

ATTACHMENT 1 – LOCALITY PLAN



- ☐ SUBJECT SITE
- ✓ PROPERTIES NOTIFIED

THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

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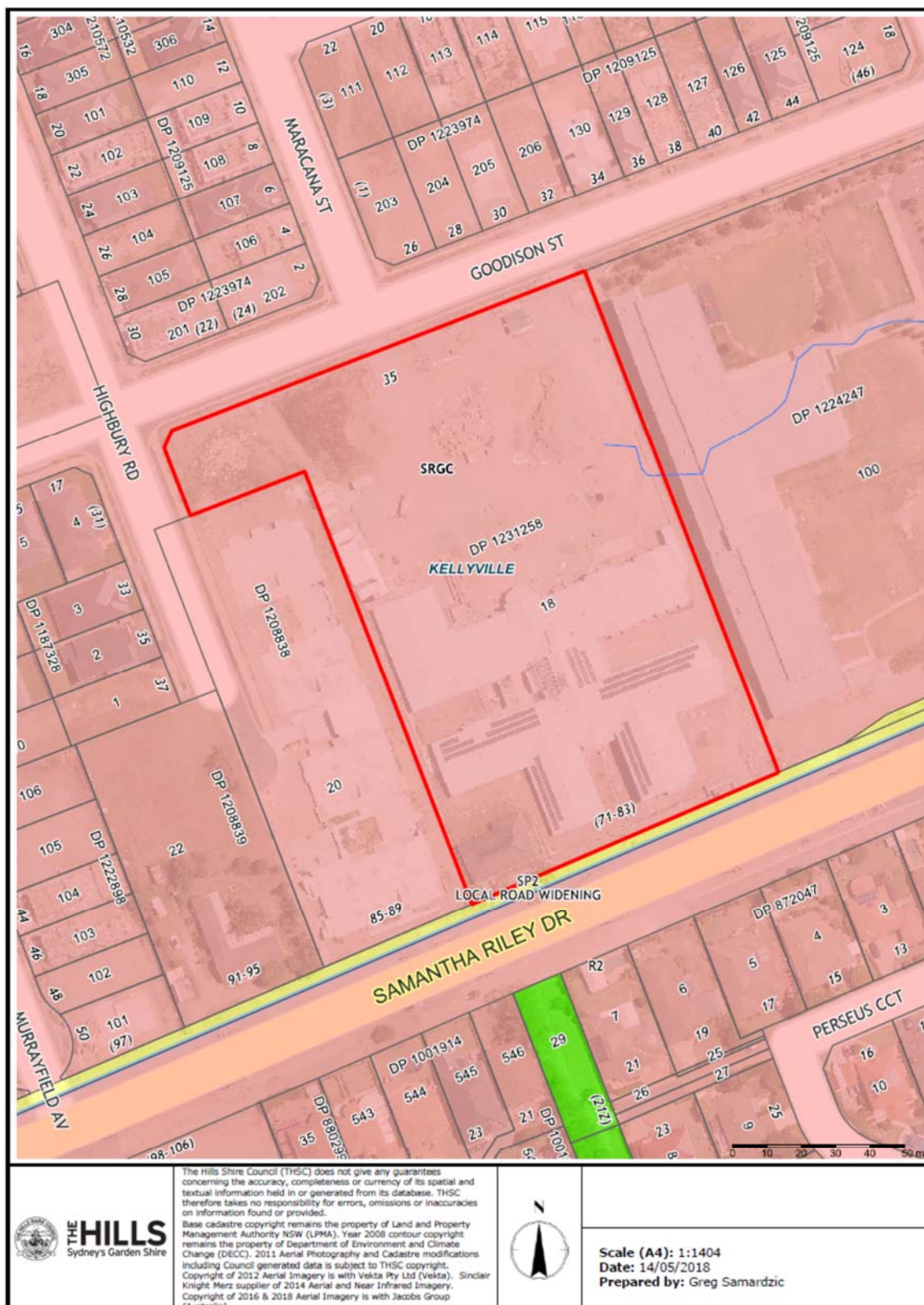
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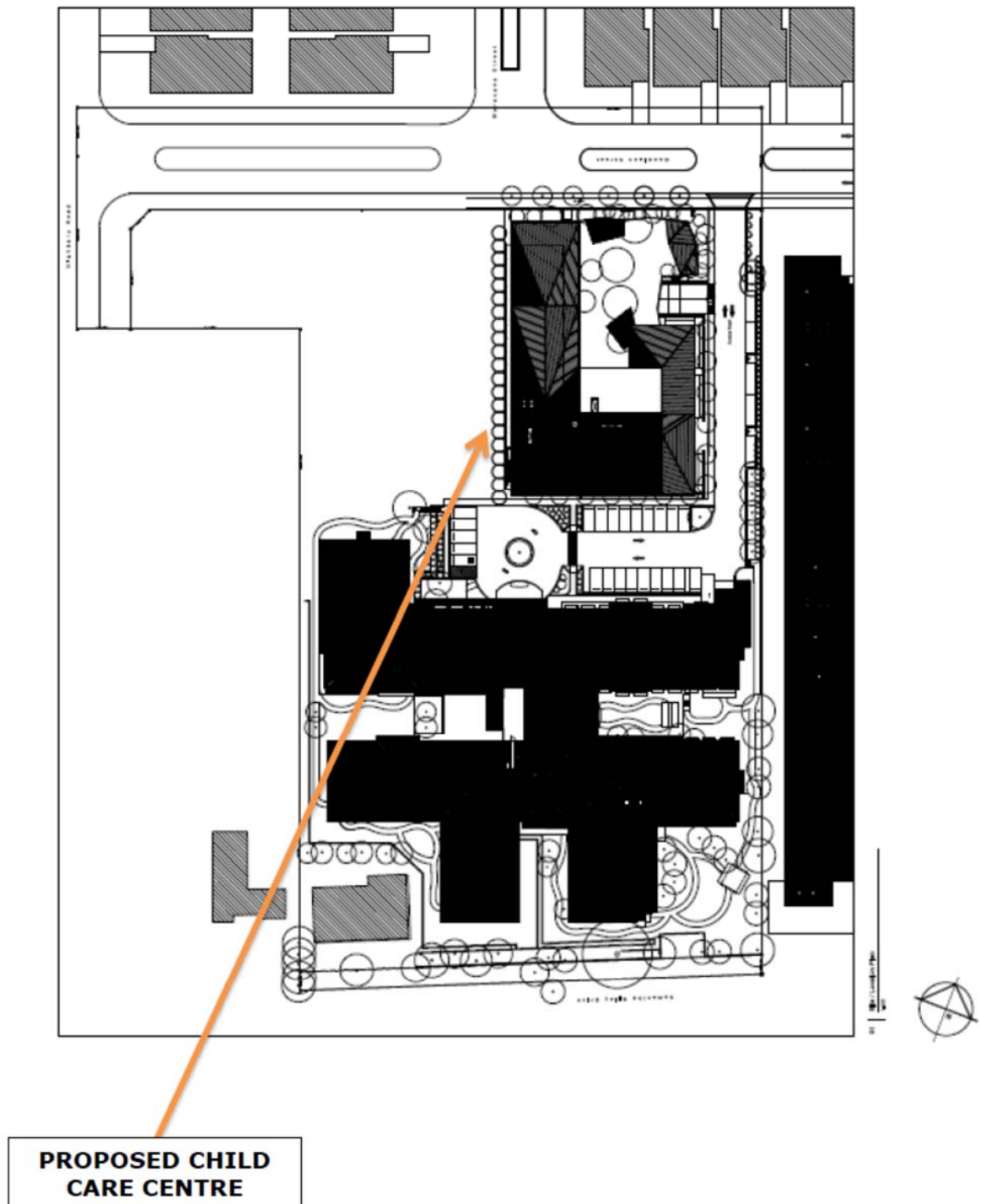
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Date: 14/05/2018
Prepared by: Greg Samardzic

