

**NSLPP MEETING HELD ON 06/04/22****Attachments:**

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Statement

ADDRESS/WARD: 372 Military Road (aka 75 & 75A Parraween Street), Cremorne (C)**APPLICATION No:** D269/21**PROPOSAL:** Demolition of the existing shop top housing and construction of a five (5) storey shop top housing containing seven (7) apartments, a ground floor retail tenancy and basement parking.**PLANS REF:**

Plan No.	Description	Prepared by	Dated
DA100 Issue B	Basement & Ground Floor	PA Studio	18/11/21
DA 101 Issue B	Floor Plans: L1 - L3	PA Studio	18/11/21
DA 102 Issue B	Floor Plans: L4 & Roof Plan	PA Studio	18/11/21
DA 200 Issue B	Section A-A	PA Studio	18/11/21
DA 201 Issue B	Section B-B	PA Studio	18/11/21
DA 202 Issue B	Section C-C & D-D	PA Studio	18/11/21
DA 300 Issue B	North and West Elevations	PA Studio	18/11/21
DA 301 Issue B	South & East Elevations	PA Studio	18/11/21

OWNER: Canopy Investment Holding Pty Ltd**APPLICANT:** Platino Properties Pty Ltd**AUTHOR:** Robin Tse, Senior Assessment Officer**DATE OF REPORT:** 28 March 2022**DATE LODGED:** 6 September 2021**RECOMMENDATION:** Approval (Deferred Commencement)

EXECUTIVE SUMMARY

This development application seeks approval for demolition of the existing two (2) storey shop top housing building and the construction of a five (5) storey shop top (mixed use) development containing seven (7) apartments, a ground floor commercial/retail tenancy and basement parking with an underground vehicular access across the property boundary to the basement of the adjoining mixed use development at No.368 Military Road including the shared use of an existing driveway off Parraween Street.

The application is reported to North Sydney Local Planning Panel for determination as the proposal is subject to SEPP 65, a variation to the building height development standard that is greater than 10% and received more than 10 submissions, which requires determination of the application by the Panel as directed by the Director of Planning and the Environment.

Notification of the original and the amended proposal has attracted a total of sixteen (16) submissions including multiple submissions from two submitters. The concerns raised in the submissions include the appropriateness of the proposed development adjacent to a heritage listed item, impacts of works associated with the underground vehicular access to the adjoining property, view loss, overshadowing and traffic/parking impacts. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

The subject site is located to west of the heritage listed Orpheum Theatre. A deferred commencement condition is recommended requiring additional setback for the southern side on the fourth floor to provide a more sympathetic transition of built form and building height for the Orpheum Theatre (**Condition AA1**).

Consideration has been given to a written request submitted by the applicant seeking a variation to Clause 4.3 in North Sydney LEP concerned with the height of buildings height pursuant to Clause 4.6 of the LEP. It is considered that the variation to the building height development standard could be supported because the building elements in breach of the LEP building height development standard would not cause material impacts on the amenity of the adjoining properties as well as the character of the locality subject to the imposition of the deferred commencement condition.

The issues raised in the submissions have been addressed in the report.

Having regard to the provisions of Section 4.15(1) of the EP&A Act 1979 the application is considered to be satisfactory and therefore can be approved subject to the imposition of the deferred commencement condition (**Condition AA1**).

DESCRIPTION OF PROPOSAL

The proposal seeks NSLPP approval 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.

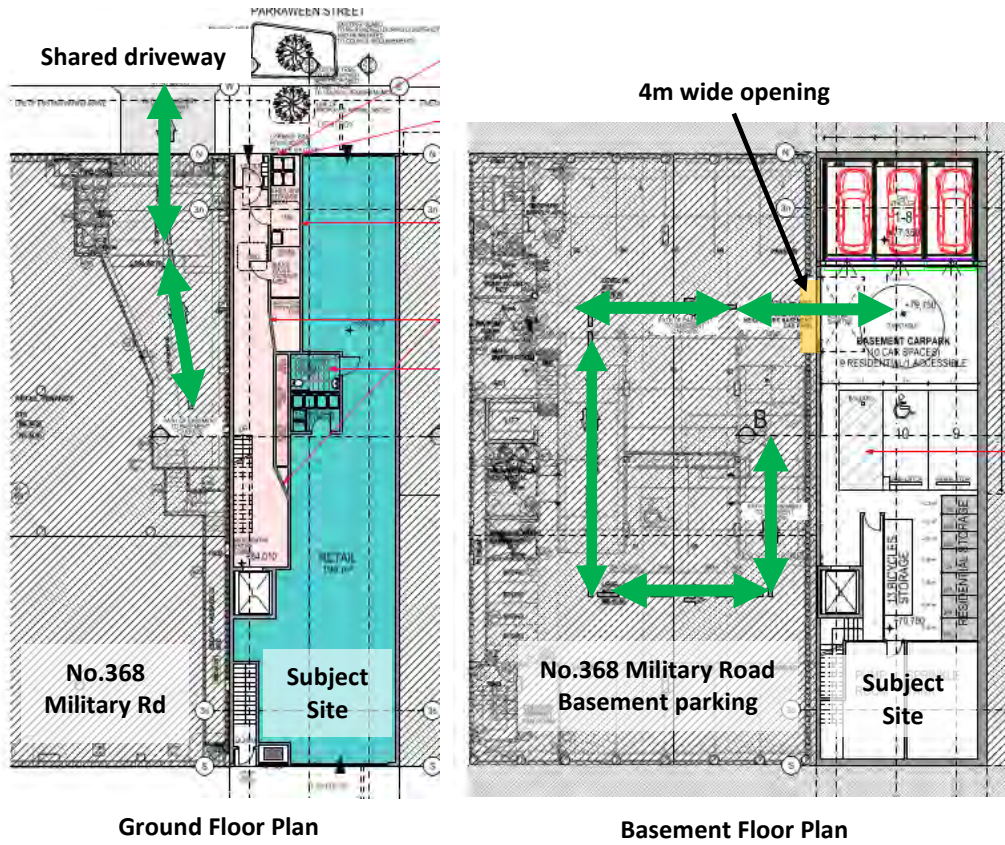
The proposed works are summarised as follows:

- (a) Demolition of the existing two (2) storey shop top housing building containing three (3) ground floor retail/commercial tenancies and two (2) apartments on the first floor;
- (b) Construction of a five (5) storey shop top housing (mixed use) development containing the following:
 - Basement – ten (10) parking spaces including eight (8) stacked parking spaces, bicycle parking/storage area, residential garbage storage room, a pump room and a fire sprinkler tank room. Vehicular access to the basement is provided via the basement of the adjoining property at No.368 Military Road;
 - Ground Floor – A retail tenancy (136sqm) with dual shop frontages to Military Road and Parraween Street, residential entrance and lift foyer and garage bin storage and bulky waste storage room;
 - First Floor – Two (2) apartments: 1 x 1 bedroom unit (61sqm) and 1 x 3 bedroom unit (145sqm);
 - Second Floor – Two (2) apartments: 1 x 1 bedroom unit (61sqm) and 1 x 3 bedroom unit (145sqm);
 - Third Floor – Two (2) apartments: 1 x Studio (42sqm) and 1 x 4 bedroom unit (155sqm);
 - Fourth Floor – One (1) apartment: 1 x 4 bedroom unit (177sqm); and
- (c) Construction of a 4m wide opening through the eastern boundary wall on the basement level of the adjoining property to the west at No.368 Military Road.

This opening on the property boundary will provide an inter-allotment vehicular access to the subject site via the basement of the adjoining mixed use development at No.368 Military Road including the shared use of the existing driveway to No.368 Military Road off Parraween Street as shown on **Figures 3 and 4**. Owners consent for this aspect of the proposed works has been granted by the body corporate of No.368 Military Road.



Figures 1 & 2: Proposed Development



Figures 3 & 4: Proposed Vehicular Access via No.358 Military Rd



Figures 6 & 7: Montages

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 (Biodiversity and Conservation) 2021
- SEPP (Resilience and Hazards) 2021
- SEPP 65 – Design Quality of Residential Apartment Development
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Transport and Infrastructure) 2021
- SEPP (Housing) 2021
- Local Development
- North Sydney Local Infrastructure Contributions Plan 2020

POLICY CONTROLS

DCP 2013

Apartment Design Guidelines (ADG)

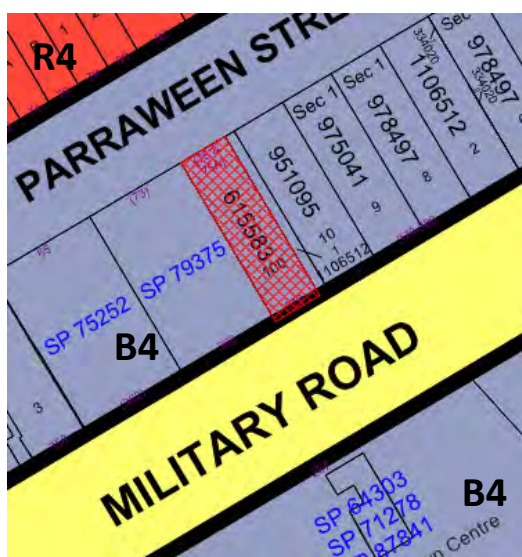


Figure 8: Zoning



Figure 9: Building Height

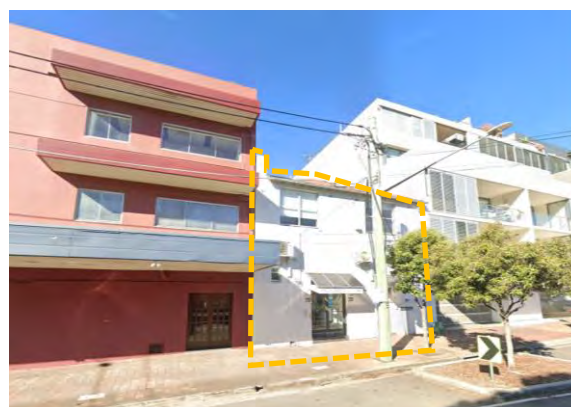
DESCRIPTION OF LOCALITY

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 saloon 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 10 & 11: 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).

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.



Figure 12: The Locality

RELEVANT HISTORY

Previous applications

- **30 September 2002** – Development Consent (**D292/02**) was granted by Council for demolition of existing buildings and construction of a mixed use development with basement parking on No.368 Military Road, Cremorne (formerly known as Nos. 366-370 Military Road). Condition C23 in the Development Consent required the creation of a right of way over the driveway and within the carpark level 1 and 2 within the approved development to provide vehicle access to a future basement carpark at No. 372 Military Road (subject site). The right of way is to be in the form of a s88B instrument as part of the strata plan.
- **21 September 2006** – Construction Certificate (**CC016-104**) for the approved development at No.368 Military Road was issued by the Principal Certifier. It is noted from the structural drawings submitted as part of the Construction Certificate for the adjoining property at No.368 Military Road that consideration has been given to the design of the shoring walls along the property boundary with No.372 Military Road to facilitate the creation of a future opening through to the basement of the subject site.
- **16 July 2008** – The strata subdivision plan for No.368 Military Road (SP79375) was registered with the Lands Title Office together with an 88B for the creation of the right of access burdening No.368 Military Road and benefit the subject site.
- **28 February 2014** – Development Consent (**D444/13**) was approved under delegated authority for the conversion of the first floor within the existing building for 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.

Current Application

- **6 September 2021** – The subject Development Application (**D269/21**) for the demolition of the existing building and the construction of a five (5) storey mixed use building was lodged with Council
- **17 September to 1 October 2021** – The owners of the adjoining properties and the Harrison and Brightmore Precincts were notified for 14 days. The notification attracted eleven (11) submissions including five (5) submissions from two (2) submitters.
- **12 October 2021** – The proposal was considered by Council's Design Excellence Panel (DEP).
- **23 November 2021** – A letter was sent to the applicant requesting amended plans in order to address issues raised by the DEP and Council officers.
- **10 January 2022** – The applicant submitted amended plans in response to the matters raised by the DEP and Council officers.
- **28 January to 11 February 2022** – The owners of the adjoining properties and the Harrison and Brightmore Precincts were notified for 14 days. The notification attracted five (5) submissions.
- **28 January 2022** – The applicant submitted owners consent from the owners corporation of the adjoining mixed used building to the west (No.368 Military Road) for the works associated with the break-through wall to provide vehicular access to the basement of the proposed development.

- **February 2022** – The application was re-allocated to the current Assessing Officer
- **21 March 2022** – The applicant submitted additional information about the design of the proposed car stacking system.

INTERNAL REFERRALS

National Construction Code (NCC)

The application has not been assessed in respect of the NCC, however the Act requires that Council impose a condition of consent requiring compliance with the NCC. Should significant amendments be needed to achieve compliance with the NCC or to obtain a Construction Certificate, a further Section 4.55 modification may be required.

Engineering

The application, including the amended plans, have been referred to Council's Development Engineer who raised no in-principle objection to the proposed development subject to the imposition of appropriate engineering conditions.

Comment:

The conditions recommended by Council's Senior Development Engineer are noted and concurred with. In particular specific conditions requiring dilapidation survey for the adjoining properties and the requirement for shoring of the adjoining properties to ensure the protection of existing public infrastructure and the adjoining private properties (**Conditions C5 & C6**).

In addition, the applicant has submitted a statement from the structural engineering detailing the measures required to ensure structural integrity of the basement walls and the adjoining properties. A condition requiring the submission of a report detailing the structural adequacy of the adjoining properties, including the mixed use building at No.368 Military Road, is recommended to ensure the protection and structural adequacy of the adjoining properties during the excavation works (**Condition C7**).

Traffic

The application was referred to Council's Traffic and Transport Engineer who provided the following comments in relation to traffic generation and the proposal for stack packing and the recommendation:

- **Traffic Generation** - *The proposed development will not have unacceptable traffic implications in terms of road network capacity.*
- **Car Stacker** – *Given that the subject basement car park would be accessible from the basement car of the adjoining property, there would be no queuing of cars on the access driveway on the street level due to the operation of a car stacker.*

Conclusion

It is recommended that the applicant address the following matters:

- *Removal of one (1) parking space;*
- *Provision of one (1) motorcycle parking space in accordance with Council's DCP motorcycle parking requirement; and*

- *Provision of a car wash bay to comply with Council's DCP.*

It is also recommended that the following conditions be imposed to ensure proper management of construction traffic and compliance with the Australian Standards that are applicable to parking facilities:

- *A Construction Management Plan be prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of the Construction Certificate (Condition B2); and*
- *All aspects of the carpark comply with the Australian Standard AS2890.1 Off-Street Parking.*

Comment:

The comments from Council's Traffic and Transport Engineer are noted and generally concurred with.

Given the confined nature of the basement car park and the modest scale of the proposed development containing seven (7) apartments, the provision of a full car wash bay may not be practicable. However, consideration can be given to the conversion of parking space No.9 for motorcycle parking to ensure the availability of parking for a variety of vehicles.

It is recommended that a condition be imposed requiring modifications to the design of the basement car park involving the allocation of parking space No.9 to provide parking for the commercial component within the proposed development and a car stacker space for motorcycle parking (**Condition C1**).

Heritage

The subject site adjoins the heritage listed Orpheum Theatre therefore, the application was referred to Council's Conservation Planner who provided the following comments:

Heritage Assessment and Recommendations

An assessment of the proposal has been undertaken in relation to NSLEP 2013 Clause 5.10 Heritage conservation and NSDCP 2013 Part B: Section 13 Heritage and Conservation in particular s13.4 (Development in the vicinity of heritage items). The objective of s13.4 is to ensure that new work is designed and sited so as not to have a detrimental impact on the significance of the heritage item and its setting allowing the new development to respect and respond to the curtilage, setting, form, scale and architectural style of the heritage item.

The construction of the building on the subject site is from a similar building period as the adjacent heritage listed Orpheum Theatre, such that its form, scale and architectural style remain appropriate to the setting of the heritage item. Like the Orpheum Theatre, the existing building on the subject site has undergone modifications. However, there is potential, as is the case with the Orpheum Theatre, to restore earlier detail, most notably being the windows. In all other respects, particularly above the awning, the façade/parapet detailing remain intact. The building also maintains a positive transition between the Orpheum Theatre and the later, but taller development immediately adjacent to the western side of the subject site at 358-368 Military Road. However, the subject site does not afford any heritage protection to enforce such an outcome.

With respect to the subject development, its contemporary form will be readily identifiable adjacent to the heritage item. However, in terms of its height, a stepped built form similar to the development to the west of the subject site at Nos.358-368 Military Road, it is recommended that a similar approach be under taken by maintaining a podium height level reminiscent of the historical scale along Military Road that is compatible with the predominant parapet height of the Orpheum Theatre.

With regard to the setting of the Orpheum Theatre, it is recommended that any level above the parapet height (level 4) be set back to reinforce a transitional height between the height of the existing development and the building complex between 358-398 Military Road and also to express a podium height that complements the existing parapet height of the Orpheum Theatre.

Conclusions and Recommendations

With reference to the above an assessment of the proposal 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, the proposal was found to be unsatisfactory having regard to the adjoining heritage item.

In order to comply with the provisions set out in Section 13.4 in NSLEP 2013 (Development in the vicinity of heritage items) - P1 with respect to the curtilage, setbacks, built form, and architectural style of the heritage item, it is recommended that:

“Any level above the parapet height (level 4) be set back to reinforce a transitional height between the height of the existing development and the building complex between 358-398 Military Road and also to express a podium height that complements the existing parapet height of the Orpheum Theatre.”

Comment:

Council’s Conservation Planner’s comments including the recommendation for building setbacks above the parapet height are noted and generally concurred with. The recommendation for amendments would likely be the same as those would be required if the Orpheum Theatre was listed as a State Heritage Item.

Whilst the applicant has changed the external materials for the upper levels of the proposed building, the amended proposal has not addressed the issue relating to visibility of the upper levels of the proposed building to provide a transitional building height in order to be more respectful of the curtilage of the heritage item along the Military Road elevation.

It is recommended that a deferred commencement condition be imposed requiring the fourth floor southern elevation be setback off the Military Road boundary by 8m to match the southern wall of the lift overrun to provide a 3 bedroom apartment, similar to the layout of the three bedroom apartments on the first and second floor. This will minimise the visibility of the top level of the proposed building and provide a more respectful transitional built form and building height to the adjoining heritage listed Orpheum Theatre to the east of the subject site (**Condition AA1**).



Figure 13: Additional Setback for the Fourth Floor of the Proposed Building

It should be noted that the existing two (2) storey shop top housing building is not listed as a heritage item and is not located within a conservation area. Whilst the southern façade above the Military Road awning contains some original building elements and the building height is more consistent with that of the Orpheum Theatre, the remainder of the building has been heavily modified including the fit-out works within the ground floor tenancies for various commercial/retail and restaurant uses and the extensive works involved for the creation of the first floor apartments following the approval of the 2013 development application.

Given that there is no heritage listing of the existing building, there are insufficient grounds for the retention of the existing shop top housing building that occupies the subject site.

Waste Management

The application was referred to Council's Waste Service Customer Liaison Officer who made the following comments as summarised below:

- **Garbage Chute** - The provision of a garbage chute and recycling bins on all levels.
- **Temporary Bin Holding Bay** – The requirement for a temporary bin holding bay within 2 metres from the street alignment.
- **Bulky Waste Storage** – The requirement for a bulky waste storage room.

- **Residential/Commercial Garbage Storage** – Residential and commercial garbage chutes and storage areas are to be separated.
- **Key Access** – Garbage storage areas are to be accessible using a master key.
- **Conditions** - Conditions C10, C25 and I6 are recommended whilst other mixed use development conditions may also apply.

Comment:

Council's Waste Service Customer Liaison Officer comments are noted.

The applicant has proposed external access to the main garbage storage room with the installation of a decorative screen on the Parraween Street frontage. The size of the bulky waste storage room has also been increased to improve usability of the facility. In addition, separate garbage storage areas have been proposed for the residential and commercial elements within the proposed building.

However, the proposal does not provide garbage chutes and recycling waste bin storage rooms on the residential levels within the building.

This is considered to be acceptable having regard to the small number of seven (7) apartments within the development and the constrained floor plan to accommodate various facilities particularly on the ground floor.

The proposal, as amended by the applicant, is considered to be acceptable having regard to waste management subject to the imposition of appropriate conditions.

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 Section 4.55 application would be necessary.

Landscaping

The applicant has provided further information in response to the comments from Council's Landscape Officer in relation to the proposed removal of two street trees on Parraween Street and further details of the proposed green wall within the light well.

The street trees are proposed to be removed to provide appropriate construction access that is acceptable provided replacement trees are planted after the completion of the proposed development. This aspect of the proposal is considered to be satisfactory subject to the imposition of appropriate conditions related to the removal of the street trees and the planting of new street trees (**Condition G18**).

EXTERNAL REFERRALS

The application was referred to the following external agencies in accordance with various provisions under Section 138 of the Roads Act 1993, Section 73 of the Sydney Water Act 1994 and Clauses 45(2) and 101 of the repealed SEPP (Infrastructure) 2007.

General Comment:

The comments/responses from the various agencies have been received and details provided later in this report under the headings of each agency, namely TfNSW, Sydney Water and Ausgrid.

On 1 March 2022, forty-five (45) State Environmental Planning Policies (SEPPs) were consolidated into one of the eleven (11) new SEPPs. The change included the consolidation of SEPP (Infrastructure) 2007 into SEPP (Transport and Infrastructure) 2021.

It is noted that the consolidation primarily involves the transfer of the repealed SEPPs to form new chapters within the new SEPPs without significant amendment (i.e. will only involve a change in clause numbers and consequential amendments such as removal of introductory/duplicated provisions). Therefore, there would be no material changes to the requirements between the repealed SEPPs and the new consolidated SEPPs.

Transport for NSW (TfNSW)

The application was referred to the Transport for NSW who provided the following comments:

TfNSW has reviewed the submitted application and provides concurrence under Section 138 of the Roads Act 1993, for the proposed excavation and stormwater connection to the existing TfNSW stormwater pit on Military Road, subject to Council's approval and the following requirements being included in any consent issued by Council:

- 1. 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.*
- 2. 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.

- 3. 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.*

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.

- 4. 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.*
- 5. 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.*
- 6. 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.*
- 7. 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.*
- 8. All demolition and construction vehicles are to access the site via Parraween Street. A construction zone will not be permitted on Military Road.*
- 9. 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>*

Comment:

Comments from TfNSW are noted. It is recommended that a condition containing the agency's requirements is imposed to ensure compliance (**Condition C45**).

Ausgrid

The application was referred to Ausgrid who provided the following responses:

Ausgrid does not have any objection to the proposed development. The applicant/developer should note the following comments regarding any proposal within the proximity of existing electrical network assets.

Overhead Powerlines

Safe work NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.

The “as constructed” minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid’s website, www.ausgrid.com.au

It remains the responsibility of the developer and relevant contractors to verify and maintain these onsite clearances.

“Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost.

It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected be entering and leaving the site.”

Comment:

It is recommended that a condition containing the agency’s requirements is imposed to ensure compliance (**Condition C46**).

Sydney Water

The application was referred to Sydney Water who provided the following comments:

Sydney Water has reviewed the application based on the information supplied and provides the following comments to assist in planning the servicing needs of the proposed development.

Water Servicing

- *Potable water servicing should be available via a 100mm CICL watermain (laid in 1922) on Military Road.*
- *Amplifications, adjustments, and/or minor extensions may be required.*

Wastewater Servicing

- *Wastewater servicing should be available via a 225mm SGW wastewater main (laid in 1902) on Parraween Street.*
- *Amplifications, adjustments, and/or minor extensions may be required.*

This advice is not formal approval of our servicing requirements. Detailed requirements, including any potential extensions or amplifications, will be provided once the development is referred to Sydney Water for a Section 73 application. More information about the Section 73 application process is available on our web page in the Land Development Manual.

Comment:

It is recommended that a condition containing the agency's requirements is imposed to ensure compliance (**Condition C47**).

DESIGN EXCELLENCE PANEL (DEP)

The proposed development was considered by the DEP on 12 October 2021 where the comments are summarised as follows:

Principle 1: Context and local character

- *The site is located adjacent to the heritage listed Orpheum Cinema. Enhancements to the facade of the subject building are suggested to be more sympathetic with the adjoining heritage building.*
- *The High visibility of the eastern façade as seen from Military Road as well as the detailing and materiality of the eastern façade should be equal to that of the principle façade to complement the heritage item.*
- *The awning structure on level 3 is very prominent and should be removed or reduced to ensure the bulk and scale is consistent with immediately adjoining buildings.*
- *The site has narrow frontages with a deep footprint and land locked by the side walls making access to light and air challenging. Design amendments are required to address light and ventilation issues.*

Principle 2: Built form, scale and public domain/ urban design response

- *Details of the roof top clerestory window are required. The design of the windows should open away from heavily trafficked Military Road to avoid conflict between heat and noise generated by roof plant and access to natural ventilation.*
- *All roof plant should be concealed, setback sufficiently to cause no additional overshadowing, and located to minimise impacts on views/outlook from adjacent properties.*

Principle 3: Density

- *Whilst the basic form may have the potential to achieve an acceptable density, issues raised particularly in regard to the light well, acoustics, privacy and natural ventilation must be addressed.*

Principle 4: Sustainability, building performance and adaptability

- *The provision of shading devices on the northern facade to manage summer heat loads.*
- *The lightwell should be increased in size to enhance amenity (access of light and ventilation to habitable spaces).*

Principle 5: Landscape Integration

- *An enlarged light well to form a courtyard to provide additional planting to assist with visual privacy between apartments and to provide an outlook.*
- *Retention of the green wall.*
- *Retention of street trees located on Parraween Street adjacent to the subject site.*

Principle 6: Building configuration, planning, and amenity

Apartment planning / amenity:

- *The proposed lightwell at 2.5m wide x 5m deep is considered to be undersized to provide adequate amenity for the 3 habitable rooms on each typical floor over 4 floors.*
- *The lightwell should be increased in size to improve visual and acoustic privacy between apartments. Consideration could be given to providing a 6m x 6m lightwell with a similar sized courtyard below.*
- *Consideration should be given to changes to the number of apartments on each floor, the internal layout of the apartments with a reduction in the number bedrooms/study in order to provide better amenity for the proposed apartments.*

Acoustics and natural ventilation:

- *Concerns are raised about the acoustic amenity and natural ventilation to rooms facing Military Road due to heavy traffic and associated noise and fumes.*
- *Acoustically attenuated ventilation devices should be provided to minimise noise impacts.*
- *Further consideration should be given to a highly articulated brick façade and an increased proportion of solid wall to glazing ratio on the building façade that is likely to assist acoustic amelioration.*
- *A shielded courtyard design will assist in protecting occupants from traffic noise and provide access to natural ventilation.*

Boundary windows:

- *The proposed windows on the boundary should not be relied on for access to light and air.*

Servicing:

- *Consideration should be given to reducing the width of services on Parraween Street frontage with the relocation of some of the services internally to provide a more generous retail frontage to Parraween Street to maximise street activation.*

Solar Access:

- *Further solar access studies should be provided to confirm that living areas will achieve compliance with the ADG solar access controls.*

Privacy:

- *Potential overlooking from the fourth floor south facing balcony into the third floor southern balconies.*

Principle 7: Safety

- *The entry lobby is long and the lift is located very deep within the site. Consideration should be given to flipping the apartment level plan to reduce the length of the lift lobby and provide more direct access from the primary entry from Parraween Street to provide a more legible entry with greater visual prominence and passive surveillance.*

Principle 8: Housing diversity and social interaction

- *The proposal provides no communal space for residents., however, this is likely to be considered acceptable due to the small number of apartments proposed within the new building.*
- *Any communal space should be provided within a compliant building height.*

Principle 9: Architectural expression and materiality

- *Further details regarding colours and materials of the façade and awning should be submitted.*
- *The brick masonry façade is supported. However, an increased proportion of masonry to glazing and further articulation is encouraged to assist in acoustic amelioration, to lend animation to the façade and to mediate between the masonry character of the Hayden Orpheum and the neighbouring residential apartment building.*
- *The location and treatment of booster valves/fire hydrants/substations should be designed to integrate within the building facade.*

Recommendations

The Panel provides qualified support for the proposal, subject to the issues identified above being satisfactorily resolved.

Comments

The applicant has submitted amended plans and additional information in response to the matters raised by the DEP as follows:

- **Lightwell** – The applicant has submitted amended plans including an increase in the depth of the lightwell to 8.4m, the removal of ventilation shafts within the lightwell and the deletion of balconies on the northern and southern sides of the lightwell. These measures would provide better access to light and ventilation for residents of the proposed building particularly the habitable spaces with windows/openings to the lightwell.

- **Façade/External Treatments** – The design of the building façade has been modified including a reduction in the size of windows on the Military Road elevation to increase the ratio of solid wall to glazing, the deletion of a fourth floor balcony on the Military Road elevation and a reduction in the size of the third floor awning on the Parraween Street elevation. The applicant has also provided a more detailed schedule of materials and finishes. The proposed modifications to the façade are generally acceptable

Notwithstanding the above, a deferred commencement condition is recommended requiring additional building setback of the fourth floor on Military Road elevation in order to provide a better transition of building heights and built forms between the heritage listed Orpheum Theatre and the subject site (**Condition AA1**).

- **Noise from Military Road** – The design of the proposed mixed use building has incorporated noise attenuation measures as recommended in the acoustic report submitted with the DA, such as double glazing and a high balustrade balcony design to achieve compliance with the DCP acoustic amenity requirements. The proposed measures are considered to be acceptable subject to a condition requiring the recommendations of the acoustic reports are complied with (**Condition C2**)
- **Plant Area and Clerestory Windows** – The applicant has provided additional information about the proposed plant area and clerestory windows on the roof level. A 1.8m high louvered screen is proposed on the perimeter of the plant area and further details have been provided for the design of the clerestory windows to demonstrate access to light and ventilation from the apartment below.

The plant area would be located away from habitable rooms and the roof terrace of the adjoining mixed use building to the west at No.368 Military Road, to minimise any amenity impacts to the adjoining properties. It is also considered that the proposed clerestory windows should enhance the amenity of the apartment below with additional access to daylight and ventilation.

- **Solar access** – The applicant has acknowledged the non-compliance with the ADG's requirements for solar access due to the small site area and the elongated shape of the property. A further assessment will be provided later in this report. Notwithstanding this, daylight access to the third floor studio on the Military Road elevation, particularly the balcony, can be improved by an additional setback as required by the deferred commencement condition **AA1**.
- **Street Frontage Treatments** – The applicant indicated that the scope for further widening of ground floor retail tenancy shopfronts would be limited due to the narrow street frontage of the subject site and the requirements for services, such as fire hydrants and garbage bin storage, to be located in close proximity to the street.

The applicant has provided further design details for the treatments of the screen doors for services areas along the street frontage and is considered to be acceptable.

Conclusion:

The applicant has provided amended plans and additional information to address the issues raised by the DEP. The applicant's responses are considered to be generally satisfactory subject to the imposition of appropriate conditions including the deferred commencement condition **AA1** requiring design modifications to the fourth floor on the Military Road elevation.

A referral back to the DEP is therefore considered not necessary.

SUBMISSIONS

Original proposal

Council notified adjoining properties and the Harrison and Brightmore Precincts of the proposed development seeking comment between 17 September and 1 October 2021. Council received eleven (11) submissions, including five (5) submissions from two (2) submitters. The matters raised in the submissions are listed below:

The issues raised in the submissions are summarised below and addressed later in this report. 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 available for review by NSLPP members.

