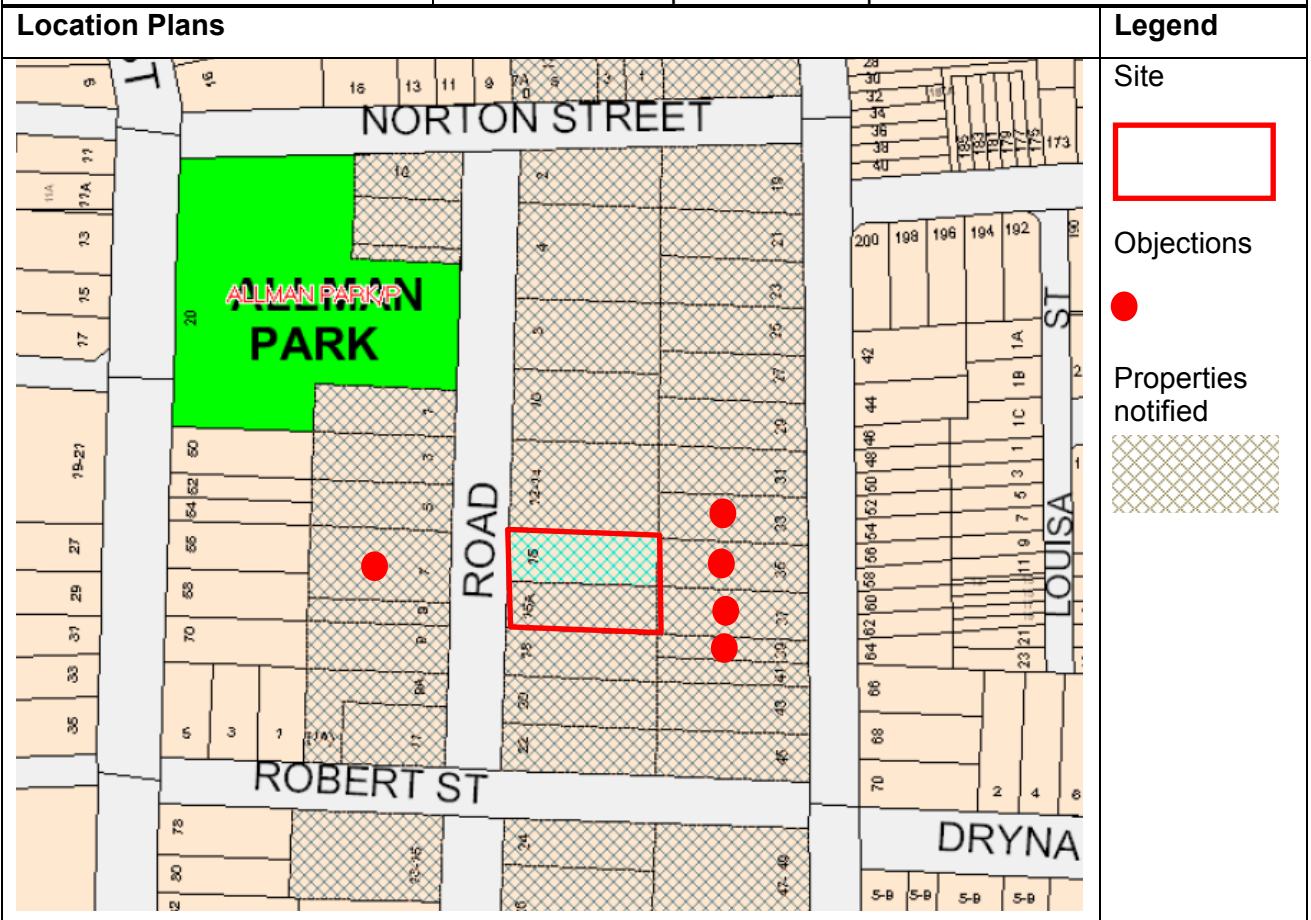




# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	10.2017.263.01
<b>Address</b>	16-16A Tintern Road, Ashfield
<b>Proposal</b>	Demolition of existing structures and construction of a 3 storey, 15 room residential flat building with basement carpark.
<b>Date of Lodgement</b>	19 December 2017
<b>Applicant</b>	Tony Boutros
<b>Owner</b>	Tony, George, Said and Malke Boutros
<b>Number of Submissions</b>	5
<b>Value of works</b>	\$4,400,000
<b>Reason for determination at Planning Panel</b>	Sensitive Development (Statement Environmental Planning Policy No 65)
<b>Main Issues</b>	Floor space ratio Stormwater Neighbouring privacy Street trees
<b>Recommendation</b>	Deferred Commencement
<b>Attachment A</b>	Recommended conditions
<b>Attachment B</b>	Plans of Proposed Development
<b>Attachment C</b>	Clause 4.6 Exemption to Development Standards







Picture 1: Aerial photo with subject sites identified.



Picture 2: Subject site viewed from Tintern Road.





Picture 3: Neighbouring building to the south at No. 18 Tintern Road as viewed from the subject site.



Picture 4: Neighbouring building to the north at No. 12-14 Tintern Road as viewed from Tintern Road.

## 1. Executive Summary

This report is an assessment of the application submitted to Council for the demolition of existing structures and construction of a three (3) storey residential flat building with basement carpark at 16-16A Tintern Road, Ashfield. The application was notified to surrounding properties and five (5) submissions were received.

The main issues that have arisen from the application include:

- Floor space ratio
- Stormwater
- Neighbouring privacy
- Street trees

The non-compliances are acceptable given the compliance with the zone and development standards objectives, lack of environmental impacts, the applicants well-founded Clause 4.6 request to vary a development standard and subject to the imposition of recommended conditions of consent. The application is recommended for approval.

## 2. Proposal

The proposal is for the demolition of all existing structures on the sites and construction of a three (3) storey residential flat building with 15 units and a basement car park with 18 car spaces.



Picture 5: Proposed street context.

## 3. Site Description

The subject sites are located on the eastern side of Tintern Road, between Norton Street to the north and Robert Street to the south. The sites have a combined area of approximately 1557sqm and are legally known as Lot B in DP 330071 and Lot 36 in DP 883. For the purposes of this report, the two sites will be referred to as 'the subject site'.

Currently 16 Tintern Road is occupied by a two (2) storey building and a detached structure at the rear which appears to contain a total of seven (7) units. 16A Tintern Road is undeveloped except for a carport structure. To the north and south, the subject site is adjoined by three (3) storey residential flat buildings. Tintern Road is largely characterised by three (3) storey residential flat buildings and several original two (2) storey detached dwelling houses.



The subject site is not identified as containing a heritage item or located within a heritage conservation area however there are a number of heritage items nearby including No. 39 Prospect Road (I592 known as 'House') neighboring the south-east corner of the subject site and No. 9 Tintern Road (I309 known as 'House') to the south-west on the opposite side of Tintern Road.

## 4. Background

### 4(a) Site history

The following application outlines the relevant development history of the subject site and any relevant applications on surrounding properties.

#### Subject Site

Application	Proposal	Decision & Date
10.2001.379	Demolition of all building structures and construction of a new three-storey flat building containing 15 two-bedroom units and 1 one-bedroom unit and basement car parking.	Refused – 19 June 2001
10.2000.227	Residential apartments 13x2 and 5x3 bedroom, above basement car parking level and demolition of house and consolidation of two lots, including removal of a tree	Refused – 21 November 2000
10.1999.447	Proposed 2 storey (with base level parking) residential flat building. comprising of 7 units	Refused – 7 November 1999
10.1999.18	Erection of new 3 levels residential building with 8 units.	Refused – 22 January 1999

### 4(b) Application history

The following table outlines the relevant history of the subject application.

Date	Discussion / Letter / Additional Information
1 May 2018	<p>A request for additional information was sent to the applicant requesting the following:</p> <ul style="list-style-type: none"> <li>• Updated gross floor area calculations including all foyer areas.</li> <li>• Plans demonstrating that the units comply with the solar access and cross ventilation requirements of the ADG.</li> <li>• Reduction in the number of car parking spaces and inclusion of a car wash bay.</li> <li>• Dimensions on all plans.</li> <li>• Further details of the width, length and section of the vehicle ramp.</li> <li>• The distance from the waste storage area to the collection point be significantly reduced.</li> </ul>
28 May 2018	<p>The applicant provided a written response and amended plans addressing all but one of Council's concerns. Most notably the applicant did not update the gross floor area calculations to include the foyer areas. The applicant put forth an argument that the entirety of the foyer areas should not be included in the calculations in accordance with the Standard Instrument definition of 'gross floor area'. The applicant was</p>

	informed that Council staff did not agree that the definition would exclude portions of the foyer areas in this development and that as a Clause 4.6 variation to the gross floor area development standard was sought, the calculation of gross floor area must be consistent with Council's calculations.
2 August 2018	Further correspondence was sent to the applicant requesting the gross floor area calculations be updated as per the letter dated 1 May 2018.
9 October 2018	The applicant provided updated gross floor area calculations which included the entirety of the foyer areas. In order to reduce the floor space ratio non-compliance, the applicant also provided amended drawings which reduced the buildings footprint and envelope.
5 November 2018	The applicant provided revised basement level to ensure compliance with the relevant car parking provisions in the CIWDCP 2016. The applicant also provided an updated Clause 4.6 request.
7 November 2018	The applicant provided revised sections and elevations which showed the natural ground level.

## 5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979.

### 5(a) Environmental Planning Instruments

The application has been assessed against the relevant Environmental Planning Instruments listed below:

- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Ashfield Local Environmental Plan 2013

The following provides further discussion of the relevant issues:

#### 5(a)(i) State Environmental Planning Policy No 55—Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. CIWDCP 2016 provides controls and guidelines for remediation works. SEPP 55 requires that remediation works must be carried out in accordance with a Remediation Action Plan (RAP) as approved by the consent authority and any guidelines enforced under the Contaminated Land Management Act 1997.

The site has not been used in the past for activities which could have potentially contaminated the site and therefore it is considered that the site will not require remediation in accordance with SEPP 55.



5(a)(ii) **State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development**

The development is subject to the requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65). SEPP 65 prescribes nine design quality principles to guide the design of residential apartment development and to assist in assessing such developments. The principles relate to key design issues including context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction and aesthetics.

A statement from a qualified Architect was submitted with the application verifying that they designed, or directed the design of, the development. The statement also provides an explanation that verifies how the design quality principles are achieved within the development and demonstrates, in terms of the Apartment Design Guide (ADG), how the objectives in Parts 3 and 4 of the guide have been achieved.

The development is acceptable having regard to the nine design quality principles.

**Apartment Design Guide**

The Apartment Design Guide (ADG) contains objectives, design criteria and design guidelines for residential apartment development. In accordance with Clause 6A of the SEPP certain requirements contained within CIWDPC2016 do not apply. In this regard the objectives, design criteria and design guidelines set out in Parts 3 and 4 of the ADG prevail.

The following provides further discussion of the relevant issues:

**Part 3D: Communal and Open Space**

The ADG prescribes the following requirements for communal and open space:

- Communal open space has a minimum area equal to 25% of the site.
- Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9.00am and 3.00pm on 21 June (mid-winter).

**Comment:** The subject site has a total area of 1557sqm, thus requiring at least 389.25sqm of communal open space. The proposal has 364sqm (23.3%) of communal open space across two principal areas at the ground level – the landscaped ‘front setback’ fronting Tintern Road and the central forecourt. Although the proposed communal open space does not numerically comply with this part of the ADG, it is noted that the non-compliance is numerically small and that given the relatively small scale of the residential flat building (15 units), large site (1557sqm), the extensive perimeter landscaped areas which cannot strictly be included as communal open space, and the provision of significantly oversized private open spaces for most units (most notably on the ground and second floors), the minor non-compliance is considered acceptable in this instance.

The supplied solar access diagrams demonstrate the principal usable part of the communal open space (which is considered to be the landscaped ‘front setback’ fronting Tintern Road) will receive at least 50% direct sunlight for 2 hours between 9.00am and 3.00pm during the winter solstice.

Part 3B: Orientation

The ADG states that overshadowing of neighbouring properties is minimised during mid-winter.

**Comment:** It is noted that the neighbouring residential flat building to the south at No. 18 Tintern Road (No. 18) has extensive north-facing glazing (facing the subject site) which are setback approximately 3.2m from the common side boundary, and three (3) north-facing balconies which are setback approximately 2.5m from the common side boundary.

Given the minimal setback of the existing building at No. 18 and the ‘borrowed’ amenity currently enjoyed because No. 16A Tintern Road is undeveloped, it is considered difficult to expect the existing level of solar access or amenity be maintained given the development potential of the subject site prescribed by the relevant planning controls.

Nevertheless, the applicant has provided ‘sun-eye view’ diagrams at hourly intervals between 9.00am and 3.00pm during the winter solstice which demonstrate that the additional solar impacts on No. 18 Tintern Road will be minimal and almost entirely confined to the ground floor openings and balcony. The proposed 6m setback to the common boundary and ‘U-shaped’ footprint ensure that the solar impacts of the development on No. 18 Tintern Road will be significantly minimised.

Part 3E: Deep Soil Zones

The ADG prescribes the following minimum requirements for deep soil zones:

Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)
Less than 650m <sup>2</sup>	-	7%
650m <sup>2</sup> - 1,500m <sup>2</sup>	3m	
Greater than 1,500m <sup>2</sup>	6m	
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	

**Comment:** The subject site has a total area of 1557sqm, thus requiring 108.9sqm of deep soil zone. The proposal includes 194sqm (12.5%) of deep soil zone at the front of the site.

Part 3F: Visual Privacy/Building Separation

The ADG prescribes the following minimum required separation distances from buildings to the side and rear boundaries:

Building Height	Habitable rooms and balconies	Non-habitable rooms
Up to 12 metres (4 storeys)	6 metres	3 metres
Up to 25 metres (5-8 storeys)	9 metres	4.5 metres
Over 25 metres (9+ storeys)	12 metres	6 metres

The ADG prescribes the following minimum required separation distances from buildings within the same site:

Up to four storeys/12 metres



Room Types	Minimum Separation
Habitable Rooms/Balconies to Habitable Rooms/Balconies	12 metres
Habitable Rooms to Non-Habitable Rooms	9 metres
Non-Habitable Rooms to Non-Habitable Rooms	6 metres

**Comment:** The proposed development is a three (3) storey building and has a maximum building height of 11.7m. The building has 6 metre setbacks to the side and rear boundaries and a 9.54m setback to the front boundary in accordance with this part of the ADG.

As discussed elsewhere in this report, it is noted that the neighbouring residential flat building at No. 18 has extensive north-facing glazing (facing the subject site) which are setback approximately 3.2m from the common side boundary, and three (3) north-facing balconies which are setback approximately 2.5m from the common side boundary.

As the proposed development has a 'U-shaped' configuration, the portion of the building approximately adjacent to the existing balconies of the building at No. 18 is setback 14.5m from the common boundary, reducing the developments impact on outlook, daylight access and visual bulk when viewed from No. 18. The southern elevation of the proposed development only contains relatively small windows relating to bedrooms which will not be subject to high levels of activity. The proposed balconies on the southern elevation are located at the eastern and western edges of the building and roughly align with the edges of the existing building at No. 18, thus minimising the opportunity for direct sightlines. As also previously discussed the proposal will maintain adequate solar access to No. 18.

Although the intent of this part of the ADG is to provide a minimum 12m setback between buildings, given the constraints imposed by the siting of the existing building at No. 18 and the retention of acceptable neighbouring amenity as discussed above, it is considered unreasonable to expect the subject development to be setback a further ~3m from the common side boundary to ensure this is achieved.

Although the ground floor elevated terraces are setback less than 6m from the common boundaries, they are not considered balconies and therefore not explicitly required to comply with the building separation requirements of this part of the ADG.

The building has a 'U' shape configuration centred around a common forecourt. The portions of the building either side of the forecourt contain blank walls (with the exception of one bedroom window at first floor) and have a separation of 10m which achieves the required 9m in this part of the ADG.

#### Part 3J: Bicycle and Car Parking

In accordance with this part of the ADG, the bicycle and car parking provisions of the CIWDGP 2016 are to be referred to for rates and therefore is discussed elsewhere in this report.

#### Part 4A: Solar and Daylight Access

The ADG prescribes the following requirements for solar and daylight access:

- Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9.00am and 3.00pm at mid-winter.
- A maximum of 15% of apartments in a building receive no direct sunlight between 9.00am and 3.00pm at mid-winter.

**Comment:** The supplied shadow solar access diagrams demonstrate that 13 (86%) of units will receive at least 2 hours of direct sunlight and that no units will receive no direct sunlight between 9.00am and 3.00pm during the winter solstice. The proposed siting, setbacks and orientation contribute to the development achieving this level of solar access.

Part 4B: Natural Ventilation

The ADG prescribes the following requirements for natural ventilation:

- At least 60% of apartments are naturally cross ventilated in the first 9 storeys of the building. Apartments at 10 storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.

**Comment:** 12 (80%) of the units will be naturally cross ventilated.

Part 4C: Ceiling Heights

The ADG prescribes the following minimum ceiling heights:

Minimum Ceiling Height	
Habitable Rooms	2.7 metres
Non-Habitable	2.4 metres

**Comment:** All rooms have ceiling heights of 2.7 metres.

Part 4D: Apartment Size

The ADG prescribes the following minimum apartment sizes:

Apartment Type	Minimum Internal Area
Studio apartments	35m <sup>2</sup>
1 Bedroom apartments	50m <sup>2</sup>
2 Bedroom apartments	70m <sup>2</sup>
3 Bedroom apartments	90m <sup>2</sup>

Note: The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.

**Comment:** All units comply with the minimum internal areas outlined in this part of the ADG.

Part 4D: Apartment Layout

The ADG prescribes the following requirements for apartment layout requirements:

- Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.
- Habitable room depths are limited to a maximum of 2.5 x the ceiling height.
- In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8 metres from a window.
- Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space).
- Bedrooms have a minimum dimension of 3 metres (excluding wardrobe space).



- Living rooms or combined living/dining rooms have a minimum width of:
- 3.6 metres for studio and 1 bedroom apartments.
- 4 metres for 2 and 3 bedroom apartments.

**Comment:** All habitable rooms have direct access to a glass area of not less than 10% of the floor area of the room.

The development has proposed ceiling heights of 2.7m and therefore all habitable rooms are restricted to 6.75m with the exception of open plan living areas which are restricted to 8m. All habitable rooms and open plan living areas are consistent with the requirements of this part of the ADG.

All master bedrooms (excluding wardrobe space) are at least 10sqm in area and all other bedrooms (excluding wardrobe space) are at least 9sqm in area. All bedrooms have a minimum dimension of 3m.

All units have combined living/dining rooms all of which have a width of at least 3.6m for the 1 bedroom units and 4 metres for the 2 and 3 bedroom units.

Part 4E: Private Open Space and Balconies

The ADG prescribes the following sizes for primary balconies of apartments:

Dwelling Type	Minimum Area	Minimum Depth
Studio apartments	4m <sup>2</sup>	-
1 Bedroom apartments	8m <sup>2</sup>	2 metres
2 Bedroom apartments	10m <sup>2</sup>	2 metres
3+ Bedroom apartments	12m <sup>2</sup>	2.4 metres

Note: The minimum balcony depth to be counted as contributing to the balcony area is 1 metres.

The ADG also prescribes for apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3 metres.

**Comment:** The size of all balconies on the first and second floors are in excess of the minimum area and minimum depth required by this part of the ADG.

All ground floor units include private open spaces with an area of at least 15sqm. It is noted that Unit 5 has a minimum depth of 2.935m which although does not numerically comply with the required 3m is considered acceptable given the minor nature of the non-compliance and that the units private open space is significantly larger (24.3sqm) than that required by this part of the ADG (15sqm).

Part 4F: Common Circulation and Spaces

The ADG prescribes the following requirements for common circulation and spaces:

- The maximum number of apartments off a circulation core on a single level is 8.

**Comment:** The development proposes a maximum of five (5) apartments off a single circulation core.

Part 4G: Storage

The ADG prescribes the following storage requirements in addition to storage in kitchen, bathrooms and bedrooms:

Apartment Type	Minimum Internal Area
Studio apartments	4m <sup>3</sup>
1 Bedroom apartments	6m <sup>3</sup>
2 Bedroom apartments	8m <sup>3</sup>
3+ Bedroom apartments	10m <sup>3</sup>

Note: At least 50% of the required storage is to be located within the apartment.

**Comment:** Sufficient space has been provided in each unit and in the basement car park for storage.

**5(a)(iii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

A BASIX Certificate was submitted with the application, which indicates that the proposal can meet the required reduction targets. An appropriate condition of consent has been recommended to ensure future compliance with these targets.

**5(a)(iv) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

An assessment has been made of the matters set out in Clause 20 of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. It is considered that the carrying out of the proposed development is generally consistent with the objectives of the Plan and would not have an adverse effect on environmental heritage, the visual environment, the natural environment and open space and recreation facilities.

**5(a)(v) Ashfield Local Environment Plan 2013 (ALEP 2013)**

The application was assessed against the following relevant clauses of the Ashfield Local Environmental Plan 2013.

The site is located with the R3 – Medium Density Residential zone. The proposal is defined as a ‘residential flat building’ which is permissible with consent in the zone.

The following table provides an assessment of the application against the development standards:

Standard (maximum)	Proposal	% of non compliance	Compliances
Floor Space Ratio Permissible: 0.7:1 (1089.9sqm)	0.76:1 (1178.6sqm)	7.8%	No
Height of Building Permissible: 12.5m	11.7m	N/A	Yes

The following provides further discussion of the relevant issues:

**Clause 4.6 Exceptions to Development Standards**

As outlined in table above, the proposal results in a breach of the following development standard:

- Floor space ratio

The applicant seeks a variation to the floor space ratio development standard under Clause 4.4 of the Ashfield Local Environmental Plan 2011 by 7.8% (88.7 sqm).

Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the Ashfield Local Environmental Plan 2011.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the applicable local environmental plan justifying the proposed contravention of the development standard which is summarised as follows:

- The proposed built form is consistent with the existing residential flat buildings surrounding the site and the wider context of Tintern Road.
- The units achieve very good internal amenity.
- The proposal will have an acceptable outcome for traffic generation and will not unreasonably impact on the functionality of the road network.
- The proposed additional density will not create any significant additional amenity impacts on neighboring properties compared to a compliant scheme.
- The proposed variation assists with meeting housing needs of the community.

