

10 August 2022

At 5.00 pm

Local Planning Panel



Agenda

1. **Confirmation of Minutes**
2. **Disclosures of Interest**
3. **Development Application: 5020 Chapman Road, Annandale - D/2022/253**
4. **Development Application: 25-27 Dunning Avenue, Rosebery - D/2021/1491**



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1. Register to speak by calling Secretariat on 9265 9702 or emailing secretariat@cityofsydney.nsw.gov.au before 12.00 noon on the day of the meeting.
2. Check the recommendation in the LPP report before speaking, as it may address your concerns so that you just need to indicate your support for the recommendation.
3. Note that there is a three minute time limit for each speaker and prepare your presentation to cover your major points within that time.
4. Avoid repeating what previous speakers have said and focus on issues and information that the LPP may not already know.
5. If there is a large number of people interested in the same item as you, try to nominate three representatives to speak on your behalf and to indicate how many people they are representing.

At the start of each LPP meeting, the Chair may re-order agenda items so that those items with speakers can be dealt with first.

LPP reports are on line at www.cityofsydney.nsw.gov.au

Item 1.

Confirmation of Minutes

Minutes of the following meeting of the Local Planning Panel, which have been endorsed by the Chair of that meeting, are submitted for noting:

Meeting of 20 July 2022

Item 2.

Disclosures of Interest

In accordance with section 4.9 of the Code of Conduct for Local Planning Panel Members, all Panel members are required to sign a declaration of interest in relation to each matter on the agenda.

Pursuant to the provisions of Clause 15 of Schedule 4B of the Environmental Planning and Assessment Act 1979, members of the Local Planning Panel are required to disclose pecuniary interests in any matter on the agenda for this meeting of the Local Planning Panel.

Panel members are also required to disclose any non-pecuniary interests in any matter on the agenda for this meeting of the Local Planning Panel.

In both cases, the nature of the interest must be disclosed.

Item 3.**Development Application: 5020 Chapman Road, Annandale - D/2022/253**

File No.: D/2022/253

Summary

Date of Submission:	23 March 2022 Amended documentation submitted 30 May 2022
Applicant:	City of Sydney
Owner:	City of Sydney
Planning Consultant:	Andrew Robinson Planning Services
Heritage Consultant:	Tonkin Zulaikha Greer
Cost of Works:	\$3,310,926
Zoning:	The site is located within the RE1 - Public Recreation zone. The proposal is for remediation works to a road and First Title Creation subdivision (a form of subdivision to create a parcel identity/lot and DP), which is permissible with consent.
Proposal Summary:	<p>The application seeks consent for remediation works to part of Chapman Road (1,822sqm) and First Title Creation subdivision. Within this section of road, 40 existing car spaces and 5 trees will be removed, allowing for this section of Chapman Road to be closed and remediated.</p> <p>The application is being reported to the Local Planning Panel for determination as City of Sydney is the landowner and applicant, and more than one (1) submission was received during the assessment of the proposal.</p> <p>The proposed works and subdivision are to facilitate the gazettal of the road closure and the future use of the roadway and adjacent open space to The Crescent as recreational area (synthetic sports field).</p>

The recreational area is being provided in accordance with the Johnstons Creek Parklands Master Plan (2013) and has been approved under a Part 5 Infrastructure and Environmental Impact Assessment (IA/2022/4) on 13 April 2022. The recreational area proposal was assessed as 'Development without Consent' under the provisions of State Environmental Planning Policy (Transport & Infrastructure) 2021 and Part 5 of the *Environmental Planning and Assessment Act 1979*.

The Part 5 Infrastructure and Environmental Impact Assessment identified that Category 1 remediation works within a 'floodway' would require a development application (DA). Additionally, the inclusion of part of Chapman Road for the new sports field requires formal closure of the affected portion of the road. In order to define the portion to be closed, a parcel identity must be created, known as 'First Title Creation', a form of subdivision that also requires development consent.

The closure of part of Chapman Road has been endorsed by Council (on 29 March 2021) and the subsequent parking changes to Chapman Road (i.e. removing the 45 car spaces, constructing a new cul-de-sac and changing other on-street parking arrangements) was approved by the Local Pedestrian, Cycling and Traffic Calming Committee on 24 February 2022.

The DA for Category 1 remediation works within a 'floodway' and First Title Creation subdivision that is the subject of this assessment was notified for a period of 28 days between 31 March and 29 April 2022. Thirteen (13) submissions were received, commenting on the reduction of car spaces having an adverse impact on local residents, users of the recreational area and the nearby childcare centre, both in terms of lack of parking in the area, and safety within Chapman Road and The Crescent, as well as contamination impacts.

Subject to conditions, the proposed remediation of the roadway and First Title Creation subdivision with associated works is not considered to have a significantly adverse impact on neighbouring properties or impede the use of adjoining recreational open space. The proposal is consistent with the City's master plan for the area, in that it will facilitate the future use of the site as a synthetic sports field and is considered to be in the public interest.

Summary Recommendation: The development application is recommended for approval, subject to conditions.

Development Controls:

- (i) SEPP (Resilience and Hazards) 2021
- (ii) SEPP (Transport and Infrastructure) 2021
- (iii) SEPP (Biodiversity and Conservation) 2021
- (iv) Sydney Local Environmental Plan 2012
- (v) Sydney Development Control Plan 2012

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Endorsement of Chapman Road Closure

Recommendation

It is resolved that consent be granted to Development Application No. D/2022/253 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal is consistent with the relevant objectives and controls of Sydney Local Environmental Plan 2012 (LEP) and Sydney Development Control Plan 2012 (DCP).
- (B) The proposal is in the public interest because it is consistent with the objectives of the RE1 - Public Recreation zone.
- (C) The application has demonstrated the proposal will not result in unacceptable amenity impacts on surrounding properties. The site is to be remediated, addressing the SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land, such that the site can be made suitable for the proposed use.
- (D) The proposal is consistent with the City's Johnstons Creek Parklands Master Plan 2013, in that it will facilitate the future use of the site as a synthetic sports field and is considered to be in the public interest.

Background

The Site and Surrounding Development

1. The site is a road reservation known as 5020 Chapman Road. The portion of road subject to this application has an area of 1,822sqm, comprising part of the carriageway and footpath, and a cul-de-sac to the north. This section of Chapman Road is currently used for on-street parking, containing forty (40) parking bays).
2. To the north of Chapman Road, where the cul-de-sac- is located, is the Glebe Railway Viaduct, which is a State Heritage Item (SHR: 01034). The Railway Viaduct contains the Light Rail railway line. Further north (with access below the railway viaduct) are Federal Park Sports Field, Bicentennial Park and Jubilee Oval.
3. Adjoining the road reservation to the east and west are open fields associated with Federal Park and The Crescent open space. Federal Park, on the eastern side of Chapman Road, is a Local Heritage Item (I30).
4. To the immediate south-west at No. 7 Chapman Road is a childcare centre owned by the City of Sydney. Further south-west along Chapman Road is vacant land that has been fenced off, and a two storey warehouse development containing two tenancies, Pet-O and a carpet store.
5. The site is not heritage listed and is not located within a heritage conservation area. The site is located within the Western Parklands locality and is identified as being subject to flooding.
6. A site visit was carried out on 8 July 2022. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounds



Figure 2: Chapman Road (portion to be closed) looking north to the Railway Viaduct



Figure 3: Chapman Road looking south. The Crescent Parklands adjoin the road to the right (west).



Figure 4: The Railway Viaduct adjoining Chapman Road to the north. View is from the Crescent parklands looking north-east to the viaduct.



Figure 5: The childcare centre, adjoining the Crescent Parklands to the south



Figure 6: The Crescent viewed across the Crescent parklands, looking west



Figure 7: The Crescent Parklands looking south-west to the childcare centre. Chapman Road is to the left (east). The main grass area will be the site of the new multipurpose sports field.



Figure 8: Chapman Road looking south to the childcare centre and the 'Pet O' building



Figure 9: The Railway Viaduct adjoining Chapman Road to the north and the skatepark at 11-13 The Crescent. View is from the Crescent parklands looking north-east.



Figure 10: The Crescent looking south

History Relevant to the Development Application

Site History

7. The Crescent open space (adjoining Chapman Road to the west) comprises Nos. 7, 9 and 11 The Crescent and was historically used for commercial and industrial land uses. The site was remediated and converted to public open space in 2016, forming part of the open space network within the Johnstons Creek Parklands.
8. The Johnstons Creek Parkland Master Plan, adopted by the City of Sydney in August 2013, endorsed a strategic vision to redevelop The Crescent open space into a new recreation precinct, with a 'Village Green' for junior sports which would reclaim the land along The Crescent and Chapman Road.
9. As part of the City of Sydney's sports field development program, Council has identified No. 7 The Crescent and part of Chapman Road as a site suitable for active junior sports and has been selected as a multipurpose synthetic surface field as part of the strategic vision of the master plan.
10. The Village Green area for The Crescent is detailed below, with No. 7 The Crescent and part of Chapman Road indicated by the red circle.



THE CRESCENT

- | | |
|---|--|
| ① Freshwater wetland at entry | ⑧ Community facility |
| ② Boardwalk through wetlands | ⑨ Village Green for junior sports |
| ③ Primary parkland entry for pedestrians, bike riders and vehicles and drop off with Nelson Street vista retained | ⑩ Proposed 90-degree angle parking and new pedestrian crossing along The Crescent |
| ④ New bridge | ⑪ New pedestrian entry and bus stop along The Crescent |
| ⑤ Existing saltmarsh retained and embellished | ⑫ Skate park and plaza space |
| ⑥ Car parking | ⑬ Viaducts opened with relocation of existing uses in community facility and/ or allocated community space in Tram Sheds |
| ⑦ Park and community facility drop-off plaza | |

Figure 11: The Crescent Master Plan Precinct, as outlined in the Johnstons Creek Parkland Master Plan 2013. The Village Green is marked out by red dashed lines and the synthetic sports field is circled in red. Note: the Master Plan envisions the complete removal of Chapman Road.

Partial Road Closure

11. To enable the construction of the sports field, approximately 1,822 square metres of Chapman Road is to be closed to traffic. In a consultation and approval process separate to this DA, City Projects notified the partial closure of the road reservation and removal of 45 car spaces (40 within the closed section of Chapman Road and 5 for the new cul-de-sac) in the Sydney Morning Herald and Sydney Your Say between 9 November and 27 December 2020, inviting feedback on the proposal. Sixty-one public submissions and one formal objection from Ausgrid were received.
12. The proposed road closure was reported to the City's Transport, Heritage and Planning Committee on 22 March 2021 and endorsed by Council on 29 March 2021.

13. The road closure is detailed below.

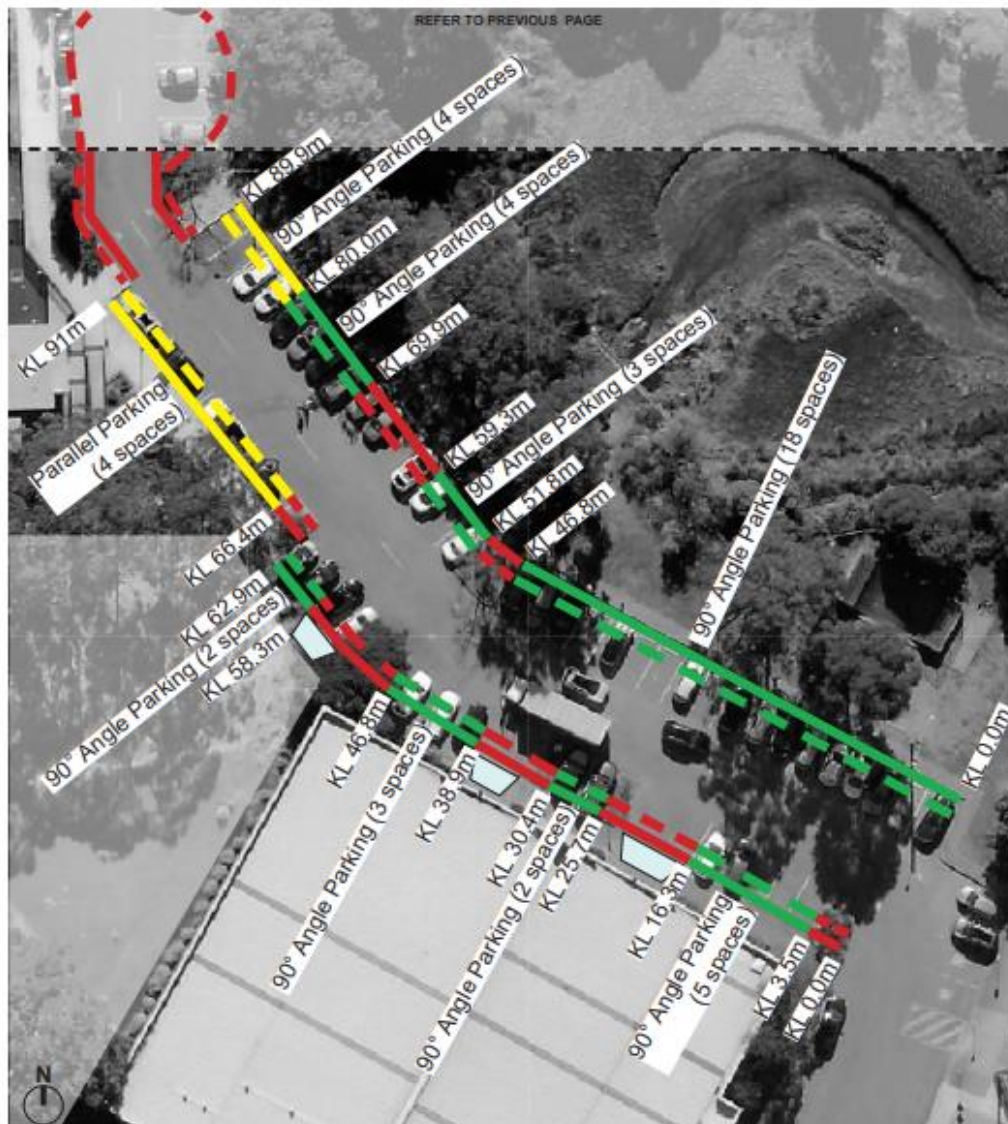


Figure 12: The partial road closure of Chapman Road, endorsed by Council on 29 March 2021

14. On 24 February 2022, the Local Pedestrian, Cycling and Traffic Calming Committee endorsed the following traffic and parking changes to Chapman Street:

- (a) permanent road closure of part of Chapman Street;
- (b) reallocation of parking on the northern side of Chapman Road (25 spaces) as "2P 8am-10pm" 7 days a week;
- (c) reallocation of parking on the southern side of Chapman Road (13 spaces) as "2P 8am-10pm" 7 days a week;
- (d) reallocation of parking on the northern side of Chapman Road (4 spaces) as "1/4P 8am-10pm" 7 days a week (for the child care centre);
- (e) reallocation of parking on the southern side of Chapman Road (4 car spaces) as "1/4P 8am-10pm" 7 days a week (for the childcare centre).

15. The endorsed changes relating to parking are depicted below.



Existing

-  Driveway
-  2P 8am - 6pm Mon - Fri
-  No Stopping
-  1/4P Mon - Fri
7am-9am & 3pm-6pm

Proposed

-  New Road Condition / No Parking
-  2P 8am-10pm
-  No Stopping
-  1/4P 8am-10pm

Figure 13: The endorsed parking changes to Chapman Road (partial closed road not depicted, but is to the north of the image), 24 February 2022

The Crescent Synthetic Sports Field (part of 'Village Green')

16. The proposed scope of works for The Crescent Synthetic Sports Field (comprising The Crescent and part of Chapman Road) was reported to the Environment Committee on 11 October 2021. The project consists of a new raised compact sized multipurpose synthetic sports field, supplemented by field lighting; new seating; new accessible circulation paths; new overland flow path; as well as new open lawn area, new trees and planting.
17. Concept plans were presented to the community between 20 April and 14 May 2021 and exhibited on the City's website by City Projects. Community and sporting group feedback was associated with three broad themes: field size, parking and environmental concerns. Feedback was incorporated into the Revised Concept Design, this included a review of the proposed field size and location to allow for senior hockey training.
18. The scope of works for The Crescent Synthetic Sports Field was endorsed by Council on 18 October 2021.



Figure 14: The Crescent Synthetic Sports Field, endorsed by Council on 18 October 2021



Figure 15: The Crescent Synthetic Sports Field perspective, looking north-east to the Railway Viaduct

Part 5 Infrastructure and Environmental Impact Assessment

19. The scope of works outlined above for the new synthetic sports field to The Crescent open space and the closed section of Chapman Road are being carried out as 'Development without Consent' under the provisions of State Environmental Planning Policy (Transport & Infrastructure) 2021 and approved under a Part 5 Infrastructure and Environmental Impact Assessment (IA/2022/4), under Part 5 of the *Environmental Planning and Assessment Act 1979* on 13 April 2022.
20. The Part 5 Infrastructure and Environmental Impact Assessment identified that Category 1 remediation works within a 'floodway' would require a DA. Additionally, the inclusion of part of Chapman Road for the new sports field requires formal closure of the affected portion of the road. In order to define the portion to be closed, a parcel identity must be created, known as 'First Title Creation', a form of subdivision that also requires development consent.

Development Applications

21. The following applications are relevant to the current proposal:
 - **D/2014/1997** – Development consent was granted on 29 June 2015 at 7 Chapman Road for the demolition of the existing building and adjoining structures, and construction of a new childcare centre for a maximum of 80 children; associated earthworks; drainage; ancillary works; landscaping; and signage. Modifications A-C have since been approved but are not relevant to this application.
 - The childcare centre is immediately to the south-west of the area of Chapman Road to be closed.

- Condition 14 (Allocation of Parking) requires 8 drop off / pick up spaces to be provided. These spaces are currently accommodated within Chapman Road and as outlined under 'Site History' are to be included in the area of Chapman Road to remain open to traffic.
- **D/2016/678** – Development consent was granted on 29 March 2017 at 7 , 9 and 11-13 The Crescent for the demolition of buildings along The Crescent, removal of infill structures under the light rail viaduct, site remediation, shortening of Chapman Road, and construction of new public open space, including a skate park.

Compliance Action

22. There are no current compliance actions directly relating to Chapman Road.

Amendments

23. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information was sent to the applicant on 24 May 2022. It was requested that a Transport Impact Study be prepared and submitted for review, as per Section 3.11.1 'Managing transport demand' of the Sydney DCP 2012. The report needed to address the overall impact of removing car spaces on the local traffic network and advise if the childcare centre could still provide pick-up/drop-off spaces in accordance with their consent (which requires 8 car spaces).
24. The applicant responded to the request on 30 May 2022, and submitted a parking study, community engagement study (relating to the synthetic sports field, parking changes and partial road closure), and the Local Pedestrian, Cycling and Traffic Calming Committee decision relating to the partial road closure and parking changes that have been approved.

Proposed Development

25. The application seeks consent for the following:
 - Remediation of part of Chapman Road that adjoins Nos. 7, 9 and 11-13 The Crescent. The affected area is 1,822sqm. Remediating the affected area will result in the removal of 45 car spaces and 5 trees. It is noted that the closure of this section of Chapman Road, and the removal of the car spaces have already been approved; and
 - First Title Creation to create a parcel identity for the affected area, to allow for the gazettal of the road closure of the affected part of Chapman Road.

26. The draft Plan of Subdivision for the proposed development is provided below.

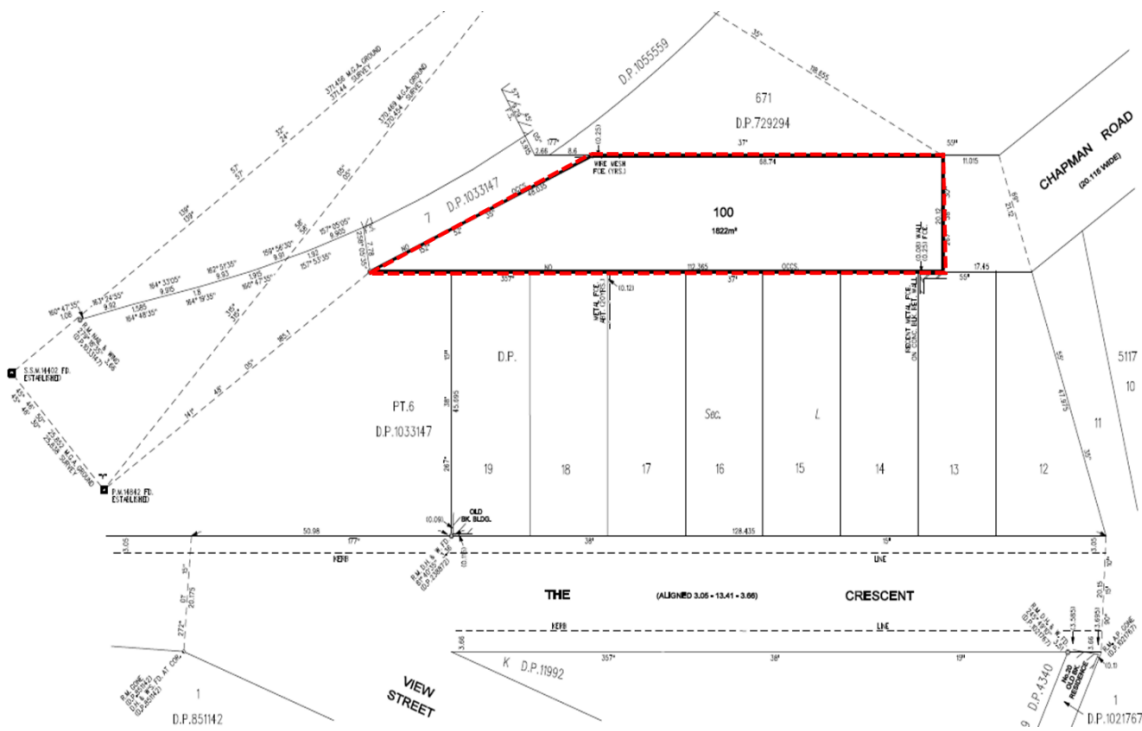


Figure 16: Proposed draft subdivision plan for First Title Creation. The section of Chapman Road affected by the proposal is outlined in black.

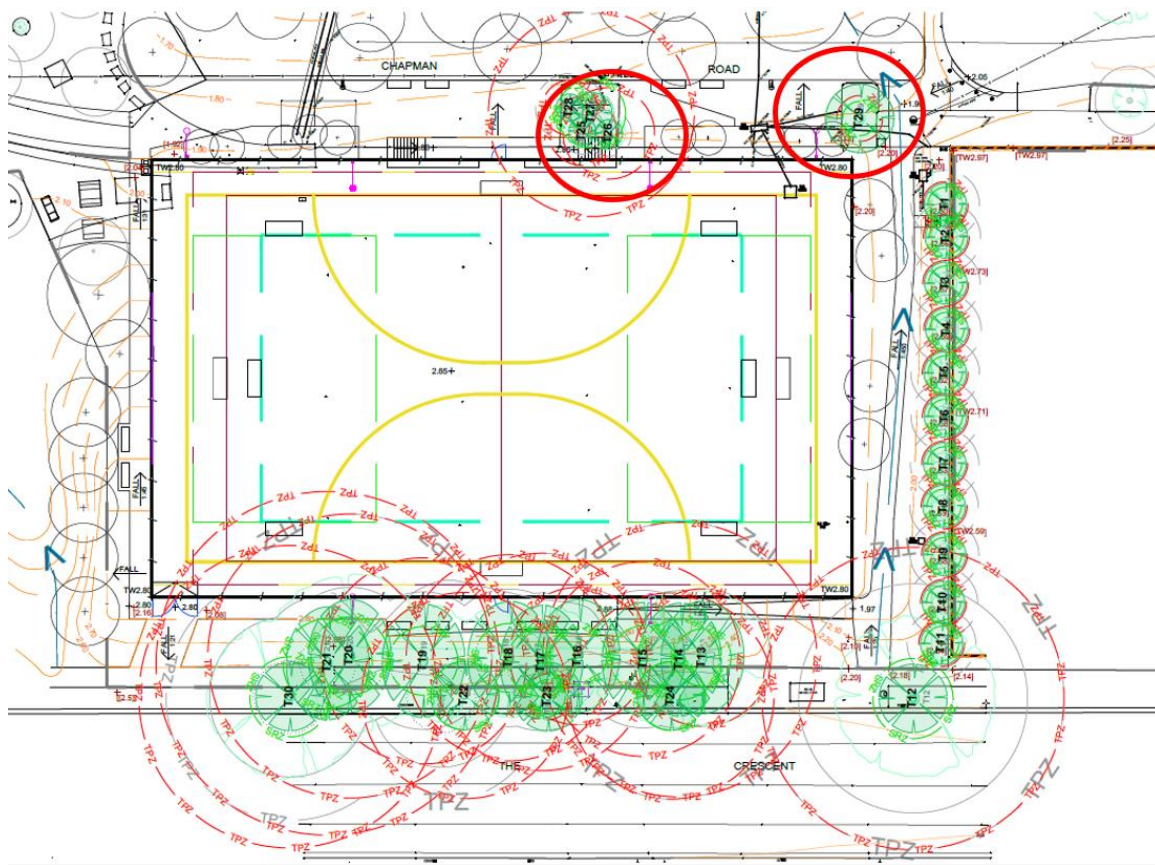


Figure 17: Five (5) trees to be removed within Chapman Road circled in red (T25, 26, 27, 28 and 29)

Assessment

27. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

State Environmental Planning Policies

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4

Remediation of Land

28. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
29. The area historically consisted of several commercial and industrial properties located along 3-13 The Crescent (also having a frontage to Chapman Road). Numerous investigations have been carried out as part of previous applications to redevelop these areas as parkland and the childcare centre at 7 Chapman Road. It was indicated that uncontrolled filling across The Crescent lands has resulted in hydrocarbon, metals and asbestos contamination. Most of the area has previously been remediated using a cap and contain strategy and are subject to Long-term Environmental Management Plans (LTEMP).
30. Chapman Road has not previously been investigated, but as part of this DA an intrusive investigation was carried out (with boreholes to a depth of 3m). The investigation found the sub-surface profile of Chapman Road to contain metals, petroleum hydrocarbons, polycyclic aromatic hydrocarbons, organochlorine pesticides and asbestos.
31. Site investigations have also identified elevated concentrations of ammonia and arsenic in the groundwater (although does not represent a risk as groundwater use is restricted).
32. A Remediation Action Plan (RAP) relating to the site, accompanied by a Site Audit Statement has been submitted with the development application.
33. The RAP proposes a cap and contain strategy, implementing a capping layer at a minimum of 1m below ground (the same method that is already in place across most of The Crescent lands) to limit exposure of contaminants and still allows for tree plantings as well as other forms of landscaping. This will require the implementation of an LTEMP, requiring ongoing monitoring. This is similar to the other parklands in close proximity owned by the City of Sydney.
34. The Site Auditor confirms the above approach is appropriate.
35. Council's Health Unit has reviewed the information provided and has recommended conditions of consent to ensure compliance with the remediation measures outlined, and for Council to be notified should there be any changes to the strategy for remediation. The RAP has also been reviewed by the City's Public Domain Unit who have no objection, subject to the implementation of the capping layer.

36. Following remediation and validation works, and the creation of the LTEMP, a positive covenant, pursuant to Section 88E of the *Conveyancing Act 1919* is to be registered on the title of the land for Chapman Road (once created), binding current and future owners to be responsible for ongoing maintenance and any future rehabilitation works if required. An appropriate condition is recommended.
37. Council's Health Unit is satisfied that, subject to conditions, the site can be made suitable for the proposed use.

State Environmental Planning Policy (Transport and Infrastructure) 2021

38. The provisions of SEPP (Transport and Infrastructure) 2021 have been considered in the assessment of the development application.

Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network

Clause 2.48 Determination of development applications – other development

39. The application is subject to Clause 2.48 of the SEPP as the development will be carried out within an easement for electricity purposes .
40. The application was referred to Ausgrid for a period of 21 days and no objection was raised, subject to the imposition of advisory conditions recommending that the development comply with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets. These conditions have been included in Attachment A.

Division 15, Subdivision 2: Development in or adjacent to rail corridors and interim rail corridors

Clause 2.97 – Development adjacent to rail corridors

41. The application is adjacent to the Sydney Light Rail corridor and was subsequently referred to Transport for NSW (TfNSW) for comment. TfNSW have recommended conditions requesting that the development comply with certain procedures when working in close proximity to the railway corridor, and to protect Light Rail infrastructure, which are included in Attachment A - Recommended Conditions.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 2 (Vegetation in Non Rural Areas) 2017

42. The proposal includes the clearing of vegetation in a non-rural area and as such is subject to this SEPP.
43. The SEPP states that the Council must not grant consent for the removal of vegetation within heritage sites or heritage conservation areas unless Council is satisfied that the activity is minor in nature and would not impact the heritage significance of the site.
44. A review of the plans and documentation has revealed 30 trees will be affected by the proposal. This includes five trees proposed for removal to Chapman Road and the remaining 25 trees will be retained and protected.

45. The plans indicate trees numbered 25, 26, 27, 28 and 29 are proposed for removal to facilitate reconfiguration of entry points, ramps and car parking arrangements. With the exception of T27, all are rated as having low landscape significance and low retention value. Tree 27 has been rated as having moderate landscape significance and medium retention value.
46. The removal of these tree will not have any impact on the amenity of the immediate area and is supported by the City's Tree Management Unit.
47. To compensate for the loss of canopy cover that will result from tree removal, City's Tree Management Unit have requested the replacement planting of at least one (1) tree must be undertaken. It is noted that tree plantings within the closed section of Chapman Road have been approved under the Part 5 assessment.
48. The plans indicate that the remaining trees will be retained and protected, and conditions are recommended to ensure that this occurs.
49. The City's Tree Management Unit has also recommended conditions affecting the landscape design of the sports field (including relocating a ramp) and remediation of The Crescent to ensure further tree removal is not required. The proposal however, relates to Chapman Road only, and as such, conditions relating to the design of the future park or remediation in other areas of the parklands cannot be imposed.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 10 Sydney Harbour Catchment

50. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
51. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SEPP are not applicable to the proposed development.

Local Environmental Plans

Sydney Local Environmental Plan 2012

52. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the RE1 Public Recreation zone. The proposal is for remediation works to a road and First Title Creation (a form of subdivision to create a parcel identity), which is permissible with consent.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	N/A	The height of buildings control does not apply to the road reservation. Notwithstanding, no new structures are proposed within the roadway.
4.4 Floor space ratio	N/A	The Floor space ratio control does not apply to the road reservation. Notwithstanding, no new structures are proposed within the roadway, and no increase in floor area.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	The site is not heritage listed and is not located within a heritage conservation area. Chapman Road, however, is adjacent to the State Heritage Railway Viaduct (SHR: 01034) to the north and adjoins the locally listed heritage listed Federal Park (I30) to the east. The application is accompanied by a Statement of Heritage Impact (HIS) assessing the overall impact of the works approved under Part 5, including the removal of parking on Chapman Road and conversion to parkland.

Provision	Compliance	Comment
		<p>The HIS notes that the removal of asphalt (for remediation) will allow for the introduction of new soft landscaping. The removal of car parking and this section of roadway is not considered to have any heritage impact.</p> <p>The HIS also acknowledges that the removal of trees along Chapman Road will have some heritage impact, however it is minimal as these trees are not mature and will be replaced.</p> <p>In light of the above, it is considered that the proposed remediation and removal of trees will have no impact on the curtilage of either heritage item and are considered acceptable, noting that there will be replacement trees planted as recommended by the City's Tree Management Unit and as part of the approved sports field design.</p>
5.21 Flood planning	Yes	<p>The site is identified as being subject to flooding and is in close proximity to Johnston's Creek Canal, which forms a 'floodway' during intense rain events.</p> <p>A bioswale is proposed to the east of the site (not part of this DA), which is intended to capture and filter stormwater movement from the site to the Johnstons Creek Canal when the park is constructed.</p> <p>Following remediation works, the area of Chapman Road to be included as part of the open space will be turfed and new trees planted.</p> <p>This application relates to remediation works only, and stormwater related impacts are dealt with under the Part 5 assessment.</p> <p>The proposal is therefore considered acceptable when assessed against the City's Interim Floodplain Management Policy and satisfies the provisions of the standard.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	N/A	<p>The development is for remediation works, the removal of car parking and trees to facilitate the future use of a roadway as part of a new synthetic sports field.</p> <p>The proposal does not involve alterations to a building, and as such Clause 6.21 does not apply.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 3 Affordable housing		
7.13 Contribution for purpose of Affordable Housing	Yes	The proposal is for remediation works, removal of trees and subdivision of a public roadway only and is excluded from the need to pay a contribution.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>Acid Sulfate Soils have not been identified during contamination investigations and whilst not expected, Chapman Road is located within a Class 1 and Class 2 area. An Acid Sulfate Soils Management Plan will be required to be prepared if encountered during the works.</p> <p>An appropriate condition is recommended for a management plan to be prepared for treatment, validation and management if Acid Sulfate Soils are found.</p>

Development Control Plans

Sydney Development Control Plan 2012

53. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

54. The site is located within the Western Parklands locality. The proposed development is in keeping with the unique character and the design principles of the locality. The proposal will result in the enhancement of the public domain, removing and containing contaminants and allowing for the future use of Chapman Road as open space.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	The proposed development will result in the removal of 5 trees, which is considered to be an acceptable outcome subject to replacement planting being implemented. See discussion under the SEPP (Biodiversity and Conservation) 2021.
3.7 Water and Flood Management	Yes	The site is identified as being on flood prone land. See discussion under Clause 5.21 above.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	<p>In order to facilitate the formal closure of part of Chapman Road, it is proposed to create a First Title parcel identity over the 1,822sqm area that currently comprises part of the carriageway and footpath (eastern side only).</p> <p>The First Title Creation will have no impact on the setting of the heritage items adjacent to Chapman Road to the north and east, as per Section 3.8.2 of the SDCP 2012.</p> <p>As discussed within this report, the road closure has been endorsed by Council, with a notice of the proposal published in the newspaper and online for community and stakeholder feedback in accordance with Section 38B of the <i>Roads Act 1993</i>.</p> <p>In order to proceed to gazettal of the road closure, the First Title Creation subdivision is proposed, which will then be lodged with the NSW Land Registry Service.</p>

Provision	Compliance	Comment
		<p>During the notification period for this DA, comments were received from Ausgrid and Sydney Water. Ausgrid raised no objection, and Sydney Water noted that easements for access to their assets within the closed portion of Chapman Road may be required. Ausgrid also has assets within the roadway currently, and although they have not formally asked for easements to be granted in their favour it is assumed that they will also be required.</p> <p>The subdivision will also require an LTEMP to be registered on title, advising that the area is subject to ongoing maintenance relating to contamination and remediation.</p> <p>The application was referred to Council's Specialist Surveyor, who supported the proposal, subject to conditions, including the need for a subdivision certificate, protection of survey infrastructure, reference to the easements and LTEMP noted above, which are included in Attachment A.</p>
3.9 Heritage	Yes	<p>The site is not heritage listed and is not located within a heritage conservation area but is located in close proximity to State and Local Heritage Items.</p> <p>As discussed under Clause 5.10 of the SLEP 2012, the proposal has minimal heritage impact on the adjacent heritage items and is acceptable.</p>
3.11 Transport and Parking	Yes	<p>The application is accompanied by a car parking study to address Section 3.11.1 of the SDCP 2012 and to understand the impact of removing 45 car spaces.</p> <p>Refer to the 'discussion' section.</p>
3.14 Waste	Yes	<p>A condition has been recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>

Discussion

Removal of car spaces

55. The application is accompanied by a car parking study to address Section 3.11.1 of the SDCP 2012 and to understand the impact of removing 45 car spaces.
56. It is acknowledged that the closure of the roadway and removal of car spaces have already been approved by Council and the City's Local Pedestrian Cycling and Traffic Calming Committee. As part of this DA, the parking spaces are to be removed to allow for remediation. Submissions received during the exhibition period have raised concerns with the loss of parking and the need for pick-up/drop-off spaces for the existing childcare centre.
57. The applicant has submitted a copy of the car parking study that informed Council's approval of the Chapman Road closure in March 2021 and again in February 2022. Parking surveys were undertaken on Saturday 29 August 2020 and Thursday 3 September 2020 to record hourly parking occupancy and duration of stay data. The study notes that on Thursday morning, The Crescent experiences around 75% parking occupancy. Throughout the day, occupancy levels on Chapman Road increase from 54% at 12:00pm to 81% in the afternoon at 5:00pm. On Saturday between 12:00pm-2:00pm and 4:00pm-5:00pm, Tramsheds and Chapman Road experience high occupancy levels of more than 85% of capacity. The parking occupancy decreases from 6:00pm onwards.
58. The study then goes on to assess the proposed parking supply in the area. The removal of 45 car spaces from the Chapman Road Car Park will have the greatest impact on Thursday evenings and Saturday midday, where the demand exceeds capacity and this demand is likely to spill onto surrounding streets, some of which are primarily residential. Currently, all parking on The Crescent is unrestricted after 6:00pm on weekdays and all day on weekends. All parking at Tramsheds is ticketed with the first two hours free so areas with unrestricted parking may be disproportionately affected by the parking spill over.
59. To reduce the parking demand expected of the development and to manage the risk of parking overflow to surrounding streets, the study recommended a number of parking mitigation measures. These include promoting active and sustainable forms of transport, including the use of bus stops on The Crescent (2x north and 2x south), install bicycle parking facilities, and make changes to parking restrictions. The parking restrictions noted in the study have already been approved by the Local Pedestrian Cycling and Traffic Calming Committee on 24 February 2022 as follows:
 - (a) permanent road closure of part of Chapman Street;
 - (b) reallocation of parking on the northern side of Chapman Road (25 spaces) as "2P 8am-10pm" 7 days a week;
 - (c) reallocation of parking on the southern side of Chapman Road (13 spaces) as "2P 8am-10pm" 7 days a week;
 - (d) reallocation of parking on the northern side of Chapman Road (4 spaces) as "1/4P 8am-10pm" 7 days a week; and
 - (e) reallocation of parking on the southern side of Chapman Road (4 car spaces) as "1/4P 8am-10pm" 7 days a week.

60. The endorsed changes relating to parking are depicted below.

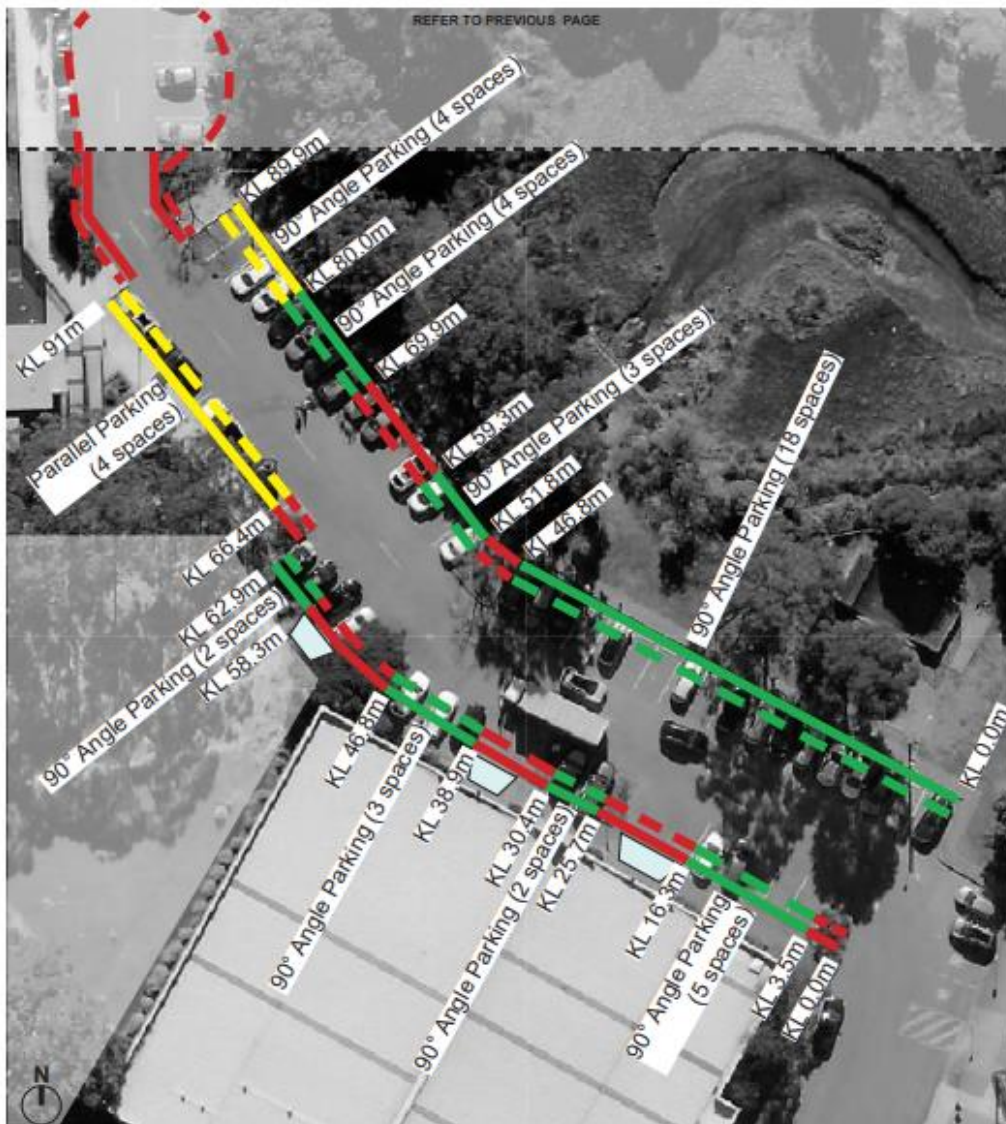


Figure 18: The endorsed parking changes to Chapman Road (partial closed road not depicted, but is to the north of the image), 24 February 2022

- 61. The eight 15-minute spaces outlined in part (d) and (e) above are for the childcare centre, as required by Condition 14 (Allocation of Parking) of D/2014/1997.
- 62. Council, and the City's Local Pedestrian, Cycling and Traffic Calming Committee considered that the overspill of parking associated from the parking loss could be accommodated through changes to parking provisions along Chapman Road and in surrounding streets, as outlined above.

63. The car parking study recommendations and subsequent approval of the removal of car spaces in Chapman Road are considered to adequately address the requirements of Section 3.11.1 of the Sydney DCP 2012.
64. Council's Transport and Access Officer noted that there is regional cycle connection that currently uses Chapman Road that is not mentioned in the documentation. The applicant has advised that the cycleway has been accommodated in the design of the new park.

Consultation

Internal Referrals

65. The application was discussed with Council's:
 - (a) Environmental Health Unit;
 - (b) Public Domain Unit;
 - (c) Surveyors;
 - (d) Transport and Access Unit; and
 - (e) Tree Management Unit.
66. The above advised that the proposal is acceptable subject to conditions. The City's Public Domain Unit and Tree Management Unit in particular, have recommended a number of conditions relating to construction of the sports field, public domain lighting and alignment levels and landscaping works to Chapman Road which do not form part of this DA proposal. As such, these conditions have not been imposed.
67. Where appropriate, conditions recommended by the above units within Council are included in the Notice of Determination.

External Referrals

Ausgrid

68. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.
69. A response was received raising no objections to the proposed development.

Transport for NSW

70. Pursuant to Section 2.97 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Transport for NSW (TfNSW) for comment.
71. Comments were received on 19 April 2022. Conditions of consent were recommended which are included in the Notice of Determination.

Sydney Water

72. The application was referred to Sydney Water for comment.

73. Comments were received on 11 April 2022. Conditions of consent were recommended which are included as part of Attachment A.

Advertising and Notification

74. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 31 March 2022 and 29 April 2022. A total of 41 properties were notified and 13 submissions were received.

75. The submissions raised the following issues:

(a) Loss of parking spaces

- (i) **Issue:** The traffic study was completed in August/September 2020. It is not reflective of traffic during October to May, during the park's peak period. Additionally, the skate park did not exist and the kid's playground was closed for refurbishment. That time period is not reflective of the reality of today.
- (ii) **Issue:** It is very concerning that concerns over the parking situation were raised numerous times in the public consultation for this project and there is no sign that these concerns have been addressed.
- (iii) **Issue:** The loss of 45 car parking spaces as part of this development is untenable. Demand for parking has increased and, at peak times, there are no free spaces for parking. Reducing available parking while further increasing demand for parking in the area poses significant problems for the area, potentially increasing traffic and elevating the danger to pedestrians.
- (iv) **Issue:** The removal of these car spaces will push traffic onto local Annandale streets and will also prevent local residents (many with young children) from parking near their homes. Parents, kids, and teenagers will also need to rely on the surrounding streets to access the field.
- (v) **Issue:** The removal of car spaces will greatly increase the risk of accidents, either to vehicles or pedestrians.
- (vi) **Issue:** There are other sporting competitions played in this park i.e. touch football, AFL. Adding the hockey field will add further traffic to a location that struggles for parking.

Response: The above concerns regarding the loss of car spaces and safety concerns are noted. The permanent closure of Chapman Road and removal of car spaces have already been approved. This DA proposes to remediate the area currently occupied by the car spaces.

The traffic study noted by the objections was produced for the Community Engagement Report relating to the permanent road closure of Chapman Road in January 2021. The study made a number of recommendations for parking restrictions, and along with the Community Engagement report, have been endorsed by Council in March 2021, and the parking restrictions adopted by the Local Pedestrian, Cycling and Traffic Calming Committee in February 2022. The applicant has advised that traffic calming measures, including pedestrian crossings, are being reviewed by City of Sydney, Inner West Council and TfNSW. Any such measures are to be notified for public comment once further developed.

(b) Closure of the road

- (i) **Issue:** The cul-de-sac will also result in the creation of a turning circle immediately outside the children's playground which raises concerns with respect to safety and noise. The cul-de-sac should be moved further toward the northern end of the roadway away from the Centre.

