CITY OF SYDNEY

10 April 2024

At 5.00 pm

Local Planning Panel

Agenda

1. **Disclosures of Interest**
2. **Confirmation of Minutes**
3. **Section 4.55 Application: 100 Bayswater Road, Rushcutters Bay - D/2012/939/K**
4. **Development Application: 190-192 Victoria Street, Potts Point - D/2023/967**

CITY OF SYDNEY

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1. Register to speak by calling Secretariat on 9265 9702 or emailing secretariat@cityofsydney.nsw.gov.au before 10.00am 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.

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 2.

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 March 2024

Item 3.

Section 4.55 Application: 100 Bayswater Road, Rushcutters Bay - D/2012/939/K

File No.: D/2012/939/K

Summary

Date of Submission:	29 November 2023
Applicant:	Goran Iliev
Architect/Designer:	Antoniades Architects
Developer:	Dedico Development Services
Owner:	RHS Hotel Investments
Planning Consultant:	BBC Consulting Planners
Cost of Works:	$39,754,000.00
Zoning:	MU1 Mixed Use
Proposal Summary:	S4.55(2) modification for the consolidation of six ground floor apartments into four apartments and the consolidation and replacement of six wintergardens to four ground floor external terraces. Modifications also include changes to ground floor fenestration on the northern elevation, replacement of glass wintergarden roofs with awnings, changes to level 5, 6 and 7 roof finishes from synthetic turf to river pebbles and metal sheeting, a revised lobby design, lobby glazing, driveway amendments and landscape amendments. The application is referred to the Local Planning Panel as the application has received over 25 unique objections and therefore meets the criteria of contentious development under the Minister's Local Planning Panels Direction 2023. Council staff requested the submission of additional information and amendments to the application on 9 February 2024. The request required the removal of reference to public art modifications on the plans, clarification of proposed garden fencing height and style, clarification regarding glazing modifications, box gutter details, minor plan amendments, and a written address of Chapter 4 of SEPP (Housing) 2021. The applicant

responded to the request on 1 March 2024 with the requested information and amendments.

A total of 150 properties were notified and 42 submissions were received. The submissions comprise 42 objections, which principally relate to concerns regarding impacts to residential amenity from the proposed removal of the six approved wintergardens and replacement with four outdoor terraces.

As amended, the proposed modifications are considered to be substantially the same as previously approved. Subject to recommended conditions the proposal is not likely to negatively impact the amenity of surrounding sites.

The proposed modifications are supported subject to recommended conditions of consent.

Summary Recommendation: The Section 4.55(2) modification application is recommended for approval, subject to conditions.

Development Controls:

(i) Sydney Local Environmental Plan 2012

(ii) Sydney Development Control Plan 2012

(iii) SEPP (Resilience and Hazards) 2021

(iv) SEPP (Biodiversity and Conservation) 2021

(v) SEPP (Housing) 2021

(vi) SEPP (Sustainable Buildings) 2022

Attachments:

A. Recommended Conditions of Consent

B. Selected Proposed Drawings

C. Selected Approved Drawings (D/2012/939/J)

Recommendation

It is resolved that consent be granted to Section 4.55 Application Number D/2012/939/K subject to the amendment of the conditions in Attachment A to the subject report (with modifications shown in ***bold italics*** (additions) and ~~strikethrough~~ (deletions)).

Reasons for Recommendation

The application is recommended for approval for the following reasons:

(A) The development, as modified, is substantially the same development as that originally approved and is consistent with Section 4.55(2)(a) of the Environmental Planning and Assessment Act, 1979.

(B) The proposal is consistent with the relevant provisions of Chapter 4 of SEPP (Housing) 2021.

(C) The proposal is consistent with the aims, objectives and relevant provisions of the Sydney Local Environment Plan 2012 and Sydney Development Control Plan 2012 for the reasons set out in the report.

(D) The proposal satisfies Clause 6.21C Design excellence provisions of the Sydney Local Environment Plan 2012.

(E) The development, as modified, is in the public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 101 DP 1006908, and is known as 100 Bayswater Road, Rushcutters Bay. It is irregular in shape with an area of approximately 3,616 square metres. It is bounded by Bayswater Road to the south (the primary frontage), Clement Place to the northwest, a residential development known as Marina One to the north, and the Rushcutters Bay stormwater canal and Rushcutters Bay Park to the east. The site is located close to the intersection of Waratah Street, McLachlan Avenue and Neild Avenue with Bayswater Road. Levels on the site fall by approximately 5 metres from west to east.

2. The site contains a four to seven storey building which is currently under construction in accordance with development consent D/2012/939. The building is formerly known as the Vibe Hotel which was constructed in the late 1990s. The hotel consisted of a four storey western wing that runs parallel to Bayswater Road and a seven storey eastern wing that curves away from Bayswater Road to the north. The building has a basement level / back of house area and a level previously used for car parking below.

3. The surrounding area is characterised by a mixture of land uses, primarily being residential, mixed use and commercial premises. Surrounding development in the vicinity includes:

    - A residential flat complex known as Marina One is located to the immediate north of the site. Marina One was built at the same time as the subject site and formed part of the same development consent. It consists of a wedge shaped six-storey building and contains 90 residential apartments.

    - To the south of the site, on the opposite side of Bayswater Road, is an eleven storey early 1980s residential flat building known as the Bayswater Apartments.

    - To the west at 1 McLachlan Avenue, is an eight storey residential flat building with ground floor commercial premises.

    - Retail premises are located to the west of the site on Bayswater Road, and residential apartments are located further to the west and northwest.

4. The site is not identified as being listed as a heritage item but is partly located within the Elizabeth and Rushcutters Bays heritage conservation area (C20). The site is identified as a detracting building within the conservation area.

5. A site visit was carried out on 31 January 2024. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site (orange) and surrounds



Figure 2: View of subject site from across Bayswater Road, facing northeast



Figure 3: View of neighbouring properties immediately west of the site, viewed facing north from across Bayswater Road



Figure 4: Rushcutters Bay stormwater canal which borders the east of the site, viewed facing north



Figure 5: Rear of Subject site (right) and neighbouring Marina One apartment (left) viewed from Clement Place, facing southeast



Figure 6: Waratah Street, which lies west of the subject site, viewed, facing northeast



Figure 7: Marina One apartments north of the subject site, viewed facing southeast



Figure 8: Existing 5-6 metre wall fronting a proposed terrace location (Lot 10) on the northeast side of the site, viewed from the ground floor facing northeast



Figure 9: Existing view from a proposed outdoor terrace location (Lot 12), with Marina One seen top left, viewed facing northeast



Figure 10: View of proposed terrace locations (Lots 13.A and 15) (at ground level) with existing 5-6 metre wall shown to the left between subject site and neighbouring Marina One apartments



Figure 11: Proposed location of the two terraces on the northeast side of the development, with Marina One apartments seen in background, viewed facing northeast

History Relevant to the Development Application

Development Applications

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

- **D/2012/939** – Development consent was granted by Council on 11 December 2012 for alterations and extension to the Vibe hotel and use as a residential flat building containing 125 apartments, 102 parking spaces and retail space.

- **D/2012/939/A** – A modification application was approved by Council on 17 March 2014 for an increase in building height, addition of external balconies to the eastern elevation, reduction in the number of apartments and change of dwelling mix, modifications to parking allocation, modifications to private open space and minor internal and external modifications.

- **D/2012/939/B** – A modification application was approved under delegation of Council on 21 March 2014 for retention of the existing vehicle entry and exit arrangement onto Bayswater Road.

- **D/2012/939/C** – A modification application was approved under delegation of Council on 5 May 2015 to stage the construction process into three stages (being CC1A, CC1B and CC2).

- **D/2012/939/D** – A modification application was approved under delegation of Council on 29 July 2015 to alter the stage at which various conditions were required to be satisfied.

- **D/2012/939/E** – A modification application was partially approved under delegation of Council on 14 February 2022 to alter the stage at which various conditions were required to be satisfied, and amend Condition 1A to change CC2 into 5 stages, being:

  CC2: Internal strip out and demolition;

  CC3: Structural works;

  CC4: Building services and internal fit-out;

  CC5: upgrade of architectural façade; and

  CC6: Remainder of the works, including external works and public domain works.

- **D/2012/939/F** – A modification application to amend the internal configuration of all apartments and the main entry lobby design, reconfigure exhaust risers and basement bicycle parking, storage cages, waste and plant rooms, reduce motorbike parking numbers from 26 to 9 and delete level 7 roof slab was withdrawn 10 April 2022.

- **D/2012/939/G** – A modification application was approved on 21 June 2022 to alter the stage at which various conditions were required to be satisfied. The Notice of Determination contained errors made by Council staff as it did not include all the amendments requested and supported.

- **D/2012/939/H** – A modification application was approved on 30 June 2022 to correct errors made by Council staff during the assessment and determination of modification application D/2012/939/G.

- **D/2012/939/I** – A modification application was approved on 9 December 2022 to amend Condition 100 to permit alternative waste collection arrangements.

- **D/2012/939/J** – A modification application was approved on 1 August 2023 for various internal and external design changes relating to parking layout, internal apartment configuration, and amendments to security camera requirements and waste management.

Compliance Action

7. The site is not subject to an ongoing compliance action.

Amendments

8. Following a preliminary assessment a request for additional information and amendments was sent on 9 February 2024. The applicant was requested to provide the following details:

   (a) Revised landscape drawings which identify the extent and type of the garden fencing proposed around the proposed terraces;

(b) The removal of references to public artwork modifications from the proposal due to no information being provided explaining the modifications. It was noted to the applicant that public artwork is regulated through an existing condition of consent, and that this same issue was raised during assessment of D/2012/939/J, which also resulted in the removal of reference to public art modifications from that modification.

(c) Clarification regarding the scope of proposed amendments to glazing, i.e. whether materiality or form is proposed to be modified.

(d) Additional design details in relation to the newly proposed terrace awnings and the proposed metal roof replacement.

(e) A written response addressing the criteria of Schedule 9 of SEPP (Housing) 2021;

(f) A solar access study, including sun's eye diagrams and a calculation of the number of apartments receiving direct solar access; and

(g) A written response addressing the loss of cross ventilation in the ground floor apartments that would result from the modification.

9. The applicant responded to the request on 1 March 2024, and submitted the following information**:**

(a) Revised landscape plans.

(b) Removal of reference to public artwork from proposed plans, and clarification over the scope of proposed glazing modifications.

(c) Details of the proposed box gutter on the proposed metal roof.

(i) A written response to Schedule 9 of the SEPP (Housing) 2021; and

(d) A solar access study and a natural ventilation study in accordance with the criteria described in the Apartment Design Guide.

Proposed Development

10. The application seeks consent for the following:

- Consolidation of four two-bedroom and two single-bedroom apartments into four two-bedroom apartments on the ground floor.
- Consolidation and replacement of six ground floor wintergardens with four ground floor terraces in association with the above apartment reconfigurations.
- Amended ground floor apartment glazing from bifold doors to sliding doors in association with the introduced terraces.
- Introduction of metal awnings with integrated acoustic baffling over the proposed terraces.

- Replacement of synthetic grass with metal roof sheeting on level 6, and replacement of synthetic turf with river pebbles on levels 5 and 7.
- A revised lobby layout and associated glazing configuration amendments (with no glazing materiality changes proposed).
- An adjustment to the driveway layout and associated planter to accommodate for a retained concrete column.
- Revised landscaping details including addition of fencing around proposed terraces.
- Introduction of additional storage cages throughout the basement carpark
- Amendment to 'Condition 85 - Landscaped (Green) Roof' to be revised in title to 'Condition 85 - Landscaped ~~**(Green) Roof**~~ ***Pool Deck***' and reference to 'landscaped pool deck' instead of the current references to 'Green Roofs' throughout the condition.

11. Plans and elevations of the proposed development are provided below.

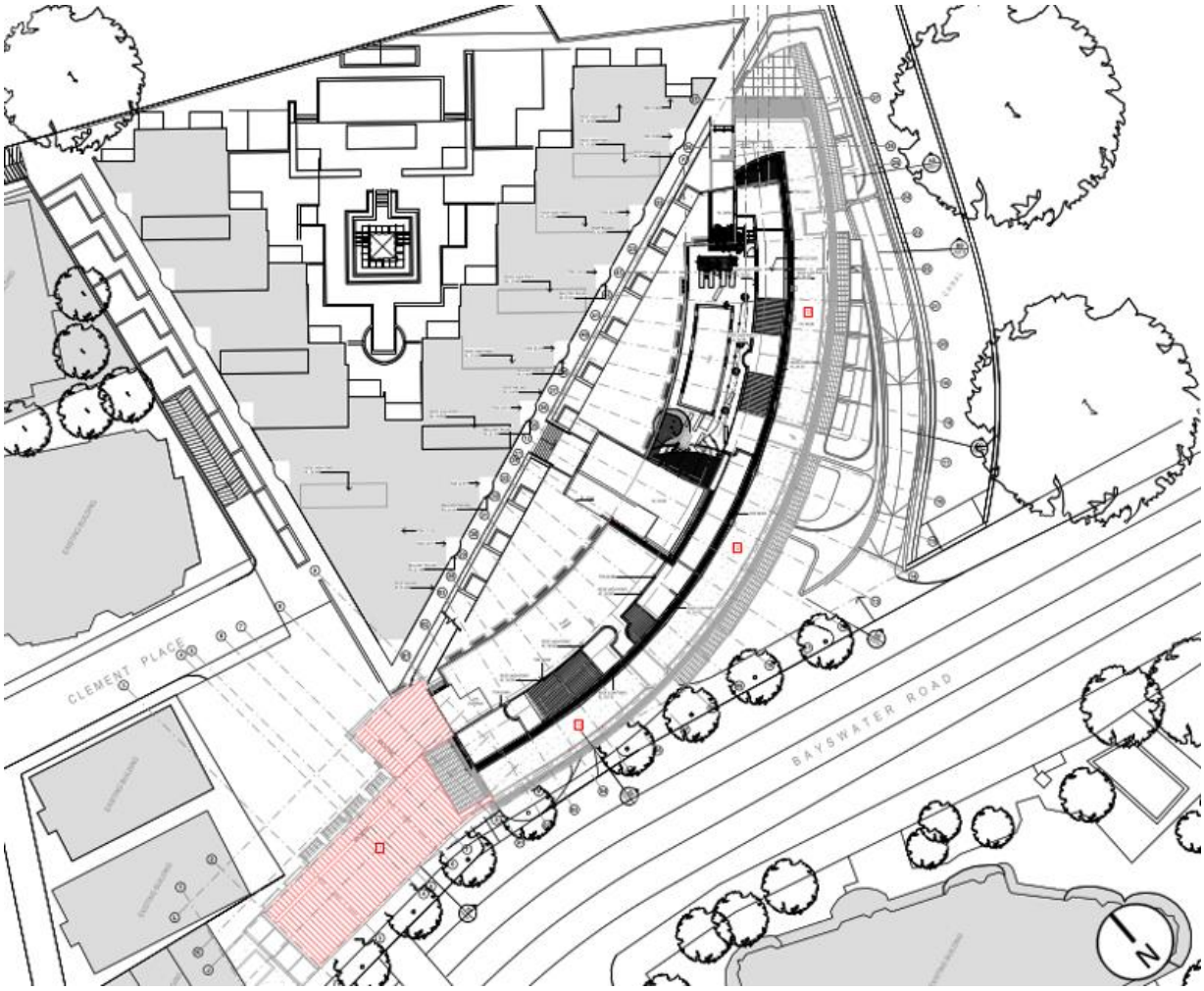


Figure 12: Site Plan



Figure 13: Proposed Basement 2 (proposed storage cages shown in red)

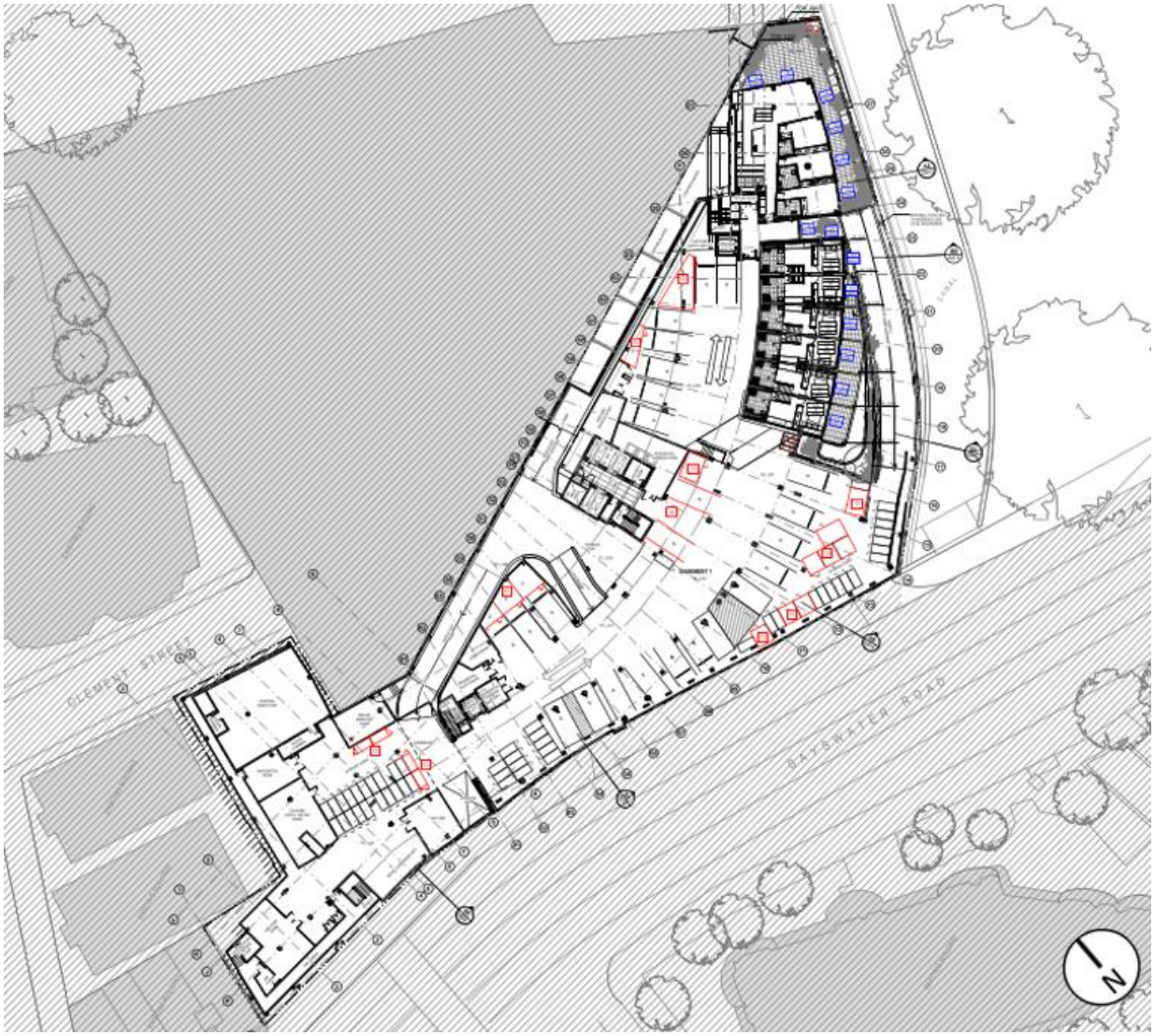


Figure 14: Proposed Basement 1 (proposed storage cages shown in red)



Figure 15: Proposed Ground Floor (proposed modifications including revised driveway layout, apartment configuration, terraces, landscaping, and lobby design shown in red)



Figure 16: Proposed Level 1 (with mezzanine level proposed to be removed, and ground floor modifications being visible in the void)



Figure 17: Proposed Level 5 (with proposed roof modification from synthetic turf to river pebbles shown in red)



Figure 18: Proposed Level 6 (with proposed roof modification from synthetic turf to metal sheeting shown in red)

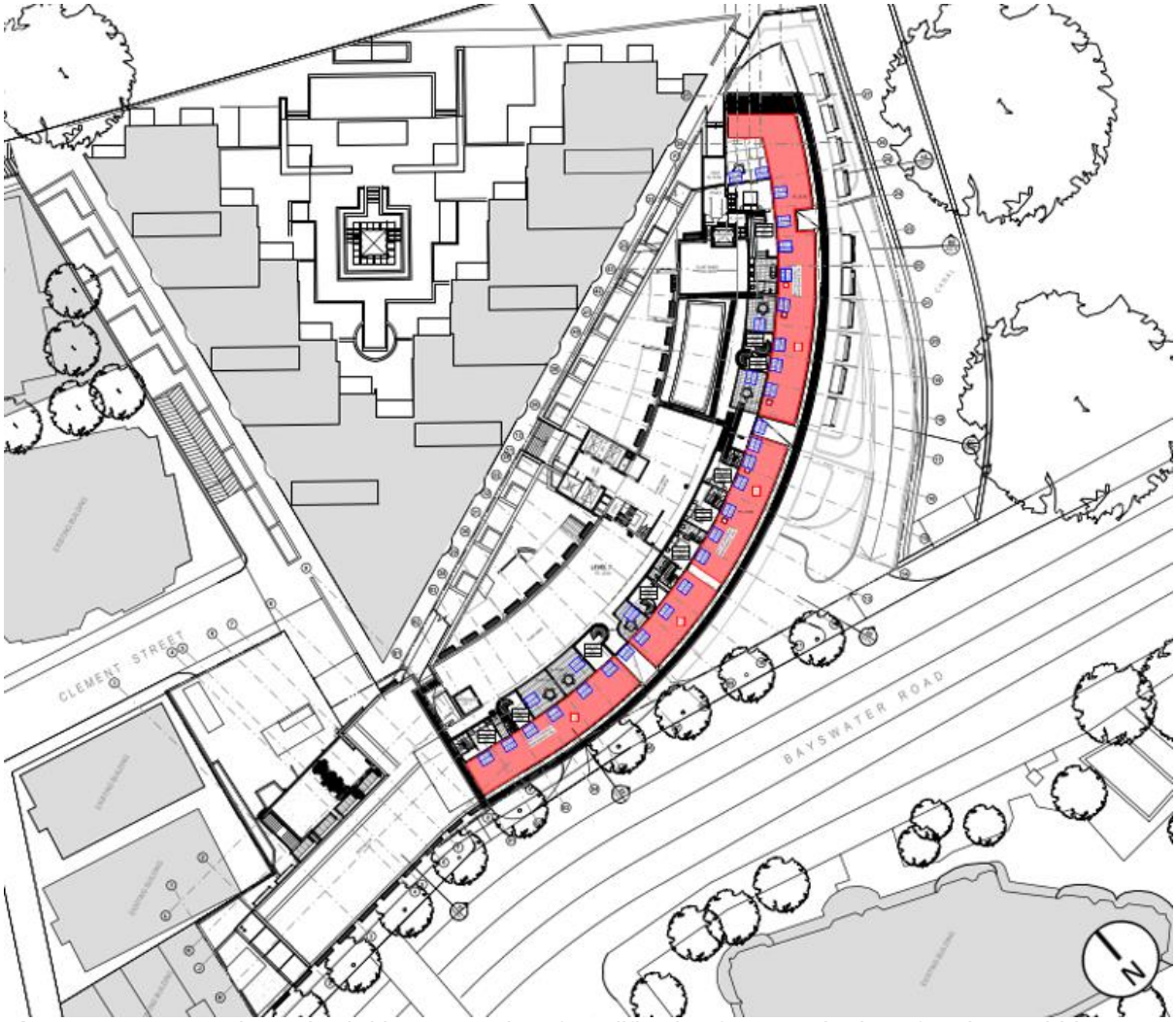


Figure 19: Proposed Level 7 (with proposed roof modification from synthetic turf to river pebbles shown in red)

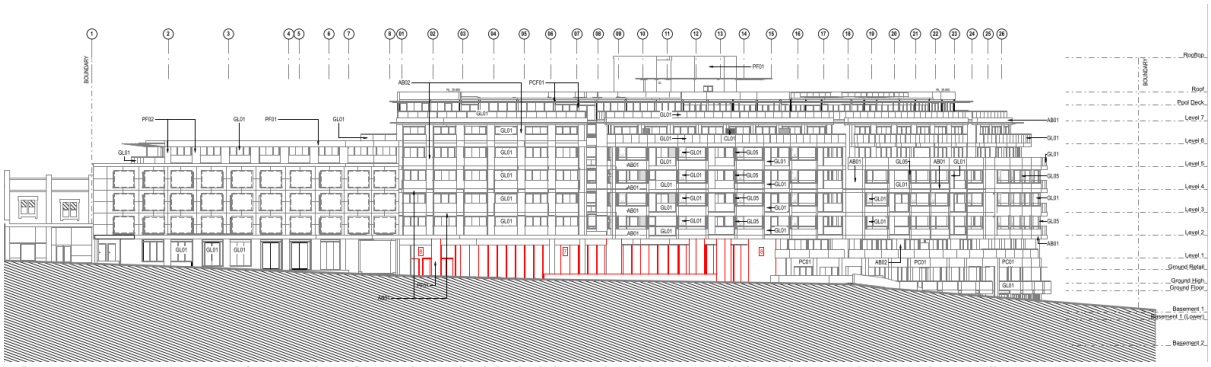


Figure 20: Proposed South Elevation (with lobby glazing modifications shown in red)

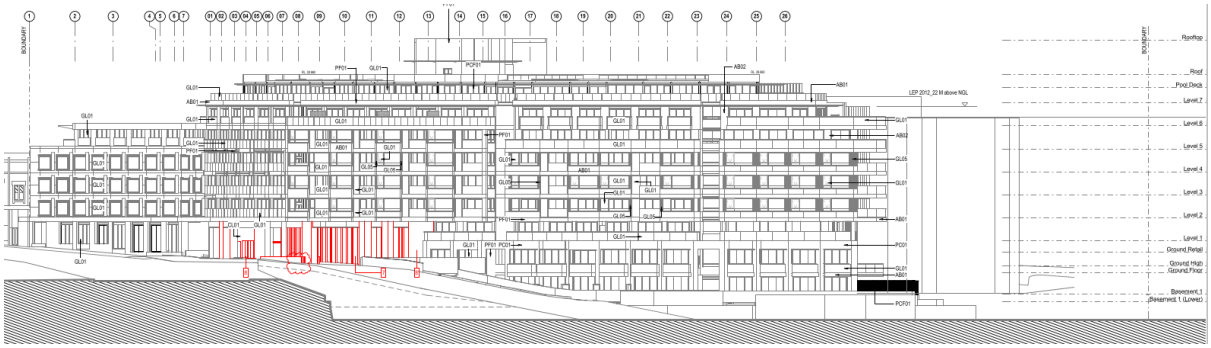


Figure 21: Proposed Southeast Elevation (with lobby glazing modifications shown in red)

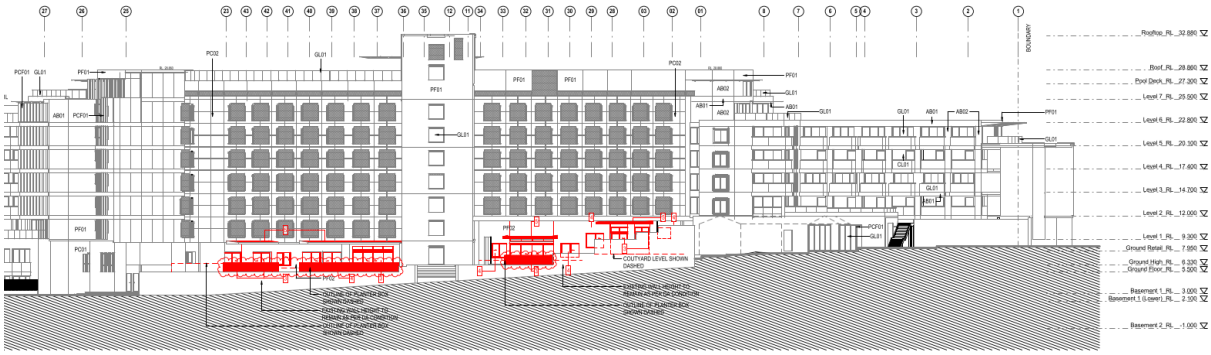


Figure 22: Proposed North Elevation (with lobby glazing modifications, and new terrace awnings shown in red)

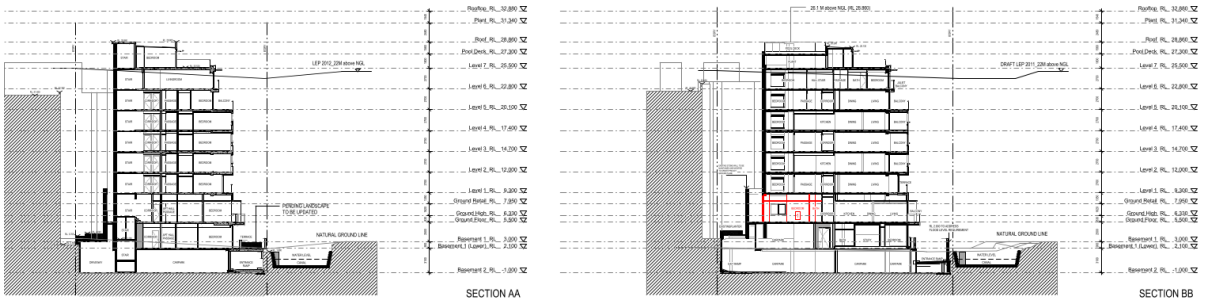


Figure 23: Proposed Section AA and Section BB

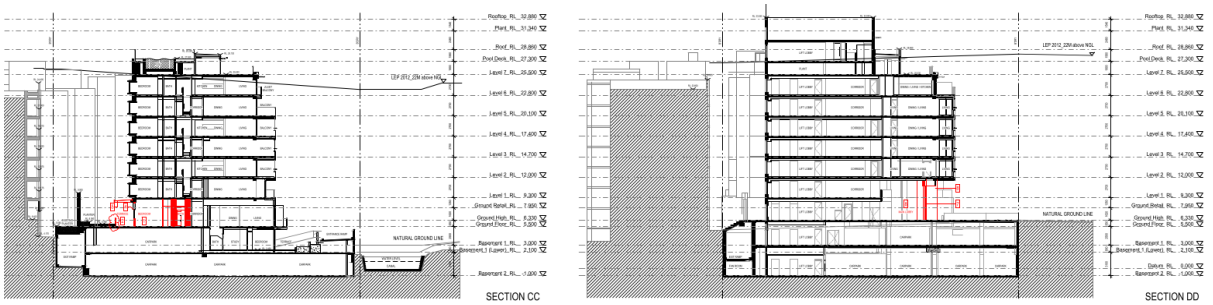


Figure 24: Proposed Section CC and Section DD

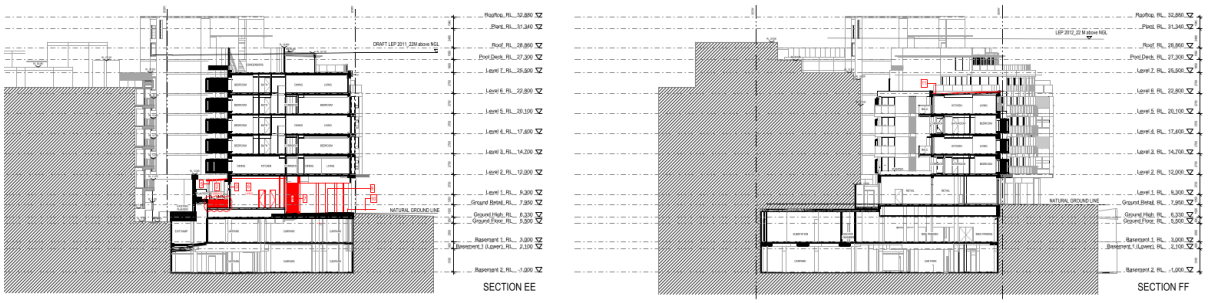


Figure 25: Proposed Section EE and Section FF

Assessment

12. 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 (Housing) 2021

Chapter 4 - Design of residential apartment development

13. The aim of Chapter 4 of the SEPP is to improve the design quality of residential apartment development in New South Wales.

14. When determining a modification application for a residential flat development of three or more floors and containing four or more apartments, the SEPP requires the consent authority take into consideration a number of matters relating to design quality, including the design quality principles as set out in Schedule 9.

15. The applicant has submitted a design verification statement and design report prepared by PTW Architects with the application, addressing the design quality principles. The statement is deemed to satisfy Clause 102 of the Environmental Planning and Assessment Regulation 2021.

16. An assessment of the proposal against the design quality is provided as follows:

    (a) Principle 1: Context and Neighbourhood Character

        Consistent: The proposed development remains consistent with the character of the area which is predominantly residential and includes residential flat buildings.

    (b) Principle 2: Built Form and Scale

        Consistent: The approved development is a major refurbishment and change of use of an existing building, which neighbours an existing residential flat building of similar scale. The proposed modifications do not alter the scale of the approved development.

    (c) Principle 3: Density

        Consistent: The density of the development will decrease slightly as a result of the proposal which seeks to remove two single-bedroom apartments. The resulting reconfiguration of the ground floor apartments will result in increased amenity for residents resulting from an improved solar access to bedroom spaces. The density of the building remains generally consistent with the original development approval and neighbouring development.

(d) Principle 4: Sustainability

Consistent: The proposed modifications maintain appropriate cross ventilation within the building. The proposal also seeks to replace approved synthetic turf on the building's rooftop, with metal sheeting and river pebbles, which is an improved environmental outcome.

(e) Principle 5: Landscape

Consistent: The approved landscaping is of a high quality design, and proposed modifications to landscaping are minor – generally relating to amended plant species and accommodating minor changes to the driveway layout and winter garden removal. The introduction of ground floor terraces improves landscaping integration with the occupation of the modified ground floor apartments.

(f) Principle 6: Amenity

Consistent: The proposed modifications will improve amenity amongst the reconfigured ground floor dwellings as it will provide an outdoor space to these units. The proposal will maintain visual privacy to the outdoor spaces and living rooms through the use of a metal awning, which is also proposed to be acoustically baffled to ensure neighbouring acoustic amenity. The subject apartments generally comply with applicable ADG criteria for internal amenity.

(g) Principle 7: Safety

Consistent: The safety of the development as approved is maintained under the current proposal.

(h) Principle 8: Housing Diversity and Social Interaction

Consistent: While the proposal results in a reduction of two single-bedroom apartments the remaining proposed 117 apartments retain an acceptable mix of apartment sizes, configurations, and bedroom numbers, and do not propose modifications to the approved communal areas and features.

(i) Principle 9: Aesthetics

Consistent: The proposal replaces approved synthetic turf roof covers with metal sheeting and river pebbles and is an approved aesthetic outcome for the building.

17. The development is acceptable when assessed against the SEPP including the above stated principles and the associated Apartment Design Guide. These controls are generally replicated within the apartment design controls under the Sydney Development Control Plan 2012. Consequently, compliance with the SEPP generally implies compliance with Council’s own controls. A detailed assessment of the proposal against the relevant ADG criteria is provided below.

4A Solar and Daylight Access	**Consistency**	**Comment**
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	No, but supported	As a result of the proposed modification, the proposal will reduce solar access from the current approved development's 36.1% solar access to 35%. See 'Discussion'
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	No, but supported	As a result of the proposed modification the proposal will increase the percentage of apartments receiving no direct sunlight from 23.5% to 23.9%. See 'Discussion'

4B Natural Ventilation	**Consistency**	**Comment**
All habitable rooms are naturally ventilated.	Yes	The reconfigured apartments are naturally ventilated.
Minimum 60% of apartments in the first nine storeys of the building are naturally cross ventilated.	Yes	The proposal continues to provide at least 60% of naturally cross ventilation apartments across the development.

4D Apartment Size and Layout	**Consistency**	**Comment**
Minimum unit sizes: • two bed: 70 square metres The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5 square metres each.	Yes	The reconfigured apartments each contain two bathrooms and each apartment is at least 75 square metres.
Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.	Yes	The reconfigured apartments are consistent with this criteria.

4D Apartment Size and Layout	Consistency	Comment
Habitable room depths are to be no more than 2.5 x the ceiling height.	Yes	The reconfigured apartments are consistent with this criteria.
8 metres maximum depth for open plan layouts.	Yes	The reconfigured apartments are consistent with this criteria.
Minimum area for bedrooms (excluding wardrobes): • master bedroom: 10 square metres • all other bedrooms:9 square metres Minimum dimension of any bedroom is 3 metres (excluding wardrobes).	Yes	The reconfigured apartments are consistent with this criteria.
Living and living/dining rooms minimum widths: • Studio and one-bedroom: 3.6 metres • Two-bedroom or more: 4 metres	Yes	The reconfigured apartments are consistent with this criteria.

4E Private Open Space and Balconies	Consistency	Comment
Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15 square metres and a minimum depth of 3 metres.	Partial consistency, supported	Two of the proposed terraces are consistent with the criteria, however, two terraces achieve 14.2 square metres and 13.2 square metres each. It is noted that these terraces are constrained by an existing wall, existing building, and the modified garden. While the terraces could be slightly wider to accommodate the extra square meterage, they are designed with an awning, which if wider, would diminish solar access to adjacent bedrooms. As the terraces are newly introduced through the proposal and replace

4E Private Open Space and Balconies	Consistency	Comment
		currently approved wintergardens that would otherwise enclose these apartments, the minor inconsistency with the ADG is supported.

4J Noise and Pollution	Consistency	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Yes	Noise impacts to the subject site are not likely to be increased by the proposed modification. Despite the removal of the wintergardens, the proposed terraces are on the opposite side of the building to Bayswater Road, and are located behind an existing concrete wall, separating residents from the neighbouring residential flat building.

State Environmental Planning Policy (Sustainable Buildings) 2022

18. A BASIX Certificate (1417679M) been submitted with the application. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. An existing condition of consent will ensure the measures detailed in the BASIX certificate are implemented.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 6 Water Catchments

19. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the controls set out in Part 6.2, Division 2, of the above SEPP, and for land within 100 metres of a natural waterbody in a regulated catchment the consent authority must consider the provisions of Part 6.2, Division 3.

20. While the proposal is within the Sydney Harbour Catchment, and within 100 metres of a natural water body within the Sydney Harbour Catchment, the proposal is considered to be satisfactory with regard to the provisions of Part 6.2 of the SEPP, subject to recommended conditions of consent.

21. The proposal is also located in the Foreshores and Waterways Area, and as such the consent authority must consider the provisions of Division 3 of Part 6.3 of the SEPP. The proposal, being a residential flat building, is considered to be satisfactory having regard to the considerations of Part 6.3.

Local Environmental Plans

Sydney Local Environmental Plan 2012

22. 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 MU1 Mixed Use zone. The proposed development is defined as a residential flat building and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No, but supported	A maximum building height of 22 metres is permitted. The development is currently subject to an approved building height of 26.2 metres. The subject section 4.55(2) modification does not propose to modify the building's approved height.
4.4 Floor space ratio	No, but supported	A maximum floor space ratio of 2.5:1 or 9,040 square metres is permitted. The development is currently subject to an approved floor space ratio of 3.23:1, which is also specified in an existing condition of consent. As a result of the removal of the wintergardens, and mezzanine of Lot 12, the proposed development will reduce the approved floor space ratio by 0.01:1 or 129.9 square metres. Therefore, Condition 35 - Floor Space Ratio - All Other Areas is recommended to be modified accordingly to refer to an FSR of 3.22:1 instead of the currently approved FSR of 3.23:1.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	The site is partially located within the Elizabeth and Rushcutters Bays heritage conservation area (C20). The proposed modifications are not within the heritage conservation area, and the proposal does not present any heritage impacts to the area.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	The proposed development is of a high standard and uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area. The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The development therefore achieves design excellence.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.5 Residential flat buildings, dual occupancies and multi dwelling housing	No, but supported	The maximum number of resident car parking spaces applicable to the proposed development is 74. The number of resident car parking spaces currently approved is 90. 90 car parking spaces are proposed, which does not comply with the development standard.

Provision	Compliance	Comment
		See 'Discussion'
Division 4 Miscellaneous		
7.15 Flood planning	Yes	The proposed modifications are not flood affected and do not have any impact on flooding.

Development Control Plans

Sydney Development Control Plan 2012

23. 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

24. The site is located within the 'The Bays' locality (2.4.6). The overall development remains in keeping with the unique character and the design principles of the locality which is predominantly a residential area with a diversity of housing styles.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	The modified landscape plans have been reviewed by Council's Landscape Specialist who has raised no objections to the application. The proposal continues to generally satisfy urban ecology controls.
3.6 Ecologically Sustainable Development	Yes	The proposal has been submitted with an updated BASIX certificate and satisfies BASIX and environmental requirements.
3.9 Heritage	Yes	The site is partially located within the Elizabeth and Rushcutters Bays heritage conservation area (HCA) (C20), and the building is identified as being 'detracting' to the HCA. However, the proposed modifications are not within the boundary HCA and the proposed modification do not present any heritage impacts to the area.

Provision	Compliance	Comment
3.11 Transport and Parking	No	While a development of this scale would be required to provide additional bicycle spaces than what is currently approved, the control is not triggered by the proposed modification, and the existing bicycle storage is supported.
3.12 Accessible Design	Yes	The application is accompanied by an Access Report and the modifications are deemed to be accessible.
3.14 Waste	Yes	The development will continue to utilise waste measures as approved.

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.3 Amenity		
4.2.3.5 Landscaping	Yes	The modified landscape plans have been reviewed by Council's Landscape Specialist and are considered satisfactory.
4.2.3.6 Deep Soil	Yes	The modified landscape plans do not affect the site's deep soil provision.
4.2.3.10 Outlook	Yes	The proposed modification has no impact on any approved outlook.
4.2.3.11 Acoustic privacy	Yes	The application has been reviewed by Council's Environmental Health Unit who raised no issues regarding internal acoustic privacy.
4.2.3.12 Flexible housing and dwelling mix	No, but supported	The currently approved development does not comply with the dwelling mix under this control, however, the proposed reduction in one bedroom apartments will cause closer conformity with this control and is supported.

Provision	Compliance	Comment
4.2.3.14 Apartments with setback bedrooms	Yes	The proposal decreases the number of setback bedrooms from the current approval. The removal of two single-bedroom apartments and the reconfiguration of the four remaining two-bedroom apartments will result in each of the subject bedrooms being located adjacent to a window.

Threshold test - substantially the same

25. The proposed modifications primarily seek to:

    (a) Reconfigure approved apartments on the ground floor of the building, including reducing the apartment count by two units.

    (b) Remove approved ground floor wintergardens from the development and introduce four terraces to the north facade of the building.

    (c) Adjust the layout of the approved driveway and reconfigure the adjacent lobby and glazing.

    (d) Modify approved landscaping to account for the proposed driveway and terraces.

    (e) Modify approved synthetic turf roof covers with metal sheeting and river pebbles.

    (f) Add additional storage cages to the basement car parks; and

    (g) Amend Condition 85 to refer to 'landscape pool deck'.

26. The development as proposed to be modified is substantially the same as that originally approved. This is because:

    (a) The development continues to constitute alterations and extensions to an existing building which will result in the adaptive reuse of an existing hotel into a residential flat building.

    (b) The proposal predominantly involves the minor modifications, such as the reconfiguration of approved building elements including approved floorplans and fenestration, or in regard to the roof, involves the replacement of approved building materials.

    (c) Building elements which are introduced within this proposal such as storage cages and terraces with awnings remain within the scope of the original development description, and are minor additions, particular with regard to the scale of the subject development.

    (d) The development remains consistent with the objectives of the statutory instruments and planning controls applying to the site.

(e) The proposed modifications to the approved development present acceptable environmental impacts when compared to the original approval.

The original approval (D/2012/939) did not include any reasons for the recommendation. In the circumstances, the requirement to take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified under s. 4.55(3) of the Act does not apply.

Discussion

Solar Access

The proposed removal of the wintergardens will result in a reduction of the number of ground floor apartments with direct solar access in mid-winter. As a result of the proposal, the following solar access will be achieved across the whole development when considered against the design criteria of Part 4A-1 of the Apartment Design Guide (ADG):

- 35.0 per cent (41 out of 117) of apartments will achieve 2 hours solar access across the assessment window, which is inconsistent with the ADG minimum criteria of 70 per cent.

- 23.9 per cent (28 out of 117) of apartments will receive no solar access across the assessment window, which is inconsistent with the ADG maximum criteria of 15 per cent.

27. It is noted that the original development application achieved 37.3 per cent solar access across the assessment window when compared with the ADG criteria, while the current approved development achieves 36.1 per cent.

28. Council assessment staff consider that although the proposal presents further inconsistency with the ADG criteria, the proposed removal of the wintergardens and replacement with outdoor terraces will offer improved amenity to residents by affording an outdoor area to apartments that are currently entirely enclosed. The proposal will also improve internal amenity as the reconfigured layout of the subject apartments will now reduce the number of setback bedrooms and improve internal solar access. The proposed modification is therefore supported.

Parking

29. Based on the proposed apartment count and unit mix a maximum of 74 residential car parking spaces are permitted under Part 7, Division 1 of the Sydney LEP 2012.

30. It is noted that this is the same amount which would apply to the unit mix under the current approval (D/2012/939/K) despite the subject application's proposed reduction in unit mix by two single-bedroom apartments. This occurs as Clause 7.5 of the LEP requires rounding of the maximum permissible parking spaces to whole numbers.

31. The development is currently approved with 90 residential parking spaces, which is a result of the original development application having been assessed against a predecessor development control plan and having not been reduced in previous modifications.

32. Despite the reduction in single-bedroom apartments from the previous approval (D/2012/939/K) and while the currently approved parking numbers exceed that of the maximum permissible amount for the development, the current approved number of spaces is not recommended to be reduced by any amount for the following reasons:

    - The reduction of spaces across to the maximum permissible number of 74 spaces is unreasonable with regard to the limited scope of the modification application, and because the discrepancy largely derives from a difference between a predecessor DCP and the current Sydney LEP 2012.

    - The maximum car parking rate for the currently approved unit mix which constitutes 119 units is 74 spaces. The applicable maximum parking rate for the proposed apartment mix which constitutes 117 units is also 74 spaces. As such, the removal of any car spaces to bring the proposal closer to the relevant maximum is not proportionally warranted where specifically measured against the parking rate applied to unit mix.

Awnings

33. Drainage details for the proposed awnings have not been submitted. A condition of consent is recommended which requires the submission of further drainage details of the awnings.

34. In order to ensure neighbouring acoustic amenity, a condition of consent is also recommended which requires the proposed terrace awnings to be treated with acoustically absorptive lining, with a minimum performance of NRC 0.5 as recommended in the E-Lab Consulting Acoustic Report.

Condition 6 - Winter Gardens

35. Condition 6 of the current development consent requires that light sources from the winter gardens must be removed where Council deems that the light adversely impacts upon the amenity of adjoining properties. The condition is recommended to be retained but amended to refer to the newly proposed terraces instead.

Consultation

Internal Referrals

36. The application was discussed with Council's;

    (a) Environmental Health Unit

    (b) Transport and Access Unit

    (c) Urban Design Unit

    (d) Landscape Unit

    (e) Public Art Unit

37. Council's Environmental Health Unit have reviewed the submitted Acoustic Report and have advised that the report's acoustic modelling is representative of the proposed development and that the proposed modifications are capable of complying with relevant acoustic criteria. The Environmental Health Unit support the application subject to recommended conditions of consent.

38. The Transport and Access Unit have noted that the development exceeds the maximum number of parking spaces applicable to the site, and that the development would be required by the DCP to provide 134 bicycle spaces instead of the currently approved amount of 14. The unit have therefore suggested the utilisation of surplus parking spaces for bicycle storage.

39. The matter has been further assessed since the Traffic and Access Unit's comments were received. As outlined in the discussion section of the report, the reduction of approved parking spaces to the maximum permitted amount would be unreasonable with regard to the scope of the subject modification application, and that a reduction of parking is not proportionate to the scope of the proposal and is also not significant where compared to the latest approval (D/2012/939/J). Additionally, the scope of the subject modification does not trigger any DCP requirement to amend the bicycle storage rate within the rest of the development. As such, amendments to the approved parking and bicycle spaces are not recommended by planning assessment staff.

40. Remaining referral teams advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

Advertising and Notification

41. In accordance with the City of Sydney Community Engagement Strategy and Community Participation Plan 2023 and EP&A Act 1979, the proposed development was notified and advertised for a period of 37 days between 19 December 2023 and 25 January 2024. A total of 150 properties were notified and 42 submissions were received, each of which were objections.

42. The application was not renotified after the receipt of additional information on 1 March 2024 as only minor amendments to the architectural plans were made, and further information provided to clarify details and satisfy technical requirements of the ADG and SEPP (Housing) 2021. As such, the submitted information did not raise additional environmental impacts which would warrant renotification to surrounding neighbours.

43. Submissions can be viewed at:
https://eplanning.cityofsydney.nsw.gov.au/Common/Integration/FileDownload.ashx?id=!!Yavq3bGrFnYFBZovGa0j0NDyqfHDoQLetdMwNQ%3d%3dCODrr9GM57Q%3d&ext=PDF&filesize=18383489&modified=2024-02-07T21:27:21Z

44. The submissions raised the following issues:

    (a) **Issue:** The proposed replacement of the six approved winter gardens with four outdoor terraces will result in adverse impacts to neighbouring acoustic amenity along the south facade of the Marina One apartments at 1A Clement Place, Rushcutters Bay which is in very close proximity to the north facade of the subject site. The objections particularly raise concerns with parties, music, pets and children being within the terrace gardens.

Response: The modification application has been accompanied by an Acoustic Report prepared by E-Lab Consulting which identifies a predicted noise level of up to 41dB at the most affected facade of the Marina One apartments, which is well below the maximum criteria noise level established under the acoustic modelling of 50dB. The submitted Acoustic Report has been reviewed by Council's Environmental Health Unit and is considered satisfactory. As such, the Environmental Health Unit support the proposal subject to recommended conditions of consent.

It is noted that an objection submitted by the Marina One strata committee is accompanied by an Acoustic Report prepared by Acoustic Dynamics. Council's Environmental Health Unit have also reviewed this report and note that the report utilises scenarios to demonstrate exceedance of their noise criteria, which are not representative of the proposal. In this regard, the Acoustic Dynamics report assumes the use of the terraces with one person standing per every square metre. This does not align with the expected use of the terraces as the private open space to a residential apartment. It is noted that the terraces are for residential use, and that existing condition of consent – Condition 47 - Restriction on Residential Development – prescribes a maximum occupancy rate of two adults per bedroom. Additionally, the existing condition – Condition 42 Noise - General – will continue to apply to this development.

Notwithstanding the above, if any adverse impacts to neighbouring acoustic amenity occur due to unreasonable use of the development, residents are able to raise a complaint with Council.

(b) **Issue:** The proposed terraces will incur air quality and general amenity impacts resulting from smokers, and smoke from the use of barbeques in these spaces.

Response: An existing condition of consent – Condition 81 - Emissions – requires that the use of the premises must not give rise to the emission of gases, vapours, dusts, or other impurities which are a nuisance, injurious or prejudicial to health. Where uses of the terraces do not contravene this condition, they are considered to be reasonable on planning grounds.

(c) **Issue:** The proposed terraces will incur visual privacy impacts to the Marina One apartments.

Response: The proposed terraces are set below the adjacent Marina One apartments and are also located behind a 4 to 5 metre tall concrete wall. The proposal therefore does not present any privacy impacts to the neighbouring building. Conversely, the subject terraces are afforded privacy from the neighbouring building by the same built form elements, and the proposed awnings. A section which shows the typical relationship of the proposed terraces to the neighbouring building is provided below.

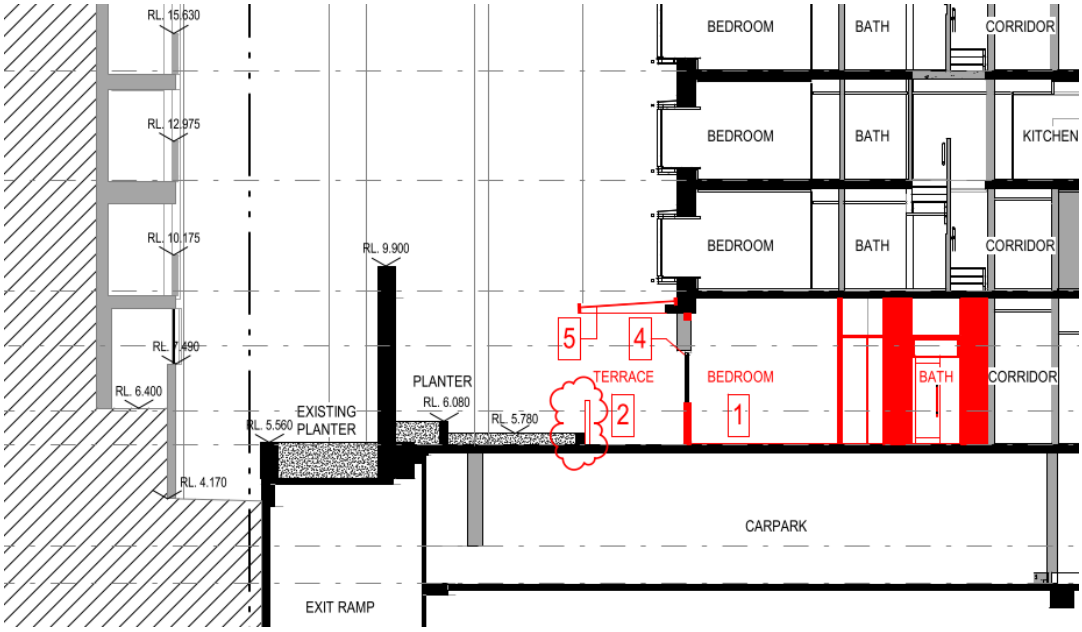


Figure 26: Section CC, demonstrating typical proposed terrace proximity and sight lines to neighbouring Marina One apartments

(d) **Issue:** The proposal which comprises the subject S4.55(2) modification will result in the approval of a development which is not substantially the same as the original development application.

Response: Council staff consider that while the proposed modifications are significant, the development as proposed to be modified is still materially, substantially, and essentially the same development as originally approved. Despite the decrease in proposed apartment count, materiality and minor layout changes, the development remains as alterations and extensions to the Vibe Hotel and use as a residential flat building with a retail space. This matter is discussed further in the 'Discussion' section of the report.

(e) **Issue:** The proposed development represents a deviation from prior consent which did not present the acoustic impacts subject of the submissions.

Response: The S4.55(2) modification process under the EP&A Act 1979 enables applicants to propose modifications to prior development consents. The proposed modifications are subject to Council assessment and are assessed against relevant statutory and non-statutory controls.

(f) **Issue:** The development and subject proposal breach relevant requirements regarding residential building proximity.

Response: The proposal is a modification of the approved development for the change of use and associated alterations and extension of the existing building from a hotel to a residential flat building. It is recognised that this objection is made in relation to the proposed terraces and in concern of perceived amenity impacts, however, this assessment has reviewed the applicable statutory and non-statutory controls, relevant ADG design criteria, existing conditions of consent, existing and approved built form, and makes both a qualitative and technical assessment of potential impacts of the proposal. A site visit has also been conducted. This assessment concludes that the proximity of the proposed terraces to the neighbouring residential flat building is appropriate in this instance.

(g) **Issue:** The application was submitted over the Christmas period to avoid proper notification of neighbouring residents.

Response: The proposal was notified and advertised for a period of 37 days between 19 December 2023 and 25 January 2024 as per the City's Community Engagement Strategy and Community Participation Plan 2023, and the EP&A Act 1979. Typically, this Section 4.55 modification would be notified for a period of 14 days, as per the Community Participation Plan. However, this period was extended to account for the Christmas period as required by the EP&A Act 1979.

(h) **Issue:** The proposed terraces will enable residents to access the surrounding gardens, which are required to be inaccessible.

Response: The proposed landscaped gardens will remain inaccessible as required by existing condition of consent – Condition (5) - Landscaping – as a 1,050 millimetre high fence is proposed to be located around each terrace area.

(i) **Issue:** The subject apartments and terraces will not receive adequate solar access.

Response: This matter is discussed in the 'Discussion' section above.

(j) **Issue:** Housing supply should not be decreased.

Response: While the proposal decreases the approved unit count by two single-bedroom apartments, the matter is not an assessment criterion under Section 4.15 of the EP&A Act 1979.

(k) **Issue:** The proposal will decrease the market value of the units in the Marine One apartments.

Response: Property valuation is not an assessment criterion under Section 4.15 of the EP&A Act 1979.