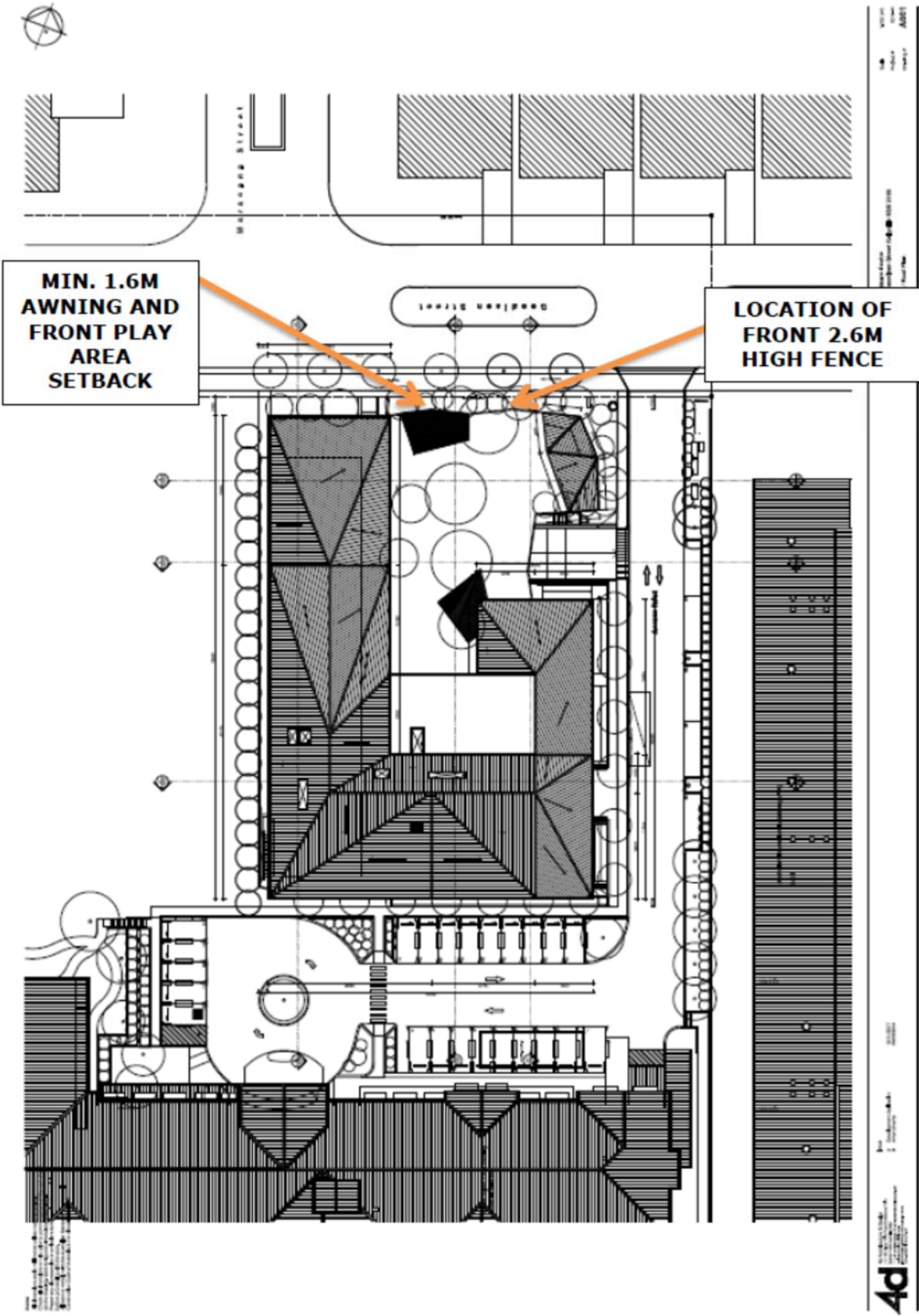
ATTACHMENT 3 – ZONING PLAN



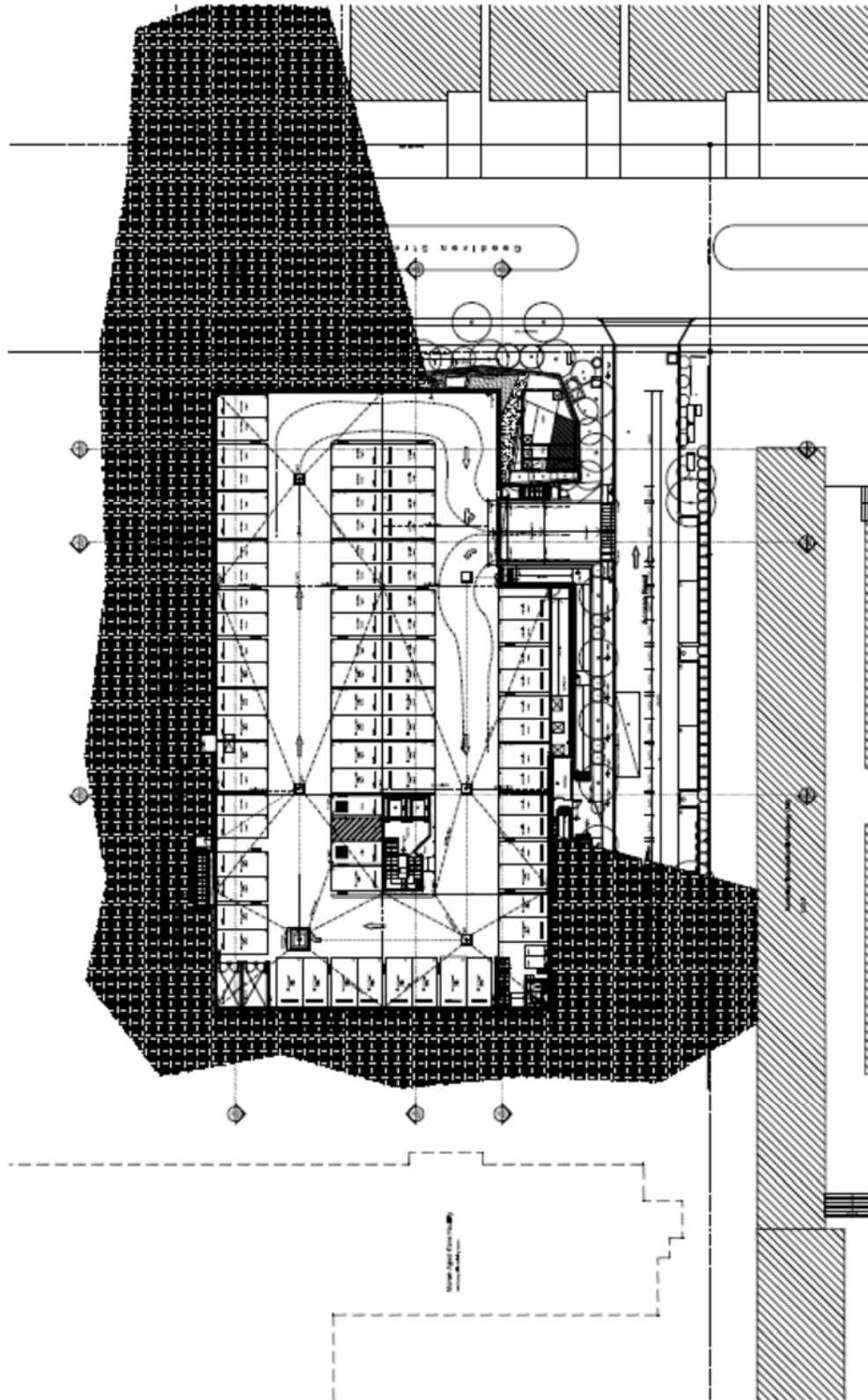
ATTACHMENT 4 – SITE PLAN



ATTACHMENT 5 – PART SITE PLAN



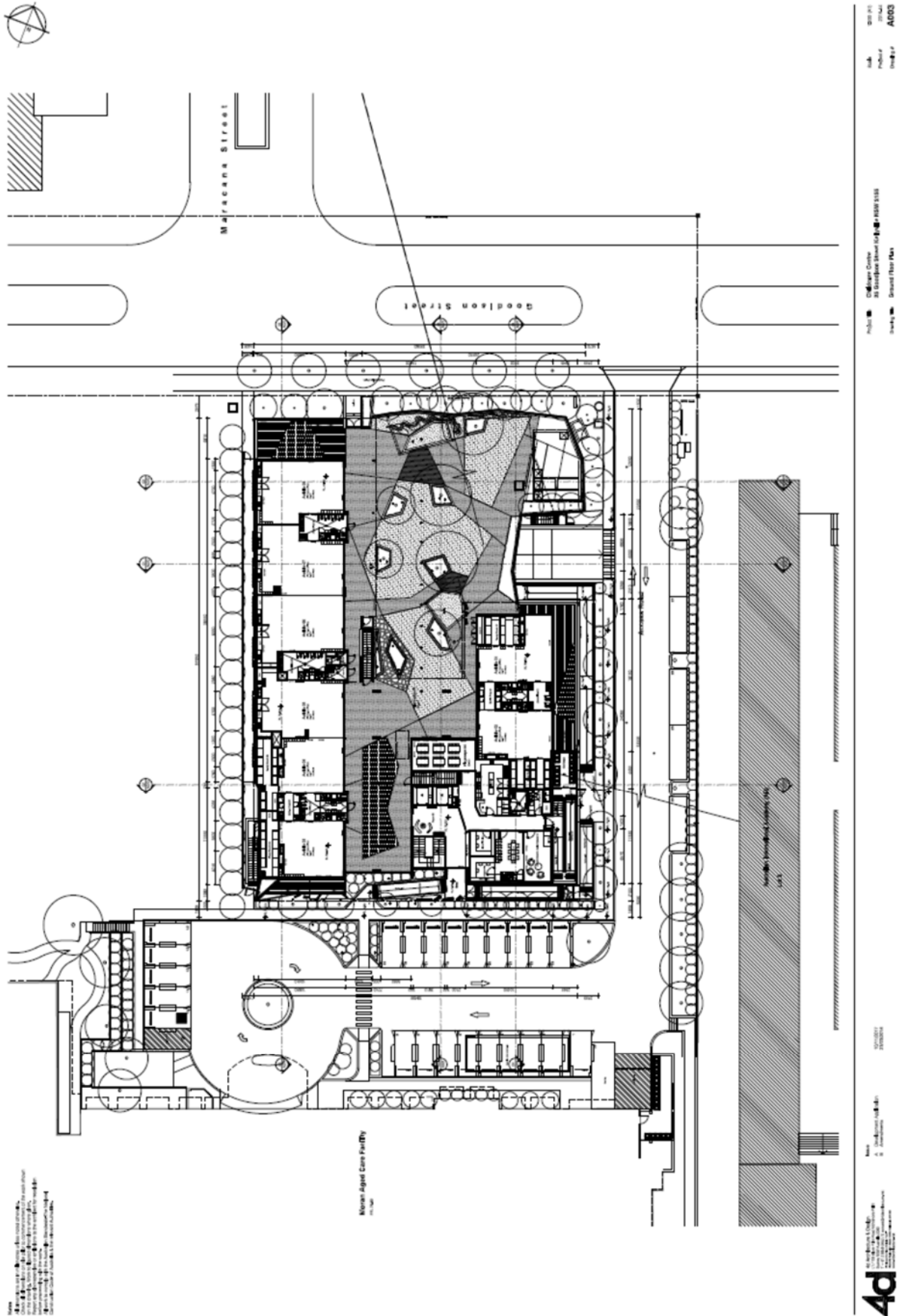
ATTACHMENT 6 – BASEMENT CAR PARK PLAN



NOTES:
1. All dimensions are in millimetres unless otherwise stated.
2. All dimensions are to the centre of the line unless otherwise stated.
3. All dimensions are to the face of the wall unless otherwise stated.
4. All dimensions are to the face of the slab unless otherwise stated.
