

**NSLPP MEETING HELD ON 7/02/24****Attachments:**

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Statement (Building Height)

ADDRESS/WARD: 126-128 Willoughby Road, Crows Nest**APPLICATION No:** DA 279/22

PROPOSAL: Alterations and additions to an existing building to create a mixed use development of 2 levels and a mezzanine of commercial and retail premises, and 4 residential units on the upper 2 levels and associated works.

PLANS REF:

Plan No.	Rev No.	Description	Prepared by	Dated
DA02	-	Site Analysis Plan	Into Architecture	28/03/22
DA03A	A	Ground Car Park & Retail	Into Architecture	30/11/22
DA04	-	Level Mezzanine	Into Architecture	28/03/22
DA05	-	Level 1 Office	Into Architecture	28/03/22
DA06B	B	Level 2 Apartments Lower	Into Architecture	30/11/22
DA07B	B	Level 3 Apartments Upper	Into Architecture	30/11/22
DA08A	A	Roof Plan	Into Architecture	23/08/22
DA09A	A	Section A	Into Architecture	23/08/22
DA10A	A	Section B & D	Into Architecture	30/11/22
DA11B	B	Elevation North	Into Architecture	30/11/22
DA12A	A	Elevation South	Into Architecture	23/08/22
DA13A	A	Elevation East	Into Architecture	23/08/22
DA14A	A	Elevation West	Into Architecture	23/08/22
DA16A	A	Ext. Colours & Materials	Into Architecture	28/03/22
SW01	P1	Existing Stormwater Plan	Demlakian Consulting Engineers	08.08.22

OWNER: DEM Property Group Pty Ltd**APPLICANT:** Ken Demlakian**AUTHOR:** Damon Kenny, Executive Planner**DATE OF REPORT:** 24 January 2024**DATE LODGED:** 16 September 2022**RECOMMENDATION:** Refusal

EXECUTIVE SUMMARY

This development application seeks approval for alterations and additions to an existing building to create a mixed use development of 2 levels and a mezzanine of commercial and retail premises, and 4 residential units on the upper 2 levels and associated works

The application is reported to the North Sydney Local Planning Panel for determination as the applicant is a sensitive development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies and makes a request to contravene the building height development standard of 10m, prescribed by cl. 4.3 North Sydney Local Environmental Plan 2013 (the LEP) by more than 10%.

The request to breach the prescribed height maximum is examined by this report. The maximum height standard is 10m with the proposal demonstrating a maximum height of 16.05m. The written request made pursuant to Clause 4.6 Departure to development standards in NSLEP 2013 fails to demonstrate that compliance with the development standard is both unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the variation.

The proposed development is not considered satisfactory when evaluated against the Design Quality Principles in Schedule 1 to SEPP 65 – Design Quality of Residential Apartment Development and is inconsistent with the objectives of the Apartment Design Guide.

The development application has been assessed against the North Sydney Local Environmental Plan 2013, North Sydney Development Control Plan 2013 and the relevant State Planning Policies and found to be unsatisfactory.

The proposed development is not considered to be in keeping with the established and desired future character of the area and will result in adverse impacts on the streetscape. The proposal fails to allow for a height, bulk and scale which is compatible with the existing and desired future character of the area and fails to ensure that new development does not adversely affect residential amenity in terms of visual privacy.

The application was notified in accordance with the Community Engagement Protocol. Council received no submissions.

Following this assessment and having regard to the provisions of S4.15(1) of the Environmental Planning & Assessment Act 1979, the application is recommended for **refusal** for the reasons as set out in this report.

DESCRIPTION OF PROPOSAL

The application seeks consent for alterations and additions to an existing building to create a mixed use development, specifically:

- Partial demolition of existing building on the site;
- Retention of existing commercial car parking;
- Retention of ground floor retail space;
- Retention of mezzanine office space;
- Retention of level 1 office space
- Construction of a 2 storey residential addition comprising four (4) 2-storey apartments with associated balconies with an apartment mix of 3 2-bedroom apartments and 1 2-bedroom + study apartment.
- Services including fire isolated stairway, lift and garbage chute

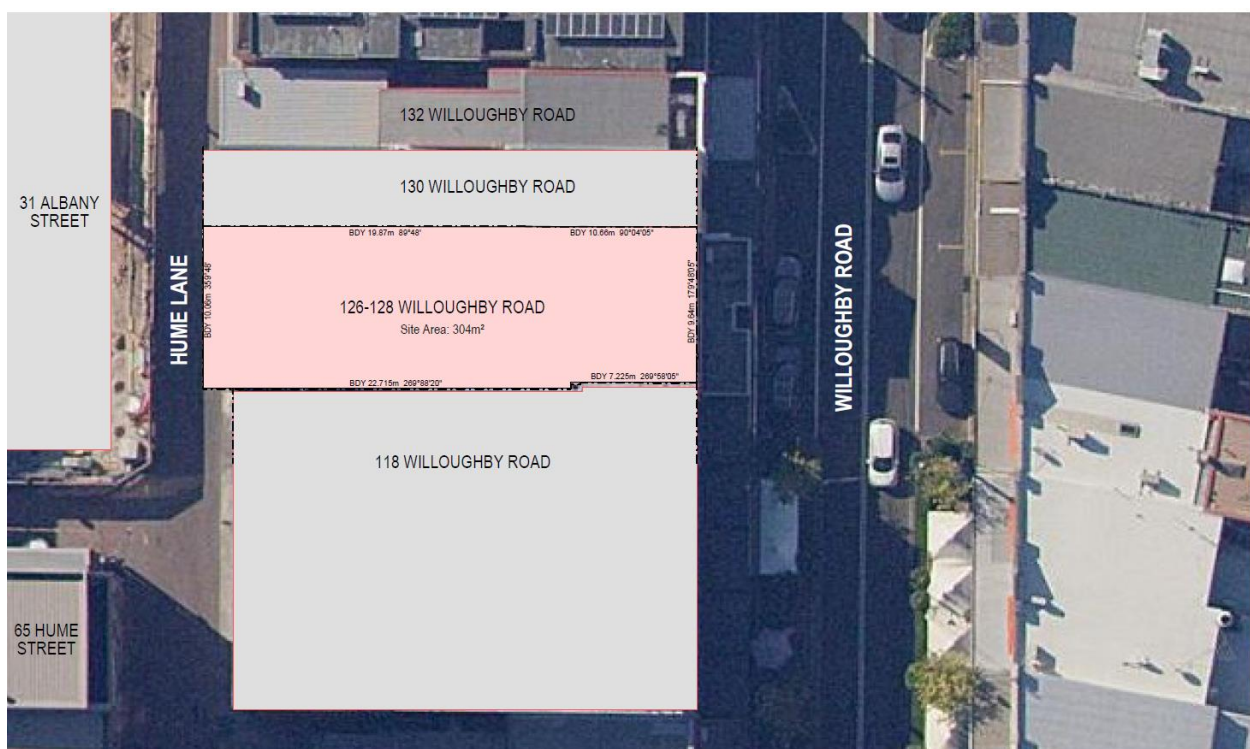


Figure 1: Site Plan (Into Architecture)

STATUTORY CONTROLS

North Sydney LEP 2013 (the LEP)

- Zoning – MU1 Mixed Use
- Item of Heritage - No
- In Vicinity of Item of Heritage - No
- Conservation Area – No
- SEPP (Biodiversity and Conservation) 2021
- SEPP (Resilience and Hazards) 2021
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP 65 – Design Quality of Residential Flat Buildings

POLICY CONTROLS

- North Sydney Development Control Plan (the DCP)
- North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF SITE & LOCALITY

The subject site 126-128 Willoughby Road, Crows Nest (lot 21 in DP 315327) is located on the western side of Willoughby Road approximately 31m south of the intersection of Albany Street and Willoughby Road.

On-site is a 2 storey commercial and retail building. The site has rear vehicular access via Hume Lane on the western boundary. The 304m² site is generally rectangular in shape, with the site's topography sloping down to the front to the rear by approximately 1.4m and with a cross fall of approximately 450mm.

Architectural styles along Willoughby Road vary significantly, primarily influenced by the descending topography from the Pacific Highway to the north and northeast. The site falls within the "Crows Nest Town Centre" as defined in the St Leonards / Crows Nest Planning Area Statement of the NSDCP, where mixed commercial and residential developments are predominant.

Directly to the north, the site is adjacent to 130 Willoughby Rd, which hosts a three-storey mixed-use building with a ground-floor restaurant and residential units above. The basement parking is accessible via Hume Lane.

On the eastern side of Willoughby Road, near the site, there is a series of two-storey commercial/shop front buildings characterized by a step-down articulated parapet towards the north.

South of the site, at 118-124 Willoughby Rd, lies a mixed-use building with three and four storeys. It features ground-floor commercial spaces and residential units above, with vehicle access and parking available from the rear lane.

Along the western side of Willoughby Road, there is a diverse mix of two and three-storey buildings, presenting a variety of roof forms and heights.

The site also has frontage on Hume Lane to its west, which serves as a 'service lane' for properties facing Willoughby Road.

Positioned behind the site is 31 Albany Street, an eight-storey mixed-use building comprising ground-floor retail spaces and residential apartments. This building, standing at 30.06 meters tall, is prominently visible from Willoughby Road.

Northeast of the site, at the corner of Willoughby Road and Albany Street, is 101 Willoughby Road. This mixed-use development spans four to six storeys and includes a supermarket, residential apartments, a childcare centre, a public plaza, a link through the site, and four levels of basement parking.



Figure 2: Site location (hatched in red)(IFM).

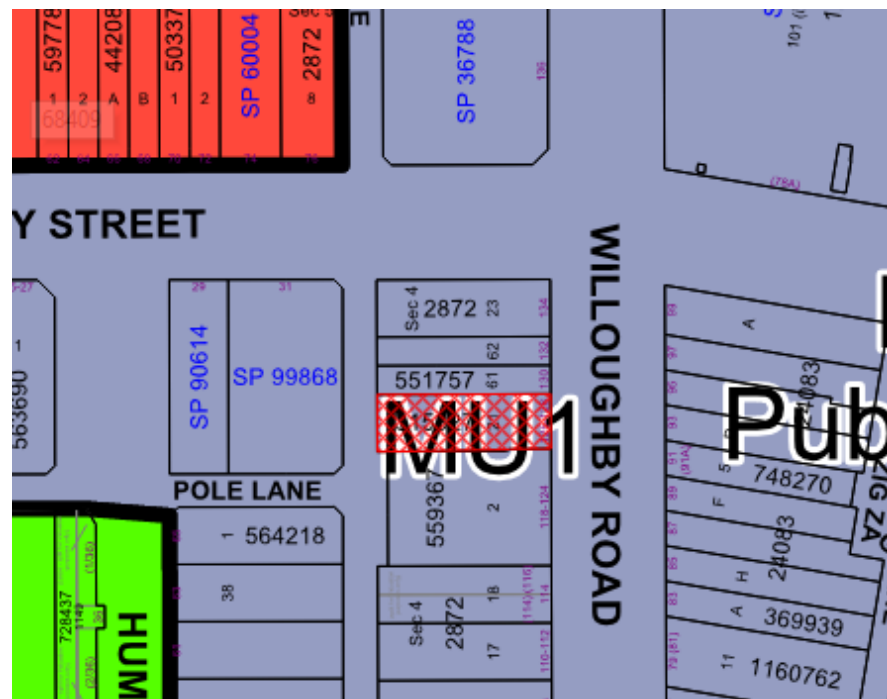


Figure 3. NSLEP Site (hatched in red) is zoned MU1 Mixed Use (lilac)(IFM).

RELEVANT HISTORY

Current Application

Date	Action
16/09/22	Development Application lodged
28/09/22	DA notified, for 14 days (until 21/10/22)

Date	Action
08/11/22	DA considered by North Sydney Design Excellence Panel
21/02/23	Request for information sent to applicant
22/08/23	Applicant response to request for information

INTERNAL REFERRALS

WASTE

The proposed development was referred to Council's Waste Operations Officer who provided the following comments:

"The waste management plan and facilities in this proposal are not acceptable for Council's requirements for the following reasons. 1. The residential waste bins need a temporary bin holding area for collection off the street and within 2 meters of the street alignment. The holding bay must be large enough to fit the minimum 4 x 240L. 2. Properties with a lift must have a garbage chute and recycling bin on each level 3. There needs to be functional bulky waste storage area to hold household clean up material. This should be separate from the garbage room. 4. Commercial bins must not be presented kerbside and must have a bin holding bay for collection. The proposed development must adhere to the NSC DCP 2013 Section 19 - Waste Minimisation and Management and Part B: Section 2 - Commercial and Mixed Use Development requirements. A temporary holding bay for collections must be provided of sufficient size to accommodate the required garbage and recycling bins as well as bulky waste material and located within 2 meters from the street boundary. Residential and Commercial garbage storage and chutes must be kept separate. Key access should be used for the garbage storage areas. The proposed development of 4 units is allowed an allocation of approximately 80L waste per unit. The following standard conditions will apply to this proposed development: Condition C11 Condition C51 Condition I29. Some other mixed use development conditions may apply."

Planner's Comment

The residential and commercial waste storage areas have been separated as requested and 4 x 660L have been provided, with the residential waste and chute located in a storage cupboard and the commercial waste located near the garage stairs.

A bulk waste storage area has not been provided. There is an excess amount of car parking spaces provided to the development where an area could be provided.

BUILDING

The proposed development was referred to Council's Senior Building Surveyor who raised no objection subject to conditions of consent.

TRAFFIC

The proposed development was referred to Council's Traffic Engineer who provided the following comments:

"It is recommended that the proposed development be refused until the applicant addresses the following:

- 1. The number of parking spaces be adjusted to comply with Council's DCP requirements.*
- 2. The development makes provision for on-site bicycle spaces to comply with Council's DCP.*
- 3. The development makes provision for one (1) on-site car wash bay to comply with Council's DCP.*
- 4. The development makes provision for an on-site loading bay within the site's boundary to comply with Council's DCP."*

Planner's Comment

The proposal does not provide any additional parking for residents or visitors, nor a car wash bay or loading bay. The proposal has not been amended to address the comments above.

DEVELOPMENT ENGINEERING

No objection was raised by Council's Development Engineers and conditions are recommended in the event the application is approved.

DESIGN EXCELLENCE PANEL

Set out below are excerpts from the panel's report, germane to this assessment. They are based on the originally submitted application, not the amendments received subsequent to the panel's consideration of the proposal.

Principle 1: Context and local character

Willoughby Street and development along Willoughby Street generally slopes down away from the Pacific Highway. Council recommends any future proposal steps down with topography of Willoughby Road.

The current context is typified by two storey shop-top housing being slowly replaced by three storey development to the and south between Albany Street and Clarke Street.

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

Height, bulk and scale

The building significantly exceeds the maximum permissible building height. There appears to be no rationale from a design perspective for the height breach.

The proposal will be highly visible from both frontages and will be uncharacteristic of the locality.

The Parapet wall and front façade should respond/relate to the adjacent building heights

Principle 3: Density

Compliance diagrams are required to confirm compliance with the minimum non-residential FSR requirement. Given the significant concerns expressed under other headings the proposed development is considered an overdevelopment of the site.

Principle 4: Sustainability, building performance and adaptability

Water management

Details are required on waste storage and management for the development. Separate waste storage facilities should be provided as the development contains a mixture of both residential and commercial uses.

Principle 5: Landscape Integration

The panel would recommend inclusion of some planting and structures to both provide shade and enclosure to balcony spaces and contribute to the overall green canopy of the precinct.

Principle 6: Building configuration, planning, and amenity

Configuration and planning:

While the development of a shop top housing typology is commended the 2 storey townhouses typology is not suitable in this case, resulting in an isolated Apartment 2 dependent on a side boundary for amenity and internal bedrooms dependent on small light wells for amenity.

The already poor amenity for Apartment 2 would be further compromised if the property to the north were re-developed. The applicant should refer to the ADG for the required building separation distances for habitable rooms facing side boundaries.

The use of the lightwells for the provision of light and ventilation to the dwellings is not acceptable.

A number of windows appeared to be close to the boundary, to deal with privacy and fire separation issues these windows may need to be inoperable or face blank boundary walls which is not an acceptable solution.

Alternative layouts could be considered such as single floor apartments with a central courtyard and existing staircase.

Apartment size and layout

Apartment floor areas and room dimensions should be clarified and demonstrated as being compliant with the ADG.

Pedestrian access and entries

Separate pedestrian entrances and lobbies should be provided to the residential accommodation and commercial development.

Common circulation

No daylighting is provided to the common circulation areas of the residential building. Some natural daylighting should be provided potentially in the form of a light well and void

Private open space and balconies

The level 2 balcony spaces are unprotected and do not currently encourage use. Roof trellises and sunshade awnings should be considered.

Solar and daylight access

Solar shading should be provided to east, north and west facing windows and glazed doors.

Natural cross ventilation and natural ventilation

Cross ventilation to dining rooms and rear bedrooms is dependent on stack ventilation over two levels by means of narrow staircases, corridors and light wells. This is not supported. The ADG does not support light wells as the primary air source for habitable rooms (Part 4B-1).

Parking

No details were provided on car parking facilities.

Building services

No details were provided on proposed building services.

Principle 7: Safety

Not discussed.

Principle 8: Housing diversity and social interaction

The proposed development should provide a mix of dwelling sizes.

Principle 9: Architectural expression and materiality

Additional wall materials and sun shading devices should be considered for the west and east elevations particularly at Level 2. Consider 118 Willoughby Rd as a precedent for high quality liveable and shaded balcony spaces.

Low quality high maintenance materials are proposed. Unpainted masonry and shading would be preferred.

Recommendations to Achieve Design Excellence

Not supported and should be amended and returned to the Panel for further review.

Planner's comment

The application was amended in response to the DEP comments and the advice has generally not been adopted in the revised design. This is discussed further in this report.

SUBMISSIONS

Original proposal

On 28 September 2022, Council notified adjoining properties and the Holtermann Precinct of the proposed development seeking comment between 7 October 2022 and 21 October 2022. Council received no submissions.

Amended Proposal

Being of a similar scope and smaller scale to the original proposal, renotification was considered unnecessary in accordance with the provisions of Council's Community Engagement Protocol.

CONSIDERATION

Relevant matters of Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended) are considered below.

SEPP (Biodiversity and Conservation) 2021

Chapter 6 Water catchments

Part 6.2 Development in regulated catchments

The SEPP defines the Sydney Harbour Catchment as a "regulated catchment", meaning relevant provisions of Chapter 6 apply to land and development in the catchment.

Water quality and quantity

The proposed development will have acceptable impacts on water quality and quantity in the catchment, provided suitable regimes are adopted for water management during construction and operation of the development, as proposed and required by recommended conditions.

SEPP (Resilience and Hazards) 2021

The provisions of this policy require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. The site is currently used for retail and office purposes, and evidently has not been zoned or used for industrial, agricultural or defence purposes at any times in the lands recent history. In the circumstances, there is no evidence to suggest that the land is likely to be contaminated to the extent that would render it unsuitable for continued retail and residential use. Council can be satisfied the policy can be complied with subject to conditions and consent accordingly granted.

SEPP (Building Sustainability Index: BASIX) 2004

A valid BASIX Certificate has been submitted with the application to satisfy the aims of this SEPP.

SEPP 65 – DESIGN QUALITY OF RESIDENTIAL FLAT BUILDINGS

State Environmental Planning Policy No. 65 aims to improve the design quality of residential flat buildings in New South Wales by recognising that the design quality of residential flat development is of significance for the environment within NSW due to the economic, environmental, cultural and social benefits of high quality design. The SEPP aims to:

- (a) to ensure that it contributes to the sustainable development of New South Wales:
(i) by providing sustainable housing in social and environmental terms, and
(ii) by being a long-term asset to its neighbourhood, and
(iii) by achieving the urban planning policies for its regional and local contexts, and*
- (b) to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*
- (c) to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*
- (d) to maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- (e) to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions.*

The design quality principles are discussed as follows:

Principle 1 & 2: Context, Built Form and Scale

The subject site is located within the Crows Nest Planning area which is characterised by predominantly 3 Storey shop top housing developments.

The proposed four storey built form is considered to overwhelm the scale of the existing three storey buildings within the immediate locality. The contravention to the building height development standard results in an additional storey being above the maximum permissible building height which fails to reflect the scale and form of existing buildings and the desired future character.

Principle 3: Density

The subject site is located within the MU1 Mixed Use zone surrounded by three storey mixed use developments. As a result of the building height exceedance the proposal results in a density that exceeds the existing and desired future character of the area.

Principle 4: Sustainability

The application was accompanied by a valid BASIX certificate.

Principle 5: Landscape

The proposal is deemed acceptable within the context of an MU1 zone. Presently, the site features no landscaping, reflecting the prevailing development pattern in the area, which favours built structures over green spaces. This approach aligns with the character statement for the Crows Nest Town Centre, which advocates for no setbacks on all street frontages and a minimal 1.5-meter setback on all laneways. Despite this, the plan includes the introduction of new street trees along the site's frontages on both Willoughby Road and Chandos Street.

Principle 6: Amenity

The internal amenity of the proposed development is considered to be satisfactory. The proposed apartments incorporate open plan living, where the primary living areas of the dwellings open and extend to private open spaces. The proposal has been designed considering the constraints.

Principle 7: Safety

The design provides a high level of safety and security, with clearly defined entries & exits.

Principle 8: Housing diversity and social interaction

The development proposal includes four two-bedroom apartments in various sizes, catering to the housing preferences of a diverse demographic. Apartment 4 is distinct, featuring a study area that adds unique amenity and value within the local centre context. All apartments are designed with private open spaces that exceed the minimum requirements set by the Apartment Design Guide, enhancing the social wellbeing of residents.

Principle 9: Aesthetics

The proposed development incorporates varied building elements, textures, materials and finishes which all contribute to an overall quality and balanced building. The overall appearance of the building is in keeping with the desired future character of the area.