Relevant Legislation

45. Environmental Planning and Assessment Act 1979.

Conclusion

46. Having regard to all of the above matters, the proposed modification will not result in any adverse impacts on both the natural and built environment and the locality and is suitable for the site, subject to appropriate conditions of consent being imposed.

47. The development as proposed to be modified is substantially the same as that originally approved and will have minimal environmental impacts.

48. The proposed modification generally satisfies the relevant provisions of the applicable State Environmental Planning Instruments including the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012.

49. The proposed modifications are therefore in the public interest and are recommended for approval subject to the conditions in Attachment A.

ANDREW THOMAS

Executive Manager Planning and Development

Thomas Walters, Specialist Planner

Attachment A

Recommended Conditions of Consent

(1) APPROVED DEVELOPMENT

(a) Development must be in accordance with Development Application No. D/2012/939 dated 22 June 2012 and the Statement of Environmental Effects prepared by Robinson Urban Planning, dated 19 June 2012 and the following drawings:

Drawing Number	**Architect**	**Date**
~~*A0001/C Site and Context*~~	~~*PTW Architects*~~	~~*17 October 2012*~~
~~*A0002/C Basement 2*~~	~~*PTW Architects*~~	~~*17 October 2012*~~
~~*A0003/C Basement 1*~~	~~*PTW Architects*~~	~~*17 October 2012*~~
~~*A0004/C Ground Floor*~~	~~*PTW Architects*~~	~~*17 October 2012*~~
~~*A0055/C Level 01*~~	~~*PTW Architects*~~	~~*17 October 2012*~~
~~*A0006/C Level 02*~~	~~*PTW Architects*~~	~~*17 October 2012*~~
~~*A0007/C Level 03*~~	~~*PTW Architects*~~	~~*17 October 2012*~~
~~*A0008/C Level 04*~~	~~*PTW Architects*~~	~~*17 October 2012*~~
~~*A0009/C Level 05*~~	~~*PTW Architects*~~	~~*17 October 2012*~~
~~*A0010/C Level 06*~~	~~*PTW Architects*~~	~~*17 October 2012*~~
~~*A0011/C Level 07*~~	~~*PTW Architects*~~	~~*17 October 2012*~~
~~*A0012 Level 07 Pool*~~	~~*PTW Architects*~~	~~*17 October 2012*~~
~~*A0013 Sections*~~	~~*PTW Architects*~~	~~*17 October 2012*~~
~~*A0014/C Sections Details 01*~~	~~*PTW Architects*~~	~~*17 October 2012*~~
~~*A0015/A Sections Details 02*~~	~~*PTW Architects*~~	~~*17 October 2012*~~
~~*A0016/C Elevations*~~	~~*PTW Architects*~~	~~*17 October 2012*~~
~~*A0020/C Elevations*~~	~~*PTW Architects*~~	~~*17 October 2012*~~

Drawing Number	Architect	Date
~~*A0001/E Site and Context*~~ ~~***A0001, Rev B - Site Plan***~~ ***A0001, Rev C – Site Plan***	~~*PTW Architects*~~ *Antoniades Architects*	~~*23 November 2013*~~ ~~*15 November 2013*~~ ~~***25 January 2023***~~ ***6 November 2023***
~~*A0002/F Basement 2*~~ ~~***A0002, Rev C - Basement 2***~~ ***A0002, Rev D, Basement 2***	~~*PTW Architects*~~ *Antoniades Architects*	~~*23 November 2013*~~ ~~*15 November 2013*~~ ~~***25 January 2023***~~ ***13 December 2023***
~~*A0003/F Basement 1*~~ ~~***A0003, Rev E - Basement 1***~~ ***A0003, Rev F – Basement 1***	~~*PTW Architects*~~ *Antoniades Architects*	~~*23 November 2013*~~ ~~*15 November 2013*~~ ~~***31 May 2023***~~ ***13 December 2023***
~~*A0004/F Ground Floor*~~ ~~***A0004, Rev F – Ground Floor***~~ ***A0004, Rev I – Ground Floor***	~~*PTW Architects*~~ *Antoniades Architects*	~~*23 November 2013*~~ ~~*15 November 2013*~~ ~~***24 July 2023***~~ ***21 February 2024***
~~*A0005/F Level 01*~~ ~~***A0005, Rev C – Level 1***~~ ***A0005, Rev E – Level 1***	~~*PTW Architects*~~ *Antoniades Architects*	~~*23 November 2013*~~ ~~*15 November 2013*~~ ~~***25 January 2023***~~ ***21 February 2024***
~~*A0006/F Level 02*~~ *A0006, Rev C – Level 2*	~~*PTW Architects*~~ *Antoniades Architects*	~~*23 November 2013*~~ ~~*15 November 2013*~~ *25 January 2023*
~~*A0007/F Level 03*~~ *A0007, Rev C – Level 3*	~~*PTW Architects*~~ *Antoniades Architects*	~~*23 November 2013*~~ ~~*15 November 2013*~~ *25 January 2023*
~~*A0008/F Level 04*~~ *A0008, Rev C – Level 4*	~~*PTW Architects*~~ *Antoniades Architects*	~~*23 November 2013*~~ ~~*15 November 2013*~~ *25 January 2023*
~~*A0009/F Level 05*~~ ~~***A0009, Rev C – Level 5***~~ ***A0009, Rev D – Level 5***	~~*PTW Architects*~~ *Antoniades Architects*	~~*23 November 2013*~~ ~~*15 November 2013*~~ ~~***25 January 2023***~~ ***6 November 2023***
~~*A0010/F Level 06*~~ ~~***A0010, Rev C – Level 6***~~ ***A0010 Rev D – Level 6***	~~*PTW Architects*~~ *Antoniades Architects*	~~*23 November 2013*~~ ~~*15 November 2013*~~ ~~***25 January 2023***~~ ***6 November 2023***
~~*A0011/F Level 07*~~ ~~***A011, Rev C – Level 7***~~ ***A0011, Rev D – Level 7***	~~*PTW Architects*~~ *Antoniades Architects*	~~*23 November 2013*~~ ~~*15 November 2013*~~ ~~***25 January 2023***~~ ***6 November 2023***

Drawing Number	Architect	Date
~~*A0012/F Level 07 Pool*~~ *A0012, Rev C – Pool Deck*	~~*PTW Architects*~~ *Antoniades Architects*	~~*23 November 2013*~~ ~~*15 November 2013*~~ *25 January 2023*
~~*A0013/F Sections*~~ ~~***A0014, Rev C - Sections***~~ ***A0014, Rev E - Sections***	~~*PTW Architects*~~ *Antoniades Architects*	~~*23 November 2013*~~ ~~*15 November 2013*~~ ~~***25 January 2023***~~ ***21 February 2024***
A0014/F Sections Details 01	*PTW Architects*	~~*23 November 2013*~~ *15 November 2013*
A0015/F Sections Details 02	*PTW Architects*	~~*23 November 2013*~~ *15 November 2013*
~~*A0016/F Elevations*~~ ~~***A0015, Rev E – Elevations***~~ ***A0015, Rev H - Elevations***	~~*PTW Architects*~~ *Antoniades Architects*	~~*23 November 2013*~~ ~~*15 November 2013*~~ ~~***24 July 2023***~~ ***21 February 2024***
A0020/C Elevations	*PTW Architects*	~~*23 November 2013*~~ *15 November 2013*
A0015.1, Rev C – Detail Elevation & Section	*Antoniades Architects*	*24 July 2023*
A14.1, Rev A – Roof Section	***Antoniades Architects***	***21 February 2024***

and the following landscape drawings prepared by 360 Degrees Landscape Architect:

Drawing Number	***Drawing Name***	***Date***
L-DA-00, ~~*Rev F*~~ ***Rev H***	*Cover Page & Drawing Schedule*	~~*26/6/2023*~~ ***6/11/2023***
L-DA-01, ~~*Rev F*~~ ***Rev H***	*Design Statement and Character*	~~*26/6/2023*~~ ***6/11/2023***
L-DA-02, ~~*Rev F*~~ ***Rev H***	*Tree Protection & Removal Plan*	~~*26/6/2023*~~ ***6/11/2023***

Drawing Number	***Drawing Name***	***Date***
L-DA-03, ~~Rev F~~ ***Rev H***	*Landscape Plan - Basement*	*~~26/6/2023~~* ***6/11/2023***
L-DA-04, ~~Rev G~~ ***Rev L***	*Landscape Plan – Ground Floor*	*~~26/6/2023~~* ***29/02/2024***
L-DA-05, ~~Rev G~~ ***Rev I***	*Landscape Plan – Level 2*	*~~26/6/2023~~* ***6/11/2023***
L-DA-06, ~~Rev G~~ ***Rev J***	*Landscape Plan – Level 5, 6, 7, and Pool Deck*	*~~26/6/2023~~* ***6/11/2023***
L-DA-07, ~~Rev F~~ ***Rev H***	*Landscape Elevations*	*~~26/6/2023~~* ***6/11/2023***
L-DA-08, ~~Rev F~~ ***Rev I***	*Landscape Sections*	*~~26/6/2023~~* ***27/02/2024***
L-DA-09, ~~Rev F~~ ***Rev H***	*Planting Palette*	*~~26/6/2023~~* ***6/11/2023***

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.

(Amended 21 March 2014)

(Amended 17 March 2014)

(Amended 1 August 2023 – Modification J)

(Amended 10 April 2024 – Modification K)

(1A) STAGING OF CONSENT

(a) The works may be carried out in stages with the relevant conditions being satisfied prior to the issue of a construction certificate for each stage as follows:

Stage	*Works*	*Conditions to be satisfied where applicable*
CC1A	*Works to the internal retail areas*	*44, 51, 52, 59, 60, 70, 78, ~~87, 88, 89~~, 95, ~~96~~, ~~99~~*
CC1B	*Remainder of the retail works (comprising the retail shopfronts and retail external works)*	*34, 37, 44, 51, 52, 58, 59, 60, 70, 78b, 86, ~~87, 88, 89,~~ 90, ~~91,~~ 94, 95, ~~99~~*
CC2	*Internal strip out and demolition works including permanent strengthening works as required to complete hard demolition ~~Remainder of the works (comprising basement levels, residential levels and plant levels)~~*	*3, ~~3A, 10, 13, 23, 32, 34,~~ 44, 51, 52, 58, 59, 60, 70, ~~72, 76, 77, 78, 85,~~ 86, 87, 90, 91, 94, 95, ~~96,~~ 98a, 99b~~, 100~~*
CC3	*Structural works*	*3A, 3B, 34, 51, 52, 58, 59, 60, ~~72,~~ ~~76, 85,~~ 95, 96, 98b, 99b1, 100b*
CC4	*Building services and internal fitout*	*10b, 13, 32, 34, 51, 52, 58, 59, 60, 72, 78, 95, 98b*
CC5	*Upgrade of architectural facade*	*34, 51, 52, 58, 59, 60, 95, 98b*
CC6	*Remainder of the works (including external works and public domain works)*	*23, 34, 51, 52, 58, 59, 60, 76, 77, 85, 88, 89, 95, 98b*

(b) In addition to those conditions identified in the above table, other conditions may be required to be satisfied prior to the issue of a construction certificate at ~~the~~ each stage of construction.

(c) Any reference to 'A Construction Certificate' or 'An Occupation Certificate' relates to the first Construction Certificate and/or Occupation Certificate unless a Stage is nominated elsewhere in that particular condition. In all other cases, conditions are to be satisfied with the relevant stage detailed in the condition, including as specified in the table above. ~~specifically stated at either Stage 1A, Stage 1B or Stage 2.~~

(d) CC1B does not need to be completed prior to any of the Construction Certificate stages that follow given the work is standalone work.

(Amended 29 July 2015) (Inserted 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(Condition amended – D/2012/939/G – 21 June 2022)

(Condition amended – D/2012/939/H – 30 June 2022)

(2) DESIGN DETAILS (MAJOR DEVELOPMENT)

The design details of the proposed building facade including all external finishes, colours and glazing must be in accordance with the materials schedule and sample board, and specifications prepared by James Mather Delaney Design dated June 2012 and by PTW Architects dated 4 June 2012 *as amended by the Material Sample Board prepared by Antoniades Architects, drawing no. MSB-P1, Rev 1, dated 20 July 2023 (Council ref. 2023/441452)*.

(Amended 1 August 2023 – Modification J)

(3) DESIGN MODIFICATIONS – DRIVEWAY CONTROLS

~~*(a) The existing traffic control signals on the egress driveway at 100 Bayswater Road are to be removed and the works undertaken in accordance with RMS requirements, the relevant Austroads Guidelines and Australian standards.*~~

~~*(b) The current ingress and egress driveways for vehicles are to be reversed so that vehicles enter the site at the driveway where the traffic lights are currently provided. A detailed plan showing the switching of the entry and exit driveways, including information about what additional works will be required at the porte-cochere to allow for a safe exit into the kerb side lane, must be submitted to and approved by Council Officers prior to the issue of a Construction Certificate.*~~

(a) The existing signalised vehicle exit on Bayswater Road is to be upgraded to comply with Roads and Maritime Services' Technical Direction for Signalised Entries to Private Developments prior to the issue of any Occupation Certificate (including any interim Occupation Certificate).

(b) Prior to the commencement of the signal and civil works at the exit driveway on Bayswater Road, the developer shall enter into a 'Work Authorisation Deed' with Roads and Maritime Services.

(c) The developer shall be responsible for all public utility adjustment/relocation works, necessitated by the above work and as required by the various public utility authorities and/or their agents.

(d) All traffic control during construction must be carried out by accredited RMS approved traffic controllers.

(e) All works/regulatory signposting associated with the proposed development are to be at no cost to RMS.

(f) Any modifications which might be required to facilitate the works to driveways are to be submitted to and approved by Council Officers prior to ~~a~~ Construction Certificate *CC2* being issued.

(g) The applicant is to construct/carry out (at their cost) any works which are required as a result of this condition.

Note: Any proposed temporary/partial road closures will require the applicant to apply for a Road Occupancy Licence (Form C & D) by contacting the Transport Management Centre's Planned Incidents Unit on (02) 8396 1513 during office hours (8am-4pm) or 131 700 after hours.

The applicant will be required to submit the Road Occupancy Licence form/traffic management plan at least 10 working days prior to the start of works. Plans should be forwarded to Rohit Autar, Supervisor Planned Incidents Unit, Transport Operations, Transport Management Centre or on facsimile (02) 8396 1530.

In the event that a Road Opening Licence is required, details can be obtained from RMS Sydney Project Services on 8849 2496.

(Amended 5 May 2015)

(3A) DESIGN MODIFICATIONS

The design of the building must be modified as follows:

(a) As per the applicant's written request dated 10 February 2014, the accessible roof top areas bordered in red on plan A0011/F are not approved and do not form part of this consent. These areas must not be made accessible to residents (except for maintenance).

(b) The proposed structures and landscaping of the site adjacent to Clement Place must not contravene the Right of Access to the benefit of Lot 100 (Marina One) under DP 1006908. The landscaping and structures within this location are not to negatively impact on the visibility of pedestrians along Clement Place. The landscaping and structures are not to provide spaces in which a person could conceal themselves.

The modifications are to be submitted to and approved by Council's Director City Planning, Development and Transport prior to ~~a~~ Construction Certificate CC3 ~~CC2~~ being issued.

(Amended 5 May 2015) (Inserted 17 March 2014)

(Condition amended – D/2012/939/E – 14 February 2022)

(3B) LANDSCAPE DESIGN MODIFICATIONS

(a) Adaptive reuse of building and change of use from hotel to residential flat building. The location and feasibility of proposed landscaping on structure makes allowance for structural design and hydraulic connections must be confirmed.

(b) A concept landscape design including plans, sections and details drawn to scale, by a registered landscape architect, must be submitted to and approved by Council's Area Coordinator Planning Assessments / Area Planning Manager prior to the issue of Construction Certificate 3. These documents must include:

(i) Location of existing and proposed planting on the site including existing and proposed trees and planting in natural ground.

(ii) Confirm the location of all planting on structure and in raised planters on structure to make allowance for minimum soil depths for planting as advised by the registered landscape architect. Coordinated planting plan and soil depth plan to be issued by registered landscape architect.

(iii) Location and details of proposed accessible and inaccessible green roofs on the site including green roof profile depths

(iv) Location of existing and proposed structures on the site including, but not limited to, paving, walls, services, furniture, shade structures, lighting and other features

(v) Engineers report confirming structural capacity of building for proposed roof terrace loads.

(vi) Engineers hydraulic penetration design confirming the planter drainage design is coordinated with structure, for all planting on structure and green roofs.

(Condition added – D/2012/939/G – 21 June 2022)

(3C) AWNING DESIGN MODIFICATIONS

The design of the terrace awnings must include drainage details. The design modifications are to be submitted to and approved by Council's Manager – Planning Assessments prior to the issue of the relevant construction certificate.

(Condition added – D/2012/939/K – 10 April 2024)

(4) OVERHANGING BALCONY

The bay windows on the facade of the building facing Bayswater Road, shown as overhanging the Bayswater Road alignment shall not overhang that alignment by more than 0.45m.

(5) LANDSCAPING

(a) The landscaped area at the rear of the site adjacent to the boundary with the Marina One Apartments and the fire escape easement is to be accessed only for maintenance purposes. The landscaping and vegetation is to be provided prior to the issue an Occupation Certificate and retained and maintained thereafter.

(b) The existing wall which is located 2.3 metres from the northern boundary of the Marina One Apartments is to be retained at its current height *with the wall over the northern pedestrian arch maintained. In the event of damage or demolition the wall is to be repaired and reconstructed to its height at the time of this approval.*

(Amended 17 March 2014)

(6) WINTER GARDENS

(a) Any light source from the ***~~winter gardens~~ ground floor terraces*** which Council deems to be adversely impacting on the amenity of adjoining properties is to be removed from the ***~~winter gardens~~ ground floor terraces***.

(b) The landscaped area at the rear of the site is to be accessed only for maintenance purposes.

(***Condition amended – D/2012/939/K – 10 April 2024)***

(7) ALLOCATION FOR CAR WASH BAYS

If car wash bays are provided, spaces must not at any time be allocated, sold or leased to an individual owner/occupier and must be strictly retained as common property by the Owners Corporation for use by all tenants.

(8) ALLOCATION FOR VISITOR PARKING

Visitor parking spaces must not at any time be allocated, sold or leased to an individual owner/occupier and must be strictly retained as common property by the Owners Corporation for use by building visitors.

(9) ALLOCATION OF PARKING

The approved parking spaces must be allocated as detailed below. All spaces must be appropriately line-marked and labelled according to this requirement prior to the issue of an Occupation Certificate or the use commencing, whichever is earlier. If the development is to be strata subdivided, the car park layout must respect the required allocation:

(a) *~~81~~ 90* residential parking spaces.

(b) *~~21~~ 10* visitor parking spaces.

(c) 2 car share spaces

(Amended 17 March 2014)

(10) ALLOCATION OF ACCESSIBLE CAR PARKING SPACES

(a) For residential development, accessible car parking spaces for people with mobility impairment are only to be allocated as visitor parking or to adaptable units. Where allocated to adaptable units, the unit(s) and car spaces must be assigned to the unit in any future strata subdivision of the building.

(b) The design, layout, signage, line marking, lighting and physical controls of all off-street accessible parking facilities must comply with the minimum requirements of Australian Standard AS/NZS 2890.6 - 2009 Parking facilities Part 6: Off-street parking for people with disabilities. An amended plan must be submitted to the City and approved to show how this can be complied with prior to the relevant ~~a~~ Construction Certificate ~~*CC2*~~ being issued *for this work*. The plan must be accompanied by an Accessibility Report, prepared by a qualified person to outline any non-compliance and provide an argument as to why they are acceptable.

Note: As the car parking is in an existing basement with structural elements some spaces may not be able to fully comply.

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(11) ASSOCIATED ROADWAY COSTS

All costs associated with the construction of any new road works including kerb and gutter, road pavement, drainage system and footway shall be borne by the developer. The new road works must be designed and constructed in accordance with the City's "Development Specification for Civil Works Design and Construction".

(12) BICYCLE PARKING

The layout, design and security of bicycle facilities either on-street or off-street must comply with the minimum requirements of Australian Standard AS 2890.3 – 1993 Parking Facilities Part 3: Bicycle Parking Facilities except that:

(a) all bicycle parking for occupants of residential buildings must be Class 1 bicycle lockers, and

(b) all bicycle parking for staff / employees of any land uses must be Class 2 bicycle facilities, and

(c) all bicycle parking for visitors of any land uses must be Class 3 bicycle rails.

(13) CAR PARKING SPACES AND DIMENSIONS

A maximum of 102 off-street car parking spaces must be provided. The design, layout, signage, line marking, lighting and physical controls of all off-street parking facilities must comply with the minimum requirements of Australian Standard AS/NZS 2890.1 - 2004 Parking facilities Part 1: Off-street car parking and Council's Development Control Plan. The details must be submitted to and approved by the Principal Certifying Authority prior to *the relevant* ~~a~~ Construction Certificate ~~*CC2*~~ being issued.

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(14) COST OF SIGNPOSTING

All costs associated with signposting for any kerbside parking restrictions and traffic management measures associated with the development shall be borne by the developer.

(15) INTERCOM FOR VISITORS

Where a boomgate or barrier control is in place, the visitor spaces must be accessible to visitors by the location of an intercom (or card controller system) at the car park entry and at least 6m clear of the property boundary, wired to all units. The intercom must comply with '*Australian Standard AS 1428.2-1992: Design for access and mobility - Enhance and additional requirements - Building and facilities Sections 22 and 23*'.

(16) LOCATION OF ACCESSIBLE CAR PARKING SPACES

Where a car park is serviced by lifts, accessible spaces for people with mobility impairment are to be located close to lifts. Where a car park is not serviced by lifts, accessible spaces for people with mobility impairment are to be located at ground level, or accessible to ground level by a continually accessible path of travel, preferably under cover.

(17) LOCATION OF VISITOR PARKING

All visitor parking spaces must be grouped together, and located at the most convenient location to the car parking entrance. All spaces must be clearly marked 'visitor' prior to the issue of an occupation certificate or the use commencing, whichever is earlier. All signs must be maintained in good order at all times.

(18) PROHIBITION ON PARTICIPATION IN RESIDENT PARKING PERMIT SCHEME APPLICATION OF CITY OF SYDNEY PERMIT PARKING POLICY - INELIGIBILITY FOR RESIDENT PARKING PERMITS

All owners, tenants and occupiers of this building are not eligible to participate in any existing or proposed Council on-street resident parking schemes.

(19) SERVICE VEHICLE SIZE LIMIT

The size of vehicles servicing the property must be a maximum length of 10 metres.

(20) SIGNAGE TO INDICATE NON PARTICIPATION IN RESIDENT PARKING PERMIT SCHEME

Signs reading 'all owners, tenants and occupiers of this building are advised that they are not eligible to obtain an on-street resident parking permit from Council' must be permanently displayed and located in prominent places such as at display apartments and on all directory boards or notice boards, where they can easily be observed and read by people entering the building. The signs must be erected prior to an Occupation Certificate being issued and must be maintained in good order at all times by the Owners Corporation.

(21) SIGNS AT EGRESS

The following signs must be provided and maintained within the site at the point(s) of vehicle egress:

(a) Compelling drivers to stop before proceeding onto the public way

(b) Compelling drivers to "Give Way to Pedestrians" before crossing the footway; or compelling drivers to "Give Way to Pedestrians and Bicycles" before crossing a footway on an existing or identified shared path route.

(22) STACKED PARKING EMPLOYEES OR TENANTS ONLY

Any stacked parking spaces (maximum 2 spaces, nose to tail) must be attached to the same strata title comprising a single dwelling unit or commercial/retail tenancy, subject to the maximum parking limit applying. The stacked parking spaces must be designated (with appropriate signage) for employee or tenant parking only (not visitor parking), prior to an Occupation Certificate being issued. The moving of stacked vehicles must occur wholly within the property.

(23) TRAFFIC WORKS

Any proposals for alterations to the public road, involving traffic and parking arrangements, must be designed in accordance with RTA Technical Directives and must be referred to and agreed to by the Sydney Traffic Committee prior to *the relevant stage* ~~*construction stage CC2*~~ ~~*any work*~~ commencing on site.

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(24) VEHICLE ACCESS

The site must be configured to allow a vehicle to be driven onto and off the site in a forward direction.

(25) DRIVEWAY CROSSOVERS

Vehicles are not to cross or encroach into the footway of the public domain except at designated driveway crossovers. Details are to be submitted and approved by Council demonstrating how vehicle movements will be restricted to the driveway crossovers. Details are to be submitted with the landscaping of the site submission.

(26) REMOVAL OF GRAFFITI

The owner of the site must be responsible for the removal of all graffiti from the building within 48 hours of its application.

(27) USE - SEPARATE DA REQUIRED

A separate development application for the fit-out and use of the retail premise on the ground floor must be submitted to and approved by Council prior to that fit-out or use commencing.

(28) SIGNS - SEPARATE DA REQUIRED

A separate development application for any proposed signs (other than exempt or complying signs under Council's exempt and complying DCPs) must be submitted to and approved by Council prior to the erection or display of any such signs.

(29) ALCOVE LIGHTING

The communal garden on the ground level adjacent to Clement Street, and the driveway entrance shall be fitted with sensor-activated vandal proof security lights. The lights shall be maintained in good working order to Council's satisfaction. The intensity, colour, and illumination must be varied if, at any time in the opinion of the consent authority, adverse impact is being caused to the amenity of the area.

(30) EXTERNAL LIGHTING

A separate development application is required to be lodged and approved prior to any external floodlighting or illumination of the building or site landscaping.

(31) SECURITY GATES

Where a car park is accessed by a security gate, that gate must be located at least 6 metres within the site from the street front property boundary.

(32) CAR PARK SECURITY

Details of the car park access and security, including access procedures and systems for residents, workers and visitors, are to be approved by Council prior to the release of ~~*the*~~ *relevant* Construction Certificate *for this work.* ~~CC2.~~

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(33) SURVEILLANCE CAMERAS

(a) CCTV surveillance cameras shall be strategically installed, operated and maintained ~~*throughout the premises*~~ with particular coverage to:

(i) principal entrance/s and exits;

(ii) corridors;

(iii) lifts; and

(iv) basement car parking.

~~*(ii) all areas within the premise occupied by the public (excluding toilets);*~~

~~*(iii) staircases in multilevel premises; and*~~

~~*(iv) the area within a 10m radius external to the public entrance(s) to the premise.*~~

~~*(b) A quality visual monitor shall be installed on each level of the premise to display clear live security CCTV footage of that area, to staff.*~~

~~*(c) A quality visual monitor shall be located at the principal entrance alerting patrons to the use of CCTV facilities.*~~

~~*(d)*~~*(b)* Suitable and clearly visible signage shall be displayed at the principal entrance(s) ~~*to the premise*~~ and in a prominent position on each floor accessible to the public~~*, in lettering not less than 50mm in height with the words "Closed Circuit Television in use on these premises"*~~.

~~*(e)*~~*(c)* All CCTV recording equipment and cameras shall be of high grade digital quality capable of establishing the population and identification of patrons, offenders and incidents within the depth of field view of the cameras. In this respect each surveillance camera shall be capable of recording a minimum rate of 10 frames per second and at high resolution.

~~*(f)*~~*(d)* CCTV recording discs or hard drive recordings shall be retained for 30 days before being re-used, destroyed or deleted. Time and date shall be auto recorded on the disc or hard drive. The CCTV recording equipment shall be capable of reproducing a CD, DVD or other appropriate digital copy of recorded footage on demand of Council or Police Officers either immediately or within 12 hours of the request being made. Copy discs must be handed to Council, Police Officer or Special Inspectors as required.

~~*(g)*~~*(e)* All CCTV recording devices and cameras shall be checked daily ~~*to ensure the equipment is operating correctly. The Licensee shall record this daily checking activity in the security/incident register book that meets the standards required by the Licensing Police and Council*~~. If it is discovered at any time that the equipment is not in full operating order all reasonable steps must be taken to repair the system as soon as practicable. Where the system will not be functioning in full operating order for a period of longer than 24 hours the manager/licensee is to notify the relevant Local Area Commander of the NSW Police.

~~*(h)*~~*(f)* All CCTV recording devices and cameras shall be operated at all times ~~*when the premises are open to the public and, where premises do not operate 24 hours a day, continuously for at least 1 hour prior to opening and closing times of the premises*~~.

~~*(i) The CCTV recording device shall be secured within the premises and only be accessible to senior management personnel so as to maintain the integrity of the recorded footage. When the premises is operating there must be at least one staff member present at the premises who is authorised to access the CCTV system and able to immediately review recordings and produce copies.*~~

~~*(j)*~~*(g)* Camera views are not to be obstructed by temporary or permanent structures, signage or other impediments.

(Amended 1 August 2023 – Modification J)

(34) DESIGN QUALITY EXCELLENCE

(a) In order to ensure the design quality excellence of the development is retained:

(i) The design architect is to have direct involvement in the design documentation, contract documentation and construction stages *CC1B, CC3, CC4, CC5 and CC6 ~~and CC2~~* of the project;

(ii) The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout *stages CC1B, CC3, CC4, CC5 and CC6 ~~and CC2 the life~~* of the project;

(iii) Evidence of the design architect's commission is to be provided to the Council prior to release of *~~the~~* Construction Certificate *CC1B, CC3, CC4, CC5 and CC6. ~~and CC2.~~*

(b) The design architect of the project is not to be changed without prior notice and approval of the Council.

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(35) FLOOR SPACE RATIO - ALL OTHER AREAS

The following applies to Floor Space Ratio:

(a) The Floor Space Ratio for the site must not exceed *~~3.2:1~~* ***~~3.23:1~~*** ***3.22:1*** in accordance with the definition of Gross Floor Area pursuant to the South Sydney Local Environmental Plan 1998.

(b) Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification of the total and component Gross Floor Areas (by use) in the development, utilising the definition under the South Sydney Local Environmental Plan 1998, applicable at the time of development consent, to the satisfaction of the Principal Certifying Authority.

(Amended 1 August 2023 – Modification J)

(Amended 10 April 2024 – Modification K)

(36) USE OF COMMON AREAS AND FACILITIES

The roof top swimming pool and communal garden on the ground floor adjacent to Clement Street must be available for the use all residents of the building, and must be designated as common property on any strata subdivision of the site, with no exclusive use rights.

(37) SHOP FRONTS

(a) All shop front glazing must be clear and untinted and must not be obscured by blinds, curtains or the like.

(b) Security roller shutters must not be installed on the outside of the shop front. Any security grill is to be a dark recessive colour, located on the inside of the shop front, must be an open grille / see through and not a solid metal type. Details are to be submitted to and approved by Council or the Certifying Authority prior to ~~a~~ Construction Certificate *CC1B* being issued.

(Amended 5 May 2015)

(38) INTRUDER ALARM

Intruder alarm/s associated with the development must operate only in accordance with the requirements of Clause 53 of the *Protection of the Environment Operations (Noise Control) Regulation, 2008* under the *Protection of the Environment Operations Act, 1997*.

(39) INTERCOM FOR VISITORS

Where a boomgate or barrier control is in place, the visitor spaces must be accessible to visitors by the location of an intercom (or card controller system) at the car park entry and at least 6m clear of the property boundary, wired to all units. The intercom must comply with '*Australian Standard AS 1428.2-1992: Design for access and mobility - Enhance and additional requirements - Building and facilities Sections 22 and 23*'.

(40) NOISE - MECHANICAL PLANT AND EQUIPMENT

Noise associated with the use of mechanical plant and equipment must not give rise to any one or more of the following:

(a) Transmission of "*offensive noise*" as defined in the *Protection of the Environment Operations Act, 1997* to any affected receiver.

(b) A sound pressure level at the boundary of any affected receiver that exceeds the background ($L_{A90,\ 15minutes}$) noise level by more than 5dB. The background noise level must be measured in the absence of noise emitted from the use in accordance with Australian Standard AS1055.

Note: The method of measurement of vibration being carried out in accordance with "assessing Vibration; Technical Guidelines" - DEC (EPA) AS1055 for sound level measurements.

(41) COMPLIANCE WITH ACOUSTIC REPORT

(a) All recommendations prepared by Arup Pty Limited, Vibe Hotel, Residential: Acoustic Development, Application Report referenced REP/221669-00/R01, Issue and dated 14 June 2012*, as amended by the advice prepared by Marshall Day Acoustics dated 16 August 2013 (reference Lt 001 2013292SY SM S96 - Removal of barrier), and as amended by the Noise Impact Assessment prepared by E-Lab Consulting, dated 23 December 2022 (Council ref. 2023/109832)* must be implemented during construction and use of the premises.

(b) The Principal Certifying Authority (PCA) shall obtain a statement from appropriately qualified acoustic consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustic Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants, certifying that the acoustic mitigation measures outlined in the above stated report and Councils noise criterion have been suitably incorporated into the development and that relevant noise criteria have been satisfied prior to issue of Occupational Certificate.

(Amended 17 March 2014)

(Amended 1 August 2023 – Modification J)

(41A) COMPLIANCE WITH THE ACOUSTIC REPORT PRIOR TO CONSTRUCTION AND OR OCCUPATION CERTIFICATES

(a) All relevant performance parameters (including but not limited to requirements, engineering assumptions and recommendations) in the DA Acoustic Report prepared by Brandon Notaras, E-LAB Consulting dated 16 October 2023, ref Project No: P00043, titled 100 Bayswater Road, Rushcutters Bay NSW 2011 Acoustics – Section 4.55 Acoustic Assessment, Council Ref 2023/683590 must be implemented in the development prior to the commencement of its use.

(b) Prior to the issue of any relevant Construction Certificate, the final construction drawings and final construction methodology must be assessed and reported to be in accordance with the requirements of the DA Acoustic Report in (a) above, with reference to relevant documentation. This must be done by a Suitably Qualified Acoustic Consultant* (see definition below). This work will be to the satisfaction of the Registered Certifier.

(c) Prior to the issue of any Occupation Certificate, a Suitably Qualified Acoustic Consultant* is to provide a written Acoustic Verification Report to the satisfaction of the Principal Certifier that the development complies with the requirements set out in the Report and in (a) and (b) above.

Note: Suitably Qualified Acoustic Consultant means a consultant who possesses the qualifications to join the Australian Acoustical Society, Institution of Engineers Australia (grade of member) or the Association of Australasian Acoustical Consultants (grade of member firm).

(d) All physical aspects of the building's structure installed in order to meet performance parameters in accordance with this condition must be maintained at all times.

Reason

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

(Condition added – D/2012/939/K – 10 April 2024)

(42) NOISE - GENERAL

General Criteria

(a) The emission of noise associated with the use of the premises including the operation of any mechanical plant and equipment shall comply with the following criteria:

(i) The LAeq, 15minute noise level emitted from the use must not exceed the background noise level LA90, 15minute by more than 5dB when assessed at the boundary of any affected residence.

(ii) The background noise level shall be measured in the absence of noise emitted from the use in accordance with *Australian Standard AS 1055.1-1997-Description and measurement of environmental noise.*

(iii) The LAeq,15minute noise level shall be adjusted to account for any applicable modifying factors in accordance with Part 4 of the EPA NSW Industrial Noise Policy.

(iv) In this clause, the term "noise level emitted from the use" means the contributing noise level from the use in isolation to any other ambient noise and account must therefore be taken of the LAeq, 15minute when the use is not in operation.

(v) In circumstances where this development application refers to a modification or addition to an existing use, the background noise level referred to in this clause pertains to the LA90, 15minute noise level measured in the absence of all noise from the site.

Internal to internal noise transmission - residential amenity

(b) An LAeq,15minute noise level emitted from the use must not exceed the LA90, 15minute noise level by more than 3dB in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed inside any habitable room of any affected residence provided that;

(i) Where the LA90, 15minute noise level is below the threshold of hearing Tf at any Octave Band Centre Frequency as defined in Table 1 of *International Standard ISO 226 - Normal Equal-Loudness-Level Contours* then the value of Tf corresponding to that Octave Band Centre Frequency shall be used instead.

(ii) The LAeq,15minute noise level and the LA90,15minute noise level shall both be measured with all external doors and windows of the affected residence closed;

(iii) The LA90, 15minute noise level shall be measured in the absence of noise emitted from the use but with the ventilation equipment (excluding air-conditioning equipment) normally servicing the affected residence operating.

Internal to internal noise transmission – commercial amenity

(c) An LAeq,15minute noise level emitted from the use must not exceed the LA90, 15minute noise level by more than 3dB in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed inside any commercial premises provided that;

(i) The LAeq,15minute noise level and the LA90,15minute noise level shall both be measured with all external doors and windows of the commercial premises closed;

(ii) The LA90, 15minute noise level shall be measured in the absence of noise emitted from the use but with the ventilation equipment (including air-conditioning equipment) normally servicing the commercial premises operating.

(43) AIR CONDITIONERS IN RESIDENTIAL BUILDINGS

The air conditioner/s must comply with the requirements of *Protection of the Environment Operations (Noise Control) Regulation, 2008* and shall not:

(a) emit noise that is audible within a habitable room in any other residential property (regardless of whether any door or window to that room is open):

(i) before 8.00am and after 10.00pm on any Saturday, Sunday or public holiday; or

(ii) before 7.00am and after 10.00pm on any other day; or

(b) emit a sound pressure level when measured at the boundary of any other residential property, at a time other than those *specified* in (i) and (ii) above, which exceeds the background ($L_{A90,\ 15minutes}$) by more than 5dB(A). The source noise level must be measured as a LAeq 15 minute.

(44) DEMOLITION, EXCAVATION AND CONSTRUCTION NOISE MANAGEMENT PLAN

A site specific noise management plan shall be submitted to the Council for comment and approval prior *to the issue of CC1B or CC2, whichever is earlier.* ~~*the CC for each stage.*~~ *The noise management plan shall relate to the scope of works for all remaining stages of development.* ~~*to be completed within each stage.*~~

The Plan must be prepared by a suitably qualified person who possesses the qualifications to render them eligible for membership of the Australian Acoustic Society, Institution of Engineers Australia or the Australian Association of Acoustic Consultants.

The plan must include but not be limited to the following:-

(a) identification of noise sensitive receivers near to the site.

(b) A prediction as to the level of noise impact likely to affect the nearest noise sensitive receivers from the use and proposed number of high noise intrusive appliances intended to be operated onsite. A statement should also be submitted outlining whether or not predicted noise levels will comply with the noise criteria stated within the City of Sydney Construction Hours /Noise Code of Practice 1992 for the typical construction hours of 07.00am to 7.00pm. Where resultant site noise levels are likely to be in exceedance of this noise criteria then a suitable proposal must be given as to the duration and frequency of respite periods that will be afforded to the occupiers of neighbouring property.

(c) A representative background noise measurement (LA90, 15min) should be submitted, assessed in the vicinity of any potentially affected receiver locations and measured in accordance with AS 1055:1.2.1997.

(d) Confirmation of the level of community consultation that has is and will be undertaken with Building Managers/occupiers of the main adjoining noise sensitive properties likely to be most affected by site works and the operation of plant/machinery particularly during the demolition and excavation phases.

(e) Confirmation of noise monitoring methodology that is to be undertaken during the main stages of work at neighbouring noise sensitive properties in order to keep complaints to a minimum and to ensure that noise from site works complies with the noise criteria contained within City's Construction Noise Code.

(f) What course of action will be undertaken following receipt of a complaint concerning offensive noise.

(g) Details of any noise mitigation measures that have been outlined by an acoustic consultant or otherwise that will be deployed on site to reduce noise impacts on the occupiers of neighbouring noise sensitive property to a minimum.

(h) What plant and equipment is to be used on site, the level of sound mitigation measures to be undertaken in each case and the criteria adopted in their selection taking into account the likely noise impacts on the occupiers of neighbouring property and other less intrusive technologies available.

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(45) USE OF INTRUSIVE APPLIANCES – NOT APPROVED

This development consent does not extend to the use of appliances which emit noise of a highly intrusive nature (such as pile - drivers and hydraulic hammers) or are not listed in Groups B, C, D, E or F of Schedule 1 of the City of Sydney Code of Practice for Construction Hours/Noise 1992" .

A separate section 96 Development Application must be submitted to the Council for the use of any equipment of a highly intrusive nature (such as pile - drivers and hydraulic hammers) or are not listed in Groups B, C, D, E or F of Schedule 1 of the City of Sydney Code of Practice for Construction Hours/Noise 1992".

(46) WATER POLLUTION

No waste water, chemicals or other substances harmful to the environment such as from washing garbage bins or communal garbage areas shall be permitted to discharge to Council's stormwater system. Only clean, unpolluted water is permitted to discharge into the stormwater system.

(47) RESTRICTION ON RESIDENTIAL DEVELOPMENT

The following restriction applies to buildings approved for residential use:

(a) The accommodation portion of the building must be used as permanent residential accommodation only and not for the purpose of a hotel, motel, serviced apartments, private hotel, boarding house, tourist accommodation or the like, other than in accordance with the South Sydney Local Environmental Plan 1998.

(b) A restrictive covenant is to be registered on the title of the development site in the above terms and restricting any change of use of those levels from a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile as defined in the South Sydney Local Environmental Plan 1998. The covenant is to be registered on title prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, to the satisfaction of the Council. All costs of the preparation and registration of all associated documentation are to be borne by the applicant.

(c) No more than two adult people shall occupy any bedroom and no bedroom shall contain more than two beds. This excludes children and children's beds, cots or bassinets.

(d) The total number of adults residing in one unit shall not exceed twice the number of approved bedrooms.

(e) If a unit contains tenants, it must be subject to a residential tenancy agreement for a term of at least three months.

(f) An owner, tenant or Owners Corporation shall not permit a Building Manager or agent to advertise or organise for short term accommodation or share accommodation in the building.

(g) Car parking spaces may only be used for parking of vehicles related to residence in the unit with which the space is associated. No storage should take place for commercial businesses in car parking spaces.

(48) RESTRICTION ON USE OF CAR SPACES - MIXED USE

The following conditions apply to car parking:

(a) The on-site car parking spaces, exclusive of service and visitor car spaces, are not to be used other than by an occupant, tenant or resident of the subject building.

(b) Prior to an Occupation Certificate being issued, a documentary restrictive covenant, is to be registered on the Title of the development site pursuant to section 88E of the *Conveyancing Act, 1919*, to the effect of (a) above. The covenant is to be created appurtenant to Council, at no cost to and to the satisfaction of Council.

(c) Any future strata subdivision of the site is to include a restriction on User pursuant to section 39 of the *Strata Titles (Freehold Development) Act, 1973*, as amended, burdening all utility car parking allotments in the Strata Plan and/or an appropriate restrictive covenant pursuant to section 88B of the *Conveyancing Act, 1919* burdening all car parking part - lots in the strata scheme.

(49) PARKING ON COMMON AREAS

No part of any common areas, apart from visitor vehicle spaces which are to be used only by visitors to the building, and service vehicle spaces which are to be used only by service vehicles, is to be used for the parking or storage of vehicles or boats. Any strata subdivision of the building is to include an appropriate documentary restriction pursuant to Section 88B of the *Conveyancing Act, 1919*, so burdening common property, with the Council being the authority to release, vary or modify the restriction.

(50) STRATA SUBDIVISION

Strata subdivision requires development consent and therefore the lodgment of a separate development application or complying development application, and subsequent approval from Council, or an accredited certifier, of the strata plan and issue of the Strata Certificate under the *Strata Schemes (Freehold Development) Act, 1973.*

SCHEDULE 1B

Prior to Construction Certification/Commencement of Work/Health and Building

Note: Prior to the issue of the *relevant* Construction Certificate*s, ~~for each of the three stages,~~* sufficient information must be forwarded to the certifying authority (whether Council or a private accredited certifier) illustrating compliance with the relevant requirements of the Building Code of Australia (and a copy forwarded to Council where Council is not the certifying authority). If Council is to be the certifying authority, please contact the Building Unit to discuss the requirements prior to submission of the application for construction certificate*s*.

(Amended 5 May 2015)

(Note amended – D/2012/939/E – 14 February 2022)

(51) BCA COMPLIANCE - ALTERATIONS AND ADDITIONS - UPGRADE OF BUILDING IS REQUIRED - BCA REPORT HAS BEEN PROVIDED AND BCA VARIATIONS ARE SOUGHT (CC REQUIRED)

(a) Pursuant to Clause 94 of the *Environmental Planning and Assessment Regulation, 2000*, the whole building must comply with the Building Code of Australia (BCA) including:

(i) Fire resistance and stability - Part C1;

(ii) Compartmentation and separation - Part C2;

(iii) Protection of openings - Part C3;

(iv) Provision for escape (access and egress) - Part D1;

(v) Construction of exits - Part D2;

(vi) Access for people with disabilities - Part D3;

Note: Compliance with the access provisions of Part D3 of the BCA, and the Disability (Access to Premises-Buildings) Standards 2010, may necessitate design modifications prior to *the relevant ~~a~~* Construction Certificate*s* being issued.

(vii) Fire fighting equipment - Part E1;

(viii) Smoke hazard management - Part E2;

(ix) Lift installation - Part E3;

(x) Emergency lighting, exit signs and warning systems - Part E4;

(xi) Damp and weatherproofing - Part F1;

(xii) Sanitary and other facilities - Part F2;

(xiii) Sound transmission and insulation - Part F5;

(xiv) Energy Efficiency - Building sealing - Part J3;

(xv) Energy Efficiency - Air-conditioning and ventilation systems - Part J5;

(xvi) Energy Efficiency - Artificial lighting and power - Part J6;

(xvii) Energy Efficiency - Access for maintenance - Part J8;

Prior to *the relevant ~~a~~* Construction Certificate being issued*, ~~for each of the three stages~~* the certifying authority must ensure that the proposed works and other upgrading works required by this condition satisfy the Building Code of Australia by complying with Clause A0.4 of the BCA.

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(52) BCA - NEW BUILDINGS WORKS - CLASS 2-9 BUILDINGS

(a) Pursuant to Clause 98 of the *Environmental Planning and Assessment Regulation, 2000*, the proposed building work must comply with the Building Code of Australia (BCA) including:

(i) Structural provisions - Part B1;

(ii) Fire resistance and stability - Part C1;

(iii) Compartmentation and separation - Part C2;

(iv) Protection of openings - Part C3;

(v) Provision for escape (access and egress) - Part D1;

(vi) Construction of exits - Part D2;

(vii) Access for people with disabilities - Part D3;

Note: All new works must fully comply with the requirements of the BCA, Assess to Premises Code, 2010 and all relevant Australian Standards applicable to the provision and maintenance of access and facilities for persons with a disability.

(viii) Fire fighting equipment - Part E1;

(ix) Smoke hazard management - Part E2;

(x) Lift installation - Part E3;

(xi) Emergency lighting, exit signs and warning systems - Part E4;

(xii) Damp and weatherproofing - Part F1;

(xiii) Sanitary and other facilities - Part F2;

Note: For restaurants, cafes, bars and the like, sanitary facilities (including accessible facilities for persons with disabilities complying with AS 1248.1) must be provided for staff and customers where more than 20 seats are provided, including seating for any future footway dining facilities.

(xiv) Light and ventilation - Part F4;

(xv) Sound transmission and insulation - Part F5;

(xvi) Energy Efficiency - External glazing - Part J2;

(xvii) Energy Efficiency - Building sealing - Part J3;

(xviii) Energy Efficiency - Air-conditioning and ventilation systems - Part J5;

(xix) Energy Efficiency - Artificial lighting and power - Part J6;

(xx) Energy Efficiency - Hot water supply and swimming pool plant - Part J7;

(xxi) Energy Efficiency - Access for maintenance - Part J8;

(b) If compliance with the deemed-to-satisfy provisions of the BCA and the matters listed in condition (a) above cannot be achieved, an alternative building solution in accordance with Part A0 of the BCA must be prepared by a suitably qualified and accredited person and be submitted to the Certifying Authority illustrating how the relevant performance requirements of the BCA are to be satisfied. Prior to *the relevant* ~~*a*~~ Construction Certificate being issued ~~*for each of the three stages*~~, the Certifying Authority must ensure that the building complies with the Building Code of Australia.

(c) The BCA matters identified in (a) above are not an exhaustive list of conditions to verify compliance or non-compliance with the BCA. Any design amendments required to achieve compliance with the BCA must be submitted to Council. Significant amendments may require an application under Section *4.55* ~~*96*~~ of the Act to be lodged with Council to amend this consent.

Note: The provisions of Clause 94 of the *Environmental Planning and Assessment Regulation, 2000* have been considered in the assessment of the proposed development.

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(53) BASIX CERTIFICATE - DETAILS TO BE LODGED WITH A CC

A copy of the required completed BASIX certificate accepted as part of this Development Consent with respect to the proposed residential building works, must be lodged with an application for a construction certificate and the items nominated as part of the subject BASIX certificate must be specified on the plans submitted with the construction certificate application. – See Note.

Note: Any requirement detailed in the accompanying BASIX Certificate, must be included as a specific notation or inclusion on any future Construction Certificate plans and specification in accordance with Part 3 of Schedule 1 of the *Environmental Planning and Assessment Regulation, 2000*.

(54) SPRINKLER & SMOKE DETECTION SYSTEM

The effective coverage and operation of any sprinkler system must not be impaired by the partitioning layout and/or the coverage and operation of any fire and smoke detection system must not be impaired by the proposed partitioning layout. Any alterations to the existing sprinkler installation must comply with the Building Code of Australia.

(55) GLAZING - COMPLIANCE WITH AUSTRALIAN STANDARD

All glazing materials must be selected and installed in accordance with the Building Code of Australia.

(56) ANNUAL FIRE SAFETY STATEMENT FORM

An annual Fire Safety Statement must be given to Council and the NSW Fire Brigade commencing within 12 months after the date on which the initial Interim/Final Fire Safety Certificate is issued or the use commencing, whichever is earlier.

(57) FIRE SAFETY CERTIFICATE TO BE SUBMITTED

A Fire Safety Certificate must be submitted to the Principal Certifying Authority for all of the items listed in the Fire Safety Schedule prior to an Occupation Certificate being issued. A copy of the Fire Safety Certificate must be submitted to Council if it is not the Principal Certifying Authority.

(58) STRUCTURAL CERTIFICATION FOR DESIGN - BCA (ALL BUILDING CLASSES)

Prior to the issue of *the relevant* ~~*a*~~ Construction Certificate*s, ~~for each of the three stages,~~* structural details and a Structural Certificate for Design by a qualified practising structural engineer and in accordance with Clause A2.2(a)(iii) of the Building Code of Australia (applicable to class 2-9 building) and Clause 1.2.2(iii) of Volume 2 of the BCA (applicable to Class 1 and 10 buildings) must be submitted to the satisfaction of Council (where Council is the Certifying Authority).

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(59) STRUCTURAL CERTIFICATION FOR EXISTING BUILDING - ALTERATIONS AND ADDITIONS

A qualified practising certified structural engineer must provide structural certification to Council (where Council is the Certifying Authority) verifying that the existing structure can adequately support the proposed new loads and the structural design complies with the Structural Provisions of Part B1 (Vol 1) and Part 2.1 (Vol 2) of the Building Code of Australia prior to a Construction Certificate being issued *for any structural work to the building.* ~~each of the three stages.~~ The proposed additional loads and/or alterations must not cause a decrease in the existing structural performance of the building including its performance under earthquake actions (AS1170.4).

Note: Where a condition of consent has been imposed under the provisions of Clause 94 of the *Environmental Planning and Assessment Regulation, 2000*, the building (part or whole) may be required to comply fully with Part B1 of the of the Building Code of Australia including compliance with the earthquake loads standard, AS1170.4.

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(60) VERIFICATION OF SUPPORT FOR NEW LOADS

For alterations and additions to an existing building, a certificate from a qualified practicing structural engineer (National Engineering Registration Board) must be submitted to the Certifying Authority prior to a Construction Certificate being issued for *any structural works to the building.* ~~*each of the three stages.*~~ The certificate must state that the existing structure is adequate to support the new loads and that the design will comply with the relevant Australian Standards adopted by the Building Code of Australia *for the scope of works to be completed within the relevant stage.* ~~*each of the three stages.*~~

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(61) ASBESTOS REMOVAL

All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission (NOHSC): "Code of Practice for the Safe Removal of Asbestos" and the City of Sydney Asbestos Policy.

(62) ASBESTOS REMOVAL SIGNAGE

Standard commercially manufactured signs containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm are to be erected in prominent visible positions on the site.

(63) 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 (April 2008)'. 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.

(64) DISPOSAL OF ASBESTOS

Asbestos to be disposed of must only be transported to waste facilities licensed to accept asbestos. The names and location of these facilities are listed in Part 6 of the City of Sydney's Asbestos Policy.

(65) NOTIFICATION OF ASBESTOS REMOVAL

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 is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone and facsimile numbers and email address.

(66) PROHIBITION OF ASBESTOS RE-USE

No asbestos products are to be reused on the site (i.e. packing pieces, spacers, formwork or fill etc).

(67) SIGNAGE LOCATION AND DETAILS

(a) 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.

(b) The site notice board must include the following:

(i) contact person for the site;

(ii) telephone and facsimile numbers and email address; and

(c) site activities and time frames.

(68) SKIPS AND BINS

No asbestos laden skips or bins are to be left in any public place without the approval of Council.

(69) COMPLIANCE WITH BUILDING CODE OF AUSTRALIA

The proposed work must comply with the Building Code of Australia (BCA).

(70) CONSTRUCTION TRAFFIC MANAGEMENT PLAN

A Construction Traffic Management Plan must be submitted to and approved by Council prior to ~~a~~ Construction Certificate *CC1B or CC2* being issued*, whichever is earlier. ~~for each of the three stages.~~*

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(71) ROAD OPENING PERMIT

A separate Road Opening Permit under Section 138 of the *Roads Act, 1993* must be obtained from Council prior to the commencement of any:

(a) Excavation in or disturbance of a public way, or

(b) Excavation on land that, if shoring were not provided, may disturb the surface of a public road (including footpath).

(72) PUBLIC ART

High quality art work must be provided within the porte-cochere as proposed within the Design Verification Statement prepared by Andrew Andersons dated June 2012 and the Public Art Policy. ~~*Details of the art work*~~ *Public Art Strategy* must be submitted to and approved by Council prior to ~~a~~ Construction Certificate *CC4* ~~*CC3 CC2*~~ being issued. Installation of the art work must be completed to Council's satisfaction prior to the issue of an Occupation Certificate.

Note: Public art must be reviewed and endorsed by the City's Public Art Team and/or the Public Art Advisory Panel prior to submission for Council approval. Further information is available online at:

http://www.cityofsydney.nsw.gov.au/explore/arts-and-culture/public-art

Please contact the Public Art Team for further information at:

publicartreferrals@cityofsydney.nsw.gov.au.

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(Condition amended – D/2012/939/G – 21 June 2022)

(Condition amended – D/2012/939/H – 30 June 2022)

(73) CONTAMINATED WASTE

The generation, storage, transport, treatment or disposal of industrial, hazardous or Group A liquid waste must be in accordance with the requirements of the *Protection of the Environment Operations Act, 1997* and the NSW Department of Environment and Climate Change and Water (DECCW) waste tracking requirements.

The generation, storage, transport, treatment or disposal of industrial, hazardous or Group A liquid waste must be in accordance with the requirements of the *Protection of the Environment Operations Act, 1997* and the NSW Department of Environment Climate Change and Water (DECCW) waste tracking requirements. For further information contact DECCW on 131 555.

(74) IMPORTED WASTE DERIVED FILL MATERIAL

The only waste derived fill material that may be received at the development site is:

(a) Virgin excavated natural material (within the meaning of the *Protection of the Environment Operations Act, 1997*);

(b) Any other waste-derived material the subject of a resource recovery exemption under cl.51A of the *Protection of the Environment Operations (Waste) Regulation, 2005* that is permitted to be used as fill material.

Any waste-derived material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Principal Certifying Authority on request.

(75) TREE PRUNING SPECIFICATIONS

The consent from Council must be obtained prior to the undertaking of any tree pruning works, including tree roots greater than 40mm in diameter. Only minor pruning works will be approved by Council.

(76) LANDSCAPING OF THE SITE

(a) A detailed landscape plan, drawn to scale, by a qualified landscape architect or landscape designer, must be submitted to and approved by Council prior to the issue of ~~a~~ Construction Certificate *CC6 ~~CC3~~ ~~CC2~~*. The plan must include:

(i) Location of existing and proposed structures on the site including existing trees (if applicable);

(ii) Details of earthworks including mounding and retaining walls and planter boxes (if applicable);

(iii) Location, numbers and type of plant species;

(iv) Details of planting procedure and maintenance;

(v) Details of drainage and watering systems.