Basis of Submissions

- The subject site is one of the last remaining original shop top housing buildings adjacent to the Orpheum Theatre and the shopfronts and upper facades are considered to contribute to the significance of the Orpheum Theatre physically and visually.
- The proposal has not acknowledged the significance and value of commercial heritage of the subject building.
- Objection is raised to the proposed building height variation because of the negative impacts on the context and streetscape of the Orpheum Theatre.
- The proposal is contrary to a number of LEP and DCP controls and should not be permitted in its current form.
- The loss of the last remaining old shopfront facades adjacent to the Orpheum Theatre.
- The proposal would cause overshadowing and the loss of natural light to the atrium of the adjoining mixed use building to the west.
- The proposal would cause a reduction in airflow for air conditioning units and the ventilation system on the roof of the adjoining mixed use building to the west.
- Concerns raised about the proposed basement vehicular access through an opening on the property boundary and its impacts on the structural integrity/stability of the adjoining mixed use building.
- There is insufficient justification for the creation of an underground link to provide vehicular access for the subject site via the basement of the adjoining property.
- The design, colours, finishes and materials of the proposed building do not respect the adjoining heritage listed building and the surrounding properties.
- The proposal would result in the demolition of an existing shop top housing building built during the inter-war years with its Art Décor character.
- Inaccurate and/or inadequate information/assessment provided in the submitted Heritage Impacts Statement.
- The proposed building does not comply with the building height limit.
- The proposed development would generate additional traffic and would adversely affect the amenity of the nearby residents.
- The comments and findings of the submitted traffic report are questionable.
- Objection is raised to the shared driveway arrangement given that the proposal would cause increased traffic arising the use of the driveway at the rear of No.368 Military Road and would adversely affect pedestrian safety.
- The proposal would increase demand for on-street parking along Parraween Street.
- The increase in traffic would have adverse impacts on the amenity of a property to the north of the subject site across Parraween Street.
- The structures on the roof would have adverse impacts on views as seen from the roof of a top floor apartment within a mixed use building to the west.

- Concerns are raised about noise and ventilation impacts on the adjoining property to the west of the subject site.
- The proposal would have negative impacts on property values.
- Concerns are raised about the use of the driveway for No.368 Military Road to be shared by the proposed development.
- Concerns are raised about the use of parking spaces within the basement of the adjoining property by cars from the subject site.
- Concerns raised about security and safety issues associated with the shared use of the driveway to the basement car park.
- The proposed building will negatively affect both the streetscape and the Orpheum theatre by its excessive size and chosen materials without a set-back from the existing building alignment.
- Objections are raised about the proposal due to the likely negative impacts on the heritage listed Orpheum Theatre and the demolition of the existing shop top housing building on the subject site.

Amended Proposal

The applicant submitted amended plans that were renotified to adjoining properties and the precinct for 14 days between 28 January and 11 February 2022. Council received five (5) submissions and the matters raised in submissions are listed below:

Basis of Submissions

- The proposed development will have an unacceptable impact on the heritage significance of the heritage item in the vicinity.
- The proposed development will result in a negative and potentially detrimental impact on the Orpheum Theatre.
- The proposed development will have an adverse impact on the setting and views of the Orpheum Theatre.
- The proposed development will visually dominate the streetscape setting on Military Road.
- The proposed development will result in a loss of character in Parraween Street.
- Objection is raised to the proposed building height variation because of the negative impacts on the curtilage and character of the Orpheum building.
- The proposal would increase traffic movements on the driveway and would have adverse impacts on pedestrian safety including patrons of the Orpheum Theatre.
- The existing building is the last remaining commercial building along the strip of land between Military Road and Parraween Street and it provides a contextual reference to the original character of Military Road.
- The potential adverse impacts on street trees.
- Concerns raised about the proposed basement vehicular access through an opening on the property boundary and its impacts on the structural integrity/stability of the adjoining mixed use building.
- The proposal must be rejected due to the negative impacts arising from the proposed basement link between the subject site and the adjoining property to the west.
- Concerns are raised about excessive traffic resulting from the use of the shared driveway on Parraween Street and its impacts on pedestrian safety.
- The increase in traffic would have adverse impacts on the amenity of a property to the north of the subject site across Parraween Street particularly noise from cars using the driveway and glare from car headlights.
- The locality does not need another apartment building.
- Inadequacy of the submitted heritage impact statement about the history and significance of the subject shop top housing building.
- The significance of the existing building on the subject site because it is one of the last remaining early 20th century shopfronts on Military Road.

- Objections are raised about the demolition of the existing shop top building due to its character and the unsympathetic nature of the design of the proposed mixed use building.
- Consideration should be given to the retention of the architecture and design of the existing building.

CONSIDERATION

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

As indicated earlier in this report, forty-five (45) State Environmental Planning Policies (SEPPs) were consolidated into one of the eleven (11) new SEPPs on 1 March 2022. These changes affect a number of SEPPs to be considered in this report.

It is however noted that the consolidation primarily involves the transfer of the repealed SEPPs to form new chapters within the new SEPPs without significant amendments (i.e. will only involve a change in clause numbers and consequential amendments such as removal of introductory/duplicated provisions). Therefore, there would be no material changes to the requirements between the repealed SEPPs and the new consolidated SEPPs.

- SREP (Sydney Harbour Catchment) 2005 - Chapter 10 in SEPP (Biodiversity and Conservation) 2021
- SEPP 55 (Remediation of Land) – Chapter 4 in SEPP (Resilience and Hazards) 2021
- SEPP (Housing) 2021
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP 65 – Design Quality of Residential Apartment Development

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 development is 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.

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 provisions of SEPP 55 require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. The tenancies on the ground floor of the existing building have been used for commercial/retail purposes for a long period of time including uses that would potentially cause contamination of the ground cover and sub-surface materials; therefore, it is recommended a condition be imposed requiring an asbestos and contaminated materials survey to address the requirements of the SEPP and to protect the long term health of workers on site and the occupants of the future development are not put at risk unnecessarily (**Condition C26 and G11**).

SEPP (Housing) 2021

The proposal involves demolition of the existing shop top housing containing 2 x 3 bedroom units. It is understood that these residential units have been used as rental properties of some time.

It is also noted that the provisions relating to the retention of existing rental housing as contained in Clause 46 (1) (a) in Part 3, Chapter 2 of SEPP (Housing) 2021 only apply to low rental residential building (i.e. a residential flat building containing low-rental dwellings or as a boarding house) located within Greater Sydney region.

Given that the residential component of the existing building only contains two (2) apartments and does not satisfy the definition for a residential flat building containing three (3) or more units, the provisions of the SEPP in relating to the retention of existing rental housing do not apply.

SEPP (Building Sustainability Index: BASIX) 2004

A valid BASIX Certificate (No. 1224852M_02) for the residential component of the proposed building has been submitted with the application to satisfy the Aims of the SEPP. (**Conditions No. C42, G14**)

SEPP 65 Design Quality of Residential Apartment Development

State Environmental Planning Policy No. 65 aims to improve the design quality of residential flat buildings in New South Wales. The primary design principles in the SEPP are discussed as follows:

Principles 1 and 2: Context, Built Form and Scale

The subject site is located within a B4 (Mixed Use) zone and the proposal for a mixed use/shop top housing style development would generally be suitable for the site context and be compatible with the desirable future character for development along Military Road.

The building generally responds to the height controls for the area and the scale of the proposed building would be consistent with similar mixed use/shop top housing developments along Military Road.

The proposal adopts a built form which generally complies with the relevant development controls relating to height, FSR and setbacks. The overall built form of the proposed building, as amended by the applicant, is also consistent with other similar developments within the locality.

The proposed deferred commencement condition requiring further setback of the top level from Military Road would provide a better transition between the subject development and the heritage listed Orpheum Theatre in terms of their building heights and built forms (**Condition AA1**).

Principle 3: Density

The subject site is located in close proximity to public transport, shops and services. A total of seven (7) apartments on the site is considered acceptable as each will receive reasonable levels of internal amenity.

Principle 4: Sustainability

A valid BASIX Certificate was submitted with the application. The proposed development also incorporates energy efficient devices such as awnings and clerestory windows to enhance thermal performance of the building.

Principle 5: Landscape

The subject site is located along the commercial/retail strip along Military Road with over 90% site coverage. The applicant has proposed soft landscaping at the base of the lightwell to enhance the landscaping quality of the subject site. The proposed removal of the existing street trees on Parraween Street is required for access during construction which is acceptable with the proposed replacement street trees to ensure landscape quality.

Principle 6: Amenity

All apartments comply with the ADG requirements to ensure reasonable levels of internal amenity. The building is appropriately designed and sited to minimise any adverse amenity impacts in terms of the loss of privacy and solar access for adjoining properties.

The proposed deferred commencement condition requiring further setback of the top level from Military Road would provide better access to views for the roof terrace at the adjoining property to west (**Condition AA1**).

Principle 7: Safety

The proposal would provide a secured pedestrian entrance to the lift foyer of the upper level apartments from Parraween Street. The entrance to the development on Parraween Street would be highly visible and provide a good sense of address for the development.

Furthermore, the proposed commercial tenancy on the ground level would activate the two street frontages and improve security along Military Road and Parraween Street. Furthermore, the living room balconies above Parraween Street would provide additional natural surveillance.

Principle 8: Housing Diversity and Social Dimensions

The proposed development is located in an area with good access to public transport and amenities on Military Road. The proposed unit mix, comprising studio, 1 bedroom and 3 bedroom units, satisfy the Apartment Design Guide (ADG) apartment mix objective (4K-1) to ensure that a range of apartment types and sizes is provided to cater for different household types now and into the future.

		The proposal is therefore considered to be acceptable in this regard.	
Visual privacy	6m (between habitable rooms and balconies to side/rear boundaries)	<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>Furthermore, the applicant has proposed 8.4m separation between the proposed bedroom windows looking into the lightwell. In addition, the position of these windows will be off set from each other with the proposed privacy screens to minimise any visual privacy.</p> <p>The proposal is therefore considered to be acceptable.</p>	<p>Yes</p> <p>No (acceptable on merit)</p> <p>Yes</p>
Solar and daylight access	70% off apartments to receive 2 hours of direct sunlight	<p>Four out of the 7 apartments (57%) will receive 2 hours of direct solar access to living spaces and private open space.</p> <p>The applicant acknowledged the non-compliance with the ADG's requirements is due to the site circumstances such as the small site area and the elongated shape of the property.</p> <p>Notwithstanding the above, daylight access to the third floor studio on the Military Road elevation, particularly the balcony, can be improved by the additional setback as required by the deferred commencement condition AA1.</p> <p>The proposal is acceptable subject to the design modifications as required by Condition AA1.</p>	No (acceptable via condition)
Natural ventilation	60% of apartments are naturally cross ventilated	Five of the 7 apartments (71%) of the apartments would achieve 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)	42m ² (Studio) 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 master bedrooms are suitably sized in excess of 10 m ²	Yes
	All secondary bedrooms have a minimum width of 3m	The secondary bedrooms comply with the minimum width of 3m.	Yes
	Living rooms have a minimum width of 3.6m (S and 1B) and 4m (2B and 3B)	Studio/1B – 4.2m min. 3B + – 5.5m min.	Yes
	The maximum habitable room depth is 8m from a window	All habitable areas would be within 8m from windows.	Yes
Private open space and balconies	S – 4 m ² 1B – 8m ² 2B – 10m ² 3B – 12m ²	Studio - 5m ² 1B - 8m ² 2B – N/A 3B+ – >19m 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 for seven (7) apartments and ready access to spaces which could be used for communal activities/interactions including hotels, cafes and other similar facilities/establishments.	No (acceptable on merit)
Deep soil zones	7% of the site area	The proposed development does not provide deep soil zones for substantial planting. Nevertheless, the proposal is considered to be acceptable having regard to the location of the subject site along Military Road and zoned B4 (mixed use) which permits developments with minimal or zero boundary setbacks. The applicant has submitted a landscape plan to provide new planting areas within the lightwell and on the roof top terrace. The proposal is considered to be acceptable under the site circumstances.	No (acceptable on merit)

Apartment Mix	A range of apartment types and size to cater for different household types	The proposal would provide a range of apartments including a studio, 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
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The proposal is considered 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 considered minor and unlikely to materially compromise the amenity of the apartments subject to the imposition of appropriate conditions.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

Compliance Table

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area – 303.3m²	Proposed	Control	Complies
Clause 4.2 – Heights of Building	17.99m (Top of screen for plant area)	16m	NO – Clause 4.6 Variation submitted
Clause 4.4A – Non-residential Floor Space Ratio	196 m ² (FSR - 0.64:1)	0.5:1 min.	Yes

1. Permissibility within 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.

2. Zone Objectives

Clause 2.3 of the LEP 2013 specifies that the consent authority must have regard to the objectives for the development in a zone when determining a development application in respect of land within a zone.

The objectives of the B4 – Mixed Use zone are expressed as follows:

- *To provide for provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.*

- To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses on the lower levels and residential uses above those levels.

The proposed mixed use development is generally consistent with the above objectives of the B4 – Mixed Use zone as detailed throughout this report.

3. Building Heights

Clause 4.3(2) of the LEP 2013 and the LEP building height map specify a maximum building height of 16m for the subject site. The building elements above the LEP maximum height limit, including the proposed fourth floor roof slab, the clerestory windows, the lift overrun and the plant areas, would breach the LEP maximum building height limit.

It is noted that the main building element above the LEP building height limit would be the fourth floor roof slab with a building height of 16.19m above the existing ground level (i.e. 190mm above the LEP maximum building height limit). The height of the other smaller building elements on the roof, such as the clerestory windows, lift overrun and the screen around the plant area, would vary from 17.54m to 17.99m above the existing ground level (i.e. 1.54m to 1.99m above the LEP maximum height limit) as shown on **Figure 14** below.

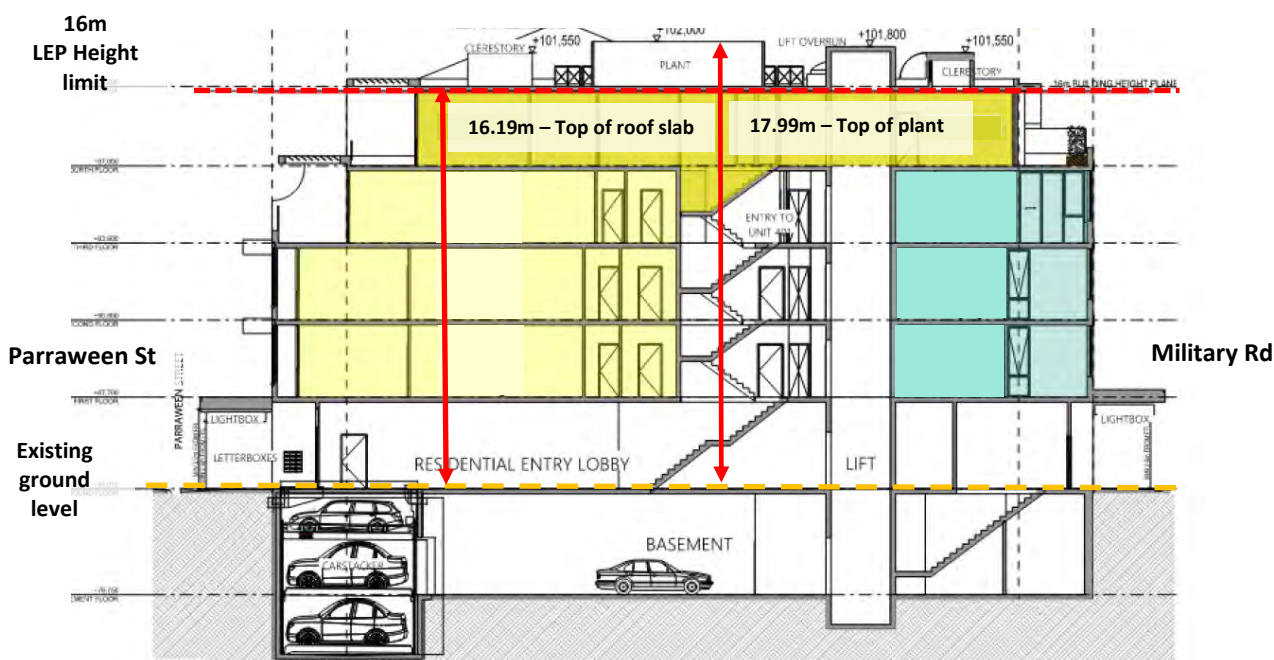


Figure 14: Proposed Development and the LEP Maximum Building Height

4. Clause 4.6 Exceptions to Development Standards

Clause 4.6 of LEP 2013 specifies that the consent may be granted for development that contravenes a development standard imposed by an environmental planning instrument, in circumstances, where compliance with the standard is unreasonable or unnecessary in the circumstances, also where there are sufficient environmental planning grounds to justify a non compliance with the development standard.

Given that the proposal involves building elements in breach of the LEP maximum building height development standard, the applicant has submitted a written request for a variation to this development standard pursuant to Clause 4.6(2) of the LEP.

Consideration has been given to the following building height objectives under Clause 4.3(1) of the LEP 2013 and the written request submitted by the applicant seeking variation to the maximum building height development standard.

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

Comment:

The subject site is generally flat from the northern (Parraween Street) to the southern (Military Road) property boundaries and the design of the proposed development respects the existing landform.

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

Comment:

Consideration has been given to the likely view impacts of the proposed development on nearby properties.

No.82 Parraween Street

The view from this single storey dwelling house on the northern side of Parraween Street would not be changed significantly given that any significant view would have been obstructed by the existing buildings (two storeys or more) on the southern side of Parraween Street.

No.287 Military Road (The Park Regis Hotel)

This building to the south across Military Road is used as a hotel providing short term accommodation and not a building for long term residential uses.

No.380 Military Road (The Orpheum Theatre)

This heritage listed building is for commercial use as a theatre/cinema only.

368 Military Road

The proposal would have no view impacts on the windows/balconies on the Military Road and Parraween Street elevations of this building because of the orientation of these elements away from the subject site.

The proposed development may affect the views/outlook towards the south-east as seen from the roof terrace on the southern side of the building. In particular, concerns have been raised in a submission about the potential view impacts arising from the proposed development for a fourth floor apartment (Unit 21) on the south-eastern side of the mixed use building at No.368 Military Road.

Tenacity Planning Principle

An assessment of the impacts of the proposal in accordance with the principles of view sharing established by the Land and Environment Court in *Tenacity Consulting v Warringah* [2004] NSWLEC 140 has been detailed below.

The Four Step Test in respect of Views

The following view assessment has been undertaken in accordance with the four (4) step process adopted by Commissioner Roseth of the NSW Land and Environment Court centering around *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*.

- ***Assessment of views to be affected; and***
- ***Consider from what part of the property the views are obtained.***

The views most affected by the development and the location of where these views are obtained are detailed below:

Unit 21 – Roof Terrace

A roof terrace is located above the fourth floor apartment and is for the use of the residents living in the apartment below. A photo provided by the submitter taken from the eastern edge of the roof terrace indicates an outlook across the side (eastern) property boundary over the roof of the subject site and the Orpheum Theatre towards the south-east to nearby building, district/skyline view of the Mosman LGA, the sky and the horizon on the background as shown in **Figure 15**.



Figure 15: The outlook from the eastern edge of the roof terrace

The applicant has submitted an analysis on the new building elements as seen from the roof terrace that indicates there would be some obstruction of the outlook/view arising from the lift overrun and the proposed clerestory windows as shown in **Figure 16** below.

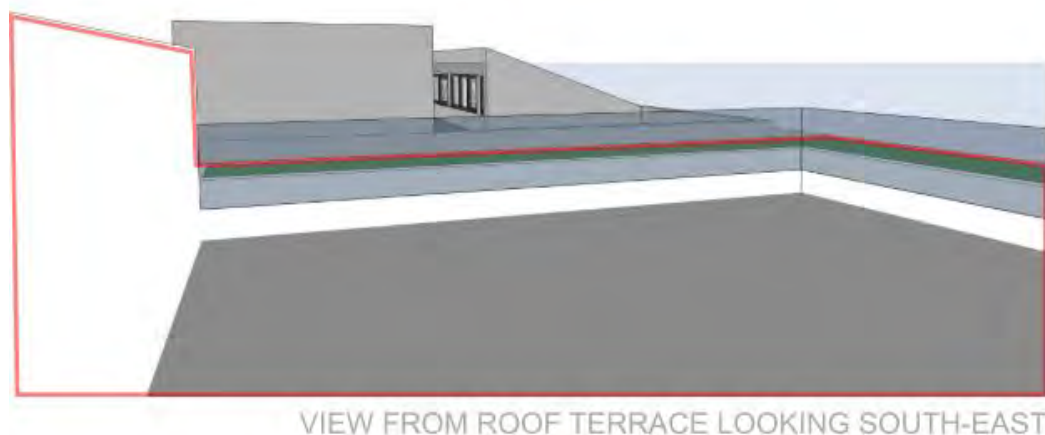


Figure 16: New building element on the roof of the proposed building as seen from the roof terrace for Unit 21/368 Military Road

It is noted that there are no window openings on the eastern (side) elevation of apartment below, therefore, the impacts on views/outlook would be confined to the roof terrace only.

- **Assess the extent of the impact in qualitative terms as negligible, minor, moderate, severe or devastating.**

The proposed development would obstruct the district/skyline view as seen from the roof terrace however, this obstruction caused by new building elements would be reduced on the southern end of the terrace.

Furthermore, the views/outlook would be obtained across the side property boundary, therefore, the impact is considered to be minor.

- **Assess the reasonableness of the proposal that is causing the impact.**

The building elements causing the view impacts do not comply with the building height control in Clause 4.3 in NSLEP 2013. Whilst the impacts on views/outlook for Unit 21 at No.368 Military Road would primarily be confined to the roof terrace only, the recommendation for design modifications requiring additional building setback for the fourth floor of the proposed mixed use building would have the additional benefit of reducing the extent of view impacts (**Condition AA1**).

Conclusion

The proposed development is considered to be reasonable and the view impacts are considered to be acceptable subject to the imposition of deferred commencement condition (**Condition AA1**).

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

Comment:

An examination of the solar access diagrams submitted with the application has indicated that the shadows caused by the building elements in breach of the LEP building height development standard would generally fall along the eastern edge of the roof of No. 368 Military Road and the roof of the Orpheum Theatre. It is therefore considered that the shadowing impacts would have no material impacts on the residential amenity of the adjoining properties.

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

Comment:

As mentioned earlier in this report, the building elements in breach of the LEP maximum height limit would involve lift overrun/plant areas which are accessible for building maintenance purposes only.

The plant area would be located away from the main habitable rooms within the adjoining mixed use building at No.368 Military Road and the roof terrace of this adjoining building. In addition, a 1.8m high louvred screen would be installed along the perimeter of the plant area to minimise visual and noise impacts.

Therefore, there would be no material privacy impacts resulting from the building elements above the LEP maximum building height limit.

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

Comment:

The height, bulk and scale of the proposed shop top housing development would generally be consistent with other similar developments along Military Road.

As indicated earlier in this report, a deferred commencement condition (**Condition AA1**) is recommended requiring design modifications to the southern side of the fourth floor to provide a more sympathetic transition of building height and built form for the heritage listed Orpheum Theatre. It is considered that the required design modifications would provide a more appropriate transition of scale from the heritage listed building to the proposed development.

That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Strict compliance with the building height control is considered to be unreasonable and unnecessary as the elements in breach of the height control will not have material impacts the streetscape or the amenity of adjoining properties subject to the imposition of the deferred commencement condition.

As has been demonstrated above that the building elements above the LEP height limit will not be easily discernible from the public domain or result in unacceptable loss of significant views, overshadowing or privacy impacts with the imposition of the deferred commencement condition (**Condition AA1**). A five storey built form on this site, as modified by the deferred commencement condition, is considered to be generally consistent with the B4 Mixed Use zoning and relevant planning controls.

That there are sufficient environmental planning grounds to justify contravening the development standard.

The primary function of the building elements above the LEP height limit is to provide amenity for the future residents and to support essential building services. These building elements are required under the deferred commencement condition (**Condition AA1**) to provide further setback from the Military Road property boundary in order to minimise the bulk and scale of the proposed building as seen from Military Road with the added benefit of reducing amenity impacts on the adjoining properties.

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

The written justification as submitted by the applicant seeking variation to Clause 4.3(2) in NSLEP 2013 is considered to be well founded in the site circumstances subject to the imposition of the deferred commencement condition requiring design modifications to the fourth floor of the proposed building (**Condition AA1**). Compliance with the maximum building height control is therefore considered to be unreasonable and unnecessary in the circumstances, as the objectives of the zone and the control are achieved despite the non-compliance.

5. Non-Residential Floor Space Ratio (FSR)

The proposal would contain three commercial/retail tenancies on the ground floor with a total floor space area of 196sqm with a FSR of 0.64:1 which complies with the minimum non-residential FSR of 0.5:1 in accordance with Clause 4.4A(2) of North Sydney LEP 2013.

6. Heritage Conservation

The subject site adjoins the heritage listed Orpheum Theatre. The application has been assessed against the relevant heritage objectives and provisions as contained in the North Sydney LEP 2013, particularly Clauses 5.10(1) and 5.10(4) of the North Sydney LEP 2013 and generally found to be satisfactory as indicated in the comments from Council's Conservation Planner subject to the imposition of **Condition AA1** to ensure that the design, bulk and scale of the proposed building is sympathetic to the heritage listed building to the east as discussed throughout this report.

7. Earthworks

Consideration has been given to the provisions of Clause 6.10 of the LEP 2013, the proposed excavation/earth works are considered to be generally acceptable subject to imposition of appropriate engineering conditions. In particular specific conditions requiring a dilapidation survey for the adjoining properties and the requirement for shoring of the adjoining properties to ensure the protection of existing public infrastructure and the adjoining private properties (**Conditions C5 & C6**).

Furthermore, a condition requiring the submission of a report detailing the structural adequacy of the adjoining properties, including that of the mixed use building at No.368 Military Road, is recommended to ensure the protection and structural adequacy of the adjoining properties during the excavation works (**Condition C7**).

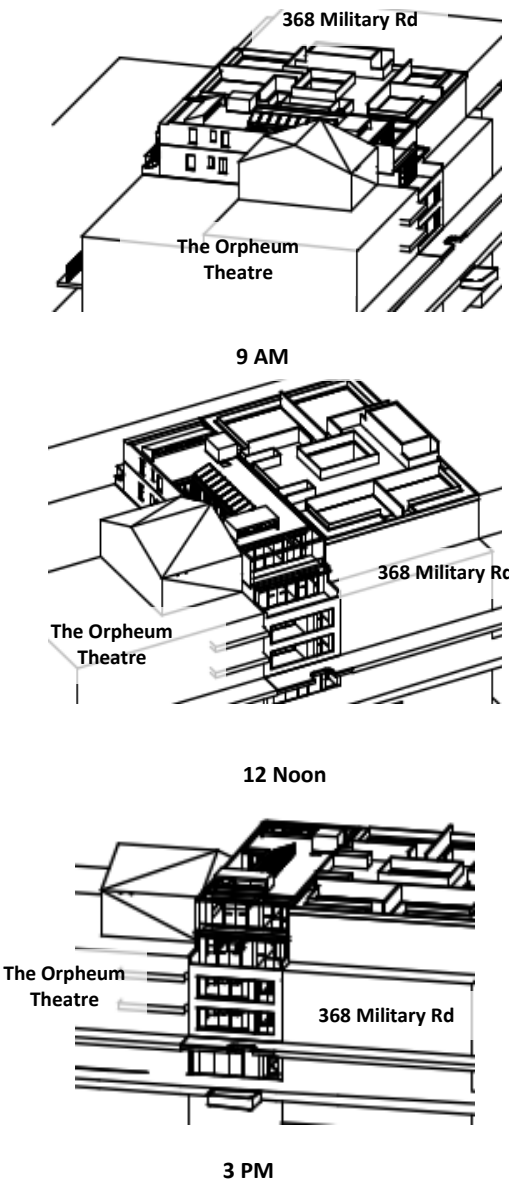
The proposal is considered to be consistent with the provisions of Clause 6.10 of the LEP 2013.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

The proposal has been assessment under the following heading within NSDCP 2013:

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2- Commercial and Mixed Use Development																							
	<i>complies</i>	<i>Comments</i>																					
2.2 Function																							
2.2.1 Diversity of Activities	Yes	The proposal would ensure diversity of activities within the mixed use zone with retail/commercial uses on the ground floor and residential uses on the upper levels.																					
2.2.2 Maximise Use of Public Transport	Yes	The subject site is well served by public transport with frequent bus services along Military Road. This will be further enhanced by the B-Line bus service along Military Road.																					
2.2.3 Mixed Residential Population – Size of units	No (acceptable on merit)	<p><i>Unit Mix:</i></p> <p>The proposal does not comply with the DCP unit mix control for 1-bedroom and 2-bedroom units as shown in the compliance table below:</p> <table border="1"> <thead> <tr> <th>Dwelling Type:</th> <th>Proposed</th> <th>Control</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>14% (1 unit)</td> <td>10% - 20%</td> <td>Yes</td> </tr> <tr> <td>1 Bedroom</td> <td>28% (2 Units)</td> <td>25% - 35%</td> <td>Yes</td> </tr> <tr> <td>2 Bedroom</td> <td>N/A</td> <td>35% - 45%</td> <td>N/A</td> </tr> <tr> <td>3 Bedroom</td> <td>50% (4 Units)</td> <td>10% - 20%</td> <td>No</td> </tr> </tbody> </table> <p>Whilst the proposal does not strictly comply with the DCP requirements, the proposed unit mix is acceptable having regard to the lot size and the relatively small scale of the proposed development.</p> <p><i>Adaptable Units:</i></p> <p>The applicant has proposed one (1) adaptable unit (14%) within the proposed 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 seven (7) apartments.</p>		Dwelling Type:	Proposed	Control	Compliance	Studio	14% (1 unit)	10% - 20%	Yes	1 Bedroom	28% (2 Units)	25% - 35%	Yes	2 Bedroom	N/A	35% - 45%	N/A	3 Bedroom	50% (4 Units)	10% - 20%	No
Dwelling Type:	Proposed	Control	Compliance																				
Studio	14% (1 unit)	10% - 20%	Yes																				
1 Bedroom	28% (2 Units)	25% - 35%	Yes																				
2 Bedroom	N/A	35% - 45%	N/A																				
3 Bedroom	50% (4 Units)	10% - 20%	No																				
2.3 Environmental Criteria																							
2.3.2 Noise	Yes (via condition)	<p>The proposed development is unlikely to cause material noise nuisance for the nearby residential properties for the following reasons:</p> <p>(a) 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;</p> <p>(b) A condition is recommended requiring the recommendations of the acoustic report to be adhered to (Condition C2);</p>																					