5. All dimensions are to the face of the column unless otherwise stated.
6. All dimensions are to the face of the beam unless otherwise stated.
7. All dimensions are to the face of the floor slab unless otherwise stated.
8. All dimensions are to the face of the ceiling slab unless otherwise stated.
9. All dimensions are to the face of the wall unless otherwise stated.
10. All dimensions are to the face of the slab unless otherwise stated.

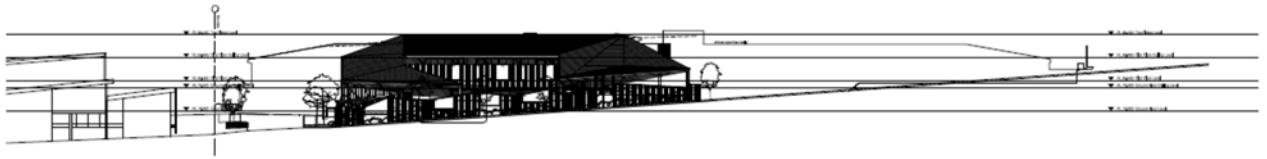
4d	Architectural	Structural	Mechanical	Electrical	Civil	Landscape	Interior	Exterior
Project Name	Project Number	Project Location	Project Date	Project Status	Project Manager	Project Engineer	Project Designer	Project Checker
Client Name	Client Address	Client Phone	Client Email	Client Website	Client Logo	Client Signature	Client Stamp	Client Seal

ATTACHMENT 7 – GROUND FLOOR PLAN



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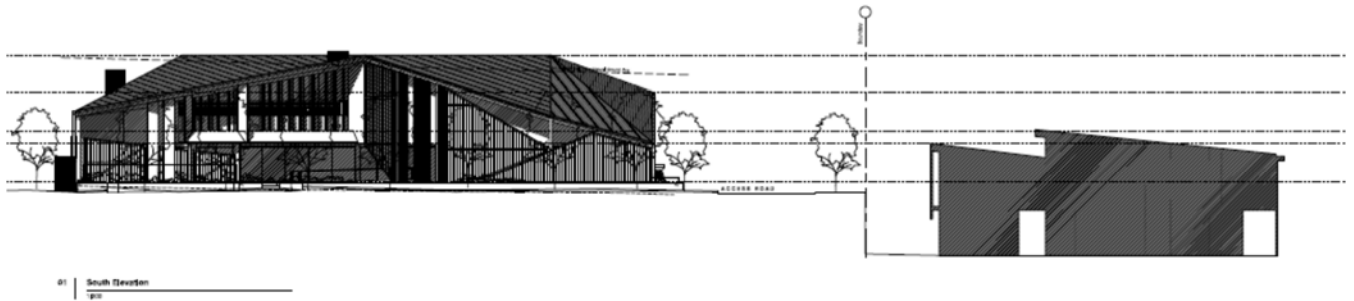
ATTACHMENT 9 – ELEVATIONS



