



DETERMINATION BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

**Wednesday 27 July 2022
at 4:00pm**



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2 DA/368/2022 - ALTERATIONS AND ADDITIONS TO AN EXISTING SENIORS LIVING DEVELOPMENT AT ROWLAND VILLAGE - 301-305 GALSTON ROAD, GALSTON

EXECUTIVE SUMMARY

DA No:	DA/368/2022 (Lodged on 12 April 2022)
Description:	Demolition of retaining wall and the erection of a lift structure with internal and external alterations and additions to an existing seniors living development
Property:	Lot 1 DP 713848, Lot 2 DP 713848, No. 301-305 Galston Road, Galston - Rowland Village
Applicant:	Miss Vanessa Farrell
Owner:	RSL Lifecare Limited
Estimated Value:	\$522,500
Ward:	A Ward

- The proposal complies does not comply with the Height of Buildings development standard under 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 to contravene the development standard by 11.4% exceedance of the 10.5 metre height control. The submission is considered well founded and is supported.
- As the development exceeds the height of buildings standard by more than 10% and is non-compliant with a non-numerical development standard, the Hornsby Shire Local Planning Panel is the delegated authority which is required to determine the proposal.
- No submissions have been received in respect of the application.
- It is recommended that the application be approved.

RECOMMENDATION

THAT the Hornsby 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/368/2022 for demolition of retaining wall and the erection of a lift structure with internal and external alterations and additions to an existing seniors living development at Lot 1 DP 713848, Lot 2 DP 713848, Nos. 301-305 Galston Road, Galston (Rowland Village) subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP36/22.

BACKGROUND

On 15 December 1983, Council approved DA/276/1983 for a residential aged care facility (RACF) comprising 200 self-contained units, 60 hostel serviced units and 30-40 bed nursing home principally on Lot 1 DP 713848 including a number of ancillary structures.

The RACF has undergone various renovations and extensions over the last 50 years with extensions approved between 1992 and 2016. The approved applications involved alterations and additions, construction and subsequent relocation of a shed and access ramps.

The last major extension was approved on 12 October 2016, being DA/642/2016 for the alterations and additions to an aged care hostel within the eastern elevation of wing 3.

SITE

The site consists of Lots 1 and 2 in DP 713848, has an area of 22.49 hectares and is located on the southern side of Galston Road, Galston. The site experiences an overall fall of more than 20% toward the centre of the site.

Lot 1 has an area of 7.7 hectares and is occupied by "Rowland Village", an aged and differently abled housing facility (approved under DA/276/1983), which includes self-contained, serviced/hostel and nursing home accommodation as well as administration, support and recreational facilities.

Lot 2 within the site comprises native bushland, a wastewater disposal system and a golf course. A vegetable patch is located on the northern section of Lot 2. The shed and the vegetable garden are ancillary to the retirement village.

Council records indicate the site is bushfire prone and is not flood prone.

The site is burdened by a right of carriage way variable width and an easement for transmission line.

The site is located in a rural zone and is surrounded by agricultural land, plant nurseries, low density residential developments and the Berowra Valley Regional Park to the south. Galston Shopping Village is located 750m west of the site.

The site does not contain a heritage listed item and is not located within a heritage conservation area. The site is located within the vicinity of heritage listed items No. 430 - 2 Crosslands Road (House) and No. 436 - 295 Galston Road (house), as identified in Schedule 5 Environmental Heritage of the Hornsby Local Environmental Plan 2013.

PROPOSAL

The application proposes alterations and additions to the existing RACF comprising the following works:

- Erection of a lift structure attached to the existing building including:
 - 2600mm x 2800mm internal lift shaft, which traverses the basement, ground floor, first floor and second floor.
 - 3000mm x 3200mm elevator core encasing internal lift shaft, associated new parapet walls and 1600mm deep lift pit. Lift core and parapet walls and capping will be designed to match the existing. External walls are to be rendered and painted to match and complement the existing building.

- Lift overrun including 300mm capping and total length of 4500mm above the second-floor floor level. The new lift will be capped to match the existing building. The height of the lift remains well below the highest roof level of the building.
- Alterations to the basement level including:
 - A small area of land will be excavated for the construction of the lift and extension of the footpath to access the new lift. The paving will match existing paving. The existing retaining wall which reaches first floor level, will be demolished and extended. Relocation of existing stormwater pipe.
- Alterations to the ground floor level including:
 - Relocation of a window and construction of a new entry door. Fill and line portion of existing window. The removal and relocation of an existing column.
- Alterations to the first-floor level including:
 - Demolition of one window, relocation of one window. The removal and relocation of an existing column.
- Second floor level
 - Demolish a window, entry/exit door, wall, balustrade and planter. Construction of a new window and entry/exit door. The removal and relocation of an existing column.
- Demolition of portion of roof.

ASSESSMENT

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

1. STRATEGIC CONTEXT

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

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

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

The proposed development would be consistent with the Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan, by enhancing existing services to support a growing aged population.

2. STATUTORY CONTROLS

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

2.1 Hornsby Local Environmental Plan 2013

The 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 RU4 Primary production small lots under the HLEP. 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 defined as ‘*Seniors Housing*’ (Residential Care Facility) which contains the following definition:

Seniors housing means a building or place that is:

- (a) *A residential care facility.*
- (b) *A hostel within the meaning of State Environmental Planning Policy (Housing) 2021, Chapter 3, Part 5.*
- (c) *A group of self-contained dwellings.*
- (d) *A combination of any of the buildings or places referred to in paragraphs (a)–(c), and that is, or is intended to be, used permanently for:*
- (e) *Seniors or people who have a disability.*
- (f) *People who live in the same household with seniors or people who have a disability.*
- (g) *Staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place.*

But does not include a hospital.

Note. Seniors housing is a type of residential accommodation.

Seniors housing is a prohibited land use under the HLEP in the RU2 Primary production small lots zone.

Notwithstanding, the development is afforded existing use rights pursuant to Clause 4.65 of the *Environmental Planning and Assessment Act 1979* and the proposed development is consistent with the requirements for 'existing use' under the Act as discussed in Part 2.2 of this report.

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 10.5m. The application seeks to contravene Clause 4.3 as the lift extends up to a maximum height of 11.7m.

Whilst it is noted that Clause 107 of the Housing SEPP contains a non-discretionary development standard limiting the height of a residential care facility to no more than 9.5 metres in height, the requirements of this clause are not applicable to this development, as clause 79 of the Housing SEPP specifically excludes the provisions of the SEPP from applying to RU4 land zone. Consequently, Clause 4.3 of the HLEP is the only height of buildings development standard applicable to the proposed development application.

The specific objectives of Clause 4.3 are:

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

Saffioti v Kiama Municipal Council [2019] NSWLEC 57 has established that a Clause 4.6 is required where a contravention of the development standards is proposed as it does not derogate from the incorporated provisions in Part 5 of the Act.

The application includes a written request under Clause 4.6 to contravene the development standard, prepared by Mecone Town Planners. A discussion regarding Clause 4.6 is provided below.

2.1.3 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, and it can be demonstrated that sufficient environmental planning grounds are present to justify contravening a development standard.

The application seeks to contravene Clause 4.3 of the HLEP as the maximum height of the proposed works would be 11.7m, which does not comply with the 10.5m height of buildings development standard.

The specific objectives of Clause 4.3 of the HLEP are:

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

The applicant has made a submission in support of a contravention of the development standard in accordance with Clause 4.6 of the HLEP. Clause 4.6 provides that 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.*

Council must be satisfied that the written request provided by the applicant under Clause 4.6 addresses both the unreasonable and unnecessary test and demonstrates sufficient environmental planning grounds to justify contravening the development standard. These matters are discussed below.

2.1.3.1 Unreasonable or Unnecessary

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

- 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 states that Wehbe test 1, as described in Williams, are relevant for the subject site:

- *"Wehbe Test 1 - the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

This is considered further below in relation to the height of buildings clause and relevant objectives provided in HELP 2013.

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.*

The exceedance in height proposed at the subject site will not restrict the ability of the area to deliver development which transitions in height and land use intensity appropriately. This is based on the following:

- *The proposed lift will not change the current use of the site for the use of a 'health service facility' and 'seniors housing'.*
- *The proposed lift does not increase the height of the building and remains below the highest point of the building.*
- *The proposed lift will not limit the development of adjoining sites.*

Such uplift being considered indicates that the additional height proposed would be in keeping with any transition in building height in the future.

- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The written request states in part:*

The exceedance in height will not result in any adverse visual impacts, disrupt views, result in a loss of privacy or solar access. This assessment is based on the following:

- *The distance from the site to adjacent roads and developments.*
- *The proposed lift does not increase the height of the building and remains below the buildings highest point.*

The proposed development is located over 350m setback from Galston Road, where no changes are proposed to the existing setbacks of the building on site. The significant distance of the proposal from other roads or developments in the environment is considered to not generate visual impacts, disrupt views, loss of privacy or solar access.

- (c) *To require the height of future buildings to have regard to heritage sites and their settings,*
The proposed development will not impact any heritage items nor their surrounds. The closest heritage items to the site are local 'houses' at 295 Galston Road, Galston and 2 Crosslands Road, Galston, are located over 450m northeast of the proposed site of works. The building will generally maintain the same built and form from that previously approved.
- (d) *To ensure the preservation of historic views,*
The proposed development will largely be obscured from public view and will not have any impact on historic view corridors identified within the HDCP 2013.
- (e) *To reinforce and respect the existing character and scale of low-density residential areas,*
The site is zoned RU4 Primary Production Small Lots and over 600m far from any low density zoned land. As such, the proposal is not expected to have any impacts on the amenity of R2 zoned land.
- (f) *To maintain satisfactory sky exposure and daylight to existing buildings within commercial centres,*
To the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.

As discussed above, the site will have no impact on commercial development noting mixed use zones are located over 600m from the site.

The request to vary the development standard is consistent with Part 1 of the 'five part test' established in Wehbe v Pittwater Council [2007] NSWLEC 827 which provides that a development standard is unreasonable or unnecessary where the objectives of the standard are achieved notwithstanding non-compliance with the standard."

Council considers that the applicant's written request sufficiently identifies that the objectives of the development standard are achieved notwithstanding the non-compliance with the standard.

2.1.3.2 Environmental Planning Grounds

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

In demonstrating the environmental planning grounds the written request states in part:

- *The proposed new lift does not increase the height of the building and remains below the buildings highest point.*
- *The proposed new lift will improve the use of the land as 'seniors housing' with greater access for residents and staff.*
- *The lift will provide greater assistance to staff with the movement of residents, linen, food, and waste. The building currently has no existing lift which services the southern wing of the building. With the addition of a new lift, staff and residents will be able to move more efficiently between levels in the southern wing.*
- *The proposed height breach, resulting from the need to address the bespoke user needs of the facility, is not expected to cause any adverse environmental impacts.*
- *The development will not impact upon any heritage or significant view corridors given its location and the low-lying industrial peninsula.*
- *The design provides for a contemporary design mitigating potential visual impacts.*
- *Furthermore, the lift will not increase the current height of the building and therefore no unreasonable overshadowing of surrounding properties is anticipated.*
- *The height of the proposed development provides a built form within the locality which is consistent with the objectives and requirements outlined within HLEP 2013 and HDCP 2013 for residential land.*
- *Given the proposed lift is setback over 350m from Galston Road and no increase to the current building height is proposed, the relatively minor height breach is considered acceptable and in keeping with the height, bulk and scale of the desired future character of the locality.*
- *Strict compliance with height controls would result in the objectives of the HLEP 2013 being neglected and would not result in the orderly and economic use and development of land.*

Council considers that the environmental planning grounds stated within the written request are sufficient with respect to Clause 4.6(3)(b) and that the stated grounds are specific to the proposed development and the circumstances of the development site. It is therefore considered that the written request adequately demonstrates compliance with the clause and is acceptable in this regard.

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 part (i), the written request is considered to adequately address the matter required to be demonstrated as outlined above.

With regard to part (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 development within the zone in which the development is proposed to be carried out.

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 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%.

Accordingly, it is considered that the written request satisfactorily responds to the relevant matters required to be addressed under Clause 4.6 and that the Panel, as consent authority, may rely upon the written request and grant development consent to the development application. Should the Panel resolve to approve the application, it should also provide a statement in the reasons for approval that it has satisfied itself of the matters in Clause 4.6(4).

2.1.4 Heritage Conservation

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire and aims to conserve the heritage significance of heritage items and conservation areas including associated fabric, settings and view. Clause 5.10(4) requires the consent authority, before granting consent, to consider the effect of the proposal on the significance of the item or area concerned. 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, the consent authority is required to assess the impacts of the works on adjoining properties, drainage patterns and soil stability of the locality.

The waste management plan submitted with the proposal estimates that 12m³ of excavated material would be required to be removed. Conditions are recommended that all extracted material be disposed of in a licenced facility.

Council raises no objections to the proposed earthworks as they are unlikely to cause impact to adjoining property or existing drainage patterns.

2.2 Environmental Planning and Assessment Act 1979 - Section 4.65 Existing Use

Division 4.11 of the Act protects the existing use right of a building, work or land that is in non-conformance with the zoning of the land. The development application asserts that the site benefits from existing use rights for use as seniors living and a RACF.

Clause 4.65 of the Act defines an existing use as:

- a) *The use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use.*
- b) *The use of a building, work or land:*
 - (i) *For which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
 - (ii) *That has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.*

Moreover, Clause 4.66 of the Act states, “*nothing in this Act or an environmental planning instrument prevents the continuance of an existing use*”.

As stated in the Background Section of this report, on 15 December 1983, Council approved Development Application No. 276/83 for a retirement complex comprising 200 self-contained units, 60 hostel serviced units and 30-40 bed nursing home principally on Lot 1 DP 713848 in accordance with State Environmental Planning Policy No. 5 Housing for Aged or Disabled Persons when the land use was permissible in the subject zone. This policy was repealed on 14 February 1998 and replaced with State Environmental Planning Policy No. 5 Housing for Older People or People with a Disability. This instrument was subsequently repealed and replaced with State Environmental Planning Policy (Housing for the Seniors and People with Disability) 2004. This instrument was subsequently repealed and replaced with State Environmental Planning Policy (Housing) 2021.

Clause 4.68(3) of the Act states that “*a use is presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months*”.

It is noted that the RACF has been operated by RSL LifeCare continually since the approval.

Having regard to the whole of the circumstances of the site, Council is satisfied that that site continues to benefit from existing use rights. Consequently, Council does not consider that the existing use has been abandoned.

Clause 4.67(1) of the Act notes that the Environmental Planning and Assessment Regulation 2021 (the Regulation) provides provisions with respect to alterations and additions to an existing use. Accordingly, an assessment in accordance with the Regulation is provided below.

Clause 4.67(3) also states:

An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.

In effect, Council notes that any provisions or development standards contained within an applicable planning instrument, must not derogate what is permitted within the Regulation as discussed below. Further, in accordance with *Fodor Investments v Hornsby Shire Council (Proceedings 10882 of 2004)*, Section 4.15 considerations under the Act are still relevant as long as they do not derogate from the Regulation. In this regard a Section 4.15 assessment has been carried out in the body of this report.

2.3 Environmental Planning and Assessment Regulation 2021

Part 7 Existing uses of the Regulation clause 163 states:

- (1) *An existing use may, subject to this Division:*
 - (a) *Be enlarged, expanded or intensified, or*
 - (b) *Be altered or extended, or*
 - (c) *Be rebuilt...*

With respect to Clause 163(1)(a), the existing RACF would be physically enlarged and expanded, however given the proposal would retain the existing number of beds and staff would not be intensified.

With respect to Clause 163(1)(b), the existing use would be altered and expanded.

With respect to Clause 163(1)(c) the application does not propose to re-build the existing building.

Clause 165 of the Regulation states in part:

- (1) *Development consent is required for any alteration or extension of a building or work used for an existing use.*
- (2) *The alteration or extension:*
 - (a) *Must be for the existing use of the building or work and for no other use.*
 - (b) *Must be erected or carried out only on the land on which the building or work was erected or carried out immediately before the relevant date.*

With respect to Clause 165, the alterations and additions require development consent, would be for the existing use, and would be carried out entirely within the subject parcel of land that contains the existing use.

In summary, Council is satisfied that the site benefits from existing use rights and the proposed alterations and additions are permissible with consent.

2.4 State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 of the Resilience and Hazards SEPP provides guidelines for the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

Section 4.6 of the SEPP requires Council to consider whether land is contaminated, contained and/or remediated prior to granting consent to the carrying out of any development on that land.

The site has been historically used for residential aged care facility and the proposal does not seek to change the use of the land. Accordingly, no further assessment under Chapter 4 of the Resilience and Hazards SEPP is required.

2.5 State Environmental Planning Policy (Biodiversity and Conservation) 2021

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

2.5.1 Chapter 9 Hawkesbury-Nepean River

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

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

2.6 State Environmental Planning Policy (Housing) 2021

The application has been assessed against the requirements of Part 5 of State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

2.6.1 Part 5 Housing for seniors and people with a disability

The Housing SEPP is the overriding planning instrument for the development of housing for aged and disabled people in NSW. SEPP Housing is comprehensive in scope including land use planning provisions, design principles, development standards and standards specifically to meet the housing needs of aged and disabled people.

The Housing SEPP does not apply to the proposed development and the requirements of this environmental planning instrument are not applicable to the RU4 land use zone. Notwithstanding this fact, the planning controls contained within the Housing SEPP can be utilised to form a merit-based assessment of the proposed development. Such an assessment of the proposal in accordance with the relevant requirements of Part 5 of the Housing SEPP is provided as follows:

2.6.1.1 Section 94 - Location and access to facilities and services

The Housing SEPP includes mandatory standards for accessibility and useability to ensure wheelchair accessibility throughout the development and to a public road. Section 94 states that *Development consent must not be granted for development for the purposes of a residential care facility unless the consent authority is satisfied that residents of the facility will have access to facilities and services—*

- (a) *On-site, or*
- (b) *By a transport service other than a passenger service.*

It is noted that site is located 1 km south-east of Galston Shopping Village Complex and there is a public bus stop located inside the village which transports residents to the local shopping village and more.

The proposal is considered acceptable with regard to Section 94.

2.6.1.2 Division 6 Design Principals

In determining a development application, a consent authority must not grant consent to a development unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 6 (Sections 99 to 105). As discussed below, Council is generally satisfied that the proposal demonstrates sufficient regard for the design principles.

2.6.1.3 Section 99 - Neighbourhood Amenity and Streetscape

Council's assessment against the relevant requirements of Section 99 is provided as follows.

The proposed development should

- (a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area

Comment: In response to Section 99(a), the site is zoned RU2 Primary production small lots. The site is located within the vicinity of a variety of development including dwelling houses, and rural land uses.

Council considers that the modifications to the existing facility would provide sufficient boundary setbacks and would contribute to the quality of the area.

As discussed within Section 2.1.2 and 2.1.3 of this report, the proposal has demonstrated that the height of the development is appropriate for the site context taking into consideration the specific circumstances of the site.

Council is satisfied that the amended development considers the requirements of Section 99(a) and generally meets the desired future character of the locality.

- (d) maintain reasonable neighbourhood amenity and appropriate residential character by -
- (i) providing building setbacks to reduce bulk and overshadowing, and
 - (ii) using building form and siting that relates to the site's land form, and
 - (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development.

Comment: In response to Section 99(d), the proposal has demonstrated that minimum existing boundary setbacks would be maintained.

With regard to the proposed height and scale, the height does not strictly conform to Council's HDCP given it would exceed the maximum building height. Council considers that the additional height and storey are acceptable as discussed in Section 2.1.2 and 2.1.3 of this report.

In summary, the proposal has demonstrated that adequate regard has been given to Section 99(d) of Housing SEPP.

- (g) retain, wherever reasonable, major existing trees

Comment: The proposal would not result in any tree removal. The proposal complies the provisions of Section 99(g) of the Housing SEPP and is assessed as satisfactory in this regard.

2.6.1.1 Section 100 - Visual and Acoustic Privacy

Section 100 notes that development should consider the visual and acoustic privacy of neighbours in the vicinity of the site by appropriate design of windows, balconies and landscaping, as well as ensuring acceptable noise levels.

It is considered that the proposed lift would have minimal impact on the visual and acoustic privacy of residents.

The proposal complies with the provisions of Section 100 of the Housing SEPP and is assessed as satisfactory in this regard.

2.6.1.2 Section 101 - Solar Access and Design for Climate

Section 101 requires seniors living developments to provide adequate daylight to the main living areas of neighbouring properties and adequate sunlight to areas of private open space.

The proposed lift would still ensure adequate daylight to the main living areas of neighbouring properties and to the communal private open space areas.

The proposal complies with the provisions of Section 101 of the Housing SEPP and is assessed as satisfactory in this regard.

2.6.1.3 Section 102 - Stormwater

Section 102 requires development to minimise the disturbance and impacts of stormwater runoff on adjoining properties and include, wherever practical on-site stormwater detention or stormwater re-use.

The application indicates that the existing stormwater system will remain largely unchanged. The basement floor stormwater pipe would be relocated.

Subject to conditions, the proposal complies the provisions of Section 102 of the Housing SEPP and is assessed as satisfactory in this regard.

2.6.1.4 Section 104 - Accessibility

The application includes an BCA Design Assessment report, prepared by Design Confidence. The report indicates that the development can comply with the internal and outdoor accessibility provisions within relevant Australian Standards, the Building Code of Australia.

Subject to conditions, the proposal complies the provisions of Section 104 of the Housing SEPP and is assessed as satisfactory in this regard

2.6.1.5 Section 105 - Waste Management

The application is supported by a waste management plan (WMP) for demolition and construction prepared by RSL Lifecare Ltd.

Subject to conditions, the proposal complies the provisions of Section 105 of the Housing SEPP and is assessed as satisfactory in this regard

2.6.1.6 Section 107 - Non-discretionary development standards for hostels and residential care facilities—the Act, s 4.15

- (2)(b) *servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m—*
- (i) *is fully integrated into the design of the roof or contained and suitably screened from view from public places, and*
 - (ii) *is limited to an area of no more than 20% of the surface area of the roof, and*
 - (iii) *does not result in the building having a height of more than 11.5m,*

The proposed lift has an overrun of 300mm capping and total length of 4500mm above the second-floor floor level. The lift overrun does not increase the height of the building and is below the buildings highest point.

The proposal complies with the provisions of Section 107 of the Housing SEPP and is assessed as satisfactory in this regard.

2.7 State Environmental Planning Policy (Resilience and Hazards) 2021

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

2.7.1 Chapter 4 Remediation of Land

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

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

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 chapter 4 of the Resilience and Hazards SEPP is not required.

2.8 State Environmental Planning Policy (Transport and Infrastructure) 2021

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

2.8.1 Development with frontage to a classified road

The application is subject to assessment under Section 2.118 of the SEPP given the proposal has a frontage to a classified road being Galston Road.

Section 2.118(2) of the Policy 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, 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.*

In regard to Section 2.118(2)a, existing access to the site is provided via Galston Road as this is practicable and safe, vehicular access to the land.

In regard to Section 2.118(2)b, the safety, efficiency and ongoing operation of Galston Road is unlikely to be impacted, the development would not emit smoke or dust and the number of residential beds are not increasing as a result of this development.

In regard to Section 2.118(2)c, the development is sensitive to traffic noise and vehicle emissions. With regard to vehicle emissions, the centre is existing, and Council is satisfied that the development has been designed to provide residential care rooms at a safe distance from Galston Road.

2.8.2 Impact of road noise or vibration on non-road development

An assessment of the impact of road noise on a residential use is required pursuant to Section 2.119 of the SEPP where development fronts a road with an annual average daily traffic volume of more than 20,000 vehicles. Traffic data shows that Galston Road in 2022 has an average traffic count of 2,500 vehicles. Therefore, this section of the SEPP does not apply to the development.

2.9 Clause 3.42 Environmental Planning and Assessment Act 1979 - Purpose and Status of Development Control Plans

Clause 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 in achieving good planning outcomes.

2.10 Hornsby Development Control Plan 2013

The Hornsby Development Control Plan 2013 (HDCP) applies to all land within Hornsby Shire and came into effect on 11 October 2013. A discussion regarding relevant sections of the HDCP are provided below. Council notes that the proposal has been assessed predominantly against the requirements of SEPP Housing in accordance with the prescriptive measure of Part 7.2 of the HDCP which states development for seniors housing should comply with the planning controls in the SEPP.

2.10.1 Scale

A discussion regarding the scale of the proposal is provided in Section 2.3.1.3 of this report.

2.10.2 Setbacks

A discussion regarding the setbacks of the proposal is provided in Section 2.3.1.3 of this report.

2.10.3 Vehicle Access and Parking

The proposal would not increase the number of residents or staff and therefore no increase in parking or traffic generation is anticipated from the development.

2.11 Section 7.12 Contributions Plan

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 proposal would not result in the removal of vegetation. Therefore, the application is considered to provide a benefit to the natural environment in terms of tree and vegetation preservation.

3.1.2 Stormwater Management

The application is considered acceptable with regard to stormwater management subject to recommended conditions.

3.2 Built Environment

3.2.1 Built Form

Discussions regarding the impact of the proposal on the built environment is provided in Section 2.3.1.3 of this report.

3.3 Social Impacts

The development would continue to provide housing for seniors in a high-care environment. The proposed development would result in a social benefit for the occupants of the facility by providing a higher level of access.

There would be a number of multiplier effects that the development would provide throughout the local and regional economies through the construction phase of the development.

3.4 Economic Impacts

The proposal would have a minor positive impact on the local economy in conjunction with other 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 Bushfire Risk

The land is identified as being subject to bushfire risk. As outlined in the Bushfire Assessment Report prepared by Coastal Consulting and Construction Pty Ltd dated January 2022, the property is located in an area with a Bushfire Attack Level (BAL) rating of BAL-FZ.

The application was referred to the NSW Rural Fire Service (RFS) in accordance with Section 100B of the Rural Fires Act 1997.

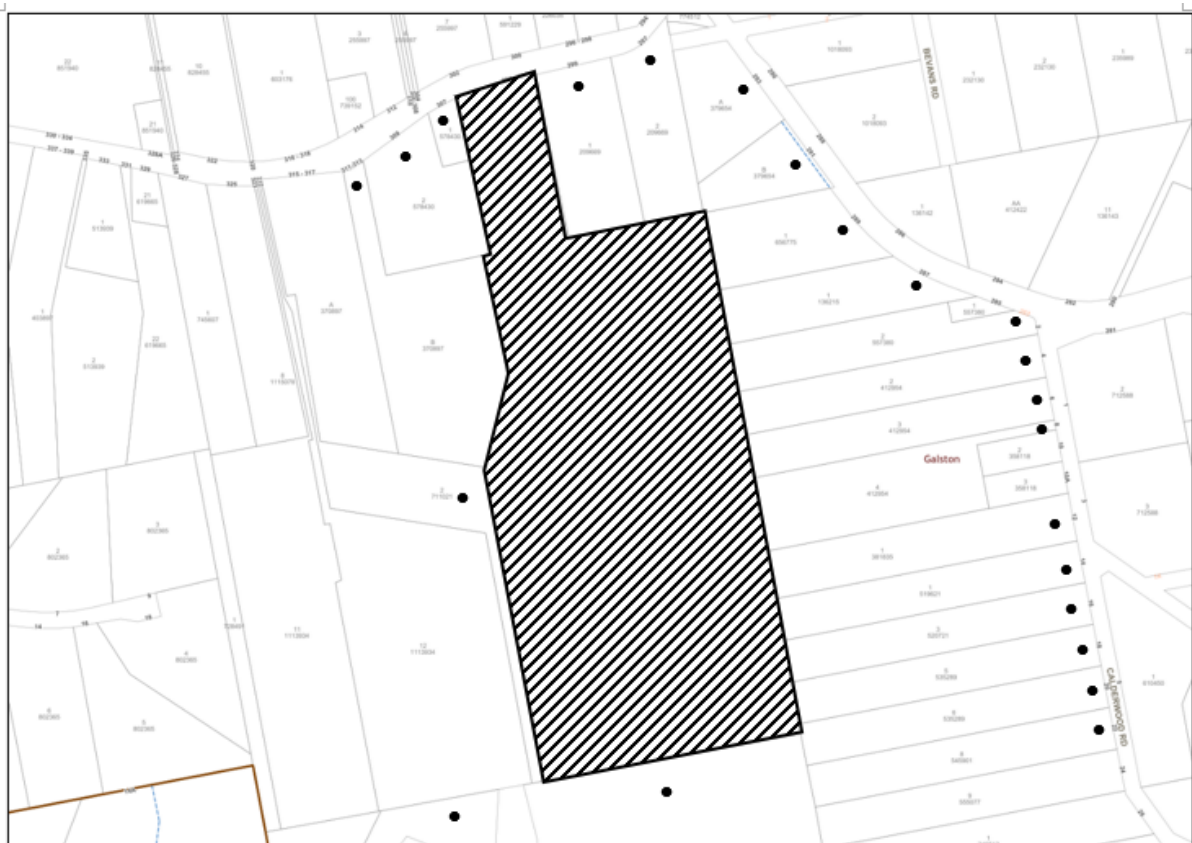
The RFS raised no objections to the development, subject to the conditions recommended in Schedule 1 of this report.

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 19 April 2022 and 10 May 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 were notified of the development.



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 RACF is considered to be a “Special Fire Protection Purpose” (SFPP) as defined by Section 100B of the *Rural Fires Act 1997*. Therefore, the proposal is considered to be integrated development and has been referred to the RFS for comment. The RFS raised no objections to the proposed development subject to the General Terms of Approval (GTAs) contained 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 the demolition of retaining wall and the erection of a lift structure with internal and external alterations and additions to an existing seniors living development.

“Seniors housing” is a prohibited landuse within the subject RU4 Primary production small lots. The application maintains that the site benefits from existing use rights.

The application includes a Clause 4.6 request to contravene the maximum height of buildings development standard. The request is considered well founded.

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 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 State Environmental Planning Policy (Housing) 2021, the Hornsby Local Environmental Plan 2013 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, 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 Charley Wells.

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.   Clause 4.6 Variation
3.   Architectural Plans
4.   BCA Design Assessment Report
5.   Bushfire Risk Assessment

File Reference: DA/368/2022

Document Number: D08419580

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 2**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
A001	Site Plan	Mc Nally Architects	24/03/2022	
A100	Basement Floor Plan	Mc Nally Architects	24/03/2022	
A101	Ground Floor Plan	Mc Nally Architects	24/03/2022	
A102	First Floor Plan	Mc Nally Architects	24/03/2022	
A103	Second Floor Plan	Mc Nally Architects	24/03/2022	
A104	Roof Plan	Mc Nally Architects	24/03/2022	
A105	Sediment Control Plan	Mc Nally Architects	24/03/2022	
A200	South Elevation	Mc Nally Architects	24/03/2022	
A201	North Elevation	Mc Nally Architects	24/03/2022	
A202	East Elevation	Mc Nally Architects	24/03/2022	
A300	Section A-A	Mc Nally Architects	24/03/2022	

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
BCA Design Assessment Report	Design Confidence	8 March 2022	D08391469
Bushfire Risk Assessment Report	Costal consulting and Construction Pty Ltd	January 2022	D08391467
NSW Rural Fire Service Determination Letter DA20220513007779-Original-1	NSW Rural Fire Service	13 July 2022	D08448706
Waste Management Plan	RSL Lifecare Ltd	N/A	D08391447

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*, **\$5,225.00** must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of **\$522,500**.
- b) The value of this contribution is current as of 5 July 2022. If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.12 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

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

Where:

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

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

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

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

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

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

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

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

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

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. Fire Safety Schedule

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

6. 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.

7. Stormwater Drainage

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

- a) Connected to the existing internal drainage system.

8. Retaining Walls

To ensure the stability of the site, structural details of all required retaining walls must be submitted with the application for the Construction Certificate.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

9. 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.

10. Protection of Adjoining Areas

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

- a) Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic.
- b) Could cause damage to adjoining lands by falling objects; and/or.
- c) Involve the enclosure of a public place or part of a public place.
- 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.

11. Toilet Facilities

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

12. 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.

REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION**ITEM 2****13. 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.

14. Demolition

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

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

15. 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*.

16. Council Property

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

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

17. 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.

18. Excavated Material

All excavated material removed from the site must be classified by a suitably qualified person in accordance with the Department of Environment, Climate Change and Water NSW *Waste*

Classification Guidelines and Protection of the Environment Operations (Waste) Regulation 2014 prior to disposal to an approved waste management facility and be reported to the principal certifying authority prior to the issue of an Occupation Certificate.

19. Landfill not permitted

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

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

20. Fire Safety Statement – Final

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

21. 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 Council's Civil Works Specifications. Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

22. Retaining Walls

All retaining walls must be constructed as part of the development and prior to the issue of an Occupation Certificate.

23. 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 General Terms of Approval (GTAs) prior to the issue of the Occupation Certificate.

OPERATIONAL CONDITIONS

24. 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.

GENERAL TERMS OF APPROVAL – NSW RURAL FIRE SERVICE

The following conditions of consent are General Terms of Approval from the nominated State Agency pursuant to Section 4.47 of the *Environmental Planning and Assessment Act 1979* and must be complied with to the satisfaction of that Agency.

25. Construction Standards

Intent of measures: to provide suitable building design, construction and sufficient space to ensure that radiant heat levels do not exceed critical limits for firefighters and other

emergency services personnel undertaking operations, including supporting or evacuating occupants.

- a) New construction must comply with Section 3 (excluding section 3.5) and Section 9 (BAL FZ) of the 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.
- b) Any new Class 10b structures as defined per the National Construction Code must be non-combustible.

26. Water and Utility Services

Intent of measures: to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

- a) Any new water, electricity and gas installations must comply with the following in accordance with Table 6.8c of Planning for Bush Fire Protection 2019:
 - i) Exposed water pipes external to the building are metal, including any fittings.
 - ii) Where practicable, electrical transmission lines are underground.
 - iii) Where overhead, electrical transmission lines are proposed as follows:
 - a. Lines are installed with short pole spacing (30m), unless crossing gullies, gorges or riparian areas.
 - b. 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.
 - iv) Reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 and the requirements of relevant authorities, and metal piping is used.
 - v) All fixed gas cylinders are kept clear of all flammable materials to a distance of 10m and shielded on the hazard side.
 - vi) Connections to and from gas cylinders are metal.
 - vii) Polymer sheathed flexible gas supply lines are not used.
 - viii) Above-ground gas service pipes are metal, including and up to any outlets.

27. Landscaping Assessment

Intent of measures: to provide suitable building design, construction and sufficient space to ensure that radiant heat levels do not exceed critical limits for firefighters and other emergency services personnel undertaking operations, including supporting or evacuating occupants.

- a) Any new landscaping must comply with Appendix 4 of Planning for Bush Fire Protection 2019. In this regard, the following principles are to be incorporated:

- i) A minimum 1 metre wide area (or to the property boundary where the setbacks are less than 1 metre), suitable for pedestrian traffic, must be provided around the immediate curtilage of the building.
- ii) Planting is limited in the immediate vicinity of the building.
- iii) Planting does not provide a continuous canopy to the building (i.e. trees or shrubs are isolated or located in small clusters).
- iv) Landscape species are chosen to ensure tree canopy cover is less than 15% (IPA) at maturity and trees do not touch or overhang buildings.
- v) Avoid species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies.
- vi) Use smooth bark species of trees species which generally do not spread fire up the bark into the crown.
- vii) Avoid planting of deciduous species that may increase fuel at surface/ ground level (i.e. leaf litter).
- viii) Avoid climbing species to walls and pergolas.
- ix) Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building.
- x) Locate combustible structures such as garden sheds, pergolas and materials such as timber garden furniture away from the building.
- xi) Low flammability vegetation species are used.

28. Emergency and Evacuation Planning Assessment

Intent of measures: to provide suitable emergency and evacuation arrangements for occupants of SFPP developments.

- a) A Bush Fire Emergency Management and Evacuation Plan must be updated consistently with the NSW RFS document: A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan.

- 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 (Biodiversity and Conservation) 2021* and the *Environmental Planning and Assessment Act 1979*.

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

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

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

Dial Before You Dig

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

Telecommunications Act 1997 (Commonwealth)

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

Asbestos Warning

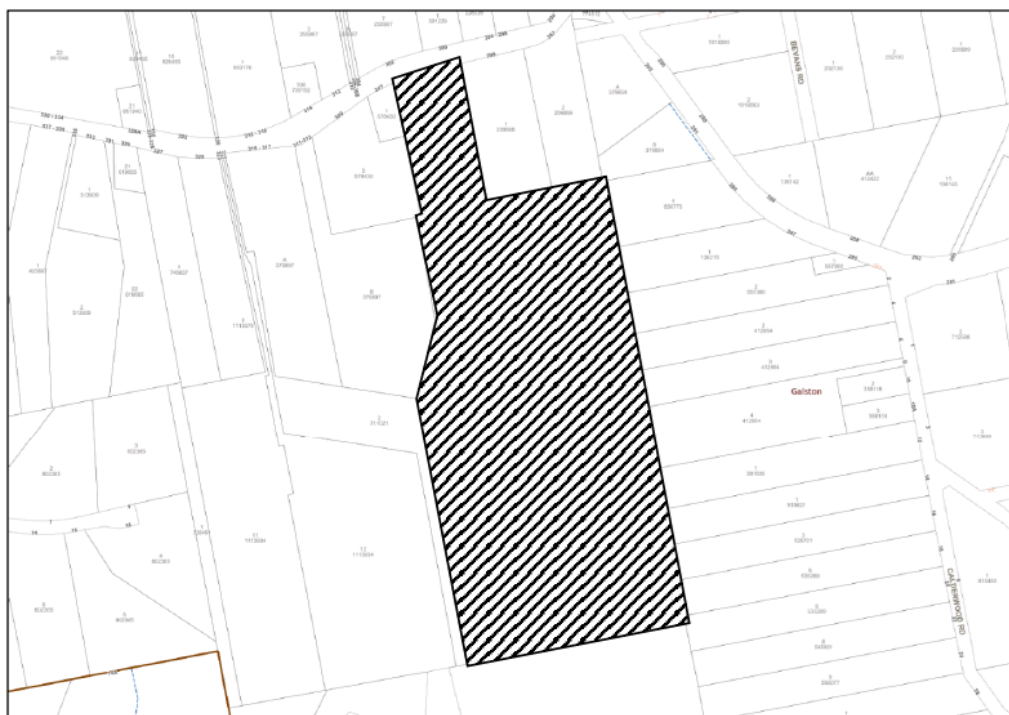
Should asbestos or asbestos products be encountered during demolition or construction works, you are advised to seek advice and information prior to disturbing this material. It is recommended that a contractor holding an asbestos-handling permit (issued by *SafeWork NSW*) be engaged to manage the proper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

www.environment.nsw.gov.au

www.adfa.org.au

www.workcover.nsw.gov.au

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



LOCALITY PLAN

DA/368/2022

Rowland Village 301-305 Galston Road, Galston

ATTACHMENT 1 - ITEM 2

Rowland Village
301-305 Galston Road, Galston

Clause 4.6 variation to Height of Buildings

On behalf of
RSL LifeCare

March 2022



1 Introduction

The Development Application (DA) for Rowland Village 301-305 Galston Road, Galston (the site) seeks approval for addition of a lift to an existing senior living building at the subject site. The development application proposes an exceedance of the maximum height of building development standard applicable to the site under the Hornsby Local Environmental Plan 2013 (HLEP 2013). As such, this document forms a written request seeking to justify the contravention of this development standard in the circumstances. It is considered that a variation to the development standard will allow for an enhanced planning outcome at the site.

2 Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the HLEP 2013 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development. Clause 4.6 enables a variation to the height standard to be approved upon consideration of a written request from the applicant that justifies the contravention in accordance with Clause 4.6.

The consent authority's satisfaction as to those matters must be informed by the objectives of clause 4.6, which are:

- 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.

When considering a variation to a development standard under clause 4.6 of the LEP, a consent authority is required to be satisfied that the contravention of the respective development standard is justifiable based on the following:

- the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard;
- 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.

The Land and Environment Court has established questions to be addressed in variations to developments standards lodged under *State Environmental Planning Policy 1 – Development Standards (SEPP 1)* through the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (**Wehbe**).

An additional principle was established in the decision by Commissioner Pearson in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (**Four2Five**) which was upheld



by Pain J on appeal. A further recent judgement by Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 clarified the correct approach to Clause 4.6 variation requests, including that:

"The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard." [88]

How these tests and considerations are applied to the assessment of variations under clause 4.6 of the LEP and other standard LEP instruments has most recently been confirmed in the judgement of Justice Preston, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSW LEC 118.

Accordingly, this Clause 4.6 variation request is set out using the relevant principles established by the Court.

Clause 4.6 of the HLEP reads as follows:

(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—

(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 C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 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,

(caa) clause 5.5.

(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.

3 The Development Standard to be varied

The development standard seeking to be varied is Clause 4.3 Height of Buildings (HOB) in the HLEP 2013. As identified on the HLEP 2013 Height of Buildings Map, the subject site has a maximum building height limit of 10.5 metres. The objectives of Clause 4.3 are provided below:

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

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

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

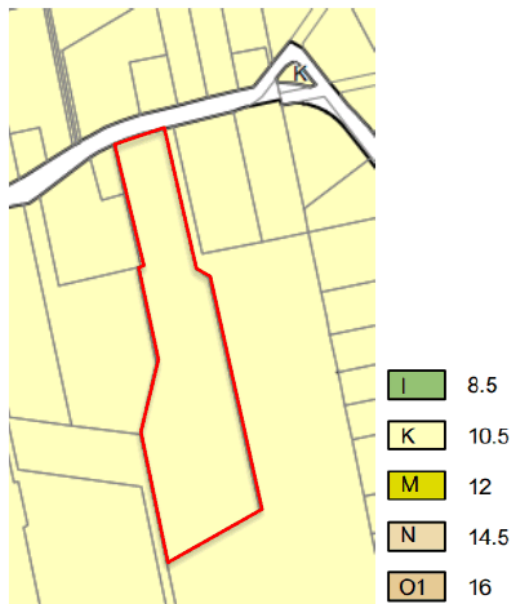


Figure 1 Height of Buildings LEP Map

Source: HLEP 2013 (site identified in red)

4 Extent of Variation to the Development Standard

The proposed lift proposes a maximum height of 11.7m, resulting in a 1.2m exceedance or 11.4% variation when expressed as a percentage in relation to the HOB control.

The proposed development requires variation from the HOB control to allow the lift to reach all four floors whilst remaining below the roof height for the existing approved building on site.

5 Objectives of the Standard

(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.

6 Objectives of the Zone

The objectives of the RU4 Primary Production Small Lots are as follows:

- 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.

7 Assessment

Clause 4.6(3)(a) - Is Compliance with the development standard unreasonable or unnecessary in the circumstances of the case

It is considered that strict compliance with the Height of Building control is unreasonable and unnecessary given the following circumstances of this case.

As detailed in *Williams v Ku-ring-gai Municipal Council* [2017] NSWLEC 1098, *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [44]–[48], a number of approaches could be used to establish that compliance with a development standard is unreasonable or unnecessary. *Wehbe* tests 1, as described in *Williams*, are relevant for the subject site:

- **Wehbe Test 1** - the objectives of the standard are achieved notwithstanding non-compliance with the standard;

This is considered further below in relation to the height of buildings clause and relevant objectives provided in HLEP 2013.

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.

Applicant Response

The exceedance in height proposed at the subject site will not restrict the ability of the area to deliver development which transitions in height and land use intensity



appropriately. This is based on the following:

- The proposed lift will not change the current use of the site for the use of a 'health service facility' and 'seniors housing'.
- The proposed lift does not increase the height of the building and remains below the highest point of the building.
- The proposed lift will not limit the development of adjoining sites.

Such uplift being considered indicates that the additional height proposed would be in keeping with any transition in building height in the future.

(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.

Applicant Response

The exceedance in height will not result in any adverse visual impacts, disrupt views, result in a loss of privacy or solar access. This assessment is based on the following:

- The distance from the site to adjacent roads and developments, and
- The proposed lift does not increase the height of the building and remains below the buildings highest point.

The proposed development is located over 350m setback from Galston Road, where no changes are proposed to the existing setbacks of the building on site. The significant distance of the proposal from other roads or developments in the environment is considered to not generate visual impacts, disrupt views, loss of privacy or solar access.

(c) to require the height of future buildings to have regard to heritage sites and their settings,

Applicant Response

The proposed development will not impact any heritage items nor their surrounds. The closest heritage items to the site are local 'houses' at 295 Galston Road, Galston and 2 Crosslands Road, Galston, are located over 450m northeast of the proposed site of works. The building will generally maintain the same built and form from that previously approved.

(d) to ensure the preservation of historic views,

Applicant Response

The proposed development will largely be obscured from public view and will not have any impact on historic view corridors identified within the HDCP 2013.

(e) to reinforce and respect the existing character and scale of low-density residential areas,

Applicant Response

The site is zoned RU4 Primary Production Small Lots and over 600m far from any low density zoned land. As such, the proposal is not expected to have any impacts on the amenity of R2 zoned land.



(f) to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.

Applicant Response

As discussed above, the site will have no impact on commercial development noting mixed use zones are located over 600m from the site.

The request to vary the development standard is consistent with Part 1 of the 'five part test' established in *Wehbe v Pittwater Council* [2007] NSWLEC 827 which provides that a development standard is unreasonable or unnecessary where the objectives of the standard are achieved notwithstanding non-compliance with the standard. Given the proposed development achieves the objectives of Clause 4.3 height of buildings it is considered that the non-compliance is justified and therefore acceptable in the circumstances of the case.

Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

As discussed above, Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate that there are other environmental planning grounds that justify contravening the development standard, preferably being grounds that are specific to the site.

Pain J also held that in order for a clause 4.6 variation to be accepted, seeking to justify the contravention is insufficient - the consent authority must be satisfied that clause 4.6(3)(a) and (b) have been properly addressed. On appeal, Leeming JA in *Four2Five vs Ashfield Council* [2015] NSWCA 248 acknowledged Pain J's approach, but did not necessarily endorse it, instead re-stating Pain J and saying:

"matters of consistency with objectives of development standards remain relevant, but not exclusively so."

Further recent findings by Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 also found that:

"The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard." [88]

There are sufficient environmental planning grounds to justify contravening the development standard as the proposed development allows for the promotion and co-ordination of the orderly and economic use and development of the land in the following ways:

- The proposed new lift does not increase the height of the building and remains below the buildings highest point.
- The proposed new lift will provide improve the use of the land as 'seniors housing' with greater access for residents and staff.



- The lift will provide greater assistance to staff with the movement of residents, linen, food, and waste. The building currently has no existing lift which services the southern wing of the building. With the addition of a new lift, staff and residents will be able to move more efficiently between levels in the southern wing.
- The proposed height breach, resulting from the need to address the bespoke user needs of the facility, is not expected to cause any adverse environmental impacts.
- The development will not impact upon any heritage or significant view corridors given its location and the low-lying industrial peninsula.
- The design provides for a contemporary design mitigating potential visual impacts.
- Furthermore, the lift will not increase the current height of the building and therefore no unreasonable overshadowing of surrounding properties is anticipated.
- The height of the proposed development provides a built form within the locality which is consistent with the objectives and requirements outlined within HLEP 2013 and HDCP 2013 for residential land.
- Given the proposed lift is setback over 350m from Galston Road and no increase to the current building height is proposed, the relatively minor height breach is considered acceptable and in keeping with the height, bulk and scale of the desired future character of the locality.
- Strict compliance with height controls would result in the objectives of the HLEP 2013 being neglected and would not result in the orderly and economic use and development of land.

The preconditions that must be satisfied in the opinion of the Consent Authority before consent can be given are detailed in Clause 4.6(4).

Clause 4.6 (4)(a)(i) – The consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

As demonstrated above, the proposed development has satisfied the matters required to be demonstrated in Clause 4.6(3) by providing a written request that demonstrates;

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, by establishing that the objectives of the development standard are achieved notwithstanding the non-compliance (Wehbe Test 1).
2. The environmental planning grounds relied on are sufficient to justify the development standard.

In accordance with the findings of Commissioner Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the Consent Authority under Clause 4.6(4)(a)(i) must only be satisfied that the request addresses Clause 4.6(3). Under Clause 4.6(4)(a)(i) the Consent Authority is not to determine in their opinion whether



the request satisfies the requirements of Clause 4.6(3)(a) and (b), just that the request has been made and that these items have demonstrated.

The relevant items in Clause 4.6(3) have been demonstrated above.

Clause 4.6(4)(a)(ii) - Is the proposed development 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?

The proposed development is in the public interest as it is consistent with the objectives of the development standard. The objectives of the development standard are addressed below under the relevant headings:

The objectives of the particular standard

In previous sections of this request, the development has been proven to be consistent with the objectives of the Clause 4.3 Height of Building clause within the HLEP. It has been demonstrated elsewhere in this report that the development achieves the objectives of Clause 4.3 Height of buildings within the HLEP notwithstanding the non-compliance with the standard.

The objectives for development within the zone in which the development is proposed to be carried out.

The site falls within the RU4 Primary Production Small Lots zone. As outlined below the proposed development is in the public interest because it is consistent with the objectives of the RU4 Primary Production Small Lots zone as demonstrated in the table below.

Zone Objective(s)	Statement of Consistency
To enable sustainable primary industry and other compatible land uses.	The proposed development is suitably located within in a rural zone.
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.	The proposed development will support both direct and indirect employment opportunities.
To minimise conflict between land uses within this zone and land uses within adjoining zones.	The development will not result in any adverse impacts or exacerbate the impact of surrounding land uses.
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.	The development is a type of residential land use as existing on the site.

Zone Objective(s)	Statement of Consistency
To ensure that development does not unreasonably increase the demand for public infrastructure, services or facilities.	The proposed development will increase the access and efficiency of the current land use providing critical infrastructure.

Taking into consideration the above the proposed development serves the public interest as it is consistent with the objectives of the development standard and the RU4 Primary Production Small Lots zone. Furthermore, there is no significant benefit in enforcing strict compliance given the circumstances of the case. The proposed height exceedance facilitates a significantly better planning outcome. The contravention results in no significant adverse environmental impacts but rather a better planning outcome to what is currently approved.

8 Any matters of significance for State or regional environmental planning

There are no matters of significance identified.

9 Conclusion to variation to height standard

This is a written request for an exception to the building height under Clause 4.6 of the HLEP 2013. It justifies the contravention to the height under Clause 4.3 of the HLEP 2013, and in particular demonstrates that the proposal provides a significantly better planning outcome, with no significant adverse environmental impacts resulting, and therefore in the circumstances of the case:

- Full compliance with the 10.5m building height control is unreasonable and unnecessary;
- The proposed development has been demonstrated not to have adverse environmental impacts on surrounding development and is supportable on environmental planning grounds;
- It is in the public interest in being consistent with the objectives of the standard and the objectives of the zone; and
- The proposed exceedance of the height standard will result in an enhanced planning outcome at the site.

Yours sincerely,



Adam Coburn
State Director – NSW



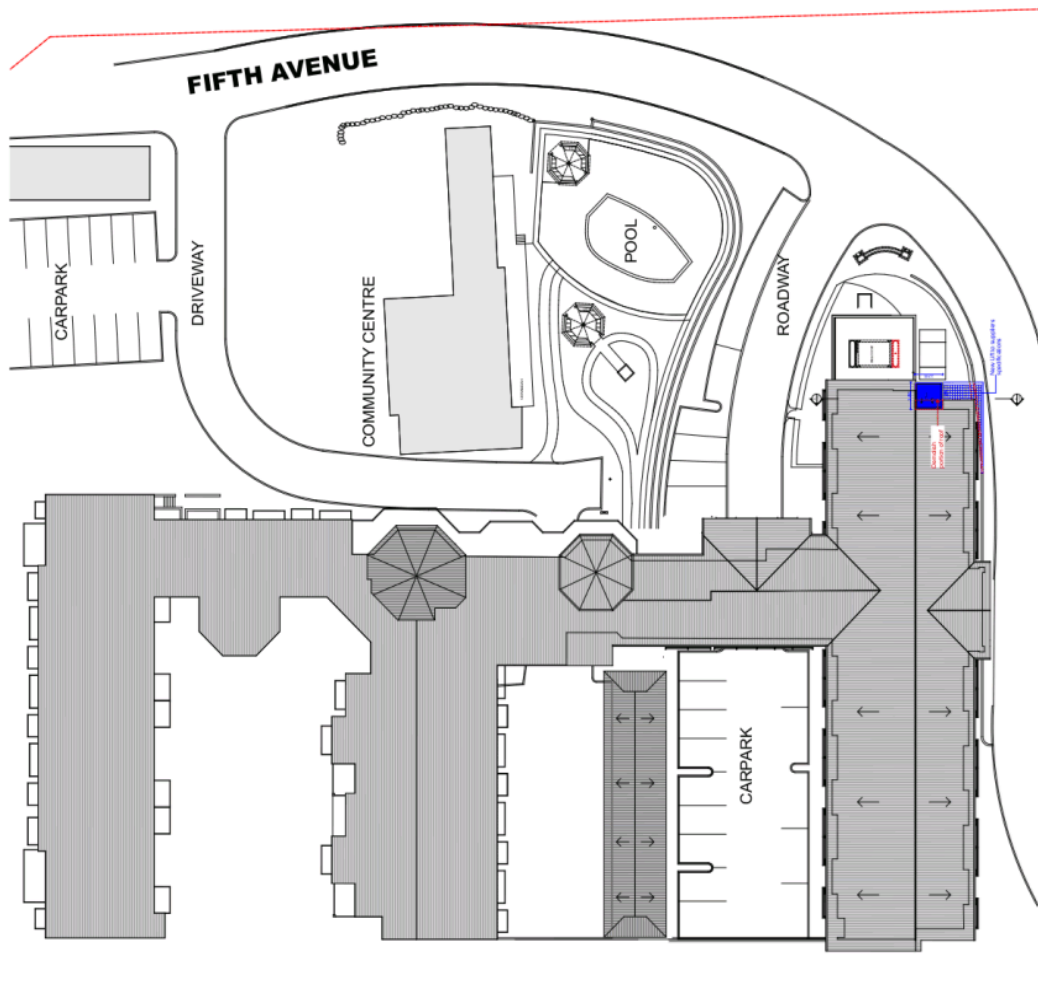


Site Location Map
1:5000

Drawing No.	Drawing Name	Revision	Issued	Issued Date
A000	Drawing Register	02	02	24/3/22, 11:01 am
A100	Site Plan	05	05	24/3/22, 11:01 am
A101	Basement Floor Plan	05	05	24/3/22, 11:01 am
A102	Ground Floor Plan	05	05	24/3/22, 11:01 am
A103	First Floor Plan	05	05	24/3/22, 11:01 am
A104	Second Floor Plan	05	05	24/3/22, 11:01 am
A105	Roof Plan	05	05	24/3/22, 11:01 am
A106	Sediment Control Plan	01	01	24/3/22, 11:01 am
A200	South Elevation	05	05	24/3/22, 11:01 am
A201	North Elevation	05	05	24/3/22, 11:01 am
A202	East Elevation	05	05	24/3/22, 11:01 am
A300	Section A-A	05	05	24/3/22, 11:01 am
A400	Neighbour Notification - Site Plan	02	02	24/3/22, 11:01 am
A401	Neighbour Notification - Elevations	02	02	24/3/22, 11:01 am
A500	External Finishes and Colours	01	01	24/3/22, 11:01 am

RSL LifeCare APG	McNally Architects Studio 301, 4-6 Clarke Street, Crows Nest, 2086, NSW, Australia +61 2 9488 3905 office@mcnallyarchitects.com.au www.mcnallyarchitects.com.au ABN 84 098 165 445 Jared McNally 21/04/2022	The drawing is a preliminary design and is not to be used for construction purposes. It is for information only and is not a contract. The drawing is the property of McNally Architects and is not to be reproduced without written permission.	Project Number 21044	Client RSL LifeCare	Drawing Title Drawing Register	Date 24/3/22	Revision 02

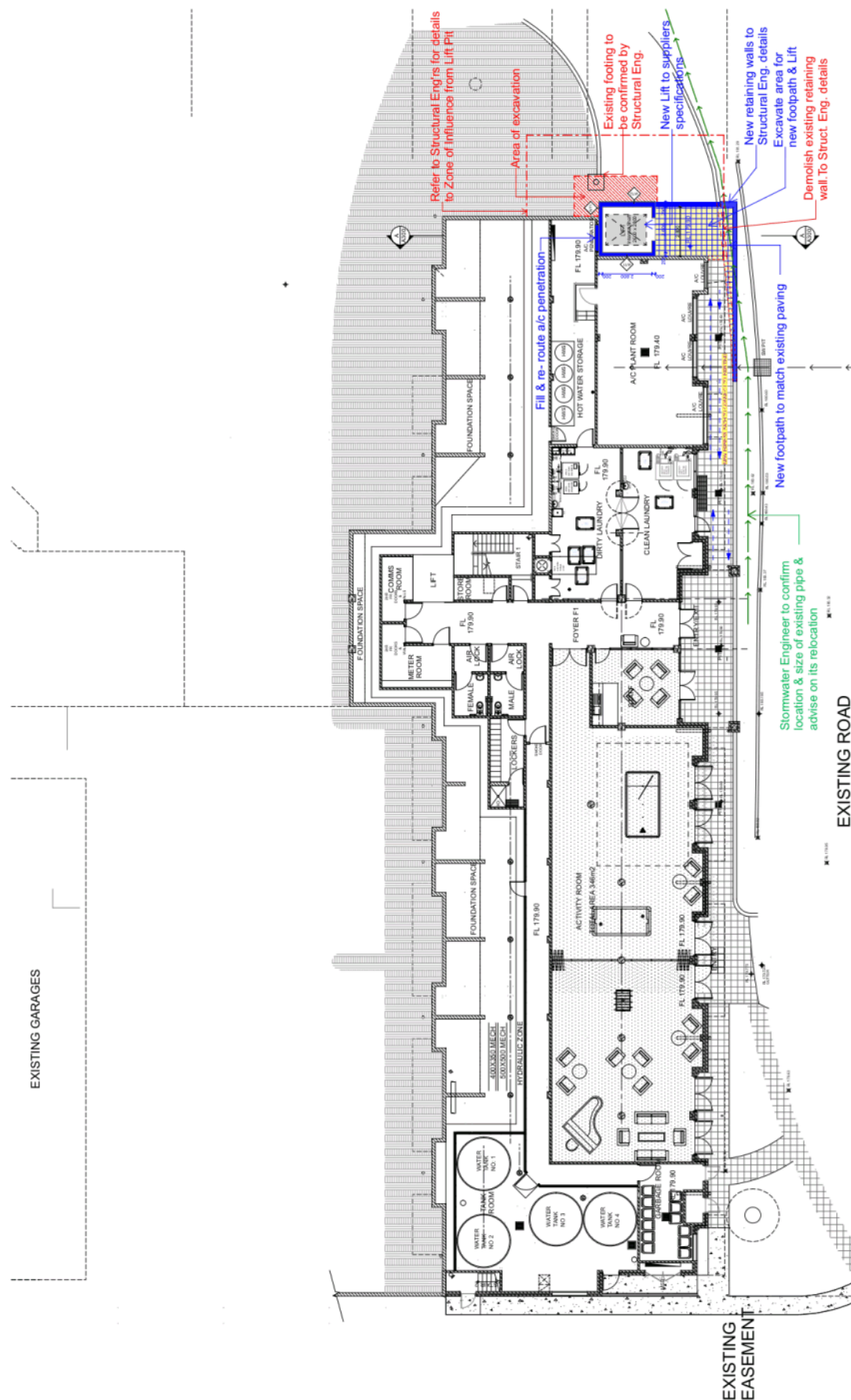
ATTACHMENT 3 - ITEM 2



Site Plan
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<p>Studio 201, 6-8 Clarke Street, Crows Nest, 2060, NSW, Australia +61 2 9438 3965 office@mcnallyarchitects.com.au www.mcnallyarchitects.com.au</p> <p> McNally Architects ABN 94 006 955 445 James McNally 0744</p>		<p>Studio 201, 6-8 Clarke Street, Crows Nest, 2060, NSW, Australia +61 2 9438 3965 office@mcnallyarchitects.com.au www.mcnallyarchitects.com.au</p> <p>This drawing is the property of RSL LifeCare and is not to be used for any other purpose without the written consent of RSL LifeCare. It is to be used for the project only and is not to be distributed to any other party without the written consent of RSL LifeCare.</p>	<p>project New Lift @ 301 - 305 Galston Rd Galston</p> <p>client RSL LifeCare</p> <p>project number 21044</p> <p>drawing Site Plan</p>	<p>date 24/3/22</p> <p>drawing scale 1:500 @ A3</p> <p>drawing number A001</p>																																																					

ATTACHMENT 3 - ITEM 2



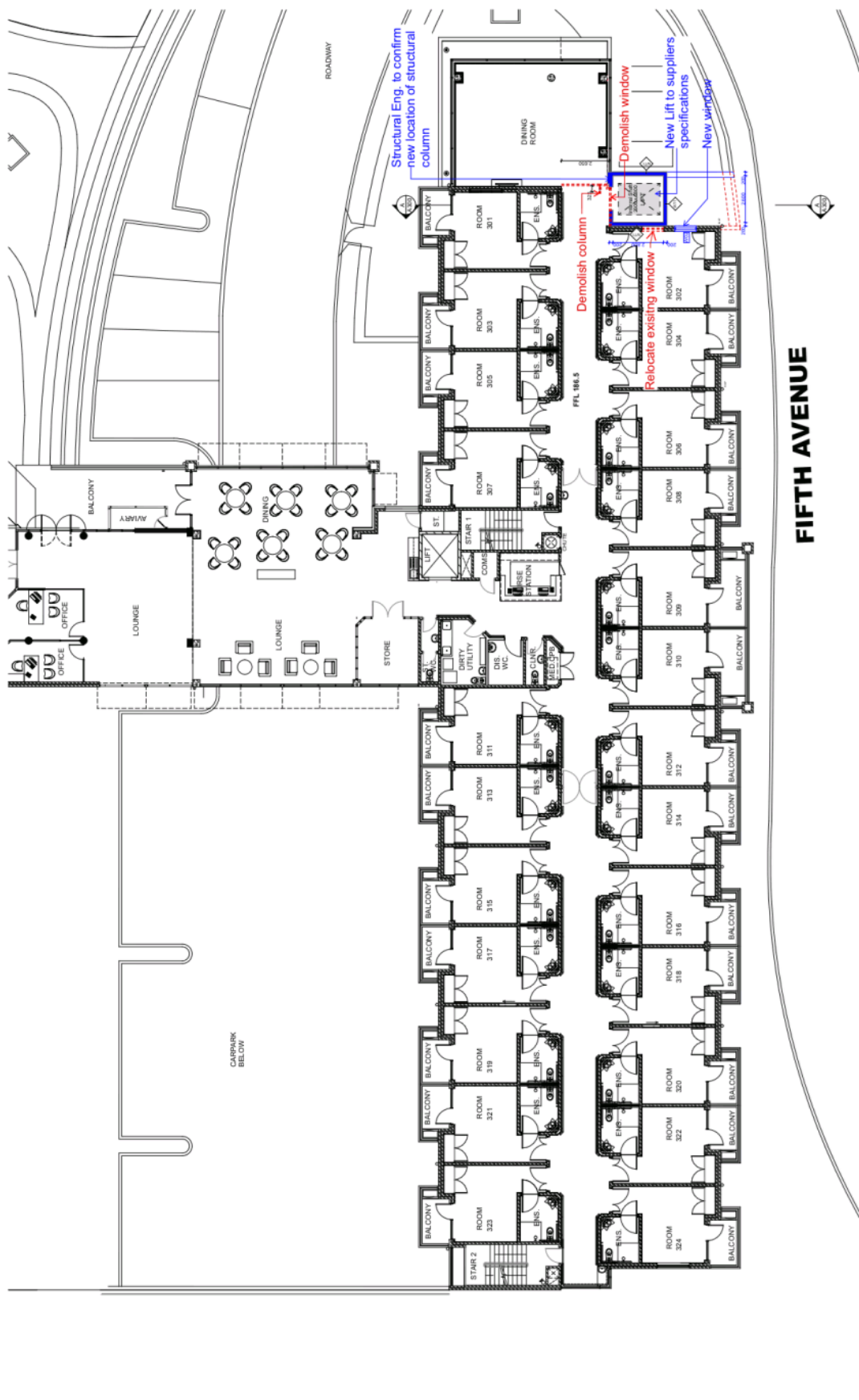
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ATTACHMENT 3 - ITEM 2

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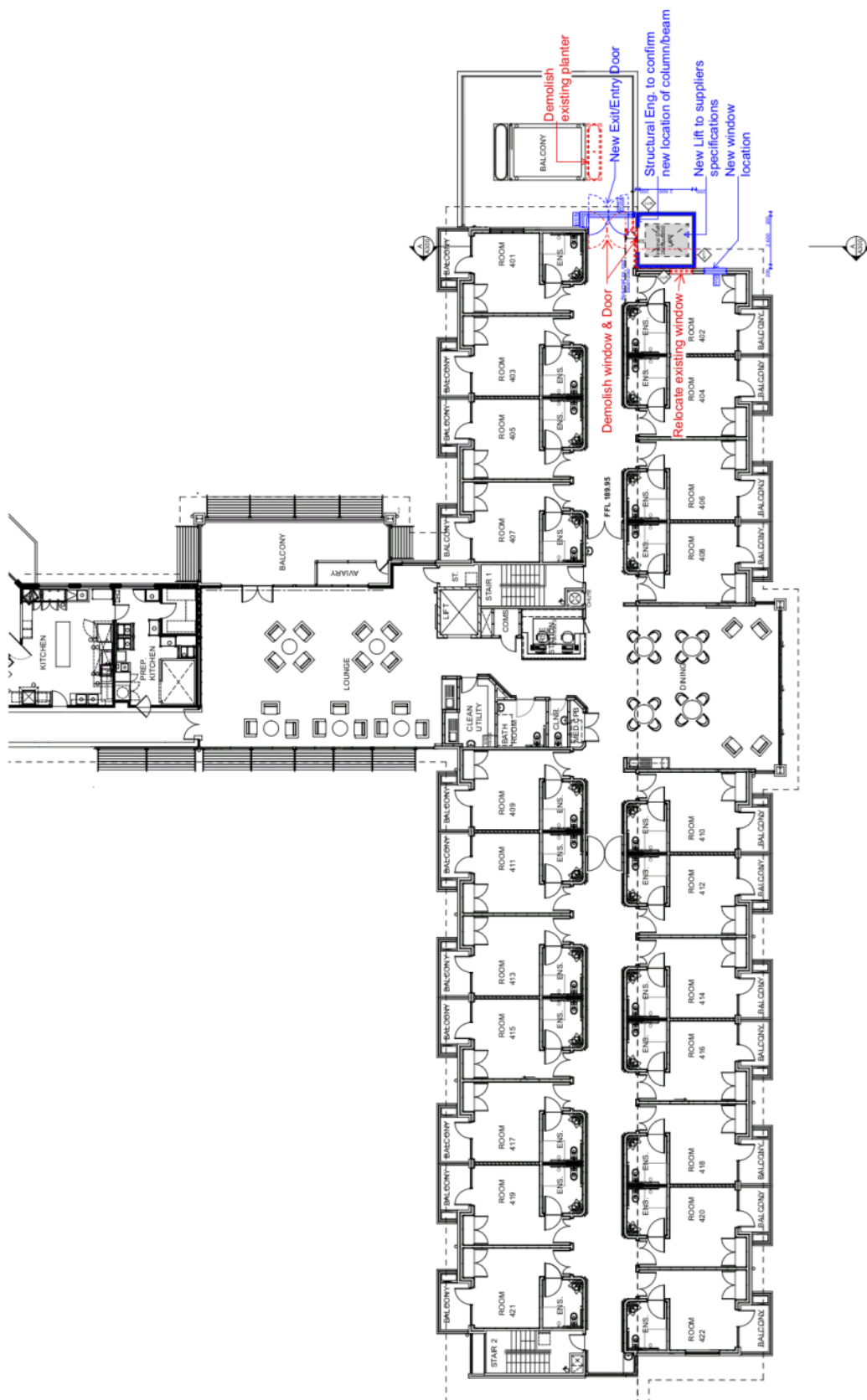
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First Floor
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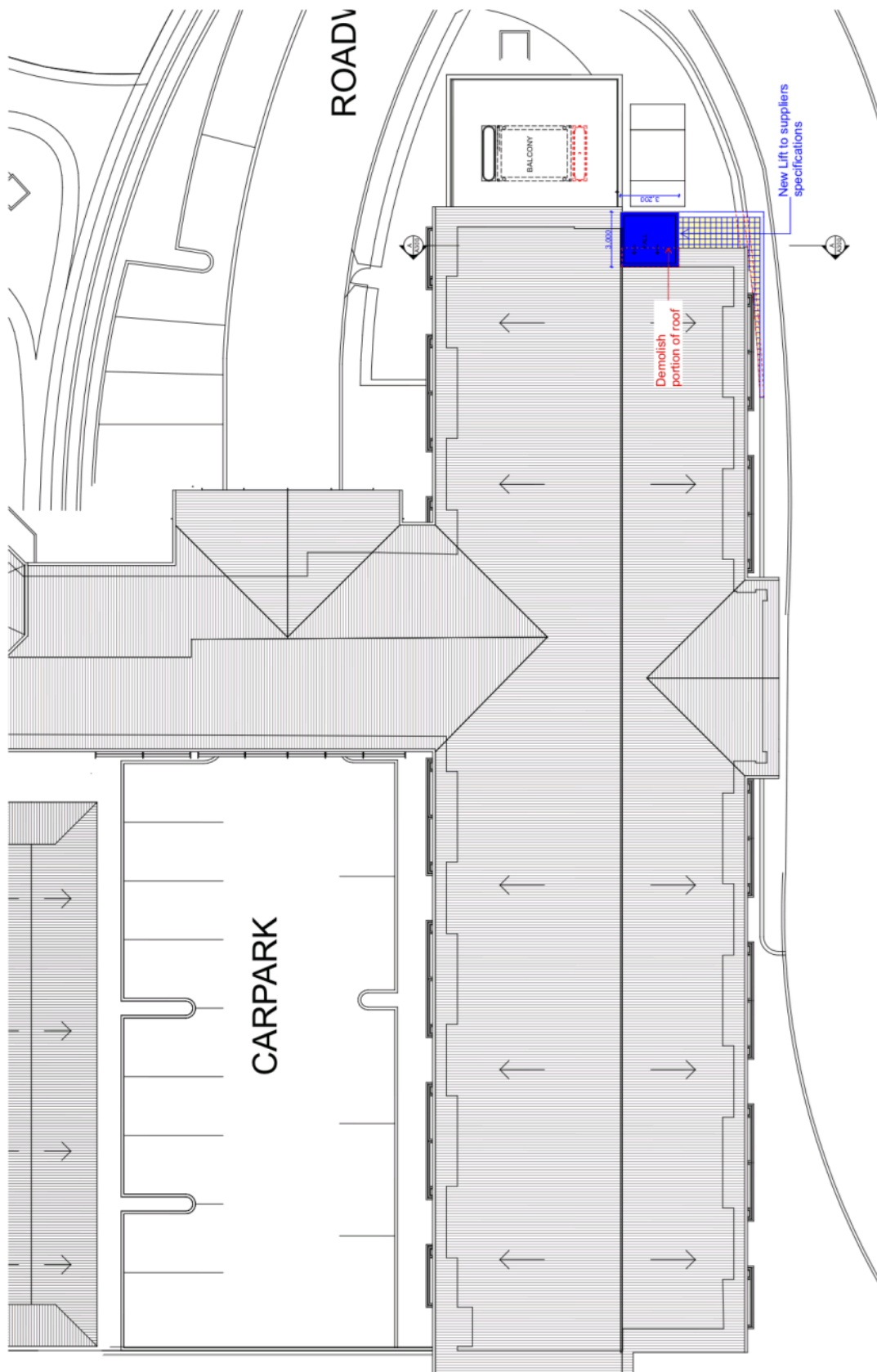
ATTACHMENT 3 - ITEM 2



Second Floor
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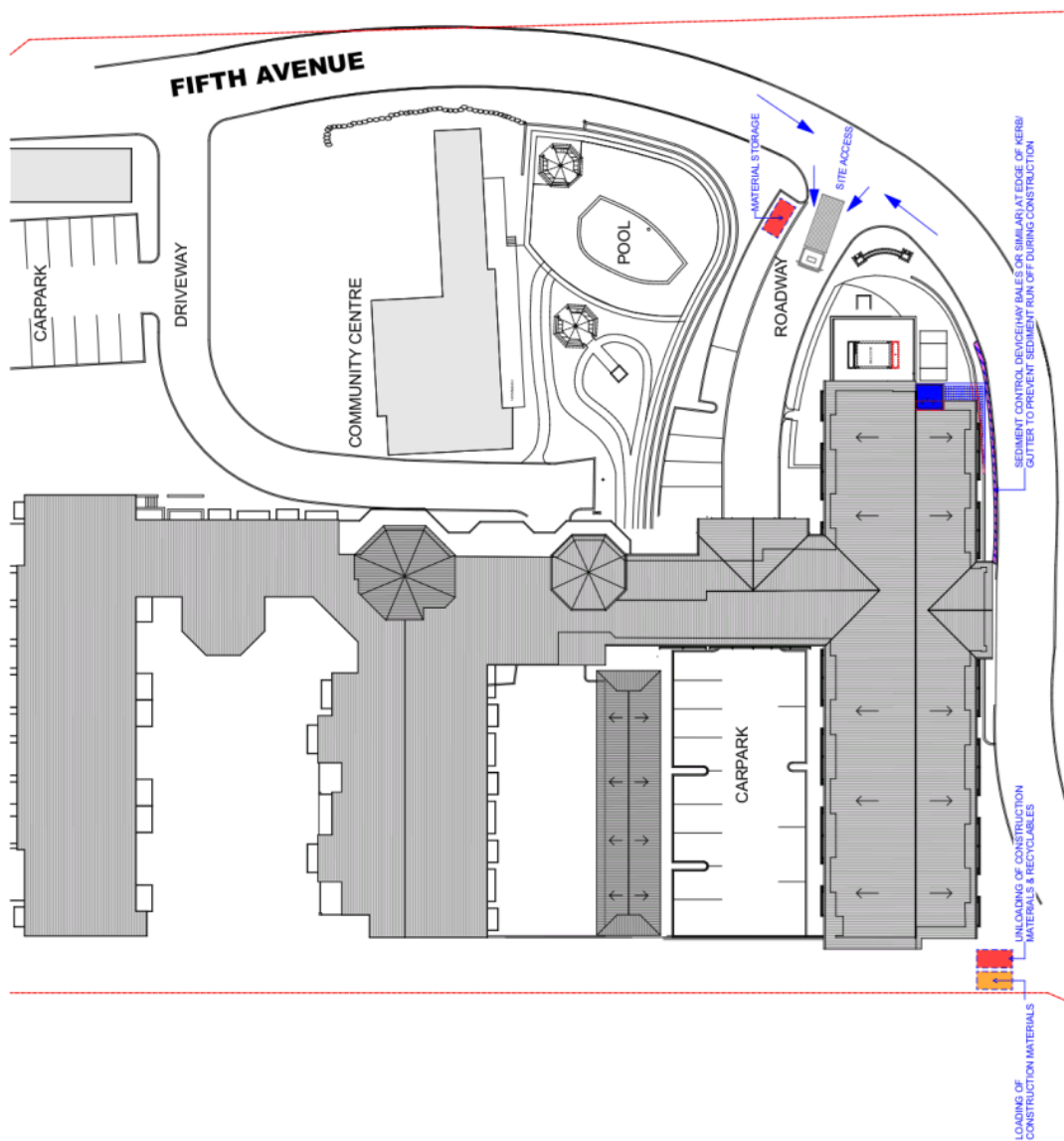
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Site Plan
1:500

		<p>01</p> <p>24/3/22</p> <p>DATE</p>	<p>24/3/22</p> <p>DATE</p>	<p>01</p> <p>REVISION</p>	<p>24/3/22</p> <p>DATE</p>	<p>01</p> <p>REVISION</p>	<p>24/3/22</p> <p>DATE</p>	<p>01</p> <p>REVISION</p>
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McNally Architects

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ATTACHMENT 3 - ITEM 2

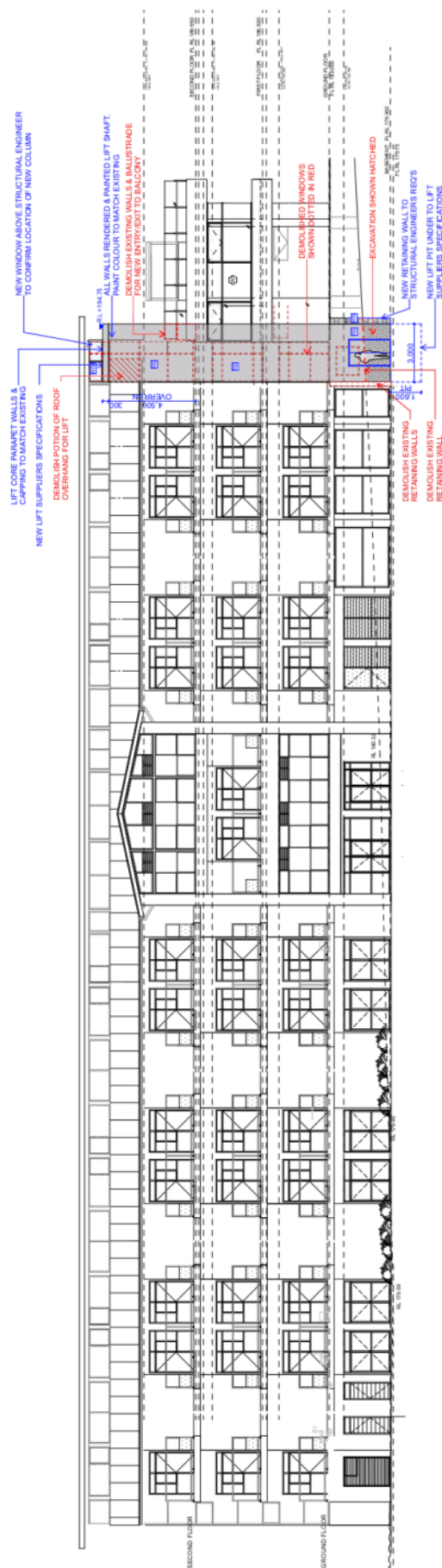
MATERIALS AND FINISHES

RW - External Lift walls - rendered & painted
RW - Selected retaining walls

W04 - Refers to window type

 - Refers to wall type

**To be read in conjunction with Materials Schedule as per Sheet A500*

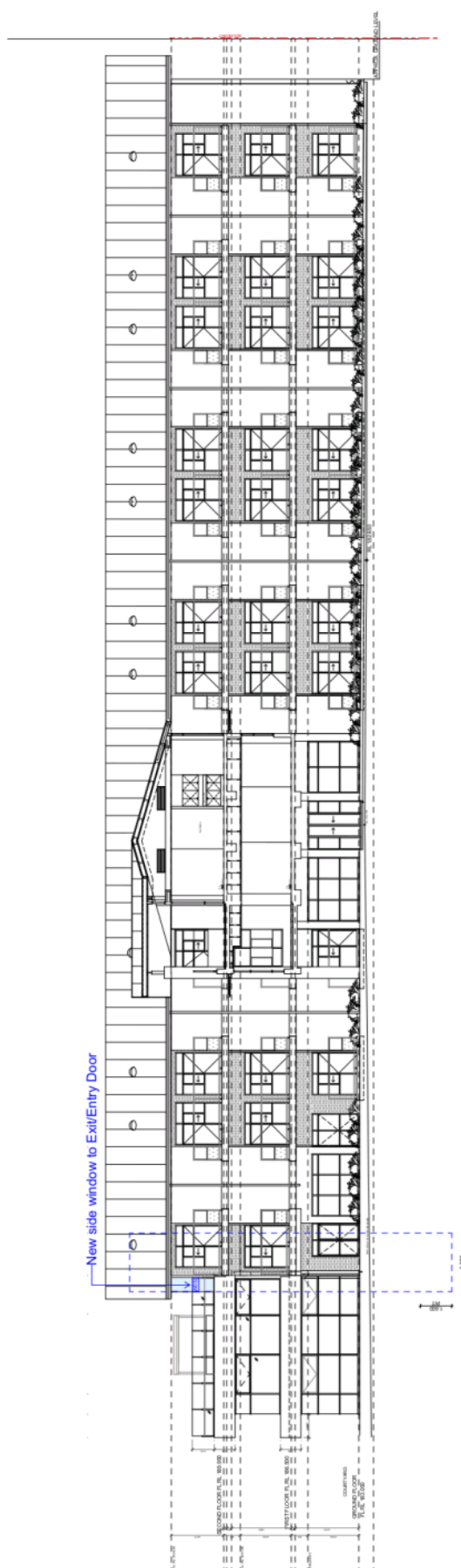


South Elevation
1:200

[illegible]

ATTACHMENT 3 - ITEM 2

MATERIALS AND FINISHES	
RE	- External Lift walls - rendered & painted
RW	- Selected retaining walls
W04	- Refers to window type
LLM	- Refers to wall type
*To be read in conjunction with Materials Schedule as per Sheet A500	




North Elevation
1:200

RSL LifeCare APG		McNally Architects	
05	24/3/22	DA Submission	05
04	17/3/22	DA Submission	
03	21/2/22	For Consideration	
02			
01			
Project		New Lift @ 301 - 305 Galston Rd Galston	
Project Number		21044	
Client		RSL LifeCare	
Drawing Scale		1:200 @ A3	
Drawing Number		A201	
Revision		05	

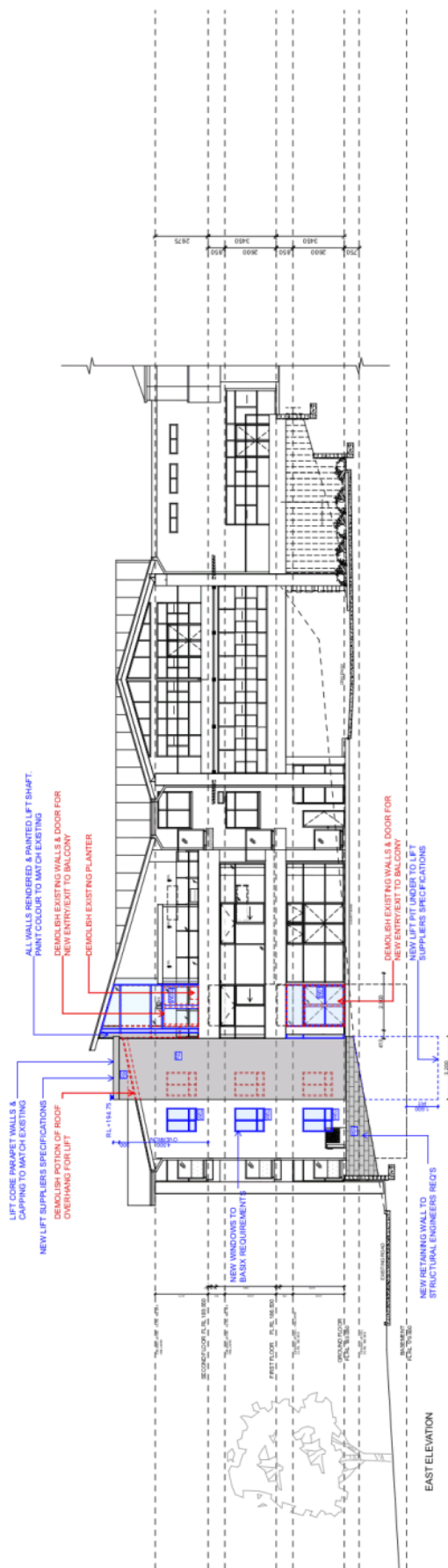
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ABN 94 098 165 445
James McNally B1 Arch

ATTACHMENT 3 - ITEM 2

MATERIALS AND FINISHES

RE - External Lift walls - rendered & painted
RW - Selected retaining walls
WWD - Refers to window type
 - Refers to wall type

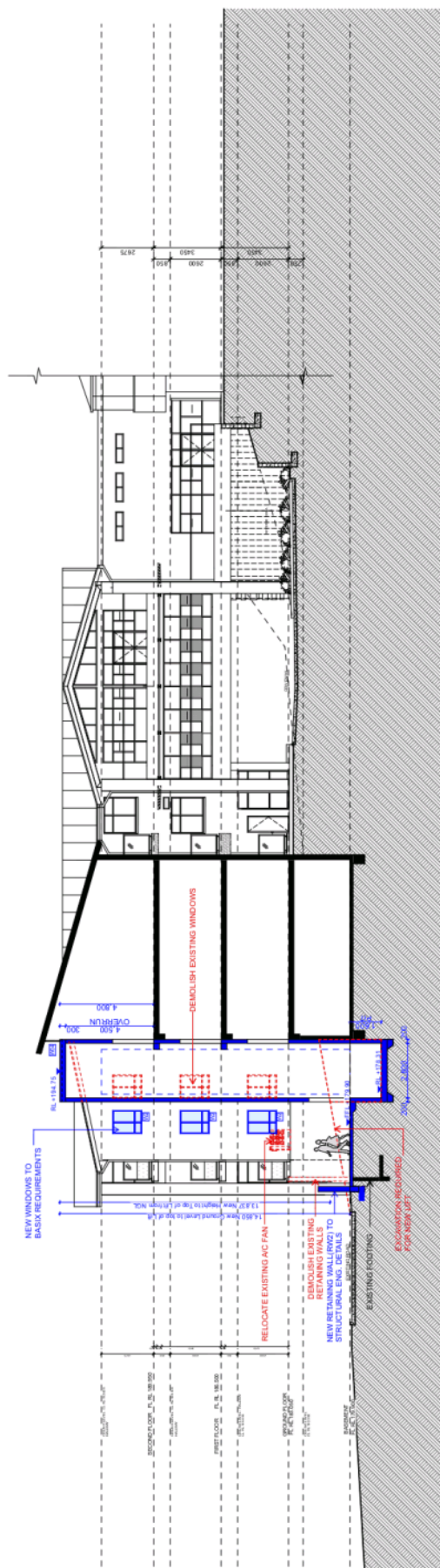
**To be read in conjunction with Materials Schedule as per Sheet A500*



East Elevation
1:200

[illegible]

ATTACHMENT 3 - ITEM 2



Section A - A
1:200

		<p> McNally Architects Studio 301, 4/4 Circle Street, Crows Nest, 2060, NSW, Australia 02 9438 3905 office@mcnallyarchitects.com.au www.mcnallyarchitects.com.au </p>	<p> Project New Lift @ 301 - 305 Galston Rd Galston Project Number 21044 Client RSL LifeCare Section Section A-A </p>	<p> Scale 1:200 @ A3 Revision 05 Revision Number A300 </p>

ATTACHMENT 3 - ITEM 2



RSL	LifeCare APG		<div style="display: flex; justify-content: space-between;"> <div> <p>Studio 201, 6-8 Carfax Street, Crows Nest, 2059, NSW, Australia +61 2 9439 3965 info@mcnellyarchitects.com.au www.mcnellyarchitects.com.au</p> </div> <div> <p>McNelly Architects ABN 94 6296 105 445 Level 7, 100 Market Street Sydney, NSW 2000</p> </div> </div>	<div style="text-align: center;"> 0 5 10 15m </div>	<p>PROJECT New Lift @ 301 - 305 Galston Rd Galston</p> <p>SITE NUMBER 21044</p> <p>CURT RSL LifeCare</p>	<p>DRAWING NO. 1500 - A3</p> <p>DATE 24/3/22</p>	<p>ISSUED FOR A400</p> <p>REVISIONS 02</p>
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ATTACHMENT 3 - ITEM 2



ATTACHMENT 3 - ITEM 2



ATTACHMENT 4 - ITEM 2



RSL Lifecare

BCA Design Assessment Report

Mark Donaldson VC House
301-305 Galston Road, Galston, NSW, 2159

ACCESSIBILITY | BUILDING REGULATIONS | FIRE ENGINEERING | MANAGEMENT SERVICES



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ATTACHMENT 4 - ITEM 2



Project: RSL Lifecare – Galston
Document Type: BCA Design Assessment Report
Report Number: P221_357-2 (BCA) LB

The following report register documents the development and issue of this and each subsequent report(s) undertaken by Design Confidence.