Response: The location of the new cul-de-sac is not part of this DA proposal. As noted elsewhere, the changes to Chapman Road have already been approved.

- (ii) **Issue:** The *Roads Act 1993* permits a Road Authority to close a public road if it is not reasonably required for public use and is not required for access to adjoining land. The proposed road closure does not meet the requirements of the Act. This section of Chapman Road is used for access and on-street parking and contains car parking bays currently used daily. Under the current proposal, all of these parking bays will be removed with no alternate parking space proposed

Response: City of Sydney Council has nominated and approved the closure of Chapman Road, separate to the DA process. In meeting the requirements of Section 38A to 38E of the *Roads Act 1993*, the closed portion of the road is to be assigned a parcel identity (via First Title Creation) before the gazettal of the road closure can be completed. This DA relates to the First Title Creation.

(c) Use of vacant land / other areas for the park

- (i) **Issue:** I suggest using the vacant lot on Chapman Road owned by the City of Sydney for parking. It was once used by the child care centre and access should be provided again.

Response: There are no immediate plans for the use of the vacant land as car parking, either for the child care centre or the general public.

- (ii) **Issue:** A far more practical and safe location for such a development exists within the bounds of Jubilee Park near Federal Road. This area has far less traffic, provides adequate parking that does not need to be reduced for any development, has good proximity to public transport, and does not consume all available space for a very special purpose use. It is disappointing that this DA has proceeded to this point without adequately considering more appropriate alternatives.

Issue: This synthetic sports field should not be built in the proposed location and the space should be maintained with native grass (for the environment, for aesthetics and for the community).

Response: The Johnstons Creek Parkland Master Plan, adopted by the City of Sydney in August 2013, endorsed a strategic vision to redevelop The Crescent open space into a new recreation precinct. This closure of Chapman Road is part of this strategic vision. The Master Plan includes Jubilee Park, however this area has been identified as a recreational space for visitors. Playing fields are better suited in other areas, such as The Crescent parklands, as identified in the City's Sports Field Development Program, which seeks to increase playing capacity across the City of Sydney by 2030.

(d) Child care centre

- (i) **Issue:** Removing car spaces poses a risk to parents and children of the child care centre. Where will the 8 pick-up/drop-off spaces go?

Response: As discussed in this report, the 8 pick-up/drop-off spaces are to be provided on Chapman Road in close proximity to the child care centre.

- (ii) **Issue:** There should also be a zebra crossing to address safety concerns for children crossing the road on The Crescent. Families have to walk all the way to end of Johnston Street, or up to Wigram Road to find a safe crossing area (this is difficult with small children) – there are no plans for a pedestrian crossing to service this latest proposal.

Response: The applicant has indicated that they have contacted Transport for NSW to address parking restrictions along the eastern side of The Crescent under their control, and along with Inner West Council, are working together to review pedestrian access and traffic calming opportunities along The Crescent, including zebra crossings.

- (iii) **Issue:** The current 8, time restricted parking spots located in front of the centre are regularly used by participants of sporting programs during structured sporting programs. This has been an ongoing issue. These spaces are not clearly identifiable by the general public and do not reference being for the child care centre.

- (iv) **Response:** The 8 x 15 minute car spaces have been provided in the new design of Chapman Road, and the restriction extended to 8am-10pm, 7 days to discourage long term parking. Any parking non-compliances can be reported to Council's Rangers for further investigation.

- (v) **Issue:** The closure of Chapman Road and removal of spaces may be in conflict with the conditions of consent of D/2014/1997 for the child care centre, including the construction of a new footpath in front of the child care centre, provision of, and timing restrictions for, pick-up/drop-off spaces.

Response: Council has made changes to parking restrictions as part of the Local Pedestrian, Cycling and Traffic Calming Committee. As discussed elsewhere in this report, the 8 x 15 minute on-street car spaces are to be accommodated within Chapman Road. The already approved works to Chapman Road (the road closure and new cul-de-sac) now supersede the affected parts of the constructed footpath on Chapman Road, under D/2014/1997, however this is a separate matter to the current DA.

- (vi) **Issue:** Council's considerations on the proposed development application should contemplate their obligations under the agreement with the child care centre.

Response: Council's lease agreement with a property or business is not a planning consideration in the assessment of the DA.

(e) Contamination impacts

- (i) **Issue:** During remediation works, and future construction, work trucks should not be permitted to enter the site from Chapman Road to minimise risk of accidents and ensure the safety of children.
- (ii) **Issue:** There is no safe work method contemplating surrounding development whilst undertaking the remediation works.
- (iii) **Issue:** The contamination report seems to contain no contemplation of the effects upon the users of the child care centre, including staff and children aged six weeks to five years old, from exposure to the works. The cut and fill works associated with the Road removal should only be carried out at the northern end of the roadway away from the child care centre.

Response: The entire section of Chapman Road to be closed will need to be remediated in order to be used as part of the sports field. A condition requiring a Construction Environmental Management Plan is to be imposed, requiring the applicant to outline how the remediation works will be carried out without adverse amenity impact to surrounding development. This includes construction traffic, noise, fencing off the area and control of emissions.

(f) Design of the park

- (i) **Issue:** The SEE states that the development will provide a valuable new recreational space, catering for a range of uses. The proposal is for a mini hockey field which is special purpose and will not be catering to a range of uses.

Response: Noted. The design of the parkland and its use as a sports field is not the subject of this application.

- (ii) **Issue:** It would be more inviting for children and the community if the area was openly accessible on one side. The increased light pollution from flood lights is a concern.

Response: Concerns about accessibility and lighting are noted, however the design of the sports field has been approved under a Part 5 assessment and is not part of this DA. The lighting engineer specialist within Council reviewed the lighting report and detail associated with the Part 5 assessment and determined that the new lighting would conform to the relevant Australian Standard (AS 4282:2019 Control of the Obtrusive Effects of Outdoor Lighting), which require minimal light spill to areas outside the playing field.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

76. The development is not subject to a Section 7.11 development contribution as the proposal is for remediation, removal of car parking and trees, and subdivision of a roadway. It is a type of development that is excluded from the need to pay a contribution.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

77. The site is located within the Residual Lands affordable housing contribution area.
78. As the development is development for the purposes of community facilities, public roads or public utility undertakings, the development is excluded and is not subject to a Section 7.13 affordable housing contribution.

Relevant Legislation

79. Environmental Planning and Assessment Act 1979.

Conclusion

80. The application seeks consent for remediation of part of Chapman Road (1,822sqm) and First Title Creation subdivision. Within this section of road, it is proposed to remove 45 car spaces and 5 trees and then proceed to closure and remediation of the site.

81. The proposed works and subdivision are to facilitate the gazettal of the road closure and future use of the roadway and open space adjoining it to the west as recreational area, designed as a synthetic sports field. The road closure and synthetic sports field have been approved by Council's Local Pedestrian, Cycling and Traffic Calming Committee and by a Part 5 Infrastructure and Environmental Impact Assessment under the *Environmental Planning and Assessment Act 1979*.
82. Subject to conditions, the proposed remediation of the roadway and First Title Creation subdivision with associated works are not considered to have a significantly adverse impact on neighbouring properties or impede the use of adjoining recreational open space. The proposal is consistent with the City's master plan for the area, in that it will facilitate the future use of the site as a synthetic sports field and is considered to be in the public interest.

ANDREW THOMAS

Executive Manager Planning and Development

Jessica Symons, Area Coordinator

Attachment A

Recommended Conditions of Consent
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SCHEDULE 1

CONDITIONS OF CONSENT

PART A - GENERAL

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2022/253 dated 23 March 2022 and the draft Plan of First Title Creation labelled 'Plan of Part of Chapman Road for Title Issue & Road Closing Under The Roads Act 1993', prepared by Michael Alexander Brown and dated 21 January 2021 (Ref 79397);

and as amended by the conditions of this consent.

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

Reason

To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

(2) WASTE AND RECYCLING MANAGEMENT - GENERAL

The proposal must comply with the relevant provisions of Council's *Guidelines for Waste Management in New Developments 2018* which requires facilities to promote the efficient storage, separation, collection and handling of waste to maximise resources recovery.

Reason

To ensure that waste and recycling is appropriately managed.

(3) TREES APPROVED FOR REMOVAL

- (a) Trees numbered 25, 26, 27, 28 and 29 in the Arboricultural Impact Assessment prepared by Tree iQ dated January 2022 are approved for removal as part of the remediation works.
- (b) All tree removal works must be carried out by a qualified Arborist, with a minimum Level 3 AQF in arboriculture and in accordance with WorkCover's Code of Practice – Amenity Tree Industry.

Reason

To ensure the correct trees are removed safely.

(4) TREES THAT MUST BE RETAINED / PROTECTED

Trees numbered 1 to 24 and 30 in the Arboricultural Impact Assessment prepared by Tree iQ dated January 2022 must be retained and protected in accordance with the conditions of consent throughout the remediation works.

Reason

To ensure surrounding trees are protected.

(5) TREE PROTECTION SPECIFICATION AND TREE PROTECTION PLANS

(a) A Tree Protection Specification and Tree Protection Plan prepared by a qualified Arborist with a minimum Australian Qualification Framework (AQF) of Level 5 in Arboriculture and written in accordance with the Australian Standard 4970-2009 Protection of Trees on Development Sites must be submitted to and approved by Council's Area Planning Manager prior to any works commencing on-site which details the following:

- (i) The Arborist must be appointed through the City's Tree Management Team.
- (ii) The specification shall include a detailed list of all trees listed for retention as detailed in these conditions.
- (iii) A plan showing trees numbers, locations, Tree Protection Zone/s and Structural Root Zone/s in accordance with AS4970-2009.
- (iv) Details of tree sensitive methods required during installation of new paving, installation of new retaining walls and site remediation works located within the TPZ of any tree to be retained.
- (v) Details of the tree protection measures in accordance with AS4970-2009
- (vi) Information on the Project Arborist's involvement during the works including hold points to be outlined in the report.

Reason

To ensure the surrounding trees are protected.

(6) COMPLIANCE WITH ARBORICULTURAL IMPACT ASSESSMENT

All recommendations, Tree Protection, and Methodology Statements contained in the approved Tree Protection Specification and Tree Protection Plan must be implemented during the remediation works.

Reason

To ensure surrounding trees are protected.

(7) TREE PLANTING

Certain tree species placed in close proximity to Sydney Water's underground assets have the potential to inflict damage through invasive root penetration and

soil destabilisation. Sydney Water requires that all proposed or removed trees and vegetation included within the proposal adhere to the specifications and requirements within Section 46 of the Sydney Water Act (1994) and *Diagram 5 – Planting Trees* within our [Technical guidelines – Building over and adjacent to pipe assets](#). Please note these guidelines include more examples of potential activities impacting our assets which may also apply to your development.

If any tree planting proposed breaches our policy, Sydney Water may need to issue an order to remove every tree breaching the act, or directly remove every tree breaching the Act and bill the developer or Council for their removal.

Reason

To ensure Sydney Water assets are protected.

(8) TFNSW - GENERAL

The applicant must comply with all Altrac Light Rail Partnership (Altrac) or any subsequent operator of Sydney Light Rail (Sydney Light Rail Operator) policies, rules and procedures when working in and about the Sydney Light Rail corridor; and

The applicant shall provide safe and unimpeded access for Sydney Light Rail patrons traversing to and from the Sydney Light Rail stops at all times.

Reason

To ensure the protection of TfNSW infrastructure.

(9) AUSGRID

The design submission must comply with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets. The “as constructed” minimum clearances to Ausgrid’s infrastructure must not be encroached by the building development. It also remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite. Ausgrid’s Network Standards can be sourced from Ausgrid’s website, www.ausgrid.com.au

Reason

To ensure the protection of Ausgrid infrastructure.

(10) LAND SUBDIVISION – SUBDIVISION CERTIFICATE

A separate application must be made to Council to obtain the approval of the plan of subdivision and issue of a Subdivision Certificate under Section 6.15 of the *Environmental Planning and Assessment Act 1979*.

Reason

To ensure separate development consent is sought for the plan of subdivision and issue of a Subdivision Certificate.

PART B – BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE

(11) CONSTRUCTION TRAFFIC MANAGEMENT PLAN

- (a) A Construction Traffic Management Plan must be submitted to and approved by Council prior to any remediation works commencing.
- (b) The approved plan must be complied with during any demolition and remediation work.

Reason

To ensure that the impacts of construction traffic is appropriately managed.

(12) ENVIRONMENTAL MANAGEMENT PLAN

Prior to any works commencing, an Environmental Management Plan (EMP) must be prepared for the site and submitted to Council's Area Planning Coordinator | Area Planning Manager for written approval.

The EMP must consider all potential environmental impacts from the approved works including but not limited to:

- (a) sedimentation control, contamination containment, stockpiles, noise and vibration, odours and dust emissions, particularly in relation to other properties in close proximity (such as the child care centre);
- (b) Any SafeWork NSW requirements; and
- (c) Procedures to be adopted for the prevention of loose or contaminated material, spoil, dust and litter from being deposited onto the public way from trucks and associated equipment and the proposed method of cleaning surrounding roadways from such deposits.

All works must be undertaken onsite in accordance with the approved Construction Environmental Management Plan.

Reason

To ensure that contamination is appropriately managed.

(13) SITE SUPERVISION AND REPORTING

- (a) An Arborist with minimum qualifications in Arboriculture of Level 5 (under the Australian Qualification Framework) must oversee various stages of work within the Tree Protection Zone of any tree listed for retention. The Arborist must certify compliance with each key milestone as detailed below:
 - (i) Installation of tree protection measures;
 - (ii) During demolition of any ground surface materials (paving, concrete, grass etc) within the Tree Protection Zone (TPZ) of any tree to be retained;

- (iii) During any excavation and trenching which has been approved by Council within the TPZ of any tree to be retained;
 - (iv) During all hold points included in the approved Tree Protection Specification and Tree Protection Plan
 - (v) During any Landscape works within the TPZ of any tree to be retained.
- (b) An Arboricultural Compliance Report which includes photographic evidence and details of the health and condition of trees, must be submitted to Council's Area Planning Manager at each hold-point listed below:
- (i) Certification tree protection measures have been installed in accordance with the conditions prior to the commencement of works.
 - (ii) Certification of compliance with each key milestone listed above within 72 hours of completion.
 - (iii) Monthly reporting for the duration of construction and development within the site.
 - (iv) Details of any other works undertaken on any tree to be retained or within TPZ/s;
 - (v) A final compliance report shall be submitted at the completion of remediation works and prior to the commencement of works relating to the sports field.

Reason

To ensure the protection of trees to be retained in close proximity to the works.

(14) SURVEY INFRASTRUCTURE – IDENTIFICATION AND RECOVERY

Under Section 24 of the Surveying and Spatial Information Act 2002, it is an offence to remove, damage, destroy, displace, obliterate, or deface any survey mark unless authorised to do so by the Surveyor-General. Accordingly, the applicant must, where possible, ensure the preservation of existing survey infrastructure undisturbed and in its original state or else provide evidence of the Surveyor-General's authorisation to remove or replace marks.

Prior to any remediation works being carried out, documentary evidence must be prepared by a Registered Surveyor and submitted to and approved by the City of Sydney's Survey team. This evidence must include either:

- (a) A copy of any Surveyor-General's Approval for Survey Mark Removal granted by NSW Spatial Services for the subject site, including all documentation submitted as part of that application (for example the survey mark audit schedule, strategy plan and strategy report) or,
- (b) A letter, signed by a current NSW Registered Land Surveyor and including his or her Board of Surveying and Spatial Information (BOSSI) identification number, stating that all investigations required under Surveyor-General's Direction No.11 have been made for the subject site and that no survey infrastructure will be affected by the proposal.

The City's Principal Surveyor may request further information and/or add conditions to any Surveyor-General's Approval at their discretion.

Reason

To ensure the preservation of existing survey infrastructure.

(15) BUILDING PLAN APPROVAL

The approved plans must be submitted to the Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

The Tap in™ service provides 24/7 access to a range of services, including:

- (a) building plan approvals
- (b) connection and disconnection approvals
- (c) diagrams
- (d) trade waste approvals
- (e) pressure information
- (f) water meter installations
- (g) pressure boosting and pump approvals
- (h) changes to an existing service or asset, e.g. relocating or moving an asset.

Sydney Water's Tap in™ online service is available at: <https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

Sydney Water recommends developers apply for Building Plan approval early as in some instances the initial assessment will identify that an Out of Scope Building Plan Approval will be required.

Reason

To ensure the protection Sydney Water assets.

(16) OUT OF SCOPE BUILDING PLAN APPROVAL

Sydney Water will need to undertake a detailed review of building plans:

- (a) That affect or are likely to affect any of the following:
 - (i) Wastewater pipes larger than 300mm in size
 - (ii) Pressure wastewater pipes
 - (iii) Drinking water or recycled water pipes

- (iv) Our property boundary
 - (v) An easement in our favour
 - (vi) Stormwater infrastructure within 10m of the property boundary.
- (b) Where the building plan includes:
- (i) Construction of a retaining wall over, or within the zone of influence of our assets
 - (ii) Excavation of a basement or building over, or adjacent to, one of our assets
 - (iii) Dewatering – removing water from solid material or soil.
- (c) The detailed review is to ensure that:
- (i) our assets will not be damaged during, or because of the construction of the development
 - (ii) we can access our assets for operation and maintenance
 - (iii) your building will be protected if we need to work on our assets in the future.

The developer will be required to pay Sydney Water for the costs associated with the detailed review.

Reason

To ensure the protection of Sydney Water assets.

(17) TfNSW PRE-CONSTRUCTION WORK DILAPIDATION REPORT

If required by TfNSW, a pre-construction work Dilapidation Report of the Sydney Light Rail and its assets shall be prepared by a qualified structural engineer. The dilapidation survey shall be undertaken via a joint site inspection by the representatives of the Sydney Light Rail Operator, TfNSW and the applicant. These dilapidation surveys will establish the extent of existing damage and enable any deterioration during construction to be observed.

Reason

To ensure the protection of TfNSW infrastructure.

PART C – BEFORE THE COMMENCEMENT OF WORK

(18) EROSION AND SEDIMENT CONTROL - BETWEEN 250 AND 2,500SQM

Prior to the commencement of any demolition/remediation/excavation work, an Erosion and Sediment Control Plan (ESCP) must be submitted to and be approved by the Principal Certifier. The ESCP must:

- (a) Conform to the specifications and standards contained in *Managing Urban Stormwater: Soils and Construction* (Landcom, 2004); the *Guidelines for Erosion and Sediment Control on Building Sites* (City of Sydney, 2004); and the *NSW Protection of the Environment Operations Act 1997*.
- (b) Include a drawing(s) that clearly shows:
 - (i) location of site boundaries and adjoining roads
 - (ii) approximate grades and indications of direction(s) of fall
 - (iii) approximate location of trees and other vegetation, showing items for removal or retention
 - (iv) location of site access, proposed roads and other impervious areas
 - (v) existing and proposed drainage patterns with stormwater discharge points
 - (vi) north point and scale
- (c) Specify how soil conservation measures will be conducted on site including:
 - (i) timing of works
 - (ii) locations of lands where a protective ground cover will, as far as is practicable, be maintained
 - (iii) access protection measures
 - (iv) nature and extent of earthworks, including the amount of any cut and fill
 - (v) where applicable, the diversion of runoff from upslope lands around the disturbed areas
 - (vi) location of all soil and other material stockpiles including topsoil storage, protection and reuse methodology
 - (vii) procedures by which stormwater is to be collected and treated prior to discharge including details of any proposed pollution control device(s)
 - (viii) frequency and nature of any maintenance program
 - (ix) other site-specific soil or water conservation structures.

Reason

To ensure that appropriate erosion and sediment control measures are put in place during construction to protect the environment.

(19) OTHER APPROVALS

Any activity which is proposed to be undertaken in, on or above a road reserve or the public domain (including a public footway) must have separate approval(s) obtainable through the lodgement of an application under Section 68 of the Local Government Act 1993 and/or Section 138/139 of the Roads Act 1993 prior to the commencement of work/activities within the road reserve/public domain. Such activities include but not limited to:

- (a) installation of construction-related temporary structures including hoardings/scaffolding;
- (b) installation and/or alterations to advertising/business signs;
- (c) installation and/or alterations to street awnings;
- (d) crane operation and other hoisting activities;
- (e) temporary works (e.g. barricading, road openings, mobile hoisting devices);
- (f) works zones (for loading and unloading from the roadway); and
- (g) temporary ground anchoring and shoring to support a roadway when excavating; and
- (h) any other structure or encroachment including facade elements/architectural features.

Reason

To ensure use of a public place is managed appropriately.

PART D – WHILE WORK IS BEING CARRIED OUT

(20) HOURS OF WORK AND NOISE – OUTSIDE CBD

The hours of construction and work on the development must be as follows:

- (a) All work, including building/demolition and excavation work, and activities in the vicinity of the site generating noise associated with preparation for the commencement of work (eg. loading and unloading of goods, transferring of tools etc) in connection with the proposed development must only be carried out between the hours of 7.30am and 5.30pm on Mondays to Fridays, inclusive, and 7.30am and 3.30pm on Saturdays, with safety inspections being permitted at 7.00am on work days, and no work must be carried out on Sundays or public holidays.
- (b) All work, including demolition, excavation and building work must comply with the City of Sydney Code of Practice for Construction Hours/Noise 1992 and Australian Standard 2436 - 2010 Guide to Noise Control on Construction, Maintenance and Demolition Sites.
- (c) Notwithstanding the above, the use of a crane for special operations, including the delivery of materials, hoisting of plant and equipment and erection and dismantling of on-site tower cranes which warrant the on-street use of mobile cranes outside of above hours can occur, subject to a separate application being submitted to and approved by Council under Section 68 of the Local Government Act 1993 and Sections 138/139 of the Roads Act 1993.

Note: Works may be undertaken outside of hours, where it is required to avoid the loss of life, damage to property, to prevent environmental harm and/or to avoid structural damage to the building. Written approval must be given by the Construction Regulation Team, prior to works proceeding

The *City of Sydney Code of Practice for Construction Hours/Noise 1992* allows extended working hours subject to the approval of an application in accordance with the Code and under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Reason

To protect the amenity of the surrounding area.

(21) ASBESTOS REMOVAL WORKS

- (a) All works removing asbestos containing materials must be carried out by a suitably licensed asbestos removalist duly licensed with Safework NSW, holding either a Friable (Class A) or a Non-Friable (Class B) Asbestos Removal Licence which ever applies.

A copy of the relevant licence must be made available to any authorised Council officer on request within 24 hours.

- (b) Five days prior to the commencement of licensed asbestos removal, Safework NSW must be formally notified of the works. All adjoining properties and those opposite the development must be notified in writing of

the dates and times when asbestos removal is to be conducted. The notification must identify the licensed asbestos removal contractor and include a contact person for the site together with telephone number and email address.

- (c) All work must be carried out in accordance with the *Work Health and Safety Regulation 2017* and the NSW Government and SafeWork NSW document entitled *How to manage and control asbestos in the work place: Code of Practice (SafeWork NSW) December 2011* and the *City of Sydney Managing Asbestos Policy dated 21 October 2013 and associated guidelines*.
- (d) The asbestos removalist must use signs and barricades to clearly indicate the area where the asbestos removal work is being performed. Signs must be placed in positions so that people are aware of where the asbestos removal work area is and should remain in place until removal is completed and clearance to reoccupy has been granted. Responsibilities for the security and safety of the asbestos removal site and removal must be specified in the asbestos removal control plan (where required). This includes inaccessible areas that are likely to contain asbestos.
- (e) Warning signs must be placed so they inform all people nearby that asbestos removal work is taking place in the area. Signs must be placed at all of the main entry points to the asbestos removal work area where asbestos is present. These signs must be weatherproof, constructed of light-weight material and adequately secured so they remain in prominent locations. The signs must be in accordance with AS 1319 -1994 *Safety Signs for the Occupational Environment* for size, illumination, location and maintenance.
- (f) Asbestos waste must only be transported and disposed of at an EPA licensed waste facility.
- (g) No asbestos products are to be reused on the site (i.e. packing pieces, spacers, formwork or fill etc).
- (h) No asbestos laden skips or bins are to be left in any public place without the written approval of Council.
- (i) A site notice board must be located at the main entrance to the site in a prominent position and must have minimum dimensions of 841mm x 594mm (A1) with any text on the notice to be a minimum of 30 point type size.

The site notice board must include the following:

- (i) contact person for the site;
- (ii) telephone and facsimile numbers and email address; and
- (iii) site activities and time frames.

Reason

To ensure that the handling and removal of asbestos from the site is appropriately managed.

(22) SITE NOTICE OF PROJECTS DETAILS AND APPROVALS

A site notice is to be prominently displayed at the boundary to each frontage of the site for the purposes of informing the public of appropriate project details and relevant approvals. The notice(s) is to satisfy all of the following requirements:

- (a) Minimum dimensions of the notice are to measure 841mm x 594mm (A1) with any text on the notice to be a minimum of 30 point type size;
- (b) The notice is to be durable and weatherproof and is to be displayed throughout the construction period;
- (c) A copy of the first page of the development approval, building approval (including any modifications to those approvals) and any civic works approvals is to be posted alongside the notice in weatherproof casing;
- (d) The approved hours of work, the Principal Certifier including contact address and certification details, the name of the site manager, the responsible managing company, its address and 24 hour contact phone number for any enquiries, including construction/noise complaint, and the estimated date of completion of the project are to be displayed on the site notice;
- (e) The notice(s) is to be mounted at eye level on the perimeter hoardings and is also to state that unauthorised entry to the site is not permitted.
- (f) All notices and signs must be displayed in locations as specified in the City's Guidelines for Hoardings and Scaffolding.

Reason

(Prescribed condition EP&A Regulation, clauses 98A (2) and (3)).

(23) CLASSIFICATION OF WASTE

Prior to the exportation of waste (including fill or soil) from the site, the waste materials must be classified in accordance with the provisions of the Protection of the *Environment Operations Act 1997* and the *NSW DECC Waste Classification Guidelines, Part1: Classifying Waste (July 2009)*. The classification of the material is essential to determine where the waste may be legally taken. The *Protection of the Environment Operations Act 1997* provides for the commission of an offence for both the waste owner and the transporters if the waste is taken to a place that cannot lawfully be used as a waste facility for the particular class of waste. For the transport and disposal of industrial, hazardous or Group A liquid waste advice should be sought from the EPA.

Reason

To ensure that waste from site is classified and disposed of appropriately.

(24) DISCHARGE OF CONTAMINATED GROUNDWATER

Contaminated groundwater must not be discharged into the City's stormwater drainage system.

Options for the disposal of groundwater include disposal to sewer with prior approval from Sydney Water or off-site disposal by a liquid waste transporter for treatment/disposal to an appropriate waste treatment/processing facility.

Reason

To ensure that the discharge of ground water is appropriately managed.

(25) IMPORTED FILL MATERIALS

All fill imported onto the site must be validated to ensure the imported fill is suitable for the proposed land use from a contamination perspective. Fill imported on to the site shall also be compatible with the existing soil characteristic for site drainage purposes.

The City may require details of appropriate validation of imported fill material to be submitted with any application for future development of the site. Hence all fill imported onto the site should be validated by either one or both of the following methods during remediation works:

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

Reason

To ensure that imported fill is not contaminated.

(26) LAND REMEDIATION (Where Site Auditor engaged)

The site is to be remediated and validated in accordance with the Remedial Action Plan prepared by Geosyntec Consultants dated 15 March 2022, reference number 20252 R03 and the Section B Site Audit Statement prepared by NSW Environment Protection Authority accredited Site Auditor Dr Julie Evans (Envirocene Pty Ltd) dated 22 March 2022 and reference (audit number) JE087-A. All remediation work carried out shall be conducted in accordance with the guidelines in force from time to time under the *Contaminated Land Management Act 1997*.

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination must be immediately notified to the Council's Area Planning Manager, the Site Auditor and the Principal Certifier.

Any variations to the approved Remediation Action Plan must be approved in writing by the Site Auditor and Council's Area Coordinator Planning Assessments / Area Planning Manager prior to the commencement of such work.

Reason

To ensure that the site is appropriately remediated.

(27) NOTIFICATION – NEW CONTAMINATION EVIDENCE

Council's Area Planning Manager and the Principal Certifier must be notified of any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination.

Reason

To ensure that the site is appropriately remediated.

(28) STOCKPILES

- (a) No stockpiles of soil or other materials must be placed on footpaths or nature strips unless prior approval has been obtained from the City's Construction Regulation Team.
- (b) All stockpiles of soil or other materials must be placed away from drainage lines, gutters or stormwater pits or inlets.
- (c) All stockpiles of soil or other materials likely to generate dust or odours must be covered.
- (d) All stockpiles of contaminated soil must be stored in a secure area and be covered if remaining more than 24 hours.

Reason

To ensure that stockpiles of soil or other materials are appropriately managed.

(29) COVERING OF LOADS

All vehicles involved in the remediation process and departing the property with demolition materials, spoil or loose matter must have their loads fully covered before entering the public roadway.

Reason

To ensure loads are managed appropriately and do not impact local amenity.

(30) EROSION AND SEDIMENT CONTROL

The Soil and Water Management Plan (SWMP) or Erosion and Sediment Control Plan (ESCP) which has been approved by the Principal Certifier must be implemented in full during the construction period.

During the construction period:-

- (a) erosion and sediment controls must be regularly inspected, repaired and maintained in working order sufficient for a 10 year Average Recurrence Interval (ARI) rainfall event;
- (b) erosion and sediment control signage available from Council must be completed and attached to the most prominent structure visible at all times when entering the site for the duration of construction; and

- (c) building operations and stockpiles must not be located on the public footway or any other locations which could lead to the discharge of materials into the stormwater system.

Reason

To ensure no substance other than rainwater enters the stormwater system and waterways.

(31) HAZARDOUS AND INDUSTRIAL WASTE

Hazardous and/or industrial waste arising from the demolition/operational activities must be removed and/or transported in accordance with the requirements of the NSW Work Cover Authority pursuant to the provisions of the following:

- (a) *Protection of the Environment Operations Act 1997*
- (b) *Protection of the Environment Operations (Waste) Regulation 2005*
- (c) *Waste Avoidance and Resource Recovery Act 2001*
- (d) *Work Health and Safety Act 2011*
- (e) *Work Health and Safety Regulation 2017.*

Reason

To ensure hazardous/ industrial waste is managed appropriately.

(32) VEHICLE CLEANSING

Prior to the commencement of work, suitable measures are to be implemented to ensure that sediment and other materials are not tracked onto the roadway by vehicles leaving the site. It is an offence to allow, permit or cause materials to pollute or be placed in a position from which they may pollute waters.

Reason

To ensure sediment is not tracked onto the roadway.

(33) NO OBSTRUCTION OF PUBLIC WAY

Unless otherwise approved by Council, the public way must not be obstructed by any materials, vehicles, waste receptacles, skip-bins or the like. Non-compliance with this requirement may result in the issue of a notice by Council to stop all work on the site.

Reason

To protect the amenity of the public domain.

(34) DRAINAGE AND SERVICE PIT LIDS

All existing or proposed drainage and service pit lids throughout the public domain must be to City of Sydney specifications and heel/bicycle safe, slip resistant, infill with material to match surrounding surface, finished flush with the adjacent pavement to avoid trip hazards and be clear of obstructions for easy opening and cleaning.

Reason

To ensure drainage and service pit lids within the public domain are appropriately designed and installed.

(35) HOLD POINTS

Hold Points for all public domain work including civil, drainage and subsurface works will be in accordance with the City of Sydney's Public Domain Manual and Sydney Streets Technical Specification. These Hold Points must be adhered to during construction.

Reason

To ensure hold points are adhered to during construction works.

(36) SECTION 73 COMPLIANCE CERTIFICATE - SUBDIVISION

Prior to the issue of a Subdivision/Strata Certificate, a Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section on the web site www.sydneywater.com.au then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

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

The Section 73 Certificate must be submitted to Council prior to a Subdivision Certificate being issued. It should be noted that a Section 73 certificate is not required for the second stage of the subdivision as it will involve dedication of a road & public reserve only.

Reason

To ensure Sydney Water directions are complied with.

(37) TFNSW - DURING CONSTRUCTION

- (a) No metal ladders, tapes and plant/machinery, or conductive material are to be used within 6 horizontal metres of any live electrical equipment unless a physical barrier such as a hoarding or structure provides separation; and

- (b) During all stages of the development extreme care shall be taken to prevent any form of pollution entering the light rail corridor. Any form of pollution that arises as a consequence of the development activities shall remain the full responsibility of the applicant.

Reason

To ensure the protection of TfNSW infrastructure.

PART E – BEFORE THE ISSUE OF AN OCCUPATION CERTIFICATE

(38) SITE AUDIT STATEMENT

Prior to the commencement of any work associated with the sports field or the issue of a subdivision certificate for Chapman Road, whichever occurs first, a Section A Site Audit Statement must be obtained from a NSW Environment Protection Authority accredited Site Auditor and submitted to and approved by, the Council's Area Planning Manager at email address:-

hbapplications@cityofsydney.nsw.gov.au

The Site Audit Statement must confirm that the site has been remediated in accordance with the approved Remedial Action Plan and clearly state that site is suitable for the proposed use.

- (a) In circumstances where the Site Audit Statement is subject to conditions that require ongoing review by the Auditor or Council, these must be reviewed and must be approved by the Council's Health and Building Unit in writing through the Area Planning Manager before the Site Audit Statement is issued.
- (b) In circumstances where the Site Audit Statement conditions (if applicable) are not consistent with the consent, the development must not proceed until the inconsistency has been resolved to the satisfaction of Council (such as via a S4.55 modification of the consent pursuant to the provisions of the *Environmental Planning & Assessment Act 1979*).
- (c) **No Occupation Certificate is to be issued** by the Principal Certifier for the sports field unless a Site Audit Statement has been submitted to and approved by Council in accordance with this condition.

Reason

To ensure that the site is appropriately remediated.

(39) SITE AUDIT STATEMENT – ENVIRONMENTAL MANAGEMENT PLAN

Where the ongoing land use suitability and release of the Final (Section A) Site Audit Statement is dependent upon the implementation of an Environmental Management Plan (EMP) in relation to any residual contamination remaining onsite, the EMP must be approved by the Site Auditor and Council's Area Planning Manager prior to the issue of the final Site Audit Statement.

The owner of the land is required to comply with the ongoing obligations of any EMP which form part of the final Site Audit Statement for the site.

A covenant must be registered on the title of the land binding the owners and future owners to be responsible for ongoing maintenance and any future rehabilitation works required in terms of the encapsulated/remaining contaminated materials, including the discharge or prevention of discharge from any contaminants or for any works subsequently required by the NSW Environment Protection Authority

A copy of the revised certificate of land title recording the covenant must be submitted to Council's Area Planning Manager and the Principal Certifier prior to the issue of any Occupation Certificate relating to the sports field.

Reason

To ensure that contamination is appropriately managed.

(40) SURVEY INFRASTRUCTURE – PRE-SUBDIVISION CERTIFICATE WORKS

- (a) Pursuant to Section 38 of the Surveying and Spatial Information Act 2002, if it is likely that any new survey mark will be disturbed by associated works (for example, footpath or kerb and gutter construction), a surveyor may defer the placement of those marks.
- (b) Prior to any the issue of any Subdivision Certificate, documentary evidence in accordance with Section B11 – *Survey Infrastructure of the Technical Specification* must be prepared by a Registered Surveyor and submitted to and approved by the City. This evidence must include:
 - (i) A copy of any Surveyor-General's Approval for Deferment of Survey Marks granted by NSW Spatial Services for the subject site, including all documentation submitted as part of that application (for example the draft deposited plan) or
 - (ii) A certificate of Practical Completion obtained from the City's Public Domain team, together with a letter, signed by a current NSW Registered Land Surveyor and including his or her Board of Surveying and Spatial Information (BOSSI) identification number, stating that all survey marks shown on their Deposited Plan remain at the date of practical completion.

Reason

To allow for deferment of survey marks.

(41) TfNSW - POST - CONSTRUCTION DILAPIDATION REPORT

Prior to the issue of the Occupation Certificate, if required by TfNSW, a post-construction dilapidation survey shall be undertaken via a joint inspection with representatives from TfNSW, Altrac, the Sydney Light Rail Operator and the applicant. The dilapidation survey will be undertaken on the rail infrastructure and property in the vicinity of the project. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report to TfNSW and the Sydney Light Rail Operator will be required unless otherwise notified by TfNSW. The applicant needs to undertake rectification of any damage to the satisfaction of TfNSW and the Sydney Light Rail Operator and if applicable the local council.

Reason

To protect TfNSW infrastructure.

PART F – OCCUPATION AND ONGOING USE

There are no conditions relevant to Part F.

SCHEDULE 2

PRESCRIBED CONDITIONS

The prescribed conditions in accordance with Division 8A of the *Environmental Planning and Assessment Regulation 2021* apply:

- Clause 69 Compliance with *Building Code of Australia* and insurance requirements under the *Home Building Act 1989*
- Clause 70 Erection of signs
- Clause 71 Notification of *Home Building Act 1989* requirements
- Clause 72 Conditions relating to entertainment venues
- Clause 73 Conditions relating to maximum capacity signage
- Clause 74 Conditions relating to shoring and adequacy of adjoining property

Refer to the NSW State legislation for full text of the clauses under Division 2 conditions of development consent of the *Environmental Planning and Assessment Regulation 2021*. This can be accessed at: <http://www.legislation.nsw.gov.au>

Attachment B

Selected Drawings

Attachment C

Endorsement of Chapman Road Closure

Resolution of Council

29 March 2021

Item 9.2

The Crescent Synthetic Sports Field Update and Proposed Permanent Road Closure - Chapman Road, Annandale

It is resolved that:

- (A) Council endorse the progression of community consultation on the design of the Crescent Synthetic Sports Field on the basis that a section of Chapman Road, Annandale is closed to traffic;
- (B) Council endorse the permanent road closure of approximately 1,822 square metres of Chapman Road, Annandale, to traffic, located to the south of the Glebe Viaducts (6A Chapman Road, Annandale);
- (C) Council note the proposed changes to traffic treatment along Chapman Road involving the creation of a turning circle are subject to review by the Local Pedestrian, Cycling and Traffic Calming Committee, and a future Council report;
- (D) authority be delegated to the Chief Executive Officer to approve the publication of a Gazette to formalise the road closure and enter into any documentation required to give effect to the road closure.

Carried unanimously.

X006324

24 February 2022

Item 32

Traffic Treatment - Permanent Road Closure and Parking Changes - Chapman Road, Annandale

X038983

Recommendation

It is recommended that the Committee endorse the following traffic treatment and parking changes in Chapman Street, Annandale:

- (A) Permanent road closure of Chapman Street between the points 114.5 metres and 183.8 metres, north of Nelson Street;
- (B) Reallocation of parking on the northern side of Chapman Road, between the points 0 metres and 46.8 metres (18 car spaces), 51.8 metres and 59.3 metres (three car spaces) and 69.9 and 80 metres (four car spaces), west of Nelson Street as "2P 8am-10pm" seven days a week;
- (C) Reallocation of parking on the southern side of Chapman Road, between the points 3.5 metres and 16.3 metres (five car spaces), 25.7 metres and 30.4 metres (two car spaces), 38.9 metres and 46.8 metres (three car spaces) and 58.3 metres and 62.9 metres (three car spaces), west of Nelson Street as "2P 8am-10pm" seven days a week;
- (D) Reallocation of parking on the northern side of Chapman Road, west of Nelson Street, between the points 80 metres and 89.9 metres (four car spaces) as "1/4P 8am-10pm" seven days a week; and
- (E) Reallocation of parking on the southern side of Chapman Road, west of Nelson Street, between the points 66.4 metres and 91 metres (four car spaces) as "1/4P 8am-10pm" seven days a week.

Voting Members for this Item

Voting Members	Support	Object
City of Sydney	✓	
Transport for NSW	✓	
NSW Police – Leichhardt PAC	✓	
Representative for the Member for Balmain	✓	

Advice

The Committee unanimously supported the recommendation.

Background

In 2013, Council adopted the Johnstons Creek Parklands Master Plan which supported the reclamation of industrial land along The Crescent for open space. The vision included the creation of a Village Green for junior sports within a new recreational precinct. This junior field would be situated on the land at 7 The Crescent, Annandale (The Crescent Open Space) and a section of Chapman Road.

The Sports Field Development Programme (endorsed by Council in 2019) selected The Crescent Open Space as a suitable location for the development of a multi-purpose synthetic field because of support from local sporting groups, proximity to public transport links including Jubilee Park Light Rail Station as well as its location adjacent to Federal Park, Jubilee Oval and future Rozelle Interchange, creating a hub of recreation and sport.

Item 4.**Development Application: 25-27 Dunning Avenue, Rosebery - D/2021/1491****File No.: D/2021/1491****Summary**

Date of Submission:	4 January 2022
Applicant:	Mr R Macauley
Architect/Designer:	Tzannes
Owner:	Dunning Proprietor Pty Ltd.
Planning Consultant:	Gyde Consulting
Heritage Consultant:	GBA Heritage Pty Ltd.
Cost of Works:	\$7,733,000
Zoning:	B4 Mixed Use. Commercial premises is permissible with consent within zone.
Proposal Summary:	<p>The proposal involves the conversion of a two storey heritage listed warehouse building, into a five storey commercial development. This includes internal alterations and the addition of three levels, upper level outdoor terraces and 10 at grade car parking spaces utilising an existing driveway from Cressy Street.</p> <p>The existing warehouse is a heritage listed item number I1376 'Paradise Garage' under the Sydney Local Environmental Plan (SLEP) 2012.</p> <p>The site includes a base Floor Space Ratio (FSR) of 1.5:1 with a potential bonus of 0.5:1 for the delivery of community infrastructure. Additional floor space is also allowed for the inclusion of end of trip facilities which is included in FSR. The development therefore has a potential FSR of 3.1:1.</p>

Given poor design outcomes for the heritage building, Council officers have not pursued a public benefit offer for the proposal. In this regard the Clause 4.6 variation must be made against the base FSR. The development proposes 73sqm for end of trip facilities bonus FSR. This equates to a FSR of 0.076:1 which is accepted as part of the development.

The proposed development exceeds the base FSR development standard by 107 per cent and with the inclusion of end of trip bonus FSR is adjusted to 97 per cent.

A request to vary the FSR development standard has been made pursuant to Clause 4.6 of the Sydney LEP 2012. The written request to vary the standard does not demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The written request fails to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. The proposal is referred to the Local Planning Panel as a result of the FSR variation and required public benefit offer.

The proposal including its massing and building intrusions would have a detrimental impact on the heritage building and is not supported.

The development was notified for 28 days between 12 January 2022 and 10 February 2022. A total of 3 submissions were received objecting to the proposal raising the following concerns:

- Loss of solar access, overlooking / privacy impacts and loss of view to neighbouring residential dwellings.
- The extent of alterations to the heritage warehouse.

Given the extent of negative impacts on the heritage item, amenity impacts to adjoining owners, non-compliance with FSR, and insufficient information provided with the application the proposal is not supported.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) Environmental Planning and Assessment Act 1979 and Regulation 2021.
- (ii) SEPP (Resilience and Hazards) 2021
- (iii) Sydney Local Environmental Plan 2012 (SLEP 2012)
- (iv) Sydney Development Control Plan 2012 (SDCP 2012)

Attachments:

- (A) Draft Architectural Plans
- (B) Clause 4.6 Variation Request - Floor Space Ratio
- (C) Heritage Inventory Report

Recommendation

It is resolved that consent be refused for Development Application No. D/2021/1491 for the following reasons:

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

- (A) The application fails to demonstrate that the land can be made suitable for the proposed commercial development. As such the application fails to satisfy the provisions of the State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP), Chapter 4 - Remediation of Land.
- (B) The proposal includes a development that will dominate the appearance of the existing heritage item and includes a significant level of demolition and facade alteration. This has a significant and detrimental impact on the existing heritage fabric and the internal and external appearance of the heritage listed warehouse building known as 'Paradise Garage' (local heritage item No. I1376). Consequently, the proposal fails to comply with:
 - (i) Clause 1.3(f) under the Environmental Planning and Assessment Act 1979 as the proposal fails to promote the sustainable management of built and cultural heritage, given the level of demolition proposed.
 - (ii) Clause 1.2(2)(k) 'Aims of Plan' under the Sydney Local Environmental Plan 2012 which promotes the conservation of environmental heritage.
 - (iii) Clause 5.10(1)(b) under the Sydney Local Environmental Plan 2012 to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.
 - (iv) Clause 6.21C(4)(d)(iii) - Design Excellence under the Sydney Local Environmental Plan 2012, which requires any heritage issues and streetscape constraints, to be adequately addressed.
 - (v) Part 3.9.5 – Heritage Items under the Sydney DCP 2012 in particular provisions (1)(a) minimising the extent of changes to the fabric, (1)(c) enabling interpretation of each significant value, (1)(d) provide a use compatible with its significance and (1)(j) respect the pattern, style and dimensions of original windows and doors.
 - (vi) Part 3.10.1 of the Sydney DCP 2012 where warehouses and industrial buildings older than 50 years old are to be conserved and adaptively re-used to maintain the legibility of their historic use and alterations and additions are sympathetic in scale and style to the existing building.
- (C) The applicant has failed to satisfy Clause 4.6(4) of the Sydney Local Environmental Plan 2012. The submitted Clause 4.6 statement fails to demonstrate that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case. Nor has the statement justified that there are sufficient environmental grounds to justify contravening the standards.

