



ATTACHMENTS

LOCAL PLANNING PANEL MEETING

Wednesday 29 March 2023
at 2:30pm



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LOCAL PLANNING PANEL

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ATTACHMENT/S

REPORT NO. LPP7/23

ITEM 1

- 1. LOCALITY PLAN**
- 2. CLAUSE 4.6**
- 3. ARCHITECTURAL PLANS**
- 4. PHOTOMONTAGE**
- 5. SCHEDULE OF FINISHES**



**LOCALITY PLAN
DA/53/2023**

No. 120A Quarter Sessions Road, Westleigh

ATTACHMENT 1 - ITEM 1

120A Quarter Sessions Road, Westleigh Clause 4.6 Exceptions to Development Standards Height of Buildings

1. Introduction

Clause 4.6 of the Hornsby Local Environmental Plan 2013 (HLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

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



The aims and objectives of Hornsby LEP 2013 Clause 4.6 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.*

Under Clause 4.6(3) and (4) of the HLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

It is of interest that the consent authority specifies a number of development standards that cannot be varied under Clause 4.6, listed in Clause 4.6(8). Clause 4.3 - Height of buildings is not one of the standards excluded, it must therefore be assumed that the standard for height of buildings, is one of the development standards that can have an appropriate degree of flexibility applied under clause 4.6.



2. Environmental Planning Instrument Details (Hornsby LEP 2013)

2.1 What is the name of the environmental planning instrument that applies to the land?

Hornsby Local Environmental Plan 2013 (HLEP 2013)

2.2 What is the zoning of the land?

R2 – Low Density Residential

2.3 What are the objectives of the zone?

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

2.4 What is the development standard being varied?

CI 4.3 of the Hornsby Local Environmental Plan 2013, Height of Buildings

2.5 Under what clause is the development standard listed in the environmental planning instrument?

CI 4.3 of the Hornsby Local Environmental Plan 2013

2.6 What are the objectives of the development 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.*

2.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 8.5m.



2.8 What is proposed numeric value of the development standard in your development application?

The numeric value of the development standard in this development application is a maximum of 9.96 metres.

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

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

2.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation sought is 17.17% or 1.46 metres.

ATTACHMENT 2 - ITEM 1



3. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

3.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
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 (Fourth Way).*
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 (Fifth Way).*

In the Micaul decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).



3.2 Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

3.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

3.4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. *The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;*
2. *The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and*



3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

3.5 Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

ATTACHMENT 2 - ITEM 1



4. Consideration

The following section addresses the provisions of clause 4.6 of the HLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

4.1 Five (5) Part Test - *Wehbe v Pittwater*

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***

The objectives of the standard are:

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

The proposed development will present with a patio cover and pergola of compatible scale to both the existing and neighbouring developments. It is an aesthetically pleasing addition to the existing elevated deck and will remain masked from public view, therefore having nil impact upon the public domain and streetscape. The height non-compliance results only where the site falls away rapidly towards the rear of the site overlooking the heavily vegetated bushland. This section of the building is centrally located on the site, therefore being well distanced from adjoining lot boundaries and minimising any potential impacts on adjoining land or the streetscape.

It is therefore considered this objective is met, despite the numerical variation.



2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).

This exception to development standards request does not rely on this reason.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).

This exception to development standards request does not rely on this reason.

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 (Fourth Way).

This exception to development standards request does not rely on this reason.

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 (Fifth Way).

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.

Thus it is considered that compliance with Clause 4.6(3)(a) is satisfied.



4.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*.

In particular:

Detail of Variation

- The variation to the height limit occurs at the rear of the existing development, being an open patio cover and pergola structure to the existing elevated deck. As the site falls away rapidly to the rear, this is where the breach occurs, with the majority of the roof structure otherwise being kept within the 8.5m height limit. This proposed roof design allows for the amenity of the outdoor living space to be achieved, providing suitable year-round protection from the elements.
The variation is required in this instance to achieve suitable amenity and compliance with the development standard would be unreasonable given that the proposal can readily achieve the objectives of the standard.

Neighbour Amenity

Fulfillment of each of the criteria below demonstrates a development satisfying Cl1.3(g).

- The variation in height will have a negligible impact on neighbours. The patio cover breach in these circumstances is considered small, being located at the rear where the site topography falls away rapidly. This is of no significant impact to neighbours, particularly given the substantial setbacks from boundaries and there are no key views across the site in this location.
- Compliance with the height control would not result in a building which has a significantly lesser bulk and any improvement as a result of compliance would be barely discernible to the side neighbours as the non-compliant roof form is centrally located within the site and not readily perceived from these adjoining dwellings. Accordingly, compliance with the development standard in this instance is unreasonable.
- Solar access impacts as a result of the small height variation are negligible. Solar access on the neighbouring sites is compliant as the development proposed is sufficiently distanced. Accordingly, compliance with the development standard based on this would be unreasonable.



- The small variation to the height of the roof form has no consequence for the privacy of neighbours. Accordingly, the variation is reasonable in the circumstances of the case.

Site Constraints

- The design, including the variation to the height, is largely a result of working with the existing site constraints and topography. It would be unreasonable to require compliance with the development standard, when the variation result allows for the orderly and economic use of the site and allows for an ecologically sustainable development satisfying CI1.3(g) and (f).

Design and Streetscape Appeal

- Strict numerical compliance with the height control would not result in a better urban design outcome. The roof form is consistent with the predominant architectural character of the street and will complete an appealing design. Compliance with the development standard based on this would be unreasonable.
- The proposed development will not present with excessive bulk from the public domain. The patio cover proposed is located over the rear deck and will not be viewable from any public vantage points in Quarter Sessions Road or from neighbouring sites. Accordingly, the streetscape appeal is unaffected by the variation to the height standard, and it would be unreasonable to require compliance with development standard based on this.

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone ensuring that appropriate and reasonable housing suitable for the local community is proposed. Compliance with the development standard based on this would be unreasonable.

**Natural Environment**

- The inclusion of the height variation has no impact on the natural environment. The variation sits at the rear of the existing dwelling and will not result in any impact to the existing natural components of the site or neighbourhood. No landscape area is lost or impacted through the height variation satisfying Cl1.3(b). The natural environment is unaffected by the small departure to the development standard, and it would be unreasonable for the development to be refused on this basis.

Environmentally Sustainable Development

- The proposal represents an environmentally sustainable design, making an appropriate enhancement to the liveability of the existing dwelling satisfying Cl1.3(f). Compliance with the development standard based on this would be unreasonable.

Social and economic welfare

- The small variation to the height as detailed above will have no social impacts for the site or local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.
- The small variation to the height control as detailed above will have no economic impacts for the site or the local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.
- The variation does not result in a roof form or height beyond that which is found in the general locality. The maximum height of the varied portion of the roof form is located at the rear of the site, well distanced from neighbours as detailed in the Architectural Plan Elevations. The small variation will be compatible within the context in which it sits and is reasonable in the circumstances of the case satisfying Cl1.3(c). Compliance with the development standard based on this would be unreasonable.



- Removal of the non-compliance would not result in any meaningful reduction in the perceived bulk and scale of the proposal due to its minor nature, siting and topography.

The variation is and the discussion above reflects the unique circumstances for the subject site and proposed development, including an assurance of reasonable bulk and scale and retention of amenity.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the height variation.

ATTACHMENT 2 - ITEM 1



4.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

Zone – R2 Low Density Residential

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

Consistent. The proposal is for a patio cover to an existing elevated deck at the rear of the residential dwelling.

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

Not relevant. The proposal is ancillary to a residential dwelling.

Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effect as the variation is set well back from all boundaries, centrally located on the site and due to site topography.

The proposal will not result in any discernible impacts, being complementary to the existing dwelling and masked from view of any public vantage point.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.



Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

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

Strict compliance with the 8.5 metre height development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, protecting the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats and promoting good design and amenity of the built environment.*



Conclusion

The proposed development is for alterations and additions to an existing residential dwelling, in the form of a new elevated patio cover on land zoned R2 Low Density Residential.