The technical and intellectual content contained herein remain the property of Design Confidence and have been prepared and may only be used, for the development / building(s) being the subject of this report.

Revision History:

OUR REFERENCE	REMARKS	ISSUE DATE
P221_357-1 (BCA) LB	Report issued as draft for design team review and comment	28 January 2022
P221_357-1 (BCA) LB	Report issued as FINAL following design team feedback	8 March 2022



EXECUTIVE SUMMARY

This BCA Design Assessment report has been prepared by Design Confidence at the request of APG on behalf of RSL Lifecare. With respect to the assessment undertaken the design is considered to be capable of complying with the performance provisions of the BCA. Compliance would be achieved via the relevant deemed-to-satisfy requirements as outlined within the BCA.

With respect to the assessment undertaken the following areas need further review as the project develops –

NO.	ITEMS FOR FURTHER CONSIDERATION	RESPONSIBILITY
1.	A test report from the architect or Registered Testing Authority must be provided to certify that the façade / external walls (lift overrun) achieves compliance with BCA FP1.4 and FV1.	Architect/ Façade Engineer



1.0 INTRODUCTION

1.1 General

This BCA Design Assessment report has been prepared at the request of APG on behalf of RSL Lifecare to accompany the Development Application documentation for the proposed lift within the Mark Donaldson VC House aged care facility, Galston.

This report is based upon, and limited to, the information depicted in the documentation provided for assessment, and does not make any assumptions regarding 'design intention' or the like.

1.2 Purpose of report

The purpose of this report is to identify the extent to which the architectural design documentation complies with the prescriptive provisions of the Building Code of Australia (BCA) Volume 1, edition 2019 Amendment 1.

1.3 Documentation Provided for Assessment

This assessment is based upon the Architectural documentation prepared by McNally Architects and listed within Appendix 1.

1.4 Report Exclusions

It is conveyed that this report should not be construed to infer that an assessment for compliance with the following has been undertaken –

- (i) Work Health & Safety Act and Regulations;
- (ii) WorkCover Authority requirements;
- (iii) Structural and Services Design Documentation;
- (iv) The individual requirements of service authorities (i.e. Telecommunication Carriers, Sydney Water, Endeavour Energy);
- (v) The Disability Discrimination Act (DDA) 1992;
- (vi) The Accessibility Requirements of the BCA, as contained within D3 and F2.4 of the BCA;
- (vii) The Energy Efficiency Provisions of the BCA, as contained with Section J of the BCA;
- (viii) An assessment of any existing building located on the allotment;



2.0 DEVELOPMENT DESCRIPTION

2.1 General

In accordance with the Building Code of Australia, the assessment undertaken relates to the proposed lift and minor internal alterations within the Mark Donaldson VC House aged care facility, Galston.

For the purpose of the Building Code of Australia (BCA) the subject development may be described as contained below.

2.2 Building Description

Table 2 – Building Characteristics

DESCRIPTION OR REQUIREMENT		
Building Classification	Residential Aged Care Facility	9c
Rise in Storeys		Four (4)
Construction Type		Type A
Effective Height		<12m
Floor Area & Volume	Basement	No change
	Ground Floor	6m ² (new works)
	First Floor	No change
	Second Floor	6m ² (new works)
Climate Zone:	Climate Zone 5	

2.3 BCA Interpretation Notes

To provide the reader with additional context, the following information regarding the assessment methodology used in this assessment is provided below –

- (i) This BCA report is based off a desktop assessment, no site inspection has been undertaken; and
- (ii) BCA Classification 9C has been provided by the client as being the applicable Class, this corresponds with previous Annual Fire Safety Statements received for the subject building;
- (iii) Exits have been taken as either corresponding with fire-isolated exits, or where on the ground floor external doors are utilised to open sky;



4.0 BCA ASSESSMENT SUMMARY

4.1 General

The following table summarises the compliance status of the architectural design in terms of each *applicable* prescriptive provision of the BCA and indicates a capability for compliance with the BCA.

Although, it should be recognised that instances exist where 'Prescriptive non-compliance' occurs, or 'design detail' is required.

Such instances should not necessarily be considered BCA deficiencies; but matters, which need to be considered by the design team and any assessment authority at relevant stages of design and/or assessment.

For those instances of either 'prescriptive non-compliance' or 'design detail', a detailed analysis and commentary is provided within Part 4.0 of this report.

4.2 Section B: Structure

BCA CLAUSE	COMPLIES	DOES NOT COMPLY	ADDITIONAL DESIGN INPUT
B1.1 resistance to actions			✓
B1.2 determination of individual actions			✓
B1.4 materials and form of construction			✓

4.3 Section C: Fire Resistance

BCA CLAUSE	COMPLIES	DOES NOT COMPLY	ADDITIONAL DESIGN INPUT
C1.1 fire resisting construction			✓
C1.8 lightweight construction			✓
C1.9 Non-combustible building elements			✓
C1.10 fire hazard properties			✓
C2.2 general floor area & volume limitations	✓		
C2.5 class 9a and 9c buildings	✓		
C2.7 separation by fire walls	✓		
C2.10 separation of lift shafts			✓
C2.11 stairways and lifts in one shaft	✓		
C3.2 protection of openings			✓
C3.4 methods of protection			✓



BCA CLAUSE	COMPLIES	DOES NOT COMPLY	ADDITIONAL DESIGN INPUT
C3.12 openings in floors and ceilings			✓
C3.13 openings in shafts			✓
C3.15 openings for service installation			✓
C3.16 construction joints			✓
C3.17 columns protected in lightweight			✓

4.4 Section D: Access & Egress

BCA CLAUSE	COMPLIES	DOES NOT COMPLY	ADDITIONAL DESIGN INPUT
D1.2 number exits required	✓		
D1.3 fire-isolated exits	✓		
D1.4 exit travel distances	✓		
D1.5 distance between alternative exits	✓		
D1.6 dimensions of exits and paths of travel to exits	✓		
D1.10 discharge from exits			✓
D1.13 number of persons accommodated			✓
D1.17 access to lift pits			✓
D2.7 installations in exits and paths of travel			✓
D2.19 doorways and doors	✓		
D2.20 swinging doors	✓		
D2.21 operation of latch			✓

4.5 Section E: Services & Equipment

BCA CLAUSE	COMPLIES	DOES NOT COMPLY	ADDITIONAL DESIGN INPUT
E1.3 fire hydrants			✓
E1.5 sprinklers			✓
E1.6 portable fire extinguishers			✓
E2.2 general provisions			✓
E3.1 lift installations			✓
E3.2 Stretcher lift			✓
E3.3 warning against use of lifts			✓
E3.5 lift landings	✓		
E4.2 emergency lighting			✓
E4.5 exit signs			✓
E4.6 design and operation of exit signs			✓



4.6 Section F: Health & Amenity

BCA CLAUSE	COMPLIES	DOES NOT COMPLY	ADDITIONAL DESIGN INPUT
F1.1 storm water design			✓
F1.5 roof coverings			✓
F1.6 sarking			✓
F3.1 height of rooms and other spaces			✓
F4.4 artificial lighting			✓
F4.5 ventilation of rooms			✓

4.7 Section G - Ancillary Provisions

BCA CLAUSE	COMPLIES	DOES NOT COMPLY	DESIGN DETAIL
G1.101 provision for cleaning windows			✓
G5.1 bushfire prone areas			✓



5.0 BCA DETAILED ASSESSMENT

5.1 General

With reference to the 'BCA Assessment Summary' contained within Part 3 of this report, the following detailed analysis and commentary is provided.

This commentary is formulated to enable the design documentation to be further progressed, for the purpose of evidencing the attainment of compliance with the relevant provisions of the BCA.

5.2 Section B – Structure

- | | |
|------|---|
| B1.1 | The resistance of a building or structure must be greater than the most critical action effect determined by B1.2 & B1.4 of the BCA and AS/NZS 1170.0-2002. |
| B1.2 | The structural design of the building must be determined in accordance with the varying "actions" considerations contained within this clause (i.e. permanent actions, imposed actions, wind / snow / earthquake actions). |
| B1.4 | <p>The structural resistance of materials and forms of construction must be determined in accordance with the following:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Masonry: AS3700-2018; and <input type="checkbox"/> Concrete construction: AS3600-2018; and <input type="checkbox"/> Steel construction: AS4100-1998 or AS/NZS4600-2005; and <input type="checkbox"/> Glazed assemblies: AS1288-2006 & AS2047-1999; and <input type="checkbox"/> Metal roofing: AS1562.1-1992. |

5.3 Section C – Fire Resistance

- | | |
|------|--|
| C1.1 | <p>The building elements are required to achieve the nominated FRLs as nominated within BCA Spec C1.1 as applicable, these FRLs have been summarised within Table A2.1 as contained within Appendix 2.</p> <p>In addition to the FRLs contained within the Appendix A2 the following information details the construction methodology and concessions available to the subject building.</p> <ul style="list-style-type: none"> <input type="checkbox"/> <u>General notes</u> <ul style="list-style-type: none"> (i) Internal walls required to have an FRL must extend: <ul style="list-style-type: none"> ▪ To the underside the floor next above; ▪ To the underside of a roof covering if it is non-combustible and must not be crossed by timber or other combustible building elements, except for roof battens with dimensions of 75mm x 50mm or less or sarking-type material; or ▪ A ceiling that is immediately below the roof and has a resistance to the incipient spread of fire to the roof space between the ceiling and the roof of not less than 60 minutes; |
|------|--|



ATTACHMENT 4 - ITEM 2

C1.1 Cont'd

- (ii) Any loadbearing internal wall and a loadbearing fire wall (including shafts) is required to be of concrete or masonry or fire-protected timber;
- (iii) A non-loadbearing internal wall required to achieve an FRL is required to be of non-combustible construction;
- (iv) A shaft which is not for the discharge of hot products of combustion and not load-bearing is required to be of non-combustible construction;
- (v) Shafts required to have an FRL must be enclosed at the top and bottom by construction having an FRL not less than 120/120/120, exempt the provisions need not apply to the top of the shaft extending beyond the roof covering, other than one enclosing a fire-isolated stairway or ramp, or the bottom of a shaft it is non-combustible and laid directly on the floor;
- (vi) Building elements are required to achieve an FRL from both sides.

❑ Concessions

- (i) In the storey immediately below the roof, the FRL of need not have an FRL;
- (ii) A floor need not have an FRL if it is laid directly on the ground; and

❑ Method of attachment not to reduce the fire-resistance of building elements

The method of attaching or installing a finish, lining, ancillary element or service installation to a building element must not reduce the fire-resistance of that element to below that required.

As the lift shaft extends beyond the roof covering of the building, the top of the shaft need not achieve an FRL.

C1.8

Lightweight construction used in a wall system required to have an FRL or a lift, stairway or service shaft (refer to Spec. C1.1 above) must comply with this clause.

If lightweight construction is used for the fire-resisting covering of any steel column/s (refer to BCA Spec C1.1 above), then any void must be filled solid, to a height of not less than 1.2m above the floor.

C1.9

The following building elements and their components must be non-combustible –

- (i) External walls, including all components incorporated in them including the façade covering, framing and insulation – this applies to the external walls of the lift overrun;
- (ii) The flooring and floor framing of lift pits;



C1.10	The fire hazard properties for materials proposed to be provided have been summarised within Table A3.1 as contained within Appendix 3.
C1.14	An ancillary element must not be fixed, installed or attached to the internal parts or external face of an external wall that is required to be non-combustible unless it is one of the elements permitted under this clause.
C2.2	The works do not propose to add any additional floor area or volume and there will be no internal change to any existing fire/smoke walls.
C2.5	<p>A Class 9c building must comply with the following:</p> <ul style="list-style-type: none"> (i) A building must be divided into areas no not more than 500m² by smoke-proof walls complying with Specification C2.5. (ii) A fire compartment must be separated from the remainder of the building by fire walls, and notwithstanding C2.7 and Specification C1.1, floors with an FRL of not less than 60/60/60. (iii) Internal walls (other than those bounding lift and stair shafts) supported by floors provided in accordance with C2.5(b)(ii) need not comply with Specification C1.1 if they have an FRL not less than 60/-/-. (iv) Ancillary use areas containing equipment or materials that are a high potential fire hazard, must be separated from the sole-occupancy units by smoke proof walls complying with Specification C2.5 <p>For the purpose of determining ancillary use areas referred to above, these include, but are not limited to;</p> <ul style="list-style-type: none"> (a) A kitchen or food preparation area with a combined floor area of more than 30m². (b) A laundry where gas fire dryers are utilised. (c) Storage rooms greater than 10m². <p>Openings in fire walls must be protected as follows:</p> <ul style="list-style-type: none"> (A) Doorways – self-closing or automatic closing -/60/30 fire doors. (B) Windows – automatic or permanently fixed closed -/60/- fire windows or -/60/-automatic fire shutters. (C) Other openings – construction having an FRL not less than -/60/- <p>The works propose an additional 6m² on the ground and second floors. Based off existing floor plans the additional floor area will not increase existing smoke compartments to exceed the above parameters and is considered compliant for the purposes of this clause.</p>

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C2.10	As the lift is located within a resident use area the lift must be separated from the building by a shaft with an FRL not less than 120/120/120.
C2.11	<p>A stairway and lift shaft is not permitted to be located within the same shaft.</p> <p>No stairway is proposed, so compliance with this clause is achieved.</p>
C2.12	<p>If the lift motors or control panels are provided within a separate room, then the room is required to be separated from the remainder of the building by construction having an FRL of not less than 120/120/120 and have any doorway in that construction protected with a self-closing fire door having an FRL of not less than --/120/30.</p> <p>Pumpset/s for fire services shall comply with AS2419.1-2005.</p>
C3.3	No alteration to existing fire walls is proposed, hence no requirements under the provisions of this clause.
C3.10	<p>(i) The doorways providing access to the lift shaft(s) shall be protected by --/60/-- fire doors complying with AS1735.11-1986 and remain closed except when discharging or receiving passengers or goods; and</p> <p>(ii) Any lift call button, indicator panel or other panel located within the wall of the fire-isolated lift shaft must be backed by construction having an FRL of --/60/60 if it exceeds 35,000mm² in area.</p> <p>This will only apply if the lift is confirmed to be located within a resident use area.</p>
C3.12	Where a service passes through a floor required to achieve an FRL, that service is required to be protected by either a shaft which has been construction in accordance with BCA Spec C1.1 (listed above) or in accordance with C3.15 (see below).
C3.13	<p>Any opening in a wall providing access to a ventilating, pipe, garbage or other service shaft must be protected by one of the following methods -</p> <p>(i) If it is in a sanitary compartment – a door or panel which together with its frame is non-combustible or has an FRL of not less than --/30/30; or</p> <p>(ii) A self-closing --/60/30 fire door or hopper; or</p> <p>(iii) An access panel having an FRL of not less than --/60/30; or</p> <p>(iv) If the shaft is a garbage shaft the door or hopper is to be of non-combustible construction.</p>

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- C3.15 Any opening(s) for service(s) (electrical, mechanical, plumbing, etc) that penetrate a building element which is required to be of fire-resisting construction is required to be protected (i.e. fire seal).
- C3.16 Construction joints, spaces and the like in and between building elements required to be fire-resisting with respect to integrity and insulation must be protected in a manner identical with a prototype tested in accordance with AS1530.4-2005 to achieve the required FRL.
- C3.17 Where a column protected by lightweight construction to achieve the required FRL defined by BCA Spec C1.1 (listed above) passes through a building element that is also required to have an FRL it must be installed using a method and materials identical with the prototype assembly of the construction which has achieved the required FRL.

4.4 Section D – Access & Egress

- D1.2 Under the provisions for a Class 9c each storey containing sleeping quarters is required to be provided with two exits. The architectural documentation indicates two exits are provided from each residential storey and the proposed will not be altering existing conditions.
- D1.3 Every stairway in a 9c building must be fire-isolated. No alteration to existing stairways is proposed.
- D1.4 Travel distances are required to comply with the following DTS provisions:
- 20m to an exit, or a point in which two exits is available, in which case the maximum distance to one of those exits is 40m.
- An assessment has revealed travel distances in the altered areas will comply with the above provisions.
- It is noted on the first floor dining room travel distances is 29m to a point of choice. This has previously been addressed under a fire engineered solution prepared by Innova. We would consider that the new works are consistent with this report, however a Clause 130 will be required to be obtained as part of the Construction Certificate documentation.
- D1.5 Distance between alternative exits are to be no more than 60m between alternative exits.
- An assessment shows the proposed floor plan is capable of complying with the above provision.
- D1.6 The path of travel to an exit and any required exit is to have an unobstructed height throughout of not less than 2m (except a doorway, which can be 1980mm) and an unobstructed width not less than 1m (except a doorway, which can be 750mm in an area not required to be accessible and 850mm in an area required to be accessible).



D1.10	Existing discharge paths are to be utilised to afford egress. Based off the architectural drawings pathways achieve a minimum 1m width and are capable of complying with the provisions of D1.10.
D1.13	The proposed works will not be adding any additional occupation loads within the building.
D1.17	Access into the lift pit must be through the lift landing doors provided on the lowest level.
D2.7	<p>Gas or other fuel services must not be installed within the required exit.</p> <p>Any services or equipment (being electrical meters, distribution boards or the like) installed within the path of travel are to be enclosed by non-combustible construction or a fire-protective covering with doorways or openings suitably sealed against smoke spreading from the enclosure.</p>
D2.15	<p>❑ <u>Internal Doorways</u></p> <p>(i) The threshold of any doorway must not incorporate a step or ramp at any point closer to the doorway than the width of the door leaf.</p> <p>❑ <u>External Doorways</u></p> <p>(ii) The threshold of the external doorways leading from the foyer on ground floor & lower ground floor must not incorporate a step or ramp at any point closer to the doorway than the width of the door leaf great than 50mm; and</p> <p>(iii) All other doorways can incorporate a step or ramp 190mm above the finished surface of the ground, this includes the balconies.</p>
D2.17	<p>Handrails must be fixed at a height of not more than 865mm measured above the nosing's of the stair treads, ramp or landing and shall be continuous such that no obstruction on or above them will tend to break a hand hold.</p> <p>Handrails must also be provided along both sides of every passageway or corridor used by residents and must be-</p> <p>(a) Fixed not less than 50mm clear of the wall; and</p> <p>(b) Where practicable, continues for their full length</p> <p>(c) Handrails must be provided in accordance with D3.3.</p>

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D2.19	<p>The doorway in resident use area of a Class 9c building must not be fitted with –</p> <ul style="list-style-type: none"> (a) A sliding fire door; or (b) A sliding smoke door; or (c) A revolving door; or (d) A tilt-up door
D2.20	<p>All exit doors must swing in the direction of egress. This applies to the doors leading external doors on the ground floor utilised as exits. No change is proposed to these doors which are swinging outwards and would comply with this clause.</p>
D2.21	<p>Door hardware requirements are applicable below –</p> <ul style="list-style-type: none"> (i) Any door in a required exit, forming part of a required exit or in the path of travel to a required exit must be readily operable without a key from the side that faces a person seeking egress; and (ii) By a single hand pushing or downward action on a single device located between 900mm and 1100mm from the floor and <ul style="list-style-type: none"> ▪ Be such that the hand of a person who cannot grip will not slip from the handle during the operation of the latch; and ▪ Have a clearance between the handle and the back plate or door face at the centre grip section of the handle of not less than 35mm nor more than 45mm; or (iii) A single hand pushing action on a single device which is located between 900mm and 1.2m above the floor; or (iv) Alternatively, any door in a required exit, forming part of a required exit or in the path of travel to a required exit must be fitted with a fail-safe device which automatically unlocks the door upon the activation of any detector system deemed suitable in accordance with AS1670.1-2004 installed throughout the building. <p>The above is to be applied to the new doors on the second floor.</p>

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4.5 Section E – Services & Equipment

- E1.3** A fire hydrant system complying with AS2419.1-2005 is required to serve the building.
- As no additional floor area is proposed, it is assumed existing coverage will be capable of serving the alterations and no alterations will be required to the hydrant system. We have received the existing Annual Fire Safety Statement which has confirmed existing hydrants.
- E1.5** As the building contains a 9c classification, the whole building is to be sprinklered. This system is to be compliant with AS2118.4-2012 and Specification E1.5 of the BCA.
- The system must be provided with a monitored main stop valve in accordance with AS2118.1 and be permanently connected to a direct data link or other approved monitoring system to a fire station or dispatch centre.
- As the works will require alteration to the existing sprinkler system (compliant to AS2118.1-1999) services engineer to confirm compliance. If compliance with the current standard cannot be achieved a 164B exemption may be sought.
- E1.6** Portable fire extinguishers complying with AS2444 are required to be provided throughout the building.
- Public corridors serving the units must be provided with powder (ABE) type fire extinguishers, with a minimum size of 2.5kg and distributed to only serve the storey where they are located and so that there is 10m maximum distance from the unit doorway to the nearest extinguisher.
- E2.2** The following smoke hazard management systems are required throughout the building –
- (i) An automatic smoke detection system complying with Specification E2.2a; and
 - (ii) The air-handling system must automatically shut down on the activation of the sprinkler system complying with Specification E1.5 of the BCA.
- As the works will require alteration to the existing detection system (compliant to AS1670.1-2004) services engineer to confirm compliance. If compliance with the current standard cannot be achieved a 164B exemption may be sought.
- E3.1** The electric passenger lift installation or an electrohydraulic passenger lift installation shall comply with this clause and Specification E3.1.
- E3.2** As the subject lift is not required to be an emergency lift, or serve a storey with an effective height above 12m, stretcher facilities are not required to be provided within the lift.



- E3.3** Warning signage "DO NOT USE LIFTS IF THERE IS A FIRE" will be required adjacent every lift call button with dimensions as detailed in this clause.
- E3.5** Access and egress to and from the liftwell landings must comply with the Deemed to Satisfy Provisions of Section D.
Circulation spaces must comply with AS1428.1.
- E4.2** Emergency lighting is required in accordance with AS2293.1-2005.
- E4.5** Exit signage designed in accordance with AS2293.1-2005 must be provided above or adjacent to any external doorways and doorways leading to & from fire-isolated exits serving as required exits from the building.
- E4.6** If an exit is not readily apparent to persons occupying or visiting the building, then exit signs complying with AS2293.1-2005 must be installed in appropriate positions in corridors, hallways, lobbies and the like, indicating the direction to a required exit.

4.6 Section F – Health & Amenity

- F1.0** A test report from a Registered Testing Authority must be provided to certify that the façade / external walls achieve compliance with BCA FP1.4 and FV1.
- F1.1** Stormwater drainage must comply with AS/NZS3500.3-2003.
- F1.4** Waterproofing membranes for external above ground use (i.e. balconies and roof) must comply with AS4654-2012.
- F1.5** Metal roof sheeting must comply with AS1562.1-1992.
- F1.6** Any Sarking-type materials used for weatherproofing of roofs and walls must comply with AS/NZS4200-1994.
- F1.9** Damp-proof courses must consist of a material complying with AS/NZ2904-1995 or an impervious termite shield complying with AS3660.1-2000.
- F1.10** A floor laid directly onto ground or fill must be provided with a vapour barrier complying with AS2870-2011.
- F1.13** Refer to B1.4 (above) for glazing requirements.
- F2.1** For facilities in 9c buildings, the following applies:
(i) For residents in each building or group of buildings, provide-
(A) a closet pan and wash basin for each 6 residents or part thereof where private facilities are not provided; and
(B) a shower for each 7 residents where private facilities are not provided; and
(C) a suitable bath, fixed or mobile.



F2.1 Cont'd	<p>The proposed facility provides for private facilities for each resident satisfying the above provisions.</p> <p>In addition to the above provide-</p> <ul style="list-style-type: none"> (A) one kitchen or other adequate facility for the preparation and cooking or reheating of food including a sink and washbasin; and (B) laundry facilities; and (C) one clinical hand washing basin for each 16 residents or part thereof. <p>No changes to existing facilities are proposed, hence the proposed works are not exacerbating any issues and compliance is achieved for the purpose of this clause.</p>
F3.1	<p>Unobstructed ceiling heights throughout the building must not be less than the following -</p> <ul style="list-style-type: none"> (i) Public corridors and the like – 2.4m; and (ii) Habitable rooms – 2.4m; and (iii) Offices and the like – 2.4m; and (i) Sanitary facilities and the like – 2.1m; and (ii) Stairways, ramps and landings – 2.0m.
F4.4	<p>Where compliant natural lighting is not provided, artificial lighting is to be installed in accordance with AS/NZS1680.0-2009.</p>

Section G – Ancillary Provisions

G1.101	<p>The windows located three (3) or more storeys above the street level shall be able to be cleaned from wholly within the building or by a method complying with Work Health and Safety Act 2011 and Regulations made under the Act.</p>
G5.1	<p>If the building is located in a designated bushfire prone area, the building must comply with AS3959-2018.</p> <p>A bushfire report addressing this has been provided as part of the Development Application.</p>

ATTACHMENT 4 - ITEM 2



5.0 CONCLUSION

Based upon our detailed review of the proposed architectural drawings, it is the opinion of this office that the subject development is capable of complying with the performance provisions of the BCA. Compliance would be achieved by complying with the relevant deemed-to-satisfy requirements as outlined within the BCA.

Report By

Lindsay Beard
Associate | Building Regulations
For Design Confidence (Sydney) Pty Ltd

Verified By

Luke Sheehy
Principal
For Design Confidence (Sydney) Pty Ltd



DESIGN CONFIDENCE

APPENDIX 1 – DOCUMENTATION PROVIDED FOR ASSESSMENT

1. The BCA Design Assessment was based upon the Architectural documentation prepared by McNally Architects, namely –

DESCRIPTION	DRAWING NUMBER	REVISION	DATE
Site Plan	A005	01	30.09.2021
Basement Floor Plan	A100	01	30.09.2021
Ground Floor Plan	A101	01	30.09.2021
First Floor Plan	A102	01	30.09.2021
Second Floor Plan	A103	01	30.09.2021
Roof Plan	A104	01	30.09.2021



APPENDIX 2 – REQUIRED FIRE RESISTANCE LEVELS (FRLs)

The Table below represents the Fire Resistance Levels (FRLs) required in accordance with BCA 2019 Amendment 1:

Table AA TYPE A CONSTRUCTION: FRL OF BUILDING ELEMENTS

Building element	Class of building — FRL: (in minutes)			
	Structural adequacy/Integrity/Insulation			
	2, 3 or 4 part	5, 7a or 9	6	7b or 8
EXTERNAL WALL (including any column and other building element incorporated therein) or other external building element, where the distance from any fire-source feature to which it is exposed is—				
For loadbearing parts—				
less than 1.5 m	90/ 90/ 90	120/120/120	180/180/180	240/240/240
1.5 to less than 3 m	90/ 60/ 60	120/ 90/ 90	180/180/120	240/240/180
3 m or more	90/ 60/ 30	120/ 60/ 30	180/120/ 90	240/180/ 90
For non-loadbearing parts—				
less than 1.5 m	–/ 90/ 90	–/120/120	–/180/180	–/240/240
1.5 to less than 3 m	–/ 60/ 60	–/ 90/ 90	–/180/120	–/240/180
3 m or more	–/–/–	–/–/–	–/–/–	–/–/–
EXTERNAL COLUMN not incorporated in an external wall, where the distance from any fire-source feature to which it is exposed is—				
less than 3 m	90/–/–	120/–/–	180/–/–	240/–/–
3 m or more	–/–/–	–/–/–	–/–/–	–/–/–
COMMON WALLS and FIRE WALLS—	90/ 90/ 90	120/120/120	180/180/180	240/240/240
INTERNAL WALLS—				
Fire-resisting lift and stair shafts—				
Loadbearing	90/ 90/ 90	120/120/120	180/120/120	240/120/120
Non-loadbearing	–/ 90/ 90	–/120/120	–/120/120	–/120/120
Bounding public corridors, public lobbies and the like—				
Loadbearing	90/ 90/ 90	120/–/–	180/–/–	240/–/–
Non-loadbearing	–/ 60/ 60	–/–/–	–/–/–	–/–/–
Between or bounding sole-occupancy units—				
Loadbearing	90/ 90/ 90	120/–/–	180/–/–	240/–/–
Non-loadbearing	–/ 60/ 60	–/–/–	–/–/–	–/–/–
Ventilating, pipe, garbage, and like shafts not used for the discharge of hot products of combustion—				
Loadbearing	90/ 90/ 90	120/ 90/ 90	180/120/120	240/120/120
Non-loadbearing	–/ 90/ 90	–/ 90/ 90	–/120/120	–/120/120
OTHER LOADBEARING INTERNAL WALLS, INTERNAL BEAMS, TRUSSES and COLUMNS—				
	90/–/–	120/–/–	180/–/–	240/–/–
FLOORS	90/ 90/ 90	120/120/120	180/180/180	240/240/240
ROOFS	90/ 60/ 30	120/ 60/ 30	180/ 60/ 30	240/ 90/ 60



APPENDIX 3 – FIRE HAZARD PROPERTIES

The table below represents the fire hazard properties for building materials applicable to this development.

FLOOR LININGS AND FLOOR COVERINGS CRITICAL RADIANT FLUX (CRF IN KW/M2)	
Non-Sprinkler Protected Areas	2.2
Sprinkler Protected Areas	1.2
Fire-Isolated Exits & Fire Control Rooms	1.2
Lift Cars	2.2
WALL LININGS AND CEILING LININGS TESTED TO AS5637.1	
Fire-Isolated Exits & Fire Control Rooms	Group 1
Public Corridors – Walls	Group 1 or 2
Public Corridors – Ceilings	Group 1 or 2
Specific Areas – Walls	Group 1, 2 or 3
Specific Areas – Ceilings	Group 1, 2 or 3
Other Areas – Walls	Group 1, 2 or 3
Other Areas – Ceilings	Group 1, 2 or 3
Lift Cars	Group 1 or 2
NOTE	<p>In addition to achieving the group number above they too must comply with the following –</p> <ul style="list-style-type: none"> a smoke growth rate index not more than 100; or an average specific extinction area less than 250m²/kg
OTHER MATERIALS OR ASSEMBLIES	
Fire-Isolated Exits & Fire Control Rooms	Spread-of Flame Index 0 Smoke-Developed Index 2
Non-fire-isolated stairs & escalators and auditorium fixed seating	Spread-of Flame Index 0 Smoke-Developed Index 5
Sarking-type material	Flammability Index 0 (fire control rooms) Flammability Index 5 (other areas)
Other materials	Spread-of Flame Index 9 Smoke-Developed Index 8 (if the Spread-of Flame Index is more than 5)



APPENDIX 4 – PROPOSED FIRE SAFETY SCHEDULE

FIRE SAFETY MEASURE	PROPOSED STANDARD OF PERFORMANCE
Access Hatches Doors & Hoppers	BCA C3.13
Automatic Fail Safe Devices	BCA D2.19, D2.21
Automatic Fire Detection & Alarm Systems	BCA E2.2A/ AS1670.1-2004
Automatic Fire Suppression Systems – Sprinkler	BCA E1/ AS2118.1
Building Occupant Warning System	BCA E2.2a/ AS1670.4-2004
Emergency Evacuation Plan	Smoke Reservoirs & Fire Separation by Fire Engineering Design Pty Ltd dated 5 May 2011
Emergency Lighting	BCA E4.2, E4.4/ AS 2293.1 – 1998
Exit Signs	BCA E4.5- E4.8/ AS 2293.1 – 1998
Fire Doors	BCA Spec C3.4/ AS1905.1
Fire Hydrant Systems	BCA E1.3/ AS 2419.1 – 2005
Fire Seals	BCA C3.15
Lightweight Construction	BCA C1.8 and Spec C1.8
Paths of travel	EPA Reg. 2000 Part 9 Div. 7
Portable Fire Extinguishers	BCA E1.6/ AS 2444 – 2001
Required exit doors (automatic)	BCA D2.19, D2.21 & D2.22
Smoke Doors	BCA Spec. C3.4
Warning and Operational Signs	BCA Part D EP&A Reg. 2000 Part 9 Div 7
Window/ Wall drenchers	AS2118.2
Fire Engineering Alternative Solution relating to extended travel of up to 29m to a point of choice worst case in lieu of 20m from the lounge room/ courtyard.	BCA Performance Requirements DP4 & EP2.2 Fire Engineering Report prepared by Innova Services, Report No 16114-R01, Revision 1 dated 1 May 2017

The above schedule is based on alterations to existing services being undertaken under 164b of the Environmental Planning & Assessment Regulation.



ATTACHMENT 4 - ITEM 2

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BUSHFIRE RISK ASSESSMENT *RSL LifeCare*

Mark Donaldson House



Address: 301-305 Galston Road Galston
Date: January 2022
Report Prepared by: Darryl Pendlebury
BPAD Accreditation #36861

301-305 Galston Road Galston 2159

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301-305 Galston Road Galston 2159

ATTACHMENT 5 - ITEM 2

1.0 INTRODUCTION

Coastal Consulting and Construction Pty Ltd has been engaged to provide a bushfire hazard assessment for the proposed new lift installation to be constructed at the residential aged-care facility located at 301-305 Galston Road Galston.

The proposed works are classified as a Class 9c building under Part A6 BCA Volume 1 of the NCC BCA.

This report is provided to assist Hornsby Shire Council to determine an application for the above-mentioned works and to ensure the development meets the aims and objectives of Planning for Bushfire Protection, those objectives are as follows:

- Afford buildings and their occupants protection from exposure to a bush fire
- Provide for a defensible space to be located around buildings
- Provide appropriate separation between a hazard and buildings which, in combination with other measures, prevent the likely fire spread to buildings
- Ensure that appropriate operational access and egress for emergency service personnel and occupants is available
- Provide for ongoing management and maintenance of BPMs
- Ensure that utility services are adequate to meet the needs of firefighters.

The building into which the lift is being installed is considered to be a "Special Fire Protection Purpose" (*SFPP*) as defined by Section 100B of the Rural Fires Act 1997.

An SFPP includes:

- (a) a school,
- (b) a child care centre,
- (c) a hospital (including a hospital for the mentally ill or mentally disordered),
- (d) a hotel, motel or other tourist accommodation,
- (e) a building wholly or principally used as a home or other establishment for mentally incapacitated persons,
- (f) seniors housing within the meaning of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004,
- (g) a group home within the meaning of State Environmental Planning Policy No 9—Group Homes,
- (h) a retirement village,
- (i) any other purpose prescribed by the regulations.

The Rural Fires Act requires a "Bushfire Safety Authority" be issued by the NSW Rural Fire Service and is therefore considered to be "Integrated Development", requiring referral to the RFS.

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The nature of SFPP developments mean that the residents are less able-bodied than other types of occupants and therefore usually require special consideration in relation to assisted evacuation etc.

2.0 PURPOSE OF THIS REPORT

- To ascertain the threat-level the subject building is likely to be exposed to during a bushfire event.
- To assess the proposed works as submitted for consideration under a Development Application with Hornsby Shire Council against the requirements of *Planning for Bushfire Protection 2019* and *Australian Standard 3959-2018* if applicable.
- To advise the applicant of construction standards for the proposed works.
- To advise the applicant if the proposal meets the aims and objectives of *Planning for Bushfire Protection 2019* and complies with *AS3959-2018* if not relying on a performance-based approach.
- Identify nearest bushfire prone land, vegetation on both the subject and adjoining lands and identify expected bushfire behaviour impacting on the subject works
- Provide advice to the applicant on potential measures that may improve but not guarantee the buildings chances of survival during a bushfire event.

3.0 SCOPE OF THIS REPORT

This report is limited to the construction requirements and bush fire risk associated with the proposed new lift installation and relocation of an existing doorway. This report does not address the requirements for any surrounding land or existing buildings; however, consideration is given regarding the impact the surrounding land has on the subject works. The report will, however, identify the Bushfire Attack Level the proposed works will be exposed to.

This report does not consider any NCC BCA matter in relation to access and egress from the building.

The relocation of the door does not involve the alteration or removal of an exit that is considered to be a "required exit" under the BCA. The doorway serves only as an exit to an outdoor activity area for the residents.

4.0 REGULATORY CONTROLS

An assessment has been made against the requirements of the *Environmental Planning and Assessment Act 1979 (Part 4, Division 4.3, Section 4.14)*, *Planning for Bushfire Protection 2019* and *AS3959-2018 if applicable* and the *Rural Fires Act 1997*.

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5.0 THE PROPOSAL

The proposal is for the construction of a new lift-shaft located on the south-east corner of Mark Donaldson House and associated relocation of an existing doorway. The new lift is intended to provide double redundancy for the single lift currently used in the building. The lift does not have any external access and is intended to provide internal-only access between the basement level and other floors.

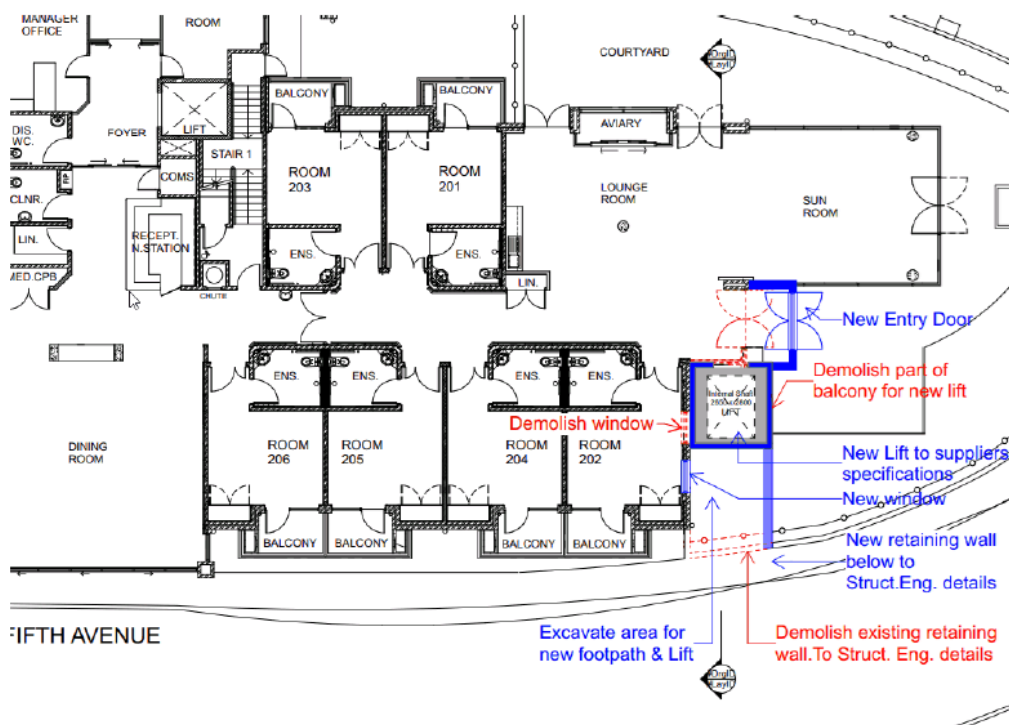


Figure 1: Plan (in part)

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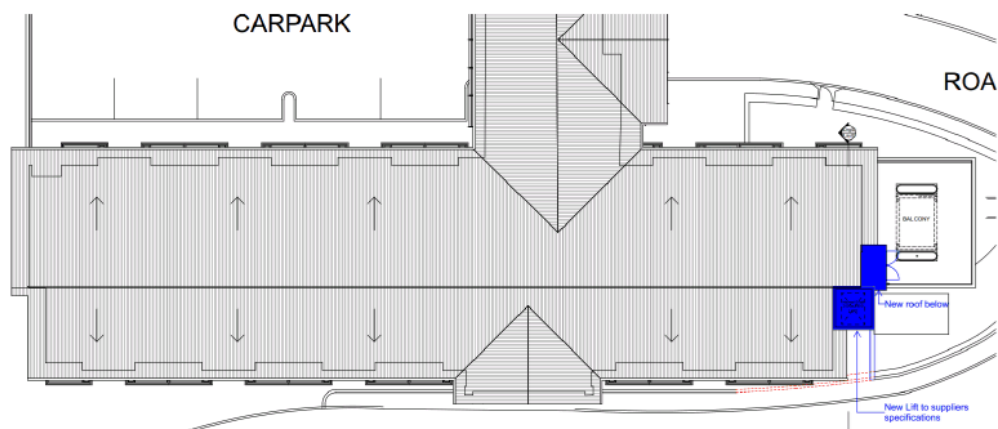


Figure 2: Lift location in relation to building.

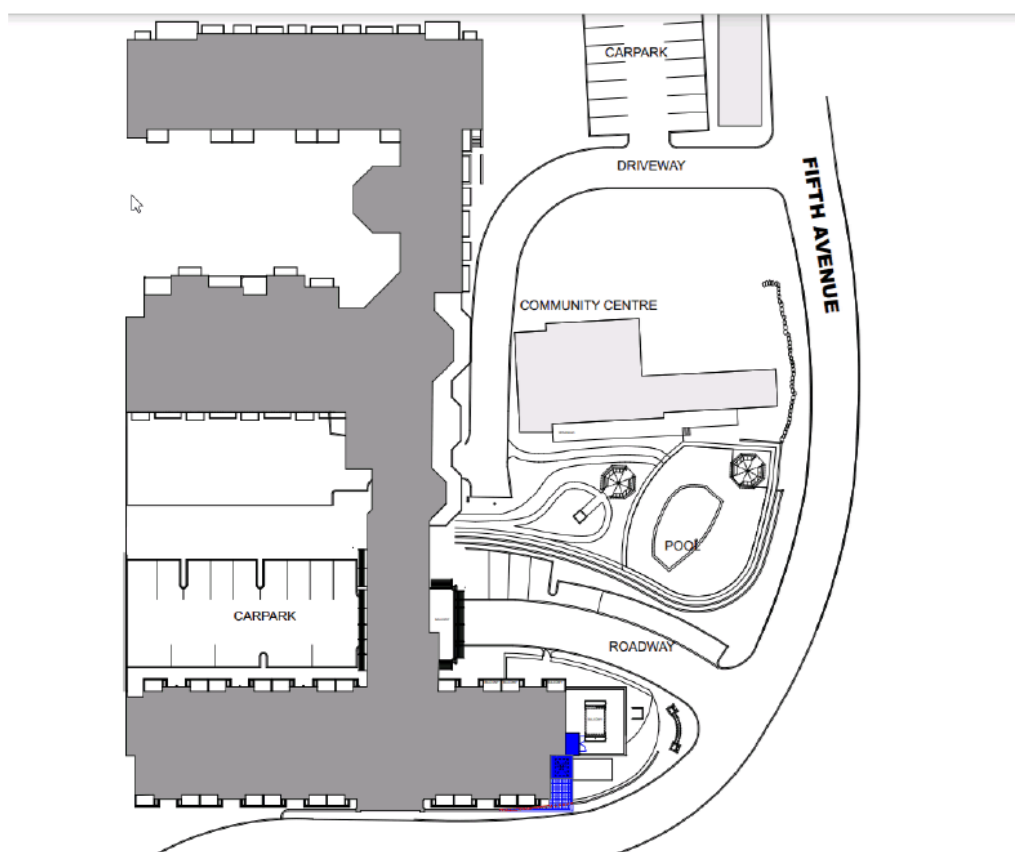


Figure 3: Location of works in relation to whole building.

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Photo 1: Proposed location of lift.



Photo 2: Door to be relocated

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Photo 3: Area of proposed lift (left) door to be relocated (right)



Photo 4: Doorway to be relocated leads to covered activities area.



Photo 5: Proposed lift area.

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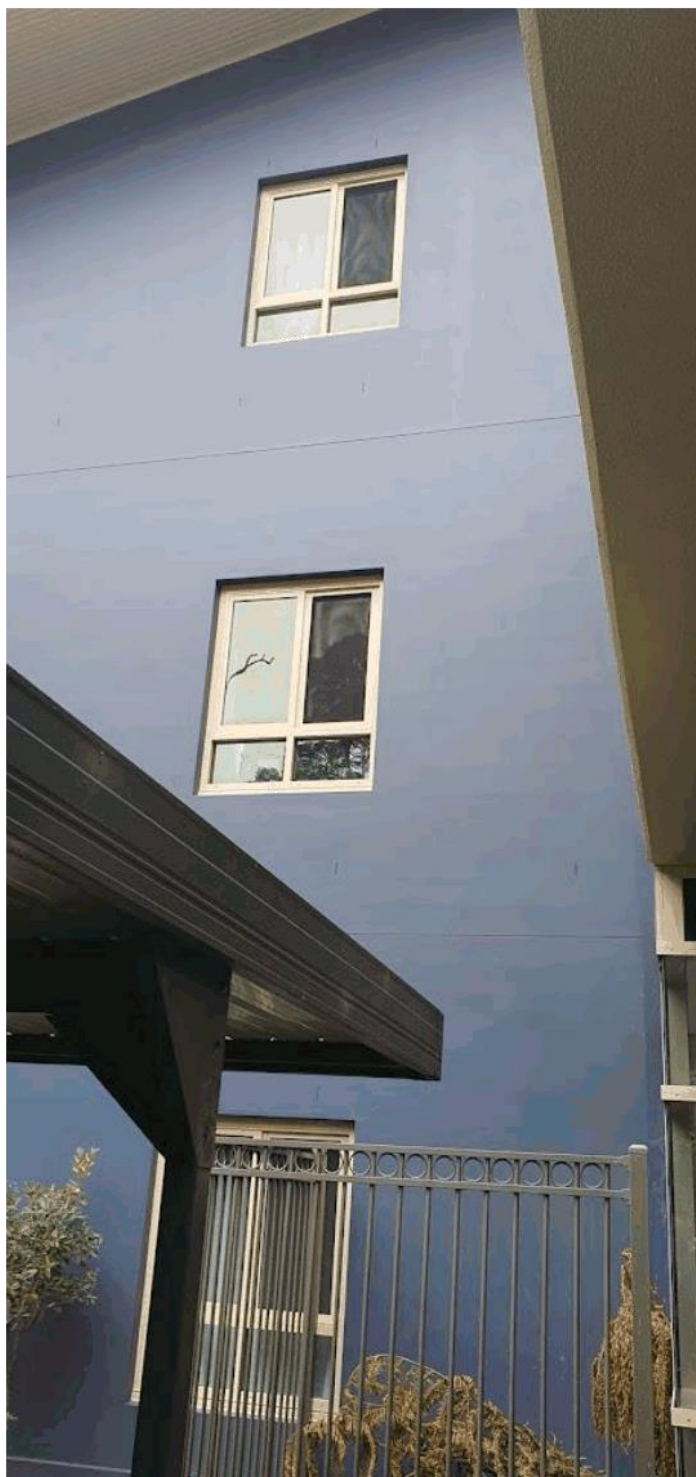


Photo 6: Lift to extend to top of existing building.

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Photo 7: Window to be relocated



Photo 8: Door to be relocated from inside - note not a required exit.

6.0 SITE AND ADJACENT DEVELOPMENTS

6.1 DESCRIPTION OF THE SITE

The site consists of an approximately 7.7 hectare lot located on the southern side of Galston Road.

The lot is legally known as Lot 2/-/DP713848. The site is zoned Ru4 under Hornsby Shire Council's LEP.

The site is mapped as being bushfire prone land consisting of category 1, and buffer zone.

The site is multi-use with a combination of an aged-care facility, detached single dwellings for over 55s accommodation and retirement village style units and villas.

The site is a combination of built-upon, managed land and unmanaged natural forest vegetation

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Figure 4: Subject site



Photo 9: Building link to retirement units shown in following picture.

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Photo 10: Retirement units on site.



Photo 11: Community Hall on site.

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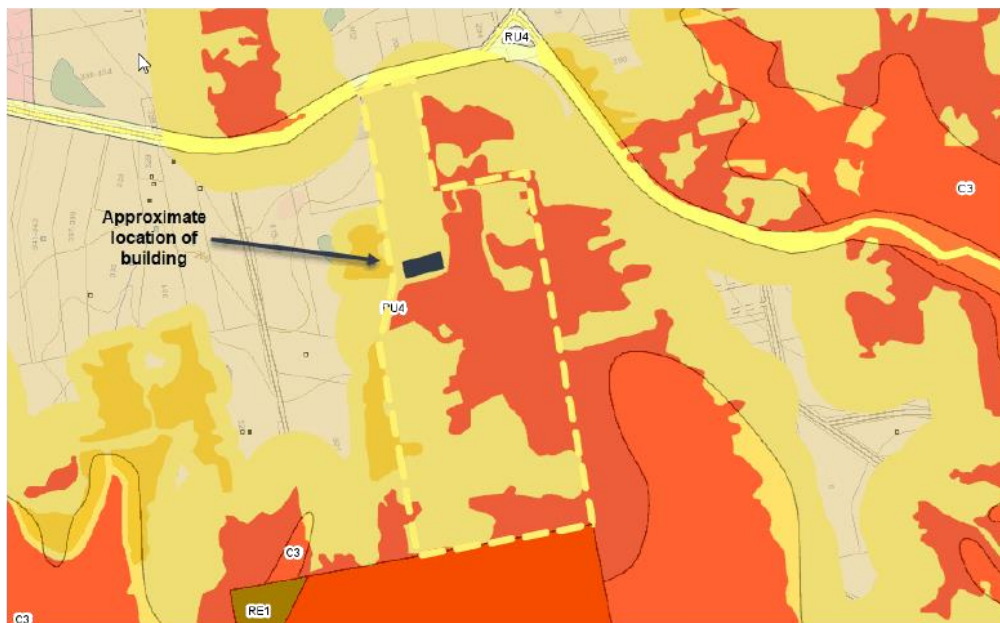


Figure 5: Bushfire Prone Land Map

6.2 DESCRIPTION OF SURROUNDING LANDS

Galston is a mixture of rural-lifestyle lots and residential land use. Figure 6 below shows the location of the proposed works circled in red.

The area most affecting the subject works is an area of unmanaged land located on the subject lot. Although some clearing of the understorey has been undertaken the unmanaged area is considered to be a risk to the development. No adjoining properties affect the subject work other than the fact the unmanaged forest area is directly linked to Galston Gorge.



Figure 6: Surrounding land use

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7.0 ENVIRONMENTAL CONSIDERATIONS

The proposed works do not pose a threat to any native habitat.

8.0 SITE ASSESSMENT METHODOLOGY

Appendix 1 of Planning for Bushfire Protection 2019 provides a methodology for undertaking a Site Bushfire Attack Assessment in relation to appropriate classification of relevant vegetation, determining the effective slope, fire danger index, provision of asset protection zones and construction levels. The site was assessed according to the following procedure:

STEP 1: DETERMINE VEGETATION FORMATION

The vegetation was assessed out to a distance of 140m in all directions. The vegetation deemed to have the most significant impact on the development was determined to be Forest in accordance with A1.2 of Planning for Bushfire Protection 2019.

The area shown below to the south, had a reduced understory to the creek which was located approximately 35m from the commencement of the vegetation.

The vegetation did not qualify for use as an Outer Protection Area pursuant to A4.1.2 given the canopy cover was not separated by a gap of 2-5m and had a canopy cover exceeding 30%.



Figure 7: Vegetation Map

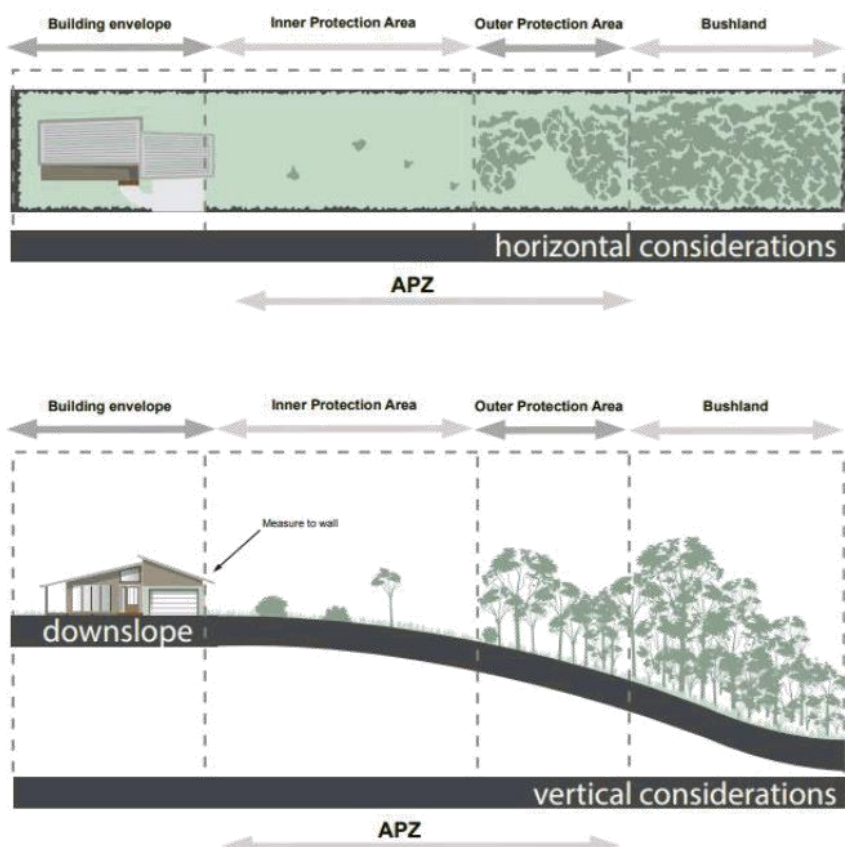
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Figure A4.1

Typical Inner and Outer Protection Areas.

**Figure 8: APZ definitions (IPA and OPA)****Photo 12: Reduced understorey in area located to the south-east of the proposed works.**

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Photo 13: Image of upslope approx. 35m from works with creek shown in foreground.



Photo 14: Image of upslope approx. 35m from works with creek shown in foreground.



Photo 15: Vegetation shown to right of picture (building is located above retaining wall on left).

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Photo 16: Vegetation shown to left of picture.



Photo 17: Building on left in relation to hazard on right.



Photo 18: Reduced understorey below hazard.

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Figure 9: Canopy cover touching (proposed works shown in red).

STEP 2: DETERMINE THE EFFECTIVE SLOPE OF THE LAND

Given the development must comply with the maximum exposure limit of 10kw/m², Table A1.12.1 has more stringent requirements as far as distances from any bushfire hazard is concerned than for "infill" development.

The slope under the vegetation was determined to be 12 degrees on site using an inclinometer with 2m contour mapping indicating a slope of 7 degrees.



Figure 10: Slope under the vegetation.

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STEP 3: DETERMINE THE FDI FOR THE LOCAL COUNCIL AREA.

The Rural Fire Service and Hornsby Shire Council (Bushfire Prone land mapping) has designated the land as bushfire prone consisting of "Category 1 vegetation and Buffer zone. Given the land is mapped as bushfire prone, the development must comply with Section 4.14 of the EP&A Act 1979.

This part of the act requires any development on bushfire prone land to comply with Planning for Bushfire Protection 2019. Given the site is located in the greater Sydney region and is determined to be FDI 100

Step 4: DISTANCE TO VEGETATION

The proposed works are to be located 15m from the vegetation as shown in figure 11 below.



Figure 11: Distance to forest vegetation

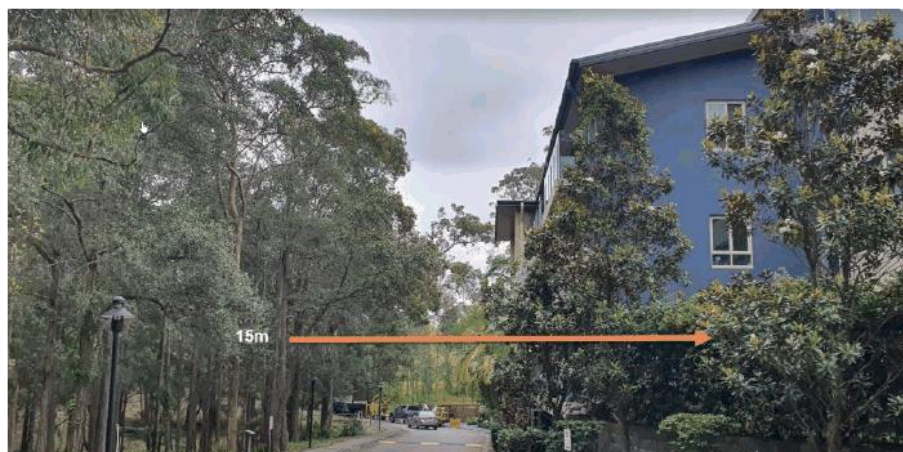


Photo 19: Distance to vegetation.

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Photo 20: Distance to vegetation.

9.0 CATEGORY OF BUSHFIRE ATTACK:

Using the methodology as specified in in Appendix 1 of PBP the development has been assessed as having the following characteristics:

- Type of development: (SFPP Development)
- Type of Vegetation: (Forest)
- Slope under the vegetation: (5-10 degrees)
- FFDI: (100)
- Distance to the vegetation: (15m)

Table A1.12.5 is the table under which the proposed works are to be assessed. When considered against the criteria of Table A1.12.5 below, the development would be exposed to a BAL level of BAL FZ.

Table A1.12.5

Determination of BAL, FFDI 100 - residential developments

KEITH VEGETATION FORMATION	BUSH FIRE ATTACK LEVEL (BAL)				
	BAL-FZ	BAL-40	BAL-29	BAL-19	BAL-12.5
	Distance (m) asset to predominant vegetation class				
Rainforest	< 14	14 -< 18	18 -< 26	26 -< 37	37 -< 100
Forest (wet and dry sclerophyll) including Coastal Swamp Forest, Pine Plantations and Sub-Alpine Woodland	< 28	28 -< 36	36 -< 49	49 -< 65	65 -< 100
Grassy and Semi-Arid Woodland (including Mallee)	< 15	15 -< 20	20 -< 28	28 -< 39	39 -< 100
Forested Wetland (excluding Coastal Swamp Forest)	< 12	12 -< 16	16 -< 23	23 -< 33	33 -< 100
Tall Heath	< 15	15 -< 20	20 -< 29	29 -< 40	40 -< 100
Short Heath	< 9	9 -< 12	12 -< 18	18 -< 25	25 -< 100
Arid-Shrublands (acacia and chenopod)	< 6	6 -< 8	8 -< 12	12 -< 18	18 -< 100
Freshwater Wetlands	< 5	5 -< 6	6 -< 10	10 -< 14	14 -< 100
Grassland	< 10	10 -< 13	13 -< 20	20 -< 28	28 -< 50

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10.0 ACCESS AND SERVICES

SFPP developments have specific access and service requirements given the vulnerable nature of the occupants.

The proposed works do not increase the occupancy of the building and therefore services and access will not be affected.

The works are of a minor nature and could be considered as Class 10 attachments appurtenant to a Class 9 building, therefore access and services have not been considered as part of this assessment.

11.0 ASSET PROTECTION ZONES

The requirements for asset protection zones on Special Fire Protection Purpose developments are more stringent than those for residential-type developments.

Table 6.8a of PBP provides guidance on the performance criteria and acceptable solutions for SFPP APZs.

The site does not provide sufficient areas for compliant asset protection zones however as previously mentioned the works are relatively minor in nature, do not increase the number of occupants or require the provision of additional access or services.

Table 6.8a

Performance criteria and acceptable solutions for APZs and construction for SFPP development.

	PERFORMANCE CRITERIA	ACCEPTABLE SOLUTIONS
	The intent may be achieved where:	
	➤ radiant heat levels of greater than 10kW/m ² (calculated at 1200K) will not be experienced on any part of the building.	➤ the building is provided with an APZ in accordance with Table A1.12.1 in Appendix 1.
	➤ APZ maintenance is practical, soil stability is not compromised and the potential for crown fires is minimised.	➤ APZs are located on lands with a slope less than 18 degrees.
	➤ APZs are managed and maintained to prevent the spread of fire to the building.	➤ the APZ is managed in accordance with the requirements of Appendix 4 of this document, and is wholly within the boundaries of the development site;
	➤ the APZ is provided in perpetuity.	➤ APZ are wholly within the boundaries of the development site; and ➤ other structures located within the APZ need to be located further than 6m from the refuge building.
ASSET PROTECTION ZONES	VARIATIONS	
	Camping and primitive camping: no performance criteria applicable.	➤ N/A.
	Bed and breakfast and farmstay: the building will not be exposed to radiant heat levels exceeding 29kW/m ² (1090K).	➤ an APZ is provided in accordance with Tables A1.12.2 or A1.12.3 in Appendix 1 of this document around the entire building or structure.
	Ecotourism: radiant heat levels of greater than 10kW/m ² (1200K) are not experienced by emergency service personnel and occupants during firefighting and emergency management around a building on site that can be used as a refuge.	➤ an APZ is provided in accordance with Table A1.12.1 in Appendix 1 of this document around the entire refuge building or structure.
	Manufactured home estates: APZs achieve radiant heat levels that are commensurate with the construction standard for the proposed dwellings.	➤ an APZ in accordance with Table A1.12.1 in Appendix 1 of this document is provided to all new dwellings; or ➤ an APZ in accordance with Table A1.12.2 or A1.12.3 in Appendix 1 of this document is provided where it is demonstrated that all new dwellings will be constructed in accordance with BAL-29.

Figure 12: APZ requirements PBP - Table 6.8a

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Given the development is considered to be a Special Fire Protection Purpose the development must be assessed against the more stringent requirements of Table A1.12.1 below. In order to comply with the minimum setback requirements for SFPP developments (see conclusion) the development must have a minimum setback of 93m. The development is located 15m from the bushfire hazard.

Table A1.12.1Minimum distances for APZs - SFPP developments ($\leq 10\text{kW/m}^2$, 1200K)

KEITH VEGETATION FORMATION	EFFECTIVE SLOPE				
	Up slopes and flat	>0°-5°	>5°-10°	>10°-15°	>15°-20°
Distance (m) from the asset to the predominant vegetation formation					
Rainforest	38	47	57	69	81
Forest (wet and dry sclerophyll) including Coastal Swamp Forest, Pine Plantations and Sub-Alpine Woodland	67	79	93	100	100
Grassy and Semi-Arid Woodland (including Mallee)	42	50	60	72	85
Forested Wetland (excluding Coastal Swamp Forest)	34	42	51	62	73
Tall Heath	50	56	61	67	72
Short Heath	33	37	41	45	49
Arid-Shrublands (acacia and chenopod)	24	27	30	34	37
Freshwater Wetlands	19	22	25	28	30
Grassland	36	40	45	50	55

Figure 13: Table 7.9 of PBP**Recommendations for Inner Protection Areas:**

- tree canopy cover should be less than 15% at maturity;
- trees at maturity should not touch or overhang the building;
- lower limbs should be removed up to a height of 2m above the ground; tree canopies should be separated by 2 to 5m; and preference should be given to smooth barked and evergreen trees.
- Shrubs create large discontinuities or gaps in the vegetation to slow down or break the progress of fire towards buildings should be provided; shrubs should not be located under trees; shrubs should not form more than 10% ground cover; and clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation.
- Grass should be kept mown (as a guide grass should be kept to no more than 100mm in height); and leaves and vegetation debris should be removed.

Recommendations Outer Protection Areas:

- tree canopy cover should be less than 30%;
- canopies should be separated by 2 to 5m.
- Shrubs should not form a continuous canopy
- Shrubs should form no more than 20% of ground cover.

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- Grass should be kept mown to a height of less than 100mm; and leaf and other debris should be removed.

12.0 SITING AND DESIGN OF THE PROPOSED DEVELOPMENT

The proposed lift and relocated door are minor in nature and although subject to bushfire attack, construction to a higher level than existing will improve the bushfire integrity of the building.

13.0 CONSTRUCTION LEVEL

Under the NCC BCA Volume 1, bushfire construction in NSW is affected by Part G5.2. This part of the BCA excludes Sections 3 and 9 of AS3959-2018 and requires buildings subject to BAL-FZ to comply with "specific conditions of development consent" or as modified by consultation with the RFS.

In this regard no category of construction can be applied via this assessment and must be imposed by Council following consultation with the Rural Fire Service.

14.0 LANDSCAPING

Landscaping is to comply with the requirements of Appendix 4 of PBP and maintained in accordance with the RFNSW document entitled "Asset Protection Zone Standards"

Table 7.4a *Continued*

PERFORMANCE CRITERIA		ACCEPTABLE SOLUTIONS	
The intent may be achieved where:			
LANDSCAPING	<ul style="list-style-type: none">➤ landscaping is designed and managed to minimise flame contact and radiant heat to buildings, and the potential for wind-driven embers to cause ignitions.	<ul style="list-style-type: none">➤ compliance with the NSW RFS 'Asset protection zone standards' (see Appendix 4);➤ a clear area of low-cut lawn or pavement is maintained adjacent to the house;➤ fencing is constructed in accordance with section 7.6; and➤ trees and shrubs are located so that:<ul style="list-style-type: none">➤ the branches will not overhang the roof;➤ the tree canopy is not continuous; and➤ any proposed windbreak is located on the elevation from which fires are likely to approach.	

Choice of species should consider the recommendations made in the paper "Landscape and Building Design for Bushfire Areas" by G.C Ramsay and L. Rudolph:

- Moisture content of leaves
- Volatile oil content of leaves
- Mineral Content of leaves
- Leaf fineness
- Density of foliage

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- Continuity of plant form
- Height of lowest foliage above ground
- Size of plant
- Dead foliage on the plant
- Bark Texture
- Quantity of ground fuels
- Fineness of ground fuels
- Compaction ability of ground fuels

15.0 BUSHFIRE HAZARD REDUCTION RECOMMENDATIONS

Vegetation Management:

- Maintain a clear area of low cut lawn or pavement adjacent to the house
- Keep areas under fences, fence posts and gates and trees raked and cleared of fuel
- Utilise non-combustible fencing and retaining walls
- Breaking up the canopy of trees and shrubs with defined garden beds
- Organic mulch should not be used in bush fire prone areas and non flammable material should be used as ground cover, eg Scoria, pebbles, recycled crushed bricks.
- Planting trees and shrubs such that: - the branches will not overhang the roof; - the tree canopy is not continuous; and - there is a windbreak in the direction from which fires are likely to approach.