- (D) The proposal has a detrimental impact on the heritage item. It consequently fails to deliver the desired future character of the locality and fails to minimise adverse impacts on the amenity of the locality. As such the development is not entitled to 'additional floor space' accessed through the delivery of Green Square community infrastructure. The proposal fails to comply with:
- (i) Clause 6.14(1)(b) under the Sydney Local Environmental Plan 2012.
 - (ii) Section 5.2 - Green Square and 5.2.3 Community Infrastructure under the Sydney DCP 2012.
- (E) The proposal fails address part 3.11 Transport and Parking of the Sydney DCP 2012 in particular insufficient information was provided to address large vehicle movements on site.
- (F) The proposal fails to adequately address part 3.14 Waste requirements of the Sydney DCP 2012 as the waste management plan fails to demonstrate acceptable waste calculations and servicing.
- (G) The proposed development fails to satisfy Clause 4.15(1) - Matters for Consideration under the Environmental Planning and Assessment Act 1979 as the proposal is considered to be an overdevelopment of the site. The site is not suited to the development and the proposal will have a significant impact upon the qualities of the heritage item.
- (H) In light of the above, the proposal is not considered to be in the public interest, contrary to Clause 4.15(1)(e) of the Environmental Planning and Assessment Act, 1979.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 35 DP 192683, known as 25-27 Dunning Avenue, Rosebery. It is irregular in shape with area of approximately 956.10sqm. It has a primary street frontage of 17.71 metres to Dunning Avenue and a secondary street frontage of 39.595 metres to Cressy Street. The site is located on the intersection of Dunning Avenue and Cressy Street. The site has a minor fall of 0.27m from the north-east corner to the south-west corner.
2. The site contains a warehouse currently being utilised as a vehicle repair station and body repair workshop. The building is a local heritage item I1376-Warehouse 'Paradise Garage' dating from 1950 built in Post-War Functionalist style with significant features such as streamlined rendered facade, horizontal steel windows at the first floor level and high parapet wall partially concealing a saw-tooth roof and prominent curved corner entry. Many of the original details and materials are intact.
3. The site is currently accessed by pedestrians from the building's corner of Cressy Street and Dunning Avenue. The site includes two vehicle cross overs in Cressy Street.
4. The surrounding area is characterised by a mixture of land uses, primarily being residential, commercial and industrial warehouses, and mixed-use developments. Adjoining the site to the immediate east is a residential development at number 13-21 Mentmore Avenue consisting of 65 apartments and basement parking for 65 vehicles.
5. Adjacent to the site across Cressy Street to the south is a residential development at 29-31 Dunning Avenue consisting of 26 apartments and basement parking.
6. A residential development has been approved (deferred commencement) at 23-29 Mentmore Avenue to the southeast of the site. Construction has not started.
7. To the immediate north of the site is 23 Dunning Avenue, there is a two storey warehouse currently used for commercial purposes and is attached to the subject site. Further north are residential / mixed use developments that have been approved at numbers 17-21 and 5-15 Dunning Avenue.
8. The site is located within the Green Square Urban Renewal precinct and is also located within the Beaconsfield locality. The site is not identified as being subject to flooding.
9. A site visit was carried out on 25 March 2022. Photos of the site and surrounds are provided below.

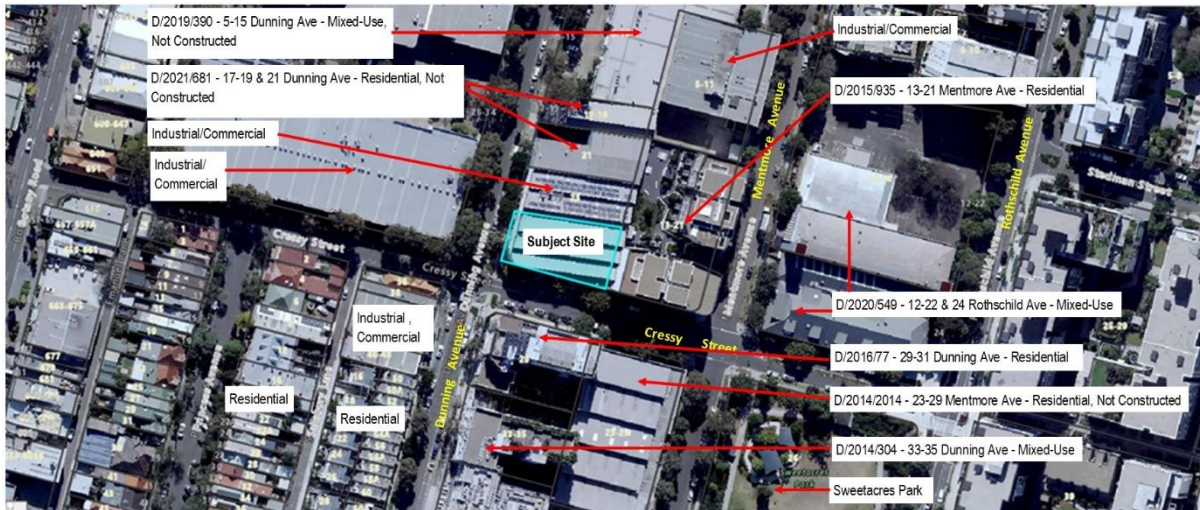


Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from the corner of Dunning Avenue and Cressy Street, looking northeast

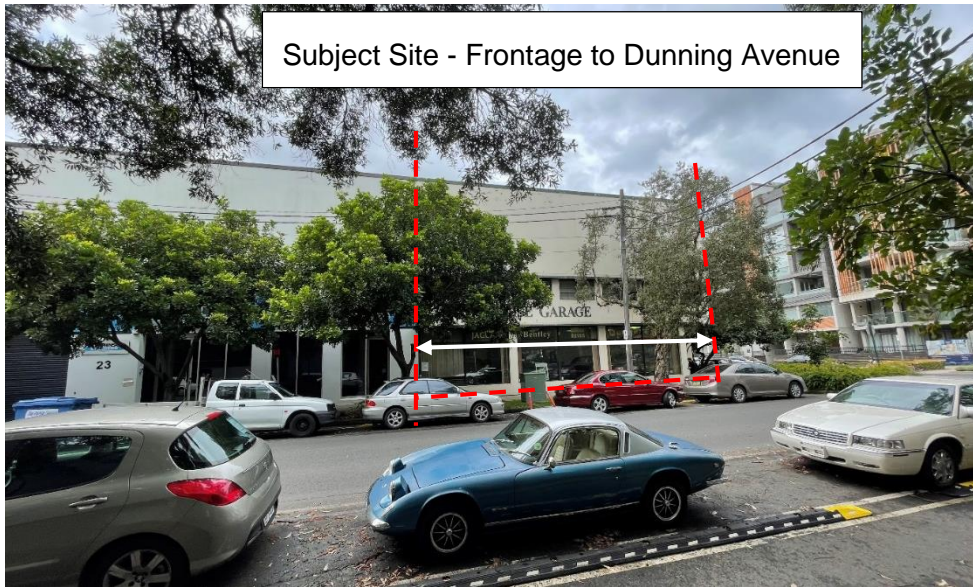
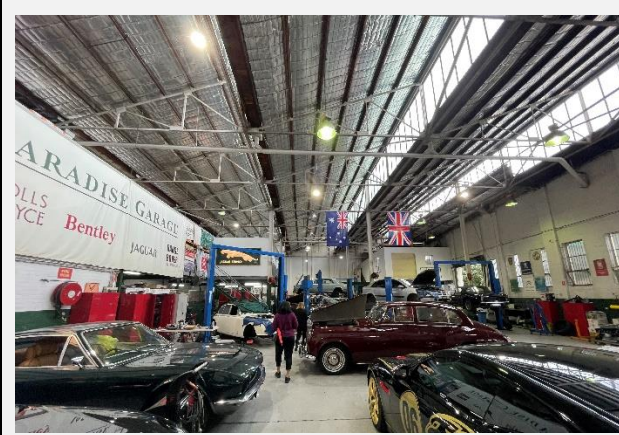


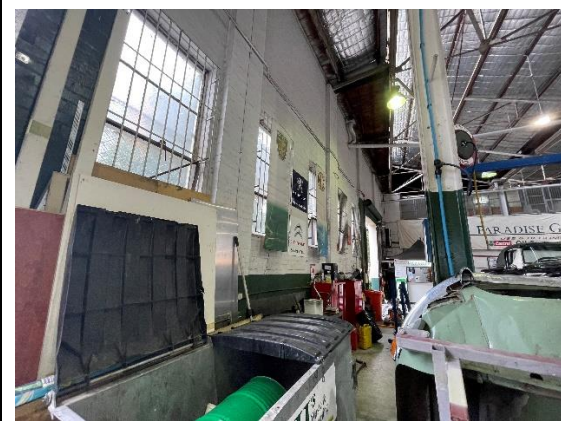
Figure 3: Site viewed from Dunning Avenue, looking east



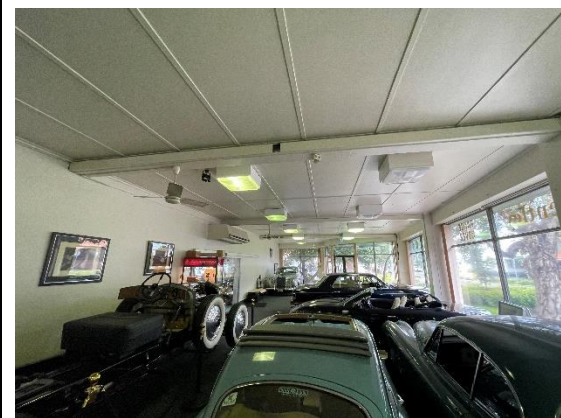
Figure 4: Site viewed from Cressy Street, looking north



Existing interior workshop showing saw-tooth roof proposed to be removed



Existing openings and vertical steel columns which are proposed to be removed and altered.



Ground floor showroom to be removed looking towards the corner entry on Dunning Avenue and Cressy Street.



First floor mezzanine level offices to be demolished.

Figure 5: Interior images of the showroom, workshop and first floor mezzanine level. All items are proposed to be demolished or altered as a result of the proposal.

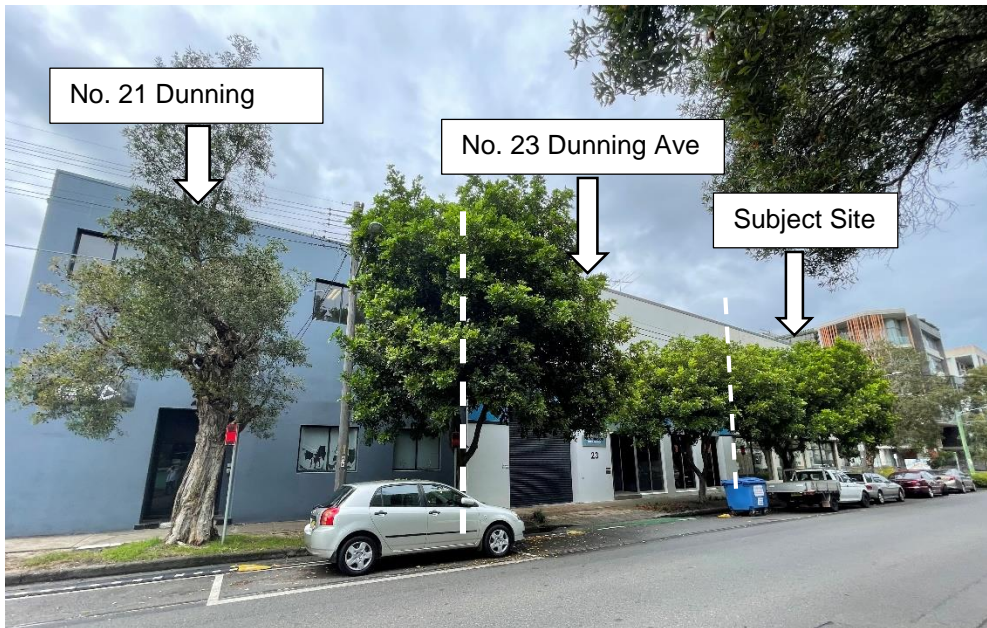


Figure 6: Number 21 and 23 Dunning Avenue frontage to the north of the subject site



Figure 7: Number 29-31 Dunning Avenue, residential development to the south of the subject site



Figure 8: Number 13-21 Mentmore Avenue, residential development to the immediate east of the subject site



Figure 9: Number 13-21 Mentmore Avenue and 23-29 Mentmore Ave, residential developments to the immediate east of the subject site



Figure 10: Low scale terrace style development fronting Dunning Avenue to the south east of the site

History Relevant to the Development Application

Development Applications

10. The following applications are relevant to the current proposal:

- **PDA/2021/63** – Construction of a 5 storey commercial building with at grade parking. Advice was provided to the applicant on 28 April 2022 stating that the proposal was not supported due to exceedance of the with FSR control and detrimental impact to the heritage fabric of the existing 'Paradise Garage', warehouse.

The subject development application was submitted to Council without a reduction in FSR and retaining the proposed building envelope.

Neighbouring Developments

11. The site adjoins numerous developments that include compliance with existing FSR controls and utilise the bonus floor space control of 0.5:1. These include:

5-15 Dunning Avenue, Rosebery

- D/2019/390 (as amended) - Development consent was granted for demolition, remediation, tree removal and construction of 3 x 7 storey residential flat buildings containing 144 apartments, a ground floor cafe and basement parking on 13 February 2020.
- The proposal provides compliant FSR (including floor space bonus associated delivery of community infrastructure) and building height.

17-19 and 21 Dunning Avenue, Rosebery

- D/2021/681 (as amended) - Development consent was granted by the Court for demolition of existing structures and construction of a part 7 and part 5 storey residential flat building with basement parking on 7 January 2022.
 - The proposal provided compliant FSR and building height (including floor space bonus associated delivery of community infrastructure).
 - The existing buildings are not heritage listed.

29-31 Dunning Avenue, Rosebery

- D/2016/77 (as amended) – Development consent was granted as a Deferred Commencement on 17 October 2017 for Demolition, excavation and construction of a 6 storey residential flat building containing 26 dwellings, one level of basement car parking and ground level parking, rooftop private open spaces and associated ground level landscaping. The consent was activated from 20 April 2017.
 - The proposal was approved with a compliant FSR of 2:1 which includes the 0.5:1 community infrastructure additional FSR and momentary contribution which was agreed upon.
 - A variation to the 22m height limit was approved at 23.5m which was a variation of 1.5m (6.8 per cent).

13-21 Mentmore Avenue, Rosebery

- D/2015/935 (as amended) – Development consent was granted by the Court with Deferred Commencement on 5 April 2016 for the demolition of existing buildings on site and the construction of 2 x 6 storey, plus 1 basement level, residential flat buildings comprising 65 apartments with 65 car parking spaces on 5 April 2016. The consent was activated on 15 November 2016
- The development was approved with conditions of consent for design modifications to comply with FSR (condition 12) and building height limit (condition 6a and 9) for the site (including floor space bonus associated delivery of community infrastructure).

Amendments

12. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information was sent to the applicant on 29 April 2022 requesting a survey plan which was not submitted with the initial application.
13. The applicant responded to the request on 3 May 2022 and provided a survey and detailed plans.
14. A letter was sent requesting withdrawal of the application on 18 May 2022. The letter stated that modifications had not been made to the proposal since the pre-DA advice. The proposal was not supportable and required a significant redesign. This would include a reduced envelope that would have a lesser impact on the heritage item through the reduction in FSR.

15. The applicant responded on 30 May 2022 to the withdrawal request and advised they would not be withdrawing the development application.

Proposed Development

16. The application seeks consent for the following:
- Demolition and alteration of the majority of the sawtooth roof, and mezzanine level (with offices). It is noted that no detailed demolition plans were lodged with the application.
 - Insertion of a new first floor contained within the existing building envelope (marked on plans as level 2). A new floor level (marked as level 3 on the plans) will replace the majority of the sawtooth roof.
 - Roof trusses to be retained behind the front parapet within lobby area fronting Dunning Avenue and the new level 4 and 5 to overhang this area. A small number of the roof trusses are to be retained within the north east corner with a void above and overhanging terraces, and to be installed in the new roof above level 5.
 - Some of the metal trusses are to be relocated, however, due to demolition plan and general lack of information on the existing floor plans, it is unclear which trusses are to be retained and which trusses are to be demolished.
 - Conservation works and upgrades to the existing heritage facade including new window and door openings on Cressy Street frontage. The conservation works include the following:
 - restore and adapt the masonry heritage fabric by removing mechanical units and temporary signage;
 - repair the windows, doors, finishes and waterproofing; and
 - restore existing steel structures and sawtooth trusses.
 - Construct a new three storey addition, amenities and services culminating in a five storey commercial building. The development is proposed to contain:
 - **Ground Floor**
 - shared commercial, lobby and retail space area;
 - two lifts, bathrooms facilities, electrical room;
 - the western half of the ground floor contains at grade car parking for 11 vehicles, with one service vehicle space and one accessible space, one motorbike parking area, to be accessed from the existing crossover from Cressy Street;
 - service areas, bin room, pump room, comms room, two fire stairs that accesses all levels; and

- end of journey facilities for 28 bicycles, three shower and change room facilities.

First Floor (LV2 on plans)

- 649sqm of open commercial space;
- bathrooms service facilities;
- void over the north east area of the development; and
- void over the western area fronting Dunning Avenue.

Second Floor (LV3 on plans)

- 443sqm of open commercial space;
- bathrooms service facilities;
- void over the north east area of the development;
- void over the western area fronting Dunning Avenue; and
- outdoor Terrace toward the southern end of the proposal behind the Cressy Street parapet wall within the under-croft space located beneath the overhang of the upper level addition.

Third Floor (LV4 on plans)

- 659sqm of open commercial space;
- bathrooms service facilities; and
- terrace over the north-east void area.

Fourth Floor (LV5 on plans)

- 632sqm of commercial floor space;
 - bathrooms service facilities; and
 - terrace over the north-east void area.
- It is proposed to retain the current pedestrian entrance at ground level and use the western half of the ground floor as a shared commercial lobby and retail space. Two lifts are proposed on the northern side of the building to access upper level commercial floors. Amenities adjoin the lifts.
 - The proposal aims to deliver a 5 star NABERS commercial building - that includes passive design and thermal performance.
 - The new development proposes significant changes to the façade as follows:
 - Cressy Street facade proposes demolition of windows and doors below and replace with new openings.

- New elements include new glazing above door ways, new windows over existing windows, three storey addition and terrace areas to replace saw-tooth roof and new doors and access hatched for the fire exists and services.
 - New vertical aluminium blades are proposed with glazing beyond for the new 3 levels that extrude over the existing warehouse. Refer to plans included below and Attachment A.
17. The application indicates that a public benefit offer is to be completed, in the form of a monetary contribution, to provide for Community Infrastructure in the Green Square Locality, however no formal written public benefit offer has been provided by the applicant.
 18. Council did not pursue the public benefit offer given the proposal fails to satisfy a key objective 6.14(1)(b) of SLEP 2012, which is to "ensure that such greater densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on the amenity of those localities".
 19. Having considered the matters under Clause 6.14(3) of SLEP 2012, the consent authority cannot be satisfied the development is consistent with objective 6.14(1)(b). In failing to satisfy the objective of the clause, the monetary offer is not accepted, and the land is not eligible for the 0.5:1 additional floor space in accordance with Clause 6.14(4) of SLEP2012. A Voluntary Planning Agreement (VPA) has not been drafted.
 20. A set of architectural drawings is provided at Attachment A. An extract from the architectural package is provided below.

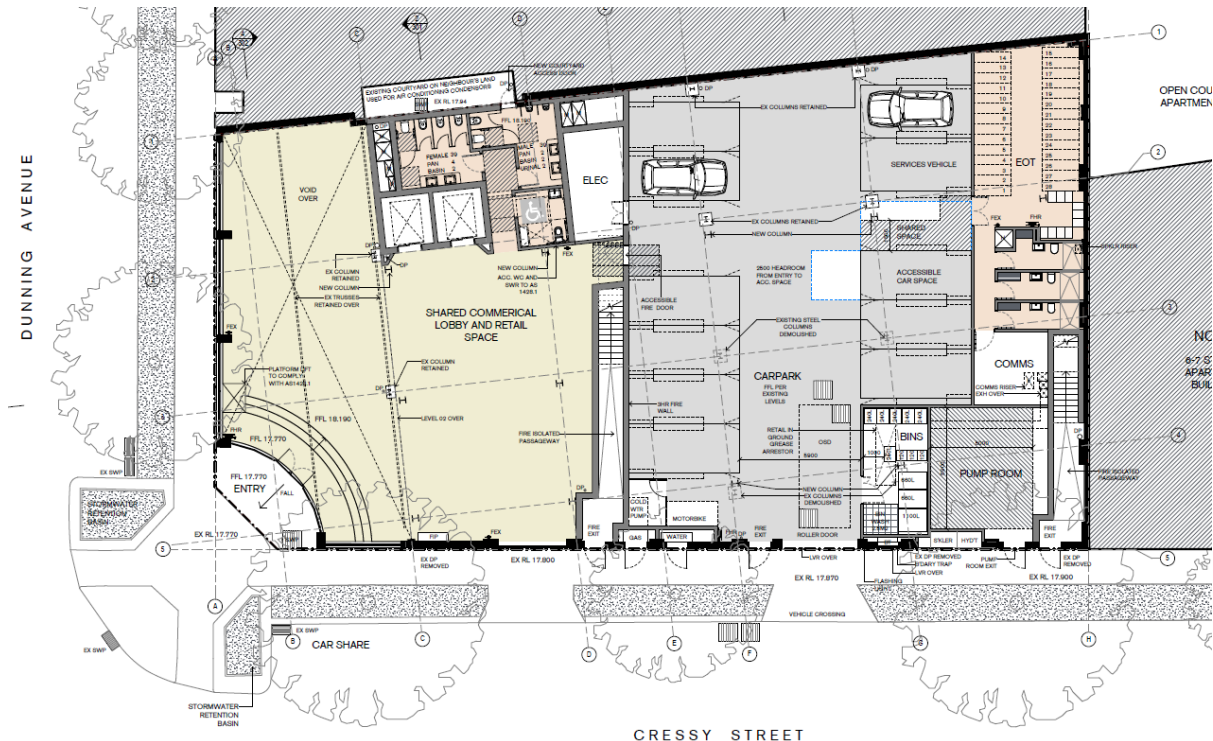


Figure 11: Proposed ground floor plan

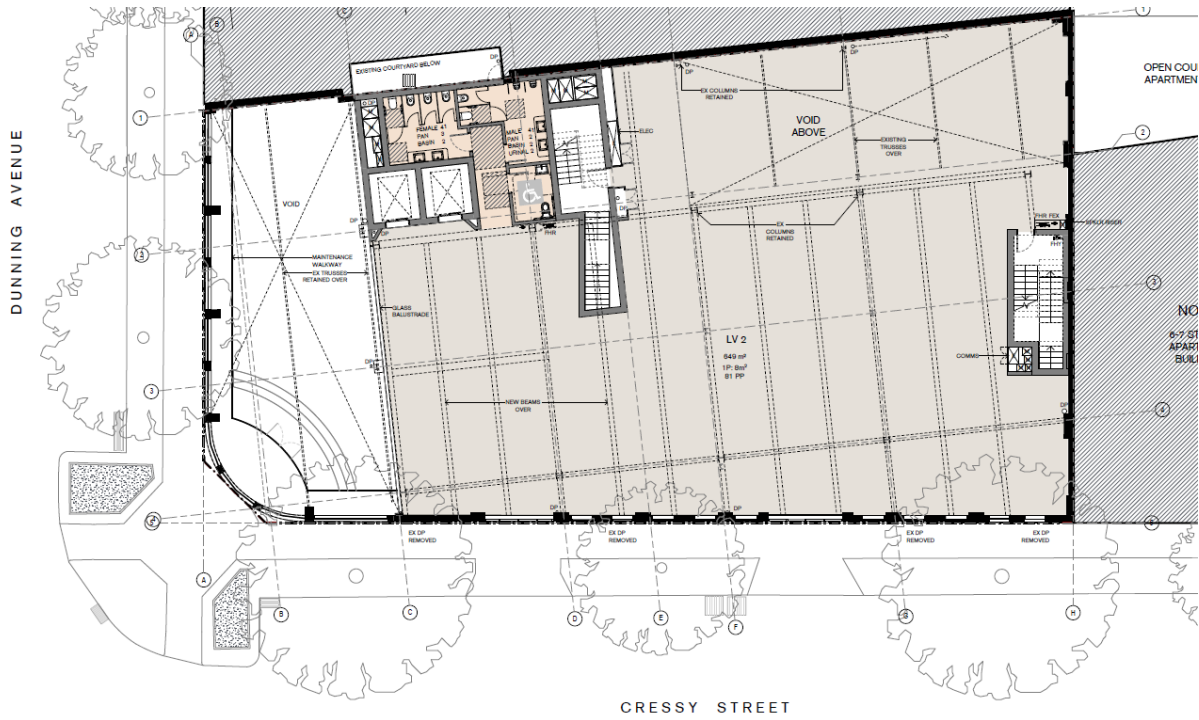


Figure 12: Proposed first floor plan

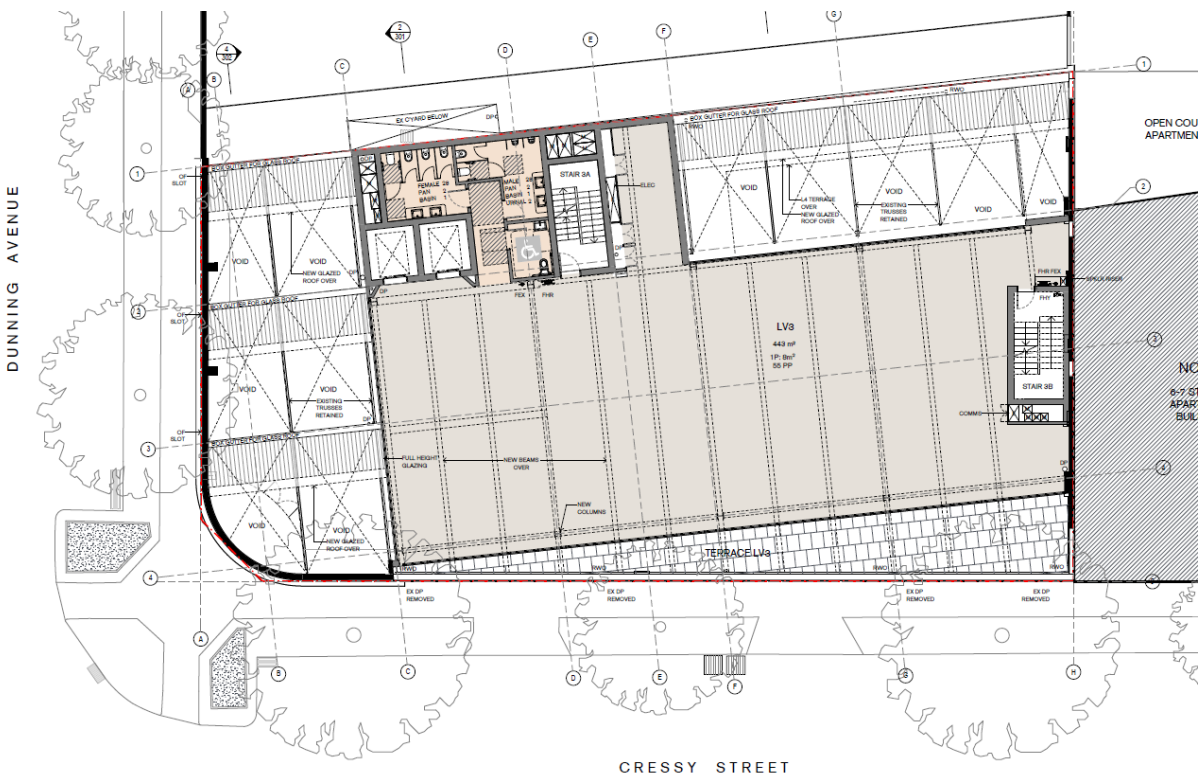


Figure 13: Proposed second floor plan

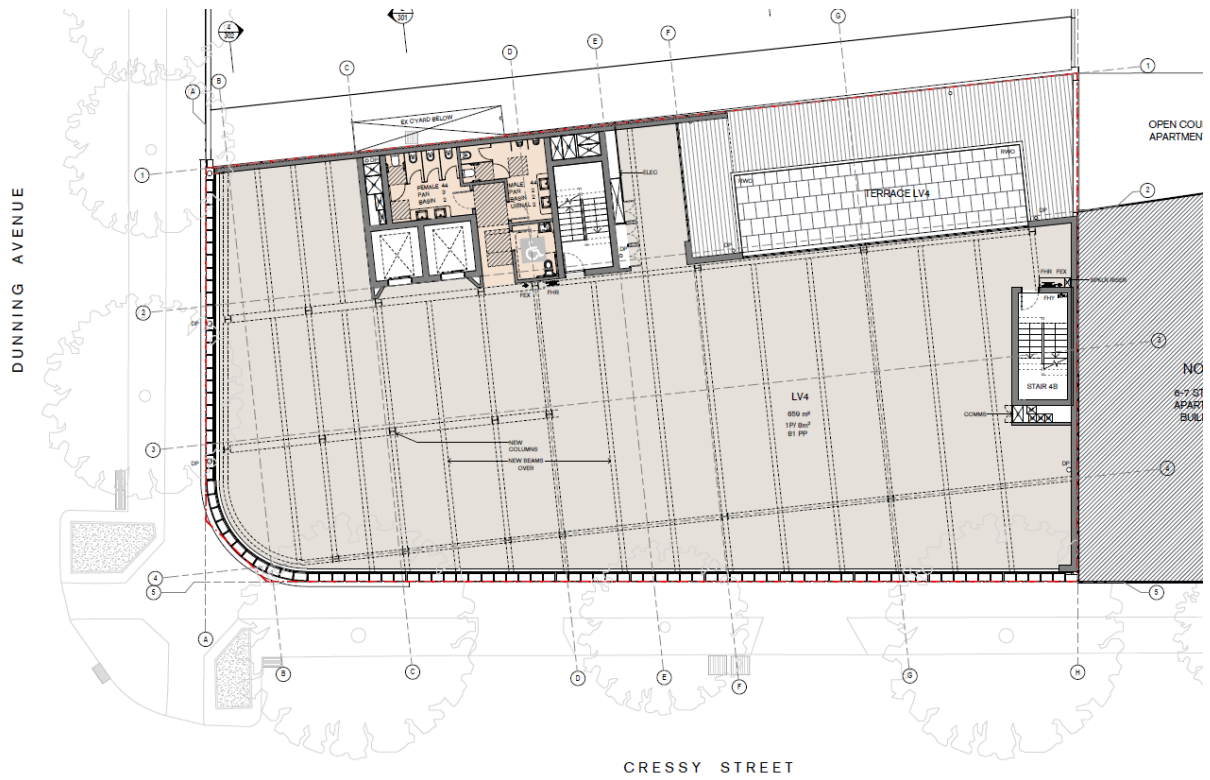


Figure 14: Proposed third floor plan

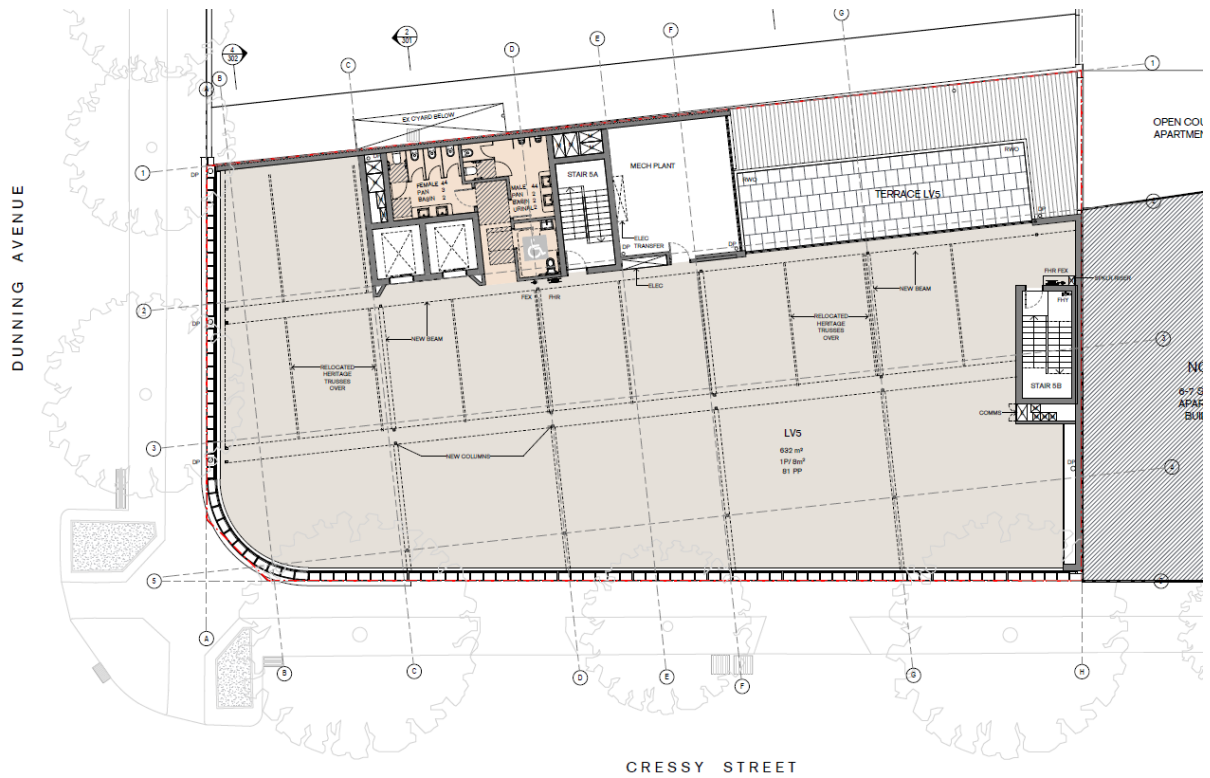


Figure 15: Proposed fourth floor plan

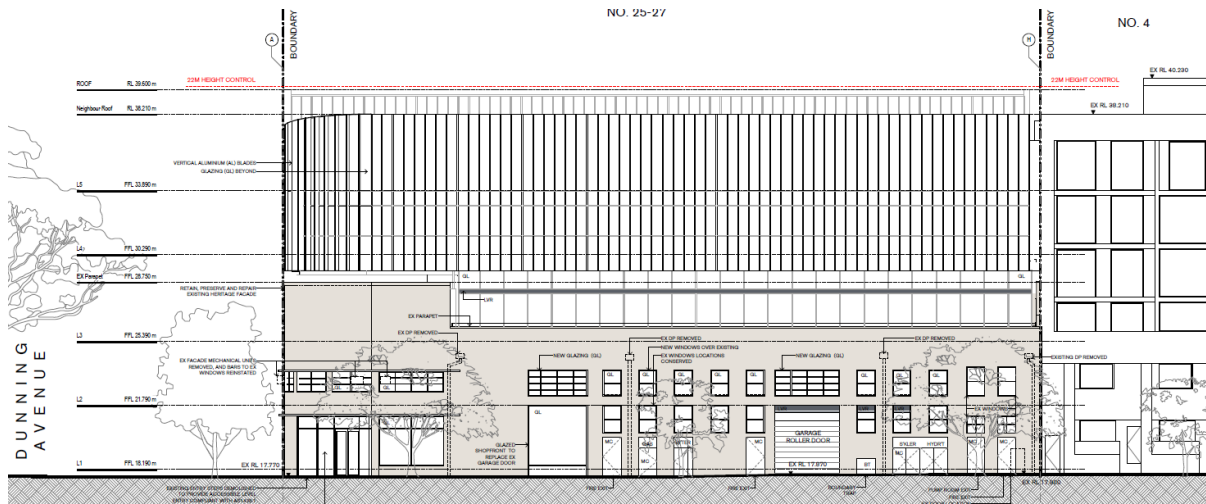


Figure 16: Proposed South Elevation (Cressy Street)

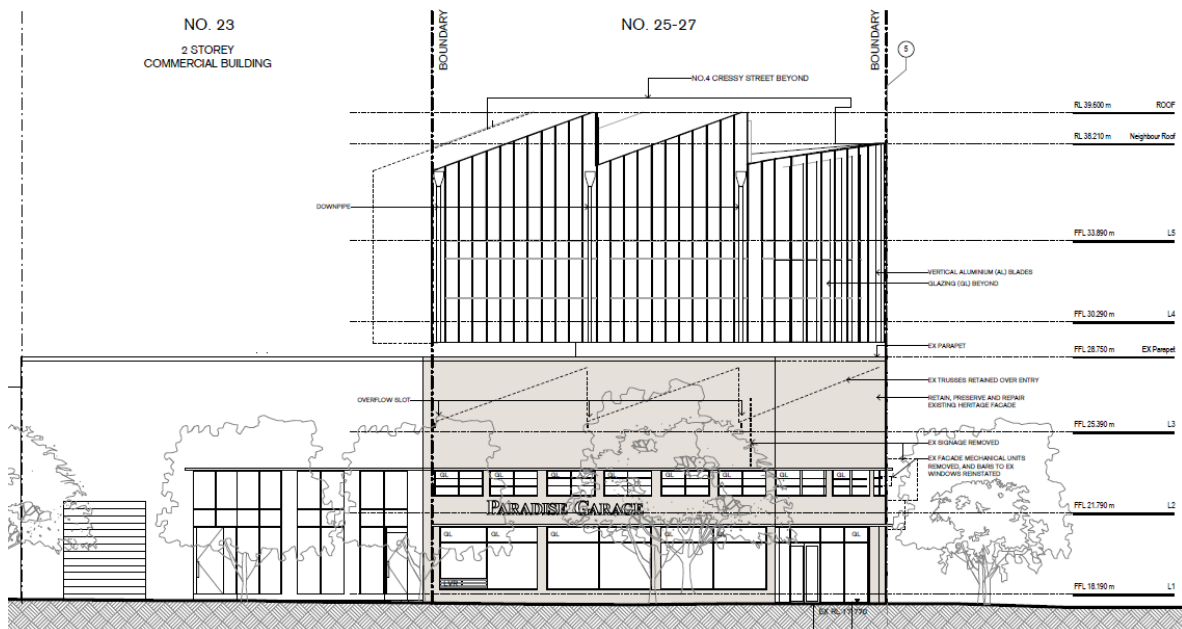


Figure 17: Proposed West Elevation (Dunning Avenue)

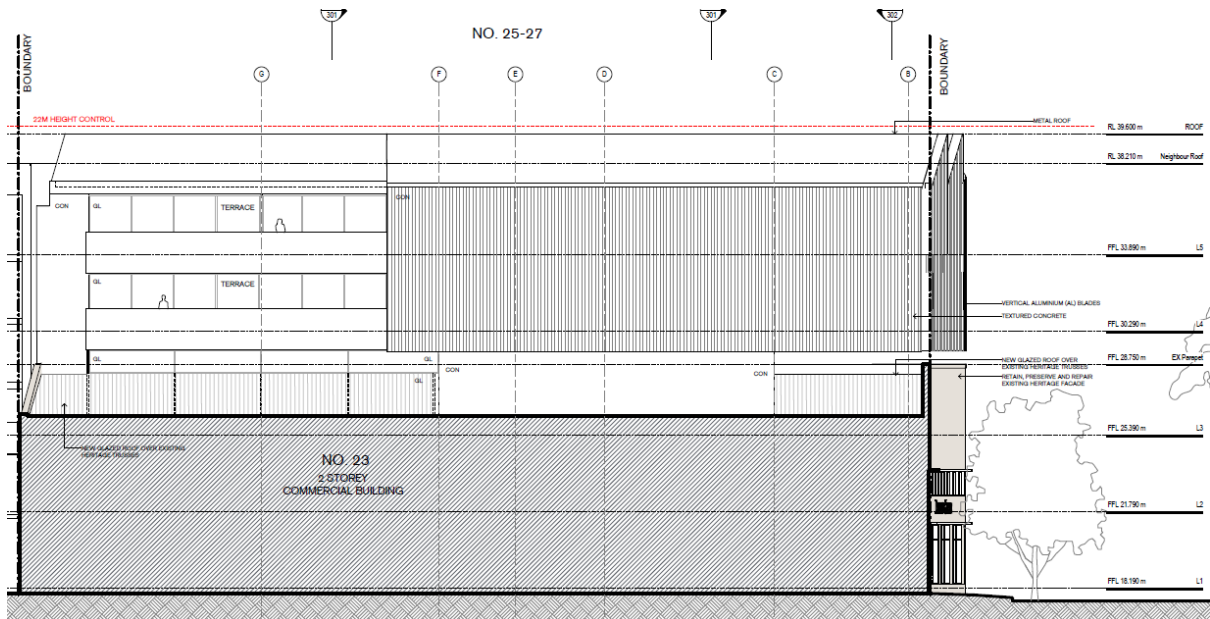


Figure 18: Proposed North Elevation

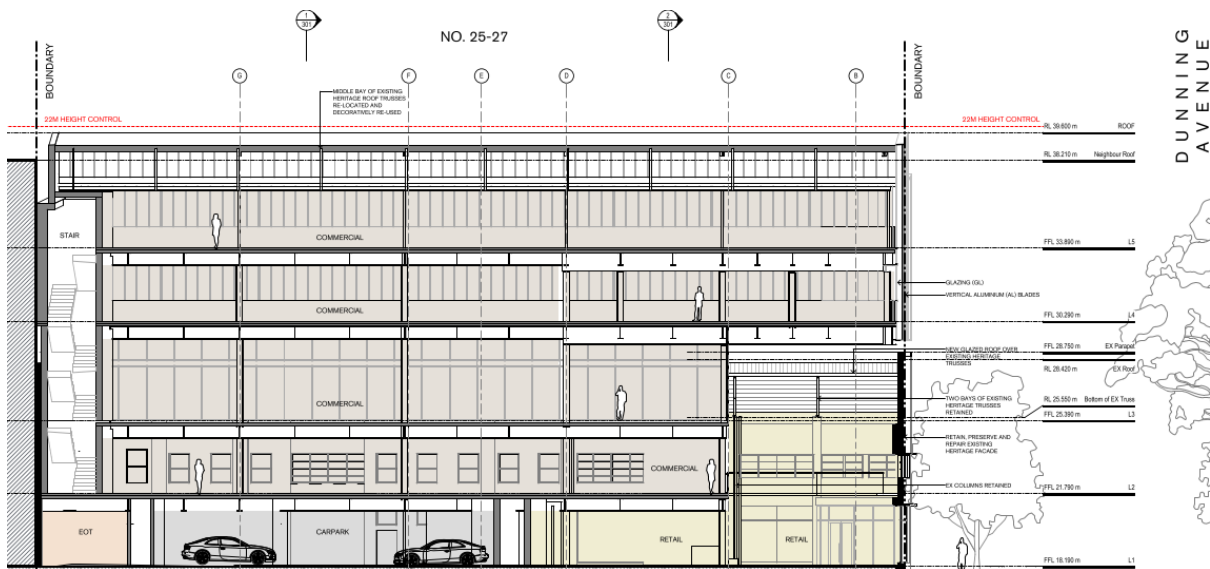


Figure 19: Proposed Section Plan 1 looking from north to south through the building

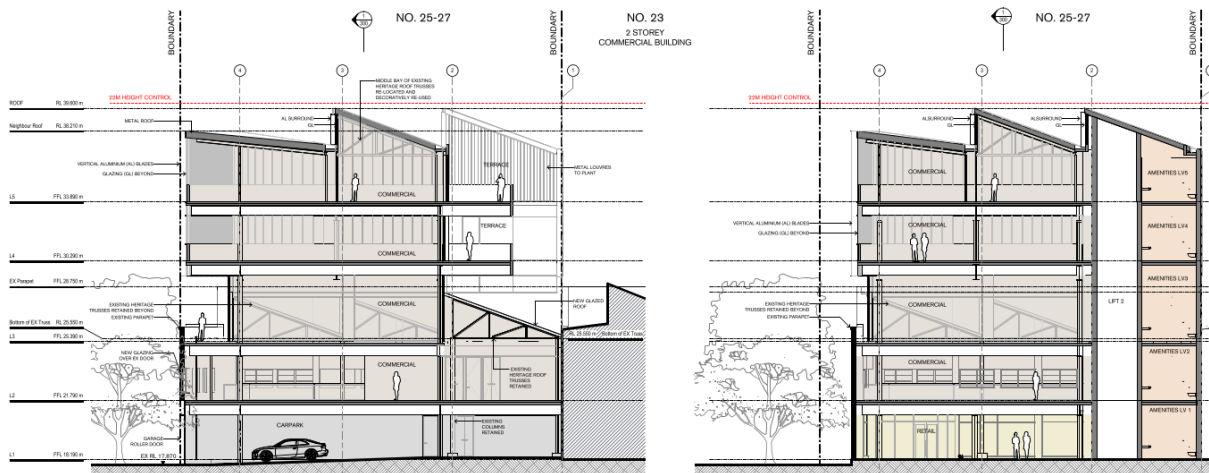


Figure 20: Proposed Section Plan 2 and 3 looking west through the building

Assessment

21. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

State Environmental Planning Policies

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land

22. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
23. The proposal has been reviewed by Council's Health and Building specialists with regard for the provisions of the Chapter 4 — Remediation of Land. The documents lodged with the application are unsatisfactory.
24. Site investigations have identified the following contaminants present on the site:
- motor vehicle related contaminates such as metals, Polycyclic Aromatic, Hydrocarbons (PAHs), total Recoverable Hydrocarbons (TRH), Benzene, Toluene, Ethylbenzene, Xylene and Naphthalene (BTEXN), and Volatile Organic Compounds (VOCs); and
 - lead and asbestos.
25. A Phase 1 contamination assessment report was provided, and the report recommended a Phase 2 and Remediation Action Plan (RAP) to be prepared. The applicant has not provided a Phase 2 report or a RAP with the application.

26. In conjunction with Chapter 4, Clause 4.6 Contamination and remediation to be considered in determining development applications; the consent authority must be satisfied that land can be made suitable for the purpose of which that land can be carried out.
27. In the absence of a Phase 2 report or A Remediation Action Plan (RAP) insufficient information has been provided for the consent authority to be satisfied that the site can be made suitable for the development.