(b) Prior to the issue of ~~a~~ Construction Certificate *CC6 ~~CC3~~ ~~CC2~~*, a maintenance plan is to be submitted to and approved by the Principal Certifying Authority. The maintenance plan is to be complied with during occupation of the property.

(c) All landscaping in the approved plan is to be completed prior to an Occupation Certificate being issued.

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(Condition amended – D/2012/939/G – 21 June 2022)

(77) STREET TREE PLANTING AND MAINTENANCE

(a) A Landscape Plan indicating the location of the street trees to be planted in association with the development must be submitted to Council for approval prior to *the construction of any public domain works.* ~~*the issuing of the Construction Certificate CC2.*~~

(b) The developer should install tree pits (in accordance with the specifications in the City's Street Tree Masterplan) at the completion of construction works.

(c) The tree pits must be inspected by Council's Street Tree Contract Coordinator.

(d) Council's Street Tree Contract Coordinator will then coordinate the new tree planting in accordance with the City's Street Tree Master Plan.

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(78) MECHANICAL VENTILATION

(a) The premises must be ventilated in accordance with the Building Code of Australia and AS1668.1-1998 and AS1668.2-1991.

(b) Details of any mechanical ventilation and/or air conditioning system complying with AS1668.1-1998 and AS1668.2-1991, the Building Code of Australia and relevant Australian Standards must be prepared by a suitably qualified person certified and certified in accordance with Clause A2.2(a)(iii) of the Building Code of Australia, to the satisfaction of the Certifying Authority prior to the issue of *the relevant* ~~*a*~~ Construction Certificate *for the works* ~~*for each of the three stages*~~.

(c) Prior to issue of an Occupation Certificate and following the completion, installation, and testing of all the mechanical ventilation systems, a Mechanical Ventilation Certificate of Completion and Performance in accordance with Clause A2.2(a)(iii) of the Building Code of Australia, must be submitted to the Principal Certifying Authority.

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(79) FUTURE FOOD USE - MECHANICAL VENTILATION PROVISION

The approved mechanical exhaust systems are to be designed to be capable of accommodating exhaust requirements for all ground floor retail tenancies in accordance with relevant Australia Standards, in order to allow for the event that any of the tenancies are approved for future use by food premises or other uses which require mechanical exhaust. Any exhaust system servicing an area where food is being cooked must discharge exhaust air at roof level.

(80) CONTROL OF LEGIONNAIRES DISEASE

(a) The *Public Health Act, 1991*, *Public Health (Microbial Control) Regulation 2000* and *NSW Health Code of Practice for the Control of Legionnaires Disease* include microbial control requirements for the installation, operation and maintenance of air handling, heated water systems and water cooling systems and must be complied with.

(b) The owner or occupier of the building must register and provide particulars of any water cooling, and warm-water systems as required under the provisions of the *Public Health Act, 1991* and Regulation. Registration forms are available from Council.

(81) EMISSIONS

(a) The use of the premises must not give rise to the emission of gases, vapours, dusts or other impurities which are a nuisance, injurious or prejudicial to health.

(b) Gaseous emissions from the development must comply with the requirements of the *Protection of the Environment Operations Act, 1997* and Regulations. Uses that produce airborne particulate matter must incorporate a dust collection system.

(82) RAINWATER TANKS

(a) The installation and use of any rainwater tank(s) must comply with the following:

(i) be constructed of a non-reflective, structurally sound and non-corrosive material with a leaching resistant capability;

(ii) have all plumbing work carried out by a licensed plumber in accordance with the New South Wales Code of Practice- Plumbing and Drainage and AS3500 and Guidelines for rainwater tanks on residential properties- Plumbing requirements.

(iii) be installed by suitably qualified persons and be fixed to structurally adequate base or wall in accordance with manufacturer's specifications or engineer's details;

(iv) not be fixed to, or otherwise supported by a bounding common fence, wall or the like, without the prior approval being obtained from the adjoining land owner/s;

(v) be fitted with a first flush device;

(vi) have openings suitably sealed to prevent access by children and be fitted with a fine mesh screen to prevent penetration of contaminants and insects such as mosquitoes;

(vii) have an overflow device fitted to the rainwater tank which directs water to a complying stormwater drainage system;

(viii) have a suitable drainage plug/tap fitted and positioned to allow for easy flushing and cleaning of the tank/s;

(ix) where water pumps are installed, be located so as to not cause an offensive noise as defined by the *Protection of the Environment Operations Act, 1997*;

(x) have all taps, outlets and pipes coloured 'mauve' and marked "non-potable water - not for drinking" in accordance with the AS 1345.

(xi) the re-use of resources (including nutrients, organic matter and water)

(xii) the minimization of any adverse impacts on the amenity of the premises and surrounding lands if appropriate. Provision for the re-use of resources (including nutrients, organic matter and water).

(b) Reference should also be made to the NSW Guidelines for Management of Private Recycled Water Schemes a copy of which is available from Water for Life www.waterforlife.nsw.gov.au

(c) The installation may also be subject to a licence application under the *Water Industry Competition Act, 2006* to IPART (the independent Licensing and Regulatory Tribunal) and as such applicants are encouraged to contact the Council's Health Compliance Team for further advice prior to submitting a S68 Application. IPART may also be contacted for further advice on their licensing requirements at www.ipart.nsw.gov.au.

(83) CONTAMINATION

(a) The exportation of waste (including fill or soil) from the site must be in accordance with the provisions of the *Protection of the Environment Operations Act, 1997* and the Department of Environment Climate Change and Water (DECC) *Environmental Guidelines Assessment, Classification and Management of Non-Liquid Wastes*

(b) 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 and the Principal Certifying Authority.

(84) ACID SULFATE SOILS

(a) If any new information comes to light during demolition or construction works which has the potential to alter previous conclusions about Acid Sulfate Soils then this must be immediately notified to the Council and the Principal Certifying Authority.

(b) All works are to be in accordance with the NSW Acid Sulfate Soils Management Advisory Committee, Acid Sulfate Soils Assessment Guidelines 1998 for works that are classified as being in an Acid Sulfate Soils zone Class 2.

(85) LANDSCAPED *~~(GREEN) ROOFS~~ POOL DECK*

(a) A detailed plan of the ***landscaped ~~green roof~~ pool deck***, drawn to scale, by a qualified landscape architect or landscape designer, must be submitted to and approved by Council prior to the issue of ~~a~~ Construction Certificate *CC6 ~~CC3~~ ~~CC2~~*. The plan must include:

(i) A Design Statement that includes details of proposed use of the ***landscaped ~~green roof~~ pool deck***, general accessibility, a description of the environmental parameters it sets out to address, including noise and privacy treatment and performance specification.

(ii) Survey Plans showing existing and proposed services and engineering details of existing roofs proposed to be retrofitted.

(iii) Location of existing and proposed structures and hard landscaping on the rooftop, retaining walls, and roof fixings and other structural elements that may interrupt waterproofing, including cross-sectional details of all components.

(iv) Details of the location, sizes and numbers of plants used with reference to NATSPEC (if applicable), with preference for drought resistant species and those specified for use by the City of Sydney.

(v) Details of installation methodology including structural reinforcement or retention structures for sloping roofs, including details of prevention of slippage.

(vi) Details of accessible and inaccessible areas on the ***landscaped ~~green roof~~ pool deck***. Where proposed to be inaccessible, ***landscaped ~~green roof~~ pool deck*** are required to remain such during occupation of the property.

(vii) Details of drainage and irrigation systems, including overflow provisions.

(b) Prior to the issue of ~~a~~ Construction Certificate *CC6 ~~CC3~~ ~~CC2~~*, a Maintenance Manual is to be submitted and approved by the Principal Certifying Authority. A copy of the Maintenance Manual is to be kept on site at all times during construction and shall be produced to Council on request. The Maintenance Manual shall include as a minimum:

(i) Frequency and methodology of different maintenance requirements.

(ii) Details of safety procedures.

(iii) Laminated copies of 'As Built' drawings.

(iv) Manufacturer's contact details and copies of manufacturers' typical details and specification; and

(v) Copies of warranties and guarantees relating to all materials and plant used in construction.

(c) The owner of the premises shall at all times comply with the on-going maintenance requirements of the Maintenance Manual and shall promptly upon request produce a copy of the Manual to Council.

(d) All landscaping in the approved plan is to be completed prior to an Occupation Certificate being issued.

(e) Prior to the issue of ~~a~~ Construction Certificate *CC6 ~~CC3~~*, the certifying authority must assess and approve the proposed design of the waterproofing system against the relevant performance provisions of the Building Code of Australia as required by Clause A0.5 of the Code and ensure the following is satisfied:

(i) A report from a structural engineer confirming the adequacy of the structure to support the saturated weight-bearing capacity of the ***landscaped ~~green roof~~ pool deck***; and

(ii) A report from a hydraulic engineer certifying the drainage overflow provisions and water retention cells in the drainage layer used to facilitate self-watering for the plants.

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(Condition amended – D/2012/939/G – 21 June 2022)

(Condition amended – D/2012/939/K – 10 April 2024)

(86) FOOTPATH DAMAGE BANK GUARANTEE

(a) A Footpath Damage Bank Guarantee calculated on the basis of 70 lineal metres of the asphalt footpath site frontage must be lodged with Council in accordance with the City of Sydney's adopted Schedule of Fees and Charges. The Footpath Damage Bank Guarantee must be submitted as an unconditional bank guarantee in favour of Council as security for repairing any damage to the public domain in the vicinity of the site.

(b) The guarantee must be lodged with Council prior to issue of ~~a~~ Construction Certificate *CC1B or CC2, whichever is the earlier*.

(c) The Bank Guarantee will be retained in full until the final Occupation Certificate has been issued and any rectification works to the footway and Public Domain are completed to Council's satisfaction. On satisfying the above requirements 90% of the total securities will be released, with the remaining 10% to be retained for the duration of the 12 months Defect Liability Period.

(Amended 29 July 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(87) ALIGNMENT LEVELS

(a) Prior to ~~a~~ Construction Certificate *CC2* ~~*CC1B*~~ ~~*CC1A*~~ being issued, footpath alignment levels for the building must be submitted to Council for approval. The submission must be prepared by a Registered Surveyor and must be in accordance with the City of Sydney's Public Domain Manual.

(b) These alignment levels, as approved by Council, are then to be incorporated into the plans submitted with the application for ~~a~~ Construction Certificate *CC2* ~~*CC1B*~~ ~~*CC1A*~~, excluding a Construction Certificate for approved preparatory, demolition or shoring work.

(c) If a Public Domain Plan condition applies to the development the Alignment Levels application must be made concurrently with the submission of a Public Domain Plan.

(Amended 29 July 2015) (Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(88) PUBLIC DOMAIN PLAN

(a) *A* ~~*Three copies of a*~~ detailed Public Domain Plan *and all relevant documentation must be submitted to and approved by the City's* ~~*prepared by an architect, urban designer or landscape architect and must be lodged with Council's*~~ Public Domain *Unit prior to the construction of any public domain works.* ~~*Section and be approved by Council prior to a Construction Certificate CC1B CC1A being issued for any new building work (including internal refurbishments) excluding approved preparatory, demolition or shoring work.*~~ *The Public Domain Plan is to identify the works to be undertaken to the public domain as part of each of the Construction Certificate stages.*

(b) The Public Domain Plan must be prepared in accordance with the City of Sydney's Public Domain Manual. If an Alignment Levels condition applies to the development, the Public Domain Plan submission must be made concurrently with the Alignment Levels application. The works to the public domain are to be completed in accordance with the approved plan and the Public Domain Manual before any Occupation Certificate *(or Interim Occupation Certificate related for the relevant Construction Certificate Stage)* is issued in respect of the development or before the use commences, whichever is earlier.

Note: A Public Domain Works Guarantee deposit will be required for the public domain works, in accordance with the City of Sydney's adopted fees and charges and the Public Domain Manual. The Public Domain Works Guarantee must be submitted as an unconditional bank guarantee in favour of Council as security for completion of the obligations under this consent.

(c) Council's Public Domain section must be contacted to determine the guarantee amount prior to lodgement of the guarantee. The guarantee must be lodged with Council prior to a Road Opening Permit for works on the public way being issued.

(d) The Bank Guarantee will be retained in full until all Public Domain works are completed and the required certifications, warranties and works-as-executed documentation are submitted and approved by Council in writing. On satisfying the above requirements, 90% of the total securities will be released. The remaining 10% will be retained for the duration of the specified Defects Liability Period.

(Amended 29 July 2015) (Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(89) PUBLIC DOMAIN WORKS - HOLD POINTS AND HANDOVER

(a) Prior to *the construction of any public domain works ~~a Construction Certificate being issued for a new building work, excluding approved preparatory, demolition and shoring work~~*, a set of hold points for approved public domain and civil construction work is to be determined with and approved by the City's Public Domain section in accordance with the City's Public Domain Manual.

(b) Completion and handover of the constructed public domain works is to be undertaken in accordance with the City's Public Domain Manual, including requirements for as-built documentation, certification and defects liability period.

(Amended 29 July 2015) (Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(90) PHOTOGRAPHIC RECORD / DILAPIDATION REPORT - PUBLIC DOMAIN

Prior to an approval for demolition being granted ~~a~~ Construction Certificate *CC1B or CC2* being issued, whichever is earlier, a photographic recording of the public domain site frontages is to be prepared and submitted to Council's satisfaction.

The recording must include clear images of the footpath, nature strip, kerb and gutter, driveway crossovers and laybacks, kerb ramps, road carriageway, street trees and plantings, parking restriction and traffic signs, and all other existing infrastructure along the street.

The form of the recording is to be as follows:-

(a) A PDF format report containing all images at a scale that clearly demonstrates the existing site conditions;

(b) Each image is to be labelled to identify the elements depicted, the direction that the image is viewed towards, and include the name of the relevant street frontage;

(c) Each image is to be numbered and cross referenced to a site location plan;

(d) A summary report, prepared by a suitable qualified professional, must be submitted in conjunction with the images detailing the project description, identifying any apparent existing defects, detailing the date and authorship of the photographic record, the method of documentation and limitations of the photographic record;

(e) Include written confirmation, issued with the authority of both the applicant and the photographer that the City of Sydney is granted a perpetual non-exclusive license to make use of the copyright in all images supplied, including the right to make copies available to third parties as though they were Council images. The signatures of both the applicant and the photographer must be included.

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(91) PRESERVATION OF SURVEY MARKS

(a) All works in City streets must ensure the preservation of existing permanent survey marks (a brass bolt, or a lead plug holding a brass tack, covered by a cast iron box). At least forty-eight hours prior to the commencement of any works in the public way within 1 metre of a permanent survey mark contact must be made with the City's Project Manager Survey / Design Services to arrange for the recovery of the mark.

(b) Prior to the issue of ~~*a*~~ Construction Certificate *CC2* ~~*CC1B*~~, a survey plan, clearly showing the location of all permanent survey marks fronting the site and within 5 metres on each side of the frontages must be submitted to Council.

(c) At least forty-eight hours prior to the commencement of any works in the public way within 1 metre of a permanent survey mark contact must be made with the City's Senior Surveyor to arrange for the recovery of the mark.

(d) A fee must be paid to the Council for the replacement of any permanent survey mark removed or damaged in accordance with the City's Schedule of Fees and Charges (Reinstatement of Survey Box).

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(92) PROTECTION OF STONE KERBS

(a) The existing stone kerbs on the Clement Place and Bayswater Rd frontages of the site are to be retained and properly protected during excavation and construction works.

(b) To avoid damage to stone kerbs during construction and / or excavation works for the development, temporary removal and storage of the stone kerbs may be approved by Council. Removed, serviceable stone kerbs (i.e. those that are in good condition as agreed by City officers) must be re-installed in accordance with the City's standard details and specifications after the construction and / or excavation works have been completed. Note:

A temporary concrete kerb will need to be constructed to retain the footpath and road access until the stone kerbs can be reinstalled. The removed stone kerbs are to be reinstalled prior to the issue of an Occupation Certificate. Note: all costs associated with the works are to be at no cost to the Council.

(c) Damaged kerbs are to be replaced to match existing to the City's satisfaction or as otherwise advised by City officers.

(d) Where new crossings or temporary crossings are to be constructed to access the property, the affected kerb stones should be salvaged and reused wherever possible.

(e) All new driveway laybacks and kerbs are to be constructed with stone kerbs to match existing stones or as specified by City officers. All unused stone kerbs are to be salvaged and returned to the City's store.

(f) Council approval is required before kerbs are removed.

(93) STORMWATER AND DRAINAGE - MINOR DEVELOPMENT

The drainage system is to be constructed in accordance with Council's standard requirements as detailed in Council's 'Stormwater Drainage Connection Information' document dated July 2006. This information is available on Council's website - www.cityofsydney.nsw.gov.au.

A Positive Covenant must be registered on the title for all drainage systems involving On-site Detention (OSD) to ensure maintenance of the approved OSD system regardless of the method of connection.

(94) APPLICATION FOR HOARDINGS AND SCAFFOLDING ON A PUBLIC PLACE

(a) A separate application under Section 138 of the *Roads Act, 1993* is to be made to Council to erect a hoarding and/or scaffolding in a public place and such application is to include:-

(i) Architectural, construction and structural details of the design in accordance with the *Policy for the Design and Construction of Hoarding* (September 1997) and the *Guidelines for Temporary Protective Structures (*April 2001).

(ii) Structural certification prepared and signed by an appropriately qualified practising structural engineer.

Evidence of the issue of a Structural Works Inspection Certificate and structural certification will be required prior to the commencement of demolition or *external* construction works on site.

Assessment of the impacts of construction and final design upon the City of Sydney's street furniture such as bus shelters, phone booths, bollards and litter bins and JCDecaux street furniture including kiosks, bus shelters, phones, poster bollards, bench seats and littler bins. The applicant is responsible for the cost of removal, storage and reinstallation of any of the above as a result of the erection of the hoarding. In addition, the applicant is responsible for meeting any revenue loss experienced by Council as a result of the removal of street furniture. Costing details will be provided by Council.

The applicant must also seek permission from the telecommunications carrier (e.g. Telstra) for the removal of any public telephone.

(b) Should the hoarding obstruct the operation of Council's CCTV Cameras, the applicant must relocate or replace the CCTV camera within the hoarding or to an alternative position as determined by Council's Contracts and Asset Management Unit for the duration of the construction of the development. The cost of relocating or replacing the CCTV camera is to be borne by the applicant. Further information and a map of the CCTV cameras is available by contacting Council's CCTV Unit on 9265 9232.

(c) The hoarding must comply with the Councils policies for hoardings and temporary structures on the public way. Graffiti must be removed from the hoarding within one working day.

(Amended 5 May 2015)

(95) BARRICADE PERMIT

Where construction/building works require the use of a public place including a road or footpath, approval under Section 138 of the Roads Act 1993 for a Barricade Permit is to be obtained from Council prior to the commencement of work *for each stage of construction*. Details of the barricade construction, area of enclosure and period of work are required to be submitted to the satisfaction of Council.

(Amended 5 May 2015)

(96) ELECTRICITY SUBSTATION

If required by the applicable energy supplier, the owner must dedicate to the applicable energy supplier, free of cost, an area of land within the development site, but not in any landscaped area or in any area visible from the public domain, to enable an electricity substation to be installed. The size and location of the substation is to be submitted for approval of Council and Energy Australia, prior to ~~a~~ Construction Certificate *CC3* ~~*CC2*~~ ~~*CC1A*~~ being issued or the commencement of the use, whichever is earlier.

(Amended 29 July 2015) (Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(97) SYDNEY WATER CERTIFICATE (QUICK CHECK)

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

(b) The consent authority or a Certifying Authority must ensure that a Quick Check agent/Sydney Water has appropriately stamped the plans before the commencement of work.

(98) UTILITY SERVICES

To ensure that utility authorities are advised of the development:

(a) Prior to the issue of ~~a~~ Construction Certificate *CC2, ~~CC1B~~* a survey is to be carried out of all utility services within and adjacent to the site including relevant information from utility authorities and excavation if necessary, to determine the position and level of services.

(b) Prior to the commencement of work *for the relevant stages, ~~Stage 1B and Stage 2~~* the applicant is to obtain written approval from the utility authorities (e.g. Energy Australia, Sydney Water, and Telecommunications Carriers) in connection with the relocation and/or adjustment of the services affected by the construction of the underground structure. Any costs in the relocation, adjustment or support of services are to be the responsibility of the developer.

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(99) WASTE AND RECYCLING MANAGEMENT - RESIDENTIAL

(a) *~~The Waste Management Plan accompanying this Development Application has not been approved by this consent.~~ The development must operate in accordance with the Operational Waste Management Plan prepared by Foresight Environmental, Revision 10, dated 24 July 2023 (Council ref. 2023/441444).*

(b) A *Demolition* Waste Management Plan is to be submitted to and approved by Council prior to ~~a~~ Construction Certificate *CC2* being issued *~~for each of the three construction stages~~*. The plan must comply with the Council's Policy for Waste Minimisation in New Developments 2005. All requirements of the approved *Demolition* Waste Management Plan must be implemented during construction of the development.

(b1) ~~A Construction and Operational Waste Management Plan is to be submitted to and approved by Council prior to Construction Certificate CC3 being issued. The plan must comply with the Council's Policy for Waste Minimisation in New Developments 2005. All requirements of the approved Waste Management Plan must be implemented during construction and operation of the development~~

(c) The building must incorporate designated areas or separate garbage rooms constructed in accordance with Council's Policy for Waste Minimisation in New Developments 2005, to facilitate the separation of commercial waste and recycling from residential waste and recycling.

UPON COMPLETION OF THE DEVELOPMENT

(d) Prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, the Principal Certifying Authority must *~~obtain Council's approval of the waste and recycling management facilities provided in the development and ensure arrangements are in place for domestic waste collection by Council~~ ensure that waste handling works, waste vehicle*

access and waste storage areas are built in accordance with the approved Operational Waste Management Plan.

(Amended 29 July 2015) (Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(Amended 1 August 2023 – Modification J)

(100) WASTE AND RECYCLING MANAGEMENT - REDESIGN

(a) Prior to the issue of ~~*a*~~ Construction Certificate *CC3* ~~*CC2*~~ for the development, the waste management and collection facilities are to be redesigned in accordance with *Council's Policy for Waste Minimisation in New Developments 2005* to provide a receptacle holding area capable of accommodating the amount of waste generated by the use of the building for each collection service and located to Council's satisfaction adjacent to and at the same level as the standing area for Council's waste collection vehicles. In order to accommodate Council's 9.5-metre garbage compaction vehicles, the residential garbage room is to be provided with an acceptable garbage compaction system. The proposal is to be incorporated into the above Residential *Construction and Operational* Waste Management Plan for approval by Council.

(b) All driveways and paved areas accessed by Council's garbage collection vehicles must provide a minimum vertical unobstructed clearance of 3.9 metres, a maximum ramp grade of 1 in 6 with appropriate transitions and appropriate design turning circles for Council's 9.5 metre-long garbage compaction vehicle. Such design criteria are to be shown on the plans for Construction Certificate *CC3* and approved by Council prior to issue thereof.

(c) In the event that compliance cannot be achieved as required under part (a) and (b) of this condition, an alternative collection arrangement design that achieves an equivalent level of collection service for residents as would be provided by Council must be proposed in the waste management plan and submitted to and approved by Council's Area Planning Manager.

(Amended 5 May 2015)

(Condition amended – D/2012/939/E – 14 February 2022)

(Condition amended - D/2012/939/I - 9 December 2022)

SCHEDULE 1C

During Construction/Prior to Occupation/Completion

(101) BASIX – PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

(102) 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 (e.g. 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 Building Sites Noise Code* and Australian Standard 2436 - 1981 "Guide to Noise Control on Construction, Maintenance and Demolition Sites".

(103) 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 Department of Environment and Conservation (DEC) and 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, 1996*.

(c) *Waste Avoidance and Recovery Act, 2001*.

(d) *New South Wales Occupational Health & Safety Act, 2000*.

(e) *New South Wales Construction Safety Act, 1912 (Regulation 84A-J Construction Work Involving Asbestos or Asbestos Cement, 1983)*.

(f) *The Occupational Health & Safety Regulation, 2001*.

(g) *The Occupational Health & Safety (Asbestos Removal Work) Regulation, 1996*.

(104) OCCUPATION CERTIFICATE TO BE SUBMITTED

An Occupation Certificate must be obtained from the Principal Certifying Authority and a copy submitted to Council prior to commencement of occupation or use of the whole or any part of a new building, an altered portion of, or an extension to an existing building.

(105) ACCESS DRIVEWAYS TO BE CONSTRUCTED

Approved driveways are to be constructed for all vehicular access to the construction site in accordance with the requirements of Council's "Driveway Specifications" to the satisfaction of Council.

(106) LOADING AND UNLOADING DURING CONSTRUCTION

The following requirements apply:

(a) All loading and unloading associated with construction activity must be accommodated on site.

(b) If, during excavation, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.

(c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.

(d) In addition to any approved construction zone, provision must be made for loading and unloading to be accommodated on site once the development has reached ground level.

(e) The structural design of the building must allow the basement and/or the ground floor to be used as a loading and unloading area for the construction of the remainder of the development.

(107) NO OBSTRUCTION OF PUBLIC WAY

The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances. Non-compliance with this requirement will result in the issue of a notice by Council to stop all work on site.

(108) USE OF MOBILE CRANES

The following requirements apply:

(a) Mobile cranes operating from the road must not be used as a method of demolishing or constructing a building.

(b) 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, permits must be obtained from Council for the use of a mobile crane. The permits must be obtained 48 hours beforehand for partial road closures which, in the opinion of Council will create minimal traffic disruptions and 4 weeks beforehand in the case of full road closures and partial road closures which, in the opinion of Council, will create significant traffic disruptions.

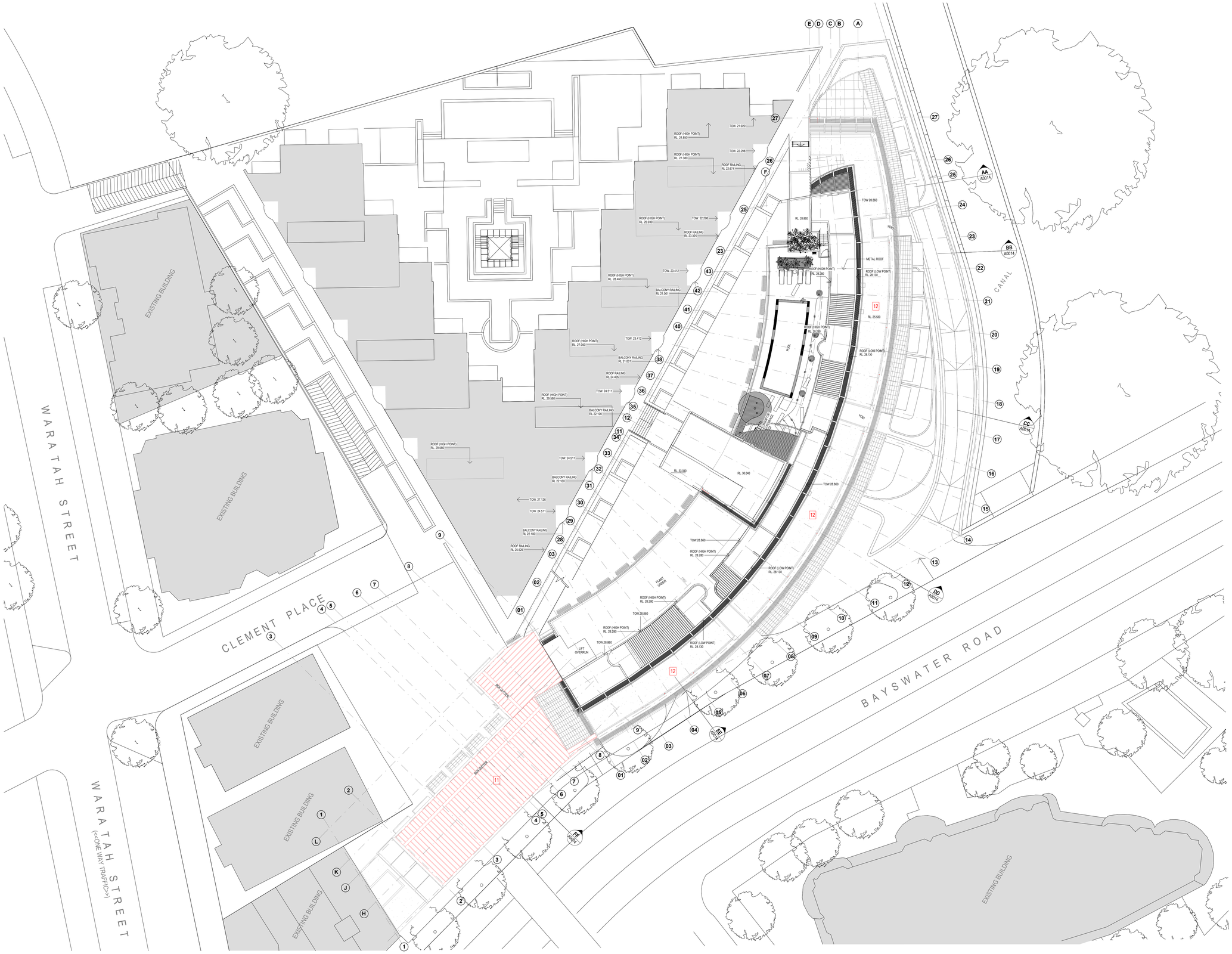
(c) Special operations and the use of mobile cranes must comply with the approved hours of construction. Mobile cranes must not be delivered to the site prior to 7.30am without the prior approval of Council.

SCHEDULE 2

The prescribed conditions in accordance with Clause 98 of the *Environmental Planning and Assessment Regulation, 2000* apply to the development.

Attachment B1

Selected Proposed Drawings



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- To be read in conjunction with all other documents.
- Report any discrepancies to Antoniades Architects Pty Ltd.
- All boundary dimensions and bearings to be verified by licensed surveyor prior to proceeding with work.

S4.55 CHANGES IN RED

LEGEND

1. AMALGAMATION OF PREVIOUS LOT 13, 14 & 15 INTO TWO APARTMENTS.
2. WINTERGARDEN REMOVED
3. BI-FOLD DOOR CHANGED TO SLIDING DOOR
4. WINDOW MODIFIED
5. GLAZED ROOF CHANGE TO METAL SHEET ROOF
6. AMALGAMATION OF PREVIOUS LOT 10, 11 & 12 INTO TWO APARTMENTS.
7. AMEDNED LOBBY GLAZING
8. REVISED LOBBY DESIGN
9. REVISED DRIVEWAY DESIGN
10. REVISED LANDSCAPING & ART WORK
11. ROOF FINISHES CHANGED TO METAL SHEET
12. ROOF FINISHES CHANGED TO RIVER PEBBLE

REV	DESCRIPTION	BY	DATE
A	PRELIMINARY		13.10.2022
B	FOR S4.55 SUBMISSION	JF	25.01.2023
C	FOR S4.55 SUBMISSION	JF	06.11.2023

PROJECT PHASE

S4.55 APPLICATION

STATUS

FOR APPROVAL

PROJECT NO. 21018CC

PROJECT **NAUTIQUE**

ADDRESS 100 Bayswater Road, Rushcutters Bay

DEVELOPMENT MANAGER

DEDICO

SCALE: 1 : 200 @B1

0m 4 8 10m

Scale 1:200

DRAWING SERIES

DRAWING TITLE

SITE PLAN

DRAWING NO.	REVISION	DRW:
A0001	**C**	**RT**
		CHK: **JF**

ANTONIADES ARCHITECTS

www.antoniades.com.au
ACN 129 731 559

Nominated Architect: Andreas Antoniades
NSW Registration 7954


EXISTING BUILDING
EXISTING BUILDING
EXISTING BUILDING
EXISTING BUILDING
EXISTING BUILDING
EXISTING BUILDING
WARATAH STREET
(<<ONE WAY TRAFFIC>>)
CLEMENT STREET
BAYSWATER ROAD
CANAL
CAR PARK SUPPLY AIR FAN ROOM
CARPARK EXHAUST FAN ROOM
BASEMENT 2
FFL -1.020
FFL -1.005
FFL -1.015
FFL -1.030
FFL -1.070
FFL -0.985
STAIR 2
PASSENGER LIFT 1
RAMP 01
DENTY RAMP
RAMP 02
GARAGE RAMP
DRIVEWAY
RETAIL CONSIGNMENTS
STAIR 1
LIFT 2
LIFT 3
LIFT 4
LIFT 5
LIFT 6
LIFT 7
LIFT 8
LIFT 9
LIFT 10
LIFT 11
LIFT 12
LIFT 13
LIFT 14
LIFT 15
LIFT 16
LIFT 17
LIFT 18
LIFT 19
LIFT 20
LIFT



LEGEND	
	RESIDENTIAL CAR SPACE
	VISITOR CAR SPACE
	SHARED CAR SPACE

CAR / MOTORBIKE SPACE	
REQUIRED	**PROVIDED**
CAR SPACE	
RESIDENTIAL	90
VISITOR	10
SHARED	2
MOTORBIKE SPACE	
9	
VISITOR CLASS 3 BIKE RAILS	
14	

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S4.55 CHANGES IN RED

LEGEND

1. AMALGAMATION OF PREVIOUS LOT 13, 14 & 15 INTO TWO APARTMENTS.
2. WINTERGARDEN REMOVED
3. BI-FOLD DOOR CHANGED TO SLIDING DOOR
4. WINDOW MODIFIED
5. GLAZED ROOF CHANGE TO METAL SHEET ROOF
6. AMALGAMATION OF PREVIOUS LOT 10, 11 & 12 INTO TWO APARTMENTS.
7. AMEDNED LOBBY GLAZING
8. REVISED LOBBY DESIGN
9. REVISED DRIVEWAY DESIGN
10. REVISED LANDSCAPING & ART WORK
11. ROOF FINISHES CHANGED TO METAL SHEET
12. ROOF FINISHES CHANGED TO RIVER PEBBLE
13. MODIFIED BASEMENT STORAGE CAGES
14. MODIFIED BASEMENT CAR PARKING

REV	DESCRIPTION	BY	DATE
A	FOR PRE-DA SUBMISSION		05.07.2022
B	PRELIMINARY		13.10.2022
C	FOR S4.55 SUBMISSION	JF	25.01.2023
D	FOR S4.55 SUBMISSIONS	JF	16.02.2023
E	REVISED S4.55 SUBMISSION	JF	31.05.2023
F	REVISED S4.55	JF	13.12.2023

PROJECT PHASE

S4.55 APPLICATION

STATUS

FOR APPROVAL

PROJECT NO. 21018CC

PROJECT **NAUTIQUE**

ADDRESS 100 Bayswater Road, Rushcutters Bay

DEVELOPMENT MANAGER

DEDICO

SCALE: As indicated @B1

0m 4 8 10m

Scale 1:200

DRAWING SERIES

General Arrangement Plans

DRAWING TITLE

BASEMENT 1

DRAWING NO.	REVISION	DRW:
A0003	**F**	**RT**
		CHK: **AA**

ANTONIADES ARCHITECTS

www.antoniades.com.au
ACN 129 731 559

Nominated Architect: Andreas Antoniades
NSW Registration 7954


WARATAH STREET
(<<ONE WAY TRAFFIC>>)
CLEMENT PLACE
BAYSWATER ROAD
CANAL
EXISTING BUILDING
EXISTING BUILDING
EXISTING BUILDING
EXISTING BUILDING
EXISTING BUILDING
METAL PALISADE FENCE 1050 HIGH
OUTLINE OF AWNING OVER SHOWN DASHED
METAL PALISADE FENCE 1050 HIGH
EXISTING ARCH ABOVE OPENING TO BE RETAINED
OUTLINE OF AWNING OVER SHOWN DASHED
METAL PALISADE FENCE 1050 HIGH
OUTLINE OF AWNING OVER SHOWN DASHED
FOOTPATH CROSSING LEVELS TO BE MODIFIED
NEW RETAIL WINTERGARDEN TERRACE
KITCHEN
LAYOUT TO FUTURE FITOUT
GROUND FLOOR RETAIL
GROUND FLOOR RETAIL
RETAIL STORAGE
RETAIL SERVICE DUCTS (DUCTS TO BE PAINTED BLACK)
ACCESS TO EXISTING SUBSTATION
ACCESS TO EXISTING SUBSTATION
SUBSTATION
SUBSTATION
SUBSTATION
SUBSTATION
NEW PASSENGER LIFT 1
NEW PASSENGER LIFT 2
STAIR 1
STAIR 2
STAIR 3
LIFT LOBBY
LIFT OVERRUN
LIFT OVERRUN
LIFT OVERRUN



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S4.55 CHANGES IN RED

LEGEND

1. AMALGAMATION OF PREVIOUS LOT 13, 14 & 15 INTO TWO APARTMENTS.
2. WINTERGARDEN REMOVED
3. BI-FOLD DOOR CHANGED TO SLIDING DOOR
4. WINDOW MODIFIED
5. GLAZED ROOF CHANGE TO METAL SHEET ROOF
6. AMALGAMATION OF PREVIOUS LOT 10, 11 & 12 INTO TWO APARTMENTS.
7. AMEDNED LOBBY GLAZING FORM AND LOCATION, NO MATERIAL CHANGE.
8. REVISED LOBBY DESIGN, NO MATERIAL CHANGE.
9. REVISED DRIVEWAY DESIGN
10.
11. ROOF FINISHES CHANGED TO METAL SHEET
12. ROOF FINISHES CHANGED TO RIVER PEBBLE
13. MODIFIED BASEMENT STORAGE CAGES
14. MODIFIED BASEMENT CAR PARKING

REV	DESCRIPTION	BY	DATE
A	FOR PRE-DA SUBMISSION		05.07.2022
B	PRELIMINARY		13.10.2022
C	FOR S4.55 SUBMISSION	JF	25.01.2023
D	FOR S4.55 SUBMISSIONS	JF	16.02.2023
E	S4.55 Additional information	JF	21.02.2024

PROJECT PHASE

FOR APPROVAL

STATUS

S4.55.2 SUBMISSION

PROJECT NO. 21018CC

PROJECT **NAUTIQUE**

ADDRESS 100 Bayswater Road, Rushcutters Bay

DEVELOPMENT MANAGER

DEDICO

SCALE: 1 : 200 @B1

0m 4 8 10m

Scale 1:200

DRAWING SERIES

General Arrangement Plans

DRAWING TITLE

LEVEL 1

DRAWING NO. **A0005**

REVISION **E**

DRW: **RT**

CHK: **AA**

ANTONIADES ARCHITECTS

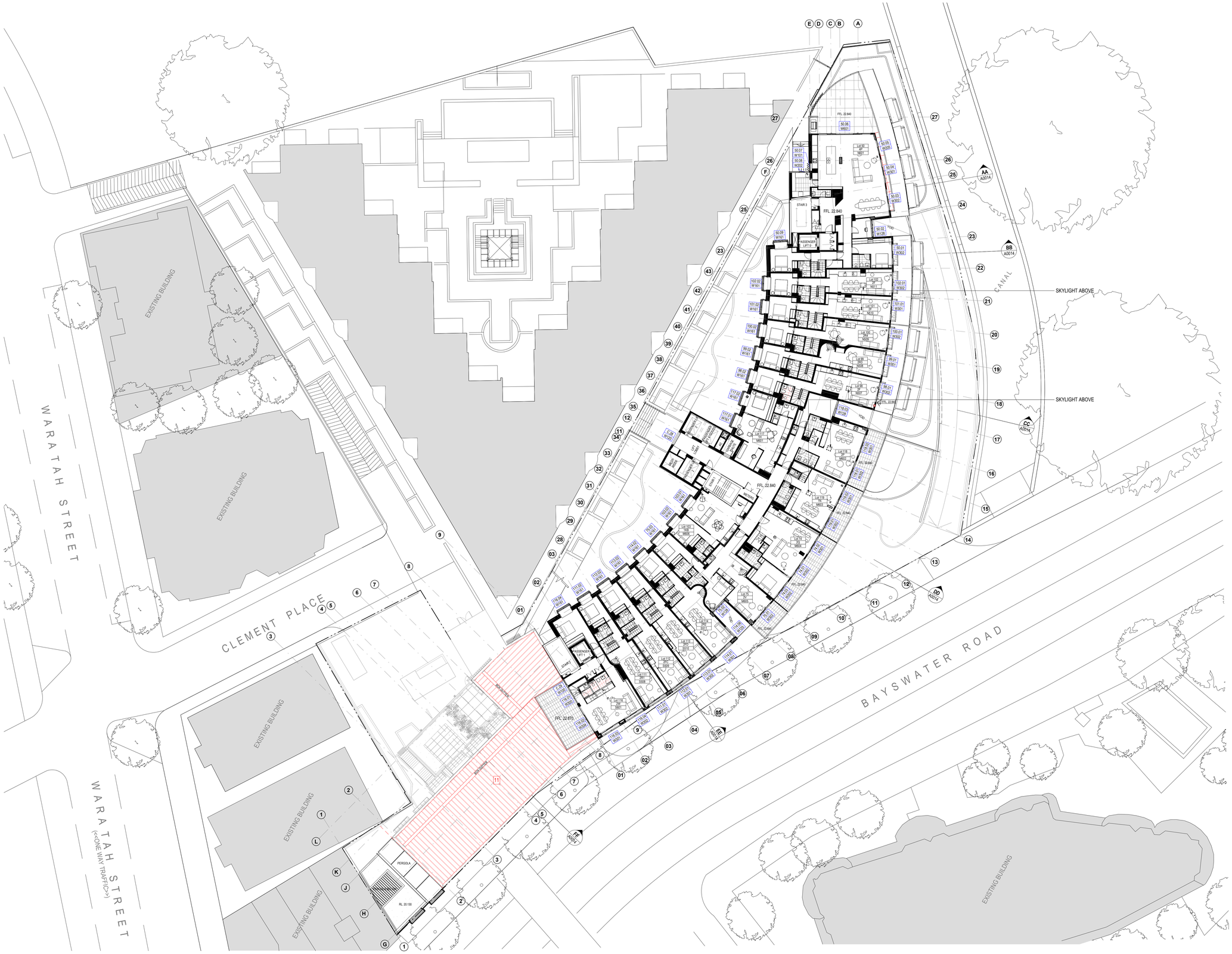
www.antoniades.com.au
ACN 129 731 559

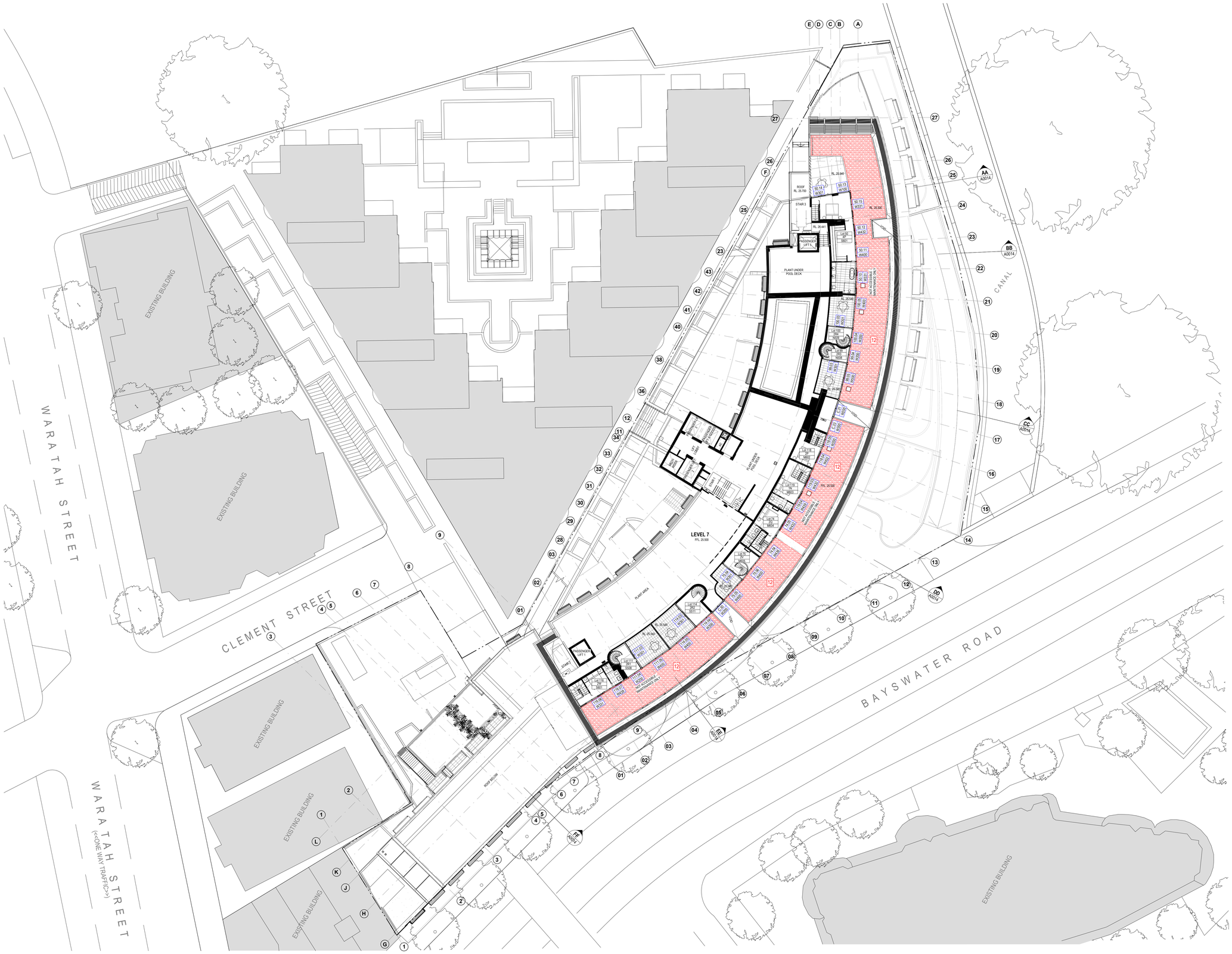
Nominated Architect: Andreas Antoniades NSW Registration 7954

Attachment B2

Selected Proposed Drawings


WARATAH STREET
(<<ONE WAY TRAFFIC>>)
CLEMENT PLACE
BAYSWATER ROAD
CANAL
EXISTING BUILDING
EXISTING BUILDING
EXISTING BUILDING
EXISTING BUILDING
EXISTING BUILDING
FFL. 20.140
FFL. 20.140
FFL. 20.140
RL. 20.140
RL. 20.140
R


WARATAH STREET
(<<ONE WAY TRAFFIC>>)
CLEMENT PLACE
BAYSWATER ROAD
CANAL
EXISTING BUILDING
EXISTING BUILDING
EXISTING BUILDING
EXISTING BUILDING
EXISTING BUILDING
SKYLIGHT ABOVE
SKYLIGHT ABOVE
BOX GUTTER
BOX GUTTER
PERGOLA
RL 20.130
FFL 22.840
FFL 22.840
FFL 22.840
FFL 22.840
FFL 22.840
FFL 22.840
FFL 22.670
STAIR 3
PASSENGER LIFT 1
PASSENGER LIFT 2
PASSENGER LIFT 3
AA A0014
BB A0014
CC A0014
DD A0014
RT A0014
RT A0014
RT



96

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S4.55 CHANGES IN RED

LEGEND

1. AMALGAMATION OF PREVIOUS LOT 13, 14 & 15 INTO TWO APARTMENTS.
2. WINTERGARDEN REMOVED
3. BI-FOLD DOOR CHANGED TO SLIDING DOOR
4. WINDOW MODIFIED
5. GLAZED ROOF CHANGE TO METAL SHEET ROOF
6. AMALGAMATION OF PREVIOUS LOT 10, 11 & 12 INTO TWO APARTMENTS.
7. AMEDNED LOBBY GLAZING
8. REVISED LOBBY DESIGN
9. REVISED DRIVEWAY DESIGN
10. REVISED LANDSCAPING & ART WORK
11. ROOF FINISHES CHANGED TO METAL SHEET
12. ROOF FINISHES CHANGED TO RIVER PEBBLE

REV	DESCRIPTION	BY	DATE
A	FOR PRE-DA SUBMISSION		05.07.2022
B	PRELIMINARY		13.10.2022
C	FOR S4.55 SUBMISSION	JF	25.01.2023
D	FOR S4.55 SUBMISSION	JF	06.11.2023

PROJECT PHASE

S4.55 APPLICATION

STATUS

FOR APPROVAL

PROJECT NO. 21018CC

PROJECT **NAUTIQUE**

ADDRESS 100 Bayswater Road, Rushcutters Bay

DEVELOPMENT MANAGER

DEDICO

SCALE: 1 : 200 @B1

0m 2 4 5m

Scale 1:100

DRAWING SERIES

General Arrangement Plans

DRAWING TITLE

LEVEL 7

DRAWING NO. **A0011**

REVISION **D**

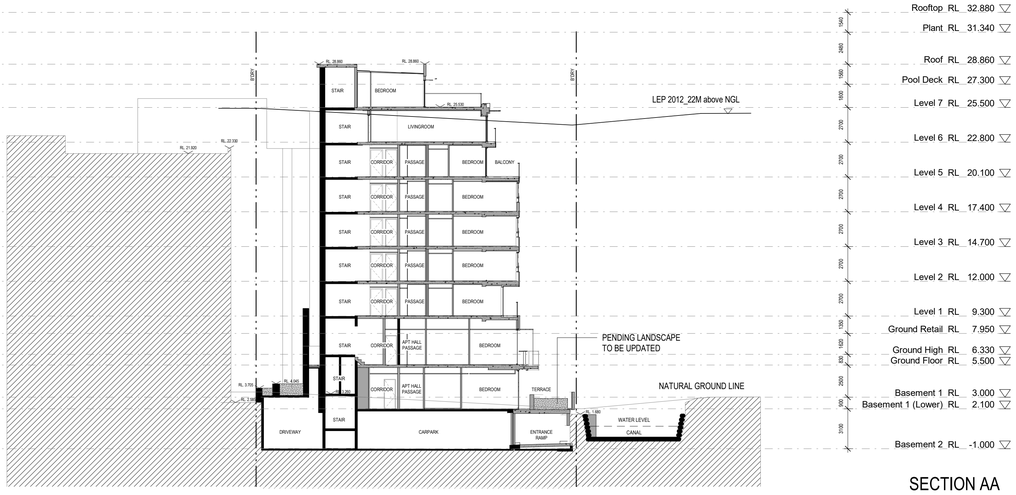
DRW: **RT**

CHK: **JF**

ANTONIADES ARCHITECTS

www.antoniades.com.au
ACN 129 731 559

Nominated Architect: Andreas Antoniades
NSW Registration 7954



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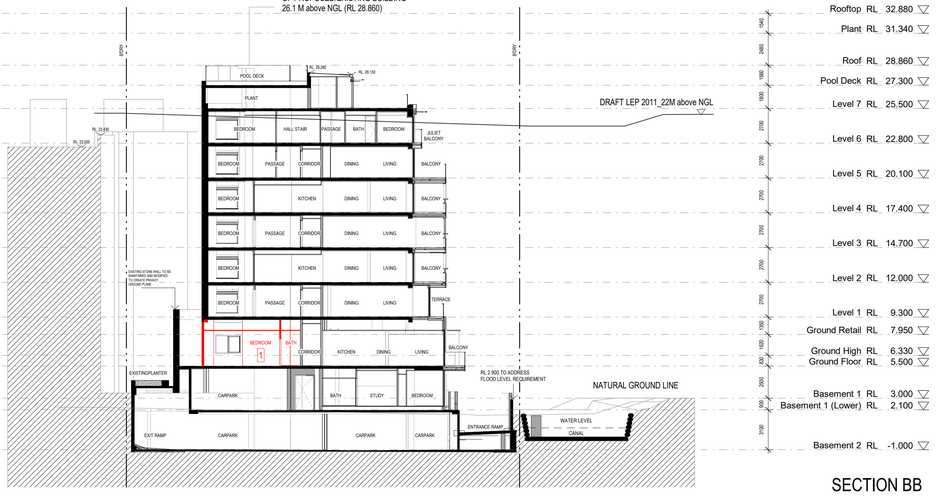
Plant RL 31.340
Roof RL 28.860
Pool Deck RL 27.300
Level 7 RL 25.500
Level 6 RL 22.800
Level 5 RL 20.100
Level 4 RL 17.400
Level 3 RL 14.700
Level 2 RL 12.000
Level 1 RL 9.300
Ground Retail RL 7.950
Ground High RL 6.330
Ground Floor RL 5.500
Basement 1 RL 3.000
Basement 1 (Lower) RL 2.100
Basement 2 RL -1.000

SECTION AA



Rooftop RL 32.880
Plant RL 31.340
Roof RL 28.860
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Level 7 RL 25.500
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Level 5 RL 20.100
Level 4 RL 17.400
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Level 2 RL 12.000
Level 1 RL 9.300
Ground Retail RL 7.950
Ground High RL 6.330
Ground Floor RL 5.500
Basement 1 RL 3.000
Basement 1 (Lower) RL 2.100
Basement 2 RL -1.000

SECTION BB

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S4.55 CHANGES IN RED

LEGEND

1. AMALGAMATION OF PREVIOUS LOT 13, 14 & 15 INTO TWO APARTMENTS.
2. WINTERGARDEN REMOVED
3. BI-FOLD DOOR CHANGED TO SLIDING DOOR
4. WINDOW MODIFIED
5. GLAZED ROOF CHANGE TO METAL SHEET ROOF
6. AMALGAMATION OF PREVIOUS LOT 10, 11 & 12 INTO TWO APARTMENTS.
7. AMEDNED LOBBY GLAZING FORM AND LOCATION, NO MATERIAL CHANGE.
8. REVISED LOBBY DESIGN, NO MATERIAL CHANGE.
9. REVISED DRIVEWAY DESIGN
10.
11. ROOF FINISHES CHANGED TO METAL SHEET
12. ROOF FINISHES CHANGED TO RIVER PEBBLE
13. MODIFIED BASEMENT STORAGE CAGES
14. MODIFIED BASEMENT CAR PARKING

Rooftop RL 32.880
Plant RL 31.340
Roof RL 28.860
Pool Deck RL 27.300
Level 7 RL 25.500
Level 6 RL 22.800
Level 5 RL 20.100
Level 4 RL 17.400
Level 3 RL 14.700
Level 2 RL 12.000
Level 1 RL 9.300
Ground Retail RL 7.950
Ground High RL 6.330
Ground Floor RL 5.500
Basement 1 RL 3.000
Basement 1 (Lower) RL 2.100
Basement 2 RL -1.000

SECTION CC

Rooftop RL 32.880
Plant RL 31.340
Roof RL 28.860
Pool Deck RL 27.300
Level 7 RL 25.500
Level 6 RL 22.800
Level 5 RL 20.100
Level 4 RL 17.400
Level 3 RL 14.700
Level 2 RL 12.000
Level 1 RL 9.300
Ground Retail RL 7.950
Ground High RL 6.330
Ground Floor RL 5.500
Basement 1 RL 3.000
Basement 1 (Lower) RL 2.100
Datum RL 0.000
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SECTION DD

Rooftop RL 32.880
Plant RL 31.340
Roof RL 28.860
Pool Deck RL 27.300
Level 7 RL 25.500
Level 6 RL 22.800
Level 5 RL 20.100
Level 4 RL 17.400
Level 3 RL 14.700
Level 2 RL 12.000
Level 1 RL 9.300
Ground Retail RL 7.950
Ground High RL 6.330
Ground Floor RL 5.500
Basement 1 RL 3.000
Basement 1 (Lower) RL 2.100
Basement 2 RL -1.000

SECTION EE

Rooftop RL 32.880
Plant RL 31.340
Roof RL 28.860
Pool Deck RL 27.300
Level 7 RL 25.500
Level 6 RL 22.800
Level 5 RL 20.100
Level 4 RL 17.400
Level 3 RL 14.700
Level 2 RL 12.000
Level 1 RL 9.300
Ground Retail RL 7.950
Ground High RL 6.330
Ground Floor RL 5.500
Basement 1 RL 3.000
Basement 1 (Lower) RL 2.100
Basement 2 RL -1.000

SECTION FF

REV	DESCRIPTION	BY	DATE
A	FOR PRE-DA SUBMISSION		05.07.2022
B	PRELIMINARY		13.10.2022
C	FOR S4.55 SUBMISSION	JF	25.01.2023
D	FOR S4.55 SUBMISSION	JF	06.11.2023
E	S4.55 Additional information	JF	21.02.2024

PROJECT PHASE

S4.55 APPLICATION

STATUS

FOR APPROVAL

PROJECT NO. 21018CC

PROJECT **NAUTIQUE**

ADDRESS 100 Bayswater Road, Rushcutters Bay

DEVELOPMENT MANAGER

DEDICO

SCALE: 1 : 200 @B1

0m 4 8 10m

Scale 1:200

DRAWING SERIES

DRAWING TITLE

SECTIONS

DRAWING NO. **A0014**

REVISION **E**

DRW: RT

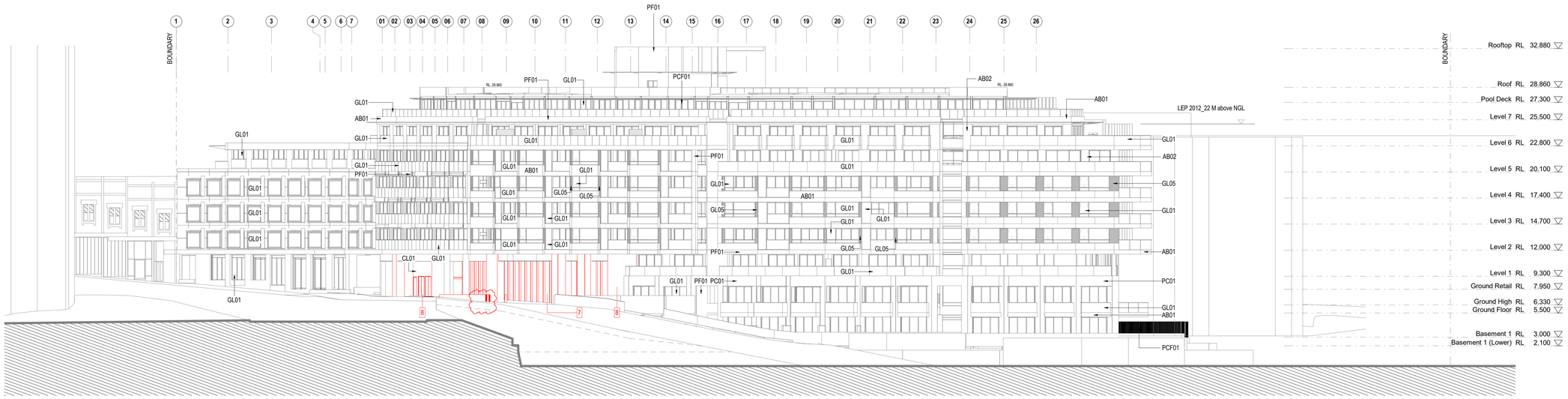
CHK: JF

ANTONIADES ARCHITECTS

www.antoniades.com.au
ACN 129 731 559

Nominated Architect: Andreas Antoniades
NSW Registration 7954







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S4.55 CHANGES IN RED

LEGEND

1. AMALGAMATION OF PREVIOUS LOT 13, 14 & 15 INTO TWO APARTMENTS.
2. WINTERGARDEN REMOVED
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8. REVISED LOBBY DESIGN, NO MATERIAL CHANGE.
9. REVISED DRIVEWAY DESIGN
10.
11. ROOF FINISHES CHANGED TO METAL SHEET
12. ROOF FINISHES CHANGED TO RIVER PEBBLE
13. MODIFIED BASEMENT STORAGE CAGES
14. MODIFIED BASEMENT CAR PARKING

REV	DESCRIPTION	BY	DATE
A	FOR PRE-DA SUBMISSION		05.07.2022
B	PRELIMINARY		13.10.2022
C	FOR S4.55 SUBMISSION	JF	25.01.2023
D	REVISED S4.55 SUBMISSION	JF	31.05.2023
E	REVISED S4.55 SUBMISSION	JF	24.07.2023
F	FOR S4.55 SUBMISSION	JF	06.11.2023
G	REVISED S4.55	JF	13.12.2023
H	S4.55 Additional information	JF	21.02.2024

PROJECT PHASE

S4.55 APPLICATION

STATUS

FOR APPROVAL

PROJECT NO. 21018CC

PROJECT **NAUTIQUE**

ADDRESS 100 Bayswater Road, Rushcutters Bay

DEVELOPMENT MANAGER

DEDICO

SCALE: 1 : 200 @B1

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Scale 1:200

DRAWING SERIES

DRAWING TITLE

ELEVATIONS

DRAWING NO. **A0015**

REVISION **H**

DRW: **RT**

CHK: **JF**

ANTONIADES ARCHITECTS

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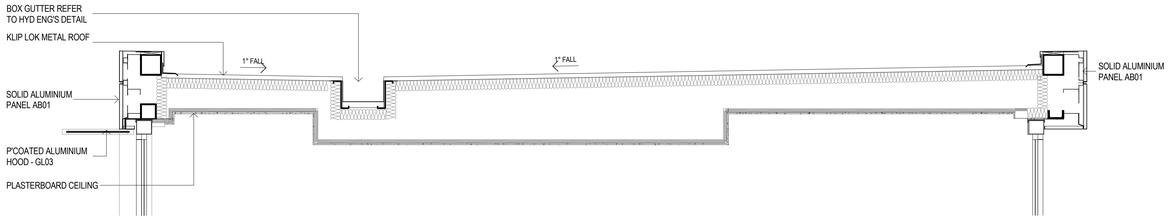
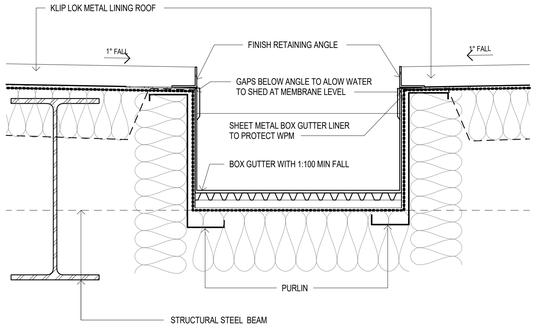
ACN 129 731 559

Nominated Architect: Andreas Antoniades
NSW Registration 7954



METAL ROOF SECTION



BOX GUTTER DETAILS

MATERIAL:

Klip Lok 406 Surfmist colour



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REV	DESCRIPTION	BY	DATE
A	S4.55 Additional information	JF	21.02.2024

PROJECT PHASE

S4.55 APPLICATION

STATUS

FOR APPROVAL

PROJECT NO. 21018CC

PROJECT **NAUTIQUE**

ADDRESS 100 Bayswater Road, Rushcutters Bay

DEVELOPMENT MANAGER

DEDICO

SCALE: As indicated @B1

0m 4 8 10m

Scale 1:200

DRAWING SERIES

DRAWING TITLE

ROOF SECTION

DRAWING NO.	REVISION	DRW:
A0014.1	**A**	**RT**
		CHK: **JF**

ANTONIADES ARCHITECTS

www.antoniades.com.au
ACN 129 731 559

Nominated Architect: Andreas Antoniades
NSW Registration 7954

Attachment B3

Selected Proposed Drawings

NAUTIQUE
100 BAYSWATER ROAD, RUSHCUTTERS BAY

LANDSCAPE DOCUMENTATION

REVISED SECTION 4.55

DRAWING REGISTER

Dwg No.	Drawing Title	Scale	Size
General			
L-DA-00	Cover Page & Drawing Register	N/A	A1
L-DA-01	Design Statement and Diagrams	N/A	A1
L-DA-02	Tree Protection & Removal Plan	1:200	A1
Plans			
L-DA-03	Landscape Plan - Basement	1:200	A1
L-DA-04	Landscape Plan - Ground Floor	1:200	A1
L-DA-05	Landscape Plan - Level 2	1:200	A1
L-DA-06	Landscape Plan - Level 5, 6, 7 and Pool Deck	1:200	A1
Sections			
L-DA-07	Landscape Elevations	1:200	A1
L-DA-08	Landscape Sections	1:100	A1
Palettes			
L-DA-09	Planting Palette	N/A	A1

GENERAL NOTES

* FOR DEVELOPMENT APPLICATION ONLY

* All tree dimensions and RLs in metres. All other dimensions in mm unless stated otherwise.