Property Maintenance:

Prior to each bushfire season special attention should be made to the following tasks:

- Removal of material such as litter from the roof and gutters
- Ensure painted surfaces are in good condition with decaying timbers being given particular attention to prevent the lodging of embers within gaps
- Check pumps and water supplies are available and in working order
- Driveways are in good condition with trees not being too close and forming an obstacle during smoky conditions
- Check tiles and roof lines for broken tiles or dislodged roofing materials
- Screens on windows and doors are in good condition without breaks or holes in flyscreen material and frames are well fitting into sills and window frames

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- Drenching or spray systems are regularly tested before the commencement of the fire season
- Hoses and hose reels are not perished and fittings are tight and in good order
- Doors are fitted with draught seals and well maintained
- Mats are of non combustible material or in areas of low potential exposure
- Woodpiles, garden sheds and other combustible materials are located downslope and well away from the house.
- ensure that vegetation does not provide a continuous path to the house;
- Remove all noxious and environmental weeds
- Plant or clear vegetation into clumps rather than continuous rows
- Prune low branches two metres from the ground to prevent a ground fire from spreading into trees
- Locate vegetation far enough away from the asset so that plants will not ignite the asset by direct flame contact or radiant heat emission
- Plant and maintain short green grass (grass not to exceed 100mm in height) around the house as this will slow the fire and reduce fire intensity. Alternatively, provide non-flammable pathways directly around the dwelling
- Ensure that shrubs and other plants do not directly abut the dwelling. Where this does occur, gardens should contain low-flammability plants and non flammable ground cover such as pebbles and crush tile; and • avoid erecting brush type fencing and planting “pencil pine” type trees next to buildings, as these are highly flammable.
- Ensure all leaf material is removed regularly from surrounding areas
- Future planting of unsuitable species of trees with the potential to impact on the survivability of the building post-approval should be discouraged
- Keep all grassland located on the site managed to a height not exceeding 100mm out to either the adjoining boundaries of 50m
- Ensure a maintenance schedule is enacted for the maintenance of all asset protection zones located on the property.

Frequency of Maintenance:

Although maintenance should be continued throughout the year, special attention should be given to the items mentioned above in late spring prior to the beginning of the bushfire season. However, given the increasing effects of Climate Change the frequency and timing of management may have to be adjusted depending on seasonal variations.

A sensible approach to maintenance with lawns being mowed every 2 – 3 weeks (this was indicated on site as being the occurrence of APZ mowing) depending on seasonal changes (again, may require more frequent attention to maintain height not exceeding 100mm) is to be implemented along with implementation of “Property Maintenance” schedule in

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accordance with items listed on previous page and in accordance with the Fuel Management Plan (attached)

16.0 CONCLUSION/RECOMMENDATIONS

- The site has been designated as bushfire prone land (Category 1 and buffer zone). The site is currently used as an RSL – aged care home and retirement village.
- The works are attached to a building classified as a “Special Fire Protection Purpose” as defined by the Rural Fires Act 1997 and therefore referral to the Rural Fire Service is required. The lift could be considered as a “Class 10 building attached to a Class 9 building.
- Although the works do not qualify as “Minor development in SFPP facilities” as defined by Section 6.5 of PBP the works are not extensive in nature consisting only of a lift shaft, and relocation of a non-required exit. The existing door is not constructed to BAL FZ and installation of a new door to a higher construction level can only improve the overall performance of the building.
- Under the NCC BCA Volume 1, bushfire construction in NSW is affected by Part G5.2. This part of the BCA excludes Sections 3 and 9 of AS3959-2018 and require buildings subject to BAL-FZ to comply with “specific conditions of development consent” or as modified by consultation with the RFS. In this regard no category of construction can be applied via this assessment and must be imposed by Council following consultation with the Rural Fire Service.
- The vegetation seen as having the most significant impact on the development was located 15m to the south (Forest). Although a reduction in understorey was present, the area to the south of the building could not be discounted as a threat given the canopy cover exceeded 30 percent and was continuous.
- The proposed works do not increase occupancy of the building, with the additional lift being constructed to provide redundancy for the single lift currently serving the building.
- The lift does not have any exits that are open to the external fabric of the building. The door to be relocated is not a required exit meaning emergency services or occupants will not be egressing via this door during a bushfire event. Exposure to radiant heat at this point therefore should not be an issue.
- Given the occupancy will not be increased and the minor nature of the work an assessment of the access and services for the site were not considered necessary.
- The building is staffed 24 hours, 7-days a week providing the occupants with ongoing assurance of evacuation assistance.

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The development achieves the performance criteria of PBP in the following matters:

Is a defensible space provided onsite and has the APZ been determined in accordance with Chapter 3 and Table A1.12.2 of PBP 2019.	No
Can the asset protection zone be maintained over the life of the development	YES
Is the building sited and designed to minimise the risk of attack	No however increased construction over existing is proposed.
Is it demonstrated the building can withstand bushfire attack in the form of embers, wind and radiant heat	YES if constructed to higher construction standards than existing when imposed by RFS and Council.
Is there safe operation access for emergency service and residents – does the access and egress comply with Appendix 3 and Table 7.4a	N/A not undertaken as part of this report.
Is there adequate water supply and electrical services and compliant access to services for emergency services.	Yes however a review of the water supply provisions pursuant to Section E of Volume 1 NCC BCA and AS2419 was not undertaken.
Is gas and electrical supply located to minimise risk to building	N/A – not undertaken.
Is landscaping designed to minimise flame and radiant heat	YES, future planting to consider the recommendations contained in this report
The adequacy of sprinkler systems and other fire protection measures to be incorporated into the development.	N/A
The proposal does not increase the bushfire risk to adjoining land	YES

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The extent to which the proposed development deviates from the standards, specific objectives, performance criteria and acceptable solutions set out in Chapters 5 to 8 of PBP.	The development does not meet the minimum setback requirements for SFPP.
Does the development not result in and increased bushfire management and maintenance responsibility on adjoining land owners	YES
Are the radiant heat levels acceptable pursuant to Table A1.12.1	No – however see conclusion
Does the development provide an appropriate operational environment for emergency service personnel during firefighting and emergency management.	YES – however road width subject to RFS approval.
Does the development ensure the capacity of existing infrastructure can accommodate the increase in demand.	N/A
Does the development ensure emergency evacuation procedures and management which provides for the special characteristics and needs of the occupants.	N/A - Does not affect egress or access to the building.

Notwithstanding the precautions adopted, it should always be remembered that bushfires burn under a wide range of conditions and an element of risk, no matter how small always remains, and although the standard is designed to improve the performance of such buildings, there can be no guarantee, because of the variable nature of bushfires, that any one building will withstand bushfire attack on every occasion.

This Report is a Bush Fire Hazard Assessment that provides the required information to assist Local Council and the Rural Fire Service in determining compliance in accordance with Planning for Bushfire Protection and AS 3959, 2019. The Local Council is the Final Consenting Authority and the construction of the building must comply with the recommendations included in the Council's conditions of consent.

Signed



Darryl Pendlebury
BPAD Accredited Bushfire Practitioner 36861



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**3 DA/445/2022 - ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING - 30
BALACLAVA ROAD, BEROWRA**

EXECUTIVE SUMMARY

DA No: DA/445/2022 (Lodged on 5 May 2022)

Description: Alterations and additions to a dwelling house

Property: Lot 235 DP 825647, No. 30 Balaclava Road, Berowra

Applicant: Ms Melanie Farquhar

Owner: Mr Andrew and Mrs Sarah Flarey

Estimated Value: \$109,000.00

Ward: A Ward

- The application involves alterations and additions to a dwelling house.
- The proposal does not comply with maximum building height requirement of 8.5 metres under Clause 4.3 “Height of Buildings” of Hornsby Local Environmental Plan 2013. The applicant has made a submission in accordance with Clause 4.6 ‘Exceptions to development standards’ of the Hornsby Local Environmental Plan 2013 to vary Clause 4.3 Height of Buildings. 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 Local Environmental Plan 2013 development standard for maximum height of buildings by more than 10 percent.
- It is recommended that the application be approved.

RECOMMENDATION

THAT the Hornsby 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/445/2022 alterations and additions to a dwelling house at Lot 235 DP 825647, No. 30 Balaclava Road Berowra subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP37/22.

SITE

The 813.5m² site is on the southern side of Balaclava Road and contains a two-storey dwelling house and a 22m² chicken coop.

The site is mapped as having a gradient in excess of 20%. The site has a crossfall of 5 metres from the western to eastern side of the site (25% slope).

The site contains vegetation indicative “Silvertop Ash-Scribbly Gum Woodland”.

The site is bushfire prone having a bushfire attack level of BAL - Flame Zone (BAL FZ).

An easement to drain water (1.2 metre wide) runs along the south (rear) boundary.

The site adjoins Berowra Public School to the rear. The site is close the intersection of Kona Close to the west, and the intersection of Evanda Street and Koloona Street to the east.

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



Figure 1: Aerial photo of site (Source: Intramaps)

PROPOSAL

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

- Change from an “A-frame” style first floor to a standard style of wall and roof on the south (rear) elevation of the first floor to create additional floor area (with compliant floor to ceiling height)
- Filling in the existing void area to create additional floor area
- Minor internal alterations to change room configuration creating an additional bedroom and living area

No trees would be removed or impacted by the proposal.

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 additions to 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 would result in a maximum height of 9.99 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 building development standard, which is discussed 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 buildings development standard contained within Clause 4.3 of the HLEP. The applicant provided the following information with regards to the height contravention:

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

Proposed contravention (maximum): 1.49m.

The contravention 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 eastern edge of the dwelling is 10.4m in height (1.9 metres over the height limit).

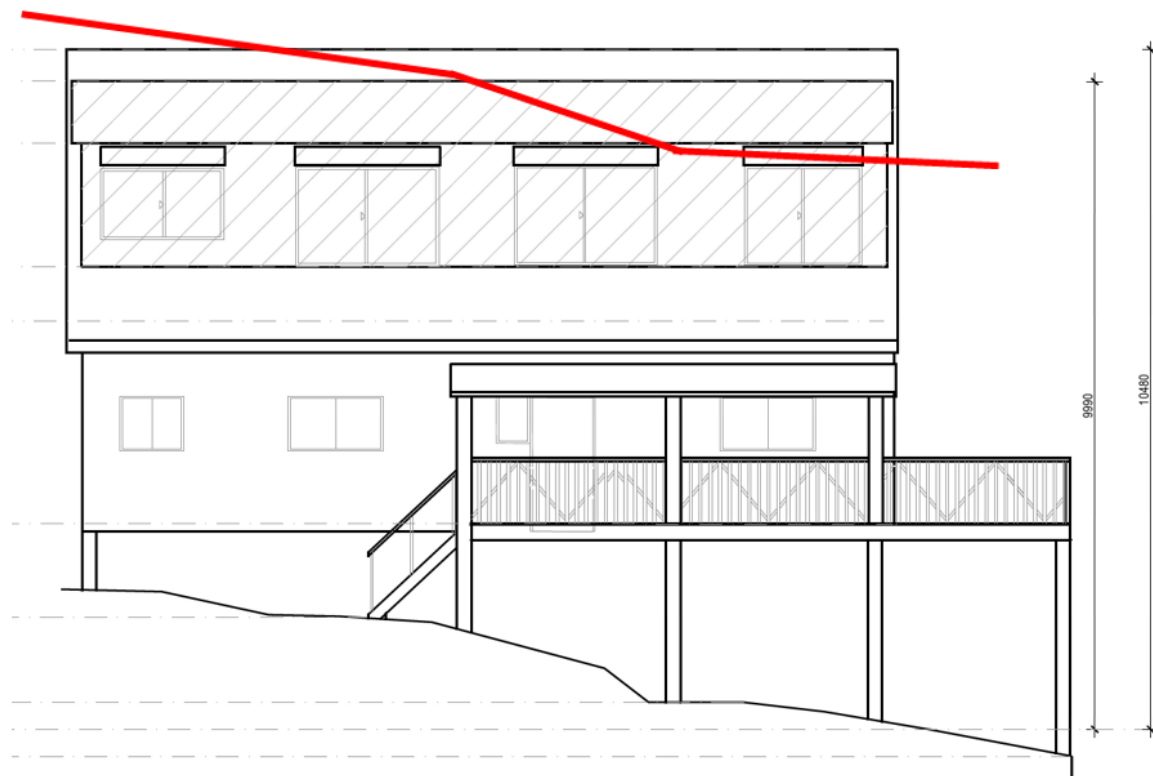


Figure 2: Extract of Application plans by Drafted Up showing Southern Elevation with 8.5m building height in red

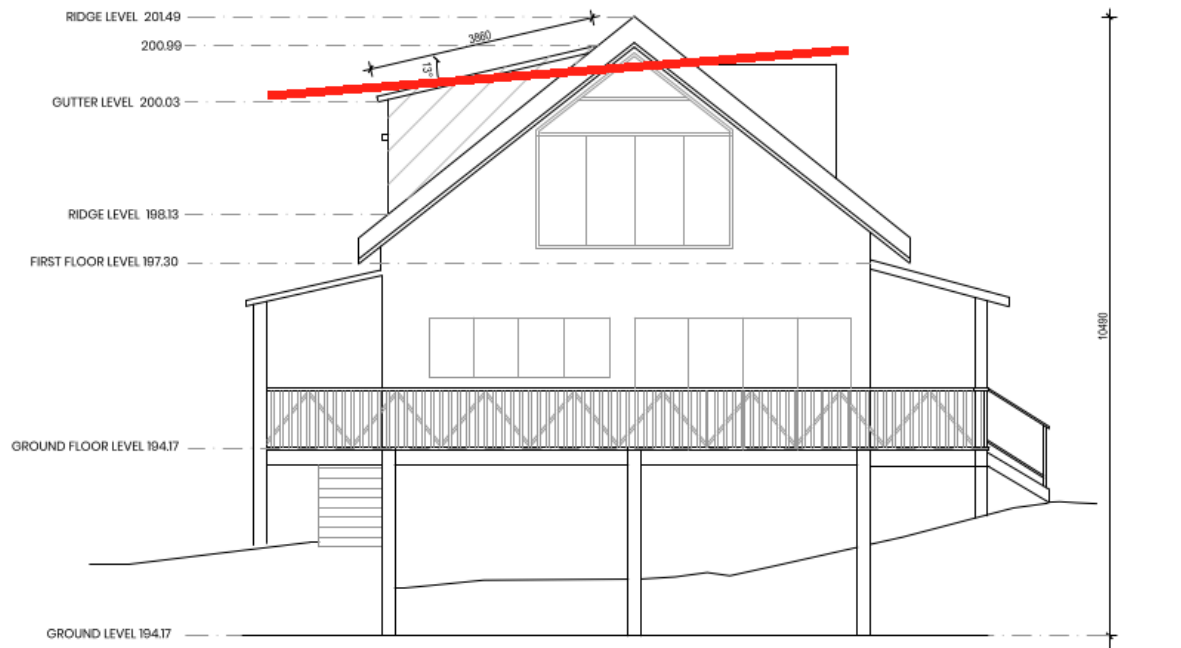


Figure 3: Extract of Application plans by Drafted Up showing Eastern Elevation with 8.5m building height in red

Figures 2 and 3 depict the extent of the contravention with the maximum height standard, being a height of 9.99 metres or 17% contravention (max).

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 a 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 proposal 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;

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.
3. The underlying object of purpose would be defeated or thwarted if compliance was required.

4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard.
5. The zoning of the land is unreasonable or inappropriate.

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

The written request by Drafted Up dated 2 May 2022 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:

Applicant's Justification

- *The proposed addition will take place at the rear of the dwelling and will not be immediately discernible from the public realm. In addition to this, the site faces an area of bushland to the rear that is not populated and as such, cannot be considered to result in a development that would otherwise be overbearing when viewed from the rear of the site.*
- *An observation of the character of development within the visual catchment of the site shows that dwellings within this part of Balaclava Street are constructed in a manner that reflects the significantly sloping topography, with dwellings up to three storeys in height presenting to the street. In this sense, the proposed variation cannot be considered to result in a development that is uncharacteristic of its surrounds*
- *As shown through compliance with the maximum floor space ratio, the proposal does not seek to over utilise the development potential of the site and will not be of any material impact upon the infrastructure capacity of the locality. Therefore, the proposal is consistent with the objective of Clause 4.3.*

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 construction that the proposed additions meet the objectives of Clause 4.3. In reaching this conclusion the following points are noted:

- The proposed contravention would not be visible from the street and would not have any impact on adjoining landowners. No new windows would face adjoining properties.
- The height of the proposed addition would not exceed the existing maximum ridge height of the dwelling house.
- The contravention to the development standard of building height is a result of the slope of the site. Any first-floor addition would be non-compliant.
- The innovative design utilises existing void areas increase the useable floor area of the dwelling house within increasing the physical footprint of the dwelling house.
- The footprint of the building is not increased. Should the applicant propose to extend the ground floor or first floor footprint towards the rear of the site, this would decrease the

separation distance of bushfire prone vegetation to the proposed development, therefore increasing bushfire risk on a BAL FZ site.

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 legislation and Hornsby Development Control Plan requirements (discussed in the body of the 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 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 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 v Ashfield Council* [2015] NSWLEC 1009 [60]).

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

- *The form of the building will not be significantly altered. The proposal is limited to a moderate first floor addition that is of compliant floor space ratio, taking place below and behind the existing ridge line.*
- *The proposal will take place within the existing building footprint, will not require the removal of any significant vegetation, and will not result in any material impacts to neighbouring solar access, privacy or general amenity.*
- *At the western end, the proposed addition will be within the maximum height allowance of Clause 4.3 and will not be of any undue visual bulk and scale when viewed from the adjacent property (28 Balaclava Street) at the eastern end, although a contravention will exist, the non-compliant building form will be well setback from the common boundary shared with 32 Balaclava Street and will not result in any adverse bulk or scale impact. This particularly notes that, when viewed from this property, only a small area of new building fabric (approximately 3m² in area) will be visible. This is not significant in the context of the visual presentation of the existing eastern elevation of the subject dwelling.*

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 addition is a reasonable built form 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 the numerical standards, the proposal does not give rise to any adverse amenity impacts to any adjoining property. The dwelling addition is located to the rear of the dwelling house, minimising any impacts to adjoining properties.

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 public interest because it is consistent with the objectives of the particular development 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 request is 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 within 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 greater than 10%.*
- *The variation is to a non-numerical development 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 to the height of building 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 no excavation or fill are proposed.

The site is mapped as having a gradient in excess of 20% slope. No geotechnical assessment has been submitted in support of this development application. However, given that no footings/foundations are proposed, and no cut and/or fill is required, no geotechnical report has been requested.

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 State Environmental Planning Policy (Building Sustainability Index) 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 (Cert. No. A453932) for the proposed dwelling house which meets the requirements of the SEPP. 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 (Biodiversity and Conservation) 2021

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

2.4.1 Chapter 2 Vegetation in Non-Rural Areas

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

Part 2.3 of the policy states that a development control plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the HDCP prescribes works that can be undertaken with or without consent to trees and objectives for tree preservation.

The application has been assessed against the requirements of Chapter 2 of the policy and it has been determined that the proposal would protect the biodiversity and amenity values of trees within non-rural areas of the state, as the works do not seek to remove or impact any trees as part of the development.

2.4.2 Chapter 9 Hawkesbury-Nepean River

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

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would not impact on the water quality of the

catchment and would comply with the requirements of chapter 9 of the Biodiversity and Conservation SEPP.

2.5 State Environmental Planning Policy (Resilience and Hazards) 2021

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

2.5.1 Chapter 4 Remediation of Land

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

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

An examination of Council's records and aerial photography has determined that the site has been historically used for residential purposes and the proposal does not seek to change the use of the land, noting the recent approval for construction of a new dwelling on the site. Accordingly, no further assessment under Chapter 4 of the Resilience and Hazards SEPP is required.

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

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

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

2.7 Hornsby Development Control Plan 2013

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

HDCP – Part 3.1 Dwelling Houses			
Control	Proposal	Requirement	Complies
Site Area	813.5m ²	N/A	N/A
Building Height	9.99m	8.5m	No

No. storeys	2 storeys	max. 2 + attic	Yes
Site Coverage	14%	max. 50%	Yes
Floor Area	181.9m ²	max. 380m ²	Yes
Setbacks			
- Front	7.6m	6m	No
- Side (East)			
Ground floor	4.2m	0.9m	Yes
First floor	7.4	1.5m	N/A
- Side (west)			
Ground floor	1.0m	0.9m	Yes
First floor	1.0m	1.5m	No
- Rear (north)			
Ground floor	17.18m	3m	Yes
First floor	18.9m	8m	Yes
Landscaped Area (% of lot size)	591m ² (72%)	min. 30%	Yes
Car Parking	2 spaces	2 spaces	Yes

As detailed in the above table, the proposed development does not comply 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.

2.7.1 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:*

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

The proposed ridge height of the roof over the addition roof is 9.99 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 the site is a significant constraint for any development on the site. There is no option to increase the size of the first floor whilst achieving a

compliant building height. The addition would be achieved by enclosing existing void areas and by changing the pitch on the southern half of the roof.

The maximum ridge height of the proposed addition would not exceed the maximum ridge height of the existing building.

The lowest residential storey is between 980mm and 2.97 metres above existing ground level. Which pushes up the overall height of the dwelling house, making compliance with a maximum height of 8.5 metres for a two dwelling house and pitched roof almost impossible.

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

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

2.7.2 Setbacks

The desired outcomes of Part 3.1.2 Setbacks 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*”.

These desired outcomes are supported by prescriptive controls requiring the setback of a first floor to a side boundary to be 1.5 metres. The proposal complies with this control on the eastern side of the dwelling addition. However, the western side of the addition is proposed to be setback 1 metre from the western side boundary.

The proposed addition would be a vertical extension of the existing western elevation of the dwelling house and is consistent with the setback of the existing western elevation. There would be no new windows or openings on the western elevation. Therefore, there are no privacy issues which arise from the non-compliance.

The proposal complies with desired outcomes of Part 3.1.2 Setbacks and is considered acceptable.

2.7.3 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.*’ 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 proposed first floor addition would not contain any additional windows or decks which face adjoining properties. The only additional windows would face the rear of the property toward the private open space of the subject site and bushland to the rear.

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

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 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 Bushfire Consultancy Australia dated 18 January 2022.

The Bushfire Assessment Report recommends 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 - Flame Zone (BAL-FZ) and the relevant sections of Planning for Bushfire Protection 2019.

In accordance with Council's assessment protocol for development in BAL-FZ, 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.

2.7.5 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.”*

No geotechnical assessment has been provided. However, given that no foundations/footings are proposed, and the proposal is for minor additions only, no geotechnical assessment has been requested in this instance. Conditions have been included in Schedule 1 of this report requiring structural engineering certification of the existing footings and walls to confirm they can accommodate the additional load from the dwelling addition.

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

2.8 Section 7.12 Contributions Plans

Hornsby Shire Council Section 7.12 Contributions Plan 2019-2029 applies to the development as the estimated costs of works is greater than \$100,000. 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 not require the removal of any trees from the site. The Erosion and Sediment Control Plan submitted with the development application shows stockpiles and a sediment barrier running under the canopies of trees on the eastern side of the site. A condition has been included in Schedule 1 of the Report requiring that 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 structural root zone/canopy of any tree on the site.

3.1.2 Stormwater Management

All stormwater for the proposed addition will be directed to the existing internal drainage system which would then be conveyed to the street.

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 areas which consists of dwelling houses ranging from single storey, split level and two storeys.

3.3 Social Impacts

The residential development would improve the 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 development is adjacent to Berowra Public School. The Berowra Railway station is approximately 1.2km from the site and the commercial centre, of Turner Road is approximately 1.5km from the site. Several public open space areas are in proximity of the site.

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 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. While the site is bushfire prone, appropriate conditions have been included in Schedule 1 of this report to mitigate any risk from bushfire.

4.1 Bushfire Risk

As noted in Section 2.7.3 of this report, the subject site is identified as being bushfire prone, having a Bushfire Attack Level - Flame Zone (BAL-FZ). A bushfire assessment report was prepared by Bushfire Consultancy Australia (dated 18 January 2022).

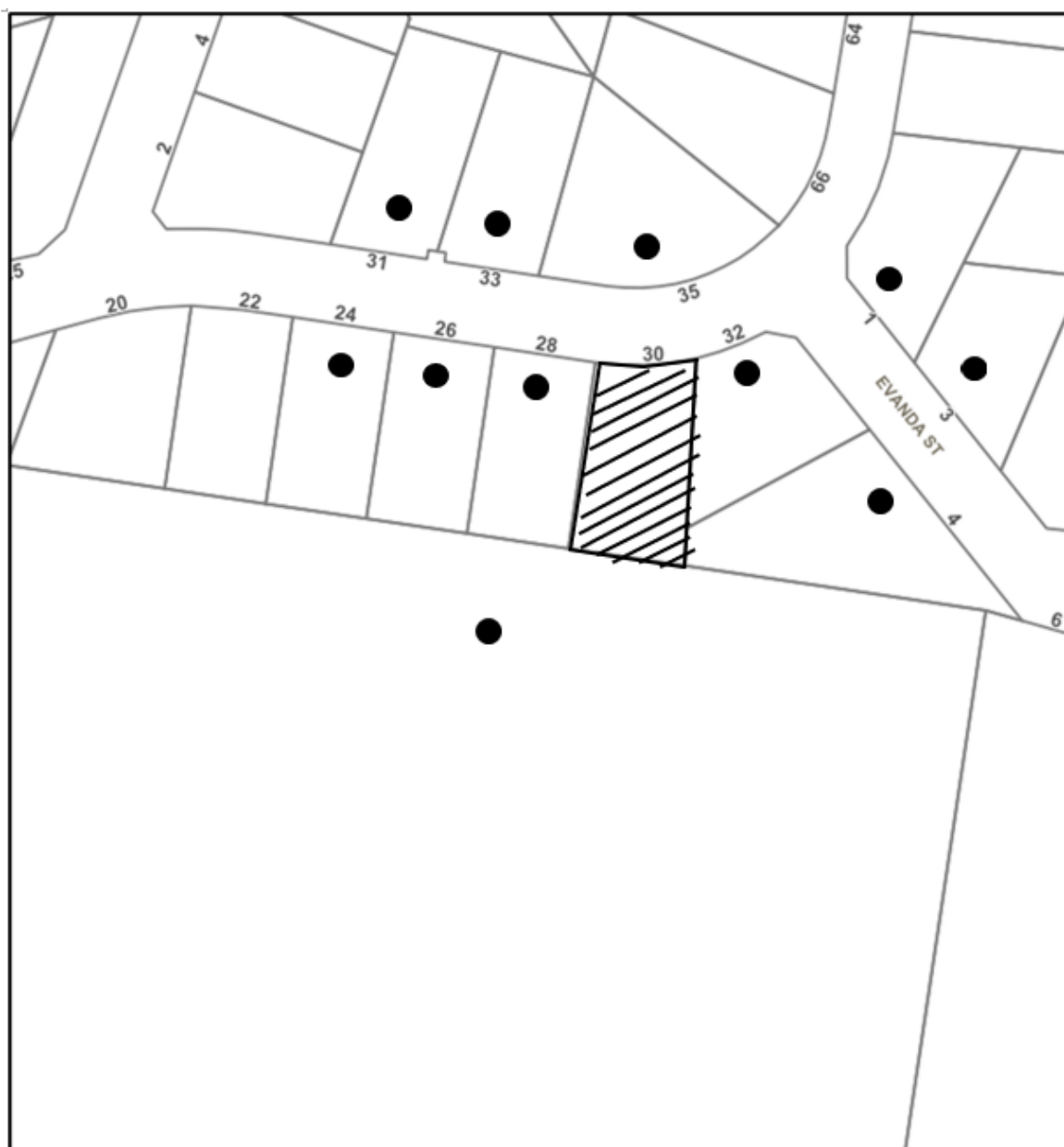
The development application was referred to NSW Rural Fire Service who have no objections to the proposal subject to the inclusion of conditions in Schedule 1 of this report.

5. PUBLIC PARTICIPATION


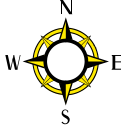
Section 4.15(1)(d) of the Act requires Council to consider *“any submissions made in accordance with this Act”*.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 9 May 2022 and 31 May 2022 in accordance with the Hornsby Community Engagement Plan. During this period, Council received no submissions.



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 Fire Service for comment and no objections were raised to the proposed development subject to the inclusion of conditions in Schedule 1 of this report.

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*.

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 State Environmental Planning Policy (Housing) 2021, the Hornsby Local Environmental Plan 2013 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, 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
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Attachments:

1. [!\[\]\(b7e1c8bc060ab2af8bc42ce81bfcf3c4_img.jpg\) !\[\]\(2d0771195b0e0240efcbd9d75c7cddb8_img.jpg\)](#) Locality Plan
2. [!\[\]\(2877759bcf4a3609f6b92cbc19de8848_img.jpg\) !\[\]\(28f8e7c07e6223706c823723c822f20f_img.jpg\)](#) Clause 4.6 Statement
3. [!\[\]\(d87d73a74f22e314c531cbe6e8724268_img.jpg\) !\[\]\(c32625d3acdc466104f8dc7eeb786ca3_img.jpg\)](#) Architectural Plans

File Reference: DA/445/2022
Document Number: D08421047

SCHEDULE 1**GENERAL CONDITIONS**

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

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

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

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

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

Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
A.00	Specifications	Drafted Up	07/03/2022	
A.01	Existing Site Plan	Drafted Up	07/03/2022	
A.02	Proposed Site Plan	Drafted Up	07/03/2022	
A.03	Ground Floor Plan	Drafted Up	07/03/2022	
A.04	Proposed First Floor Plan	Drafted Up	07/03/2022	
A.05	Proposed Elevations – South and West	Drafted Up	07/03/2022	
A.06	Proposed Elevations – East and Section	Drafted Up	07/03/2022	
A.08	Demolition Plan	Drafted Up	07/03/2022	
A.09	Erosion and Sediment Control Plan	Drafted Up	07/03/2022	
A.10	Roof Plan	Drafted Up	07/03/2022	

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference

Document Title	Prepared by	Dated	Council Reference
Waste Management Plan	Unknown	12/03/2022	D08403495
BASIX Certificate No. A453932	BASIX Certificate Centre	29/03/2022	D08403489
Bushfire Assessment Report	Bushfire Consultancy Australia	18/01/2022	D08403487

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*, **\$545.00** must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of **\$109,000.00**.
- b) The value of this contribution is current as of **5 July 2022**. If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.12 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

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

Where:

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

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

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

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

- c) The monetary contributions shall be paid to Council:
 - (i) Prior to the issue of the Subdivision Certificate where the development is for subdivision.
 - (ii) Prior to the issue of the first Construction Certificate where the development is for building work.

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

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

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

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

4. Structural Engineering Certification

To ensure the stability of the site, a suitably qualified and experienced structural engineer is to confirm that the existing footings and walls can accommodate the additional load from the dwelling addition.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

5. 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*.

6. 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.

7. 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; and
 - 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; and
- 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.

8. 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.

9. Design and Construction - Bushfire Attack Category

New construction must comply with the current Australian Standard AS3959 'Construction of Buildings in Bush Fire-prone Areas' Section 3 and 9 (BAL Flame Zone) and Planning for Bushfire Protection 2019.

Note: Further information concerning planning for bush fire protection can be found at: www.rfs.nsw.gov.au.

10. 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.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

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*.

REQUIREMENTS DURING CONSTRUCTION

14. 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.

15. Demolition

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

- a) Demolition material must be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan.
- b) Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *SafeWork NSW* in accordance with the *Work Health and Safety Regulation 2017* and be appropriately transported and disposed of in accordance with the *Protection of the Environment Operations (Waste) Regulation 2014*.
- c) On construction sites where any building 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.

16. 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*.

17. 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.

18. 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 structural root zone/canopy of any tree on the site.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**19. Fulfilment of BASIX Commitments**

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

20. 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.

21. Construction of engineering works.

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

CONDITIONS OF CONCURRENCE – NSW RURAL FIRE SERVICES

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

22. Asset Protection Zones

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

From the start of building works and in perpetuity, the entire property must be managed as an inner protection area (IPA) 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 be less than 15% at maturity.
- b) Trees at maturity are not touching or overhang the building.
- c) Lower limbs are removed up to a height of 2m above the ground.
- d) Tree canopies are separated by 2 to 5m.
- e) Preference is given to smooth-barked and evergreen trees.
- f) Large discontinuities or gaps in vegetation are provided to slow down or break the progress of fire towards buildings.
- g) Shrubs are not located under trees.
- h) Shrubs do not form more than 10% of ground cover.
- i) Clumps of shrubs are separated from exposed windows and doors by a distance of at least twice the height of the vegetation.
- j) Grass to be kept mown (as a guide grass should be kept to no more than 100mm in height).
- k) Leaves and vegetation debris are removed.
- l) NSW Rural Fire Service's document Standards for asset protection zones.

23. Landscaping

Any new landscaping within the inner protection area (IPA) 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 metre wide area (or to the property boundary where the setbacks are less than 1 metre).
- b) suitable for pedestrian traffic, must be provided around the immediate curtilage of the building.
- c) Planting is limited in the immediate vicinity of the building.
- d) Planting does not provide a continuous canopy to the building (i.e. trees or shrubs are isolated or located in small clusters).
- e) Landscape species are chosen to ensure tree canopy cover is less than 15% (IPA) at maturity and trees do not touch or overhang buildings.
- f) Avoid species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies.
- g) Use smooth bark species of trees species which generally do not spread fire up the bark into the crown.
- h) Avoid planting of deciduous species that may increase fuel at surface/ ground level (i.e. leaf litter).
- i) Avoid climbing species to walls and pergolas.
- j) Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building.

- k) Locate combustible structures such as garden sheds, pergolas and materials such as timber garden furniture away from the building.
- l) Low flammability vegetation species are used.

24. Construction Standards

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

- a) New construction must comply with Section 3 (excluding section 3.5) and Section 9 (BAL FZ) of the 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.
- b) Any new Class 10b structures as defined per the National Construction Code must be non-combustible.

25. 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.

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

- a) Exposed water pipes external to the building are metal, including any fittings.
- b) Where practicable, electrical transmission lines are underground.
- c) Where overhead, electrical transmission lines are proposed as follows:
 - i) Lines are installed with short pole spacing (30m), unless crossing gullies, gorges or riparian areas.
 - ii) 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.
- d) Reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 and the requirements of relevant authorities, and metal piping is used.
- e) All fixed gas cylinders are kept clear of all flammable materials to a distance of 10m and shielded on the hazard side.
- f) Connections to and from gas cylinders are metal.
- g) Polymer sheathed flexible gas supply - lines are not used; and
- h) Above-ground gas service pipes are metal, including and up to any outlets.

- END OF CONDITIONS -

ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the *Environmental Planning and Assessment Act, 1979, Environmental Planning and Assessment Regulation 2000,*

other relevant legislation and Council's policies and specifications. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

Environmental Planning and Assessment Act 1979 Requirements

The *Environmental Planning and Assessment Act 1979* requires:

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

Long Service Levy

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

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

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

Tree and Vegetation Preservation

Hornsby Development Control Plan 2013 Tree and Vegetation Preservation provisions have been developed under Council's authorities contained in *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* and the *Environmental Planning and Assessment Act 1979*.

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

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

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

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 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/445/2022

No. 30 Balaclava Road, Berowra

ATTACHMENT 1 - ITEM 3

**Clause 4.6 Statement Seeking to Vary the Strict Application of Clause 4.3 of the
Hornsby Local Environmental Plan 2013**

Prepared by Melanie Farquhar
2nd May 2022

Property: 30 Balaclava Road, Berowra NSW 2081

Development: Alterations and additions to an existing dwelling

Development standard: Clause 4.3 – Height of Buildings of the Hornsby Local Environmental Plan 2013

Introduction

The purpose of this Clause 4.6 Statement, prepared pursuant to 'Clause 4.6 – Exception to development standards' of the Hornsby Local Environmental Plan 2013 (HLEP2013), is to seek a variation of the maximum 8.5 metre building height limitation prescribed by 'Clause 4.3 – Height of Buildings' of the HLEP2013. Clause 4.3 is a development standard as prescribed by the *Environmental Planning and Assessment Act, 1979* and its associated Regulations and may only be varied through the successful demonstrating that the development is consistent with the assessment criteria set out under Clause 4.6.

Area of non-compliance

This Development Application proposes a maximum building height of 9.99m, a variation of 1,490mm, equating to a 17.5% percent departure from the development standard in question. This non-compliance occurs at the eastern end of the proposed addition, as shown in Figure 1 below.

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Clause 4.6



Figure 1: Location of the proposed height non-compliance.

Assessment

This Clause 4.6 statement has been prepared having due consideration to the matters set out for consideration under Clause 4.6 of the HLEP2013 as well as relevant case law developed within the NSW Land and Environment Court. This consideration is set out in the following:

Clause 4.6(1) – Objectives of the Clause

The objectives of Clause 4.6 are as follows:

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Clause 4.6

(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.

The proposal is consistent with the objectives of Clause 4.6. Clause 4.6 exists to allow flexibility in circumstances where strict compliance with a development standard may otherwise unreasonably hinder the attainment of a reasonable development outcome. As is outlined within this statement, the site is subject to such a circumstance. However, the development has been designed in a manner that will not compromise the surrounding environment or result in a poor planning precedent that may otherwise challenge the integrity or relevance of the building height development standard.

Clause 4.6(3-a) – Application of the development standard is unreasonable or unnecessary in the circumstances of the case

The strict application of the development standard is not considered to be reasonable or necessary in this instance. As is evident from the survey plan, a visual inspection of the subject site and the surrounding streetscape, the site is subject to a significant crossfall. This crossfall is such that an approximate difference of 3 metres exists between the natural ground level at the western end of the building (around RL194.00) in comparison to that at the eastern end (RL191.00). If the proposal were to take place on a level allotment, the departure from the development standard would arguably not occur and therefore, the variation can be viewed as largely technical in nature. As is articulated below, the proposal is void of undue environmental impact and consequently, requiring numerical compliance to be achieved without any material net benefit to the surrounding environment is not 'reasonable' or 'necessary' to ensure the integrity of the built form character within the locality is maintained.

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 minor addition. However, as a result of the unique topography of the site, a portion of the proposed first floor addition exceeds the height control.

The alternative complying solution would create in an irregular and unappealing development form with the dormer window not being symmetrical on the roof and the floor space being restricted for the occupants. Rather, the designer has appropriately designed the proposed addition by considering the overall form of the building. The proposal will provide a high quality of living and amenity to the occupants of the dwelling with minimal external impact.

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.

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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 more than 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.

Furthermore, there is no increase of the existing building in this proposal, as with the nature of a dormer window development it is integrated in to the existing roof.

The development has no negative consequences because of this minor non-compliance. The development 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.

The merit - based justification provided in this request provides strong evidence that the proposed dormer windows development to be integrated into the existing roof will provide clear positive outcomes, and is a designed with sympathy to the existing building and Council's development standard. The proposed development ultimately results in a planning outcome that meets Council's desired intent for the area.

It is argued that the variation deserves support as it has no negative (and no significantly noticeable) impact on the streetscape, the surrounding locality and the neighbouring properties.

Clause 4.6(3-b) – there are sufficient environmental planning grounds to justify contravening the development standard

There are numerous environmental planning grounds justifying a contravention of the development standard in this instance. These are outlined in the following:

- the proposed addition will take place at the rear of the dwelling and will not be immediately discernible from the public realm. In addition to this, the site faces an area of bushland to the rear that is not populated and as such, cannot be considered to result in a development that would otherwise be overbearing when viewed from the rear of the site
- at the western end, the proposed addition will be within the maximum height allowance of Clause 4.3 and will not be of any undue visual bulk and scale when viewed from the adjacent property (28 Balaclava Street)
- at the eastern end, although a non-compliance will exist, the non-compliant building form will be well setback from the common boundary shared with 32 Balaclava Street and will not result in any adverse bulk or scale impact. This particularly notes that, when viewed from this property, only a small area of new building fabric (approximately 3m² in area) will be visible. This is not significant in the context of the visual presentation of the existing eastern elevation of the subject dwelling

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Clause 4.6

- an observation of the character of development within the visual catchment of the site shows that dwellings within this part of Balaclava Street are constructed in a manner that reflects the significantly sloping topography, with dwellings up to three storeys in height presenting to the street. In this sense, the proposed variation cannot be considered to result in a development that is uncharacteristic of its surrounds
- the form of the building will not be significantly altered. The proposal is limited to a moderate first floor addition that is of compliant floor space ratio, taking place below and behind the existing ridge line. Moreover, the proposal will take place within the existing building footprint, will not require the removal of any significant vegetation, and will not result in any material impacts to neighbouring solar access, privacy or general amenity

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

The proposed variation to the building height development standard will not compromise the achievement of the objectives of the zone within which the site is contained or the standard itself.

The objective of Clause 4.3 is as follows:

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

As demonstrated above, the site is subject to a significant constraint being a substantial cross-fall. However, the development outcome sought does not compete with this constraint in any manner that may otherwise result in an adverse impact to the surrounding environment. As shown through compliance with the floor space ratio maximum, the proposal does not seek to overutilize the development potential of the site and will not be of any material impact upon the infrastructure capacity of the locality. Therefore, the proposal is consistent with the objective Clause 4.3

The objectives of the 'R2 – Low Density Residential' zoning within which the site is contained are as follows:

- *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 proposal will provide a moderate addition to an existing dwelling that is in no way dominate or apathetic to the context of its surrounds. This addition is associated with a low density, detached single dwelling that will provide an improved living environment for its occupants. As such, the proposal is consistent with the first objective of the zone.

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Clause 4.6

The second objective of the zone is not relevant to the proposal in that the site will be used for the primary intention of the 'R2 – Low Density Residential' zoning, being a single, detached dwelling.

Clause 4.6(5-a) – Concurrence of the planning Secretary – Any state or regional planning matters raised by contravening the standard

There are no state or regional planning matters that will result as an outcome of allowing a departure from the development standard.

Clause 4.6(5-b) – Concurrence of the planning Secretary – the public benefit of maintaining the development standard

There is no net public benefit to requiring strict compliance with the development standard in this instance. The standard itself is of importance in terms of providing a clear guideline for what generally constitutes an acceptable building height in a low density residential environment. However, the site is subject to a unique circumstance that lends itself to a variation of the standard where this can be achieved without an adverse environmental impact. This has been demonstrated within the design put forward by this Development Application.

Clause 4.6(8) – Exceptions to the application of Clause 4.6

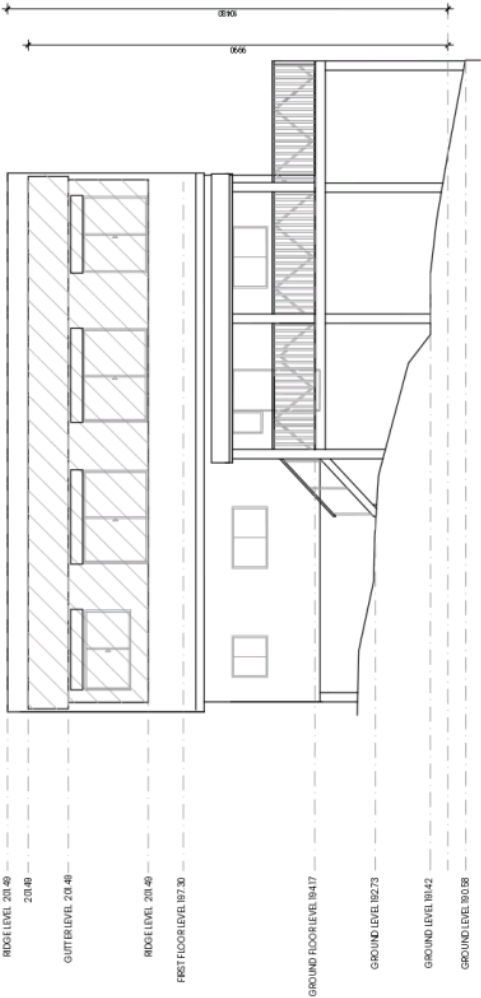
The proposal does not relate to any form of development nominated by this sub-clause.

Conclusion

Having consideration of the points advanced above, it is considered that allowing for a variation to the strict application of 'Clause 4.3 – Height of Buildings' of the Hornsby Local Environmental Plan 2013 is reasonable in this instance.

02.05.22

Clause 4.6



Alterations and Additions for Sarah and Andrew Flarey

30 Balaclava Road, Berowra NSW 2081
Lot 235 DP825647
Stage: Development Application
7th March 2022

Drawing Schedule

- A.00 SPECIFICATIONS
- A.01 ROOFING PLAN
- A.02 ROOFING SECTION
- A.03 GROUND FLOOR PLAN
- A.04 PROPOSED FIRST FLOOR PLAN
- A.05 PROPOSED SECOND FLOOR PLAN AND WEST
- A.06 PROPOSED ELEVATIONS - EAST AND WEST
- A.07 SHADOW DIAGRAM
- A.08 EXCAVATION PLAN
- A.09 PROPOSED SEGMENT CONTROL PLAN
- AND ROOF PLAN

SCALE: CAPSULE ADAPTATIONS AND ADDITIONS **Customer: Sarah and Andrew Flarey** **Project: 19, March 2022**

Project Description: The project involves the construction of a new building with a total floor area of 1,000 square meters. The building will be used for residential purposes. The project is located at 30 Balaclava Road, Berowra NSW 2081. The project is a Stage 1 Development Application.

Project Details:

Item	Description	Quantity	Unit	Price	Total
1	Roofing	1	sqm	100	100
2	Ground Floor	1	sqm	200	200
3	First Floor	1	sqm	200	200
4	Second Floor	1	sqm	200	200
5	West Elevation	1	sqm	200	200
6	East Elevation	1	sqm	200	200
7	Shadow Diagram	1	sqm	200	200
8	Excavation Plan	1	sqm	200	200
9	Segment Control Plan	1	sqm	200	200
10	Roof Plan	1	sqm	200	200

Project Summary:

Item	Description	Quantity	Unit	Price	Total
1	Roofing	1	sqm	100	100
2	Ground Floor	1	sqm	200	200
3	First Floor	1	sqm	200	200
4	Second Floor	1	sqm	200	200
5	West Elevation	1	sqm	200	200
6	East Elevation	1	sqm	200	200
7	Shadow Diagram	1	sqm	200	200
8	Excavation Plan	1	sqm	200	200
9	Segment Control Plan	1	sqm	200	200
10	Roof Plan	1	sqm	200	200

draftedup Drawn By Melanie Farquhar

ATTACHMENT 3 - ITEM 3

BE ADVISED : SOME CLAUSES IN THIS SPECIFICATION MAY NOT BE RELEVANT TO THIS PROJECT

- 10 GENERAL
- 11 ALL DIMENSIONS SHALL BE CHECKED ON SITE PRIOR TO COMMENCEMENT OF ANY WORK
 - 12 ALL MATERIALS SHALL COMPLY WITH RELEVANT CURRENT AUSTRALIAN STANDARDS AND UNLESS OTHERWISE STATED ON THE PLANS SHALL BE NEW AND THE BEST OF THE THEIR RESPECTIVE KIND AND SUITABLE FOR THEIR INTENDED PURPOSES.
 - 13 ALL WORKMANSHIP SHALL COMPLY WITH RELEVANT CURRENT AUSTRALIAN STANDARDS AND TO GOOD TRADE PRACTICES
 - 14 ALL WORK SHALL BE IN ACCORDANCE WITH REQUIREMENTS OF THE RESPECTIVE AUTHORITY
 - 15 THE ARCHITECTURAL DRAWINGS SHALL BE READ IN CONJUNCTION WITH THE SPECIFICATION, SCHEDULES AND CONSULTANTS DRAWINGS THAT FORM PART OF THE CONSTRUCTION DOCUMENTS REFERRED TO IN THE "BUILDING CONTRACT"
 - 16 DO NOT SCALE FROM DRAWINGS. NOTIFY OF ANY ERRORS OR OMISSIONS BEFORE PROCEEDING WITH ANYWORKS
 - 17 ENSURE THAT SUBSTRATES ARE SUITABLE FOR THE INTENDED SUBSEQUENT FINISHES. COMMENCEMENT OF WORK ON THE SUBSTRATES IMPLIES ACCEPTANCE BY THE SUBCONTRACTOR OF THE SUBSTRATES ON WHICH FINISHES ARE APPLIED.
 - 18 CONTRACTOR IS TO SUPPLY ALL EQUIPMENT NECESSARY FOR THE COMPLETION OF THE RESPECTIVE WORKS.
 - 19 CONTRACTOR IS RESPONSIBLE FOR THE PROGRESSIVE CLEAN UP DURING AND AFTER THE COMPLETION OF RESPECTIVE WORKS
 - 20 EARTHWORKS
 - 21 UNLESS OTHERWISE STATED, REMOVE TOPSOIL TO A MINIMUM DEPTH OF 200mm INCLUDING ALL ROOTS AND OTHER MATTER, AND REQUIRD BY THE SOIL CONDITION AND/OR BUILDER PROVIDE ADEQUATE DRAINAGE AND COMPACT IN LAYERS NOT GREATER THAN 300mm TO REDUCE LEVELS AS SHOWN.
 - 22 DO NOT EXCAVATE SERVICES, TRENCHES WITHIN AN ANGLE OF 45 DEGREES DOWN FROM THE BOTTOM EDGE OF THE FOOTING.
 - 23 ALL RETAINING WALLS TO BE TREATED WITH "BITIKOTE" WATERPROOFING AGENT
 - 30 CONCRETE
 - 31 ALL CONCRETE REINFORCEMENT AND FORMWORK SHALL BE TO STRUCTURAL ENGINEERS DETAILS, RELEVANT BUILDING CODES AND STANDARDS
 - 32 THE FOOTING AND SLAB CONSTRUCTION IS TO COMPLY WITH AS 2870
 - 33 PROVIDE A PROPRIETARY VAPOUR BARRIER WHICH CONSISTS OF HIGH IMPACT RESISTANT POLYTHENE FILM MIN 0.2mm THICK WHICH HAS BEEN PIGMENTED AND BRANDED BY THE MANUFACTURER.
 - 40 TERMITE PROTECTION
 - 41 PROVIDE AN TERMITE TREATMENT UNDER THE BUILDING AREAS IN ACCORDANCE WITH AS 2057 AS PER THE MANUFACTURERS INSTRUCTIONS
 - 42 BUILDER SHALL PROVIDE TRIFLEX OR SIMILAR APPROVED ANTI-TERMITE TREATMENT IN ACCORDANCE WITH RELEVANT AUSTRALIAN STANDARD CODES
 - 5.0 BRICKWORK
 - 5.1 BRICK WORK SHALL COMPLY WITH:
 - AS 3700 MASONRY CODE
 - AS A123 MASONRY CODE
 - 5.2 BRICK GAUGE 75 STANDARD COURSES = 600mm. MORTAR FOR MASONRY CONSTRUCTION
 - 5.3 TIES SHALL BE 3mm DIAMETER GALVANIZED WIRE KINKED FOR AND BUILT IN EVERY 5TH COURSE AT APPROXIMATELY 900mm CENTRES, WITH ADDITIONAL TIES AT THE RATE OF 1 IN 300mm HEIGHT OF OPENINGS AND VERTICAL CONTROL JOINTS AND WITHIN 150mm OF OPENINGS BUILD TIES INTO EACH LEAF AT LEAST 50mm.
 - 5.4 VERTICAL CONTROL JOINTS SHALL BE 20mm WIDE FILLED AT COMPLETION WITH A CONTINUOUS RULER STRIP.
 - 5.5 PERMITS TO BE KEPT CLEAR OF MORTAR. PROVIDE CAVITY BOARDS. TEMPORARILY OMIT BRICK TO PERMIT RAKING OUT OF CAVITY BOTTOMS.
 - 5.6 FORM WEED HOLES EVERY FOURTH PERPEND ABOVE FLASHING AND CAVITY FILL KEEP CLEAR OF MORTAR. DO NOT LOCATE WEEDHOLES CLOSER THAN 500mm TO JOINTS IN DAMP PROOF COURSES OR FLASHING.
 - 5.7 PROVIDE DAMP PROOF COURSES (DPC) IN THE BOTTOM 3 COURSES OF BRICK WORK AND SLAB AND/OR FOOTINGS. DPC ADDITIVE SHALL BE CLEAR IN ALL FACEWORK.
 - 5.8 SETOUT BRICKWORK ACCURATELY PLUMB LEVEL AND PROPERLY BONDED. RISING WORK TO BE RAKED BACK. JAMES REVEALS CORNERS, PERPENDS, ETC TO BE TRUE, PLUMB AND IN LINE WITH PERPENDS TRUE LINE. SETOUT DOOR FRAMES NEAR PERPENDICULAR WALL WITH A MARGIN OF 12mm OR GREATER THAN 50mm
 - 5.9 PROVIDE 12mm PLASTERING MARGIN BETWEEN WINDOW FRAME AND INTERNAL BRICKWORK TO BE RAKED BACK
 - 5.10 WHERE NECESSARY REINFORCE BELOW AND OVER OPENINGS WITH GALVANISED WOVEN WIRE FABRIC 75mm WIDE IN CENTRE OF EACH LEAF OPENING EXTENDING ALUMINIUM OF 600mm BEYOND THE OPENING.
- 11.0 CEILING
- 11.1 CEILINGS SHALL BE RECESSED EDGE. MINIMUM 8.0mm PLASTERGLASS OR GYPROCK.
 - 11.2 FLUSH JOINTS, SCREW HEADS, AND OTHER BLEMISHES IN THE SHEETS USING APPROVED SYSTEMS TO PROVIDE FLUSH SMOOTH CONTINUOUS SURFACE
 - 11.3 PROVIDE AND FIX ALL FLUSH STOP BEADS & CASING BEADS TO ALL CORNERS & EDGES
 - 11.4 PROVIDE ALL SELECTED MOLDINGS AND CORNICES TO ALL CEILINGS AS SHOWN ON THE DRAWINGS.
 - 12.0 PLASTERING
 - 12.1 INTERNAL WALL FINISHES INCLUDING CUPBOARD, BIN & FRIDGE RECESSES ETC SHALL BE (OTHER THAN FACE FINISHES OR WHERE COVERED BY FEATURE MATERIAL) FLOAT AND SET IN HARDWALL PLASTER PLASTERED WALLS SHALL BE NOMINAL 12mm THICK CONSISTING OF 110. CEMENT:TIME:SAND REND, AND FINISHED WITH NOMINALLY 3mm HARDWALL PLASTER
 - 12.2 SUPPLY AND FIX EXTERNAL CORNER BEADS TO ALL EXTERNAL CORNERS.
 - 12.3 PROVIDE STOP BEADS WHERE PLASTER WORK ABUTS TIMBER FRAMES, OR FACEWORK
 - 12.4 EXTERNAL RENDER WHEN APPLICABLE SHALL BE 2 COAT SAND FINISH. (OR PAINTING)
 - 12.5 FINISHES IN INTERNAL CORNERS ADJACENT TO DOOR FRAMES GREATER THAN 40mm SHALL NOT BE FLUSHED UP WITH FRAMES
 - 12.6 PROVIDE V-JOINTS IN RENDER & FINISHING PLASTER WHERE BRICK WORK ABUTS OR JOINS ONTO CONCRETE WORK.
 - 13.0 FLOORING FINISHES
 - 13.1 CARPET FLOOR COVERINGS TO NOMINATED AREAS COMPLETE WITH SELECTED UNDERLAY SMOOTH EDGE. DIMINISHING STRIPS ETC, TO COMPLETE THE WORKS. REFER TO DRAWINGS AND FINISHES SCHEDULE
 - 13.2 PROVIDE TILED FLOOR FINISHES TO NOMINATED AREAS COMPLETE WITH ALL MATERIALS, ANGLE TRIMS ETC, TO COMPLETE THE WORKS. REFER TO DRAWINGS AND FINISHES SCHEDULE
 - 13.3 PROVIDE TIMBER FLOOR FINISHES TO NOMINATED AREAS COMPLETE WITH ALL MATERIALS, DIMINISHING BOARDS ETC TO COMPLETE THE WORKS. FLOOR BOARDS TO BE Sanded AND POLISHED TO HIGH STANDARD WITH PREMIUM QUALITY SEALER (2 COATS). REFER TO DRAWINGS AND FINISHES SCHEDULE
 - 14.0 SIGNAGE
 - 14.1 WHERE NECESSARY SUPPLY & FIX SELECTED UNIT AND HOUSE NUMBERS TO EACH UNIT AND TO LETTERBOXES AS SCHEDULED
 - 14.2 "SUPERDRAFT" RESERVES THE RIGHT TO ERECT A BUILDERS SIGN ON THE PROPERTY FACING THE STREET FRONTAGE IN COMPLIANCE WITH AUTHORITY REQUIREMENTS.
 - 15.0 PAVING
 - 15.1 GENERALLY WHEN PAVING IS INCLUDED IN THE BUILDING CONTRACT THE FOLLOWING SHALL APPLY AS A MINIMUM STANDARD
 - SUPPLY AND LAY ALL PAVING TO EXTERNAL AREAS AS SHOWN ON WORKING DRAWINGS.
 - CUT FILL & COMPACT SAND TO REQUIRED LEVELS. SPORED TO UNIFORM THICKNESS AND LEVELS.
 - CONCRETE DRIVEWAYS SHALL BE 150mm THICK WITH 40mm MINIMUM COVER TO REINFORCE.
 - TO DRIVEWAY AREAS. PROVIDE NOMINAL 300x600mm CONCRETE FOOTING ALONG PERIMETER OF DRIVEWAY AND BED EDGE BRICK IN BORDER.
 - 15.2 PROVIDE 100mm COMPACTED LIMESTONE BASE TO DRIVEWAY TOPPED WITH 50mm CLEAN SAND AND GRADE TO FALLS.
 - 15.3 UNLESS NOTED PAVING PATTERN IS TO CLIENTS DETAIL
 - 15.4 TRAFFICABLE AREAS: MIN. 65mm SOLID CLAY OR CONCRETE
 - 15.5 PEDESTRIAN AREAS: MIN. 45mm SOLID CLAY OR CONCRETE
 - 16.0 ENERGY EFFICIENCY
 - 16.1 INSULATION MUST FORM A CONTINUOUS BARRIER WITH CEILINGS, WALLS AND FLOORS BY ABUTTING OR OVERLAPPING ADJOINING INSULATION
 - 16.2 INSULATION MUST NOT ADVERSELY AFFECT DOMESTIC SERVICES OR FITTINGS
 - 16.3 REFLECTIVE INSULATION IS TO BE PROVIDED WITH A MINIMUM 25mm AIRSPACE AND IS FITTED CLOSE TO OPENINGS SUCH AS WINDOWS/DOORS ETC. AND IS PROVIDED WITH ADEQUATE SUPPORT.
 - 16.4 BULK INSULATION MUST MAINTAIN ITS POSITION, THICKNESS
 - 16.5 ENSURE THAT CEILING INSULATION OVERLAPS UN-INSULATED WALLS
 - 16.6 CONSTRUCTION JOINTS, SUCH AS BETWEEN WALL AND FLOOR ARE TO BE TIGHT FITTING OR SEALED USING CALKING OR JOINERY ITEMS SUCH AS SKIRTING OR CORNICES
 - 16.7 EXHAUST FANS ARE TO BE FITTED WITH A SELF CLOSING DAMPER
 - 16.8 ROOF LIGHTS MUST BE SEALED WITH WEATHERPROOF SEALS
 - 16.9 HEATED WATER PIPING MUST BE THERMALLY INSULATED AND PROTECTED AGAINST THE WEATHER AND SUN
 - 16.10 INTERNAL HEATED WATER PIPING TO HAVE AN R VALUE OF 0.2
 - 16.11 CLOSED SUB-FLOOR AND ROOF SPACE TO HAVE AN R VALUE OF 0.45
- 16.1 BUILD IN ALCOVE/PCI FLASHINGS AS FOLLOWS:
- WHEREVER SHOWN ON DRAWINGS
 - CAVITY WALLS BUILT OF SLAB ON GROUND (WHERE NOT PARGE)
 - ACROSS CAVITY 50mm INTO INNER LEAF 2x ABOVE
 - OVER ROOF - EXTEND THE FULL WIDTH OF EXTERNAL LEAF - STEPPED TO ROOF SLOPE TURNED INNER LEAF TO ABOVE
 - DOOR/WINDOW STILES - EXTEND THE FULL HEIGHT 150mm WIDE FIXED TO FRAMES INTERLEAVED WITH SILL AND HEAD FLASHING AT EACH END
 - STRUCTURE OR SERVICES WITHIN 30mm OF EXTERIOR BRICK LEAF IN CAVITY - VERTICAL FLASHING CONTINUOUS TO BELOW FL TO ABOVE STRUCTURE OR FRAME. NOMINAL 300mm WIDE.
 - FOR HORIZONTAL STRUCTURES/SERVICES, CONTINUOUS FLASHING BUILT IN AS FOR OVER LINTELS
 - AT CAVITY WALLS WITH GLASS BLOCK 300mm WIDE FIXED TO GLASS BLOCK FRAME AND TURNED AWAY IN CAVITY FROM INNER LEAF.
- 5.12 WHERE NECESSARY REINFORCE BELOW AND OVER OPENINGS WITH GALVANISED WOVEN WIRE FABRIC 75mm WIDE IN CENTRE OF EACH LEAF OPENING EXTENDING ALUMINIUM OF 600mm BEYOND THE OPENING.
- 5.13 UNLESS OTHERWISE SHOWN ON DRAWINGS
- EXTERNAL FACE WORK: 20x100x70mm
- WINDOW SILLS: 2x FACE BRICK SPLAYED SILLS
- WINDOW HEADS: SOLID FACEBRICK COURSE
- 8.0 LINTELS
- | MAX SPAN (mm) | LINTEL SIZE (VERT x HORIZ x THICK) | BEARING EACH END (mm) |
|---------------|------------------------------------|-----------------------|
| 900 | 75x40 | 150 |
| 1200 | 75x75x8 | 150 |
| 1500 | 90x90x8 | 150 |
| 1800 | 100x75x8 | 230 |
| 2100 | 125x75x8 | 230 |
| 2400 | 150x75x8 | 230 |
| 2700 | 100x100x8 | 230 |
| 3000 | 150x100x8 | 230 |
- 7.0 CARPENTRY WORK
- ROOF AND CEILING FRAMING SHOULD COMPLY WITH AS 1684 LIGHT TIMBER FRAMING CODE DRAW WITHIN 100mm OF EXTERIOR WALL PLATES AND BE SECURELY FIX TO TOP OF PLATE BY 250mm GALT.
- CLUSTER TRAP
- REFER TO AS 1684 FOR ROOF FRAMING SIZES UNLESS SPECIFIED ON DRAWINGS.
- 7.2 SUPPLY AND FIX ALL BULKHEADS & FALSE CEILINGS AS SHOWN ON THE DRAWINGS.
- 8.0 ROOFING
- SELECTED ROOFING MATERIAL SHALL BE INSTALLED AND FIXED IN ACCORDANCE WITH MANUFACTURERS SPECIFICATION AND RELEVANT BUILDING CODES
- 8.2 GUTTER FASCIA DOWNPIPES, FLASHING SHALL BE IN LONGEST POSSIBLE LENGTHS
- 8.3 ALLOW FOR ALL JOINTS AND JOINING MATERIALS, COLLARS, STRAPS & FASTENINGS NECESSARY TO COMPLETE WORK.
- 8.4 ALLOW FOR ALL ROOF PENETRATIONS, ROOF COWLS, FLASHING FLUMES THROUGH ROOF
- 8.5 SEAL GUTTERS & FLASHING TO PERMIT THERMAL MOVEMENT IN THEIR FULL LENGTH
- 8.6 SEAL BETWEEN OVERLAPPING FLASHING FLASHING TURNED DOWN OVER BASE OR APRON FLASHING FLASHING OVER METAL ROOF, FLASHING OVER SECRET GUTTERS, AROUND ROOF PENETRATIONS ETC.
- 9.0 WINDOWS/GLAZING
- UNLESS OTHERWISE STATED ON THE DRAWINGS WINDOW FRAMES SHALL BE ALUMINIUM RESIDENTIAL OR COMMERCIAL IN SECTION WITH POWDERCOAT FINISH AS SELECTED BY OWNER.
- 9.2 ALLOW FOR FLYSCREENS TO BE FITTED TO ALL WINDOWS
- 9.3 ANGLED WINDOW UNITS SHALL BE FACTORY MADE AND FIXED AND DELIVERED ON SITE AS A PERFORMANCE ASSESSOR
- 9.4 WHERE RELEVANT WINDOWS ARE TO COMPLY WITH THE SPECIFICATIONS PROVIDED BY THE THERMAL CLEAR GLASS GENERALLY OBTAIN GLASS TO BATHROOMS. REFER TO DRAWINGS.
- 9.5 MANUFACTURERS SPECIFICATIONS
- 9.6 WHERE GLASS BLOCKS HAVE BEEN NOMINATED, THEY SHALL BE IN FRAMES AND INSTALLED TO 10.0 JOINERY
- ALL JOINERY SHALL BE OF HIGHEST QUALITY MATERIALS TO BEST TRADE PRACTICES AND HIGH QUALITY FINISH.
- 10.1 INTERNAL DOOR FRAMES SHALL BE 100x40 DOUBLE REBATED FRAME WITH 130x40 WEATHERED THRESHOLD UNDO.
- 10.2 SUPPLY AND BUILD IN TIMBER DOOR FRAMES TO EXTERNAL LOCATIONS AS SHOWN ON ARCHITECTURAL DRAWINGS.

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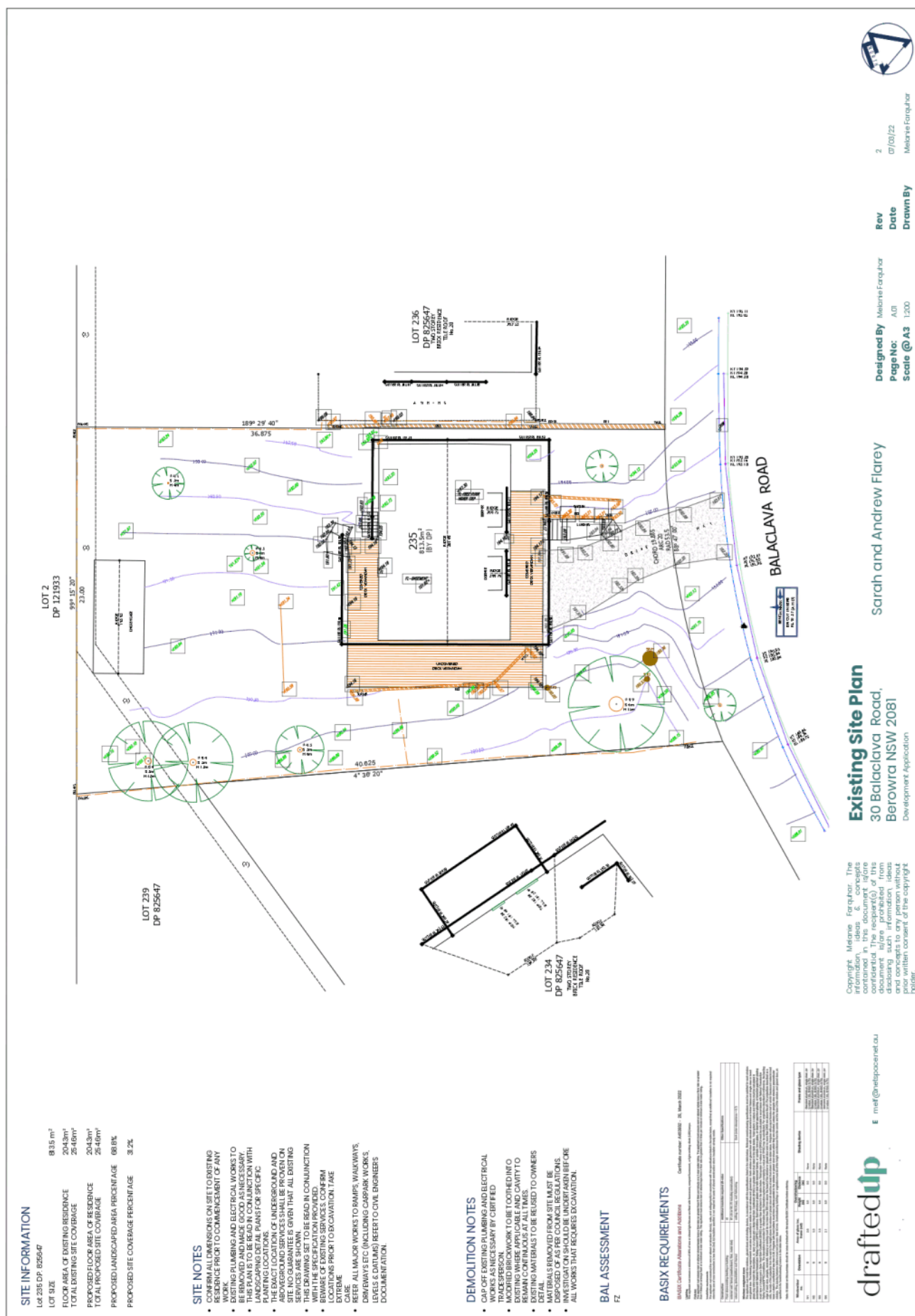
draftedup

Specifications
30 Balclutha Road,
Berowra NSW 2081
Designation Application

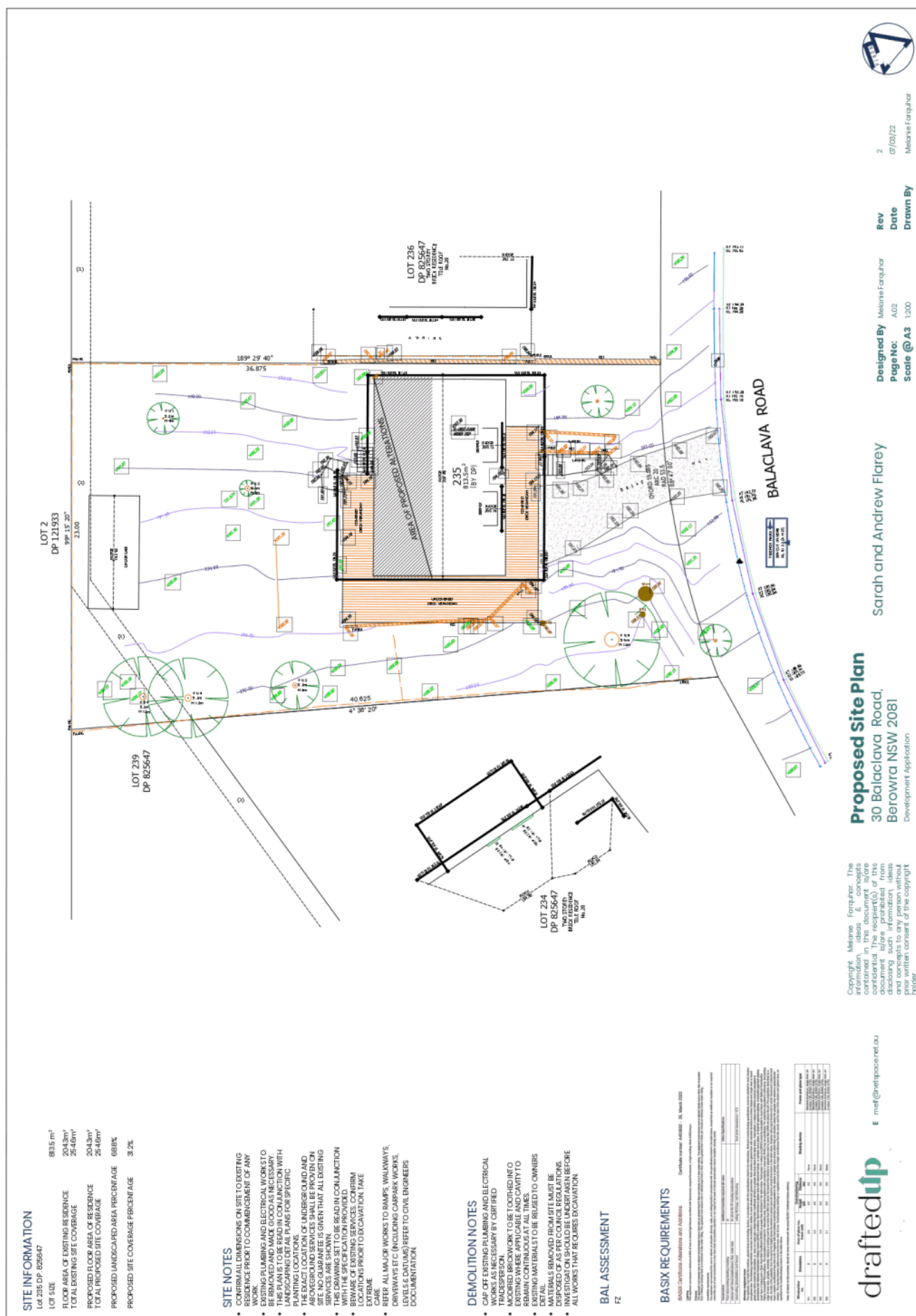
Sarah and Andrew Flarey

Designed By Melrose Farquhar
Page No: A00
Rev Date 07/03/22
Drawn By Melrose Farquhar

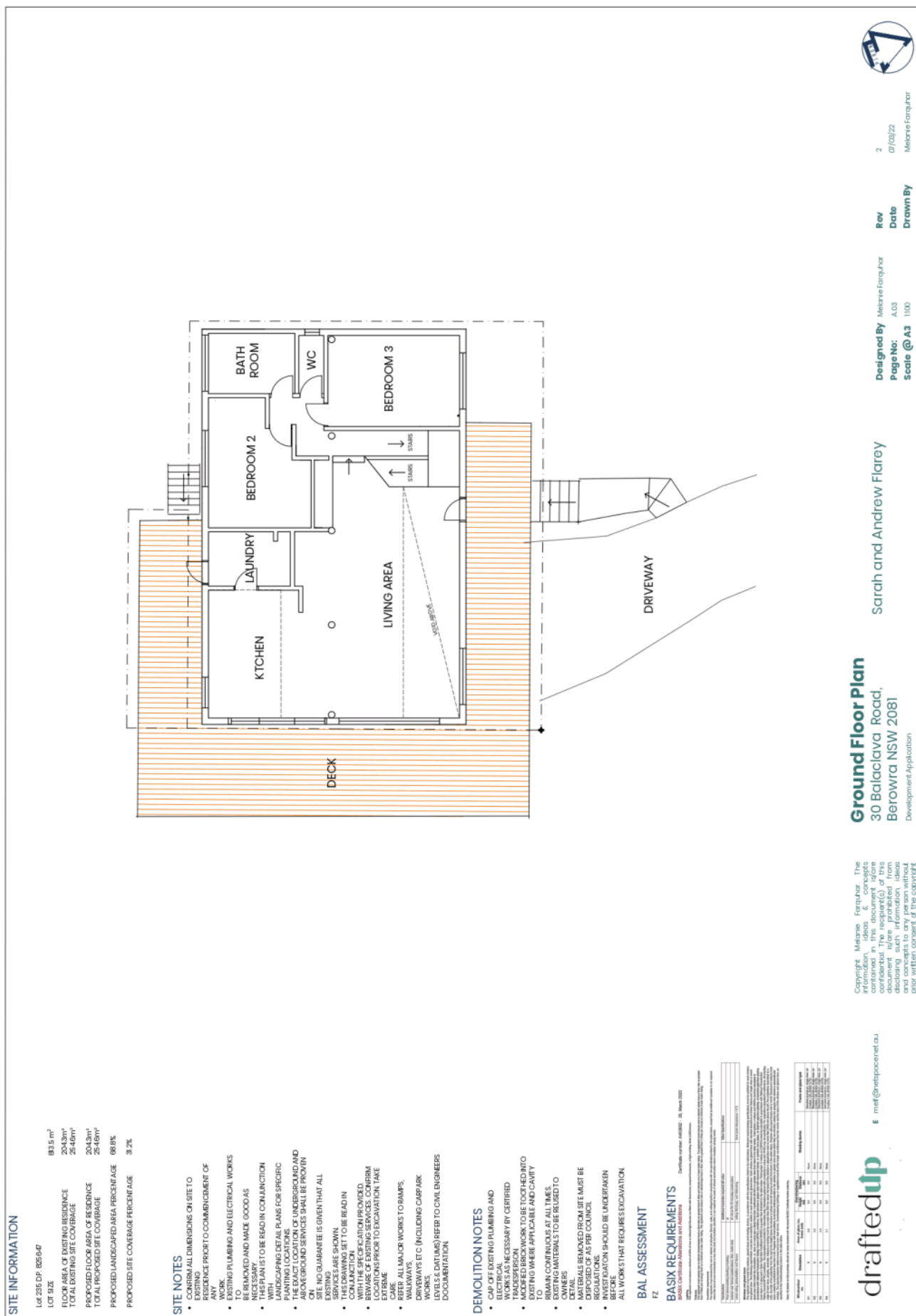
ATTACHMENT 3 - ITEM 3



ATTACHMENT 3 - ITEM 3



ATTACHMENT 3 - ITEM 3



ATTACHMENT 3 - ITEM 3

SITE INFORMATION

LOT 236 DP 825647	
LOT SIZE	8835 m ²
FLOOR AREA OF EXISTING RESIDENCE	204.3m ²
TOTAL EXISTING SITE COVERAGE	25.48m ²
PROPOSED FLOOR AREA OF RESIDENCE	204.3m ²
TOTAL PROPOSED SITE COVERAGE	25.48m ²
PROPOSED UNDISCARDED AREA PERCENTAGE	68.8%
PROPOSED SITE COVERAGE PERCENTAGE	3.2%

SITE NOTES

- CONFIRM ALL DIMENSIONS ON SITE TO EXISTING RESIDENCE PRIOR TO COMMENCEMENT OF ANY WORKS.
- EXISTING PLUMBING AND ELECTRICAL WORKS TO BE REMOVED AND MADE GOOD AS NECESSARY.
- THIS PLAN IS TO BE READ IN CONJUNCTION WITH THE EXISTING SITE PLAN FOR SPECIFIC PLANTING LOCATIONS.
- THE EXACT LOCATION OF UNDERGROUND AND ABOVEGROUND SERVICES SHALL BE PROVIDED ON SERVICES ARE SHOWN.
- THIS DRAWING SET TO BE READ IN CONJUNCTION WITH THE EXISTING SITE PLAN FOR SPECIFIC PLANTING LOCATIONS.
- BEWARE OF EXISTING SERVICES, CONFORM LOCATIONS PRIOR TO EXCAVATION TAKE EXTREME.
- REFER ALL MAJOR WORKS TO RAMP, WALKWAYS, DRIVEWAYS ETC (INCLUDING CARPARK WORKS, LEVELS & DATUMS) REFER TO CIVIL ENGINEERS DOCUMENTATION.