Local Environmental Plans

Sydney Local Environmental Plan 2012

28. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 1 Preliminary

Provision	Compliance	Comment
1.2 Aims of the Plan	No	As a result of excessive exceedance of the FSR leading to bulk and scale issues and significant alterations to the heritage fabric of the existing building, the development fails to satisfy the aims of SLEP 2012 at 1.2(h), 1.2(j) and 1.2(k), to enhance the amenity and quality of life of local communities, to achieve a high-quality urban form by ensuring that new development exhibits design excellence and reflects the existing or desired future character of particular localities, provide a high quality urban form and to conserve the environmental heritage of the City of Sydney.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the B4 Mixed Use zone. The proposed development is defined as commercial premises and is permissible with consent in the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	<p>A maximum building height of 22m is permitted.</p> <p>A height of 21.75m (max.) is proposed.</p> <p>The proposed development complies with the maximum height of buildings development standard.</p>
4.4 Floor space ratio	No	<p>A maximum floor space ratio of 1.5:1 or 1,434.15sqm is permitted.</p> <p>In accordance with Clause 6.14 of SLEP2012, an additional FSR provision of 0.5:1 is available to allow for the provision for Green Square community infrastructure increasing the maximum FSR for the site to 2:1.</p> <p>The site is also eligible for end of journey floor space of up to 0.3:1.</p> <p>A total of 73sqm is proposed as end of trip facilities consisting of lockers and changes rooms with showers, which equates to a FSR of 0.076:1.</p> <p>A floor space ratio of 3.1:1 or 2,966sqm is proposed.</p> <p>The proposed development does not comply with the maximum floor space ratio development standard.</p> <p>A request to vary the floor space ratio development standard in accordance with Clause 4.6 was not formerly made in writing by the applicant but was indicated in the Clause 4.6 variation request. Council did not pursue the public benefit offer. See further details in the 'Discussion' section below.</p>

Provision	Compliance	Comment
4.6 Exceptions to development standards	No	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.4. A written statement addressing the provisions of Clause 4.6 of SLEP 2012 fails to recognise the extent of the variation to the FSR standard and does not meet the requirements of the clause.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	No	<p>The site is a local heritage item warehouse 'Paradise Garage' I1376.</p> <p>The proposed development will have a detrimental impact on the significance of the heritage item.</p> <p>See further details in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 2 Additional floor space outside Central Sydney		
6.13 End of journey floor space	Yes	<p>The proposed development is eligible for end of journey additional floor space of up to 0.3:1 for showers, change rooms, lockers and bicycle storage areas.</p> <p>A total of 73sqm which equates to a FSR of 0.076:1 is proposed as end of trip facilities consisting of lockers and change rooms with showers. The additional end of journey FSR will result in a FSR of 1.576:1. Refer to 'Discussion' section below for details.</p>
6.14 Community infrastructure floor space at Green Square	No	<p>Planning controls allow access to an additional FSR of 0.5:1. The proposal does not meet the objectives of this control.</p>

Provision	Compliance	Comment
		An official public benefit offer for a monetary contribution was not submitted in accordance with Clause 6.14 of SLEP 2012. Refer to 'Discussion' section below for further details.
Division 4 Design excellence		
6.21 Design excellence	No	The proposed scheme fails to deliver the highest standard of architectural, urban and landscape design and has a detrimental impact on an existing heritage item. Consequently, the proposal fails to satisfy design excellence provisions and is recommended for refusal. See further details in the 'Discussion' section below.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.6 Office premises and business premises	Yes	A maximum of 17 car parking spaces are permitted. The proposed development includes 11 car parking spaces and complies with the relevant development standards.
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes	The site is located within the Green Square affordable housing contribution area. In the event the proposal was supported, it would be subject to a Section 7.13 contribution.

Provision	Compliance	Comment
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.
7.23 Retail development outside of Green Square Town Centre and other planner centres	Yes	The application does not propose greater than 1000sqm of floor area for the purpose of shops or markets.
7.25 Sustainable transport of southern employment land	Yes	The development does propose parking for 11 car spaces on site with a maximum of 17 required. The proposal will rely on nearby transport modes including buses and railway services which promotes sustainable transport options.

Development Control Plans

Sydney Development Control Plan 2012

29. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

30. The site is located within the Beaconsfield locality. The proposed development is not in keeping with the unique character and the design principles of the Beaconsfield locality as it does not respond to or complement the heritage item in which the development is proposed.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Partial compliance	No arborist advice has been submitted to detail the impact on street trees by the development and associated scaffolding. If the application were recommended for approval a public domain plan would be requested through conditions of consent.

Provision	Compliance	Comment
3.4 Hierarchy of Centres, City South	Yes	As stated under the LEP provisions the ground floor retail space is less than 1000sqm and complies with the retail area restriction within green square.
3.5 Urban Ecology	No	Given the existing building footprint no vegetation is to be removed from the site. However, as discussed in this report, no landscape plan has been submitted to take advantage of greening opportunities within the built form. In addition, the full impact of construction on existing street trees has not been detailed. No Landscape Plan was submitted with the application.
3.6 Ecologically Sustainable Development	Yes	The proposal was submitted with a NCC Section J report and does satisfy environmental requirements. A 5-star NABERs rating is proposed and has been the application was referred to Council's Environmental Projects Team and the development can meet the 5 star rating.
3.7 Water and Flood Management	Yes	The site is not identified as being on flood prone land.
3.9 Heritage	No	The site is a local heritage item I1376 "Paradise Garage" warehouse. The proposal does not comply with the relevant provisions. Refer to 'Discussion' section below.
3.10 Significant Architectural Building Types	No	The site contains a warehouse that is older than 50 years. The building was constructed circa 1950. Refer to heritage discussion below for further details.
3.11 Transport and Parking	Partial compliance	A traffic impact assessment report was submitted with the application. A total of 10 car spaces, 1 service vehicle space, a motorbike space and 28 bicycle parking spaces are proposed and fall within the requirements of the controls.

Provision	Compliance	Comment
		Despite the parking being below the maximum and bicycle parking being proposed, Council's Traffic Engineer advised that vehicle movements require further assessment in particular the allowance for larger vehicles such as B99 which is a vehicle that is a minimum 5.2m long, 1.94m wide and 1.878m wide to move within the proposed parking area. Therefore, the traffic report is considered insufficient.
3.12 Accessible Design	No	Accessible design matters have not addressed by the proposal.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles. However, the number of new openings within the building facade has a detrimental impact on the heritage item.
3.14 Waste	No	A waste management plan has been provided with the application but is not considered adequate as advised by Council's Waste Management officer. Further details regarding storage and collection are required, and additional information is to be provided on floor plans for waste area on each level.

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Yes	The site is permitted a maximum building height of 6 storeys with no maximum street frontage height control. The proposed development is 5 storeys in height.

Provision	Compliance	Comment
4.2.1.2 Floor to ceiling heights and floor to floor heights	No	The proposed development does not achieve the minimum floor to floor heights. It is preferred that the existing ground floor head height is retained through the building. The existing ceiling height is 3.75m and the proposed new ceiling in the proposal for the ground floor to first floor is being reduced to approximately 3.6m. Refer to the heritage discussion within this report.
4.2.2 Building setbacks	Partial compliance	Setbacks are generally consistent with the existing development patterns. No ground floor setback is required given the need to retain the existing heritage footprint. It is considered the new floors dominate the building and detract from its heritage significance and appearance within the streetscape.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	<p>The development will contribute to increased overshadowing to the property to the south No. 29-31 Dunning Avenue. Predominantly, ground floor apartments will see a reduction in solar access to bedrooms positioned facing Cressy Street on the ground floor. However, living areas are located on the first and second floors of the building and will still receive at least 2 hours of solar access.</p> <p>Some of the ground floor apartments have private open space located facing Cressy Street and these will be impacted by the development and apartments toward the north-east corner of 29-31 Dunning Avenue will not receive 2 hours of solar access to at least 50 per cent of the private open space.</p>
4.2.3.11 Acoustic privacy	No	No acoustic report was provided with the application. Internal noise management and external noise impacts have not been demonstrated.

Provision	Compliance	Comment
4.2.6 Waste and recycling Management	No	The waste management proposed by the application is not considered adequate. Council's Waste Management Officer has requested further details. Refer to 'Discussion' section below.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Partial compliance	The inclusion of new window openings is a concern in regard to the retention of heritage fabric and alterations are being made to the existing warehouse with little regard to the elements such as the windows, doors, saw-tooth roof, internal steel trusses and overall appearance of the building.

Section 5 – Specific Areas

Provision	Compliance	Comment
5.2 Green Square	No	The proposal provides a commercial building that significantly alters the heritage character of the existing warehouse. The proposal fails to comply with Green Square controls and fails to complement the desired future character of the neighbourhood and fails to respond appropriately to a heritage building. Refer to heritage and 4.6 variation 'Discussion' below for further details.
5.2.3 Community infrastructure	No	An official public benefit offer was not submitted to enable a monetary contribution towards community infrastructure within the Green Square locality, but was rather indicated in the Clause 4.6 variation request . In this regard, Council did not pursue a public benefit offer as the results in poor design outcomes which is largely a consequence of significant exceedance of the FSR and insufficient retention of the heritage item.

Provision	Compliance	Comment
		<p>The proposal fails to satisfy provision 6.14 of SLEP 2012 and provision 5.2.3(1) of SDCP 2012, which specifies that consent may be granted for development up to the maximum gross floor area achievable under Clause 6.14 of Sydney LEP 2012, but only if the development contributes to the desired character of the locality in which it is located and has little or no impacts on the amenity of that locality.</p> <p>See discussion below in the Issues section.</p>

Discussion

Heritage

31. The existing building is a local heritage listed item I1376 "Paradise Garage' Warehouse. The warehouse is described as a two storey, Post-War Functionalist warehouse with streamlined rendered facade, horizontal steel windows at first floor level and high parapet wall partially concealing a saw-tooth roof. The building includes a prominent curved corner entry with original details and materials intact.



Figure 21: Aerial of view of site circa 1950 showing the saw-tooth roof and completed warehouse

32. The proposal was accompanied by a Statement of Heritage Impact (SoHI) and Conservation Management Plan (CMP) completed by GBA Heritage.

- 33. The development proposes demolition of the majority of the sawtooth roof, demolition of the existing first floor and offices, alteration to the facade by removing original windows and doors and proposing new windows and doors, removal of the most of the internal steel trusses and construction of a new first floor within the existing warehouse envelope.
- 34. New elements include new glazing above door ways, new windows over existing windows, new cantilevered terrace to replace saw-tooth roof and new doors and access hatched for the fire exists and services (See Figure 22 below).

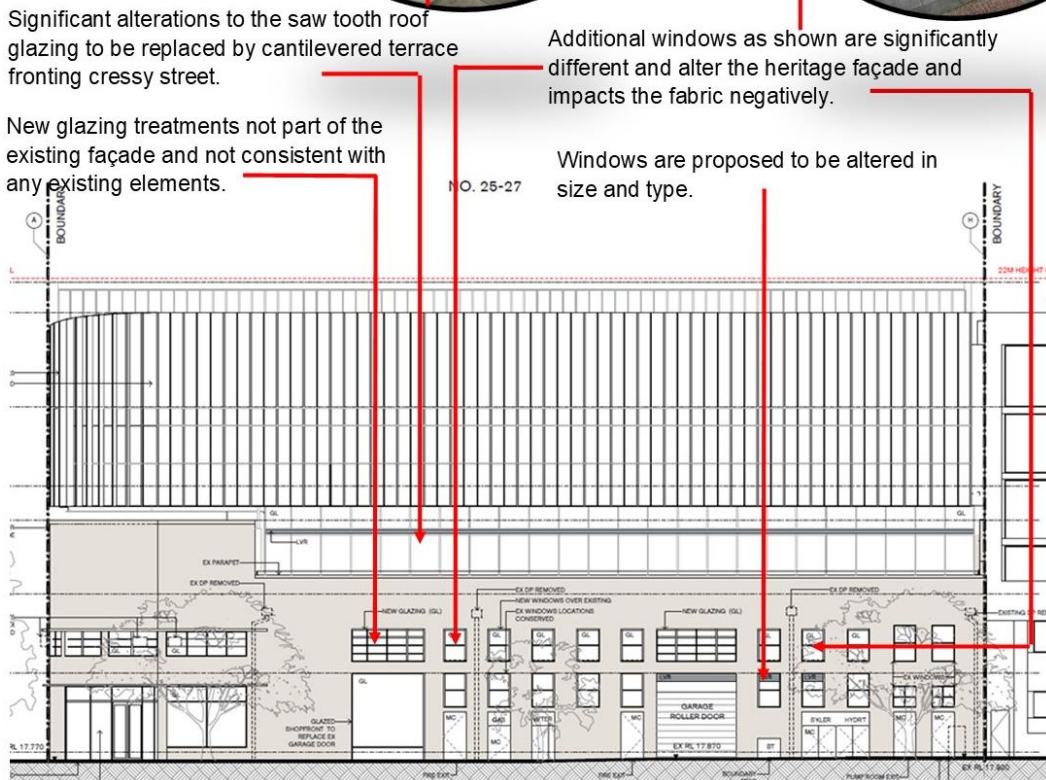


Figure 22: Cressy Street frontage amendments

35. The removal of openings is not supported as they are significant fabric. The insertion of new windows alters the heritage significance and architectural language of the post war building. The creation of new lower level first floor requires the alteration of windows, incorporates new openings for the first floor and removes almost all of the internal steel trusses. Such significant alterations substantially and unreasonably diminish the heritage significance of the building.
36. The statement of heritage impact submitted with the application acknowledges that the proposal is not in line with a “traditional heritage approach” but seeks to justify and support the proposal as it maintains most of the existing warehouse. The statement justifies the current proposal based on an “established trend in the locality”, with adaptive re-use of similar warehouses. However, this assertion is not substantiated by referring to any such examples.
37. The statement seeks to support the deconstruction of the heritage roof structure to relocate it elsewhere on the site. However, the statement does not make it clear how this will be achieved. The statement does not make any distinction between whether the heritage roof structure is to be ‘conserved and retained in original condition and location’ or if the roof structure is to be ‘conserved and retained elsewhere on site’. In this regard the statement does not give adequate consideration to the impact on physical integrity and intactness of the roof structure.
38. The statement also makes no assessment against the relevant SDCP 2012 heritage provisions where the provisions do not support the proposal. This is detailed below:
 - (a) 3.9.5(2) provides that development should enhance the heritage item by removing unsympathetic alterations and additions and reinstating missing details, building and landscape elements, where physical or documentary evidence is available.

In this regard the existing warehouse does not have any unsympathetic alterations or any missing elements to be reinstated. However, the development proposes to significantly alter physical elements which are integral to the buildings's heritage significance such as the demolition of the saw-tooth roof, trusses, steel columns, windows and doors.

- (b) 3.9.14(1) - indicates that development to a heritage item or within a heritage conservation area or special character area is to be consistent with the guidelines contained within the Heritage Inventory Assessment Report. The key guidance within the current HIR is that there should be no vertical additions and no alterations to the facade other than restoring lost elements.

The proposal does not provide a detailed assessment against the inventory guidelines.

The recommendations in the applicant's report do not include discussions around vertical additions that are prominent and visible. In addition, the proposal does not address the need to retain the facade without new intrusions and proposes significant alterations to the interior elements of the warehouse,

- (c) Section 3.10.1 details provisions for the preservation of warehouses and industrial buildings older than 50 years which is to encourage the conservation of the existing fabric and ensure alterations and additions that are sympathetic in scale and style to the existing building.
- The proposed demolition, external alteration and vertical addition, are inconsistent with a majority of the provisions in this section.
 - The SoHI fails to provide an assessment against relevant provisions stated below:
 - A proposed increase in floor space outside the existing building envelope is not permitted where it would compromise the significant fabric and building elements.
 - The provision of car parking within the existing building is not an acceptable justification for creating additional storeys above the height of the existing roof.
 - Additional storeys or roof additions must not result in the removal of the original roof structure where that roof is an essential component of the original building form.
 - The original or significant pattern of windows and openings is to be retained.
 - All original window frames, sashes and lights are to be retained on prominent elevations and on secondary elevations were considered critical to the significance of the building.
- (d) In addition to the above the proposal is considered inconsistent with the Burra Charter and its principles.

Floor Space Ratio (FSR)

39. The site is subject to a FSR control of 1.5:1. Based on the site area of 956.10sqm, the site has a permissible gross floor area of 1,434.15sqm or 1.5:1.
40. In addition, the site has a potential community infrastructure bonus of 0.5:1 in the Green Square locality. In this instance the 0.5:1 bonus for community infrastructure is not supported. Refer below.
41. The site is also eligible for a FSR bonus of up to 0.3:1 which equates to 286.83sqm for End of Journey facilities. The applicant has requested 0.076:1 or 73sqm for end of journey facilities to be included in the development which equates to a allowable FSR of 1.576:1 (1,507sqm).
42. The proposed development has a gross floor area of 2,966sqm. The FSR equates to 3.1:1, which constitutes a 97 per cent variation to the floor space ratio with the inclusion of end of journey facilities.

43. The exceedance of the FSR control is not supported, particularly where this results in a development that provides poor design outcomes and dominates the heritage item. Accordingly, the proposal is not in keeping with the desired future character of the area. Addressing issues of heritage significance, overall bulk and scale of the proposal and to a lesser degree the view loss, will likely result in a substantial decrease in floor space. Furthermore, the applicant does not address the FSR and how it complements the heritage building, but rather focuses on the economic feasibility of the development.

Clause 6.14: Community Infrastructure

In accordance with Clause 6.14 of SLEP 2012, the proposed development is eligible for a FSR bonus of 0.5:1 to provide for infrastructure within the Green Square locality. The proposal does not provide any infrastructure on the site and the proposed public benefit offer is a monetary contribution. In failing to satisfy the objective of clause 6.14, the land is not eligible for an amount of additional floor space in accordance with Clause 6.14(4) of SLEP 2012 and Council as the consent authority did not pursue a public benefit offer. Consequently, the FSR must be considered without the bonus GFA for community infrastructure but including the end of journey bonus resulting in a 97 per cent variation and the application cannot be supported.

44. The FSR bonus is contingent on the consent authority being satisfied the development is consistent with the key objectives. In particular, objective 6.14(1)(b), requires development to reflect the desired character of the locality and that minimise adverse impacts on the amenity of the locality. In this regard, the proposal fails to achieve this objective by providing a design that damages and alters a heritage item and provides an inappropriate bulk and scale within its setting.
45. Furthermore, the guidelines for community infrastructure under schedule 10 of the SDCP 2012 states that the development must be acceptable in terms of environmental capacity and compliance with development controls, must contribute to the desired character of its locality, and must have little or no impact on the amenity of the locality. As noted in this report, Council is not satisfied that the development will contribute to the locality or the desired future character as it proposes significant exceedance to the FSR above the bonus allowed by the control and as a result is resulting in detrimental impact to the heritage listed item. Therefore, it is not considered part of the future desired character and is not supported.

Clause 4.6 Request to Vary a Development Standard - Floor Space Ratio (FSR)

46. Clause 4.4 of SLEP2012 allows for a maximum floor space ratio for the site of 1.5:1. The applicant has offered to enter into a Planning Agreement to provide for Green Square community infrastructure. In accordance with Clause 6.14 of SLEP 2012. The contribution (if it were to be accepted) allows for an additional FSR provision of 0.5:1 and a total FSR of 2.0:1 (GFA: 1,912.20sqm). As discussed above, the FSR bonus for providing community infrastructure is not available for this proposal.
47. The site is also subject to a FSR bonus of up to 0.3:1 which equates to 286.83sqm for End of Journey facilities. The applicant has requested 0.076:1 or 73sqm for end of journey facilities to be included in the development as discussed in their FSR calculations. The end of journey facilities bonus has been included in calculations as noted in FSR section above.

48. The provision for end of journey floor space under clause 6.13 of the Sydney LEP 2012 the application requests 73sqm which equates to a FSR of 0.076:1. The purpose of the provision is to provide facilities to commercial buildings such as showers, changing rooms, lockers and bicycle facilities. The application proposes bicycle facilities with changing rooms and lockers located in the north-east corner of the building.
49. When including both the community infrastructure bonus and end of journey FSR, the proposal has approximately 2,966sqm of GFA, resulting in a floor space ratio of 3.1:1. The proposal exceeds the 1.5:1 base FSR by 1.6:1 or 107 per cent. When the end of journey facilities bonus FSR is included in calculations, the FSR exceedance is reduced to 1.576:1 which results in an exceedance of 1.524:1 or 97 per cent. Should Council have accepted the additional community infrastructure bonus, the proposal would still result in a proposal that exceeds the permissible FSR standard by 49 per cent.
50. A written request to vary the floor space ratio development standard in accordance with Clause 4.6 was submitted with the proposal. The request identifies a non-compliance of 107 per cent but does not factor in Council accepting the end of journey facilities only and justifies the extent of the non-compliance based on the development being non-feasible without it.
51. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking 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;
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard
- The proposed development will be consistent with the objectives of the zone; and
- (c) The proposed development will be consistent with the objectives of the standard.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

52. The applicant seeks to justify the contravention of the floor space ratio development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) the proposed works represent a desirable and appropriate form of development on the subject site;
 - (ii) the bulk and scale of the development is compatible with surrounding existing development and is consistent with the desired future character of the area;
 - (iii) the proposal satisfies the objectives of the FSR standard; and
 - (iv) the proposal satisfies the objectives of the mixed use zone.

(b) That there are sufficient environmental planning grounds to justify contravening the standard:

(i) The built form is consistent with the desired future character of the locality as the buildings complies with the maximum 22m building height that applies to the site in addition to complaint setbacks and building height in storeys as prescribed under the SDCP.

(ii) The FSR standard is not calibrated to commercial buildings.

Commercial buildings have different physical characteristics compared to residential flat buildings and shop top housing. Due to 25 per cent communal open space requirements and minimum separation distances to provide adequate privacy between habitable rooms and balconies, residential flat buildings and shop top housing requires more land to achieve adequate amenity.

(iii) The existing heritage listed building occupies the whole site.

The site coverage of the proposal is determined by the existing heritage listed building, which occupies the whole site. The 'new floors' (levels 4 and 5) are setback from the rear and the eastern boundaries to ensure an appropriate relationship with the adjoining development and provide amenity for the commercial office floors.

(iv) The variation facilitates employment development which will help satisfy identified needs in the region.

The background report accompanying the Employment Lands Study identified that by 2030 the Green Square locality is expected to attract about 22,000 workers. The variation of the FSR standard facilitates an economically feasible development of the land and adaptive reuse of the heritage fabric that will provide employment floor space in an appropriate location nearby to public transport, services and housing. An entirely commercial development of the site is desirable as it will provide local employment opportunities reduce travel demand and support local economic activity.

(v) The variation facilitates the provision of flexible commercial floorplates suited to a wider range of enterprises.

The proposal includes commercial floorplates ranging in size from 443sqm to 659sqm. Larger commercial floorplates suit a wider range of enterprises. As a result of Covid 19, enterprises are also seeking greater space allocations per employee. An arbitrary reduction in the size of floorplates for the sake of numerical compliance only would reduce the commercial attractiveness of the building, whereas the variation promotes the orderly and economic use and development of the land.

- (vi) The variation facilitates the conservation of the heritage significance of the building.

The adaptive reuse of the building for commercial purposes promotes the conservation of the building. It is both a highly suitable use because the large open floorplates and central services minimise disturbance of the heritage fabric, and provided it is economically feasible, it ensures the long-term conservation of the fabric. From a heritage perspective, there are significant costs associated with conserving the heritage item and funding the upgrades required to the building. Development options which involve reduced floor space, such as only one additional level within the existing facade, are not financially viable. As observed by GBA, low scale alterations and additions to the building would be temporary and likely to only be viable in the short term, with the low property returns eventually leading to building decay. The proposed development, on the other hand, exhibits a very high degree of design excellence and longevity of materials and design.

- (vii) The proposed variation will not cause adverse environmental impacts.
 - (i) The proposal has been carefully designed to avoid adverse impacts on neighbouring properties by reason of visual privacy and noise impacts and the building form, which is consistent with the building form that would be expected from a complying residential flat building development, will not cause unreasonable overshadowing of neighbouring properties.
- (c) The proposed development will be consistent with the objectives of the zone;
 - (i) To provide a mixture of compatible land uses.
 - (i) The proposal seeks to provide commercial premises on the site which are compatible with the surrounding mix of land uses including residential flat buildings, other commercial uses and warehouses. The proposal includes a retail premises on the ground floor which can not only be utilised by workers on the subject site but also nearby residents and workers.
 - (ii) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
 - (i) The proposal will result in an office development on the site which is located in close proximity to multiple bus services from Botany Road, Epsom Road and Rothschild Avenue. The site is also a 10 minute walk from Green Square train station and is highly accessible by public and active forms of transport. The proposal includes 28 bicycle parking spaces and EOTF to further encourage walking and cycling to and from the site.

- (iii) To ensure uses support the viability of centres.

The applicant states that the proposed commercial and retail uses on the site will support the viability of nearby centres by providing increased employment opportunities and a small scale retail premises which will not detract from nearby centres.

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

53. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
 - (b) 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.
54. In the circumstances of the application, the applicant has failed to adequately demonstrate by way of their submitted Clause 4.6 statement that compliance with the standard is unreasonable and unnecessary and that the objectives of the development standards are achieved, notwithstanding non-compliance with the standard. In particular:
- (a) The written Clause 4.6 statement significantly understates the extent of the non-compliance with the FSR standard. The statement fails to detail the impacts of the proposal accurately and does not enable the consent authority to be satisfied that the arguments put forward in the written Clause 4.6 statement can be justified.
 - (b) The significant exceedance of FSR demonstrates that key objectives of Clause 4.4(1)(b) and (d) of SLEP 2012 are not achieved. In particular lack of consideration for the heritage significance and objectives under Clause 5.10 of the SLEP 2012 and provisions of the bonus community infrastructure at Green Square and end of journey floor space. The lack of heritage justification in the 4.6 request points to a distinct lack of consideration for the constraints of the site. As a result, the proposal fails to regulate the density of development and provide a built form and land use intensity that reflects the desired character of the locality and fails to minimise adverse impacts on the amenity of that locality.
 - (c) The exceedance of FSR in terms of the bulk and scale and its dominance and alteration it imposes on the heritage elements of the warehouse do not enable the consent authority to be satisfied that key provisions of Clause 6.14(b) and (c) of SLEP0212 can be satisfied. These provisions aim to ensure that greater densities reflect the desired character of the localities in which they are allowed and that increased densities minimise adverse impacts on the amenity of those localities.
55. With regard for clause 4.6(3)(b) of Sydney LEP 2012, the written request provided by the applicant has failed to demonstrate there are sufficient environmental planning grounds to justify contravening the development standard. In particular:

- (a) The proposed variation fails to analyse the impact FSR exceedance will have on the heritage fabric of the building. In the scope of the development the application aims to partially retain the facade but altering the windows and doors to accommodate a new floor plate. Furthermore, the additional floors have an overbearing impact on the existing envelope and detracts from the sawtooth roof. In requesting the FSR variation to such an excessive extent the applicant has failed to adequately analyse the impact to the heritage fabric within the scope of the environmental planning grounds and therefore fails to adequately justify contravening the standard.
56. The applicant's written request has significantly understated the extent of the departure from the development standard. The proposed development is 107 per cent over the base FSR, 97 per cent over the base plus end of journey facilities FSR. The applicant has failed to adequately address the matters required to be demonstrated by subclause 4.6(3) of SLEP 2012. The applicant's written request has failed to demonstrate that the proposed development will be in the public interest because it is not consistent with key objectives of the FSR development standard and with a key objective for development within the B4 Mixed Use zone in which the development is proposed to be carried out.
57. The applicant has failed to demonstrate by way of their clause 4.6 statement that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case. In particular, the applicant has failed to demonstrate by way of their clause 4.6 statement that the objectives of Clause 4.4 of Sydney LEP 2012 are achieved notwithstanding non-compliance with the standard in particular the impacts the 4.6 request will have on the heritage elements.
58. The applicant has failed to demonstrate the proposal meets the objectives of Clause 5.10 of the Sydney LEP 2012 in particular to consider the heritage significance of heritage item including its associated fabric and setting with significant alterations and to demolition proposed to the 'Paradise Garage' warehouse with little regard for the bulk and scale associated with the significant variation to the FSR proposed.
59. For the reasons provided above, the requested variation to the FSR development standard is not supported. The applicant's written request has not adequately addressed the extent of the non-compliance and the matters relevant to 4.6(3) of the Sydney LEP 2012.
60. Further, the applicant's written statement has not been successful in arguing that one of the five ways established in Wehbe has been satisfied, being that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.
61. The applicant's written statement does not demonstrate the proposal is satisfactory in relation to the environmental planning grounds used to justify contravening the development standard. Accordingly, the proposed development is not in the public interest as it is inconsistent with the objectives of the FSR standard that is applicable to the site.

Design Excellence

62. In an effort to maximise floor space of the development the proposal fails to retain the heritage aspects of the building evident by the amount of changes to the existing warehouse that is proposed and fails to compliment the surrounding area.

(a) Modulation and bulk and scale

- (i) The development aims to maximise the envelope rather than adequately considering the significance of the heritage item. In this regard the proposed addition above the heritage item, has a consistent blade wall which wraps around the building from Cressy Street toward Dunning Avenue with zero lot setback and no recessed elements. As a result, the vertical extension above the heritage item will dominate the public domain rather compliment the surrounding buildings and warehouse below. Refer to figure 23 below.



Figure 23: Photomontage of the proposal and presentation to the public domain

(b) Amenity Impacts - Adjoining development

(i) View Loss Analysis

- A view loss assessment has been completed by the proponent as part of the submitted SEE for No. 29-31 Dunning Avenue. A review of the assessment indicates that No. 29-31 Dunning Avenue will be negatively affected by the proposal with a loss of view to the city skyline, however, the analysis was conducted up to level 5 and the neighbouring building has a roof-top access which is level 6, figure 24 below.
- It is accepted that views to the city skyline will be interrupted by future development in the precinct located north of the apartments at 29-31 Dunning Avenue. However, given the massing and that the FSR remains significantly non-compliant view loss created by the development is considered unreasonable.

- As noted in the report, approved nearby developments to south-east and north of the subject site are provided with compliant FSR and do not contain heritage items on site. Therefore proposal with compliant FSR and greater heritage preservation in conjunction with the controls, would result in a building envelope with reduced bulk and scale and would have a reduced impact on the view loss from developments south of the subject site.

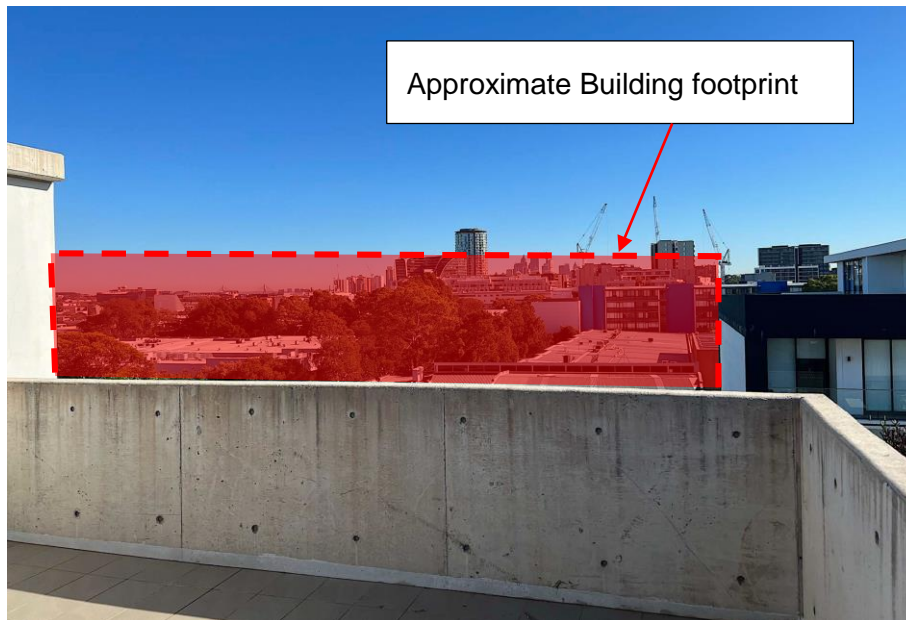


Figure 24: View from Level 6 - Roof top of adjacent residential building 29-31 Dunning Avenue (image provided by a submitter)

Consultation

Internal Referrals

Environmental Projects Unit

63. The application was accompanied by a Section J report which detailed the passive design and thermal performance and NABERS rating. The application was referred to Council's Environmental Projects Unit who advised the building can attain a 5-star NABERS rating.

Environmental Health Unit

64. A phase 1 contamination report was provided which indicated that a Phase 2 or Remediation Action Plan (RAP) was required. The Phase 2 and RAP have not been provided. In the absence of a phase 2 report or RAP, Council officers are not satisfied that the site can be made suitable.

Heritage and Urban Design Unit

65. The proposal was discussed with Council's Heritage and Urban Design Units. The proposal was not supported given the extensive amount of demolition, alteration of facades and the dominant addition. It was also advised that the Statement of Heritage Impact and Conservation Management Plan were not adequate as detailed in the discussion section of this report.

Transport and Access Unit

66. Did not support the proposal in the absence of additional information regarding larger vehicle swept path analyses.

Tree Management Unit

67. There is one semi-mature and two mature Native Hibiscus located on Cressy Road. It appears that the proposed stormwater pipe is in close proximity of Tree 2 on Cressy Street. Any excavation within the Tree Protection Zone (TPZ) of this tree or in any area known to or suspected of having street tree roots greater than 40mm diameter will require tree sensitive methods such as hand digging.

There is one mature Broad-leaved Paperbark, one mature Tuckeroo and one juvenile Tuckeroo located on Dunning Avenue. These trees are of good health and structure and contribute to the local environment, character, and street tree canopy. Some pruning of the street trees may be required for the installation of hoarding and scaffolding. A 'Pruning Specification Report' prepared by a qualified Arborist (minimum AQF Level 5) is required.

Waste Management Unit

68. The waste management plans provided is insufficient. The waste management must clearly address the following:
- (a) waste generation calculations based on GFA for the development type, (see Guidelines for Waste Management in New Developments 2018, Reference A) to support the proposed number, configuration and collection frequency of bins;
 - (b) as part of Sustainable Sydney 2030, the City is limiting truck movements to ease road congestion. As such, waste collections should ideally be limited to a maximum 3 x weekly for all waste streams;
 - (c) identify space in the commercial development dedicated for storing bulky waste and problem waste for recycling; and
 - (d) a bin for each waste stream (waste, recycling and food waste) is to be centrally located on each commercial office floor (clearly mark on the plans). Details on the changeover/servicing and maintenance of these bins is to be outlined within the waste management plan.

External Referrals

69. No External referrals were required.

Advertising and Notification

70. In accordance with the City of Sydney Community Participation Plan 2020, the proposed development was notified and advertised for a period of 28 days between 12 January 2022 and 10 February 2022. A total of 179 properties were notified and 3 submissions were received.

71. The submissions raised the following issues:

- (a) **Issue:** Amenity impacts and loss of view to neighbouring residential dwellings.

Response: The proposed scale of the building is exacerbated by the large variation to FSR proposed by the application resulting in loss of views to the city skyline. The bulk of the building and its impact on views is detailed in the discussion section of this report.

- (b) **Issue:** Privacy impacts into apartments from a commercial development.

Response: A view analysis was conducted by the applicant for No. 29-31 Dunning Avenue. The analysis indicates that the blade walls wrapped around the building do not provide a visual barrier to view into and from the proposed development. Behind the blade walls is large commercial windows which can be viewed directly into from a number of levels of No 29-31 Dunning Avenue. This is a matter raised in the body of the report as amenity issue of concern with the development.

- (c) **Issue:** The proposal alters the heritage warehouse.

Response: The proposal will result in extensive and excessive removal of heritage fabric and will erode the significance of the heritage item and is a reason for refusal. Refer to the 'Discussion' section in the body of the report for details.

- (d) **Issue:** Loss of solar access to apartments.

Response: A solar analysis was provided by the applicant. By the nature of its orientation and overshadowing the proposed building will have a minor impact on the ground floor of No.29-31 Dunning Avenue to the south of the subject site. However, the impacts are to bedrooms and private open space facing Cressy Street toward the north-east corner of 29-31 Dunning Avenue. Overall, the proposal will not greatly reduce the solar access to the neighbouring developments which will still comply with the apartments design guideline requirements for solar access to habitable rooms for at least 70 per cent of the building.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

72. In the event the proposal was supported, it would be subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

73. The site is located within the Green Square affordable housing contribution area. As the proposed development includes additional floor space and if Council had supported the proposal, a 7.13 contribution would have been charged.

Relevant Legislation

74. Environmental Planning and Assessment Act 1979.

Conclusion

75. The application failed to provide a Phase 2 or Remediation Action Plan in relation to Chapter 4, Remediation of land in the State Environmental Planning Policy (Resilience and Hazards) 2021. In this regard, council is not satisfied that the site can be made safe from contaminants.
76. The application seeks a significant variation of the FSR standard. Whilst a public benefit offer to provide a monetary contribution toward community infrastructure in Green Square is intended by the applicant, a letter of offer was not submitted with the application and council has not pursued a formal public benefit offer.
77. The applicant's request for a variation to the FSR development standard fails to adequately address the requirements under clause 4.6 of SLEP 2012. The applicant fails to state the amount of the non-compliance with the standard and has not demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances of the application.
78. The proposal is not considered to satisfy the matters for consideration under Clause 5.10 Heritage Conservation of the SLEP 2012 due to the extent of material impact upon the significant fabric of the heritage item.
79. The proposal is not considered to exhibit design excellence in accordance with the requirements of Clause 6.21 of Sydney Local Environmental Plan 2012 as it fails to deliver the highest standard of architectural and urban design. The development proposes to significantly exceed the FSR. As a result it achieves a poor design outcome for the site.
80. The proposed development does not satisfy the matters for consideration provided by Section 4.15 of the Environmental Planning and Assessment Act 1979 in that it is not compliant with key provisions of SLEP 2012 and SDCP 2012. As such, the proposal fails to provide development that is suitable for the subject site.
81. In light of the above, the proposal is not considered to be in the public interest, contrary to Clause 4.15(1)(e) of the Environmental Planning and Assessment Act, 1979.

ANDREW THOMAS

Executive Manager Planning and Development

Nabil Alaeddine, Senior Planner

Attachment A

Draft Architectural Plans

25-27 DUNNING AVENUE, ROSEBERY

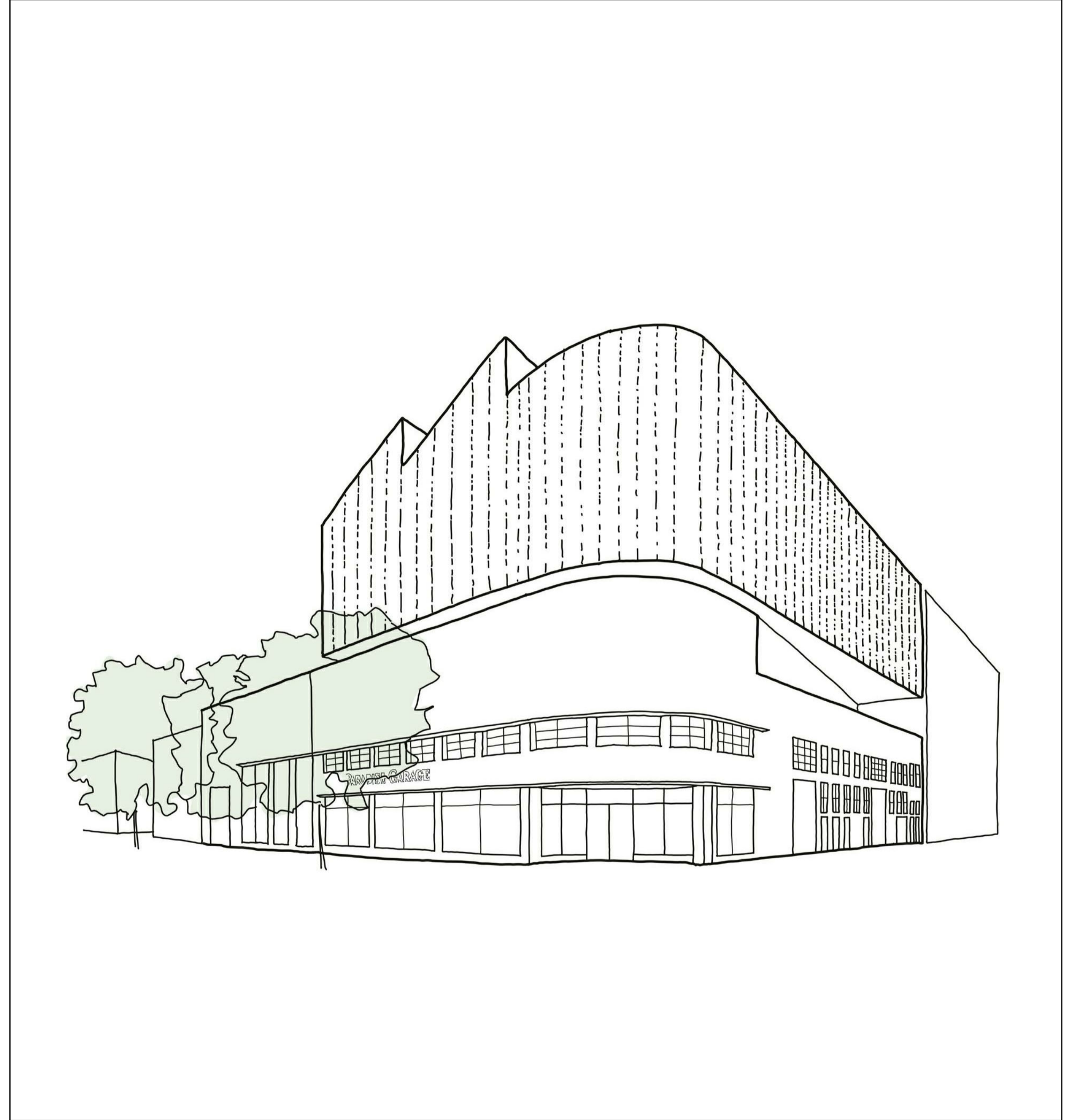
SITE CONTEXT

Address | 25 - 27 Dunning Avenue, Rosebery
 NSW Land Registry | DP 192683, Lots 35 and 36
 Site Area | 956.1m2



DRAWING LIST

Dwg No.	Drawing Title	Revision
000	Cover Sheet	A
010	Existing Floor Plans	D
020	Existing Elevations	C
030	Existing Sections	C
050	Proposed Site & Roof Plan	G
100	Level 1 Plan	L
101	Level 2 Plan	H
102	Level 3 Plan	H
103	Level 4 Plan	H
104	Level 5 Plan	H
200	South Elevation	G
201	West Elevation	F
202	North Elevation	E
203	East Elevation	E
300	Section 01	E
301	Section 02 and 03	H
302	Section 04	E
600	Area Schedule	B
601	Material and Finishes Schedule	A
800	Solar Study_Elevation Existing	C
801	Solar Study_Elevation Proposed	C
802	Solar Study_Plan Existing	C
803	Solar Study_Plan Proposed	C
810	View Study Diagrams	D
811	View Study Diagrams	B
812	View Study Diagrams	B



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Nominated Architect
 Alec Tzannes 4174

General Notes

Verify dimensions on site prior to commencement of work. Check existing RL's on site. Advise Architect of any discrepancies before commencement. Allow for adjustments to suit discrepancies. Comply with relevant authorities requirements. Comply with Building Code of Australia requirements. Comply with relevant Australian Standards for materials and construction practice. Comply with Basix Certificate. Do not scale from drawings.