		<p>(c) A standard condition is recommended relating to noise from plant equipment/air conditioning units to protect the amenity of the adjoining properties (Condition C28); and</p> <p>(d) The requirement for a construction noise management plan to ensure appropriate management of noise generating activities during construction phase of the proposed development (Condition C36).</p>
2.3.3 Wind Speed	Yes	<p>Whilst the building height of the proposed development is unlikely to adversely affect the pedestrian comfort along Military Road, the provision of an awning along Military Road and the additional setbacks above the podium height would further alleviate any impacts on pedestrians.</p>
2.3.4 Reflectivity	Yes (via condition)	<p>The proposed building façade treatments and the choice of materials with generally natural or darker tones should minimise the level of reflectivity as indicated on the proposed materials and finishes.</p> <p>Standard conditions are also recommended to minimise reflectivity of the roof materials and glazing (Conditions C12 & C13)</p> <p>The proposal is considered to be satisfactory.</p>
2.3.5 Artificial Illumination	Yes (via conditions)	<p>The external lighting on ground level would only involve lighting of building entrances and passageways.</p> <p>The proposal is considered to be acceptable in this regard with a further condition restricting external illumination of the building (Condition I5).</p>
2.3.6 Awnings	Yes	<p>The proposal for an awning along the Military Road and Parraween Street frontage is supported as this would provide weather protection for pedestrians.</p>
2.3.7 Solar Access	<p>No (acceptable on merit and condition)</p> <p>Yes</p>	<p>Solar access to apartments within the subject site:</p> <p>The DCP requires 70% of dwelling within a residential flat building/shop top housing to receive more than 2 hours of sunlight in mid-winter. The proposed development would achieve 57% (i.e. 4 of 7) of the apartments to receive 2 hours of sunlight to the main living/private open space areas.</p> <p>The applicant has acknowledged the non-compliance with the requirements due to the site circumstances such as the small site area and the elongated shape of the property.</p> <p>As indicated earlier in this report daylight access to the third floor studio on the Military Road elevation, particularly the balcony, can be improved by the additional setback as required by the deferred commencement condition AA1.</p> <p>Shadowing impacts on the adjoining properties:</p> <p>The applicant has submitted shadow diagrams indicating that the shadows from the proposed building would primarily fall on the eastern side of the roof of the adjoining mixed used building between 9am and 1pm during mid winter and the roof of the Orpheum Theatre from 2pm onwards.</p> <p>There would be no additional shadowing onto the central lightwell of the adjoining mixed use building at No.368 Military Road.</p> <p>The shadowing impact on the adjoining properties is considered to be acceptable.</p>

		 <p style="text-align: center;">9 AM</p> <p style="text-align: center;">12 Noon</p> <p style="text-align: center;">3 PM</p> <p style="text-align: center;"><i>Figures 17 – 19: Sun-eye Shadow Analysis (21 June)</i></p>
<p>2.3.8 Views</p>	<p>Yes (via condition)</p>	<p>As indicated earlier in this report, the view impacts of the proposed development would primarily affect the view/outlook from the roof terrace of the adjoining mixed use building at No. 368 Military Road.</p> <p>The deferred commencement condition requiring additional building setback on southern side of the fourth floor of the proposed development would provide a more sympathetic built form for the heritage listed Orpheum Theatre (Condition AA1). This also has the benefit of reducing the view impacts for the roof terrace at No.368 Military Road due to the reduction in building elements on the roof level.</p>
<p>2.3.9 Acoustic Privacy</p>	<p>Yes (via condition)</p>	<p>The applicant has submitted an acoustic report recommending a number of measures for the southern units facing Military Road, to include double glazing and a high balustrade balcony design to achieve compliance with the DCP acoustic amenity requirements.</p>

		A condition is recommended requiring the development to comply with the recommendations of the acoustic report to ensure the amenity of the proposed apartment units (Condition C2).
2.3.11 Visual Privacy	Yes	<p>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 (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	Yes (via condition)	<p>The design of the proposed mixed use building is generally in context with other new mixed use development along Military Road to the west of the subject site.</p> <p>A deferred commencement condition is recommended requiring an increase in the setback for the fourth floor of the Military Road façade in order to provide a more sympathetic transition of building height and built form for the two storey Orpheum Theatre to the east of subject site (Condition AA1).</p>
2.4.2 Site Consolidation	Yes	There would be no isolation of the adjoining properties given that the properties to the west have already been redeveloped for modern style mixed use building. The property occupied by the Orpheum Theatre is substantial in size and can be redeveloped for a mixed use development, however, such a development is unlikely to occur due to the heritage listing of the site.
2.4.3 Setbacks	Yes	<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. 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. This proposal is considered to be acceptable having regard to the site circumstances.</p>
2.4.4 Podiums 2.4.5 Building Design	Yes (via condition)	<p>The proposed building design with zero front and side setbacks and the use of ground floor for commercial/retail purposes is generally consistent with the character of similar mixed use buildings along Military Road.</p> <p>The proposal to provide variable podium heights on the street frontages is supported because this would provide a transition of podium heights between the Orpheum Theatre to the east and the mixed use building at No.368 Military Road to the west of the subject site.</p> <p>The recommendation for a deferred commencement condition requiring an increase in the setback for the fourth floor from Military Road should provide a more sympathetic transition in terms of building heights and built forms for the two storey Orpheum Theatre to the east of subject site (Condition AA1).</p>

<p>2.4.6 Skyline</p>	<p>Yes</p>	<p>The proposal is generally within the LEP height limit, with the exception of the lift overrun and the plant area. The maximum height of these building elements would not exceed 2m over the maximum building height limit and are generally located away from the edge of the proposed mixed use building to minimise visual impacts on the skyline of Cremorne Town Centre.</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>2.4.9 Through Site Pedestrian Links</p>	<p>No (acceptable on merit)</p>	<p>The absence of a through-site-link for the subject proposal is considered to be acceptable given the small site area and the narrow and elongated shape of the property with its two frontages.</p>
<p>2.4.10 Streetscape</p>	<p>Yes (via condition)</p>	<p>The design of the building and the treatments of the building façades to Military Road and Parraween Street with their variable podium heights are considered to be acceptable and would provide visual interest.</p> <p>The recommendation of a deferred commencement condition requiring an increase in the setback for the fourth floor from Military Road should provide a more sympathetic transition of building heights and built forms for the two storey Orpheum Theatre to the east of subject site (Condition AA1).</p> <p>The façades are considered to be well articulated with the use of various materials/colours.</p> <p>The proposed commercial/retail uses on the ground level would provide opportunities for street activation on Military Road and Parraween Street.</p>
<p>2.4.11 Entrances and Exits</p>	<p>Yes (via condition)</p>	<p>The entrances to the ground level commercial/retail tenancies would be located on Military Road and Parraween Street frontage. The pedestrian entrance for the apartments on the upper level would be located on Parraween Street frontage.</p> <p>No objection is raised to the proposed entry/exit arrangements because the commercial/retail tenancies would activate the street on the two street frontages whilst the pedestrian entrance for the apartments on Parraween Street would be clearly marked and convey a sense of address.</p> <p>In addition, appropriate street addresses can be provided for the Military Road and Parraween Street frontages to ensure easy identification of the commercial/retail tenancies and the building entrance on different street frontages (Condition D2).</p>
<p>2.5 Quality Urban Environment</p>		
<p>2.5.1 Accessibility</p>	<p>Yes</p>	<p>The proposed development, including the ground floor commercial/retail tenancies and the apartment units, 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="778 275 1412 459"> <thead> <tr> <th>Dwelling Type:</th> <th>Proposed</th> <th>Control</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>42m²</td> <td>40sqm</td> <td>Yes</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 - 177m²</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, second and third 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	42m ²	40sqm	Yes	1 Bedroom	61m ²	50sqm	Yes	2 Bedroom	N/A	80sqm	N/A	3 Bedroom	145m ² - 177m ²	100sqm	Yes
Dwelling Type:	Proposed	Control	Compliance																			
Studio	42m ²	40sqm	Yes																			
1 Bedroom	61m ²	50sqm	Yes																			
2 Bedroom	N/A	80sqm	N/A																			
3 Bedroom	145m ² - 177m ²	100sqm	Yes																			
<p>2.5.5 Lightwells</p>	<p>No (acceptable on merit)</p>	<p>As mentioned earlier in this report, the applicant has amended the design of the lightwell to increase the access of light and ventilation with the removal of balconies and ventilation shafts within the lightwell.</p> <p>Whilst the size of the proposed lightwell at 8.4m x 2.7m does not comply with the DCP requirements of 6m x 6m, the proposal is considered to be acceptable given that the small site area, the narrow and the elongated shape of the subject site.</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>Yes (via condition)</p>	<p>As mentioned earlier in this report, the proposal involves works to be carried out on the western property boundary to create a 4m wide opening to provide an underground vehicular access between the proposed basement carpark of the subject site and the existing basement carpark of the adjoining mixed use building to the west at No.368 Military Road.</p> <p>Vehicular access to the basement carpark within the subject site would be provided via the existing basement carpark entrance driveway for No.368 Military Road off Parraween Street. Therefore, the proposal would rely on the use of the basement carpark and entrance driveway within No.368 Military for vehicular access to the basement carpark within the subject site.</p> <p>Council's Development Engineer and Traffic and Transport Engineer have raised no objection to the proposed vehicular access design subject to the imposition of appropriate conditions. The proposal is supported because the provision of a separate entrance driveway for the subject site is constrained by its narrow street frontage and the need for providing other facilities and shopfront on the ground floor.</p> <p>It is noted that an 88B instrument has been in placed as part of the strata plan for the adjoining mixed used development at No.368 Military Road (SP79375) to provide vehicular access for the subject site via the basement of No.368 Military Road.</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="778 302 1410 808"> <thead> <tr> <th>Parking Type:</th> <th>Proposed</th> <th>Control (Max.)</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Residential: - Car</td> <td>9</td> <td>6</td> <td>No</td> </tr> <tr> <td>Residential - Motorcycle</td> <td>0</td> <td>1 (1sp/10car)</td> <td>No</td> </tr> <tr> <td>Disabled</td> <td>1</td> <td>1 (1sp/each adaptable unit)</td> <td>Yes</td> </tr> <tr> <td>Non-residential</td> <td>0</td> <td>3</td> <td>No</td> </tr> <tr> <td>Commercial</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 to be provided on the opposite side of the car stacker include one (1) parking space for people with disabilities. The applicant has also advised that the car stacker would employ an automated parking system design instead of a conventional car stacking design within each individual parking bay.</p> <p>It is noted earlier in the report that Council's Traffic and Transport Engineer recommended the deletion of one parking space and the provision of a car wash bay.</p> <p>Given the confined nature of the basement car park and the modest scale of the proposed development containing only seven (7) apartments, the provision of a full car wash bay is not considered to be practicable.</p> <p>However, it is considered to be more appropriate to allocate parking space No.9 for commercial parking to ensure the availability of parking for the commercial tenancy within the proposed development.</p> <p>In addition, it is considered that a parking space on the car stacker can be allocated for motorcycle in order to cater for the parking needs from different types of vehicles.</p> <p>It is recommended a condition be imposed requiring modifications to the design of the basement car park involving the changes to the allocation of parking spaces to include parking for the commercial component within the development and one (1) space for motorcycle on the car stacker (Condition C1).</p>	Parking Type:	Proposed	Control (Max.)	Compliance	Residential: - Car	9	6	No	Residential - Motorcycle	0	1 (1sp/10car)	No	Disabled	1	1 (1sp/each adaptable unit)	Yes	Non-residential	0	3	No	Commercial	0	3	No
Parking Type:	Proposed	Control (Max.)	Compliance																							
Residential: - Car	9	6	No																							
Residential - Motorcycle	0	1 (1sp/10car)	No																							
Disabled	1	1 (1sp/each adaptable unit)	Yes																							
Non-residential	0	3	No																							
Commercial	0	3	No																							
<p>2.5.9 Garbage Storage</p>	<p>No (acceptable on merit and via condition)</p>	<p>As indicated earlier in this report, the absence of a garbage chute and recycle bin storage on all residential levels is acceptable having regard to the small number of seven (7) apartments within the development and the constrained floor plan to accommodate various facilities particularly on the ground floor.</p> <p>The proposal, as amended by the applicant, is considered to be acceptable having regard to waste management subject to the imposition of appropriate conditions.</p>																								

2.5.10 Site Facilities	Yes	The proposal is considered to provide for the needs of future residents and have no adverse impacts to the environment.
2.6 Efficient Use of Resources		
2.6.1 Energy Efficiency	Yes	The application is accompanied by a compliant BASIX Certificate.

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

The application has been assessed against the relevant controls in NSDCP 2013 and generally found to be satisfactory as shown in the earlier compliance table.

The proposal is also generally consistent with Part C of North Sydney DCP 2013 in particular Section 5 of the Character Statement for North Cremorne Planning Area and Section 5.1 for Neutral Bay and Cremorne Town Centres.

The proposed mixed use building would be generally consistent with the desired mixed use character for development along Military Road. The design of the proposed mixed use building is also consistent with the desired built form within the town centre in terms of bulk/scale, setbacks, podium heights subject to the imposition of a deferred commencement condition requiring design modifications to the fourth floor of the proposed building (**Condition AA1**) to provide a more sympathetic response to the adjoining heritage listed Orpheum Theatre.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The subject application has been assessed against the North Sydney Local Infrastructure Contributions Plan 2020 and is subject to payment of contributions towards the provision of local infrastructure. The contributions payable have been calculated in accordance with Section 1.4 in Council’s Contributions Plan as follows:

Population Increase

Development type	Existing	Proposed	Unit	Increase
Residential accommodation:				
Studio/1 bed dwellings	0	3	dwellings	3 dwellings
3 or more bed dwellings	2	4	dwellings	2 dwellings
Non-residential accommodation:				
Business premises	297sqm	196sqm	35sqm/worker	-2.9 worker

Contribution amounts payable

Applicable contribution type		
s7.11 contribution		
<i>(Net population increase)</i>	Open space and recreation facilities:	\$42,779.55
	Public domain:	\$17,623.67
	Active transport:	\$1,005.97
	Community facilities:	\$8,592.45
	Plan administration and management:	\$1,044.79
	Total:	\$71,046.43

Conditions requiring the payment of contributions at the appropriate time are included in the attached conditions (**Condition C42**).

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 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

SUBMITTERS CONCERNS

Council notified adjoining properties and the Harrison and Brightmore Precincts of the proposed development seeking comment between 17 September and 1 October 2021. Council received eleven (11) submissions, including five (5) submissions from two (2) submitters.

The applicant submitted amended plans that were renotified to adjoining properties and the precinct for 14 days between 28 January and 11 February 2022. Council received five (5) submissions.

The matters raised in relation to view impacts have been considered and addressed in detail earlier in this report. The other issues raised in the submissions are addressed as follows

- ***The proposal is inappropriate as it has not addressed the significance of the heritage listed Orpheum Theatre***

Comment:

As indicated earlier in this report, the application was referred to Council's Conservation Planner who recommended modifications to the design of the proposed mixed use building to address the heritage significance of the Orpheum Theatre.

It is recommended that a deferred commencement condition be imposed requiring the fourth floor southern building be setback from the southern (Military Road) boundary by 8m to match the southern wall of the lift overrun to provide a 3 bedroom apartment, similar to the layout of the three bedroom apartments on the first and second floor, in order 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 (**Condition AA1**).

- ***The proposal has no regard to the significance of the existing shop top housing building***

Comment:

The existing two (2) storey shop top housing building is not listed as a heritage item and is not located within a conservation area. Whilst the southern façade above the Military Road awning contains some original building elements and the building height is more consistent with that of the Orpheum Theatre, the remainder of the building has been heavily modified including the fit-out works within the ground floor tenancies for various commercial/retail and restaurant uses and the extensive works involved for the creation of the first floor apartments following the approval of **D444/13**.

Given that there is no heritage listing of the existing building, there are insufficient grounds for the retention of the existing shop top housing building that occupies the subject site.

- ***Concerns raised about the impacts of the proposed works to provide vehicular access through the basement of the subject site and the adjoining mixed use building to the west at No.368 Military Road***

Comment:

The application was referred to Council's Senior Development Engineer and considered satisfactory subject to the imposition of appropriate engineering conditions. In particular specific conditions requiring dilapidation surveys for the adjoining properties and the requirement for shoring of the adjoining properties to ensure the protection of existing public infrastructure and the adjoining private properties (**Conditions C5 & C6**).

In addition, the applicant has submitted a statement from a structural engineer detailing the engineering requirements to ensure structural integrity of the basement walls and the adjoining properties. A condition requiring the submission of a report detailing the structural adequacy of the adjoining properties, including that of the mixed use building at No.368 Military Road, is recommended to ensure the protection and structural adequacy of the adjoining properties during the excavation works (**Condition C7**).

It is also noted from the structural drawings submitted as part of the Construction Certificate for the adjoining property at No.368 Military Road that consideration has been given to the design of the shoring walls along the property boundary with No.372 Military Road to facilitate the creation of a future opening through to the basement of the subject site.

The removal of the need for an extra driveway is to be commended.

- ***Overshadowing***

Comment:

As indicated earlier in this report, the proposal would not cause material shadowing impacts on the adjoining properties including the mixed use building at No.368 Military Road.

- ***Reduction in airflow to air conditioning units and ventilation system on the roof of the adjoining mixed use building to the west***

Comment:

It is noted that the building elements on the roof of the proposed mixed use building would be similar in height to the building elements on the roof of No.368 Military Road. Given the separation distance and the height of the proposed building elements on the roof of the subject site and the existing plant/equipment on the roof of No.368 Military Road, the impact on air flow between the properties is not considered to be material.

- ***Insufficient justifications for the creation of an underground link between the subject site and No.368 Military Road***
- ***Additional traffic generation and associated pedestrian safety concerns and amenity impacts***
- ***Higher demand for on-street parking***

Comment:

The proposed vehicular link between the basements of the subject site and No.368 Military Road is considered to be acceptable because the narrow street frontage of the subject site is unlikely to provide a satisfactory vehicular access with a shopfront that promotes street activation.

The scale of the proposed development would not generate an excessive level of traffic movements on the existing shared driveway of No. 368 Military Road via Parraween Street. The additional movements of cars is unlikely to cause material amenity impacts for the adjoining properties such as noise and glare from headlights giving the modest scale of the proposed development including seven (7) apartments and the small increase in traffic movements associated with the development.

The proposal is unlikely to cause additional safety concerns for pedestrians because the proposal including a shared driveway would remove the need for another driveway from the subject site that would be adjacent to the existing driveway for No.368 Military Road on Parraween Street. The proposal would avoid further proliferation of driveways on Military Road with implications for traffic flows and streetscape appearance.

The proposal is unlikely to have adverse impact on the demand for on street parking given that the proposed parking is considered to be acceptable subject to conditions as indicated earlier in this report.

PUBLIC INTEREST

The proposal is considered to be in the public interest for the reasons stated throughout this report.

SUITABILITY OF THE SITE

The proposal would be located in a B4 (Mixed use) zone where a shop top housing (mixed use) development is a permissible form of development. Consequently, the proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

CONCLUSION + REASONS

The development application has been assessed against the North Sydney LEP 2013 and North Sydney DCP 2013, SEPP 65 – Design Quality of Residential Apartment Development and Apartment Design Guide (ADG) and was generally found to be satisfactory.

The subject site is located to west of the heritage listed Orpheum Theatre. A deferred commencement condition is recommended requiring additional setback for the southern side on the fourth floor to provide a more sympathetic transition of the built form and building height for the Orpheum Theatre (**Condition AA1**). The design amendment is considered appropriate whether the Orpheum Theatre is listed as a local heritage item or in the event of future State listing.

This report has also considered a written request submitted by the applicant seeking a variation to Clause 4.3 in North Sydney LEP concerned with the height of buildings height pursuant to Clause 4.6 of the LEP. It is considered that the variation to the building height development standard could be supported because the building elements in breach of the LEP building height development standard would not cause material impacts on the amenity of the adjoining properties as well as the character of the locality subject to the imposition of the deferred commencement condition.

The issues raised in the submissions have been addressed in the report.

Having regard to the provisions of Section 4.15(1) of the EP&A Act 1979 the application is considered to be satisfactory and therefore can be approved subject to the imposition of the deferred commencement condition (**Condition AA1**).

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

Council notified adjoining properties and the Harrison and Brightmore Precincts of the proposed development seeking comment between 17 September and 1 October 2021. Council received eleven (11) submissions, including five (5) submissions from two (2) submitters.

The applicant submitted amended plans that were renotified to adjoining properties and the precinct for 14 days between 28 January and 11 February 2022. Council received five (5) submissions.

The matters raised in the submissions have been considered and addressed in detail earlier in this report.

RECOMMENDATION

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

- A. **THAT** the North Sydney Local Planning Panel, assume the concurrence of the Secretary of Planning, Industry and Environment, invoke the provisions of Clause 4.6 with regard to the exception to the development standard for maximum building height and grant deferred commencement consent to Development Application No. 269/21 for demolition of the existing two storey shop top housing building and the construction of a five storey shop top housing (mixed use) development on land at No.372 Military Road (aka 75 & 75A Parraween Street) Cremorne, subject to the following site specific conditions and the attached conditions:-

AA. Deferred Commencement Condition

This consent shall not operate until the following deferred commencement condition has been satisfied.

The applicant must satisfy Council as to the matters specified in the deferred commencement condition within 12 months of the date of the grant of this consent.

If the applicant fails to satisfy Council as to the matters specified in the deferred commencement condition within 12 months from the date of this consent. It will lapse in accordance with Section 4.16(3) of the Environmental Planning and Assessment Act 1979.

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.)

This consent shall not operate until such time as the written approval from Council's Manager Development Services stating that the requirements of this condition have been satisfied.

- B. Subject to the above deferred commencement condition being satisfied within 12 months of the date of this determination, the consent shall operate in accordance with the attached conditions including the following site specific conditions and the attached conditions:**

Basement Carpark

- C1. The applicant shall amend the design of the basement carpark with the allocation of parking space No.9 as shown on Drawing No. DA100 Issue B, dated 18.11.21 and prepared by PA Studio to provide a parking space for the commercial tenancy and to remain as common property in any strata plan. A parking space on the car stacker shall be allocated to motorcycle in order to cater for the parking needs from different types of vehicles.

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

(Reason: To ensure compliance with DCP requirement for motorcycle parking.)

Compliance with Acoustic Report

- C2. The recommendations contained in the statement and the referenced acoustic report, prepared by Acoustic Logic, dated 13 July 2021 must be implemented during construction and use of the development.

A statement from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that the acoustic mitigation measures outlined in the above stated report have been suitably incorporated into the development and that relevant noise criteria have been satisfied, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

(Reason: To maintain an appropriate level of amenity for the subject shop top housing development and the adjoining land uses.)

ROBIN TSE
SENIOR ASSESSMENT OFFICER

ROBYN PEARSON
TEAM LEADER ASSESSMENTS

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
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AA. Deferred Commencement Condition

This consent shall not operate until the following deferred commencement condition has been satisfied.

The applicant must satisfy Council as to the matters specified in the deferred commencement condition within 12 months of the date of the grant of this consent. If the applicant fails to satisfy Council as to the matters specified in the deferred commencement condition within 12 months from the date of this consent, this consent will lapse in accordance with Section 4.16(3) of the Environmental Planning and Assessment Act 1979.

NOTE: Consideration should be given to providing the evidence to Council to allow sufficient time to consider the same and form a view as to whether the deferred commencement conditions are satisfied or not. You are also advised of your appeal rights under clause 95(6) of the Environmental Planning and Assessment Regulation 2000, which provides that: *If the consent authority has not notified the applicant within the period of 28 days after the applicant's evidence is produced to it, the consent authority is, for the purposes only of section 8.7 of the Act, taken to have notified the applicant that it is not satisfied as to those matters on the date on which that period expires.*

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.

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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.)

This consent shall not operate until such time as the written approval from Council's Manager Development Services stating that the requirements of this condition have been satisfied.

Subject to the above deferred commencement conditions being satisfied within 12 months of the date of this determination, the consent shall operate in accordance with the following standard conditions and site specific conditions:

A. Conditions that Identify Approved Plans

Development in Accordance with Plans/Documentation

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan No.	Description	Prepared by	Dated
DA 100 Issue B	Basement & Ground Floor	PA Studio	18/11/21
DA 101 Issue B	Floor Plans: L1 - L3	PA Studio	18/11/21
DA 102 Issue B	Floor Plans: L4 & Roof Plan	PA Studio	18/11/21
DA 200 Issue B	Section A-A	PA Studio	18/11/21
DA 201 Issue B	Section B-B	PA Studio	18/11/21
DA 202 Issue B	Section C-C & D-D	PA Studio	18/11/21
DA 300 Issue B	North and West Elevations	PA Studio	18/11/21
DA 301 Issue B	South & East Elevations	PA Studio	18/11/21
DA 504 Issue B	Landscape Plan	PA Studio	18/11/21

(Note: The final drawing numbers and associated details in this condition are subject to further updates to reflect the changes required by the relevant deferred commencement conditions.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

Plans on Site

- A2. A copy of all stamped approved plans, specifications and documents (including the plans, specifications and documents submitted and approved with the Construction Certificate) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

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All documents kept on site in accordance with this condition must be provided to any officer of the Council or the certifying authority upon their request.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information and to ensure ongoing compliance)

No Demolition of Extra Fabric

A3. Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans.

(Reason: To ensure compliance with the approved development)

External Finishes and Materials

A4. External finishes and materials must be in accordance with the submitted schedule Drawing Numbered DA503, Issue B, dated 18 November 2021 and prepared by PA Studio and received by Council unless otherwise modified by Council in writing.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

B. *Matters to be Completed before the lodgement of an Application for a Construction Certificate*

Construction Management Program - Local Traffic Committee Approval

B1. A Construction Management Program prepared by a suitably qualified and experienced traffic consultant must be submitted for consideration by the North Sydney Traffic Committee and approved in writing by North Sydney Council's Traffic Division PRIOR TO THE ISSUE OF ANY Construction Certificate. Any use of Council property will require appropriate approvals prior to any work commencing. At a minimum, the Construction Management Program must specifically address the following matters:

- a) A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
 - i. Dedicated temporary construction site driveway entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways and footways;
 - ii. The proposed signage for pedestrian management to comply with the relevant Australian Standards, including pram ramps;
 - iii. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
 - iv. The locations of any proposed Work Zones in the frontage roadways (to be approved by Council's Traffic Committee);
 - v. Locations of hoardings proposed;
 - vi. Location of any proposed crane standing areas;

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- vii. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
 - viii. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected; and
 - ix. The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible.
-
- b) A detailed heavy vehicle access route map through the Council area to Arterial Roads. Provision is to be made to ensure through traffic is maintained at all times.
 - c) The proposed phases of works on the site, and the expected duration of each phase.
 - d) How access to neighbouring properties will be maintained at all times and the proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of process.
 - e) The road is not to be used as a waiting area for trucks delivering to or awaiting pick up of materials.
 - f) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising structural engineer and must not involve any permanent or temporary encroachment onto Council's property.
 - g) Proposed protection for Council and adjoining properties. Details are to include site fencing and the provision of "B" class hoardings over footpaths and laneways.
 - h) A Waste Management Plan. The Waste Management Plan must include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, design of on-site waste storage and recycling area and administrative arrangements for waste and recycling management during the construction process.

All traffic control work and excavation, demolition and construction activities must be undertaken in accordance with the approved Construction Management Program and any conditions attached to the approved Program. A certificate of compliance with this condition must be obtained from Council's development engineers. The certificate and the approved Construction Management Program must be submitted as part of the documentation lodged with the application for approval of a construction certificate. A copy of the approved Construction Management Program and any conditions imposed on that Program, must be kept on the site at all times and made available to any officer of Council upon request.

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Notes:

- 1) North Sydney Council's adopted fee for certification of compliance with this condition shall be payable on lodgement, or in any event, prior to the issue of the relevant approval.
- 2) Any use of Council property will require appropriate approvals and demonstration of liability insurances prior to such work commencing.
- 3) Failure to provide complete and detailed information may result in delays. It is recommended that your Construction Management Plan be lodged with Council as early as possible, as **a minimum six (6) weeks' assessment period** is required, including referral to the Traffic Committee.
- 4) Dependent on the circumstances of the site, Council may request additional information to that detailed above.

(Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the demolition process in a manner that respects adjoining owner's property rights and residential amenity in the locality, without unreasonable inconvenience to the community)

C. *Prior to the Issue of a Construction Certificate (and ongoing, where indicated)*

Basement Carpark

- C1. The applicant shall amend the design of the basement carpark with the allocation of parking space No.9 as shown on Drawing No. DA100 Issue B, dated 18.11.21 and prepared by PA Studio to provide a parking space for the commercial tenancy and to remain as common property in any strata plan. A parking space on the car stacker shall be allocated to motorcycle in order to cater for the parking needs from different types of vehicles.

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

(Reason: To ensure compliance with DCP requirement for motorcycle parking.)

Compliance with Acoustic Report

- C2. The recommendations contained in the statement and the referenced acoustic report, prepared by Acoustic Logic, dated 13 July 2021 must be implemented during construction and use of the development.

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A statement from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that the acoustic mitigation measures outlined in the above stated report have been suitably incorporated into the development and that relevant noise criteria have been satisfied, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

(Reason: To maintain an appropriate level of amenity for the subject shop top housing development and the adjoining land uses.)

Dilapidation Report Damage to Public Infrastructure

- C3. A dilapidation survey and report (including photographic record) must be prepared by a suitably qualified consultant which details the pre-developed condition of the existing public infrastructure in the vicinity of the development site. Particular attention must be paid to accurately recording any pre-developed damaged areas so that Council is fully informed when assessing any damage to public infrastructure caused as a result of the development. A copy of the dilapidation survey and report is to be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The developer may be held liable for all damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded and demonstrated as pre-existing under the requirements of this condition.

The developer shall bear the cost of carrying out works to restore all public infrastructure damaged as a result of the carrying out of the development, and no occupation of the development shall occur until damage caused as a result of the carrying out of the development is rectified.

A copy of the dilapidation survey and report must be lodged with North Sydney Council by the Certifying Authority with submission of the Construction Certificate documentation.

(Reason: To record the condition of public infrastructure prior to the commencement of construction)

Dilapidation Report Private Property (Excavation)

- C4. A full dilapidation survey and report on the visible and structural condition of all neighbouring structures within the 'zone of influence' of the required excavations must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The zone of influence is to be defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

The dilapidation report and survey are to be prepared by a consulting structural/geotechnical engineer agreed to by both the applicant and the owner of any affected adjoining property.

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All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant **MUST DEMONSTRATE**, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only and may be used by the developer or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: To record the condition of property/i.e., prior to the commencement of construction)

Dilapidation Survey Private Property (Neighbouring Buildings)

- C5. A photographic survey and dilapidation report of adjoining properties No. 368 Military Road and No. 380 Military Road detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, **SHALL BE** submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Certifying Authority, prior to the issue of any Construction Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the photographic survey and dilapidation report is denied by an adjoining owner, the applicant **MUST DEMONSTRATE**, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: Proper management of records)

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Shoring for Adjoining Property

- C6. Where any shoring for excavation is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising structural engineer, showing all details, including the extent of excavation, encroachment and the method of removal and de-stressing of shoring elements, backfilling and compacting of over-excavated cavities on Council's and/or private property with fill suitable for its purpose, must be submitted to the Certifying Authority for approval with the Construction Certificate. A copy of this documentation must be provided to the Council for record purposes. Backfilling and compacting of over-excavated cavities must be addressed as the build-up is progressing through the basements to ensure that compaction is reliable. To obtain the permit for tieback anchors, an 'Application to satisfy development consent' form with payment of the adopted assessment fees, must be made to Council.

Note: Approval of engineering drawings for shoring works to be located on adjoining property by the Certifying Authority does not authorise a trespass on private or public land. All relevant permissions/legal rights must be obtained to undertake any works on adjoining land.

(Reason: To ensure the protection of existing public infrastructure and adjoining properties)

Structural Adequacy

- C7. A report from an appropriately qualified and practising structural engineer detailing the structural adequacy of adjoining properties No. 368 Military and No. 380 Military Road with reference to the findings from the statement prepared by MPN Structural Design and Engineering dated 19 August 2021, which certifies their ability to withstand the proposed excavation (including the works associated with the creation of basement opening between the subject site and No. 368 Military Road) and outlines any measures required to be implemented to ensure that no damage will occur to adjoining properties during the course of the works, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The measures outlined in the certified report must be complied with at all times.

Under no circumstances shall the party or common wall be extended or altered without the prior written consent of the adjoining owner. Any such extension of the party wall shall be noted on title by way of appropriate easement or Section 88B instrument.

