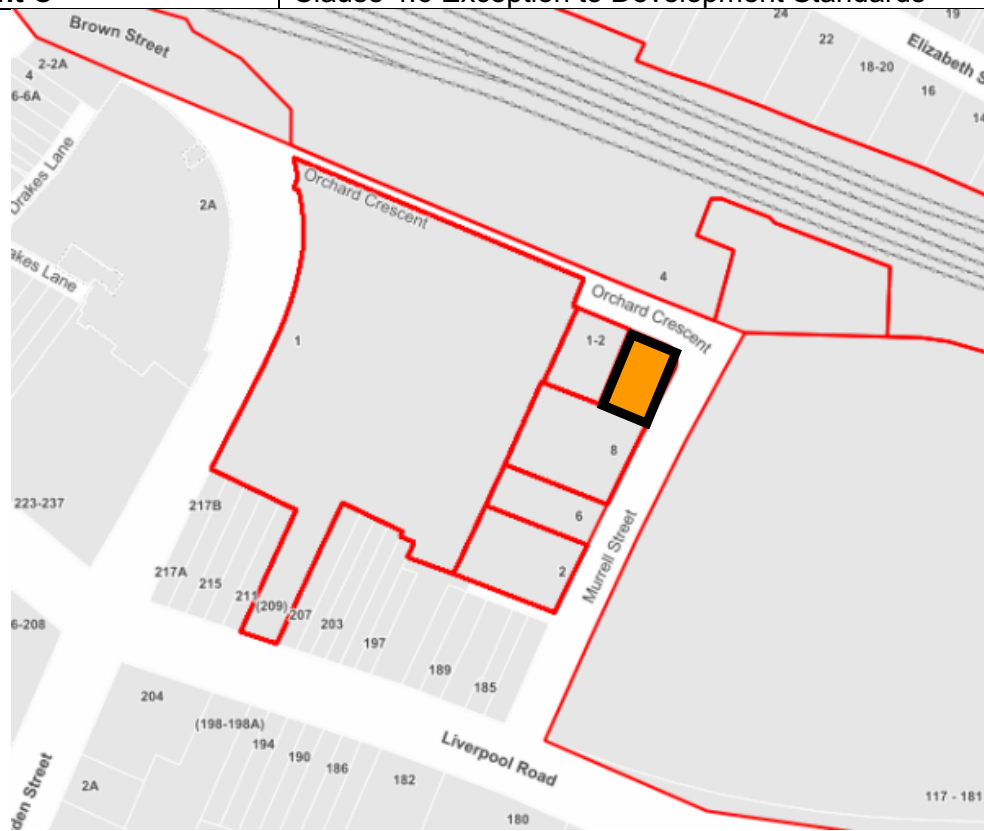






# INNER WEST

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	DA/2021/0374
<b>Address</b>	1A Orchard Crescent ASHFIELD NSW 2131
<b>Proposal</b>	Demolition of existing building and erection of a new residential flat building containing 5 x 1 Bedroom, 10 x 2 Bedroom & 5 x 3 Bedroom units over 8 levels and 4 level of basement parking
<b>Date of Lodgement</b>	12 May 2021
<b>Applicant</b>	MP Australia Pty Ltd
<b>Owner</b>	MP Australia Pty Ltd
<b>Number of Submissions</b>	None
<b>Value of works</b>	\$6,405,967.00
<b>Reason for determination at Planning Panel</b>	Sensitive Development – SEPP 65 is applicable & Variation over 10%
<b>Main Issues</b>	FSR variation
<b>Recommendation</b>	Approved with Conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Clause 4.6 Exception to Development Standards



### LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the application submitted to Council for demolition of existing building and erection of a new residential flat building containing 5 x 1 Bedroom, 10 x 2 Bedroom & 5 x 3 Bedroom units over 8 levels and 4 levels of basement parking at 1A Orchard Crescent ASHFIELD NSW 2131.

The application was notified to surrounding properties and no submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- 42% (514m<sup>2</sup>) variation to Clause 4.4 – Floor Space Ratio, of the Ashfield LEP 2013

The non-compliances are acceptable given merits of the case and therefore the application is recommended for approval.

## 2. Proposal

The current application submitted to Council seeks consent for demolition of all existing on-site structures and construction of a new residential flat building. The existing residential flat building to be demolished is noted to accommodate 8 residential units. The proposed building has been designed over 8 levels (level 8 being a rooftop terrace), with 7 levels being dedicated for residential accommodation. The proposed building is to accommodate 20 units with a mix of:

- 5 x 1 Bedroom units
- 10 x 2 Bedroom units
- 5 x 3 Bedroom units

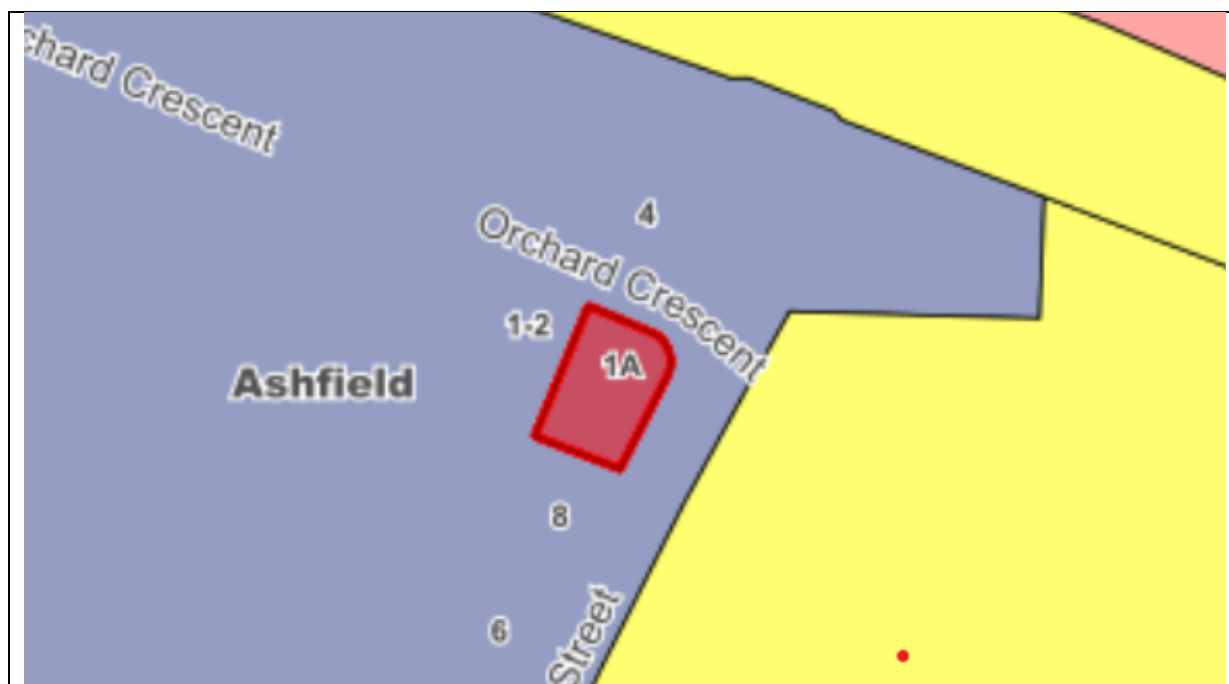
The proposal is to accommodate 4 levels of basement parking. With total of 24 on-site vehicular parking spaces and 4 bicycle spaces are to be accommodated upon the site.

## 3. Site Description

The subject site is located on the southern side of Orchard Crescent, on the corner of Murrell Street and Orchard Crescent. The site consists of 1 allotment and is generally rectangular in shape with a total area of 408.2 sqm and is legally described as 1A Orchard Crescent, Ashfield.

The site has a frontage to Orchard Crescent of 12m and a secondary frontage to Murrell Street of approximately 18.2 metres. The site supports an existing three-part four storey residential flat building, with basement carparking.

The adjoining properties support residential flat buildings which directly to the south of the site are seven storeys in height, whilst to the west, 4 storeys in height and an educational premises known as Ashfield Public School is located to the east.



Zoning Map

#### 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
10.2012.12	Demolition of existing structures and construction of a three storey residential flat building	Approved
10.20190.00203.1	Alterations and additions to residential flat building	Refused by IWLPP – 8 September 2020
REV/2020/0034	Section 8.2 review of alterations and additions to residential flat building	Refused by IWLPP – 10 August 2021

##### Surrounding properties

8-12 Murrell Street (directly adjacent to south)

Application	Proposal	Decision & Date
10.2016.127	Demolition of existing structures construction of a residential flat building	Approved – 24 February 2017

#### 4(b) Application history

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

Date	Discussion / Letter / Additional Information
26 July 2021	Council Officers contacted the applicant and requested the following additional information/amended plans: <ul style="list-style-type: none"> <li>- Amended plans including a southern elevation detailing the proposals context in the streetscape and in context with neighbouring developments.</li> <li>- Amended plans detailing material finishes to the western elevation which will promote visual interest.</li> <li>- Amended plans detailing a revised unit layout compliant with ADG requirements.</li> <li>- Amended plans detailing a revised unit layout which avoids conflict between uses of various units (e.g bedrooms not adjacent to primary living areas of neighbours).</li> <li>- Amended plans detailing a revised ground floor entry compliant with the requirements of CPTED.</li> <li>- Amended plans detailing a revised façade expression in-keeping with the existing streetscape.</li> <li>- Amended plans detailing the location of any mechanical ventilation or AC condensers.</li> <li>- Amended plans detailing a centralised area for basement storage cages.</li> <li>- Amended stormwater plans.</li> </ul>
13 August 2021	Amended plans addressing the above request from Council were provided.
20 September 2021	Council Officers provided the applicant a copy of the AEP report based on the amended plans provided on the 13 August 2021. At this time the applicant was provided the opportunity to submit an additional set of amended plans addressing the concerns raised by the AEP.
1 October 2021	The applicant provided amended plans addressing the concerns raised by the AEP.

The amended plans provided on the 1 October 2021 form the basis of the below assessment.

### 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 (Affordable Rental Housing) 2009*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*

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. The DCP provides controls and guidelines for remediation works. *SEPP 55* requires the consent authority to be satisfied that “the site is, or can be made, suitable for the proposed use” prior to the granting of consent.

The site has not been used in the past for activities which could have potentially contaminated the site. 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 development is subject to the requirements of *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 IWC DCP 2016 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:

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%

Comment:

The proposal results in a deep soil rate of 6%. In this instance the small nature of the allotment and its location within the Ashfield Town Centre means that opportunities for strict compliance with deep soil landscaping requirements are limited and as such strict compliance is not readily achievable. In this instance the proposal has sought to utilise all opportunities for on-site deep soil landscaped area and has been appropriately designed to locate this landscaped area on the corner of the site, where it will have the greatest potential to soften and contribute the greening of the streetscape. The proposed landscape variation is noted to be minor and acceptable given the circumstances of the case.

Visual Privacy/Building Separation

As outlined under Chapter 3F – Visual Privacy and 2F Building Separation elements of a proposal which incorporate blank walls on a nil boundary setback are not required to have separation. Therefore, elements of the proposal which relate to the southern and western boundaries of the development which incorporate blank walls do not require separation. The setback and location of these blank walls have been reviewed and will not impact upon the amenity or streetscape for the locality. The proposed nil boundary setback for the southern elevation has been appropriately located to align with a blank wall of 8-12 Murrell Street up to level 3 and as such this wall will not impact amenity or streetscape. From level 3 to 7 the subject site is noted to protrude beyond the setbacks of the neighbouring 8-12 Murrell Street, as seen on the southern elevation. This protruding setback has been reviewed as part of the current assessment and is acceptable. The proposed setbacks ensure sufficient acoustic/visual privacy for all residents, is to be treated with material finishes which will promote visual interest and will not result in unreasonable bulk/scale when viewed from neighbouring POS. In this instance a requirement for the subject site to mirror the neighbouring 8-12 Murrell Street setbacks would unreasonably constrain the subject site and provide minimal amenity improvement for neighbours. The resulting streetscape outcomes have been considered by the current design and treated to ensure an outcome which will contribute and promote visual interest within the locality.

The proposed blank wall located along the western boundary relates directly to the existing development at 1-2 Orchard Crescent and is within a locality where it can be reasonably anticipated that 1 – 2 Orchard Crescent will develop to a similar setback, size and scale in the future. In the interim to avoid a blank wall presentation to the public domain the applicant has detailed this elevation with decorative panels. This proposed setback and wall presentation will not impact the public domain and is considered supportable.

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

A BASIX Certificate was submitted with the application and will be referenced in any consent granted.

**5(a)(iv) State Environmental Planning Policy Affordable Rental Housing**

The current application involves the demolition of an existing residential flat building. As such the provisions of Part 3 – retention of existing affordable rental housing have been reviewed/considered as part of the current assessment.

The applicant has outlined that on 13 July 2012 the existing building was granted consent for strata title subdivision and provided copies of the subdivision certificate. In accordance with clause 49(2)(a) of SEPP ARH the retention of affordable housing does not apply to development which has been approved for subdivision under the strata schemes Act 1973. The proposal is therefore compliant with SEPP ARH 2009.

**5(a)(v) State Environmental Planning Policy (Vegetation in Non-Rural Areas) (Vegetation SEPP)**

*Vegetation SEPP* concerns the protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council's DCP.

The application seeks the removal of vegetation from within the site. The application was referred to Council's Tree Management Officer who outlined no objection to the proposal, subject to suitable conditions of consent.

Overall, the proposal is considered acceptable with regard to the *Vegetation SEPP* and subject to the imposition of conditions, which have been included in the recommendation of this report.

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

The application was assessed against the following relevant clauses of the *Ashfield Local Environment Plan 2013*:

- Clause 1.2 - Aims of Plan
- Clause 2.3 - Land Use Table and Zone Objectives
- Clause 2.7 - Demolition
- Clause 4.3 - Height of buildings
- Clause 4.3A - Exception to maximum height of buildings in Ashfield town centre
- Clause 4.4 - Floor space ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 5.10 - Heritage Conservation
- Clause 6.1 - Earthworks

**(i) Clause 2.3 - Land Use Table and Zone Objectives**

The site is zoned B4 – Mixed Use under the *ALEP 2013*. The *ALEP 2013* defines the development as:

*residential flat building means a building containing 3 or more dwellings but does not include an attached dwelling or multi dwelling housing.*

The development is permitted with consent within the land use table. The development is consistent with the objectives of the B4 – mixed use zone.

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

Standard	Proposal	% of non-compliance	Compliances
<p><b>Height of Building</b> Maximum 23m</p> <p>30m - by operation of clause 4.3A: a) the development will contain at least 1 dwelling used for the purpose of affordable rental housing; and b) at least 25% of the additional floor space area resulting from the part of the building that exceeds the maximum height will be used for the purpose of affordable rental housing</p> <p>Clause 4.3 (2A) – any part of the building that is within 3 metres of the height limit (30m) must not include any area that forms part of the gross floor area of the building</p>	<p>29.4m</p> <p>A single unit (unit 1.03 on the first floor) is nominated for affordable rental housing. It totals 52.3m<sup>2</sup> which is 25% of the additional floor space (208.5m<sup>2</sup>) above the height limit and consequently satisfies Clause 4.3A(3)</p> <p>26m (to top of habitable floor)</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p>	<p>Yes</p> <p>Yes</p>
<p><b>Floor Space Ratio</b> Maximum 3:1 (1,225.2m<sup>2</sup>)</p>	<p>4.3:1 (1,739.5m<sup>2</sup>) Of this 52.3m<sup>2</sup> is nominated for affordable rental housing.</p>	<p>42% (514m<sup>2</sup>)</p>	<p>No – see discussion below</p>

The following provides further discussion of the relevant issues:

Clause 4.3 - Height of Building

This Clause provides that maximum building height on any land should not exceed the maximum height shown for the land on the height of building map. The maximum permissible building height for the subject site is 23m. However, Clause 4.3A allows an additional 7m height in Ashfield Town Centre provided the development will contain at least 1 dwelling used for the purpose of affordable rental housing, and at least 25% of the additional floor space area resulting from the part of the building that exceeds the maximum height will be used for the purpose of affordable rental housing.

The proposed development nominates a single unit (unit 1.03) for affordable rental housing. This unit totals 52.3m<sup>2</sup> which is 25% of the additional floor space (219.8m<sup>2</sup>) above the height limit and consequently satisfy Clause 4.3A(3).

Furthermore, Clause 4.3 (2A) states “If a building is located on land in Zone B4 Mixed Use, any part of the building that is within 3 metres of the height limit set by subclause (2) must not include any area that forms part of the gross floor area of the building and must not be reasonably capable of modification to include such an area”. The proposed development has a maximum of 26m height to top of the habitable floor. Consequently, the development satisfies Clause 4.3 (2A).

Clause 4.4 Floor Space Ratio

This Clause provides that maximum floor space ratio on any land should not exceed the maximum floor space ratio shown for the land on the floor space ratio map. The maximum permissible floor space ratio for the subject site is 3:1. The proposed development would



have a floor space ratio of 4.3:1 (1,739.5m<sup>2</sup>) which does not comply with this provision. Accordingly, the applicant has submitted a Clause 4.6 variation to the development standard.

#### Clause 4.6 Exceptions to Development Standards

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

- Clause 4.4 - 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 2013 by 42% (514m<sup>2</sup>).

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 2013 below.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the Ashfield Local Environmental Plan 2013 justifying the proposed contravention of the development standard which is summarised as follows:

- *The additional floor space is proposed is a consequence of seeking the height bonus pursuant to Clause 4.3A of the LEP. This allows for additional height subject to the provision of an element of affordable housing. As such, there is a corresponding uplift in GFA which is unavoidable if the additional height bonus is to be of any benefit. There is a clear and direct public benefit associated with the affordable housing element proposed in conjunction with the development;*
- *The non-compliance will have no adverse impact on adjoining properties with regard to visual impacts or overshadowing. The additional shadow is not significant with only the front elevation of No.8-12 Murrell Street receiving some modest additional overshadowing at 9am on midwinter. This elevation is south east facing and therefore it is not orientated appropriately direct sunlight after 9am regardless. To require strict compliance would not have any planning benefit and would in fact be counterproductive as it would result in the loss of additional high quality accommodation and affordable housing within the locality. To insist on strict compliance would thwart and preclude the redevelopment of the land to a reasonable standard, and not allow the site to reach its full development potential;*
- *Despite the non-compliance, the objectives of the FSR standard have been achieved as demonstrated*
- *The non-compliance provides a suitable transition to the adjoining properties likely to undergo a similar transition to higher density development in the future; and,*
- *The variation to FSR does not impact on views or outlook, the streetscape appearance is not adversely impacted by the variation and does not result in any adverse impacts to neighbouring properties.*

- *An FSR exceedance was previously supported by Council under the previous DA for the site (0102019000203.1). The subject exceedance provides similar benefits to the previous DA, albeit with an enhanced building form and design. It follows that the subject exceedance should also therefore be supported*

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

It is considered that a variation to a development standard for the subject site is in the public interest because it is consistent with the objectives of the B4 Mixed Use zone, in accordance with Clause 4.6(4)(a)(ii) of the Ashfield Local Environmental Plan 2013 for the following reasons:

- The proposal provides residential accommodation including affordable housing.
- The proposal would enhance the viability, vitality of Ashfield the town centre.
- The proposed development would encourage the orderly and efficient development of land.
- The development meets the objectives of the FSR standard and the objectives of the zone.

A variation such as the one sought is consistent with the objectives of the floor space ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the Ashfield Local Environmental Plan 2013 for the following reasons:

- The development would provide consistency between the mismatch in the development standards of building height and floor space ratio. The bonus 7m building height provision for affordable housing in Ashfield town centre cannot be achieved without the additional floor space ratio.
- The proposed floor space ratio would be within the maximum building height envisaged within the ALEP 2013 for the provision of at least 25% affordable housing.
- The proposed development provides comparable bulk and scale to the existing development on Murrell Street, in particular Nos. 8-12 Murrell Street and 2 – 4 Murrell Street.
- The proposed development would not have impact on the environmental amenity and enjoyment of the adjoining properties with respect to privacy and solar access.
- The proposed development would not have adverse impacts on heritage properties.

The concurrence of the Planning Secretary may be assumed for matters dealt with by the Local Planning Panel.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the Ashfield Local Environmental Plan 2013. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Floor Space Ratio Development Standard and it is recommended the Clause 4.6 exception be granted.

