

**NSLPP MEETING HELD ON 07/09/2022****SECTION 4.55 APPLICATION REPORT****Attachments:**

1. Site Plan
2. Architectural Plans
3. Original Report

ADDRESS/WARD: 372 Military Road, Cremorne**APPLICATION No:** D269/21/2**PROPOSAL:** Section 4.55(2) application seeking modifications to Development Consent (D269/21) including various amendments to the deferred commencement approval for a five (5) storey mixed use development.**PLANS REF:**

Plan No.	Description	Prepared by	Dated
DA 100 Issue C	Basement & Ground Floor	PA Studio	16/06/22
DA 101 Issue C	Floor Plans: L1 - L3	PA Studio	16/06/22
DA 102 Issue D	Floor Plans: L4 & Roof Plan	PA Studio	19/07/22
DA 200 Issue C	Section A-A	PA Studio	16/06/22
DA 201 Issue C	Section B-B	PA Studio	16/06/22
DA 202 Issue C	Section C-C & D-D	PA Studio	16/06/22
DA 300 Issue D	North and West Elevations	PA Studio	19/07/22
DA 301 Issue C	South & East Elevations	PA Studio	16/06/22

OWNER: Canopy Investment Holding Pty Ltd**APPLICANT:** Platino Properties Pty Ltd**AUTHOR:** Robin Tse, Senior Assessment Officer**DATE OF REPORT:** 30 August 2022**DATE LODGED:** 21 June 2022**RECOMMENDATION:** Approval (In-part)

EXECUTIVE SUMMARY

This application under Section 4.55 of the Environmental Planning and Assessment Act 1979 seeks to modify Development Consent (D269/21) modifications to the deferred commencement approval for a five (5) storey mixed use development.

The application is reported to NSLPP for determination because the proposed modifications involve changes to the specific design requirements as contained in the deferred commencement conditions that was imposed by the Panel in accordance with the directions of the Minister for Planning.

Council's notification of the proposal has attracted no submissions.

The proposed modifications are considered to be generally consistent with the originally approved development application and s.4.55 of the EP & A Act 1979.

The proposed modifications would result in a development which is substantially the same development as originally approved as the proposal would not materially change the overall building height and setback of the development as approved in the original deferred commencement consent.

The proposed design modifications to the southern (Military Road) façade on Levels 3 and 4 do not provide a respectful transition in building heights, built forms, building bulk and scale between the subject site and the heritage listed Orpheum Theatre. Therefore, this aspect of the subject Section 4.55 application is not supported and is recommended for deletion from the modification plans.

The other aspects of the proposed modifications, such as changes to the clerestory windows above the LEP height limit, the amalgamation of the apartments on Level 3 and the proposed amendments to Condition C45, can be supported because there would be no adverse impacts on the character of the locality and no material amenity impacts upon the adjoining properties in terms of the loss of significant views, solar access, visual and acoustic privacy.

The proposed modifications, with the exception of the design modifications to the southern (Military Road) façade on Levels 3 and 4, were found to be acceptable in the site circumstances and recommended for requiring modifications to existing conditions of consent and addition of a new condition.

DESCRIPTION OF PROPOSAL

The applicant seeks NSLPP approval for modifications to the deferred commencement approval for a five (5) storey mixed use development.

The proposed modifications are listed as follows:

- (a) Increased building setback off the southern boundary on Levels 3 and 4;
- (b) Changes to the southern (Military Road) and eastern façades;
- (c) Amalgamation of Units 301 (3 Bedroom) and 302 (Studio) on Level 3 to create a four (4) bedroom apartment resulting in a reduction in the overall number of apartments within the development from seven (7) to six (6);
- (d) Internal reconfiguration of Unit 401 on Level 4 and the addition of a terrace to the southern side of the apartment;
- (e) Amendments to the materials and colours at the upper levels of the Military Road façade;
- (f) Removal of the clerestory windows from the southern side of the roof;
- (g) Reduction in the size of the clerestory window on the northern side of the roof; and
- (h) Amendments to consent condition **C45 (TfNSW Requirements)** to allow the requirements to be satisfied prior to the issue of the Construction Certificate for the construction works.

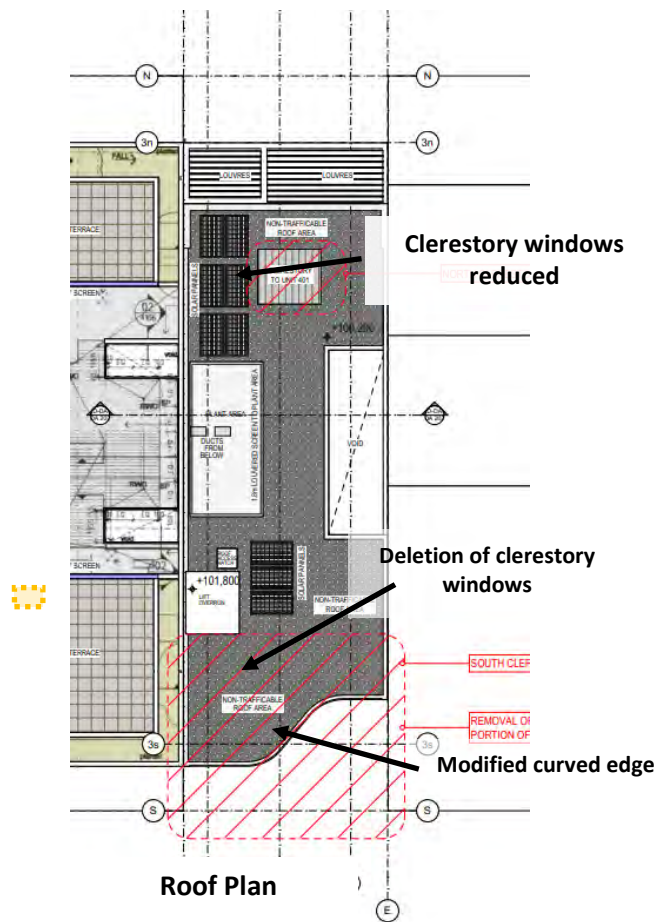


Figure 1: Proposed modified southern (Military Road) elevation.



**Military Rd
 (southern) elevation)**

**Parraween St
 (northern) elevation)**



Figures 2 – 4: Proposed modifications

Referral to NSLPP:

The NSLPP granted deferred commencement approval for the original DA with the requirement for design modifications to the southern façade of Level 4 to provide an 8m setback from the Military Road boundary to provide a more respectful transition of built form and building height for the adjoining heritage listed Orpheum Theatre (**Condition AA1**).

The application is reported to NSLPP for determination because the proposed modifications involve changes to the specific design requirements as contained in the deferred commencement conditions that was imposed by the Panel in accordance with the directions of the Minister for Planning.

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – B4 (mixed Use)
- Item of Heritage - No
- In Vicinity of Item of Heritage – Yes (No. 378-380 Military Road, Hayden Orpheum Theatre)
- Conservation Area – No

- Environmental Planning & Assessment Act 1979 (As amended)
- SEPP (Resilience and Hazards) 2021
- SEPP (Biodiversity and Conservation) 2001
- SEPP 65 – Design Quality of Residential Apartment Development
- SEPP (Building Sustainability Index: BASIX) 2004
- Local Development

POLICY CONTROLS

- North Sydney DCP 2013
- Apartment Design Guidelines (ADG)
- North Sydney Local Infrastructure Contributions Plan 2020

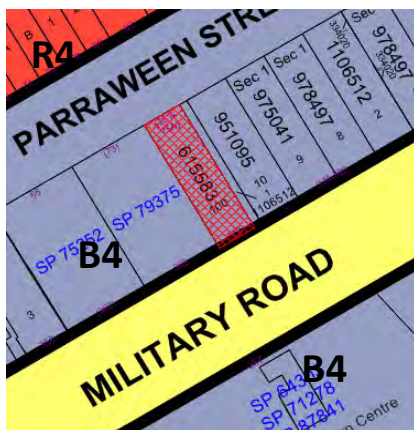


Figure 5: Zoning



Figure 6: Building Height

DESCRIPTION OF LOCALITY

The subject site is located on the northern side of Military Road to the west of Langley Avenue. The property has a legal description of Lot 100 DP615583 also known as No. 372 Military Road (aka Nos 75 & 75A Parraween Street), Cremorne. The site is flat and rectangular in shape with a total area of 303.3sqm.

The site is occupied by a two storey brick shop top housing building with street frontages to Military Road and Parraween Street. The two (2) ground floor tenancies fronting Military Road are being used as restaurants and a hair salon occupying the ground floor tenancy that faces Parraween Street. The first floor of the building is occupied by 2 x 3 bedroom apartments. There is no vehicular access to the subject site.



Military Road Elevation



Parraween Street Elevation

Figures 7 & 8: Existing Development

The subject site is located on the eastern edge of the Cremorne Town Centre and is surrounded by other commercial/mixed use buildings with varying heights between two and eight storeys to the east, west and south of the subject site on land zoned B4 (mixed Use). To the north of the subject site across Parraween Street is a group of semi-detached/detached dwellings on land zoned R4 (High Density Residential).



Figure 9: The Locality

To the east of the subject is the heritage listed “Hayden Orpheum Picture Palace” (commonly known as the Orpheum Theatre) at No. 380 Military Road. A five (5) storey mixed use /shop top housing development is located to the west of the subject site at No. 368 Military Road (aka No.73 Parraween Street). Vehicular access to this adjoining mixed use building is via Parraween Street.

An eight (8) storey building containing retail on the lower three levels with hotel uses (trading as Park Regis Hotel) on the upper levels occupies the property to the south across Military Road.

To the north of the subject site across Parraween Street is a single storey detached dwelling at No.82 Parraween Street.

RELEVANT HISTORY

Previous applications

- **28 February 2014** – Development Consent (**D444/13**) was approved under delegated authority for the conversion of the first floor level for its use as 2 x 3 bedroom apartments.
- **10 August 2021** – Development Application (**D236/21**) for the demolition of the existing building and the construction of a five (5) storey mixed use building was rejected due to insufficient information.
- **6 March 2022** – A deferred comment consent (**D269/21**) was granted by NSLPP for the redevelopment of the subject site including the demolition of the existing two storey shop top housing building and the construction of a five (5) storey shop top housing (mixed use) development containing seven (7) apartments, a ground floor retail tenancy and basement parking. Condition AA1 was imposed by the NSLPP requiring the following design changes to the top (fourth) level in order to ensure that the design of the development would complement the street scape and the heritage significance of the adjoining Orpheum Theatre:

Deferred Commencement Matters

AA1. *Amended plans, addressing the following matters, must be submitted for the written approval of Council's Manager Development Services:*

(a) Design Modifications

The design of proposed building be modified to provide an 8m setback between the southern building line on the fourth floor of the building and the southern (Military Road) property boundary to minimise the visibility of the top level of the proposed building and to provide a more sympathetic transition of built form and building height for the adjoining heritage listed Orpheum Theatre to the east of the subject site.

The modified fourth floor southern building line shall match the southern wall of the proposed lift shaft/overrun. The internal layout of the fourth floor shall be modified to a three bedroom apartment similar in layout to the other three bedroom apartments proposed on the first and second floor.

(Reason: To ensure that the development complements the locality in terms of streetscape and heritage significance of the adjoining Orpheum Theatre.)

- **15 July 2022** – The applicant submitted architectural drawings and a montage seeking approval for the design modifications as required under condition AA1.

Current Application

- **21 June 2022** – The subject Development Application (**D269/21/2**) seeking various modifications, including changes to the design for the southern side of the building on Level 4 was lodged with Council
- **8 to 22 July 2022** – The owners of the adjoining properties and the Harrison and Brightmore Precincts were notified for 14 days. The notification attracted no submissions.

REFERRALS - INTERNAL

BUILDING

The proposed works the subject of this application have not been assessed in accordance with compliance with the National Construction Code of Australia. This would need to be undertaken prior to the issue of a Construction Certificate. Should significant changes be required to achieve compliance with NCC standards, a further Section 4.55 application would be necessary.

HERITAGE

The application was referred to Council's Conservation Planner who provide the following comments:

Assessment of the Modified Proposal:

The proposed modifications have been assessed in accordance with North Sydney LEP 2013, Part 5 Clause 5.10 Heritage conservation and North Sydney DCP 2013 Part B: section 13 Heritage and Conservation, namely s13.4 Development in the vicinity of heritage items P1, was found to be unsatisfactory having regard to the adjoining heritage item.

*The setback of less than 8m at Level 4 from the Military Road boundary creates a more imposing outcome on the setting of the heritage item and does not enhance the outcome as required in the original deferred commencement approval. As such, the proposed modifications cancel out the benefits of the deferred commencement outcome of appropriate transitional heights between the group of buildings at Nos. 358-398 Military Road, including the subject site, and the Orpheum Theatre building. As such, the s4.55 application is contrary to NDCP 2013 Part B: s13.4 and is **not supported**.*

Conclusions and Recommendations:

With reference to the above assessments undertaken in terms of North Sydney LEP2013, Part 5 Clause 5.10 Heritage conservation and NDCP 2013 Part B: s13 Heritage and Conservation namely s13.4 Development in the vicinity of heritage items P1, the design submitted by the applicant on 15 July 2022 showing design modifications as required by Condition AA1 in the original deferred commencement approval with an 8m setback from the southern (Military Road) boundary for Level 4 is supported.

Conversely, the s4.55 application to modify the design of Level 3 and 4 on the southern elevation at No.372 Military Road is not supported and is contrary to the provisions in NDCP 2013 Part B: s13.4 and is found to be unsatisfactory having regard to the adjoining heritage item.

It is recommended that the transitional height and setbacks retain an 8m setback at Level 4 to retain an appropriate relationship with the adjacent heritage item as per condition AA1 in the original deferred commencement approval.

Comment:

Council's Conservation Planner's comments are noted and concurred with.

A comparison of two montages of the Military Road (southern) elevation of the proposed mixed use building are provided below:



Design as required by Condition AA1 in the Original Deferred Commencement Approval - 8m setback for Level 4



Subject S4.55 modified plans – with modifications to Levels 3 & 4

Figures 10 & 11: Montages (Military Road)

It is considered that the design as required by Condition AA1 in **Figure 10** with an 8m setback for Level 4 from the southern (Military Road) boundary minimises the visibility of the top level of the proposed building and provides a more respectful transitional built form and building height to the adjoining heritage listed Orpheum Theatre and the existing mixed use building to the west at No. 368 Military Road.

The proposed modified design as shown in **Figure 11** does not adequately address the heritage concerns as indicated in the comments from Council's Conservation Planner above because Level 4 of the proposed modified development would still be highly visible and imposing as seen from Military Road. In addition, the curved glass and eave lines on the southern elevation of Levels 3 and 4 above the podium are contrary to the primarily angular built form of the southern façade. Therefore, the proposed design changes to the Level 3 southern façade are not supported by Council Officers.

ENGINEERING

The proposed modifications does not involve additional earth works and other engineering works and no further changes to the engineering requirements would be necessary.

REFERRAL – EXTERNAL:

TfNSW

The application was referred to TfNSW and the following comments were provided:

TfNSW has reviewed the submitted application and raises no objection to the proposed modifications as they are unlikely to have a significant impact onto the classified road network.

Comment:

The comments from TfNSW are noted.

The applicant has requested that the wording for the first sentence of Condition be amended to include the words "for construction" as follows:

C45. The following TfNSW requirements must be complied with prior to the issue of a Construction Certificate for construction:

The reason of the proposal is some of the specific requirements from TfNSW, such as some investigative earthworks, can only be carried out after the demolition of the existing building. The applicant has therefore proposed the above amendments in order to satisfy TfNSW requirements.

TfNSW has raised no objection to the proposed changes to the wording of Condition C45. It is therefore recommended that the wording of Condition C45 be modified accordingly.

CONSIDERATION

Council is required to assess the s4.55 application under the EPA Act 1979 (As amended) having regard to the following matters:

Section 4.55 (2)

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) *it has notified the application in accordance with—*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent,*
and
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comments are provided on the above matters in section 4.55 (2) as follows:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

The application involves modifications to the design of the building on Levels 3 and 4, amalgamation of apartments on Level 3, changes to materials, removal/reduction in the design of the clerestory windows on the roof level and amendments to condition C45. The proposed modifications would not materially change the overall building height, density and the use of the approved development. Consequently, the proposal is considered to be “substantially the same”.

- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

The proposal involves amendments to Condition C45 imposed by TfNSW. The authority has raised no objection to the proposed modifications as indicated earlier in the report.

- (c) *Whether the application has been notified and, if so, were there any submissions*

The application was notified to adjoining properties and the Brightmore and Harrison Precincts under section 3.6 of the North Sydney Community Engagement Protocol inviting comment on the proposal. The notification of the application has attracted no submissions.

Pursuant to section 4.55 (3) in the EPA ACT 1979 (as amended) Council must also consider the matters that need to be addressed under section 4.15 (Evaluation) and the reasons for the original approval that are considered later in this report.

