



NSLPP MEETING HELD ON 5/05/21

Attachments:

1. Site Plan
2. Proposed Floor Plan
3. Plan of Management

ADDRESS/WARD: 13 Eden Street, North Sydney (W)

APPLICATION No: DA 287/20

PROPOSAL: To extend operating hours of ground floor tenancies G01 to G07 (inclusive) to 24 hours a day, seven days a week.

PLANS REF: Project 2304 Plan Ref DA 24H01-H04 inclusive

OWNER: [REDACTED]

APPLICANT: Myrtle 29 Pty Ltd

AUTHOR: Leonie Derwent, Consultant Planner Ingham Planning Pty Ltd

DATE OF REPORT: 27 March 2021

DATE LODGED: 9 November 2020

ADDITIONAL INFO: 2 December

RECOMMENDATION: Refusal

EXECUTIVE SUMMARY

This development application seeks approval to extend operating hours of ground floor tenancies G01 to G07 (inclusive) to 24 hours a day, seven days a week.

The premises are located on the ground floor of a mixed use development within a B4 mixed use zone. The site is occupied by a mixed-use development accommodating eight (8) non-residential tenancies at the ground floor level, and seventeen (17) residential apartments above. Off- street car parking is provided for 22 vehicles within a basement level accessed via a combined entry/exit driveway located along the Eden Street frontage of the site. The existing hours of operation for the ground floor tenancies are restricted to Monday to Saturday 7am to 7pm with no operation permitted on Sundays or Public Holidays.

The proposal is reported to North Sydney Local Planning Panel for determination because of the number of submissions that have been received. Notification of the proposal has attracted 18 unique public submissions including one from the owners strata committee of the subject building.

The proposal has been assessed against the relevant requirements of the North Sydney LEP 2013 and North Sydney DCP 2013 and is considered to be contrary to the aims of the plan and objectives of the B4 (Mixed Use) zone and the provisions of Part B Section 2 of the DCP relating to mixed use development.

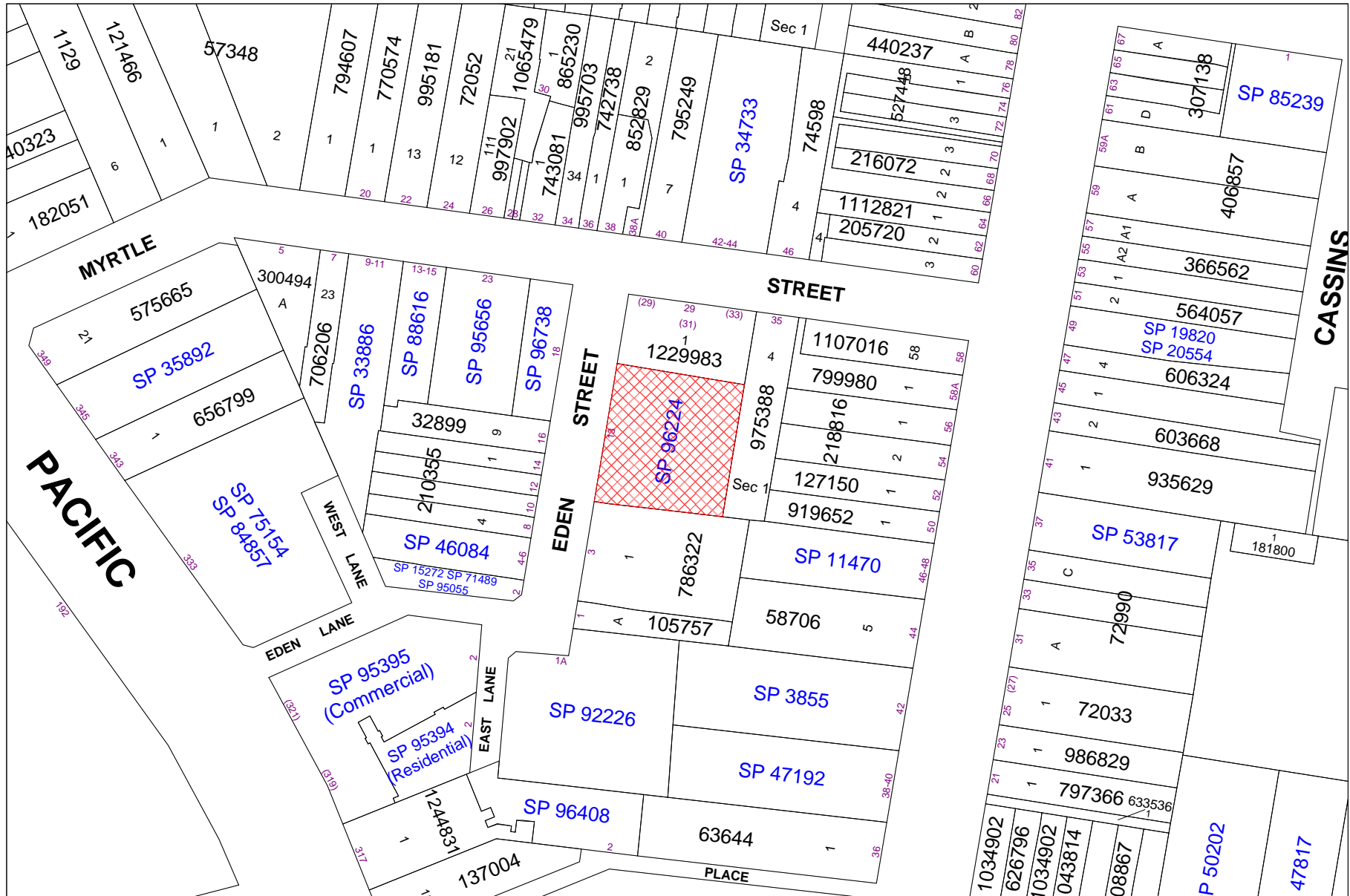
The zone objectives and DCP provisions require that a diversity of activities be maintained, including non-residential uses, while protecting residential accommodation and local amenity.

The proposed extension of operating hours to 24 hours a day, seven days a week is contrary to the objectives and provisions of Part B Section 7- Late Night Trading of the North Sydney DCP which requires that a development ensures that late night trading premises will have minimal adverse impacts on the amenity of residential or other sensitive land uses and to ensure that operators of late night trading premises commit to good management practices through the implementation of robust plans of management

Although the ground floor tenancies are separated from the residential uses above, fundamentally it is the design of the building with a central courtyard, which causes issues between the two (2) uses. As such and despite assurances from the acoustic consultant, the central courtyard design results in unsatisfactory impacts to the upper level residential users. The Plan of Management is not considered to be an appropriate mechanism to ensure that reasonable residential amenity would be able to be maintained given the inherent conflict between commercial and residential uses, particularly during late night hours.

Following this assessment, the development application is not considered to be reasonable in the circumstances and is recommended for **refusal**.

LOCATION MAP



□ Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

The subject site is located on the north eastern corner of the intersection of Eden Street and Myrtle Street.

The subject premises were approved as part of Development Consent (DA 351/2013) which was approved by the Land and Environment Court. DA 351/2013 permitted substantial alterations and additions to, and partial demolition of 2 existing buildings on No. 29-33 Myrtle Street, demolition of an existing building on No. 13 Eden Street and the construction of a new 4 storey building with basement parking at Nos. 29-33 Myrtle Street and No. 13 Eden Street, North Sydney to create a mixed use building comprising 17 residential apartments, ground floor retail/business uses and basement parking for 22 vehicles.

On 3 November 2016, Council granted Development Consent (DA 176/2016) to subdivide the site to create two (2) allotments in a stratum subdivision. The former dwellings occupy Lot 1 in DP 1229983 and the mixed-use development to the rear occupies Lot 2. A right of footway extends over Lot 1 in favour of Lot 2, and a right of carriageway extends over Lot 2 in favour of Lot 1 to provide access to the basement.

The approved development has been modified under two previous modification applications to make minor changes to the approved development (tree removal and minor reconfiguration of internal and external parts of the development).

Applications to modify the existing development consent to have 24 hours operating hours apply to both the 3 Cottages in Myrtle Street and Suites G.01- G.07 and have previously been submitted to Council in 2018 and 2019 and refused on the grounds that the amended development did not satisfy the requirements of Section 4.55 of the Act, and that the modification “would not ensure that the amenity of the surrounding locality is maintained”. The subject application is a development application and not a modification to the existing development consent.

Proposed change to operating hours to allow 24/7 operation of Suites G.01-G.07

This development application seeks development consent to modify the approved hours of operation for seven (7) non-residential suites located at No. 13 Eden Street, North Sydney. The applicant’s Statement of Environmental Effects (SEE) prepared by James Lovell and Associates has provided the following background to the proposal:

‘The proposed development relates to the hours of operation for seven (7) of the non-residential tenancies at the ground floor level. In that regard, the tenancies are currently used for office purposes, and it is proposed to amend Condition 11 to allow 24-hour operating hours for office purposes.

The purpose of the extended operating hours is to facilitate the operational requirements of the existing tenants. In that regard, the existing tenants are engaged in business activities within overseas markets, including the purchase and import of building and construction related materials and products, jewellery, art work, wholesale machinery, irrigation equipment and agricultural commodities trading.

In the circumstances, the extended operating hours are intended to facilitate timely interaction with overseas suppliers and clients. Further, the extended hours of operation will also accommodate an identified demand from some other office related uses for extended hours of operation. ‘

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – B4 Mixed Use
- Item of Heritage - No
- In Vicinity of Item of Heritage – No, nearest items are the rear of Nos 58/58A West Street
- Conservation Area – No, adjacent to CA09 Holtermann Estate C.
- FSBL - No

S7.11 Contribution - No

Environmental Planning & Assessment Act 1979

SEPP No. 55 - Contaminated Lands - No

SEPP No. 64 - Advertising Signs - No

SREP (2005) – No

Foreshore Development - No

Integrated Development - No

Local Development - Yes

POLICY CONTROLS

NSLEP 2013

The site is zoned B4 – Mixed Use under North Sydney Local Environmental Plan 2013 (NSLEP 2013).

Under the B4 zone, the following may be carried out with development consent:

Amusement centres; Backpackers’ accommodation; Boarding houses; Car parks; Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Hostels; Hotel or motel accommodation; Information and education facilities; Medical centres; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Registered clubs; Residential flat buildings; Respite day care centres; Restricted premises; Roads; Seniors housing; Serviced apartments; Sex services premises; Shop top housing; Signage; Tank-based aquaculture; Vehicle repair stations; Veterinary hospitals

The proposal does not seek a change of the approved use of the premises as offices (business uses). This application relates to the use of these approved premises for 24 hours, 7 days a week.

The objectives of the B4 Mixed Use Zone are

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

- *To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.*
- *To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.*

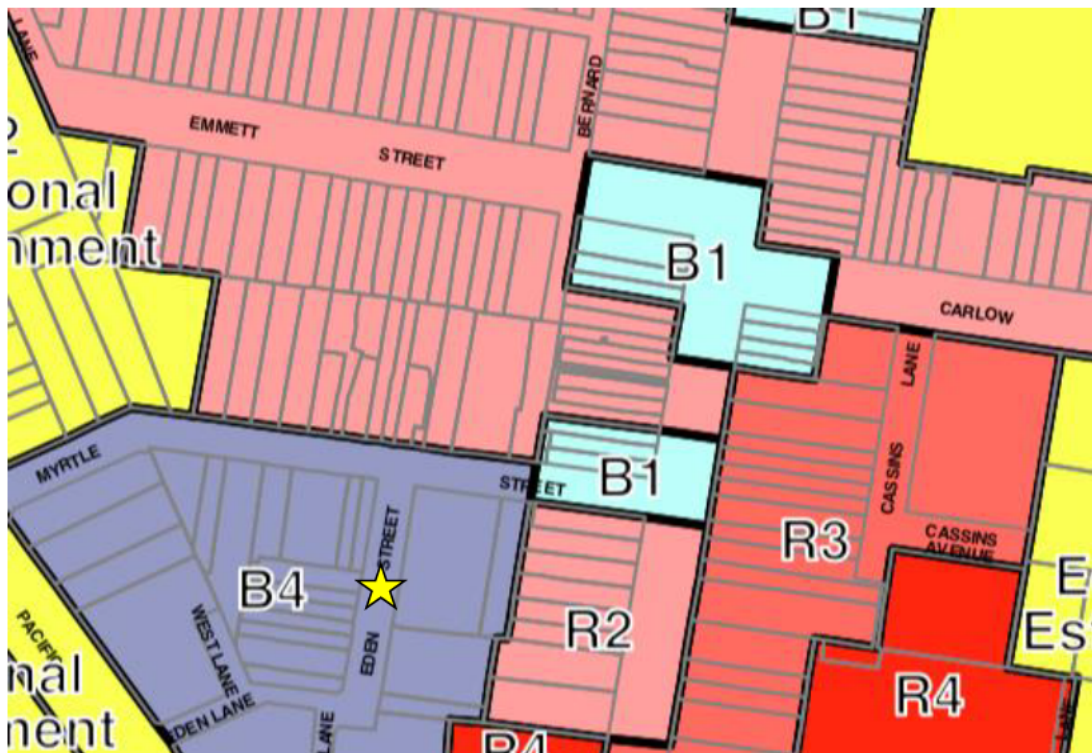


Figure 2: NSLEP 2013 Zoning Map Extract



Figure 3: NSLEP 2013 Heritage Map Extract

North Sydney DCP 2013

Part B, Section 2 – Commercial and Mixed Use Developments applies to the application.

Part B, Section 7 – Late Night Trading applies to the proposed hours of use.

Part B, Sections 10 and 11 (Carparking and Traffic generation) do not apply as there is no proposal change to the current use.

DESCRIPTION OF LOCALITY

The site is not within the Holtermann Estate Conservation Area C but is immediately adjacent to the area.

The site is located within an established mixed-use precinct characterised by a relative predominance of commercial and residential land uses, accommodated within a wide variety of building forms. Within the vicinity of the site are 1-2 storey dwellings and multi-level commercial buildings of different architectural styles.

RELEVANT HISTORY

DA 351/2013

Development Consent (DA 351/2013) was approved by the Land and Environment Court. DA 351/2013 permitted substantial alterations and additions to, and partial demolition of 2 existing buildings on No. 29-33 Myrtle Street, demolition of an existing building on No. 13 Eden Street and the construction of a new 4 storey building with basement parking at Nos. 29-33 Myrtle Street and No. 13 Eden Street, North Sydney to create a mixed use building comprising 17 residential apartments, ground floor retail/business uses and basement parking for 22 vehicles.

The approved development has been successfully modified under two previous modification applications (**DA 351/2 and DA 351/3**) to make minor changes to the approved development (tree removal and minor reconfiguration of internal and external parts of the development). A subsequent modification which related to the former cottages was refused by Council.

DA 176/2016

On 3 November 2016, Council granted Development Consent (DA 176/2016) to subdivide the site to create two (2) allotments in a stratum subdivision. The former dwellings occupy Lot 1 in DP and the mixed-use development to the rear occupies Lot 2. A right of footway extends over Lot 1 in favour of Lot 2, and a right of carriageway extends over Lot 2 in favour of Lot 1 to provide access to the basement. This consent was subsequently modified by Council on the 07/08/2017.