Apartment Design Guide (ADG)

The proposed development has also been considered against the Apartment Design Guide and as detailed in the table below:

Amenity	Design Criteria	Compliance	Comments
2F - Building Separation	<i>Minimum separation distances for buildings (up to four storeys):</i> <ul style="list-style-type: none"> • 6m setbacks for habitable rooms and balconies. • 3m setbacks for non-habitable rooms. • No separation distance is required between blank walls. 	Demonstrates merit	Living Rooms, Balconies and Bedrooms are largely oriented to the East & West Street Frontages of Willoughby Road and Hume Lane. Apartment 2 has been set back from the North Side boundary with dimensions fitting of this urban infill development. Zero side setbacks are proposed for the South wall where 118 Willoughby Rd abuts. Various Setbacks are proposed for the North side boundary to respond to the existing adjacent building form.

Amenity	Design Criteria	Compliance	Comments
3D - Communal Open Space	<p><i>Communal open space has a minimum area equal to 25% of the site.</i></p> <p><i>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two hours between 9.00 am and 3.00 pm on 21 June (mid-winter)</i></p> <p><i>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</i></p> <p><i>Communal open space is designed to maximise safety</i></p>	Demonstrates merit	<p>The size and scale of the building, and the generous provision of private open space, mitigates the need to provide on-site communal open space.</p>
3E - Deep Soil Zones	<p><i>Deep soil zones are to meet the following minimum requirements:</i></p> <ul style="list-style-type: none"> • <i>3m minimum width</i> • <i>Criteria: minimum 7% of the site area</i> • <i>Guidance: minimum 10% of the site area (650-1000m²)</i> • <i>Guidance: minimum 15% of site area (>1500m²)</i> 	Demonstrates merit	<p>There is no provision to accommodate deep soil due to the existing development on site.</p>
3F - Visual privacy	<p><i>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</i></p> <p><i>6m (between habitable rooms and balconies to boundaries)</i> <i>3m (between non-habit-able rooms)</i></p>	No	<p>Apt 1: Views directed exclusively Eastwards to Willoughby Rd.</p> <p>Apt 2: Living Room & Bed 1 Glazing set back 3.5m from the North (side) boundary. Living Room & Bed 1 overlook neighbouring rooftops with opportunities for visual screening to be located at the boundary line in the event of future neighbouring redevelopment. I.e. in the event of a future neighbouring development built to the side building line, Apartment 2 windows would face a blank wall with no visual privacy impacts.</p> <p>Apt 3 & 4: Living Room views directed towards Hume Lane. Living Room glazing is set back 2.3m from the rear Hume Lane street frontage. These 2 apartments allow for direct overlooking onto 33 Albany Street living areas and POS.</p>

Amenity	Design Criteria	Compliance	Comments
			<p>Light Wells are used in two locations and only for secondary bedrooms. Whilst not optimal, for long narrow in-fill development sites such as this, the use of courtyards and lightwells is permissible and not an uncommon strategy to provide light and amenity to second bedrooms, study's or bathrooms. Courtyard walls will be finished in a light colour to increase light reflectivity and penetration.</p> <p>Apt 2: Light and ventilation is provided to Bedroom 2 via a 6m² courtyard that is open to the sky. Direct sunlight reaches the Bed 2 glass sliding doors for 7 months of the year.</p> <p>Apt 4: Light and ventilation to the Study / Home Office is achieved via a lightwell measuring 2.2x0.8m. Utilising a west-facing glass louvre window on the upper level, daylight and fresh air is able to reach the rear of the deep ground floor Study/Home office area of Apartment 4.</p>
<p>4B - Natural ventilation</p>	<p><i>All habitable rooms are naturally ventilated.</i></p> <p><i>The layout and design of single aspect apartments maximises natural ventilation.</i></p> <p><i>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents - At least 60% of apartments are naturally cross ventilated</i></p>	<p>Yes</p>	<p>The proposed development features openings for all habitable rooms - ensuring these are naturally ventilated.</p>
<p>4C - Ceiling Heights</p>	<p><i>Ceiling height achieves sufficient natural ventilation and daylight access - Minimum 2.7 m (habitable rooms)</i></p>	<p>Yes</p>	<p>The proposed ceiling heights comply with a minimum 2.7m.</p>
<p>4D 1 - Apartment size and layout</p>	<p><i>Apartments are required to have the following minimum internal areas:</i> <i>50m² (1-bedroom)</i> <i>70m² (2-bedroom),</i> <i>90m² (3-bedroom)</i></p> <p><i>Additional bathrooms increase the minimum internal area by 5m² each</i></p> <p><i>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each</i></p>	<p>Yes</p>	<p>All units comply with the minimum internal areas specified.</p> <p>All habitable rooms have external walls with windows that provide daylight and ventilation.</p>

Amenity	Design Criteria	Compliance	Comments
	<p><i>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</i></p>		
<p>4D 2 - Apartment size and layout</p>	<p>1. <i>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</i></p> <p>2. <i>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</i></p>	<p>Yes</p> <p>Yes</p>	<p>Complies with the maximum depths for habitable rooms and open plan layouts.</p> <p>Apt 1 = 7.6m Max. Open Plan Living Room Depth Apt 2 = 6.7m Max. Open Plan Living Room Depth Apt 3 = 8m Open Plan Living Room Depth (Living, Dining & Kitchen). Oversized entry / storage area located at Apartment Entry door as a result of fixed site parameters. Apt 4 = 8m Open Plan Living Room Depth.</p>
<p>4D 3- Apartment size and layout</p>	<p>1. <i>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space)</i></p> <p>2. <i>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</i></p> <p>3. <i>Living rooms or combined living/dining rooms have a minimum width of:</i></p> <ul style="list-style-type: none"> • <i>4m for 2-bedroom and 3-bedroom apartments</i> 	<p>Yes</p> <p>Yes</p> <p>Yes</p>	<p>Master bedrooms have a minimum area of 10m². Other bedrooms have a minimum area of 9m².</p> <p>All bedrooms have a minimum width of 3m.</p> <p>Living rooms have a minimum width of 4.4m.</p>
<p>4E - Private open space and balconies</p>	<p><i>All apartments are required to have primary balconies as follows:</i></p> <p><i>3+ bedroom apartments 12m² and minimum depth 2.4m</i></p> <p><i>The minimum balcony depth to be counted as contributing to the balcony area is 1m</i></p> <p>2. <i>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</i></p> <p><i>Primary private open space and balconies are appropriately located to enhance liveability for residents.</i></p>	<p>Yes</p>	<p>Primary balconies and terraces comply with the required minimum area and minimum depth.</p>

Amenity	Design Criteria	Compliance	Comments
	<p><i>Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.</i></p> <p><i>Private open space and balcony design maximises safety.</i></p>		
4F Common circulation and spaces	1. <i>The maximum number of apartments off a circulation core on a single level is eight</i>	Yes	Maximum of four (4) apartments.
4G -Storage	<p><i>Studio apartments- 4m³</i></p> <p><i>1-bedroom apartments - 6m³</i></p> <p><i>2-bedroom apartments - 8m³</i></p> <p><i>3+ bedroom apartments - 10m³</i></p>	Yes	The proposed storage areas comply with the minimum storage requirements for each unit.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

1. Aims of Plan

Clause 1.2 Aims of North Sydney LEP 2013 reads as follows:-

- (2) *The particular aims of this Plan are as follows—*
- (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
 - (a) *to promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment,*
 - (b) *in relation to the character of North Sydney's neighbourhoods—*
 - i. ***to ensure that new development is compatible with the desired future character of an area in terms of bulk, scale and appearance, and***
 - ii. *to maintain a diversity of activities while protecting residential accommodation and local amenity, and*
 - iii. *to ensure that new development on foreshore land does not adversely affect the visual qualities of that foreshore land when viewed from Sydney Harbour and its tributaries,*
 - (c) *in relation to residential development—*
 - i. ***to ensure that new development does not adversely affect residential amenity in terms of visual and acoustic privacy, solar access and view sharing, and***
 - ii. *to maintain and provide for an increase in dwelling stock, where appropriate,*
 - (d) *in relation to non-residential development—*
 - i. *to maintain a diversity of employment, services, cultural and recreational activities, and*
 - ii. *to ensure that non-residential development does not adversely affect the amenity of residential properties and public places, in terms of visual and acoustic privacy, solar access and view sharing, and*
 - iii. *to maintain waterfront activities and ensure that those activities do not adversely affect local amenity and environmental quality,*

- (e) *in relation to environmental quality—*
 - i. *to maintain and protect natural landscapes, topographic features and existing ground levels, and*
 - ii. *to minimise stormwater run-off and its adverse effects and improve the quality of local waterways,*
- (f) *to identify and protect the natural, archaeological and built heritage of North Sydney and ensure that development does not adversely affect its significance,*
- (g) *to provide for the growth of a permanent resident population and encourage the provision of a full range of housing, including affordable housing*

The proposed development is not considered to be in keeping with the established and desired future character of the area and will result in adverse impacts on the streetscape. The proposal is not supported in this regard. The proposal fails to allow for a height, bulk and scale which is compatible with the existing and desired future character of the area being inconsistent with **Clause 1.2(2)(b)(i)** and fails to ensure that new development does not adversely affect residential amenity in terms of visual privacy in accordance with **Clause 1.2.(2)(c)(i)**.

2. Permissibility

The proposed development is for the purposes of “commercial premises” and “residential flat building” as defined by the LEP, which are a permissible use in the zone, with development consent. Mixed use development is a permitted innominate use.

3. Objectives of the zone

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

The objectives of the MU1 Mixed Use zone are:

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.*
- *To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.*

The proposed mixed use development is generally consistent with the objectives of the MU1 Mixed Use zone. The proposed project entails constructing residential apartments atop the existing commercial spaces on the ground and first floors, creating a mixed-use development. This aligns well with the permissible and compatible land uses under the MU1 zone, offering a balanced mix.

The inclusion of apartments diversifies housing options in the area. It aims to preserve the current retail and commercial spaces on the ground and first levels, while adding residential units above.

Part 4 – Principal Development Standards

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area - #m ²	Proposed	Control	Complies
Clause 4.3 – Heights of Building	16.05m to lift overrun 15.45m to top of parapet	10m	NO – A request to contravene the standard was submitted
Clause 4.4a – Non-residential FSR	1.61:1	0.5:1 min	Yes

4. Height of Building

The proposed works would have a height of 16.05m to the lift overrun and 15.45m to the top of the parapet that fails to comply with the permissible height limit of 10m in accordance with clause 4.3 in NSLEP 2013.

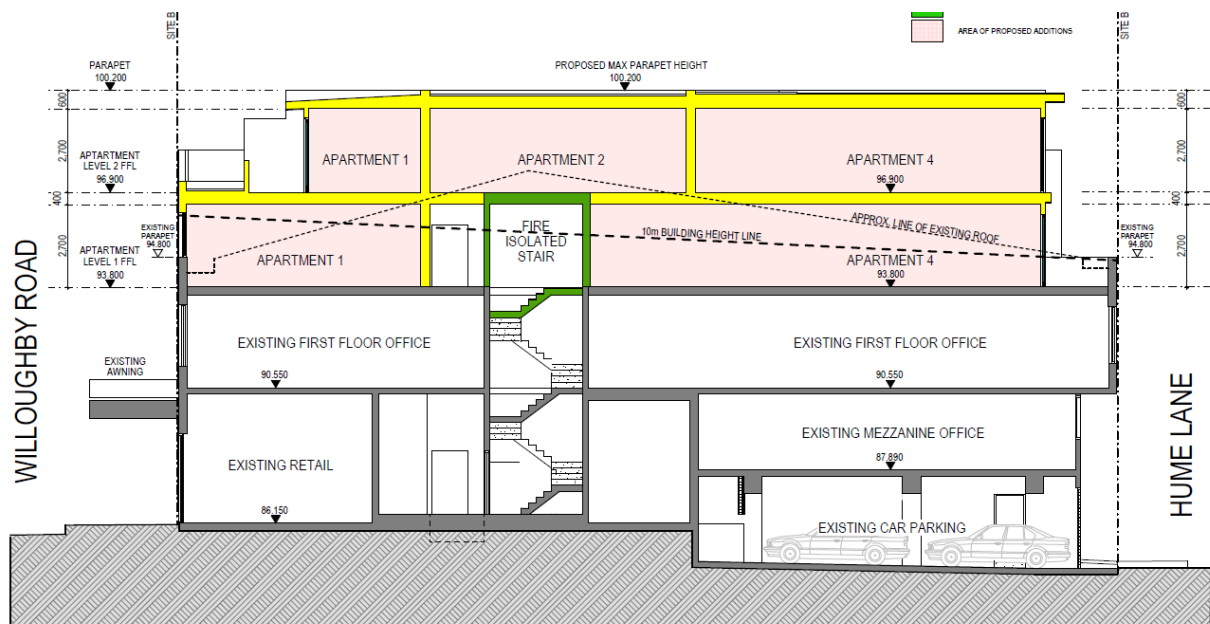


Figure 4: Section Plan

- *The proposed development adjoins higher density areas (particularly to the west along Albany Street). The St Leonards and Crows Nest 2036 Plan emphasises a need for transitions at density interfaces, which the proposed development will facilitate.*
- *The proposal provides new housing opportunities within a transitioning area, in an accessible and well serviced location. The Crows Nest Metro Station is located approximately 80m west of the site and will act as a catalyst for change within the locality. A number of higher density developments have emerged within the vicinity of the site, particularly along the Pacific Highway, to utilise the opportunities that the Metro Station and associated infrastructure provides.*
- *The development delivers diverse housing within an established local centre in accordance with Local Planning Priorities L1 and P6 of the North Sydney Local Strategic Planning Statement (LSPS).*
- *The building is carefully massed to ensure that its bulk and scale complements the local context and existing topography along Willoughby Road. The proposed mass is consistent with desired built forms envisaged by the NSDCP, particularly through the establishment of a podium to the street and recessing upper floors from the street edge. The carefully selected materials, colours and finishes responds to the streetscape in accordance with the existing and future character of the area.*
- *The development satisfies the objectives of the height standard, as well as the objectives of the Zone B4 Mixed Use.*

Objectives of the development standard

The applicant's written request submits that the proposal is consistent with the objectives of the standard.

The relevant objectives for the development standard are quoted from clause 4.3 in NSLP 2013 below:

- to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- to promote the retention and, if appropriate, sharing of existing views,*
- to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- to ensure compatibility between development, particularly at zone boundaries,*
- to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*

A summary of the applicant's submission is provided below:

- Objective (a) – Building forms on Willoughby Road are influenced by the topography, and generally step to conform with the land as it falls from a high point at Falcon St towards Albany Street.

The two adjoining sites being 130 Willoughby Road (north) and 118-124 Willoughby Road (south) each present a three-storey façade to the street. The proposed building complements this pattern by also proposing a three-storey façade. The parapet of the façade mediates between the height of the adjoining properties, being lower than the property to south and higher than that to the north, creating a stepping pattern which is characteristic feature of Willoughby Road.

The fourth storey is setback from Willoughby Road by 4.05m to the external face and 2.10m from the balcony edge. The setbacks define the podium edge and minimise visibility of the upper storey which is partially screened from view by the parapet.

- Objective (b) - There is an east facing outlook over the site towards Willoughby Road from 31 Albany Street. This is a typical urban outlook and does not constitute a view. The proposed development does not impact any views.
- Objective (c) - The proposed development has been designed to protect the solar access to existing nearby dwellings and the street. The adjoining site at 118-124 Willoughby Road (south) will be subject to additional shadows that will be cast over the northern portion of the non-trafficable rooftop. There is no change to the solar access to existing private open space, balcony areas or windows of this development.
- Objective (d) - The portions of the proposed development which contravene the height standard do not cause any unacceptable privacy impacts to residents of existing dwellings or potential future development.
- Objective (e) - The site is located within the limited portion of Willoughby Rd, that adjoins land to the west and north with height controls of 16m and 26m. Notably, the neighbouring site to the rear at 31 Albany Street has a height of 30.06m which exceeds the permissible height by 4.06m.

The St Leonards and Crows Nest 2036 plan identifies the importance of transitioning between development of different forms and densities. The proposed development will provide a transition between the lower height (10m) development on Willoughby Road to the taller development (26m) to the west and create greater compatibility between development addressing Hume Lane.

- Objective (f) - The St Leonards and Crows Nest 2036 plan identifies the importance of transitioning between development of different forms and densities. Development in the immediate vicinity of the site is not uniform and offers an opportunity to provide a transition towards existing and permissible higher densities to the north, west and east.

The scale and character of development on Willoughby Road varies between Falcon and Albany Streets. Its southern end has a uniform and main streetscape character with traditional shop fronts. The character changes as you move northward with the higher density developments on Willoughby Road and Albany Street becoming part of the visual character.

The design similarly responds to existing adjoining development on Willoughby Road. The proposal complements the existing pattern of development by providing a three-storey podium to the street. The parapet of the façade mediates between the height of adjoining properties, being lower than the property to south and higher than that to the north, creating a stepping pattern which is characteristic feature of the streetscape. This design solution is also consistent with the St Leonards / Crows Nest Planning Area Character Statement within the North Sydney Development Control Plan (NSDCP). The proposed parapet wall height will reinforce the rhythm of the streetscape parapet line as heights step down the street frontage, retaining the character when viewed from the southern portion of Willoughby Road.

Sufficient Environmental Planning Grounds

The applicant submits:

- *Object 1.3(a) of the EP&A Act - The proposed variation to the height of building development standard assists in promoting "the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources" as it enables the provision of high-quality well-located housing, near to existing commercial, community and transport services.*

The site is within the transitioning Crows Nest Local Centre and will deliver housing the supports North Sydney's growing and changing population, in accordance with Local Planning Priority 1 (Diverse housing options that meet the needs of the North Sydney community) of the North Sydney Local Strategic Planning Statement (LSPS). The soon to be completed Crows Nest Metro will enhance access to public transport, service and amenity for future residents.

State Government investment through the Metro will inevitably lead to future city shaping through increased investment in the local centre.

A requirement to comply with the height of building control would result in the loss of housing opportunity within a transitioning locality.

- *Object 1.3(c) and 1.3(d) of the EP&A Act - The development assists in promoting "the delivery and maintenance of affordable housing" and "the orderly and economic use of land" by establishing a mixed-use development with the addition of a residential component, which is permissible with consent in the B4 Zone. It is well designed, comprises a suitable built form and is compatible with the neighbouring developments and character of the area. The proposal similarly retains existing private investment (ground floor retail and first floor commercial use) to support the vitality of the local centre and ongoing orderly / economic use of the land.*
- *Object 1.3(g) of the EP&A Act - The proposed variation to the height of building development standard promotes "good design and amenity of the built environment". The proposed building (inclusive of the proposed height variation) is a skilful architectural response to the site and context, providing a height, bulk and scale which is consistent with the topographic landscape of Willoughby Road, prevailing building heights and desired future character of the locality.*

The proposed building is carefully massed to break up its bulk and scale. It has established a three storey podium and features a mix of materials and architectural treatments to make it visually sympathetic to neighbouring buildings.

- *Importantly, the variation to the height of building development standard does not result in any unreasonable amenity impacts with the adjoining properties maintaining a high level of solar access, visual and aural privacy;*

Comment:

The request to vary development standard cannot be supported for the following reasons:

- The request advances consistency with context and desired future character as an environmental planning ground, stating that the building will present a similar bulk and scale to its surrounds, and a four-storey development is consistent with the context.

However, in the circumstances of the proposed development, this environmental planning ground is not sufficient to justify the exceedance of the height development standard. There is no four-storey building on the eastern and western side of Willoughby Road within the immediate visual catchment of this site with which the proposed development could be said to be consistent. The request does not provide any analysis of how the fourth storey (the additional height) is justified in order to achieve consistency in its context. The reliance, in the written request, on the height of approved buildings elsewhere in the local centre, absent an analysis of the immediate built form context of the subject site or the mechanisms through which those consents were gained, is not sufficient to establish that the additional height is justified to achieve consistency with the context. Although there are streetscape renders elsewhere in the request, there is no accompanying information that establishes that the additional height is justified to achieve consistency in the streetscape context. If anything, the streetscape renders demonstrate that the additional height is not consistent with the Willoughby Road streetscape context, particularly given the two and three storey character buildings located immediately adjacent.

- The written request refers to the desired future character and relies on the content of the written request in relation to consistency with the desired future character of the neighbourhood. Again, in the context of this site, in which there is no four-storey building on the eastern and western side of Willoughby Road within this block and where the request does not define the “neighbourhood” with which the proposed development is seeking to be consistent, It is not consider that consistency with the desired future character in the broad undefined area of the “neighbourhood” is sufficient to justify the contravention of the height development standard on this site. Whilst it is well established that the desired future character of an area can be informed by the form of the buildings approved by the Council in the area, selectively pointing to other approved buildings elsewhere in the Crows Nest local centre that are five or more storeys in height does not actually inform why a fourth storey is justified on this site. In the present case, the departure from the height development standard is not justified by such an outcome, and reliance on specifically chosen developments in some broader undefined area is not sufficient.

- The avoidance of impacts is an environmental planning ground, as it promotes “good design and amenity of the built environment”, one of the objectives of the EPA Act. However, even that there is no impact from the additional height, the lack of impacts does not arise from the breach of the height development standard so as to justify the breach.

Further, it is not accepted that a lack of impact is sufficient to justify the extent of the breach of the standard. The lateral extent of the breach is for the entire fourth storey and partially the third storey, and the vertical extent of the breach is up to 6.5m. The full height of the building is highly visible when viewed from the south west in context with the adjoining character buildings. A lack of external impacts is not sufficient to justify such a departure from the standard.