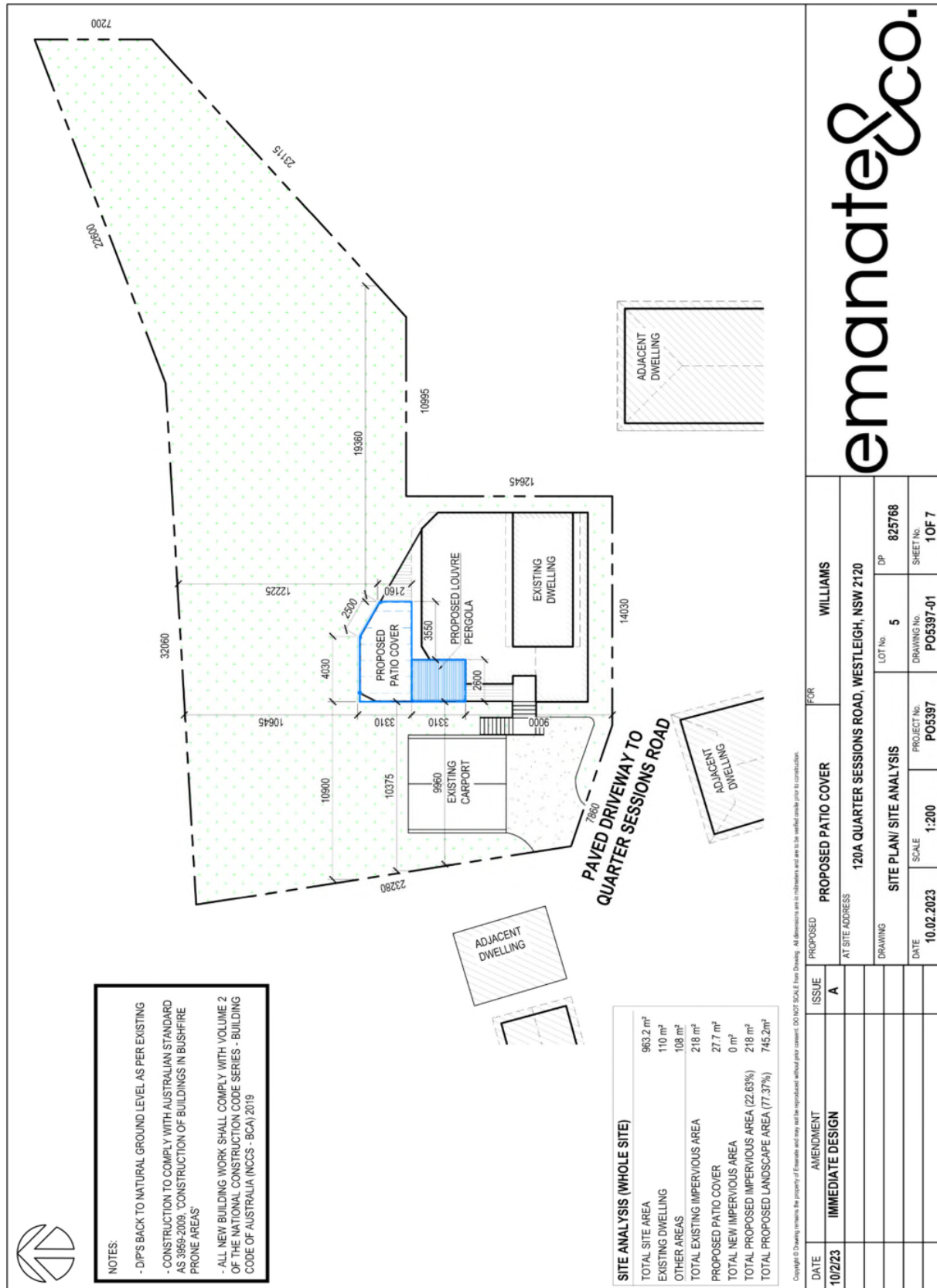
As stated above, the non-compliance between the proposal and the environmental planning instrument is 1.46 metres or 17.17%. It occurs largely as a result of working with the constraints of the existing site levels but is confined to the rear of the site where it falls away rapidly, resulting in it not being readily understood as excessive or in excess of the height limit. It will not create any unreasonable impacts associated with view loss, loss of privacy or increase in shadowing for neighbouring properties and will result in a development of a similar scale to development on surrounding properties. Further, the proposal will remain masked from any public vantage point and therefore have no impact upon the streetscape. Amenity is retained for all neighbours.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6.

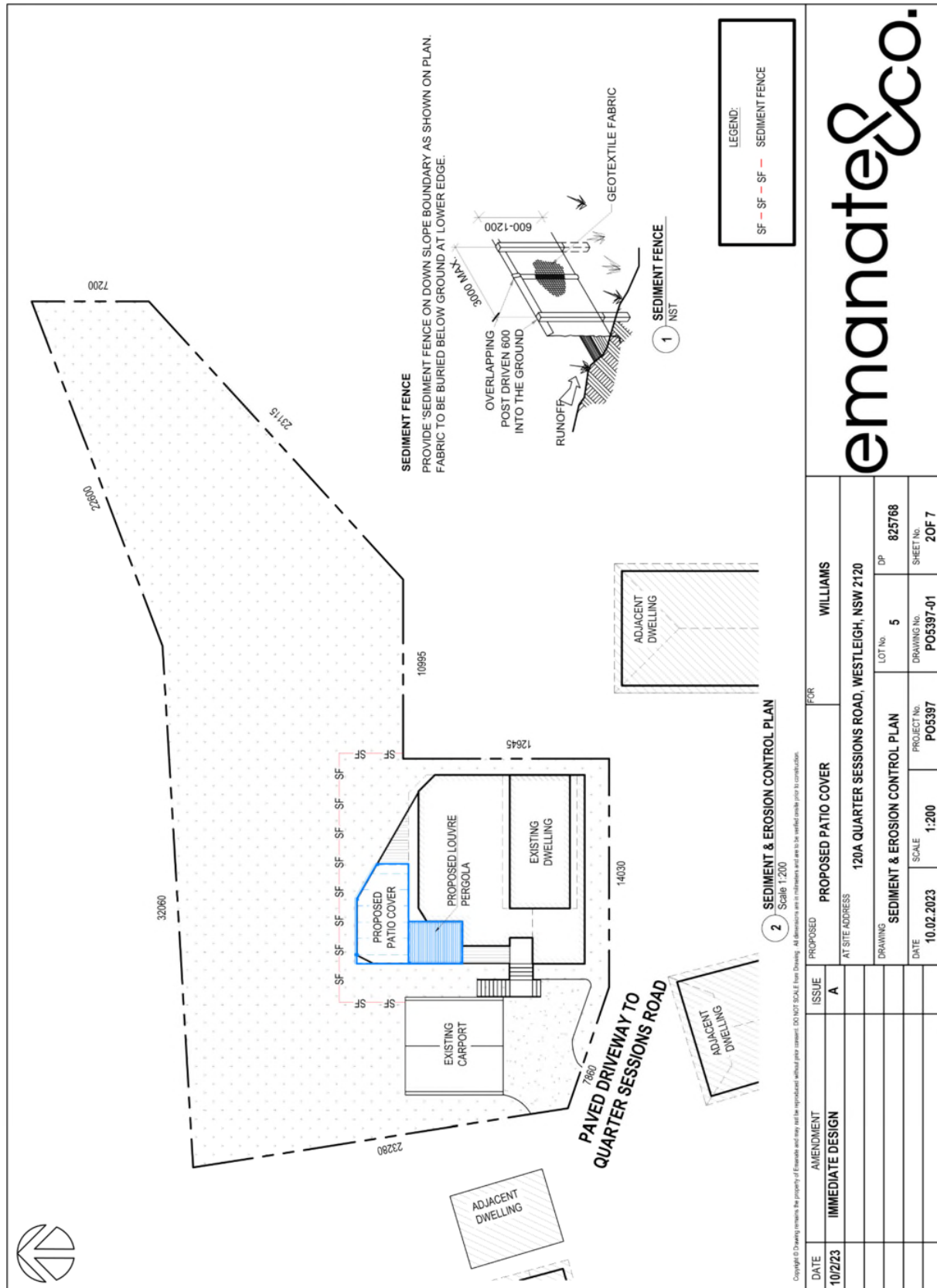
The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic development of the land, notwithstanding the height variation.

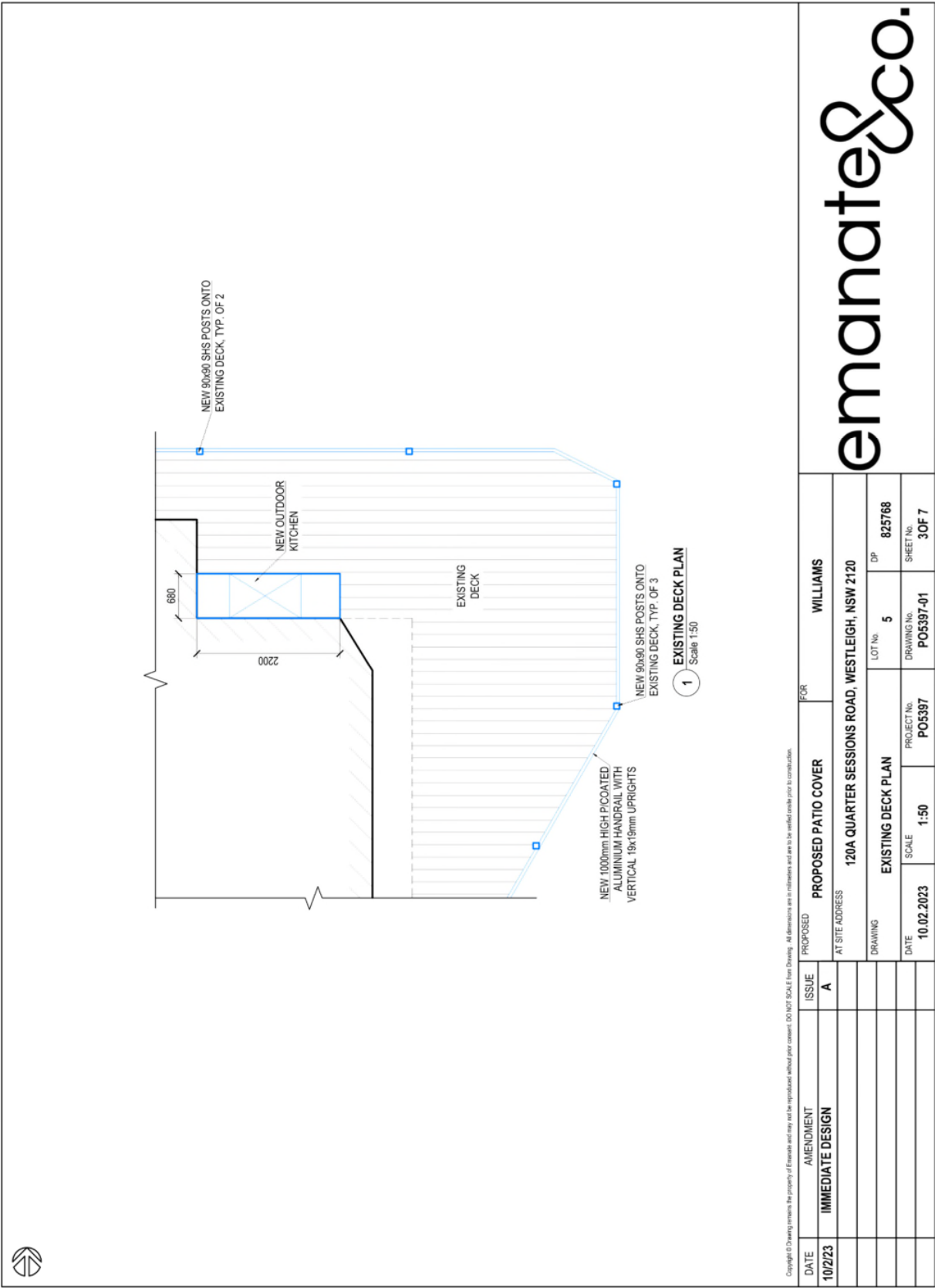
The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.3, and therefore the merits of the proposed variation are considered to be worthy of approval.