The applicant's written rational adequately demonstrates compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in the public interest because it is consistent with the objectives of the R3 – Medium Density Zone, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

- The proposal is for a residential flat building with a mixture of one, two and three bedroom units which will provide a variety of housing types and for the general housing needs of the community.

It is considered the development is in the public interest because it is consistent with the objectives of the floor space ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

- The proposal is consistent with the density, height and intensity of existing neighbouring development as well as existing development on Tintern Road which is largely characterised by three (3) storey residential flat buildings.
- Given the scale of the development, is consistent with the predominate character of Tintern Road, the proposal will not significantly adversely impact upon nearby heritage items.
- As discussed elsewhere in this report, subject to the imposition of conditions the proposal will maintain adequate neighbouring amenity, solar access, privacy and outlook.
- The proposed three (3) storey development has an appropriate visual relationship with the two existing neighbouring residential flat buildings. The proposed ridge height is set between that at No. 18 Tintern Road to the south and No. 12-14 Tintern Road to the north, reinforcing the gradual stepping down of the buildings and slope of the land along this side of Tintern Road from south to north.



The contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning. Council may assume the concurrence of the Director-General under the Planning Circular PS 18-003 issued in February 2018 in accordance with Clause 4.6(4)(b) of the applicable local environmental plan.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the applicable local environmental plan. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the floor space ratio development standard and it is recommended the Clause 4.6 exception be granted.

#### Heritage

The subject site is not identified as containing a heritage item and is not located in a heritage conservation area. The subject site is in the vicinity of a number of heritage items including No. 39 Prospect Road (I592 known as 'House') neighboring the south-east corner of the subject site and No. 9 Tintern Road (I309 known as 'House') to the south-west on the opposite side of Tintern Road.

The development will be setback approximately 20m from the listed house at No. 39 Prospect Road and approximately 30m from the listed house at No. 9 Tintern Road. Given the separation to the listed items, it is considered that the proposed works have been appropriately designed as to not impact upon the heritage significance of the building in accordance with Clause 5.10(4) of the LEP.

Appropriate documentation regarding heritage management and impacts upon heritage significance have been prepared and submitted as part of this development application. This documentation has been reviewed and considered acceptable given the context and proximity of the listed items within the vicinity of the subject site in accordance with Clause 5.10(5) of the LEP.

### 5(b) Draft Environmental Planning Instruments

#### **Draft Environment SEPP**

The NSW government has been working towards developing a new State Environmental Planning Policy (SEPP) for the protection and management of our natural environment. The Explanation of Intended Effect (EIE) for the Environment SEPP was on exhibition from 31 October 2017 until the 31 January 2018. The EIE outlines changes to occur, implementation details, and the intended outcome. It considers the existing SEPPs proposed to be repealed and explains why certain provisions will be transferred directly to the new SEPP, amended and transferred, or repealed due to overlaps with other areas of the NSW planning system.

This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland and Willandra Lakes World Heritage Property. Changes proposed include consolidating the seven existing SEPPs including Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. The proposed development would be consistent with the intended requirements within the Draft Environment SEPP.

### 5(c) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Comprehensive Inner West Development Control Plan (CIWDCP) 2016.

DCP 2016 – Section 2, Chapter A, Part 5 – Parking				
Control No.	Control	Standard	Proposed	Compliance
DS2.1	Bicycle and motor cycle parking	1 per 10 flats	7 bicycle spaces are provided in a room in the basement level.	Yes

DCP 2016 – Section 2, Chapter F, Part 5 – Residential Flat Buildings				
Control No.	Control	Standard	Proposed	Compliance
DS2.1	Streetscape	Each Development Application is to be supported by a Streetscape Assessment.	A Streetscape Assessment has been provided. As discussed elsewhere in this report, the development responds to existing development on Tintern Road.	Yes
DS5.2	Building height	The height of the finished floor level of the first floor, not being a floor at ground level, is not to exceed a height of 3.4 metres measured vertically above any point at natural ground level, in order not to have overly exposed basement car parking.	The finished floor level of the first floor exceeds 3.4m. See discussion below.	No (considered acceptable)
DS7.1	Setbacks - front	The main front face of the building is setback within 20% of that of the average of immediately adjoining properties	The proposed front setback aligns with the neighbouring buildings.	Yes
DS8.1 DS8.2 DS8.4	Setbacks – side and rear	Development does not cause a significant adverse amenity impact on adjoining properties. Development enables the provision of a 2m side setback containing deep soil planting. Rear setbacks include adequate provision of green space between adjoining properties.	As discussed elsewhere in this report, the proposed setbacks comply with the requirements of the ADG and will maintain adequate neighbouring amenity. Generally 2m of deep soil planting has been proposed along the side boundaries. The developments external face has a 6m setback from the rear boundary, of which 3m is communal landscaped area and the other 3m is landscaped private open space associated with Units 3 and 4.	Yes
DS9.1 DS9.2 DS9.3	Car parking	1 space per dwelling 1 visitor space per 4 dwellings 1 car wash bay 1 accessible car space for each accessible or adaptable unit	The proposal included 15 resident car spaces (3 of which are accessible), 3 visitor car spaces and 1 car wash bay in accordance with this part of the plan.	Yes
DS16.1 DS16.5	Stormwater drainage	OSD required. Compliance with Council's Stormwater Management Code (1996).	Council's Engineers support the supplies stormwater drainage plan which includes OSD.  A condition of consent has been recommended requiring a downstream easement for the stormwater drainage.	Yes
DS18.1	Fence and walls	Front fences and walls are compatible with the streetscape, in particular those of adjoining properties.	The front fence is solid and 1.2m in height.	Yes
DS9.1	Waste	Garbage and recycling facilities on the premises shall be provided in accordance with the requirements	The proposed waste storage areas and waste management plan have	Yes

		<p>of Part C3- Waste Management of Inner West DCP 2016, and the specific requirements of any other Part of this DCP applicable to the development.</p>	<p>been reviewed and supported by Council's Waste Unit subject to the imposition of conditions of consent.</p> <p>The proposed bin storage area is in close proximity to the south facing windows of Unit 04. To minimise potential amenity impacts on the bedrooms, it is a recommended condition of consent that further treatment to the bin storage areas northern edge be included to adequately reduce the possible amenity impacts (odour, noise etc) to the satisfaction of Council.</p>	
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Further discussions:

**Privacy**

As discussed elsewhere in this report, the proposed setbacks comply with the ADG which will ensure adequate visual privacy is maintained.

It is noted that due to the slope of the land, the rear ground floor private open spaces of Units 3 and 4 are elevated approximately 500mm above the existing ground level. To ensure the visual privacy of the neighbouring properties is not unreasonably effected by these terraces, it is a recommended condition of consent that privacy screens with a height of 1.6m above the ground finished floor level (RL 42850) and an opacity of 50% be provided around the perimeter of the private open spaces of Units 3 and 4.

The top floor rooftop terraces facing the eastern (rear) boundary associated with Units 13 and 14 contain perimeter planter boxes which will minimise opportunities for overlooking and ensure adequate visual privacy is maintained.

Privacy concerns are raised over the south-facing ground floor bedrooms of Units 04 and 05 and their proximity to the communal staircases leading to the basement. As such, it is a recommended condition of consent that the south-facing windows of the ground floor bedrooms closest to the central communal open space of Units 04 and 05 are to have sill heights of 1.6m above the ground floor FFL (RL42850).

**Building Height**

It is noted that the finished floor level of the first floor has a varying height above the natural ground level being 3.5 metres at the front and 4.1 metres at the rear of the building. The varying heights are due to the slope of the land which falls approximately 1.2m from Tintern Road to the rear boundary.

It is noted that the proposed ground, first and second floor finished floor levels roughly align with those of the two neighbouring residential flat buildings at Nos. 12-14 and 18 Tintern Road. It is also noted that the existing residential flat building on the neighbouring site to the north (No. 12-14 Tintern Road) has a significantly exposed basement/lower-ground level and as a result has a finished first floor level greater than 3.4m and not dissimilar to that proposed in the subject development.



Given the context of the site, the slope of the land, and that the proposed development complies with the building height in storeys and metres controls, the proposed basement carpark will not be overly exposed when viewed from the public domain and is considered acceptable in this respect.

#### 5(d) The Likely Impacts

The assessment of the Development Application demonstrates that, subject to the recommended conditions, the proposal will have minimal impact in the locality.

#### 5(e) The suitability of the site for the development

The site is zoned R3 – Medium Density Residential. Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

#### 5(f) Any submissions

The application was notified in accordance with the Comprehensive Inner West DCP 2016 for a period of 28 days to surrounding properties. A total of five (5) submissions were received.

The following issues raised in submissions have been discussed in this report:

- Stormwater – see Section 5(c) and 6(a)
- Privacy implications – see Section 5(a)(ii) and 5(c)
- Floor space ratio non-compliance and excessive building size – see Section (5)(a)(v)
- Building separation/setbacks – see Section 5(a)(ii) and 5(c)
- Removal of trees – see Section 6(a)
- Traffic/parking impact – see Section 5(c)
- View loss – see Section 5(a)(ii)
- Heritage – see Section 5(a)(v)
- Basement protrudes excessively above the natural ground level – see Section 5(c)

In addition to the above issues, the submissions raised the following concerns which are discussed under the respective headings below:

Issue: *Insufficient landscaping/deep soil areas.*

Comment: As discussed, the development results in 12.5% of the site area being designated as deep soil planting far in excess of the 7% required by the ADG.

Issue: *Excessive provision of on-site car parking.*

Comment: As discussed elsewhere in this report, the proposal was revised to reduce the number of proposed car spaces so as to comply with the minimum number required in the CIWDGP 2016.

Issue: *Impact on traffic and street parking.*

Comment: As discussed elsewhere in this report, the proposal provides on-site car parking in accordance with the requirements of the CIWDGP 2016 which is considered to adequate to allay any significant impacts on street parking.

Issue: *Impact of construction on street trees.*

Comment: A condition of consent has been recommended to ensure the protection of the nearby street trees.

### 5(g) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

The proposal is not contrary to the public interest.

## 6 Referrals

### 6(a) Internal

The application was referred to the following internal sections/officers and issues raised in those referrals have been discussed in section 5 above.

- **Development Engineer** – Concern was raised that the proposed relocation of the existing street power pole to facilitate the new driveway might result in significant pruning or removal of the existing mature street trees. A deferred commencement condition has been recommended requiring future tree pruning investigations and recommendations to be assessed and approved by Council's Tree Officer. A deferred commencement condition has also been recommended requiring the creation of an easement for drainage over downstream properties due to the slope of the land to the rear. Concerns were initially raised about the insufficient car parking in the basement level as required by the CIWDCP 2016. As discussed the design was revised to provide car parking in accordance with the CIWDCP 2016.
- **Waste** – Council's Waste Unit raised some initial concerns chiefly about the distance of the waste storage area to the collection point and the lack of any bulky goods storage area. The applicant subsequently provided amended drawings which provided a screened waste storage area adjacent to Tintern Road and a bulky goods storage area in the basement. Council's Waste Unit were satisfied with the amendments and raised no further issues.
- **Trees** – No objection was raised subject to the imposition of recommended standard conditions of consent relating to tree protection and on-going management

### 6(b) External

Nil.

## 7. Section 94 Contributions

Section 7.11 contributions are payable for the proposal.

The contribution is based on 15 units - 5 x units <60sqm, 8 x units 60-84sqm, and 2 x units >84sqm.

Little information has been supplied regarding the existing building on the subject site. It appears the buildings at 16 Tintern Road contain a total of seven (7) units however due to the lack of information provided by the applicant and in Council records, a credit for 1 dwelling house can only be applied. If further information can be provided to Council demonstrating that consent has previously been granted for more than one dwelling, the credits applied to the contributions can be reviewed by way of a future Section 4.55 modification.

A financial contribution would be required for the development under Ashfield Section 94 Contributions Plans as follows:

<u>Community Infrastructure Type</u>	<u>Contribution</u>
Local Roads	\$4,731.63
Local Public Transport Facilities	\$8,952.66
Local Car Parking Facilities	\$0.00
Local Open Space and Recreation Facilities	\$144,104.28
Local Community Facilities	\$7,587.78
Plan Preparation and Administration	\$7,153.25
<b>TOTAL</b>	<b>\$172,529.60</b>

## 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in Ashfield Local Environmental Plan 2013 and Comprehensive Inner West Development Control Plan 2016. The development will not result in any significant impacts on the amenity of adjoining premises and the streetscape. The application is considered suitable for the issue of a deferred commencement consent subject to the imposition of appropriate terms and conditions.

## 9 Recommendation

- A. That the Inner West Local Planning Panel (IWLPP) approve a variation to the floor space ratio development standard prescribed by clause 4.4 in the Ashfield Local Environmental Plan (2013), as it is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and objectives for development within the zone
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No: D.2017.263.1 for the demolition of existing structures and construction of a 3 storey, 15 room residential flat building with basement carpark at 16 and 16A Tintern Road, Ashfield subject to the conditions listed in Attachment A below.



## Attachment A – Recommended conditions of consent

CONSENT NO. 10.2016.253.1

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### CONDITIONS

DA 2017.263.1

16 Tintern Road ASHFIELD 2131

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**Description of Work as it is to appear on the determination:**

Demolition of existing structures and construction of a 3-storey, 15 room residential flat building with basement car park.

**PART A****Deferred Commencement conditions to be satisfied prior to activation of consent:**

This consent shall not operate until such time as the following additional/revised information is provided to the satisfaction of Council:

1. The relocation of the existing power pole affecting the proposed vehicle crossing at the north western corner of the site shall be investigated and proof submitted that the relocation is practical without detrimentally affecting the existing street trees, in regard to trimming for the overhead wires to all properties (this appears unlikely to be met). Liaison and acceptance by Council's Tree Officer is required. Alternatives to overcome this problem will be considered by Council after sufficient documentation is submitted which shall be at the minimum, documentation from the power authority responsible for the pole and Council's Tree Officer – an alternative may be undergrounding and which affects the wires to the other properties or relocating the proposed driveway but note there appears to be a street light pole at the other boundary.
2. As the site falls to the rear, an easement for drainage over downstream properties is required to be created (1m wide). Satisfactory written documentation of the creation of an easement or of a legal agreement to create an easement shall be submitted to Council.
3. The supplied Landscape Plans – LA01 'C' dated 11 August 2018 and LA02 'A' dated 26 June 2014 prepared by Taylor Brammer Landscape Architects Pty Ltd must be updated reflect the approved drawings in Condition A(1) in Part B of this consent and submitted to the satisfaction of Council.
4. Privacy screens with a height of 1.6m above the ground finished floor level (RL 42850) and an opacity of at least 50% must be provided around the perimeter of the private open spaces of Units 3 and 4.
5. The south-facing windows of the ground floor bedrooms of Units 04 and 05 closest to the central communal open space are to have sill heights of 1.6m above the ground floor finished level (RL 42850) to ensure adequate internal privacy is maintained given the close proximity of the communal staircases.
6. Further treatment to the bin storage area's northern edge must be included to adequately reduce the possible amenity impacts (odour, noise etc) to the bedrooms in Unit 04, to the satisfaction of Council.

The operational development consent will be issued by Council (in writing) after the applicant provides sufficient information to satisfy Council in relation to the conditions of the deferred commencement and any conditions that arise as a result of satisfying the above matters.

If the applicant fails to satisfy Council as to the above matters within 12 months from the date of determination or this consent will lapse.

**PART B****A General Conditions**

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**(1) Approved plans stamped by Council**

The development must be carried out only in accordance with the plans and specifications set out on drawing numbers prepared by and date stamped by Council and any supporting documentation received with the application, except as amended by the conditions specified hereunder.

Approved Plans:

Drawing No.	Title/Description	Prepared by	Revision	Date
DA05	Design Analysis	Kennedy Associates Architects	C	2 October 2018
DA06	Demolition & Early Site Works Plan	Kennedy Associates Architects	C	2 October 2018
DA07	Level-01	Kennedy Associates Architects	D	1 November 2018
DA08	Level 00	Kennedy Associates Architects	C	2 October 2018
DA09	Level 01	Kennedy Associates Architects	C	2 October 2018
DA10	Level 02	Kennedy Associates Architects	C	2 October 2018
DA11	Roof Plan	Kennedy Associates Architects	C	2 October 2018
DA12	Sections	Kennedy Associates Architects	C	7 November 2018
DA13	Elevations – West + North	Kennedy Associates Architects	C	7 November 2018
DA14	Elevations – East + South	Kennedy Associates Architects	C	7 November 2018
DA15	Street Elevation	Kennedy Associates Architects	C	2 October 2018
DA16	Finishes	Kennedy Associates Architects	C	2 October 2018
SKC1.01	Proposed Stormwater Management Concept Plan Ground Floor	ACOR	C	22 May 2018
SKC1.02	Proposed Stormwater Management Concept Plan Basement Level	ACOR	C	22 May 2018
SKC2.01	Soil Erosion and Sediments Control Ground Floor	ACOR	B	16 August 2017
SKC2.02	Soil Erosion and Sediments Control Basement Level	ACOR	B	16 August 2017

Supporting Documents:

Title/Document	Prepared by	Issue/Revision	Date
Arboricultural	Birds Tree Consultancy	-	25 August 2017

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Development Impact Assessment Report			
Waste Management Plan	Dickens Solutions Pty Ltd	-	November 2017

In the event of any inconsistency, the conditions of this consent shall prevail.

**(2) Compliance with BCA**

All architectural drawings, specifications and related documentation shall comply with the Building Code of Australia (BCA). All work must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

**(3) Waste – trackable**

Removal of trackable waste (as defined by the NSW Environment Protection Authority) from the site must comply with the Protection of the Environment Operations (Waste) Regulation 2005 for the transportation, treatment and disposal of waste materials. Waste materials must not be disposed on land without permission of the land owner and must with the provisions of the *Protection of the Environment and Operations Act 1997*.

**(4) Tree Removal**

Approval is given for the following trees to be removed:

The trees identified in the arborist report by Birds Tree Consultancy dated 25 August 2017 (Revised) and numbered 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14 and 15.

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved.

**(5) Tree Retention**

The following trees are to be retained:

The trees identified in the arborist report by Birds Tree Consultancy dated 25 August 2017 (Revised) and numbered 1, 2, & 8.

Details of the trees to be retained must be included on the Construction Certificate plans.

**(6) Materials and colour schemes**

Materials of construction are to be as specified in the schedule of finishes submitted with the development application and on the approved plans, except where amended by the conditions hereunder.

**B Conditions that must be satisfied prior to issuing/releasing a Construction Certificate**

**(1) Consolidation of allotments**

The following properties Nos. 16 and 16A Tintern Road, Ashfield, Lot B in DP 330071 and Lot 36 in DP 883 are to be consolidated into one plan of consolidation prepared by a registered surveyor and six (6) paper

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copies are to be submitted to Council for signature prior to registration at the Land Titles Office (Land and Property Information NSW). Evidence of consolidation from the Land Titles Office shall be submitted to Council or the Principal Certifying Authority prior to the release of a Construction Certificate.

**(2) Waste Management Plan**

Prior to the issue of a Construction Certificate, the applicant shall prepare and submit a Waste Management Plan in accordance with the provisions of Ashfield Development Control Plan - Planning For Less Waste and the Waste Planning Guide for Development Applications (Planning for Less Waste, prepared by the Regional Waste Boards), including:

- (a) Estimations of quantities and type of materials to be reused, recycled or left over for removal from site;
- (b) Identification on a plan of on site material storage areas during construction, waste storage, recycling and composting areas;
- (c) Details of construction materials and methods to be used to minimise the production of waste in the completion of the new building work.
- (d) How waste is to be treated on the site.
- (e) How any residual non-reusable and non-recyclable waste is to be disposed of and including details of the approved waste disposal outlets where disposal will take place.

**(3) Construction and Site Management Plan**

Prior to the issue of a Construction Certificate the applicant shall submit to Council or the accredited certifier a construction and site management plan that clearly sets out the following:

- (a) what actions and works are proposed to ensure safe access to and from the site and what protection will be provided to the road and footpath area from building activities, crossings by heavy equipment, plant and materials delivery, or static loads from cranes, concrete pumps and the like,
- (b) the proposed method of loading and unloading excavation machines, building materials, formwork and the erection of any part of the structure within the site,
- (c) the proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period,
- (d) how it is proposed to ensure that soil/excavated material is not transported on wheels or tracks of vehicles or plant and deposited on surrounding roadways,
- (e) the proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed by a chartered Civil Engineer or an accredited certifier.

Where it is proposed to:

- pump concrete from within a public road reserve or laneway, or
- stand a mobile crane within the public road reserve or laneway, or
- use part of Council's road/footpath area,
- pump stormwater from the site to Council's stormwater drains, or



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- store waste and recycling containers, skip, bins, and/or building materials on part of Council's footpath or roadway,

An Activity Application for a construction zone, a pumping permit, an approval to stand a mobile crane or an application to pump water into a public road, together with the necessary fee shall be submitted to Council and approval obtained before a Construction Certificate is issued.

Note: A separate application to Council must be made for the enclosure of a public place (hoarding).

**(4) Soil and Water Management Plan**

Prior to the issue of a Construction Certificate, the applicant shall submit to and obtain approval from Council or the accredited certifier of a Soil and Water Management Plan and Statement which clearly identifies site features, constraints and soil types together with the nature of proposed land disturbing activities and also specifies the type and location of erosion and sediment control measures and also rehabilitation techniques necessary to deal with such activities.

The Plan shall be compatible with any Construction and Site Management Plan and shall ensure the following objectives are achieved, namely:

- (a) to minimise the area of soils exposed at any one time
- (b) to conserve top soil
- (c) to identify and protect proposed stockpile locations
- (d) to preserve existing vegetation and identify revegetation techniques and materials
- (e) to prevent soil, sand, gravel, and any other sediment or spoil from leaving the site in an uncontrolled manner
- (f) to control surface water flows through the development construction site in a manner that:-
  - i. diverts clean run-off around disturbed areas
  - ii. minimises slope gradient and flow distance within disturbed areas.
  - iii. ensures surface run-off occurs at non-erodable velocities.
  - iv. ensures disturbed areas are promptly rehabilitated
- (g) to ensure regular monitoring and maintenance of erosion and sediment control measures and rehabilitation works.

