plan	85. BD Architecture interiors	86. 08.03. 22	87.
88. 12	A4	E	89. Articulat ion Plan – Level 1 Plan	90. BD Architecture interiors	91. 08.03. 22	92.
93. 13	A4	E	94. Articulat ion Plan – Typical Floor Plan	95. BD Architecture interiors	96. 08.03. 22	97.
98. 14	A4	E	99. Articulat ion Plan – Level 4 Plan	100. BD Architecture interiors	101. 08.03. 22	102.
103. 15	A4	E	104. Articulat ion Plan – Roof Plan	105. BD Architecture interiors	106. 08.03. 22	107.

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
Design Excellence Panel Meeting Minutes	Hornsby Shire Council Design Excellence Panel	11.02.22	D08348747

2. Development Consent

- a) This development consent does not permit any demolition or construction works on the site, or the removal of any trees. The approved development is concept only. Separate development applications are required to be submitted for any building/ drainage/ infrastructure/ tree removals works within the site.
- b) The development approves a maximum of 31 residential units (*dwelling*s) and 2 ground level *commercial premises* as defined within the Hornsby Local Environmental Plan 2013.
- c) The vehicular access to the site is to be from Amor Street as indicated on the approved concept plans.

3. Building Envelope

The building envelope and floor plans for the future development application on the site must incorporate the setbacks and deep soil landscape areas approved in the Articulation Plans A410-A415 prepared by BD Architecture interiors dated 08/03/2022.

4. Compliance with Apartment Design Guidelines

Any future development application is to demonstrate compliance with the requirements of the NSW Department of Planning and Environment Apartment Design Guide.

5. Communal Open Space

Communal open space must have a minimum area equal to 25% of the site. A minimum of 50% direct sunlight is required to be provided to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter). Details to be provided with the relevant development application for building work.

6. Internal Driveway/Vehicular Areas

- a) The driveway and parking areas on site must be designed, in accordance with Australian Standards 2890.1, 2890.2, 3727 and the following requirements:
 - i) All car parking spaces within the basement level are to comply with AS2890.6.
 - ii) The number of car parking spaces to be provided must comply with the requirements of the Hornsby Development Control Plan 2013 for both the commercial and residential components.
 - iii) All service areas are to comply with AS2890.2.
 - iv) The site entry/exit, vehicular ramp, loading bays and truck turning areas to be used by waste collection vehicles must be designed for a heavy rigid vehicle in compliance with AS2890.2.
 - v) *Note: AS2890.2-2002 includes a maximum gradient of 1:6.5 for forward travel and 1:8 for reverse travel, a minimum vertical clearance of 4.5 m, and minimum loading dock/service bay dimensions of 3.5 m x 12.5 m. A turn table to facilitate truck turning is acceptable.*

- vi) A physical barrier such as a gate, roller door or the like is to be provided to control entry into the basement levels, and to separately control entry into the residential component of the basement.

- b) Details to be provided with the relevant development application.

7. Stormwater Drainage

- a) The stormwater drainage system for the development must be designed in accordance with AUS-SPEC Specifications and be connected directly to Council's street drainage system.
- b) An on-site stormwater detention system must be designed by a Chartered Civil Engineer. Details to be provided with the relevant development application.
- c) The proposed development must incorporate water sensitive urban design into the stormwater drainage design.

Note: The design of the stormwater management system must be supported with a MUSIC model.

- d) Details to be provided with the relevant development application.

8. Geotechnical Report

A Geotechnical Investigation report is to be submitted to Council with the first development application.

9. Traffic Parking Impact Assessment Report

A Traffic Parking Impact Assessment Report is to be provided with any future development application. The report is to address the traffic and parking implications of the development and must include the following:

- a) Architectural Plans demonstrating whether the vehicle access point has sufficient pedestrian sight distance.

Refer to Australian Standard AS2890.2-2018 Part 2 Off-Street Commercial vehicle facilities, figure 3.4.

- b) The right turn from Amor Street into the driveway is to be prohibited by signage as well as driveway design. A plan showing the driveway design and signage is to be provided to Council for further review.

10. Contamination

A detailed investigation of the proposed development site must be prepared by a suitably qualified environmental consultant for any land contamination and submitted with the first development application. Such an investigation must be undertaken in accordance with NSW Environment Protection Authority's 'Contaminated Sites Guidelines for Consultants Reporting on Contaminated Sites' and 'Contaminated Sites Sampling Design Guidelines'.

Should you require further information regarding this request, please contact Hornsby Shire Council's Compliance Team on 9847 6829.

11. Remedial Action Plan

A Remedial Action Plan (RAP) must be prepared by a suitably qualified environmental consultant and be submitted with the first development application should the preliminary/detailed investigation reveal contamination exceeding criteria prescribed by the NSW Environment Protection Authority's 'Contaminated Sites Guidelines for the NSW Site Auditor Scheme'.

12. Acoustics

Prior to the issue of the relevant development application for building works, an acoustic report is to be prepared by a suitably qualified acoustic consultant in accordance with NSW EPA's Noise Policy for Industry (2017), Hornsby Shire Council Policy and Guidelines for Noise and Vibration Generating Development (Acoustic Guidelines V.5, 2000), NSW Department of Planning's Development Near Rail Corridors and Busy Roads - Interim Guideline, State Environmental Planning Policy (Transport and Infrastructure) 2021 and NSW EPA's Noise Guide for Local Government (2013). The acoustic report must detail, at a minimum:

- a) The predicted noise levels to be emitted from all noise associated with the construction and ongoing operation of the development at all sensitive receivers.
- b) The predicted noise and vibration impacts associated with the adjacent classified road and rail corridor within all prescribed internal areas of the proposed development.
- c) Any required noise attenuation measures which must be implemented to ensure acoustic compliance with the established noise criteria for the development and the internal noise levels detailed in Clauses 2.99(3) and 2.119(3) of State Environmental Planning Policy (Transport and Infrastructure) 2021.

13. Construction Management Plan (CMP)

A Preliminary Construction Management Plan must be prepared by a suitably qualified environmental consultant in consultation with a qualified traffic engineer and AQF 5 arborist and be submitted with the first development application.

The PCMP assists with the protection of the public, the environment and Council's assets during all stages of construction works and must include the following:

- a) *Description of the works*
 - i) A general description of the scope of works.
 - ii) Details of the extent of earthworks including quantities of excavated and imported material to be transported to and from the site.
 - iii) Details of any staging of works.
- b) *Construction traffic and management*
 - i) The anticipated number and frequency of truck movements per day over the duration of the project (i.e. throughout demolition, earthworks and construction phases) for fill importation and exportation. The number of trucks should correlate to the volume of fill material to be imported to/exported from the site.

- ii) The vehicle traffic routes to and from the site, including any queuing locations. The vehicle routes should be identified on a plan attached to the PCMP.
- iii) Size and types of construction vehicles to be used for importation and exportation of fill throughout the stages of works.
- iv) Access and egress into the site, including any limitation on access for certain types of vehicles (determined via swept path analysis) due to site constraints.
- v) Any required road closures/openings, work zones, crane permits, road occupancy licences and traffic control.
- vi) Management measures to be implemented to minimise disruption to, and maintain the safety, of all road users.
- c) *Pedestrian management*
 - i) Potential impacts on pedestrian movements. This includes consideration of locations or times where footpaths are heavily trafficked (e.g. school arrival and departure; commuter peaks).
 - ii) Management measures to be implemented to minimise disruptions to pedestrians and maintain safety.
- d) *Car parking*
 - i) Impacts on on-street parking (e.g. use of work zones, construction access implications).
 - ii) Details of construction worker parking. Where limited car parking is available on site or nearby, details of alternative transport arrangements must be provided.
- e) *Tree management and protection*
 - i) Trees to be removed and retained on site consistent with other lodged Plans, including tree protection measures.
- f) *Stormwater Management*
 - i) Details of stormwater management and disposal during excavation and construction, consistent with other lodged Plans.
 - ii) Identification of existing watercourses.
 - iii) Sediment and erosion control measures.
- g) *Noise and Vibration*
 - i) Expected sources of noise and vibration during demolition, earthworks and construction at sensitive receiver locations.
 - ii) Duration of works that are expected to emit higher than average levels of noise and vibration (e.g. rock breaking and rock sawing).
 - iii) Details of mitigation measures to minimise noise and vibration impacts.
- h) *Waste Management*

- i) Detail the reuse, recycling and disposal methods for all demolition and construction waste on site.
- i) *Site plan*
 - i) A site plan which identifies the following information at each stage of the development:
 - a. Existing and proposed buildings.
 - b. Site boundaries.
 - c. Extent of proposed earthworks (i.e. excavation and fill importation locations, and cut and fill locations).
 - d. Existing trees and vegetation to be removed and retained and tree protection measures (consistent with TPP if required to be submitted as part of the Development Application).
 - e. Vehicle access and egress.
 - f. On-site vehicle parking areas.
 - g. Proposed hard-stand areas for loading and unloading materials, including the location of cranes and concrete pumps.
 - h. Location of material storage on-site, stockpiles, site sheds, hoardings, waste storage.
 - i. Location of sediment control measures (consistent with Erosion and Sediment Control plans submitted as part of the Development Application).
 - j. Potential Work Zone locations.

14. **Soil and Water Management Plan (SWMP)**

- a) A Soil and Water Management Plan (SWMP) is to be prepared by a suitably qualified consultant in accordance with the Managing Urban Stormwater - Soils & Construction, 2004 Manual, and be submitted with the first development application. The SWMP is to detail the sediment and erosion control measures to be implemented during the construction of the proposed development and is to include a plan to scale of 1:500 or larger and supporting information.
- b) The following information must be included within the SWMP:
 - i) Site survey which identifies contours and approximate grades and the direction(s) of fall.
 - ii) Locality of site and allotment boundaries.
 - iii) Location of adjoining road(s) and all impervious surfaces.
 - iv) Location of site within catchment including an estimate of flows through the site.
 - v) Existing vegetation and site drainage.
 - vi) Nature and extent of clearing, excavation and filling.

- vii) Diversion of run off around disturbed areas.
- viii) Location and type of proposed erosion and sediment control measures.
- ix) Location of site access and stabilisation of site access.
- x) Location of material stockpiles.
- xi) Location and engineering details with supporting design calculations for all necessary sediment retention basins.
- xii) Location and concept plans of any proposed constructed wetlands, gross pollutant traps, trash racks or trash collection/separator units.
- xiii) Proposed site rehabilitation and landscaping.
- xiv) Detailed staging of construction works (breaking down of catchment disturbed).
- xv) Maintenance program for erosion and sediment control measures.
- c) All design criteria and calculations used to size sediment and erosion control measures should be shown, and construction standard drawings are to be provided on each type of sediment and erosion control measure proposed.
- d) Where sediment retention basins are proposed, the following additional information is to be included in the SWMP:
 - i) Details of catchment area of basin.
 - ii) Design capacity dimensions of basin and overflow mechanism.
 - iii) Estimate of the average volumes of water to be disposed from the basin.
 - iv) Details of treatment methods to be employed to water prior to disposal from basin (flocculation).
 - v) Estimate of the water quality after treatment prior to disposal from basin (suspended solids).
 - vi) Method of disposal of water from basin.
 - vii) Location of discharge points and / or disposal areas of water from basin.
 - viii) Inspection and maintenance program for basin.

15. Waste Management

- a) A future development application must provide Waste Management Plans for the Demolition Stage and for the Construction Stage, covering the scope of this project and including the following details:
 - i) An estimate of the types and volumes of waste and recyclables to be generated.
 - ii) A site plan showing sorting and storage areas for demolition and construction waste and the vehicle access to these areas.
 - iii) How excavation, demolition and construction waste materials will be reused or recycled and where residual wastes will be disposed.

- iv) The total percentage (by weight) of demolition and construction waste that will be reused or recycled.
- b) A future development application must provide separate Waste management plans for use and on-going management for the commercial/retail and residential components of the development, including the following details:
 - i) Estimate of expected waste and recycling generation for each waste stream.
 - ii) Bin size(s) and collection frequency for each waste stream.
 - iii) How bins are to be serviced (including where the waste collection vehicle is to park, vehicle turning paths for HRV, Traffic Report to include consideration of waste collection safety).
 - iv) Bin storage(s) including dimensions, how location and design has minimised impact on streetscape, amenity etc .
 - v) Waste carting routes (e.g. from commercial tenancy to commercial bin room) and bin carting routes (e.g. from each residential waste facility to the bin holding/collection room) including gradients and widths and distance.
 - vi) Details of all Waste facilities (including, but not limited to the garbage chute, 240L recycling bin and 240L FOGO bin in a small room or cupboard on each residential level of each lift core of each building, any litter bins in the commercial courtyard), including dimensions and accessibility for persons with a disability.
 - vii) Details of all equipment required for on-going waste management and where it will be stored. Examples of equipment include but are not limited to the chute system (and volume handling equipment to ensure there is 3 days bin capacity under the chute), motorised bin carting equipment, bin lifter, commercial cardboard compactor/bailer, Return and Earn machine, etc.
 - viii) Roles and responsibilities for on-going waste management.
- c) The commercial/retail units and the residential units must have a separate self-contained waste management systems. The commercial/retail tenants must not have access to the residential waste management system and residents must not have access to the commercial/retail waste management system.
- d) A dedicated bulky waste storage area of at least 8 square metres must be provided for every 50 dwellings or part thereof.
- e) The waste facilities (a small room or cupboard housing the garbage chute, 240L recycling bin and 240L FOGO recycling bin) on each residential level must be accessible by persons with a disability while comfortably housing the garbage chute and 2x 240L bins.
- f) The domestic waste collection facility at the basement level must accommodate the bins as per the following rates:
 - i) Bins for residential use are required at a rate of 140L/dwelling/week for garbage, 120L/dwelling/week for co-mingled recycling and 25L/dwelling/week for food organic garden organic (FOGO) recycling. In addition, allow for 2x 660L or 1x 1100L paper/cardboard bins.

- ii) Garbage is collected two times per week and recycling is collected once per week.
- iii) Garbage bins can be 660L or 1100L whereas recycling bins are 240L.
- g) The commercial/ retail waste management system must be designed with waste collections no more frequent than twice per week for each waste stream.
- h) The heavy rigid waste collection vehicle must be able to enter the site in a forward direction, adequately manoeuvre into position near the bins with no more than one reverse movement, load the bins and exit the site in a forward direction.
- i) Details are to be provided with the relevant development application.

16. Arboricultural Assessment

A future development application must be accompanied by an Arboricultural Impact Assessment Report that assesses the impact of the development on trees to be retained and details all trees that are required to be removed to facilitate the future development. The Arboricultural Impact Assessment Report must:

- a) Be completed by an Arborist with a minimum AQF5 level certification.
- b) Assesses the impact of the development on all trees located on the subject site as well as all trees located on neighbouring allotments or within road reserves that are likely to be impacted by the development.
- c) Assess the entire impact of the development on trees to be retained; including but not limited to:
 - i) The impacts of the proposed building envelope.
 - ii) The impacts of the installation of any proposed services and drainage infrastructure.
 - iii) The likely impacts of the erection of any required scaffolding and or erection of any cranes.
- d) The Arboricultural Impact Assessment Report must be accompanied by, or contain within, a tree protection plan for all stages of the development, including site preparation, demolition and construction.

17. Landscape Plans

A future development application must be accompanied by detailed landscape plans and drawings that indicate the following:

- a) Retention of the approved landscaped areas including retention of all approved deep soil zones.
- b) Provision for canopy trees of no less than 10 metres mature height along the northern and western property boundaries.
- c) Details for on slab planters are to be provided. These details need to include automatic drip irrigation, subsoil drainage (proprietary drainage cell, 50mm sand and filter fabric), and waterproofing. Soil depths additional to the requirement of subsoil drainage shall be a minimum of 500mm for shrubs.

- d) Undergrounding of powerlines along the site frontages to avoid canopy and overhead powerline conflicts.
- e) Native plants are to be used in preference.
- f) All landscape plans are to be prepared by a suitably qualified Landscape Architect.

18. Urban Design Report

A future development application must be accompanied by an Urban Design Report, prepared by a suitably qualified architect that addresses (as a minimum):

- a) The requirements of Clause 6.8 Design Excellence of the Hornsby Local Environmental Plan 2013.
- b) Schedule 1 Design Quality Principles of State Environmental Planning Policy No 65 Design Quality of Residential Apartment Development.
- c) The Hornsby Public Domain Guidelines to ensure that the future application is consistent with the public domain design for the Asquith Precinct.

19. Public Domain Guidelines

A future development application must be consistent with the Hornsby Public Domain Guideline and a future statement of environmental effects must state how the guidelines have been incorporated into the application. The following is required to be submitted with any future development application:

- a) An Alignments Plan demonstrating levels, gradients and alignments of new and altered buildings and a Public Domain Plan to be prepared and submitted for approval, reflecting the public domain elements as outlined in the Public Domain Guidelines.

- 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 80A of the Act.

Environmental Planning and Assessment Act 1979 Requirements

The *Environmental Planning and Assessment Act 1979* require the lodgement and approval of a development application prior to any development on the site.

Tree and Vegetation Preservation

In accordance with Clause 5.9 of the Hornsby Local Environmental Plan 2013 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 both the Hornsby Local Environmental Plan 2013 and 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.

ITEM 5



LOCALITY PLAN

DA/528/2020

409-411 Pacific Highway Asquith

ATTACHMENT 1 - ITEM 5



SOUTH EASTERN PERSPECTIVE VIEW ALONG PACIFIC HIGHWAY

SHOPTOP HOUSING CONCEPT DA

409 - 411 PACIFIC HIGHWAY
ASQUITH, NSW, 2077

ATTACHMENT 2 - ITEM 5

ATTACHMENT 2 - ITEM 5

DEVELOPMENT SUMMARY		2715.7 SQM	
SCHEDULE OF UNITS		2715.7 SQM	
1 UNIT	1 UNIT	1 UNIT	1 UNIT
2 UNIT	2 UNIT	2 UNIT	2 UNIT
3 UNIT	3 UNIT	3 UNIT	3 UNIT
4 UNIT	4 UNIT	4 UNIT	4 UNIT
5 UNIT	5 UNIT	5 UNIT	5 UNIT
TOTAL	TOTAL	13 UNITS	13 UNITS
GRAND TOTAL		31 UNITS	
AREA SUMMARY		GFA	
COMMERCIAL	COMMERCIAL	963 SQM	963 SQM
RESIDENTIAL	RESIDENTIAL	183 SQM	183 SQM
TOTAL	TOTAL	1146 SQM	1146 SQM
CAR PARKING		RAT	
COMMERCIAL	COMMERCIAL	0.03 / MP	0.03 / MP
RESIDENTIAL	RESIDENTIAL	0.1 / UNIT	0.1 / UNIT
TOTAL	TOTAL	0.13 / UNIT	0.13 / UNIT
MINIMUM NUMBER OF ALLOWABLE COMMERCIAL CARPARKING SPACES		34 SPACES	
MINIMUM NUMBER OF ALLOWABLE RESIDENTIAL CARPARKING SPACES		42 SPACES	
BICYCLE PARKING		RAT	
COMMERCIAL	COMMERCIAL	0.2 / UNIT	0.2 / UNIT
RESIDENTIAL	RESIDENTIAL	0.1 / UNIT	0.1 / UNIT
TOTAL	TOTAL	0.3 / UNIT	0.3 / UNIT
MINIMUM NUMBER OF REQUIRED BICYCLE SPACES		8 SPACES	
MOTORCYCLE PARKING		RAT	
COMMERCIAL	COMMERCIAL	0.02 / CARPARK SPACES	0.02 / CARPARK SPACES
RESIDENTIAL	RESIDENTIAL	0.02 / CARPARK SPACES	0.02 / CARPARK SPACES
TOTAL	TOTAL	0.04 / CARPARK SPACES	0.04 / CARPARK SPACES
MINIMUM NUMBER OF REQUIRED MOTORCYCLE SPACES		2 SPACES	
PROVIDED PARKING SPACES		BICYCLE PARKING	
COMMERCIAL	COMMERCIAL	1 SPACES	1 SPACES
RESIDENTIAL	RESIDENTIAL	0 SPACES	0 SPACES
TOTAL	TOTAL	1 SPACES	1 SPACES
PROVIDED PARKING SPACES		MOTORCYCLE PARKING	
COMMERCIAL	COMMERCIAL	1 SPACES	1 SPACES
RESIDENTIAL	RESIDENTIAL	0 SPACES	0 SPACES
TOTAL	TOTAL	1 SPACES	1 SPACES
MINIMUM NUMBER OF PROVIDED PARKING SPACES		2 SPACES	
WASTE		COLLECTION FREQUENCY	
COMMERCIAL	COMMERCIAL	1 WEEKLY	1 WEEKLY
RESIDENTIAL	RESIDENTIAL	1 WEEKLY	1 WEEKLY
TOTAL	TOTAL	2 WEEKLY	2 WEEKLY
MINIMUM NUMBER OF PROVIDED PARKING SPACES		2 SPACES	
WASTE		COLLECTION FREQUENCY	
COMMERCIAL	COMMERCIAL	1 WEEKLY	1 WEEKLY
RESIDENTIAL	RESIDENTIAL	1 WEEKLY	1 WEEKLY
TOTAL	TOTAL	2 WEEKLY	2 WEEKLY
MINIMUM NUMBER OF PROVIDED PARKING SPACES		2 SPACES	
WASTE		COLLECTION FREQUENCY	
COMMERCIAL	COMMERCIAL	1 WEEKLY	1 WEEKLY
RESIDENTIAL	RESIDENTIAL	1 WEEKLY	1 WEEKLY
TOTAL	TOTAL	2 WEEKLY	2 WEEKLY
MINIMUM NUMBER OF PROVIDED PARKING SPACES		2 SPACES	
WASTE		COLLECTION FREQUENCY	
COMMERCIAL	COMMERCIAL	1 WEEKLY	1 WEEKLY
RESIDENTIAL	RESIDENTIAL	1 WEEKLY	1 WEEKLY
TOTAL	TOTAL	2 WEEKLY	2 WEEKLY
MINIMUM NUMBER OF PROVIDED PARKING SPACES		2 SPACES	
WASTE		COLLECTION FREQUENCY	
COMMERCIAL	COMMERCIAL	1 WEEKLY	1 WEEKLY
RESIDENTIAL	RESIDENTIAL	1 WEEKLY	1 WEEKLY
TOTAL	TOTAL	2 WEEKLY	2 WEEKLY
MINIMUM NUMBER OF PROVIDED PARKING SPACES		2 SPACES	
WASTE		COLLECTION FREQUENCY	
COMMERCIAL	COMMERCIAL	1 WEEKLY	1 WEEKLY
RESIDENTIAL	RESIDENTIAL	1 WEEKLY	1 WEEKLY
TOTAL	TOTAL	2 WEEKLY	2 WEEKLY
MINIMUM NUMBER OF PROVIDED PARKING SPACES		2 SPACES	
WASTE		COLLECTION FREQUENCY	
COMMERCIAL	COMMERCIAL	1 WEEKLY	1 WEEKLY
RESIDENTIAL	RESIDENTIAL	1 WEEKLY	1 WEEKLY
TOTAL	TOTAL	2 WEEKLY	2 WEEKLY
MINIMUM NUMBER OF PROVIDED PARKING SPACES		2 SPACES	
WASTE		COLLECTION FREQUENCY	
COMMERCIAL	COMMERCIAL	1 WEEKLY	1 WEEKLY
RESIDENTIAL	RESIDENTIAL	1 WEEKLY	1 WEEKLY
TOTAL	TOTAL	2 WEEKLY	2 WEEKLY
MINIMUM NUMBER OF PROVIDED PARKING SPACES		2 SPACES	
WASTE		COLLECTION FREQUENCY	
COMMERCIAL	COMMERCIAL	1 WEEKLY	1 WEEKLY
RESIDENTIAL	RESIDENTIAL	1 WEEKLY	1 WEEKLY
TOTAL	TOTAL	2 WEEKLY	2 WEEKLY
MINIMUM NUMBER OF PROVIDED PARKING SPACES		2 SPACES	
WASTE		COLLECTION FREQUENCY	
COMMERCIAL	COMMERCIAL	1 WEEKLY	1 WEEKLY
RESIDENTIAL	RESIDENTIAL	1 WEEKLY	1 WEEKLY
TOTAL	TOTAL	2 WEEKLY	2 WEEKLY
MINIMUM NUMBER OF PROVIDED PARKING SPACES		2 SPACES	
WASTE		COLLECTION FREQUENCY	
COMMERCIAL	COMMERCIAL	1 WEEKLY	1 WEEKLY
RESIDENTIAL	RESIDENTIAL	1 WEEKLY	1 WEEKLY
TOTAL	TOTAL	2 WEEKLY	2 WEEKLY
MINIMUM NUMBER OF PROVIDED PARKING SPACES		2 SPACES	
WASTE		COLLECTION FREQUENCY	
COMMERCIAL	COMMERCIAL	1 WEEKLY	1 WEEKLY
RESIDENTIAL	RESIDENTIAL	1 WEEKLY	1 WEEKLY
TOTAL	TOTAL	2 WEEKLY	2 WEEKLY
MINIMUM NUMBER OF PROVIDED PARKING SPACES		2 SPACES	
WASTE		COLLECTION FREQUENCY	
COMMERCIAL	COMMERCIAL	1 WEEKLY	1 WEEKLY
RESIDENTIAL	RESIDENTIAL	1 WEEKLY	1 WEEKLY
TOTAL	TOTAL	2 WEEKLY	2 WEEKLY
MINIMUM NUMBER OF PROVIDED PARKING SPACES		2 SPACES	

SCHEDULE OF UNITS	INTERNAL AREA (SQM)	EXTERNAL AREA (SQM)
LEVEL 1	101	52
	102	52
	103	46
	104	48
	105	18
	106	98
	107	11
LEVEL 2	108	26
	201	13
	202	13
	203	13
	204	18
	205	17
	206	46
LEVEL 3	301	13
	302	13
	303	13
	304	18
	305	17
	306	46
	307	19
LEVEL 4	308	26
	401	32
	402	52
	403	18
	404	17
	405	46
	406	19
TOTAL	9619	967

DRAWING NO	DRAWING LIST	SHEET NAME	REVISION
A000	DRAWING SUMMARIES AND SCHEDULES	D	
A000A	3D PERSPECTIVE 2	D	
A000B	3D PERSPECTIVE 3	D	
A001	SITE PLAN	D	
A002	SITE ANALYSIS	D	
A100	GROUND FLOOR PLAN	E	
A101	BASEMENT 1 PLAN	E	
A102	BASEMENT 2 PLAN	E	
A103	GROUND FLOOR PLAN	E	
A104	LEVEL 1 PLAN	E	
A105	TYPICAL FLOOR PLAN	D	
A106	LEVEL 4 PLAN	D	
A107	LEVEL 5 PLAN	D	
A200	ELEVATIONS - SHEET 1	E	
A201	ELEVATIONS - SHEET 2	E	
A202	STREET ELEVATION	D	
A203	SECTION A-A	D	
A204	VIEW FROM SUN DIAGRAM	D	
A301	SOLAR COMPLIANCE SCHEDULE	D	
A302	SECTION B-B	D	
A303	SECTION C-C	D	
A400	SHADING DIAGRAM	D	
A401	HEIGHT OF BUILDING DIAGRAM	D	
A402	ARTICULATION PLAN - BASEMENT 1 LEVEL	E	
A410	ARTICULATION PLAN - GROUND FLOOR PLAN	E	
A411	ARTICULATION PLAN - LEVEL 1 PLAN	E	
A412	ARTICULATION PLAN - LEVEL 2 PLAN	E	
A413	FLOOR PLAN - TYPICAL	E	
A414	ARTICULATION PLAN - LEVEL 4 PLAN	E	

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NORTH EASTERN PERSPECTIVE VIEW ALONG PACIFIC HIGHWAY

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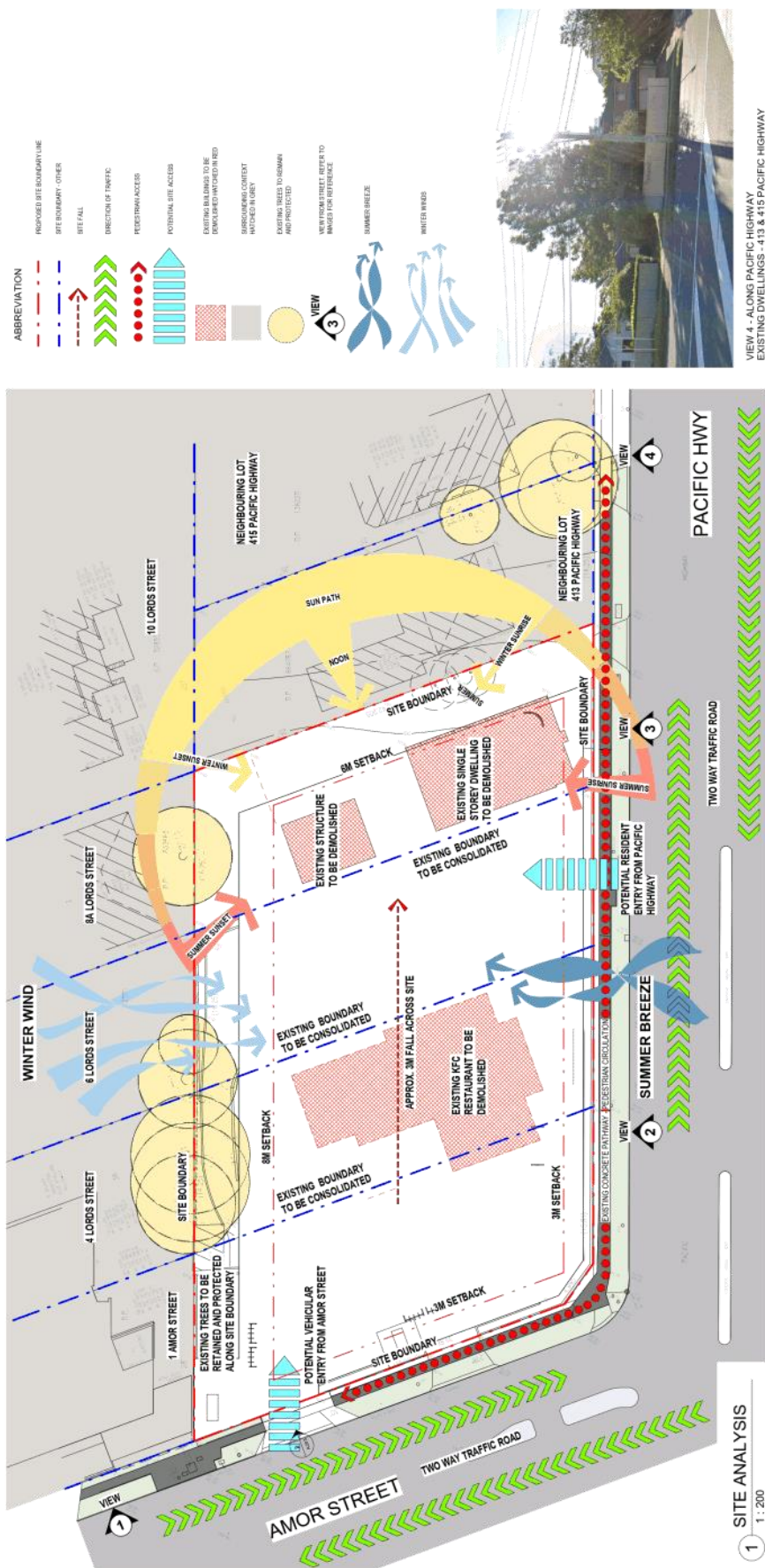
ATTACHMENT 2 - ITEM 5



SOUTHERN PERSPECTIVE VIEW ALONG AMOR STREET

BD BENTON & BOWLES 10000 W. 16th Ave. Suite 100 Denver, CO 80202 Tel: 303.733.1000 Fax: 303.733.1001 Email: info@bbdb.com		PREPARED BY: JACQUES PROJECT NO: 1000000000000000 DATE: 10/10/2024 BY: JACQUES CHECKED: JACQUES APPROVED: JACQUES 2024-10-10	NO. 1 DATE 10/10/2024 BY JACQUES CHECKED JACQUES APPROVED JACQUES 2024-10-10	REVISIONS NO. 1 DATE 10/10/2024 BY JACQUES CHECKED JACQUES APPROVED JACQUES 2024-10-10	APPROVAL NO. 1 DATE 10/10/2024 BY JACQUES CHECKED JACQUES APPROVED JACQUES 2024-10-10
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ATTACHMENT 2 - ITEM 5



VIEW 1 - ALONG AMOR STREET - POST OFFICE

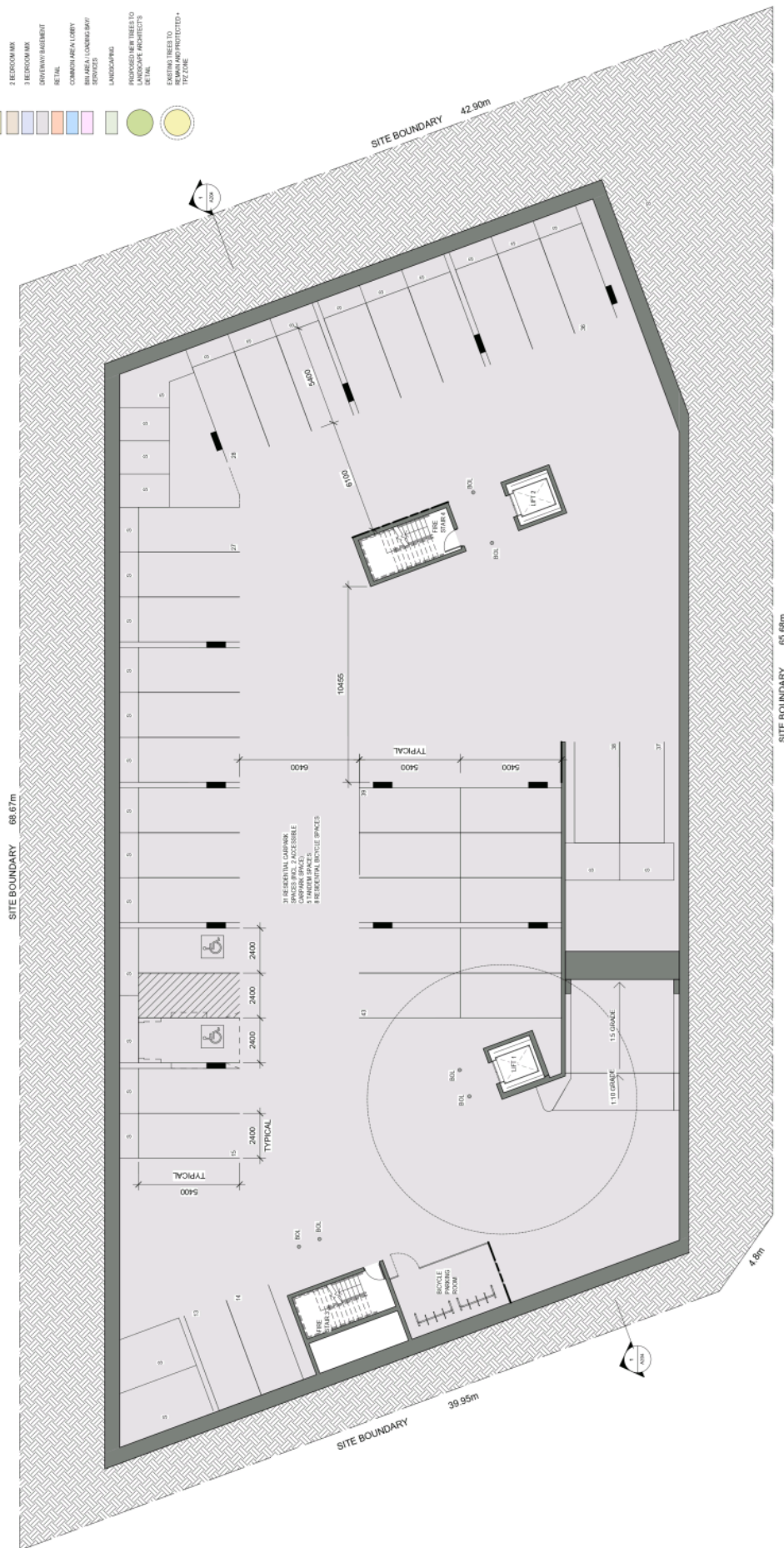


VIEW 2 - ALONG PACIFIC HIGHWAY - EXISTING HFC RESTAURANT



COLOR LEGEND

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DATE	14/06/22
BY	DAVID
FOR	13/07/22
PROJECT	100
NO.	100
REV	100
DATE	14/06/22

