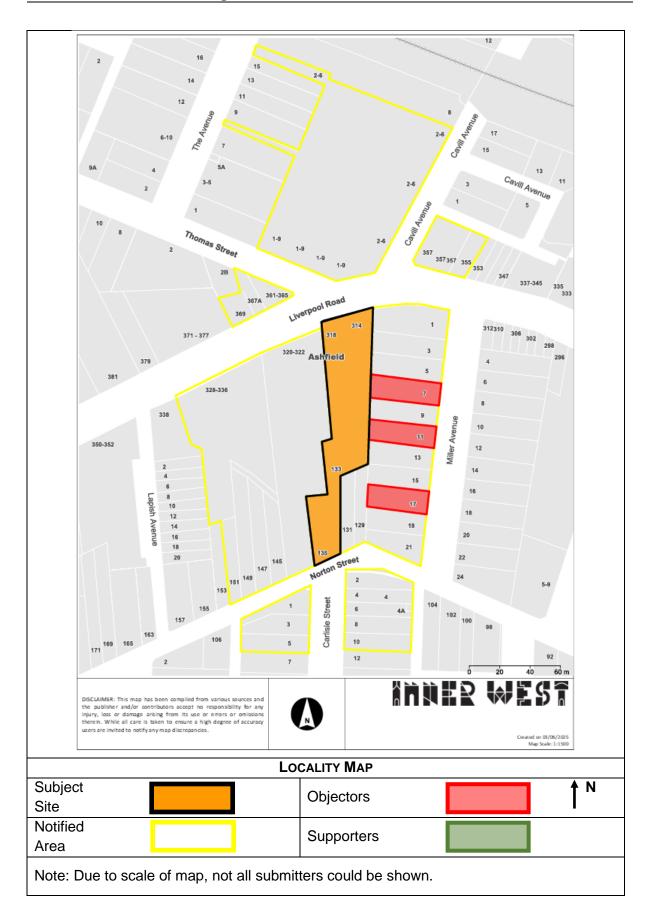
DEVELOPMENT ASSESSMENT PANEL REPORT		
Application No.	DA/2024/0882	
Address	314 Liverpool Road ASHFIELD	
Proposal	Alterations and additions to an approved Residential Flat Building under DA/2020/0583 dated 17 September 2021, which includes the construction of a new 3rd level with 7 additional residential units and the allocation of 11 affordable housing units.	
Date of Lodgement	23 October 2024	
Applicant	Mr Tony Sukkar	
Owner	Mr Tony Sukkar	
	Mrs Mouna Sukkar	
Number of Submissions	Initial: 3	
	After Renotification: 2	
Cost of works	\$2,328,547.00	
Reason for determination	Development to which State Environmental Planning	
at Planning Panel	Policy (Housing) 2021, Chapter 4 (Design of residential	
	apartment) applies and is 4 or more storeys in height.	
Main Matters	 Height of Buildings development standard variation Landscaped Area non-discretionary development standard variation Car parking (visitor) non-discretionary development standard variation Existing use rights Apartment Design Guide (building separation) 	
Recommendation	Approved with Conditions	
Attachment A	Recommended conditions of consent	
Attachment B	Plans of proposed development	
Attachment C	Section 4.6 Exception to Development Standards – Height of Buildings	
Attachment D	Section 4.6 Exception to Development Standards –	
	Landscaped Area	
Attachment E	Section 4.6 Exception to Development Standards – Car	
	Parking	



1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to an approved Residential Flat Building under DA/2020/0583 dated 17/9/2021, which includes the construction of a new 3rd level with 7 additional residential units and the allocation of 11 affordable housing units. at 314 Liverpool Road ASHFIELD.

The application was notified to surrounding properties and three (3) submissions were received in response to the initial notification. The application was renotified due to an error and two (2) submissions were received in response to renotification of the application, one submission was in support of the application.

The main issues that have arisen from the application include:

- Landscaped area non-compliance under Section 19(2)(b) of State Environmental Planning Policy (Housing) 2021
- Shortfall in carparking for visitors under Section 148(2)(a) of State Environmental Planning Policy (Housing) 2021
- Height of building variation under Section 4.3 of Inner West Local Environmental Plan 2022 (IWLEP);
- Apartment Design Guide variations (separation, visitor carparking);
- · Overshadowing.

Despite the identified non-compliances, the proposal is considered acceptable in the context of the site and surrounding development and is supported on merit. Accordingly, the application is recommended for approval, subject to conditions.

2. Proposal

Consent for the approved development at the subject site was originally granted by the Land and Environment Court under DA/2020/0583. The approved development involved the demolition of existing structures and the construction of a residential flat building with basement car parking. The development consent was subsequently modified under MOD/2023/0316 to allow for various internal and external alterations.

The approved development comprises 46 residential units across two buildings:

- Building A, fronting Liverpool Road, and
- Building B, fronting Norton Street.

Construction of the approved development is currently underway and partially completed.

Approved Development (DA/2020/0583 as modified by MOD/2023/0316)

Lower Ground Floor

- Building A: Basement car park with 45 spaces, including 11 visitor spaces and 6 accessible spaces, 1 car wash bay, 5 motorcycle spaces, 5 bicycle spaces, two garbage rooms, services, and storage areas.
- Building B: One studio unit facing Norton Street, three at-grade parking spaces (including one visitor space), a bin holding area, and common open space.

Ground Floor

- Building A: Four studio units, one 1-bedroom unit, seven 2-bedroom units, and one 3-bedroom unit. This level includes pedestrian access from Liverpool Road and a communal open space area.
- Building B: Two studio units and one 2-bedroom unit.

Level 1

- Building A: Five 1-bedroom units, seven 2-bedroom units, and one 3-bedroom unit.
- Building B: Two studio units and one 2-bedroom unit.

Level 2

- Building A: Five 1-bedroom units, seven 2-bedroom units, and one 3-bedroom unit.
- Building B: Non-trafficable roof.

Level 3

- Building A: Rooftop communal open space.
- Building B: Non-trafficable roof.

Current Development Application

The current Development Application seeks approval for alterations to the approved development to enable its use as an in-fill affordable housing development. The proposal includes the addition of a fourth storey to Building A and seeks to utilise the floor space bonus provisions under *State Environmental Planning Policy (Housing)* 2021.

The following is a summary of the proposed additional works:

Lower Ground Floor

- Building A: Reconfigured basement layout to provide 46 car parking spaces, including 5 visitor spaces, 6 accessible spaces, 1 car wash bay, 2 motorcycle spaces, and 8 bicycle spaces.
- Building B: No changes proposed.

Ground Floor

- Building A: New private courtyards to Bedroom 1 of Units G.12 and G.13; two external bicycle racks on the eastern tiled walkway; designation of Units G.2, G.3, G.4, and G.9 as affordable housing.
- Building B: No changes proposed.

Level 1

- Building A: Designation of Units 1.1, 1.2, 1.3, 1.4, and 1.7 as affordable housing.
- Building B: No changes proposed.

Level 2

- Building A: Reconfiguration of Units 2.8, 2.9, and 2.10 into 3-bedroom split-level units (spanning Levels 2 and 3); designation of Unit 2.2 as an affordable housing unit.
- Building B: No changes proposed.

Level 3

- Building A: Construction of one studio unit, three 1-bedroom units, and three 2-bedroom units, as well as the upper levels of the split-level Units 2.8, 2.9, and 2.10.
- Building B: Non-trafficable roof (unchanged).

Roof Level

- Building A: Rooftop communal open space and a non-trafficable roof area.
- Building B: Non-trafficable roof (unchanged).

3. Site Description

The subject site is located on the southern side of Liverpool Road and the northern side of Norton Street, between Miller Avenue and Lapish Avenue. It is legally described as Part Lot 100 in Deposited Plan 1283052. The site has a primary frontage of approximately 31 metres to Liverpool Road and a secondary frontage of approximately 17.7 metres to Norton Street. The land slopes approximately 3.8 metres from the Liverpool Road frontage down to Norton Street and has a total site area of approximately 3,116 square metres.

The site is currently under construction, with works being carried out in accordance with the approved development under DA/2020/0583, as modified by MOD/2023/0316, for a residential flat building.

To the east, the site adjoins properties located within the Miller Avenue Heritage Conservation Area (HCA), which are characterised by single-storey dwelling houses. To the west, adjoining properties comprise a single-storey dwelling house and a three-storey commercial building. The subject site is also identified as flood-prone.

The land is zoned part MU1 Mixed Use and part R3 Medium Density Residential under the *Inner West Local Environmental Plan 2022* (refer to Figure 3 below).



Figure 1: Photo of subject site as viewed from Liverpool Road.



Figure 2: Photo of subject site as viewed from Norton Street.

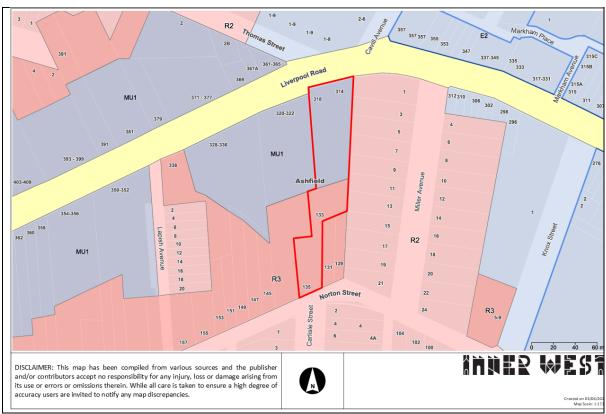


Figure 3: Zoning Map (subject site outlined in red)

4. Background

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
MOD/2023/0316	Section 4.56 modification to approved residential flat building including minor internal and external changes.	
	<u> </u>	
DA/2020/0583	Residential flat development with basement car parking	Upheld with Amended Plans - Court - 17/09/2021

Surrounding properties

Not applicable.

Application history

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

Date	Discussion / Letter / Additional Information
13/01/2025	A request for further information was sent to the applicant requiring the
	following;
	Amended plans to increase affordable housing component to
	comply with Housing SEPP requirements.
	Increased affordable housing component to comply with FSR bonus
	under Housing SEPP.
	Increased affordable housing component to comply with height of
	building bonus under Housing SEPP.
	Section 4.6 request to address landscaped area non-compliance
	under Section 19(2)(b) of the <i>Housing SEPP</i> .
	Strata subdivision plans to detail the proposed layout changes and
	provision of additional units, including the allocation of carparking.
	Design changes to address matters raised by the Architectural
	Excellence and Design Review Panel.
	Amended plans demonstrating adequate visitor car parking spaces.
	Revised Traffic Report to address parking shortfall.
	Amended plans demonstrating compliance with bicycle parking
	provisions under the DCP.
	Amended shadow diagrams.
	Amended plans to address impacts on the adjoining Heritage
	Conservation Area, including materials and finishes.
17/02/2025	Applicant provided response to Council's additional information request.
28/02/2025	A request for further information was sent to the applicant requiring the
20,02,2020	following;
	Revised gross floor area calculations.
	 Clarification on inconsistencies in the identification of affordable
	housing units.
	 Additional affordable housing component needed to comply with
	FSR and building height sought.
	Inadequate bicycle parking.
	Inadequate shadow diagrams.
21/03/2025	Applicant provided response to Council's additional information request.
1/04/2025	Council wrote to the applicant requesting further clarification on the
1/04/2023	following unresolved matters:
	Discrepancies were identified between the affordable housing
	schedule and the units labelled as affordable housing on the plans.
	Additional dedication of affordable housing is required to meet the proposed FSR sought under the application.
	Clarification was sought whether the sectional views show the 3- metre height of building limitation intersecting the building where the
	metre height of building limitation intersecting the building where the
	building's GFA is contained.

2/04/2025	Applicant provided response to Council's additional information request.
11/04/2025	Council wrote to the applicant requesting further clarification on the
	following unresolved matters:
	Additional affordable housing component is required to access the
	height bonus. Specifically, the applicant had not demonstrated that
	the proposal complies with Section 4.3(2A) of the IWLEP 2022.
16/04/2025	Applicant provided amended plans in response to Council's additional
	information request.
13/05/2025	Council wrote to the applicant advising updated Clause 4.6 requests
	were required to address building height, landscaped area and
	carparking variations.
23/05/2025	Applicant provided further information in response to Council's
	additional information request.

The amended plans and supporting documentation that were received in response to Council's requests for additional information were not required to be renotified in accordance with Council's Community Engagement Strategy. The amended plans and supporting documentation are the subject of this report.

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* (*EP&A Act 1979*).

A. Environmental Planning Instruments

Section 4.67 of the *EP&A Act 1979* "Regulations respecting existing use" provides that the regulations may make provision for matters with respect to existing uses and those provisions (incorporated provisions) are taken to be incorporated in every environmental planning instrument. Importantly, an environmental planning Instrument (EPI) can contain provisions *extending*, *expanding* or *supplementing* the incorporated provisions but to the extent that the environmental planning instrument derogates from the incorporated provisions, it has no force or effect.

The judgements of Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71 and Stromness Pty Limited v Woollahra Municipal Council [2006] NSWLEC 587 found that while it is acceptable to consider the relevant EPIs as they apply to the surrounding area of the development site, failure to comply with standards in an environmental planning instrument cannot be a consideration in the assessment of the application based on existing use rights.

Notwithstanding the above, to undertake a thorough assessment of the proposal, this report provides an assessment of the proposed development against the controls which would typically apply to residential flat buildings in a relevant zone.

The application has been assessed and the following provides a summary of the relevant Environmental Planning Instruments.

State Environmental Planning Policies (SEPPs)

SEPP (Resilience and Hazards) 2021

Chapter 4 Remediation of land

Section 4.6(1) of the *Resilience and Hazards SEPP* requires the consent authority not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

In considering the above, there is no evidence of contamination on the site.

There is also no indication of uses listed in Table 1 of the contaminated land planning guidelines within Council's records. The land will be suitable for the proposed use as there is no indication of contamination.

SEPP (Housing) 2021

Chapter 2 Affordable housing

Section	Proposed	Compliance Yes/No
15C Development to which divisi	on applies	
(1) This division applies to developme	ent that includes residential developme	nt if—
(a) the development is permitted with consent under Chapter 3, Part 4, Chapter 5 or another environmental planning instrument, and	and R3 Medium Density Residential, which prohibits	Yes, see comments
(b) the affordable housing component is at least 10%, and	Total GFA proposed: 4,188.5m ² Affordable housing (AH) component: 600m ² = 14.325%	Yes

(c) all or part of the development is carried out— (i) for development on land in the Six Cities Region, other than in the City of Shoalhaven or Port Stephens local government area—in an accessible area, or (ii) for development on other land—within 800m walking distance of land in a relevant zone or an equivalent land use zone.	The site is located within 500m walking distance of Ashfield Station and is therefore within an accessible area.	Yes
	nents for additional floor space ratio	
		Yes
(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).	The proposal benefits from the bonus because the minimum AH component is achieved.	
(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows— affordable housing component = additional floor space ratio +2 (as a percentage)	Based on 14.325% affordable housing, a bonus FSR of 28.65% applies. On MU1-zoned land with a base FSR of 1.5:1, the bonus FSR is 1.92975:1. The proposed FSR is 1.85:1.	Yes
(3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1). Example— Development that is eligible for 20% additional floor space ratio because the development includes a 10% affordable housing component, as calculated under subsection (2), is also eligible for 20% additional building height if the development involves residential flat buildings or shop top housing.	A 28.65% height bonus applies. For MU1-zoned land with a 12.5m height limit, the bonus height is 16.08m. The proposed height is 16.207m, exceeding the limit by 0.127m (0.79%).	No - see discussion below
18 Affordable housing requirement		
(1) This section applies to development that includes residential development to which	Section 18 does not apply, as the proposal uses the additional FSR under section 16.	N/A

spaces in at least 70% of the

dwellings receive at least 3 hours of direct solar access between 9am and 3pm at

mid-winter,

this division applies if the development— (a) includes residential flat buildings or shop top housing, and (b) does not use the additional floor space ratio permitted under section 16.		
19 Non-discretionary development	standards—the Act, s 4.15	
consent authority from requiring m Note— See the Act, section 4.15(3), wh granted if a non-discretionary deve	t under this division that, if complied with ore onerous standards for the matters which does not prevent development belopment standard is not complied with y development standards in relation to	th, prevent the consent being n.
(a) a minimum site area of 450m2,	The site area exceeds 450m ² .	Yes
(b) a minimum landscaped area that is the lesser of— (i) 35m2 per dwelling, or (ii) 30% of the site area,	Landscaped area by % is the lesser. Therefore, the required landscaped area is 974.1m². 619.1m² landscaped area proposed. Variation = 355sm² or 36.4%	No
(c) a deep soil zone on at least 15% of the site area, where— (i) each deep soil zone has minimum dimensions of 3m, and (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,		N/A
(d) living rooms and private open		N/A

Subsection (2)(d) does not apply to the development.

(e) the following number of parking spaces for dwellings used for affordable housing—	Affordable housing: 7 x studio / 1-bed = 3, 1 x 2 bed = 1	Yes
(i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces,	Market housing: 6 x 3-bed = 9, 23 x 2-bed = 23, 16 x studio / 1-bed = 8 →	
(ii) for each dwelling containing 2 bedrooms— at least 0.5 parking spaces,	I	
(iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space,		
(f) the following number of parking spaces for dwellings not used for affordable housing— (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces,		
(ii) for each dwelling containing 2 bedrooms— at least 1 parking space, (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,		
(g) the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development,	Compliant – see ADG assessment below.	Yes
purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the minimum floor area specified in the Low Rise Housing Diversity Design Guide,	Not applicable.	N/A
(i) if paragraphs (g) and (h) do not apply, the following minimum floor areas— (i) for each dwelling containing 1 bedroom— 65m2,	Not applicable, as paragraph (g) applies.	N/A
(ii) for each dwelling containing 2 bedrooms— 90m2, (iii) for each dwelling containing at least 3 bedrooms—115m2 plus		
12m2 for each bedroom in addition to 3 bedrooms.		

(3) Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies.	Chapter 4 applies – therefore, clauses 2(c) and 2(d) are not applicable.	N/A
(1) Development consent must not be granted to development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces) under this division unless the consent authority has considered the Low Rise Housing Diversity Design Guide, to the extent to which the guide is not inconsistent with this policy.	Not applicable. Refer to subsection 20(2) which identifies that subsection (1) does not apply to development to which Chapter 4 applies.	N/A
(2) Subsection (1) does not apply to development to which Chapter 4 applies.	Chapter 4 applies – subsection (1) does not apply.	Yes
(3) Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with— (a) the desirable elements of the character of the local area, or (b) for precincts undergoing transition—the desired future character of the precinct.	The proposal has been the subject of an Architectural Excellence and Design Review Panel, ensuring that its architectural quality is of a high standard and contextually fits within the surrounding locality.	Yes
21 Must be used for affordable l	nousing for at least 15 years	
(1) Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development— (a) the development will include the affordable housing component required for the development under section 16, 17 or 18, and (b) the affordable housing component will be managed by a registered community housing provider.	An Affordable Housing Letter has been prepared by and outlines an in-principle agreement. Correspondence dated 22/05/2025 confirms a registered housing provider will manage the affordable housing component.	Yes

(2) This section does not apply to	
development carried out by or on	
behalf of the Aboriginal Housing	
Office or the Land and Housing	
Corporation.	

Height of Buildings Development Standard

The applicant seeks a variation to the above mentioned under section 4.6 of the IWLEP 2022.

The development standard to which this request for contravention relates is section 4.3(2)(a) of the *IWLEP* 2022 – Height of buildings, which specifies that:

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

The height on the height of buildings map is:

• 12.5m

As mentioned previously in this report, the proposed development benefits from a bonus under section 16(3) of SEPP (Housing) 2021), which specifies that:

If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).

The additional floor space ratio is 28.65% and therefore the maximum building height is:

- 12.5m x 0.2865 = 3.58m
- 12.5m + 3.58m = 16.08m

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

A written request has been submitted to Council in accordance with Section 4.6(3) of the *IWLEP 2022* justifying the proposed contravention of the development standard. 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 Section 4.6 of the *IWLEP 2022* below.

Whether compliance with the development standard is unreasonable or unnecessary

In Wehbe at [42] – [51], Preston CJ summarises the common ways in which compliance with the development standard may be demonstrated as unreasonable or unnecessary. This is repeated in *Initial Action* at [16]. In the Applicant's written request, the first method described in *Initial Action at* [17] is used, which is that the objectives of the height of buildings development standard are achieved notwithstanding the numeric non-compliance.

The **first objective of Section 4.3** is "to ensure the height of buildings is compatible with the character of the locality". The written request states the additional height associated with the contravention results from the proposed lift overrun and pergola structure and would not alter the contribution of the proposal to the character of the locality, as it would not generally be visible from any point outside the site, and particularly the streetscape. Even if visible, it would comprise an element of such visual insignificance as to not materially contribute to the character of the locality. The structures attributed to the height of building breach are inset from the sides of the building and would not adversely impact the character of the locality. The main form of the building, including the raised parapets are contained within the maximum height envelope. Accordingly, the breach is consistent with the first objective.

The **second objective of Section 4.3** is "to minimise adverse impacts on local amenity". The written request states the contravention would not impact upon the amenity of surrounding properties given that it comprises a very minor building element. The sun eye view diagrams submitted as part of this application confirm the building elements contributing to the height breach are inset from the side of the building in a manner that would not contribute to adverse amenity impact of nearby residential properties on Miller Avenue. Accordingly, the breach is consistent with the second objective.

The **third objective of Section 4.3** is "to provide an appropriate transition between buildings of different heights". The written request states the contravention would not hinder the ability of the proposal to provide a suitable transition between the 23m height limit of the land adjacent the site to the west and the 8.5m height limit of the land adjacent the site to the east. The proposal maintains an appropriate transition in height as it has been designed to step down toward the heritage conservation area to the east, providing a suitable built form transition. Accordingly, the breach is consistent with the third objective.

As the proposal achieves the objectives of the height of buildings development standard, compliance is considered unreasonable and unnecessary in this instance.

Whether there are sufficient environmental planning grounds to justify contravening the development standard

Pursuant to Section 4.6(3)(b), the Applicant provides the following environmental planning grounds to justify contravening the height of buildings development standard:

Environmental Planning Ground 1 - The contravention would facilitate provision of affordable rental housing, and equitable access via lift to the rooftop communal open space (it is noted that access would be possible by stair only if strict compliance were required; if so, less able residents may have to use the communal open space at ground level). This environmental planning ground is accepted, as the height variation primarily results from roof-level structures, including a lift overrun and a pergola, which are necessary to provide equitable access and enhance the functionality of the development.

Environmental Planning Ground 2 - The contravention would enable more ecologically sustainable development by more efficiently utilising land within an existing urban area serviced by existing utilities thereby taking pressure off development on the urban fringe. This environmental planning ground is accepted the additional height does not result in significant

environmental harm and allows for better utilisation of the land in a manner that aligns with strategic planning objectives to accommodate growth within an existing urban area.

Environmental Planning Ground 3 – The proposal is consistent with Section 1.3(e) objects of the Act, *to promote the delivery and maintenance of affordable housing*. This environmental planning ground is accepted because the proposed development facilitate the provision of affordable housing in accordance with *SEPP (Housing) 2021*.

Environmental Planning Ground 4 – The contravention would marginally lessen the incentive for new development on the urban fringe and the associated impacts upon natural environments. The written request has not provided sufficient reasoning to demonstrate that this ground is relevant, providing general proposition only.

Environmental Planning Ground 5 – The contravention would have a neutral heritage impact. The proposed development is not located within a heritage conservation area and is deliberately positioned further westward to minimise impacts on the adjoining Heritage Conservation Area. Accordingly, this environmental planning ground is accepted.

Environmental Planning Ground 6 – The contravention would provide lift access (and therefore universal access) to the rooftop communal open space to better service less able building users. This ground is similar to ground 1 and is accepted.

Cumulatively, and while not all the grounds have been adequately made out, grounds 1, 2, 3, 5 and 6 are considered sufficient to justify contravening the development standard.

For the reasons outlined above, it is recommended that the section 4.6 exception be granted.

Landscaped Area Non-Discretionary Development Standard

If a development does not comply with a non-discretionary development standard, section 4.15(3) of the *EP&A Act* allows the consent authority to apply section 4.6 (or an equivalent provision) when considering and determining the development.

The applicant seeks a variation to the minimum landscaped area for the site by 355sm² or 36.4%.

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

A written request has been submitted to Council in accordance with Section 4.6(3) of the *IWLEP 2022* justifying the proposed contravention of the development standard. 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 Section 4.6 of the *IWLEP 2022* below.

Whether compliance with the development standard is unreasonable or unnecessary

In Wehbe at [42] – [51], Preston CJ summarises the common ways in which compliance with the development standard may be demonstrated as unreasonable or unnecessary. This is repeated in *Initial Action* at [16]. In the Applicant's written request, the first method described in *Initial Action at* [17] is used, which is that the objectives of the landscaped area non-discretionary development standard are achieved notwithstanding the numeric non-compliance. There are no explicitly stated specific objectives for the landscaped area non-discretionary development standard but the most relevant are provided below:

The **first principle of SEPP** (**Housing**) **2021** is "enabling the development of diverse housing types, including purpose-built rental housing". The written request argues that the proposed variation facilitates the delivery of affordable housing. The non-compliance with the landscaped area standard is an existing condition resulting from the site already having an operational development consent for a residential flat building currently under construction. Accordingly, the breach is consistent with the first principle.

The **second principle of** *SEPP* (*Housing*) *2021* is "encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability". The written request states that the proposal delivers in-fill affordable housing for low- to moderate-income households. The provision of affordable housing supports the intent of this principle, and the proposal is therefore consistent with it.

The third principle of SEPP (Housing) 2021 is "ensuring new housing development provides residents with a reasonable level of amenity". According to the applicant's written request, the proposed development would continue to provide amenity consistent with the Apartment Design Guide (ADG), other applicable planning controls, and the approved scheme. The additional level has been reviewed by the Inner West Council Architectural Excellence Design Review Panel and is considered acceptable under the nine design quality principles for residential flat buildings. These include considerations such as solar access, natural ventilation, privacy, outlook, and access to indoor and outdoor spaces. On this basis, the proposal satisfies the third principle.

The **fourth principle of SEPP** (**Housing**) **2021** is "promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services". The written request highlights the site's proximity to Ashfield Town Centre, Ashfield and Croydon Railway Stations, and frequent bus services along Liverpool Road. The site's location makes it particularly suitable for affordable housing. As such, the proposal is consistent with this principle.

The **fifth principle of SEPP** (**Housing**) **2021** is "minimising adverse climate and environmental impacts of new housing development". The written request states that the proposed additional level allows for more efficient use of an already serviced site, marginally reducing pressure for development on the urban fringe. As the proposal does not substantially increase the building footprint and forms part of an already approved development, it is not expected to result in significant or cumulative adverse environmental impacts. Therefore, it aligns with this principle.

The **sixth principle of SEPP** (**Housing**) **2021** is "reinforcing the importance of designing housing in a way that reflects and enhances its locality". The applicant argues that the proposed contravention would not result in a built form that is inconsistent with the surrounding context. The approved landscaped area would remain unchanged, and the proposal retains consistency with the form and character of the residential flat building currently under construction. As such, the design continues to integrate appropriately with its locality, and the sixth principle is satisfied.

The objective of Chapter 2, Part 2, Division 1 in-fill affordable housing of SEPP (Housing) 2021 is "to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households". The written states the landscaped area contravention would allow the provision of affordable rental housing which would otherwise not be facilitated. The non-compliance arises from the existing approval for a residential flat building currently under construction, and the proposed development seeks to build upon this approval without altering the approved footprint or landscape treatment. The proposal seeks to introduce affordable rental housing within a well-located urban site, thereby directly supporting the intent of Division 1. In this context, the variation to the landscaped area standard is considered reasonable and consistent with the overarching objective of facilitating affordable housing for households in need.

As the proposal achieves the objectives of the landscaped area non-discretionary development standard, compliance is considered unreasonable and unnecessary in this instance.