The plan is to be prepared in accordance with "*Managing Urban Stormwater: Soils and Construction Manual*" prepared by NSW Department of Housing (1998).

**(5) Erosion & sedimentation control-management plan**

Prior to issue of a construction certificate the applicant shall prepare an erosion and sedimentation control plan in accordance with Part 4 of the guidelines titled "*Pollution Control Manual for Urban Stormwater*", as recommended by the Environmental Protection Authority.

Any stormwater runoff collected from the site must be treated in accordance with the Guidelines, before discharge off the site to comply with the *Protection of the Environment Operations Act 1997* or other subsequent Acts.

Where sedimentation control basins are provided discharge shall be to the requirements of the Environment Protection Authority.

Applicants are further advised to refer to the following publications for additional information:

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- (a) "Sedimentation and Erosion Control" - Department of Conservation and Land Management.
- (b) "Soil and Water Management for Urban Development" - Department of Housing.

The plan must be submitted with the application for a construction certificate.

Further information may be obtained from:

Environment Protection Officer  
Environment Protection Authority  
Inner Sydney Region  
Locked Bag 1502  
BANKSTOWN NSW 2200

**(6) Damage deposit/footpath, road, kerb and gutter**

A Damage Deposit of \$15,680 is to be submitted prior to the release of the Construction Certificate covering repair and/or replacement of adjoining footpath, road shoulder, road pavement, kerbing and guttering both outside the subject site and the surrounding area. This is to be paid to Council and may be refunded subject to satisfactory completion of construction or demolition.

This Damage Deposit covers unforeseen damage to the above property by construction vehicles, skip bins, construction methods etc. Note: Should repair works or maintenance be required on Council land, a Road Opening Permit must be obtained before those works take place.

Bank Guarantees are accepted in lieu of any Council security deposit/bond subject to the following:

It must be an original with no end date and issued in favour of Council, details of the proponent's address shall be included.

A charge equal to the value multiplied by the current "overdue rates interest charge" be levied, per month or part thereof, with a minimum charge of three months is to be paid upon lodgement.

Any remaining charge is to be calculated at the prevailing "overdue rates interest rate" for each month or part thereof beyond the original three months that the Bank Guarantee was held, and paid prior to its release.

Any costs incurred in the acceptance, administration or release of such Bank Guarantees be on-charged to the entity claiming the release of such Bank Guarantee, and that these amounts be paid prior to its release.

At the time of lodgement, Council will seek verification of the Bank Guarantee. Please provide contact details for the branch (phone number and officer) to assist with verification of the bona fides of the Bank Guarantee.

Until all items above are completed, no documents or usage sought from Council by the party lodging the Bank Guarantee can be issued. Please allow a minimum of 2 business days for this process.

**(7) Long service levy**

Compliance with Section 109F of the Environmental Planning and Assessment Act 1979 – payment of the long service levy under Section 34 of the Building and Construction Industry Long Service Payments Acts 1986 – is required. All building of \$25,000.00 and over are subject to the payment of a

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Long Service Levy fee. A copy of the receipt for the payment of the Long Service Levy shall be provided to the Principal Certifying Authority (PCA) prior to the issue of a Construction Certificate. Payments can be made at Long Service Payments Corporation offices or most Councils.

**(8) Services and infrastructure adjustment/relocation**

The applicant shall meet the full cost for Telstra, Sydney Water, Energy Australia, AGL Electricity/AGL Retail Energy or alternative service/energy providers to adjust/relocate their services/infrastructure as required. The applicant shall make the necessary arrangements with the relevant service authority or relevant retail energy company.

(For information on the location of services contact the "Dial before you Dig" service on 1100.)

Documentary evidence from the utility authorities/retail energy company confirming that all of their requirements have been satisfied shall be submitted to Council with the Construction Certificate.

**(9) Driveway crossing fee**

Council can construct the driveway crossing for a fee. Contact Council on 9382 5999 in order that a fee estimate can be sent to you for acceptance.

**(10) Redundant crossing removal fee**

Council will need to remove any redundant crossings and replace with kerbing and other ancillary works where necessary. Contact Council on 9392 5000 and you will be advised as to the estimate of cost of this work. **Note: Cost of this work to be borne by the applicant.**

**(11) Lighting to basement/pedestrian routes-safety**

Lighting which meets the relevant Australian Standard of 40 lux., spaced at appropriate intervals to provide the required surveillance shall be provided to the vehicular basement parking area and along pedestrian access routes for safety and security purposes during the evenings.

Details to be shown on the construction certificate.

**(12) Car parking provision/layout**

The following 18 off-street parking spaces are to be provided:

- a) 15 car spaces for residential units (including 3 spaces for the accessible/adaptable units); and
- b) 3 visitor car spaces.

Additionally 1 car wash bay and 7 bicycle spaces are to be provided.

A total of 18 car spaces including 3 spaces for the accessible parking shall be provided and allocated in accordance with the provisions of AS2890.1, AS2890.2 and AS2890.6 and the requirements of Inner West Comprehensive Council's Development Control Plan 2016 for Access, Adaptability and Mobility (Phone 9392 5000 for a free copy).

Details to be shown on the application with the Construction Certificate.

Note: Minimum basement ceiling height above any parking spaces provided for people with disabilities is to be 2.6 metres.

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**CONSENT NO. 10.2016.253.1****8/26****(13) Access and services for people with a disability**

Detailed plans drawn to the scale of 1:50 shall be submitted detailing compliance with the requirements of AS4299 and AS 1428 and the provisions of Part C1 – Access, Adaptability and Mobility, Inner West Comprehensive Development Control Plan 2016 prior to the issue of a Construction Certificate, and details of complying levels, ramp slopes, door widths, circulation spaces.

**(14) Preparation of geotechnical report**

To ensure that the structural integrity of the proposal and neighbouring buildings will be maintained, a full geotechnical report must be submitted to the Council or the PCA prior to the issue of a construction certificate and prior to the commencement of excavation works. The report must include an investigation of site and soil conditions as well as the proposed means of construction and must contain, where required, recommendations to ensure that excavation, backfilling and construction, including temporary works during construction, will not affect the structural integrity of neighbouring buildings or the structural stability of neighbouring public land, property or services. The report is to be prepared and certified by an appropriately qualified practicing geotechnical engineer.

All demolition, excavation, backfilling and construction must be undertaken in accordance with the recommendations of the geotechnical report.

**(15) Ventilation**

To ensure that adequate provision is made for ventilation of the building all mechanical and/or natural ventilation systems shall be designed, constructed and installed in accordance with the provisions of:

- (a) *Building Code of Australia.*
- (b) AS 1668.1 - 1998.
- (c) AS 1668.2 - 1991.
- (d) *Public Health Amendment Regulation 2003*
- (e) *Public Health Act 1991*
- (f) SafeWork NSW.
- (g) AS/NZS 3666.1 - 2002.

Evidence from an appropriately qualified person certifying that these design requirements have been met shall accompany the application for the Construction Certificate.

**(16) Water efficient irrigation system**

The communal open space areas shall be provided with a water efficient irrigation system to enable effective landscape maintenance. Details shall be included with the landscape plan to be submitted with the Construction Certificate.

**(17) Footpath/laneway – photographs to be submitted**

Prior to the release of the Construction Certificate, the applicant shall lodge with Council photographs of the roadway, footpath and/or laneway at the property indicating the state of the relevant pavements. At the completion of construction, again at the expense of the applicant, a new set of photographs is to be taken to determine the extent, if any, of any damage which has occurred to the relevant pavements. If any damage has occurred, the applicant shall meet the full cost to repair or reconstruct these damaged areas to Council's relevant standard. Failure to do this shall result in the applicant being held accountable for the cost of all repairs in the area near/at the site.

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**(18) Driveway details approval – PCA**

Proposed internal driveway grate and longitudinal section details shall be submitted to the Principal Certifying Authority in conjunction with the application for approval of the Construction Certificate. In particular, the driveway ramp from internal and across the footpath to Murrell Street, shall be checked for clearances at changes of grade and vertical height, in accordance with AS 2890.1-2004, and any amendments implemented.

**(19) Public Liability Insurance – Works on Council/public lands**

The applicant or any contractors carrying out approved works on public or Council controlled lands with consent shall have public liability insurance cover to the value of \$20m and shall provide proof of such cover to the principal certifying authority prior to carrying out the works and annually for the period of time for which works are being carried out on Council or public lands.

**(20) Development Contributions**

In accordance with Section 80A(1) of the *Environmental Planning and Assessment Act 1979* and the Ashfield Council Development Contributions Plan, the following monetary contributions shall be paid to Council Prior to issue of a Construction Certificate to cater for the increased demand for community infrastructure resulting from the development:

<u>Community Infrastructure Type</u>	<u>Contribution</u>
Local Roads	\$4,731.63
Local Public Transport Facilities	\$8,952.66
Local Car Parking Facilities	\$0.00
Local Open Space and Recreation Facilities	\$144,104.28
Local Community Facilities	\$7,587.78
Plan Preparation and Administration	\$7,153.25
<b>TOTAL</b>	<b>\$172,529.60</b>

Being for 15 residential accommodation made up of the following:  
 - Residential accommodation less than 60m<sup>2</sup> GFA – 5 units;  
 - Residential accommodation between 60-84m<sup>2</sup> GFA – 8 units;  
 - Residential accommodation greater than 84m<sup>2</sup> GFA – 2 units;  
 And credit for one existing dwelling.

If the contributions are not paid within the financial quarter that this consent is granted, the contributions



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payable will be adjusted in accordance with the provisions of the Ashfield Development Contributions Plan and the amount payable will be calculated on the basis of the contribution rates applicable at the time of payment in the following manner:

$$\$C_c = \frac{\$C_p \times CPI_c}{CPI_p}$$

Where:

$\$C_c$  is the amount of the contribution for the current financial quarter

$\$C_p$  is the amount of the original contribution as set out in this development consent

$CPI_c$  is the Consumer Price Index (Sydney – All Groups) for the current financial quarter as published by the ABS.

$CPI_p$  is the Consumer Price Index for the financial quarter at the time of the original consent.

Prior to payment of the above contributions, the applicant is advised to contact Council's Planning Division on 9392 5000. Payment may be made by cash, money order or bank cheque.

Council's Development Contributions Plan may be viewed at [www.innerwest.nsw.gov.au](http://www.innerwest.nsw.gov.au) or a copy may be inspected at Council's Administration Centre.

**(21) Permits - General**

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent shall obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the Local Government Act 1993 and/or Section 138 of the Roads Act 1993. Permits are required for the following activities:

- a) Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application.
- b) A concrete pump across the roadway/footpath
- c) Mobile crane or any standing plant
- d) Skip bins
- e) Scaffolding/Hoardings (fencing on public land)
- f) Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
- g) Awning or street verandah over footpath
- h) Partial or full road closure
- i) Installation or replacement of private stormwater drain, utility service or water supply

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities.

Applications for such Permits shall be submitted and approved by Council prior to the commencement of the works associated with such activity or issue of the Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

**(22) SEPP 65 – Design Verification**

Prior to release of the Construction Certificate design verification is required to be submitted from the original designer to confirm the development is in accordance with the approved plans and details and continues to satisfy the design quality principles in State Environmental Planning Policy No – 65 Design Quality of Residential Flat Building Development.

**(23) Allocation of Resident Storage Areas**

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Storage areas are to be allocated internally to each unit to comply with the SEPP 65, 6m<sup>3</sup> (Min) for 1 bedroom unit, 8m<sup>3</sup> (Min) for two bedroom units and 10 m<sup>3</sup> (Min) for 3 bedroom units. 50% is to be accessible from the apartments.

**(24) Dilapidation – Minor**

The person acting on this consent shall submit to the Principal Certifying Authority a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site before the issue of a Construction Certificate.

**(25) Alignment Levels**

Alignment levels for the site at all pedestrian and vehicular access locations shall match the existing back of footpath levels at the boundary.

Note: This may require the internal site levels to be adjusted locally at the boundary to ensure that they match the above alignment levels. Failure to comply with this condition will result in vehicular access being denied.

**(26) Security Deposit**

Prior to the commencement of demolition works or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit and inspection fee must be paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit (FOOT)	\$9,348.00
Inspection fee (FOOT)	\$230.65

Payment will be accepted in the form of cash, bank cheque, EFTPOS/credit card (to a maximum of \$10,000) or bank guarantee. Bank Guarantees must not have an expiry date.

The inspection fee is required for Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

Should any of Council's property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council's assets or the environment at risk, or if any road, footpath or drainage works required by this consent are not completed satisfactorily, Council may carry out any works necessary to repair the damage, remove the risk or complete the works. Council may utilise part or all of the security deposit to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.

A request for release of the security may be made to the Council after all construction work has been completed and a final Occupation Certificate issued.

The amount nominated is only current for the financial year in which the consent was issued and is revised each financial year. The amount payable must be consistent with Council's Fees and Charges in force at the date of payment.

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

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**CONSENT NO. 10.2016.253.1****12/26****(27) BASIX Certificate**

A copy of the required completed BASIX certificate with respect to the proposed residential building works as per the approved drawings in Condition A1 of this consent, must be lodged with an application for a construction certificate and the items nominated as part of the subject BASIX certificate must be specified on the plans submitted with the construction certificate application. – See Note.

All commitments listed in the BASIX Certificate for the development must be fulfilled prior to an Occupation Certificate being issued.

**C Conditions that must be complied with before work commences****(1) Notice of Commencement – Notification of Works**

Work must not commence until the Principal Certifying Authority or the person having the benefit of the development consent has given Notification in Writing to Council no later than two days before the building work commences.

**(2) Requirement for a Construction Certificate**

In accordance with the provisions of Section 81A of the *Environmental Planning and Assessment Act 1979* the erection of a building and/or construction works must not commence until:

- (a) detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
  - (i) Council; or
  - (ii) an accredited certifier; and
- (b) a principal certifying authority (PCA) has been appointed and the Council has been notified in writing of the appointment, and
- (c) at least two days notice, in writing, has been given to Council of the intention to commence work.

The documentation required under this condition shall show that the proposal complies with all development consent conditions and the *Building Code of Australia*.

Note: If the principal certifying authority is the Council, the appointment will be subject to the payment of a fee for the service to cover the cost of undertaking building work and / or civil engineering inspections.

**WARNING:** Failure to obtain a Construction Certificate prior to the commencement of any building work is a serious breach of Section 81A(2) of the *Environmental Planning & Assessment Act 1979*. It is a criminal offence that attracts substantial penalties and may also result in action in the Land and Environment Court and orders for demolition.

**(3) Inspections required by Principal Certifying Authority**

Inspections shall be carried out at different stages of construction by Council or an accredited certifier. If Council is selected as the Principal Certifying Authority (PCA) the inspection fees must be paid for in advance which will be calculated at the rate applicable at the time of payment.

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**CONSENT NO. 10.2016.253.1****13/26****(4) Sanitary facilities - demolition/construction sites**

Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

The provision of toilet facilities in accordance with this clause must be completed before any other work is commenced.

**(5) Layout of buildings**

The layout of all external walls, including retaining walls and contiguous piling must be checked and verified by survey prior to the commencement of construction to ensure that building construction complies with the development consent and does not encroach beyond the boundaries of the site.

**(6) Building location - check survey certificate**

To ensure that the location of the building satisfies the provision of the approval, a check survey certificate shall be submitted to the Principal Certifying Authority either prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, indicating the: -

- (i) location of the building with respect to the boundaries of the site;
- (ii) level of the floor in relation to the levels on the site (all levels are to be shown relative to Australian Height Datum);
- (iii) site coverage of the buildings on the site.

**(7) Crane permit**

Should the applicant need to use a crane during the course of building, it will be necessary to first obtain a "Crane Permit" from Council. The approval of other authorities (eg Police Department, RTA) may be required for the use of a crane.

**(8) Protection of public places - erection or demolition of building**

- (a) If the work involved in the erection or demolition of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient or involves the enclosure of a public place; a hoarding or fence must be erected between the work site and the public place.
- (b) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- (c) Any such hoarding, fence or awning is to be erected prior to works commencing and only with Council approval in accordance with SafeWork requirements. The temporary structures are to be removed when the work has been completed.

**(9) Site fencing/security**

The site must be appropriately secured and fenced to the satisfaction of Council during demolition, excavation and construction work to ensure there are no unacceptable impacts on the amenity of

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**CONSENT NO. 10.2016.253.1****14/26**

adjoining properties. Permits for hoardings and or scaffolding on Council land must be obtained and clearly displayed on site.

**(10) Support for neighbouring buildings and notice to adjoining owners**

- (a) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:
- i. Must preserve and protect the building from damage, and
  - ii. If necessary, must underpin and support the building in an approved manner, and
  - iii. Must at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (b) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

Notes:

- (i) Details of underpinning works, prepared and certified by a practicing structural engineer shall be submitted to and approved by the Principal Certifying Authority prior to the commencement of any works.
- (ii) allotment of land includes a public road and any other public place.

**(11) Demolition work plan**

Prior to demolition, the applicant shall submit a Work Plan prepared in accordance with AS 2601 by a person with suitable expertise and experience to the Principal Certifying Authority. The Work Plan shall identify any hazardous materials, the method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.

**(12) Asbestos sheeting removal - EPA/SafeWork NSW**

Asbestos removal is to be carried prior to principal works commencing in accordance with Environmental Protection Authority and SafeWork NSW requirements. Proper procedures shall be employed in the handling and removal of asbestos and products containing asbestos so as to minimise the risk to personnel and the escape of asbestos particles in the atmosphere. Work is only to be carried out with the prior consent of the SafeWork NSW.

Note: There are substantial penalties for non-compliance with the above requirements.

**(13) Asbestos and/or lead removal certification**

The existing structures/land on the site potentially contain asbestos and/or lead. Following removal of any asbestos/lead located on site a clearance must be provided to the Principal Certifying Authority certifying that no such asbestos/lead remains on site from a suitably qualified person.

A copy of the clearance Certificate must be forwarded to Council before any other demolition work is commenced.



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**CONSENT NO. 10.2016.253.1****15/26****(14) Sydney Water approval**

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements and if further requirements need to be met. Plans will be appropriately stamped. For Quick Check agent details please refer to the web site: [www.sydneywater.com.au](http://www.sydneywater.com.au), see Your Business then Building & Developing then Building & Renovating or telephone Sydney Water 13 20 92.

**(15) Works zone application to Council - construction vehicles**

The applicant is to apply to Council for a "works zone" along the site frontages for construction vehicles prior to work commencing. Contact Council's One Stop Shop for details and the fee you need to pay, telephone 9392 5000.

*Note:* A minimum of 2 months notice to Council is required.

**(16) Structural Engineering Details**

Structural engineer's details prepared and certified by a practising structural engineer for all reinforced concrete and structural members is to be submitted to the Principal Certifying Authority for approval with the Construction Certificate.

**(17) Tree Protection**

Upon installation of the required tree protection measures, an inspection of the site by the Principal Certifying Authority is required to verify that tree protection measures comply with all relevant conditions.

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

**D Conditions that must be complied with during construction or demolition****(1) Root Protection**

If tree roots are required to be severed for the purposes of constructing the approved works, they shall be cut cleanly using a sharp and fit for purpose tool. The pruning shall be undertaken by a minimum Level 3 (AQF 3) qualified Arborist.

Details demonstrating compliance with the requirements of this condition are to be submitted by the Project Arborist undertaking the works to the satisfaction of the Principal Certifying Authority.

**(2) Street Trees**

No trees on public property (footpaths, roads, reserves etc) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.

Prescribed trees protected by Council's Management Controls on the subject property and/or any vegetation on surrounding properties must not be damaged or removed during works unless specific approval has been provided under this consent.

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**CONSENT NO. 10.2016.253.1****16/26****(3) Footpath, kerb and gutter protection**

The applicant shall take all precautions to ensure footpaths and roads are kept in a safe condition and to prevent damage to Council's property.

Pedestrian access across this footpath shall be maintained in good order at all times during work. Any damage caused will be made good by Council at Council's restoration rates, at the applicant's expense.

**(4) Road opening permit – Council controlled lands**

A road opening permit shall be obtained for all works carried out in public or Council controlled lands. Contact Council's Engineering Services for details.

This road opening permit covers the direct costs involved in the repair/replacement of works where the public or Council controlled lands are specifically damaged/saw cut etc for the construction of services, stormwater pipes, kerb works, bitumen works, footpath works etc. It is separate from a Damage Deposit as listed elsewhere in these Conditions of Consent.

**(5) Building materials and equipment - storage/placement on footpath/roadway - Council approval**

All building materials and equipment shall be stored wholly within the property boundaries and shall not be placed on the footpath, grass verge or roadway without prior written approval of Council.

Bulk refuse bins shall not be placed on the grass verge, footpath or roadway without Council permission. Application forms and details of applicable fees are available from Council.

**(6) Site vehicles – mud/debris**

You are to ensure that all vehicles leaving the site are free of mud and debris. Loads are to be fully covered and vehicles/wheels washed down to ensure that no nuisance occurs.

**(7) Road and footpath – safety and access requirements**

The contractor is to take all precautions to ensure footpaths and roads are kept in a safe condition and to prevent damage to Council's property.

Heavy vehicles entering and leaving the site must only cross the footpath where it is adequately timbered and strapped. Pedestrian access across this footpath must be maintained in good order at all times during the work. Any damage caused must be made good by Council at Council's restoration rates, at the applicant's or builder's expense.

**(8) Underground services and electrical sub-station**

All electrical and telephone services to the subject property must be placed underground. If an electrical sub-station is required, it must be situated within the boundaries of the subject property and suitably screened. Details of the sub-station is to be submitted into Council for approval.

**(9) Plans to be available on site**

The Council stamped approved plans, Development Consent and Construction Certificate shall be held on site to be produced unobliterated to Council's officer at any time when required.