BASEMENT 3 PLAN

SHOPTOP HOUSING CONCEPT DA

408 - 411 PACIFIC HWY ASQUITH

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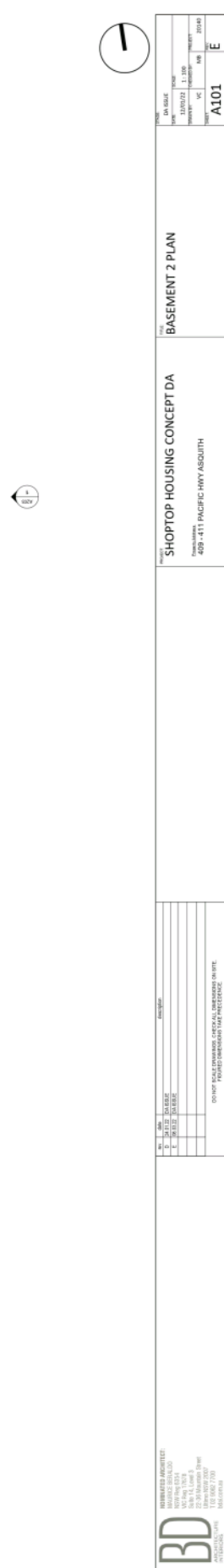
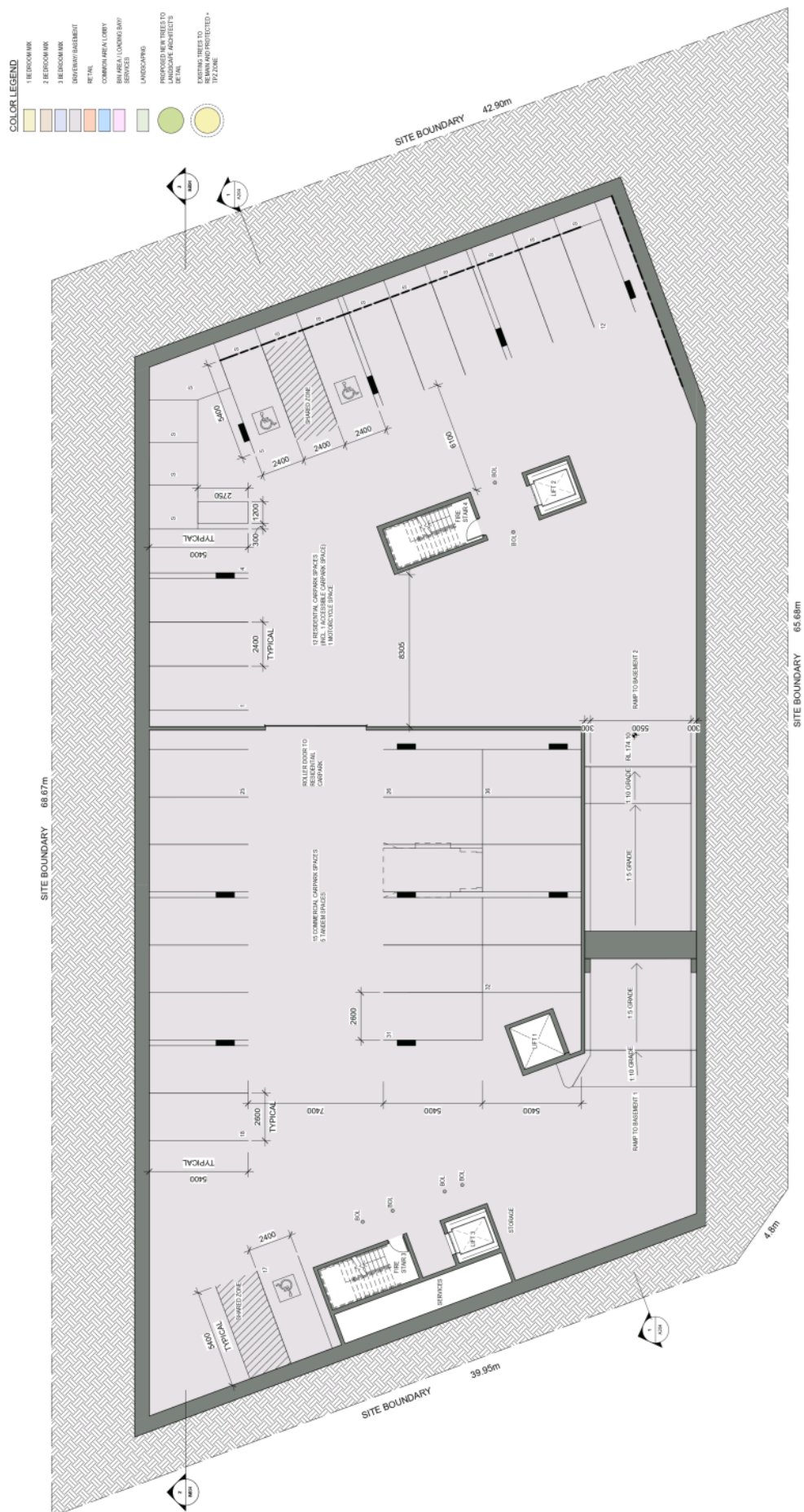
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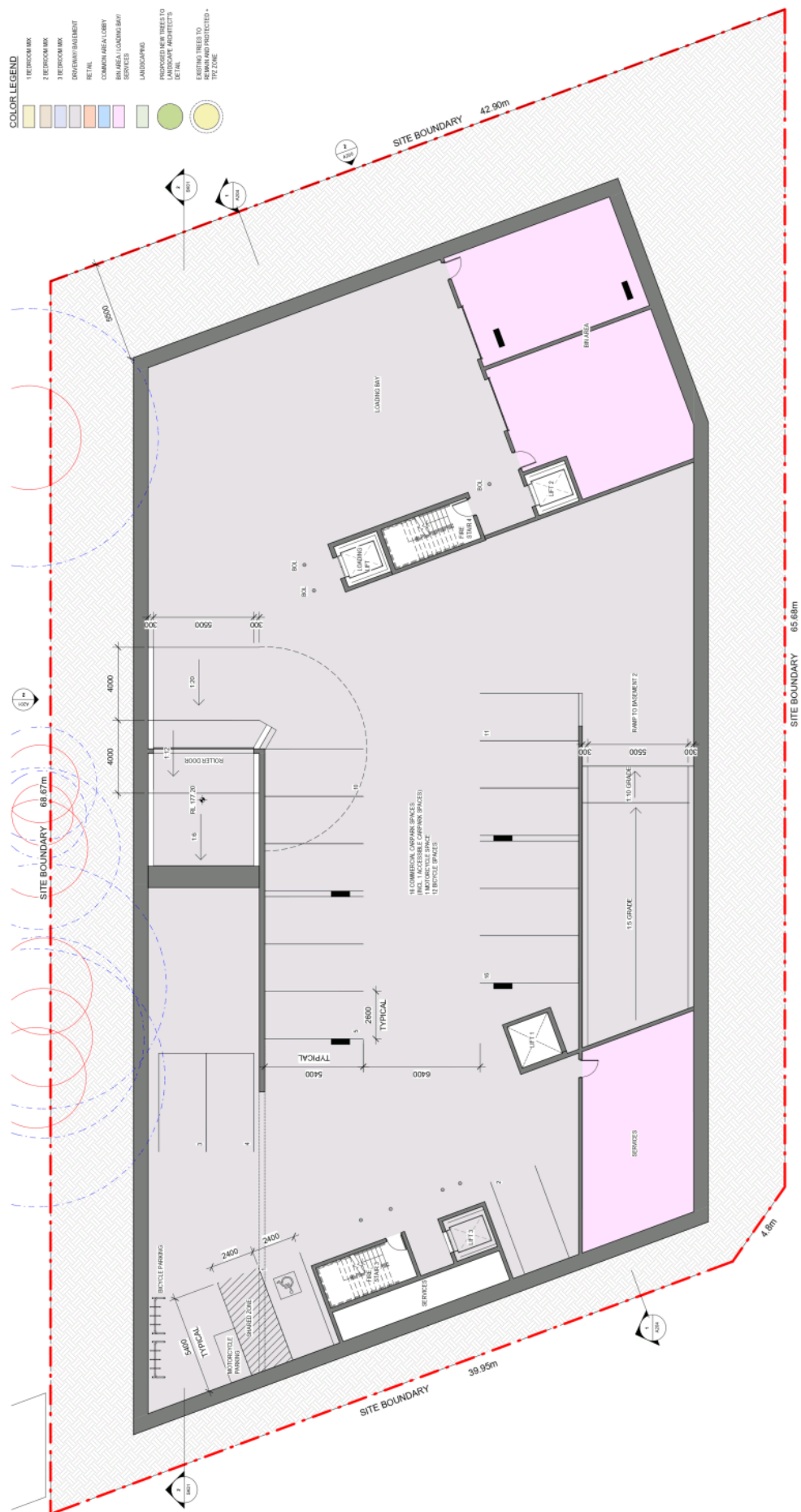
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ATTACHMENT 2 - ITEM 5



NO.	DATE	BY	CHKD	DESCRIPTION
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3	10/01/22	BD	BD	ISSUED FOR PERMIT
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10	10/01/22	BD	BD	ISSUED FOR PERMIT

BASEMENT 1 PLAN

SHOPTOP HOUSING CONCEPT DA

408 - 411 PACIFIC HWY ASQUITH

10/01/22

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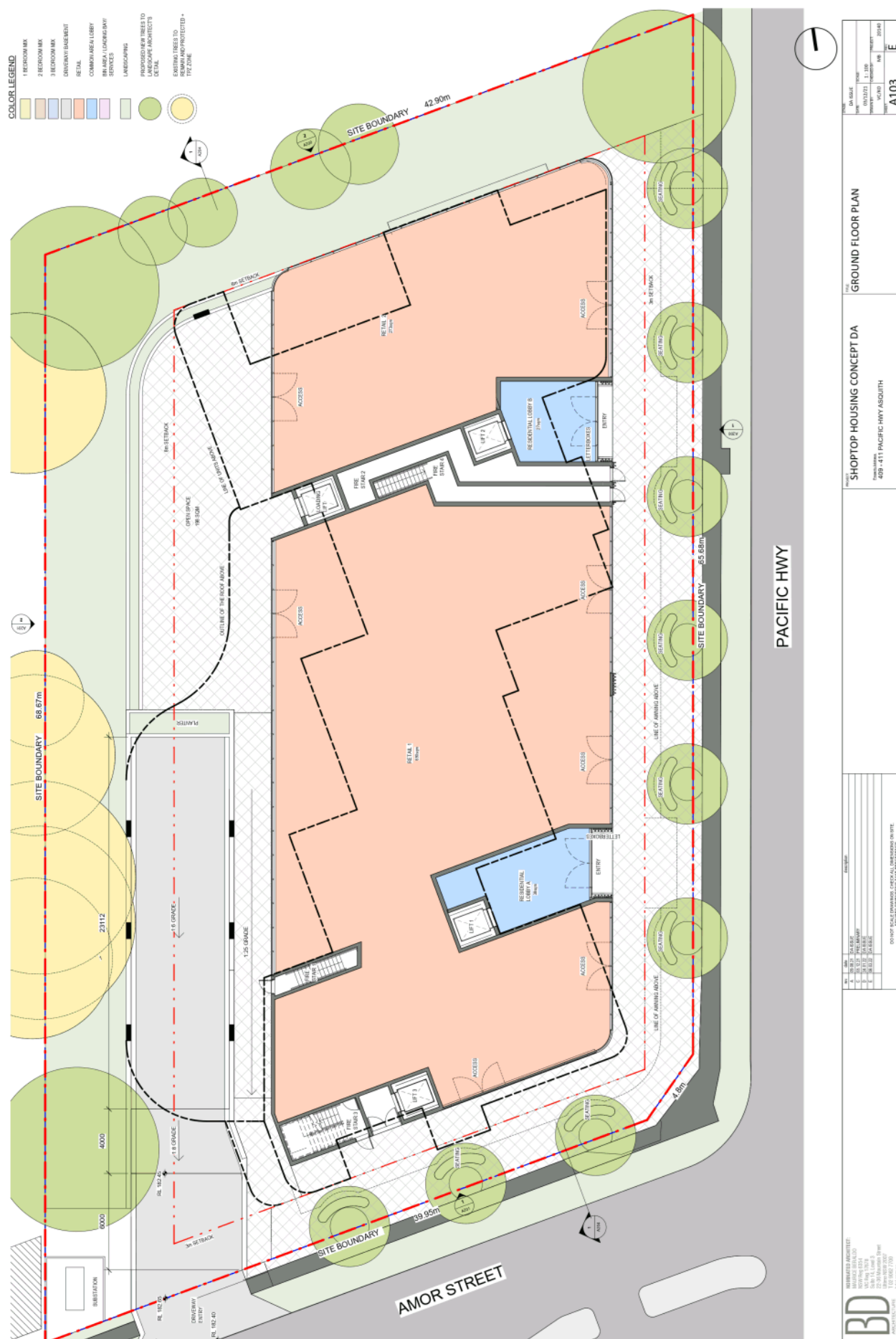
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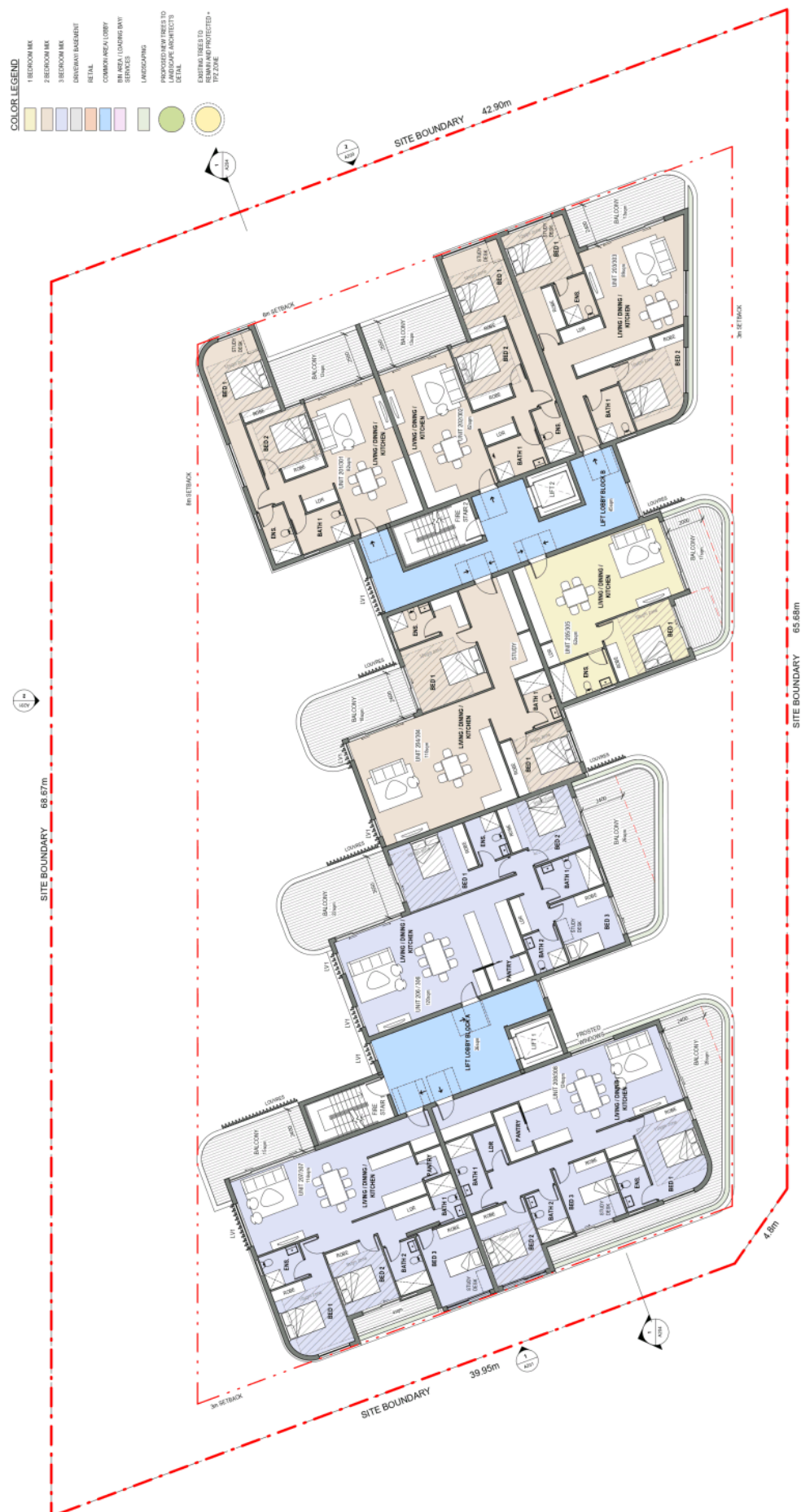
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ATTACHMENT 2 - ITEM 5



ATTACHMENT 2 - ITEM 5



DA 684/E	SCALE	
09/08/23	1: 100	
VC/NO	MB	20040
A105	MB	D

TYPICAL FLOOR PLAN

SHOPTOP HOUSING CONCEPT DA

409 • 411 PACIFIC HWY ASQUITH

DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE.

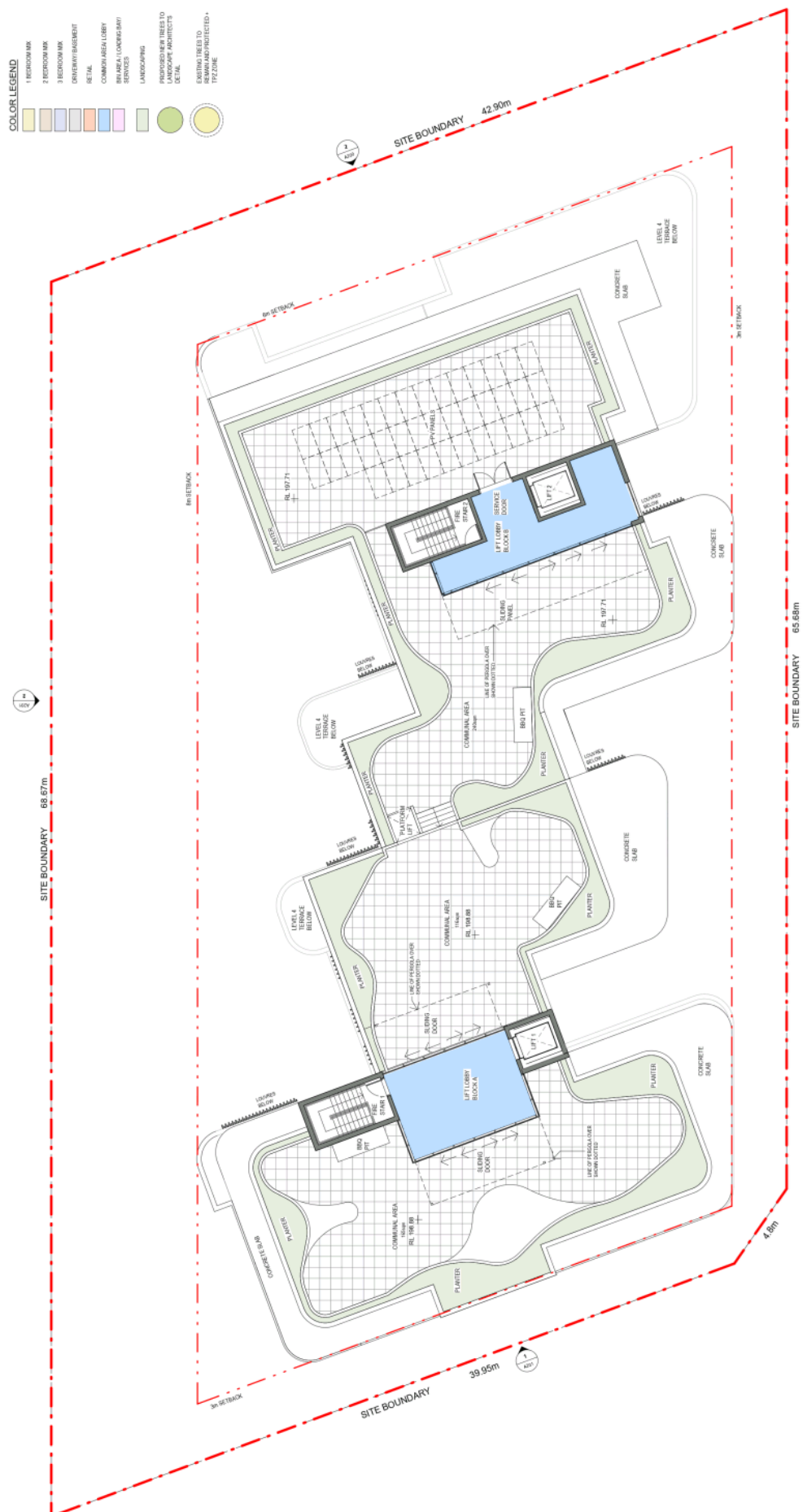
BD
ARCHITECTURE

INNOVATES ARCHITECT:
MARIAZEE BERNALDO
NSW Reg 6354
VIC Reg 17678
Suite 14, Level 8
22-39 Maurinton Street
Ultimo NSW 2007
T 02 9662 7700

ATTACHMENT 2 - ITEM 5

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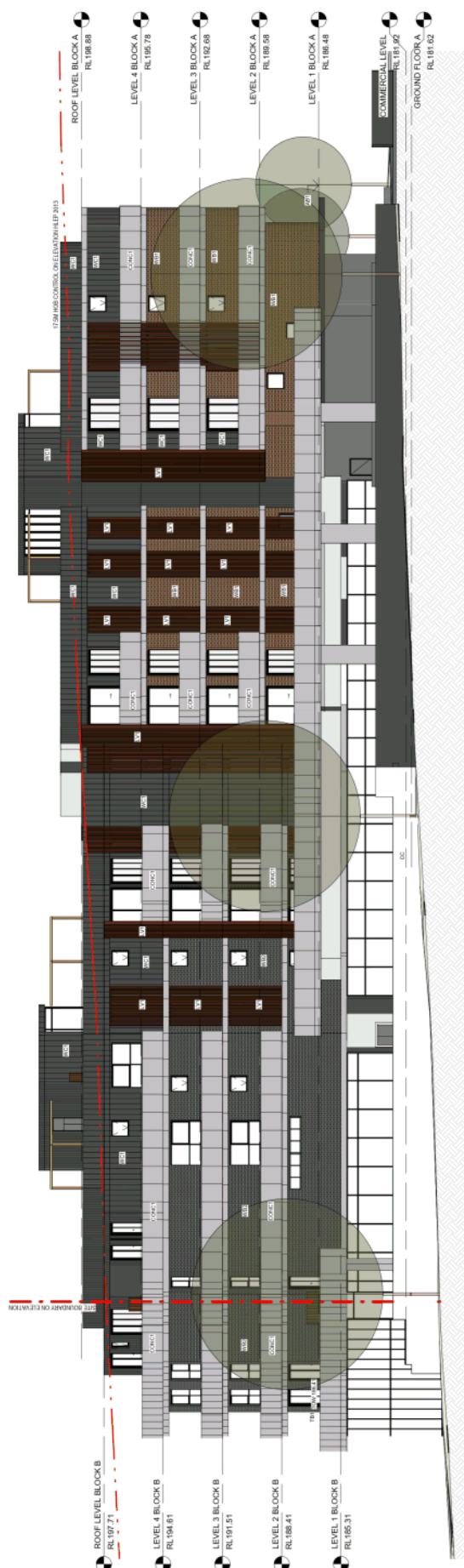
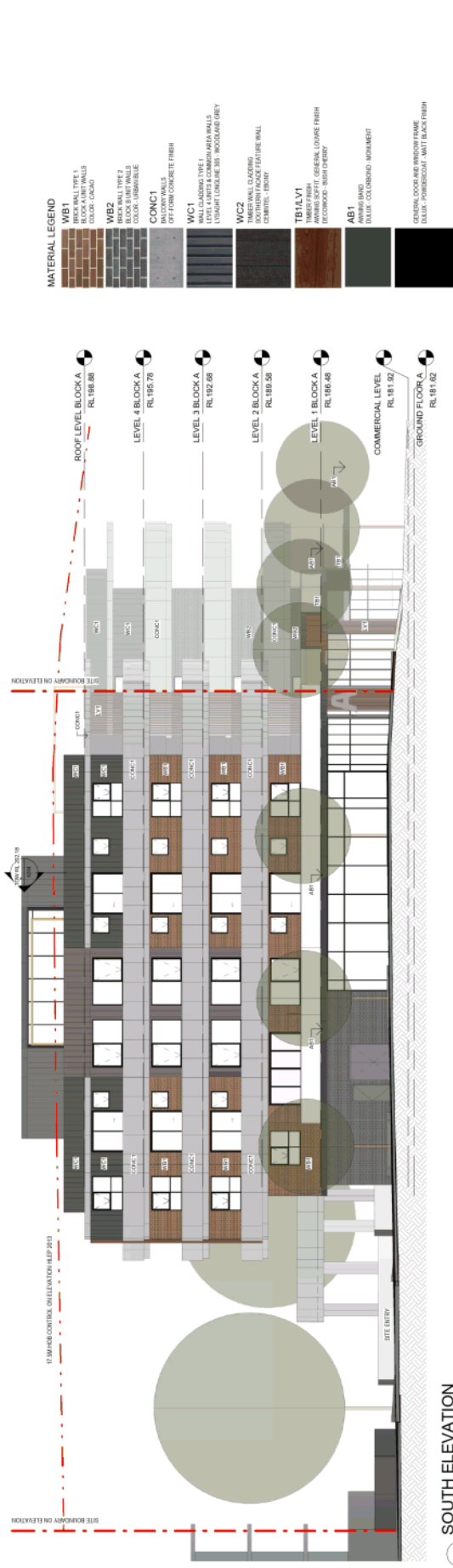
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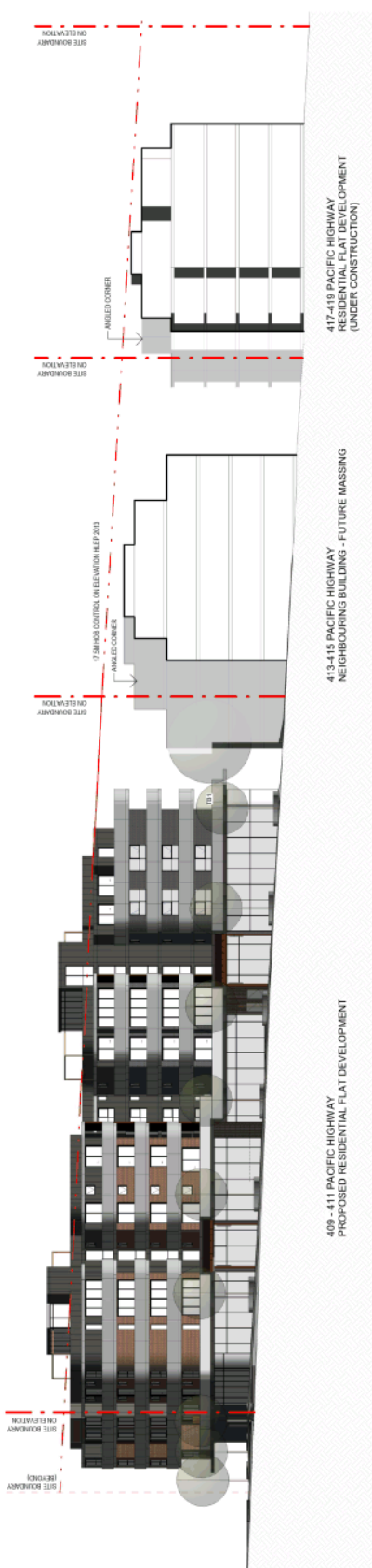


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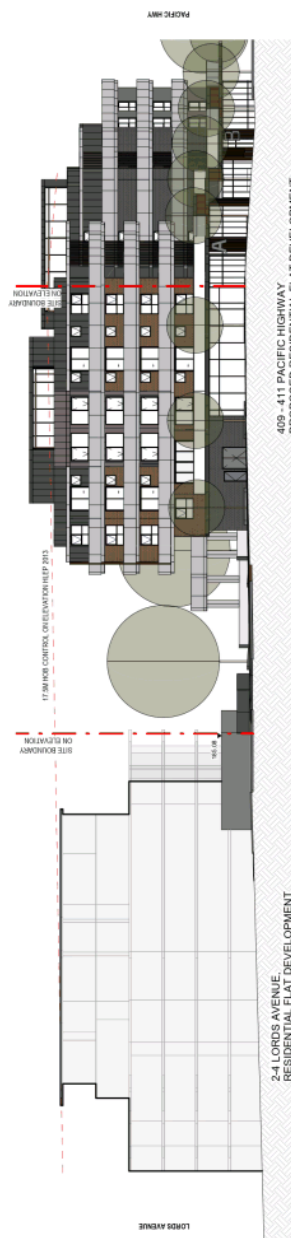


BD BUILDING DESIGN 10/100 HAWTHORN ROAD HAWTHORN VIC 3122 PH: 03 9594 1000 WWW.BUILDINGDESIGN.VIC.AU	PROJECT NO: 409 - 411 PACIFIC HWY ASQUITH PROJECT NAME: SHOPTOP HOUSING CONCEPT DA PROJECT LOCATION: 409 - 411 PACIFIC HWY ASQUITH PROJECT DESCRIPTION: SHOPTOP HOUSING CONCEPT DA PROJECT STATUS: PRELIMINARY	SHEET NO: A201 SHEET TITLE: ELEVATIONS - SHEET 2	DATE: 14/03/2022 DRAWN BY: J. LEE CHECKED BY: J. LEE APPROVED BY: J. LEE

ATTACHMENT 2 - ITEM 5



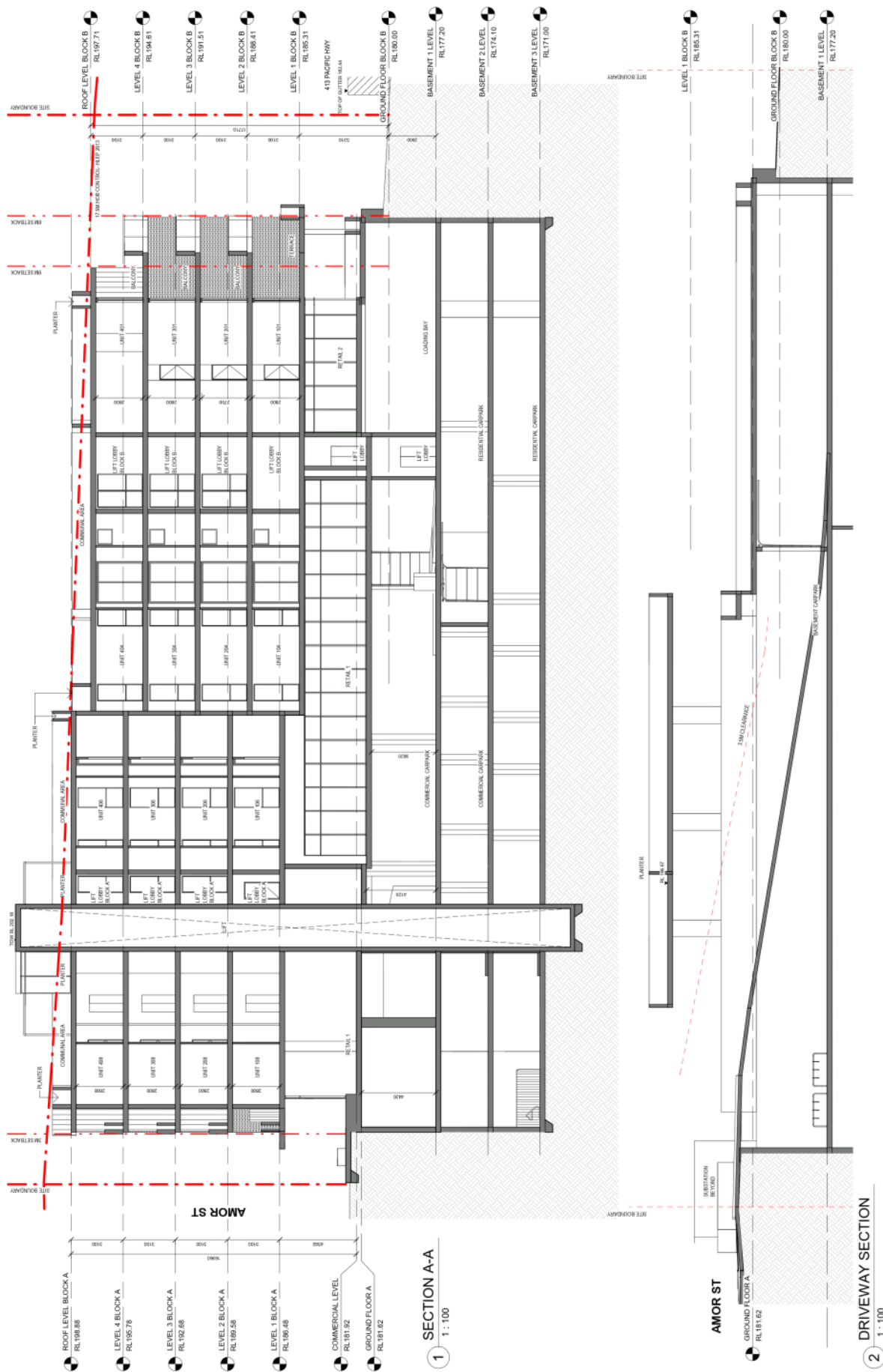
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2 STREET ELEVATION - AMOR ST
1 : 200

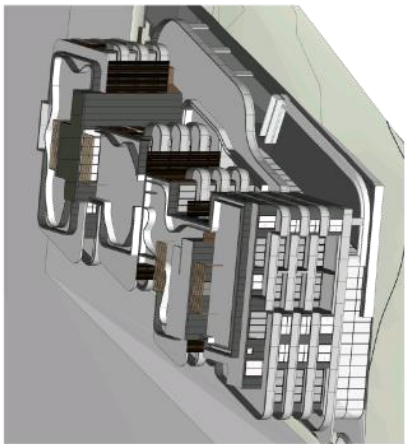
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ATTACHMENT 2 - ITEM 5

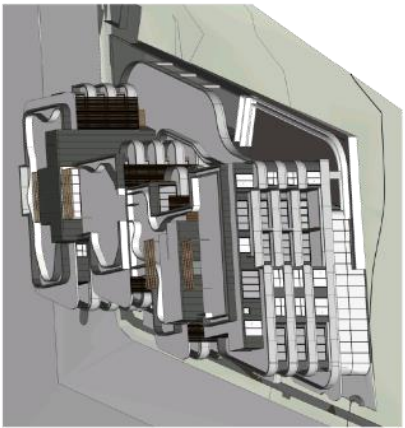


BD BENTLEY DESIGN 10/100 HAWTHORN Suite 10, Level 3 10/100 Hawthorn Road Hawthorn VIC 3122 Tel: 03 9594 1000 Email: info@bentleydesign.com.au	PROJECT NO: 2021/001 PROJECT NAME: SHOPTOP HOUSING CONCEPT DA DRAWING NO: A204 DATE: 15/03/2022 DRAWN BY: [Name] CHECKED BY: [Name] APPROVED BY: [Name]	SECTION A-A SHOPTOP HOUSING CONCEPT DA 409 - 411 PACIFIC HWY ASQUITH	DA SCALE: 1:100 PLAN SCALE: 1:100 ELEVATION SCALE: 1:100 SECTION SCALE: 1:100
			A204
			D
			15/03/2022

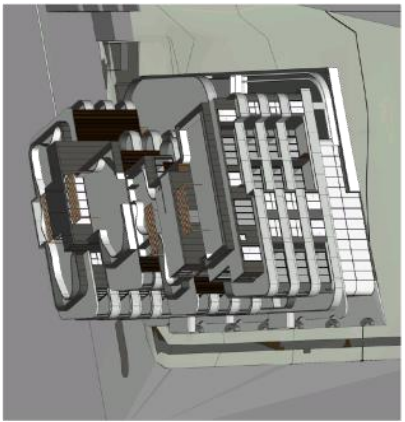
ATTACHMENT 2 - ITEM 5



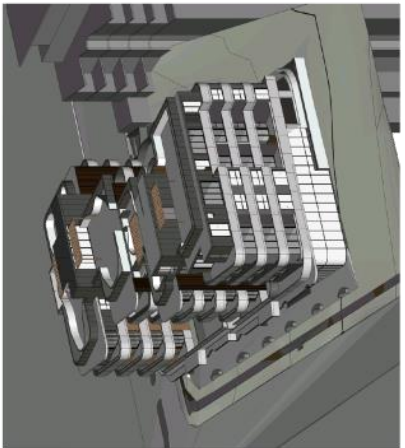
4 VIEW FROM SUN - WINTER SOLSTICE - 12PM



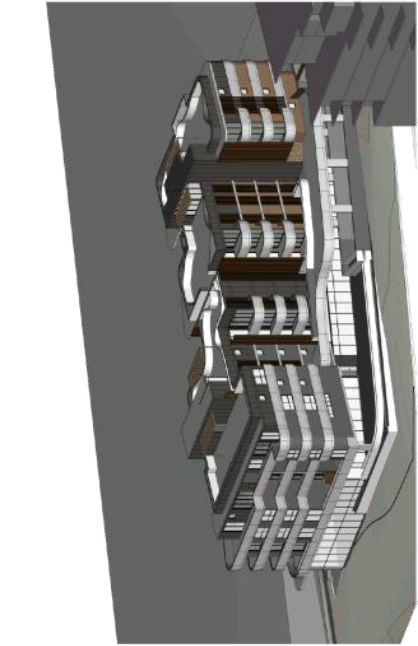
3 VIEW FROM SUN - WINTER SOLSTICE - 11AM



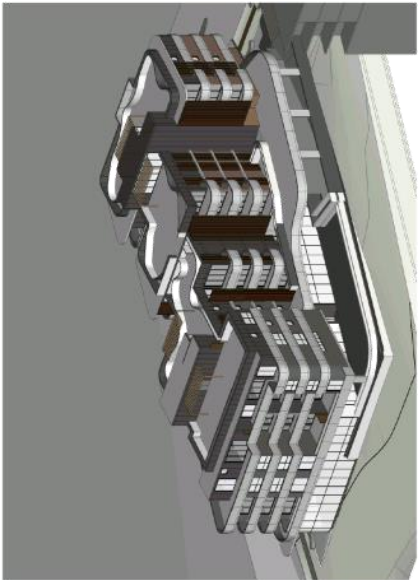
2 VIEW FROM SUN - WINTER SOLSTICE - 10AM



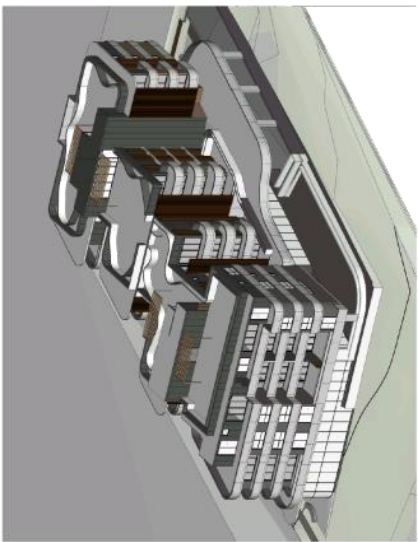
1 VIEW FROM SUN - WINTER SOLSTICE - 9AM



7 VIEW FROM SUN - WINTER SOLSTICE - 3PM



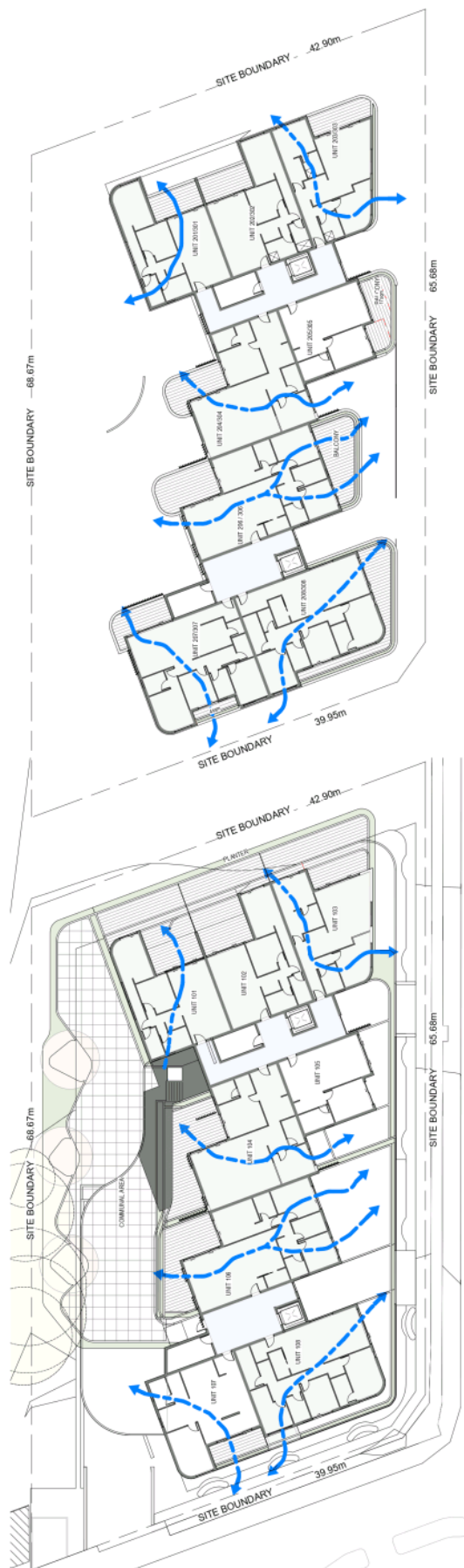
6 VIEW FROM SUN - WINTER SOLSTICE - 2PM



5 VIEW FROM SUN - WINTER SOLSTICE - 1PM

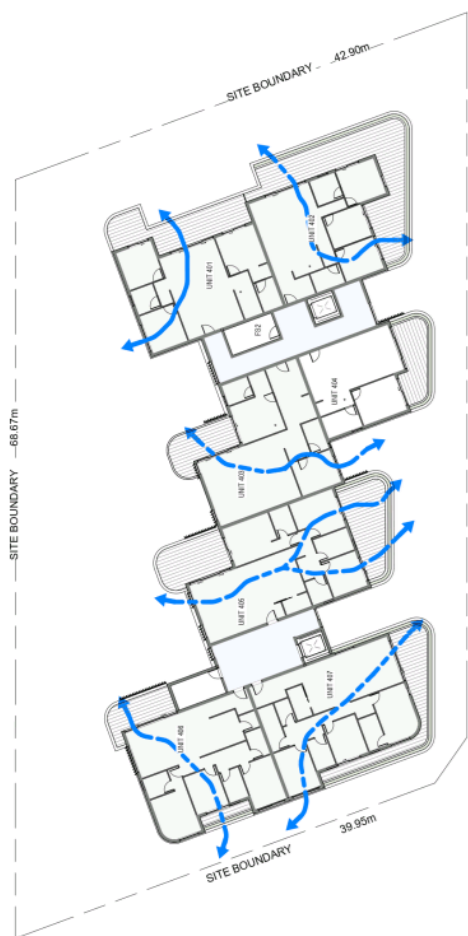
DRAWING NO. A301		PROJECT NAME SHOPTOP HOUSING CONCEPT DA		VIEW FROM SUN DIAGRAM	
DATE 08/07/22		PROJECT NO. 409 - 411 PACIFIC HWY ASQUITH		DATE 08/07/22	
DRAWN BY J. BROWN		CHECKED BY J. BROWN		DATE 08/07/22	
APPROVED BY J. BROWN		DATE 08/07/22		DATE 08/07/22	