DA 301/16

On 24 November 2016 Development Application No. 301/16 was approved by delegated authority for the first use of the eleven (11) non-residential tenancies. Use for each ground floor tenancy on the subject were shown on the approved floor plans as follows:

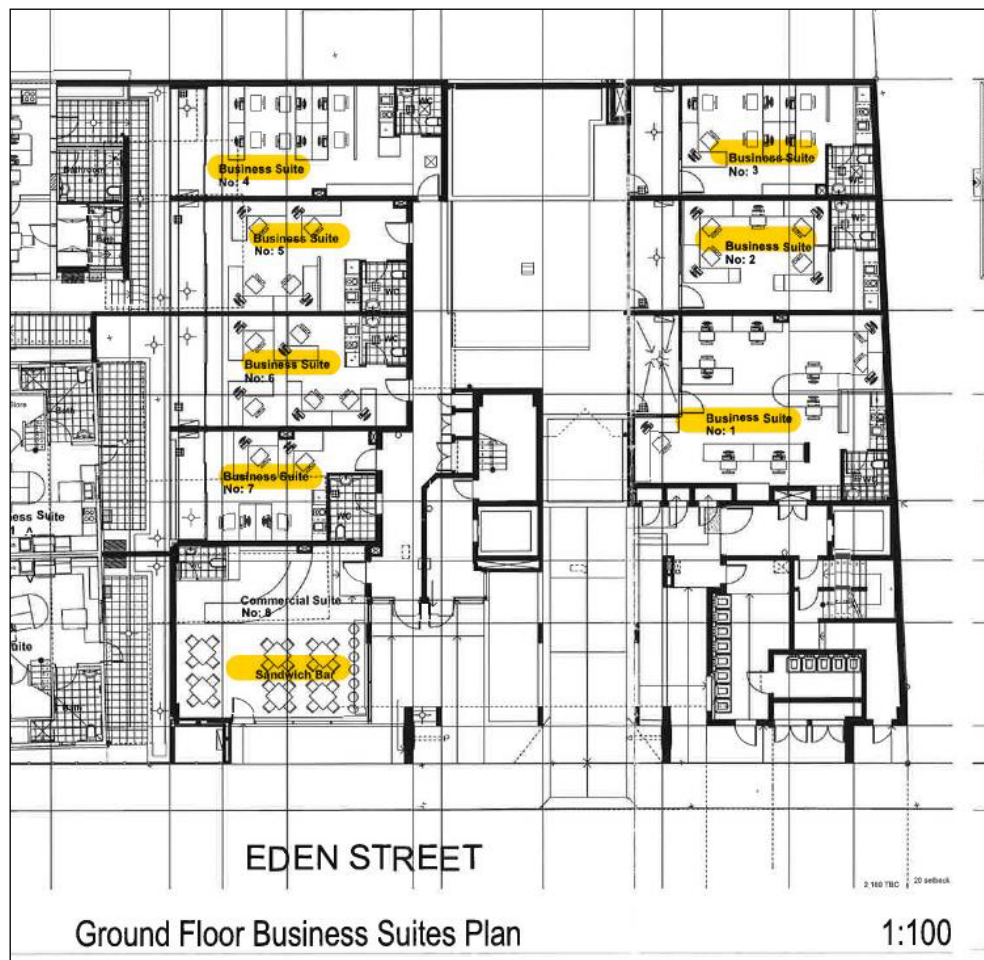


Figure 4: Approved uses ground floor tenancies G01 to G07 (DA301/16).

Under the approval granted by DA 301/16 the following relevant conditions apply to the ongoing commercial operation of the premises:

I. On-Going / Operational Conditions

Hours of Operation

11. The hours of operation are restricted to:

Monday to Saturday: 7.00 am to 7.00 pm
Sunday or a Public Holiday: No operation.

(Reason: To ensure that the amenity of the surrounding locality is maintained)

No Entertainment

12. In relation to Tenancy No. 8, this approval is for a sandwich shop only and does not authorise musical or other forms of entertainment. A separate development consent is required for any proposed entertainment.

(Reason: Clarification of terms of this consent and ensure compliance with relevant legislation)

Commercial Waste and Recycling Storage

13. *Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins.*

(Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed)

Waste Collection

14. *Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.*

(Reason: To ensure the amenity of surrounding properties)

Delivery Hours

15. *No deliveries, loading or unloading associated with the premises are to take place between the hours of 10pm and 6am on any day.*

(Reason: To ensure the acoustic amenity of surrounding properties)

Shop Premises Registration

16. *The shop premises must be registered with Council and NSW Food Authority prior to commencement of operation of the approved activity. Shop Premises Registration must be maintained at all times.*

Note:

- a) Council registration forms can be found at <http://www.northsydney.nsw.gov.au>*
- b) Notification is required to the NSW Food Authority under Standard 3.2.2 Division 2 Section 4 Notification. (see www.foodnotify.nsw.gov.au)*

(Reason: To ensure compliance with environmental health legislation)

Details of commencement of approved uses

17. *Documentary and photographic evidence of the commencement of each and every approved use (11 in total) is to be provided to North Sydney Council within one month of the commencement of each use, for Council's records. Details are to include at least the business name and full contact details, together with photographic evidence of commencement.*

No change of use under SEPP (Exempt and Complying Development Codes) 2008 of any of the approved uses is to be carried out unless the subject approved use has been lawfully commenced and is existing, supported by documentary and photographic evidence as detailed above.

(Reason: For Council's records and to ensure compliance with the provisions of SEPP (Exempt and Complying Development Codes) 2008)

On 19 February 2018 correspondence was received by Council from Moore Development Group to provide documentary evidence to address the requirements of Condition 17 above which states that the existing occupancy was for office uses.

DA 180/2019

On 20 June 2019 the NSLPP refused development consent for the change of use from business / retail use to motel use of six (6) ground floor tenancies.

DA 288/2020

On the 9 November 2020 a development application was lodged with Council for the Change of use to residential - 6 lots and was rejected by the DRP on the 12 November 2020.

DA 339/2020

On the 21 December 2020 a development application was lodged with Council for the Change of use of six business / retail tenancies at ground floor level to residential studio apartments. This application is currently being assessed by Council.

Processing of Subject Application

Application lodged:

9 November 2020

Development Review Panel:

11 November 2020

Request for Additional information:

On 16 November 2020 Council requested the following additional information:

- 1. Revised DA form and Statement of Environmental Effects (SEE) to provide details of existing use of each ground floor unit including the existing and proposed number of employees for each tenancy and use.*

Notification Period

The application was placed on public notification between 20 November and 4 December 2020.

Applicant response

On 2 December the applicant submitted a revised Statement of Environmental Effects and DA form which states the existing use of the ground floor premises G01 to G07 are currently office related businesses.

REFERRALS

Environmental Health / Noise Assessment

The proposal was referred to Council's Environmental Health Team Leader who provided the following comments.

Statement of Environmental Effects

The business activities proposed to be undertaken in the offices, being dealings with overseas markets in different time zones, these activities can be done from home;

The SEE says there are other identified demands for the extended office hours but these demands have not been further elaborated;

Issues may result in the policing of extended hours (who would police?)

The applicant states that the owner/landlord will safeguard amenity. What if the business use changes or the owner sells? The DA is attached to the land not the person. A new owner/landlord may not offer same safeguards.

Plan of Management

The plan of management offers restrictions on use of the courtyard; on windows and doors being closed etc.. A plan of management is only as good as the person who oversees that it is adhered to. Who polices this?

Acoustic report

The acoustic report advises that the main noise sources would be office equipment such as a printer and raised voices on the telephone. It assumes windows and doors will be kept closed. the report advises of an external noise level - being the predicted noise from the subject tenancies measured at the external facade of the residential units above.

The report does not consider if any noise or vibration may pass internally though the ceiling structure to the tenancy above. This should be satisfactory being a new building but needs to be identified & addressed in the report.

No mention is made in the report as to the potential for staff to play music while at work.

- *who polices that the windows and doors are kept closed all the time?*
- *who polices that the workers don't use the courtyard for having a cigarette or coffee - talking to each other or using the phone while there?*
- *is there any control over vehicles that may pull up and depart regularly to and from the businesses - the business use can change at any time and could involve vehicle movements?*
- *the noise output from the air conditioners was measured during day time hours on a warm day. the air conditioners would not have been operating at maximum capacity on a warm day. The report needs to investigate the noise output at night with all of the air conditioners operating at maximum capacity.*

The recommendations in the report are that there is only one person per tenancy - as before, who polices this; and

That the doors and windows are kept closed at all times and the courtyard not used - again, who polices this.

The current business uses could change at any time as could ownership of the tenancies. While the current landlord may have the best intentions in mind, he or she could sell next week and the consent will still apply to use of the land.

A 24 hour "license" to operate a business in a mixed use block is ...not recommended

Planner's Comment

The matters raised by the Council's Environmental Health Officer have been considered in conjunction with other issues raised in this assessment could not reasonably be managed by condition of consent or through an updated plan of management. The proposed extended hours of operation would require constant monitoring and policing through the Strata Body Corporate and would present unreasonable compliance monitoring on Council.

The extended hours of operation are also contrary to the late night Trading hours provisions of under Section 7 of the Council's DCP 2013 and would not provide for appropriate amenity for residents as required by the zone objectives.

Building

The proposal was not referred to Council's Building Surveyor.

Heritage

The proposal was not referred to Council's Heritage Advisor for comment.

Engineering/Traffic

The proposal was not referred to Council's Traffic Engineer.

SUBMISSIONS

Adjoining properties and the Hayberry Street were notified of the proposed development between 20 November 2020 and 4 December 2020 and a notice was placed on Council's website on 19 November 2020. A total of 18 submissions including one on behalf of the strata committee were received from the following submitters with the main issues raised summarised below:

Basis of Submissions

- Noise into residential apartments. The architecture of the building with central courtyard results in a vortex of sound to the top of the building.
- Loss of residential amenity
- Parking shortage in the immediate area
- There are a variety of uses which could change in the premises over years within the approved business premises which could intensify the issues raised
- The proposed hours are inconsistent with the zone
- The proposed approved hours respect the residential character of the surrounding area
- The proposal indicates that residential use is not suitable for these premises yet the DA 339/202 proposes residential use and is therefore at odds with this application
- The continual lodgement of applications for this site is a waste of resources
- Contrary to the surrounding residential neighbourhood which includes the residential use of the site
- There is no demonstrated demand and other premises in the commercial area are better suited to these hours
- Despite assurances, the Owners Corporation has not been consulted prior to the lodgement of the DA.

CONSIDERATION

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, are assessed under the following headings:

The application has been assessed against the relevant numeric controls in NSLEP 2013 and DCP 2013 as indicated in the following compliance tables. More detailed comments with regard to the major issues are provided later in this report.

NSLEP 2013 Compliance Table

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area - 805.1m²	Proposed	Control	Complies
Clause 4.1 – Subdivision lot size	No Change to existing		YES
Clause 4.3 – Heights of Building	No Change to existing		YES
Clause 4.4 – Floor Space Ratio	No Change to existing		YES
Clause 4.4a – Non residential FSR	No Change to existing		YES

DCP 2013 Compliance Table

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2- Commercial and Mixed Use Development		
	Complies	Comments
2.2 Function		
Diversity of Activities <i>O1 To ensure a diversity of activities, facilities, opportunities and services is provided, including high grade business accommodation, community services, employment, entertainment, government agencies, health and welfare, recreation and retail.</i> <i>P3 A variety of uses should be provided at street level, which contributes positively to economic and social vitality.</i>	Yes	There is no change of use. Non-residential uses retained on the ground floor
Maximise Use of Public Transport	No	The site is accessible to public transport and will still encourage walking and cycling by virtue of its location within North Sydney, however the proposal to have the premises operating 24 hours, 7 days a week may not encourage the use of public transport but be more heavily reliant on the use of private vehicles given the availability of public transport at night and reluctance of some members of the community to use public transport late at night due to safety concerns.
Mixed Residential Population	N/A	Uses retained.
2.3 Environmental Criteria		
Clean Air	Yes	
Noise	Yes	
Acoustic Privacy	No	The stated objective is:

		<p><i>O1 To ensure all residents within mixed use developments are provided with a reasonable level of acoustic privacy.</i></p> <p>It is considered that the potential for late night activity within the offices and central courtyard area of the building would not provide the residents with a reasonable level of acoustic privacy, particularly in the late night and early morning hours which are proposed. While the applicant has provided acoustic information, this relies on only one person being within each commercial tenancy (whereas the usual occupation is 2-3 persons per tenancy) and doors and windows must be shut. In addition, there would be comings and going through the central courtyard from the basement parking level and through the street level entrance. Given the potential for disturbances during the night, the proposed hours are considered to be inconsistent with the outcomes which are envisaged for a mixed use development and could not be reasonably managed by a Plan of Management.</p> <p>Fundamentally the design of the building with a central courtyard, cannot facilitate the proposed use of business uses which would operate in a 24 hour, 7 day a week environment in close proximity to residential users of the same development. This issue was considered as part of the recent application to convert the ground floor tenancies to motel accommodation (DA 180/2019). It was also the view of the Panel that the design and layout of the subject building was problematic in regard to those land uses given the upper level residential uses within the development.</p>
Visual Privacy	Yes	
2.5 Quality Urban Environment		
Accessibility	Yes	
Safety and Security	No	<p>The stated objective is:</p> <p><i>To ensure that a high level of personal safety and security is provided within the development.</i></p> <p>It is considered that to allow 24/7 access into the building will not meet this objective given the mixed use nature of the development and the proposed extended night time and early morning hours. The use of the building by commercial tenants on a 24 hour, 7 day a week basis was not an expectation of residential tenants at the time of purchase or rental.</p>
Private Open Space	Yes	
Vehicular Access	Yes	
Car Parking	Yes	
Garbage Storage	Yes	
Site Facilities	Yes	

Part B Section 7- Late Night Trading

The following controls relate to the operating of premises between 8pm and 7am.

7.2 Matters for Consideration

P1 Appropriate trading hours will be determined by taking into account a number of primary issues which include (but are not limited to):

- (a) the location and context of the premises, including proximity to residential and other sensitive land uses and other late trading premises;
- (b) the specific use of the premises (eg pub, nightclub, restaurant etc) and the proposed hours of operation;
- (c) the existing hours of operation of surrounding business uses;
- (d) the size and patron capacity of the premises;
- (e) the availability of amenities provided to the premises;
- (f) the impact of the premises on the mix, diversity and possible concentration, of late night uses in the locality;
- (g) the likely operation of the proposal during day time hours;
- (h) submission of a Plan of management that demonstrates a strong commitment to good management of the operation of the business, particularly in relation to managing potential impacts on adjoining and surrounding land uses and premises, as well as the public domain;
- (i) the diversity of retail services within an area and the impact of a late night proposal on this diversity;
- (j) measures to be used for ensuring adequate safety, security and crime prevention both on the site of the premises and in the public domain immediately adjacent to, and generally surrounding, the premises;
- (k) the accessibility and frequency of public transport during late night trading hours.

P2 Consideration of all of these factors provides the basis for a consistent approach to the determination of appropriate trading hours and creates greater certainty both for the community and proponents of late night trading premises.

P3 Once these factors are taken into consideration late night trading hours may be permitted in appropriate circumstances, particularly in areas of North Sydney that already exhibit or have an emerging vibrant night-time character, as opposed to parts of the LGA that are predominantly residential in character where amenity impacts can be the greatest and most difficult to manage.

Comment: The proposal fails to achieve compliance with many of the matters for consideration as listed above in P1. Despite the size of the individual business premises being small, it is the context of these premises within the same building as residential units with the building's configuration featuring a central courtyard which renders the proposed operating hours as being unsuitable for the site. The submission of a plan of management would require ongoing monitoring of activities if issues were raised, such as noise and banging of doors from the business activities.

7.3.1 Trading Hours

P1 The **maximum** trading hours that will be granted for a premises within a B4 zone (indoors) are:

7am to 11pm (Mon-Wed)
7am to Midnight (Thurs-Sat)
7am to 10pm (Sun)

Comment: The proposal does not comply.

NORTH SYDNEY LEP 2013

1. Permissibility within the zone:

The subject site is zoned B4 Mixed Use pursuant to LEP 2013. The proposed use of the ground floor tenancies does not change as part of this proposal.

2. Objectives of the zone

The particular objectives of the Mixed Use zone are to:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.*
- *To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses on the lower levels and residential uses above those levels.*

The change of hours of operation to 24/7 use of the premises is inconsistent with the objectives of the zone which ensure that residential amenity of the nearest residents is maintained. In this regard:

- The proposal in its current form, with business uses on the ground floor being restricted in use from 7am until 7pm, is acceptable and was anticipated by residential occupants. The proposal to extend the use of the ground floor tenancies to a 24 hour, 7 day a week use is not compatible with the upper level residential uses within the building.
- The site is accessible to public transport and will still encourage walking and cycling by virtue of its location within North Sydney. However, the likelihood of the commercial tenants arriving and leaving by private vehicle is higher given the extended hours proposed. This would also increase the potential for noise within the building when background noise is low in the late night and early morning hours.
- Although the ground floor tenancies which continue to be separated from the residential uses above, fundamentally it is the design of the building with a central courtyard, which causes issues between the two (2) uses. As such and despite assurances from the acoustic consultant, the central courtyard design results in sensitivity to upper level residential users. Following consideration of this matter by the Panel in respect to the application which sought to change the ground floor tenancies to motel use, a Plan of Management is not considered in this case, to be an appropriate mechanism to ensure that reasonable residential amenity will be able to be maintained.