Whether there are sufficient environmental planning grounds to justify contravening the development standard

Pursuant to Section 4.6(3)(b), the Applicant provides the following environmental planning grounds to justify contravening the height of buildings development standard:

Environmental Planning Ground 1 – The application seeks approval for an additional level only and does not propose any increase in building footprint or site coverage that would result in a reduction of landscaped area. This ground is accepted because the approved landscaped area would remain unchanged from the previous approval, and the proposal retains consistency with the form and character of the residential flat building currently under construction.

Environmental Planning Ground 2 – The majority of the development has already been constructed and it would not be possible to provide a compliant quantity of landscaped area. This ground is similar to ground 1 and is accepted.

Environmental Planning Ground 3 – The quantity of landscaped area provided is compliant with the applicable controls under the ADG. This environmental planning ground is similar to grounds 1 and 2, as the proposal maintains the landscaped areas already approved under the existing development consent. Importantly, the current application seeks approval for the addition of one level only and does not propose any increase in the building footprint or site

coverage. As such, there is no further encroachment into landscaped areas, and the overall open space provision remains unchanged.

Environmental Planning Ground 4 – The standard is a non-discretionary development standard which, under section 4.15(3) of the Act, does not prevent development consent being granted if it is not complied with. This is not an environmental planning ground and is not accepted.

Cumulatively, and while not all the grounds have been adequately made out, grounds 1, 2, and 3 are considered sufficient to justify contravening the development standard.

For the reasons outlined above, it is recommended that the section 4.6 exception be granted.

Chapter 4 Design of residential apartment development

Section 147 of the *Housing SEPP* requires the consent authority to consider any comments from the Council's Architectural Excellence Design Review Panel (AEDRP), the design principles set out in Schedule 9 and the Apartment Design Guide (ADG).

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 ADG, how the objectives in Parts 3 and 4 of the guide have been achieved.

In accordance with Section 149 of the *Housing SEPP* certain provisions for residential apartment development contained within the CIWDCP 2016 have no effect if the ADG also specifies provisions to the same matter.

Following comments received from the AEDRP, the applicant has provided amended plans to address, *inter alia*, matters raised. The application was not required to be referred to the AEDRP again due to the issues raised being resolved. However, the application was referred to Council's Urban Design specialist who raised no further concerns regarding the amendments made.

The development, as amended, is considered to be acceptable having regard to the nine design quality principles. The proposal is considered to achieve the following design principles as follows:

Principle	Comment
1. Context &	The application was referred to the AEDRP on 16
Neighbourhood	December 2024. At that time, the Panel raised concerns
	regarding the lack of a comprehensive set of development
	application (DA) drawings. The drawings appeared to be
	'for construction' plans, limiting the ability to assess
	contextual relationships and potential off-site impacts.
	These concerns have been addressed through the

	submission of revised architectural plans that better respond to the site's context.
2. Built form & Scale	The proposal seeks to utilise bonus floor space and height incentives. The additional storey atop Building A is considered acceptable, as it presents to Liverpool Road and steps down appropriately toward the heritage conservation area to the east, providing a suitable built form transition.
3. Density	The proposal is satisfactory having regard to the requirements and intention of principle 3, which seeks development to achieve a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. In this instance, the additional FSR and height granted by the provisions of the SEPP Housing 2021 does not adversely compromise residential unit amenity and maintains an acceptable level of amenity for residents and apartments. Additionally, the site is ideal for quality affordable housing, due to its proximity to transport nodes, shopping and services.
4. Sustainability	The proposal is satisfactory having regard to the requirements and intention of principle 4, which seeks development to include use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. The proposal achieves good access to natural light, and winter sun, having regard to the orientation, of the site and achieves compliant cross ventilation throughout the development.
5. Landscape	No changes are proposed the landscape design of the approved residential flat building, which was approved on the basis the landscape design achieved this principle.
6. Amenity	The proposal aligns with Principle 6, providing well-proportioned rooms with adequate solar access, natural ventilation, privacy, outlook, and access to indoor and outdoor spaces. Apartment layouts remain efficient and liveable.
7. Safety	The additional level does not materially affect the safety or security of the development or its relationship with the public domain. The original development's safety provisions remain applicable.
8. Housing diversity and social interaction	The proposal supports Principle 8 through the provision of affordable housing in a highly accessible location. It includes a range of apartment sizes and types, catering to various household needs, demographics, and income levels.

9. Aesthetics	The application was referred to the AEDRP, the proposed
	facade treatment is consistent with the approved design
	and provides visual interest appropriate to the context.

The following provides further discussion of the relevant issues:

De	sign Criteria	Compliance	Comment
	Site Analysis		
•	Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context	Yes	A satisfactory site analysis has been submitted and considered in the design response.
3B	Orientation		
•	Building types and layouts respond to the streetscape and site while optimising solar access within the development Overshadowing of neighbouring properties is minimised during mid winter	Yes	The proposed Level 3 aligns with the orientation of the approved lower levels. Unit layouts are consistent, and the development maintains compliance with CIWDCP 2016 regarding solar access to neighbouring properties.
3C	Public Domain Interface	e	
•	Amenity of the public domain is retained and enhanced	N/A	No change proposed to the building's interface with the public domain, as the development involves an additional level only.
3D	Communal and public of	ppen space	
•	Communal open space has a minimum area equal to 25% of the site Minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter)	Yes	No changes are proposed to the approved communal open space located at ground level. The proposed roof terrace reflects the design approved under the previous development application that originally approved the residential flat building.
3E	Deep soil zones		

•	7% of the site area with	N/A	No changes are proposed
	a minimum dimension		to the approved deep soil
	of 6m		zones.
3F	Visual privacy		
•	Min separation distances from buildings to side and rear boundaries:	No	The additional level results in non-compliance with ADG separation requirements along the
•	Up to 12m (4 storey) – 6m habitable & 3m non- habitable Up to 25 metres (5-8		eastern and western boundaries. This matter is addressed in the discussion section of the
	storeys) – 9m habitable & 4.5m non habitable		report.
•	Between a change in zone from apartment buildings to a lower density area, increase the building setback from the boundary by 3m.		
3G	Pedestrian access and	entries	
•	Building entries and pedestrian access connects to and addresses the public domain. Access, entries and pathways are accessible and easy to identify. Large sites provide pedestrian links for access to streets and connection to destinations. Vehicle access	N/A	No changes are proposed to the approved pedestrian access or building entries.
3H		NI/A	No shanne and managed
	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	N/A	No changes are proposed to approved vehicle access arrangements.
3J	Bicycle and car parking		

			1=
800m station, car par for visitors Guide Genera Develo car par prescril relevan	pments, or the king requirement bed by the	Yes	Residential Car parking complies with the minimum requirement permitted under Chapter 2 of SEPP (Housing) 2021, as the site is within 800m of a railway station. Visitors Noting the Guide to Transport Impact Assessment (GTIA) supersedes Guide to Traffic Generating Development (GTGD), any references to GTGD in the ADG refer to GTIA.
			The GTIA prescribes a minimum of 1 space per 7 dwellings (visitors). 8 visitor parking spaces are required. Therefore, the proposed 5 visitor carparking spaces results in a shortfall of 3 spaces.
4A Solar a	nd daylight acce	ess	
at leas receive hours betwee mid-wir Max 1 direct s 9am-3	nter 5% receive no sunlight between pm mid-winter	No	Of the 7 proposed units on Level 3, 4 receive at least 2 hours of direct sunlight. Units 3.5, 3.6, and 3.7 do not meet the minimum requirement. Solar access to all other approved units remains unchanged. This is discussed further in the report.
4B Natura	l ventilation		
natural • Min 6	itable rooms are ly ventilated 60% of units ly ventilated	Yes	35 of 53 total units (66%) are naturally ventilated, exceeding the minimum requirement of 60%.
4C Ceiling	•		
HabitalNon-ha2.4m	ole rooms – 2.7m abitable rooms –	Yes	The proposed floor-to- ceiling height is 2.7m for all habitable rooms.
-	nent size and lay		L A II
Studio	= 35m²	Yes	All proposed units comply with the minimum internal

	1	
• 1 Bed = 50m ²		areas. 3-bedroom units
• 2 Bed = 70m ²		with 3 bathrooms meet the
• 3 Bed = 90m ²		adjusted 105m ² minimum.
Additional bathrooms,		All habitable rooms have
beyond 1, increase the		windows in external walls.
minimum internal area		Daylight and air are
by 5m ² each		accessed directly, not
Window in external wall		borrowed.
with min 10% glass		
area of room		
4E Private open space and	balconies	
• Studio – 4m ²	Yes	All proposed units are
• 1-bed – 8m² & 2m depth		provided with compliant
• 2-bed – 10m ² & 2m		balconies or courtyards
depth		accessed from living areas,
• 3+-bed – 12m ² & 2.4m		with adequate dimensions
depth		and privacy treatments.
• Ground level – 15m ² &		
3m depth		
4F Common circulation ar	d spaces	
Max 8 units accessed off	Yes	No more than 7 units are
one circulation core per		accessed from a single
level		corridor on Level 3. Other
		levels remain unchanged.
4G Storage		
• Studio – 4m ²	Yes	Storage areas meet or
• 1-bed – 6m³		exceed minimum
• 2-bed – 8m³		requirements for all unit
• 3+-bed – 10m ²		types.
4H Acoustic privacy		
The impacts of external	Yes	An acoustic report by
noise and pollution are		Rodney Stevens Acoustics
minimised through the		confirms compliance, with
careful siting and layout		mitigation measures
of buildings		included in the design.
Appropriate noise		
shielding or attenuation		
techniques for the		
building design,		
construction and choice		
of materials are used to		
mitigate noise		
transmission		
4K Apartment mix		
A range of apartment	Yes	A varied mix of studio, 1-, 2-
types and sizes is		, and 3-bedroom
provided to cater for		apartments is provided,
<u></u>	•	

•	different household types now and into the future The apartment mix is distributed to suitable locations within the building		distributed appropriately throughout the development.
4L	Ground floor apartment	s	
•	Street frontage activity is maximised where ground floor apartments are located Design of ground floor apartments delivers amenity and safety for residents	N//A	No changes are proposed to approved ground floor apartments.
4N	I Facades		
•	Building facades provide visual interest along the street while respecting the character of the local area	Yes	The proposed facade treatment is consistent with the approved design and provides visual interest appropriate to the context.

Visual Privacy/Building Separation

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

Room Types Minimum Separat		
Up to 12 metres (4 storeys)		
Habitable rooms and balconies	6m	
Non-habitable rooms	ns 3m	
Up to 25 metres (5-8 storeys)		
Habitable rooms and balconies	9m	
Non-habitable rooms	4.5m	

Comment:

The proposal seeks a variation to the minimum building separation distances prescribed by Objective 3F-1 of the ADG. The ADG requires separation distances of 9 metres for habitable rooms and balconies and 4.5 metres for non-habitable rooms where a building exceeds 12 metres in height (i.e., generally 5–8 storeys). Although the proposed building exceeds 12 metres in height, it comprises four storeys. The 9m building separation distance applies to the extent of the roof terrace communal open space that is located at the roof level.

Eastern Boundary

At the boundary between a change in zone from apartment buildings to a lower density area, increase the building setback from the boundary by 3m—this applies along the site's eastern (side) boundary, which adjoins an R2 – Low Density Residential zone. As such, 12m (habitable rooms and balconies) and 7.5m (non-habitable rooms) apply to the proposed level 3 and roof terrace. The proposed development results in departures along the eastern boundary (see figures 4 and 5 below).

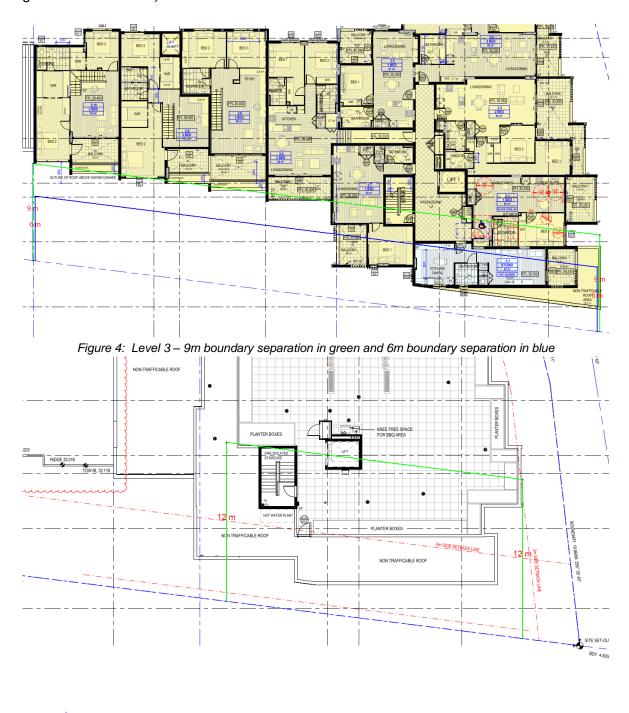


Figure 5: 12m boundary separation in green

Along the eastern boundary At Level 3, the departure is considered acceptable for the following reasons:

- a. The proposed separation at Level 3 replicates the design and setbacks of the approved lower levels (Levels ground–2). These levels were deemed acceptable in previous assessments and establish a consistent built form and interface.
- b. Visual privacy has been addressed through several design measures:
 - i. Fixed privacy screens and blade walls between adjacent balconies to obstruct cross-viewing.
 - ii. Operable louvres and highlight windows are employed in selected areas to limit the potential for overlooking while maintaining daylight access and ventilation.
- c. Where glass balustrades are used, the potential for downward or horizontal overlooking is noted. To ensure this is appropriately managed a condition of consent is recommended to ensure that all glass balustrades on the eastern elevation treated with obscure glazing to prevent overlooking.
- d. The development is located within an established urban setting, where a more compact urban form is encouraged. Full compliance with ADG separations would unreasonably constrain the site's redevelopment potential without demonstrable amenity benefit.

At the roof terrace, the departure is considered acceptable for the following reasons:

a. The roof terrace has been designed with non-trafficable areas defined by the area that is the non-trafficable roof that is concealed behind a parapet and planter box around the perimeter of the roof terrace to prevent overlooking.

Having regard to the above, the proposed separation along the eastern boundary is acceptable on merit.

Western Boundary

The proposed 3m western boundary setbacks and built form is directly resultant from the proposal's response to a site specific DCP built form control found within Chapter D – Precinct Guidelines of the Inner West Comprehensive DCP 2016. This site-specific built form requirement is replicated within figure 6 below and was created to ensure that any development upon the subject site maximises separation distances to neighbouring houses within the Miller Ave HCA.



Figure 6: Site Specific Built Form outlined in DCP, subject site highlighted by red dashes

In response to the reduced 3m western boundary setback the applicant has designed the western elevation to incorporate reduced glazing/window openings and POS, consistent with the previous approvals on the site. Where window openings are proposed they generally incorporate a high windowsill or have been treated by frosted glazing. Additionally, where the development does propose POS for units these spaces incorporate privacy screenings treatments to avoid direct sightlines into neighbouring sites. Overall, it is considered that the currently proposed western setback is acceptable in its current form and has been designed to achieve a reasonable level of external and internal visual privacy consistent with the previous approval on the site.

Southern Boundary

The proposed level 3 and roof terrace is separated from the portion of the southern boundary that adjoins the property at 129 and 131 Norton Street by 30.8m and 61.2m, respectively. However, the proposal seeks to provide a courtyard off bedroom 1 in unit G.12 and a courtyard off bedroom 1 in unit G.13. These courtyards were previously recommended under MOD/2023/0316 to be deleted, and the sliding doors replaced with a window to match level 1 above. The reason for this design change was to prevent restrictions on the development potential of the southern property at 129 and 131 Norton Street, given the proximity of the proposed courtyards to the southern property and its elevated position.

It is noted that the courtyard faces south and, given the provision of primary private open space (POS) elsewhere within the unit, it is not required to meet amenity needs under the ADG. Furthermore, if access is needed for maintenance purposes, it is considered that this can be accommodated through alternative means without necessitating the provision of a courtyard in this location.

Having regard to the above, the deletion of the courtyards is recommended through conditions of consent.

Solar Access and Daylight

The solar access diagrams submitted with this application indicate that the approved balconies and main living room windows do not receive the required amount of sunlight during midwinter, contrary to the applicant's claim. However, the proposal does not seek to alter the orientation of these units. Instead, it seeks to add an additional level containing seven units. These new units follow the same orientation as those below, which is shaped by the long and narrow configuration of the site—limiting opportunities to optimise solar access. Despite these constraints, the design maximises northern orientation where possible, with four of the seven new units receiving at least two hours of direct sunlight. As such, the proposal is considered to satisfy Objective 4A-1 of the ADG, which seeks to optimise the number of apartments receiving sunlight.

148 Non-discretionary development standards—the Act, s 4.15 (1) The object of this section is to identify development standards for particular matters relating to residential development under this division that, if complied with, prevent the consent authority from requiring more onerous standards for the matters. Note— See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with. (2) The following are non-discretionary development standards— (a) the car parking for the building must be equal to, or greater achieves compliance with the

(a) the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of	The proposed development achieves compliance with the required carparking for residents under Chapter 2 of SEPP (Housing) 2021.	Yes
the Apartment Design Guide,	The ADG notes that the minimum parking requirement for residents and visitors is the lower of the rates set out in Guide to Traffic Generating Developments (GTGD), or the car parking requirements prescribed by the relevant council. Noting the Guide to Transport Impact Assessment (GTIA) supersedes GTGD, any references to GTGD in the ADG refer to GTIA. The GTIA prescribes a minimum of 1 space per 7 dwellings (visitors). 8 visitor parking spaces are required.	No
	Therefore, the proposed 5 visitor parking spaces does not comply with Part 3J of the ADG.	
(b) the internal area for each apartment must be equal to, or greater than, the	All rooms comply with the minimum internal areas.	Yes

recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide,		
(c) the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.	The ceiling heights comply with Part 4C of the ADG.	Yes

Carparking Non-Discretionary Development Standard

If a development does not comply with a non-discretionary development standard, section 4.15(3) of the *EP&A Act* allows the consent authority to apply section 4.6 (or an equivalent provision) when considering and determining the development.

The applicant seeks a variation to the above-mentioned development standard under Section 4.6 of the *IWLEP 2022* by 3 visitor spaces. Section 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

A written request has been submitted to Council in accordance with Section 4.6(3) of the *IWLEP 2022* justifying the proposed contravention of the development standard. 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 Section 4.6 of the *IWLEP 2022* below.

Whether compliance with the development standard is unreasonable or unnecessary

In Wehbe at [42] – [51], Preston CJ summarises the common ways in which compliance with the development standard may be demonstrated as unreasonable or unnecessary. This is repeated in *Initial Action* at [16]. In the Applicant's written request, the first method described in *Initial Action at* [17] is used, which is that the objectives of the carparking non-discretionary development standard are achieved notwithstanding the numeric non-compliance. There are no explicitly stated specific objectives for the landscaped area non-discretionary development standard but the most relevant are provided below:

The **first principle of SEPP (Housing) 2021** is "enabling the development of diverse housing types, including purpose-built rental housing". The written request argues that the proposed variation facilitates the delivery of affordable housing. Accordingly, the breach is consistent with the first principle.

The **second principle of** *SEPP* (*Housing*) *2021* is "encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability". The written request states that the proposed contravention delivers in-fill affordable housing. Accordingly, the breach is consistent with the second principle.

The **third principle of** *SEPP* (*Housing*) *2021* is "ensuring new housing development provides residents with a reasonable level of amenity". The written request states the proposed development would continue to provide amenity consistent with the Apartment Design Guide (ADG), other applicable planning controls, and the approved scheme. The additional level has been reviewed by the Inner West Council Architectural Excellence Design Review Panel and is considered acceptable under the nine design quality principles for residential flat buildings. On this basis, the proposal satisfies the third principle.

The **fourth principle of SEPP** (Housing) 2021 is "promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services". The written request highlights the site's proximity to Ashfield Town Centre, Ashfield and Croydon Railway Stations, and frequent bus services along Liverpool Road. The site's location makes it particularly suitable for affordable housing. As such, the proposal is consistent with the fourth principle.

The **fifth principle of SEPP** (**Housing**) **2021** is "minimising adverse climate and environmental impacts of new housing development". The written request states that the proposed additional level allows for more efficient use of an already serviced site, marginally reducing pressure for development on the urban fringe. As the proposal does not substantially increase the building footprint and forms part of an already approved development, it is not expected to result in significant or cumulative adverse environmental impacts. Therefore, it aligns with this principle.

The **sixth principle of SEPP** (**Housing**) **2021** is "reinforcing the importance of designing housing in a way that reflects and enhances its locality". The applicant argues that the proposed contravention would not result in a built form that is inconsistent with the surrounding context. The approved landscaped area would remain unchanged, and the proposal retains consistency with the form and character of the residential flat building currently under construction. As such, the design continues to integrate appropriately with its locality, and the sixth principle is satisfied.

The first aim of Section 142 of SEPP (Housing) 2021 reads as follows: "The aim of this chapter is to improve the design of residential apartment development in New South Wales for the following purposes—

- (a) to ensure residential apartment development contributes to the sustainable development of New South Wales by—
 - (i) providing socially and environmentally sustainable housing, and
 - (ii) being a long-term asset to the neighbourhood, and
 - (iii) achieving the urban planning policies for local and regional areas,

Comment: The written request states the contravention is consistent with this aim in that it facilitates the provision of affordable housing in close proximity to public transport and services which would lessen reliance on private transport and promote walkability. Additionally, the contravention would achieve the urban planning policies for the locality by providing affordable housing near the town centre including public transport and services which would lessen reliance on private transport, promote walkability and

increase the viability of the town centre. Accordingly, the breach is consistent with this aim.

(b) to achieve better built form and aesthetics of buildings, streetscapes and public spaces,

Comment: The contravention is not inconsistent with this aim, as it relates to a visitor car parking requirement.

(c) to maximise the amenity, safety and security of the residents of residential apartment development and the community,

Comment: The written request states the contravention is not inconsistent with this aim given that public transport is available directly outside the development on a busy street with excellent surveillance. Accordingly, the breach is consistent with this aim.

- (d) to better satisfy the increasing demand for residential apartment development, considering—
 - (i) the changing social and demographic profile of the community, and
 - (ii) the needs of a wide range of people, including persons with disability, children and seniors,

Comment: The written request states that the proposed contravention would facilitate the provision of affordable housing to satisfy the current social and demographic profile of the community. Additionally, the contravention would not reduce amenity for persons with disability, children and seniors. Accordingly, the breach is consistent with this aim.

(e) to contribute to the provision of a variety of dwelling types to meet population growth,

Comment: The written request states the proposed contravention would permit the provision of affordable housing units to satisfy demand resulting from population growth. Accordingly, the breach is consistent with this aim.

(f) to support housing affordability,

Comment: The written request states the proposed contravention would specifically facilitate the provision of affordable housing on the site. Accordingly, the breach is consistent with this aim.

(g) to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions,

Comment: The written request states that the proposed contravention would increase the intensity of development and population on the site in close proximity to public transport (within 400m of Ashfield Station) and services thereby promoting walkability, reducing reliance on private transport and the associated greenhouse gas emissions,

optimally utilising existing urban infrastructure and reducing pressure for development on the urban fringe. Accordingly, the breach is consistent with this aim.

(h) to facilitate the timely and efficient assessment of development applications to which this chapter applies.

Comment: The contravention is not inconsistent with this aim.

Accordingly, the proposed contravention is consistent with the first aim.

The **second aim of Section 142 of SEPP (Housing) 2021** is "this chapter recognises that the design of residential apartment development is significant because of the economic, environmental, cultural and social benefits of high quality design". The contravention is not inconsistent with this aim as it relates to visitor car parking shortfall.

The first objective of Section 148(1) under SEPP (Housing) 2021 is "to identify development standards for residential development under this division that, if complied with, prevent the consent authority from requiring more onerous standards." The written request states that the proposed shortfall of 3 spaces (5 spaces proposed, 8 required) arises from existing basement design constraints and that the overall development meets the intent of the SEPP, including accessibility and public transport integration. Accordingly, the breach is consistent with this objective.

As the proposal achieves the objectives of the car parking non-discretionary development standard, compliance is considered unreasonable and unnecessary in this instance.

Whether there are sufficient environmental planning grounds to justify contravening the development standard

Pursuant to Section 4.6(3)(b), the Applicant provides the following environmental planning grounds to justify contravening the car parking non-discretionary development standard:

Environmental Planning Ground 1 – The building has already been constructed and retrofitting additional parking spaces would require significant demolition. This environmental planning ground is not accepted because, although it highlights physical site constraint, it does not in itself justify the proposed intensification of use, nor demonstrate that the site is suitable for the resulting visitor car parking shortfall.

Environmental Planning Ground 2 – The site is well-serviced by public transport, being within 400m of Ashfield Station. This environmental planning ground is accepted because it reduces dependence on private vehicles and supports active/public transport use.

Environmental Planning Ground 3 – The contravention supports the provision of affordable housing, a key objective of the *SEPP* and the *EP&A Act*. This environmental planning ground is accepted as it directly enables delivery of diverse, affordable housing options.

Cumulatively, and while not all the grounds have been adequately made out, grounds 2 and 3 are considered sufficient to justify contravening the development standard.

For the reasons outlined above, it is recommended that the section 4.6 exception be granted.

SEPP (Sustainable Buildings) 2022

Chapter 2 Standards for residential development - BASIX

The application is accompanied by a BASIX Certificate (lodged within 3 months of the date of the lodgment of this application) in compliance with the *EP&A Regulation 2021*.

SEPP (Transport and Infrastructure) 2021

Chapter 2 Infrastructure

Development with frontage to classified road

In considering Section 2.119(2) of the *Transport and Infrastructure SEPP*:

Vehicular access to the land is provided by Norton Street and this is considered practical and safe. The design will not adversely impact the safety, efficiency, and ongoing operation of the classified road.

Transport for NSW (TfNSW) has reviewed the application and advises that the proposed development will have a negligible impact on the surrounding state road network. As such, TfNSW has no objections regarding the application subject to previously provided TfNSW conditions dated 27 August 2020.

Conditions of consent are recommended to ensure any consent issued is to be read together with, and operates in conjunction with, development consent DA/2020/0583 (as amended by MOD/2023/0316 and any subsequent modifications).

Impact of road noise or vibration on non-road development

The impacts of traffic noise or vehicle emissions have been considered and suitable measures to ameliorate potential traffic noise or vehicle emissions have been included within the development. The development complies with the requirements of Section 2.120 of the *Transport and Infrastructure SEPP*.

SEPP (Biodiversity and Conservation) 2021

Chapter 6 Water Catchments

Section 6.6 under Part 6.2 of the *Biodiversity and Conservation SEPP* provides matters for consideration which apply to the proposal. The subject site is located within the designated hydrological catchment of the Sydney Harbour Catchment and is subject to the provisions contained within Chapter 6 of the above *Biodiversity Conservation SEPP*.

It is considered that the proposal remains consistent with the relevant general development controls under Part 6.2 of the *Biodiversity Conservation SEPP* and would not have an adverse

effect in terms of water quality and quantity, aquatic ecology, flooding, or recreation and public access.

Inner West Local Environmental Plan 2022

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022 (IWLEP 2022)*.

Part 1 – Preliminary

Section	Proposed	Complies
Section Section 1.2 Aims of Plan	The proposal satisfies the section as follows: The proposal encourages development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles, The proposal conserves and maintains the natural, built and cultural heritage of Inner West, The proposal reduces community risk from and improves resilience to urban and natural hazards, The proposal encourages walking, cycling and use of public transport through appropriate intensification of development densities surrounding transport nodes, The proposal encourages diversity in housing to meet the needs of, and enhance amenity for, Inner West residents, The proposal creates a high quality urban place through the application of design excellence in all elements of the built environment and public domain, The proposal prevents adverse social, economic and environmental impacts on the local character of Inner West,	Yes
	The proposal prevents adverse social, economic and environmental impacts, including cumulative impacts	

Part 2 - Permitted or prohibited development

Section	Proposed	Complies
Section 2.3 Zone objectives and	The application proposes alterations and additions to a residential flat building, <i>residential flat buildings</i> are	No
Land Use Table	prohibited in the MU1 and R3 zones. See existing use assessment below.	
Existing Uses	assessment below.	