### 5(c) Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979*.

Under the Draft IWLEP 2020 the subject sites zoning changes from the current B4 – Mixed Use zone to B2 – Local Centre. Under the B2 Zone Residential Flat Buildings become prohibited and replaced with shop top housing. The draft IWLEP 2020 is not considered to be imminent or certain at this time and as such has no weight to the assessment of the current proposal.

#### 5(d) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

IWCDCP2016	Compliance
<b>Section 1 – Preliminary</b>	
B – Notification and Advertising	Yes
<b>Section 2 – General Guidelines</b>	
A – Miscellaneous	
1 - Site and Context Analysis	Yes
2 - Good Design	Yes
4 - Solar Access and Overshadowing	Yes
5 - Landscaping	Yes
6 - Safety by Design	Yes
7 - Access and Mobility	Yes
8 - Parking	Yes
15 - Stormwater Management	Yes
D – Precinct Guidelines	
Ashfield Town Centre	Yes
F – Development Category Guidelines	
5 – Residential Flat Buildings	Yes

The following provides discussion of the relevant issues:

#### Good Design

Council’s Architectural Excellence Panel (AEP) reviewed the current application on the 13 July 2021 and the 7 September 2021. This review assessed the proposal against the principles of SEPP 65 and the Good Design Controls contained within the DCP. During these reviews the AEP outlined concerns regarding the proposals appearance and presence within the streetscape, stating that the overall design requires re-working to better align with the streetscape and desired future character of the locality.

These concerns were put to the applicant on the 20 September 2021 who subsequently engaged a third-party (independent) architect to provide a peer-review of the proposal and make recommendations on ways to improve the overall design. Following this peer-review amended plans were submitted to Council on the 1 October 2021. These amended plans have been reviewed against the design guidelines of SEPP 65 and the Good Design Principles of the DCP. This review highlighted that overall, the proposal is acceptable, but that there are minor concerns with elements of the ground floor façade. These elements are assessed below and can be resolved through design change conditions.

The concerns with the ground floor façade relate to the sandstone tiling entry way and fence height for unit G.01. With regards to the sandstone entry way this element of the design is at odds with the remainder of the façade and streetscape, with no other element of the building incorporating sandstone. To ensure the entry is consistent with the streetscape and overall façade a design change condition recommending the deletion of the sandstone tiles and replacement with 'bowral blue' brick matching the other materials of proposal is recommended. The proposed fence height relating to unit G.01 has been assessed as being roughly 2.1m in height. Fencing of this height is at odds with the streetscape which has consistently employed no fencing or low height fencing. In this instance the proposed fencing design results in a harsh and defensive streetscape outcome and is not supported. A design change condition requiring a reduction to the proposed fence height is recommended for the consent.

Subject to conditions of consent the revised design meets the objectives and controls for good design as outlined within the DCP, providing an overall design/expression which is in-keeping with the locality and provides improve streetscape/vitality, ensuring the on-going strengthening of the Ashfield Town Centre as a residential and economic hub.

The amended plans are considered to respond and resolve the concerns expressed by the AEP. The proposal is acceptable and recommended for approval.

#### Parking

The Guide to Traffic Generating Development requires a total of 23 car parking spaces for the proposed residential units, of which 4 car parking spaces are to be for visitor parking. The proposed development provides 24 car spaces for residential units. The proposal is therefore compliant with the minimum parking rates.

The subject site has been assessed and is located within an area of high accessibility being only 200m from Ashfield train station, 200m walk from bus stops servicing the Ashfield Train Station and 200m from the Ashfield Mall a major shopping centre. The proximity of the premises to the various public transport options is expected to make it an appealing choice for residential development.

The provided 24 on-site parking spaces are sufficient to service residents.

#### Solar Access and Overshadowing

The revised plans have been assessed against the provisions of Chapter A – Part 4 Solar Access and Overshadowing. Within this section residential flat buildings are required to:

- maintain existing levels of solar access to adjoining properties

Or

- ensures living rooms and principal private open space of adjoining properties receive a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June.

The shadow impacts resultant from the proposed development application are compliant with the above controls. As outlined by the applicant there is no significant overshadowing impacts upon 8 – 12 Murrell Street resulting from the revised scheme. Analysis of the existing balconies of 8 – 12 Murrell Street (which address the street frontage on the southern façade), highlights full height blank walls to northern elevations of balconies and glazing to living areas setback from the balconies. The north facing solid walls currently block direct solar access to 8-12 Murrell Street unit balconies. The proposal maintains solar access to windows addressing Murrell Street (windows separate from balconies) which serve to provide solar access to the existing units. Units of 8 – 12 Murrell Street are therefore

unaffected shadows cast by the proposed development and will retain existing levels of solar access.

Analysis of the nearby school playground and shadow diagrams provided by the applicant has highlighted that the playground receives uninterrupted direct solar access until 2pm. At 3pm a larger portion of the playground is overshadowed. The extent of overshadowing to the neighbouring playground is compliant with the overshadowing controls listed above and ensures over 2 hours solar access between 9am to 3pm on 2 June. The extent of overshadowing is considered to be unavoidable given the maximum permitted height limit and orientation of sites resulting from original subdivision. As outlined by the applicant predominant overshadowing only occurs at 3pm which is at, or close to, home-time for students and they are unlikely to be utilising the playground for breaks at this time. Impacts of overshadowing to school are therefore considered to be acceptable.

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

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(g) Any submissions

The application was notified in accordance with Community Engagement Framework for a period of 21 days to surrounding properties. No submissions were received in response to the notification.

#### 5(h) 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.

- Architectural Excellence Panel (AEP)
- Environmental Health
- Resource Recovery
- Development Assessment Engineers
- Building Surveyor
- Urban Forests

## 7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$140,000 would be required for the development under Ashfield Section 94/94A Contributions Plan 2014. A condition requiring that contribution to be paid is included in the recommendation.

This contribution has been calculated based off the creation of 5 new units less than 60sqm, 10 new units between 60-84sqm and 5 new units over 84sqm. A credit for 2 existing units between 60-84sqm and 6 units over 84sqm has been applied.

## 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Ashfield Local Environmental Plan 2013* and Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

The development will not result in any significant impacts on the amenity of the adjoining premises/properties and the streetscape and is considered to be in the public interest.

The application is considered suitable for approval subject to the imposition of appropriate conditions.

## 9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.4 – Floor Space Ratio of the *Ashfield Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- 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. DA/2021/0374 for Demolition of existing building and erection of a new residential flat building containing 5 x 1 Bedroom, 10 x 2 Bedroom & 5 x 3 Bedroom units over 8 levels and 4 basement parking at 1A Orchard Crescent ASHFIELD NSW 2131 subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

### CONDITIONS OF CONSENT

#### DOCUMENTS RELATED TO THE CONSENT

##### 1. Documents related to the consent

The development must be carried out in accordance with plans and documents listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
A101 Rev A	Site Plan	29/09/2021	Axel Richter Architect
A103 Rev A	Basement 1 & 2	29/09/2021	Axel Richter Architect
A104 Rev A	Basement 3 & 4	29/09/2021	Axel Richter Architect
A105 Rev A	Ground Floor & Level 1	29/09/2021	Axel Richter Architect
A106 Rev A	Level 2 & 3	29/09/2021	Axel Richter Architect
A107 Rev A	Level 4 & 5	29/09/2021	Axel Richter Architect
A108 Rev A	Level 6 & 7	29/09/2021	Axel Richter Architect
A109 Rev A	Adaptable Units	29/09/2021	Axel Richter Architect
A110 Rev A	Roof Terrace & Roof Plan	29/09/2021	Axel Richter Architect
A200 Rev A	Elevation East	29/09/2021	Axel Richter Architect
A203 Rev A	Elevation North	29/09/2021	Axel Richter Architect
A207 Rev A	Elevation West	29/09/2021	Axel Richter Architect
A205 Rev A	Elevation South	29/09/2021	Axel Richter Architect
A206 Rev A	Elevation South - Detail View	29/09/2021	Axel Richter Architect
A301 Rev A	Section 1	29/09/2021	Axel Richter Architect

19-4083 LO1 Rev D	Landscape Plan	7/08/2021	Zenith Landscape Designs
G490-1	Geotechnical Desktop Study	30.04/2021	Foundation Earth Sciences

As amended by the conditions of consent.

**DESIGN CHANGE**

**2. Design Change**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating the following:

- a. The proposed metal louvers and fence located along the eastern boundary of the balcony to unit G.01 (facing Murrell Street) are to be a maximum height of 1.4m, when measured from the finished floor level of unit G.01.
- b. The proposed sandstone tiling located on the ground floor (facing Murrell Street) is not approved and is to be deleted. All sandstone tiling is to be replaced with face brick 'bowral blue' or similar to align with other elements of the facade.

**FEES**

**3. Security Deposit - Custom**

Prior to the commencement of demolition works or prior to the issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been 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.

<b>Security Deposit:</b>	\$15,000.00
<b>Inspection Fee:</b>	\$241.50



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 the 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 initial 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.

#### **4. Section 7.11 (Former Section 94) Contribution**

Prior to the issue of a Construction Certificate works written evidence must be provided to the Certifying Authority that a monetary contribution of \$140,526.68 indexed in accordance with [Ashfield Development Contributions Plan/ Developer Contributions Plan No.1 – Open Space and Recreation; 'Developer Contributions Plan No.2 – Community Facilities and Services (2005) 94/94A Contributions Plan 2014 ("CP") has been paid to the Council.

The above contribution is the contribution applicable as at 6 September 2021.

The indexation of the contribution rates occurs in the first week of the months of February, May, August and November each year, following the release of data from the Australian Bureau of Statistics.

The contribution payable has been calculated in accordance with the CP and relates to the following public amenities and/or services and in the following amounts:

Community Infrastructure Type:	Contribution \$
Local Roads	\$4,285.51
Local Public Transport Facilities	\$7,268.99
Local Public Car Parking	-
Local Open Space and Recreation	\$117,003.42
Local Community Facilities	\$6,160.79
Plan Preparation and Administration	\$5,807.98
<b>TOTAL</b>	<b>\$140,526.68</b>

A copy of the CP can be inspected at any of the Inner West Council Services Centres or viewed online at:

<https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

Payment methods:

The required contribution must be paid either **by BPAY (to a maximum of \$500,000); unendorsed bank cheque (from an Australian Bank only); EFTPOS (Debit only); credit card (Note: A 1% credit card transaction fee applies to all credit card transactions; cash (to a maximum of \$10,000))**. It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. **Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.**

\*NB A 0.75% credit card transaction fee applies to all credit card transactions.

#### 5. Long Service Levy

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more.

**GENERAL CONDITIONS**

**6. Boundary Alignment Levels**

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

**7. Dry-weather Flows**

Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system.

**8. Rock Anchors**

This consent does not grant consent for any rock anchors on the road reserve or Council land.

**9. Tree Protection**

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.

Any public tree within five (5) metres of the development must be protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

No activities, storage or disposal of materials taking place beneath the canopy of any tree (including trees on neighbouring sites) protected under Council's Tree Management Controls at any time.

**10. Works to Trees**

Approval is given for the following works to be undertaken to prescribed trees on the site after the issuing of a Construction Certificate:

<b>Tree/location</b>	<b>Approved works</b>
<i>Jacaranda mimosifolia</i> (Jacaranda) Orchard Crescent	Remove
<i>Jacaranda mimosifolia</i> (Jacaranda) Orchard Crescent	Remove

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and shall be retained and protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

#### **11. Car Parking**

The development must provide and maintain within the site:

- a. 24 car parking spaces must be paved and line marked;
- b. 2 car parking spaces, for persons with a disability must be provided and marked as disabled car parking spaces;
- c. 4 visitor car parking spaces must be provided and marked as visitor car parking spaces. A sign legible from the street must be permanently displayed to indicate that visitor parking is available on site;

#### **12. Residential Flat Buildings – Hot Water Systems**

Where units or dwellings are provided with separate individual hot water systems, these must be located so they are not visible from the street.

#### **13. Residential Flat Buildings – Air Conditioning Systems**

Where units or dwellings are provided with separate individual air conditioning systems, these must be located so they are not visible from the street.

#### **14. Residential Flat Buildings – Adaptable Dwellings**

Prior to the issue of a Construction Certificate, the Certifying Authority, must be provided with plans that demonstrate 2 units are Adaptable units.

No works are to occur to the premises that would prevent the Adaptable units from being adapted for persons with a disability.

#### **15. Waste Management Plan**

Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan.

#### **16. Erosion and Sediment Control**

Prior to the issue of a commencement of any works (including any demolition works), the Certifying Authority must be provided with an erosion and sediment control plan and

specification. Sediment control devices must be installed and maintained in proper working order to prevent sediment discharge from the construction site.

#### **17. Standard Street Tree Protection**

Prior to the commencement of any work, the Certifying Authority must be provided with details of the methods of protection of all street trees adjacent to the site during demolition and construction.

#### **18. Verification of Levels and Location**

Prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, the Principal Certifier must be provided with a survey levels certificate prepared by a Registered Surveyor indicating the level of the slab and the location of the building with respect to the boundaries of the site to AHD.

#### **19. Works Outside the Property Boundary**

This development consent does not authorise works outside the property boundaries on adjoining lands.

#### **20. Affordable Housing**

Prior to the issue of any occupation certificate, a restriction is to be registered against the title of the property on which development is to be carried out, in accordance with section 88E of the *Conveyancing Act 1919*, that will ensure that:

1. Unit 1.03 must be used for the purposes of affordable housing (as defined by the *EPA Act 1979*) and
2. The affordable housing units are to be managed by a registered community housing provider in perpetuity. (As per Council resolution from the 30 October 2018 (C1018(2) Item 11)),

#### **PRIOR TO ANY DEMOLITION**

#### **21. Resource Recovery and Waste Management Plan - Demolition and Construction**

Prior to any demolition works, the Certifying Authority must be provided with a Resource Recovery and Waste Management Plan - Demolition and Construction that includes details of materials that will be excavated and their proposed destination or reuse.

## 22. Hoardings

The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.

Separate approval is required from the Council under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property.

## 23. Construction Traffic Management Plan – Detailed

Prior to Any Demolition, the Certifying Authority, must be provided with a detailed Construction Traffic Management Plan (CTMP), prepared by an appropriately qualified Traffic Management Consultant with Transport for NSW accreditation. The Certifying Authority must approved by the CTMP prior to the commencement of any works, including demolition. The Certifying Authority must ensure that the CTMP instructs vehicles to use State and Regional and Collector Roads to the maximum extent with the use of Local Roads as final approach to the development site via the most suitable direct route.

The following matters should be addressed in the CTMP (where applicable):

- a. Description of the demolition, excavation and construction works;
- b. Site plan/s showing the site, roads, footpaths, site access points and vehicular movements;
- c. Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site);
- d. Proposed route(s) from the arterial (state) road network to the site and the proposed route from the site back to the arterial road network;
- e. Impacts of the work and vehicular movements on the road network, traffic and pedestrians and proposed methods to safely manage pedestrians and construction related vehicles in the frontage roadways;
- f. Any Traffic Control Plans (TCP's) proposed to regulate traffic and pedestrian movements for construction activities (such as concrete pours, crane installation/removal etc.);
- g. Proposed hours of construction related activities and vehicular movements to and from the site;
- h. Current/proposed approvals from other Agencies and Authorities (including Roads and Maritime Services, Police and State Transit Authority);

- i. Any activities proposed to be located or impact upon Council's road, footways or any public place;
- j. Measures to maintain public safety and convenience;
- k. Any proposed road and/or footpath closures;
- l. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
- m. Locations of work zones (where it is not possible for loading/unloading to occur on the site) in the frontage roadways accompanied by supporting documentation that such work zones have been approved by the Local Traffic Committee and Council;
- n. Location of any proposed crane and concrete pump and truck standing areas on and off the site (and relevant approvals from Council for plant on road);
- o. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
- p. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected;
- q. On-site parking area for employees, tradespersons and construction vehicles as far as possible;
- r. 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; and
- s. How it is proposed to ensure that soil/excavated material is not transported onto surrounding footpaths and roadways.
- t. Swept Paths for the proposed construction vehicles to demonstrate that the needed manoeuvres can be achieved without causing any nuisance.

#### **24. Dilapidation Report**

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining properties to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

#### **25. Advising Neighbors Prior to Excavation**

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.

**26. Construction Fencing**

Prior to the commencement of any works (including demolition), the site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property.

**PRIOR TO CONSTRUCTION CERTIFICATE****27. Bin Storage Area - Residential**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a report detailing the ongoing waste generation requirements of the development and demonstrate that the bin storage area is to be provided within the site that will fully accommodate the number of bins required for all waste generated by a development of this type and scale. The number of bins required must be calculated based on a weekly collection of garbage, and a fortnightly collection of recycling.

The area must also include 50% allowance for manoeuvring of bins. The bin storage area is to be located away from habitable rooms, windows, doors and private useable open space, and to minimise potential impacts on neighbours in terms of aesthetics, noise and odour.

The bin storage area is to meet the design requirements detailed in the Inner West Comprehensive Development Control Plan (DCP) 2016 and must include doorways/entrance points of 1200mm.

**28. Bulky Waste Storage Area – Residential**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating that the bulky waste storage area must meet the floor area requirements as per the Inner West Comprehensive Development Control Plan (DCP) 2016 and have minimum doorways of 1200mm wide to accommodate large items.

**29. Waste Transfer Route**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the path of travel between the bin storage area/bulky waste storage area and the designated waste/recycling collection point is has a minimum 1200mm wall-to-wall clearance, be slip-proof, of a hard surface, be free of obstructions and at no point have a gradient exceeding 1:12.



**30. Each Residential Level is to have Access to a Disposal Point for All Waste Streams**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the disposal point is to be within 30m of the dwelling access (distance covered by lifts excluded). Any bins stored on residential floors are to have the capacity to store, at minimum, all waste generated by that floor over a 24 hour period.

**31. Stormwater Drainage System – Minor Developments (OSD is required)**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention and re-use facilities, certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. The design must be generally in accordance with the stormwater drainage concept plans on Drawing Nos.SW1 to SW7 prepared by Fadi Bassil Civil and Structural Engineer and dated 6 August 2021, as amended to comply with the following;
- b. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from the 6750 L rainwater tank, by gravity to the Council's piped drainage system;
- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- d. The design plans must detail the proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;
- e. The proposed rainwater tank (6750 L) must be connected to a pump system for internal reuse for flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to the rainwater tank;
- f. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows;
- g. Details of the 100-year ARI overflow route in case of failure/blockage of the drainage system must be provided;
- h. The design must make provision for the natural flow of stormwater runoff from adjacent properties;
- i. No nuisance or concentration of flows to other properties;
- j. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- k. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for the stormwater outlet;
- l. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site; and
- m. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;

### 32. Structural and Geotechnical Report

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an integrated structural and geotechnical report and structural plans that address the design of the proposed basement, prepared certified as compliant with the terms of this condition by a qualified practicing Structural and Geotechnical Engineer(s) who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng). The report and plans must be prepared/ amended to make provision for the following:

- a. Retaining walls must be entirely self-supporting in the event that excavation is undertaken within the road reserve adjacent to the property boundary to the depth of the proposed structure;
- b. Any existing or proposed retaining walls that provide support to the road reserve must be adequate to withstand the loadings that could be reasonably expected from within the constructed road and footpath area, including normal traffic and heavy construction and earth moving equipment, based on a design life of not less than 50 years;
- c. All components of the basement, including footings, must be located entirely within the property boundary;
- d. No adverse impact on surrounding properties including Council's footpath and road;
- e. The existing subsurface flow regime in the vicinity of the development must not be significantly altered as a result of the development;
- f. Recommendations regarding the method of excavation and construction, vibration emissions and identifying risks to existing structures or those on adjoining or nearby property; and
- g. Provide relevant geotechnical/ subsurface conditions of the site, as determined by a full geotechnical investigation.

### 33. Public Domain Works – Prior to Construction Certificate

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a qualified practising Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a. The public domain along all frontages of the site inclusive of footpath paving, kerb, any street trees, landscaping etc, must be reconstructed and upgraded in accordance with the Street Tree Master plan and the Public Domain Design Guide or scheme;
- b. The construction of heavy duty vehicular crossing to the vehicular access location;
- c. New concrete footpath and kerb and gutter along the frontage of the site. The kerb type (concrete or stone) must be consistent with the majority of kerb type at this location as determine by the Council Engineer;

- d. Cross sections are to be provided at the boundary at a minimum distance of every 5m and at all pedestrian and vehicular access locations. Note, the cross fall of the footpath must be set at 2.5%. These sections will set the alignment levels at the boundary; and
- e. The existing Council drainage system must be extended by an appropriately sized pipeline (minimum 375mm diameter) to the frontage of the site, where a kerb inlet pit with 1.8 m lintel must be installed; The pipeline must be designed to have the capacity to convey flows that would be collected at that section of street as generated by a 20 year Average Recurrence Interval storm event. Pipes must be Class 4 Steel Reinforced Concrete Pipe or approved equivalent and Pits must be cast-in-situ. Plans, longsections and details must be provided including location of utility services.