DEMOLITION NOTES

- CAP OFF EXISTING PLUMBING AND ELECTRICAL WORKS AS NECESSARY BY CERTIFIED TRADESPERSON.
- ALL EXISTING WORK TO BE TOOTHED INTO EXISTING WHERE APPLICABLE AND CAVITY TO REMAIN CONTINUOUS AT ALL TIMES.
- NO MATERIALS TO BE REUSED TO OWNERS.
- MATERIALS REMOVED FROM SITE MUST BE DISPOSED OF AS PER COUNCIL REGULATIONS.
- ALL WORKS TO BE COMPLETED PRIOR TO ANY DEMOLITION WORKS.
- ALL WORKS THAT REQUIRE EXCAVATION.

BAL ASSESSMENT

FZ

BASIX REQUIREMENTS

BASIX Certificate number: 44818020 - 26 March 2022

BASIX Certificate number: 44818020 - 26 March 2022

Category	Requirement	Value	Target
Energy	Energy Use (kWh/m ² /yr)	15.5	15.5
Water	Water Use (kL/m ² /yr)	115	115
Greenhouse Gas	Greenhouse Gas (kg CO ₂ -e/m ² /yr)	1.5	1.5

Category	Requirement	Value	Target
Energy	Energy Use (kWh/m ² /yr)	15.5	15.5
Water	Water Use (kL/m ² /yr)	115	115
Greenhouse Gas	Greenhouse Gas (kg CO ₂ -e/m ² /yr)	1.5	1.5

Category	Requirement	Value	Target
Energy	Energy Use (kWh/m ² /yr)	15.5	15.5
Water	Water Use (kL/m ² /yr)	115	115
Greenhouse Gas	Greenhouse Gas (kg CO ₂ -e/m ² /yr)	1.5	1.5

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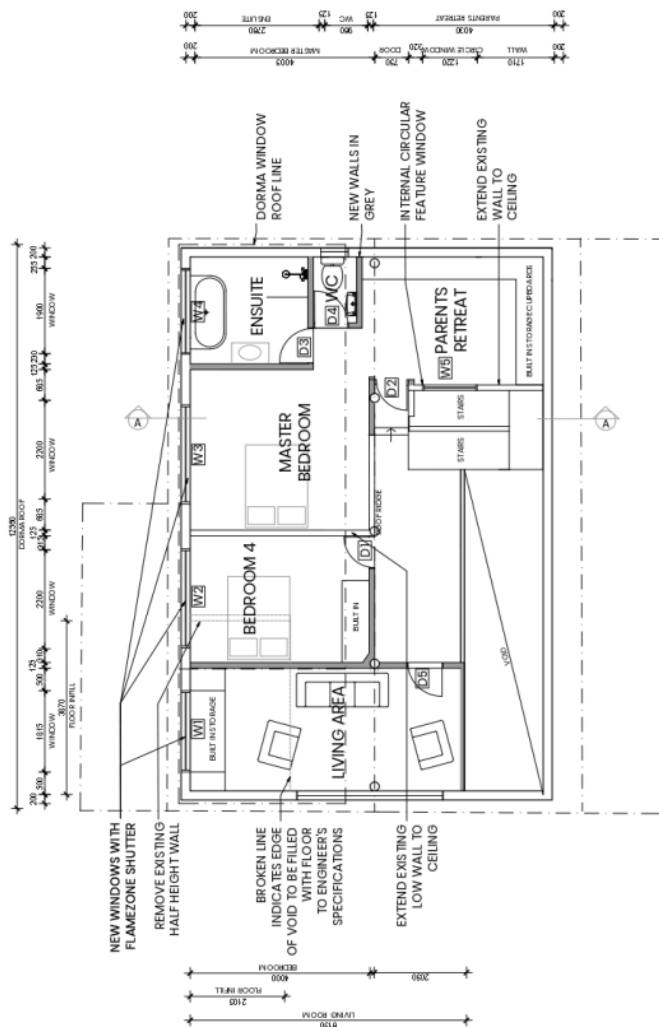
Proposed First Floor Plan

30 Balclutha Road,
Berowra NSW 2081

Development Application

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Designed By: Melanie Forquhar
Page No: A04
Scale @ A3: 1:100
Rev: 2
Date: 07/03/22
Drawn By: Melanie Forquhar
Hatching denotes proposed situation



ATTACHMENT 3 - ITEM 3

ATTACHMENT 3 - ITEM 3

[illegible]

SITE INFORMATION

Lot 235 DP 825647	8.35 m ²
LOT SIZE	204.3m ²
FLOOR AREA OF EXISTING RESIDENCE	25.46m ²
TOTAL EXISTING SITE COVERAGE	204.3m ²
PROPOSED FLOOR AREA OF RESIDENCE	25.46m ²
TOTAL PROPOSED SITE COVERAGE	68.8%
PROPOSED LANDSCAPED AREA PERCENTAGE	3.2%

SITE NOTES

- ALL WORKS TO BE COMPLETED PRIOR TO COMMENCEMENT OF ANY WORK.
- ALL EXISTING PLUMBING AND ELECTRICAL WORKS TO BE REINSTALLED AND ALL NEW WORKS TO BE INSTALLED IN ACCORDANCE WITH THE RELEVANT STANDARDS.
- THIS PLAN IS TO BE READ IN CONJUNCTION WITH THE LANDSCAPING DETAIL PLANS FOR SPECIFIC AREAS.
- THE EXISTING LOCATION OF UNDERGROUND AND ABOVEGROUND SERVICES SHALL BE PROVEN ON SITE PRIOR TO COMMENCEMENT OF WORKS. SERVICES ARE SHOWN AS GIVEN THAT ALL EXISTING SERVICES ARE SHOWN AS GIVEN THAT ALL EXISTING SERVICES ARE SHOWN AS GIVEN.
- THIS DRAWING SET TO BE READ IN CONJUNCTION WITH THE SPECIFICATION PROVIDED.
- WITH THE SPECIFICATION PROVIDED.
- THE EXISTING LOCATION OF UNDERGROUND AND ABOVEGROUND SERVICES SHALL BE PROVEN ON SITE PRIOR TO COMMENCEMENT OF WORKS.
- REFER ALL MAJOR WORKS TO RAMPS, WALKWAYS, DRIVEWAYS ETC (INCLUDING CARPARK WORKS, DOCUMENTATION.

DEMOLITION NOTES

- CARP OFF EXISTING PLUMBING AND ELECTRICAL WORKS AS NECESSARY BY CERTIFIED TRADESPERSON.
- EXISTING WORKS TO BE DESTROYED AND REMAINING MATERIALS TO BE REUSED TO OWNERS.
- EXISTING MATERIALS TO BE REUSED TO OWNERS.
- MATERIALS REMOVED FROM SITE MUST BE DISPOSED OF AS PER COUNCIL REGULATIONS.
- ALL WORKS THAT REQUIRE EXCAVATION.

BAL ASSESSMENT

F2

BASIX REQUIREMENTS

BASIX Certificate Exemptions and Abbreviations

Exemption: The proposed development is exempt from BASIX requirements as it is a minor works project. The proposed development is exempt from BASIX requirements as it is a minor works project.

Abbreviations: The following abbreviations are used in the BASIX certificate:

Abbreviation	Full Name
BA	BASIX Assessment
BA1	BASIX Assessment 1
BA2	BASIX Assessment 2
BA3	BASIX Assessment 3
BA4	BASIX Assessment 4
BA5	BASIX Assessment 5
BA6	BASIX Assessment 6
BA7	BASIX Assessment 7
BA8	BASIX Assessment 8
BA9	BASIX Assessment 9
BA10	BASIX Assessment 10
BA11	BASIX Assessment 11
BA12	BASIX Assessment 12
BA13	BASIX Assessment 13
BA14	BASIX Assessment 14
BA15	BASIX Assessment 15
BA16	BASIX Assessment 16
BA17	BASIX Assessment 17
BA18	BASIX Assessment 18
BA19	BASIX Assessment 19
BA20	BASIX Assessment 20
BA21	BASIX Assessment 21
BA22	BASIX Assessment 22
BA23	BASIX Assessment 23
BA24	BASIX Assessment 24
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BA26	BASIX Assessment 26
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BA90	BASIX Assessment 90
BA91	BASIX Assessment 91
BA92	BASIX Assessment 92
BA93	BASIX Assessment 93
BA94	BASIX Assessment 94
BA95	BASIX Assessment 95
BA96	BASIX Assessment 96
BA97	BASIX Assessment 97
BA98	BASIX Assessment 98
BA99	BASIX Assessment 99
BA100	BASIX Assessment 100

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ATTACHMENT 3 - ITEM 3

SITE INFORMATION

LOT 235 OF 825547	
LOT SIZE	83.5 m ²
FLOOR AREA OF EXISTING RESIDENCE	204.3m ²
TOTAL EXISTING SITE COVERAGE	25.46m ²
PROPOSED FLOOR AREA OF RESIDENCE	204.3m ²
TOTAL PROPOSED SITE COVERAGE	25.46m ²
PROPOSED LANDSCAPED AREA PERCENTAGE	68.8%
PROPOSED SITE COVERAGE PERCENTAGE	3.2%

SITE NOTES

- CONFIRM ALL DIMENSIONS ON SITE TO EXISTING RESIDENCE PRIOR TO COMMENCEMENT OF ANY WORKS.
- EXISTING PLUMBING AND ELECTRICAL WORKS TO BE REMOVED AND MADE GOOD AS NECESSARY.
- THE EXISTING SITE IS TO BE DEMOLISHED WITH LANDSCAPING SET OUT AS SHOWN FOR SPECIFIC PLANTING LOCATIONS.
- THE EXISTING LOCATION OF UNDERGROUND AND ABOVE GROUND SERVICES ARE TO BE SHOWN ON SITE. NO GUARANTEE IS GIVEN THAT ALL EXISTING SERVICES ARE SHOWN.
- BEWARE OF EXISTING SERVICES. CONFIRM LOCATIONS PRIOR TO EXCAVATION. TAKE CARE.
- REFER ALL MAJOR WORKS TO RAMPS, WALKWAYS, DRIVEWAYS ETC (INCLUDING CARPARK WORKS, ETC) TO CIVIL ENGINEERS FOR DOCUMENTATION.

DEMOLITION NOTES

- CAP OFF EXISTING PLUMBING AND ELECTRICAL WORKS AS NECESSARY BY CERTIFIED PLUMBER/ELECTRICIAN.
- MODIFIED BRICKWORK TO BE TOOTHED INTO EXISTING WHERE APPLICABLE AND CAVITY TO REMAIN CONTINUOUS AT ALL TIMES.
- ALL MATERIALS TO BE REMOVED TO BE REUSED TO OWNERS DETAIL.
- MATERIALS REMOVED FROM SITE MUST BE REUSED OR RECYCLED OR SENT TO AN APPROPRIATE WASTE TREATMENT FACILITY.
- ALL WORKS THAT REQUIRES EXCAVATION.

BAL ASSESSMENT

FZ

BASIX REQUIREMENTS

BASIX Certificate Alternatives and Attributes				Certificate number: A48886 - 18, March 2022			
BASIX Summary				BASIX Details			
Category	Requirement	Proposed Measure	Proposed Measure Details	Category	Requirement	Proposed Measure	Proposed Measure Details
Energy	1.1	Energy Star Rating	4.5	Water	1.1	Water Saving Devices	Water Saving Devices
	1.2	Energy Star Rating	4.5		1.2	Water Saving Devices	Water Saving Devices
	1.3	Energy Star Rating	4.5		1.3	Water Saving Devices	Water Saving Devices
	1.4	Energy Star Rating	4.5		1.4	Water Saving Devices	Water Saving Devices
Greenhouse Gas	2.1	Greenhouse Gas Emissions	4.5	Water	2.1	Water Saving Devices	Water Saving Devices
	2.2	Greenhouse Gas Emissions	4.5		2.2	Water Saving Devices	Water Saving Devices
	2.3	Greenhouse Gas Emissions	4.5		2.3	Water Saving Devices	Water Saving Devices
	2.4	Greenhouse Gas Emissions	4.5		2.4	Water Saving Devices	Water Saving Devices

draftedup

me@draftedup.net.au

Shadow Diagram

30 Balclutha Road,
Berowra NSW 2081

Development Application

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Sarah and Andrew Flarey

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Melrose Farquhar

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Date

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ATTACHMENT 3 - ITEM 3

SITE INFORMATION

Lot 235 DP 825 647	8135 m ²
LOT SIZE	
FLOOR AREA OF EXISTING RESIDENCE	204.3m ²
TOTAL EXISTING SITE COVERAGE	254.8m ²
PROPOSED FLOOR AREA OF RESIDENCE	204.3m ²
TOTAL PROPOSED SITE COVERAGE	254.8m ²
PROPOSED UNDISBURSED AREA PERCENTAGE	68.8%
PROPOSED SITE COVERAGE PERCENTAGE	31.2%

SITE NOTES

- CONFIRM ALL DIMENSIONS ON SITE TO EXISTING RESIDENCE PRIOR TO COMMENCEMENT OF ANY WORK.
- ALL PLUMBING AND ELECTRICAL WORKS TO BE REMOVED AND MADE GOOD AS NECESSARY.
- THIS PLAN IS TO BE READ IN CONJUNCTION WITH THE DEMOLITION SPECIFICATION AND THE DEMOLITION SCHEDULE.
- THE EXACT LOCATION OF UNDERGROUND AND ABOVEGROUND SERVICES SHALL BE PROVEN ON SITE PRIOR TO COMMENCEMENT OF ANY WORK. SERVICES ARE SHOWN.
- THIS DRAWING SET TO BE READ IN CONJUNCTION WITH THE SPECIFICATION PROVIDED.
- ALL SERVICES TO BE REMOVED PRIOR TO EXCAVATION LOCATIONS PRIOR TO EXCAVATION TAKE.
- EXISTING SERVICES TO BE REMOVED PRIOR TO EXCAVATION TAKE.
- REFER ALL MAJOR WORKS TO RAMP, WALKWAYS, DRIVEWAYS ETC (INCLUDING CARPARK WORKS, LEVELS & DRAINAGE) REFER TO CIVIL ENGINEERS DOCUMENTATION.

DEMOLITION NOTES

- CAP OFF EXISTING PLUMBING AND ELECTRICAL SERVICES PRIOR TO DEMOLITION.
- ALL EXISTING SERVICES TO BE REMOVED BY CERTIFIED TRADE PERSON.
- MODIFIED BRICKWORK TO BE TOOTHED INTO EXISTING BRICKWORK AND FILL WITH MORTAR.
- EXISTING MATERIALS TO BE REUSED TO OWNERS DETAIL.
- ALL MATERIALS REMOVED FROM SITE MUST BE DISPOSED OF AS PER COUNCIL REGULATIONS.
- INVESTIGATION SHOULD BE UNDERTAKEN BEFORE ALL WORKS THAT REQUIRES EXCAVATION.

BAL ASSESSMENT

BAL FZ

BASIX REQUIREMENTS

Certificate number: 14410001 - 16 March 2022

Category	Requirement	Compliance
Water	Water saving devices must be installed in all new and renovated buildings.	Compliant
Energy	Energy saving devices must be installed in all new and renovated buildings.	Compliant
Waste	Waste management plan must be developed and implemented.	Compliant

Category	Requirement	Compliance
Water	Water saving devices must be installed in all new and renovated buildings.	Compliant
Energy	Energy saving devices must be installed in all new and renovated buildings.	Compliant
Waste	Waste management plan must be developed and implemented.	Compliant

Category	Requirement	Compliance
Water	Water saving devices must be installed in all new and renovated buildings.	Compliant
Energy	Energy saving devices must be installed in all new and renovated buildings.	Compliant
Waste	Waste management plan must be developed and implemented.	Compliant

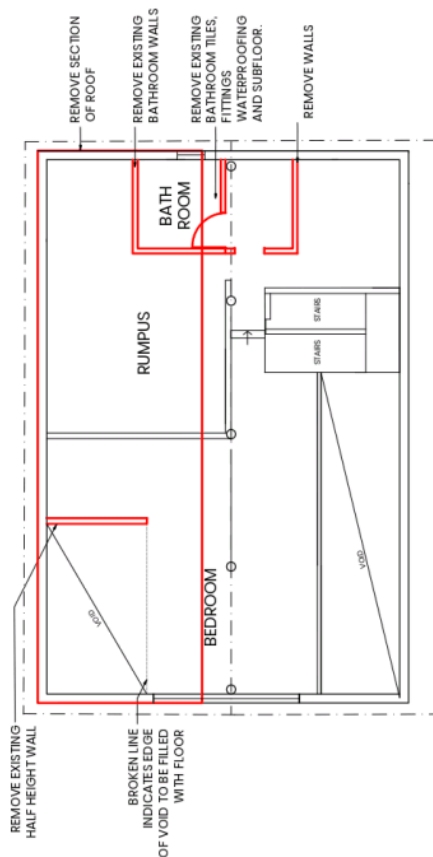
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Demolition Plan - First Floor Only
30 Balclutha Road,
Berowra NSW 2081
Development Application

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Page No: A08
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Rev: 2
Date: 07/03/22
Drawn By: Melanie Forquhar
Checking: Melanie Forquhar
Prepared: Melanie Forquhar



ATTACHMENT 3 - ITEM 3

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ATTACHMENT 3 - ITEM 3

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ATTACHMENT 3 - ITEM 3

4 DA/416/2020 - CONSTRUCTION OF A 10-12 STOREY MIXED USE DEVELOPMENT AND STRATA SUBDIVISION - 228-234 PACIFIC HIGHWAY, HORNSBY

EXECUTIVE SUMMARY

- DA No:** DA/416/2020 (Lodged on 2 June 2020)
- Description:** Construction of a 10-12 storey mixed use development comprising retail tenancies at the ground floor level, commercial tenancies at the first-floor level, a residential aged care facility at Levels 3-11, a residential apartment at Level 12 and strata subdivision
- Property:** Lot A DP 304557 and Lot B DP 304557, Nos. 228-234 Pacific Highway, Hornsby
- Applicant:** TBG Senior Living Services Pty Ltd
- Owner:** TBG Senior Living Services Pty Ltd
- Estimated Value:** \$26,950,000
- Ward:** B Ward
- 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 Local Environmental Plan 2013 to contravene the height of buildings development standard. The submission is considered well founded and is supported.
 - A total of 6 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 Local Environmental Plan 2013 development standard for maximum height of buildings by more than 10 percent.
 - It is recommended that the application be approved.

RECOMMENDATION

THAT the Hornsby 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/416/2020 for construction of a 10-12 storey mixed use development and strata subdivision at Lot A DP 304557, Lot B DP 304557, Nos. 228-234 Pacific Highway, Hornsby subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP20/22.

BACKGROUND

On 3 June 2009, Council approved DA/1564/2008 for construction of a seven storey development comprising one level of retail on the ground floor, two floors of commercial and four floors of residential. The residential component would comprise a total of 32 units. The approved development included the provision of four levels of basement car parking comprising a total of 108 car spaces with 7 bicycle racks and 4 motorcycle spaces.

The original consent has been through numerous approved modifications with the most recent modification (DA/1564/2008/E) approved on 12 August 2015 which included an additional storey and eight additional units with an approved height of 27.4m and a total combined floor space ratio of 4.7:1.

The approved development (as amended) comprises an 8-storey mixed-use building providing approximately 359m² of retail floor space, 1,651m² of commercial floor space, and 35 residential apartments. Off-street car parking was approved for 86 vehicles within a 3 level basement structure, accessed via a combined entry/exit driveway located along the Edgeworth David Avenue frontage of the site.

On 22 September 2014, Construction Certificate No. CC/566/2014 was approved. DA/1564/2008 has physical commencement as a result of demolition of the commercial building on the site.

In late May 2017, the subject site was sold to TBG Senior Living Services Pty Ltd, a social housing provider delivering home support services include nursing care, personal care, home help, social support, respite and recreational care, gardening and home maintenance.

Following the change in ownership, the Applicant held a pre-lodgement meeting with Council Officers on 3 May 2018 to discuss a new approach to the site. At the time, the design concept generally involved retaining the retail and commercial uses on the lower levels, and otherwise adjusting the approved building form above to accommodate the operational requirements associated with the change of use from residential apartments to a 'residential care facility'. Given the strategic location of the site, Council strongly recommended that the Applicant engage an Urban Designer prior to lodging the development application.

On 21 March 2019, following the pre-lodgement advice, the Applicant engaged GMU Urban Design and Architecture to review the original approval and concerns were raised in relation to the overall architectural merit of the approved development and an opportunity was identified to respond to the site context more appropriately, and the emerging form of development in the locality. Accordingly, it was recommended by the consultant urban designer that a new scheme be formulated for the site.

On 21 March 2019, the Applicant and its representatives attended a meeting of Council's Design Excellence Panel. The Panel generally supported the proposed development and indicated that: "*The Panel provided in principle support for the design concept and recommended that the proposal proceed to a future Development Application or Planning Proposal (should it be warranted)*".

APPLICATION HISTORY

On 2 June 2020, DA/416/2020 was lodged for construction of a 10-12 storey mixed use building accommodating retail tenancies at the ground floor level, commercial tenancies at the first-floor level, a residential care facility at Levels 3-11, a residential apartment at Level 12 and strata subdivision.

On 12 August 2020, a Design Excellence Panel meeting was held between the Applicant's representatives and Council's Design Excellence Panel (DEP). The DEP concluded that:

“This DA proposal is capable of satisfying the intentions of the Hornsby LEP, DCP and objectives for design excellence. Subject to addressing the issues raised, the development has the potential to create a high quality outcome that will generate much needed accommodation for the aged care sector, while also adding to the amenity and visual qualities of this gateway site.”

Between 4 June 2021 and 16 June 2021, the applicant submitted amended architectural plans and a written response responding to the points raised by the DEP and Council’s assessment request.

Between 21 September 2021 and 14 March 2022, the applicant provided additional information requested by Council to support the application including detailed contamination reports, acoustic reports, amended architectural plans, amended traffic report and a geotechnical report.

On 2 March 2022, the applicant submitted minutes from the Strata Plan 30399 meeting which benefits from the right of way, who unanimously resolved to enter into a deed of agreement for an amended right of way and requirements for access during construction of the building.

Between September 2020 to July 2022 the Applicant responded to numerous detailed requests for additional information from Sydney Trains and Transport for NSW.

On 5 May 2022, Transport for NSW provided concurrence to the application.

On 27 June 2022, Sydney Trains provided concurrence to the application.

SITE

The 1181.2m² site is located on the south-eastern corner of the Pacific Highway and Edgeworth David Avenue. The existing improvements on the site have been demolished and the site is currently vacant.

The site comprises an irregular shaped allotment with frontages of 19.68 metres to the Pacific Highway, 36.57 metres to Edgeworth David Avenue and 39 metres to the Northern Railway corridor.

The site falls approximately 2 metres from the north-western corner to the south-eastern corner.

The access to the site is provided via a 3.05 metre wide driveway located along the eastern boundary of the site with vehicular access provided from Edgeworth David Avenue. This driveway also acts as the right of carriageway providing access to No. 10 Edgeworth David Avenue, adjoining the site to the east.

The site is located in the Hornsby Town Centre, being within 1km of the Hornsby Railway Station and is surrounded by a mix of land uses including commercial, residential and educational establishments. The Westfield Shopping Centre is located to the north of the site on the opposite side of Edgeworth David Avenue. The adjoining building to the east includes a medical centre and retail premises. The development is located in close proximity to a number of high-density residential and mixed use developments. A ten storey high density residential development exists on the opposite side of the rail corridor to the south of the site.

PROPOSAL

The proposed development comprises the construction of a 10-12 storey mixed-use building accommodating retail tenancies at the ground floor level, commercial tenancies at the first floor level, a ‘residential aged care facility’ at Levels 3 -11, and a residential apartment at Level 12. Specific details of the proposed development is provided as follows:

- *Basement Levels*

Off-street car parking is proposed for 55 vehicles (including 4 accessible spaces) within a 3 level basement car park, accessed via a combined entry/exit driveway located along the Edgeworth David Avenue frontage of the site. The basement levels also accommodate six motorcycle spaces, multiple storage areas, a waste truck/delivery area, a water tank, plant rooms, and the kitchen and laundry facilities servicing the “residential care facility”.

An ambulance bay is also located within the ground floor level basement area.

- *Retail/Commercial Levels*

The retail floor space along the ground floor would be divided into five tenancies ranging in size from 37.65-129.21m². The individual retail tenancies include entry/exit doors along the Pacific Highway and Edgeworth David Avenue frontages.

The commercial floor space at the first-floor level would be divided into five tenancies (plus the reception and administrative support for the “residential care facility”) ranging in size from 60-145.8m². The individual commercial tenancies extend around the perimeter of the floorplate, with internal access via the main entry foyer.

- *Residential Aged Care Facility*

The ‘residential aged care facility’ (RACF) accommodates 84 beds and associated facilities including kitchen, laundry, meeting rooms, reception, lounge and dining areas, nurses stations, cleaning store rooms and amenities. The “residential care facility” includes a dedicated dementia unit at Level 2, with the podium level utilised to provide a landscaped dementia garden. The RACF would be occupied in accordance with Clause 18 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

The RACF would accommodate approximately 35 staff.

- *Residential Apartment*

The residential apartment would be ancillary to the RACF building and used by the Manager of the complex. The apartment would be located on Level 12, provides a floor area of 194.91m², and includes three bedrooms, a home office, living, dining and kitchen areas, garden beds and terraces.

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 proposed development would be consistent with the Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan, by providing additional dwellings to support an aging population and would contribute to housing choice in the locality.

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 B4 Mixed Use under the HLEP. The objectives of the B4 zone are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The proposed development is defined as ‘seniors housing’ and ‘business premises’ and is permissible in the B4 zone with Council’s consent.

The residential accommodation on the top level is considered ancillary to the residential aged care facility as it would be used by the Manager/staff of the seniors housing development and is permissible in the B4 zone with Council’s consent.

2.1.2 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 site is 23.5m. The proposal does not comply with this provision.

The proposed building has a maximum height of approximately 41.68 metres measured to the top of the feature screen, and 39.58 metres to the upper level roof which does not comply with this provision.

Clause 48 of SEPP (Housing for Seniors or People with a Disability) 2004 does not specify a maximum building height, and there is no maximum building height control for a “*residential care facility*”. Further, Clause 5(3) of the SEPP specifies that the SEPP prevails to the extent of any inconsistency with any other environmental planning instrument (including the HLEP).

Notwithstanding, the applicant has submitted a precautionary Clause 4.6 request which is discussed in Section 2.1.5 of this report below.

2.1.3 Architectural Roof Features

The objectives of Clause 5.6 of the HLEP are as follows:

- a) *To permit variations to maximum building height standards for roof features of visual interest,*
- b) *To ensure that roof features are decorative elements and that the majority of the roof is contained within the maximum building height standard.*

This provision permits development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limit set by Clause 4.3.

The proposal incorporates a feature screen along the top of the building which assists in the design of the building and reinforces the corner of Edgeworth David Avenue and Pacific Highway. The screen does not add to any floor space of the building and instead contributes to visual interest.

In accordance with Clause 5.6(3), the feature screen is excluded from the height of building provision as the screen is considered an architectural roof feature which comprises a decorative element on the uppermost portion of a building, is not an advertising structure, does not include floor space area, is not reasonably capable of modification to include floor space area, and will cause minimal overshadowing.

2.1.4 Floor Space Ratio

Clause 4.4(2) of the HLEP provides that the floor space ratio (FSR) on any land is not to exceed the maximum shown for the land on the Floor Space Ratio Map. The maximum permissible FSR for the precinct in accordance with the map is 5:1.

The proposed development provides a gross floor area of 5,883.78m², representing a FSR of 5:1 which complies with the overall FSR for the subject site.

Notwithstanding, Clause 4.4(2A) of the LEP states the following:

Despite subclause (2), the floor space ratio for residential accommodation in an area identified as "Area 1" on the Floor Space Ratio Map must not exceed 2:1.

The Dictionary of the HLEP defines 'residential accommodation' to include 'seniors housing', irrespective of whether the 'seniors housing' comprises a 'residential aged care facility', a 'hostel', or 'self-contained dwellings'.

On that basis, the proposed development provides a non-residential FSR of approximately 1.05:1, and a residential FSR of approximately 3.95:1 which exceeds the maximum residential accommodation permitted for the site.

The applicant has made a submission in support of a variation to the development standard in accordance with Clause 4.6 of the HLEP and this is discussed in Section 2.1.4 of this report.

2.1.5 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 development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary, and

it can be demonstrated that sufficient environmental planning grounds are present to justify contravening a development standard.

The application seeks to contravene Clause 4.3 of the HLEP as the maximum height of building development standard as the roof pitch would be 39.58m which exceeds the development standard by 16.08m or 68% and does not comply with the 23.5m height of building development standard.

The objectives of Clause 4.3 Height of buildings 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.*
- (b) *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.*

In addition, the application seeks to contravene Clause 4.4(2A) of the HLEP which states that a maximum Floor Space Ratio of 2:1 applies for any residential accommodation for the subject site as the proposed development provides a residential FSR of 3:95:1.

The objectives of Clause 4.4 Floor Space Ratio are as follows:

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

The applicant has made a submission in support of the contravention to the development standard in accordance with Clause 4.6 of the HLEP. Clause 4.6 provides that 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.*
- (b) *That there are sufficient environmental planning grounds to justify contravening the development standard.*

Council must be satisfied that the written request provided by the applicant under Clause 4.6 addresses both the unreasonable and unnecessary test and demonstrates sufficient environmental planning grounds to justify contravening the development standard. These matters are discussed below.

2.1.5.1 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 James Lovell and Associates, dated 13 April 2022 provides a detailed assessment of the proposal with respect to the development standards sought to be contravened. The request argues that:

Height of Building

What is the underlying object or purpose of the standard

- The locality surrounding the site is undergoing a transition towards a more intensified precinct, with the newer development characterised by multi-storey mixed-use buildings. Further, the site effectively functions as the southern gateway to the Hornsby Town Centre, providing an opportunity to construct a high-quality building to be perceived as an important built form marker.
- *The applicable building height and floor space ratio (FSR) controls incorporated in the LEP effectively generate a "squat building form" which, in terms of design quality, is inherently inappropriate for a prominent gateway site.*
- *Accordingly, the proposed development has been designed to comply with the FSR control, and has intentionally redistributed the floor space to provide a more appropriate, vertical building form, that extends above the current building height control.*
- *The proposed development does not involve exceeding the development capacity of the site in terms of overall floor space, and the site is serviced by all necessary infrastructure.*
- *Further, the proposed building form, including the variation to the building height control, has specifically been designed to achieve a building form that is more appropriate for the site having regard to its physical context, and the nature of surrounding development.*
- *In the circumstances, the proposed development is consistent with the objective of the building height control, notwithstanding the numerical variation.*

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

- *The proposed development is consistent with the objective of the building height control, notwithstanding the numerical variation. In that regard, the Applicant relies upon ground 1 in Wehbe (i.e. the objectives and purposes of the standard are achieved notwithstanding non-compliance with the development standard) to support its submission that compliance with the development standard is both unreasonable and unnecessary in the circumstances of this case.*

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

- *The objectives and purpose of the building height control remain relevant, and the proposed development is consistent with the objective of the building height control, notwithstanding the numerical variation.*

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

- *The proposed development is consistent with the objective of the building height control, notwithstanding the numerical variation. Further, strict compliance with the building height control would generate a “squat building form” which, in terms of design quality, is inherently inappropriate for a prominent gateway site.*

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

- *The building height control has not been abandoned or destroyed by the Council's actions. However, the Council has consistently adopted an orderly but flexible approach to the implementation of development standards in appropriate circumstances, including when the objectives of the standard are achieved, notwithstanding numerical variations. Further, the objectives of Clause 4.6 of the LEP includes to provide “an appropriate degree of flexibility in applying certain development standards to particular development”.*

Compliance with the 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 zoning of the land remains relevant and appropriate.*

Floor Space Ratio

What is the underlying object or purpose of the standard

- *In relation to the expressed objective of the FSR control, the proposed development complies with the total FSR control, circumstances in which the bulk and scale of the building is an appropriate response to the site constraints, development potential and infrastructure capacity of the locality.*
- *In relation to the assumed objective of the residential FSR control, the proposed “residential care facility” will generate employment for approximately 35 staff, with additional “flow on effects” arising due to the sites proximity to major retail and transport infrastructure, including Westfield Hornsby Shopping Centre and Hornsby Railway Station.*
- *Finally, the “residential care facility” (whilst technically a form of “residential accommodation”) will provide more employment than any other form of “residential accommodation”, and substantially more employment than the approved residential apartments on the site. In the circumstances, the proposed development is consistent with both the expressed and assumed objectives of the residential FSR control, notwithstanding the numerical variation.*

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

- *As noted above, the proposed development is consistent with both the expressed and assumed objectives of the residential FSR control, notwithstanding the numerical variation.*
- *In that regard, the Applicant relies upon ground 1 in Wehbe (i.e. that the objectives and purposes of the standard are achieved notwithstanding non-compliance with the development standard) to support its submission that compliance with the development standard is both unreasonable and unnecessary in the circumstances of this case.*

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

- *The objectives and purpose of the residential FSR control remain relevant, and the proposed development is consistent with both the expressed and assumed objectives of the residential FSR control, notwithstanding the numerical variation.*

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

- *The proposed development is consistent with both the expressed and assumed objectives of the residential FSR control, notwithstanding the numerical variation.*
- *Further, strict compliance with the non-residential FSR control would require a not insignificant proportion of the “residential care facility” to be converted to an alternate use, and thereby the significant public, health and economic benefits arising from the inclusion of that important use would be unnecessarily lost.*

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.

- *The non-residential FSR control has not been abandoned or destroyed by the Council's actions. However, the Council has consistently adopted an orderly but flexible approach to the implementation of development standards in appropriate circumstances, including when the objectives of the standard are achieved, notwithstanding numerical variations.*
- *Further, the objectives of Clause 4.6 of the LEP includes to provide “an appropriate degree of flexibility in applying certain development standards to particular development”.*

Compliance with the 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 zoning of the land remains relevant and appropriate.*

Council considers that the applicant's written request sufficiently identifies that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The request makes a sufficient argument that the proposed FSR and increased height are appropriate for the site and consistent with the business zoning of the site and the objectives of the height and FSR development standards for the site. The contravention would not be out of character when viewed from the public domain and would not result in amenity impacts to adjoining properties in terms of overshadowing, views or outlook.

It is also noted that neither the Height of Building or non-residential FSR would not generate additional infrastructure demand and does not amount to an overdevelopment of the site noting that the proposal complies with the overall FSR for the site. The non-compliance could be avoided by strictly complying with the height of building standard or non-residential FSR, however this would not result in a slimline building, nor would it achieve residential aged care within the town centre and would not result in a good planning outcome.

Accordingly, it is considered that the proposal is consistent with the objectives of the B4 zone as the development provides for a mixture of compatible land uses which integrates business, office, retail

and residential in an accessible location to maximise public transport patronage and satisfies the objective of the height of building and floor space ratio development standards.

It is considered that the development potential and infrastructure capacity of the locality are capable of accommodating a development of the kind proposed.

2.1.5.2 Environmental Planning Grounds

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

In demonstrating the environmental planning grounds the written request states:

Height of Building

- *Clause 48 of SEPP (Housing for Seniors or People with a Disability) 2004 does not specify a maximum building height, and there is no maximum building height control for a “residential care facility”;*
- *The applicable building height and FSR controls incorporated in the LEP effectively generate a “squat building form” which, in terms of design quality, is inherently inappropriate for a prominent gateway site;*
- *The proposed development has been designed to comply with the FSR control, and has intentionally redistributed the floor space to provide a more appropriate, vertical building form, that extends above the current building height control;*
- *The proposed development does not involve exceeding the development capacity of the site in terms of overall floor space, and the site is serviced by all necessary infrastructure;*
- *The compliance with the total FSR control of 5:1 ensures the proposed development the bulk and scale of the building is an appropriate response to the site constraints, development potential and infrastructure capacity of the locality;*
- *Strict compliance with the building height control would generate a “squat building form” which, in terms of design quality, is inherently inappropriate for a prominent gateway site;*
- *The proposed development is consistent with the objectives of the B4 - Mixed Use zone; and*
- *The proposed development is consistent with the objective of the building height control, notwithstanding the numerical variation.*

Floor Space Ratio

- *The LEP specifies a maximum FSR of 5:1, and the proposed development provides an FSR of 5:1;*
- *The compliance with the total FSR control of 5:1 ensures the proposed development the bulk and scale of the building is an appropriate response to the site constraints, development potential and infrastructure capacity of the locality;*
- *The proposed development complies with Clause 19 of the SEPP which species that development for the purposes of seniors housing should not include the use of any part of the*

ground floor level of a building that fronts a street for residential purposes if the building is located on land zoned primarily for commercial purposes;

- *Clause 19 of the SEPP does not require any additional non-residential floor space to be located above the ground floor level, even on sites zoned primarily for commercial purposes;*
- *The proposed “residential care facility” will generate employment for approximately 35 staff, with additional “flow on effects” arising due to the sites proximity to major retail and transport infrastructure, including Westfield Hornsby Shopping Centre and Hornsby Railway Station;*
- *The “residential care facility” (whilst technically a form of “residential accommodation”) will provide more employment than any other form of “residential accommodation”, and substantially xxiii more employment than the approved residential apartments on the site;*
- *Strict compliance with the residential FSR control would require a not insignificant proportion of the “residential care facility” to be converted to an alternate use, and thereby the significant public, health and economic benefits arising from the inclusion of that important use would be unnecessarily lost;*
- *The variation to the residential FSR does not alter the proposed building forms, circumstances in which there are no consequences arising in terms of the physical relationship and/or amenity of surrounding properties;*
- *The proposed development is consistent with the objectives of the B4 - Mixed Use zone; and*
- *The proposed development is consistent with both the expressed and assumed objectives of the residential FSR control, notwithstanding the numerical variation.*

Council considers that the environmental planning grounds stated within the written request are sufficient with respect to Clause 4.6(3)(b) and that the stated grounds are specific to the proposed development and the circumstances of the development site. It is therefore considered that the written request adequately demonstrates compliance with the clause and is acceptable in this regard.

Council further notes that in demonstrating the unreasonable and unnecessary test, the applicant further established environmental planning grounds with respect to the site and the surrounding constraints.

2.1.5.3 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 part (a)(i), the written request is considered to adequately address the matter required to be demonstrated as outlined above.

With regard to part (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 development within the zone in which the development is proposed to be carried out.

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

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

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

Accordingly, it is considered that the Request satisfactorily responds to the relevant matters required to be addressed under Clause 4.6 and that the Panel, as consent authority, may rely upon the Request and grant development consent to the DA. Should the Panel resolve to approve the DA, it should also provide a statement in the reasons for approval that it has satisfied itself of the matters in Clause 4.6(4).

2.1.6 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.

2.1.7 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 proposal is acceptable, subject to a dilapidation report be prepared for the adjoining commercial property at No. 10 Edgeworth David Avenue and submitted to Council/PCA prior to the issue of a Construction Certificate.

2.1.8 Design Excellence

Clause 6.8 of the HLEP sets out matters for consideration to determine whether a proposed development exhibits a high standard of design. The Clause applies to development proposals on land with a permitted height limit over 29.5m (10 storeys or more) as well as attached dwellings, multi dwelling housing, residential flat buildings and shop top housing.

Clause 6.8 states that development consent must not be granted to development to which this Clause applies unless, in the opinion of the consent authority, the proposed development exhibits design excellence.

To enable the implementation of 'Clause 6.8 Design Excellence' in the HLEP, Council has established a panel of suitably qualified architecture and urban design professionals to undertake a review of the design quality of relevant developments.

This Clause does not apply to the subject development application for a mixed-use building with commercial on the ground and first level and residential care facilities above. Notwithstanding, the Applicant agreed to engage an urban designer and the scheme was referred to Council's Design Excellence Panel on two separate occasions, during the pre-lodgement stage and during the development application stage to provide design guidance and improve amenity for both the neighbourhood and future residents of the development.

It is considered that the development has adequately responded to the amendments recommended by the Design Excellence Panel and achieves a design that is sympathetic to the Hornsby Town Centre, increasing amenity to future residents and facilitating a building of design excellence.

This is discussed in greater detail in Section 2.5.6 of the report below.

2.2 Adopted State Environmental Planning Policies

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

- State Environmental Planning Policy (Primary Production) 2021
- State Environmental Planning Policy (Resources and Energy) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Industry and Employment) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 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 December 2021, this development application is considered to have been made prior to the commencement date of the SEPPs. 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 SEPPs and is considered to be consistent with this policy.

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.

The site previously contained a commercial building which has since been demolished. Accordingly, a Remedial Action Plan, Asbestos Clearance Certificate, Environmental Compliance Report and Site Validation Report were submitted with the application that verified the remediation goals have been met from the demolition of previous structures on the site and the site is suitable for the proposed residential land use.

Subject to conditions that require compliance with an Environmental Management Plan which includes provisions for waste classification and unexpected finds, Council raises no objections to the proposal as it is not likely that the site has experienced any significant contamination, and further assessment under SEPP 55 is not required.

2.4 State Environmental Planning Policy (Infrastructure) 2007

The application has been assessed against the requirements of State Environmental Planning Policy (Infrastructure) 2007 (ISEPP). This Policy contains State-wide planning controls for developments adjoining rail-corridors and busy roads. The relevant clauses of the Policy are addressed below.

2.4.1 Excavation in, above, below or adjacent to railway corridors

The development is located immediately adjoining the Northern Rail Corridor and would require excavation within 25 metres (measured horizontally) of the corridor. The proposal was referred to Sydney Trains for concurrence.

On 27 June 2022, Sydney Trains raised no objections to the proposal and provided concurrence to the application, subject to conditions.

2.4.2 Development with Frontage to a Classified Road

The proposal has been assessed against the requirements of Clause 101 of the ISEPP as the site has a frontage to Pacific Highway which is a Classified Road and vehicular access is proposed from Edgeworth David Drive (a regional classified road).

The proposed development was referred to the Transport for NSW (TfNSW) for concurrence under Section 138 of the *Roads Act 1993*. No objections were raised regarding the driveway location or stormwater solution subject to conditions of consent. Council's engineering assessment concludes that the width of the driveway is satisfactory to enable vehicles to pass and enter and leave the site in a forward direction.

2.4.3 Impact of Road Noise and Noise from Train Corridor

Clauses 87 and 102 of the ISEPP applies to the development as it would be impacted upon by the noise and vibration from the rail corridor and the Pacific Highway. In accordance with the requirements of the SEPP, the application has been assessed against the noise related controls contained within the Department of Planning's publication 'Development near Rail Corridors and Busy Roads – Interim Guidelines'.

The applicant has addressed this requirement by submitting a detailed Rail Impact Report and Noise Assessment Report against the above guidelines. The report details the construction techniques to attenuate rail noise and vibration and concludes that the development would not exceed the specified noise criteria and Leq levels within Clauses 87 and 102 of the ISEPP.

Council's assessment of the application with regard to noise included a detailed examination of the Noise Assessment Report and is considered satisfactory. Sydney Trains has also reviewed the

application with regard to noise and vibration and raised no objections subject to implementation of the recommended conditions.

A condition is recommended that the Construction Certificate plans are required to demonstrate compliance with the recommendations of the acoustic report and vibration measures.

2.4.4 Rail safety issues

The document '*Development near Rail Corridors and Busy Roads – Interim Guidelines*' prescribes guidelines and design elements to be incorporated into a development adjoining a rail corridor to reduce vandalism and improve safety of the infrastructure. Sydney Trains has recommended the following conditions in accordance with the guidelines:

- *'Given the possible likelihood of objects being dropped or thrown onto the rail corridor from balconies, windows, and other external features (e.g., roof terraces and external fire escapes) that are within 20 metres of, and face, the rail corridor, the development must have measures installed, to the satisfaction of Sydney Trains (e.g., awning windows, louvres, enclosed balconies, window restrictors etc.) which prevent the throwing of objects onto the rail corridor.'*
- *No scaffolding is to be used facing the rail corridor and TAHE (Transport Asset Holding Entity) electrical assets unless prior written approval has been obtained from Sydney Trains. To obtain approval the Applicant will be required to submit details of the scaffolding, the means of erecting and securing this scaffolding, the material to be used, and the type of screening to be installed to prevent objects falling onto the rail corridor and TAHE (Transport Asset Holding Entity) electrical assets.'*

The design of the proposal includes anti-throw louvred glass windows louvers on all balcony levels facing the rail corridor and the terrace on Level 2 'dementia garden' includes a 1.88m high wall to prevent the throwing of structures onto the rail corridor. Accordingly the design of the proposal would not have an unacceptable impact on the streetscape and would protect the rail infrastructure. The proposal is acceptable in this regard.

2.4.5 Traffic Generating Development

The development is not classified as a Traffic Generating Development in accordance with Clause 104 and Schedule 3 of the ISEPP as it would not result in more than 75 dwellings fronting a classified road.

Further, the TfNSW Development Guidelines do not specify a generation rate for a RACF and the RMS Technical Direction TDT 2013-4 (Seniors Housing) is not relevant as that document is predominately based on Independent Living Units which generate a high demand for car parking.

No objections have been raised by TfNSW with regard to traffic generation.

2.5 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) is the overriding planning instrument for the development of housing for aged and disabled people in NSW and provides for hostels, residential care facilities (nursing homes) self-contained dwellings and multi-storey buildings.

SEPP HSPD is comprehensive in scope including land use planning provisions, design principles, development standards and standards specifically to meet the housing needs of aged and disabled

people. SEPP HSPD also includes design guidelines for infill development. The assessment of the proposal in accordance with the relevant requirements of SEPP HSPD is provided as follows:

2.5.1 Clause 11 - Residential Care Facilities

SEPP HSPD includes the following definition for “residential care facility”:

“In this Policy, a residential care facility is residential accommodation for seniors or people with a disability that includes -

- (a) meals and cleaning services, and*
- (b) personal care or nursing care, or both, and*
- (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care, not being a dwelling, hostel, hospital or psychiatric facility”.*

For the purposes of assessment against SEPP HSPD, the proposed RACF development is defined as a “residential care facility” comprising 84 bedrooms.

It is noted that pursuant to clause 18 of the SEPP, recommended conditions shall only permit the following people to occupy any accommodation to which the application relates by way of imposing positive covenant pursuant to section 88E of the Conveyancing Act 1919:

- (a) seniors or people who have a disability,*
- (b) people who live within the same household with seniors or people who have a disability,*
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.*

2.5.2 Use of seniors housing in commercial zones

SEPP HSPD restricts seniors housing for any part of the ground floor of a building that fronts a street if the building is located on land that is zoned primarily for commercial purposes unless another environmental planning instrument permits the use of all of the building for residential purposes

The proposed ground and first floor level do not contain residential accommodation and these levels would be commercial.

2.5.3 Clause 26 - Location and Access to Facilities

The SEPP HSPD includes mandatory standards for accessibility and useability of Seniors Housing to ensure wheelchair accessibility throughout the development and to a public road.

Mandatory standards also apply for access to public transport, medical services and shops.

The application was supported by a disability Access Report prepared by Cheung Access which includes a detailed assessment of the subject site and the proposed development, with respect to compliance with the mandatory standards. The relevant matters are discussed below.

2.5.3.1 Local Shopping Centre Access

The site is located immediately opposite the main pedestrian entrance to Westfield Hornsby Shopping Centre, with a signalised pedestrian crossing in front of the site. The Centre provides a full range of shops, banks, retail, commercial and health services the future residents may reasonably require.

2.5.3.2 Public Transport Access

There are multiple bus stops located within 400 metres of the site (including immediately in front of the site) that service bus routes 587, 588, 589 and 591, providing regular connections throughout the surrounding area. Accordingly, the site location and access provisions of the SEPP are compliant pursuant to Clause 26(2).

2.5.4 Clause 30 - Site Analysis

The application includes a site analysis plan and accompanying information in accordance with the requirements of the SEPP HSPD. The proposal is assessed as satisfactory in this regard.

2.5.5 Clause 32 - Design of Residential Development

In determining a development application, a consent authority must not grant consent to a development unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 (Clauses 33 to 39).

The proposed development was accompanied by an Urban Design Report prepared by GMU under the guidance of Karla Castellanos. The proposal was referred to Council's Design Excellence Panel which concluded that:

"...this DA proposal is capable of satisfying the intentions of the Hornsby LEP, DCP and objectives for design excellence. Subject to addressing the issues raised, the development has the potential to create a high quality outcome that will generate much needed accommodation for the aged care sector, while also adding to the amenity and visual qualities of this gateway site."

As discussed below, Council is satisfied that the proposal demonstrates sufficient regard for the design principles.

2.5.6 Clause 33 - Neighbourhood Amenity and Streetscape

Council's assessment against the relevant requirements of Clause 33 is provided as follows:

The proposed development should:

- (a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area.

The subject site is located in a mixed-use precinct of the Hornsby Town Centre with an applicable height limit 23.5m which equates to approximately 7 storeys.

The Hornsby Design Excellence Panel provided the following response which recognises that the proposed scheme is a preferred outcome to the existing approved DA for the site:

Desired Future Character

"Given the site location and context within Hornsby Town Centre, the contemporary expression and well modelled language was considered to be an appropriate character response. This was demonstrated with 3D streetscape visualisations from various locations in the public domain and provided a well-conceived approach to achieving a suitable redistribution of the massing and its enclosure for this transitional area. This is a preferable development outcome to the currently approved DA for this site.

Height

“The justification for the significant exceedance of the height limit is supported on the basis that a superior development outcome can be achieved within the permissible FSR, and that there will not be major detrimental environmental impacts to nearby sites. Based on Cl. 4.3 of the height of buildings ‘To permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality’ the Cl. 4.6 variation sought should be supported, subject to minor adjustments recommended on built form.”

The Applicants Urban Designer states the following with regards to recognising the desirable character of the area:

“The existing scale of the surrounding buildings varies from large 2-3 storeys retail/commercial developments along Edgeworth David Avenue to 12 storey residential developments along Pacific Highway. The subject site presents as a transition site with a height of up to 23.5m given that the surrounding height for the residential dwellings is 8.5m towards the west and south and the maximum permissible height around the train station is 77.5m.

The controls envision a transition in height to the traditional surrounding residential dwellings. Therefore, a more sensitive and distinctive response is required, and this is what the proposal has attempted to do. The proposed height is 41.21m, which is higher than what is permissible on the subject site. However, the aim of this deliberate departure from the controls is to provide a more gradual transition between the two prevalent heights in the surrounding and to emphasise the corner as a built form marker at the entrance to the Town Centre.

The allowable FSR for the subject site is 5:1, which results in a GFA of approximately 5884.25sqm. The proposal has an approximate GFA of 5881.65sqm, which is equivalent to the allowance permitted by the controls. The real challenge presented by the current height control is how to utilise the GFA while providing a height that is contextually fitting as there is a discrepancy between the FSR and height controls. To meet and utilise the FSR provided by the built form would have to cover the entire site up to 7 storeys which leads to a stunted and bulky built form. To achieve a slender built form, additional height is required, thereby increasing the height beyond the height of building provision. The deliberate increase in height concentrated mainly at the corner will result in a better contextual response and built form outcome for the subject site.”

The proposed contemporary design results in a slender design for the site compared to the existing approval by achieving a slender built form which complies with the maximum Floor Space Ratio for the site.

The design concentrates additional height towards the corner of the site and complies with the HDCP objective of forming “a pair with another building to enhance the perception of entry”. The placement of height at the corner of Edgeworth David Avenue and Pacific Highway is a deliberate attempt to accentuate the corner and the proposed roof feature further enhances the proportions of the tower element without the addition of any additional lettable area.

(c) maintain reasonable neighbourhood amenity and appropriate residential character by

(i) providing building setbacks to reduce bulk and overshadowing,

(ii) using building form and siting that relates to the site’s land form, and

(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development.

The prescriptive controls do not specify any setback controls, and the proposed building has been designed to extend to the boundaries, albeit with a setback to the southern boundary to accommodate the specific requirements of Sydney Trains.

The building height transitions down towards the east to provide an appropriate relationship with the future development along Edgeworth David Avenue contemplated by the planning controls that apply to that land.

The Hornsby Design Excellence Panel advised as follows with regard to building setbacks:

“It is stated in the Urban Design Report that the proposal complies with the allowable density and land use of the LEP, the general objectives of the DCP controls as well as the vision and strategies of the draft LSPS (Hornsby Local Strategic Planning Study). This supports the case for zero or minimal setbacks to the podium from Ground to Level 2, reinforcement of the vertical corner element above with further setback to the upper floors behind, and a more generous setback at the rear for the communal garden on top of the podium and communal areas on floors above.

While the podium expression in the north-eastern and south-western views does not continue around the corner to the Pacific Highway, the proposed setbacks and their correlation with built form distribution contribute adequately to meeting the intentions of the Hornsby DCP objectives.”

With regard to building form, the Design Excellence Panel advised the following:

“The analysis of an appropriate urban form for the site was appreciated, and the proposed material and finishes palette was considered acceptable in relation to the built form and façade modulation. While the Applicant’s case for reinforcement of the ‘landmark’ corner was understood, discussion on the merits of protection to the public domain around the footpath indicated there was scope for some improvement that is noted under Public Domain below.

With regard to the floor plan configuration, it was assessed that there was also potential for further improvements:

- *The main foyer entry off Edgeworth David Ave is a direct corridor to the lifts, and scope for some softening of this space with inclusion of casual seating or ‘bump’ space for residents and visitors could improve its quality, and the same applies to Level 1 foyer.*
- *On Level 2 it was noted that there was provision for a walking path that connected through the communal and dining space to the dementia garden, and some more thought should be given to how this would operate, giving more clarity and purpose to how residents would access and use this route and what would improve their roaming experience.*
- *Above Level 2 it was noted that only resident rooms had the benefit of solar access, so it was recommended some consideration be given to the swap of one of the rooms with a communal and/or visitor terrace - similar to that proposed on L10.*
- *Another such modification could be extension of the foyer corridor and balcony in the vertical slot between Grids F and G, and small reduction of the adjacent room balcony to create a small breakout visiting space with access to sun and fresh air.*

- *On Level 11 the Applicant indicated that the apartment and adjacent office were intended for management use only, and this was considered to be an unfortunate loss of potential for the residents, staff and their families to have access to a larger communal roof terrace for regular group activities and with benefits of solar access and landscape treatment.*

Provision of these recommended improvements would further add to the qualities of the vertical village environment and enhance the operating potential for the aged care facility.

On 16 June 2021, the applicant provided amended plans and a supporting letter in response to the Design Excellence Panel's recommendations. It is considered that the Applicant has adequately responded to the Panels recommended design improvements and the proposal is acceptable in respect to the requirements of the SEPP HSPD for neighbourhood and streetscape.

2.5.7 Clause 34 - Visual and Acoustic Privacy

Clause 34 states that development should consider the visual and acoustic privacy of neighbours in the vicinity and the proposed residents by appropriate design of windows, balconies and landscaping, as well as ensuring acceptable noise levels.

Due to the unique location of the proposed development, the proposal does not have any immediate residential properties that would be impacted by the proposed development as the site is abuts a road, a carriageway and a railway corridor as well as the adjacent shopping centre providing separation distances of approximately 20 metres to the north, 50 metres to the south, and 65 metres to the west. The openings along the eastern elevation adjoining the two-storey commercial building at No.10 Edgeworth David Avenue have been limited and treated with appropriate privacy measures where required.

2.5.8 Clause 35 - Solar Access and Design for Climate

Clause 35 requires seniors living developments to provide adequate daylight to the main living areas of neighbouring properties and adequate sunlight to areas of private open space.

The site is currently vacant, and the shadows cast by the proposed development will extend to some of the surrounding properties to the south-east, south and southwest. Irrespective, the impacts on any individual properties are generally limited to relatively short periods of the day, and in most instances, for approximately 2 hours (or less) between 9am and 3pm in mid-winter. Accordingly, the majority of the surrounding properties will continue to receive sunlight in mid-winter for more than 3 hours. Further, the residential accommodation is generally orientated towards the north and north-west, ensuring at least 3 hours of sunlight between 9am and 3pm in mid-winter.

2.5.9 Clause 36 - Stormwater

Clause 36 requires development to minimise the disturbance and impacts of stormwater runoff on adjoining properties and include, wherever practical on-site stormwater detention or stormwater re-use.

The development would be connected to an on-site detention system which would drain via gravity to the street drainage system in Edgeworth David Avenue. Council's engineering assessment raised no objections to the stormwater system.

2.5.10 Clause 37 - Crime Prevention

The proposed development promotes casual surveillance of the public domain by providing active retail uses at the ground floor level, and multiple window openings orientated towards the public domain. Further, the proposed building provides a defined point of entry, and access to the basement will be controlled and monitored. The application is assessed as generally satisfactory in this regard.

2.5.11 Clause 38 - Accessibility

The accessibility report submitted with the proposal indicates that the development is capable of compliance with internal and outdoor accessibility provisions within relevant Australian Standards, the Building Code of Australia, and the *Disability Discrimination Act 1992*. Further, the vehicular access and pedestrian links are considered safe and functional.

2.5.12 Clause 39 - Waste Management

The application proposes two separate waste garbage storage rooms within the ground level basement for the RACF and for the commercial facilities. In addition, each level of the RACF includes a 'dirty room' with provision for a waste bin for general rubbish during the day which would be transported via lift to the basement.

Waste would be collected via a private contractor given the proposal is a commercial facility and Council does not service RACF facilities.

The waste truck would enter the site from Edgeworth David Avenue and park within the basement while the waste is loaded. Truck turning areas were provided during the assessment of the application that indicated waste vehicles would be able to enter and leave the site in a forward direction. Provision has also been provided to enable a private waste vehicle to enter the rear of No.10 Edgeworth David Avenue which would be in a similar arrangement to existing.

2.5.13 Clause 40 - Development Standards

The site has an area of 1,176.85m² and complies with the standard in respect to the site area being greater than the minimum 1,000m².

The site frontage is approximately 36.57m to Edgeworth David Avenue which complies with the minimum frontage of 20m at the building line.

2.5.14 Clause 48 - Standards That Cannot be Used to Refuse Development Consent for Residential Care Facilities

Clause 48 of SEPP HSPD includes non-discretionary development standards and states "a consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a residential care facility on any of the following grounds". A discussion is provided below in this regard.

(a) building height: if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys)

The proposed building has a maximum height of approximately 41.68 metres measured to the top of the feature screen, and 39.58 metres to the upper-level roof. Clause 48 does not impose any limitations on the grounds on which a consent authority may grant development consent. That is, there is no maximum building height for a 'residential aged care facility' pursuant to the SEPP. This element is has been discussed in Section 2.1.4 of the report above.

(b) density and scale: if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less

The proposed development has an FSR of 5:1. Clause 48 does not impose any limitations on the grounds on which a consent authority may grant development consent. That is, there is no maximum FSR control for a 'residential aged care facility' pursuant to the SEPP.

Landscaped area: if a minimum of 25 square metres of landscaped area per residential care facility bed is provided

The proposed development provides a total landscaped area (above structures) of approximately 913.52m² (excluding the roof level) representing approximately 11.01m² per residential care facility bed which is considered acceptable given the location of the proposal within the Hornsby Town Centre.

Clause 48 does not impose any limitations on the grounds on which a consent authority may grant development consent. That is, there is no minimum landscaped area control for a 'residential aged care facility' pursuant to the SEPP.

(d) parking for residents and visitors: if at least the following is provided:

- i 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and
- ii 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and
- iii 1 parking space suitable for an ambulance".

In addition to the above parking requirements, the HDCP has a parking requirement of 1 space per 29m² of Gross Leasable Floor Area (GLFA) for shops, 1 space per 48 m² GFA for Office and business premises and 1.2 spaces per 3-bedroom apartment where the development is <800 metres from a railway station.

The proposed development provides off-street car parking for 59 vehicles within a 3 level basement structure, including a dedicated ambulance space.

In accordance with SEPP HSPD and HDCP, the retail component (0.75×305.9m² GLFA) requires 8 car spaces, the commercial component (591.2m² GFA) requires 12 car spaces, and the residential component requires 1 car space. In total, the development is required to provide 47 car spaces.

The proposal is compliant with regard to the number of car parking spaces to be provided.

2.6 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 modified proposal would comply with the requirements of the Policy.

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). Council notes that the proposal has been assessed predominantly against the requirements of SEPP HSPD which prevails over inconsistencies with the HDCP and accordingly the merits of the proposal are discussed in the report above.

2.9 Section 7.11 Contributions Plans

Hornsby Shire Council Section 7.11 Contributions Plan 2020-2030 applies to the development as it would result in an additional retail, commercial and residential development.

Accordingly, the requirement for a monetary Section 7.11 contribution is recommended as a condition of consent.

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 Built Environment

3.1.1 Built Form

As discussed in the report above, the proposed building is located within a precinct identified for future high density mixed use developments of varying heights with a network of open spaces, continuous podiums and underground car parking.

As discussed in this report, the resultant built-form would be consistent with the desired future character of the precinct. The proposal is assessed as satisfactory with regard to its impact on the built environment of the locality

3.1.2 Traffic Impacts

The application was supported by a Traffic report and SIDRA modelling.

The TfNSW Development Guidelines do not specify a generation rate for the RACF use and the sites surveyed for RMS Technical Direction TDT 2013-4 (Seniors Housing) are not relevant because they were predominately for Independent Living Units.

TPIA states that TTPA have undertaken surveys at a number of existing RACF sites in assisting with development schemes and the results of recent surveys at the Anglicare Kingswood RACF which has 102 beds indicates the following traffic generation during the morning and afternoon peak periods.

AM: 0.17 vtpd per bed

PM: 0.22 vtpd per bed

Using the traffic generation rate above, the proposed 85 beds will generate 14 vehicles and 19 vehicles in AM and PM peak hours respectively.

TfNSW Guide to Traffic Generating Development (GTGD) gives traffic generation rate for Commercial office use: evening peak hour vehicle trips = 2 per 100 m², using this rate, 12 trips will be generated by Commercial Office use in both AM and PM peak hours.

TfNSW GTGD gives traffic generation rate for retail under 10,000m² GLFA: 12.5 vehicle trips per hour per 100m². Using this rate, 38 trips will be generated by Retail use in both AM and PM peak hours.

The three-bedroom units generate less than 1 trip in both AM and PM peak hours.

In total, the proposed development generates 64 trips and 69 trips in the AM and PM peak hours respectively.

The original traffic report argued that because the proposed trips are less than the previous approved proposal, traffic generation would be acceptable. Council's traffic assessment did not support this rationale given the site's location within the core area of the Hornsby Town Centre and traffic conditions are changing constantly and requested that the traffic report be amended to include:

- SIDRA model of the intersection of Edgeworth David Avenue with Pacific Highway, before the development and after the development.
- The existing queue length at the east leg of intersection of Edgeworth David Avenue with Pacific Highway, and the impact on property access and egress.
- A discussion regarding conflict between vehicles using the driveway and pedestrians walking across the driveway.

Council's review of the amended traffic information concluded that the proposal would have an acceptable traffic impact on the road network and raised no objections on traffic and safety grounds.

3.2 Social Impacts

The development would make a positive social contribution to the local community by providing housing for older persons and persons with disabilities.

3.3 Economic Impacts

The proposal would have a minor positive impact on the local economy in conjunction with other residential type 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 17 June 2020 and 9 July 2020 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 6 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

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

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

- Unacceptable impact to right of way to No.10 Edgeworth David Road.

- Questions regarding construction impacts.
- Unacceptable parking impacts.
- Lack of information on website.
- Egress issues to site.

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 Right of Way

During the assessment of the application, Council required amended plans to indicate that vehicle access would be maintained to the rear of No.10 Edgeworth David Avenue and that agreement must be provided from the owners' corporation of No.10 Edgeworth David Avenue that they are acceptable to the amended right of way.

Minutes from a Strata Committee meeting for SP 30399 held on 2 March 2022 were provided indicating support for a deed of agreement for a revised right of way.

The amended plans indicate vehicular access including waste truck access would be provided to No.10 Edgeworth David Avenue via the rear of the ground floor basement level of the subject development.

5.1.2 Questions regarding construction impacts

A submission raised numerous questions regarding the construction process, however no specific objections were raised. No further assessment is required in this regard.

5.1.3 Lack of information on website

The submitter's email claims that no information was available on Council's website. It is noted that Council was in the progress of uploading DA documents for public advertising at the time the submitter wrote to Council. Accordingly all documents are available on Council's website and were available during the notification period.

5.1.4 Parking

The proposed development complies with the parking requirements of SEPP (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD).

5.1.5 Egress to site

Vehicles will have a combined access and egress driveway to the proposed development from Edgeworth David Avenue. The access to the development will be limited to left in and left due to the existing median on Edgeworth David Avenue.

Council's traffic and road safety assessment raised no objections to the location of the driveway as it is located in the most practical and safe location for the subject site.

5.2 Public Agencies

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

5.2.1 Transport for NSW

As detailed in Section 2.4 of the report, the application was referred to Transport for NSW (TfNSW) for concurrence under Clauses 102, 104 and Schedule 3 of the ISEPP. No objections were raised to the proposed development, subject to the imposition of the conditions of concurrence.

5.2.2 Sydney Trains

As detailed in Section 2.4 of the report, the application was referred to Sydney Trains) for concurrence under Clauses 85, 86 and 87 of the ISEPP. No objections were raised to the proposed development, subject to the imposition of the conditions of concurrence.

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 construction of a 10-12 storey mixed use development comprising retail tenancies at the ground floor level, commercial tenancies at the first-floor level, a residential aged care facility at Levels 3-11, a residential apartment at Level 12 and strata subdivision.

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

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

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

The reasons for this decision are:

- The 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 SEPP (Housing for Seniors or People with a Disability) 2004 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, 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 Matthew Miles.

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

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.   Locality Map
2.   Clause 4.6 Variation
3.   Architectural Plans
4.   Landscape Plans

File Reference: DA/416/2020
Document Number: D08368581

SCHEDULE 1**1. Deferred Commencement**

- a) Pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, this consent does not operate until a signed deed of agreement between the subject property owner and adjoining property at Strata Scheme No. 30399, situated at No. 10-12 Edgeworth David Avenue, Hornsby for the closure of access area during construction and restriction of access has been created.
- b) Such information must be submitted within **36 months** of the date of this notice.

Upon Council's written satisfaction of the above information, the following conditions of development consent apply:

GENERAL CONDITIONS

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

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

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

2. Approved Plans and Supporting Documentation

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

Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
DA-01R, R	Site location plan	Coble Stephens Architects	07.02.2022	
DA-38R, Q	Detail Section	Coble Stephens Architects	21.07.2021	
DA-44R, R	Detail Section	Coble Stephens Architects	07.02.2022	
DA-41R, R	Site plan - 11KV Blowout	Coble Stephens Architects	07.02.2022	
DA-32R, Q	Railway corridor elevations	Coble Stephens Architects	21.07.2021	
DA-37R, R	Site plan - ground floor	Coble Stephens Architects	07.02.2022	

<i>Plan No.</i>	<i>Plan Title</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Council Reference</i>
DA-39R, R	Garbage enclosure	Coble Stephens Architects	07.02.2022	
DA-34R, Q	Detail plans - loading dock	Coble Stephens Architects	21.07.2021	
DA-40R, R	Site plan - 33KV Blowout	Coble Stephens Architects	07.02.2022	
DA-19R, R	North elevation	Coble Stephens Architects	07.02.2022	
DA-20R, R	South elevation	Coble Stephens Architects	07.02.2022	
DA-22R, R	West elevation	Coble Stephens Architects	07.02.2022	
DA-26R, R	Section D-D	Coble Stephens Architects	07.02.2022	
DA-25R, R	Section C-C	Coble Stephens Architects	07.02.2022	
DA-21R, R	East elevation	Coble Stephens Architects	07.02.2022	
DA-24R, R	Section B-B	Coble Stephens Architects	07.02.2022	
DA-23R, R	Section A-A	Coble Stephens Architects	07.02.2022	
DA-14R, R	Level 11 floor plan	Coble Stephens Architects	07.02.2022	
DA-15R, R	Roof plan	Coble Stephens Architects	07.02.2022	
DA-16R, R	Basement 1	Coble Stephens Architects	07.02.2022	
DA-18R, R	Basement 03	Coble Stephens Architects	07.02.2022	
DA-17R, R	Basement 02	Coble Stephens Architects	07.02.2022	
DA-08R, R	Fifth floor plan	Coble Stephens Architects	07.02.2022	
DA-09R, R	Level 6 floor plan	Coble Stephens Architects	07.02.2022	
DA-10R, R	Level 7 floor plan	Coble Stephens Architects	07.02.2022	
DA-11R, R	Level 8 floor plan	Coble Stephens Architects	07.02.2022	
DA-12R, R	Level 9 floor plan	Coble Stephens Architects	07.02.2022	
DA-13R, R	Level 10 floor plan	Coble Stephens Architects	07.02.2022	

Plan No.	Plan Title	Drawn by	Dated	Council Reference
DA-05R, R	Level 2 floor plan	Coble Stephens Architects	07.02.2022	
DA-07R, R	Level 4 floor plan	Coble Stephens Architects	07.02.2022	
DA-06R, R	Level 3 floor plan	Coble Stephens Architects	07.02.2022	
DA-03R, R	Ground floor plan	Coble Stephens Architects	07.02.2022	
DA-04R, R	Level 1 floor plan	Coble Stephens Architects	07.02.2022	
DA-02R, R	Site plan	Coble Stephens Architects	07.02.2022	
L-01, Rev D	Landscape plan Ground floor	Space Landscape Designs	22/3/2022	
L-02, Rev D	Landscape plan Level 1	Space Landscape Designs	22/3/2022	
L-03, Rev E	Landscape plan Level 2	Space Landscape Designs	22/3/2022	
L-04, Rev D	Landscape plan Level 3-9	Space Landscape Designs	22/3/2022	
L-05, Rev D	Landscape plan Level 10	Space Landscape Designs	22/3/2022	
L-06, Rev E	Landscape plan Level 11	Space Landscape Designs	22/3/2022	

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
Sydney Trains Concurrence Conditions	Sydney Trains	27/06/2022	D08441310
TfNSW Concurrence Conditions	TfNSW	5/05/2022	D08402145
TfNSW Concurrence Conditions for CTMP	TfNSW	27/04/2022	D08396831
Disability Access Report	Cheung Access	6/04/2022	D08398418
Acoustic Report	Acoustic works	28/04/2022	D08398632
Geotech report	Douglas Partners	April 2022	D08395490
Rail impact Assessment	Douglas Partners	April 2022	D08395495
Stormwater plans, basement 2 and 3, SW001, Rev 8	Majcon	23/03/2022	D08377775
Stormwater plans, basement 1 and ground floor, SW002, Rev 8	Majcon	23/03/2022	D08377775
Stormwater plans, level 1, SW003, Rev 8	Majcon	23/03/2022	D08377775
Sediment erosion plans, ER001, ER002, ER003, Rev 07	Majcon	23/03/2022	D08377774
Sediment erosion plan ER004, Rev 02	Majcon	23/03/2022	D08377774
Survey plan, 122-02, Rev 03	Craig and Rhodes	11/03/2022	D08369631

Document Title	Prepared by	Dated	Council Reference
Construction Traffic Management Plan, Rev I	Transport and traffic planning	March 2022	D08365757
Detailed Site Investigation, Ref 99895.01	Douglas Partners	17/12/21	D08367320
BCA Report, Rev 2	Custom Development Certifications	29/05/2022	D08418718
BCA Letter	Holmes Fire	19/05/2022	D08418718
Traffic and parking impact assessment, Issue J	Transport and traffic planning	May 2022	D08416252
Survey, Sheet 1 to 2, Rev 03	Craig and Rhodes	11/03/2022	D08369631
Site retention design report	Majcon Consulting	20/05/2022	D08443588
Civil and structural design plans, SR0 rev E, SR1 rev B, SR2 rev B, SR 3 rev B, SR 4, rev B, SR 5 rev F, SR6 rev C	Majcon Consulting	June 2021	D08443632
Electrical Blowout Design Report	ECL Power Services	30 July 2021	D08390336
Electrical Blowout Plan	ECL Power Services	30 July 2021	D08390335
Plans prepared and certified by Craig & Rhodes sheets 1, 3, 4	Craig & Rhodes	23/03/2022	D08443594
Plans prepared and certified by Craig & Rhodes sheets 5, 6, 7, 8	Craig & Rhodes	23/03/2022	D08443598

3. Section 7.11 Development Contributions

- a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the Hornsby Shire Council Section 7.11 Development Contributions Plan 2020-2030, the following monetary contributions must be paid to Council to cater for the increased demand for community infrastructure resulting from the development:

Description	Contribution (4)
Roads	\$135,355.75
Open Space and Recreation	\$11,537.35
Community Facilities	\$7,105.95
Plan Preparation and Administration	\$769.95
TOTAL	\$154,769.00

being for 1 x 3+ bedroom unit, 306m² of retail floor space and 520m² of business floor space.

- b) The value of this contribution is current as at 12 July 2022. If the contribution is not paid within the financial quarter that this condition was generated, the contribution payable will be adjusted in accordance with the provisions of the Hornsby Shire

Council Section 7.11 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

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

Where:

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

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

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

CPI_{DC} is the Consumer Price Index (Sydney - All Groups) for the financial quarter at the date applicable in this Development Consent Condition.

- c) The monetary contribution must be paid to Council:
- i) Prior to the issue of the Subdivision Certificate where the development is for subdivision.
 - 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: Council's 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.

4. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any construction works under this consent.
- b) A separate Works Certificate must be obtained from Council for all works within the public road reserve under S138 of the *Roads Act 1993*.
- c) The Construction Certificates plans must be consistent with the Development Consent plans.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**ITEM 4****5. 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.

6. 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.

7. 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.

8. Utility Services

The applicant must submit written evidence of the following service provider requirements:

- a) *Ausgrid (formerly Energy Australia)* - a letter of consent demonstrating that satisfactory arrangements have been made to service the proposed development.
- b) *Telstra/NBN* - a letter of consent demonstrating that satisfactory arrangements have been made to service the proposed development.

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. Dilapidation Report

- a) Prior to the commencement of any works on site, the applicant must submit for approval by the Principal Certifying Authority (with a copy forwarded to Council) a 'Dilapidation Report' detailing the structural condition of the adjoining properties:
 - i) 10 Edgeworth David Avenue (SP 30399)
- b) The report must include a photographic survey of the adjoining properties detailing their physical condition, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items. The report must be completed by a chartered structural/geotechnical engineer. A copy of the dilapidation report must be submitted to Council.
- c) In the event access to adjoining allotments for the completion of a dilapidation survey is denied, the applicant must demonstrate in writing that all reasonable steps have been taken to advise the adjoining allotment owners of the benefit of this survey and details of failure to gain consent for access to the satisfaction of the Principle Certifying Authority.

Note: This documentation is for record keeping purposes only and can be made available to an applicant or affected property owner should it be requested to resolve any dispute over damage to adjoining properties arising from works. It is in the applicant's and adjoining owner's interest for it to be as detailed as possible

11. Fire Safety Schedule

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

12. 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".

13. Stormwater

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 drainage system/ street gutter.
- b) Discharge to Council gutter must be limited to 50 litres per second at any point. For more than 1 discharge point, separation is to be minimum 1m.
- c) Be designed by a Chartered Professional Civil/ Hydraulic Engineer of the Institution of Engineers, Australia.

14. On Site Stormwater Detention

An on-site stormwater detention system must be designed by a chartered civil engineer and constructed in accordance with the following requirements:

- a) Storage capacity to accommodate volume from up to 50 years ARI (average recurrence interval) storms and a maximum discharge (when full) limited to 5 years pre development rate.
- b) Have a surcharge/inspection grate located directly above the outlet. Discharge from the detention system to be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
- c) Where above ground system is proposed and the average depth is greater than 0.3 metres, a 'pool type' safety fence and warning signs to be installed.
- d) Not be constructed in a location that would impact upon the visual or recreational amenity of residents.
- e) Detail calculations are to be shown in construction certificate plan.
- f) An overflow/escape path shall be incorporated in the design.