* Do not scale from drawings. Use figured dimensions only. Larger scale drawings and written dimensions take preference.

* All work shall be carried out in accordance with current versions of Australian Standards, BCA and Local Government Regulations.

* Structural Details are indicative only and are subject to Structural Engineer's Details and Specifications.

* Drainage details are subject to Hydraulic / Civil Engineer's Detail and Specification.

* Subbase details including compaction are to Civil and Structural Engineer's Specification.

* Lighting Plans are subject to detailed design by a qualified Lighting Consultant or Electrical Contractor.

* Water Feature Details are indicative only and are subject to detailed design by a specialist Water Feature designer.

* Service location on plans are indicative only. *360 Degrees Landscape Architects Pty Ltd* accepts no responsibility for the accuracy of service locations shown or for services not shown. It is the responsibility of the contractor to determine service locations prior to the commencement of work, including contacting *Dial Before You Dig* and performing on site service locations. Locate and protect all services on site and in adjacent public domain. Any damages to services and associated damages remains the responsibility of the contractor and shall be rectified at no cost to the client or any other party.

*All adjoining property elements including but not limited to buildings, walls, trees and paving to be protected. Damaged elements remain the responsibility of the contractor and shall be rectified at no cost to the client or any other party. Existing trees to be retained are to be protected to Council and Project Arborist's requirements. No vehicular traffic, stockpiling or storage of materials within Tree Protection Zones (TPZs).

* No responsibility will be taken by *360 Degrees Landscape Architects Pty Ltd* for any variations in design, construction method, materials specified and general specifications without permission from the Project Landscape Architect.

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LOCATION PLAN



PRELIMINARY
NOT FOR CONSTRUCTION

Rev	Amendment	Date	By
D	S4.55 Draft Review	10/11/22	CB
E	S4.55	13/12/22	CB
F	S4.55 additional notes	26/06/23	CB
G	Revised S4.55 Draft Review	24/10/23	CB
H	Revised S4.55	06/11/23	CB

IMPORTANT NOTES:
Do not scale from drawings.
All discrepancies to be brought to the attention of the Project Landscape Architect.
Larger scale drawings and written dimensions take preference. All dimensions in mm unless otherwise stated.
All tree dimensions and RLs in metres.
Use figured dimensions only.
Verify all dimensions on site before the commencement of any works.
Contractors shall locate and protect all services prior to construction.
All work shall be carried out in accordance with ADA, BCA and Local Government Regulations.
Structural Details shall be subject to Engineer's Specifications.
Drainage & Water Feature Details shall be subject to Hydraulic Engineer's Specifications.
All work shall be carried out in a professional manner by Qualified Tradesmen according to Landscape Drawings and Engineer's Specifications.
No responsibility will be taken by *360 Degrees Landscape Architects Pty Ltd* for any variations in design, construction method, materials specified, and general specifications without permission from the Project Engineer or Landscape Architect.
This Drawing is copyright to *360 Degrees Landscape Architects Pty Ltd*.

CLIENT: JDH Capital
CHECKED: GD
ARCHITECT: Antoniades Architects
DRAWN: CB
SCALE: N/A
SIZE: A1
STAGE: S4.55

DWG. TITLE
Cover Page & Drawing Schedule

PROJECT
100 Bayswater Road, Rushcutters Bay

360
Level 1, 1 Mary's Place
Surry Hills, 2010
P 02 9332 3601
W 360.net.au
ABN 90 146 901 322

L-DA-00

101

DESIGN STATEMENT

INTRODUCTION

360 Degrees Landscape Architects have been engaged by Dedico and JDH Capital to prepare a Landscape Design S4.55 for the proposed residential development at Nautique - 100 Bayswater Road, Rushcutters Bay. This statement will describe the landscape concept for the site and provide a framework for detailed design and documentation.

As part of a collaborative design team, 360 Degrees Landscape Architects propose to create a community responsive development through an engaging and memorable landscape design. The proposed Landscape S4.55 has been designed and set out in accordance with;

- City of Sydney DCP and guidelines
- Architectural plans by Antoniades Architects

Careful consideration of the architectural building and conceptual collaboration with the planner, the client, architects and consultant team has contributed to the landscape design solutions.

In general the Landscape Architectural design sets out to provide a stimulating environment responsive to the scale of the development. The plant selection has been made from plant species suited to various microclimatic conditions and site requirements with local native and indigenous species used where applicable, including a review of NSW WeedWise and the BASIX Indigenous Plant List.

The sequence of landscape components (Street Frontage and Entry, Communal Gardens, Pool Deck and the Private Courtyards combine to create an integrated, verdant and diverse sequence of spaces that contributes to both the private domain of the residents and the public domain of the neighbourhood.

The overall design aims for an environmental and socially sustainable landscape and an integrated landscape experience with the building architecture and function, activating the site and creating a vibrant precinct and place to live.

The communal open spaces have been designed with the intention to form a focus on the development and provide landscape buffers and pockets between the building and boundary/common areas. These spaces also provide pleasant outlooks for residents and neighbouring properties, spaces that generate activity and interaction to create a sense of community, providing social and recreational opportunities. The proposed landscape design will contribute to the urban character, visual quality and biodiversity of the area.

The primary landscape architectural components of this project can be divided as follows for descriptive purposes;

- Street Frontage and Entry
- Communal Gardens
- Pool Deck
- Private Courtyards

STREET FRONTAGE AND ENTRY

The Street Frontage and Entry are for residents and visitors, integrating the private and the public domain. The landscape allows for visual clarity to the building entry and with generous planted areas. The combined street tree planting, feature tree fern planting and cobblestone driveway to porte cochère create a dynamic fine grain at street level.

The existing narrow planter along the south boundary (grid 6 to 11) will be increased to accommodate the proposed public artwork (by others) and be planted with low planting of *Lomandra* 'Lime Tuff' and *Dichondra repens*.

The landscape plan proposes to introduce 3x street trees - Brush Box (*Lophostemon confertus*) to the front of the property. These trees will soften the façade.

The proposed planting to the street frontage offers the street edge of the development a residential interface and pedestrian scape, the entry from the street and the façade of the building articulates the main entry points along Bayswater Road.

The majority of planting to the development will be maintained as part of the strata management program to ensure planting stays consistent and healthy.

Proposed planting to the street frontage planter near the two car parking spaces (grid 13 to 16) will include *Cyathea cooperi* (feature grove), *Lagerstroemia indica, Tristaniopsis laurina* 'Luscious', *Acmena* 'Sublime', *Alpinia caerulea, Philodendron xanadu*, *Lomandra* 'Lime Tuff', *Gardenia augusta* 'Florida', *Dianella* 'Little Jess', *Dichondra repens* and *Viola hederacea*. Screen hedge planting such as *Syzygium* 'Cascade' and feature planting of *Rhaphis excelsa.*

COMMUNAL GARDENS - Ground Level

The exiting Palm and Tree Fern planting and planters along the northern pedestian access path between the site and Marina One Apartments will be retained and protected. Additional palms and tree ferns will be added.

The Communal Gardens to the rear of the property will provide residents with a garden outlook and seasonal solar access and/or shade. These areas are accessible for maintenance only and can be seen from the covered terraces.

The gardens will be planted with a diversity of species - predominantly native plants, some indigenous plant species and accented with exotics as required to meet the micro-climatic conditions.

The gardens are designed to create a suitable balance of privacy, amenity and solar access. A diversity of plant species is continued through the landscape while a unified canopy species selection of *Cyathea cooperi, Tristaniopsis laurina 'Luscious', Alocasia* and native ferns and groundcovers provide seasonal variation and amenity.

Proposed underplanting will include *Blechnum nudum*, *Blechnum* 'Silver Lady', *Dianella* 'Little Jess', *Ligularia tussilaginea*, *Todea barbara, Doodia aspera, Dichondra repens, Viola hederacea* and *Ficus pumila.*

COMMUNAL GARDEN - Level 2

The Communal Garden to Level 2 will allow the residents to plant an edible garden and grow herbs and vegetables in raised planters. The raised planters to the edge will act as balustrades and screen planting will create privacy to the adjacent private courtyard.

POOL DECK

This space will be a communal rooftop terrace with views to the harbour. The existing pool is to be repaired and a new deck terrace, feature tree (*Pandanus sp.*) and pots/planters have been proposed. Planting to the lift core roof will soften this area.

PRIVATE COURTYARDS - Basement and Ground Level

A series of private courtyards with generous planters for screen planing have been proposed along the south east edge of the site facing Bayswater Road. Tree Ferns (*Cyathea cooperi*) and a native Lilly Pilly hedge (*Syzygium* 'Cascade') soften the edge of the building.

MAINTENANCE

All systems, setout and plant selection has been closely considered to minimise maintenance. Simple durable materials and appropriate planting species have been implemented to minimise maintenance requirements for the successful continuance of the site. Drip irrigation shall be provided to all garden beds. Maintenance of all communal landscape elements are to be conducted by qualified maintenance staff.

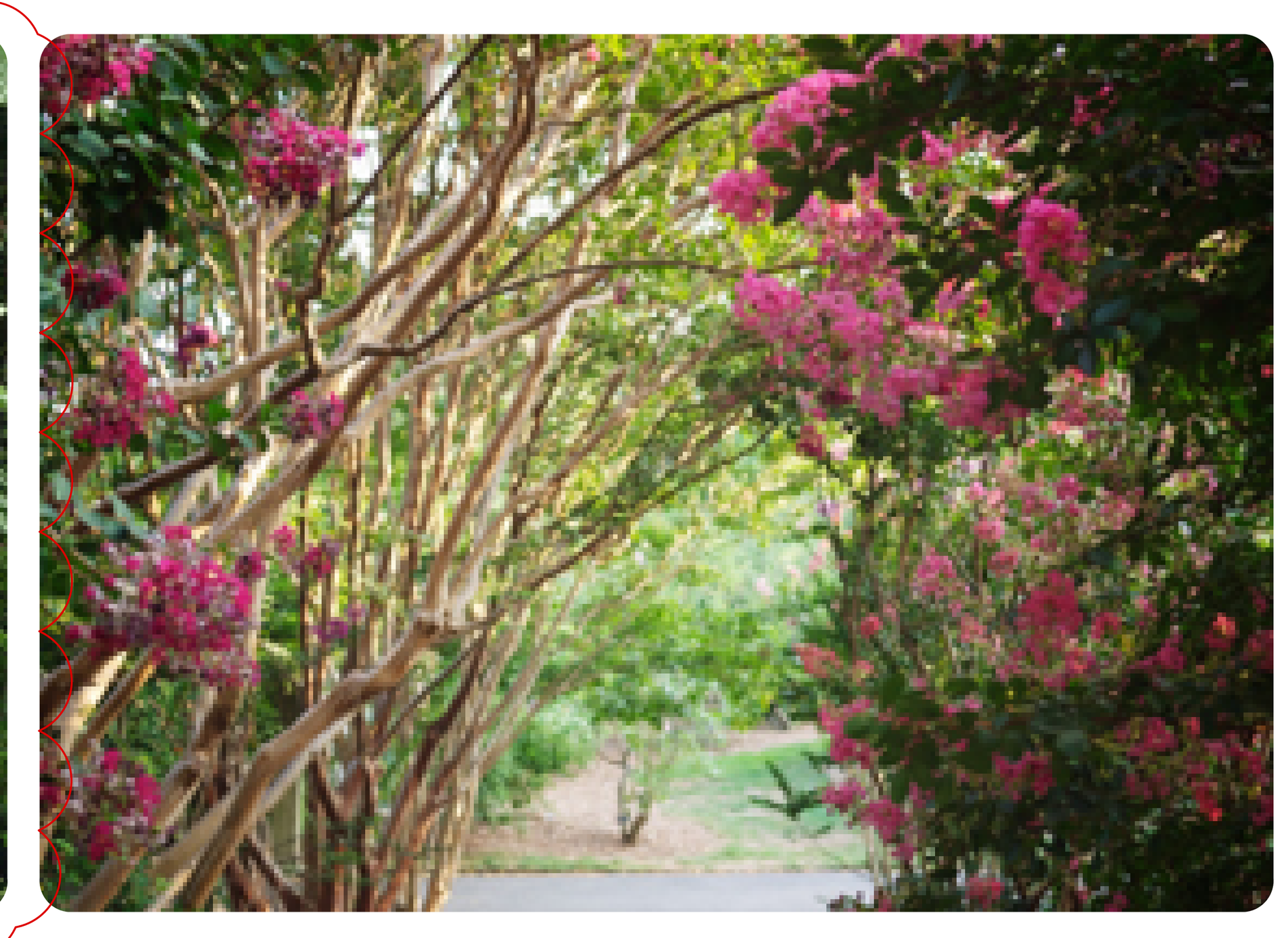
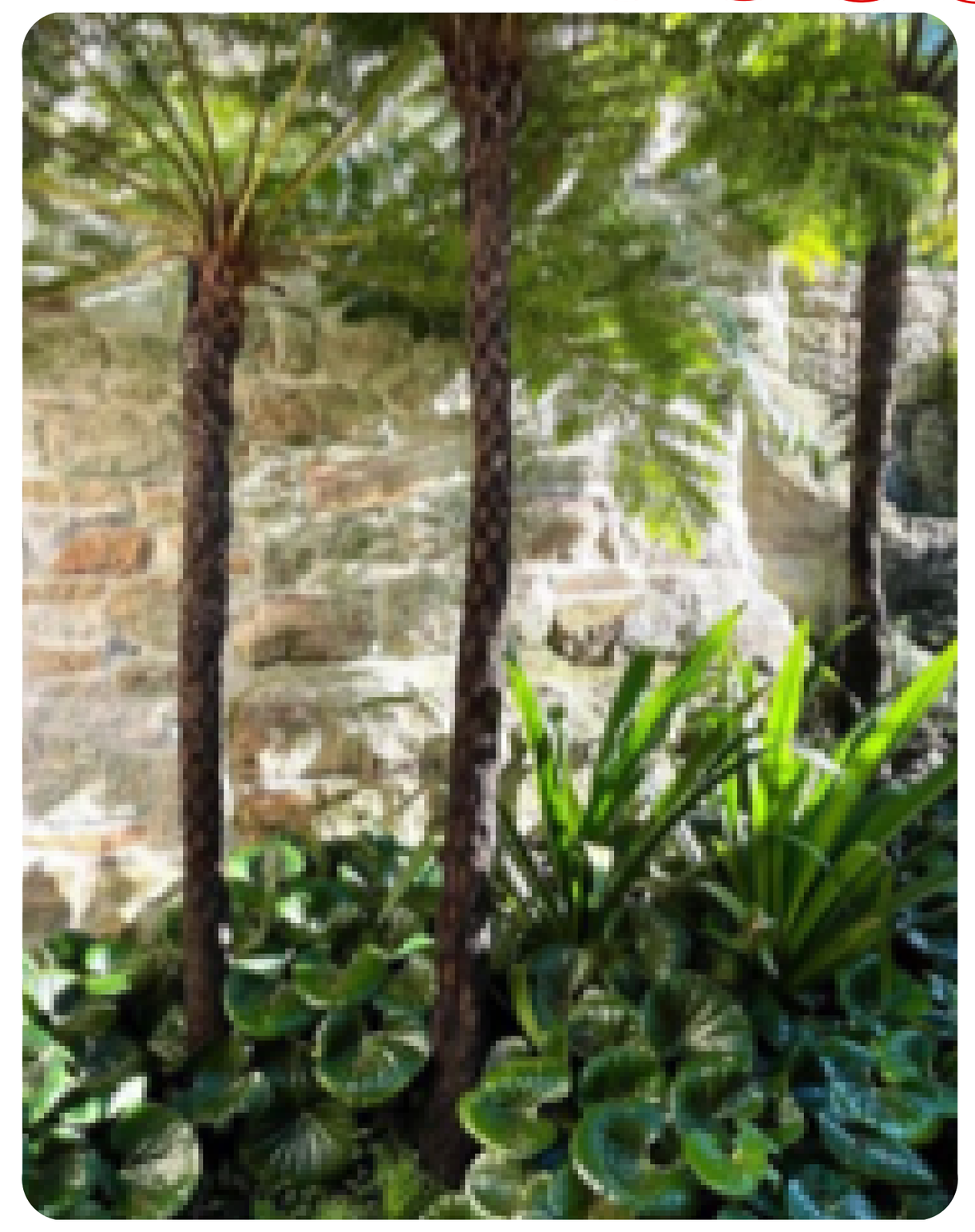
CONCLUSION

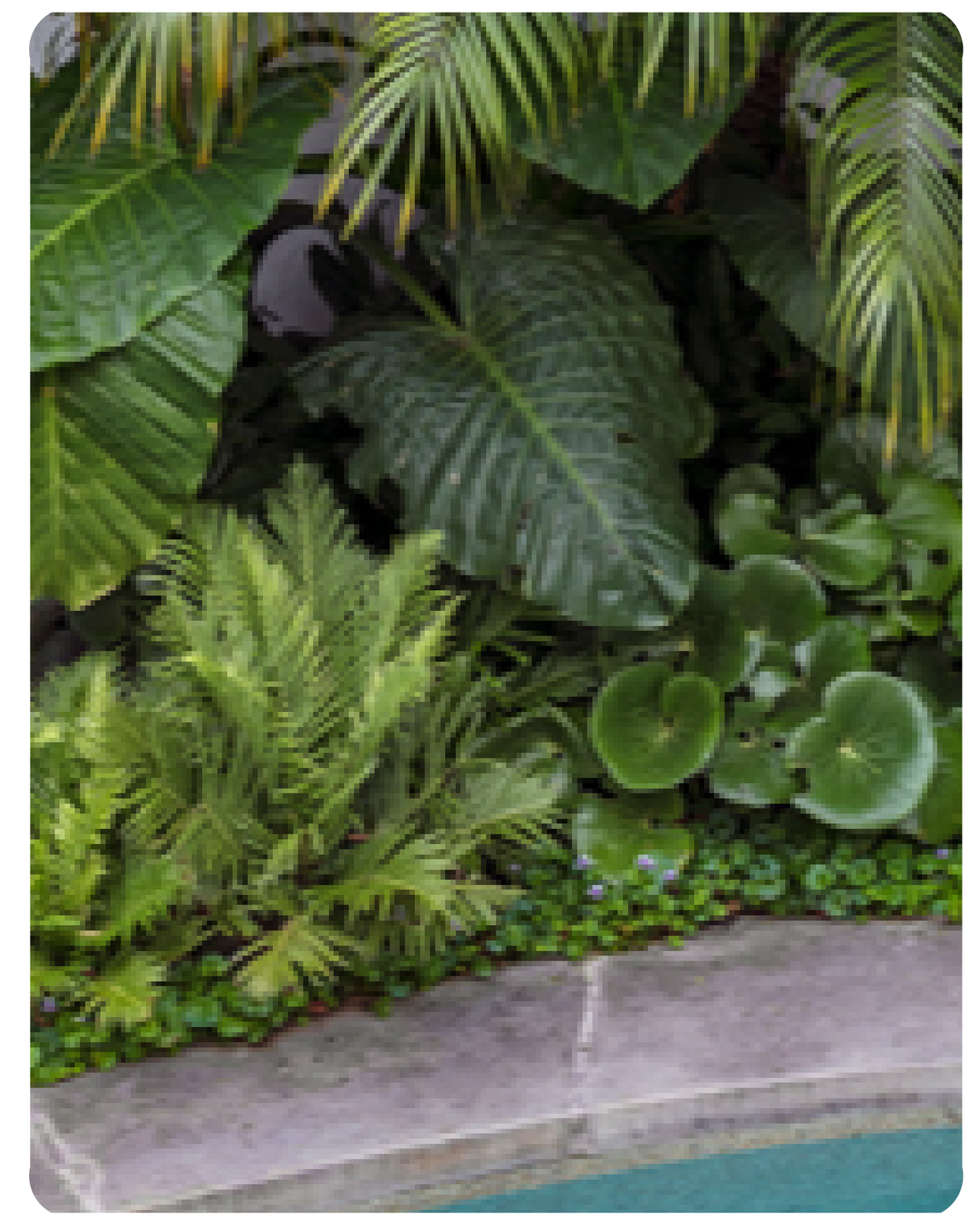
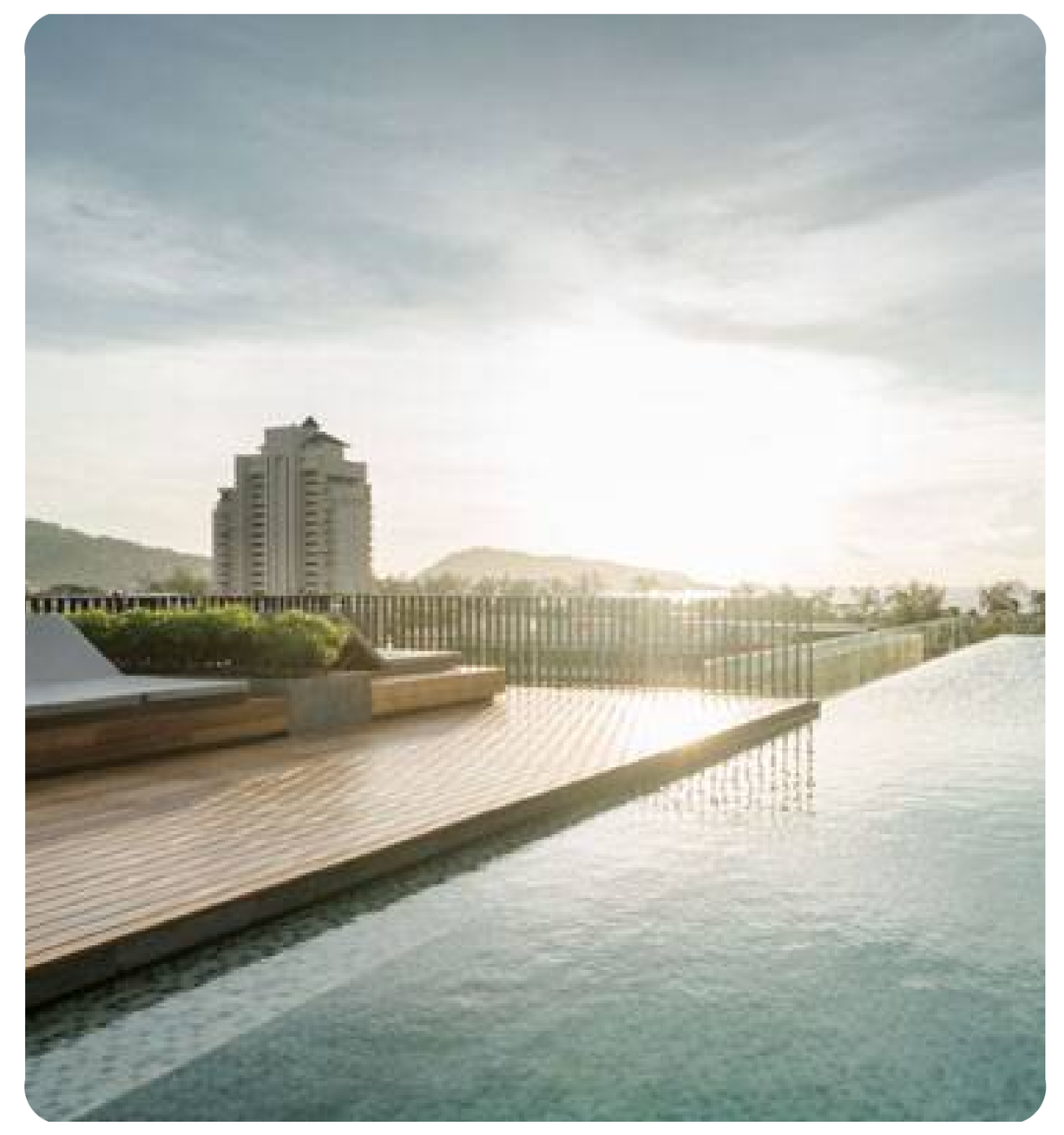
The landscape itself is conceived as an urban garden, an extension of the neighbouring Rushcutters Bay Park. It is a counterpoint to the architecture and a complement to the district's residential scale and garden character. It is a juxtaposition of wild urban oasis and a familiar domestic courtyard, always with an air of relaxed informality. These gardens demonstrate a progressive approach to landscape in our urban centres; in this residential development, the gardens contribute as much to the character of the suburb and its inhabitants as it does to the enjoyment of its residents.

The proposed landscape plan encourages indoor/outdoor relationships, the buildings edge seamlessly transitions to the surrounding landscape, offering a unified internal and external spatial experience. The arrangement of the private courtyards and communal spaces promotes healthy and active lifestyles while providing adaptability to engage a variety of uses, including outdoor dining, passive relaxation and active recreation to the pool deck level.

The proposed landscape design will contribute to the urban character and visual quality of the area and provide a rich and rewarding environment for residents to promote environmental and social sustainability. The planting has been selected to complement and enhance the building and responds to the existing planting of the local area with the majority of native and low water use plant species being proposed. Consideration has been made for a low maintenance landscape.

LANDSCAPE CHARACTER





PRELIMINARY
NOT FOR CONSTRUCTION

Rev	Amendment	Date	By
D	S4.55 Draft Review	10/11/22	CB
E	S4.55	13/12/22	CB
F	S4.55 additional notes	26/06/23	CB
G	Revised S4.55 Draft Review	24/10/23	CB
H	Revised S4.55	06/11/23	CB

0 2 4 6 8 10m
1:200@A1 _ 1:400@A3

IMPORTANT NOTES:
Do not scale from drawings.
All discrepancies to be brought to the attention of the Project Landscape Architect.
Larger scale drawings and written dimensions take preference. All dimensions in mm unless otherwise stated.
All tree dimensions and RLs in metres.
Use figured dimensions only.
Verify all dimensions on site before the commencement of any works.
Contractors shall locate and protect all services prior to construction.
All work shall be carried out in accordance with ADA, BCA and Local Government Regulations.
Structural Details shall be subject to Engineer's Specifications.
Drainage & Water Feature Details shall be subject to Hydraulic Engineer's Specifications.
All work shall be carried out in a professional manner by Qualified Tradesmen according to Landscape Drawings and Engineer's Specifications.
No responsibility will be taken by 360 Degrees Landscape Architects Pty Ltd for any variations in design, construction method, materials specified, and general specifications without permission from the Project Engineer or Landscape Architect.
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CLIENT: JDH Capital
CHECKED: GD
ARCHITECT: Antoniades Architects
DRAWN: CB
SCALE: 1:200 @ A1
SIZE: A1
STAGE: S4.55

DWG. TITLE
Tree Protection & Removal Plan

PROJECT
100 Bayswater Road, Rushcutters Bay

360
Level 1, 1 Mary's Place
Surry Hills, 2010
P 02 9332 3601
W 360.net.au
ABN 90 146 901 322

L-DA-02


CLEMENT STREET
EXISTING BUILDING
EXISTING BUILDING
EXISTING BUILDING
EXISTING STAIR TO GROUND FLOOR
FIRE PUMP ROOM
AIR LOCK
FIRE EGRESS
STAIR 21
RETAIL CONDENSING UNIT
HYDRANT BOOSTER
MAIN SWITCH ROOM
CAPTAIN SPRINKLER ROOM
EXCESS CHAMBER
HYDRANT BOOSTER
STORAGE UNDER
STORAGE UNDER
STORAGE UND



Rev	Amendment	Date	By
H	S4.55 Draft Review	25/10/23	CB
I	S4.55 Draft Review	01/11/23	CB
J	Revised S4.55	06/11/23	CB
K	Revised S4.55	27/02/24	CB
L	Revised S4.55	29/02/24	CB

PRELIMINARY
NOT FOR CONSTRUCTION

0 2 4 6 8 10m
1:200@A1 _ 1:400@A3

IMPORTANT NOTES:
Do not scale from drawings.
All discrepancies to be brought to the attention of the Project Landscape Architect.
Figured dimensions to be taken where dimensions take preference. All dimensions in mm unless otherwise stated.
All site dimensions and RLs in metres.
Use figured dimensions only.
Check all dimensions on site before the commencement of any works.
Contractors shall locate and protect all services prior to construction.
All work shall be carried out in accordance with NSA, BCA and Local Government Regulations.
Structural Details shall be subject to Engineer's Specifications.
Drainage & Water Feature Details shall be subject to Hydraulic Engineer's Specifications.
All Pool Fencing & Gates to be installed by a professional manner by Qualified Tradesmen according to Landscape Drawings and Engineer's Specifications.
No responsibility will be taken by *360 Degrees Landscape Architects Pty Ltd* for any variations in design, construction methods, materials specified, and general specifications without prior permission from the Project Engineer or Landscape Architect.
This Drawing is copyright to *360 Degrees Landscape Architects Pty Ltd*.

CLIENT
JDH Capital

ARCHITECT
Antoniades Architects

SCALE
1:200 @ A1

SIZE
A1

CHECKED
GD

DRAWN
CB

STAGE
S4.55

DWG. TITLE
Landscape Plan - Ground Floor

PROJECT
100 Bayswater Road, Rushcutters Bay

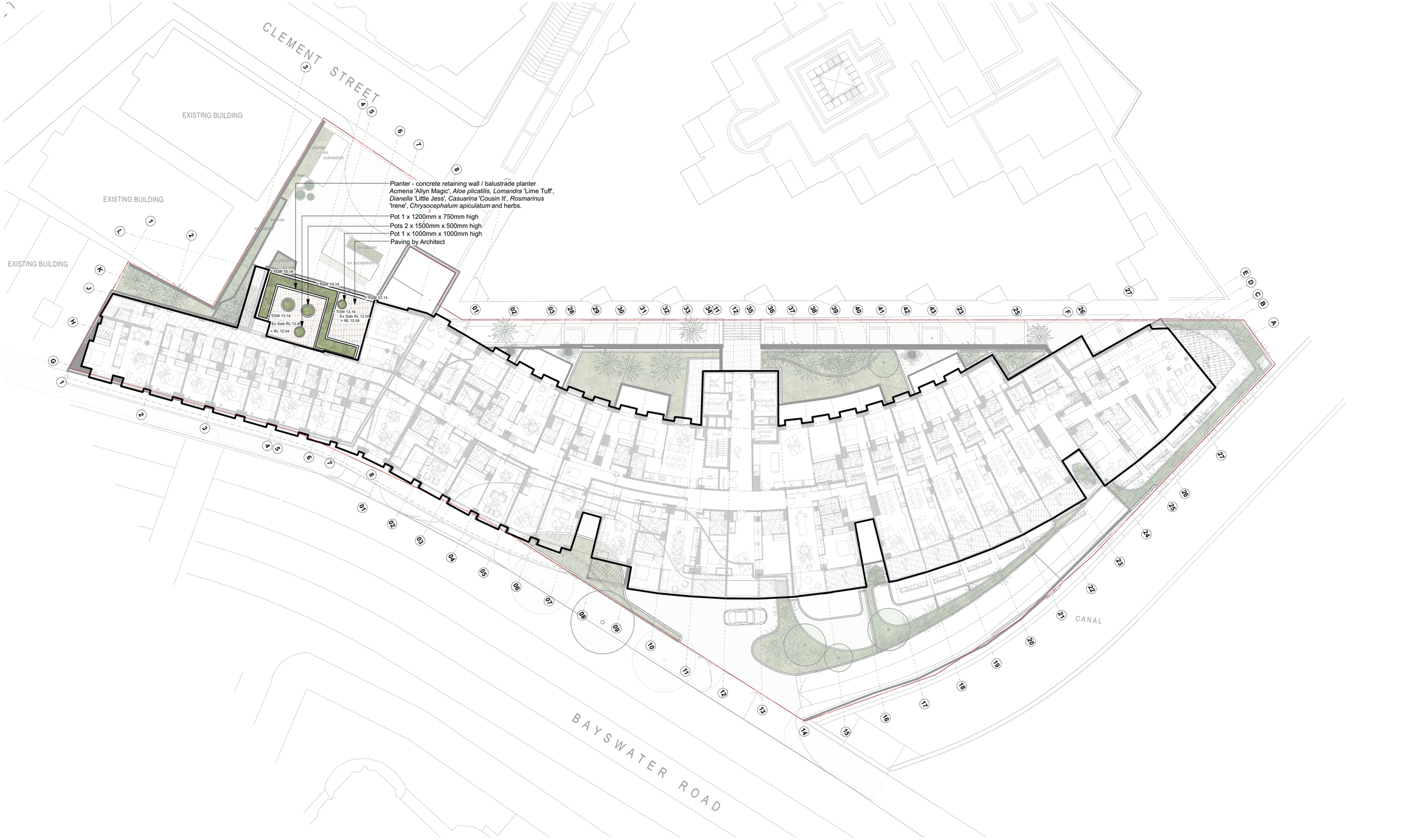
360°
Level 1, 1 Mary's Place
Surry Hills, 2010

P 02 9332 3601
W 360.net.au
ABN 90 146 901 322

L-DA-04

Attachment B4

Selected Proposed Drawings



Rev	Amendment	Date	By
E	S4.55	13/12/22	CB
F	S4.55 Removed Pots to Clement St	31/05/23	JR
G	S4.55 additional notes	26/06/23	CB
H	S4.55 Draft Review	25/10/23	CB
I	Revised S4.55	06/11/23	CB

PRELIMINARY
NOT FOR CONSTRUCTION

0 2 4 6 8 10m
1:200@A1 _ 1:400@A3

IMPORTANT NOTES:
Do not scale from drawings
All discrepancies to be brought to the attention of the Project Landscape Architect
All dimensions are in millimetres unless noted otherwise. Dimensions take preference. All dimensions in mm unless otherwise stated.
All tree dimensions and RLs in metres.
Use figured dimensions only.
Site to be verified by builder before the commencement of any works.
Contractors shall locate and protect all services prior to construction.
All work shall be carried out in accordance with AS/NZ, BCA and Local Government Regulations.
All Soil Mix and Planting Details shall be subject to Landscape Architect.
Drainage & Water Feature Details shall be subject to Hydraulic Engineer's Specifications.
All work shall be carried out in a professional manner by Qualified Tradesman according to Landscape Drawings and Specifications.
No responsibility will be taken by 360 Degrees Landscape Architects Pty Ltd for any variations in design, construction method, materials specified, and general specifications without permission from the Project Engineer or Landscape Architect.
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CLIENT
JDH Capital

ARCHITECT
Antoniades Architects

SCALE
1:200 @ A1

SIZE
A1

CHECKED
GD

DRAWN
CB

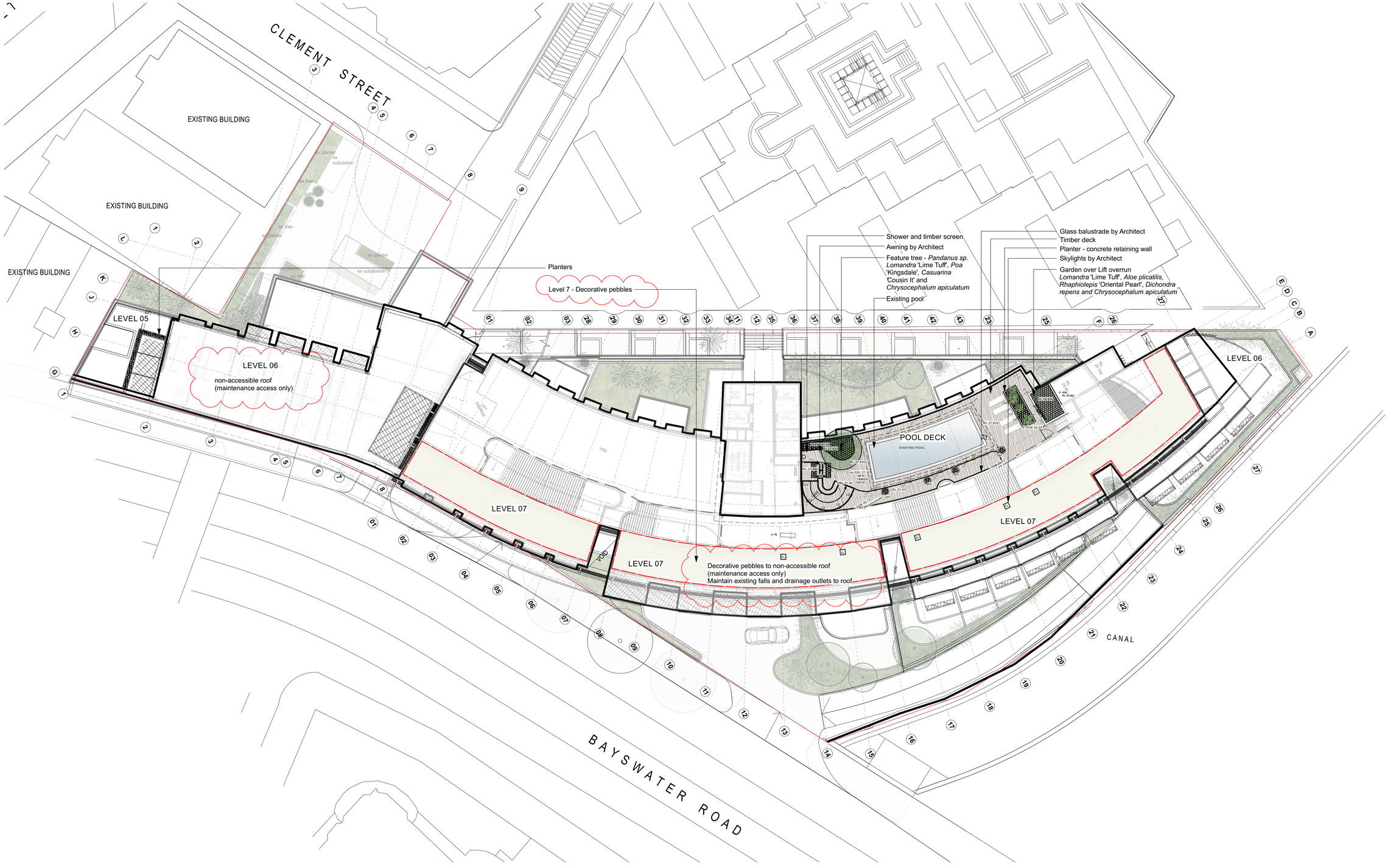
STAGE
S4.55

DWG. TITLE
Landscape Plan - Level 2

PROJECT
100 Bayswater Road, Rushcutters Bay

360°
Level 1, 1 Mary's Place
Surry Hills, 2010
P 02 9332 3601
W 360.net.au
ABN 90 146 901 322

L-DA-05



PRELIMINARY
NOT FOR CONSTRUCTION

Rev	Amendment	Date	By
F	S4.55 Removed Pots to Clement St	31/05/23	JR
G	S4.55 additional notes	26/06/23	CB
H	S4.55 Draft Review	25/10/23	CB
I	S4.55 Draft Review	01/11/23	CB
J	Revised S4.55	06/11/23	CB

0 2 4 6 8 10m
1:200@A1 _ 1:400@A3

IMPORTANT NOTES:
Do not scale from drawings.
All discrepancies to be brought to the attention of the Project Landscape Architect.
Larger scale drawings and written dimensions take preference. All dimensions in mm unless otherwise stated.
All tree dimensions and RL in metres.
Use figured dimensions only.
Verify all dimensions on site before the commencement of any works.
Contractors shall locate and protect all services prior to construction.
All work shall be carried out in accordance with ASA, BCA and Local Government Regulations.
Structural Details shall be subject to Engineer's Specifications.
Drainage & Water Feature Details shall be subject to Hydraulic Engineer's Specifications.
All work shall be carried out in a professional manner by Qualified Tradesmen according to Landscape Drawings and Engineer's Specifications.
No responsibility will be taken by 360 Degrees Landscape Architects Pty Ltd for any variations in design, construction method, materials specified, and general specifications without permission from the Project Engineer or Landscape Architect.
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CLIENT
JDH Capital

CHECKED
GD

ARCHITECT
Antoniades Architects

DRAWN
CB

SCALE
1:200 @ A1

SIZE
A1

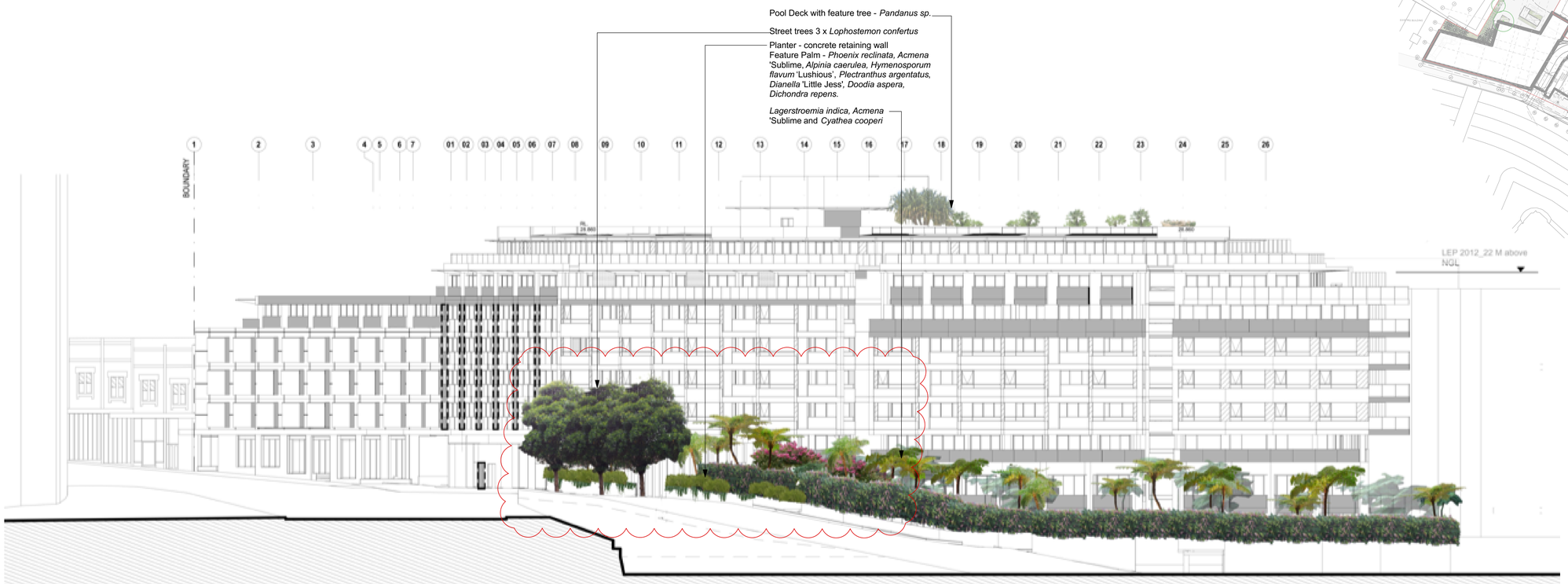
STAGE
S4.55

DWG. TITLE
Landscape Plan - Level 5, 6, 7 and Pool Deck

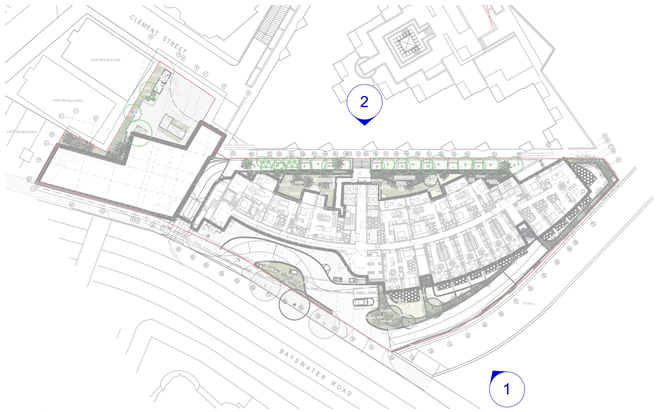
PROJECT
100 Bayswater Road, Rushcutters Bay

360
Level 1, 1 Mary's Place
Surry Hills, 2010
P 02 9332 3601
W 360.net.au
ABN 90 146 901 322

L-DA-06



ELEVATION 1
EAST ELEVATION





ELEVATION 2
NORTH ELEVATION

PRELIMINARY
NOT FOR CONSTRUCTION

Rev	Amendment	Date	By
D	S4.55 Draft Review	10/11/22	CB
E	S4.55	13/12/22	CB
F	S4.55 additional notes	26/06/23	CB
G	Revised S4.55 Draft Review	24/10/23	CB
H	Revised S4.55	06/11/23	CB

0 2 4 6 8 10m
1:200@A1 _ 1:400@A3

IMPORTANT NOTES:
Do not scale from drawings.
All discrepancies to be brought to the attention of the Project Landscape Architect
Larger scale drawings and written dimensions take preference. All dimensions in mm unless otherwise stated.
All Levels are shown in RL in metres.
Use figured dimensions only.
Verify all dimensions on site before the commencement of any works.
Contractors shall locate and protect all services prior to construction.
All work shall be carried out in accordance with ADA, BCA and Local Government Regulations.
Structural Details shall be subject to Engineer's Specifications.
Drainage & Water Feature Details shall be subject to Hydraulic Engineer's Specifications.
All work shall be carried out in a professional manner by Qualified Tradesmen according to Landscape Drawings and Engineer's Specifications.
No responsibility will be taken by 360 Degrees Landscape Architects Pty Ltd for any variations in design, construction method, materials specified, and general specifications without permission from the Project Engineer or Landscape Architect.
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CLIENT: JDH Capital
CHECKED: GD
ARCHITECT: Antoniades Architects
DRAWN: CB
SCALE: 1:200 @ A1
SIZE: A1
STAGE: S4.55

DWG. TITLE
Landscape Elevations

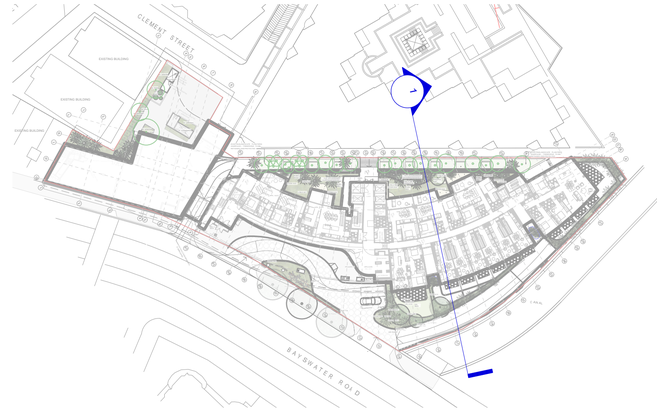
PROJECT
100 Bayswater Road, Rushcutters Bay

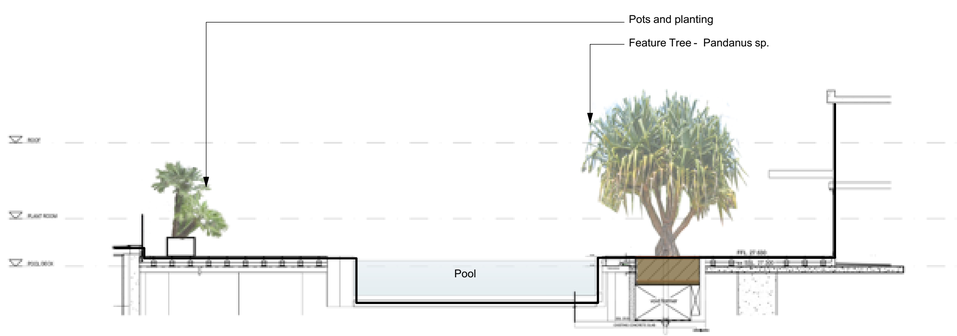
360
Level 1, 1 Mary's Place
Surry Hills, 2010
P 02 9332 3601
W 360.net.au
ABN 90 146 901 322

L-DA-07

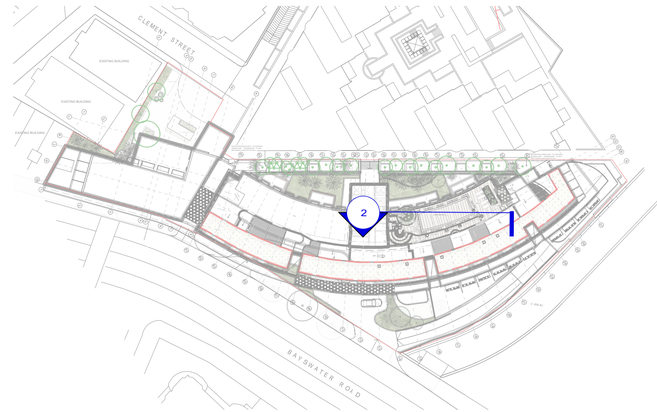


SECTION 1





SECTION 2



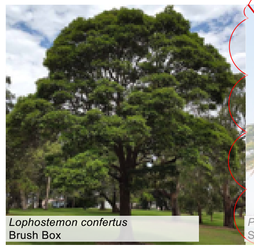
Rev	Amendment	Date	By
E	S4.55	13/12/22	CB
F	S4.55 additional notes	26/06/23	CB
G	Revised S4.55 Draft Review	24/10/23	CB
H	Revised S4.55	06/11/23	CB
I	Revised S4.55	27/02/24	CB