All works must be completed prior to the issue of an Occupation Certificate.

#### 34. Tree Planting in the Public Domain

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Public Domain/Street Tree Planting Plan and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a. One (1) new tree shall be located within the footpath outside the subject property on Murrell Street. The species of tree selected shall be *Lagerstroemia indica* (Crepe Myrtle);
- b. All planting stock size shall be minimum 200 litres;
- c. The planting stock shall comply with AS 2303—*Tree Stock for Landscape Use*;
- d. The new tree shall be planted by a qualified horticulturist or arborist, with a minimum qualification of Certificate 3 in Horticulture or Arboriculture;
- e. The tree pit dimensions and staking detail shall be in accordance with Detail 10 on page C44 of the *Ashfield Street Tree Strategy 2015, Part C* (available online);
- f. The awning configuration must be detailed on the plan. All construction plans shall show the awning on the Murrell Street frontage to be setback around the street trees. The awning must be setback a minimum of 1200mm from the back of the kerb for a minimum distance of 1800mm either side of each tree location; and
- g. It must be demonstrated that adequate soil volume can be provided for the street tree. Tree planting details, soil specification and cell vault construction details (in accordance with the manufactures specifications and details) must be submitted to the satisfaction of Council's Urban Forest Manager before the issue of a Construction Certificate. The plans must include dimensions for tree pits and details of a cell vault style structure with a minimum of 20-30m<sup>3</sup> available soil volume for each tree. Refer to Appendix 6.6 (Detail 5) of the Marrickville Street Tree Master Plan 2014 for indicative detail, noting that structural soil is not approved in this case. Note: The soil vault may require a drainage system if the surrounding soil type will not naturally provide adequate drainage.

- h. The street tree must be maintained for a minimum period of twelve (12) months commencing on the planting date. Maintenance includes, but is not limited to, watering, weeding, removal of rubbish from tree base, pruning and fertilising and pest and disease control.
- i. If the street tree requires replacement due to maintenance deficiencies during the twelve (12) month maintenance period, the twelve (12) month maintenance period will commence again from the date of the planting of the replacement tree (up to three (3) occurrences).

### **35. Enclosure of Fire Hydrant**

Prior to the issue of a Construction Certificate, the Certifying Authority is to be provided with plans indicating that all fire hydrant and sprinkler booster valves and the like are enclosed in accordance with the requirements of AS 2419.1 2005.

### **36. Party Walls**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with Architectural Plans accompanied by a Structural Certificate which verifies that the architectural plans do not rely on the Party Wall for lateral or vertical support and that additions are independently supported. A copy of the Certificate & plans must be provided to all owners of the party wall/s.

### **37. Sydney Water – Tap In**

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program 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.

*Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 13 20 92*

### **38. Acoustic Report – Aircraft Noise**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans detailing the recommendations of an acoustic report prepared by a suitably qualified Acoustic Engineer demonstrating compliance of the development with the relevant provisions of Australian Standard AS 2021:2015 Acoustics – Aircraft noise intrusion – Building siting and construction.

**39. Fibre-ready Facilities**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with evidence that arrangements have been made for:

- a. The installation of fibre-ready facilities to all individual lots and/or premises the development so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose.
- b. The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises the development demonstrated through an agreement with a carrier.

**40. Green Roofs, Walls and Facades Report**

Prior to the issue of Construction Certificate, the Certifying Authority is to be provided with a report prepared by a suitably qualified person demonstrating that the proposed landscape plan and details of any green roofs, wall and facades are consistent with [Inner West Councils Green Roof, Walls and Facades Technical Guidelines](#) including but not limited to using species selected from the suggested species list, water proofing and drainage.

**DURING DEMOLITION AND CONSTRUCTION****41. Contamination – New Evidence**

Any new information revealed during demolition, remediation or construction works that have the potential to alter previous conclusions about site contamination must be immediately notified to the Council and the Certifying Authority.

**42. Imported Fill Materials**

All imported fill on the site shall be validated as Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM), in accordance with NSW Environment Protection Authority guidelines, 'Consultants Reporting on Contaminated Sites' (August 2011) to ensure the imported fill is suitable for the proposed land use.

All fill imported onto the site shall be validated by either one or both of the following methods:

- a. Imported fill be accompanied by documentation from the supplier which certifies that the material is not contaminated based upon analyses of the material for the known past history of the site where the material is obtained; and/or
- b. Sampling and analysis of the fill material be conducted in accordance with NSW Environment Protection Authority's Sampling Design Guidelines (September 1995).

#### **43. Documentation of Demolition and Construction Waste**

All waste dockets from the recycling and/or disposal of any demolition and construction waste generated from the works must be retained on site.

#### **44. Construction Hours – Class 2-9**

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

- a. 7:00am to 6:00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b. 8:00am to 1:00pm 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 out of hours 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 must be limited to:

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

The person acting on this consent must not undertake such activities for more than three continuous hours and must 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.

#### **45. Survey Prior to Footings**

Upon excavation of the footings and before the pouring of the concrete, the Certifying Authority must be provided with a certificate of survey from a registered land surveyor to verify that the structure will not encroach over the allotment boundaries.

### **PRIOR TO OCCUPATION CERTIFICATE**

#### **46. Public Domain Works**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with written evidence from Council that the following works on the Road Reserve have been completed in accordance with the requirements of the approval under Section 138 of the *Roads Act 1993* including:

- a. Heavy duty concrete vehicle crossing at the vehicular access location;
- b. The redundant vehicular crossing to the site must be removed and replaced by kerb and gutter and footpath. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb must also be in stone;
- c. The existing concrete footpath across the frontage of the site must be reconstructed; and
- d. Other works subject to the *Roads Act 1993* approval.

All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-“Roadworks Specifications”.

#### **47. No Encroachments**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any encroachments on to Council road or footpath resulting from the building works have been removed, including opening doors, gates and garage doors with the exception of any awnings or balconies approved by Council.

#### **48. Protect Sandstone Kerb**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any stone kerb, damaged as a consequence of the work that is the subject of this development consent, has been replaced.

**49. Parking Signoff – Minor Developments**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from a qualified practising Civil Engineer that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.

**50. Works as Executed – Site Stormwater Drainage System**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a suitably qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that:

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and
- b. Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD system commissioned and stormwater quality improvement device (rainwater tank) and any pump installed in accordance with the approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plans must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans.

**51. Operation and Management Plan**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an Operation and Management Plan has been prepared and implemented for the on-site detention and re-use facilities. The Plan must set out the following at a minimum:

- a. The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners; and
- b. The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

**52. Easements, Restrictions on the Use of Land and Positive Covenants**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence that Easements, Restrictions on the Use of Land and Positive Covenants under Section 88B or 88E, whichever is relevant to the subject development, of the *Conveyancing Act 1919*, has been created on the title of the property detailing the following :



- a. Restrictions on the Use of Land related to on Site Stormwater Detention System and rainwater tank system; and
  - b. Positive Covenant related to on-site stormwater detention and rainwater tank system.
- The wording in the Instrument must be in accordance with Councils Standard wording.

#### **53. Basement/Retaining Wall Signoff – Major Development**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with certification from a suitably experienced structural and geotechnical engineer, who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng), that the basement and driveway has been constructed in accordance with the development consent and relevant Australian Standards.

#### **54. Project Arborist Certification**

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with certification from the project arborist the requirements of the conditions of consent related to the landscape plan and the role of the project arborist have been complied with.

#### **55. Smoke Alarms - Certification of upgrade to NCC requirements**

Prior to the issue of any Occupation Certificate, the Principal Certifier is required to be satisfied the existing building has been upgraded to comply with the provisions of the National Construction Code (Building Code of Australia) in relation to smoke alarm systems.

#### **56. Shopping Trolley Management Plan**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a shopping trolley management plan which specifies a management system that will be used to ensure that shopping trolleys are not abandoned on the surrounding area.

#### **57. Section 73 Certificate**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a Section 73 Certificate under the *Sydney Water Act 1994*.

#### **58. Verification and Maintenance of Green Roofs, Walls and Facades Works**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority is to be provided with written evidence demonstrating that the works have been carried out in accordance with the Green Roofs, Walls and Facades Report that was submitted at

Construction Certificate Stage and a maintenance plan that is consistent with the [Inner West Councils Green Roof, Walls and Facades Technical Guidelines](#).

### **ON-GOING**

#### **59. Noise General**

The proposed use of the premises and the operation of all plant and equipment must not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations, NSW EPA Noise Policy for Industry and NSW EPA Noise Guide for Local Government.

#### **60. Bin Storage**

All bins are to be stored within the site. Bins are to be returned to the property within 12 hours of having been emptied.

#### **61. Operation and Management Plan**

The Operation and Management Plan for the on-site detention and re-use facilities, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

#### **62. Vehicles Leaving the Site**

All vehicles must enter and exit the site in a forward direction.

#### **63. Loading/unloading on site**

All loading and unloading are to be conducted within the site at all times. Any designated loading bay/dock area is to remain available for loading/unloading purposes at all times. No storage of goods or parking of cars is to be carried out in these areas.

#### **64. Tree Establishment**

The tree/s planted as part of this consent is/are to be maintained in a healthy and vigorous condition for 12 months from the issue of an Occupation Certificate. If any of the tree/s is/are found faulty, damaged, dying or dead within 12 months of the issue of an Occupation Certificate it/they must be replaced with the same species within one (1) month (up to 3 occurrences).

**65. Green Roofs, Walls and Facades Establishment**

The plantings within the Green Roofs, Walls and Facades as part of this consent are to be maintained in a healthy and vigorous condition for 12 Months from the issue of an Occupation Certificate. If any of the planting are found faulty, damaged, dying or dead within 12 months of the issue of an Occupation Certificate they must be replaced with the same species within one (1) month (up to 3 occurrences).

**ADVISORY NOTES****Mechanical Ventilation System Certification**

The mechanical ventilation systems are to be designed, constructed and operated in accordance with the following:

- a. Australian Standard AS 1668 Part 1 – 1998;
- b. Australian Standard AS 1668 Part 2 – 2012;
- c. Australian Standard 3666.1 – 2011;
- d. Australian Standard 3666.2 – 2011; and
- e. Australian Standard 3666.3 - 2011.

The system must be located in accordance with the approved plans and/or within the building envelope, design and form of the approved building. Any modifications to the approved plans required to house the system must be the subject of further approval from Council.

**Asbestos Removal**

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m<sup>2</sup> of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

Removal of friable asbestos material must only be undertaken by a contractor that holds a current Class A Friable Asbestos Removal Licence.

Demolition sites that involve the removal of asbestos must display a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.

All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2014. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

**Notice to Council to deliver Residential Bins**

Council should be notified of bin requirements three weeks prior to the occupation of the building to ensure timely delivery.

Council will place an order for the required bins. Delivery will occur once the applicant has completed a Request for New Service.

**Recycling / Garbage / Organics Service Information and Education**

The building manager / strata title manager or body corporate is responsible for ensuring all tenants are kept informed regarding Council's services, and best practice waste and recycling source separation.

**Rock Anchors**

If you are seeking to use temporary anchors, you must make a request for approval for a Permit under Section 138 of the Roads Act 1993. The submission would need to be supported by an engineering report prepared by a suitably qualified Structural Engineer, with supporting details addressing the following issues:

- a. Demonstrate that any structures within the road reserve are of adequate depth to ensure no adverse impact on existing or potential future service utilities in the road reserve. All existing services must be shown on a plan and included on cross-sectional details where appropriate.
- b. Demonstrate how the temporary anchors will be removed or immobilised and replaced by full support from structures within the subject site by completion of the works.
- c. The report must be supported by suitable geotechnical investigations to the efficacy of all design assumptions.

**Electrical Substations**

Should the proposed development require the provision of an electrical substation, such associated infrastructure must be incorporated wholly within the development site and may be the subject of an application for modification of consent.

**Permits**

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must 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 veranda over the footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

If required contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. Applications for such Permits must be submitted and approved by Council prior to the commencement of the works associated with such activity.

#### **Easement and Covenant Process**

The following documents must be submitted to Council as part of the Easement and Covenant process and requirements, for the site on-site detention and reuse facilities (rainwater tank):

- a. Work-As-Executed Plans

A "Work-as-Executed" plan prepared and signed by a Registered Surveyor must be submitted to the Council's Development Assessment Engineer at the completion of the works showing the location of the detention basin and rainwater tank with finished surface levels and volume of storage available. Also, the outlet pipe from the detention basin to its connection to the Council's drainage system must be shown together with the following information: location; pipe diameter; gradient; pipe material, i.e. PVC or RCP etc.; pits sizes; orifice size; trash screen at orifice; emergency overflow dimensions and RL; all buildings (including floor levels) and finished ground and pavement surface levels.

- b. Engineer's Certificate

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

- c. The soundness of the storage structure;
- d. The capacity of the detention storage;
- e. The emergency overflow system being in place;
- f. The works being constructed in accordance with the Development Application Consent and Council's Stormwater Management DCP/Code;

- g. 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 DCP/Code;
- h. Basement car park pumps are class one zone two; and
- i. Rainwater tank pumps have been installed and commissioned.

c. Restriction-As-To-User

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

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

A typical document is available from Council's Development Assessment Engineer.

d. A Maintenance Schedule.

**Insurances**

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

**Consent of Adjoining property owners**

This consent does not authorise the applicant, or the contractor engaged to do the tree works to enter a neighbouring property. Where access to adjacent land is required to carry out approved tree works, Council advises that the owner's consent must be sought. Notification is the responsibility of the person acting on the consent. Should the tree owner/s refuse access to their land, the person acting on the consent must meet the requirements of the *Access To Neighbouring Lands Act 2000* to seek access.

**Arborists standards**

All tree work must be undertaken by a practicing Arborist. The work must be undertaken in accordance with AS4373—*Pruning of amenity trees* and the Safe Work Australia Code of

Practice—*Guide to Managing Risks of Tree Trimming and Removal Work*. Any works in the vicinity of the Low Voltage Overhead Network (including service lines—pole to house connections) must be undertaken by an approved Network Service Provider contractor for the management of vegetation conflicting with such services. Contact the relevant Network Service Provider for further advice in this regard.

#### **Tree Protection Works**

All tree protection for the site must be undertaken in accordance with Council's *Development Fact Sheet—Trees on Development Sites* and AS4970—*Protection of trees on development sites*.

#### **Prescribed Conditions**

This consent is subject to the prescribed conditions of consent within clause 98-98E of the *Environmental Planning and Assessment Regulations 2000*.

#### **Notification of commencement of works**

At least 7 days before any demolition work commences:

- a. the Council must be notified of the following particulars:
  - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
  - ii. the date the work is due to commence and the expected completion date; and
- b. a written notice must be placed in the letter box of each directly adjoining property identified advising of the date the work is due to commence.

#### **Storage of Materials on public property**

The placing of any materials on Council's footpath or roadway is prohibited, without the prior consent of Council.

#### **Toilet Facilities**

The following facilities must be provided on the site:

- a. Toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees; and
- b. A garbage receptacle for food scraps and papers, with a tight fitting lid.

Facilities must be located so that they will not cause a nuisance.

**Infrastructure**

The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones respectively to the property. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be undertaken before occupation of the site.

**Other Approvals may be needed**

Approvals under other acts and regulations may be required to carry out the development. It is the responsibility of property owners to ensure that they comply with all relevant legislation. Council takes no responsibility for informing applicants of any separate approvals required.

**Failure to comply with conditions**

Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.

**Other works**

Works or activities other than those approved by this Development Consent will require the submission of a new Development Application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

**Obtaining Relevant Certification**

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):

- a. Application for any activity under that Act, including any erection of a hoarding;
- b. Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*;
- c. Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*;
- d. Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed;
- e. Application for Strata Title Subdivision if strata title subdivision of the development is proposed;
- f. Development Application for demolition if demolition is not approved by this consent;  
or



- g. Development Application for subdivision if consent for subdivision is not granted by this consent.

#### **Disability Discrimination Access to Premises Code**

The *Disability Discrimination Act 1992* (Commonwealth) and the *Anti-Discrimination Act 1977* (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.

#### **National Construction Code (Building Code of Australia)**

A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out. All building works approved by this consent must be carried out in accordance with the requirements of the National Construction Code.

#### **Notification of commencement of works**

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the PCA (not being the council) has given the Council written notice of the following information:

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

#### **Dividing Fences Act**

The person acting on this consent must comply with the requirements of the *Dividing Fences Act 1991* in respect to the alterations and additions to the boundary fences.

#### **Permits from Council under Other Acts**

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must 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; and
- 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. A lease fee is payable for all occupations.

#### **Noise**

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.

#### **Amenity Impacts General**

The use of the premises must not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment must not give rise to the transmission of a vibration nuisance or damage other premises.

#### **Fire Safety Certificate**

The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:

- a. Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
- b. Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).

Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Statement for each of the Fire Safety Measures listed in the Schedule.

The Annual Fire Safety Statement must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

**Construction of Vehicular Crossing**

The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for *Construction of a Vehicular Crossing & Civil Works* form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, prior to commencement of works.

**Lead-based Paint**

Buildings built or painted prior to the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned prior to occupation of the room or building.

**Dial before you dig**

Contact "Dial Prior to You Dig" prior to commencing any building activity on the site.

**Useful Contacts**

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm <a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>
Department of Fair Trading	13 32 20 <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 <a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>
Landcom	9841 8660

			To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments	131441	<a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority		1300 552 406	<a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>
NSW Government			<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diysafe.nsw.gov.au">www.diysafe.nsw.gov.au</a>
			Information on asbestos and safe work practices.
NSW Office of Environment and Heritage		131 555	<a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>
Sydney Water		13 20 92	<a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>
Waste Service - Environmental Solutions	SITA	1300 651 116	<a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>
Water Efficiency Labelling and Standards (WELS)			<a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>
WorkCover Authority of NSW		13 10 50	<a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a>
			Enquiries relating to work safety and asbestos removal and disposal.

**Street Numbering**

If any new street numbers or change to street numbers (this includes unit and shop numbers) are required, a separate application must be lodged with and approved by Council's GIS Team before being displayed.