MERIT ASSESSMENT

4. **Any relevant considerations under Section 4.15(1) of the Environmental Planning and Assessment Act 1979.**

In determination of a development application, a consent authority is to take into consideration the following matters relevant to the development application:

- *The provisions of any environmental planning instrument or draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority.*

(i) SEPP (Resilience and Hazards) 2021 - Chapter 4

SEPP 55 (Remediation of Land) has been consolidated into the new **SEPP (Resilience and Hazards) 2021** and the provisions of the former SEPP are contained under Chapter 4 of the new SEPP. The proposed modifications do not offend the provisions/requirements of the SEPP because the proposal does not involve additional earthworks/excavation within the subject site.

(ii) SEPP (Biodiversity and Conservation) 2021 - Chapter 10

SREP (Sydney Harbour Catchment) 2005 has been consolidated into the new **SEPP (Biodiversity and Conservation) 2021** and the provisions of the former SREP are contained under Chapter 10 of the new SEPP.

Having regard to the relevant provisions of the SREP (Sydney Harbour Catchment) 2005, the proposed modifications are not considered to be detrimental to the Harbour and will not unduly impose upon the character of the foreshore given the subject site is not visible from the harbour as the site is far enough away from the foreshores of Sydney Harbour as to have no impacts on the harbour and its foreshores. As such, the development satisfies the provisions contained within the above SREP and Chapter 10 of the new SEPP.

(iii) SEPP 65 - Design Quality of Residential Flat Buildings

Consideration has been given to the primary design principles in the SEPP as follows:

Principles 1 and 2: Context, Built Form and Scale

Whilst the proposed mixed use building would generally maintain the approved mixed use/shop top housing style design, the proposed design modifications to Levels 3 and 4 are considered to be unsatisfactory because the proposal does not provide a sympathetic and respectful transition in height, built form, building bulk and scale between the subject development and the heritage listed Orpheum Theatre as compared to the building design with an 8m setback from Military Road for Level 4 as required by the original deferred commencement approval as specified in **Condition AA1**.

Principle 3: Density

The proposed modifications would reduce the number of apartments within the approved mixed use building by one (1) unit as compared to the deferred commencement approval. However, the proposal would have no material impacts in the overall density given the overall quantum of apartments within the locality.

Principle 4: Sustainability

The proposed modifications would not change the overall thermal performance of the approved development. The applicant has submitted a revised BASIX Certificate for the modified development.

Principle 5: Landscape

The proposed modifications do not involve significant changes to the landscaping treatments as originally approved.

Principle 6: Amenity

The proposal for the amalgamation of two (2) apartments on Level 3 to create a single 4 Bedroom apartment would achieve compliance with the relevant ADG requirements including unit size, solar access, cross ventilation and private open space.

However, it is considered that the amalgamated apartment should be accommodated within the Level 3 building envelope of the original design because the unsympathetic curved built form on the southern elevation would have a detrimental impact on the significance of the heritage listed Orpheum Theatre. It is therefore recommended that **Condition AA1** be modified to include an additional requirement that the amalgamated apartment on Level 3 shall be accommodated within the Level 3 building envelope as proposed the original DA.

The proposed changes to the clerestory windows would have no detrimental impacts on the amenity for the apartment on Level 4.

It is also noted that the applicant has amended the description of the rooms on the western side of the lightwell on Level 1, 2 and 3 to "Study" in accordance with **Condition C48** in the original deferred commencement consent to provide appropriate amenity for the relevant room type.

Principle 7: Safety

The proposed modifications would not materially change the level of safety within the approved development and the modified works are subject to compliance with the relevant building requirements under the National Construction Codes.

Principle 8: Housing Diversity and Social Dimensions

The proposed modifications involve the amalgamation of 1 x Studio and 1 x 3 Bedroom apartments on Level 3 to create a 4 bedroom apartment. This would reduce the total number of apartments within the proposed mixed use building by one (1) to six (6) apartments. The revised unit mix for the proposed development is as follows:

Unit Type	Original DA (%)	Proposed modifications (%)
Studio	1 (14%)	0 (0%)
1 Bedroom	2 (28%)	2 (33%)
2 Bedroom	0 (0%)	0 (0%)
3 Bedroom and above	4 (58%)	4 (67%)
Total	7 (100%)	6 (100%)

Notwithstanding the changes to the unit mix and the total number of apartments within the mixed use development, the proposed modifications would not materially change housing diversity and would have no adverse social impacts given the minor nature of the modifications and the ample supply of smaller apartments within existing and new developments in the vicinity of the subject site along Military Road and Parraween Street.

Principle 9: Aesthetics

As indicated earlier in this report, the proposed modifications with a revised design for Levels 3 and 4 on the southern (Military Road) elevation of the proposed mixed use development is considered to be unsatisfactory in terms of providing an sympathetic transition in height, built form, building bulk and scale between the subject development site and the heritage listed Orpheum Theatre as compared to the building design with an 8m setback from Military Road for Level 4 as required by Condition AA1 in the original deferred commencement consent.

It is concluded that the design for southern façade of the subject mixed use development is to be consistent with the requirements of Condition AA1 in the original deferred commencement consent including an 8m setback for Level 4 from the Military Road boundary.

(iv) Apartment Design Guide (ADG)

A compliance table is provided below for a number of relevant ADG controls:

Amenity	Design Criteria	Comment	Compliance
Building Separation (between buildings : non-habitable rooms – habitable rooms)	Up to 4 storeys: 6m – 12m 5 - 8 storeys: 9m – 18m	<i>Southern (Military Road) Elevation</i> The separation between the proposed building and the nearby commercial properties across Military Road would be in excess of 30m. <i>Side (eastern and western) Elevations</i>	Yes

		<p>There is a non-compliance with the building separation on the eastern and western elevations where there is a 0m setback between the proposed building and the neighbouring Orpheum Theatre to the east and No. 368 Military Road to the west.</p> <p>The applicant has proposed a number of fire rated windows on the third and fourth floor on the eastern elevation to the airspace above the Orpheum Theatre. It is noted that these windows are secondary windows for the respective habitable rooms to provide an additional source of light. This aspect of the proposal is considered to be acceptable given that these windows would not cause impacts on the amenity of the adjoining theatre building and can be closed/removed should there be new development within the adjoining site.</p> <p>There would be no windows on the western elevation of the proposed development adjoining the side property boundary wall of the existing mixed use building to the west at No. 368 Military Road.</p> <p><i>Northern (Parraween Street) Elevation</i></p> <p>There would be no further changes to the 25m building separation between the balconies on the north-western elevation of the proposed mixed use building and the habitable room windows/verandah on the front (street) elevation of No. 82 Parraween Street.</p> <p>The proposed modifications are considered to be acceptable in this regard.</p>	<p>No (acceptable on merit)</p> <p>Yes</p>
<p>Visual privacy</p>	<p>6m (between habitable rooms and balconies to side/rear boundaries)</p>	<p>As mentioned above under the assessment relating to building separation, the proposed building would provide adequate building separation to minimise any visual privacy impacts for the adjoining properties along Military Road and Parraween Street.</p> <p>Despite the absence of any setback from the side property boundaries, the third and fourth floor windows on the eastern wall would overlook the roof of the Orpheum Theatre only. There would be no windows on the walls along western property boundary. Therefore, there would be no material visual privacy impacts on the adjoining mixed use building to the west at No. 368 Military Road.</p> <p>In addition, there would be no further changes to the separation between the proposed bedroom windows looking into the lightwell.</p> <p>The proposal is therefore considered to be acceptable.</p>	<p>Yes</p> <p>No (acceptable on merit)</p> <p>No change</p>

Solar and daylight access	70% of apartments to receive 2 hours of direct sunlight	The proposed modifications would result in a total of six (6) apartments. Four (4) out of the six (6) apartments (67%) will receive 2 hours of direct solar access to living spaces and private open space. The numeric non-compliance is considered to be acceptable having regard to the site circumstances such as the small site area, the elongated shape of the property and the limited number of apartments within the proposed development.	No (acceptable on merit)
Natural ventilation	60% of apartments are naturally cross ventilated	The modified proposal complies with the ADG requirement with four (4) of the six (6) apartments (67%) of the apartments benefiting from cross ventilation.	Yes
Ceiling Heights	2.7m (habitable rooms)	2.7m	Yes
Apartment size and layout	35 m ² (Studio) 50 m ² (1B) 70 m ² (2B) 90 m ² (3B)	N/A 61m ² (1B) N/A(2B) >145m ² (3B+)	Yes
Apartment size and layout	Master bedrooms have a minimum area of 10 m ² All secondary bedrooms have a minimum width of 3m Living rooms have a minimum width of 3.6m (S and 1B) and 4m (2B and 3B) The maximum habitable room depth is 8m from a window	All master bedrooms are suitably sized in excess of 10 m ² The secondary bedrooms comply with the minimum width of 3m. The rooms on the western side of the lightwell have been amended to "Study" as the width of these rooms are under the required 3m in accordance with Condition C48 in the original deferred commencement consent. 1B – 4.2m min. 3B + – 5.5m min. All habitable areas would be within 8m from windows.	Yes Yes Yes Yes
Private open space and balconies	S – 4 m ² 1B – 8m ² 2B – 10m ² 3B – 12m ²	Studio – N/A 1B - 8m ² 2B – N/A 3B+ – >23m ²	Yes

Common circulation and spaces	Maximum number of apartments off a circulation core on a single level is 8	A maximum of 2 apartments on all levels.	Yes
Storage	6m ³ (1B) 8m ³ (2B) 10m ³ (3B)	Satisfactory storage areas are provided within the apartments and on the basement levels.	Yes
Communal and public open space	Communal open space has a minimum area equal to 25% of the site	The proposal does not provide communal areas within the development. This is considered to be acceptable due to the small scale of the proposal with six (6) apartments.	No (acceptable on merit)
Apartment Mix	A range of apartment types and size to cater for different household types	The modified proposal would provide a range of apartments including 2 x 1B and 4 x 3B units The proposal is consistent with the ADG objective to provide a range of units for different household types. Furthermore, the proposal would also allow flexibility for the development to be adapted to future needs in accordance with ADG Objectives 4Q 1 – 3.	Yes

The proposed modifications are considered to be generally satisfactory having regard to the design criteria as specified in the ADG. As detailed in the table above, where strict compliance is not achieved, the non-compliances are unlikely to materially compromise the amenity of the apartments.

It is concluded that the proposed modifications are acceptable having regard to the relevant requirements/provisions of SEPP 65 and the ADG with the exception of the treatments of the southern façade on Levels 3 and 4 and compliance with the 8m setback from the southern (Military Road) boundary on Level 4 as required in Condition AA1 in the original deferred commencement consent in order to ensure an appropriate heritage/streetscape outcome for the development and the adjoining heritage listed Orpheum Theatre.

(v) SEPP (Building Sustainability Index – BASIX) 2004

The applicant has submitted a revised BASIX certificate (1224852M_04) to reflect the proposed modifications. It is considered that the submission a further BASIX certificate is required in order to incorporate the design changes required in the modified deferred commencement condition AA1.

It is recommended that **Condition C44** be modified to include a revised BASIX Certificate number to reflect the design changes as required by the deferred commencement condition AA1.

(vi) North Sydney Local Environmental Plan 2013 (NSLEP 2013)

Compliance Table:

Principal Development Standards – North Sydney Local Environmental Plan 2013				
Site Area – 303.3m²	Approved	Proposed	Control	Complies
Clause 4.2 – Heights of Building	17.99m (Top of screen for plant area)	17.2m (Modified clerestory windows)	16m	NO
Clause 4.4A – Non-residential Floor Space Ratio	196 m ² (FSR - 0.64:1)	196 m ² (FSR - 0.64:1)	0.5:1 min.	Yes (No change)

Permissibility with the Zone

The land affected by the proposed development is zoned B4 (Mixed Use) pursuant to the North Sydney LEP 2013, and development for the purpose of “shop top housing” is permissible in the zone with the consent of Council.

Zone Objectives

The proposed modifications are generally consistent with the objectives of the B4 (Mixed Use) zone subject to modifications to Condition AA1 as indicated earlier in this report.

Building Height

The proposed modifications would not change the overall building height of the approved development at RL102.0 for the top of plant and RL101.8 for the lift overrun.

However, the proposed revision of the design for the clerestory windows on the roof level and the modified roof slab on the southern side of the proposed mixed use building would cause further non-compliance with the LEP 16m height limit as illustrated below:

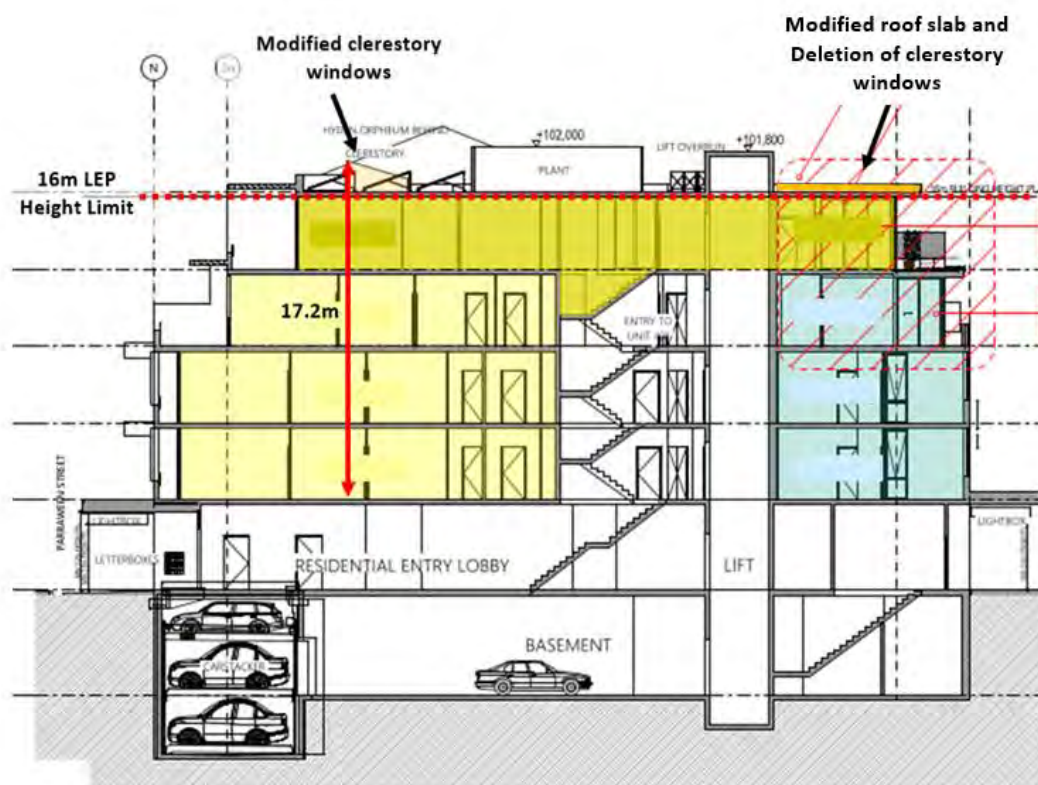


Figure 12: Proposed development and LEP building height limit

In accordance with the findings by Justice Lloyd in *Gann & Anor v Sutherland Shire Council [2008] NSWLEC 157*, the modification of a development consent pursuant to Section 4.55 (formerly Section 96) which results in a new or modified variation to a development standard, does not require the submission of an objection pursuant to SEPP 1 or a request for variation to the Development Standard under Clause 4.6 of the LEP. In this regard, reference is made to the provisions of S4.55(4) of the Act which distinguishes between the modification of a development consent pursuant to S4.55 and the granting of development consent.

In addition, consideration has been given to the objectives of the LEP building height control and the environmental grounds justifying the proposed building height variation as a measure of the performance of the proposed modifications. These matters have been considered 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 modifications would not change the overall landform within the subject site.

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

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

It is considered that the proposed modifications would have no material impacts on significant views as seen from the public domain and the surrounding properties because the modified clerestory windows over the height limit would be located on the northern side of the roof away from the significant views towards the south-east as seen from the roof top terrace of an adjoining property to the south.

Furthermore, the shadows of the modified clerestory windows would fall primarily on the roof of the proposed building. Therefore, there would be no material shadowing impacts on the adjoining residential properties at No. 368 Military Road.

The modified roof slab on the southern side of the building would have no material view and shadowing impacts because the modified structure is unlikely to obstruct any significant views as seen from the roof terrace at No. 368 Military Road and the additional shadows would primarily fall on Military Road or the roof of the Orpheum Theatre.

(1)(d) To maintain privacy for residents of existing dwelling and to promote privacy for residents of new buildings

The modified building elements in breach of the LEP maximum height limit would be the revised clerestory windows on the northern side of the roof and the modified roof slab on the southern side of the building.

There would be no material privacy impacts resulting from the revised clerestory windows above the LEP maximum building height limit because these windows would be located on the roof and not causing overlooking onto other properties. Furthermore, the roof slab would be only trafficable for maintenance purpose only, hence any material privacy impacts are unlikely.

(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 the area

As indicated earlier in this report, the modifications for the southern side of Level 4 as required by the original deferred commencement condition (**Condition AA1**) is supported because the required 8m setback from the southern (Military Road) boundary for Level 4 would provide a more sympathetic transition of building height and built form for the heritage listed Orpheum Theatre and the group of buildings along the northern side of Military Road.