15. Water Quality/Bio Retention System

- a) A Water Sensitive Urban Design is to be done and constructed. The stormwater leaving the premises must achieve the quality as specified in Council's Development Control Plan 2012 (table 1C.1.2(b) Urban Stormwater Quality Targets) or utilise one of the deemed to comply solutions. The design shall be based on Hornsby Council parameters as contained in the MUSIC Model. The design is to be carried out by a Chartered Professional Civil/ Hydraulic Engineer of the institution of Engineers, Australia.
- b) Prior to occupation of the premises, a Chartered Civil/Hydraulic Engineer of the Institution of Engineers, Australia is to certify that works have been completed in accordance with the approved construction plan and the design will achieve the targets specified in the condition.

16. Internal Driveway/Vehicular Areas

The driveway and parking areas on site must be designed, constructed and a Construction Certificate issued in accordance with Australian Standards 2890.1, 2890.2, 3727 and the following requirements:

- a) Design levels at the front boundary shall be obtained from Council if a private accredited certifier is engaged to obtain a construction certificate for these works.
- b) The driveway be a rigid pavement.
- c) Conduit for utility services including electricity, water, gas and telephone be provided. All existing overhead assets including electricity and telecommunications cabling shall be relocated underground at no cost to Council. A certificate from an appropriately licensed contractor shall be submitted to the principal certifying authority certifying

that the service conduits have been installed in accordance with the relevant utility provider and Australian Standards.

- d) Longitudinal sections along both sides of the access driveway shall be submitted to the principal certifying authority in accordance with the relevant sections of AS 2890.1. The maximum grade shall not exceed 1 in 4 (25%) with the maximum changes of grade of 1 in 8 (12.5%) for summit grades and 1 in 6.7 (15%) for sag grades. Any transition grades shall have a minimum length of 2 metres. The longitudinal sections shall incorporate the design levels obtained by Council.

17. Road Works

All road works approved under this consent must be designed in accordance with Council's AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) and the following requirements:

- a) Replace the existing Kerb and gutter and footpath in front of the development site along Edgeworth David Road.
- b) Kerb and gutter along Pacific Highway frontage shall be replaced in accordance with RMS's requirements.
- c) Existing footpath along Pacific Highway shall be replaced.
- d) No work is to commence within the road reserve until approval under Section 138 of the *Roads Act 1993* is obtained from Hornsby Shire Council. In this regard a construction certificate application is to be submitted to Council.

18. Construction Management Plan (CMP)

To assist in the protection of the public, the environment and Council's assets, a separate Construction Management Plan must be prepared by a suitably qualified environmental consultant in consultation with Transport for New South Wales, a qualified traffic engineer and AQF 5 arborist and submitted to Council via Council's Online Services Portal for review and written approval.

The CMP must include the following details:

- a) A Construction Traffic Management Plan (CTMP) including the following:
 - i) The order of construction works and arrangement of all construction machines and vehicles being used during all stages.
 - ii) The CTMP plans shall be in accordance with all other plans submitted to Council as part of this development proposal.
 - iii) A statement confirming that no building materials, work sheds, vehicles, machines or the like shall be allowed to remain in the road reserve area without the written consent of Hornsby Shire Council.
 - iv) The Plan shall be in compliance with the requirements of the *Roads and Maritime Services Traffic control at work sites Manual 2018* and detail:
 - a. Public notification of proposed works.
 - b. Long term signage requirements.

- c. Short term (during actual works) signage.
 - d. Vehicle Movement Plans, where applicable.
 - e. Traffic Management Plans.
 - f. Pedestrian and Cyclist access and safety.
 - v) Traffic controls including those used during non-working hours. Pedestrian access and two-way traffic in the public road must be able to be facilitated at all times.
 - vi) Details of parking arrangements for all employees and contractors, including layover areas for large trucks during all stages of works. The parking or stopping of truck and dog vehicles associated with the development will not be permitted other than on the site and the plan must demonstrate this will be achieved.
 - vii) Confirmation that a street 'scrub and dry' service will be in operation during all stages of works.
 - viii) Proposed truck routes to and from the site including details of the frequency of truck movements for all stages of the development.
 - ix) Swept path analysis for ingress and egress of the site for all stages of works.
 - x) Site plans for all stages of works including the location of site sheds, concrete pump and crane locations, unloading and loading areas, waste and storage areas, existing survey marks, vehicle entry, surrounding pedestrian footpaths and hoarding (fencing) locations.
 - xi) The total quantity and size of trucks for all importation and exportation of fill on site throughout all stages of works, and a breakdown of total quantities of trucks for each stage of works.
 - xii) The number of weeks trucks will be accessing and leaving the site with excavated or imported fill material.
 - xiii) The maximum number of trucks travelling to and from the site on any given day for each stage of works.
 - xiv) The maximum number of truck movements on any given day during peak commuting periods for all stages of works.
 - xv) The source site location of any proposed fill to be imported to the site, for all stages of works.
 - xvi) The Plan must state that the applicant and all employees of contractors on the site must obey any direction or notice from the Prescribed Certifying Authority or Hornsby Shire Council in order to ensure the above.
 - xvii) If there is a requirement to obtain a Work Zone, Out of Hours permit, partial Road Closure or Crane Permit, the Plan must detail these requirements and include a statement that an application to Hornsby Shire Council will be made to obtain such a permit.
- b) A Construction Waste Management Plan detailing the following:

- i) Details of the importation or excavation of soil and fill, the classification of the fill, disposal methods and authorised disposal depots that will be used for the fill.
 - ii) Asbestos management requirement and procedures for removal and disposal from the site in accordance with *AS 2601-2001 - 'The Demolition of Structures'*, and the *Protection of the Environment Operations (Waste) Regulation 2005*.
 - iii) General construction waste details including construction waste skip bin locations and litter management for workers.
- c) A Tree Protection Plan (TPP) prepared by an AQF 5 Arborist in accordance with any approved Arboricultural Impact Assessment and tree location plans, detailing the following:
 - i) A site plan showing tree protection zones (TPZ) and structural root zones (SRZ) of trees to be retained and specific details of tree protection measures inclusive of distances (in metres) measured from tree trunks.
 - ii) Construction methodology to avoid damage to trees proposed to be retained during construction works.
 - iii) Specifications on tree protection materials used and methods within the TPZ or SRZ.
 - iv) Location of dedicated material storage space on site outside of TPZ's and SRZ's for retained trees.
- d) A Construction Noise and Vibration Management Plan (CNMP) which includes:
 - i) Existing noise and vibration levels within the proximity of the proposed development site.
 - ii) Details of the extent of rock breaking or rock sawing works forming part of the proposed development works.
 - iii) The maximum level of noise and vibration predicted to be emitted during each stage of construction.
 - iv) The duration of each stage of works where the maximum level of noise and vibration are predicted to be emitted for.
 - v) Details of mitigation measures, inclusive of respite periods, that will meet acoustic standards and guidelines at each stage of works.
 - vi) Details of a complaints handling process for the surrounding neighbourhood for each stage of works.
- e) Identification of approved sediment and erosion control measures.
- f) The CMP must detail the contact information for developers, builder, private certifier and any emergency details during and outside work hours.

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

19. Environmental Management Plan (EMP)

An Environmental Management Plan (EMP) is to be submitted to Council's Compliance Team via Council's Online Services Portal for review and written approval, prior to the issue of a Construction Certificate. The EMP is to be prepared by a suitably qualified Environmental Consultant detailing the actions that will be taken to protect the environment for the duration of works, and all responsible parties ensuring compliance with the document. The Plan is to be in accordance with the publication 'Managing Urban Stormwater - Landcom (March 2004)', the *Protection of the Environment Operations Act 1997* and relevant Council guidelines, and should include but not be limited to:

- a) Water quality and soil management, including but not limited to sediment and erosion control measures and stormwater management.
- b) Air quality.
- c) Noise management, including excavation noise mitigation measures to be implemented.
- d) Waste Management.
- e) Tree Protection Management inclusive of tree protection measures.
- f) Unexpected finds protocol to manage contamination finds.

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

20. Noise - Rail Corridor

- a) Prior to the issue of a Construction Certificate, an Acoustic Report prepared by a suitably qualified environmental consultant in accordance with the requirements of the Department of Planning's *Development Near Rail Corridors and Busy Roads - Interim Guideline* and RailCorp's *Interim Guidelines for Applicants* must be submitted to the Principal Certifying Authority. The Acoustic Report must demonstrate that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:
 - i) In any bedroom in the residential accommodation - 35dB(A) at any time between 10:00pm and 7:00am, and
 - ii) Anywhere else in the residential accommodation (other than a garage, kitchen bathroom or hallway) - 40dB(A) at any time.
- b) The development must be carried out in accordance with the recommendations contained within the Acoustic Report submitted with the Construction Certificate application.

Note: The Department of Planning's document is available at www.planning.nsw.gov.au/development/assessments.

Note: The RailCorp document is available at www.railcorp.nsw.gov.au/publications.

21. Waste Management Details

The following waste management requirements must be complied with:

- a) No steps/ bin and waste carting routes
 - i) There must be no steps along any bin carting route. Ramps and service lifts are acceptable.

Note: bin carting routes include, but are not limited to, from the bin storage rooms to the ground level temporary bin holding bay, from the ground level bin storage/holding bay to the kerbside.
 - ii) For all bin carting routes, the path must be smooth hard surface. (Concrete pavement for example is acceptable, but pebbles, stepping stones, grass etc is not acceptable).
 - iii) A design certificate and detailed plans are to accompany any Construction Certificate application, which demonstrate that the bin carting route from the ground level bin temporary bin holding bay to the parked waste collection vehicle has been designed to be constructed in accordance with the Waste Minimisation and Management Guidelines and including the following requirements:
 - a. Must be smooth hard surface.
 - b. Must be sufficiently wide to hold all serviceable bins and provide aisle space for manoeuvring bins out and in (including through any gates or doors).
 - c. Must be devoid of steps.
 - d. Must have a gradient no steeper than 1:14 for 240L bins and 1:20 for 660L or 1100L bins.
 - iv) A design certificate and detailed plans are to accompany any Construction Certificate application, which demonstrate that the waste carting route from each dwelling to the bulky waste storage area has been designed to be constructed in accordance with the Waste Minimisation and Management Guidelines and including the following requirements:
 - a. The route is direct, does not cross into a private lot, and is wholly within property boundaries (does not include the public footpath or road).
 - b. The route is as short as possible and does not exceed 30m walking distance.
 - c. The route is an accessible path of travel for persons with a disability in accordance with AS1428 Design and Access for Mobility.
- b) Bin storage rooms at ground level
 - i) A design certificate and detailed plans are to accompany any Construction Certificate application, which demonstrate that all waste storage room(s) at ground level have been designed to be constructed in accordance with the Waste Minimisation and Management Guidelines and including the following requirements:

- a. The floor is to be constructed of concrete at least 75mm thick and adequately graded to drain to a Sydney Water approved drainage fitting.
- b. The floor must be finished so that it is non-slip, sealed and impervious, and has a smooth and even surface coved at all intersections.
- c. The ceilings and walls must be finished with smooth faced non-absorbent material capable of being cleaned.
- d. The room is to be provided with artificial light controllable within the room and adequate forced ventilation.
- e. The room is to be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock.
- f. The doors are to be robust and lockable, with door openings suitable for manoeuvring the required bins through. The doors must be able to be opened from inside the room without a key.
- g. The doors to the bin rooms must be wide enough to fit a 1100L bin through, double doors should be provided.
- ii) If the 240L bins are to be decanted into 1100L bins at ground level, provision needs to be made for a bin lifter.
- c) Waste facilities in FACP dirty utility rooms
 - i) The dirty utility rooms on each level must include space for a garbage and recycling bin.
 - ii) must be a waste facility (a garbage chute, plus 1 x 240L recycling bin & 1 x 240L future FOGO bin in a cupboard or small room) on each residential level of each lift core of each building. Each waste facility must:
 - a. Be accessible by persons with a disability after the garbage chute, recycling bin and FOGO bin are installed.
 - b. Comfortably house the required garbage chute and 240 L recycling bin and 240L FOGO bin.
 - c. Have door(s) wide enough and positioned so that the 240 L recycling bin and 240L FOGO bin can fit through with ease.

Note: 240L bins are 600mm wide, 750mm deep, 1100mm high. To allow for ease around the bin an additional 75mm is recommended. These dimensions do not include wall thickness, door thickness, ventilation ducting etc, which must be added. The chute system supplier must be consulted for chute space requirements. AS1428.1 requires at least 800mm clear doorway opening for wheelchair access.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

22. Erection of Construction Sign

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

23. Protection of Adjoining Areas

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

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

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

24. Toilet Facilities

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

25. Erosion and Sediment Control

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

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

26. 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

27. Construction Work Hours

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

28. 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*.

29. Street Sweeping

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

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

30. Compliance with Environmental Management Plan (EMP)

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

31. 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.

32. 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.

33. Landfill not Permitted

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

34. Excavated Material

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

35. 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.

36. Compliance with Construction Management Plan

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

37. 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.

38. Unexpected Finds

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

39. Waste Management Details

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

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

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

Note: In accordance with the Protection of the Environment Operations Act 1997, the definition of waste includes any unwanted substance, regardless of whether it is reused, recycled or disposed to landfill.
- h) A report(s) must be prepared by a registered surveyor and submitted to the principal certifying authority:
 - i) Prior to the pouring of the concrete on the ground level, certifying that: the ground level bin storage/holding bay rooms are at the same level as the driveway (no steps).

40. Vehicular Crossing

A separate application under the *Local Government Act, 1993* and the *Roads Act 1993* must be submitted to Council for the installation of a new vehicular crossing and the removal of the

redundant crossing. The vehicular crossing must be constructed in accordance with Council's *Civil Works Design 2005* and the following requirements

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

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

41. 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:
 - ii) The building, retaining walls and the like have been correctly positioned on the site.
 - iii) The finished floor level(s) are in accordance with the approved plans.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

42. Damage to Council Assets

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

43. Streetscape paving

- a) Streetscape pavement works are to be provided within the Edgeworth David Avenue and Pacific Highway road verge.
- b) Paving works are to include a fully paved verge using Claypave 'Monarch Tan' 230 x 110 x 60mm unit paving laid in a 45degree herringbone pattern with header course.
- c) Pavers are to be laid on bedding sand over a 100mm thick concrete base slab. A 90 degree Header is to be provide around all the paving areas including to the tree planter pits.

44. Street Tree Plantings

- a) Street tree plantings along the frontage to Edgeworth David Avenue shall include:
 - i) Street tree planting is to consist of three (3) *Leptospermum conferta* (Brushbox) planted at a minimum pot size of 75 litres.

- b) Street tree plantings along the frontage to Pacific highway should include:
 - i) Street tree planting is to consist of two (2) *Corymbia maculata* (spotted gum) planted at a minimum pot size of 75 litres.
- c) Trees are to be placed in sufficient soil area and have the following specifications:
 - i) Be 2m x 4m x 0.5m deep per tree creating a minimum volume of structural soils of 4m³ per tree. Imported tree pit soil is to be structural soils such as 40mm aggregate free draining granular material similar to that provided by Benedicts Pty Ltd to create an adequate lateral growing volume below the pavement.
 - ii) Tree pit areas are to have surface area opening of 2m x 1m with the finished surface mulch in the tree pit to be compacted decomposed granite similar to that supplied by ANL Pty Ltd. 50mm thick.

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

45. Planter Pots

Planter Pots must include automatic irrigation, sufficient soil depth and adequate drainage to ensure sustainable landscape is achieved.

46. Completion of Landscaping

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

47. Asbestos Clearance Certificate

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

48. Works as Executed Plan

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for completed diversion of Council pipe, overland flow path, footpath, driveway, on-site detention and water sensitive urban design systems. The plan(s) must be accompanied by a certificate from a registered surveyor certifying that all pipelines and associated structures lie wholly within any relevant easements.

49. 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 and water sensitive urban design systems/ rain water tanks and outlet works, within the lots in favour of Council in accordance with Council's prescribed wording. The positions of the on-site detention system and

water sensitive urban design systems/ rainwater are to be clearly indicated on the title.

- b) To register the positive covenant and the restriction on the use of land, “works-as-executed” details of the on-site-detention and water sensitive urban design systems must be submitted verifying that the required storage and discharge pipes of the on-site detention system and the water sensitive urban system/ rain water tank have been constructed in accordance with the design requirements. The details must show the invert levels of pipes, pipe sizes and grades and filters/bio retention basin. Any variations to the approved plans must be shown in red on the “works-as-executed” plan and supported by calculations

50. Preservation of Survey Infrastructure

Prior to the issue of a construction certificate, a registered surveyor shall 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.

51. Completion of Works and Compliance Certificate

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

52. Fire Safety Statement - Final

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

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

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

54. Traffic Signage

A ‘left turn into the kerb side lane only’ sign is to be installed within the boundary of the property facing exit side of the driveway.

55. Provision for National Broadband Network (NBN)

Provision must be made for fibre ready passive infrastructure (pits and pipes) generally in accordance with NBN Co’s pit and pipe installation guidelines to service the proposed development. A certificate from NBN Co or Telstra must be submitted to the PCA that the fibre optic cabling provided for the development complies with MDU Building Design Guides for Development.

56. External Lighting

- a) To protect the amenity of adjacent premises, all external lighting must be designed and installed in accordance with Australian Standard AS4282 Control of the obtrusive effects of outdoor lighting.
- b) Certification of compliance with this Standard must be obtained from a suitably qualified person and submitted to the PCA with the application for the Occupation Certificate.

57. Retaining Walls

All retaining walls must be constructed as part of the development and prior to the issue of an Occupation Certificate.

58. Waste Management Details

The following waste management requirements must be complied with:

- a) Prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, the Principal Certifying Authority must obtain Council's approval of the waste and recycling management facilities provided in the development and ensure arrangements are in place for domestic waste collection by Council.

Note: Waste and recycling management facilities includes everything required for on-going waste management on the site. For example the bin storage areas, bulky waste storage area, bin collection area, waste collection vehicle access, doors wide enough to fit the bin through, accessibility, bin carting routes etc.

- b) Prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, all external works including but not limited to the vehicular crossover and footpath, must be completed. For staged occupation (where the Occupation Certificate will be limited to a portion of the development):

- i) Prior to the issue of the occupation certificate or the use commencing, whichever is earlier, for each stage of the development the waste management system (including but not limited to the bin storage room, bin holding bay, the road/accessway and vehicular crossover, loading bay and truck turning area) for that stage, must be completed.

- c) A report must be prepared by an appropriately qualified person, certifying the following:

- i) A comparison of the estimated quantities of each demolition and construction waste type against the actual quantities of each waste type.

Note: Explanations of any deviations to the approved Waste Management Plan is required to be included in this report

- ii) That at least 60% of the waste generated during the demolition and construction phase of the development was reused or recycled.

Note: If the 60% diversion from landfill cannot be achieved in the Construction Stage, the Report is to include the reasons why this occurred and certify that appropriate work practices were employed to implement the approved Waste Management Plan. The Report must be based on documentary evidence such as tipping dockets/receipts from recycling

depots, transfer stations and landfills, audits of procedures etc. which are to be attached to the report.

- iii) All demolition and construction waste was taken to site(s) that were lawfully permitted to accept that waste.
- d) The bin carting routes must be devoid of any steps and must be wholly within the site.
Note: Ramps between different levels are acceptable. The use of the public footpath is not acceptable.
- e) All lockable doors and gates, both pedestrian and vehicular, that are required to be opened by Council's waste collection contractor in the provision of waste collection services, must be able to be opened using a pin code. That is, locks requiring keys, remote controls, key fobs etc are not acceptable.
- f) The bin storage rooms at the ground level must comfortably house all of the bins required to be stored there.
- g) The temporary bin holding bay at the ground level must include sealed and impervious surfaces, robust door(s), adequate lighting and ventilation, and must be lockable. The walls must be finished with smooth faced non-absorbent material capable of being cleaned. The temporary bin holding bay must include water or a hose for cleaning, and graded floors draining to sewer.

59. Garbage Collection Easement

For the purpose of waste collection, an easement entitling Council, its servants and agents and persons authorised by it to enter upon the subject land and to operate thereon, vehicles and other equipment for the purposes of waste collection must be granted to Council by the owner of the land. The waste collection easement must be registered with the NSW Land Registry Services prior to issue of the occupation certificate.

Note: The easement must be in a form prescribed by Council and must include covenants to the effect that parties will not be liable for any damage caused to the subject land or any part thereof or to any property located therein or thereon by reason of the operation thereon of any vehicle or other equipment used in connection with the collection of garbage and to the effect that the owner for the time being of the subject land shall indemnify the Council, its servants, agents and persons authorised by it to collect garbage against liability in respect of any such claims made by any person whomsoever.

60. Restriction on Occupation - Housing for Seniors or People with a Disability

A restriction as to user must be created under s88E of the *Conveyancing Act 1919* and registered, requiring all residential dwellings approved under this consent to be solely used for the accommodation of:

- a) Seniors (55+ age) or people who have a disability.
- b) People who live within the same household as seniors or people with a disability.
- c) Staff employed to assist the administration and provision of services to housing provided under State Environmental Planning Policy (Housing) 2021.

Note: The restriction must nominate Council as the authority to release, vary or modify the restriction.

OPERATIONAL CONDITIONS**ITEM 4****61. Hours of Operation**

- a) The hours of operation of the commercial tenancies are restricted to those times listed below unless otherwise approved in writing by Council:

Monday to Saturday 7 am to 6 pm

Sunday & Public Holidays 8am to 6pm

- b) All deliveries must take place within the approved hours of operation.

62. 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.

63. Landscape establishment

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

64. Noise - Operational

- a) All noise generated by the proposed development must be attenuated to prevent levels of noise being emitted to adjacent premises which possess tonal, beating and similar characteristics or which exceeds background noise levels by more than 5dB(A).
- b) 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 premises exceeds 5dB(A) above background noise levels, appropriate measures must be employed to rectify excessive noise.

65. Waste Management

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

- a) The approved Waste Management Plan is to be implemented throughout the ongoing use of the development.
- b) There must be a sufficient number of bins on site to contain the volume of waste and recycling expected to be generated between collection services. There must be a sufficient number of rotational bins on site for there to be a garbage bin under each chute and a recycling bin in each bin cupboard on each residential level on collection days.

- c) A site caretaker must be employed and be responsible for:
- i) moving bins where and when necessary, washing bins and maintaining waste storage areas and signage, ensuring the chute systems and related devices are regularly checked and maintained in effective and efficient working order. Maintaining and checking all waste management equipment (e.g. bin cart/tug), managing the bulky item storage area, arranging the prompt removal of dumped rubbish, arranging for shopping trolleys to be promptly returned to the local shopping centre(s), ensuring recycling bins are free of contamination (which includes but is not limited to garbage, plastic bags, clothing, etc.), addressing overflowing bins and pest infestations, liaising with Council on waste matters and ensuring all residents are informed and kept up to date on the use of the waste management system. The site caretaker must be employed for a sufficient number of hours each week to allow all waste management responsibilities to be carried out to a satisfactory standard.

Note: bins are to be placed in the holding area the day before the collection day, then returned to the basement bin storage rooms promptly after servicing.

- d) No waste storage containers are to be located or placed outside of the approved waste storage area at any time except for collection purposes.
- e) Adequate signage is to be provided and maintained on how to use the waste management system and what materials are acceptable for recycling within all waste storage areas of the development. Signage is also to be provided and maintained which clearly identifies which bins (and containers) are to be used for general waste and recycling and what materials can be placed in each bin. Signage is also to be provided in locally appropriate culturally and linguistically diverse (CALD) community languages.

Note: Council may be able to assist with signage.

- f) Where the development incorporates strata title subdivision, the by-laws are to clearly set out the management responsibilities for the developments waste management system.
- g) Where the waste management system includes a chute system, there needs to be a contingency plan to allow for the continual disposal and collection of waste if the chute cannot be operated.
- h) All equipment required in the operation of the approved waste management system must be regularly checked and maintained in effective and efficient working order in accordance with the manufacturers instructions by trained service technicians.

66. Car Parking

All car parking must be constructed and operated in accordance with Australian Standard AS/NZS 2890.1:2004 - Off-street car parking and Australian Standard AS 2890.2:2002 - Off-street commercial vehicle facilities.

- a) All parking areas and driveways are to be sealed to an all weather standard, line marked and signposted.

- b) Car parking, loading and manoeuvring areas to be used solely for nominated purposes.
- c) Vehicles awaiting loading, unloading or servicing shall be parked on site and not on adjacent or nearby public roads.
- d) All vehicular entry on to the site and egress from the site shall be made in a forward direction.
- e) Visitors must be able to access the visitor parking spaces at all times. These spaces are not to be used by residents as storage or parking spaces
- f) Motorcycle parking spaces are to be designed in accordance with AS/NZS 2890.1:2004 Figure 2.7.
- g) Bicycle parking spaces are to be designed in accordance with AS 2890.3-1993 Bicycle parking facilities.

CONDITIONS OF CONCURRENCE - TRANSPORT FOR NSW

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.

67. TfNSW 1

The awning is to be setback a minimum of 600mm from the face of kerb to protect the structure from vehicle overhang.

68. TfNSW 2

The awning is not to hinder driver sight distances to the traffic signal lanterns.

69. TfNSW 3

The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2020/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to development.sydney@transport.nsw.gov.au

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

70. TfNSW 3

The proposed development, noting its use, should be designed, as per the requirements of clause 101 (2)(c) of State Environmental Planning Policy (Infrastructure) 2007 such that it includes measures to ameliorate potential traffic noise or vehicle emissions noise within the site of the development arising from the Pacific Highway. These measures shall be certified

by an appropriately qualified noise and air quality expert and noted on the plans prior to issue of a Construction Certificate.

71. TfNSW 4

All demolition and construction vehicles are to access the site via Edgeworth David Avenue. A construction zone will not be permitted on the Pacific Highway.

CONDITIONS OF CONCURRENCE - Sydney Trains

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.

72. A1

Unless amendments are required in order to obtain approval/certification/compliance from Sydney Trains in relation to any of the Sydney Trains related conditions of consent, all excavation and construction works are to be undertaken in accordance with the details, methodology, advice, undertakings, and recommendations as detailed in the following documents:

- a) Geotechnical Investigation Report prepared by Douglas Partners, reference 99895.00, revision 1, dated 19 April 2022.
- b) Civil & Structural Design Plans prepared by MAJCON Consulting:
 - i) Site Retention Works Construction Notes & Drawing Index, reference 20190057-SRO, revision E, dated 10 May 2022;
 - ii) Site Retention Works Ground Floor Plan Showing Shoring, reference 20190057-SR1, revision B, dated 4 March 2022;
 - iii) Site Retention Works Basement-1 Floor Plan Showing Shoring, reference 20190057-SR2, revision B, dated 4 March 2022;
 - iv) Site Retention Works Basement-2 Floor Plan Showing Shoring, reference 20190057-SR3, revision B, dated 4 March 2022;
 - v) Site Retention Works Basement-3 Floor Plan Showing Shoring, reference 20190057-SR4, revision B, dated 4 March 2022;
 - vi) Site Retention Works, Site Cross Sections & Construction Sequence, reference 20190057-SR5, revision F, dated 20 May 2022; and
 - vii) Site Retention Works- Cross Section Z-Z Showing Bridge Abutment, reference 20190057-SR6, revision C, dated 20 May 2022.
- c) Site Retention Design Report prepared by MAJCON Consulting, reference MAJ20190057-REP 01 REV 06 20 05 2022, revision 6, dated 20 May 2022.
- d) Detailed Survey Plans prepared by Craig & Rhodes, reference 122-02, Drawings 122-02 T06 [03] Sheet 1 of 2 & 2 of 2, revision 03, dated 11 March 2022.
- e) Architectural Plans prepared by Coble Stephens Architects (CSA), reference 610- 17-458, revision R, dated 7 February 2022:

- i) Detail Plan - Blowout 33kV Line, Sheet 40 of 47 DA-40R;
 - ii) Detail Plan - Blowout 11kV Line, Sheet 41 of 47 DA-41R;
 - iii) Blowout Sections - Option A - Crane/Precast Panels, Revision R, Reference 610-17-458, Sheet 42 of 47 DA-42R;
 - iv) Blowout Sections - Option B - Scaffolding, Reference 610-17-458, Revision R, Sheet 43 of 47 DA-43R;
 - v) Blowout Sections - Option C - Maintenance, Sheet 44 of 47 DA-44R; and
 - vi) Blowout/Crane Section Through Lift Shaft, Sheet 45 of 47 DA-45R.
- f) Ground Floor Plan - Retail prepared by Coble Stephens Architects (CSA), Reference 610-17-458, Revision R, Sheet 3 of 46 DA-03R, dated 16 September 2021.
- g) First Floor Plan - Commercial prepared by Coble Stephens Architects (CSA), Reference 610-17-458, Revision M, Sheet 5 of 32 DA-04L, dated 20 August 2020.
- h) Electrical Blowout Design Report prepared by ECL Power Services (No Reference) dated 30 July 2021;
- i) Electrical Blowout Plan prepared by ECL Power Services, reference Hornsby 01, Sheet 1, revision A, dated 30 July 2021.
- j) Plans prepared and certified by Craig & Rhodes, reference 122-02, dated 23 March 2022:
- i) Craneage Plan/Electrical Blowout Plans Survey, Drawing 122-02G T09 [06] - Plan 8;
 - ii) Scaffolding Plan/Electrical Blowout Plans Survey, Drawing 122-02G T09 [06] - Plan 7; iii. Pre-Cast Panel/Electrical Blowout Plans Survey, Drawing 122-02G T09 [06] - Plan 6;
 - iii) Detail Survey Plan/Electrical Blowout 33kV Plans Survey, Drawing 122- 02G T09 [06] - Plan 5;
 - iv) Detail Survey Plan/Electrical Blowout 11kV Plans Survey, Drawing 122- 02G T09 [06] - Plan 4;
 - v) Crane Cross-Sectional Plan/Electrical Blowout Plans Survey, Drawing 122-02G T09 [06] - Plan 3;
 - vi) Craneage Survey Plan/Electrical Blowout Survey, Drawing 122-02G T09 [06] - Plan 2; and
 - vii) Craneage Survey Plan/Electrical Blowout Plans Survey, Drawing 122-02G T09 [06] - Plan 1.
- k) TBG Senior Living Services Pty Ltd email (Signed by Matthew Blissett) dated 3 March 2022.

The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming which of the documentation listed in this condition are to now apply or are superseded as a result of the compliance with the Sydney Trains related conditions of consent. The measures detailed in the documents approved/ certified by Sydney Trains under this Condition are to be incorporated into the

construction drawings and specifications prior to the issuing of the Construction Certificate. Prior to the commencement of works the Principal Certifying Authority is to provide verification to Sydney Trains that this condition has been complied with.

73. B1.

Prior to the issue of a Construction Certificate, the Applicant is to consult with Sydney Trains and provide details as agreed upon for unfettered access to Sydney Trains access gates and TAHE (Transport Asset Holding Entity) owned land and assets, during and postconstruction. The Applicant should ensure provision for easy and ongoing 24/7 access by rail vehicles, plant, and equipment to support maintenance and emergency activities. The Principal Certifying Authority is not to issue any Construction Certificate, until written confirmation has been received from Sydney Trains confirming this condition has been satisfied.

74. B2.

If required, prior to the commencement of works, the Applicant shall enter into a Licence Agreement with Sydney Trains/TAHE (Transport Asset Holding Entity) for the formalisation of access to Sydney Trains access gates/TAHE (Transport Asset Holding Entity) owned land and assets.

75. B3.

Prior to the issue of a Construction Certificate, the applicant is to consult with Sydney Trains/TAHE (Transport Asset Holding Entity), and provide documentation of registration of the Easement on Title as agreed upon for the provision of a Right of Carriageway Easement under c88B of the Conveyancing Act 1919, as part of the proposed development to allow for continued access to Sydney Trains access gates and TAHE (Transport Asset Holding Entity) owned land and assets for maintenance and emergency purposes.

76. B4.

A Plan of Survey and associated easement terms defining the extent of the easement is required to be submitted to Sydney Trains/TAHE (Transport Asset Holding Entity) for endorsement. The location of the new easement (including easement terms) will be in accordance with Sydney Trains/TAHE (Transport Asset Holding Entity) requirements. The responsibility of creating and registering the new easement shall be the Applicant's and at their cost. The Principal Certifying Authority is not to issue any Occupation Certificate until written confirmation has been received from Sydney Trains confirming its endorsement of the new easement (including easement terms), and confirmation that the Applicant has registered the new easement on Title.

77. B5.

Prior to the commencement of any works, the applicant is to prepare and provide to Sydney Trains for review and endorsement a Hydrologic Assessment report demonstrating that the dewatering during construction will not have any adverse settlement impacts on the rail corridor. No works are to commence until this report has been endorsed by Sydney Trains.

78. B6.

Prior to the commencement of any works, a Registered Surveyor shall peg-out the common property boundary between the development site and TAHE (Transport Asset Holding Entity) land and easements. A copy of the survey report indicating the location of pegs must be provided to Sydney Trains prior to the commencement of works.

79. B7.

Prior to the issuing of a Construction Certificate, the Applicant shall prepare and provide to Sydney Trains for review, comment, and written endorsement the following final version rail specific items in compliance with Sydney Trains' requirements and the relevant ASA Standards (<https://www.transport.nsw.gov.au/industry/assetmanagement-branch>):

- a) Geotechnical Engineering Report demonstrating that the development has no negative impact on the rail corridor, embankment, or the integrity of the infrastructure.
- b) Excavation and Construction Methodology (including staging) with construction details pertaining to machinery to be used and structural support during excavation.
 - iii. Cross Sectional Drawings showing the rail corridor, sub soil profile, proposed basement excavation and/or structural design of sub ground support adjacent to the rail corridor. All measurements are to be verified by a Registered Surveyor.
 - iv. Detailed Survey Plan showing the relationship of the proposed development with respect to the rail corridor and assets.
- c) If required by Sydney Trains, an FE analysis which assesses the different stages of loading-unloading of the site and its effect on the rock mass surrounding the rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

80. B8.

Prior to the issue of a Construction Certificate, the Applicant shall include in their Construction Management Plan and Safe Working Method Statements (SWMS) adherence to the load restriction set in place for the Pacific Highway Rail Bridge, or as per the applicable structural requirements. The Principal Certifying Authority shall not issue a Construction Certificate until these requirements have been met.

81. B9.

If required by Sydney Trains, a Track Monitoring Plan (including instrumentation and the monitoring regime during excavation and construction phases) is to be submitted to Sydney Trains for review and endorsement prior to the issuing of a Construction Certificate. The Principal Certifying Authority is not to issue a Construction Certificate until written confirmation has been received from Sydney Trains advising of the need to undertake the track monitoring plan, and if required, that it has been endorsed.

82. B10.

No work is permitted within the rail corridor (including airspace) or any easements which benefit Sydney Trains/TAHE (Transport Asset Holding Entity), at any time, unless the prior approval of, or an Agreement with, Sydney Trains/TAHE (Transport Asset Holding Entity) has been obtained by the Applicant. The Principal Certifying Authority is not to issue the

Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

83. B11.

A risk analysis, which shall determine the required level of derailment protection (if any), shall be carried out in consultation with Sydney Trains. This risk analysis will determine the redundancy requirements or the minimum collision loads specified in Australian Standard AS5100 that needs to be complied with. The risk assessment is to be prepared in accordance with the Sydney Trains Safety Management System. The Principal Certifying Authority shall not issue the Construction Certificate until it has received written confirmation from Sydney Trains that the risk analysis has been prepared and the Principal Certifying Authority has also confirmed that the measures recommended in this risk analysis have been indicated on the Construction Drawings.

84. B12.

The Applicant shall prepare an acoustic assessment demonstrating how the proposed development will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads- Interim Guidelines". The Applicant must incorporate in the development all the measures recommended in the report. A copy of the report is to be provided to the Principal Certifying Authority and Council prior to the issuing of a Construction Certificate. The Principal Certifying Authority must ensure that the recommendations of the acoustic assessment are incorporated in the construction drawings and documentation prior to the issuing of the relevant Construction Certificate.

85. B13.

Prior to the issue of an Occupation Certificate (whether an interim or final Occupation Certificate), a report must be prepared and submitted to the Certifying Authority, Council and Sydney Trains certifying that the completed development meets the requirements of State Environmental Planning Policy (Transport and Infrastructure) 2021 and with the Department of Planning and Infrastructure's Development Assessment Guideline titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines" as set down in the subject condition of this consent. Such a report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development, and that internal noise levels meet the required dB(A) levels. Where it is found that internal noise levels are greater than the required dB(A) level, necessary corrective measures must be carried out to ensure that internal noise levels are compliant with the requirements of this consent.

86. B14.

Prior to the issue of a Construction Certificate, the Applicant shall undertake a services search to establish the existence and location of any rail services. Persons performing the service search shall use equipment that will not have any impact on rail services and signalling. Should rail services be identified within the subject development site, the Applicant must discuss with Sydney Trains as to whether these services are to be relocated or incorporated within the development site.

87. B15.

Prior to the issuing of a Construction Certificate, the Applicant must submit to Sydney Trains a final plan showing all craneage and other aerial operations for the development and must comply with all standards and Sydney Trains' requirements. If required by Sydney Trains, the Applicant must amend the plan showing all craneage and other aerial operations to comply with all Sydney Trains' requirements. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.

88. B16.

Prior to the issue of a Construction Certificate the Applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for a Construction Certificate. The Principal Certifying Authority must ensure that the recommendations of the electrolysis report are incorporated in the construction drawings and documentation prior to the issuing of the relevant Construction Certificate.

B17.

No scaffolding is to be used facing the rail corridor and TAHE (Transport Asset Holding Entity) electrical assets unless prior written approval has been obtained from Sydney Trains. To obtain approval the Applicant will be required to submit details of the scaffolding, the means of erecting and securing this scaffolding, the material to be used, and the type of screening to be installed to prevent objects falling onto the rail corridor and TAHE (Transport Asset Holding Entity) electrical assets. Unless agreed to by Sydney Trains in writing, scaffolding shall not be erected without isolation and protection panels.

89. B18.

Given the possible likelihood of objects being dropped or thrown onto the rail corridor from balconies, windows, and other external features (e.g., roof terraces and external fire escapes) that are within 20 metres of, and face, the rail corridor, the development must have measures installed, to the satisfaction of Sydney Trains (e.g., awning windows, louvres, enclosed balconies, window restrictors etc.) which prevent the throwing of objects onto the rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

90. B19.

The design, installation and use of lights, signs, and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor must limit glare, reflectivity, and illumination to the satisfaction of the rail operator. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

91. B20.

Prior to the commencement of any works appropriate fencing must be in place along the rail corridor to prevent unauthorised access to the rail corridor during construction works. Details of the type of fencing and the method of erection are to be to the satisfaction of Sydney Trains prior to the fencing work being undertaken.

92. B21.

The development shall have appropriate fencing fit for the future usage of the development site to prevent unauthorised access to the rail corridor by future occupants of the development. Prior to the issuing of an Occupation Certificate the Applicant shall liaise with Sydney Trains regarding the adequacy of any existing fencing along the rail corridor boundary or design and construction of new fencing. Details of the type of new fencing to be installed and the method of erection are to be to the satisfaction of Sydney Trains prior to the fencing work being undertaken.

93. B22.

The Applicant is to ensure that the development incorporates appropriate anti-graffiti measures, to the satisfaction of Sydney Trains.

94. B23.

The Applicant must ensure that all drainage from the development is adequately disposed of and managed and not allowed to be discharged into the rail corridor unless prior written approval has been obtained from Sydney Trains.

95. B24.

Rainwater from the roof must not be projected and/or falling into the rail corridor and must be piped down the face of the building which faces the rail corridor.

96. B25.

During all stages of the development the Applicant must take extreme care to prevent any form of pollution entering the rail corridor. Any form of pollution that arises as a consequence of the development activities shall remain the full responsibility of the Applicant.

97. B26.

Excess soil is not allowed to enter, be spread, or stockpiled within the rail corridor (and its easements) and must be adequately managed/disposed of.

98. B27.

Sydney Trains advises there are 11kV & 33kV High Voltage Aerial Transmission Lines in close proximity to the proposed works. All works within 6 metres of the nearest transmission line conductor must comply with:

- a) ISSC 20 - Guideline for the Management of Activities within Electricity Easements and Close to Electricity Infrastructure.
- b) The Safe Approach Distances (SADs) in the Sydney Trains Document titled "SMS06-GD-0268 - Working Around Electrical Equipment".

- c) "WorkCover Code of Practice - Work near Overhead Power Lines (The Code)" B28. There is a need to ensure that the roots and foliage of trees being planted beside the rail corridor and High Voltage Aerial Transmission Line(s) do not have an impact on the rail corridor, rail operations, or infrastructure assets. All Landscaping shall be in accordance with the Sydney Trains High Voltage Powerline Tree Management Plan. A final landscaping and planting plan demonstrating measures to ensure compliance with this condition must be prepared to the satisfaction of Sydney Trains. No construction certificate can be issued until written confirmation has been received from Sydney Trains confirming that this condition has been complied with.

99. B29.

No metal ladders, tapes, and plant, machinery, or conductive material are to be used within 6 horizontal metres of any live electrical equipment. This applies to the train pantographs and catenary, contact and pull-off wires of the adjacent tracks, and to any aerial power supplies within or adjacent to the rail corridor.

100. B30.

If required by Sydney Trains, prior to the issue of a Construction Certificate, a Risk Assessment/Management Plan, and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

101. B31.

No metal ladders, tapes, and plant, machinery, or conductive material are to be used within 6 horizontal metres of any live electrical equipment. This applies to the train pantographs and catenary, contact and pull-off wires of the adjacent tracks, and to any aerial power supplies within or adjacent to the rail corridor.

102. B32.

Prior to the issuing of any Occupation Certificate, the Applicant must provide to Sydney Trains for review and endorsement a plan of how future maintenance of the development facing the rail corridor is to be undertaken. The Principal Certifying Authority is not to issue any Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied. The maintenance plan must be implemented for the life of the approved development.

103. B33.

Prior to the issuing of any Occupation Certificate, the Applicant is to submit as-built drawings to Sydney Trains and Council. The as-built drawings are to be endorsed by a Registered Surveyor confirming that there has been no encroachment into TAHE (Transport Asset Holding Entity) property or easements, unless agreed to by TAHE (Transport Asset Holding Entity). The Principal Certifying Authority is not to issue the final Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

104. B34.

If required by Sydney Trains, prior to the commencement of works or at any time during the excavation and construction period deemed necessary by Sydney Trains, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required within 10 days following the undertaking of the inspection, unless otherwise notified by Sydney Trains.

105. B35.

If required by Sydney Trains, prior to the issue of the Occupation Certificate, or at any time during the excavation and construction period deemed necessary by Sydney Trains, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The Principal Certifying Authority is not to issue the final Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

106. B36.

If required, prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains External Interface Management team to determine the need for the lodgement of a Bond or Bank Guarantee for the duration of the works. The Bond/Bank Guarantee shall be for the sum determined by Sydney Trains. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written advice from Sydney Trains confirming the lodgement of this Bond/Bank Guarantee.

107. B37.

If required, prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains External Interface Management team to determine the need for public liability insurance cover. If insurance cover is deemed necessary, this insurance must be for a sum as determined by Sydney Trains and shall not contain any exclusion in relation to works on or near the rail corridor and rail infrastructure, and must be maintained for the duration specified by Sydney Trains. The Applicant is to contact Sydney Trains External Interface Management team to obtain the level of insurance required for this particular proposal. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written proof of this insurance in conjunction with Sydney Trains' written advice to the Applicant on the level of insurance required.

108. B38.

Sydney Trains or Transport for NSW, and persons authorised by those entities for the purpose of this condition, must be permitted to inspect the site of the development and all structures to enable it to consider whether those structures have been or are being constructed and maintained in accordance with the approved plans and the requirements of this consent, on giving reasonable notice to the principal contractor for the development or the owner or occupier of the part of the site to which access is sought.

109. B39.

The Applicant must ensure that at all times they have a representative (which has been notified to Sydney Trains in writing), who:

- a) Oversees the carrying out of the Applicant's obligations under the conditions of this consent and in accordance with correspondence issued by Sydney Trains.
- b) Acts as the authorised representative of the Applicant.
- c) Is available (or has a delegate notified in writing to Sydney Trains that is available) on a 7 day a week basis to liaise with the representative of Sydney Trains, as notified to the Applicant.

110. B40.

Without in any way limiting the operation of any other condition of this consent, the Applicant must, during demolition, excavation and construction works, consult in good faith with Sydney Trains in relation to the carrying out of the development works and must respond or provide documentation as soon as practicable to any queries raised by Sydney Trains in relation to the works.

111. B41.

Where a condition of consent requires consultation with Sydney Trains, the Applicant shall forward all requests and/or documentation to the relevant Sydney Trains External Interface Management team. In this instance the relevant interface team is North Interface, and they can be contacted via email on North_Interface@transport.nsw.gov.au.

112. B42.

Copies of any certificates, drawings, approvals/certification, or documents endorsed by, given to, or issued by Sydney Trains or TAHE (Transport Asset Holding Entity) must be submitted to Council for its records prior to the issuing of the applicable Construction Certificate or Occupation Certificate.

113. B43.

Where a condition of consent requires Sydney Trains or Transport for NSW endorsement the Principal Certifying Authority is not to issue a Construction Certificate or Occupancy Certificate, as the case may be, until written confirmation has been received from those entities that the particular condition has been complied with. The issuing of staged Construction Certificates dealing with specific works and compliance conditions can be issued subject to written agreement from those entities to which the relevant conditions applies.

- 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 2021*, other relevant legislation and Council's policies and specifications. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

Environmental Planning and Assessment Act 1979 Requirements

The *Environmental Planning and Assessment Act 1979* requires:

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

Long Service Levy

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

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

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

Tree and Vegetation Preservation

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

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

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

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

Disability Discrimination Act

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

Covenants

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

Tenancy Fit-Out - Separate DA Required

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

Use of Building - Separate DA Required

This consent does not permit the use of the premises for any purpose. Separate development consent is required for the use of the premises prior to the occupation of the building.

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.

Dial Before You Dig

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

Telecommunications Act 1997 (Commonwealth)

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

Asbestos Warning

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

www.environment.nsw.gov.au

www.adfa.org.au

www.safework.nsw.gov.au

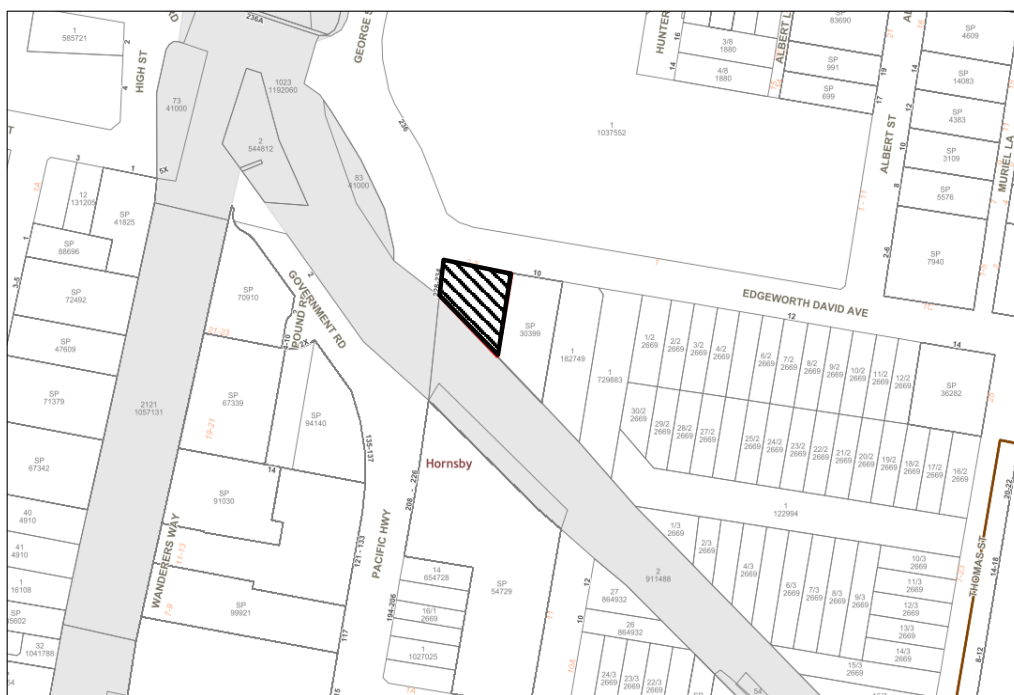
Alternatively, telephone the *SafeWork NSW* on 13 10 50.

Construction Traffic Management Plan Advisory Note (TfNSW)

- Any bus seating readjustments will require approval from the relevant assets owner (council and/or Rail) and must comply to TfNSW and Bus operator guidelines.
- For the class B hoarding, they will need to ensure that along the Pacific Hwy it is a minimum 600mm from the kerb, preferably 800mm from the kerb to ensure safety clearance for buses is met.
- Any Traffic Guidance Schemes (TGS) prepared are to comply with AS1742.3 and Transport for NSW's "Traffic Control at Worksites" manual and be signed by a person with TfNSW certification to prepare a TGS.
- Proponent must apply and obtain approval from the Transport Management Centre for a Road Occupancy Licence (ROL) for any required lane closures and/or Speed Zone

Authorisations as part of the ROL that impact the state road network or is within 100m of traffic signals.

- Proponent must submit a site specific traffic management plan for any Road closures required to Road occupancy unit for endorsement.
- No marshalling or queuing of construction vehicles is to occur on public roads. Arriving vehicles that are not able to use parking bay/work zone must continue to a holding point until space becomes available.
- When heavy vehicles are entering or leaving the site a traffic controller is to be provided to manage any conflicts between pedestrians and heavy vehicles.
- Transport for New South Wales reserve the right to alter the CTMP Conditions at any time to maintain safe and efficient traffic and pedestrian movements in this area
- Any approved Works Zone should only be used for work activities. No infrastructure, including bins, tanks or traffic control equipment should be left on the road when the works zone is not in use by a vehicle. All non-vehicular items must be contained within the work area and not on the carriageway. When a work zone is not in use, the area/lane must be opened up to allow for normal trafficable conditions
- Should TfNSW Network and Asset Management, Network Operations, CJP Operations, Network and Safety or other TfNSW business area determine that that more information is to be provided for review and acceptance, including other TCS locations, this information must be submitted prior to the CTMP being implemented, or otherwise agreed upon.
- Endorsement of the CTMP is not an approval to the type of traffic management or delineation devices used, nor is it an approval to any traffic guidance schemes depicted within the CTMP. It is assumed that the proponent has used type approved devices and has developed its traffic guidance schemes in accordance with the relevant Australian Standards and Guidelines.
- The proponent is to ensure local residents, businesses, schools and other stakeholders in the affected area as well as emergency service organisations are notified of the changes associated with the CTMP, prior to its implementation.
- Please ensure this CTMP is shared and adhered to by all contractors. If the CTMP changes, please forward a copy to Developments.CJP@transport.nsw.gov.au or further review and endorsement.



LOCALITY PLAN
DA/416/2020
228-234 Pacific Highway, Hornsby

ATTACHMENT A

Request to Vary the Building Height Control

INTRODUCTION

Clause 4.3 of the Hornsby Local Environmental Plan (LEP) 2013 specifies a maximum building height of 23.5 metres. The proposed building has a maximum height of approximately 41.68 metres measured to the top of the feature screen, and 39.58 metres to the upper level roof.

Clause 48 of SEPP (Housing for Seniors or People with a Disability) 2004 does not specify a maximum building height, and there is no maximum building height control for a *"residential care facility"*.

Further, Clause 5(3) of the SEPP specifies that the SEPP prevails to the extent of any inconsistency with any other environmental planning instrument (including the Hornsby LEP 2013).

Irrespective, in the event that the building height control incorporated in the LEP is deemed to apply to the proposed development, this *"written request"* pursuant to Clause 4.6 of the LEP has been prepared for abundant caution.

CLAUSE 4.6 OF THE HORNSBY LEP 2013

Clause 4.6(1) is facultative and is intended to allow flexibility in applying development standards in appropriate circumstances.

Clause 4.6 does not directly or indirectly establish a test that non-compliance with a development standard should have a neutral or beneficial effect relative to a complying development (*Initial* at 87).

Clause 4.6(2) of the LEP specifies that *"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"*.

Clause 4.6(3) specifies that 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.*

The requirement in Clause 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard has a better environmental planning outcome than a development that complies with the development standard (*Initial* at 88).

Clause 4.6(4) specifies 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 Secretary has been obtained.*

Clause 4.6(5) specifies 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.*

CONTEXT AND FORMAT

This “written request” has been prepared having regard to “Varying development standards: A Guide” (August 2011), issued by the former Department of Planning, and relevant principles identified in the following judgements:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7;
- *Moskovich v Waverley Council* [2016] NSWLEC 1015;
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118; and
- *Hansimikali v Bayside Council* [2019] NSWLEC 1353.

“Varying development standards: A Guide” (August 2011) outlines the matters that need to be considered in DA’s involving a variation to a development standard. The Guide essentially adopts the views expressed by Preston CJ, in *Wehbe v Pittwater Council* [2007] NSWLEC 827 to the extent that there are effectively five (5) different ways in which compliance with a development standard can be considered unreasonable or unnecessary as follows:

1. The objectives and purposes of the standard are achieved notwithstanding non-compliance with the development standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying objective or 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 Councils own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

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

As Preston CJ, stated in *Wehbe*, the starting point with a SEPP No. 1 objection (now a Clause 4.6 variation) is to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances. The most commonly invoked 'way' to do this is to show that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard.

The Applicant relies upon ground 1 in *Wehbe* to support its submission that compliance with the development standard is both unreasonable and unnecessary in the circumstances of this case.

In that regard, Preston CJ, in *Wehbe* states that "... *development standards are not ends in themselves but means of achieving ends*". Preston CJ, goes on to say that as the objectives of a development standard are likely to have no numerical or qualitative indicia, it logically follows that the test is a qualitative one, rather than a quantitative one. As such, there is no numerical limit which a variation may seek to achieve.

The above notion relating to 'numerical limits' is also reflected in Paragraph 3 of Circular B1 from the former Department of Planning which states that:

As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small in others it may be numerically large, but nevertheless be consistent with the purpose of the standard.

It is important to emphasise that in properly reading *Wehbe*, an objection submitted does not necessarily need to satisfy all of the tests numbered 1 to 5, and referred to above. This is a common misconception. If the objection satisfies one of the tests, then it may be

upheld by a Council, or the Court standing in its shoes. Irrespective, an objection can also satisfy a number of the referable tests.

In *Wehbe*, Preston CJ, states that there are three (3) matters that must be addressed before a consent authority (Council or the Court) can uphold an objection to a development standard as follows:

1. The consent authority needs to be satisfied the objection is well founded;
2. The consent authority needs to be satisfied that granting consent to the DA is consistent with the aims of the Policy; and
3. The consent authority needs to be satisfied as to further matters, including non-compliance in respect of significance for State and regional planning and the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

Further, it is noted that the consent authority has the power to grant consent to a variation to a development standard, irrespective of the numerical extent of variation (subject to some limitations not relevant to the present matter).

The decision of Pain J, in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 suggests that demonstrating that a development satisfies the objectives of the development standard is not necessarily sufficient, of itself, to justify a variation, and that it may be necessary to identify reasons particular to the circumstances of the proposed development on the subject site.

Further, Commissioner Tuor, in *Moskovich v Waverley Council* [2016] NSWLEC 1015, considered a DA which involved a relatively substantial variation to the FSR (65%) control. Some of the factors which convinced the Commissioner to uphold the Clause 4.6 variation request were the lack of environmental impact of the proposal, the characteristics of the site such as its steeply sloping topography and size, and its context which included existing adjacent buildings of greater height and bulk than the proposal.

The decision suggests that the requirement that the consent authority be satisfied the proposed development will be in the public interest because

it is “consistent with” the objectives of the development standard and the zone, is not a requirement to “achieve” those objectives. It is a requirement that the development be ‘compatible’ with them or ‘capable of existing together in harmony’. It means “something less onerous than ‘achievement’”.

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ found that it is not necessary to demonstrate that the proposed development will achieve a “better environmental planning outcome for the site” relative to a development that complies with the development standard.

Finally, in *Hansimikali v Bayside Council* [2019] NSWLEC 1353, Commissioner O’Neill found that it is not necessary for the environmental planning grounds relied upon by the Applicant to be unique to the site.

ASSESSMENT

Is the requirement a development standard?

The building height control is a development standard and is not excluded from the operation of Clause 4.6 of the LEP.

What is the underlying object or purpose of the standard?

The objective of the building height control is expressed as follows:

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

The locality surrounding the site is undergoing a transition towards a more intensified precinct, with the newer development characterised by multi-storey mixed-use buildings. Further, the site effectively functions as the southern gateway to the Hornsby Town Centre, providing an opportunity to construct a high-quality building to be perceived as an important built form marker.

In that regard, the proposed development has been designed under the direction of an urban design specialist (Karla Castellanos of [then] GMU

Urban Design & Architecture), and has been carefully designed to accommodate the specific operational requirements of the proposed uses, whilst achieving a benchmark for high quality architecture within the Hornsby Town Centre.

The applicable building height and floor space ratio (FSR) controls incorporated in the LEP effectively generate a “*squat building form*” which, in terms of design quality, is inherently inappropriate for a prominent gateway site.

Accordingly, the proposed development has been designed to comply with the FSR control, and has intentionally redistributed the floor space to provide a more appropriate, vertical building form, that extends above the current building height control.

The proposed development does not involve exceeding the development capacity of the site in terms of overall floor space, and the site is serviced by all necessary infrastructure.

Further, the proposed building form, including the variation to the building height control, has specifically been designed to achieve a building form that is more appropriate for the site having regard to its physical context, and the nature of surrounding development.

In the circumstances, the proposed development is consistent with the objective of the building height control, notwithstanding the numerical variation.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The Department of Planning published “*Varying development standards: A Guide*” (August 2011), to outline the matters that need to be considered in Development Applications involving a variation to a development standard. The Guide essentially adopts the views expressed by Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 to the extent that there are five (5) different ways in which compliance with a development standard can be considered unreasonable or unnecessary.

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

As noted above, the proposed development is consistent with the objective of the building height control, notwithstanding the numerical variation.

In that regard, the Applicant relies upon ground 1 in *Wehbe* (ie. that the objectives and purposes of the standard are achieved notwithstanding non-compliance with the development standard) to support its submission that compliance with the development standard is both unreasonable and unnecessary in the circumstances of this case.

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

The objectives and purpose of the building height control remain relevant, and the proposed development is consistent with the objective of the building height control, notwithstanding the numerical variation.

3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

The proposed development is consistent with the objective of the building height control, notwithstanding the numerical variation.

Further, strict compliance with the building height control would generate a “squat building form” which, in terms of design quality, is inherently inappropriate for a prominent gateway site.

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;*

The building height control has not been abandoned or destroyed by the Council's actions. However, the Council has consistently adopted an orderly but flexible approach to the implementation of development standards in appropriate circumstances, including when the objectives of the standard are achieved, notwithstanding numerical variations.

Further, the objectives of Clause 4.6 of the LEP includes to provide “an appropriate degree of flexibility in applying certain development standards to particular development”.

5. *Compliance with the 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 zoning of the land remains relevant and appropriate.

Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed numerical variation to the building height control is reasonable and appropriate in the particular circumstances on the basis that:

- Clause 48 of SEPP (Housing for Seniors or People with a Disability) 2004 does not specify a maximum building height, and there is no maximum building height control for a “residential care facility”;
- the applicable building height and FSR controls incorporated in the LEP effectively generate a “squat building form” which, in terms of design quality, is inherently inappropriate for a prominent gateway site;
- the proposed development has been designed to comply with the FSR control, and has intentionally redistributed the floor space to provide a more appropriate, vertical building form, that extends above the current building height control;
- the proposed development does not involve exceeding the development capacity of the site in terms of overall floor space, and the site is serviced by all necessary infrastructure;
- the compliance with the total FSR control of 5:1 ensures the proposed development the bulk and scale of the building is an appropriate response to the site constraints, development potential and infrastructure capacity of the locality;
- strict compliance with the building height control would generate a “squat building form” which, in terms of design quality, is inherently inappropriate for a prominent gateway site;
- the proposed development is consistent with the objectives of the B4 – Mixed Use zone; and
- the proposed development is consistent with the objective of the building height control, notwithstanding the numerical variation.

The quality and form of the immediate built environment creates unique opportunities and constraints to achieving a good design outcome: *Initial Action v Woollahra Council 209 NSWLEC 1097* (O'Neill C) at 42. The proposal is a justified response to the scale and immediate built environment of the site.

In particular, the proposed development is consistent with object (c) of Section 1.3 of the Act: to promote the orderly and economic use and development of land; and object (g) to promote good design and amenity of the built environment. There are obvious economic and design/amenity considerations which should be taken into account in order to achieve those objects.

Are there any matters of State or regional significance?

The proposed numerical variation to the residential FSR control does not raise any matters of State or regional significance.

What is the public benefit of maintaining the standard?

The proposed development is consistent with both the expressed and assumed objectives of the residential FSR control, notwithstanding the numerical variation.

In the circumstances, the proposed development does not affect the public benefit of maintaining compliance with the residential FSR control in other instances.

In that regard, the objectives of Clause 4.6 of the LEP includes to provide "*an appropriate degree of flexibility in applying certain development standards to particular development*".

Any other matters?

There are no further matters of relevance to the proposed variation to the residential FSR control.

Zone Objectives and Public Interest

The site is zoned B4 – Mixed Use pursuant to the Hornsby LEP 2013, and the objectives of the zone are expressed as follows:

- *To provide a mix of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The proposed development is consistent with (and not antipathetic to) the relevant objectives of the zone on the basis of the mix of compatible retail, commercial and residential care land uses.

Further, the workers, visitors and residents of the building will have access to the extremely good public transport facilities located within a comfortable walking distance of the site.

Finally, the proposed development serves the public interest by providing a benchmark for high quality architecture within the Hornsby Town Centre, offering a good level of internal amenity without imposing any unreasonable impacts on the amenity of surrounding land.

CONCLUSION

The purpose of this submission is to formally request a variation in relation to the building height control in Clause 4.3 of the Hornsby LEP 2013.

In general terms, strict compliance with the building height control is unreasonable and unnecessary in the particular circumstances, and there are sufficient environmental planning grounds to justify the numerical variation.

ATTACHMENT B

Request to Vary the Residential Floor Space Ratio Control

INTRODUCTION

Clause 4.4 of the Hornsby Local Environmental Plan (LEP) 2013 specifies a maximum floor space ratio (FSR) of 5:1, and Clause 4.4(2A) specifies that the FSR for “residential accommodation” shall not exceed 2:1.

The proposed development provides a gross floor area of 5,883.78m², representing an FSR of 5:1.

The Dictionary of the LEP defines “residential accommodation” to include “seniors housing”, irrespective of whether the “seniors housing” comprises a “residential care facility”, a “hostel”, or “self-contained dwellings”.

On that basis, the proposed development provides a non-residential FSR of approximately 1.05:1, and a residential FSR of approximately 3.95:1.

Clause 19 of the State Environmental Planning Policy (SEPP) (Housing for Seniors or People with a Disability) 2004 species that development for the purposes of seniors housing should not include the use of any part of the ground floor level of a building that fronts a street for residential purposes if the building is located on land zoned primarily for commercial purposes.

The site is zoned “primarily for commercial purposes” on the basis of the range of permissible uses, and the FSR control of 5:1 includes a maximum FSR for “residential accommodation” of 2:1.

The SEPP does not require any additional non-residential development above the ground floor level, and the proposed development complies with Clause 19 of the SEPP.

Irrespective, in the event that Clause 19 of the SEPP is deemed not to be inconsistent with the residential FSR control, this “written request” pursuant to Clause 4.6 of the LEP has been prepared for abundant caution.

CLAUSE 4.6 OF THE HORNSBY LEP 2013

Clause 4.6(1) is facultative and is intended to allow flexibility in applying development standards in appropriate circumstances.

Clause 4.6 does not directly or indirectly establish a test that non-compliance with a development standard should have a neutral or beneficial effect relative to a complying development (*Initial* at 87).

Clause 4.6(2) of the LEP specifies that *“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”*.

Clause 4.6(3) specifies that 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.*

The requirement in Clause 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard has a better environmental planning outcome than a development that complies with the development standard (*Initial* at 88).

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

- (a) *the consent authority is satisfied that:*
 - (iii) *the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (iv) *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(5) specifies 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.*

CONTEXT AND FORMAT

This “written request” has been prepared having regard to “Varying development standards: A Guide” (August 2011), issued by the former Department of Planning, and relevant principles identified in the following judgements:

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- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;*
- *Moskovich v Waverley Council [2016] NSWLEC 1015;*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118; and*
- *Hansimikali v Bayside Council [2019] NSWLEC 1353.*

“Varying development standards: A Guide” (August 2011) outlines the matters that need to be considered in DA’s involving a variation to a development standard. The Guide essentially adopts the views expressed by Preston CJ, in *Wehbe v Pittwater Council [2007] NSWLEC 827* to the extent that there are effectively five (5) different ways in which compliance with a development standard can be considered unreasonable or unnecessary as follows:

1. The objectives and purposes of the standard are achieved notwithstanding non-compliance with the development standard.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying objective or 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 Councils own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

As Preston CJ, stated in *Wehbe*, the starting point with a SEPP No. 1 objection (now a Clause 4.6 variation) is to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances. The most commonly invoked 'way' to do this is to show that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard.

The Applicant relies upon ground 1 in *Wehbe* to support its submission that compliance with the development standard is both unreasonable and unnecessary in the circumstances of this case.

In that regard, Preston CJ, in *Wehbe* states that "... *development standards are not ends in themselves but means of achieving ends*". Preston CJ, goes on to say that as the objectives of a development standard are likely to have no numerical or qualitative indicia, it logically follows that the test is a qualitative one, rather than a quantitative one. As such, there is no numerical limit which a variation may seek to achieve.

The above notion relating to 'numerical limits' is also reflected in Paragraph 3 of Circular B1 from the former Department of Planning which states that:

As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some

circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small in others it may be numerically large, but nevertheless be consistent with the purpose of the standard.

It is important to emphasise that in properly reading *Wehbe*, an objection submitted does not necessarily need to satisfy all of the tests numbered 1 to 5, and referred to above. This is a common misconception. If the objection satisfies one of the tests, then it may be upheld by a Council, or the Court standing in its shoes. Irrespective, an objection can also satisfy a number of the referable tests.

In *Wehbe*, Preston CJ, states that there are three (3) matters that must be addressed before a consent authority (Council or the Court) can uphold an objection to a development standard as follows:

1. The consent authority needs to be satisfied the objection is well founded;
2. The consent authority needs to be satisfied that granting consent to the DA is consistent with the aims of the Policy; and
3. The consent authority needs to be satisfied as to further matters, including non-compliance in respect of significance for State and regional planning and the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

Further, it is noted that the consent authority has the power to grant consent to a variation to a development standard, irrespective of the numerical extent of variation (subject to some limitations not relevant to the present matter).

The decision of Pain J, in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 suggests that demonstrating that a development satisfies the objectives of the development standard is not necessarily sufficient, of itself, to justify a variation, and that it may be necessary to identify reasons particular to the circumstances of the proposed development on the subject site.

Further, Commissioner Tuor, in *Moskovich v Waverley Council* [2016] NSWLEC 1015, considered a DA which involved a relatively substantial

variation to the FSR (65%) control. Some of the factors which convinced the Commissioner to uphold the Clause 4.6 variation request were the lack of environmental impact of the proposal, the characteristics of the site such as its steeply sloping topography and size, and its context which included existing adjacent buildings of greater height and bulk than the proposal.

The decision suggests that the requirement that the consent authority be satisfied the proposed development will be in the public interest because it is “consistent with” the objectives of the development standard and the zone, is not a requirement to “achieve” those objectives. It is a requirement that the development be ‘compatible’ with them or ‘capable of existing together in harmony’. It means “something less onerous than ‘achievement’”.

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ found that it is not necessary to demonstrate that the proposed development will achieve a “better environmental planning outcome for the site” relative to a development that complies with the development standard.

Finally, in *Hansimikali v Bayside Council* [2019] NSWLEC 1353, Commissioner O'Neill found that it is not necessary for the environmental planning grounds relied upon by the Applicant to be unique to the site.

ASSESSMENT

Is the requirement a development standard?

The non-residential FSR control is a development standard and is not excluded from the operation of Clause 4.6 of the LEP.

What is the underlying object or purpose of the standard?

The objective of the FSR control (which also applies to the residential component) is expressed as follows:

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

Further, it is reasonable to conclude that the residential FSR control is intended to ensure that development make an appropriate contribution to employment generation and business activity within certain specific locality.

In relation to the expressed objective of the FSR control, the proposed development complies with the total FSR control, circumstances in which the bulk and scale of the building is an appropriate response to the site constraints, development potential and infrastructure capacity of the locality.

In relation to the assumed objective of the residential FSR control, the proposed *"residential care facility"* will generate employment for approximately 35 staff, with additional *"flow on effects"* arising due to the sites proximity to major retail and transport infrastructure, including *Westfield Hornsby Shopping Centre* and *Hornsby Railway Station*.

Finally, the *"residential care facility"* (whilst technically a form of *"residential accommodation"*) will provide more employment than any other form of *"residential accommodation"*, and substantially more employment than the approved residential apartments on the site.

In the circumstances, the proposed development is consistent with both the expressed and assumed objectives of the residential FSR control, notwithstanding the numerical variation.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The Department of Planning published *"Varying development standards: A Guide"* (August 2011), to outline the matters that need to be considered in Development Applications involving a variation to a development standard. The Guide essentially adopts the views expressed by Preston CJ in *Wehbe v Pittwater Council [2007] NSWLEC 827* to the extent that there are five (5) different ways in which compliance with a development standard can be considered unreasonable or unnecessary.

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

XX

As noted above, the proposed development is consistent with both the expressed and assumed objectives of the residential FSR control, notwithstanding the numerical variation.

In that regard, the Applicant relies upon ground 1 in *Wehbe* (ie. that the objectives and purposes of the standard are achieved notwithstanding non-compliance with the development standard) to support its submission that compliance with the development standard is both unreasonable and unnecessary in the circumstances of this case.

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

The objectives and purpose of the residential FSR control remain relevant, and the proposed development is consistent with both the expressed and assumed objectives of the residential FSR control, notwithstanding the numerical variation.

3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

The proposed development is consistent with both the expressed and assumed objectives of the residential FSR control, notwithstanding the numerical variation.

Further, strict compliance with the non-residential FSR control would require a not insignificant proportion of the "residential care facility" to be converted to an alternate use, and thereby the significant public, health and economic benefits arising from the inclusion of that important use would be unnecessarily lost.

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;*

The non-residential FSR control has not been abandoned or destroyed by the Council's actions. However, the Council has consistently adopted an orderly but flexible approach to the implementation of development standards in appropriate circumstances, including when the objectives of the standard are achieved, notwithstanding numerical variations.

Further, the objectives of Clause 4.6 of the LEP includes to provide “an appropriate degree of flexibility in applying certain development standards to particular development”.

5. *Compliance with the 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 zoning of the land remains relevant and appropriate.

Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed numerical variation to the residential FSR control is reasonable and appropriate in the particular circumstances on the basis that:

- the LEP specifies a maximum FSR of 5:1, and the proposed development provides an FSR of 5:1;
- the compliance with the total FSR control of 5:1 ensures the proposed development the bulk and scale of the building is an appropriate response to the site constraints, development potential and infrastructure capacity of the locality;
- the proposed development complies with Clause 19 of the SEPP which species that development for the purposes of seniors housing should not include the use of any part of the ground floor level of a building that fronts a street for residential purposes if the building is located on land zoned primarily for commercial purposes;
- Clause 19 of the SEPP does not require any additional non-residential floor space to be located above the ground floor level, even on sites zoned primarily for commercial purposes;
- the proposed “residential care facility” will generate employment for approximately 35 staff, with additional “flow on effects” arising due to the sites proximity to major retail and transport infrastructure, including *Westfield Hornsby Shopping Centre* and *Hornsby Railway Station*;
- the “residential care facility” (whilst technically a form of “residential accommodation”) will provide more employment than any other form of “residential accommodation”, and substantially

- more employment than the approved residential apartments on the site;
- strict compliance with the residential FSR control would require a not insignificant proportion of the “residential care facility” to be converted to an alternate use, and thereby the significant public, health and economic benefits arising from the inclusion of that important use would be unnecessarily lost;
 - the variation to the residential FSR does not alter the proposed building forms, circumstances in which there are no consequences arising in terms of the physical relationship and/or amenity of surrounding properties;
 - the proposed development is consistent with the objectives of the B4 – Mixed Use zone; and
 - the proposed development is consistent with both the expressed and assumed objectives of the residential FSR control, notwithstanding the numerical variation.

The quality and form of the immediate built environment creates unique opportunities and constraints to achieving a good design outcome: *Initial Action v Woollahra Council 209 NSWLEC 1097* (O'Neill C) at 42. The proposal is a justified response to the scale and immediate built environment of the site.

In particular, the proposed development is consistent with object (c) of Section 1.3 of the Act: to promote the orderly and economic use and development of land; and object (g) to promote good design and amenity of the built environment. There are obvious economic and design/amenity considerations which should be taken into account in order to achieve those objects.

Are there any matters of State or regional significance?

The proposed numerical variation to the residential FSR control does not raise any matters of State or regional significance.

What is the public benefit of maintaining the standard?

The proposed development is consistent with both the expressed and assumed objectives of the residential FSR control, notwithstanding the numerical variation.

In the circumstances, the proposed development does not affect the public benefit of maintaining compliance with the residential FSR control in other instances.

In that regard, the objectives of Clause 4.6 of the LEP includes to provide *"an appropriate degree of flexibility in applying certain development standards to particular development"*.

Any other matters?

There are no further matters of relevance to the proposed variation to the residential FSR control.

Zone Objectives and Public Interest

The site is zoned B4 – Mixed Use pursuant to the Hornsby LEP 2013, and the objectives of the zone are expressed as follows:

- *To provide a mix of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The proposed development is consistent with (and not antipathetic to) the relevant objectives of the zone on the basis of the mix of compatible retail, commercial and residential care land uses.

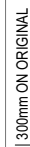
Further, the workers, visitors and residents of the building will have access to the extremely good public transport facilities located within a comfortable walking distance of the site.

Finally, the proposed development serves the public interest by providing a benchmark for high quality architecture within the Hornsby Town Centre, offering a good level of internal amenity without imposing any unreasonable impacts on the amenity of surrounding land.

CONCLUSION

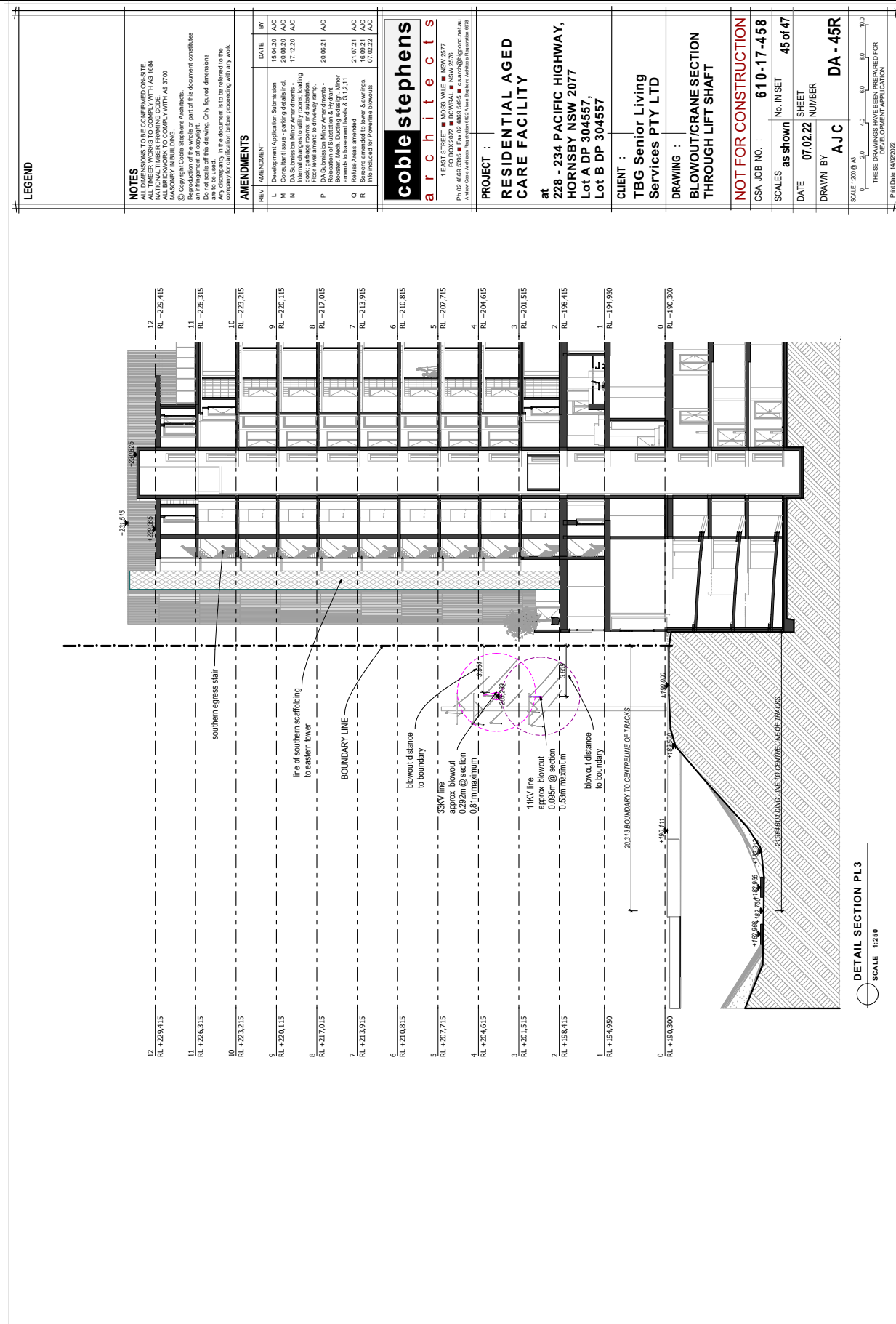
The purpose of this submission is to formally request a variation in relation to the residential FSR control in Clause 4.4 of the Hornsby LEP 2013.