**Attachment B – Plans of proposed development**

1A ORCHARD CRESCENT ASHFIELD  
Date: September 29, 2021

CONTENTS

A001	CONTENTS / FIGURES
A101	SITE PLAN
A102	SITE ANALYSIS
A103	BASEMENT & BASEMENT 2 PLAN
A104	BASEMENT 3 & BASEMENT 4 PLAN
A105	GROUND FLOOR & LEVEL 1 PLAN
A106	LEVEL 2 & LEVEL 3 PLAN
A107	LEVEL 4 & LEVEL 5 PLAN
A108	LEVEL 6 & LEVEL 7 PLAN
A109	ADJACENT LIMITS
A110	CONTRIBUTORY TERRACE & ROOF PLAN
A206	ELEVATION WEST
A207	ELEVATION NORTH
A208	ELEVATION SOUTH
A209	ELEVATION EAST
A210	ELEVATION NORTH WEST
A211	ELEVATION NORTH EAST
A212	ELEVATION SOUTH WEST
A213	ELEVATION SOUTH EAST
A214	ELEVATION WEST
A215	ELEVATION NORTH
A216	ELEVATION SOUTH
A217	ELEVATION EAST
A218	ELEVATION WEST
A219	ELEVATION NORTH
A220	ELEVATION SOUTH
A221	ELEVATION EAST
A222	ELEVATION WEST
A223	ELEVATION NORTH
A224	ELEVATION SOUTH
A225	ELEVATION EAST
A226	ELEVATION WEST
A227	ELEVATION NORTH
A228	ELEVATION SOUTH
A229	ELEVATION EAST
A230	ELEVATION WEST
A231	ELEVATION NORTH
A232	ELEVATION SOUTH
A233	ELEVATION EAST
A234	ELEVATION WEST
A235	ELEVATION NORTH
A236	ELEVATION SOUTH
A237	ELEVATION EAST
A238	ELEVATION WEST
A239	ELEVATION NORTH
A240	ELEVATION SOUTH
A241	ELEVATION EAST
A242	ELEVATION WEST
A243	ELEVATION NORTH
A244	ELEVATION SOUTH
A245	ELEVATION EAST
A246	ELEVATION WEST
A247	ELEVATION NORTH
A248	ELEVATION SOUTH
A249	ELEVATION EAST
A250	ELEVATION WEST
A251	ELEVATION NORTH
A252	ELEVATION SOUTH
A253	ELEVATION EAST
A254	ELEVATION WEST
A255	ELEVATION NORTH
A256	ELEVATION SOUTH
A257	ELEVATION EAST
A258	ELEVATION WEST
A259	ELEVATION NORTH
A260	ELEVATION SOUTH
A261	ELEVATION EAST
A262	ELEVATION WEST
A263	ELEVATION NORTH
A264	ELEVATION SOUTH
A265	ELEVATION EAST
A266	ELEVATION WEST
A267	ELEVATION NORTH
A268	ELEVATION SOUTH
A269	ELEVATION EAST
A270	ELEVATION WEST
A271	ELEVATION NORTH
A272	ELEVATION SOUTH
A273	ELEVATION EAST
A274	ELEVATION WEST
A275	ELEVATION NORTH
A276	ELEVATION SOUTH
A277	ELEVATION EAST
A278	ELEVATION WEST
A279	ELEVATION NORTH
A280	ELEVATION SOUTH
A281	ELEVATION EAST
A282	ELEVATION WEST
A283	ELEVATION NORTH
A284	ELEVATION SOUTH
A285	ELEVATION EAST
A286	ELEVATION WEST
A287	ELEVATION NORTH
A288	ELEVATION SOUTH
A289	ELEVATION EAST
A290	ELEVATION WEST
A291	ELEVATION NORTH
A292	ELEVATION SOUTH
A293	ELEVATION EAST
A294	ELEVATION WEST
A295	ELEVATION NORTH
A296	ELEVATION SOUTH
A297	ELEVATION EAST
A298	ELEVATION WEST
A299	ELEVATION NORTH
A300	ELEVATION SOUTH
A301	ELEVATION EAST
A302	ELEVATION WEST
A303	ELEVATION NORTH
A304	ELEVATION SOUTH
A305	ELEVATION EAST
A306	ELEVATION WEST
A307	ELEVATION NORTH
A308	ELEVATION SOUTH
A309	ELEVATION EAST
A310	ELEVATION WEST
A311	ELEVATION NORTH
A312	ELEVATION SOUTH
A313	ELEVATION EAST
A314	ELEVATION WEST
A315	ELEVATION NORTH
A316	ELEVATION SOUTH
A317	ELEVATION EAST
A318	ELEVATION WEST
A319	ELEVATION NORTH
A320	ELEVATION SOUTH
A321	ELEVATION EAST
A322	ELEVATION WEST
A323	ELEVATION NORTH
A324	ELEVATION SOUTH
A325	ELEVATION EAST
A326	ELEVATION WEST
A327	ELEVATION NORTH
A328	ELEVATION SOUTH
A329	ELEVATION EAST
A330	ELEVATION WEST
A331	ELEVATION NORTH
A332	ELEVATION SOUTH
A333	ELEVATION EAST
A334	ELEVATION WEST
A335	ELEVATION NORTH
A336	ELEVATION SOUTH
A337	ELEVATION EAST
A338	ELEVATION WEST
A339	ELEVATION NORTH
A340	ELEVATION SOUTH
A341	ELEVATION EAST
A342	ELEVATION WEST
A343	ELEVATION NORTH
A344	ELEVATION SOUTH
A345	ELEVATION EAST
A346	ELEVATION WEST
A347	ELEVATION NORTH
A348	ELEVATION SOUTH
A349	ELEVATION EAST
A350	ELEVATION WEST
A351	ELEVATION NORTH
A352	ELEVATION SOUTH
A353	ELEVATION EAST
A354	ELEVATION WEST
A355	ELEVATION NORTH
A356	ELEVATION SOUTH
A357	ELEVATION EAST
A358	ELEVATION WEST
A359	ELEVATION NORTH
A360	ELEVATION SOUTH
A361	ELEVATION EAST
A362	ELEVATION WEST
A363	ELEVATION NORTH
A364	ELEVATION SOUTH
A365	ELEVATION EAST
A366	ELEVATION WEST
A367	ELEVATION NORTH
A368	ELEVATION SOUTH
A369	ELEVATION EAST
A370	ELEVATION WEST
A371	ELEVATION NORTH
A372	ELEVATION SOUTH
A373	ELEVATION EAST
A374	ELEVATION WEST
A375	ELEVATION NORTH
A376	ELEVATION SOUTH
A377	ELEVATION EAST
A378	ELEVATION WEST
A379	ELEVATION NORTH
A380	ELEVATION SOUTH
A381	ELEVATION EAST
A382	ELEVATION WEST
A383	ELEVATION NORTH
A384	ELEVATION SOUTH
A385	ELEVATION EAST
A386	ELEVATION WEST
A387	ELEVATION NORTH
A388	ELEVATION SOUTH
A389	ELEVATION EAST
A390	ELEVATION WEST
A391	ELEVATION NORTH
A392	ELEVATION SOUTH
A393	ELEVATION EAST
A394	ELEVATION WEST
A395	ELEVATION NORTH
A396	ELEVATION SOUTH
A397	ELEVATION EAST
A398	ELEVATION WEST
A399	ELEVATION NORTH
A400	ELEVATION SOUTH
A401	ELEVATION EAST
A402	ELEVATION WEST
A403	ELEVATION NORTH
A404	ELEVATION SOUTH
A405	ELEVATION EAST
A406	ELEVATION WEST
A407	ELEVATION NORTH
A408	ELEVATION SOUTH
A409	ELEVATION EAST
A410	ELEVATION WEST
A411	ELEVATION NORTH
A412	ELEVATION SOUTH
A413	ELEVATION EAST
A414	ELEVATION WEST
A415	ELEVATION NORTH
A416	ELEVATION SOUTH
A417	ELEVATION EAST
A418	ELEVATION WEST
A419	ELEVATION NORTH
A420	ELEVATION SOUTH
A421	ELEVATION EAST
A422	ELEVATION WEST
A423	ELEVATION NORTH
A424	ELEVATION SOUTH
A425	ELEVATION EAST
A426	ELEVATION WEST
A427	ELEVATION NORTH
A428	ELEVATION SOUTH
A429	ELEVATION EAST
A430	ELEVATION WEST
A431	ELEVATION NORTH
A432	ELEVATION SOUTH
A433	ELEVATION EAST
A434	ELEVATION WEST
A435	ELEVATION NORTH
A436	ELEVATION SOUTH
A437	ELEVATION EAST
A438	ELEVATION WEST
A439	ELEVATION NORTH
A440	ELEVATION SOUTH
A441	ELEVATION EAST
A442	ELEVATION WEST
A443	ELEVATION NORTH
A444	ELEVATION SOUTH
A445	ELEVATION EAST
A446	ELEVATION WEST
A447	ELEVATION NORTH
A448	ELEVATION SOUTH
A449	ELEVATION EAST
A450	ELEVATION WEST
A451	ELEVATION NORTH
A452	ELEVATION SOUTH
A453	ELEVATION EAST
A454	ELEVATION WEST
A455	ELEVATION NORTH
A456	ELEVATION SOUTH
A457	ELEVATION EAST
A458	ELEVATION WEST
A459	ELEVATION NORTH
A460	ELEVATION SOUTH
A461	ELEVATION EAST
A462	ELEVATION WEST
A463	ELEVATION NORTH
A464	ELEVATION SOUTH
A465	ELEVATION EAST
A466	ELEVATION WEST
A467	ELEVATION NORTH
A468	ELEVATION SOUTH
A469	ELEVATION EAST
A470	ELEVATION WEST
A471	ELEVATION NORTH
A472	ELEVATION SOUTH
A473	ELEVATION EAST
A474	ELEVATION WEST
A475	ELEVATION NORTH
A476	ELEVATION SOUTH
A477	ELEVATION EAST
A478	ELEVATION WEST
A479	ELEVATION NORTH
A480	ELEVATION SOUTH
A481	ELEVATION EAST
A482	ELEVATION WEST
A483	ELEVATION NORTH
A484	ELEVATION SOUTH
A485	ELEVATION EAST
A486	ELEVATION WEST
A487	ELEVATION NORTH
A488	ELEVATION SOUTH
A489	ELEVATION EAST
A490	ELEVATION WEST
A491	ELEVATION NORTH
A492	ELEVATION SOUTH
A493	ELEVATION EAST
A494	ELEVATION WEST
A495	ELEVATION NORTH
A496	ELEVATION SOUTH
A497	ELEVATION EAST
A498	ELEVATION WEST
A499	ELEVATION NORTH
A500	ELEVATION SOUTH
A501	ELEVATION EAST
A502	ELEVATION WEST
A503	ELEVATION NORTH
A504	ELEVATION SOUTH
A505	ELEVATION EAST
A506	ELEVATION WEST
A507	ELEVATION NORTH
A508	ELEVATION SOUTH
A509	ELEVATION EAST
A510	ELEVATION WEST
A511	ELEVATION NORTH
A512	ELEVATION SOUTH
A513	ELEVATION EAST
A514	ELEVATION WEST
A515	ELEVATION NORTH
A516	ELEVATION SOUTH
A517	ELEVATION EAST
A518	ELEVATION WEST
A519	ELEVATION NORTH
A520	ELEVATION SOUTH
A521	ELEVATION EAST
A522	ELEVATION WEST
A523	ELEVATION NORTH
A524	ELEVATION SOUTH
A525	ELEVATION EAST
A526	ELEVATION WEST
A527	ELEVATION NORTH
A528	ELEVATION SOUTH
A529	ELEVATION EAST
A530	ELEVATION WEST
A531	ELEVATION NORTH
A532	ELEVATION SOUTH
A533	ELEVATION EAST
A534	ELEVATION WEST
A535	ELEVATION NORTH
A536	ELEVATION SOUTH
A537	ELEVATION EAST
A538	ELEVATION WEST
A539	ELEVATION NORTH
A540	ELEVATION SOUTH
A541	ELEVATION EAST
A542	ELEVATION WEST
A543	ELEVATION NORTH
A544	ELEVATION SOUTH
A545	ELEVATION EAST
A546	ELEVATION WEST
A547	ELEVATION NORTH
A548	ELEVATION SOUTH
A549	ELEVATION EAST
A550	ELEVATION WEST
A551	ELEVATION NORTH
A552	ELEVATION SOUTH
A553	ELEVATION EAST
A554	ELEVATION WEST
A555	ELEVATION NORTH
A556	ELEVATION SOUTH
A557	ELEVATION EAST
A558	ELEVATION WEST
A559	ELEVATION NORTH
A560	ELEVATION SOUTH
A561	ELEVATION EAST
A562	ELEVATION WEST
A563	ELEVATION NORTH
A564	ELEVATION SOUTH
A565	ELEVATION EAST
A566	ELEVATION WEST
A567	ELEVATION NORTH
A568	ELEVATION SOUTH
A569	ELEVATION EAST
A570	ELEVATION WEST
A571	ELEVATION NORTH
A572	ELEVATION SOUTH
A573	ELEVATION EAST
A574	ELEVATION WEST
A575	ELEVATION NORTH
A576	ELEVATION SOUTH
A577	ELEVATION EAST
A578	ELEVATION WEST
A579	ELEVATION NORTH
A580	ELEVATION SOUTH
A581	ELEVATION EAST
A582	ELEVATION WEST
A583	ELEVATION NORTH
A584	ELEVATION SOUTH
A585	ELEVATION EAST
A586	ELEVATION WEST
A587	ELEVATION NORTH
A588	ELEVATION SOUTH
A589	ELEVATION EAST
A590	ELEVATION WEST
A591	ELEVATION NORTH
A592	ELEVATION SOUTH
A593	ELEVATION EAST
A594	ELEVATION WEST
A595	ELEVATION NORTH
A596	ELEVATION SOUTH
A597	ELEVATION EAST
A598	ELEVATION WEST
A599	ELEVATION NORTH
A600	ELEVATION SOUTH
A601	ELEVATION EAST
A602	ELEVATION WEST
A603	ELEVATION NORTH
A604	ELEVATION SOUTH
A605	ELEVATION EAST
A606	ELEVATION WEST
A607	ELEVATION NORTH
A608	ELEVATION SOUTH
A609	ELEVATION EAST
A610	ELEVATION WEST

A001

UNIVERSITY OF WOLLONGONG  
SCHOOL OF ARCHITECTURE  
ARCHITECTURE

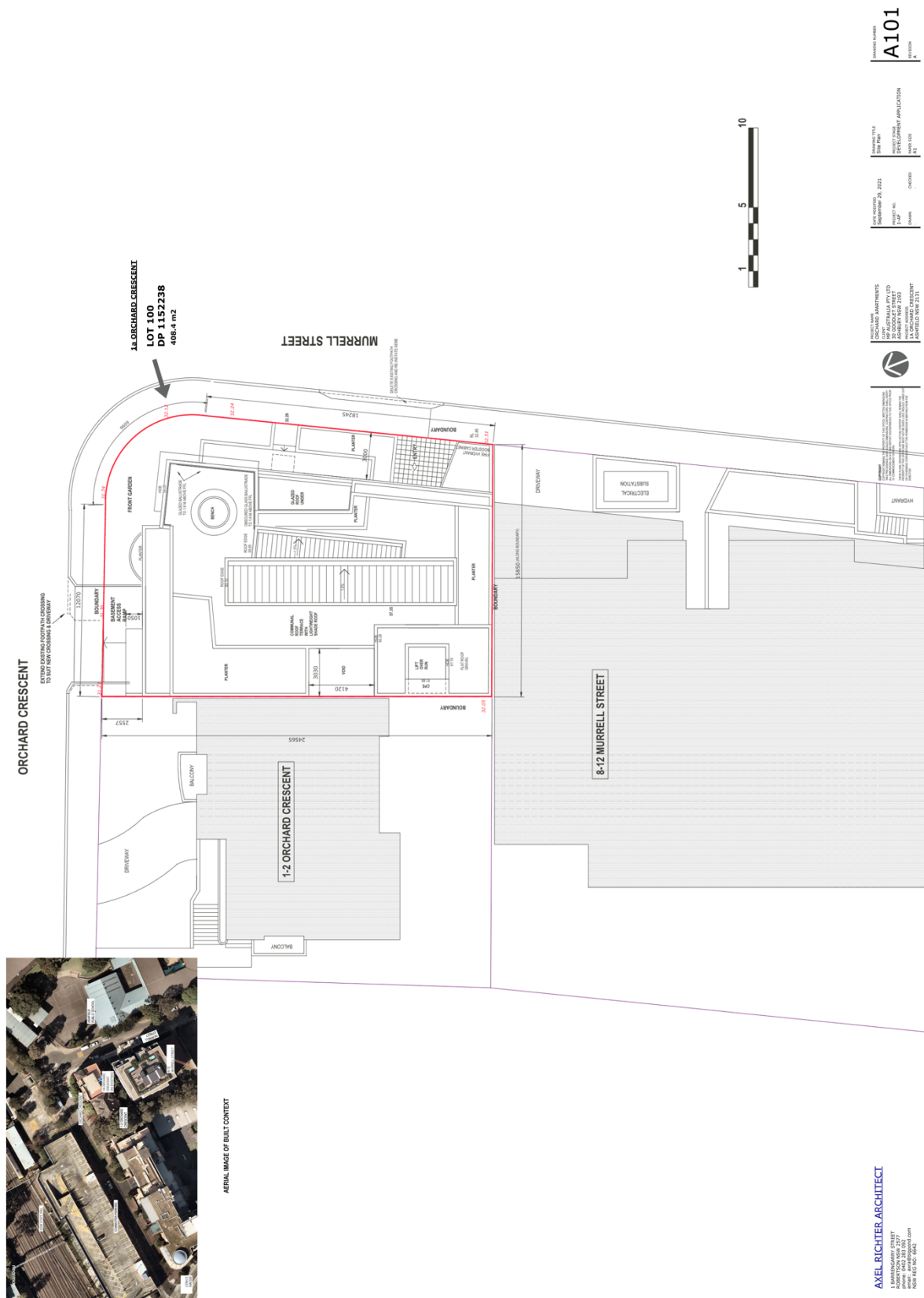
UNIVERSITY OF WOLLONGONG  
SCHOOL OF ARCHITECTURE  
ARCHITECTURE

UNIVERSITY OF WOLLONGONG  
SCHOOL OF ARCHITECTURE  
ARCHITECTURE



UNIVERSITY OF WOLLONGONG  
SCHOOL OF ARCHITECTURE  
ARCHITECTURE

AXEL RICHTER ARCHITECT  
15 BRISBANE STREET  
WOLLONGONG NSW 2520  
PH: 02 942 1234







**SEE EXHIBIT 6.**

- 1. GOOD SOLAR EXPOSURE
- 2. TWO ASPECTS FOR ALL UNITS FACILITATING CROSS VENTILATION
- 3. PROXIMITY TO PUBLIC TRANSPORT - ASHFIELD STATION AND BUS STOPS: CONVENIENT BUT NOISE IMPACT
- 4. PROXIMITY TO PUBLIC SCHOOLS AND CHILDCARE: CONVENIENT BUT SOME NOISE IMPACT
- 5. PROXIMITY TO ASHFIELD CENTRE: CONVENIENT, EMPLOYMENT OPPORTUNITIES, SHOPPING, ENTERTAINMENT SERVICES
- 6. PROXIMITY OF PUBLIC CAR PARKING
- 7. WELL SHIELDED FROM COLD SOUTHERLY WINTER WINDS
- 8. CORNER LOCATION - EXISTING EMPHASE ON CORNER
- 9. CALL-OUT WITH PEDESTRIAN/BICYCLE CONNECTION TO BROWN STREET

**NEIGHBOURING BUILDINGS: ASHFIELD**

- ASHFIELD PUBLIC SCHOOL AND HIGH SCHOOL: 1-3 STOREYS + ROOF
- 10. COMMERCIAL SERVICES ON ROOF
- 11. COMMERCIAL SERVICES ON ROOF
- 12. COMMERCIAL SERVICES ON ROOF
- 14. BROWN STREET: 4-8 STOREYS

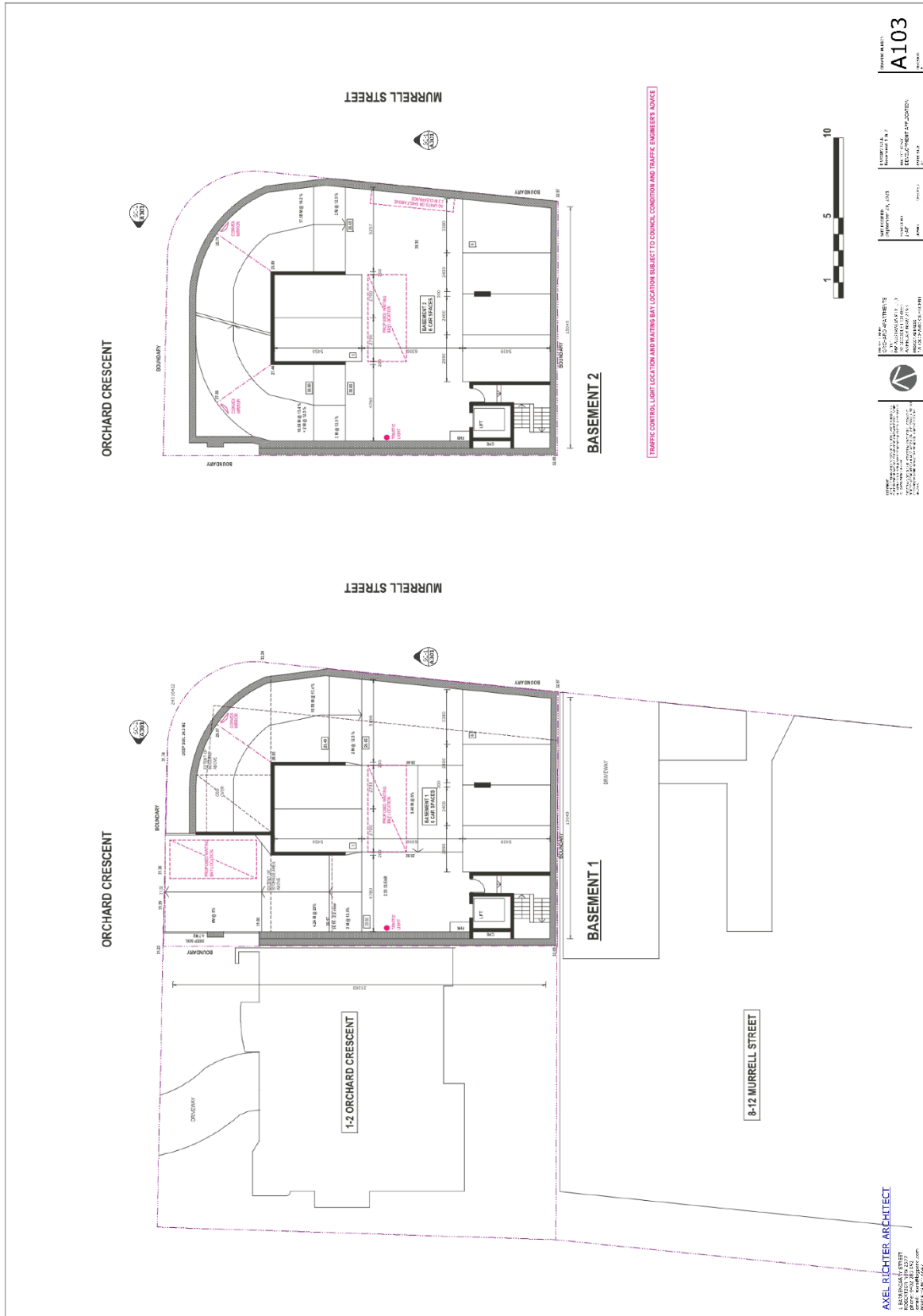
**AXEL RICHTER ARCHITECT**  
 11 BARNBERRY STREET  
 SYDNEY NSW 2041  
 PHONE: 045 292 000  
 WWW.AXELRICHTERARCHITECT.COM