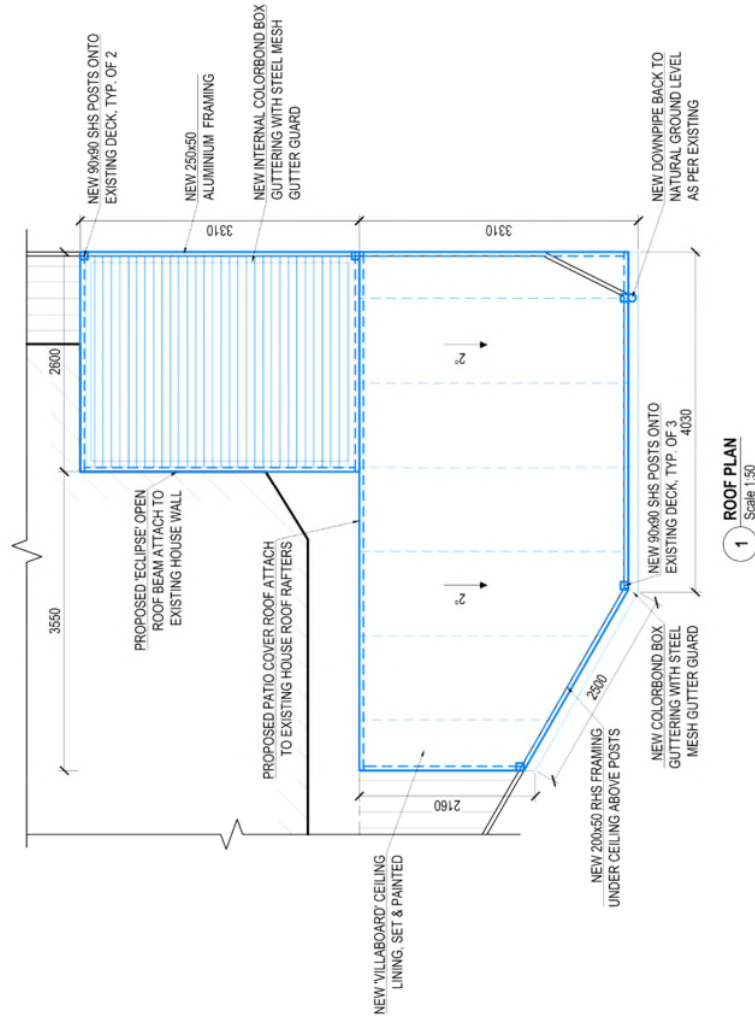
ATTACHMENT 3 - ITEM 1



ATTACHMENT 3 - ITEM 1



ATTACHMENT 3 - ITEM 1



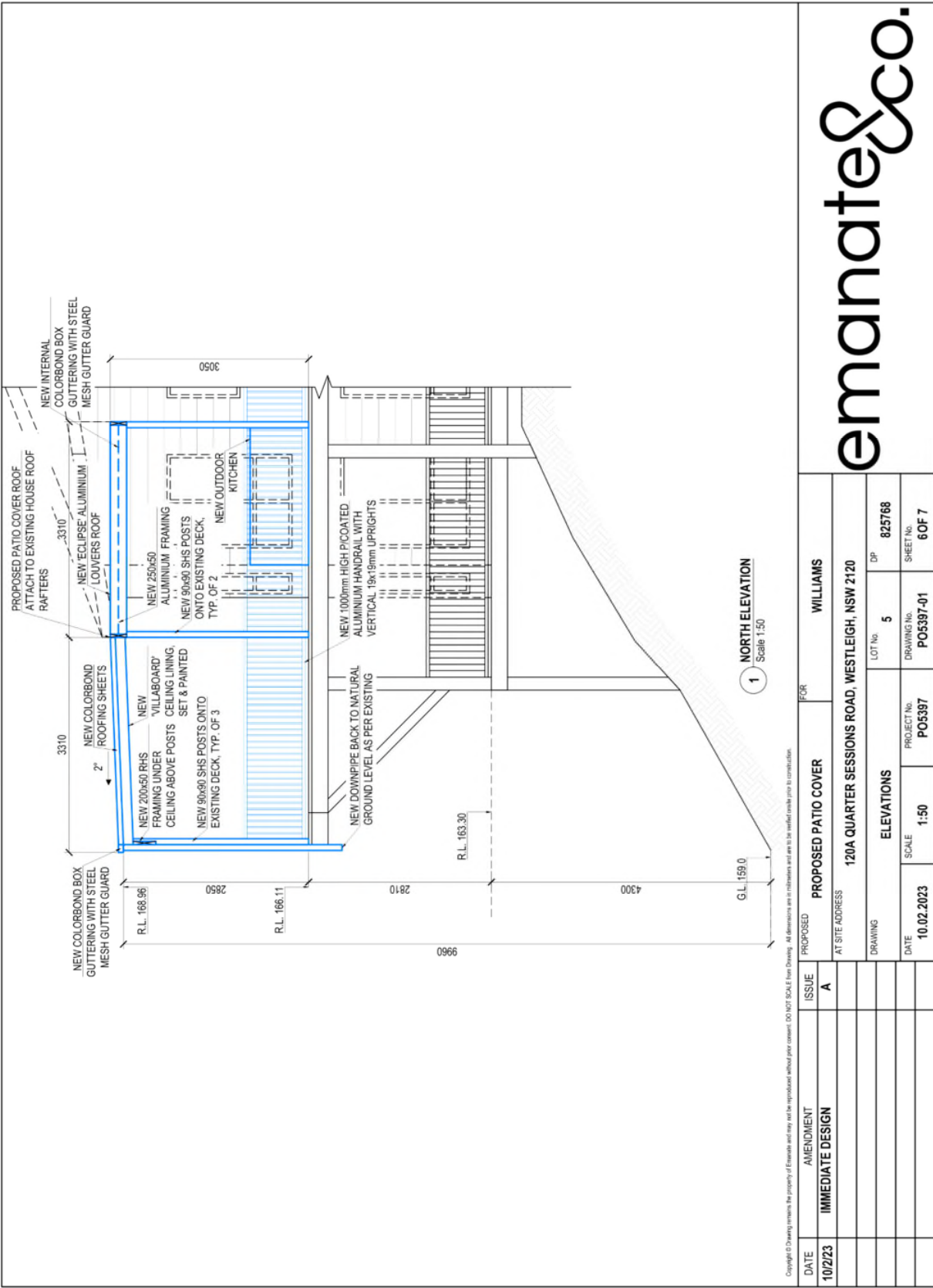
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DATE	AMENDMENT	ISSUE	PROPOSED	FOR	WILLIAMS
10/2/23	IMMEDIATE DESIGN	A	PROPOSED PATIO COVER	120A QUARTER SESSIONS ROAD, WESTLEIGH, NSW 2120	
			AT SITE ADDRESS	LOT No. 5	DP 825768
			DRAWING	PROJECT No. POS397-01	SHEET No. 40F 7
			DATE 10.02.2023	SCALE 1:50	

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ATTACHMENT 3 - ITEM 1





DATE	AMENDMENT	ISSUE	PROPOSED	FOR
10/2/23	IMMEDIATE DESIGN	A	PROPOSED PATIO COVER	WILLIAMS
			AT SITE ADDRESS	120A QUARTER SESSIONS ROAD, WESTLEIGH, NSW 2120
			DRAWING	ELEVATIONS
			DATE	10.02.2023
			SCALE	1:50
			PROJECT No.	POS397
			DRAWING No.	POS397-01
			SHEET No.	6 OF 7
			LOT No.	5
			DP	825768


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ATTACHMENT 3 - ITEM 1

BASIX®Certificate
Building Sustainability Index www.basix.nsw.gov.au
Alterations and Additions
Certificate number: A480244

This certificate confirms that the proposed development will meet the NSW government's requirements for sustainability, if it is built in accordance with the BASIX requirements. It is issued on the basis that the applicant has provided the information required by the BASIX requirements and that the proposed development will be built in accordance with the BASIX requirements. Definitions dated 06/10/2017 published by the Department. This document is available at www.basix.nsw.gov.au

Secretary
Date of issue: Thursday, 10 November 2022
To be valid, this certificate must be lodged within 3 months of the date of issue.