Existing Uses

As is evident from the Land Use Table under *IWLEP 2022*, 'residential flat buildings' are prohibited in the MU1 and R3 zones. Accordingly, the applicant seeks to rely on existing use rights under Division 4.11 of Part 4 of the *Environmental Planning and Assessment Act 1979* (the Act).

Definition of 'existing use'

Section 4.65 of the Act defines an 'existing use'. An existing use is defined under the Act as:

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

Continuance of and limitations on existing use

If the 'existing use' is a use for a lawful planning purpose immediately before the coming into force of an Environmental Planning Instrument (EPI) which has the effect of prohibiting that use, then that existing use is permitted to continue under the provisions of Section 4.66 of the Act.

'Existing use rights' is the right to continue a use regardless of whether that use is now prohibited under Council's planning controls. However, these rights can be lost if the use is abandoned for a continuous period of 12 months after the introduction of the prohibition in accordance with Section 4.66(3) of the Act.

The proposed development relies on the site benefiting from existing uses rights otherwise the proposal is prohibited development within the relevant zones. The foundation for the applicant's development application must be, therefore, that there is an existing use of the land in the meaning of that term in Section 4.65 of the Act. The applicant has provided the following information regarding existing use rights:

The proposed development is defined as a residential flat building/ residential accommodation. As such, the development is prohibited under the zone. However, given that there is an operational development consent for the development being DA/2020/583 and MOD/2023/0316, the development benefits from existing use rights under the Act.

There is an operational Development Consent (DA/2020/0583) for the existing residential flat building, which this application seeks to amend. Consent for the construction of this building was granted on 17 September 2021, when the site was zoned B4 Mixed Use and R3 Medium Density Residential under the Ashfield Local Environmental Plan 2013, whereby residential flat buildings were permitted with consent. Accordingly, Sections 4.65 and 4.66(3) of the Act is satisfied.

With regard to Section 4.67 of the Act, the alteration and extension or expansion or intensification of an existing use is permitted to an existing use as described under the Regulations detailed below.

Environmental Planning and Assessment Regulation 2021

Part 7 of the *Environmental Planning and Assessment Regulation 2021* (*EP&A Regulation 2021*) is relevant to the development as it sets out the matters for consideration for the consent requirements for altering or extending an existing use.

Section 163 of the *EP&A Regulation 2021* reinforces the capacity to alter and extend or expand or intensify of an existing use on a site which has existing use rights under subsections 1(a) and (b). The proposed development seeks consent to undertake alterations and additions to a building for work as a residential flat building and is carried out on the land on which work for an existing residential flat building is being erected, which is in accordance with these requirements.

Land and Environment Court Planning Principle - Existing use rights and merit assessment

In Land and Environment Court proceedings *Fodor Investments v Hornsby Shire Council*, a planning principle for the assessment of existing use rights was established. The 'Redevelopment – existing use rights and merit assessment' Planning Principle developed as a result of that judgment is used hereunder to assess the merits of the development, specifically paragraph 17 which is reproduced below:

"17 Four questions usually arise in the assessment of existing use rights developments, namely:

 How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

Height:

The site is identified on the Height of Buildings Map under the *IWLEP 2022* as having a maximum height of 12.5m—the northern portion of the site is identified as being within 'Area 2', which places a 3m height limitation on the building to ensure no part of the building's GFA is contained within the maximum building height (see image below).



Figure 7: A screenshot from the NSW Planning Portal Digital EPI Viewer shows the subject site (dashed in red outline) mapped with a 12.5m maximum building height and the northern potion of the site fronting Liverpool Road being within Area 2.

The proposed building height (16.207m) exceeds the maximum 12.5m building height by 3.707m or 29.66%. However, the proposal qualifies for the AH bonus under *SEPP (Housing) 2021*—see assessment under Section 5.A. of this assessment report. As assessed, a 28.65% bonus applies to the maximum building height. The application seeks additional building height on the portion of the site that is zoned MU1 and is subject to a maximum height of 12.5m. With the bonus applied, the maximum height of building is 16.08m. The proposed maximum building height is 16.207m, which exceeds the maximum height by 0.127m or 0.79%.

Notwithstanding this breach, the applicant has submitted a Section 4.6 request, and it has been found that the variation can be supported in this instance as the applicant has demonstrated the preconditions of Section 4.6(3)(a) and (b) of the *IWLEP 2022* are achieved notwithstanding the non-compliance.

Floor Space Ratio (FSR):

The site is split between two FSR areas (see image below), the northern portion of the site is afforded an FSR of 1.5:1 and the southern portion of the site is afforded an FSR of 0.7:1 in accordance with Section 4.4 of *IWLEP 2022*.



Figure 8: A screenshot from the NSW Planning Portal Digital EPI Viewer shows the subject site (dashed in red outline) mapped with a 12.5m maximum building height and the northern portion of the site fronting Liverpool Road being within Area 2.

The proposal, as amended, seeks an additional FSR on the 1.5:1 portion of the site. The proposal seeks an FSR of 1.85:1, which exceeds the maximum FSR by 23.65% or 624.2sqm. However, the proposal qualifies for the AH bonus under *SEPP* (Housing) 2021—see assessment under Section 5.A. of this assessment report. As assessed, a 28.65% bonus applies to the maximum FSR. With the bonus applied, the maximum FSR is 1.92975:1. Therefore, the proposal does not exceed the maximum permitted FSR.

Setbacks: The proposed building setbacks have been sited where it can reasonably be expected for new development to occur. The proposed setbacks will have a reasonable impact on adjoining properties having regard to solar access, visual privacy, bulk and scale. In this regard, the proposed building setbacks are consistent with the objectives for building setbacks

contained within the Comprehensive Inner West Development Control Plan 2016 (CIWDCP 2016).

What is the relevance of the building in which the existing use takes place?

The subject site currently supports a residential flat building that is currently under construction. The scale and form of the existing building is consistent with the area. The proposal does not involve a change of use. The site would maintain the existing non-conforming use as a 'residential flat building'.

What are the impacts of the development on adjoining land?

The proposed development has no significant adverse impacts on adjoining land. The proposal is generally consistent with the relevant provisions of the ADG and CIWDCP 2016 relating to visual privacy, overshadowing, visual bulk and general amenity, as discussed within this report.

What is the internal amenity?

The development incorporates suitably sized internal spaces and facilities and will receive adequate solar access and ventilation which is considered to provide acceptable internal amenity for the use as a residential flat building in accordance with the ADG and CIWDCP 2016.

An assessment of the proposal against the four (4) planning principles established by the NSW Land and Environment Court in relation to existing use rights has been undertaken. The proposal is unlikely to have any unreasonable impacts upon the adjoining properties or the streetscape.

Part 4 – Principal development standards

Section	Proposed		Complies
Section 4.3	Maximum	12.5m	No
Height of buildings	Proposed	16.207m	
	Variation	3.707m or 29.66%	
	Note: A 28.65% height b	oonus applies under SEPP	
	(Housing) 2021. The propo	sal entails new works on the	
	portion of the MU1-zoned	land with a maximum 12.5m	
	building height, the bon	us height is 16.08m. The	
	proposed height is 16.20	7m, exceeding the limit by	
	0.127m (0.79%).		

Section	Proposed	Complies
Section 4.3(2A) applies to land identified as "Area 1", "Area 2" or "Area 3". Buildings on this land must not contain, or be reasonably capable of being modified to contain, an area forming part of the building's gross floor area within 3m of the maximum height for the land	The proposal entails new works on the northern portion of the site is land identified as "Area 2" on the Height of Buildings Map. Pursuant to SEPP (Housing) 2021, the maximum height is restricted to 13.08m. Areas accommodating FSR are limited below 13.08m.	Yes
Section 4.4	Maximum 1.5:1 or 2,639.1sqm	No
Floor space ratio	Proposed 1.85:1 or 3,263.3sqm	
	Variation 23.65% or 624.2% Note: A 28.65% FSR bonus applies under SEPP (Housing) 2021. The proposal entails new works on the portion of the MU1-zoned land with a base FSR of 1.5:1, the bonus FSR is 1.92975:1. The proposed FSR is 1.85:1.	
NSW Planning	Portal Digital EPI Viewer	!
Ratio Map - Additional Controls Floor Space Ratio Map Opacity: 70% Show layer labels Height of Buildings Map Additional Controls	atial Services) Legends 121 251	
Buildings Map Heritage Map		
Controls Land Zoning Map Lot Size Map -		055
Additional Controls	020	+
Lot Size Map	07.1 20 m	7

Section	Proposed	Complies	
Figure 9: A screenshot fro	Figure 9: A screenshot from the NSW Planning Portal Digital EPI Viewer shows the subject site dashed outline in red on the Floor Space Ratio Map.		
Section 4.5 Calculation of floor space ratio and site area	The site area and floor space ratio for the proposal has been calculated in accordance with the section.	Yes	
Section 4.6 Exceptions to development standards	The applicant has submitted a variation request in accordance with Section 4.6 to vary Section 4.3. This has already been discussed under Part 5.A. of this assessment report.	See discussion under Part 5.A.	

Part 5 - Miscellaneous provisions

Section	Proposed	Complies
Section 5.10 Heritage conservation	The site is not listed as a heritage item nor is it located in a heritage conservation area. The site adjoins the Miller Avenue Conservation Area to the east and is located adjacent a local heritage item at No. 1 Miller Avenue. The transition proposed is considered acceptable	Yes
Section 5.21 Flood planning	The site is located in a flood planning area. The development is considered to be compatible with the flood function and behaviour on the land now and under future projections. The design of the proposal and its scale will not affect the flood affectation of the subject site or adjoining properties and is considered to appropriately manage flood risk to life and the environment.	Yes

Part 6 – Additional local provisions

Section	Proposed	Complies
Section 6.2	No earthworks proposed.	N/A
Earthworks		
Section 6.3	Subject to standard conditions would not result in any	Yes, subject
Stormwater	significant runoff to adjoining properties or the	to conditions
Management	environment.	
Section 6.9 Design excellence	 The proposed development is for the external alterations to a building that exceeds 14 metres in height. The development is therefore required to demonstrate design excellence. In considering if the proposal exhibits design excellence, the application was referred to the Architectural Excellence & Design Review Panel (AEDRP) for comment. The recommendations from the AEDRP have been largely resolved. The proposal satisfies this section as follows: A high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved. 	Yes

Section	Proposed	Complies
Section 6.13	The proposal is not capable of achieving this section	No
Residential	and relies on existing use rights for permissibility.	
accommodation in		
Zones E1, E2 and MU1		

B. Development Control Plans

Summary

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

CIWDCP 2016	Complies
Section 1 – Preliminary	
B – Notification and Advertising	Yes
Section 2 – General Guidelines	
A – Miscellaneous	
1 - Site and Context Analysis	Yes
2 - Good Design	Yes
3 - Flood Hazard	Yes
4 - Solar Access and Overshadowing	Yes
5 - Landscaping	Yes
6 - Safety by Design	Yes
7 - Access and Mobility	Yes
8 - Parking	On merit – see discussion
	under Section 5.A. of this
	report SEPP (Housing)
	2021
9 - Subdivision	N/A
10 - Signs and Advertising Structures	N/A
11 - Fencing	N/A
12 - Telecommunication Facilities	N/A
13 - Development Near Rail Corridors	N/A
14 - Contaminated Land	N/A
15 - Stormwater Management	Yes
B – Public Domain	
C – Sustainability	
1 – Building Sustainability	Yes
2 – Water Sensitive Urban Design	Yes
3 – Waste and Recycling Design & Management Standards	Yes
4 – Tree Management	Yes
5 - GreenWay	N/A
D – Precinct Guidelines	
Ashfield West	Yes – see discussion

E1 - Heritage items and Conservation Areas (excluding	
Haberfield)	
1 – General Controls	Yes
2 – Heritage Items	N/A
3 – Heritage Conservation Areas (HCAs)	N/A
4 – Building Types and Building Elements within HCAs	N/A
5 – Retail and Commercial Buildings	N/A
6 – Apartments and Residential Flat Buildings	N/A
7 – Subdivision and lot consolidation affecting heritage items	N/A
or in heritage conservation areas	
8 - Demolition	N/A
9 - Heritage Conservation Areas, Character Statements and	N/A
Rankings	
E2 – Haberfield Neighbourhood	N/A
F – Development Category Guidelines	
1 – Dwelling Houses	N/A
2 – Secondary Dwellings	N/A
3 – Neighbourhood Shops and Shop Top Housing in R2 zones	N/A
4 – Multi Dwelling Housing	N/A
5 – Residential Flat Buildings	Yes
6 – Boarding Houses and Student Accommodation	N/A
7 – Residential Care Facilities	N/A
8 – Child Care Centres	N/A
9 – Drive-in Take Away Food Premises	N/A
10 – Sex Industry Premises	N/A
11 – Car Showrooms	N/A

The following provides discussion of the relevant issues:

Chapter A – Part 4 – Solar Access and Overshadowing

In accordance with DS1.1 under Chapter A, Part 4 of the CIWDCP 2016, residential flat buildings must ensure that the development:

- Maintains existing levels of solar access to adjoining properties; or,
- Ensures that living rooms and principal private open space of adjoining properties receive a minimum of 2 hours of direct sunlight between 9am and 3pm on 21 June.

The winter solstice shadow and sun eye view diagrams submitted with the application demonstrate that the overshadowing impacts from the proposed additional uplift scheme comply with the above provisions, except for the private open space at No. 5 Miller Avenue. The private open space of properties along Miller Avenue to the east are oriented perpendicular to the subject site, making it difficult to protect solar access to these properties, particularly in the afternoon during mid-winter. Furthermore, No. 5 Miller Avenue is already overshadowed by the rear building line of No. 3 Miller Avenue, which affects the private open space adjacent to the rear living area of No. 3 between 11am and 1pm, a period during which other properties maintain sunlight.

As such, the non-compliance arises from offsite impacts and the challenge of protecting solar access to No. 5 Miller Avenue, particularly in the late afternoon when the most significant overshadowing occurs. However, the design is considered a reasonable outcome for the site, as the proposed development is generally contained within the maximum permitted building height, except for a lift overrun and pergola, which both exceed the maximum height but do not contribute to overshadowing. The development also complies with the maximum FSR. Furthermore, the design takes into account the site's topography and has been positioned closer to the western side of the site to minimise overshadowing impacts.

In this context, the proposed overshadowing impacts are deemed reasonable, and the proposed development has been designed to optimise solar access to the living areas and private open space of surrounding residential properties.

Chapter D - Part 3 - Ashfield West

Chapter D Part 3 of the CIWDCP relates to all development within the Ashfield West precinct and applies to the proposal. The proposed development is consistent with the following key relevant performance criteria as follows:

Performance Criteria	Comment
To identify key matters that	The proposal is consistent with the desired character of
affect building and open	the precinct and Principle 1 – Context and neighbourhood
space design and influence	character of SEPP (Housing) 2021.
the desired character of the	
townscape of the Ashfield	
West strip and address	
Principle 1 – Context and	
neighbourhood character of	
SEPP 65.	
Building height:	The proposed development maintains a reasonable
• minimises amenity	height for the site, despite exceeding the maximum under
impacts on adjoining	the IWLEP 2022. It is noted that the site benefits from a
low density residential	bonus under the Housing SEPP, the proposal results in a
properties	minor variation to the standard. However, the building
• defines the maximum	element resulting in the exceedance are attributed to roof
permitted building scale	top structures such as a lift overrun and pergola servicing
including number of	the communal open space. These structures are inset
storeys as stipulated	from the sides of the building and do not result in adverse
within the Inner West	amenity related impacts and can be supported on merit.
LEP 2022, and is	
capable of	
accommodating all of a	
building's functional	
requirements	
Buildings are:	The proposed siting of the development remains
• to be located and	consistent with what has previously been approved on
arranged in a way	this site. The proposed development steps down

which gives spatial definition to the road and provides surveillance of the public domain

east, providing a suitable built form transition to the lower density residential properties located to the east of the site.

appropriately toward the heritage conservation area to the

- to ensure the building scale is sympathetic with surrounding lower density residential properties
- to ensure future development does not compromise development potential of adjoining properties and /or reduce solar access for adjoining properties.

Residential amenity

Overall, the layout of the approved residential flat building approved previously remains unchanged. The proposed development seeks to accommodate an additional level, which offers reasonable amenity. See ADG assessment under SEPP Housing of Part 5.A. in this report.

Residential development:

- responds to SEPP 65 -Principle 8: Housing diversity and social interactions and the Design Apartment Guide. in order to ensure that residential development provides a mix of dwelling types and sizes to cater for a range of household types and occupancy rates.
- addresses SEPP 65 -Principle 8: Housing diversity and social interactions bv requiring certain а percentage of smaller dwellings which will be comparatively more affordable in terms of rental cost and purchase price.

The proposal supports Principle 8 through the provision of affordable housing in a highly accessible location. It includes a range of apartment sizes and types, catering to various household needs, demographics, and income levels.

 requires Universal Design to be an upfront consideration in the design process. 	
Development servicing requirements	The proposed site facilities servicing the development are satisfactory and capable of serving the proposed additional units proposed as part of this application.
Sustainable development	A BASIX Certificate accompanies the application.
To avoid reflecting of sunlight from buildings onto surrounding areas and buildings.	The building elevations and materials remain consistent with those approved.

C. The Likely Impacts

These matters have been considered as part of the assessment of the development application. It is considered that the proposed development will not have significant adverse environmental, social or economic impacts upon the locality.

D. The Suitability of the Site for the Development

The proposal is of a nature in keeping with the overall function of the site. The premises are in a residential surrounding and amongst similar uses to that proposed.

E. Submissions

The application was notified in accordance with Council's Community Engagement Strategy between 31 October 2024 to 21 November 2024. A total of three (3) submissions were received in response to the initial notification.

The application was renotified due to error in original notification and two (2) submissions were received, of which one submission was in support. Issues raised as follows have been discussed in this report:

- Overshadowing
- Visual privacy
- Waste management
- Traffic and parking
- Impacts on Heritage Conservation Area and neighbourhood character

Further issues raised in the submissions received are discussed below:

Concern	Comment
Retaining wall impacts	The impact of the proposed development on existing structures to
	be retained is outside the scope of this Development Application
	assessment. Notwithstanding, the proposal does not include any
	new works in the vicinity of the retaining wall between the subject
	site and the adjoining property at No. 11 Miller Avenue. Standard
	conditions of consent will continue to apply, including the
	requirement for a dilapidation report and a condition that no works
	are to be carried out beyond the property boundaries.

F. 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.

This has been achieved in this instance.

6. Section 7.11 / 7.12 Contributions

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 \$140,000.00 would be required for the development under the Inner West Local Infrastructure Contributions Plan 2023.

A condition requiring that contribution to be paid is included in the recommendation.

7. Housing and Productivity Contributions

The carrying out of the development would result in an increased demand for essential state infrastructure such as schools, hospitals, major roads, public transport infrastructure and regional open space. A contribution of \$74,974.57 would be required for the development under Part 7, Subdivision 4 Housing and Productivity Contributions of the *EP&A Act 1979*.

A housing and productivity contribution is required in addition to any Section 7.11 or 7.12 Contribution. A condition requiring that the housing and productivity contribution is to be paid is included in the recommendation.

8. Referrals

The following internal referrals were made, and their comments have been considered as part of the above assessment:

- Heritage Specialist;
- Development Engineer;
- Urban Forest;
- Resource Recovery;
- Environmental Health;
- · Building Certification; and
- Property.

The following external referrals were made, and their comments have been considered as part of the above assessment:

• Transport for NSW.

9. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Inner West Local Environmental Plan 2022* and Inner West Comprehensive Development Control Plan 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.

10 Recommendation

- A. In relation to the proposal in Development Application No. DA/2024/0882 to contravene the Height of building development standard in Clause 4.3 of *Inner West Local Environmental Plan 2022* the Inner West Local Planning Panel is satisfied that the Applicant has demonstrated that:
 - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.
- B. In relation to the proposal in Development Application No. DA/2024/0882 to contravene the Landscaped Area non-discretionary development standard in Section 19(2)(b) of *State Environmental Planning Policy (Housing) 2021* the Inner West Local Planning Panel is satisfied that the Applicant has demonstrated that:
 - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.
- C. In relation to the proposal in Development Application No. DA/2024/0882 to contravene the Car Parking non-discretionary development standard in Section 148(2)(a) of *State Environmental Planning Policy (Housing) 2021* the Inner West Local Planning Panel is satisfied that the Applicant has demonstrated that:
 - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.
- D. 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/2024/0882 for alterations and additions to an approved Residential Flat Building under DA/2020/0583 dated 17 September 2021, which includes the construction of a new 3rd level with 7 additional residential units and the allocation of 11 affordable housing units. at 314 Liverpool Road ASHFIELD subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

GENERAL CONDITIONS

	Condition
1.	Noise – Consultant's Recommendations
	All the recommendations contained in the acoustic report prepared by Rodney Stevens Acoustics, reference R230397R1 dated 23 September 2024 must be implemented.
	Reason: To protect the amenity of the neighbourhood and ensure that the development is carried out in accordance with the consent.
2.	Mechanical Ventilation System Certification
	The mechanical ventilation systems are to be designed, constructed and operated in accordance with the following:
	1. Australian Standard AS 1668 Part 1 – 1998;
	2. Australian Standard AS 1668 Part 2 – 2012;
	3. Australian Standard 3666.1 – 2011;
	4. Australian Standard 3666.2 – 2011; and
	5. 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.
	Reason: To ensure compliance with the relevant Australian Standards.
3.	Asbestos Removal
	Hazardous and industrial waste arising from the use must be removed and / or transported in accordance with the requirements of the NSW Environment Protection Authority (EPA) and the New South Wales WorkCover Authority.
	Reason: To ensure compliance with the relevant environmental legislation.
4.	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 unless levels are otherwise approved by Council via a S138 approval.
	Reason: To allow for pedestrian and vehicular access.

activities:

5. **Dry-weather Flows** Dry-weather flows of any groundwater including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system. Alternatively, the basement or any below ground structure must be designed to be "tanked" preventing the ingress of seepage or groundwater. Reason: To prevent continuous flow of groundwater in the kerb and gutter and to ensure no substance other than rainwater enters the stormwater system and waterways. 6. **Rock Anchors** This consent does not grant consent for any rock anchors on the road reserve or Council land. Reason: To protect Council infrastructure. 7. **Rock Anchors** For use of 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: 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. 2. 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. The report must be supported by suitable geotechnical investigations to the efficacy of all design assumptions. Reason: To ensure works are carried out in accordance with the relevant legislation. 8. Vehicles Leaving the Site All vehicles must enter and exit the site in a forward direction. Reason: To ensure parking facilities maintain public and pedestrian safety. 9. **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. Reason: To ensure works are carried out in accordance with the relevant legislation. 10. **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

- 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:
- A concrete pump across the roadway/footpath;
- · Mobile crane or any standing plant;
- · Skip Bins;
- Scaffolding/Hoardings (fencing on public land);
- Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
- · Awning or street veranda over the footpath;
- · Partial or full road closure; and
- 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.

Reason: To ensure works are carried out in accordance with the relevant legislation.

11. 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.

Reason: To ensure that any designated loading dock is available for servicing the site at all times.

12. 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.

Reason: To ensure Council assets are protected.

13. 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.

Reason: To ensure the approved works are undertaken in accordance with the consent.

14. Adjoining wall dilapidation report

- If a wall on a lot is to be built to a boundary and there is a wall (the adjoining wall) on the lot adjoining that boundary that is less than 0.9m from that boundary, the person having the benefit of the complying development certificate must obtain a dilapidation report on the adjoining wall.
 If the person preparing the report is denied access to the adjoining lot for the
- (2) If the person preparing the report is denied access to the adjoining lot for the purpose of inspecting the adjoining wall, the report may be prepared from an external inspection of the adjoining wall.

Reason: To ensure adjacent properties are protected during construction.

15. 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/Received	Prepared by
DA-0006, Rev. F	Schedule of Finishes	14/04/2025	IDA Design Group
DA-0100, Rev. F	Site Plan	14/04/2025	IDA Design Group
DA-0101, Rev. F	General Arrangement Plan - Basement	14/04/2025	IDA Design Group
DA-0102, Rev. F	General Arrangement Plan - Ground Level	14/04/2025	IDA Design Group
DA-0103, Rev. F	General Arrangement Plan - Level 1 - Block 1-4	14/04/2025	IDA Design Group
DA-0104, Rev. F	General Arrangement Plan - Level 2 - Blocks 1-4	14/04/2025	IDA Design Group
DA-0105, Rev. F	General Arrangement Plan - Level 3 - Blocks 1-4	14/04/2025	IDA Design Group
DA-106, Rev. F	General Arrangement Plan - Roof Plan	14/04/2025	IDA Design Group
DA-0155, Rev. F	Adaptable Units & Details	14/04/2025	IDA Design Group
DA-0156, Rev. F	Liveable Units & Details	14/04/2025	IDA Design Group

DA-600, Rev. F	Elevations - Sheet 1	14/04/2025	IDA Desigr Group
DA-0601, Rev. F	Elevations - Sheet 2	14/04/2025	IDA Desigr Group
DA-0602, Rev. F	Elevations - Sheet 2	14/04/2025	IDA Desigr Group
DA-0650, Rev. F	Sectional Elevations - Sheet 1	14/04/2025	IDA Desigr Group
DA-0651, Rev. F	Sectional Elevations - Sheet 2	14/04/2025	IDA Desigr Group
DA-0651A, Rev. F	Sectional Elevations - Sheet 2	14/04/2025	IDA Desigr Group
DA-0652, Rev. F	Sectional Elevations - Sheet 3	14/04/2025	IDA Desigr Group
DA-0652A, Rev. F	Sectional Elevations - Sheet 3	14/04/2025	IDA Desigr Group
DA-0653, Rev. F	Sectional Elevations - Sheet 4	14/04/2025	IDA Design Group
DA-0654, Rev. D	Sectional Elevations - Sheet 5	14/04/2025	IDA Design Group
DA-0850, Rev. F	Window Schedule - Details	14/04/2025	IDA Design Group
1116292M_04	BASIX Certificate	22/10/2024	Building 8 Energy Consultants Australia
ASHFIELD_DSP REV 3	Location Plan - SP Draft - Sheet 1 of 7	14/02/2025	SWS Surveyors
ASHFIELD_DSP REV 3	Basement & Lower Ground Plan - Sheet 2 of 7	14/02/2024	SWS Surveyors
ASHFIELD_DSP REV 3	Ground Floor Plan - Sheet 3 of 7	14/02/2024	SWS Surveyors
ASHFIELD_DSP REV 3	First Floor Plan - Sheet 4 of 7	14/02/2024	SWS Surveyors
ASHFIELD_DSP REV 3	Second Floor Plan - Sheet 5 of 7	14/02/2024	SWS Surveyors

ASHFIELD_DSP REV 3	Third Floor Plan - Sheet 6 of 7	14/02/2024	SWS Surveyors
ASHFIELD_DSP REV 3	Roof Plan - Sheet 7 of 7	14/02/2024	SWS Surveyors
-	Structural Adequacy Certificate	2/10/2024	ABCD Design Consulting Structural and Civil Engineers
DA-22025, Rev. A	Accessibility Compliance Report	16/10/2024	Access Link Consulting
Reference 2434	Traffic Assessment	October 2024	One Traffic Consulting
-	BCA Compliance Assessment Report	27/09/2024	CD Certification
R230397R1, Rev. 1	Traffic Noise Assessment	23/09/2024	Rodney Stevens Acoustics Pty Ltd
REF - 24185	Amended Waste Management Plan	October 2024	Dickens Solutions

As amended by the conditions of consent.

This consent is to be read together with, and operates in conjunction with, development consent DA/2020/0583 (as amended by MOD/2023/0316 and any subsequent modifications). Where there is any inconsistency between these consents, the conditions of this consent are to prevail.

Reason: To ensure development is carried out in accordance with the approved documents.