ATTACHMENT 2 - ITEM 5



1 AMENITIES - LEVEL 1
A303 1:200

2 AMENITIES - TYPICAL FLOOR
A303 1:200



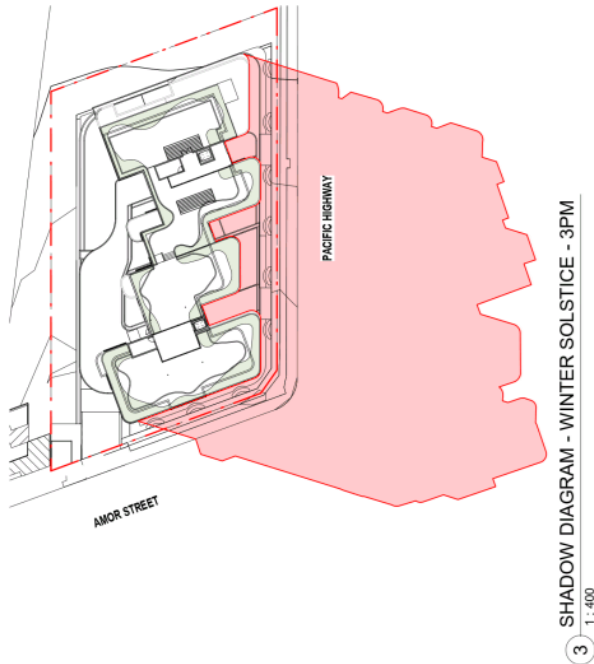
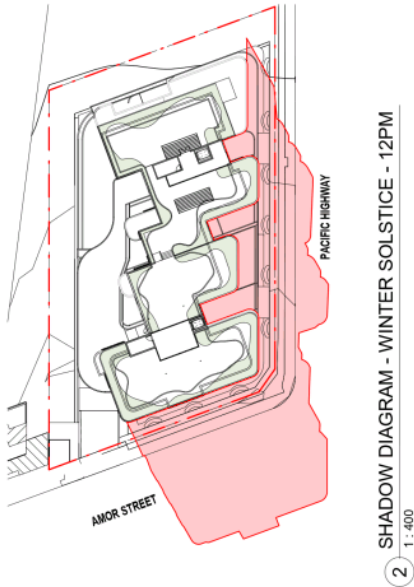
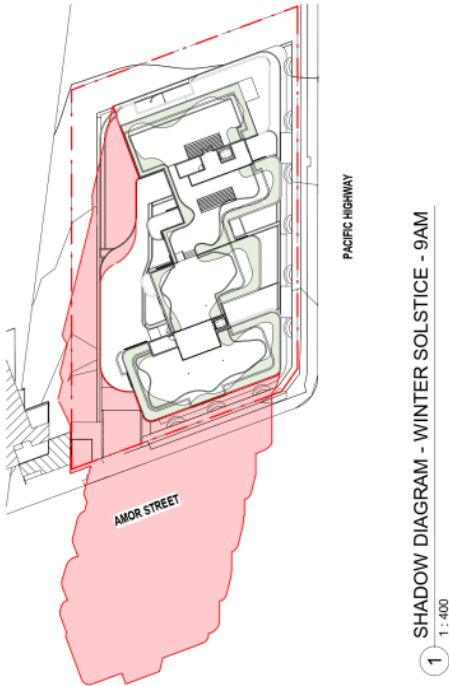
3 AMENITIES - LEVEL 4
A303 1:200

GROSS VENTILATION TABLE
TOTAL UNITS 31 UNITS
MIN UNITS REQUIRED TO COMPLY (65%) 20 UNITS
PROPOSED COMPLIANT UNITS 24 UNITS (77%)



<p>BD BURNING DUNES ARCHITECTS 10/100 HAWTHORN ROAD HAWTHORN VIC 3122 TEL: 03 9594 1000 WWW.BURNINGDUNESARCHITECTS.COM.AU</p>	<p>PROJECT NAME A303 1:200 PROJECT NO. A303 1:200 DATE 10/10/2022 DRAWN BY BD CHECKED BY BD APPROVED BY BD</p>	<p>PROJECT LOCATION 403 - 411 PACIFIC HWY ASSOUTH PROJECT NO. A303 1:200 DATE 10/10/2022 DRAWN BY BD CHECKED BY BD APPROVED BY BD</p>	<p>PROJECT DESCRIPTION SHOPTOP HOUSING CONCEPT DA PROJECT NO. A303 1:200 DATE 10/10/2022 DRAWN BY BD CHECKED BY BD APPROVED BY BD</p>	<p>PROJECT LOCATION 403 - 411 PACIFIC HWY ASSOUTH PROJECT NO. A303 1:200 DATE 10/10/2022 DRAWN BY BD CHECKED BY BD APPROVED BY BD</p>	<p>PROJECT DESCRIPTION SHOPTOP HOUSING CONCEPT DA PROJECT NO. A303 1:200 DATE 10/10/2022 DRAWN BY BD CHECKED BY BD APPROVED BY BD</p>	<p>PROJECT LOCATION 403 - 411 PACIFIC HWY ASSOUTH PROJECT NO. A303 1:200 DATE 10/10/2022 DRAWN BY BD CHECKED BY BD APPROVED BY BD</p>	<p>PROJECT DESCRIPTION SHOPTOP HOUSING CONCEPT DA PROJECT NO. A303 1:200 DATE 10/10/2022 DRAWN BY BD CHECKED BY BD APPROVED BY BD</p>	<p>PROJECT LOCATION 403 - 411 PACIFIC HWY ASSOUTH PROJECT NO. A303 1:200 DATE 10/10/2022 DRAWN BY BD CHECKED BY BD APPROVED BY BD</p>	<p>PROJECT DESCRIPTION SHOPTOP HOUSING CONCEPT DA PROJECT NO. A303 1:200 DATE 10/10/2022 DRAWN BY BD CHECKED BY BD APPROVED BY BD</p>
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ATTACHMENT 2 - ITEM 5



ABBREVIATION

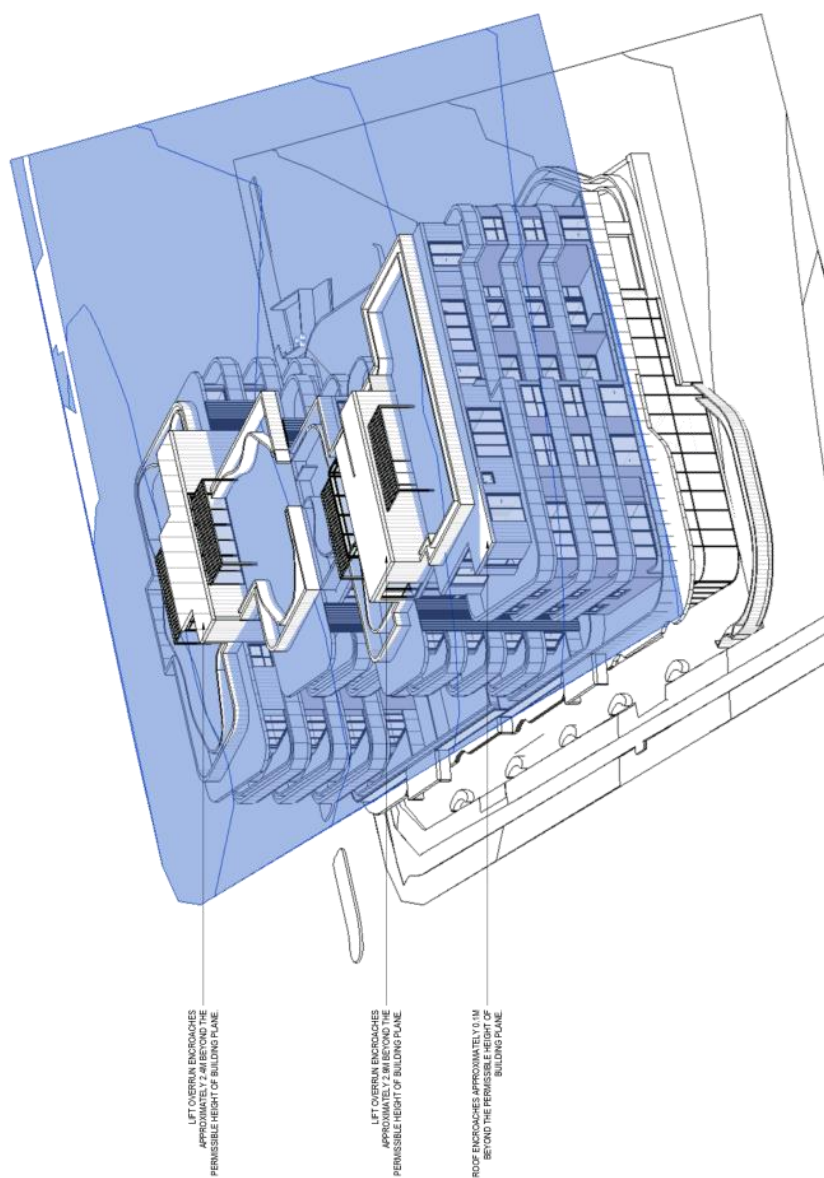
--- SITE BOUNDARY LINE

■ EXTENT OF SHADOW CAST BY PROPOSED BUILDING



BD BENTLEY DESIGN 10/10 PINE STREET SYDNEY NSW 1585 TEL: 02 9550 1234 WWW.BENTLEYDESIGN.COM	PROJECT NO. A401	PROJECT NAME SHOPTOP HOUSING CONCEPT DA 408 - 411 PACIFIC HWY ASQUITH	DATE 10/10/22	DRAWN BY J. BENTLEY	CHECKED BY J. BENTLEY	DATE 10/10/22	SCALE 1:400	SHEET NO. 1	SHEET TOTAL 1

ATTACHMENT 2 - ITEM 5



REGISTERED ARCHITECT:

B.D. ARCHITECTS
 10101 Pine Ave.
 Suite 100
 San Francisco, CA 94133
 Tel: 415.774.1111
 Fax: 415.774.1112
 Email: info@bdarch.com

PROJECT INFORMATION:

Project Name: SHOPTOP HOUSING CONCEPT DA

Project Address: 409 - 411 PACIFIC HWY ASDUTH

Client: DONUT BOWL/DAWNBIRD CEREAL/D BAKERS/IN/PT.

DATE: 05/05/21

BY: [Signature]

DATE: 05/05/21

BY: [Signature]

PROJECT NO.: 2019-001

PROJECT NAME: SHOPTOP HOUSING CONCEPT DA

PROJECT ADDRESS: 409 - 411 PACIFIC HWY ASDUTH

CLIENT: DONUT BOWL/DAWNBIRD CEREAL/D BAKERS/IN/PT.

DATE: 05/05/21

BY: [Signature]

DATE: 05/05/21

BY: [Signature]

PROJECT NO.: 2019-001

PROJECT NAME: SHOPTOP HOUSING CONCEPT DA

PROJECT ADDRESS: 409 - 411 PACIFIC HWY ASDUTH

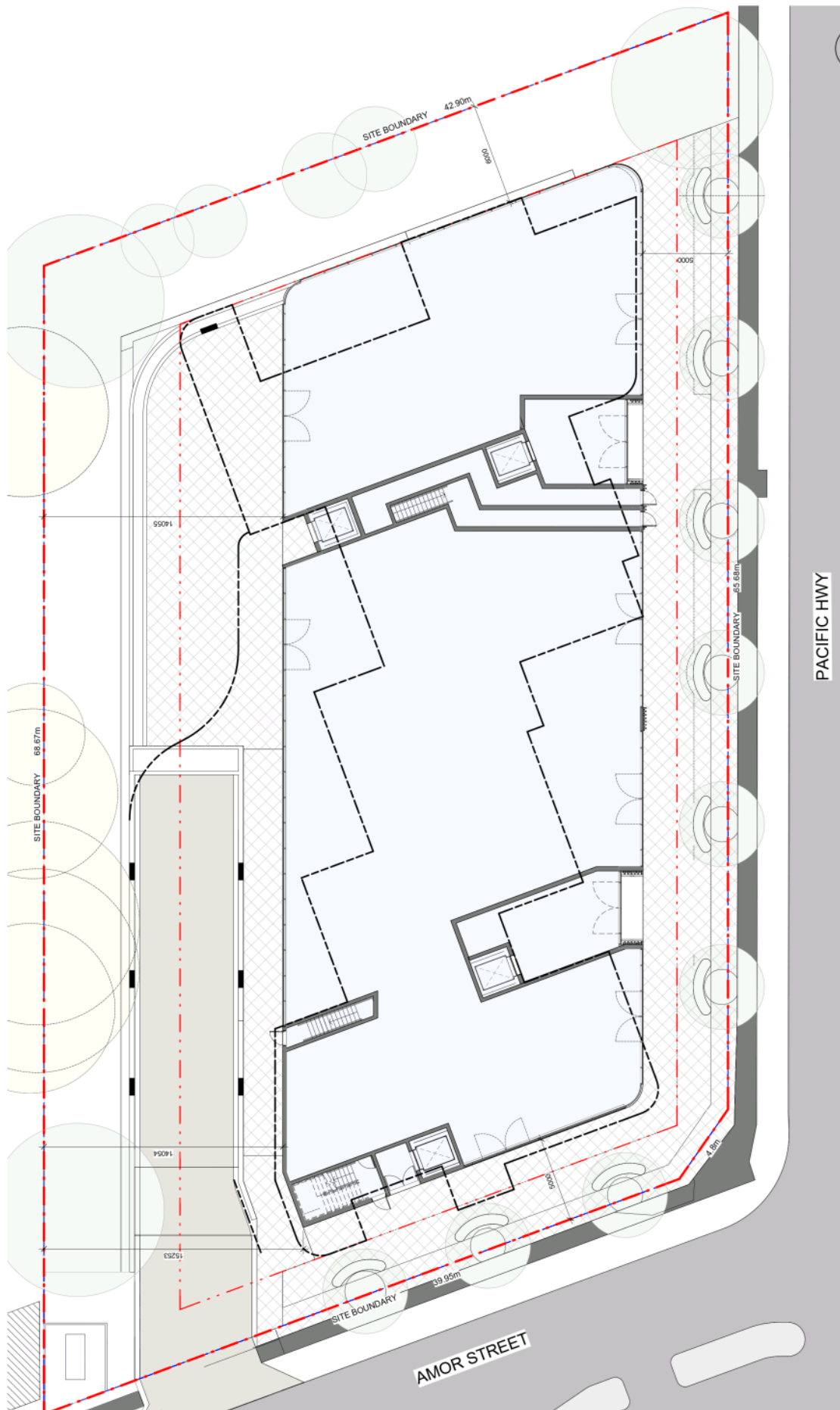
CLIENT: DONUT BOWL/DAWNBIRD CEREAL/D BAKERS/IN/PT.

ATTACHMENT 2 - ITEM 5



	INTERESTED ARCHITECTS: BENTLEY CALLOO 10101 Pine 0514 910-494-1763 22-24 Marquette Street San Francisco, CA 94102 415-680-7330		DATE: 10/1/02 BY: JN/BSJ	
	DESCRIPTION: SHOPTOP HOUSING CONCEPT DA		DATE: 10/01/02 BY: JN/BSJ	
PROJECT NAME: SHOPTOP HOUSING CONCEPT DA		PROJECT ADDRESS: 409 - 411 PACIFIC HWY ASDUTH		PROJECT NUMBER: 20349
CLIENT: DONUT BULZSWARNO CHECKALL DIMENSION ON SITE.		PROJECT LOCATION: VC		PROJECT TYPE: E
DATE: 10/01/02		BY: JN/BSJ		PROJECT NUMBER: 20349

ATTACHMENT 2 - ITEM 5



BD BENTLEY DESIGN 10/100 HAWTHORN ROAD HAWTHORN VIC 3122 PH: 03 9594 1000 WWW.BENTLEYDESIGN.COM.AU	PROJECT NO: 2022/001 PROJECT NAME: SHOPTOP HOUSING CONCEPT DA PROJECT LOCATION: 409 - 411 PACIFIC HWY ASCUTH	PROJECT NO: 2022/001 PROJECT NAME: SHOPTOP HOUSING CONCEPT DA PROJECT LOCATION: 409 - 411 PACIFIC HWY ASCUTH	DATE: 08/03/22 DRAWN BY: J. LEE CHECKED BY: J. LEE PROJECT NO: 2022/001 PROJECT NAME: SHOPTOP HOUSING CONCEPT DA PROJECT LOCATION: 409 - 411 PACIFIC HWY ASCUTH
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ATTACHMENT 2 - ITEM 5



DATE	DA 08/02/02	TIME	1:10:00	REMARKS	200.40
DRIVER	VC	VC	VC	VC	VC
SHEET	A412	E			

ARTICULATION PLAN - LEVEL
1 PLAN

SHOPTOP HOUSING CONCEPT DA

09-411 PACIFIC HWY ASQUITH

REV	DATE	DESCRIPTION
1	08/17/21	DA 8582

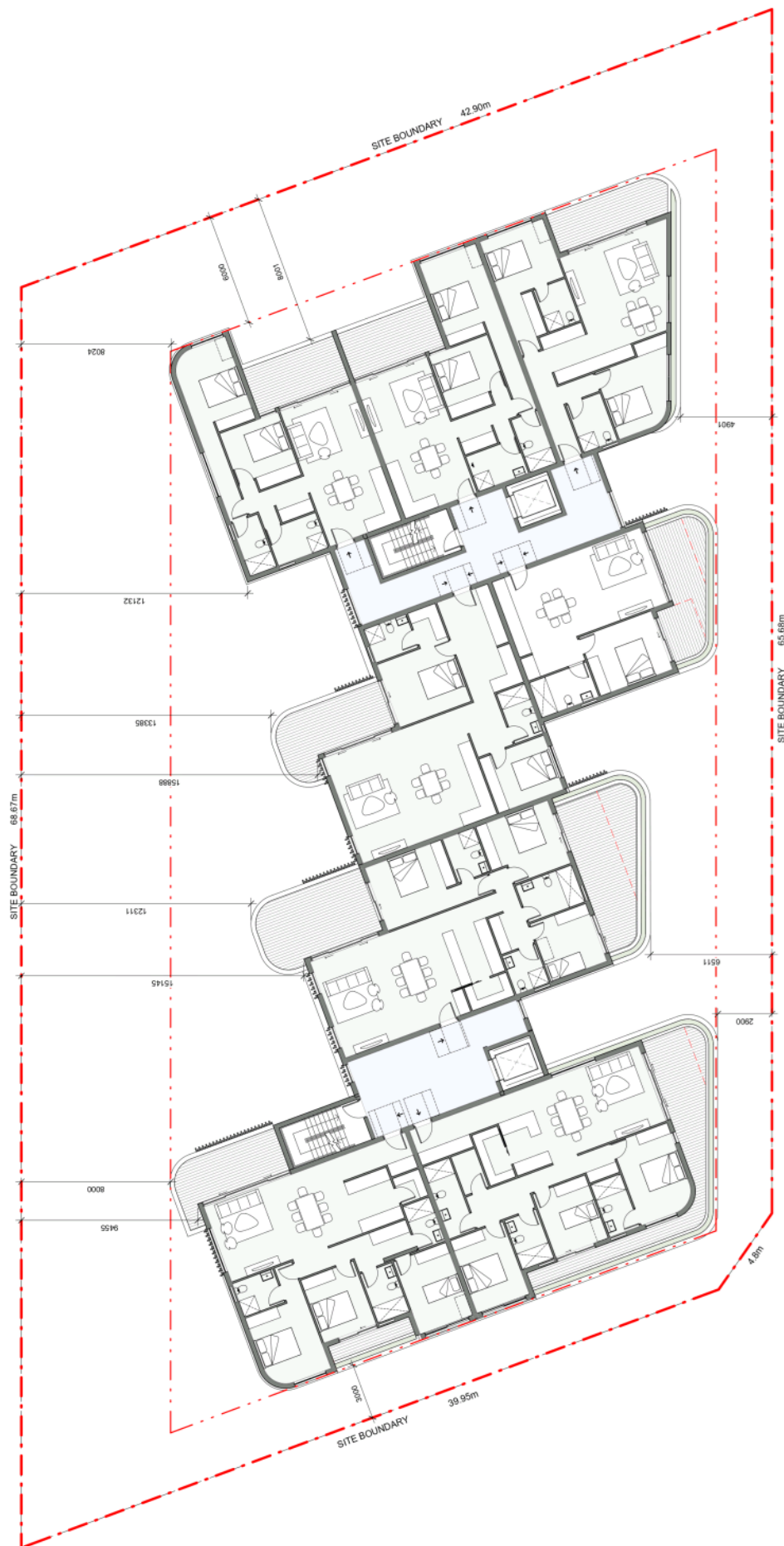
DO NOT SCALE DIMENSIONS. CHECK ALL DIMENSIONS ON SITE.

ONCE SCALE DRAWINGS CHECK ALL DIMENSIONS ON SITE.

BD
ARCHITECTURE

INNOVATES ARCHITECT:
MAURIZIO BERUCCO
NSW Reg 6354
VIC Reg 17678
Suite 14, Level 3
22-39 Maurinton Street
Ultimo NSW 2007
T 02 9662 7700

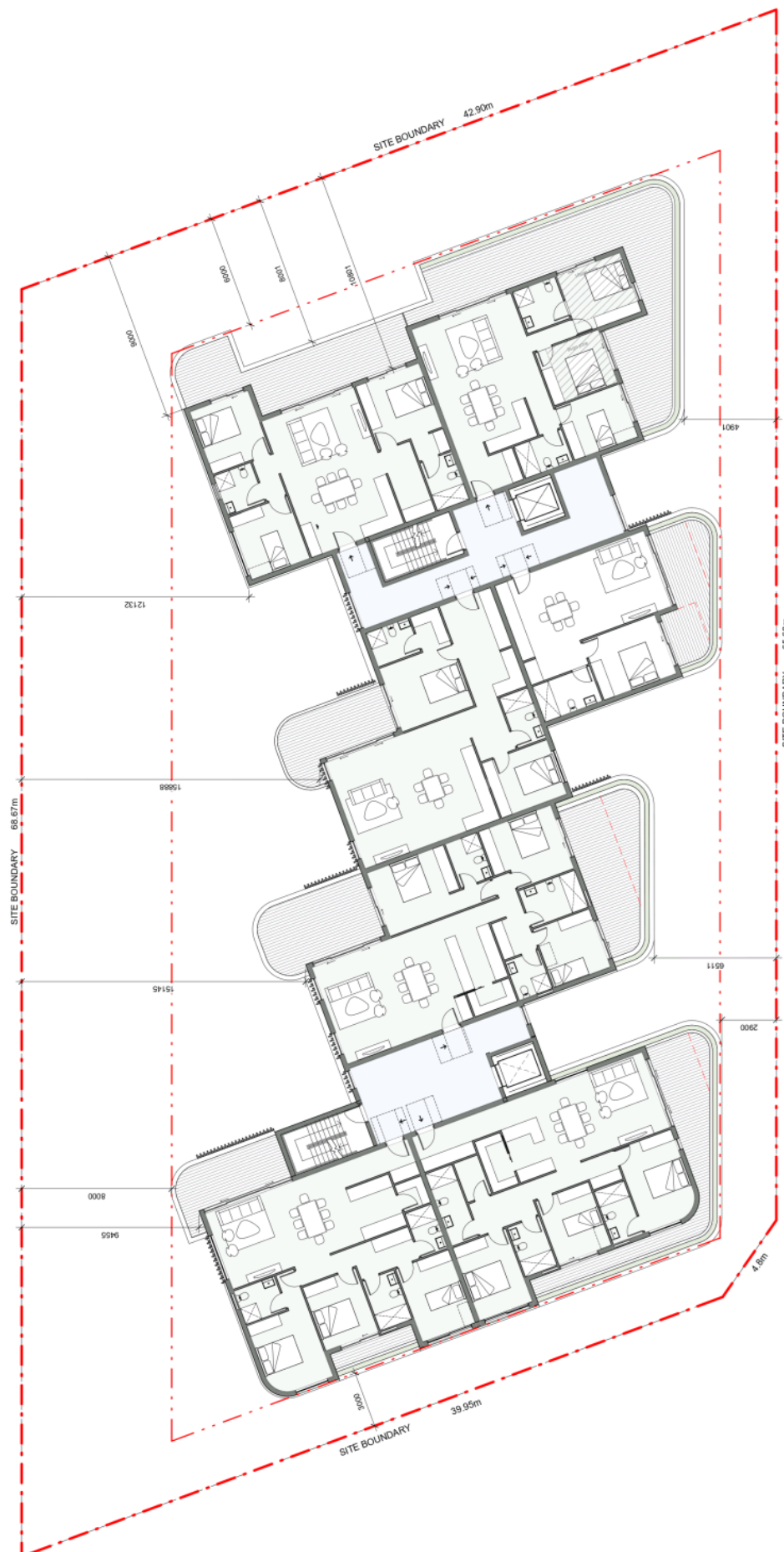
ATTACHMENT 2 - ITEM 5



1 ARTICULATION PLAN - TYPICAL FLOOR PLAN

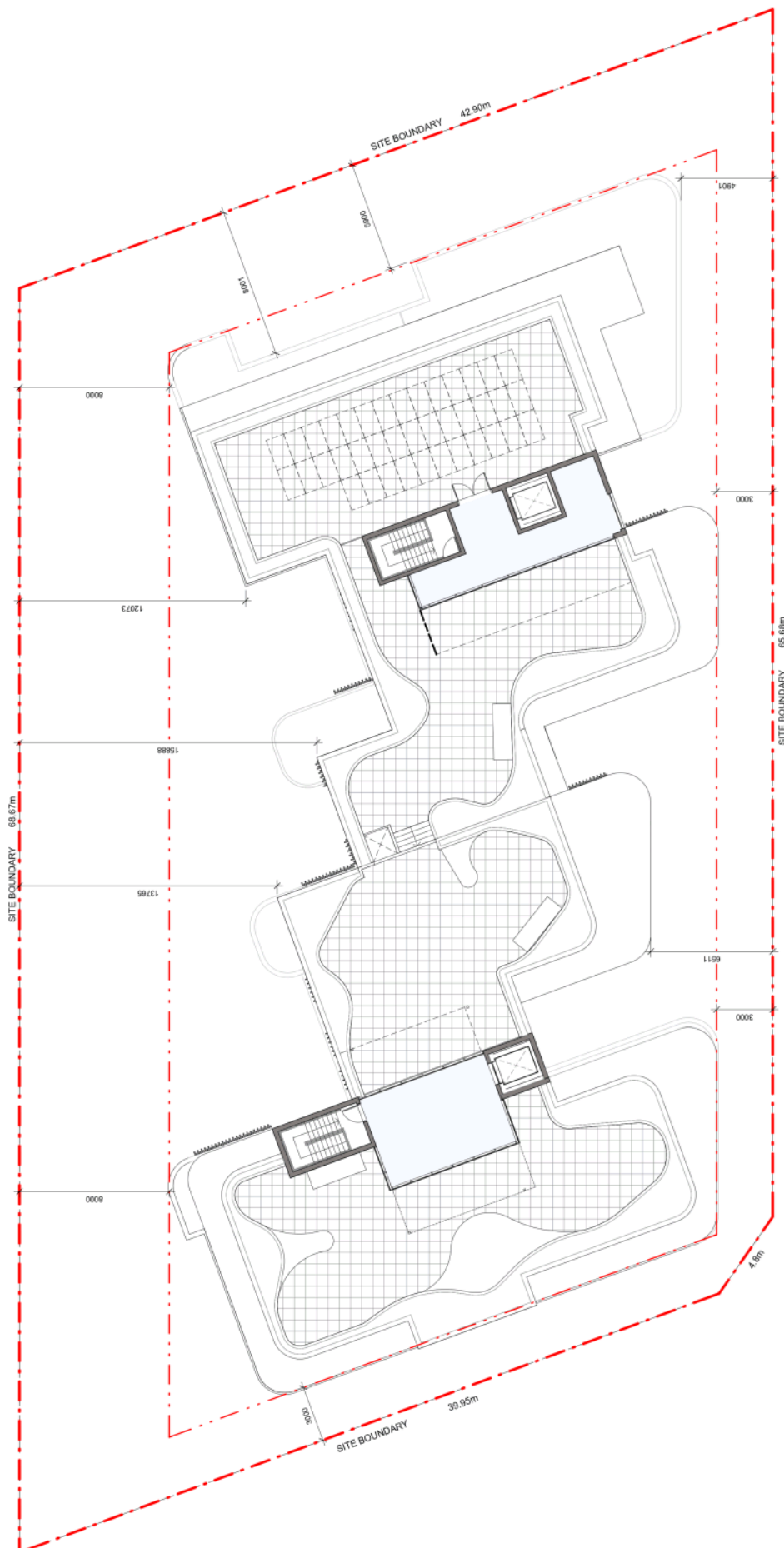
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<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>
<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>
<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>	<p>DA 0012 DA 0012 DA 0012</p>

ATTACHMENT 2 - ITEM 5



<p>BD BENTLEY DESIGN 10/10 PARRAMATTA ROAD SYDNEY NSW 2150 TEL: 02 9610 1000 WWW.BENTLEYDESIGN.COM</p>	<p>DATE: 14/03/22 DRAWN BY: J. BENTLEY CHECKED BY: J. BENTLEY PROJECT NO: 2021/001 PROJECT NAME: 409 - 411 PACIFIC HWY ASQUITH PROJECT LOCATION: 409 - 411 PACIFIC HWY ASQUITH PROJECT DESCRIPTION: SHOPTOP HOUSING CONCEPT DA PROJECT STATUS: PRELIMINARY DESIGN</p>	<p>PROJECT NO: 2021/001 PROJECT NAME: 409 - 411 PACIFIC HWY ASQUITH PROJECT LOCATION: 409 - 411 PACIFIC HWY ASQUITH PROJECT DESCRIPTION: SHOPTOP HOUSING CONCEPT DA PROJECT STATUS: PRELIMINARY DESIGN</p>	<p>DATE: 14/03/22 DRAWN BY: J. BENTLEY CHECKED BY: J. BENTLEY PROJECT NO: 2021/001 PROJECT NAME: 409 - 411 PACIFIC HWY ASQUITH PROJECT LOCATION: 409 - 411 PACIFIC HWY ASQUITH PROJECT DESCRIPTION: SHOPTOP HOUSING CONCEPT DA PROJECT STATUS: PRELIMINARY DESIGN</p>
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ATTACHMENT 2 - ITEM 5



<p>BD BENTLEY DESIGN ARCHITECTS 10/11 Hume St Sydney NSW 1501 02 9550 1234 www.bentleydesign.com.au</p>	<p>DATE: 14/03/22 BY: J. BENTLEY CHECKED: J. BENTLEY PROJECT: SHOPTOP HOUSING CONCEPT DA SUBJECT: 409 - 411 PACIFIC HWY ASQUITH</p>	<p>ARTICULATION PLAN - ROOF PLAN</p>	<p>DA: 04/04/22 REV: 001/01 DATE: 14/03/22 BY: J. BENTLEY CHECKED: J. BENTLEY PROJECT: SHOPTOP HOUSING CONCEPT DA SUBJECT: 409 - 411 PACIFIC HWY ASQUITH</p>
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ATTACHMENT 2 - ITEM 5

ATTACHMENT 3 - ITEM 5

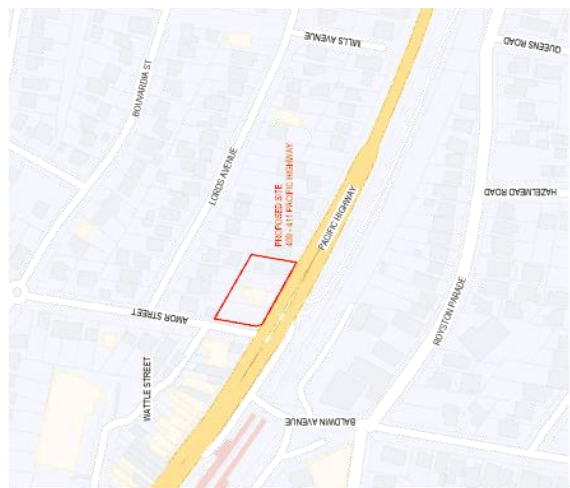
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SCHEDULE OF UNITS	INTERNAL AREA (SQM)	EXTERNAL AREA (SQM)
LEVEL 1	101	52
	102	52
	103	46
	104	48
	105	18
	106	98
	107	11
LEVEL 2	108	26
	201	13
	202	13
	203	13
	204	13
	205	17
	206	46
LEVEL 3	301	13
	302	13
	303	13
	304	18
	305	17
	306	46
	307	19
LEVEL 4	308	26
	401	32
	402	52
	403	18
	404	17
	405	46
	406	19
TOTAL	9619	967

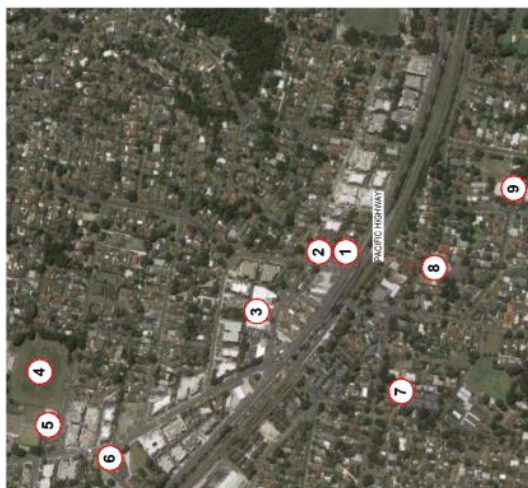
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A000A	3D PERSPECTIVE 2	D	
A000B	3D PERSPECTIVE 3	D	
A001	SITE PLAN	D	
A002	SITE ANALYSIS	D	
A100	FIRST FLOOR PLAN	E	
A101	BASEMENT 1 PLAN	E	
A102	BASEMENT 2 PLAN	E	
A103	GROUND FLOOR PLAN	E	
A104	LEVEL 1 PLAN	E	
A105	TYPICAL FLOOR PLAN	D	
A106	LEVEL 4 PLAN	D	
A107	FLOOR PLAN - SHEET 1	E	
A200	ELEVATIONS - SHEET 1	E	
A201	ELEVATIONS - SHEET 2	E	
A202	SECTION A-A	D	
A203	VIEW FROM SUN DIAGRAM	D	
A301	SOLAR COMPLIANCE SCHEDULE	D	
A302	SECTION B-B	D	
A303	SECTION C-C	D	
A400	SHADING DIAGRAM	D	
A401	HEIGHT OF BUILDING DIAGRAM	D	
A402	ARTICULATION PLAN - BASEMENT 1 LEVEL	E	
A410	ARTICULATION PLAN - GROUND FLOOR PLAN	E	
A411	ARTICULATION PLAN - LEVEL 1 PLAN	E	
A412	ARTICULATION PLAN - TYPICAL FLOOR PLAN	E	
A413	FLOOR PLAN - LEVEL 4 PLAN	E	
A414	ARTICULATION PLAN - LEVEL 4 PLAN	E	

DRAWING NO	DRAWING LIST	SHEET NAME	REVISION
A000	DRAWING SUMMARIES AND SCHEDULES	D	
A000A	3D PERSPECTIVE 2	D	
A000B	3D PERSPECTIVE 3	D	
A001	SITE PLAN	D	
A002	SITE ANALYSIS	D	
A100	FIRST FLOOR PLAN	E	
A101	BASEMENT 1 PLAN	E	
A102	BASEMENT 2 PLAN	E	
A103	GROUND FLOOR PLAN	E	
A104	LEVEL 1 PLAN	E	
A105	TYPICAL FLOOR PLAN	D	
A106	LEVEL 4 PLAN	D	
A107	ROOF PLAN	D	
A200	ELEVATIONS - SHEET 1	E	
A201	ELEVATIONS - SHEET 2	E	
A202	STREET ELEVATION	D	
A203	SECTION A-A	D	
A204	VIEW FROM SUN DIAGRAM	D	
A301	SOLAR COMPLIANCE SCHEDULE	D	
A302	SECTION B-B	D	
A303	SECTION C-C	D	
A400	SHADING DIAGRAM	D	
A401	HEIGHT OF BUILDING DIAGRAM	D	
A402	ARTICULATION PLAN - BASEMENT 1 LEVEL	E	
A410	ARTICULATION PLAN - GROUND FLOOR PLAN	E	
A411	ARTICULATION PLAN - LEVEL 1 PLAN	E	
A412	ARTICULATION PLAN - LEVEL 2 PLAN	E	
A413	FLOOR PLAN - TYPICAL	E	
A414	ARTICULATION PLAN - LEVEL 4 PLAN	E	

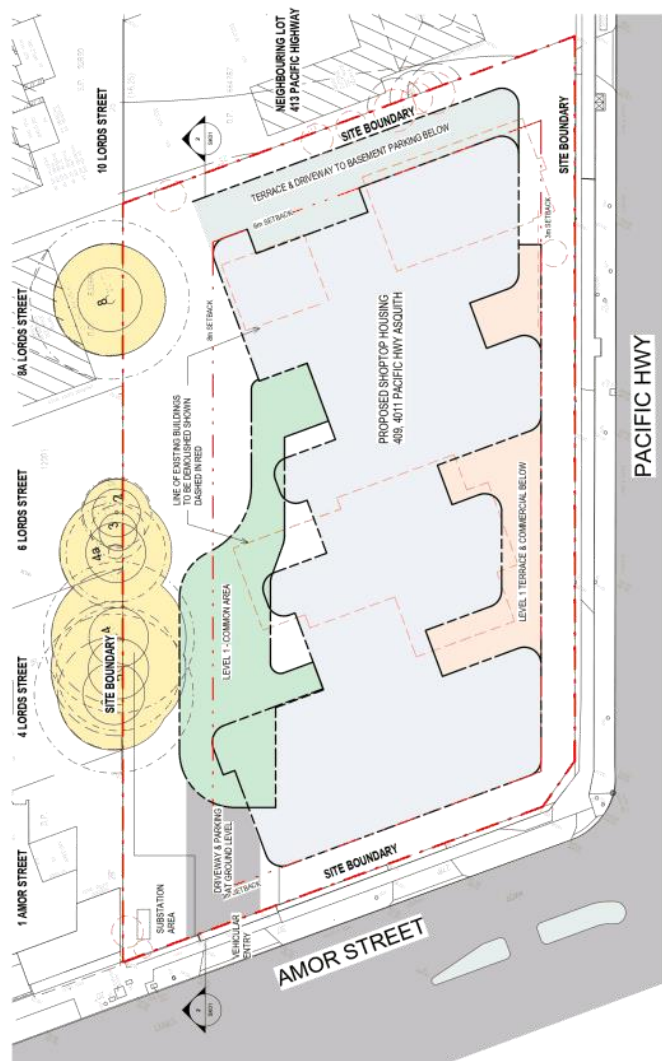
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KEY PLAN