PRELIMINARY
NOT FOR CONSTRUCTION

0 1 2 3 4 5m
1:100@A1 _ 1:400@A3

IMPORTANT NOTES:
Do not scale from drawings.
All discrepancies to be brought to the attention of the Project Landscape Architect.
Figured dimensions to be taken in preference to scaled dimensions. Verify all dimensions on site before commencing any work or shop drawings. Any discrepancies shall be brought to the attention of the Project Landscape Architect.
All measurements are in millimetres unless noted otherwise.
All levels are to Australian Height Datum (AHD).
All finished surface levels are indicative only and are subject to detailed design.
Existing trees to be retained and protected in accordance with the Arborist's report and Council requirements.
Refer to Architectural, Hydraulic and Civil Engineer's drawings for all structural details, setout dimensions, site grading and drainage.
Refer to Hydraulic Engineer's drawings for all irrigation details.
Refer to Architectural drawings for all fire booster valve and hydrant locations.
Refer to Architectural drawings for all external lighting locations.
Refer to Architectural drawings for all fencing and balustrade details.
Refer to Architectural drawings for all pedestrian and vehicular access details.
Refer to Architectural drawings for all planter waterproofing details.
Refer to Architectural drawings for all planter soil depths.
Refer to Architectural drawings for all roof top plant locations.
Refer to Architectural drawings for all roof top access details.
Refer to Architectural drawings for all roof top balustrade details.
Refer to Architectural drawings for all roof top planter waterproofing details.
Refer to Architectural drawings for all roof top

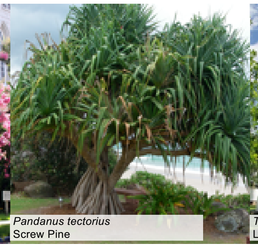
TREES & PALMS


Lophostemon confertus
Brush Box



Phoenix reclinata
Senegal Date Palm


Lagerstroemia indica
Crepe Myrtle


Pandanus tectorius
Screw Pine

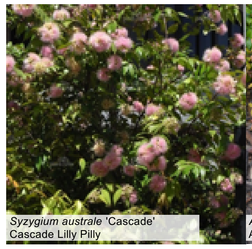

Tristaniopsis laurina 'Luscious'
Luscious Water Gum


Chamaerops humilis
European Fan Palm


Cyathea cooperi
Australian Tree Fern


Rhapis excelsa
Lady Palm

SHRUBS & PERENNIALS


Syzygium australe 'Cascade'
Cascade Lilly Pilly


Acmena smithii 'Allyns Magic'
Allyns Magic Dwarf Lilly Pilly


Acmena smithii 'Sublime'
Sublime Lilly Pilly


Alpinia caerulea
Common Ginger


Gardenia augusta 'Florida'
Fragrant Gardenia


Hymenosporum flavum 'Lushious'
Lushious Dwarf Native Frangipani


Plectranthus argentatus
Silver Spurflower


Rhaphiolepis indica 'Oriental Pearl'
Oriental Pearl


Philodendron 'Xanadu'
Xanadu Philodendron

GRASSES & LILIES


Alocasia macrorrhiza
Elephant's Ear


Dianella caerulea 'Little Jess'
Little Jess Flax Lily


Ligularia tussilaginea
Leopard Plant


Lomandra 'Lime Tuff'
Lime Tuff Matt Rush


Poa 'Kingsdale'
Poa Kingsdale

FERNS, CYCADS, BROMELIADS & SUCCULENTS


Blechnum gibbum 'Silvery Lady'
Silver Lady Fern


Doodia aspera
Prickly Rasp


Todea barbara
King Fern


Aloe plicatilis
Fan Aloe

GROUNDCOVER & CLIMBERS


Casuarina glauca 'Cousin It'
Cousin It Sheoak


Chrysocephalum apiculatum
Yellow Buttons


Dichondra repens
Kidney Weed


Rosmarinus 'Irene'
Trailing Rosmary

PLANT SCHEDULE

ID	Botanical Name	Common Name	Pot Size	Qty	Notes
Trees					
Cit Lem	Citrus 'Lemonicious'	Lemonicious Lemon	45L	4	
Cya coo	Cyathea cooperi	Australian Tree Fern	Various heights	50	
Lag ind	Lagerstroemia indica	Crepe Myrtle	200L	3	
Lop con	Lophostemon confertus	Brush Box	200L	3	
Pan tec	Pandanus tectorius	Screw Pine	ex ground	1	Special
Tri Lus	Tristaniopsis laurina 'Luscious'	Luscious Water Gum	200L	1	
Palms & Bamboo					
Cha hum	Chamaerops humilis	European Fan Palm	100L	4	
Rha exc	Rhapis excelsa	Lady Palm	400mm	10	
Shrubs & Perennials					
Acm AM	Acmena smithii 'Allyns Magic'	Allyns Magic Dwarf Lilly Pilly	300mm	58	
Acm Sub	Acmena smithii 'Sublime'	Sublime Lilly Pilly	100L	8	
Alp cae	Alpinia caerulea	Common Ginger	300mm	7	
Hym Lus	Hymenosporum flavum 'Lushious'	Lushious Dwarf Native Frangipani	200mm	36	
Phi Xan	Philodendron 'Xanadu'	Xanadu Philodendron	200mm	21	
Rha OP	Rhaphiolepis indica 'Oriental Pearl'	Oriental Pearl	300mm	14	
Syz Cas	Syzygium australe 'Cascade'	Cascade Lilly Pilly	400mm	123	
Grasses, Lilies & Aquatic					
Alo mac	Alocasia macrorrhiza	Elephant's Ear	400mm	23	
Dia LJ	Dianella caerulea 'Little Jess'	Little Jess Flax Lily	150mm	225	
Lig tus	Ligularia tussilaginea	Leopard Plant	200mm	18	
Lom LT	Lomandra 'Lime Tuff'	Lime Tuff Mat Rush	200mm	334	
Poa Kin	Poa 'Kingsdale'	Poa Kingsdale	150mm	13	
Ground Covers					
Cas Cl	Casuarina glauca 'Cousin It'	Cousin It Sheoak	200mm	22	
Chr api	Chrysocephalum apiculatum	Yellow Buttons	150mm	46	
Dic rep	Dichondra repens	Kidney Weed	150mm	1304	
Ros Ire	Rosmarinus officinalis 'Irene'	Prostrate Rosemary	200mm	19	
Climbers					
Fic pum	Ficus pumila	Creeping Fig	200mm	40	
Hoy aus	Hoya australis	Australian Hoya	200mm	97	
Ferns, Cycads & Bromeliads					
Ble SL	Blechnum gibbum 'Silver Lady'	Silver Lady Fern	200mm	129	
Doo asp	Doodia aspera	Prickly Rasp	150mm	157	
Tod bar	Todea barbara	King Fern	300mm	15	
Succulents & Cactus					
Alo pli	Aloe plicatilis	Fan Aloe	300mm	26	

PRELIMINARY
NOT FOR CONSTRUCTION

Rev	Amendment	Date	By
D	S4.55 Draft Review	10/11/22	CB
E	S4.55	13/12/22	CB
F	S4.55 additional notes	26/06/23	CB
G	Revised S4.55 Draft Review	24/10/23	CB
H	Revised S4.55	06/11/23	CB

IMPORTANT NOTES:
Do not scale from drawings
All discrepancies to be brought to the attention of the Project Landscape Architect
Larger scale drawings and written dimensions take preference. All dimensions in mm unless otherwise stated.
Levels and contours are in metres.
Use figured dimensions only.
Verify all dimensions on site before the commencement of any works.
All works shall be carried out in accordance with the relevant Australian Standards.
All work shall be carried out in accordance with AS/NZ, BCA and Local Government Regulations.
Structural Details shall be subject to Engineer's Specifications.
All work shall be carried out in a proficient manner to the Landscape Engineer's Specifications.
All work shall be carried out in a professional manner by Qualified Tradesman according to Landscape Drawings and Engineer's Specifications.
Any discrepancy will be taken to mean by *360 Degrees Landscape Architects Pty Ltd* for any variations in design, construction method, material, workmanship, and general specifications without permission from the Project Engineer or Landscape Architect.
This Drawing is copyright to *360 Degrees Landscape Architects Pty Ltd*.

CLIENT: JDH Capital
ARCHITECT: Antoniades Architects
SCALE: N/A @ A1
SIZE: A1
CHECKED: GD
DRAWN: CB
STAGE: S4.55

DWG. TITLE
Planting Palette

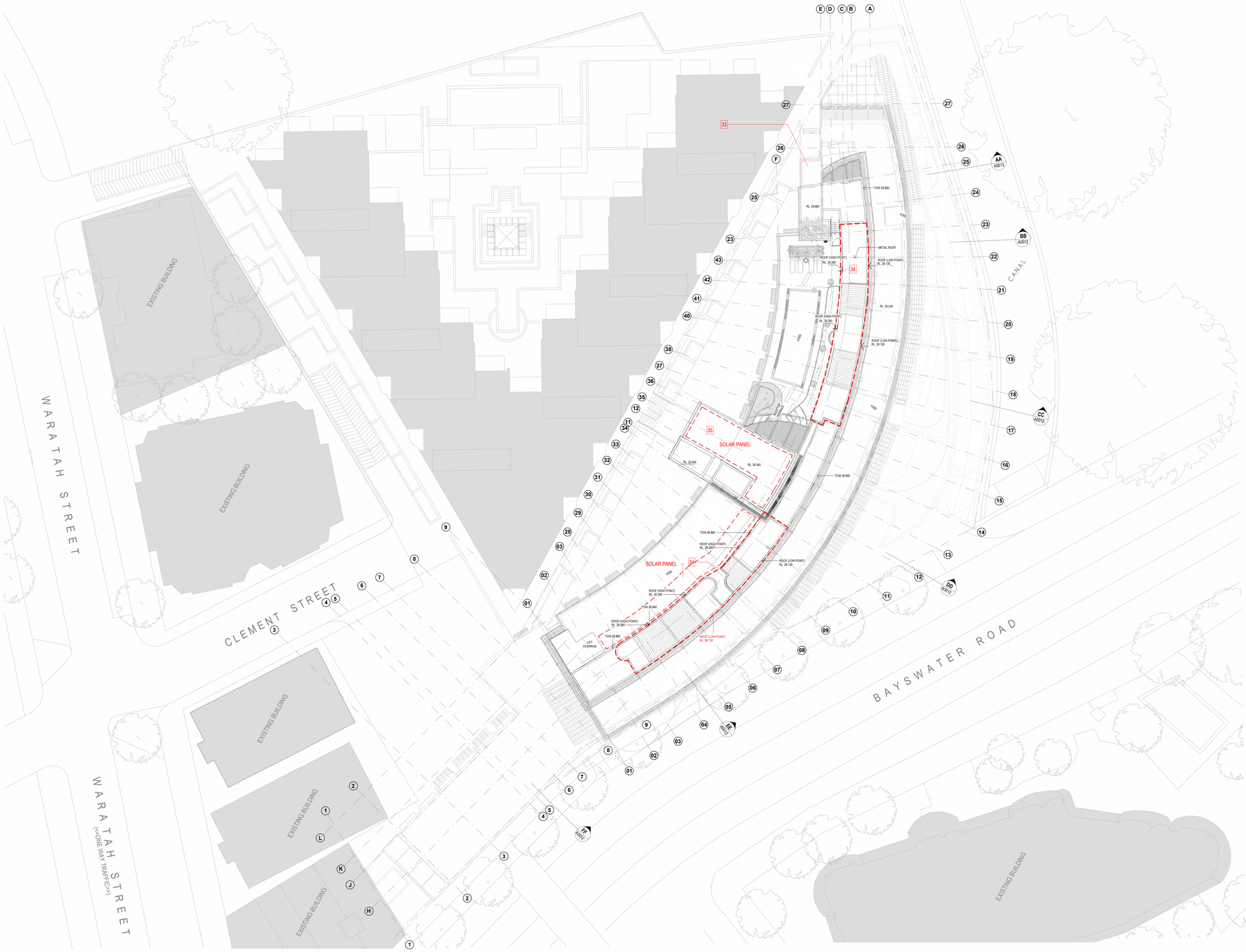
PROJECT
100 Bayswater Road, Rushcutters Bay

360°
Level 1, 1 Mary's Place
Surry Hills, 2010
P 02 9332 3601
W 360.net.au
ABN 90 146 901 322

L-DA-09

Attachment C1

Selected Approved Drawings (D/2012/939/J)



NOTES:

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- All dimensions in millimeters unless otherwise shown.
- Use figured dimensions only.
- Do not scale from drawings.
- Check all dimensions on site prior to construction.
- To be read in conjunction with all other documents.
- Report any discrepancies to Antoniades Architects Pty Ltd.
- All boundary dimensions and bearings to be verified by licensed surveyor prior to proceeding with work.

S4.55.2 CHANGES IN RED

LEGEND

1. ADJUSTED CAR PARK ARRANGEMENT
2. ADJUSTED PLANT ROOM
3. REMOVED COLUMN
4. RELOCATED GREASE ARRESTER ROOM
5. REDESIGNED EXIT RAMP
6. RELOCATED CAR PARK EXIT LANE
7. REMOVED CARPARK AIR EXHAUST ROOM
8. INTRODUCED MANAGERS ROOM
9. INTRODUCED ELEC & COMMS C'BORDS
10. AIR INTAKE RISER INTRODUCED
11. REDESIGNED INTERNAL APARTMENT LAYOUTS
12. MODIFIED LIFT LOBBY SPACE
13. RELOCATED CAR PARK A/S PLANT ROOM
14. RELOCATED ELECTRICAL ROOM
15. RELOCATED MAIN SWITCH ROOM
16. RELOCATED CAR WASH BAY
17. INTRODUCED HYDRAULIC PUMP ROOM
18. RELOCATED STORAGE CAGES
19. INTRODUCED PLANT ROOM
20. REVISED RAMP ARRANGEMENT
21. GARBAGE CHUTE RELOCATED
22. REDESIGNED LOBBY INTERNAL AREA
23. RELOCATED BOOSTER CABINET
24. REMOVED PLANT ROOM
25. REMOVED STAIR
26. WINDOW RELOCATED
27. RISER CONVERTED INTO A GARBAGE ROOM
28. PRIVACY SCREEN REMOVED FROM BALCONY
29. REDESIGNED MAIN ENTRY LOBBY GLAZING
30. VERTICLE GLASS SCREEN REMOVED
31. CONVERTED 2 APARTMENTS INTO 1 APARTMENT
32. ADDED LAUNDRY ROOM TO BUILDING MASS
33. ROOF LEVEL INCREASED TO 25.700
34. ROOF OF LEVEL 7 RAISED BY 300MM
35. ROOF REMOVED
36. WINDOW MISSED ON APPROVED ELEVATION
37. TIMBER FLOOR TO BALCONIES REPLACED WITH TILED FLOOR
38. ARTIFICIAL GRASS REPLACED WITH TILED FLOOR
39. INCREASE SIZE OF BALCONY
40. ADDED SKYLIGHTS
41. PLANTER PLINTH FOR ARTWORK
42. MODIFICATION TO AREA SURROUNDING THE SWIMMING POOL
43. COLOURED BLINDS REMOVED

CITY OF SYDNEY
CITY PLANNING DIVISION

Section 4.55 APPROVAL

D/2012/939/J
01/08/2023
These plans must be read in conjunction with the decision notice

REV	DESCRIPTION	BY	DATE
A	PRELIMINARY		13.10.2022
B	FOR S4.55 SUBMISSION	JF	25.01.2023

PROJECT PHASE
DOCUMENTATION

STATUS
S4.55.2 SUBMISSION

PROJECT NO. 21018CC

PROJECT **NAUTIQUE**

ADDRESS 100 Bayswater Road, Rushcutters Bay

DEVELOPMENT MANAGER
DEDICO

SCALE: 1 : 200 @B1

0m 4 8 10m
Scale 1:200

DRAWING SERIES
General Arrangement Plans

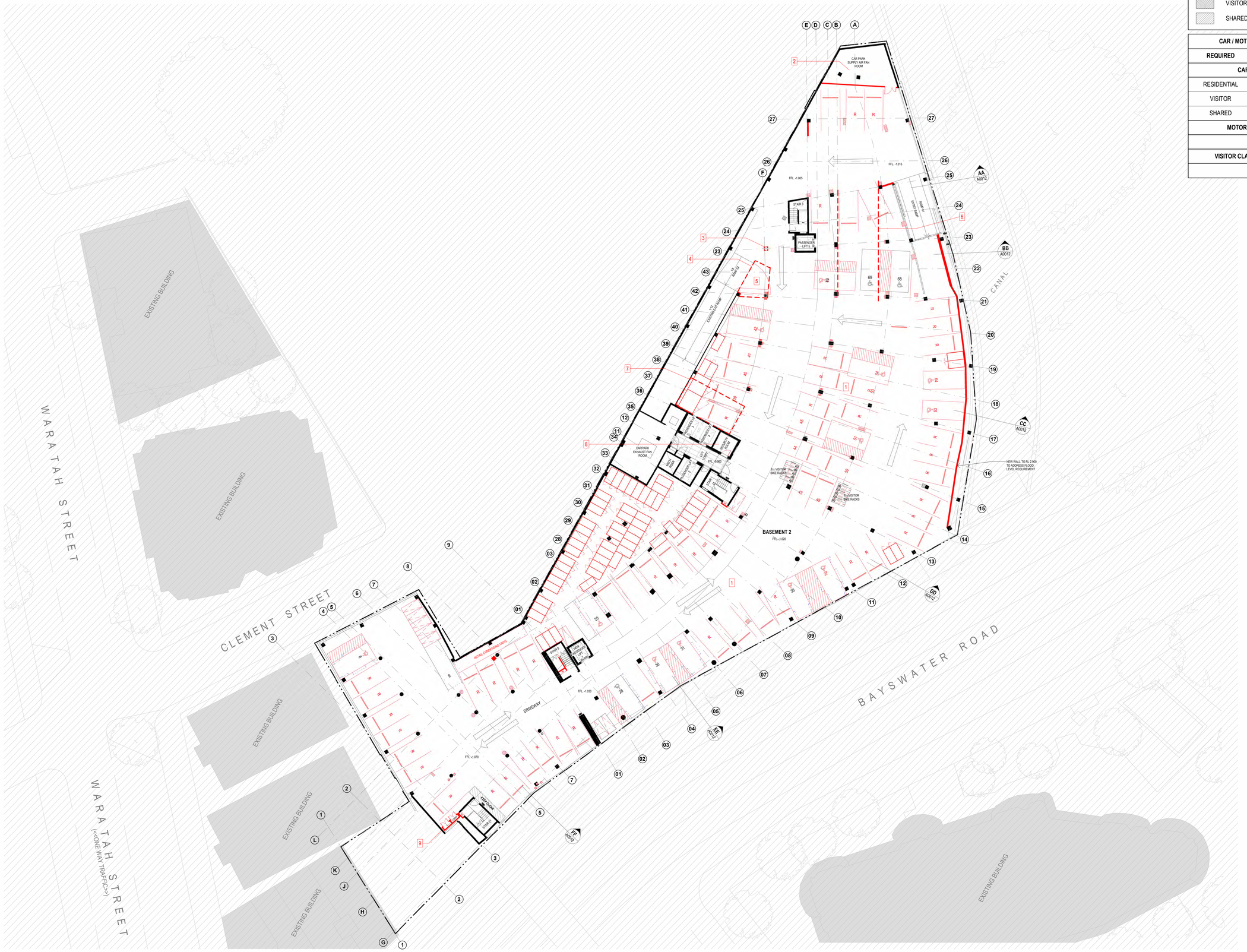
DRAWING TITLE
SITE PLAN

DRAWING NO. **A0001**
REVISION **B**
DRW: **RT**
CHK: **AA**

ANTONIADES ARCHITECTS

www.antoniades.com.au
ACN 129 731 559

Nominated Architect: Andreas Antoniades
NSW Registration 7954



LEGEND

- RESIDENTIAL CAR SPACE
- VISITOR CAR SPACE
- SHARED CAR SPACE

CAR / MOTORBIKE SPACE	
REQUIRED	**PROVIDED**
CAR SPACE	
RESIDENTIAL	90
VISITOR	10
SHARED	2
MOTORBIKE SPACE	
9	
VISITOR CLASS 3 BIKE RAILS	
14	

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S4.55.2 CHANGES IN RED

LEGEND

1. ADJUSTED CAR PARK ARRANGEMENT
2. ADJUSTED PLANT ROOM
3. REMOVED COLUMN
4. RELOCATED GREASE ARRESTER ROOM
5. REDESIGNED EXIT RAMP
6. RELOCATED CAR PARK EXIT LANE
7. REMOVED CARPARK AIR EXHAUST ROOM
8. INTRODUCED MANAGERS ROOM
9. INTRODUCED ELEC & COMMS C'BORDS
10. AIR INTAKE RISER INTRODUCED
11. REDESIGNED INTERNAL APARTMENT LAYOUTS
12. MODIFIED LIFT LOBBY SPACE
13. RELOCATED CAR PARK A/S PLANT ROOM
14. RELOCATED ELECTRICAL ROOM
15. RELOCATED MAIN SWITCH ROOM
16. RELOCATED CAR WASH BAY
17. INTRODUCED HYDRAULIC PUMP ROOM
18. RELOCATED STORAGE CAGES
19. INTRODUCED PLANT ROOM
20. REVISED RAMP ARRANGEMENT
21. GARBAGE CHUTE RELOCATED
22. REDESIGNED LOBBY INTERNAL AREA
23. RELOCATED BOOSTER CABINET
24. REMOVED PLANT ROOM
25. REMOVED STAIR
26. WINDOW RELOCATED
27. RISER CONVERTED INTO A GARBAGE ROOM
28. PRIVACY SCREEN REMOVED FROM BALCONY
29. REDESIGNED MAIN ENTRY LOBBY GLAZING
30. VERTICLE GLASS SCREEN REMOVED
31. CONVERTED 2 APARTMENTS INTO 1 APARTMENT
32. ADDED LAUNDRY ROOM TO BUILDING MASS
33. ROOF LEVEL INCREASED TO 25.700
34. ROOF OF LEVEL 7 RAISED BY 300MM
35. ROOF REMOVED
36. WINDOW MISSED ON APPROVED ELEVATION
37. TIMBER FLOOR TO BALCONIES REPLACED WITH TILED FLOOR
38. ARTIFICIAL GRASS REPLACED WITH TILED FLOOR
39. INCREASE SIZE OF BALCONY
40. ADDED SKYLIGHTS
41. PLANTER PLINTH FOR ARTWORK
42. MODIFICATION TO AREA SURROUNDING THE SWIMMING POOL
43. COLOURED BLINDS REMOVED

CITY OF SYDNEY
CITY PLANNING DIVISION

Section 4.55 APPROVAL

D/2012/939/J
01/08/2023
These plans must be read in conjunction with the decision notice

REV	DESCRIPTION	BY	DATE
A	FOR PRE-DA SUBMISSION		05.07.2022
B	PRELIMINARY		13.10.2022
C	FOR S4.55 SUBMISSION	JF	25.01.2023

PROJECT PHASE
FOR APPROVAL

STATUS
S4.55.2 SUBMISSION

PROJECT NO. 21018CC

PROJECT **NAUTIQUE**

ADDRESS 100 Bayswater Road, Rushcutters Bay

DEVELOPMENT MANAGER
DEDICO

SCALE: As indicated @B1
0m 4 8 10m
Scale 1:200

DRAWING SERIES
General Arrangement Plans

DRAWING TITLE
BASEMENT 2

DRAWING NO. **A0002** REVISION **C** DRW: **RT** CHK: **AA**

ANTONIADES ARCHITECTS
www.antoniades.com.au
ACN 129 731 559
Nominated Architect: Andreas Antoniades NSW Registration 7954

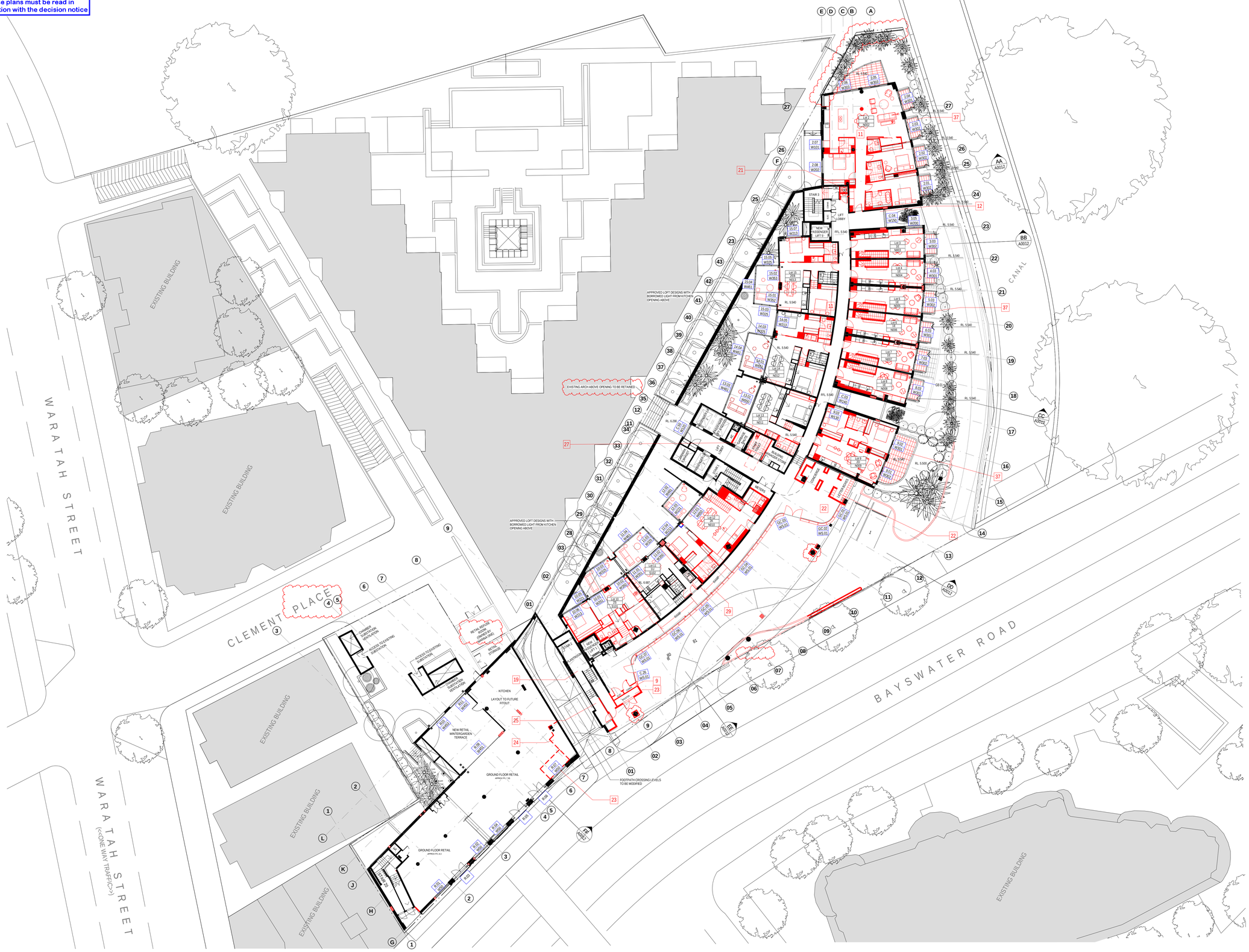
Attachment C2

Selected Approved Drawings (D/2012/939/J)

CITY OF SYDNEY
CITY PLANNING DIVISION

Section 4.55 APPROVAL

D/2012/939/J
01/08/2023
These plans must be read in conjunction with the decision notice


EXISTING BUILDING
WARATAH STREET
(<<ONE WAY TRAFFIC>>)
CLEMENT PLACE
BAYSWATER ROAD
CANAL
EXISTING BUILDING
EXISTING BUILDING
EXISTING BUILDING
EXISTING BUILDING
EXISTING BUILDING
APPROVED LOFT DESIGNS WITH BORROWED LIGHT FROM KITCHEN OPENING ABOVE
EXISTING ARCH ABOVE OPENING TO BE RETAINED
APPROVED LOFT DESIGNS WITH BORROWED LIGHT FROM KITCHEN OPENING ABOVE
FOOTPATH CROSSING LEVELS TO BE MODIFIED
KITCHEN
LAYOUT TO FUTURE FITOUT
NEW RETAIL WINTERGARDEN TERRACE
GROUND FLOOR RETAIL
GROUND FLOOR RETAIL
RETAIL ENTRY DOOR OPENING TO BE CREATED IN EXISTING OPENING
RETAIL STORAGE
ACCESS TO EXISTING SUBSTATION
SYDNEY WATER SUBSTATION VENTILATION
ACCESS TO EXISTING SUBSTATION
SYDNEY WATER SUBSTATION VENTILATION
LIFT LOBBY
STAIR 3
NEW PASSENGER LIFT 5
BROOMS
LIFT OVERRUN
BUILDING MANAGER
LIFT OVERRUN
LIFT OVERRUN
LIFT OVERRUN

CITY OF SYDNEY
CITY PLANNING DIVISION

Section 4.55 APPROVAL

D/2012/939/J
01/08/2023
These plans must be read in conjunction with the decision notice



117

CITY OF SYDNEY
CITY PLANNING DIVISION

Section 4.55 APPROVAL

D/2012/939/J
01/08/2023
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S4.55.2 CHANGES IN RED

LEGEND

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3. REMOVED COLUMN
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CITY OF SYDNEY
CITY PLANNING DIVISION

Section 4.55 APPROVAL

D/2012/939/J
01/08/2023
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REV	DESCRIPTION	BY	DATE
A	FOR PRE-DA SUBMISSION		05.07.2022
B	PRELIMINARY		13.10.2022
C	FOR S4.55 SUBMISSION	JF	25.01.2023

PROJECT PHASE
FOR APPROVAL

STATUS
S4.55.2 SUBMISSION

PROJECT NO. 21018CC

PROJECT **NAUTIQUE**

ADDRESS 100 Bayswater Road, Rushcutters Bay

DEVELOPMENT MANAGER
DEDICO

SCALE: 1 : 200 @B1

0m 4 8 10m
Scale 1:200

DRAWING SERIES
General Arrangement Plans

DRAWING TITLE
LEVEL 1

DRAWING NO. **A0005**
REVISION **C**
DRW: **RT**
CHK: **AA**

ANTONIADES ARCHITECTS

www.antoniades.com.au
ACN 129 731 559

Nominated Architect: Andreas Antoniades
NSW Registration 7954

CITY OF SYDNEY
CITY PLANNING DIVISION

Section 4.55 APPROVAL

D/2012/939/J
01/08/2023
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PROJECT PHASE
FOR APPROVAL

STATUS
S4.55.2 SUBMISSION

PROJECT NO. 21018CC

PROJECT **NAUTIQUE**

ADDRESS 100 Bayswater Road, Rushcutters Bay

DEVELOPMENT MANAGER
DEDICO

SCALE: 1 : 200 @B1

0m 4 8 10m
Scale 1:200

DRAWING SERIES
General Arrangement Plans

DRAWING TITLE
LEVEL 7

DRAWING NO. **A0011** REVISION **C** DRW: **RT** CHK: **AA**

ANTONIADES ARCHITECTS

www.antoniades.com.au
ACN 129 731 559

Nominated Architect: Andreas Antoniades
NSW Registration 7954

Attachment C3

Selected Approved Drawings (D/2012/939/J)

CITY OF SYDNEY
CITY PLANNING DIVISION

Section 4.55 APPROVAL

D/2012/939/J
01/08/2023
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CITY OF SYDNEY
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Section 4.55 APPROVAL

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CITY OF SYDNEY
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Section 4.55 APPROVAL

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B	PRELIMINARY		13.10.2022
C	FOR S4.55 SUBMISSION	JF	25.01.2023

PROJECT PHASE
FOR APPROVAL

STATUS
S4.55.2 SUBMISSION

PROJECT NO. 21018CC

PROJECT **NAUTIQUE**

ADDRESS 100 Bayswater Road, Rushcutters Bay

DEVELOPMENT MANAGER
DEDICO

SCALE 1 : 200 @B1

0m 4 8 10m
Scale 1:200

DRAWING SERIES
General Arrangement Plans

DRAWING TITLE
LEVEL 7

DRAWING NO. **A0011** REVISION **C** DRW. **RT** CHK. **AA**

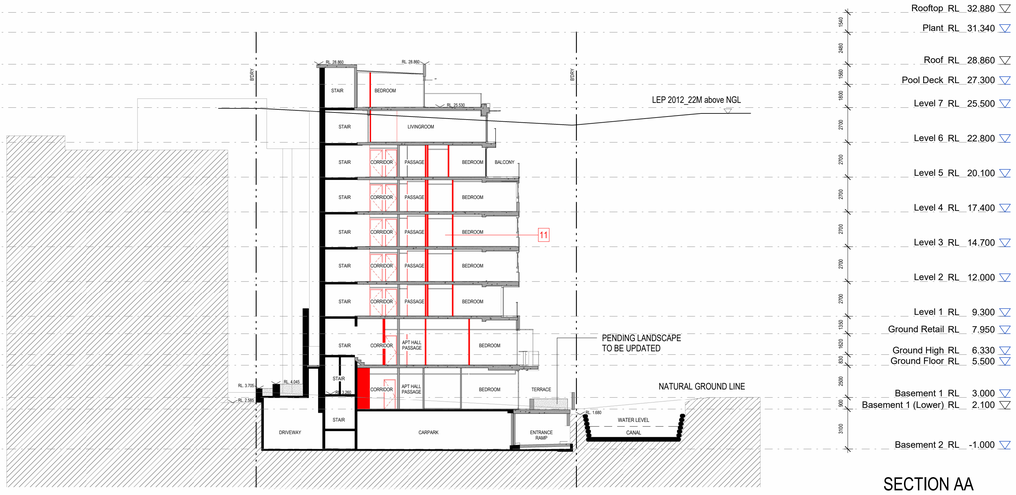
ANTONIADES ARCHITECTS

www.antoniades.com.au
ACN 129 731 559

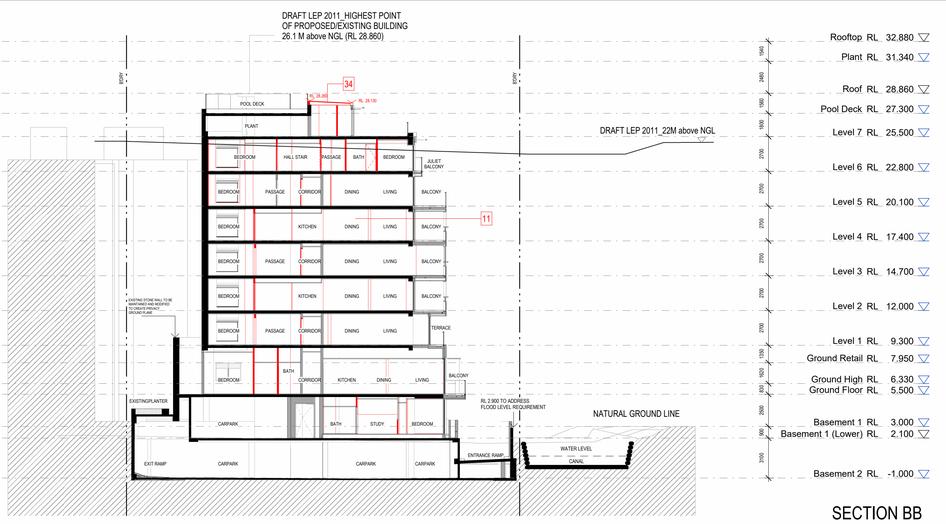
Nominated Architect: Andreas Antoniades
NSW Registration 7954

Attachment C4

Selected Approved Drawings (D/2012/939/J)



SECTION AA



SECTION BB

SECTION CC

SECTION DD

SECTION EE

SECTION FF

Rooftop RL 32.880
Plant RL 31.340
Roof RL 28.860
Pool Deck RL 27.300
Level 7 RL 25.500
Level 6 RL 22.800
Level 5 RL 20.100
Level 4 RL 17.400
Level 3 RL 14.700
Level 2 RL 12.000
Level 1 RL 9.300
Ground Retail RL 7.950
Ground High RL 6.330
Ground Floor RL 5.500
Basement 1 RL 3.000
Basement 1 (Lower) RL 2.100
Datum RL 0.000
Basement 2 RL -1.000

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LEGEND

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CITY OF SYDNEY
CITY PLANNING DIVISION

Section 4.55 APPROVAL

D/2012/939/J
01/08/2023
These plans must be read in conjunction with the decision notice

REV	DESCRIPTION	BY	DATE
A	FOR PRE-DA SUBMISSION		05.07.2022
B	PRELIMINARY		13.10.2022
C	FOR S4.55 SUBMISSION	JF	25.01.2023

PROJECT PHASE
DOCUMENTATION

STATUS
S4.55.2 SUBMISSION

PROJECT NO. 21018CC

PROJECT **NAUTIQUE**

ADDRESS 100 Bayswater Road, Rushcutters Bay

DEVELOPMENT MANAGER
DEDICO

SCALE 1 : 200 @B1
0m 4 8 10m
Scale 1:200

DRAWING SERIES
A08 - Sections

DRAWING TITLE
SECTIONS

DRAWING NO. **A0014**
REVISION **C**
DRW: **EC**
CHK: **AA**

ANTONIADES ARCHITECTS

www.antoniades.com.au
ACN 129 731 559
Nominated Architect: Andreas Antoniades NSW Registration 7954

CITY OF SYDNEY
CITY PLANNING DIVISION

Section 4.55 APPROVAL

D/2012/939/J
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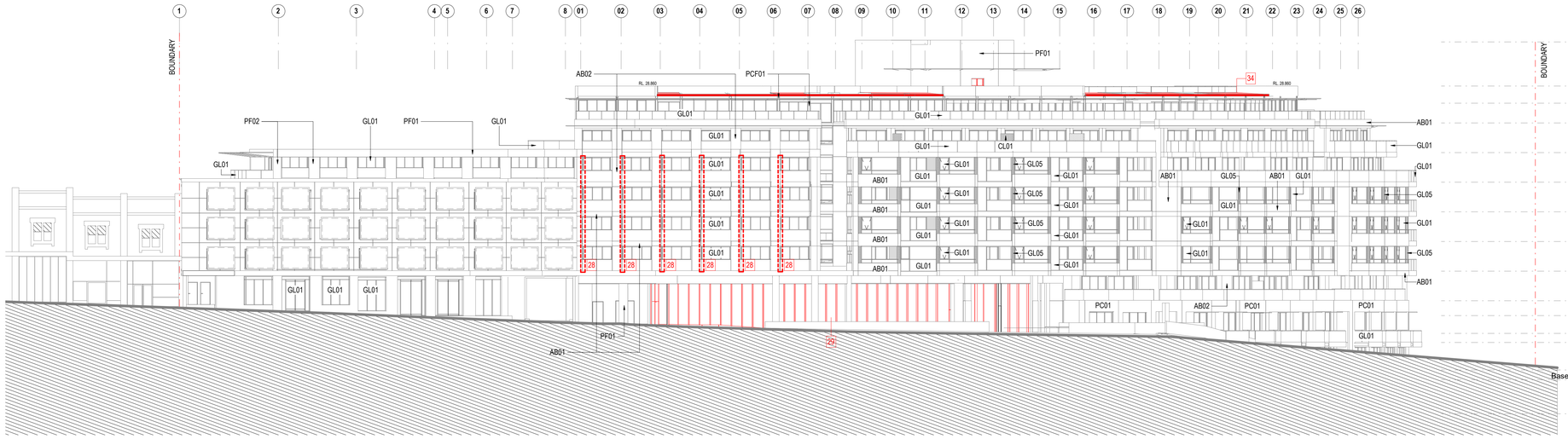
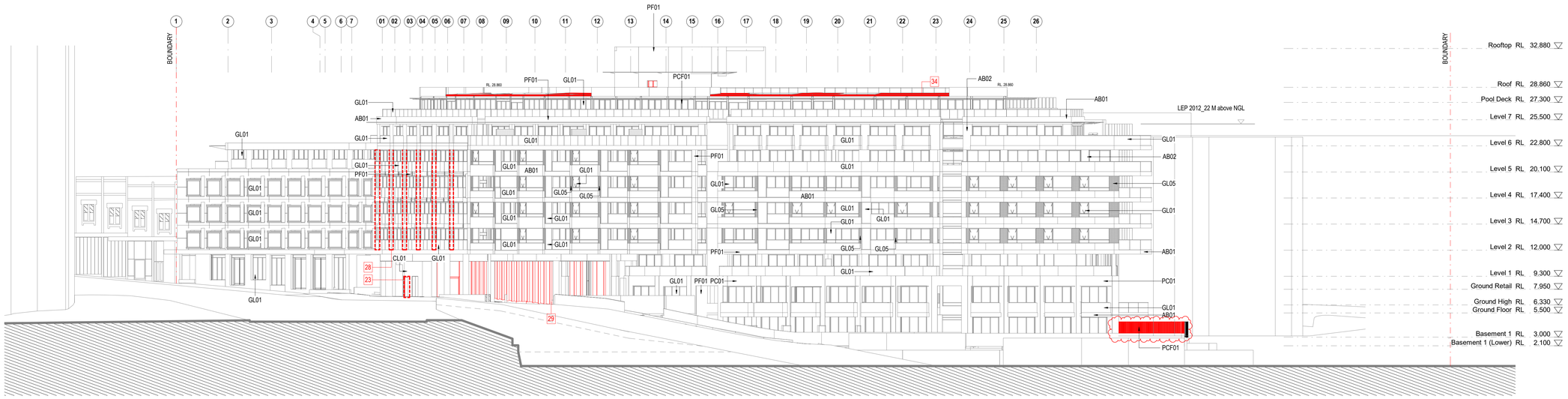
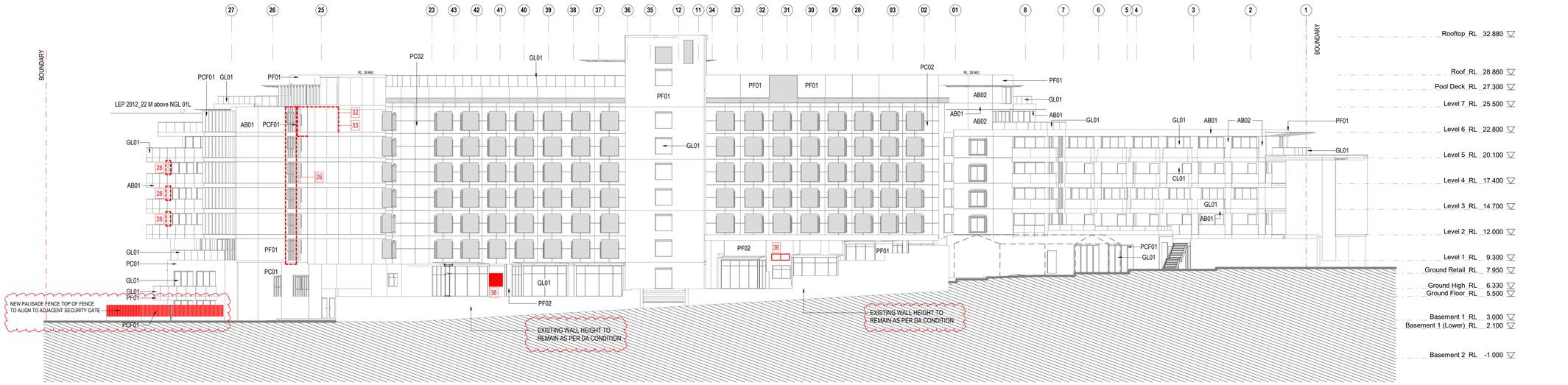


SOUTH ELEVATION



EAST ELEVATION



NORTH ELEVATION

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10. AIR INTAKE RISER INTRODUCED
11. REDESIGNED INTERNAL APARTMENT LAYOUTS
12. MODIFIED LIFT LOBBY SPACE
13. RELOCATED CAR PARK A/S PLANT ROOM
14. RELOCATED ELECTRICAL ROOM
15. RELOCATED MAIN SWITCH ROOM
16. RELOCATED CAR WASH BAY
17. INTRODUCED HYDRAULIC PUMP ROOM
18. RELOCATED STORAGE CAGES
19. INTRODUCED PLANT ROOM
20. REVISED RAMP ARRANGEMENT
21. GARBAGE CHUTE RELOCATED
22. REDESIGNED LOBBY INTERNAL AREA
23. RELOCATED BOOSTER CABINET
24. REMOVED PLANT ROOM
25. REMOVED STAIR
26. WINDOW RELOCATED
27. RISER CONVERTED INTO A GARBAGE ROOM
28. PRIVACY SCREEN REMOVED FROM BALCONY
29. REDESIGNED MAIN ENTRY LOBBY GLAZING
30. VERTICLE GLASS SCREEN REMOVED
31. CONVERTED 2 APARTMENTS INTO 1 APARTMENT
32. ADDED LAUNDRY ROOM TO BUILDING MASS
33. ROOF LEVEL INCREASED TO 25.700
34. ROOF OF LEVEL 7 RAISED BY 300MM
35. ROOF REMOVED
36. WINDOW MISSED ON APPROVED ELEVATION
37. TIMBER FLOOR TO BALCONIES REPLACED WITH TILED FLOOR
38. ARTIFICIAL GRASS REPLACED WITH TILED FLOOR
39. INCREASE SIZE OF BALCONY
40. ADDED SKYLIGHTS
41. N/A
42. MODIFICATION TO AREA SURROUNDING THE SWIMMING POOL
43. COLOURED BLINDS REMOVED

REV	DESCRIPTION	BY	DATE
A	FOR PRE-DA SUBMISSION		05.07.2022
B	PRELIMINARY		13.10.2022
C	FOR S4.55 SUBMISSION	JF	25.01.2023
D	REVISED S4.55 SUBMISSION	JF	31.05.2023
E	REVISED S4.55 SUBMISSION	JF	24.07.2023

PROJECT PHASE

DOCUMENTATION

STATUS

S4.55.2 SUBMISSION

PROJECT NO. 21018CC

PROJECT **NAUTIQUE**

ADDRESS 100 Bayswater Road, Rushcutters Bay

DEVELOPMENT MANAGER

DEDICO

SCALE: 1 : 200 @B1

0m 4 8 10m

Scale 1:200

DRAWING SERIES

A07 - Elevations

DRAWING TITLE

ELEVATIONS

DRAWING NO. **A0015**

REVISION **E**

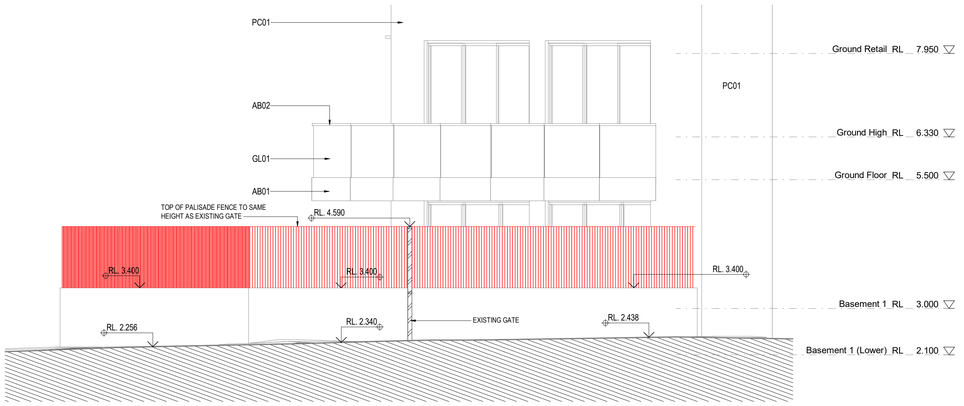
DRW: **EC**

CHK: **AA**

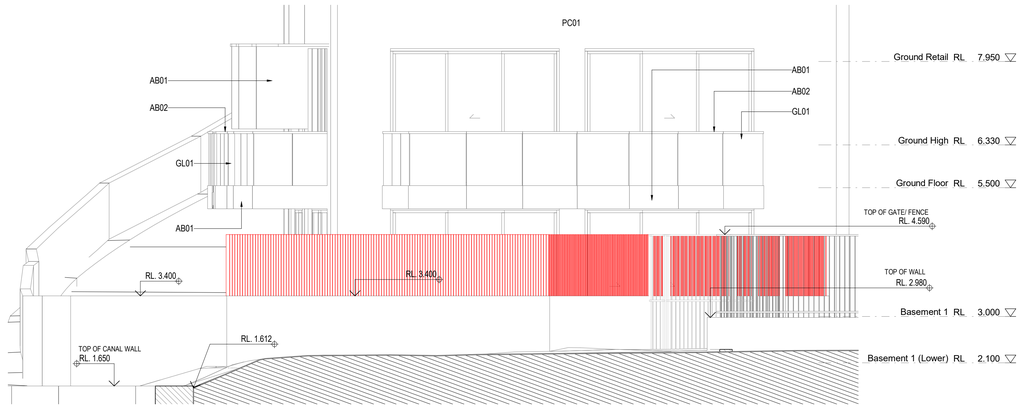
ANTONIADES ARCHITECTS

www.antoniades.com.au
ACN 129 731 559

Nominated Architect: Andreas Antoniades
NSW Registration 7954



DETAIL ELEVATION 1



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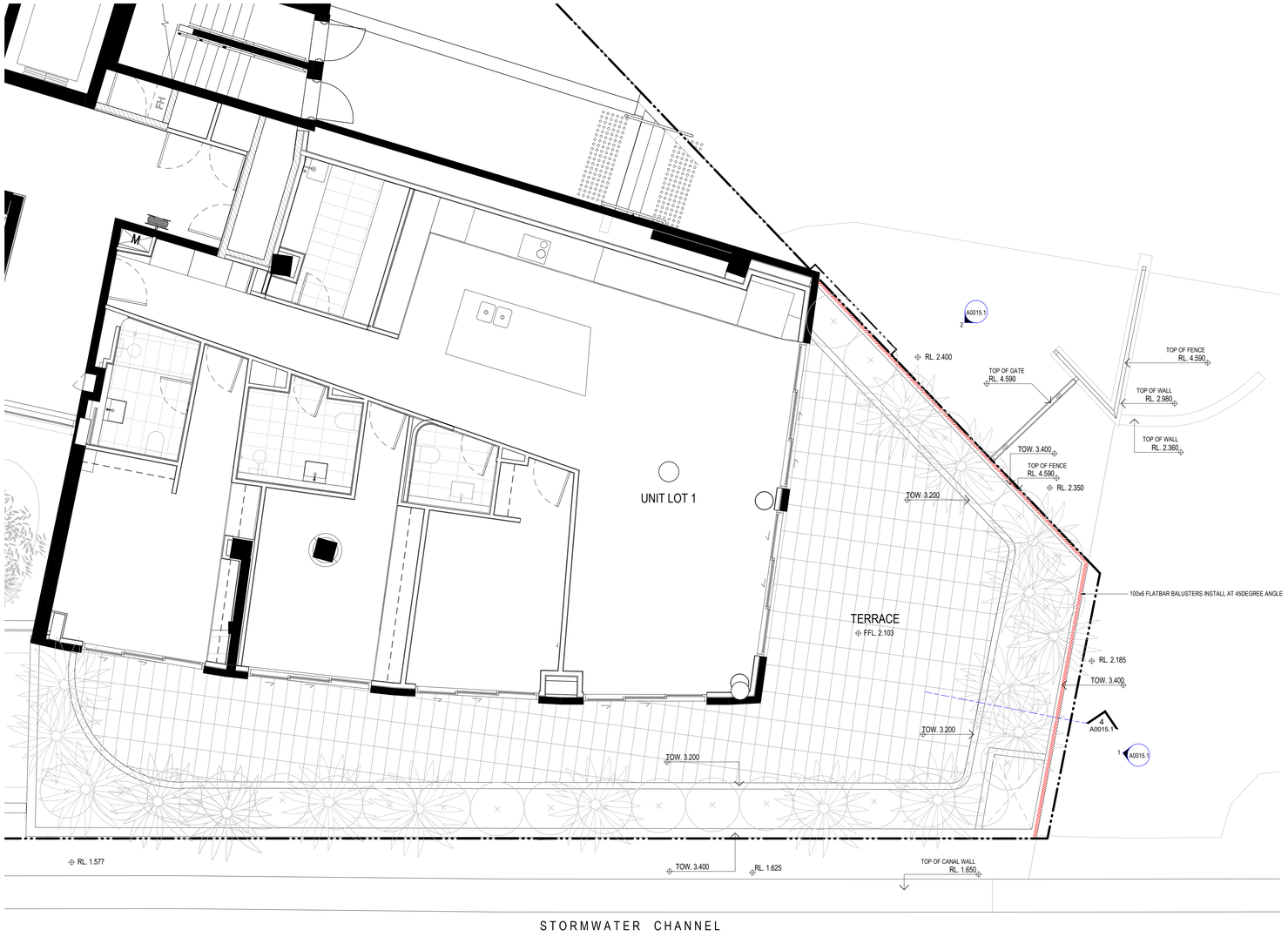
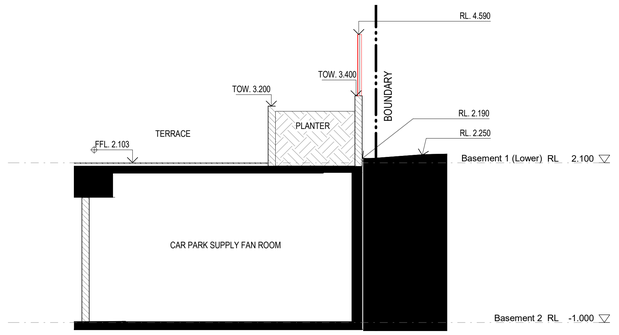


PLAN DETAIL



PLANTER DETAIL

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- All dimensions in millimeters unless otherwise shown.
- Use figured dimensions only.
- Do not scale from drawings.
- Check all dimensions on site prior to construction.
- To be read in conjunction with all other documents.
- Report any discrepancies to Antoniades Architects Pty Ltd.
- All boundary dimensions and bearings to be verified by licensed surveyor prior to proceeding with work.

LEGEND

1. ADJUSTED CAR PARK ARRANGEMENT
2. ADJUSTED PLANT ROOM
3. REMOVED COLUMN
4. RELOCATED GREASE ARRESTER ROOM
5. REDESIGNED EXIT RAMP
6. RELOCATED CAR PARK EXIT LANE
7. REMOVED CARPARK AIR EXHAUST ROOM
8. INTRODUCED MANAGERS ROOM
9. INTRODUCED ELEC & COMMS C'BORDS
10. AIR INTAKE RISER INTRODUCED
11. REDESIGNED INTERNAL APARTMENT LAYOUTS
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43. COLOURED BLINDS REMOVED

CITY OF SYDNEY
CITY PLANNING DIVISION

Section 4.55 APPROVAL

D/2012/939/J
01/08/2023
These plans must be read in conjunction with the decision notice

REV	DESCRIPTION	BY	DATE
A	ADDITIONAL INFORMATION FOR S4.55	JF	18.05.2023
B	REVISED S4.55 SUBMISSION	JF	24.06.2023
C	REVISED S4.55 SUBMISSION	JF	24.07.2023

PROJECT PHASE
DOCUMENTATION

STATUS
S4.55.2 SUBMISSION

PROJECT NO. 21018CC
PROJECT **NAUTIQUE**
ADDRESS 100 Bayswater Road, Rushcutters Bay

DEVELOPMENT MANAGER
DEDICO

SCALE: As indicated @B1
0m 1 2 2.5m
Scale 1:50

DRAWING SERIES
A07 - Elevations

DRAWING TITLE
DETAIL ELEVATION & SECTION

DRAWING NO. **A0015.1**
REVISION **C**
DRW: **RT**
CHK: **JF**

ANTONIADES ARCHITECTS
www.antoniades.com.au
ACN 129 731 559
Nominated Architect: Andreas Antoniades NSW Registration 7954

Item 4.