 Planning,
Industry &
Environment

Description of project

Project address	Williams 5397
Project name	120A Quarter Sessions Road Westleigh 2120
Street address	Hornsby Shire Council
Local Government Area	Deposited Plan 825768
Plan type and number	5
Lot number	
Section number	
Project type	Separate dwelling house
Dwelling type	
Type of alteration and addition	My renovation work is valued at \$50,000 or more, and does not include a pool (and/or spa).

Certificate Prepared by (please complete before submitting to Council or PCA)

Name / Company Name: Paololand
ABN (if applicable): 49 003 170 287

Features and systems	Show on DA Plans	Show on COCDOC Plans & specs	Certifier Check
Lighting			
The applicant must ensure a minimum of 40% of new or altered light fixtures are fitted with fluorescent compact fluorescent, or light-emitting-diode (LED) lamps.			

Construction	Show on DA Plans	Show on COCDOC Plans & specs	Certifier Check
Insulation requirements			
The applicant must construct the new or altered construction (floor(s), walls, and ceiling/roofs) in accordance with the specifications listed in the table below, except that a) additional insulation is not required where the area of new construction is less than 2m ² , b) insulation specified is not required for parts of altered construction where insulation already exists.			
Construction (suspended floor with open subfloor: framed (R0.7).			
Additional insulation required (R-value)			
R0.8 (down) (or R1.50 including construction)			

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DATE	AMENDMENT	ISSUE	PROPOSED	FOR	WILLIAMS
10/2/23	IMMEDIATE DESIGN	A	PROPOSED PATIO COVER		
			AT SITE ADDRESS		120A QUARTER SESSIONS ROAD, WESTLEIGH, NSW 2120
			DRAWING		LOT No. 5 DP 825768
			DATE		SHEET No. 7 OF 7
			SCALE		
			PROJECT No.		
			PO5397		
			DRAWING No.		
			PO5397-01		

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ATTACHMENT 3 - ITEM 1

SITE PHOTOS

SUBJECT PREMISES: 120A Quarter Sessions Rd Westleigh NSW 2120

OWNER: Warren and Halima Williams

PROPOSED DEVELOPMENT: Outdoor Patio Cover

BUILDER: Patioland Pty Ltd
24/7 Sefton Road,
THORNLEIGH, NSW 2120

COUNCIL: Hornsby Shire Council

DATE: November 2022



At view - Exist residence showing location of proposed works

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ATTACHMENT 4 - ITEM 1



Close-up - Exist residence showing location of proposed works



3d Render Proposed Works

Emanate & Co., 24/7 Sefton Road, Thornleigh, NSW 2120 T 02 9481 048
E info@emanateandco.com.au W www.emanateandco.com.au I Licence No. 43136 I ABN 49 003 170 28

SCHEDULE OF COLOURS/MATERIALS:

SUBJECT PREMISES: 120A Quarter Sessions Road
WESTLEIGH NSW 2120





OWNER: Warren and Halima Williams

PROPOSED DEVELOPMENT: Outdoor Patio cover

BUILDER: Patioland Pty Ltd trading as Emanate & Co
24/7 Sefton Road,
THORNLEIGH, NSW 2120



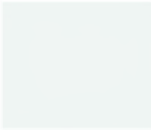


COUNCIL: Hornsby Shire Council

DATE: December 2022

<i>Product/Material:</i>	<i>Note:</i>	<i>Client Selection:</i>
Ceiling: lined Villaboard		Dulux Lexicon quarter
Horizontal beam on front edge of fixed roof/ceiling		Colorbond Wallaby
Topside roof		Colorbond Wallaby
Handrail		Dulux Colorbond Monument

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ATTACHMENT 5 - ITEM 1

90mm Posts		Dulux Colorbond Monument
Opening Roof: External 250 x 50mm alum frame		Dulux Colorbond Wallaby
Opening roof louver		Dulux Pearl White
Opening roof internal box gutter		Colorbond Wallaby
Decking		140mm Merbau

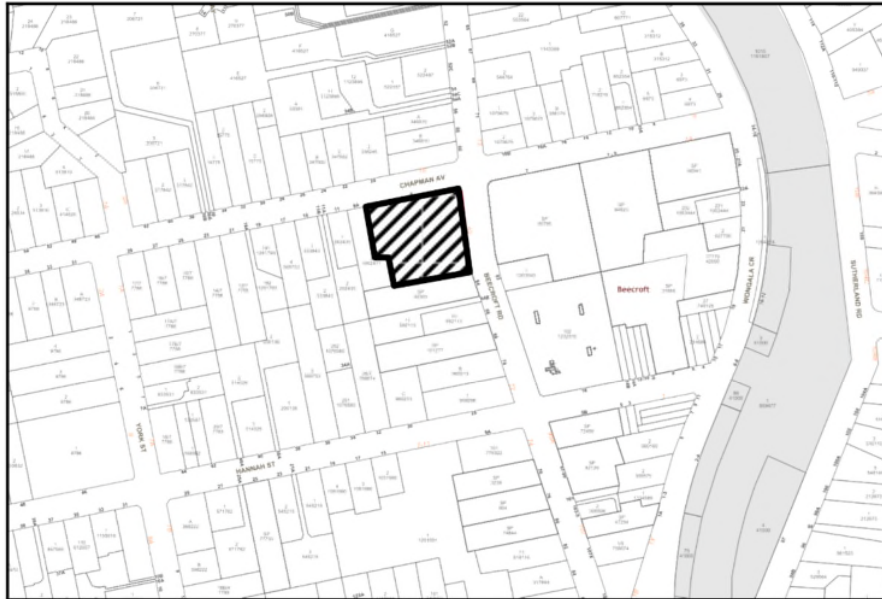
ATTACHMENT/S

REPORT NO. LPP8/23

ITEM 2

- 1. LOCALITY PLAN**
- 2. CLAUSE 4.6**
- 3. ARCHITECTURAL PLANS**
- 4. LANDSCAPE PLANS**

ATTACHMENT 1 - ITEM 2



LOCALITY PLAN

DA/887/2022

Lot 1 DP 1052911 - No. 9 Chapman Avenue, Beecroft (St Johns Anglican Church)



REQUEST PURSUANT TO CLAUSE 4.6, FOR EXCEPTION TO COMPLIANCE WITH CLAUSE 4.3(2) of HORNSBY LOCAL ENVIRONMENTAL PLAN 2013

This Clause 4.6 Exception Submission has been prepared by Slattery Planning Group on behalf of St John's Anglican Church, Beecroft (the Applicant), in relation to the property at No. 9 Chapman Avenue, Beecroft (the site).

This Submission is made to Hornsby Shire Council in support of a Development Application (DA) for the following:

- demolition of entry porch to the rear (west) of the 1967 extension to the 1908 church building and the enlarging of the opening in the 1967 rear wall of the church;
- the relocation of the 1891-1894 weatherboard former School-church building to a location closer to Chapman Avenue and demolition of the pre-1943 creche addition to the southern side of this building;
- construction a new western extension to the existing 1967 extension of the 1908 church building, designed as a modern, part glazed, part brick and part metal clad building, including the following elements:
 - two (2) offices;
 - a meeting room;
 - kitchenette;
 - foyer area;
 - accessible WC;
 - storage area;
 - stairs and platform lift;
 - a centralised space linking the church to the new areas at the rear;
- removal of six (6) trees;
- various new external paving; and
- a fenced play area adjacent to the timber church meeting room.

1.0 CLAUSE 4.6 OF HORNSBY LOCAL ENVIRONMENTAL PLAN (HLEP) 2013

Clause 4.6(1) is facultative and is intended to allow flexibility in applying development standards in appropriate circumstances.

Clause 4.6 of BLEP 2021 has the following objectives:

- (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.

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).

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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.

2.0 APPROACH TO CLAUSE 4.6

This request has been prepared having regard to:

- 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;
- NSW Department of Planning and Infrastructure's Varying Development Standards: A Guide 2015;
- 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;
- Hansimikali v Bayside Council [2019] NSWLEC 1353; and
- RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

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.

As noted by Sheahan J in *Liberty Investments Pty Ltd v Blacktown City Council* [2009] NSWLEC 7, the considerations identified by Preston CJ in *Wehbe* are not intended to be exhaustive or applied as a code, and accordingly there may be other bases for considering that compliance with a development standard is unreasonable or unnecessary.

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 (65%) to the FSR 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.

The following assessment is undertaken pursuant to cl 4.6 and the above principles.

3.0 WHAT IS THE CLAUSE SOUGHT TO BE VARIED?**3.1 Clause 4.3(2) of HLEP 2013**

Pursuant to Clause 4.3(2) of HLEP 2013, a maximum building height of 8.5m is permitted at the site.

3.2 What is the extent of the non-compliance?

The existing masonry church has a maximum height of 11.744m to crucifix above the main parapet and 10.7m to the main ridge. The existing building therefore exceeds the maximum 8.5m height of building development standard by 3.244m or 38.2%.

The proposed addition to the rear of the masonry building has a maximum height of 10.178m which, while being lower than the existing building, exceeds the maximum 8.5m permitted under Clause 4.3 of HLEP 2013 by 1.678m or 19.7%.

4.0 CLAUSE 4.6(3)(a) - IS COMPLIANCE WITH THE STANDARD UNREASONABLE AND UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?**4.1 Clause 4.3 Objective is achieved**

The objective of Clause 4.3 of HLEP 2013 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.