3. Heritage Provisions

The site is not within a Heritage Conservation Area but immediately adjacent to one. There is no change to the form or appearance of the building. The proposed development will facilitate the use of the existing buildings for purposes that are permissible in the zone, and no physical works are required to accommodate the change of use. Accordingly, the proposed development will have no impact on the heritage significance of the conservation area.

SREP (Sydney Harbour Catchments) 2005

The site is located within the catchment of Sydney Harbour and is subject to the provisions of the above SREP. The proposed use would not be visible from Sydney Harbour and will not have any other impact thereupon. The proposed development raises no other issues and otherwise satisfies the aims and objectives of the SREP.

SEPP 55 and Contaminated Land Management Issues

The works do not involve a change of use to an existing commercial premises. The proposed use is considered to be satisfactory with regard to the requirements of the SEPP. In particular the requirements of Clause 7 of the consent have been considered and the subject site considered suitable for the proposed intended use.

DEVELOPMENT CONTROL PLAN 2013

Relevant Planning Area: Crows Nest/ St Leonards

The application has been assessed against the relevant controls in DCP 2013.

2. Environmental Criteria

The issue of concern that has been raised by many residents within the apartments at 13 Eden Street is potential noise between the use of the ground floor tenancies and the apartments above.

3. Quality Built Form

There are no material changes to the building or any fit out works required.

4. Urban Environment

Although the site is within a B4 Mixed Use zone, where there is an expectation that there will be a range of different uses to that allowed in residential zones and a B4 mixed use development explicitly requires non residential uses on the ground floor of a mixed use building, the proposed use of the ground floor late at night and early hours of the morning does raise safety and security issues.

Carparking (also see 7. below) and garbage storage are provided for within the development and do not change.

5. Providing for the Community

There is no change to the public domain.

6. Efficient Use of Resources

There is no change to the use of resources within the site.

7. Car parking

Off-street parking will continue to be accommodated in the existing car spaces located in the basement car parking area of the building. The night time and early morning use of all tenancies at once would result in the use of street parking at a time when parking is used for residential users.

11. Waste Management

The site is currently serviced for the removal of waste. The proposed application is unlikely to result in an increase for waste services.

SECTION 7.11 CONTRIBUTIONS

Not applicable

ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

ENVIRONMENTAL APPRAISAL

CONSIDERED

1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and Carparking provision	Yes
6. Loading and Servicing facilities	Yes
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant s.4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

SUBMITTERS CONCERNS

Issues raised by the submitters have been dealt with within this report and by the reasons for refusal.

CONCLUSION

This development application seeks approval for the use of G.01-G.07 currently approved for operation from 7am until 7pm to 24 hour, 7 day a week operation.

The proposal has been assessed against the relevant requirements of the North Sydney LEP 2013 and North Sydney DCP 2013 and is considered to be contrary to the aims of the plan and objectives of the B4 (Mixed Use) zone and the provisions of Part B Section 2 of the DCP relating to mixed use development.

The zone objectives and DCP provisions require that a diversity of activities be maintained, including non-residential uses, while protecting residential accommodation and local amenity. A number of surrounding residents have raised a number of concerns relating to noise and security.

Although the ground floor tenancies are separated from the residential uses above, fundamentally it is the design of the building with a central courtyard, which causes issues between the two (2) uses. As such and despite assurances from the acoustic consultant, the central courtyard design results in unsatisfactory impacts to the upper level residential users. The Plan of Management is not considered to be an appropriate mechanism to ensure that reasonable residential amenity would be able to be maintained given the inherent conflict between commercial and residential uses, particularly during late night hours.

The proposed extension of operating hours to 24 hours a day, seven days a week is contrary to the objectives and provisions of Part B Section 7- Late Night Trading of the North Sydney DCP which requires that a development ensures that late night trading premises will have minimal adverse impacts on the amenity of residential or other sensitive land uses and to ensure that operators of late night trading premises commit to good management practices through the implementation of robust plans of management

This application is reported to the Planning Panel in conjunction with DA 339/20 which seeks separate development consent for change of use of the ground floor commercial tenancies to residential studio apartments.

Following this assessment, the development application is not considered to be reasonable in the circumstances and is recommended for **refusal**.

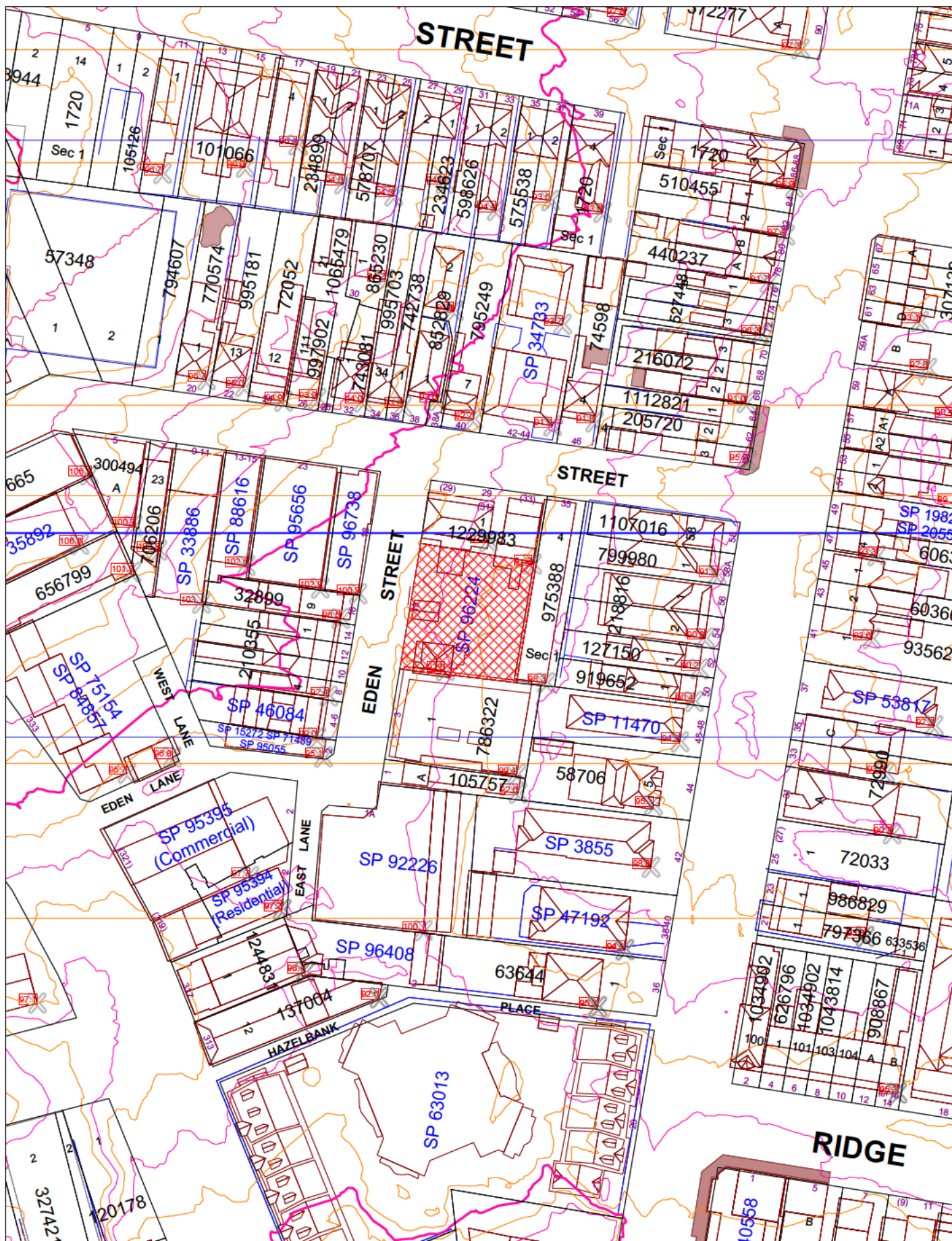
RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Local Planning Panel, as the Consent Authority on behalf of Council under the Ministers Direction, refuse consent to Development Application No. 287/2020 to extend operating hours of ground floor tenancies G01 to G07 (inclusive) to 24 hours a day, seven days a week for the following reasons:

1. The proposed extension of operating hours to 24 hours a day, seven days a week is contrary to clause 1.2 2(a) of the North Sydney Local Environmental Plan because it has not been demonstrated that the proposal is appropriate to its context and enhances the amenity of the North Sydney community and environment.

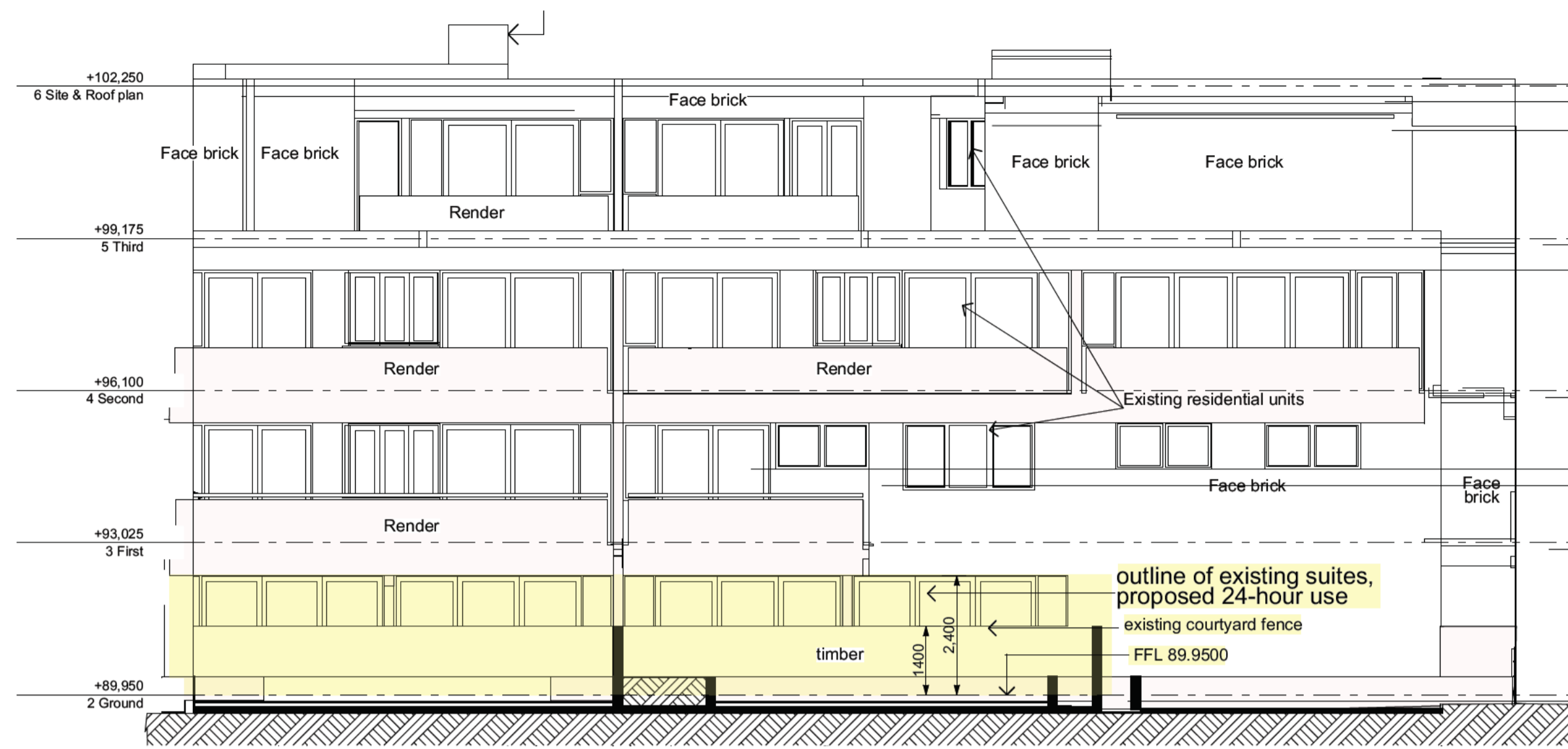
2. The proposed extension of operating hours to 24 hours a day, seven days a week is contrary to clause 1.2 2(b) (ii) of the North Sydney Local Environmental Plan because it has not been demonstrated that the proposal will maintain a diversity of activities while protecting residential accommodation and local amenity.
3. The proposed extension of operating hours to 24 hours a day, seven days a week is contrary to clause 1.2 2(d) (ii) of the North Sydney Local Environmental Plan because the development will adversely affect the amenity of residential properties in terms of acoustic privacy.
4. The proposed extension of operating hours to 24 hours a day, seven days a week is contrary to the stated aim of the B4 Mixed Use zone which is to create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.
5. The proposed extension of operating hours to 24 hours a day, seven days a week is contrary to Objective 5 of Part 1.1.1 (General) of the North Sydney DCP which requires that any development does not have adverse impacts on residential amenity or environmental quality.
6. The proposed extension of operating hours to 24 hours a day, seven days a week is contrary to the objective O12 of Part 2.1.1(General Objectives) of the North Sydney DCP as it would not minimise the acoustic impacts on residents from non-residential activities,
7. The proposed extension of operating hours to 24 hours a day, seven days a week is contrary to the objective of Part 2.3.9 (Acoustic Privacy) of the North Sydney DCP which requires that a development ensures all residents within a mixed use development are provided with a reasonable level of acoustic privacy. In this case, a Plan of Management is not considered to be a satisfactory mechanism to ensure compliance with this objective.
8. The proposed extension of operating hours to 24 hours a day, seven days a week is contrary to the objectives and provisions of Part B Section 7- Late Night Trading of the North Sydney DCP which requires that a development ensures that late night trading premises will have minimal adverse impacts on the amenity of residential or other sensitive land uses and to ensure that operators of late night trading premises commit to good management practices through the implementation of robust plans of management;



North Sydney Council

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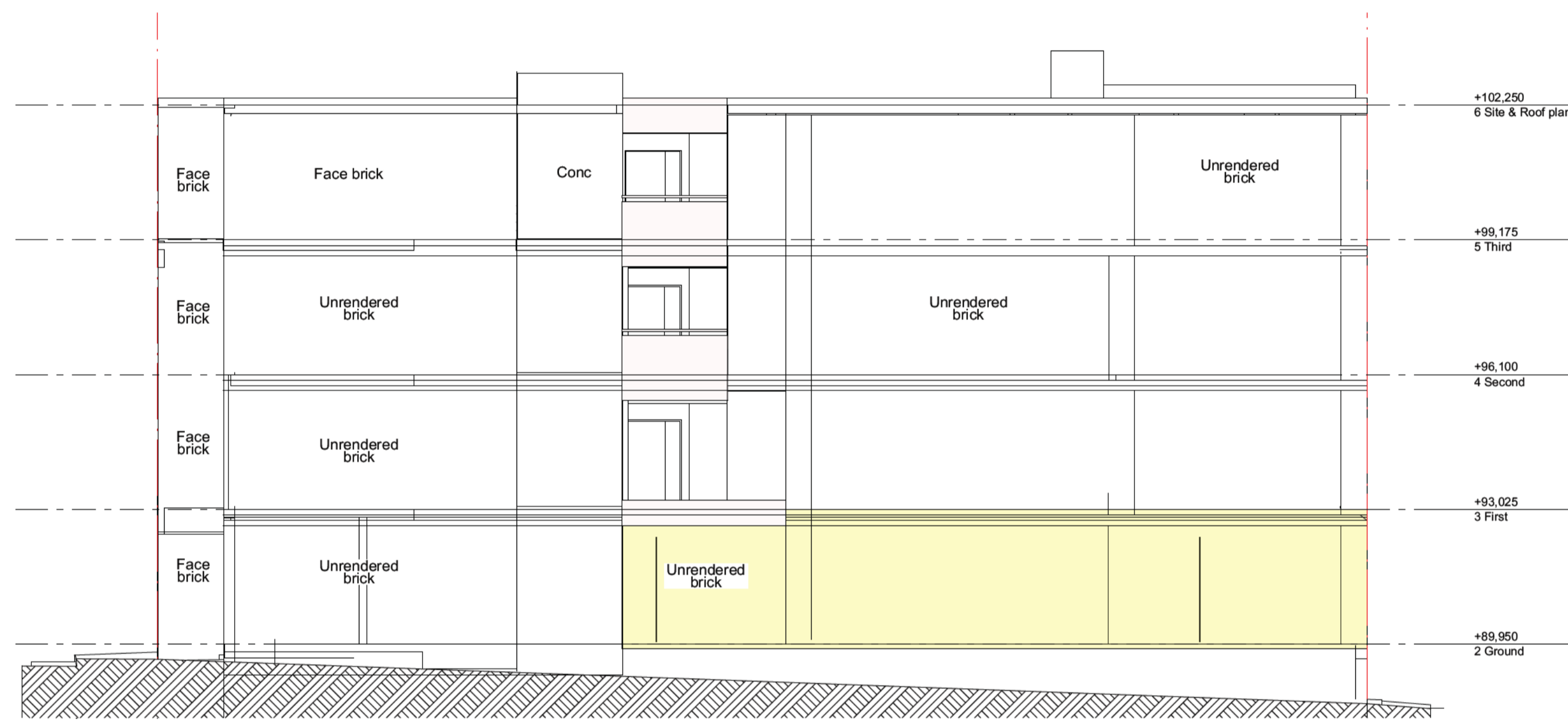
Further details can be obtained by calling (02) 9936 8100 or e-mail mapping@northsydney.nsw.gov.au