SURROUNDING CONTEXT PLAN



1 SITE PLAN 1:200



- SURROUNDING CONTEXT ABBREVIATION**
- 1. PROPOSED SITE
 - 2. EXISTING BUILDING
 - 3. EXISTING BUILDING
 - 4. EXISTING BUILDING
 - 5. EXISTING BUILDING
 - 6. EXISTING BUILDING
 - 7. EXISTING BUILDING
 - 8. EXISTING BUILDING
 - 9. EXISTING BUILDING



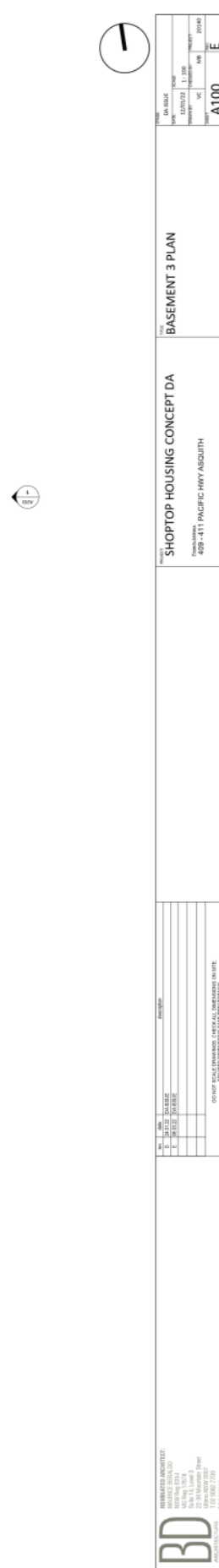
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5	14/03/22	PRELIMINARY DESIGN
6	14/03/22	PRELIMINARY DESIGN
7	14/03/22	PRELIMINARY DESIGN
8	14/03/22	PRELIMINARY DESIGN
9	14/03/22	PRELIMINARY DESIGN

NO.	DATE	DESCRIPTION
1	14/03/22	PRELIMINARY DESIGN
2	14/03/22	PRELIMINARY DESIGN
3	14/03/22	PRELIMINARY DESIGN
4	14/03/22	PRELIMINARY DESIGN
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6	14/03/22	PRELIMINARY DESIGN
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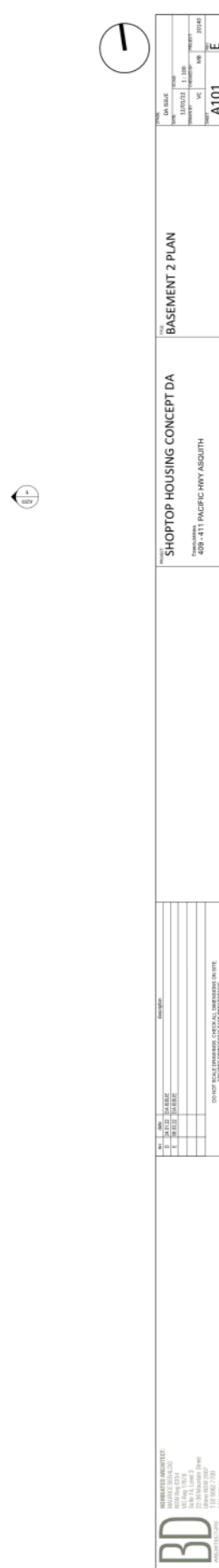
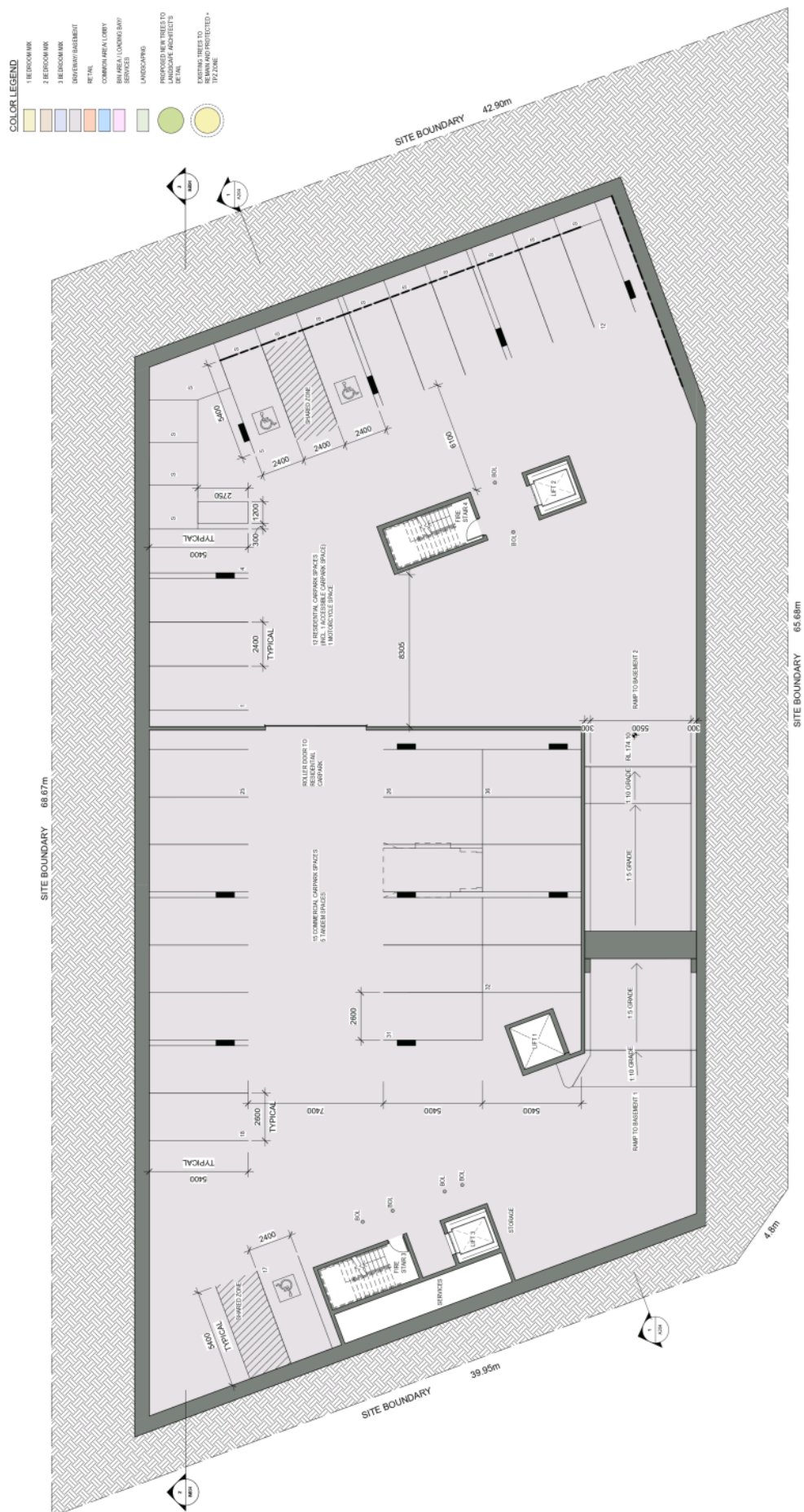
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7	14/03/22	PRELIMINARY DESIGN
8	14/03/22	PRELIMINARY DESIGN
9	14/03/22	PRELIMINARY DESIGN

NO.	DATE	DESCRIPTION
1	14/03/22	PRELIMINARY DESIGN
2	14/03/22	PRELIMINARY DESIGN
3	14/03/22	PRELIMINARY DESIGN
4	14/03/22	PRELIMINARY DESIGN
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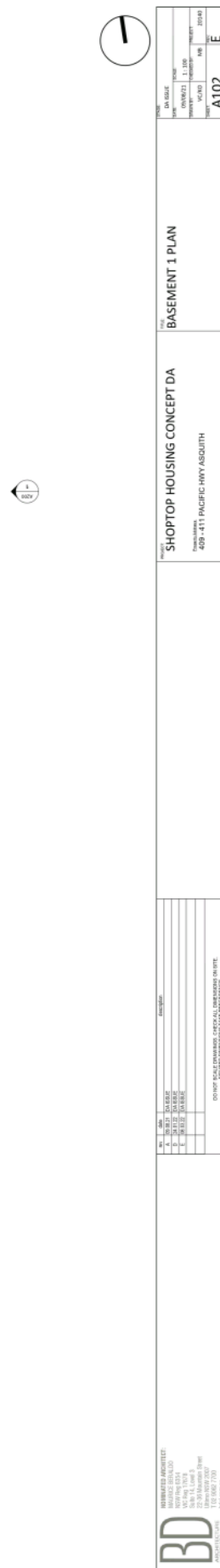
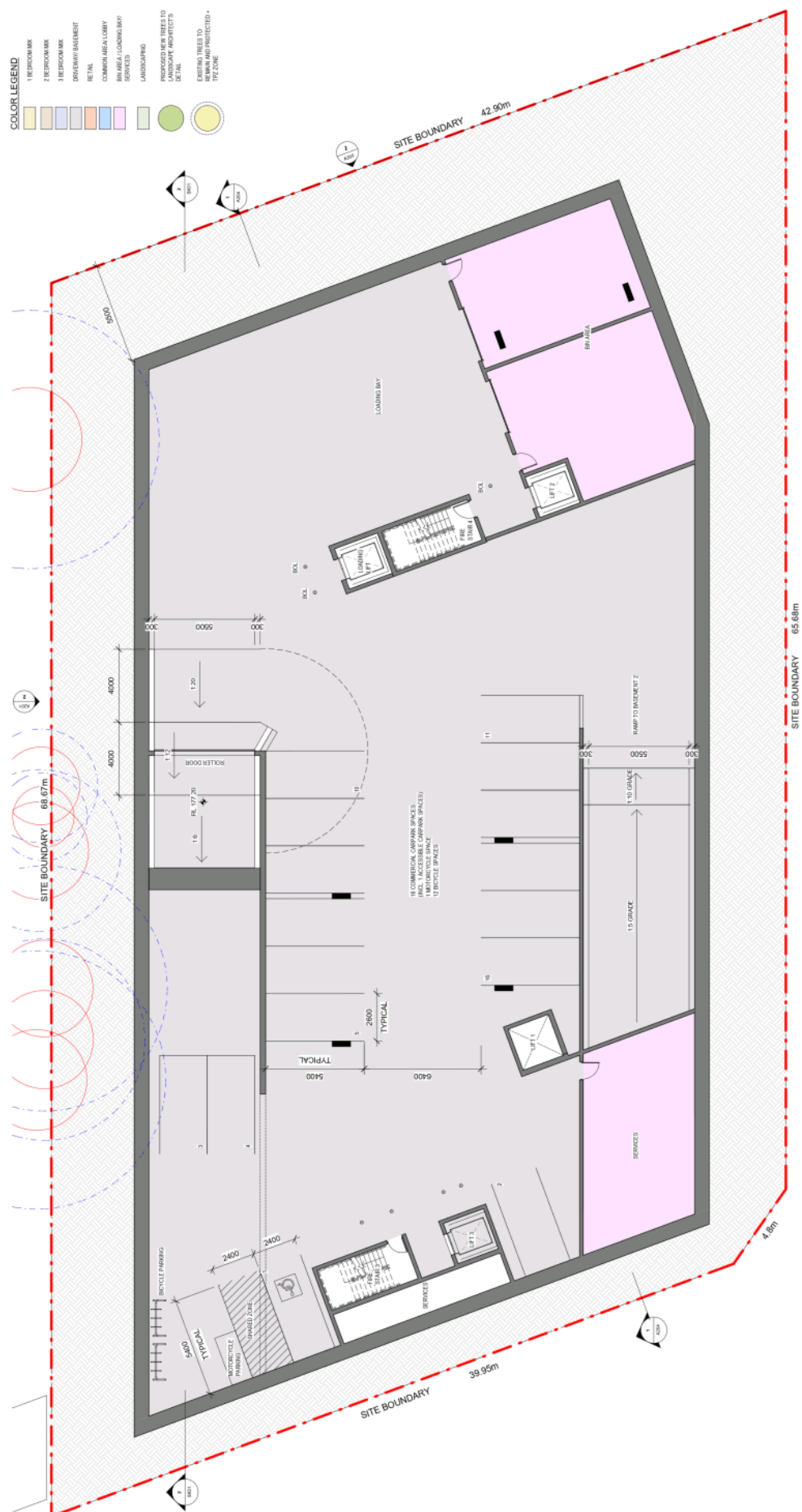
ATTACHMENT 3 - ITEM 5



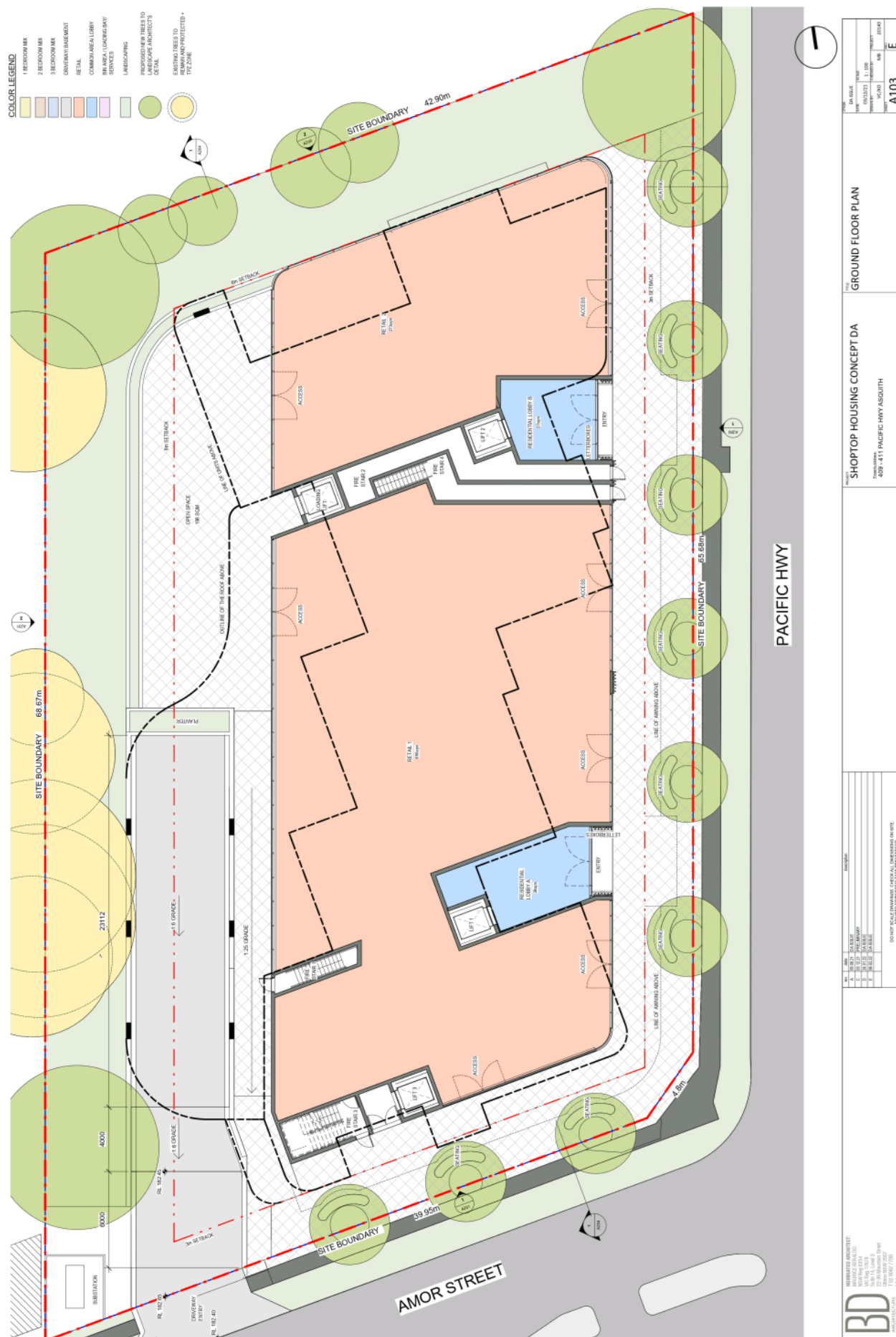
ATTACHMENT 3 - ITEM 5



ATTACHMENT 3 - ITEM 5



ATTACHMENT 3 - ITEM 5



ATTACHMENT 3 - ITEM 5



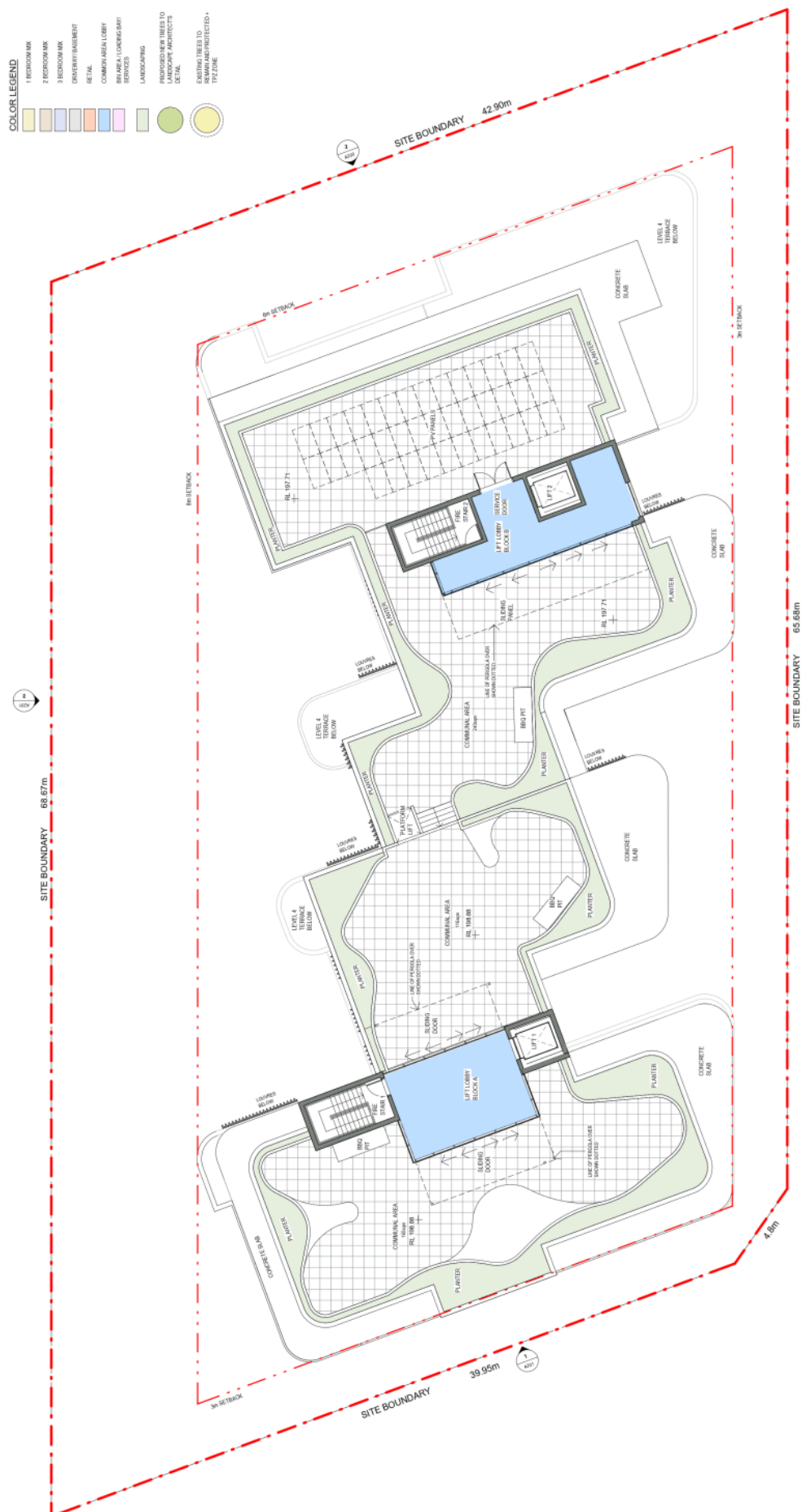
ATTACHMENT 3 - ITEM 5

[illegible]

ATTACHMENT 3 - ITEM 5

[illegible]

ATTACHMENT 3 - ITEM 5



DATE	DA 85JUE	TIME	
FROM	05/06/21	TO	1:10P
FROM BY		CHECKED BY	MB
		VC/NO	200.40
SHEET	A107	REV	D

ROOF PLAN

SHOPTOP HOUSING CONCEPT DA

409 • 411 PACIFIC HWY ASQUITH
 Property Address:

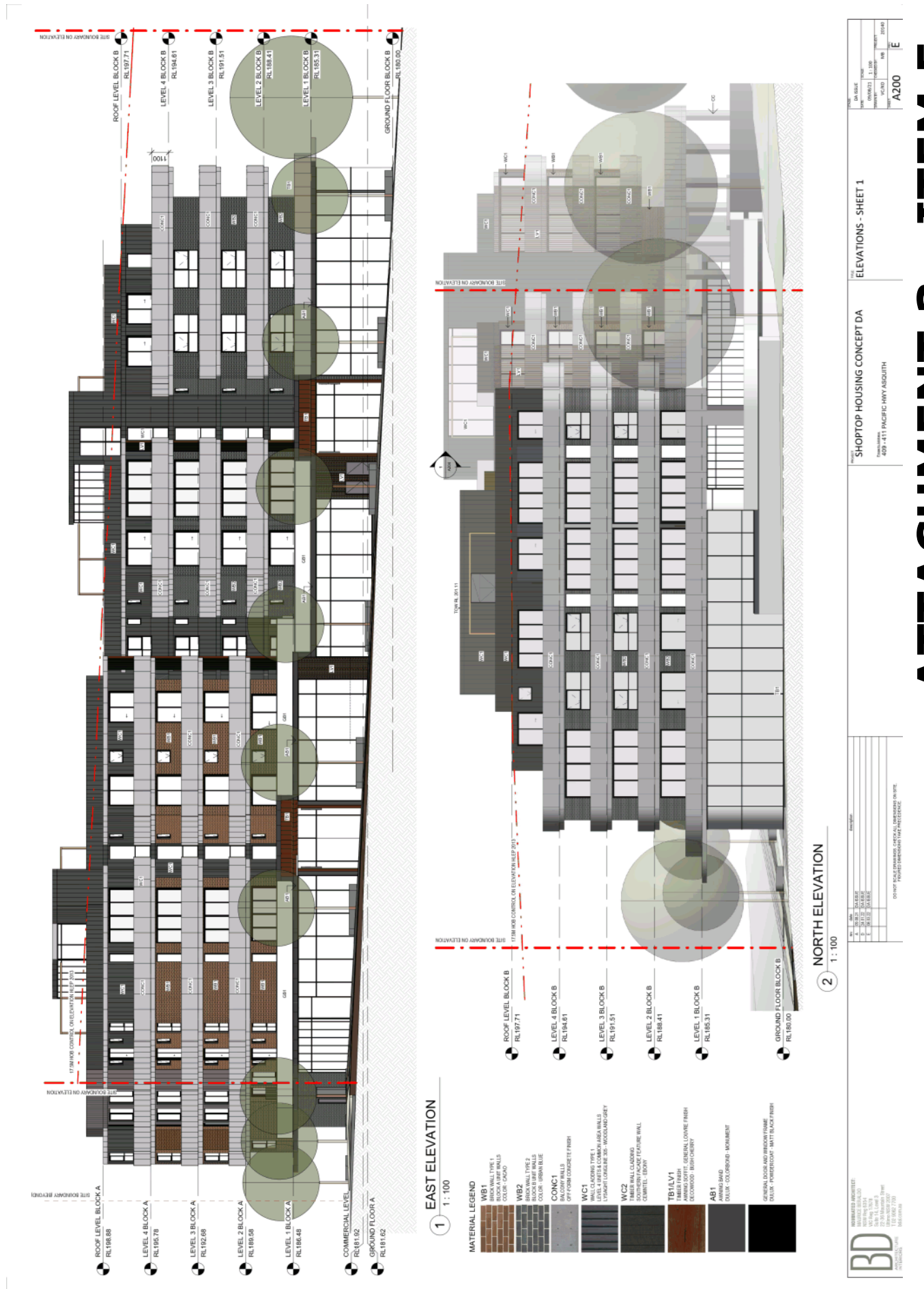
409 • 411 PACIFIC HWY ASQUITH

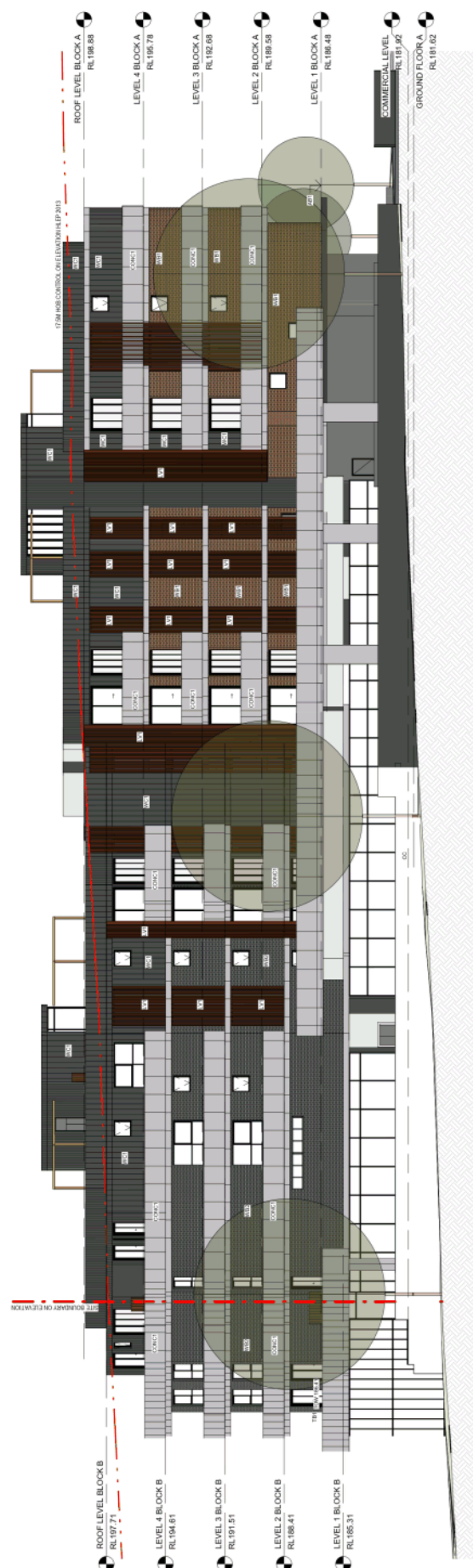
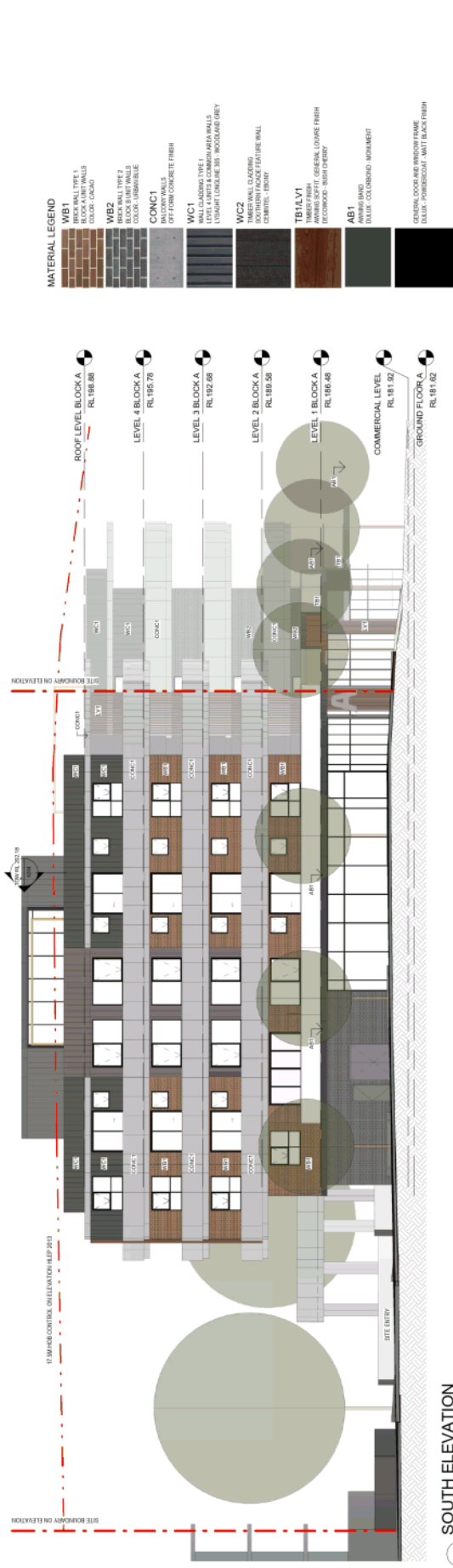
DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE.

BD
ARCHITECTURE

INNOVATED ARCHITECTURE:
MAJORS BERLAND
NSW Reg 6354
NSW Reg 17638
Suite 14, Level 8
22-30 Mairum Street
Ultimo NSW 2007
T 02 9662 7700

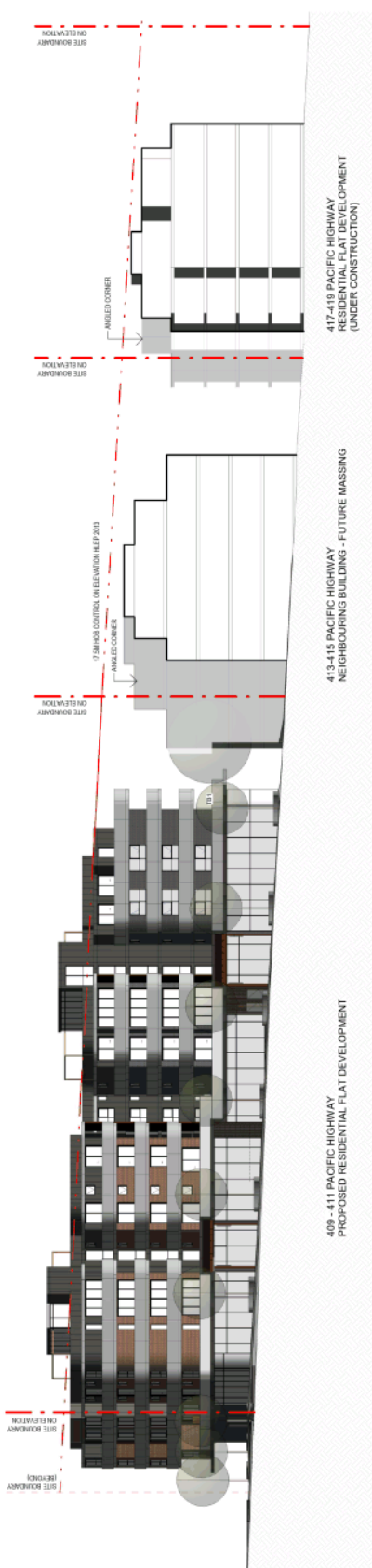
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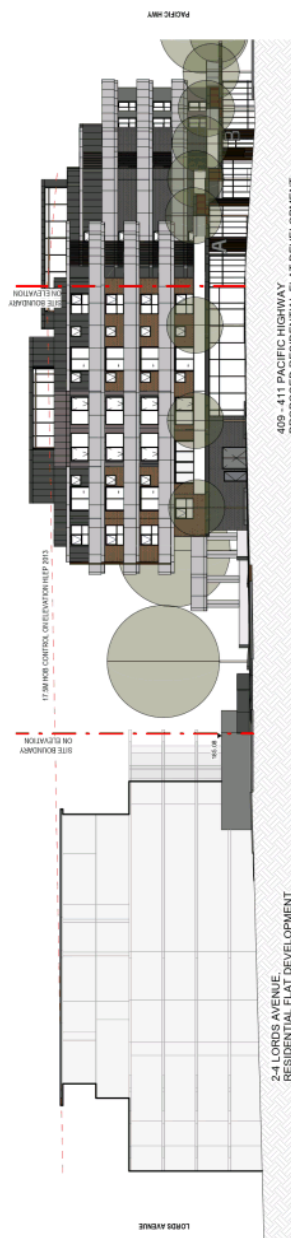


<p>SHOPS TOP HOUSING CONCEPT DA</p>	<p>ELEVATIONS - SHEET 2</p>	<p>DA DATE: 10/01/22 DRAWN BY: J. L. L. L. CHECKED BY: J. L. L. L. DATE: 10/01/22</p>	<p>A201</p>
<p>SHOPS TOP HOUSING CONCEPT DA</p>	<p>DA DATE: 10/01/22 DRAWN BY: J. L. L. L. CHECKED BY: J. L. L. L. DATE: 10/01/22</p>	<p>SHOPS TOP HOUSING CONCEPT DA</p>	<p>DA DATE: 10/01/22</p>

ATTACHMENT 3 - ITEM 5



1 STREET ELEVATION - PACIFIC HIGHWAY 1:200



2 STREET ELEVATION - AMOR ST
1 : 200

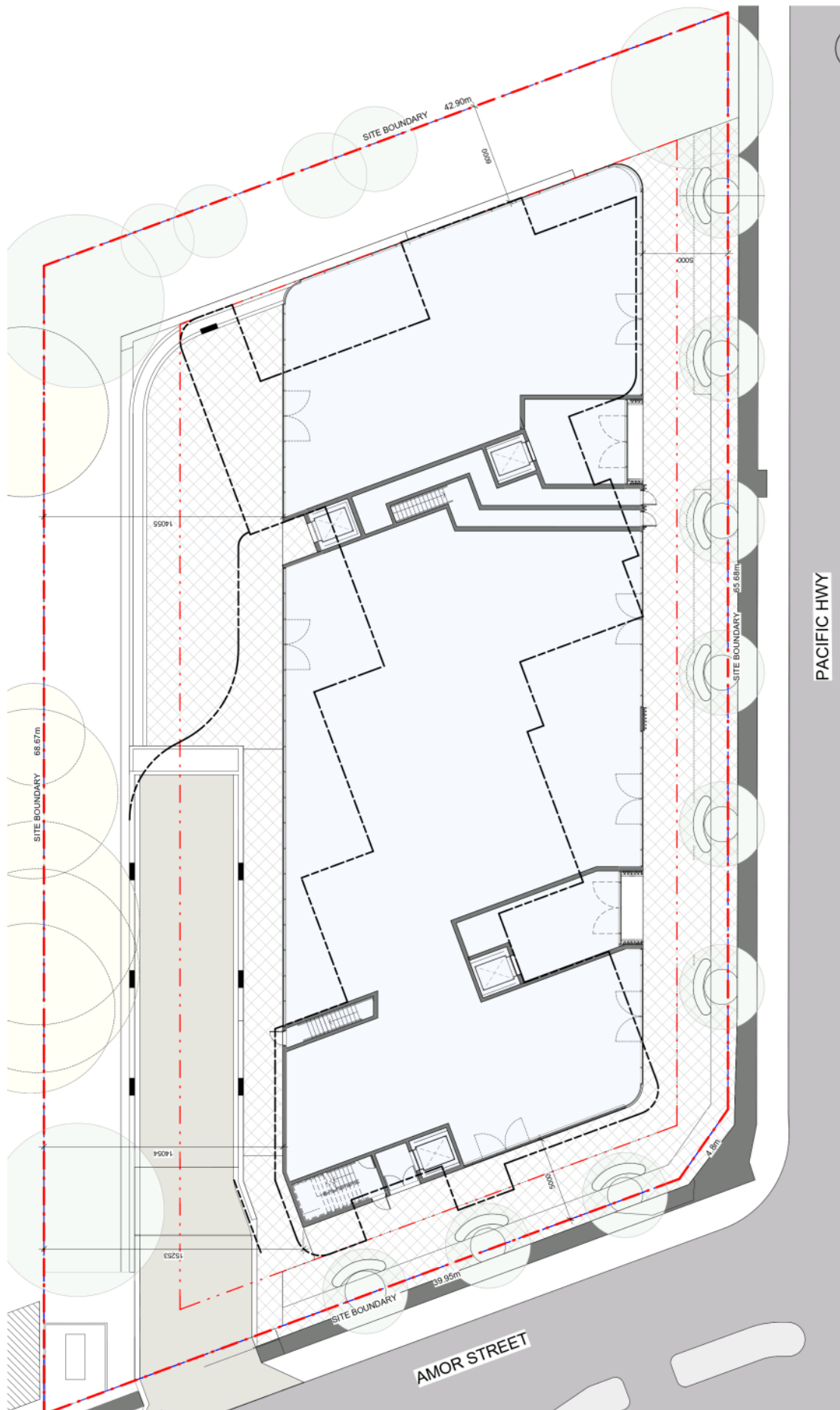
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ATTACHMENT 3 - ITEM 5



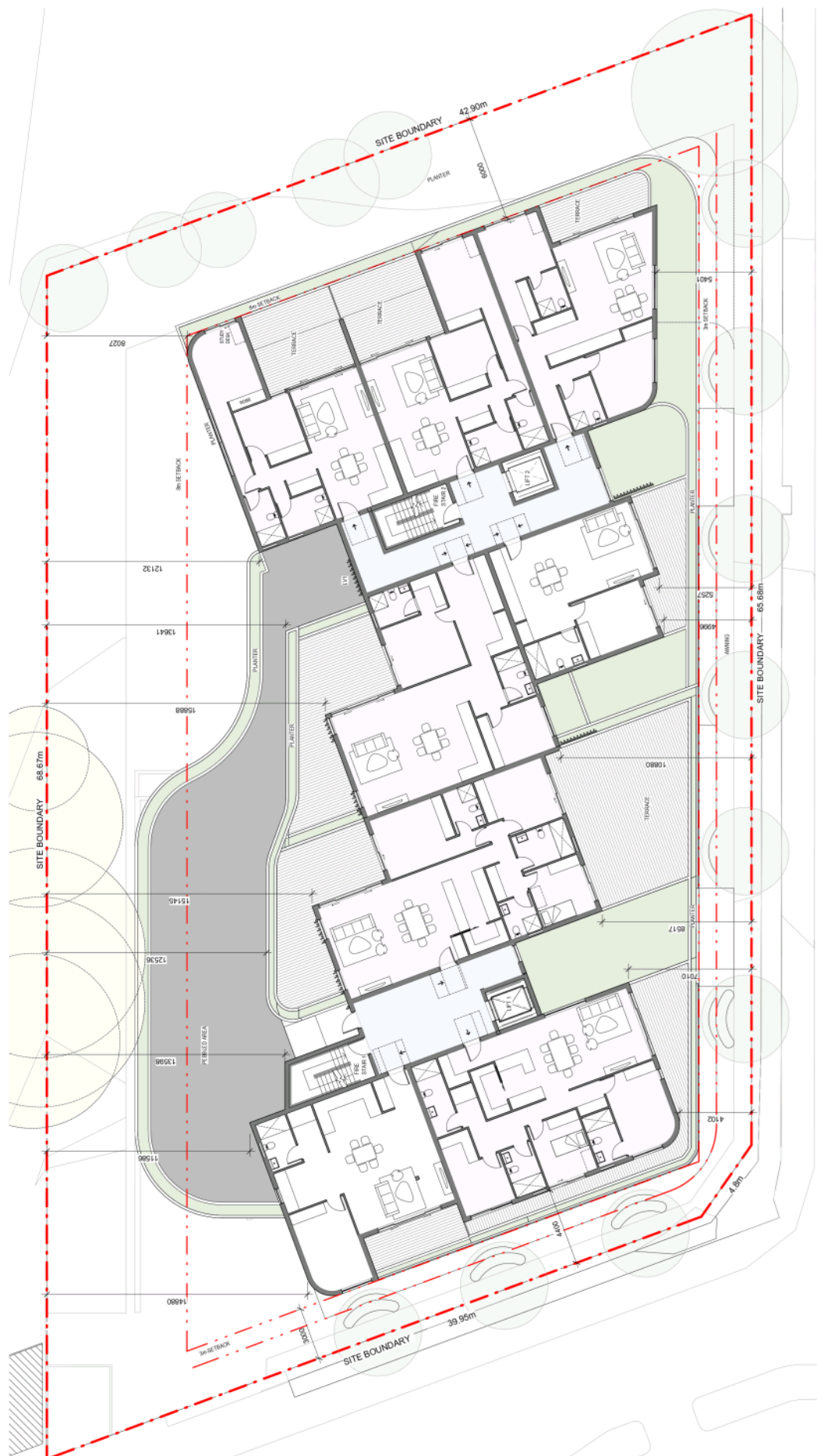
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ATTACHMENT 3 - ITEM 5