**DATE: 2021**  
 PROJECT NO: 2021-001  
 DRAWING NO: 101  
 SCALE: 1:1

**PROJECT NAME:**  
 30-32 ASHFIELD STREET  
 30-32 ASHFIELD STREET  
 ASHFIELD NSW 2131

**DATE: 2021**  
 PROJECT NO: 2021-001  
 DRAWING NO: 101  
 SCALE: 1:1

**AXEL RICHTER ARCHITECT**  
 11 BARNBERRY STREET  
 SYDNEY NSW 2041  
 PHONE: 045 292 000  
 WWW.AXELRICHTERARCHITECT.COM



**MURRELL STREET**

**ORCHARD CRESCENT**

**MURRELL STREET**

**ORCHARD CRESCENT**

**AXEL RICHER ARCHITECT**  
 2 BUNDASHEIM AVENUE  
 DOWNSIDE NSW 2055  
 PHONE: (02) 9258 0100  
 FAX: (02) 9258 0101

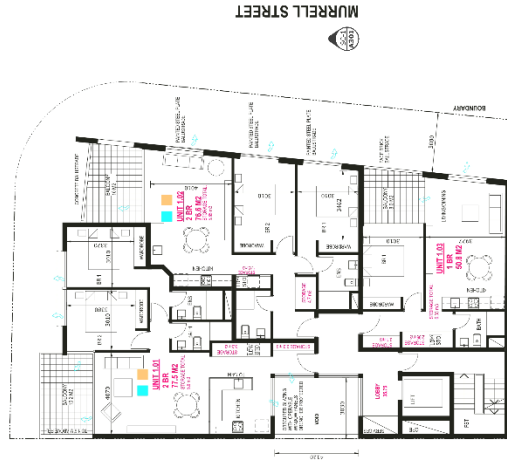
**AXEL RICHER ARCHITECT**  
 PROJECT No. 19000  
 DRAWING No. 19000-03  
 DATE: 23/10/19

**A104**

1 5 10

**TRAFFIC CONTROL LIGHT LOCATION AND WAITING BAY LOCATION SUBJECT TO COUNCIL CONDITION AND TRAFFIC ENGINEER'S ADVICE**

ORCHARD CRESCENT



LEVEL 1

ORCHARD CRESCENT



GROUND FLOOR

AXEL RICHTER ARCHITECT  
 1. REGISTERED ARCHITECT  
 2. 10/110/2008/0001  
 3. 10/110/2008/0001  
 4. 10/110/2008/0001  
 5. 10/110/2008/0001  
 6. 10/110/2008/0001

PROJECT NO. A105

DATE: 10/110/2008/0001

SCALE: 1:500

AXEL RICHTER ARCHITECT  
 10/110/2008/0001





ORCHARD CRESCENT

MURRELL STREET

LEVEL 5

ORCHARD CRESCENT

MURRELL STREET

LEVEL 4



2 HR SOLAR ACCESS ACHIEVED IN MIDWINTER

CROSS VENTILATED

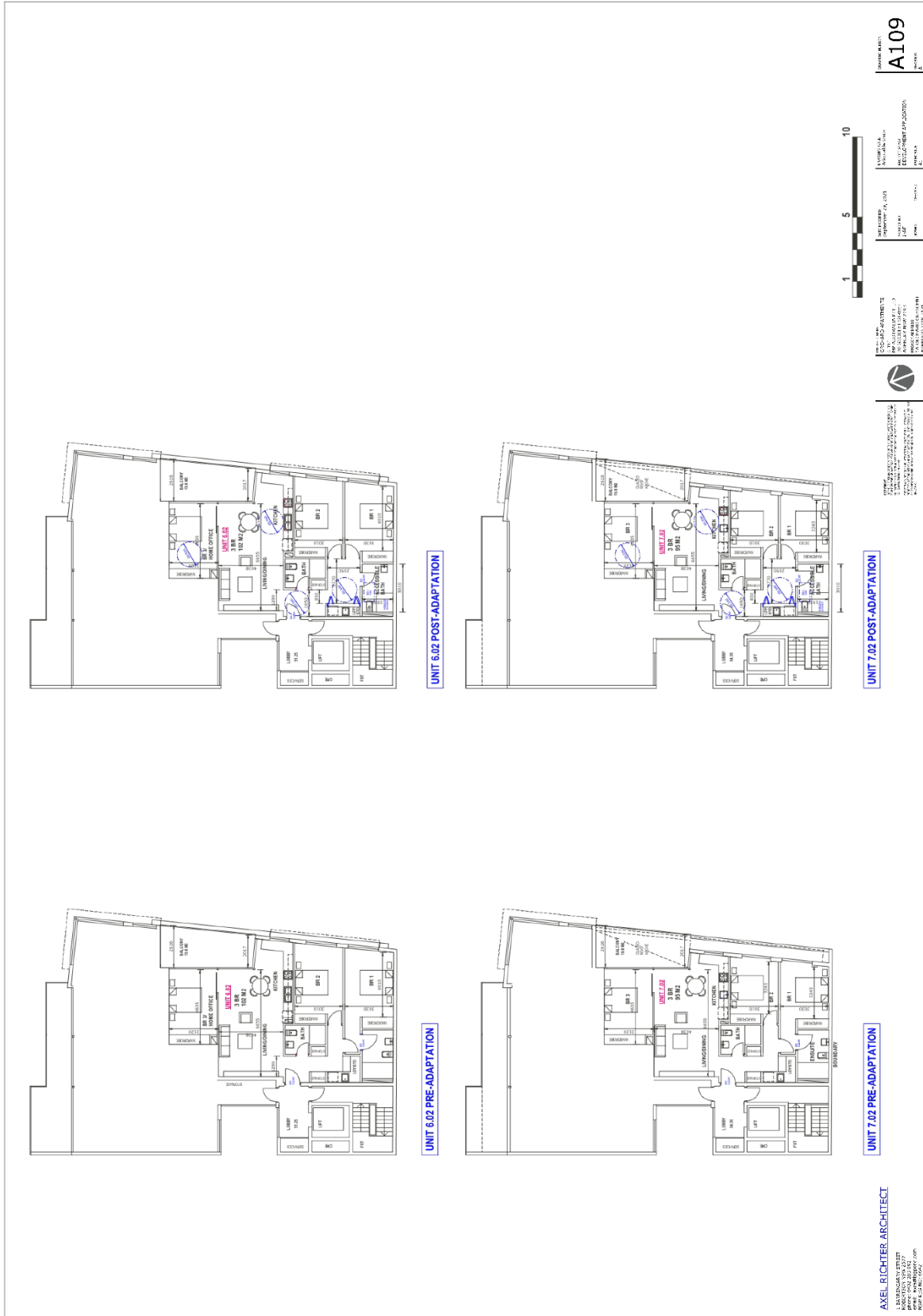
**AXEL RICHTER ARCHITECT**  
 1 JONESBURY STREET  
 SYDNEY NSW 2015  
 PH: 02 9550 1234  
 WWW.AXELRICHTER.COM

**PROJECT NAME**  
 NORTH BRIDGE APARTMENTS  
 100-102 JONESBURY STREET  
 SYDNEY NSW 2015  
**PROJECT NO.**  
 100-102 JB  
**DATE**  
 14-SEPTEMBER-2017

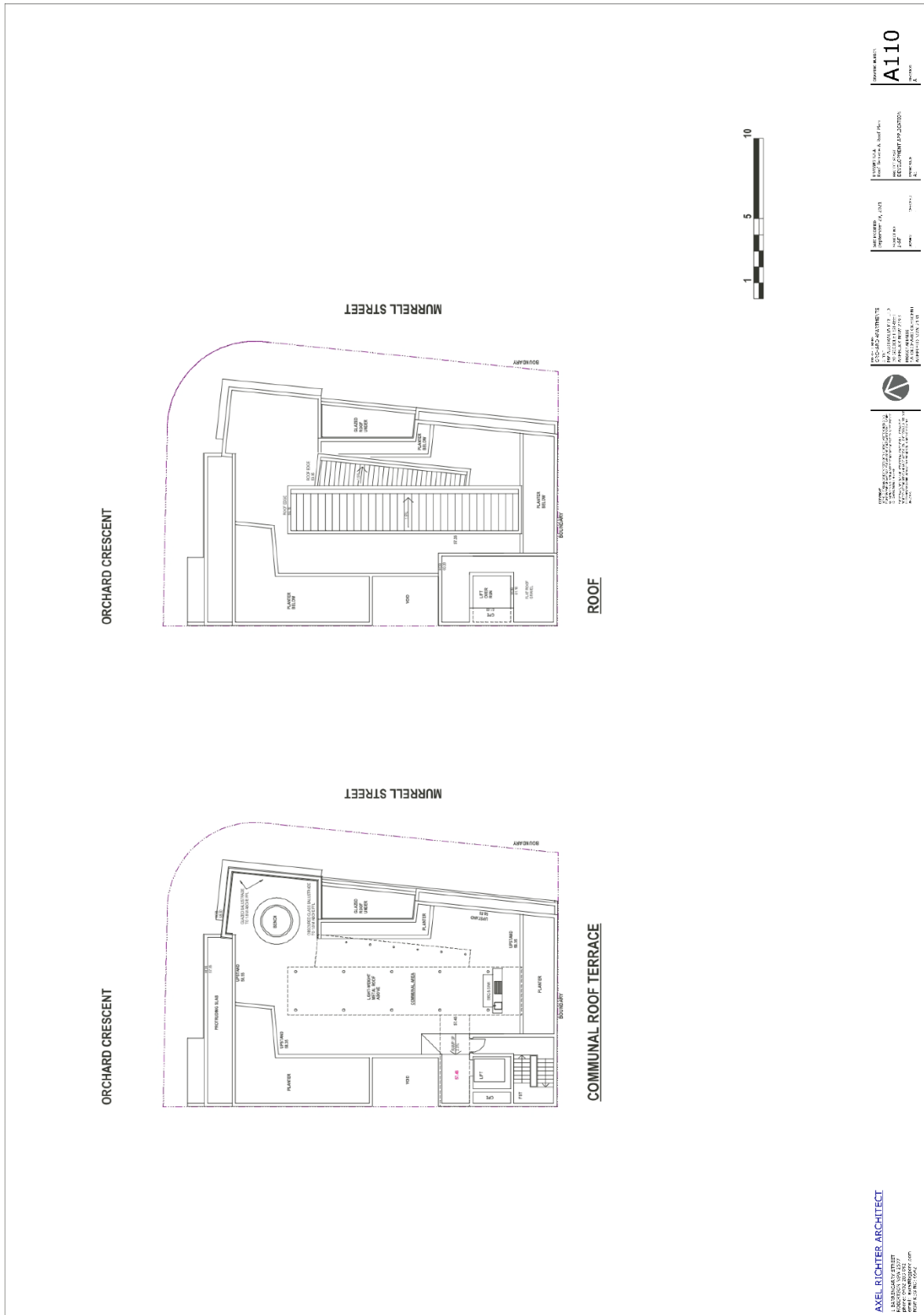
**REVISIONS**  
 NO. DESCRIPTION  
 1. 14-SEP-17  
 2. 14-SEP-17  
 3. 14-SEP-17  
 4. 14-SEP-17  
 5. 14-SEP-17  
 6. 14-SEP-17  
 7. 14-SEP-17  
 8. 14-SEP-17  
 9. 14-SEP-17  
 10. 14-SEP-17

**A107**  
 ARCHITECTURAL PLAN









**AXEL RICHTER ARCHITECT**  
 14 BRINDLEY STREET  
 PARRAMATTA NSW 2150  
 PH: 61 2 9645 1000  
 WWW.AXELRICHTER.COM

**A110**  
 ARCHITECTURAL PLAN  
 PROJECT: 14 BRINDLEY STREET  
 CLIENT: 14 BRINDLEY STREET PT 1222202  
 SCALE: 1:100  
 DATE: 20/08/2015  
 DRAWN BY: A.R.  
 CHECKED BY: A.R.  
 APPROVED BY: A.R.

**MATERIALS & FINISHES**

- 1 FACE BRICK 'BOWRAL BLUE' OR SIMILAR
- 2 DULUX 'VIVID WHITE'
- 3 DARK FACADE ELEMENTS - DULUX 'JUBE' OR SIMILAR
- 4 FACE CONCRETE - ECOTONE CONCRETE ETCHING 'E6' - WARM WHITE
- 5 ALUMINIUM WINDOW FRAMES - DULUX 'MONUMENT' OR SIMILAR
- 6 METAL CLADDING COLORBOND 'NINEA'
- 7 STRUCTURAL GLASS BALUSTRADE
- 8 VERTICAL/HORIZONTAL METAL BLADES - ANODIC NATURAL MATT ALUMINIUM
- 9 FACE CONCRETE - ECOTONE CONCRETE ETCHING 'E13' - DARK GREY
- 10 FACE CONCRETE - ECOTONE CONCRETE ETCHING 'E50' - LIGHT GREY
- 11 SANDSTONE TILE

LEVEL 10.00  
LEVEL 9.00  
LEVEL 8.00  
LEVEL 7.00  
LEVEL 6.00  
LEVEL 5.00  
LEVEL 4.00  
LEVEL 3.00  
LEVEL 2.00  
LEVEL 1.00  
GROUND LEVEL

ORCHARD CRESCENT

8-12 MURRELL STREET

MURRELL STREET

1A ORCHARD CRESCENT

SANDSTONE TILING WITH INTEGRATED WOODEN DOORS

PROVIDE PLANTING - PLEASE REFER TO LANDSCAPE ARCHITECT'S DOCUMENTATION

AXEL RICHTER ARCHITECTI  
1 BARRACLOUGH STREET  
MURRUMBidgee NSW 2870  
PHONE: 0403 333 000  
WWW.ARA.NSW.AU

PROJECT NAME: ORCHARD APARTMENTS  
PROJECT ADDRESS: 1A ORCHARD CRESCENT, MURRELL STREET, MURRUMBIDGEE NSW 2870  
PROJECT NO: 2023/00000000000000000000  
DATE: 10/05/2023  
DRAWN BY: ARA  
CHECKED BY: ARA  
SCALE: 1:100

AXEL RICHTER ARCHITECTI





PROJECT NO. **A202**  
REVISED

CLIENT: **Inner West Council**  
PROJECT: **Inner West Council Office**  
DRAWN BY: **AXEL RICHTER ARCHITECTS**  
DATE: **2021**

DATE: **2021**  
PROJECT NO. **A202**  
DRAWN BY: **AXEL RICHTER ARCHITECTS**  
DATE: **2021**

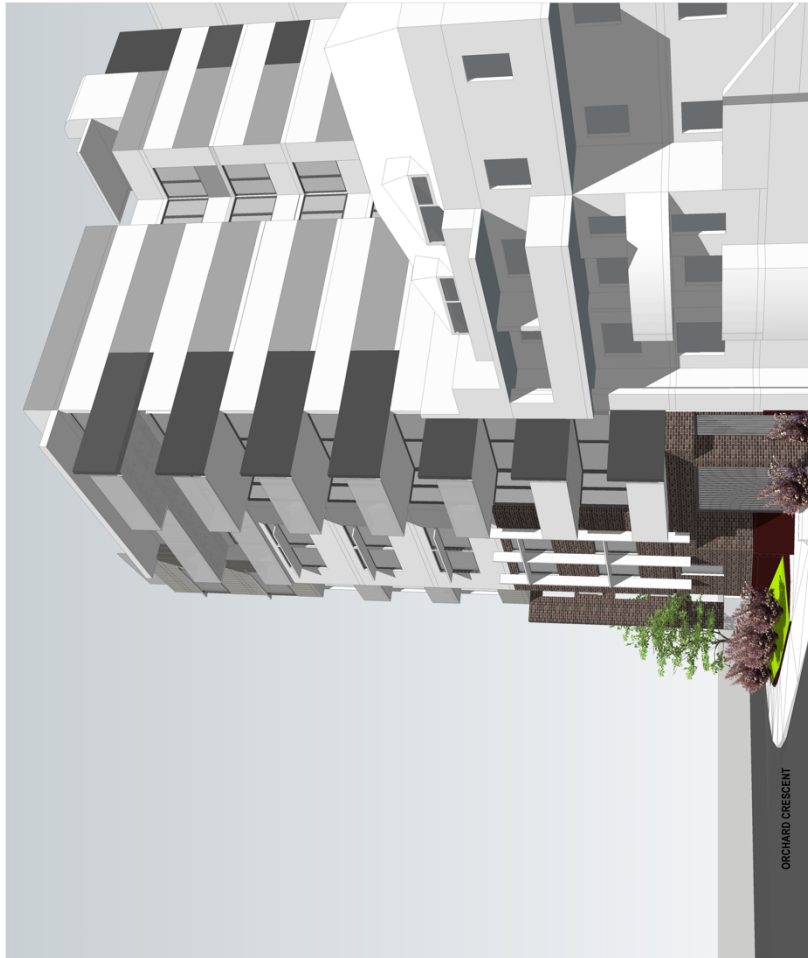
PROJECT NAME: **Inner West Council Office**  
CLIENT: **Inner West Council**  
PROJECT NO. **A202**  
DRAWN BY: **AXEL RICHTER ARCHITECTS**  
DATE: **2021**



AXEL RICHTER ARCHITECTS  
1 BARRINGTON STREET  
SYDNEY NSW 2000  
PHONE: 02 9231 5555  
WWW: AXELRICHTERARCHITECTS.COM.AU

**AXEL RICHTER ARCHITECTS**  
1 BARRINGTON STREET  
SYDNEY NSW 2000  
PHONE: 02 9231 5555  
WWW: AXELRICHTERARCHITECTS.COM.AU