Notes Regarding "For Construction Documents"

Tzannes Associates (TZ) believes that the information shown on this drawing (when read with the applicable specification) is sufficient for a reasonably competent and experienced builder to understand the design intent; understand the process of construction required to achieve a finished product conforming with the design intent and understand what building materials, techniques and methods are required to achieve that finished product

Rev	Date	For
A	06.12.21	Development Application

Client
 Dunning Proprietor Pty Ltd
 robert@ptwlaw.com.au toly@ptwlaw.com.au

Legend

Tzannes

Scale

North

Project
 Dunning Avenue Rosebery

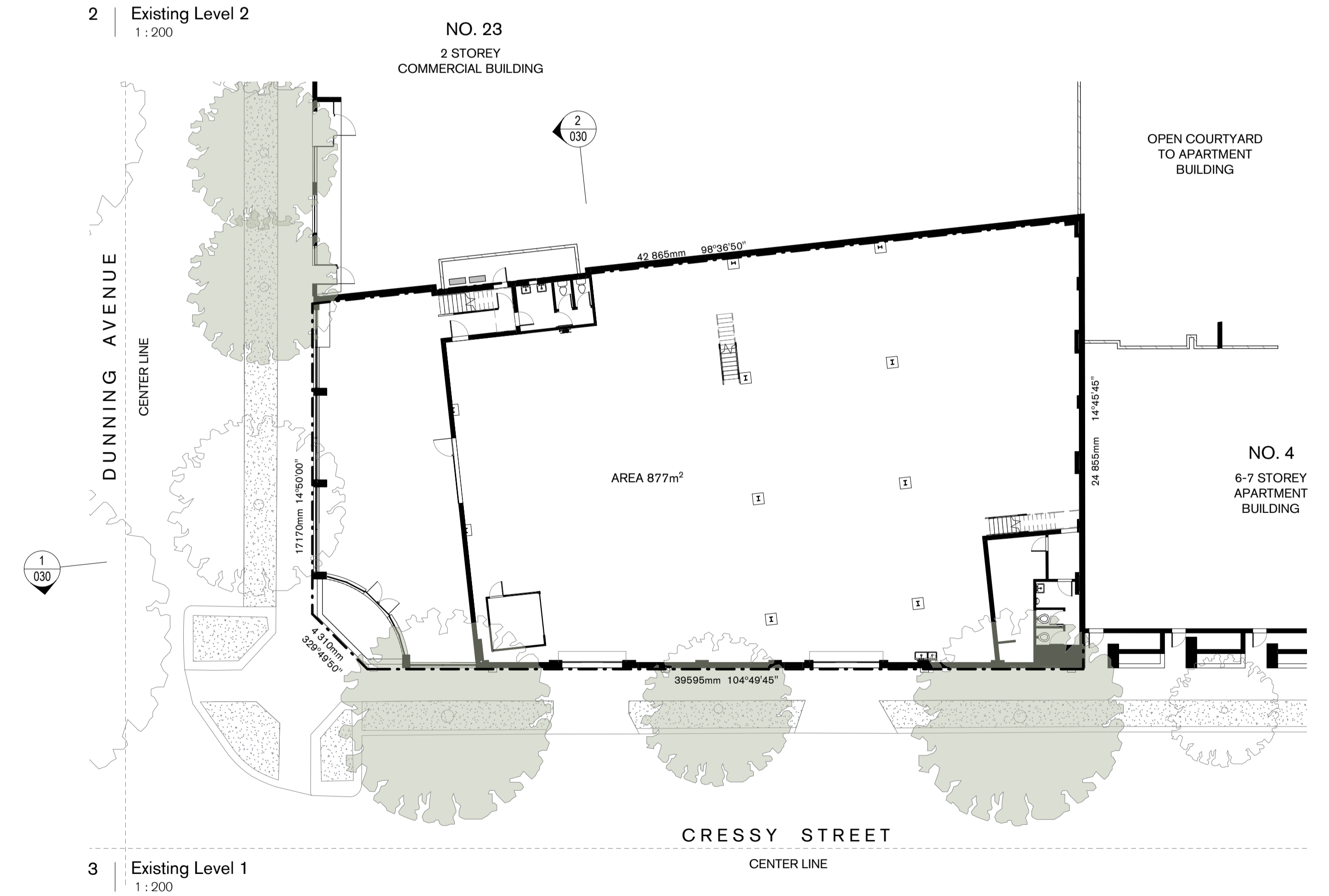
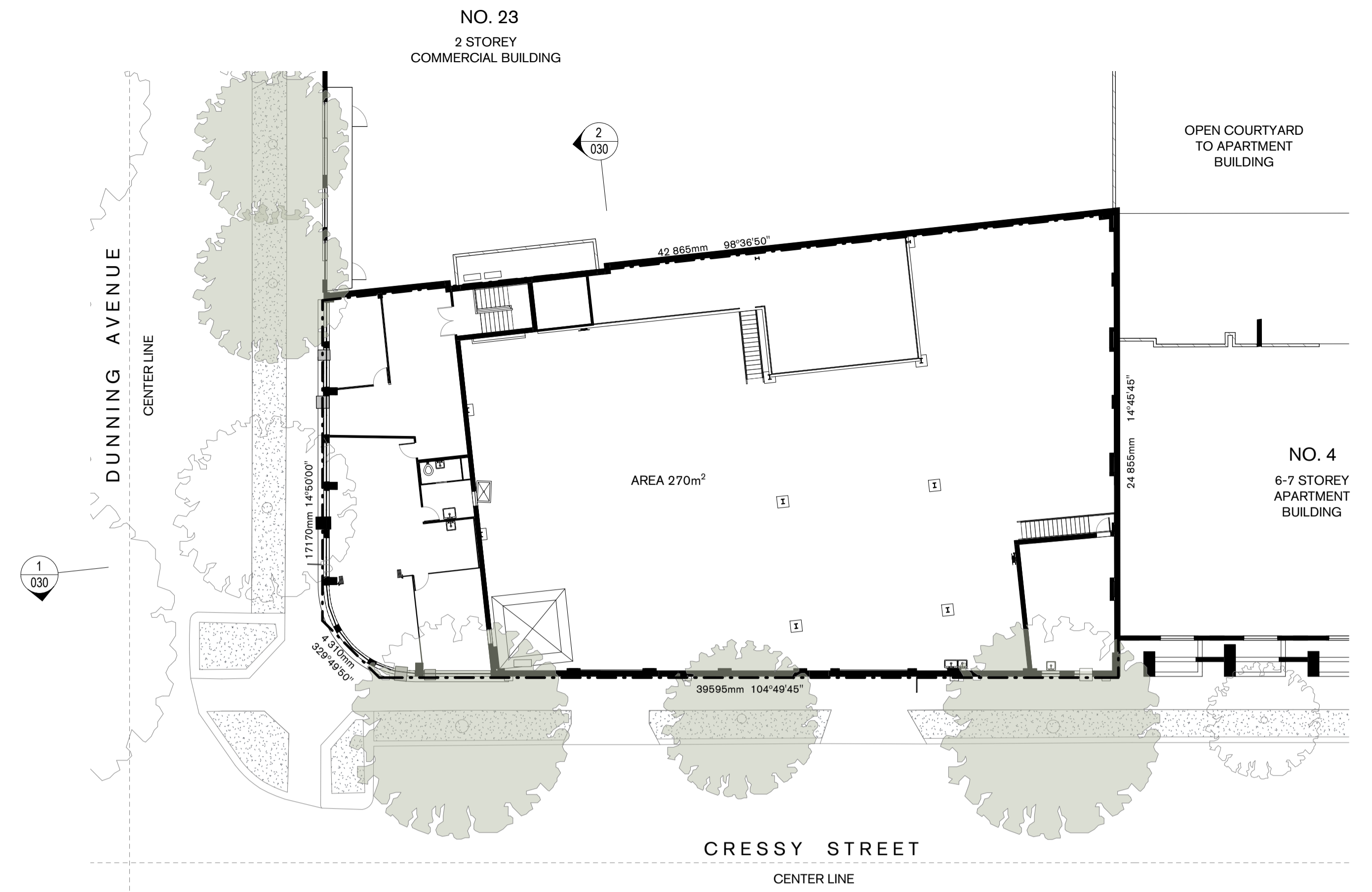
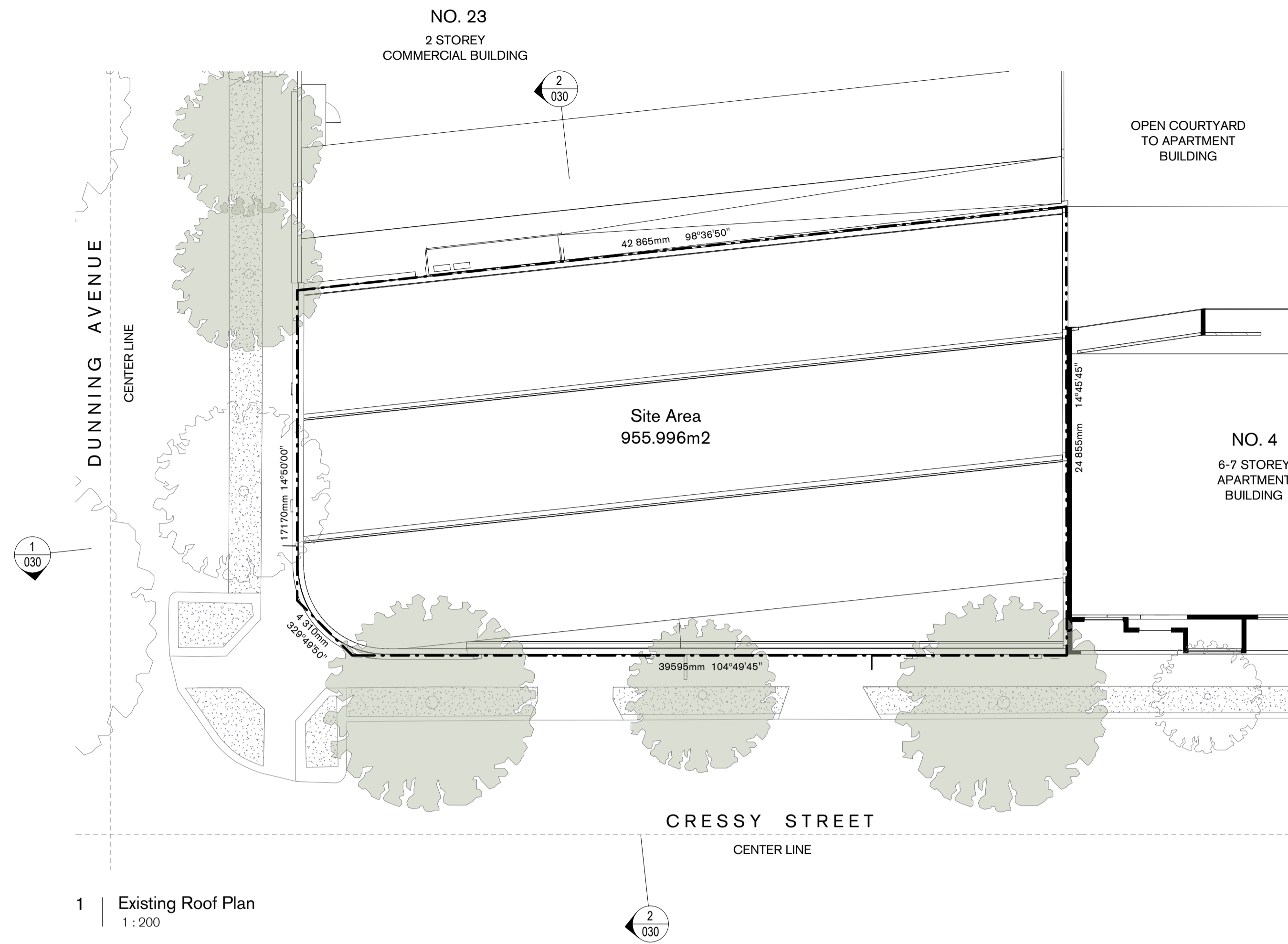
Address
 25-27 Dunning Avenue
 Rosebery, NSW 2018

Status
 NOT FOR CONSTRUCTION

Drawing
 Cover Sheet

Date Created 27.05.20
Drawn TZ
Checked TZ

Project No. 20009
Drawing No. 000
Revision A



1 Existing Roof Plan
1:200

2 Existing Level 2
1:200

3 Existing Level 1
1:200



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Nominated Architect
Alec Tzannes 4174

General Notes

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Rev	Date	For
A	06.08.20	Consultant Information
B	05.11.20	For Comment
C	05.03.21	For Review
D	06.12.21	Development Application

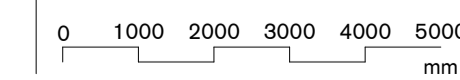
Client

Dunning Proprietor Pty Ltd
robert@ptlaw.com.au toly@ptlaw.com.au

Legend

Tzannes

Scale
1:200 @ A1



North



Project
Dunning Avenue Rosebery

Address
25-27 Dunning Avenue
Rosebery, NSW 2018

Status
NOT FOR CONSTRUCTION

Drawing
Existing Floor Plans

Date Created 27.05.20
Drawn TZ
Checked TZ

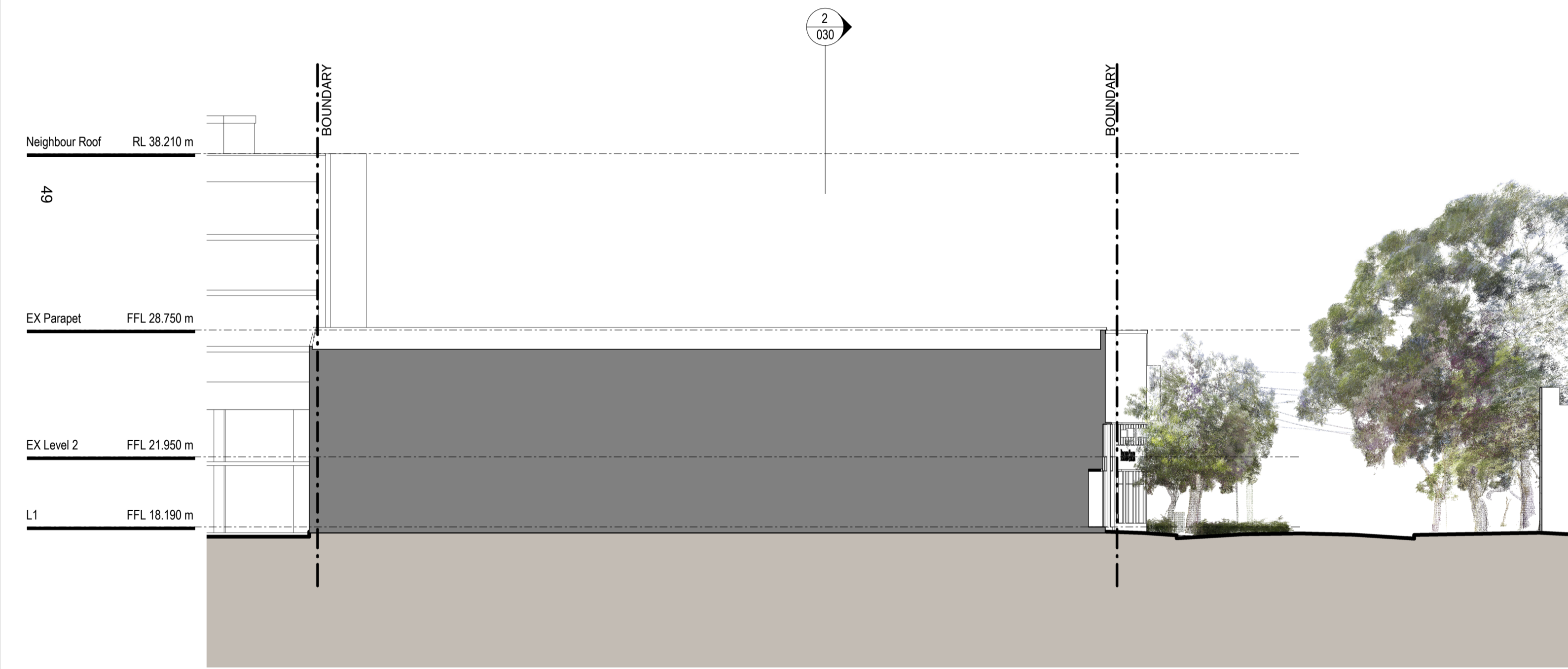
Project No. 20009
Drawing No. 010
Revision D



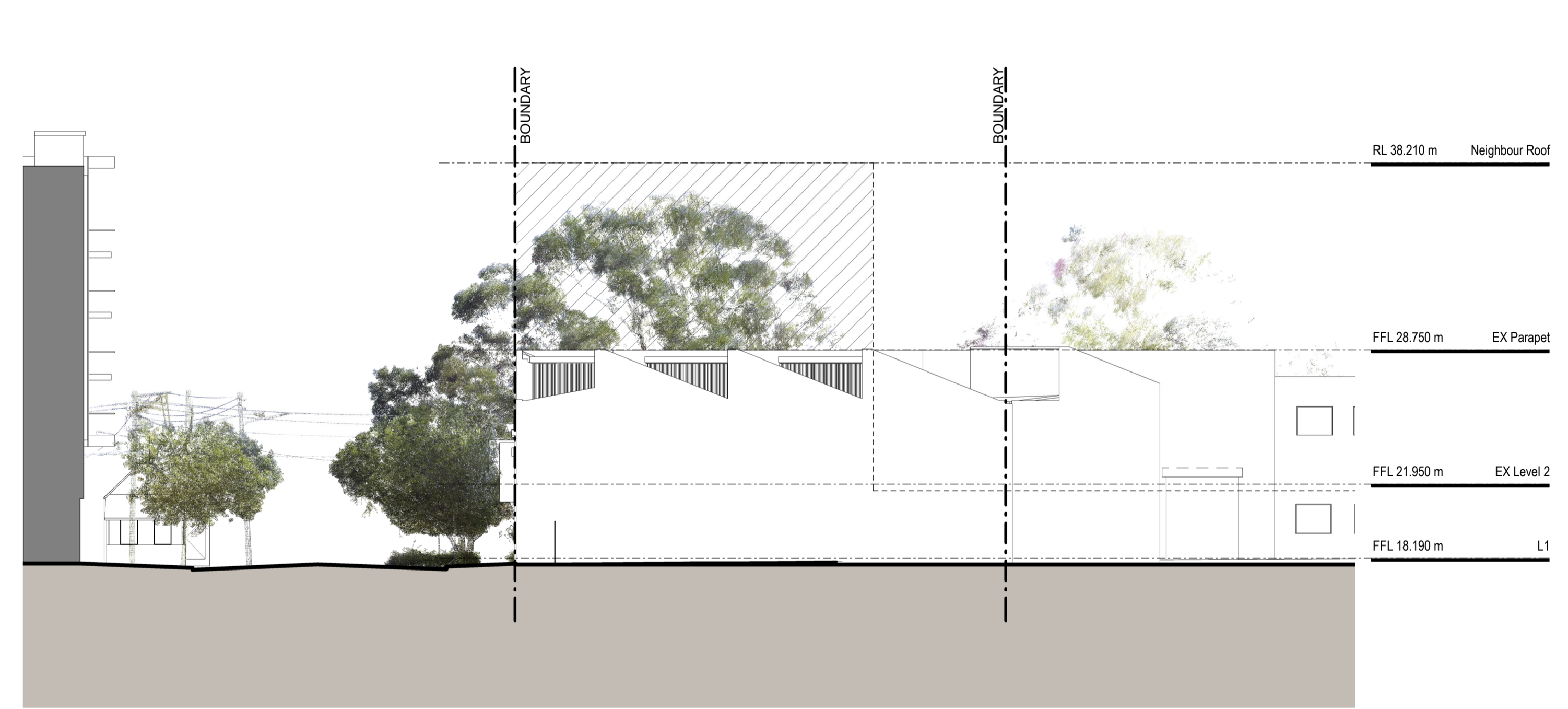
1 Existing South Elevation
1:200



2 Existing West Elevation
1:200



3 Existing North Elevation
1:200



4 Existing East Elevation
1:200



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Alec Tzannes 4174

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Rev

Rev	Date	For
A	05.11.20	For Comment
B	05.03.21	For Review
C	06.12.21	Development Application

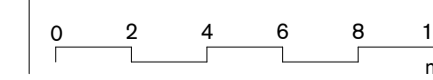
Client

Dunning Proprietor Pty Ltd
robert@ptwaw.com.au toly@ptwaw.com.au

Legend

Tzannes

Scale
1:200 @ A1



North

Project
Dunning Avenue Rosebery

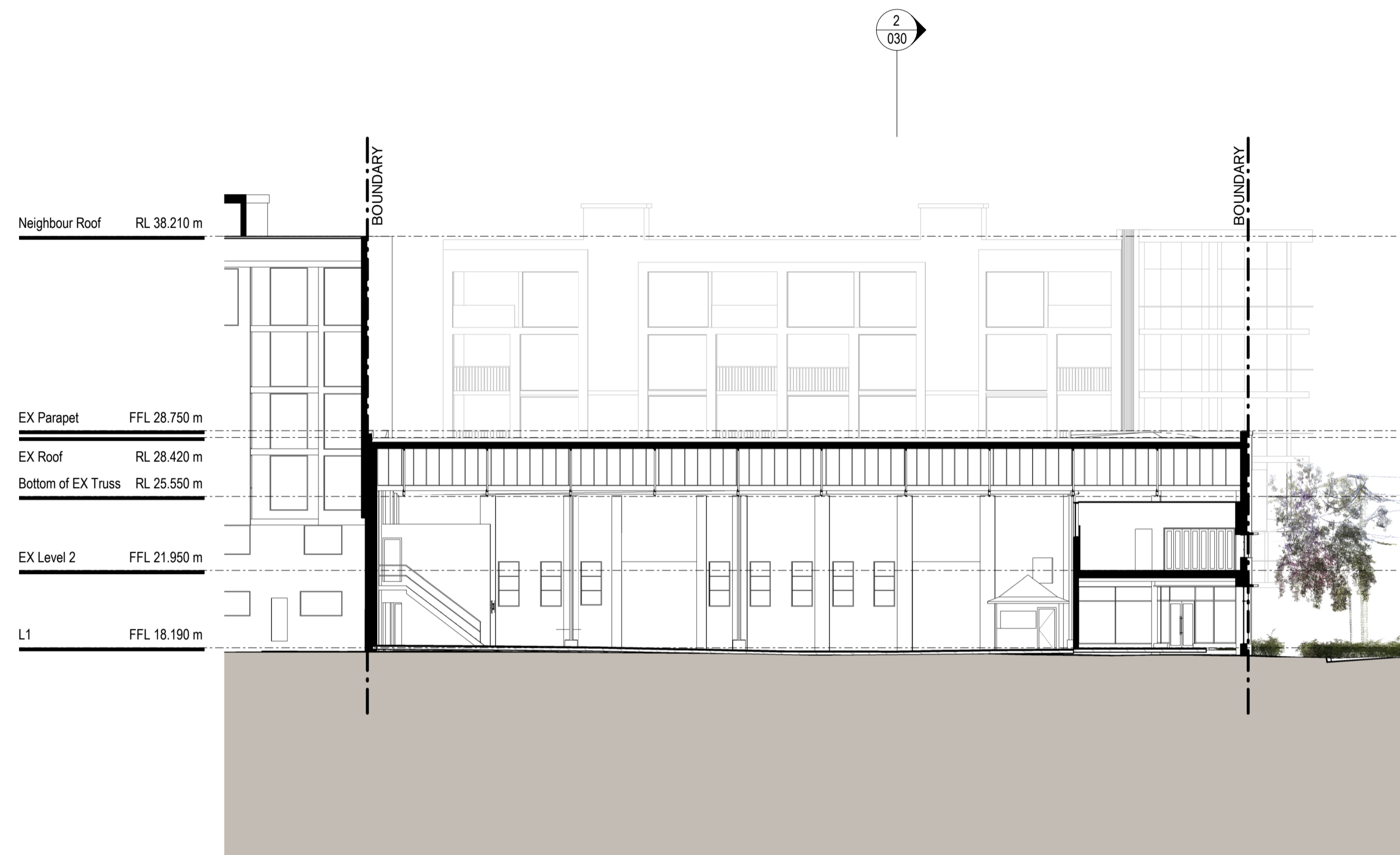
Address
25-27 Dunning Avenue
Rosebery, NSW 2018

Status
NOT FOR CONSTRUCTION

Drawing
Existing Elevations

Date Created 30/10/20
Drawn TZ
Checked TZ

Project No. 20009
Drawing No. 020
Revision C



1 | Section 1 Existing
1 : 200



2 | Section 2 Existing
1 : 200



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Rev	Date	For
A	05.11.20	For Comment
B	05.03.21	For Review
C	06.12.21	Development Application

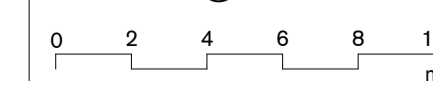
Client

Dunning Proprietor Pty Ltd
robert@ptwlaw.com.au toly@ptwlaw.com.au

Legend

Tzannes

Scale
1 : 200 @ A1



North

Project
Dunning Avenue Rosebery

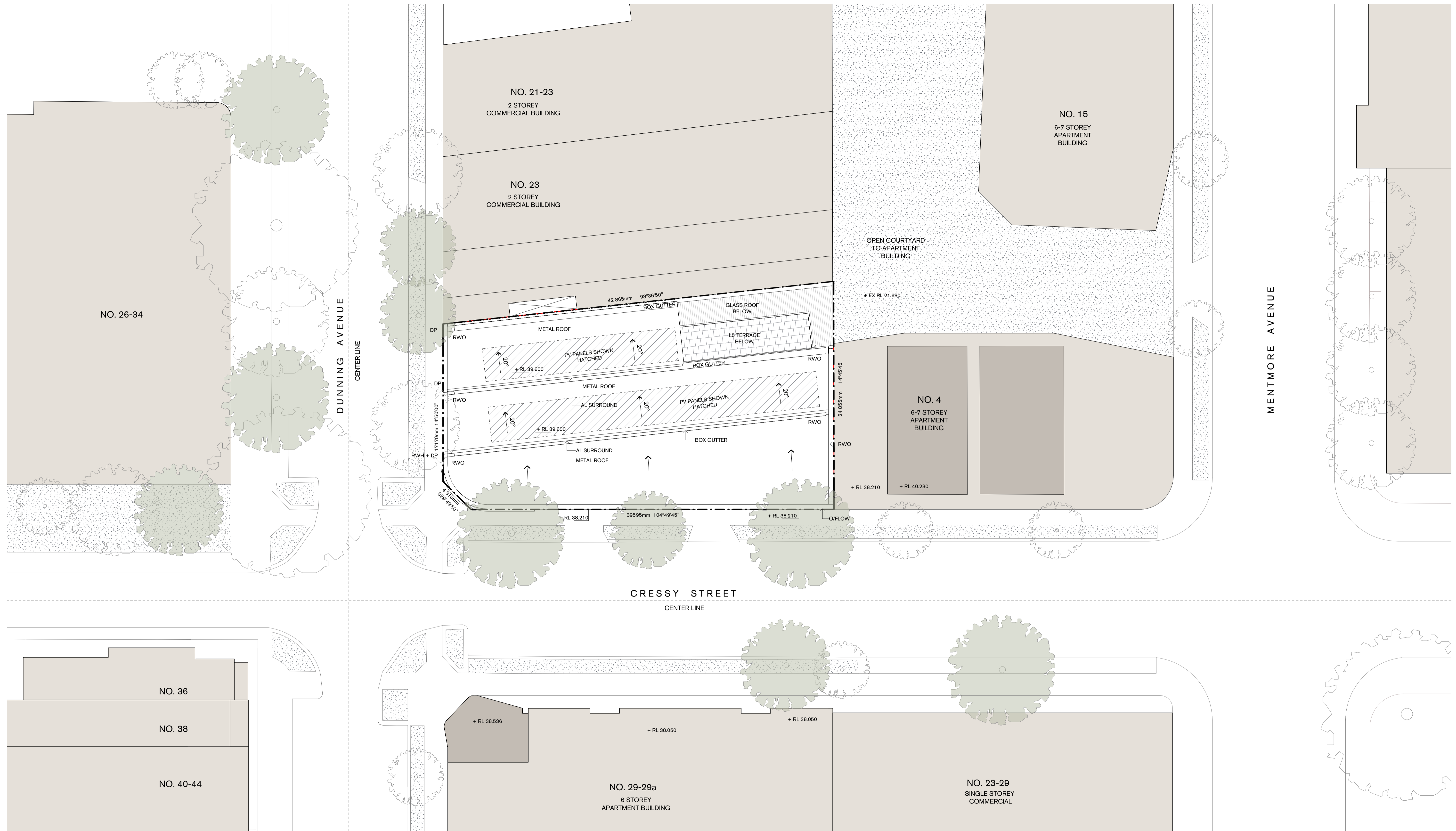
Address
25-27 Dunning Avenue
Rosebery, NSW 2018

Status
NOT FOR CONSTRUCTION

Drawing
Existing Sections

Date Created	Drawn	Checked
30/10/20	TZ	TZ

Project No.	Drawing No.	Revision
20009	030	C



51



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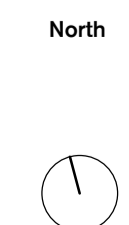
Rev	Date	For
A	05.11.20	For Comment
B	15.02.21	For Review
C	05.03.21	For Review
D	30.03.21	Pre-DA Additional Information
E	04.11.21	Draft DA
F	24.11.21	PV added
G	06.12.21	Development Application

Client
 Dunning Proprietor Pty Ltd
 robert@ptw.com.au toly@ptw.com.au

Legend

Tzannes

Scale
 1 : 200 @ A1



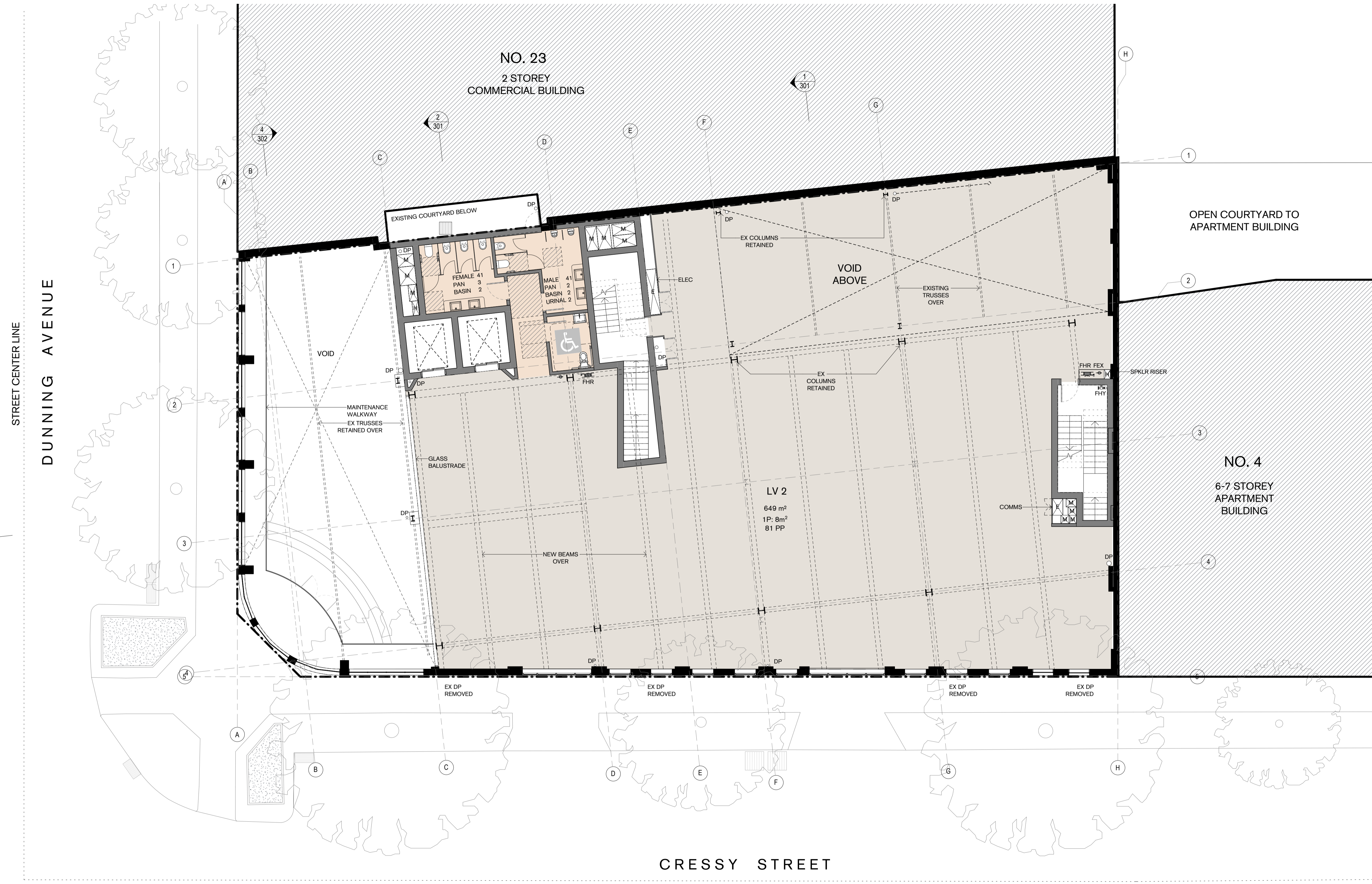
Project
 Dunning Avenue Rosebery

Address
 25-27 Dunning Avenue
 Rosebery, NSW 2018

Status
 NOT FOR CONSTRUCTION

Drawing		
Proposed Site & Roof Plan		
Date Created	Drawn	Checked
27.05.20	TZ	TZ
Project No.	Drawing No.	Revision
20009	050	G

1
202



CRESSY STREET

STREET CENTER LINE

4
302

2
301

1
200

1
301



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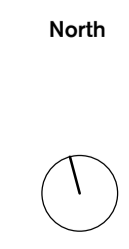
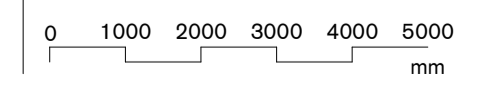
Rev	Date	For
A	05.11.20	For Comment
B	15.02.21	For Review
C	05.03.21	For Review
D	30.03.21	Pre-DA Additional Information
E	18.09.21	For Co-ordination
F	07.10.21	For Co-ordination
G	04.11.21	Draft DA
H	06.12.21	Development Application

Client
 Dunning Proprietor Pty Ltd
 robert@ptlaw.com.au toly@ptlaw.com.au

Legend

Tzannes

Scale
 1 : 100 @ A1



Project
 Dunning Avenue Rosebery

Address
 25-27 Dunning Avenue
 Rosebery, NSW 2018

Status
 NOT FOR CONSTRUCTION

Drawing
 Level 2 Plan

Date Created	Drawn	Checked
27.05.20	TZ	TZ

Project No.	Drawing No.	Revision
20009	101	H

1
202

1
301

2
301

4
302

1
300

1
203

4
302

2
301

1
200

1
301

NO. 23
2 STOREY
COMMERCIAL BUILDING

OPEN COURTYARD TO
APARTMENT BUILDING

NO. 4
6-7 STOREY
APARTMENT
BUILDING

LV3
443 m²
1P: 8m²
56 PP

TERRACE LV3

STREET CENTER LINE
DUNNING AVENUE

CRESSY STREET

STREET CENTER LINE



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Alec Tzannes 4174

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Rev	Date	For
A	05.11.20	For Comment
B	15.02.21	For Review
C	05.03.21	For Review
D	30.03.21	Pre-DA Additional Information
E	18.09.21	For Co-ordination
F	07.10.21	For Co-ordination
G	04.11.21	Draft DA
H	06.12.21	Development Application

Client
Dunning Proprietor Pty Ltd
robert@ptwlaw.com.au toly@ptwlaw.com.au

Legend

Tzannes

Scale
1 : 100 @ A1

0 1000 2000 3000 4000 5000 mm

North

Project
Dunning Avenue Rosebery

Address
25-27 Dunning Avenue
Rosebery, NSW 2018

Status
NOT FOR CONSTRUCTION

Drawing
Level 3 Plan

Date Created
27.05.20

Project No.
20009

Drawn
TZ

Drawing No.
102

Checked
TZ

Revision
H

54



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Rev	Date	For
A	05.11.20	For Comment
B	15.02.21	For Review
C	05.03.21	For Review
D	30.03.21	Pre-DA Additional Information
E	18.09.21	For Co-ordination
F	07.10.21	For Co-ordination
G	04.11.21	Draft DA
H	06.12.21	Development Application

Client
 Dunning Proprietor Pty Ltd
 robert@ptwlaw.com.au toly@ptwlaw.com.au

Legend

Tzannes

Scale 1 : 100 @ A1

0 1000 2000 3000 4000 5000 mm

North

Project
 Dunning Avenue Rosebery

Address
 25-27 Dunning Avenue
 Rosebery, NSW 2018

Status
 NOT FOR CONSTRUCTION

Drawing
 Level 4 Plan

Date Created
 27.05.20

Drawn
 TZ

Checked
 TZ

Project No.
 20009

Drawing No.
 103

Revision
 H



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Rev	Date	For
A	05.11.20	For Comment
B	15.02.21	For Review
C	05.03.21	For Review
D	30.03.21	Pre-DA Additional Information
E	18.09.21	For Co-ordination
F	07.10.21	For Co-ordination
G	04.11.21	Draft DA
H	06.12.21	Development Application

Client
 Dunning Proprietor Pty Ltd
 robert@ptwlaw.com.au toly@ptwlaw.com.au

Legend

Tzannes

Scale 1 : 100 @ A1
 0 1000 2000 3000 4000 5000 mm

North

Project
 Dunning Avenue Rosebery

Address
 25-27 Dunning Avenue
 Rosebery, NSW 2018

Status
 NOT FOR CONSTRUCTION

Drawing
 Level 5 Plan

Date Created
 27.05.20

Drawn
 TZ

Checked
 TZ

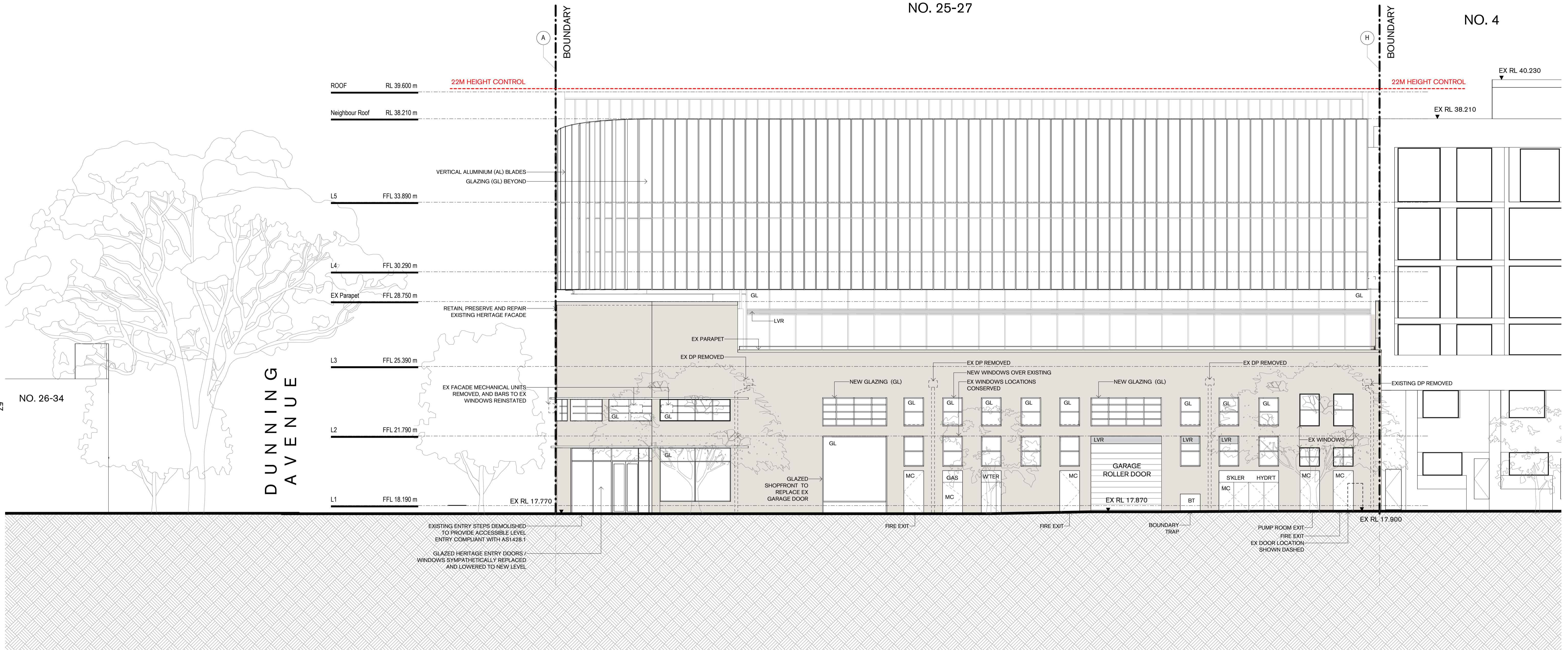
Project No.
 20009

Drawing No.
 104

Revision
 H

NO. 25-27

NO. 4



57

NO. 26-34

DUNNING AVENUE

TZ

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Rev	Date	For
A	05.11.20	For Comment
B	15.02.21	For Review
C	05.03.21	For Review
D	07.10.21	For Co-ordination
E	04.11.21	Draft DA
F	22.11.21	Revised South Facade
G	06.12.21	Development Application

Client
 Dunning Proprietor Pty Ltd
 robert@ptwlaw.com.au toly@ptwlaw.com.au

Legend

AL	ALUMINIUM BLADES
DP	DOWNPIPE
EX	EXISTING
GL	GLAZING
LVR	LOUVRE
MC	METAL CLADDING

Tzannes

Scale As indicated @ A1

0 1000 2000 3000 4000 5000 mm

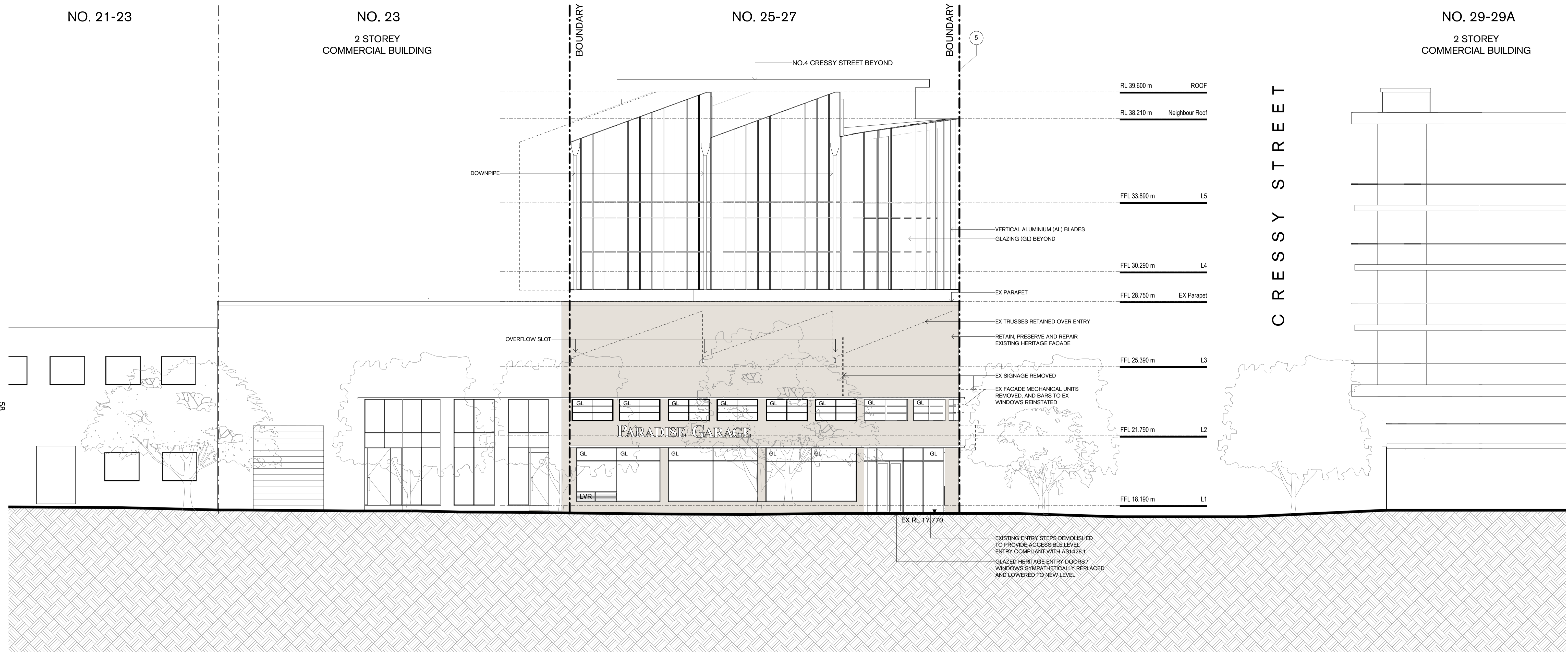
Project		Drawing	
Dunning Avenue Rosebery		South Elevation	
Address	25-27 Dunning Avenue Rosebery, NSW 2018	Date Created	28.05.20
Status	NOT FOR CONSTRUCTION	Drawn	TZ
		Checked	TZ
Project No.	20009	Drawing No.	200
		Revision	G

NO. 21-23

NO. 23
2 STOREY
COMMERCIAL BUILDING

NO. 25-27

NO. 29-29A
2 STOREY
COMMERCIAL BUILDING



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A	05.11.20	For Comment
B	15.02.21	For Review
C	05.03.21	For Review
D	07.10.21	For Co-ordination
E	04.11.21	Draft DA
F	06.12.21	Development Application

Client
Dunning Proprietor Pty Ltd
robert@ptwaw.com.au toly@ptwaw.com.au

Legend	
AL	ALUMINIUM BLADES
DP	DOWNPIPE
EX	EXISTING
GL	GLAZING
LVR	LOUVRE
MC	METAL CLADDING

Tzannes

Scale As indicated @ A1
0 1000 2000 3000 4000 5000 mm

Project
Dunning Avenue Rosebery

Address
25-27 Dunning Avenue
Rosebery, NSW 2018

Status
NOT FOR CONSTRUCTION

Drawing
West Elevation

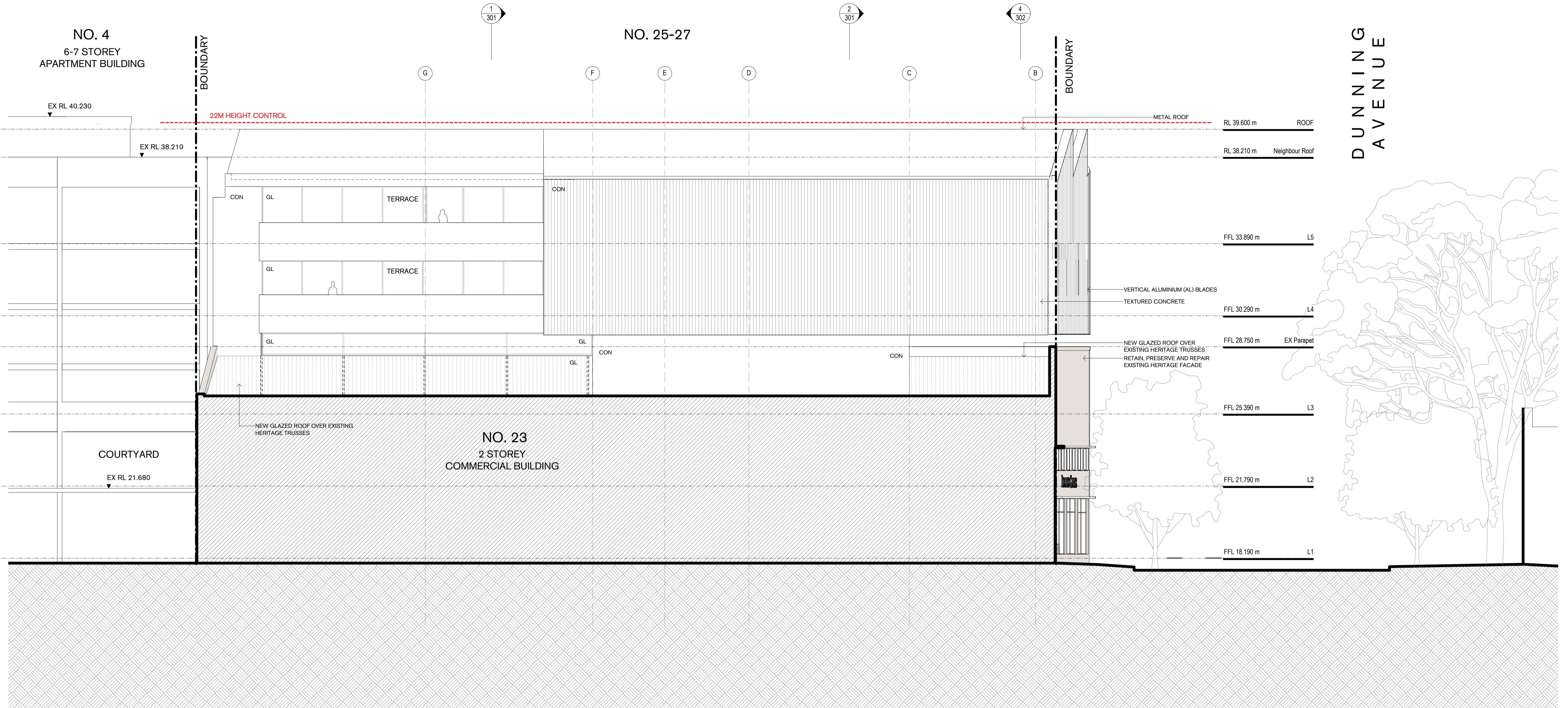
Date Created 28.05.20
Drawn TZ
Checked TZ