<p>BD</p> <p>BRUNNEN ARCHITECTS</p> <p>10/100 HAWTHORN ROAD</p> <p>WILSONS PROMENADE</p> <p>SYDNEY NSW 1585</p> <p>TEL: 02 9550 1234</p> <p>WWW.BDARCHITECTS.COM</p>	<p>DATE: 14/03/22</p> <p>BY: [Signature]</p> <p>PROJECT: SHOPTOP HOUSING CONCEPT DA</p> <p>PROJECT NO: 409 - 411 PACIFIC HWY ASCUTH</p> <p>PROJECT LOCATION: 409 - 411 PACIFIC HWY ASCUTH</p> <p>PROJECT DESCRIPTION: SHOPTOP HOUSING CONCEPT DA</p> <p>PROJECT STATUS: PRELIMINARY DESIGN</p>	<p>PROJECT: SHOPTOP HOUSING CONCEPT DA</p> <p>PROJECT NO: 409 - 411 PACIFIC HWY ASCUTH</p> <p>PROJECT LOCATION: 409 - 411 PACIFIC HWY ASCUTH</p> <p>PROJECT DESCRIPTION: SHOPTOP HOUSING CONCEPT DA</p> <p>PROJECT STATUS: PRELIMINARY DESIGN</p>	<p>DATE: 14/03/22</p> <p>BY: [Signature]</p> <p>PROJECT: SHOPTOP HOUSING CONCEPT DA</p> <p>PROJECT NO: 409 - 411 PACIFIC HWY ASCUTH</p> <p>PROJECT LOCATION: 409 - 411 PACIFIC HWY ASCUTH</p> <p>PROJECT DESCRIPTION: SHOPTOP HOUSING CONCEPT DA</p> <p>PROJECT STATUS: PRELIMINARY DESIGN</p>
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ATTACHMENT 3 - ITEM 5



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A412	MB	2004.03

ARTICULATION PLAN - LEVEL
1 PLAN

SHOPTOP HOUSING CONCEPT DA

409 • 411 PACIFIC HWY ASQUITH

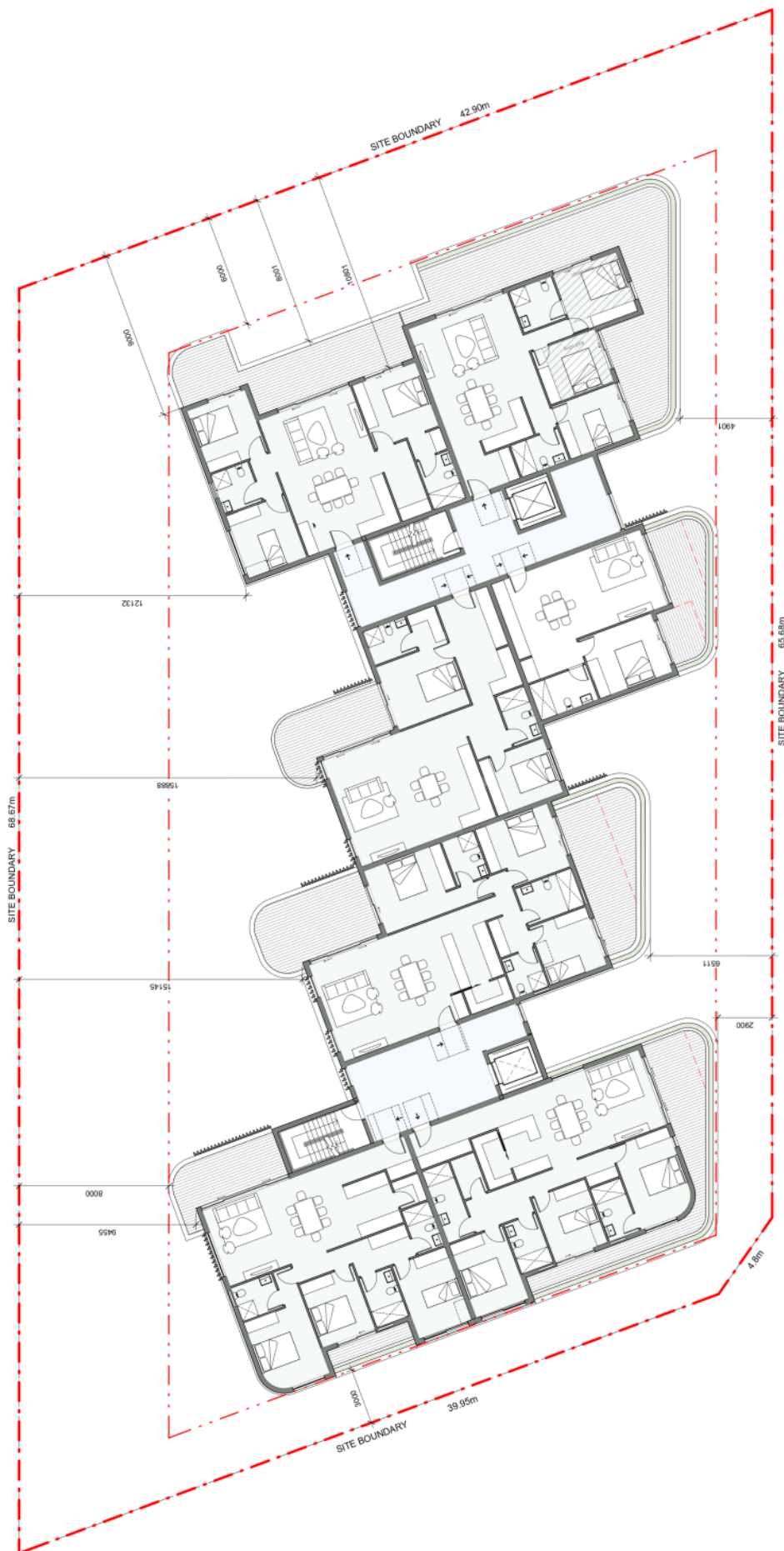
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DO NOT SCALE DRAWINGS CHECK ALL DIMENSIONS ON SITE.

BB
ARCHITECTURE

INSULATED ARCHITECT:
MARUZE BETULDO
NSW Hwy 6354
VIC Pkg 17078
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22-91 Macarthur Street
Ulmarra NSW 2307
T 02 9462 7700

ATTACHMENT 3 - ITEM 5



<p>DA 0001</p> <p>DA 0002</p> <p>DA 0003</p> <p>DA 0004</p> <p>DA 0005</p> <p>DA 0006</p> <p>DA 0007</p> <p>DA 0008</p> <p>DA 0009</p> <p>DA 0010</p> <p>DA 0011</p> <p>DA 0012</p> <p>DA 0013</p> <p>DA 0014</p> <p>DA 0015</p> <p>DA 0016</p> <p>DA 0017</p> <p>DA 0018</p> <p>DA 0019</p> <p>DA 0020</p> <p>DA 0021</p> <p>DA 0022</p> <p>DA 0023</p> <p>DA 0024</p> <p>DA 0025</p> <p>DA 0026</p> <p>DA 0027</p> <p>DA 0028</p> <p>DA 0029</p> <p>DA 0030</p> <p>DA 0031</p> <p>DA 0032</p> <p>DA 0033</p> <p>DA 0034</p> <p>DA 0035</p> <p>DA 0036</p> <p>DA 0037</p> <p>DA 0038</p> <p>DA 0039</p> <p>DA 0040</p> <p>DA 0041</p> <p>DA 0042</p> <p>DA 0043</p> <p>DA 0044</p> <p>DA 0045</p> <p>DA 0046</p> <p>DA 0047</p> <p>DA 0048</p> <p>DA 0049</p> <p>DA 0050</p> <p>DA 0051</p> <p>DA 0052</p> <p>DA 0053</p> <p>DA 0054</p> <p>DA 0055</p> <p>DA 0056</p> <p>DA 0057</p> <p>DA 0058</p> <p>DA 0059</p> <p>DA 0060</p> <p>DA 0061</p> <p>DA 0062</p> <p>DA 0063</p> <p>DA 0064</p> <p>DA 0065</p> <p>DA 0066</p> <p>DA 0067</p> <p>DA 0068</p> <p>DA 0069</p> <p>DA 0070</p> <p>DA 0071</p> <p>DA 0072</p> <p>DA 0073</p> <p>DA 0074</p> <p>DA 0075</p> <p>DA 0076</p> <p>DA 0077</p> <p>DA 0078</p> <p>DA 0079</p> <p>DA 0080</p> <p>DA 0081</p> <p>DA 0082</p> <p>DA 0083</p> <p>DA 0084</p> <p>DA 0085</p> <p>DA 0086</p> <p>DA 0087</p> <p>DA 0088</p> <p>DA 0089</p> <p>DA 0090</p> <p>DA 0091</p> <p>DA 0092</p> <p>DA 0093</p> <p>DA 0094</p> <p>DA 0095</p> <p>DA 0096</p> <p>DA 0097</p> <p>DA 0098</p> <p>DA 0099</p> <p>DA 0100</p>	<p>SHOPTOP HOUSING CONCEPT DA</p> <p>ARTICULATION PLAN - LEVEL 4 PLAN</p> <p>409 - 411 PACIFIC HWY ASQUITH</p> <p>A414</p>	<p>SHOPTOP HOUSING CONCEPT DA</p> <p>ARTICULATION PLAN - LEVEL 4 PLAN</p> <p>409 - 411 PACIFIC HWY ASQUITH</p> <p>A414</p>	<p>SHOPTOP HOUSING CONCEPT DA</p> <p>ARTICULATION PLAN - LEVEL 4 PLAN</p> <p>409 - 411 PACIFIC HWY ASQUITH</p> <p>A414</p>	<p>SHOPTOP HOUSING CONCEPT DA</p> <p>ARTICULATION PLAN - LEVEL 4 PLAN</p> <p>409 - 411 PACIFIC HWY ASQUITH</p> <p>A414</p>	<p>SHOPTOP HOUSING CONCEPT DA</p> <p>ARTICULATION PLAN - LEVEL 4 PLAN</p> <p>409 - 411 PACIFIC HWY ASQUITH</p> <p>A414</p>
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ATTACHMENT 3 - ITEM 5



DESIGN EXCELLENCE PANEL MEETING MINUTES

Application No:	DA/528/2020
Proposal:	Concept development application - shop top housing
Property Description:	409-411 Pacific Highway Asquith
Date:	14 February 2022
Held:	Electronic Review

Panel Composition

<i>Chair:</i>	Jon Johannsen
<i>Panel Members:</i>	David Epstein, Matthew Taylor

PANEL COMMENTS

This is the third 'concept proposal' presented to the Panel for this site and is again a significant departure from earlier schemes that included various concepts for a drive-through road adjacent to the corner of Pacific Highway and Amor Street.

The inclusion of urban design input has resulted in positive changes for the development proposal that address many issues raised in the most recent submission seen by the Panel at the DEP meeting on 24 March 2021.

Despite those changes, the Panel raised a number of concerns in relation to the current proposal, and these will need to be addressed in the final DA submission.

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- **The Panel reports that this further amended DA submission has improved and addressed many of the issues raised and as noted below are identified for further attention and could be subject to Conditions of Approval.**

1. DESIRED FUTURE CHARACTER

- The proposed reconfiguration of residential component as well articulated built form over the podium is more aligned with the desired future character for the area and is an improved overall concept for upper floor levels above ground.
- The retail part of the development is still of concern in the way this is proposed with dual frontages that face the highway and into the undercroft of the podium above, and this needs review in association with issues related to traffic management, parking and circulation as noted below.
- Along the Pacific Highway there needs to be more resolution of the podium, street awning and manner in which the north-east corner is expressed to reduce the apparent height as viewed from the road.



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On the ground level the timber looking details at the residential lobby entrances on Pacific Highway and on the south-west corner of the building have been deleted (see also southern Perspective CGI). In terms of character some material variation is recommended to soften the façade at street level. Instead of render and paint the fire stair could be in brickwork carried from Level 1 down to the ground to add some texture and form at the street level.

2. HEIGHT

- The proposed roof terrace access results in a height increase above both the existing 17.5m limit and anticipated 16.5m limit under the updated LEP. As is often the case for communal open space at roof level, the provision of equitable lift access and some internal lobby or area protected from wind results in height non-compliance that can be supported with the appropriate Cl.4.6 variation provided it can be demonstrated that there are no adverse environmental impacts. In that case the Panel would support this height variation.

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- Agreed height increase subject to addressing issues noted below.

3. SETBACKS

- As currently proposed the setbacks to the north and west boundaries are not as per DCP controls and create difficulties with provision of adequate deep soil to support mature tree canopies and lower vegetation to provide visual outlook and privacy.
- Existing trees adjacent to the western boundary may also be affected by the proposed first floor communal space.
- With the proposed communal space podium setback there would potential privacy issues for properties to the west, and the Panel recommended this either be substantially reduced or removed given the generous roof terraces intended.
- Cross sections extending beyond the site boundaries and CGI's of the western side of the development should be provided to properly assess the interface between the development and surrounding properties.
- The proposed setback for retail along the Pacific Highway provides pedestrian protection with an awning above within the site boundary, but this still needs more development and should allow scope for mature street trees without indents to the edge that would further complicate the appearance. A screen shown protruding into this setback adjacent to the foyer should be removed.

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- Agreed setback adjustments are acceptable subject to addressing issues noted below.



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4. BUILDING FORM AND SEPARATION

- The overall built form configuration is well resolved to create a modelled frontage that is consistent with the anticipated future development along the highway, but further review of the podium on the north-east corner and along the western boundary is required in association with the reconciliation of parking and access issues.
- On the south elevation to Amor Street there is what appears as a part curtain wall element, and as this does not appear consistent with the main façade it is recommended an alternative treatment be considered.
- There are substantial terraces proposed to units on Level 1 and adjacent roof planting indicated that will require further detail on how these are to be used and managed, with consideration of privacy and security. The north facing terraces on Level 1 could be reduced in association with an amended basement access solution.

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- **Agreed adjustments are acceptable subject to addressing other issues noted.**
- **The reduction in the size of the basement footprint is a good outcome despite the additional basement level. As well, the removal of the surface parking at the rear is a significant improvement compared to the previous design.**
- **The unit layouts and lift lobbies appear to be the same as per the previous proposal.**

5. LANDSCAPING

- The landscape design to the overall site and area is to be further assessed in relation to the provision of open space and contribution to urban tree canopy targets, particularly to the west and northern position of the site. **See below.**
- The sealed surface of the car parking area to the rear over natural ground does not take advantage of the deep soil zone adjacent to the basement and consideration needs to be made to create further landscape amenity to the project. **See below.**
- The incorporation of street trees to the Pacific Highway and Amor Street will assist in the urban tree targets and overall amenity to the public domain to filter and complement views of the built form and lessen the dependence of the balcony planting which cannot be depended on as they are in private ownership. **See below.**

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- **The proposed street trees and footpath seating are supported for pedestrian amenity and to complement retail uses, particularly on such a busy road. However, the paved setback area is mostly separated from the footpath by the narrow nature strip on the boundary of the property and the Panel recommends liaison with Council officers to unify the footpath and setback area with matching paving with trees to be set in the paving subject to adequate soil zones.**
- **The northern extension of the paved setback area adjacent to the northern boundary should set further back for soft landscaping and include trees for privacy and softening.**

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- **The choice of a Banksia tree to the roof top should be reassessed as they can fail without showing any sign of distress, both on grade and on slab, and are very sensitive to soil mix, moisture levels. It is recommended these be replaced with small trees more suitable for the location such as Crepe Myrtle, Olea Europaea and Frangipani. Note is made of the proposed trees to be exotic, as they tend to be more resilient to the exposed conditions that will be experienced in this location.**

6. OPEN SPACES

- As noted above the resolution of boundary setbacks will impact on how better ground level deep soil provision can be achieved, and this is important for optimum tree canopies to be achieved along boundaries. It is important that a positive contribution to urban canopy targets is incorporated to optimise tree canopies on the site
- The Level 1 communal terrace appears larger than needed and subject to resolution of ground floor planning should be reduced or eliminated given generous roof level communal space. It is noted that the roof terraces require further design resolution to provide the expected amenity needed including further plantings, wind abatement measures and provision of shade.
- Roof level terraces are also generous and some allowance for variety of private and family gatherings should be considered.

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- **The reduction in the size of the raised terrace / common open space on the first-floor west side is an improvement. The terrace should be substantially planted with low maintenance succulents for visual and environmental impact. It should be non-trafficable other than for maintenance.**
- **The Ground Level paved common open space at the rear of the retail (north-west corner) appears excessive and is perhaps intended for outdoor dining? More plants and less paving would make it more private and intimate, better when viewed from above, and would also reduce potential heat gain.**
- **Section A-A shows floor level variation between retail area 1 and 2 and relative to the rear open space. Levels need to be resolved for access /usability. The same applies to the floor levels relative to the Pacific Hwy footpath, and cross sections detailing this must be included.**
- **The rooftop common open space BBQ facilities have been added however there should be accessible unisex toilet facilities provided.**

7. PRIVACY AND SECURITY

- The location of the Lift 2 opening adjacent to the entry of Units 103 and 203 should be reviewed to reduce privacy issues and given roof terrace access this lift could open on the opposite side.
- Security across balconies and terraces will need consideration to avoid introduction of awkward retro screens by residents, and the south facing windows of bedrooms to Units 208/308 and 207/307 will require opaque panels at lower levels to address privacy issues.



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- **Adjustments are acceptable subject to addressing other issues noted.**

8. SUNLIGHT AND VENTILATION

- From the revised unit configuration, it is apparent that ADG guidelines for sun access and ventilation should not be a problem, but there will be need for solar screening to west facing windows.
- At the roof terrace level the lobby spaces could include a series of sliding panels/doors to allow these to be more flexible spaces for use in different seasons and climatic conditions.

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- **There must be solar screens to north and west facing windows provided to Level 4 windows / doors and elsewhere where not protected by roof or balconies above.**

9. HOUSING CHOICE

- There is a good mix of unit sizes proposed but some allowance for work from home spaces should be included where possible in response to likely post-pandemic working conditions.

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- **Adjustments are acceptable subject to addressing other issues noted.**

10. VEHICLE ACCESS AND PARKING

- As noted above there is concern that the location and allowance for retail/commercial parking is compromising an optimum solution for the ground floor planning and vehicle circulation. It is recommended that alternative solutions be reviewed with consultant input to determine how on-grade parking on the western side can be reduced or relocated to enable a generous setback on this side.
- The potential for an additional half-basement level should be considered to resolve parking issues, and this should also enable the northern boundary setback to be compliant, reduce conflicts between residential and non-residential traffic, and help address the north-east corner of the podium.
- Basement planning for parking, service vehicles and circulation could be more efficient to assist with the relocation of car spaces.

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- **Adjustments are acceptable subject to addressing other issues noted.**

11. PUBLIC DOMAIN AND TRAFFIC MANAGEMENT

- As noted above the site perimeter along the Pacific Highway and Amor Street has good potential for pedestrian activation, but resolution of tree and amenity issues is needed.

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- If traffic and parking issues can be managed alternative solutions to vehicle circulation would be encouraged to help address issues with ground floor and podium layouts.

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- **Adjustments are acceptable subject to addressing other issues noted.**

12. ESD

- Consideration should be given to a range of sustainability and passive energy initiatives including:
 - a) Sunscreens to unprotected north and west facing windows
 - b) p/v solar panels on roof for power to communal areas
 - c) roof slabs with foam insulation and pebble ballast for thermal comfort
 - d) windows (other than sliding doors) that can provide efficient cross ventilation
 - e) avoid large south facing windows - bedroom 2 / unit 208/308 and bedroom 3 / unit 207/307.
 - f) ceiling fans for bedrooms and living areas (clearly marked on the plans) as alternative to a/c
 - g) rainwater collection for use in landscape irrigation.

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- **On the roof, PV Panels have been added as per previous DEP recommendations., but ESD measures listed above need to be confirmed eg. ceiling fans to be indicated.**

CONCLUSION

The panel provides qualified support for this latest proposal, subject to the identified issues being addressed. If necessary and agreeable with Council officers, any amended updates could be reviewed by DEP through electronic circulation to enable efficient finalisation of the DA.

Electronic Review Comments - 14/2/2022

- **Overall, the applicant has responded positively to the DEP's advice. The scheme has improved significantly compared to the earlier proposals and should be supported subject to addressing issues noted.**

**6 ELECTRONIC - DA/1353/2021 - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
- 28 LANDRA AVENUE, MOUNT COLAH**

EXECUTIVE SUMMARY

- DA No:** DA/1353/2021 (Lodged on 17 December 2021)
- Description:** Partial demolition and alterations and additions to a dwelling house comprising a first-floor addition and a ground floor balcony.
- Property:** Lot 3 DP 204635, No. 28 Landra Avenue, Mount Colah
- Applicant:** Addbuild Master Builders
- Owner:** Mr Duncan Scott Hayes & Mrs Cecily Rita Hayes
- Estimated Value:** \$427,708.00
- Ward:** A Ward
- The proposal does not comply with the maximum building height development standard prescribed under Clause 4.3 'Height of buildings' 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 contravene the height of buildings development standard. The submission is considered well founded and is supported.
 - 1 submission has been received in respect of the application.
 - The application is required to be determined by the Hornsby Council Local Planning Panel as the proposal would contravene the Hornsby Local Environmental Plan 2013 development standard for maximum height of buildings by more than 10 percent (19.7%).
 - It is recommended that the application be approved.

RECOMMENDATION

THAT Council assume the concurrence of the Secretary of the Department of Planning and Environment pursuant to Clause 4.6 of the Hornsby Local Environmental Plan 2013 and approve Development Application No. DA/1353/2021 for alterations and additions to a dwelling house at Lot 3 DP 204635, No. 28 Landra Avenue Mount Colah subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP15/22.

SITE

The site comprises a single 697.5m² allotment on the eastern side of Landra Avenue, Mount Colah. Landra Avenue is typically characterised by one and two storey dwelling houses on landscaped allotments. Dwellings on the eastern and southern side of the street are typically set above street level, with dwellings on the northern and western side, set below street level. The area has remnant vegetation, exotic planted gardens and exposed sandstone rock shelves.

The subject site experiences a fall of 12 metres towards the front boundary of the site.

The site currently contains a part one and part two storey dwelling house, with a below ground garage and a single residential level.

The site is not bushfire prone and is not identified as flood prone.

The site is not burdened or benefitted by any easements or restrictions.

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

PROPOSAL

The application proposes alterations and additions to a dwelling house, described within the Statement of Environmental Effects as follows:

- *Ground Floor* - Internal renovations to Beds 1 and 2 to provide a new staircase to first floor proposed and addition of an ensuite to the Master Bedroom. It is also proposed to provide a covered balcony at the front of the existing dwelling.
- *First Floor* - Construction of 3 bedrooms, sitting room and bathroom.
- *External* - New cement roof tiles over the proposed ground floor and first floor additions. Painting and external finishes in keeping with existing residence and defined character of area. The extent of the proposed works is detailed on the plans prepared by Addbuild Master Builders.

No trees are proposed to be removed or altered to facilitate the 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 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.

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 a ‘*dwelling house*’ and is permissible in the zone with Council’s consent and would meet the objectives of the zone by providing for the housing needs of the community within a low-density residential environment.

2.1.2 Height of Buildings

Clause 4.3 of the HLEP provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5 metres. The proposal fails to comply with this provision with a maximum building height 10.176 metres, a 19.7% contravention of the development standard. The applicant has submitted a written request to contravene the development standard under Clause 4.6 of the HLEP which is discussed in Section 2.1.3 below.

2.1.3 Exceptions to Development Standards

The applicant submitted a written request to contravene the height of building development standard contained within Clause 4.3 of the HLEP.

The written request describes the extent of the contravention as follows:

The proposed works involve the addition of a first floor over the existing ground level residence which also has a lower level one-car garage.

The subject site has a steep slope with a gradient excess of 20%, increasing several metres in height from street level to the rear of the property. Given the topography of the site, it is highly likely that when the original single storey dwelling and garage was being built, the site was excavated around the building envelope to provide for the lower-level garage.

As a result of the previously excavated garage, the small portion of the proposed first floor addition that is sited directly above the garage, exceeds the maximum building height control.

Figures 1 and 2 depict the extent of the non-compliance with the maximum height standard, being a height of approximately 10.176 metres or 19.7% variation (max). The majority of the building will remain within the maximum 8.5 metre development control standard. Please refer to Sheet No 6 and 7 of job no. 1894/3.1 prepared by Addbuild.



Figure 1: West (front) Elevation (Source - Addbuild)

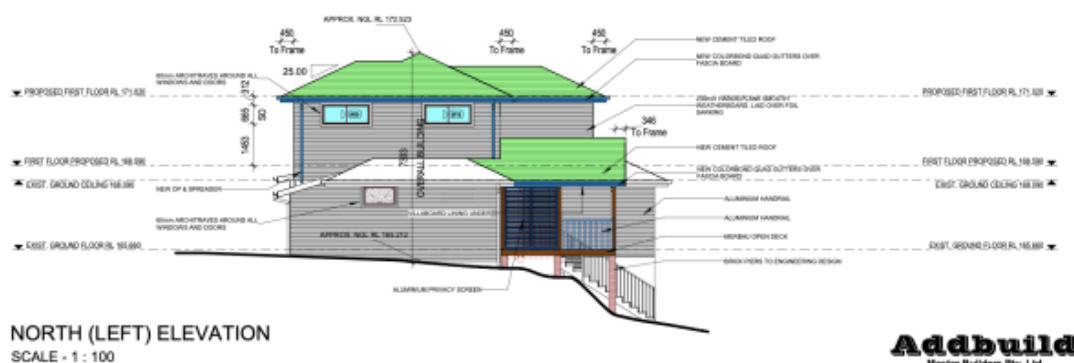


Figure 1: North (left) Elevation (Source - Addbuild)

Figure 1: Extract from applicant's Clause 4.6 written request.

Further to the figures provided by the applicant above, Council notes that the Section C-C Plan clearly details the overall height of the building;

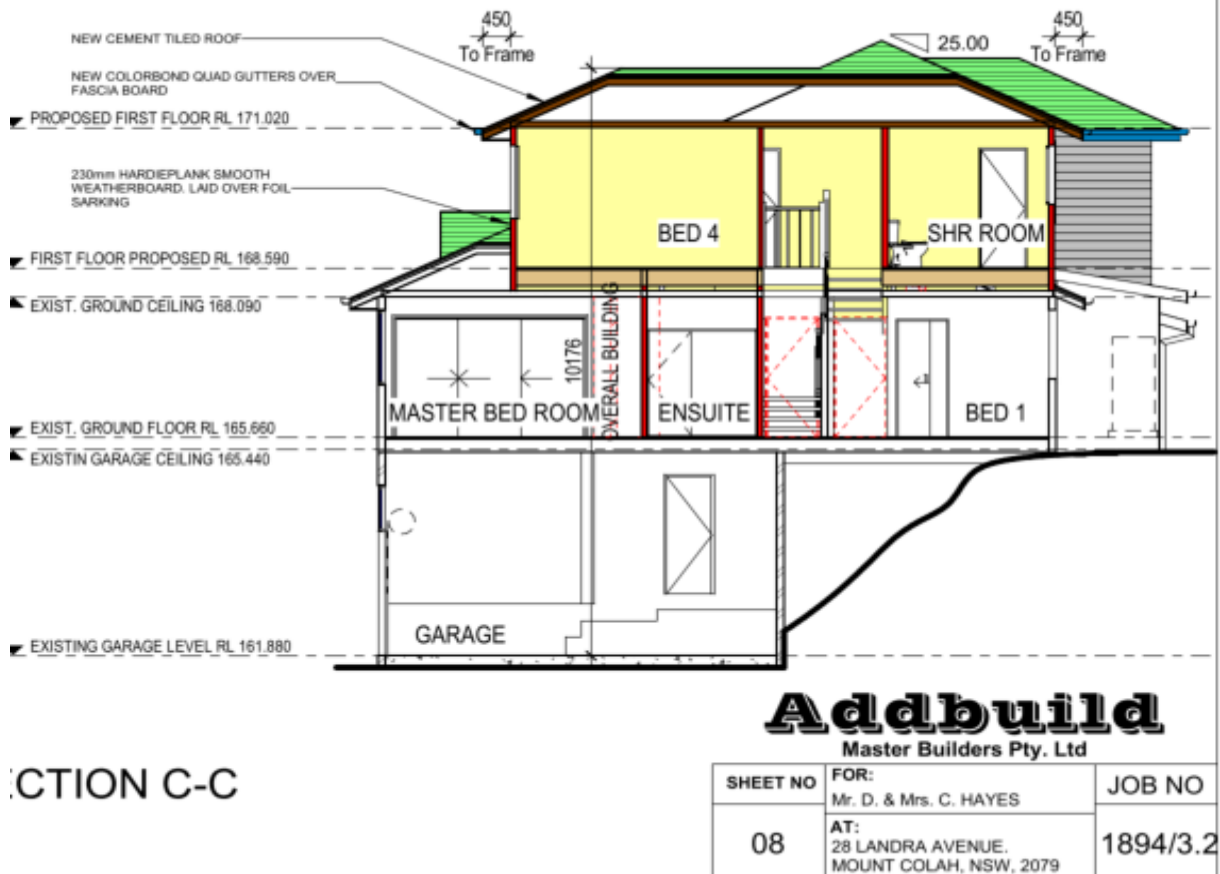


Figure 2: Section C-C showing overall building height.

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 tender to hinder the attainment of the objectives of the zone. In particular, Clause 4.6 provides criteria that must be satisfied prior to a consent authority granting consent to development that contravenes a development standard. These criteria demonstrated under Clause 4.6(3) are as follows:

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

A discussion regarding the criteria provided at Clause 4.6(3), with respect to the development application is provided below.

2.1.3.1 Unreasonable or Unnecessary Clause 4.6(3)(a)

There are five common methods by which an applicant can demonstrate that compliance with a development standards 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 required to demonstrate that a development meets multiple methods as listed above, and the satisfaction of one can be adequate to demonstrate that the development standard is unreasonable or unnecessary.

The written request prepared by Sky Town Planning, dated 14 December 2021 provides a detailed assessment of the proposal with respect to the development standard sought to be contravened. The request argues that the objectives of the development standard are achieved notwithstanding non-compliance with the standard in Part 6 of the document, providing reasoning as follows:

The proposed development seeks a minor variation to the height control for a portion of the addition as a result of the sites unique topography and existing garage.

The proposal has been designed to create a high-quality home that can comfortably accommodate a large family, and maximises the potential of the site while maintaining a residential scale that is appropriate for the low-density area. This is confirmed by the fact the proposal meets all other controls that limit bulk and scale including FSR, landscaped area and maximum site coverage, therefore demonstrating that this is a modest development.

Our opinion is that the relatively modest additional height proposed contributes to the delivery of a high quality and better functioning residence on the site. The proposed height variation realises the development potential of the site and provides a higher quality outcome than the alternative complying solution which would create an irregular development form as a result of having to mirror the unique angular topography in order to meet the height control.

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

Council notes that the objectives of Clause 4.3 of the HLEP are as follows:

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

With reference to the reasoning provided by the applicant above, Council does not object to the conclusion that the proposed additions meet the objectives of Clause 4.3. In reaching this conclusion the following points are noted:

- The primary site constraint relating to the allotment is the significant fall from the rear of the site to the frontage with Landra Avenue. Placing further bulk within the existing building footprint is a logical response to this constraint and greatly reduces the environmental impacts of the proposed extension. The placement of further floor area within the building footprint reduces environmental impacts, reduces waste, reduces the requirement for extensive earthworks and protects slope stability with negligible additional impacts to adjoining properties.

- The lack of environmental impacts arising from the non-compliance with the development standard, and the largely compliant nature of the development when assessed against the relevant legislative and Hornsby Development Control Plan requirements (discussed in the body of this report) identifies that the site is suitable for this development.
- The proposed development would have negligible impact on the infrastructure capacity of the locality.

For the reasons outlined above, it is considered that the written request to contravene the height of building standard adequately demonstrates that the objectives of the height of buildings development standard contained within Clause 4.3 of the HLEP are achieved, notwithstanding non-compliance with the standard.

2.1.3.2 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 (summarised from *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 [60]).

The applicant provided the following planning grounds for the contravention of the development standard:

- *The non-compliance arises solely as a result of the existing excavated garage and is only for the small portion of the first-floor addition that is site directly over the garage. The majority of the proposal complies with the height control.*
- *The proposed height variation provides a higher quality outcome than the alternative complying solution which would create an irregular development form as a result of having to mirror the unique angular topography.*
- *The request for the variation of 19.7% does not prevent compliance with all other LEP controls. All other controls that limit bulk and scale including FSR, landscaped area and maximum site coverage, therefore demonstrating that this is a modest development.*
- *The proposal is consistent with the objectives of the height standard, contained in Clause 4.3 of the LEP.*
- *The departure from the maximum height standard will not result in any significant adverse impact upon the amenity of the adjoining neighbours in terms of overshadowing, loss of privacy or views.*
- *The non-compliance is as a result of the sites unique topography and particular development history. No precedent will be set that would allow unjustified noncompliance with the standard in future applications.*
- *The proposed variation to the height standard does not conflict with any matters of State or regional environmental planning significance, nor does it conflict with any State Planning Policies or Ministerial directives. The significance of the non-compliance is acceptable in the context of the overall development of the broader Hornsby area.*
- *The public benefit would be best served by approval of the development application under consideration, given the absence of any demonstrable adverse impacts resulting from the*

proposal and that a higher quality outcome would be provided than the alternative complying solution.

Council's further review of the environmental planning grounds presented by the applicant raises no points of contention, and it is considered that the consolidation of the building footprint to be a reasonable built environment outcome, both within the subject site, and to the adjoining residential development.

Council further notes that if the dwelling house were to be proposed as a single entity, with excavated garage and two floors above, the proposed residence would not contravene the height of buildings development standard. The technical non-compliance is a result of previous excavation and not the result of a building extending above natural ground level.

Council is therefore satisfied that Clause 4.6(3) of the HLEP is adequately addressed.

2.1.3.3 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).*
 - (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.*
- (b) *The concurrence of the Planning Secretary has been obtained.*

With regard to point (i), the written requests are considered to adequately address the matters required to be demonstrated as outlined above. With regard to point (ii), the proposed development is considered to be in the public interest because it is consistent with the objectives of the particular standard and the objectives for height of building contained within the HLEP. With regard to (b) the concurrence of the Planning Secretary has been obtained.

Therefore, the exceedance of the height of buildings development standard is supported in this instance.

2.1.4 Heritage Conservation

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

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.

Council's assessment of the proposed works and excavation concludes that the proposed excavation works would be minor works undertaken for the purpose of the front facing balcony.

The proposed earth works are not considered to be of a form that would have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

2.2 State Environmental Planning Policy No. 55 Remediation of Land

The application has been assessed against the requirements of State Environmental Planning Policy No. 55 Remediation of Land (SEPP 55) under which consent must not be granted to the carrying out of any development on land unless the consent authority has considered whether the land is contaminated or requires remediation for the proposed use.

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

An examination of Council's records and aerial photography has determined that 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 (Building Sustainability Index: BASIX) 2004

The application has been assessed against the requirements of State Environmental Planning Policy (Building Sustainability Index - BASIX) 2004. The proposal includes a BASIX Certificate for the proposed alterations and additions.

A condition is recommended in Schedule 1 of this report requiring the recommendations of the BASIX certificate be complied with.

2.4 State Environmental Planning Policy (Vegetation in non-rural areas) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 3, Clause 9(2) 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 and objectives for tree preservation.

The application has been assessed against the requirements of the Vegetation SEPP and it has been determined that the proposal would meet the objectives of the Vegetation SEPP. This matter is addressed in Section 3.1.1 of this report.

2.5 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.

2.6 Adopted State Environmental Planning Policies

On 1 March 2022, the following State Environmental Planning Policies (SEPPs) applicable to the proposed development were gazetted:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*

These SEPPs now form matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. However general savings provisions apply to development applications that have been made but not yet determined, on or before the commencement date of the above SEPPs.

As this development application was lodged on 17 December 2021, this development application is considered to have been made prior to the commencement date of the SEPPs. The newly adopted SEPPs have been considered as a matter for consideration under S4.15 of the *Environmental Planning and Assessment Act 1979*. However, the existing legislation, in force at time of lodgement of the development application, prevails to be extent of any inconsistency.

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

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

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

2.8 Hornsby Development Control Plan 2013

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

Hornsby Development Control Plan 2013 - Part 3.1 Dwelling Houses			
Control	Proposal	Requirement	Compliance
Site Area	697.5m ²	N/A	Yes
Building Height	10.17m	8.5m	No
No. of storeys	3 storeys	2 storeys	No
Site Coverage	16%	50%	Yes
Floor Area	219.5m ²	380m ²	Yes

Setbacks			
- <i>Front Setback (existing)</i>	7.6m	7.6m	Yes
- <i>Northern Side Setback</i>			
- <i>Ground Floor</i>	1.8m	0.9m	Yes
- <i>First Floor</i>	3m	1.5m	Yes
- <i>Southern Side Setback</i>			
- <i>Ground Floor</i>	0.9m	0.9m	Yes
- <i>First Floor</i>	1.3m	1.5m	No
- <i>Rear Setback</i>			
- <i>Ground Floor</i>	21m	0.9m	Yes
- <i>First Floor</i>	21m	1.5m	Yes
Landscaped Areas (% of lot size)	>50%	30%	Yes
Private Open Space			
- <i>Minimum area</i>	>24m	24m	Yes
- <i>Minimum dimension</i>	>3m	3m	Yes
Car Parking	2 spaces	2 spaces	Yes

As detailed in the above table, the proposed development generally complies with a number of prescriptive requirements within the *HDCP*. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant desired outcomes.

2.8.1 Scale

The desired outcome of Part 3.1.1 Scale of the *HDCP* is for '*Development with a height, bulk and scale that is compatible with a low-density residential environment*' with the prescriptive measure that dwellings houses are to have a maximum building height of 8.5 metres, with a maximum of 2 residential stories.

The proposed alterations and additions proposes a three-storey dwelling house with a maximum height of 10.17 metres.

As outlined in Part 2.1.3 of this report, the height of the proposal is considered to be compatible with the surrounding low-density environment and consistent with the objectives of Clause 4.3 of the *HLEP*.

With regard to the number of storeys, the proposed dwelling would be part 2 and part 3 storey in design. The 3-storey portion of the development comprises the first-floor addition that is located over the sub floor garage level. In support of this non-compliance the following is noted:

- The majority of the proposed development is of a compliant 2 storey design.
- The portion of the building that is 3 storeys is setback from the northern, front façade, which prevents a sheer façade design and softens the appearance of the 3-storey building portion.
- The non-compliance does not generate unacceptable streetscape impacts to the locality, and due to the topography of Landra Avenue and surrounding streets, there are numerous examples of buildings that appear elevated above the streetscape or of a 3-storey appearance.
- The 3-storey building portion does not generate unacceptable amenity impacts to adjoining residential development.