It is therefore considered that the proposed modifications to the southern façade for Levels 3 and 4 are not supported because the proposed modified design does not promote the character of the area.

There are insufficient environmental planning grounds to justify the proposed changes to southern (Military Road) façade on Levels 3 and 4.

Notwithstanding the above, no objection is raised to the modifications to the clerestory windows over the LEP height limit because this aspect of the proposal would have no material impacts on neighbouring properties and the locality in terms of the built forms within the locality and the amenity of the surrounding properties.

There are sufficient environmental planning grounds to justify the modifications to the clerestory windows only in relation to the variation to the building height control.

Earthworks

The proposed modifications would not change the scope of earthworks as approved in the original deferred commencement consent.

(v) North Sydney Development Control Plan 2013:

Consideration has been given to the relevant DCP controls as follows:

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2 - Commercial and Mixed Use Development		
	<i>complies</i>	<i>Comments</i>
2.2 Function		
2.2.3 Mixed Residential Population Size of units –	Yes	<i>Unit Mix:</i> The proposal contains 2 x 1 Bedroom and 4 x 3 Bedroom apartments. This complies with the DCP requirement for a minimum of two dwelling types (i.e. studio, 1B, 2B and 3B) within residential flat buildings containing less than twenty (20) units.
	No (acceptable on merit)	<i>Adaptable Units:</i> The applicant has proposed one (1) adaptable unit (16%) within the modified development. The non-compliance with the DCP minimum of 20% of the total number of units to be adaptable is considered to be acceptable under the site circumstance given the narrow and elongated shape of the property and the modest nature of the proposed development with only six (6) apartments.
2.3 Environmental Criteria		
2.3.7 Solar Access	No (acceptable on merit)	Solar access to apartments within the subject site: The DCP requires 70% of dwellings within a residential flat building/shop top housing to receive more than 2 hours of sunlight in mid-winter. The proposed development would achieve 67% (i.e. 4 of 6) of the apartments to receive 2 hours of sunlight to the main living/private open space areas. As indicated earlier in this report, this numeric non-compliance is considered to be acceptable having regard to the site circumstances such as the small site area and the elongated shape of the property and the small number of apartments within the proposed development.
	Yes	Shadowing impacts on the adjoining properties: It is noted that the proposed modifications relate to design changes to the southern façade on Levels 3 and 4 and the clerestory windows.

		<p>It is considered that the southern façade changes would have no material shadowing impacts given that any additional shadow is likely to fall on Military Road to the south or the roof of the Orpheum Theatre.</p> <p>The shadows of the modified clerestory windows would primarily fall on the roof of the subject building.</p> <p>Therefore, the proposed modifications would have no material shadowing impacts on the adjoining residential properties.</p>
2.3.8 Views	Yes	<p>As indicated earlier in this report, the proposed modifications would have no material impacts on significant views as seen from the public domain and the surrounding properties, particularly the southern roof top terrace of the adjoining mixed use building at No.368 Military Road, for the following reasons:</p> <p>(a) the modified clerestory windows would only be located on the northern side of the roof away from the significant views towards the south-east as seen from the neighbouring roof top terrace; and</p> <p>(b) the modified roof slab on the southern side of the building would not obstruct views as seen from the roof top terrace due to the lower floor level of the modified slab.</p>
2.3.9 Acoustic Privacy	Yes	<p>The proposed development is unlikely to cause additional noise nuisance/acoustic privacy impacts for the nearby residential properties because of the following reasons:</p> <p>(a) The reduction in the total number of apartments from seven (7) to six (6).</p> <p>(b) The living room windows and balconies would be located on the southern (Military Road) and northern (Parraween Street) elevations away from the adjoining mixed use building at No. 368 Military Road; and</p> <p>(c) The applicant has not sought to change any acoustic privacy and construction noise related conditions in the deferred commencement consent.</p>
2.3.11 Visual Privacy	Yes	<p>The modified building would provide adequate building separation to minimise any visual privacy impacts for the adjoining properties along Military Road and Parraween Street.</p> <p>Despite the absence of any setback from the side (south-western and north-eastern) property boundaries, there would be no windows on the walls along such boundaries. Therefore, there would be no adverse visual privacy impacts on the adjoining mixed use building to the west at No .368 Military Road.</p> <p>Furthermore, the proposed windows looking into the lightwell are windows within the same apartment. Visual privacy impact is therefore minimised with the use of window treatments such as shutters/blinds/curtains etc.</p>
2.4 Quality built form		
2.4.1 Context	No	<p>Whilst the overall design of the proposed mixed use building is generally consistent with other new mixed use development along Military Road to the west of the subject site, the proposed design modifications to Levels 3 and 4 are unsatisfactory because the proposal does not provide a respectful transition in building heights, built forms, building bulk and scale between the group of buildings along Nos. 358 – 398 Military Road, including the subject site, and the heritage listed Orpheum Theatre as compared to the building design requiring an 8m setback from Military Road for Level 4 as contained Condition AA1 in the original deferred commencement consent.</p>

<p>2.4.3 Setbacks</p>	<p>Yes</p>	<p>The proposal complies with the DCP character statement for Neutral Bay/Cremorne Town Centre requiring buildings to be built to Military Road frontage.</p> <p>The proposed zero side boundary setbacks are also consistent with the character of existing developments along Military Road.</p> <p>The applicant has also proposed a variable podium height on the Military Road frontage, to provide a transition of building heights along the street frontage.</p> <p>Whilst this aspect of the proposal is generally consistent with the DCP requirement, the building setbacks for the structures above the podium from Military Road must have regard to the built forms of the heritage listed Orpheum Theatre to the east of the subject site and the group of building to the west of the subject site.</p> <p>The required 8m setback for the southern (Military Road) façade for Level 4 as contained in Condition AA1 in the original deferred commencement consent is considered to be appropriate in order to provide a development sympathetic to the heritage listed Orpheum Theatre immediately to the east of the subject site.</p>
<p>2.4.4 Podiums 2.4.5 Building Design</p>	<p>No</p>	<p>The proposed modifications would not change the building design with zero front and side setbacks and the use of ground floor for commercial/retail purposes that is generally consistent with the character of similar mixed use buildings along Military Road.</p> <p>As indicated earlier in this report, the proposed design modifications to Levels 3 and 4 are unsatisfactory because the proposal does not provide a respectful transition in building heights, built forms, building bulk and scale between the group of buildings being Nos 358-398 Military Road, including the subject site, and the heritage listed Orpheum Theatre as compared to the building design requiring an 8m setback from Military Road for Level 4 as contained Condition AA1 in the original deferred commencement consent.</p>
<p>2.4.8 Balconies - Apartments</p>	<p>Yes</p>	<p>The proposal would provide complying balconies to all apartments to ensure access to functional private open space for the future residents.</p>
<p>2.4.10 Streetscape</p>	<p>No</p>	<p>The design modifications to Levels 3 and 4 of the proposed mixed use building do not provide a respectful transition in building heights, built forms, building bulk and scale between the group of buildings being No's. 358-398 Military Road, including the subject site, and the heritage listed Orpheum Theatre.</p> <p>The design outcome of the deferred commencement condition AA1 in the original DA determination requiring an 8m setback for Level 4 from Military Road would enhance the streetscape because of a more respectful transition of building heights and built forms for the group of buildings at Nos 358-398 Military Road with appropriate stepping of the height of buildings along the Military Road frontage from the five storey mixed use building to the west of the subject site to the two storey Orpheum Theatre to the east of subject site.</p>
<p>2.5 Quality Urban Environment</p>		
<p>2.5.1 Accessibility</p>	<p>Yes</p>	<p>The modified development, including the ground floor commercial/retail tenancies and the apartments on the upper levels, would be accessible.</p>

<p>2.5.2 Safety and Security</p>	<p>Yes</p>	<p>The design of the proposal has considered personal safety and security with secured access and passive surveillance from the apartments above the building entrance.</p>																									
<p>2.5.4 High Quality Residential Accommodation</p>		<p><u>Unit Size</u></p> <table border="1" data-bbox="791 421 1398 600"> <thead> <tr> <th>Dwelling Type:</th> <th>Proposed</th> <th>Control</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>N/A</td> <td>40sqm</td> <td>N/A</td> </tr> <tr> <td>1 Bedroom</td> <td>61m²</td> <td>50sqm</td> <td>Yes</td> </tr> <tr> <td>2 Bedroom</td> <td>N/A</td> <td>80sqm</td> <td>N/A</td> </tr> <tr> <td>3 Bedroom +</td> <td>145m² (minimum)</td> <td>100sqm</td> <td>Yes</td> </tr> </tbody> </table> <p>All the proposed apartments would comply with the DCP's unit size requirements.</p> <p><u>Width of Apartments</u></p> <p>The proposed apartments would have variable widths. It is noted that the width of the apartments comply with the ADG requirements as detailed earlier in this report.</p> <p><u>Single Aspect Apartments</u></p> <p>The living areas of the single aspect apartments would be within 8m from a window. It is noted that the entrance corridors of the southern apartments on the first and second floors would be in excess of 8m from windows, however, this is considered to be acceptable because such areas would primarily be used for circulation only.</p>	Dwelling Type:	Proposed	Control	Compliance	Studio	N/A	40sqm	N/A	1 Bedroom	61m ²	50sqm	Yes	2 Bedroom	N/A	80sqm	N/A	3 Bedroom +	145m ² (minimum)	100sqm	Yes					
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3 Bedroom +	145m ² (minimum)	100sqm	Yes																								
<p>2.5.5 Lightwells</p>	<p>No change</p>	<p>The applicant has not proposed changes to the lightwell as previously approved.</p>																									
<p>2.5.6 Private Open Space</p>	<p>Yes</p>	<p>The proposal complies with the DCP open space requirements for all apartments.</p>																									
<p>2.5.7 Vehicular Access</p>	<p>No change</p>	<p>The applicant has not proposed further changes to the vehicular access arrangements via the basement of the adjoining mixed use development at No. 368 Military Road as previously approved.</p>																									
<p>2.5.8 Car Parking</p>		<p>Parking is proposed to be provided within the basement as detailed below.</p> <table border="1" data-bbox="767 1464 1418 1861"> <thead> <tr> <th>Parking Type:</th> <th>Approved</th> <th>Proposed</th> <th>Control (Max.)</th> <th>Complies</th> </tr> </thead> <tbody> <tr> <td>Residential: - Car</td> <td>8</td> <td>9</td> <td>5</td> <td>No</td> </tr> <tr> <td>Residential - Motorcycle</td> <td>0</td> <td>0</td> <td>1 (1sp/10car)</td> <td>No</td> </tr> <tr> <td>Disabled</td> <td>1</td> <td>1</td> <td>1 (1sp/each adaptable unit)</td> <td>Yes</td> </tr> <tr> <td>Non-residential</td> <td>0</td> <td>0</td> <td>3</td> <td>No</td> </tr> </tbody> </table> <p>It is noted that a car stacker is proposed on the northern side of the basement to accommodate eight (8) cars and the remaining two (2) parking spaces are provided on the opposite side of the car stacker include one (1) parking space for people with disabilities. The design of the basement car parking is generally consistent with the one considered in the original DA.</p>	Parking Type:	Approved	Proposed	Control (Max.)	Complies	Residential: - Car	8	9	5	No	Residential - Motorcycle	0	0	1 (1sp/10car)	No	Disabled	1	1	1 (1sp/each adaptable unit)	Yes	Non-residential	0	0	3	No
Parking Type:	Approved	Proposed	Control (Max.)	Complies																							
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Residential - Motorcycle	0	0	1 (1sp/10car)	No																							
Disabled	1	1	1 (1sp/each adaptable unit)	Yes																							
Non-residential	0	0	3	No																							

		<p>A condition (C1) has been imposed in the original deferred commencement consent requiring amendments to the basement carpark to provide parking for the commercial tenancies and motorcycles.</p> <p>The applicant has not proposed changes to the Condition C1. The parking allocation as specified in Conditions C1 is considered to be appropriate for the modified proposal because the parking needs generated by different components within proposed development are being catered for by the proposal.</p>
2.5.9	Garbage Storage	<p>No (acceptable on merit and via condition)</p> <p>The absence of a garbage chute and recycle bin storage on all residential levels is considered to be acceptable having regard to the small number of six (6) apartments within the development and the constrained floor plan to accommodate various facilities particularly on the ground floor.</p> <p>The applicant has not sought changes to the waste management conditions in the original deferred commencement consent.</p>
2.6 Efficient Use of Resources		
2.6.1	Energy Efficiency	<p>Yes (via condition)</p> <p>The applicant has submitted a revised BASIX certificate (1224852M_04) to reflect the proposed modifications. It is considered that the submission a further BASIX certificate is required in order to incorporate the design changes required in the modified deferred commencement condition AA1.</p> <p>It is recommended that Condition C44 be modified to include a note that the BASIX Certificate number is subject to a revision to reflect the design changes as required by the deferred commencement condition AA1.</p>

North Cremorne Planning Area (Neutral Bay and Cremorne Town Centres)

The proposed design modifications to Levels 3 and 4 are unsatisfactory because the proposal does not provide an appropriate transition in building heights, built forms, building bulk and scale between the group of buildings along Nos 358-398 Military Road, including the subject site, and the heritage listed Orpheum Theatre.

Therefore, it is considered that the 8m setback from Military Road for Level 4 be maintained as required by **Condition AA1** in the original deferred commencement consent to ensure a respectful built form is provided that it is likely to complement the heritage listed Orpheum Theatre and the Military Road streetscape.

NORTH SYDNEY LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN 2020

The proposed amalgamation of two (2) apartments to create a single apartment on Level 3 would result in the reduction in the total number of apartments within the proposed development from seven (7) to six (6).

Consequently, the modified proposal has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and is subject to payment of contributions towards the provision of local infrastructure. It is also noted that the contributions as required in **Condition C40** in the original deferred commencement consent have not been paid to date. Therefore, the contributions payable have been re-calculated in accordance with Council's Contributions Plan as follows:

Development type	Existing	Proposed	Change
Residential accommodation	2 dwellings	6 dwellings	Increase: 4 dwellings
Non-Residential Floorspace	297sqm	196sqm	Decrease: 101sqm

Contribution amounts payable:

Applicable contribution type: s7.11 contribution		
	Open space and recreation facilities:	\$35,882.05
	Public domain:	\$14,715.76
	Active transport:	\$839.99
	Community facilities:	\$7,207.06
	Plan administration and management:	\$875.26
	Total:	\$59,520.12

Accordingly, it is recommended that **Conditions C40 and C41** be modified to incorporate the above revised contribution.

REASONS FOR THE ORIGINAL APPROVAL

Section 4.55 (3) requires the reasons given by the consent authority for the grant of the consent that is sought to be modified. In this case, the reasons for granting the original permission, which is sought through this application to be modified, are set out in the notice of determination of the original DA.

The reasons given by the NSLPP for the deferred commencement approval of the original application are as follows:

- *The Panel considers the plans must be amended with the Officer's recommendation to ensure that the building has a respectful transition to the adjoining heritage item.*
- *These design changes are also considered appropriate in the context of a more sensitive design to reduce view impacts for the adjoining property.*
- *While the front façade of the existing building remains somewhat intact above the awning, the remainder of the building has been extensively modernised and does not warrant retention in the context of current planning controls.*
- *The application, subject to the above changes is satisfactory on a merits assessment and further modification is not required.*

The proposal for modifications to the design of the southern (Military Road) façade on Levels 3 and 4 is contrary to the key reason for granting deferred commencement approval of the original application because the modified design does not provide a respectful transition in building heights, built forms, building bulk and scale between the group of buildings along No's. 358-398 Military Road, including the subject site, and the heritage listed Orpheum Theatre. This aspect of the subject Section 4.55 application is not supported.

The other aspects of the proposed modifications, such as changes to the clerestory windows, the amalgamation of apartments on Level 3 and the amendments to Condition C45, do not offend the reasons for approval for the original deferred commencement consent and can be supported.

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	N/A
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes
10. Section 89 LGA 93 including Clause 12 Consideration of Local Government (Approvals) Regulation 1993	Yes

PUBLIC INTEREST

The proposed design modifications to the southern (Military Road) façade on Levels 3 and 4 do not provide a respectful transition in building heights, built forms, building bulk and scale between the subject site and the heritage listed Orpheum Theatre. Therefore, this aspect of the subject Section 4.55 application is not supported and approval of this aspect of the proposal is not considered to be in the public interest.

The other aspects of the proposed modifications, such as changes to the clerestory windows above the LEP height limit, the amalgamation of the apartments on Level 3 and the proposed amendments to Condition C45, can be supported because there would be no adverse impacts on the character of the locality and no material amenity impacts upon the adjoining properties in terms of the loss of significant views, solar access, visual and acoustic privacy. Approval of these modifications are considered to be in the public interest.

SUITABILITY OF THE SITE

The proposal would be located in a B4 (Mixed use) zone where shop top housing/mixed use development is a permissible form of development. Consequently, the proposed modifications, with the exception of the proposed modifications to the southern (Military Road) façade of the proposed mixed use building, are considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

COMMUNITY VIEWS

The application was notified to adjoining properties and the Brightmore and Harrison Precincts under section 3.6 of the North Sydney Community Engagement Protocol inviting comment on the proposal. The notification of the application has attracted no submissions.