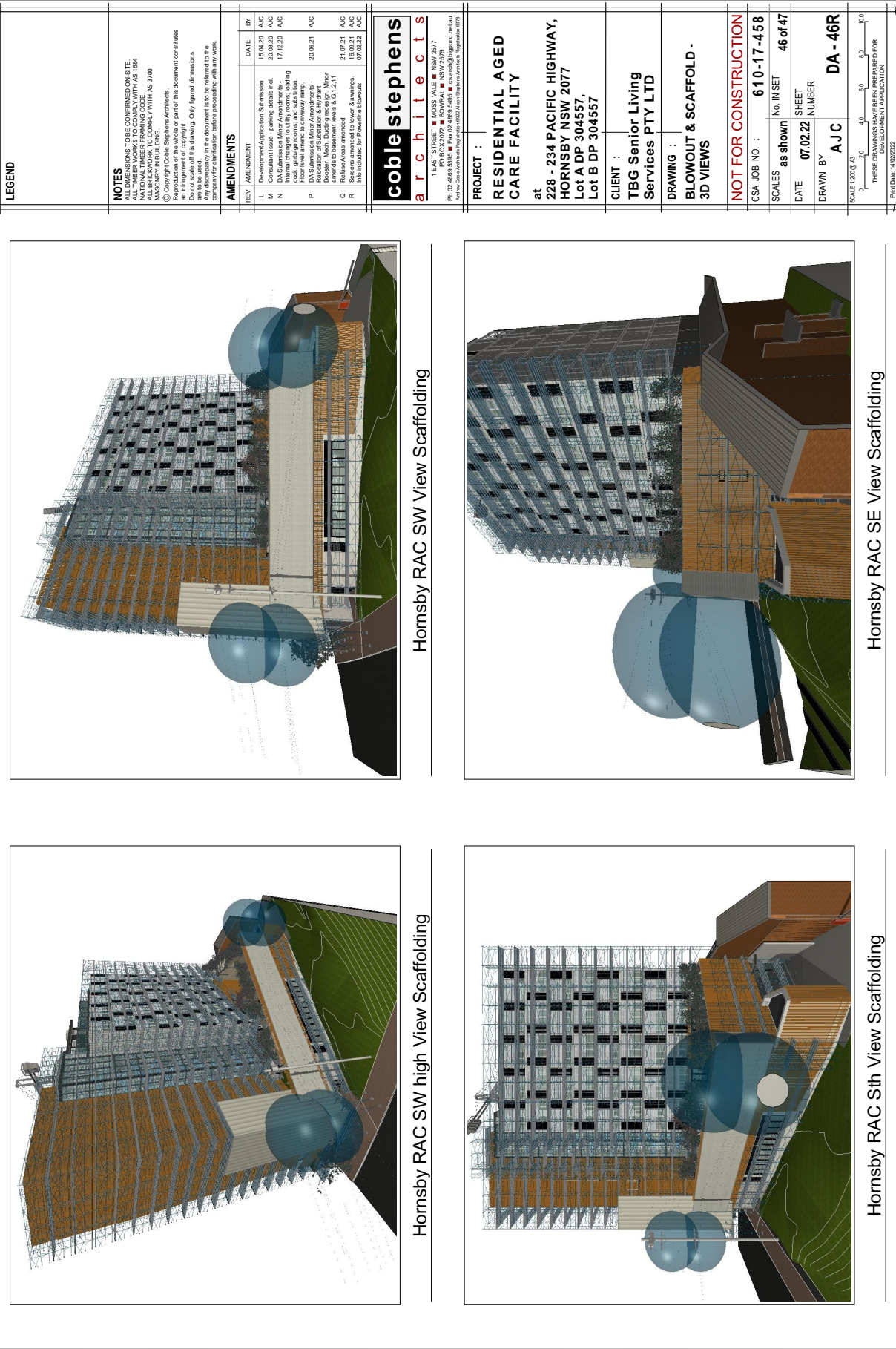
In general terms, strict compliance with the residential FSR control is unreasonable and unnecessary in the particular circumstances, and there are sufficient environmental planning grounds to justify the numerical variation.



FIGURED DIMENSIONS TO BE USED IN PREFERENCE TO SCALING | 200

ATTACHMENT 3 - ITEM 4





ATTACHMENT 3 - ITEM 4

300mm ON ORIGINAL

ATTACHMENT 3 - ITEM 4



ATTACHMENT 3 - ITEM 4

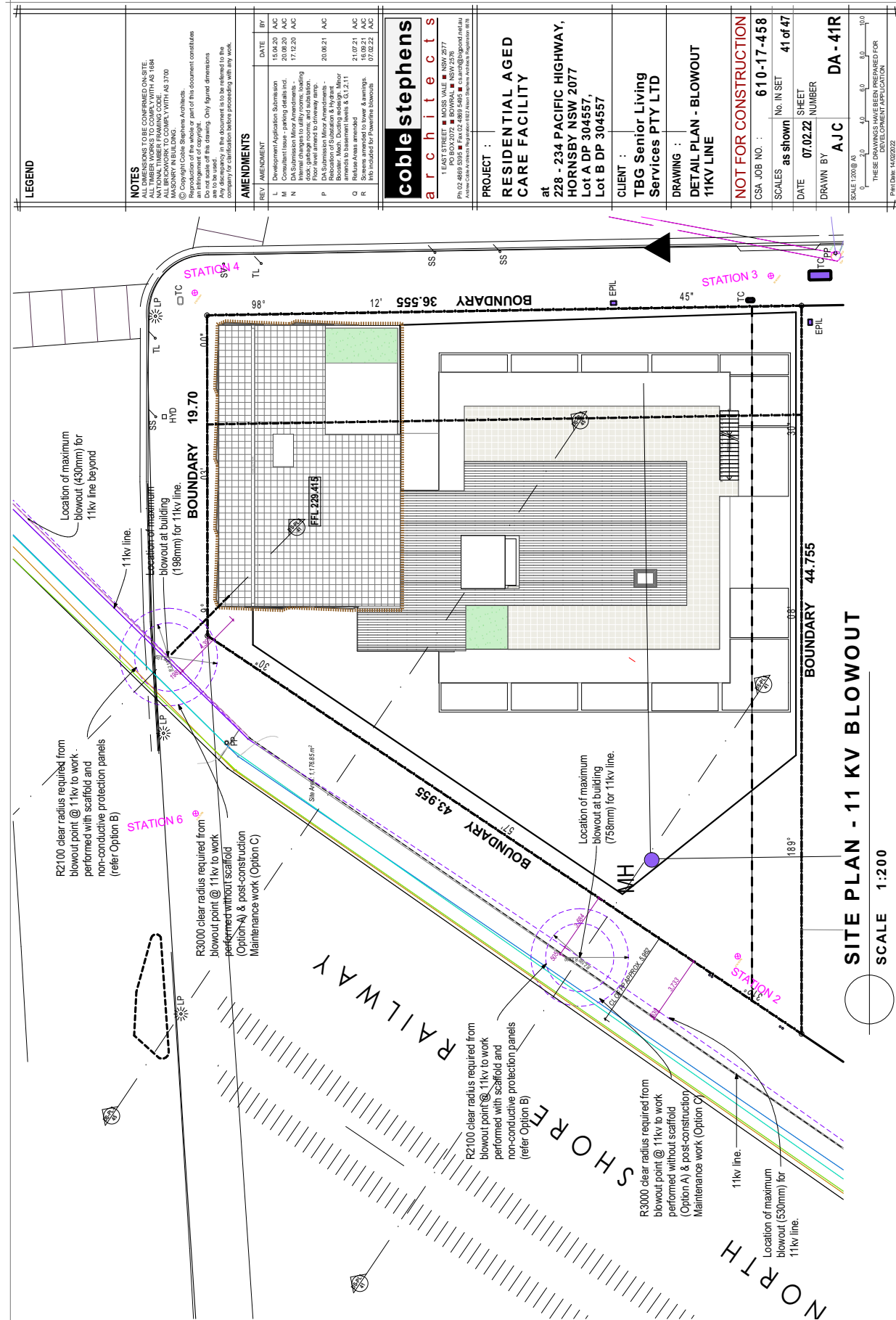


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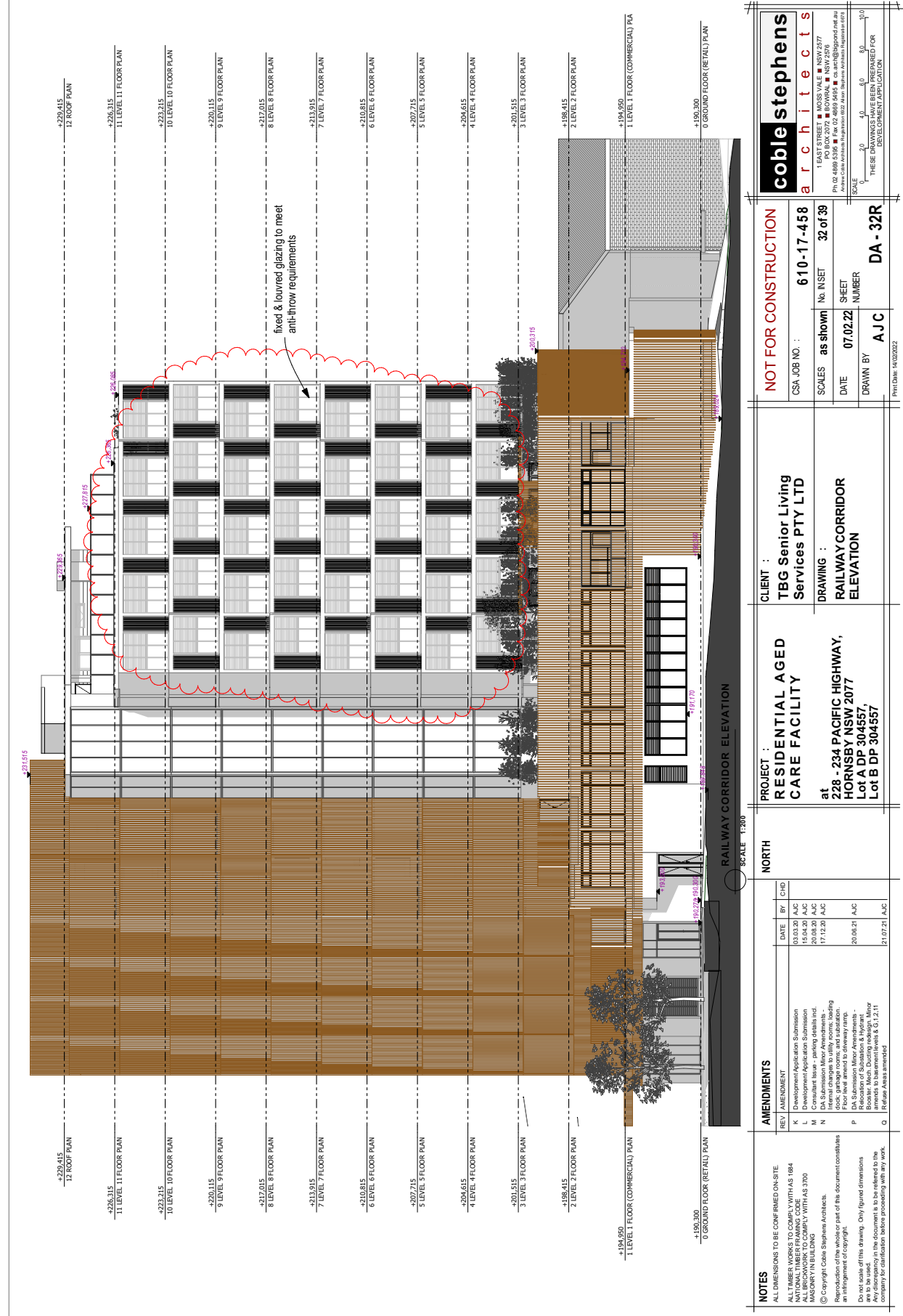
ATTACHMENT 3 - ITEM 4



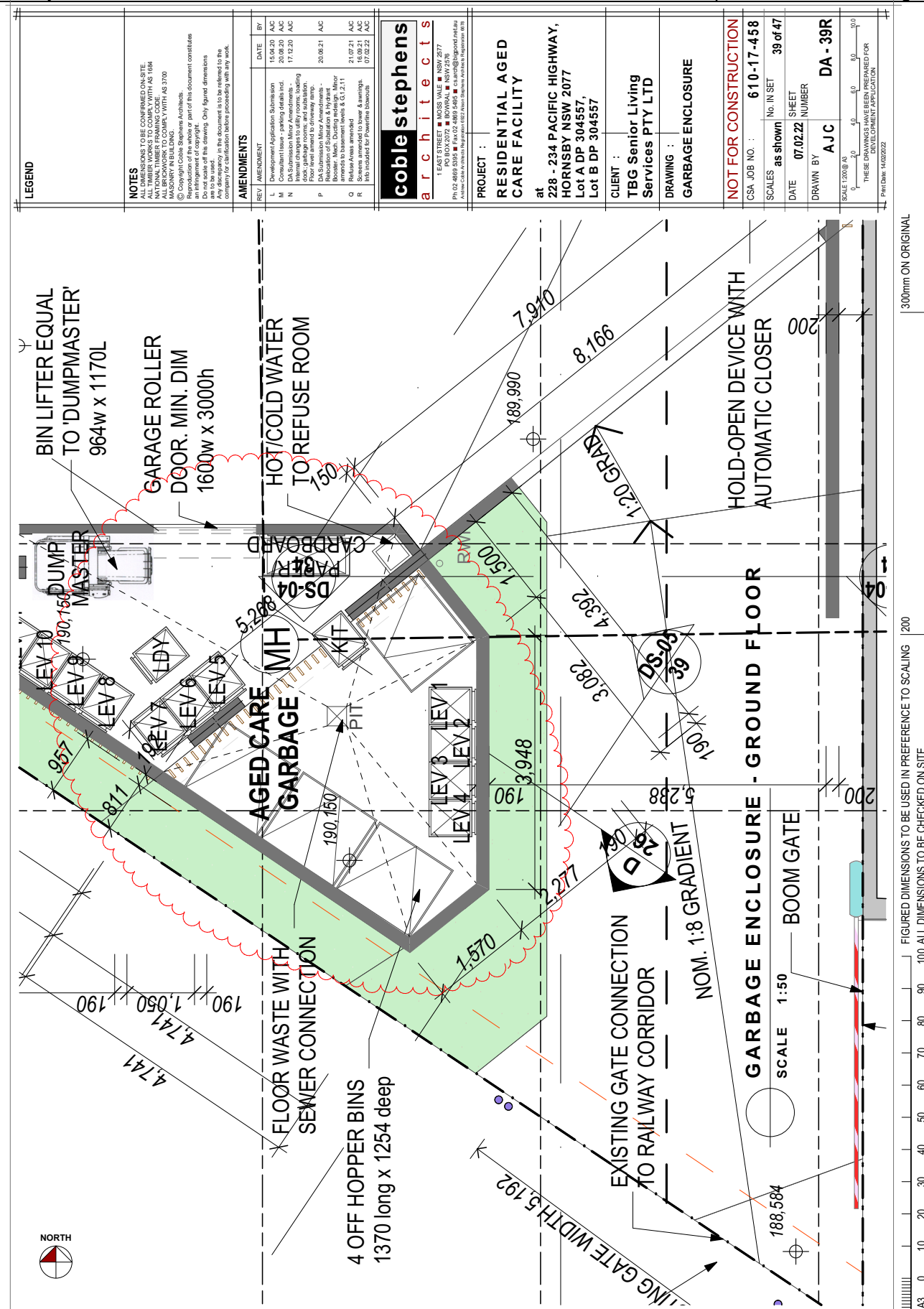
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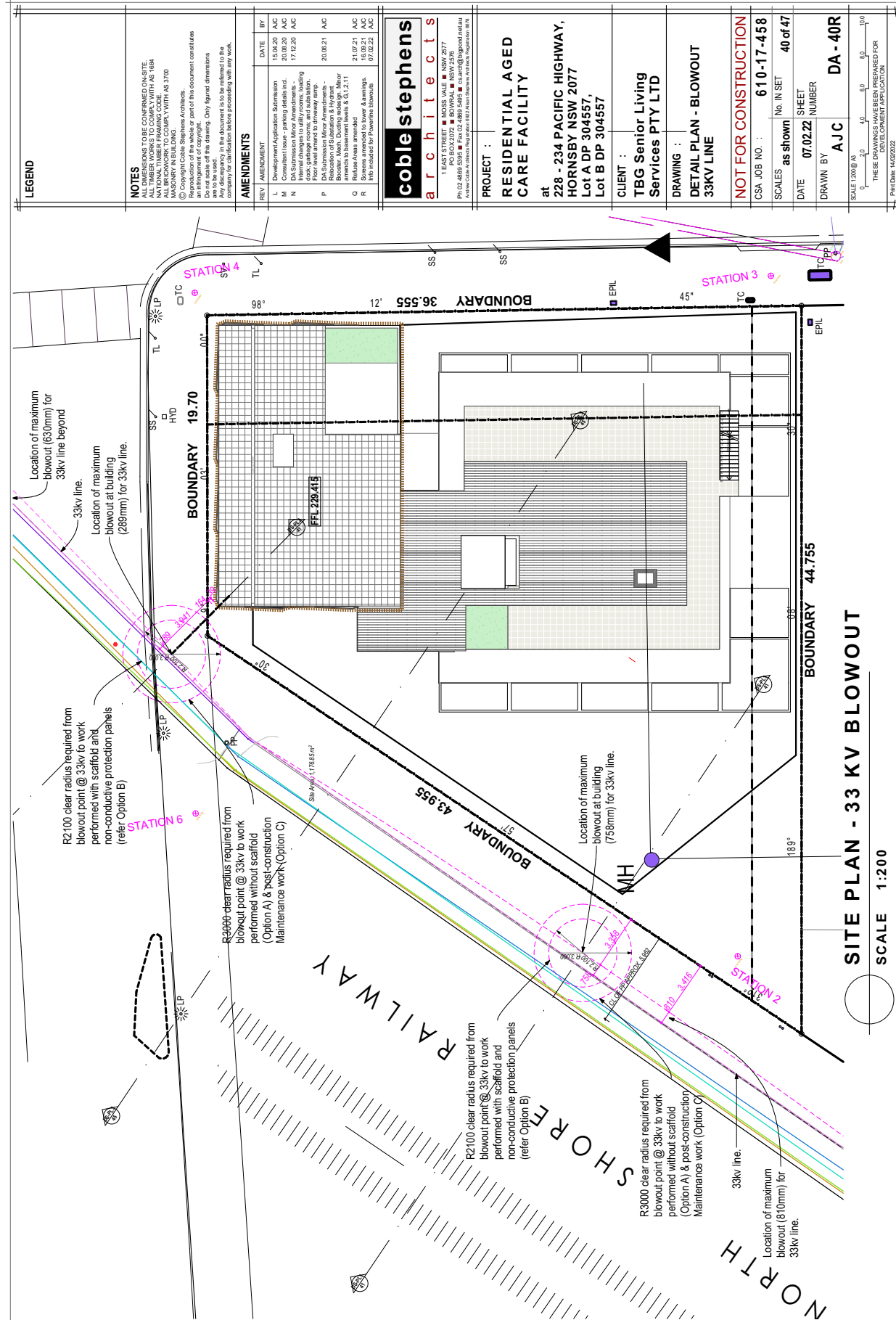


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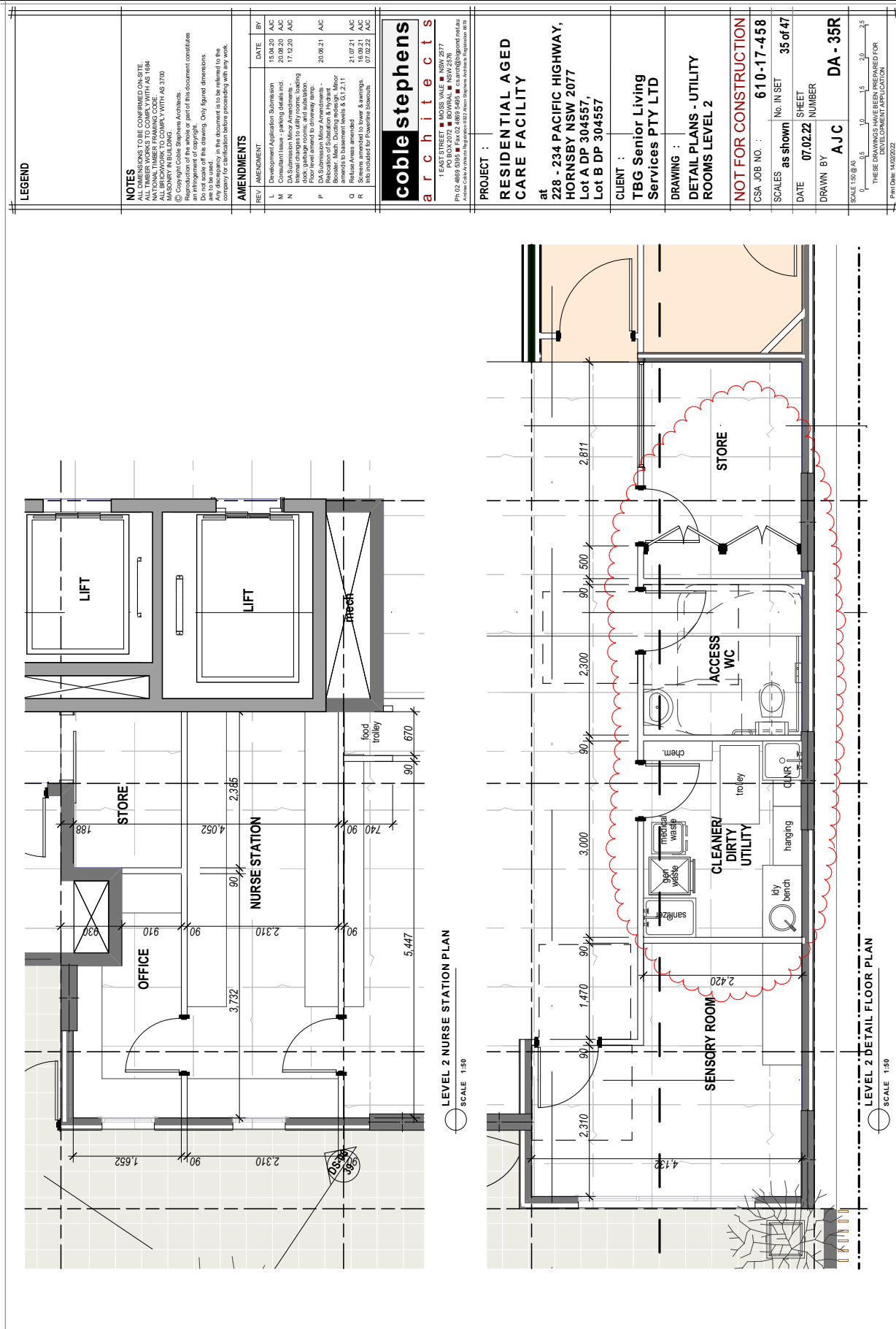


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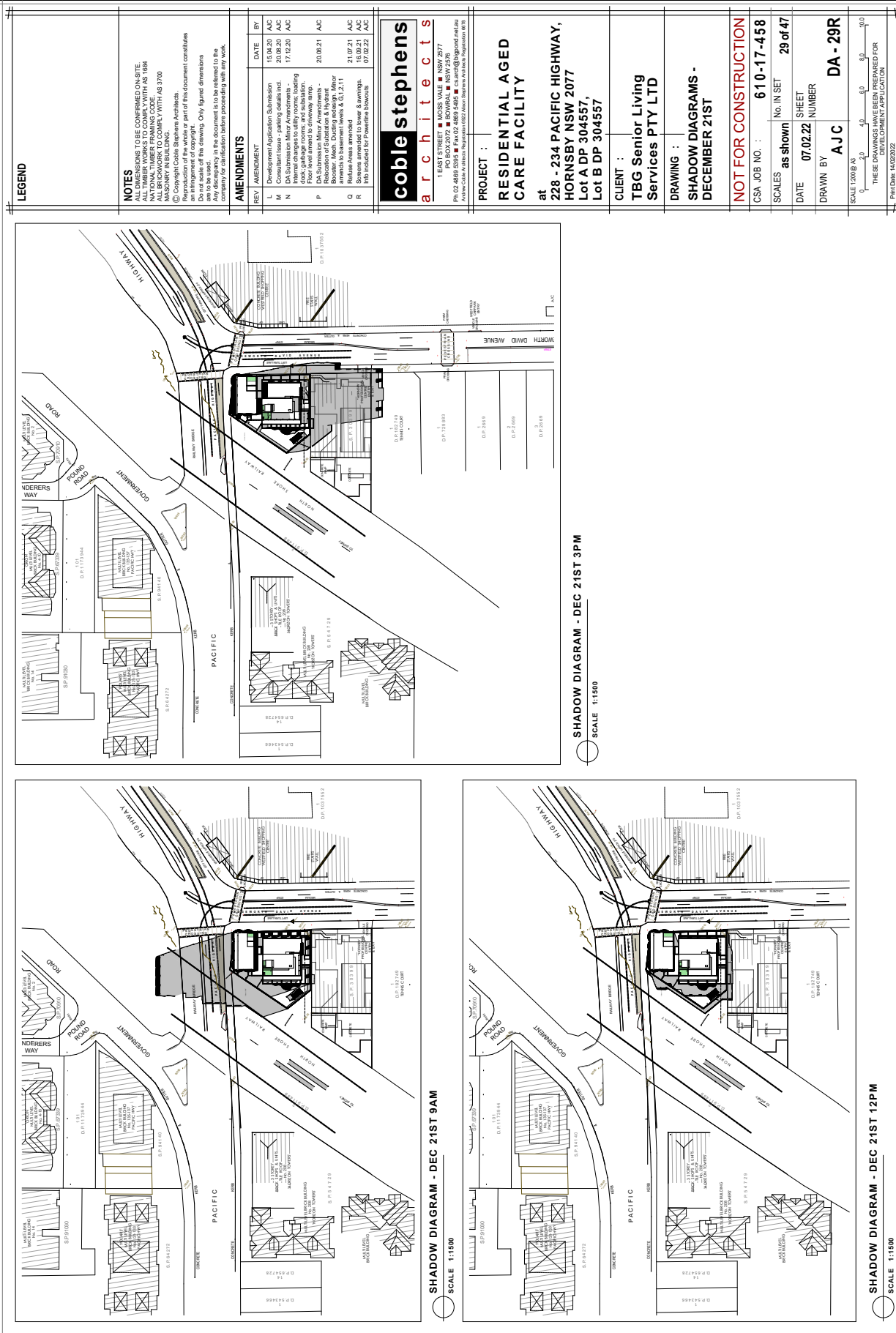
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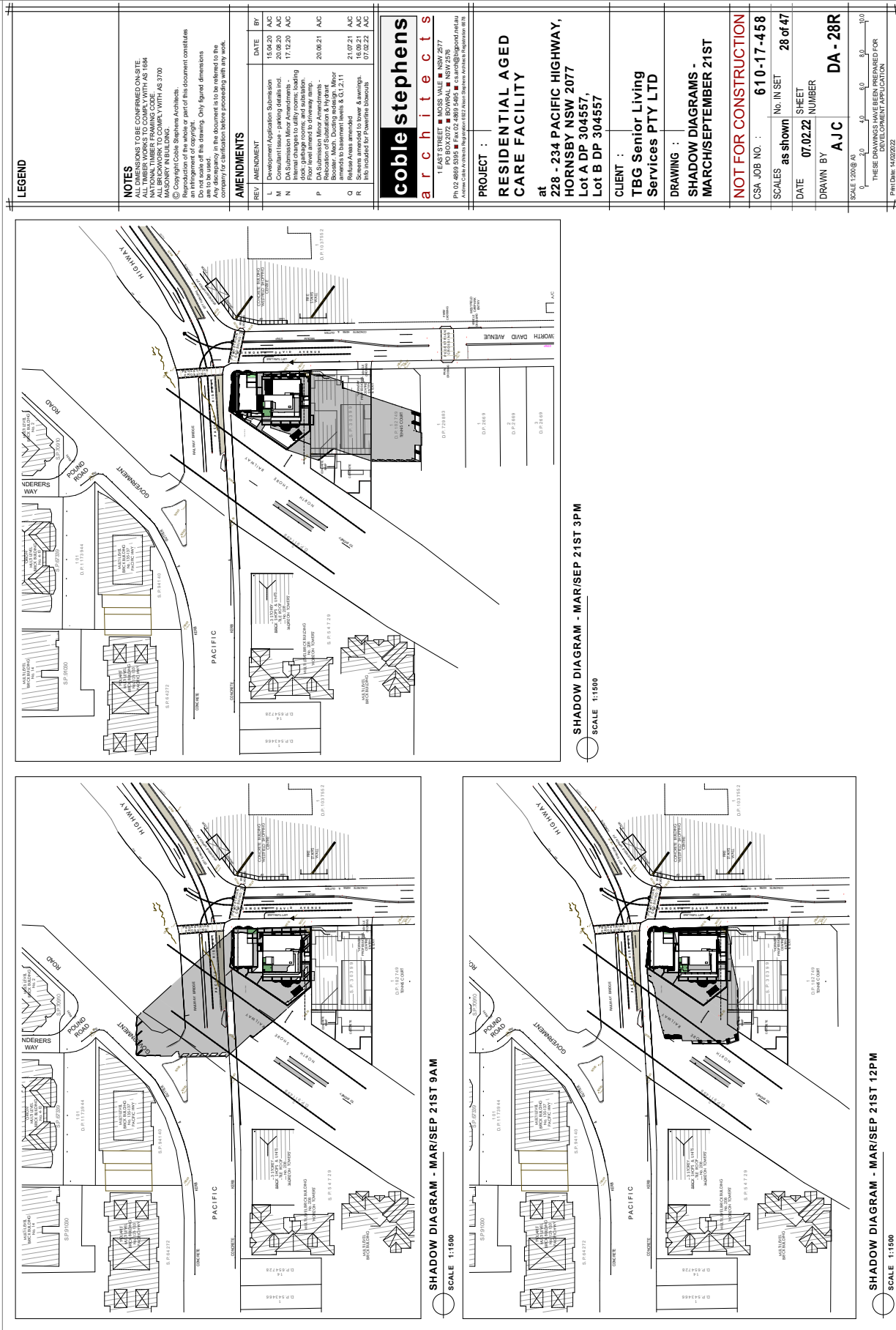
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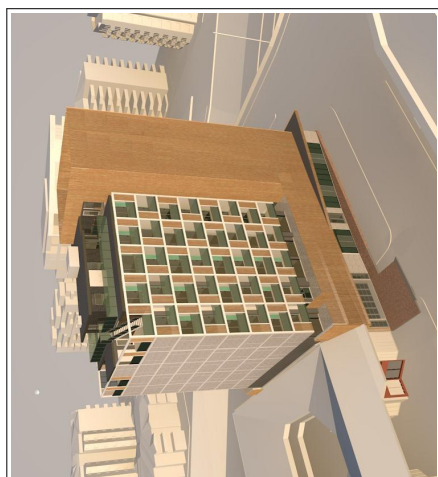


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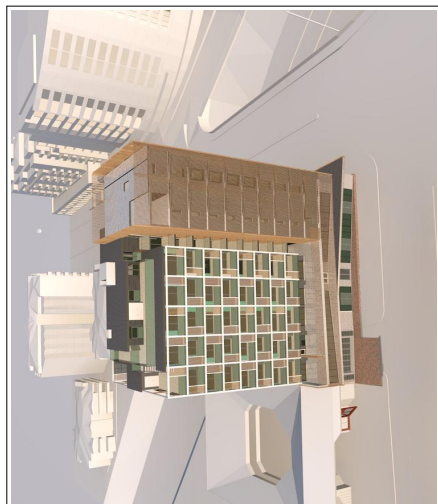




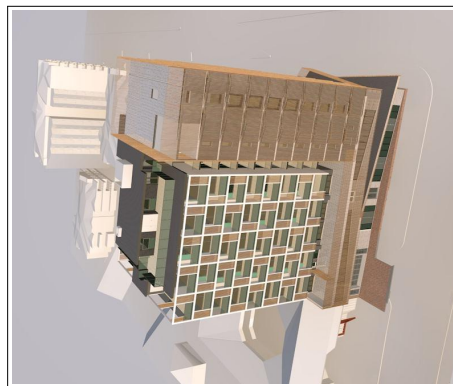
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SUN EYE MODEL - 10AM JUNE 21ST



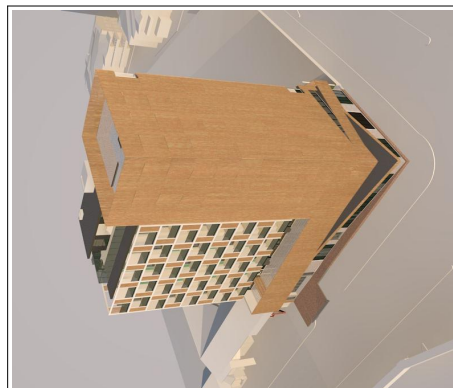
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SUN EYE MODEL - 12PM JUNE 21ST



SUN EYE MODEL - 1PM JUNE 21ST



SUN EYE MODEL - 2PM JUNE 21ST



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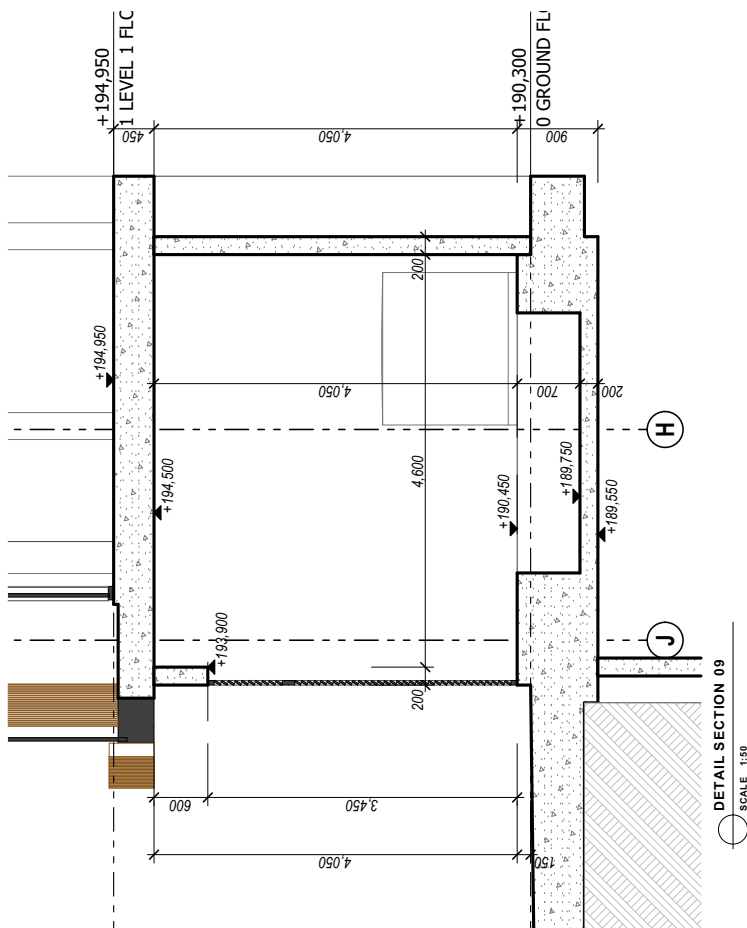
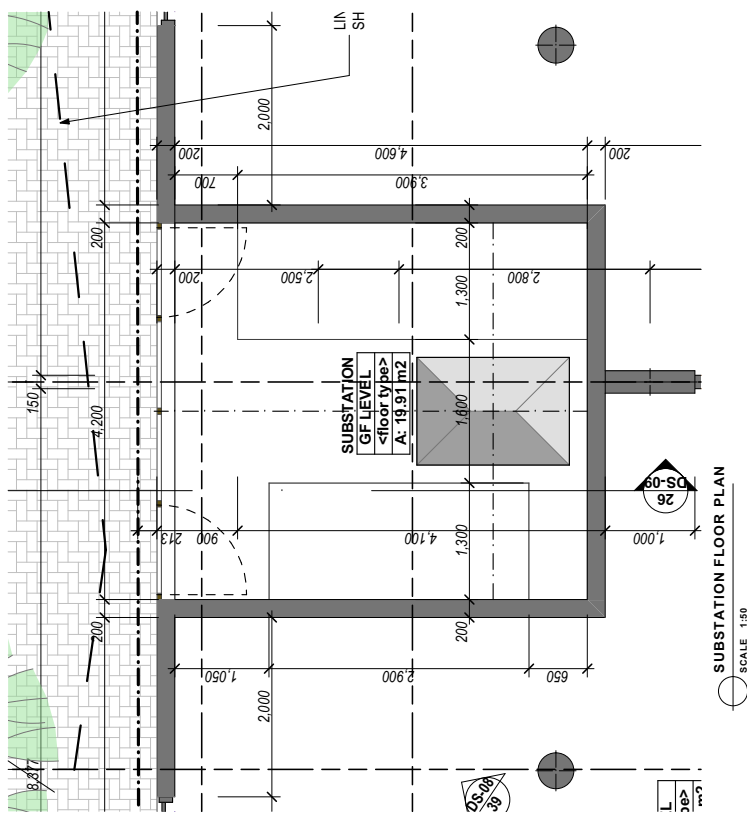
NOTES	AMENDMENTS		DATE		BY		CHD	NORTH	PROJECT :	CLIENT :	NOT FOR CONSTRUCTION	coble stephens architects
	REV	AMENDMENT										
ALL DIMENSIONS TO BE CONFIRMED ON SITE. ALL DIMENSIONS TO COMPLY WITH AS 1564 ALL DIMENSIONS TO COMPLY WITH AS 3700 ALL DIMENSIONS TO COMPLY WITH AS 3700 © Copyright Coble Stephens Architects. Reproduction of the whole or part of this document constitutes an infringement of copyright. Do not scale of this drawing. Only figured dimensions are to be used in preference to scaling. Any discrepancy in the document is to be referred to the company for clarification before proceeding with any work.	K	Development Application Submission	03.03.20	A/C					RESIDENTIAL AGED CARE FACILITY	TBG Senior Living Services PTY LTD	CSA JOB NO. :	610-17-458
	L	Development Application Submission	15.04.20	A/C					at 228 - 234 PACIFIC HIGHWAY, HORNSBY NSW 2077	DRAWING :	as shown	No INSET
	M	Consultant Issue - parking details incl. internal change to utility rooms, loading dock, garage rooms and sanitation.	20.08.20	A/C					Lot A DP 304557, Lot B DP 304557	SUN-EYE DIAGRAMS - JUNE 21ST	DATE	07.02.22
	N	Internal change to utility rooms, loading dock, garage rooms and sanitation.	17.12.20	A/C							SHEET	31 of 39
	P	Relocation of Substation & Hydrant	20.08.21	A/C							NUMBER	DA - 31R
	Q	Relocation of Substation & Hydrant	21.07.21	A/C							DRAWN BY	AJC

FIGURED DIMENSIONS TO BE USED IN PREFERENCE TO SCALING | 200

300mm ON ORIGINAL

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ATTACHMENT 3 - ITEM 4



NOTES		AMENDMENTS		NORTH		PROJECT :		CLIENT :		NOT FOR CONSTRUCTION		coble stephens architects	
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		K Development Application Submission		03.03.20		AJC						1 EAST STREET ■ MOSS VALE ■ NSW 2577 PO BOX 2077 ■ BOWRA ■ NSW 2576 PH 02 4889 1111 ■ FAX 02 4889 1112 ■ www.coblestephens.com.au ■ Lic No 123456789 These drawings have been prepared for this project only and are not to be used for any other purpose without the written consent of Coble Stephens Architects	
		L Development Application Submission		15.04.20		AJC						SCALES as shown	
		M Consultant Issue - parking details incl.		20.08.20		AJC						DATE 07.02.22	
		N DA Submission Minor Amendments - Relocation of Substation & Hydrant amends to basement levels & G, 1, 2, 11		17.12.20		AJC						SHEET NUMBER	
		P DA Submission Minor Amendments - Relocation of Substation & Hydrant amends to basement levels & G, 1, 2, 11		20.08.21		AJC						DRAWN BY AJC	
		Q Refuse Area amended		21.07.21		AJC						DA - 33R	
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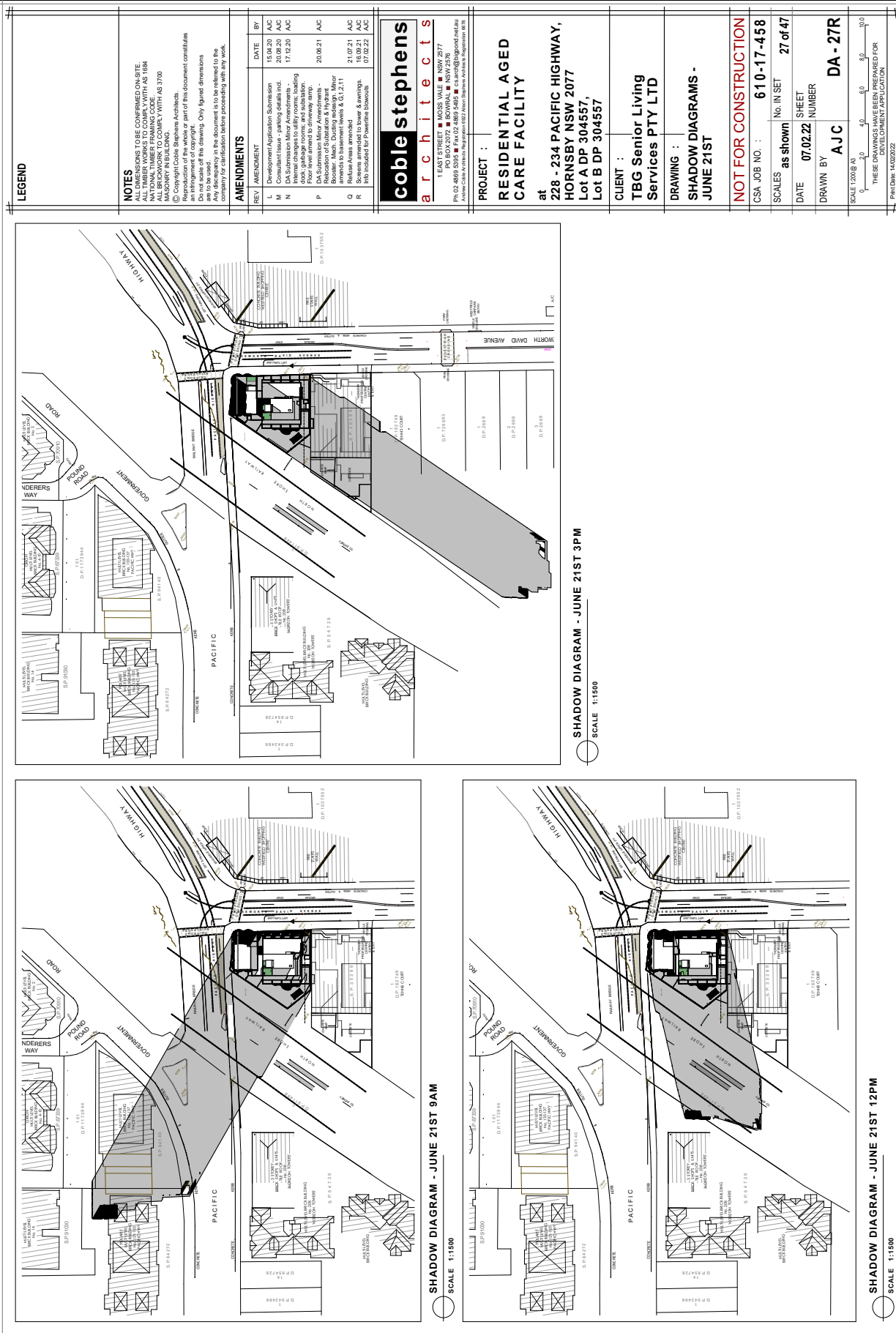
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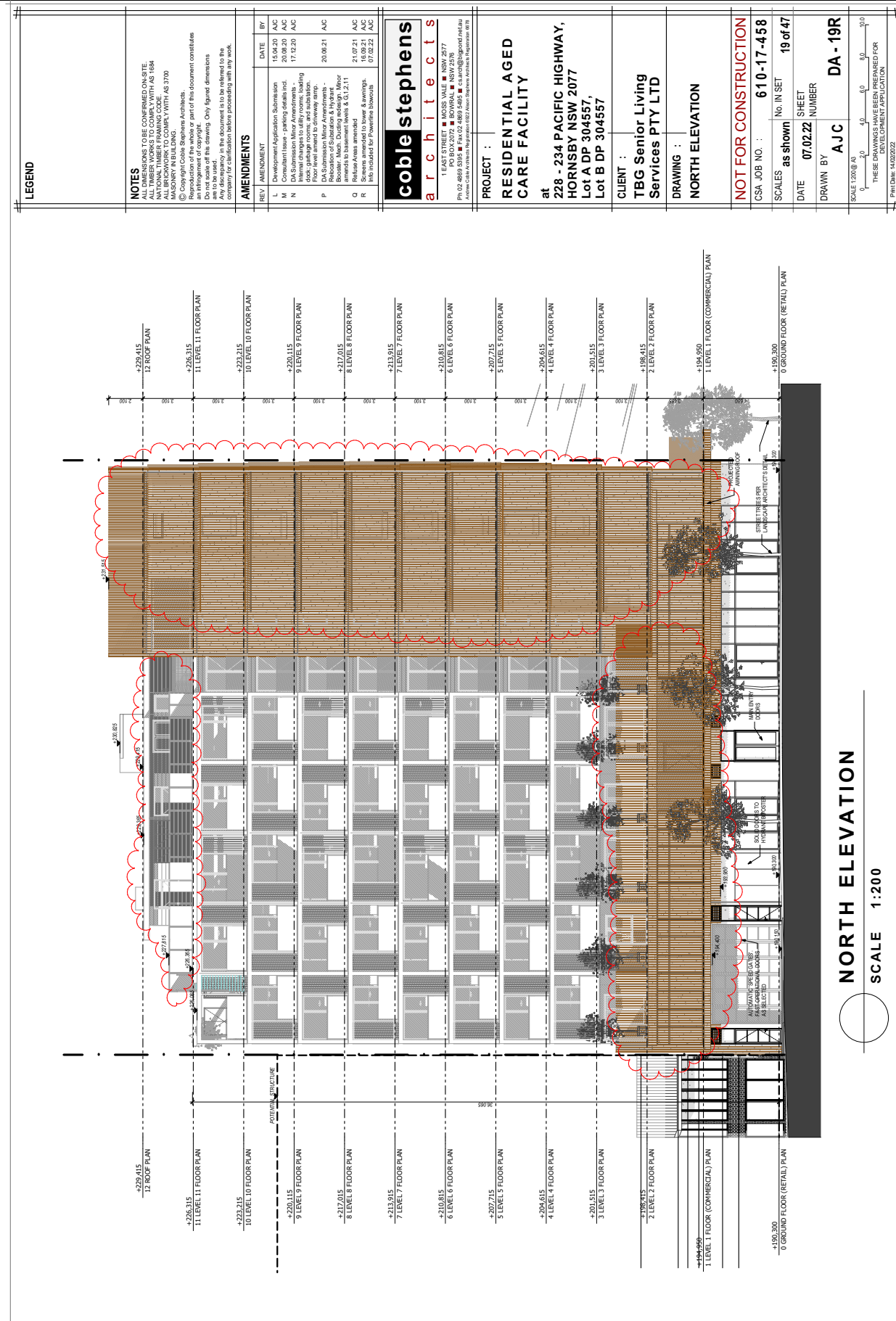
FIGURED DIMENSIONS TO BE USED IN PREFERENCE TO SCALING 1200

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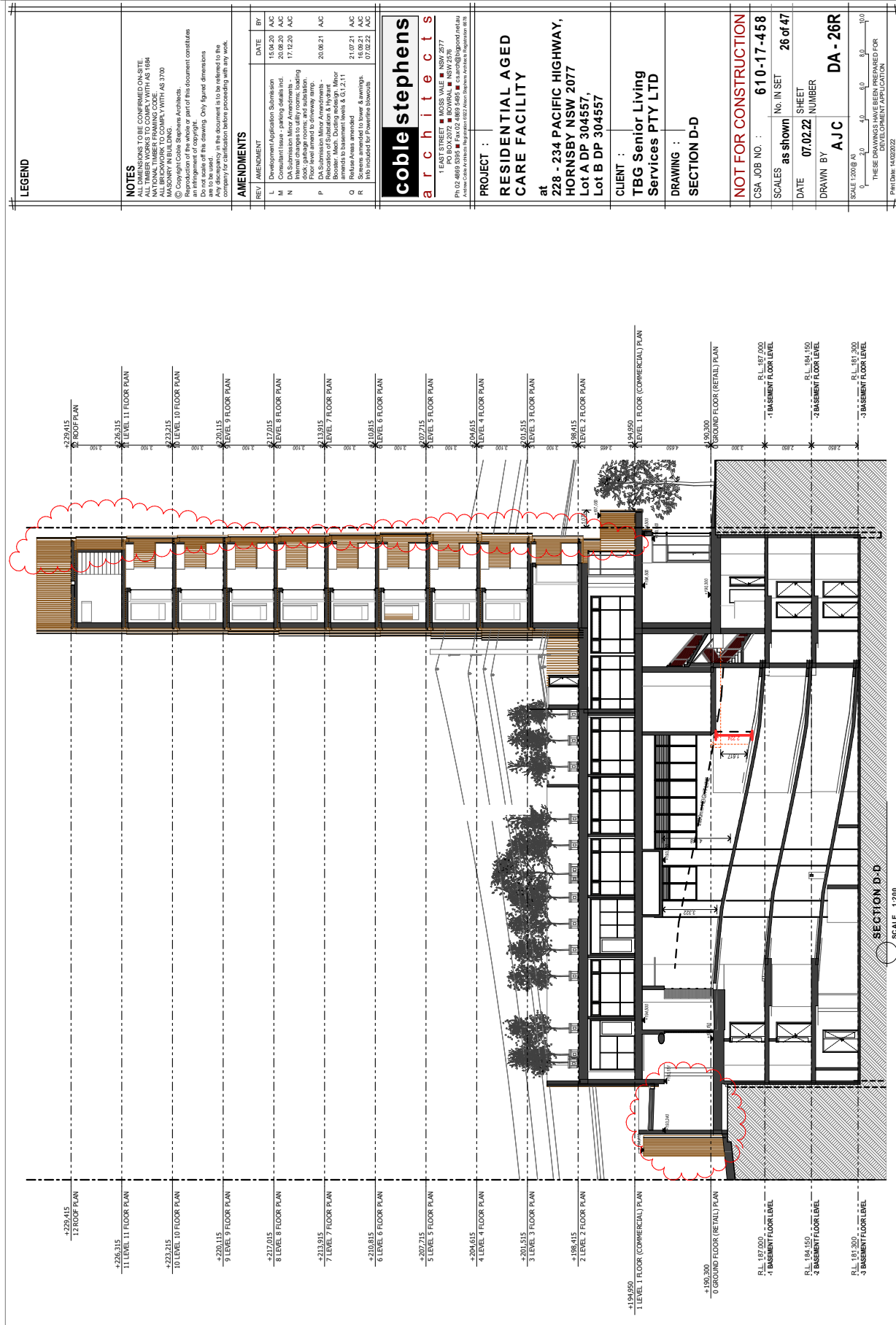


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Figure Dimension	Number of Dimensions to be Checked on Site
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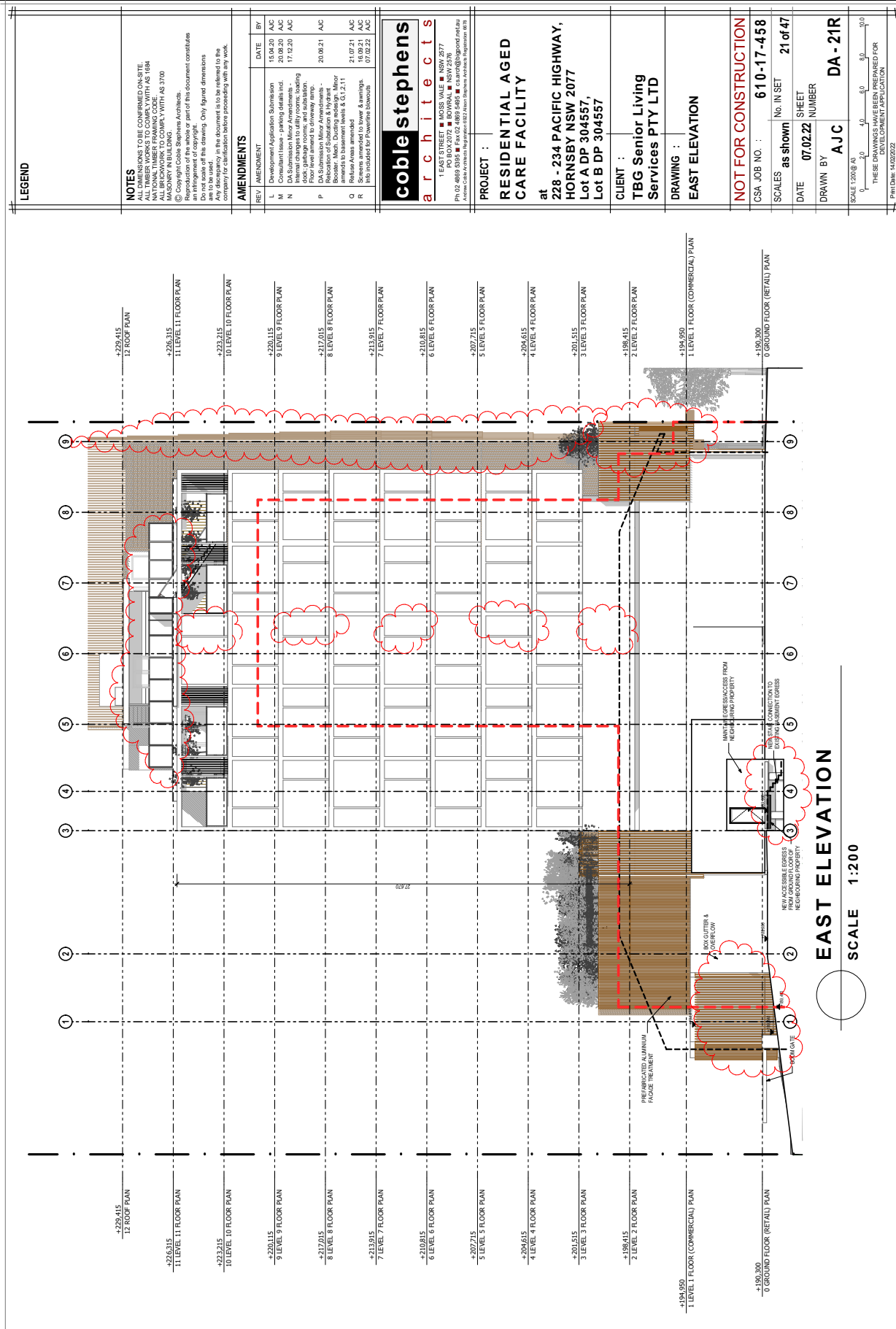
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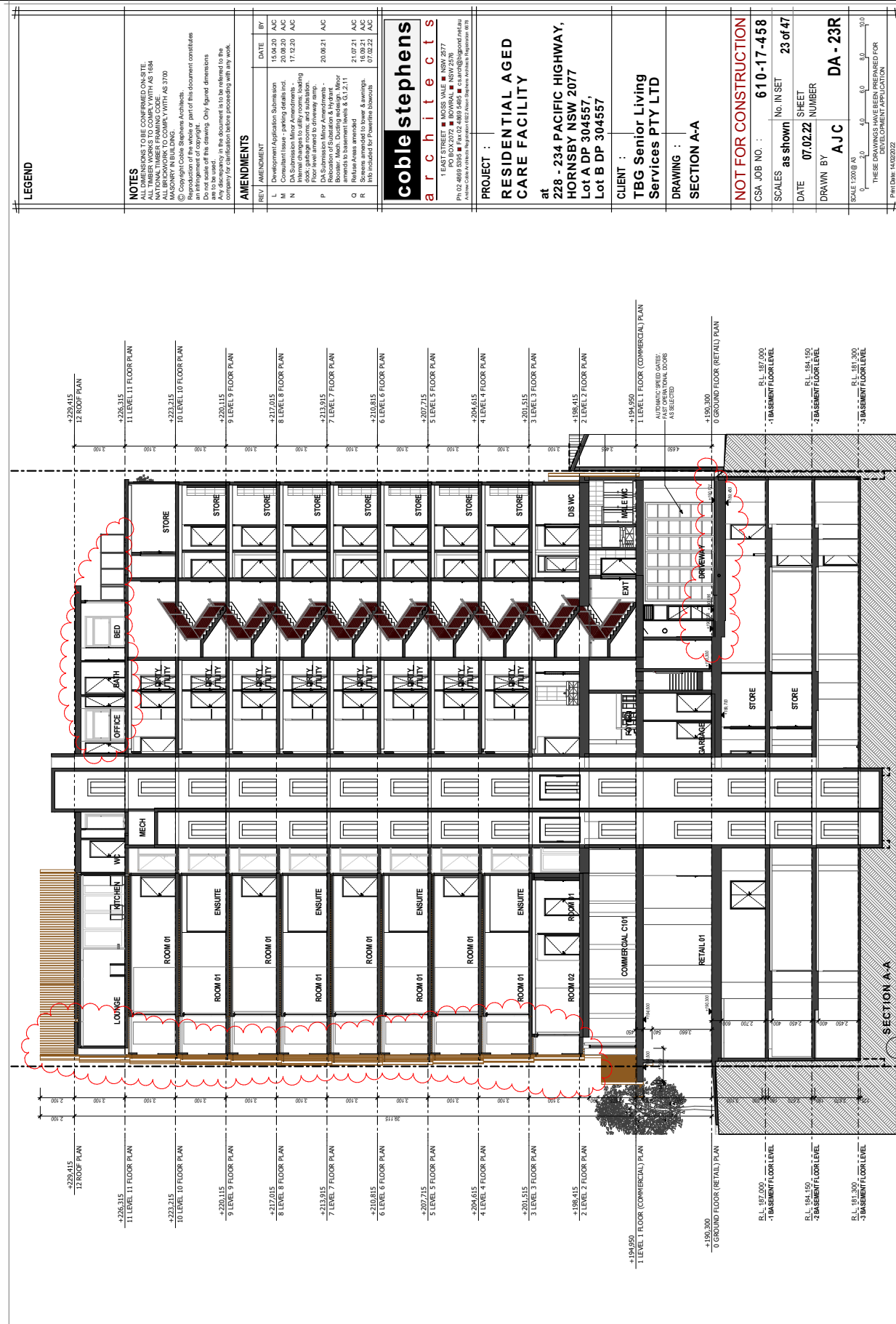
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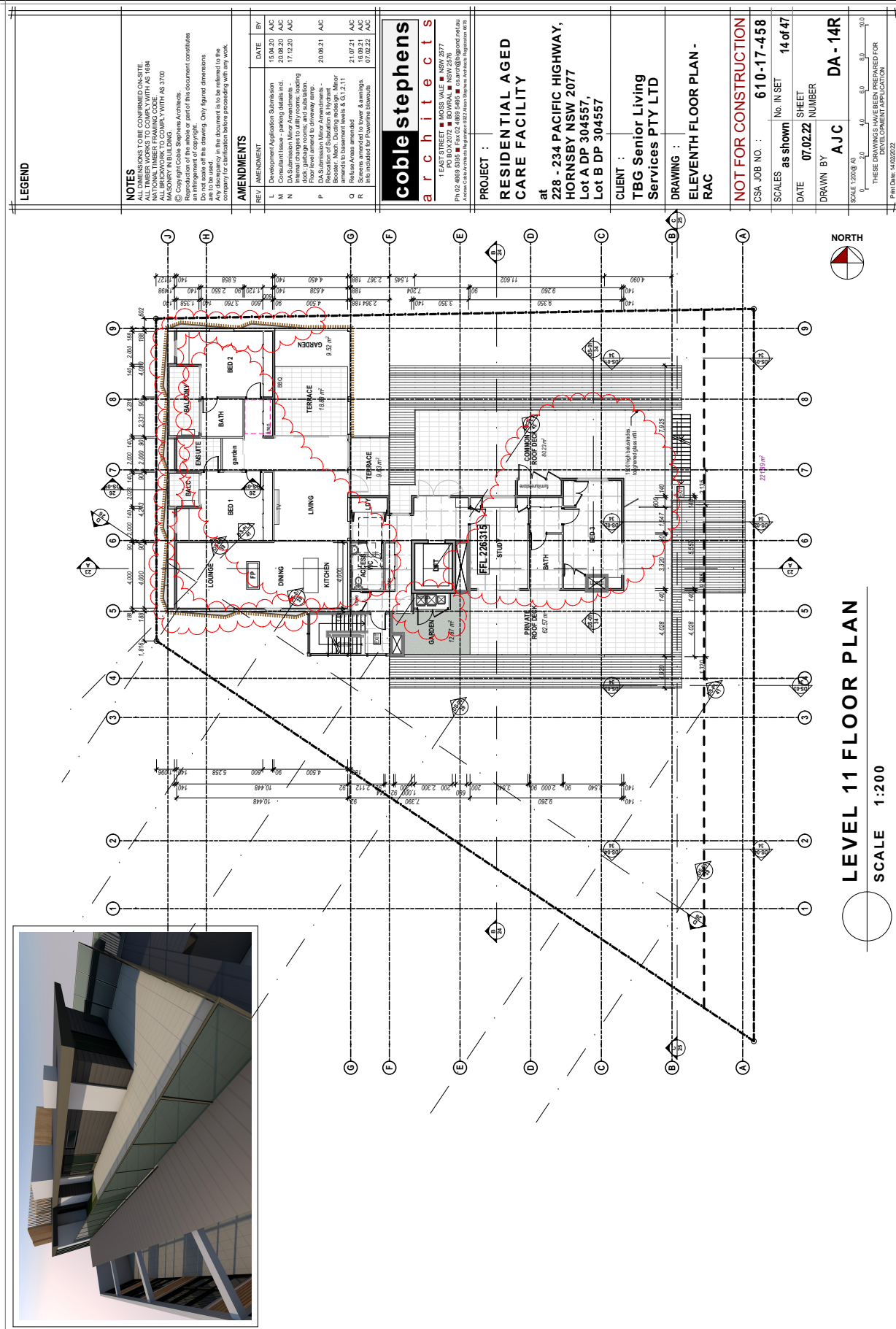
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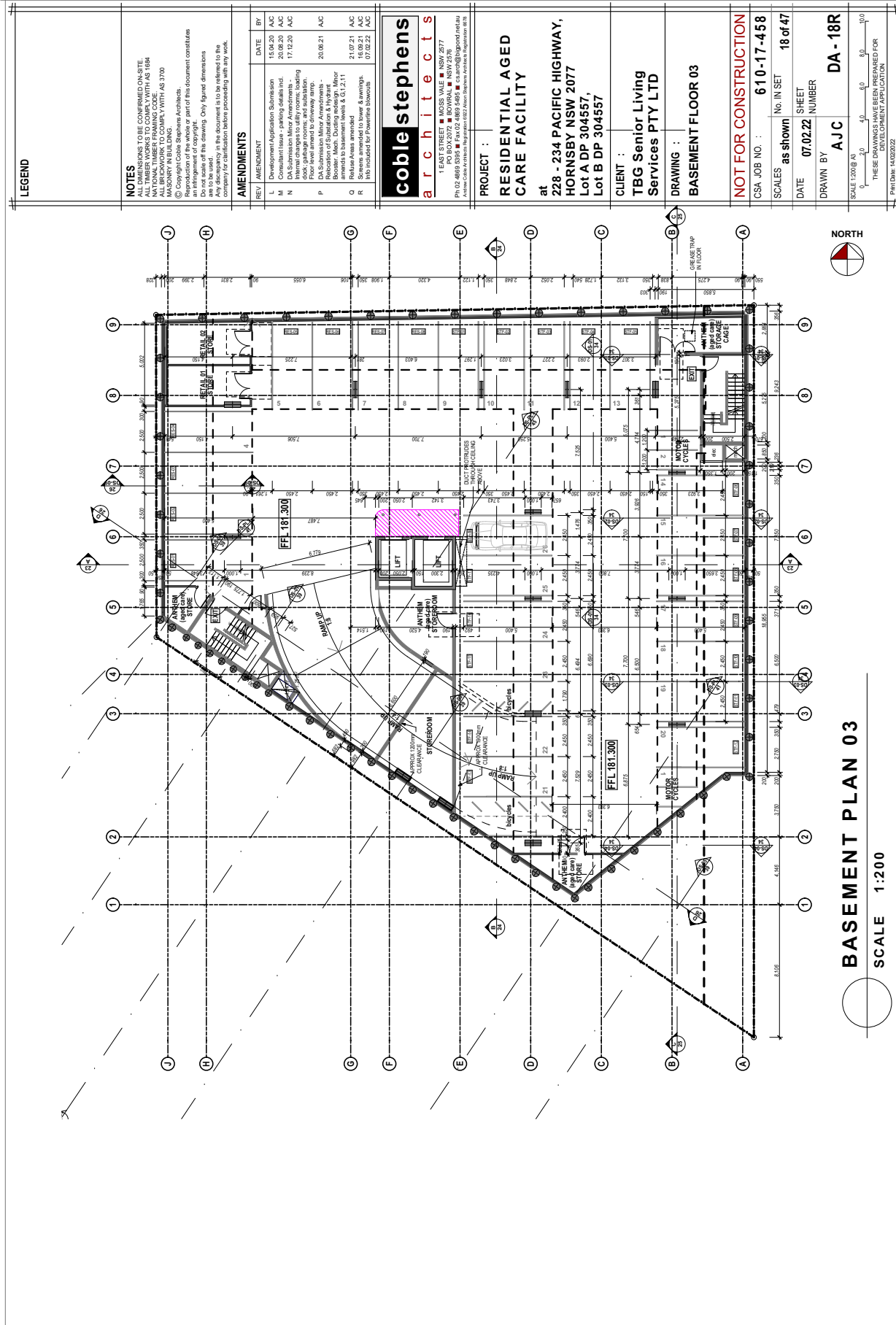


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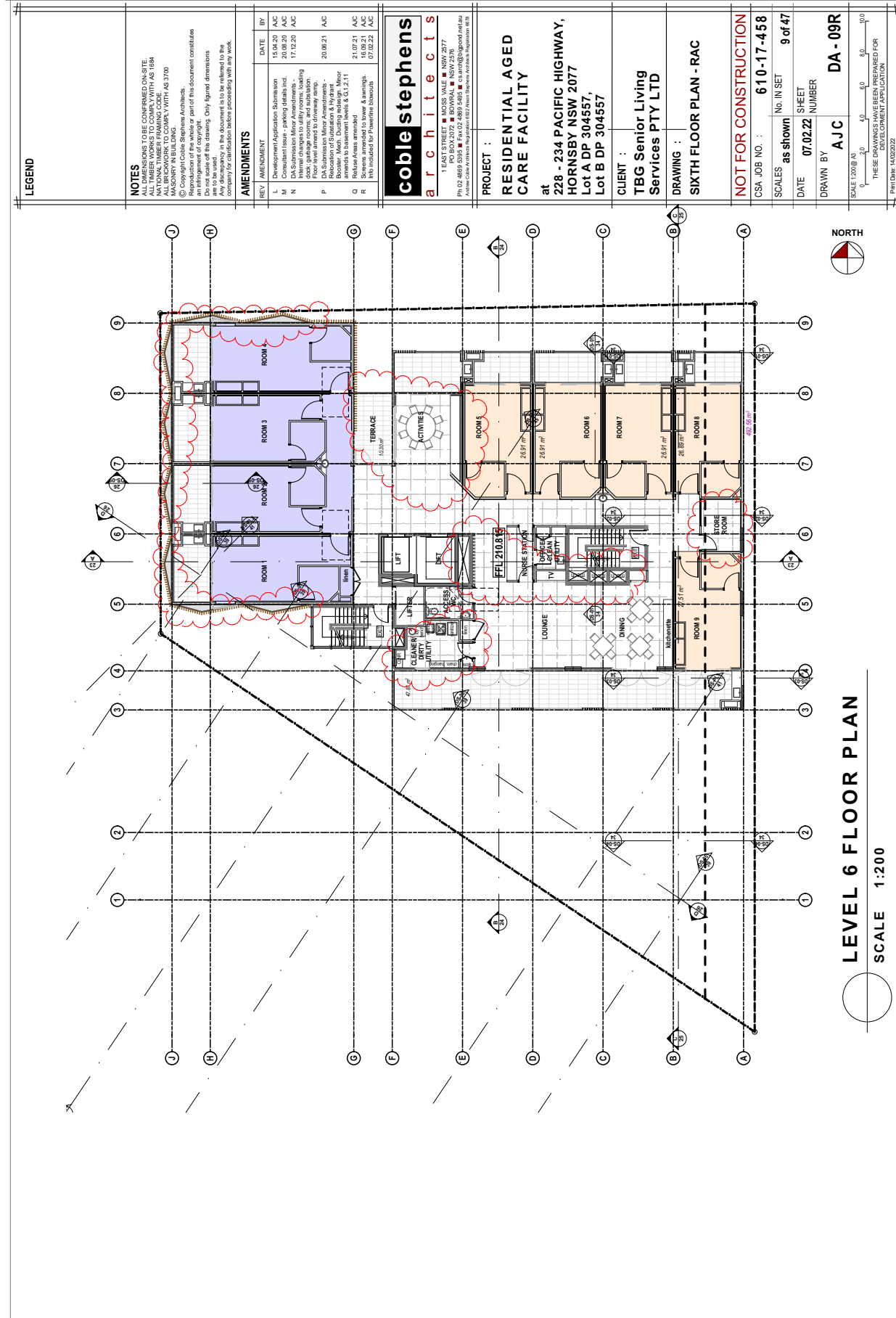
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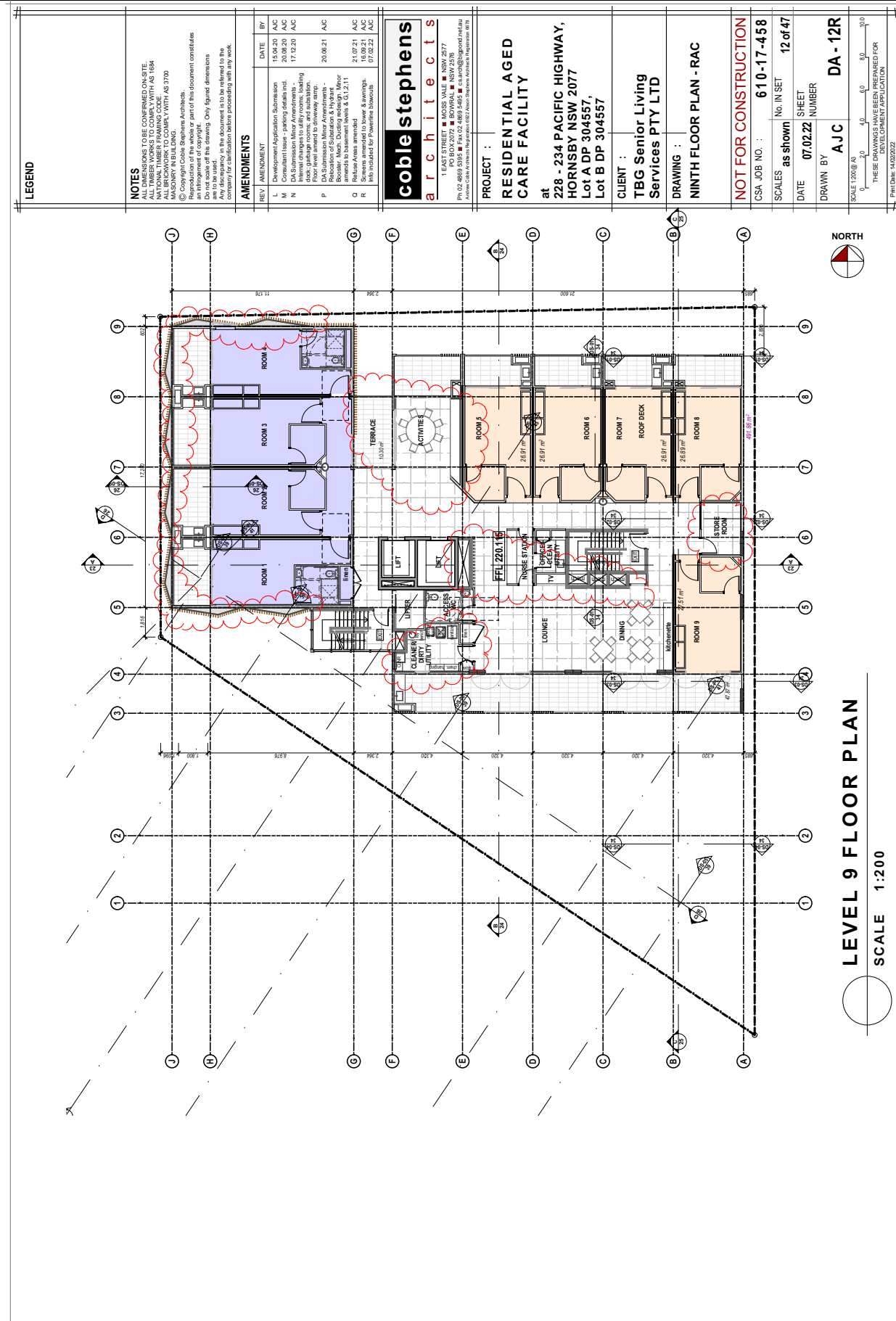
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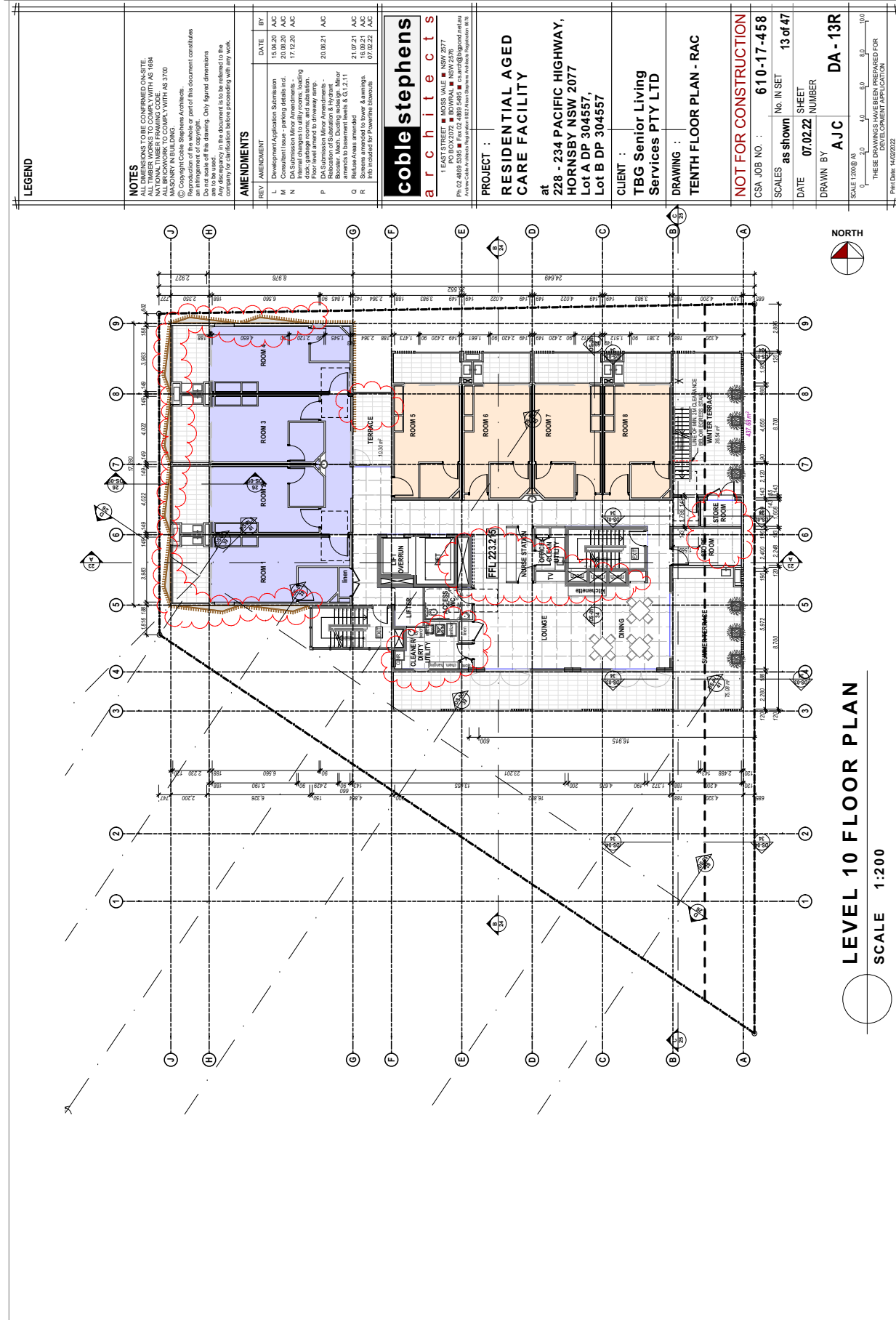
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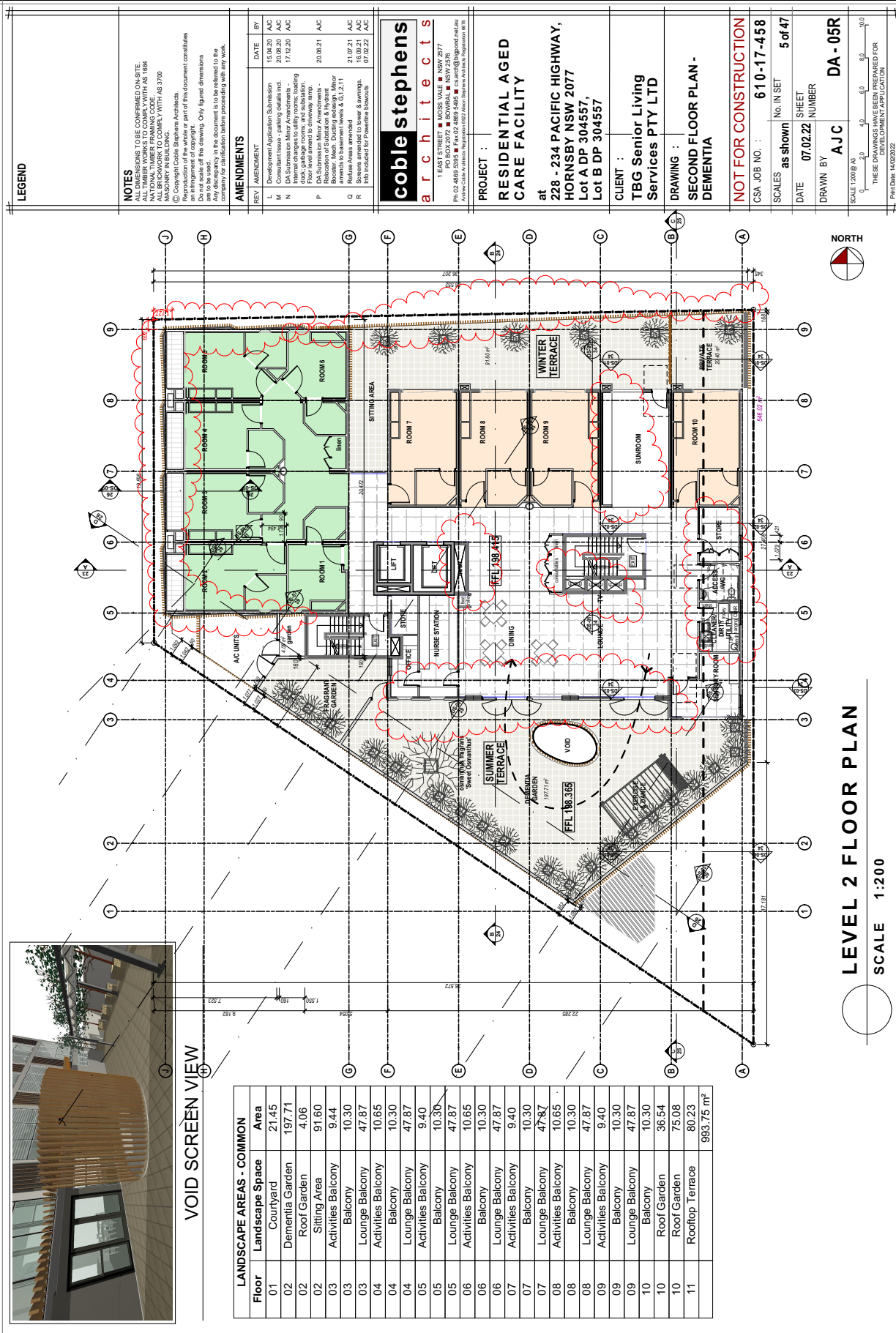