For the reasons listed above, it is considered that the development is of a height, bulk and scale that is compatible with the surrounding low density residential environment, and the proposal is consistent with the desired outcome of Part 3.1.1 Scale of the HDCP.

2.8.2 Setbacks

The desired outcomes of Part 3.1.2 Setbacks of the HDCP is for '*Setbacks that are compatible with adjacent development and complement the streetscape*' and that '*setbacks that allow for canopy trees to be retained and planted along front and rear property boundaries*' with the prescriptive measure that first floor building elements are to be setback 1.5 metres from side boundaries.

The proposed first floor addition would be setback 1.3 metres from the side boundary which does not comply with the prescriptive measure.

In support of this variation the following is noted;

- The 200mm variation would have negligible impact on the adjoining southern property in terms of overshadowing, privacy or amenity impacts that would arise as a result of the 200mm variation.
- The non-complaint first floor area is a result of the existing 1.3 metre building setback and the proposed first floor does not further encroach on the adjoining side setback.
- The non-compliant side setback would have negligible impact on the streetscape.

For the reasons outlined above, it is considered that the proposed southern side setback is compatible with adjacent development and would complement the streetscape. Consequently it is considered that the proposed development is consistent with the desired outcomes of Part 3.1.2 Setbacks of the HDCP and is acceptable.

2.8.3 Privacy

The desired outcome of Part 3.1.6 Privacy of the HDCP is for '*Development that is designed to provide reasonable privacy to adjacent properties*' with the prescriptive measure that:

- *Decks and the like that need to be located more than 600mm above existing ground should not face a window of another habitable room, balcony or private open space of another dwelling located within 9 metres of the proposed deck unless appropriately screened.*
- *Living and entertaining areas of dwelling houses should be located on the ground floor and oriented towards the private open space of the dwelling house and not side boundaries.*

The proposed development includes a first floor sitting room which does not comply with the prescriptive measures of Part 3.1.6.

The first floor sitting room would be serviced by windows that face the front and rear boundary only and would not have any windows that would face the private open space or internal living area of any adjacent residential allotment. No objections are raised to the inclusion of this elevated living area.

With regard to the front facing ground floor balcony, it is noted that this structure would be elevated up to 2.2 metres above natural ground level. The north eastern facing side of the balcony would have views over the front setback of the adjoining property, No. 30 Landra Avenue. An aluminium privacy screen is proposed to be erected over approximately half of the north eastern balcony elevation. The portion of the balcony that would not have a privacy screen erected would have views over the front setback of No. 30 Landra Avenue only, which is not considered to generate an unacceptable privacy impact.

The proposed development is therefore considered to be consistent with the desired outcomes of Part 3.1.6 Privacy of the HDCP and is considered acceptable.

2.8.4 Sunlight and Ventilation

The desired outcomes of Part 3.1.5 Sunlight Access of the HDCP is that *'Dwelling houses are designed to provide solar access to open space areas'* and that *'Development is designed to provide reasonable sunlight to adjacent properties'* with the prescriptive measure that *'On 22 June, 50 percent of the required principal private open space on any adjoining property should receive 3 hours of unobstructed sunlight access between 9am and 3pm.'*

The proposed development includes shadow diagrams that indicate that overshadowing impacts would impact the adjoining south western property, No. 26 Landra Avenue. The bulk of the shadows generated by the development would be cast over the existing roof line of No. 26 Landra Avenue, with shadowing impacting the rear garden area of the adjoining allotment in the afternoon. The proposed development would not overshadow more than 50% of the required private open space, and more than 3 hours of unobstructed sunlight access would be enjoyed by the neighbouring property.

2.8.5 Vehicular Access and Parking

The HDCP prescribes that two parking spaces be made available on allotments with 3 or more bedrooms. The proposed development is compliant with this requirement, with one car space available in the exiting garage, and a further space available immediately in front of the garage.

2.9 Section 7.12 Contributions Plans

Hornsby Shire Council Section 7.12 Contributions Plan 2019-2029 applies to the development as the estimated costs of works is greater than \$100,000. Should the application be approved, an appropriate condition of consent is recommended requiring the payment of a contribution in accordance with the Plan.

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

3.1.1 Tree and Vegetation Preservation

The proposed development does not seek to remove any vegetation to facilitate the development. It is noted that two trees in the front of the site would be located in close proximity to the proposed works as depicted in yellow in Figure 3 below.

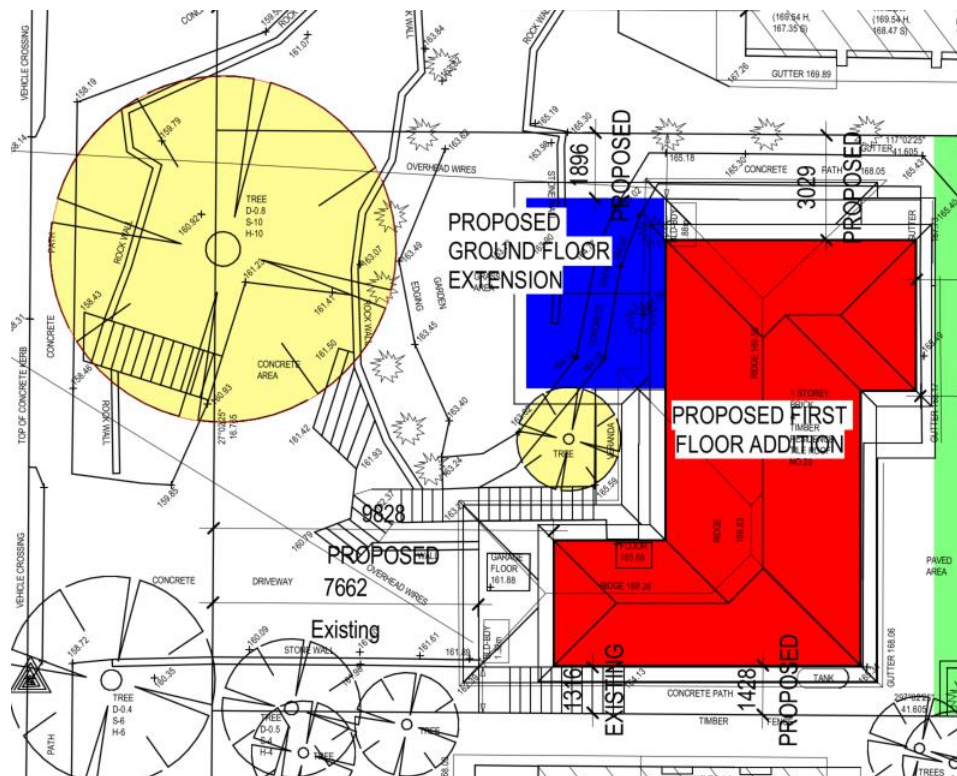


Figure 3: Trees in the vicinity of the proposed works (highlighted in yellow)

Of the trees that would be located in close proximity to the proposed works, the tree located immediately adjacent to the proposed ground floor extension is an exotic planted species, that has a height of approximately 3 metres. The tree is pruned into a shrub and consequently, is of a small stature and form. No tree protection measures are considered necessary for this tree.

The larger tree located adjacent to the front boundary is a large multi trunked native tree. The existing layout and topography of the front yard would adequately separate this tree from the proposed ground floor extension. The topography and an existing rock retaining wall would serve as an adequate barrier to this tree and consequently, no tree preservation measures are deemed necessary for this tree.

Subject to the imposition of conditions requiring that no materials be stored in the tree protection zone of trees on the subject site, no objections are raised to the proposed development on tree preservation grounds.

3.1.2 Stormwater Management

The site slopes towards the front boundary with Landra Avenue. Stormwater can be disposed of to the street drainage system, via the existing stormwater system on site as minimal additional roof area is proposed. Appropriate conditions to this effect are recommended in Schedule 1 of this report.

3.2 Built Environment

3.2.1 Built Form

As discussed in the body of this report, the proposed development is considered to be of a built form that would be appropriate for the site, the streetscape and with minimal impacts to surrounding residential development.

3.2.2 Traffic

The proposed development would not increase traffic upon completion. Minor construction traffic would be required during the construction period. The existing form and layout of Landra Avenue would be able to cater for any required construction traffic.

3.3 Social Impacts

The development would have negligible social impact and would allow for the utilisation of an existing dwelling to meet the needs of the existing occupants.

3.4 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 subject site has not been identified as bushfire prone or flood prone land. The site is considered to be capable of accommodating the proposed development. The scale of the proposed development is consistent with the capability and constraints of the site and is considered acceptable.

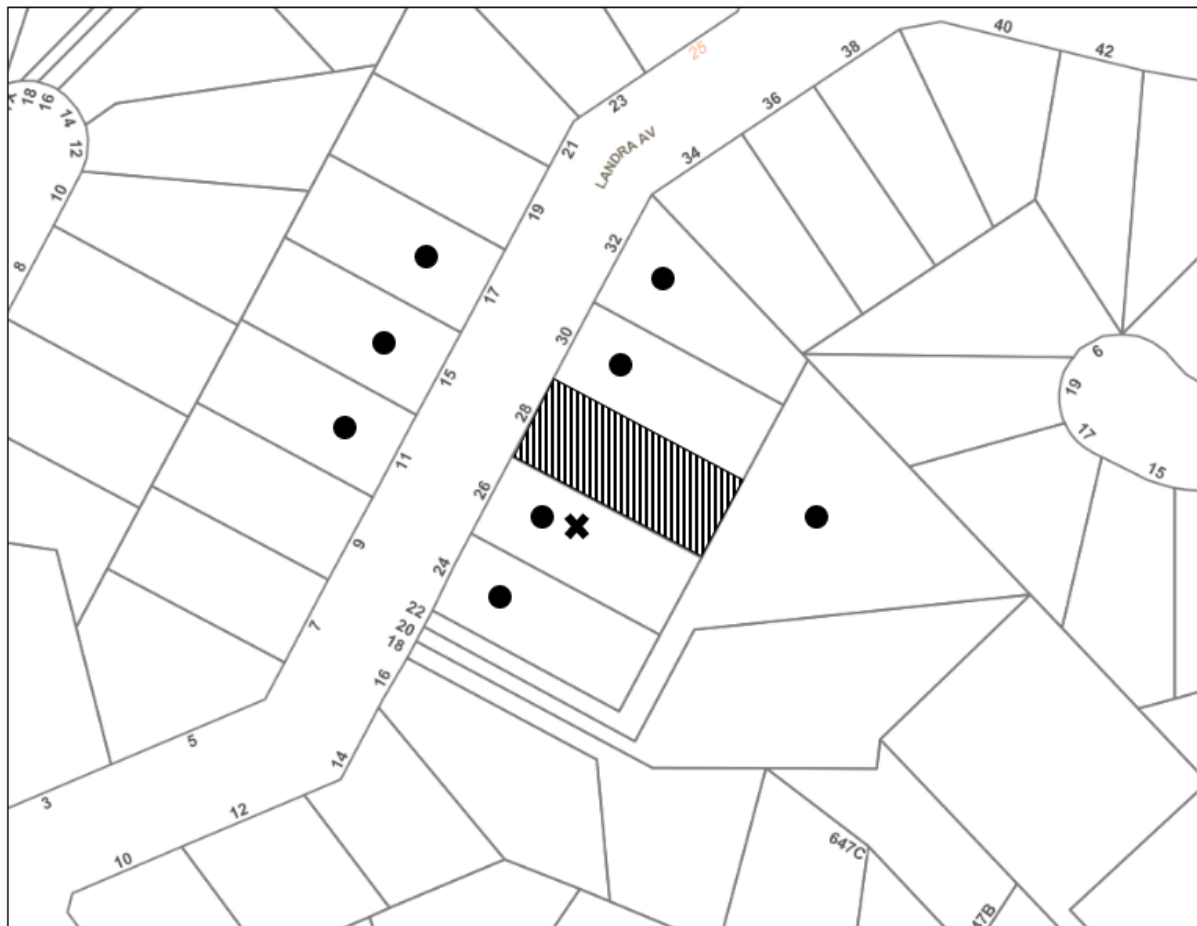
5. PUBLIC PARTICIPATION

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


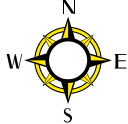
5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 24 December 2021 and 24 January 2022 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 1 submission. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.

ITEM 6



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED		PROPERTY SUBJECT OF DEVELOPMENT	
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Council received 1 objection to the development, which raised concerns regarding shadowing of north-eastern facing windows of the adjoining property, No. 26 Landra Avenue.

Part 3.1.5 of the HDCP provides controls for sunlight access to principal private open space on adjoining property.

The supplied shadow plans show that shadows cast by the development would shade north-eastern facing windows of No. 26 Landra Avenue from 9am to 12pm, with shadows retreating sometime in the afternoon so that by 3pm, the windows are not shaded by the development. The Hornsby DCP does not include prescriptive controls for solar access to windows of adjoining properties and as such, no objections are raised to the shadowing impacts from the proposed development.

Overshadowing of open space areas is discussed in further detail in Section 2.7.4 of this report.

5.2 Public Agencies

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

6. THE PUBLIC INTEREST

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

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

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

CONCLUSION

The application proposes the partial demolition and the construction of alterations and additions to a dwelling house.

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

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

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

The reasons for this decision are:

- The request under Clause 4.6 of Hornsby Local Environmental Plan 2013 to contravene the ‘Height of buildings’ development standard is well founded. Strict compliance with the development standard is considered unreasonable and unnecessary in the circumstances of the case and sufficient environmental planning grounds have been submitted to justify the contravention to the development standard.
- The proposed development generally complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, overshadowing, solar access, amenity or privacy.

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

RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is Ben Jones.

CASSANDRA WILLIAMS









ROD PICKLES

Major Development Manager - Development
Assessments
Planning and Compliance Division

Manager - Development Assessments
Planning and Compliance Division

ITEM 6

Attachments:

1.   Locality Plan
2.   Architectural Plans
3.   Shadow Plans
4.   Clause 4.6

File Reference: DA/1353/2021

Document Number: D08348352

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 6**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
1894/3.2 Sheet 02	Site Plan	Addbuild Master Builders	07.12.21	
1894/3.2 Sheet 04	Ground Floor – Proposed	Addbuild Master Builders	07.12.21	
1894/3.2 Sheet 05	First Floor Proposed	Addbuild Master Builders	07.12.21	
1894/3.2 Sheet 06	Elevations	Addbuild Master Builders	07.12.21	
1894/3.2 Sheet 07	Elevations	Addbuild Master Builders	07.12.21	
1894/3.2 Sheet 08	Sections	Addbuild Master Builders	07.12.21	

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
Geotechnical Investigation Ref: 6675-G1	assetgeoenviro	25/10/21	

Document Title	Prepared by	Dated	Council Reference
BASIX Certificate No. A424248	Addbuild Master Builder Pty Ltd	28.10.21	D08318216
Waste Management Plan	Addbuild	27.10.21	D08318223

2. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any construction works under this consent.
- b) The Construction Certificate plans must be consistent with the Development Consent plans.

3. Section 7.12 Development Contributions

- a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the *Hornsby Shire Council Section 7.12 Development Contributions Plan 2019 - 2029*, \$4,277.05 must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of \$427,708.00.
- b) The value of this contribution is current as of 1 March 2022. If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.12 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

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

Where:

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

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

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

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

- c) The monetary contributions shall be paid to Council:
 - (i) Prior to the issue of the Subdivision Certificate where the development is for subdivision.
 - (ii) Prior to the issue of the first Construction Certificate where the development is for building work.

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

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

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

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

4. 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*.

5. Contract of Insurance (Residential Building Work)

Where residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, this contract of insurance must be in force before any building work authorised to be carried out by the consent commences.

6. Notification of Home Building Act 1989 Requirements

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being Council) has given Council written notice of the following information:

- a) In the case of work for which a principal contractor is required to be appointed:
 - i) The name and licence number of the principal contractor.
 - ii) The name of the insurer by which the work is insured under Part 6 of that Act.
- b) In the case of work to be done by an owner-builder:
 - i) The name of the owner-builder.
 - ii) If the owner-builder is required to hold an owner-builder's permit under that Act, the number of the owner-builder's permit.

Note: If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being Council) has given Council written notification of the updated information.

7. 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.

8. 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.

9. Stormwater Drainage – Dwellings

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

- a) Connected directly to Council's Street drainage system via the existing internal drainage system.

10. Geotechnical Design Requirements

- a) The development shall be carried out in accordance with the requirements and recommendations of the preliminary Geotechnical Investigation Ref: 6675-G1 prepared by Asset Geotechnical Engineering Pty Ltd, dated 25 October 2021 and in accordance with further geotechnical assessment and advice to be provided during development and construction.
- b) Structural design relating to the geotechnical aspects of the proposed development shall be checked and certified by a suitably qualified and experienced Geotechnical Engineer as being in accordance with the geotechnical recommendations prior to issue of the Construction Certificate.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS
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11. 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.

12. Protection of Adjoining Areas

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

- a) Could cause a danger, obstruction, or inconvenience to pedestrian or vehicular traffic.
- b) Could cause damage to adjoining lands by falling objects.
- c) Involve the enclosure of a public place or part of a public place.
- d) Have been identified as requiring a temporary hoarding, fence, or awning within the Council approved Construction Management Plan (CMP).

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

13. Toilet Facilities

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

14. 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.

15. Garbage receptacle

- a) A garbage receptacle must be provided at the work site before works begin and must be maintained until all works are completed.
- b) The garbage receptacle must have a tight-fitting lid and be suitable for the reception of food scraps and papers.

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

REQUIREMENTS DURING CONSTRUCTION

16. 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.

17. 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.
- b) Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by SafeWork NSW in accordance with the Work Health and Safety Regulation 2017 and be appropriately transported and disposed of in accordance with the Protection of the Environment Operations (Waste) Regulation 2014.
- c) On construction sites where any building contain asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' and measuring not less than 400mm x 300mm must be displayed in a prominent position visible from the street.

18. 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*.

19. 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.

20. 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.

21. Landfill not Permitted

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

22. Excavated Material

Any 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.

23. Survey Report

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

- a) Prior to the pouring of concrete at each level of the building certifying that:
 - i) The building, retaining walls and the like have been correctly positioned on the site.
 - ii) The finished floor level(s) are in accordance with the approved plans.

24. Geotechnical Engineer Inspection

A suitably qualified and experience geotechnical engineer must carry out an inspection during construction at the following stages and provide certification to the principal certifying authority, to ensure that the requirements of the geotechnical report are followed:

- a) Footing excavations shall be inspected prior to pouring concrete.

25. Waste Management

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

26. Maintenance of Public Footpaths

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

27. 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.

28. Ongoing management of the site/ structure

- a) Surface and subsurface drains shall be maintained in good condition and shall be kept free of blockages and debris.
- b) Inspection shall be carried out annually.
- c) A record of inspections shall be kept on site.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**29. Fulfilment of BASIX Commitments**

The applicant must demonstrate the fulfilment of BASIX commitments pertaining to the development.

30. Damage to Council Assets

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

- 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). (HDCP 1B.6.1.c).

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 1800 810 443.

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/1353/2021

28 Landra Avenue, Mount Colah

ATTACHMENT 1 - ITEM 6

<p>The following reference notes must be read in conjunction with the architectural plans and construction notes, contained herein. Some of these notes may not be applicable to the scope of works.</p>															
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<p>ELECTRICALS EXISTING CABLES WILL BE INSPECTED AND REPAIRED WHERE NECESSARY. STORMWATER DRAINAGE FROM NEW DOWNPIPES TO EXISTING DRAINAGE AS NECESSARY. NOTE: BUILDER ASSUMES AN EXISTING STORMWATER DRAIN SYSTEM CURRENTLY EXISTS ON SITE AND IS DISCHARGED TO A LEGAL POINT. BUILDER HAS MADE NO ALLOWANCE TO PROVIDE NEW SWD SYSTEM AND / OR LEGAL POINT OF DISCHARGE SHOULD NO SYSTEM EXIST</p> <p>RELOCATION OF METER BOX. NO ALLOWANCE HAS BEEN MADE TO RELOCATE EXISTING METER BOX.</p> <p>EXISTING TREES AND VEGETATION NO ALLOWANCE HAS BEEN MADE TO CLEAR THE AREA OF THE PROPOSED ADDITION OF ANY TREES, SHRUBS OR OTHER VEGETATION.</p> <p>FLOOR REPAIRS. MAKE GOOD FLOOR WITH ONE PIECE OF TIMBER FLOORING LAD IN THE SAME DIRECTION OF THE WALL BEING DEMOLISHED.</p> <p>SKYLIGHTS AND SOLAR TUBES. NO ALLOWANCE HAS BEEN MADE TO MATCH ACTUAL POSITION MAY CHANGE ON SITE. DEPENDING ON STRUCTURAL CONDITIONS.</p> <p>ALL TIMBER SIZES ARE NOMINAL</p> <p>CONCRETE FOOTINGS & SLABS. NO ALLOWANCE FOR ANY PIERING.</p> <p>TERMITE TREATMENT. KORDON TREMITE TREATMENT TO EXTERNAL SLAB EDGES AND PENETRATIONS.</p> <p>Certificate number: 424248</p>		<p>SPECIAL NOTES</p> <ul style="list-style-type: none">o 2 / 90 X 38 EXTERNAL TOP PLATESo 90 X 45 EXTERNAL BOTTOM PLATESo 90 X 38 EXT STUDS @ 450 CTRS MAXo 70 X 45 INT TOP & BOTTOM PLATESo 70 X 45 INT STUDS @450 CTRS MAXo HJ 200 ENGINEERED FLOOR JOISTS @ 450 CTRS MAX UNLESS OTHERWISE SPECIFIED BY ENGINEER <p>FLOORING FIRST FLOOR 3 STRUCTURAL SHEET (UNSAUNDED)</p> <p>FASCIA 280 X 25 TREATED PINE.</p> <p>BARGE 240 X 25 TREATED PINE ALUMINUM WINDOWS WITH ALUMINIUM FRAMED NYLON MESH FLYSCREENS. ALUMINUM STACKER DOORS WITH ALUMINIUM FRAMED NYLON MESH.</p> <p>BRICKWORK N/A</p> <p>CLADDING 200MM HARDBOARD OR NYLON WEATHERBOARD SMOOTH CLADDING. LAY OVER FOIL SARKING.</p> <p>ROOF PLUMBING 100 X 75 OR 100 X 50 POWDERCOATED DOWNPIPES POWDERCOATED QUAD GUTTERS</p> <p>SOFFIT LINING 4.5 mm F.C. SHEET.</p> <p>ROOF COVERING FIRST FLOOR NEW CEMENT ROOF TILES FROM STANDARD RANGE. LAY OVER FOIL SARKING.</p> <p>INTERNAL LININGS INT. WALL = 10 mm PLASTERBOARD CEILINGS = 10 mm PLASTERBOARD WET AREA = 6 mm VILLABOARD CORNICHE = 90mm Cove CORNICHE</p> <p>INTERNAL FIXINGS JAMBS - EX 90 X 38 REBATED SKIRTING - EX 75 X 25 BULLNOSE ARCHITRAVE - EX 75 X 25 BULLNOSE</p> <p>BUILT IN CUPBOARDS ALL WARDROBE SHELVING AND HANGING RAILS TO BE SUPPLIED AND INSTALLED BY OWNER. HANGERS / HANGERS 16MM THICK MELAMINE SHELVES.</p> <p>DOORS 4 PANEL SOLICORE DOORS FOR PAINT</p> <p>ELECTRICAL TO ADDITIONS TWO WAY LIGHT SWITCH x — O — x 1. OFF LIGHT POINTS O — x 12. OFF DOUBLE G.P.O. 12. OFF SMOKE ALARM 2. OFF</p> <p>HOT WATER SYSTEM CIRCUITS 4. OFF RCD safety switch to new power circuit 4. OFF CONNECT TO EXISTING HOT WATER UNIT</p> <p>STAIRCASE AND HANDRAILS TYPE: MAPLE CLOSED RISER TIMBER STRINGER NOMINAL WIDTH: 900mm RISE: 18No. x 163 TREAD: 240mm FINISH: MAPLE TREADS & MAPLE RISERS, MAPLE SQUARE BAULTRADE.</p> <p>METALWORK INTERNAL BLACK EXTERIAL PRIME</p> <p>EXCAVATION EXCAVATION HAS BEEN ASSUMED TO BE IN SOIL. CLAY OR OTHER MATERIAL REASONABLY CAPABLE OF EXCAVATION WITH HAND TOOLS</p> <p>INSULATION CEILING TO FIRST FLOOR ADDITION R3.0 INSULATION. INTERNAL WALLS TO FIRST FLOOR ADDITION R 1.7 EXTERNAL WALLS TO GROUND FLOOR & FIRST FLOOR ADDITION & L.I.THERMAL INSULATION.</p> <p>PAINTING ALL INTERNAL PAINTING TO FIRST FLOOR ADDITION TO BE DONE BY BUILDER. ALL EXTERNAL PAINTING TO GROUND FLOOR & FIRST FLOOR ADDITION BY BUILDER. ALL RENOVATION PAINTING BY OWNER UNLESS SPECIFICALLY NOTED OTHERWISE.</p>													
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3.2	TO VARIATION 1	OP	07.12.21												

ATTACHMENT 2 - ITEM 6

Area Calculations:

Site Area	-- 697.57 m ²
Existing Ground Floor Area	-- 107.87 m ²

Existing Other Structure -

Entry Porch	--	5.28 m ²
Rear Pergola	--	11.34 m ²
Garage	--	23.76 m ²
Shed	--	3.43 m ²

Existing Hardstand Area

Concrete Paths (Combined)--	124.19 m ²
Driveway	-- 49.72 m ²

Existing Gross Floor Area. -- 107.87 m²
Existing Floor Space Ratio (FSR) -- 0.15 : 1

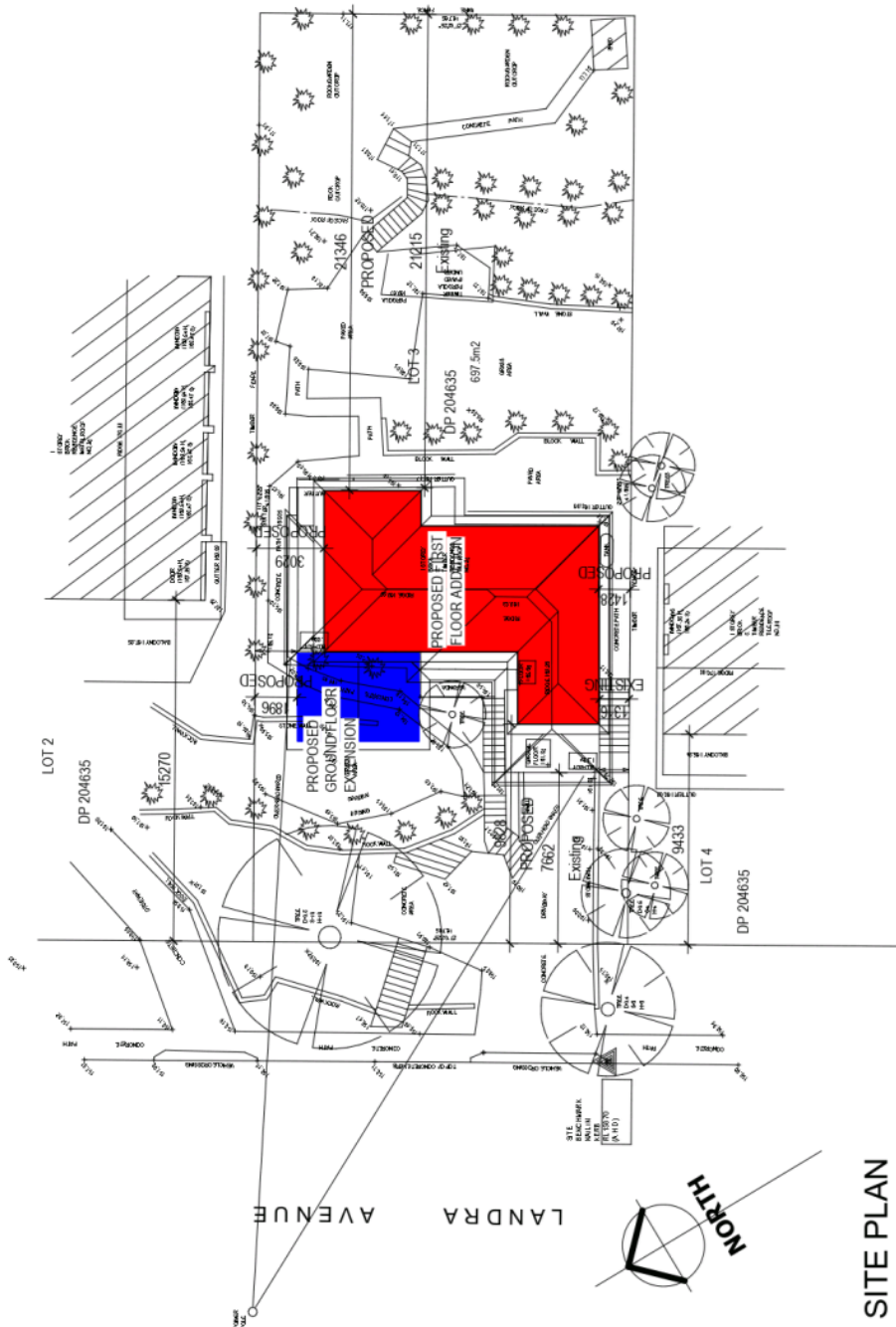
Total Existing Site Coverage	-- 310.89 m ² or 45 %
Total Existing Landscape Area	-- 381.24 m ² or 55 %

Proposed Ground Floor Area.	--	108.33 m ²
Proposed First Floor Area .	--	79.84 m ²

Total Proposed Gross Area -- 188.17 m²
Proposed Floor Space Ratio (FSR) -- 0.27 : 1

Total Proposed Site Coverage	-- 310.89 m ² or 45 %
Total Proposed Landscape Area	-- 381.24 m ² or 55 %

Proposed Landscaping to Front	--	67.80 m ²
Proposed Landscaping to Rear	--	267.95 m ²

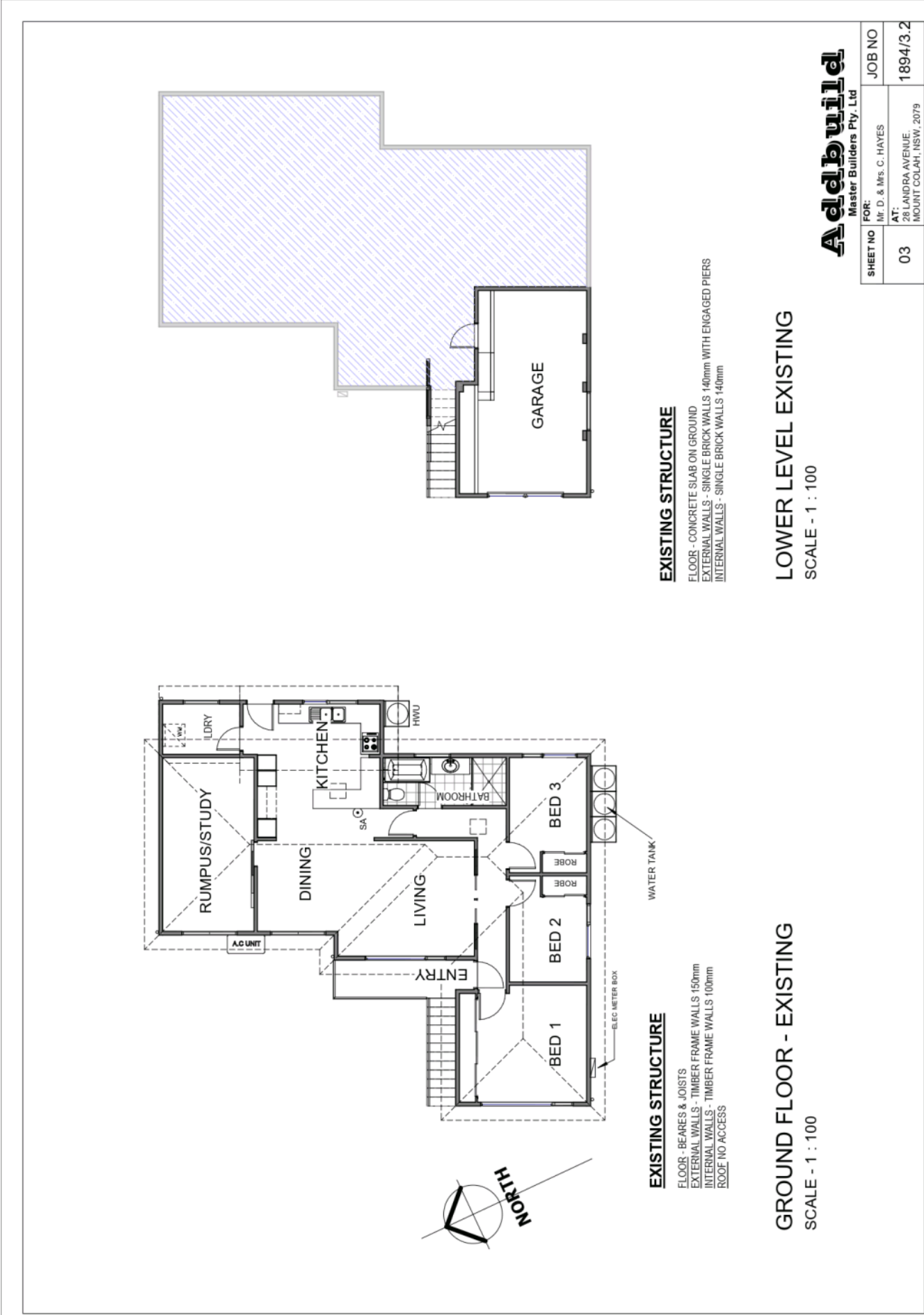
Private Open Space -- 364.13 m² or 52 %

Addendum

Master Builders Pty. Ltd

SHEET NO	02	FOR:	JOB NO
		Mr. D. & Mrs. C. HAYES	1894/3.2
		AT:	
		28 LANDRA AVENUE, MOUNT COLAH NSW 2079	

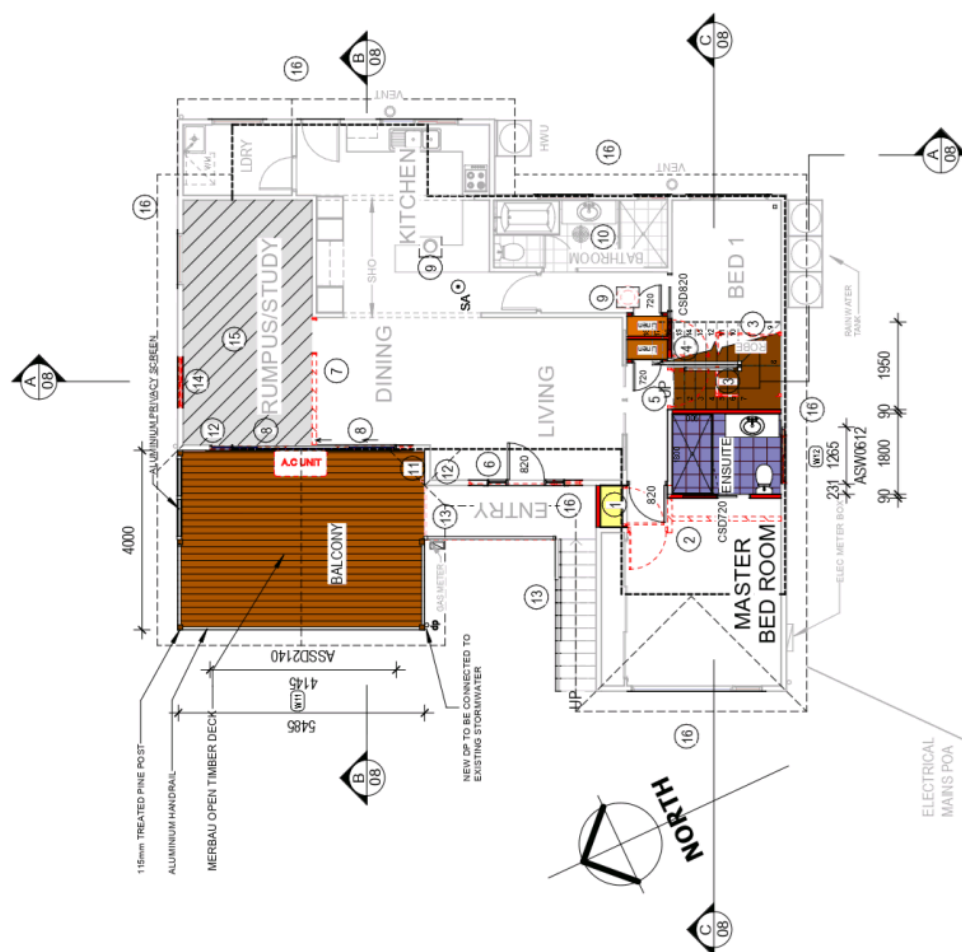
ATTACHMENT 2 - ITEM 6



ATTACHMENT 2 - ITEM 6

ATTACHMENT 2 - ITEM 6

- ① REMOVE EXISTING ENTRY DOOR. BUILD UP FLOOR AND BLOCK UP OPENING WITH NEW TIMBER FRAME WALL.
STRIP INTERNAL CLADDING AND FIX PLASTERBOARD. REPAIR AFFECTED SURFACES.
- ② DEMOLISH EXISTING INTERNAL TIMBER FRAMED WALLS AS SHOWN DASHED. REPAIR AFFECTED SURFACES.
- ③ REMOVE 2 OFF WARDROBES. REPAIR AFFECTED SURFACES.
- ④ REMOVE EXISTING DOOR AND BLOCK UP OPENING. REPAIR AFFECTED SURFACES.
- ⑤ DEMOLISH EXISTING TIMBER FRAME WALL AND FORM A 2100H SQUARE HEAD OPENING. REPAIR AFFECTED SURFACES.
- ⑥ REMOVE EXISTING WINDOW. DEMOLISH EXISTING TIMBER FRAME WALL AS REQUIRED TO FIX A NEW ENTRY DOOR WITH TWO SIDELIGHTS. REPAIR AFFECTED SURFACES.
- ⑦ CREATE A FULL WIDTH SQUARE SET OPENING BETWEEN THE ENTERTAINING AND DINING AREA. REPAIR AFFECTED SURFACES.
- ⑧ REMOVE 2 OFF WINDOWS FROM ENTERTAINING AND DINING ROOM. DEMOLISH TIMBER FRAME WALL AS REQUIRED TO PLACE A NEW STACKER DOOR. REPAIR AFFECTED SURFACES. AC UNIT TO BE REMOVED AND RELOCATED BY OWNER.
- ⑨ REMOVE 2 OFF SOLAR TUBELIGHTS. PATCH UP CEILING REPAIR AFFECTED SURFACES.
- ⑩ DUCT EXISTING EXHAUST FAN
- ⑪ REMOVE AND RELOCATE EXISTING DOWN PIPE
- ⑫ EXTEND EXISTING ROOF TO FORM NEW BALCONY ROOF AREA AND FORM NEW GABLE END. PROVIDE VILLABOARD LINING TO BALCONY CEILING.
- ⑬ REMOVE EXISTING HANDRAIL. PLACE NEW ALUMINIUM HANDRAIL. REPAIR TO INCLUDE REATTACHMENT OF 2 LOOSE STEPS. EXACT STEPS TO BE CONFIRMED ON SITE
- ⑭ REMOVE EXISTING WINDOW. BLOCK UP REMAINING OPENING. PLACE CLADDING EXTERNALLY AND PLASTERBOARD INTERNALLY. REPAIR AFFECTED AREAS.
- ⑮ STRIP AND REPLACE EXISTING CEILING.
PLACE NEW CORNICE TO MATCH DINING AREA.
REPAIR AFFECTED AREAS.
- ⑯ STRIP THE EXISTING ASBESTOS CLADDING FROM ALL OF THE EXTERNAL WALLS AND REPLACE WITH 230mm HARDIEPLANK SMOOTH WEATHERBOARD.