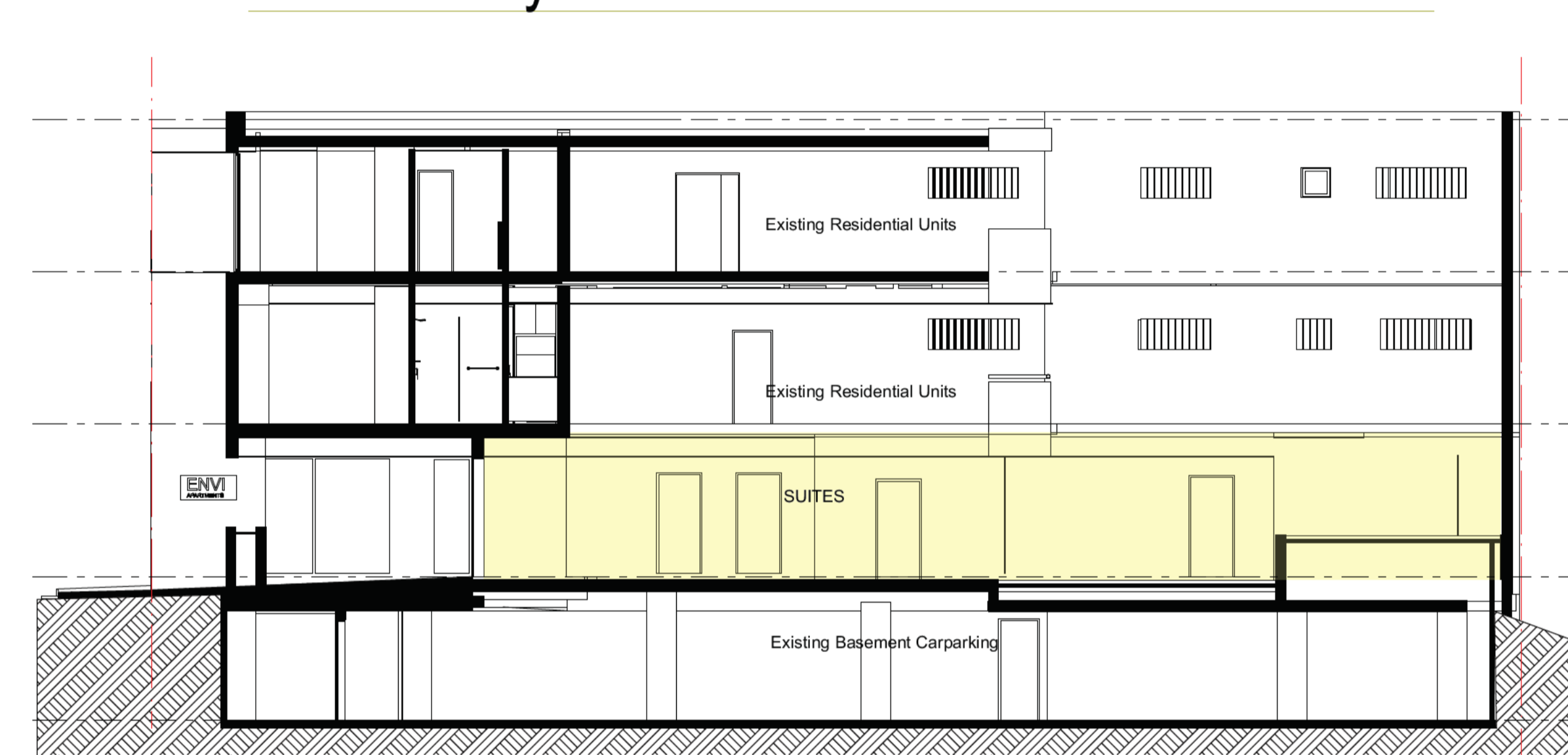
E/04 North Elevation 1:100



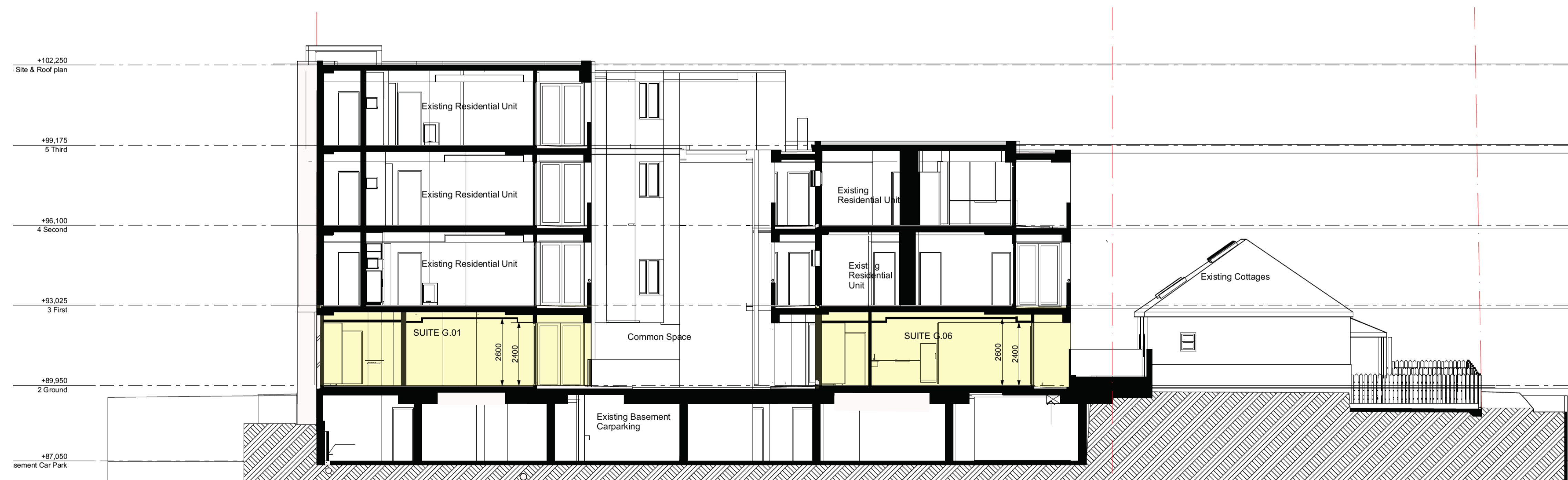
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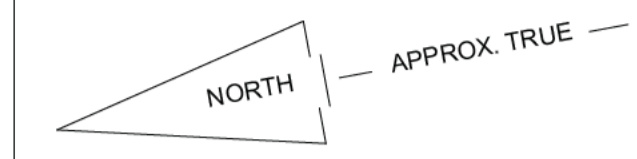
E/06 South Elevation 1:100



E/07 South Elevation / Section 1:100



S/01 Section 1 1:100



A	DA 24 Hours use issue	2.11.20
No	Amendment	date

The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.

Client	Myrtle 29 P/L
Project Name	13 Eden St North Sydney
Architect	Max Wessels 3 Oleander Rd Wahroonga Ph 0405 137430

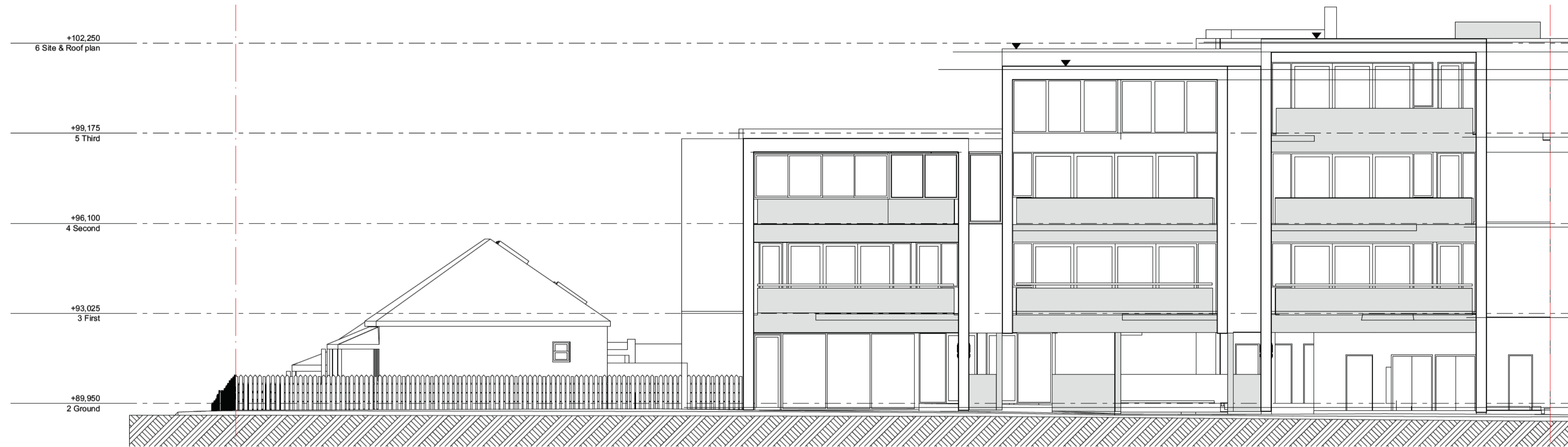
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Proposed 24 Hour Use

Drawing Title:
Elevations/ Section

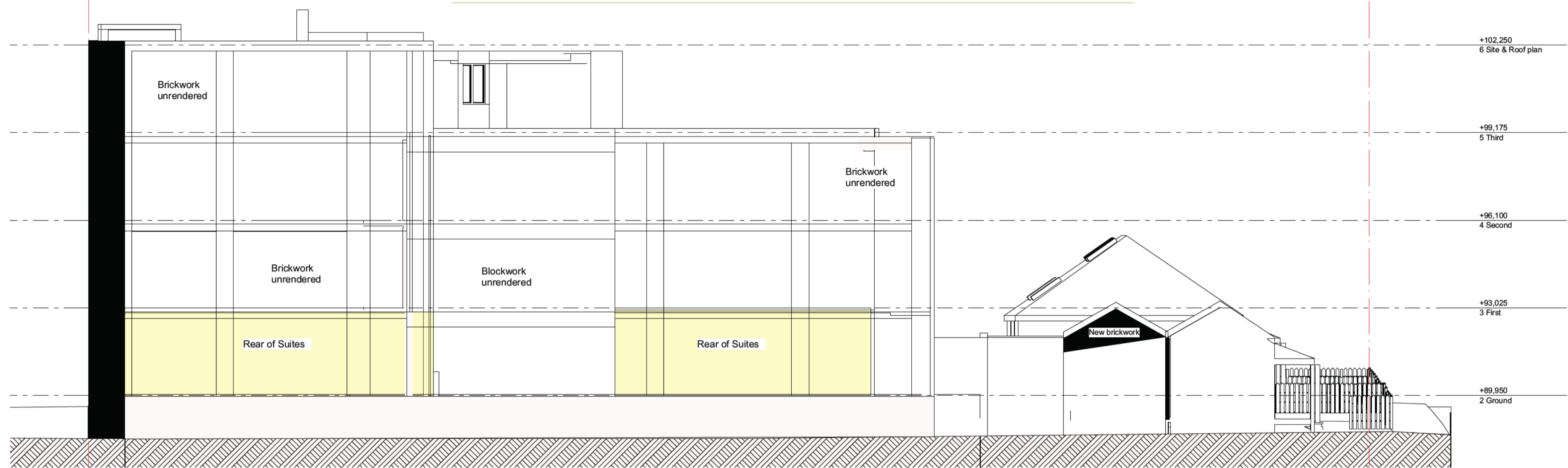
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Status: DA	Checked By: JMW

Project No: 2314	Drawing No.: DA24H03	Amend No.: A
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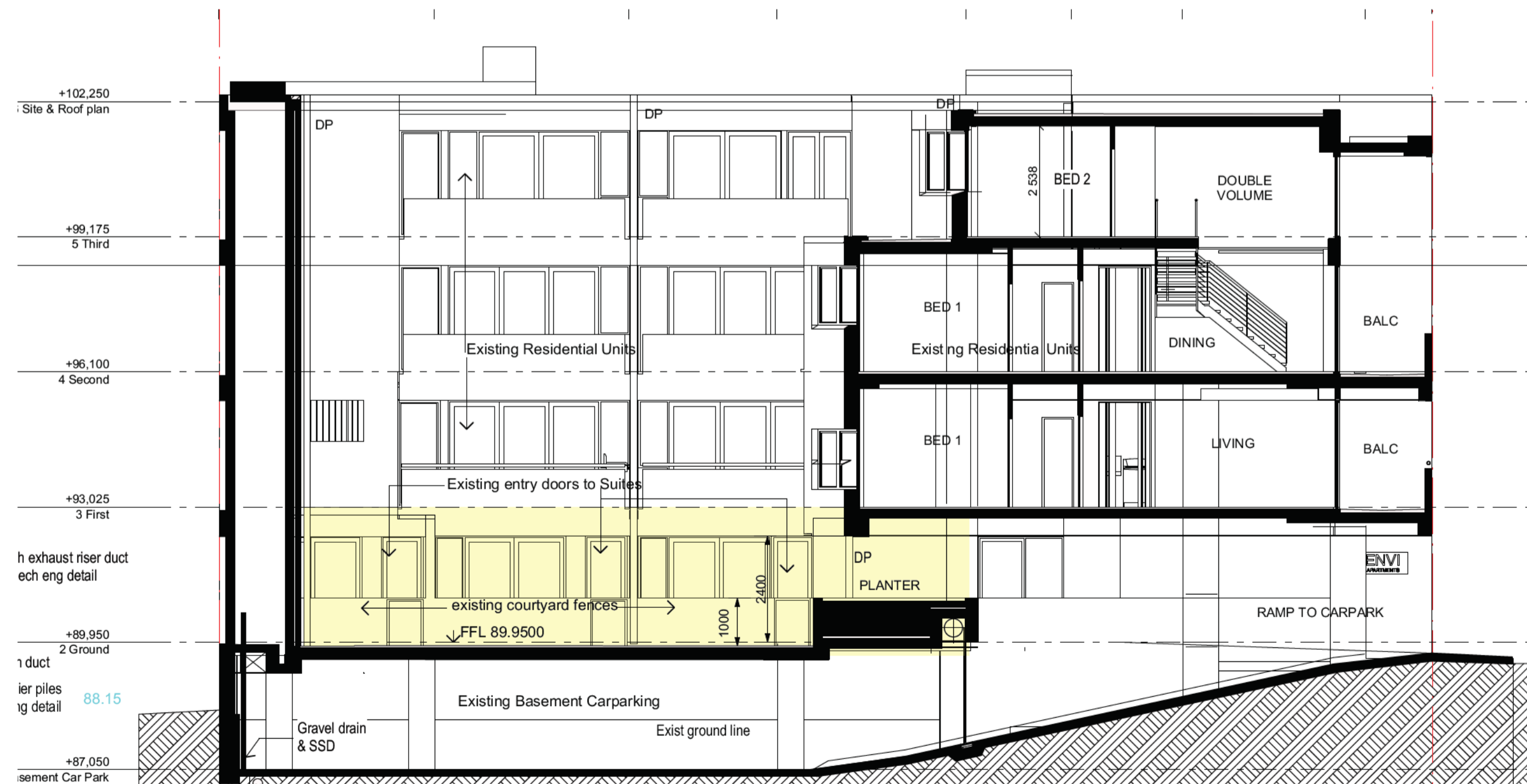
Plot Date: 2/11/2020