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**CONSENT NO. 10.2016.253.1****17/26****(10) Building construction - check survey**

A check survey is to be submitted to the Principal Certifying Authority for perusal at an early stage of construction indicating excavated levels, boundary distances, site coverage and building alignment to ensure compliance with the approved plans.

**(11) Locate structures within boundaries**

The proposed structure(s) to be erected must stand wholly within the boundaries of the allotment.

**(12) Storage of building materials**

Building materials and spoil are to be located wholly on site and not placed in a position that may result in materials being washed onto the roadway or into the stormwater system.

**(13) Roof water, surface and subsoil drainage**

Roofwater, surface and subsoil drainage shall be piped to the street gutter or to an easement – absorption pits are not acceptable and are not approved.

**(14) Signs to be erected on building and demolition sites**

(1) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:

- (a) stating that unauthorised entry to the work site is prohibited; and
- (b) showing the name and address of the contractor for the building work and the person in charge of the work site and a telephone number at which the person may be contacted outside working hours; and
- (c) showing the name, address and telephone number of the Principal Certifying Authority appointed for the building works.

(2) Any-sign shall be maintained and not removed until work has been finished.

**(15) Waste Management Plan – compliance**

- (a) All requirements of the approved Waste Management Plan must be implemented during the demolition and/or excavation and construction period of the development. Adequate measures need to be in place to ensure the ongoing waste management of the site.
- (b) Keep receipts of where waste will be taken to be treated or disposed. The receipts must be presented to the Principal Certifying Authority prior to issue of the occupation certificate.

**(16) Demolition/excavation/construction - hours of work**

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work shall only be permitted during the following hours:

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- a) 7:00 am to 6:00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b) 8:00 am to 1:00 pm on Saturdays with no demolition works occurring during this time; and
- c) at no time on Sundays or public holidays.

Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.

In the case that a standing plant or special permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.

This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving shall be limited to:

- 8:00 am to 12:00 pm, Monday to Saturday; and
- 2:00 pm to 5:00 pm Monday to Friday.

The Proponent shall not undertake such activities for more than three continuous hours and shall provide a minimum of one 2 hour respite period between any two periods of such works.

"Continuous" means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.

Noise arising from the works must be controlled in accordance with the requirements of the Protection of the Environment Operations Act 1997 and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

**(17) Demolition/excavation/construction - noise - Protection of the Environment Operations Act 1997**

Noise arising from demolition/excavation/construction works shall be controlled in accordance with the requirements of *Protection of the Environment Operations Act 1997* and guidelines currently contained in the *NSW EPA Environmental Noise Control Manual*.

**(18) Demolition requirements/standards**

Demolition of existing building and structures is to be carried out in accordance with the following:

- (a) Australian Standard 2601 and any requirements of the SafeWork NSW.
- (b) The Waste Management Plan submitted with the Development Application.
- (c) The property is to be secured to prohibit unauthorised entry.
- (d) All precautions are to be exercised in the handling, removal and disposal of all asbestos materials. Licensed contractors and the disposal of asbestos is to be carried out in accordance with the requirements of the Work Cover Authority.
- (e) All other materials and debris is to be removed from the site and disposed of to approved outlets.

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**CONSENT NO. 10.2016.253.1****19/26**

- (f) Any demolition on the site is to be conducted in strict accordance with, but not limited to, sections 1.5, 1.6, 1.7, 3.1 and 3.9 of the AS 2601 - 1991, demolition of structures. The following measures must be undertaken for hazardous dust control:
- (g) Prior to demolition, the applicant shall submit a Work Plan prepared in accordance with AS 2601 by a person with suitable expertise and experience to the Principal Certifying Authority. The Work Plan shall identify any hazardous materials, the method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
- (h) Hazardous dust must not be allowed to escape from the site or contaminate the immediate environment. The use of fine mesh dust proof screens, wet-lead safe work practices, or other measures is required.
- (i) All contractors and employees directly involved in the removal of hazardous dusts and substances shall wear protective equipment conforming to AS 1716 Respiratory Protective Devices and shall adopt work practices in accordance with SafeWork NSW Requirements (in particular the SafeWork NSW standard for the *Control of Inorganic Lead At Work* (NOHSC: 1012, 1994) and AS 2641, 1998).
- (j) Any existing accumulations of dust (eg; ceiling voids and wall cavities must be removed by the use of an industrial vacuum fitted with a high efficiency particulate air (HEPA) filter and disposed of appropriately.
- (k) All dusty surfaces and dust created from work is to be suppressed by a fine water spray. Unclean water from the suppressant spray is not be allowed to enter the street gutter and stormwater systems.
- (l) Demolition is not to be performed during high winds that may cause dust to spread beyond the site boundaries without adequate containment.
- (m) All lead contaminated material is to be disposed of in accordance with the NSW Environment Protection Authorities requirements.
- (n) Construction and demolition waste, particularly timber, bricks and tiles, concrete and other materials need not be disposed of- they can be recycled and resold if segregated properly from any hazardous waste contamination.
- (o) Following demolition activities, soil must be tested by a person with suitable expertise to ensure the soil lead levels are below acceptable health criteria for residential areas. Full certification is to be provided for approval by the Principal Certifying Authority.

**(19) Surface run-off**

Allowance shall be made for surface run-off from adjacent properties, and to retain existing surface flow path systems through the site. Any redirection or treatment of these flows shall not adversely affect any other properties.

**(20) Advertisements on hoardings prohibited**



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No advertisements of any kind shall be affixed to the hoarding except a board which may show the builder's or architect's name or any particulars regarding the subject building.

***E***     **Conditions that must be complied with prior to installation of services**

***F***     **Conditions that must be complied with before the building is occupied**

**(1) Approval to use/occupy building**

The building or any part thereof must not be used or occupied until an Occupation Certificate has been obtained from the Principal Certifying Authority.

*Note: If Council is chosen as the Principal Certifying Authority a fee is applicable prior to the release of the Construction Certificate.*

**(2) Final Site Inspection**

Prior the issue of the Occupation Certificate, a final site inspection relating to the public area shall be arranged by the applicant, and shall be undertaken by the applicant's supervising engineer and Council's authorised officer. The purpose of the inspection is to ensure that notwithstanding the submission of any certifications required by an approval that all impacts within the public area from the development have been satisfactorily addressed. A fee is payable for this inspection.

**(3) Sydney Water - Section 73 Compliance Certificate**

A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the "Your Business" section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then follow the "e-Developer" icon or telephone Sydney Water 13 20 92 for assistance.

Following application, a "Notice of Requirements" will advise of water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the release of an occupation certificate.

**(4) Stormwater detention storage facility**

**(a) Work-As-Executed Plans**

A "Work-as-Executed" plan prepared and signed by a registered surveyor is to be submitted to Council's Engineering Department at the completion of the works showing the location of the detention basin with finished surface levels, contours at 0.2 metre intervals and volume of storage available. Also the outlet pipe from the detention basin to its connection to Council's drainage system, is to be shown together with the following information:

- location
- pipe diameter
- gradient
- pipe material i.e. PVC or EW etc
- orifice size
- trash screen at orifice

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- all buildings (including floor levels) and finished ground and pavement surface levels

(b) Engineer's Certificate

A qualified practising Civil Engineer shall certify on the completion of drainage works in respect of:

- the soundness of the storage structure;
- the capacity of the detention storage;
- the emergency overflow system being in place;
- the works being constructed in accordance with the Council approved plans; and
- the freeboard from maximum water surface level to the finished floor and garage levels are at or above the minimum required in Council's Stormwater Code.
- basement car park pumps are class one zone two.

(c) Restriction-As-To-User

A "Restriction-as-to-User" is to be placed on the title of the subject property to indicate the location and dimensions of the detention area. This is to ensure that works, which could affect the function of the stormwater detention system, shall not be carried out without the prior consent in writing of the Council.

Such restrictions shall not be released, varied or modified without the consent of the Council.

**(5) Requirement for a Compliance certificate**

A Compliance Certificate must be issued prior to the issue of an Occupation Certificate certifying that the development has been built and completed in accordance with the development consent and that all the conditions of development consent have been satisfied.

**(6) Positive Covenant – stormwater detention/surface flow paths - occupation certificate**

A Positive Covenant under Section 88E of the Conveyancing Act shall be created on the title of the property detailing the:

- (a) surface flow path
- (b) finished pavement and ground levels
- (c) prevent the erection of any structures or fencing
- (d) on-site stormwater detention system

The wording in the Instrument shall be submitted to and approved by Council prior to lodgement at the Land Titles Office and prior to the release of the Occupation Certificate. The Instrument shall be registered prior to the completion of development.

**(7) Engineering conditions to be satisfied prior to issue of occupation certificate**

When the on-site building works are completed there are three (3) conditions that must be satisfied before Council's Engineering Department will recommend that an Occupation Certificate be issued:

They are:

- (a) *Work-As-Executed Plans*

A "Work-as-Executed" plan prepared and signed by a registered surveyor is to be submitted to Council's Engineering Department at the completion of the works showing

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the location of the detention basin with finished surface levels, contours at 0.2 metre intervals and volume of storage available. Also the outlet pipe from the detention basin to its connection to Council's drainage system, is to be shown together with the following information:

- location
- pipe diameter
- gradient
- pipe material ie. PVC or EW etc
- orifice size (if used)
- trash screen at orifice

(b) *Engineer's Certificate*

A qualified practising Civil Engineer shall certify on the completion of drainage works in respect of:

- \* the soundness of the storage structure;
- \* capacity of the detention storage;
- \* the emergency overflow system being in place;
- \* works being constructed in accordance with the Council approved plans; and
- \* the freeboard from maximum water surface level to the finished floor and garage levels are at or above the minimum required in Council's *Stormwater Management Code*.

(c) *Restriction-As-To-User*

Prior to the release of the strata or subdivision plan for a development a "Restriction-as-to-User" is to be placed on the title of the subject property to indicate the location and dimensions of the detention area. This is to ensure that any works which could affect the function of the stormwater detention system shall not be carried out without the prior consent in writing of the Council.

Such restrictions shall not be released, varied or modified without the consent of the Council.

**(8) Driveways, parking and service areas - PCA**

A qualified practicing Civil or Structural engineer shall certify to the Principal Certifying Authority that driveways, parking and services areas have been constructed in accordance with approved specifications. Such certification shall be submitted prior to occupation of the building.

**(9) Sign posting/line-marking - access/car parking**

The direction of traffic flow and off-street car parking spaces are to be signposted/line-marked on site prior to occupation of the building.

**(10) Parking area surfacing - PCA approval**

The parking areas are to be constructed in a suitable all-weather surface and drained to the requirements of the Principal Certifying Authority. Such work to be carried out prior to occupation.

Full details in this regard are to be incorporated in the submitted plans.

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**CONSENT NO. 10.2016.253.1****23/26****(11) Landscaping completion**

All site works and landscaping are to be carried out in accordance with the approved landscaping plans prior to the issue of the occupation certificate.

**(12) Road Alignment Levels**

The existing levels of the footpath at the fence/lot boundary shall be maintained.

**(13) Reconstruction of kerb and gutter**

The existing kerb and gutter for the full frontage of the development shall be reconstructed, at the applicant's full cost, with 150mm kerb height, concrete kerb and gutter to Council's Standard Plan R1 (Integral kerb and gutter), with the lip of gutter matching the existing road surface, and a smooth longitudinal profile. Any redundant laybacks shall be replaced with kerb and gutter.

Detailed design plans shall be prepared by an experienced road designer and submitted to Council's Development Engineer for review and ultimate approval.

This work shall be carried out prior to the release of the Occupation Certificate.

**(14) Heavy duty vehicle crossing**

A heavy duty concrete vehicle crossing, in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications", shall be constructed at the vehicular access location, before the issue of the Occupation Certificate and at no cost to Council.

**(15) Unit Numbering**

All units are to be numbered consecutively commencing at No.1. The strata plan lot number is to coincide with the unit number, e.g Unit 1 = Lot 1. The allocated of unit numbering must be authorised by Council prior to the numbering of each units in the development. The authorised numbers are required to be displayed in a clear manner at or near the main entrance to each premise.

**(16) Street Numbering**

A House Number that is clearly visible to motorists and a minimum lettering height of 100mm, shall be displayed, facing Tintern Road.

**(17) Carparking**

- (a) All car spaces shall be allocated and marked according to this requirement.
- (b) If the development is to be strata subdivided, the car park layout must reflect the above allocation and thereafter be regarded as part of the entitlement of that strata lot.
- (c) Under no circumstances shall parking spaces be sold, let or otherwise disposed of for use other than in accordance with this condition.
- (d) Each car parking space shall have minimum dimensions in accordance with the relevant Australian Standard and be provided on-site in accordance with the approved plans.
- (e) The parking bays shall be delineated by line marking.
- (f) Visitor spaces shall be clearly line marked and/or signposted and shall only be used by persons visiting residents of the property or commercial/business/retail premises located within the development. Visitor spaces shall not be allocated as permanent residential parking spaces. Access to visitor parking spaces shall not be restricted without development approval and a sign shall be erected at the vehicular entrance indicating the availability of visitor parking.

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Details demonstrating compliance with this condition shall be submitted to and approved by the Principal Certifying Authority, prior to the issue of an Occupation Certificate.

**(18) Ordering of garbage/recycling bins**

All required garbage bins and recycling bins for the residents of the development must be ordered from Council at least 3 months prior to the issue of an occupation certificate.

**G Conditions that are ongoing requirements of development consents**

**(1) Garbage bin storage/placement for collection - strata title plan**

All garbage/recycling bins are to be kept in the garbage bin storage area. Bins are to be individually wheeled in and wheeled out on the day of garbage collection and are to be returned to the storage area immediately after collection. Bins are not to be located on the street at any time unattended. This requirement is to be incorporated into the Strata Title of the property.

**(2) Landscape Maintenance**

The landscaping approved as part of this application is to be maintained to the satisfaction of Council.

**(3) Air conditioners**

To preserve the streetscape, air conditioners or any plant equipment shall not be placed along the street façade or any place/part of the building that is visible from the public domain.

**(4) Private Power Poles**

Private power poles are not to be erected on the subject site without Council's Consent.

**(5) Waste management**

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

- (a) A site caretaker must be employed and be responsible for moving bins where and when necessary, washing bins and maintaining waste storage areas, ensuring the chute system and related devices are maintained in effective and efficient working order, managing the communal composting area, managing the bulky item storage area, arranging the prompt removal of dumped rubbish, ensuring the loading bay is kept clear of parked cars, and ensuring all residents are informed of 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.
- (b) The approved on-going waste management practise for the site must not be amended without consent from Council.

**(6) Car parking and road safety**

- (a) 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.
  - i) All parking areas and driveways are to be sealed to an all weather standard, line marked and signposted;

**CONSENT NO. 10.2016.253.1****25/26**

- ii) Car parking, loading and manoeuvring areas to be used solely for nominated purposes;
  - iii) Vehicles awaiting loading, unloading or servicing shall be parked on site and not on adjacent or nearby public roads;
  - iv) All vehicular entry on to the site and egress from the site shall be made in a forward direction.
- (b) Any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath.
  - (c) Residential parking spaces are to be secure spaces with access controlled by card or numeric pad.
  - (d) Visitors must be able to access the visitor parking spaces in the basement car park at all times.
  - (e) All parking for people with disabilities is to comply with AS/NZS 2890.6:2009 Off-street parking for people with disabilities.
  - (f) Bicycle parking spaces are to be designed in accordance with AS 2890.3-1993 Bicycle parking facilities
  - (g) Motorcycle parking spaces are to be designed in accordance with AS/NZS 2890.1:2004 Figure 2.7.

**(7) Canopy Replacement**

The canopy replenishment trees required by this consent are to be maintained in a healthy and vigorous condition until they attain a height of 6 metres whereby they will be protected by Council's Tree Management Controls. Any of the trees found faulty, damaged, dying or dead shall be replaced with the same species within 2 months.

**H Advisory Notes****(1) Application for a Construction Certificate**

The required application for a Construction Certificate may be lodged with Council. Alternatively, you may apply to an accredited private certifier for a Construction Certificate.

**WARNING:** Failure to obtain a Construction Certificate prior to the commencement of any building work is a serious breach of Section 81A(2) of the *Environmental Planning & Assessment Act 1979*. It is also a criminal offence which attracts substantial penalties and may also result action in the Land and Environment Court and orders for demolition.

**(2) Compliance with the Disability Discrimination Act - liability**

This decision does not ensure compliance with the Disability Discrimination Act. The owner, lessee, operator and/or manager of the premises is advised that under the *Disability Discrimination Act 1992*, it is illegal to discriminate against a person with a disability by means of restricting access to or within the building. If access is restricted the owner, lessee, operator and/or manager of the premises may be liable for prosecution and/or a successful appeal to the Human Rights and Equal Opportunities Commission. You should therefore investigate your liability under that Act. Australian Standard 1428 - Design for Access and Mobility, Parts 2, 3 and 4 may assist in determining compliance with the *Disability Discrimination Act 1992*.

**(3) Tree preservation**

Where tree removal or work has not been approved by this Development Consent, the developer is notified that a general Tree Preservation Order applies to all trees (with the exception of certain species) in the Municipality of Ashfield with a height greater than five (5) metres. This order prohibits the ringbarking, cutting down, topping, lopping\*, pruning, transplanting, injuring or wilful destruction of such trees except with the prior approval of the Council. Written consent from Council for such tree



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**CONSENT NO. 10.2016.253.1****26/26**

works must be in the form of a "Tree Preservation Order Permit for Pruning or Removal of Protected Trees" to be obtained from Council.

- \* Lopping may be carried out without consent only to maintain a minimum clearance of 500mm from power lines, pruning to remove dead wood/branches and minor pruning of branches overhanging buildings to a height of 2 metres only with the agreement of the owner of the tree. Contact Council's One Stop Shop - telephone 9716 1800, for details of the Tree Preservation Order.

**(4) Relocation of stormwater drainage**

Council is not responsible for the cost of relocating Council's stormwater drainage pipes through the subject property.

**Reason for the imposition of conditions**

Unrestricted consent would be likely to cause injury:

- a) to the amenity of the neighbourhood
- b) to the heritage significance of the area
- c) to the heritage significance of the property
- d) to the amenity of the neighbourhood due to the emission of noise
- e) to the amenity of the neighbourhood due to the creation of a traffic hazard

and further, would not be in the public interest.

**Compliance with Building Code of Australia**

- (1) All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate or complying development certificate was made).
- (2) This clause does not apply to the extent to which an exemption is in force under clause 187 or 188 of the Environmental Planning and Assessment Regulation 2000, subject to the terms of any condition or requirement referred to in clause 187 or 188.

**NOTES**

- (i) This approval does not relieve an applicant of the obligation to obtain any other approval required under Section 68 of the Local Government Act, 1993 and Ordinances or Section 4.12 of the Environmental Planning & Assessment Act, 1979 or any other Act or Regulation.
- (ii) Further approval(s) – see above, may be required in addition to this development consent. Plans and specifications submitted for building works must comply with the Building Code of Australia, any relevant condition of development consent and/or other code or requirement of Council at the time of approval.

Ask Council if you are unsure of what procedures you need to follow.

**SECTIONS 8.2, 8.7 AND 4.53 OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979**

You are advised that:

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**CONSENT NO. 10.2016.253.1****27/26**

- Under the provisions of Section 8.2 of the Environmental Planning and Assessment Act, 1979, an applicant may request Council to review a determination of the applicant's development application, other than an application for designated development. Any request for a review must be made within six (6) months of the date on which the applicant received notice, given in accordance with the regulations, of the determination of the application and be accompanied by the fee prescribed in Section 257 of the Regulations.
- If you are dissatisfied with this decision, Section 8.7 of the Environmental Planning and Assessment Act, 1979, gives you the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice.
- Under the provisions of Section 4.53 of the Environmental Planning and Assessment Act, 1979, unless the development, which is the subject of this consent, is commenced within five (5) years from the date of determination, the consent will lapse.

# Attachment B- Plans of Proposed Development



## DEVELOPMENT APPLICATION

cover

proposed new development at

16-16A tintern road, ASHFIELD

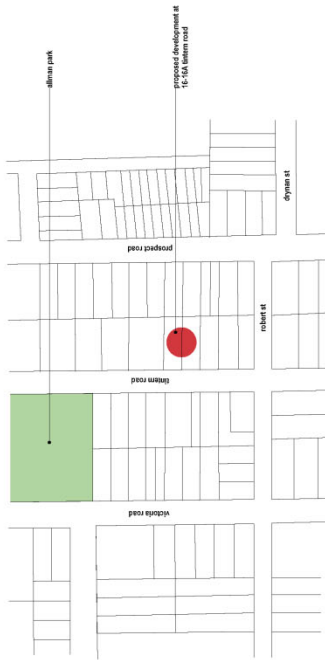
Kennedy Associates Architects, Level 2 / 1 Booth Street, Annandale 2038 | P: 01 2 8657 6498 | F: 01 2 8657 6477 | www.kennedy-associates.com.au  
Kennedy Associates Architects - Steve Kennedy - registration no. 2023

C 2/10/18 revised DA submission  
1303 - DA00 C

**DRAWING SCHEDULE**

- DA00 cover page
- DA01 introduction
- DA02 site analysis
- DA03 setback analysis
- DA04 summary - planning guides
- DA05 design analysis
- DA06 demolition & early site works plan
- DA07 level -01
- DA08 level -01
- DA09 level -01
- DA10 roof plan
- DA11 sections
- DA12 west and north elevations
- DA13 east and south elevations
- DA14 street elevations
- DA15 finishes
- DA16 summary - area counts
- DA17 shadows - winter solstice - 9 am
- DA18 shadows - winter solstice - 12 noon
- DA19 shadows - winter solstice - 3 pm
- DA20 shadows - equinox - 9 am
- DA21 shadows - equinox - 12 noon
- DA22 shadows - equinox - 3 pm
- DA23 views from sun - winter solstice
- DA24 BASIX commitments
- DA25 summary of ADG cross ventilation
- DA26 summary of ADG solar access
- DA27

**LOCATION PLAN**



**ACCOMMODATION SUMMARY**

Unit Number	Unit Type	Net Area	Storage
unit 01	2 bed offset	80.1 sq m	5 m <sup>3</sup>
unit 02	1 bed	50 sq m	3.5 m <sup>3</sup>
unit 03	2 bed	93 sq m	7 m <sup>3</sup>
unit 04	2 bed	76.7 sq m	5.7 m <sup>3</sup>
unit 05	2 bed	81.1 sq m	5 m <sup>3</sup>
unit 06	2 bed offset	81.1 sq m	3 m <sup>3</sup>
unit 07	3 bed	98.9 sq m	8.7 m <sup>3</sup>
unit 08	3 bed	98.9 sq m	8.7 m <sup>3</sup>
unit 09	2 bed	75 sq m	4.6 m <sup>3</sup>
unit 10	2 bed	74 sq m	5.7 m <sup>3</sup>
unit 11	2 bed offset	80.1 sq m	5.7 m <sup>3</sup>
unit 12	1 bed	50 sq m	3.5 m <sup>3</sup>
unit 13	2 bed	93 sq m	7 m <sup>3</sup>
unit 14	2 bed	76.7 sq m	5.7 m <sup>3</sup>
unit 15	2 bed	77.4 sq m	5.7 m <sup>3</sup>

**PROJECT DESCRIPTION**

This application seeks approval to undertake the demolition of the existing structures on the subject site shown as 16 and 16A Tintern Road, Ashfield NSW 2058. The site is currently zoned R2 Medium Density Residential. The proposed development includes a new 16-16A Tintern Road, Ashfield NSW 2058. The site is currently zoned R2 Medium Density Residential. The proposed development includes a new 16-16A Tintern Road, Ashfield NSW 2058.