(Reason: To ensure the protection and structural integrity of adjoining properties, and that common law property rights are recognised)

Geotechnical Report

- C8. Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following:

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- a) the type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0 m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum;
- b) the appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended;
- c) the proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support must be provided within the subject site);
- d) the existing groundwater levels in relation to the basement structure, where influenced;
- e) the drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilised in controlling groundwater. Where it is considered there is the potential for the development to create a "dam" for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilised; and
- f) recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

The geotechnical report must be prepared by an appropriately qualified consulting geotechnical/hydrogeological engineer with previous experience in such investigations and reporting.

It is the responsibility of the consulting geotechnical/hydrological specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report must contain site-specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate.

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The design principles for the geotechnical report are as follows:

- a) no ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure;
- b) no changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- c) no changes to the ground water level are to occur during the construction of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- d) vibration is to be minimised or eliminated to ensure no adverse impact on the surrounding property and infrastructure occurs, as a result of the construction of the development;
- e) appropriate support and retention systems are to be recommended and suitable designs prepared to allow the proposed development to comply with these Design Principles; and
- f) an adverse impact can be assumed to be crack damage as identified within the relevant Australian Standard for determining such damage.

The report, satisfying the requirements of this condition, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The professional recommendations, implementation program, monitoring program, mitigation measures and the like contained in the report must be implemented in full during the relevant stages of excavation and construction.

(Reason: To ensure the structural integrity of the subject site and adjoining sites during the excavation process)

Sediment Control

- C9. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication *Managing Urban Stormwater: Soils and Construction* (4th edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

A Sediment Control Plan must be prepared and submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate and prior to any works commencing. The Sediment Control Plan must be consistent with the Blue Book and disclose:

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- a) All details of drainage to protect and drain the site during the construction processes;
- b) All sediment control devices, barriers and the like;
- c) Sedimentation tanks, ponds or the like;
- d) Covering materials and methods; and
- e) A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- f) Methods for the temporary and controlled disposal of stormwater during construction.

All works must be undertaken in accordance with the approved Sediment Control plan. 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.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Waste Management Plan

C10. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate. The plan must include, but not be limited to:

- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
- b) The design of the on-site waste storage and recycling area; and
- c) Administrative arrangements for waste and recycling management during the construction process.

The approved Waste Management Plan must be complied with at all times in the carrying out of the development.

(Reason: To encourage the minimisation of waste and recycling of building waste)

External Finishes and Materials

C11. The external colours and finishes must be in accordance with the approved schedule of finishes and materials. 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.

(Reason: To ensure quality built form of development)

Reflectivity Index of Glazing

- C12. The reflectivity index (expressed as a per centum of the reflected light falling upon any surface) of external glazing for windows, walls or roof finishes of the proposed development is to be no greater than 20%. Plans and specifications which comply 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: The reflectivity index of glazing elements can be obtained from glazing manufacturers. Glass with mirrored or reflective foil finishes is unlikely to achieve compliance with this requirement.

(Reason: To ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development)

Roofing Materials - Reflectivity

- C13. Roofing materials must be factory pre-finished with low glare and reflectivity properties to be compatible with the colours of neighbouring buildings. The selected roofing material must not cause a glare nuisance or excessive reflectivity to adjoining or nearby properties. Plans and specifications which comply 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.

(Reason: To ensure that excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development)

No External Service Ducts

- C14. Service ducts must be provided within the building to keep external walls free of plumbing, drainage or any other utility installations. Plans and specifications which comply 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.

(Reason: To ensure quality built form of the development)

Work Zone

- C15. If a Work Zone is proposed, an application must be made to the North Sydney Local Traffic Committee to install the 'Work Zone'. A Work Zone permit is required to be issued by the Council prior to the issue of any Construction Certificate.

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Work Zones are provided specifically for the set down and pick up of materials and not for the parking of private vehicles associated with the site. Work Zones will generally not be approved where there is sufficient space on-site for the setting down and picking up of goods being taken to or from a construction site. If the Work Zone is approved by the Committee, the Applicant must obtain a written copy of the related resolution from the North Sydney Local Traffic Committee and submit a copy of this to the Certifying Authority to enable issue of the Construction Certificate.

Where approval of the 'Work Zone' is given by the Committee, the requirements of the Committee, including installation of the necessary 'Work Zone' signage and payment of any fees, must occur prior to commencement of any works on the site. Further, at the expiration of the Work Zone approval, the developer is required to remove the Work Zone signs and reinstate any previous signs, all at the developer's cost. The requirements imposed by the Committee on the Work Zone permit (or permits) must be complied with at all times.

(Reason: Amenity and convenience during construction)

Parking Meter Relocation

- C16. All costs associated with relocating the metered parking including all sign changes, parking bay line markings must be paid in full to North Sydney Council prior to issue of any Construction Certificate.

The Certifying Authority must ensure that the specifications submitted, accompanying the issued Construction Certificate, fully satisfy this condition.

(Reason: To ensure the proper management of public land and funds)

Bicycle Storage and Parking

- C17. A bicycle storage area must accommodate a minimum of thirteen (13) bicycles as indicated on the approved plans, and a visitor parking bicycle rail shall be provided. The bicycle storage lockers and bicycle rail shall be designed in accordance with the applicable Australian Standards. Plans and specifications which comply 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, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To promote and provide facilities for alternative forms of transport)

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Accessible Parking Spaces to be Provided

C18. A total of 1 accessible parking space shall be provided as part of the total car-parking requirements. Consideration must be given to the means of access from the car-parking spaces to adjacent buildings, to other areas within the building and to footpath and roads. All details shall be prepared in consideration of, and construction completed in accordance with applicable Australian Standards to achieve compliance with the Disability Discrimination Act. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

(Reason: To ensure equity of access and appropriate facilities are available for people with disabilities in accordance with Federal legislation)

Basement Car Park to comply with relevant standards

C19. The basement layout must comply with all requirements of Australian Standard AS2890.1. Certification from a suitably qualified and practicing Civil Engineer that the basement design will comply with the requirements of the Australian Standard must be provided to the Certifying Authority for approval prior to issue of any Construction Certificate.

(Reason: To ensure the basement layout complies with relevant standards)

Required Infrastructure Works –Roads Act 1993

C20. Prior to issue of any Construction Certificate engineering design plans and specifications must be prepared by a qualified civil design engineer. The plans and specifications must be to a detail suitable for construction issue purposes and must provide detail and specification for the following infrastructure works to be completed as part of the development. To obtain the permit, an application must be made to Council on a *'Application to satisfy development consent'* form with payment of the adopted assessment/inspection fees. The responsibility for accuracy of the design fully rests with the designing engineer. All responsibility on implementation and supervision of works specified on design plans fully rests on the designing engineer or whoever is chosen to be applicant's engineering representative:

Road Works

- a) Construction of a fully new footpath from pavers is required across the entire site frontage in Parraween Street. The footpath pavement must be placed on a single straight grade of 3.0% falling to the top of kerb, so that it is uniform without showing signs of dipping or rising particularly at entrances. The footpath pavement must be constructed for the full width using the construction required for **(05) Village Centres & Activity Strips area**, as specified in Public Domain Style Manual and Design Codes. A longitudinal section is required along the footpath property boundary at a scale of 1:50 extending 5m past the property boundary line. A longitudinal section is required along the boundary line (existing and proposed levels), at a scale of 1:50 extending 5m past the property boundary line.

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- b) Construction of a fully new kerb and gutter is required across the entire site frontage in Parraween Street. A longitudinal section is required along the gutter line (existing and proposed levels), at a scale of 1:50 extending 5m past the property boundary line.
- c) Cross sections at a scale of 1:50 along the centre-line of each access point to the building must be provided and are to show the calculated clearance to the underside of any overhead structure. All the entry points are to comply with the Building Code of Australia (BCA), including disability requirements. The Council approved footpath levels must be accommodated at the building entry points.
- d) Construction of a fully new road shoulder (maximum grade 5% down towards new gutter) extending to 600 mm out from the gutter alignment and across the entire development site frontage in Parraween Street.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate.

Certifying Authorities must not issue a Construction Certificate without the formal written approval of Council (as Roads Authority) under the Roads Act 1993.

The required plans and specifications are to be designed in accordance with North Sydney Council's current documents Infrastructure Specification for Road Works, Drainage and Miscellaneous Works and Performance Guide for Engineering Design and Construction. The drawings must detail existing utility services and trees affected by the works, erosion control requirements and traffic management requirements during the course of works. A detailed survey must be undertaken as required. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1 – 1996 – Field Guide for Traffic Control at Works on Roads – Part 1 and RMS Traffic Control at Work Sites (1998). **Construction of the works must proceed only in accordance with any conditions attached to the Council Roads Act 1993 approval.**

Note: *A minimum of 21 days will be required for Council to assess Roads Act submissions. Early submission is recommended to avoid any delays in obtaining a Construction Certificate. A fee to cover cost of assessment (set out in Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees. Plans and specifications must be marked to the attention of Council's Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number.*

(Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993)

Stormwater Management and Disposal Design Plan - Construction Issue Detail

- C21. Prior to issue of any Construction Certificate, the applicant shall have a site drainage management plan prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:

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- a) Compliance with BCA drainage requirements, Councils Engineering Performance guide and current Australian Standards and guidelines, such as AS/NZ3500.3.2 1998, National Plumbing and Drainage Code.
- b) Stormwater runoff and subsoil drainage generated by the approved dwellings must be conveyed in a controlled manner by gravity via a direct connection to Council's stormwater gully pit in Parraween Street. When a direct connection to the pit option is implemented then the pipeline within the footpath area shall have a minimum cover of 300mm.
- c) Any redundant stormwater pipelines within the footpath area shall be removed and the footpath and kerb reinstated.
- d) All sub-soil seepage drainage shall be discharged via a suitable silt arrester pit. Details of all plans certified as being adequate for their intended purpose and compliant with the provisions of AS3500.3.2 by an appropriately qualified and practising civil engineer, shall be submitted with the application for a Construction Certificate.
- e) The design and installation of the Rainwater Tanks shall comply with Basix and **Sydney Water** requirements. Overflow from tank shall be connected by gravity to the stormwater disposal system.
- f) Provide subsoil drainage to all necessary areas with pump out facilities as required.

Details demonstrating compliance are to be submitted with the Construction Certificate.

The Certifying Authority issuing the Construction Certificate must ensure that the approved drainage plan and specifications, satisfying the requirements of this condition, is referenced on and accompanies the Construction Certificate.

(Reason: To ensure controlled stormwater management and disposal without nuisance)

On-Site Stormwater Detention

- C22. On site detention must be provided to ensure that the maximum discharge of stormwater collected from the undeveloped site, which would occur during a one-in-five-year storm of one-hour duration is not exceeded. All other stormwater run-off from the site for all storms up to a one-in-twenty-year storm event is to be retained on the site for gradual release to the kerb and gutter or piped drainage system. Provision is to be made for satisfactory overland flow should a storm in excess of the above parameters occur.

For small areas up to 0.5 hectares, determination of the require cumulative storage may be calculated by the mass curve technique as detailed in Technical Note 1, Chapter 14 of the Australian Rainfall and Runoff Volume 1, 1987 Edition.

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Engineering calculations, design and certification complying with this condition must be provided by an appropriately qualified and practising Civil Engineer and submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

(Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that public infrastructure in Council's care and control is not overloaded)

Bond for Damage and Completion of Infrastructure Works - Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement

C23. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of **\$66,000.00** to be held by Council for the payment of cost for any/all of the following:

- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent.
- c) remedying any defects in any such public work that arise within six months after the work is completed.

The security required by this condition and in the schedule contained later in these conditions 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.

The security will be refundable following the expiration of six months from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Engineers.

Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in circumstances including the following:

- where the damage constitutes a hazard in which case Council may make use of the security immediately;
- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;
- works in the public road associated with the development are to an unacceptable quality; and

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- the Certifying Authority must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)

Approval for removal of Trees

- C24. The following tree(s) are approved for removal in accordance with the development consent:

Tree	Location	Height (m)
2 x Buckinghamia celissima (Street Tree)	Parraween Street verge and landscape island	5m

Removal or pruning of any other tree on the site is not approved, excluding species exempt under Council's Tree Preservation Order.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

Garbage and Recycling Facilities

- C25. An appropriate area must be provided within the premises for the storage of garbage bins and recycling containers and all waste and recyclable material generated by this premises. The following requirements must be met:
- all internal walls of the storage area must be rendered to a smooth surface, covered at the floor/wall intersection, graded and appropriately drained with a tap in close proximity to facilitate cleaning;
 - provision for the separation and storage in appropriate categories of material suitable for recycling;
 - the storage area must be adequately screened from the street, with the entrance to the enclosures no more than 2 m from the street boundary of the property;
 - if a storage facility is to be provided at another suitable location within the building, a complementary garbage bin holding bay must be provided no more than 2 m from the street boundary of the property;
 - garbage enclosures serving residential units are not to be located within areas designated for non-residential uses; and
 - garbage enclosures serving non-residential uses are not to be located within areas designated for dining purposes.

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Plans and specifications which comply 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: The applicant may wish to discuss bin storage requirements and location with Council's Environmental Services prior to finalisation of the required detail, and a copy of Council's Waste Handling Guide should be obtained for reference purposes before the design is finalised.

(Reason: To ensure the provision of appropriate waste facilities for residents and protect community health, and to ensure efficient collection of waste by collection contractors)

Asbestos/Contaminated Materials Survey

C26. A report must be prepared by a suitably qualified person in relation to the existing building fabric/ground cover to be demolished and/or disturbed identifying the presence or otherwise of contamination and, if contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos/other contaminated materials must be undertaken by a WorkCover licensed contractor;
- b) all removal must be in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- c) during the removal of any asbestos/contaminated materials a sign stating "DANGER ASBESTOS/CONTAMINATED MATERIALS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Certifying Authority as proof of correct disposal of asbestos/contaminated materials laden waste.

The report must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the report, and other plans, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the long-term health of workers on site and occupants of the building is not put at risk unnecessarily)

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Storage of Hazardous or Toxic Material

- C27. To ensure hazardous and toxic materials are not a threat to the environment they must be stored in accordance with WorkCover Authority requirements. All tanks, drums and containers of toxic and hazardous materials must be stored in a bunded area. The bund walls and floors must be constructed of impervious materials and are to be of sufficient size to contain 110% of the volume of the largest tank plus the volume displaced by any additional tanks within the bunded area.

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 fully satisfy the requirements of this condition.

(Reason: To ensure the environmental health and safety of the public and workers)

Location of Plant

- C28. Plant and equipment, other than that identified on the approved plans on the roof, is to be located within the basement of the building and is not to be located on balconies or the roof. 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.

(Reason: Minimise impact on surrounding properties, improved visual appearance and amenity for locality)

Noise from Plant and Equipment

- C29. The use of all plant and equipment installed on the premises must not:
- (a) Contribute an LAeq(15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.
 - (b) Cause "offensive noise" as defined in the *Protection of the Environment Operations Act 1997*.

"affected receiver" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship, commercial premises and parks and such other affected receiver as may be notified by the Council in writing.

"boundary" includes any window or elevated window of an affected receiver.

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Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Vibration from Plant and Equipment

- C30. The use of all plant and equipment to be installed on the premises must comply with the vibration limits specified in "Assessing Vibration: a technical guideline" issued by the NSW Environment Protection Authority, at the boundary of any affected receiver.

A certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants must be submitted to the Certifying Authority, certifying that all plant and equipment on the site, together with the proposed plant and equipment, operating contemporaneously will comply with the requirements of this condition.

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.

"affected receiver" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship and commercial premises and such other affected receiver as may be notified by the Council in writing.

"boundary" includes any window or elevated window of an affected residence.

"contemporaneously" means *existing at or occurring in the same period of time* (Macquarie Dictionary 3rd rev. ed. 2004).

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Air Conditioners in Residential Premises

- C31. The use of any air conditioner installed on the premises must comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulations 2008 and State Environmental Planning Policy (Infrastructure) 2007 and must not:

- (a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
 - (i) before 8.00 am and after 10.00 pm on any Saturday, Sunday or Public Holiday; or
 - (ii) before 7.00 am or after 10.00 pm on any other day

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- (b) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy will be applied.

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

“boundary” includes any window or elevated window of an affected residence.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain residential amenity)

Acoustic Privacy (Residential Apartments)

- C32. Noise levels in sole occupancy units of residential apartments must not exceed the following:

Location	Maximum
Habitable Rooms other than Sleeping Areas	40 LAeq (1hr)
Sleeping Areas	35 LAeq (1hr)

The “Maximum” limits are to apply in any hour of a 24-hour period with the windows of the sole occupancy unit closed.

“habitable room” has the same meaning as in the Building Code of Australia.

A floor separating sole occupancy units shall have a weighted standardised impact sound pressure level $L'_{nT,w}$ not more than 55dB when measured in-situ in accordance with AS ISO 140.7-2006 “Field measurements of impact sound insulation of floors” and rated to AS ISO 717.2-2004 “Rating of sound insulation in buildings and of building elements. Part 2: Impact sound insulation”. This clause shall not apply to the floor of a kitchen, bathroom, toilet or laundry in a residential sole occupancy unit.

Mechanical equipment such as lift plant, air conditioning plant servicing the building and pumps shall not be located immediately adjacent bedrooms.

A statement from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that the acoustic mitigation measures outlined above have been satisfied, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

(Reason: To comply with best practice standards for residential acoustic amenity)

Noise and Vibration from Major Roads and Rail Corridors (A)

- C33. To minimise the impact of noise from the adjoining major road or rail corridor, the building shall be acoustically designed and constructed to comply with the requirements of the State Environmental Planning Policy (Infrastructure) 2007 and State Environmental Planning Policy (Infrastructure) Amendment (Schools and TAFE Establishments) 2008.

To minimise the impact of vibration from any adjoining rail corridor, the building shall be acoustically designed and constructed to comply with the requirements of "Assessing Vibration: a technical guideline" issued by the NSW Environment Protection Authority.

(Reason: To comply with State regulations and to ensure a suitable level of amenity not affected by excessive noise and vibration from surrounding activities)

Noise and Vibration Compliance Certification Prior to Issue of Construction Certificate

- C34. A certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that suitable measures have been incorporated into the development and that the noise criteria contained in the conditions herein have been satisfied, must be provided to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The Principal 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.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Mechanical Exhaust Ventilation

- C35. A statement from an appropriately qualified and practising Mechanical Engineer is required detailing how the exhaust ventilation system will be installed in accordance with AS1668. 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.

(Reason: To ensure compliance with acceptable standards for the construction and operation of mechanical plant)

Construction Noise Management Plan

- C36. A Construction Noise Management Plan must be prepared by an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, and must include the following:

(a) Identification of noise affected receivers near to the site.

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- (b) A prediction as to the level of noise impact at noise affected receivers from the use and proposed number of high noise intrusive appliances intended to be operated onsite.
- (c) Details of work schedules for all construction phases;
- (d) A statement should also be submitted outlining whether or not predicted noise levels will comply with the noise criteria stated within the Environment Protection Authority's Interim Construction Noise Guideline ("ICNG").
- (e) Representative background noise levels should be submitted in accordance with the ICNG.
- (f) Confirmation of the level of community consultation that is to be undertaken by occupants at noise affected receivers likely to be most affected by site works and the operation of plant/machinery particularly during the demolition and excavation phases.
- (g) Confirmation of noise monitoring methodology that is to be undertaken during the noise intensive stages of work including details of monitoring to be undertaken at the boundary of any noise affected receiver.
- (h) What course of action will be undertaken following receipt of a complaint concerning offensive noise?
- (i) Details of any noise mitigation measures that have been outlined by an acoustic consultant or otherwise that will be deployed on site to reduce noise impacts on the occupants at noise affected receivers.
- (j) Details of selection criteria for any plant or equipment that is to be used on site, the level of sound mitigation measures to be undertaken in each case and the criteria adopted in their selection taking into account the likely noise impacts on occupants at noise affected receivers and other less intrusive technologies available; and
- (k) Details of site induction to be carried out for all employees and contractors undertaking work at the site.

"affected receiver" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship, commercial premises and parks and such other affected receiver as may be notified by the Council in writing.

"boundary" includes any window or elevated window of an affected residence.

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The Construction Noise Management Plan and must be submitted to the Principal Certifying Authority and a copy provided to Council prior to the issue of the Construction Certificate.

(Reason: To ensure noise generating activities are appropriately managed and nearby sensitive receivers protected)

Provision of Accessible Paths of Travel

C37. The building must be designed and constructed to provide access and facilities in accordance with the Building Code of Australia and Disability (Access to Premises - Buildings) Standards 2010. 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.

Notes:

1. If, in complying with this condition, amendments to the development are required, the design changes must be submitted for the approval of Council prior to a Construction Certificate being issued. Approval of a modification application may be required.
2. It is not within Council's power to set aside National legislation which requires the upgrade of buildings to meet modern access standards. Such decisions remain the jurisdiction of the Building Professionals Board Access Advisory Committee who may grant an exemption in certain exceptional circumstances.
3. Information on making an application for an "unjustifiable hardship exemption" under the accessibility standards can be found in the website of the NSW Building Professional Boards at <http://www.bpb.nsw.gov.au/page/premises-standards>.

(Reason: To ensure the provision of equitable and dignified access for all people in accordance with disability discrimination legislation and relevant Australian Standards)

Underground Electricity and Other Services

C38. All overhead electricity and other lines (existing and proposed) must be undergrounded from the proposed building on the site to the appropriate power pole(s) or other connection point, in accordance with the requirements of Energy Australia. 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 fully satisfy the requirements of this condition.

(Reason: To provide infrastructure that facilitates the future improvement of the streetscape by relocation of overhead lines below ground)

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Adaptable Housing

- C39. Proposed apartments Unit 201 are to be designed with accessible features for disabled persons and must incorporate level entries and wider doorways and corridors, slip resistant surfaces, reachable power points, disabled toilet, and lever door handles and taps. These features are to be designed generally in accordance with the relevant Australian Standard 4299-1995. 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.

(Reason: To ensure equity of access and availability of accommodation in the future for an ageing population)

Section 7.12 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:	\$42,779.55
Public domain:	\$17,623.67
Active transport:	\$1,005.97
Community facilities:	\$8,592.45
Plan administration and management:	\$1,044.79
Total:	\$71,046.43

- * 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)

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Security Deposit/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	
Section 7.11 Contribution	\$71,046.43
TOTAL FEES	\$71,046.43

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)

BASIX Certificate

- C42. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. 1224852M_02 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.

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

Under Awning Sign

- C43. Any under awning sign must be erected approximately horizontal to the ground and be at no point less than 2.6 m from the ground. 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.

(Reason: To ensure adequate head clearance for pedestrian safety)

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Under Awning Lighting

C44. Under awning lighting must be provided to the Military Road, Parraween Street frontage of the site. Such lighting is to be designed to P1 standard in accordance with AS/NZS 1158.3.1. The luminaries must be:

- a) weatherproof and vandal proof;
- b) designed in conjunction with Energy Australia so that the system can easily be connected to a public lighting system when available; and
- c) the location and type of the said luminaries shall be to the satisfaction of Council's Director of Engineering and Property Services.

Plans and specifications complying with this condition must be submitted to the Certifying Authority and the Council's Director of Engineering and Property Services for approval prior to the issue of any Construction Certificate. A construction certificate must not be issued without the approval of the Council's Director of Engineering and Property Services. The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To enhance the amenity and safety of the footpath adjacent to the premises)

TfNSW

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

- (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.

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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)

Ausgrid

- C46. The following Ausgrid requirements must be complied with prior to the issue of a Construction Certificate:

Overhead Powerlines

Safe work NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.

The “as constructed” minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid’s website, www.ausgrid.com.au

It remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.

"Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost.

It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected be entering and leaving the site."

(Reason: Compliance with Ausgrid Requirements)

Sydney Water

C47. The following Sydney Water requirements must be complied with prior to the issue of a Construction Certificate:

Water Servicing

- Potable water servicing should be available via a 100mm CICL watermain (laid in 1922) on Military Road.
- Amplifications, adjustments, and/or minor extensions may be required.

Wastewater Servicing

- Wastewater servicing should be available via a 225mm SGW wastewater main (laid in 1902) on Parraween Street.
- Amplifications, adjustments, and/or minor extensions may be required.

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Note: This advice is not formal approval of our servicing requirements. Detailed requirements, including any potential extensions or amplifications, will be provided once the development is referred to Sydney Water for a Section 73 application. More information about the Section 73 application process is available on our web page in the Land Development Manual.

(Reason: Compliance with Sydney Water Requirements)

D. Prior to the Commencement of any Works (and continuing where indicated)**Public Liability Insurance - Works on Public Land**

D1. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent. The Policy is to note and provide protection/full indemnification for North Sydney Council, as an interested party. A copy of the Policy must be submitted to Council prior to commencement of any works. The Policy must be valid for the entire period that the works are being undertaken.

Note: Applications for hoarding permits, vehicular crossings etc will require evidence of insurance upon lodgement of the application.

(Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land)

Notification of New Addresses

D2. Prior to the commencement of any building works, an application must be made and written confirmation received from North Sydney Council of the allocated street address (house number) and/or unit numbers of the completed project.

To assist Council, a plan for unit numbering should be submitted for concurrence. These details will be recorded in Council records and must be displayed at the property in accordance with the provisions of the applicable Australian Standard relating to rural and urban addressing. A copy of the allocation confirmation must be submitted to the Certifying Authority with the application for a Construction Certificate.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties)

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Sydney Water Approvals

- D3. Prior to the commencement of any works, the approved plans must be submitted to Sydney Water to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The Certifying Authority must ensure that Sydney Water has appropriately stamped the plans before the commencement of building works.

Notes: **Sydney Water Building Plan Approvals** can be obtained from the Sydney Water Tap in™ online service. Building plans must be submitted to the Tap in™ to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met. For further information visit <http://www.sydneywater.com.au/tapin/index.htm> or call 13 000 TAP IN (1300 082 746) for further information.

(Reason: To ensure compliance with Sydney Water requirements)

Commencement of Works' Notice

- D4. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

(Reason: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

E. *During Demolition and Building Work***Parking Restrictions**

- E1. Existing public parking provisions in the vicinity of the site must be maintained at all times during works. The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions must be approved by the North Sydney Local Traffic Committee. The Developer will be held responsible for any breaches of this condition and will incur any fines associated with enforcement by Council regulatory officers.

(Reason: To ensure that existing kerbside parking provisions are not compromised during works)

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Road Reserve Safety

- E2. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works, with no obstructions caused to the said footways and roadways. Construction materials and plant must not be stored in the road reserve without approval of Council. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site.

Where public infrastructure is damaged, repair works must be carried out in when and as directed by Council officers (at full Developer cost). Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (1996) "Traffic Control Devices for Work on Roads". **If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.**

(Reason: Public Safety)

Service Adjustments

- E3. Where required, the adjustment or inclusion of any new utility service facilities must be carried out by the person acting on the consent and in accordance with the requirements of the relevant utility authority. These works shall be at no cost to Council. It is the Applicants full responsibility to make contact with the relevant utility authorities to ascertain the impacts of the proposal upon utility services at the appropriate stage of the development (including water, phone, gas and the like). Council accepts no responsibility whatsoever for any matter arising from its approval of this application involving any influence upon utility services provided by another authority.

(Reason: To ensure the service requirements are met)

Temporary Disposal of Stormwater Runoff

- E4. During construction, stormwater runoff must be disposed in a controlled manner that is compatible with the erosion and sediment controls on the site. Immediately upon completion of any impervious areas on the site (including roofs, driveways, paving) and where the final drainage system is incomplete, the necessary temporary drainage systems must be installed to reasonably manage and control runoff as far as the approved point of stormwater discharge. Such ongoing measures must be to the satisfaction of the Certifying Authority.

(Reason: Stormwater control during construction)

Geotechnical Stability during Works

- E5. A contractor with specialist excavation experience must undertake the excavations for the development and a suitably qualified and consulting geotechnical engineer must oversee the excavation procedure.

Geotechnical aspects of the development work, namely appropriate excavation method and vibration control, support and retention of excavated faces, and hydrogeological considerations must be undertaken in accordance with the recommendations of the geotechnical report and the structural adequacy statement as required by Condition C9 and C8 respectively, and all subsequent geotechnical inspections carried out during the excavation and construction phase.

Approval must be obtained from all affected property owners, including North Sydney Council where rock anchors (both temporary and permanent) are proposed below adjacent private or public property.

(Reason: Ensure appropriate professional are engaged at appropriate stages during construction)

Council Inspection of Public Infrastructure Works

- E6. During the works on public infrastructure reverting to Council's care and control, Council's development engineer may undertake inspections of the works at the following hold points:

- a) Road Civil Works

All works must proceed in accordance with Roads Act 1993 approvals or other permits relating to roads issued by Council. A minimum of 48 hours' notice must be given to Council to book an inspection. Work must not proceed until the works or activity covered by the inspection is approved.

(Reason: To ensure quality of construction joints and connections in the drainage system)

Progress Survey

- E7. In order to ensure compliance with approved plans, a Survey Certificate, prepared to Australian Height Datum, must be prepared by a Registered Surveyor showing the following:

- a) at the completion of excavation, prior to the placement of any footings, showing the completed level of the excavation and its relationship to the boundaries;
- b) prior to placement of concrete at the ground floor level, showing the level of the form work and its relationship to boundaries including relevant footpath and roadway levels;

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- c) prior to placement of concrete at each fifth-floor level showing the principal level of the formwork and the intended relationship of the completed works to the boundary;
- d) prior to roofing, or completion of the highest point of the building showing the anticipated level of the completed work and its relationship to the boundary; and
- e) at completion, works showing the relationship of the building to the boundary and showing the maximum height of the overall works and the height of the principal roof elements.

Progress certifications in response to points (a) through to (e) must be provided to the Certifying Authority for approval at the time of carrying out relevant progress inspections. In the event that such survey information is not provided or reveals discrepancies between the approved plans and the proposed works, all works, save for works necessary to bring the development into compliance with the approved plans, must cease. Works may only continue upon notification by the Certifying Authority to the Applicant that survey information (included updated survey information following the carrying out of works to comply with the approved plans) complies with this condition.

(Reason: To ensure compliance with approved plans)

Removal of Extra Fabric

- E8. Should any portion of the existing building, trees, or curtilage of the site which is indicated on the approved plans to be retained be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification of the damage is to be given to Council forthwith. No work is to resume until the written approval of Council to do so is obtained. Failure to comply with the provisions of this condition may result in the Council taking further action including legal proceedings if necessary.

(Reason: To ensure compliance with the terms of this development consent)

Dust Emission and Air Quality

- E9. The following must be complied with at all times:
- (a) Materials must not be burnt on the site.
 - (b) Vehicles entering and leaving the site with soil or fill material must be covered.
 - (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.
 - (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

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Noise and Vibration

- E10. The works must be undertaken in accordance with the "Interim Construction Noise Guideline" published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

Compliance with Construction Noise Management Plan

- E11. All works conducted on site which form part of this development must be carried out in accordance with the submitted Construction Noise Management Plan submitted with the Construction Certificate and all conditions of consent.