NORTH ELEVATION



EAST ELEVATION



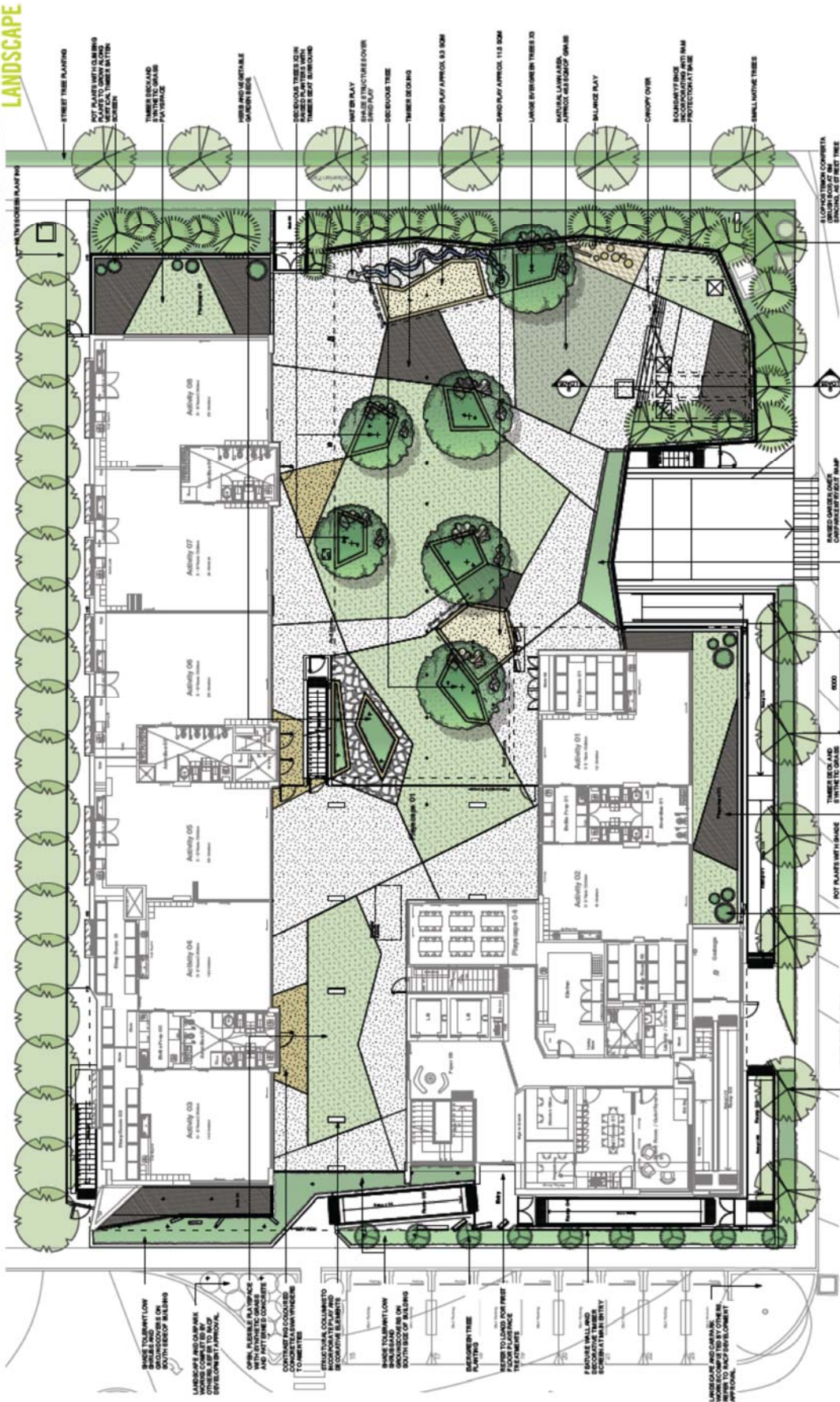
SOUTH ELEVATION



WEST ELEVATION

ATTACHMENT 10 – LANDSCAPE PLANS

NBRSARCHITECTURE.
LANDSCAPE



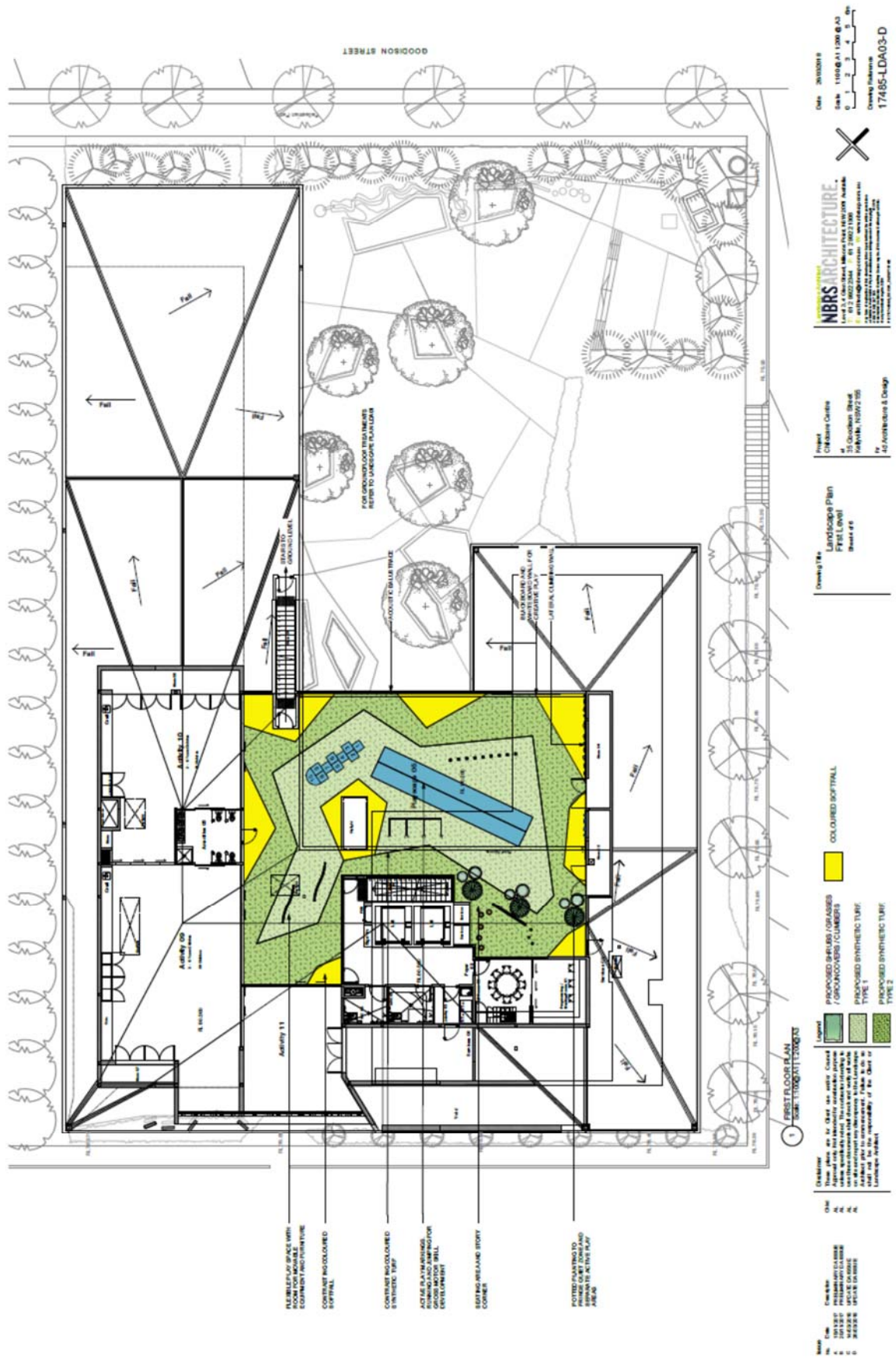
Legend
 PROPOSED TREES
 PROPOSED COLOURED CONCRETE
 PROPOSED COLOURED GROUND COVER
 PROPOSED SHRUB/ GROUND COVER
 PROPOSED TURF
 PROPOSED SAND/ GRAVEL
 PROPOSED STONE PAVING
 PROPOSED DINING AREA

Notes
 1. All plants are to be installed within 12 months of completion of construction.
