



NSLPP MEETING HELD ON 05/10/22

Attachments:

1. Site Plan
2. Architectural Plans (Mod)
3. SEE Extract regarding Height of Buildings Development Standard
4. 3D Views

ADDRESS/WARD: 5 (formerly 1-11) Rodborough Avenue, Crows Nest

APPLICATION No: DA 232/2020/3

PROPOSAL: Section 4.55(2) modification relating to Development Consent D 232/20 for the demolition of the existing buildings and the construction of a 4 storey residential flat building with basement parking and associated landscaping including strata subdivision.

PLANS REF:

Plan No	Issue	Tittle	Dated	Prepared	Received
A0014	J	Site Plan	20/07/2022	Koichi Takada Architects	1/08/2022
A0098	O	Basement 01 Floor Plan	20/07/2022		1/08/2022
A0099	T	Lower Ground Floor Plan	20/07/2022		1/08/2022
A0100	V	Ground Floor Plan	20/07/2022		1/08/2022
A0101	N	Level 1 Plan	20/07/2022		1/08/2022
A0102	N	Level 2 Plan	20/07/2022		1/08/2022
A0103	W	Level 3 Plan	23/09/2022		28/09/2022
A0104	P	Level 4 Roof Plan	20/07/2022		1/08/2022
A0200	N	East & West Elevations	22/09/2022		28/09/2022
A0201	N	North & South Elevations	20/07/2022		1/08/2022
A0300	K	Sections 01	20/07/2022		1/08/2022
A0301	I	Sections 02	20/07/2022		1/08/2022

OWNER: Abadeen Rodborough Pty Ltd

APPLICANT: Rodborough Pty Ltd

AUTHOR: Michael Stephens, Senior Assessment Officer

DATE OF REPORT: 29 September 2022

DATE LODGED: 17 March 2022

SUBMISSIONS: Twenty-two

RECOMMENDATION: Refusal

EXECUTIVE SUMMARY

This application seeks consent to modify development consent D232/2020 relating to the construction a 4-storey residential flat building with basement parking and associated landscaping including strata subdivision, to incorporate one additional apartment on the roof level, reduction of the communal roof terrace and amendments to parking.

The application is reported to the North Sydney Local Planning Panel for determination as the application meets the criteria for development applications set out in schedules relating to departures from development standard and contentious development. In accordance with the Ministers direction of 1 August 2020 a public determination meeting is required because more than 10 submissions were received.

The application and amended plans were notified in accordance with Council's Community Engagement Protocol and attracted twenty-two (22) submissions objecting to the proposed modifications.

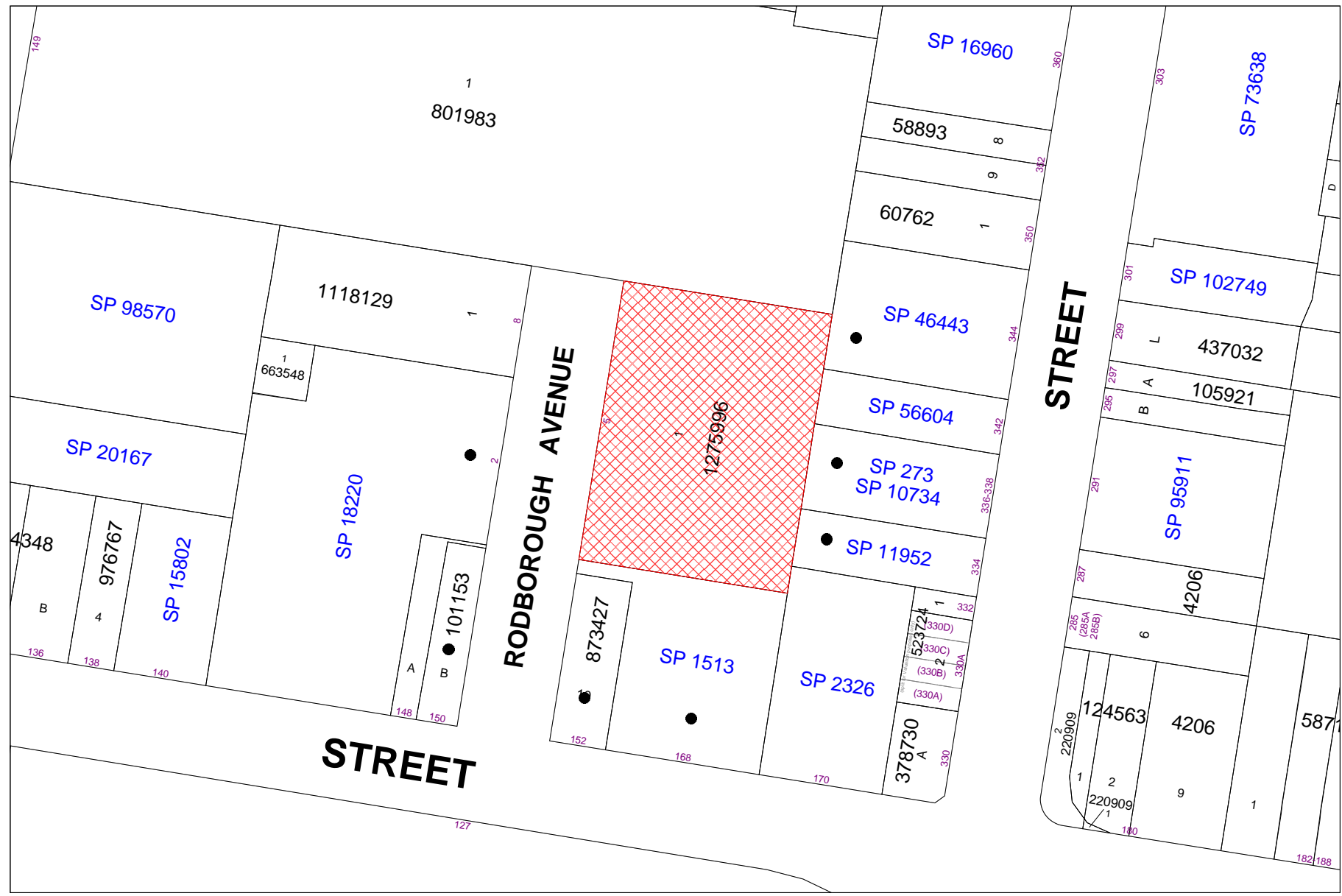
The proposed modifications seek to increase the development yield by incorporating an additional three bedroom apartment on the upper most level of the building. The whole of the additional apartment results in a non-compliance with the 12m height of buildings development standard by up to 1.8m or 15%. The nature and extent of the proposed additional non-compliance is not supported as the applicant's justification for a further breach of the development standard is considered insufficient and not well founded. The proposed additions would detract from the design quality of the approved building form causing a loss of the stepped built form that reflects the topography of the site and the contrived proportion of the additions which bear little relevance to the design of the approved building and seek only to increase the net residential floor space.

The proposed additional apartment on the upper most level also results in a loss of approximately half of the roof top communal open space and comes at a detriment to the amenity of the approved development.

The modification application fails to meet the requirements of section 4.55(2) as the proposed modified development is not considered substantially the same development and when considered against the original reasons for approval is considered to be inconsistent with those reasons. The application has also been considered against the matters for consideration outlined in section 4.15(1) of the Act and is considered to be unsatisfactory.

On balance, the proposed modification application is considered not in the public interest, is considered unreasonable and is therefore recommended for refusal.

LOCATION MAP



□ Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

This application seeks consent to modify development consent DA232/2020 relating to the demolition of the existing buildings and the construction a four storey residential flat building with basement parking and associated landscaping including strata subdivision.

The proposed modifications include:

Level 3

- Modification to the previously approved three bedroom apartment and construction of an additional three bedroom apartment; and
- Reduction in the size of the approved rooftop communal open space and landscaping.

Basement

- Partial reconfiguration of the basement car parking and storage areas;
- An increase in the number of parking spaces as per the table below:-

Parking	Approved S4.55 232/2020/2	Proposed S4.55 232/2020/3
Residential	30	32
Residential – Visitors	6	6
Accessible (Residential)	6	6
Accessible (Visitor)	1	1
Total	43	45

- Decrease the number of motorcycle parking spaces from 5 to 2.

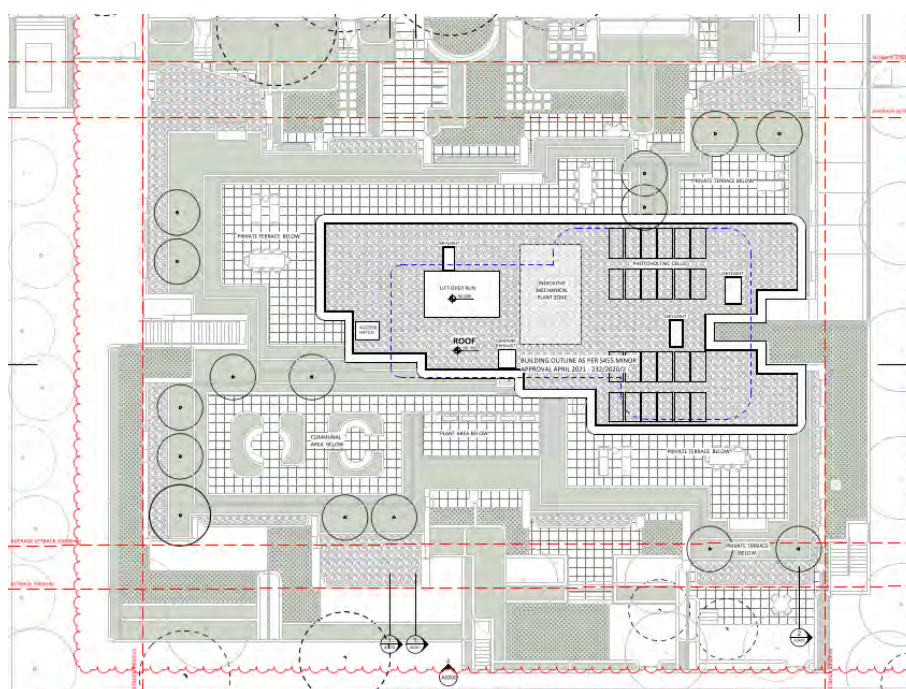


Figure 1. DA232/2020/3 s4.55(2) modification amended proposed roof plan

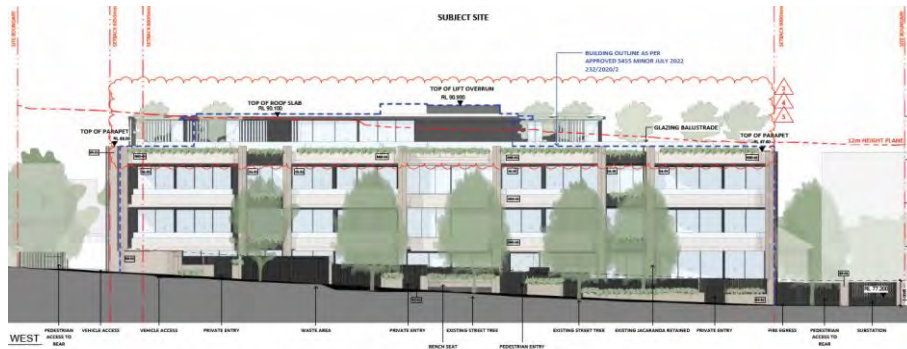


Figure 2. Western (Rodborough Avenue) Elevation



Figure 3. Northern Elevation

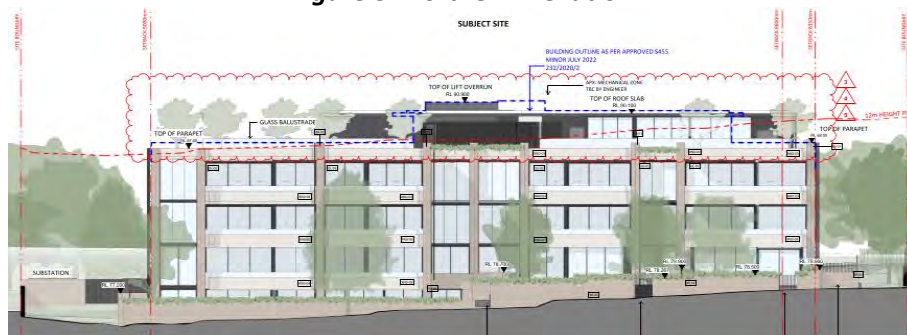


Figure 4. Eastern Elevation



Figure 5. Southern Elevation

Deletion of Condition C2

The application seeks to delete condition C2 stated below.

Privacy screening to projecting level 01 and 02 eastern balconies

- C2. Prior to the issue of a construction certificate, the plans forming part of Condition A1 of the consent, must be amended as follows:
- The balconies that extend to within 7.05m and 7.1m from the eastern rear boundary on levels 1 and 2 of the building must provide the following:

- i. A fixed privacy screen along the entire width (eastern side) of these balconies and to a minimum height of 1.8m above the respective floor levels of the balconies.

Plans and specifications complying with this condition must be submitted to the Principal Certifying Authority prior to the issue of a construction certificate.

(Reason: To ensure a reasonable level of visual and acoustic privacy is maintained with the western windows and private open space of townhouse 5 at 346 Miller Street and to the rear private and communal open space of 338 Miller Street.)

STATUTORY CONTROLS

North Sydney Local Environmental Plan 2013

- Zoning – R4 High Density Residential
- Item of Heritage – No
- In Vicinity of Item of Heritage - Yes (adjoining items I0016 & I0017)
- Conservation Area – No

Environmental Planning and Assessment Act 1979

- Section 7.11/12 Infrastructure Contributions

SEPP 65 – Design Quality of Residential Apartment Development

SEPP (Biodiversity and Conservation) 2021

SEPP (Housing) 2021

SEPP (Resilience and Hazards) 2021

SEPP (Planning Systems) 2021

POLICY CONTROLS

North Sydney Development Control Plan 2013

North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF LOCALITY

The subject site is legally described as Lot 1 in DP 1275996 and is known as 5 Rodborough Avenue. The development site was formerly known as 1-11 Rodborough Avenue, however, was consolidated following the demolition of the existing buildings.



Figure 6. Aerial Image of the subject site and surrounds prior to demolition (Nearmap September 2020)

The site is located on the eastern side of Rodborough Avenue which is a cul-de-sac accessed from Falcon Street to the south. The site and surrounding properties are zoned R4 High Density Residential, with the exception of Cammeraygal Public School to the north which is zoned SP2 – Educational Establishment.

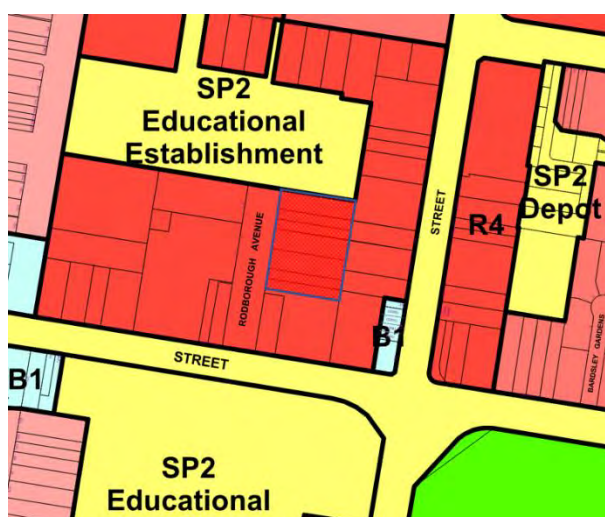


Figure 7. NSLIP 2013 Land use zoning map with the subject site shown outlined in blue.

The site is rectangular in shape with a 60.95m frontage to Rodborough Avenue and depth of 45.4m-45.6m, equating to a site area of 2773sqm. The land falls from the northern side boundary towards the southern side boundary by approximately 3m, and the front (western) boundary towards the rear (eastern) boundary by approximately 1.6m.

The site is surrounded by other residential flat buildings to the east, south and west.

- The buildings located to the east, which face Miller Street are two to four storeys in height.
- The buildings located to the west on the opposite side of Rodborough Avenue are three storeys in height.
- The buildings located to the south, which face Falcon Street are three to four storeys in height.

The subject site is currently vacant following the commencement of the demolition works.



Figure 8. Aerial Image of subject site as of 12 September 2022

RELEVANT DEVELOPMENT HISTORY

Development Application **DA232/2020** for Demolition of all structures and construction of a part 4, part 5-storey residential flat building containing 35 units over two levels of basement parking for 53 vehicles and associated works was refused by NSLPP on 3 March 2021.

A Review of Determination made under section 8.2 of the Act was approved by NSLPPP on 7 July 2021 following various amendments which included the deletion of three of the four originally proposed apartments on the upper level of the building

Modification application **DA232/2020/2** made under section 4.55(1A) of the Act for various minor modification to improve the constructability of the development and resolve NCC compliance issues was approved under delegation on 16 February 2022.

Modification application **DA232/2020/4** made under section 4.55(1A) of the Act for modifications to the stormwater management plan was lodged 6 May 2022 and was approved under delegation on 29 August 2022.

The site, formerly 1-11 Rodborough Avenue, was consolidated into one lot, Lot 1 in DP 1275996 on 8 February 2022.

Modification application **DA232/2020/5** made under section 4.55(1) of the Act to correct a condition of consent was approved under delegation on 2 September 2022.

A Principal Consent Authority was appointed on 13 September 2022.

RELEVANT APPLICATION HISTORY

Date	Assessment
17 March 2022	The application was lodged with Council via the NSW Planning Portal.
30 March 2022	The development application was notified in accordance with Council's Community Engagement Protocol from 8 April 2022 until 22 April 2022.
13 May 2022	Council wrote to the applicant outlining that the proposed modification could not be supported given the excessive bulk and scale and it was suggested that the application be withdrawn within seven days.
1 August 2022	The applicant submitted amended plans
5 August 2022	The amended application was notified in accordance with Council's Community Engagement Protocol from 5 August 2022 until 19 August 2022, however, contained an error in the description.
25 August 2022	The amended application was notified in accordance with Council's Community Engagement Protocol from 29 August 2022 until 12 September 2022.

Council was under no obligation to accept the amended plans lodged 1 August 2022, as Section 38 of the Environmental Planning and Assessment Regulation 2021 provides discretion to Council. However, the amended plans were accepted and assessed, including renotification, so as not to prevent or limit the North Sydney Local Planning Panel from undertaking its function as the consent authority.

The following extracts from plans over the course of the various applications, reviews and modifications indicate the various attempts to seeks approval for a fifth level, contravening the height of buildings development standard.

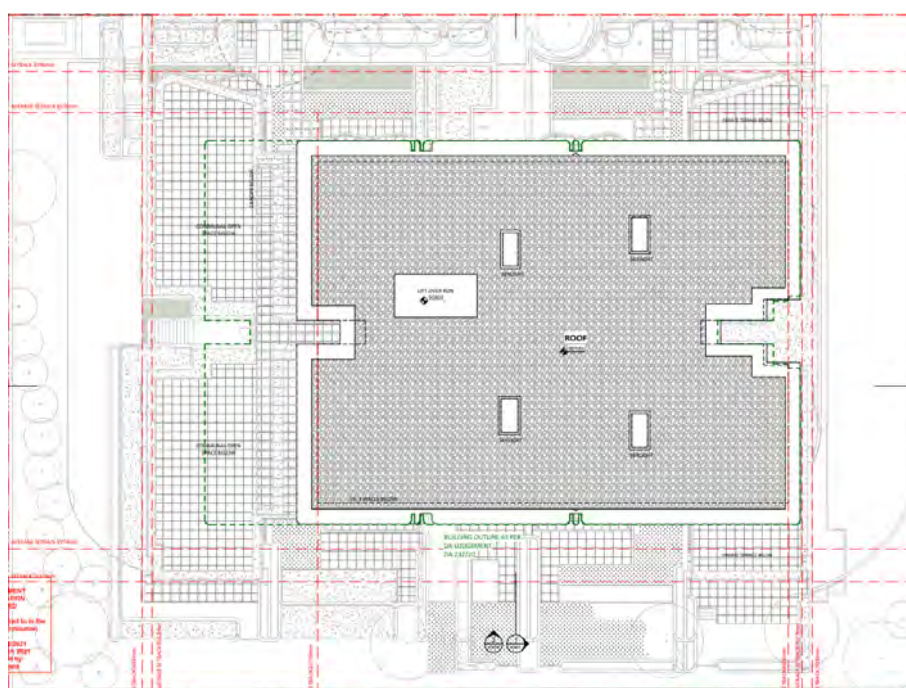


Figure 9. DA232/2020 refused roof plan with three units on level 3



Figure 10. DA232/2020 refused western (street) elevation

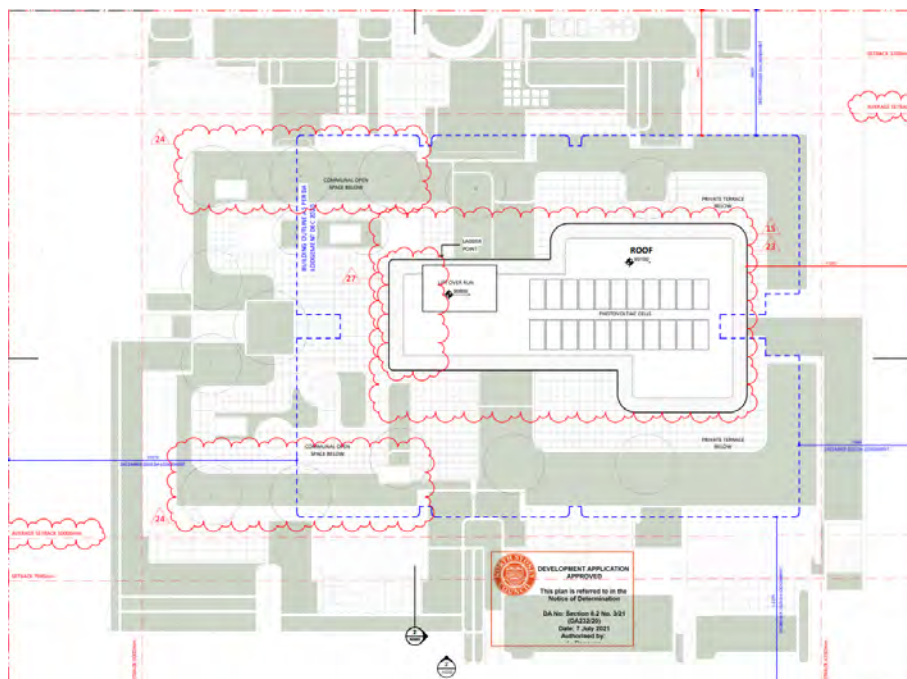


Figure 11. DA232/2020 – section 8.2 review approved roof plan with one unit on level 3