(Reason: To ensure noise generating activities are appropriately managed and nearby sensitive receivers protected)

No Work on Public Open Space

- E12. No work can be undertaken within adjoining public lands (i.e., Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the developer is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

(Reason: Protection of existing public infrastructure and land and to ensure public safety and proper management of public land)

Applicant's Cost of Work on Council Property

- E13. The Applicant must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

(Reason: To ensure the proper management of public land and funds)

Trees to be Removed

- E14. All trees on the site must be protected and retained save for those expressly identified below as being approved for removal:

Tree	Location	Height (m)
2 x Buckinghamia celissima (Street Tree)	Parraween Street verge and landscape island	5m

(Reason: To ensure compliance with the terms of this development consent)

Special Permits

- E15. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

The developer, owner or builder may apply for specific permits available from Council's Customer Service Centre for the undermentioned activities on Council's property. In the event that a permit is granted by Council for the carrying out of works, processes, storage of materials, loading and unloading associated with the development on Council's property, the development must be carried out in accordance with the requirements of the permit. A minimum of forty-eight (48) hours' notice is required for any permit:

1) **On-street mobile plant**

E.g., cranes, concrete pumps, cherry-pickers, etc. - restrictions apply to the hours of operation, the area of operation, etc. Separate permits are required for each occasion and each piece of equipment. It is the developer's, owner's and builder's responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

(Reason: Proper management of public land)

2) **Hoardings**

Permits are required to erect Class A and Class B hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

(Reason: Proper management of public land)

3) **Storage of building materials and building waste containers (skips) on Council's property**

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given. Storage of building materials and waste containers on open space reserves and parks is prohibited.

(Reason: Proper management of public land)

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4) **Kerbside restrictions, construction zones**

Attention is drawn to the existing kerbside restrictions adjacent to the development. Should alteration of existing kerbside restrictions be required, or the provision of a construction zone, the appropriate application must be made and the fee paid to Council. Alternatives to such restrictions may require referral to Council's Traffic Committee and may take considerable time to be resolved. An earlier application is suggested to avoid delays in construction programs.

(Reason: Proper management of public land)

Construction Hours (Commercial Core and Mixed-Use Zones)

- E16. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

Location	Standard Construction Hours	
	Day	Hours
B3 Commercial Core Zone	Monday - Friday	7.00 am - 7.00 pm
	Saturday	8.00 am - 1.00 pm
B4 Mixed-Use Zone	Sunday, Public holiday	No work permitted

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above and any Construction Noise Management Plan required under this consent.

In the event of breach to the approved hours of construction Council take may take enforcement action under Part 9 of the EP&A Act 1979 and in accordance with Council's adopted Compliance and Enforcement Policy.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Out-of-Hours' Work Permits

- E17. Where it is necessary for works to occur outside those hours allowed by these conditions, an application may be made to Council's Customer Services Centre for a permit to carry out works outside of the approved hours. If a permit is issued the works approved must be carried out in accordance with any requirements specified in the permit. Permits will only be approved if **public safety is at risk**. Applications which seek a variation to construction hours solely to benefit the developer will require the lodgement and favourable determination of a modification application pursuant to the provisions of Section 96 of the Environmental Planning and Assessment Act 1979.

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Notes:

- 1) Failure to obtain a permit for work outside of the approved hours will result in on the spot fines being issued, or Council pursuing any action required (including legal proceedings) to have the out of hours work cease, without prior warning.
- 2) Applications for out of hour's works should be lodged with Council no later than seven (7) calendar days prior to the date of the intended works.
- 3) Examples of activities for which permits may be granted include:
 - the erection of awnings,
 - footpath, road and other infrastructure works which cannot be carried out for public convenience reasons within normal hours,
 - the erection and removal of hoardings and site cranes, and
 - craneage of materials which cannot be done for public convenience reasons within normal working hours.
- 4) Examples of activities for which permits WILL NOT be granted include;
 - extended concrete pours
 - works which are solely to convenience the developer or client, and
 - catch up works required to maintain or catch up with a construction schedule.
- 5) Further information on permits can be obtained from the Council website at www.northsydney.nsw.gov.au.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Installation and Maintenance of Sediment Control

- E18. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and erosion control plan submitted and approved with the Construction Certificate.

Erosion and sediment measures must be maintained in accordance with the publication Managing Urban Stormwater: Soils and Construction (4th edition, Landcom, 2004), commonly referred to as the "Blue Book" and can only be removed when development activities have been completed and the site fully stabilised.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

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Sediment and Erosion Control Signage

- E19. A durable sign must be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained. A sign of the type referred to in this condition is available from Council.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Site Amenities and Facilities

- E20. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of workplace determines the type of amenities required.

Further information and details can be obtained from the Internet at www.workcover.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Health and Safety

- E21. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at www.workcover.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Prohibition on Use of Pavements

- E22. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

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Plant and Equipment Kept Within Site

- E23. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Council's website at www.northsydney.nsw.gov.au.

(Reason: To ensure public safety and amenity on public land)

Waste Disposal

- E24. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

(Reason: To ensure the lawful disposal of construction and demolition waste)

Asbestos Removal

- E25. All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission.

(Reason: To ensure works are carried out in accordance with relevant WorkCover requirements)

F. Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation**National Construction Code**

- F1. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

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Home Building Act

- F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) for which the *Home Building Act 1989* requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given North Sydney Council written notice of the contract of insurance being issued and of the following:
- a) in the case of work for which a principal contractor is required to be appointed:
 - i) the name and licence number of the principal contractor, and
 - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or
 - (b) in the case of work to be done by an owner-builder:
 - (i) the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this conditions is out of date, work must cease and no further work may be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

(Reason: Prescribed - Statutory)

Appointment of a Principal Certifying Authority (PCA)

- F3. Building work, demolition or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifying Authority for the building work in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

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Construction Certificate

- F4. Building work, demolition or excavation in accordance with the development consent must not be commenced until a Construction Certificate for the relevant part of the building work has been issued in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

Occupation Certificate

- F5. A person must not commence occupation or use of the whole or any part of a new building (*new building* includes an altered portion of, or an extension to, an existing building) unless an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifying Authority appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

Critical Stage Inspections

- F6. Building work must be inspected by the Principal Certifying Authority on the critical stage occasions prescribed by the EP&A Act and its Regulations, and as directed by the appointed Principal Certifying Authority.

(Reason: Statutory)

Excavation/Demolition

- F7. 1) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- 2) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- 3) Demolition work must be undertaken in accordance with the provisions of AS2601- Demolition of Structures.

(Reason: To ensure that work is undertaken in a professional and responsible manner and protect adjoining property and persons from potential damage)

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Protection of Public Places

- F8. 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
- 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
- 5) No access across public reserves or parks is permitted.

Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained. Any application needs to be accompanied by plans indicating the type of hoarding and its layout. Fees are assessed and will form part of any approval given. These fees must be paid prior to the approval being given. Approval for hoardings will generally only be given in association with approved building works, maintenance or to ensure protection of the public. An application form for a Hoarding Permit can be downloaded from Council's website.

(Reason: To ensure public safety and the proper management of public land)

Site Sign

- F9. 1) A sign must be erected in a prominent position on the site
- a) stating that unauthorised entry to the work site is prohibited;
- b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
- c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while to building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

G. Prior to the Issue of an Occupation Certificate**Infrastructure Repair and Completion of Works**

- G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:
- a. in the road reserve must be fully completed; and
 - b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of public assets)

Access to Premises

- G2. Prior to the issue of any Occupation Certificate, a certificate must be prepared an appropriately qualified and practising Civil Engineer certifying that access and facilities for persons with a disability in accordance with the Building Code of Australia and AS Disability (Access to Premises - buildings) Standards 2010 (Premises Standards) has been provided. This certificate must be submitted to, and approved by, the Certifying Authority prior to issue of the Occupation Certificate.

(Reason: Equitable access and facilities for people with a disability)

Noise Certification

- G3. Prior to issue of the any Occupation Certificate a certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants is to be submitted to, and approved by, the Certifying Authority certifying that the noise and vibration from use of the development complies with the conditions of consent here-in.

(Reason: To ensure acoustic amenity)

Certification - Civil Works

- G4. a) An appropriately qualified and practising Civil Engineer must certify to the Certifying Authority that the stormwater drainage system is constructed in accordance with this consent and the provisions of the applicable Australian Standard. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority) upon completion of the development works and prior to the issue of an Occupation Certificate.

**372 MILITARY ROAD (aka 75 & 75A PARRAWEEN STREET), CREMORNE
DEVELOPMENT APPLICATION NO. 269/21**

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- b) An appropriately qualified and practicing Civil Engineer must certify to the Certifying Authority that the vehicular crossing and associated works and road works were constructed in accordance with this consent and any approval for works in the road reserve issued by the Council. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority), upon completion of the development works and prior to the issue of an Occupation Certificate.

(Reason: Compliance with the Consent)

Certification for Mechanical Exhaust Ventilation

- G5. Prior to issue of an Occupation Certificate and following the completion, installation, and testing of all the mechanical ventilation systems, a Mechanical Ventilation Certificate of Completion and Performance in accordance with Clause A2.2(a)(iii) of the Building Code of Australia, must be submitted to, and approved by, the Certifying Authority.

(Reason: To ensure compliance with acceptable standards for the construction and operation of mechanical plant)

Utility Services

- G6. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of an occupation certificate. This shall be at no cost to Council.

(Reason: To ensure compliance with the terms of this consent)

Covenant for Restriction of Vehicle Access

- G7. An Instrument pursuant to Section 88E of the *Conveyancing Act* 1919 and one copy must be submitted to Council in registrable form, providing for:
- a. A covenant and restriction as to user in favour of Lot 100 DP 615583 (No. 372 Military Road) burdening SP 793375 (No. 368 Military Road, Cremorne) requiring maintenance of vehicular access to the basement of No. 372 Military Road via the basement of No. 368 Military Road including the shared use of the entrance driveway of No. 368 Military Road off Parraween Street in accordance with Condition C23 in Development Consent D292/02; and
 - b. North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument;

Upon Council being satisfied as to the terms of the Instrument, North Sydney Council's official seal will be affixed to these documents, prior to lodgement at the Land and Property Information Office for registration

The Instrument creating the covenant under s88E required by this condition of consent must be registered on the Title of the development site prior to the issue of an Occupation Certificate or commencement of use of the site, whichever is earlier.

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All costs associated with the preparation, approval and registration of the Instrument required by this condition of consent must be borne by the person acting on this consent including the reasonable costs of Council in obtaining advice, negotiating the terms or otherwise facilitating the execution and registration of the required Instrument. Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of an Occupation Certificate.

(Reason: To ensure owners, or intending owners of the subject property are aware of the limitation of vehicles capable of using the crossing without damage)

Covenant and Restriction (Stormwater Control Systems)

- G8. An Instrument pursuant to Sections 88B and 88E of the *Conveyancing Act* 1919 and one copy must be submitted to Council in registrable form, providing for:
- a. a restriction as to user and positive covenant as to user as appropriate in favour of North Sydney Council burdening No.372 Military Road, Cremorne requiring the ongoing retention, maintenance and operation of the stormwater facility (on-site detention, pump-out, charged lines);
 - b. North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument;
 - c. the wording on the Instrument making reference to the Council file/s which hold:
 - (a) the Construction plans; and
 - (b) the "Work-as-Executed" (as built) plans;

Upon Council being satisfied as to the terms of the Instrument, North Sydney Council's official seal will be affixed to these documents, prior to submission to the Land and Property Information Office for registration

The Instrument creating the restriction and/or covenant under ss 88B and 88E required by this condition of consent must be registered on the Title of the development site prior to the issue of an Occupation Certificate or commencement of use of the site, whichever is the earlier. Typical wording for the Instrument can be sourced from Council's "Specification for the Management of Stormwater".

Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of an Occupation Certificate.

All costs associated with the preparation, approval and registration of the Instrument required by this condition of consent must be borne by the person acting on this consent including the reasonable costs of Council in obtaining advice, negotiating the terms or otherwise facilitating the execution and registration of the required Instrument.

(Reason: Compliance and adequate maintenance of drainage system)

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Basement Pump-Out Maintenance

- G9. Prior to issue of an Occupation Certificate a Maintenance Regime must be prepared for the basement stormwater pump-out system and submitted to the Principal Certifying Authority for approval with the Occupation Certificate documentation. The regime must specify that the system is to be regularly inspected and checked by qualified practitioners.

The basement stormwater pump-out system must be maintained in accordance with the approved Maintenance Regime at all times.

(Reason: To ensure future provision for maintenance of the drainage system)

Notification of New Address Developments

- G10. Prior to any Occupation Certificate being issued, the person acting upon this consent must comply with the following: -

- (a) Notify Australia Post of the address(es) as issued by Council and the location in plan form of any secondary, internal addresses, in relation to built public roads. Check Australia Post Website (www.auspost.com.au) to find your nearest Australia Post Delivery Facility.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties)

Asbestos/Contaminated Materials Clearance Certificate

- G11. For building works where asbestos based products/contaminated materials have been removed or altered, an asbestos/contaminated materials clearance certificate signed by an appropriately qualified person (being an Occupational Hygienist or Environmental Consultant) must be submitted to and approved by the Certifying Authority (and a copy forwarded to Council if it is not the Certifying Authority) for the building work prior to the issue of any Occupation Certificate, the asbestos clearance certificate must certify the following:

- a) the building/land is free of asbestos/contaminated materials; or
b) the building/land has asbestos/contaminated materials that is presently deemed safe.

The certificate must also be accompanied by tipping receipts, which detail that all asbestos waste has been disposed of at an approved asbestos waste/contaminated materials disposal depot. If asbestos/contaminated materials are retained on site the certificate must identify the type, location, use, condition and amount of such material.

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Note: Further details of licensed asbestos waste disposal facilities can be obtained from www.epa.nsw.gov.au.

(Reason: To ensure that building works involving asbestos based products are safe for occupation and will pose no health risks to occupants)

Disposal Information

G12. Upon completion of works and prior to occupation, a report including the following information must be provided to Council's Open Space and Environmental Services Department:

- (a) the total tonnage of all waste and excavated material disposed of from the site (including any tipping docket); and
- (b) the disposal points and methods used.

(Reason: To ensure appropriate disposal methods are undertaken for auditing and inspection purposes)

Sydney Water

G13. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained.

The Section 73 Certificate must be submitted to the Certifying Authority prior to the issue of the Strata Certificate.

Notes: Application must be made through an authorised Water Servicing Co-ordinator, for details see the Sydney Water web site www.sydneywater.com.au/customer/urban/index, or telephone 13 20 92.

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

(Reason: To ensure compliance with the statutory requirements of Sydney Water)

BASIX Completion Certificate

G14. In accordance with Clause 154C of the Environmental Planning and Assessment Regulation 2000, prior to issuing a final occupation certificate the Certifying Authority must apply to the Director-General for a BASIX completion receipt.

(Reason: To ensure compliance with the specified BASIX Certificate)

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Landscaping

G15. The landscaping shown in the approved landscape plan Drawing No. DA504, Issue B, dated 18 November 2021 and prepared by PA Studio must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

Damage to Adjoining Properties

G16. On completion of the development the subject of this consent and prior to the issue of the Occupation Certificate, a report is to be prepared by an appropriately qualified consultant and is to be provided to the Certifying Authority (and a copy to Council if it is not the Certifying Authority) certifying:

- a) whether any damage to adjoining properties has occurred as a result of the development;
- b) the nature and extent of any damage caused to the adjoining property as a result of the development;
- c) the nature and extent of works required to rectify any damage caused to the adjoining property as a result of the proposed development;
- d) the nature and extent of works carried out to rectify any damage caused to the adjoining property as a result of the development; and
- e) the nature and extent of any agreements entered into for rectification of any damage caused to the adjoining property as a result of the development.

The report and certification must reference the dilapidation survey and reports required to be provided to the Certifying Authority in accordance with this consent.

All costs incurred in achieving compliance with this condition shall be borne by the developer.

(Reason: To ensure adjoining owner's property rights are protected in so far as possible)

Verification Statement (External Finishes and Materials)

G17. Prior to the issue of any Occupation Certificate, a verification statement from a qualified designer or architect (preferably the original designer), must be submitted to Council and the Certifying Authority certifying that the external finishes and materials are in accordance with the approved schedule of finishes and materials identified in this consent.

"qualified designer" means a person registered as an architect in accordance with the Architects Act 2003 cf 50(1A) EP&A Regs 2000.

(Reason: To ensure the design quality and finishes for residential flat development)

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Required Tree Planting

- G18. On completion of works and prior to the issue of an Occupation Certificate trees in accordance with the schedule hereunder must be planted in Council's nature strip/footpath:

Schedule

Tree	Location	Pot Size
2 x Buckinghamia celissima (Street Tree)	Parraween Street verge and landscape island	100Litre

The installation of such trees, their current health and their prospects for future survival must be certified upon completion by an appropriately qualified horticulturalist.

Upon completion of installation and prior to the issue of an Occupation Certificate an appropriately qualified horticulturalist must certify that any trees planted in accordance with this condition are healthy and have good prospects of future survival. The certification must be submitted with any application for an Occupation Certificate.

(Reason: To ensure that replacement plantings are provided to enhance community landscaped amenity and cultural assets)

Allocation of Spaces

- G19. Car parking spaces must be provided and maintained at all times on the subject site. The spaces shall be allocated to uses within the building in accordance the following table:

7	Residential
1	Commercial
1	Motorcycle
1	Accessible

The car parking spaces are to be identified on-site by line-marking and numbering upon the completion of the works and prior to issue of Occupation Certificate. Car parking spaces provided must only be used in conjunction with the approved uses contained within the development.

In the case of Strata subdivision any car parking for strata lots for residential purposes must be individually allocated to its corresponding residential strata lot as part of each lots' unit entitlement.

Visitor parking facilities must be designated as common property on the strata plan. Visitor parking facilities must not at any time be allocated, sold, licensed or leased for the exclusive use of any occupier or owner and must be retained as common property by the Owners Corporation for use by building visitors.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

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Compliance with Certain conditions

- G20. Prior to the issue of any Occupation Certificate, Conditions C1 and C2 must be certified as having been implemented on site and complied with.

(Reason: To ensure the development is completed in accordance with the requirements of this consent)

I. Ongoing/Operational Conditions

First Use of Premise - Further consent required

11. A separate development application for the fit out and use of [insert specific premises/tenancy] must be submitted to and approved by Council prior to that fit out or use commencing.

(Reason: To ensure development consent is obtained prior to uses commencing)

Noise and Vibration Impact

12. The ongoing use of the premises approved under this consent must comply with all conditions pertaining to noise and vibration specified in this consent.

(Reason: To ensure compliance with the specified levels of noise and vibration and to maintain the amenity of surrounding land uses)

Use of Car Parking Spaces

13. Car parking spaces provided must only be used in conjunction with the approved uses contained within the development. Visitor parking facilities must be designated as common property on any strata plan. Visitor parking facilities must not at any time be allocated, sold, licensed or leased for the exclusive use of any owner or occupier or third party and must be retained as Common Property by the owner's corporation for use by building visitors.

(Reason: To ensure that visitor parking is not allocated to building occupants and remains available on an ongoing basis)

Allocation of Spaces

14. The allocation of carparking spaces within the development must be maintained at all times in accordance with the terms of this consent. The allocation of spaces must be maintained in accordance with the following table:

7	Residential
1	Commercial
1	Motorcycle
1	Accessible

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Carparking spaces provided must only be used in conjunction with the approved uses contained within the development.

In the case of Strata subdivision any car parking for strata lots for residential purposes must be individually allocated to its corresponding residential strata lot as part of each lot's unit entitlement.

Visitor parking facilities must be designated as common property on the strata plan. Visitor parking facilities must not at any time be allocated, sold, licensed or leased for the exclusive use of any occupier or owner and must be retained as common property by the owner's corporation for use by building visitors.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

No Illumination

15. No consent is given or implied for any form of illumination or floodlighting to the building or any sign. A separate development application must be lodged and approved prior to any external floodlighting or illumination of the building, approved sign or site landscaping.

(Reason: To ensure appropriate forms of signage that are consistent with Council's controls and those that are desired for the locality, and do not interfere with amenity of nearby properties)

Waste Collection

16. Waste and recyclable material, generated by this premises, must not be collected between the hours of 10.00 pm and 6.00 am on any day.

(Reason: To ensure the amenity of surrounding properties)

Maintenance of Approved Landscaping

17. The owner of the premises at 372 Military Road is to maintain the landscaping approved by this consent generally in accordance with drawing number DA504, issue B, dated 18 November 2021 and prepared by PA studio and Condition G18.

Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved.

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Should it be desired to substitute plants which are not of the same mature height, canopy density and nature (particularly flowering for non-flowering, native for exotic, deciduous for non-deciduous or the reverse of any these) a modification to this consent will be required.

(Reason: To ensure maintenance of the amenity, solar access and views of adjoining properties)



Artist's impression - View from Military Road



Artist's impression - View from Parraween Street

DRAWING No.	DESCRIPTION	REV	ISSUED
DA 000	COVER PAGE	B	18/11/21
DA 001	SITE PLAN	B	18/11/21
DA 002	SURVEY	B	18/11/21
DA 003	NOTIFICATION PLAN	B	18/11/21
DA 100	BASEMENT & GROUND FLOOR	B	18/11/21
DA 101	FLOOR PLANS: L1- L3	B	18/11/21
DA 102	FLOOR PLANS: L4 & ROOF PLAN	B	18/11/21
DA 200	SECTION A-A	B	18/11/21
DA 201	SECTION B-B	B	18/11/21
DA 202	SECTIONS C-C AND D-D	B	18/11/21
DA 300	NORTH & WEST ELEVATIONS	B	18/11/21
DA 301	SOUTH & EAST ELEVATIONS	B	18/11/21
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	B	18/11/21
DA 504	LANDSCAPE DESIGN	B	18/11/21
DA 505	3D PDF	B	18/11/21
DA 506	PRIVACY LOUVERS DIAGRAM	B	18/11/21
DA 507	3D MODEL VIEWS	B	18/11/21
DA 600	SHADOW DIAGRAMS FOR 21st MARCH	B	18/11/21
DA 601	SHADOW DIAGRAMS FOR 21st JUNE	B	18/11/21

General Notes
 The Builder shall check all dimensions and levels on site prior to construction.
 Notify any errors, discrepancies or omissions to the architect.
 Drawings shall not be used for construction purposes until issued for construction.
 Do not scale drawings.
 All boundaries and contours subject to survey

FILE PATH: BIMcloud: Bimcloud - BIMcloud Basic for ARCHICAD 24/PAR75 3

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

PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

COVER PAGE		DRAWING SET ID:	DA 000	B
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		FILE: PAR75 3		
		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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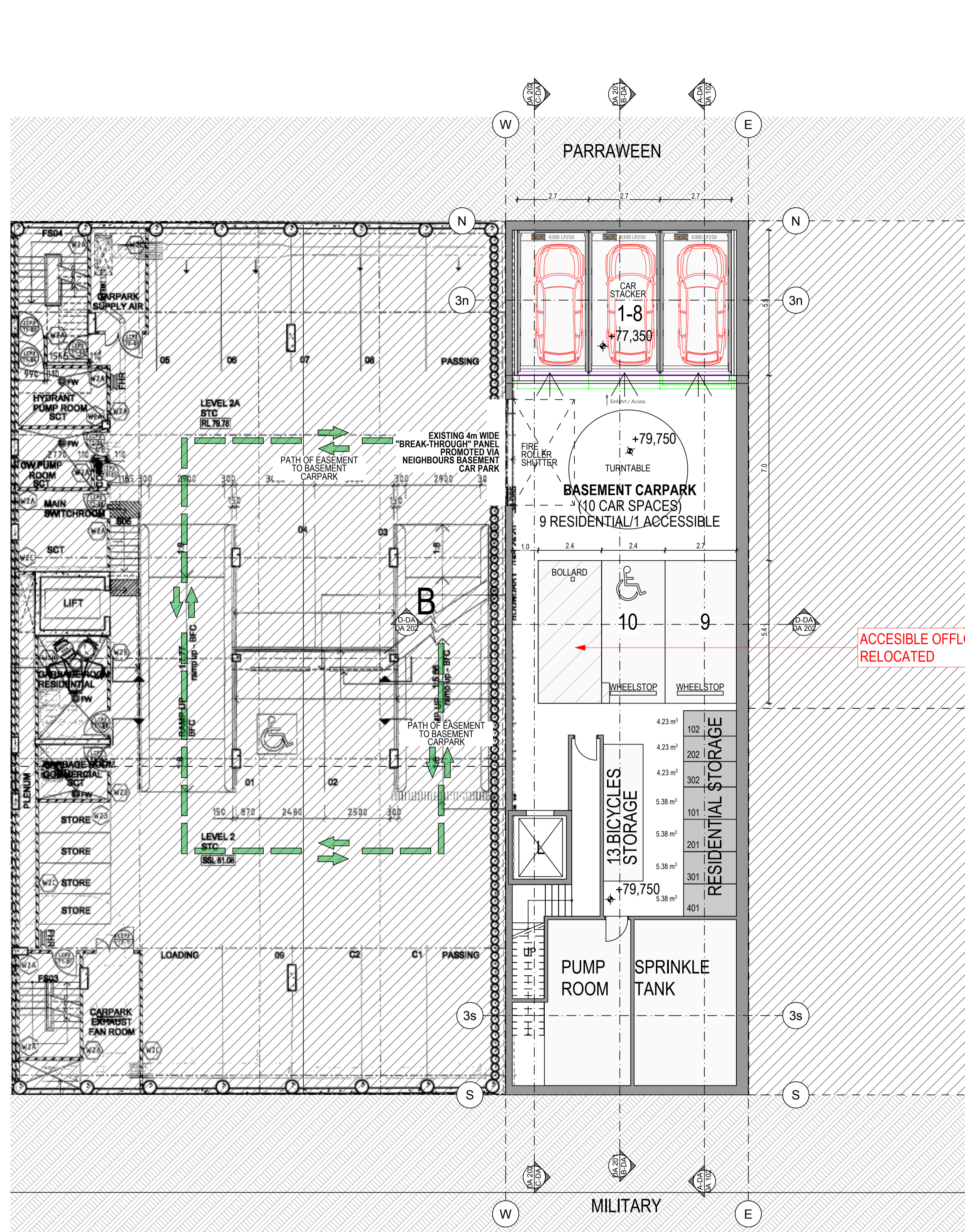
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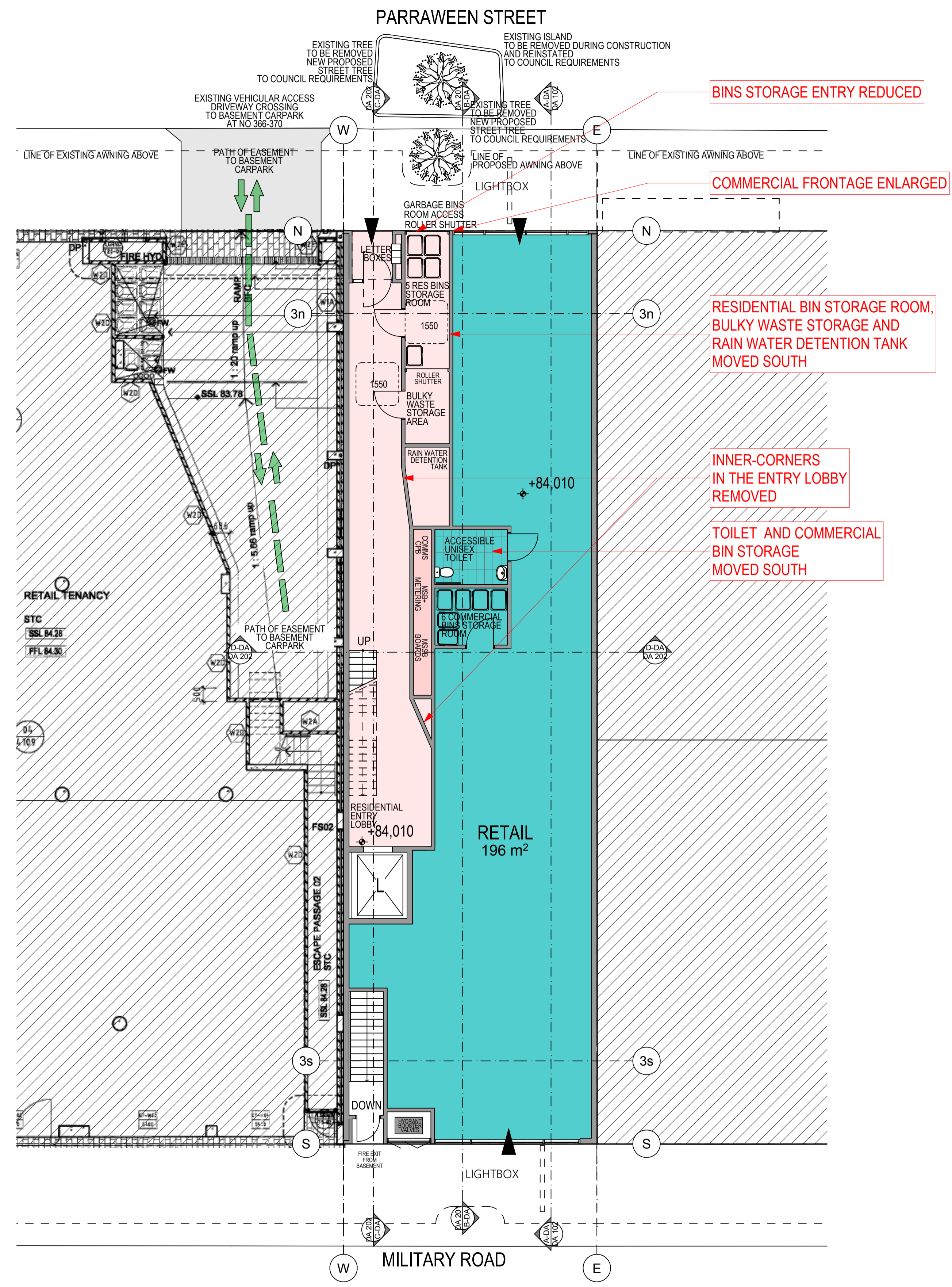
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				B	UPDATE TO COUNCIL GUIDELINES		18.11.21
				A	ORIGINAL ISSUE FOR DA		26.07.21

PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

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				REG. NO. 3954	



BASEMENT FLOOR



GROUND FLOOR

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

PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

BASEMENT & GROUND FLOOR

SCALE:
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NOMINATED ARCHITECT	GEORGE REVAY REG. NO. 3954		



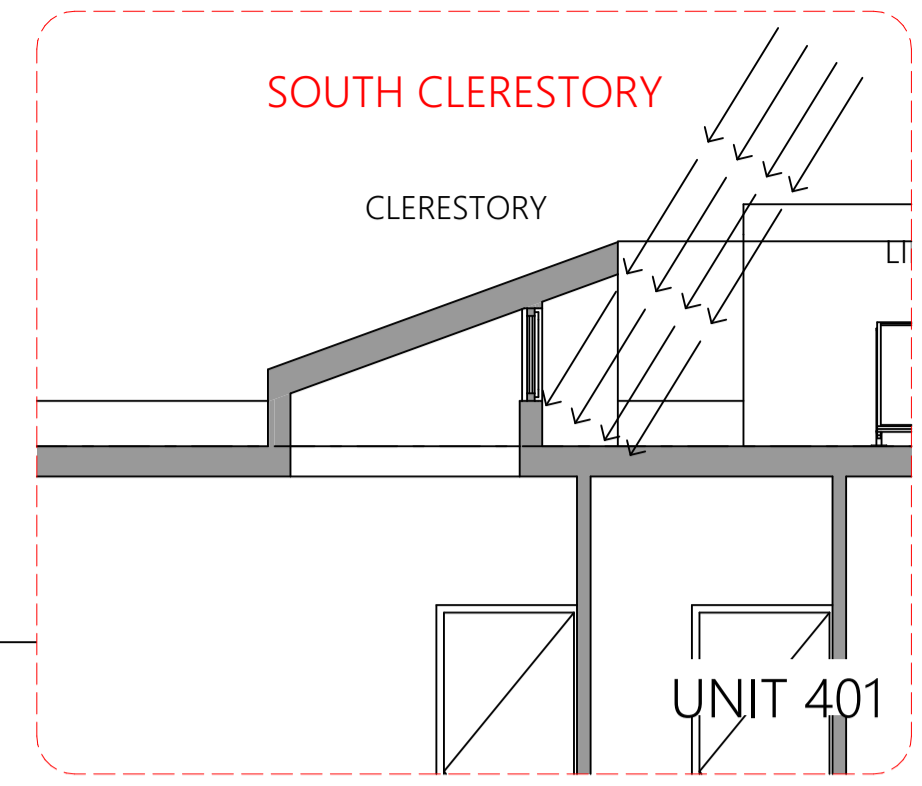
General Notes
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 All boundaries and contours subject to survey
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	A		26.07.21	ORIGINAL ISSUE FOR DA			