Project No. 20009
Drawing No. 201
Revision F

NO. 4
6-7 STOREY
APARTMENT BUILDING

NO. 25-27

DUNNING
AVENUE



65

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A	05.11.20	For Comment
B	15.02.21	For Review
C	05.03.21	For Review
D	04.11.21	Draft DA
E	06.12.21	Development Application

Client
Dunning Proprietor Pty Ltd
robert@ptwlaw.com.au toly@ptwlaw.com.au

Legend

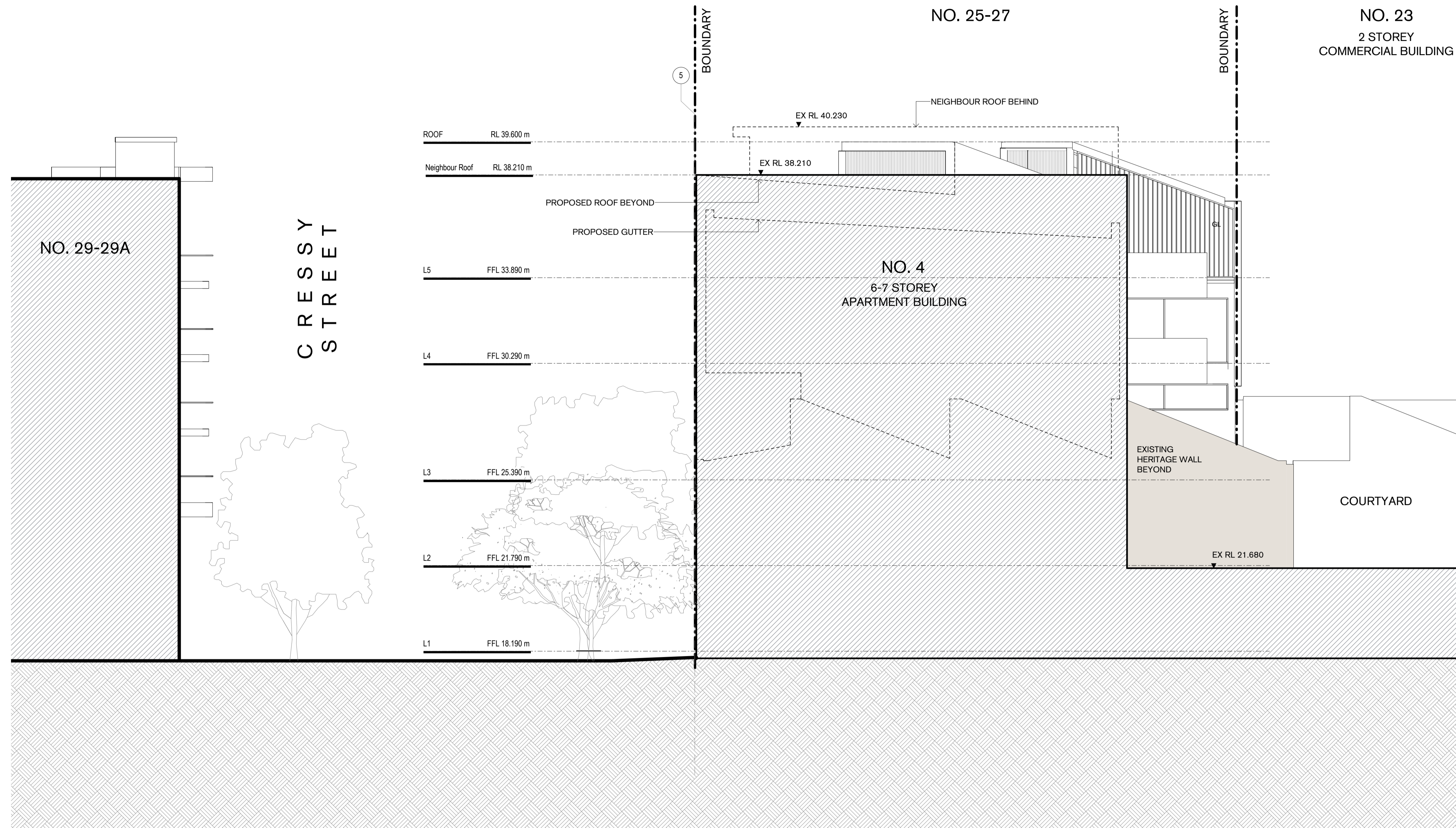
AL	ALUMINIUM BLADES
DP	DOWNPIPE
EX	EXISTING
GL	GLAZING
LVR	LOUVRE
MC	METAL GLAZING

Tzannes

Scale As indicated @ A1

0 1000 2000 3000 4000 5000 mm

Project	Drawing	Date Created	Drawn	Checked
Dunning Avenue Rosebery	North Elevation	28.05.20	TZ	TZ
Address	Project No.	25-27 Dunning Avenue	20009	
Rosebery, NSW 2018	Drawing No.		202	
Status	Revision	NOT FOR CONSTRUCTION	E	



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 Alec Tzannes 4174

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Rev	Date	For
A	05.11.20	For Comment
B	15.02.21	For Review
C	05.03.21	For Review
D	04.11.21	Draft DA
E	06.12.21	Development Application

Client

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 robert@ptwlaw.com.au toly@ptwlaw.com.au

Legend

- AL ALUMINIUM BLADES
- DP DOWNPIPE
- EK EXISTING
- GL GLAZING
- LVR LOUVRE
- MC METAL CLADDING



Scale As indicated @ A1
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North

Project

Dunning Avenue Rosebery

Address

25-27 Dunning Avenue
 Rosebery, NSW 2018

Status

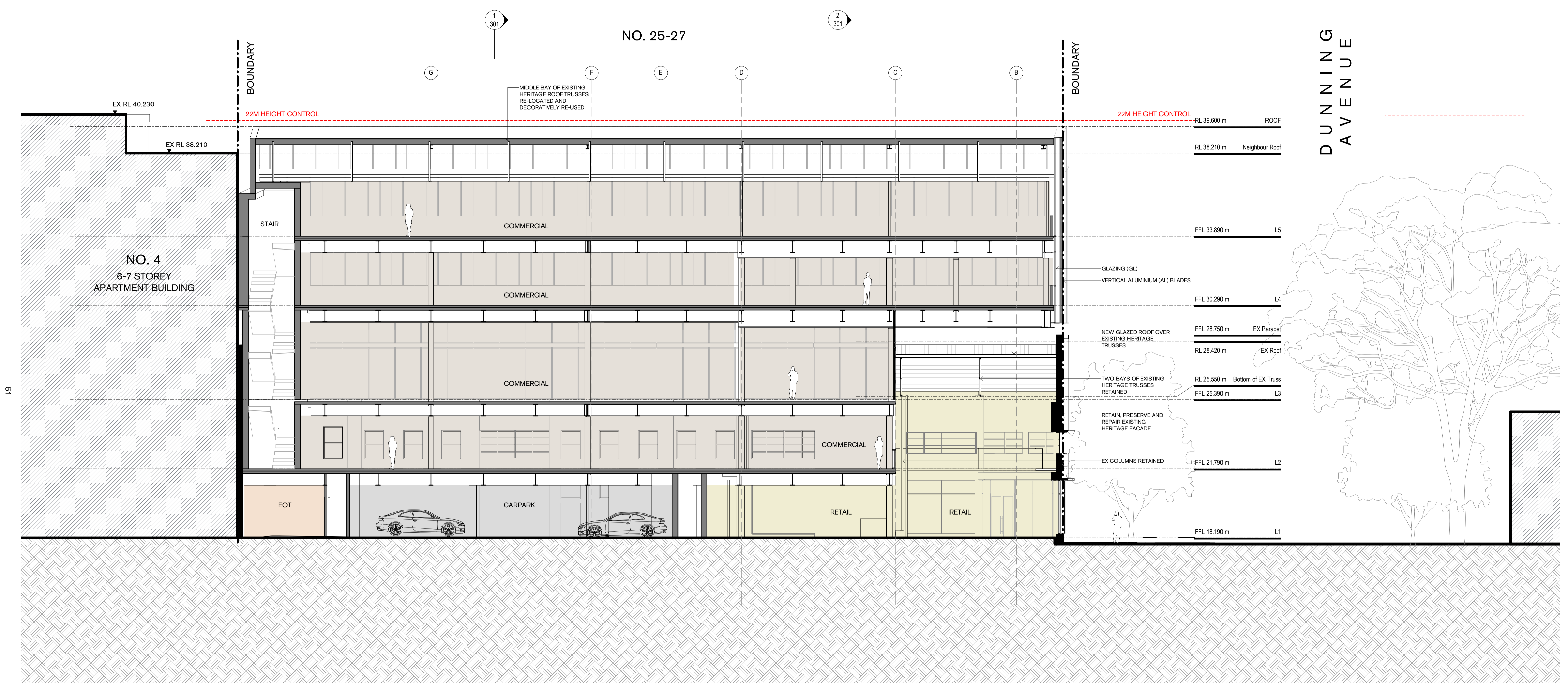
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Drawing

East Elevation

Date Created 28.05.20
 Drawn TZ
 Checked TZ

Project No. 20009
 Drawing No. 203
 Revision E



19

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E	06.12.21	Development Application

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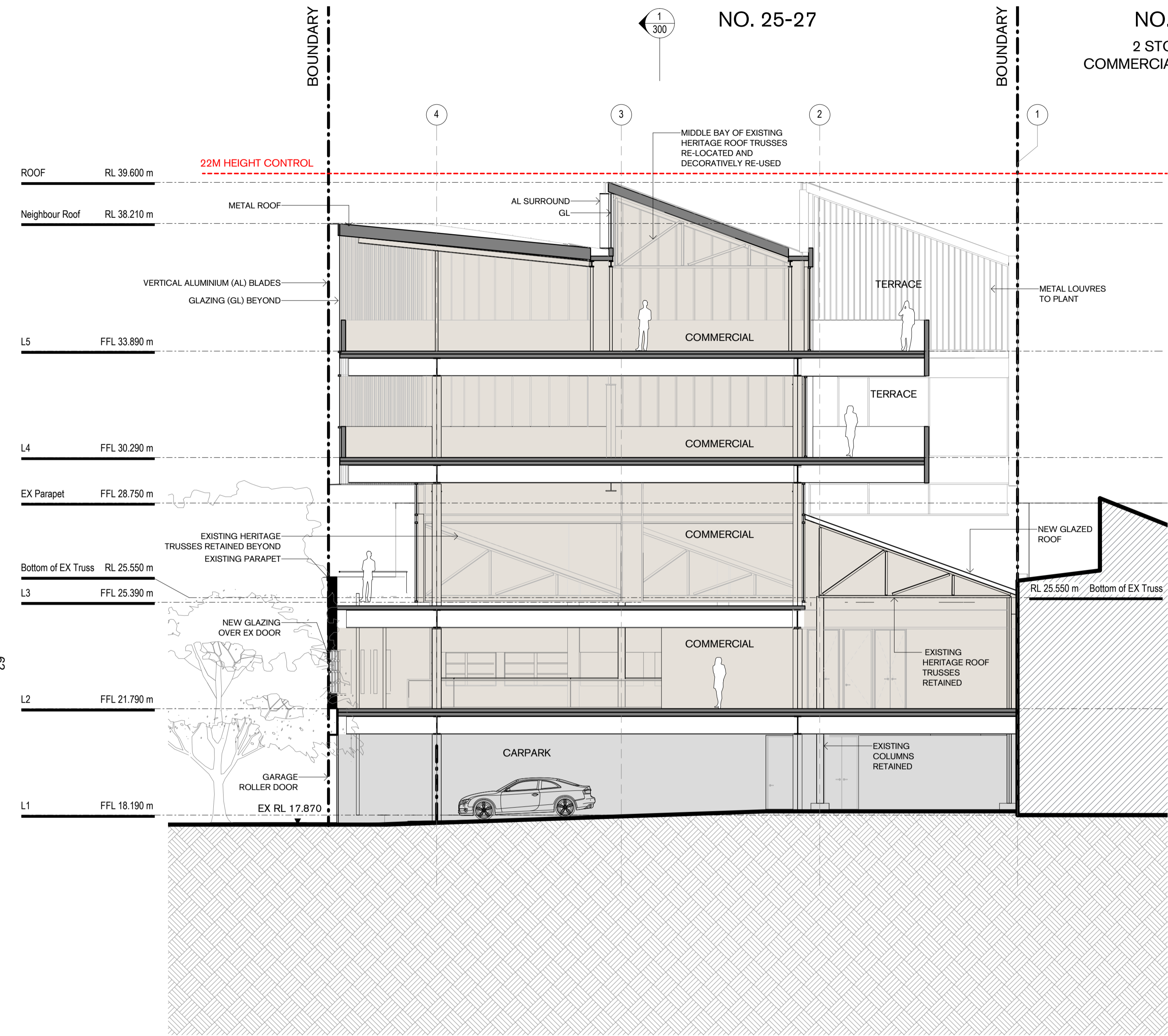
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EX	EXISTING
GL	GLAZING
LVR	LOUVRE
MC	METAL CLADDING

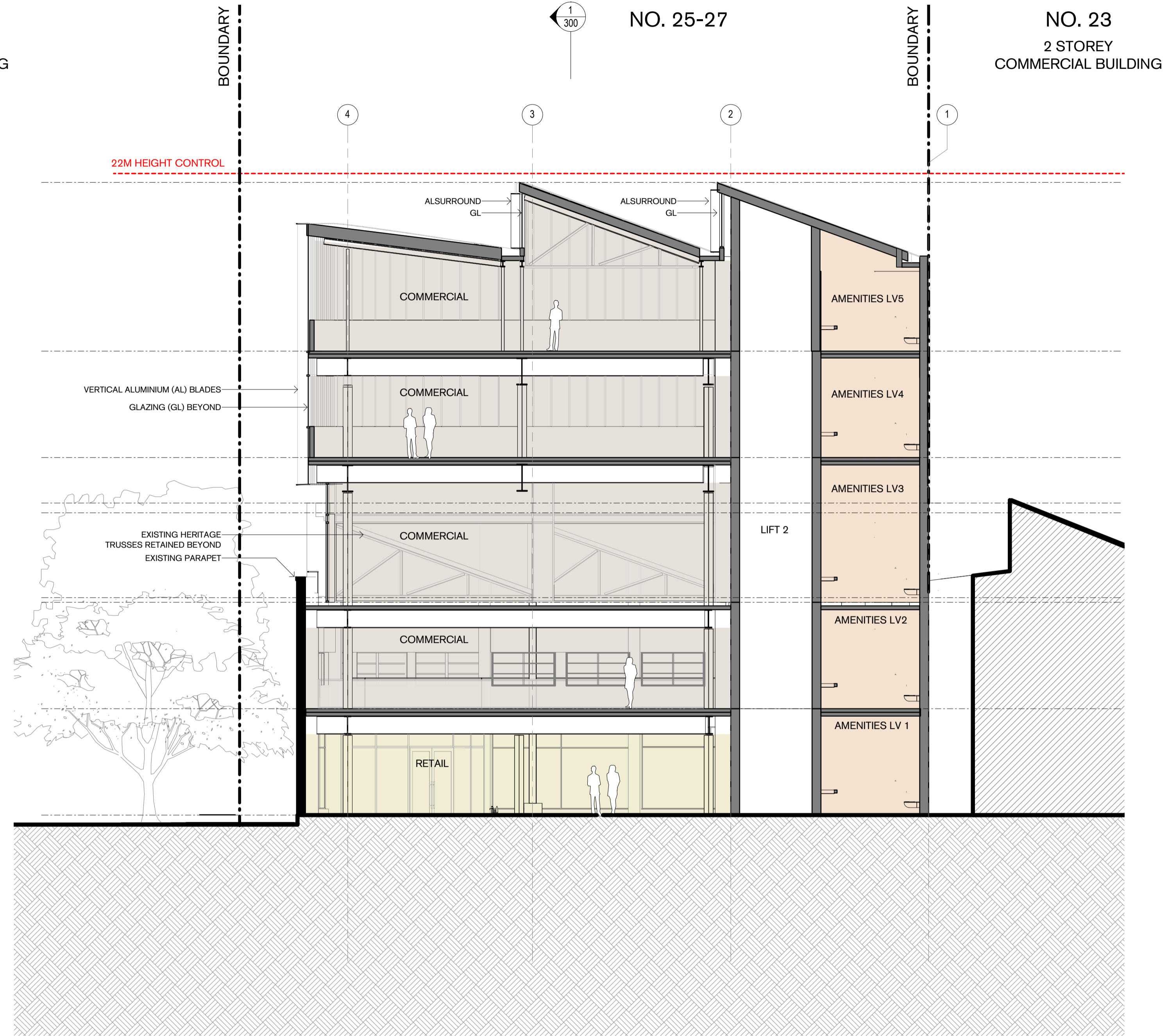
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Address	25-27 Dunning Avenue Rosebery, NSW 2018	Date Created	Drawn	Checked
		28.05.20	TZ	TZ
Status	NOT FOR CONSTRUCTION	Project No.	Drawing No.	Revision
		20009	300	E



1 | SECTION 02
1 : 100



2 | SECTION 03
1 : 100

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A	05.11.20	For Comment
B	15.02.21	For Review
C	05.03.21	For Review
D	30.03.21	Pre-DA Additional Information
E	27.07.21	For Co-ordination
F	04.11.21	Draft DA
G	22.11.21	Revised South Facade
H	06.12.21	Development Application

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Legend

AL	ALUMINIUM BLADES
DP	DOWNPIPE
EX	EXISTING
GL	GLAZING
LVR	LOUVRE
MC	METAL CLADDING

Tzannes

Scale As indicated @ A1
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Project
 Dunning Avenue Rosebery

Address
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 Rosebery, NSW 2018

Status
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Drawing
 Section 02 and 03

Date Created
 28.05.20

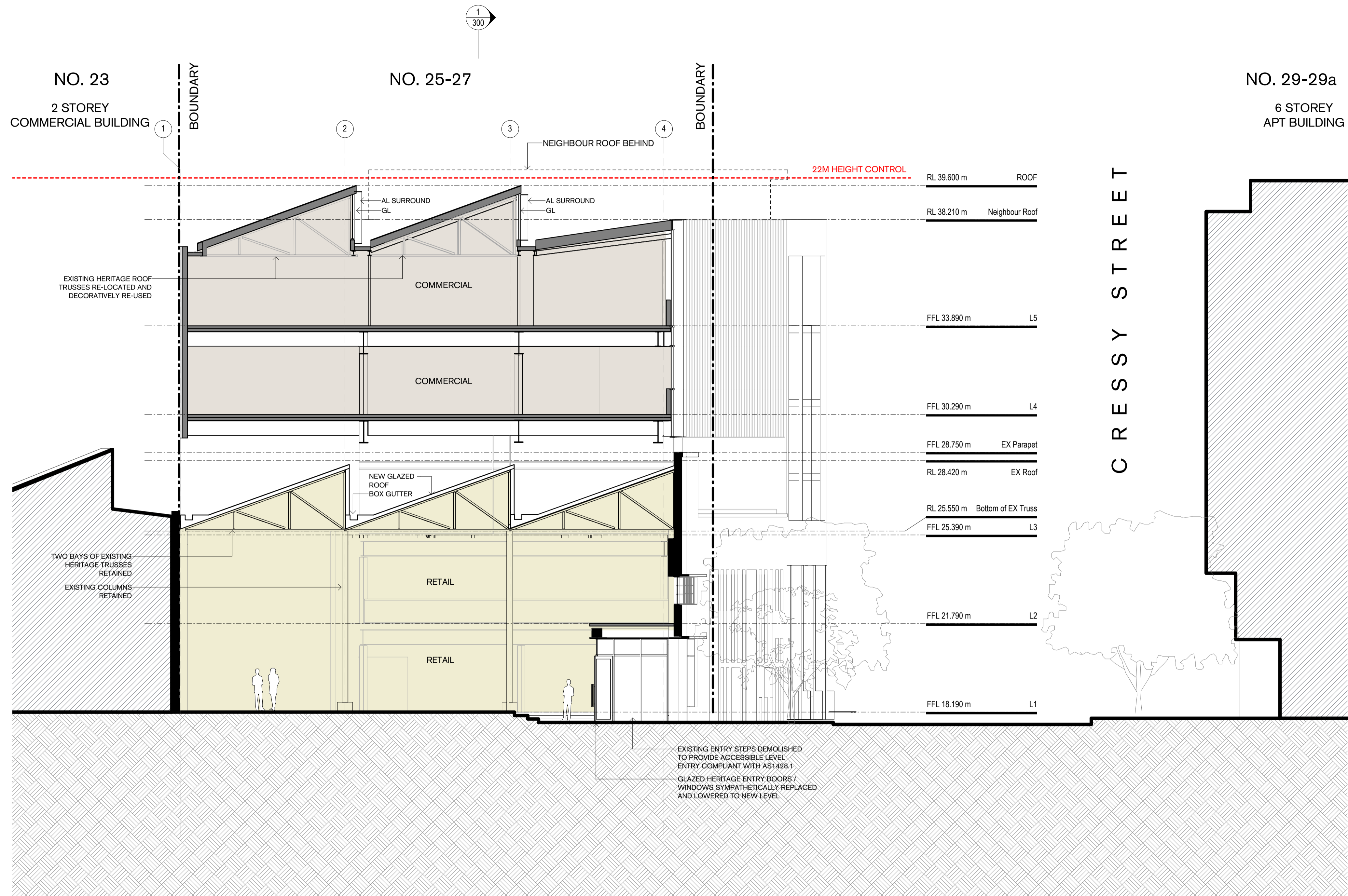
Project No.
 20009

Drawn
 TZ

Drawing No.
 301

Checked
 TZ

Revision
 H



63



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C	30.03.21	Pre-DA Additional Information
D	04.11.21	Draft DA
E	06.12.21	Development Application

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Legend

AL	ALUMINIUM BLADES
DP	DOWNPIPE
EX	EXISTING
GL	GLAZING
LVR	LOUVRE
MC	METAL CLADDING

Tzannes

Scale North
 As indicated @ A1
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Project
 Dunning Avenue Rosebery

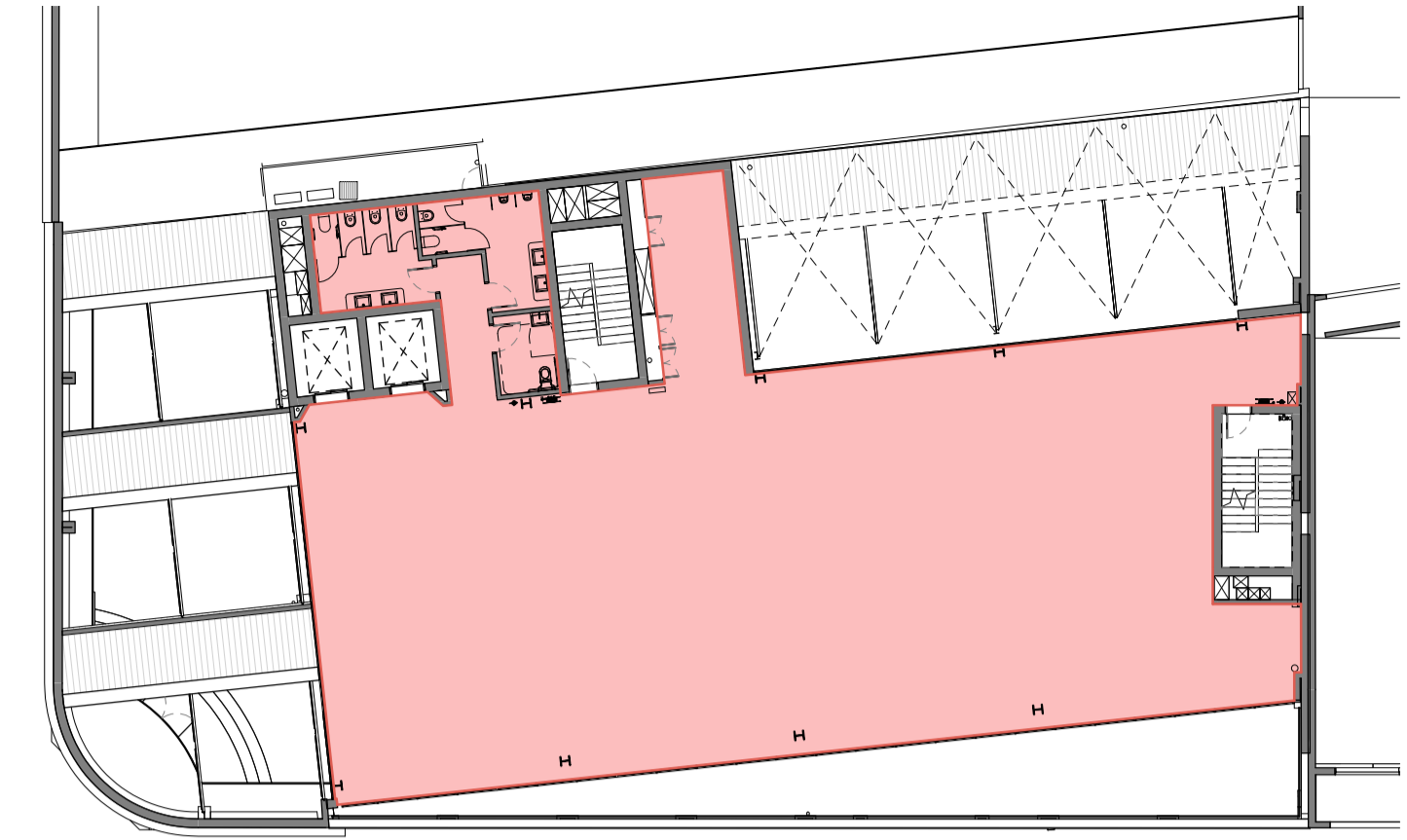
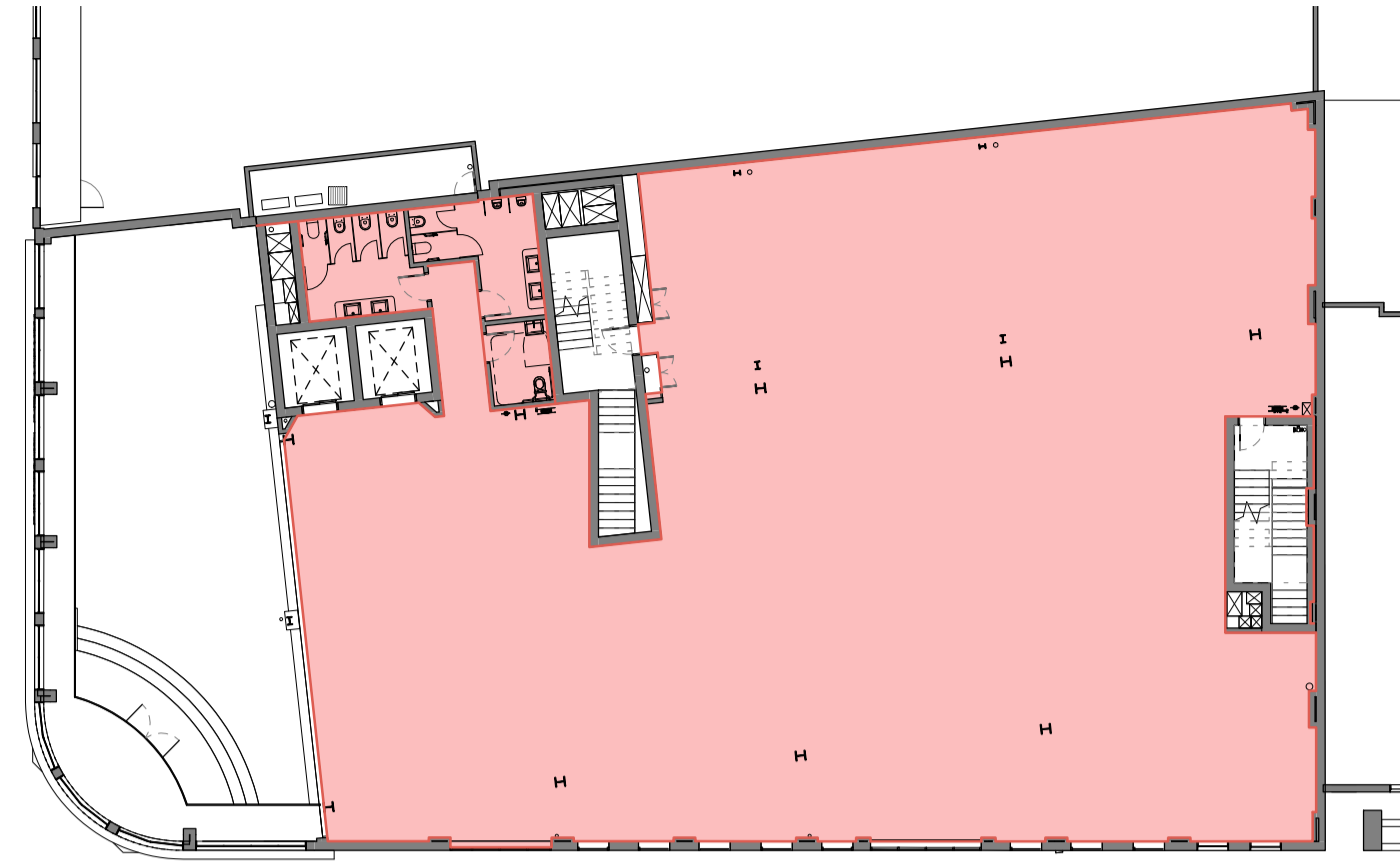
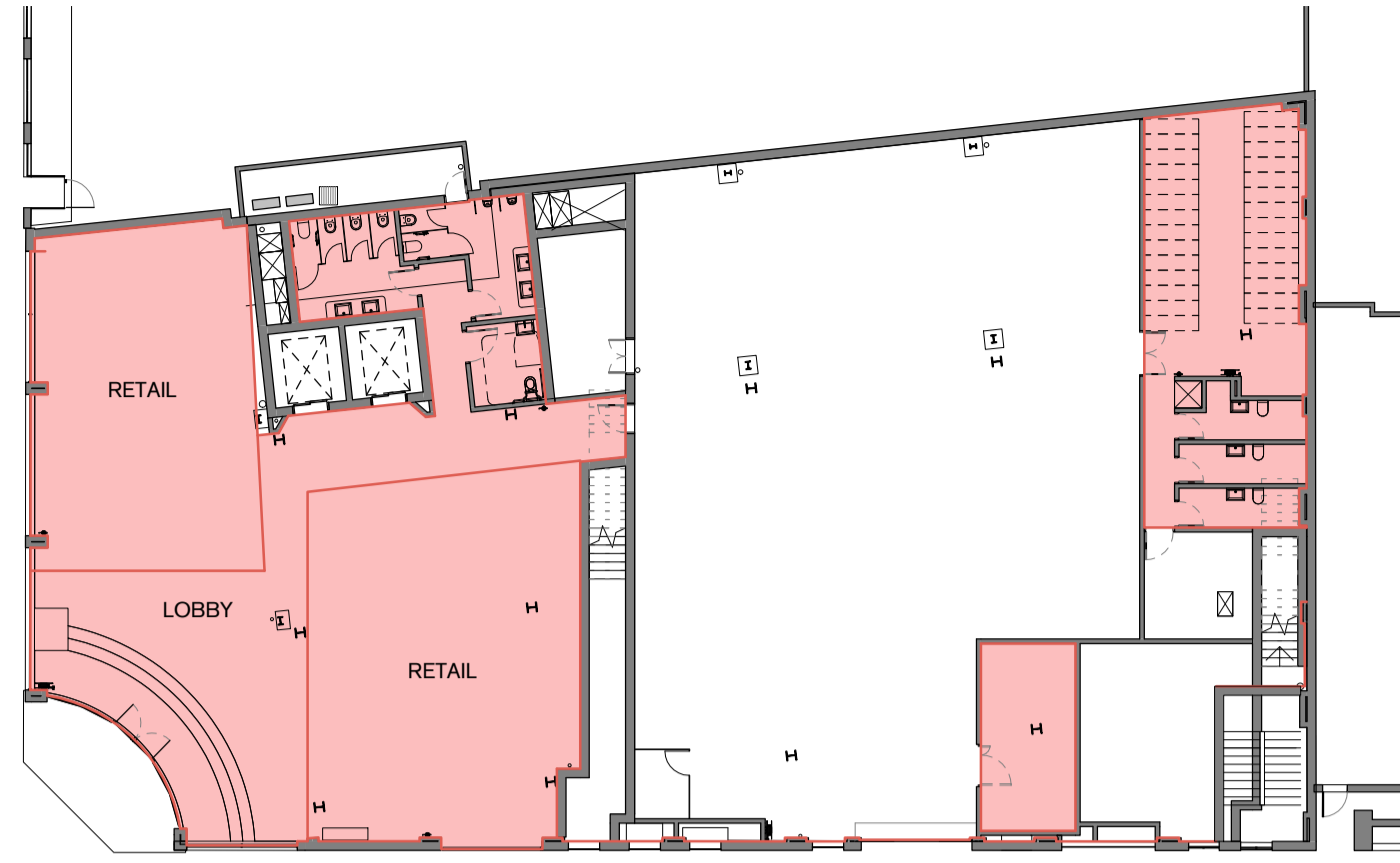
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Status
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Date Created	Drawn	Checked
28.05.20	TZ	TZ

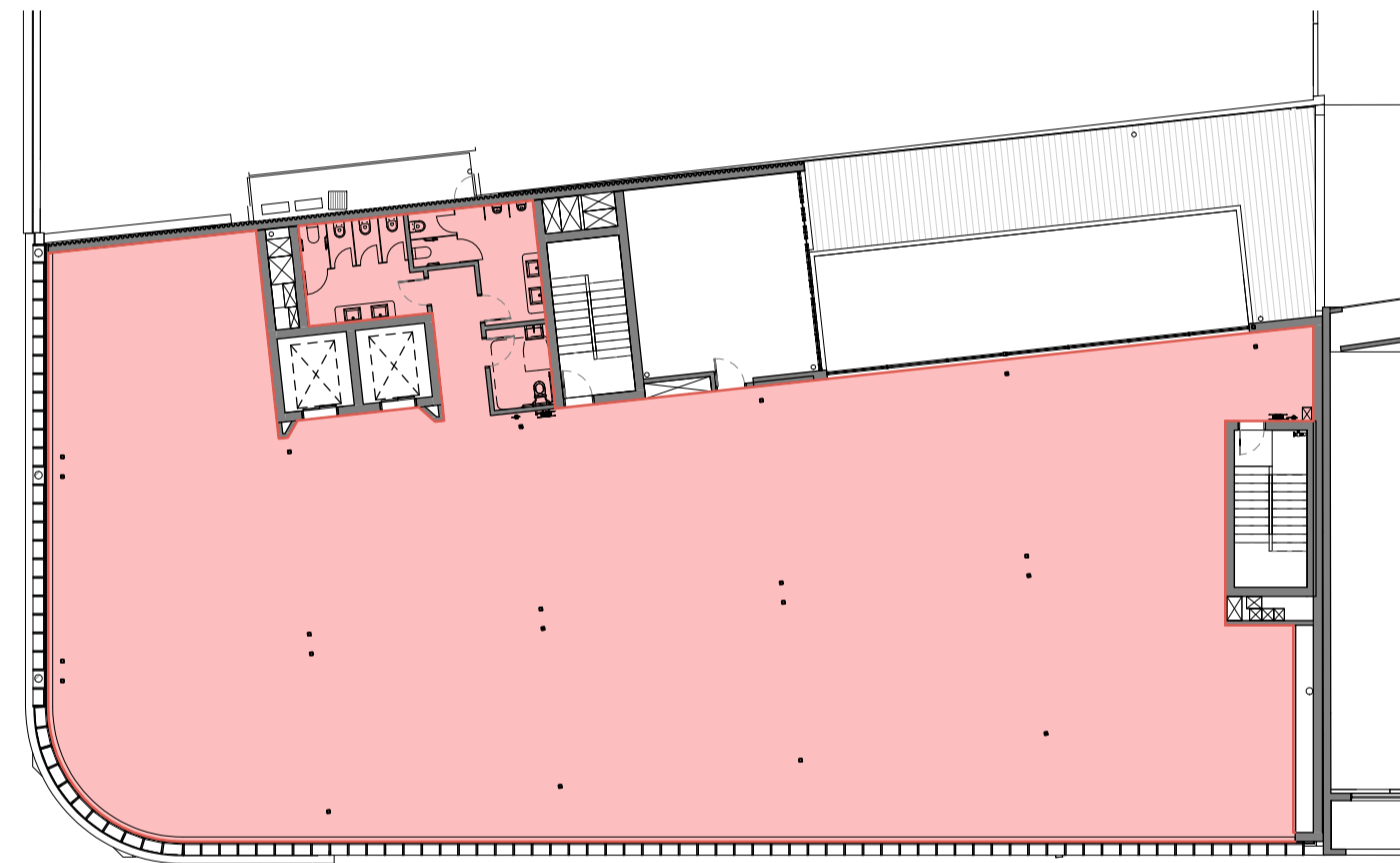
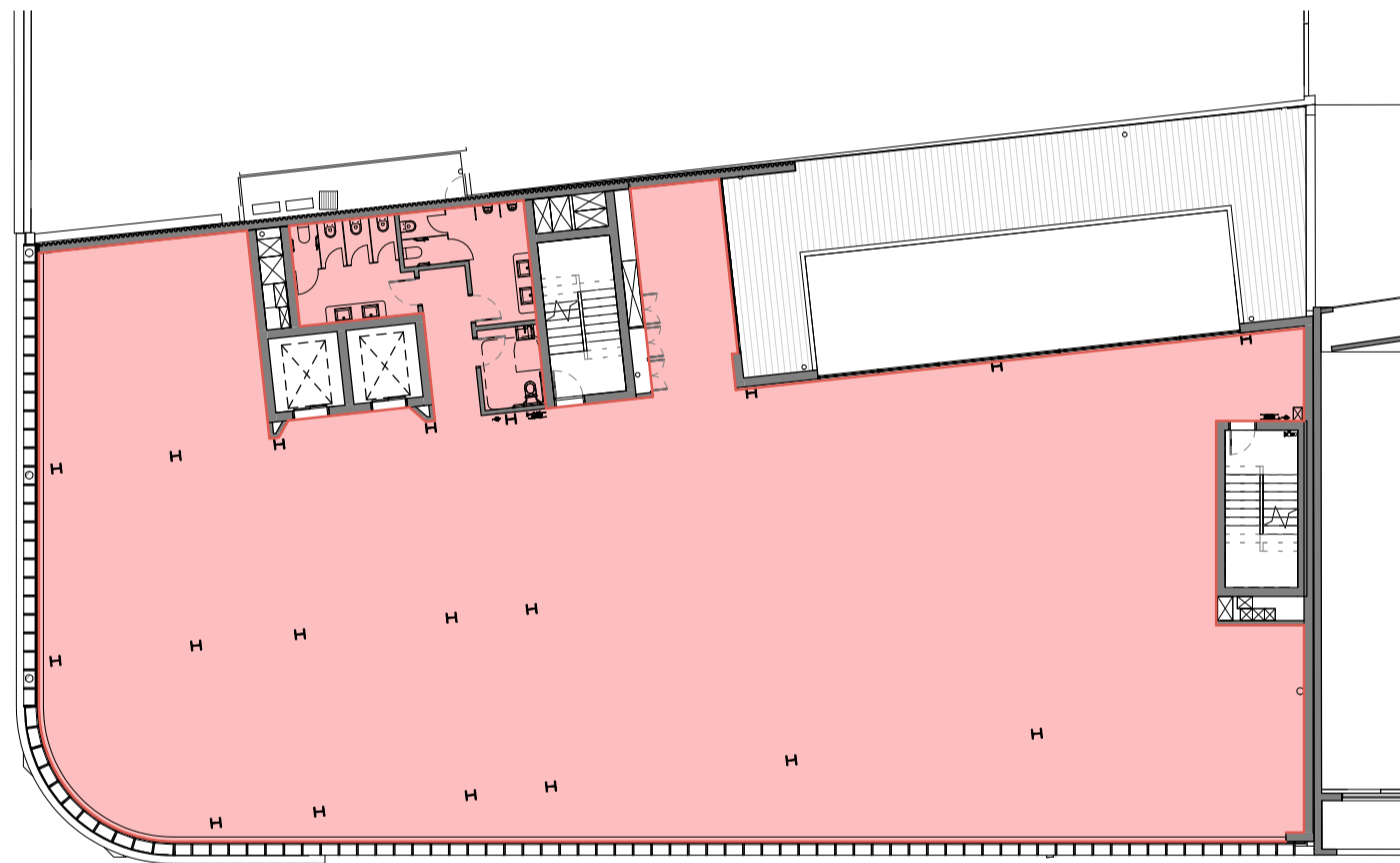
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20009	302	E



1 | L1
1:250

2 | L2
1:250

3 | L3
1:250



4 | L4
1:250

5 | L5
1:250

Area Schedule - GFA		
Level	Name	Area
L1	Commercial Lobby	134 m ²
L1	EOT	73 m ²
L1	Garbage	19 m ²
L1	Retail	84 m ²
L1	Retail	108 m ²
L2	Commercial	684 m ²
L3	Commercial	479 m ²
L4	Commercial	705 m ²
L5	Commercial	681 m ²
Total GFA		2966 m ²