16. Car Parking

The development must provide and maintain within the site:

- a. 44 car parking spaces must be paved and line marked;
- 6 car parking spaces, for persons with a disability must be provided and marked as disabled car parking spaces;
- c. 5 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;
- d. 2 off-street motorcycle parking spaces must be provided, paved, line marked and maintained at all times;
- e. 10 Bicycle storage capacity within the site; and
- f. 1 Carwash bays

Reason: To ensure parking facilities are designed in accordance with the Australian Standard and Council's DCP.

17.	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.
	Reason: To protect the visual amenity of the neighbourhood.
18.	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.
	Reason: To protect the visual amenity of the neighbourhood.
40	Waller Outside the Busineste Basindani
19.	Works Outside the Property Boundary
	This development consent does not authorise works outside the property boundaries
	on adjoining lands.
	Reason: To ensure works are in accordance with the consent.
	Reason. To ensure works are in accordance with the consent.
20.	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.
	and prior controlled to controlled
	Reason: To protect pedestrian safety.
	The second personnel control
21.	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.
	Reason: To ensure compliance with legislative requirements.
22.	National Construction Code (Building Code of Australia)
22.	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.
	Toquironionio of the National Conditionion Code.
	Reason: To ensure compliance with legislative requirements.
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23.	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.
	Reason: To ensure compliance with legislative requirements.
24.	Dividing Fences Act
	The person acting on this consent must comply with the requirements of the <i>Dividing Fences Act 1991</i> in respect to the alterations and additions to the boundary fences.
	Reason: To ensure compliance with legislative requirements.
25.	Dial Before You Dig
	Contact "Dial Before You Dig" prior to commencing any building activity on the site.
	Reason: To protect assets and infrastructure.
26.	Bin Storage - Residential
	All bins are to be stored within the property. Bins are to be returned to the property within 12 hours of having been emptied.
	Reason: To ensure resource recovery is promoted and residential amenity is protected.

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

	Condition
27.	Noise General – Acoustic Report Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an acoustic report demonstrating that noise and vibration from the operation of the premises will satisfy the relevant provisions of the Protection of the Environment Operations Act 1997 and Regulations and relevant state and local policies and guidelines. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.
	Note: In special entertainment precincts, this condition applies to noise and vibration from plant equipment and machinery only.
	Reason: To protect the amenity of the neighbourhood.
28.	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.

Security Deposit:	\$30,000.00
Inspection Fee:	\$389.90

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.

Reason: To ensure required security deposits are paid.

29. Stormwater Drainage System – Major Developments

rior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention and/or on site retention/ re-use facilities (OSR/OSD) and Stormwater Quality Improvement Devices (SQIDS), certified by a suitably experienced 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) that the design of the site drainage system complies with the following specific requirements:

- The design must be generally in accordance with the stormwater drainage concept plan on Drawing Nos. SW100 to SW551 (13 Sheets) prepared by SGC Consulting Engineers and dated 29 September 2024, as amended to comply with the following;
- Stormwater runoff from all surface areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank by gravity directly to Council's piped drainage system via the OSD/OSR tank.

- 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.
- Charged or pump-out stormwater drainage systems are not permitted including for roof drainage.
- 5. The Drainage Plan must detail the proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes.
- 6. The on-site detention system must be designed for all storm events from the 1 in 5 years to the 1 in 100 year storm event, with discharge to a Council controlled stormwater pipe system limited to fully pervious (state of nature) conditions with the maximum allowable discharge equivalent to Council's pipe capacity equivalent to an ARI (Average Recurrence Interval) event flow rate.
- At least two 200 mm wide heavy duty grate shall be provided below 18.6 m AHD across the full width of the driveway. The flood water shall be directed to below the driveway slab.
- 8. Details of the 1 in 100-year ARI overflow route in case of failure\blockage of the drainage system must be provided.
- Any pump-out system for drainage of surface flows from the basement ramp is permitted for the basement area only and must be designed in accordance with the following criteria.
 - 1. Comply with all relevant Australian Standards.
 - An overflow, flashing light and audible alarm is to be provided to warn of pump failure.
 - A maintenance regime for the pump system must be provided, including provision for regular maintenance and servicing at least every 6 months.
 - 4. The proposed pump system must consist of two (2) pumps, connected in parallel, with each pump being capable of emptying the holding tank at a rate equal to the rate of inflow for the one-hour duration, 100-year Average Recurrence Interval (ARI) storm event. The holding tank must be capable of holding one hour's runoff from one-hour duration 20-year ARI storm event.
 - 5. The pump system must be discharged to the OSD storage tank.
 - Subsurface flows must be collected at the point of ingress to the basement.
 - 7. The subsurface drainage system must have sufficient capacity to collect and convey all surface flows to the pump out system.
 - Inlet pits and drains for subsurface drainage must be designed to minimise potential for pollutants from cars or other sources to enter the subsurface drainage system.
- The design must make provision for the natural flow of stormwater runoff from adjacent properties;
- 11. No nuisance or concentration of flows to other properties.
- The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system.
- 13. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.
- All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.
- 15. Stormwater quality improvement devices must be installed such that stormwater flows leaving the site meet the following environmental targets.

16.

Pollutant	Baseline Annual Pollution Load (kg/ha/yr)	Retention Criteria
Gross Pollutants, including trash, litter and vegetation matter greater than 5mm		90% reduction of average annual load
Total Suspended solids, including sediment and other fine material less than 5mm		85% reduction of average annual load
Total Phosphorous	2	65% reduction of average annual load
Total Nitrogen	15	45% reduction of average annual load
Hydrocarbons (Oil and Grease)		90% reduction of average annual load – no visible discharge
Toxicants		100% containment of toxicants

- A water balance model must be submitted to accompany the water re-use proposal.
- 18. A WSUD Strategy Report including detailed design plans must be provided to ensure the treatment measures proposed to meet Council's water quality targets.
- 19. A detailed WSUD maintenance plan outlining how all elements of the water quality treatment facility will be maintained and to record annual inspections/maintenance works to be undertaken.
- 20. 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.
- 21. The stormwater and architectural site plans must be amended to accurately show the location of the Sydney Water and Council's stormwater pipes. The stormwater pipes must be located by the use of test pits and must be inspected by a suitably experienced Civil Engineer. The actual location and depth of the pipe must be used in the design of the footings of the proposed building.
- 22. Sydney Water approval is required for any building over or adjacent to its asset. Written approval from Sydney Water permitting construction over or adjacent to its asset is to be provided to the Certifying Authority.

Reason: To ensure that the adequate provision of stormwater drainage is provided.

30. 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:

- 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;
- All components of the basement, including footings, must be located entirely within the property boundary;
- 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;
- 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.

Reason: To ensure that the design of the basement is structurally sound and has been appropriately certified.

31. 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 construction of heavy duty vehicular crossing and removal of all redundant vehicular crossings to the site.
- b. The vehicular crossing and driveway ramp to the site shall be designed to satisfy the ground clearance template for a B99 vehicle using dynamic ground clearance software. A long section, along both sides of the vehicular crossing and ramp, drawn at a 1:20 or 1:25 natural scale, shall be provided for review. The long section shall begin from the centreline of the adjacent road to a minimum of 3 metres into the property. The long section shall show both existing and proposed surface levels including information including chainages.
- 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.

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

Reason: To ensure public domain works are constructed to Council's standards

32. Flood Risk Management Plan

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Flood Risk Management Plan prepared and certified by a suitably experienced 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). The Plan must be prepared/amended to make provision for the following:

- The plan must be generally in accordance with the recommendations of the Flood Study Report - Issue C prepared by SGC Consulting Engineers and dated 20 August 2021
- b. Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development. Such recommendations must be consistent with the approved development. The flood impacts on the site must be assessed for the 100-year ARI and Probable Maximum Flood (PMF) storm events. The precautions must include but not be limited to the following:
 - Types of materials to be used to ensure the structural integrity of the building to immersion and impact of velocity and debris.
 - Waterproofing methods, including electrical equipment, wiring, fuel lines or any other service pipes or connections.
 - iii. Flood warning signs/depth indicators for areas that may be inundated
 - iv. A flood evacuation strategy.
 - On-site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level.
- c. All habitable floor levels must be set at 19.20 m AHD (1 in 100 year flood level plus 500mm/300mm freeboard). All structures below 19.20 m AHD must be constructed from flood compatible materials.
- d. The entry crest to any underground carpark must be set at 19.40 m AHD (1 in 100 year flood level plus 500mm freeboard).
- e. A structural engineer's certificate must be submitted stating that the proposed building has been designed to withstand the forces of flood water, debris and buoyancy up to the 1 in 100-year flood level/(Probable Maximum Flood (PMF) level- If refuge on site proposed).
- f. The existing ground levels throughout the site must be maintained so as not to alter the existing overland flow path. Details of all obstructions or changes in level within the overland flow paths must be detailed on the plan.
- g. All buildings and driveways over the overland flow path and floodway shall be on piers and open under the slab.

- h. The elevated driveway should not redirect the flood way to adjacent properties.
- No solid and retaining walls are not permitted below 19.2 m AHD across the full width of the floodway.
- j. All fencing within the floodway and overland flow path must be of an open type below the 100 year ARI flood levels so as to allow for the free flow of water throughout the site so as to maintain existing flows.
- j. All structures within the existing overland flood flow path and flood storage areas within the site must be raised on piers and any areas below floor level maintained as open areas with suitable open type fencing/screening so as to maintain existing flow paths and flood storage.
- k. All works must be designed to comply with the ABCB Standard: Construction of Buildings in Flood Hazard Areas in accordance with the National Construction Code and the Building Code of Australia. Note that some terms defined in this standard have equivalent meaning to terms used in Council's Development Control Plan as listed below.
 - i. Building Code of Australia
 - Defined flood level (DFL) 100-year Average Recurrence Interval flood level
 - iii. Defined flood event (DFE) 100-year Average Recurrence Interval flood
 - iv. Flood hazard level (FHL) Flood Planning Level (FPL).

Reason: To protect human life and property during a flood event.

33. Amended Architectural Plans to Reflect Flood Risk Management Plan

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended architectural plans that incorporate the recommendations of the Flood Risk Management Plan. The design must be prepared to make provision for the following:

- a. Specification of materials.
- b. Heavy duty grated drains (300 mm wide) on the elevated driveway.
- c. No solid and retaining walls below 19.20 m AHD.
- Flood way opening dimensions and columns with detailed descriptions on the elevation and section plans.
- e. Waterproofing works, where applicable.

No changes to the external form or appearance of the development contrary to the approved plans must occur except as identified by this condition. Any changes to such must be subject to separate approval.

Reason: To protect human life and property during a flood event.

34. Engineering Design - Structural Engineer Plans and Certification

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans prepared and certified by a suitably qualified 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 incorporate the following recommendations of the Flood Risk Management Plan.

The design must be prepared to make provision for the following:

- Structural integrity of all structures from immersion and/or impact of velocity and debris.
- b. Waterproofing works, where applicable.

Reason: To protect human life and property during a flood event.

35. Design Change

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

- Balcony balustrades along the eastern elevation of building A are to be treated with obscure glazing.
- b. Open elements or voids below building B must incorporate enclosing/screening grills but must designed to have a maximum of 7.4% blockage.
- c. The privacy screening between ground floor apartments and the along the ground floor eastern elevation on building A is to be no higher than 1.6m in height from the relevant finished floor level of each apartment.
- d. The courtyard which services bed 1 in G.13 is to be deleted, and the glass doors replaced with a window to match window 1 in U1.13.
- e. The courtyard which services bed 1 in G.12 is to be deleted, and the glass doors replaced with a window to match window 1 in U1.12.
- f. The materials and finishes schedule is to be amended to delete reference to 'or similar'.

Reason: To ensure that the design changes protect the amenity of the neighbourhood.

36. Section 7.11 Contribution

In accordance with section 7.11 of the *Environmental Planning and Assessment Act* 1979 and the Inner West Local Infrastructure Contribution Plan 2023 (the Plan), the following monetary contributions shall be paid to Council to cater for the increased demand for local infrastructure resulting from the development:

Contribution Category	Amount
Open Space & Recreation	\$100,100.00
Community Facilities	\$18,553.00
Transport	\$13,160.00
Drainage	\$6,902.00
Plan Administration	\$1,285.00

TOTAL \$140,000.00

At the time of payment, the contributions payable will be adjusted for inflation in accordance with indexation provisions in the Plan in the following manner:

Cpayment = Cconsent x (CPIpayment ÷ CPIconsent)

Where:

Cpayment = is the contribution at time of payment

Cconsent = is the contribution at the time of consent, as shown above

CPIconsent = is the Consumer Price Index (All Groups Index) for Sydney at the date the contribution amount above was calculated being 140.9 for the March 2025 quarter.

CPIpayment = is the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics that applies at the time of payment

Note: The contribution payable will not be less than the contribution specified in this condition.

The monetary contributions must be paid to Council (i) if the development is for subdivision – prior to the issue of the subdivision certificate, or (ii) if the development is for building work – prior to the issue of the first construction certificate, or (iii) if the development involves both subdivision and building work – prior to issue of the subdivision certificate or first construction certificate, whichever occurs first, or (iv) if the development does not require a construction certificate or subdivision certificate – prior to the works commencing.

It is the professional responsibility of the principal certifying authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.

Council's Plan may be viewed at www.innerwest.nsw.gov.au or during normal business hours at any of Council's customer service centres.

Please contact any of Council's customer service centres at council@innerwest.nsw.gov.au or 9392 5000 to request an invoice confirming the indexed contribution amount payable. Please allow a minimum of 2 business days for the invoice to be issued.

Once the invoice is obtained, payment may be made via (i) BPAY (preferred), (ii) credit card / debit card (AMEX, Mastercard and Visa only; log on to www.innerwest.nsw.gov.au/invoice; please note that a fee of 0.75 per cent applies to credit cards), (iii) in person (at any of Council's customer service centres), or (iv) by mail (make cheque payable to 'Inner West Council' with a copy of your remittance to PO Box 14 Petersham NSW 2049).

The invoice will be valid for 3 months. If the contribution is not paid by this time, please contact Council's customer service centres to obtain an updated invoice. The contribution amount will be adjusted to reflect the latest value of the Consumer Price Index (All Groups Index) for Sydney.

Reason: To ensure payment of the required development contribution.

37. **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 0.25% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$250,000 or more. Reason: To ensure the long service levy is paid. 38. Residential Flat Buildings - Adaptable Dwellings Prior to the issue of a Construction Certificate, the Certifying Authority, must be provided with plans that demonstrate 6 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. Reason: To ensure adaptable units are designed in accordance with the relevant Australian Standard. 39. Structural Details and Design Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with structural details and a Structural Certificate for Design by a qualified practising structural engineer and in accordance with AS/NZS 1170. Reason: To ensure compliance with the National Construction Code (Building Code of Australia). 40. Structural Certification for Existing Building – Alterations and Additions Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a structural certification prepared by a qualified practising certified structural engineer verifying that the existing structure can adequately support the proposed new loads and the structural design complies with AS/NZS 1170. A Certificate prepared by an appropriately qualified and practising structural engineer. certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction. Where applicable, the certificate shall also include all details of the methodology to be employed in construction phases to achieve the above requirements without resulting in demolition of elements marked on the approved plans for retention. Reason: To ensure compliance with the National Construction Code (Building Code of Australia) & relevant Australian Standards. 41. **Housing and Productivity Contribution** a. The housing and productivity contribution (HPC) set out in the table below, but as adjusted in accordance with condition (b), is required to be made Housing and productivity Amount contribution Housing and productivity contribution \$74,974.57 (base component)

The amount payable at the time of payment is the amount shown in condition

 (a) as the total housing and productivity contribution adjusted by multiplying it by:

Highest PPI number

Consent PPI number

Where:

highest PPI number is the highest PPI number for a quarter following the June quarter 2023 and up to and including the 2nd last quarter before the quarter in which the payment is made, and

consent PPI number is the PPI number last used to adjust HPC rates when consent was granted, and

June quarter 2023 and PPI have the meanings given in clause 22 (4) of the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.

If the amount adjusted in accordance with this condition is less than the amount at the time consent is granted, the higher amount must be paid instead.

c. The HPC must be paid before the issue first construction certificate in relation to the development, or before the commencement of any work authorised by this consent (if no construction certificate is required). However, if development is any of the kinds set out in the table below, the total housing and productivity contribution must be paid as set out in the table:

Development	Time by which HPC must be paid
Development consisting only of residential subdivision within the meaning of the HPC Order	Before the issue of the first subdivision certificate
High-density residential development within the meaning of the HPC Order for which no construction certificate is required	Before the issue of the first strata certificate
Development that consists only of residential strata subdivision (within the meaning of the HPC Order) or only of residential strata subdivision and a change of use of an existing building	Before the issue of the first strata certificate
Manufactured home estate for which no construction certificate is required	Before the installation of the first manufactured home

In the Table, HPC Order means the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.

- d. The HPC must be paid using the NSW planning portal (http://pp.planningportal.nsw.gov.au/).
- e. If the Minister administering the *Environmental Planning and Assessment Act* 1979 agrees, the HPC (apart from any transport project component) may be made, instead of as a monetary contribution, in the following ways:
 - a. the dedication or provision of land for the purpose of regional infrastructure in the region in which the development will be carried out
 - b. the carrying out of works for the purpose of regional infrastructure in the region in which the HPC development will be carried out.

If the HPC is made partly as a monetary contribution, the amount of the part payable is the amount of the part adjusted in accordance with condition (b.) at the time of payment.

f. Despite condition (a.), a housing and productivity contribution is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the Environmental Planning and Assessment Act 1979 to the development, or the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023 exempts the development from the contribution. The amount of the contribution may also be reduced under the order, including if payment is made before 1 July 2025.

Reason: To ensure payment of the required development contribution.

42. Concealment of Plumbing and Ductwork

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans detailing the method of concealment of all plumbing and ductwork (excluding stormwater downpipes) within the outer walls of the building so they are not visible.

Reason: To protect the visual amenity of the neighbourhood.

43. Street Numbering

If there are any changes to the number of occupancies including any additional occupancies created, a street numbering application must be lodged and approved by Council's GIS team before any street number is displayed. Link to Street Numbering Application

Reason: To ensure occupancies are appropriately numbered.

BEFORE BUILDING WORK COMMENCES

	Condition
44.	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.
	Reason: To ensure the site is secure and that the required permits are obtained if enclosing public land.
45.	Construction Traffic Management Plan – Detailed
45.	Prior to any building work, 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;

- 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;
- 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);
- A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
- 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.

If in the opinion of Council, TfNSW or the NSW Police the works results in unforeseen traffic congestion or unsafe work conditions the site may be shut down and alternative Traffic Control arrangements shall be implemented to remedy the situation. In this regard you shall obey any lawful direction from the NSW Police or a Council officer if so required. Any approved CTMP must include this as a note.

Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.

46. 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

Reason: To ensure resource recovery is promoted and local amenity is maintained.

47. 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.

Reason: To ensure resource recovery is promoted and local amenity is maintained.

48. 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.

Reason: To ensure works are in accordance with the consent.

49. 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.

Reason: To protect the built environment from construction works.

DURING BUILDING WORK

Condition 50. **Advising Neighbours 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, reasonable notice must be provided to the owner of the adjoining allotment of land including particulars of the excavation. Reason: To ensure surrounding properties are adequately notified of the proposed works. 51. Construction Hours - Class 2-9 Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours: 7:00am to 6.00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm): 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and 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 8:00am to 12:00pm, Monday to Saturday: and 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. Reason: To protect the amenity of the neighbourhood.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

	Condition
52.	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:
	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.
	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".
	Reason: To ensure Council assets are protected, and that works that are undertaken in the public domain maintain public safety.
53.	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.
	Reason: To maintain and promote vehicular and pedestrian safety.
54.	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.
	Reason: To ensure Council assets are protected.
55.	Undergrounding Power – Major development
	Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that the existing overhead power cables along Liverpool Road & Norton Street frontage of the site have been relocated underground with appropriate street lighting and new steel standard poles. The street lighting must be designed in accordance with Australian Standard AS1158-Road Lighting and the Network Standards of Ausgrid and must meet the lighting category required by Council and RMS. In addition the design must also comply with AS4282 to ensure that no injury is caused to the amenity of the surrounding area by light overspill or obtrusive light.
	Reason: To ensure Council assets are protected, and that lighting is provided in accordance with the relevant standards.

56. Parking Signoff – Major Development

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from 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) that the vehicle access and off street parking facilities have been constructed in accordance with the development consent and relevant Australian Standards and the following has been implemented within the property.

The car park has been completed, line marked and all signage relating to car parking erected

A notice has been clearly displayed at the Liverpool frontage to indicate that visitor parking is available within the property with access from Norton Street.

Reason: To ensure parking facilities are designed in accordance with the Australian Standard and council's specifications.

57. Public Domain - Major Developments

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with the works-as-executed plan(s), certified by a Registered Surveyor, that show the as built details in comparison to those shown on the plans approved with the public domain and Roadworks Permit with all relevant levels and details indicated must be marked in red on a copy of the Council stamped plans.

Reason: To confirm the public domain works once constructed are in accordance with the consent and the approved plans.

58. Dilapidation Report – Post-Development

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a second Dilapidation Report addressing the public infrastructure identified in approved predevelopment dilapidation report, including a photographic survey, structural condition and CCTV inspections which was compiled after the completion of works. As the report details public infrastructure, a copy is to be furnished to Council at the same time.

Reason: To ensure Council assets are protected.

59. Stormwater Drainage and Road Works – Certification

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a qualified 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) that:

- All works required to be undertaken on public roads were designed and constructed in accordance with Council's approved plans.
- b. Video inspection (CCTV) in accordance with WSA 05-2013 Conduit Inspection.
- c. Full works-as-executed plans in PDF and CAD format (dwg or dxf files), prepared and signed by a Registered Surveyor have been submitted to Council.

Reason: To ensure Council assets are protected.

60. 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 (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that:

The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards.

Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD/OSR system commissioned and stormwater quality improvement device and any pump installed in accordance with the approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plan 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.

Reason: To ensure the approved works are undertaken in accordance with the consent.

61. 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/or on-site retention/re-use facilities and stormwater quality improvement device and pumps. 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.
- b. The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

Reason: To ensure the approved works are undertaken in accordance with the consent

62. 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:

- Restrictions on the Use of Land related to on Site Stormwater Detention System and stormwater quality improvement devices.
- 2. Restrictions on the Use of Land related to Stormwater Surface Flow Paths.
- Positive Covenant related to on-site stormwater detention and/or retention system.
- 4. Positive Covenant related to stormwater quality improvement devices.
- 5. Positive Covenant related to Stormwater Surface Flow Paths.

The wording in the Instrument must be in accordance with Councils Standard wording.

Reason: To ensure that the relevant easements are registered on the property.

63. No Weep Holes

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence that any weep holes to Council road or footpath resulting from the building works have been removed.

Reason: To ensure adequate public safety.

64. Easement and Covenant Process

Prior to the issuing of an Occupation Certificate, the following documents must be submitted to Council as part of the Easement and Covenant process and requirements, for the site on-site detention/on-site retention/reuse facilities (OSD/OSR) and stormwater quality improvement devices (SQIDS):

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 SQIDS with finished surface levels, contours at 0.2-metre intervals and volume of storage available. Also, the outlet pipe from the detention basin to its connection to 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 and full details of SQIDS.

b. Engineer's Certificate

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

- a. The soundness of the storage structure.
- b. The capacity of the detention storage.
- c. The emergency overflow system being in place.
- d. The works being constructed in accordance with the Development Application Consent and Council's Stormwater Management DCP/Code.
- e. 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.
- f. Basement car park pumps are class one zone two.
- g. OSR pumps and SQIDS 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 stormwater quality improvement device(s) (SQIDS). This is to ensure that works, which could affect the function of the stormwater detention system and SQIDS, 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.

Reason: To ensure easements are registered and the correct documentation is provided.

65. Flood Risk Management Plan - Certification

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification 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) that all aspects of the flood risk management plan have been implemented in accordance with the approved design, conditions of this consent and relevant Australian Standards.

In addition, the certification shall include the following specific items.

- a) No solid and retaining walls were constructed across the floodway.
- b) All fences across the floodway are open type below the 100 year ARI flood levels and will not obstruct the flow paths.
- c) The proposed development will not increase the risk of flooding to adjacent properties in accordance with Council's DCP requirements.

Reason: To ensure the approved works are undertaken in accordance with the consent

66. Road Widening

Prior the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence which establishes that a plan of subdivision has been registered with NSW Land and Registry Services which results in the following road widening:

a) Widening of Liverpool Road in accordance with Transport for NSW requirements.

Reason: To maintain and promote vehicular and pedestrian safety.

67. Waste Collection

Prior to the issue of an Occupation Certificate, the Certifying Authority must be provided with written confirmation from Council's Waste Management Team that the proposed waste collection service—whether by Council or a private contractor—has been reviewed and approved by Council.

Reason: To ensure waste collection arrangements are appropriate, safe, and consistent with Council's waste management requirements and service capabilities.

68. Affordable Housing Requirements

Prior to the issue of any occupation certificate, the Certifying Authority must be provided with evidence confirming the following:

- a. A restriction must be registered prior to the issue of any occupation certificate, in accordance with the Conveyancing Act 1919, Section 88E, against the title of the property relating to the development which will ensure:
 - i. Units G.2, G.3, G.4, G.9, 1.1, 1.2, 1.3, 1.4, 1.7, 2.2 and 3.1 must be used for the purposes of affordable housing.
 - ii. The affordable housing units are to be managed by a registered community housing provider for 15 years commencing on the day on which an occupation certificate is issued for all parts of the building or buildings to which the development consent relates.
- iii. Notice of a change in the registered community housing provider who managed the affordable housing component must be given to the Registrar of Community Housing and the consent authority no later than 3 months after the change.
- iv. The registered community housing provider who manages the affordable housing component must apply the NSW Affordable Housing Ministerial Guidelines 2023-2024, as amended from time to time.
- Inner West Council is nominated as an authority to release, vary or modify the restriction.
- b. Evidence of an agreement with a registered community housing provided for the management of the affordable housing component must be given to the Registrar of Community Housing, including the name of the registered community housing provider, and
- c. Evidence that the requirements of paragraphs (a) and (b) have been met must be given to Council prior to the issue of any occupation certificate.

Reason: To confirm the terms of the affordable housing.

69. 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.

Reason: To ensure relevant utility and service provides' requirements are provided to the certifier.

70. Resident Parking Scheme Not Applicable

Prior the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence that measures have been put in place to advise future owners and occupants or tenants of the proposed building that they are not eligible to obtain parking permits under any existing or future resident parking scheme for the area. The person acting on this Development Consent shall advise any purchaser or prospective tenant of this condition. All developments that are excluded from Permit Parking Schemes can be found in Councils Public Domain Parking Policy.

Reason: To provide transparency in the application of the Resident Parking Scheme.

71. Custom Prior to Occupation Certificate Condition 3

Prior to the issue of any Occupation Certificate, the Certifier must ensure that the final Occupation Certificate relating to development consent DA/2020/0583 (as amended by MOD/2023/0316 and any subsequent modifications) has been issued.

Reason: To confirm terms of approval.

OCCUPATION AND ONGOING USE

	Condition
72.	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. Reason: To protect the amenity of the neighbourhood.
73.	Operation and Management Plan The Operation and Management Plan for the on-site detention and/or on-site retention/re-use and/or stormwater quality improvement devices and/or Pump facilities, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times. Reason: To ensure that the adequate provision of stormwater drainage is provided.
74.	Flood Risk Management Plan The Flood/Foreshore Risk Management Plan approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times. Reason: To protect human life and property during a flood/inundation event.
75.	Terms of Affordable Housing It is a condition of this consent that for 15 years commencing on the day on which an occupation certificate is issued for all parts of the building or buildings to which the development consent relates that: a. Units G.2, G.3, G.4, G.9, 1.1, 1.2, 1.3, 1.4, 1.7, 2.2 and 3.1 must be used for affordable housing, and b. The affordable housing component must be managed by a registered community housing provider, and c. Notice of a change in the registered community housing provider who managed the affordable housing component must be given to the Registrar of Community Housing and the consent authority no later than 3 months after the change, and d. The registered community housing provider who manages the affordable housing component must apply the Affordable Housing Guidelines. Reason: To confirm the terms of the affordable housing.