 2. All plants are to be installed within 12 months of completion of construction.
 3. All plants are to be installed within 12 months of completion of construction.
 4. All plants are to be installed within 12 months of completion of construction.
 5. All plants are to be installed within 12 months of completion of construction.
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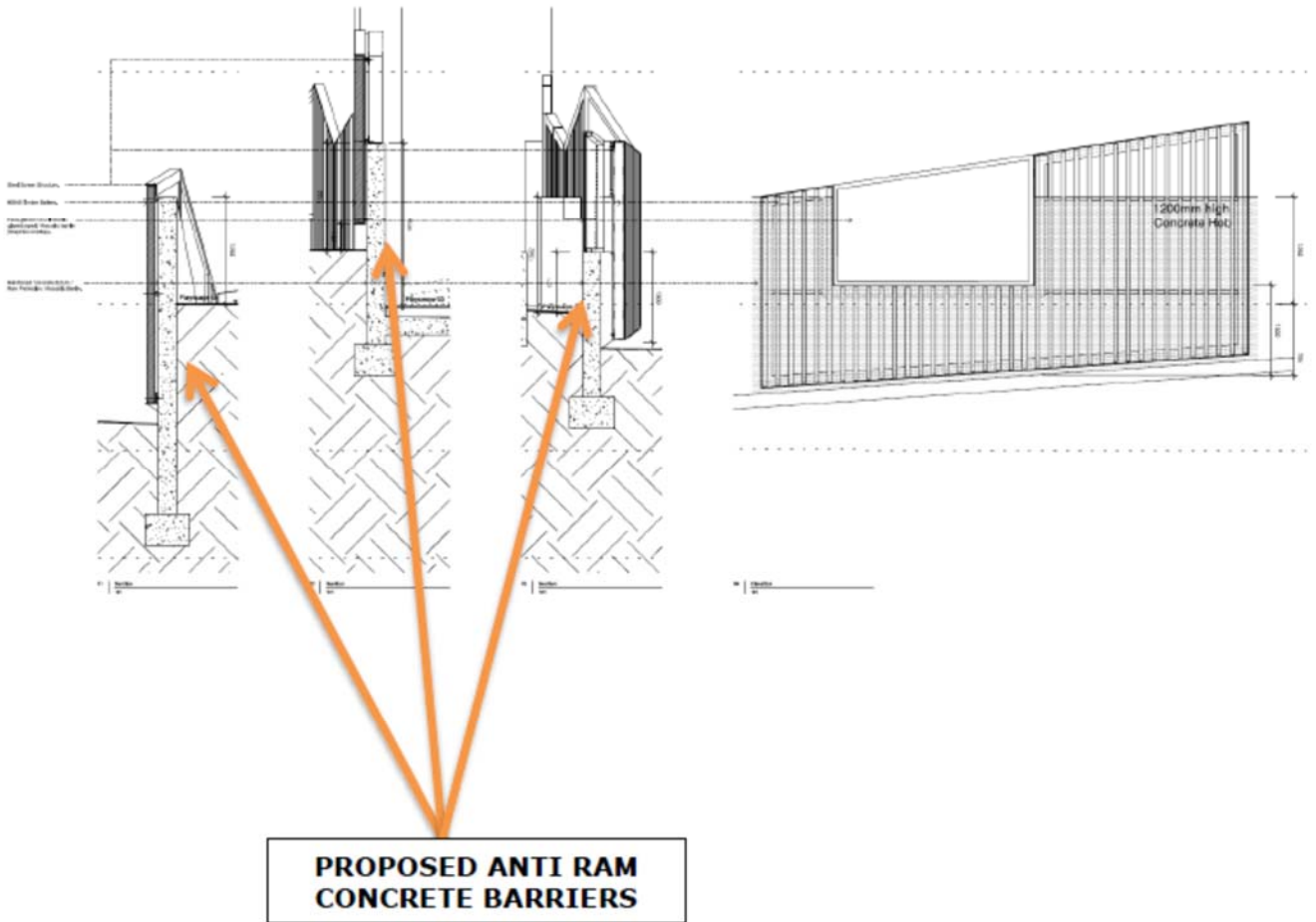
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Project
 Chisholm Centre
 111 Chisholm Street
 Melbourne VIC 3000
 17485-LDA01-D