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FIGURED DIMENSIONS TO BE USED IN PREFERENCE TO SCALING | 200

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LEVEL 3 FLOOR PLAN

SCALE 1:200

NORTH



THESE DRAWINGS HAVE BEEN PREPARED
DEVELOPMENT APPLICATION

Date: 14/02/2022

ATTACHMENT 3 - ITEM 4



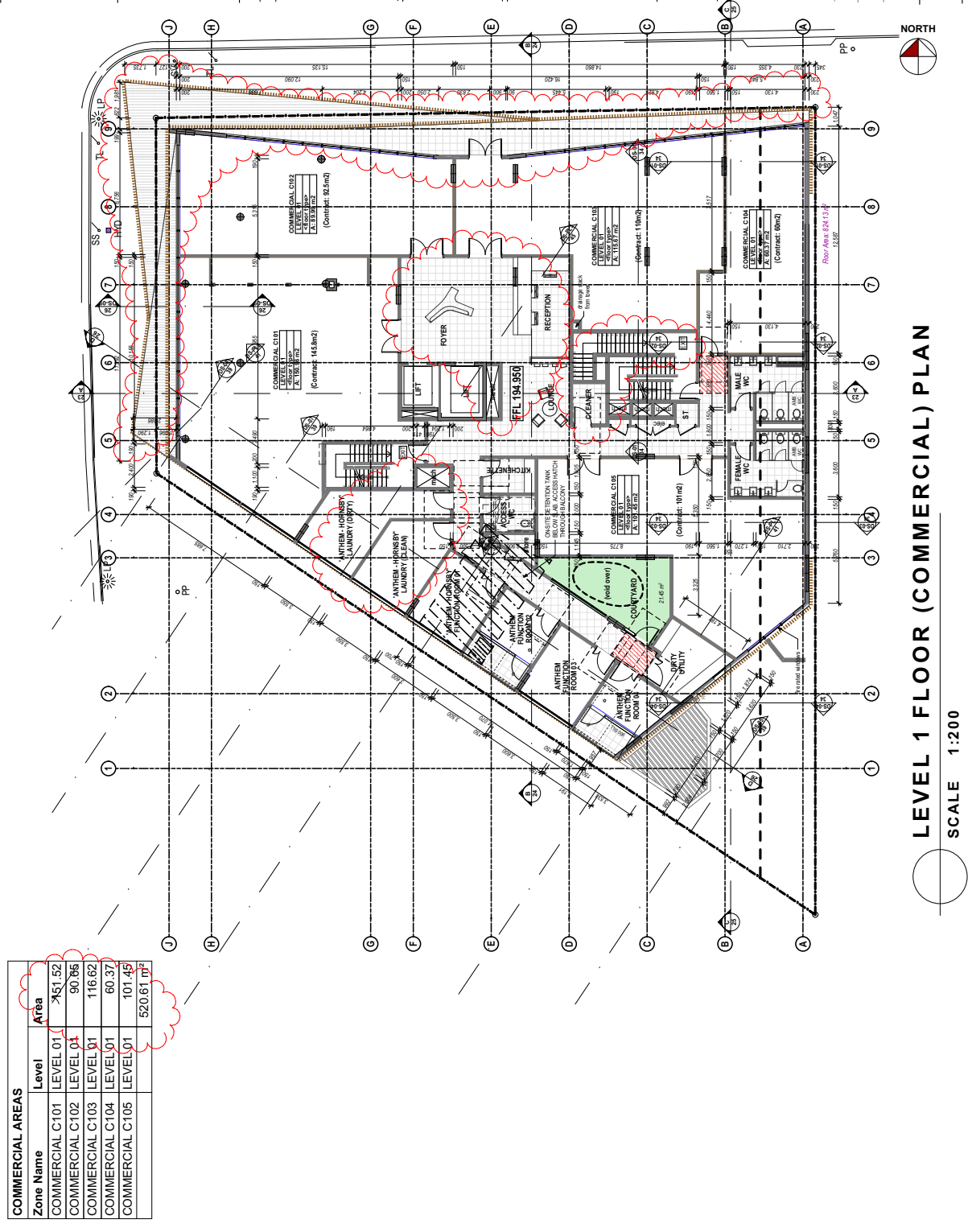
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GROUND FLOOR (RETAIL) PLAN

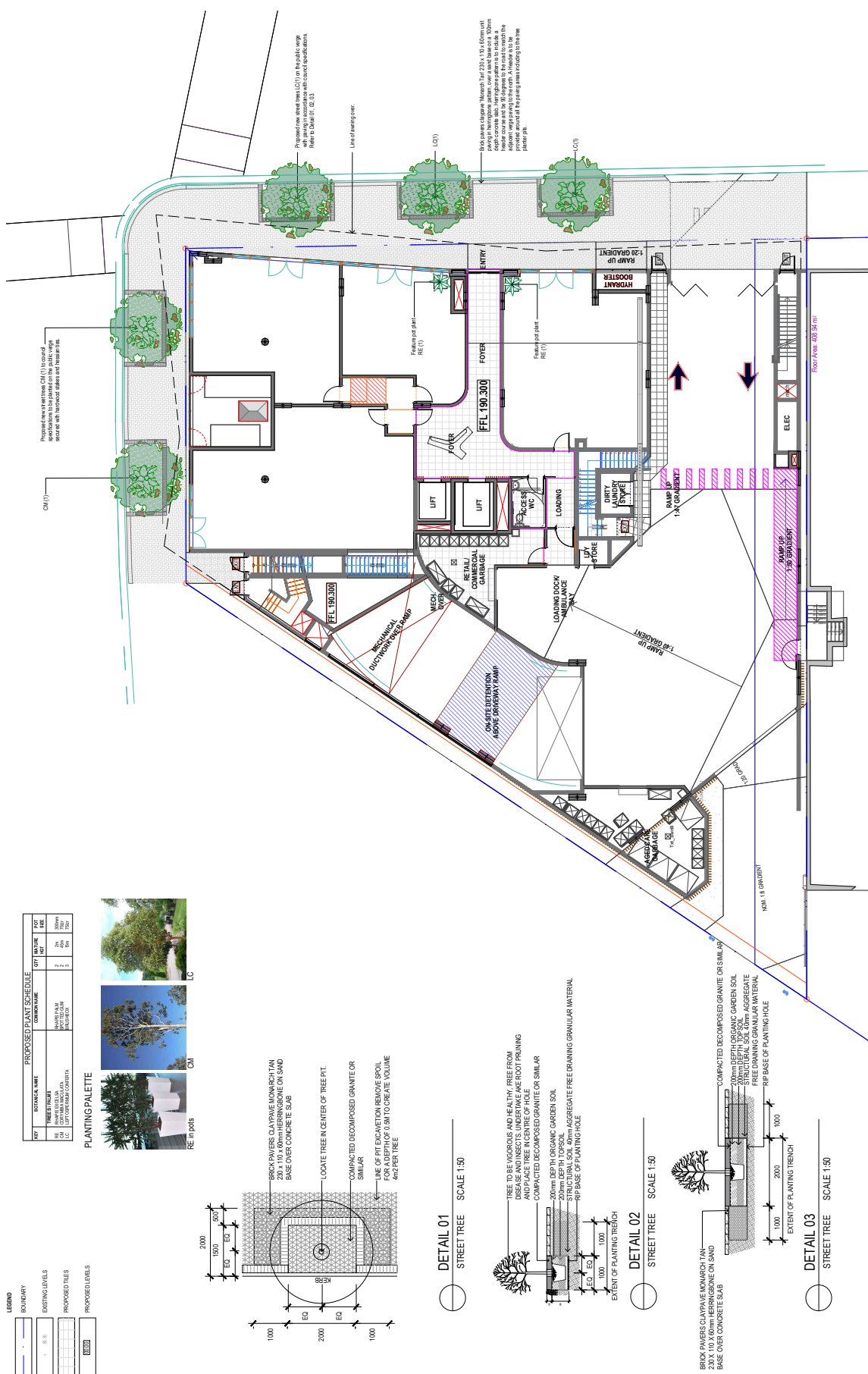
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ATTACHMENT 3 - ITEM 4





ATTACHMENT 4 - ITEM 4



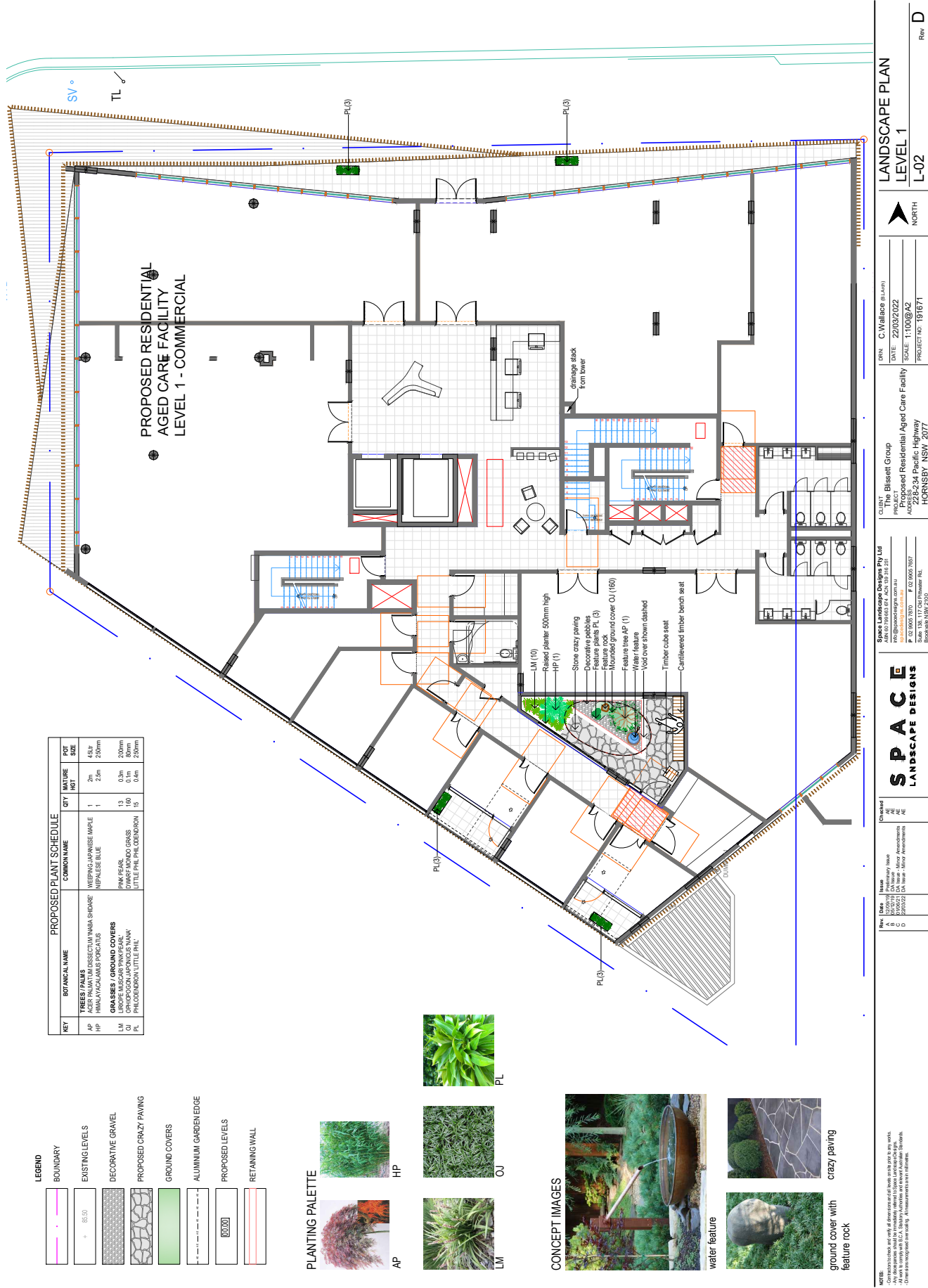
Rev.	Date	Issue	Checked
A	02/01/11	Initial Reply/Issue	ME
B	05/21/11	CAI Issue	ME
C	06/01/11	Minor Alterations	ME
D	06/05/11	CAI Issue - Minor Alterations	ME

SPACE LANDSCAPE DESIGNS
 116-118/120-122/124-126/128-130/132-134/136-138/140-142/144-146/148-150/152-154/156-158/160-162/164-166/168-170/172-174/176-178/180-182/184-186/188-190/192-194/196-198/200-202/204-206/208-210/212-214/216-218/220-222/224-226/228-230/232-234/236-238/240-242/244-246/248-250/252-254/256-258/260-262/264-266/268-270/272-274/276-278/280-282/284-286/288-290/292-294/296-298/300-302/304-306/308-310/312-314/316-318/320-322/324-326/328-330/332-334/336-338/340-342/344-346/348-350/352-354/356-358/360-362/364-366/368-370/372-374/376-378/380-382/384-386/388-390/392-394/396-398/400-402/404-406/408-410/412-414/416-418/420-422/424-426/428-430/432-434/436-438/440-442/444-446/448-450/452-454/456-458/460-462/464-466/468-470/472-474/476-478/480-482/484-486/488-490/492-494/496-498/500-502/504-506/508-510/512-514/516-518/520-522/524-526/528-530/532-534/536-538/540-542/544-546/548-550/552-554/556-558/560-562/564-566/568-570/572-574/576-578/580-582/584-586/588-590/592-594/596-598/600-602/604-606/608-610/612-614/616-618/620-622/624-626/628-630/632-634/636-638/640-642/644-646/648-650/652-654/656-658/660-662/664-666/668-670/672-674/676-678/680-682/684-686/688-690/692-694/696-698/700-702/704-706/708-710/712-714/716-718/720-722/724-726/728-730/732-734/736-738/740-742/744-746/748-750/752-754/756-758/760-762/764-766/768-770/772-774/776-778/780-782/784-786/788-790/792-794/796-798/800-802/804-806/808-810/812-814/816-818/820-822/824-826/828-830/832-834/836-838/840-842/844-846/848-850/852-854/856-858/860-862/864-866/868-870/872-874/876-878/880-882/884-886/888-890/892-894/896-898/900-902/904-906/908-910/912-914/916-918/920-922/924-926/928-930/932-934/936-938/940-942/944-946/948-950/952-954/956-958/960-962/964-966/968-970/972-974/976-978/980-982/984-986/988-990/992-994/996-998/1000-1002/1004-1006/1008-1010/1012-1014/1016-1018/1020-1022/1024-1026/1028-1030/1032-1034/1036-1038/1040-1042/1044-1046/1048-1050/1052-1054/1056-1058/1060-1062/1064-1066/1068-1070/1072-1074/1076-1078/1080-1082/1084-1086/1088-1090/1092-1094/1096-1098/1100-1102/1104-1106/1108-1110/1112-1114/1116-1118/1120-1122/1124-1126/1128-1130/1132-1134/1136-1138/1140-1142/1144-1146/1148-1150/1152-1154/1156-1158/1160-1162/1164-1166/1168-1170/1172-1174/1176-1178/1180-1182/1184-1186/1188-1190/1192-1194/1196-1198/1200-1202/1204-1206/1208-1210/1212-1214/1216-1218/1220-1222/1224-1226/1228-1230/1232-1234/1236-1238/1240-1242/1244-1246/1248-1250/1252-1254/1256-1258/1260-1262/1264-1266/1268-1270/1272-1274/1276-1278/1280-1282/1284-1286/1288-1290/1292-1294/1296-1298/1300-1302/1304-1306/1308-1310/1312-1314/1316-1318/1320-1322/1324-1326/1328-1330/1332-1334/1336-1338/1340-1342/1344-1346/1348-1350/1352-1354/1356-1358/1360-1362/1364-1366/1368-1370/1372-1374/1376-1378/1380-1382/1384-1386/1388-1390/1392-1394/1396-1398/1400-1402/1404-1406/1408-1410/1412-1414/1416-1418/1420-1422/1424-1426/1428-1430/1432-1434/1436-1438/1440-1442/1444-1446/1448-1450/1452-1454/1456-1458/1460-1462/1464-1466/1468-1470/1472-1474/1476-1478/1480-1482/1484-1486/1488-1490/1492-1494/1496-1498/1500-1502/1504-1506/1508-1510/1512-1514/1516-1518/1520-1522/1524-1526/1528-1530/1532-1534/1536-1538/1540-1542/1544-1546/1548-1550/1552-1554/1556-1558/1560-1562/1564-1566/1568-1570/1572-1574/1576-1578/1580-1582/1584-1586/1588-1590/1592-1594/1596-1598/1600-1602/1604-1606/1608-1610/1612-1614/1616-1618/1620-1622/1624-1626/1628-1630/1632-1634/1636-1638/1640-1642/1644-1646/1648-1650/1652-1654/1656-1658/1660-1662/1664-1666/1668-1670/1672-1674/1676-1678/1680-1682/1684-1686/1688-1690/1692-1694/1696-1698/1700-1702/1704-1706/1708-1710/1712-1714/1716-1718/1720-1722/1724-1726/1728-1730/1732-1734/1736-1738/1740-1742/1744-1746/1748-1750/1752-1754/1756-1758/1760-1762/1764-1766/1768-1770/1772-1774/1776-1778/1780-1782/1784-1786/1788-1790/1792-1794/1796-1798/1800-1802/1804-1806/1808-1810/1812-1814/1816-1818/1820-1822/1824-1826/1828-1830/1832-1834/1836-1838/1840-1842/1844-1846/1848-1850/1852-1854/1856-1858/1860-1862/1864-1866/1868-1870/1872-1874/1876-1878/1880-1882/1884-1886/1888-1890/1892-1894/1896-1898/1900-1902/1904-1906/1908-1910/1912-1914/1916-1918/1920-1922

CLIENT	The Blissett Group		
PROJECT	Proposed Residential Aged Care Facility		
ADDRESS	228-234 Pacific Highway		
DATE	22/03/2022	DRAWN BY	C. Wallace (B. Lavo)
SCALE	1:100@A1		
PROJECT NO.	101671		

 NORTH

LANDSCAPE PLAN
GROUND FLOOR
I-01



PROPOSED PLANT SCHEDULE				
KEY	BOTANICAL NAME	COMMON NAME	QTY	MATURE HT
AP	TRISTIS PALM	TRISTIS PALM	1	4.5m
HP	HEAVY JAPANESE MAPLE	HEAVY JAPANESE MAPLE	1	2m
LM	MAHUA ACACIA	MAHUA ACACIA	1	2.5m
OU	ORANGE MAHUA	ORANGE MAHUA	13	0.3m
PL	PHLOEDENDRON LITTLE PHIL	PHLOEDENDRON LITTLE PHIL	15	0.4m

- LEGEND**
- BOUNDARY
 - EXISTING LEVELS
 - PROPOSED CRAZY PAVING
 - GROUND COVERS
 - ALUMINUM GARDEN EDGE
 - PROPOSED LEVELS
 - RETAINING WALL



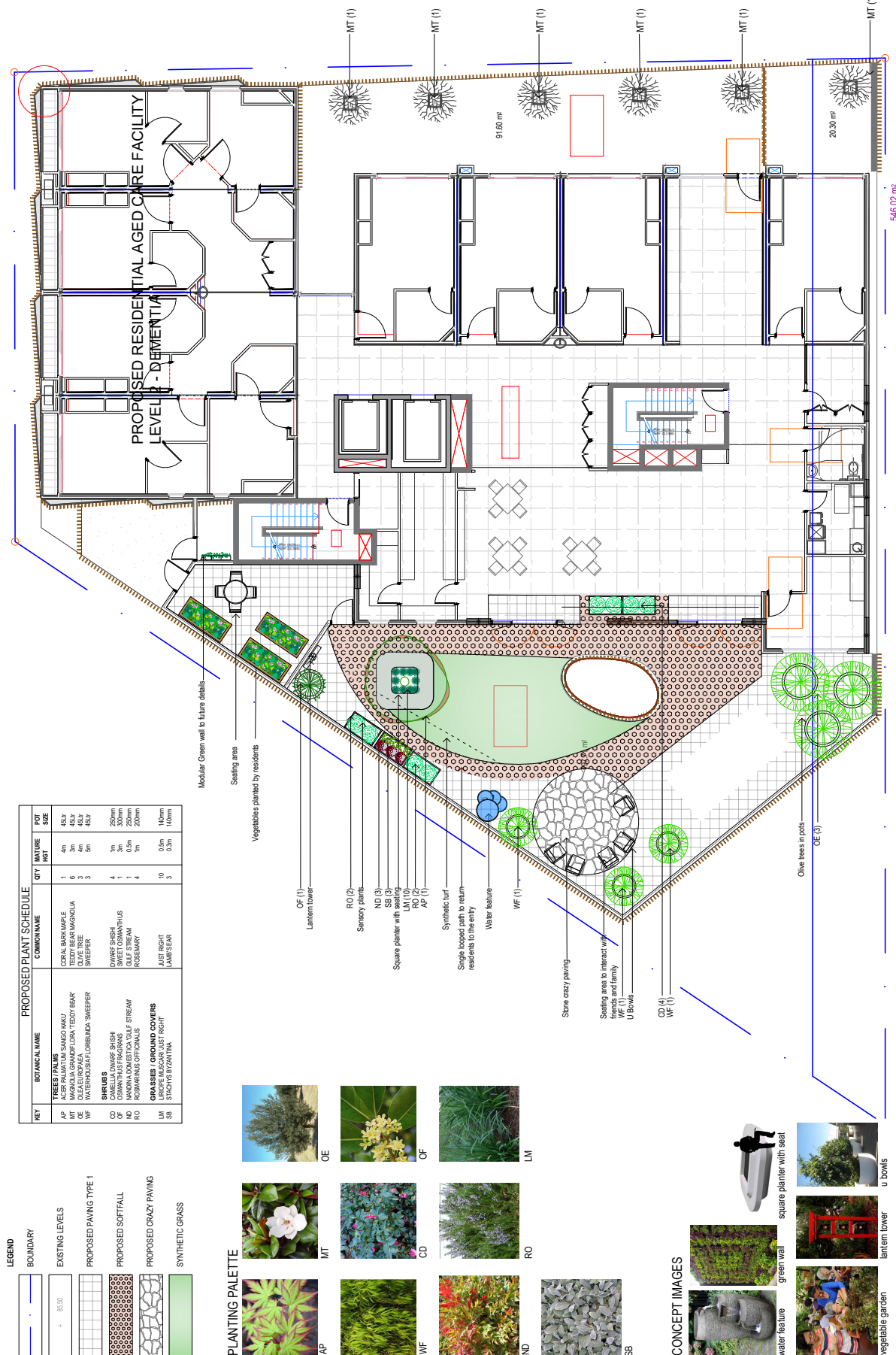
SPACELANDSCAPE DESIGNS

DATE: 22/03/2022
SCALE: 1:100 @ A2
PROJECT NO: 191671

CLIENT: The Blissat Group
PROJECT: Proposed Residential Aged Care Facility
ADDRESS: 100 Pacific Highway
HORNSBY NSW 2077

DESIGNER: C Wallace B (Landscape Architect)
DATE: 22/03/2022
SCALE: 1:100 @ A2
PROJECT NO: 191671

ATTACHMENT 4 - ITEM 4



Space Landscape Designs Pty Ltd 10/10/2021 info@spacelandscape.com.au 02 9555 1000 Suite 105, 117 Our Street, Hornsby NSW 2077	CLIENT: Blissett Group PROJECT: Proposed Residential Aged Care Facility ADDRESS: 228-234 Pacific Highway HORNSBY NSW 2077	DATE: 22/03/2022 SCALE: 1:100 @ A2 PROJECT NO: 191671	DRN: C Wallace & Associates
Rev	Rev	Rev	Rev

ATTACHMENT 4 - ITEM 4

PLANTING PALETTE



ST

LM

RE

PROPOSED PLANT SCHEDULE - LEVEL 3				
KEY	BOTANICAL NAME	COMMON NAME	QTY	POT SIZE
RE	RUPELLIA	RUPELLIA	1	450
LM	GRASSES / SUCCEULENTS	JUST RIGHT	9	250mm
ST	LIROPEMUSCARI JUST RIGHT	MOTHER IN LAWS TONGUE	2	300mm

PROPOSED PLANT SCHEDULE - LEVEL 4				
KEY	BOTANICAL NAME	COMMON NAME	QTY	POT SIZE
RE	RUPELLIA	RUPELLIA	1	450
LM	GRASSES / SUCCEULENTS	JUST RIGHT	9	250mm
ST	LIROPEMUSCARI JUST RIGHT	MOTHER IN LAWS TONGUE	2	300mm

PROPOSED PLANT SCHEDULE - LEVEL 5				
KEY	BOTANICAL NAME	COMMON NAME	QTY	POT SIZE
RE	RUPELLIA	RUPELLIA	1	450
LM	GRASSES / SUCCEULENTS	JUST RIGHT	9	250mm
ST	LIROPEMUSCARI JUST RIGHT	MOTHER IN LAWS TONGUE	2	300mm

PROPOSED PLANT SCHEDULE - LEVEL 6				
KEY	BOTANICAL NAME	COMMON NAME	QTY	POT SIZE
RE	RUPELLIA	RUPELLIA	1	450
LM	GRASSES / SUCCEULENTS	JUST RIGHT	9	250mm
ST	LIROPEMUSCARI JUST RIGHT	MOTHER IN LAWS TONGUE	2	300mm

PROPOSED PLANT SCHEDULE - LEVEL 7				
KEY	BOTANICAL NAME	COMMON NAME	QTY	POT SIZE
RE	RUPELLIA	RUPELLIA	1	450
LM	GRASSES / SUCCEULENTS	JUST RIGHT	9	250mm
ST	LIROPEMUSCARI JUST RIGHT	MOTHER IN LAWS TONGUE	2	300mm

PROPOSED PLANT SCHEDULE - LEVEL 8				
KEY	BOTANICAL NAME	COMMON NAME	QTY	POT SIZE
RE	RUPELLIA	RUPELLIA	1	450
LM	GRASSES / SUCCEULENTS	JUST RIGHT	9	250mm
ST	LIROPEMUSCARI JUST RIGHT	MOTHER IN LAWS TONGUE	2	300mm

PROPOSED PLANT SCHEDULE - LEVEL 9				
KEY	BOTANICAL NAME	COMMON NAME	QTY	POT SIZE
RE	RUPELLIA	RUPELLIA	1	450
LM	GRASSES / SUCCEULENTS	JUST RIGHT	9	250mm
ST	LIROPEMUSCARI JUST RIGHT	MOTHER IN LAWS TONGUE	2	300mm

PROPOSED PLANT SCHEDULE - LEVEL 10				
KEY	BOTANICAL NAME	COMMON NAME	QTY	POT SIZE
RE	RUPELLIA	RUPELLIA	1	450
LM	GRASSES / SUCCEULENTS	JUST RIGHT	9	250mm
ST	LIROPEMUSCARI JUST RIGHT	MOTHER IN LAWS TONGUE	2	300mm

CLIENT	The Elisett Group
PROJECT	Proposed Residential Aged Care Facility
ADDRESS	234 Pacific Highway
CITY	Hornsby NSW 2077
DATE	22/03/2022
SCALE	1:100 @ A2
PROJECT NO.	191671

SPACE LANDSCAPE DESIGN	Space Landscape Design Pty Ltd
ABN	60 605 107 070
PO BOX	6055 1070
SYDNEY	NSW 1585
TEL	02 9555 1070
WWW	www.spacelandscape.com.au

REVISIONS	Rev	Date	Issue
A	1	10/03/2022	Final Design
B	2	10/03/2022	Final Design
C	3	10/03/2022	Final Design

Rev.	Date	Issue	Checked
A	12/03/19	Preliminary issue	AE
B	03/12/19	DA issue	AE
C	01/06/21	DA issue - Minor Amendments	AE
D	22/03/22	DA issue - Minor Amendments	AE

REVISIONS	Rev	Date	Issue
A	1	10/03/2022	Final Design
B	2	10/03/2022	Final Design
C	3	10/03/2022	Final Design

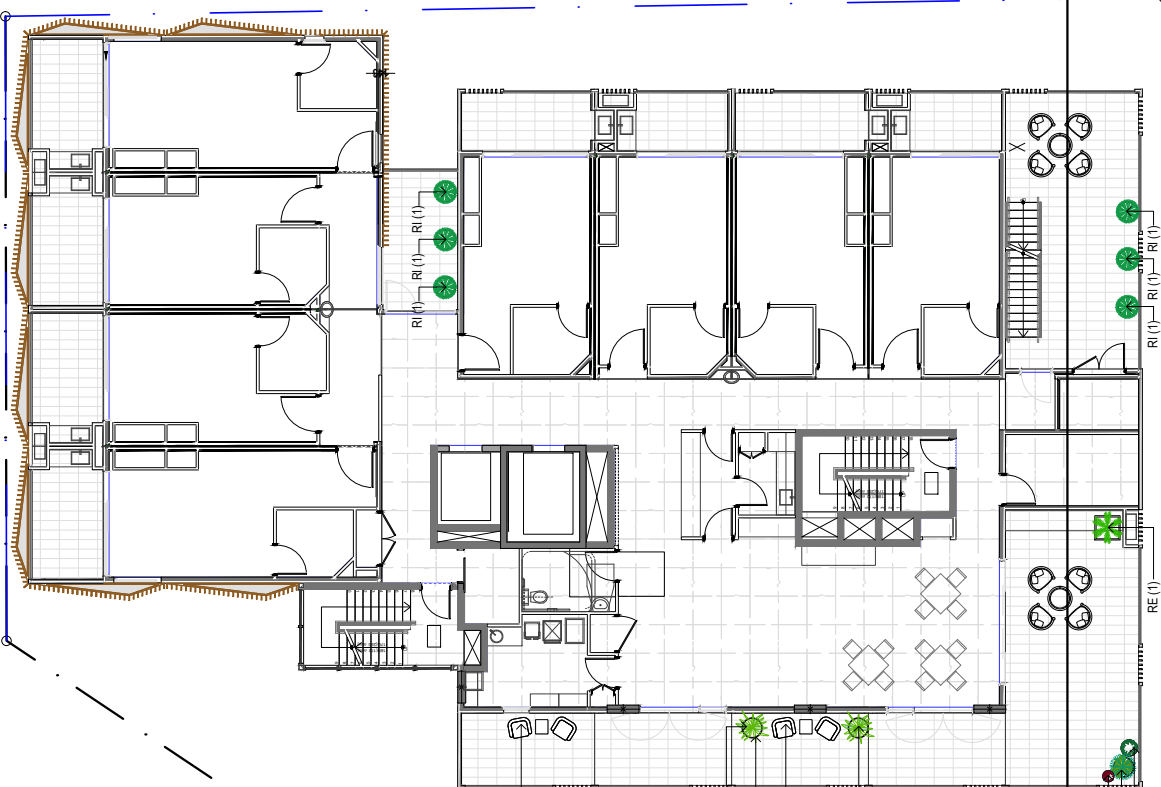
REVISIONS	Rev	Date	Issue
A	1	10/03/2022	Final Design
B	2	10/03/2022	Final Design
C	3	10/03/2022	Final Design

REVISIONS	Rev	Date	Issue
A	1	10/03/2022	Final Design
B	2	10/03/2022	Final Design
C	3	10/03/2022	Final Design

REVISIONS	Rev	Date	Issue
A	1	10/03/2022	Final Design
B	2	10/03/2022	Final Design
C	3	10/03/2022	Final Design

ATTACHMENT 4 - ITEM 4

Rev D

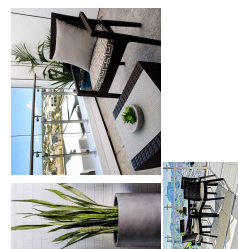


PROPOSED PLANT SCHEDULE				
KEY	BOTANICAL NAME	COMMON NAME	QTY	POT SIZE
MT	TREES / PALMS	TEDDY BEAR MAGNOLIA	1	45Ltr
RE	MAGNOLIA GRANDIFLORA 'TEDDY BEAR'	RHAPIS PALM	1	300mm
DS	GRASSES / SUCCULENTS	MAX COOK	1	250mm
ND	CRASSULA UNULATIFOLIA 'MAX COOK'	SILVER FALLS	5	140mm
RI	DICHONDRA ARGENTEA	GULF STREAM	1	250mm
ST	NANDINA DOMESTICA 'GULF STREAM'	ORIENTAL PEARL	6	300mm
	RHAPHIOLEPS INDICA 'ORIENTAL PEARL'	MOTHER IN LAWS TONGUE	2	230mm
	SANSEVIERIA TRIFASCIATA 'LAURENTII'			

LEGEND	
BOUNDARY	—
EXISTING LEVELS	— 45.00
PROPOSED TILES	—
PROPOSED LEVELS	— 45.00



CONCEPT IMAGES

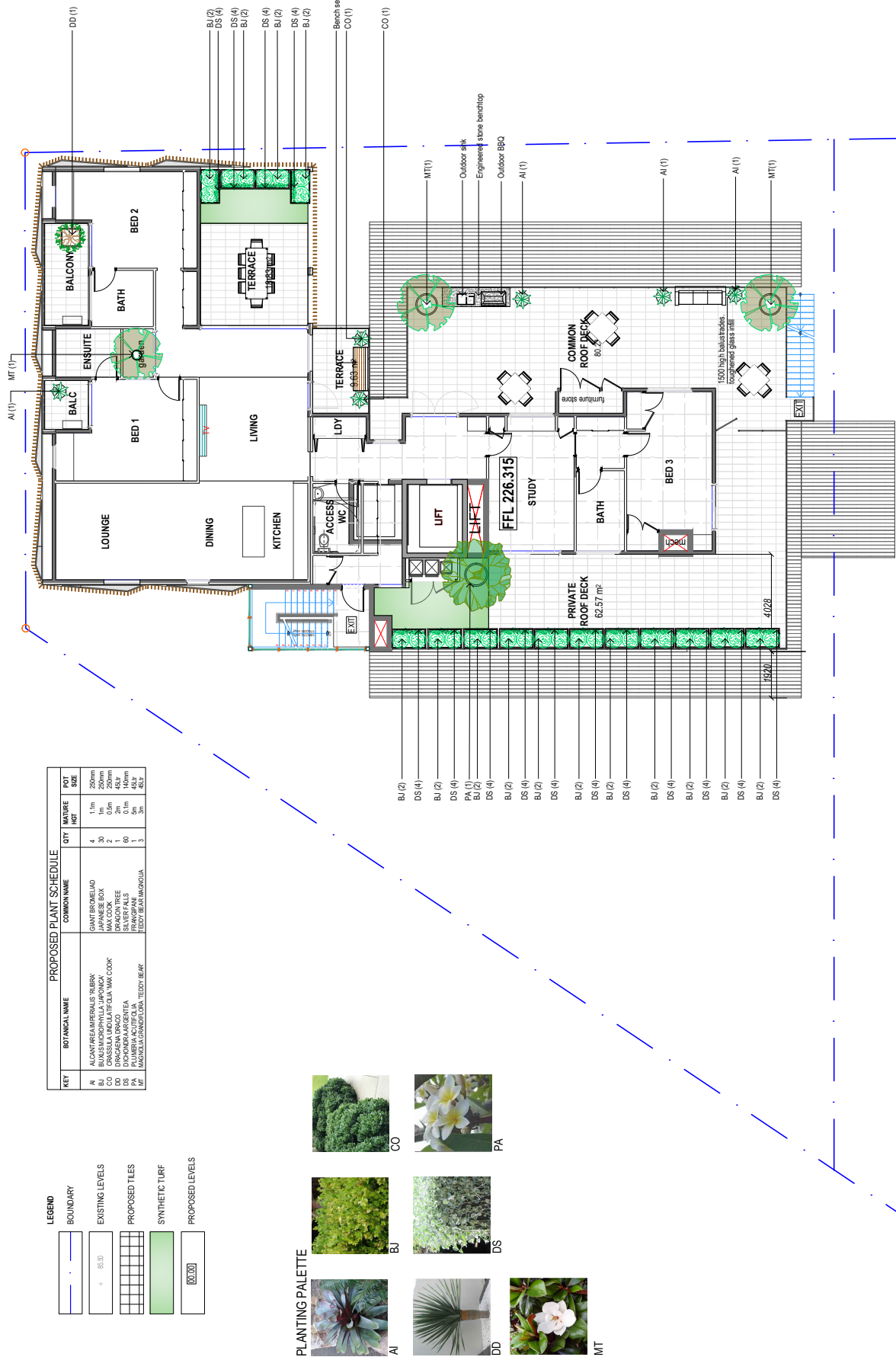


SPACELANDSCAPE DESIGNS LANDSCAPE DESIGNS		CLIENT: The Blissnet Group PROJECT: The Blissnet Residential Aged Care Facility ADDRESS: 224 Pacific Highway HORNSBY NSW 2077	DATE: 22/03/2022 SCALE: 1:100@A2 PROJECT NO: 191671	DRAWN: C. Wallace DATE: 22/03/2022 SCALE: 1:100@A2 PROJECT NO: 191671	LANDSCAPE PLAN LEVEL 10 L-05	NORTH Rev D
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NOTES:

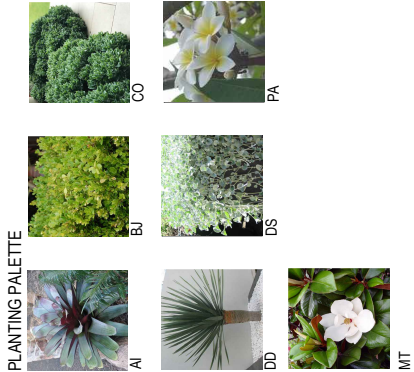
- 1. Confirm to check any way of drainage and if needed to be done by the works.
- 2. All works to comply with LGA, City of Sydney and Hornsby Shire Councils.
- 3. Dimensions are in millimetres.

ATTACHMENT 4 - ITEM 4



PROPOSED PLANT SCHEDULE				
KEY	BOTANICAL NAME	COMMON NAME	QTY	POT SIZE
AI	ALCANTHEA AMURENSIS 'TUBERA'	GIANT BROMELAD	4	250mm
BJ	BUXUS MICROPHYLLA 'JAPONICA'	JAPANESE BOX	30	1m
CO	COCAOBA VITIFOLIA 'MAGNOLIA'	COCAOBA	1	1m
DS	DRACOPIS DRACOPIS	DRAGON TREE	1	2m
PA	PALMIA ALBERTIANA	SILVER FALLS	60	400mm
MT	MAGNOLIA GRANDIFLORA 'TERRY BEAR'	TEDDY BEAR MAGNOLIA	3	400mm

LEGEND	
BOUNDARY	---
EXISTING LEVELS	+ 65.00
PROPOSED TILES	XXXXXX
SYNTHETIC TURF	XXXXXX
PROPOSED LEVELS	XXXXXX



SPACELANDSCAPE DESIGNS

Space Landscape Designs Pty Ltd
ABN 60 795 653 577 ACN 135 315 251
10/100 Pacific Highway
Hornsby NSW 2077
P 02 9069 7970 F 02 9069 7957
Email: info@spacelandscapedesigns.com.au

CLIENT
The Blissett Group
Proposed Residential Aged Care Facility
Address: 234 Pacific Highway
HORNSBY NSW 2077

DRN: C Wallace (SLA/01)
DATE: 22/03/2022
SCALE: 1:100 @ A2
PROJECT NO: 191671

LANDSCAPE PLAN
LEVEL 11
L-06

Rev E

Rev

Date

Issue

Checked

1

22/03/2022

Initial Issue

AE

2

22/03/2022

DA Issue - Minor Amendments

AE

3

22/03/2022

DA Issue - Minor Amendments

AE

NOTES:

Contractor to check and verify all dimensions and levels on site prior to any works.

All works to comply with EICA, Safety Australia and relevant Australian Standards.

Consultation required from building, fire, and other stakeholders in relation to the plan.

ATTACHMENT 4 - ITEM 4

5 DA/1379/2021 - FURTHER REPORT - CONSTRUCTION OF A DWELLING HOUSE - 99A COPELAND ROAD, BEECROFT

EXECUTIVE SUMMARY

DA No: DA/1379/2021 (Lodged on 21 December 2021)

Description: The construction of a two-storey dwelling house on Lot 121 approved under Development Application No. DA/985/2020 (two into four lot subdivision)

Property: Lot 2 DP 444486, No. 99A Copeland Road, Beecroft

Applicant: Doug Sneddon Planning Pty Ltd

Owner: Frobat Pty Limited

Estimated Value: \$931,700

Ward: C Ward

- Development Application Number DA/1379/2021 was reported to the Hornsby Local Planning Panel (the Panel) for determination on 29 June 2022.
- The Panel deferred determination of the application to confirm that the opinion of the applicant's arborist regarding the structural soundness of tree No. 40 was consistent with the independent assessment of Council's Tree Management Team. In addition, the Panel noted that the supplied landscape plan was erroneous and inconsistent and indicated trees 39 and 41, amongst other trees, as removed.
- The applicant has amended the proposed landscape plan to address the matters raised by the Panel.
- It is recommended that the application be approved.

RECOMMENDATION

THAT Development Application No. DA/1379/2021 for the construction of a two-storey dwelling house at Lot 2 DP 444486, No. 99A Copeland Road, Beecroft be approved as a deferred commencement pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979* subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP47/22.

BACKGROUND

On 29 June 2022, DA/1379/2021 was reported to the Hornsby Local Planning Panel (the Panel) for determination. At that meeting, the Panel resolved to defer determination of the application and required the Applicant to submit additional information and for Council's arborist to provide an independent assessment of the health and viability of tree No. 40.

The additional matters to be addressed were outlined in the minutes of the meeting as follows:

The Panel considered the matters raised in the written submissions and by the speakers at the meeting including bulk and scale; visual impact, removal of trees and impacts on flora and fauna, landscaping requirements, solar panels, privacy and amenity impacts.

The Panel heard from the applicant's arborist, who identified that Tree 40 was structurally compromised and of low useful life expectancy, failing the visual tree assessment. It was further identified that Tree 40 was not a native species and would be offset by four native trees on site. A 100-200 litre pot size was identified as suitable to instate mature specimens of approximately 3 metres in height to provide initial screening and amenity.

The Panel noted that the opinion of the applicant's arborist has not yet been corroborated by Council arborists.

The Panel resolved to defer the item in order to receive the independent advice of Council's arborist regarding the ability to retain tree 40 having particular regards to safety.

The Panel also noted that the supplied landscape plan was inconsistent and may show trees 39 and 41 as removed. The Panel requests that an amended landscape plan be provided prior to any determination.

Upon receipt of the above information the panel would determine the matter electronically at the July LPP meeting.

The response to the deferment items is discussed in the report.

This report is a supplementary report and is to be read in conjunction with LPP Report No. LPP35/22 in relation to DA/1379/2021 which was considered by the Panel at its meeting held on 29 June 2022.

1. RESPONSE TO REASONS FOR DEFERRAL

On 29 June 2022, DA/1379/2021 was reported to the Panel for determination. At that meeting, the Panel resolved to defer determination of the DA and required the Applicant to submit additional information and for Council's arborist to provide an independent assessment of the health and viability of tree No. 40. The reasons for deferral are addressed in detail below.

1.1 Tree No. 40

The Panel heard from the applicant's arborist, who identified that Tree 40 was structurally compromised and of low useful life expectancy, failing the visual tree assessment. The Panel noted that the opinion of the applicant's arborist has not yet been corroborated by Council arborists. The Panel resolved to defer the item in order to receive the independent advice of Council's arborist regarding the ability to retain tree 40 having particular regards to safety.

The application proposes the removal of 1 tree to facilitate the construction of the dwelling house, identified as Tree No. 40 (*Parrotiopsis jacquemontiana*) as shown in Figure 1 below. The submitted Arboricultural Impact Assessment has assessed the tree as having a 'low' significance rating and a short, safe and useful life expectancy (SULE) rating. The addendum letter prepared by Advanced

Treescape Consulting dated 11 March 2022 indicates that tree No. 40 failed the Visual Tree Assessment (VTA) and determined that the tree “poses an unacceptably high level of risk and is not suitable to be considered for retention”.

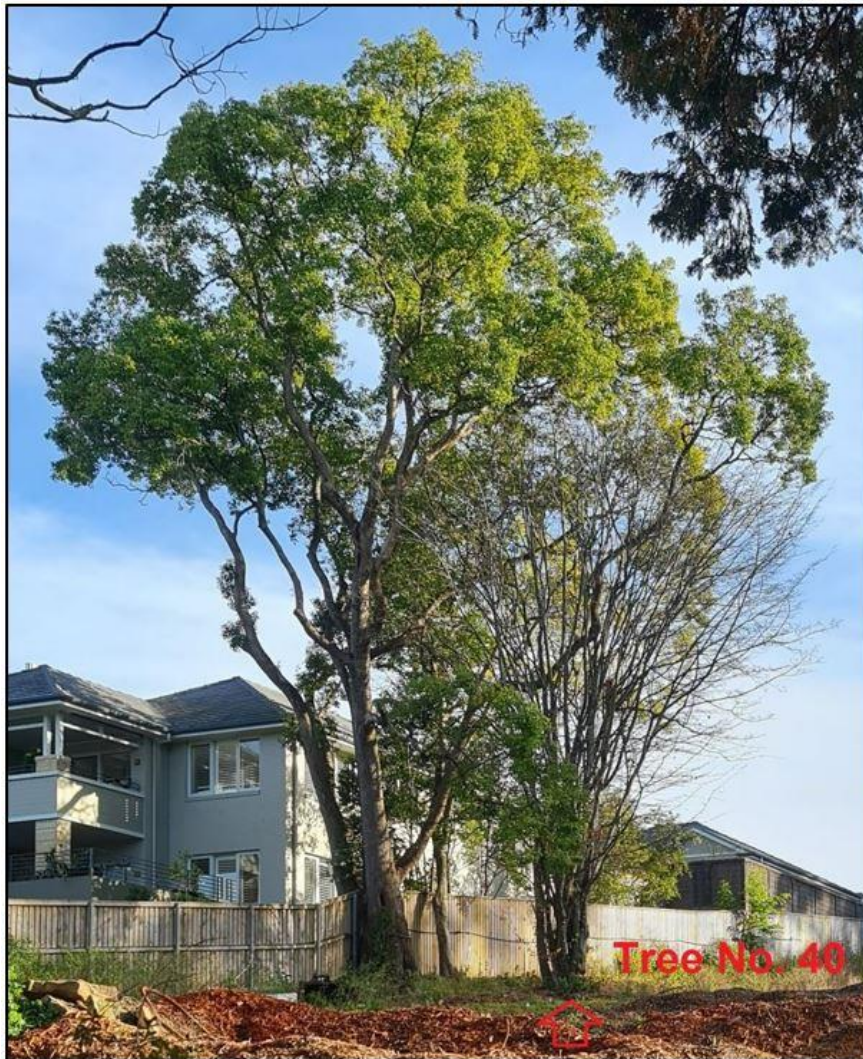


Figure 1 - Tree No. 40

In addressing the Panel's resolution, Council's arborist provided independent advice on 30 June 2022 regarding the retention of tree No. 40, excerpted as follows:

As discussed, Tree Management agrees with the findings of the Arborist report dated 8/12/2021 by Advanced Treescape Consulting recommending the removal of T40.

The tree is in a poor condition and structurally compromised. For these reasons, the tree was permitted for removal in the provided tree comments.

Council would not recommend the retention of this tree even with a relocation of the proposed dwelling.

In summary, Council considers that tree No. 40 is in poor condition, structurally compromised and is unsuitable for retention, irrespective of any relocation of the development footprint to be outside of the Tree Protection Zone (TPZ) of the tree.

1.2 Replacement Planting

It was further identified that Tree 40 was not a native species and would be offset by four native trees on site. A 100-200 litre pot size was identified as suitable to instate mature specimens of approximately 3 metres in height to provide initial screening and amenity.

To ensure that the 4 replacement canopy trees and the Pittosporum 'hedge' along the southern and western boundaries achieve a height of 3 metres at the time of planting, Council has amended condition of consent No. 38 within Schedule 1 of this report to require the use of 100-200 litre pot sizes with these trees to be planted at a height of 3 metres.

1.3 Amended Landscape Plan

The Panel also noted that the supplied landscape plan was inconsistent and may show trees 39 and 41 as removed. The Panel requests that an amended landscape plan be provided prior to any determination.

In response to the Panel's concern, the applicant has provided an amended Landscape Plan prepared by Aspect Designs dated 8 July 2022 which rectifies any inconsistencies and identifies tree No. 40 as the only tree proposed to be removed.

The amended Landscape Plan has addressed the Panel's original concerns. Accordingly, Council has amended condition No. 2 within Schedule 1 of this report to substitute the original Landscape Plan with the amended Landscape Plan dated 8 July 2022.

CONCLUSION

The application proposes construction of a two-storey dwelling house on Lot 121 approved under DA/985/2020 (Torrens title subdivision of two lots into four).

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 11 submissions during the public notification period. The matters raised have been addressed in report LPP/35/22 (copy attached). Further, the Panel at its public meeting held on 29 June 2022, considered the matters raised in the written submissions and by the speakers at the meeting including bulk and scale; visual impact, removal of trees and impacts on flora and fauna, landscaping requirements, solar panels, privacy and amenity impacts.

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

The reasons for this decision are:

- The proposed development complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, vegetation, heritage, 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 Thomas Dales.

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

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.   Locality Plan
2.   Assessment Report
3.   Architectural Plans
4.   Landcape Plan
5.   Survey Plan
6.   Tree Location Plan

File Reference: DA/1379/2021
Document Number: D08445418

SCHEDULE 1**1. Deferred Commencement**

- a) Pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, this consent does not operate until a registered plan of subdivision from the NSW Land Registry Services (NSW LRS) creating the proposed lot is submitted to Council.
- b) Such information must be submitted within **36 months** of the date of this notice.

Upon Council's written satisfaction of the above information, the following conditions of development consent apply:

GENERAL CONDITIONS

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

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

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

2. Approved Plans and Supporting Documentation

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

Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
03, Rev 07	Site Plan	Fyffe Design	10.3.22	
04, Rev 07	Ground Floor Plan	Fyffe Design	10.3.22	
06, Rev 07	First Floor Plan	Fyffe Design	10.3.22	
08, Rev 07	Roof Plan	Fyffe Design	10.3.22	
09, Rev 07	East, West & North Elevations	Fyffe Design	10.3.22	
10, Rev 07	South Elevation & Sections	Fyffe Design	10.3.22	
12, Rev 07	External Finishes	Fyffe Design	10.3.22	
A3, Rev B	Landscape Plan	Aspect Designs	8.7.22	

Supporting Documents

Document Title	Prepared by	Dated	Council Reference
Arboricultural Impact Assessment	Advanced Treescape	8.12.21	D08320953

Document Title	Prepared by	Dated	Council Reference
	Consulting		
BASIX Certificate No. 1251913S	Building & Energy Consultants Australia	25.10.21	D08320949
Waste Management Plan	Doug Sneddon Planning P/L	1.1.21	D08320939

3. Removal of Existing Trees

- a) This development consent permits the removal of one tree numbered T40 as identified in the Arboricultural Impact Assessment prepared by Advanced Treescape Consulting dated 8/12/2021 TRIM D08320953.
- b) No consent is granted for the removal of the trees numbered T39 and T41 as these trees contribute to the established landscape amenity of the area/streetscape.

4. Amendment of Plans

- a) To comply with Councils requirement in terms of privacy, the approved plans are to be amended as follows:
 - i) The sill height of the window to the first-floor level sitting room on the western elevation is to be increased to a minimum height of 1.5 metres above the finished floor level.
- b) These amended plans must be submitted with the application for the Construction Certificate.

5. Construction Certificate

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

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

6. 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.

7. Building Code of Australia

Detailed plans, specifications and supporting information is required to be submitted to the certifying authority detailing how the proposed building work achieves compliance with the National Construction Code - Building Code of Australia. All building work must be carried out in accordance with the requirements of the National Construction Code - Building Code of Australia.

8. 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.

9. 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.

10. Sydney Water – Approval

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

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

11. Stormwater Drainage

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

- a) Connected to an existing inter-allotment drainage system.

12. On Site Stormwater Detention

An on-site stormwater detention system must be designed by a chartered civil engineer and constructed in accordance with the following requirements:

- a) Have a capacity of not less than 5 cubic metres, and a maximum discharge (when full) of 8 litres per second.
- b) Have a surcharge/inspection grate located directly above the outlet.

- c) Discharge from the detention system must be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
- d) Be in accordance with the stormwater design plans prepared by C & M Consulting Engineers dated Jan 2022.
- e) Not be constructed in a location that would impact upon the visual or recreational amenity of residents.

13. Internal Driveway/Vehicular Areas

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

- a) The driveway be a rigid pavement.
- b) The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent.

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*.
 - iii) Have an on-site effluent disposal system approved under the *Local Government Act 1993*.

17. 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.

18. Garbage Receptacle

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

19. Installation of Tree Protection Measures

- a) Trees to be retained and numbered T39 and T41 as identified on the Tree Location Plan prepared by must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:
 - i) For the duration of demolition works, in accordance with the Tree Protection Plan in the Arboricultural Impact Assessment, prepared by Advanced Treescape Consulting dated 8/12/2021.
 - ii) For the duration of construction works, in accordance with Tree Protection Plan in the Arboricultural Impact Assessment, prepared by Advanced Treescape Consulting dated 8/12/2021.

- b) Tree protection fencing for the trees to be retained must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with Australian Standard AS4687-2007 Temporary fencing and hoardings.
- c) The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates and liquids from entering the tree protection zone.
- d) The circumference of the trunk(s) must be wrapped in hessian material to provide cushioning for the installation of timber planks.
- e) Timber planks (50 x100mm) must be spaced at 100mm intervals and must be attached using adjustable ratchet straps.
- f) All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.
- g) Where wood-chip mulch is permitted by Council instead of tree protection fencing within the tree protection zones, the wood-chip must be covered with a layer of geotextile fabric and rumble boards.

REQUIREMENTS DURING CONSTRUCTION

20. 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.

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. 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.

23. 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.

24. Landfill

- a) Prior to fill material being imported to the site, a Waste Classification Certificate shall be obtained from a suitably qualified environmental consultant confirming the fill wholly consists of Virgin Excavated Natural Material (VENM) as defined in Schedule

1 of the *Protection of the Environment Operations Act 1997* or a material approved under the NSW Environment Protection Authority's Resource Recovery Orders and Exemptions.

- b) The required Waste Classification Certificate must be obtained by the Principal Contractor prior to fill being imported to the site and made available to Council at its request.

25. 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.

26. Unexpected Finds

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

27. 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.

28. Waste Management

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

29. 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.

30. 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 retained on the approved plans.

31. Maintaining Tree Protection Measures

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

32. 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 50mm.
- b) Where the building footprint enters or transects the Tree Protection Zones of trees to be retained sensitive construction techniques in the form of screw pilings or piers, cantilevered or suspended slab design must be employed to create a 100mm clearance above existing soil grade.
- c) Approved excavations within the Tree Protection Zone of trees to be retained not associated with installation of services must be undertaken as follows:
 - i) Excavations for the construction and/or installation of the house/deck/driveway/piers in the Tree Protection Zone of trees to be retained on the approved plans must be supervised by the project arborist for the first 1.000 meter undertaken manually to locate roots and allow for pruning.
- d) To minimise impacts within the Tree Protection Zone (TPZ) of trees retained on the approved plans, the installation of services must be undertaken as follows:
 - i) The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.
 - ii) The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
 - iii) For manually excavated trenches the AQF 5 project arborist must designate roots to be retained. Manual excavation may include the use of pneumatic and hydraulic tools.
- e) Where scaffolding is required, ground protection must be installed beneath the scaffolding in the following order:
 - i) Installation of a 100mm deep layer of woodchip.
 - ii) Installation of geotextile fabric ground covering.
 - iii) Installation of scaffold boarding above the woodchip and geotextile fabric.

33. 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.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

34. Fulfilment of BASIX Commitments

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

35. 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.

36. Retaining Walls

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

37. Final Tree Certification

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

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

38. Completion of Landscaping

- a) A certificate must be submitted to the PCA by a practicing landscape architect, horticulturalist or person with similar qualifications and experience certifying that all required landscaping works have been satisfactorily completed in accordance with the approved landscape plans.
- b) The 4 replacement canopy trees (*Rough Barked Apple*, *Coastal Banksia's*, and *Water Gum*) and the *Pittosporum* 'hedge' along the southern and western boundaries are to achieve a height of 3 metres at the time of planting. 100-200 litre pot sizes are to be utilised for these trees.

Note: Advice on suitable species for landscaping can be obtained from Council's planting guide 'Indigenous Plants for the Bushland Shire', available at www.hornsby.nsw.gov.au.

39. Creation of Easements

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

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

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

40. Works as Executed Plan

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for the completed on-site detention system.

41. Asbestos Clearance Certificate

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

- 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 (Biodiversity and Conservation) 2021* and the *Environmental Planning and Assessment Act 1979*.

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

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

Note: A tree is defined as a long lived, woody perennial plant with one or relatively few main stems with the potential to grow to a height greater than three metres (3m). (HDGP 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.safework.nsw.gov.au

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

ITEM 5



LOCALITY PLAN

DA/1379/2021

No. 99A COPELAND ROAD, BEECROFT

ATTACHMENT 1 - ITEM 5

LPP Report No. LPP35/22
Local Planning Panel
Date of Meeting: 29/06/2022

2 DA/1379/2021 - CONSTRUCTION OF A DWELLING HOUSE - 99A COPELAND ROAD, BEECROFT

EXECUTIVE SUMMARY

DA No: DA/1379/2021 (Lodged on 21 December 2021)

Description: The construction of a two-storey dwelling house on Lot 121 approved under Development Application No. DA/985/2020 (two into four lot subdivision)

Property: Lot 2 DP 444486, No. 99A Copeland Road, Beecroft

Applicant: Doug Sneddon Planning

Owner: Frobat Pty Limited

Estimated Value: \$931,700

Ward: C

- The application involves the construction of a two-storey dwelling house on Lot 121 approved under Development Consent No. DA/985/2020 for Torrens title subdivision of 2 lots into 4 lots.
- The proposal generally complies with the Hornsby Local Environmental Plan 2013 and the Hornsby Development Control Plan 2013.
- A total of 11 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be approved as a deferred commencement consent.

RECOMMENDATION

THAT Development Application No. DA/1379/2021 for the construction of a two-storey dwelling house at Lot 2 DP 444486, No. 99A Copeland Road, Beecroft be approved as a deferred commencement pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979* subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP35/22.

Local Planning Panel meeting

29 June 2022

Hornsby Shire Council

Report No. LPP35/22 Page 2

BACKGROUNDSite History

On 28 April 2021, Development Application No. DA/985/2020 was approved by the Hornsby Local Planning Panel for the demolition of structures, Torrens title subdivision of two allotments into four lots and construction of a dwelling house at Lots 1 and 2 at Nos. 99 and 99A Copeland Road Beecroft.

On 28 June 2021, Council approved a Section 4.55(1A) application seeking modifications to the approved subdivision involving the rearrangement of the staging of the consent as follows:

- Stage 1 - The removal of 25 trees, the demolition of the dwelling house, in-ground swimming pool and carport, boundary adjustment between existing Lots 1 and 2 DP 444486, the construction of a Right of Carriageway over proposed Lot 11.
- Stage 2 - Torrens title subdivision of proposed Lot 12 into 3 lots and the construction of a Right of Carriageway over proposed Lots 121, 122 and 123.
- Stage 3 - Construction of a two-storey dwelling house on proposed Lot 11.

At the time of writing, a Subdivision Certificate has not been issued for the approved subdivision and the subdivision is not registered with the NSW Land Registry Services.

Application History

On 20 January 2022, Council requested amendments to the Stormwater Plan and the submission of Swept Path Diagram demonstrating that vehicles can enter and exit the proposed garage in a forward direction.

On 20 January 2022, Council's Tree Management Team requested a re-design of the development/ additional information to reduce impacts to tree Nos. T39 and T41. On 3 February 2022, Council received additional information in the form of an addendum letter from the engaged arborist clarifying the impacts to tree Nos. 39 and 41.

On 7 February 2022, Council's Heritage Planner requested amended plans/ additional information to address concerns with the excessive bulk and scale of the proposed dwelling.

To ensure the undertaking of a comprehensive assessment of the building height, Council requested the provision of a Roof Plan with roof RL's overlayed with the Survey Plan contours.

Between 14 February and 22 February 2022, the requested plans were received by Council. The bundle included a letter prepared by Doug Sneddon Planning Pty Ltd justifying a number of the requested amendments, including building height.

On 8 March 2022, Council's heritage assessment of the amended plans determined that the proposal as amended was acceptable on heritage grounds, subject to the submission of an amended landscape plan indicating additional evergreen screen planting on the southwestern corner and additional materials and finishes detail of the proposed retaining walls and fencing.

Between 12 March and 16 March 2022, Council received the requested plans/documentation.

SITE

The existing site is currently described as Lot 2 DP 444486 (No. 99A Copeland Road). The legal description of the site will be revised upon registration of the subdivision with NSW Land Registry Services.

Local Planning Panel meeting

29 June 2022

Hornsby Shire Council

Report No. LPP35/22 Page 3

The subject site (approved Lot 121) has an area of 1038.8m² (903.2m² ex. ROW) and is located on the northern side of Copeland Road Beecroft. The site is currently vacant of improvements with the exception of a recently constructed carriageway to the eastern side.

The site experiences a fall of 5 metres to the south-eastern corner, representing an average gradient of 11%.

The adjoining sites to the east at Nos. 101 and 101A Copeland Road contain 1 and 2 storey dwelling houses. It is noted that No. 101 Copeland Road also contains a swimming pool within the rear setback. The adjoining site to the west at Nos. 95-97 Copeland Road contains a Seniors Living development in the form of 2 x two-storey independent living unit buildings with basement car parking and a row of single and two storey villas including 2 detached dwellings and 4 semi-detached dwellings.

Copeland Road is a local street with a low-density streetscape largely comprising a mixture of single and two storey residential buildings. Within close proximity to the subject site along Copeland Road includes a childcare centre, the Beecroft Bowling and Recreation Club to the east and Pennant Hills Golf Course to the west.

The site is located approximately 800m west of Beecroft Station and 600m to Beecroft Public School.

The site is not bushfire or flood prone.

The site is not burdened by any easements or restrictions. Notwithstanding, a 4m wide and variable width Right of Carriageway has been approved to the eastern side of the site under DA/985/2020 (not yet registered with NSW Land Registry Services).

The site does not contain a heritage listed item; however the site is located within the C2 Beecroft – Cheltenham Heritage Conservation Area.

PROPOSAL

The application proposes the construction of a two-storey dwelling house on Lot 121 approved under DA/985/2020 (two into four lot subdivision).

At the time of writing, the subdivision is not registered with the NSW Land Registry Services.

The ground floor level of the dwelling house would include a media room, laundry, powder room, scullery, kitchen, dining room, living room, study, entry, lounge, guest bedroom with ensuite, storage room, alfresco and a semi-detached two car garage outbuilding.

The first-floor level would contain three bedrooms with one ensuite, master bedroom with ensuite, sitting room and bathroom.

A Landscape Plan has been submitted indicating the planting of 4 large canopy trees and a variety of small trees/ shrubs to the perimeter of the site.

The application would necessitate the removal of 1 tree to facilitate the construction of the dwelling house.

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

Local Planning Panel meeting

29 June 2022

Hornsby Shire Council

Report No. LPP35/22 Page 4

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 site is zoned R2 Low density residential pursuant to the Land Use Table of 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. It is considered that the proposed development would provide for the growing housing needs of the community and meets the objectives of the R2 Low density residential zone.

2.1.2 Height of Buildings

A submission has been received raising concerns that insufficient detail has been provided to determine the height of the dwelling.

Clause 4.3 of the HLEP provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The proposed dwelling house would have a maximum height of 8.21m and complies with this provision.

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In addressing the submission, to ensure the undertaking of a comprehensive assessment of the building height, Council's assessment requested the provision of a Roof Plan with roof RL's overlayed with the Survey Plan contours. The proponent subsequently submitted an amended Site Plan (Issue 7) addressing Council's request.

2.1.3 Heritage Conservation

A submission has been received raising concerns that the excessive bulk and scale of the proposed dwelling house would be unsympathetic to the HCA.

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire. The site does not contain a heritage listed item; however, the site is located within the C2 Beecroft-Cheltenham Heritage Conservation Area (HCA) under Schedule 5 of the HLEP.

Council's heritage assessment requested amended plans to address concerns with the bulk and scale of the proposed dwelling in comparison to the approved dwelling on the front lot. With the information available to Council as part of the original suite of plans / documents, it was also considered that views of the site and proposed dwelling would be visible in the street from the western side of the site, due to the adjoining driveway, vegetation removal, and side boundary setbacks. To address Council's heritage concerns, amendments were requested to address the concerns as follows:

- Reduction in the height and scale of the dwelling so that it is not easily visible in the streetscape. It was suggested that this could be achieved by the avoidance of excessive fill and incorporating a split-level design to enable the dwelling to better relate to the slope of the site. Greater articulation and stepping of the second storey further to the rear to reduce the bulk/height of the southern elevation was also requested.
- Additional evergreen screen planting was requested to be provided on the southern and western boundaries of the property.
- The elevated clothesline was requested to be relocated or evergreen screen planting provided on the southwestern corner of the site.
- Details of the appearance of any proposed retaining walls and fencing on the southern and western boundaries were requested.
- In the instance that the amendments did not sufficiently reduce the visibility of the dwelling from the streetscape and surrounding areas, the materials and finishes were requested to be amended to clean faced brick in accordance with HDCP Part 9.3.1 and Table 9.3.6 (a) requirements.

In response, a letter prepared by Doug Sneddon Planning Pty Ltd sought to justify the heritage impacts of the dwelling, in addition to an amended Landscape Plan (Revision A).

Council's heritage assessment accepts the justification provided in the addendum letter and the amended Landscape Plan for the following reasons:

- Most of the dwelling would be screened from the streetscape by existing retained vegetation (western boundary), the proposed additional screen planting on the southwestern corner of the site, and the approved two storey dwelling on the street front allotment.
- The proposed addition of 4 additional *Pittosporum tenuifolium* evergreen screen plants on the southern and western boundaries would address the sightline concerns raised.

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- The adjoining approved Seniors housing development to the west, comprises a substantial amount of render and as the proposed dwelling is setback, from the streetscape the render proposed on review is accepted in this circumstance.

Council's heritage assessment raises no concerns to the application as amended.

2.1.4 Earthworks

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

The site experiences a fall of 5 metres to the south-eastern corner, representing an average gradient of 11%.

The development would require excavation of a maximum depth of 1m beneath the north-western corner of the proposed dwelling house and a maximum fill of 1.3m at the south-western corner of the dwelling. The proposed earthworks are a consequence of the natural contours of the land to provide for a level building platform and open space suitable for residential development.

It is considered that the adjacent properties would be unaffected by the proposal with regard to stormwater flows and soil stability.

Conditions have been recommended requiring that prior to fill material being imported to the site, a Waste Classification Certificate shall be obtained from a suitably qualified environmental consultant confirming the fill wholly consists of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997*.

Subject to compliance with the recommended conditions, the proposal is considered acceptable in this regard.

2.2 Adopted State Environmental Planning Policies

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

- State Environmental Planning Policy (Primary Production) 2021
- State Environmental Planning Policy (Resources and Energy) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Industry and Employment) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 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 December 2021, this development application is considered to have been made prior to the commencement date of the SEPPs. The existing legislation in force at time of lodgement of the development application, prevails to be extent of any inconsistency.

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

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 residential purposes. It is not likely that the site has experienced any significant contamination, and further assessment under SEPP 55 is not required.

2.4 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 development and is considered to be satisfactory.

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.

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

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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 3.1 Dwelling Houses			
Control	Proposal	Requirement	Complies
Site Area	1,038.8m ² (903.2m ² ex. ROW)	N/A	N/A
Dwelling House height	8.21m	8.5m	Yes
No. storeys	2 storeys	max. 2 + attic	Yes
Site Coverage	33.6%	40%	Yes
Floor Area	430m ²	430m ²	Yes
Outbuilding Area (Garage)	48.5m ²	100m ²	Yes
Setbacks			
- Front - Dwelling (south)	2.5m	900mm	Yes
- Front – Garage (south)	1.1m	900mm	Yes
- Side (west)			
Ground Floor	3m	900mm	Yes
First Floor	3m	1.5m	Yes
- Side (east)			
Ground Floor	11.76m	900mm	Yes
First Floor	19.75m	1.5m	Yes
- Rear (north)			
Ground Floor	4.8m	3m	Yes

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<i>First Floor</i>	9.3m	8m	Yes
Landscaped Area (% of lot size)	47%	40%	Yes
Private Open Space			
- <i>minimum area</i>	>24m ²	24m ²	Yes
- <i>minimum dimension</i>	>3m	3m	Yes
Car Parking	2 spaces	2 spaces	Yes

As detailed in the above table, the proposed development complies with the prescriptive requirements within Section 3.1 of the HDCP. A discussion on compliance with relevant desired outcomes and Sections 1 and 9 of the HDCP is provided below.

2.8.1 Transport and Parking

The subject site would benefit from recent improvements to the site servicing the approved subdivision, comprising the common vehicle turning area to the rear of the subject allotment and a passing bay provided adjacent to the Copeland Road frontage. Council's engineering assessment is satisfied that vehicles egressing the garage of the proposed dwelling house would be able to manoeuvre and egress from the site in a forward direction in accordance with Australian Standard AS2890.

The application proposes the provision of two car parking spaces within a semi-detached garage to the eastern side of the proposed dwelling house and complies with the HDCP with regard to on-site parking.

The proposal complies with the transport and parking provisions of the HDCP and is deemed acceptable in this regard.

2.8.2 Landscaping

The submitted Landscape Plan (Revision A) indicates the planting of 4 large canopy trees including:

- 1x Rough Barked Apple trees with a mature height of 15m.
- 2x Coastal Banksia trees with a mature height of 12m.
- 1x Water Gum with a mature height of 7m.

A total of 105 groundcovers, trees and shrubs around the perimeter of the site.

The proposal meets the desired outcomes of the landscaping section of the HDCP.

2.8.3 Sunlight Access

The HDCP stipulates that on 22 June, 50 percent of the required principal private open space on any adjoining property should receive a minimum of 3 hours of unobstructed sunlight access between 9am and 3pm.

The submitted Shadow Diagrams prepared by Brooks Projects Architects demonstrates that the overshadowing resulting from the proposed dwelling house would predominantly fall within:

- The frontage of the adjoining property to the west at No. 95-97 Copeland Road.

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- The accessway and landscaped area within the eastern portion of the subject site.
- The principal private open space area (terrace) of the approved dwelling house on the front (Lot 11).

It is calculated by Council that the principal private space area of the approved dwelling house on the front lot (Lot 11) would receive 3 hours of unobstructed sunlight access between 9AM to 12PM on 22 June.

The application has demonstrated that on 22 June all adjoining properties would receive a minimum of 3 hours of unobstructed sunlight access between 9AM and 3PM.

The proposal complies with the prescriptive requirements of the HDCP with regard to sunlight access.

2.8.4 Privacy

A submission has been received raising concerns that the windows to the western side of the proposed dwelling house would facilitate overlooking into the adjacent property at Nos. 95-97 Copeland Road. It is suggested that highlight windows be used on the western elevation of the proposed dwelling.

In addressing the submission, it is acknowledged that the first-floor level of the proposed dwelling house would be setback between 3m to 4.5m to the western side boundary. The proposed first floor level bedrooms to the western elevation would be serviced by full sized windows with sill heights less than 1.5m above finished floor level. The HDCP states that windows servicing elevated bedrooms would not require the implementation of privacy measures/ screens and accordingly no privacy concerns are raised to the proposed first floor bedrooms.

Notwithstanding, the west-facing window servicing the first-floor level sitting room (W27) would have a sill height of 1.3m above finished floor level and would facilitate overlooking into bedrooms and living room areas within the residential development at the adjoining property at Nos. 95-97 Copeland Road. In general, it is considered that living spaces such as sitting rooms experience greater intensity of use compared to bedrooms and therefore require additional consideration with regard to privacy impacts. To ensure that privacy to the adjoining property is maintained, a condition has been recommended in Schedule 1 requiring the provision of amended plans prior to the issue of the Construction Certificate demonstrating an increase in the sill height of the first-floor level sitting room window at the western elevation to be a minimum of 1.5m.

The proposal complies with the privacy requirements of the HDCP, subject to the imposition of the abovementioned conditions.

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.

Section 2.8 of the Contributions Plan provides exemptions to development contributions required by this Plan, including for subdivision development that has been the subject of a condition requiring monetary contributions under a previous development consent. It is noted that the subject site is an allotment arising from a land subdivision approved under DA/985/2020. A condition of consent under DA/985/2020 required monetary payment of a Section 7.11 Contribution and accordingly the subject development is exempt from the development contributions ordinarily required under the Section 7.12 Contributions Plan 2019-2029.