SUBDIVISION WORK

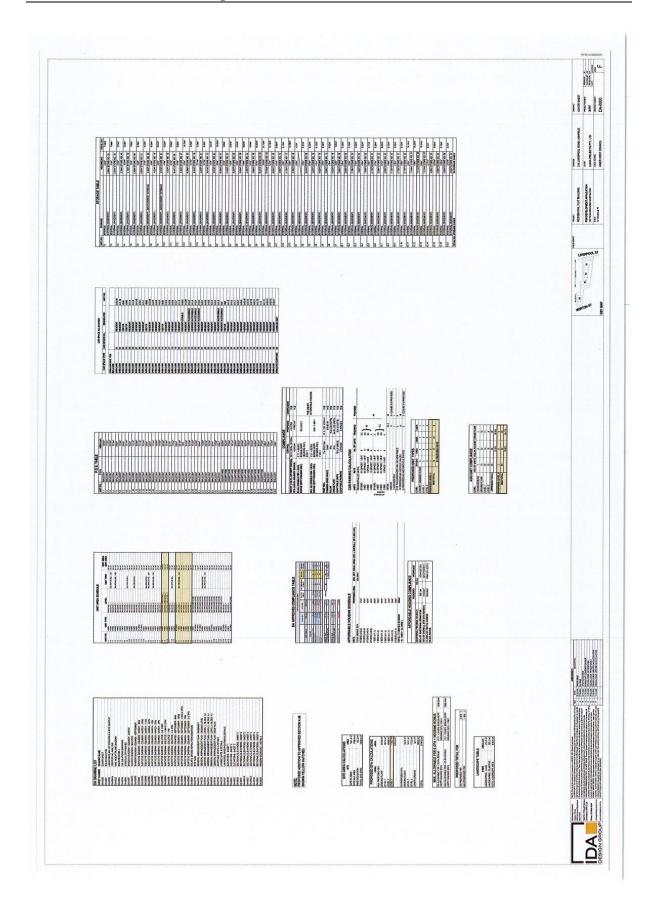
BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

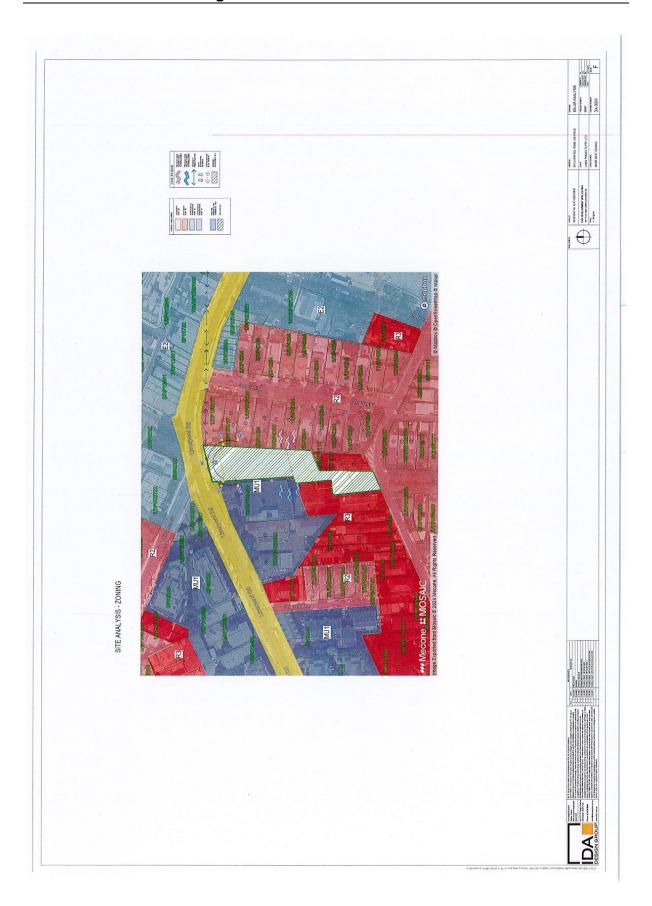
Condition 76. Strata Subdivision Plan Prior to the release of a Strata Subdivision Plan, the Certifying Authority must be provided with plans indicating that the strata subdivision of the development has been carried out in accordance with approved plans and demonstrating that: Each strata lot comprising a dwelling and one car space; b. Disabled spaces must be allocated adaptable dwellings; Car spaces must not be given separate strata lot numbers; and d. All visitor parking spaces and car wash bays are to be included in common property. If there are any changes to the number of occupancies including any additional occupancies created, a street numbering application must be lodged and approved GIS team before any street number displayed. https://www.innerwest.nsw.gov.au/live/information-for-residents/roads-andfootpaths/how-to-apply-for-a-street-number Reason: To ensure works are in accordance with the consent and adequate on-site facilities are provided for the development. 77. Section 73 Certificate Prior to the issue of a Subdivision Certificate, the Certifying Authority must be provided with the Section 73 Certificate. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Reason: To ensure relevant utility and service provides' requirements are provided to the certifier. 78. **Street Numbering** If there are any changes to the number of occupancies including any additional occupancies created, a street numbering application must be lodged and approved by Council's GIS team before any street number is displayed. Street Numbering Application Reason: To ensure occupancies are appropriately numbered.