E/01 West Elevation Eden Street 1:100



E/02 East Elevation 1:100



S/03 East Elevation /Section 1:100



A	DA 24 Hours use issue	2.11.20
No	Amendment	date

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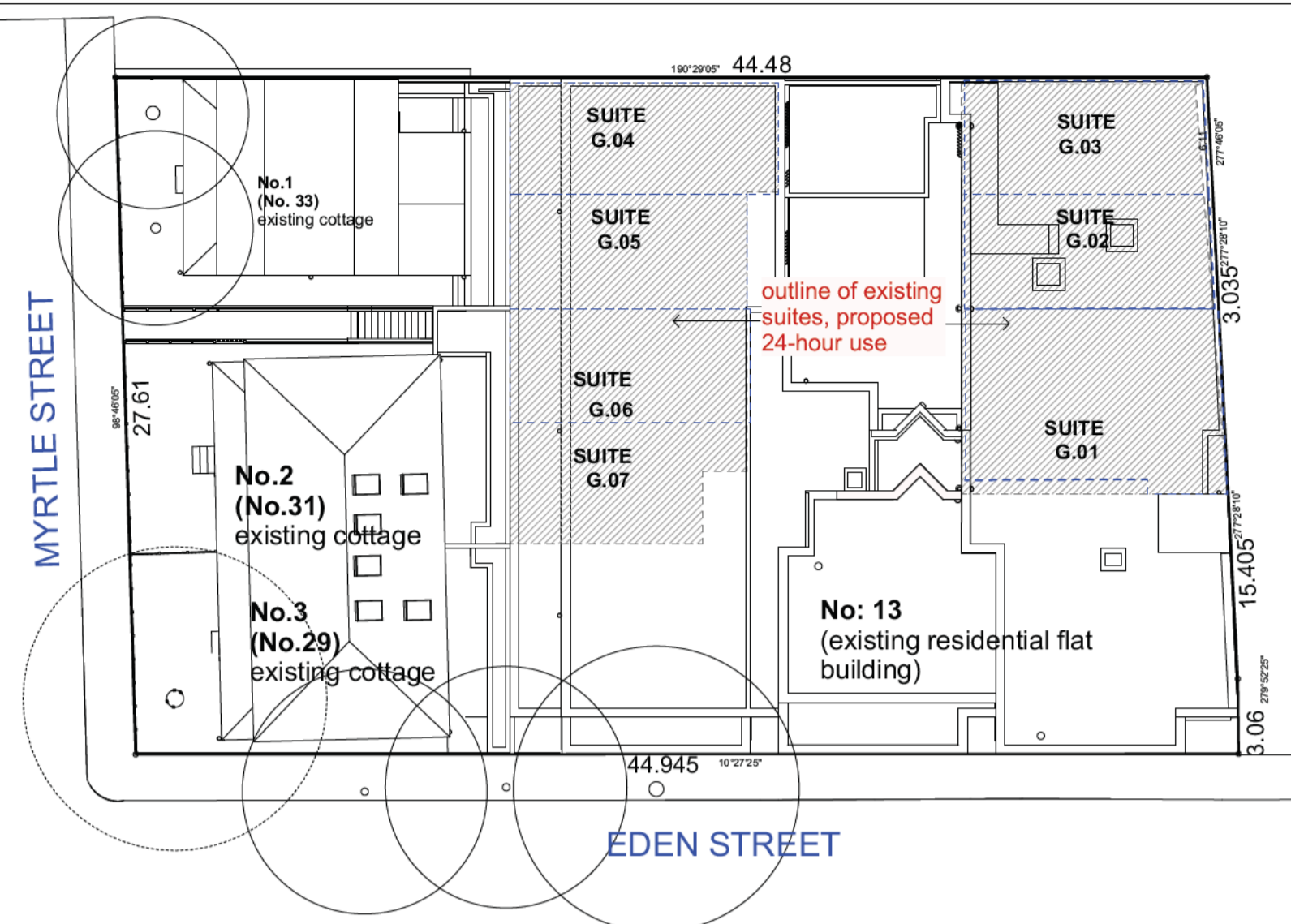
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Proposed 24 Hour Use

Drawing Title:
Elevations

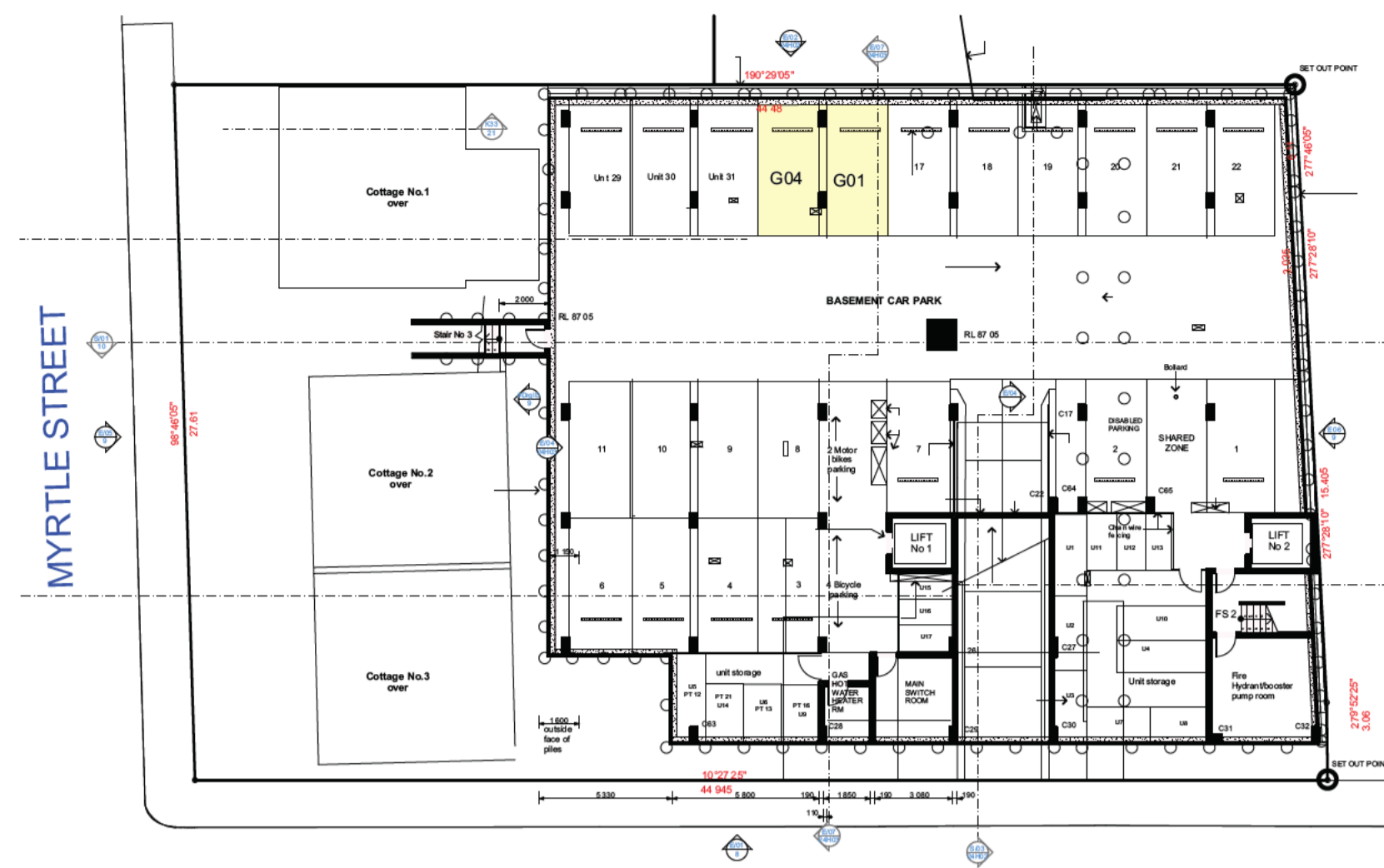
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Status:	DA	Checked By:	JMW

Project No:	2314	Drawing No.:	DA24H02	Amend No.:	A
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Plot Date: 2/11/2020



Site & Roof Plan 1:250



Basement Car Park 1:250



Ground Floor Plan 1:100

A	DA 24 Hours use issue	2.11.20
No	Amendment	date

The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.

Client	Myrtle 29 P/L
Project Name	13 Eden St North Sydney
Architect	Max Wessels 3 Oleander Rd Wahroonga Ph 0405 137430

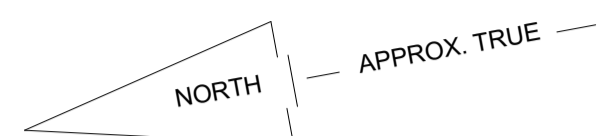
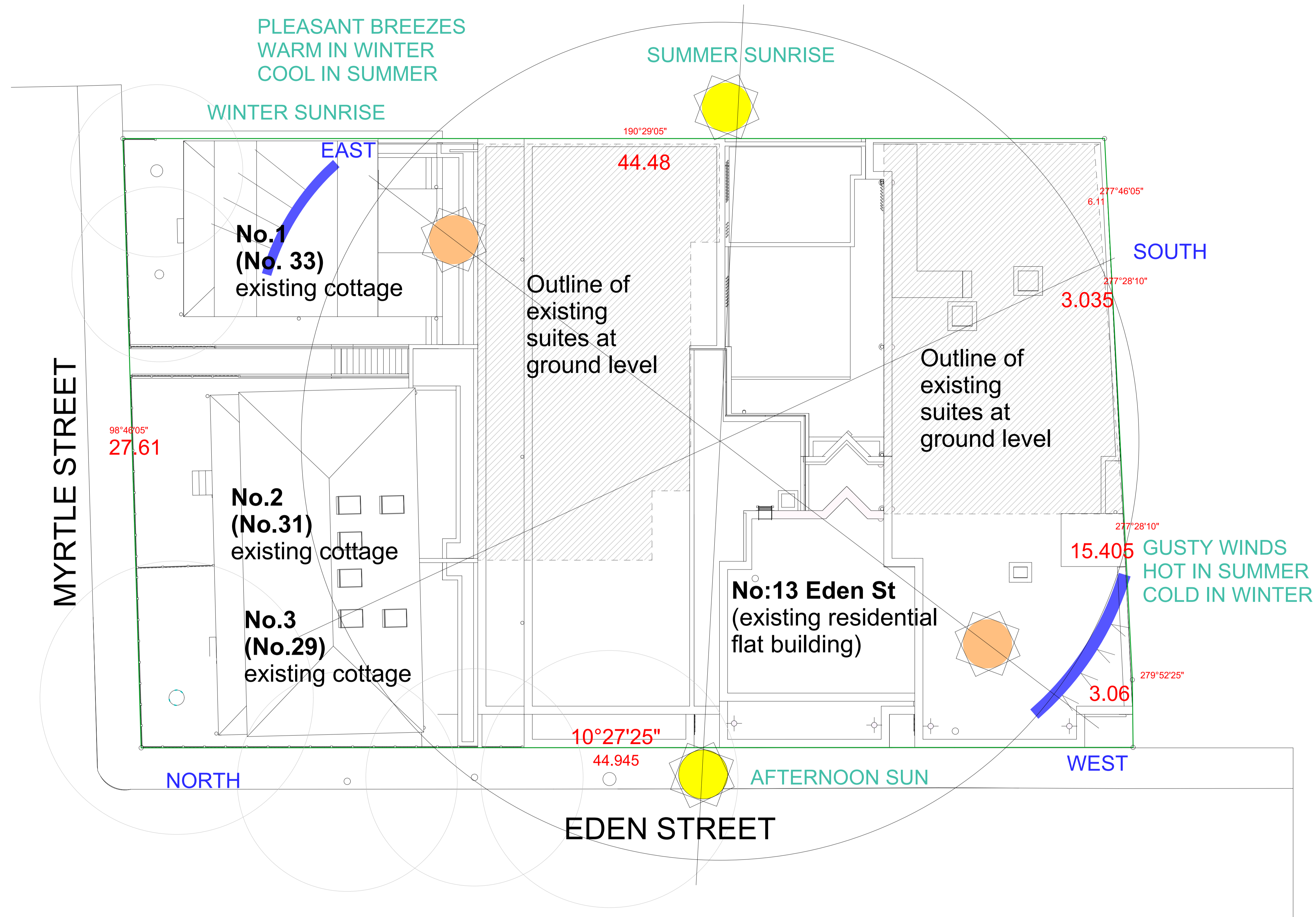
Description:
Proposed 24 Hour Use

Drawing Title:
Site & Ground Floor Plan

Scale:	1:100 @ A1 1:200 @ A3	Date:	Nov 2020
Status:	DA	Checked By:	JMW

Project No:	2314	Drawing No.:	DA24H01	Amend No.:	A
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Plot Date: 2/11/2020



Site Analysis Plan

1:100

A	DA 24 Hours use issue	2.11.20
No	Amendment	date

The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.

Client	Myrtle 29 P/L
Project Name	13 Eden St North Sydney
Architect	Max Wessels 3 Oleander Rd Wahroonga Ph 0405 137430

Description:
Proposed 24 Hour Use

Drawing Title:
Site Analysis Plan

Scale: 1:100 @ A1
1:200 @ A3
Date: Nov 2020
Status: DA
Checked By: JMW

Project No.: 2314
Drawing No.: DA24H04
Amend No.: A

Plot Date: 2/11/2020



DIRECTORS
MATTHEW PALAVIDIS
VICTOR FATTORETTO
MATTHEW SHIELDS

20181594.1/2801A/R2/VF

04/11/2020

Moore Development Group Pty Ltd
Unit G04
13 Eden Street
NORTH SYDNEY NSW 2060

Email: nick.rickard@modog.com.au

ATTN: NICK RICKARD

13 Eden Street, North Sydney - Commercial Unit Extended Hours Noise Assessment

1 INTRODUCTION

An acoustic assessment of the likely noise impact of the extended hours proposal has been undertaken. A JLA letter addressing the subject development attached indicates that:

- The current hours of operation are Monday to Saturday 7am to 7pm.
- The proposed hours of operation are 24 hours per day, 7 days per week.
- No physical works are needed to accommodate the proposed operating hours.
- The commercial units would be used as offices.

We are instructed that only one person shall be in each unit during the night. There is a total of 7 units that may be used at night. There are 2 car spaces allocated in the basement car park for use by the commercial units.

The potential for noise impact will be assessed for 3 noise sources:

- Internal activities.
- Mechanical plant emissions
- Additional traffic movements.

SYDNEY
A: 9 Sarah St
MASCOT 2020
T: (02) 8339 8000

SYDNEY MELBOURNE BRISBANE CANBERRA
LONDON DUBAI SINGAPORE GREECE

ABN: 11 068 954 343

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2 AMBIENT NOISE LEVELS

2.1 MYRTLE STREET

Ambient noise levels in Myrtle Street were measured for a previous development application for the subject building and are provided in Appendix 1. The night time (10pm to 7am) rating background noise level obtained from the monitoring has been calculated in accordance with EPA procedures. The evening background is higher, so compliance at night will also result in compliance during the day and evening periods.

The night time rating background noise level was 35 dB(A) L_{90} . This background noise level will be used to assess noise impact at the first floor residential apartments on the northern façade of the 13 Eden Street building.

2.2 13 EDEN STREET COURTYARD

Ambient noise levels in the courtyard of 13 Eden Street were measured were measured between 13th and 19th December 2018 using an unattended noise monitor. The monitor was set up to record 15 minute statistical noise levels using A-weighted, fast response. The monitor was calibrated prior to and following the measurement and there was no significant calibration drift. The results are provided in Appendix 1.

The night time (10pm to 7am) rating background noise level obtained from the monitoring has been calculated in accordance with EPA procedures. The evening background is higher, so compliance at night will also result in compliance during the day and evening periods.

The night time rating background noise level was 36 dB(A) L_{90} . This background noise level will be used to assess noise impact at the first floor residential apartments facing the internal courtyard of the 13 Eden Street building.

3 NOISE IMPACT ASSESSMENT

3.1 SENSITIVE RECEIVERS POTENTIALLY IMPACTED

The residential apartments on level 1 of this development will be the potentially most impacted sensitive receivers. Compliance at these residential receivers would achieve compliance at all locations.

The cottages immediately to the north of 13 Eden Street building have commercial uses.

The residents on the northern side of Myrtle Street and on the western side of Eden Street are significantly more distant. If emissions to 13 Eden Street comply, then so too will the residences in Myrtle Street.