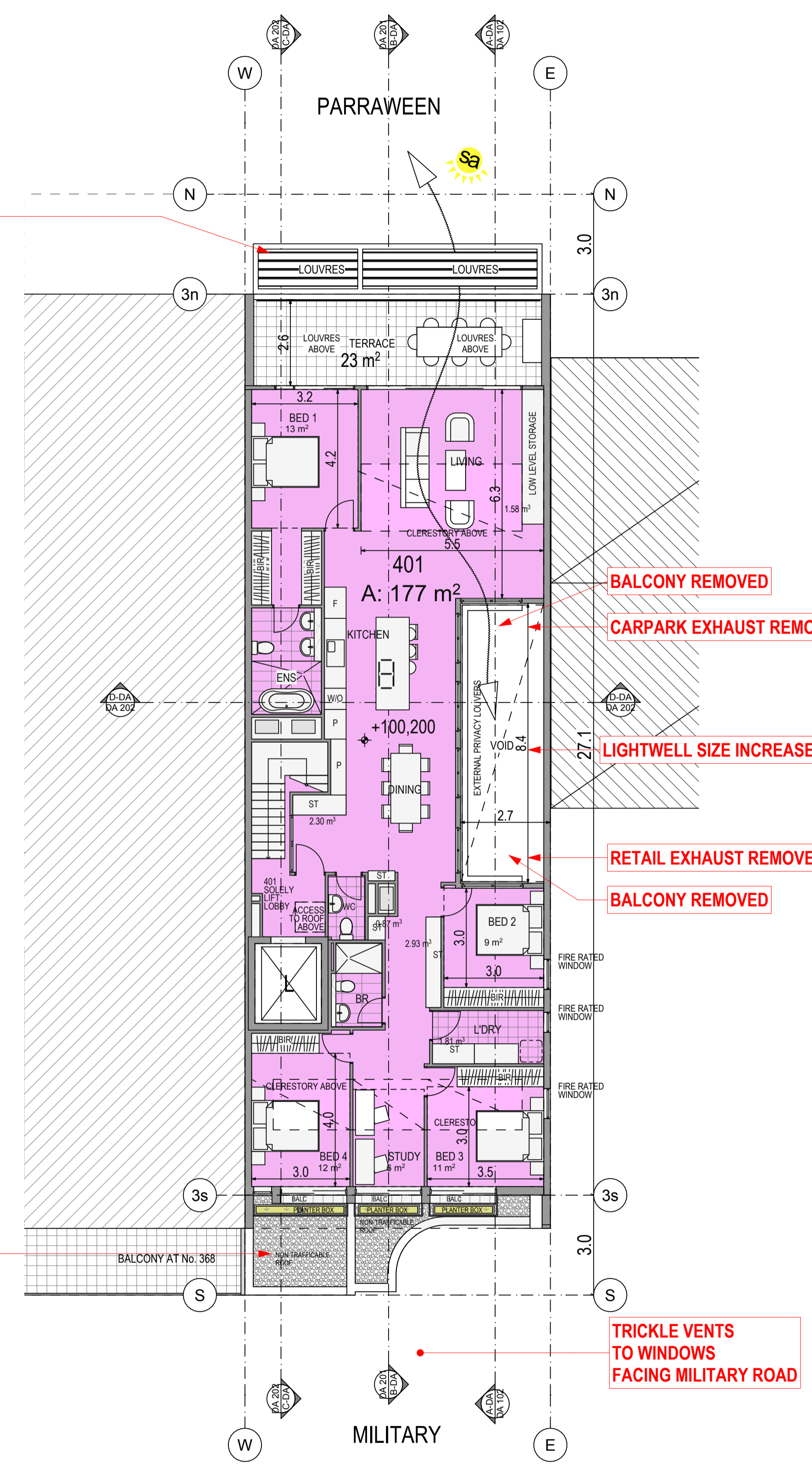
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MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

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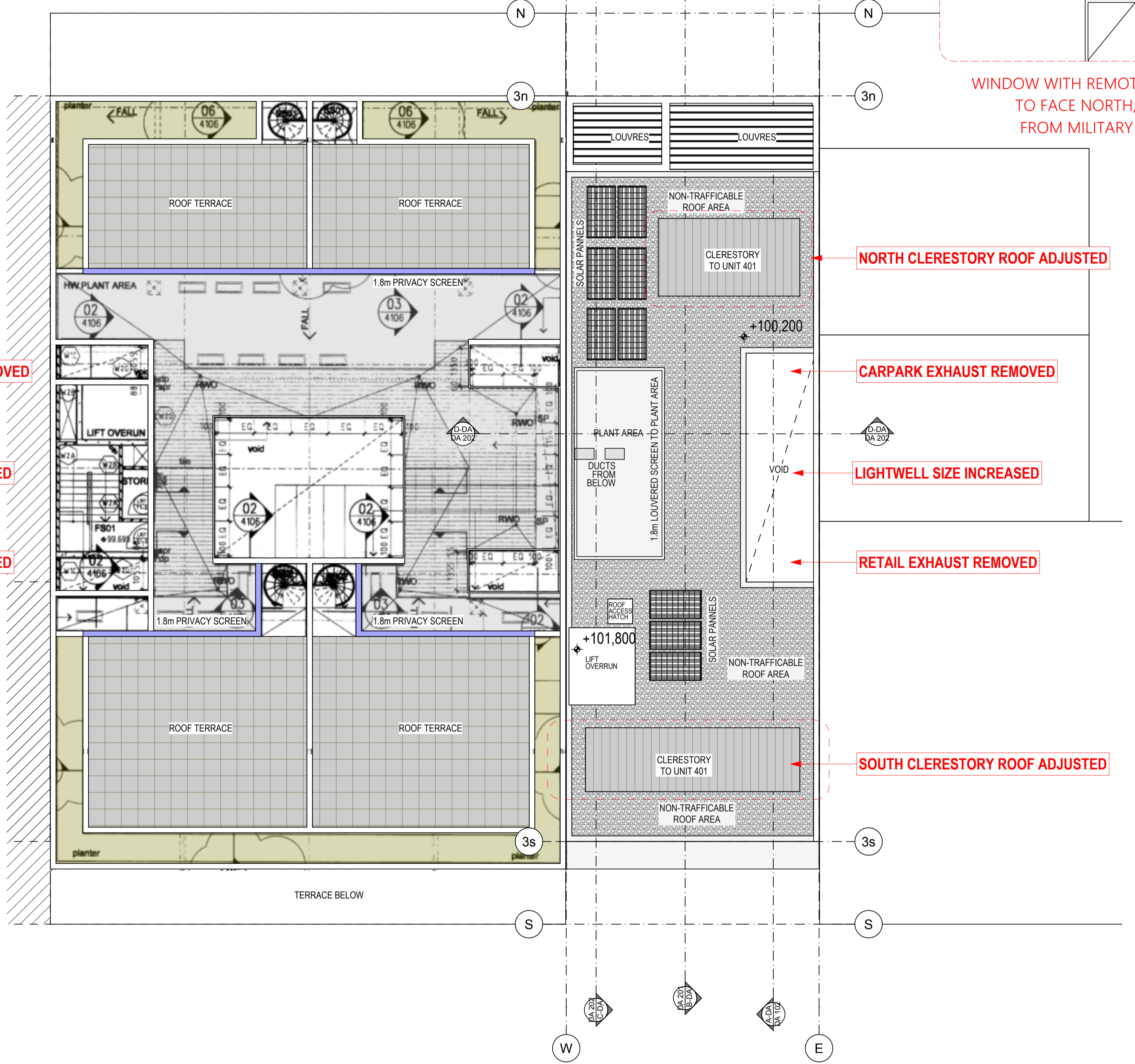
REDUCED LOUVRES TO LEVEL 3



WINDOW WITH REMOTE OPERATOR TO FACE NORTH, AWAY FROM MILITARY ROAD



FOURTH FLOOR 1:100



ROOF 1:100

General Notes
 The Builder shall check all dimensions and levels on site prior to construction. Notify any errors, discrepancies or omissions to the architect. Drawings shall not be used for construction purposes until issued for construction. Do not scale drawings. All boundaries and contours subject to survey.
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	A		26.07.21	ORIGINAL ISSUE FOR DA			

PROJECT:
MIXED USE DEVELOPMENT
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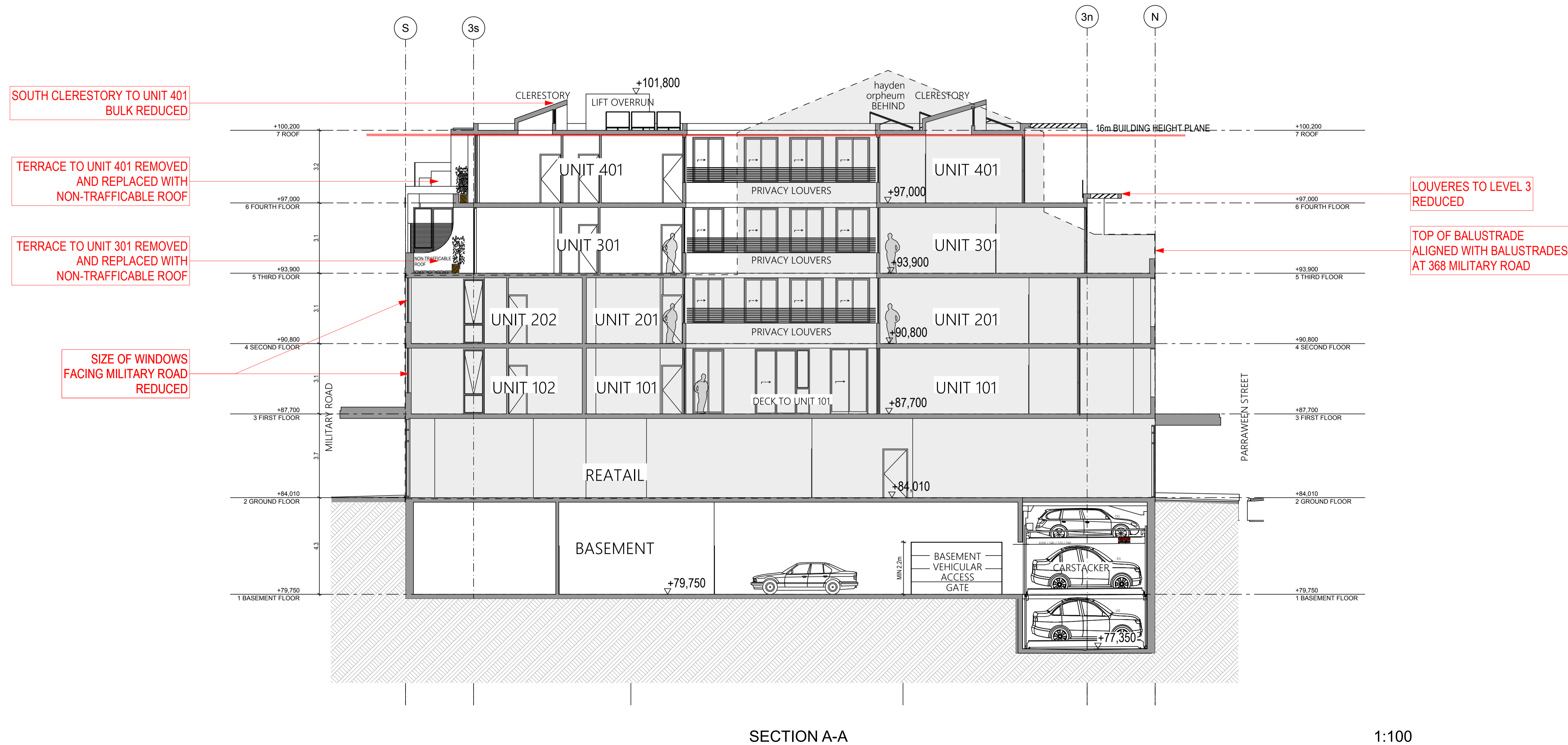
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 REG. NO. 3954

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DA 102

ISSUE
B



General Notes
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ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
				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

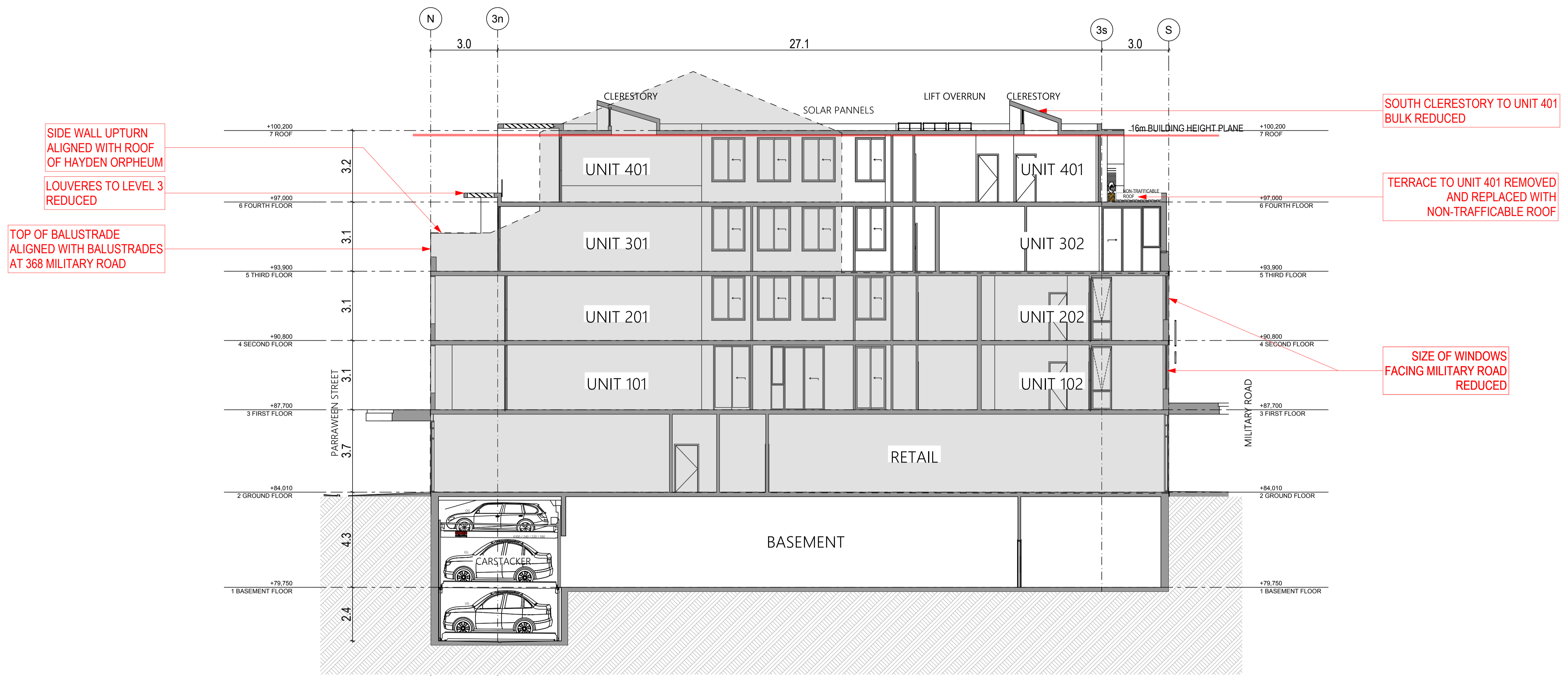
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SUBSET: DA SECTIONS		
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FILE: PAR75 3		
NOMINATED ARCHITECT	GEORGE REVAY REG. NO. 3954	

DA 200



SECTION B-B

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General Notes
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 FILE PATH: BIMcloud: Bimcloud - BIMcloud Basic for ARCHICAD 24/PAR75 3
 Printed 22/12/2021

ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
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PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

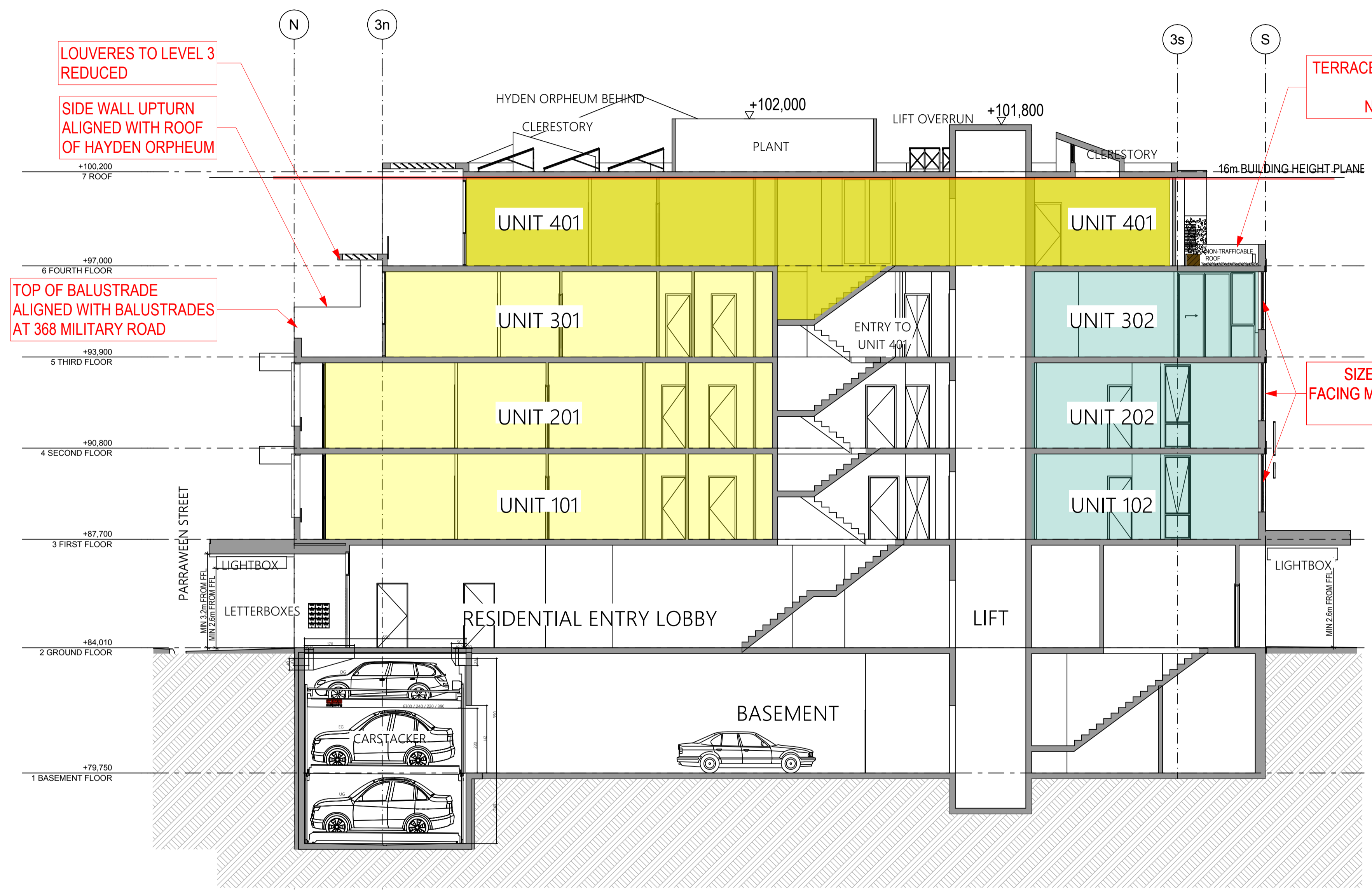
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PASTUDIO

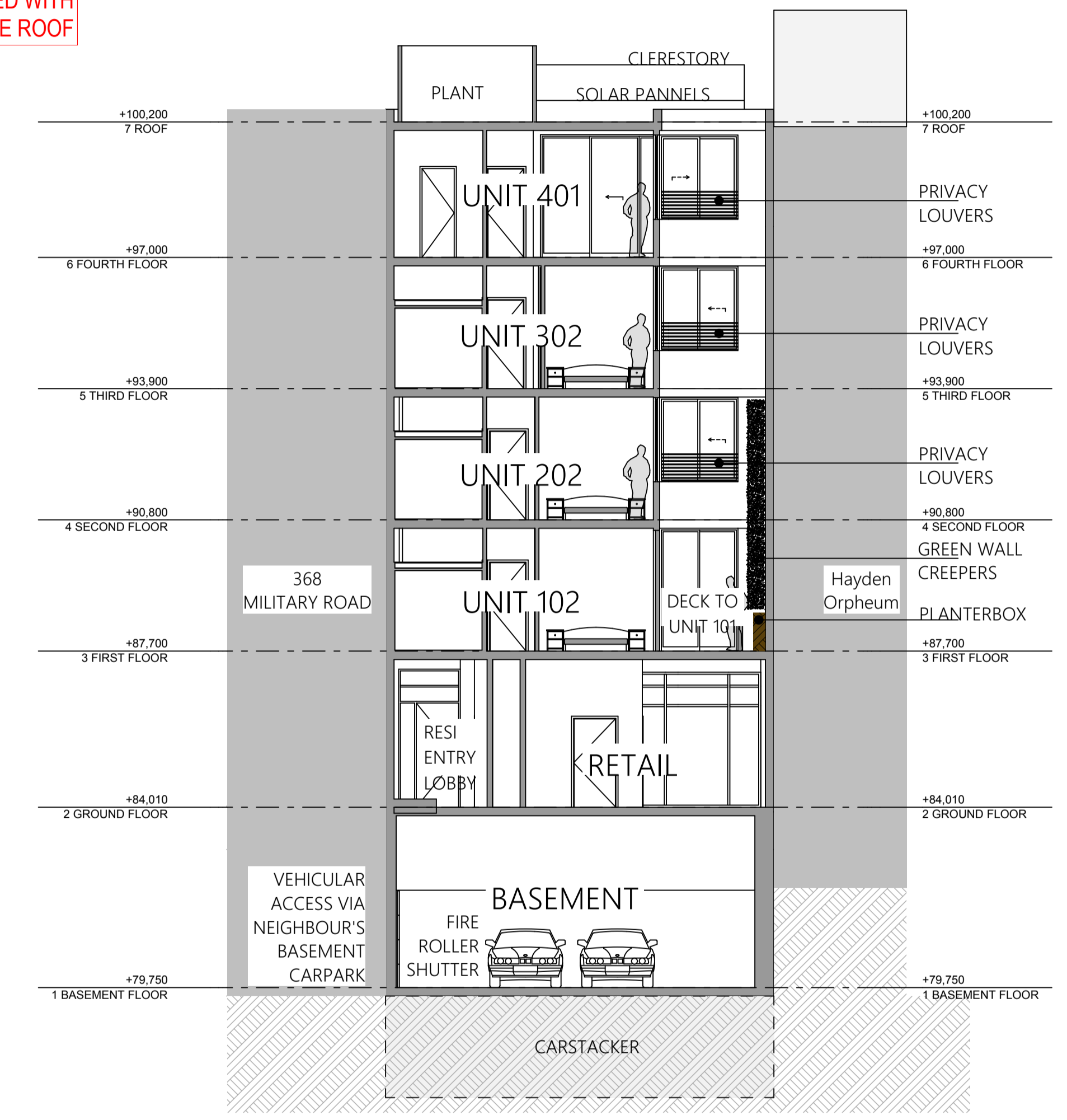
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SECTION C-C

1:100



SECTION D-D

1:100

General Notes
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 FILE PATH: BIMcloud: Bimcloud - BIMcloud Basic for ARCHICAD 24/PAR75 3

Printed 22/12/2021

ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
	B		18.11.21	UPDATE TO COUNCIL GUIDELINES			
	A		26.07.21	ORIGINAL ISSUE FOR DA			

PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

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

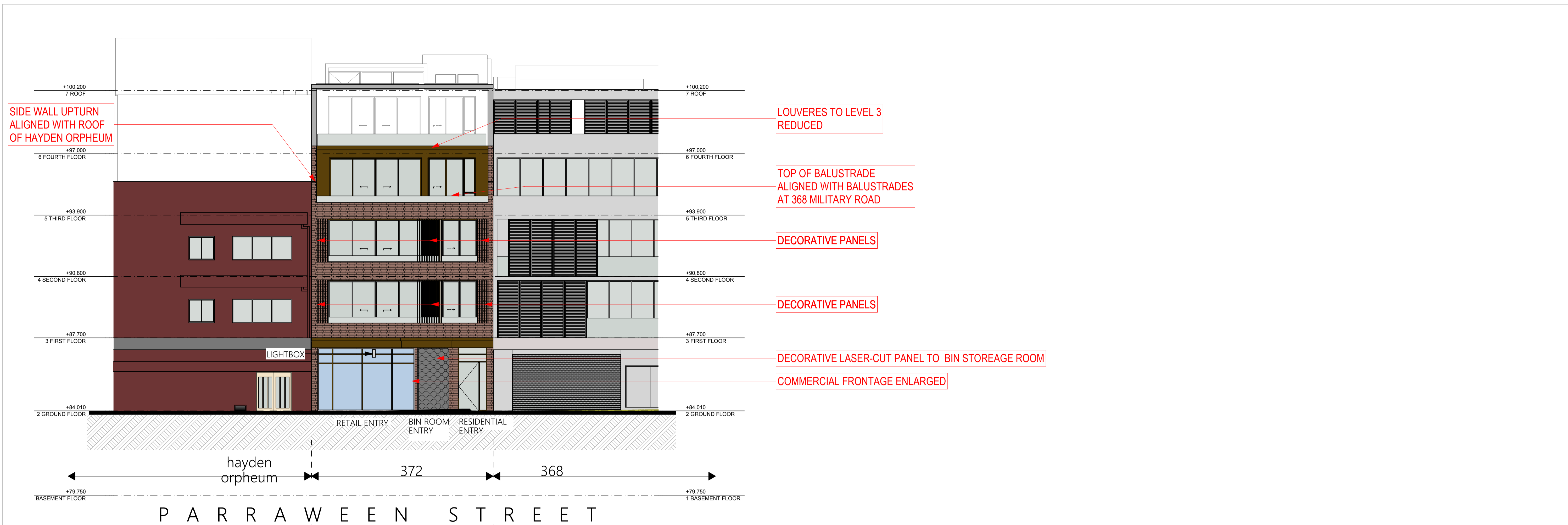
SECTIONS C-C AND D-D

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

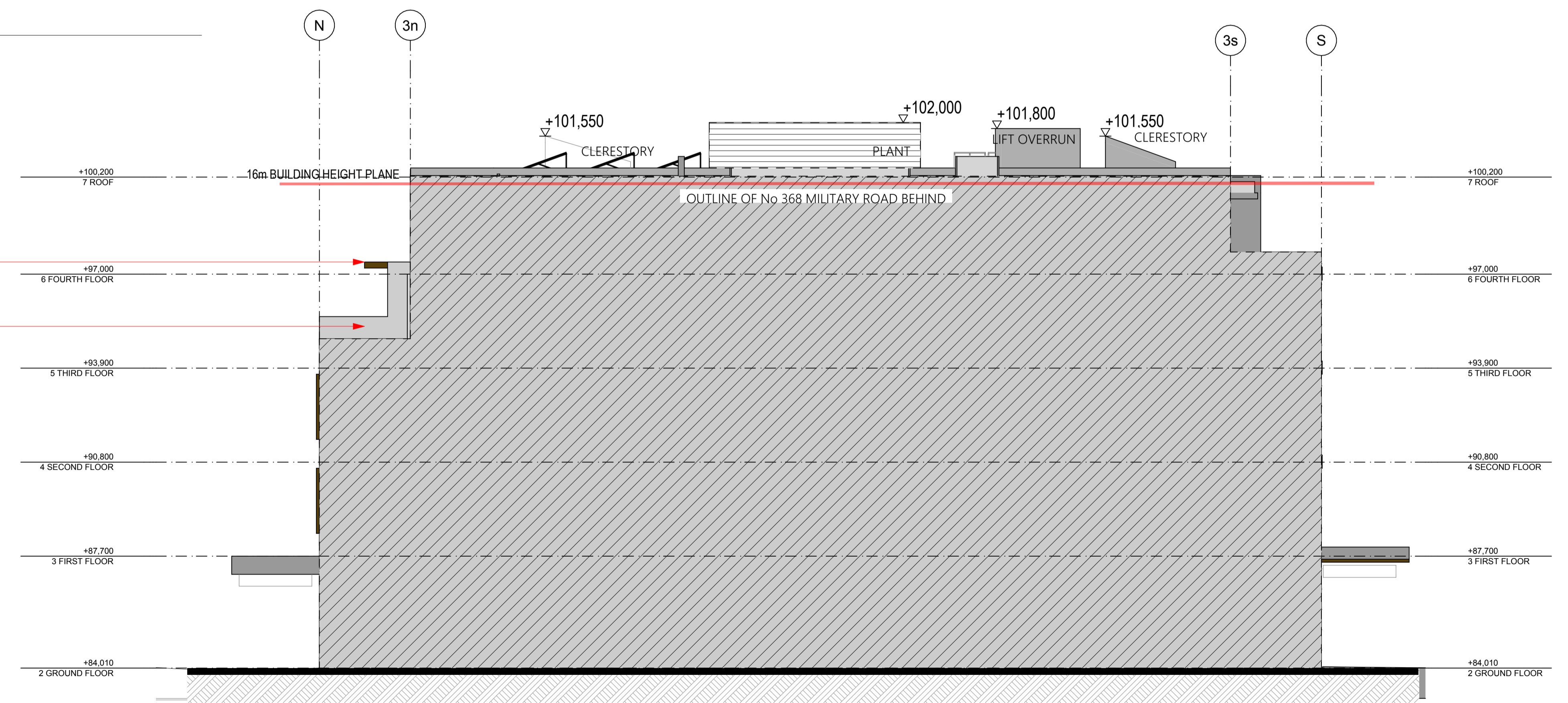
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 DRAWN BY: WH
 FILE: PAR75 3
 NOMINATED ARCHITECT: GEORGE REVAY
 REG. NO. 3954

DA 202

ISSUE **B**



NORTH ELEVATION



WEST ELEVATION

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ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
				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

NORTH & WEST ELEVATIONS

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

DRAWING SET ID:		ISSUE
SUBSET: DA ELEVATIONS		
DRAWN BY: WH		DA 300
FILE: PAR75 3		
NOMINATED ARCHITECT	GEORGE REVAY REG. NO. 3954	B



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FILE PATH: BIMcloud: Bimcloud - Bimcloud Basic for ARCHICAD 24/PAR75 3

Printed 23/12/2021

ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
	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