Attachment B – Plans of proposed development

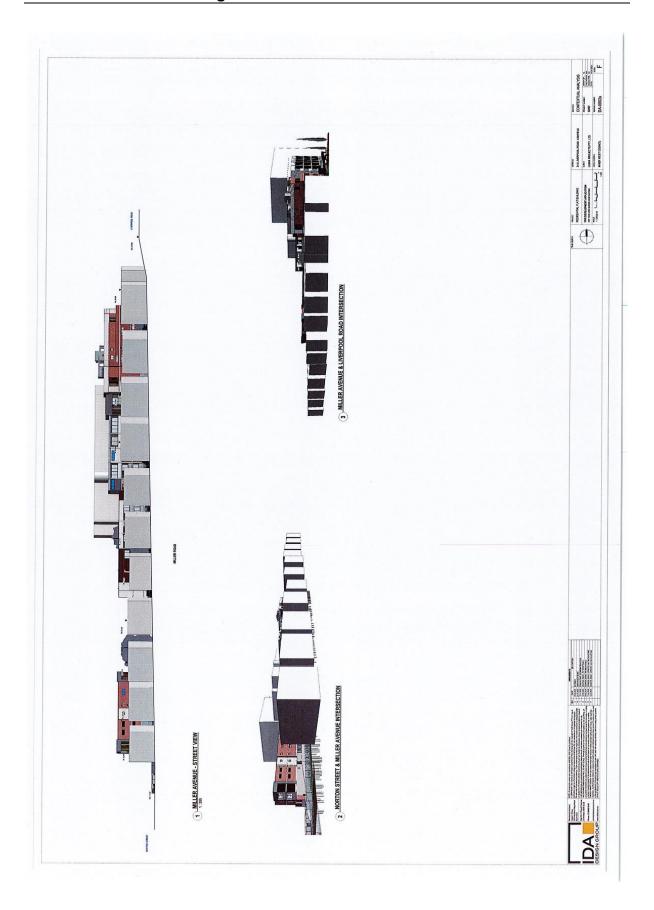




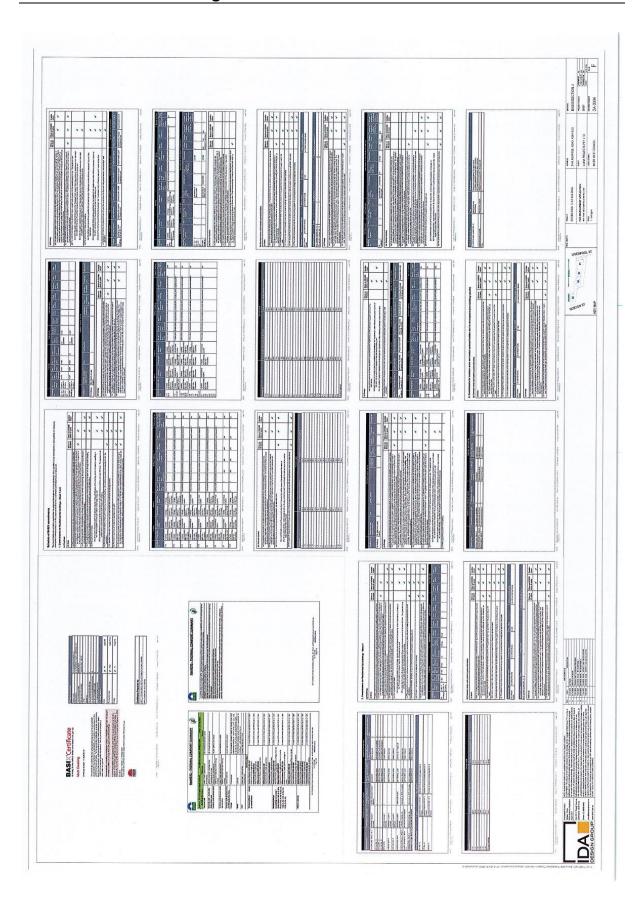


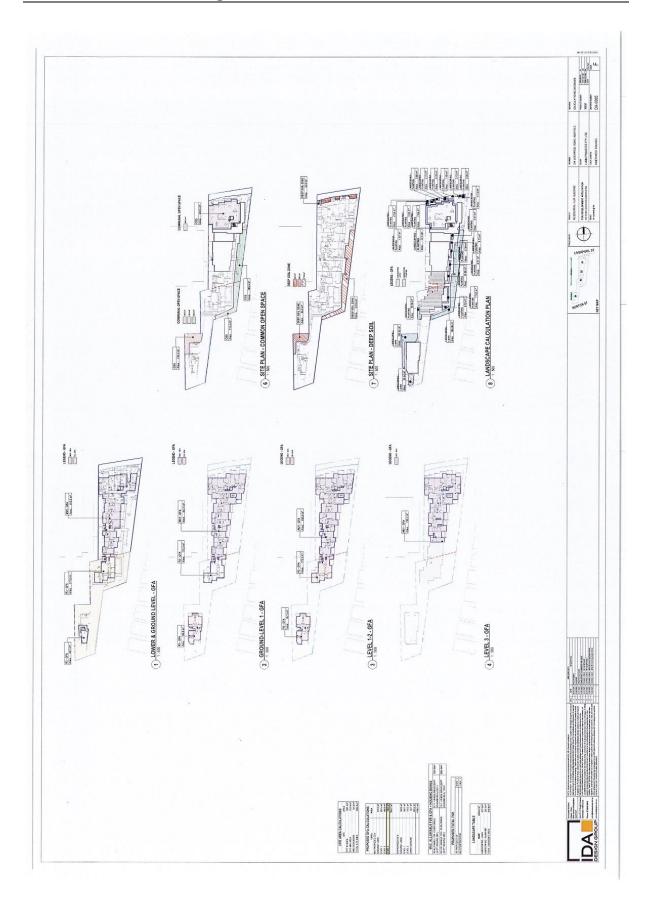


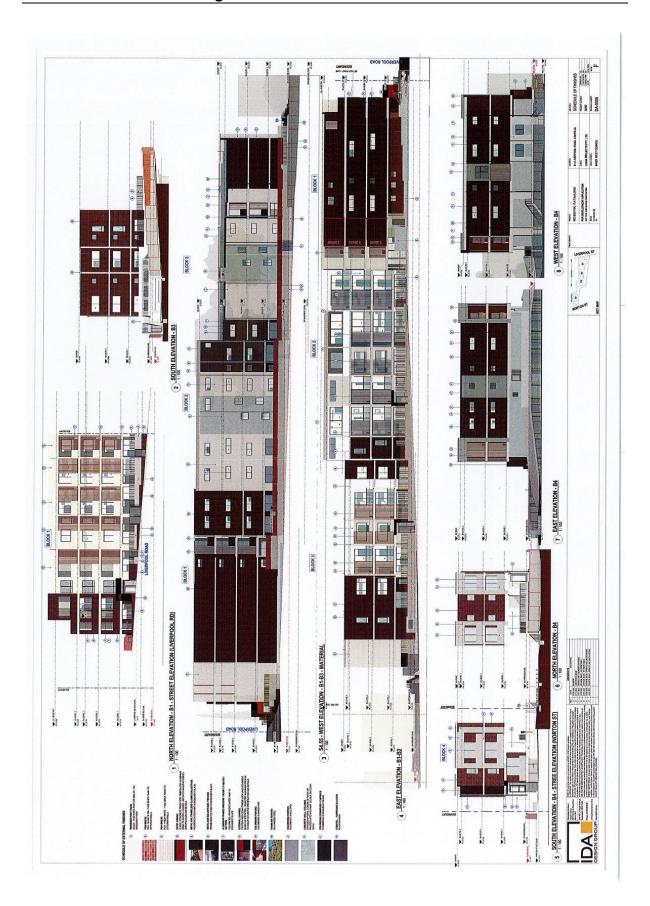








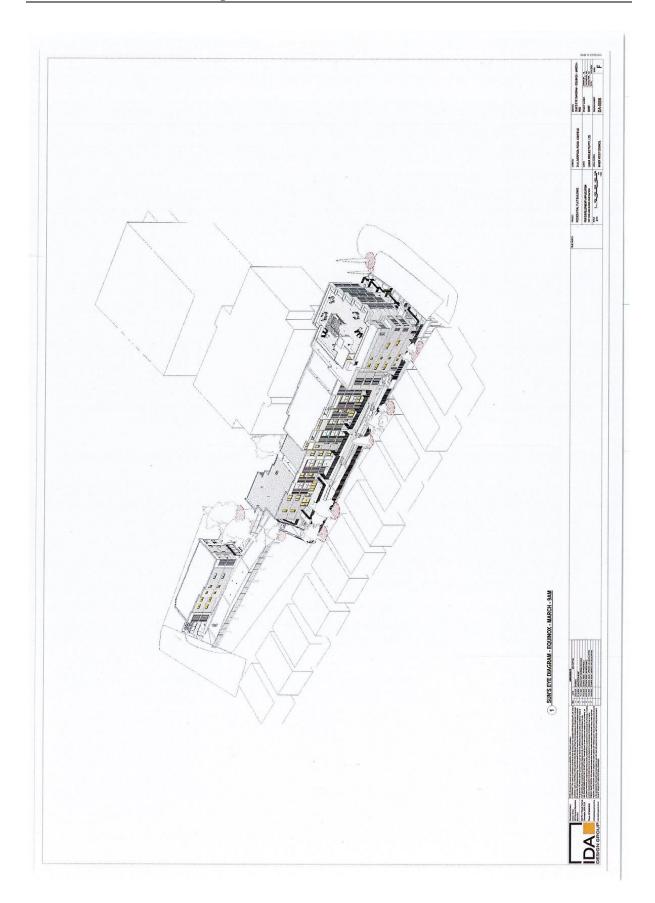


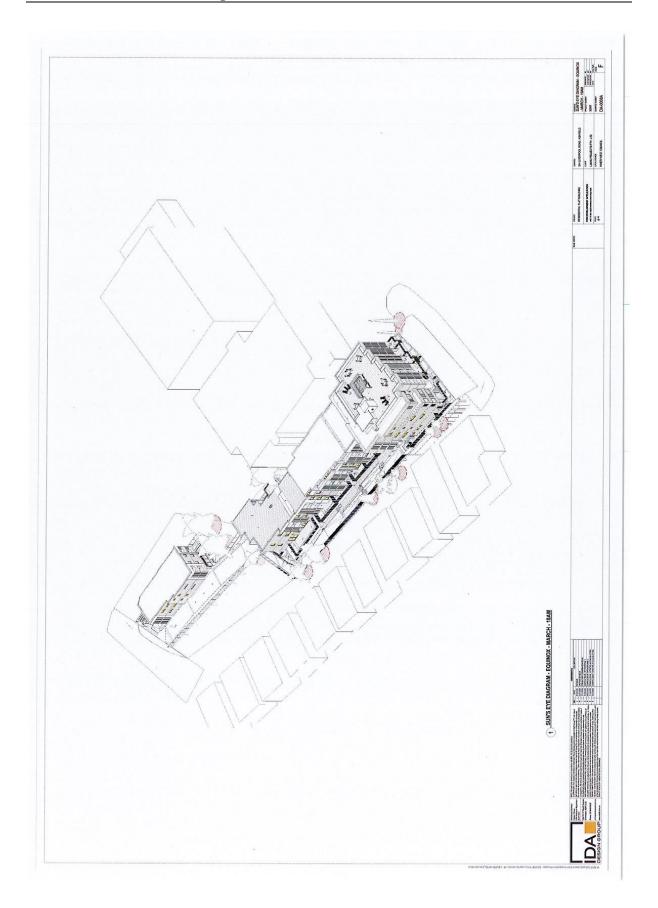


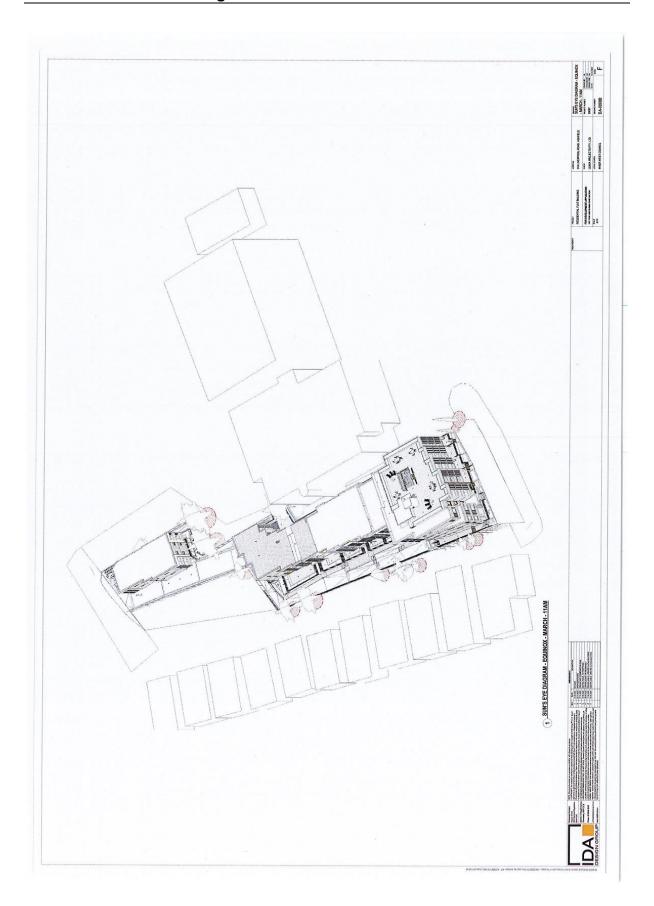


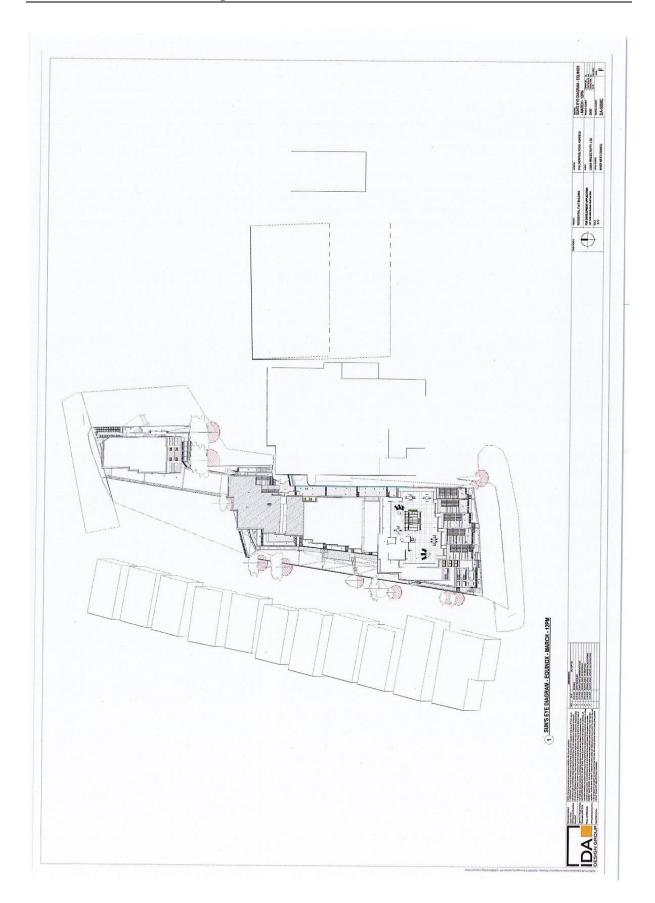


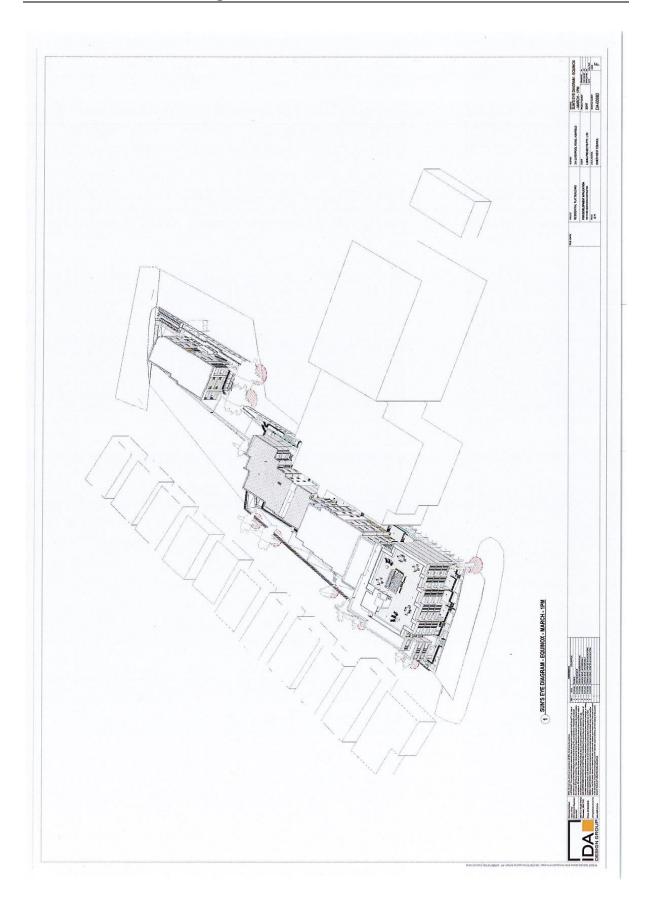


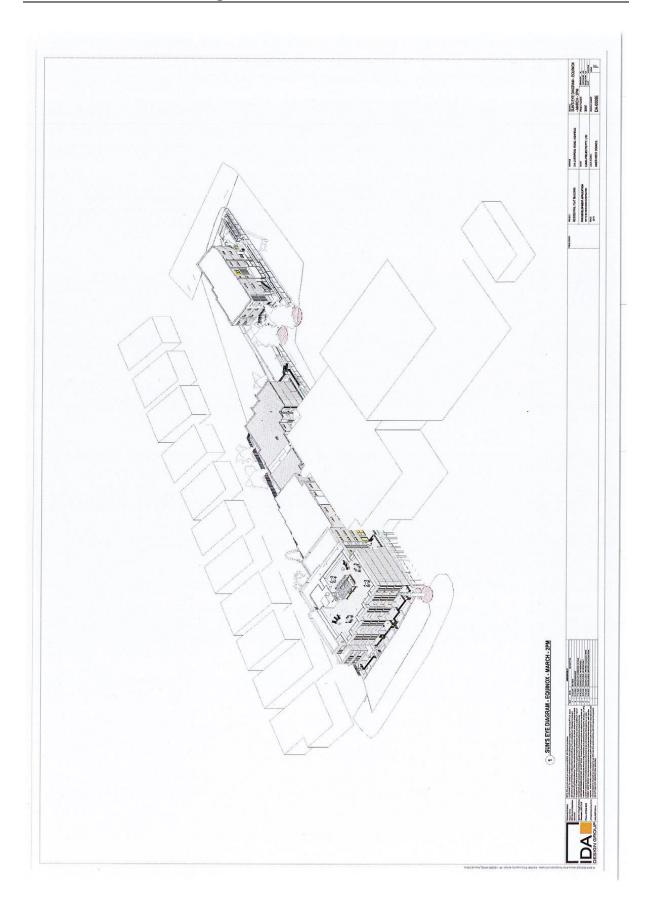


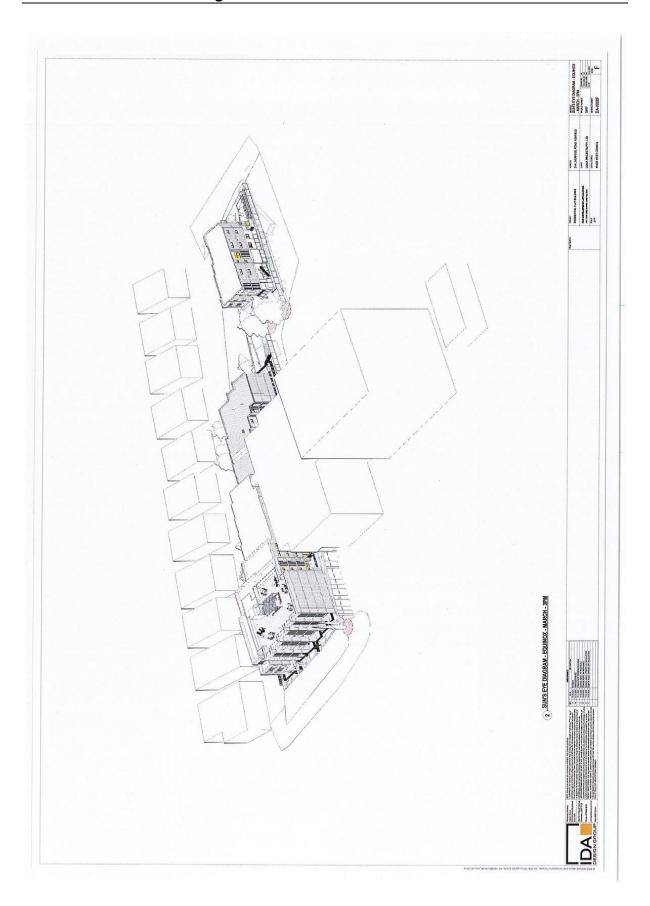


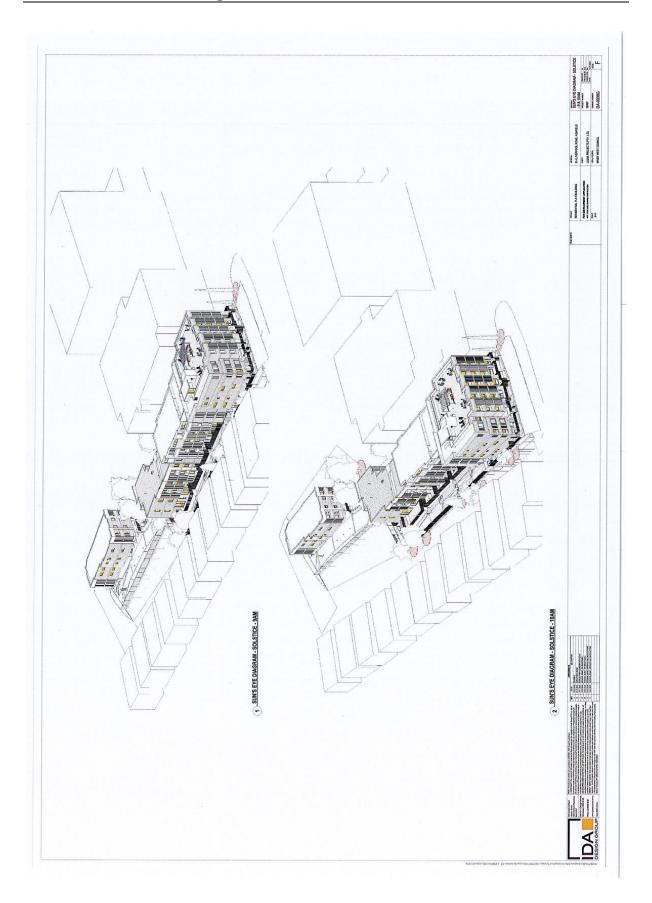


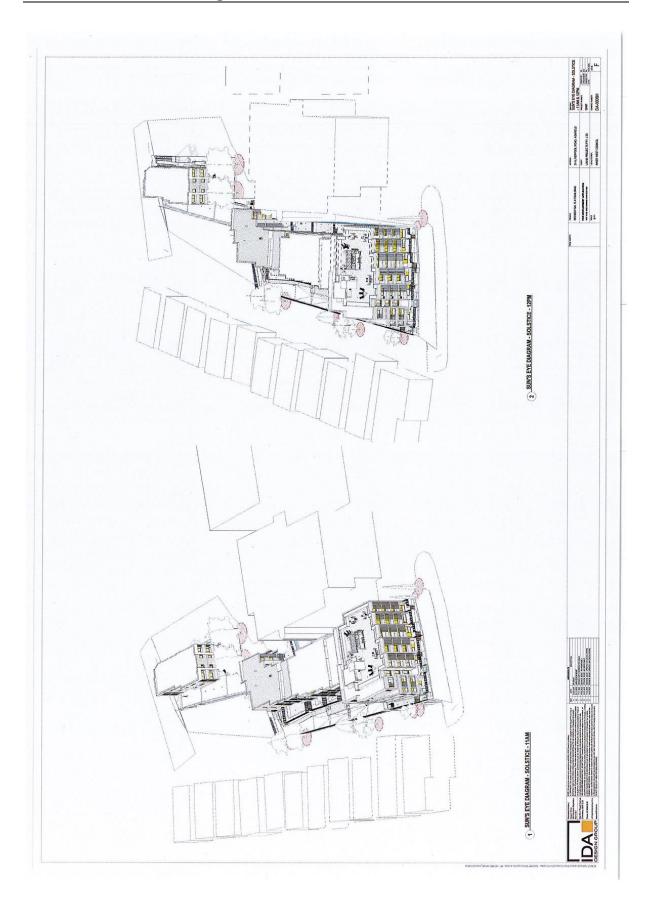


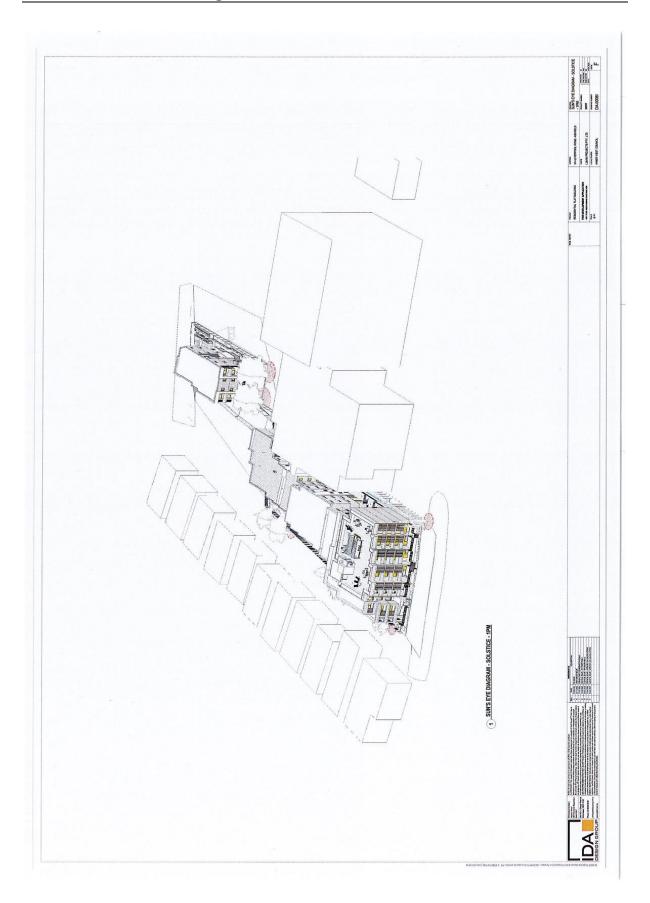


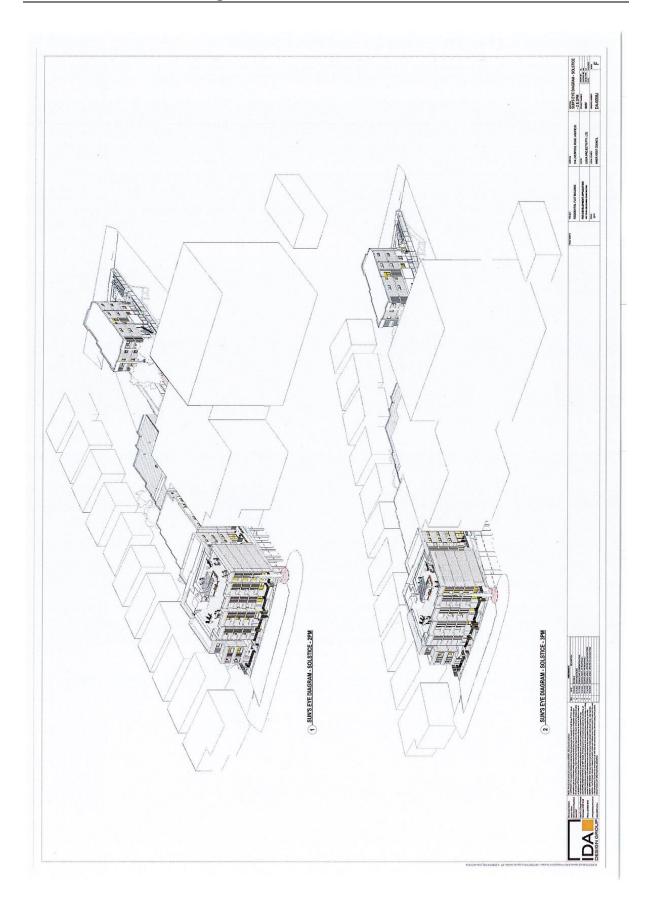


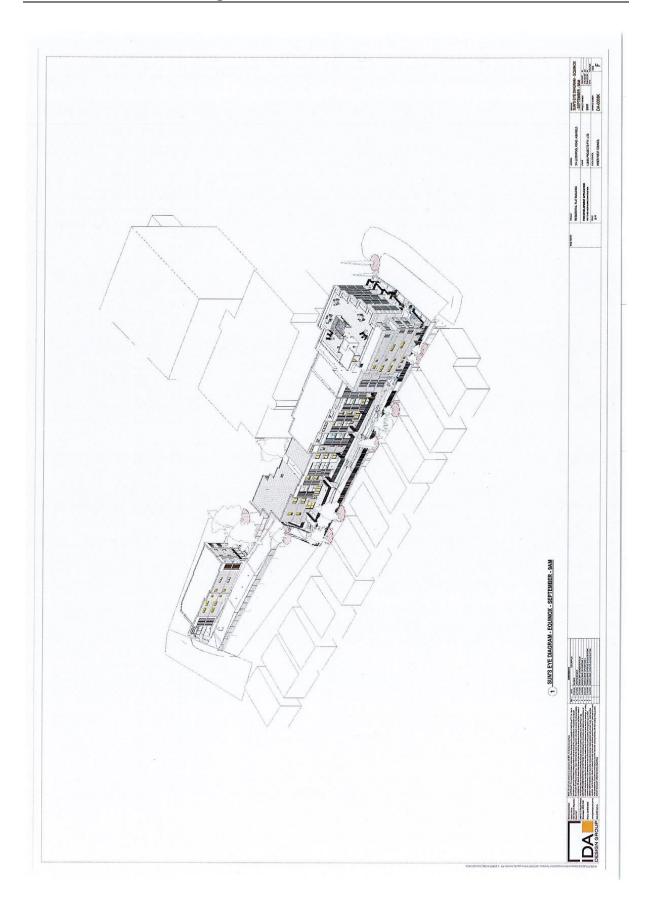


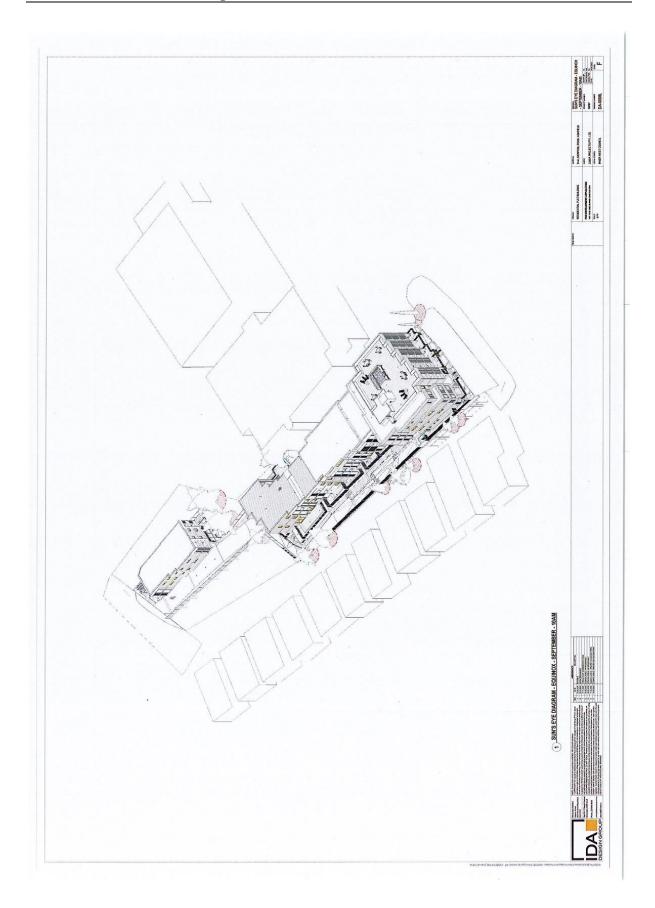


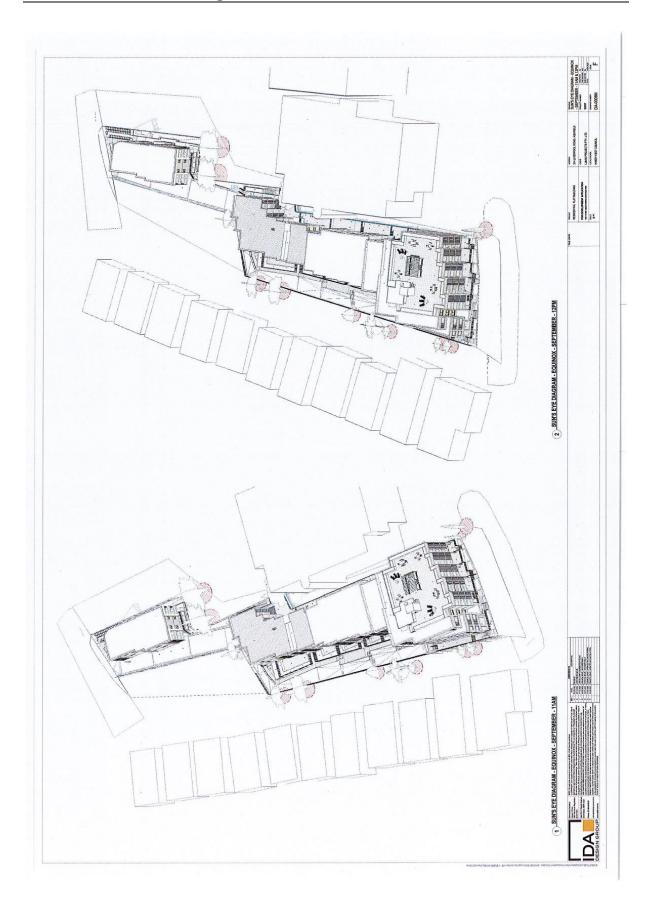


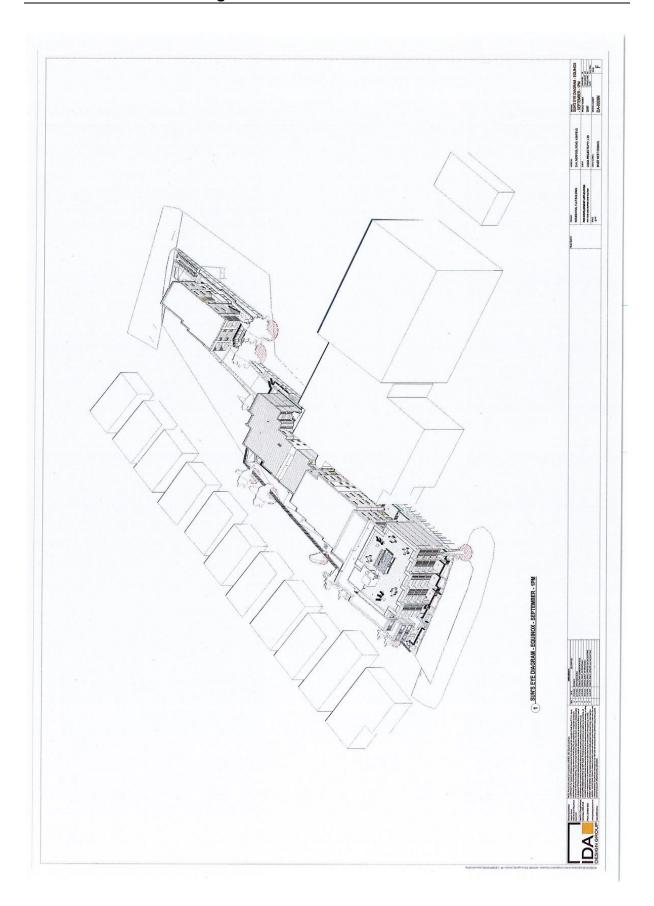


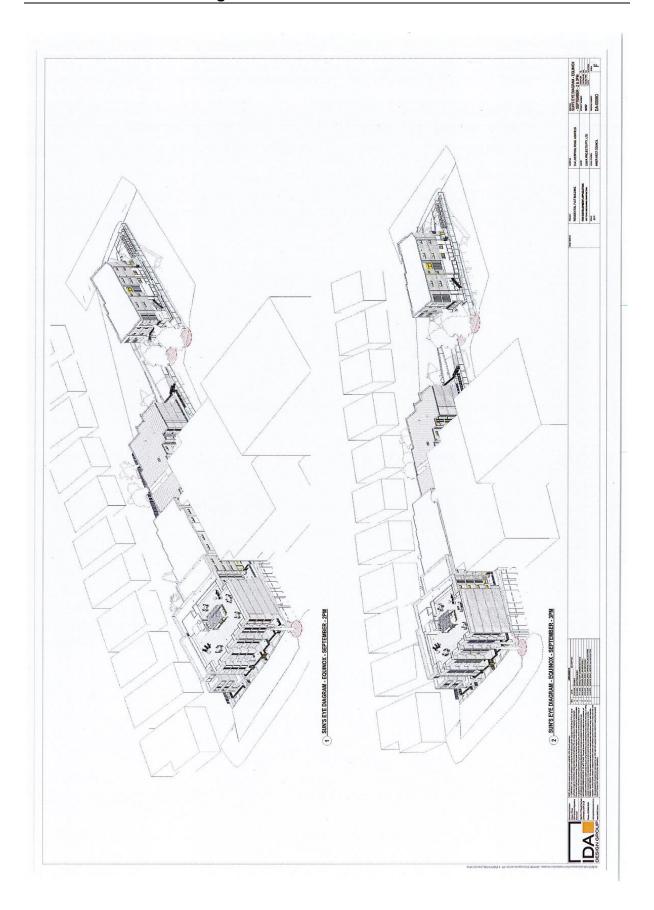




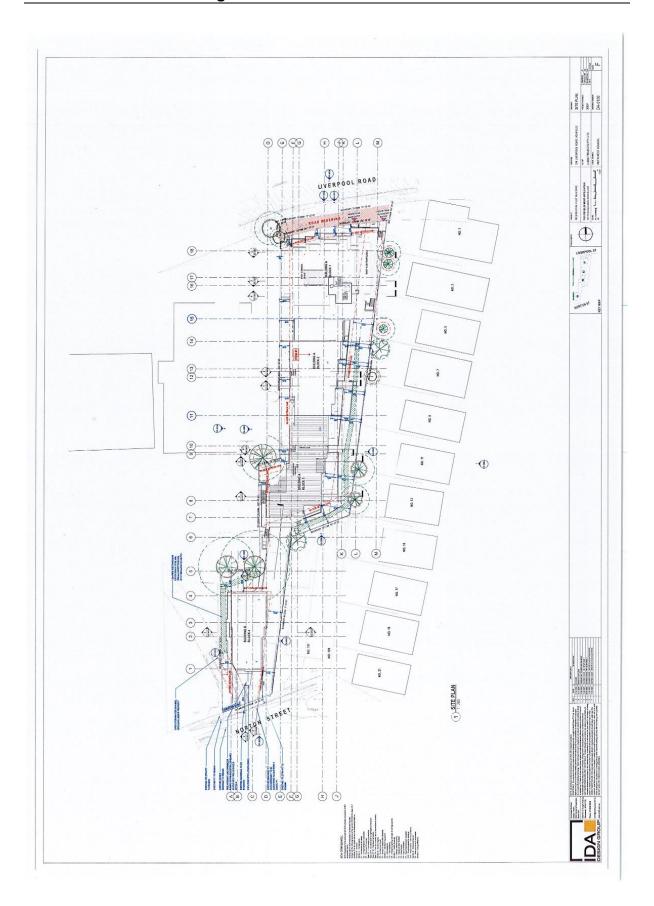


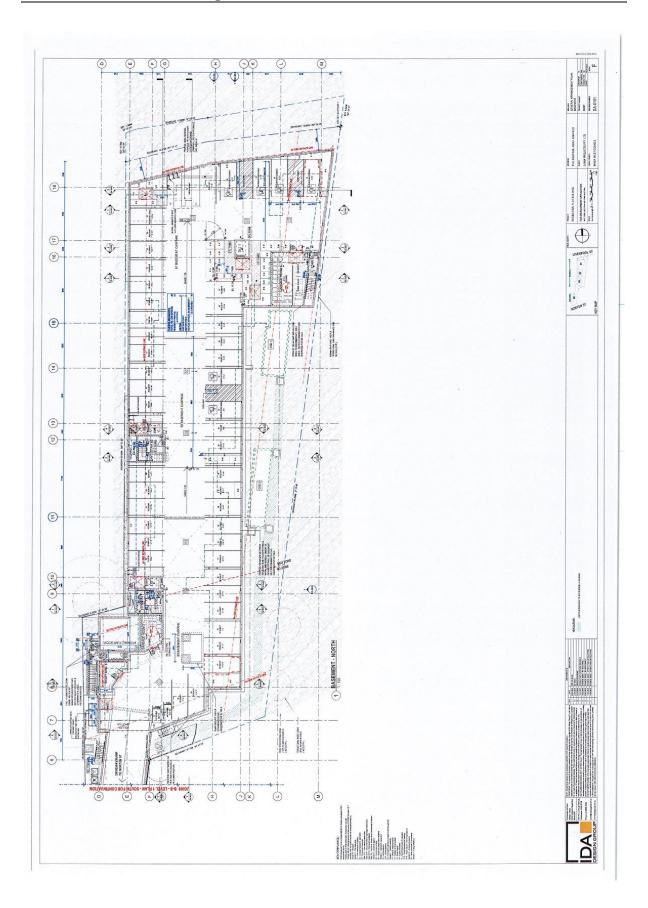


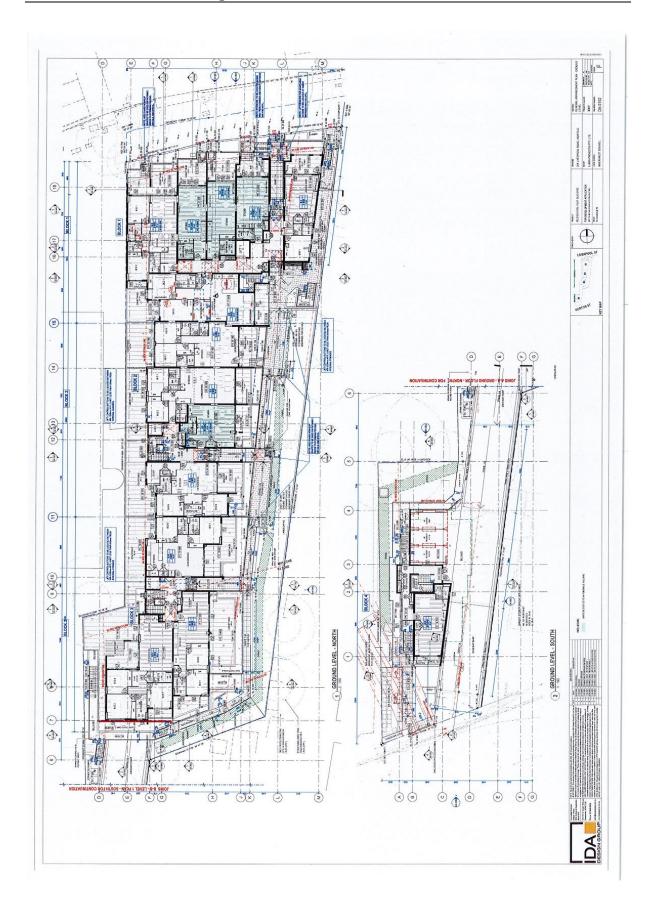


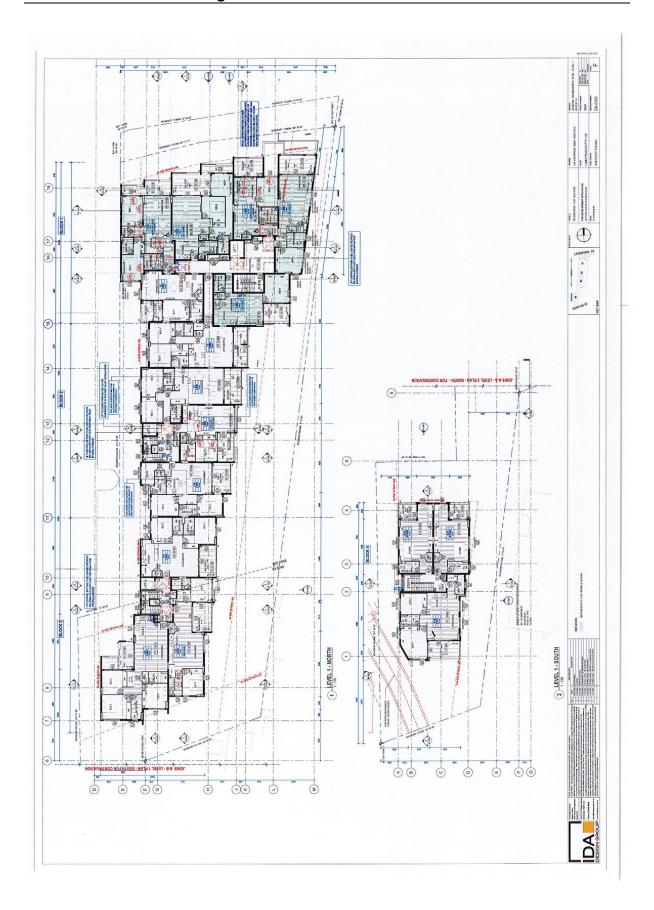


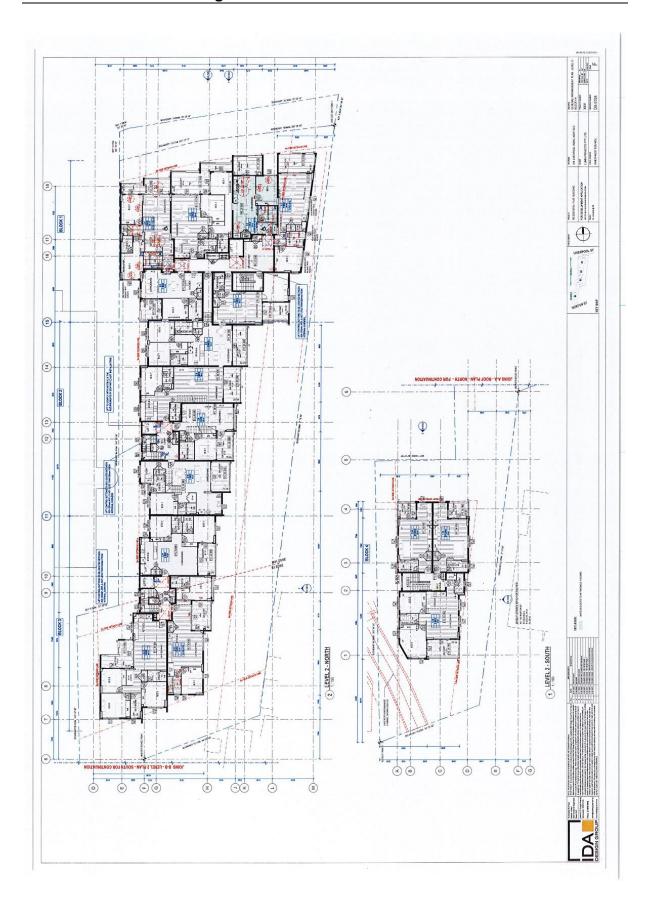




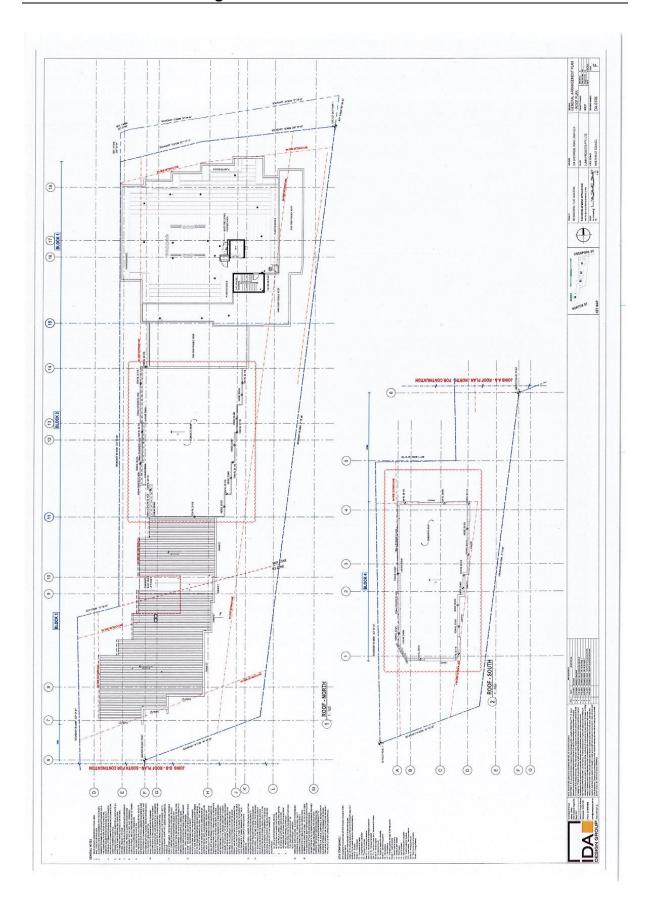




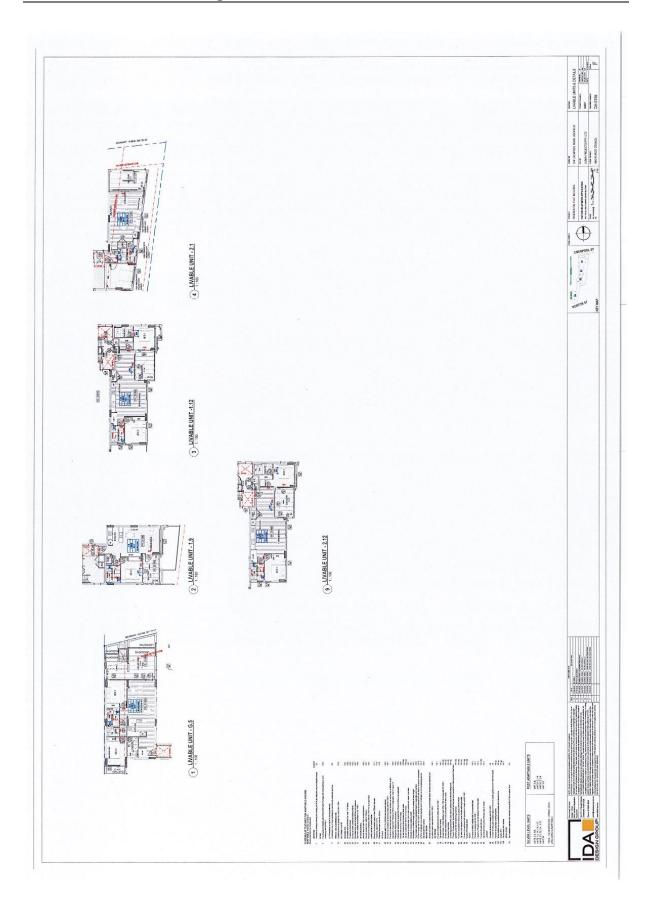


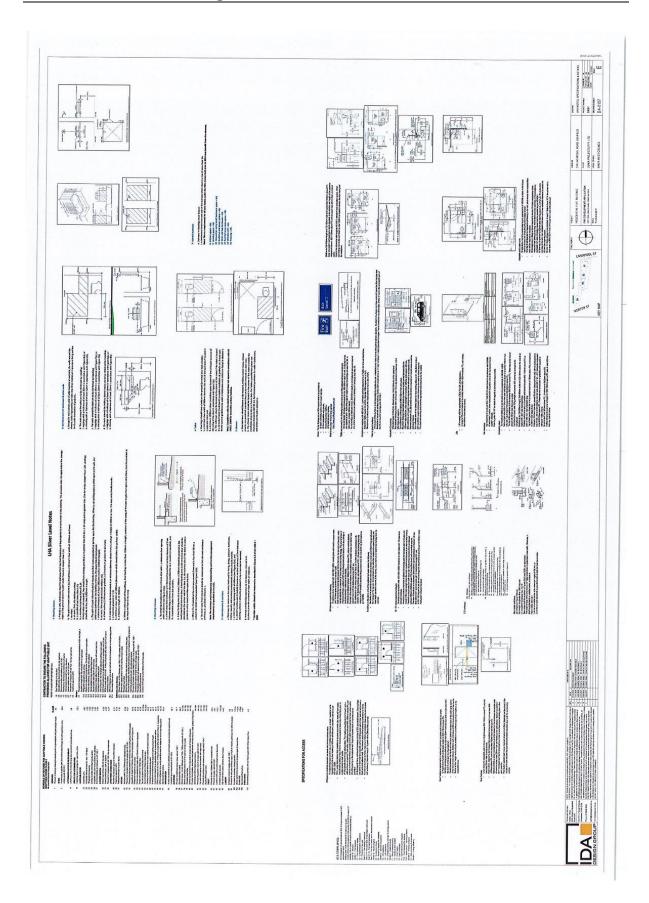


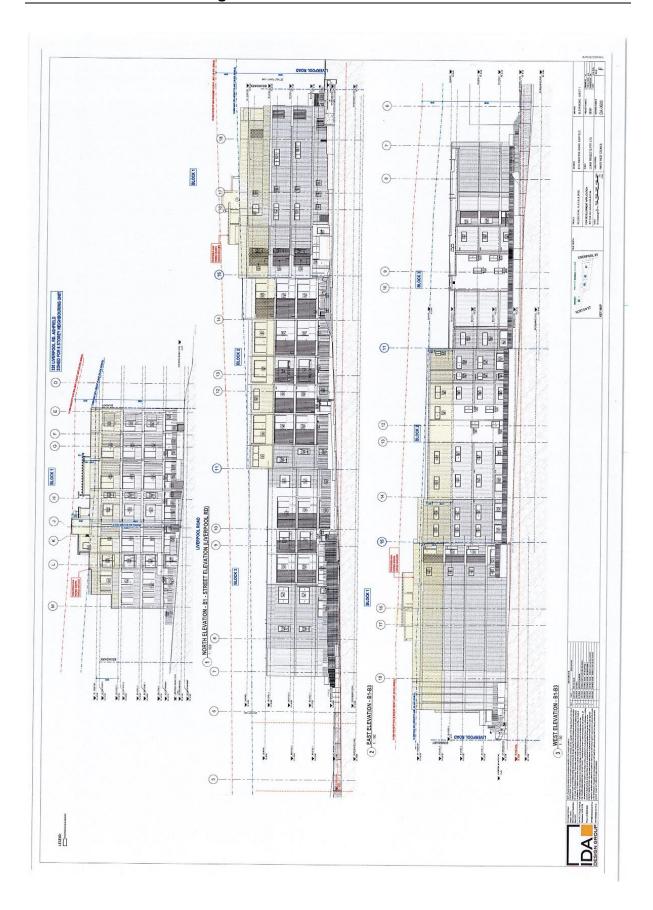




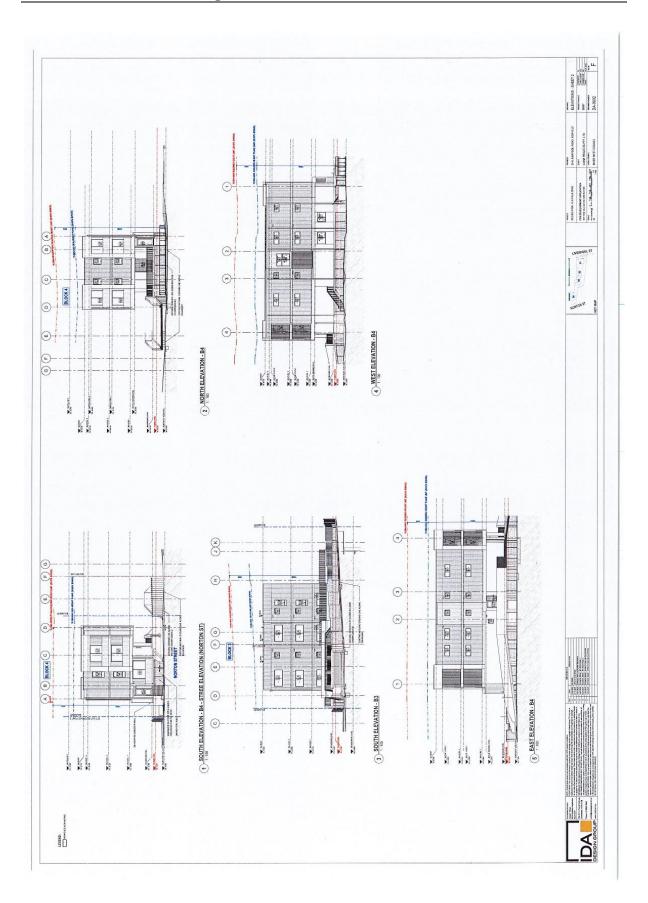


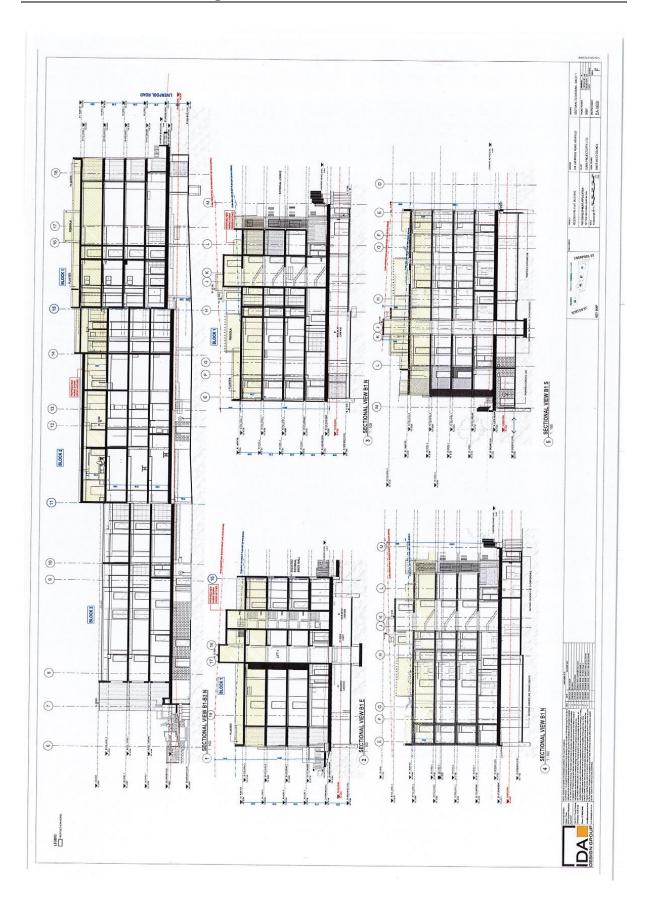


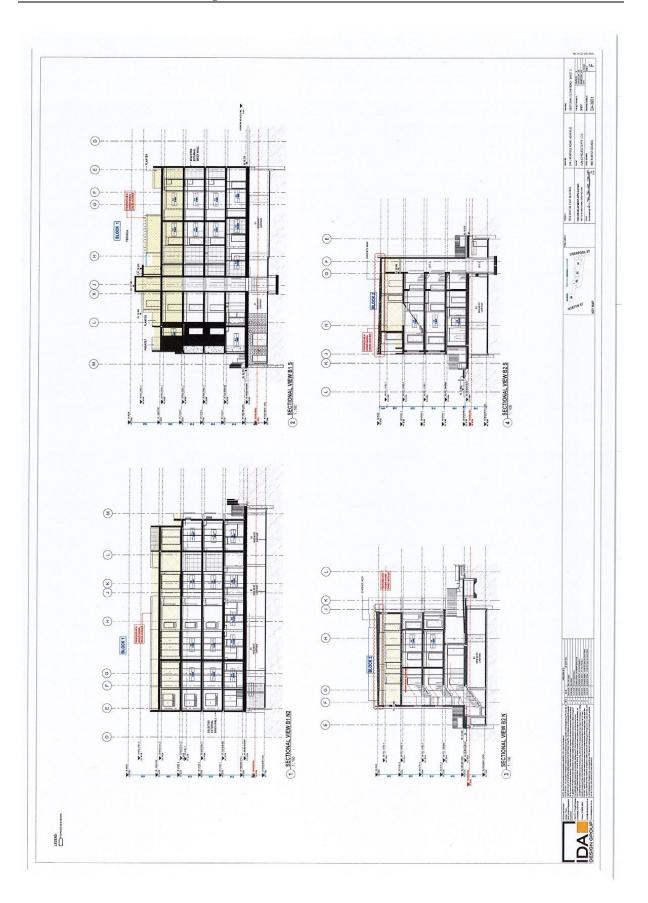


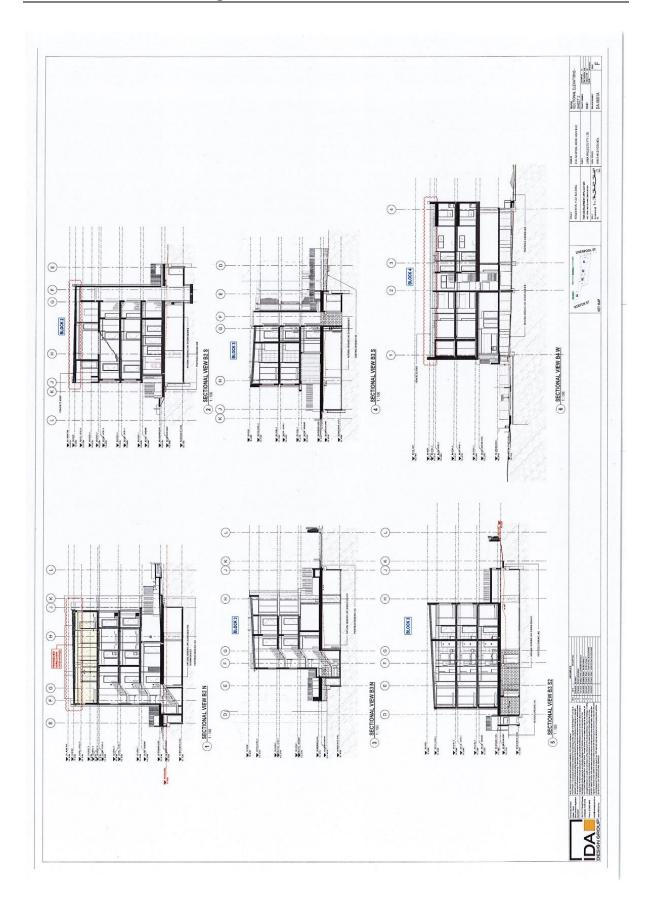


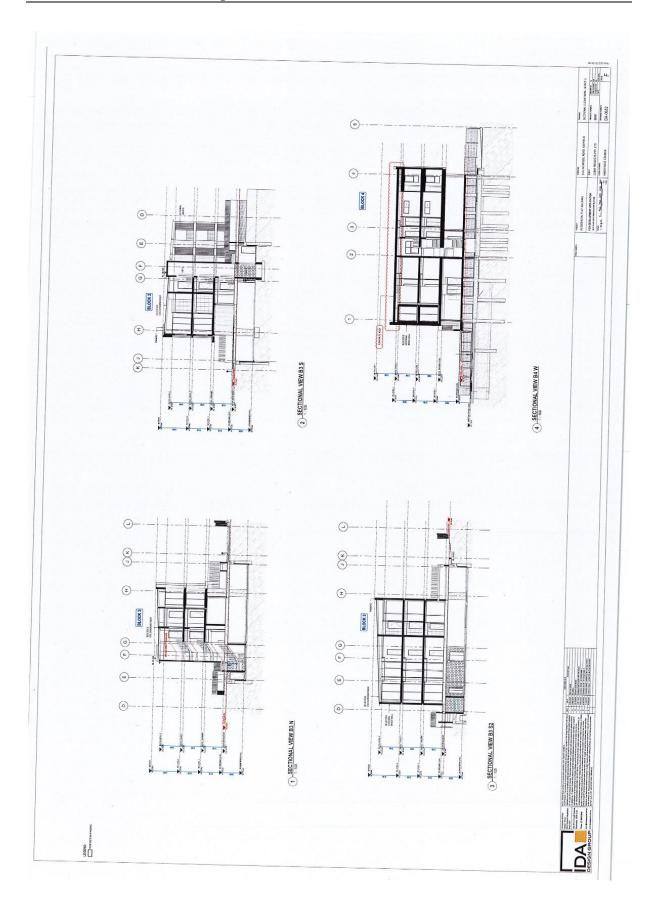


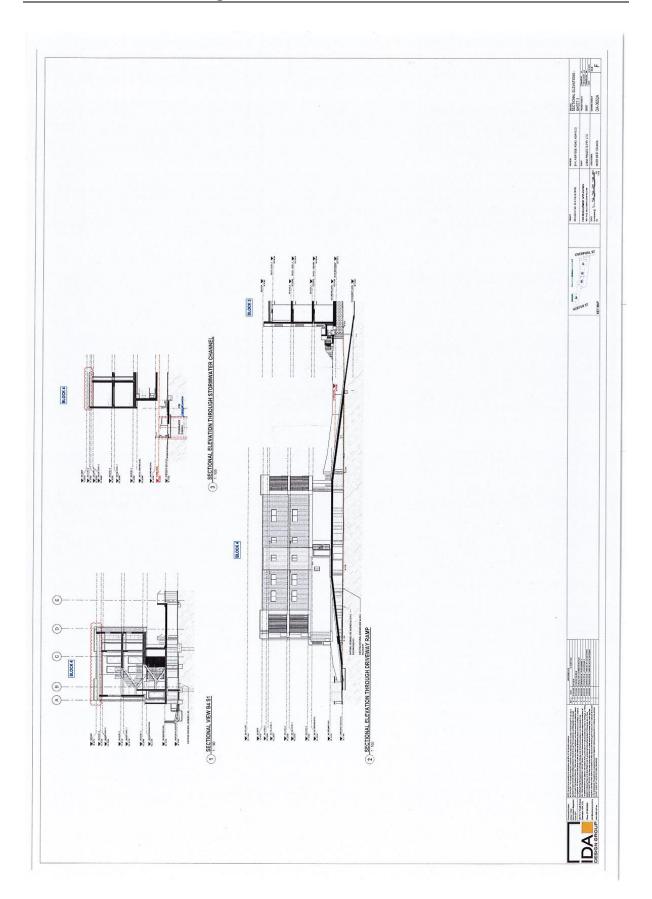


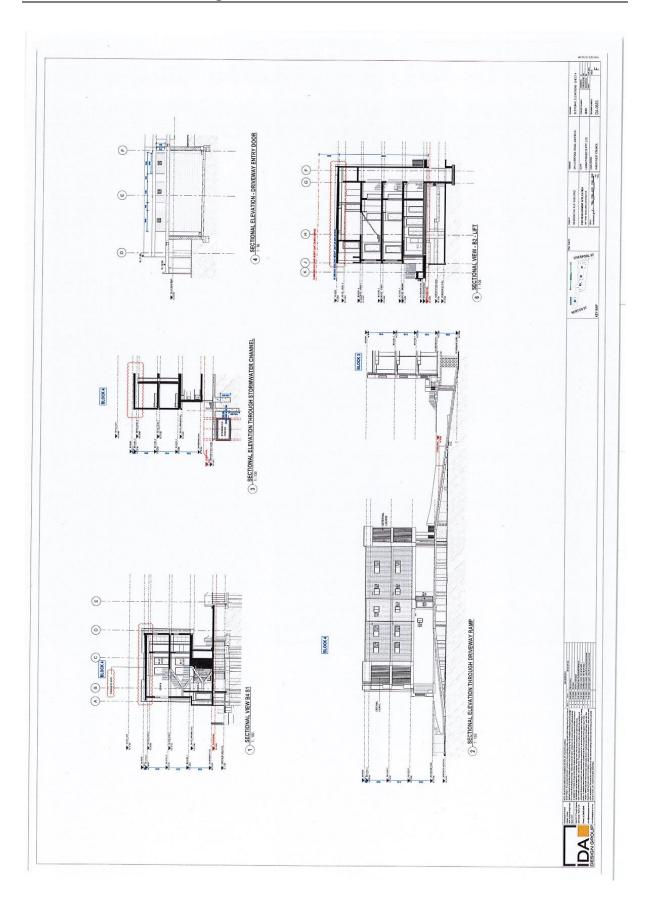


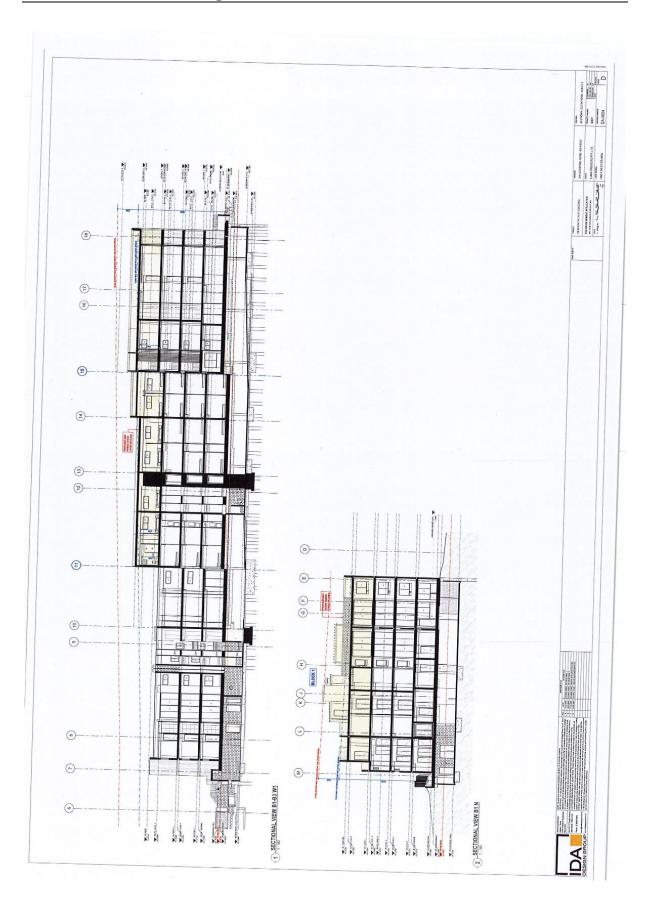


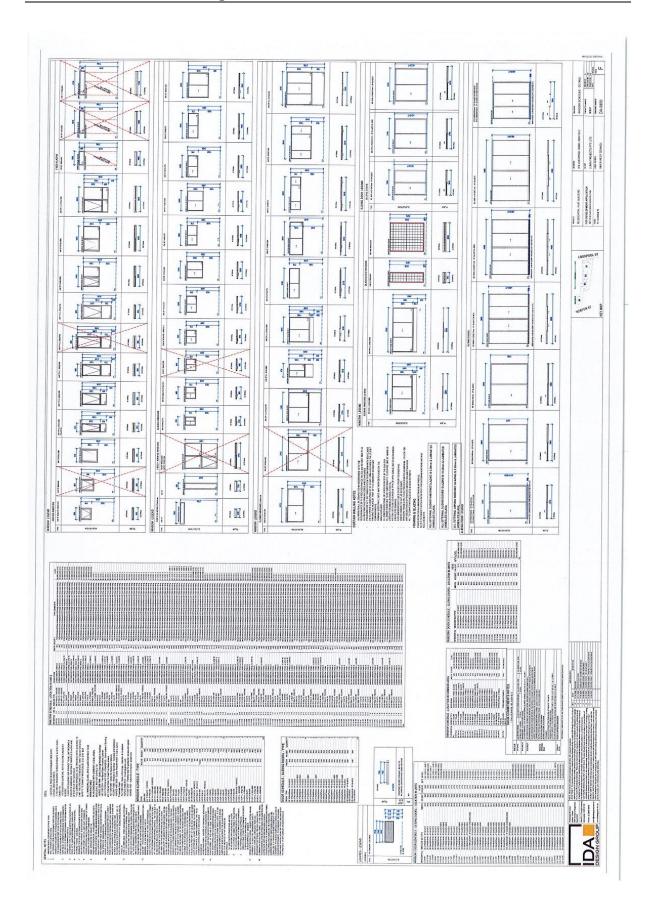












Attachment C – Section 4.6 Exception to Development Standards

REQUEST TO CONTRAVENE A DEVELOPMENT STANDARD UNDER CLAUSE 4.6

cl. 4.3(2), Inner West LEP 2022: Height of Buildings



314 Liverpool Road, Ashfield NSW

Amending Development Application to approved DA/2020/0583 for a change of use of the approved residential flat building to an in-fill affordable housing residential flat building and increase in height and number of units

16 May 2025 | P105_03 Revision B



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Final	30.04.2024	PN	PN
Revision A	21.03.2025	PN	PN
Revision B	16.05.2025	PN	PN

We acknowledge that the land on which we live, learn and work as the traditional country of the Gadigal people of the Eora Nation. We acknowledge these traditional owners of this land and acknowledge their living cultures and the unique roles they have played in maintaining life, language, and culture in this region. We pay respect to their Elders past, present and emerging and all aboriginal people.

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1.0 INTRODUCTION

This request to contravene a development standard in respect of height of buildings under clause 4.3(2) of Inner West Local Environmental Plan 2022 (IWLEP 2022) and as modified by cl. 16(3) of State Environmental Planning Policy (Housing) 2021 is submitted to accompany a development application for:

a change of use of the approved residential flat building to an in-fill affordable housing residential flat building and increase in height and number of units

at 314 Liverpool Road, Ashfield NSW.

It has been prepared with particular reference to the decisions of the Court in respect of:

- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;
- Four2Five Pty Limited v Ashfield Council [2015] NSWLEC 90;
- Wehbe v Pittwater Council [2007] NSWLEC 827;

and other relevant case law.

2.0 THE DEVELOPMENT STANDARD

2.1 The applicable planning instrument which specifies the development standard:

Inner West Local Environmental Plan 2022 (IWLEP 2022) (as modified by the bonus provisions of cl. 16(3) of State Environmental Planning Policy (Housing) 2021).

2.2 The number of the relevant clause:

Clause 4.3 -Height of buildings.

2.3 The provisions of the relevant clause:

a) IWLEP 2022: Clause 4.3(2) - Height of buildings.

The development standard to which this request for contravention relates is clause 4.3(2)(a) of IWLEP 2022 – Height of buildings, which specifies that:

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

The height on the height of buildings map is:

- 12.5m
- b) SEPP (Housing) 2021: Clause 16(3) Affordable housing requirements for additional floor space ratio

The development standard to which this request for contravention relates is clause 16(3) of SEPP (Housing) 2021 – Affordable housing requirements for additional floor space ratio, which specifies that:

If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).

The additional floor space ratio is 28.65% and therefore the maximum building height is:

12.5m + 28.65% (3.58m): 16.08m

3.0 THE CONTRAVENTION SOUGHT:

3.1 Description of the contravention:

The proposed development would contravene the non-discretionary development standard as follows:

3.1.1 Proposed height:

• Lift overrun: 16.207m

3.1.2 Extent of contravention:

• Lift overrun: 0.127m

3.1.3 Percentage of proposed contravention:

Lift overrun: 0.79%

3.1.4 Elements comprising contravention:

The contravention comprises the following building elements

• The lift overrun of the lift providing access to the rooftop communal open space.

4.0 PROVISIONS OF CLAUSE 4.6

4.1 Cl. 4.6(1): Objectives

Clause 4.6 seeks to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. The objectives of Clause 4.6 are as follows:

Cl. 4.6(1)	Cl. 4.6(1) Objectives of Clause		
Clause	Control	Justification	
(1)(a)	to provide an appropriate degree of flexibility in applying certain development standards to particular development	The proposal contravenes the development standard which sets a maximum building height. It seeks to utilise this clause to provide appropriate flexibility in application of the standard to permit approval.	
(1)(b)	to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	The proposal would achieve better outcomes: • For the development: The contravention would permit: ○ More efficient utilisation of the site; ○ Lift access (and therefore universal access) to the rooftop communal open space; and ○ Increased weather protection to the rooftop communal open space. • From the development: The contravention would result in: ○ Lift access (and therefore universal access) to the rooftop communal open space; and ○ Increased weather protection to the rooftop communal open space.	

4.2 Cl. 4.6(2): Development standards excluded form operation of clause

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

The relevant clause is not expressly excluded from the operation of clause 4.6.

4.3 Cl. 4.6(3): Justification of the Contravention of the Development Standard

Under the provisions of clause 4.6(3) – Exceptions to development standards of IWLEP 2022, the consent authority must satisfied that the applicant has demonstrated that compliance with the development

standard is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the table below:

Cl. 4.6(3)	Cl. 4.6(3) Justification of Contravention		
Clause	Control	Justification	
4.6(3)	Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant has demonstrated that:	This written request addresses this clause.	
4.6(3)(a)	compliance with the development standard is unreasonable or unnecessary in the circumstances (see the test under Wehbe v Pittwater Council below and assessment against the objectives of the zone and development standard), and	Compliance with the development standard is unnecessary given that: • The objectives of the development standard are met (see below). notwithstanding the non-compliance. Compliance with the development standard is unreasonable given that: • The contravention is small in area and relates to relatively discrete and minor elements of the building; • The contravention would not be visible from the street or most external viewing points; and • There would be no material impacts associated with a the contravention (eg in respect of streetscape, urban design, privacy, overshadowing etc).	
4.6(3)(b)	That there are sufficient environmental planning grounds to justify contravening the development standard.	Sufficient environmental planning grounds, in accordance with the criteria established in Initial Action, are outlined below:	
	As established in Initial Action [23], 'environmental planning grounds' refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act. These are as follows:	See below:	
1.3(a)	to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	The contravention would facilitate provision of: Affordable rental housing; and Equitable access via lift to the rooftop communal open space (it is noted that access would be possible by stair only if strict compliance were required; if so, less able residents may have to use the communal open space at ground level).	
1.3(b)	to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The contravention would enable more ecologically sustainable development by more efficiently utilising land within an existing urban area serviced by existing utilities thereby taking pressure off development on the urban fringe.	
1.3(c)	to promote the orderly and economic use and development of land,	Not applicable.	
1.3(d)	to promote the delivery and maintenance of affordable housing,	The contravention is associated with the provision of more affordable housing.	
1.3(e)	to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	The contravention would marginally lessen the incentive for new development on the urban fringe and the associated impacts upon natural environments.	