GROUND FLOOR - PROPOSED
SCALE - 1 : 100

NOTE: THE AREAS SHOWN IN GREY ARE EXISTING & INDICATIVE ONLY. NO REMEDIAL OR RENOVATION WORK IS TO BE CARRIED IN THESE AREAS UNLESS DISCUSSED WITH THE SUPERVISOR & THE OWNER PRIOR TO THE COMMENCEMENT OF ANY WORK.

Addendum

Master Builders Pty. Ltd

SHEET NO.

OR:
Mr. D. & Mrs. C. HAYES

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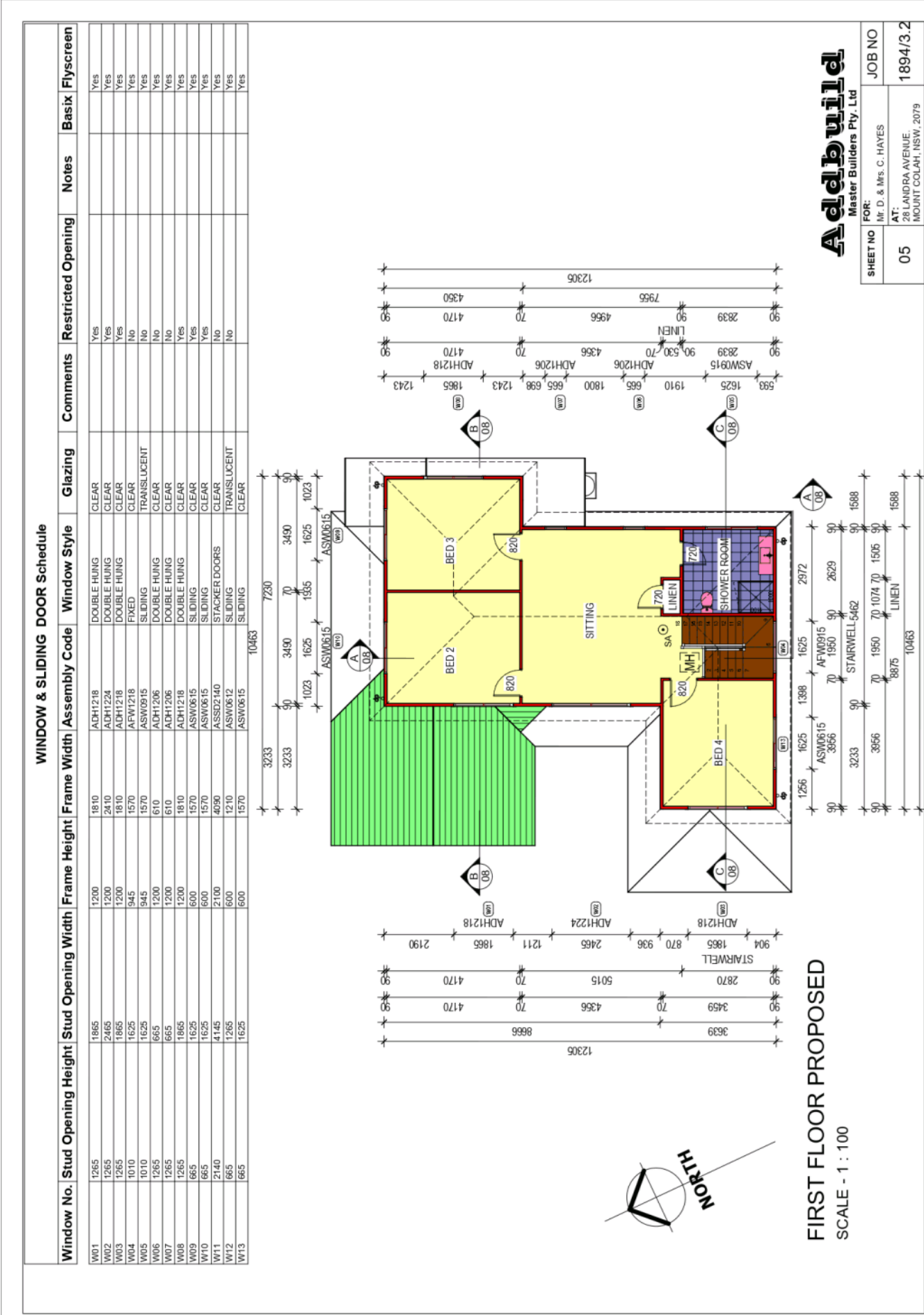
T:
8 LANDRA AVENUE.

SHEET NO.

OR:
Mr. D. & Mrs. C. HAYES

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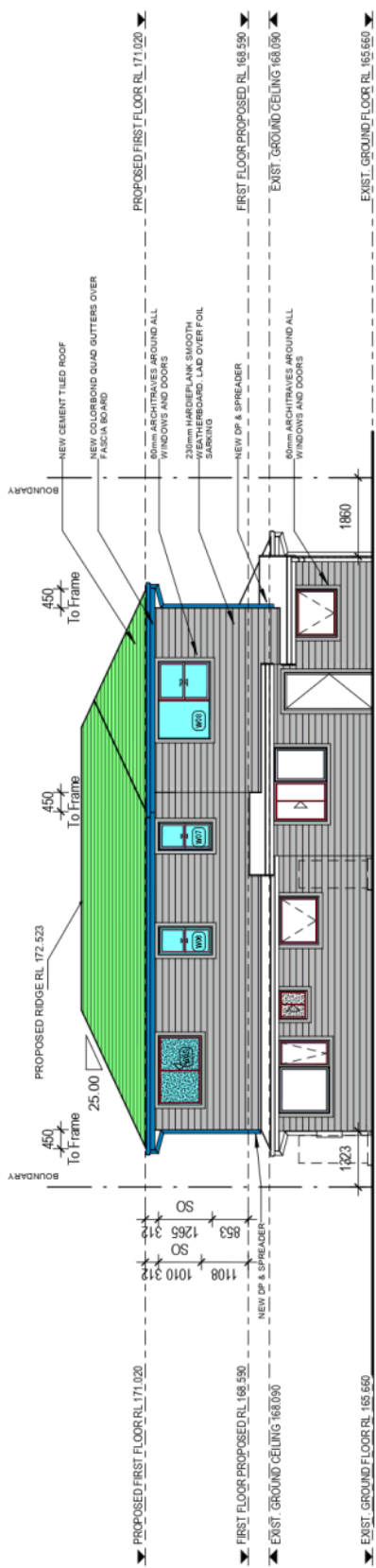
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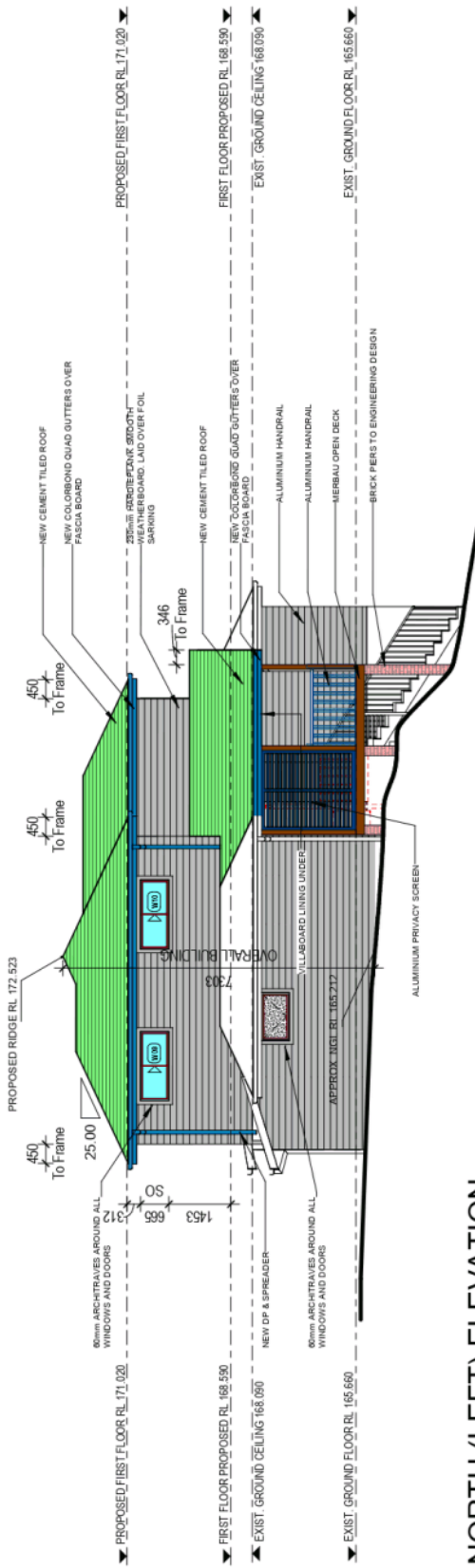
ATTACHMENT 2 - ITEM 6



ATTACHMENT 2 - ITEM 6



EAST(REAR) ELEVATION
SCALE - 1 : 100

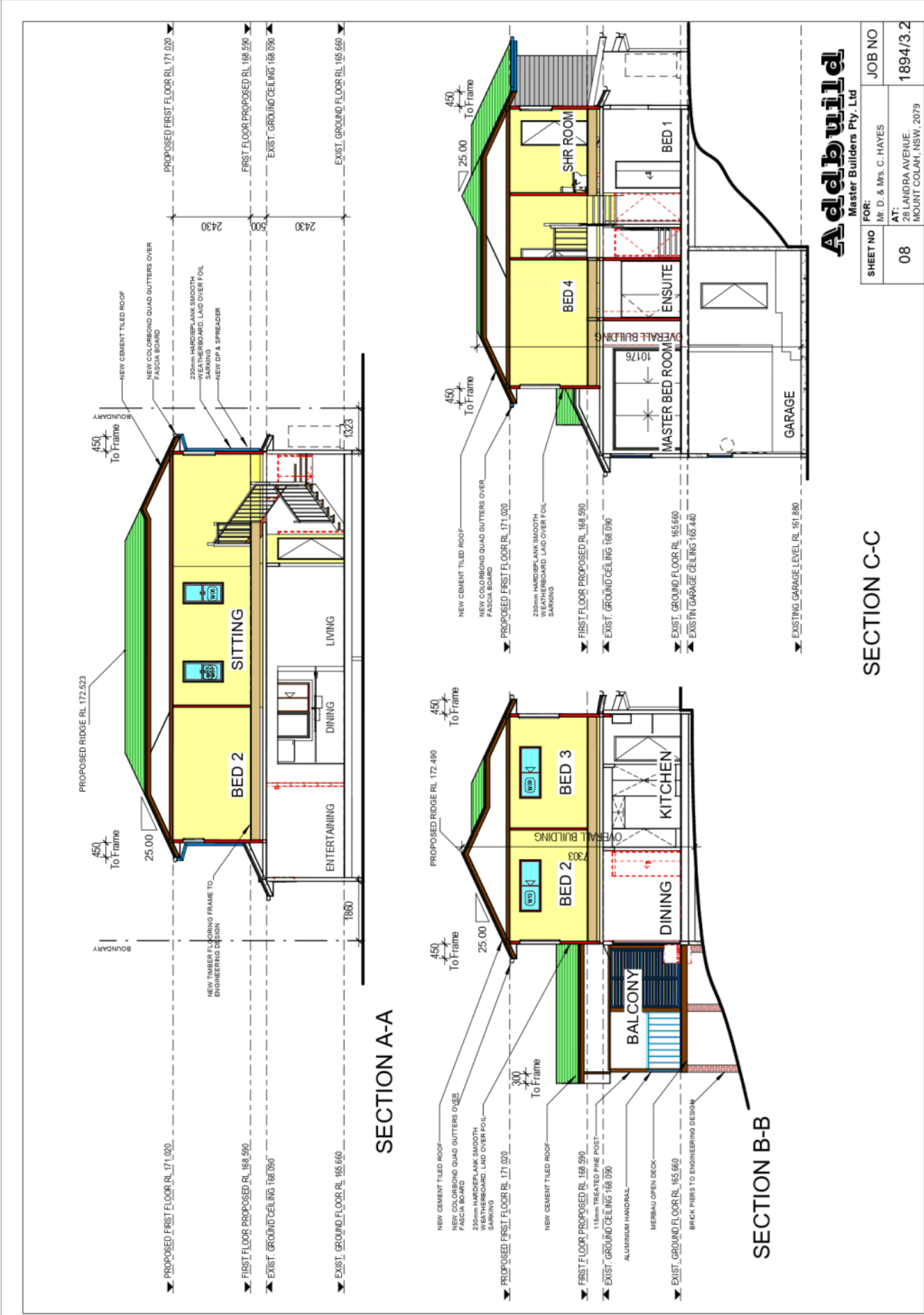


NORTH (LEFT) ELEVATION
SCALE - 1 : 100

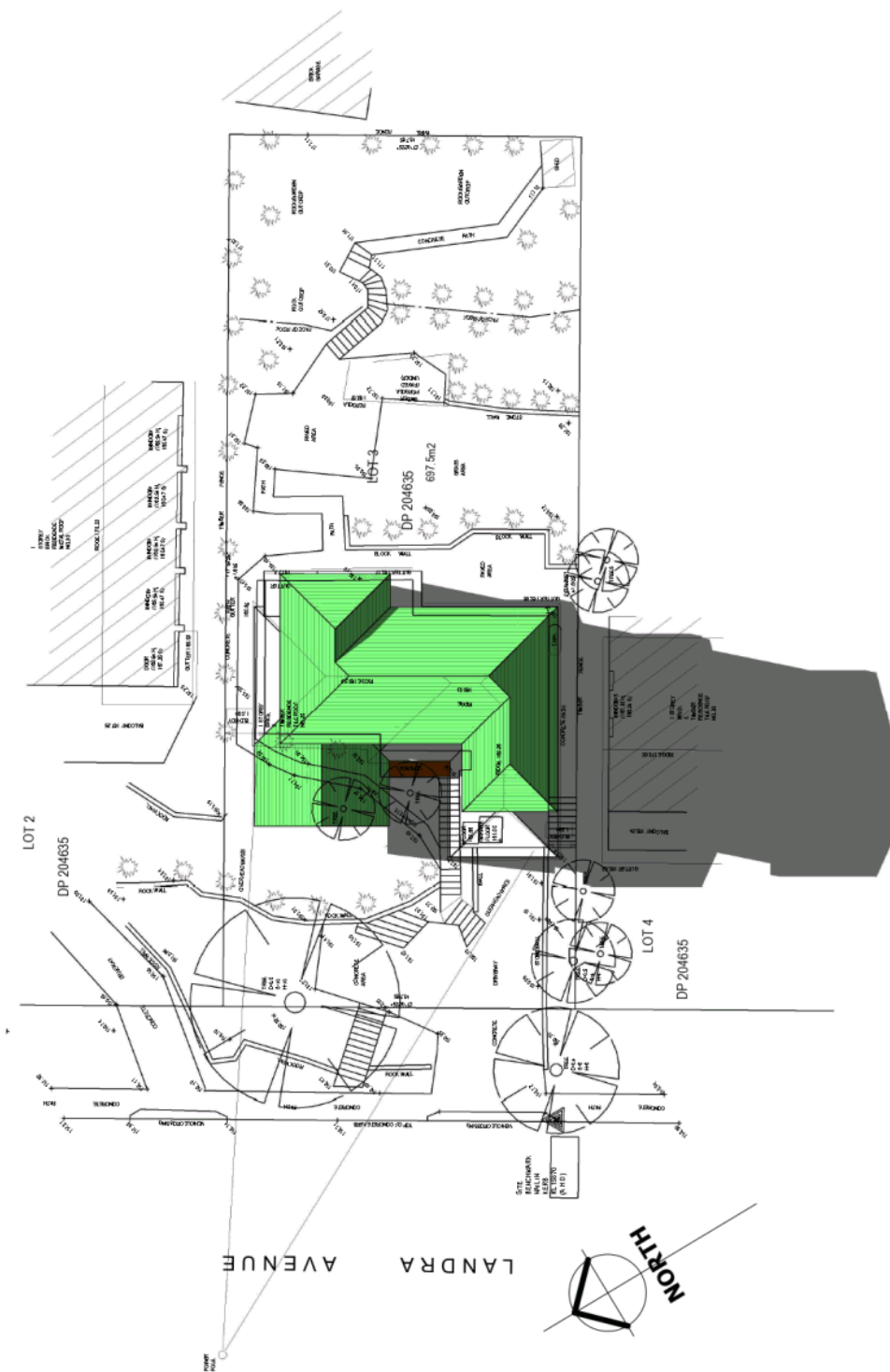
Adelbuild
Master Builders Pty. Ltd

SHEET NO	FOR:	JOB NO
07	Mr. D. & Mrs. C. HAYES	1894/3.2
	AT:	
	28 LANDRA AVENUE, MOUNT COLAH, NSW. 2079	

ATTACHMENT 2 - ITEM 6



ATTACHMENT 2 - ITEM 6



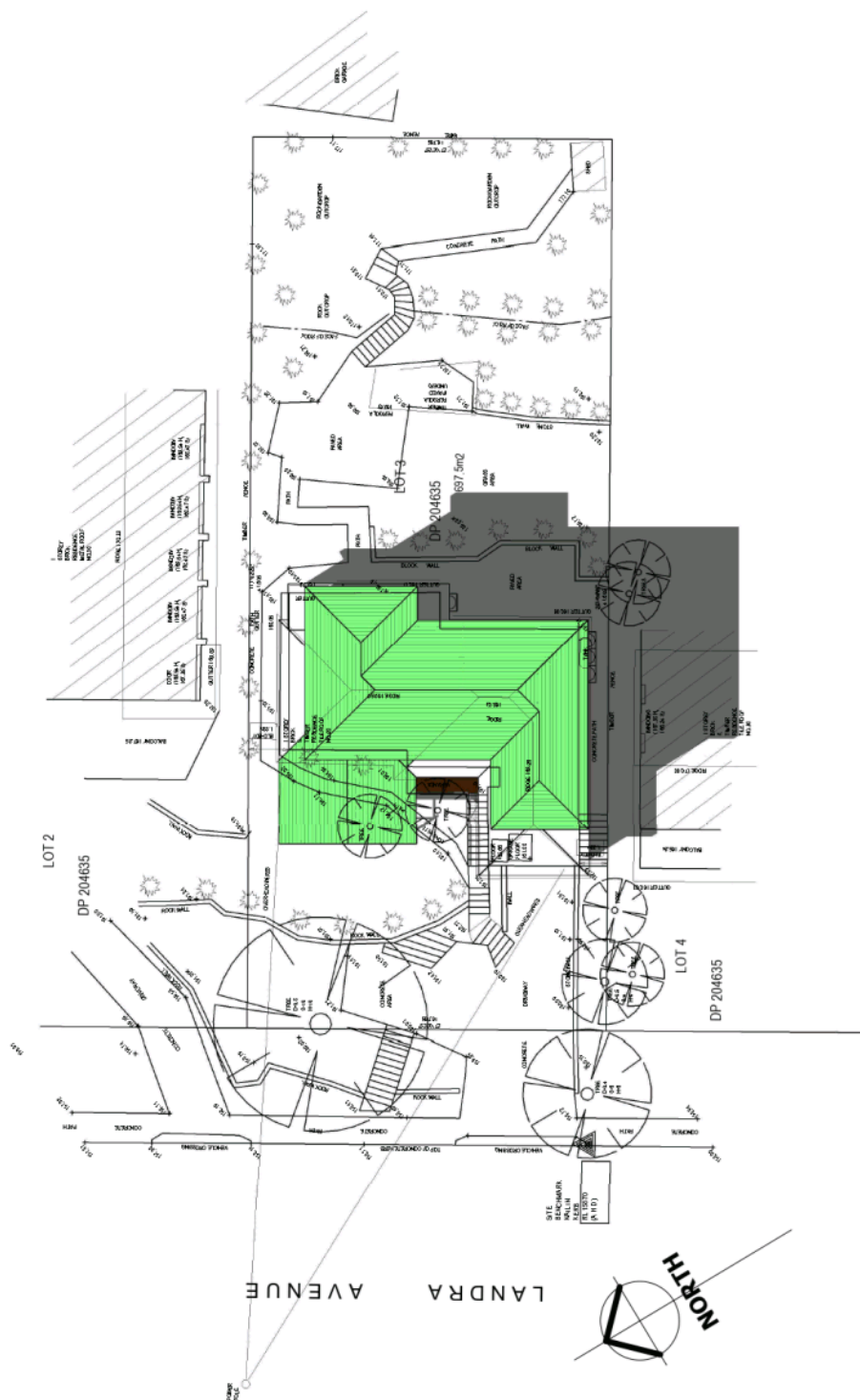
WINTER SHADOW DIAGRAM - 9.00am - 21st JUNE - PROPOSED

Adelbuild

Master Builders Pty. Ltd

SHEET NO	FOR:	JOB NO
12.2	Mr. D. & Mrs. C. HAYES	1894/3.1
	AT:	
	28 LANDRA AVENUE, MOUNT COLAH, NSW, 2079	

ATTACHMENT 3 - ITEM 6



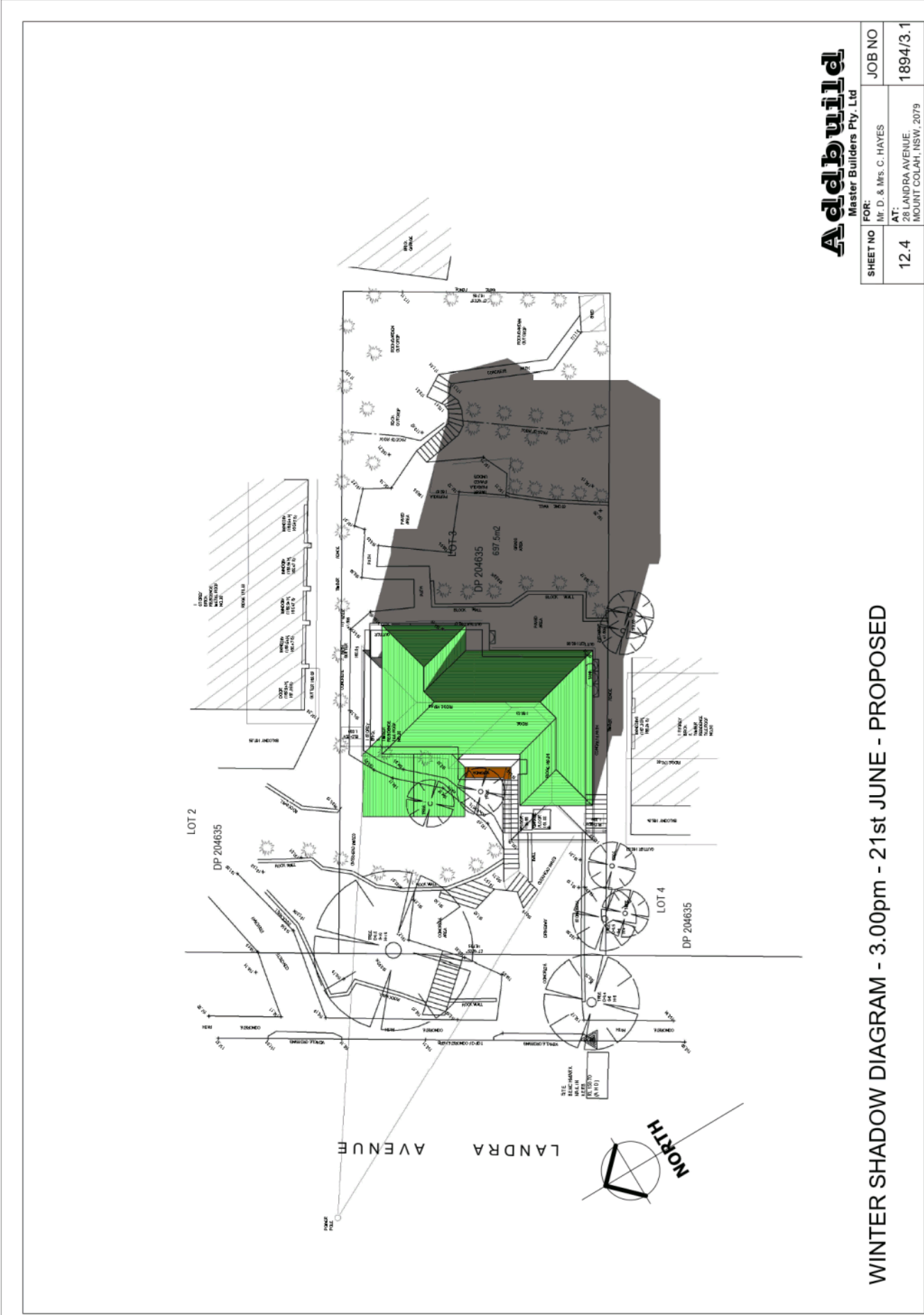
WINTER SHADOW DIAGRAM - 12.00 noon - 21st JUNE - PROPOSED
SCALE - 1 : 200

Adelbuild

Master Builders Pty. Ltd

SHEET NO	FOR:	JOB NO
12.3	Mr. D. & Mrs. C. HAYES	1894/3.1
	AT:	
	28 LANDRA AVENUE, MOUNT COLAH, NSW. 2079	

ATTACHMENT 3 - ITEM 6



WINTER SHADOW DIAGRAM - 3.00pm - 21st JUNE - PROPOSED



Adelbuild
Master Builders Pty. Ltd

SHEET NO 12.4	FOR: Mr. D. & Mrs. C. HAYES	JOB NO 1894/3.1
	AT: 28 LANDRA AVENUE, MOUNT COLAH, NSW. 2079	

ATTACHMENT 3 - ITEM 6

Clause 4.6 Variation Statement (Floor Space Ratio)

28 LANDRA AVENUE, MOUNT COLAH

Title Details:	Lot 3 on DP204635
Proposal:	Development Application (DA) for 'Proposed ground floor alterations, extension and first floor addition to an existing residential dwelling'.
Owner:	Duncan & Cecily Hayes
Consent Authority:	Hornsby Shire Council
Date:	14 December 2021



www.skyplanning.com.au
ABN: 69 130 400 884

CLAUSE 4.6 VARIATION REQUEST -28 LANDRA AVENUE MOUNT COLAH

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5.0	CONCLUSION	16

ATTACHMENT 4 - ITEM 6

CLAUSE 4.6 VARIATION REQUEST -28 LANDRA AVENUE MOUNT COLAH

1 Introduction

This Clause 4.6 Variation Report supports a Development Application submitted to the Council of the Shire of Hornsby, pursuant to the Environmental Planning and Assessment Act 1979 (EP&A Act). The Development Application is seeking consent for proposed ground floor alterations, extension and first floor addition to an existing residential dwelling at Lot 3 on DP 204635 known as 28, Landra Avenue, Mount Colah in the Council of the Shire of Hornsby.

This report has been prepared to request a variation to Clause 4.3 Height of Buildings of the Hornsby Local Environmental Plan 2013 as it applies to the Addbuild proposal plans, job no. 1894/3.1, dated 29/10/2021, submitted under separate cover.

This request responds to NSW Planning & Infrastructure 'guide for varying development standards' which states that development applications seeking to vary a development standard must include a Clause 4.6 written request.

Additionally, several case laws have been considered to justify the strict compliance with the standard is unreasonable and has incorporated as relevant principles identifies in the following judgements:

1. *Winten Developments Pty Ltd v North Sydney Council* [2001] NSW 46
2. *Wehbe v Pittwater Council* [2007] NSWLEC 827
3. *Four2Five Pty Ltd v Ashfield Council* (2015) NSWLEC 90
4. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118

The NSW Planning & Infrastructure guide outlines all matters that need to be considered in Clause 4.6 written requests. Each of these matters has been diligently addressed in Section 4.0 of this report.

CLAUSE 4.6 VARIATION REQUEST -28 LANDRA AVENUE MOUNT COLAH

2 Clause 4.6

Clause 4.6 of Hornsby Local Environmental Plan 2013 enables an exception to the maximum allowable yield standard, subject to consideration of a written request from the applicant justifying the contravention. Relevant extracts of Clause 4.6 of LEP 2021 read as follows:

Clause 4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows—*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless—*
 - (a) *the consent authority is satisfied that—*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Planning Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*

CLAUSE 4.6 VARIATION REQUEST -28 LANDRA AVENUE MOUNT COLAH

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

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

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

Note—

When this Plan was made it did not include of these zones.

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

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

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

(8A) This clause does not allow development consent to be granted for development that would contravene clause 4.4 for a building on land in Zone B2 Local Centre within the Epping Town Centre, identified as "Area 9" on the Floor Space Ratio Map for the following purposes—

- (a) boarding houses,
- (b) group homes,
- (c) hostels,
- (d) shop top housing,
- (e) tourist and visitor accommodation,
- (f) a mixed-use development comprising a combination of uses specified in paragraphs (a)–(e).

(8B) Subclause (8A) and this subclause are repealed at the beginning of 31 July 2024.

CLAUSE 4.6 VARIATION REQUEST -28 LANDRA AVENUE MOUNT COLAH

3 Relevant Case Law

New South Wales Land and Environment Court (NSW LEC) have supplemented the clause 4.6 request with several key case laws that have refined the evolving method of planning principles and 'tests' in which variations to development standards are required to be approached. Reference is made in Section 4.0 of this statement to case *Four2Five Pty Ltd v Ashfield Council* (2015) NSWLEC 90 as summarised here in:

1. *Four2Five Pty Ltd v Ashfield Council* (2015) NSWLEC 90

The judgement of this case emphasised that the proponent must address the following:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances;
- There are sufficient environmental planning grounds to justify contravening the development standard;
- The development is in the public interest;
- The development is consistent with the objectives of the particular standard; and
- The development is consistent with the objectives for development within the zone;

4 Grounds for variation

This section responds to questions provided in Appendix 3 of the NSW Planning & Infrastructure 'guide for varying development standards.'

1. What is the name of the environmental planning instrument that applies to the land?

Hornsby Local Environmental Plan 2013

2. What is the zoning of the land?

The subject site is zoned R2: Low Density Residential

CLAUSE 4.6 VARIATION REQUEST -28 LANDRA AVENUE MOUNT COLAH

3. What are the objectives of the zone?

- *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.*

Comment:

It is considered that the proposal meets the objectives of the Zone R2 Low Density Residential. This opinion is justified on the basis that the proposal will improve the living amenity for the residents and provide much needed space within the home thereby providing for their housing needs while maintaining the low-density residential character.

The proposal meets all other controls that limit bulk and scale including FSR, landscaped area and maximum site coverage, therefore demonstrating that this is a modest development with bulk and scale that is within context of the R2 zoning.

There are no statutory zoning or zone objectives that are an impediment to the granting of approval to the proposed development.

4. What is the development standard being varied?

Building Height – 8.5m maximum

5. Under what clause is the development standard listed in the environmental planning instrument?

'Clause 4.3 Height of buildings ' of the Hornsby Local Environmental Plan 2013

6. What are the objectives of the development standard?

The objectives of this clause are as follows—

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

Comment:

The request seeks a variation to the 8.5 metre maximum height standard prescribed under the LEP.

The proposed works involve the addition of a first floor over the existing ground level residence which also has a lower level one-car garage.

CLAUSE 4.6 VARIATION REQUEST -28 LANDRA AVENUE MOUNT COLAH

The subject site has a steep slope with a gradient excess of 20%, increasing several metres in height from street level to the rear of the property. Given the topography of the site, it is highly likely that when the original single storey dwelling and garage was being built, the site was excavated around the building envelope to provide for the lower level garage.

As a result of the previously excavated garage, the small portion of the proposed first floor addition that is sited directly above the garage, exceeds the maximum building height control.

Figures 1 and 2 depict the extent of the non-compliance with the maximum height standard, being a height of approximately 10.176 metres or 19.7% variation (max). The majority of the building will remain within the maximum 8.5 metre development control standard. Please refer to Sheet No 6 and 7 of job no. 1894/3.1 prepared by Addbuild.

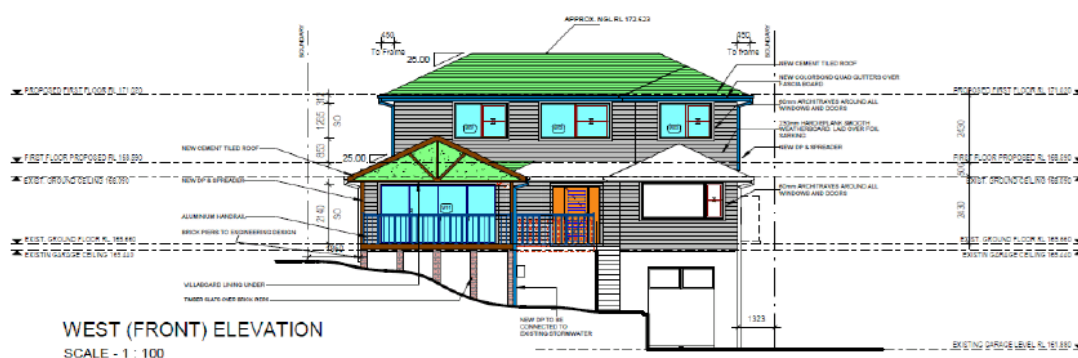


Figure 1: West (front) Elevation (Source - Addbuild)



Figure 1: North (left) Elevation (Source - Addbuild)

CLAUSE 4.6 VARIATION REQUEST -28 LANDRA AVENUE MOUNT COLAH

The proposed development seeks a minor variation to the height control for a portion of the addition as a result of the sites unique topography and existing garage.

The proposal has been designed to create a high quality home that can comfortably accommodate a large family, and maximises the potential of the site while maintaining a residential scale that is appropriate for the low density area. This is confirmed by the fact the proposal meets all other controls that limit bulk and scale including FSR, landscaped area and maximum site coverage, therefore demonstrating that this is a modest development.

Our opinion is that the relatively modest additional height proposed contributes to the delivery of a high quality and better functioning residence on the site. The proposed height variation realises the development potential of the site and provides a higher quality outcome than the alternative complying solution which would create an irregular development form as a result of having to mirror the unique angular topography in order to meet the height control.

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

Given the nature of the proposal which is for additions and alterations, it will not generate any additional vehicular or pedestrian traffic around the site or in the street.

The site is well serviced by public infrastructure including water, waste, electricity and other utilities and the proposal will not have any undue impact upon these. The proposed development is coordinated and orderly urban development.

7. What is the numeric value of the development standard in the environmental planning instrument?

Max. building height 8.5m - From Natural ground level.

Refer Figure 3 below for extract of the Height of the building map from the HELP 2013.

(Map 16, I = 8.5m)

CLAUSE 4.6 VARIATION REQUEST -28 LANDRA AVENUE MOUNT COLAH

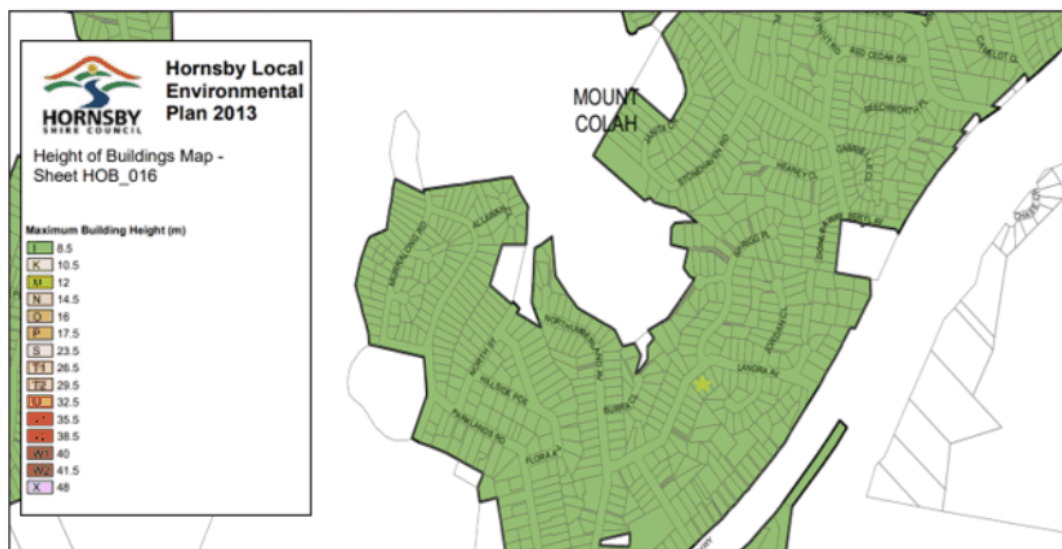


Figure-3: Height of Buildings Maps (Source- Hornsby Local Environmental Plan 2013)

8. What is proposed numeric value of the development standard in your development application?

10.176m

9. What is the percentage variation (between your proposal and the environmental planning instrument)?

Approximately 19.7%

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

As outlined above, this development is in keeping with the low-density residential character and environment, desired by the Council in this area, and the proposal meets all of the objectives of the zone. As demonstrated in the Statement of Environmental Effects, submitted with this application, the proposal generally meets all other planning controls, which reflects that this is a modest addition.

However, as a result of the unique topography of the site and the existing excavated garage, a small portion of the proposed first floor addition exceeds the height control.

The alternative complying solution would create in an irregular and unappealing development form as a result of having to mirror the unique angular topography. Rather, the designer has appropriately designed the proposed addition by considering the overall form of the building and aligning it with the existing ground

CLAUSE 4.6 VARIATION REQUEST -28 LANDRA AVENUE MOUNT COLAH

floor. The proposal will provide a high quality of living and amenity to the occupants of the dwelling and an aesthetically improved dwelling.

Analysis of the impact of the addition on neighbouring properties or on the streetscape reveals it will not create any adverse environmental or amenity related impacts, specifically:

1. No view loss

There are no view corridors to be impacted.

2. No impact on privacy

There is no impact on privacy of the occupants and to the occupants of the neighbouring dwellings.

3. Complies with solar access requirements

The proposal achieves in excess the 50% requirement of sunlight to the private open space of the adjoining property to the south between 9am and 3pm on 21 June. Please refer the shadow diagrams provided with the application.

The development has negligible negative consequences as a result of this minor non-compliance. Further, it meets the objectives of the development standard, and therefore strict compliance with the development standard would be unreasonable and unnecessary.

Clause 4.6 allows Council to vary a control where a written request is made by an applicant demonstrating that two criteria are met. The criteria to be satisfied is that:

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

In this circumstance, it is unreasonable and unnecessary to strictly comply with the building height control given that the resulting addition will be absent of any additional negative environmental or planning outcomes. Rather, the merit - based justification provided in this request provides strong evidence that the proposed height variation would have clear positive outcomes.

The proposed development ultimately results in a planning outcome that meets Council's desired intent for the area.

For the reasons stated above, it is argued that the variation deserves support as it has no negative and significantly noticeable impact on the streetscape, the surrounding locality and the neighbouring properties.

11. How would strict compliance hinder the attainment of the objects specified in Section 1.3(a) and (c) [previously s5(a)(i) and (ii)] of the Act.

CLAUSE 4.6 VARIATION REQUEST -28 LANDRA AVENUE MOUNT COLAH

1.3 (a) To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.

1.3 (c) To promote the orderly and economic use and development of land.

Comment: The proposed dwelling is a well-designed and orderly development providing a desirable and improved housing situation for the residents while maintaining the low-density residential character of the built environment.

The proposal is a more efficient and orderly development on the land that is of high-quality architectural design that maximises the sites development potential along with providing improved housing stock for the community in the locality.

As such strict compliance in this regard would limit the above objects being fully attained.