- The written request fails to demonstrate that reasonable levels of privacy would be maintained for existing residents of the surrounding buildings.
- The written request fails to demonstrate that the proposed development would be compatible with the surrounding development and the proposed building would fit comfortably within its context. The proposed development is not consistent with the desired future character of the Crows Nest Town Centre described in the character statement in Part C of NSDCP 2013.
- The written request fails to demonstrate that the proposed development would have an appropriate scale and density, having regard to the character of the surrounding area. The 10m height control anticipates a three storey building. The proposed development, including the non-complying elements is four storeys.

Part 6 – Additional local Provisions

5. Residential flat buildings

Clause 6.12A specifies that “the residential flat building must be part of a mixed use development”, and “no part of the ground floor level of the building that is facing a street is used for residential accommodation”.

Other than the residential entry foyer which is permitted pursuant to Clause 4.4A(6) of the LEP, the whole ground floor level (at footpath level) facing a street is occupied by non-residential floor space.

The proposal provides residential apartments above an existing commercial premises facilitating a ‘mixed use development’. The ground floor commercial premises will be retained, and no part of the residential component will be located on the ground floor facing the street. The residential addition will be located on Levels 3 and 4 only.

The proposed development continues to maintain non-residential floor space along Willoughby Road, where pedestrian access can be provided from the adjacent footpath level to the non-residential floor space.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

The proposal has been assessment in accordance with requirements of the DCP relevant to the Crows Nest Town Centre, including the recently updated section 3.2 – of Part C – Area Character Statements – St Leonards/ Crows Nest Planning Area.

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2- Commercial and Mixed-Use Development		
	<i>complies</i>	<i>Comments</i>
2.2 Function		
Diversity of Activities	Yes	The proposal would ensure diversity of activities within the mixed use zone.
Maximise Use of Public Transport	Yes	The site is close to public transport facilities with regular bus services along Willoughby Road. The site is also within close proximity of the St Leonards train station.
Mixed Residential Population	No	The dwelling mix is inconsistent with the DCP controls as it fails to provide a minimum of two dwelling types.
2.3 Environmental Criteria		
Noise	Yes	The proposed development is unlikely to generate excessive noise.
Reflectivity	Yes	The external facades provide an appropriate balance between solid and glazed elements, and non-reflective materials will be used throughout.
Awnings	Yes	The existing awning is proposed to be retained, consistent with the character statement for the Crows Nest Town Centre.
Solar Access	Yes	Solar and sunlight access performance of the building is satisfactory.
Views	Yes	The proposal would not cause significant view loss from nearby properties.
Acoustic Privacy	Yes	There being adjacent residential development, should the application be supported conditions would be imposed to manage potentially unacceptable sounds levels being emitted from the development.
Visual Privacy	No	Apt 3 & 4: Living Room views directed towards Hume Lane. Living Room glazing is set back 2.3m from the rear Hume Lane street frontage. These 2 apartments allow for direct overlooking onto 33 Albany Street living areas and POS.
2.4 Quality built form		
Context	No	The design of the proposed mixed-use building is not in context with surrounding development in that its height, bulk and scale is incompatible with the existing built form adjoining the site and in the immediate context along Willoughby Road which comprises 2 and 3 storey buildings. Further, the proposed development is inconsistent with the desired future character of the area as it presents as a four storey building exceeding the maximum permissible height by 6.05m to lift overrun and 15.45m to top of parapet.

Site Consolidation	Yes	In the Crows Nest Town Centre Area Character Statement, a 10-15m frontage is specified. The proposal provides for a 10.08m street frontage.
Setbacks – Side & Rear	Yes - merit	<p>Front The proposal provides a zero-metre setback to the three-storey podium on Willoughby Road. The fourth storey is recessed from the Willoughby Road boundary by 4.05m to the external face and 2.10m from the balcony edge. This is to reduce visibility from the street and align with the existing parapet line along the street front.</p> <p>Side & Rear The three-storey podium provides a zero-metre side setback (north and south) in accordance with P5 and adjoining development. The fourth storey establishes a zero-metre setback to the south, however, varied side setbacks to the north. The external wall of Apartment 2's living room & bedroom is setback 3.5m while the balcony is setback 1.6m. These setbacks allow for residential amenity, while also responding to adjacent built forms. There are opportunities for visual screening to be provided along the boundary line in the event of future neighbouring development, to protect visual and aural privacy.</p> <p>The development provides a 2.40m setback to the external building face at Levels 3 and 4, establishing a podium to the rear. This podium responds to the existing building line of 118-124 Willoughby Road (south). The adjacent development at 31 Albany Street similarly establishes a podium to Hume Lane, whereby upper levels exhibit increased setbacks. The proposal achieves a podium to the rear to establish a suitable scale and promote the existing character of development along Hume Lane.</p>
Podiums	Yes	<p>The scale of the proposed development is modulated with a podium to both street frontages, in accordance with the NSDCP. A three-storey podium is provided along the Willoughby Road frontage for compatibility with existing adjoining development. As detailed above, the fourth storey is setback from the street to reduce visibility and reinforce a suitable human scale when read from the public domain.</p> <p>The rear of the development provides a two-storey podium above the existing building, which is carefully massed to replicate the building line of the adjoining development at 118-124 Willoughby Road. The podium establishes a suitable scale for pedestrians in Hume Lane and ensures it is a comfortable, trafficable space, for the public.</p>
Building Design	Yes	Floor to floor heights are consistent with DCP requirements.
Entrances and Exits	No	The application proposes one single entry for the residential accommodation and non-residential development where separate entrances are required.
2.5 Quality Urban Environment		
Accessibility	Yes	The proposed development, including the ground floor commercial/retail tenancy and the apartment unit, are accessible.
Safety and Security Illumination	Yes	The design of the proposal has considered personal safety and security.

High Quality Residential Accommodation	Yes	The proposal generally satisfies the provisions of the ADG.
Private Open Space	Yes	Balconies complying with the ADG have been proposed for the apartments.
Vehicular Access	Yes – remains unchanged	Vehicle access to the site remains unchanged.
Car Parking	No	The proposal exceeds the maximum number of car parking spaces and fails to provide bicycle parking.
Waste Management	No	The waste management facilities are generally acceptable, however there is not provision for bulk waste.
Site Facilities	Yes	Site facilities are integrated into the development.
2.6 Efficient Use of Resources		
Energy Efficiency	Yes	The application is accompanied by a compliant BASIX Certificate.
Natural Ventilation	Yes	The proposal would achieve a reasonable level of natural ventilation.
Stormwater Management	Yes	Council’s Development Engineer has raised no objection to the proposal subject to the imposition appropriate conditions for stormwater management.
Building Materials	Yes	The proposed finishes and materials as submitted with the plans are acceptable, from a sustainability perspective.

St Leonards/Crows Nest Planning Area (Crows Nest Town Centre)

The proposal is generally consistent with the desired character for Crows Nest in terms of setbacks and podium heights, however, it fails to provide an appropriate built form, massing, and scale due to the proposed building height which is discussed in detail in this report.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The proposed development would increase the number of residents within the locality and therefore a contribution levied under Section 7.11 the Act is required in accordance with Council’s Infrastructure Contributions Plan 2020.

s7.11 contribution		
	Open space and recreation facilities:	\$44,051.57
	Public domain:	\$24,522.20
	Active transport:	\$1,399.63
	Community facilities:	\$8,847.96
	Plan administration and management:	\$1,178.64
	Total:	\$80,000.00

The total contribution payable for four new dwellings is \$80,000.00. Should the application be supported condition is recommended requiring payment prior to the issue of any Construction Certificate.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

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

SUBMITTERS CONCERNS

The application was notified to adjoining properties and the Holtermann Precinct seeking comment between 7 October 2022 and 21 October 2022. Council received no submissions.

SUITABILITY OF THE SITE

The site is in a B4 Mixed Use zone where 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.

PUBLIC INTEREST

The cumulative effect of the non-compliances with Council's controls, particularly the height of the building; the application is not considered to be in the public's interest contrary to Section 4.15(e) of the Environmental Planning and Assessment Act 1979 (as amended).

CONCLUSION + REASONS

The proposed development is not considered satisfactory when evaluated against the Design Quality Principles in Schedule 1 to SEPP 65 – Design Quality of Residential Apartment Development and is inconsistent with the objectives of the Apartment Design Guide.

The development application has been assessed against the North Sydney Local Environmental Plan 2013, North Sydney Development Control Plan 2013 and the relevant State Planning Policies and found to be unsatisfactory.

The written requests made pursuant to Clause 4.6 *Departure to development standards* in NSLEP 2013 fails to demonstrate that compliance with the development standard is both unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the variation.

It is acknowledged that there are planning reforms in the making which may facilitate the form of development that is envisaged here but it would be inappropriate to rely on those reforms (development around transport hubs) in the determination of this application as there is no certainty as to their final form at this time.

The proposed development is not considered to be in keeping with the established and desired future character of the area and will result in adverse impacts on the streetscape. The proposal fails to allow for a height, bulk and scale which is compatible with the existing and desired future character of the area and fails to ensure that new development does not adversely affect residential amenity in terms of visual privacy.

Following this assessment and having regard to the provisions of Section 4.15 of the *Environmental Planning & Assessment Act 1979*, the application is recommended for **refusal**.

RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED) **THAT** the North Sydney Local Planning Panel, exercising the functions of Council as the consent authority, and **refuse** Development Application No. 279/22 for alterations and additions to an existing building to create a mixed use development of 2 levels and a mezzanine of commercial and retail premises, and 4 residential units on the upper 2 levels and associated works, for the following reasons:-

1. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is contrary to the objectives of the aims of plan of North Sydney Local Environmental Plan 2013 pursuant to Clause 1.2 in that the proposal is inconsistent with:
 - (a) The proposal does not provide development that is appropriate to its context and is does not enhance the amenity of the North Sydney community and environment (Clause 1.2(2)(a));
 - (b) The proposal is not compatible with the desired future character in terms of its height, bulk and scale (Clause 1.2(2)(b)(i));
 - (c) The proposal adversely affects the residential amenity of adjoining properties in terms of visual privacy (Clause 1.2(2)(c)(i));

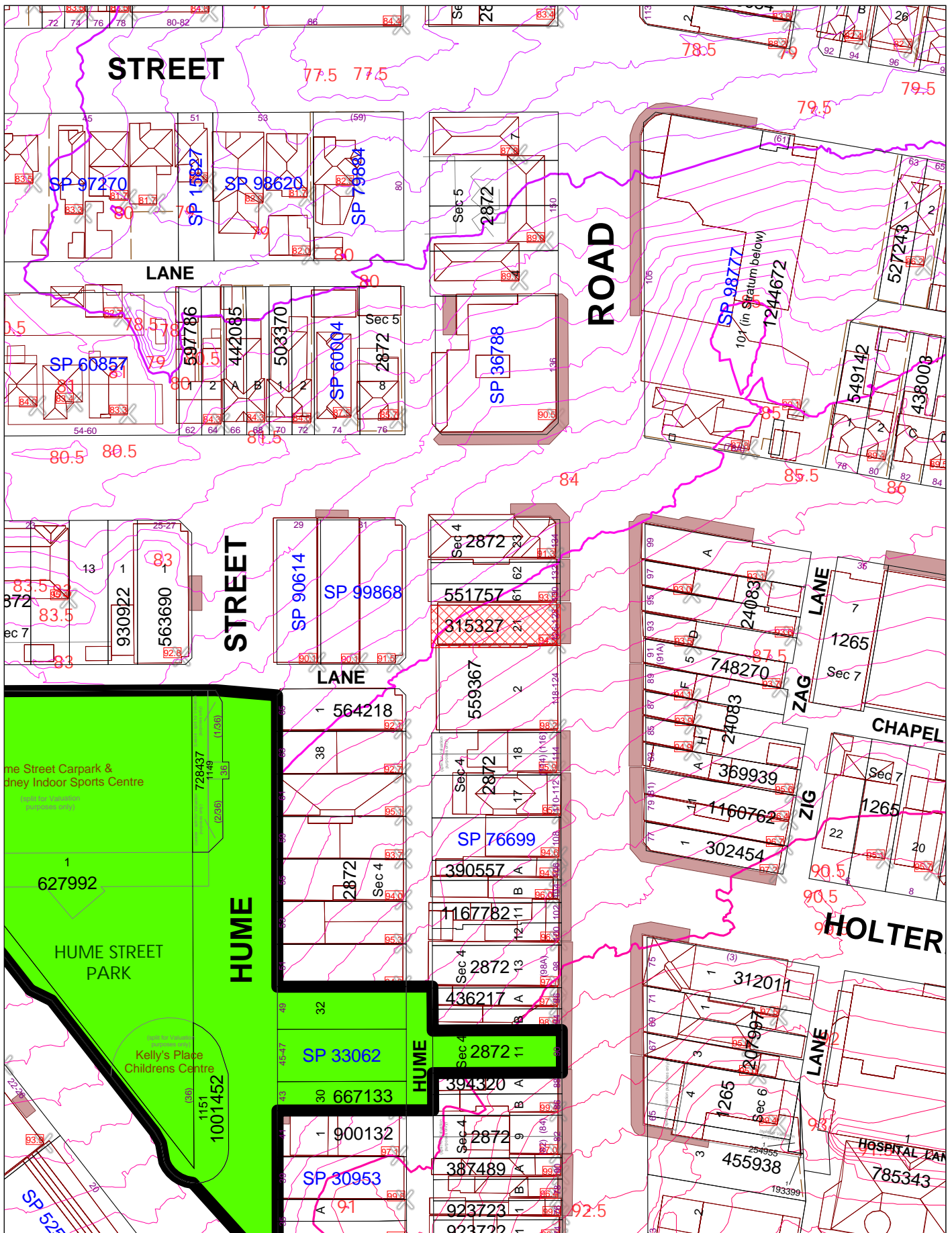
2. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the variation to the building height development standard pursuant to Clause 4.3(2) of North Sydney Local Environmental Plan 2013 lodged pursuant to Clause 4.6(3) has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case or that there are sufficient environmental planning grounds to justify the contravention of the development standard. The proposal is unsatisfactory having regard to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposed development as a whole does not ensure that a high level of amenity is achieved and maintained. The Clause 4.6 Statement in respect to the non-compliance with Clause 4.3 Height of Building standard is not considered to be well founded or in the public interest.

3. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the design quality of the proposal when evaluated in accordance with the design quality principles is unacceptable, contrary to Clause 28(2)(b) of State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development ('SEPP 65') and adequate regard has not been demonstrated to the design quality principles contrary to Clause 30(2)(a) of SEPP 65. Consent must not be granted as the proposal does not demonstrate that adequate regard has been given to the design quality principles. In particular, the proposal is inconsistent with the following design quality principles:
 - (a) Principle 1 - Current and Neighbourhood Character: The four storey building does not respect the existing context of Willoughby Road. The height of the development is inconsistent with the desired future character and built forms envisaged by the NSLEP 2013 and NSDCP 2013.
 - (b) Principle 2 - Built Form and Scale: The height, bulk and scale is inconsistent with the existing and desired future character of the locality.

The development is not consistent with the current built forms permissible under North Sydney Local Environmental Plan 2013 or the built forms envisaged under the St Leonards and Crows Nest Planning Area. The built form would produce a dominating presence within the streetscape.
 - (c) Principle 3 - Density: The floor space provided by a building that: exceeds height standards results in an overdevelopment of the site.

4. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as there are numerous inconsistencies with the Apartment Design Guide pursuant to Clause 28(2)(c) of State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development ('SEPP 65') which result in an unsatisfactory impact to amenity, adjoining properties and the streetscape, including the following:
 - (a) Part 3F: Apartments 3 and 4 allow for direct overlooking onto No.33 Albany Street living areas and private open space.
 - (b) Part 3J: the proposal fails to provide adequate bicycle parking facilities.

5. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with various parts of Part B of the North Sydney Development Control Plan 2013 in that:
 - (a) The proposed development does not satisfactorily respond to Part B Section 2.1.1 General Objectives - O8 as it does not provide an acceptable level of amenity to adjoining properties.
 - (b) The proposed development does not satisfactorily respond to Part B Section 2.4.1 in that the proposed developments height, bulk and scale is not in context with the surrounding development.
6. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the waste management objectives and requirements of Section 19 Waste Minimisation and Management of the North Sydney Development Control Plan 2013 in that the proposed waste management arrangements are unacceptable and do not adequately demonstrate compliance with the requirements including:
 - (a) A functional bulky waste storage area has not been provided to hold household clean up material. This must be separate from the garbage room.
7. The proposal is unsatisfactory having regard to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as the development will cause adverse impacts upon the built environment with respect to the impact upon the streetscape and amenity to adjoining properties.
8. The proposed development is unsatisfactory having regard to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 in that the proposed development in its current form is not suitable for the site.
9. The proposed development is considered unacceptable pursuant to the provisions of Section 4.15(1) (e) of the Environmental Planning and Assessment Act 1979 as the proposal in its current form given its height, bulk and scale and massing, is not in the public interest as it is inconsistent with the relevant planning controls in relation to the adverse impacts on the streetscape and amenity of immediately adjoining properties. The proposal also lacks good urban design and will negatively affect the character and nature of the neighbourhood. It is considered to be an inappropriate outcome for the site and will establish an undesirable precedent in the area which will not be in the public interest.



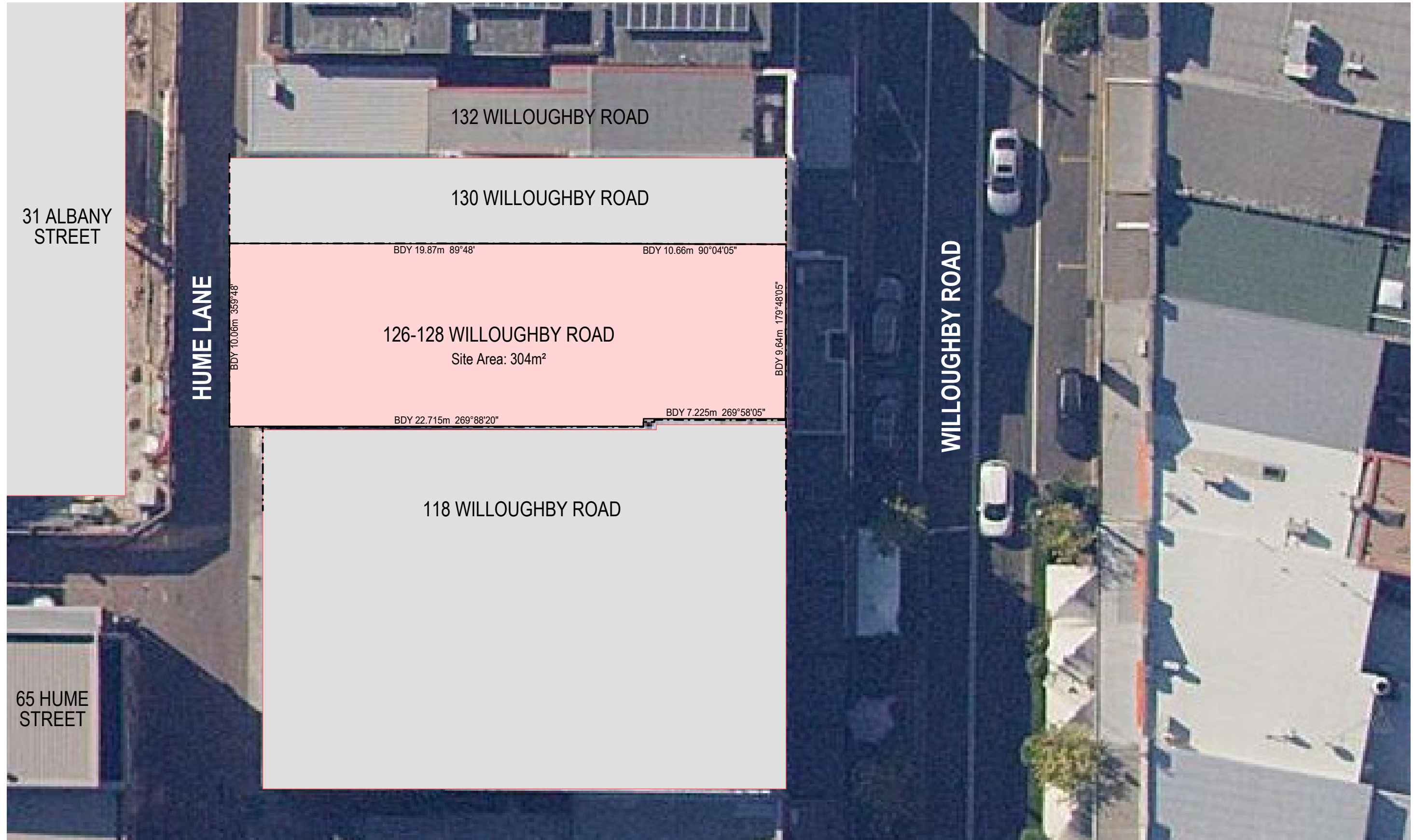
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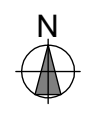
Further details can be obtained by calling (02) 9936 8100 or e-mail mapping@northsydney.nsw.gov.au.

Scale: 1:1200 approx.