Cl. 4.6(3)	Cl. 4.6(3) Justification of Contravention		
Clause	Control	Justification	
1.3(f)	to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	The contravention would have a neutral heritage impact.	
1.3(g)	to promote good design and amenity of the built environment,	The contravention would provide: Lift access (and therefore universal access) to the rooftop communal open space.	
1.3(h)	to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	Lift access (and therefore universal access) to the rooftop communal open space to better service less able building users.	
1.3(i)	to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	Not applicable.	
1.3(j)	to provide increased opportunity for community participation in environmental planning and assessment.	Not applicable.	

In Wehbe v Pittwater Council [2007] NSWLEC 827, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. These are examined below:

	The Five Part Test: (in accordance with Preston CJ in Wehbe v Pittwater Council [2007] NSW LEC 827)		
Part	Test	Discussion	
1.	The objectives of the standard are achieved notwithstanding noncompliance with the standard.	The objectives of the development standard are achieved. See discussion under 4.4 below.	
2.	The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.	The objectives of the standard are relevant to the proposal and an assessment of compliance is provided above. It is considered that the objectives of the standard have been met and therefore strict compliance is unnecessary.	
3.	The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.	N/A	
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	There is no evidence that the development standard has been abandoned although this may be the case.	
5.	the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.	Not applicable. The zoning of the land is considered appropriate.	

4.4 Cl. 4.6(3)(a) Objectives of the Zone & Development Standard

Under the Five Part Test established in Wehbe v Pittwater Council, it may be demonstrated that the objectives of the standard are achieved notwithstanding non-compliance with the standard. This can be determined by an assessment of the consistency of the contravention with the objectives of the development standard. This assessment is summarised in the table below:

Cl. 4.6(3	Cl. 4.6(3)(a): Objectives of the development standard		
Clause	Objectives Justification		
4.3(2)	Height of buildings		
(a)	to ensure the height of buildings is compatible with the character of the locality,	The height associated with the contravention (ie the lift overrun and pergola) would not alter the contribution of the proposal to the character of the locality as it would not generally be visible from any point outside the site and, in particular, the streetscape. Even if visible, it would comprise an element of such visual insignificance as to not materially contribute to the character of the locality.	
(b)	to minimise adverse impacts on local amenity,	The contravention would not impact upon the amenity of surrounding properties given that it comprises a very minor building element.	
(c)	to provide an appropriate transition between buildings of different heights.	The contravention would not hinder the ability of the proposal to provide a suitable transition between the 23m height limit of the land adjacent the site to the west and the 8.5m height limit of the land adjacent the site to the east.	

In circumstances where there are no significant adverse impacts resulting from the contravention of the development standard, it is unreasonable and unnecessary to require strict compliance.

5.0 CONCLUSION

This Clause 4.6 contravention request to clause 4.3(2) of IWLEP 2022 – Height of buildings (as modified by cl. 16(3) of State Environmental Planning Policy (Housing) 2021), should be supported on the basis that strict application of the development standard is unnecessary and unreasonable given that:

- a) The development meets the stated objectives of clause 53, specifically:
 - a) to ensure the height of buildings is compatible with the character of the locality,
 - b) to minimise adverse impacts on local amenity,
 - to provide an appropriate transition between buildings of different heights.
- b) There are sufficient environmental planning grounds to justify contravening the development standard as set out above.

For the reasons set out above, the development may be granted consent notwithstanding the contravention of the development standard in respect of height of buildings under clause 4.3(2) of IWLEP 2022 – Height of buildings (as modified by cl. 16(3) of State Environmental Planning Policy (Housing) 2021).

Attachment D – Section 4.6 Exception to Development Standards

REQUEST TO CONTRAVENE A DEVELOPMENT STANDARD UNDER CLAUSE 4.6

cl. 19(2)(b), SEPP Housing 2021: Landscaped Area



314 Liverpool Road, Ashfield NSW

Amending Development Application to approved DA/2020/0583 for a change of use of the approved residential flat building to an in-fill affordable housing remarchsidential flat building and increase in height, GFA and number of units

16 May 2025 | P105_03 Revision A



ABN 38 116 266 882

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Revisions			
Revision	Date	Prepared by	Reviewed by
Draft 1	14.02.2025	PN	PN
Final	19.03.2025	PN	PN
Revision A	16.05.2025	PN	PN

We acknowledge that the land on which we live, learn and work as the traditional country of the Gadigal people of the Eora Nation. We acknowledge these traditional owners of this land and acknowledge their living cultures and the unique roles they have played in maintaining life, language, and culture in this region. We pay respect to their Elders past, present and emerging and all aboriginal people.

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1.0 INTRODUCTION

This request to contravene a non-discretionary development standard in respect of landscaped area under clause 19(2)(b) of State Environmental Planning Policy (Housing) 2021 is submitted to accompany a development application for:

a change of use of the approved residential flat building to an in-fill affordable housing residential flat building and increase in height, GFA and number of units

at 314 Liverpool Road, Ashfield NSW.

It has been prepared with particular reference to the decisions of the Court in respect of:

- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;
- Four2Five Pty Limited v Ashfield Council [2015] NSWLEC 90;
- Wehbe v Pittwater Council [2007] NSWLEC 827;

and other relevant case law.

2.0 THE DEVELOPMENT STANDARD

2.1 The applicable planning instrument which specifies the development standard:

State Environmental Planning Policy (Housing) 2021 (SEPPH 2021).

2.2 The number of the relevant clause:

Clause 19(2)(b) - Non-discretionary development standards—the Act, s 4.15 (landscaped area).

2.3 The provisions of the relevant clause:

(1) The object of this section is to identify development standards for particular matters relating to residential development under this division that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

Note—See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

- (2) The following are non-discretionary development standards in relation to the residential development to which this division applies—
 - (b) a minimum landscaped area that is the lesser of-
 - (i) 35m² per dwelling, or
 - (ii) 30% of site area.

3.0 THE CONTRAVENTION SOUGHT:

3.1 Description of the contravention:

The proposed development would contravene the non-discretionary development standard as follows:

3.1.1 Required landscaped area:

- Site area (for the purpose of calculation of landscaped area): 3,247 m²
- No. dwellings: 53
- Landscaped area by no. dwellings: 1,855m²
- Landscaped area by %: 974.1m²
- \bullet Landscaped area by % is the lesser therefore the required landscaped area is $974.1m^2.$

3.1.2 Extent of contravention:

- Required landscaped area: 974.1m²
- Proposed (existing and approved) landscaped area: 619.1m²

Contravention: 355m²

3.1.3 Percentage of proposed contravention:

36%

3.1.4 Reason for the contravention:

The contravention results from:

- The approval of the development with a landscaped area consistent with the requirements of the ADG and the relevant development control plan; and
- The fact that the majority of the development has already been constructed and it is not physically
 possible to provide compliant landscaped area without significant demolition and reconstruction of
 the entire development.

4.0 PROVISIONS OF CLAUSE 4.6

4.1 Cl. 4.6(1): Objectives

Clause 4.6 seeks to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. The objectives of Clause 4.6 are as follows:

Cl. 4.6(1)	Cl. 4.6(1) Objectives of Clause		
Clause	Control	Justification	
(1)(a)	to provide an appropriate degree of flexibility in applying certain development standards to particular development	The proposal contravenes the development standard which sets a minimum landscaped area. It seeks to utilise this clause to provide appropriate flexibility in application of the standard to permit approval.	
(1)(b)	to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	The proposal would achieve better outcomes: • For the development: The contravention would permit: • Utilisation of the fabric of the existing development without demolition of existing structure and building fabric; • Avoidance of waste. • From the development: The contravention would result in: • Provision of affordable housing; • More efficient utilisation of the site.	

4.2 Cl. 4.6(2): Development standards excluded form operation of clause

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

The relevant clause is not expressly excluded from the operation of clause 4.6.

4.3 Cl. 4.6(3): Justification of the Contravention of the Development Standard

Under the provisions of clause 4.6(3) – Exceptions to development standards of IWLEP 2022, the consent authority must satisfied that the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the table below:

Cl. 4.6(3) Justification of Contravention		
Clause	Control	Justification
4.6(3)	Development consent must not be granted for development that contravenes a development standard	This written request addresses this clause.

	6(3) Justification of Contravention		
Clause	Control	Justification	
	unless the consent authority is satisfied that the applicant has demonstrated that:		
4.6(3)(a)	compliance with the development standard is unreasonable or unnecessary in the circumstances (see the test under Wehbe v Pittwater Council below and assessment against the objectives of the zone and development standard), and	Compliance with the development standard is unnecessary given that: • The objectives of the development standard are met (see below). notwithstanding the non-compliance. Compliance with the development standard is unreasonable given that: • The majority of the development has already been constructed and it would not be possible to provide a compliant quantity of landscaped area; • The development has already been approved with the existing quantity of landscaped area; • The quantity of landscaped area provided is compliant with the applicable controls under the ADG; and • The standard is a non-discretionary development standard which, under section 4.15(3) of the Act, does not prevent development consent being granted if it is not complied with.	
4.6(3)(b)	That there are sufficient environmental planning grounds to justify contravening the development standard.	Sufficient environmental planning grounds, include: The application seeks approval for an additional level only and does not propose any increase in building footprint or site coverage that would result in a reduction of landscaped area; The majority of the development has already been constructed and it would not be possible to provide a compliant quantity of landscaped area; The development has already been approved with the existing quantity of landscaped area; The quantity of landscaped area provided is compliant with the applicable controls under the ADG; and The standard is a non-discretionary development standard which, under section 4.15(3) of the Act, does not prevent development consent being granted if it is not complied with. In addition, Sufficient environmental planning grounds in accordance with the criteria established in Initial Action, are outlined below:	
	As established in Initial Action [23], 'environmental planning grounds' refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act. These are as follows:	See below:	
1.3(a)	to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	The contravention would facilitate provision of: Affordable rental housing; and Much needed additional residential accommodation in an accessible area.	
1.3(b)	to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making	The contravention would enable more ecologically sustainable development by more efficiently utilising land within an existing urban area serviced by existing utilities	

Clause	Control	Justification
	about environmental planning and assessment,	thereby taking pressure off development on the urban fringe.
1.3(c)	to promote the orderly and economic use and development of land,	Not applicable.
1.3(d)	to promote the delivery and maintenance of affordable housing,	The contravention is associated with the provision of affordable housing.
1.3(e)	to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	The contravention would marginally lessen the incentive for new development on the urban fringe and the associated impacts upon natural environments.
1.3(f)	to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	The contravention would have a neutral heritage impact.
1.3(g)	to promote good design and amenity of the built environment,	The contravention would not alter compliance with the ADG or any other controls and the development would remain consistent with these.
1.3(h)	to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The contravention would not alter this consideration.
1.3(i)	to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	Not applicable.
1.3(j)	to provide increased opportunity for community participation in environmental planning and assessment.	Not applicable.

In Wehbe v Pittwater Council [2007] NSWLEC 827, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. These are examined below:

The Five Part Test: (in accordance with Preston CJ in Wehbe v Pittwater Council [2007] NSW LEC 827)		
Part	Test	Discussion
1.	The objectives of the standard are achieved notwithstanding noncompliance with the standard.	The objectives of the development standard are achieved. See discussion under 4.4 below.
2.	The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.	The objectives of the standard are relevant to the proposal and an assessment of compliance is provided above. It is considered that the objectives of the standard have been met and therefore strict compliance is unnecessary.
3.	The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.	N/A
4.	The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard	There is no evidence that the development standard has been abandoned although this may be the case.

	The Five Part Test: (in accordance with Preston CJ in Wehbe v Pittwater Council [2007] NSW LEC 827)		
Part Test I		Discussion	
	and hence compliance with the standard is unnecessary and unreasonable		
5.	the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.	Not applicable. The zoning of the land is considered appropriate.	

4.4 Cl. 4.6(3)(a) Objectives of the Zone & Development Standard

Under the Five Part Test established in Wehbe v Pittwater Council, it may be demonstrated that the objectives of the standard are achieved notwithstanding non-compliance with the standard. This can be determined by an assessment of the consistency of the contravention with the objectives of the development standard. There are no explicitly stated specific objectives for the landscaped area non-discretionary development standard but the most relevant are summarised in the table below:

Cl. 4.6(3	Cl. 4.6(3)(a): Objectives of the development standard		
Clause	Objectives	Justification	
3	State Environmental Planning Police	y (Housing) 2021: Principles of Policy	
(a)	enabling the development of diverse housing types, including purpose- built rental housing,	The contravention allows the provision of diverse housing, specifically affordable housing.	
(b)	encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,	The contravention allows the provision of affordable housing which could not be provided without the contravention.	
(c)	ensuring new housing development provides residents with a reasonable level of amenity,	The development would continue to provide amenity levels consistent with the ADG and other applicable controls and as already approved.	
(d)	promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,	The contravention allows the provision of affordable housing in close proximity to: • Ashfield Town Centre • Ashfield Railway Station • Croydon Railway Station • Frequent bus services along Liverpool Road	
(e)	minimising adverse climate and environmental impacts of new housing development,	The more efficient use of the site with a greater density in a location already serviced by infrastructure and local facilities would marginally reduce the demand for development on the urban fringe and the associated loss of natural environment.	
(f)	reinforcing the importance of designing housing in a way that reflects and enhances its locality,	The contravention would not result in a development inconsistent with the locality as the landscaped area would remain as approved and consistent with the requirements of the ADG and other applicable controls.	
(g)	supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the	Not applicable.	

Cl. 4.6(3	4.6(3)(a): Objectives of the development standard		
Clause	Objectives	Justification	
	social and environmental impacts from this use,		
(h)	mitigating the loss of existing affordable rental housing.	Not applicable. No loss of existing affordable rental housing is proposed.	
Div 1	In-fill affordable housing: Objective	of division	
15A	The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.	The contravention would allow the provision of affordable rental housing which would otherwise not be facilitated.	
19	Non-discretionary development standards—the Act, s 4.15		
(1)	The object of this section is to identify development standards for particular matters relating to residential development under this division that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.	Section 4.15(3) of the Act does not prevent development consent being granted if a non-discretionary development standard is not complied with. It simply prevents a consent authority from imposing a more onerous standard in respect of the same matter.	

In circumstances where there are no significant adverse impacts resulting from the contravention of the development standard, it is unreasonable and unnecessary to require strict compliance.

5.0 CONCLUSION

This Clause 4.6 contravention request to contravene a non-discretionary development standard in respect of landscaped area under clause 19(2)(b) of State Environmental Planning Policy (Housing) 2021, should be supported on the basis that strict application of the development standard is unnecessary and unreasonable given that:

- a) The development meets the stated objectives of the clause; and
- b) There are sufficient environmental planning grounds to justify contravening the development standard as set out above.

For the reasons set out above, the development may be granted consent notwithstanding the contravention of the development standard in respect of landscaped area under clause clause 19(2)(b) of State Environmental Planning Policy (Housing) 2021.

Attachment E – Section 4.6 Exception to Development Standards

REQUEST TO CONTRAVENE A DEVELOPMENT STANDARD UNDER CLAUSE 4.6

cl. 148(2)(a), SEPP Housing 2021: Car parking



314 Liverpool Road, Ashfield NSW

Amending Development Application to approved DA/2020/0583 for a change of use of the approved residential flat building to an in-fill affordable housing residential flat building and increase in height, GFA and number of units

23 May 2025 | P105_03 Revision B



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We acknowledge that the land on which we live, learn and work as the traditional country of the Gadigal people of the Eora Nation. We acknowledge these traditional owners of this land and acknowledge their living cultures and the unique roles they have played in maintaining life, language, and culture in this region. We pay respect to their Elders past, present and emerging and all aboriginal people.

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1.0 INTRODUCTION

This request to contravene a non-discretionary development standard in respect of car parking under clause 148(2)(a) of State Environmental Planning Policy (Housing) 2021 is submitted to accompany a development application for:

a change of use of the approved residential flat building to an in-fill affordable housing residential flat building and increase in height, GFA and number of units

at 314 Liverpool Road, Ashfield NSW.

It has been prepared with particular reference to the decisions of the Court in respect of:

- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;
- Four2Five Pty Limited v Ashfield Council [2015] NSWLEC 90;
- Wehbe v Pittwater Council [2007] NSWLEC 827;

and other relevant case law.

2.0 THE DEVELOPMENT STANDARD

2.1 The applicable planning instrument which specifies the development standard:

State Environmental Planning Policy (Housing) 2021 (SEPPH 2021).

2.2 The number of the relevant clause:

Clause 148(2)(a) – Non-discretionary development standards for residential apartment developments — the Act, s 4.15.

2.3 The provisions of the relevant clause:

The requirements for car parking are established by State Environmental Planning Policy (Housing) 2021 (SEPPH 2021).

As the proposal is an in-fill affordable housing development, the car parking requirements are established by clauses 19(c) and (d). The proposal is compliant with these requirements. These do not, however, specify that they apply to visitor or other types of parking. For this, the applicable requirements are those applying to residential apartment development under clause 148 which do contain provisions relating to visitor car parking:

The relevant clause requires that:

148(1) The object of this section is to identify development standards for particular matters relating to residential development under this division that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

Note—See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

148(2)The following are non-discretionary development standards —

148(2)(a) the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,

Part 3J of the Apartment Design Guide requires that:

The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.

The 'Comprehensive Inner West DCP 2016 – Chapter F' specifies parking rates for residential developments as follows:

· Visitor parking: 13.2 spaces

The Guide to Traffic Impact Assessment (GTIA), released in November 2024, has replaced the *Guide to Traffic Generating Developments*. It requires:

• Visitor parking: 1 space per 7 units x 53 units: 7.5 spaces rounded up to 8.

Given that that GTIA requirements are less, it is these that apply. The proposal therefore requires 8 visitor parking spaces.

3.0 THE CONTRAVENTION SOUGHT:

3.1 Description of the contravention:

The proposed development would contravene the non-discretionary development standard as follows:

3.1.1 Required visitor parking:

8 spaces

3.1.2 Provided visitor parking:

5 spaces

3.1.3 Extent of contravention:

3 spaces

3.1.4 Percentage of proposed contravention:

• 38%

3.1.5 Reason for the contravention:

The contravention results from:

- A shortfall of 3 spaces in the total number of parking spaces;
- An inability to provide these on site because the basement and ground level elements have already been constructed and the required reconstruction would be constructionally implausible and prohibitive.

4.0 PROVISIONS OF CLAUSE 4.6

4.1 Cl. 4.6(1): Objectives

Clause 4.6 seeks to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. The objectives of Clause 4.6 are as follows:

Cl. 4.6(1) Objectives of Clause		
Clause	Control	Justification
(1)(a)	to provide an appropriate degree of flexibility in applying certain development standards to particular development	The proposal contravenes the development standard which sets a minimum number of visitor spaces. It seeks to utilise this clause to provide appropriate flexibility in application of the standard to permit approval.
(1)(b)	to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	The proposal would achieve better outcomes: • For the development: The contravention would permit: ○ Utilisation of the fabric of the existing development without demolition of existing structure and building fabric; ○ Avoidance of waste. • From the development: The contravention would result in: ○ Provision of affordable housing; ○ More efficient utilisation of the site.

4.2 Cl. 4.6(2): Development standards excluded form operation of clause

Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning

instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

The relevant clause is not expressly excluded from the operation of clause 4.6.

4.3 Cl. 4.6(3): Justification of the Contravention of the Development Standard

Under the provisions of clause 4.6(3) – Exceptions to development standards of IWLEP 2022, the consent authority must satisfied that the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the table below:

Clause	Control	Justification
4.6(3)	Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant has demonstrated that:	This written request addresses this clause.
4.6(3)(a)	compliance with the development standard is unreasonable or unnecessary in the circumstances (see the test under Wehbe v Pittwater Council below and assessment against the objectives of the zone and development standard), and	Compliance with the development standard is unnecessary given that: • The objectives of the development standard are met (see below). notwithstanding the non-compliance. Compliance with the development standard is unreasonable given that: • The majority of the development has already been constructed and it would not be possible to provide a compliant number of visitor car parking spaces; and • The standard is a non-discretionary development standard which, under section 4.15(3) of the Act, does not prevent development consent being granted if it is not complied with.
4.6(3)(b)	That there are sufficient environmental planning grounds to justify contravening the development standard.	Sufficient environmental planning grounds, in accordance with the criteria established in Initial Action, are outlined below:
	As established in Initial Action [23], 'environmental planning grounds' refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act. These are as follows:	See below:
1.3(a)	to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	The contravention would facilitate provision of: • Affordable rental housing; and • Much needed additional residential accommodation in an accessible area within 400m of Ashfield Station.
1.3(b)	to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The contravention would enable more ecologically sustainable development by more efficiently utilising land within an existing urban area serviced by existing utilities thereby taking pressure off development on the urban fringe.
1.3(c)	to promote the orderly and economic use and development of land,	Not applicable.
1.3(d)	to promote the delivery and maintenance of affordable housing,	The contravention is associated with the provision of affordable housing.

Cl. 4.6(3)	Cl. 4.6(3) Justification of Contravention		
Clause	Control	Justification	
1.3(e)	to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	The contravention would marginally lessen the incentive for new development on the urban fringe and the associated impacts upon natural environments.	
1.3(f)	to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	The contravention would have a neutral heritage impact.	
1.3(g)	to promote good design and amenity of the built environment,	Aside from a minor deficiency in visitor parking spaces, the contravention would not alter compliance with the ADG or any other controls and the development would remain consistent with these.	
1.3(h)	to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The contravention would not alter this consideration.	
1.3(i)	to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	Not applicable.	
1.3(j)	to provide increased opportunity for community participation in environmental planning and assessment.	Not applicable.	

In Wehbe v Pittwater Council [2007] NSWLEC 827, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. These are examined below:

	The Five Part Test: (in accordance with Preston CJ in Wehbe v Pittwater Council [2007] NSW LEC 827)		
Part	Test	Discussion	
1.	The objectives of the standard are achieved notwithstanding noncompliance with the standard.	The objectives of the development standard are achieved. See discussion under 4.4 below.	
2.	The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.	The objectives of the standard are relevant to the proposal and an assessment of compliance is provided above. It is considered that the objectives of the standard have been met and therefore strict compliance is unnecessary.	
3.	The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.	N/A	
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	There is no evidence that the development standard has been abandoned although this may be the case.	
5.	the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and	Not applicable. The zoning of the land is considered appropriate.	

	The Five Part Test: (in accordance with Preston CJ in Wehbe v Pittwater Council [2007] NSW LEC 827)		
Part	Test	Discussion	
	unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.		

4.4 Cl. 4.6(3)(a) Objectives of the Development Standard

Under the Five Part Test established in Wehbe v Pittwater Council, it may be demonstrated that the objectives of the standard are achieved notwithstanding non-compliance with the standard. This can be determined by an assessment of the consistency of the contravention with the objectives of the development standard. There are no explicitly stated specific objectives for the landscaped area non-discretionary development standard but the most relevant are summarised in the table below:

Clause	Objectives	Justification	
	Objectives		
3	State Environmental Planning Policy (Housing) 2021: Principles of Policy		
(a)	enabling the development of diverse housing types, including purpose- built rental housing,	The contravention allows the provision of diverse housing, specifically affordable housing.	
(b)	encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,	The contravention allows the provision of affordable housing which could not be provided without the contravention.	
(c)	ensuring new housing development provides residents with a reasonable level of amenity,	The development would continue to provide amenity levels consistent with the ADG and other applicable controls and as already approved.	
(d)	promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,	The contravention allows the provision of affordable housing in close proximity to: • Ashfield Town Centre • Ashfield Railway Station (within 400m) • Croydon Railway Station • Frequent bus services along Liverpool Road	
(e)	minimising adverse climate and environmental impacts of new housing development,	The more efficient use of the site with a greater density in a location already serviced by infrastructure and local facilities would marginally reduce the demand for development on the urban fringe and the associated loss of natural environment.	
(f)	reinforcing the importance of designing housing in a way that reflects and enhances its locality,	The contravention would not result in a development inconsistent with the locality as the physical form of the development would remain the same.	
(g)	supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,	Not applicable.	
(h)	mitigating the loss of existing affordable rental housing.	Not applicable. No loss of existing affordable rental housing is proposed.	
142	Chapter 4 Design of residential apartment development: Aims of chapter		
(1)	The aim of this chapter is to improve the design of residential apartment	The contravention is not inconsistent with this aim.	

Clause	Objectives	Justification
	development in New South Wales for the following purposes—	
(1)(a)	to ensure residential apartment development contributes to the sustainable development of New South Wales by—	The contravention is consistent with this aim as follows:
(1)(a) (i)	providing socially and environmentally sustainable housing, and	The contravention facilitates the provision of affordable housing in close proximity to public transport and services which would lessen reliance on private transport and promot walkability.
(1)(a) (ii)	being a long-term asset to the neighbourhood, and	The contravention is not inconsistent with this aim.
(1)(a) (iii)	achieving the urban planning policies for local and regional areas,	The contravention would facilitate the urban planning policies for the locality by providing affordable housing in in close proximity to the town centre including public transport and services which would lessen reliance on private transport, promote walkability and increase the viability of the town centre.
(1)(b)	to achieve better built form and aesthetics of buildings, streetscapes and public spaces,	The contravention is not inconsistent with this aim.
(1)(c)	to maximise the amenity, safety and security of the residents of residential apartment development and the community,	The contravention is not inconsistent with this aim given that public transport is available directly outside the development on a busy street with excellent surveillance.
(1)(d)	to better satisfy the increasing demand for residential apartment development, considering—	The contravention would facilitate the provision of additional residential apartment dwellings.
(1)(d) (i)	the changing social and demographic profile of the community, and	The contravention would facilitate the provision of affordable housing to satisfy the current social and demographic profile of the community.
(1)(d) (ii)	the needs of a wide range of people, including persons with disability, children and seniors,	The contravention is not inconsistent with this aim and would not reduce amenity for those who do not drive including persons with disability, children and seniors.
(1)(e)	to contribute to the provision of a variety of dwelling types to meet population growth,	The contravention would permit the provision of more affordable housing units so satisfy demand resulting from population growth.
(1)(f)	to support housing affordability,	The contravention would specifically facilitate the provision of optimal supply of affordable housing on the site.
(1)(g)	to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions,	The contravention would increase the intensity of development and population on the site in close proximity to public transport (within 400m of Ashfield Station) and services thereby promoting walkability, reducing reliance on private transport and the associated greenhouse gas emissions, optimally utilising existing urban infrastructure an reducing pressure for development on the urban fringe.
(1)(h)	to facilitate the timely and efficient assessment of development applications to which this chapter applies.	The contravention is not inconsistent with this aim.
(2)	This chapter recognises that the design of residential apartment development is significant because	The contravention is not inconsistent with this aim.

Cl. 4.6(3	Cl. 4.6(3)(a): Objectives of the development standard				
Clause	Objectives	Justification			
	of the economic, environmental, cultural and social benefits of high quality design.				
148	Non-discretionary development standards—the Act, s 4.15				
(1)	The object of this section is to identify development standards for particular matters relating to residential development under this division that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.	Section 4.15(3) of the Act does not prevent development consent being granted if a non-discretionary development standard is not complied with. It simply prevents a consent authority from imposing a more onerous standard in respect of the same matter. In this case, the deficiency of 3 visitor parking spaces is reasonable given the location of the development in close proximity to services, utilities and, in particular, a wide variety of modes of public transportation including within 400m of Ashfield Station.			

In circumstances where there are no significant adverse impacts resulting from the contravention of the development standard, it is unreasonable and unnecessary to require strict compliance.

5.0 CONCLUSION

This Clause 4.6 contravention request to contravene a non-discretionary development standard in respect of parking under clause 148(2)(a) of State Environmental Planning Policy (Housing) 2021, should be supported on the basis that strict application of the development standard is unnecessary and unreasonable given that:

- a) The development meets the stated objectives of the relevant clauses; and
- b) There are sufficient environmental planning grounds to justify contravening the development standard as set out above.

For the reasons set out above, the development may be granted consent notwithstanding the contravention of the development standard in respect of parking under clause clause 148(2)(a) of State Environmental Planning Policy (Housing) 2021.