The proposed development will provide:

- a single level of basement carparking providing 16 car spaces as well as bike storage, residential storage and public space
- separate outdoor and pedestrian access from Tintern Road
- separate outdoor and pedestrian access from Victoria Road
- landscaped private and communal open space, in excess of Council requirements

The proposal:

- fully complies with Council setbacks and height controls
- maintains solar access to adjoining properties
- complies with Council requirements regarding accessibility

**COMPLIANCE SUMMARY**

Item	Proposed	Permissible	Complies
<b>Basic data</b>			
Site area (sq m per survey)	1557.0	1557.0	yes
Number of apartments	15 total	15 total	yes
	5 x 1 bed	5 x 1 bed	
	3 x 2 bed	3 x 2 bed	
	2 x 3 bed	2 x 3 bed	
<b>Site Area</b>	1557 sq m	1557 sq m	
<b>Gross Floor Area</b>	11776 sq m	10283 sq m	FSR=0.7
<b>Landscaped Area</b>	637.1 sq m	778.5 sq m	95% of site area
<b>Driveway Area</b>	516.3 sq m	497.1 sq m	96% of site area
<b>Communal Open Space</b>	483 sq m	185 sq m	39.25% of site area (39m <sup>2</sup> m x 5 sqm per unit)

introduction

PROPOSED NEW DEVELOPMENT PTY LTD

16-16A Tintern road, ASHFIELD

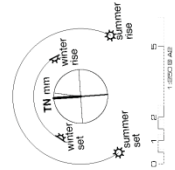
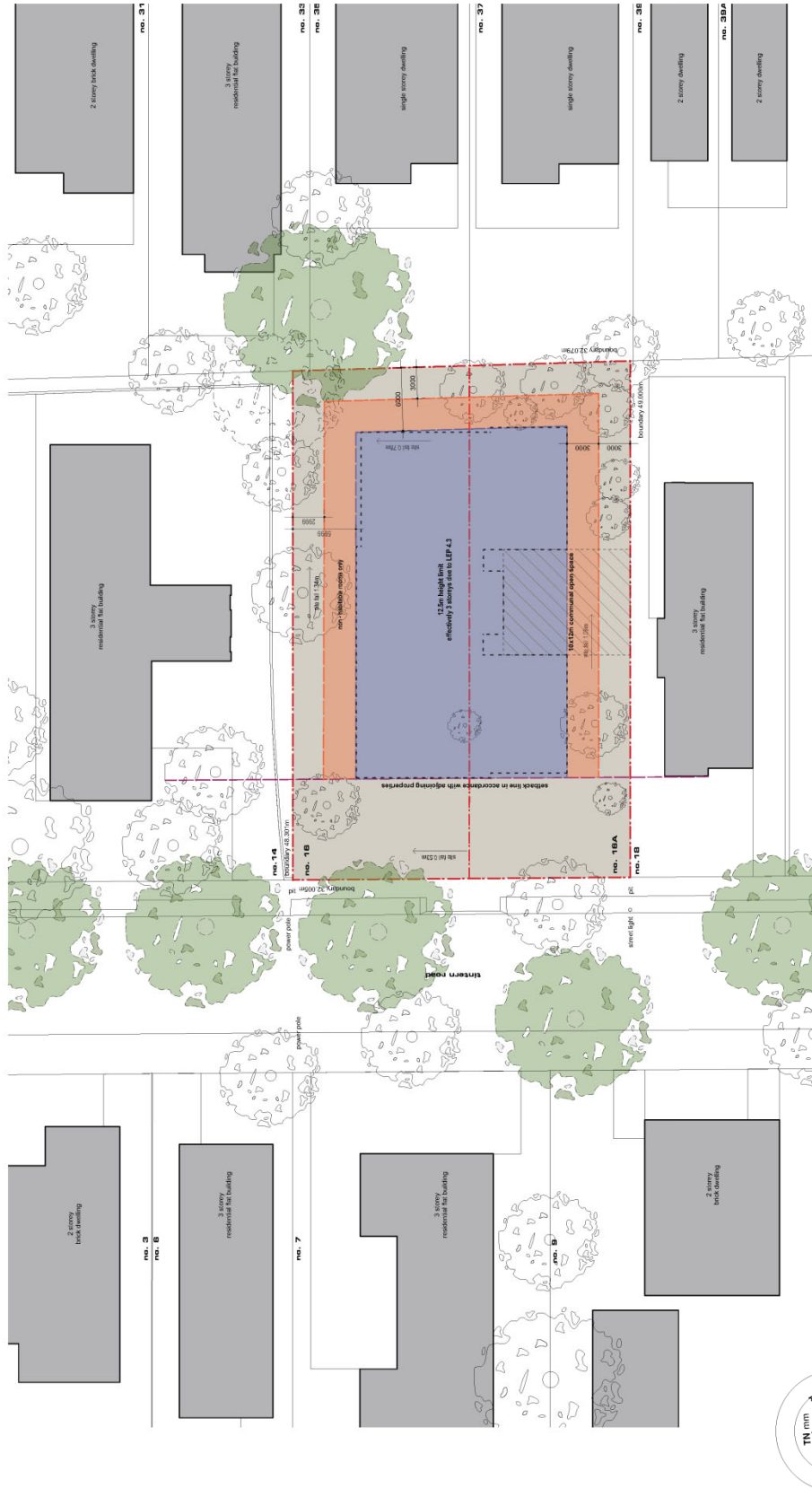
Kennedy, associates architects level 9 / 1 booth corner, annamallee 2038 p / 61 2 9657 6466 f / 61 2 9657 6477 nominated architect - stave kennedy - registration no. 5858

2/10/18 reviewed DA submission

1303 - DA01 C

FILED: 18/09/2018 10:04 AM





- - - - - indicates proposed building footprint
- indicates front setback, align to adjacent buildings - refer DCP
- indicates 5m setback to adjacent building - refer DCP
- indicates 1.5m setback to adjacent building - refer DCP
- indicates 2m setback to adjacent building - refer DCP
- indicates extent of subject site

setback analysis

prepared: new.development.net

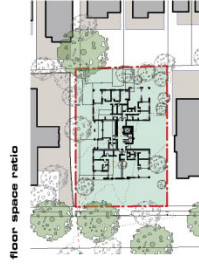
1B-16A tintern road, ASHFIELD

kennedy associates architects level 3 / 1 booth street, annandale 2038 p + 61 2 8657 6468 f + 61 2 8657 6477 nominated architect - steve kennedy - registration no. 58268

C 2/10/18 revised DA submission

1303 - DA03 C

base area (as per survey)	zone	control (LEP Draft 2013)	control ADD	control (DCP)	compliance	
157.02 sqm	residential density residential	0.7:1	max. 1083.9 sqm	C2 residential LEP 2013	permissible	
32 m	floor space ratio	max. 12.5 m	max. 12.5 m	max. FSR complies with the Ashfield LEP 2013	yes	
	building height			max. levels above ground include a roof used as a garden, terrace or deck	yes	
				height of finished floor of 1st floor not to exceed height of finished floor of 2nd floor above any point at natural ground		
	setbacks:					
	front	match existing development		the main front face of the building is setback within 20% of that of the average of immediately adjoining development does not cause a significant adverse amenity/impact on adjoining properties, reduction in the level of overshadowing, reduction in the level of overlooking, reduction in the level of sunlight and ventilation	2m side setback confining deep side setback in accordance with requirement	yes
	side and rear	side and rear setbacks with the requirements for building separation and visual privacy, zone requirements		side and rear setbacks with the requirements for building separation and visual privacy, zone requirements		yes
	dwelling size	apartments are required to have the following min. internal areas: 1 bedroom - 50m <sup>2</sup> ; 2 bedroom - 70m <sup>2</sup> ; 3 bedroom - 90m <sup>2</sup>		max. 125 sqm	max. 125 sqm	yes
	landscaped area	the min. internal areas include only one min. internal area by 2m <sup>2</sup> each				
	soft landscaped area			min. 50 % of site	min. 77.6 sqm	yes
	deep soil zone	min. 7% of site area		min. 30 % of site	min. 543.0 sqm	yes
	communal open space	min. the public open space should be well landscaped with public streets along at least one edge.		108.992	min. 483.2 sqm	yes
	private open space:	backyards should be clearly defined between public open space and private areas.		min. 10m x 12m	min. 10m x 12m	yes
	on ground floor	apartments at ground level or on a podium or similar structure, a private open space is required with a minimum area of 15m <sup>2</sup>				yes
	on first floor	studio apartment - 4m <sup>2</sup> , 1 bedroom - 6m <sup>2</sup> with 2m min. depth, 2 bedroom - 11m <sup>2</sup> with 2m min. depth and 3 bedroom - 12m <sup>2</sup> with 2.4m min. depth.		with minimum depth of 2.4 m		yes
	storage	studio apartments - 4m <sup>3</sup> , one-bed = 6m <sup>3</sup> , two-bed = 8m <sup>3</sup> , three + bed = 10m <sup>3</sup>				yes
	solar access - private courtyard	70% of apartments to achieve min. 2h between at least 60% of apartments are naturally cross ventilated				yes
	natural ventilation	at least 60% of apartments are naturally cross ventilated				yes
	car parking	the car parking requirement prescribed by the relevant council.		as per the RTA Guide to Traffic Generating Development - 0.6 space per bedroom unit, 1.4 spaces per 3 bedroom unit		yes
	visitor parking			min. 1 space per 5 units plus 1 car wash bay		yes
	accessible parking			min. 1 space per admissible unit		yes
	bicycle parking			min. 1 space per 10 units		yes
	motorbike parking			min. 1 space per 25 units		yes
	adaptable units			up to 3 storeys; all ground floor units to be adaptable PLUS 10% of units to be adaptable		yes
	heritage items in proximity to site			no 9 + 04 Tintern Road ( diagonally opposite site)	no 39, 41, 43, 45 Prospect Road ( 2 hours south of 16A site)	



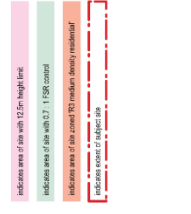
**Ashfield LEP 2013**  
**Clause 4.2 - Height of buildings**  
 (1) The objectives of this clause are as follows:  
 (a) to ensure that maximum development density and intensity of land use, the building, and the site, are compatible with the height, bulk and scale of the surrounding area;  
 (b) to ensure that buildings are compatible with the height, bulk and scale of the surrounding area;  
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**Ashfield LEP 2013**  
**Clause 4.3 - Height of buildings**  
 (1) The objectives of this clause are as follows:  
 (a) to ensure that maximum development density and intensity of land use, the building, and the site, are compatible with the height, bulk and scale of the surrounding area;  
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 (z) to ensure that buildings are compatible with the height, bulk and scale of the surrounding area;



**Ashfield LEP 2013**  
**Medium Density Residential**  
 (1) Objectives of zone:  
 (a) To provide for the housing needs of the community and to ensure that maximum development density and intensity of land use, the building, and the site, are compatible with the height, bulk and scale of the surrounding area;  
 (b) To ensure that buildings are compatible with the height, bulk and scale of the surrounding area;  
 (c) To ensure that buildings are compatible with the height, bulk and scale of the surrounding area;  
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 (z) To ensure that buildings are compatible with the height, bulk and scale of the surrounding area;



summary - planning guides

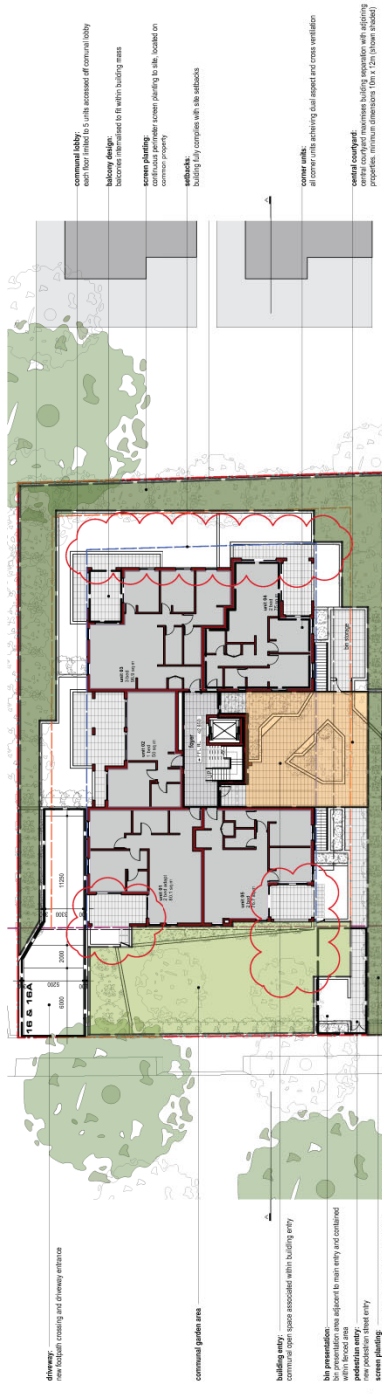




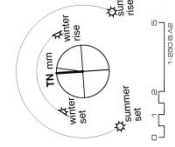
STREET ELEVATION



SECTION (AA)



PLAN



design analysis

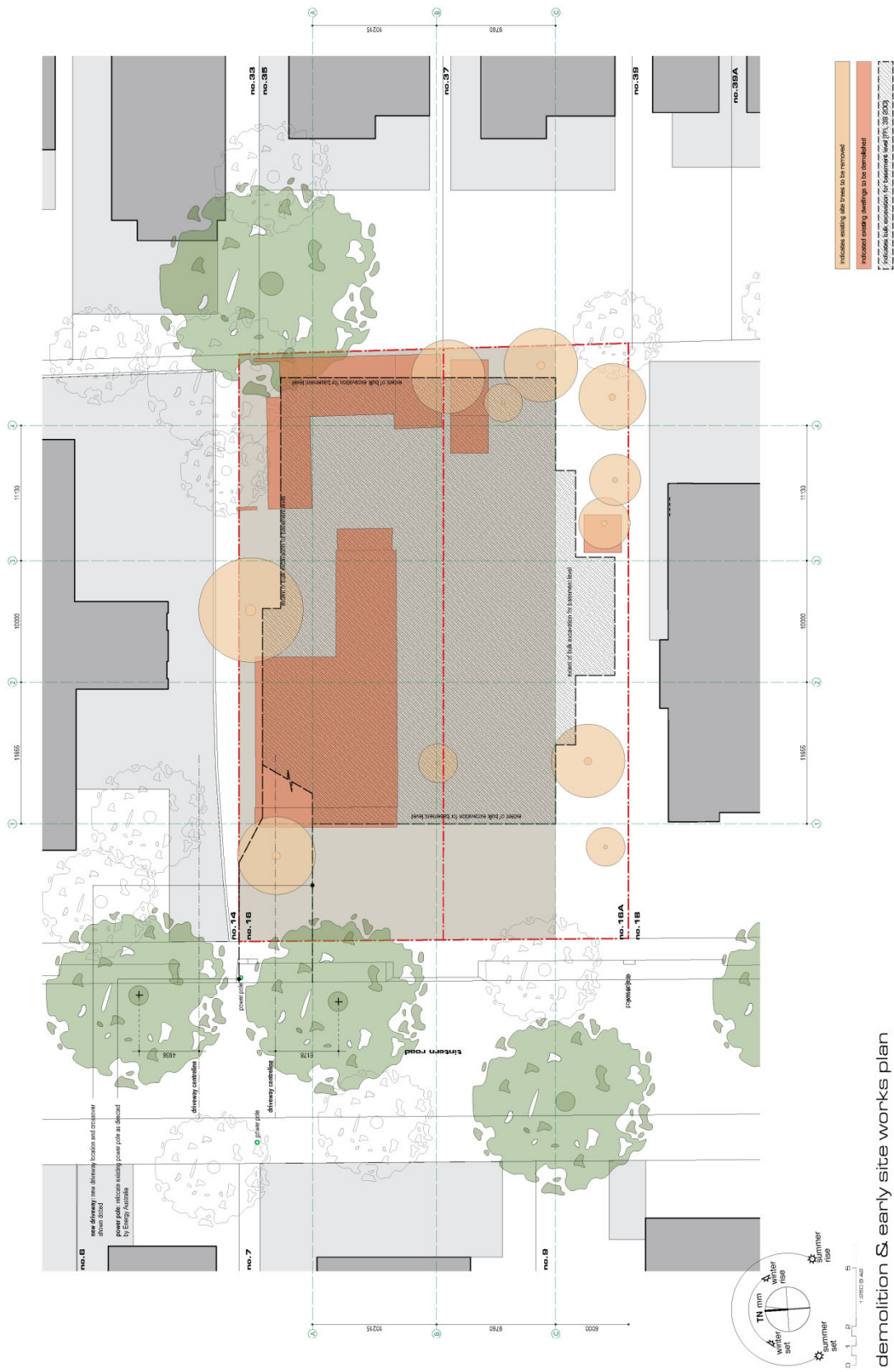
Proposed new developments at

16-16A tintern road, ASHFIELD

Kennedy associates architects level 3 / 1 booth street annandale 2039 p + 61 2 9557 6465 f + 61 2 9557 6477 nominated architect - steve kennedy - registration no. 5529

C 2/12/18 revised DA submission  
1303 - DA05 C

1303 - DA05 C



demolition & early site works plan

PROCESSED BY: DESIGNCONNECT PTY LTD

16-16A tintern road, ASHFIELD

Kennedy Associates Architects Level 3 / 1 Booth Street Annandale 2038 p - 61 2 9557 6477 north-west architects - uswe/kennedy\_registration\_no\_5528

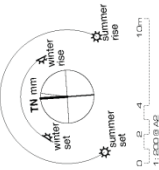
C 2/10/18 revised DA submission

1303 - DA06 C

1303-00 revision 04.vdw



prepared new developments pt  
 Kennedy Associates Architects level 3 / 1 Booth Street Annandale 2038 p + 61 2 9557 6465 f + 61 2 9557 6477 nominated architect - steve Kennedy - registration no. 6568  
 16-18A tintern road, ASHFIELD  
 D 01/11/18 revised DA submission  
**1303 - DA07 D**  
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level 00

prepared: new development, etc.