3. ENVIRONMENTAL IMPACTS

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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

Submissions have been received raising tree and vegetation impact concerns, summarised as follows:

- The design of the development should be amended to allow for the retention of tree Nos. 39, 40 and 41.
- Tree No. 40 is listed as an unknown species in the Arborist Report.
- Loss of habitat for fauna.

The application has been supported by an Arboricultural Impact Assessment (AIA) prepared by Advanced Treescape Consulting dated 8 December 2021. Addendum letters have also been received by Advanced Treescape Consulting providing an identification of the species of tree No. 40 (dated 11 March 2022) and clarifying impacts to tree Nos. 39 and 41 (dated 27 January 2022).

The application proposes the removal of 1 tree to facilitate the construction of the dwelling house, identified as tree No. 40 (*Parrotiopsis jacquemontiana*).

Tree No. 40 achieves a height of 12m with a Tree Protection Zone (TPZ) of 12m. The submitted AIA has assessed the tree as having a 'low' significance rating and a short, safe and useful life expectancy (SULE) rating. Given that tree No. 40 is located to the westernmost portion of the site, Council's tree assessment has taken into consideration whether the tree could be retained through the relocation of the building footprint in an eastward direction. As the tree has a TPZ of 12m, it is estimated that the dwelling in its current form would be required to be shifted approximately 10.5m to the east to facilitate the retention of tree No. 40 and would not be a feasible solution. Given that the proposal complies with the setback and floor area requirements of the HDCP, on balance it is determined that the retention of the proposed positioning of the dwelling is acceptable, and the removal of the 'low' value tree is deemed appropriate in this instance.

As discussed under Section 2.8.2 of this report, to compensate for tree removal, the submitted Landscape Plan (Revision A) indicates the planting of 4 large canopy trees and a variety of small trees/ shrubs to the perimeter of the site.

The application proposes the retention of all other trees on the subject site and adjoining sites, including tree Nos. 39 and 41, identified as follows:

- Tree No. 39 is identified within the Arboricultural Impact Assessment as a Jacaranda tree with a height of 14m, a TPZ of 3.6m and a 'medium' significance rating.
- Tree No. 41 is identified within the Arboricultural Impact Assessment as a Camphor Laurel tree with a height of 25m, a TPZ of 9.6m and a 'low' significance rating.

Council's original tree assessment requested a re-design of the development to reduce impacts to tree Nos. 39 and 41. In response, Council received additional information in the form of an addendum letter from Advanced Treescape Consulting dated 27 January 2022 clarifying the impacts to tree Nos. 39 and 41 (dated 27 January 2022). It is noted that the applicant has not provided amended plans to address Council's re-design request. The addendum letter is summarised as follows:

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- The addendum letter clarifies that the entire TPZ of tree No. 39 is not impacted by the proposed development.
- The addendum letter clarifies that half of the TPZ of tree No. 40 would be located to the south of the proposed dwelling. If this section of residence is constructed on piers and beam with a suspended slab, there would be an acceptable impact on this tree and will reduce the intrusion in TPZ to around 12% from 25% as originally calculated in the Arborist Report.

Council's tree assessment agrees with the addendum letter and concurs that only tree No. 40 would be removed to facilitate the proposed development.

In addressing the submission, application proposes to replace one tree 12m tall tree with 4 trees capable of achieving mature heights between 7m to 15m. It is acknowledged that a total of 105 groundcovers, trees and shrubs are proposed to be planted in accordance with the submitted Landscape Plan. It is considered that the proposal would be of a positive outcome with regard to landscaping and fauna habitat on the site.

The proposal is deemed acceptable with regard to the tree and vegetation preservation measures of the HDCP.

3.1.2 Stormwater Management

The application proposes to drain the stormwater collected by the proposed development to the approved inter-allotment stormwater drainage system beneath the recently constructed accessway to Council's drainage system along Copeland Road.

Council's stormwater management assessment raises no concerns to the proposed method of stormwater disposal, subject to recommended conditions in Schedule 1.

3.2 Built Environment

3.2.1 Built Form

The proposed built form is consistent with the dwellings on adjoining properties in terms of height design and materials

3.2.2 Traffic

At the time of subdivision, the traffic generation from this additional lot was considered and deemed acceptable and within the capacity of the road network. The proposal is for a single dwelling only and does not intensify the traffic generation from that previously assessed under DA/985/2020.

3.3 Social Impacts

The residential development would improve housing choice in the locality by providing a range of household 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.

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.

3.5 Deferred Commencement

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Given that the allotment subject to this application is yet to be registered with NSW Land Registry Services (LRS), a deferred commencement condition has been recommended in Schedule 1 indicating that the consent does not operate until evidence that a registered plan of subdivision from the LRS creating the proposed lot is submitted to Council.

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 is not identified as bushfire prone or flood prone land and is not burdened by any easements or restrictions. The proposal has demonstrated the ability to avoid the removal significant vegetation and provides a dwelling design that is appropriate for the locality and heritage conservation area. The 11% gradient of the site is suitable for residential development and provides ample amenity to adjacent properties.

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 23 December 2021 and 24 January 2022 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 11 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.

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NOTIFICATION PLAN

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

Eleven submissions have been received objecting to the development, generally on the following grounds:

- The design of the development should be amended to allow for the retention of tree Nos. 39, 40 and 41.
- Tree No. 40 is listed as an unknown species in the Arborist Report.
- Glare from proposed solar panels would disturb residents at Nos. 95-97 Copeland Road. It is suggested that non-reflective solar panels be installed.
- The excessive bulk and scale of the proposed dwelling house is unsympathetic to the HCA.
- The adjacent property at Nos. 95-97 Copeland Road would be able to overlook the western side of the proposed dwelling house. It is suggested that highlight windows be used on the western elevation of the proposed dwelling.
- Insufficient detail has been provided to determine the height of the dwelling and the positioning of A/C units and exhaust outlets.
- Loss of fauna habitat.
- The proximity of the dwelling house to the western side boundary.

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- The recent dumping of wood chips has increased the natural ground level and may increase the eventual height of the building.

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 Glare From Solar Panels

A submission has been received raising concerns that glare from proposed solar panels would disturb residents at Nos. 95-97 Copeland Road. It is suggested that non-reflective solar panels be installed.

In addressing the submission, it is noted that solar panels are indicated on the western (side) and northern (rear) portions of the roof. Section 2.41(4) of State Environmental Planning Policy (Transport and Infrastructure) 2021 provides that roof mounted solar panels constitute exempt development in heritage conservation areas when not visible from the adjoining road. As discussed under Section 2.1.3 of this report, the development would not be visible from Copeland Road and the solar panels would be capable of meeting the exempt provisions of the SEPP.

Given that the solar panels are exempt development, the inclusion of the solar panels on the submitted plans are indicative only and are not subject to this application.

5.1.2 Western Setback

A submission has been received raising concerns that the proximity of the dwelling house to the western side boundary is insufficient.

In addressing this submission, it is noted that the HDCP provides that the minimum side boundary setback is to be 900mm. The proposed dwelling house would be setback between 3m to 4m from the western side boundary and complies with the HDCP in this regard. The proposed dwelling house would be screened by existing and proposed vegetation along the western boundary and it is considered that the proposed development adequately setback from the adjoining residential development.

5.1.3 Recent Earthworks Resulting in Increase in Building Height

A submission has been received raising concerns that the wood chips have recently been placed onto the site and have increased the natural ground level. Concerns are raised that this may increase the eventual height of the building.

In addressing this submission, Council's Lidar contour maps have confirmed that the site contours have not been altered between 2010 to 2019. Council's assessment of the height of the proposed dwelling house has been formulated using the existing site contours based on a Survey Plan prepared by Stephen Thorne & Associates dated 11 April 2014. Accordingly, the recent earthworks on the site would not result in any increase in the eventual height of the building.

5.1.4 Positioning of A/C Units & Exhaust Outlets

A submission has been received raising concerns that insufficient detail has been provided on the plans to determine the location of air conditioning units and exhaust outlets.

In addressing this submission, the positioning of air conditioning units and exhaust outlets are not matters for consideration in Council's assessment of the application under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. Notwithstanding, to ensure that noise and emissions emanating from any air conditioning units and exhaust outlets are in keeping with expectations for residential areas, conditions have been recommended in Schedule 1 in this regard.

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The conditions include that the level of total continuous noise emanating from operation of air conditioning units (measured for at least 15 minutes) must not exceed the background level by more than 5dB(A) when measured at all property boundaries and that any kitchen exhaust system be designed and installed to effectively prevent air pollution in accordance with the *Protection of the Environment Operations Act 1997*.

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 construction of a two-storey dwelling house on Lot 121 approved under DA/985/2020 (Torrens title subdivision of two lots into four).

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

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

The reasons for this decision are:

- The proposed development complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, vegetation, overshadowing, heritage, 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 Thomas Dales.

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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. Survey Plan
5. Tree Location Plan

File Reference: DA/1379/2021
Document Number: D08410975

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ATTACHMENT 2 - ITEM 5

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SCHEDULE 1**1. Deferred Commencement**

- a) Pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, this consent does not operate until a registered plan of subdivision from the NSW Land Registry Services (NSW LRS) creating the proposed lot is submitted to Council.
- b) Such information must be submitted within **36 months** of the date of this notice.

Upon Council's written satisfaction of the above information, the following conditions of development consent apply:

GENERAL CONDITIONS

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

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

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

2. Approved Plans and Supporting Documentation

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

Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
03, Rev 07	Site Plan	Fyffe Design	10.3.22	
04, Rev 07	Ground Floor Plan	Fyffe Design	10.3.22	
06, Rev 07	First Floor Plan	Fyffe Design	10.3.22	
08, Rev 07	Roof Plan	Fyffe Design	10.3.22	
09, Rev 07	East, West & North Elevations	Fyffe Design	10.3.22	
10, Rev 07	South Elevation & Sections	Fyffe Design	10.3.22	
12, Rev 07	External Finishes	Fyffe Design	10.3.22	
A3, Rev A	Landscape Plan	Aspect Designs	15.3.22	

Supporting Documents

Document Title	Prepared by	Dated	Council Reference
Arboricultural Impact Assessment	Advanced Treescape Consulting	8.12.21	D08320953

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Document Title	Prepared by	Dated	Council Reference
BASIX Certificate No. 1251913S	Building & Energy Consultants Australia	25.10.21	D08320949
Waste Management Plan	Doug Sneddon Planning P/L	1.1.21	D08320939

3. Removal of Existing Trees

- a) This development consent permits the removal of one tree numbered T40 as identified in the Arboricultural Impact Assessment prepared by Advanced Treescape Consulting dated 8/12/2021 TRIM D08320953.
- b) No consent is granted for the removal of the trees numbered T39 and T41 as these trees contribute to the established landscape amenity of the area/streetscape.

4. Amendment of Plans

- a) To comply with Councils requirement in terms of privacy, the approved plans are to be amended as follows:
 - i) The sill height of the window to the first-floor level sitting room on the western elevation is to be increased to a minimum height of 1.5 metres above the finished floor level.
- b) These amended plans must be submitted with the application for the Construction Certificate.

5. Construction Certificate

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

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**6. 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.

7. Building Code of Australia

Detailed plans, specifications and supporting information is required to be submitted to the certifying authority detailing how the proposed building work achieves compliance with the National Construction Code - Building Code of Australia. All building work must be carried out in accordance with the requirements of the National Construction Code - Building Code of Australia.

8. Contract of Insurance (Residential Building Work)

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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.

9. 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.

10. Sydney Water – Approval

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

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

11. Stormwater Drainage

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

- a) Connected to an existing inter-allotment drainage system.

12. On Site Stormwater Detention

An on-site stormwater detention system must be designed by a chartered civil engineer and constructed in accordance with the following requirements:

- a) Have a capacity of not less than 5 cubic metres, and a maximum discharge (when full) of 8 litres per second.
- b) Have a surcharge/inspection grate located directly above the outlet.
- c) Discharge from the detention system must be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice

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bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.

- d) Be in accordance with the stormwater design plans prepared by C & M Consulting Engineers dated Jan 2022.
- e) Not be constructed in a location that would impact upon the visual or recreational amenity of residents.

13. Internal Driveway/Vehicular Areas

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

- a) The driveway be a rigid pavement.
- b) The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

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

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- 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*.

17. 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.

18. Garbage Receptacle

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

19. Installation of Tree Protection Measures

- a) Trees to be retained and numbered T39 and T41 as identified on the Tree Location Plan prepared by must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:
 - i) For the duration of demolition works, in accordance with the Tree Protection Plan in the Arboricultural Impact Assessment, prepared by Advanced Treescape Consulting dated 8/12/2021.
 - ii) For the duration of construction works, in accordance with Tree Protection Plan in the Arboricultural Impact Assessment, prepared by Advanced Treescape Consulting dated 8/12/2021.
- b) Tree protection fencing for the trees to be retained must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with Australian Standard AS4687-2007 Temporary fencing and hoardings.

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- c) The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates and liquids from entering the tree protection zone.
- d) The circumference of the trunk(s) must be wrapped in hessian material to provide cushioning for the installation of timber planks.
- e) Timber planks (50 x100mm) must be spaced at 100mm intervals and must be attached using adjustable ratchet straps.
- f) All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.
- g) Where wood-chip mulch is permitted by Council instead of tree protection fencing within the tree protection zones, the wood-chip must be covered with a layer of geotextile fabric and rumble boards.

REQUIREMENTS DURING CONSTRUCTION
20. 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.

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. 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.

23. 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.

24. Landfill

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

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Hornsby Shire Council

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- b) The required Waste Classification Certificate must be obtained by the Principal Contractor prior to fill being imported to the site and made available to Council at its request.

25. 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.

26. Unexpected Finds

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

27. 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.

28. Waste Management

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

29. 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

30. 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 retained on the approved plans.

31. Maintaining Tree Protection Measures

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

32. 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 50mm.
- b) Where the building footprint enters or transects the Tree Protection Zones of trees to be retained sensitive construction techniques in the form of screw pilings or piers, cantilevered or suspended slab design must be employed to create a 100mm clearance above existing soil grade.
- c) Approved excavations within the Tree Protection Zone of trees to be retained not associated with installation of services must be undertaken as follows:
 - i) Excavations for the construction and/or installation of the house/deck/driveway/piers in the Tree Protection Zone of trees to be retained on the approved plans must be supervised by the project arborist for the first 1.000 meter undertaken manually to locate roots and allow for pruning.
- d) To minimise impacts within the Tree Protection Zone (TPZ) of trees retained on the approved plans, the installation of services must be undertaken as follows:
 - i) The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.
 - ii) The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
 - iii) For manually excavated trenches the AQF 5 project arborist must designate roots to be retained. Manual excavation may include the use of pneumatic and hydraulic tools.
- e) Where scaffolding is required, ground protection must be installed beneath the scaffolding in the following order:
 - i) Installation of a 100mm deep layer of woodchip.
 - ii) Installation of geotextile fabric ground covering.
 - iii) Installation of scaffold boarding above the woodchip and geotextile fabric.

33. 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.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

34. Fulfilment of BASIX Commitments

Local Planning Panel meeting

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Hornsby Shire Council

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

35. 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.

36. Retaining Walls

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

37. Final Tree Certification

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

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

38. Completion of Landscaping

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

Note: Advice on suitable species for landscaping can be obtained from Council's planting guide 'Indigenous Plants for the Bushland Shire', available at www.hornsby.nsw.gov.au.

39. Creation of Easements

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

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

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with pipe sizes and grades. Any variations to the approved plans must be shown in red on the "works-as-executed" plan and supported by calculations;

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

40. Works as Executed Plan

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for the completed on-site detention system.

41. Asbestos Clearance Certificate

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

- 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

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

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

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

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

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

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

Local Planning Panel meeting

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DRAWING No.	DESCRIPTION
-------------	-------------

DA Calculations	SITE AREA	903m ²
	PROPOSED GFA	428.63m ²
	ALLOWABLE GFA	430m ²
GFA Calculations	PATIO	7.80
	GROUND FLOOR AREA	217.44
	FIRST FLOOR AREA	173.26
	AFRESCO	30.13
		428.63 m²
SITE COVERAGE	GARAGE	48.75
	GROUND FLOOR AREA	224.90
		273.65 m²

SITE COVERAGE	
GARAGE	48.75
GROUND FLOOR AREA	224.90
	273.65 m²

MENT 3

ATTACHMENT 3 - ITEM 5

bda



Full Member
No. 1672 - 14

FYFFE DESIGN

residential and building design
w. www.fyffedesign.com.au | e. info@fyffedesign.com.au | p. 02 9534 3600
55/ 254 New Line Road Dural

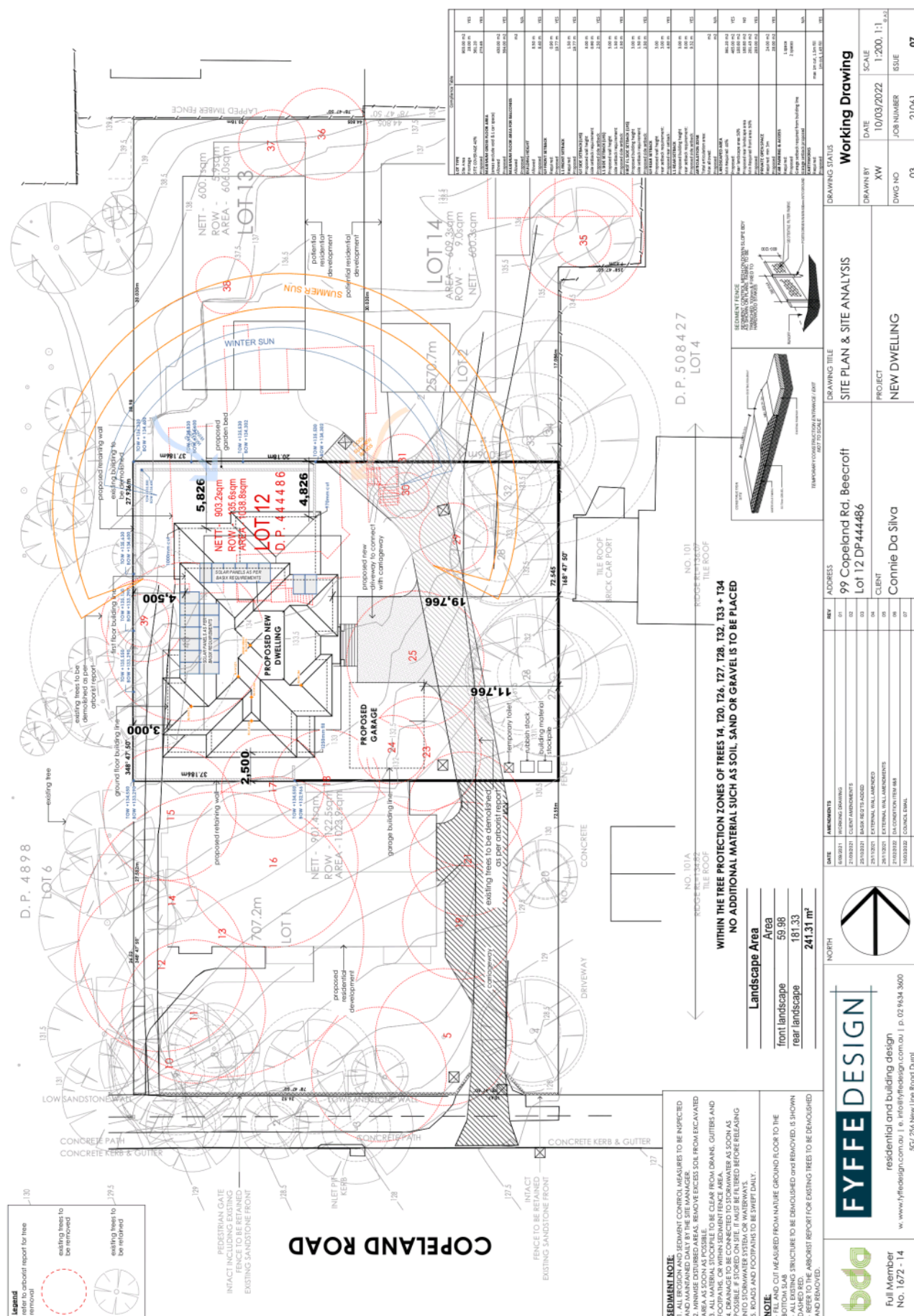
BASIX COMMITMENTS NOTES				
REFER TO APPROVED BASIX REPORT				
WATER				
Fixtures	All Shower Heads	All toilet flushing systems	All kitchen taps	All bathroom taps
	3 star (≥ 7.5 but < 9 Litres)	4 star	4 star	5 star
Alternative water source	Individual rainwater tank to collect run off from at least 200 m ² of roof area - Tank size min 3000 litres			
	The applicant must connect the rainwater tank to:			
	Landscaping connection	Toilet connection	Laundry connection	Pool top up
	Yes	Yes	-	-
ENERGY	Hot water system: Gas instantaneous with a performance of 5 stars			
	Bathroom ventilation system: Individual fan, ducted to façade or roof; manual switch on/off			
	Kitchen ventilation system: Individual fan, ducted to façade or roof; manual switch on/off			
	Laundry ventilation system: Natural ventilation only			
	Cooling system: 3 Phase air-conditioning EER 3.0 - 3.5 in at least 1 living/bed area			
	Heating system: 3 Phase air-conditioning EER 3.0 - 3.5 in at least 1 living/bed area			
	Natural lighting: As per BASIX			
	Artificial lighting: As per BASIX			
	Alternative energy: Must install a photovoltaic system with the capacity to generate at least 6.5 peak kilowatts of electricity.			
	Must install a gas cooktop and electric oven.			
	Must install fixed outdoor clothes drying line as part of the development.			

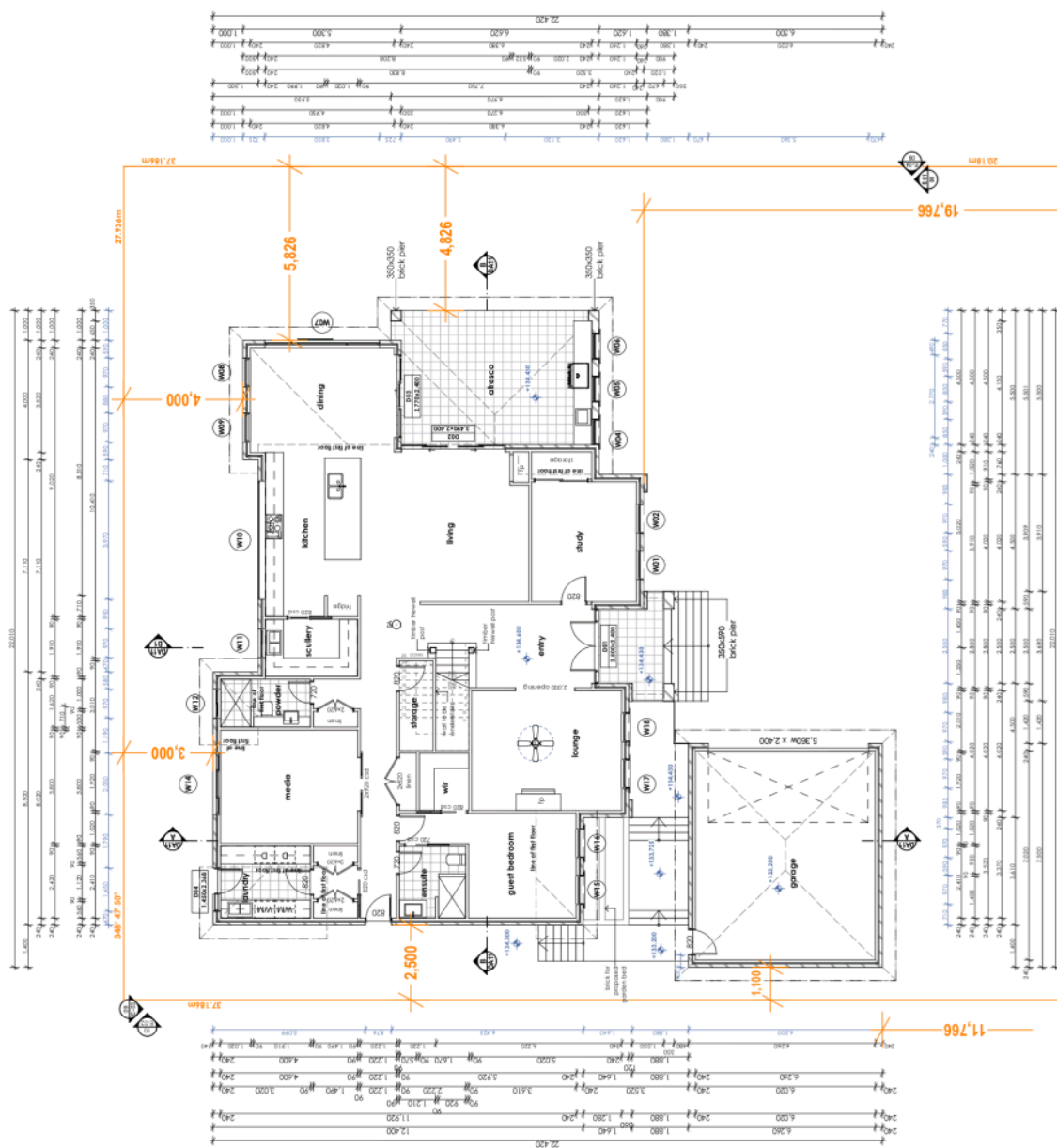
BASIX summary for 99 Copeland Road Beecroft 2119		
Building Elements	Material	Detail
External walls	Brick veneer – light colour	R2.5 bulk insulation
Internal walls	Plasterboard on studs	R2.0 bulk insulation to walls adjacent to powder, bathroom & laundry
ceilings	Plasterboard	R4.0 bulk insulation to ceilings with roof above
Floors	Concrete – ground floor	Waffle pod
	Timber – first floor	
Roof	Roof Tiles – Dark Colour	Foil (isolation) to underside of roof
	Solar Absorbance > 0.70	
Doors/Windows – W01, W02, D01 sidelights, D02, D03, W10, W11, W14, W15, W16, W17, W18, W19, W22, W24, W27, W28, W29, W33, W34	<u>Sliding windows/doors, double hung & fixed windows:</u> Aluminium frame, single glazed low e or similar	U value 5.40 or less and SHGC 0.58 +/- 10%
Doors/Windows – D01, W07, W08, W09, Half door, W20, W21, W25, W35, W36	<u>Awning windows & hinged doors:</u> Aluminium frame, single glazed low e or similar	U value 5.40 or less and SHGC 0.49 +/- 10%
Doors/Windows – D04 sidelight, W12, W23, W31, W32	<u>Sliding windows, fixed windows:</u> Aluminium single glazed	U value 6.70 or less and SHGC 0.70 +/- 10%
Doors/Windows – D04	<u>Hinged door:</u> Aluminium single glazed	U value 6.70 or less and SHGC 0.57 +/- 10%
Ceiling fans	1200mm ceiling fans to lounge, sitting & first floor bedrooms	
Lighting: This dwelling has been rated with non-ventilated LED downlights as per NatHERS certificate.		
Note: Insulation specified must be installed in accordance with Part 3.12.1.1 of the BCA.		
Note: In some climate zones, insulation should be installed with due consideration of condensation and associated interaction with adjoining building materials.		
Note: Self-closing damper to bathroom & ensuite exhaust fans.		

 Full Member No. 1672 - 14	 residential and building design w. www.fyffedesign.com.au e. info@fyffedesign.com.au p. 02 9434 3600 507/256 New Line Road Dulal	DATE	24/07/2022	APPROVED BY	24/07/2022	REV	01	ADDRESS	99 Copeland Rd, Beecroft Lot 12 DP444486	DRAWING TITLE	BASIX COMMITMENTS	DRAWING STATUS	Working Drawing				
		DATE	24/07/2022	APPROVED BY	24/07/2022	REV	02	CLIENT	Connie Da Silva	PROJECT	NEW DWELLING	DRAWN BY	XW	DATE	10/03/2022		
												DWG NO	02	JOB NUMBER	21061	SCALE	07

ATTACHMENT 3 - ITEM 5

ATTACHMENT 3 - ITEM 5

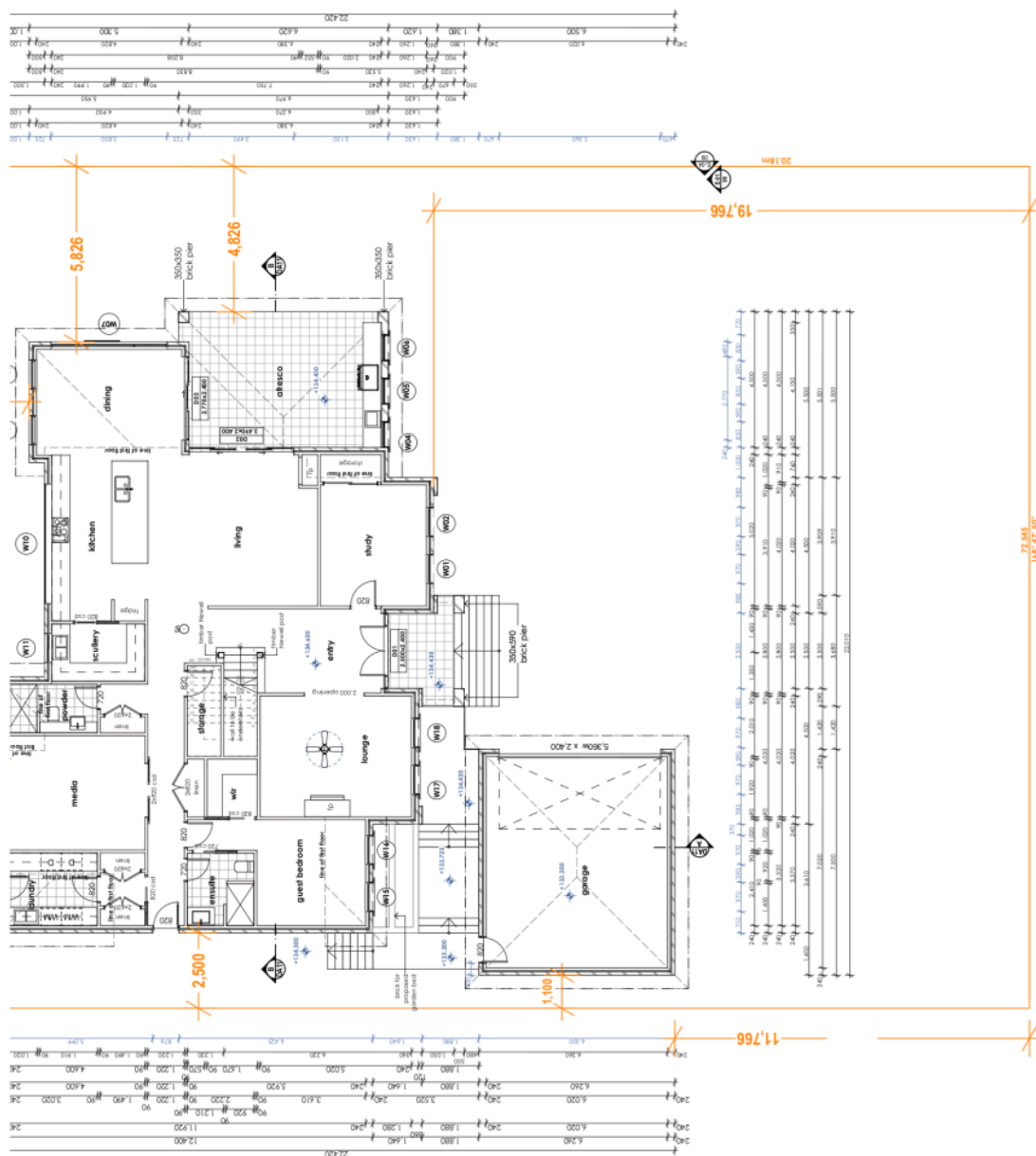






SA smoke alarm

 residential and building design w. www.fyffedesign.com.au e. info@fyffedesign.com.au p. 02 9434 3600 50/ 256 New Line Road Dual	NORTH	DATE: 10/03/2022 DRAWN BY: XW DWG NO: 04 PROJECT: NEW DWELLING CLIENT: Connie Da Silva	ADDRESS: 99 Copeland Rd, Beecroft Lot 12 DP444486	DRAWING TITLE: GROUND FLOOR PLAN-1	DRAWING STATUS: Working Drawing




ATTACHMENT 3 - ITEM 5



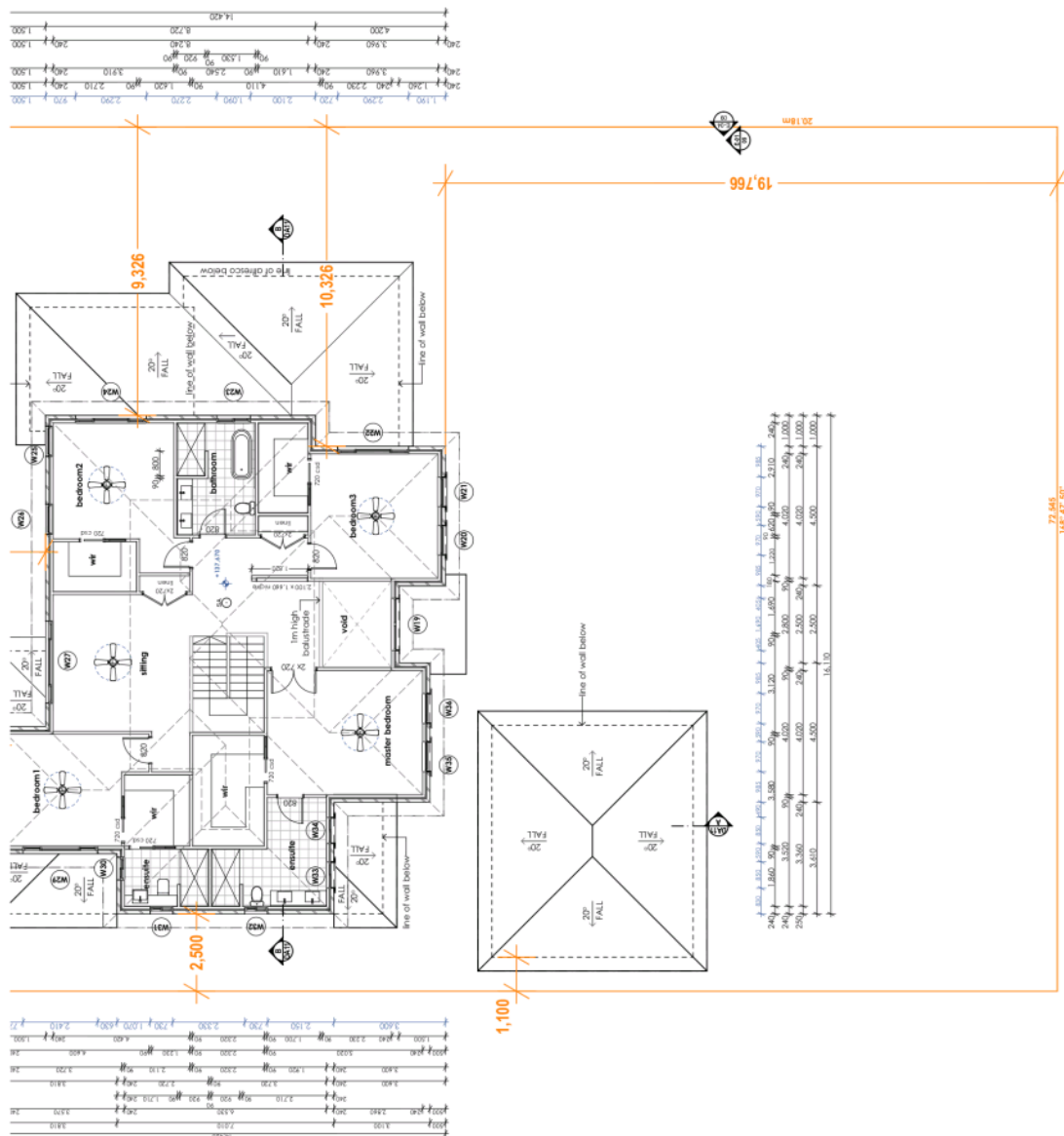
 Full Member No. 1472 - 14	 NORTH	DATE: 10/03/2022 DRAWN BY: XW DWG NO: 05	ADDRESS: 99 Copeland Rd, Beecroft Lot 12 DP444486 CLIENT: Connie Da Silva	DRAWING TITLE: GROUND FLOOR PLAN-2 PROJECT: NEW DWELLING	DRAWING STATUS: Working Drawing	SCALE: 1:100	ISSUE: 07

ATTACHMENT 3 - ITEM 5





 Full Member No. 1672 - 14	www.lyffe-design.co.uk e. info@lyffe-design.co.uk p. 02 9634 3600 5CJ 256 New Lane Road, Durdham			DATE 23/08/2022		AMENDMENTS 01 CLIENT AMENDMENTS 02 CLIENT AMENDMENTS 03 MAIN REVISED 04 EXTERNAL CIVIL AMENDMENTS 05 EXTERNAL CIVIL AMENDMENTS 06 EXTERNAL CIVIL AMENDMENTS 07 COUNCIL DEMAL		NEW ADDRESS 99 Copeland Rd, Beecroft Lot 12 DF44486		DRAWING TITLE FIRST FLOOR PLAN-1		DRAWING STATUS Working Drawing	
				PROJECT NEW DWELLING		CLIENT Connie Da Silva		DWG NO 04		DRAWN BY XW		DATE 10/03/2022	

ATTACHMENT 3 - ITEM 5

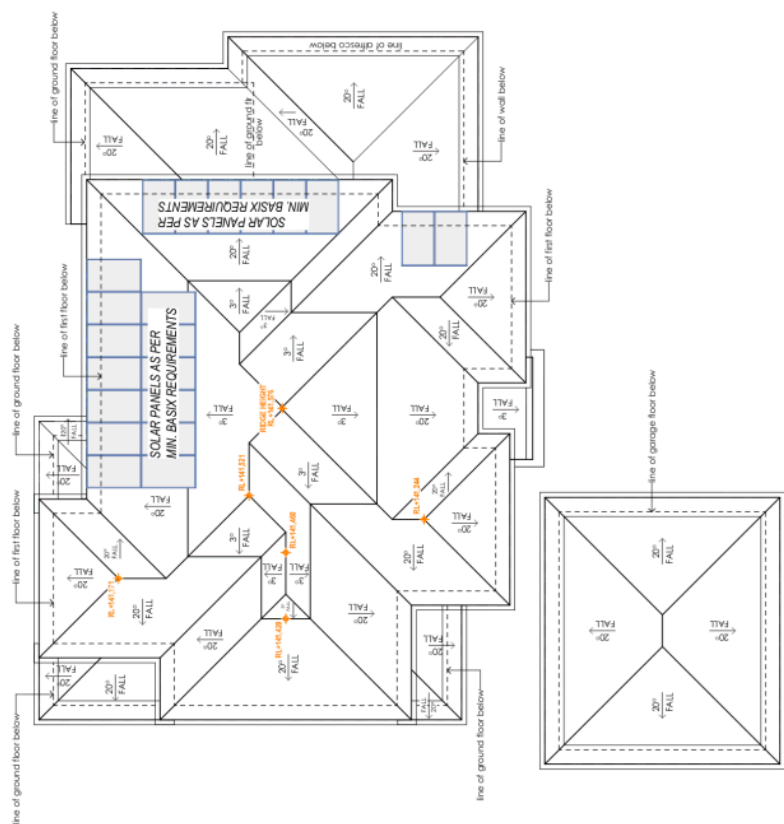


SA ○ smoke alarm

 Full Member No. 1272 - 14	 NORTH	DATE: 10/03/2022 DRAWN BY: XW DWG NO: 07	ADDRESS: 99 Copeland Rd, Beecroft Lot 12 DP444486	DRAWING TITLE: FIRST FLOOR PLAN-2	DRAWING STATUS: Working Drawing	SCALE: 1:100	ISSUE: 07

ATTACHMENT 3 - ITEM 5

ROOF AREA		
Level	Pitch	Area
GROUND FLOOR FCL	3.00°	6.08
GROUND FLOOR FCL	20.00°	149.33
FIRST FLOOR FCL	3.00°	48.55
FIRST FLOOR FCL	20.00°	167.20
		371.16 m²



ROOF PLAN
1:100

WINDOW SCHEDULE						
ID	W x H	W01	W02	W04	W05	W06
NOTES		970x1,900	970x1,900	850x1,460	850x1,460	3,650x2,150
Elevation						




WINDOW SCHEDULE						
ID	W x H	W09	W10	W11	W12	W14
NOTES		970x2,150	3,970x600	970x600	970x600	2,000x600
Elevation						

WINDOW SCHEDULE						
ID	W x H	W17	W18	W19	W20	W21
NOTES		970x1,900	970x1,900	1,460x1,850	970x1,460	970x1,460
Elevation						

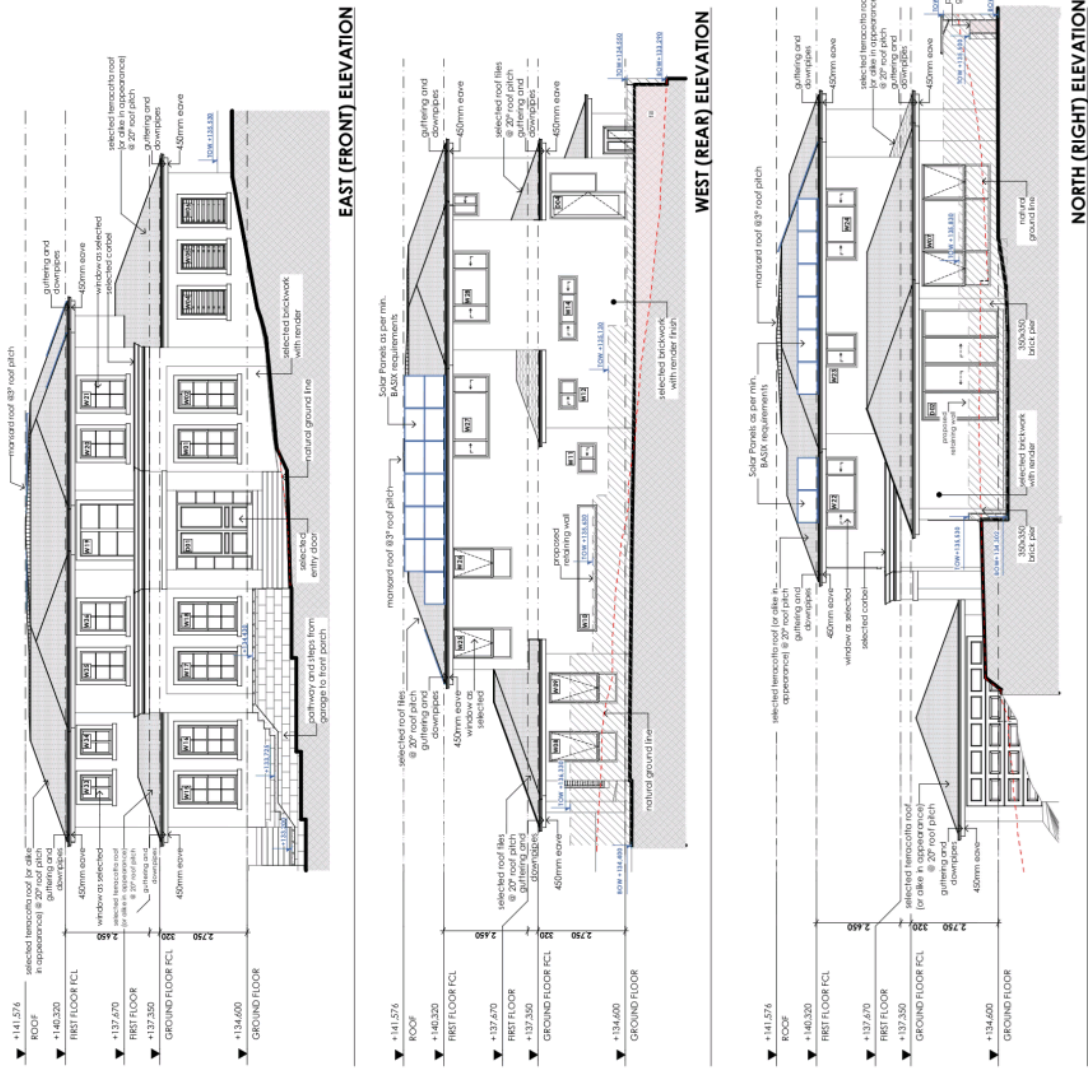
WINDOW SCHEDULE						
ID	W x H	W24	W25	W26	W27	W28
NOTES		2,290x1,030	970x1,900	970x1,900	2,630x1,200	2,290x1,200
Elevation						

WINDOW SCHEDULE						
ID	W x H	W31	W32	W33	W34	W35
NOTES		730x640	730x640	850x1,030	850x1,030	970x1,460
Elevation						

DOOR SCHEDULE				
ID	D01	D02	D03	D04
W x H	2,500 x 2,400	3,490 x 2,400	2,770 x 2,400	820 x 2,340
NOTES				
Elevation				

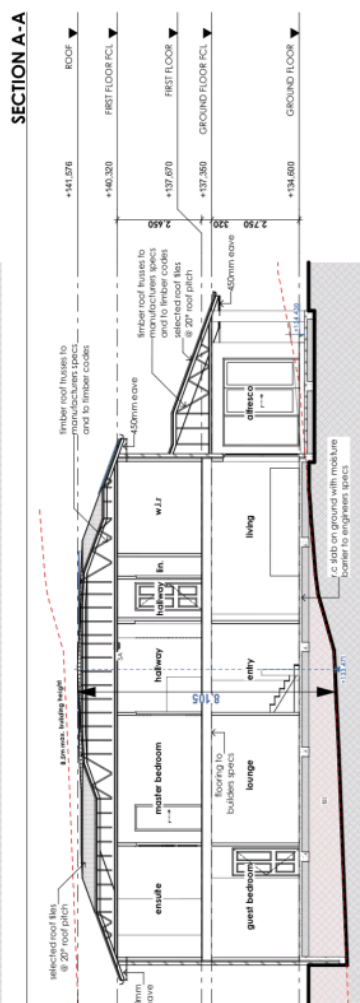
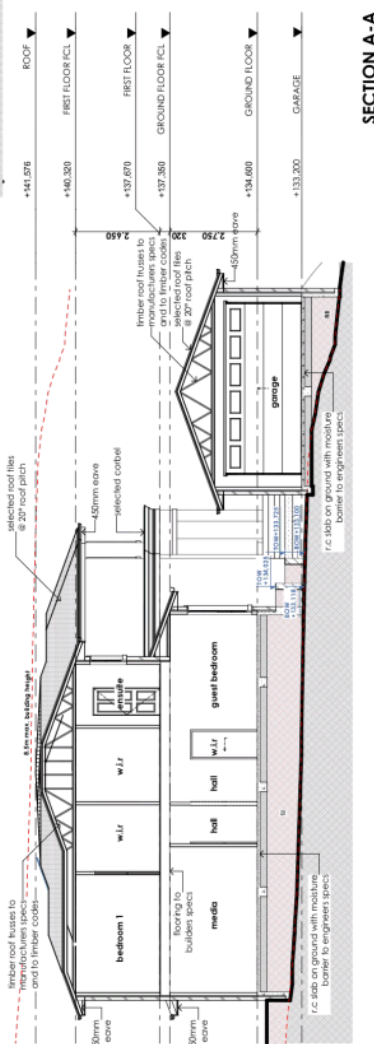
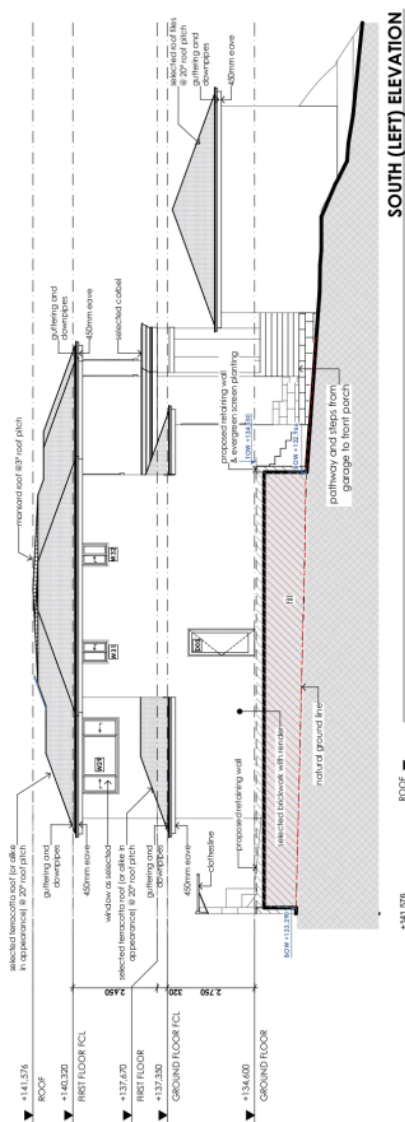
 Full Member No. 1672 - 14	 residential and building design www.fyffdesign.co.uk e. info@fyffdesign.co.uk p. 02 9534 3600 5CJ 215, New Life Road, Durdham	NORTH 	DATE 19/03/2021 20/03/2021 24/03/2021 29/03/2021 04/04/2021 15/03/2022		AMENDMENTS 1. REVISION DRAWING 2. CLIENT COMMENTS 3. REVISION DRAWING 4. REVISION DRAWING 5. REVISION DRAWING 6. REVISION DRAWING		NEW ADDRESS 99 Copeland Rd, Beecroft Lot 12 DF44486		DRAWING TITLE ROOF PLAN + WINDOW & DOOR SCHEDULES		DRAWING STATUS Working Drawing	
			DRAWN BY XW		DATE 10/03/2022		SCALE 1:100, 1:1		PROJECT NEW DWELLING		DWG NO 08	



ATTACHMENT 3 - ITEM 5



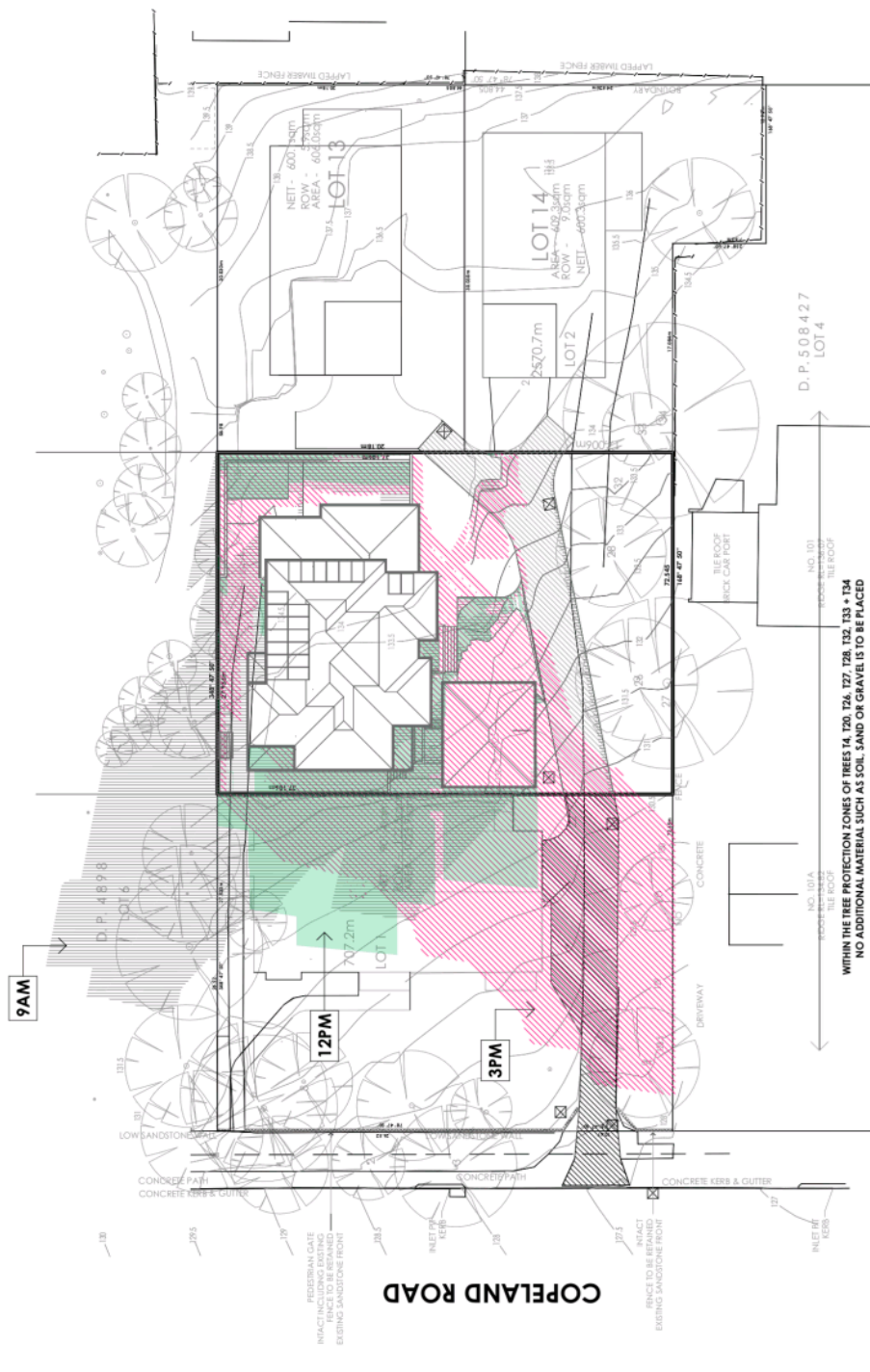
<div> <div> <div>bda</div> <div>Full Member No. 1672 - 14</div> </div> <div> <div>residential and building design</div> <div> w. www.fyffe.com.au e. info@fyffedesign.com.au p. 02 9434 3600 507 256 New Line Road Dulal </div> </div> </div>	<div> <div>DATE</div> <div>14/06/2019</div> <div>DESCRIPTION</div> <div> <div>20/03/2021</div> <div>20/03/2021</div> <div>20/03/2021</div> <div>20/03/2021</div> <div>20/03/2021</div> <div>20/03/2021</div> <div>20/03/2021</div> <div>20/03/2021</div> </div> </div>	<div> <div>REV</div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> </div>	<div> <div>ADDRESS</div> <div>99 Copeland Rd, Beecroft Lot 12 DP444486</div> </div>	<div> <div>DRAWING TITLE</div> <div>WEST, EAST & NORTH ELEVATIONS</div> </div>	<div> <div>DRAWING STATUS</div> <div>Working Drawing</div> </div>
	<div> <div>CLIENT</div> <div>Connie Da Silva</div> </div>	<div> <div>PROJECT</div> <div>NEW DWELLING</div> </div>	<div> <div>DRAWN BY</div> <div>XW</div> </div>	<div> <div>DATE</div> <div>10/03/2022</div> </div>	<div> <div>SCALE</div> <div>1:100</div> </div>
	<div> <div>EXTERNAL WALL FINISHES</div> <div>EXTERNAL WALL FINISHES</div> </div>	<div> <div>DWG NO</div> <div>09</div> </div>	<div> <div>JOB NUMBER</div> <div>21061</div> </div>	<div> <div>ISSUE</div> <div>07</div> </div>	



ATTACHMENT 3 - ITEM 5

SA ☐ smoke alarm

 Full Member No. 1672 - 14	 residential and building design www.fyffedesign.co.za e. info@fyffedesign.co.za p. 02 9534 3600 567 256 New Life Road Durban	<table><tr><th>DATE</th><th>AMENDMENTS</th><th>REV</th><th>ADDRESS</th></tr><tr><td>20080322</td><td>DESIGN DEVELOPMENT</td><td>01</td><td></td></tr><tr><td>20080322</td><td>CLIENT COMMENTS</td><td>02</td><td></td></tr><tr><td>20120227</td><td>REVISIONS</td><td>03</td><td></td></tr><tr><td>20120227</td><td>EXTERNAL LINKS AMENDED</td><td>04</td><td></td></tr><tr><td>20120307</td><td>EXTERNAL LINKS AMENDMENTS</td><td>05</td><td></td></tr><tr><td>20120307</td><td>EX-CONDITION ITEM 004</td><td>06</td><td></td></tr></table>	DATE	AMENDMENTS	REV	ADDRESS	20080322	DESIGN DEVELOPMENT	01		20080322	CLIENT COMMENTS	02		20120227	REVISIONS	03		20120227	EXTERNAL LINKS AMENDED	04		20120307	EXTERNAL LINKS AMENDMENTS	05		20120307	EX-CONDITION ITEM 004	06		<table><tr><th colspan="2">DRAWING STATUS</th></tr><tr><td colspan="2">Working Drawing</td></tr><tr><td>DRAWN BY XW</td><td>DATE 10/03/2022</td></tr><tr><td>DWG NO 10</td><td>SCALE 1:100</td></tr><tr><td></td><td>JOB NUMBER 21043</td></tr><tr><td></td><td>ISSUE 07</td></tr></table>	DRAWING STATUS		Working Drawing		DRAWN BY XW	DATE 10/03/2022	DWG NO 10	SCALE 1:100		JOB NUMBER 21043		ISSUE 07
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ATTACHMENT 3 - ITEM 5








		NORTH	
residential and building design www.fyffdesign.com.au info@fyffdesign.com.au p. 02 9434 3600			
DATE		AMENDMENTS	
18/05/2017		WORKING DRAWINGS 01	
24/05/2017		CLIENT AMENDMENTS 02	
24/05/2017		INTERNAL ONLY AMENDMENTS 03	
26/07/2017		EXTERNAL ONLY AMENDMENTS 04	
26/07/2017		INTERNAL ONLY AMENDMENTS 05	
24/05/2017		EXTERNAL ONLY AMENDMENTS 06	
18/05/2017		DRAFT CONDITION 1 PER AHS 07	
18/05/2017		DRAFT 2 PER AHS 08	
18/05/2017		DRAFT 3 PER AHS 09	
18/05/2017		DRAFT 4 PER AHS 10	
18/05/2017		DRAFT 5 PER AHS 11	
18/05/2017		DRAFT 6 PER AHS 12	
18/05/2017		DRAFT 7 PER AHS 13	
18/05/2017		DRAFT 8 PER AHS 14	
18/05/2017		DRAFT 9 PER AHS 15	
18/05/2017		DRAFT 10 PER AHS 16	
18/05/2017		DRAFT 11 PER AHS 17	
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18/05/2017		DRAFT 64 PER AHS 70	
18/05/2017		DRAFT 65 PER AHS 71	
18/05/2017		D	

ATTACHMENT 3 - ITEM 5



EXTERNAL FINISHES

External Wall	Corbelling & Window/Door casing	Roof	Gutters & Fascia	Window Frame
				
render -equivalent to light grey Dulux	paint finish-equivalent to vivid white low sheen Dulux	-equivalent to charcoal	-equivalent to monument colorband	-equivalent to monument Dulux

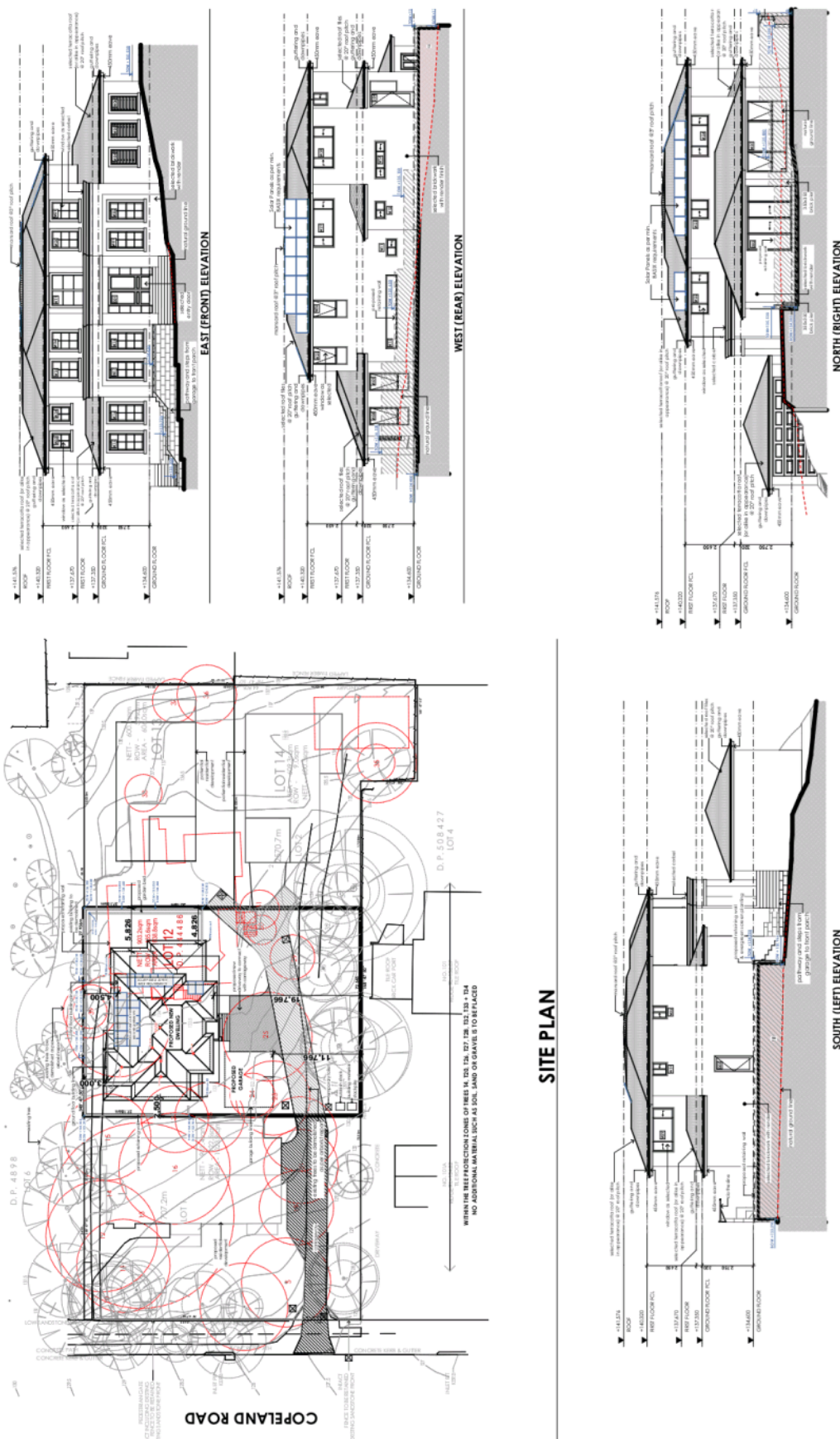
 residential and building design w. www.fyffedesign.com.au e. info@fyffedesign.com.au p. 02 9434 3600 50/ 256 New Line Road Dual	DATE: 10/03/2022 DRAWN BY: XW DWG NO: 12		PROJECT: NEW DWELLING CLIENT: Connie Da Silva		ADDRESS: 99 Copeland Rd, Beecroft Lot 12 DP444486		DRAWING TITLE: EXTERNAL COLOURSCHEME DRAWING STATUS: Working Drawing	
	SCALE: 1:1, 1:1.06, 1:1.5 ISSUE: 07							

ATTACHMENT 3 - ITEM 5

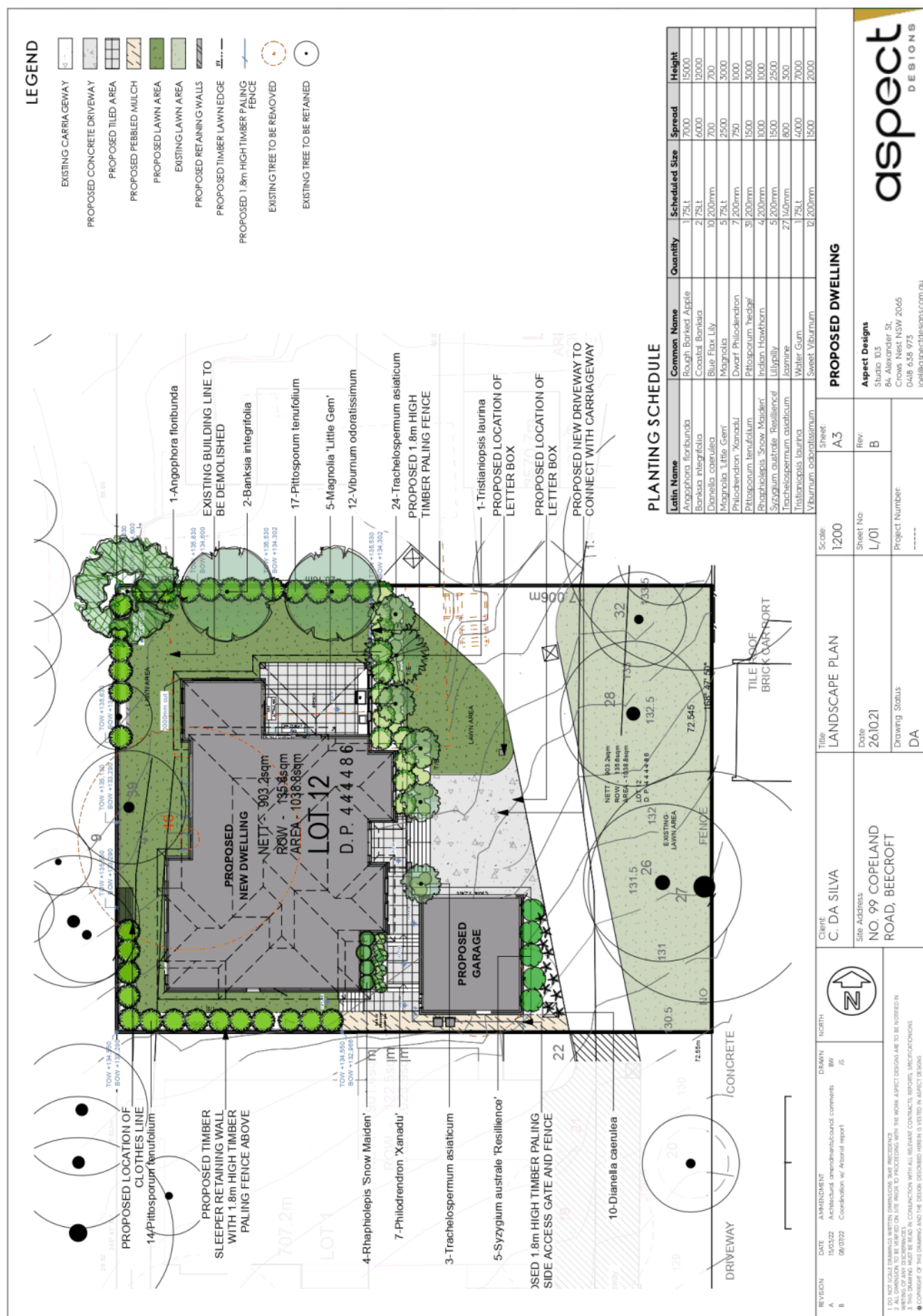


 residential and building design w. www.fyffedesign.com.au e. info@fyffedesign.com.au p. 02 9434 3600 50/ 256 New Line Road Dural	DATE 24/03/22 24/03/22 24/03/22 10/03/22	AMENDMENTS 01 02 03 04	NEW 01 02 03 04	ADDRESS 99 Copeland Rd, Beecroft Lot 12 DP444486 CLIENT Connie Da Silva	DRAWING TITLE 3D - BUILDING HEIGHT PROJECT NEW DWELLING	DRAWING STATUS Working Drawing			
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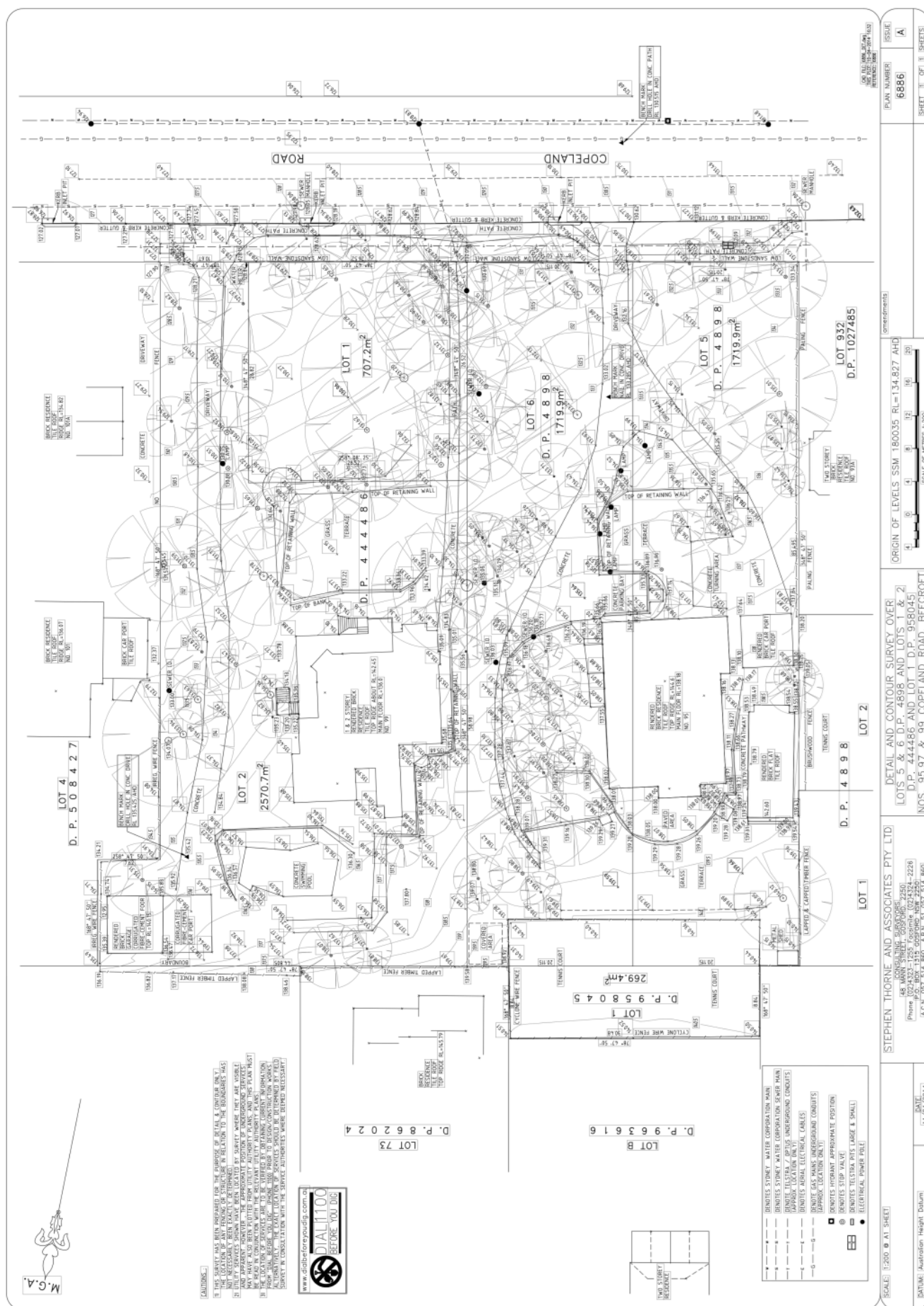
ATTACHMENT 3 - ITEM 5



ATTACHMENT 3 - ITEM 5

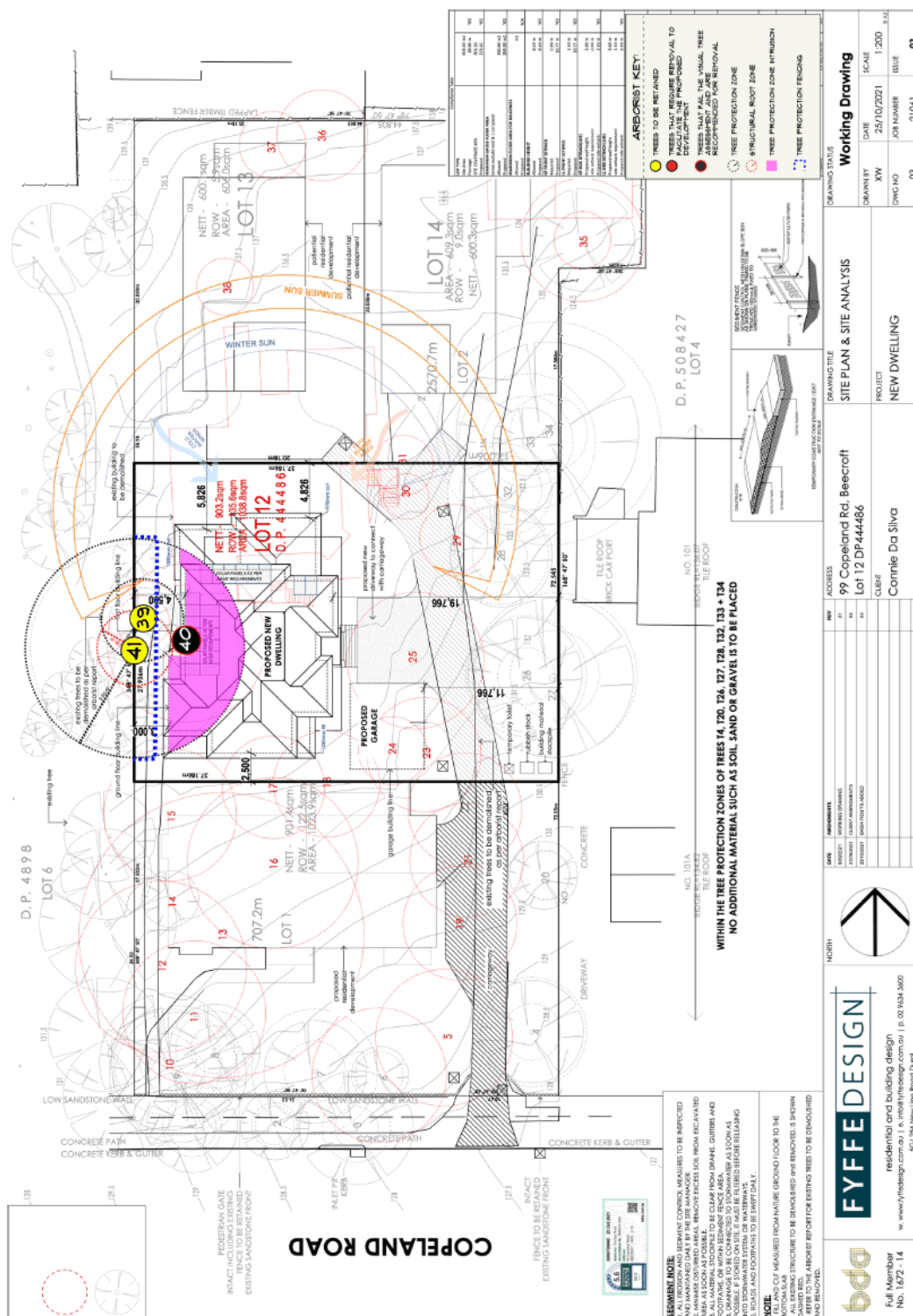


ATTACHMENT 4 - ITEM 5



ATTACHMENT 5 - ITEM 5

Appendix 1: Site Survey with Trees and Proposed Development



ATTACHMENT 6 - ITEM 5

**6 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. LPP46/22 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.  Status All LPP DA over 180
 days

File Reference: F2013/00295-003

Document Number: D08444002

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 27/7
DA/1146/2020	Torrens title subdivision of 1 into 10	90-92 Franklin Road Cherrybrook	C	VPA	Dec	Council's Infrastructure and Major Projects Teams have completed a number of design options for road widening works on Franklin and John Road and a meeting with the applicant is to be held to discuss amendments to the proposed subdivision to reduce impacts on EEC vegetation on site.	583
DA/1022/2021	Torrens title subdivision of 1 lot into 64	36-56 David Road Castle Hill	C	VPA	Dec	Amended subdivision layout and supporting documentation currently being prepared following the meeting with Council staff. The applicant is also preparing VPA for review. Additional information is not expected until mid to late August.	300
DA/1244/2021	Demolition of existing structures and construction of seniors living development comprising 33 self-contained dwellings	15B-21 Penrhyn Ave, Beecroft and 579 Pennant Hills Road, West Pennant Hills	C	>10 submissions	Sept	Applicant requested extension to provide additional information due to consultant delays. Information to be provided by 25/07/22 and will require re-notification and DEP review prior to determination.	252

ATTACHMENT 1 - ITEM 6

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 27/7
DA/1308/2021	Alterations and additions to existing industrial building	29 Leighton Place Hornsby	B	>10% contravention of height development standard	Sept	Council is reviewing the additional information recently submitted in response to a RFI sent earlier this year. The additional information does not cover all aspects previously requested, and further discussions between Council and the applicant will be undertaken prior to finalisation.	232
DA/1368/2021	Childcare Centre	59 Edwards Road Wahroonga	B	>10 submissions	Sept	Council is reviewing the additional information submitted in response to a detailed RFI. Deficiencies have been identified in the submitted information which will require further review by the applicant prior to finalisation.	220

ATTACHMENT 1 - ITEM 6