ORCHARD CRESCENT

1A ORCHARD CRESCENT

12 ORCHARD CRESCENT



**AXEL RICHTER ARCHITECT**  
 1 BARRINGTON STREET  
 SYDNEY NSW 2000  
 PHONE: 0433 333 000  
 WWW: WWW.AXELRICHTER.COM

**AXEL RICHTER ARCHITECT**  
 1 BARRINGTON STREET  
 SYDNEY NSW 2000  
 PHONE: 0433 333 000  
 WWW: WWW.AXELRICHTER.COM

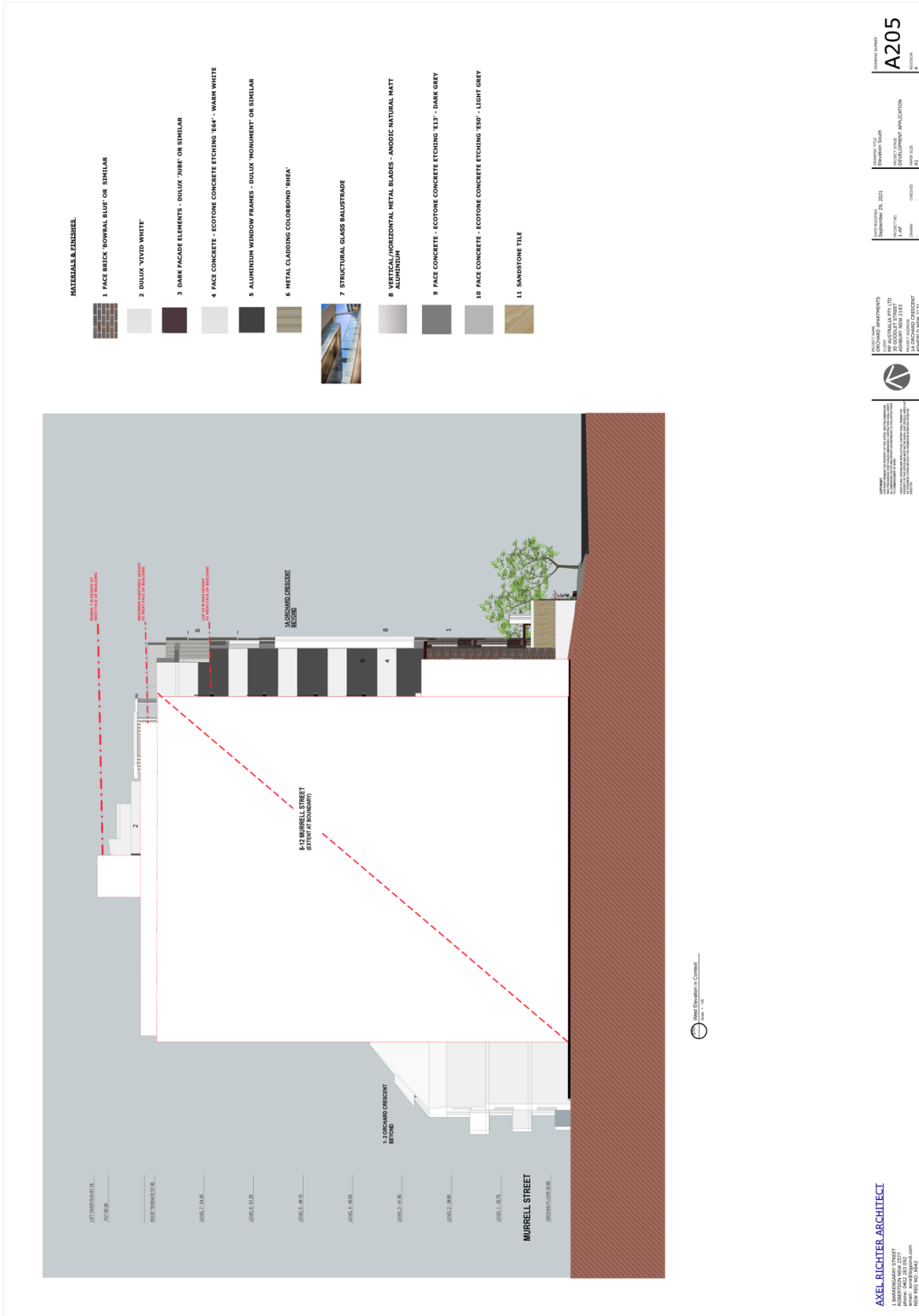


**PROJECT NAME**  
 ORCHARD APARTMENTS  
 12 ORCHARD CRESCENT  
 SYDNEY NSW 2000  
 PROJECT NO.  
 AXR/2018/001

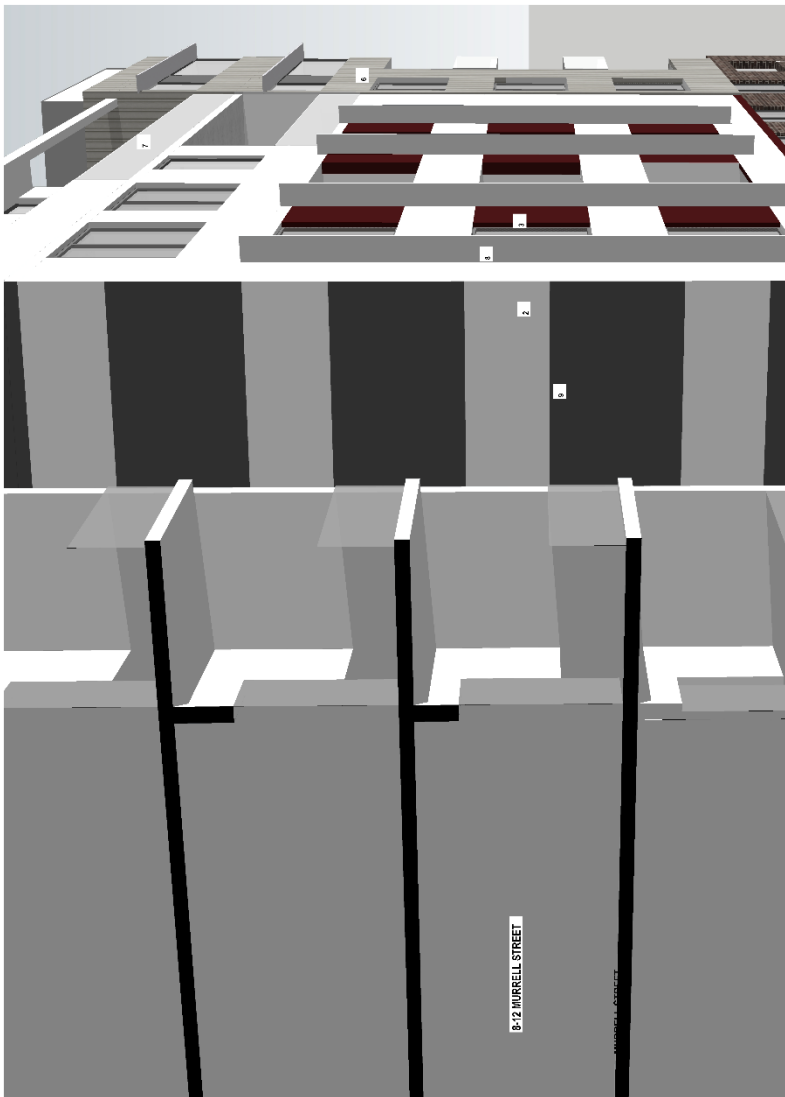
**DATE SUBMITTED**  
 SEPTEMBER 25, 2021  
**PROJECT NO.**  
 AXR/2018/001

**APPROVED BY**  
 CURRIE PARTNERSHIP  
 CURRIE PARTNERSHIP  
 111 MARKET STREET  
 SYDNEY NSW 2000  
 PHONE: 02 9250 1111

**PROJECT NO.**  
**A204**  
 12 ORCHARD CRESCENT



- MATERIALS & FINISHES**
- 1 FACE BRICK - BOWRAL BLUE OR SIMILAR
  - 2 DULL 'VIVID WHITE'
  - 3 DARK FACADE ELEMENTS - DULUX 'DUNE' OR SIMILAR
  - 4 FACE CONCRETE - ECOTONE CONCRETE ETCHING 'EM' - WARM WHITE
  - 5 ALUMINIUM WINDOW FRAMES - DULUX 'NOUVEAU' OR SIMILAR
  - 6 METAL CLADDING COLOURS 'NIEK'
  - 7 STRUCTURAL GLASS BALUSTRADE
  - 8 VERTICAL/HORIZONTAL METAL BLADES - ANODIC NATURAL FINISH (ALUMINIUM)
  - 9 FACE CONCRETE - ECOTONE CONCRETE ETCHING 'L3' - DARK GREY
  - 10 FACE CONCRETE - ECOTONE CONCRETE ETCHING 'E0' - LIGHT GREY
  - 11 SANDSTONE TILE



**PROJECT NO. 15/16**  
**A206**

**CLIENT:** [REDACTED]  
**PROJECT NO.:** [REDACTED]  
**DATE:** [REDACTED]

**DESIGNER:** [REDACTED]  
**SCALE:** [REDACTED]

**DATE:** [REDACTED]

**AXEL RICHTER ARCHITECT**  
 15/16 MURRELL STREET  
 SYDNEY NSW 2145  
 PH: 02 9550 1516  
 WWW.AXELRICHTERARCHITECT.COM





ORCHARD CRESCENT

MURRELL STREET

LEVEL 1  
LEVEL 2  
LEVEL 3  
LEVEL 4  
LEVEL 5  
LEVEL 6  
LEVEL 7  
LEVEL 8  
LEVEL 9  
LEVEL 10  
LEVEL 11  
LEVEL 12  
LEVEL 13  
LEVEL 14  
LEVEL 15  
LEVEL 16  
LEVEL 17  
LEVEL 18  
LEVEL 19  
LEVEL 20

Section East - West  
Scale 1:100

Section North - South  
Scale 1:100

**AXEL RICHTER ARCHITECTS**  
 1 BARRINGTON STREET  
 SYDNEY NSW 2000  
 PHONE: 0433 333 000  
 WWW: WWW.AXELRICHTER.COM

**A301**  
 PRELIMINARY ARCHITECTURAL DRAWING  
 DATE: 2021

PROJECT NAME:  
**ORCHARD APARTMENTS**  
 20 BARRINGTON STREET  
 SYDNEY NSW 2000

DATE: 2021

PROJECT NO:  
 A301

DATE: 2021



UNIT SCHEDULE

20 UNITS PROPOSED IN TOTAL

	1 BR	2 BR	3 BR	SOLAR	CROSS VENTILATION
GROUND FLOOR			1	1	1
FIRST FLOOR	1	2		2	2
SECOND FLOOR	1	2		2	2
THIRD FLOOR	1	2		2	2
FOURTH FLOOR	1	2		2	2
FIFTH FLOOR	1	2		2	2
SIXTH FLOOR			1	1	1
SEVENTH FLOOR			1	2	1
TOTAL	1	10	1	14	13
PERCENTAGE	22%	50%	25%	72%	88%

CAR PARKING IN BALCONY

STANDARD	22
ACCESSIBLE	2
TOTAL	24

BICYCLE PARKING ON GROUND FLOOR

	RESIDENTIAL	VISITOR
GROUND FLOOR	2	2

DEEP SOIL LANDSCAPING

SITE AREA	DEEP SOIL	PERCENTAGE
404.4 m <sup>2</sup>	28.8 m <sup>2</sup>	7.1%

AFFORDABLE HOUSING

Overall m <sup>2</sup> of Affordable Housing Required	Affordable Housing Proposed
288.8 m <sup>2</sup>	288.8 m <sup>2</sup> @ 25% = 82.1 m <sup>2</sup> Units 103, 103.3 m <sup>2</sup>

COMMUNAL OPEN SPACE

65.6 m<sup>2</sup> EXCLUDING PLANTERS EQUIVALENT TO 21% OF SITE AREA

**AXEL RICHTER ARCHITECT**  
 14 BRINDLEY STREET  
 PARRAMATTA NSW 2150  
 PH: 61 2 9615 1024

PROJECT NO. A602

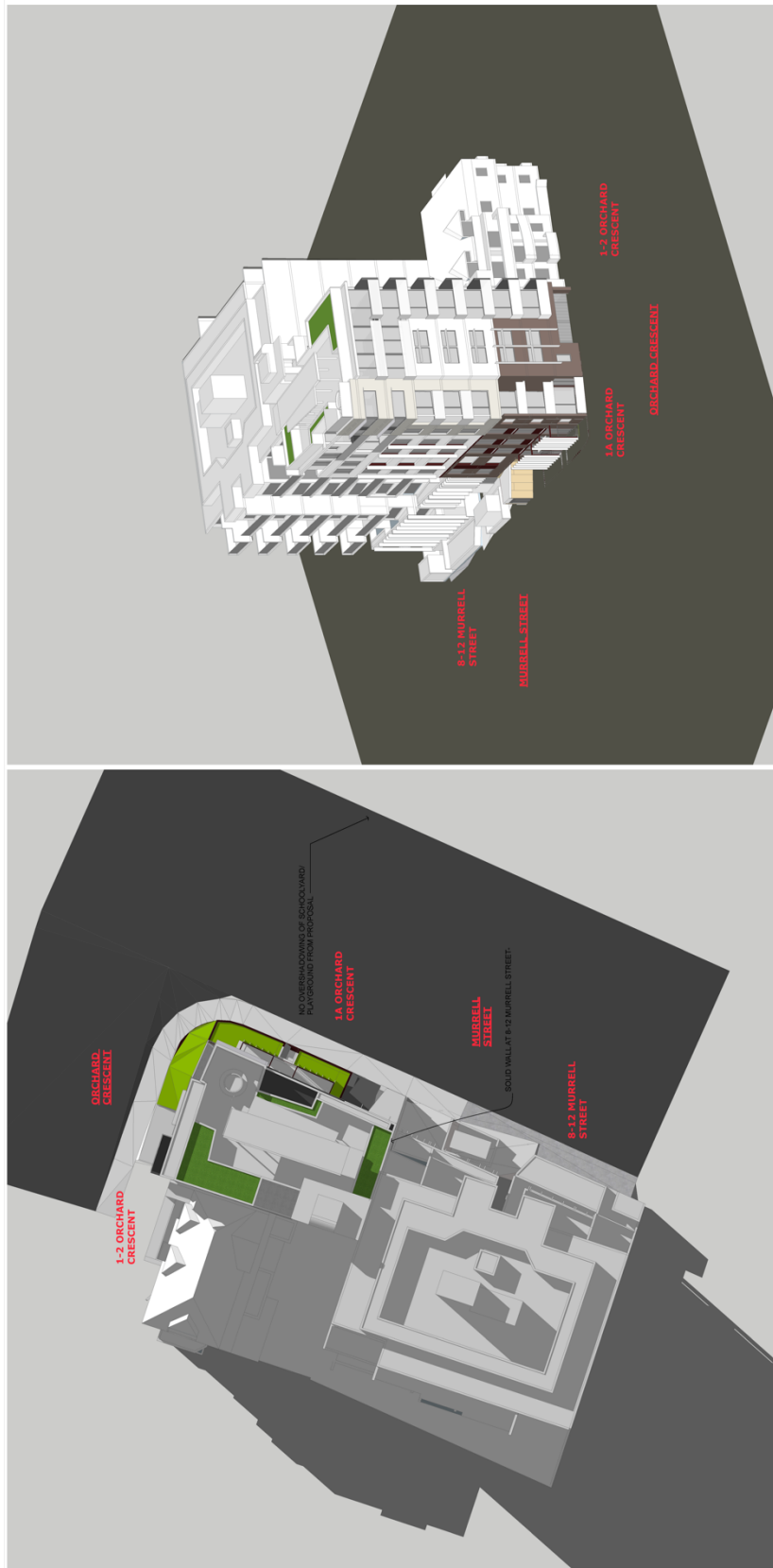
DATE: 10/10/2024  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]

DATE: 10/10/2024  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]

DATE: 10/10/2024  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]



AXEL RICHTER ARCHITECT  
 14 BRINDLEY STREET  
 PARRAMATTA NSW 2150  
 PH: 61 2 9615 1024



9.00 am, 21. JUNE - in plan and view from the sun

PROJECT NAME  
**A603**  
 APPLICANT

PROJECT NO.  
 21  
 DATE  
 21

DATE  
 2021

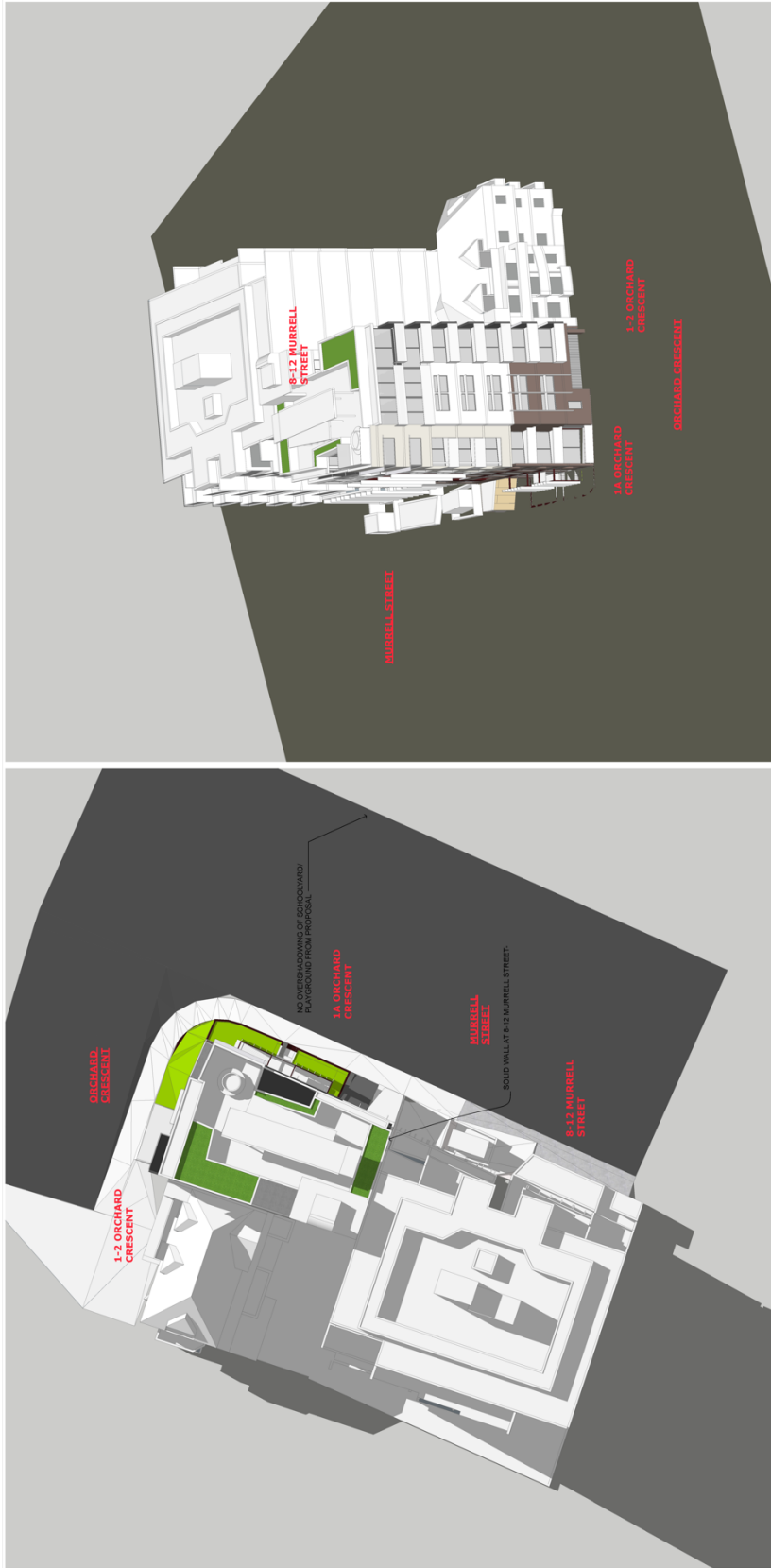
PROJECT NAME  
 ORCHARD APARTMENTS  
 20 ORCHARD STREET  
 SYDNEY NSW 2151



AXEL RICHTER ARCHITECTS  
 1 BARRINGTON STREET  
 SYDNEY NSW 2151  
 PHONE: 0433 333 000  
 WWW: WWW.AXELRICHTER.COM.AU



AXEL RICHTER ARCHITECTS  
 1 BARRINGTON STREET  
 SYDNEY NSW 2151  
 PHONE: 0433 333 000  
 WWW: WWW.AXELRICHTER.COM.AU



10.00 am, 21. JUNE - in plan and view from the sun

**AXEL RICHTER ARCHITECT**  
 1 BARBERDOY STREET  
 SYDNEY NSW 1500  
 PHONE: 0433 335 000  
 NEWCASTLE OFFICE  
 NEWCASTLE NSW 1500