Figure 12. DA232/2020 section 8.2 review approved western (street) elevation

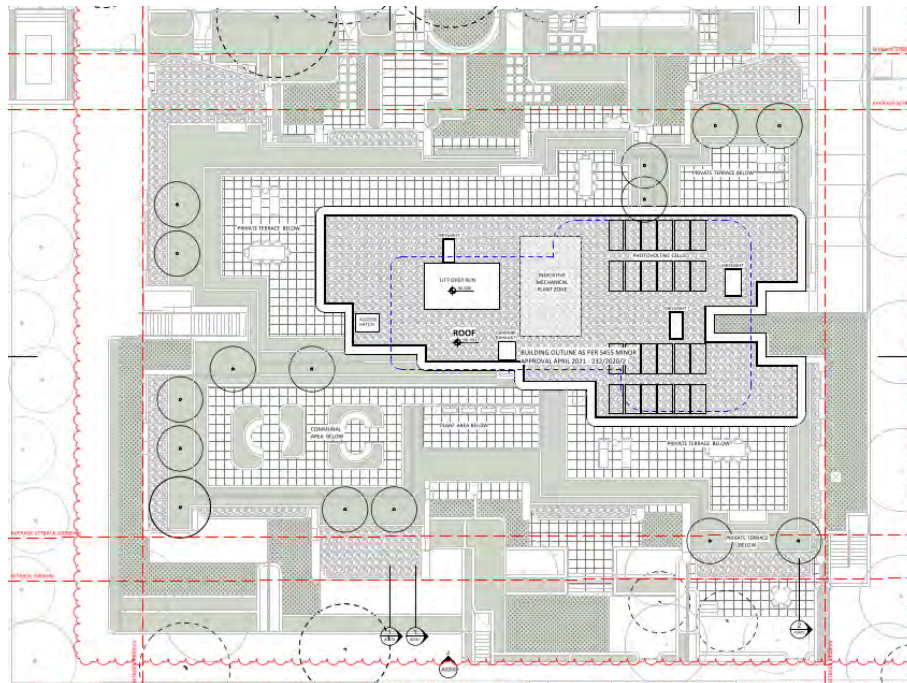


Figure 13. DA232/2020/3 s4.55(2) modification amended proposed roof plan (subject of this report) with two units on level 3

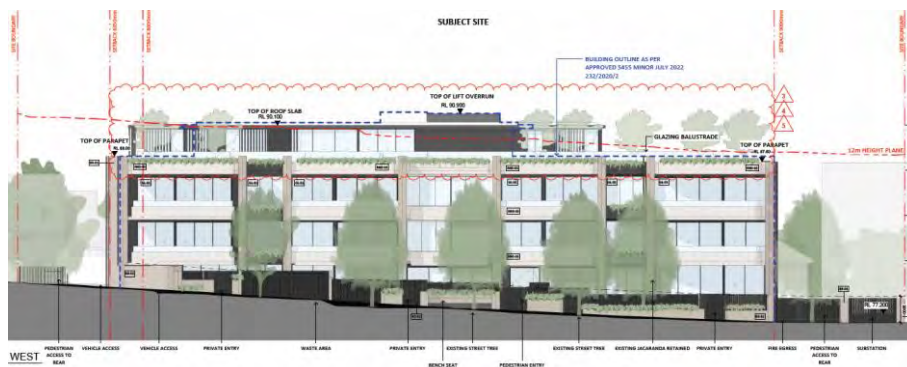


Figure 14. DA232/2020/3 s4.55(2) modification amended western (street) elevation (subject of this report)

REFERRALS

Due to the nature of the proposed modifications no referral advice was required.

SUBMISSIONS

Original Modification Application

The development application was notified in accordance with Council's Community Engagement Protocol from 8 April 2022 until 22 April 2022. Eleven submissions objecting to the modification application were received at Council.

Amended Modification Application

Amended plans lodged 1 August 2022 were renotified from 5 August 2022 until 19 August 2022 although contained a misdescription of the proposed modifications.

Given the error contained in the notification letter dated 5 August 2022, the amended application was renotified to correct this error to ensure that neighbours were aware that the amend plans related to the subject application. The corrected documentation was notified in accordance with Council's Community Engagement Protocol from 29 August 2022 until 12 September 2022. Eleven further were received at Council relating to the amended

All submissions received in response to the notifications of the subject modification application have been considered and the matters raised in the submissions are summarised below.

Basis of Submissions

- *The development was approved on the basis that the height of the building was reduced under the s8.2 review application. The proposed additions are inconsistent with the reasons for approval.*
- *The proposed additions would further exacerbate the non-compliance with the height of buildings development standard.*
- *The proposed fourth storey is out of character with the surrounding development.*
- *The application seeks additional yield through subsequent modifications causing development creep and associated impacts not envisaged at the time the original consent was granted.*
- *Approval of the height non-compliance would cause an undesirable precedent for future development.*
- *The proposed modifications are a reiteration of the originally refused scheme.*
- *The proposed additions are an overdevelopment of the site.*
- *The overdevelopment of the site would adversely impact the adjoining school and childcare centre.*
- *The proposed additions would cause additional overshadowing to surrounding residential properties.*
- *The proposed additional apartment would cause additional overlooking of surrounding residential properties.*
- *The proposed additions would cause additional traffic and parking congestion.*
- *The proposed additional massing and scale would have an adverse visual impact on the quality and character of the streetscape.*
- *The proposed modifications increase the development yield by reducing the amenities for the residents.*
- *The proposed additional apartments are achieved through the loss of communal open space putting additional pressure on public open space.*
- *The proposed modifications reduce the number of EV charging spaces and bicycle parking.*
- *The proposed deletion of Condition C2 Privacy Screens would result in a loss of privacy for surrounding properties.*
- *The proposed development would result in further light spillage to surrounding properties.*
- *The approved trees will not afford surrounding residents' privacy for many years.*
- *The proposed development would devalue surrounding properties.*
- *The proposed additions will be overbearing on adjoining properties, particularly those located at a lower level.*
- *The proposed development would result in a loss of district views to the east.*
- *No photo montages have been modelled from the rear of the building making it difficult to understand the impact to adjoining properties.*

- *The increased size of the development will prolong the disturbances associated with the construction.*
- *The number of modification applications and amended plans creates confusions and puts a burden on surrounding residents to continually review documentation and make submissions.*

The original submissions may be viewed by way of DA tracking on Council's website https://www.northsydney.nsw.gov.au/Building_Development/Current_DAs and are provided for review by NSLPP members.

CONSIDERATION

The relevant matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979, are assessed under the following headings:

Pursuant to Section 4.55(2) – Modification of Consents

Council, on application, may modify a development consent provided that the following requirements are satisfied:

- (a) That the proposed development as modified is substantially the same development as originally approved by the Council.**

The proposed development as modified is not considered to be substantially the same development as originally approved as the modifications increase the size of the development, and the associated non-compliance with the height of building development standard beyond the approved size and scale of the development. Whilst the number of additional apartments is only one, the location of the additional apartment, and associated non-compliances, is inconsistent with the approved building form. Approval of the original application under a review of determination was predicated on the reduced scale of the development and the satisfactory written request seeking a more modest variation to the height of buildings development standard. The additional extent of the non-compliance to facilitate the additional development yield is inconsistent with the original written request and reasons for approval.

- (b) Whether the application required the concurrence of the relevant Minister, public authority or approval body and any comments submitted by these bodies.**

No referrals or concurrences were required.

- (c) That the application has been notified in accordance with the regulations and Councils Development Control Plan.**

The modification application, and amended application were notified in accordance with Council's Community Engagement Protocol from 8 April 2022 until 22 April 2022 and from 29 August 2022 until 12 September 2022, respectively.

- (d) That any submission made concerning the proposed modification have been considered.**

All submissions have been considered and addressed under the relevant heading later in this report.

(3) In determining the application for modification, has taken into consideration such matters referred to under Section 4.15 (1) as are relevant. Consideration of the reasons given by the consent authority for the grant of the consent that is sought to be modified in accordance with Section 4.55(3).

The proposed modification is assessed against the matters for consideration in sub-section 4.15(1) of the Act further in this report. With regard to the reasons for the grant of the original consent in accordance with sub-section 4.55(3), the following reasons were provided by the Panel.

Panel Reason

“The Panel considers that the section 8.2 is justified in light of the improvements to the design, reduction in number of dwellings, car parking spaces, general improvement in the internal and external amenity, and streetscape, and is accepted as an amended proposal to that originally refused by the panel. The Panel has considered in detail submissions made in regard to construction noise but notes that is not a sustainable reason for refusal of the application. However, in considering this issue the panel has amended Condition E26 Community information as follows”

The proposed modified development would be inconsistent with the reasons for approval provided by the Panel given that the development again seeks additional yield on the originally refused third floor level where the excessive non-compliance with the height of building development standard occurs. Furthermore, the proposed modified development seeks to increase the number of dwellings with an increase from 27 (s8.2 approved), to 28 apartments and there is also an associated increase in parking.

State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development

The applicant submitted a revised design verification statement in accordance with Section 102 of the Environmental Planning and Assessment Regulations 2021.

Referral to the Design Review Panel is not required under the subsection 29(2)(a) of the SEPP as the proposed modification scheme was designed or directed by the same architect who oversaw the original application.

However, the application is required to be considered against the Design Quality Principles and the Apartment Design Guide under subsections 29(2)(a) and (b) of the SEPP.

Design Quality Principles

The proposal is assessed below against the Design Quality Principles in Schedule 1 of the Policy.

Principle 1: Context and neighbourhood character

The approved building is the largest development within the surrounding area. It is noted that some other buildings may exceed the current height of buildings development standard which was not in place when these buildings were constructed. Furthermore, the non-compliances appear to relate to the pitched roof forms and is not associated with the massing of an additional level.

Principle 2: Built form and scale

It is evident that the proposed additional massing on the upper most level caused by the proposed additional apartment has been conceived through a process of reductions from the originally proposed scheme in an effort to comply with relevant numerical development controls and not as an architectural response to the building. The proposed additional massing is elongated in form and is poorly proportioned with extensive blank facades and various irregular articulations. There is limited consistency in the size and scale of the proposed upper level. The reduced set back from the level below on the northern side of the building results in additional visual massing when viewed from the north.

The western elevation of the upper most level is a long (32m) single plane of curtain wall glazing or blank wall and has no physical articulation and very limited visual articulation. There is also no eave proposed to provide any significant degree of architectural detailing to this element.

The approved building clearly steps down to the south near the centre of the building form (lift core) when viewed from Rodborough Avenue, however, the proposed additional massing on the upper most level would elongate the building form further to the south, despite the fall of the land below, and does not retain the approved proportioning and stepping of the building form.

Principle 3: Density

The density of the proposed development, as modified, is proposed to be further increased and relies on a non-compliance with the height of buildings development standard to achieve the additional yield, although it is noted that the building is three storeys in some areas which balance the density of the development with respect to the number of residents, however, the proposed additional massing exacerbates the massing and scale of the development.

Principle 4: Sustainability

A valid amended BASIX Certificate has been submitted to satisfy the relevant SEPP.

Principle 5: Landscape

The proposed modification would reduce the amount of roof top landscaping in comparison to the approved development. It is noted that the original approved development did not achieve the minimum required landscaped area in NSDCP 2013 and in part relied upon additional planting over the basement structure and the roof top and balcony planting. The proposed modification is therefore detrimental to the landscape quality of the development.

Principle 6: Amenity

The proposed additional apartment and the approved apartment on the upper most level, proposed to be modified, would achieve a reasonable level of amenity with regard to solar access, natural cross ventilation and size and functionality. However, the proposed modifications would detract from the amenity of the building by reducing the size of the approved rooftop communal open space area to accommodate additional floor space for additional yield and causing a non-compliance with the communal open space requirements.

Principle 7: Safety

The proposed modifications are unlikely to adversely impact the safety of the building.

Principle 8: Housing diversity and social interaction

The proposed modification would reduce the size of the approved communal roof top open space area by privatising a portion of this space to achieve additional development yield. The proposed modification is therefore detrimental to the potential for social interaction between residents within the development.

Principle 9: Aesthetics

The irregular and contrived additional massing of the upper most level bears little relationship to the levels below and would reduce the aesthetic quality of the building. The excessive glazing and elongated built form of the upper most level provides no physical or visual articulation of interest.

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

A revised BASIX certificate has been submitted in accordance with the Policy. Should the application be approved, condition C52, is to be amended to reflect the updated BASIX Certificate.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The proposed development does not require the removal of or impact to any trees on the subject site or within the vicinity of the site. The proposed development is consistent with the objectives of Chapter 2 *Vegetation in non-rural areas* of the Policy.

The subject site is not highly visible from Sydney Harbour or its foreshores given the distance to water. The proposal therefore would not impact upon the scenic quality of Sydney Harbour or its waterways and is considered acceptable with regard to the Chapter 10 *Sydney Harbour Catchment* of the Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

The provisions of Chapter 4 *Remediation of Land* in the Policy have been considered. The subject site has historically been used for residential development and therefore is unlikely to be contaminated. The requirements in clause 4.6 of the Policy are therefore considered to be satisfied.

North Sydney Local Environmental Plan 2013

Permissibility

The subject site is zoned R4 High Density Residential under North Sydney Local Environment Plan 2013. The proposed development is for the purpose of a residential flat building which is a permitted use within the zone.

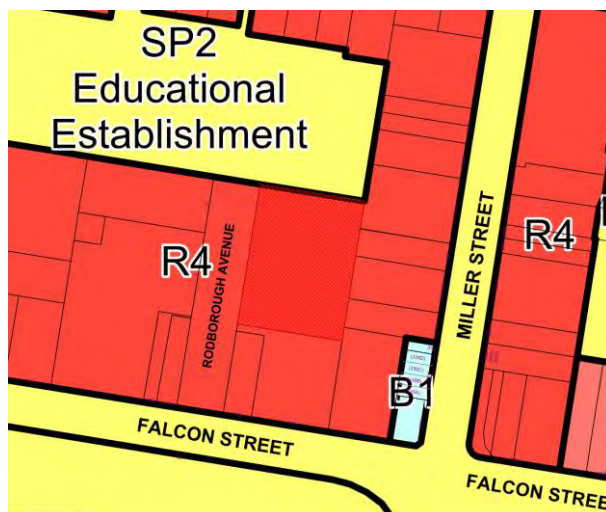


Figure 15. NSLEP 2013 Land use zoning map with the subject site shown outlined in yellow.

Objectives of the zone

The objectives of the R4 High Density Residential zone are as follows:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the development of sites for high density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a reasonably high level of residential amenity is achieved and maintained.*

The proposed modifications would compromise the amenity of the surrounding area by imposing a significantly non-compliant building form on the streetscape and the surrounding properties, inconsistent with the desired future character of the area and causing additional amenity impacts. The bulk and massing of the additional floor space on the upper most level detracts from the approved proportioning of the building form which stepped down towards the south to reflect the natural topography of the site, and instead would appear as visually overbearing when viewed from the street and surrounding residential properties.

The proposed modifications would detract from the amenity of the approved apartments by compromising the approved communal open space area to achieve additional yield.

Clause 4.3 – Height of buildings development standard

The subject site has a maximum permitted building height of 12m pursuant to clause 4.3(2) in NSLEP 2013.



Figure 16. NSLEP 2013 – Clause 4.3 Height of Buildings map

The approved development contravened the maximum permitted building height to accommodate the central lift overrun and staircase and part of the third floor level (fourth storey) penthouse apartment. The contravention equated to a maximum variation of 2.2m or 18.33% for the lift overrun and 1.1 m or 9.16% for the roof form (and was referred to as a small part of the building). The contravention was supported by a written request made pursuant to clause 4.6 in NSLEP 2013 that was deemed to be acceptable.

The proposed modification would further exacerbate the contravention by increasing the extent of the floor plate that exceeds the height plane.

The proposed modified building form has a maximum height of 13.8m, a variation of **1.8m** or **15%**. The largest extent of the variation occurs within the southeastern corner of the upper most level.

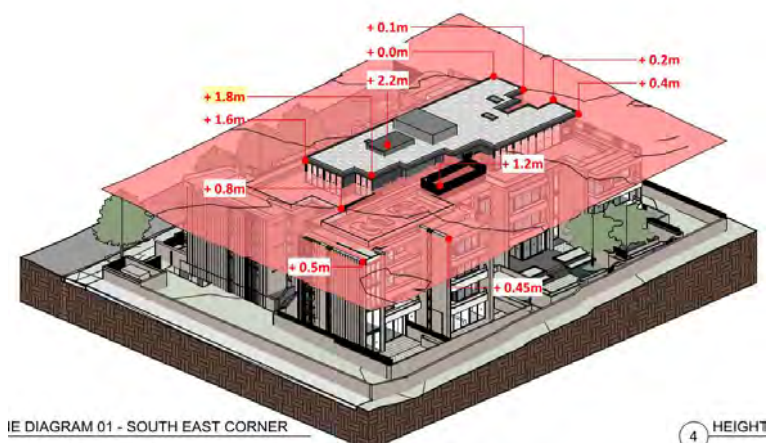


Figure 17. Height Plane Diagram

The proposed modification also includes an additional mechanical plant enclosure zone on top of the roof adjacent to the lift overrun which would have a maximum height of approximately **14.5m**, a variation of **2.5m** or **20.83%**. The approved development had a larger plant area on the level below that was well integrated with the building form, although this area is proposed to be subsumed for additional floor space.

Whilst a written request made pursuant to clause 4.6 in NSLEP 2013 to contravene the development standard is not required to modify a development consent, the proposed further contravention is addressed below having regard to the objectives of the development standard and the supporting justification advanced by the applicant. Whilst the jurisdictional requirements of clause 4.6 are not binding, it is considered that any further consideration of a proposed contravention should be undertaken with the same degree of scrutiny and that the integrity of the development standard should be maintained.

The relevant objectives of the height of buildings development standard in clause 4.3 in NSLEP 2013 are addressed below:

(1)(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,

The proposed modified development is considered to be inconsistent with this objective. The land falls by 3.5m which conceivably equates to more than a storey.

The subject site is comparatively large in comparison to the majority of development within the LGA and provides ample opportunity to step the building form over the length of the site.

The fall of the land is generally consistent in that that the gradients are numerically consistent and does not present any significant drop-offs, depressions, or irregularities. Given the relatively consistent fall of the land any development should provide a step down of a full storey across the length of the site which is demonstrated by the approved scheme (section 8.2 approved) or a stepped down proportionally i.e a half a storey or more step down to address the fall of the land across the length of the building footprint.

The proposed modified development fails to provide any step down the building height towards the south or rear of the site to reflect the slope of the land, and instead has sought to establish additional yield by excavating within the south eastern corner of the building. The failure to provide any step down to reflect the slope of the land is evident by the single floor plates and resulting roof plane in spite of the corresponding fall of the land below and the continuously increasing numerical extent of the variation to the height of building development standard towards the south and rear of the building. The contravention increases from 0.0-4.0% at the northern end to 8.3-15% at the southern end. The extent of the contravention is not contained to a small area of the floor plan and instead is reflected across the majority of the upper level footprint, notwithstanding that a portion of this has already been approved.

The applicant's rationale that a stepped building form cannot be provided on this site because the southern end of the building would be located below the flood planning level is contradicted by their own proposal (approved under the s8.2 application) for two additional apartments located on the lower ground floor within the south eastern corner of the building. These apartments required protection from flood inundation through the construction of flood deflection barriers to a height of 500mm above the 1%AEP flood level. It is therefore conceivable that the ground level of the approved building could have been lowered (stepped) to better relate to the natural slope of the land subject to an extension of the flood deflection barriers.

The various discussions having regard to the detriments of a stepped floor plate in comparison to a single continuous floor plate is acknowledged on the basis that it has benefits in terms of internal circulation etc to maintain a single continuous floor plate, however, this only bears relevance to a compliant building form and in this instance the floor plate is large enough that a step could be accommodated. The approved development includes two lifts and therefore it is conceivable that two separate lift cores could be provided within the development to accommodate a building form that steps down the site by approximately half a storey as opposed to a full storey at the upper level.

A stepped floor plate would potentially enable the desired construction of a fourth storey over the southern half of the building with no to little variation of the height of buildings development standard. A development of this nature is likely to achieve the objective of the development standard by better relating to and conforming to the natural landform of the subject site.

It is noted that the proposed modified scheme extends the upper most level (level 03) a further 7m to the south in comparison to the approved development, with additional massing surrounding the left core which was intended to be a recessive element. The length of the building, and more specifically the upper most level (32m), is significant when viewed from the street and the highlights the lack of variation (stepping) in the building form and the resulting disassociation with the slope of the site, particularly when viewed in comparison to the footpath level.

(1)(b) to promote the retention and, if appropriate, sharing of existing views,

Throughout the assessment of the original development application and section 8.2 review, potential impact to views has not been identified as an issue for this site given the location of the development. The adjoining buildings to the south have an outlook to the north over the subject site, however the view impact associated with the proposed modified scheme would be consistent with the approved massing when viewed from the south.

The residential flat building located to the west (2 Rodborough Avenue) is three storeys and would not generally have views over the approved building form as the approved building is taller. Whilst the proposed modifications would alter the outlook from surrounding development it would not cause any loss of views.

(1)(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,

The submitted shadow diagrams do not delineate potential shadowing caused by the compliant or non-compliant elements. Notwithstanding, the proposed modified development would result in some very minor additional overshadowing of the adjoining properties to the east (Nos. 334 & 336-338 Miller Street). The overshadowing would impact the west facing ground level communal open space between 2pm and 3pm in mid-winter and the west facing ground and first floor windows by 3pm.