The proposed alterations and additions to the brick church building, where the non-compliance with Clause 4.3(2) occurs, have been designed having regard to heritage input, consultation with the church congregation and discussions with Council during its assessment of DA/668/2017, as discussed in the Heritage Impact Statement accompanying the DA. The HIS notes the following in relation to the proposal:

- “has been carefully designed with an understanding of and respect for the heritage significance of the site, in particular the 1908 brick church with its 1967 western addition, and the 1891-1894 weatherboard former School-church building;
- supports the ongoing use of the site for its historical use for the Church community;
- enables the conservation and the reinstatement of the 1894 form of the 1891-1894 weatherboard former School-church building and the reinstatement of its internal spaces with the removal of later internal walls;
- will enhance the ability for the public to appreciate the heritage significance of the 1891-1894 weatherboard former School-church building through both its conservation and its relocation on the site to a location closer to Chapman Street, noting that the building was previously relocated from another site in 1905 and therefore has a history of relocation;
- involves only the demolition of elements which are not considered to be of high heritage significance (being a 1967 rear porch and rear wall addition to the 1908 church and a pre-1943 weatherboard classroom addition to the 1891-1894 weatherboard former School-church building, the removal of the former allowing for a link to the modern rear addition, and the removal of the

latter allowing for the reinstatement of the 1894 form of the weatherboard former School-church building;

- involves the construction of a sympathetic modern rear addition to the 1908 church extended at the rear in 1967, which will upgrade the amenity of the site and its compliance with BCA and disabled access requirements, and which will be largely obscured from view from the surrounding streets."

The proposed alterations and additions will have positive streetscape and heritage impacts, as discussed in the HIS accompanying this DA. The works are subservient to the main masonry church building on the site and will complement its form and function (see **Figures 1 and 2** below).



Figure 1: Perspective showing the proposed development when viewed from Beecroft Road (Source: Paul Davies Pty Ltd)



Figure 2: Perspective showing the proposed development when viewed from the intersection of Beecroft Road and Chapman Avenue (Source: Paul Davies Pty Ltd)

The proposed non-compliant elements are lower than the main church roof and will be subservient to the existing form and scale. Furthermore, the location of the works towards the rear of the building ensures that there is a minimal level of visibility from the public domain in the vicinity of the site.

The height of the works are appropriate having regard to the site conditions and constraints as they do not create any significant overshadowing impacts in relation to nearby properties. The church is a heritage item and the proposed development seeks to alter and add to the building in order to address compliance issues with the existing building, to ensure its ongoing functionality to the benefit of parishioners and the local community.

Having regard to the preceding discussion, it is considered that the proposal is consistent with objective (a) despite the non-compliance with Clause 4.3(2) of HLEP 2013.

4.3 Would the underlying object or purpose of the standard be defeated or thwarted if compliance was required, such that compliance is unreasonable or unnecessary?

It is not considered that the underlying objective of the Standard is irrelevant to the proposal, however, as demonstrated herein, it is submitted that the proposal is able to achieve consistency with the intent of the Standard, despite the non-compliance.

4.4 Has the development standard 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?

It is not considered that the Standard has been virtually abandoned or destroyed by Council's actions, however, having regard to the particulars of this Application, and the heritage conservation and amenity gains resulting from the non-compliance, it is considered that flexibility in the application of the Standard is warranted.

5.0 CLAUSE 4.6(3)(b) - ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

5.1 What is the aspect or feature of the development that contravenes the development standard?

As discussed previously, it is the proposed extensions to the rear of the existing masonry church building which contravenes Clause 4.3(2) of HELP 2013.

The remainder of the proposed works are compliant with Clause 4.3(2).

5.2 Why is contravention of the development standard acceptable?

The proposed height non-compliance is associated with the roof extension to the rear of the masonry church building.

The addition to the rear of the church has been designed as a modern, part glazed, part brick and part metal clad building. The section linking into the rear (west) of the main church building (i.e. the element with the non-compliant building height) is setback in width and height, to create a respectful link into the main church building.

The works will be partly obscured from view from Chapman Avenue due to the relocated former School-church building and it will have limited visibility from Beecroft Road.

The proposed contravention is considered acceptable given the sensitive design of the proposed works, heritage gains achieved by the proposal and the significant benefits to the functionality of the existing church which will occur as a result of the proposal. The works will enable the ongoing use of the church in a manner which complies with relevant accessibility standards, to the benefit of all people.

6.0 The Proposed development is in the public interest because it is consistent with the objectives of the particular standard and the zone objectives (cl4.6(4)(a)(ii))

Having regard to the acceptable environmental impacts, and the merits of the proposed development, it is considered that the public interest is being met by the proposed development, despite the non-compliance. Indeed, incorporation and conservation of the heritage item within the site is a public benefit associated with the proposal.

6.1 Objectives of the Standard

The objectives of the standard and the consistency of the proposal with those objectives are considered in detail above

6.2 Zone objectives

Pursuant to LEP 2013, the site is located within the R2 Low Density Residential zone. The objectives of the zone 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 proposed development is consistent with the relevant zone objective as it maintains church-related uses which meet the day to day needs of local residents. The proposal maintains a form which is subservient to the existing masonry church building and will not detract from the low-density residential environment in the locality.

To this end, the proposal is consistent with the relevant objective of the zone despite the non-compliance with the height of buildings development standard.

7.0 Requirements for Planning Secretaries concurrence

The Planning Secretaries concurrence may be assumed pursuant to Planning Circular PS18_003 issued 21 Feb 2018. Nevertheless the proposal is considered against the matters to which the Secretary is required to have regard below.

7.1 Clause 4.6(5)(A) - Matters of State or Regional Environmental Planning

The proposed contravention of the Standard does not raise any matter of significance for State or regional environmental planning.

7.2 Clause 4.6(5)(B) - The Public benefit of maintaining the standard

The proposal could be amended to comply with Clause 4.3(2) of HLEP 2013 however this would result in a poor amenity and heritage outcome as the proposed form has been designed to respect the form and scale of the existing building. For all of the reasons outlined above, and the absence of environmental harm, there is greater public benefit in permitting the contravention than in maintaining the standard.

7.3 Clause 4.6(5)(C) – Any Other Matters Required to Be Considered

There are no other known matters required to be taken into consideration by the Director-General before granting concurrence.

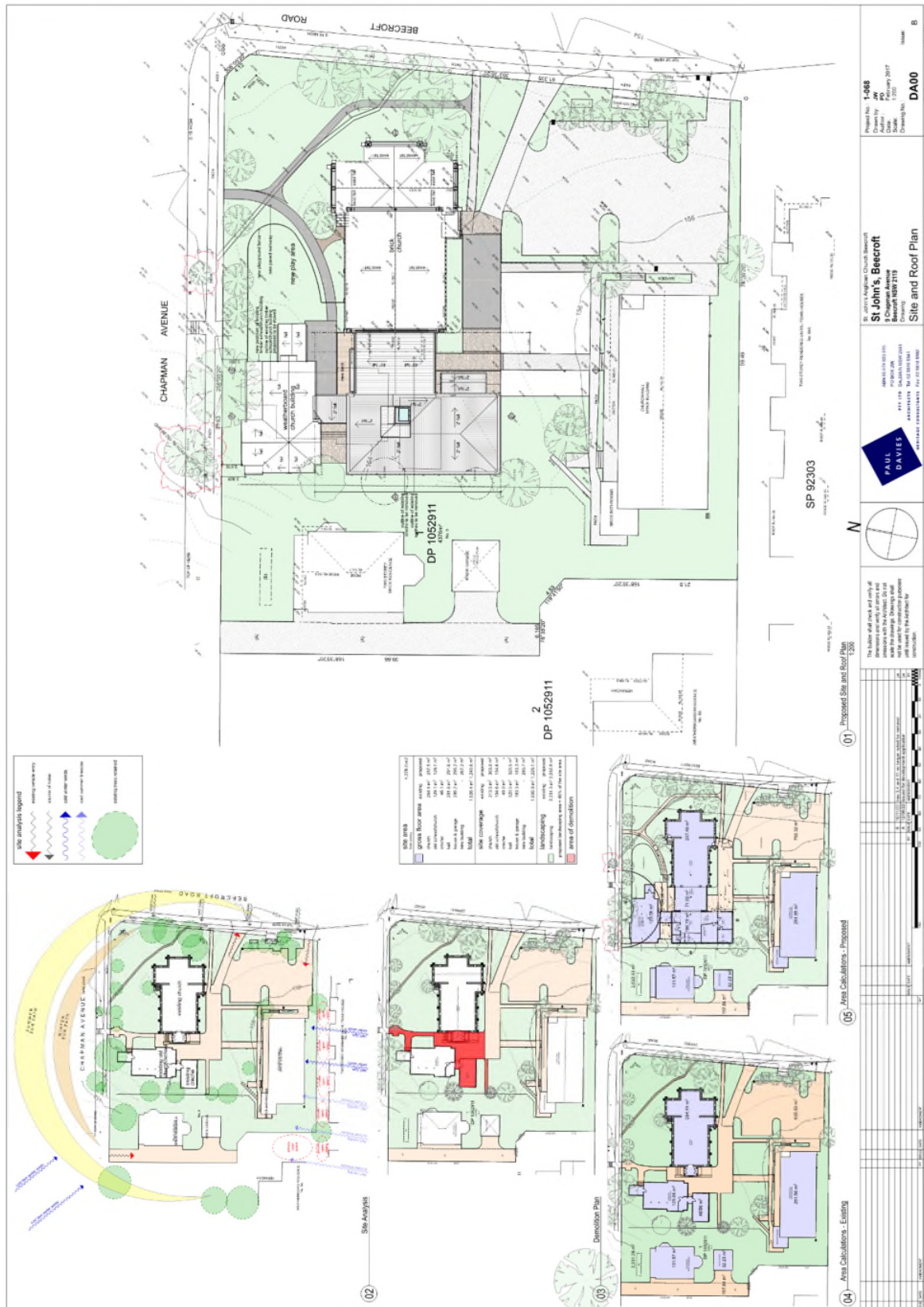
As can be seen from the discussion herein, the proposed development is consistent with the objectives of the development standard and R2 Low Density Residential zone pursuant to HLEP 2013 despite the non-compliance with the building height development standard.