Surrounding commercial receivers (including the cottages and commercial uses on other sites) would be less impacted by night time noise compared to activities occurring in the currently approved hours of operation and would therefore not be adversely impacted by the proposed night time uses. Notwithstanding, if the residential receivers are not adversely impacted then, clearly, the commercial receivers would not be impacted.

3.2 INTERNAL ACTIVITIES

Given there will be only one person within each tenancy the noise sources would be:

- Occupant talking on telephone.
- Office machinery such as printers, etc.

Of these, the loudest activity would be the occupants talking on the telephone.

The noise level emitted from the commercial units to the level 1 residential facades were predicted assuming:

- External windows and doors are closed at night
- Telephone conversations last at least 15 minutes with telephone conversations occurring in all tenancy simultaneously (worst case).
- A sound level of 66dB(A) would typically be generated as a within the spaces corresponding to "raised voice" (source: AS 2822:1985).

The predicted noise level:

- at the Eden Street residence northern façade is 29 dB(A) $L_{eq,15min}$.
- at the courtyard of the Eden Street residences is 37 dB(A) $L_{eq,15min}$.

An appropriate criterion for noise emissions from this noise sources is equivalent to background + 5 dB(A), which in this case is 40 dB(A) for the northern façade assessment and 41 dB(A) for the courtyard assessment.

The predicted noise levels, even taking worst case assumptions, are well below the assessment criteria.

It is concluded that even taking the most conservative assumptions noise emissions from this noise source would not adversely impact any residential or commercial receiver.

3.3 AIR CONDITIONING

Each of the commercial tenancies has a VRV air conditioning condensing unit.

The condensing units serving the ground floor units located on the northern side of the building are on the terraces facing north. The condensing units serving the ground floor units located on the southern side of the building are located within the courtyard on the terraces belonging to each unit.

Noise emissions from these condensing units were measured during the day on 11th December 2018. Weather conditions on that day were similar to a warm night, and so would be representative of worst-case conditions at night. On milder nights less noise would be emitted as the units' noise level reduces with cooling/heating output.

The noise level was measured with all units operating. The highest noise level in the courtyard was measured at the south facing façade opposite the air conditioning units as this location had a more direct line of sight to the units. The measured noise level with the units operating was 40.5 dB(A) and the ambient level of 38.5 dB(A). Therefore, noise due to the air conditioning units was 36 dB(A).

The noise level at the northern façade above a condensing unit was measured at 38.1 dB(A) with an ambient of 37.5 dB(A). Therefore, noise due to the air conditioning units was 29 dB(A).

It was noted that the character of noise emitted by the air conditioning units was neutral and would not require the addition of modifying factors.

An appropriate criterion for noise emissions from this noise sources is equivalent to background + 5 dB(A), which in this case is 40 dB(A) for the northern façade assessment and 41 dB(A) for the courtyard assessment.

The measured noise levels are well below the assessment criteria.

It is noted that the assessment criteria should include the combined noise from air conditioning and internal activities. The cumulative noise levels would be 40 dB(A) within the courtyard and 32 dB(A) at the northern façade. In both cases the cumulative noise levels remain below the assessment criteria.

It is concluded air conditioning noise levels would not exceed night time criteria (even allowing for cumulative noise from activities and would therefore not adversely impact any of the residential receivers.

3.4 TRAFFIC MOVEMENTS

The commercial units have 2 parking spaces allocate to them within the basement carpark.

The number and distribution of traffic movements though the night period will depend on a number of factors including end of shift times adopted by the tenancies, whether the tenancies operate 2 shifts or one shift at night, mode of transport used by employees, etc. Given the above it is expected that the additional number of hourly vehicle movements to be small and would not result in adverse impact.

4 RECOMMENDATIONS

The following recommendations are made.

- The night time occupancy at night is to be limited to 1 per tenancy.
- Between 7pm and 7am all external windows and doors are to be kept closed except to access the tenancy when entering or leaving the site, and the courtyard is not to be used by the tenants.

5 CONCLUSION

Potential noise impacts from the proposed use of the ground floor commercial tenancies between 7pm and 7am have been assessed. Provided the recommendations in Section 4 are adopted it is concluded the proposal would not adversely impact the surrounding receivers.