CONCLUSION & REASONS

The proposed modifications are considered to be generally consistent with the originally approved development application and s.4.55 of the EP & A Act 1979.

The proposed modifications would result in a development which is substantially the same development as originally approved as the proposal would not materially change the overall building height and setback of the development as approved in the original deferred commencement consent.

The proposed design modifications to the southern (Military Road) façade on Levels 3 and 4 do not provide a respectful transition in building heights, built forms, building bulk and scale between the subject site and the heritage listed Orpheum Theatre. Therefore, this aspect of the subject Section 4.55 application is not supported and is recommended for deletion from the modification plans.

The other aspects of the proposed modifications, such as changes to the clerestory windows above the LEP height limit, the amalgamation of the apartments on Level 3 and the proposed amendments to Condition C45, can be supported because there would be no adverse impacts on the character of the locality and no material amenity impacts upon the adjoining properties in terms of the loss of significant views, solar access, visual and acoustic privacy.

The proposed modifications, with the exception of the design modifications to the southern (Military Road) façade on Levels 3 and 4, were found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(2) application be approved with modifications to existing conditions of consent and addition of a new condition.

RECOMMENDATION

PURSUANT TO SECTION 4.55 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Planning Panel exercising the functions of Council approve the modification of development consent D269/21 dated 6 March 2022 in respect of a proposal for the redevelopment of the subject site including the demolition of the existing two storey shop top housing building and the construction of a five (5) storey shop top housing (mixed use) development at No. 372 Military Road, Cremorne under the provisions of Section 4.55 of the Environmental Planning and Assessment Act only insofar as will provide for the following:

- 1. To modify the development consent (D269/21) and modify conditions AA1, C40, C41, C42, and C45 to read as follows:**

Deferred Commencement Matters

- AA1. Amended plans, addressing the following matters, must be submitted for the written approval of Council's Manager Development Services:

Design Modifications

- The design of proposed building be modified to provide an 8m setback between the southern building line on Level 4 of the building and the southern (Military Road) property boundary to minimise the visibility of the top level of the proposed building and to provide a more respectful transition of built form and building height for the adjoining heritage listed Orpheum Theatre to the east of the subject site;
- The modified fourth floor (Level 4) southern building line shall match the southern wall of the proposed lift shaft/overrun. The internal layout of the fourth floor shall be modified to provide a three bedroom apartment similar in layout to the other three bedroom apartments proposed on the first and second floor;
- The internal layout of the amalgamated four (4) bedroom apartment on Level 3 shall be accommodated within the Level 3 building envelope of the original DA scheme as shown on Drawing No. DA101 Issue B, dated 18.11.21 and prepared by PA Studio;
- Modifications to the clerestory windows on the roof level, including the removal of the clerestory windows from the southern side of the roof and reduction in the size of the clerestory windows on the northern side of the roof, as shown on Drawing DA102 Issue D, dated 19/07/22 and prepared by PA Studio.

(Reason: To ensure that the development complements the locality in terms of streetscape and heritage significance of the adjoining Orpheum Theatre.)

Section 7.11 Contributions

- C40. 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 Local Infrastructure Contribution Plan 2020 for the public amenities/ services detailed in column A below and, for the amount detailed in column B below, must be paid to Council.

Contribution Categories/Facilities:	Contribution(\$)
Open space and recreation facilities:	\$35,882.05
Public domain:	\$14,715.76
Active transport:	\$839.99
Community facilities:	\$7,207.06
Plan administration and management:	\$875.26
Total:	\$59,520.12

* Contribution required for the current proposal offset by credit from the existing commercial development

The contribution MUST BE paid prior issue of any 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 Local Infrastructure Contribution Plan 2020 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)

Security Deposits/Guarantee Schedule

C41. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security Deposit/Guarantee	Amount (\$)
Footpath Damage Bond	\$30,000.00
Engineering Construction Bond	\$36,000.00
TOTAL BONDS	\$66,000.00

Note: The following fees applicable

Fees	
S7.11 Contribution	\$59,520.12
TOTAL FEES	\$59,520.12

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date. (Reason: Compliance with the development consent)

(Reason: Compliance with the development consent)

BASIX Commitments

- C42. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. 1224852M_04 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Note: A revised BASIX Certificate may be required to reflect the modified design as required by Condition AA1 of this consent.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

TfNSW

- C45 The following TfNSW requirements must be complied with prior to the issue of a Construction Certificate for construction:

- (a) All buildings and structures (other than pedestrian footpath awnings), together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the Military Road boundary.
- (b) Detailed design plans and hydraulic calculations for any changes to the stormwater drainage system that are likely to have an impact upon Military Road are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au.

A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.

- (c) The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2020/001.
- (d) The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to development.sydney@transport.nsw.gov.au.

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

- (e) The developer shall be responsible for all public utility adjustment/relocation works, etc necessitated by the above/approved work and as required by the various public utility authorities and/or their agents.
- (f) The proposed development, noting its use, should be designed, as per the requirements of clause 101 (2)(c) of State Environmental Planning Policy (Infrastructure) 2007 such that it includes measures to ameliorate potential traffic noise or vehicle emissions noise within the site of the development arising from Military Road. These measures shall be certified by an appropriately qualified noise and air quality expert and noted on the plans prior to issue of a construction certificate.
- (g) The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004, AS2890.6-2009 and AS 2890.2 – 2018 for heavy vehicle usage.
- (h) The swept path of the longest vehicle (including garbage trucks, building maintenance vehicles and removalists) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.
- (i) All demolition and construction vehicles are to access site via Parraween Street. A construction zone will not be permitted on Military Road.
- (j) A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Military Road during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>

(Reason: Compliance with TfNSW Requirements)

2. To insert a new condition A5 to read as follows:

Terms of Consent (D269/21/2)

A5. Approval is granted for the following modifications only:

- (a) Amalgamation of Units 301 (3 Bedroom) and 302 (Studio) on Level 3 to create a four (4) bedroom apartment resulting in a reduction in the overall number of apartments within the development from seven (7) to six (6);
- (b) Removal of the clerestory windows from the southern side of the roof;
- (c) Reduction in the size of the clerestory windows on the northern side of the roof;

- and
- (d) Amendments to consent condition C45 (TfNSW Requirements) to allow the requirements to be satisfied prior to the issue of the Construction Certificate for the construction works.

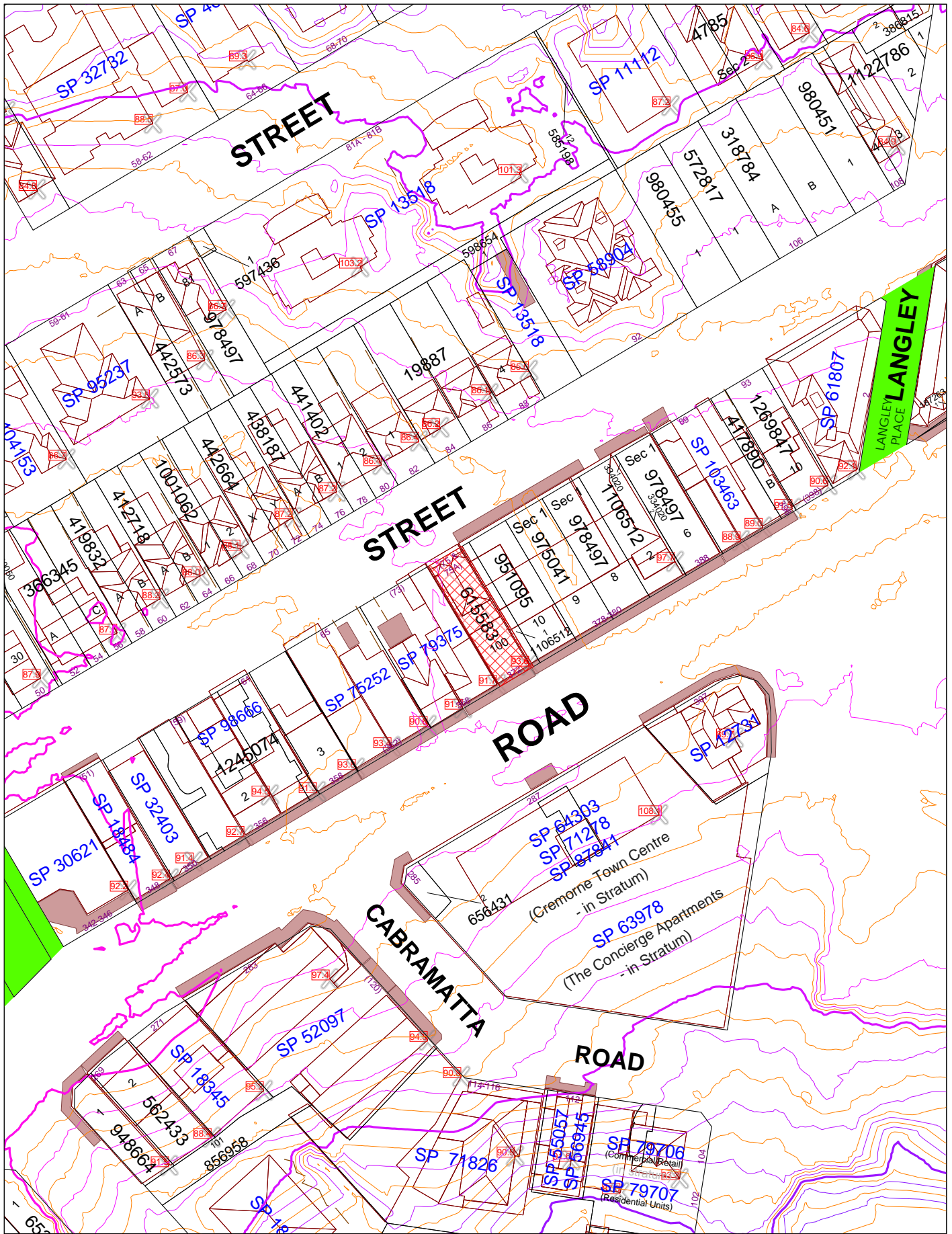
No approval is given or implied in this consent for any other works, both internal and external, particularly the proposed modifications to the southern (Military Road) façade on Levels 3 and 4, within the subject property unless specified in the consent.

(Reason: To ensure the terms of the consent are clear.)

Robin Tse
SENIOR ASSESSMENT OFFICER

Robyn Pearson
TEAM LEADER ASSESSMENTS

Stephen Beattie
MANAGER DEVELOPMENT SERVICES



North Sydney Council

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



Artist's impression - View from Military Road



Artist's impression - View from Parraween Street

DRAWING No.	DESCRIPTION	REV	ISSUED
DA 000	COVER PAGE	C	16/06/22
DA 001	SITE PLAN	B	18/11/21
DA 002	SURVEY	B	18/11/21
DA 003	NOTIFICATION PLAN	C	16/06/22
DA 100	BASEMENT & GROUND FLOOR	C	16/06/22
DA 101	FLOOR PLANS: L1- L3	C	16/06/22
DA 102	FLOOR PLANS: L4 & ROOF PLAN	C	16/06/22
DA 200	SECTION A-A	C	16/06/22
DA 201	SECTION B-B	C	16/06/22
DA 202	SECTIONS C-C AND D-D	C	16/06/22
DA 300	NORTH & WEST ELEVATIONS	C	16/06/22
DA 301	SOUTH & EAST ELEVATIONS	C	16/06/22
DA 400	VIEWS FROM THE SUN JUNE 21	B	18/11/21
DA 500	ADAPTABLE UNIT	B	18/11/21
DA 501	DEMOLITION PLAN	B	18/11/21
DA 502	AREA AND STORAGE SCHEDULES	B	18/11/21
DA 503	SCHEDULE OF COLOURS AND FINISHES	C	16/06/22
DA 504	LANDSCAPE DESIGN	C	16/06/22
DA 505	3D PDF	C	16/06/22
DA 506	PRIVACY LOUVERS DIAGRAM	B	18/11/21
DA 507	3D MODEL VIEWS	C	16/06/22
DA 508	BIN STORAGE DOOR DETAIL	B	18/11/21
DA 600	SHADOW DIAGRAMS FOR 21st MARCH	B	18/11/21

General Notes
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 Notify any errors, discrepancies or omissions to the architect.
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 Do not scale drawings.
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FILE PATH: Z:\PAR75\PAR75 6.pln

Printed 16/06/2022

ISSUE	REVISIONS	DATE	ISSUE	REVISIONS	DATE
			C	UPDATES AS REQUESTED BY COUNCIL	16.06.22
			B	UPDATES AS REQUESTED BY COUNCIL	18.11.21
			A	ORIGINAL ISSUE FOR DA	26.07.21

PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

SCALE: 1:100 @A1 1:200 @A3		COVER PAGE PA STUDIO LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089 TEL: 8968 1900 FAX: 8968 1999 ACN: 603 389 288		DRAWING SET ID:	DA 000	ISSUE C
				SUBSET: GENERAL INFO		
				NOMINATED ARCHITECT	GEORGE REVAY	REG. NO. 3954



STREET VIEW ALONG MILITARY ROAD



STREET VIEW ALONG PARRAWEEN STREET



SITE PLAN 1:500

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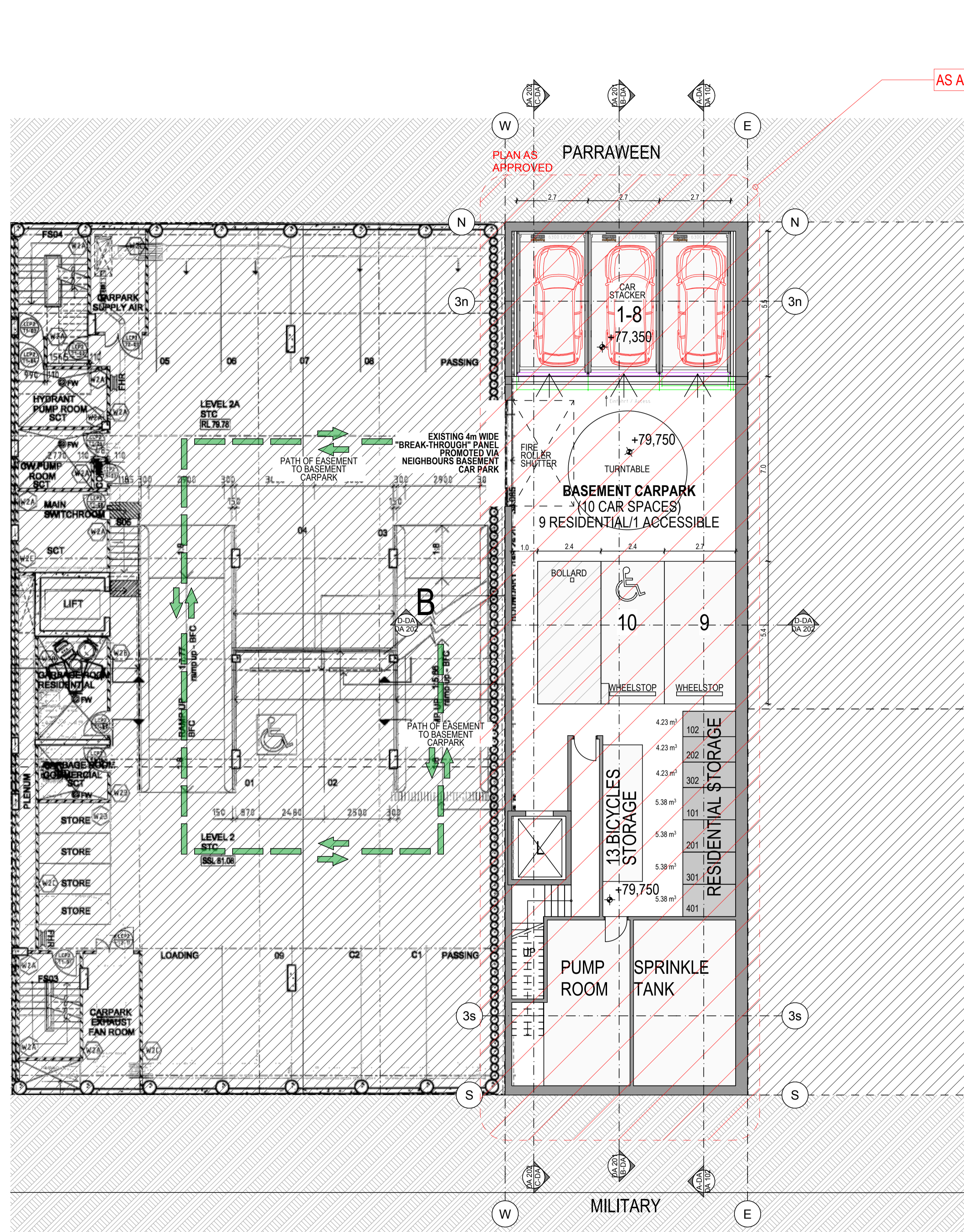
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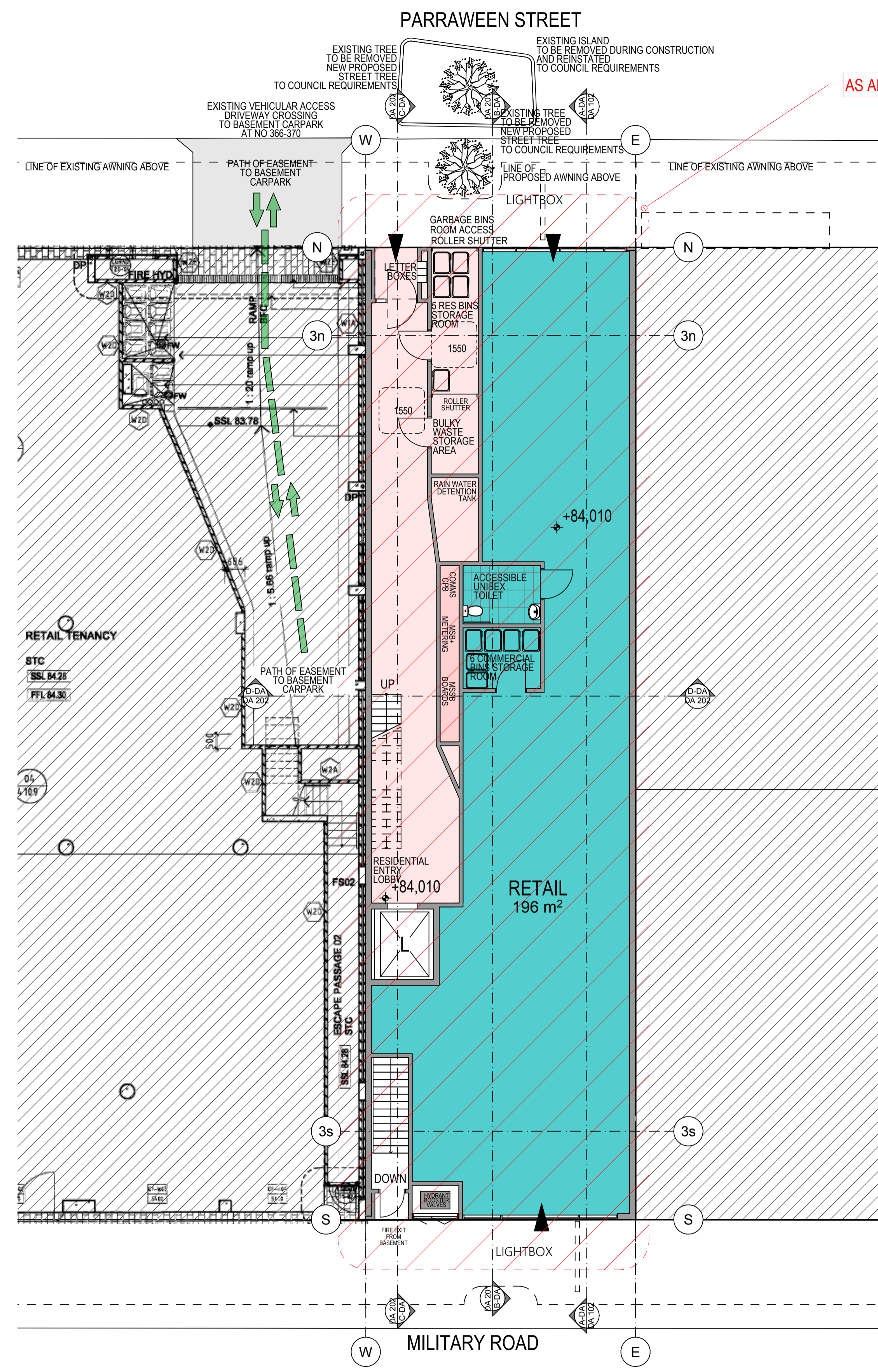
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				B	UPDATE TO COUNCIL GUIDELINES		18.11.21
				A	ORIGINAL ISSUE FOR DA		26.07.21

PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

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		LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089 TEL: 8968 1900 FAX: 8968 1999 ACN: 603 389 288		DRAWN BY: WH	B
				FILE: PAR75 3	
				NOMINATED ARCHITECT: GEORGE REVAY	
				REG. NO. 3954	



BASEMENT FLOOR



GROUND FLOOR

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Printed 16/06/2022

ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
				C	UPDATE TO COUNCIL GUIDELINES		16.06.22
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				A	ORIGINAL ISSUE FOR DA		26.07.21

PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

BASEMENT & GROUND FLOOR

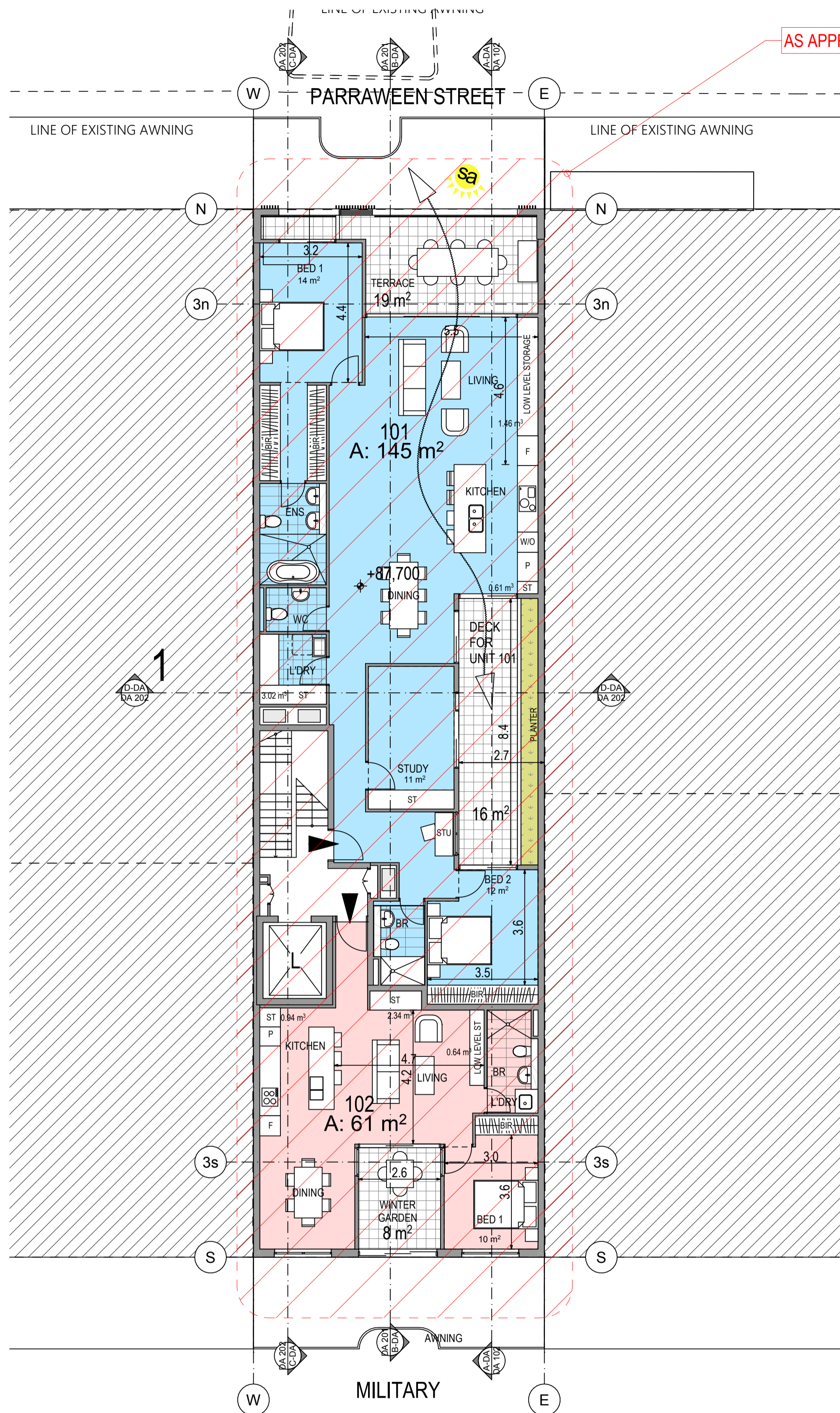
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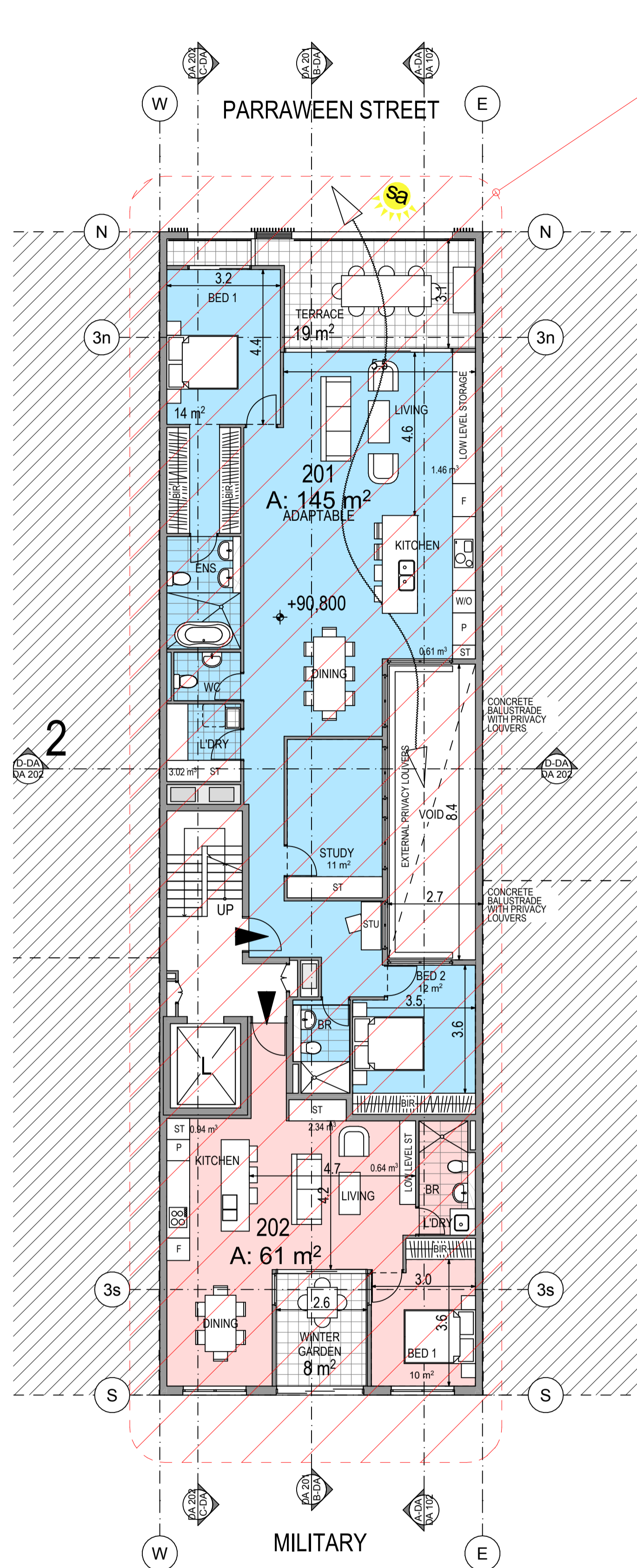
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 FILE: PAR75 6.pln
 NOMINATED ARCHITECT: GEORGE REVAY
 REG. NO. 3954

DA 100

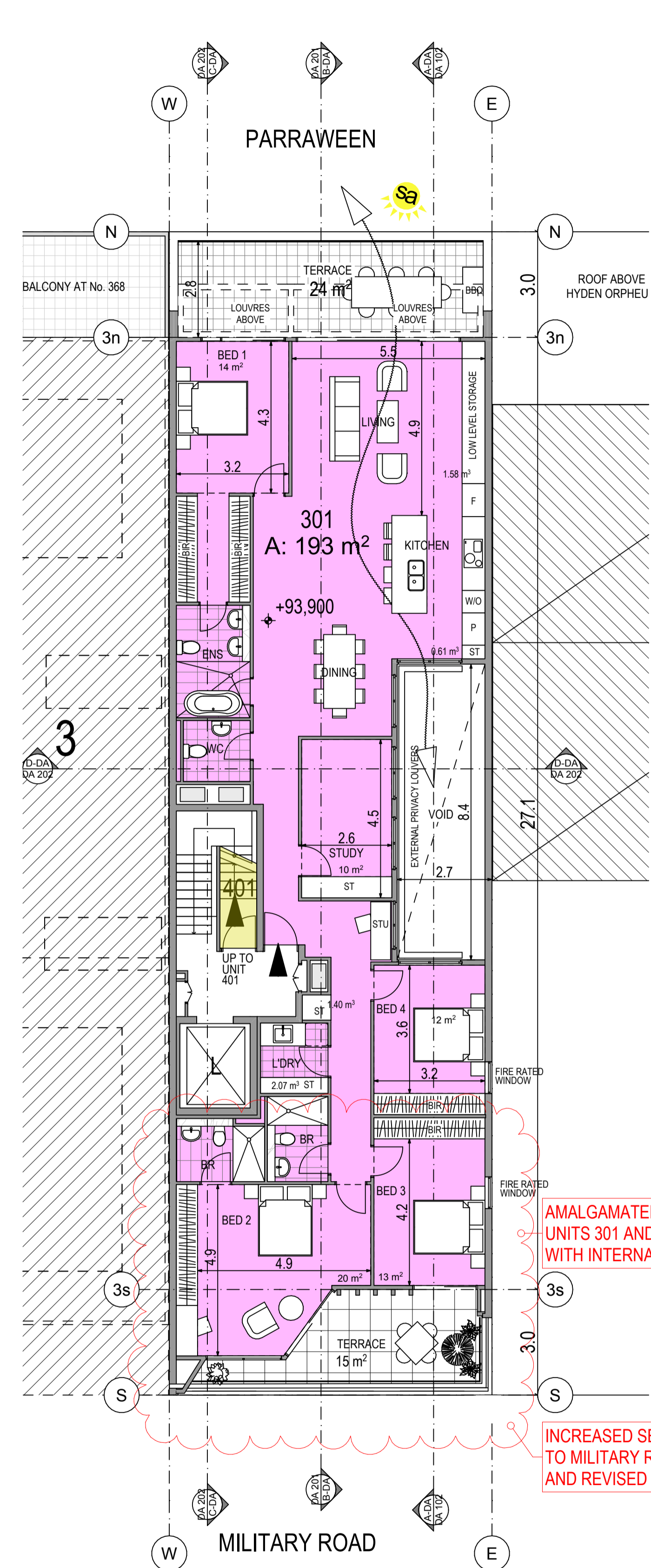
ISSUE
C



FIRST FLOOR 1:100



SECOND FLOOR 1:100



THIRD FLOOR 1:100

AMALGAMATED
UNITS 301 AND 302
WITH INTERNAL LAYOUT CHANGE

INCREASED SETBACK
TO MILITARY ROAD
AND REVISED TERRACE

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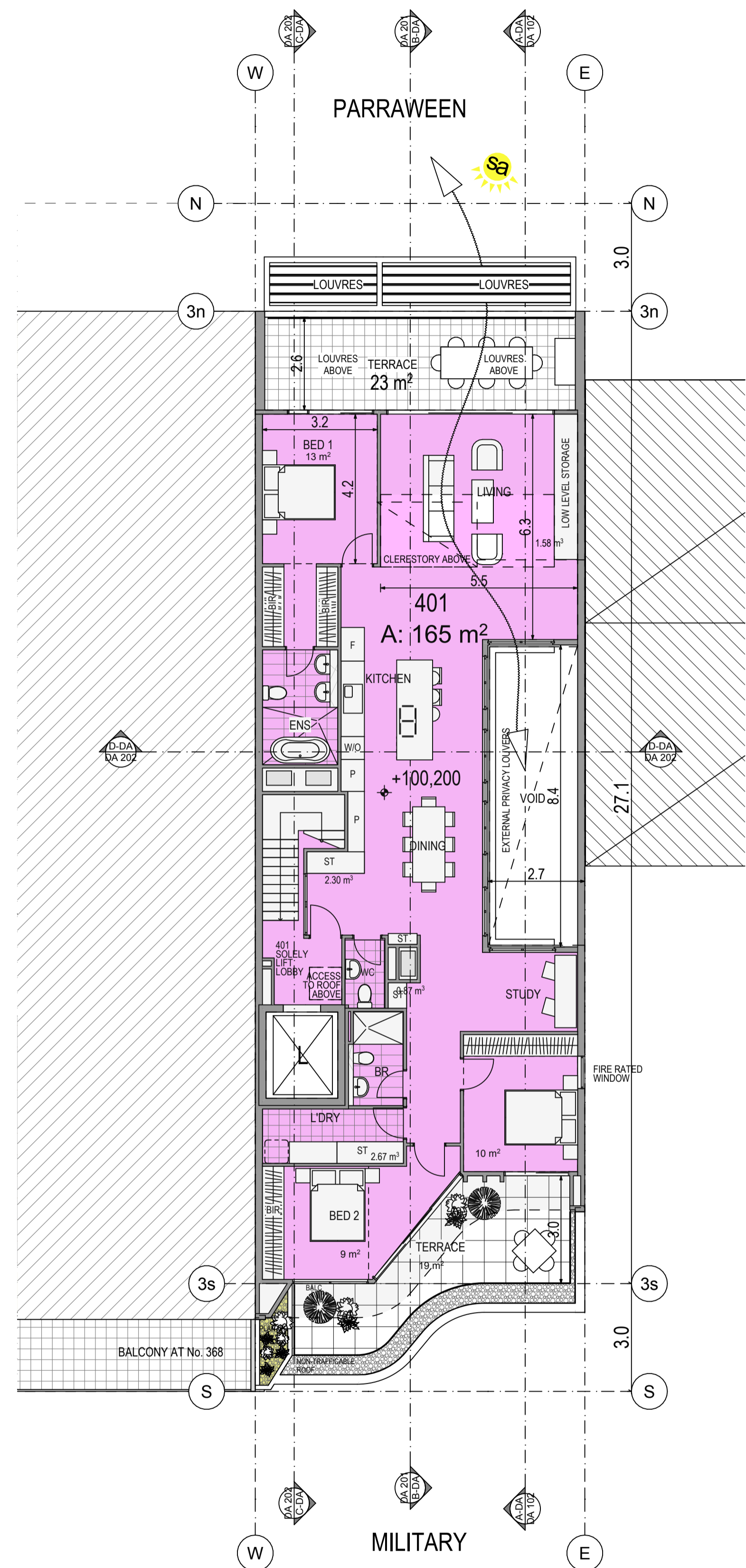
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Printed 16/06/2022