It is considered that the proposal has adequately addressed the matters outlined in Section 4.6(3) – (5) of HLEP 2013.

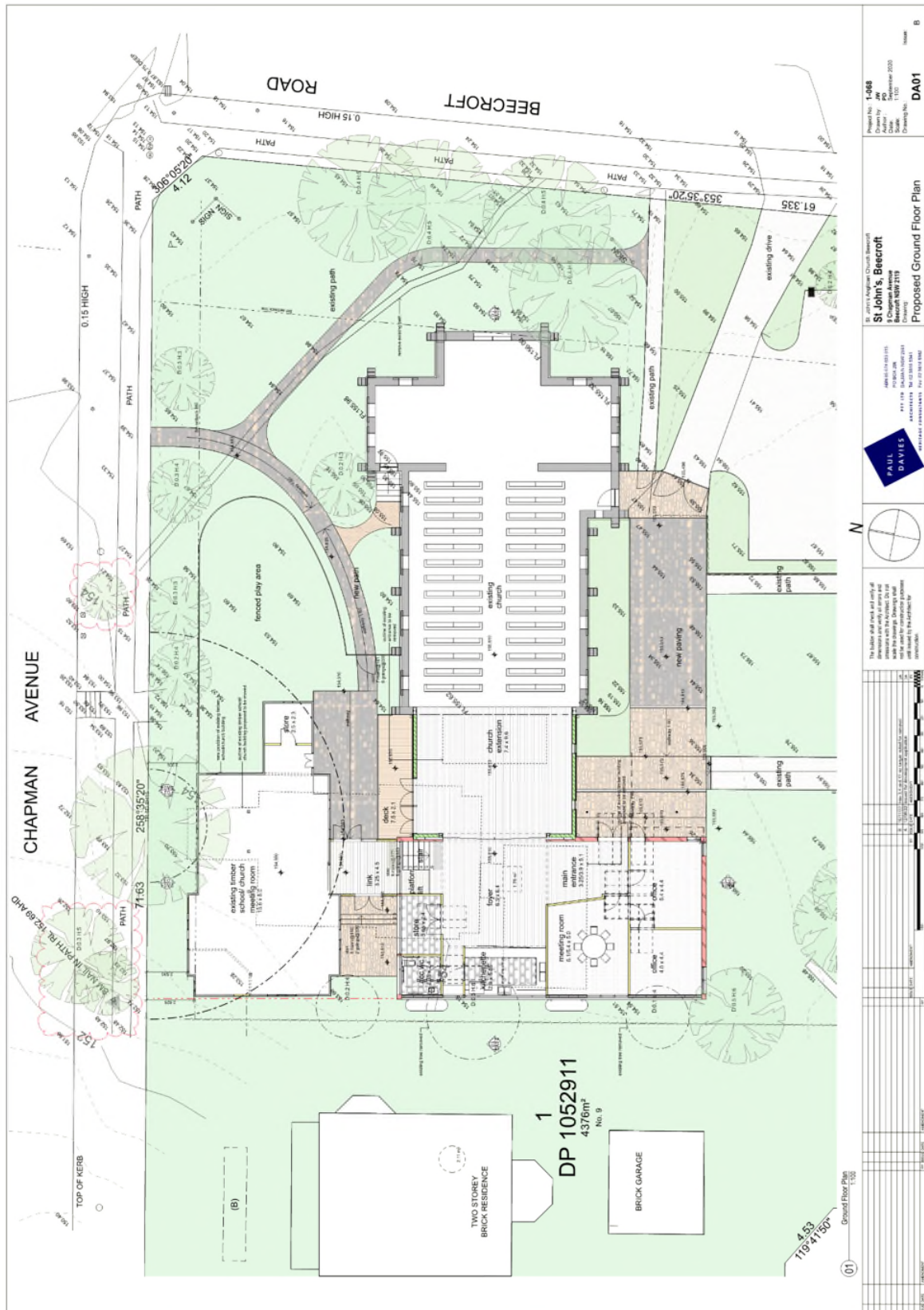
8.0 CONCLUSION

Having regard to the discussion contained herein, it is considered that the matters required to be addressed, pursuant to Clause 4.6 of HLEP 2013, the five-part test established in the Land and Environment Court and the Varying Development Standards: A Guide, have been fully canvassed herein.

Having regard to the particulars of the proposal, as outlined above, it is considered that there would be no material benefit to requiring the proposal to comply with Clause 4.3(2) of HLEP 2013 and on this basis, an exception to Clause 4.3(2) of HLEP 2013 is considered well-founded, and worthy of Council's support.