Yours faithfully,

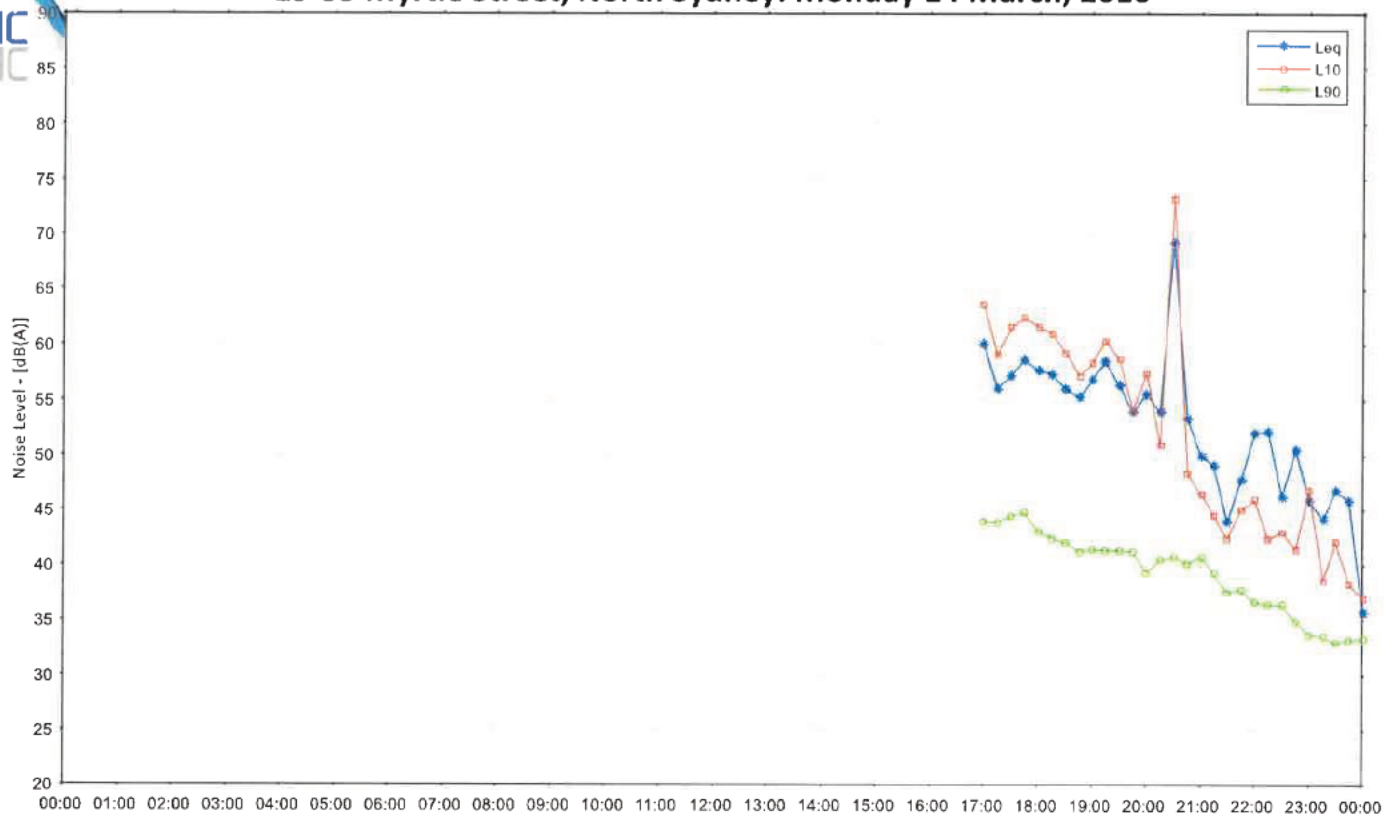


Acoustic Logic Consultancy Pty Ltd
Victor Fattoretto

Appendix 1 – Ambient Noise Monitoring Results

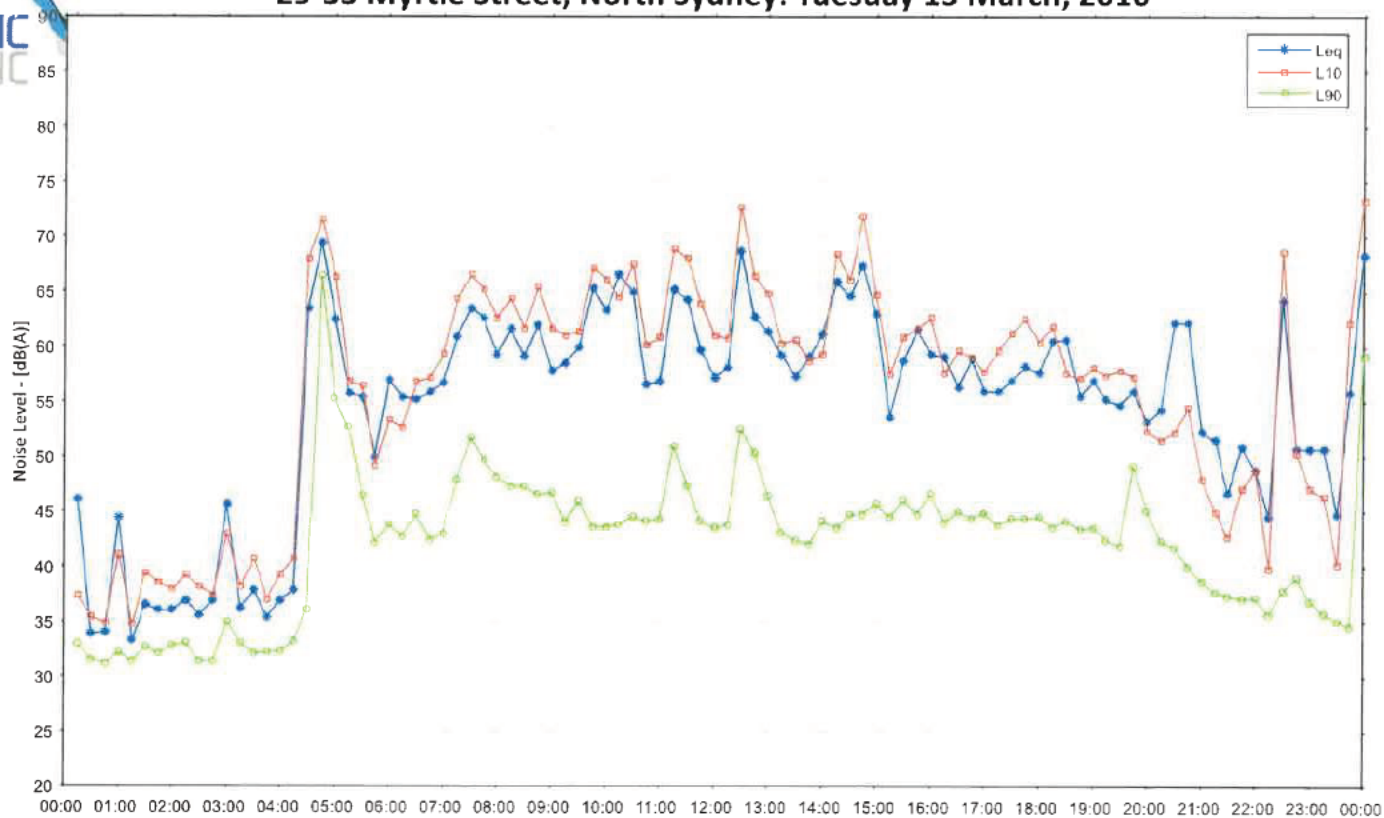


29-33 Myrtle Street, North Sydney: Monday 14 March, 2016



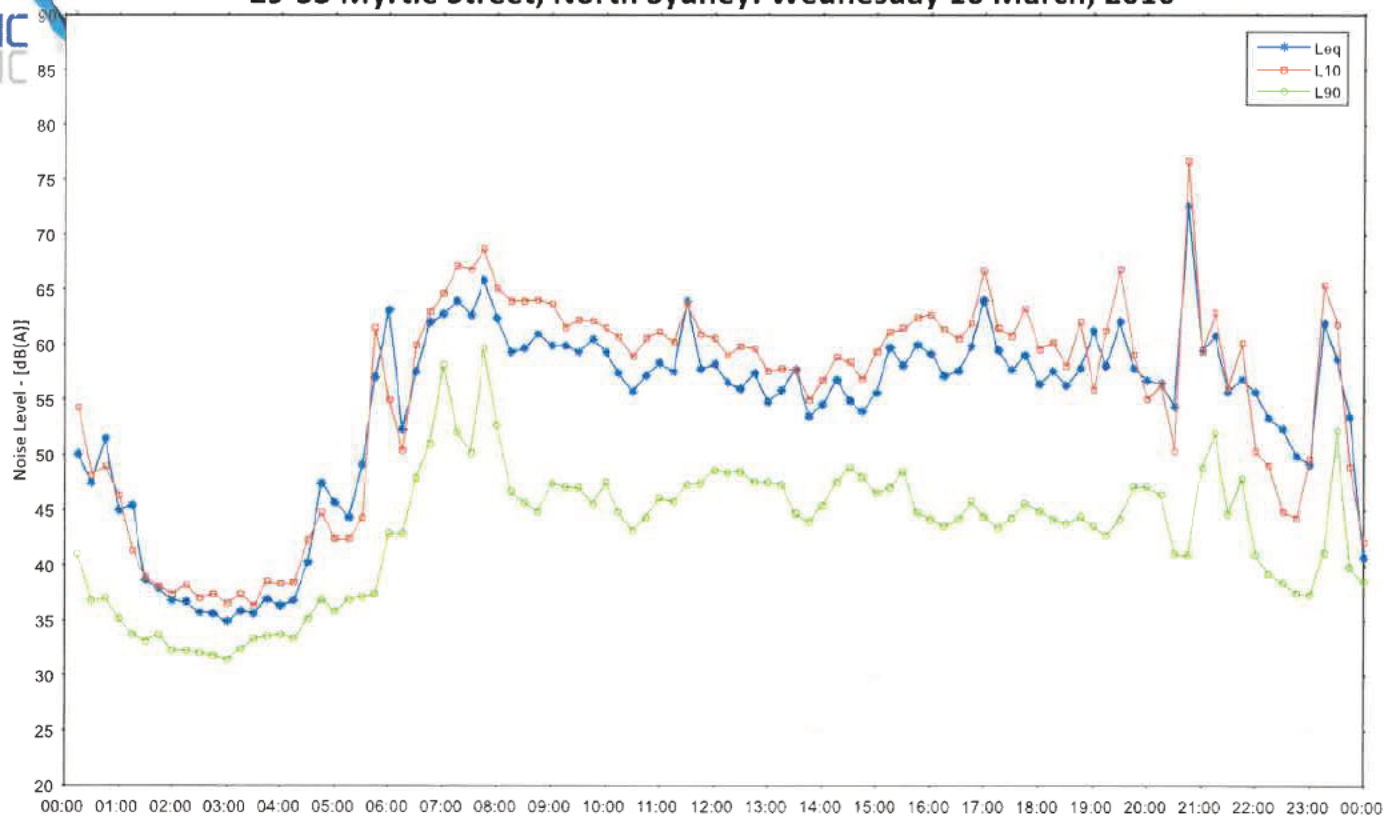


29-33 Myrtle Street, North Sydney: Tuesday 15 March, 2016



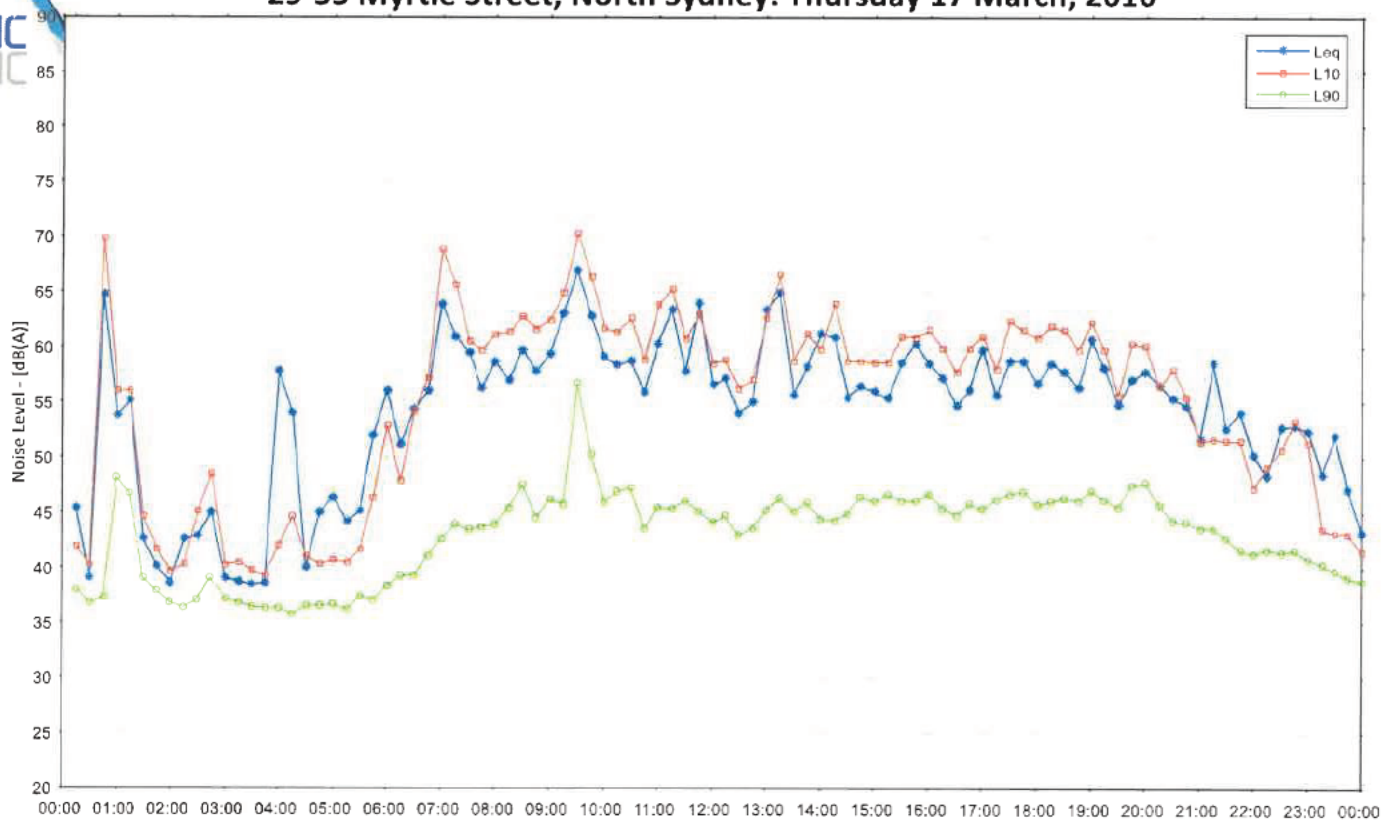


29-33 Myrtle Street, North Sydney: Wednesday 16 March, 2016



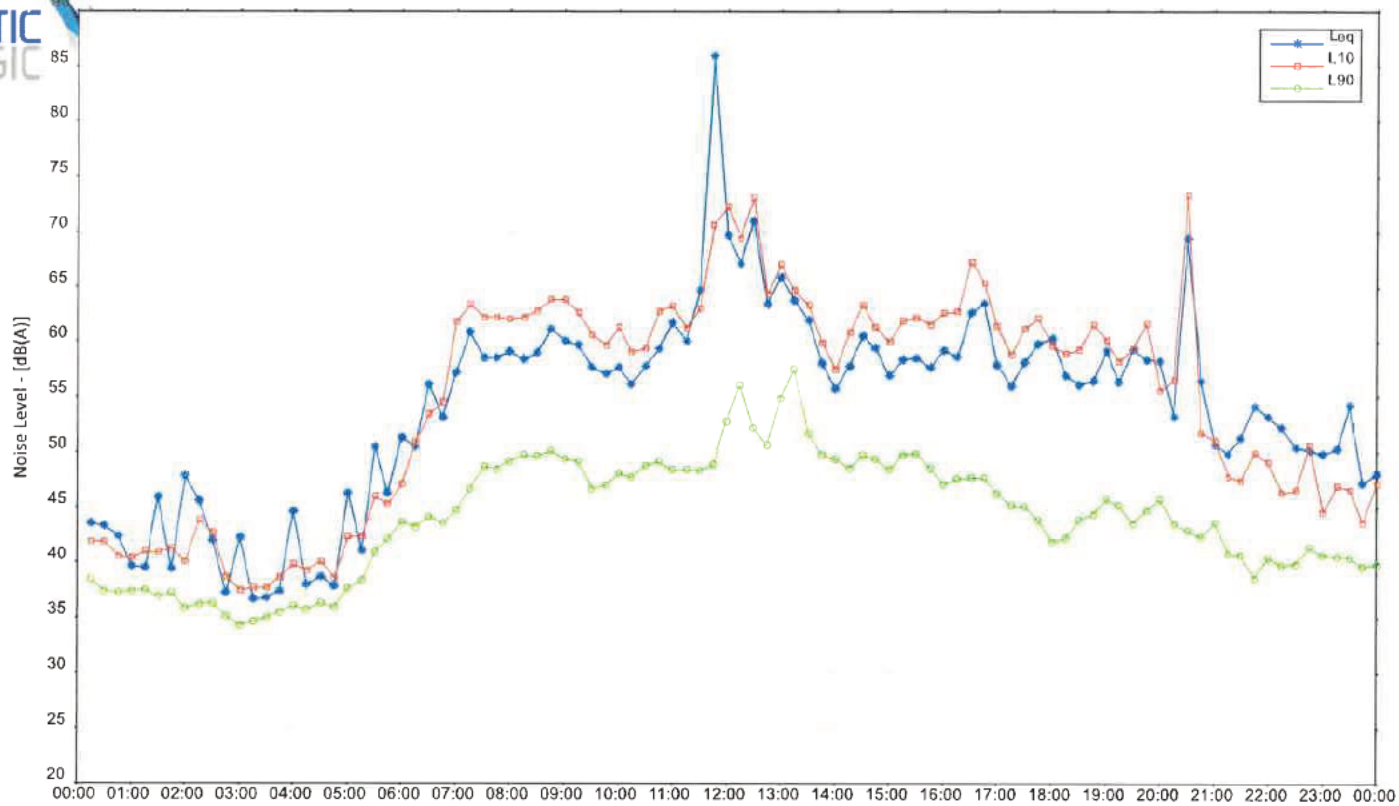


29-33 Myrtle Street, North Sydney: Thursday 17 March, 2016



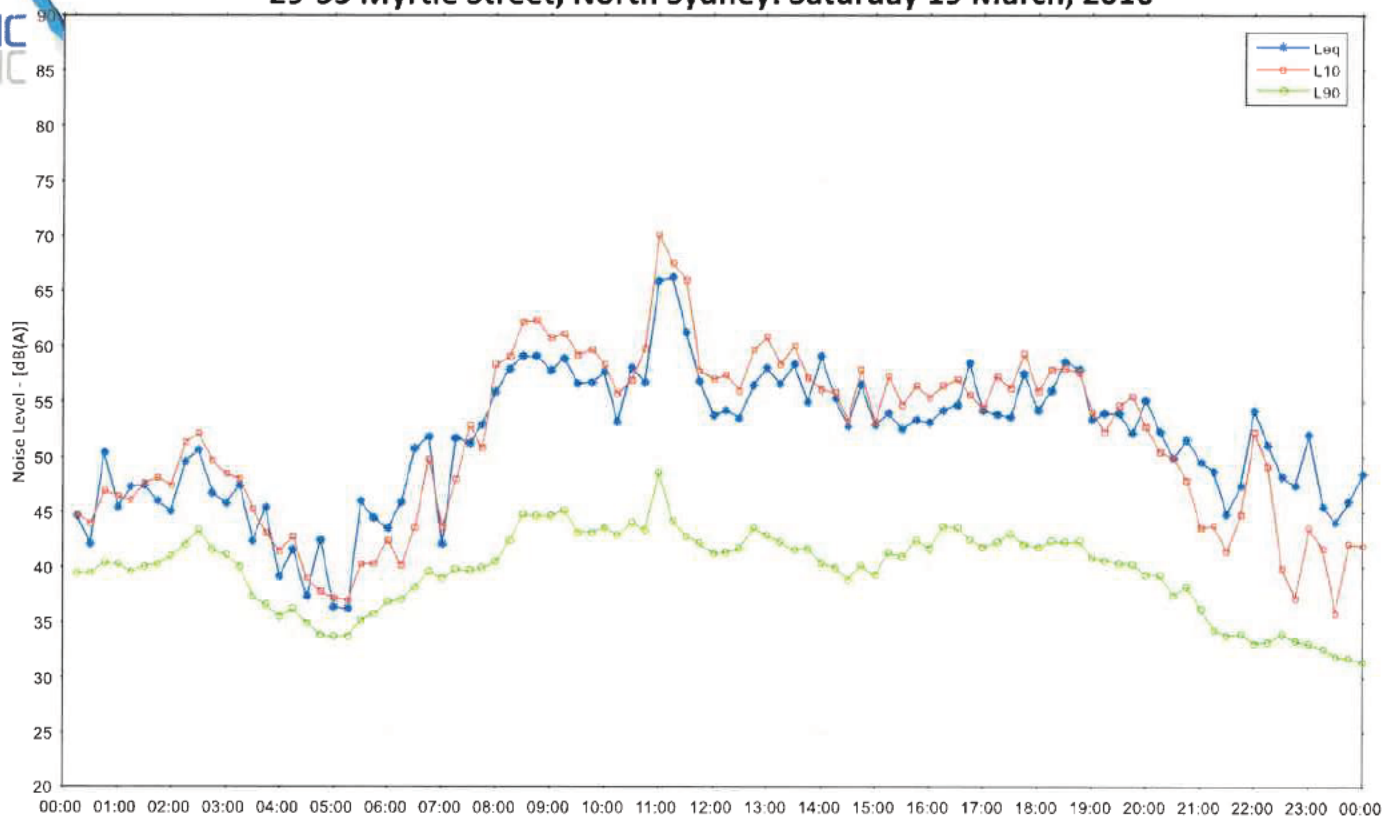


29-33 Myrtle Street, North Sydney: Friday 18 March, 2016



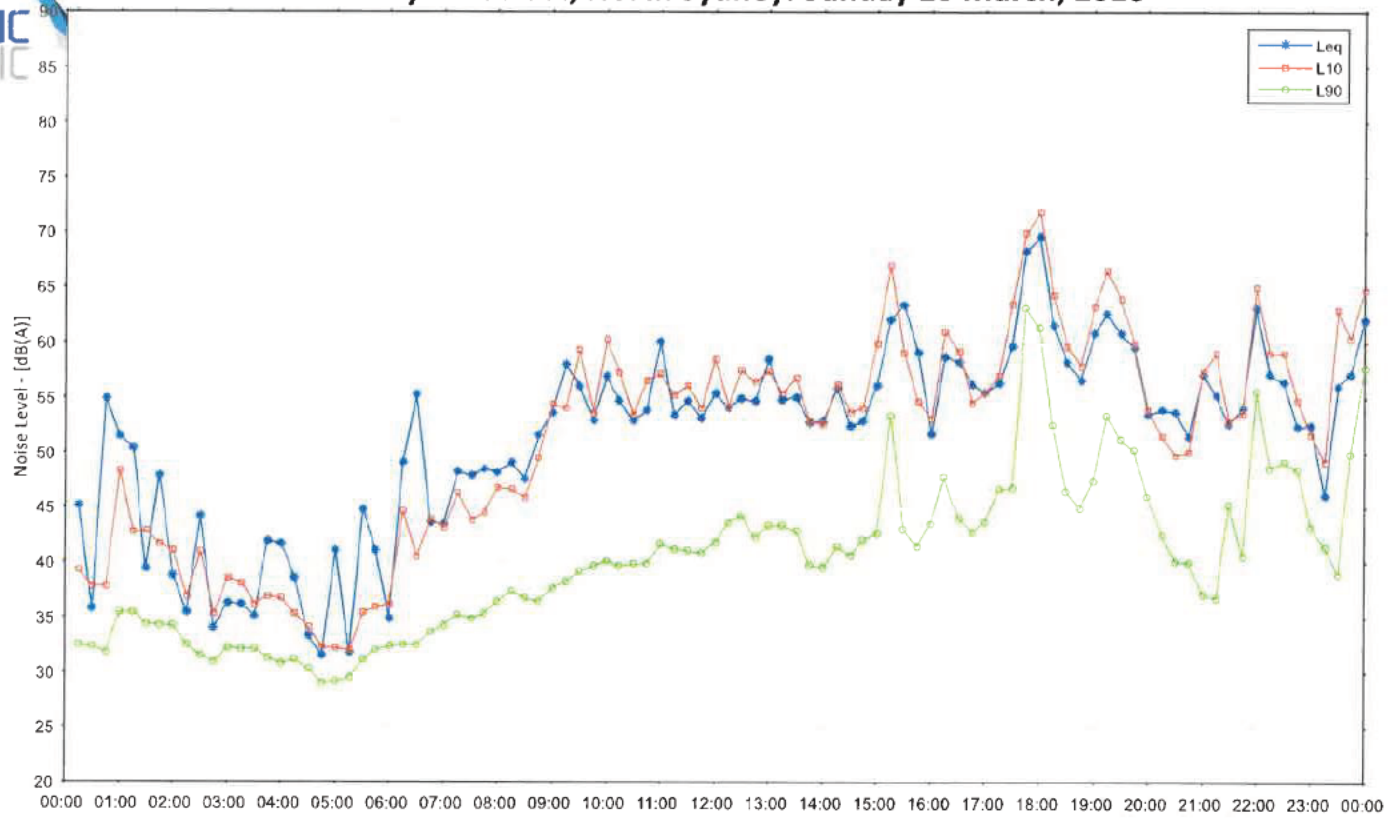


29-33 Myrtle Street, North Sydney: Saturday 19 March, 2016



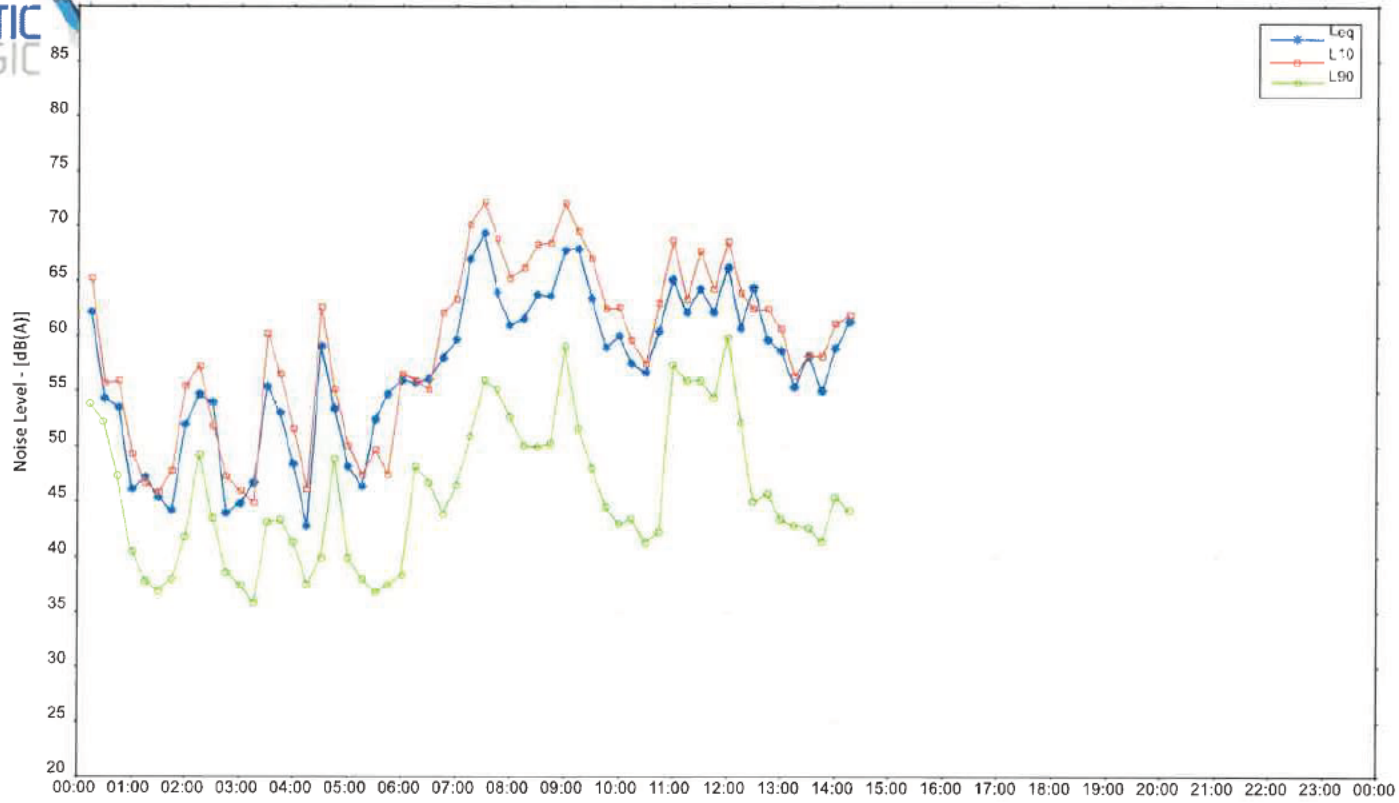


29-33 Myrtle Street, North Sydney: Sunday 20 March, 2016





29-33 Myrtle Street, North Sydney: Monday 21 March, 2016



Plan of Management of Commercial Suites G.01 to G.07

24 hour operation

13 Eden Street, North Sydney

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1. Definitions and Interpretations

In this plan, unless the context otherwise requires or permits:

5 Star Rating means the 5 Star Rating of the Association of Australian Acoustical Consultants, namely:

- (a) Airborne Sound Insulation $D_{nT,w} + O_r > 50$; and
- (b) Impact Isolation of floors $L_{nT,w} < 45$

Act is the Strata Schemes Management Act 1996 (NSW) as amended from time to time.