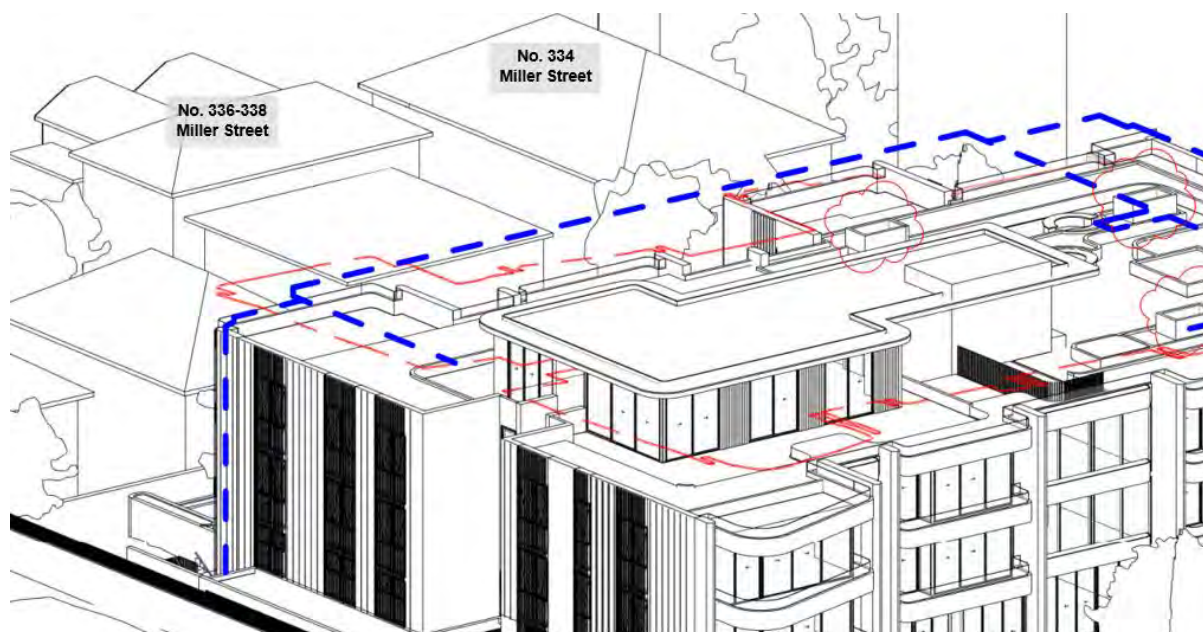


Figure 18. Approved Development - View from sun solar diagram 3:00pm in midwinter



Figure 19. Proposed Development - View from sun solar diagram 3:00pm in midwinter

The design of the proposed upper level area additional aligns with the existing shadowing impact at 3:00pm in mid-winter. Some minor additional overshadowing would arise as a result of the proposed modification. Whilst the additional impact on the amenity of the adjoining dwellings would be minor, the approved development already causes a notable impact to these properties in the afternoon hours.

The impact is more significant than the approved scheme and is caused by the additional bulk and massing of the non-compliant upper storey (part four, part storey). The set back of the upper level from the floor directly below is not sufficient to contain any new shadows within the approved shadow profile.

(1)(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,

The proposed additional / modified dwellings located on the upper level are set back from the side and rear boundaries to comply with the building separation requirements in 3F of the *Apartment Design Guide* which is 9m for the portion of the building above 12m or the fifth storey.

**(1)(e) to ensure compatibility between development, particularly at zone boundaries,
(1)(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.**

The proposed development would present as a four building with the largest extent of the variation occurring towards the southern end of the building. The proposed development as viewed from Rodborough Avenue would be four storeys over a subfloor of up to 1.75m at the southern end of the building.

The adjoining buildings to the south, Nos. 152 and 168 Falcon Street, are three storeys with a pitched roof and four storeys with a pitched roof respectively. The proposed development would have a similar overall height despite being located downhill from these properties. Furthermore, despite the similar maximum ridge / roof heights, the adjoining buildings have pitched roofs which assist in managing the perceived bulk and massing of those buildings. Although it is noted that the proposed development has a flat roof form and generally complies with Provision P8 in Section 1.4.7 of NSDCP 2013, with the exception of the northern elevation, which requires residential flat buildings with a flat roof to comply with an upper level setback height plan (36 degree) to minimise the scale or dominance of the upper most level to be comparable to the as pitched roof form.

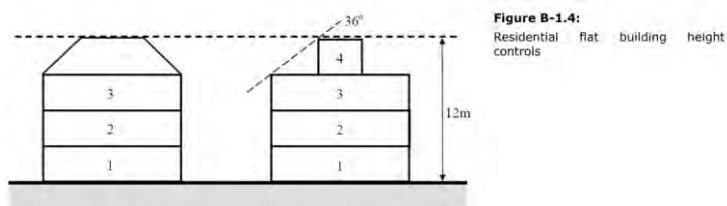


Figure 20. Compliance diagram referenced in Provision 8 of Section 1.4.7 of Part B in NSDCP2013

The adjoining buildings to the east, facing Miller Street, are between two and three storey and includes a pair of heritage items. The proposed development, in particular the additional massing towards the south of the building would exceed the scale of the surrounding development to the east.

The applicant has submitted view modelling below to demonstrate the visibility of the proposed upper most level from the public domain. The area of additional massing circled red is non-compliant with the development standard.



VIEW 2 - AMENDED S4.55 MODIFICATION PROPOSAL

Figure 21. Photo montage from western side of Rodborough Avenue

The additional massing would also be more highly visible from surrounding areas of higher topography, such as Falcon Street to the south, and from the first floor level and above within surrounding residential flat buildings. The additional plant area has also not been modelled although is likely to also be visible and detract from the character of the building.

The buildings located to the west, on the western side of Rodborough Avenue, are a mix of two to four storeys although the width of Rodborough Avenue provides decent separation between the buildings to alleviate the dominance of the buildings.

The subject site has a zone boundary along the northern side boundary as it adjoins land zoned SP2 Educational Establishment which is also subject to a maximum permitted building height of 12m. The proposed modified upper level presents more modest variation of between 0.0-4% at the northern end of the building and is considered to be compatible at this interface.

In summary, whilst the proposed building remains four storeys and the approved building was generally compatible with the surrounding development, the proposed additional massing, particularly where it is located towards the southern end of the building is non-compliant with the development standard and would be visible from the public domain and surrounding development. The proposed building would evidently be the largest building within the surrounding context, and whilst theoretically not fatal to any application, in the circumstances the proposed additional massing appears excessive in the context of the Rodborough Avenue cul-de-sac.

Environmental Planning Grounds

The applicant has advanced the following grounds in the submitted Statement of Environmental Effects (pages 16-17) to justify the proposed further contravention.

Ground 1 – “Lack of Impact”

The proposed upper storey level creates demonstrable impacts and therefore this ground is not applicable. Whilst the additional impacts are relatively minor, they serve to exacerbate the already accepted impact of the development.

Ground 2 – “Floor Levels”

As discussed above, regarding the topography of the site, it is not agreed that the flood level of the site require the building to contravene the height of buildings development standard, and not to the proposed extent. The applicant has not borne out the implications of additional flood barriers or flood gates however this is reasonably well understood through previous applications on this site. The approved development sufficiently dealt with the floor level and compliance with the height of buildings development standard.

The arguments regarding the basement entry ramp gradient are also inconsequential. Whilst it is preferable to locate the basement entry ramp at the high end of the site and therefore well above the floor level, there is adequate potential to accommodate a longer entry ramp, with acceptable gradients, to basement levels of the building. It is noted that there are various superfluous areas within the basement, such as residents’ cellar room or additional storage areas, that could have been repurposed or reconfigured to accommodate a longer basement entry ramp and the necessary car parking, plant and storage areas.

Regardless of the fact that the approved development demonstrates the ability to develop below the flood level, this flood level is a predefined constraint of the subject site and does not entitle a contravention of the height of buildings development standard.

Ground 3 – “Reduced apartment amenity”

The proposed and subsequently approved lower ground floor apartments within the south eastern corner of the site inconsistent with this statement. Notwithstanding, this ground relies on an expectation or entitlement by the developer despite the constraints of the site.

The ground floor level of the approved building is approximately 1.8m above the surrounding floor level. Lowering the building level would not necessarily require the floor level to be below ground level as described in this environmental planning ground, just that the ground floor level would be below the flood level and require protection from inundation.

Ground 4 – “The nature of the height control”

The proposed building form with the non-compliant building form the applicant has suggested is typical of the key development controls. The proposed building form is inconsistent with the sloping topography of the site

Council has been flexible in its application of the development standard, as per objective (1)(a) in Clause 4.6 in NSLEP 2013 and therefore it is acknowledged that various recent approvals may involve variations to the height of buildings development standard, this is typically limited to a lift overrun and roof forms rather than for the provision of additional habitable space, however, are dealt with within the individual circumstances

In summary, it is not considered that the extent of the proposed contravention is justifiable in the circumstances. Whilst the submission of a written request is not a jurisdictional consideration, the consent authority cannot be satisfied that non-compliance is unreasonable or unnecessary as the proposed development would fail to the achieve the objectives of the standard. Furthermore, sufficient grounds have not be raised to justify the variation given that it is evident that a significant development has already been achieved for the site.

Clause 5.10 - Heritage conservation

Sub-clause 5.10(4) allows the consent authority to consider the potential impact of a proposed development on the heritage significance of a heritage item or conservation area in the vicinity of the subject site. The subject site is located in proximity to Nos. 336-338 Miller Street, which are identified as heritage items (I0016 and I0017) in Schedule 5 to NSLEP 2013.

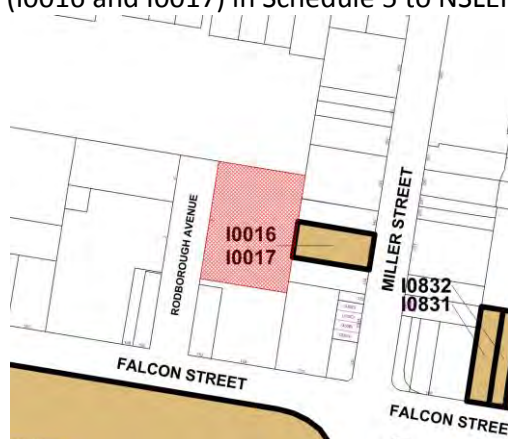


Figure 22. NSLEP 2013 Schedule 5 Heritage items (gold), Heritage Conservation Area (Red Crosshatch)

The proposed additional massing is significantly set back from the adjoining Heritage Items, and therefore is unlikely to have any determinantal impact on the heritage significance of the heritage items.

POLICY CONTROLS

Apartment Design Guide

Amenity	Design Criteria	Comment	Compliance
2C- Building Height	<p><i>Consider the height of surrounding buildings that are unlikely to change (such as contributory and heritage items)</i></p> <p><i>Development should respond to desired future scale and character.</i></p>	<p>The proposed development results in a further, more significant, contravention to the height of buildings development standard.</p> <p>The proposed development does step down to reflect the natural topography of the area.</p>	No

<p>2F - Building Separation</p>	<p><i>Minimum separation distances for buildings are: Up to four storeys (approximately 12m):</i></p> <ul style="list-style-type: none"> • <i>12m between habitable rooms/balconies (6m to boundary)</i> • <i>9m between habitable and non-habitable rooms (4.5m to boundary)</i> • <i>6m between non-habitable rooms (3m to boundary)</i> 	<p>Proposed upper level</p> <p>The proposed additional / modified apartments on the upper most level, including the balconies, are set back a minimum of 12m from the rear and southern side boundaries and therefore comply with the building separation requirements.</p> <p>Condition C2</p> <p>The proposed modification seeks to delete condition C2 which requires the installation of privacy screening along the eastern side of the balconies of apartments 105, 107, 205 and 207 which are within 7.05-7.1m from the rear boundary to minimise privacy impacts to the western windows of Terrace 5 of 346 Miller Street and the private open space of No. 338 Miller Street.</p> <p>These apartments comply with the setback provisions to the rear boundary although not the building separation requirement to No. 346 Miller Street due to the siting of the adjoining building. The adjoining building is setback approximately 3.5m from its rear boundary resulting in only 11m building separation between the buildings.</p> <p>The condition as imposed would likely compromise the amenity of those apartments and is considered unwarranted following the assessment of the additional supporting information provided with this application. While the assessment report sought to justify the imposition of the condition on the basis of the minor non-compliance with the building separation and that landscaping should not be relied upon to achieve privacy, the resulting impact to the amenity of the approved apartment and the otherwise compliance with the relevant set back requirements in the ADH and DCP it is considered reasonable to delete the condition. Whilst the assessment report stated that landscaping should not be relied upon, it is considered that the proposed landscaping is only one of the ameliorating elements to minimise overlooking and is not solely relied upon.</p> <p>It is considered that the development, without the condition, would still achieve a level of privacy contemplated by the zoning and relevant development controls.</p>	<p>Acceptable</p>
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		Should the application be approved, it is recommended that condition C2 be deleted.	
3D- Communal Open Space	<p><i>Communal open space has a minimum area equal to 25% of the site.</i></p> <p><i>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)</i></p> <p><i>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</i></p> <p><i>Communal open space is designed to maximise safety</i></p>	<p>The proposed modification seeks to reduce the size of the approved roof top communal open space in order to increase the development yield.</p> <p>The approved rooftop communal open space measures approximately 400sqm and is proposed to be reduced to only 83sqm and is confined to the south-eastern corner of the roof top. The proposed rooftop communal open space is not sufficient in size for the scale of the development which is proposed to increase to 28 apartment, the majority of which are larger three bedroom apartments.</p> <p>The application has suggested that the loss of roof top communal open space has been offset through the use of the south side setback area as a ground level communal open space. This area has a proposed area of 380.7sqm (or 13.7% of the site area). However, the consolidated area available for use as communal open space is approximately 250sqm (or 9% of the site area), some of which includes landscaped planters. It is unreasonable to include some areas such as the narrow rear setback or the entry path adjacent to the onsite substation.</p> <p>The southern side setback area of the building comprises the overland flow path and would receive less than 2 hours of sunlight to more than 50% of the usable portion of the communal open space. It appears that only the fringes (approximately 10% of the area) of the already significantly undersized communal open space area would receive any solar access and that the proposed barbeque/seating area, i.e., the principal usable area, would receive no solar access in mid-winter. No analysis has been provided for the equinox (March & September) periods, however it is likely that only the very southern side of the communal open space area which comprises boundary landscaping would receive solar access. The proposed modified communal open space is inferior outcome for the future residents of the building.</p> <p>The proposed modifications seek increase yield to the detriment of the communal amenity of the development.</p>	No
3E – Deep Soil Zones	<p><i>Deep soil zones are to meet the following minimum requirements:</i></p>	No change	As, approved

	<ul style="list-style-type: none"> • 3m minimum width • Minimum 7% of the site area <p>Design Guidance 15% of the site where the site area is greater than 1,500sqm</p>											
3F - Visual privacy	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building Height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> </tbody> </table>	Building Height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	<p>There is no change to the building separation for the approved apartments.</p> <p>The proposed additional / modified apartments on the upper most level would comply with the 6m separation requirement where the height of the building is up to 12m and 9m separation requirement for the portion of the building over the 12m.</p>	Yes
Building Height	Habitable rooms and balconies	Non-habitable rooms										
Up to 12m (4 storeys)	6m	3m										
Up to 25m (5-8 storeys)	9m	4.5m										
3G – Pedestrian Access & Entries	<p>Building entries and pedestrian access connects to and addresses the public domain. Access, entries and pathways are accessible and easy to identify.</p>	There are no changes proposed to the pedestrian access and entries arrangements.	As Approved									
3H – Vehicle Access	<p>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.</p>	There are no changes proposed to the approved vehicle access arrangement.	As Approved									
3J – Bicycle and Car parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> • on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or • on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p>	Bicycle parking has been provided within the basement for the proposed additional apartments.	Yes									

Amenity	Design Criteria		
4A - Solar and daylight access	<i>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</i>	The proposed additional / modified apartments located on the upper level of the building would all receive a minimum of 2 hours direct sunlight between 9am to 3pm at mid-winter.	Yes
4B - Natural ventilation	<i>All habitable rooms are naturally ventilated. The layout and design of single aspect apartments maximises natural ventilation. The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents – At least 60% of apartments are naturally cross ventilated</i>	The proposed additional / modified apartments located on the upper level of the building would all achieve natural cross ventilation.	Yes
4C - Ceiling Heights	<i>Ceiling height achieves sufficient natural ventilation and daylight access - Minimum 2.7m (habitable rooms), 2.4m for second floor where it does not exceed 50% of the apartment area.</i>	The proposed additional / modified apartments located on the upper level of the building would have a minimum floor to ceiling height of 2.9m which exceeds the ADG requirement and further exacerbates the contravention of the height of building development standard.	Yes
4D 1 - Apartment size and layout	<i>Apartments are required to have the following minimum internal areas: 50m² (1B), 70m² (2B), 90m² (3B) Additional bathrooms increase the minimum internal area by 5m² each A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</i>	The proposed additional / modified apartments comply with the apartment size and layout requirements.	Yes

<p>4D 2 - Apartment size and layout</p>	<p>1. <i>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</i></p> <p>2. <i>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</i></p>	<p>The proposed additional / modified apartments comply with the apartment size and layout requirements.</p>	<p>Yes</p>
<p>4D 3- Apartment size and layout</p>	<p>1. <i>Primary bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space)</i></p> <p>2. <i>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</i></p> <p>3. <i>Living rooms or combined living/dining rooms have a minimum width of:</i></p> <ul style="list-style-type: none"> • <i>3.6m for studio and 1 bedroom apartments</i> • <i>4m for 2 and 3 bedroom</i> 	<p>The proposed additional / modified apartments comply with the apartment size and layout requirements.</p>	<p>Yes</p>
<p>4E - Private open space and balconies</p>	<p><i>All apartments are required to have primary balconies as follows: Studio apartments - 4m² 1 bedroom apartments - 8m², minimum depth 2m 2 bedroom apartments 10m² minimum depth 2m 3+ bedroom apartments 12m² minimum depth 2.4m</i></p> <p><i>The minimum balcony depth to be counted as contributing to the balcony area is 1m</i></p> <p>2. <i>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m</i></p> <p><i>Primary private open space and balconies are appropriately located to enhance liveability for residents.</i></p> <p><i>Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.</i></p> <p><i>Private open space and balcony design maximises safety.</i></p>	<p>The proposed additional / modified apartments have access to a balconies that comply with the minimum size and depth requirements.</p>	<p>Yes</p>

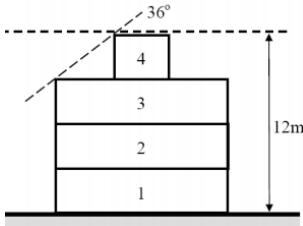

4F - Common circulation and spaces	1. The maximum number of apartments off a circulation core on a single level is eight	There are no changes proposed to the number of apartments located off a circulation core on each level. The proposed additional / modified upper level has four apartments located off the core and complies with the requirement.	Yes
4G -Storage	Studio apartments- 4m ³ 1 bedroom apartments- 6m ³ 2 bedroom apartments- 8m ³ 3+bedroom apartments- 10m ³	Storage has been provided within the basement for the proposed additional apartments.	Yes

North Sydney Development Control Plan 2013

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013 PART B – SECTION 1 - Residential Development																																		
	<i>Complies</i>	<i>Comments</i>																																
1.2 Function																																		
Mixed residential population	No	The dwelling size mix has been assessed in the Table below: <table border="1" data-bbox="762 898 1449 1279"> <thead> <tr> <th>Dwelling Size</th> <th>Refused DA</th> <th>Approved Mod_2</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Studio (10-20%)</td> <td>1 (2.9%)</td> <td>0 (0%)</td> <td>0 (0%)</td> <td>No</td> </tr> <tr> <td>1 Bedroom (25-35%)</td> <td>4 (11.1%)</td> <td>2 (7.4%)</td> <td>2 (7.14%)</td> <td>No</td> </tr> <tr> <td>2 Bedroom (35-45%)</td> <td>13 (37.1%)</td> <td>6 (22.2%)</td> <td>6 (21.43%)</td> <td>No</td> </tr> <tr> <td>3+ Bedroom (10-20%)</td> <td>17 (48.6%)</td> <td>19 (67.85%)</td> <td>20 (71.14%)</td> <td>No</td> </tr> <tr> <td>Total Dwellings</td> <td>35</td> <td>27</td> <td>28</td> <td></td> </tr> </tbody> </table> <p>The proposed development exacerbates the non-compliance with the desired dwelling sizes, however, given that the proposed modifications seek to provide one additional apartment the overall dwelling mix would not significantly change.</p> <p>It is noted that the applicant has listed one of the lower ground floor apartments as two bedrooms, however, is considered a three bedroom unit as the undefined room is capable of use as a bedroom (minimum 3x3m).</p>			Dwelling Size	Refused DA	Approved Mod_2	Proposed	Compliance	Studio (10-20%)	1 (2.9%)	0 (0%)	0 (0%)	No	1 Bedroom (25-35%)	4 (11.1%)	2 (7.4%)	2 (7.14%)	No	2 Bedroom (35-45%)	13 (37.1%)	6 (22.2%)	6 (21.43%)	No	3+ Bedroom (10-20%)	17 (48.6%)	19 (67.85%)	20 (71.14%)	No	Total Dwellings	35	27	28	
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1.3 Environmental criteria																																		
Topography	N/A	The proposed modifications do not relate any excavation or the ground level of the building.																																
Views	Acceptable	The subject site is located close to the ridgeline of Crows Nest and there are no significant water views or similar identified. <p>District views may be available from the northern apartments of the residential flat building located to south (168 Falcon Street) across the site although may be limited by the existing vegetation. Regardless, as these views are available to the north, and the northern end of the building generally complies with the maximum permitted building height, the impact, if any, is likely consistent with the anticipated development that could occur on the site. Similarly, views from the residential flat buildings to the west (No 2 Rodborough Avenue) are not notable and would be impacted by any compliant building form regardless.</p>																																