ATTACHMENT 3 - ITEM 2

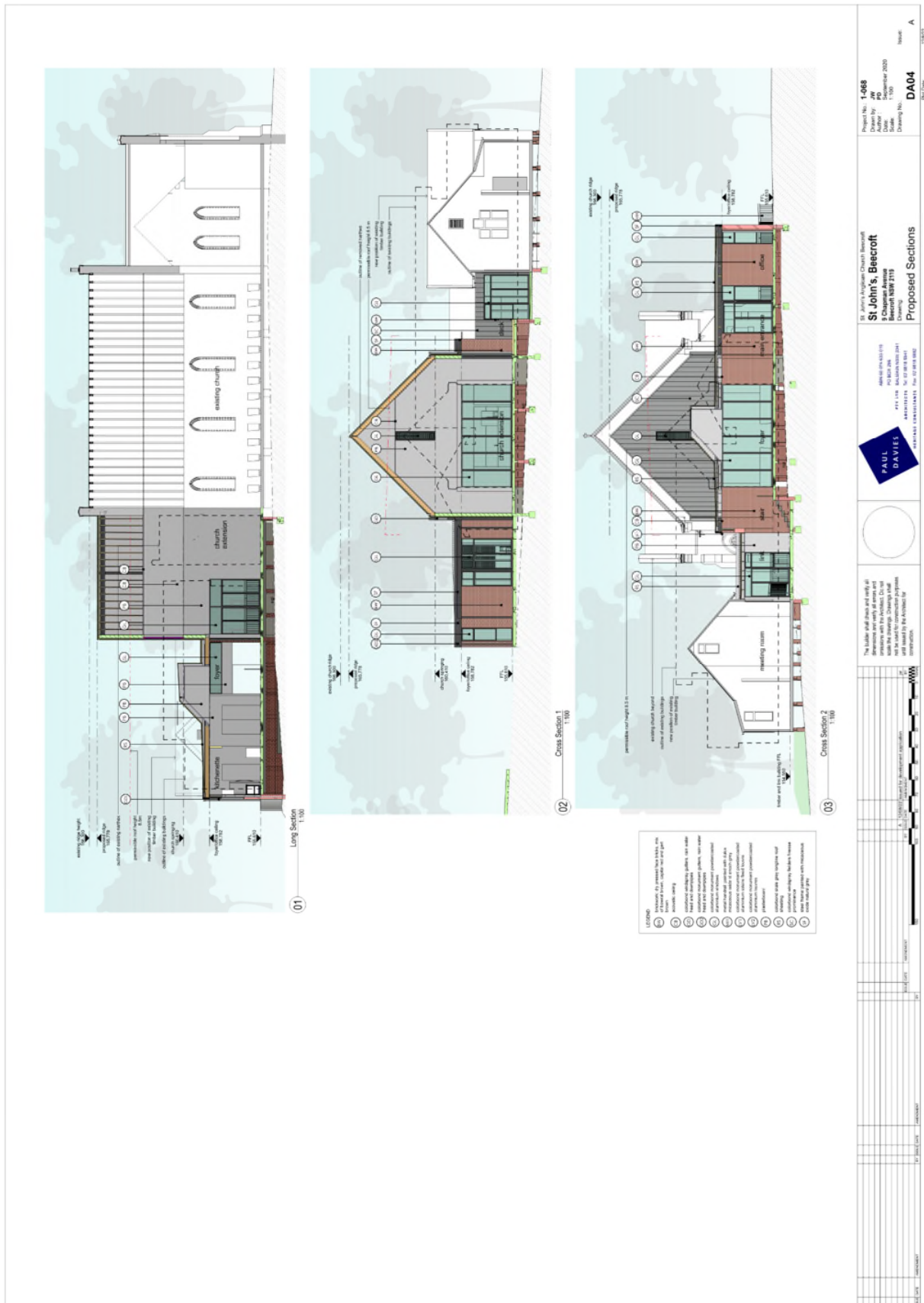


ATTACHMENT 3 - ITEM 2

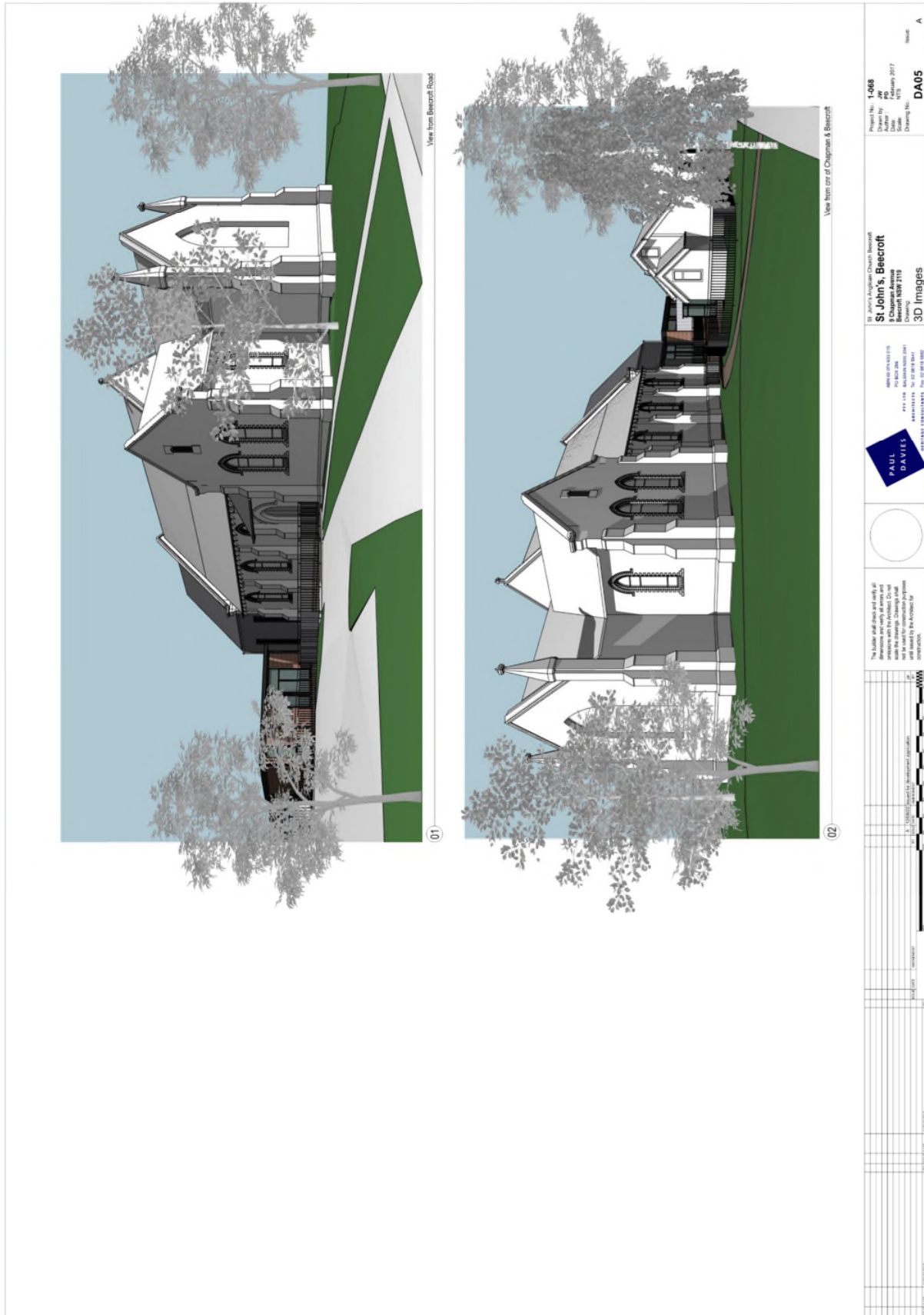
ATTACHMENT 3 - ITEM 2

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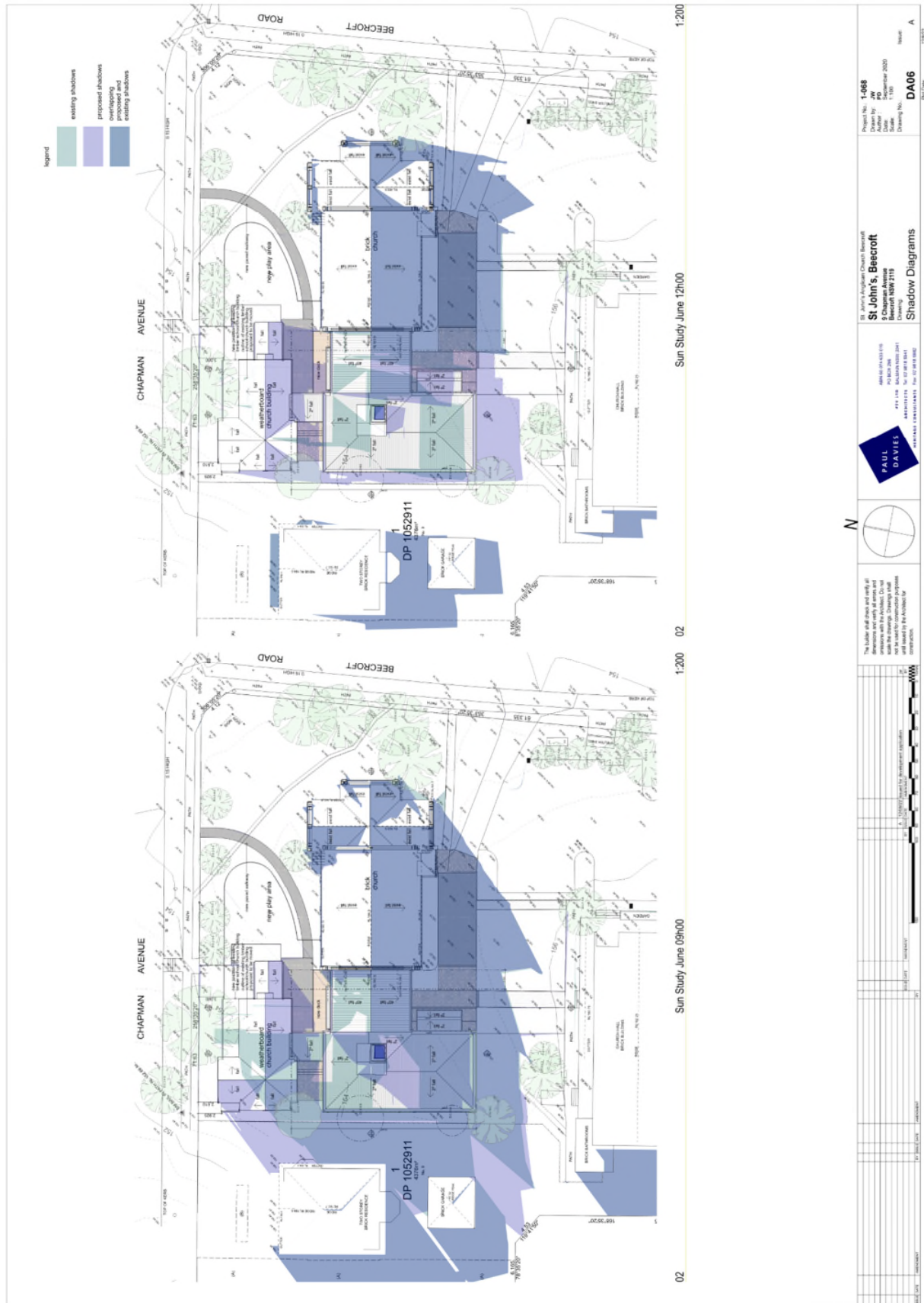




ATTACHMENT 3 - ITEM 2



ATTACHMENT 3 - ITEM 2



ATTACHMENT 3 - ITEM 2



CHAPMAN AVENUE

COPELAND ROAD

LANDSCAPE ARCHITECTURE

1:100

DATE: 17/03/22

PROJECT: CHURCH EXTENSION

CLIENT: ST JOHN ANGLICAN CHURCH BEECROFT

ARCHITECT: PAUL DAVIES

LANDSCAPE ARCHITECT: ZENITH LANDSCAPE DESIGN

19 Ashurst Lane, Beecroft NSW 1500

0 1 2 3 4 5 10m

LEGEND

- Shedding stones in garden
- Turf
- Existing grassed area
- Existing trees to be retained
- Typical back edge
- Stormwater lines and pits
- Retaining walls

NOTES

1. All works shall be completed by 15/04/2022.
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PLANT CODES

Refer also to plant schedule

- AA Acacia saligna
- BB Blackberry
- CC Camellia
- DD Daphne
- EE Eucalyptus
- FF Ficus
- GG Gardenia
- HH Hibiscus
- II Impatiens
- JJ Jacaranda
- KK Kalmegh
- LL Lavender
- MM Myrica
- NN Nandina
- OO Oleander
- PP Paeonia
- QQ Quercus
- RR Rhododendron
- SS Salix
- TT Tamarix
- UU Ulmus
- VV Viburnum
- WW Yucca
- XX Xanthorrhoea
- YY Yew
- ZZ Zanteda