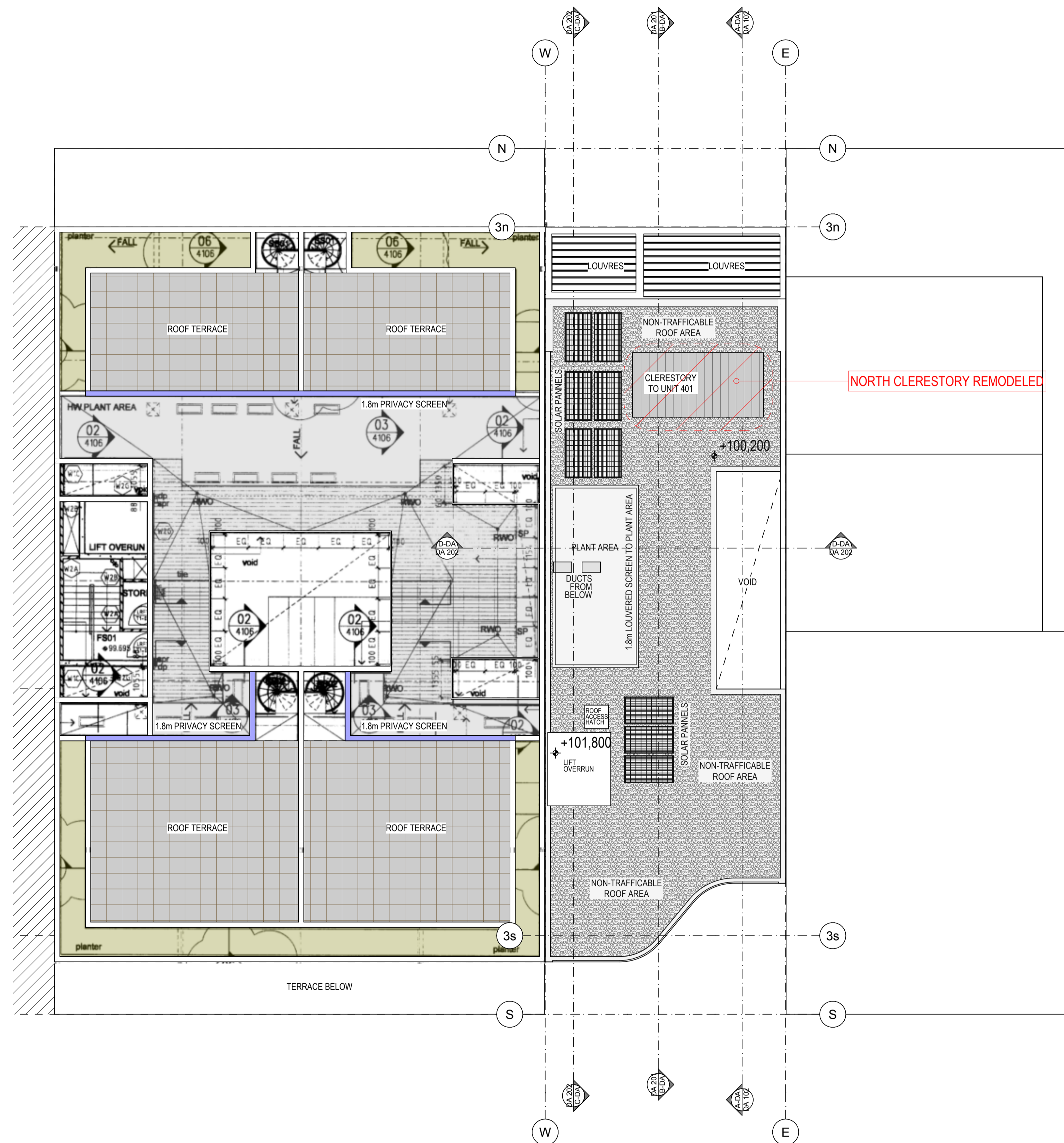
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C	UPDATE TO COUNCIL GUIDELINES		16.06.22
B	UPDATE TO COUNCIL GUIDELINES		18.11.21
A	ORIGINAL ISSUE FOR DA		26.07.21

PROJECT:
MIXED USE DEVELOPMENT
372 MILITARY ROAD CREMORNE NSW 2090

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SCALE: 1:100 @ A1 1:200 @ A3		<p>FLOOR PLANS: L1- L3</p> <p>PA STUDIO</p> <p>LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089 TEL: 8968 1900 FAX: 8968 1999 ACN: 603 389 288</p>	



FOURTH FLOOR
1:100



ROOF
1:100

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				D	UPDATE TO COUNCIL GUIDELINES		19.07.22
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				A	ORIGINAL ISSUE FOR DA		26.07.21

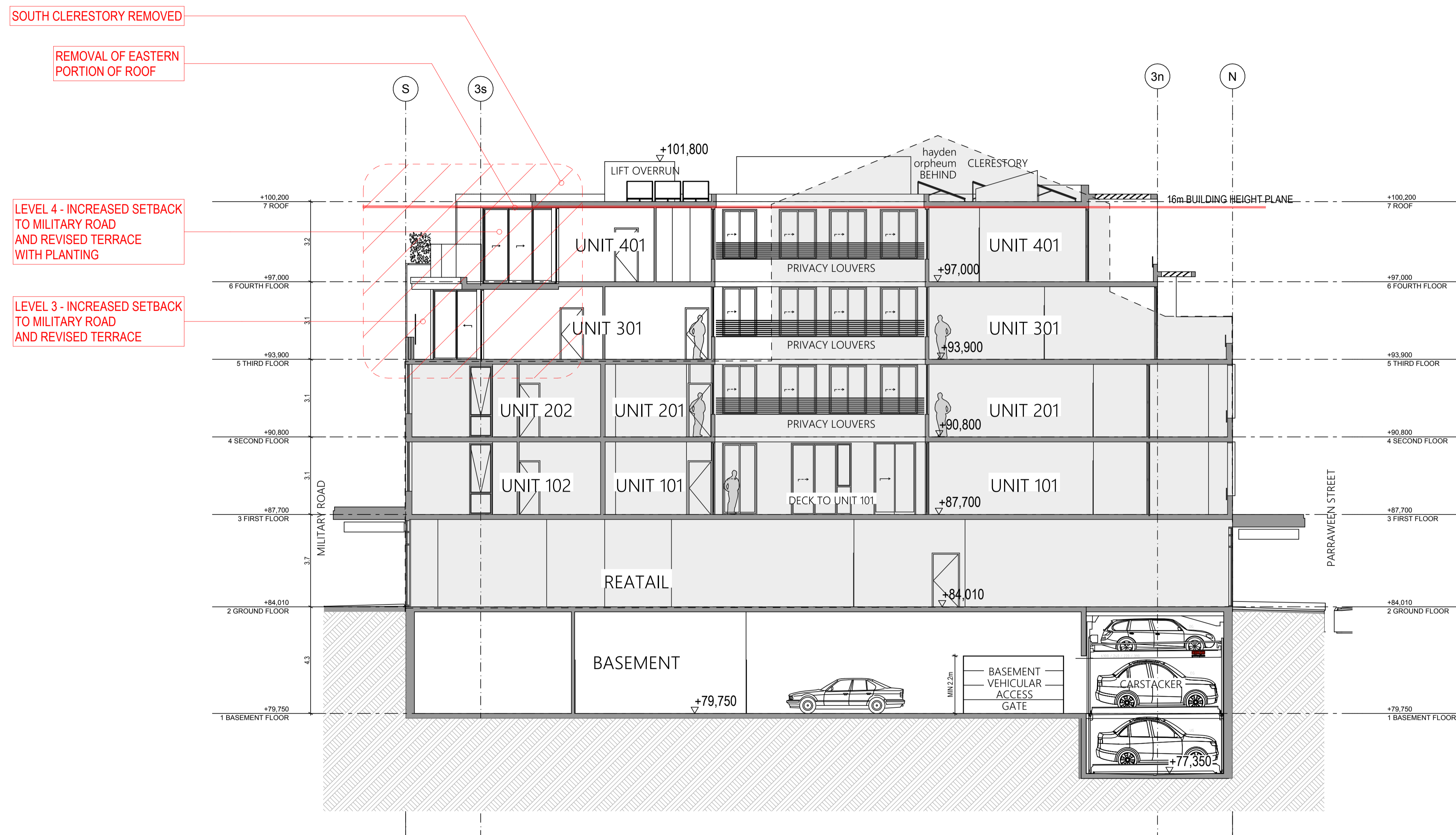
PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

FLOOR PLANS: L4 & ROOF PLAN

SCALE:
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 1:200 @ A3

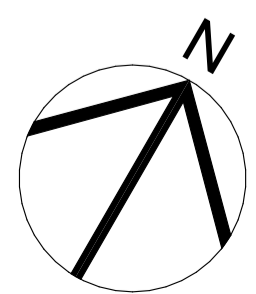
PA STUDIO
 LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089
 TEL: 8968 1900 FAX: 8968 1999 ACN: 603 389 288

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SUBSET: DA PLANS		
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NOMINATED ARCHITECT	GEORGE REVAY REG. NO. 3954	



SECTION A-A

1:100



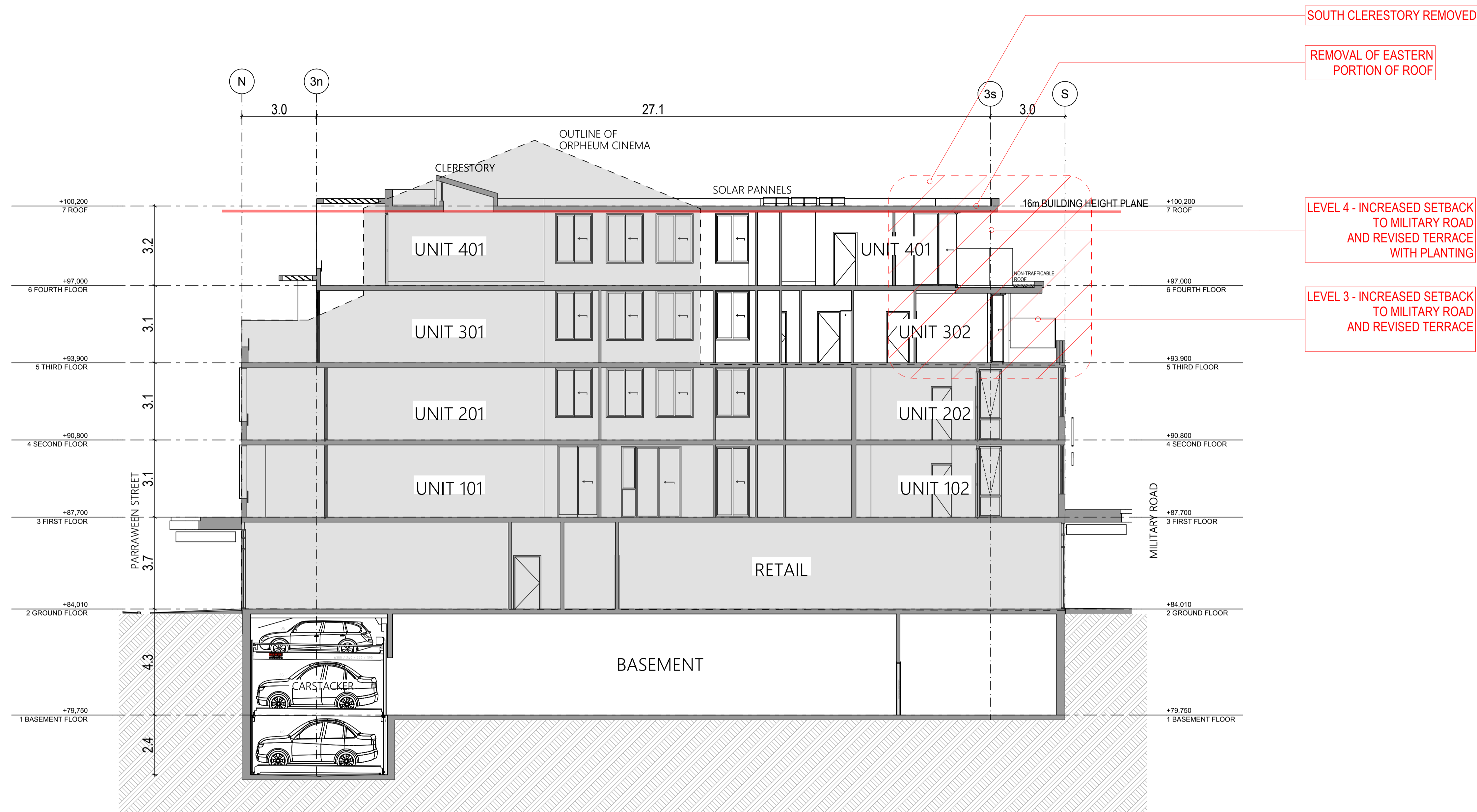
General Notes
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ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
				C	UPDATE TO COUNCIL GUIDELINES		16.06.22
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PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

SCALE: 1:100 @ A1 1:200 @ A3		SECTION A-A		DRAWING SET ID: SUBSET: DA SECTIONS	DA 200	C
		P A S T U D I O		DRAWN BY: WH		
		LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089 TEL: 8968 1900 FAX: 8968 1999 ACN: 603 389 288		FILE: PAR75 6.pln NOMINATED ARCHITECT: GEORGE REVAY REG. NO. 3954		



SECTION B-B

1:100

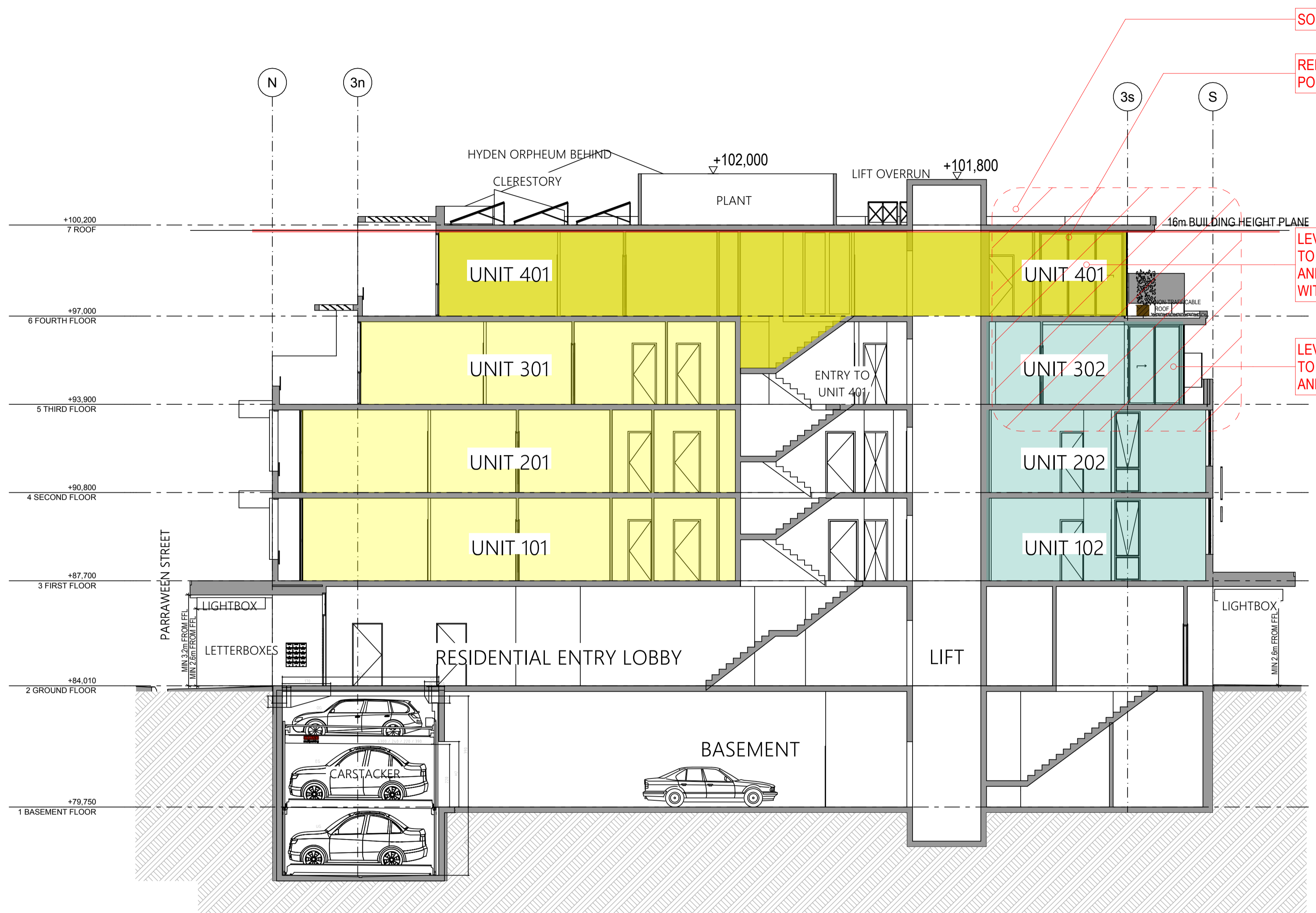
General Notes
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				A	ORIGINAL ISSUE FOR DA		26.07.21