Development Application: 190-192 Victoria Street, Potts Point - D/2023/967

File No.: D/2023/967

Summary

Date of Submission:	26 October 2023
Applicant:	Dr Rajeev Soni
Architect/Designer:	Anton Kouzmin
Owner:	Dr Rajeev Soni
Planning Consultant:	Vaughan Milligan
Heritage Consultant:	John Oultram
Cost of Works:	$509,300
Zoning:	MU1 - Mixed Use
Proposal Summary:	The proposal is for alterations and additions to shop top housing including internal modifications and extension of Unit 15 to create a new dining and living room on the 7th storey of the building. The proposal is referred to the Local Planning Panel for determination as the development is reliant on a clause 4.6 variation request to vary the height of buildings and floor space ratio development standards of the Sydney Local Environmental Plan 2012 (Sydney LEP 2012) by more than 10%. The existing building already exceeds the height of building and floor space ratio development standards. The applicant has lodged a written statement addressing the provisions of clause 4.6 of the Sydney LEP 2012 with regard to the non-compliance with the height of buildings and floor space ratio development standards. The non-compliance with the height of buildings development standard relates to the proposed works occurring 8.25m above the height standard. This equates to a 68.8% exceedance of the height of buildings control,

	noting the existing building has an 81% exceedance of the height of buildings control. The non-compliance with the floor space ratio development standard relates to the addition of 22sqm of gross floor area. This results in an increase in the buildings existing floor space non compliance from a 58.98% variation to a 63.01% variation. The application was notified and advertised for a period of 21 days from 31 October 2023 to 22 November 2023. No submissions were received. The proposal is generally consistent with the relevant objectives and provisions of the Sydney LEP 2012 and Sydney DCP 2012. Subject to the recommended conditions at Attachment A, the development application will not result in any unacceptable impacts to surrounding properties.
Summary Recommendation:	The development application is recommended for approval, subject to conditions.
Development Controls:	Environmental Planning and Assessment Act 1979 SEPP (Building Sustainability Index: BASIX) 2004 Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)
Attachments:	Recommended Conditions of Consent Selected Drawings Clause 4.6 Variation Request - Floor Space Ratio Clause 4.6 Variation Request - Height of Building

Recommendation

It is resolved that:

(A) the variation requested to floor space ratio development standard and height of buildings development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and

(B) consent be granted to Development Application No. D/2023/967 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 development complies with the objectives of the MU1 Mixed Use zone pursuant to the Sydney LEP 2012.

(B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the floor space ratio and height of buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 and 4.4 of the Sydney LEP 2012; and

(ii) the proposal is in the public interest because it is consistent with the objectives of the MU1 mixed use zone and the floor space ratio and height of buildings development standard.

(C) Having considered the matters in clause 6.21C(2) of the Sydney LEP 2012, the proposal displays design excellence because:

(i) the form and external appearance of the proposed alterations and additions will not have a detrimental impact on the quality or amenity of the public domain;

(ii) the alterations and additions will not have a detrimental impact on any private or public view corridors and will not result in any detrimental amenity impacts in terms of overshadowing, visual privacy or noise; and

(iii) the proposed bulk, massing and modulation of the alterations and additions are acceptable.

(D) The development is generally consistent with the relevant objectives and controls of the Sydney LEP 2012 and Sydney DCP 2012.

(E) Suitable conditions of consent have been applied and the development is considered to be in the public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 8 within SP 97870, Lot 190 DP 1026206 known as 190-192 Victoria Street, Darlinghurst. It is rectangular in shape with an area of approximately 273 square metres. It has a primary street frontage of 10m to Victoria Street and a secondary street frontage of 10 metres to Earl Street. The site is located close to the intersection of Victoria and Earl Street.

2. The site contains a strata titled seven storey mixed-use development with ground floor retail and six levels of units above, comprising a total of 17 lots.

3. The proposed alterations and additions relate to Unit 15 within the subject site. Unit 15 is a split-level apartment located on level 5 and level 6 of the building. Level 5 of Unit 15 contains the kitchen, living/dining, bedroom, bathroom and laundry, while level 6 contains a bedroom and outdoor private open space in the form of a rooftop terrace.

4. The surrounding area is characterised by a mixture of land uses, being terrace style housing, shop top housing, commercial development and residential flat buildings.

5. The site is located within the Potts Point heritage conservation area (C51) and is identified as a detracting building.

6. The site is located within the Kings Cross locality and is not identified as being subject to flooding.

7. A site visit was carried out on 10 November 2023.

8. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Victoria Street, looking east.



Figure 3: Site viewed from Victoria Street, facing north east.



Figure 4: Site viewed from Victoria Street, facing south east.



Figure 5: Rear viewed from Earl Street



Figure 6: Southern elevation viewed from Earl Street, facing north west.



Figure 7: Site viewed from Earl Street, facing south.

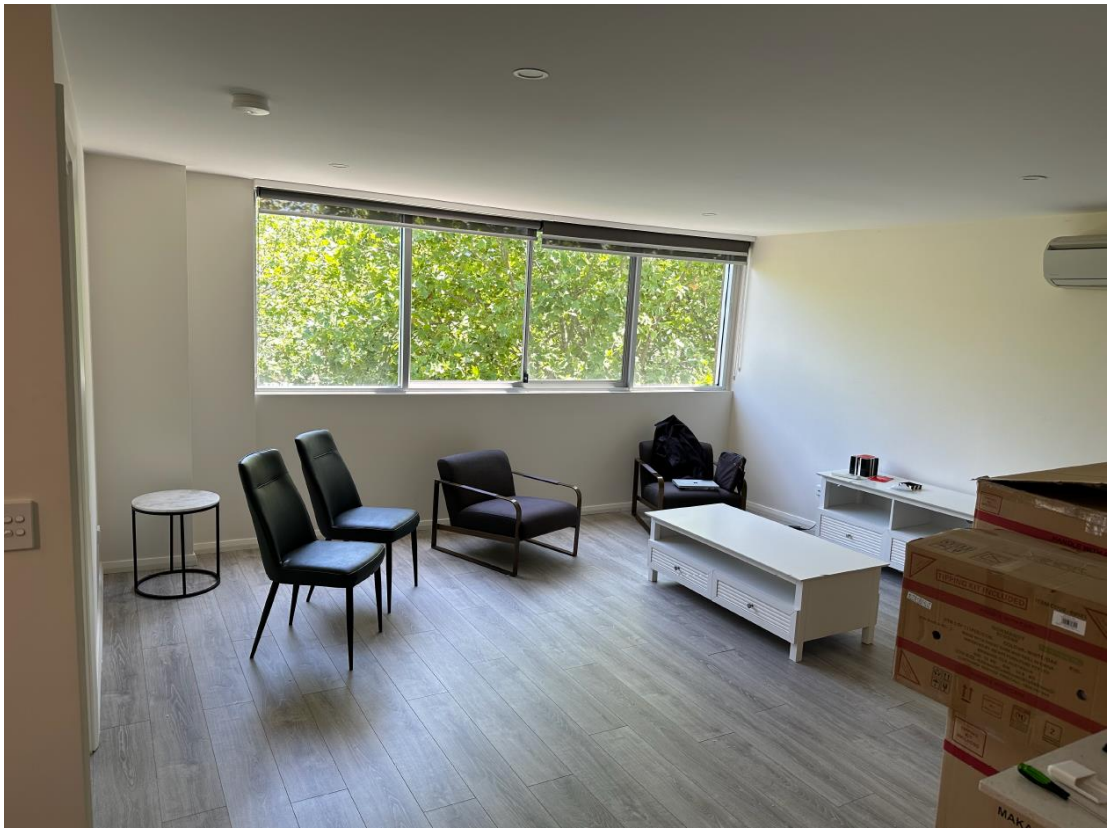


Figure 8: Internal view of Unit 15 - level 5 living room



Figure 9: Internal view of Unit 15 - stair to level 6.



Figure 10: Internal view of Unit 15 - level 6 bedroom.



Figure 11: View of Unit 15 viewed from rooftop terrace.



Figure 12: Looking north from rooftop terrace.



Figure 13: Looking south east from rooftop terrace.

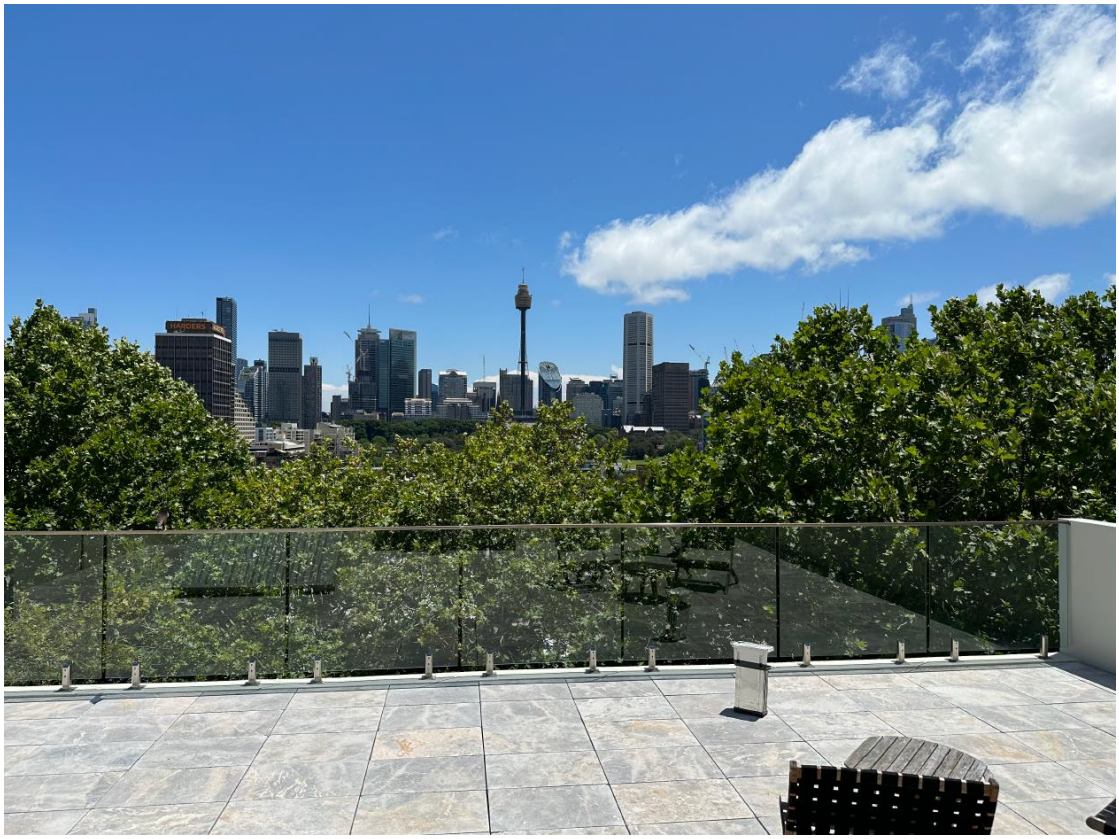


Figure 14: Looking west from rooftop terrace.



Figure 15: Looking south east toward existing level 6 and rooftop terrace from tree canopy located on the eastern side of Victoria Street (captured via drone, image provided by applicant)

History Relevant to the Development Application

Development Applications

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

- **D/2011/1913** – Development consent was granted on 25 June 2011 for a new four-storey addition to the rear of the existing mixed-use building, containing basement storage, roof terrace, ground floor retail, and residential apartments, upgrade common areas and communal facilities, and internal alterations. This application has been subject to numerous modifications (A-G). These works were completed in 2016.

- **D/2019/1349** – Development consent was granted on 18 December 2019 for the erection of two signs and window decals to the Victoria Street elevation of the ground floor retail premises.

Compliance Action

10. The site is not subject to any compliance action.

Amendments

11. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 27 November 2023, as follows:

- Additional views from the western side of Victoria Road;
- Provision of a set back at the upper level in accordance with 4.2.2 Building setbacks of the DCP;
- Specific materials, colours and finishes are keyed to an elevation;
- Removal of the dark roof;
- Requirement for the replacement of level 5 windows to the western elevation must be 'like for like'; and
- Structural Engineering Report to confirm the proposed additions will not adversely impact on the structural integrity of the existing building.

12. The applicant responded to the request on 17 January 2024, and submitted the following information:

- Structural report, prepared by Cantilever Consulting Engineers Pty ltd;
- Proposed level 6 floor plan;
- Existing and proposed 3D view of the proposal;
- Existing and proposed western elevation of the subject building with additional existing facade detail modelled; and
- Recent photographs showing the inconsistent street elevation and the extent of tree canopy coverage in the area.

13. Following a review of the additional information by Council Officers, further correspondence was sent to the applicant on 29 February 2024 requesting additional site lines from the public domain.

14. Updated site lines were provided by applicant 5 March 2024.

15. The final DA submission, as amended by the revisions summarised above, is the subject of this assessment report.

Proposed Development

16. The application seeks consent for the following alterations and additions to the residential apartment Unit 15 located at levels 5 and 6 of the existing 7 storey mixed use building:

    - Internal alterations and refurbishment of the existing apartment, within the existing building envelope;

    - Modification of fenestration to the western elevation of level 5;

    - Construction of a new addition to the upper level of the apartment (level 6), outside of the existing building envelope, to accommodate a new dining/living room addition (located on the existing rooftop terrace area). The proposed addition will result in the creation of 22 square metres of additional gross floor area (GFA); and

    - New heat pump condenser unit to southern elevation of proposed rooftop addition.

17. Plans and elevations of the proposed development are provided below.

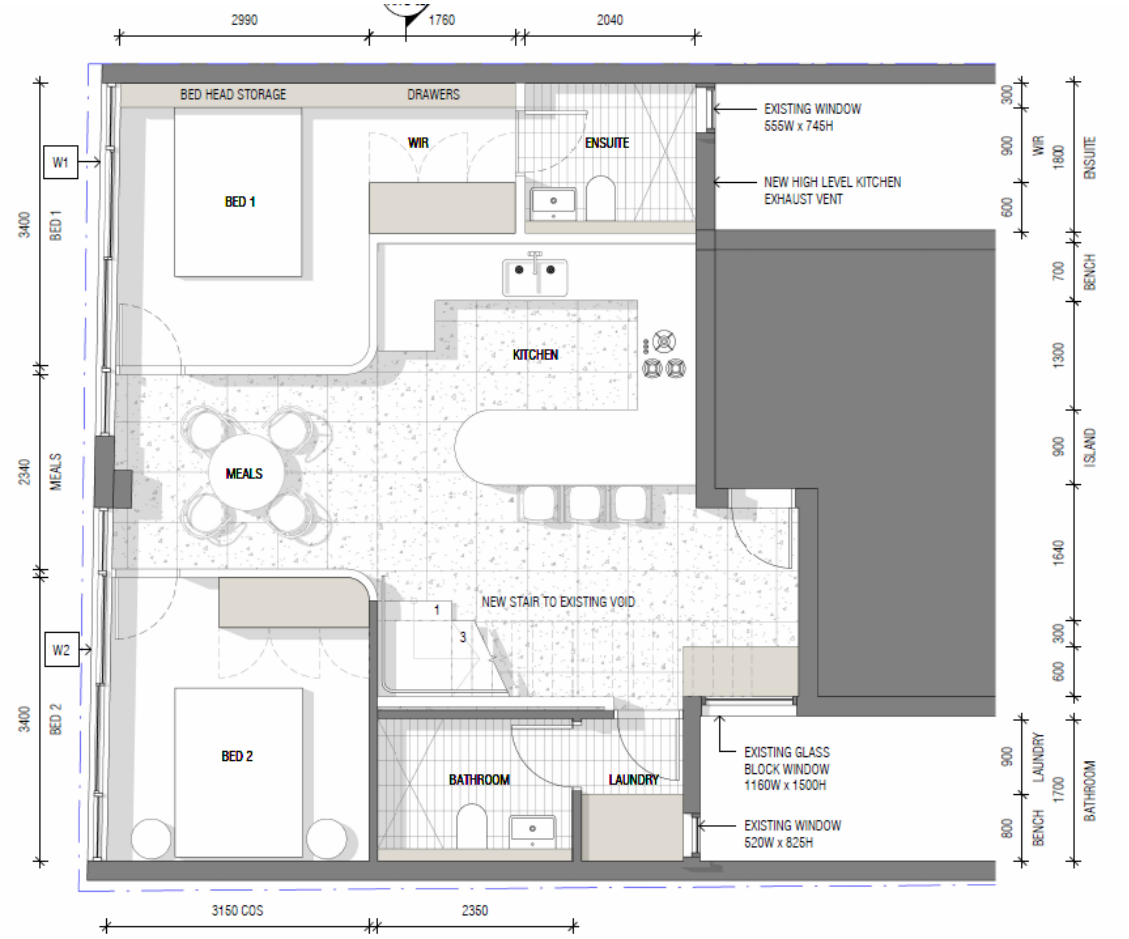


Figure 16: Proposed level 5 floor plans.

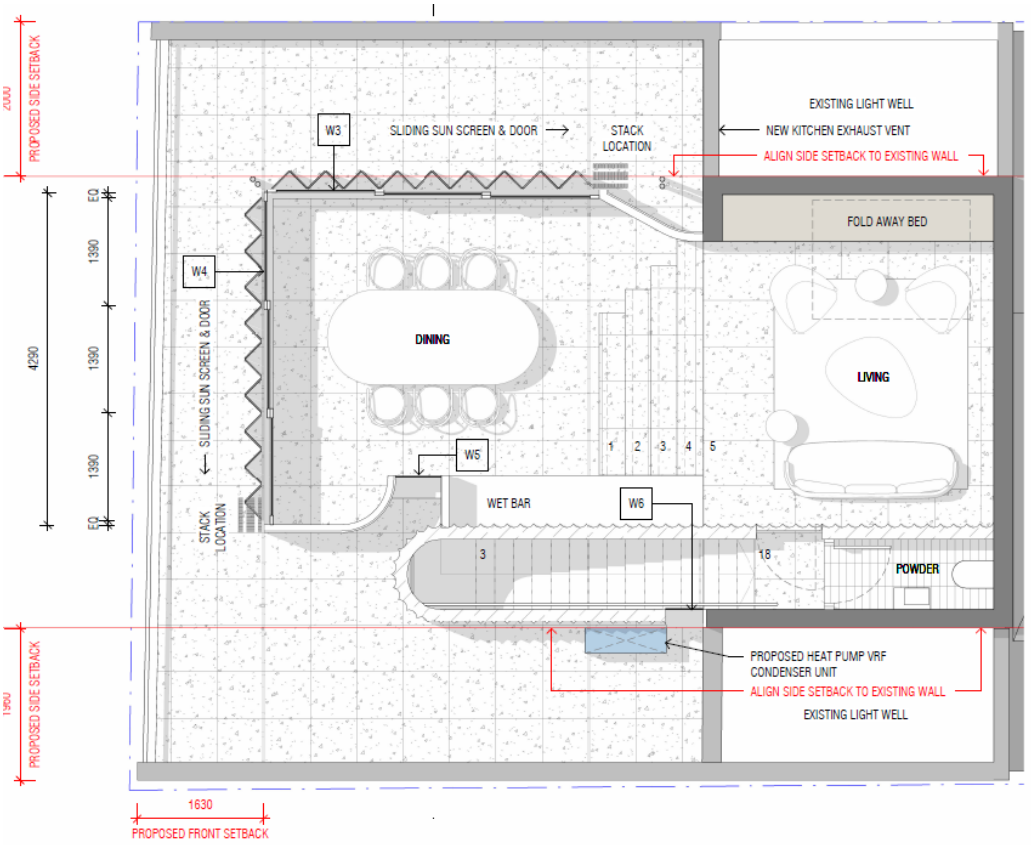


Figure 17: Proposed level 6 floor plan.

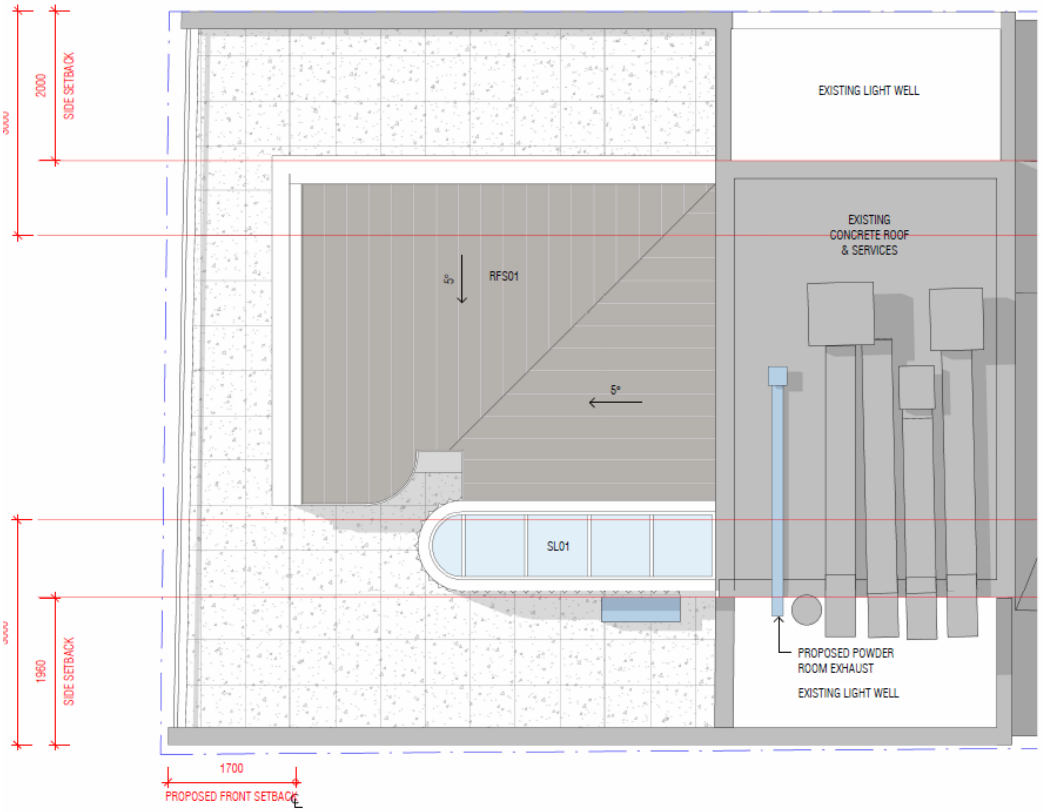


Figure 18: Proposed roof plan.

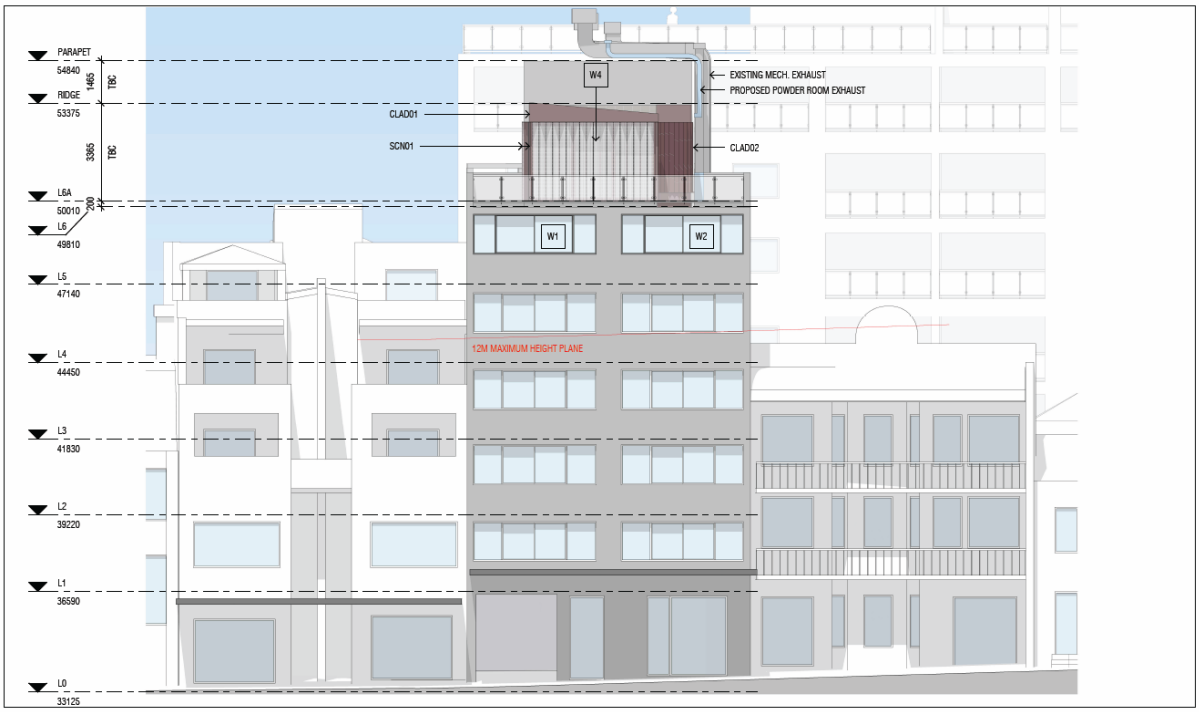


Figure 19: Proposed western elevation (Victoria Street).

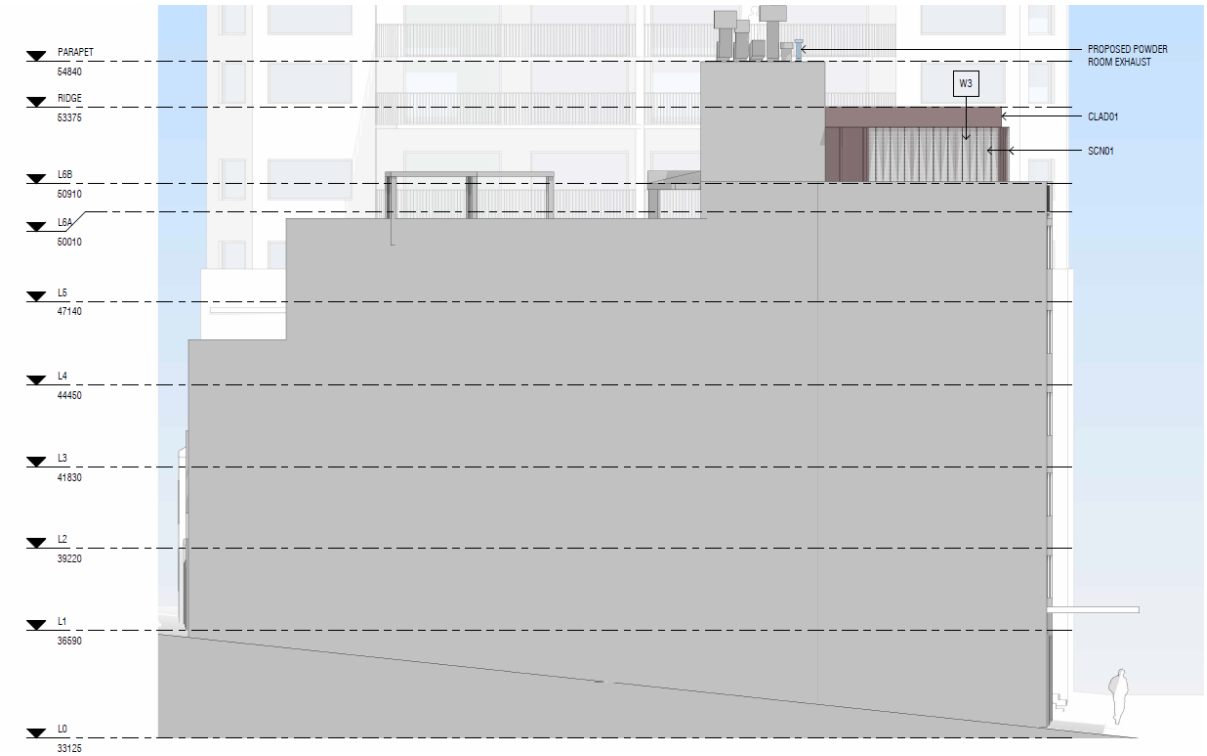


Figure 20: Proposed northern elevation.

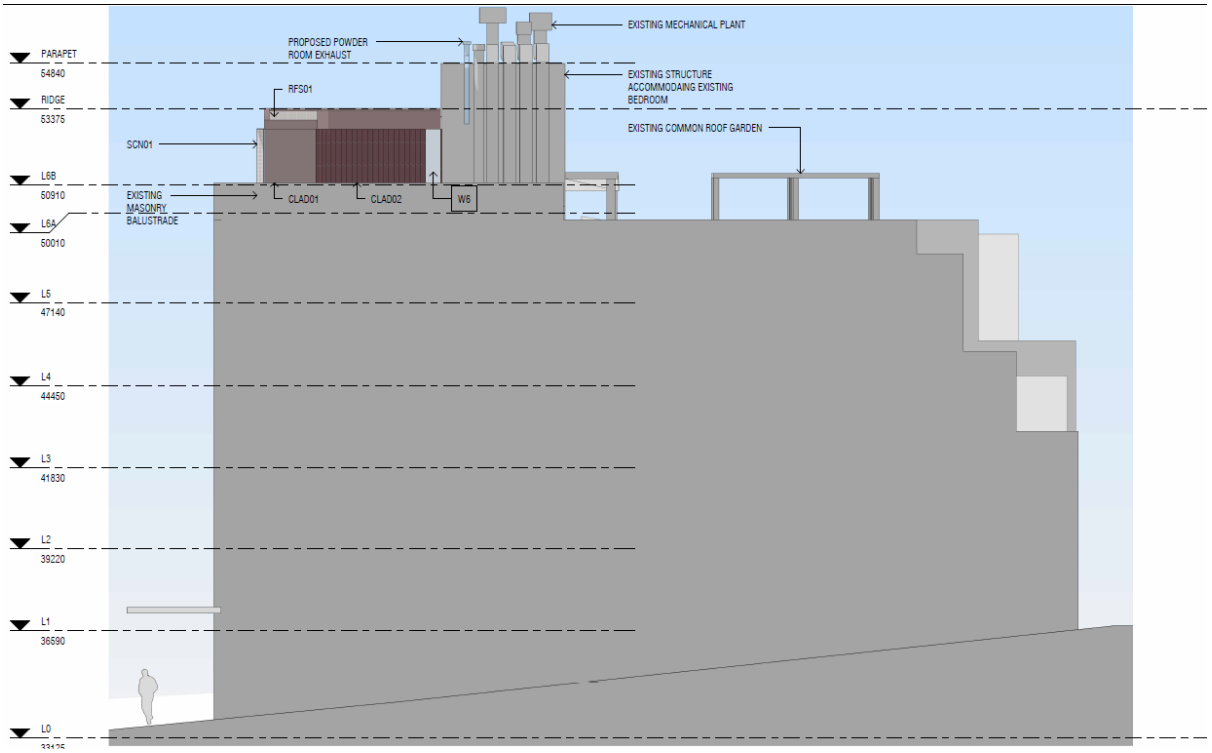


Figure 21: Proposed southern elevation.

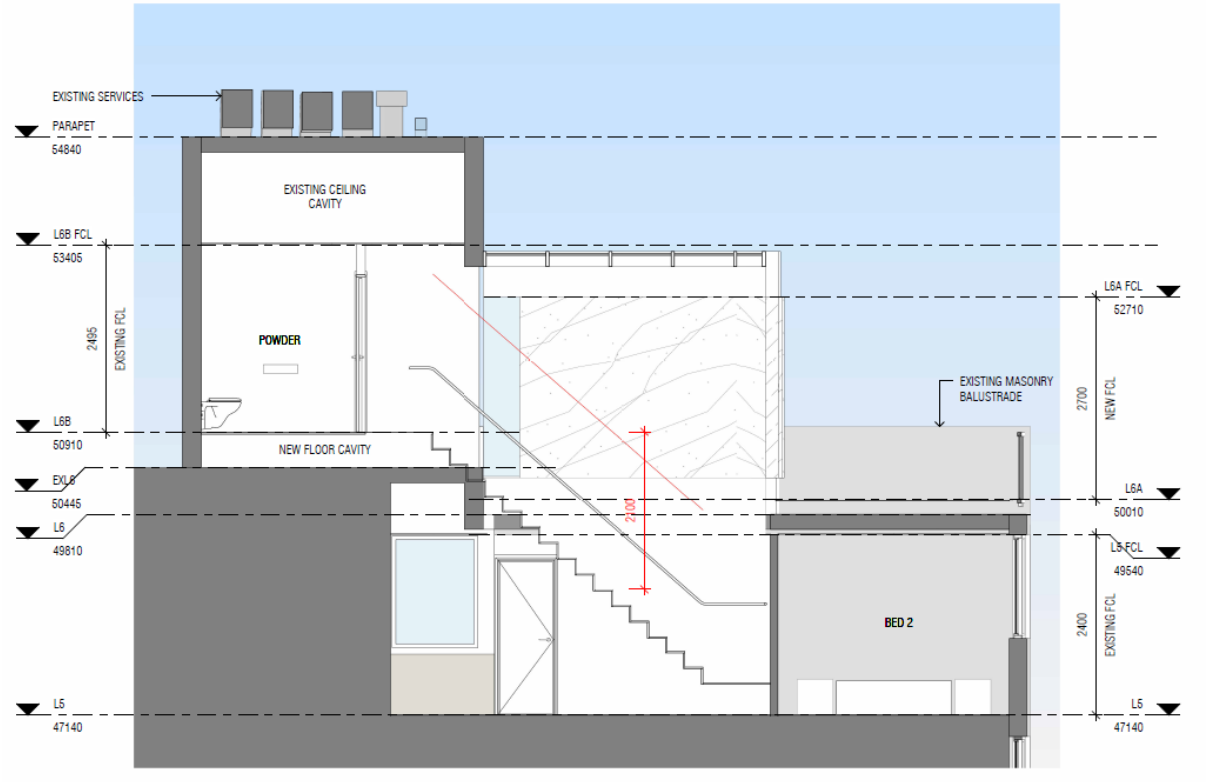


Figure 22: Proposed east west section.

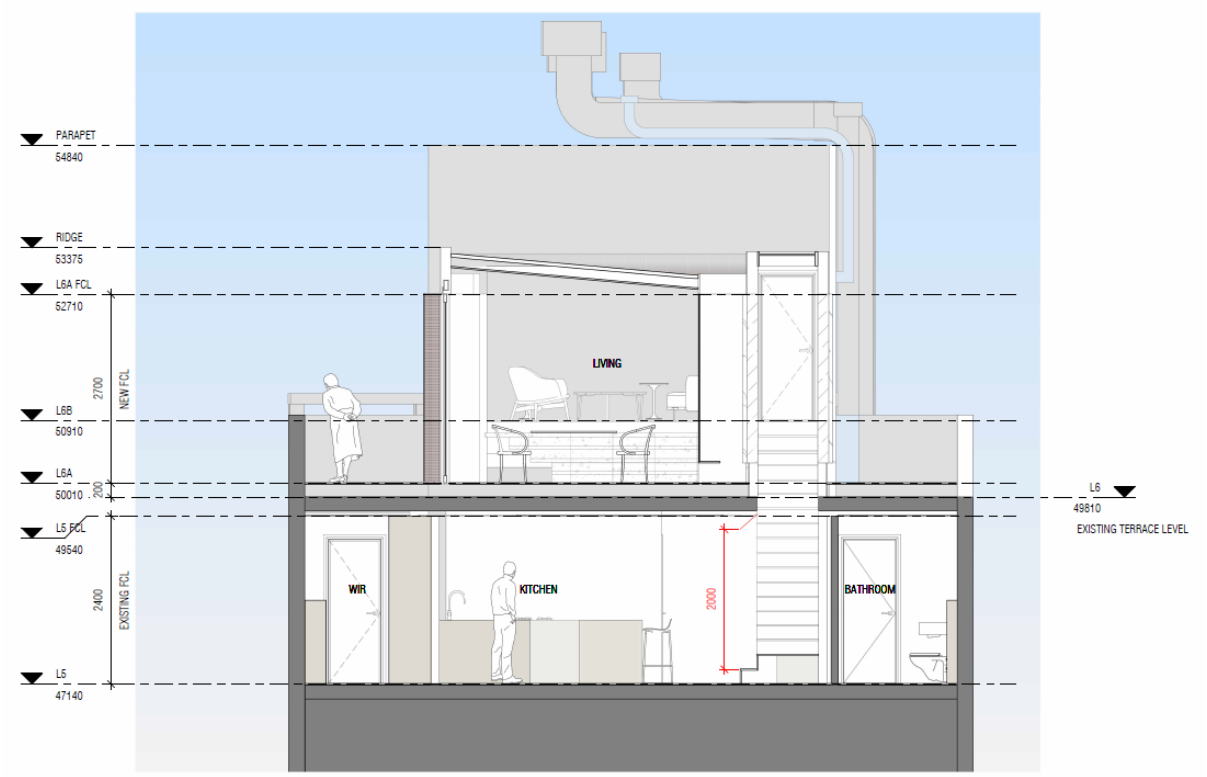


Figure 23: Proposed north south section.

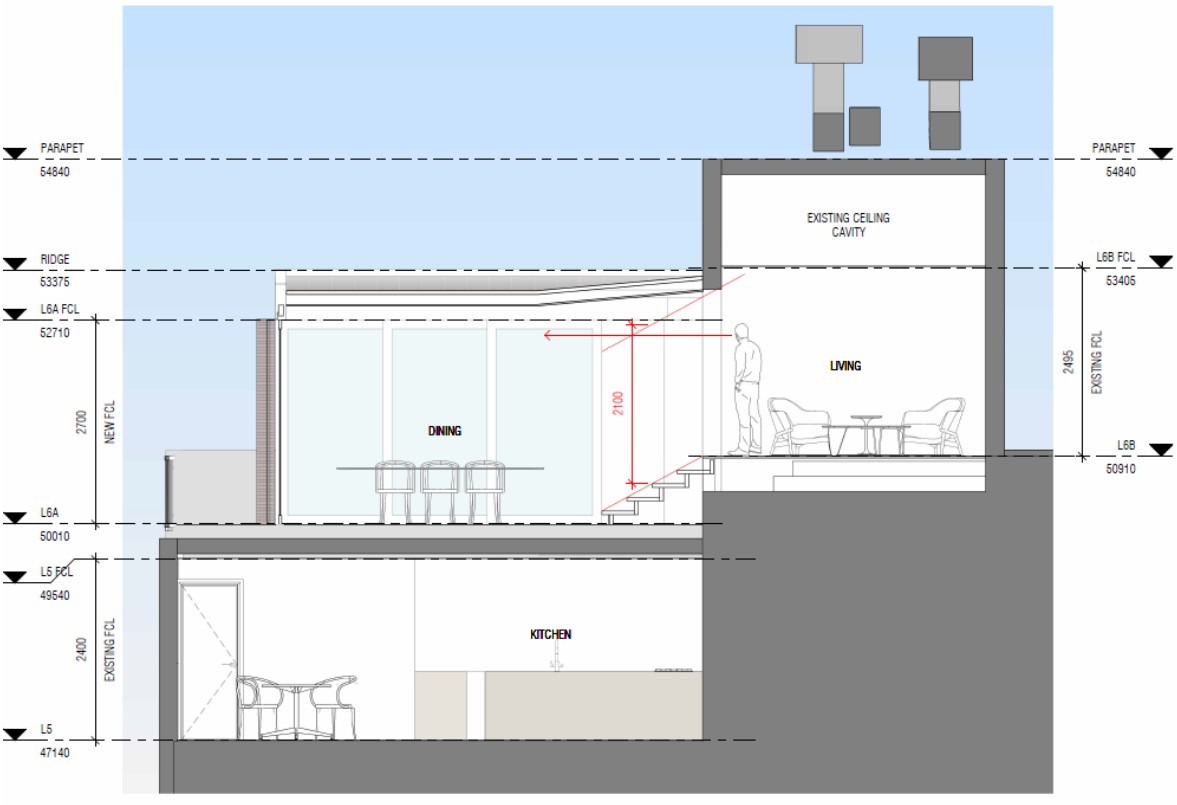


Figure 24: Proposed east west section.

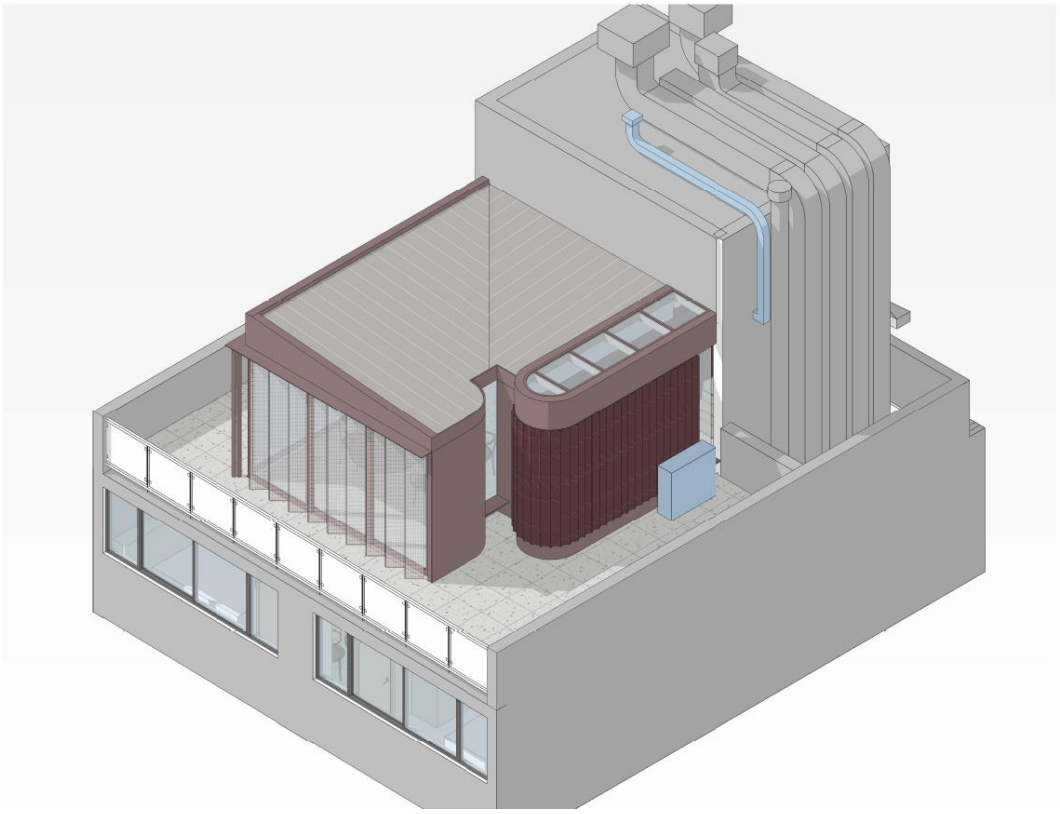


Figure 25: Proposed perspective.

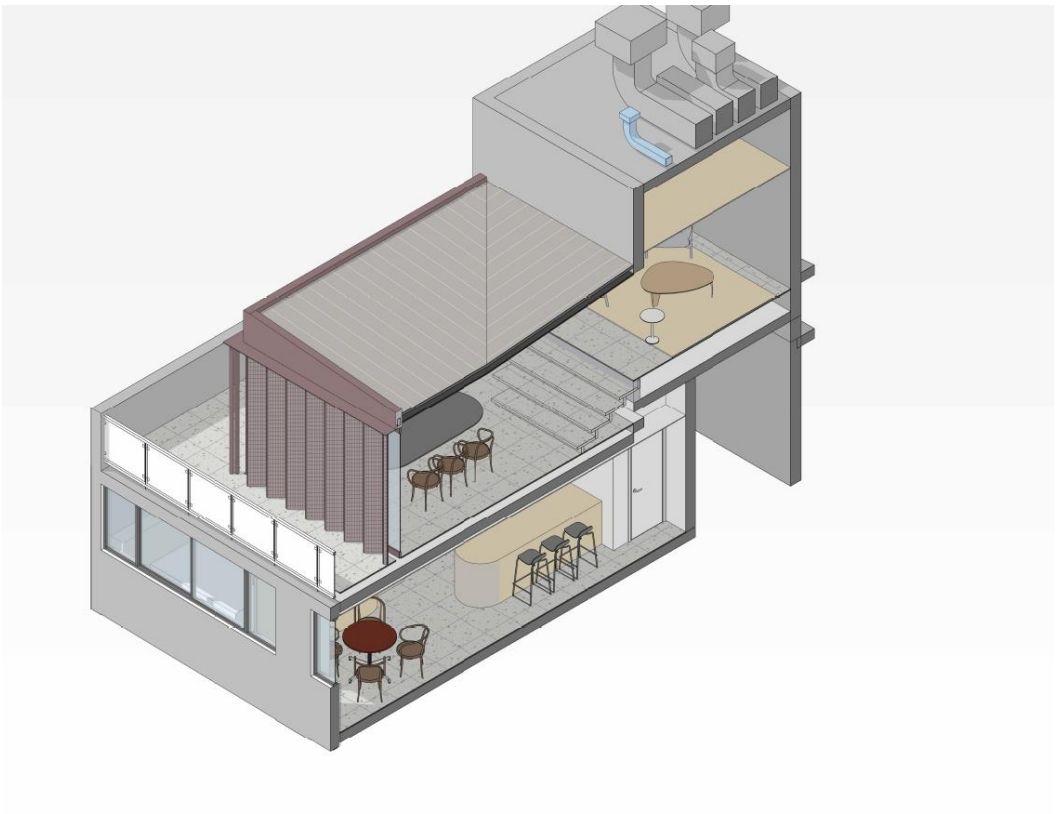


Figure 26: Proposed perspective section.

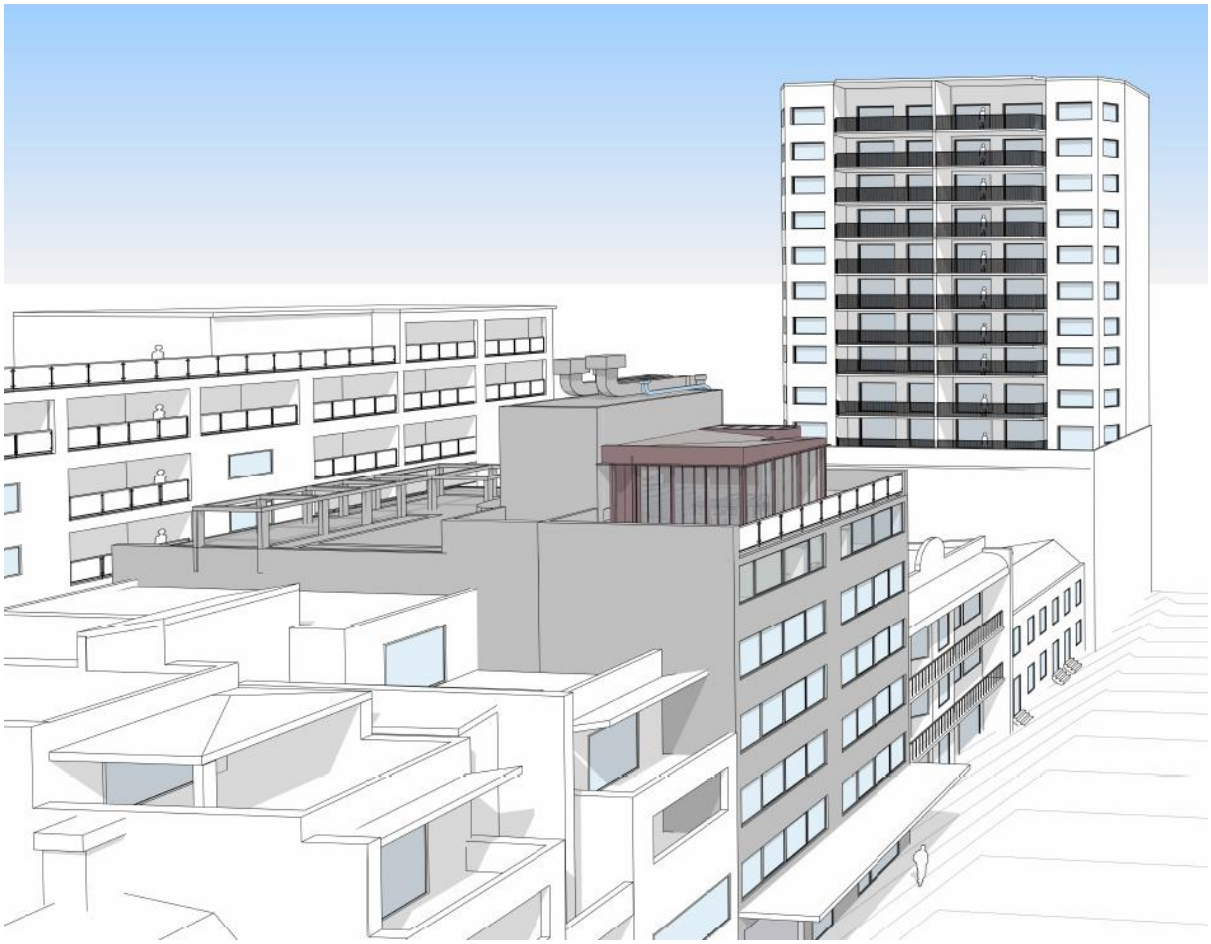


Figure 27: Proposed perspective - aerial view of north west corner.

Assessment

18. 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 No 65 - Design Quality of Residential Flat Development

19. The aim of State Environmental Planning Policy (SEPP) 65 is to improve the design quality of residential apartment development in New South Wales.

20. When determining an application for a residential flat development of three or more floors and containing four or more apartments, SEPP 65 requires the consent authority take into consideration a number of matters relating to design quality, including the design quality principles as set out in Schedule 1.

21. The proposal, however, does not seek to convert the existing building and does not constitute a substantial redevelopment or substantial refurbishment of the existing building for the following reasons:

    - The proposal involves alterations and additions to one residential apartment in building comprising 15 apartments and one commercial tenancy. As a percentage of the total number of apartments, the proposal relates to 6 per cent of the development.
    - The proposal does not include any works to any other apartments or floors within the building and does not result in any additional apartments above what currently exists in the building.
    - The increase in floor area to the building, as a result of the development, is an increase of 22 square metres above the existing floor area of 869 square metres.
    - The increase in floor area to the building is 4 per cent above the existing floor space.
    - The proposed built form extending outside the existing envelope sits below the existing height of the building.
    - When viewed from the public domain, the view impact will be minimal.

22. In accordance with clause 4(1) of the SEPP, an assessment against SEPP 65 and the Apartment Design Guide (ADG) is therefore not required.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

23. The aim of the SEPP BASIX is to encourage sustainable residential development. A BASIX Certificate has been submitted with the development application A316153.

24. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

Local Environmental Plans

Sydney Local Environmental Plan 2012

25. 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 MU1 Mixed Use zone. The proposed development is defined as shop top housing and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	A maximum building height of 12 metres is permitted. The existing building has a maximum height of 21.72 metres. The proposed works have a maximum height of 20.25 metres. The proposal does not increase the maximum height of the existing building. The proposed development does not comply with the height of buildings development standard. A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.
4.4 Floor space ratio	No	A maximum floor space ratio of 2:1 or 546 square metres is permitted. The existing building has a floor space ratio of 3.18:1 or 869 square metres. A floor space ratio of 3.26:1 or 891 square metres is proposed. The proposal creates an additional 22 square metres of gross floor area. The proposed development does not comply with the floor space ratio development standard. A request to vary the floor space ratio development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.
4.6 Exceptions to development standards	Yes	The proposed development seeks to vary the development standard prescribed under Clause 4.3 and 4.4. A Clause 4.6 variation request has been submitted with the application.

Provision	Compliance	Comment
		See further details in the 'Discussion' section below.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	The site is located within the Potts Point heritage conservation area (C51). The proposed development was referred to Councils Heritage Specialist who advised the works will not have a detrimental impact on the heritage significance of the heritage conservation area.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	Subject to the design modification conditions included in the recommended conditions of consent, the proposed development is of a high standard and is compatible with the site's context. The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact regarding the amenity of the surrounding area and future occupants.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 3 Affordable housing		
7.13 Contribution for purposes of affordable housing	Yes	The application is for alterations to an existing building that will not result in the creation of 200 square metres or more of residential gross floor area (GFA). The development is therefore excluded

Provision	Compliance	Comment
		and is not subject to a Section 7.13 affordable housing contribution.

Development Control Plans

Sydney Development Control Plan 2012

26. 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

27. The site is located within the Kings Cross locality (2.4.7). The proposed development is in keeping with the unique character and the design principles of the Kings Cross locality.

    (a) The proposed development is located at the rooftop terrace level of an existing apartment building and will have a limited impact on the surrounding historic buildings or the surrounding heritage conservation area.

    (b) The level 6 extension will not significantly impact on views from within and beyond the neighbourhood, including the neighbouring buildings at 204 - 212 Victoria Street and 10 Earl Place.

    (c) The proposed alterations and additions are located substantially above street level and will maintain view corridors over terraces along Victoria Street towards the city skyline.

    (d) The proposed alterations and additions complement the appearance of the existing building and will not alter the character of the area.

Section 3 – General Provisions

Provision	**Compliance**	**Comment**
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.6 Ecologically Sustainable Development	Yes	The proposal seeks to retain and upgrade an existing residential apartment. The proposed alterations and additions satisfy BASIX and environmental requirements.
3.9 Heritage	Yes	The site is located within the Potts Point heritage conservation area (C51). The

Provision	Compliance	Comment
		building is identified as a detracting building. As detailed in the LEP compliance table the proposal was referred to Councils Heritage Specialist who advised the proposal will not have a detrimental impact on the heritage significance of the heritage conservation area.

Section 4 – Development Types

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	No	The site is permitted a maximum building height of six storeys. The existing development is seven storeys in height. The proposed development does not seek to add any additional storeys. See further details under the sub-heading Building height in the 'Discussion' section below.
4.2.1.2 Floor to ceiling heights and floor to floor heights	Yes	The proposed development achieves the minimum floor to ceiling height.
4.2.2 Building setbacks	Yes	The 'Building setback and alignment map' does not provide a specific setback for the subject site. Accordingly, the setbacks must be consistent with adjoining buildings. The adjoining building immediately north of the site (no. 186 -188) provides a 0.8 metre setback at the upper level. The adjoining building immediately south of the site (no.194-196) provides a 1.8 metre setback to the front facade. The proposal includes a setback of 1.63 metres at the seventh storey.

Provision	Compliance	Comment
		See further details under the sub-heading Building Setbacks in the 'Discussion' section below.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	The proposed will not result in additional shadow to the neighbouring properties habitable rooms or private open space. The proposal will create additional shadow to the subject unit's private open space. However, the overshadowing is acceptable as the unit will continue to achieve in excess of 2 hours of direct solar access to more than 5 square metres of its private open space in accordance with the control.
4.2.3.3 Internal common areas	Yes	No changes are proposed to the existing internal common areas, corridors or lift lobbies.
4.2.3.4 Design features to manage solar access	Yes	The proposed sliding sun screen, attached to the building facade will protect the new west facing windows.
4.2.3.7 Private open space and balconies	Yes	The existing private open space will continue to be directly accessible from the proposed living/dining area of the dwelling. The private open space is approximately 35 square metres exceeding the requirements of the DCP.
4.2.3.8 Common open space	Yes	No changes are proposed to the existing common open space areas.
4.2.3.9 Ventilation	Yes	The existing unit is currently a single facing apartment at both upper and lower levels. The proposal results in an addition with multiple external faces at the upper level facilitating improved natural ventilation.

Provision	Compliance	Comment
4.2.3.10 Outlook	Yes	The proposed alterations and additions will retain the existing outlook from the apartment.
4.2.3.11 Acoustic privacy	Yes	The proposed addition is located directly above the lower level of the subject unit. The acoustic amenity of the apartment immediately below and the surrounding properties will not be unreasonably impacted by the proposed works.
4.2.6 Waste and recycling Management	Yes	The existing waste and recycling system is to be retained and remains adequate as there is no proposed increase to the number of dwellings. A standard condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management.

Discussion

Clause 4.6 Request to Vary a Development Standard

Height of Building

28. The site is subject to a maximum height of buildings control of 12 metres.

29. The proposal does not seek to increase the height of the existing building.

30. The existing building has a height of 21.72 metres, which equates to an existing 81 per cent exceedance of the height of buildings control.