<p>Solar access</p>	<p>No</p>	<p>Adjoining Properties - Miller Street The proposed development would result in very minor additional overshadowing to the properties located to the east facing Miller Street (Nos. 334, 336-8 & 342) within the afternoon hours. The additional overshadowing would impact the rear setback areas from around 1pm onwards and the rear elevations from 2pm onwards. The very minor additional overshadowing would be caused by the proposed modifications to the non-compliant uppermost storey.</p> <p>Whilst the additional overshadowing is quite minor, it is caused by the proposed non-compliant element and would be in addition to the existing overshadowing that would be caused by the approved development and is therefore considered unreasonable as discussed above.</p> <p>Whilst these properties would generally still receive two hours of solar access, the dwellings located on the southern side of their respective buildings (notably Nos. 334 and 336-338 Miller Street are in a two up, two down side-by-side configuration) would be most affected by the loss of afternoon solar access from the west.</p> <div data-bbox="799 893 1410 1312" data-label="Image"> </div> <p>Figure 23. Rear elevation of 336-338 Miller Street.</p> <p>Adjoining Properties - Falcon Street The additional overshadowing to the properties to the south facing Falcon Street (Nos. 168 & 170) would be cast over the driveway and parking areas only and would not impact any habitable room or balcony.</p> <p>Opposite Properties - Rodborough Avenue The proposed development would not result in any overshadowing to the properties along Rodborough Avenue between 9am-3pm in mid-winter.</p>
<p>Acoustic privacy</p>	<p>Acceptable</p>	<p>The potential acoustic impacts of the proposed additional / modified apartments on the upper most level would be consistent with the approved development, noting the roof level is approved for use as a communal roof terrace.</p>
<p>Vibration</p>	<p>N/A</p>	<p>The proposed development is not located along a rail or road corridor.</p>

<p>Visual privacy</p>	<p>Acceptable</p>	<p>The potential acoustic impacts of the proposed additional / modified apartments on the upper most level would be consistent with the approved development. The proposed apartments and associated balconies are set back a minimum of 12m from the southern and rear boundaries and are located within a similar footprint as the approved balconies and roof top communal open space.</p> <p>Deletion of Condition C2</p> <p>Condition C2 required fixed privacy screening to be installed along the eastern edge of the level 1 and 2 balconies of the apartments that protrude out towards the rear boundary.</p> <p>The applicant seeks to delete this condition given the impact to the amenity of these apartments and the ameliorating elements. The condition was imposed to minimise overlooking to the rear private open space and habitable rooms of the adjoining apartments and townhouses to the rear (Nos 346 and 336-338 Miller Street).</p> <p>The balconies are set back 7.05m -7.1m from the rear boundary and comply with the ADG separation requirement and the DCP setback provision including the BHP. The landscape plan also included landscaping planting along the rear boundary to provide additional visual screening between the properties.</p> <p>More than 12m of building separation is achieved between the balconies and the rear of No. 336-338 Miller Street), however, it is noted that the adjoining townhouses at No. 346 Miller Street are set back less than 6m from the rear boundary and therefore the full 12m building separation contemplated by the ADG is not achieved between those dwellings. The separation distance would be approximately 11m.</p> <p>Despite this, it is considered unreasonable to further restrict the proposed development where the proposed building form complies with the relevant controls and additional measures such as landscaping have been incorporated. The ADG contemplates 12m of building separation, however, seeks to achieve this by imposing a 6m boundary setback requirement (3F) for any proposed development rather than measuring from the existing adjoining development.</p> <p>Should the application be approved, it is recommended that condition C2 be deleted.</p>
<p>1.4 Quality Built Form</p>		
<p>Context</p>	<p>No</p>	<p>The proposed modified building form results in a building form that exceeds the massing and scale of development as envisaged by the relevant development controls. Adequate regard has not been taken to the constraints of the site.</p>
<p>Siting</p>	<p>Yes</p>	<p>The proposed modifications would not change the siting of the approved building form.</p>
<p>Front Setback</p>	<p>Yes</p>	<p>The proposed modifications retain the approved front setback.</p>
<p>Setbacks</p>	<p>Yes</p>	<p>The proposed modifications retain the approved minimum side setbacks. The proposed additional massing on the upper most level complies with the relevant setback and BHP provisions.</p>
<p>Rear Setback</p>	<p>Yes</p>	<p>The proposed modifications retain the approved minimum rear setback.</p>
<p>Form, massing & scale</p>	<p>No</p>	<p>The proposed height of the building exceeds the maximum permitted building height of 12m pursuant to clause 4.3 in NSLEP 2013.</p>

		<p>The proposed modified development results in additional massing on the upper most level to achieve additional yield. The upper most level exceeds the maximum permitted height by up to 1.6m towards the southern end. The proposed variation is not considered acceptable in the circumstance of the case as previously addressed in this report.</p> <p>Roof Form Provision 8 permits flat roofs provided that the development a) complies with the maximum permitted building height in clause 4.3 in NSLEP 2013 and b) the top-most storey is setback to comply with a 36-degree height plan from the storey immediately below. The proposed modified upper most level generally complies with this provision with the exception of a non-compliance along the northern side of the building.</p>  <p>Figure 24. Extract from section 1.4.7 of Part B in NSDCP 2013.</p>  <p>Figure 25. Extract from 36degree height plane diagram</p>
<p>Built form character</p>	<p>No</p>	<p>P8 - Residential Flat Buildings</p> <p>The overall form of the approved building is well articulated and is broken into smaller elements along the street wall through the use of more solid projecting vertical blade walls between apartments and the tessellated curved balconies.</p> <p>The proposed modified upper most level, however, does not provide any articulation when viewed from the west (Rodborough Avenue). The western (street) elevation is 32m long with a single plane of glazing. The additional massing does not reflect the design or articulation of the lower levels and appears to seek to maximise the floor space on the upper most level by minimising any articulation in the building form.</p> <p>The use of glazing is also an overly dominate feature on this level and does not comply with Provision P in section 1.4.6 of Part B in NSDCP 2013.</p>

Building entry	Yes	There are no changes proposed to the approved building entry.																								
Roofs	No	The proposed development has a flat roof. As addressed above, the upper most storey of the building is not sufficiently setback to justify the proposed flat roof and results in an over scaled, vertical building form.																								
Colours and materials	Yes	The proposed colours and materials are considered to be of a high quality and are acceptable with regard to the surrounding character of development and the future desired character of the area with the exception of the excessive glazing.																								
Front Fence	Yes	There are no changes proposed to the approved building entry.																								
Balconies - Apartments	Yes	There are no changes proposed to the approved balconies. Balconies are provided for the proposed modified / additional apartments on the upper most level of the building.																								
1.5 Quality urban environment																										
Safety and security	Yes	The proposed modifications would not adversely affect the safety or security of the building.																								
Car parking rates Table B-10.1 – Residential Parking Rates	Yes	<p>The proposed modification seeks to increase the number of parking spaces and is assessed in the table below:</p> <table border="1" data-bbox="799 819 1410 1142"> <thead> <tr> <th></th> <th>Approved</th> <th>Proposed</th> <th>Complies</th> </tr> </thead> <tbody> <tr> <td>Residential</td> <td>30</td> <td>32</td> <td>Yes</td> </tr> <tr> <td>Residential – visitors</td> <td>6</td> <td>6</td> <td>Yes</td> </tr> <tr> <td>Accessible – residential</td> <td>6</td> <td>6</td> <td>Yes</td> </tr> <tr> <td>Accessible – visitors</td> <td>1</td> <td>1</td> <td>Yes</td> </tr> <tr> <td>Motorbike</td> <td>5</td> <td>2</td> <td>Yes</td> </tr> </tbody> </table> <p>The proposed modifications would remain compliant with the maximum permitted parking rates in section 10.2 of Part B in NSDCP 2013.</p> <p>The reconfiguration of the basement to accommodate the additional resident parking results in the loss of the service vehicle bar would have an adverse impact on the amenity of the residents and require street parking to be utilised for service vehicles larger than a car/van.</p> <p>The proposed reconfiguration also results in a reduction in motorcycle spaces from 5 to 2, and whilst not required by the DCP detracts from the amenity of the approved development.</p>		Approved	Proposed	Complies	Residential	30	32	Yes	Residential – visitors	6	6	Yes	Accessible – residential	6	6	Yes	Accessible – visitors	1	1	Yes	Motorbike	5	2	Yes
	Approved	Proposed	Complies																							
Residential	30	32	Yes																							
Residential – visitors	6	6	Yes																							
Accessible – residential	6	6	Yes																							
Accessible – visitors	1	1	Yes																							
Motorbike	5	2	Yes																							
Location of car parking and Vehicle Access	Yes	The proposed additional parking is located within the approved basement.																								
Site Coverage, Unbuilt Area and Landscaped Area	Yes	<p>The site has an area of 2772.4sqm. The site coverage, unbuilt upon area and landscaped area provisions are assessed in the table below:</p> <table border="1" data-bbox="799 1753 1410 2067"> <thead> <tr> <th>Control</th> <th>Approved</th> <th>Proposed</th> <th>Complies</th> </tr> </thead> <tbody> <tr> <td>Site Coverage 45%</td> <td>(1246.7sqm) 44.9%</td> <td>Unchanged</td> <td>Yes</td> </tr> <tr> <td>Unbuilt Upon Area 15%</td> <td>(337.3sqm) 12.2%</td> <td>Unchanged</td> <td>Yes</td> </tr> <tr> <td>Landscaped Area 40%</td> <td>(1188.3sqm) 42.9%</td> <td>Unchanged</td> <td>Yes</td> </tr> </tbody> </table>	Control	Approved	Proposed	Complies	Site Coverage 45%	(1246.7sqm) 44.9%	Unchanged	Yes	Unbuilt Upon Area 15%	(337.3sqm) 12.2%	Unchanged	Yes	Landscaped Area 40%	(1188.3sqm) 42.9%	Unchanged	Yes								
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		The proposed modifications result in inconsequential changes to the compliance with the site coverage, unbuilt upon area and landscaped area provisions.
Garbage storage	Yes	The approved waste arrangements are sufficient, notwithstanding the proposed additional apartment.
1.6 Efficient use of resources		
BASIX	No	A revised BASIX certificate has not been provided.

Part C - Character Statements

The subject site is located in Anzac Neighbourhood of the Cammeray Planning Area.

The character statement does not provide any specific provisions regarding the Desired Future Character or Desire Built Form that are relevant to the proposed modifications.

SECTION 7.11/12 CONTRIBUTIONS

Should the application be approved, condition C50 Contribution would need to be amended to reflect the additional contribution payable in accordance with Council’s Local Contribution Plan under section 7.11 of the Act given the nexus increase in residents. The proposed modifications would result in one additional three bedroom apartment which equates to an additional 2.6 residents. It is noted that the development already has a Construction Certificate and therefore the additional contribution would be payable before the issue of the modified construction certificate.

Condition C50 would be amended as follows.

- C50. A monetary contribution pursuant to the provisions of Section 7.11 of the Environmental Planning and Assessment Act 1979, in accordance with the North Sydney Council Contributions Plan for the public amenities/ services detailed in column A below and, for the amount detailed in column B below, must be paid to Council.

s7.11 contribution		
	Open space and recreation facilities:	\$223,988.80
	Public domain:	\$124,687.93
	Active transport:	\$7,116.70
	Community facilities:	\$44,989.20
	Plan administration and management:	\$5,993.01
	Total:	\$406,775.64

The contribution MUST BE paid prior issue of **any modified** Construction Certificate.

The above amount will be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

A copy of the North Sydney Contributions Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at www.northsydney.nsw.gov.au

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new development)

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 s4.15(1) considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

SUBMITTERS CONCERNS

The modification application, and amended application were notified in accordance with Council's Community Engagement Protocol from 8 April 2022 until 22 April 2022 and from 29 August 2022 until 12 September 2022, respectively. All submissions received are addressed below:

- *The development was approved on the basis that the height of the building was reduced under the s8.2 review application. The proposed additions are inconsistent with the reasons for approval.*

The application is recommended for refusal on this basis. The proposed additions are inconsistent with the approved building form and relies on additional massing that breaches the height of buildings development standard.

- *The proposed additions would further exacerbate the non-compliance with the height of buildings development standard.*

The extent and nature of the further non-compliance with the height of building development standard is not supported. The variation arises through the proposed additional development yield. The variation, whilst not subject to the jurisdictional requirements, is not considered to achieve the objectives of the standard and is not adequately justified.

- *The proposed fourth storey is out of character with the surrounding development.*

The relevant development controls contemplate up to a four storey building, however, the proposed building form is four storeys with a significant subfloor towards the southern end to address the topography and flooding issues. Notwithstanding these constraints, the additional massing on the upper level is considered excessive in the context.

- *The application seeks additional yield through subsequent modifications causing development creep and associated impacts not envisaged at the time the original consent was granted.*
- *The proposed modifications are a reiteration of the originally refused scheme.*

As above, the proposed modifications seek to increase the development yield and are inconsistent with the approved building form and the reasons for the granting of the original consent following a section 8.2 review.

- *Approval of the height non-compliance would cause an undesirable precedent for future development.*

Whilst each application is to be assessed on its merits, the proposed modification, particularly where it relates to the height non-compliance, is considered to be without merit. Approval would set an unnecessary precedent and would be inconsistent with the development standard and its purpose.

- *The proposed additions are an overdevelopment of the site.*

The nature of the non-compliance with the height of buildings development standard implies that the proposed development exceeds the maximum capacity of the site, having regard to the other development controls and known constraints.

- *The proposed additions would cause additional traffic and parking congestion.*
- *The overdevelopment of the site would adversely impact the adjoining school and childcare centre.*

The additional traffic and parking congestion associated with the proposed additional parking space is relatively minor in the circumstances and would be less than the originally refused scheme which had raised no objection from Council's Traffic Engineers. The proposed modified development remains compliant with the parking rates in section 10.2 of Part B in NSDCP 2013.

- *The proposed additional would cause additional overshadowing to surrounding residential properties.*

The proposed additions would cause very minor additional overshadowing between 9:00am and 3:00pm in mid-winter. Whilst the additional impact would be minor, it is considered unreasonable given it is caused by a non-complying element and is in addition to the additional impact that would be caused by the approved building form.

- *The proposed additional would cause additional overlooking of surrounding residential properties.*

The proposed additional and modified apartments on the upper most level comply with the relevant building separation requirements and are unlikely to have an impact greater than that approved development given the southern end of the rooftop is approved for use as a communal open space.

- *The proposed additional massing and scale would have an adverse visual impact on the quality and character of the streetscape.*

The proposed additions would not positively contribute to the streetscape. The addition results in an upper level some 32m long with no physical or visual articulation. The excessive height and insensitive proportioning, combined with the poor resolution of the architectural building form is substandard and is considered to detract from the design quality of the approved building.

- *The proposed modifications increase the development yield by reducing the amenities for the residents.*
- *The proposed additional apartments are achieved through the loss of communal open space putting additional pressure on public open space.*

The approved communal open space would be reduced by more than half and would have an adverse impact on the amenity and social interaction of the future residents, most of which have already purchased off the plan. The communal open space within the southern side setback area is substandard and does not offset the loss of the rooftop area. The loss of amenity for the sake of additional development yield is inconsistent with the approved development and compromises the development.

- *The proposed modifications reduce the number of EV charging spaces and bicycle parking.*

The number of EV charging space has been increased. Bicycle storage is provided for all apartments within the basement and visitor bicycle rails are provided adjoining the building entry.

- *The proposed deletion of Condition C2 Privacy Screens would result in a loss of privacy for surrounding properties.*

As addressed in this report, the removal of condition C2 is considered reasonable in the circumstances as the original condition was disproportional to the potential impact given the otherwise high level of compliance with the building setbacks and height for these balconies and would severely reduce the impact the amenity of the approved apartments.

- *The proposed development would result in further light spillage to surrounding properties.*

The additional glazing on the upper level, large portions of which do not comply with the height of buildings development standard, would result in additional light spillage to surrounding properties.

- *The approved trees will not afford surrounding residents' privacy for many years.*

The approved development or proposed deletion of condition C2 are not predicated on landscaping to ensure reasonable levels of privacy for surrounding properties. Over time the level of privacy would continue to improve as these trees mature.

- *The proposed development would devalue surrounding properties.*

Whilst not a matter for consideration under s4.15(1) of the Act, the assessment seeks to ensure development is consistent with the objectives of the zone and the relevant development controls in order to ensure that the amenity of surrounding properties and the area is reasonably maintained.

- *The proposed additions will be overbearing on adjoining properties, particularly those located at a lower level.*

The bulk and massing of the proposed development is considered excessive having regard to the height of building non-compliance and would have an adverse impact on the amenity of the surrounding properties.

- *The proposed development would result in a loss of district views to the east.*

Photos provided by submitter do not identify any view that would warrant further assessment.

- *No photo montages have been modelled from the rear of the building making it difficult to understand the impact to adjoining properties.*

Photomontages were provided with the amended plans that included views from the south and east (rear).

- *The increased size of the development will prolong the disturbances associated with the construction.*

Should the application be approved, the conditions of consent seek to manage the impact of construction on traffic and amenity within the surrounding area.

- *The number of modification applications and amended plans creates confusions and puts a burden on surrounding residents to continually review documentation and make submissions.*

The number of applications associated with this development site is relatively high and it is acknowledged that this creates a burden on neighbour, however, there is no statutory limit to the number of applications that may be submitted. Furthermore, all applications are notified where required by Council's Community Engagement Protocol.

SITE SUITABILITY

The subject site is not considered suitable for the proposed modified development. The modified building form does not adequately respond to the topography of the site and results in the further non-compliance with the height of buildings development standard. The approved development is considered to have achieved the maximum capacity of the site with respect to the relevant development controls and known constraints.

PUBLIC INTEREST

Approval of the proposed modifications is not considered to be in the public interest given the extent of the non-compliances and associated impacts and detriment to the design quality of the approved development.

HOW THE COMMUNITY VIEWS WERE TAKEN INTO CONSIDERATION

The application, as subsequent amendments, have been notified in accordance with Council's Community Engagement Protocol.

All submissions have been reviewed and addressed in this report. The application is also to be determined following the conveying of a Public Meeting of the North Sydney Local Planning Panel.

CONCLUSION + REASONS

The modification application, with the exception of the deletion of condition C2, fails to meet the requirements of section 4.55(2) as the proposed modified development is not considered substantially the same development and when considered against the original reasons for approval is considered to be inconsistent with those reasons. The application has also been considered against the matters for consideration outlined in section 4.15(1) of the Act and is considered to be unsatisfactory.

The proposed modifications are considered to be inconsistent with the reasons for approval given for the granting of the original development consent. The proposed modifications would exacerbate the non-compliance with the height of buildings development standard. The application seeks to construct an additional three bedroom apartment on the upper most level of the building, with the entirety of the additional apartment relying upon a non-compliance with the development standard by up to 1.8m or 15%.

The proposed modifications are inconsistent with the approved development and are considered to detract from the design quality of the approved development. The design of the additions is contrived and has a poor relationship with the approved building form, particularly with regard to the stepping of the upper level to reflect the fall of the land, and the building portioning which lacks integration with the design of the levels below.

The proposed additional apartment results in a loss of amenity for the future residents of the building by reducing the size and quality of the approved communal open space in an attempt to increase the development yield.

The approved development is considered to have achieved the maximum capacity of the site with respect to the relevant development controls and known constraints. The proposed modifications to further increase the yield of the development are considered unreasonable and therefore are 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, exercising the functions of Council, as the consent authority resolve to refuse consent to the application to modify DA232/2020 under section 4.55(2) of the Act, for the demolition of the existing buildings and the construction a 4-storey residential flat building with basement parking and associated landscaping including strata subdivision on land at No. 5 Rodborough Avenue, Crows Nest for the following reasons:

Not substantially the same development

1. The proposed modification should be refused because the proposed development is not substantially the same development for which consent was originally granted.

Particulars

- a) The nature and extent of the non-compliance with the height of buildings development standard is inconsistent with the originally approved development.
- b) The number of apartments has increases by one, with the size of the upper most level doubling in size.

Inconsistent with reasons of approval

2. The proposed modification should be refused because the proposed modifications are inconsistent with the original reasons for approval of the original development application.

Particulars

- a) The proposed modifications are inconsistent with the reasons for approval of the originally granted development consent as required by section 4.55(3) of the Act.
- b) The proposed modifications seek additional yield on the originally refused third floor level where the excessive non-compliance with the height of building development standard occurs
- c) The proposed modifications increase the number of apartments and parking spaces.

Objectives of the zone

3. The proposed modification should be refused because the proposed development is inconsistent with the objectives of the zone.

Particulars

- a) The subject site is zoned R4 High Density Residential.
- b) The proposed modifications are inconsistent with dot point 4 because the massing and scale of the proposed development is inconsistent with the desired character of the area and would diminish the amenity of the street and surrounding properties given the overbearing nature of the non-complying portion of the additions.

- c) The proposed modifications are inconsistent with dot point 5 because the approved rooftop communal open space area is proposed to be halved in size. The overall quantity and quality of communal open space for the residents has been significantly diminished to achieve additional development yield.

Building Height

- 4. The proposed modification should be refused because the proposed development contravenes the maximum permitted building height development standard in clause 4.3 in NSLEP 2013.

Particulars

- a) A 12m height of buildings development standard applies to the subject site pursuant to subclause 4.3(2) in NSLEP 2013.
- b) The proposed additional apartment contravenes the development standard by between 1m-1.8m or 8.3-15%.
- c) The indicative plant area implies a breach of 2.5m or 20.83% although insufficient information has been submitted to assess this component.
- d) The proposed development would be inconsistent with objectives a), c), e) and f) of the development standard.

SEPP 65 – Design Quality Principles

- 5. The proposed modification should be refused because the proposed modifications detract from the design quality of the approved development.

Particulars

- a) The proposed building form is contrary to design quality principles 1 *Context and neighbourhood character* and 2 *Built form and scale*.
- b) The reduction in the size of the rooftop communal open space area is contrary to design quality principles 6 *Amenity* and 8 *Housing Diversity and Social Interaction*.

Form, Massing and Scale

- 6. The proposed modification should be refused because the proposed development does not comply with the form, massing and scale controls.

Particulars

- a) The proposed development does not comply with the height requirement in Provision P1 as required by provision P8(a) in Section 1.4.7 of Part B in NSDCP 2013 to justify the proposed flat roof.
- b) The proposed development does not comply with the top-most storey setback control of 36degrees as required by Provision P8(b) in Section 1.4.7 of Part B in NSDCP 2013 to justify the proposed flat roof.

Communal Open Space

7. The application should be refused because the proposed modifications detract from the amenity of the approved communal open space arrangements and do not meet the ADG requirements.

Particulars

- a) The proposed modified roof top communal open space has been reduced from 395sqm to only 85sqm in size (3% of the site area) and is inconsistent with requirement 3D of the Apartment Design Guide.
- b) The supplementary communal open space at ground level within the southern side setback area would receive no solar access to the principal usable portion of the space and only marginal solar access to the fringes of the space between 9am to 3pm in mid-winter.