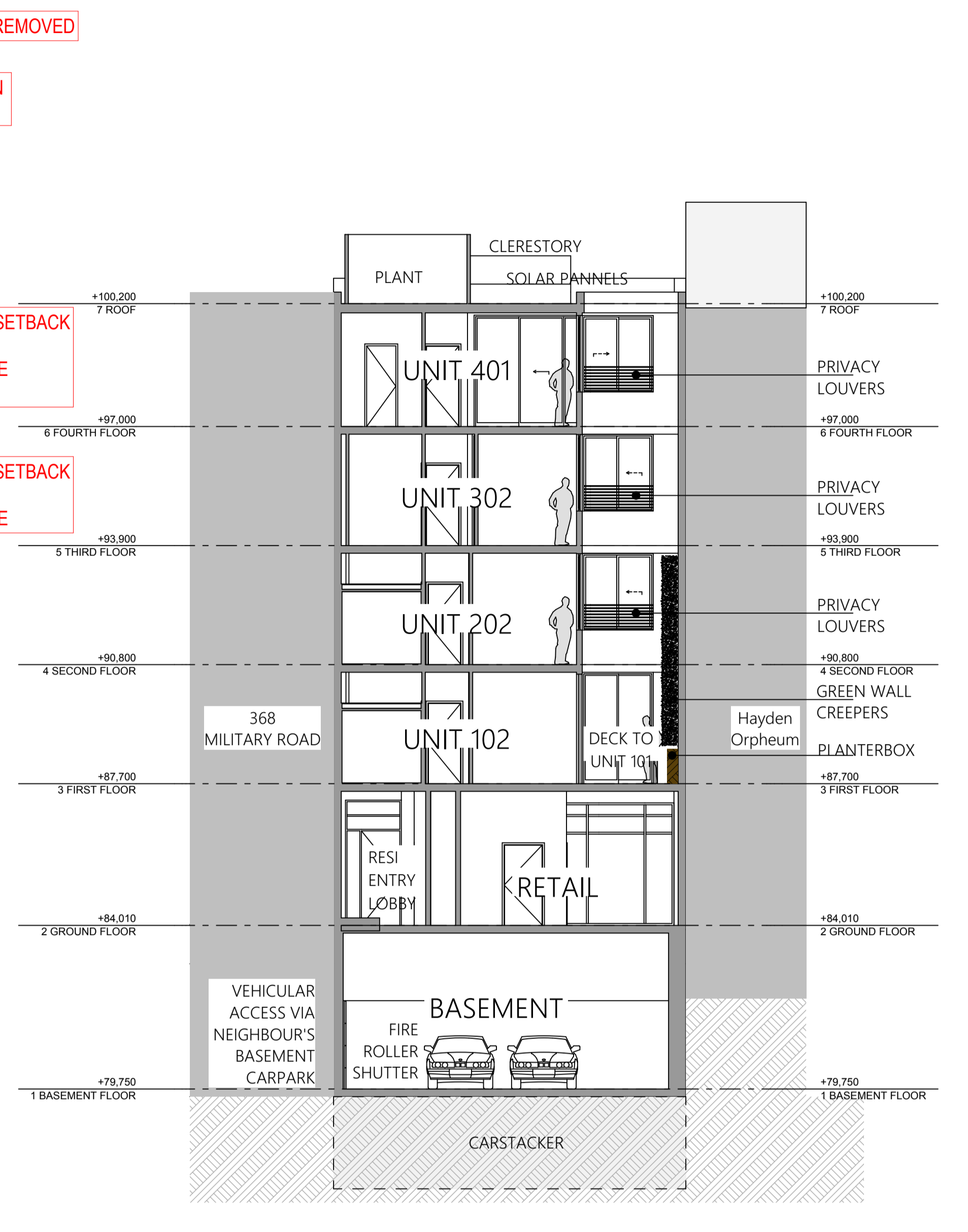
PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

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LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089 TEL: 8968 1900 FAX: 8968 1999 ACN: 603 389 288		DRAWN BY: WH			
		FILE: PAR75 6.pln	NOMINATED ARCHITECT	GEORGE REVAY	REG. NO. 3954



SECTION C-C

1:100



SECTION D-D

1:100

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				C	UPDATE TO COUNCIL GUIDELINES		16.06.22
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				A	ORIGINAL ISSUE FOR DA		26.07.21

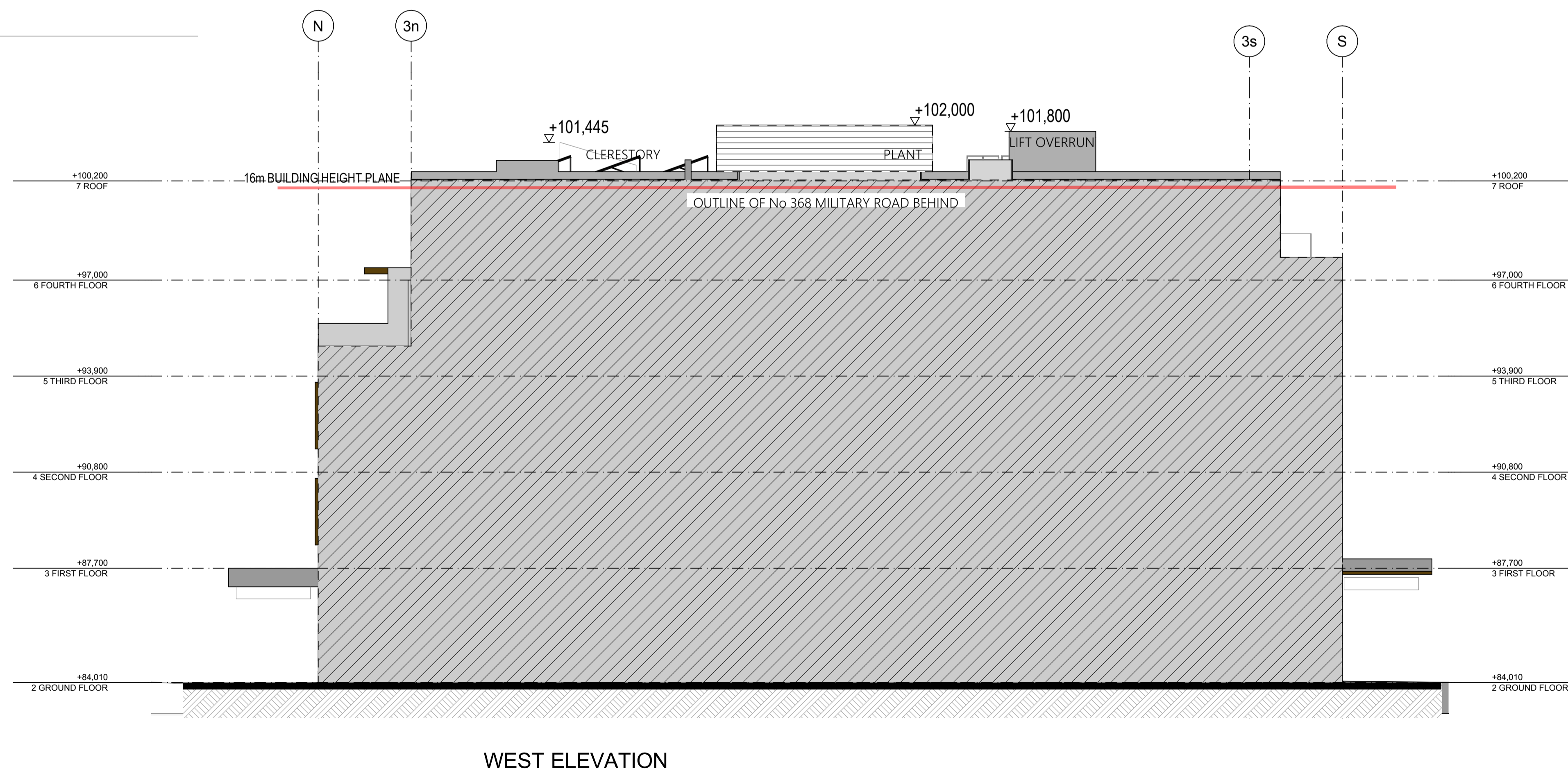
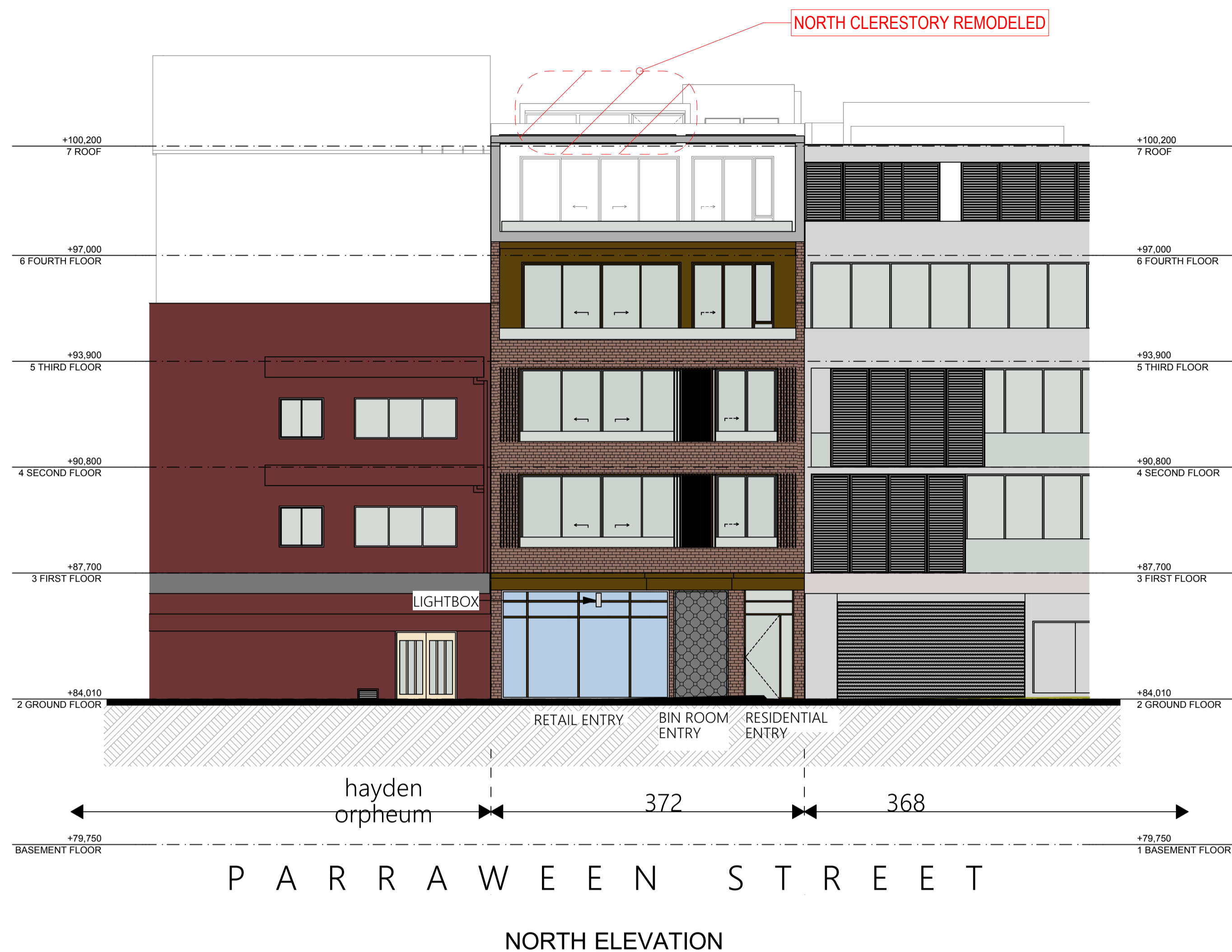
PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

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

SECTIONS C-C AND D-D

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 LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089
 TEL: 8968 1900 FAX: 8968 1999 ACN: 603 389 288

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SUBSET: DA SECTIONS		
DRAWN BY: WH		
FILE: PAR75 6.pln		
NOMINATED ARCHITECT: GEORGE REVAY		
REG. NO. 3954		



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Printed 19/07/2022

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ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
				D	UPDATE TO COUNCIL GUIDELINES		19.07.22
				C	UPDATE TO COUNCIL GUIDELINES		16.06.22
				B	UPDATE TO COUNCIL GUIDELINES		18.11.21
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PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

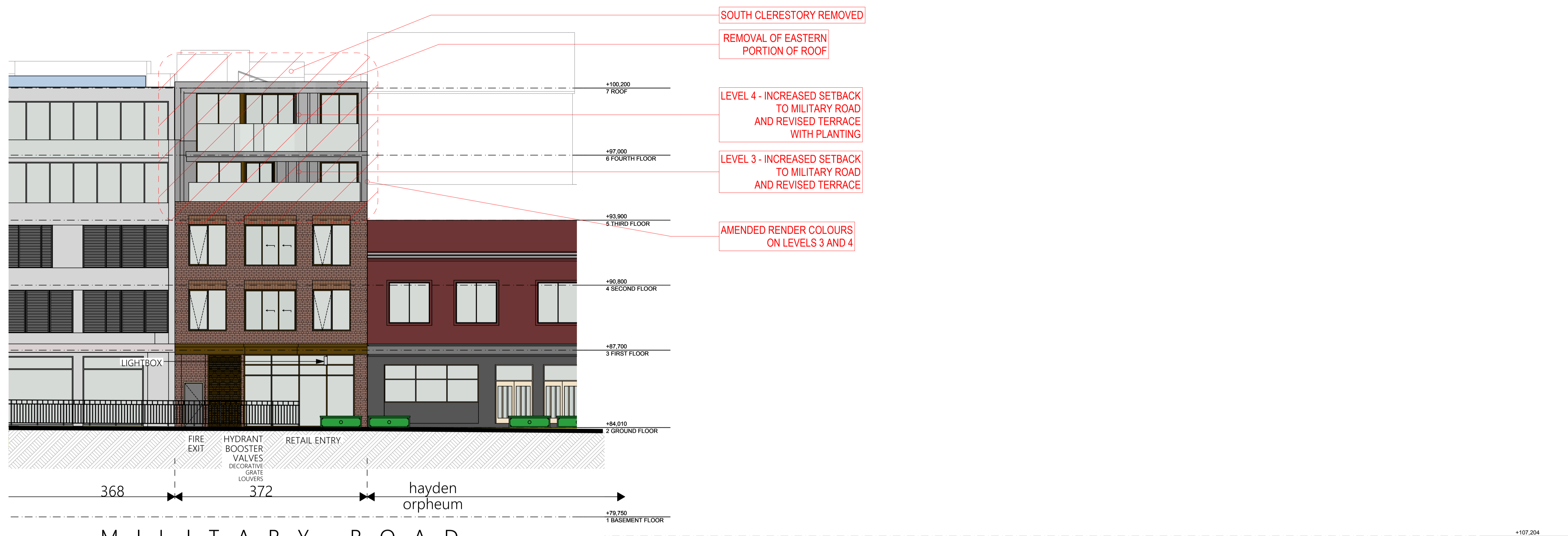
NORTH & WEST ELEVATIONS

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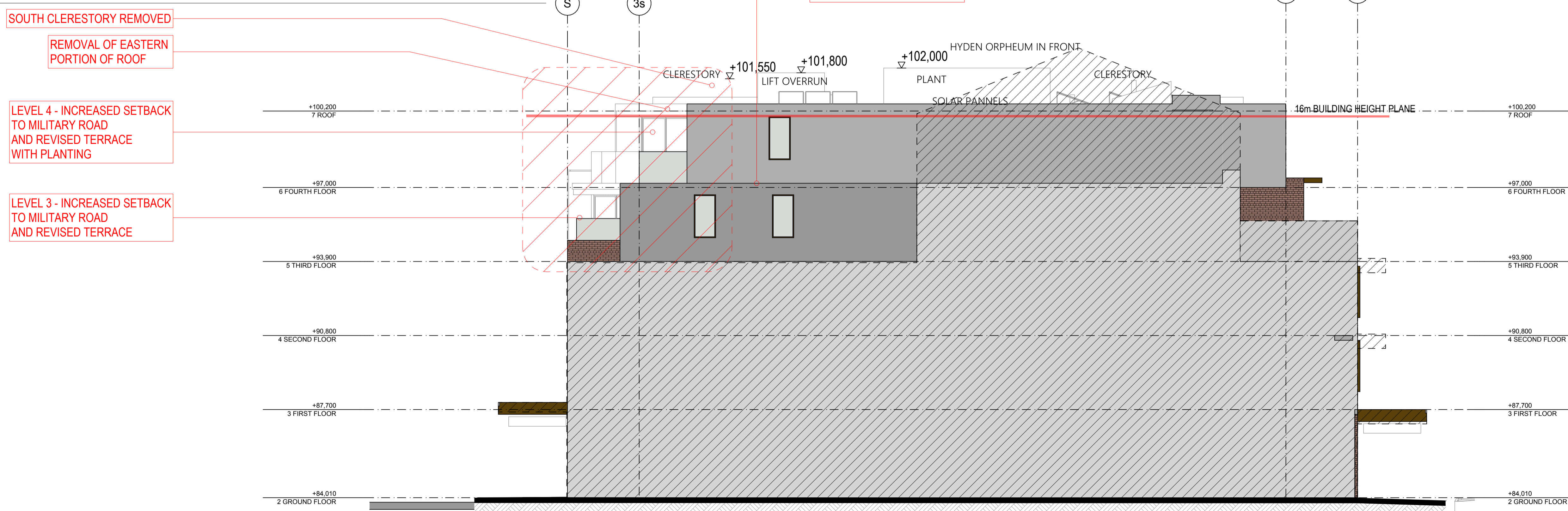
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LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089
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SUBSET: DA ELEVATIONS		
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NOMINATED ARCHITECT: GEORGE REVAY REG. NO. 3954		