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PROJECT ADDRESS
 126-128 WILLOUGHBY RD CROWS NEST
 Lot 21 D.P. 315327 Site Area: 304m²

CLIENT
 Keystone Property Consultants
 Level 1, 126 Willoughby Road
 Crows Nest NSW 2065
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 ken@keystonepc.com.au

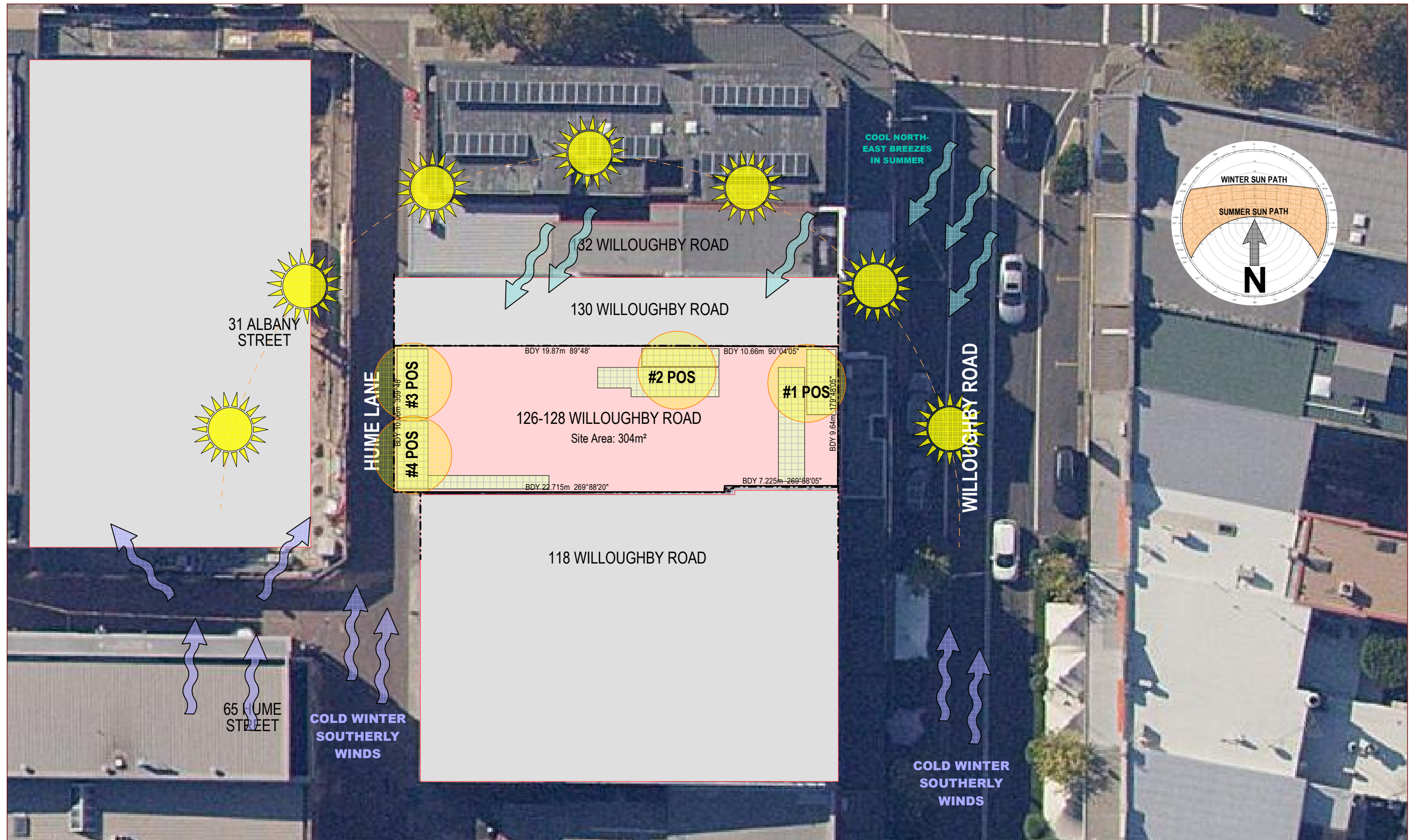


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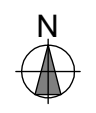
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-	DEVELOPMENT APPLICATION ISSUE	28/03/22

SCALE 1:200 @ A3
 DATE 2/12/2022
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DA01
 STATUS **DEVELOPMENT APPLICATION**



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PROJECT ADDRESS
 126-128 WILLOUGHBY RD CROWS NEST
 Lot 21 D.P. 315327 Site Area: 304m²

CLIENT
 Keystone Property Consultants
 Level 1, 126 Willoughby Road
 Crows Nest NSW 2065
 Phone: (02) 9955 6799
 ken@keystonepc.com.au

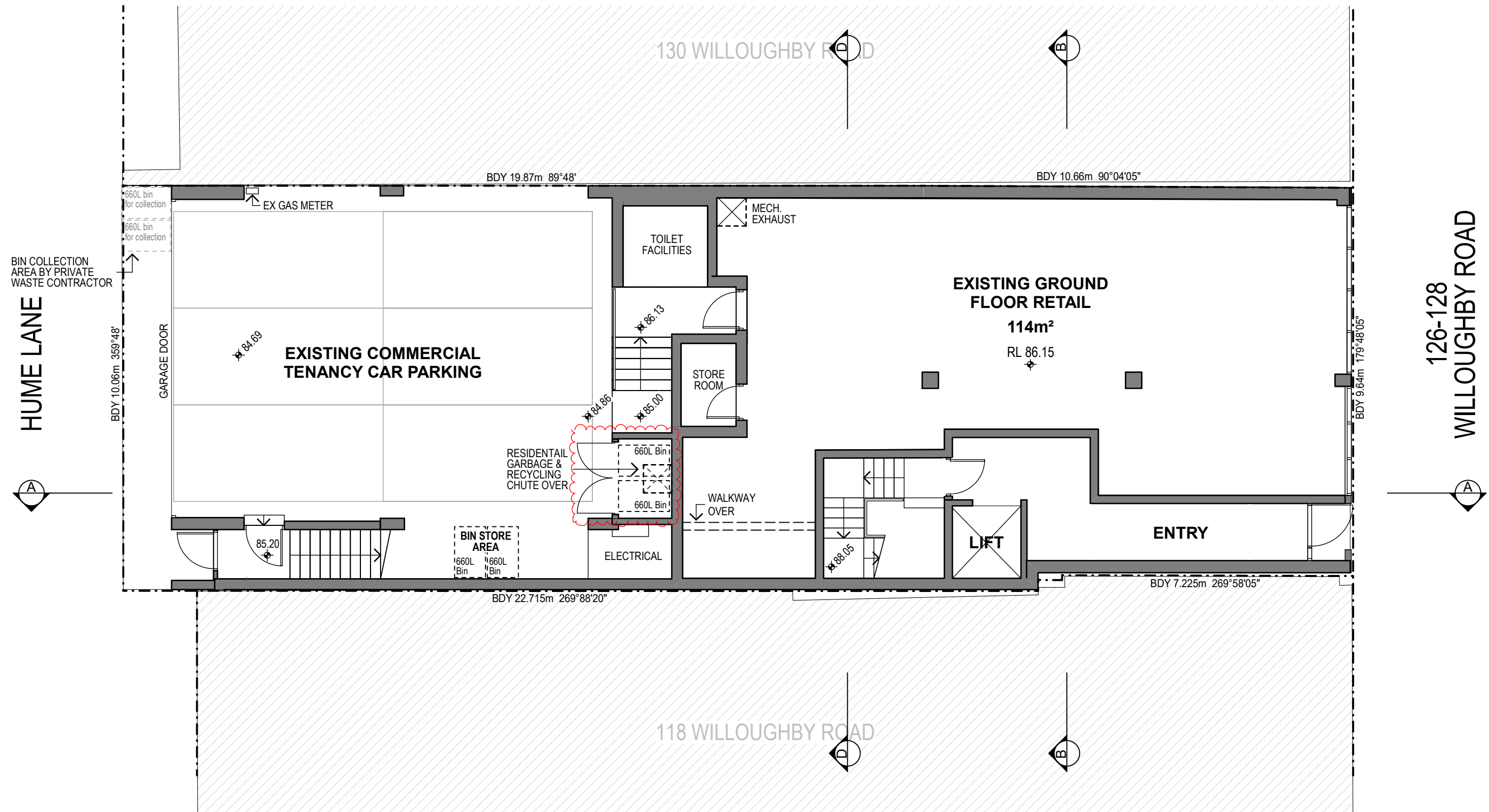


DRAWING TITLE
SITE ANALYSIS PLAN

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	28/03/22

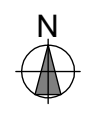
SCALE 1:250 @ A3
 DATE 2/12/2022
 DRAWN SM

DRAWING NO. & REVISION
DA02
 STATUS **DEVELOPMENT APPLICATION**



PARKING & GROUND FLOOR PLAN
1:100

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 Scott Miner - Architect NSW Reg. #9100
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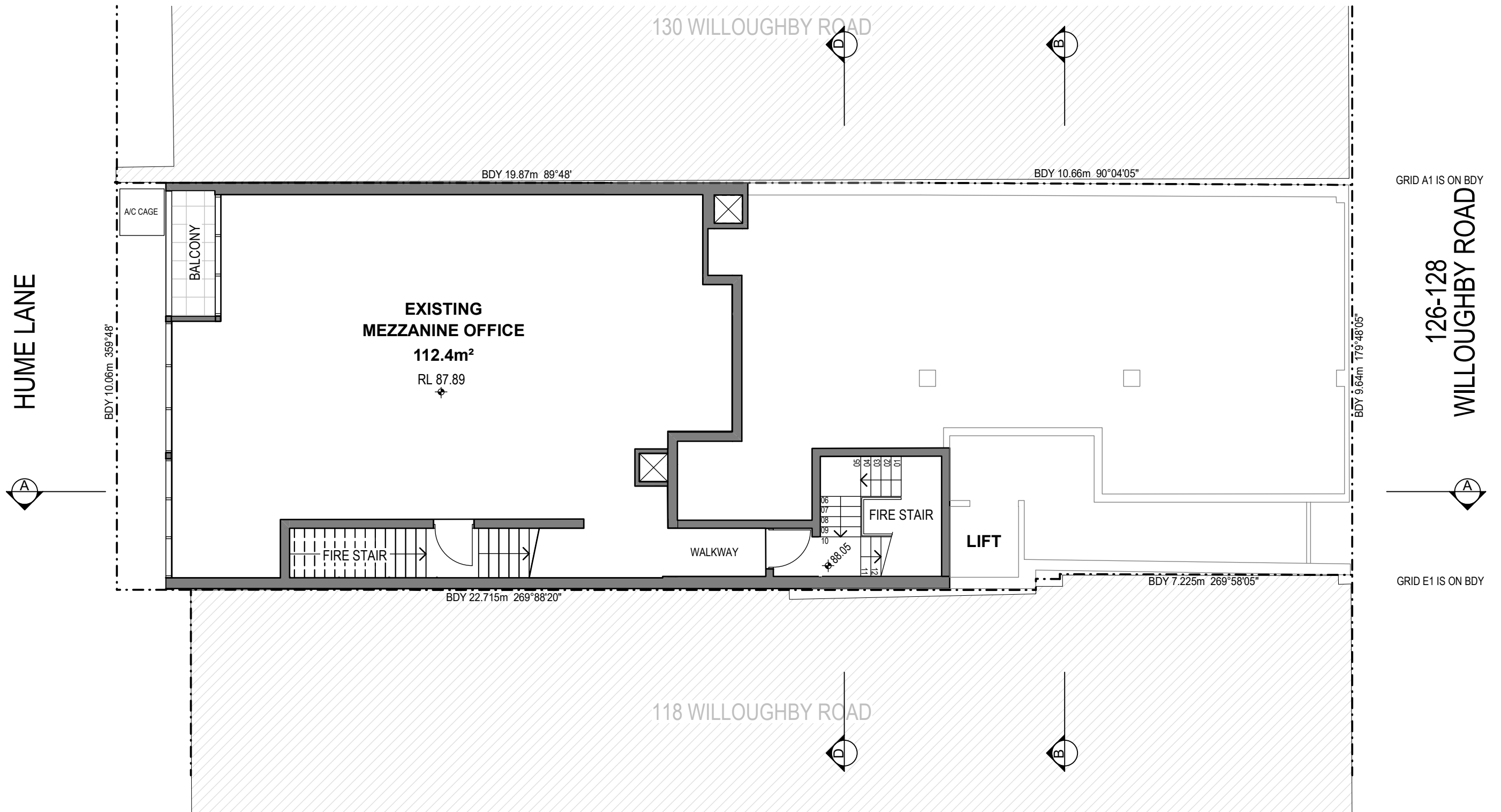
PROJECT ADDRESS
 126-128 WILLOUGHBY RD CROWS NEST
 Lot 21 D.P. 315327 Site Area: 304m²
 CLIENT
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 ken@keystonepc.com.au



REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	28/03/22
A	DEP REPORT RESPONSE - WASTE & RECYCLING	30/11/22

SCALE 1:100 @ A3
 DATE 2/12/2022
 DRAWN SM
 DRAWING NO. & REVISION
DA03A
 STATUS **DEVELOPMENT APPLICATION**

0 1 2 3 4 5 cm ON ORIGINAL @ A3



MEZZANINE LEVEL FLOOR PLAN
1:100



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PROJECT ADDRESS
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Lot 21 D.P. 315327 Site Area: 304m²

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DRAWING TITLE
LEVEL MEZZANINE

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	28/03/22

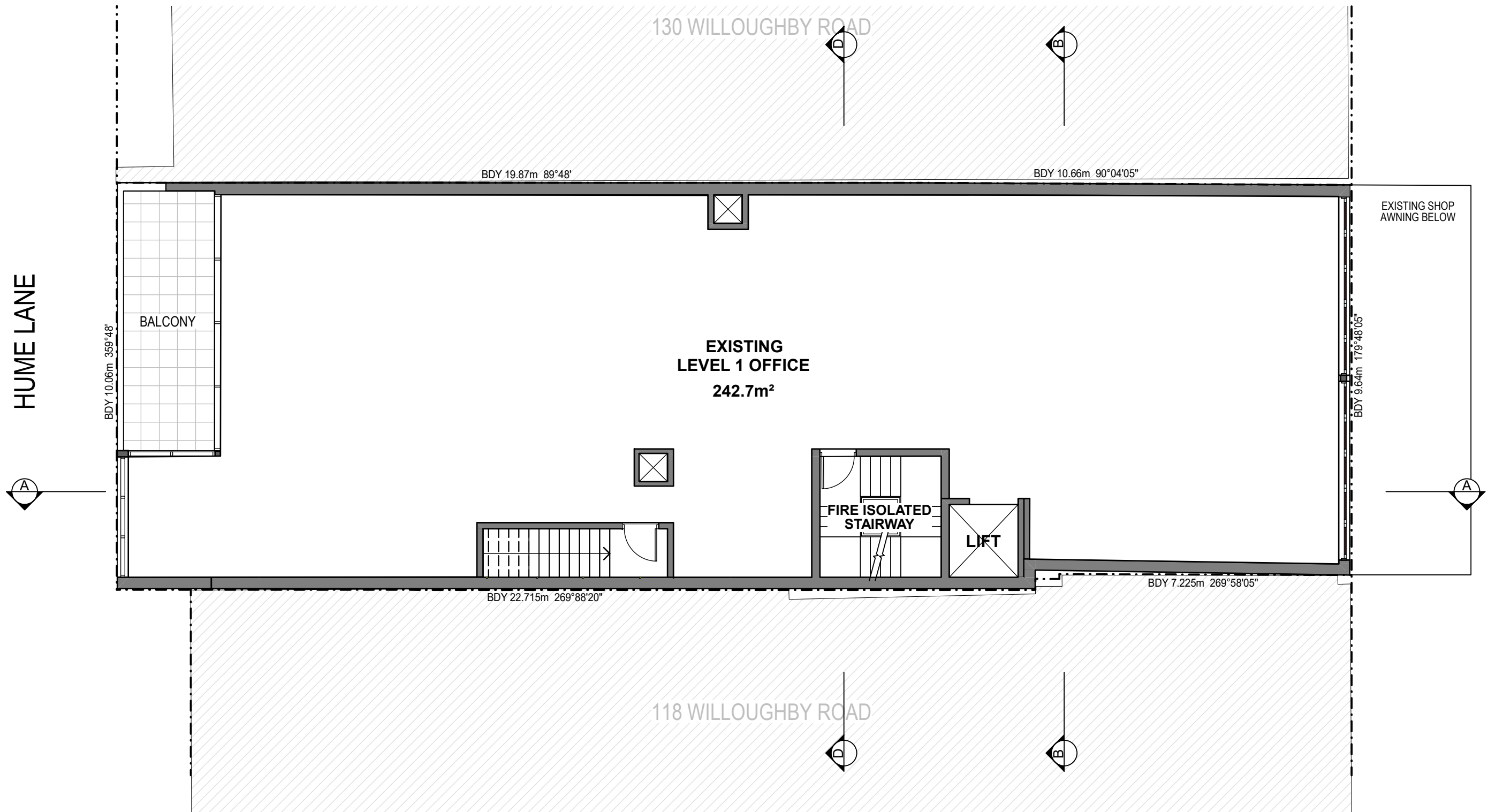
SCALE 1:100 @ A3
DATE 2/12/2022
DRAWN SM

DRAWING NO. & REVISION

DA04

STATUS **DEVELOPMENT APPLICATION**

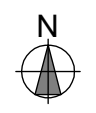
0 1 2 3 4 5 cm ON ORIGINAL @ A3



FIRST FLOOR OFFICE FLOOR PLAN
1:100



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Lot 21 D.P. 315327 Site Area: 304m²

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DRAWING TITLE
LEVEL 1 OFFICE

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	28/03/22

SCALE 1:100 @ A3
DATE 2/12/2022
DRAWN SM

DRAWING NO. & REVISION

DA05

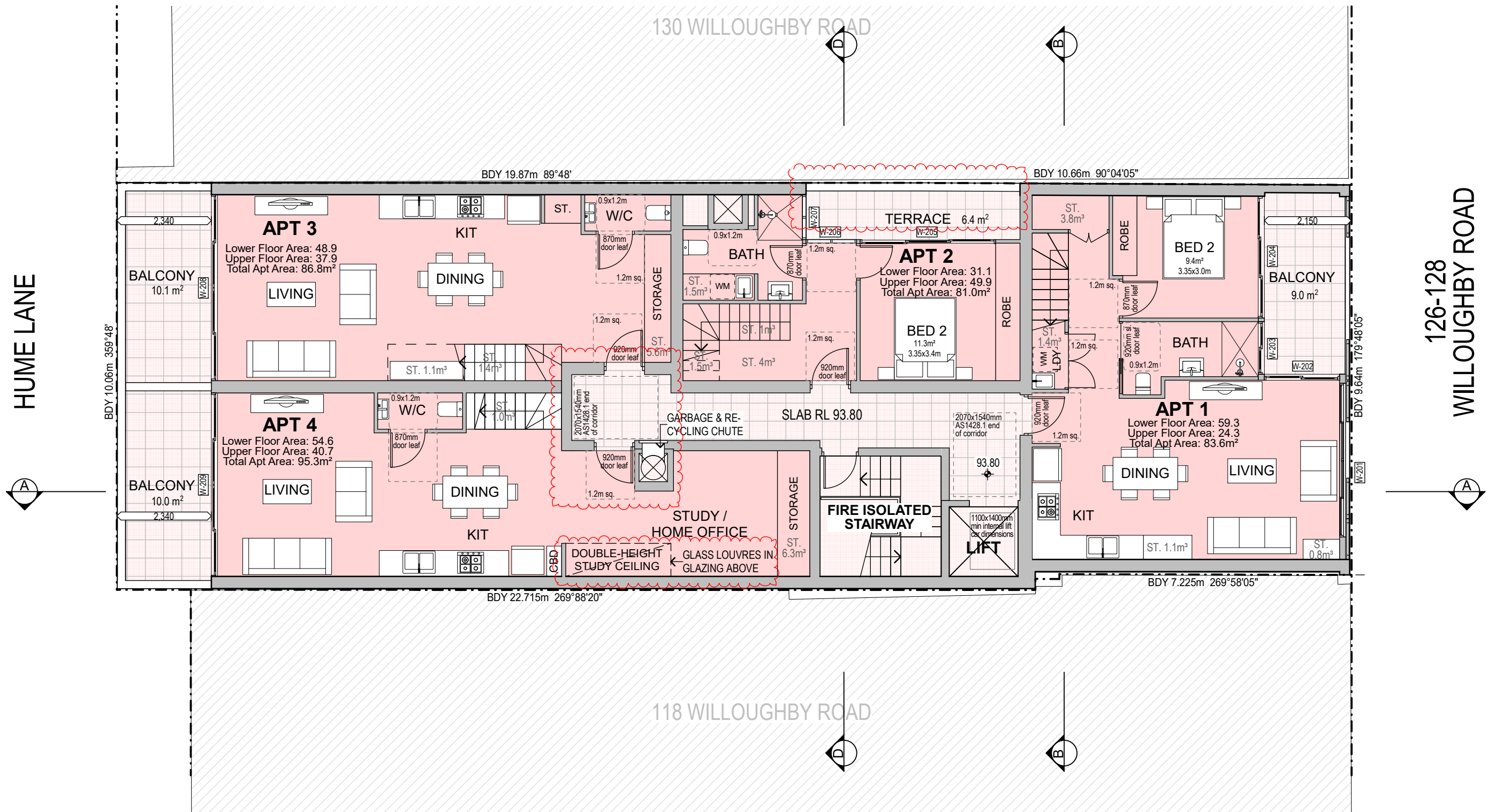
STATUS **DEVELOPMENT APPLICATION**



ON ORIGINAL @ A3

COLOUR KEY:

- PROPOSED NEW BUILDING WORKS - INTERNAL APARTMENT AREA
- PROPOSED NEW BUILDING WORKS - EXTERNAL OR COMMON AREAS



LOWER APARTMENT LEVEL FLOOR PLAN
1:100

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PROJECT ADDRESS
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DRAWING TITLE
LEVEL 2 APARTMENTS LOWER

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	28/03/22
A	BUILDING SETBACK AND EXTERNAL DIMS ADDED	23/08/22
B	DEP REPORT RESPONSE	30/11/22