Air Conditioning means the air conditioning unit, motor, compressor, pipes, wiring, cabling support bracket and ducting that services an individual lot.

Balcony door means the balcony door/s installed to each individual unit.

Door Closer means the door closer installed to each individual unit front entry door.

Exhaust Fans means an exhaust or extraction fan, wiring, cabling or ducting that services an individual lot.

Hard Surface Flooring means any flooring material that is not carpet or other soft covering.

Intercom System means the intercom handset installed to each individual unit.

Local Council means North Sydney Council.

Lot means any lot in the strata plan.

Owner means the Owner of a Lot.

Owners Corporation means Owners Corporation created by the registration of the strata plan.

Ventilation System means any ventilation, air extraction or similar system including any pipes, wiring, cabling and ducting that services an individual lot.

In these by-laws, unless the context otherwise requires:

- (a) a word which denotes the singular includes plural and vice versa;
- (b) a word which denotes any gender includes the other genders;
- (c) any terms defined in the Strata Schemes Management Act 1996 will have the same meaning as given to them in that Act; and
- (b) references to legislation includes references to amending and replacing legislation.

2. Noise

An Owner or Occupier of a lot must not create any noise on a lot or the common property likely to interfere with the peaceful enjoyment of the Owner or Occupier of another lot or of any person lawfully using common property.

3. Vehicles

- 3.1. An Owner or Occupier of a lot must not park or stand any motor or other vehicle on common property or permit any invitee of the Owner or Occupier to park or stand any motor or other vehicle on common property except with the prior written approval of the Owners Corporation.
- 3.2. The Owners Corporation must not unreasonably withhold its approval to the parking or standing of a motor vehicle on the common property.
- 3.3. The vehicle of any owner or occupier of a lot must only be parked in the car space or spaces forming part of that lot.
- 4.4. Parking designated as visitors parking is for the use of genuine visitors only. The Owners Corporation reserves the right to change access rights of owners or occupiers caught breaching this clause after first having been served a notice in accordance with this clause.

4. Obstruction of Common Property

An Owner or Occupier of a lot must not obstruct lawful use of common property by any person except on a temporary and non-recurring basis.

5. Damage to Lawn and Plants on Common Property

An Owner or Occupier of a lot must not, except with the prior written approval of the Owners Corporation:

- (a) damage any lawn, garden, tree, shrub, plant or flower being part of or situated on common property, or
- (b) use for his or her own purposes as a garden any portion of the common property.

6. Damage to Common Property

- 6.1. An Owner or Occupier of a lot must not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property except with the prior written approval of the Owners Corporation.
- 6.2. An approval given by the Owners Corporation under clause (6.1) cannot authorise any additions to the common property.
- 6.3. Subject to the conditions contained in 27 (concerning locks) this clause does not prevent an Owner or person authorised by an Owner from installing:
 - (a) any locking or other safety device for protection of the Owner's lot against

- intruders or to improve safety within the Owner's lot, or
- (b) any screen or other device to prevent entry of animals or insects on the lot, or
 - (c) any structure or device to prevent harm to children, or
 - (d) any device used to affix decorative items to the internal surfaces or walls in the Owner's lot.
- 6.4. Any such locking or safety device, screen, other device or structure must be installed in a competent and proper manner and must have an appearance, after it has been installed, in keeping with the appearance of the rest of the building.
- 6.5. Despite section 62 of the Act, the Owner of a lot must:
- (a) maintain and keep in a state of good and serviceable repair any installation or structure referred to in clause 6 (clause 6.3) that forms part of the common property and that services the lot, and
 - (b) repair any damage caused to any part of the common property by the installation or removal of any locking or safety device, screen, other device, structure or sign referred to in clause (6.3) that forms part of the common property and that services the lot.

7. Behaviour of Owners and Occupiers

An Owner or Occupier of a lot when on common property must be adequately clothed and must not use language or behave in a manner likely to cause offence or embarrassment to the Owner or Occupier of another lot or to any person lawfully using common property.

8. Children Playing on Common Property

An Owner or Occupier of a lot must not permit any child of whom the Owner or Occupier has control to play on common property within the building or, unless accompanied by an adult exercising effective control, to be or to remain on common property comprising a laundry, car parking area or other area of possible danger or hazard to children.

9. Behaviour of Invitees

An Owner or Occupier of a lot must take all reasonable steps to ensure that invitees of the Owner or Occupier do not behave in a manner likely to interfere with the peaceful enjoyment of the Owner or Occupier of another lot or any person lawfully using common property.

10. Depositing Rubbish and Other Material on Common Property

An Owner or Occupier of a lot must not deposit or throw on the common property any rubbish, dirt, dust or other material or discarded item except with the prior written approval of the Owners Corporation.

11. Hanging of Washing

- 11.1. An owner or occupier of a lot must not hang washing on any part of the lot viewable from outside of the lot (including the balcony area of the lot).

11.2. In this clause:

Washing includes any clothing, towel, bedding, or other article of a similar type.

12. Cleaning Windows and Doors

- 12.1. An Owner or Occupier of a lot is responsible for cleaning all interior and reasonably accessible exterior surfaces of glass in windows and doors on the boundary of the lot, including so much as is common property.
- 12.2. Balconies must not be washed in a manner that will cause water to discharge through balcony overflow pipes onto the units or common property below.

13. Storage of Inflammable Liquids and Other Substances and Materials

- 13.1. An Owner or Occupier of a lot must not, except with the prior written approval of the Owners Corporation, use or store on the lot or on the common property any inflammable chemical, liquid or gas or other inflammable material.
- 13.2. This clause does not apply to chemicals, liquids, gases or other material used or intended to be used for domestic purposes, or any chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.
- 13.3. Storage of combustible materials and flammable materials, including fuels, in the car park, including individual garages, is strictly prohibited.

14. Changes to Flooring Coverings

- 14.1. Unless installed by the original proprietor, an owner of a lot must not install, attach or affix any hard surface flooring to serve his lot or allow such hard surface flooring to be installed (attached or affixed) or kept; except in compliance with the following terms and conditions.
- 14.2. Prior to installing any hard surface flooring the owner must:
- (a) obtain the written approval of the Owners Corporation to the proposed location, style, design and type of the hard surface flooring, the method of installation and connection or construction and the steps taken to address noise transmission; and
 - (b) provide evidence that the proposal has been designed by an accredited Acoustic Consultant and will have sound insulation performance of at least 5 Star Rating.
- 14.3. No work is permitted within the strata scheme that would result in a kitchen, bathroom, laundry or other hard surfaced area within a lot, being relocated to a position above a bedroom or living area of a Lot below.
- 14.4. Carpet may not be removed from a bedroom that abuts the bedroom of an adjacent lot.

15. Floor Coverings

- 15.1. Unless installed by the original proprietor, an owner of a lot must ensure that all floor space within the lots is covered or otherwise treated to an extent sufficient to prevent the transmission from the floor space of noise likely to disturb the peaceful enjoyment of the owner or occupier of another lot.
- 15.2. This clause does not apply to floor space comprising a kitchen, laundry, lavatory or bathroom.

16. Garbage Disposal

- 16.1. An Owner or Occupier of a commercial lot:
- (a) must ensure that before refuse, recyclable material or waste is placed in the receptacles it is, in the case of refuse, securely wrapped or, in the case of tins or other containers, completely drained, or, in the case of recyclable material or waste, separated and prepared in accordance with the applicable recycling guidelines, and
 - (b) must make proper use of the waste and recycling facilities provided in the building by separating and inserting the designated waste in the designated receptacle,
 - (c) must promptly remove any thing which the Owner, Occupier or garbage or recycling collector may have spilled in the area of the receptacles and must take such action as may be necessary to clean the area within which that thing was spilled.
- 16.2. This clause does not require an Owner or Occupier of a lot to dispose of any chemical, biological, toxic or other hazardous waste in a manner that would contravene any relevant law applying to the disposal of such waste.

17. Not Used

18. Appearance of Lot

- 18.1. The Owner or Occupier of a lot must not, except with the prior written approval of the Owners Corporation, maintain within the lot anything visible from outside the lot that, viewed from outside the lot, is not in keeping with the rest of the building.
- 18.2. Notwithstanding clause 18.1, an Owner or Occupier of a lot must maintain and keep in good and serviceable repair any plant, shrub or other planting contained in any planter box annexed to the lot.
- 18.3. This clause does not apply to the hanging of any washing, towel, bedding, clothing or other article as referred to in clause 11.
- 18.4. The Owner or Occupier of lot must maintain the planter boxes annexed to their lot. In the event that the planter areas are not maintained to a standard in keeping with that of others lots the Owners Corporation may maintain the planter area, with reasonable costs incurred in maintaining the area, charged to the Owner or Occupier of such lot.

- 18.5. The Owner or Occupier of a lot must ensure that all window and door dressings shall be of light neutral tones and where with a pattern, such that the pattern is also of light neutral tones and not obtrusive.
- 18.6. The Owner or Occupier of a lot must ensure that Barbeques on balconies and/or courtyards are kept covered when not in use.
- 18.7. All furniture on balconies must be unobtrusive and in keeping with the aesthetics of the building.
- 18.8. Pots containing plants are to be in neutral tones and the plants are to be unobtrusive.

19. Not Used

20. No Smoking

- 20.1. An owner or occupier, and any invitee of the owner or occupier, must not smoke tobacco or any other substance on the common property.
- 20.2. An owner or occupier of a lot must ensure that smoke caused by the smoking of tobacco or any other substance by the owner or occupier, or any invitee of the owner or occupier, on the lot does not penetrate to the common property or any other lot.

21. Prevention of Hazards

The Owner or Occupier of a lot must not do anything or permit any invitees of the Owner or Occupier to do anything on the lot or common property that is likely to create a hazard or danger to the Owner or Occupier of another lot or any person lawfully using the common property.

22. Provision of Amenities or Services

- 22.1. The Owners Corporation may, by special resolution, determine to enter into arrangements for the provision of the following amenities or services to one or more of the lots, or to the Owners or Occupiers of one or more of the lots:
 - (a) security services,
 - (b) promotional services,
 - (c) advertising,
 - (d) commercial cleaning,
 - (e) domestic services,
 - (f) garbage disposal and recycling services,
 - (g) electricity, water or gas supply,
 - (h) telecommunication services (for example, cable television).
- 22.2. If the Owners Corporation makes a resolution referred to in clause (1) to provide an amenity or service to a lot or to the Owner or Occupier of a lot, it must indicate in the resolution the amount for which, or the conditions on which, it will provide the amenity or service.

Note. Section 111 of the Act provides that an Owners Corporation may enter into an agreement with an Owner or Occupier of a lot for the provision of amenities or services by it to the lot or to the Owner or Occupier.

23. Not Used

24. Compliance with Planning and Other Requirements

- 24.1. The Owner or Occupier of a lot must ensure that the lot is not used for any purpose that is prohibited by law.
- 24.2. Notwithstanding clause 21, the Owners Corporation cannot place further restrictions on the use of lots otherwise than as contemplated in any town planning instruments, Local Council order or restriction or any other legislative requirement.
- 24.4. When a lot is leased, the Owner or Occupier of a lot must ensure that all occupiers of a lot are subject to a lease under the Standard Commercial Lease issue by the Law Society of NSW. This standard lease ensures occupiers must comply with the Strata Titles Act including complying with any By Laws registered with the property.

25. Insurance Premiums

An Owner or Occupier must not, without the prior written approval of the Owners Corporation, do or permit anything which may invalidate, suspend or increase the premium for any insurance policy effected by the Owners Corporation.

26. Services and Equipment

- 26.1. This is a clause made under section 52 of the Act. This clause may only be amended by special resolution and with the written consent of the Owner of each lot.
- 26.2. On the conditions set out in this by-law, the Owner of each lot shall have exclusive use and special privilege over the, air-conditioning systems, ventilation systems, hot water system, exhaust fans, intercom handsets, windows (including frame/locks), balcony doors (including frames/locks), door closers and garage door/motor which exclusively services the lot.
- 26.4. Air conditioning motors servicing each lot form part of the lot that they service.
- 26.5. Owners are responsible for maintenance contractors or tradespersons when on site with respect to damage caused by them and the Owner or his Occupier must supervise such contractors and tradespersons with respect to works related to his lot.

27. Locks

- 27.1. Owners and Occupiers must maintain, renew, replace and repair locks, hinges and any other security devices installed in the unit entry doors, sliding balcony doors, garage door (if installed) and so much of the common property as is necessary adjacent to the boundary of their respective lots.
- 27.2. All locks, hinges and security devices maintained, renewed, replaced or repaired under this by-law must, where applicable:
 - (a) comply with all fire safety laws and any other requirements relating to fire safety

as determined by the Owners Corporation or other Authority; and

- (b) be installed in a competent and proper manner and must have an appearance after installation in keeping with the appearance of the rest of the building.
- 27.3. Owners and Occupiers will be liable for any damage caused to any part of the common property as a result of the activities carried out and contemplated in this clause and will make good that damage immediately after it has occurred.
- 27.4. Owners are responsible for maintenance contractors or tradespersons when on site with respect to damage caused by them and the Owner or his Occupier must supervise such contractors and tradespersons with respect to works related to his lot.

28. Not Used

29. Not Used

30. Fire Safety

1. The Owner must:
- (a) prominently display in the Building the fire safety certificate together with a copy of the current fire safety schedule in respect of each essential fire safety measure as required under the relevant Law;
 - (b) arrange for annual inspection of each essential fire safety measure by a suitably qualified person in accordance with the relevant Law; and
 - (c) provide a copy of a report of the annual inspection referred to in clause 30 (b) to Council.

By-Law 31. Integrity of Fire Safety Systems

- 31.1. An Owner or Occupier must not:
- (a) interfere with or damage any Fire Safety Device; or
 - (b) activate a Fire Safety Device other than in the case of a hazard or danger to the Parcel of any persons on the Parcel.
- 31.2. An Owner or Occupier must:
- (a) immediately notify the Owners Corporation of a defect, damage, failure or malfunction of any Fire Safety Device;
 - (b) immediately notify a fire protection agency or the Fire Brigade of occurrence of fire or other hazard within the Parcel;
 - (c) notify the Owners Corporation of a risk of fire or other hazard within the Parcel; and
 - (d) subject to receiving notice under clause 31 sub-clause 3 give the Owners Corporation (and any agent) access to that person's Lot for the purpose of

inspecting, testing, repairing or replacing Fire Safety Devices.

- 31.3. The Owners Corporation must give reasonable notice in writing to the Occupier of a Lot before exercising the right conferred by clause 31 sub-clause 2(d).
- 31.4. Notwithstanding the provisions of this clause, an Owner or Occupier remains responsible to keep and maintain smoke detectors within that person's Lot in good and serviceable order.