31. The proposed addition at the rooftop terrace occurs at a height of 20.25 metres, which equates to a 68.8 per cent exceedance of the height of buildings control.

32. 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;

(c) The proposed development will be consistent with the objectives of the zone; and

(d) The proposed development will be consistent with the objectives of the standard.

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

33. The applicant seeks to justify the contravention of the height of building 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 applicant's statement refers to the five tests established in Wehbe v Pittwater Council [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The report relies on Test 1, which is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard. The applicant's justification against the objectives of the height of building development standard is provided in (d) below.

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

(i) The aspect of the development which contravenes the development standard is the roof top addition. The addition is contained well-below the height of the existing building to minimise the visual impact to adjoining properties and the streetscape along Victoria Street.

(ii) The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land through the efficient use of the existing infrastructure to meet the housing needs of the community (1.3(c)).

- The proposed development will maintain the general bulk and scale of the existing surrounding built environment and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).

- Similarly, the proposed works will provide for excellent residential amenity within a built form which is compatible with the streetscape of Victoria Street and will not alter the streetscape appearance to Victoria Street, which also promotes the orderly and economic use of the land (cl 1.3(c)).

- The proposed development is considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g).

- The proposed new works and in particular the inclusion of a low-profile roof form and setback to Victoria Street demonstrates good design and improves the amenity of the built environment by creating and improved and functional living area and also suitably maintains the views and solar access enjoyed by neighbouring properties (1.3(g)).

(iii) The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants whilst minimising the impacts of bulk as viewed from the public domain. These are not simply benefits of the development as a whole but are benefits emanating from the breach of the maximum building height control.

(c) The proposed development will be consistent with the objectives of the zone;

(d) Each of the objectives of the MU1 Mixed Use and the reasons why the proposed development is consistent with each objective is set out below:

(i) ***To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.***

The proposal retains the existing retail uses at the ground level, continuing to provide a diversity of land uses that generate employment opportunities.

(ii) ***To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.***

The proposed works located at level 6 will not have any adverse impact on the existing street frontage with the works being largely imperceptible from the Victoria Street streetscape. The proposal will continue to provide for a diverse and active street frontage, providing for high-quality pedestrian amenity, while continuing to provide for a vibrant, diverse and functional street.

(iii) ***To minimise conflict between land uses within this zone and land uses within adjoining zones.***

The site and development are well-removed from nearby zones with a consistency of land uses in the surrounding area. The proposed works and resulting building height encroachment will not generate unwanted conflict between land uses within the zone and other land uses within adjoining zones.

(iv) ***To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.***

The proposed development will not alter the existing retail, business and other non-residential land uses on the ground floor of surrounding buildings with the existing retail uses on the subject site being unaffected.

(v) ***To ensure land uses support the viability of nearby centres.***

The existing land uses will not be altered and will continue to support viability of Potts Point and surrounding areas.

(vi) ***To integrate suitable business, office, residential, retail and other land uses in accessible locations that maximise public transport patronage and encourage walking and cycling.***

The proposal will continue to provide for a suitable use of land uses, namely residential and retail uses within an accessible location located nearby to public transport. The proposal will encourage public transport patronage and encourage walking and cycling.

(e) The proposed development will be consistent with the objectives of the standard:

(i) ***(a) to ensure the height of development is appropriate to the condition of the site and its context***

The Objective of Clause 4.3(1)(a) seeks to ensure buildings are compatible with the height and scale of surrounding and nearby development.

The surrounding area is predominantly characterised by a range of land uses, including building heights, many of which exceed the height control.

The proposal seeks to utilise an existing rooftop terrace by providing additional living space and amenity for the occupants. The proposed works remain well-below the existing, non-compliant building height.

The overall building height respects the surrounding character and the design seeks to minimise the visual height by providing for a setback from the front building edge to minimise the perceived visual bulk and additional height, as viewed from within the Victoria Street streetscape.

The proposed external colour and materials palette utilises recessive finishes and is intended to ensure that the building's visual height and scale is further minimised.

(ii) ***(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,***

The subject development maintains consistency with the existing surrounding development within the Potts Point Conservation Area and will not detract from the significance of any nearby heritage items.

(iii) ***(c) to promote the sharing of views outside Central Sydney***

The proposal will not see any change to the existing overall building height of the development and will therefore not result in any loss of views for neighbouring properties.

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

34. 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.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

35. The applicant has referred to the five tests established by Preston CJ in Wehbe v Pittwater to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. The applicant's statement has correctly considered Test 1 and has demonstrated that the development meets the objectives of clause 4.3, notwithstanding non-compliance with the numerical standard.

36. The proposal aims to repurpose an existing rooftop terrace to create additional living space and amenities for the occupants. It is noted that many buildings in the surrounding area already exceed the height standard. Importantly, the proposed modifications will not surpass the current height of the existing building, ensuring perceived bulk and scale of the addition from Victoria Street is minimised.

37. The overall building height respects the surrounding character of the area and the design seeks to minimise the perception of the additional height by providing for front and side setbacks at the upper level to minimise the perceived visual bulk and additional height, as viewed from within the Victoria Street streetscape and surrounding heritage conservation area.

Does the written request adequately address those issues at clause 4.6(3)(b)?

38. The statement provides environmental planning grounds specific to the circumstances to justify the extent of non-compliance with the floor space ratio development standard.

39. The aspect of the development that does not meet the standard is the rooftop addition. However, this addition is kept significantly lower than the existing building's height to reduce its visual impact on neighbouring properties and the streetscape along Victoria Street

40. The proposal aligns with land use efficiency by utilising existing infrastructure for community housing needs. It maintains the surrounding area's bulk and scale while adhering to architectural consistency, promoting orderly land use. Additionally, the development enhances residential amenity without significantly altering the streetscape, further supporting orderly land use. Furthermore, it promotes good design, enhancing both residential amenity and the immediate area. The inclusion of low-profile roof features and setbacks to Victoria Street illustrates good design, improving the built environment's amenity and preserving neighbouring properties' views and solar access.

41. The applicant has therefore demonstrated that there are sufficient environmental planning grounds to support the extent of variation proposed.

Is the development in the public interest?

42. The objectives of the height of building development standard relevant to the proposal include:

(a) to ensure the height of development is appropriate to the condition of the site and its context,

(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,

(c) to promote the sharing of views outside Central Sydney,

43. The proposal is consistent with the relevant objectives of the height of building development standard, as follows:

(a) The proposed addition does not increase the height of the subject building, the proposed additions is set 1.47 metres below the top of the building.

(b) The overall building height respects the surrounding character and the design seeks to minimise the perceived height of the addition by providing for a setback from the front building edge to minimise the visual bulk and additional height, as viewed from within the Victoria Street streetscape.

(c) The proposal will not lead to any significant loss of views for neighbouring properties as it does not involve alterations above the existing overall building height.

44. Objectives of the MU1 Mixed Use zone:

(a) To provide a mixture of compatible land uses.

(b) 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.

(c) To ensure uses support the viability of centres.

45. The proposed development is consistent with the relevant objectives of the MU1 Mixed Use zone as follows:

(a) The proposal does not change the existing land uses, does not impact on the ground floor commercial tenancies and does not prevent a mix of other compatible land uses from being provided in the locality.

(b) The site is in a highly accessible location with good access to public transport options along Victoria Road, including buses and rail. The proposal will not diminish public transport patronage, walking or cycling in the area.

(c) The proposal will improve the amenity of the existing residential use. The residential use of the site will continue to support the viability of the mixed-use zone.

Conclusion

46. For the reasons provided above the requested variation to the height of building development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of height of buildings and the MU1 Mixed Use zone.

Floorspace Ratio

47. The site is subject to a maximum floor space ratio control of 2:1 or 546 square metres. The existing building has a floor space ratio of 3.18:1 or 869 square metres. The proposed development creates an additional 22 square metres of gross floor area and has a floor space ratio of 3.18:1 or 891 square metres.

48. 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;

    (c) The proposed development will be consistent with the objectives of the zone; and

    (d) The proposed development will be consistent with the objectives of the standard.

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

49. 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 applicant's statement refers to the five tests established in Wehbe v Pittwater Council [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The report relies on Test 1, which is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard. The applicant's justification against the objectives of the floor space ratio development standard is provided in (d) below.

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

        (i) The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

        - The proposed alterations and additions to the dwelling introduce modulation and architectural relief to the building’s facade, without seeing any substantial increase to the building’s bulk, which promotes good design and improves the amenity of the built environment (1.3(g)).

        - The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly and economic use of the land (cl 1.3(c)).

(ii) The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants whilst minimising the calculable gross floor area and manages the bulk and scale and maintains views over and past the building from the public and private domain.

(iii) The minor additional floor area at the roof level of the building will provide for a more flexible floor area arrangement to meet the work from home requirements of a modern work environment, which presents the opportunity for the owners to enjoy the existing development and support future family residential accommodation.

(iv) These are not simply benefits of the development as a whole but are benefits emanating from the breach of the floor space ratio control.

(v) It is noted that in Initial Action, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome.

(vi) As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

(c) The proposed development will be consistent with the objectives of the zone. Each of the objectives of the MU1 Mixed Use and the reasons why the proposed development is consistent with each objective is set out below:

(i) ***To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.***

The proposal retains the existing retail uses at the ground level, continuing to provide a diversity of land uses that generate employment opportunities.

(ii) ***To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.***

The proposed works located at level 6 will not have any adverse impact on the existing street frontage with the works being largely imperceptible from the Victoria Street streetscape. The proposal will continue to provide for a diverse and active street frontage, providing for high-quality pedestrian amenity, while continuing to provide for a vibrant, diverse and functional street.

(iii) ***To minimise conflict between land uses within this zone and land uses within adjoining zones.***

The site and development are well-removed from nearby zones with a consistency of land uses in the surrounding area. The proposed works and resulting building height encroachment will not generate unwanted conflict between land uses within the zone and other land uses within adjoining zones.

(iv) ***To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.***

The proposed development will not alter the existing retail, business and other non-residential land uses on the ground floor of surrounding buildings with the existing retail uses on the subject site being unaffected.

(v) ***To ensure land uses support the viability of nearby centres.***

The existing land uses will not be altered and will continue to support viability of Potts Point and surrounding areas.

(vi) ***To integrate suitable business, office, residential, retail and other land uses in accessible locations that maximise public transport patronage and encourage walking and cycling.***

The proposal will continue to provide for a suitable use of land uses, namely residential and retail uses within an accessible location located nearby to public transport. The proposal will encourage public transport patronage and encourage walking and cycling.

(d) The proposed development will be consistent with the objectives of the standard:

Each objective of the floor space ratio standard and reasoning why compliance is unreasonable or unnecessary is set out below:

(i) ***To provide sufficient floor space to meet anticipated development needs for the foreseeable future.***

The proposal seeks to provide for a modest increase in the gross floor area through the provision of a living and dining area at the roof level, which does not alter the overall existing height of building and is not prominently visible from any surrounding public spaces.

The minor increase in floor area for the subject dwelling will enhance the residential opportunity for the dwelling and meet anticipated needs of the occupants through additional flexible floor space for a range of uses, which is important in the modern work/life balance requiring work from home opportunities.

(ii) ***To regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic.***

The proposed modest changes to the dwelling to increase the floor area will not result in any substantial change in the bulk, scale and density of the development and will not result in additional vehicle or pedestrian traffic generation.

(iii) ***To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.***

The proposed additional floor area will not place further demand on public infrastructure nor result in additional traffic generation in the locality.

(iv) ***To ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.***

The proposed additional floor area has been located at the roof level and is not prominently visible from the surrounding public places in Victoria Street.

The works will not have any direct or adverse impact on the solar access amenity or outlook for the neighbouring properties.

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

50. 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.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

51. The applicant has referred to the five tests established by Preston CJ in Wehbe v Pittwater to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. The applicant's statement has correctly considered Test 1 and has demonstrated that the development meets the objectives of clause 4.4, notwithstanding non-compliance with the numerical standard.

52. The applicant has identified that the increase to the gross floor area is modest (22 square metres), will not result in an intensification of the use of the apartment and will improve the overall amenity of the existing apartment.

53. Granted the increase to the gross floor area is modest, the applicant has adequately demonstrated that the additional floor area will not result in an increase in vehicular or pedestrian traffic and will not place any additional demands on infrastructure.

54. The overall built form will generally remain the same, ensuring that the character of the building and locality is maintained. The design and location of the addition will also ensure that there are no adverse impacts on the amenity of the locality, including in terms of overshadowing or view loss.

Does the written request adequately address those issues at clause 4.6(3)(b)?

55. The statement provides environmental planning grounds specific to the circumstances to justify the extent of non-compliance with the floor space ratio development standard.

56. The addition is integrated with the architecture of the building and will improve the functionality and amenity of the apartment, while causing no adverse overshadowing, visual or other environmental impacts.

57. The written request asserts the proposal provides sufficient floor area for future occupants whilst minimising the calculable gross floor area and manages the bulk and scale and maintains views over and past the building from the public and private domain.

58. The applicant has therefore demonstrated that there are sufficient environmental planning grounds to support the extent of variation proposed.

Is the development in the public interest?

59. The objectives of the floor space ratio development standard relevant to the proposal include:

    (a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,

    (b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,

    (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,

    (d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

60. The proposal is consistent with the relevant objectives of the floor space ratio development standard as follows:

    (a) The proposed alterations and additions to the building will result in only minor changes to the existing building envelope and will therefore continue to be compatible with the built form and density of surrounding developments.

    (b) The proposed changes to the existing unit will not result in any substantial change in the bulk, scale and density of the development and will not result in additional vehicle or pedestrian traffic generation.

    (c) The development proposed alterations and additions to the building fit comfortably within the existing streetscape in terms of scale and function. The proposed additions will positively complement the existing architectural character of the building and the surrounding locality.

    (d) The proposed variation to the floor space ratio standard will not result in any adverse environmental planning impacts, including overshadowing, overlooking or view loss, and will not negatively impact on the amenity of the locality.

61. Objectives of the B4 Mixed Use zone:

    (a) To provide a mixture of compatible land uses.

    (b) 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.

    (c) To ensure uses support the viability of centres.

62. The proposed development is consistent with the relevant objectives of the MU1 Mixed Use zone as follows:

    (a) The proposal does not change the existing land uses, does not impact on the ground floor commercial tenancies and does not prevent a mix of other compatible land uses from being provided in the locality.

    (b) The site is in a highly accessible location with good access to public transport options along Victoria Road, including buses and rail. The proposal will not diminish public transport patronage, walking or cycling in the area.

    (c) The proposal will improve the amenity of the existing residential use. The residential use of the site will continue to support the viability of the mixed-use zone.

Conclusion

63. For the reasons provided above the requested variation to the floor space ratio development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of floor space ratio development standard and the MU1 Mixed Use zone.

Height in storeys

64. The site is permitted a maximum building height of six storeys.

65. The existing building is seven storeys in height with a street frontage height of six storeys. The proposed development does not seek to add any additional storeys.

66. The existing seventh storey is not readily perceptible from the public domain. The proposal extends the front façade of the seventh storey by 5.6 metres to the west toward Victoria Street.

67. The objective of 4.2.1 Building Height is to ensure the height in storeys and street frontage height in storeys reinforces the existing or future neighbourhood character. Drawing on Principle (b) of the locality statement for Kings Cross (2.4.7) 'Development is to respond to and complement subdivision, heritage items and contributory buildings within heritage conservation areas, including streetscapes and lanes'.

68. As noted within 5.10 heritage conservation of the LEP compliance table of this report Councils Heritage Specialist advised the works will not have a detrimental impact on the heritage significance of the heritage conservation area responding to the principle and future neighbourhood character accordingly.

69. The proposed extension of the existing seventh storey results in a front setback of 1.63 metres (further discussion below under heading 'Building Setbacks'). In reviewing the updated site lines provided by the applicant the extension, whilst visible, will not be readily apparent from the public domain. The addition is not highly visible from the street and the primary 6 storey elevation to Victoria Street will remain. The proposal results in a modest addition that responds to and complements the streetscape in accordance with Principle (b), and by extension, the Building Height objective despite the existing numerical non-compliance in height in storeys.

Building Setbacks

70. The proposal includes construction of a new addition to the upper level of the subject apartment, outside of the existing building envelope, located on the existing rooftop terrace area. The existing seventh storey has a front setback of approximately 6.9 metres. The proposed setbacks of the addition at the roof terrace level retains a 2-metre setback from the northern side boundary, a 1.96 metre setback from the southern side boundary and proposes a 1.63 metre setback from the front Victoria Street (west) boundary.

71. As detailed under the 'Amendments' section of the report the applicant was requested to provide a 3-metre front setback in accordance with Section 4.2.2.2 (2) of Sydney DCP 2012. Section 4.2.2.2(1) of the Sydney DCP 2012 requires this setback to be provided where adjacent buildings include an upper level setback. The DCP 'Building setback and alignment map' does not provide a specific setback for the subject site.

72. The applicant did not amend the scheme to provide an increased setback and responded contending that the provision of a 3-metre setback would make the proposed addition unviable as the space would be too small for their intended purpose as living and dining rooms.

73. Council requested further site lines from the public domain to facilitate an assessment of the impact the proposal will have on the public domain, namely when viewed from the west side of Victoria Road.

74. Following the applicant's response a further assessment of the proposed setbacks was undertaken. The assessment found the following:

    (a) The surrounding Victoria Street streetscape is categorised by mostly Victorian and Federation buildings with some modern infill buildings. The adjoining buildings are much lower in height and the setbacks provided are varied with no consistent setback at the street or upper levels.

    (b) The addition is designed with setbacks to align with the current side walls, as well as a setback from the street. The height of the addition is kept lower than the existing roof structures, including a redesigned stair enclosure. The height and setbacks ensure minimal visibility from the street, preserving the buildings primary 6 storey elevation facing Victoria Street.

    (c) The proposal was reviewed by Councils Heritage Specialist who advised the works will not have detrimental impact on the heritage significance of the heritage conservation area.

    (d) The proposal maintains view corridors over terraces along Victoria Street towards the city skyline by maintaining the existing side setbacks currently provided at the seventh storey.

75. Overall, the proposal entails a modest addition that is not readily perceptible from the public domain and largely maintains the buildings height, bulk, and scale when viewed from the street. The proposal aligns with the objectives of the 4.2.2 Building setback provision and is acceptable.

Level 5 Windows

76. The proposal includes the reconfiguration and replacement of the fenestration to the western facade at level 5 to accommodate the proposed internal reconfiguration at level 5.

77. Concern was raised regarding the reconfiguration of the windows, as while this glazing may not be highly visible from the public domain, it may serve as a precedent for other floors, which has the potential to compromise the architectural expression of the façade.

78. As detailed under the 'Amendments' section the applicant was requested to amend the level 5 fenestration so:

    - The replacement of windows to the western elevation at level 5 be 'like for like' with the same size, proportion and makeup of windows.

    - Window frames are to be the same material, colour and frame section. The glazing colour is to match existing. The operability must match existing and be depicted on the drawings.

    - The proposed internal walls to bed 1 and bed 2 are not to meet the windows as proposed, as it results in an undesirable outcome and uncharacteristic to the building.

79. The applicant did not respond or make any submissions with regard to this aspect of Council's request. A condition of consent is recommended requiring design modifications reflective of Council's original request for amendments.

Materials and Samples

80. As detailed within the 'Amendments' section of the report the specific materials, colours and finishes are required to be provided on a materials, finishes and colours schedule, keyed to each elevation. It was also requested the dark roof be removed as it unnecessarily contributes to the urban heat island effect - a lighter colour is preferred.

81. The applicant did not respond or make any submissions with regard to this aspect of Councils request.

82. A condition of consent has been recommended requiring a detailed material, colours and finishes schedule (including visible rainwater goods and services) keyed to each building elevation must be submitted to and approved by Council’s Area Planning Manager prior to a Construction Certificate being issued.

Heat Pump

The proposal includes a heat pump to the southern elevation of the seventh storey. It is located on the most sensitive side of the building and should be relocated to the northern side, away from the adjacent apartment buildings. A condition of consent is recommended requiring its relocation.

Relevant Legislation

83. Environmental Planning and Assessment Act 1979.

Conclusion

84. The application seeks approval for alterations and additions to an existing residential apartment, including internal alterations, new and replacement windows, construction of a new addition to the upper level of the apartment, outside of the existing building envelope, to accommodate a new dining/living room addition.

85. The applicant has submitted a written request pursuant to clause 4.6 of the Sydney LEP 2012 which relates to the height of buildings and floor space ratio development standards (clause 4.3 and 4.4 of the Sydney LEP 2012). The request to vary the development standard is supported.

86. Additional information was submitted during the assessment of the application to address a number of matters identified by Council staff.

87. The proposal has satisfactorily demonstrated that the proposal will not have an adverse impact in terms of noise disturbance, overshadowing or view loss.

88. The alterations and additions result in a sympathetic design solution for the 7-storey building and will not have an adverse impact on the amenity of the neighbouring properties. Subject to conditions the proposal will exhibit design excellence in accordance with the provisions of Clause 6.21C of the Sydney LEP 2012.

89. The development is in the public interest and recommended for approval.

ANDREW THOMAS

Executive Manager Planning and Development

James Cooper, Specialist Planner

Attachment A

Recommended Conditions of Consent

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

(1) APPROVED DEVELOPMENT

(a) Development must be in accordance with Development Application No. D/2023/967 dated 26 October 2023 and the following drawings prepared by Anton Kouzmin Architecture:

Drawing Number	Drawing Name	Date
AR-A-02 (issue 3)	Existing and proposed Site Plan	20.06.23
AR-B-01 (issue 3)	Proposed level 5 demolition plan	20.06.23
AR-B-02 (issue 3)	Proposed level 6 demolition plan	20.06.23
AR-B-03 (issue 3)	Proposed roof demolition plan	20.06.23
AR-B-04 (issue 3)	Proposed L5 floor plan	20.06.23
AR-B-05 (issue 3)	Proposed L6 floor plan	20.06.23
AR-B-06 (issue 3)	Proposed roof plan	20.06.23
AR-C-02 (issue 3)	Proposed west elevation	20.06.23
AR-C-03 (issue 3)	Proposed north elevation	20.06.23
AR-C-04 (issue 3)	Proposed south elevation	20.06.23
AR-D-01 (issue 3)	Cross section 01	20.06.23
AR-D-02 (issue 3)	Cross section 02	20.06.23
AR-D-03 (issue 3)	Cross section 03	20.06.23

and as amended by the conditions of this consent.

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

Reason

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

(2) DESIGN MODIFICATIONS

The design of the building must be modified as follows:

(a) The replacement of windows to the western elevation at level 5 is to be 'like for like' with the same size, proportion and makeup of the existing. Window frames are to be the same material, colour and frame section. The glazing colour is to match existing. The operability must match the existing windows and be depicted on the drawings.

(b) The proposed internal walls to bed 1 and bed 2 of level 5 are not to meet the windows as proposed, the internal walls are to be amended to align with the existing location of the window mullions.

(c) The heat pump located at the southern elevation of the seventh storey is to be relocated to the northern elevation.

The modifications are to be submitted to and approved by Council's Area Planning Manager prior to the issue of a Construction Certificate.

Reason

To require amendments to the approved plans and supporting documentation following assessment of the development.

(3) MATERIALS AND SAMPLES SCHEDULE

A detailed materials, colours and finishes schedule (including visible rainwater goods and services) keyed to each building elevation must be submitted to and approved by Council's Area Planning Manager prior to a Construction Certificate being issued.

The materials and samples schedule/board must not include generic material or colour descriptions, or use terminology such as 'or similar'. The dark roof is to be replaced with a lighter colour material with a reduced solar absorbtance within the light or medium BASIX classification (Light (L <0.475), Medium (0.475 ≤ M ≤0.7)).

Reason

To require the submission of a materials and samples board following assessment of the development.

DEMOLITION WORK

DURING DEMOLITION WORK

(4) COVERING OF LOADS

All vehicles involved in the excavation and/or demolition 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.

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

(5) BASIX CERTIFICATE – DETAILS TO BE LODGED WITH A CC

A copy of the required completed BASIX certificate accepted as part of this Development Consent with respect to the proposed residential building works, must be lodged with an application for a construction certificate and the items nominated as part of the subject BASIX certificate must be specified on the plans submitted with the construction certificate application. – See Note.

IMPORTANT NOTE:

Any requirement detailed in the accompanying BASIX Certificate, MUST be included as a specific notation or inclusion on any future Construction Certificate plans and specification in accordance with Part 3 of Schedule 1 of the EP&A Regulation, 2021.

Reason

To ensure BASIX commitments are fulfilled in accordance with the BASIX certificate (prescribed condition under clause 75 EP&A Regulation, 2021).

(6) EXTERNAL WALLS AND CLADDING FLAMMABILITY

The external walls of the building including attachments must comply with the relevant requirements of the Building Code of Australia (BCA). Prior to the issue of a Construction Certificate and Occupation Certificate the Accredited Certifier and the Principal Certifier must:

(a) Be satisfied that suitable evidence is provided to demonstrate that the products and systems proposed for use or used in the construction of external walls including finishes and claddings such as synthetic or aluminium composite panels comply with the relevant requirements of the BCA; and

(b) Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the BCA as proposed and as built.

Reason

To ensure the external walls and cladding comply with relevant requirements.

(7) STRUCTURAL CERTIFICATION FOR EXISTING BUILDING – ALTERATIONS AND ADDITIONS

A qualified practising registered structural engineer must provide structural certification to Council (where Council is the Accredited Certifier) verifying that the existing structure can adequately support the proposed new loads and the structural design complies with the Structural Provisions of Part B1 (Vol 1) and Part 2.1 (Vol 2) of the *Building Code of Australia* prior to a Construction Certificate being issued. The proposed additional loads and/or alterations must not cause a decrease in the existing structural performance of the building including its performance under earthquake actions (AS1170.4).

Reason

To ensure the existing structure can support the new loads.

(8) STORMWATER AND DRAINAGE - MINOR DEVELOPMENT

The drainage system is to be constructed in accordance with the City's standard requirements as detailed in the City of Sydney's Stormwater Drainage Manual. The development is to be designed so that the flow of pollutants from the site due to stormwater is reduced.

The requirements of Sydney Water regarding the on-site detention (OSD) of stormwater must be ascertained and complied with. Evidence of the on-site detention (OSD) approval must be submitted to City's Public Domain Unit prior to issue of any Construction Certificate other than demolition.

Reason

To ensure the drainage system is constructed in accordance with Council's requirements.

BEFORE BUILDING WORK COMMENCES

(9) APPLICATION FOR HOARDINGS AND SCAFFOLDING INSTALLED ON OR ABOVE A PUBLIC ROAD AND OPERATING HOISTING DEVICES INCLUDING BUILDING MAINTENANCE UNITS OVER A PUBLIC ROAD

(a) Where a hoarding and/or scaffolding (temporary structures) are proposed to be installed on or above a road reservation (footway and/or roadway), a separate application under Section 68 of the *Local Government Act 1993* and Sections 138/139 of the *Roads Act 1993* must be submitted to and approved by Council for such structures.

(b) Where an approval (Permit) is granted allowing the placement of temporary structures on or above a public road the structures must comply fully with Council's *Hoarding and Scaffolding Policy; Guidelines for Hoardings and Scaffolding;* and the conditions of approval (Permit) granted including:

(i) maintaining a current and valid approval for the full duration that the temporary structure/s is in place;

(ii) maintaining temporary structure/s in a structurally sound and stable condition for the full duration of installation (Clause 2.11.1);

(iii) bill posters and graffiti being removed within 24 hours of their placement (Clause 2.11.2);

(iv) maintaining temporary structures and the public place adjoining the work site in a clean and tidy condition including repainting and/or repair of graphics (Clauses 2.11.1, 2.11.4, 2.14.1 and 3.9.3);

(v) maintaining a watertight deck (Type B hoardings) to prevent liquids including rainwater, falling onto the footway/roadway surfaces (Clauses 3.9.1 and 3.9.4);

(vi) approved site sheds on the decks of a Type B hoarding being fully screened from the public place (Clause 3.9.5);

(vii) material and equipment not being placed or stored on the deck of Type B hoardings, unless specifically approved by Council (Clause 3.9.4);

(viii) providing and maintaining operational artificial lighting systems under Type B hoardings including at high-bay truck entry points (Clause 3.9.9); and

(ix) ensuring all required signage, artwork or historic images are provided and fully maintained to the City's requirements (Clauses 3.4, 3.9.3, 3.9.6, 3.9.8, 3.10.1 and 4.2).

If it is proposed to operate a hoisting device including a building maintenance unit above a public road which swings, hoists material/equipment and/or slews/wind vanes any part of the device over the public road, a separate application under Section 68 of the *Local Government Act 1993* and Sections 138/139 of the *Roads Act 1993* must be made to Council to obtain approval.

Note: 'Building maintenance unit' means a power-operated suspended platform and associated equipment on a building specifically designed to provide permanent access to the faces of the building for maintenance (*Work Health and Safety Regulation 2017*).

Reason

To ensure the necessary approval is obtained for temporary structures over a public road.

(10) 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.

(11) 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.

(12) USE OF MOBILE CRANES

The following requirements apply:

(a) Mobile cranes operating from the road must not be used as a method of demolishing or constructing a building.

(b) 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, permits must be obtained from Council for the use of a mobile crane. The permits must be obtained 48 hours beforehand for partial road closures which, in the opinion of Council will create minimal traffic disruptions and 4 weeks beforehand in the case of full road closures and partial road closures which, in the opinion of Council, will create significant traffic disruptions.

(c) 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 approved hours of construction 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.

Reason

To ensure mobile cranes are used appropriately.

DURING BUILDING WORK

(13) LOADING AND UNLOADING DURING CONSTRUCTION

The following requirements apply:

(a) All loading and unloading associated with construction activity must be accommodated on site, where possible.

(b) If, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.

(c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.

(d) Where hoisting activity over the public place is proposed to be undertaken including hoisting from a Works Zone, a separate application under Section 68 of the Local Government Act 1993 and Sections 138/139 of the Roads Act 1993 must be submitted to and approved by Council.

Reason

To protect the amenity of the public domain.

(14) 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.

(15) 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.

(16) MATERIALS FOR MAKING GOOD

New materials for making good and repairs, are to match the existing in terms of colours, finishes, sizes, profile and properties.

Reason

To ensure appropriate materials and finishes are used.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

(17) SURVEY CERTIFICATE AT COMPLETION

A Survey Certificate prepared by a Registered Surveyor must be submitted to the Principal Certifier at the completion of the building work certifying the location of the building in relation to the boundaries of the allotment.

Reason

To ensure the development does not encroach onto neighbouring properties.

(18) BASIX

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

Reason

To ensure BASIX commitments are fulfilled in accordance with the BASIX certificate (prescribed condition under clause 97A(2) EP&A Regulation).

(19) OCCUPATION CERTIFICATE TO BE SUBMITTED

An Occupation Certificate must be obtained from the Principal Certifier and a copy submitted to Council prior to commencement of occupation or use of the whole or any part of a new building, an altered portion of, or an extension to an existing building.

Reason

To ensure the site is authorised for occupation.

OCCUPATION AND ONGOING USE

(20) 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.

General advisory notes

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation and other legislation. Some of these additional obligations are set out in the *Conditions of development consent: advisory notes*. https://www.planning.nsw.gov.au/sites/default/files/2023-07/condition-of-consent-advisory-note.pdf The consent should be read together with the *Conditions of development consent advisory notes* to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

Building work or subdivision work must not be carried out until a construction certificate or subdivision works certificate, respectively, has been issued and a principal certifier has been appointed.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.

Dictionary

The following terms have the following meanings for the purpose of this determination (except where the context clearly indicates otherwise):

Approved plans and documents means the plans and documents endorsed by the consent authority, a copy of which is included in this notice of determination.

AS means Australian Standard published by Standards Australia International Limited and means the current standard which applies at the time the consent is issued.

Building work means any physical activity involved in the erection of a building.

Certifier means a council or a person that is registered to carry out certification work under the *Building and Development Certifiers Act 2018*.

Construction certificate means a certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the EP&A Regulation and *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

Council means the City of Sydney.

Court means the Land and Environment Court of NSW.

EPA means the NSW Environment Protection Authority.

EP&A Act means the *Environmental Planning and Assessment Act 1979.*

EP&A Regulation means the *Environmental Planning and Assessment Regulation 2021.*

Independent Planning Commission means Independent Planning Commission of New South Wales constituted by section 2.7 of the EP&A Act.

Local planning panel means the City of Sydney Local Planning Panel.

Occupation certificate means a certificate that authorises the occupation and use of a new building or a change of building use for an existing building in accordance with this consent.

Principal certifier means the certifier appointed as the principal certifier for building work or subdivision work under section 6.6(1) or 6.12(1) of the EP&A Act respectively.

Site work means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.

Stormwater drainage system means all works and facilities relating to:
the collection of stormwater,

the reuse of stormwater,

the detention of stormwater,

the controlled release of stormwater, and

connections to easements and public stormwater systems.

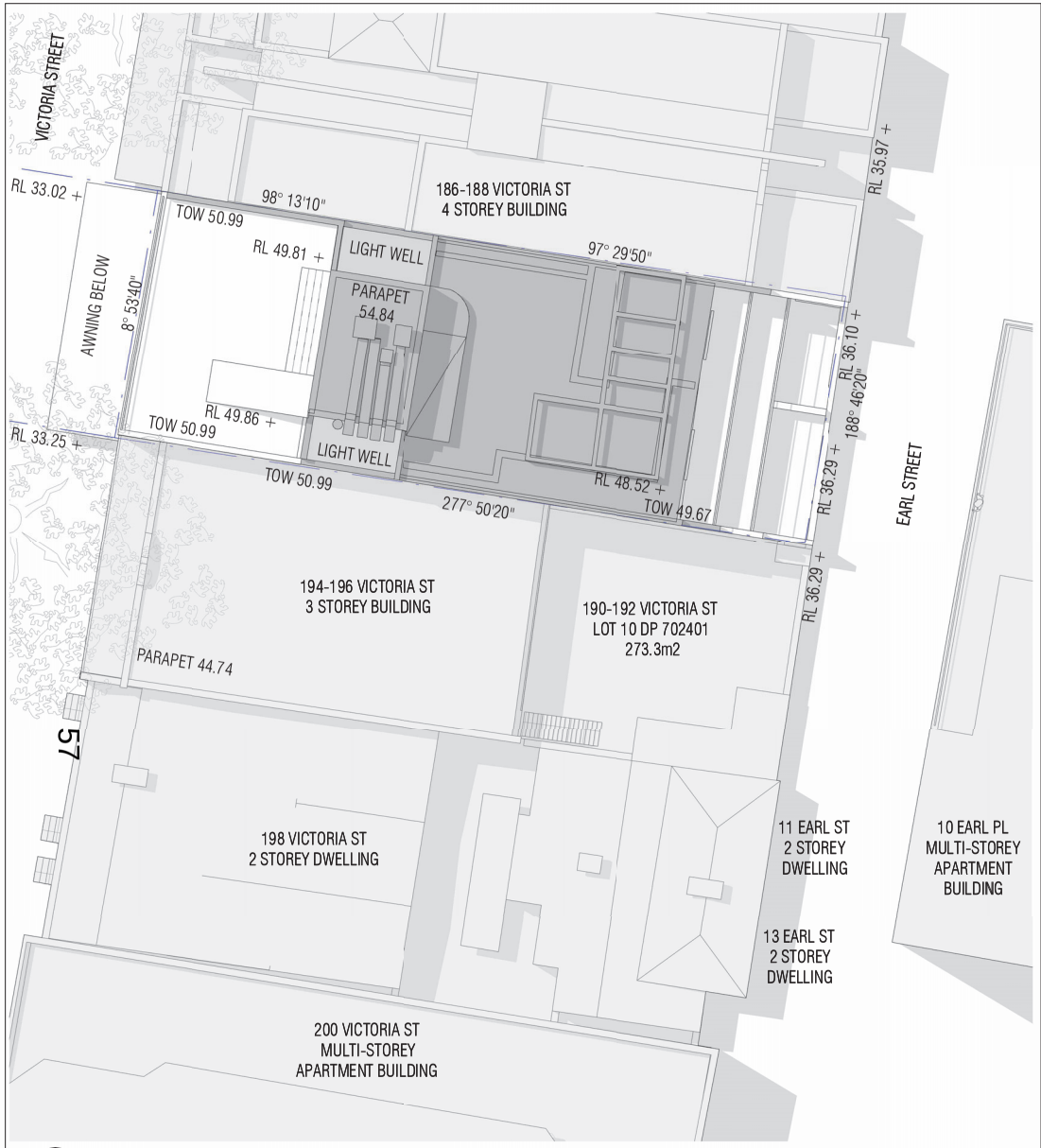
Strata certificate means a certificate in the approved form issued under Part 4 of the *Strata Schemes Development Act 2015* that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.

Subdivision certificate means a certificate that authorises the registration of a plan of subdivision under Part 23 of the *Conveyancing Act 1919*.

Subdivision works certificate means a certificate to the effect that subdivision work completed in accordance with specified plans and specifications will comply with the requirements of the EP&A Regulation.

Attachment B

Selected Drawings



1 EXISTING SITE PLAN

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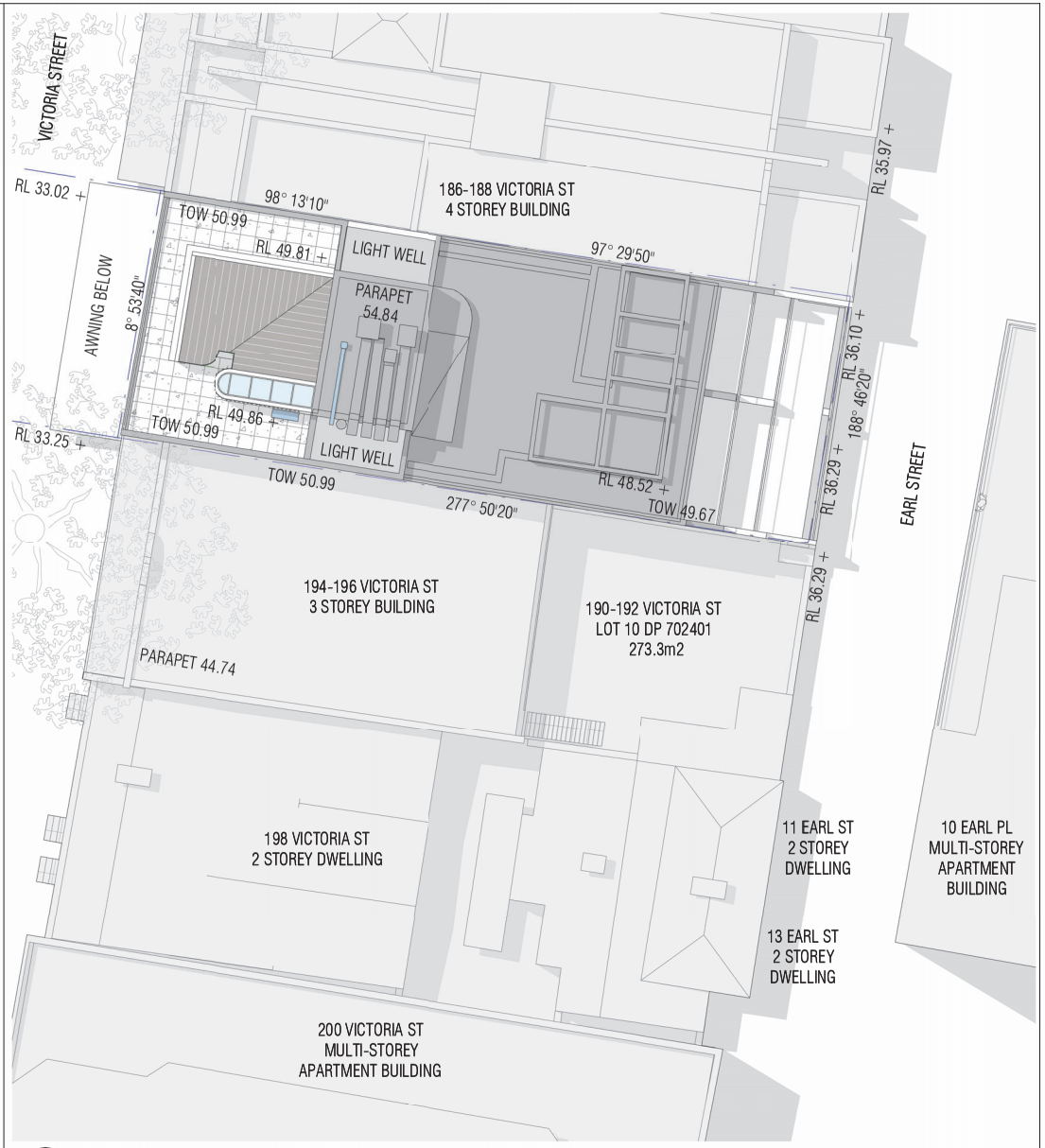

2 PROPOSED SITE PLAN

1 : 200

AntonKouzminArchitecture

Telephone + 61 410 614 099
anton@antonkouzmin.com
www.antonkouzmin.com

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ISSUE	DATE	FOR
2	26/05/23	FOR DA COORD
3	20/06/23	DA ISSUE

CLIENT
M & R SONI

CLIENT PROJECT NUMBER

CONSULTANT
HILL & BLUME SURVEYORS
TEL (02) 9332 4888

CONSULTANT
VMDC PLANNING
TEL (02) 9999 4922

CONSULTANT
JOHN OULTRAM HERITAGE
TEL (02) 9327 2748

CONSULTANT
EVOLVED ENGINEERING
TEL 0403 530 168

PROJECT MANAGER

PROJECT
15/192 VICTORIA ST, POTTS POINT

AKA PROJECT NUMBER
2204

TRUE NORTH
PROJECT NORTH

SCALE 1 : 200 @ A3
USE DIMENSIONS ONLY
0 4m 10m

STATUS
DEVELOPMENT APPLICATION

DRAWING
EXISTING & PROPOSED SITE PLAN

DRAWING NUMBER
AR-A-02

ISSUE
3

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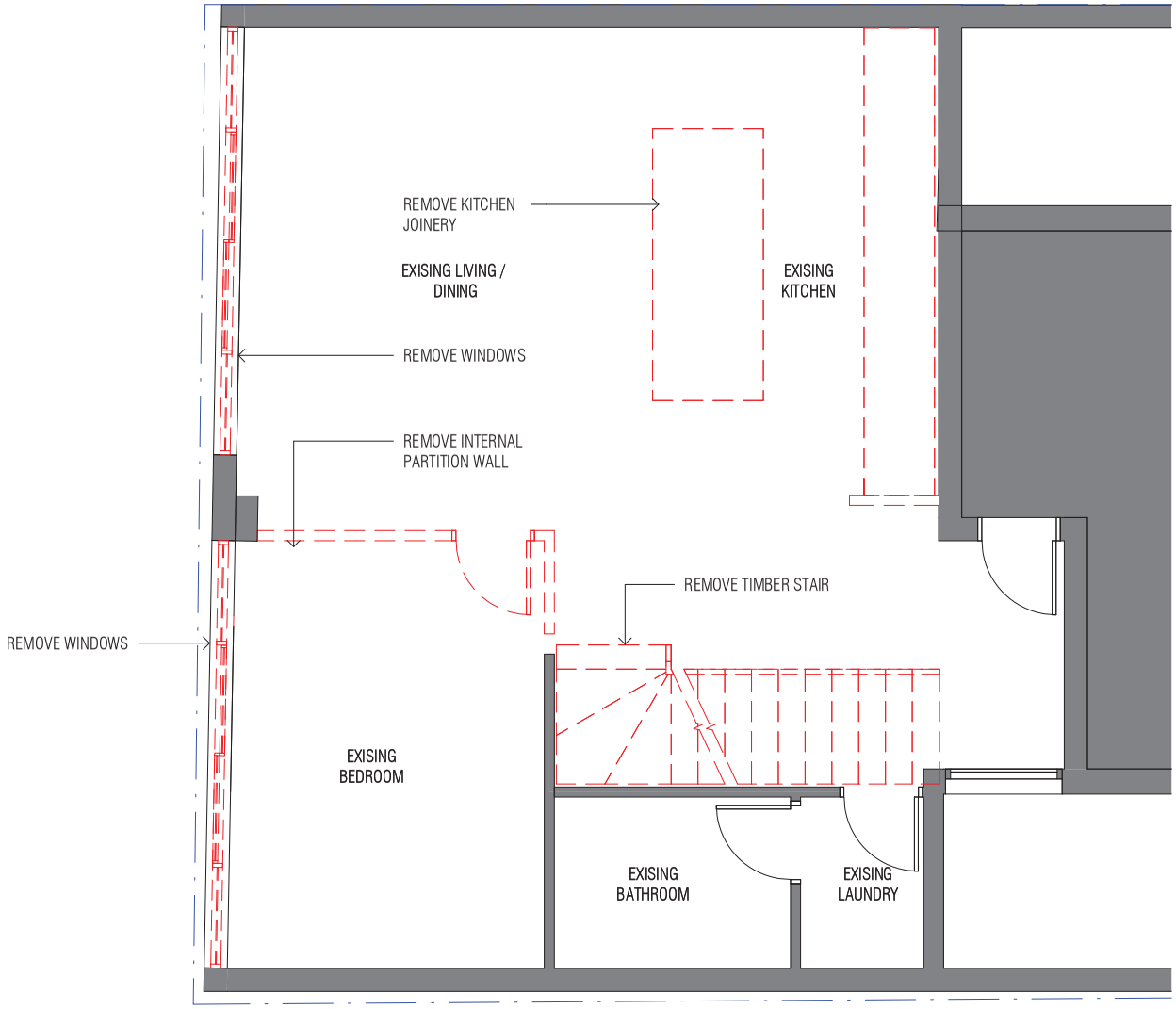

58

AntonKouzminArchitecture

Telephone + 61 410 614 099
anton@antonkouzmin.com
www.antonkouzmin.com

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ISSUE	DATE	FOR
1	22/11/22	FOR STRATA APPROVAL
2	26/05/23	FOR DA COORD
3	20/06/23	DA ISSUE

CLIENT
M & R SONI

CLIENT PROJECT NUMBER

CONSULTANT
HILL & BLUME SURVEYORS
TEL (02) 9332 4888

CONSULTANT
VMDC PLANNING
TEL (02) 9999 4922

CONSULTANT
JOHN OULTRAM HERITAGE
TEL (02) 9327 2748

CONSULTANT
EVOLVED ENGINEERING
TEL 0403 530 168

PROJECT MANAGER

PROJECT
15/192 VICTORIA ST, POTTS POINT

AKA PROJECT NUMBER
2204

TRUE NORTH
PROJECT NORTH

SCALE 1 : 50 @ A3
USE DIMENSIONS ONLY
0 1000 1500

STATUS
DEVELOPMENT APPLICATION

DRAWING
PROPOSED L5 DEMOLITION PLAN

DRAWING NUMBER
AR-B-01

ISSUE
3

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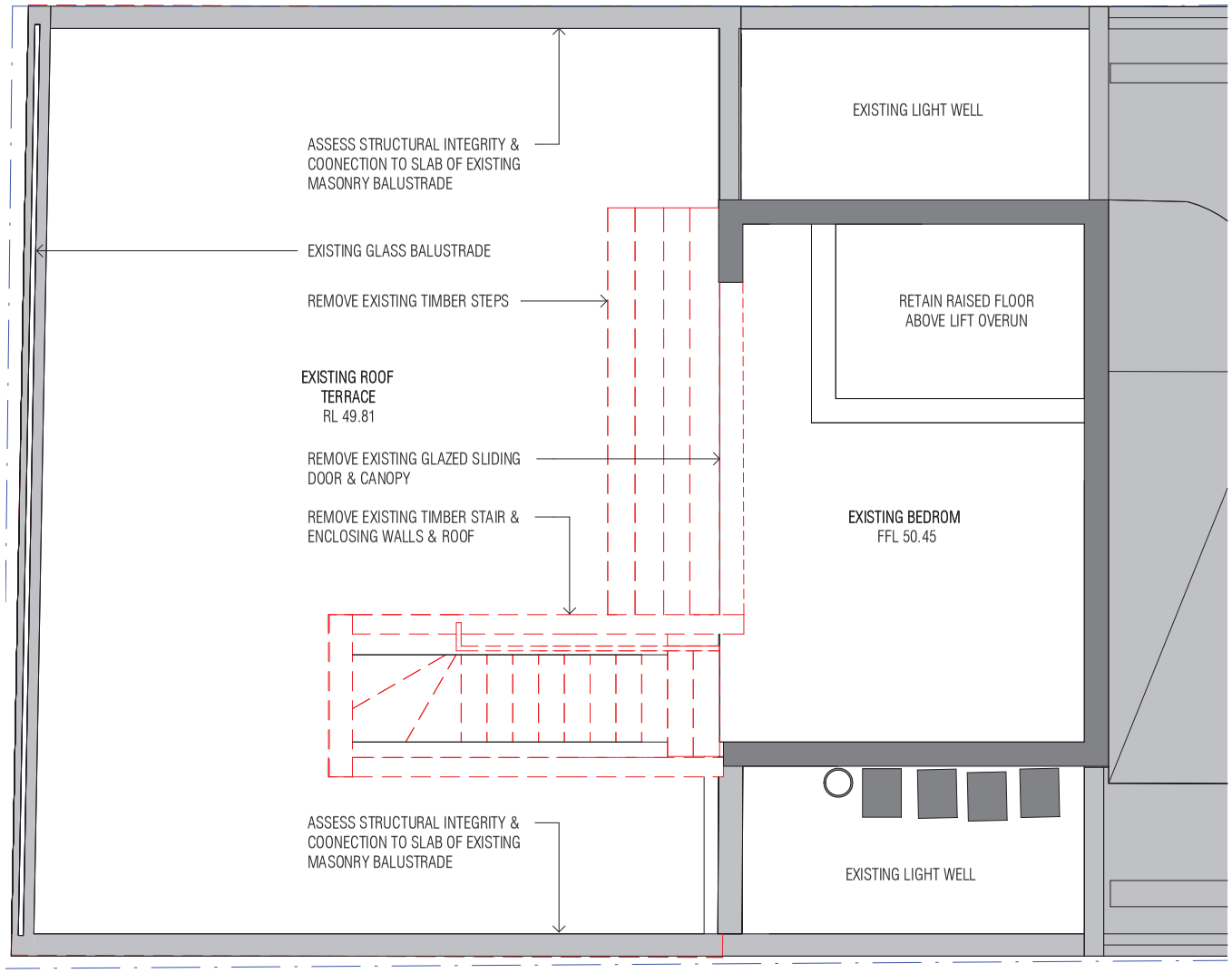

AntonKouzminArchitecture

Telephone + 61 410 614 099
anton@antonkouzmin.com
www.antonkouzmin.com

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ISSUE	DATE	FOR
1	22/11/22	FOR STRATA APPROVAL
2	26/05/23	FOR DA COORD
3	20/06/23	DA ISSUE

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HILL & BLUME SURVEYORS
TEL (02) 9332 4888

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CONSULTANT
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TEL 0403 530 168

PROJECT MANAGER

PROJECT
15/192 VICTORIA ST, POTTS POINT

AKA PROJECT NUMBER
2204

TRUE NORTH
PROJECT NORTH

SCALE
1 : 50 @ A3
USE DIMENSIONS ONLY

0 1000 1500

STATUS
DEVELOPMENT APPLICATION

DRAWING
PROPOSED L6 DEMOLITION PLAN

DRAWING NUMBER
AR-B-02

ISSUE
3

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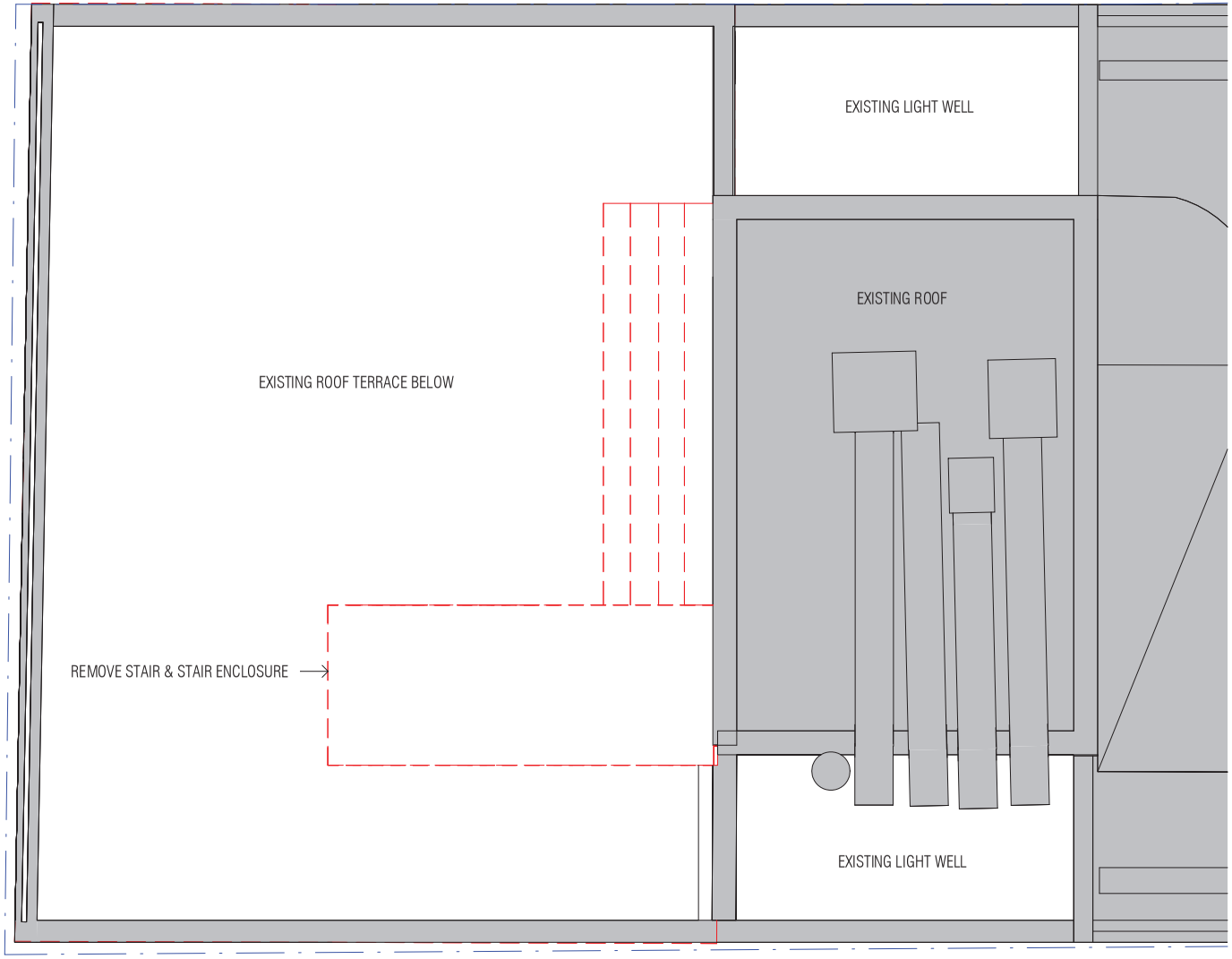

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PROJECT
15/192 VICTORIA ST, POTTS POINT