SCALE 1:100 @ A3
 DATE 2/12/2022
 DRAWN SM

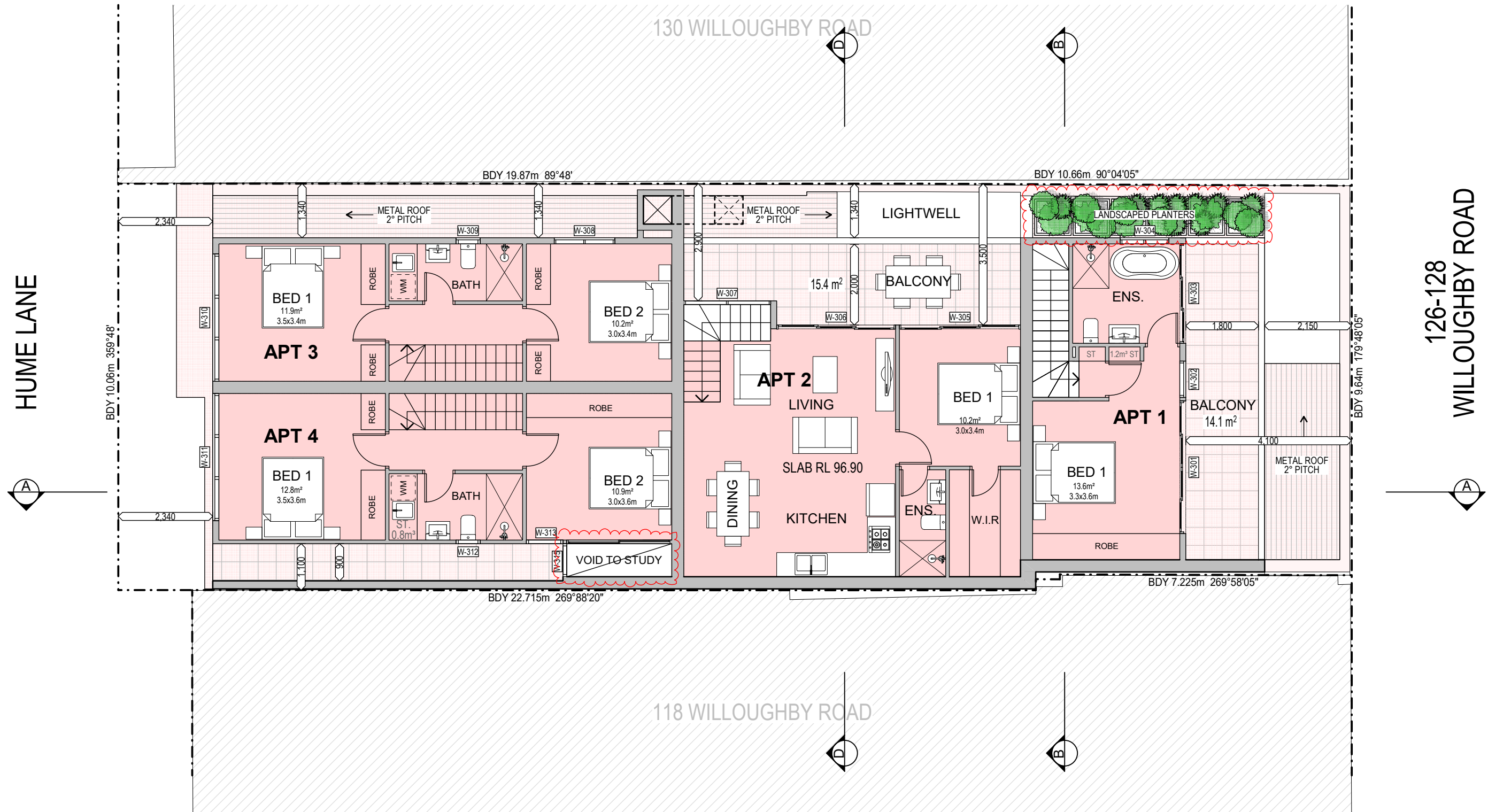
DRAWING NO. & REVISION
DA06B

STATUS **DEVELOPMENT APPLICATION**

0 1 2 3 4 5 cm ON ORIGINAL @ A3

COLOUR KEY:

- PROPOSED NEW BUILDING WORKS - INTERNAL APARTMENT AREA
- PROPOSED NEW BUILDING WORKS - EXTERNAL OR COMMON AREAS



UPPER APARTMENT LEVEL FLOOR PLAN
1:100

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PROJECT ADDRESS
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DRAWING TITLE
LEVEL 3 APARTMENTS UPPER

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	28/03/22
A	BUILDING SETBACK AND EXTERNAL DIMS ADDED	23/08/22
B	DEP REPORT RESPONSE	30/11/22

SCALE 1:100 @ A3
 DATE 2/12/2022
 DRAWN SM

DRAWING NO. & REVISION

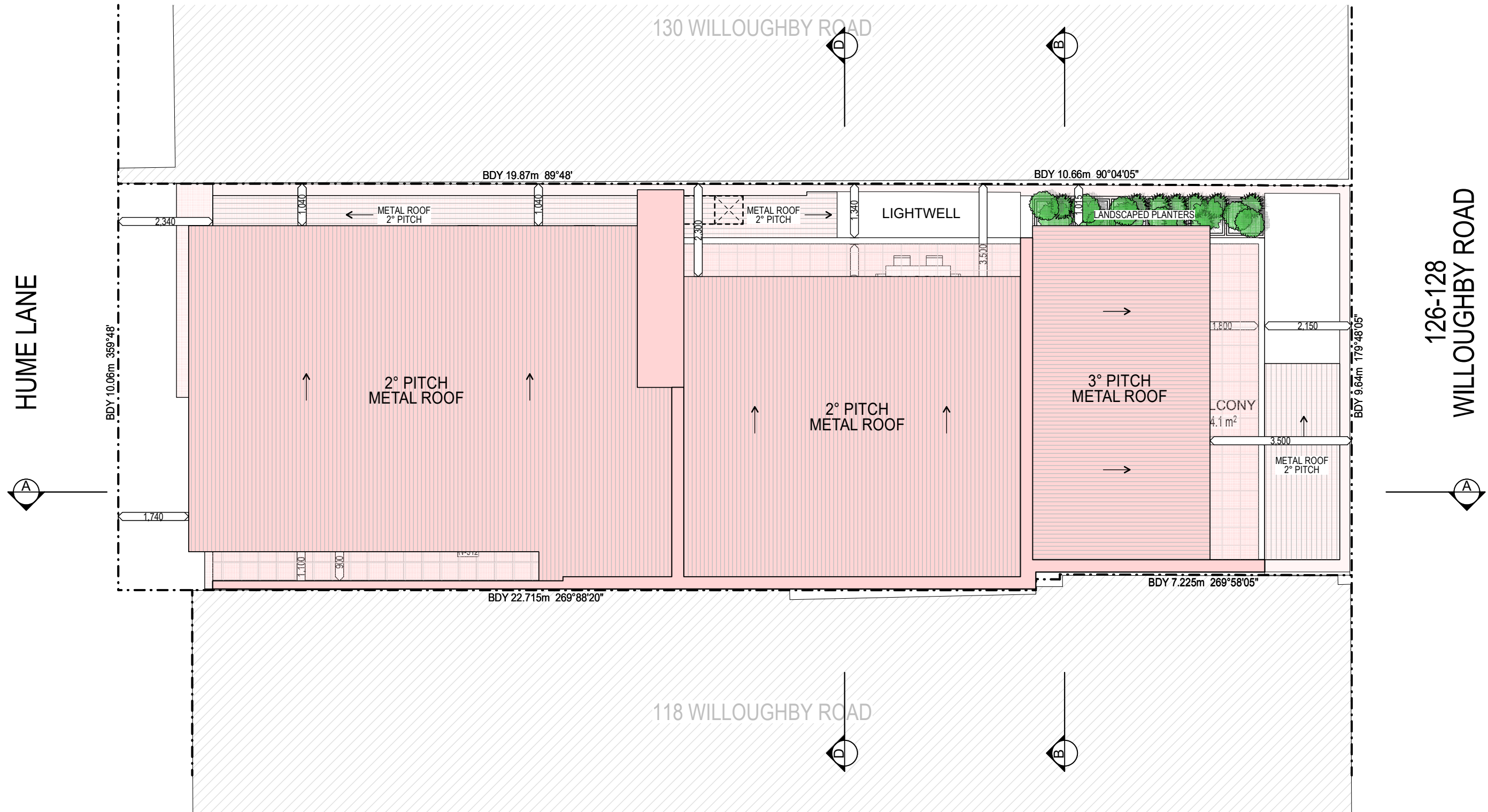
DA07B

STATUS **DEVELOPMENT APPLICATION**

0 1 2 3 4 5 cm ON ORIGINAL @ A3

COLOUR KEY:

- PROPOSED NEW BUILDING WORKS - ROOFS AND PARAPETS
- PROPOSED NEW BUILDING WORKS - ROOFS & BALCONIES ON LEVEL BELOW



ROOF PLAN
1:100



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Lot 21 D.P. 315327 Site Area: 304m²

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DRAWING TITLE
ROOF PLAN

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	28/03/22
A	BUILDING SETBACK AND EXTERNAL DIMS ADDED	23/08/22

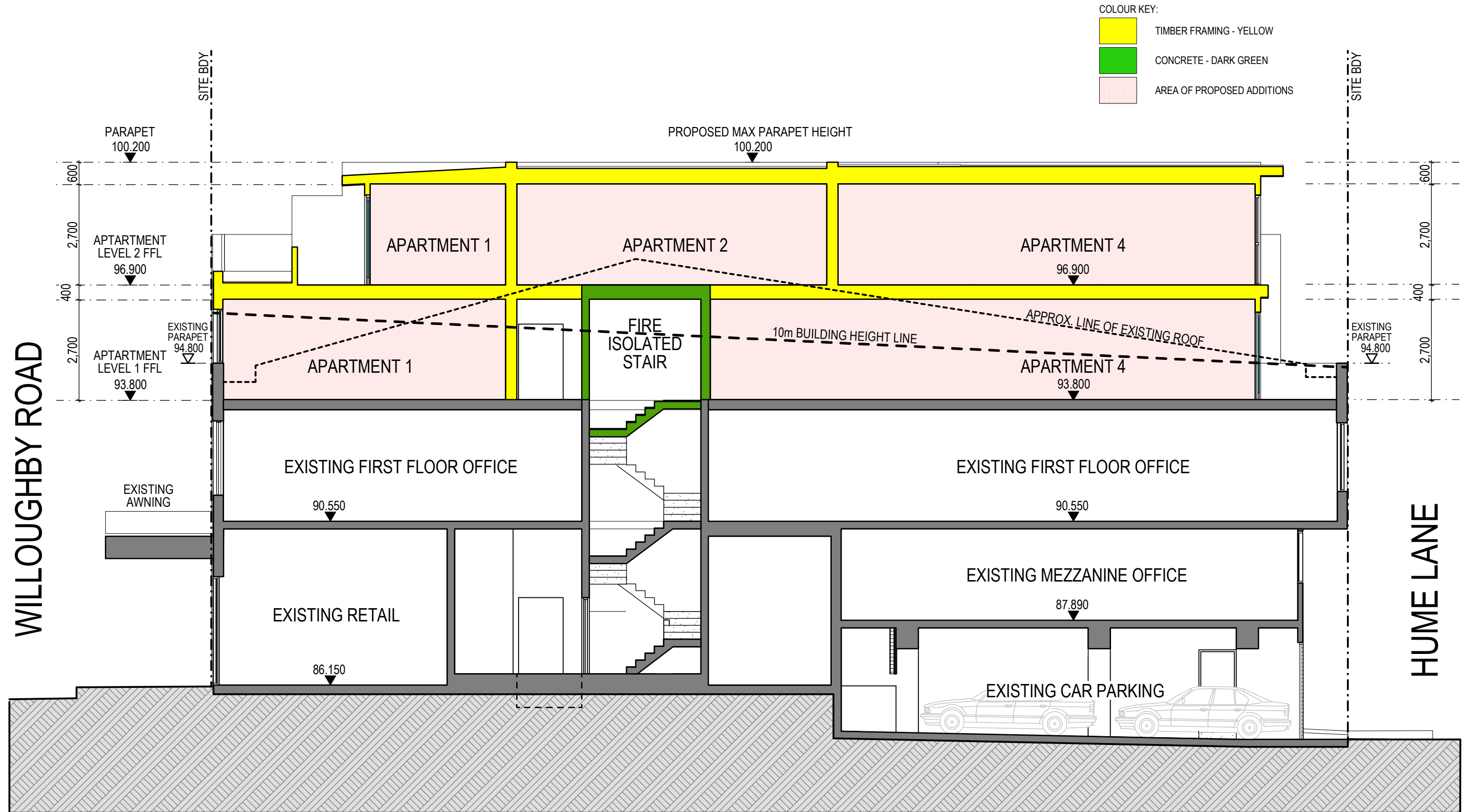
SCALE 1:100 @ A3
DATE 2/12/2022
DRAWN SM

DRAWING NO. & REVISION

DA08A

STATUS **DEVELOPMENT APPLICATION**

0 1 2 3 4 5 cm ON ORIGINAL @ A3



SECTION AA
1:100



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ON ORIGINAL @ A3

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Lot 21 D.P. 315327 Site Area: 304m²

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DRAWING TITLE
SECTION A

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	28/03/22
A	10m BUILDING HEIGHT LINE SHOWN	23/08/22

SCALE 1:100 @ A3
DATE 2/12/2022
DRAWN SM

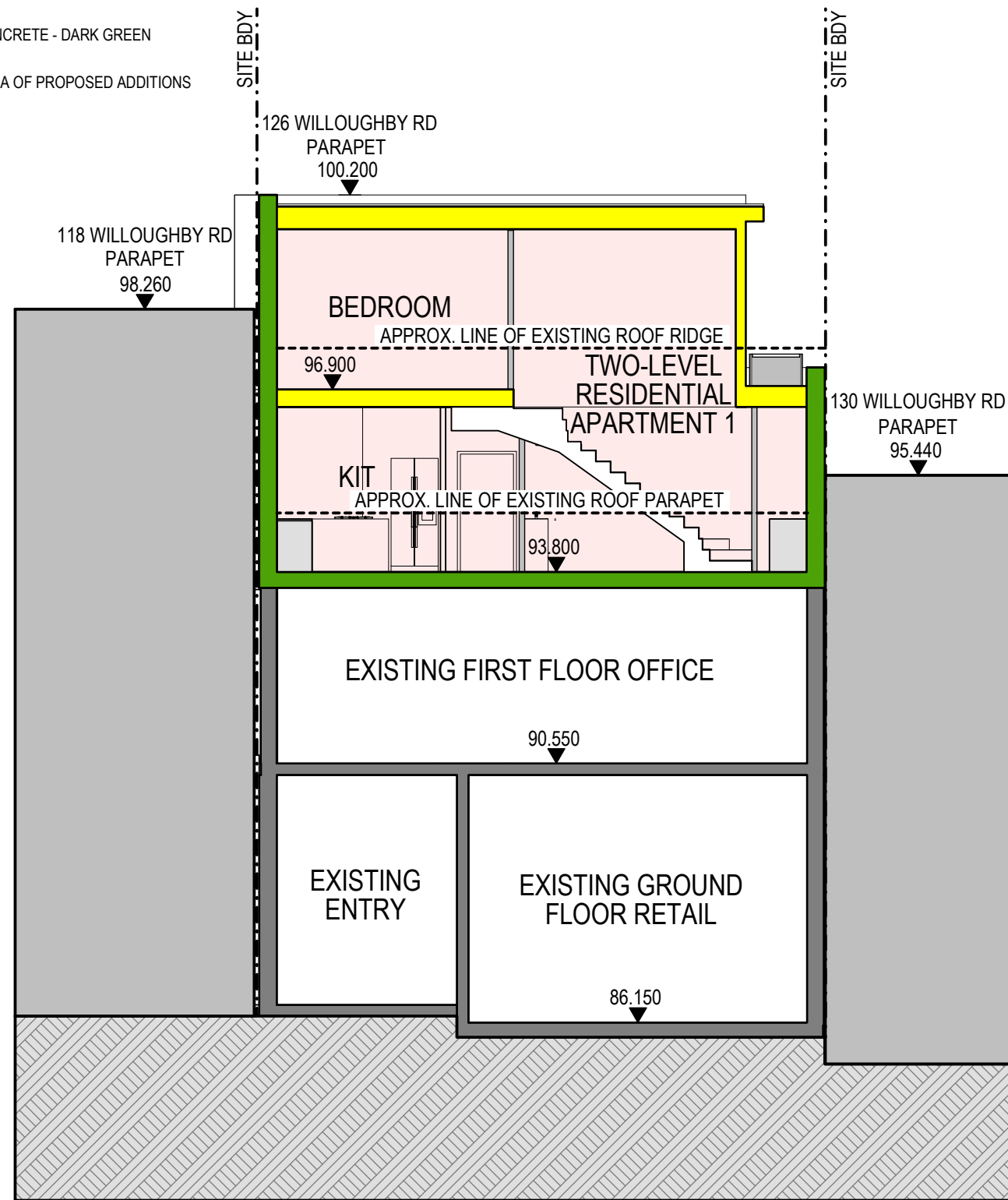
DRAWING NO. & REVISION

DA09A

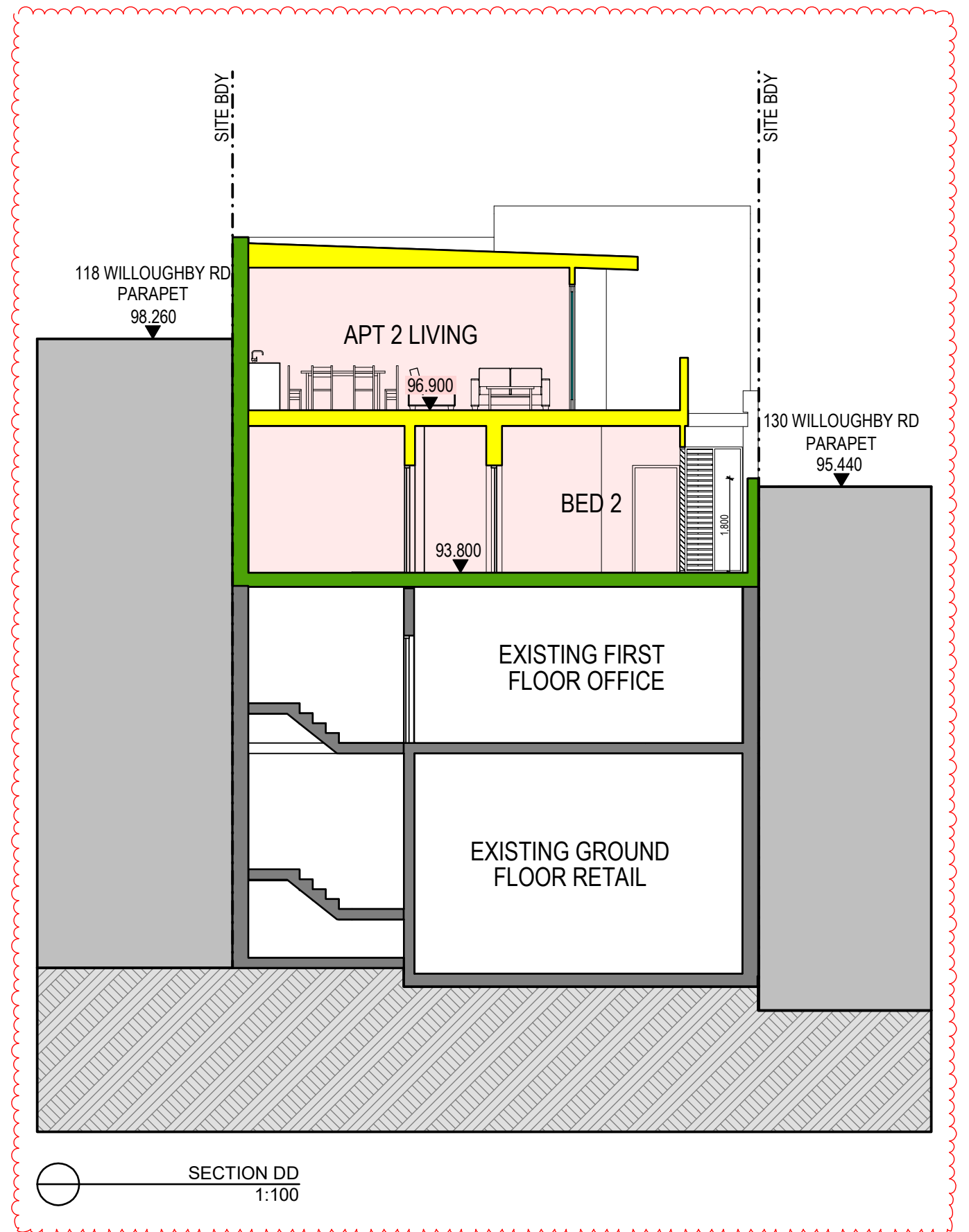
STATUS **DEVELOPMENT APPLICATION**

COLOUR KEY:

- TIMBER FRAMING - YELLOW
- CONCRETE - DARK GREEN
- AREA OF PROPOSED ADDITIONS



SECTION BB
1:100



SECTION DD
1:100



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0 1 2 3 4 5 cm

ON ORIGINAL @ A3

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PROJECT ADDRESS
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Lot 21 D.P. 315327 Site Area: 304m²

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DRAWING TITLE
SECTION B & D

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	28/03/22
A	DEP REPORT RESPONSE - WASTE & RECYCLING	30/11/22