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- ZZ Zanteda

CHURCH EXTENSION

EXISTING CHURCH

LANDSCAPE ARCHITECTURE

1:100

DATE: 17/03/22

PROJECT: CHURCH EXTENSION

CLIENT: ST JOHN ANGLICAN CHURCH BEECROFT

ARCHITECT: PAUL DAVIES

LANDSCAPE ARCHITECT: ZENITH LANDSCAPE DESIGN

19 Ashurst Lane, Beecroft NSW 1500

0 1 2 3 4 5 10m

LEGEND

- Shedding stones in garden
- Turf
- Existing grassed area
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- Typical back edge
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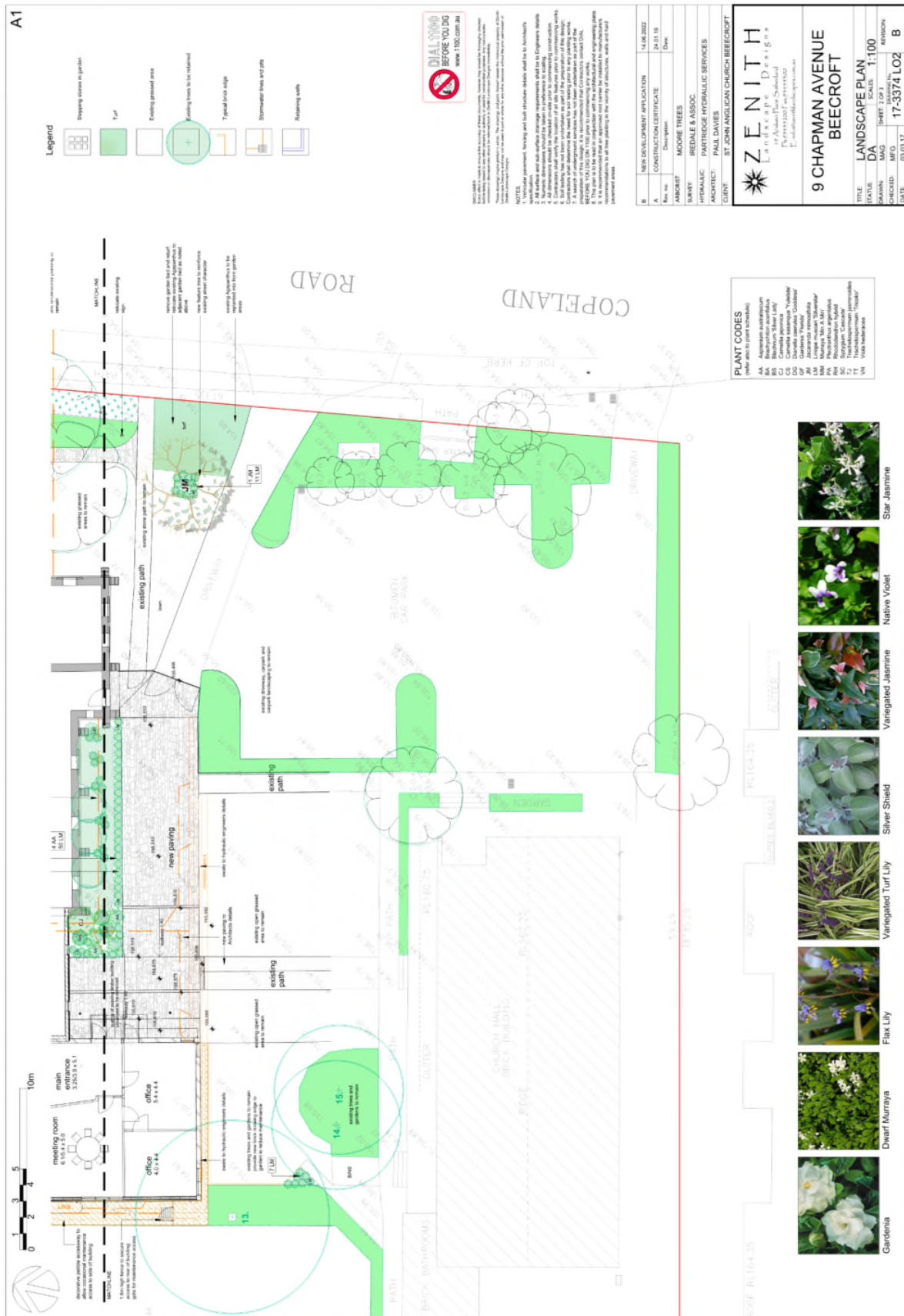
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PLANT CODES

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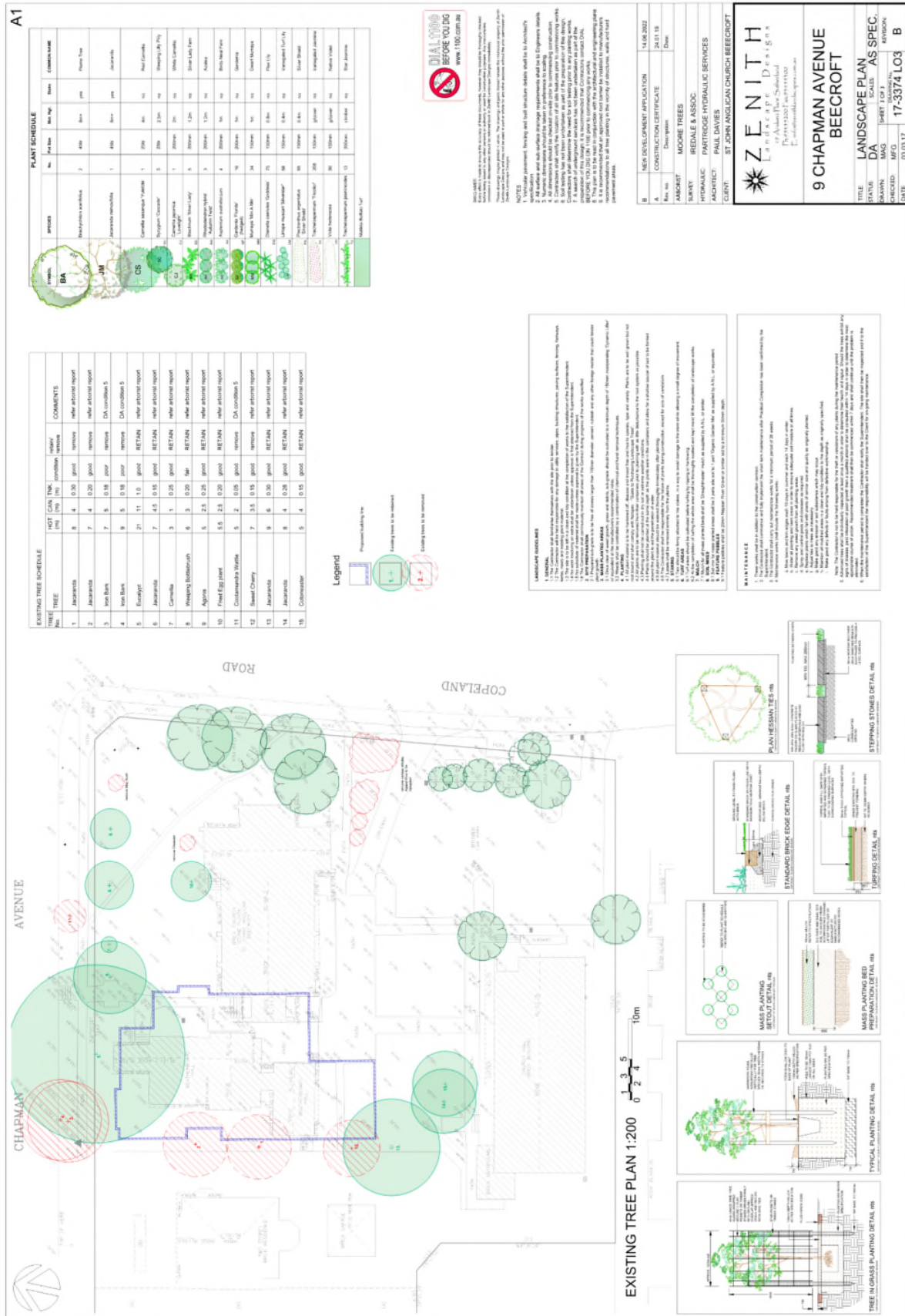
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ATTACHMENT 4 - ITEM 2



ATTACHMENT 4 - ITEM 2

ATTACHMENT 4 - ITEM 2



ATTACHMENT/S

REPORT NO. LPP9/23

ITEM 3

1. DAS OVER 180 DAYS

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

DA No.	Proposal	Address	Ward	Reason	Est. Date to LPP	Advice to Chair	No. Days at 29/3
DA/1146/2020	Torrens title subdivision of 1 into 10	90-92 Franklin Road Cherrybrook	C	VPA	Apr	Under assessment. Report being prepared for April meeting.	828
DA/1244/2021	Senior Living - 33 self-contained dwellings, demolition of existing structures, consolidation of 5 lots into 1	15B, 17, 19, 21 Penrhyn Ave, Beecroft and 579 Pennant Hills Road, West Pennant Hills	C	>10 submissions	May	Deferred by panel November LPP meeting. Amended plans and additional information received 9 March 2023. Traffic tube data for Penrhyn/Hannah intersection to be submitted by 24 March 2023. Further report being prepared for the May meeting.	497
DA/121/2022	Demolition and construction of 5 storey RFB - 64 units	23-27 Balmoral Street Waitara	B	SEPP 65 + >10 submissions	May	Applicant submitted revised plans, which were reviewed by Council's Design Excellence Panel on 15 February. The panel were not supportive of the amendments and the applicant has requested the matter be put to the LPP for determination. Report being prepared for the May meeting.	415

ATTACHMENT 1 - ITEM 3

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

DA No.	Proposal	Address	Ward	Reason	Est. Date to LPP	Advice to Chair	No. Days at 29/3
DA/585/2022	Boardwalk	Kangaroo Point - Brooklyn Rd	A	Designated development	Apr	BDAR referred to Fisheries for concurrence on 23 January 2023. Upon receipt a report will be prepared for the next LPP meeting. TFNSW are working with Council to facilitate an outcome with Fisheries, whom have been unresponsive to date.	295
DA/737/2022	Recreational facility	639 Old Northern Road Dural	A	>10 submissions	Jun	Amended plans received in response to the December 2022 Panel resolution. Application to be re-notified.	254
DA/984/2022	Torrens title subdivision of 1 lot into 2	11A Austral Avenue, Beecroft	C	>10 submissions	Apr	Amended plans and additional information received 7 February 2023. Report being prepared for the April meeting.	210

ATTACHMENT 1 - ITEM 3