12. Is the development standard a performance- based control? Give details.

The objectives of the development standard provide the controls to allow a performance-based solution. For the reasons outlined herein, it is demonstrated the proposal meets the objectives of the development standard, therefore Council should consider "compliance to the standard unreasonable in the circumstances of the development" based on the merits of the proposal.

13. Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?

Yes, please refer to answers in 10, 11 and 12 preceding.

14. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.

Yes, Clause 4.6 enables a development standard within an LEP to be varied, providing sufficient and compelling arguments based on sound planning rationale and legislation are put forward to support the variation.

As set out in Four2Five, when a development standard is sought to be varied, there is an onus on the Applicant to demonstrate that there are "sufficient environmental planning grounds" such that compliance with the development standard is unreasonable or unnecessary and these environmental planning grounds must be

CLAUSE 4.6 VARIATION REQUEST -28 LANDRA AVENUE MOUNT COLAH

particular to the circumstances of the proposed development rather than grounds that could reasonably apply a similar development on any other land.

Accordingly, the following environmental planning grounds are applicable to the particular circumstances of the proposed development and justify varying the development standard under Clause 4.6:

- The non-compliance arises solely as a result of the existing excavated garage and is only for the small portion of the first floor addition that is site directly over the garage. The majority of the proposal complies with the height control.
- The proposed height variation provides a higher quality outcome than the alternative complying solution which would create an irregular development form as a result of having to mirror the unique angular topography.
- The request for the variation of 19.7% does not prevent compliance with all other LEP controls. All other controls that limit bulk and scale including FSR, landscaped area and maximum site coverage, therefore demonstrating that this is a modest development.
- The proposal is consistent with the objectives of the height standard, contained in Clause 4.3 of the LEP.
- The departure from the maximum height standard will not result in any significant adverse impact upon the amenity of the adjoining neighbours in terms of overshadowing, loss of privacy or views.
- The non-compliance is as a result of the sites unique topography and particular development history. No precedent will be set that would allow unjustified non-compliance with the standard in future applications.
- The proposed variation to the height standard does not conflict with any matters of State or regional environmental planning significance, nor does it conflict with any State Planning Policies or Ministerial directives. The significance of the non-compliance is acceptable in the context of the overall development of the broader Hornsby area.
- The public benefit would be best served by approval of the development application under consideration, given the absence of any demonstrable adverse impacts resulting from the proposal and that a higher quality outcome would be provided than the alternative complying solution.

CLAUSE 4.6 VARIATION REQUEST -28 LANDRA AVENUE MOUNT COLAH

5 Conclusion

The non- compliance to the maximum building height is considered acceptable based on the extensive and accepted planning rationale outlined herein.

Specifically, it is our view that the variation does not:

- Hinder the attainment of the objects specified in 1.3(a) and (c) [previously s5(a)(i) and (ii)] of the Environmental Planning and Assessment Act 1979;
- Raise any matter of significance for State or Regional planning; or
- Create any unreasonable precedent.
- Impact unreasonably on adjoining properties.

As shown herein, the development is still capable of satisfying the relevant objectives notwithstanding the minor height variation. and having regard to the facts outlined in this submission it is our view that it is both unreasonable and unnecessary for Council to insist upon compliance with the prescribed maximum building height of 8.5m in this instance.

Melissa Neighbour
Principal Planner
SKY Town Planning
December 2021

7 ELECTRONIC - DA/1374/2021 - CHANGE OF USE OF A SHED FOR THE PURPOSES OF A RURAL SUPPLIES BUSINESS - 377-389 GALSTON ROAD, GALSTON

EXECUTIVE SUMMARY

DA No: DA/1374/2021 (Lodged on 21 December 2021)

Description: Change of use of a fruit packing shed to a rural supplies business

Property: Lot 4 DP 1231874, No. 377-389 Galston Road, Galston

Applicant: Mr Ryan Gill

Owner: Mr John Bouchahine and Mrs Rozette Bouchahine

Estimated Value: \$20,000

Ward: A Ward

- The application involves change of use from a fruit packing shed to a rural supplies business.
- The proposal complies with the relevant provisions of *Hornsby Local Environmental Plan 2013* and *Hornsby Development Control Plan 2013*.
- 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 proposed rural supplies business is to be operated by a current Hornsby Shire Councillor. An independent assessment of the application has been conducted by Octagon Planning.
- It is recommended that the application be approved.

RECOMMENDATION

THAT Development Application No. DA/1374/2021 for the change of use of a fruit packing shed to a rural supplies business at Lot 4 DP 1231874, No. 377-389 Galston Road, Galston be approved subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP18/22.

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 proposed rural supplies business is to be operated by a current Hornsby Shire Councillor. The report by *Octagon Planning* is held at Attachment 1 of this report.

CONCLUSION

The application proposes the change of use of a fruit packing shed to a rural supplies business.

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 application in accordance with the recommendation in the report prepared by *Octagon Planning* 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 is complementary to surrounding land uses and does not create unreasonable environmental impacts to adjoining development with regard to noise, traffic, parking.

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*.

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

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.   Locality Plan
2.   Consultant LPP Report
3.   Architectural Plans

File Reference: DA/1374/2021

Document Number: D08358243

ITEM 7

SCHEDULE 1**ITEM 7****GENERAL CONDITIONS**

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

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

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

1. Approved Plans and Supporting Documentation

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

Plan No.	Plan Title	Drawn by	Dated	Council Reference
1 of 2	Site Plan	Arcadian Designs	October 2021	
2 of 2	Ground Floor Plan	Arcadian Designs	October 2021	

Document Title	Prepared by	Dated	Council Reference
Plumbing Inspection Letter	Peter R Thomson Plumbing	21.02.2022	D08358009
Wastewater System Diagram	Arcadian Designs	Undated	D08354216
Waste Management Plan	Balance Planning	02.11.2021	D08320481

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS**2. 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 temporary chemical closet approved under the *Local Government Act 1993*.

- ii) Have an on-site effluent disposal system approved under the *Local Government Act 1993*.

3. Garbage receptacle

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

REQUIREMENTS DURING FIT OUT WORKS

4. Internal Fit-out Construction Work Hours

- a) All works on site involving the use of power tools must only occur between 7am and 5pm Monday to Saturday.
- b) No work involving the use of power tools is to be undertaken on Sundays or public holidays.

5. 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.

6. 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.

7. Maintenance of Public Footpaths

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

8. Fire Safety Measures

To ensure the protection of persons using the building, upon completion of the fit out, fire extinguishers shall be installed complying with Australian Standard AS 2444 and E1.6 of the Building Code of Australia.

9. Fire Safety Statement – Final

Upon completion of the fit out, the owner must provide to Council with a certificate in relation to each fire safety measure implemented in the building.

OPERATIONAL CONDITIONS**10. Use of Premises**

The development approved under this consent shall be used for a rural supplies business and not for any other purpose without Council's separate written consent.

11. No Approval of Signage

This consent does not permit the erection or display of any advertising signs.

12. Hours of Operation

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

Monday to Friday 7.30 am to 5.00 pm

Saturday, Sunday and Public Holidays 8.30 am to 1.00 pm

b) All deliveries must take place within the approved hours of operation.

13. Storage of Flammable and Combustible Goods

Flammable and combustible liquids must be stored in accordance with Australian Standard AS1940 Storage and handling of flammable and combustible liquids. A bund wall must be constructed around all work and liquid storage areas to prevent any spillage entering into the stormwater system. The bunded area must provide a volume equal to 110% of the largest container stored and graded to a blind sump so as to facilitate emptying and cleansing.

14. Noise – Plant and Machinery

a) 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.

b) 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.

15. 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 80A 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). (HDCP 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.

Covenants

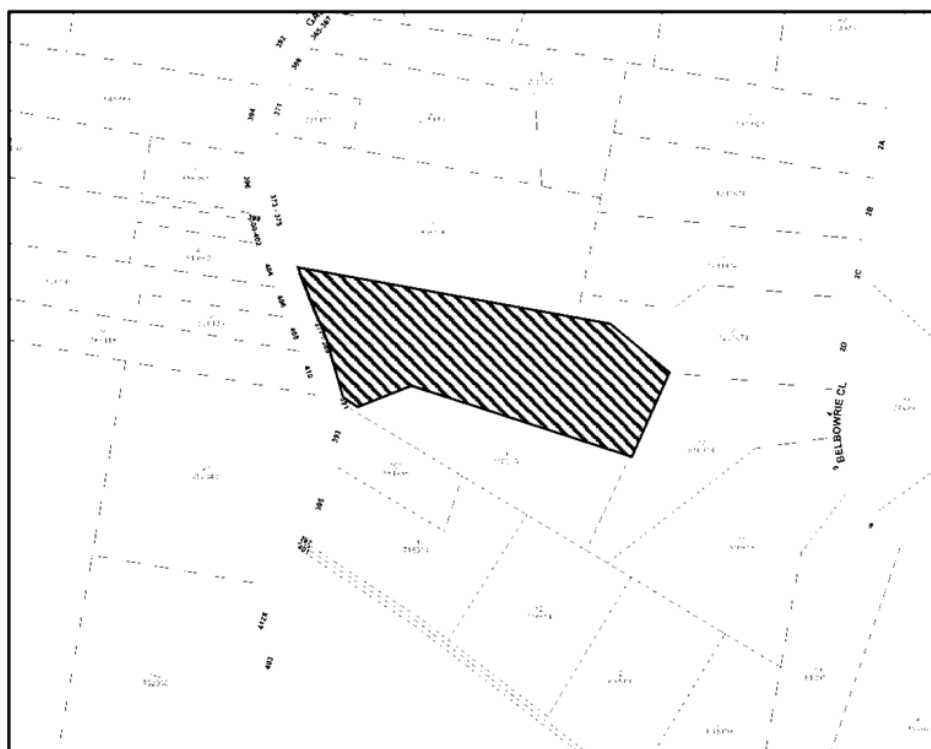
The land upon which the subject building is to be constructed may be affected by restrictive covenants. Council issues this approval without enquiry as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this consent. Applicants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

Advertising Signage – Separate DA Required

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

TfNSW Advisory Note

All buildings and structures together with any improvements integral to the future use of the site must be located wholly within the freehold property unlimited in height or depth along the Galston Road boundary.



LOCALITY PLAN

DA/1374/2021

No. 377-389 Galston Road Galston

ATTACHMENT 1 - ITEM 7

CONSULTANT ASSESSMENT REPORT

DA No:	DA/1374/2021 (Lodged on 21/12/2021)
Description:	Change of use of a fruit packing shed to a rural supplies business
Property:	Lot 4 DP1231874, No. 377-389 Galston Road, Galston
Applicant:	Mr Ryan Gill
Owner:	Mr John Bouchahine and Mrs Rozette Bouchahine
Estimated Value:	\$20,000

- The application involves change of use from a fruit packing shed to a rural supplies business.
- The proposal complies with the relevant provisions of Hornsby Local Environmental Plan 2013 and Hornsby Development Control Plan 2013.
- 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 proposed rural supplies business is to be operated by a current Hornsby Shire Councillor. An independent assessment of the application has been conducted by Octagon Planning.
- It is recommended that the application be approved.

BACKGROUND

On 3 December 1987, Council approved DA/391/1987 for the erection of a fruit packing shed containing a fruit stall at Lot 3 DP 537983, No. 389 Galston Road.

On 16 November 1988, Council approved building application 1608/88 for a packing shed and a fruit stall on the subject site.

On 16 February 2017, Council approved DA/1342/2016 for the Torrens title subdivision of one lot into four. This subdivision created the subject site.

On 30 May 2017, Council approved DA/1342/2016/A to modify the approved subdivision by removing the requirement for an inter-allotment drainage easement.

On 26 February 2018, Council approved DA/1342/2016/B to further modify the approved subdivision by amending a condition relating driveway construction.

SITE

The site is located on the eastern side of Galston Road, Galston. The site is irregularly shaped, has an area of 3.782 hectares and falls 25 metres from the west (front) to the east (rear). The development area is located close to the road frontage and is relatively level.

The largest structure on the site is the fruit packing shed, which is set back approximately 21 metres from the front boundary and has a small parking area in front of the building. Behind the fruit packing

shed is a detached fibro dwelling which was relocated from the front of the site in the 1980s. Several sheds and ancillary buildings of varying sized are dotted around the site. A strip of remnant vegetation runs through the middle of the site. The majority of the site is covered by established orchards.

The fruit packing operation has relocated to a new building at 373-375 Galston Road, which was approved by Council as part of DA/276/2015 on 18 September 2015.

The site is identified as bushfire prone.

The waterway known as Cabbage Tree Hollow runs through the eastern portion of the site. The site is a flood control lot and is affected by an overland flow path corresponding to the location of Cabbage Tree Hollow.

The site contains no heritage items and is not in a heritage conservation area. It is located opposite local heritage item no. 439 'Galston Park and memorial' at 412X Galston Road.

The site is burdened by a Positive Covenant requiring all affected lots to be fenced, revegetated and maintained in accordance with an approved Vegetation Management Plan.

The site is host to vegetation characteristic of Blackbutt Gully Forest.

The site is not served by Sydney Water sewers.

PROPOSAL

The application proposes the change of use of a former fruit packing shed to a rural supplies business. The proposal is confined to the fruit packing shed and associated customer parking area at the front of the property. No development is proposed to any other building or structure on the site.

The Statement of Environmental Effects describes the proposed operation as follows:

The rural supplies business will retail pest control products, fertilizers, pet husbandry, poultry waterers and feeders, treatments, fencing, irrigation, feeds, chainsaws, edgers, electronic pruners, etc.

The smaller rural supplies products will be stored on shelving at the internal perimeter of the building and bulkier products will be stored on pallets within a pallet zone at the centre of the shop floor.

No production or processing of supplies will be carried out on site, rather product will be sourced from wholesalers and delivered to the site where it will be stored awaiting collection by, or distribution to, customers.

Operations and Management	
Operating Hours	Monday to Friday – 7.30am to 5.00pm Saturday and Sunday – 8.30am to 1.00pm
Staff	Up to 4 employees at any one time
Parking – Customers	6 existing parking spaces in front of existing building
Parking – Staff	Informal unpaved unmarked parking area at the rear of the packing shed
Deliveries	Up to 2 times a day during operating hours Maximum vehicle size: medium rigid vehicle (MRV)

Vehicle access would be via Galston Road.

No trees would be removed or impacted by the development.

No signage is proposed as part of this application.

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 Plan sets out a number of Planning Priorities. Planning Priority N18 - Better managing rural areas is relevant to this application. In giving effect to A Metropolis of Three Cities, this Planning Priority delivers on the following objective and the corresponding strategies:

- *Objective 29 - Environmental, social, and economic values in rural areas are protected and enhanced.*

The proposed change of use of a fruit packing shed to a rural supplies business would not be inconsistent with this objective.

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 RU4 Primary Production Small Lots (with a small area in the south-eastern corner zoned C3 Environmental Management) under the HLEP. The proposed development is located wholly on the RU4 land. The objectives of the RU4 zone are:

- *To enable sustainable primary industry and other compatible land uses.*
- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage land uses that support primary production, including low-scale and low-intensity tourist and visitor accommodation and the provision of farm produce direct to the public.*
- *To ensure that development does not unreasonably increase the demand for public infrastructure, services or facilities.*

The proposed development is consistent with these objectives as it supports primary production, promotes diversity and employment in relation to primary industry, minimises conflict between land uses in this zone and adjoining zones (by locating a business that supplies primary industry within the zone designated for primary industry), and does not unreasonably increase demand for public infrastructure, services or facilities.

The proposed development is defined as rural supplies. The HLEP provides the following definition:

rural supplies means a building or place used for the display, sale or hire of stockfeeds, grains, seed, fertilizers, veterinary supplies and other goods or materials used in farming and primary industry production.

The proposed development is permissible in the zone with Council's consent.

2.1.2 Minimum lot size

Under Clause 4.1 (Minimum lot size) of the HLEP the minimum lot size is 2 hectares. No change is proposed to the existing lot size of 3.782 hectares.

2.1.3 Height of buildings

Under Clause 4.3 of the HLEP the maximum permissible height for the subject site is 10.5m. There is no change proposed to the existing building height, which is less than 10.5m.

2.1.4 Floor space ratio

No maximum floor space ratio applies to the site under Clause 4.4 of the HLEP.

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. Heritage item 439 Galston Park and Memorial is located on the opposite side of the road at 412X Galston Road.

The statement of significance for the park is as follows:

Local park from possibly late 1880's conserving mature indigenous and cultural trees and war memorial notable in local landscape and along main road. Of local significance.

The physical description is as follows:

Park with central oval and surrounded by indigenous bush trees and some cultural planting. Park is setting for recently restored and enlarged war memorial of yellow sandstone 4m high with carved stone cannon surmounted on top and with carved raised stone lettering - GALSTON HONOUR ROLL (monument very similar to that at Glenorie). 60 names let into white marble tablets. c1920. Indigenous trees conserved include Blackbutt (23m) Grey gums Smooth Bark Angophora (18m) and Stringybark (20m) from c1890. Also cultural planting of Radiata Pines (15m) of windswept form from c1930 and Brush Box (15m) from c1950's. Line of Scoparia Gums (7m) from c1980's. Somewhat out of character. [edited to correct spelling errors]

Under Clause 5.10(4) of the HLEP:

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

The memorial is approximately 70 metres away from the packing shed building and there is a clear line of sight between the two structures. The oval is approximately 100 metres away from the shed. The proposed development will not significantly impact any views to or from the heritage item; the only visual change will be new signage which will be small in scale relative to the size of the building. The proposed development does not preclude the heritage item's ongoing use as a public space and memorial. The proposed development has no impacts on heritage and no further assessment of heritage is warranted.

2.2 State Environmental Planning Policy No. 55 Remediation of Land

State Environmental Planning Policy No. 55 (SEPP 55) requires that consent must not be granted to the carrying out of any development on land unless Council has considered whether the land is contaminated or requires remediation for the proposed use.

A search of Council's records and aerial photos indicates the site has a history of agricultural use. The Environment Protection Authority's *Managing Land Contamination Planning Guidelines* 1998 lists agricultural/horticultural use as potentially contaminating activities.

No building works are proposed. No excavation, land modification or land disturbance works are proposed. Given penetration of the ground surfaces is not proposed, and the proposed use as a rural supplies facility, further investigation of land contamination is not deemed necessary.

2.3 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The Statement of Environmental Effects states:

No new signage is proposed as part of this application. The existing wall mounted sign will be replaced by a new wall sign of the same size and configuration and is exempt development under the provisions of Part 2 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 [the Codes SEPP].

In response to a request for additional information the applicant clarified that the development application does not seek approval for any signage and provided the following detail:

The existing wall mounted sign will be replaced by a new wall sign of the same size and configuration and an additional sign of an equivalent scale will be positioned on the northern elevation.

The existing signage is 2200mm wide and 1100mm high, resulting in an area of 2.42m². Part 2 of the Codes SEPP allows for up to four (4) wall signs with a maximum area of 2.5m² so it can be reasonably expected that the proposed signage is capable of complying with the Codes SEPP. Development approval is therefore not required for the signage.

2.4 State Environmental Planning Policy (Infrastructure) 2007

The subject site has frontage to Galston Road, a classified road. Under Clause 101 of the Infrastructure SEPP, a consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

- (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The existing fruit packing shed is accessed via a driveway off Galston Road. No change to existing vehicular access is proposed. There will be no increase in smoke or dust emissions or a significant increase in the nature, volume or frequency of vehicles using the road to access the land. The proposal will not increase the effects of road noise on the existing dwelling on site.

2.5 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.

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

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

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitate development that is

permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

2.7 Hornsby Development Control Plan 2013

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the Hornsby Development Control Plan 2013 (HDCP).

Part 2 of HDCP sets out controls for development in Hornsby's rural areas. The controls primarily relate to the built form, specific uses such as intensive plant agriculture, animal boarding or training establishment, rural industries and rural workers' dwellings, village masterplans, Dural Village and extractive industries. As the proposal is for a change of use there are no building works proposed that need to comply with HDCP, and the proposed use has no specific controls in Part 2 of HDCP.

2.7.1 Vehicle Access and Parking

Section 1C.2.1 of HDCP sets out controls for transport and parking. There is no parking rate specified for rural supplies in the relevant tables; there are 6 spaces on site including an accessible space. In accordance with HDCP, vehicles can enter and leave the site in a forward direction. Loading and manoeuvring areas are located at the rear of the shed and are not visible from the street. These areas are not line marked, which is consistent with the rural context and the infrequency of deliveries.

Additional information was requested from the applicant regarding staff parking. The applicant responded as follows:

An amended site plan indicating a staff parking zone is supplied with this correspondence.

The staff parking zone is "informal" in the sense that the area is not proposed to be paved or line marked.

Staff have historically parked in this location as it is convenient and avoids conflict with delivery and services vehicles. We submit that it is appropriate to continue this parking arrangement owing to modest scale of the proposal and rural context.

The proposed parking arrangements are considered acceptable.

2.7.2 Wastewater

Section 1C.2.4 of HDCP sets out controls for effluent disposal. The subject site is not connected to Sydney Water sewer. Additional information was requested from the applicant to demonstrate that the existing wastewater system is adequate for the proposed use.

The applicant provided a diagram showing the location of the on-site wastewater system and certification from a plumber confirming that the system has capacity to cater for the anticipated waste volumes associated with the single dwelling and rural supplies use. It is noted that the amenities within the rural supplies building will not be available to customers.

The proposal is considered satisfactory with regard to wastewater as the overall system load will remain substantially the same.

2.7.3 Waste Management

Section 1C.2.3 of HDCP sets out desired outcomes and prescriptive measures for waste management.

The Statement of Environmental Effects states:

The rural supplies business will generate modest volumes of waste associated with product packaging and incidental office and customer waste.

Waste and recycling bins will be stored to the rear of the former packing shed on an existing concrete slab adjacent to the cool room. This slab is large enough to cater for the required number of bins and will not be visible from public places.

A private contractor will be appointed to dispose of general waste and recycling.

A Waste Management Plan was submitted with the Development Application which satisfies the requirements of HDCP and is included as an approved supporting document in Schedule 1.

2.7.4 Bushfire

The desired outcomes of Part 1C.3.1 Bushfire of the HDCP are to encourage “development that is located and designed to minimise the risk to life and property from bushfires” and “development that balances the conservation of native vegetation and bushfire protection”.

The Galston Road frontage of the site and most of the eastern portion of the site is mapped as bushfire vegetation buffer. The south-eastern corner is mapped as vegetation category 1. The portion of the site that contains the former fruit packing shed is not mapped as bushfire prone.

The existing approved fruit packing shed is of steel frame construction and the cladding is non-combustible materials including brick and steel. The area around the shed is cleared and managed.

The proposal meets the desired outcomes of Part 1C.3.1 Bushfires under the HDCP and is considered acceptable.

2.8 Section 7.12 Contributions Plan

Hornsby Shire Council Section 7.12 Contributions Plan 2019-2029 does not apply to the development as the estimated costs of works is less than \$100,000.

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 Watercourse

The waterway known as Cabbage Tree Hollow runs through the eastern portion of the site, approximately 250 metres away from the proposed rural supplies store. The proposed development is not anticipated to have any impact on this waterway.

3.2 Built Environment

3.2.1 Traffic

It is expected that the proposal would not result in any noticeable increase in traffic; it may even reduce overall vehicle movements by locating a rural supplies store in the middle of a rural area, thus reducing distance travelled.

3.2.2 Noise and Vibration

The proposed operating hours of the rural supplies business are 7:30am to 5pm on weekdays and 8:30am to 1pm on weekends.

The SEE states that deliveries would be made by a medium rigid vehicle (MRV) or a utility vehicle up to twice per day but limited to within operating hours. Further, that the distances from the business to the nearest sensitive receivers is great enough to ensure that noise from the use of a forklift would cause no adverse impact to acoustic amenity.

It is considered that the nearest sensitive receivers would be the dwelling house on the subject site located approximately 30 metres to the north-east and the dwelling house on No. 391 Galston Road located approximately 35 metres to the south.

Consequently, to ensure that the rural supplies business would not have unreasonable acoustic impacts, a condition is recommended that all noise generated must be attenuated to prevent noise being emitted to adjoining residences and not exceed 5dBA above background levels.

3.2.3 Chemical Storage

Additional information submitted by the applicant dated 22 February 2022 states that the rural supplies business would stock up to 500 litres of herbicides, pesticides and fungicides. These materials are recognised as Class 3 dangerous goods under the Australian Dangerous Goods Code.

On 3 March 2022 it was further clarified that there would be no more than 500 litres (combined volume) of Class 3 dangerous goods stocked on site at any given time.

Council's environmental assessment has determined that the volume of goods stocked by the business would not trigger assessment against the State Environmental Planning Policy No. 33 Hazardous and Offensive Development. Nevertheless, to limit potential hazards, a condition is recommended requiring the goods to be stored in accordance with Australian Standards and in an appropriately bunded storage area.

3.3 Social Impacts

The proposal will create a small number of jobs in the local community. This is consistent with the State Government's *Greater Sydney Region Plan - A Metropolis of Three Cities* which identifies the need to provide an additional 689,000 new jobs by 2031.

While the development is a rural use in a rural area, it is noted that there is a bus stop directly outside the subject site with a corresponding stop in the other direction approximately 100m away. Buses run to Berrilee, Glenorie Shops, Castle Hill and Pennant Hills Station. The rural supplies store will therefore be accessible to customers and staff who do not have access to a car.

It is considered that the proposal would have a positive social impact.

3.4 Economic Impacts

The Galston area is primarily rural residential and there are many hobby farms, farms, orchards and plant nurseries. The proposed development is a retail store specifically targeted to the local community. The proposed development will create a small number of jobs for the local area.

It is considered that the proposal would have a positive economic impact.

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 considered to be capable of accommodating the proposed development and is in an appropriate location for the proposed use. The scale of the proposed development is consistent with the capability of the site and is considered acceptable.

4.1 Flooding

The waterway known as Cabbage Tree Hollow runs through the eastern portion of the site. The site is a flood control lot and is affected by an overland flow path corresponding to the location of Cabbage Tree Hollow. Due to the size of the site, the development area is a significant distance away from the overland flow path and is not subject to flood risk.

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 22 December 2021 and 24 January 2022 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 (blue) relative to the development site (red).



5.2 Public Agencies

The development application was referred to the following Agencies for comment.

5.2.1 Transport for NSW

The proposed development was referred to Transport for NSW (TfNSW) for comment in accordance with clause 101 of the State Environmental Planning Policy (Infrastructure) 2007. TfNSW provided the following response:

TfNSW has reviewed the submission and advises that a strip of land has previously been dedicated as Public Road by private subdivision (DP 537987), along the Galston Road frontage of the subject property, as shown by yellow colour on the attached Aerial – "X".

As such, TfNSW raises no objections to the proposed change of use provided all buildings and structures, together with any improvements integral to the future use of the site are wholly within the freehold property unlimited in height or depth along the Galston Road boundary.

6. THE PUBLIC INTEREST

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

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

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

CONCLUSION

The application proposes change of use of a fruit packing shed to a rural supplies business.

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 is complementary to surrounding land uses and does not create unreasonable environmental impacts to adjoining development with regard to noise, traffic, parking

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.

Octagon Planning

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RESPONSIBLE OFFICER

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

RECOMMENDATION

THAT Development Application No. DA/1374/2021 for change of use from a fruit packing shed to a rural supplies business at Lot 4 DP1231874, No. 377-389 Galston Road, Galston be approved subject to the conditions of consent detailed in Schedule 1 of this report.

ATTACHMENT 2 - ITEM 7

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
1 of 2	Site Plan	Arcadian Designs	22/02/2022	
2 of 2	Ground Floor Plan	Arcadian Designs	22/02/2022	

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
Plumbing Inspection Letter	Peter R Thomson Plumbing	21/02/2022	D08358009
Wastewater System Diagram	Arcadian Designs	22/02/2022	D08354216
Waste Management Plan	Balance Planning	02/11/2021	D08320481

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS**2. 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 temporary chemical closet approved under the *Local Government Act 1993*; or

- ii) have an on-site effluent disposal system approved under the *Local Government Act 1993*.

3. Garbage Receptacle

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

REQUIREMENTS DURING FIT OUT WORKS
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4. Internal Fit-out Construction Work Hours

- e) All works on site involving the use of power tools must only occur between 7am and 5pm Monday to Saturday.
- f) No work involving the use of power tools is to be undertaken on Sundays or public holidays.

5. 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.

6. 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.

7. Maintenance of Public Footpaths

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

8. Fire Safety Measures

To ensure the protection of persons using the building, upon completion of the fit out, fire extinguishers shall be installed complying with Australian Standard AS 2444 and E1.6 of the Building Code of Australia.

9. Fire Safety Statement – Final

Upon completion of the fit out, the owner must provide to Council with a certificate in relation to each fire safety measure implemented in the building.

OPERATIONAL CONDITIONS**10. Use of Premises**

The development approved under this consent shall be used for a rural supplies business and not for any other purpose without Council's separate written consent.

11. No Approval of Signage

This consent does not permit the erection or display of any advertising signs.

12. Hours of Operation

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

Monday to Friday 7.30 am to 5.00 pm

Saturday, Sunday and Public Holidays 8.30 am to 1.00 pm

b) All deliveries must take place within the approved hours of operation.

13. Storage of Flammable and Combustible Goods

Flammable and combustible liquids must be stored in accordance with *Australian Standard AS1940 Storage and handling of flammable and combustible liquids*. A bund wall must be constructed around all work and liquid storage areas to prevent any spillage entering into the stormwater system. The bunded area must provide a volume equal to 110% of the largest container stored and graded to a blind sump so as to facilitate emptying and cleansing.

14. Noise – Plant and Machinery

a) 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.

b) 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.

15. 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 80A 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). (HDCP 1B.6.1.c).

Disability Discrimination Act 1992

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

Covenants

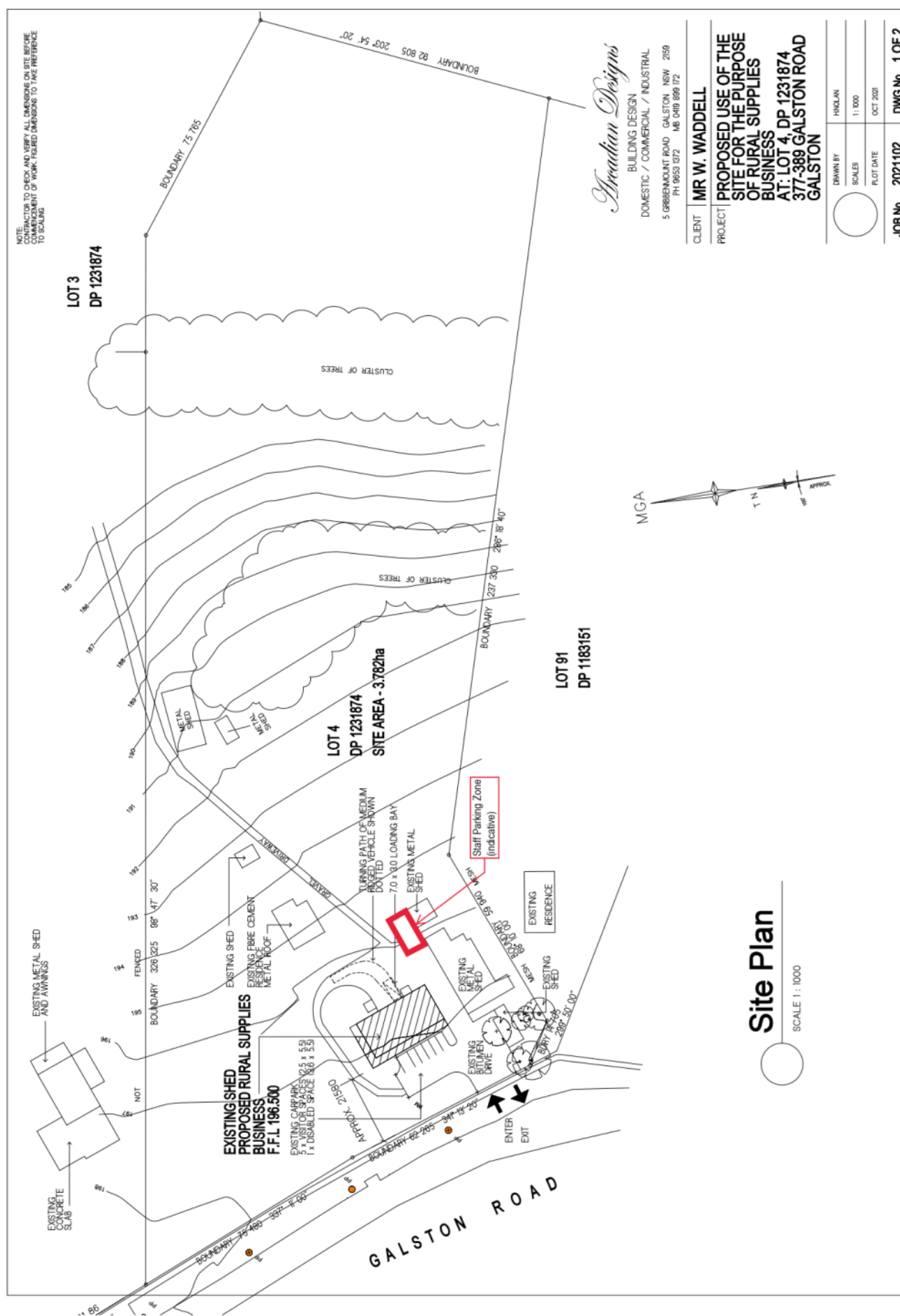
The land upon which the subject building is to be constructed may be affected by restrictive covenants. Council issues this approval without enquiry as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this consent. Applicants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

Advertising Signage – Separate DA Required

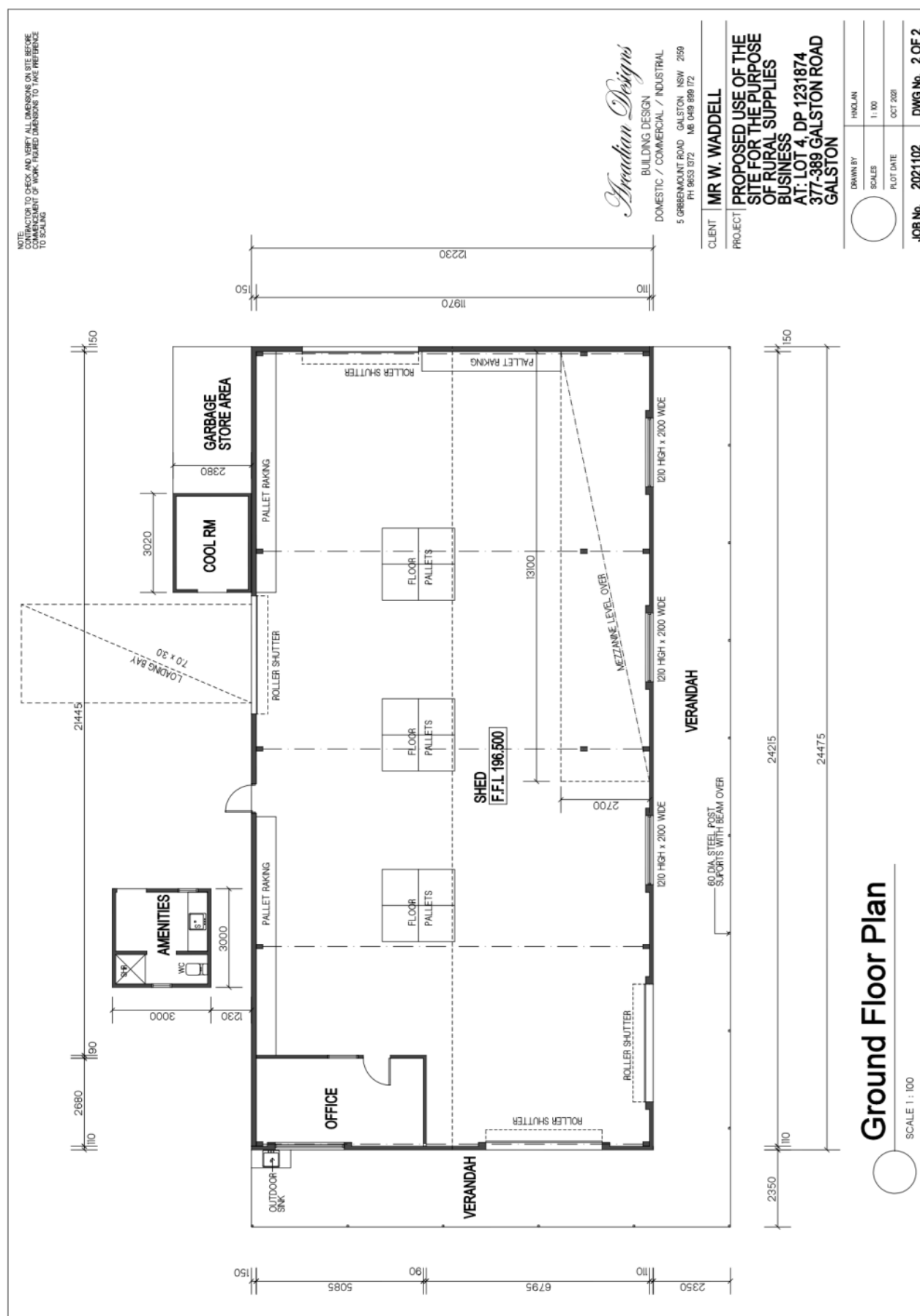
This consent does not permit the erection or display of any advertising signs. Most advertising signs or structures require development consent. Applicants should make separate enquiries with Council prior to erecting or displaying any advertising signage.

TfNSW Advisory Note

All buildings and structures together with any improvements integral to the future use of the site must be located wholly within the freehold property unlimited in height or depth along the Galston Road boundary.



ATTACHMENT 3 - ITEM 7



ATTACHMENT 3 - ITEM 7

8 ELECTRONIC - REPORTING DEVELOPMENT APPLICATIONS FOR DETERMINATION BY THE HORNSBY LOCAL PLANNING PANEL OVER 180 DAYS

EXECUTIVE SUMMARY

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

RECOMMENDATION

THAT the contents of LPP Report No. LPP19/22 be received and noted.

PURPOSE

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

DISCUSSION

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

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

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

The changes will speed up panel determinations by:

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

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

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

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

CONCLUSION

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

RESPONSIBLE OFFICER


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

JAMES FARRINGTON

Director - Planning and Compliance

Planning and Compliance Division

Attachments:

1.  All LPP over 180 days - March



2022

File Reference: F2013/00295-003

Document Number: D08363571

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

DA No.	Proposal	Address	Ward	Reason	Est. Date to LPP	Advice to Chair	No. Days at 30/3
DA/416/2020	10-12 storey mixed use building accommodating retail tenancies at the ground floor, commercial tenancies at first floor, a RACF on Levels 3-11, residential apartment on Level 12 and strata subdivision	228-234 Pacific Highway Hornsby	B	>10% contravention of height & FSR development standard	April	Report being prepared for determination by the Panel in accordance with the LPP resolution on 15 December 2021.	667
DA/1146/2020	Torrens title subdivision of 1 into 10	90-92 Franklin Road Cherrybrook	C	VPA	July	Revised VPA information is currently under review for referral to Council.	464
DA/700/2021	Construction of a dwelling house	14A Nancy Street Galston	A	council staff	May	Revised plans outstanding and will require notification when submitted	259
DA/1017/2021	Child Care Centre	94 David Rd, Castle Hill	C	>10 submissions	May	Under assessment	182
DA/1022/2021	Torrens title subdivision of 1 lot into 64	36-56 David Road Castle Hill	C	VPA	July	Meeting to be held with applicant to discuss VPA and identify potential amendments prior to referral to Council.	181

ATTACHMENT 1 - ITEM 8