NBRSARCHITECTURE.
LANDSCAPE



ATTACHMENT 11 – FENCING DETAILS



ATTACHMENT 12 – PERSPECTIVES



ATTACHMENT 12 – PERSPECTIVES



5 Environmental Planning Assessment

5.1.3 Clause 4.6 Variation Statement – Height of Buildings

Requirements of Clause 4.6

Subclause 4.6(1) of the North Kellyville Precinct Plan states the objectives of the clause as follows:

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

Our response to these provisions is contained within this submission.

Subclause 4.6(2) provides that:

- "(2) 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 Height of Buildings development standard is not expressly excluded from the operation of clause 4.6 and accordingly, consent may be granted.

Subclause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

- "(3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard."*

The proposed development does not comply with the Height of Buildings development standard pursuant to clause 4.3 of the North Kellyville Precinct Plan however, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as justified in this written request.

Subclause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- "(a) the consent authority is satisfied that:*
- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Director-General has been obtained."*

The remainder of this written request for exception to the development standard addresses the matters required under subclauses 4.6(4) of the North Kellyville Precinct Plan.

Subclause 4.6(5) provides that in deciding whether to grant concurrence, the Secretary must consider:

- "(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence."*

5 Environmental Planning Assessment

The proposed non-compliance does not raise any matter of significance for State or regional environmental planning and is peculiar to the design of the proposed development on this particular site and it is considered that there would be no significant public benefit of maintaining the development standard in this instance.

It is considered that there are no other matters of relevance that need to be taken into consideration by the Secretary.

The Nature of the Variation

Subclause 4.3(2) of the North Kellyville Precinct Plan sets out the Height of Buildings as follows:

"... 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 of Buildings Map designates a maximum Height of Buildings of 9 metres for the Site.

The North Kellyville Precinct Plan defines **building height** (or **height of building**) as:

"... the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."

The proposed Centre has a maximum height of 9.65 metres at the ridge over the two storey component (see **Figure 9**). Elsewhere, the height is substantially below 9 metres and in most parts, single storey.

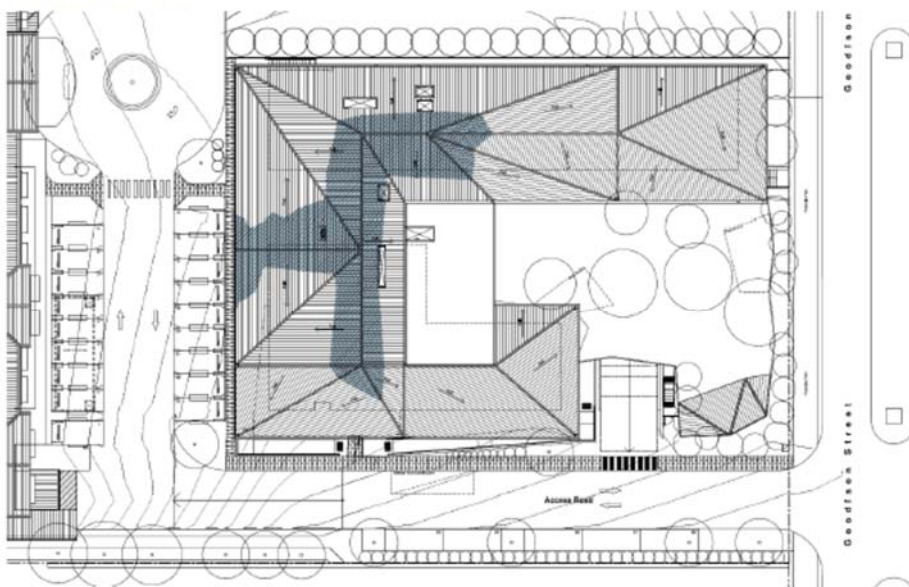


Figure 9 Height plane diagram (4D Architecture).

The sloping topography of the Site, the desire to enclose the lift overrun, provision of a seamless roof form and ramp grades from the approved driveway are contributors to the height non-compliance. In addition, the provision of basement car parking instead of providing large surface car parking areas around the building is seen as a beneficial outcome of the proposed design. The proposed design therefore provides for significant landscaping within and around the Centre.

Justification for the Variation ('5-Part Test')

The proposed variation to the development standard has been considered in light of the abovementioned objectives, potential environmental impacts and the '5-part test' established

5 Environmental Planning Assessment

by the NSW Land & Environment Court and strict compliance is considered to be unreasonable and unnecessary for the reasons expressed hereunder.

The Land and Environment Court of NSW, through the Judgment in *Winten Developments Pty Ltd v North Sydney Council* [2001], established a '5-part test' for considering whether strict compliance with a development standard is unreasonable or unnecessary in a particular case. This 5-part test was later supplemented by the Judgment in *Wehbe v Pittwater Council* [2007] where Chief Justice Preston expressed the view that there are 5 different ways in which an objection to a development standard may be assessed as being well founded and that approval of the objection may be consistent with the aims of the policy.

Whilst these Judgments related to variation requests under SEPP 1, the methodology and reasoning expressed in those Judgments continues to be the accepted basis upon which to assess variation requests pursuant to clause 4.6 and accordingly, we have applied this methodology to the assessment below.