AKA PROJECT NUMBER
2204

TRUE NORTH
PROJECT NORTH

SCALE
1 : 50 @ A3

USE DIMENSIONS ONLY

0 1000 1500

STATUS
DEVELOPMENT APPLICATION

DRAWING

PROPOSED ROOF DEMOLITION PLAN

DRAWING NUMBER
AR-B-03

ISSUE
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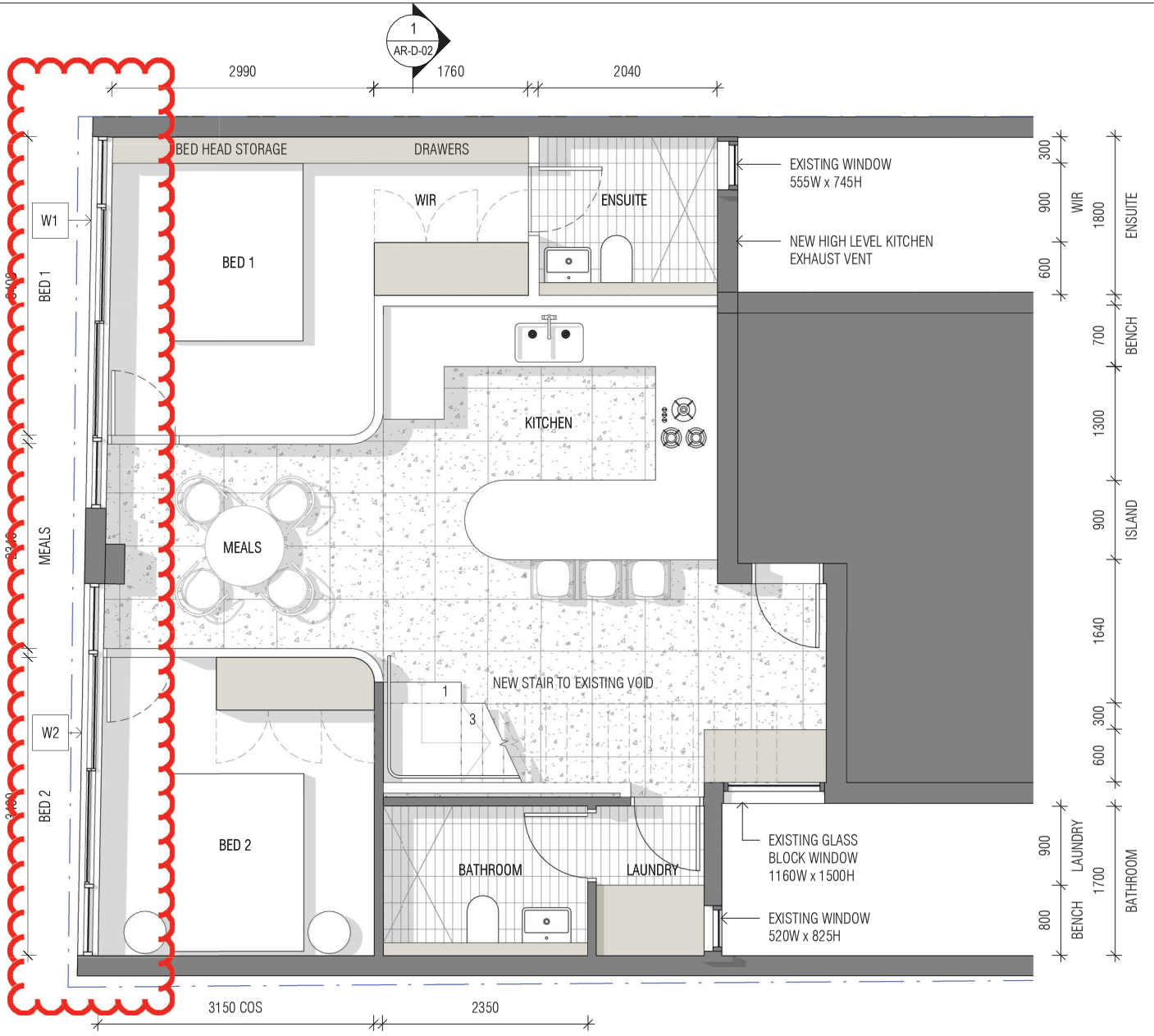

Refer Condition 2(a)&(b)

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TRUE NORTH
PROJECT NORTH

SCALE 1 : 50 @ A3
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STATUS
DEVELOPMENT APPLICATION

DRAWING
PROPOSED L5 FLOOR PLAN

DRAWING NUMBER
AR-B-04

ISSUE
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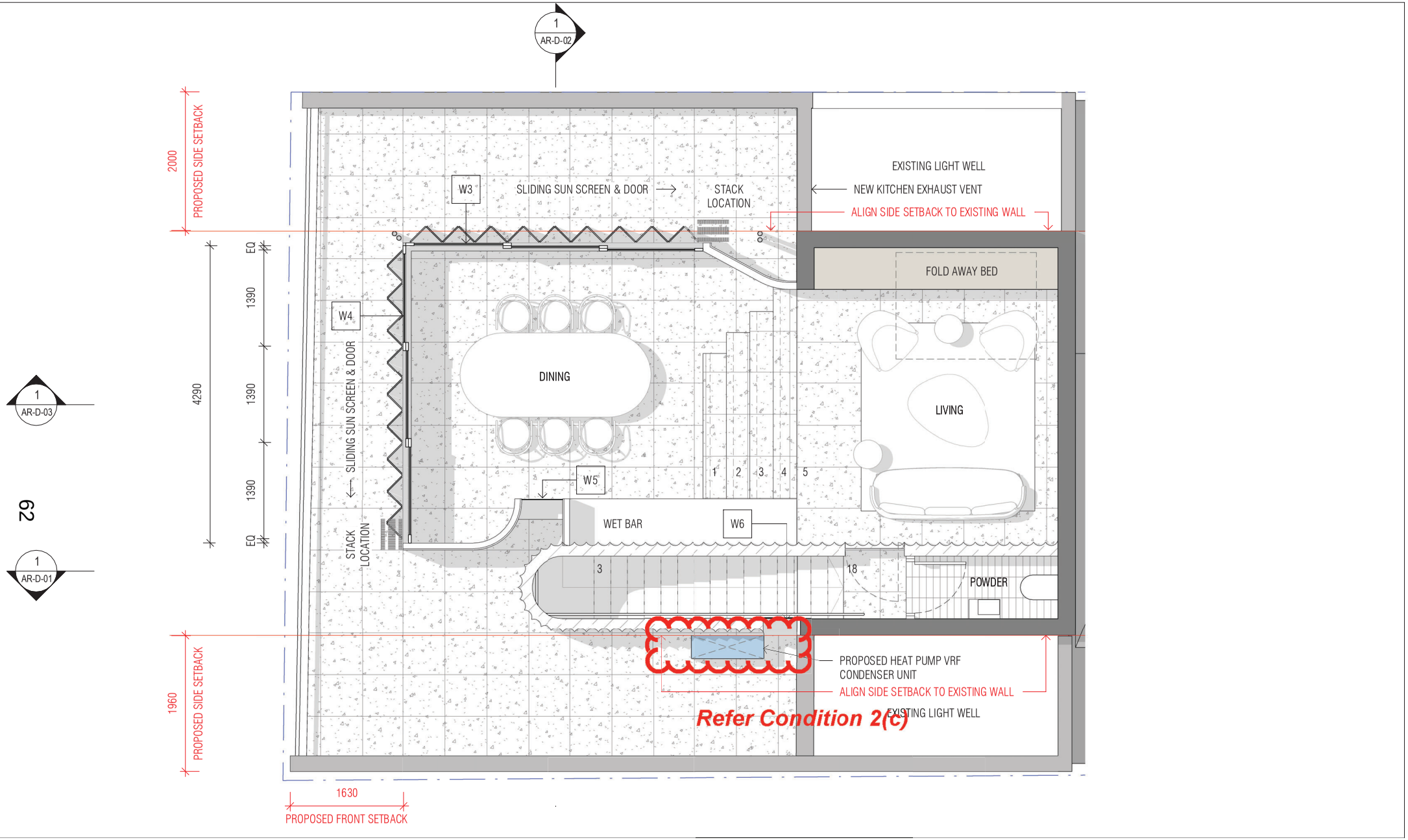

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STATUS
DEVELOPMENT APPLICATION

DRAWING
PROPOSED L6 FLOOR PLAN

DRAWING NUMBER
AR-B-05

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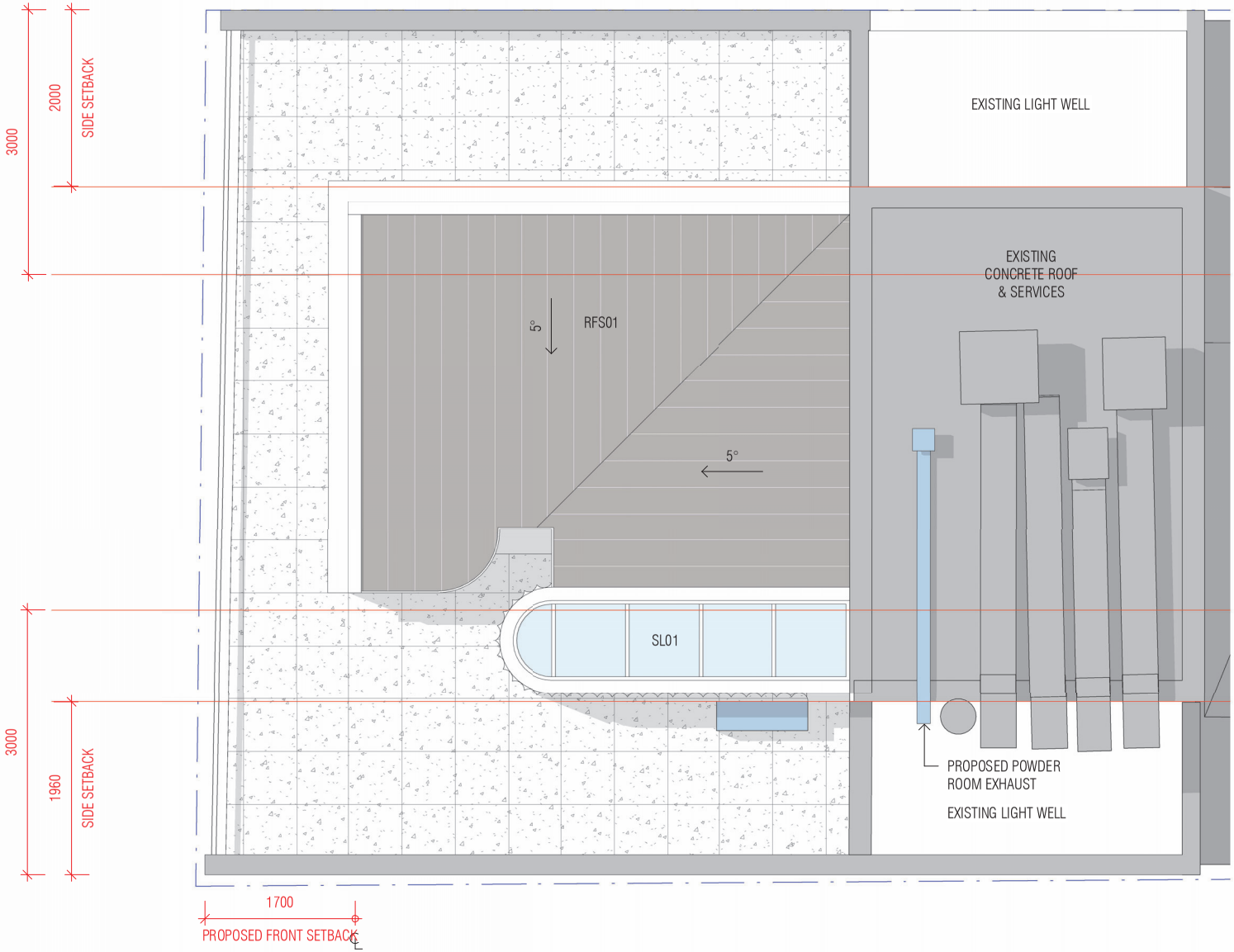

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CONSULTANT
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AKA PROJECT NUMBER
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TRUE NORTH
PROJECT NORTH

SCALE 1 : 50 @ A3
USE DIMENSIONS ONLY
0 1000 1500

STATUS
DEVELOPMENT APPLICATION

DRAWING
PROPOSED ROOF PLAN

DRAWING NUMBER
AR-B-06

ISSUE
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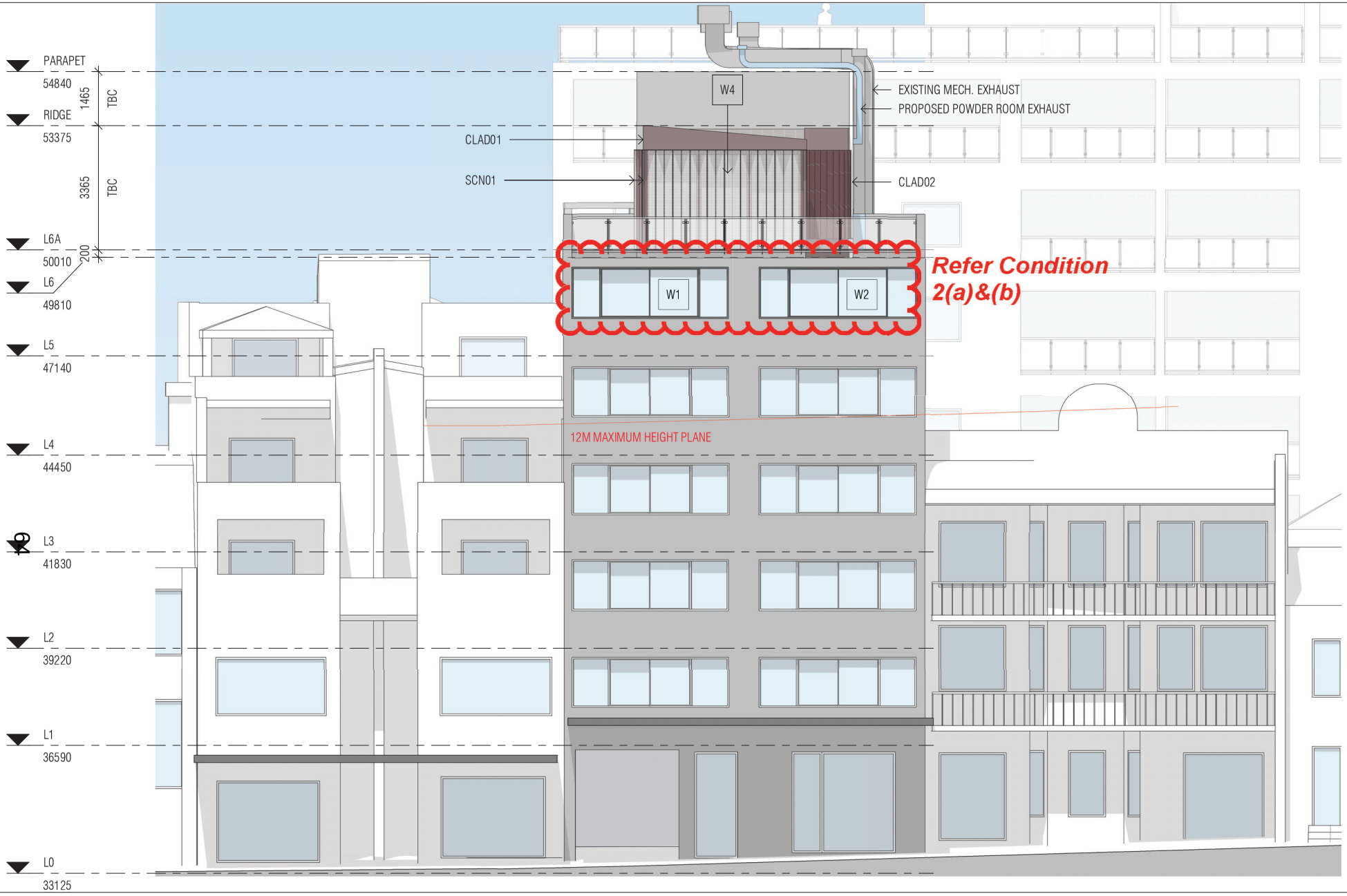

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VMDC PLANNING
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JOHN OULTRAM HERITAGE
TEL (02) 9327 2748

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2204

TRUE NORTH
PROJECT NORTH

SCALE 1 : 100 @ A3
USE DIMENSIONS ONLY
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STATUS
DEVELOPMENT APPLICATION

DRAWING
PROPOSED WEST ELEVATION

DRAWING NUMBER
AR-C-02

ISSUE
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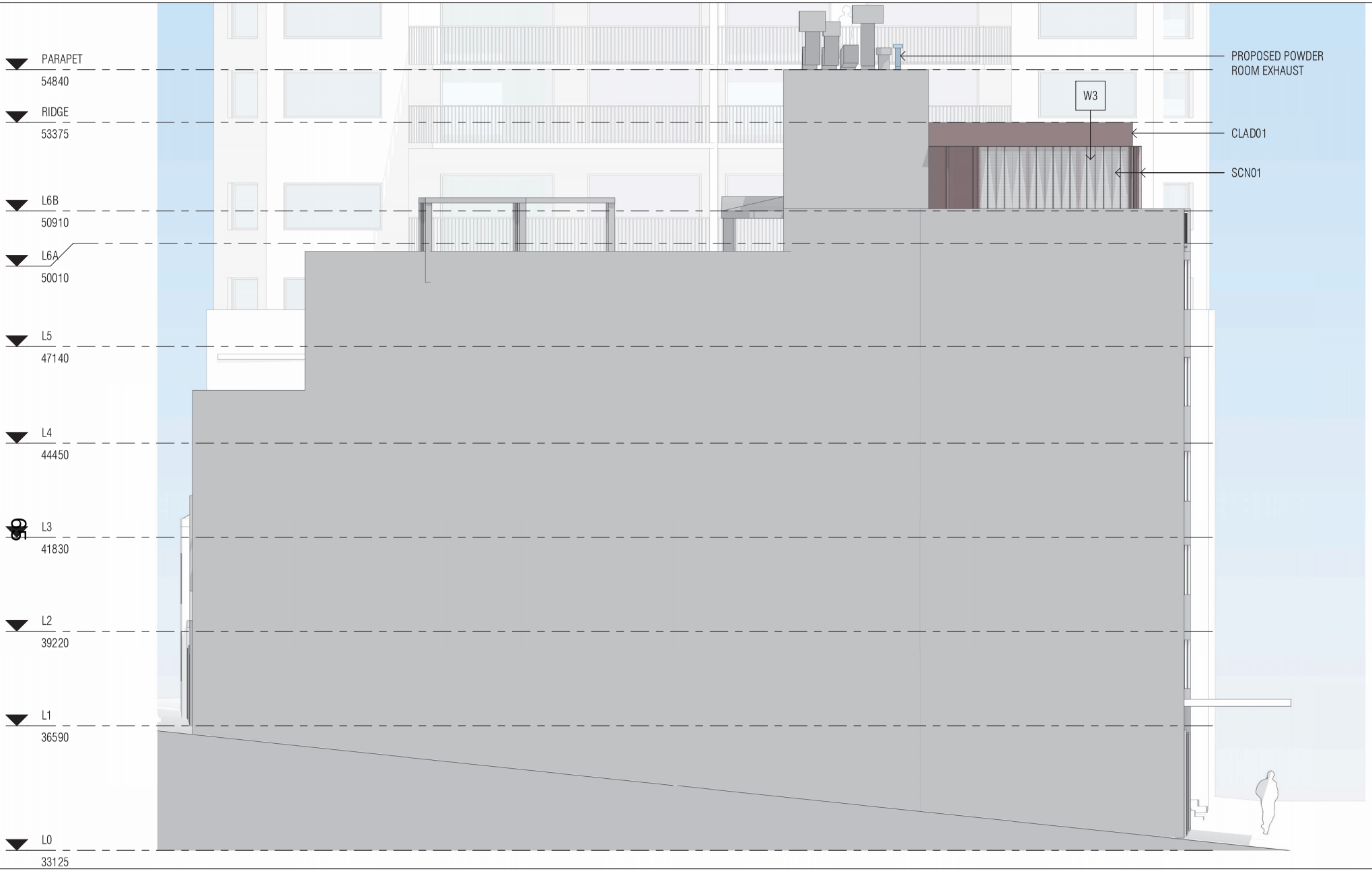

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HILL & BLUME SURVEYORS
TEL (02) 9332 4888

CONSULTANT
VMDC PLANNING
TEL (02) 9999 4922

CONSULTANT
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TEL (02) 9327 2748

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AKA PROJECT NUMBER
2204

TRUE NORTH | PROJECT NORTH

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STATUS
DEVELOPMENT APPLICATION

DRAWING
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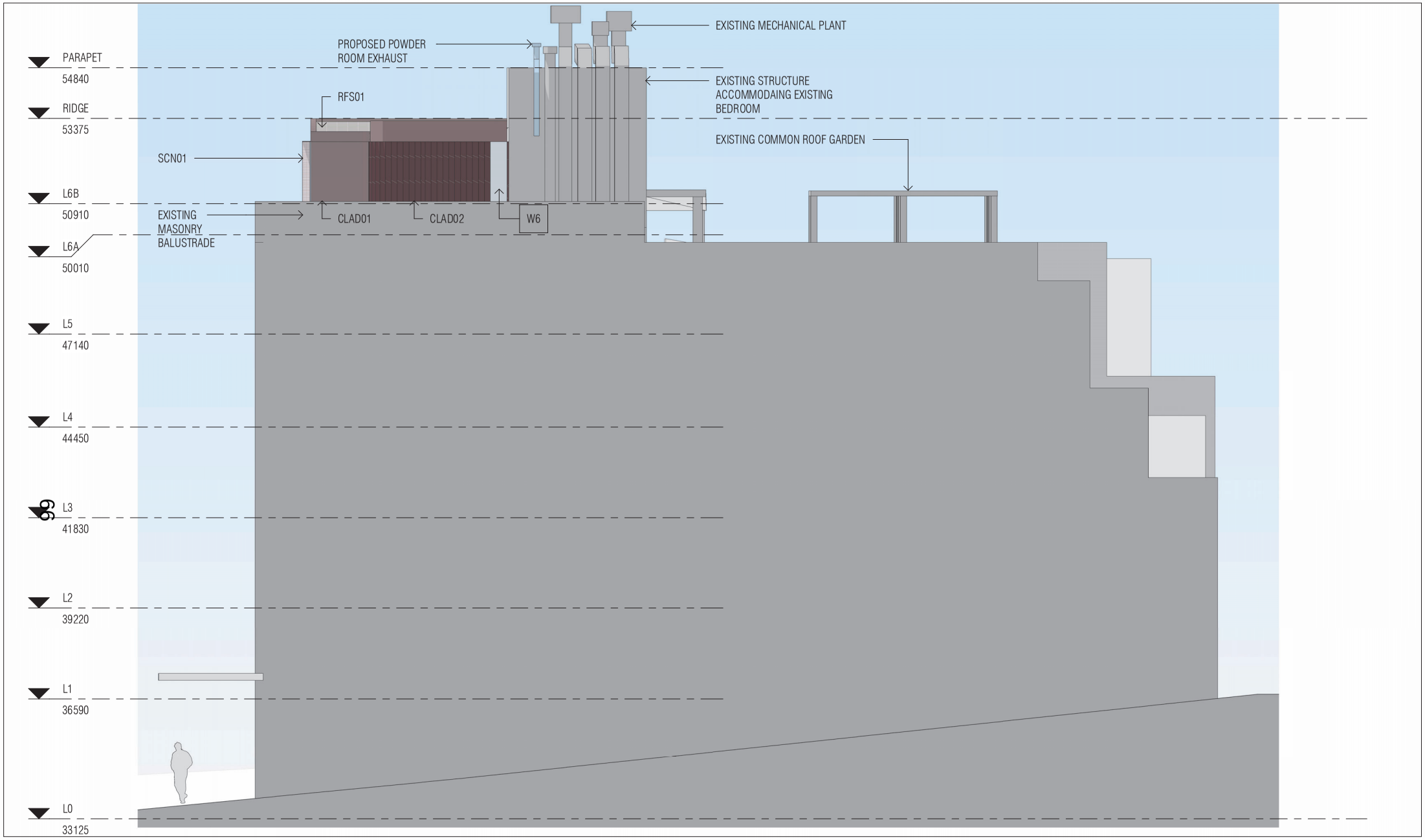

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AKA PROJECT NUMBER
2204

TRUE NORTH | PROJECT NORTH

SCALE 1 : 100 @ A3 USE DIMENSIONS ONLY

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STATUS
DEVELOPMENT APPLICATION

DRAWING
PROPOSED SOUTH ELEVATION

DRAWING NUMBER
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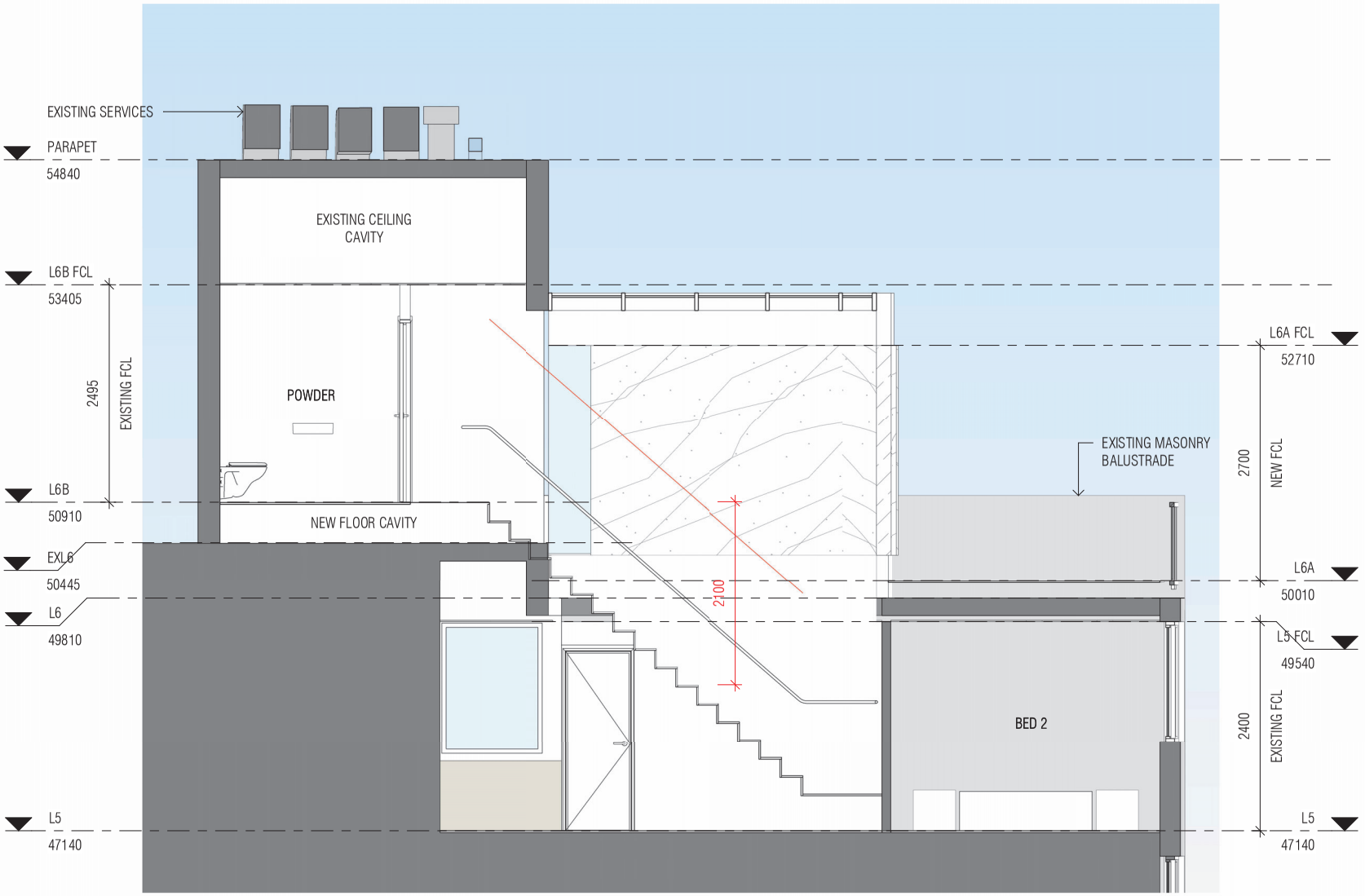

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STATUS
DEVELOPMENT APPLICATION

DRAWING
CROSS SECTION 01

DRAWING NUMBER
AR-D-01

ISSUE
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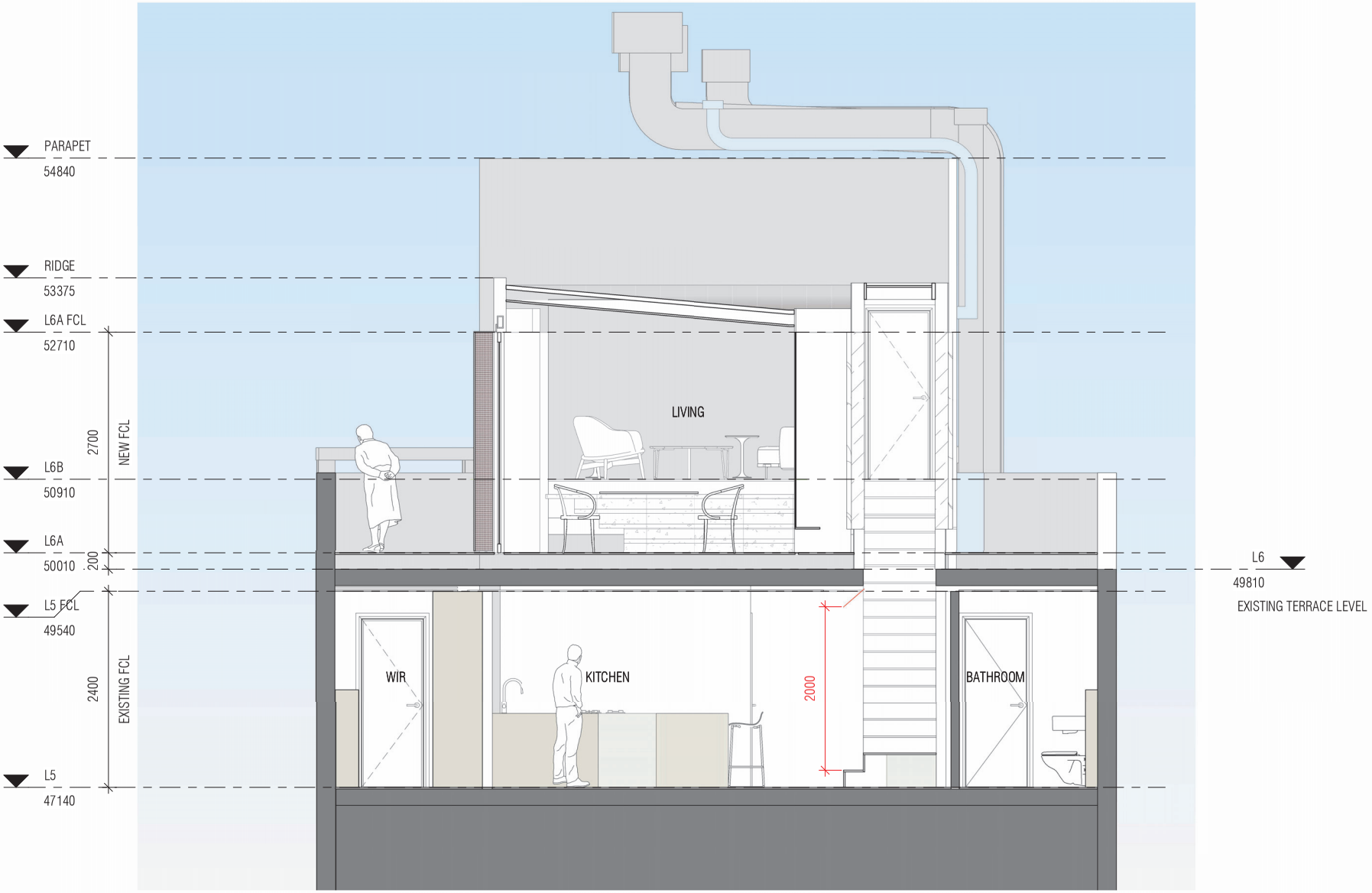

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STATUS
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DRAWING
CROSS SECTION 02

DRAWING NUMBER
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ISSUE
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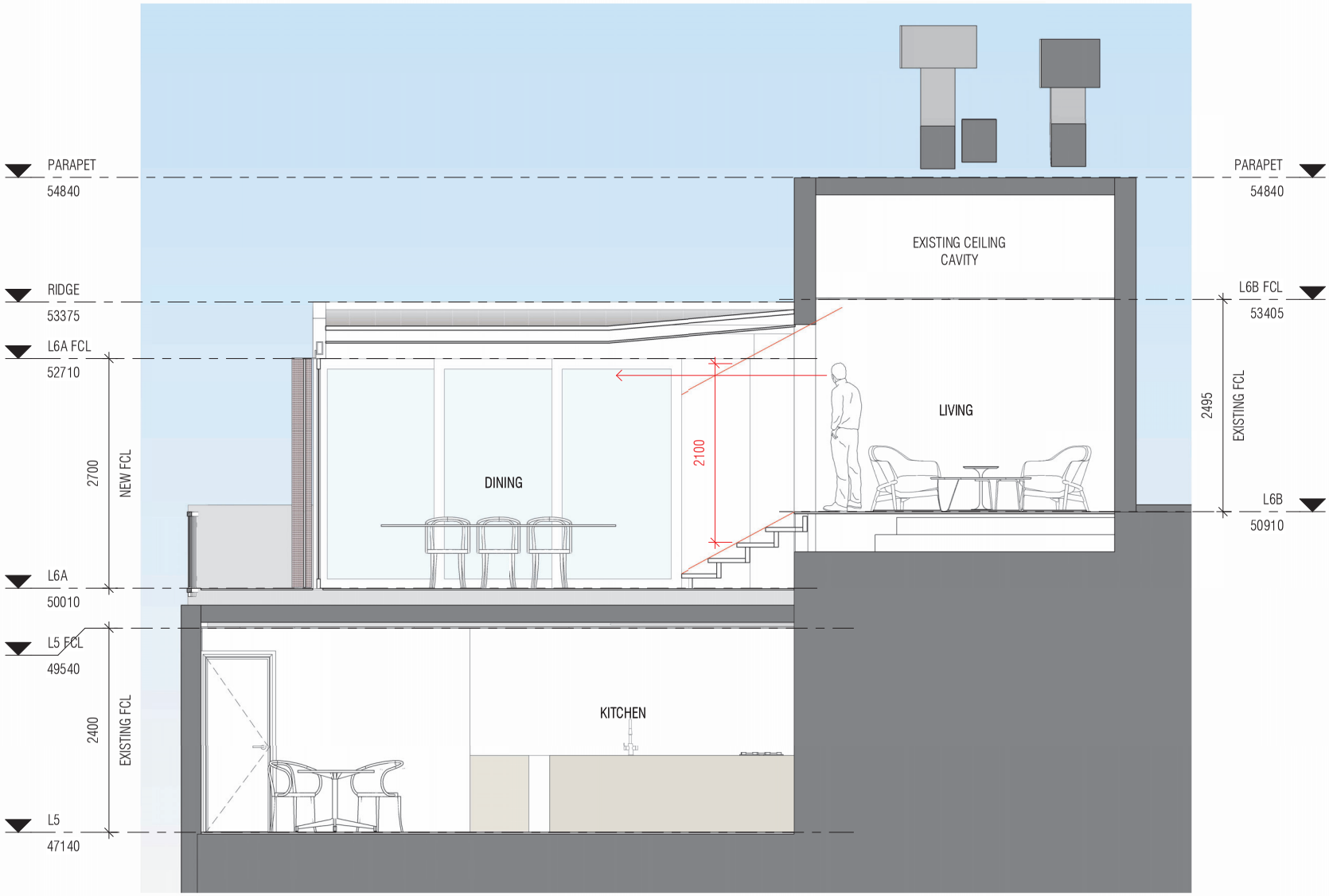

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DRAWING NUMBER
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Attachment C

4.6 request - floor space ratio

APPENDIX 1

WRITTEN REQUEST SYDNEY LOCAL ENVIRONMENTAL PLAN 2012
CLAUSE 4.6 – FLOOR SPACE RATIO

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF SYDNEY LOCAL ENVIRONMENTAL PLAN 2012

15/190 VICTORIA STREET, POTTS POINT

FOR THE CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO AN EXISTING RESIDENTIAL UNIT

For:	Construction of proposed alterations and additions to an existing residential unit
At:	15/190 Victoria Street, Potts Point
Owner:	Margaret & Raj Soni
Applicant:	Margaret & Raj Soni C/- Anton Kouzmin Architecture

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Sydney Local Environmental Plan 2012. In this regard it is requested Council support a variation with respect to compliance with the maximum floor space ratio as described in Clause 4.4 of the Sydney Local Environmental Plan 2012 (SLEP 2012).

2.0 Background

Clause 4.4 restricts the floor space ratio of a building within this area of Potts Point locality and refers to the maximum floor space ratio noted within the "*Floor Space Ratio Map*."

The relevant floor space ratio for this locality is 2:1 and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act. With a site area of 273.3m², the allowable gross floor area is 546.6m^2. Currently, the building presents a gross floor area of 869m² or 3.18:1.

Due to the extent of the existing development on site, the proposed new works will result in a gross floor area of 891m² or a floor space ratio of 3.26:1. Importantly, the proposed GFA is only 22m^2 more than the existing GFA due to the extent of the existing non-compliance.

The proposal will exceed the maximum gross floor area by 344.4m² or 63%.

Is clause 4.4 of SLEP 2012 a development standard?

(a) The definition of "development standard" in clause 1.4 of the EP&A Act means standards fixed in respect of any aspect of the development and includes:

"(d) the cubic content of floor space of a building."

(b) Clause 4.4 relates to floor space of a building. Accordingly, clause 4.4 is a development standard.

3.0 Purpose of Clause 4.6

The Sydney Local Environmental Plan 2012 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The decision of Chief Justice Preston in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in ***RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 at [1], [4] & [51]*** where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of SLEP provides:

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

Clause 4.4 (the FSR development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of SLEP.

Clause 4.6(3) of SLEP provides:

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

The proposed development does not comply with the FSR development standard pursuant to clause 4.4 of SLEP which specifies an FSR of 1.5:1 however, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of SLEP provides:

> *(4) Development consent must not be granted for development that contravenes a development standard unless:*
>
> *(a) the consent authority is satisfied that:*
>
> *(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
>
> *(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
>
> *(b) the concurrence of the Planning Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required

to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained.

Under cl55 of the *Environmental Planning and Assessment Regulation* 2021, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of SLEP provides:

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

Council and the Court on appeal has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of SLEP from the operation of clause 4.6.

This submission has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

5.0 The Nature and Extent of the Variation

5.1 This request seeks a variation to the FSR development standard contained in clause 4.4 of SLEP.

5.2 Clause 4.4 of SLEP specifies an allowable gross floor area for a site in this part of Potts Point of 2:1 or for this site with an area of 273.3m^2, the allowable gross floor area is 546.6m^2.

5.3 The proposal will introduce additional gross floor area of 22m^2 at the roof top level, which although results in a technical building height non-compliance, does not involve any increase to the existing overall building height and presents a total gross floor area of 891m^2 or 3.26:1.

5.4 The total non-compliance with the FSR control is 344.4m^2 or 60%.

6.0 Relevant Caselaw

6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

> *17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
>
> *18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
>
> *19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
>
> *20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
>
> *21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate*

for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.4 of SLEP a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

   (a) compliance is unreasonable or unnecessary; and

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

3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 and the objectives for development for in the B4 Mixed Use zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of SLEP.

7.0. Request for Variation

7.1 Is compliance with clause 4.4 unreasonable or unnecessary?

(a) This request relies upon the 1st ways identified by Preston CJ in Wehbe.

(b) The first way in Wehbe is to establish that the objectives of the standard are achieved.

(c) Each objective of the FSR standard and reasoning why compliance is unreasonable or unnecessary is set out below:

(a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,

The proposal seeks to provide for a modest increase in the gross floor area through the provision of a living and dining area at the roof level, which does not alter the overall existing height of building and is not prominently visible from any surrounding public spaces.

The minor increase in floor area for the subject dwelling will enhance the residential opportunity for the dwelling and meet anticipated needs of the occupants through additional flexible floor space for a range of uses, which is important in the modern work/life balance requiring work from home opportunities.

(b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,

The proposed modest changes to the dwelling to increase the floor area will not result in any substantial change in the bulk, scale and density of the development and will not result in additional vehicle or pedestrian traffic generation.

(c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,

The proposed additional floor area will not place further demand on public infrastructure nor result in additional traffic generation in the locality.

(d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

The proposed additional floor area has been located at the roof level and is not prominently visible from the surrounding public places in Victoria Street.

The works will not have any direct or adverse impact on the solar access amenity or outlook for the neighbouring properties.

7.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

> *23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
>
> *24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

There are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed alterations and additions to the dwelling introduce modulation and architectural relief to the building's facade, without seeing any substantial increase to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g).

- The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly and economic use of the land (cl 1.3(c)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants whilst minimising the calculable gross floor area and manages the bulk and scale and maintains views over and past the building from the public and private domain.

The minor additional floor area at the roof level of the building will provide for a more flexible floor area arrangement to meet the work from home requirements of a modern work environment, which presents the opportunity for the owners to enjoy the existing development and support future family residential accommodation.

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio control.

It is noted that in *Initial Action,* the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

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

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.3 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the MU1 Mixed Use Zone?

(a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.

(b) Each of the objectives of the MU1 Mixed Use Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone".*

In response to *Nessdee,* I have provided the following review of the zone objectives:

It is considered that notwithstanding the extent of the non-compliance with the maximum floor space ratio control, the proposed new works will be consistent with the individual Objectives of the B4 Mixed Use Zone for the following reasons:

- ***To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.***

The proposal retains the existing retail uses at the ground level, continuing to provide a diversity of land uses that generate employment opportunities.

- ***To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.***

The proposed works located at Level 6 will not have any adverse impact on the existing street frontage with the works being largely imperceptible from the Victoria Street streetscape. The proposal will continue to provide for a diverse and active street frontage, providing for high-quality pedestrian amenity, while continuing to provide for a vibrant, diverse and functional street.

- ***To minimise conflict between land uses within this zone and land uses within adjoining zones.***

The site and development are well-removed from nearby zones with a consistency of land uses in the surrounding area. The proposed works and resulting building height encroachment will not generate unwanted conflict between land uses within the zone and other land uses within adjoining zones.

- ***To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.***

The proposed development will not alter the existing retail, business and other non-residential land uses on the ground floor of surrounding buildings with the existing retail uses on the subject site being unaffected.

- ***To ensure land uses support the viability of nearby centres.***

The existing land uses will not be altered and will continue to support viability of Potts Point and surrounding areas.

- ***To integrate suitable business, office, residential, retail and other land uses in accessible locations that maximise public transport patronage and encourage walking and cycling.***

The proposal will continue to provide for a suitable use of land uses, namely residential and retail uses within an accessible location located nearby to public transport. The proposal will encourage public transport patronage and encourage walking and cycling.

As sought by the zone objectives, the proposal will provide for alterations and additions to an existing building which are sensitive to the locality.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum floor area control, whilst maintaining consistency with the zone objectives.

7.4 Has the Council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.5 Has the Council considered the matters in clause 4.6(5) of SLEP?

(a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed alterations and additions to the existing residential unit and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

(b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.

(c) there are no other matters required to be taken into account by the secretary before granting concurrence.

8.0 Conclusion

Council's Sydney LEP 2012 control within Clause 4.4 stipulates a requires a maximum floor space of 2:1 for development in this area of Potts Point.

This development provides a departure from the maximum floor space ratio development standard, with the proposed alterations and additions to the existing unit to provide a floor space ratio of 3.26:1 or exceed the permissible gross floor area of 546.6m^2 by 22m^2 of 60%.

This objection to the maximum floor space ratio specified in Clause 4.4 of the Sydney LEP 2012 adequately demonstrates that that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum floor space ratio control would be unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN
Town Planner

Attachment D

4.6 request - height of buildings

APPENDIX 2

WRITTEN REQUEST SYDNEY LOCAL ENVIRONMENTAL PLAN 2012 CLAUSE 4.3 - HEIGHT OF BUILDINGS

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF SYDNEY LOCAL ENVIRONMENTAL PLAN 2012

15/190 VICTORIA STREET, POTTS POINT

FOR THE CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO AN EXISTING RESIDENTIAL UNIT

For:	Construction of proposed alterations and additions to an existing residential unit
At:	15/190 Victoria Street, Potts Point
Owner:	Margaret & Raj Soni
Applicant:	Margaret & Raj Soni C/- Anton Kouzmin Architecture

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Sydney Local Environmental Plan 2012. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Sydney Local Environmental Plan 2012 (SLEP 2012).

2.0 Background

Clause 4.3 restricts the height of a building and refers to the maximum building height noted within the "*Height of Buildings Map*."

The maximum building height for this locality is 12m and is considered to be a development standardas defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed development will present a maximum height of 20.250m, which presents a departure from Council's maximum building height of 8.25m or 68.75%. It is notable however that the proposal does not exceed the existing maximum ridge height of the building.

The extent of the building which exceeds the 12m maximum height control is noted within Figure 1 over.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

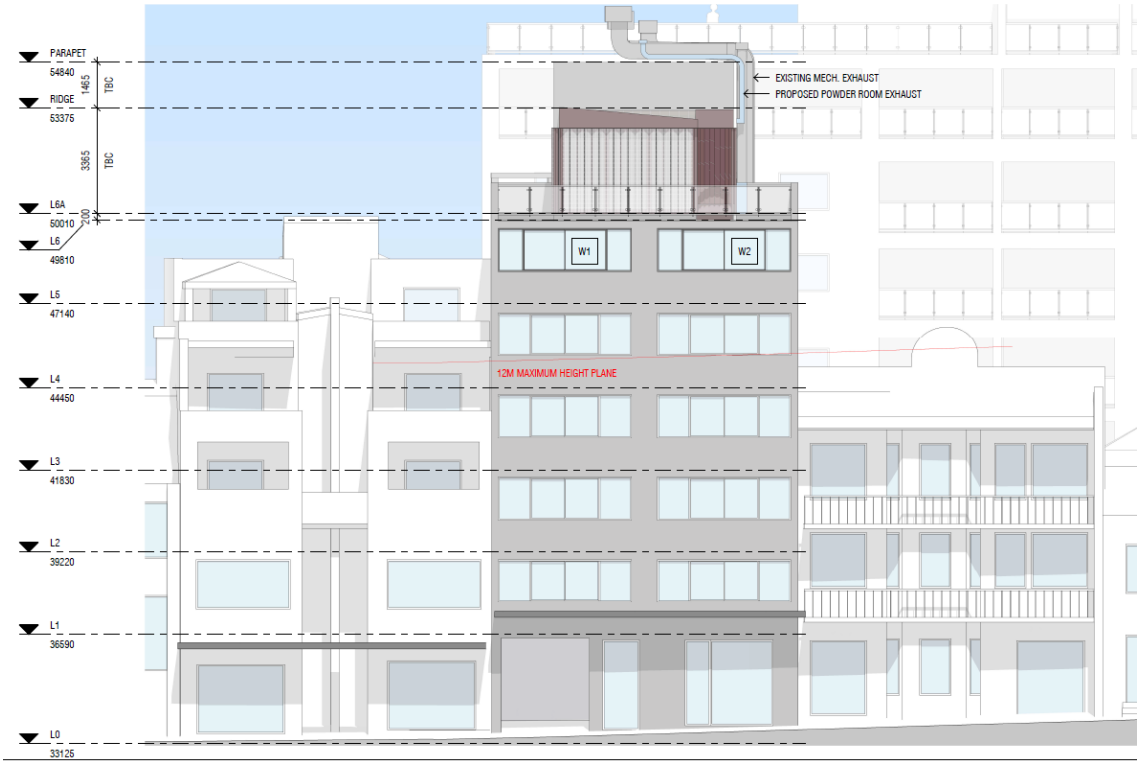


Figure 1: Extract from architectural plans prepared by Anton Kouzmin Architecture indicating breach of the maximum height control

Is clause 4.3 of SLEP 2012 a development standard?

(a) The definition of "development standard" in clause 1.4 of the EP&A Act means standards fixed in relation to an aspect of a development and includes:

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

(b) Clause 4.3 relates to the maximum building height of a building. Accordingly, clause 4.3 is a development standard.

3.0 Sydney Local Environmental Plan 2012 ("SLEP")

3.1 Clause 2.2 and the Land Use Table

Clause 2.2 and the Land Zoning Map provide that the subject site is zoned MU1 Mixed Use (the MU1 zone) and the Land Use Table in Part 2 of SLEP 2012 specifies the following objectives for the MU1 zone:

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To ensure land uses support the viability of nearby centres.*
- *To integrate suitable business, office, residential, retail and other land uses in accessible locations that maximise public transport patronage and encourage walking and cycling.*

The proposed development is for the purpose of alterations and additions to an existing dwelling which is a permissible use in the MU1 Mixed Use zone.

3.2 Clause 4.3 – Height of buildings

Clause 4.3 of SLEP sets out the maximum height of a building as follows:

(1) The objectives of this clause are as follows—
- *(a) to ensure the height of development is appropriate to the condition of the site and its context,*
- *(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*
- *(c) to promote the sharing of views outside Central Sydney,*
- *(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,*
- *(e) in respect of Green Square—*
  - *(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and*
  - *(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.*

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

The Height of Buildings Map specifies a maximum building height of 12m.

3.2 The Dictionary to SLEP operates via clause 1.4 of SLEP. The Dictionary defines "building height" as:

> ***building height*** *(or* ***height of building****) means—*
>
> *(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
>
> *(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*
>
> *including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

The proposal is considered acceptable and as discussed further within this request, there are sufficient environmental planning grounds to justify contravening the development standard.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

3.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of SLEP provides:

> *(1) The objectives of this clause are as follows:*
>
> *(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
>
> *(b) to achieve better outcomes for and from development by allowing flexibilityin particular circumstances.*

The decision of Chief Justice Preston in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal *in RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4]& [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of theclause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test thatnon-compliant development should achieve a better

environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of SLEP provides:

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

Clause 4.3 (the Height of Buildings development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of SLEP.

Clause 4.6(3) of SLEP provides:

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

(a) that compliance with the development standard is unreasonable orunnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justifycontravening the development standard.

The proposed development does not comply with the height of buildings developmentstandard pursuant to clause 4.3 of SLEP which specifies a maximum building height of12m, however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and it is considered that there are sufficient environmentalplanning grounds to justify contravening the development standard.

In the circumstances of this case, there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of SLEP provides:

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

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistentwith the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to bedemonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinionof satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl55 of the *Environmental Planning and Assessment Regulation* 2021, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of SLEP provides:

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretarybefore granting concurrence.

The Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl4.6(4)(b). Council should consider the matters in cl 4.6(5) when exercising the power togrant development consent for development that contravenes a development standard: *Fast Buck$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (Initial Action at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development.

Clause 4.6(7) is administrative and requires the consent authority to keep a record of its

assessment of the clause 4.6 variation.

Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of SLEPfrom the operation of clause 4.6.

4.0 The Nature and Extent of the Variation

4.1 This request seeks a variation to the height of buildings development standard contained in clause 4.3 of SLEP.

4.2 Clause 4.3(2) of SLEP specifies a maximum building height of 12m which is noted on the Height of Buildings Map for the subject site.

4.3 The proposal has a maximum height of 20.250m to the south-western extremity of the attic addition. The non-compliance is 8.25m which equates to a variation of 68.75%. As noted, the new works do not exceed the maximum height of the existing building.

5.0 Relevant Caselaw

5.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

> *17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
>
> *18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
>
> *19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
>
> *20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
>
> *21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate*

so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

5.2 The relevant steps identified in Initial Action (and the case law referred to in Initial Action) can be summarised as follows:

1. Is clause 4.3 of SLEP a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

   (a) compliance is unreasonable or unnecessary; and

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

3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the MU1 Mixed Use zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of SLEP?

6.0 Request for Variation

6.1 Is compliance with clause 4.3 unreasonable or unnecessary?

(a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.

(b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.

(c) In response to the first way in Wehbe, the objective of the maximum building height standard and the reasoning why compliance is unreasonable or unnecessary is set out below:

(a) to ensure the height of development is appropriate to the condition of the site and its context,

The Objective of Clause 4.3(1)(a) seeks to ensure buildings are compatible with the height and scale of surrounding and nearby development.

The surrounding area is predominantly characterised by a range of land uses, including building heights, many of which exceed the height control.

The proposal seeks to utilise an existing rooftop terrace by providing additional living space and amenity for the occupants. The proposed works remain well-below the existing, non-compliant building height.

The overall building height respects the surrounding character and the design seeks to minimise the visual height by providing for a setback from the front building edge to minimise the perceived visual bulk and additional height, as viewed from within the Victoria Street streetscape.

The proposed external colour and materials palette utilises recessive finishes and is intended to ensure that the building's visual height and scale is further minimised.

(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,

The subject development maintains consistency with the existing surrounding development within the Potts Point Conservation Area and will not detract from the significance of any nearby heritage items.

(c) to promote the sharing of views outside Central Sydney,

The proposal will not see any change to the existing overall building height of the development and will therefore not result in any loss of views for neighbouring properties.

(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,

This provision does not directly relate to the subject development.

(e) in respect of Green Square—

(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and

(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.

This provision does not relate to the subject development.

6.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

> *23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope andpurpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
>
> *24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the developmentstandard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on thedevelopment as a whole, and why that contravention is justified onenvironmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015]NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

There are sufficient environmental planning grounds to justify contravening thedevelopment standard.

The aspect of the development which contravenes the development standard is the roof top addition. The addition is contained well-below the height of the existing building to minimise the visual impact to adjoining properties and the streetscape along Victoria Street.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land through the efficient use of the existing infrastructure to meet the housing needs of the community (1.3(c)).

- The proposed development will maintain the general bulk and scale of theexisting surrounding built environment and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).

- Similarly, the proposed works will provide for excellent residential amenity within a built form which is compatible with the streetscape of Victoria Street, and will not alter the streetscape appearance to Victoria Street, which also promotes the orderly and economic use of the land (cl 1.3(c)).

- The proposed development is considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g).

- The proposed new works and in particular the inclusion of a low-profile roof form and setback to Victoria Street demonstrates good design and improves the amenity of the built environment by creating improved and functional living area and also suitably maintains the views and solar access enjoyed by neighbouring properties (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants whilst minimising the impacts of bulk and as viewed from the public domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.

It is noted that in *Initial Action,* the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planningoutcome:

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

6.3 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the MU1 Mixed Use zone?

(a) Section 4.2 of this written requests demonstrates that the proposed developmentmeets each of the applicable objectives of clause 4.3. As the proposed development meets the applicable objectives it follows that the proposed development is also consistent with those objectives.

(b) Each of the objectives of the MU1 Mixed Use and the reasons why the proposed development is consistent with each objective is set out below.

- ***To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.***

  The proposal retains the existing retail uses at the ground level, continuing to provide a diversity of land uses that generate employment opportunities.

- ***To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.***

  The proposed works located at Level 6 will not have any adverse impact on the existing street frontage with the works being largely imperceptible from the Victoria Street streetscape. The proposal will continue to provide for a diverse and active street frontage, providing for high-quality pedestrian amenity, while continuing to provide for a vibrant, diverse and functional street.

- ***To minimise conflict between land uses within this zone and land uses within adjoining zones.***

  The site and development are well-removed from nearby zones with a consistency of land uses in the surrounding area. The proposed works and resulting building height encroachment will not generate unwanted conflict between land uses within the zone and other land uses within adjoining zones.

- ***To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.***

  The proposed development will not alter the existing retail, business and other non-residential land uses on the ground floor of surrounding buildings with the existing retail uses on the subject site being unaffected.

- ***To ensure land uses support the viability of nearby centres.***

  The existing land uses will not be altered and will continue to support viability of Potts Point and surrounding areas.

- ***To integrate suitable business, office, residential, retail and other land uses in accessible locations that maximise public transport patronage and encourage walking and cycling.*** The proposal will continue to provide for a suitable use of land uses, namely residential and retail uses within an accessible location located nearby to public transport. The proposal will encourage public transport patronage and encourage walking and cycling.

6.6 Has Council obtained the concurrence of the Director-General?

Under cl55 of the *Environmental Planning and Assessment Regulation* 2021, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

6.7 Has the Council considered the matters in clause 4.6(5) of SLEP?

(a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development and for the particular site and this design is not readilytransferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

(b) As the proposed development is in the public interest because it complies withthe objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.

(c) there are no other matters required to be taken into account by the secretary before granting concurrence.

7.0 Conclusion

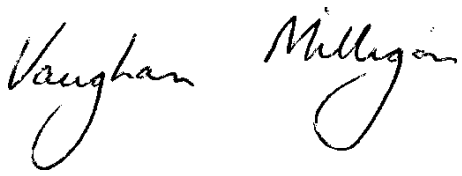
This development proposed a departure from the maximum building height development standard, with the proposed alterations and additions to provide a maximum building height of 20.250m.

This variation occurs as a result of the siting of the existing building, in particular the Unit 15 which is located wholly above the height control.

This written request to vary to the maximum building height standard specified in Clause 4.3 of the Sydney LEP 2012 adequately demonstrates that that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height control would be unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN
Town Planner
March 2023