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Legend

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Scale
1:250 @ A1

North

Project
Dunning Avenue Rosebery

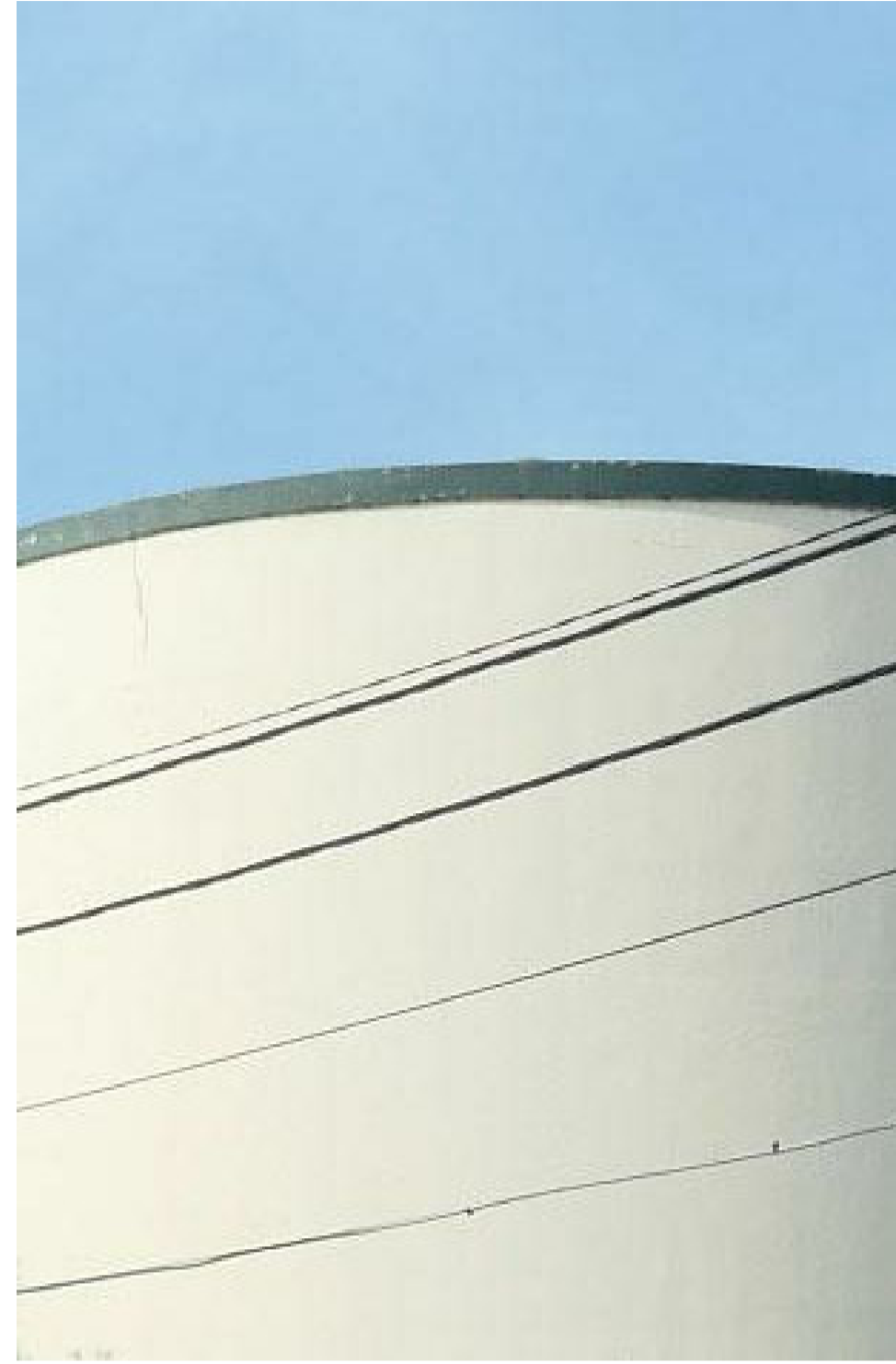
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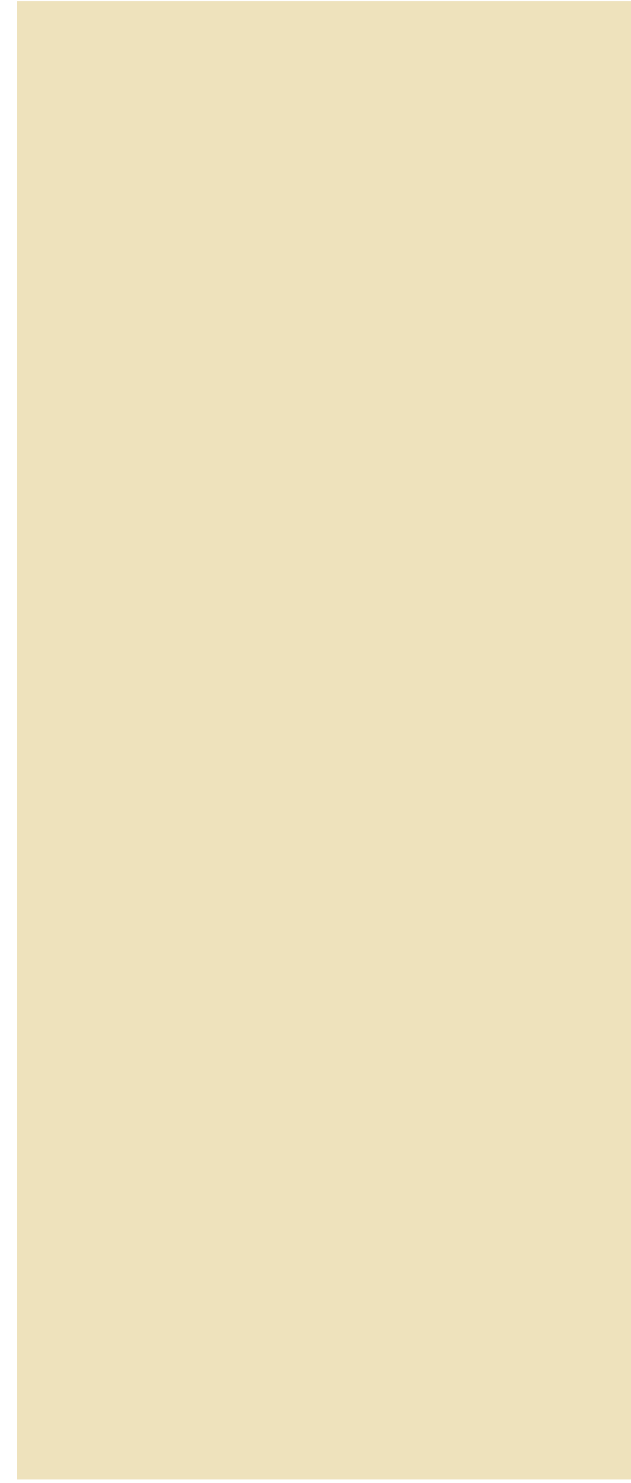
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Area Schedule

Date Created 11/03/21
Drawn TZ
Checked TZ

Project No. 20009
Drawing No. 600
Revision B



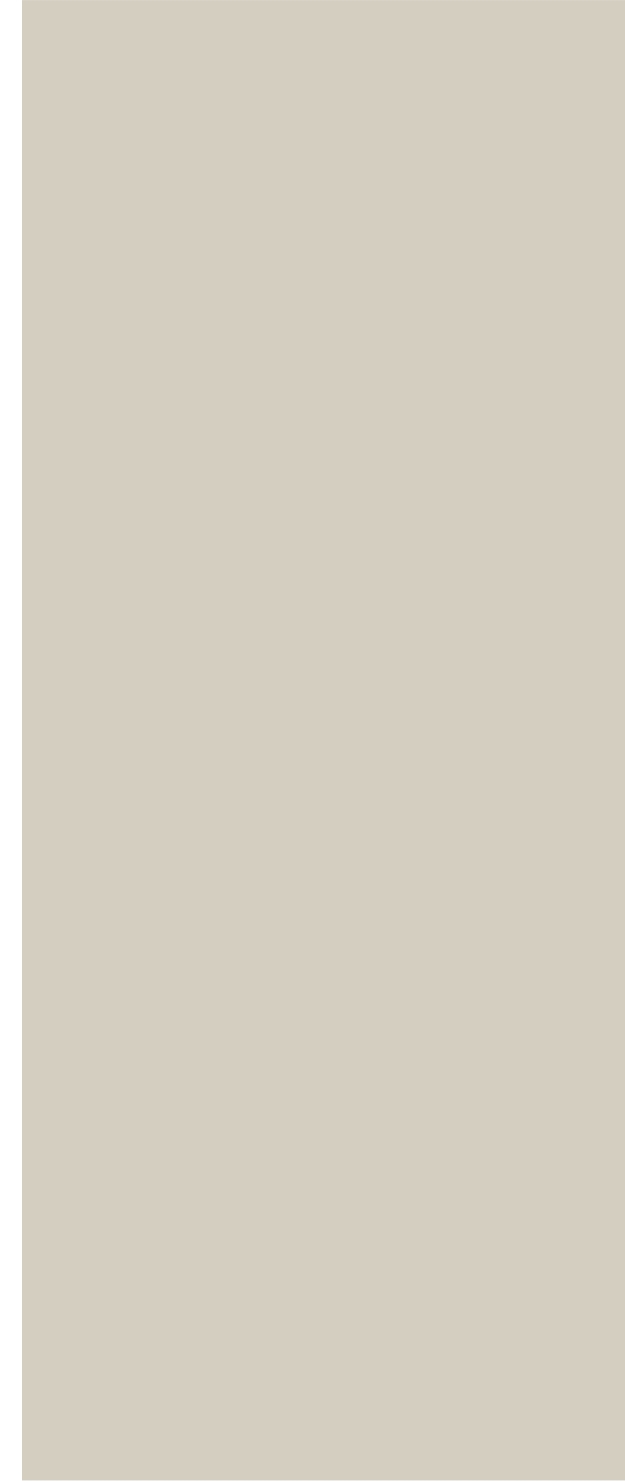
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CONSERVED AND REPAIRED



MATT POWERCOAT
SERVICES ENCLOSURES
TO MATCH EXISTING
RENDER - COLOUR TBC
ON SITE



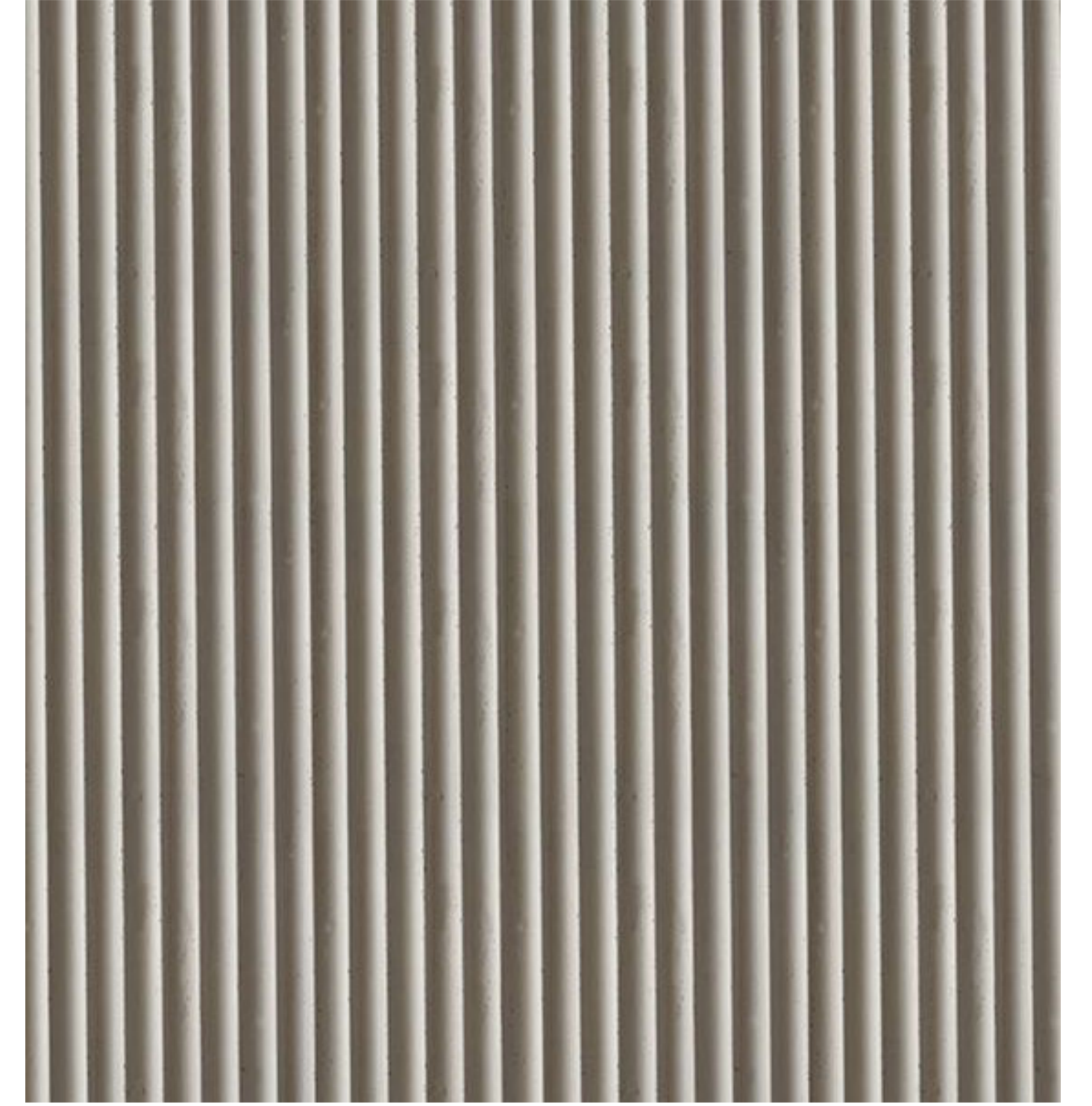
VERTICAL ALUMINIUM BLADES IN MATT
POWERCOAT, LIGHT WARM GREY



MATT POWDERCOAT
LIGHT WARM GREY



OFF-FORM CONCRETE
WARM GREY



TEXTURED CONCRETE
WARM GREY

99



DARK GREEN OF EXISTING FACADE
ELEMENTS CONSERVED AND
REPAIRED



EXISTING INTERNAL HERITAGE
TRUSSES AND COLUMNS, REPAINTED
WARM MID GREY



WARM MID GREY



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Rev

A 06.12.21

Date

For Development Application

Client

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Legend



Scale

North

Project

Dunning Avenue Rosebery

Address

25-27 Dunning Avenue
Rosebery, NSW 2018

Status

NOT FOR CONSTRUCTION

Drawing

Material and Finishes
Schedule

Date Created

12/02/21

Project No.

20009

Drawn

TZ

Drawing No.

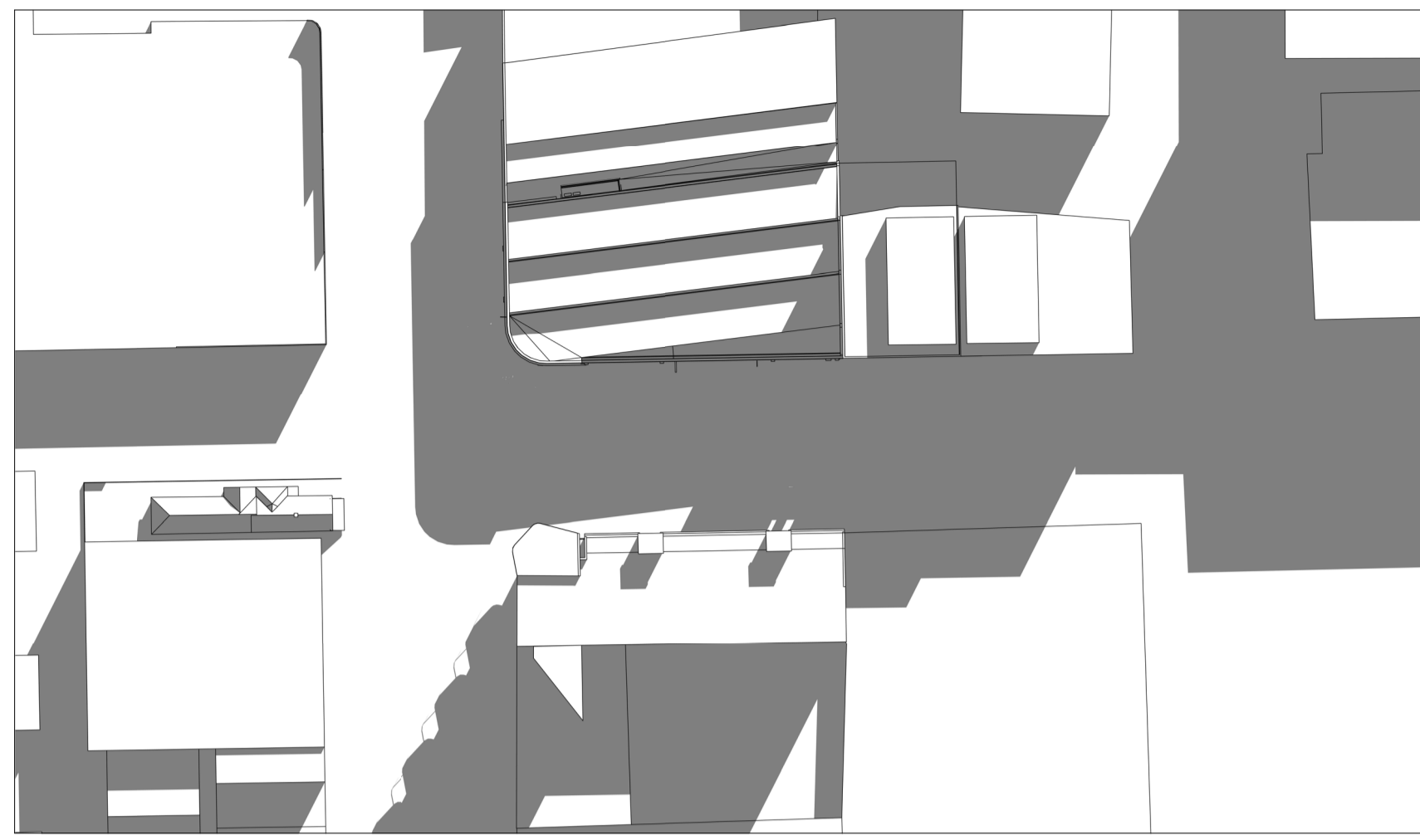
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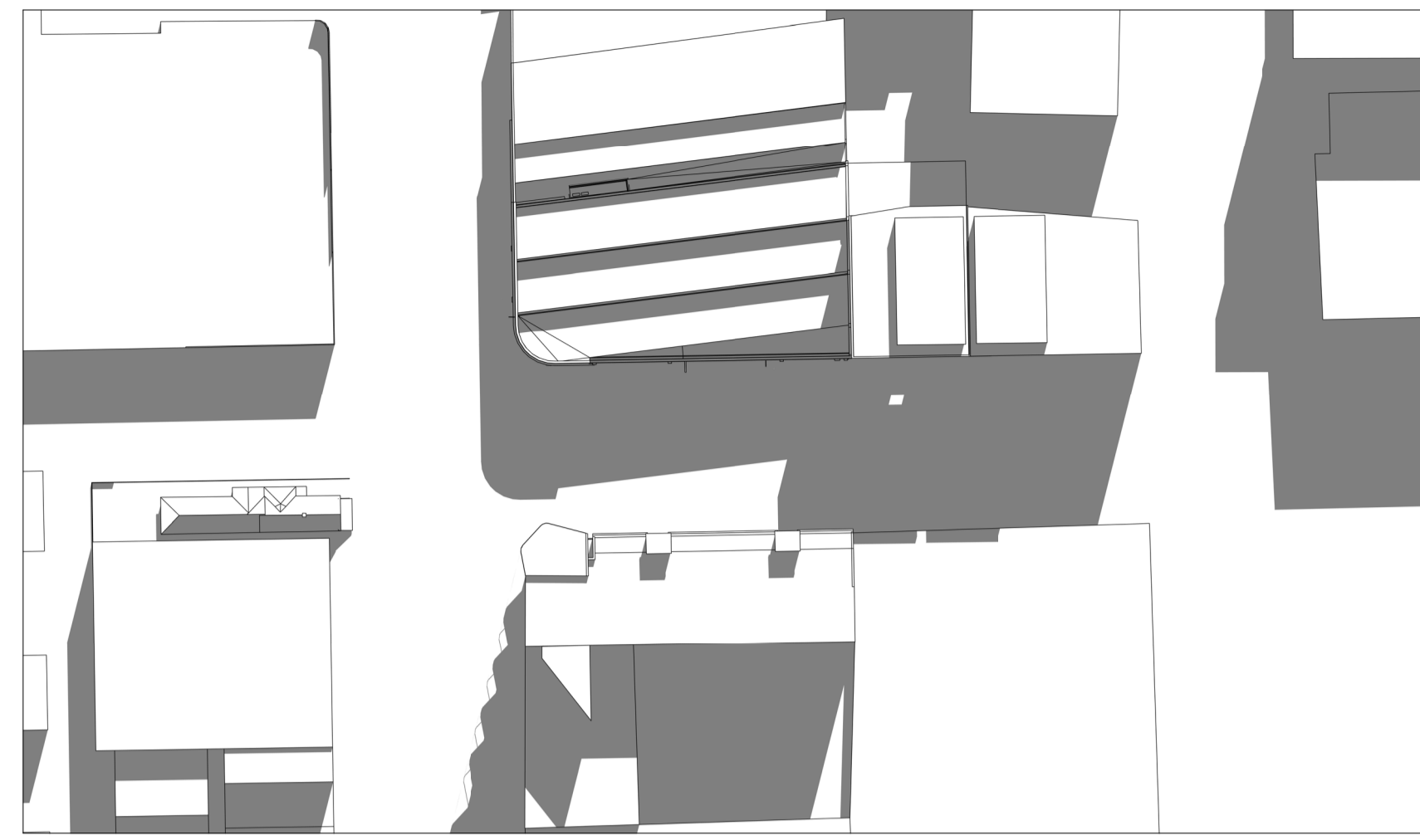
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Revision

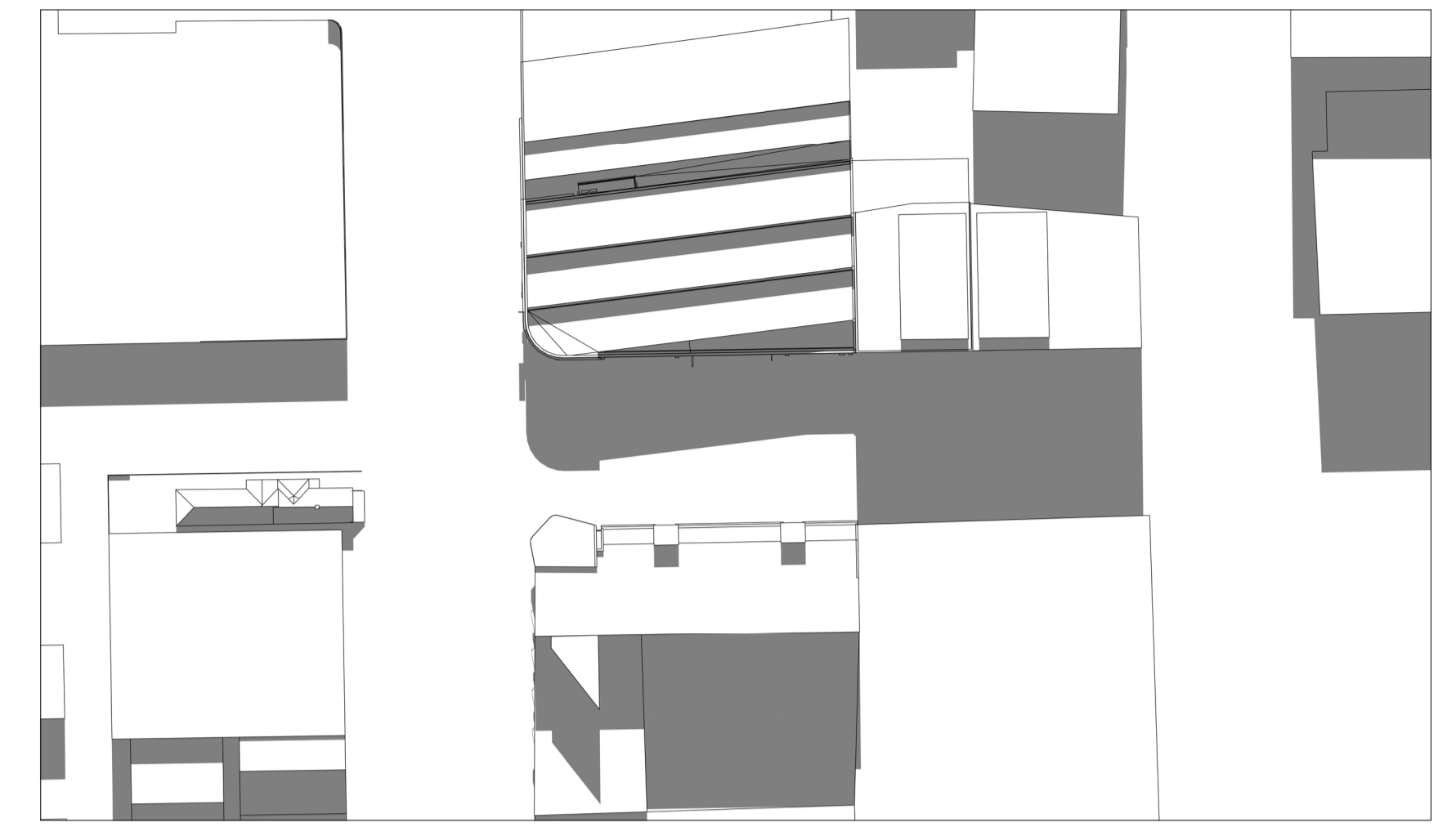
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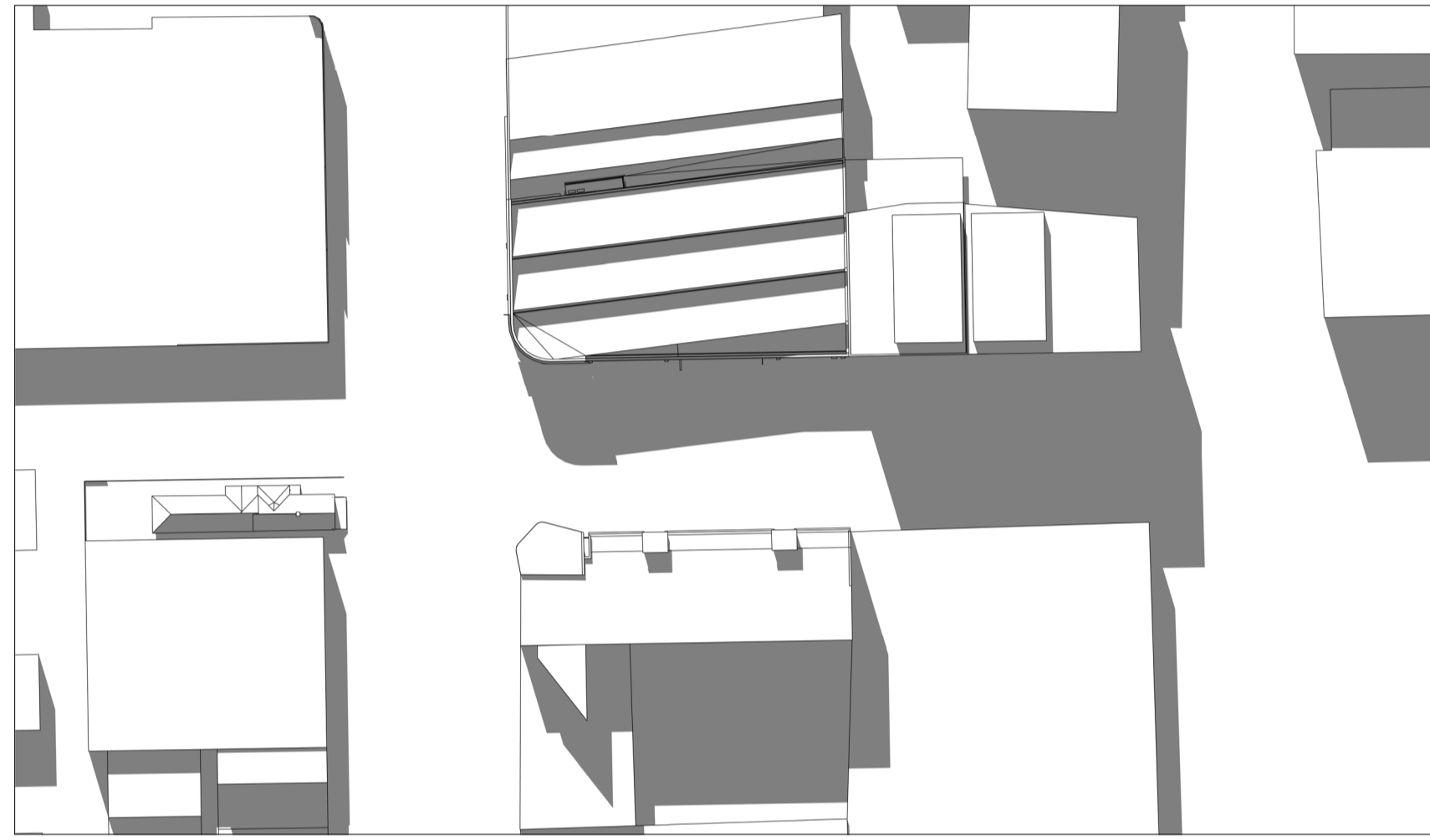
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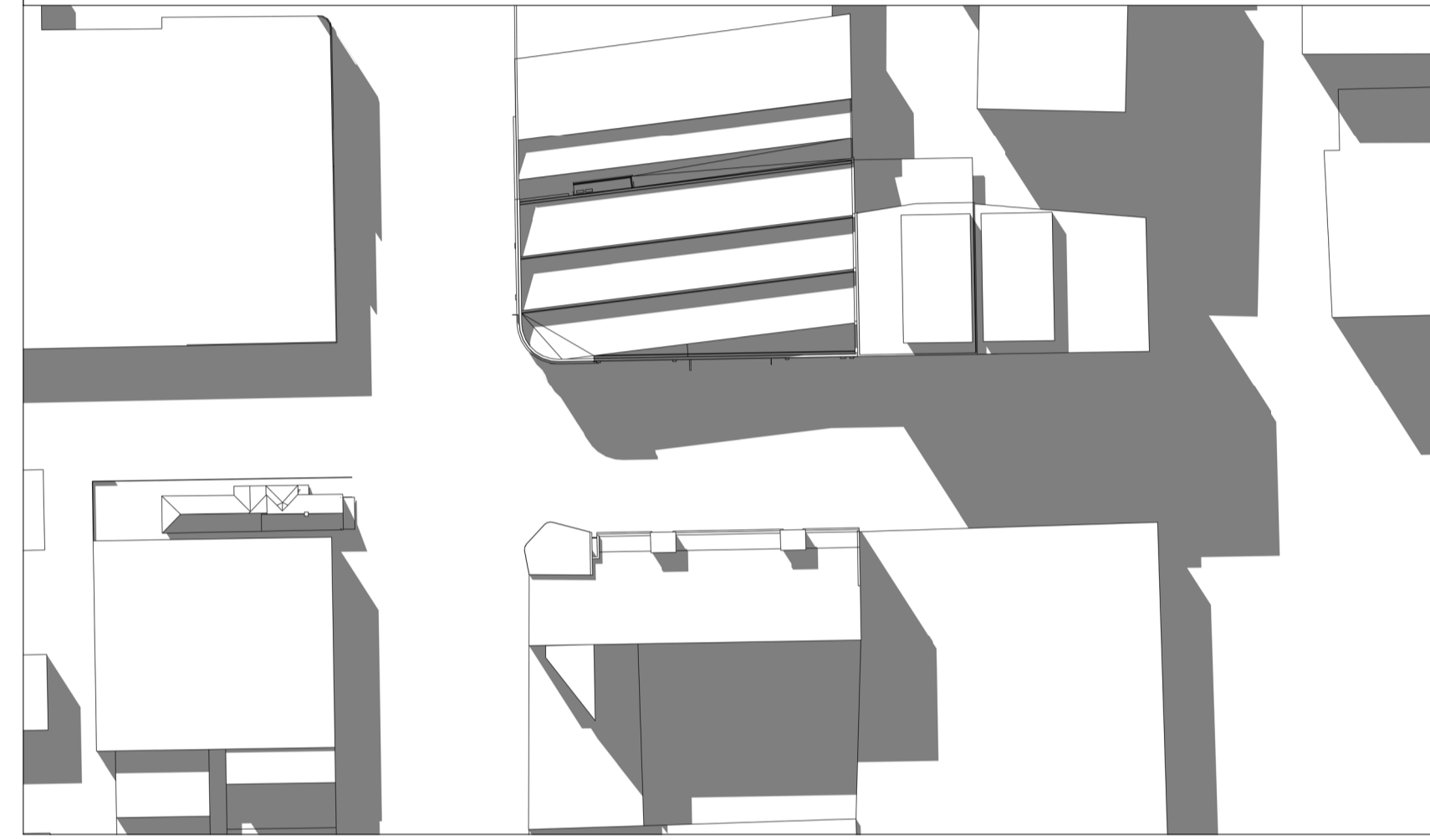
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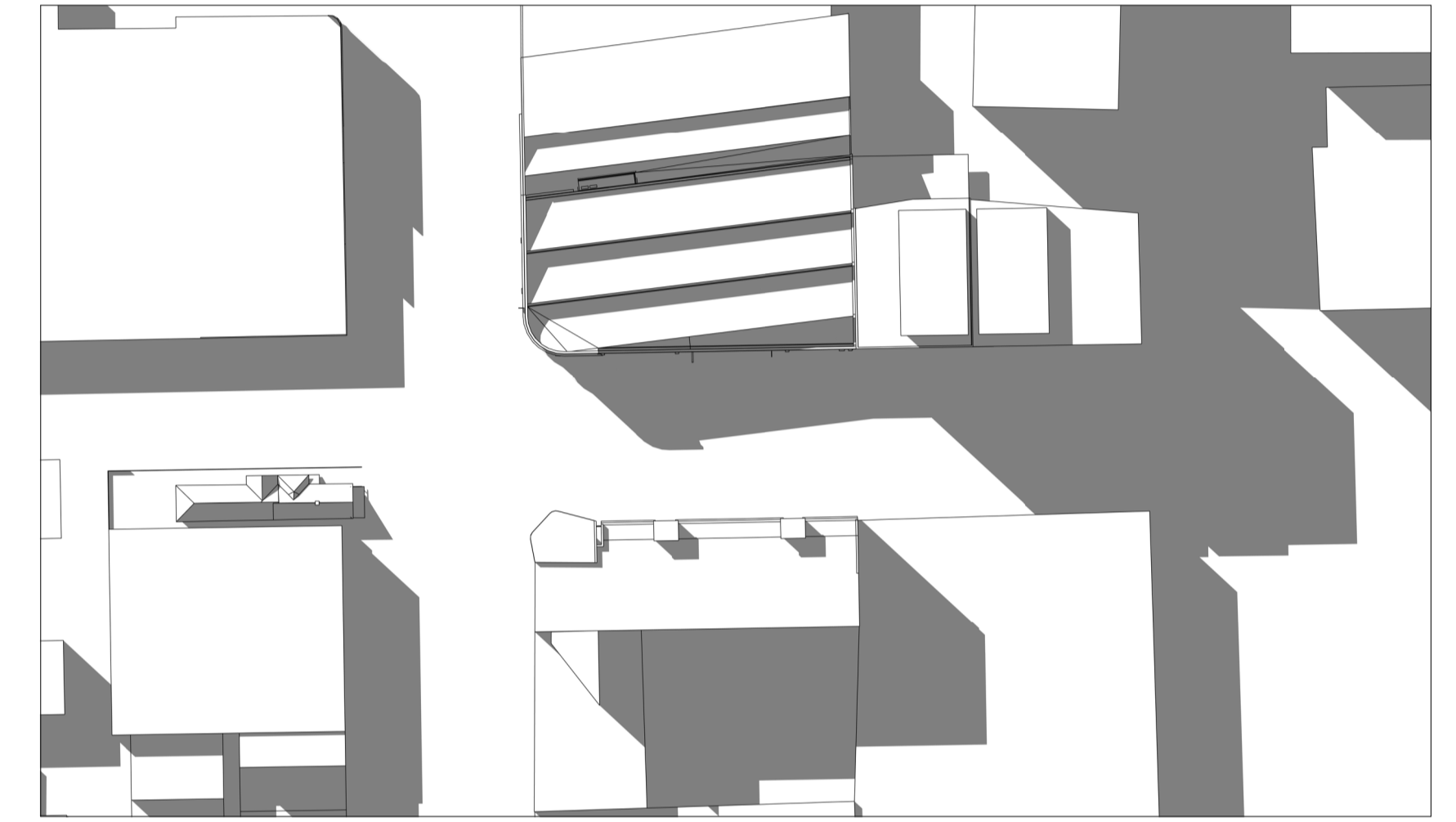
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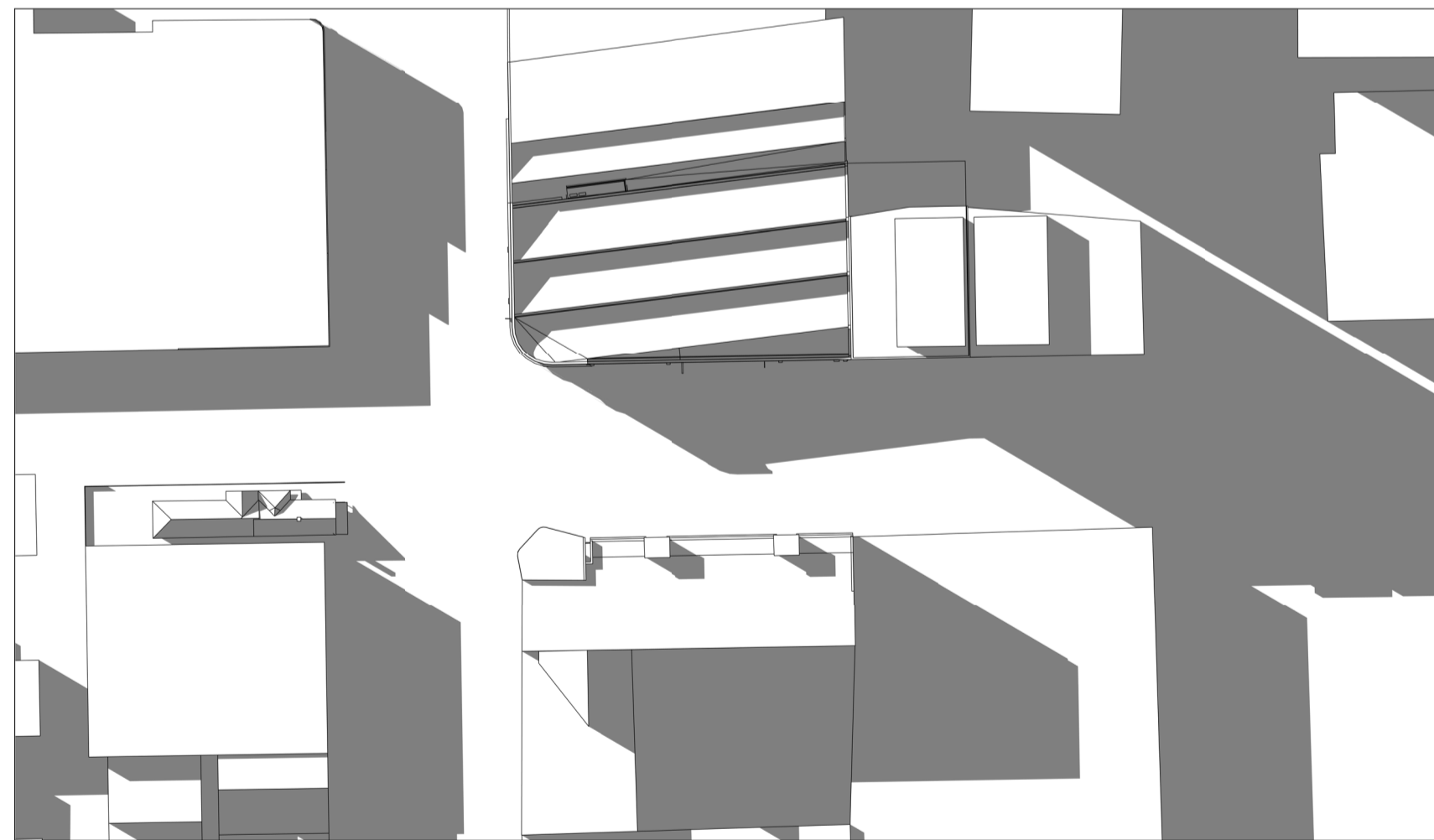
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5 Existing_Plan 1pm



6 Existing_Plan 2pm



7 Existing_Plan 3pm

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 Ben Green 7066
 Chi Melhem 7754

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C	06.12.21	Development Application

Client
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Legend

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Scale
 @ A1



Project
 Dunning Avenue Rosebery

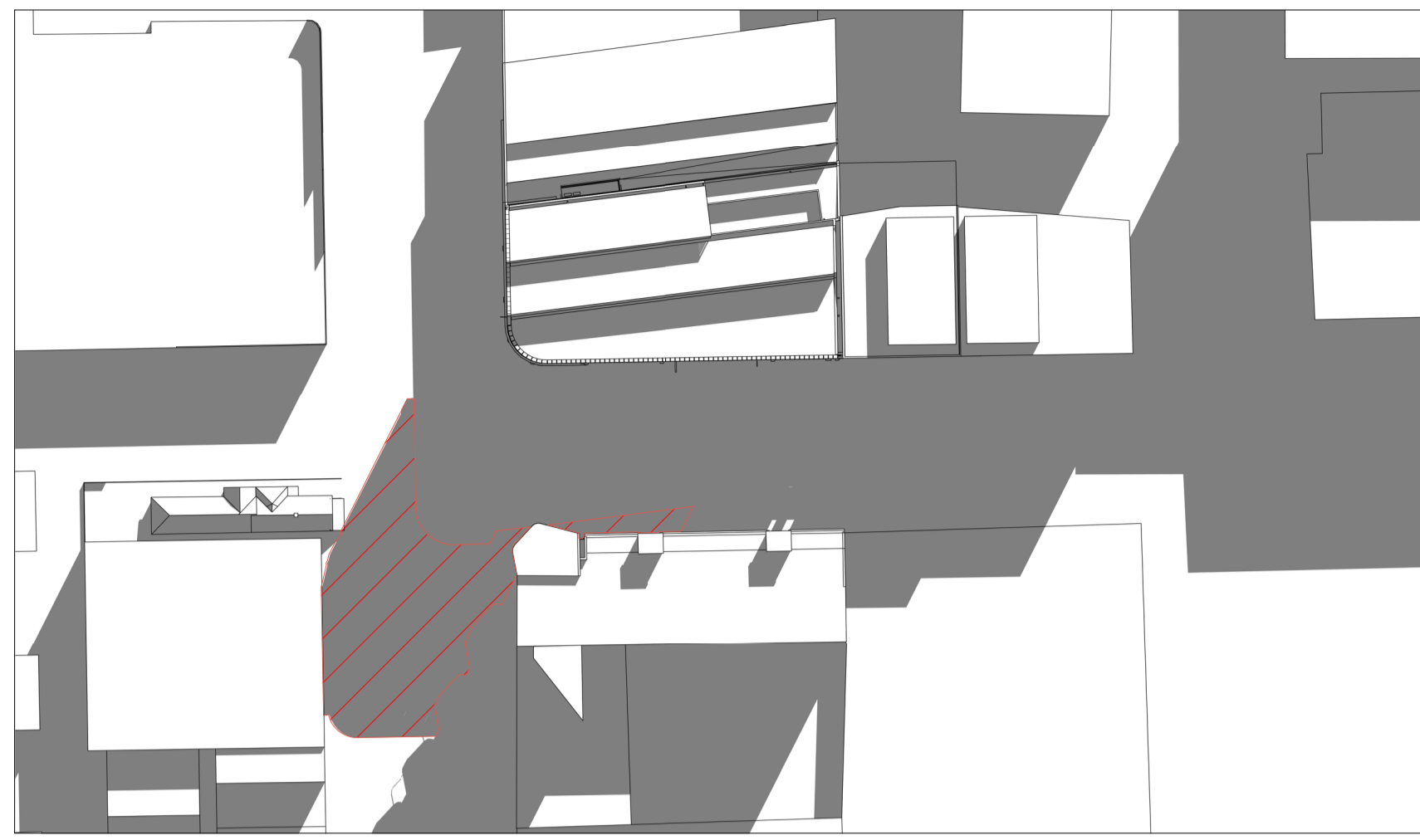
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 Rosebery, NSW 2018

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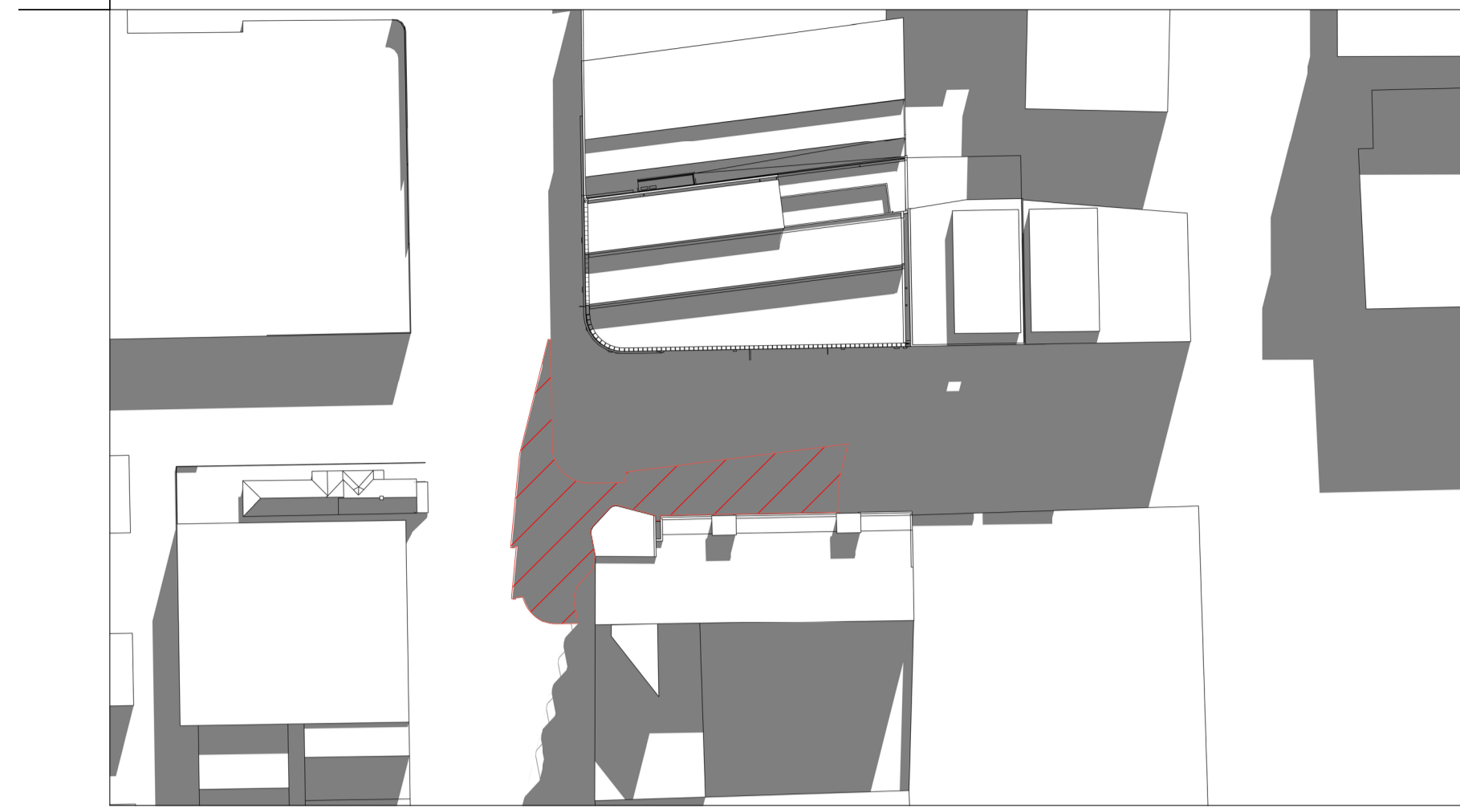
Drawing
 Solar Study_Plan
 Existing