- ***Is the planning control a development standard?***

Yes, the Height of Buildings control in clause 4.6 of North Kellyville Precinct Plan is a development standard, defined in section 4 of the EP&A Act as follows:

"development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

...

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work".

- ***What is the underlying object or purpose of the standard?***

Subclause 4.3(1) of the North Kellyville Precinct Plan states the objectives of Height of Buildings development standard as follows:

- "(a) to preserve the amenity of adjoining development in terms of solar access to dwellings, private open space and bulk and scale,*
- (b) to provide for a range of residential building heights in appropriate locations that provide a high quality urban form,*
- (c) to facilitate higher density neighbourhood and town centres while minimising impacts on adjacent residential areas,*
- (d) to provide appropriate height controls for commercial development,*
- (e) to restrict the height of buildings within the curtilage of heritage items."*

The proposal is consistent with the relevant objectives of the Height of Buildings development standard for the following reasons:

- The proposed building is predominantly single storey and the solar access diagrams at **Appendix 3** demonstrate that all surrounding residential properties, including the bedrooms within the adjacent aged care facility, will receive adequate solar access;
- Notwithstanding the non-compliance with the maximum building height, the proposed building is considered to be of high quality urban form and will present to Goodison Street and most surrounding properties as a single storey building with a two-storey component set well back from the street. In addition, the built form presenting to the street will not be dissimilar to the width and height of existing and future dwelling houses on the opposite side of Goodison Street;
- The proposed development is permissible in the zone and will provide for a compatible land use adjacent to an aged care facility, a school, a medium density housing development and low density residential development in the wider locality;

5 Environmental Planning Assessment

- The proposed development could arguably be deemed 'commercial development' although this is not a defined term in the SEPP. Notwithstanding, the height of the proposed building is comparable to the aged care facility adjoining to the south and generally consistent with the height that may be expected of a two-storey dwelling house or medium density unit development in the surrounding area; and
- The proposed Centre is not in the vicinity of any heritage items.

It is also relevant to consider the objectives of the R2 Zone under the Growth Centres SEPP as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a variety of housing types but primarily low density detached housing.*
- *To support the well being of the community, including educational, recreational, community, religious and other activities if there will be no adverse effect on the amenity of the proposed or existing nearby residential development*

The proposal is consistent with the objectives of the R2 Zone for the following reasons:

- The proposed Centre does not provide "housing" although it does provide a much-needed facility for the local residential population and will provide child care services to cater for new families in the emerging redeveloped suburb of North Kellyville;
- As indicated within this SEE report, the proposed design uses narrow and single storey forms toward Goodison Street representative of dwelling house forms, with a two storey component set well back from the street and from side boundaries;
- As detailed within this SEE report, the proposal will support the well-being of the community and the accompanying acoustic (see **Appendix 6**) and traffic (see **Appendix 7**) reports demonstrate that the proposed development will not significantly detract from the acoustic amenity of the locality or have an adverse impact upon the efficient operation of the surrounding road system.
- ***Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979?***

The non-compliance with the development standard allows for an orderly use of the land, which has the capacity to accommodate the proposed form of development with variations to the height control in some minor parts of the roof of the building, whilst all other parts of the building are well within the height limit. This enables the proposal to provide for basement car parking instead of vast areas of surface car parking.

Alternative designs would entail relocating car parking around the periphery of the building thereby reducing setbacks and landscaping opportunities or excavating further into the Site thereby resulting in significant exporting of spoil, longer ramps and less efficient use of land. Alternatively, the lift core, which is centrally located, could be moved to the west where the existing ground level is higher, which would have the effect of requiring a lower pitched roof toward the centre of the building (i.e. the area of greatest non-compliance) and reducing the overall height. However, this would be an inferior outcome for future users of the facility as the lift core would be to the side of the carpark and the side of the ground and first level floorplates, which would be inappropriate in functional terms as well as transferring bulk to the edge of the building rather than permitting to gentle slope of pitched roof forms down from the centre of the building to the outer edges of the building.

5 Environmental Planning Assessment

The proposal provides a better planning outcome for and from the development as strict compliance would require lowering the entire building which would result in a ground level that would not relate favourably to the adjoining residential care facility or the western adjoining land and/or use of a flat roof structure which would not achieve a better planning outcome in terms of the buildings relationship to northern and future western adjoining residential developments and indeed the southern adjoining residential care facility which are and will continue to be characterised by pitched roofs. In addition, the lift overrun would protrude from a flat roof and be an incongruous form in the context of this Site.

Accordingly, requiring strict compliance with the development standard would be inconsistent with the objectives of clause 4.6 which are to provide flexibility in the application of the standard and to achieve better outcomes for and from development through such flexibility.

Furthermore, it is considered that the relevant Objects of the Act are satisfied as the proposed non-compliance with the Height of Buildings development standard:

- will have no negative consequences in terms of the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment. Indeed, the proposal will facilitate social and economic welfare by activating the Site for a social asset and employment generating land use in the locality; and
- will promote the orderly and economic use and development of the Site in a manner which achieves the objectives of the relevant planning controls.

Accordingly, strict compliance with the development standard is considered to hinder the promotion and co-ordination of the orderly and economic use and development of land comprising the Site.

- ***Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?***

For the reasons expressed in this clause 4.6 variation request, strict compliance with the development standard is considered to be unnecessary and unreasonable in the circumstances of this particular case.

- ***Is the objection well founded?***

This variation request relies upon the first 'way' expressed by Chief Justice Preston in *Wehbe v Pittwater Council* [2007] as follows:

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

As discussed above, notwithstanding the non-compliance the proposed development achieves the objectives of the development standard and is considered to have positive outcomes for the Site and surrounding locality and will not adversely impact on the natural or built environment and therefore, the objection is considered to be well founded.