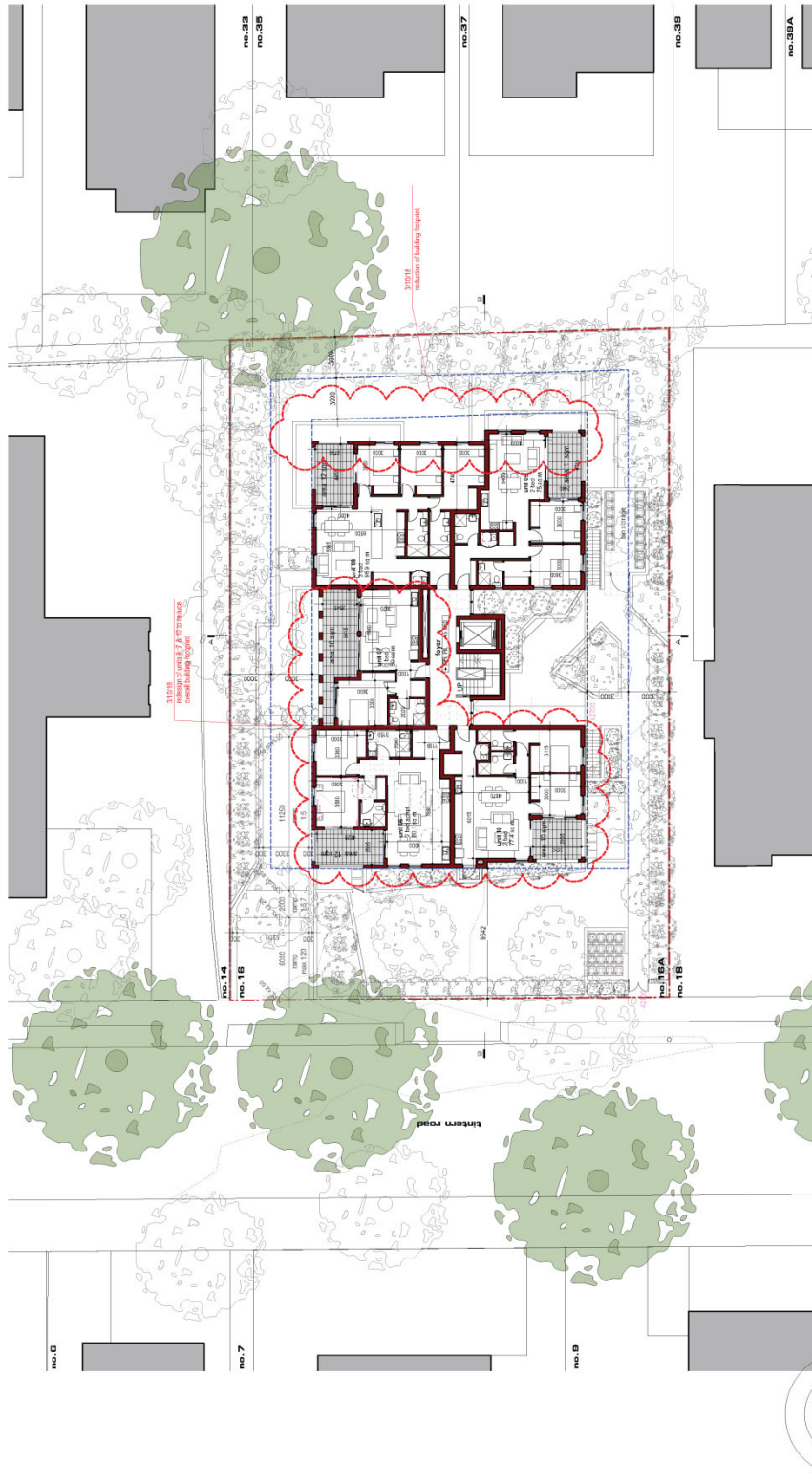
16-16A tintern road, ASHFIELD

Kennedy Associates Architects Level 3 / 1 Booth Street, Annandale 2038 p + 61 2 9557 6466 f + 61 2 9557 6477 nominated architect: stawa kennedy registration no. 8958

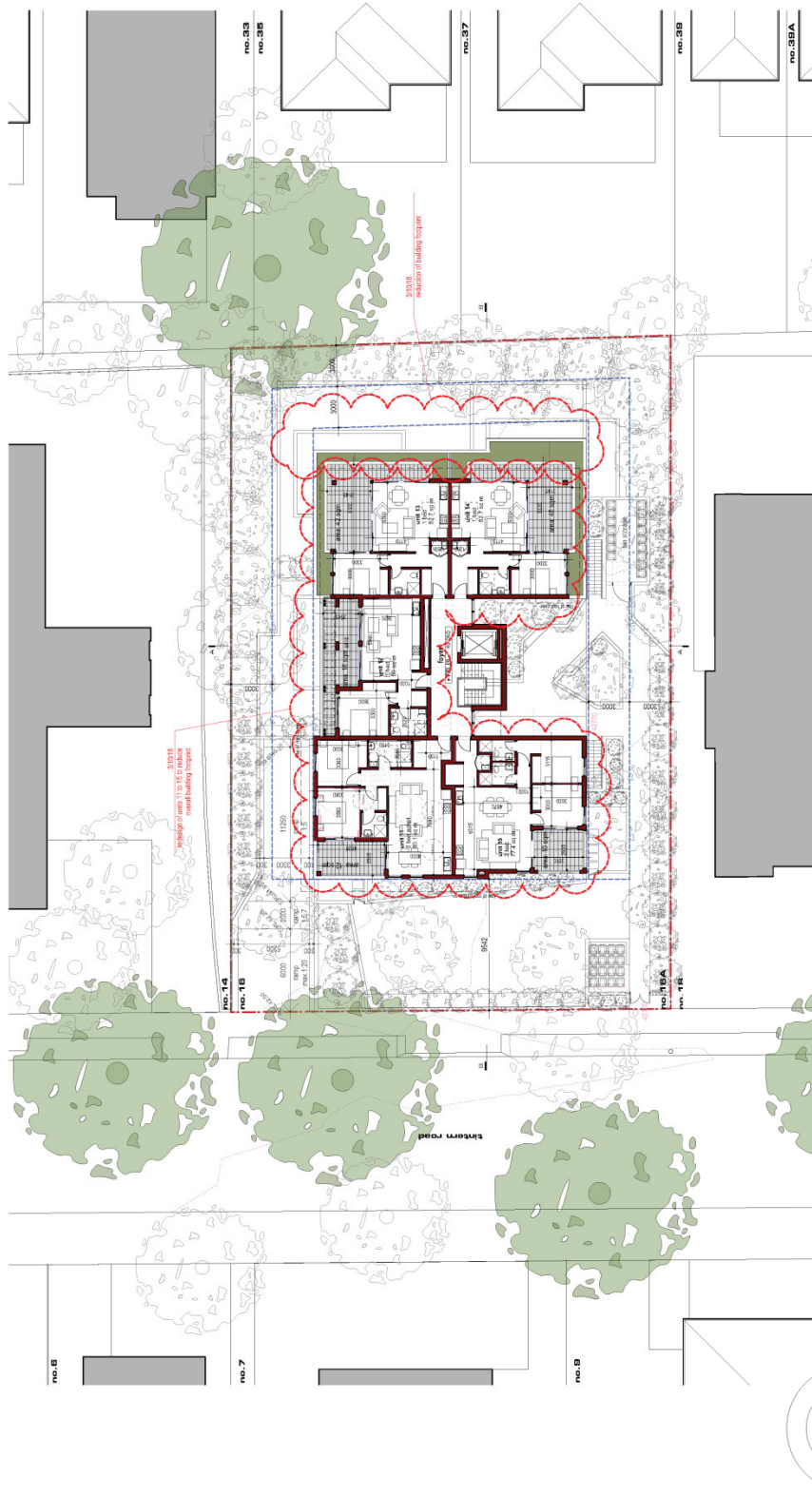
C 2/10/18 revised DA submission  
1303 - DA08 C

16-16A Tintern Road, Ashfield





16-18A tintern road, ASHFIELD  
 kennedy associates architects level 3 / 1 booth street annandale 2039 p. + 61 2 9557 6466 f. + 61 2 9557 6477 nominated architect - stave kennedy - registration no. 56628  
 2/19/18 revised DA submission  
 1303 - DA09 C



C 2/10/18 revised DA submission

1303 - DA10 C

kennedy associates architects level 3 / 1 booth street annandale 2038 p - 61 2 9557 6466 f - 61 2 9557 6477 nominated architect - gawle kennedy - registration no. 6568

16-16A tintern road, ASHFIELD

proposed new development at

level 02

1:1000

10m

North arrow

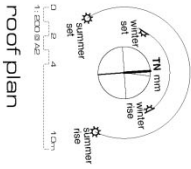
Summer rise

Summer set

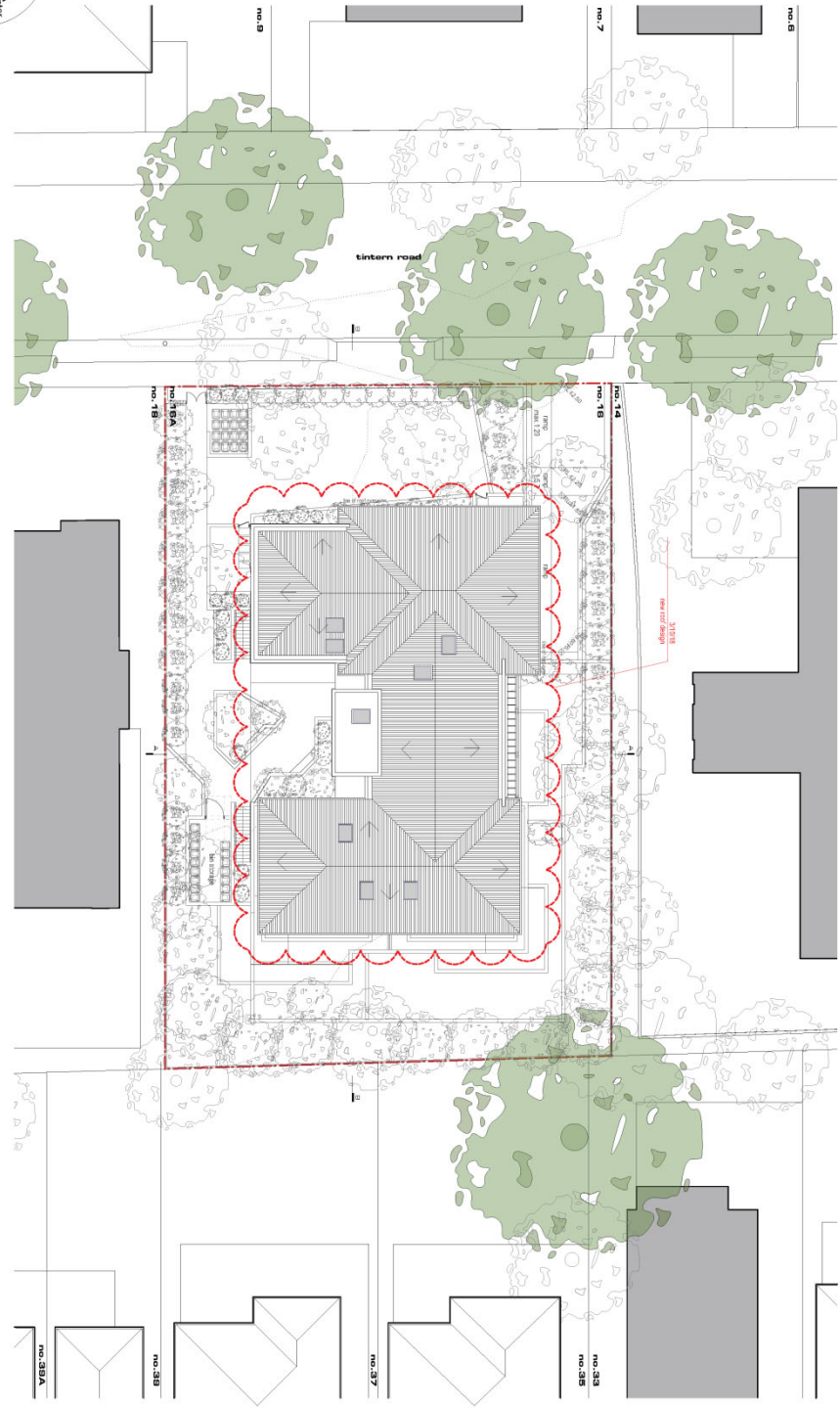
Winter rise

Winter set

10m



roof plan



16-16A tintern road, ASHFIELD

16-16A tintern road, ASHFIELD

2/10/18 1303 - DA11 C







1:200  
0 10m

### elevations - west + north

proposed new development st

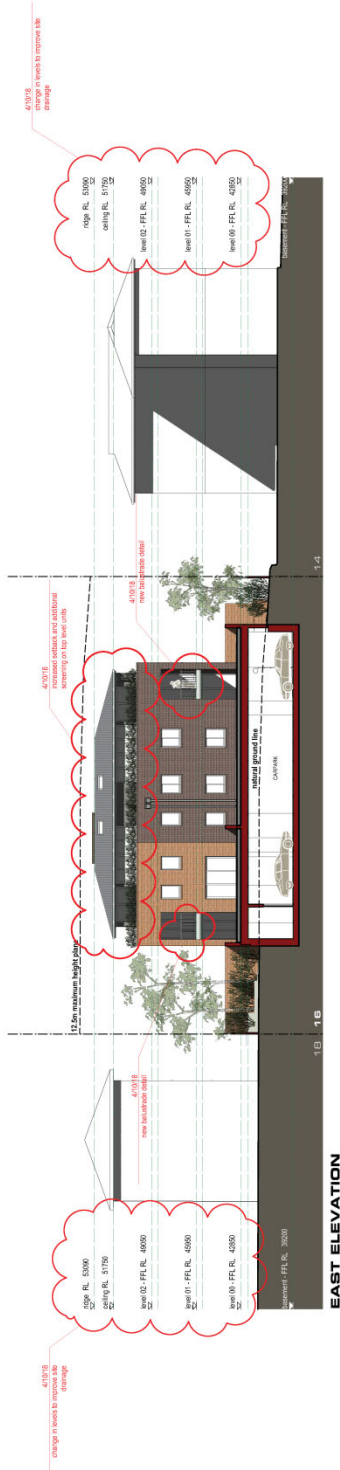
16-16A tintern road, ASHFIELD

kennedy associates architects level 3 / 1 booth street emerald q338 p + b1 2 9557 6483 f + b1 2 9557 6477 nominated architects - above kennedy - registration no. 6958

C 7/11/18 revised DA submission

1303 - DA13C

16-16A TINTERN ROAD, ASHFIELD



1:1000 scale  
 elevations - east + south  
 proposed new development at



1:500 @ A3  
10m

street elevation

proposed new developments

16-16A tintern road, ASHFIELD


Kennedy associates architects level 9 / 1 booth street annandale 2038 p 61 2 9557 6466 f 61 2 9557 6477 nominated architect - above kennedy registration no 56626


C 2/10/18 revised DA submission


1303 - DA15 C


1303 - DA15 C





- 

**1** vertical wood slat  
similar to Cleverton 2009 in 2020
- 

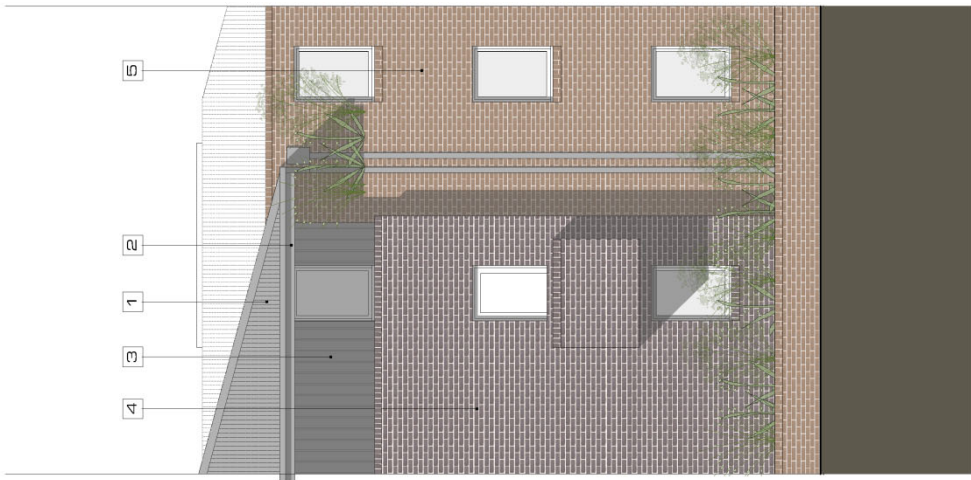
**2** solid grey panel  
similar to Cleverton 2009 in 2020
- 

**3** vertical wood slat  
similar to Cleverton 2009 in 2020
- 

**4** brick pattern  
similar to Austral Dry Press Face - Ebony Blue
- 

**5** brick pattern  
similar to Austral Dry Press Face - Many Grey
- 

**6** horizontal wood slat  
similar to Cleverton 2009 in 2020



finishes  
PROPOSED NEW DEVELOPMENT

1:20 (P.48)

C 2/10/18 revised DA submission

1303 - DA16 C

kennedy associates architects level 3 / 1000 stewart street, sydney nsw 2008 p + 61 2 9557 6406 f + 61 2 9557 6477 northward architect - staves.kennedy - registration no. 5628

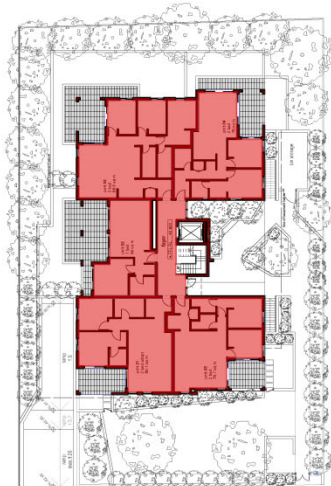
16-16A tintern road, ASHFIELD

1303 - DP submission





LANDSCAPED AREA



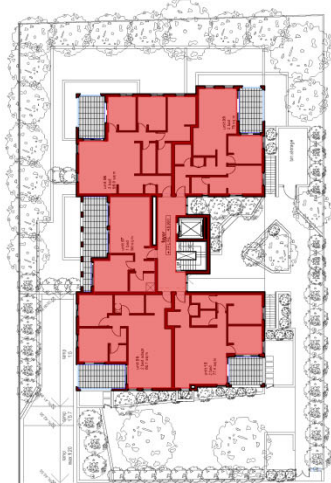
FSR - LEVEL 00



COMMUNAL OPEN SPACE



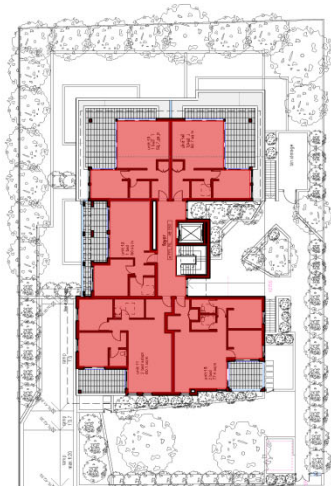
SOFT LANDSCAPE AREA



FSR - LEVEL 01



DEEP SOIL ZONE



FSR - LEVEL 02

31/1/18 revised area counts to reflect zoning 04

	Permissible	Proposed	Complete
Site Area	1200.0 sq m	1175.6 sq m	1175.6 sq m
Gross Floor Area	1577 sq m	FSR = 4.27	FSR = 4.757
Landscaped Area	778.0 sq m	657.1 sq m	657.1 sq m
Soft Landscaped Area	546.0 sq m	656.4 sq m	656.4 sq m
Deep Soil Zone	407.0 sq m	513.0 sq m	513.0 sq m
Communal Open Space	162.0 sq m	402.0 sq m	402.0 sq m
		% of site area	% of site area
		59.3%	55.8%
		30.25%	42.2%
		33.33%	33.81%
		14.00%	34.18%

- Indicates landscaped area
- Indicates soft landscape
- Indicates deep soil zone
- Indicates four space zone
- Indicates communal open space

summary - area counts

proposed new development

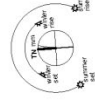
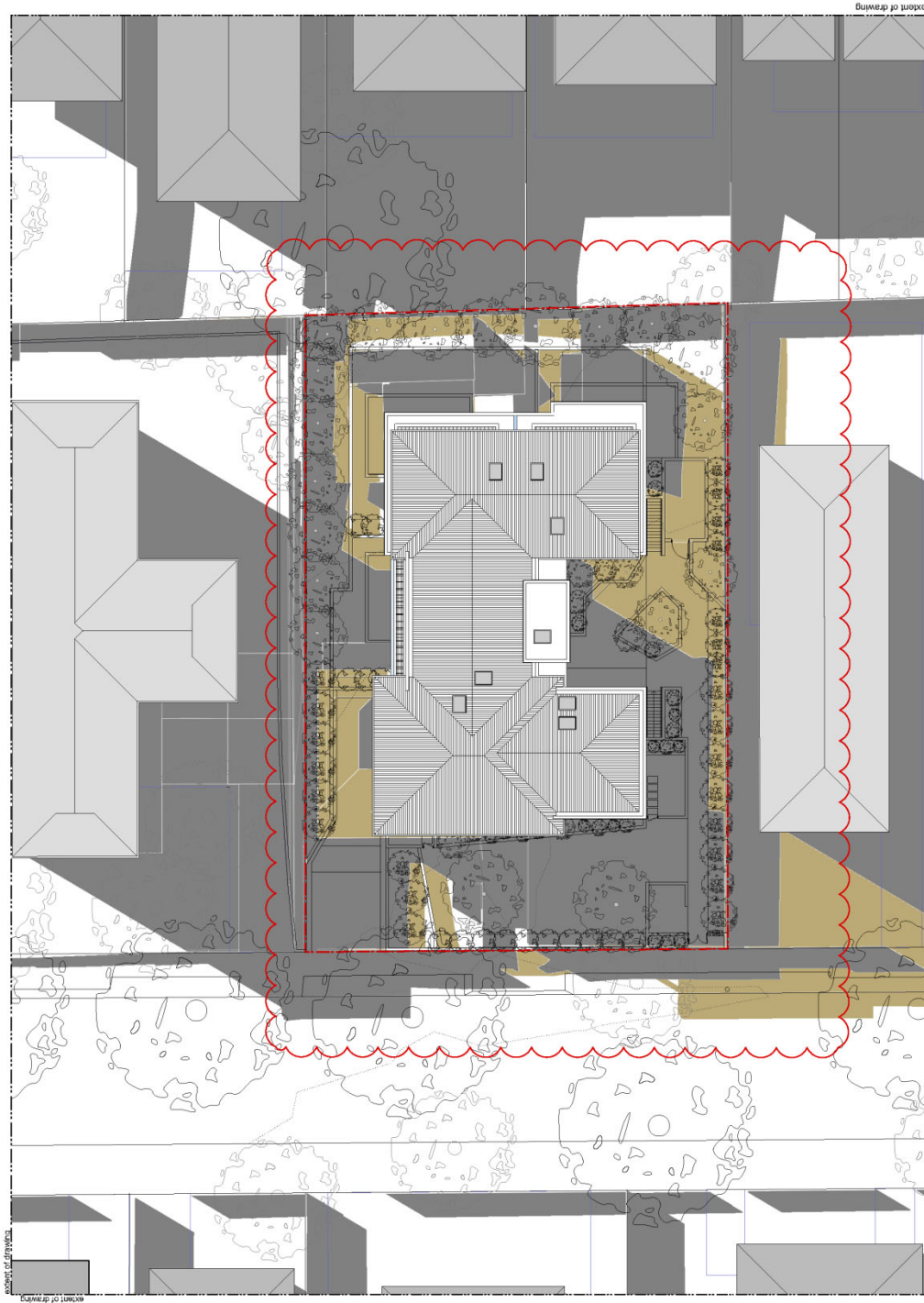
16-16A tintern road, ASHFIELD

kennedy associates architects level 3 / 1 bough street amandale 2038 p. 01 8 9567 0400 f. 01 8 9567 0477 nominated architect: steve kennedy - registration no. 65628