Insufficient Information

8. The application should be refused because insufficient information has been lodged with the application.

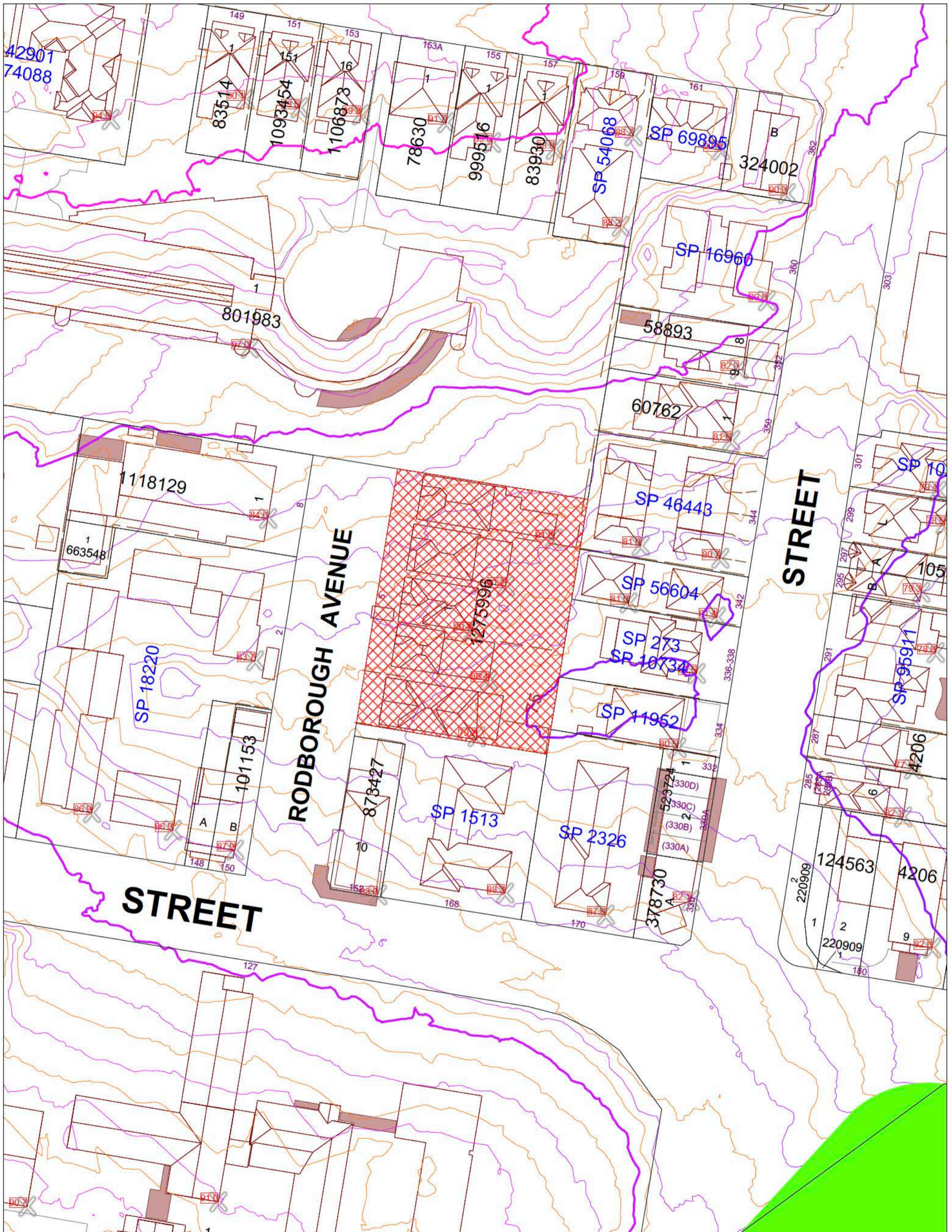
Particulars

- a) An amended landscape plan has not been provided to reflect the amended architectural plans lodged 1 August 2022.
- b) An amended strata plan has not been provided to reflect the amended architectural plans lodged 1 August 2022.

Michael Stephens
SENIOR ASSESSMENT OFFICER

Robyn Pearson
TEAM LEADER (ASSESSMENTS)

David Hoy
A/MANAGER OF DEVELOPMENT SERVICES



North Sydney Council

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1-11 RODBOROUGH AVENUE

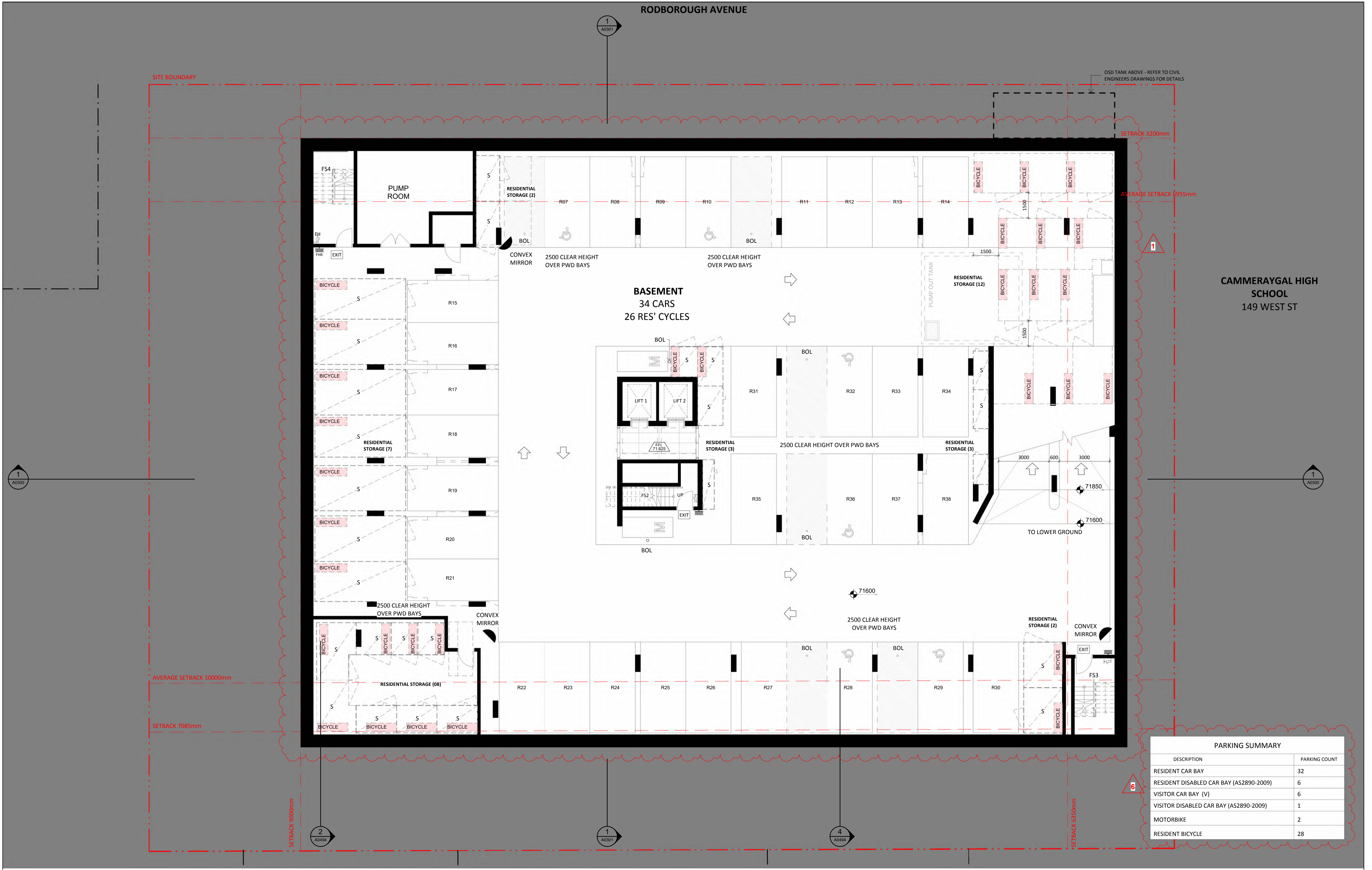
CROWS NEST, NSW 2065

S4.55 SUBMISSION

ARCHITECTURAL DRAWING LIST

A0000	COVER SHEET
A0001	PROJECT SUMMARY
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A0003	PERSPECTIVE 02
A0004	PERSPECTIVE 03- VIEW FROM EAST
A0005	PERSPECTIVE 04- VIEW FROM EAST
A0010	CONTEXT PLAN
A0012	DEMOLITION PLAN
A0013	SITE ANALYSIS
A0014	SITE PLAN
A0098	BASEMENT 01 FLOOR PLAN
A0099	LOWER GROUND FLOOR PLAN
A0100	GROUND FLOOR PLAN
A0101	LEVEL 01 FLOOR PLAN
A0102	LEVEL 02 FLOOR PLAN
A0103	LEVEL 03 FLOOR PLAN
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A0403	HEIGHT PLANE DIAGRAMS
A0405	SOLAR ACCESS
A0451	GFA DIAGRAMS
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A0461	ADAPTABLE UNIT PLANS 02
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A0472	EAST BALCONY SECTIONS
A0480	SHADOW DIAGRAMS- JUNE 21
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A0488	HEIGHT PLANE DIAGRAM - 36 DEGREE CUT
A0489	ROOF PLAN - 36 DEGREE CUT PLANE
A0490	SUN EYE VIEWS - JUNE 21
A0490A	SUN EYE VIEWS - JUNE 21 - OPTION 2
A0491	SUN EYE VIEWS - DEC 21
A0495	36 DEGREE CUT PLANE - SECTIONS
A0498	SUN EYE VIEWS - SEPT 21
A0500	MATERIAL SAMPLE BOARD
A0510	3D VIEWS 01
A0511	3D VIEWS 02
A-SK-0011	L3 BALUSTRADE OPTIONS





CAMMERAYGAL HIGH SCHOOL
149 WEST ST

PARKING SUMMARY	
DESCRIPTION	PARKING COUNT
RESIDENT CAR BAY	32
RESIDENT DISABLED CAR BAY (AS2890-2009)	6
VISITOR CAR BAY (V)	6
VISITOR DISABLED CAR BAY (AS2890-2009)	1
MOTORBIKE	2
RESIDENT BICYCLE	28

NO.	REVISION	BY	CHK	DATE	REVISION NOTES:
A	DEVELOPMENT APPLICATION	AG	AG	02/09/20	
B	DA RESUBMISSION	RPW	JAC	19/12/20	
C	WORK IN PROGRESS FOR COMMENT	ABR	RPW	19/03/21	
D	WORK IN PROGRESS FOR COMMENT	ABR	RPW	12/03/21	
E	COORDINATION ISSUE	ABR	JAC	16/03/21	
F	DRAFT DA ISSUE	VC	RPW	19/03/21	
G	DA RESUBMISSION	RPW	JAC	23/03/21	
H	COORDINATION ISSUE	VC	RPW	29/03/21	
I	ISSUE FOR COMMENT	RPW	RPW	31/03/21	
J	COUNCIL REV SUBMISSION	RPW	JAC	11/06/21	
K	ISSUE FOR COMMENT	RPW	JAC	16/06/21	
L	S455 SUBMISSION - MINOR AMENDMENTS	KL/JPW	JAC	24/09/21	
M	S455 SUBMISSION - MAJOR	RPW	JAC	19/12/21	
N	DRAFT S4 55 SUBMISSION	SN	RPW	13/07/22	
O	AMENDED S4 55 MAJOR SUBMISSION	SN	RPW	20/07/22	

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KEY PLAN
CLOUD LEGEND
● REVISION
● ON HOLD

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ABN 63 131 365 898
NOMINATED ARCHITECT:
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VIC ARCHITECTS 16179
QLD ARCHITECTS 5590
KOICHIKAKADA.COM

Koichi Takada Architects

PROJECT
1-11 RODBOROUGH AVENUE
CROWS NEST, NSW 2065

STATUS
S4.55 SUBMISSION

QA CONTROL STAMP

DWG TITLE
BASEMENT 01 FLOOR PLAN

DWG NO.
S455_02-A0098

REVISION
O

SCALE
1:100@A1, 1:200@A3

DATE
20/07/22

RODBOROUGH AVENUE

SITE BOUNDARY



CAMMERAYGAL HIGH SCHOOL
149 WEST ST

PARKING SUMMARY	
DESCRIPTION	PARKING COUNT
RESIDENT CAR BAY	32
RESIDENT DISABLED CAR BAY (AS2890-2009)	6
VISITOR CAR BAY (V)	6
VISITOR DISABLED CAR BAY (AS2890-2009)	1
MOTORBIKE	2
RESIDENT BICYCLE	28

NO.	REVISION	BY	CHK	DATE
F	WORK IN PROGRESS FOR COMMENT	ABR	RPW	12/03/21
G	COORDINATION ISSUE	ABR	JAC	16/03/21
H	UPDATED COORDINATION ISSUE	VC	RPW	17/03/21
I	DRAFT DA ISSUE	VC	RPW	19/03/21
J	DA RESUBMISSION	RPW	JAC	23/03/21
K	COORDINATION ISSUE	VC	RPW	29/03/21
L	ISSUE FOR COMMENT	RPW	RPW	31/03/21
M	ISSUE FOR COMMENT	RPW	JAC	31/03/21
N	FOR COUNCIL SUBMISSION	RPW	JAC	16/04/21
O	COUNCIL REV SUBMISSION	RPW	JAC	11/06/21
P	ISSUE FOR COMMENT	RPW	JAC	16/06/21
Q	S455 SUBMISSION - MINOR AMENDMENTS	KL/JPW	JAC	24/09/21
R	S455 SUBMISSION - MAJOR	RPW	JAC	19/12/21
S	DRAFT S4 55 SUBMISSION	SN	RPW	13/07/22
T	AMENDED S4 55 MAJOR SUBMISSION	SN	RPW	20/07/22

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95 PITT STREET
SYDNEY NSW 2000

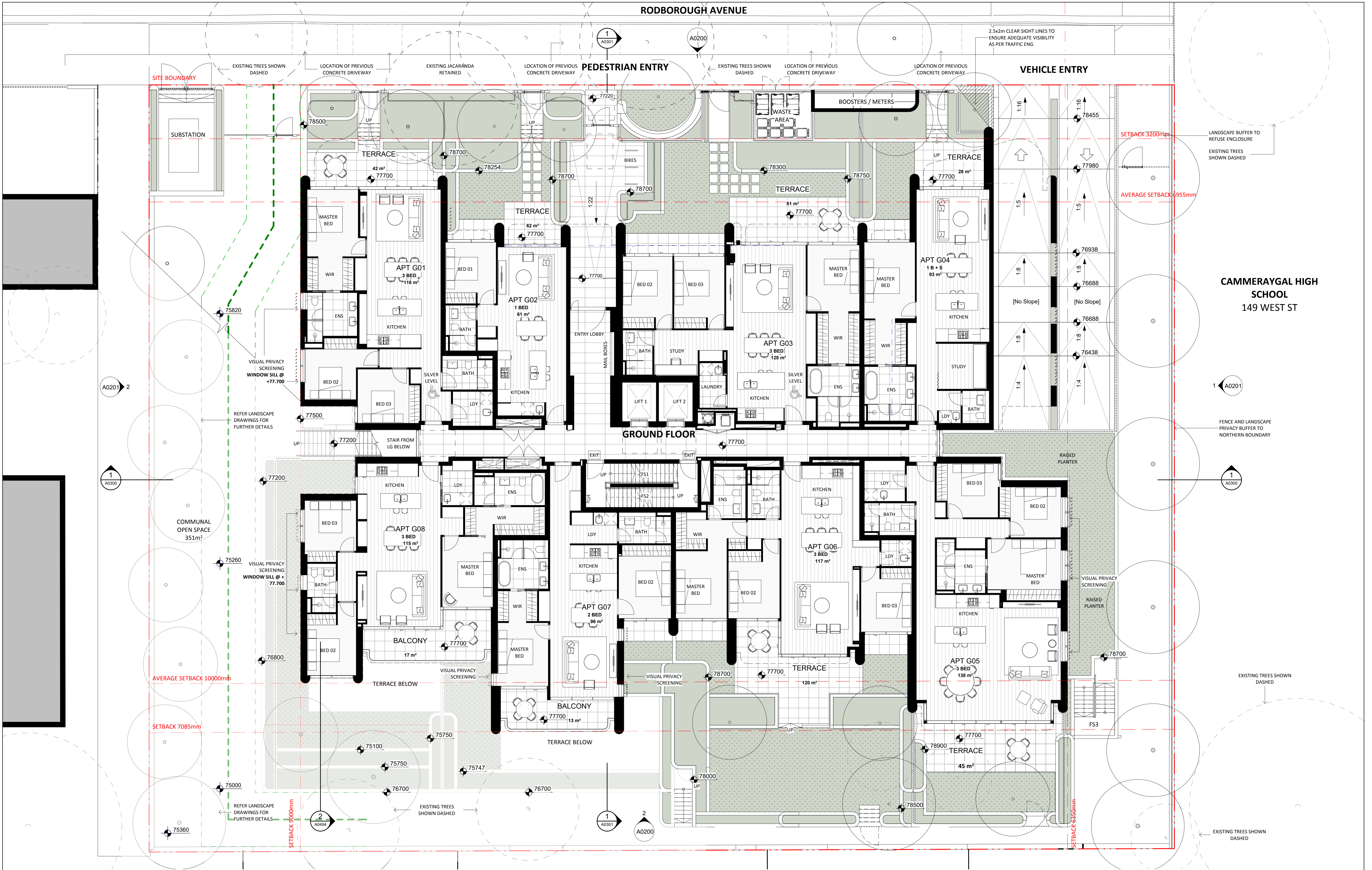
ARCHITECT
SUITE 41 & 42, LEVEL 4
61 MARLBOROUGH ST
SURRY HILLS, NSW 2010
T 02 9698 8510
ABN 63 131 365 898
NOMINATED ARCHITECT:
KOICHI TAKADA
NSW ARCHITECTS 6901
VIC ARCHITECTS 16179
QLD ARCHITECTS 5590
KOICHI TAKADA.COM

Koichi Takada Architects

PROJECT
1-11 RODBOROUGH AVENUE
CROWS NEST, NSW 2065

STATUS
S4.55 SUBMISSION

DWG TITLE
LOWER GROUND FLOOR PLAN
DWG NO.
S455_02- A0099
SCALE
1:100@A1, 1:200@A3
REVISION
T
DATE
20/07/22



NO.	REVISION	BY	CHK	DATE	REVISION NOTES:
H	WORK IN PROGRESS FOR COMMENT	ABR	RPW	12/03/21	
I	COORDINATION ISSUE	ABR	AC	16/03/21	
J	DRAFT DA ISSUE	VC	RPW	16/03/21	
K	DA RESUBMISSION	RPW	AC	20/03/21	
L	COORDINATION ISSUE	VC	RPW	20/03/21	
M	ISSUE FOR COMMENT	RPW	RPW	31/03/21	
N	ISSUE FOR COMMENT	RPW	AC	31/03/21	
O	ISSUE FOR COMMENT	ABR	RPW	14/04/21	
P	FOR COMMENTS	RPW	AC	14/04/21	
Q	FOR COUNCIL SUBMISSION	RPW	AC	16/04/21	
R	ADDITIONAL INFORMATION	ABR	RPW	21/05/21	
S	S455 SUBMISSION - MINOR AMENDMENTS	KL/JPW	AC	24/09/21	
T	S455 SUBMISSION - MAJOR	RPW	AC	19/12/21	
U	DRAFT S455 SUBMISSION	SN	RPW	13/07/22	
V	AMENDED S455 MAJOR SUBMISSION	SN	RPW	20/07/22	

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 NSW ARCHITECTS 6901
 VIC ARCHITECTS 16179
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 KOICHI TAKADA.COM

Koichi Takada Architects

QA CONTROL STAMP

PROJECT
 1-11 RODBOROUGH AVENUE
 CROWS NEST, NSW 2065

STATUS
 S4.55 SUBMISSION

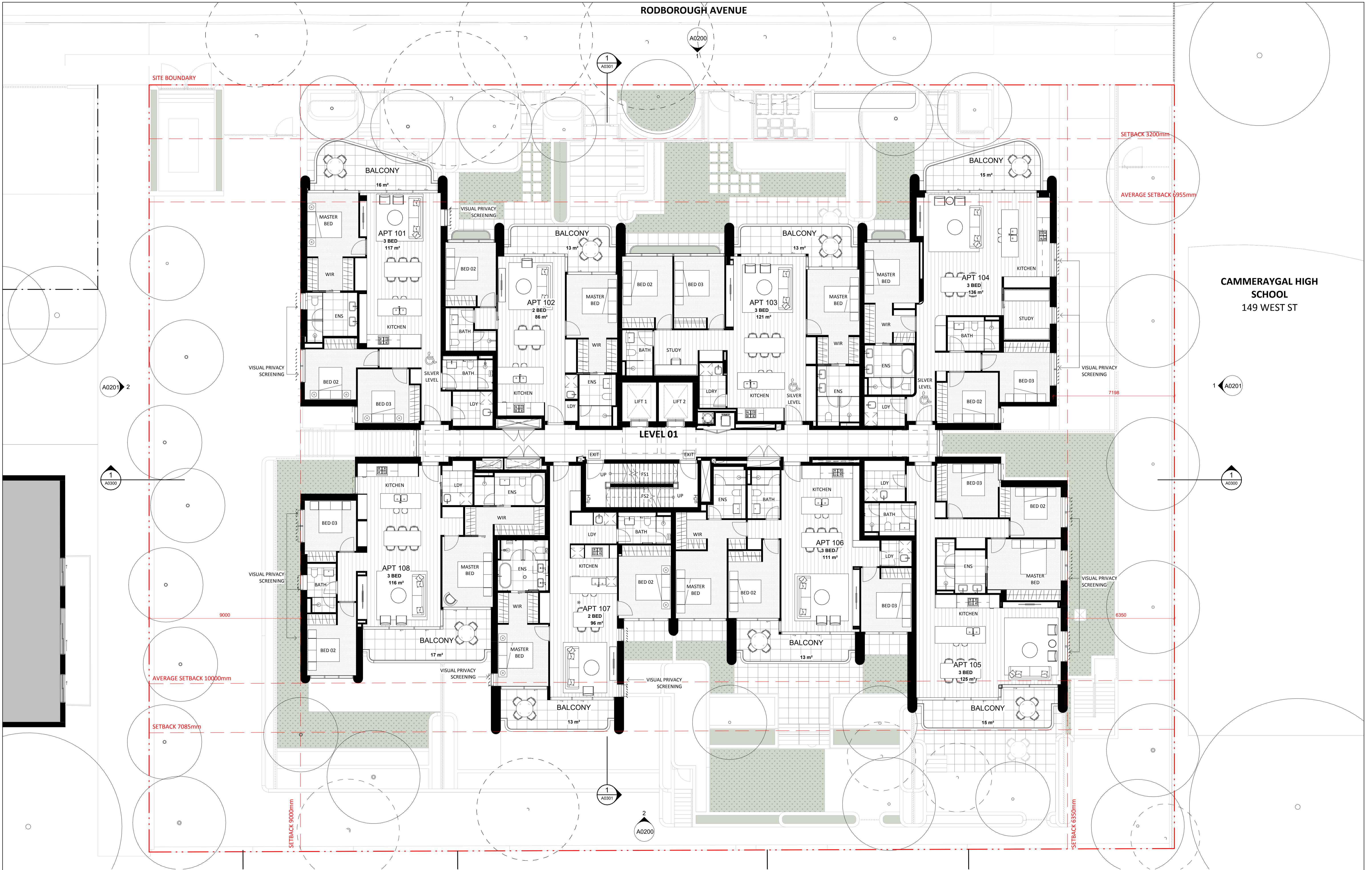
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 GROUND FLOOR PLAN