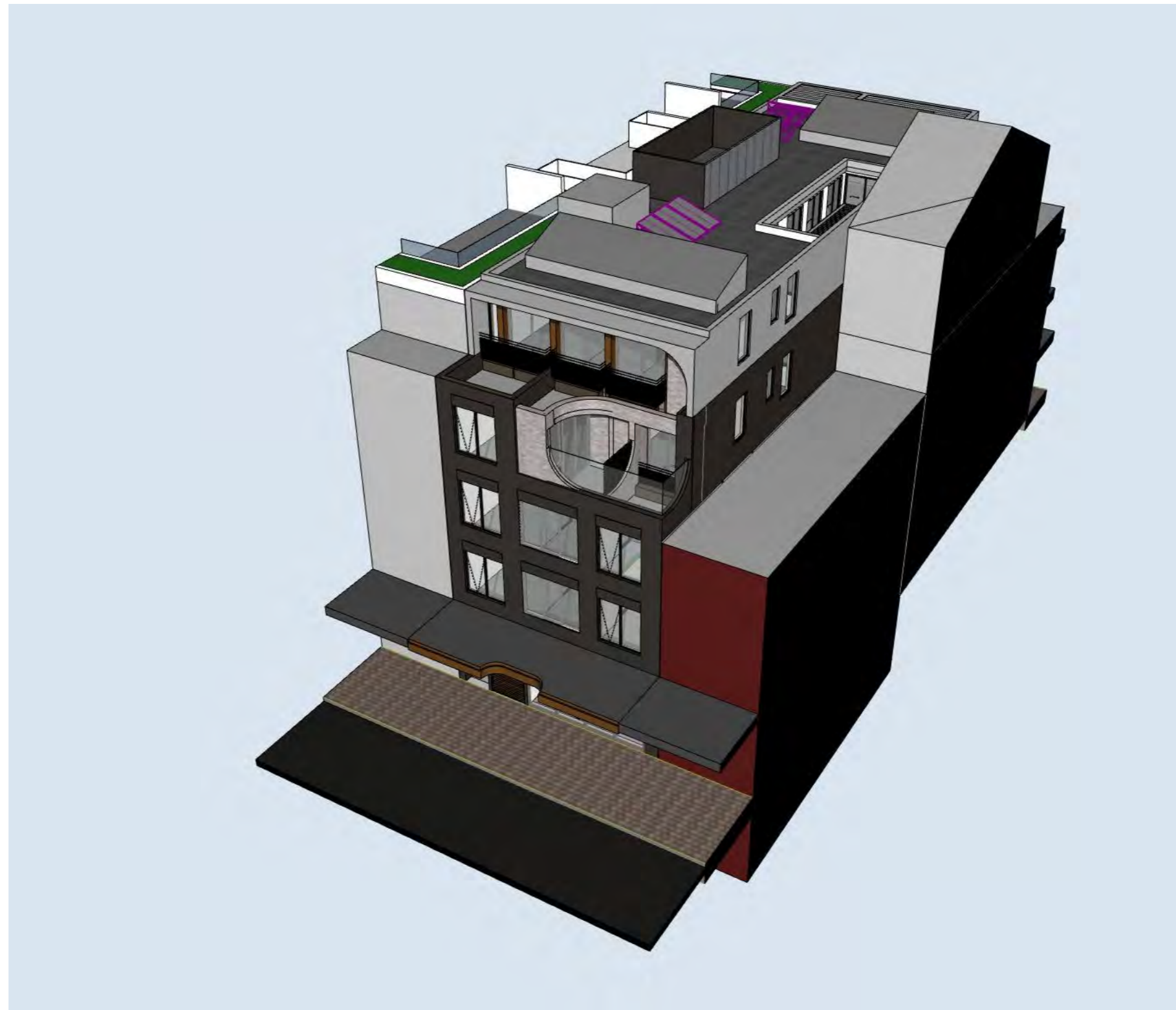
SOUTH & EAST ELEVATIONS

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

DRAWING SET ID:		ISSUE
SUBSET: DA ELEVATIONS		
DRAWN BY: WH		B
FILE: PAR75 3		
NOMINATED ARCHITECT	GEORGE REVAY	
REG. NO. 3954		

DA 301



3D PDF



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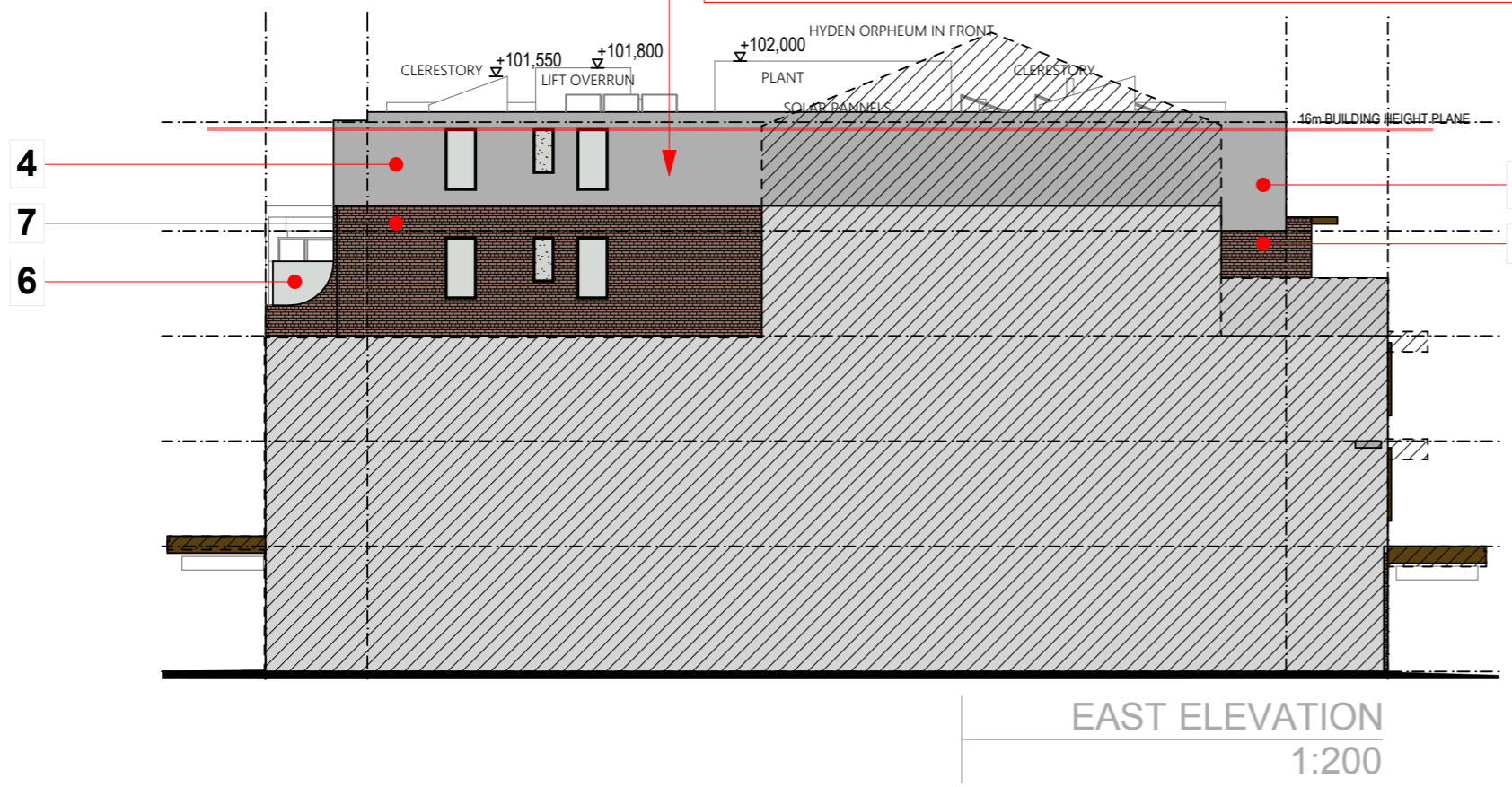
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				B	UPDATE TO COUNCIL GUIDELINES		18.11.21
				A	ORIGINAL ISSUE FOR DA		26.07.21

PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

3D PDF		DRAWING SET ID:	DA	ISSUE
		SUBSET: MISCELLANEOUS	DA 505	
		DRAWN BY: WH		B
		FILE: PAR75 3		
		NOMINATED ARCHITECT: GEORGE REVAY REG. NO. 3954		
SCALE:	P A S T U D I O			
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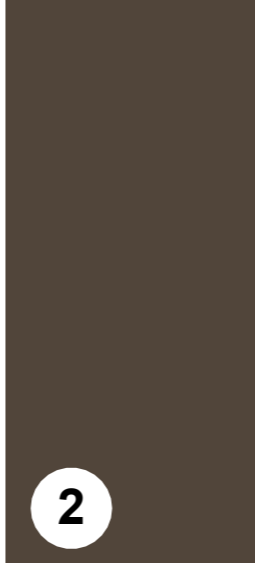
RENDER COLOUR TO MATCH ORPHEUM ROOF COLOUR



CODE	LOCATION	TYPE	SAMPLE
1	Louvers Balustrades Decorative Screens	Dulux : DURATEC ETERNITY BRONZE PEARL SATIN 90T8356Q	
2	Louvers	Dulux : DURATEC ETERNITY Colorbond Dune	
3	Walling and Slab Edges	Paint Dulux A154.1 China Brown	
4	Walling and Slab Edges	Paint Dulux GR12 Flooded Gum	
5	External Door and Window Frames	Dulux : DURATEC ETERNITY BRONZE PEARL SATIN 90T8356Q	
6	Balustrades	Clear Glass	
7	Walls	Face Brick Bowral 76, Bowral Blue	
8	Walls	Face Brick Austral La Paloma Castellana	


RENDER COLOUR TO MATCH ORPHEUM ROOF COLOUR





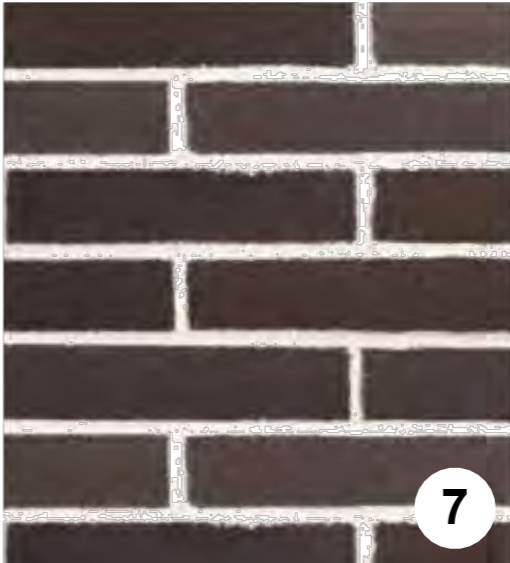
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Walling and Slab Edges
Dulux A154.1
China Brown



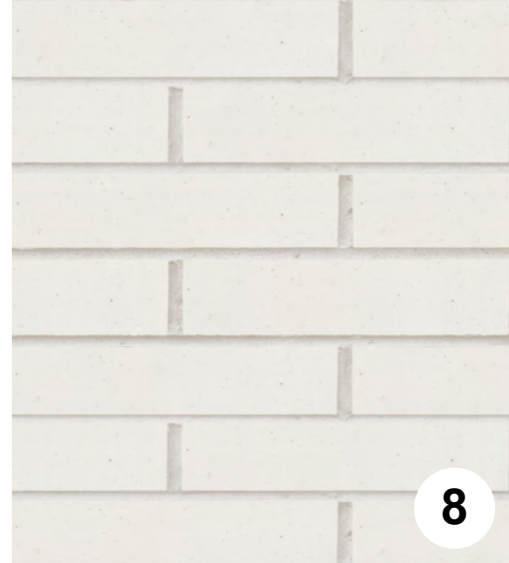
4

Walling and Slab Edges
Dulux GR12
Flooded Gum



7

Face Brick
Bowral 76, Bowral Blue



8

Face Brick
Austral
La Paloma Castellana

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FILE PATH: BIMcloud: Bimcloud - BIMcloud Basic for ARCHICAD 24/PAR75 3

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ISSUE	REVISIONS	DATE	ISSUE	REVISIONS	DATE
	B	18.11.21	UPDATE TO COUNCIL GUIDELINES		
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PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

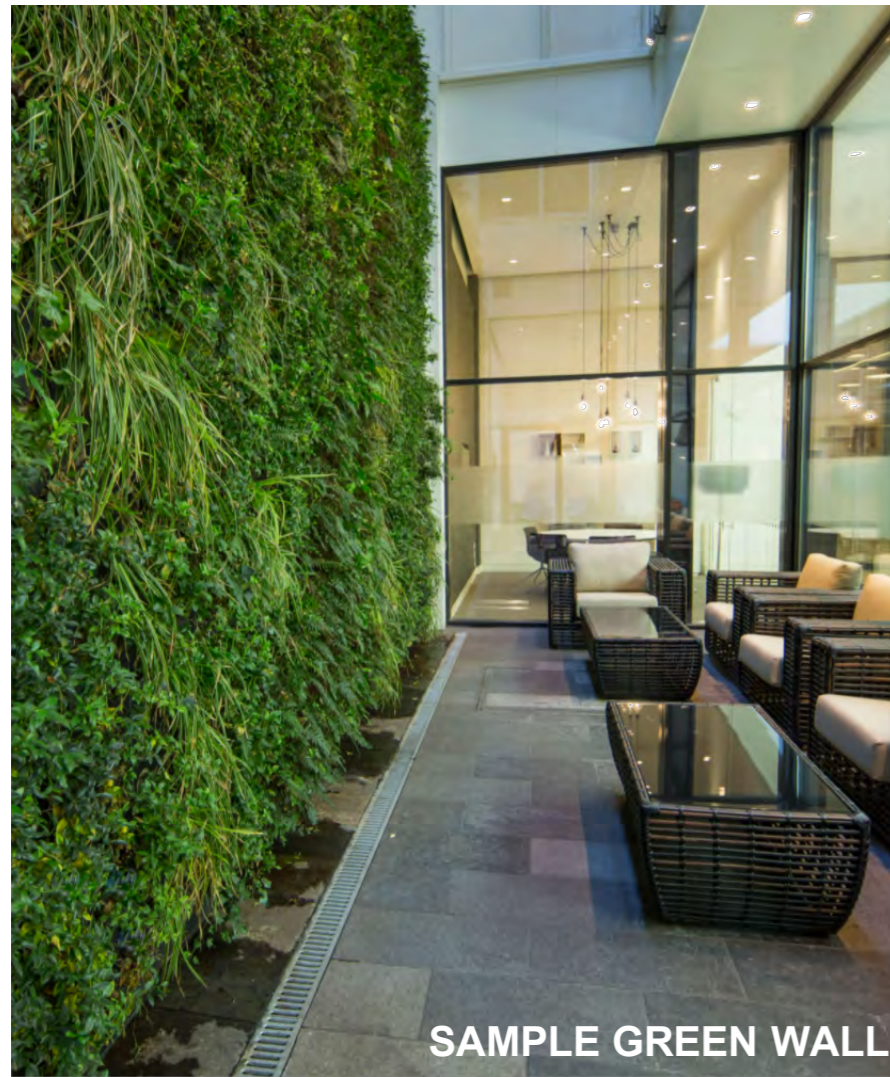
SCHEDULE OF COLOURS AND FINISHES

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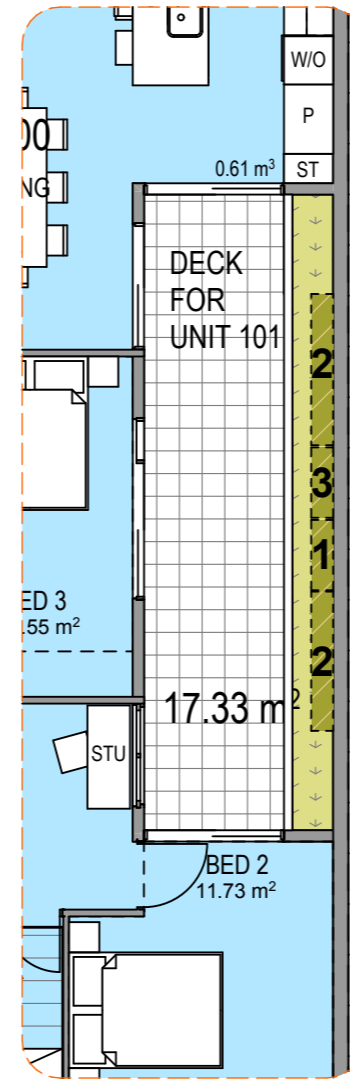
PA STUDIO

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

DRAWING SET ID:	DA	ISSUE
SUBSET: MISCELLANEOUS		
DRAWN BY: WH	DA 503	B
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NOMINATED ARCHITECT: GEORGE REVAY		
REG. NO. 3954		

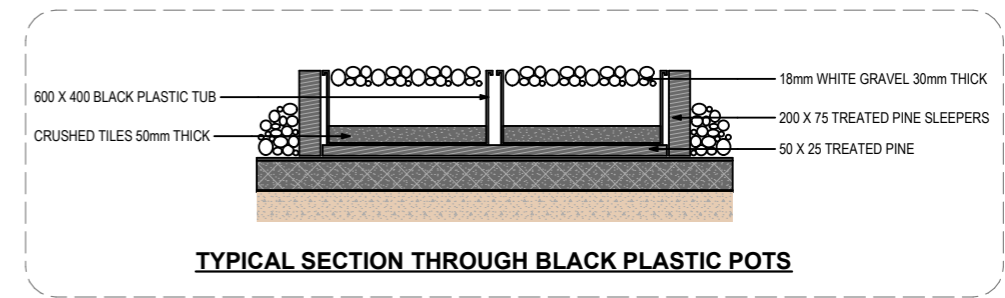


SAMPLE GREEN WALL



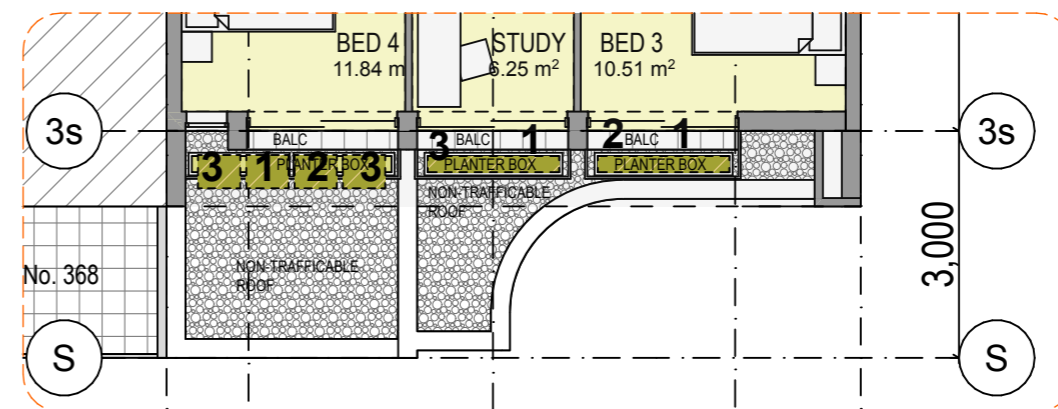
LEGEND

- 1** 2 x DRACAENA (2m MATURE HEIGHT)
6 x MONDO GRASS (300mm MATURE HEIGHT)
- 2** 3 X STAR JASMINE (CLIMBER 3m MATURE HEIGHT)
6 X MONDO GRASS (300mm MATURE HEIGHT)
- 3** 2 X AGAVE
2 X MONDO GRASS (300mm MATURE HEIGHT)



LANDSCAPE FIRST FLOOR
1:100

LANDSCAPE FOURTH FLOOR
1:100



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FILE PATH: BIMcloud: Bimcloud - BIMcloud Basic for ARCHICAD 24/PAR75 3

ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
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	A		26.07.21		ORIGINAL ISSUE FOR DA		

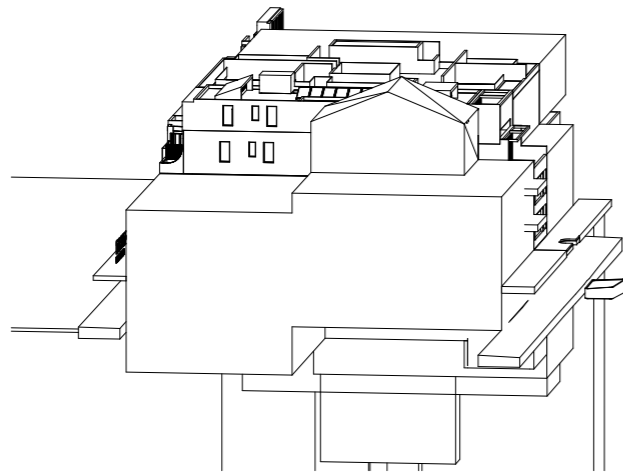
PROJECT:
MIXED USE DEVELOPMENT
372 MILITARY ROAD CREMORNE NSW 2090

SCALE:
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1:200 @A3

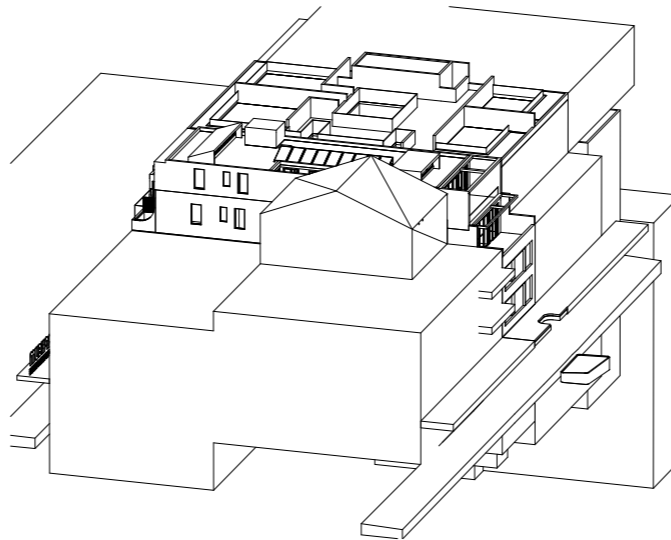
LANDSCAPE DESIGN

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

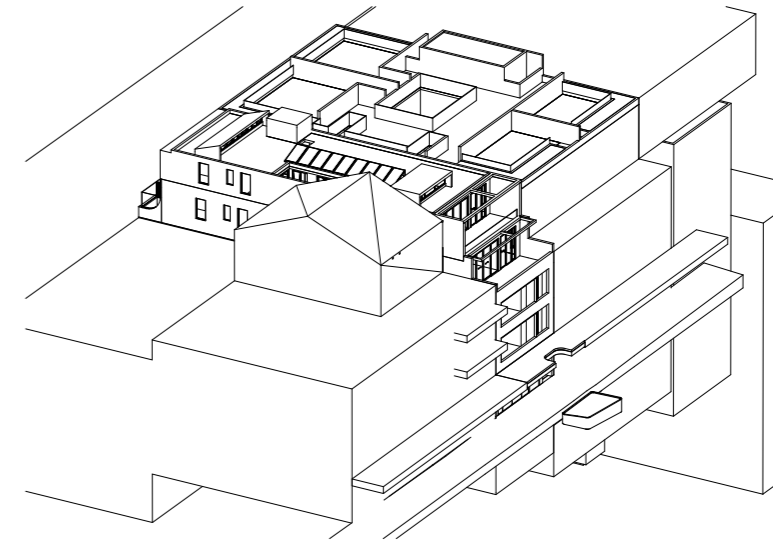
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REG. NO. 3564		



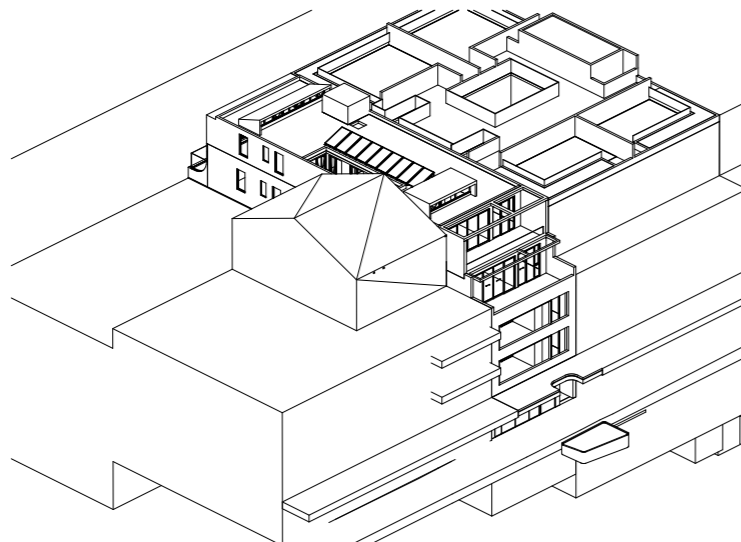
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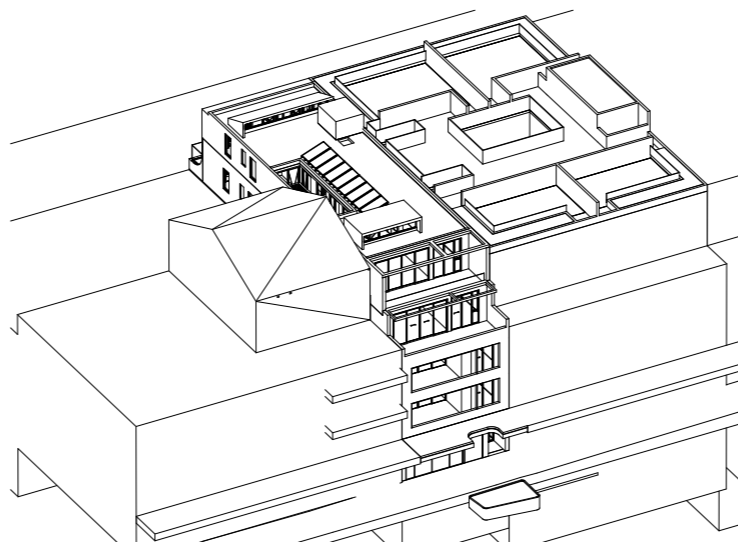
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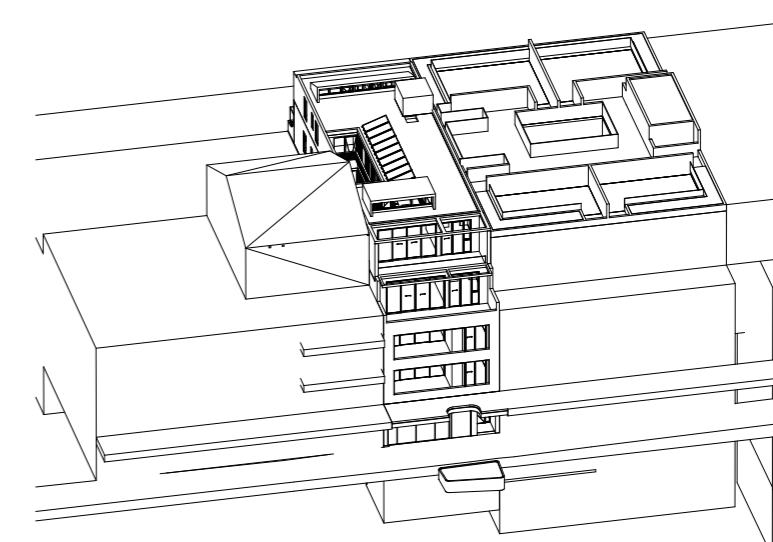
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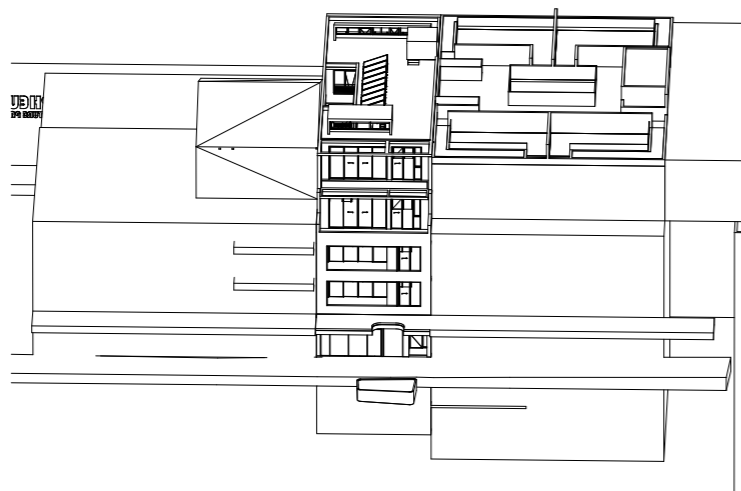
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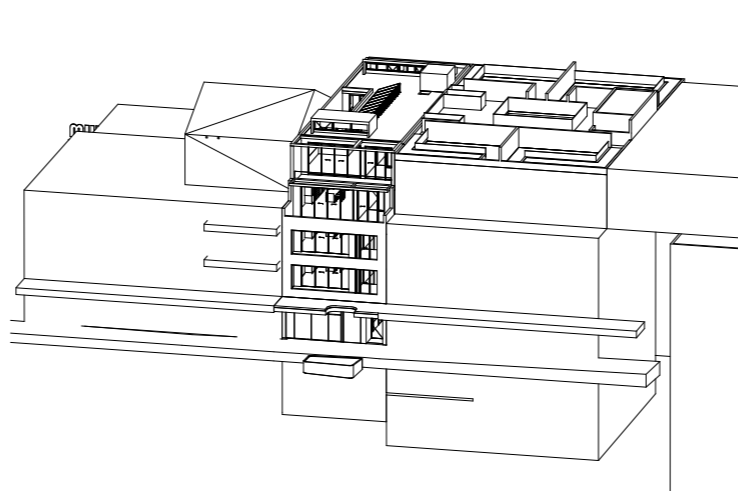
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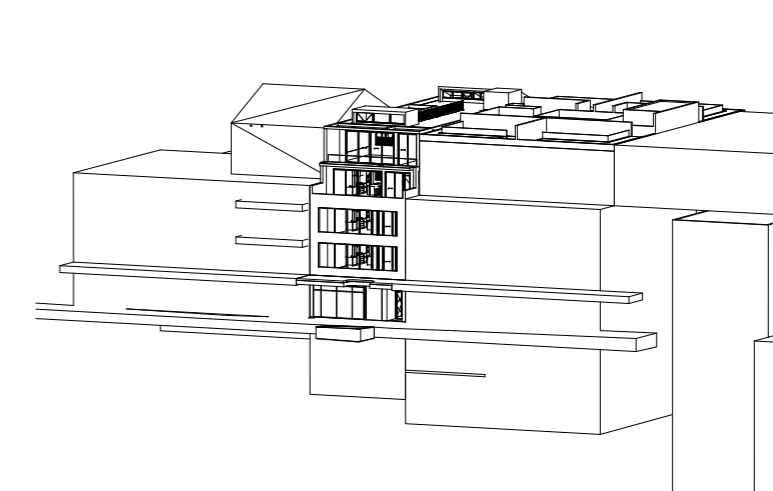
1:00PM 21ST JUNE



2:00PM 21ST JUNE



3:00PM 21ST JUNE



4:00PM 21ST JUNE



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PROJECT:

MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

VIEWS FROM THE SUN JUNE 21

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

PA STUDIO

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

DRAWING SET ID:

SUBSET: DA VIEWS FROM THE SUN

DRAWN BY: WH

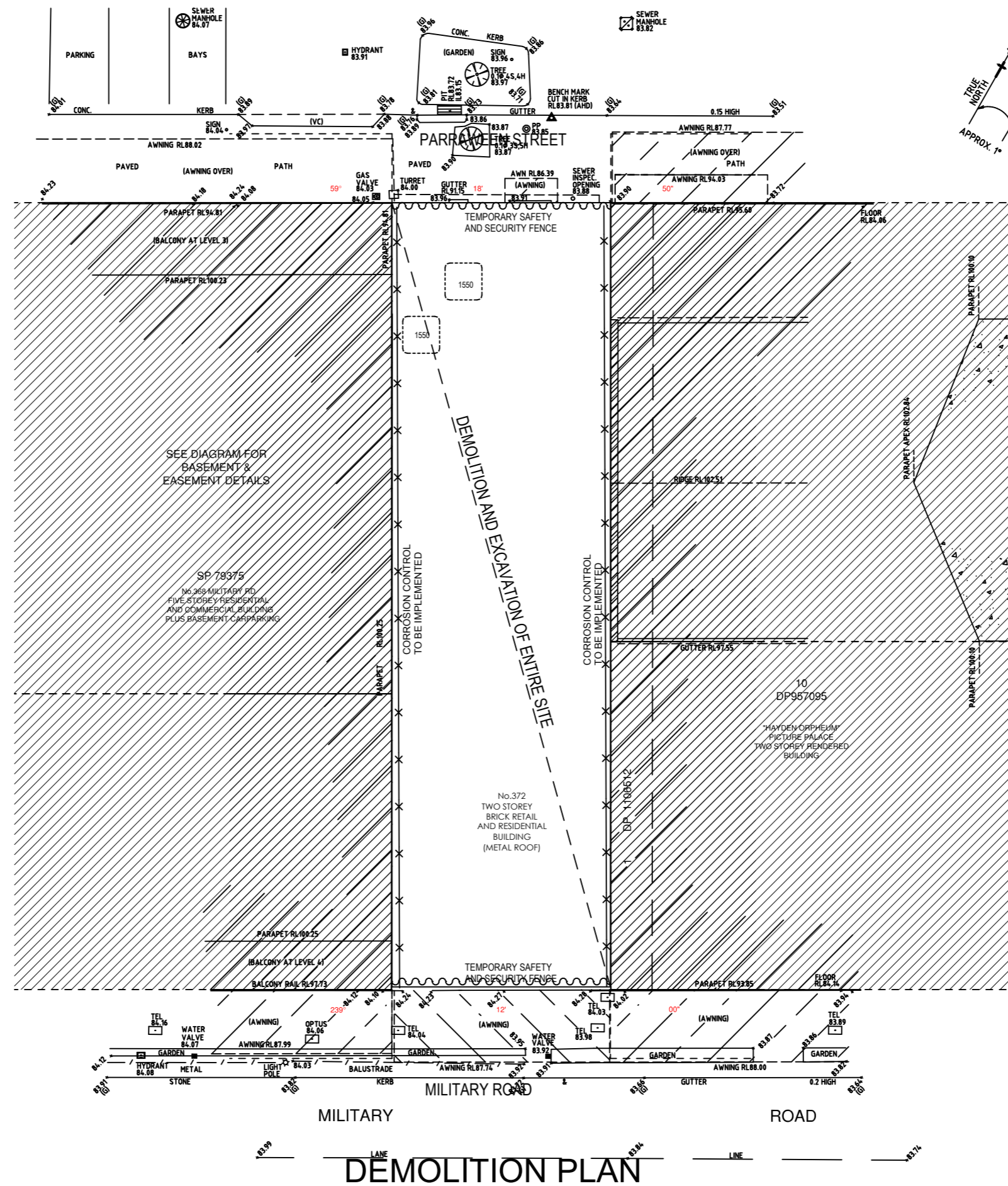
FILE: PAR75 3

NOMINATED ARCHITECT: GEORGE REVAY
 REG. NO. 3954

DA 400

ISSUE

B



DEMOLITION PLAN

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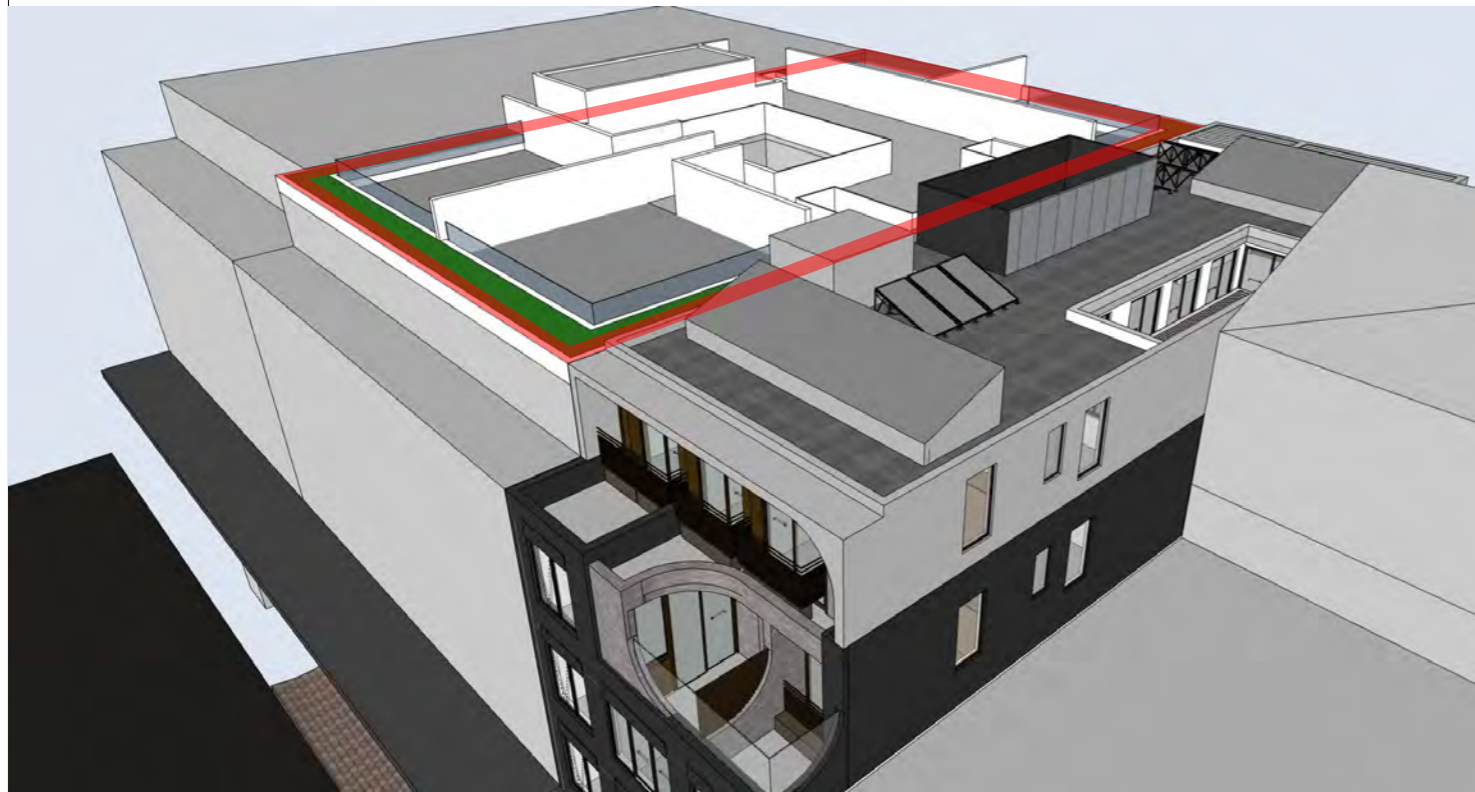
Printed 22/12/2021

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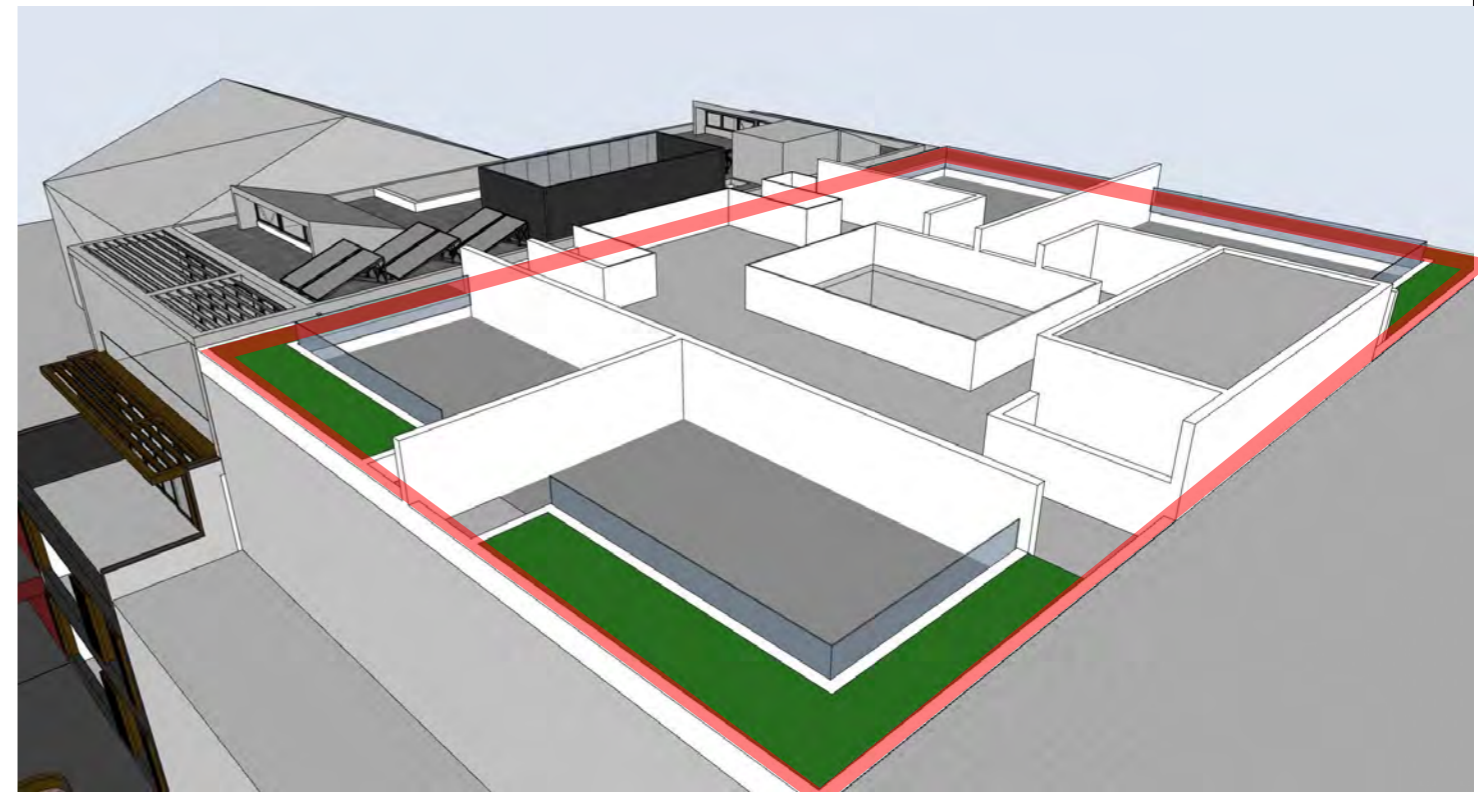
ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
				B	UPDATE TO COUNCIL GUIDELINES		18.11.21
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PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

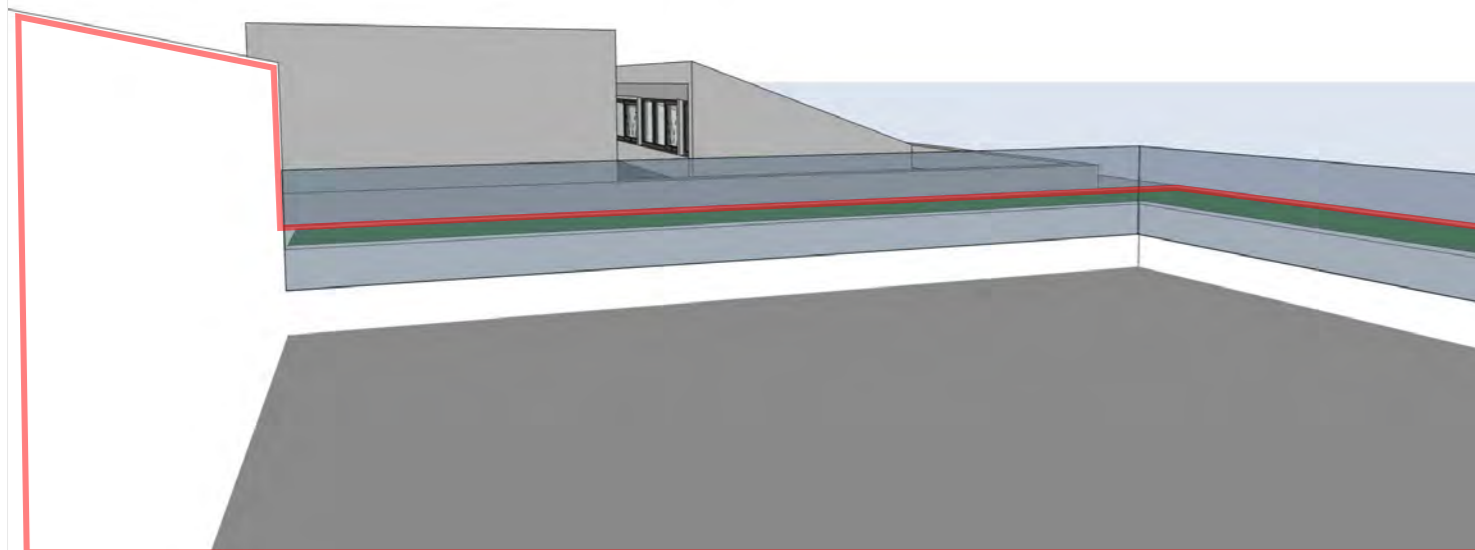
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SUBSET: MISCELLANEOUS		
DRAWN BY: WH		DA 501
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SCALE: 1:100 @A1 1:200 @A3	PA STUDIO LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089 TEL: 8968 1900 FAX: 8968 1999 ACN: 603 389 288	



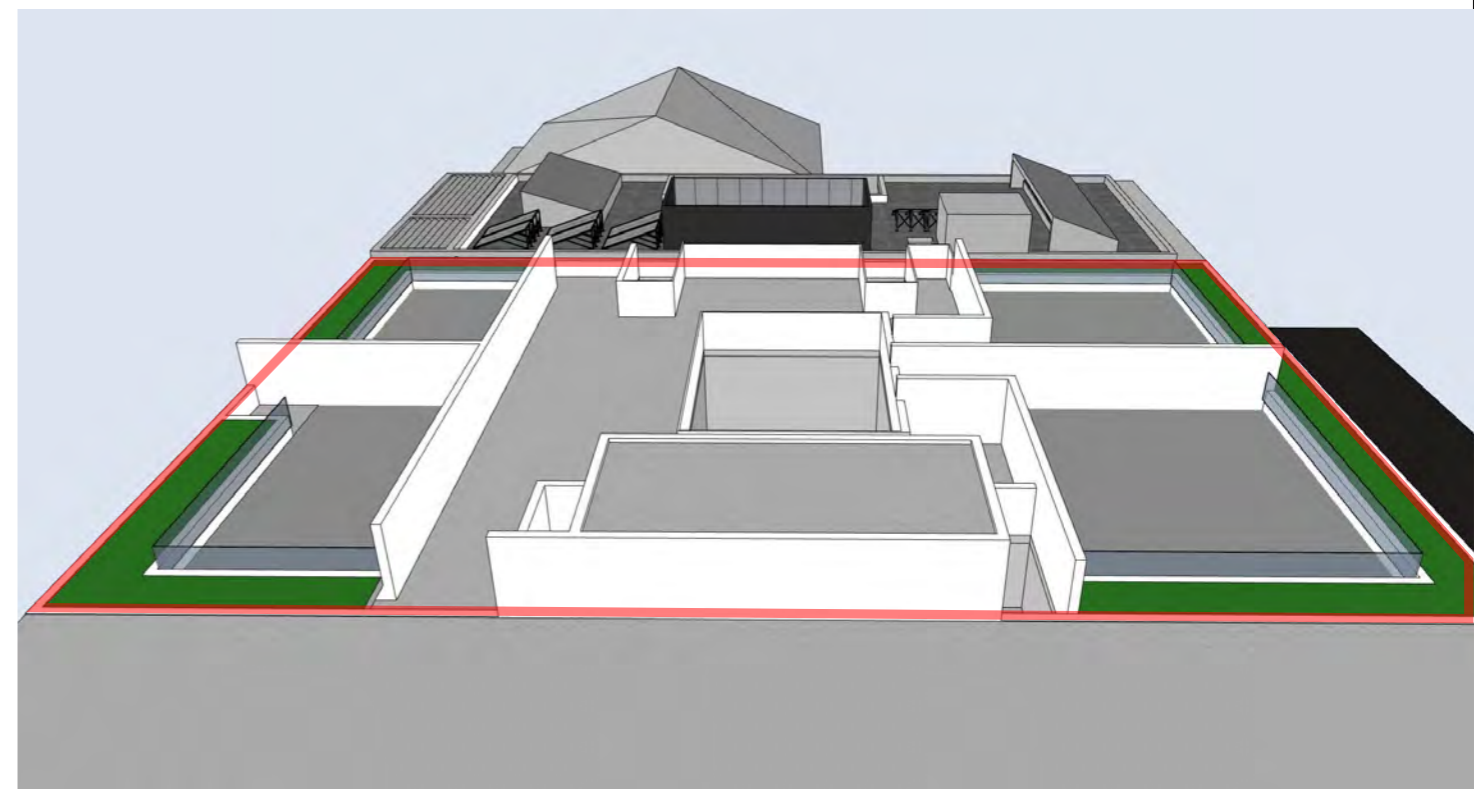
VIEW LOOKING NORTH-WEST



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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FILE PATH: BIMcloud: Bimcloud - BIMcloud Basic for ARCHICAD 24/PAR75 3

ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
				A	ORIGINAL ISSUE FOR DA		18.11.21

PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

3D MODEL VIEWS		DRAWING SET ID:	DA	ISSUE
		SUBSET: MISCELLANEOUS		
		DRAWN BY: WH		
		FILE: PAR75 3	DA 507	A
SCALE: 1:100 @A1 1:200 @A3		P A S T U D I O LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089 TEL: 8968 1900 FAX: 8968 1999 ACN: 603 389 288		
		NOMINATED ARCHITECT	GEORGE REVAY REG. NO. 3954	



ATTACHMENT A

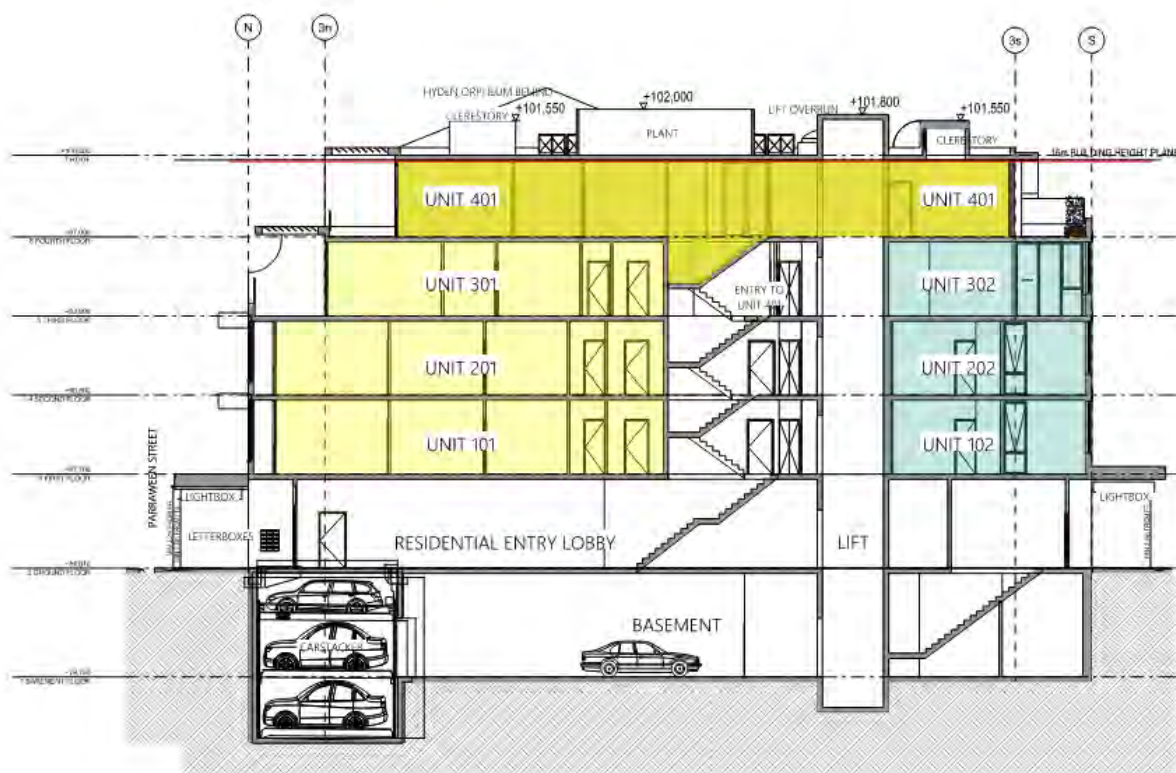
Request to Vary Building Height Control

372 Military Road, Cremorne

INTRODUCTION

Clause 4.3 of the North Sydney Local Environmental Plan (LEP) 2013 specifies a maximum building height of 16 metres for the subject site.

The proposed development extends to a maximum height of approximately 16.19 metres measured to the upper roof level, and 17.9 metres measured to the top of the plant. The portion of the building that extends above the building height control is identified on the plan extract below. In the circumstances, this “written request” has been prepared to vary the building height control pursuant to Clause 4.6 of the LEP.



The building height control is a development standard and is not excluded from the operation of Clause 4.6 of the LEP.

CLAUSE 4.6 OF THE NORTH SYDNEY LEP 2013

Clause 4.6(1) is facultative and is intended to allow flexibility in applying development standards in appropriate circumstances. Clause 4.6 does not directly or indirectly establish a test that noncompliance with a development standard should have a neutral or beneficial effect relative to a complying development.

Clause 4.6(2) of the LEP specifies that “*development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument*”. Clause 4.6(3) specifies that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The requirement in Clause 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard has a better environmental planning outcome than a development that complies with the development standard.

Clause 4.6(4) specifies that development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and (b) the concurrence of the Secretary has been obtained.

Clause 4.6(5) specifies that in deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

CONTEXT AND FORMAT

This request has been prepared having regard to "Varying development standards: A Guide" (August 2011), issued by the former Department of Planning, and relevant principles identified in the following judgements:

- Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;
- Wehbe v Pittwater Council [2007] NSWLEC 827;
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90; ➤ Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248;
- Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;
- Moskovich v Waverley Council [2016] NSWLEC 1015;
- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;
- Hansimikali v Bayside Council [2019] NSWLEC 1353;
- Big Property Group Pty Ltd v Randwick City Council [2021] NSWLEC 1161.
- HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] NSWLEC 1243.

The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or

unnecessary and that it is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (Wehbe v Pittwater Council [2007] NSWLEC) and Initial Action Pty Limited v Woollahra Municipal Council [2018] NSWLEC 118), Rebel MH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130) and Al Maha Pty Ltd v Huajun Investments Pty Ltd (2018) 233 LGERA 170; [2018] NSWCA 245.

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

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; and
5. The zoning of the land is unreasonable or inappropriate

In this case, it is demonstrated below that Test 1 – that the objectives of the development standard are achieved notwithstanding non-compliance with the standard - has been satisfied.

As Preston CJ, stated in Wehbe, the starting point with a SEPP No. 1 objection (now a Clause 4.6 variation) is to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances. The most commonly invoked way to demonstrate this is to show that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard.

The Applicant relies upon ground 1 in Wehbe to support this submission that compliance with the development standard is both unreasonable and unnecessary in the circumstances of this case. In that regard, Preston CJ, in Wehbe states that “... *development standards are not ends in themselves but means of achieving ends*”. Preston CJ, goes on to say that as the objectives of a development standard are likely to have no numerical or qualitative indicia, it logically follows that the test is a qualitative one, rather than a quantitative one.

As such, there is no numerical limit which a variation may seek to achieve. The above notion relating to ‘numerical limits’ is also reflected in Paragraph 3 of Circular B1 from the former Department of Planning which states that: *As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small in others it may be numerically large, but nevertheless be consistent with the purpose of the standard.*

It must be noted that in properly reading Wehbe, an objection submitted does not necessarily need to satisfy all of the tests numbered 1 to 5, outlined above. If the objection satisfies one of the tests, then it may be upheld by a Council or the Court.

It is also noted that the consent authority has the power to grant consent to a variation to a development standard, irrespective of the numerical extent of variation (subject to some limitations not relevant to the present matter). The decision of Pain J, in Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 suggests that demonstrating that a development satisfies the objectives of the

development standard is not necessarily sufficient, of itself, to justify a variation, and that it may be necessary to identify reasons particular to the circumstances of the proposed development on the subject site.

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ found that it is not necessary to demonstrate that the proposed development will achieve a “better environmental planning outcome for the site” relative to a development that complies with the development standard.

In *Hansimikali v Bayside Council* [2019] NSWLEC 1353, Commissioner O’Neill found that it is not necessary for the environmental planning grounds relied upon by the Applicant to be unique to the site.

In *Big Property Group Pty Ltd v Randwick City Council* [2021] NSWLEC 1161, Commissioner O’Neill found that “*The desired future character of an area cannot be determined by the applicable development standards for height and FSR alone*”. Further, Commissioner O’Neill found that “*The presumption that the development standards that control building envelopes determine the desired future character of an area is based upon a false notion that those building envelopes represent, or are derived from, a fixed three dimensional masterplan of building envelopes for the area and the realisation of that masterplan will achieve the desired urban character*”.

ASSESSMENT

Is the requirement a development standard?

The building height control is a development standard and is not excluded from the operation of Clause 4.6 of the LEP.

What is the underlying object or purpose of the standard?

The proposal is considered against the objectives of the building height control below:

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

It is noted that the site does not have any slope. None of the elements of the building for which variations to the height control are sought would be visible from any street or public place and the building provides for an appropriate 5 storey height as identified in the Cremorne Town Centre controls of the DCP.

In addition, the building form provides articulation, and the architectural expression of the building provides a predominantly 4 storey form, with the upper level recessed behind the levels below. This ensures that the building will appear to be in keeping with the surrounding area and will the intent of the height control.

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

The proposed variations to the height control will not result in any view impacts upon surrounding residential properties.

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

The elements for which variations to the height control are sought do not result in any significant loss of solar access to adjoining properties and are unlikely to result in any additional impact upon solar access potential for any future redevelopment of adjoining properties.

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

The elements for which a variation is sought will not result in reduced visual or aural privacy for nearby dwellings.

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

The compatibility of the development with its context is ensured as the elements for which variation are sought are not visible from the streets and the overall building is of a similar height to the recently approved developments at Nos. 352-358, 390-394, and 398-400 Military Road. The height is also generally consistent with the building immediately adjoining the site to the west, being 368 Military Road.

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

The scale of the proposed building is consistent with that of the recent developments along this portion of Military Road, most of which breach the 16m control to some extent. The density proposed is also similar to that of the more recent developments, including at Nos. 352-358 Military Road, 390-394 Military Road and 398-400 Military Road.

The bulk and scale of the proposed building when viewed from both Military Road and Parraween Street is generally consistent with the building height control, and compatible with the existing mixed use development in the vicinity. The elements that exceed the numerical control are set back and cannot generally be viewed from public areas.

As the proposal satisfies the objectives of the control it is considered to be unnecessary for the proposal to comply with the height control in relation to the elements for which variation is sought.

Contravention of the control does not result in any impact upon State or regional planning.

As the variations sought would result in a height and built form that is consistent with the surrounding buildings, the approval of the variation would not set any undesirable precedent and as such there is no public benefit in maintaining the development standard in this instance.

In summary, the proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The Department of Planning published "*Varying development standards: A Guide*" (August 2011), to outline the matters that need to be considered in Development Applications involving a variation to a development standard. The Guide essentially adopts the views expressed by Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 to the extent that there are five different ways in which compliance with a development standard can be considered unreasonable or unnecessary. The proposed development is considered in terms of these 5 criteria below:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;

The proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

The objectives and purpose of the building height control remain relevant, and the proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The proposed development is generally consistent with the objectives of the building height control. Further, strict compliance with the building height control would effectively require the removal of the uppermost level of the building (and portions of the level below) to accommodate the plant and lift overrun in circumstances where the proposed development is compatible with the desired future character of the locality, and will not impose any significant or unreasonable impacts on the visual character of the public domain, or the amenity of surrounding properties. It is therefore considered that strict compliance is unreasonable given the circumstances of this case.

4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

The building height control has not been abandoned or destroyed by the Council's past actions. However, the Council has consistently adopted an orderly but flexible approach to the implementation of development standards (including the building height control) in appropriate circumstances, including when the objectives of the standard are achieved, notwithstanding numerical variations.

Council has taken a practical approach to the application of the height control in the support and approval of a number of recent developments within the Cremorne Town Centre and immediate surrounds. Examples of where breaches of the height control have been supported by Council and have resulted in good urban built form outcomes include 352-358 Military Road, 390-394 Military Road and 398-400 Military Road.

Further, the objectives of Clause 4.6 of the LEP includes to provide "an appropriate degree of flexibility in applying certain development standards to particular development".

5. Compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land.

The zoning of the land remains relevant and appropriate as it provides for a mix of residential and non-residential uses in a location that is well served by public transport and in close proximity to a wide range of retail and services. Strict compliance with the building height control would effectively require the removal of the upper level of the building (and portions of the level below) in circumstances where the proposed development is compatible with the desired future character of the locality, and will not impose any significant or unreasonable impacts on the visual character of the public domain, or the amenity of surrounding properties.

Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed variation to the numerical building height control is reasonable and appropriate in the particular circumstances on the basis that:

- The elements of the building that exceed the height control are generally restricted to the building plant, clerestory windows and lift overrun, none of which are visible from any areas of public domain;
- The minor exceedance of the height control does not create any additional shadow impacts;
- It does not impact on the compliance with any other planning control;
- The built form, despite the variation to the height standard, does not impact on the compatibility of the development with the existing development in the immediate context of the site and desired future character of the area;
- The building form provides articulation, and the architectural expression of the building provides a predominantly 4 storey form, with the upper level recessed behind the levels below;
- The proposed development will have no significant or adverse impact on any existing public or private views;
- The bulk and scale of the building when viewed from both Military Road and Parraween Street is generally consistent with the building height control, and compatible with the existing development in the vicinity;
- The proposed development has been carefully designed to achieve a high standard of architectural design, the building designed to address the street frontages, with active uses at the ground floor level, and a refined palette of external materials and finishes;
- The variation sought for the clerestory windows results in an improved outcome for the development as it allows for good light and ventilation to the uppermost apartment which could not otherwise be appropriately achieved due to the orientation of the site;
- The proposed development will promote good design and the amenity of the built environment which is a recently incorporated object of the Act: “(g) to promote good design and amenity of the built environment”;
- The proposed development is consistent with the relevant objectives of the B4 – Mixed Use zone; and
- The proposed development is generally consistent with the objectives of the building height control.

Are there any matters of State or regional significance?

The proposed numerical variation to the building height control does not raise any matters of State or regional significance.

What is the public benefit of maintaining the standard?

The objectives of Clause 4.6 of the LEP includes to provide “an appropriate degree of flexibility in applying certain development standards to particular development”. The proposed development is consistent with the objectives of the building height control, notwithstanding the minor numerical variation. The proposed development does not affect the public benefit of maintaining compliance with the building height control in any other instances.

Any other matters?

There are no further matters of relevance to the proposed variation to the building height control.

Public Interest

The proposed development will serve the public interest in terms of contributing to a diverse range of residential and non-residential activities within an established mixed-use precinct.

CONCLUSION

The purpose of this submission is to formally request a variation in relation to the building height control in Clause 4.3 of the North Sydney LEP 2013. Strict compliance with the building height control is unreasonable and unnecessary in the particular circumstances, and there are sufficient environmental planning grounds to justify the relatively minor numerical variation.