C 2/10/18 revised DA submission

1303 - DA17 C

2025.02.10 10:57:00 AM



shadows - winter solstice - 9 am

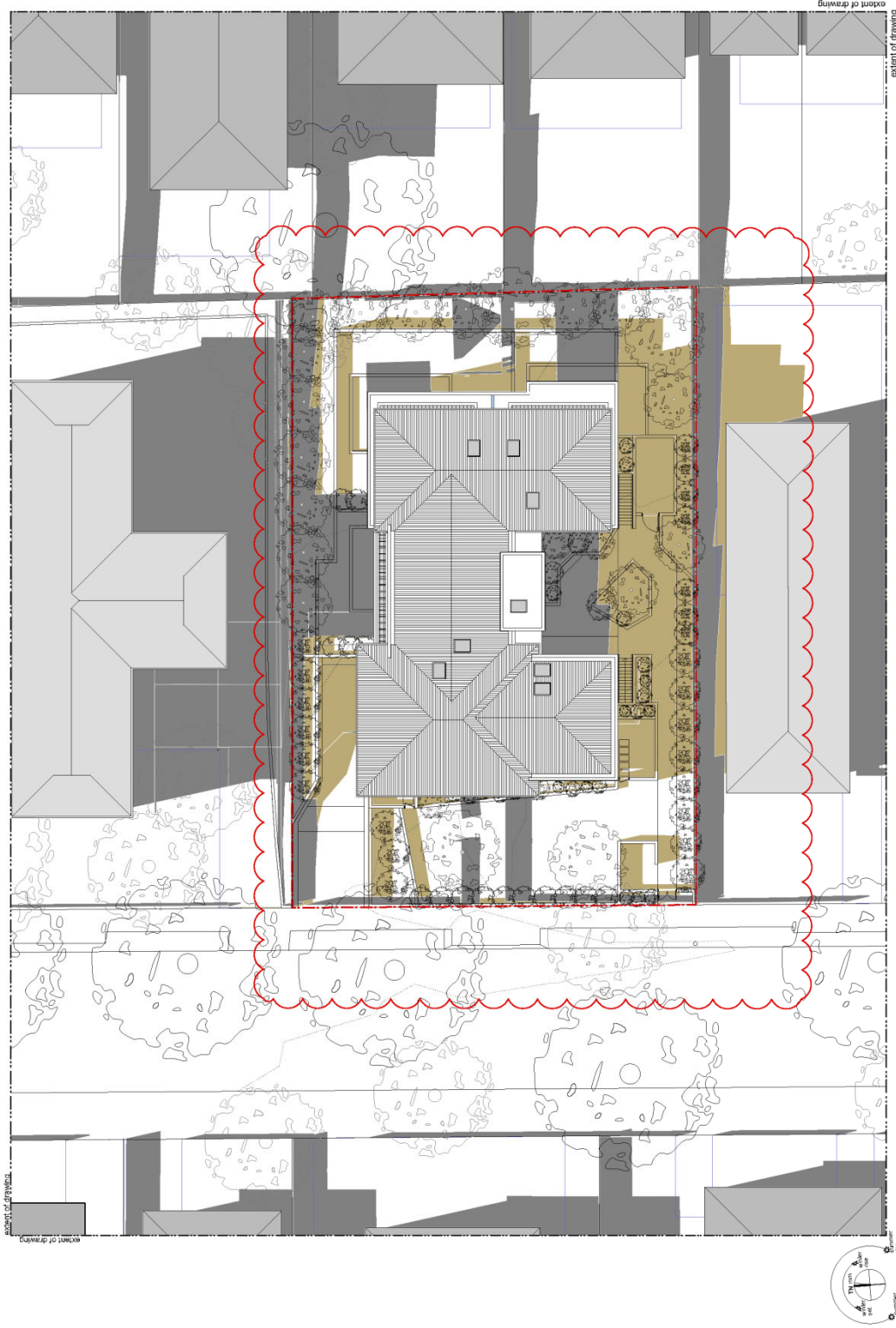
proposed new developments etc  
 structures  
 structures at shadows cast by proposed  
 developments  
 extent of drawing

made, all references to neighbouring sites not shown on this  
 drawing are approximate only

2/10/18  
 C  
 revised DA submission

1303 - DA18C  
 Kennedy Associates Architects, level 3 / 1 Booth Street, Annandale NSW p - 61 2 9537 6488 f - 61 2 9537 6477 nominated and listed - above Kennedy - registration no. 9568

proposed new developments etc  
 16-16A tintern road, ASHFIELD



shadows - winter solstice - 12 noon

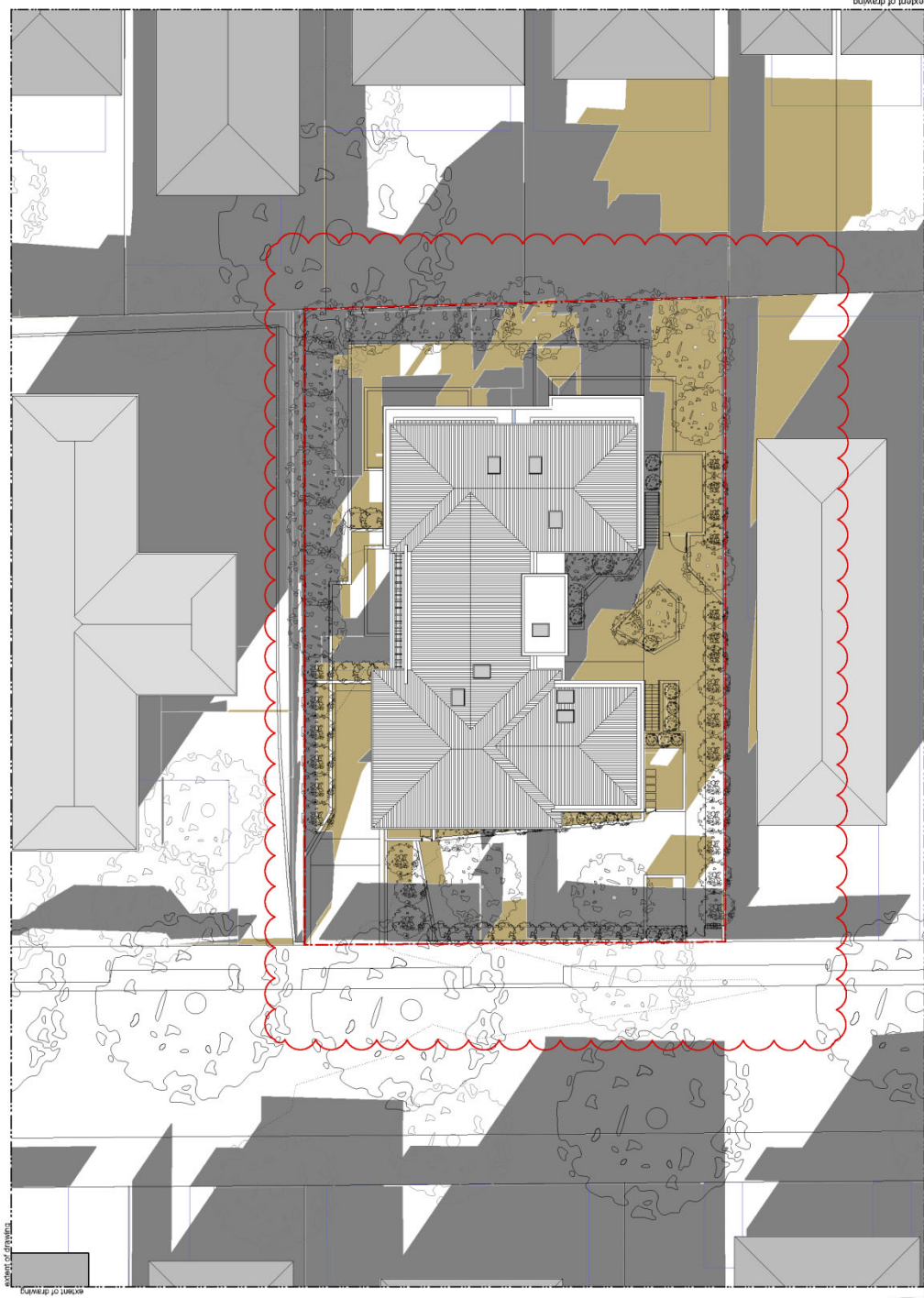
16-16A tintern road, ASHFIELD

indicators of shadow cast by existing structures  
 indicators of shadow cast by proposed structures  
 note: all dimensions and shading are as determined by survey measurements by

C 2/10/18  
 1303 - DA19C

proposed new development at  
 Kennedy associates architects level 13 / 1 boord street amandale 2038 p + 61 2 9257 8466 f + 61 2 9257 8477 nominated architect - scott kennedy - registration no. 59928  
 revised DA submission  
 1303 - DA19C  
 1303 - DA19C





0 2 4 1.0m  
 1:1000 scale

shadows - winter solstice - 3 pm

PROPOSED NEW DEVELOPMENT ETC.

indicates shadows cast by existing structure  
 indicates shadows cast by proposed structure  
 note: all shadows on neighbouring site not described by this drawing are approximate only

2/12/18  
 C

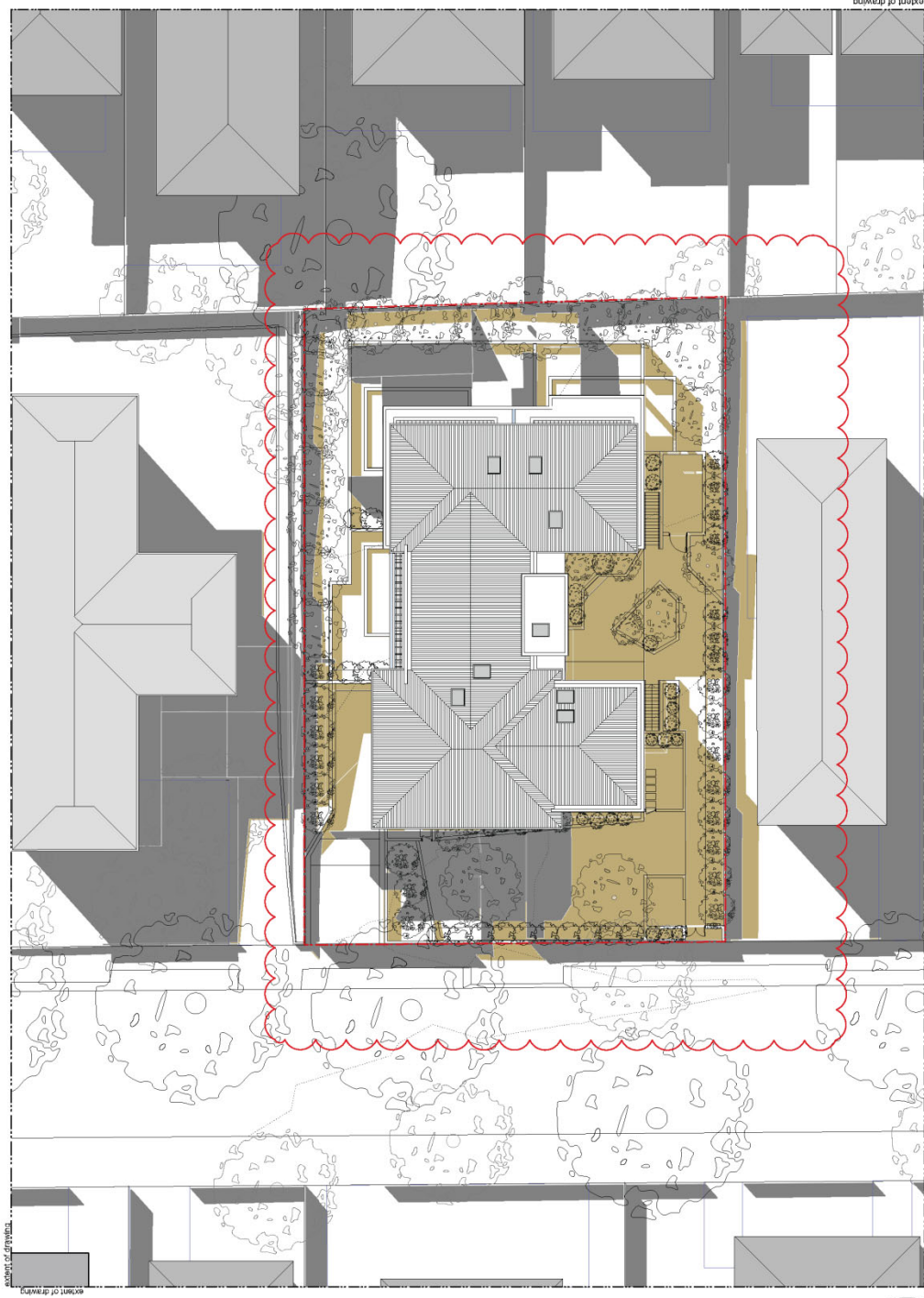
revised DA submission

1303 - DA20 C

kennedy architects architects level 3 / 1 booth street annandale 2038 p + 61 2 9537 6466 f + 61 2 9537 6477 north-west architects - stave kennedy - registration no. 95628

16-16A tintern road, ASHFIELD





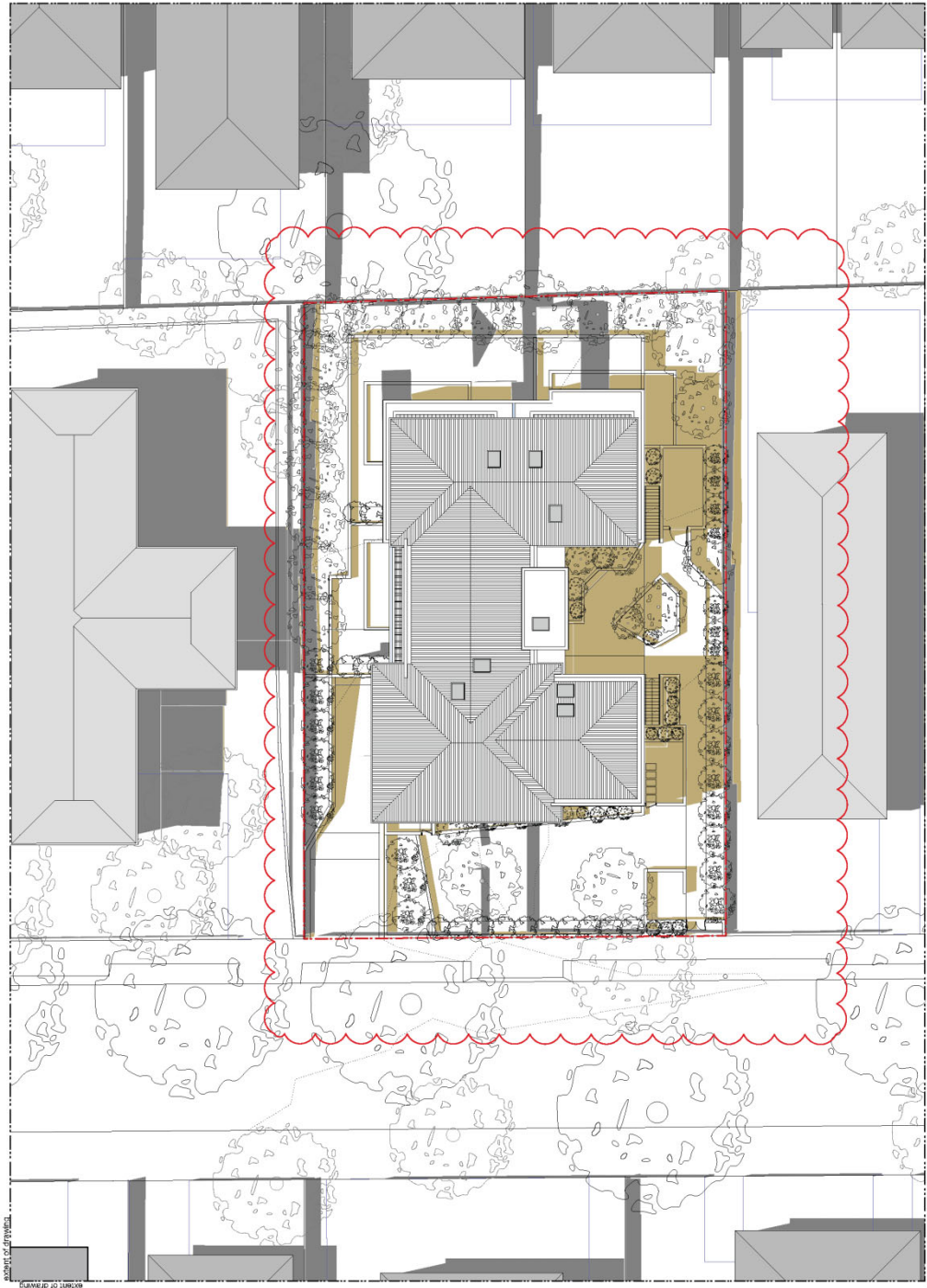
0 2 4 1.0m  
 shadows - equinox - 9 am

indicates shadows cast by existing structure  
 indicates shadows cast by proposed structure  
 note: all shadows on neighbouring site not described by this drawing are approximate only

2/12/18  
 C  
 1303 - DA21 C

revised DA submission  
 kennedy associations architects level 3 / 1 booth street annandale 2038 p + 61 2 9537 6466 f + 61 2 9537 6477 north-west architects - cove kennedy - registration no. 9528

16-16A tintern road, ASHFIELD  
 proposed new development etc.



extent of drawing

extent of drawing

extent of drawing

Indicates an existing structure by existing structure

Indicates an existing structure by existing structure

Indicates an existing structure by existing structure

0 2 4 8 10m

1:500 (AS)

shadows - equinox - 12 noon

PROPOSED NEW DEVELOPMENT

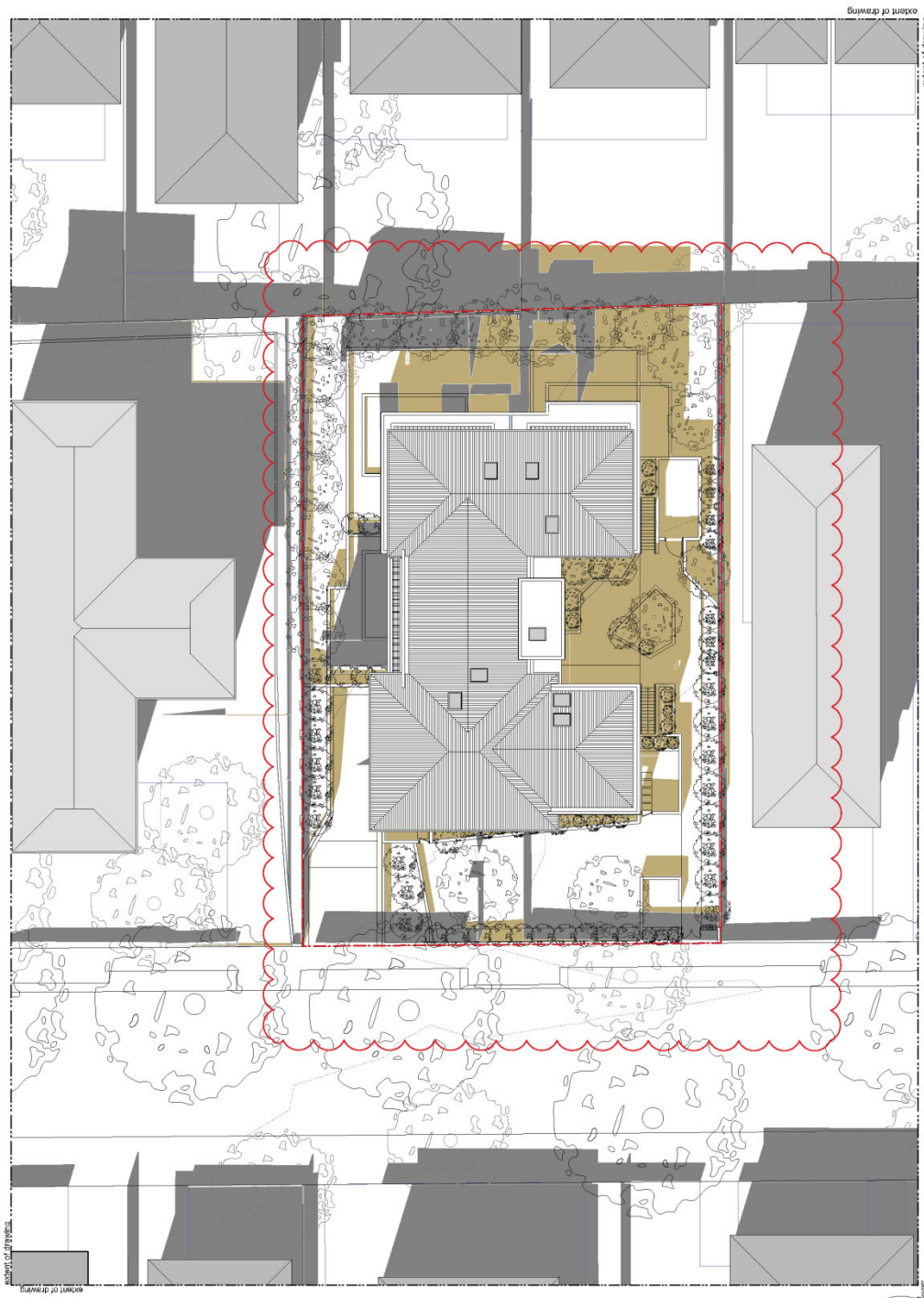
16-16A tintern road, ASHFIELD

kennedy associates architects level 13 / 1 booth street annandale 2038 p + 61 2 9557 6466 f + 61 2 9557 6477 nominated architect - stave kennedy registration no. 0568

1303 - DA22 C

2/10/18

revised DA as submitted



shadows - equinox - 3 pm

indications of shadows cast by existing structures  
indications of shadows cast by proposed structures  
indications of shadows cast by proposed structures  
indications of shadows cast by proposed structures  
indications of shadows cast by proposed structures  
indications of shadows cast by proposed structures