SOUTH ELEVATION WITH NEIGHBOURS



EAST ELEVATION

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				C	UPDATE TO COUNCIL GUIDELINES		16.06.22
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				A	ORIGINAL ISSUE FOR DA		26.07.21

PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

DRAWING SET ID: SUBSET: DA ELEVATIONS		DA 301 C	ISSUE
DRAWN BY: WH			
FILE: PAR75 6.pln			
NOMINATED ARCHITECT: GEORGE REVAY		REG. NO. 3954	

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

PASTUDIO
 LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089
 TEL: 8968 1900 FAX: 8968 1999 ACN: 603 389 288



3D PDF



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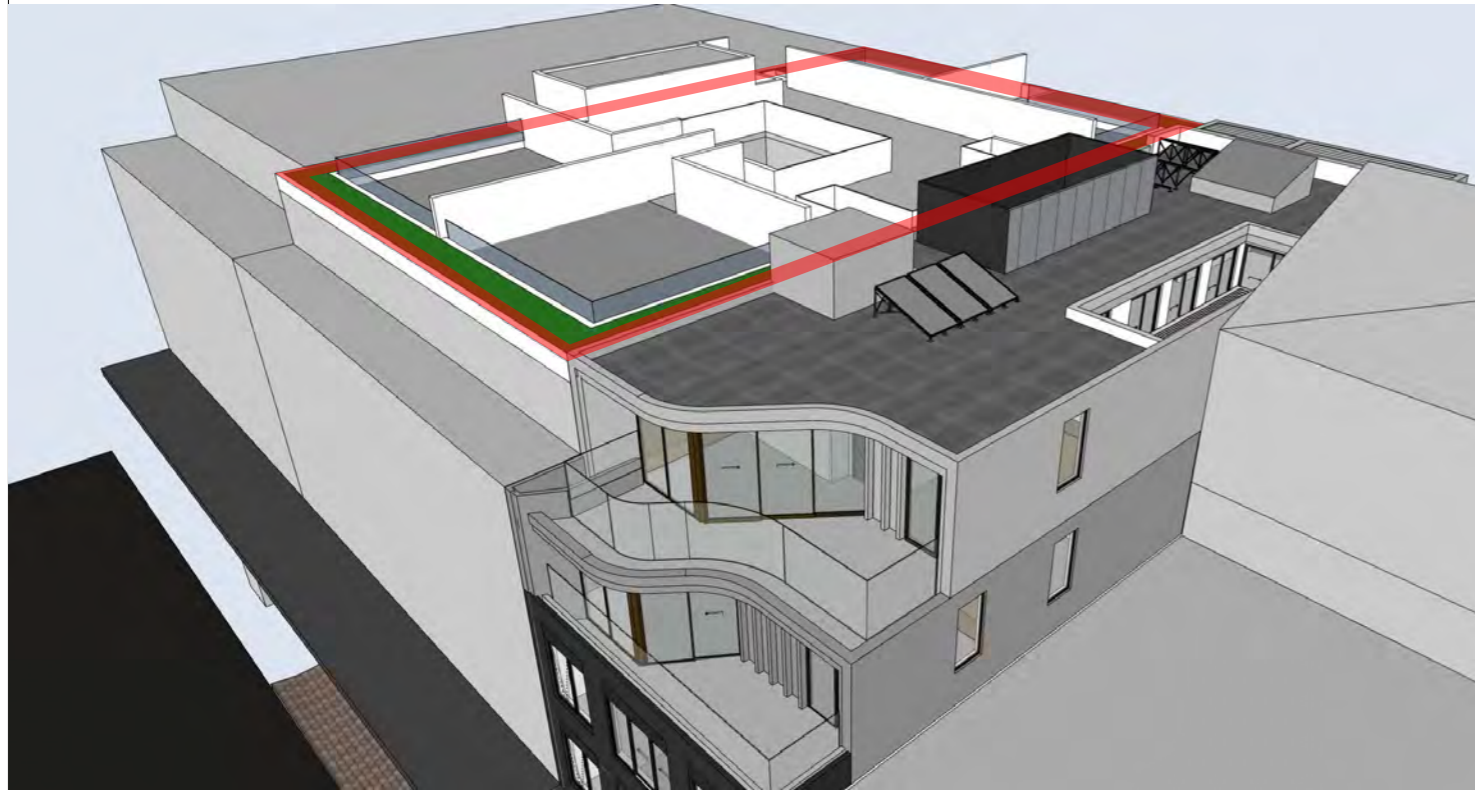
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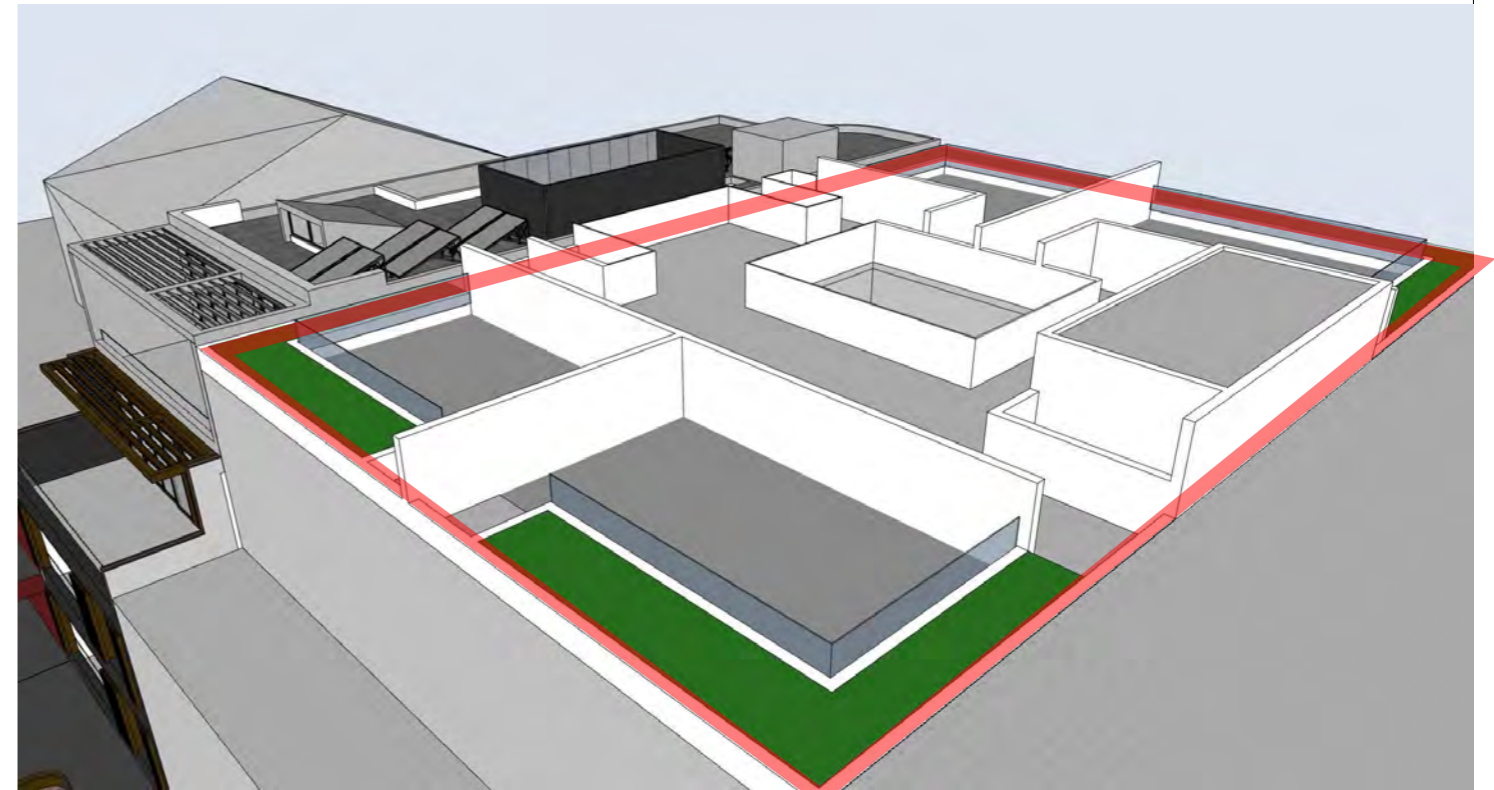
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PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

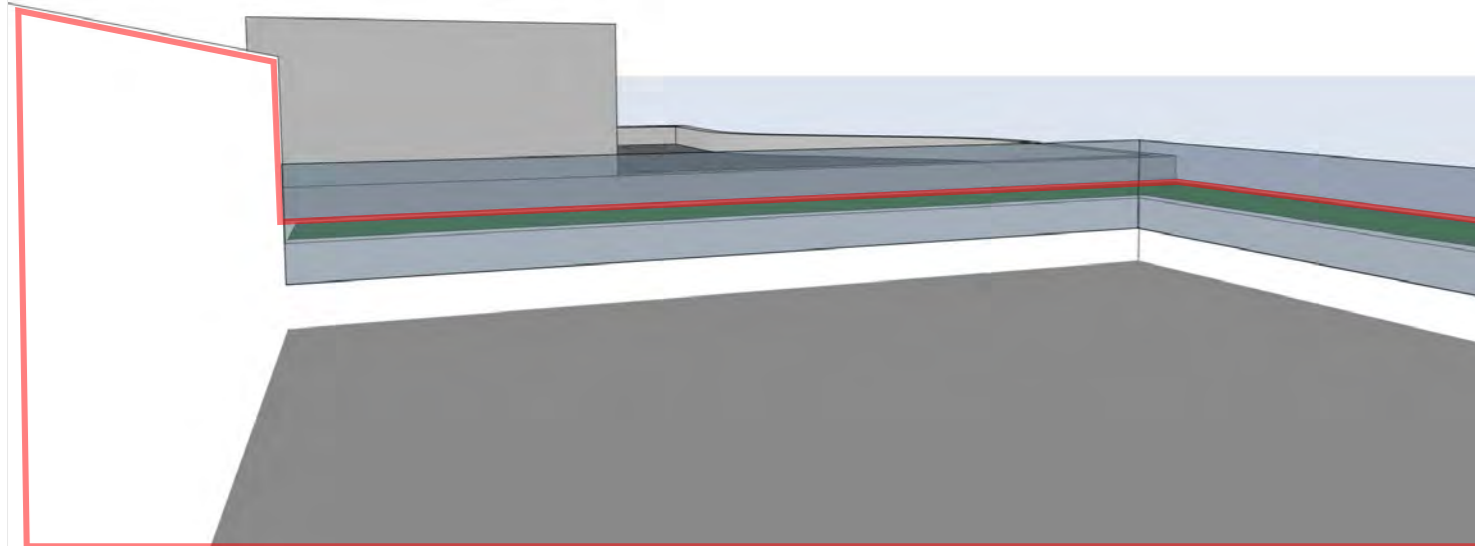
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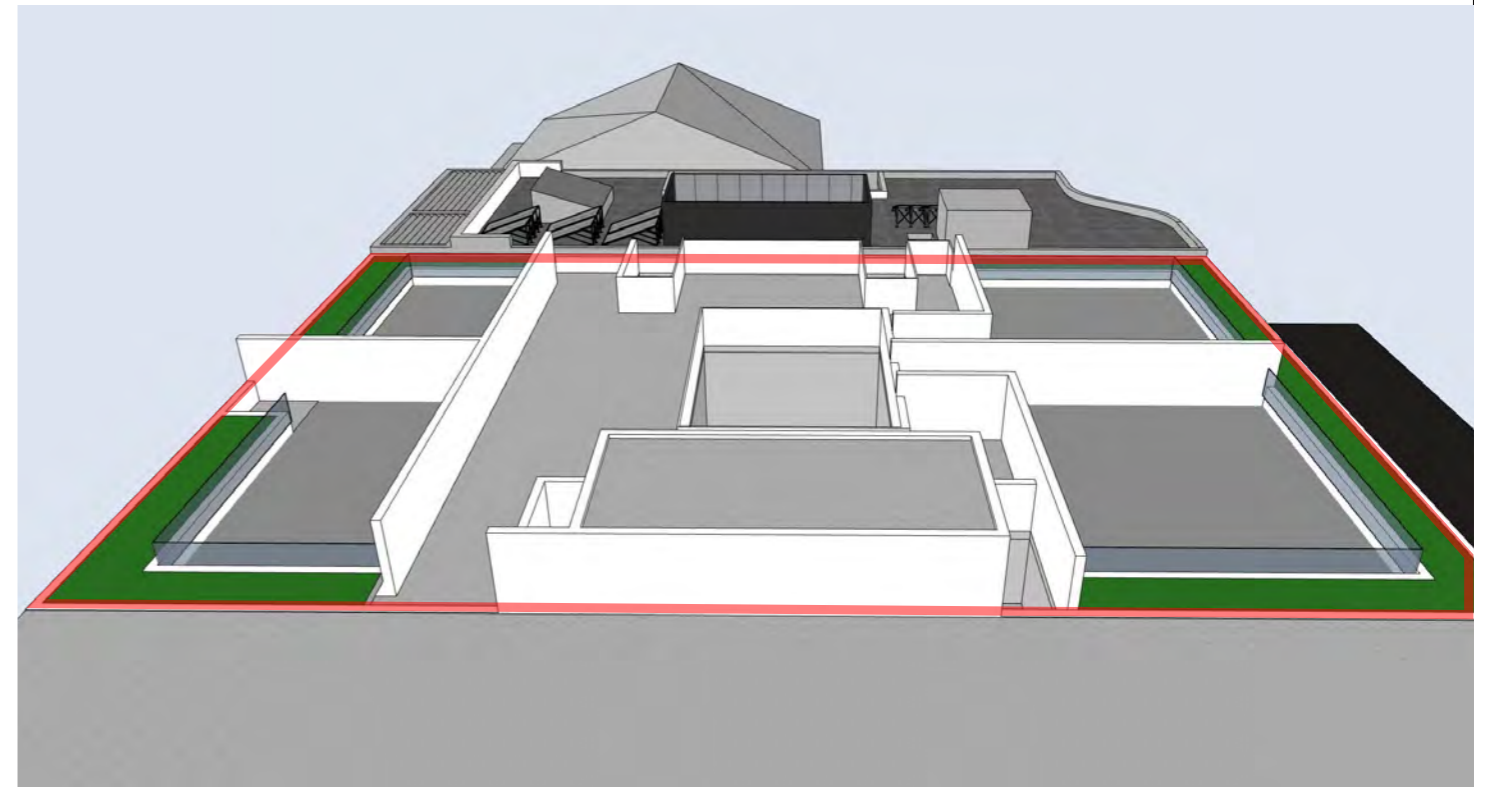
VIEW LOOKING NORTH-WEST



VIEW LOOKING SOUTH-EAST



VIEW FROM ROOF TERRACE LOOKING SOUTH-EAST



VIEW LOOKING EAST

ROOF AREA OF No 368 MILITARY ROAD MARKED RED



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PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

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