DWG NO.
 S455_02-A0100

REVISION
 V

SCALE
 1:100@A1, 1:200@A3

DATE
 20/07/22



NO.	REVISION	BY	CHK	DATE	REVISION NOTES
A	DEVELOPMENT APPLICATION	RPW	AC	02/09/20	
B	DA RESUBMISSION	RPW	AC	09/12/20	
C	WORK IN PROGRESS ISSUE	RPW	AC	05/03/21	
D	WORK IN PROGRESS FOR COMMENT	RPW	DW	09/03/21	
E	WORK IN PROGRESS FOR COMMENT	ABR	RPW	12/03/21	
F	COORDINATION ISSUE	ABR	AC	16/03/21	
G	DRAFT DA ISSUE	VC	RPW	18/03/21	
H	DA RESUBMISSION	RPW	AC	23/03/21	
I	COORDINATION ISSUE	VC	RPW	29/03/21	
J	ISSUE FOR COMMENT	RPW	RPW	31/03/21	
K	S455 SUBMISSION - MINOR AMENDMENTS	KL,RPW	AC	24/06/21	
L	S455 SUBMISSION - MAJOR	RPW	AC	16/12/21	
M	DRAFT S455 SUBMISSION	SN	RPW	13/07/22	
N	AMENDED S455 MAJOR SUBMISSION	SN	RPW	20/07/22	

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 VIC ARCHITECTS 16179
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QA CONTROL STAMP

PROJECT
 1-11 RODBOROUGH AVENUE
 CROWS NEST, NSW 2065

STATUS
 S455 SUBMISSION

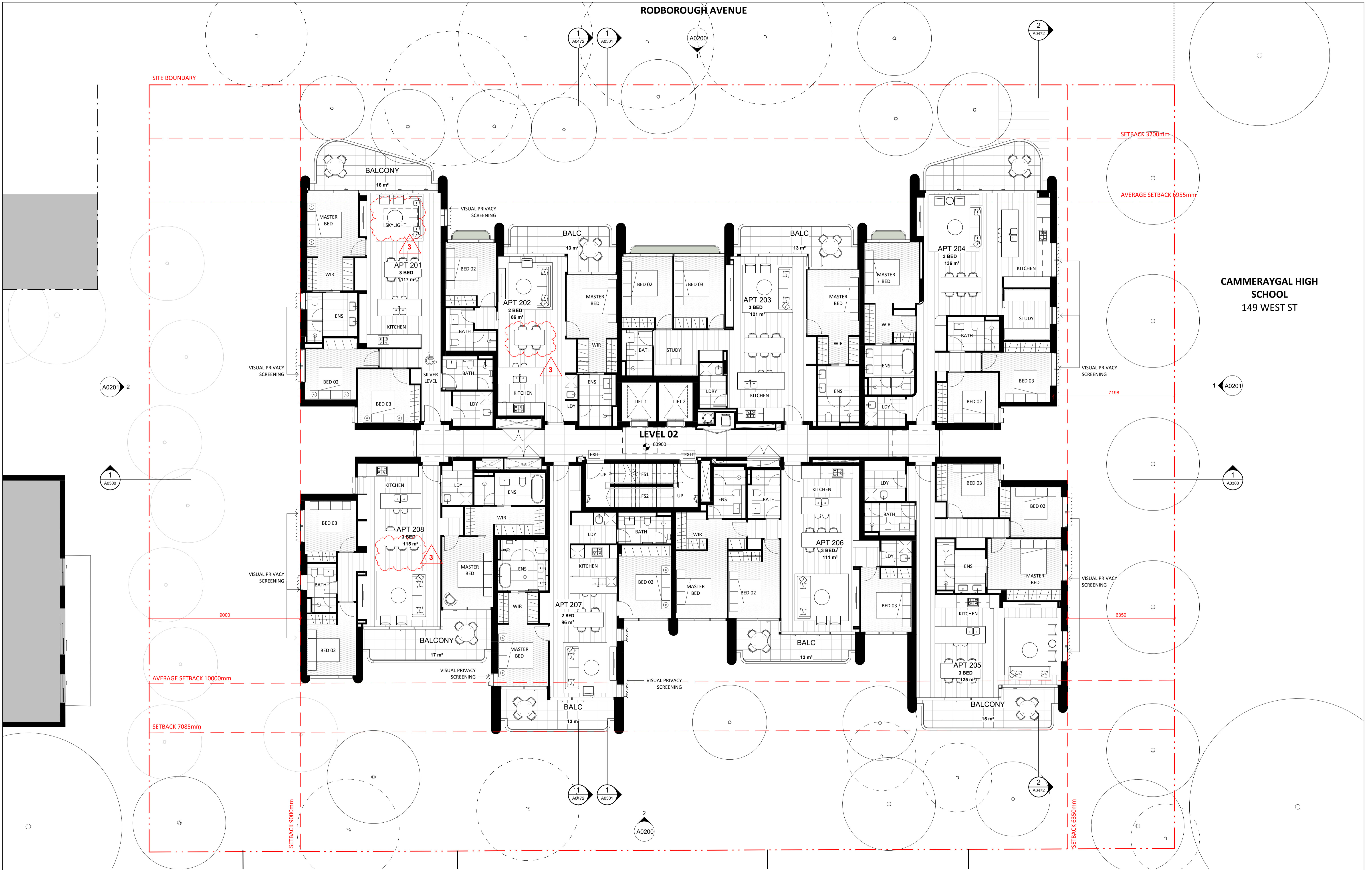
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 LEVEL 01 FLOOR PLAN

DWG NO.
 S455_02- A0101

REVISION
 N

SCALE
 1:100@A1, 1:200@A3

DATE
 20/07/22



NO.	REVISION	BY	CHK	DATE
A	DEVELOPMENT APPLICATION	AG	JAC	02/09/20
B	DA RESUBMISSION	RPW	JAC	09/12/20
C	WORK IN PROGRESS FOR COMMENT	ABR	RPW	12/03/21
D	COORDINATION ISSUE	ABR	JAC	16/03/21
E	DRAFT DA ISSUE	VC	RPW	19/03/21
F	DA RESUBMISSION	RPW	JAC	23/03/21
G	COORDINATION ISSUE	VC	RPW	26/03/21
H	ISSUE FOR COMMENT	RPW	RPW	31/03/21
I	FOR COMMENTS	RPW	JAC	14/04/21
J	FOR COUNCIL SUBMISSION	RPW	JAC	19/04/21
K	S455 SUBMISSION - MINOR AMENDMENTS	KL,RPW	JAC	24/06/21
L	S455 SUBMISSION - MAJOR	RPW	JAC	16/12/21
M	DRAFT S455 SUBMISSION	SN	RPW	13/07/22
N	AMENDED S455 MAJOR SUBMISSION	SN	RPW	20/07/22

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QA CONTROL STAMP

PROJECT
 1-11 RODBOROUGH AVENUE
 CROWS NEST, NSW 2065

STATUS
 S455 SUBMISSION

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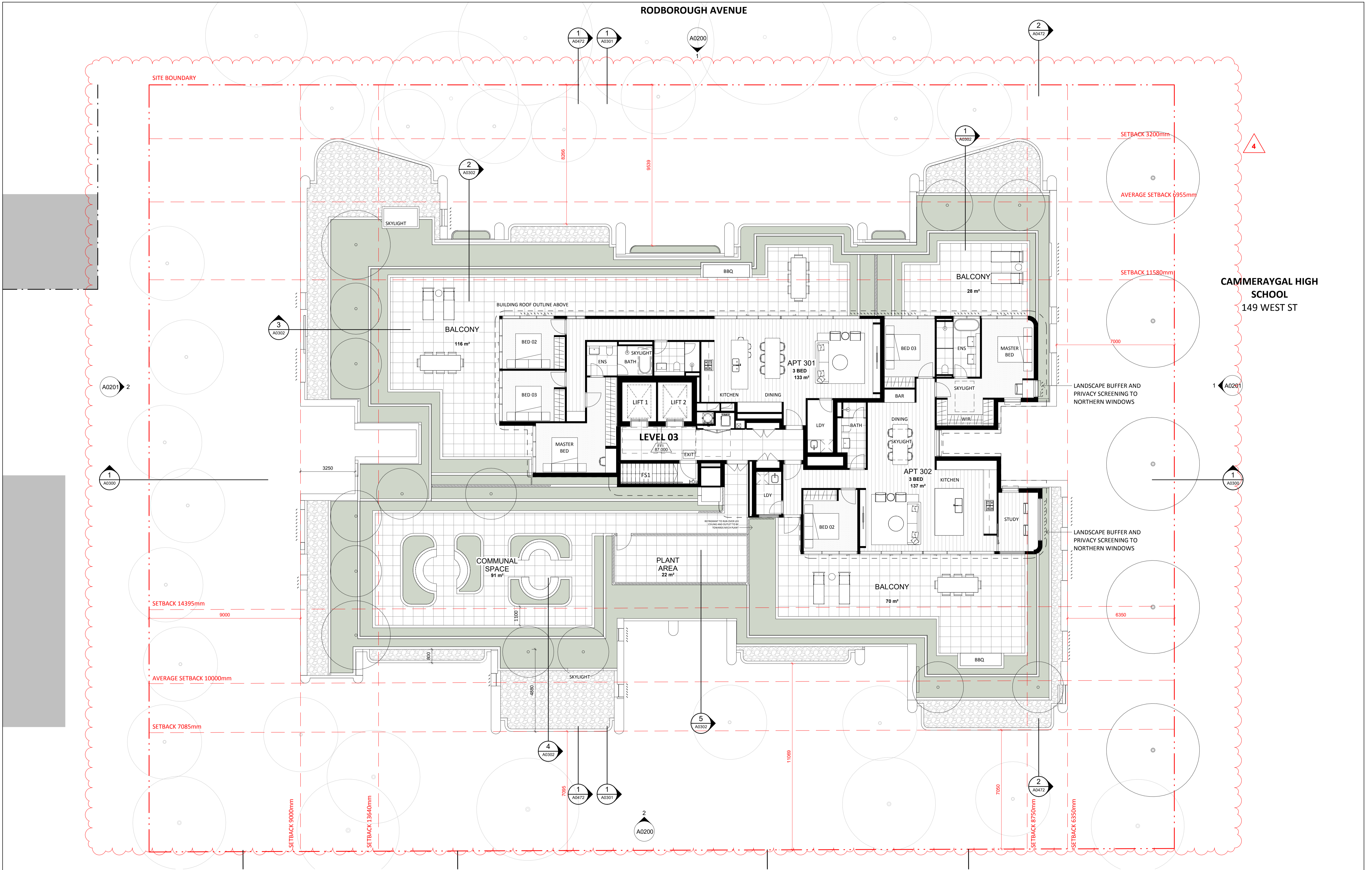
DWG TITLE
 LEVEL 02 FLOOR PLAN

DWG NO.
 S455_02- A0102

REVISION
 N

DATE
 20/07/22

RODBOROUGH AVENUE



CAMMERAYGAL HIGH SCHOOL
149 WEST ST

NO.	REVISION	BY	CHK	DATE	REVISION NOTES
J	DA RESUBMISSION	RPW	AC	23/03/21	
K	COORDINATION ISSUE	VC	RPW	26/03/21	
L	COORDINATION ISSUE	VC	RPW	26/03/21	
M	ISSUE FOR COMMENT	RPW	RPW	31/03/21	
N	ISSUE FOR COMMENT	RPW	AC	14/04/21	
O	FOR COUNCIL COMMENT	RPW	AC	15/04/21	
P	UPDATED FOR COMMENT	RPW	AC	15/04/21	
Q	FOR COUNCIL SUBMISSION	RPW	AC	16/04/21	
R	ADDITIONAL INFORMATION FOR COUNCIL	ABR	RPW	21/05/21	
S	S455 SUBMISSION - MINOR AMENDMENTS	KL/JPW	AC	24/09/21	
T	S455 SUBMISSION - MAJOR	RPW	AC	16/12/21	
U	DRAFT S455 SUBMISSION	SN	RPW	13/07/22	
V	AMENDED S455 MAJOR SUBMISSION	SN	RPW	20/07/22	
W	S455 BASIC AMENDMENTS	RPW	RPW	23/09/22	

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VIC ARCHITECTS 16179
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QA CONTROL STAMP

PROJECT
1-11 RODBOROUGH AVENUE
CROWS NEST, NSW 2065

STATUS
S455 SUBMISSION

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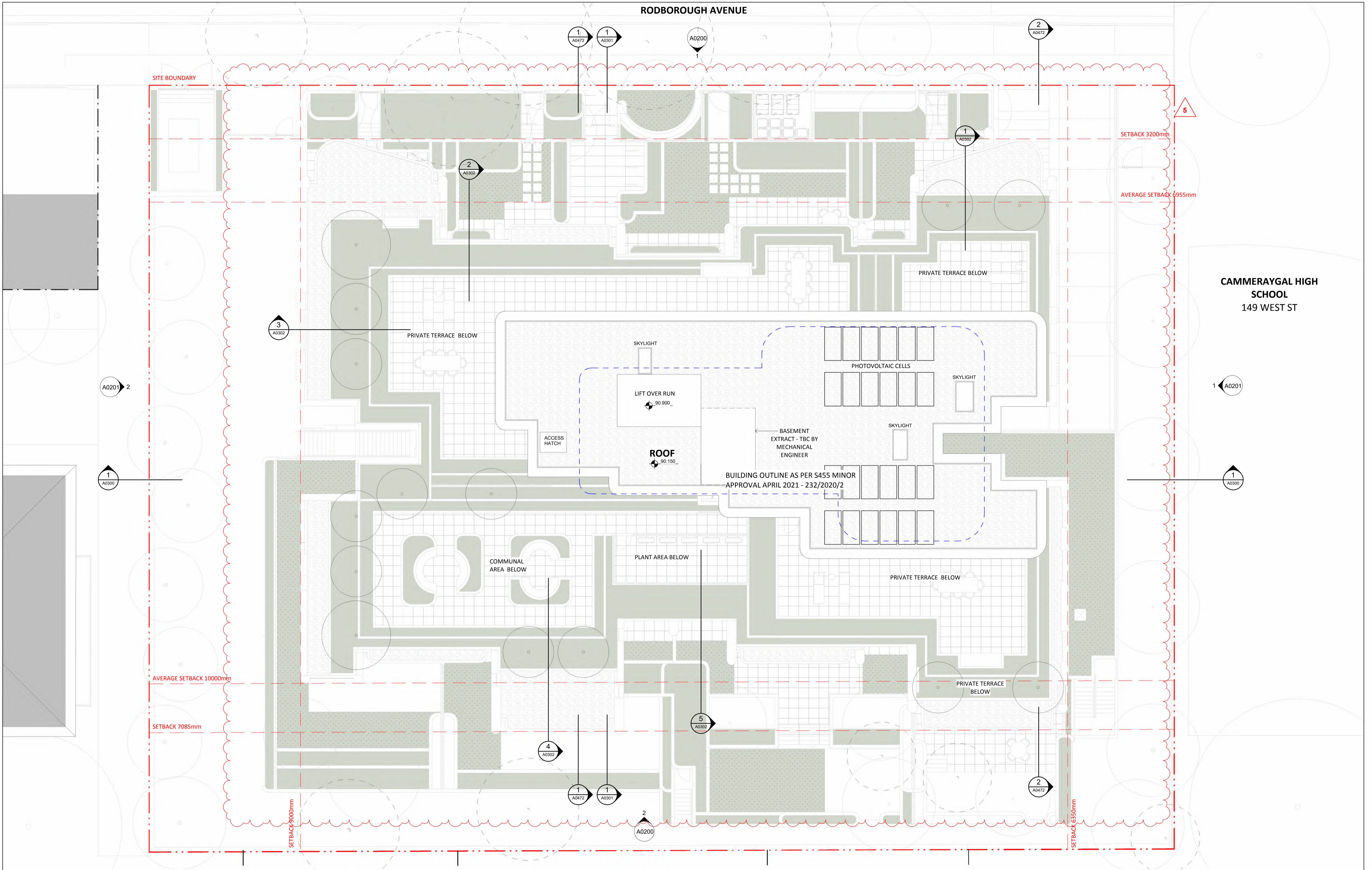
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LEVEL 03 FLOOR PLAN

DWG NO.
S455_02-A0103

REVISION
W

SCALE
1:100@A1, 1:200@A3

DATE
23/09/22



CAMMERAYGAL HIGH SCHOOL
149 WEST ST

NO.	REVISION	BY	CHK	DATE	REVISION NOTES:
B	DA RESUBMISSION	RPW	JAC	08/12/20	
C	COORDINATION ISSUE	ABR	JAC	15/03/21	
D	DRAFT DA ISSUE	VC	RPW	15/03/21	
E	DA RESUBMISSION	RPW	JAC	22/03/21	
F	COORDINATION ISSUE	VC	RPW	29/03/21	
G	ISSUE FOR COMMENT	RPW	RPW	31/03/21	
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I	FOR COUNCIL COMMENT	RPW	JAC	15/04/21	
J	UPDATED FOR COMMENT	RPW	JAC	15/04/21	
K	FOR COUNCIL SUBMISSION	RPW	JAC	15/04/21	
L	ADDITIONAL INFORMATION	ABR	RPW	21/05/21	
M	S455 SUBMISSION - MINOR AMENDMENTS	KL/JPW	JAC	24/09/21	
N	S455 SUBMISSION - MAJOR	RPW	JAC	15/12/21	
O	DRAFT S4 55 SUBMISSION	SN	RPW	13/07/22	
P	AMENDED S4 55 MAJOR SUBMISSION	SN	RPW	20/07/22	

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SYDNEY NSW 2000

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ABN 63 131 365 898
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NSW ARCHITECTS 6901
VIC ARCHITECTS 16179
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KOICHI TAKADA.COM

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QA CONTROL STAMP

PROJECT
1-11 RODBOROUGH AVENUE
CROWS NEST, NSW 2065

STATUS
S4.55 SUBMISSION

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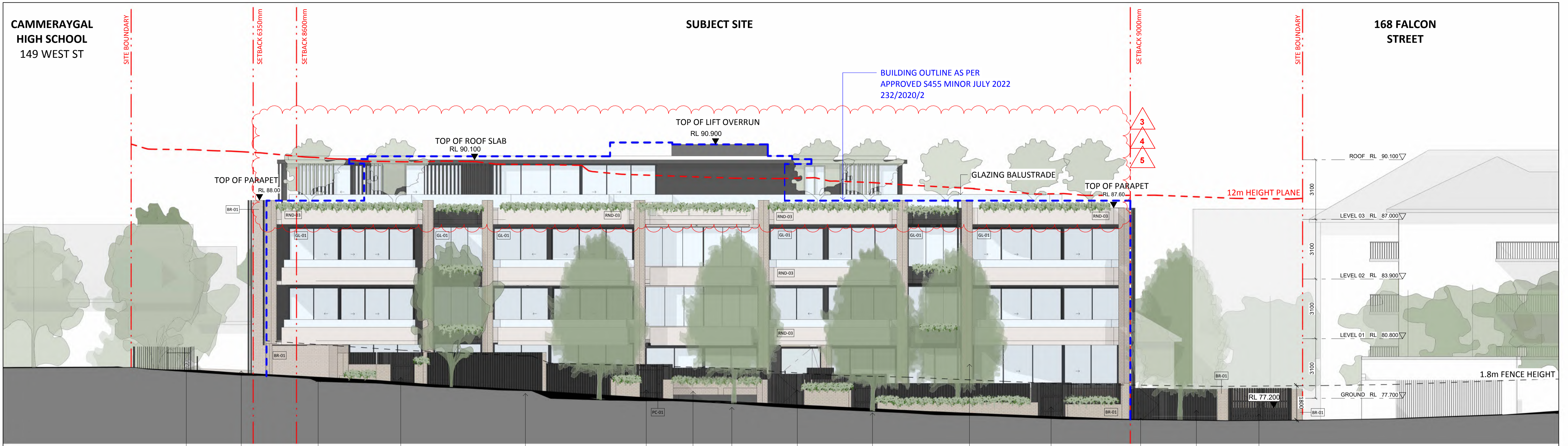
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LEVEL 04 ROOF PLAN