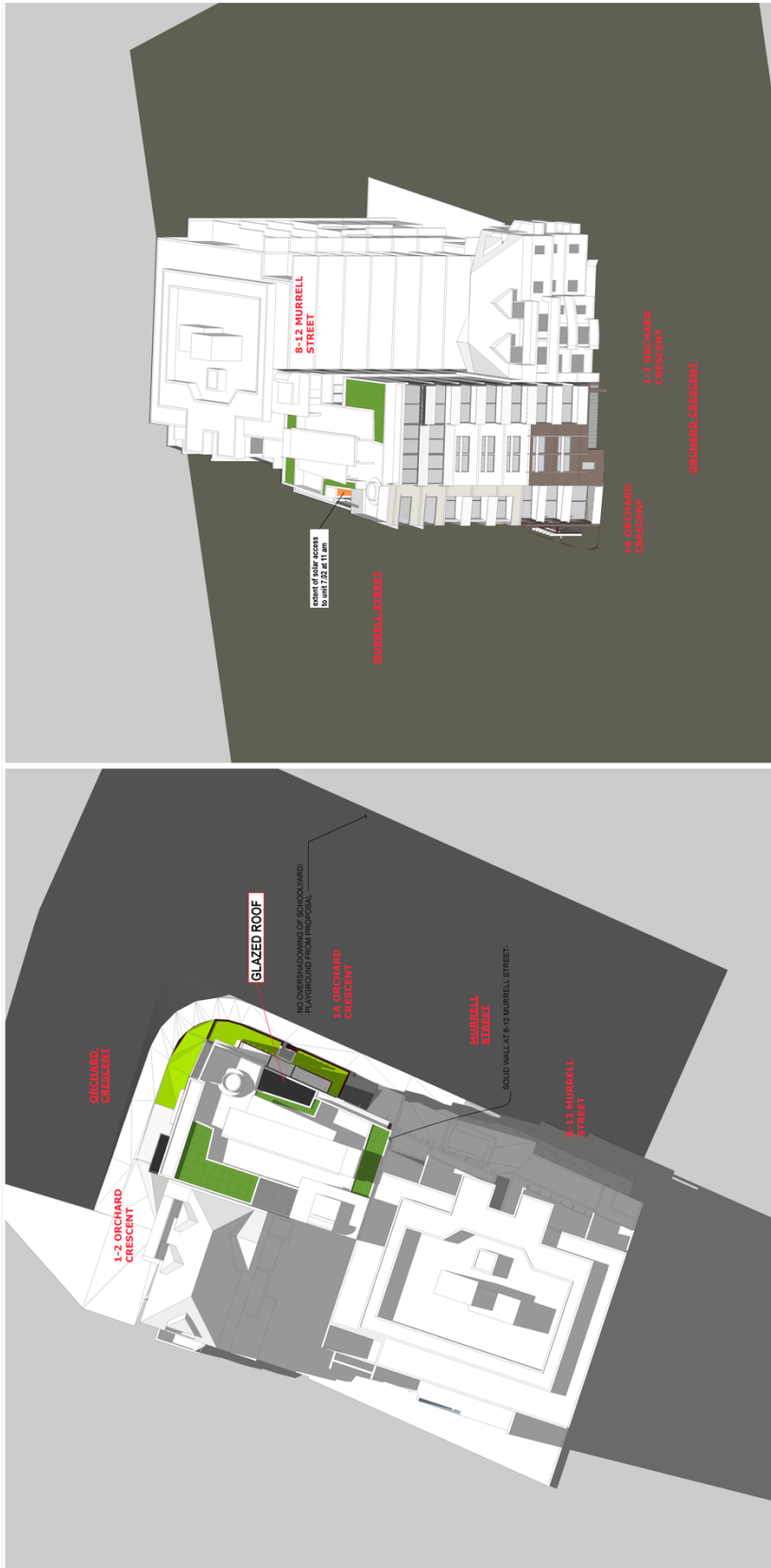


**PROJECT NAME**  
 ORCHARD APARTMENTS  
 1A ORCHARD CRESCENT  
 200 MURRELL STREET  
 NEWCASTLE NSW 1500

**DATE**  
 25 SEPTEMBER 2021

**SCALE**  
 1:100

**PROJECT NO.**  
 A604



11.00 am, 21. JUNE - in plan and view from the sun

**AXEL RICHTER ARCHITECT**  
 1 BARBERSHOPE STREET  
 SYDNEY NSW 2000  
 PHONE: 0433 351 000  
 WWW.ARA.NZ

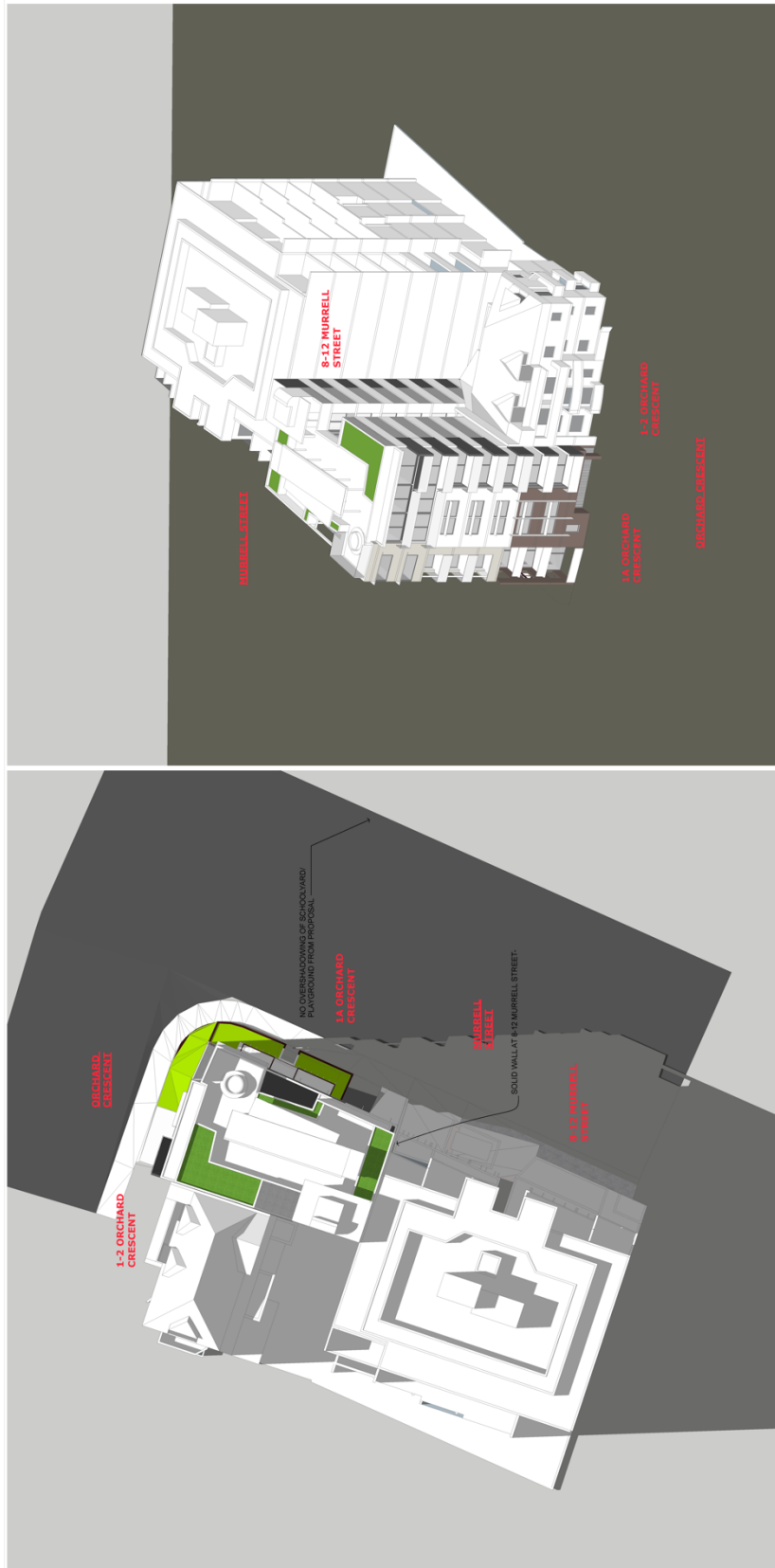


**PROJECT NAME**  
 ORCHARD APARTMENTS  
 200 MURRELL STREET  
 SYDNEY NSW 2000

**DATE**  
 25 SEPTEMBER 2021

**SCALE**  
 SHOWN TO SCALE

**PROJECT NO.**  
 A605



12.00 pm, 21. JUNE - in plan and view from the sun

PROJECT NAME  
ORCHARD APARTMENTS  
200 BUCKLE STREET  
MURRELL AVENUE  
ASPFIELD NSW 2131

DATE  
21. JUNE 2021

PROJECT NO.  
A606

DATE  
21. JUNE 2021

PROJECT NO.  
A606

DATE  
21. JUNE 2021

PROJECT NO.  
A606

DATE  
21. JUNE 2021

PROJECT NO.  
A606

DATE  
21. JUNE 2021

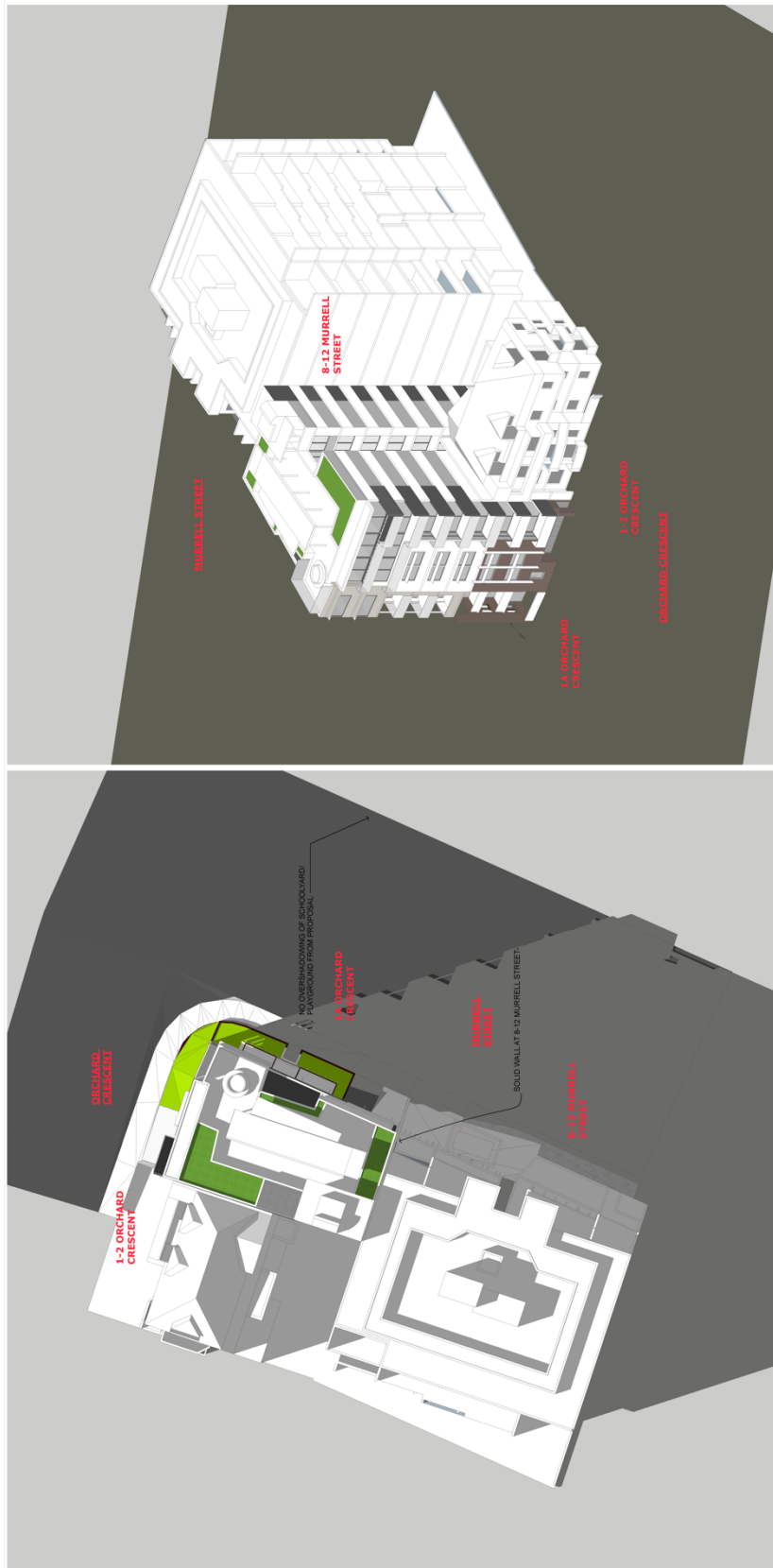
PROJECT NO.  
A606

DATE  
21. JUNE 2021

PROJECT NO.  
A606

DATE  
21. JUNE 2021





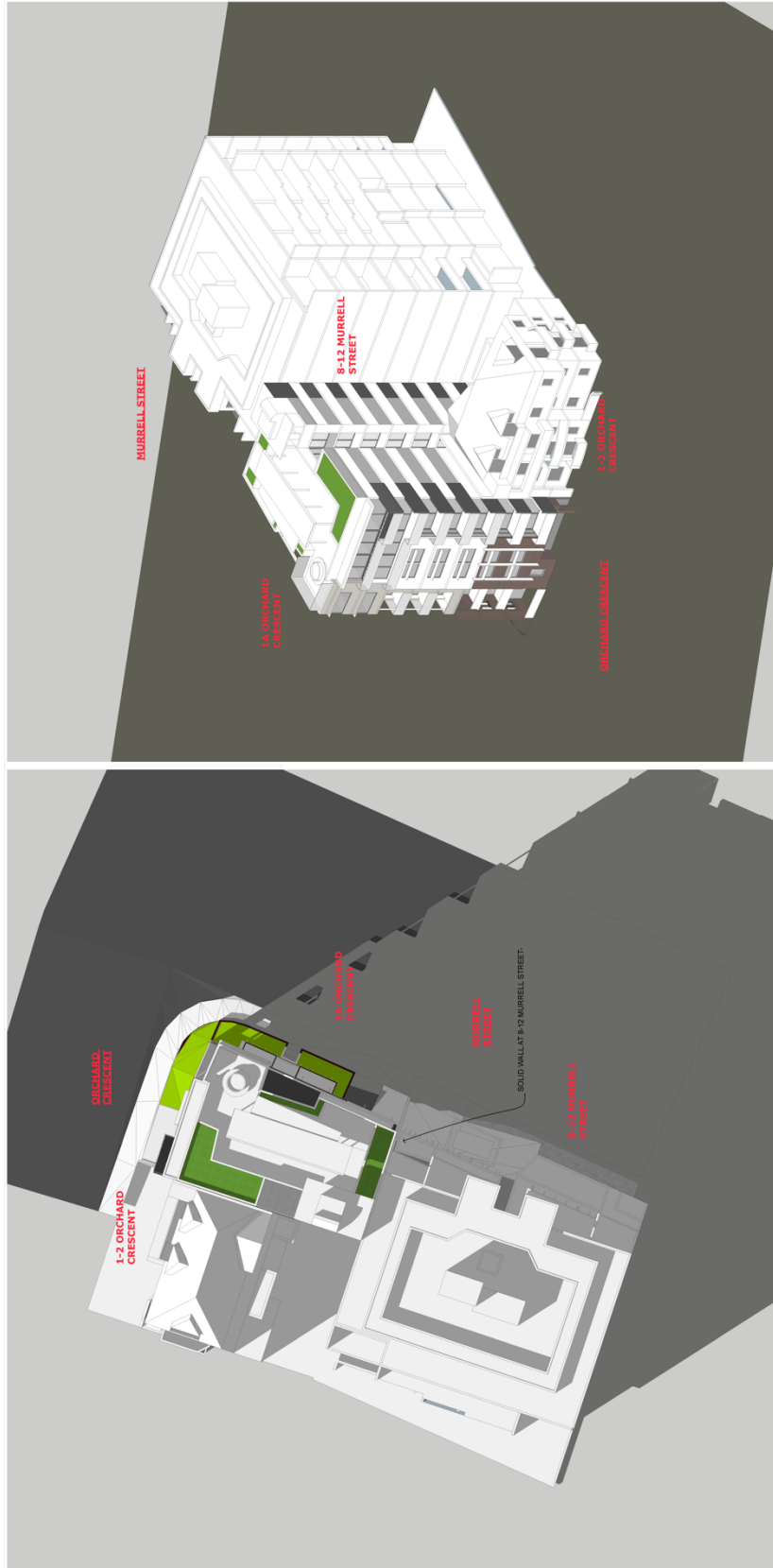
1.00 pm, 21. JUNE - in plan and view from the sun

**AXEL RICHTER ARCHITECT**  
 1 BARRINGTON STREET  
 SYDNEY NSW 2000  
 PHONE: 0433 331 000  
 WWW: WWW.ARXL.COM

**PROJECT NAME**  
 ORCHARD APARTMENTS  
 20 BARRINGTON STREET  
 SYDNEY NSW 2000  
 PROJECT NO.  
 AXR/2016/001

**DATE**  
 25 SEPTEMBER 2016

**PROJECT NO.**  
 A607



2.00 pm, 21. JUNE - in plan and view from the sun

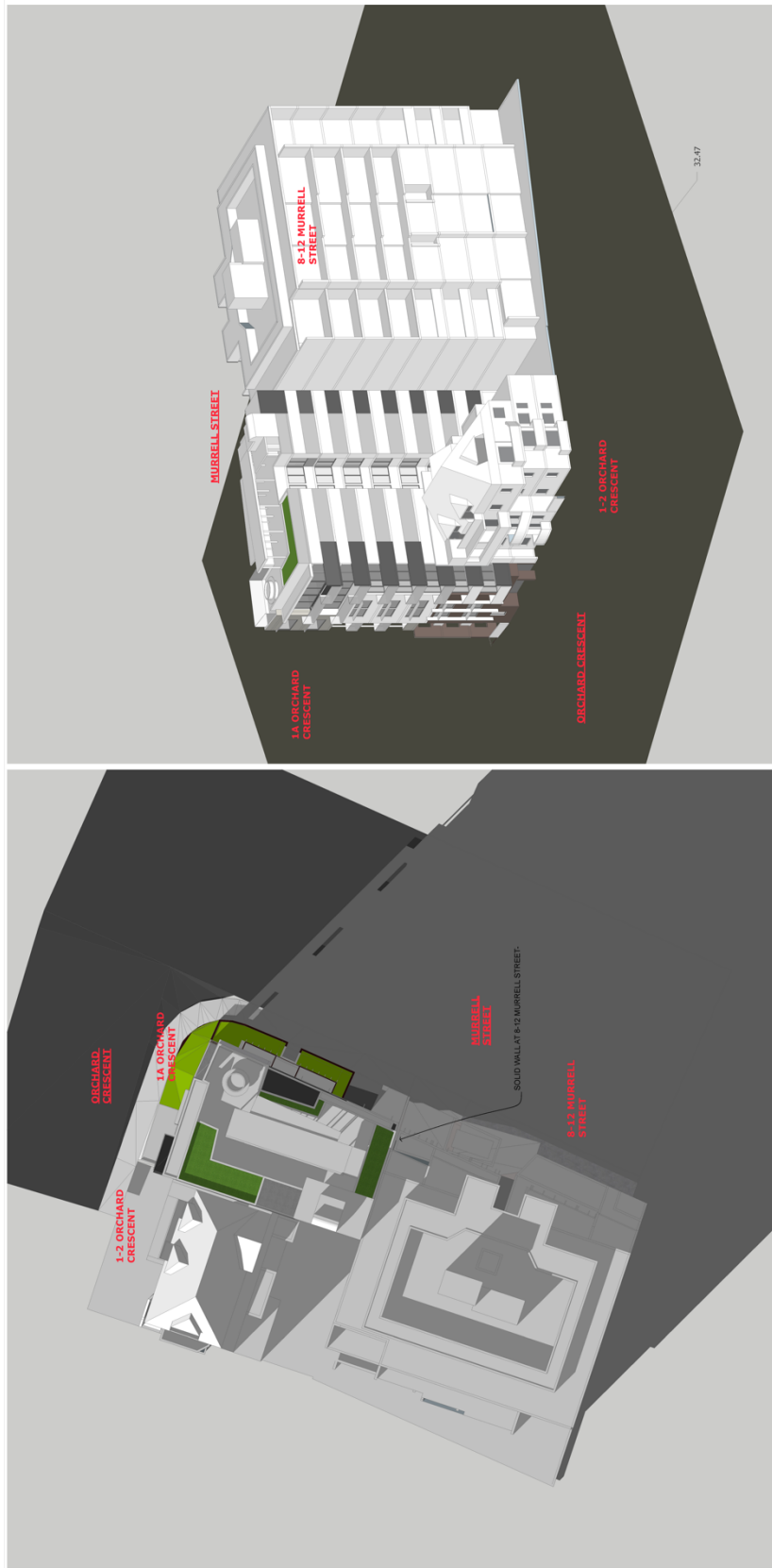
**AXEL RICHTER ARCHITECT**  
 1 BARRINGTON STREET  
 SYDNEY NSW 2000  
 PHONE: 0433 331 000  
 WWW: WWW.ARXL.COM