SCALE 1:100 @ A3
DATE 2/12/2022
DRAWN SM

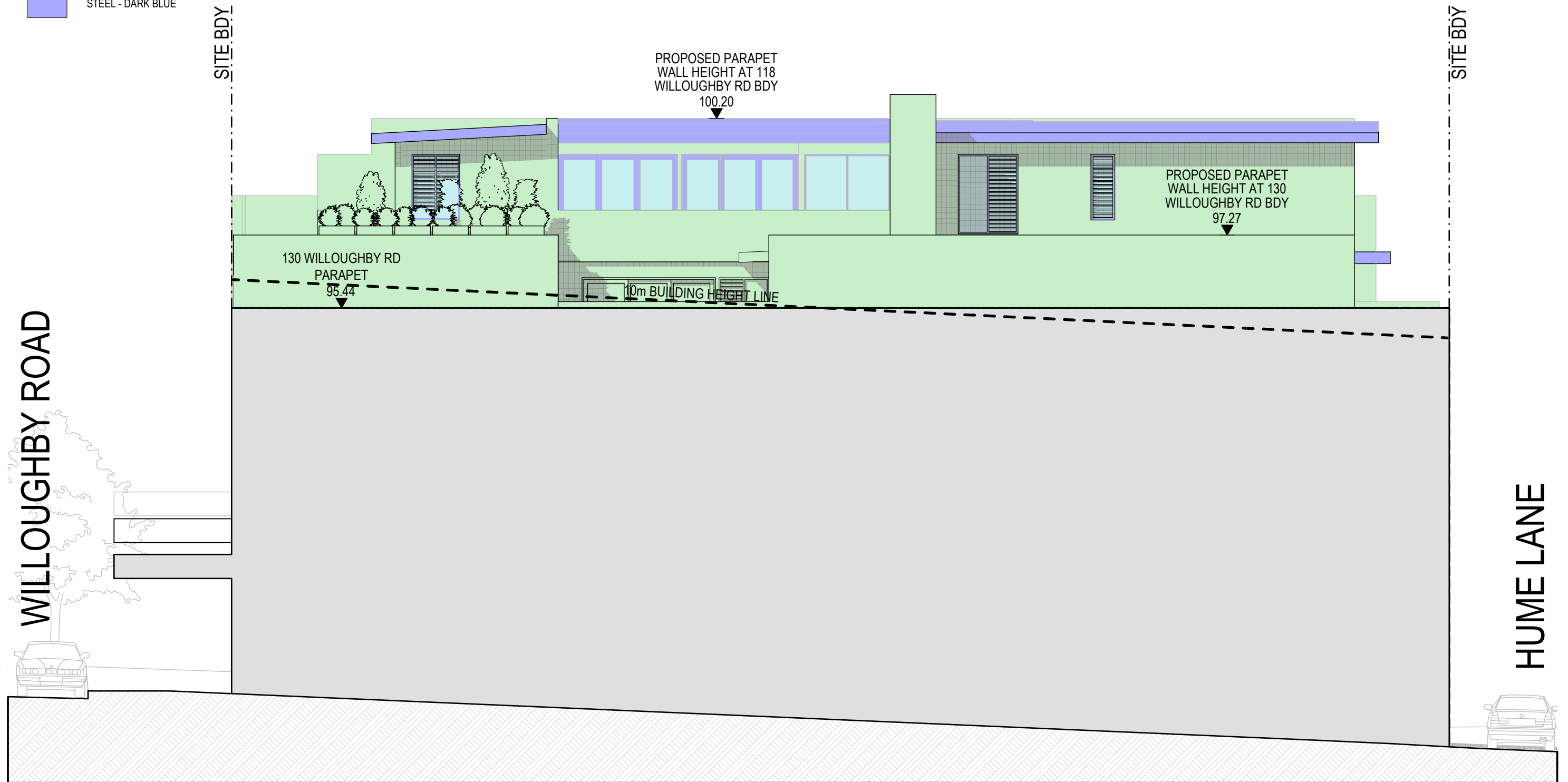
DRAWING NO. & REVISION

DA10A

STATUS **DEVELOPMENT APPLICATION**

COLOUR KEY:

	GLASS - LIGHT BLUE
	CEMENT RENDER & FC SHEETS - LIGHT GREEN
	STEEL - DARK BLUE



○ NORTH ELEVATION
1:100



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ON ORIGINAL @ A3

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PROJECT ADDRESS
126-128 WILLOUGHBY RD CROWS NEST

Lot 21 D.P. 315327 Site Area: 304m²

CLIENT

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DRAWING TITLE
ELEVATION NORTH

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	28/03/22
A	10m BUILDING HEIGHT LINE SHOWN	23/08/22
B	DEP REPORT RESPONSE	30/11/22

SCALE 1:100 @ A3
DATE 2/12/2022
DRAWN SM

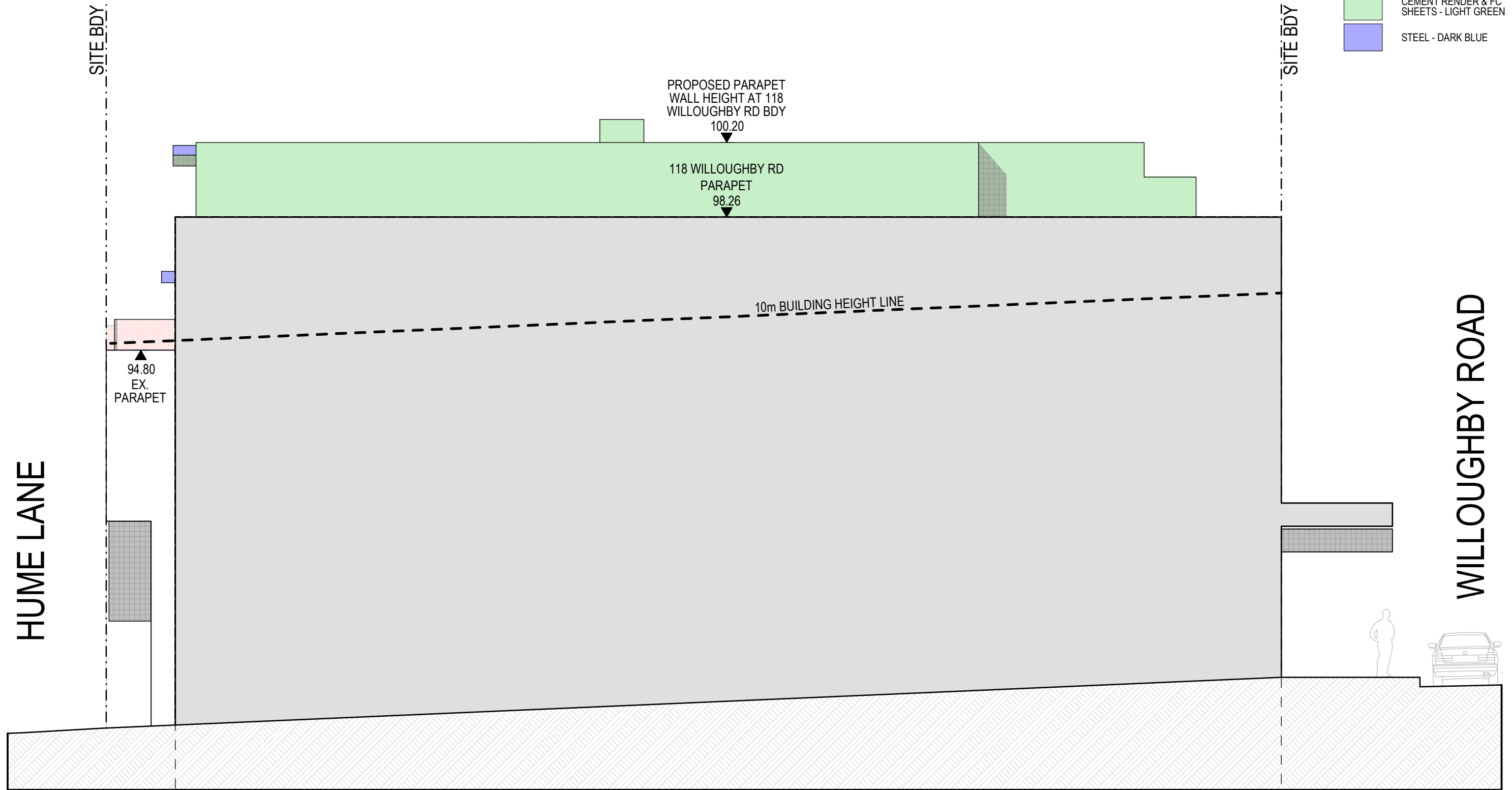
DRAWING NO. & REVISION

DA11B

STATUS **DEVELOPMENT APPLICATION**

COLOUR KEY:

	GLASS - LIGHT BLUE
	CEMENT RENDER & FC SHEETS - LIGHT GREEN
	STEEL - DARK BLUE



SOUTH ELEVATION
1:100



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ON ORIGINAL @ A3

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PROJECT ADDRESS
126-128 WILLOUGHBY RD CROWS NEST

Lot 21 D.P. 315327 Site Area: 304m²

CLIENT

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DRAWING TITLE
ELEVATION SOUTH

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	28/03/22
A	10m BUILDING HEIGHT LINE SHOWN	23/08/22

SCALE 1:100 @ A3
DATE 2/12/2022
DRAWN SM

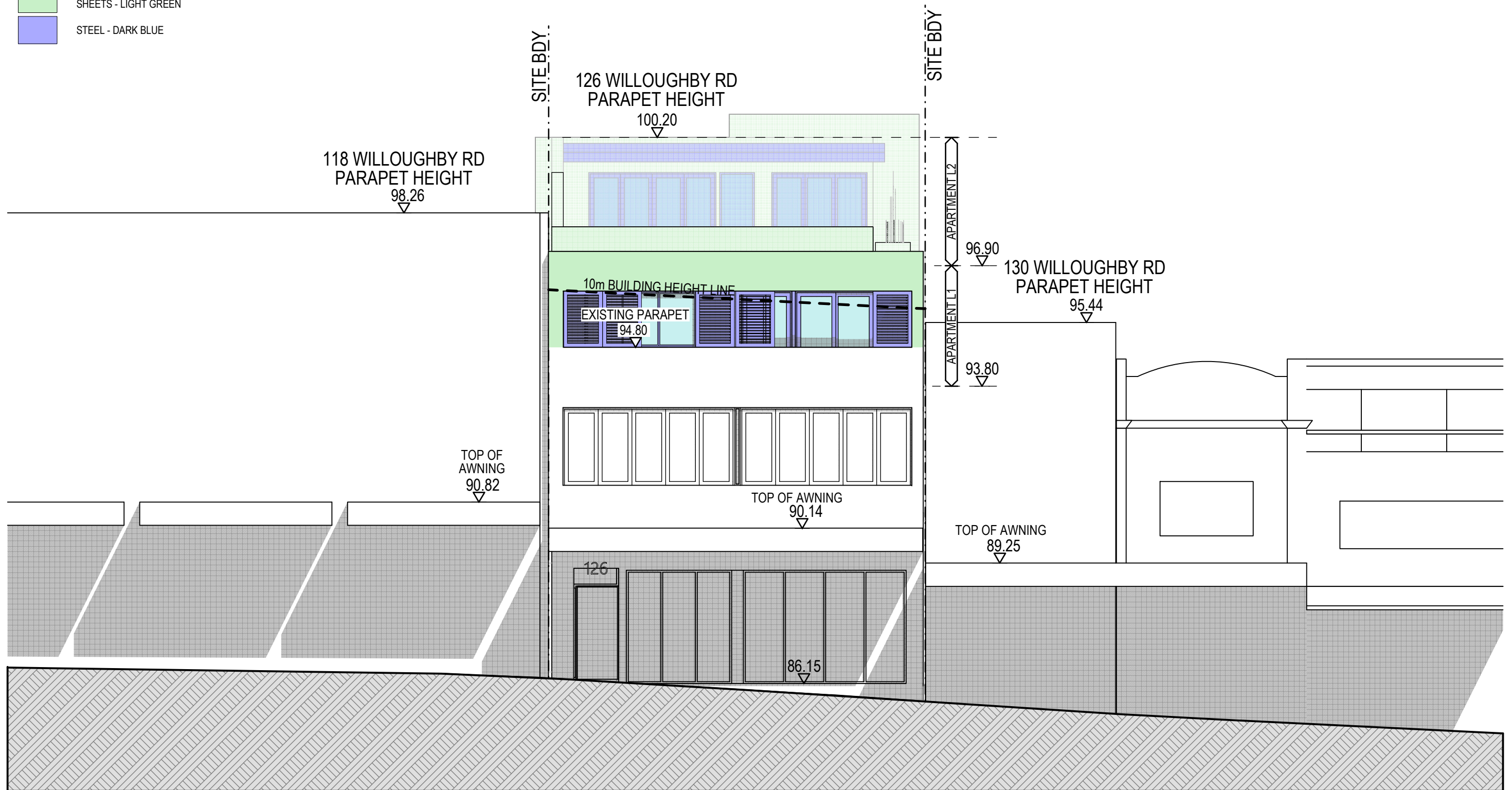
DRAWING NO. & REVISION

DA12A

STATUS **DEVELOPMENT APPLICATION**

COLOUR KEY:

	GLASS - LIGHT BLUE
	CEMENT RENDER & FC SHEETS - LIGHT GREEN
	STEEL - DARK BLUE



EAST ELEVATION
1:100



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ON ORIGINAL @ A3

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PROJECT ADDRESS
126-128 WILLOUGHBY RD CROWS NEST

Lot 21 D.P. 315327 Site Area: 304m²

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DRAWING TITLE
ELEVATION EAST

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	28/03/22
A	10m BUILDING HEIGHT LINE SHOWN	23/08/22

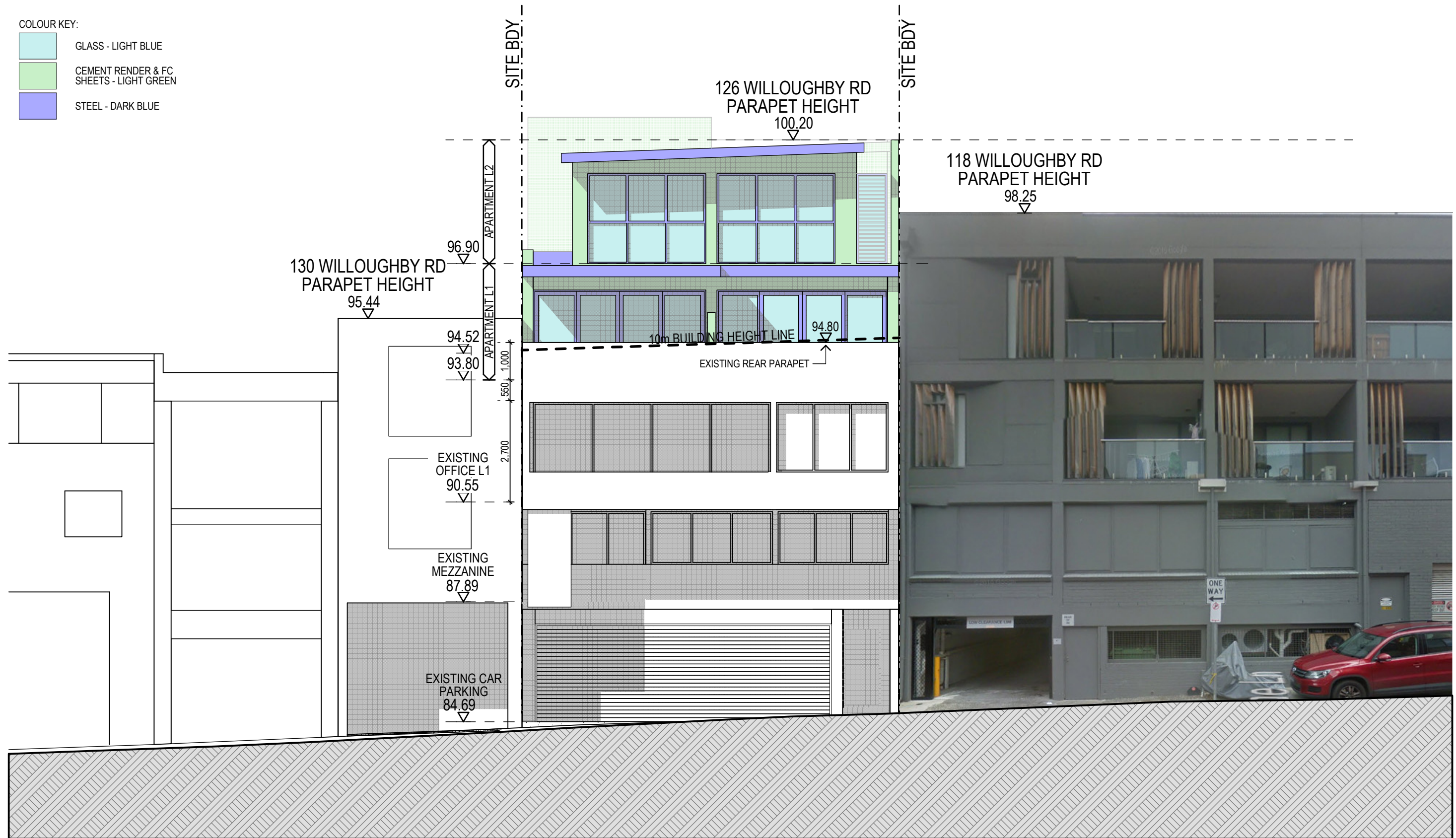
SCALE 1:100 @ A3
DATE 2/12/2022
DRAWN SM

DRAWING NO. & REVISION

DA13A

STATUS **DEVELOPMENT APPLICATION**

- COLOUR KEY:
- GLASS - LIGHT BLUE
 - CEMENT RENDER & FC SHEETS - LIGHT GREEN
 - STEEL - DARK BLUE



WEST ELEVATION
1:100



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Lot 21 D.P. 315327 Site Area: 304m²

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DRAWING TITLE
ELEVATION WEST

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	28/03/22
A	10m BUILDING HEIGHT LINE SHOWN	23/08/22

SCALE 1:100 @ A3
DATE 2/12/2022
DRAWN SM

DRAWING NO. & REVISION

DA14A

STATUS **DEVELOPMENT APPLICATION**



INTO
architecture

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PROJECT ADDRESS
126-128 WILLOUGHBY RD CROWS NEST
Lot 21 D.P. 315327 Site Area: 304m²

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DRAWING TITLE
PERSPECTIVE IMAGE 1

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	28/03/22
A	DEP REPORT RESPONSE	30/11/22

SCALE N.T.S @ A3 DATE 2/12/2022 DRAWN SM

DRAWING NO. & REVISION
DA15A

STATUS **DEVELOPMENT APPLICATION**

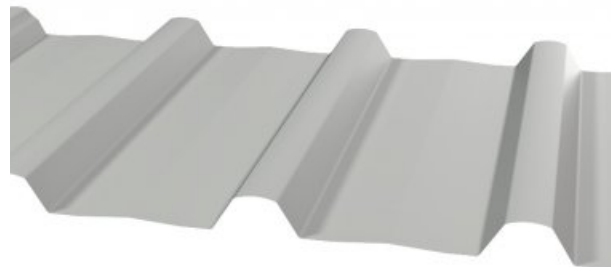
126-128 WILLOUGHBY ROAD, CROWS NEST - EXTERNAL COLOURS AND MATERIALS PALETTE



ROOF GUTTERS, FLASHINGS, METAL FASCIAS AND TRIMS:
COLORBOND MONUMENT



METAL ROOF SHEETING: COLORBOND SHALE GREY



METAL ROOF SHEETING: TRIMDEK OR SIMILAR PROFILE
SUITABLE FOR ROOF LOW PITCHES



POWDERCOATED ALUMINIUM WINDOW FRAMES AND
EXTERNAL LOUVRE SCREENS: DULUX COLORBOND
MONUMENT - TO MATCH EXISTING WINDOWS



UPPER LEVEL EXTERNAL WALL PAINT AND RENDER COLOUR:
DULUX COLORBOND WOODLAND GREY



MAIN EXTERNAL WALL RENDER COLOUR:
DULUX A204 GRAND PIANO



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0 1 2 3 4 5 cm ON ORIGINAL @ A3

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PROJECT ADDRESS
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Lot 21 D.P. 315327 Site Area: 304m²

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DRAWING TITLE
EXT. COLOURS & MATERIALS

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	28/03/22

SCALE N.T.S @ A3 DATE 2/12/2022 DRAWN SM

DRAWING NO. & REVISION

DA16

STATUS **DEVELOPMENT APPLICATION**



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Lot 21 D.P. 315327 Site Area: 304m²

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DRAWING TITLE
SHADOWS JUNE 21 09:00

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	28/03/22

SCALE 1:100 @ A3
 DATE 2/12/2022
 DRAWN SM

DRAWING NO. & REVISION

DA17

STATUS **DEVELOPMENT APPLICATION**

0 1 2 3 4 5 cm ON ORIGINAL @ A3



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Lot 21 D.P. 315327 Site Area: 304m²

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DRAWING TITLE
SHADOWS JUNE 21 12:00

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	28/03/22

SCALE 1:100 @ A3
 DATE 2/12/2022
 DRAWN SM

DRAWING NO. & REVISION

DA18

STATUS **DEVELOPMENT APPLICATION**

0 1 2 3 4 5 cm

ON ORIGINAL @ A3



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PROJECT ADDRESS
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Lot 21 D.P. 315327 Site Area: 304m²

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DRAWING TITLE
SHADOWS JUNE 21 15:00

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	28/03/22

SCALE
 1:100 @ A3

DATE
 2/12/2022

DRAWN
 SM

DRAWING NO. & REVISION

DA19

STATUS **DEVELOPMENT APPLICATION**

0 1 2 3 4 5 cm ON ORIGINAL @ A3



☉ SUN STUDY APT 1&2 - JUNE 21 @ 09:00



☉ SUN STUDY APT 1&2 - JUNE 21 @ 10:00



☉ SUN STUDY APT 1&2 - JUNE 21 @ 11:00



☉ SUN STUDY APT 1&2 - JUNE 21 @ 12:00



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0 1 2 3 4 5 cm

ON ORIGINAL @ A3

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PROJECT ADDRESS
 126-128 WILLOUGHBY RD CROWS NEST