DWG NO.
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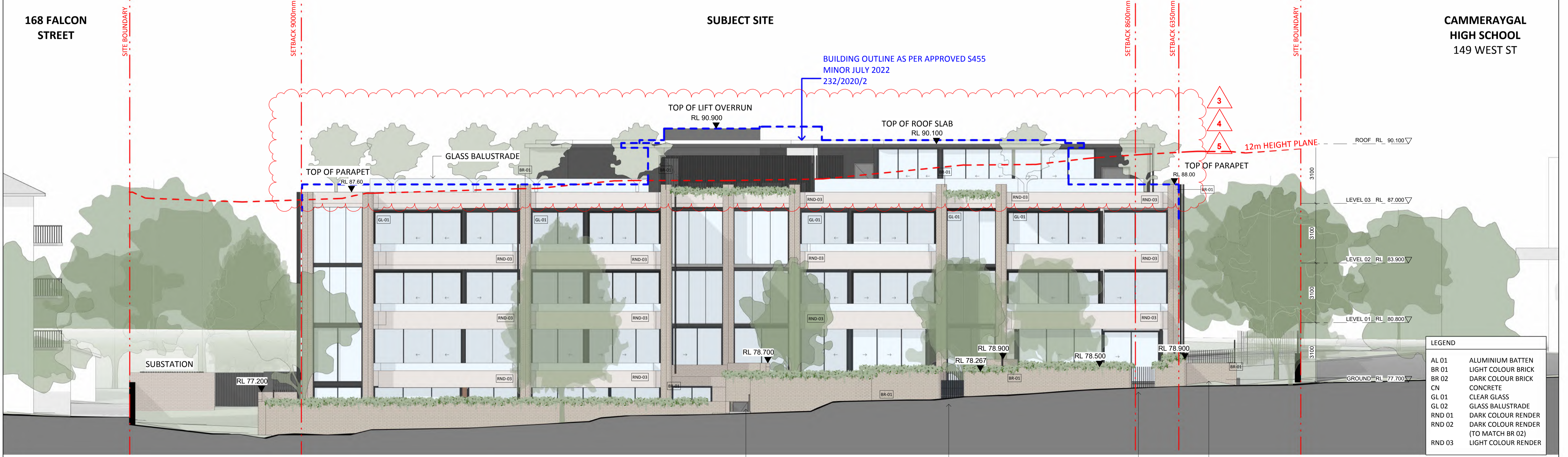
REVISION
P

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DATE
20/07/22



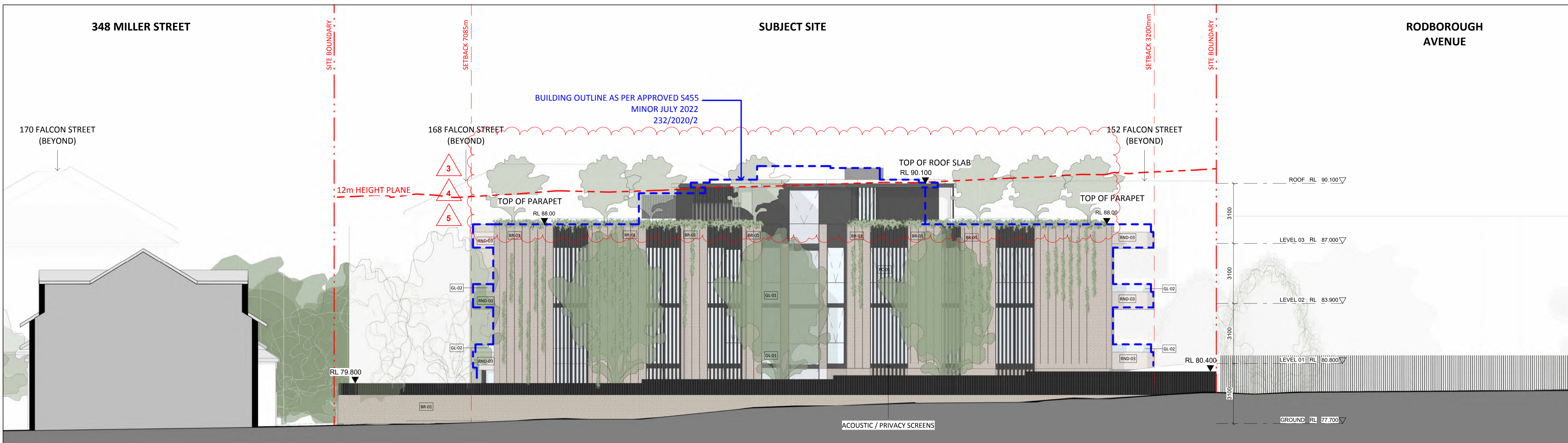
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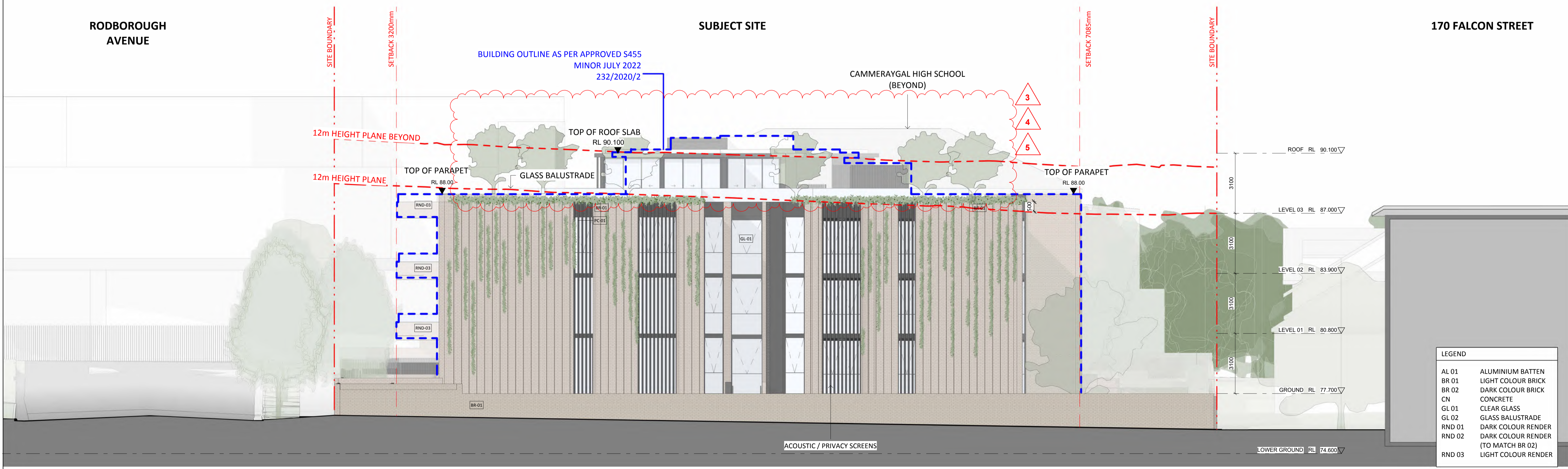
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NO.	REVISION	BY	CHK	DATE	REVISION NOTES:	NOTES:	KEY PLAN	OTHERS	CLIENT	ARCHITECT	QA CONTROL STAMP	PROJECT	DWG TITLE
A	DEVELOPMENT APPLICATION	RPW	JAC	02/09/20					PLATFORM PROJECT SERVICES PTY LTD	SUITE 41 & 42, LEVEL 4 61 MARLBOROUGH ST SURRY HILLS, NSW 2010 T 02 9698 8510 ABN 63 131 365 898 NOMINATED ARCHITECT: KOICHI TAKADA NSW ARCHITECTS 6901 VIC ARCHITECTS 16179 QLD ARCHITECTS 5590 KOICHI TAKADA.COM		1-11 RODBOROUGH AVENUE CROWS NEST, NSW 2065	ELEVATIONS 01
B	DA RESUBMISSION	RPW	JAC	18/12/20									
C	COORDINATION ISSUE	ABR	JAC	16/03/21									
D	DRAFT DA ISSUE	VC	RPW	19/03/21									
E	DA RESUBMISSION	RPW	JAC	23/03/21									
F	COORDINATION ISSUE	VC	RPW	29/03/21									
G	ISSUE FOR COMMENT	RPW	RPW	31/03/21									
H	ISSUE FOR COMMENT	RPW	JAC	31/03/21									
I	FOR COUNCIL SUBMISSION	RPW	JAC	16/04/21									
J	S455 SUBMISSION - MINOR AMENDMENTS	KL	RPW	24/06/21									
K	S455 SUBMISSION - MAJOR	RPW	JAC	16/12/21									
L	DRAFT S455 SUBMISSION	SN	RPW	13/07/22									
M	AMENDED S455 MAJOR SUBMISSION	SN	RPW	20/07/22									
N	S455 BASIS AMENDMENTS	RPW	RPW	23/09/22									

Koichi Takada Architects

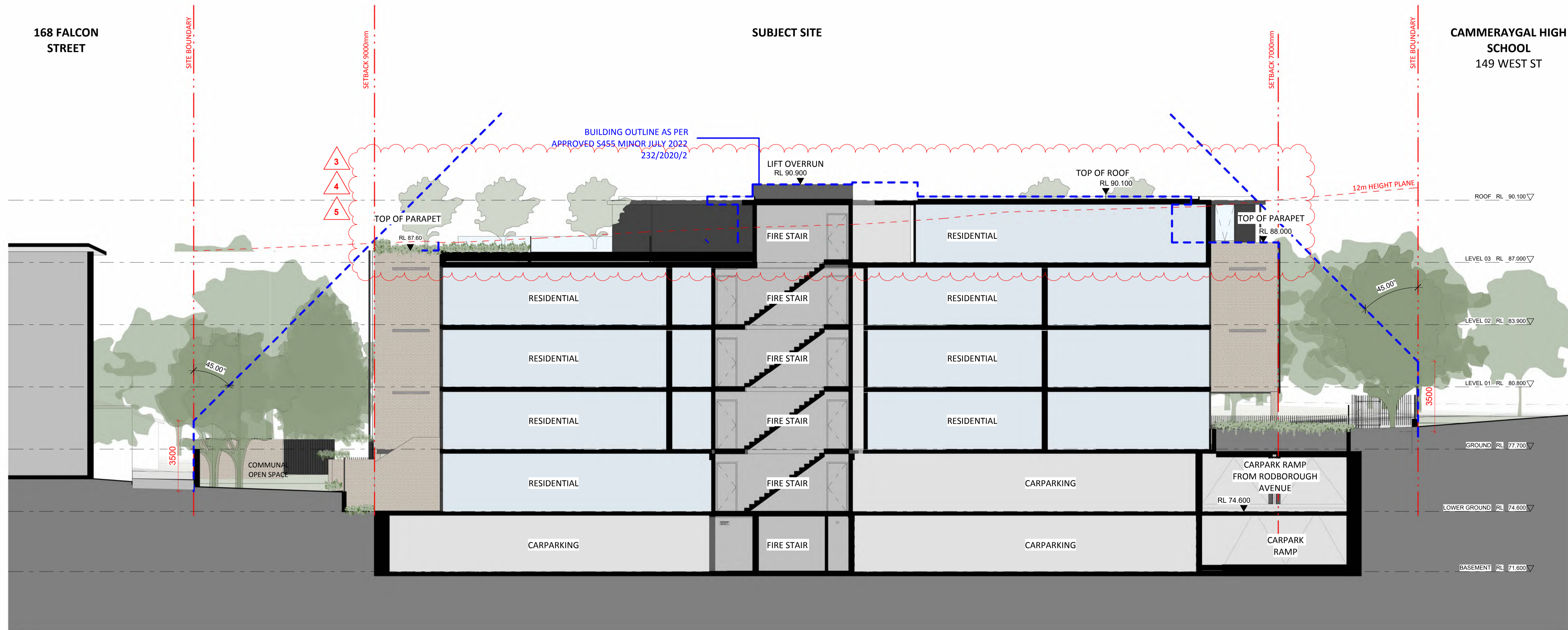


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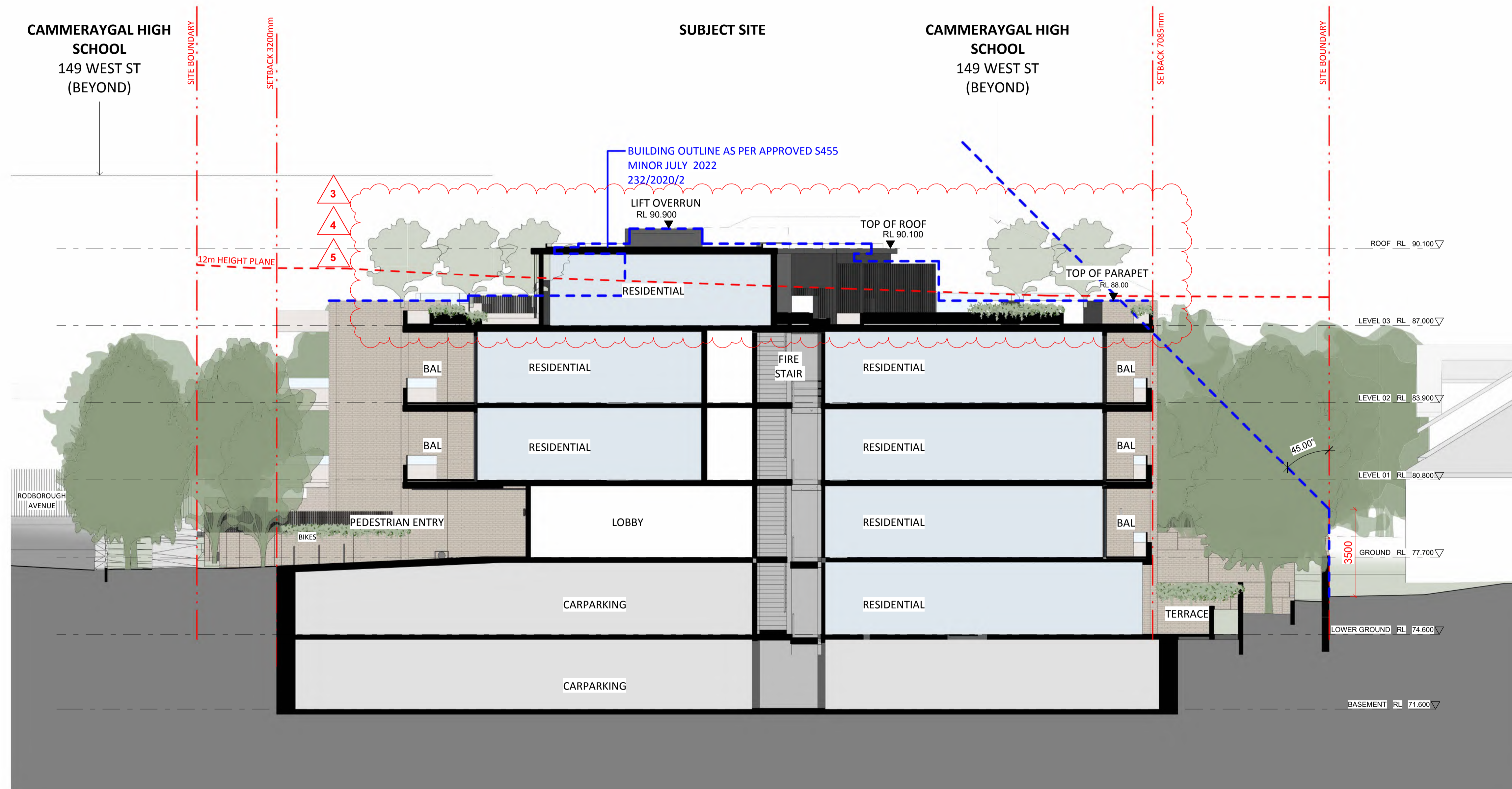
2 ELEVATION SOUTH
1 : 100

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KOICHI TAKADA.COM

Koichi Takada Architects

PROJECT
1-11 RODBOROUGH AVENUE
CROWS NEST, NSW 2065

STATUS
S455 SUBMISSION

SCALE
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DWG TITLE
SECTION 02

DWG NO.
S455_02- A0301

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DATE
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FURTHER DISCUSSION OF REVISED S4.55 PLANS- 2 August 2022

Building Height

The proposal increases the extent to which the development exceeds the 12m height control. However, it does not increase that maximum level of non-compliance, which remains as approved at 2.2m (lift overrun). The maximum non-compliance of the top level was 1.1m. These levels have been reviewed and a drawing prepared which overlays the roof plan of the current proposal on the survey plan. This is a more accurate way of indicating the difference between the existing ground level and the top of the building. There is not always a survey level which directly corresponds to the relevant points of the building. This is complicated by the 5 existing dwellings on the site and 'existing ground' does not always correspond with the floor level of the dwellings as in some cases the floor level is elevated. Where the measured level corresponds with the front part of the dwellings, the floor level is used as this is close to ground levels outside the building footprint, otherwise levels have been extrapolated from known ground levels.

Therefore the drawing at **Attachment A** uses the most relevant ground levels to accurately determine the likely ground levels relative to the key points of the building. In all cases this closer analysis indicates that the non-compliance with the height control is lower than indicated in the approved plans and also lower than the plan submitted with the s4.55 request, the latter being due both to the refinement of levels analysis but also the significant reduction in the area of the top level. The difference in levels between the schemes is shown in the following table.

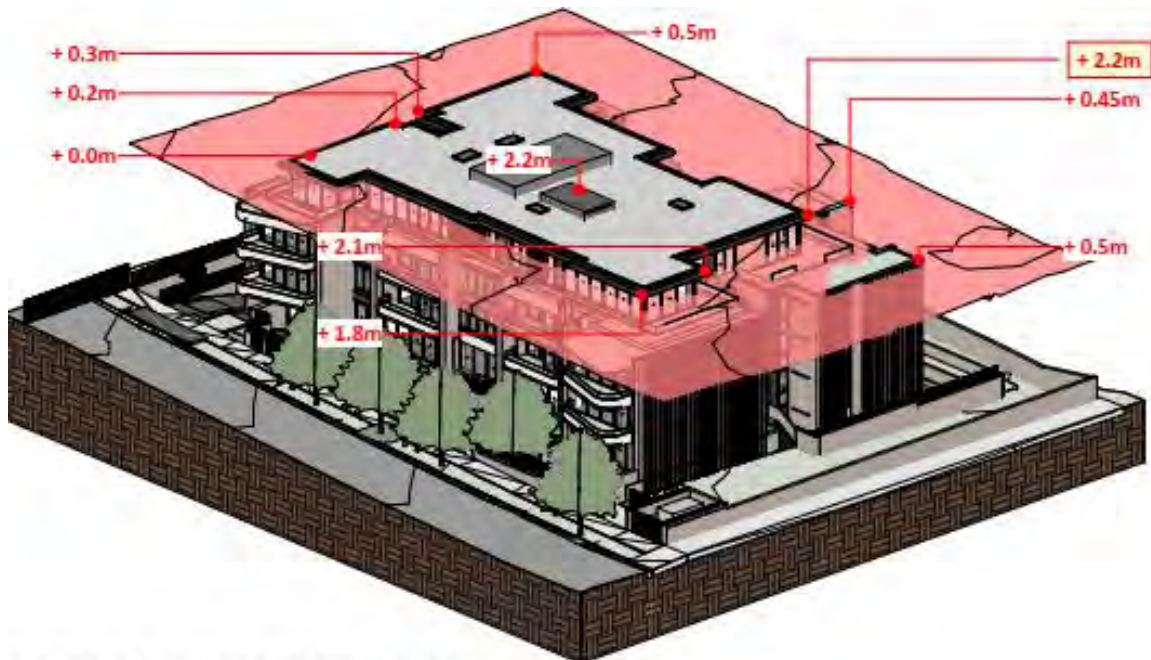
Top Level Location	Approved height non-compliance	S4.55 as submitted height non-compliance	Proposed height non-compliance
SW corner		1.8m	1.05m
SE Corner		2.2m	1.69m
NW corner	0.1m	0m	0.8m (less than 12m)
NE Corner	0.7m	0.5m	0.46m
'Middle' front	1.1m		
'Middle' rear	1.1m	1.2m	0.6m
Lift overrun	2.2m	2.2m	2.155m

The above is clearly shown on **Figure 1, Figure 2** and **Attachment A**. The net result is that the current proposal involves a lower percentage breach of the height control than the approved scheme. The comparison is made difficult by the fact that the approved scheme did not show the levels for the SE and SW corner which would have been more non-compliant than the levels that were indicated (excluding the lift overrun). However, where a comparison can be made - in the middle of the rear of the top level, the maximum approved variation was 9.2% whereas the maximum proposed variation is 5%. The maximum proposed non-compliance (ex lift overrun) is in the SE corner and is 1.69m. However this location is close to the approved location and so the level of non-compliance is likely to have been similar (see **Figure 3**). It is also significantly less than the maximum approved non-compliance at the lift overrun (2.2m).