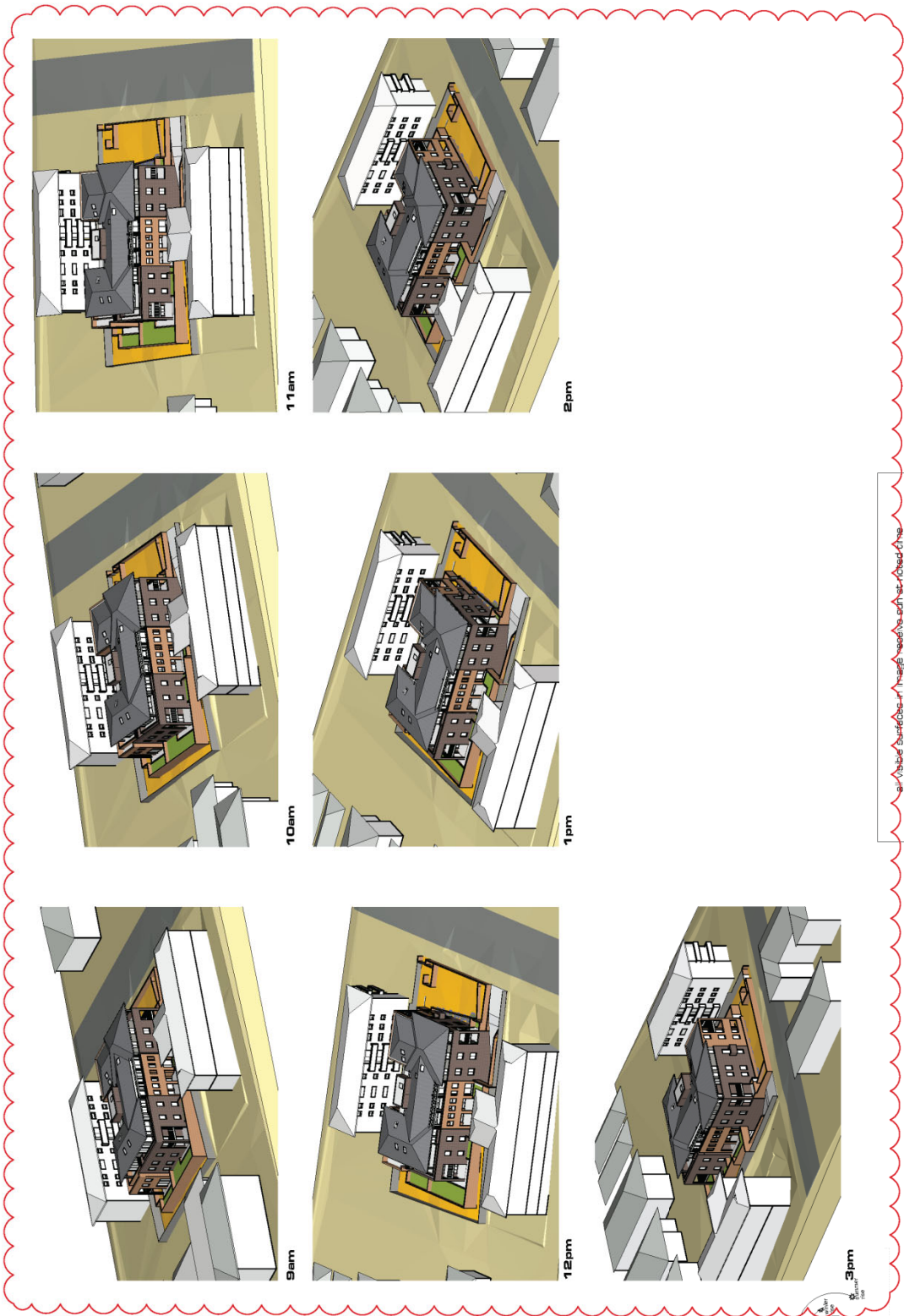
extent of drawing  
extent of drawing  
extent of drawing  
extent of drawing  
extent of drawing  
extent of drawing

16-16A tintern road, ASHFIELD  
kennedy associations architects level 3 / 1 booth street annandale 2038 p + 61 2 9057 8488 f + 61 2 9057 8477 nominated architect - stave kennedy - registration no. 1568

16-16A tintern road, ASHFIELD  
kennedy associations architects level 3 / 1 booth street annandale 2038 p + 61 2 9057 8488 f + 61 2 9057 8477 nominated architect - stave kennedy - registration no. 1568

1303 - DA23 C  
revised DA submission  
2/10/18  
C





views from sun - winter solstice

C 2/10/18 revised DA submission

1303 - DA24 C

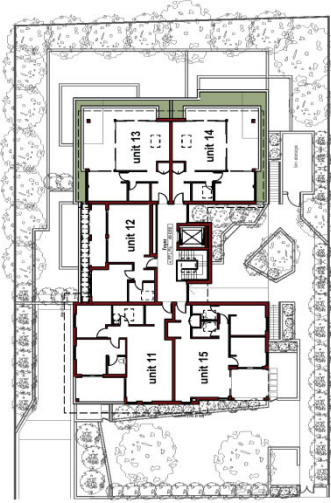
kennedy architects and planners level 3 / 1 booth street annandale 2038 p + 61 2 9557 6468 f + 61 2 9557 6477 nominated architect - steve kennedy - registration no. 5889

16-16A tintern road, ASHFIELD

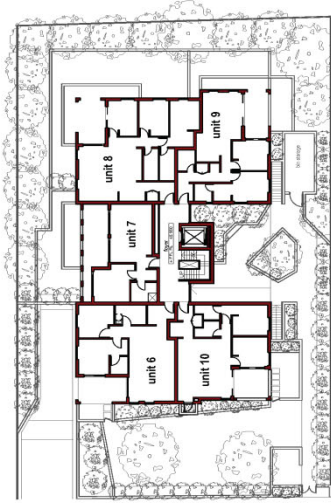
proposed new development at:

**Thermal notes for 16-16a Tintern Rd, ASHFIELD NSW 2131.**

Category	Items	Simulation Based on the Following Requirements
<b>External Walls</b>	<ul style="list-style-type: none"> <li>Cavity Brick</li> <li>Framed: (weatherboard, fibre cement, metal clad)</li> </ul>	<ul style="list-style-type: none"> <li>R1.8 Cavity Board insulation (or similar) to Units 05, 12, 15, south facing walls, (14 all).</li> <li>Sarking plus R2.0 bulk insulation</li> </ul>
<b>Internal Walls</b>	<ul style="list-style-type: none"> <li>Plasterboard on studs</li> </ul>	<ul style="list-style-type: none"> <li>Nil</li> </ul>
<b>Ceilings Internal</b>	<ul style="list-style-type: none"> <li>Suspended concrete above plasterboard</li> </ul>	<ul style="list-style-type: none"> <li>Nil</li> </ul>
<b>Ceilings External</b>	<ul style="list-style-type: none"> <li>Suspended concrete above plasterboard</li> <li>Timber above plasterboard</li> </ul>	<ul style="list-style-type: none"> <li>R3.5 bulk insulation</li> <li>R3.5 bulk insulation</li> </ul>
<b>Floors</b>	<ul style="list-style-type: none"> <li>Suspended concrete slab</li> </ul>	<ul style="list-style-type: none"> <li>Foil sided R1.5 fixed to the underside of the floor slab to all ground floor units</li> </ul>
<b>Floor Coverings</b>	<ul style="list-style-type: none"> <li>Tiles</li> <li>Carpet</li> </ul>	<ul style="list-style-type: none"> <li>To all wet areas / Living</li> <li>To all bedrooms</li> </ul>
<b>Roof (Medium)</b>	<ul style="list-style-type: none"> <li>Suspended concrete slab</li> <li>Tiled roof cladding</li> </ul>	<ul style="list-style-type: none"> <li>Nil</li> <li>Nil</li> </ul>
<b>Category</b>	<b>Items</b>	<b>Simulation Based on the Following Requirements</b>
<b>Windows</b>	<ul style="list-style-type: none"> <li>Aluminium framed <b>single glazed clear</b> to all windows and glass Doors unless noted otherwise</li> <li>Aluminium framed <b>single glazed Low E clear</b> to the following windows and glass Doors: (Units 04, 12, 14 all)</li> </ul>	<ul style="list-style-type: none"> <li><b>Group 'A' ALM-001-01</b> (Aiming, Bifold, Casement, Tilt'n Turn): U-Value 6.70 or less and SHGC 0.57 +/- 5%</li> <li><b>Group 'B' ALM-002-01</b> (Double Hung, Fixed, Louvre, Sliding): U-Value 6.70 or less and SHGC 0.70 +/- 5%</li> <li><b>Group 'A' ALM-001-03</b> (Aiming, Bifold, Casement, Tilt'n Turn): U-Value 5.60 or less and SHGC 0.38 +/- 5%</li> <li><b>Group 'B' ALM-002-03</b> (Double Hung, Fixed, Louvre, Sliding): U-Value 5.60 or less and SHGC 0.41 +/- 5%</li> </ul>
<p><i>Lighting: This dwelling has been rated with sealed LED / Fluorescent downlights to insulated ceilings.</i></p> <p><i>Note: insulation specified must be installed in accordance with Part 3.12.1.1 of the BCA.</i></p> <p><i>Note: All exhaust fans to be fitted with self-closing dampers.</i></p> <p><i>Note:</i></p> <ol style="list-style-type: none"> <li>Unit 14 Pergola to have minimum of 200mm wide series of shade battens (egg between battens not to be greater than the width of the batten)</li> </ol>		



LEVEL 02



LEVEL 01



LEVEL 00

BASIX commitments

proposed new development at

16-16a tintern road, ASHFIELD

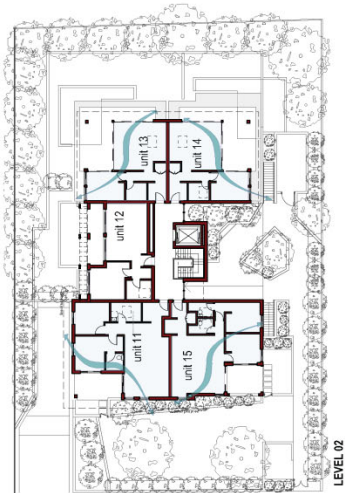
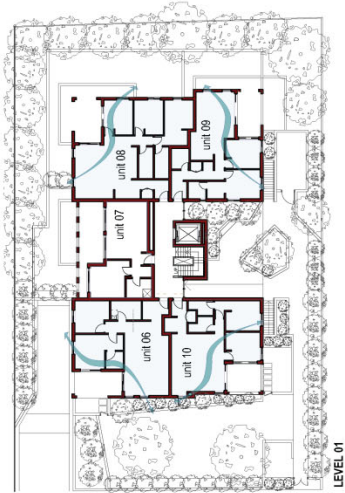
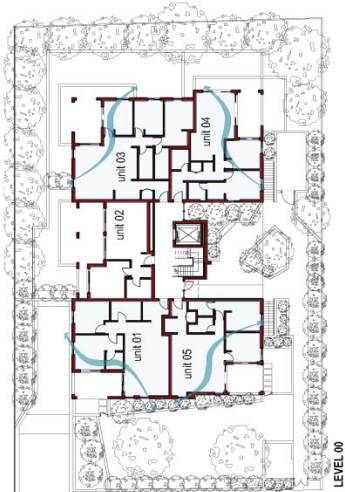
kennedy architectural architects level 3 / 1 bochr street annandale 2038 p + 61 2 9557 6488 f + 61 2 9557 6477 normalised architect - sava.kennedy - registration no. 152628

C 2/10/18

revised DA submission

1303 - DA25 C

1/2/2018 10:52 AM



Unit Number	Cross ventilated
unit 01	yes
unit 02	no
unit 03	yes
unit 04	yes
unit 05	yes
unit 06	yes
unit 07	no
unit 08	yes
unit 09	yes
unit 10	yes
unit 11	no
unit 12	yes
unit 13	no
unit 14	yes
unit 15	yes

indicates units achieving cross ventilation

12 units achieve cross ventilation = 80%

summary of ADG cross ventilation

proposed new development at

16-16A tintern road, ASHFIELD

kennedy associates architects level 3 / 1 beach street annandale 2038 p - 61 2 9557 6466 f - 61 2 9557 6477 nominated architect: nava kennedy - registration no. 5658

C 2/10/18 revised DA submission

1303 - DA26 C

1303 - 132 Planning Panel



Unit Number	UNIT 01	UNIT 02	UNIT 03	UNIT 04	UNIT 05	UNIT 06	UNIT 07	UNIT 08
8 am to 10 am								
10 am to 11 am								
11 am to 12 pm								
12 pm to 1 pm								
1 pm to 2 pm								
2 pm to 3 pm								
Total Hours	2	6	6	1	2	2	6	6
Unit Number	UNIT 09	UNIT 10	UNIT 11	UNIT 12	UNIT 13	UNIT 14	UNIT 15	
8 am to 10 am								
10 am to 11 am								
11 am to 12 pm								
12 pm to 1 pm								
1 pm to 2 pm								
2 pm to 3 pm								
Total Hours	1	2	2	6	6	6	6	6

- Indicates units achieving 2hrs solar access
- 13 units achieve 2 hrs solar = 86%
- Indicates units receiving <2hrs solar access
- 2 units receive < 2 hrs solar = 14%
- 0 units with no solar access

summary of ADG solar access



## Attachment C – Clause 4.6 Exemption to Development Standards



### CLAUSE 4.6 VARIATION STATEMENT

---

Demolition of structures and Construction of a three storey residential flat building over basement parking

Nos. 16 and 16A Tintern Road  
Ashfield

Prepared for: Mr George Boutros

REF: 0327/17

DATE: 5 November 2018







## CLAUSE 4.6 VARIATION STATEMENT – MAXIMUM FSR (CLAUSE 4.4)

### 1. Floor space ratio control

Clause 4.4 (2) of Ashfield Local Environmental Plan 2013 (ALEP 2013) relates to maximum permitted FSR for a site and refers to the *Floor Space Ratio Map*. The relevant map identifies the subject site as having a maximum FSR of 0.7:1. Gross floor area is defined as:

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

- (a) *the area of a mezzanine, and*
- (b) *habitable rooms in a basement or an attic, and*
- (c) *any shop, auditorium, cinema, and the like, in a basement or attic,*

*but excludes:*

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

The maximum FSR control is a "development standard" to which exceptions can be granted pursuant to clause 4.6 of the LEP.

### 2. Proposed variation to FSR development standard

The development application proposes the construction of a residential flat building. The building is three storeys terraces and is proposes an FSR of 0.757:1. The non-compliance is 88.7m<sup>2</sup> which is a variation to the control equivalent to 8.1%.

### 3. Clause 4.6 to ALEP 2013

The objectives and provisions of clause 4.6 to ALEP 2013 are as follows:

#### **"4.6 Exceptions to development standards**

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





- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
- (i) **the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and**
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(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."

The development standards in clause 4.4 are not "expressly excluded" from the operation of clause 4.6.

Objective 1(a) of clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This request addresses the requirements of subclauses 4.6(3) and 4.6(4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in subclause 4.6(6).

Objective 1(b) of clause 4.6 is addressed later in this request.

The objectives of clause 4.4 are as follows:

- "
- (a) to establish standards for development density and intensity of land use,
  - (b) to provide consistency in the bulk and scale of new development with existing development,
  - (c) to minimise adverse environmental impacts on heritage conservation areas and heritage items,
  - (d) to protect the use or enjoyment of adjoining properties and the public domain,
  - (e) to maintain an appropriate visual relationship between new development and the existing character of areas that are not undergoing, and are not likely to undergo, a substantial transformation."

As previously noted, the *Floor Space Ratio Map* nominates a maximum FSR of 0.7:1 for the site. It is hereby requested that an exception to this development standard be granted pursuant to clause 4.6 so as to permit a maximum FSR of 0.757:1.

In order to address the requirements of subclause 4.6(4)(a)(ii), the objectives of clause 4.4 are addressed in turn below.

**Objective (a): "to establish standards for development density and intensity of land use"**

The proposal provides a built form which is consistent with the existing residential flat buildings surrounding the subject site. The density of the development is considered appropriate in light of the site constraints and development context.

The proposed building has been purposefully designed to relate to the surrounding built form in terms of visual bulk, scale and height. The proposal also reflects elements of the surrounding buildings in terms of articulation and materials proposed. Strict compliance with the maximum FSR would not result in any fundamental change to the building form, design or general appearance.



In terms of building design and apartment layout, the proposal is considered to set an exemplary standard as it maximises solar access and cross-ventilation to apartments where possible, has full cross-ventilation and has compliant building separation to surrounding buildings. Combined with the internal layout of apartments and connected balconies and/or terraces that serve **as an extension of each apartment's living area, all dwellings will offer** high levels of occupant amenity.

The Traffic Report submitted with the development application demonstrates an acceptable outcome for traffic generation and parking provisions and that the proposal will not unreasonably impact on the functionality of the road network or intersections.

The site is ideally located to accommodate additional density as it has excellent access to public transport and is in close proximity to areas of employment, shops and services, educational facilities and entertainment. These characteristics are consistent with the aims and objectives for additional housing and population density as outlined under the NSW Draft Metropolitan Strategy for Sydney to 2036 which focuses on the provision of high quality urban consolidation within existing centres.

For these reasons the proposed FSR meets Objective (a).

**Objective (b): "to provide consistency in the bulk and scale of new development with existing development"**

The proposed density variation is considered to be minor and will not substantially change the appearance of the proposal within the locality, nor will the additional density be readily apparent or obvious to the casual observer. The proposed bulk and scale is consistent with existing residential flat buildings on surrounding allotments. In fact, many of these surrounding buildings have a height and/or density greater than the current LEP controls and greater than the proposed building on the subject site.

It is noted that the proposal is compliant with all other built form controls under the LEP and DCP and clearly reflects desired built form and density within the locality.

The proposed design provides a well resolved, highly articulated building utilising common architectural elements present within the locality.

**Objective (c): "to minimise adverse environmental impacts on heritage conservation areas and heritage items,"**

The proposal does not impact on the existing quality or future retention of a number of surrounding heritage items (as described in further detail within Annexure B and the submitted Heritage Report). In addition, the subject site is not located within a Heritage Conservation Area.

**Objective (d): "to protect the use or enjoyment of adjoining properties and the public domain,"**

The proposed additional density will not create any significant additional overshadowing, solar access or visual amenity impacts in comparison to a compliant scheme on the subject site. There will be an acceptable level of solar access available to surrounding developments (73% of units receiving 3 hours of solar access to living room windows in mid winter), especially in the context of the existing built form and siting of these properties. Visual privacy will be assured via combination of highlight windows, obscured glazing and privacy screens as required. The public domain will not be impacted by the proposal.

**Objective (e): "to maintain an appropriate visual relationship between new development and the existing character of areas that are not undergoing, and are not likely to undergo, a substantial transformation."**

The immediate surrounding locality has not recently undergone any significant transformation or is unlikely to undergo any transformation in the short-medium term. The northern end of Tintern Road is characterised by older style residential flat buildings generally from the 1960s and 1970s era, with an interspersing of older dwellings with heritage





significance. The subject site is considered to be unusual in the sense that it comprises a single detached dwelling with no heritage contribution and a vacant allotment. The subject site is essentially a 'missing tooth' within the general streetscape. The proposal has been carefully designed to capitalise on the opportunities the subject site brings, whilst employing a visual elements such as face brickwork, a deep landscaped frontage and pitched roof form to ensure an appropriate visual connection with surrounding built form.

The proposed development is therefore consistent with the objectives for maximum FSR despite the minor numeric non-compliance.

Clause 4.6(4) also requires consideration of the relevant zone objectives. The objectives of Zone R3 Medium Density Residential are as follows:

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

The proposal requests variation to the density control to assist with meeting housing needs of the community. The proposed building has been purposefully designed to relate to the surrounding built form in terms of visual bulk, scale and height. The proposal also reflects elements of the surrounding buildings in terms of articulation and materials proposed. The proposal meets all other LEP and DCP built form requirements. Strict compliance with the maximum FSR will not result in any tangible benefits in terms of building form or amenity impacts.

The density exceedance allows additional residential units which are in high demand and in an area which is entirely capable of absorbing additional residents. There is no planning purpose to be served by limiting the density strictly to the maximum allowable given the absence of significant amenity related impacts and compliance with the zone objectives.

For these reasons the development proposal meets the objectives for development in Zone R3.

#### **4. Sufficient environmental planning grounds**

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, the assessment of this numerical non-compliance is guided by the recent decision of the NSW LEC *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 whereby Justice Pain ratified the decision of Commissioner Pearson.

The non-compliance will have no adverse impacts on adjoining properties with regard to visual, aural and privacy impacts or overshadowing, and to require strict compliance would mean removing parts of the building without resulting in a real planning benefit to neighbourhood character or amenity.

To insist on strict compliance would thwart and preclude the redevelopment of the land to a reasonable standard, and not allow reasonable development potential.

The proposed FSR non-compliance will enable the orderly and economic redevelopment of the subject site in accordance with the intentions of the Environmental Planning and Assessment Act, 1979. There is no planning purpose to be served by limiting the FSR strictly to the maximum allowable given the floor space has been distributed within a compliant building envelope and in the absence of amenity related impacts.

**In short, we consider that there are sufficient environmental planning grounds to justify the applicant's proposed variation to the FSR standard.**



On "planning grounds" and in order to satisfy that the proposal meets objective 1(b) of clause 4.6 in that allowing flexibility in the particular circumstances of this development will achieve "a better outcome for and from development", the non-compliance is minor and will not be noticeable from the street or surrounding properties.

Strict compliance would be counterproductive in terms of amenity for future residents. The merits of the proposal on "environmental planning grounds" need to be balanced with the burden that strict compliance places on the site and whether strict compliance will result in a better or neutral outcome. The development has been designed to provide a high quality urban outcome, with 1 and 2 bedroom units designed so as to not impact on the privacy and amenity of neighbouring properties. The three dimensional building envelope complies with height and setback requirements. Insisting on strict compliance in this instance would result in the reduction in size of some units, thus reducing the internal amenity for future residents and/or the variety of apartment sizes.

To require strict compliance would therefore result in an unreasonable burden on the development with no demonstrable built form or amenity benefits. As such the proposal results in a high quality residential development which is suited to the site and its context.

5. **Insistence on compliance is unreasonable and unnecessary**

In regards to Clause 4.6(3)(a), in *Wehbe V Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

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

The judgement goes on to state that:

*"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."*

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

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



Having regard to all of the above, it is our opinion that compliance with the FSR development standard is unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone. Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of clause 4.6(3) are satisfied and Council has the power to grant variation to the FSR development standard as proposed.

Insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of clause 4.6(3) are satisfied.