Lot 21 D.P. 315327 Site Area: 304m²

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DRAWING TITLE
SUN STUDY - APTS 1 & 2

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	28/03/22

SCALE
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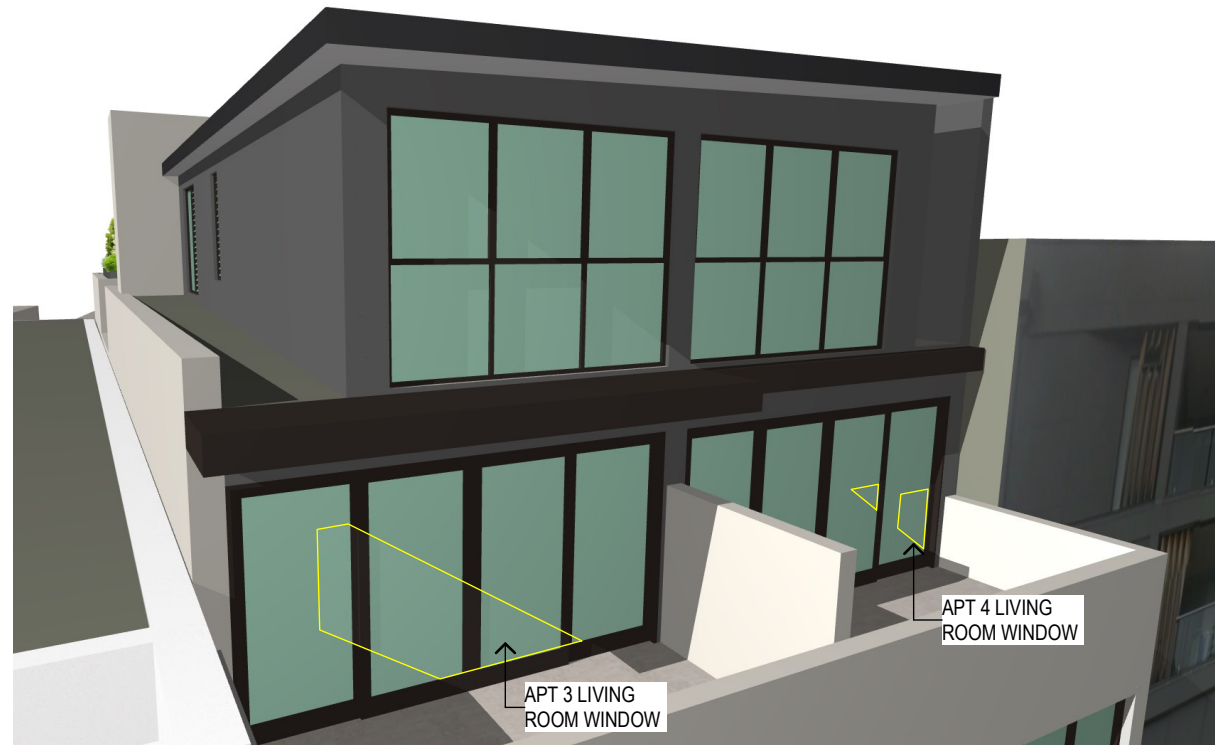
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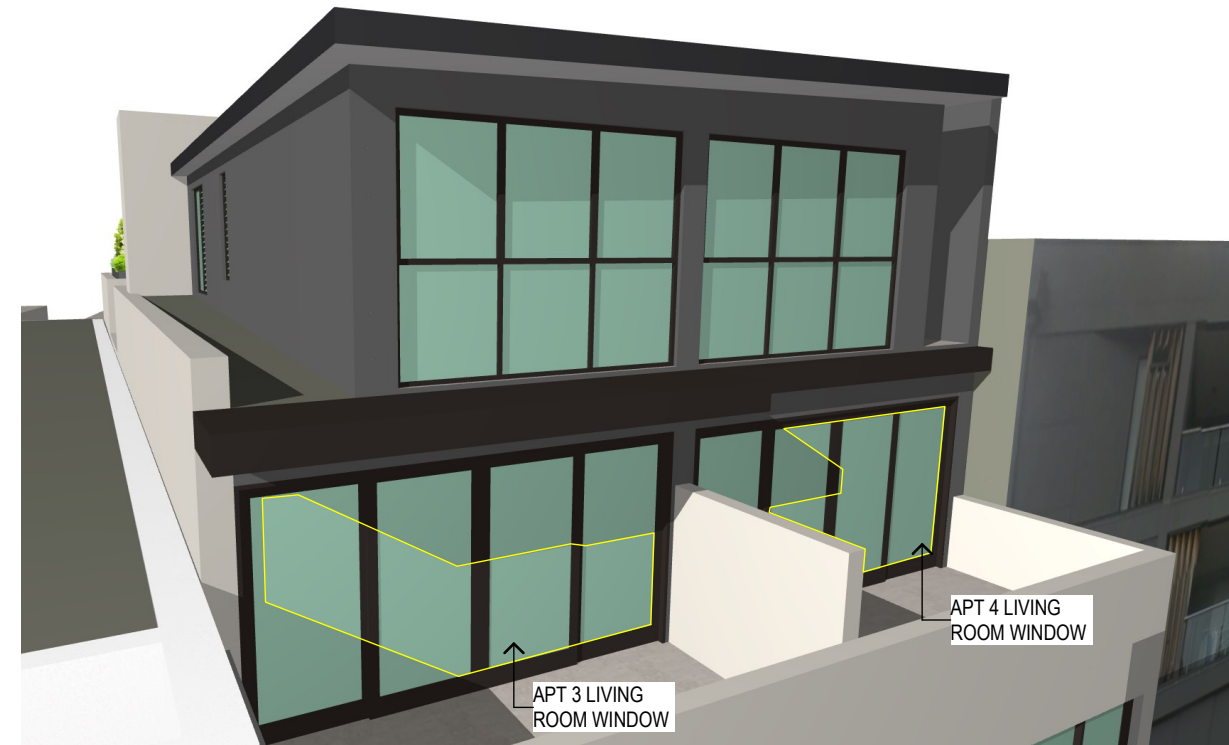
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DA20

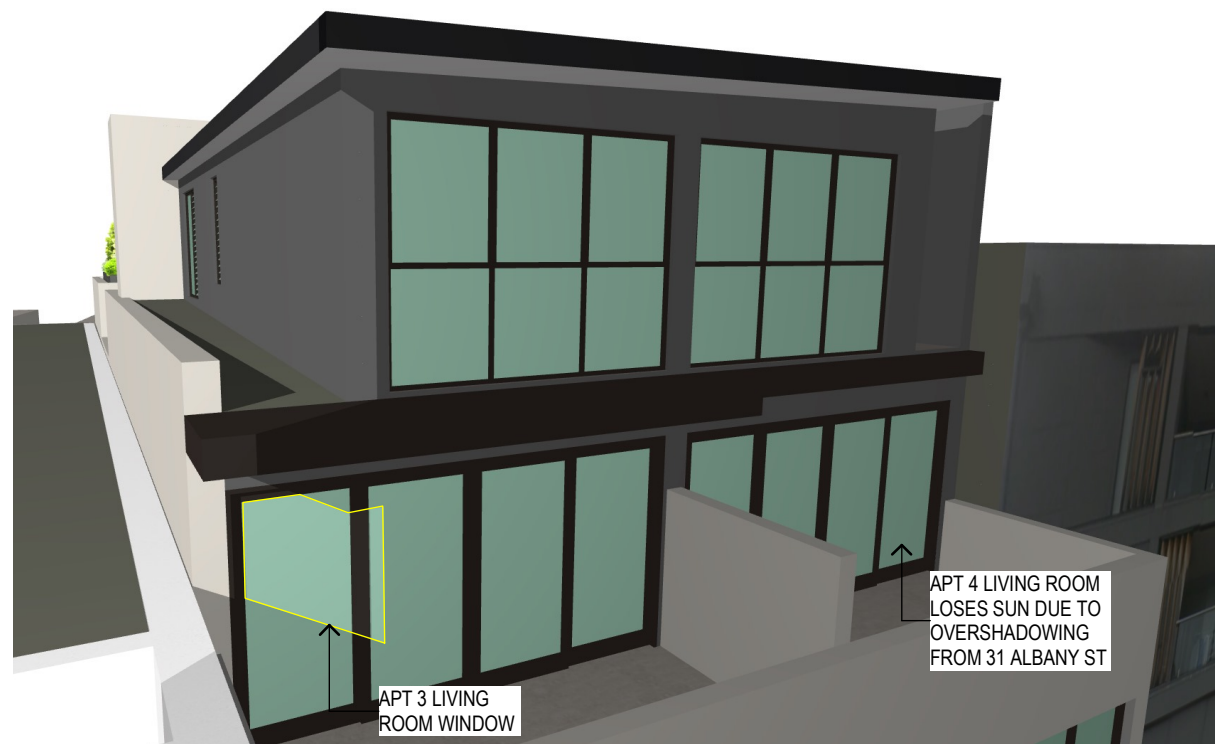
STATUS **DEVELOPMENT APPLICATION**



SUN STUDY APT 3&4 - JUNE 21 @ 12:20



SUN STUDY APT 3&4 - JUNE 21 @ 13:20



SUN STUDY APT 3&4 - JUNE 21 @ 14:20

SOLAR ACCESS COMPLIANCE TABLE:

Between the hours of 9am & 3pm mid-winter (June 21):

- Apartment 1 Recieves 3 Hours+ Sunlight to Living Room and Private Open Spaces
- Apartment 2 Recieves 3 Hours+ Sunlight to Living Room and Private Open Spaces
- Apartment 3 Recieves 2 Hours of Sunlight to Living Room and Private Open Spaces
- Apartment 4 Recieves 1.5 Hours of Sunlight to Living Room and Private Open Spaces

75% of Apartments (greater than the min. 70%) recieve more than the min. 2 Hours mid-winter sun to Living Rooms and Private Open spaces in compliance with the Apartment Design Guidelines.



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PROJECT ADDRESS
 126-128 WILLOUGHBY RD CROWS NEST

Lot 21 D.P. 315327 Site Area: 304m²

CLIENT

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DA21

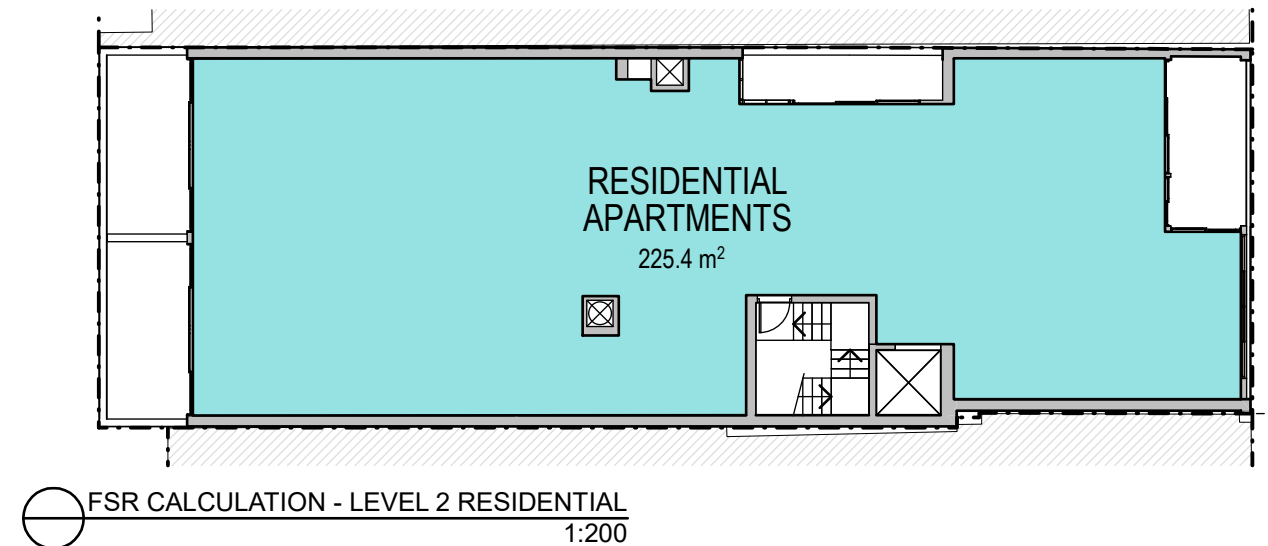
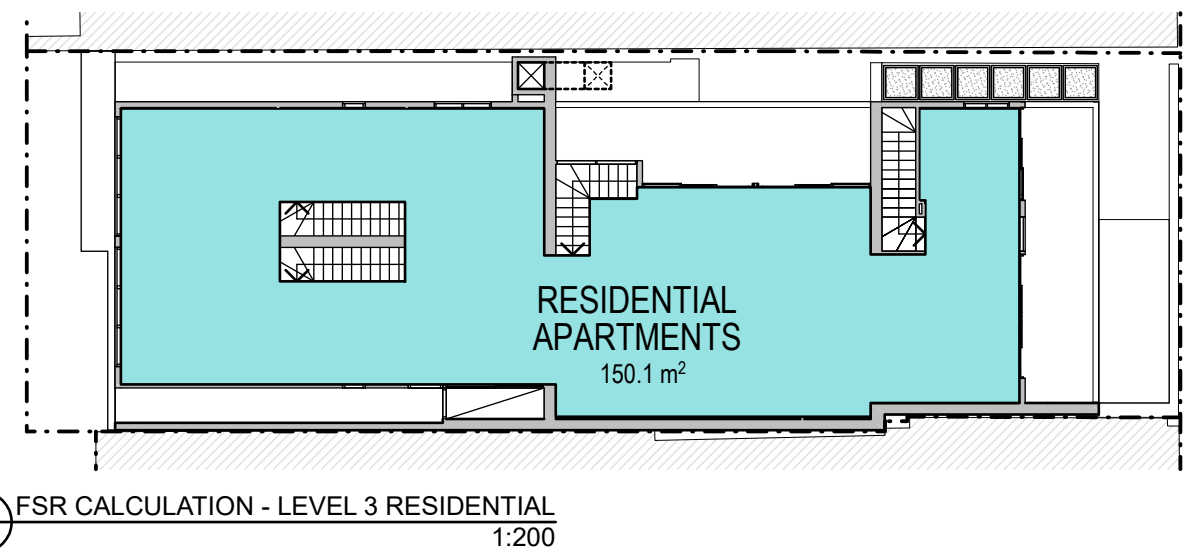
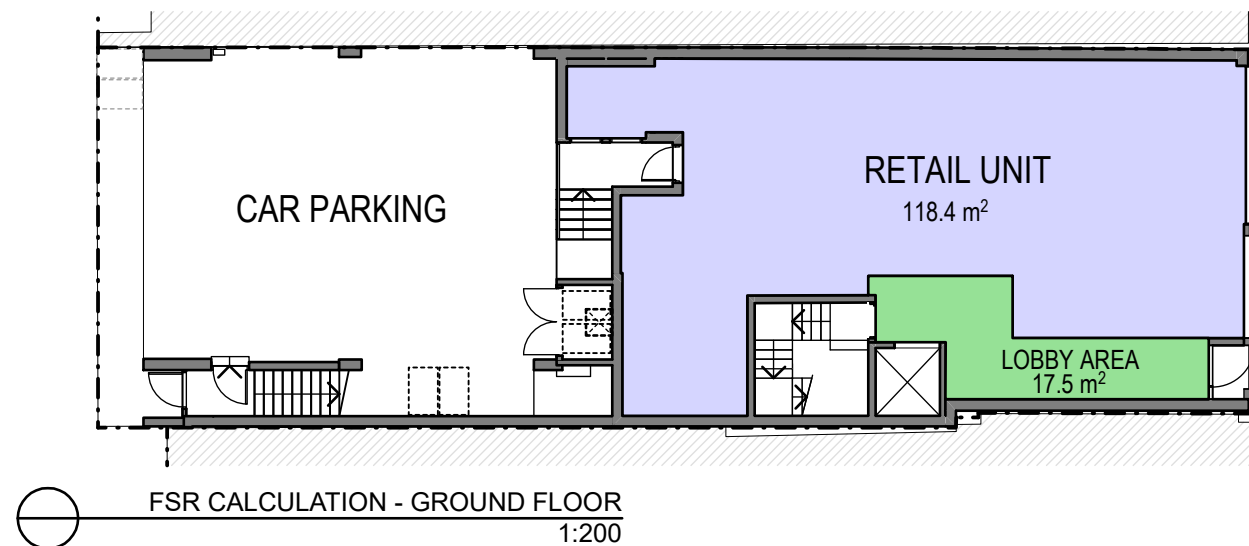
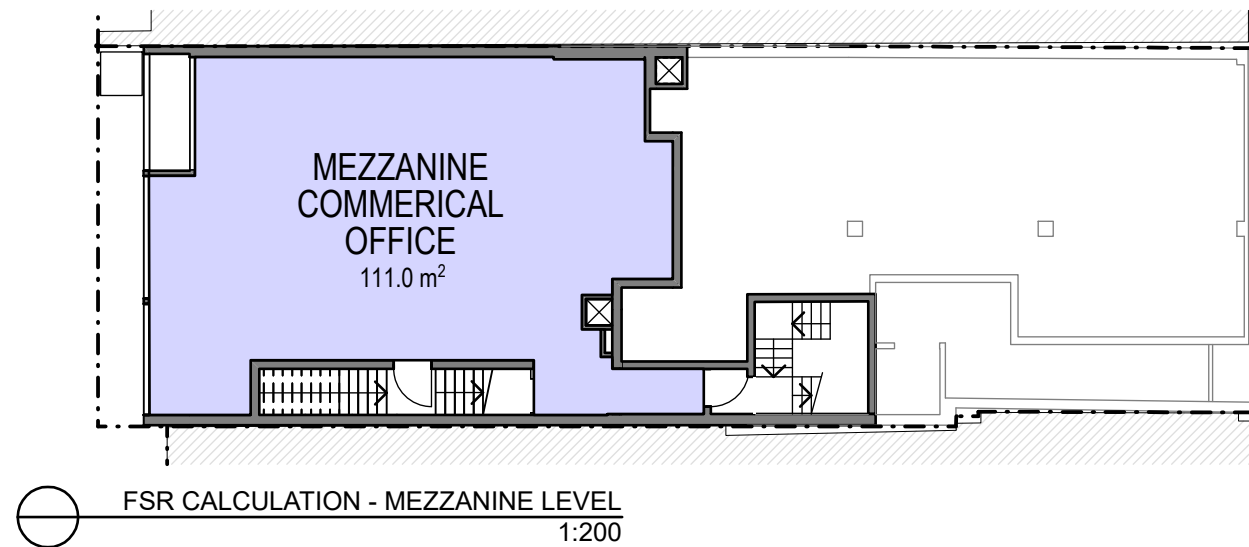
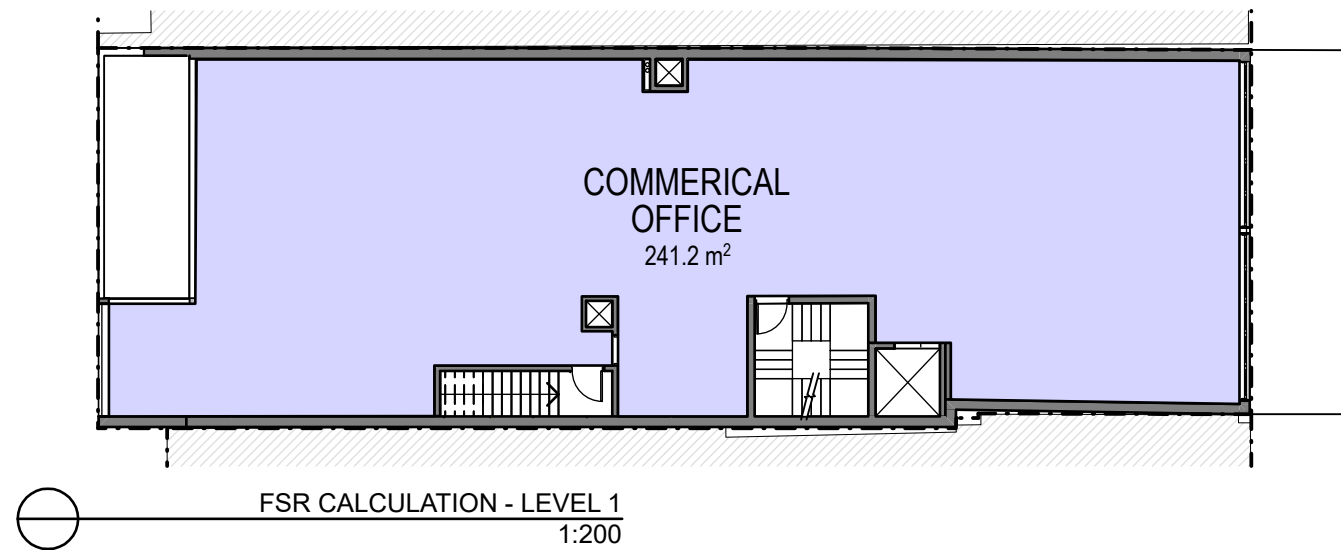
STATUS **DEVELOPMENT APPLICATION**

Site Area: 304m²

Existing Floor Area: 488.1m² Existing FSR: 1.6:1

Site Area: 304m²

Proposed Floor Area: 863.6m² Proposed FSR: 2.8:1



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Lot 21 D.P. 315327 Site Area: 304m²