1) HEIGHT PLANE DIAGRAM 01 - SOUTH WEST CORNER

Figure 1 – 3d height plane diagram (approved development)



1) HEIGHT PLANE DIAGRAM 01 - SOUTH WEST CORNER

Figure 2 – 3d height plane diagram (s4.55 as submitted)

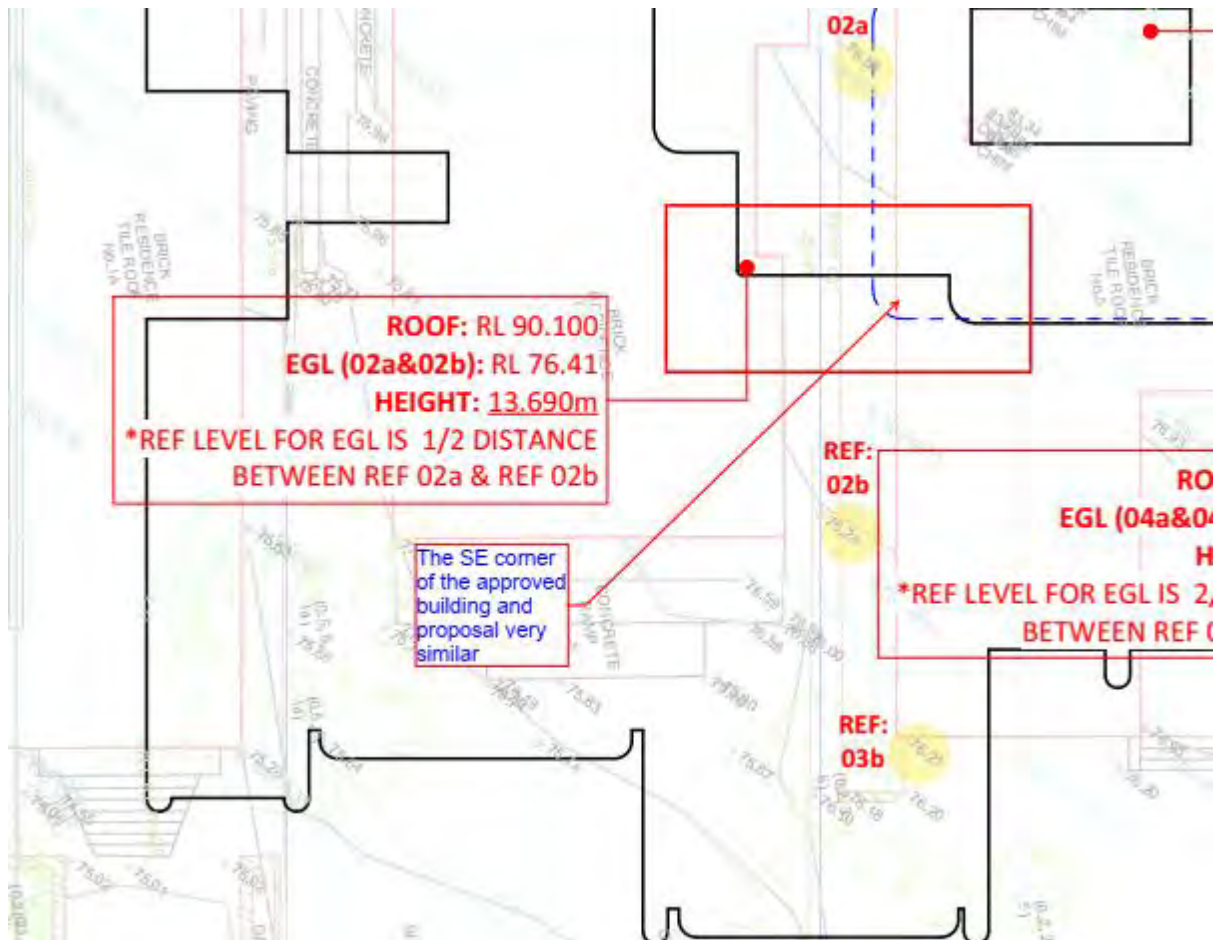


Figure 3 – comparison of approved and proposed SE corner of Level 3

Whilst a request to breach the height control pursuant to Clause 4.6 of the LEP is not required for a Section 4.55 application, the additional breach resulting from the proposed amendments needs to be addressed. The following discussion will use a similar form of analysis to that required by Clause 4.6.

Is upholding the standard unreasonable or unnecessary in the circumstances?

In this case upholding the 12m height limit is unreasonable and unnecessary as the proposal meets the objectives of the height standard. In this regard:

(a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*

Comment – the site does slope and the proposal takes advantage of this by incorporating 2 lower ground floor apartment, at the lowest part of the site. Further stepping of the lower levels of the building is not practicable as the car park is generally required to be level and accessibility outcomes would be compromised. This was acknowledged in the previous Council assessment that noted: *Given the length of the building, a stepped floor*



plate at the lower three storeys is not a viable option as it would likely impact access and circulation within the building.

However, the approved building had a reduced top level that resulted in step in the top of the building, which follows the slope along Rodborough Avenue from north to south. The modification extends the roof of Level 3 to the south by only 5m, which is still 11.5m from the southern edge of Level 2 and over 20m to the southern boundary. This ensures that the top level will still appear to step down along the street frontage, responding to the topography of the site.

(b) *to promote the retention and, if appropriate, sharing of existing views,*

Comment – the previous Council assessment did not indicate any specific potential for view loss but noted: *The fourth storey is sufficiently setback from the third storey parapet of the building to reduce its visibility from the public domain and development on adjoining properties. The breaches to the building height control will therefore not result in any unreasonable impacts on existing views. A reasonable level of view sharing will be maintained.*

The proposed modifications do not have any greater impact on views than the approved development. The visual impacts of the top level are minimised by maintaining generous setbacks to the level below. This is discussed further below.

(c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*

Comment – the proposed extensions to the top level have been specifically designed to ensure that there is no increase in overshadowing compared to the approved development between 9am and 3pm at midwinter. This can be seen in the submitted shadow diagrams.

(d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*

Comment – the proposal meets (and most significantly exceeds) the requirements of the ADG and does not have any unreasonable privacy impacts (see **Figure 4**).

(e) *to ensure compatibility between development, particularly at zone boundaries,*

Comment – the areas around the site are predominantly zoned R4 with a 12m height limit. As such development within this area can be expected to be 4 storeys. Further, the top level has been further reduced so that it is even less visible than indicated in the submitted montages and is a maximum of 4 storeys at any point and generally 3 storeys around the edge of the building. This ensures that the proposal is not only visually compatible but compatible in terms of the amenity of the dwellings in regard to matter such as privacy and overshadowing.

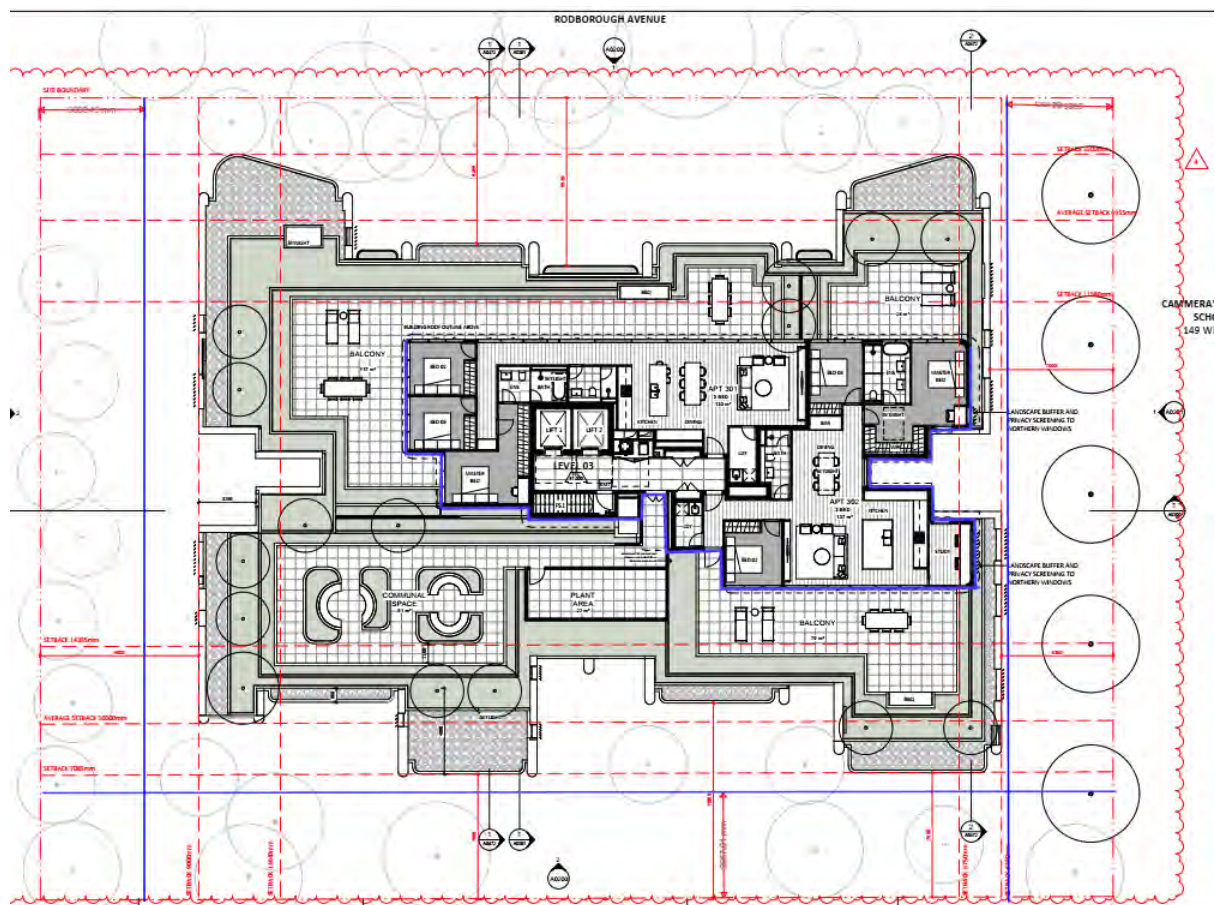


Figure 4 – proposed top level setbacks compared to 6m ADG required setback

(f) To encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.

Comment – as noted above, the proposal will have a 3-4 storey appearance and meets the relevant setback controls. There is no change proposed to the approved building footprint. The proposal will have a scale and density that is in accordance with, and will promote, the character of the area. The appearance of the building in the public domain will be consistent with what is envisaged by the controls, ie, a 3 storey building with a 4th storey setback to minimise bulk and scale.

Are there environmental planning grounds for supporting a breach of the control?

Yes, there are a number of grounds.

Ground 1 Lack of impact - as discussed above, the proposal does not have any unreasonable impacts on neighbours and this outcome has been accepted as an appropriate planning ground in the relevant case law.

Ground 2 Flood levels – the site is affected by flooding and because of this the floor levels of the building are higher than they would otherwise be able to be. For the building to be



lowered, 'flood' gates would have to be installed at the street frontage adjacent to Apartments G01 and G02 and also at the stairs at the southern end of the ground level. Further, the windows in Apartment G01 would have to be altered to ensure a minimum sill level above the flood level.

Also related to the flood issue is the location of the access to the parking. Access to parking was originally proposed at the lowest part of the street frontage (as is logical on a sloping site). However, due to the flooding issues, Council required the driveway to be relocated to the highest part of the street frontage. This means it is harder to transition down to a point below existing ground levels without breaching the maximum driveway gradient requirements. The driveway is at the maximum gradient possible and cannot be lowered any further, due to these constraints. With a difference of around 2m between the northern and southern end of the street frontage, without the flooding issue, in principle, the maximum non-compliance with the height control would be reduced to 0.2m.

Ground 3 Reduced apartment amenity – even if flood issues could be overcome, lowering levels would result in the lower ground apartments being even further below existing ground levels. They are already excavated as the proposal has sought to balance the level of the building having regard to the slope of the land and the need to maintain a constant level, due to accessibility and practicality issues. In this regard the southern end of the building is around 500mm below existing ground level (Apartment LG02), whilst the northern end is around 400mm above existing ground level (Apartment G05). Overall it is considered that the proposal strikes an appropriate balance in terms of the relationship of the floor levels to existing ground level. Any further lowering of the building would compromise apartment amenity.

Ground 4 The nature of the height control – whilst it could be argued that the original intention of the 12m height control was to encourage 3 storey development with a pitched roof, there are provisions in the DCP that allow flat roofed development and this is now the predominant (if not the only) form of development that occurs in the R4 zone (based on our considerable North Sydney experience). This is because it allows developments to accommodate a 4th storey. However, due to the minimum ceiling height requirements of the ADG, and the recent updates to the NCC requiring fire sprinklers in all Class 2 buildings of 4 storeys or more, this means that with a minimum practical floor to floor height of 3.10m, that a 4 storey building cannot comply with the 12m height control (even on a totally level site). Adding an additional 300mm for a lift overrun, this means that the minimum non-compliance of a 4 storey building (without excavating below the existing ground level) is 700mm. For this (and other reasons), we are unaware of any recently approved development in the R4 zone that has not required a breach of the height control;

In view of the above, we are of the view that the additional height is appropriate and generally consistent to what is envisaged by the LEP height control.

Form, massing & scale

As discussed above the 12m height control and Council's application of that control, permits 4 storey development. The DCP provides further controls that dictate the form, massing and scale of development. The proposed modifications do not have any impact on the



degree of non-compliance with any of these controls including the front, rear and side setback, building height plane, site cover, unbuilt upon area and landscape area.

The only change to the level of compliance relates to the top level and apart from the height control, the only other relevant control is the 36 degree 'top storey' control in Section 1.4.7 of the DCP. The approved 4th level is already in breach of this control with a setback between nil and 12m from the level below. The proposed modification maintains the nil setback (which occurs in the north facing recessed element) and reduces the maximum setback to around 8m. As can be seen in the 3D analysis of the compliance with this control (**Figure 5**), this is now the only part of top storey that does not comply with this control. This is considered to be reasonable as this part of the building varies between being 0.8m under and 0.2m over the height control. It also has no impact on neighbours and is compatible with the larger scale educational buildings to the north.

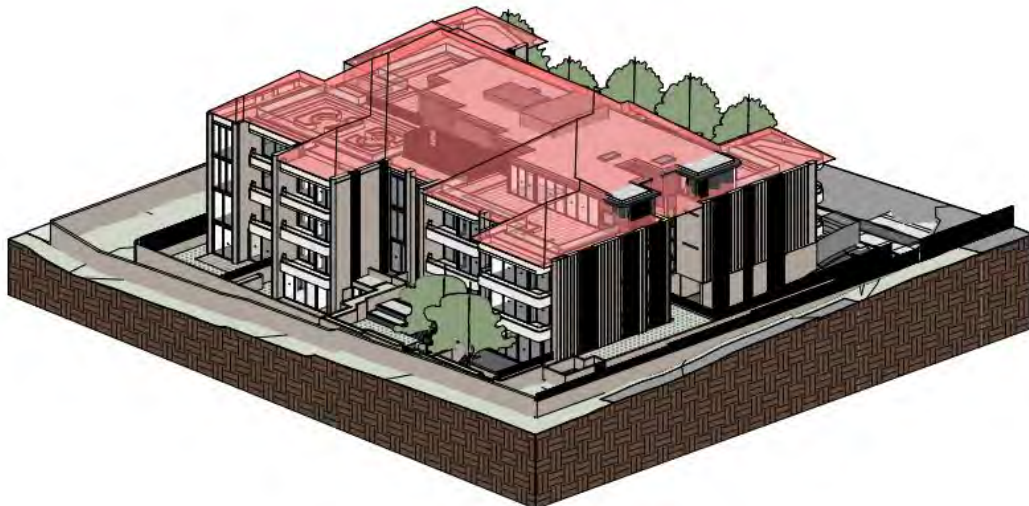


Figure 5 – top storey height plane overlay

The other parts of the 4th storey are setback significantly from the level below and to the site boundaries:

Street elevation - between 4.2-10.5m from the levels below and 13.7m to the street;
 Rear elevation – 5.5-10.4m from the levels below and 17.5-22.2m from the boundary;
 South elevation – 4.9-11.4m from the levels below and 20.8-22.8m from the boundary.

As indicated in **Figure 4**, these setbacks significantly exceed the 6m required by the ADG.

This means that the top level will only be minimally visible from the public domain and adjoining properties as indicated in the attached 3D perspective images.

The overall outcome will ensure that the top level achieves the objective of Section 1.4.7 of the DCP: *O1 To ensure the size of new buildings are consistent with surrounding, characteristic buildings and they are not significantly larger than characteristic buildings.*



In this regard, the proposed building, which predominantly has a 3-4 storey appearance, is in keeping with the character of the area which includes large scale school buildings and apartments up to 4 storeys.

Overshadowing

The revised top level has been carefully designed to minimise additional overshadowing with greater setbacks being provided to the southern and eastern sides of the building. As indicated on the submitted shadow diagrams there is now no increase to the approved overshadowing. There is no change to the amenity of the neighbouring properties compared to the approved scheme.

Conclusion

The revised top level is now 322sqm less (52%) than the original s4.55 submission and increases the top storey by only 1 apartment (160sqm). A large communal area is maintained for the benefit of all residents. The form of the top storey respects the neighbours by not creating additional overshadowing and by being setback generally much greater than the ADG requirements. The setbacks are also generous from the street maintaining the predominantly 3 storey plus 4th storey setback appearance, in accordance with the objectives of the height and built form controls. The stepping of the top level down with the slope of the land along Rodborough Avenue is also maintained.

In light of the above, we are of the view that the revised scheme is capable of being supported by Council



VIEW 1 - APPROVED SCHEME DA 232/20/2



VIEW 1 - ORIGINAL S4.55 MODIFICATION PROPOSAL



VIEW 1 - AMENDED S4.55 MODIFICATION PROPOSAL



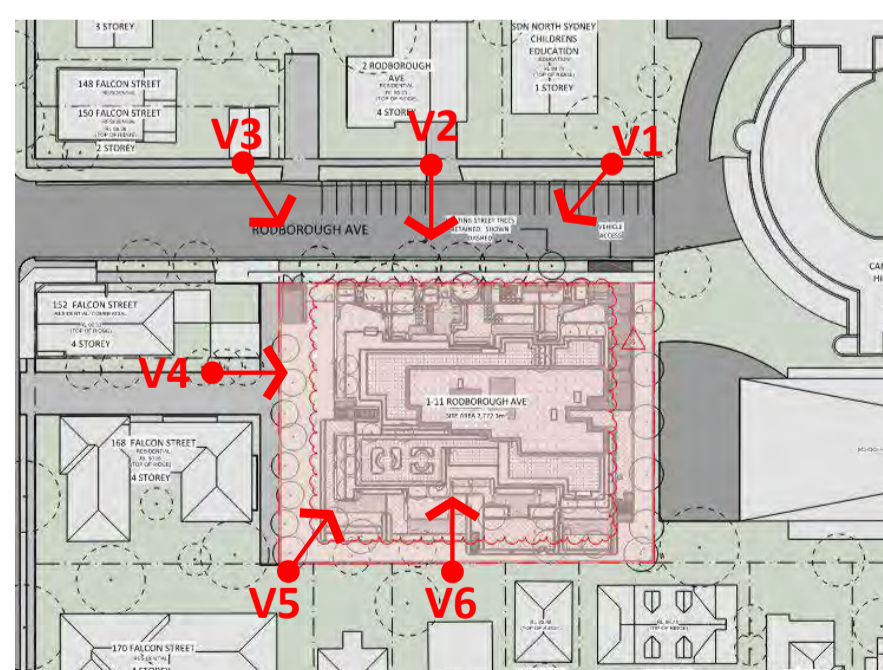
VIEW 2 - APPROVED SCHEME DA 232/20/2



VIEW 2 - ORIGINAL S4.55 MODIFICATION PROPOSAL



VIEW 2 - AMENDED S4.55 MODIFICATION PROPOSAL



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VIEW 3 - APPROVED SCHEME DA 232/20/2



VIEW 3 - ORIGINAL S4.55 MODIFICATION PROPOSAL



VIEW 3 - AMENDED S4.55 MODIFICATION PROPOSAL



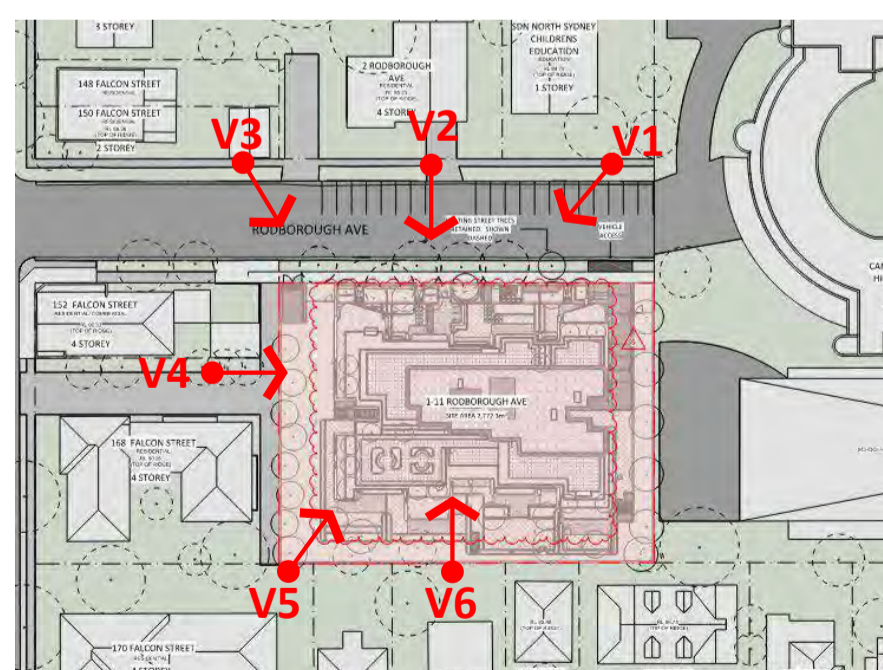
VIEW 4 - APPROVED SCHEME DA 232/20/2



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VIEW 5 - APPROVED SCHEME DA 232/20/2



VIEW 5 - ORIGINAL S4.55 MODIFICATION PROPOSAL



VIEW 5 - AMENDED S4.55 MODIFICATION PROPOSAL



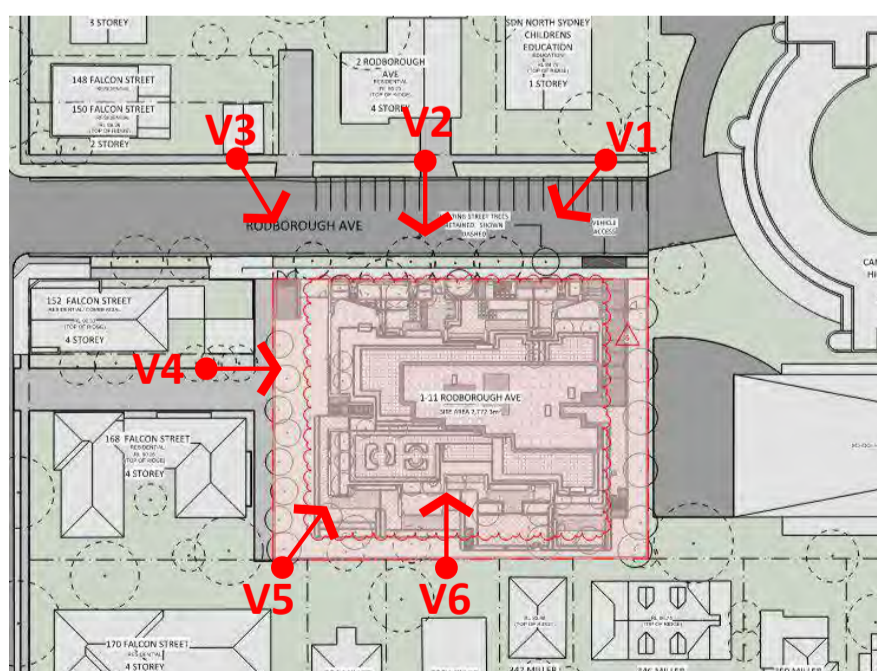
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