Date Created 15.12.20
Drawn CD/AB
Checked TZ

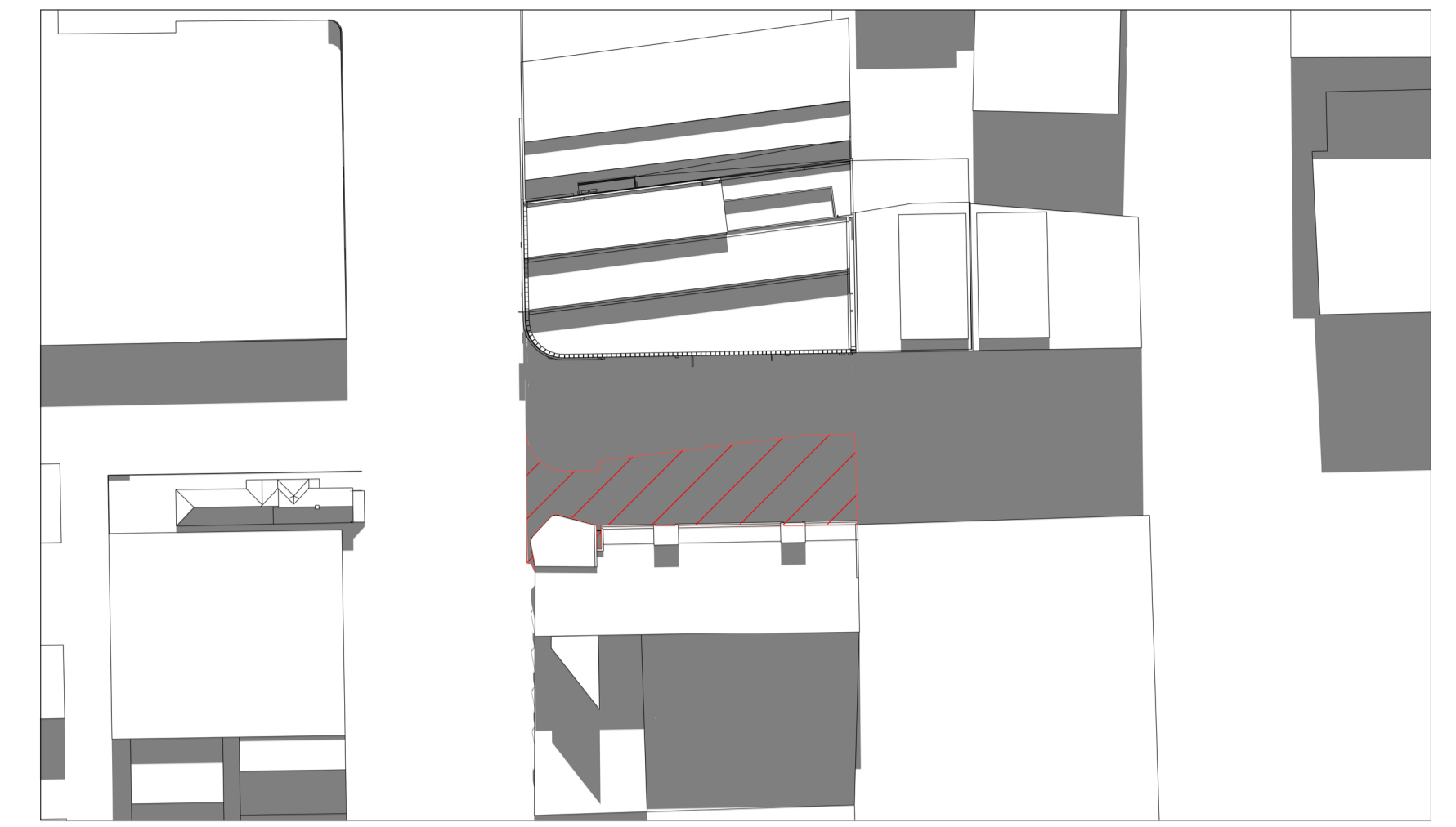
Project No. 20009
Drawing No. 802
Revision C



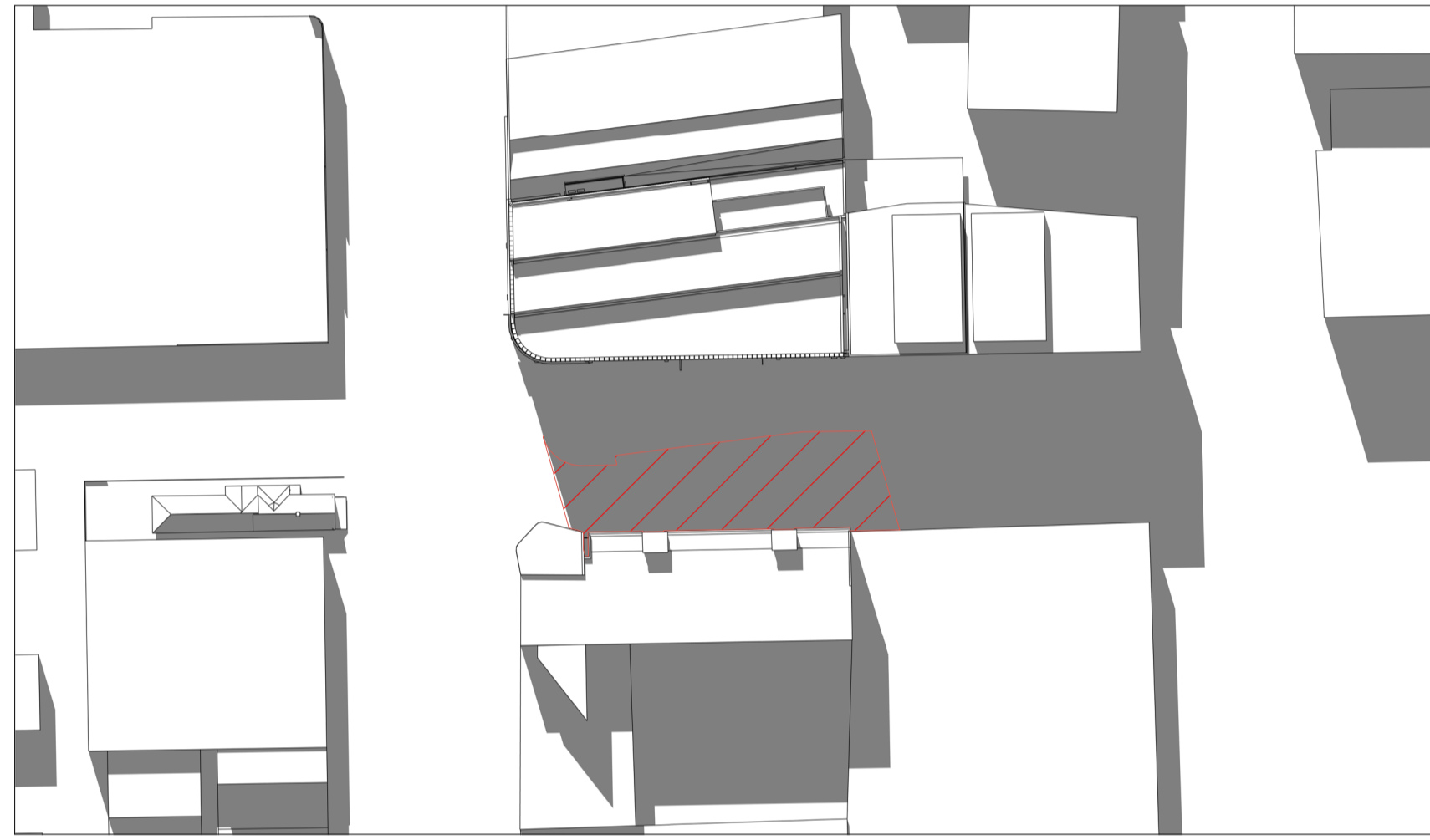
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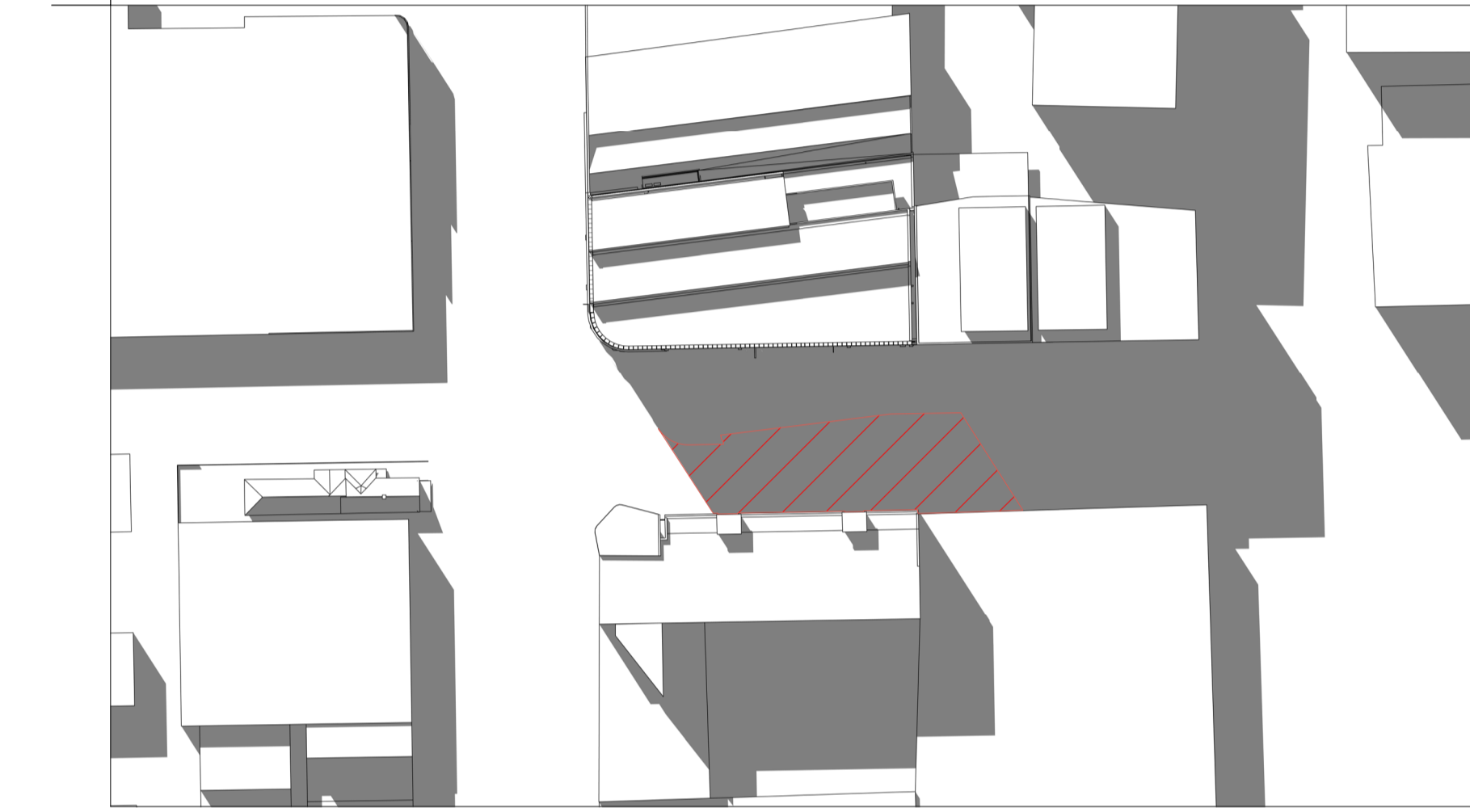
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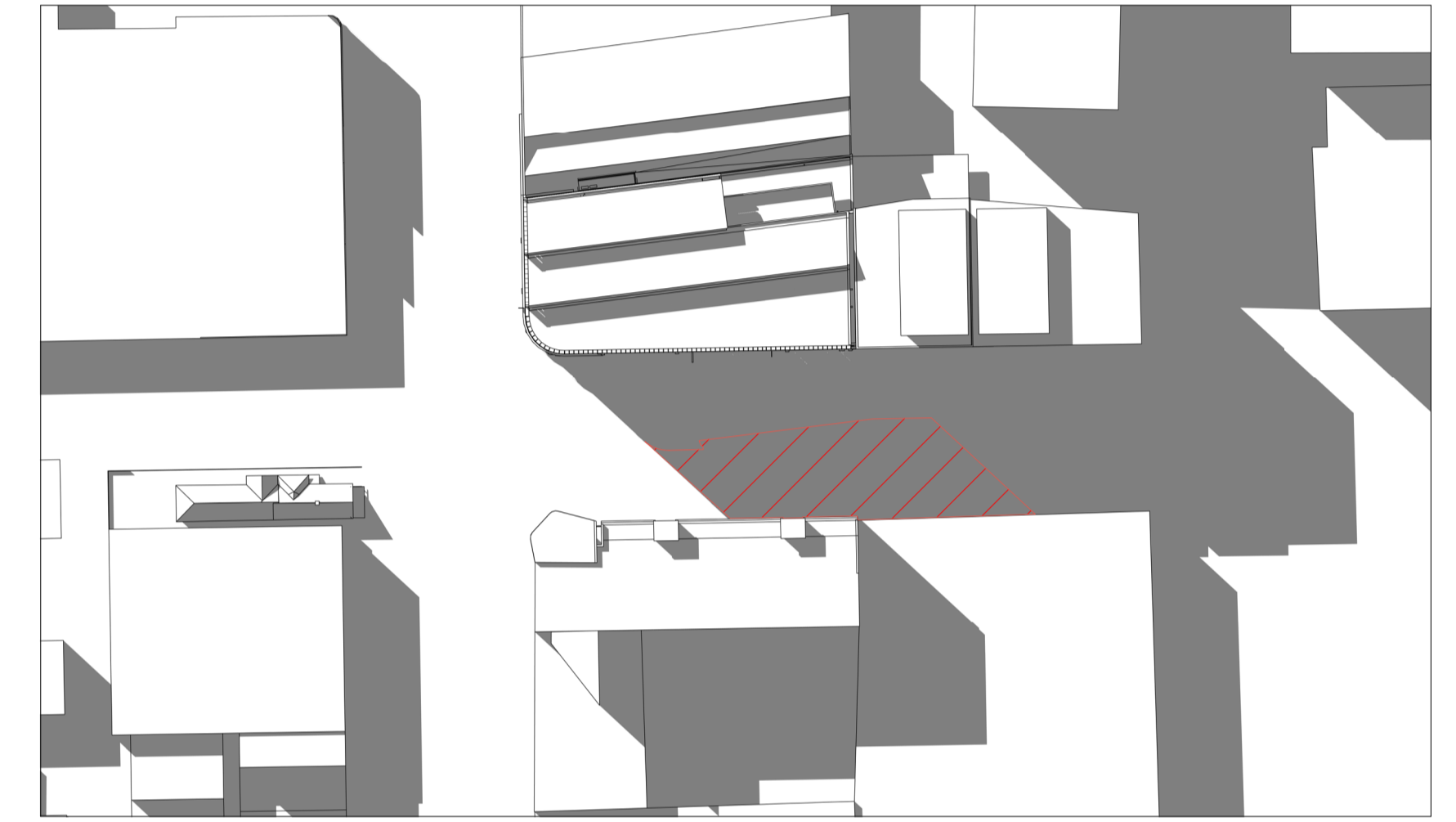
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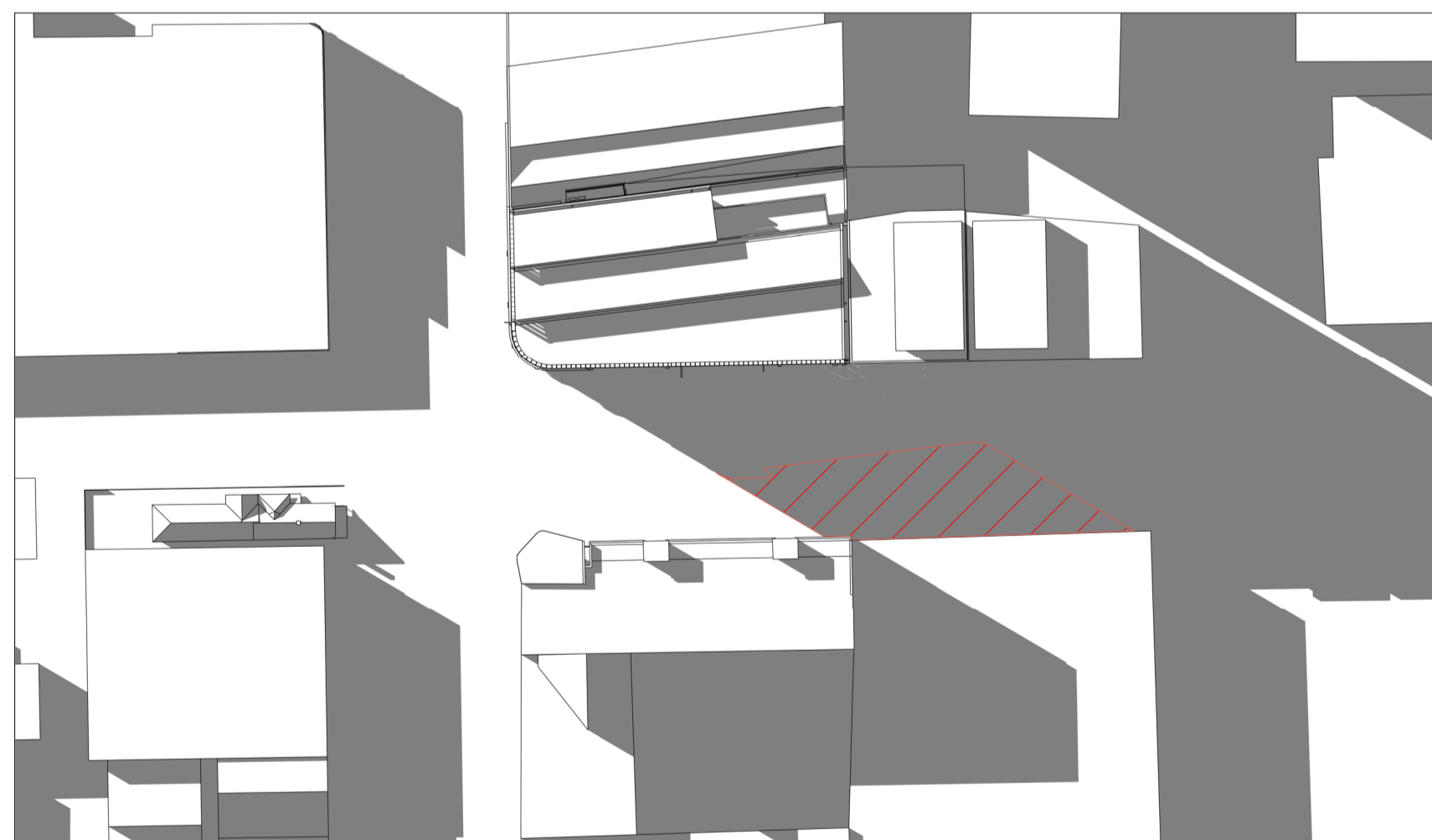
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5 | Proposed_Plan 1pm



6 | Proposed_Plan 2pm



7 | Proposed_Plan 3pm

87



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Legend

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Scale
 1 : 200 @ A1



Project
 Dunning Avenue Rosebery

Address
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 Rosebery, NSW 2018

Status
 NOT FOR CONSTRUCTION

Drawing
 Solar Study_Plan
 Proposed

Date Created 15.12.20
Drawn CD/AB
Checked TZ

Project No. 20009
Drawing No. 803
Revision C

Attachment B

Clause 4.6 Variation Request – Floor Space Ratio

GYDE

Clause 4.6 Request – Floor Space Ratio

Sydney Local Environmental Plan 2012

25-27 Dunning Avenue, Rosebery

Submitted to City of Sydney

on behalf of Dunning Proprietor Pty Ltd

This report was prepared by:

Executive Director: Stephen Kerr

Senior Planner: Elyse Kenny

Project: 21-052

Report Version: Final

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1. INTRODUCTION

This is a written request prepared in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012 (SLEP 2012) to justify a variation to the floor space ratio (FSR) development standard in a Development Application (DA) submitted to City of Sydney Council for a commercial development at 25-27 Dunning Avenue, Rosebery (the site).

The proposed works involve the:

- Removal of the existing sawtooth roof, demolition of first floor offices and mezzanine.
- Insertion of a first floor contained within the existing building envelope.
- Retention and relocation of existing trusses.
- Construction of a three (3) storey addition with outdoor terraces, amenities and services.
- Retention of, conservation works and upgrades to the existing heritage façade including new window openings on the Cressy Street frontage.

Specifically, the proposal involves the adaptive re-use of the heritage item and will result in a 5 storey commercial building containing:

- Ground Floor – shared commercial lobby and retail space, amenities, car park containing ten (10) car parking spaces and one (1) service vehicle space. The ground floor also includes end of trip facilities (EOTF), plant and service rooms and waste room.
- Four storeys of commercial tenancies above including associated amenities, lift access, fire stairs and plant.

The site is subject to a maximum FSR of 1.5:1, however, the proposal benefits from additional floor space under the SLEP which is summarised as follows:

- **Clause 6.13 End of journey floor space** – As demonstrated on the GFA plans, the proposed end of trip facilities (EOTF) have a total area of 73sqm which equates to a FSR of 0.076:1. Pursuant to Clause 6.13 of the SLEP the end of journey floor space (up to maximum FSR of 0.3:1) can therefore be added as additional floor space above the maximum FSR that applies to the site.
- **6.14 Community infrastructure floor space at Green Square** - The site is eligible for a bonus 0.5:1 FSR under Clause 6.14 by delivering additional community infrastructure at Green Square. The applicant will enter into a Voluntary Planning Agreement in accordance with Council's Community Infrastructure Guidelines.

When considering the additional floor space above, the site benefits from a combined maximum FSR of 2.076:1. However, this Clause 4.6 Request seeks to vary Clause 4.4 of the SLEP and therefore all GFA, notwithstanding the additional floor space provisions discussed above, must be considered in relation to the base FSR of 1.5:1.

Therefore, for the purpose of this Clause 4.6 Variation Request to Clause 4.4 of the SLEP, the proposed building has a total gross floor area (GFA) of 2,966sqm which equates to a FSR of 3.1:1. This results in a 1.6:1 variation (107%) to the current numerical FSR standard of 1.5:1. As Commissioner Clay explained in his decision in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112, the application of clause 4.6 should not be constrained by a perceived maximum number by which a standard may be varied (this decision was upheld by the Chief Judge of the Land and Environment Court on appeal in *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115).

The objectives of Clause 4.6 are to provide an appropriate level of flexibility in applying certain development standards to particular development, and to achieve better outcomes for and from development, by allowing flexibility in particular circumstances.

Clause 4.6 Request – Floor Space Ratio

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various recent decisions in the New South Wales Land and Environment Court (LEC) and New South Wales Court of Appeal (Appeals Court).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130) and *Al Maha Pty Ltd v Huajun Investments Pty Ltd (2018) 233 LGERA 170*; [2018] NSWCA 245:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)];
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b)]; and
3. That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out [clause 4.6(4)].

This request considers that compliance with the FSR development standard is unreasonable and unnecessary in the circumstances of the proposed development because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

There are sufficient environmental planning grounds to justify the variation as detailed in Section 5 of this 4.6 Request.

The development satisfies the objectives of the FSR standard, as well as the objectives of the B4 Mixed Use Zone and is therefore in the public interest.

This request also addresses the requirement for concurrence of the Secretary as required by Clause 4.6(4)(b).

It is therefore considered appropriate in these circumstances to grant the Clause 4.6 variation request.

2. STANDARD TO BE VARIED

The standard that is proposed to be varied is the FSR development standard which is set out in clause 4.4 of the SLEP 2012 as follows:

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.



Figure 1: Extract of FSR Map, subject site outlined in red. (Source: NSW Legislation)

The numerical value of the development standard applicable in this instance is 1.5:1.

The development standard to be varied is not excluded from the operation of clause 4.6 of the LEP.

3. EXTENT OF VARIATION

Pursuant to Clause 4.4(2) of the SLEP 2012, the maximum FSR for development on the subject site is 1.5:1. As discussed in the Executive Summary, the site is also eligible for additional FSR under Clauses 6.13 and 6.14 of the SLEP. These include an additional 0.076:1 FSR for the provision of EOTF (under Clause 6.13) and additional 0.5:1 FSR by delivering additional community infrastructure at Green Square. When considering the additional floor space provisions, the site is subject to a combined FSR standard of 2.076:1. However, this Clause 4.6 Variation Request is made in relation to Clause 4.4 of the SLEP and therefore all GFA, notwithstanding the additional floor space provisions discussed above, must be considered in relation to the base FSR of 1.5:1.

The proposed building has a total gross floor area (GFA) of 2,966sqm which equates to a FSR of 3.1:1. This results in a 1.6:1 variation (107%) to the current numerical FSR standard of 1.5:1. Compared with the combined FSR (including of EOTF and community infrastructure bonus floor space) the variation is 1.024:1 or 49%.

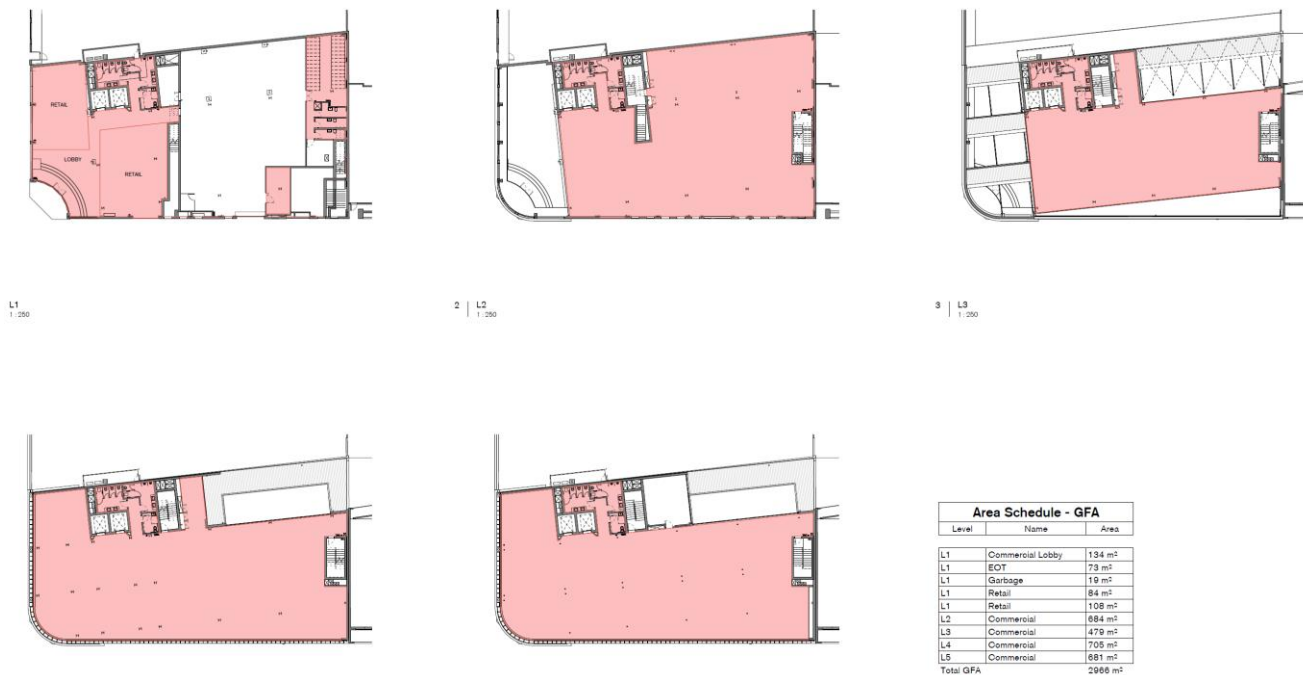


Figure 2: Gross Floor Area Diagrams (Source: Tzannes)

4. UNREASONABLE OR UNECESSARY

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a) of the LEP.

The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. See *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe).

The five ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; (First Test)
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; (Second Test)
3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; (Third Test)
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 the standard is unreasonable and unnecessary; (Fourth Test) and
5. The zoning of the land is unreasonable or inappropriate. (Fifth Test)

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

Nonetheless, we have considered each of the ways as follows.

4.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The following table considers whether the objectives of the development standard are achieved notwithstanding the proposed variation (First test under *Wehbe*).

Table 1 Consistency with Objectives of Clause 4.4 of SLEP.

OBJECTIVE	DISCUSSION
4.4 Floor space ratio (1) The objectives of this clause are as follows—	
(a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,	<p>The proposed development provides employment floorspace exclusively and in this regard is atypical of development taking place in the locality which has a strong (and often exclusive) residential focus.</p> <p>The need for employment floorspace in the locality was highlighted in the City of Sydney Employment Lands Strategy and Employment Lands Study (2014). The focus of this study was on securing Sydney's economic future by retaining essential employment lands and making space for more businesses and new jobs. Although the subject site is located just outside of the employment lands study area, the findings of the study and directions of the strategy are still relevant to this commercial proposal. The background report accompanying</p>

OBJECTIVE	DISCUSSION
	<p>the study identifies that by 2030 Green Square is expected to attract about 22,000 workers. The proposal would provide employment floorspace for approximately 200 workers.</p> <p>This demonstrates the anticipated development needs in the locality which this proposal will help to satisfy. The additional floor space in excess of the maximum FSR facilitates the provision of commercially attractive and flexible floorplates (approximately 620sqm in area) that are suited to a wider range of businesses and which make the development itself economically feasible when compared with other permissible land uses such as residential apartments.</p>
<p>(b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,</p>	<p>Although the proposal exceeds the maximum FSR that applies to the site, the proposed building complies with the maximum 22m building height under the SLEP and also complies with the setback and storey controls under the SDCP. The proposal seeks to retain the existing heritage façade which has a zero setback from Cressy Street and Dunning Avenue. The proposed zero setback of the addition is compliant with the DCP setback controls which only require an upper level setback where adjacent building adopt them which is not the case for this site. The proposed zero setbacks to the street frontages are therefore consistent with the DCP and adjoining properties. From a heritage perspective, GBA considers that setting back the addition would break down the cohesion of the building as one element and divide the development into significant shopfronts and warehouses with addition. The current proposal visually maintains the integrity of the building as a whole and is considered to celebrate the existing facade and enhance the existing streetscape presence of the heritage building. In summary, the proposal is consistent with the density, built form and land use intensity that would be expected of a commercial building, noting that commercial buildings are permissible within the B4 Mixed Use zone that applies to the site.</p> <p>The proposed commercial land use is not a high intensity use as the site will mostly be occupied Monday to Friday during working hours. The dispersion of employment floorspace within an area increasingly dominated by residential land uses maximises the opportunity for people to live close to work and promotes walking and cycling. The proposal encourages these active transport options for future staff and visitors through the provision of end of trip facilities including lockers, showers/change rooms and bicycle storage. The development includes 11 car parking spaces on site well below the maximum 21 parking spaces permitted under the SLEP. This will minimise traffic movements to and from the site and further encourage future users of the site to utilise active transport options.</p>
<p>(c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,</p>	<p>The proposal is for a purely commercial development which is not anticipated to impact the capacity of existing and planning infrastructure within the locality. Compared to a residential development, the proposed commercial development would have less reliance on certain local infrastructure such as outdoor recreation facilities and community facilities.</p> <p>Notwithstanding, the proposal will result in additional foot traffic and bike movements surrounding the site. However, these movements can be accommodated on the existing pedestrian and cycle pathways.</p>
<p>(d) to ensure that new development reflects the desired character of the</p>	<p>The objective of the B4 Mixed Use is to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling. This is indicative of the desired future character of the</p>

OBJECTIVE	DISCUSSION
<p>locality in which it is located and minimises adverse impacts on the amenity of that locality.</p>	<p>locality even though new development tends to be towards residential land uses. The commercial focus of the proposal is consistent with the desired future character of the locality and will help to balance the range of land uses.</p> <p>The proposal is compatible with its context and responds to the character of the locality. Specifically, the proposal seeks to retain the heritage significance of the building and adapt it to retain an economic and physical presence in a changing context. The proposed addition has been carefully designed to delineate new from old in a scale that is consistent with the adjacent site at 14 Cressy Street and new development in the locality generally. The proposal is compliant with the maximum building height that applies to the site.</p> <p>The proposal has been designed to minimise any adverse impacts on the amenity of the locality including:</p> <ul style="list-style-type: none"> • Privacy – The proposed three storey addition has been designed to minimise privacy impacts on the adjacent residential flat buildings including at No. 4 Cressy Street and across Cressy Street at 29-31 Dunning Avenue. The proposal includes two terraces in the north east corner of the site at Level 4 and 5. The terraces are setback 2.5m to 4.3m from the eastern site boundary to minimise potential overlooking of the communal open space at 4 Cressy Street. Further, the 3m setback of the terraces to the northern boundary considers the privacy of a future residential development of the adjoining site to the north. The façade of the new addition includes vertical aluminum blades with glazing located behind which will reduce privacy impacts by reducing sightlines between the site and the residential flat building at 29-31 Dunning Avenue. • Overshadowing – The proposal will result in some additional overshadowing of the north elevation of 29-31 Dunning Avenue as a result of the proposed addition. However, these additional shadows fall on the bedroom windows/deck of ground floor apartments which benefit from a separate living area and primary private open space on the first floor. The proposal therefore will not result in any unreasonable overshadowing impacts as the residential flat building 29-31 Dunning Avenue will continue to maintain compliance with the ADG solar access requirements. • Views – The upper-level apartments and roof terraces within the residential flat building to the south of the site at 29-31 Dunning Avenue benefit from distant regional views which include part of the Sydney CBD skyline. Whilst the proposed development exceeds the maximum floor space ratio, the proposed building complies with the maximum building height under the SLEP and the building setbacks prescribed under the DCP. The view impacts as a result of the proposal are considered reasonable in the context of: <ul style="list-style-type: none"> ○ the type of view being impacted which is a distant regional view rather than a water view. ○ the location in which the views are gained from, being a standing position on the balconies/terrace. Noting that these views would be reduced/lost from within the apartments. ○ the proposal results in similar view impacts compared to a compliant

OBJECTIVE	DISCUSSION
	<p style="text-align: center;">residential built form on the subject site and on the adjoining site to the north.</p> <p>Overall the proposal, notwithstanding the proposed FSR variation, reflects the desired character of the locality and minimises adverse impacts on the amenity of that locality.</p>

As demonstrated in Table 1 above, the objectives of the FSR development standard are achieved notwithstanding the proposed variation.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31], therefore, compliance with the FSR development standard is demonstrated to be unreasonable or unnecessary and the requirements of clause 4.6(3)(a) have been met on this way alone.

For the sake of completeness, the other recognised ways are considered as follows.

4.2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;

The underlying objective or purpose is relevant to the development and therefore is not relied upon.

4.3. The objective would be defeated or thwarted (undermined) if compliance was required with the consequence that compliance is unreasonable;

The consequence of not exercising flexibility in the application of the FSR standard in this instance is that it would reduce the economic viability of the proposal when compared with alternate land uses and residential development in particular. If this was to occur the first and fourth objectives would be undermined for the reasons explained in Table 1.

4.4. The development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary;

The standard has not been abandoned by Council actions in this case and so this reason is not relied upon.

4.5. The zoning of the land is unreasonable or inappropriate.

The zoning of the land is reasonable and appropriate and this reason is therefore not relied upon.

5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The environmental planning grounds to justify the departure of the FSR standard are as follows:

- *The built form is consistent with the desired future character of the locality.*

The proposed building complies with the maximum 22m building height that applies to the site as well as the setbacks prescribed under the DCP. The DCP stipulates a maximum of 6 storeys for the site and the proposal is for a 5 storey building compliant with this control. The DCP also establishes a nil setback at the street frontages which is evident in recent development in the locality including the immediately adjoining residential flat building at 4 Cressy Street, which is 6 storeys high and has zero setbacks to both street frontages. The built form is therefore consistent with that anticipated under the current planning controls notwithstanding the proposed FSR variation.
- *The floor space ratio standard is not calibrated to commercial office buildings.*

Commercial office buildings have different physical characteristics compared with residential flat buildings and shop top housing. Because of the requirement to provide communal open space equal to 25% of the site area, and minimum separation distances to provide adequate privacy between habitable rooms and balconies, residential flat buildings and shop top housing require more land to provide adequate residential amenity. This is evident when examining aerial photographs of residential development in the locality as illustrated in Figure 3 below.
- *The existing heritage listed building occupies the whole site.*

The site coverage of the proposal is determined by the existing heritage listed building, which occupies the whole site. The 'new floors' (levels 4 and 5) are setback from the rear and the eastern boundaries to ensure an appropriate relationship with the adjoining development and provide amenity for the commercial office floors.
- *The variation facilitates employment development which will help satisfy identified needs in the region.*

As discussed in Section 4.1, the background report accompanying the Employment Lands Study identified that by 2030 the Green Square locality is expected to attract about 22,000 workers. The variation of the floor space ratio standard facilitates an economically feasible development of the land and adaptive reuse of the heritage fabric that will provide employment floor space in an appropriate location nearby to public transport, services and housing. An entirely commercial development of the site is desirable as it will provide local employment opportunities reduce travel demand and support local economic activity.



Figure 3 - Mixed use development in the vicinity of the site (orange arrow) with unbuilt upon building separation and communal open space areas highlighted. (Source: Nearmap and Gyde)

- The variation facilitates the provision of flexible commercial floorplates suited to a wider range of enterprises.*
 The proposal includes commercial floorplates ranging in size from 443sqm to 659sqm. Larger commercial floorplates suit a wider range of enterprises. As a result of Covid 19, enterprises are also seeking greater space allocations per employee. An arbitrary reduction in the size of floorplates for the sake of numerical compliance only would reduce the commercial attractiveness of the building, whereas the variation promotes the orderly and economic use and development of the land.
- The variation facilitates the conservation of the heritage significance of the building.*
 The adaptive reuse of the building for commercial purposes promotes the conservation of the building. It is both a highly suitable use because the large open floorplates and central services minimise disturbance of the heritage fabric, and provided it is economically feasible, it ensures the long term conservation of the fabric. From a heritage perspective, there are significant costs associated with conserving the heritage item and funding the upgrades required to the building. Development options which involve reduced floor space, such as only one additional level within the existing facade, are not financially viable. As observed by GBA, low scale alterations and additions to the building would be temporary and likely to only be viable in the short term, with the low property returns eventually leading to building decay. The proposed development, on the other hand, exhibits a very high degree of design excellence and longevity of materials and design.

Clause 4.6 Request – Floor Space Ratio

- *The proposed variation will not cause adverse environmental impacts.*
The proposal has been carefully designed to avoid adverse impacts on neighbouring properties by reason of visual privacy and noise impacts and the building form, which is consistent with the building form that would be expected from a complying residential flat building development, will not cause unreasonable overshadowing of neighbouring properties.

6. PUBLIC INTEREST

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. This is required by clause 4.6(4)(a)(ii) of the LEP.

In section 4 it was demonstrated that the proposed development overall achieves the objectives of the development standard notwithstanding the variation of the development standard (see comments under "public interest" in Table 1).

The table below considers whether the proposal is also consistent with the objectives of the zone.

Table 2: Consistency with B4 Mixed Use Zone

OBJECTIVES OF B4 ZONE	DISCUSSION
<ul style="list-style-type: none"> To provide a mixture of compatible land uses. 	<p>The proposal seeks to provide commercial premises on the site which are compatible with the surrounding mix of land uses including residential flat buildings, other commercial uses and warehouses. The proposal includes a retail premises on the ground floor which can not only be utilised by workers on the subject site but also nearby residents and workers.</p>
<ul style="list-style-type: none"> To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling. 	<p>The proposal will result in an office development on the site which is located in close proximity to multiple bus services from Botany Road, Epsom Road and Rothschild Avenue. The site is also a 10 minute walk from Green Square train station and is highly accessible by public and active forms of transport. The proposal includes 28 bicycle parking spaces and EOTF to further encourage walking and cycling to and from the site.</p>
<ul style="list-style-type: none"> To ensure uses support the viability of centres. 	<p>The proposed commercial and retail uses on the site will support the viability of nearby centres by providing increased employment opportunities and a small scale retail premises which will not detract from nearby centres.</p>

As demonstrated in Table 2, the proposal is consistent with the objectives of the zone and in Section 4 it was demonstrated that the proposal is consistent with the objectives of the development standard. According to clause 4.6(4)(a)(ii), therefore, the proposal is in the public interest.

7. STATE OR REGIONAL ENVIRONMENTAL PLANNING

This section considers whether contravention of the development standard raises any matter of significance for State or regional environmental planning, the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by clause 4.6(5).

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

As demonstrated already, the proposal is consistent with the objectives of the zone and the objectives of the development standard and in our opinion, there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

8. CONCLUSION

This submission requests a variation, under clause 4.6 of the *Sydney Local Environmental Plan 2012*, to the FSR development standard and demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development.
- The development achieves the objectives of the development standard and is consistent with the objectives of the B4 zone.
- There are sufficient environmental planning grounds to justify the contravention of the development standard.

The consent authority can be satisfied to the above and that the development achieves the objectives of the development standard and is consistent with the objectives of B4 Mixed Use Zone notwithstanding non-compliance with the FSR standard and is therefore in the public interest.

The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 18-003.

On this basis, therefore, it is appropriate to exercise the flexibility provided by clause 4.6 in the circumstances of this application.

Attachment C

Heritage Inventory Report

Item Details

Name

"Paradise Garage" Warehouse Including Interior

Other/Former Names

Address

25-27 Dunning Avenue ROSEBERY NSW 2018

Local Govt Area

Sydney

Group Name

Item Classification

Item Type

Built

Item Group

Manufacturing and Processing

Item Category

Factory/ Plant

Statement Of Significance

A good and one of the few examples of an Inter-War Functionalist warehouse in the area.

Assessed Significance Type

Local

Endorsed Significance

Local

Date Significance Updated

9/24/2001

Listings

Listing Name	Listing Date	Instrument Name	Instrument No.	Plan No.	Gazette Page	Gazette Number
Local Environmental Plan	14/0/2012	Sydney Local Environmental Plan 2012	I1376			
Heritage study						

Heritage Item ID

2420258

Source

Local Government

Location

Addresses

Records Retrieved: 1

Street No	Street Name	Suburb/Town/Postcode	Local Govt. Area	LALC	Parish	County	Electorate	Address Type
25-27	Dunning Avenue	ROSEBERY/NSW/2018	Sydney	Unknown			Unknown	Primary Address

Description

Designer

Builder/Maker

T & I Holdings

Construction Year Start & End

Circa

Period

- 1954

NO

Unknown

Physical Description

Updated

Two storey, Post-War Functionalist warehouse with streamlined rendered façade, horizontal steel windows at first floor level and high parapet wall partially concealing saw-tooth roof. Prominent curved corner entry with original details and materials intact.

Physical Condition

Updated 09/21/2001

Relatively intact and in good condition

Modifications And Dates

Little altered since originally constructed.

Further Comments

Heritage Inventory sheets are often not comprehensive, and should be regarded as a general guide only. Inventory sheets are based on information available, and often do not include the social history of sites and buildings. Inventory sheets are constantly updated by the City as further information becomes available. An inventory sheet with little information may simply indicate that there has been no building work done to the item recently: it does not mean that items are not significant. Further research is always recommended as part of preparation of development proposals for heritage items, and is necessary in preparation of Heritage Impact Assessments and Conservation Management Plans, so that the significance of heritage items can be fully assessed prior to submitting development applications.

History

Historical Notes or Provenance

Updated

The "Eora people" was the name given to the coastal Aborigines around Sydney. Central Sydney is therefore often referred to as "Eora Country". Within the City of Sydney local government area, the traditional owners are the Cadigal and Wangal bands of the Eora. .

With European Occupation of the invasion of the Sydney region, the Cadigal and Wangal people were largely decimated but there are descendants still living in Sydney today.

The land in the area was first granted to William Hutchinson in 1823 but it was not until 1912 that the Town Planning Company of Australia purchased 273 Acres of the Waterloo Estate for 24 000 pounds and large scale subdivision of the area took place. The main force behind the subdivision was Richard Stanton who had earlier success with the garden suburb of Haberfield. The varying size of the allotments reflected their intended usage. The larger lots were in the northern part of the subdivision where the industrial buildings were constructed. The northern industrial areas were slow to develop with little development prior to 1924. The original site contained two late 19th century cottages owned by Minnie Booth. Subsequently demolished to make way for the existing building in 1954.

Historic Themes

Records Retrieved: 1

National Theme	State Theme	Local Theme
Developing local, regional and national economies	Leisure	Unknown

Assessment

Criteria a) Historical Significance	Include	Exclude
Criteria b) Historical Association Significance	Include	Exclude
Criteria c) Aesthetic/Technical Significance The building is a good example of a functionalist style industrial building and demonstrates many of the key elements of the style.	Include	Exclude
Criteria d) Social/Cultural Significance	Include	Exclude
Criteria e) Research Potential	Include	Exclude
Criteria f) Rarity	Include	Exclude
Criteria g) Representative Representative example of Post-War Functionalist style warehouse	Include	Exclude
Integrity/Intactness Highly intact		Updated 09/21/2001

References

References

Records Retrieved: 1

Title	Author	Year	Link	Type
Aboriginal People and Place, Barani: Indigenous History of Sydney City	Anita Heiss			Written

Heritage Studies

Records Retrieved: 0

Title	Year	Item Number	Author	Inspected By	Guidelines Used
No Results Found					

⁶Procedures / Workflows / Notes

Records Retrieved: 0

Application ID / Procedure ID	Section of Act	Description	Title	Officer	Date Received	Status	Outcome
No Results Found							

Management

Management

Records Retrieved: 0

Management Category	Management Name	Date Updated
No Results Found		

Management Summary

The building should be retained and conserved. A Heritage Assessment and Heritage Impact Statement, or a Conservation Management Plan, should be prepared for the building prior to any major works being undertaken. There shall be no vertical additions to the building and no alterations to the façade of the building other than to reinstate original features. The principal room layout and planning configuration as well as significant internal original features including ceilings, cornices, joinery, flooring and fireplaces should be retained and conserved. Any additions and alterations should be confined to the rear in areas of less significance, should not be visibly prominent and shall be in accordance with the relevant planning controls.