PROJECT NAME  
 ORCHARD APARTMENTS  
 1-2 ORCHARD CRESCENT  
 8-12 MURRELL STREET  
 SYDNEY NSW 2000

DATE  
 2021

PROJECT NO.  
 20210001

**A608**  
 ARCHITECTURE



3.00 pm, 21. JUNE - in plan and view from the sun

**AXEL RICHTER ARCHITECT**  
 1 BARBERSHOVE STREET  
 SYDNEY NSW 1500  
 PH: 02 9550 0200  
 WWW.ARA.NZ

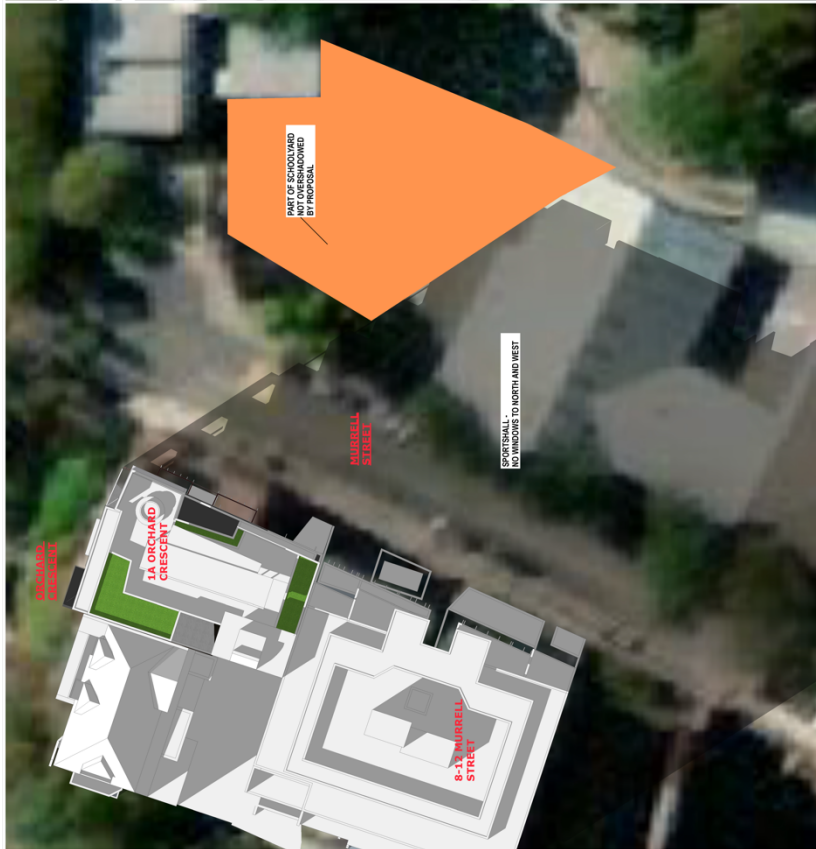


**PROJECT NAME:**  
 ORCHARD APARTMENTS  
 29-33 ORCHARD STREET  
 SYDNEY NSW 1500

**DATE:**  
 25 FEBRUARY 2021  
**PROJECT NO.:**  
 000000

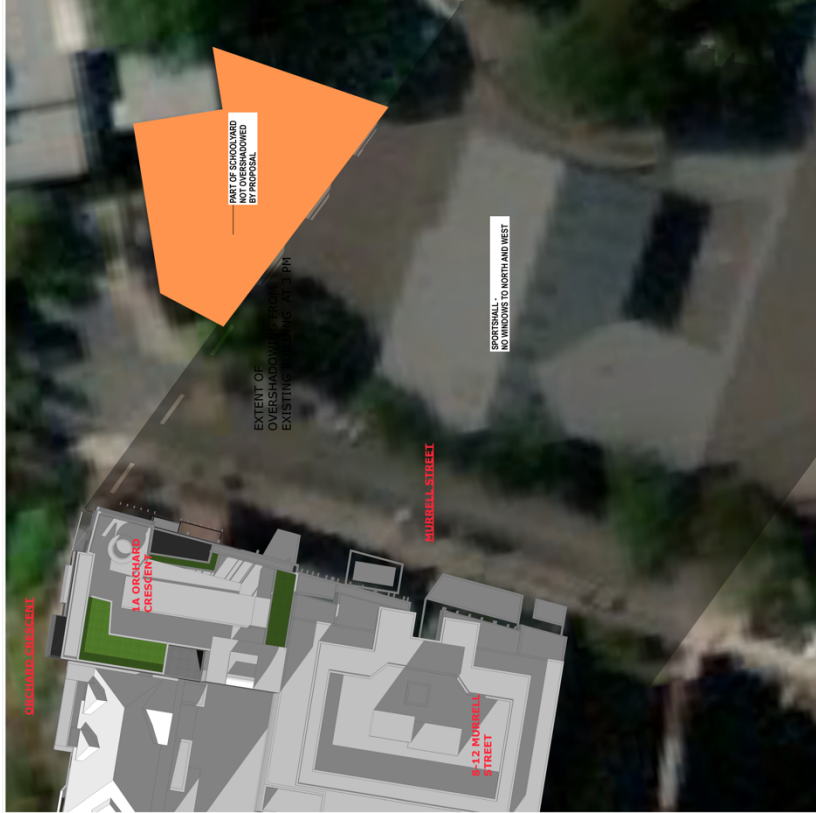
**DESIGNED BY:**  
 AXEL RICHTER ARCHITECT  
 PROJECT MANAGER

**PROJECT NO.:**  
 A609



2 pm

21. JUNE - Shade on Schoolyard



3 pm

**AXEL RICHTER ARCHITECT**  
 1 BARBERDOY STREET  
 NEWCASTLE NSW 2260  
 PHONE: 0483 393 099  
 NEWCASTLE OFFICE: 0483 393 099



**PROJECT NAME**  
 GRAND APARTMENTS  
 200-202 MURRELL STREET  
 NEWCASTLE NSW 2260



**PROJECT NO.**  
 20240001

**DATE**  
 2024/06/25

**SCALE**  
 1:100

**A610**  
 SHADING STUDY

## Attachment C- Clause 4.6 Exception to Development Standards



### ANNEXURE D

Clause 4.6 Variation -  
FSR – Clause 4.4



Planning Ingenuity Pty Ltd

Document Set ID: 35195324

Version: 1, Version Date: 13/08/2021



## Clause 4.6 Variation Statement – FSR (Clause 4.4 of ALEP 2013)

### 1. Introduction

This Variation Statement has been prepared in accordance with Clause 4.6 of Ashfield Local Environmental Plan 2012 (ALEP 2013) to accompany a development application to Inner West Council in respect of No.1A Orchard Crescent, Ashfield. The subject Development Application seeks consent for demolition of existing structures, excavation and construction of an 8 storey residential flat building with associated basement car parking at No.1A Orchard Street, Ashfield. This will result in an exceedance to the maximum permitted FSR standard.

### 2. Proposed variation to the Exceptions to FSR Standard

Clause 4.4 of the LEP provides a maximum FSR for the site of 3:1 (GFA – 1,225.2m<sup>2</sup>).

Floor space ratio is defined in ALEP 2013 as:

*“(2) Definition of “floor space ratio”  
The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area”*

The total proposed FSR for the site is 4.04:1 (GFA 1,652.1m<sup>2</sup>) which equates to a variation of 426.9m<sup>2</sup> or 34.8%.

The floor space ratio control is a “development standard” to which exceptions can be granted pursuant to clause 4.6 of the LEP.

### 3. Clause 4.6 to Ashfield LEP 2013

The exceptions to FSR standard is a “development standard” to which exceptions can be granted pursuant to clause 4.6 of the LEP.

The objectives and provisions of clause 4.6 are as follows:

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

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

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

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

*(4) Development consent must not be granted for development that contravenes a development standard unless—*

- (a) the consent authority is satisfied that—*

Planning Ingenuity Pty Ltd

Document Set ID: 35195324

Version: 1, Version Date: 13/08/2021



- (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.
- Note. When this Plan was made it did not include all of these zones.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
- (c) clause 5.4."

The development standard in clause 4.4 is 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 submission will address the requirements of subclauses 4.6(3) and (4). 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).

As previously noted Clause 4.4 of the LEP permits an overall FSR of 3:1. It is hereby requested that an exception to this development standard be granted pursuant to clause 4.6 so as to permit an overall FSR for the site of 4.04:1 which equates to a variation of 426.9m<sup>2</sup> or 34.8%.

#### 4. Compliance with the standard is unreasonable or unnecessary

Clause 4.6(3)(a) requires that the written request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case.

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:

Planning Ingenuity Pty Ltd

Document Set ID: 35195324

Version: 1, Version Date: 13/08/2021



*"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.*

For an objection to be well-founded it is only necessary for an applicant to demonstrate that any one of these five different ways is applicable. In the present case, it is the first method that is relied upon, namely that the objectives of the standard are achieved notwithstanding non-compliance with the standard as outlined in this statement.

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. In addition, requiring strict compliance with the standard is unreasonable or unnecessary because:

- The development is consistent with the standard and zone objectives, even with the proposed variation;
- There are no significant adverse impacts arising from the proposed non-compliance;
- The development seeks to utilise bonus height permissible under Clause 4.3A by providing affordable housing, this in turn has an associated GFA uplift; and
- Important planning goals are better achieved by the approval of the variation.

In terms of the last point, the relevant planning goals are set out below.

Clause 1.2(2) of ALEP 2013 sets out the plan's aims. Clause 1.2(2) provides the aims for the plans, the relevant aims in this instance are:

*"(d) to provide increased housing choice in locations that have good access to public transport, community facilities and services, retail and commercial services and employment opportunities,*

*(e) to strengthen the viability and vitality of the Ashfield town centre as a primary centre for investment, employment, cultural and civic activity, and to encourage a majority of future housing opportunities to be located within and around the centre, The proposal is consistent with each of the above stated objectives as it provides high quality accommodation."*

The B4 – Mixed Use zone objectives are better achieved by allowing the variation (as set out in Section 8 below).

Approval of the variation will give better effect to the aims of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65). In particular:





- The proposed variation will provide more sustainable housing in social and environmental terms and better achieve urban planning policies (clause 2(3)(a)(i)).
- Approval of the proposed variation will provide an extended mix of dwelling types to meet population growth (clause 2(3)(f)).
- Approval of the proposed variation will support housing affordability by providing a well-located high density housing that will be a better choice for families (clause 2(3)(g)).

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.

#### 5. Sufficient environmental planning grounds

Clause 4.6(3)(b) requires that the written request to vary a development standard demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard. In order to demonstrate that there are sufficient environmental planning grounds to justify varying the development standard, all of the points set out in Section 4 are relevant as well.

There is no planning purpose to be served by limiting the residential FSR to the maximum allowable given the absence of significant amenity related impacts and compliance with the objectives of the development standard and zone. In addition, the FSR variation is a direct consequence of seeking bonus height pursuant to Clause 4.3A of the LEP and allows for the delivery of affordable housing.

The non-compliance will have no adverse impact on adjoining properties with regard to visual impacts or overshadowing. To require strict compliance would not result in any real planning benefit and would in fact be counterproductive as it would result in the loss of additional high quality accommodation and remove the affordable housing element proposed within the locality. To insist on strict compliance would thwart and preclude the redevelopment of the land to a reasonable standard, and not allow the site to reach its full development potential.

To not provide additional residential accommodation in this growing area and one that has been identified by Inner West Council as capable of increased density, would represent a suboptimal outcome. The avoidance of this suboptimal outcome is, in itself, a sufficient environmental planning ground to justify contravening the development standard, given that the adverse impacts of the proposed development would be materially the same as the approved development.

The proposed additional FSR is considered acceptable on “planning grounds” and meets objective 1(b) of clause 4.6 in that allowing flexibility in the particular circumstances of this development it will achieve “a better outcome for and from development” because:

- The additional floor space is proposed is a consequence of seeking the height bonus pursuant to Clause 4.3A of the LEP. This allows for additional height subject to the provision of an element of affordable housing. As such, there is a corresponding uplift in GFA which is unavoidable if the additional height bonus is to be of any benefit. There is a clear and direct public benefit associated with the affordable housing element proposed in conjunction with the development;
- The non-compliance will have no adverse impact on adjoining properties with regard to visual impacts or overshadowing. The additional shadow is not significant with only the front elevation of No.8-12 Murrell Street receiving some modest additional overshadowing at 9am on midwinter. This elevation is south east facing and therefore it is not orientated appropriately direct sunlight after 9am regardless. To require strict compliance would not have any planning benefit and would in fact be counterproductive as it would result in the loss of additional high quality accommodation and affordable housing within the locality. To insist on strict compliance



would thwart and preclude the redevelopment of the land to a reasonable standard, and not allow the site to reach its full development potential;

- Despite the non-compliance, the objectives of the FSR standard have been achieved as demonstrated below in section 7;
- The non-compliance provides a suitable transition to the adjoining properties likely to undergo a similar transition to higher density development in the future; and,
- The variation to FSR does not impact on views or outlook, the streetscape appearance is not adversely impacted by the variation and does not result in any adverse impacts to neighbouring properties.
- An FSR exceedance was previously supported by Council under the previous DA for the site (0102019000203.1). The subject exceedance is provides similar benefits to the previous DA, albeit with an enhanced building form and design. It follows that it the subject exceedance should also therefore be supported.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

*"86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*

*87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard."*

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

The merits of the proposal on "environmental planning grounds" needs to be balanced with the burden that strict compliance places on the site and whether strict compliance will result in a sufficient outcome. The development has been designed to provide a high quality urban outcome, with the additional levels having no adverse impact on the views, privacy and amenity of neighbouring properties. The non-compliance has no perceptible impact on the streetscape and is within the building envelope set by the applicable height bonus and the relevant DCP controls.

The proposed FSR 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 absence of amenity related impacts, that the development is seeking to make use of a height bonus under the LEP and will be delivering an element of affordable housing. There

Planning Ingenuity Pty Ltd

Document Set ID: 35195324

Version: 1, Version Date: 13/08/2021



will be no significant or unreasonable additional shadow, no obstruction of views and no opportunities for overlooking resulting from the additional levels.

To require strict compliance would therefore result in a burden on the development with no demonstrable built form or amenity benefits, particularly given the development directly response to desired future character sought for the area by Inner West Council and is a direct consequence of utilising an LEP height bonus. As such the proposal results in a high quality mixed use development which is suited to the site and its context and broader strategy based controls.

#### 6. Clause 4.6(4)(A)

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in 7a below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in sections 7 and 8 below.

#### 7. Objectives of the standard

Clause 4.6(4) requires the consent authority to be satisfied that the objectives of the standard are met.

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.*

In order to address the requirements of subclause 4.6(4)(a)(ii), each of the relevant objectives of clause 4.3 are addressed in turn below.

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

Despite non-compliance with the numeric standard, the additional density has been arranged and configured within the site to achieve an urban form that is appropriate to the emerging context, as described below.

- The FSR variation is a direct consequence of utilising the additional height bonus pursuant to Clause 4.3A of the LEP. The building is consistent with the bonus height standard and the relevant building envelope controls



contained within the DCP. Therefore the visual bulk of the proposal is as anticipated by Council when establishing the suite of controls and standards applicable to the site.

- The corner location of the site provides opportunity to take on additional density without appearing overbearing or out of scale with limited impacts and appropriate prominent corner presence.
- The proposal will achieve a density and scale that is characteristic of the anticipated urban form, despite non-compliance with the FSR control.
- The development is of a similar height to the recently completed residential flat building at No. 8-12 Murrell Street, immediately adjacent to the subject site.
- An important factor that determines the apparent density of a development is the degree of façade articulation and the quality and arrangement of external treatments. The building provides varied and interesting façade articulation which is enhanced by material variety and building modulation on upper levels. This is a significant enhancement on the previously refused proposal on the site.
- The minor increase in intensity of land use is anticipated from the proposal and will have no detrimental impacts to the function and form of the urban environment in which it is located.
- The additional building scale will positively contribute streetscape and provides for good natural ventilation and solar access and sets a highly functional, practical and desirable precedent for the redevelopment of neighbouring sites. The building design and form will fit within the existing and desired future streetscape and will contribute to a high density urban environment envisaged by planning controls for this part of the Ashfield Town Centre.

In summary, the proposal is considered to represent a development density that will achieve an appropriate urban form for the site context within Ashfield Town Centre, despite non-compliance with the floor space ratio development standard. Accordingly, the proposal satisfies Objective (a) of the floor space ratio standard.

**Objective (b)** “to provide consistency in the bulk and scale of new development with existing development,”

As noted, the development is consistent with the bonus height standard pursuant to Clause 4.3A of the LEP and the relevant building envelope controls contained within the DCP.

The development is of a similar height to the approved and recently completed residential flat building at No. 8-12 Murrell Street, and is consistent with the bulk and scale of the desired future character of Ashfield.

Accordingly, the proposal satisfies Objective (b) of the floor space ratio standard.

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

Not applicable, the site is not adjacent to any heritage conservation areas or heritage items.

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

As noted, the development is designed to have no adverse impact on adjoining properties or the public domain. Primary windows provide outlook to Orchard Crescent and Murrell Street. No windows are provided on the southern and western elevation, thus avoiding any direct cross views towards No. 8-12 Murrell Street or No. 1-2 Orchard Crescent.

There is some minor additional overshadowing to part of the front façade of No. 8-12 Murrell Street. This is an unavoidable consequence of site orientation and urban block layout. The elevation in question is south east facing and therefore only receives oblique solar access for a short period around 9am on the mid-winter, and none throughout the remainder of the day. The additional overshadowing is therefore not considered to result in adverse impact on the adjoining development.



Accordingly, the proposal satisfies Objective (d) of the floor space ratio standard.

**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 site is within an area which is undergoing transformation, and has been zoned as such. Whilst the school site opposite is unlikely to see substantial change, the FSR variation will have no adverse impact on that site. The development is consistent with the established DCP and LEP controls (making use of the bonus height standard), as such any impact on the school site has been anticipated by the suite of controls and standards applicable to the site.

Accordingly, the proposal satisfies Objective (e) of the floor space ratio standard.

#### 8. Objectives of the Zone

Clause 4.6 (4) also requires consideration of the relevant zone objectives. The objectives of the B4 – Mixed Use zone are as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To enhance the viability, vitality and amenity of Ashfield town centre as the primary business activity, employment and civic centre of Ashfield.*
- *To encourage the orderly and efficient development of land through the consolidation of lots.*

The proposed development and FSR variation is not antipathetic to the above objectives. Residential use is permissible in the zone (being an innominate use), as such, it is compatible. The site is within 230m of Ashfield Railway station and will encourage public transport use, walking and cycling as a result (cycle storage is proposed).

The provision of additional housing is likely to enhance the viability, vitality and amenity of Ashfield Town centre as it is highly likely that future occupants will make use of town centre’s extensive facilities, therefore contributing to their continued use.

The development is taking place on a single lot, it does not result in lot isolation for any adjoining site and does not seek consolidation of lots.

Clause 4.6(4)(a)(ii) also requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives.

The proposed development is consistent with the relevant zone objectives in that it will provide additional residential accommodation, including affordable housing, (and as a consequence additional commercial patronage to the Ashfield Town Centre) within a building form which is consistent with relevant LEP standards, DCP controls and the ADG. The development is a compatible land use within the B4 Mixed Use zone and is within an accessible area with excellent public transport options. The site is located within the established Ashfield Town Centre which contains a variety of commercial premises, community facilities and recreational land uses. By virtue of its location the development will encourage walking and cycling and patronage of public transport.

#### 9. Secretary’s Concurrence

The issue of the concurrence of the Secretary of the Department of Planning and Environment is dealt with by Planning Circular PS 18–003 ‘Variations to development standards’, dated 5 May 2020. This circular is a notice under 64(1) of the Environmental Planning and Assessment Regulation 2000. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The circular provides for assumed concurrence.



Concurrence cannot be assumed for a request for a variation to a numerical standard by more than 10 per cent if the function is to be exercised by a delegate of the consent authority. This restriction does not apply to decisions made by local planning panels, who exercise consent authority functions on behalf of councils but are not legally delegates of the council. The subject variation exceeds 10% and will be subject to Local Planning Panel determination.

The Secretary can be assumed to have given concurrence to the variation.

10. Matters of State or Regional Environmental Planning

Pursuant to Clause 4.6(5)(a), contravention of the maximum floor space ratio standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

11. Public Benefit of Maintaining the Development Standard

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the FSR development standard. As such there is no public benefit in maintaining strict compliance with the development standard. Whilst the proposed overall FSR will exceed the standard by 34.8% the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

12. Conclusion

Having regard to all of the above, it is our opinion that compliance with the FSR development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach. Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis the requirements of Clause 4.6(3) are satisfied and the variation supported.