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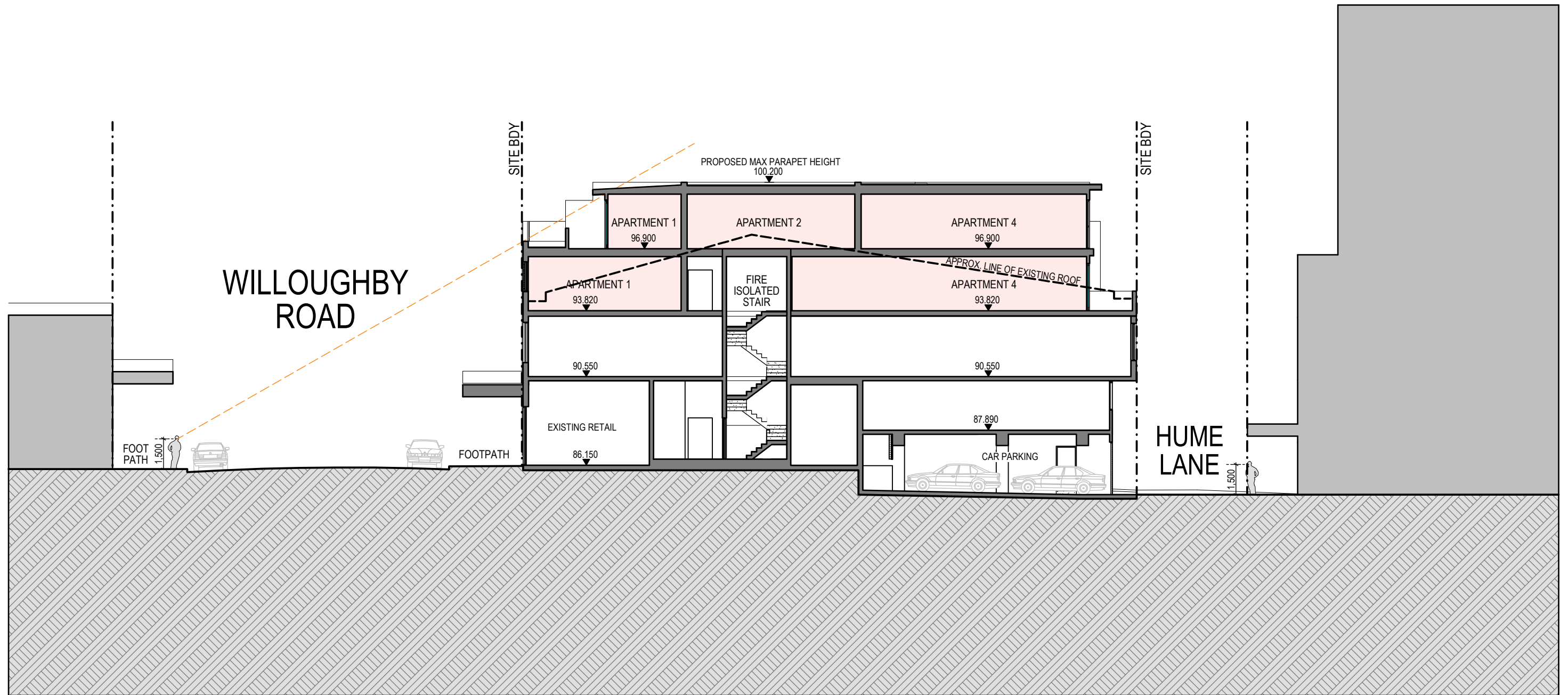
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DA22

STATUS **DEVELOPMENT APPLICATION**

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SECTION C
1:200



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126-128 WILLOUGHBY RD CROWS NEST

Lot 21 D.P. 315327 Site Area: 304m²

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SECTION C

REV.	DESCRIPTION	DATE
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DATE 2/12/2022
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DA23

STATUS **DEVELOPMENT APPLICATION**



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 126-128 WILLOUGHBY RD CROWS NEST

Lot 21 D.P. 315327 Site Area: 304m²

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DRAWING TITLE
PHOTOMONTAGE 1

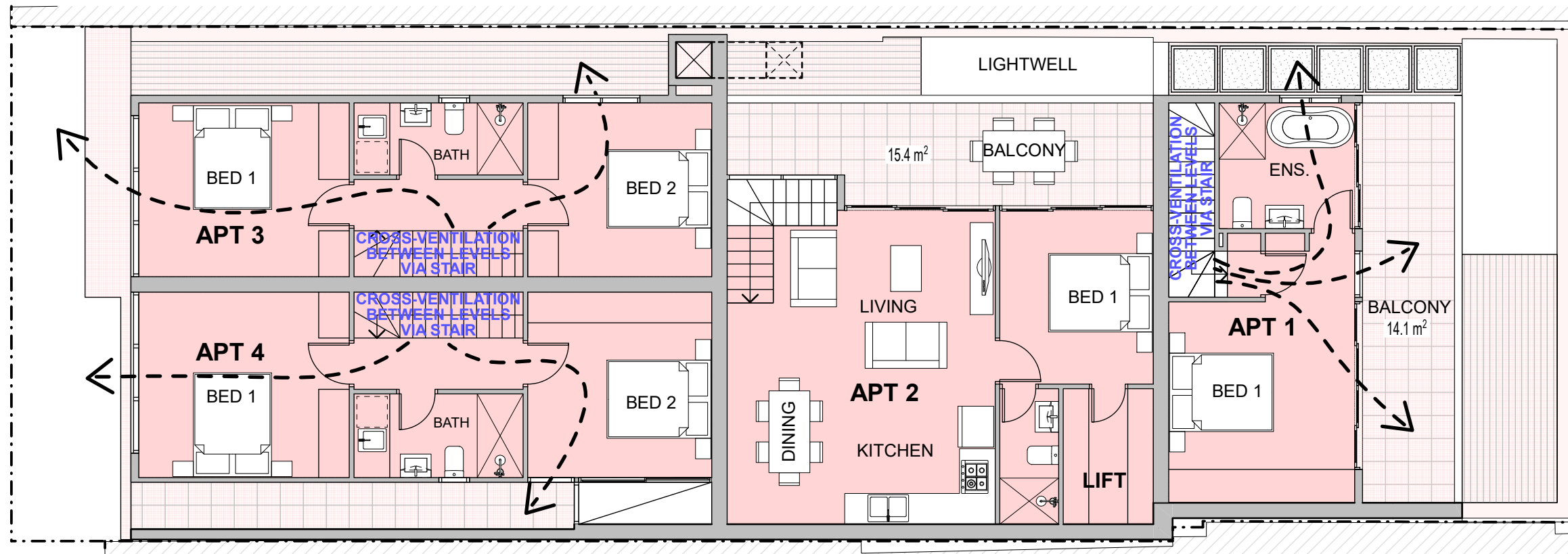
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-	DEVELOPMENT APPLICATION ISSUE	21/06/22

SCALE N.T.S @ A3
 DATE 2/12/2022
 DRAWN SM

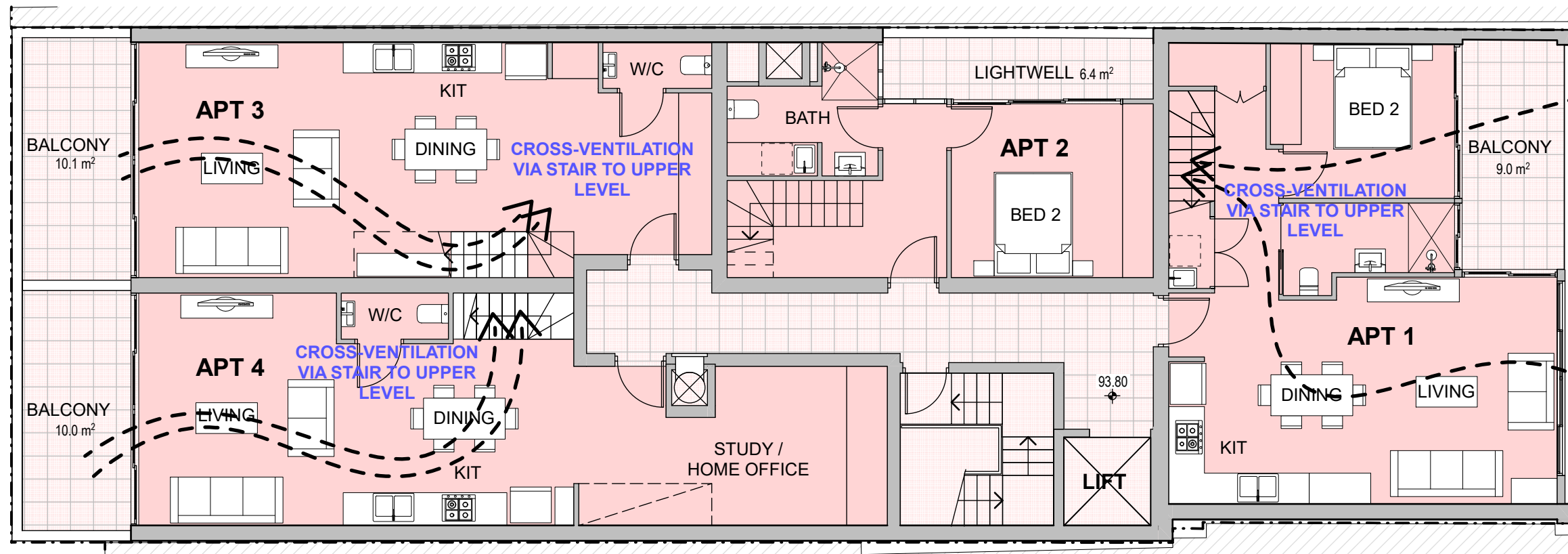
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DA24

STATUS **DEVELOPMENT APPLICATION**



CROSS VENTILATION DIAGRAM L4
1:100



CROSS-VENTILATION DIAGRAM L3
1:100

APARTMENT DESIGN GUIDE
CROSS VENTILATION NOTES:

APARTMENT 1:
NATURAL CROSS-VENTILATION

- DUAL ASPECT CORNER APT.
- EAST AND NORTH WINDOWS
- INTERNAL AIRFLOW VIA STAIR
- <16m PATH OF AIR TRAVEL

APARTMENT 2:
NOT CROSS-VENTILATED AS PER
APARTMENT DESIGN GUIDE.

- SINGLE NORTH ASPECT APT.
- TWO STOREY APARTMENT
- NOT CONSIDERED CROSS-VENTILATED UNDER SEPP65.

APARTMENT 3:
NATURAL CROSS-VENTILATION

- DUAL ASPECT CORNER APT.
- NORTH AND WEST WINDOWS
- INTERNAL AIRFLOW VIA STAIR
- <12m PATH OF AIR TRAVEL

APARTMENT 4:
NATURAL CROSS-VENTILATION

- DUAL ASPECT CORNER APT.
- WEST & SOUTH WINDOWS
- INTERNAL AIRFLOW VIA STAIR
- <12m PATH OF AIR TRAVEL

NOTE: ALL 4 APARTMENTS
BENEFIT FROM STACK-EFFECT
NATURAL VENTILATION. COOL AIR
IS DRAW-IN ON THE LOWER
LEVEL AND HOT AIR IS VENTED
OUT THROUGH UPPER LEVEL
WINDOWS.



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PROJECT ADDRESS
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CROSS VENTILATION DIAGRAM

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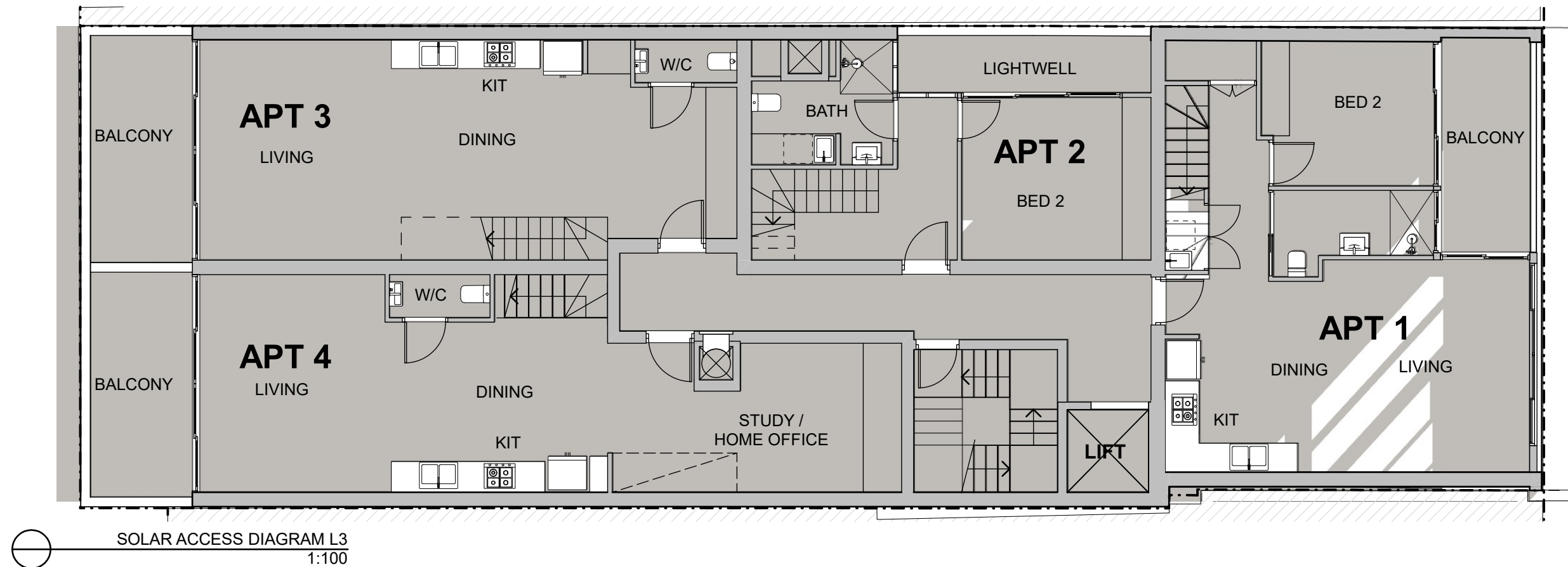
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DA25

STATUS **DEVELOPMENT APPLICATION**

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L3 SOLAR ACCESS PLAN - JUN 21 09:00
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Lot 21 D.P. 315327 Site Area: 304m²

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L3 SOLAR ACCESS DIAGRAM

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DA26

STATUS **DEVELOPMENT APPLICATION**

0 1 2 3 4 5 cm ON ORIGINAL @ A3

GYDE

Clause 4.6 Request - Height of Building

North Sydney Environmental Plan 2013

126-128 Willoughby Road, Crows Nest

submitted to North Sydney Council

on behalf of Keystone Property Consultants

**Clause 4.6 Request - Height of Building**

This report was prepared by:

Director: Mark Schofield
Assistant Planner: Hannah Keeler
Project: 21-355
Report Version: Final - Amended post lodgement

Disclaimer

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Clause 4.6 Request - Height of Building

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Clause 4.6 Request - Height of Building

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Clause 4.6 Request - Height of Building

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Clause 4.6 Request - Height of Building

1. EXECUTIVE SUMMARY

This is a written request prepared in accordance with clause 4.6 of the North Sydney Local Environmental Plan 2013 (WLEP 2012) to justify a variation to the Height of building (HOB) development standard. The request relates to a development application (DA) that seeks consent to add a residential flat building above an existing commercial building at 126-128 Willoughby Road, Crows Nest (the site).

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards to particular development, and to achieve better outcomes for, and from, development by allowing flexibility in particular circumstances.

As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application, and accordingly we respectfully submit that Council ought to be satisfied that this variation request addresses all of the matters required by clause 4.6(3). As such, it would be appropriate to exercise the flexibility provided by clause 4.6 in the circumstances of this application.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various recent decisions in the New South Wales Land and Environment Court (LEC) and New South Wales Court of Appeal (Appeals Court).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH 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:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)];
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b)]; and
3. That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out [clause 4.6(4)].

This request considers that compliance with the Height of building development standard is unreasonable and unnecessary in the circumstances of the proposed development because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The requirement to comply with the development standard is unreasonable and unnecessary in the circumstances for the reasons specified below:

- The development represents economic and orderly development by providing a suitable residential addition to an existing commercial development within a local centre;
- The site is located on the fringe of the Willoughby Road and Albany Street intersection. Buildings within this visual catchment exceed three-storeys and vary in height from 13m – 30m (approx.);
- The proposed development adjoins higher density areas (particularly to the west along Albany Street). The St Leonards and Crows Nest 2036 Plan emphasises a need for transitions at density interfaces, which the proposed development will facilitate.



Clause 4.6 Request - Height of Building

- The proposal provides new housing opportunities within a transitioning area, in an accessible and well serviced location. The Crows Nest Metro Station is located approximately 80m west of the site and will act as a catalyst for change within the locality. A number of higher density developments have emerged within the vicinity of the site, particularly along the Pacific Highway, to utilise the opportunities that the Metro Station and associated infrastructure provides.
- The development delivers diverse housing within an established local centre in accordance with Local Planning Priorities L1 and P6 of the North Sydney Local Strategic Planning Statement (LSPS).
- The building is carefully massed to ensure that its bulk and scale complements the local context and existing topography along Willoughby Road. The proposed mass is consistent with desired built forms envisaged by the NSDCP, particularly through the establishment of a podium to the street and recessing upper floors from the street edge. The carefully selected materials, colours and finishes responds to the streetscape in accordance with the existing and future character of the area.
- The development satisfies the objectives of the height standard, as well as the objectives of the Zone B4 Mixed Use.

In addition, this variation demonstrates that there is minimal environmental impacts, consistency with the relevant objects of the *Environmental Planning and Assessment Act 1979* and is consistent with the relevant aims of the NSLEP.

This request also addresses the requirement for concurrence of the Secretary as required by Clause 4.6(4)(b). It is therefore considered appropriate in these circumstances to grant the clause 4.6 variation request.

2. STANDARD TO BE VARIED

The standard that is proposed to be varied is the Height of Building development standard which is set out in Clause 4.3(2) of the *North Sydney Local Environmental Plan 2013* (NSLEP) as follows:

4.3 Height of buildings

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The site is in an area designated as "K" on the Height of Buildings Map and a 10m height control applies (Refer to Figure 1 below).

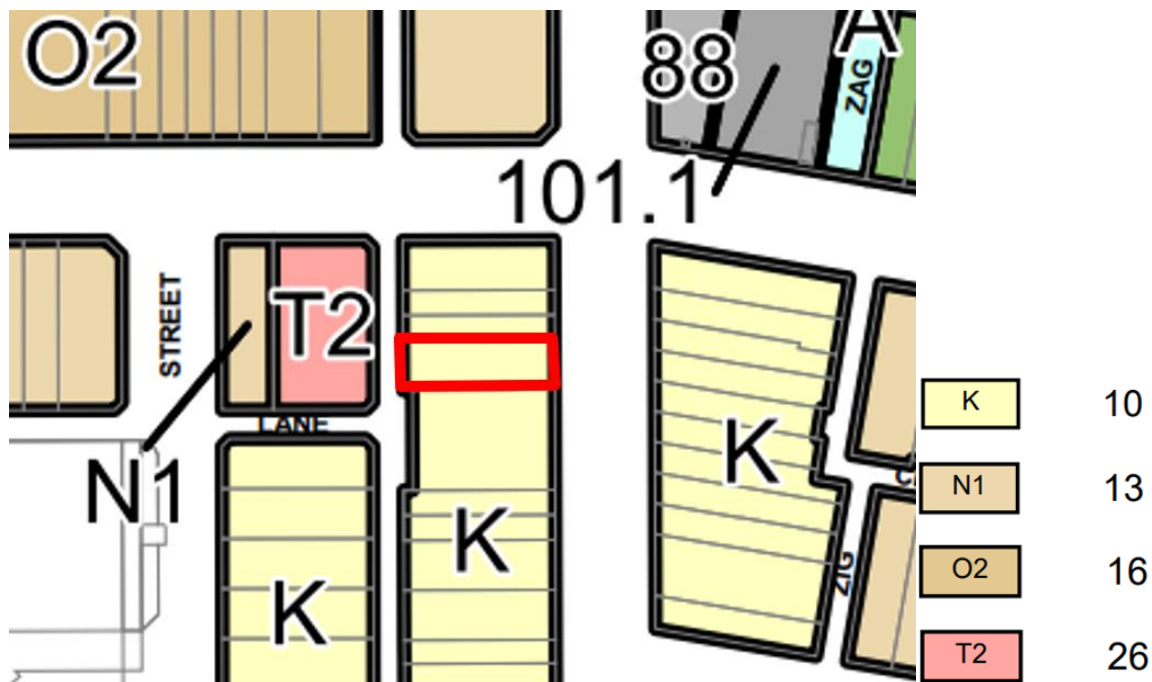


Figure 1: Extract of Height of Building Map (Source: NSW Legislation)

The development standard to be varied is not identified under sub-clause 4.6(8). Therefore, it is not excluded from the operation of clause 4.6 of the LEP.

Clause 4.6 Request - Height of Building

3. EXTENT OF VARIATION

3.1. Proposed Height Exceedances

Clause 4.3(2) of the NSLEP prescribes a maximum building height of 10m for development on the subject site.

The proposed maximum height is 15.45m, which occurs towards the rear of the development (west) at the roof parapet of Apartment 4. This equates to a maximum variation of 5.45m, or 54.5%.

The site has a 'step' which increases the existing ground floor level by approximately 1.20m at the centre of the site. It provides a maximum height at the frontage to Willoughby Road (east boundary) of 11.15m, which equates to a variation of 1.15m or 11.5%. The proposed development therefore incorporates variations that range from 1.15m (11.5%) – 5.45m (54.5%).

As demonstrated within Figure 2 below, the subject site sits well below the adjoining three-storey buildings either side. The proposed height will be generally consistent with the adjoining buildings as it will present a three-storey shopfront, with a zero setback, that steps down from the Pacific Highway to the south.



Figure 2 Street view of subject site demonstrating both adjoining properties present a 3 storey appearance to Willoughby Road (Source: Google Maps)

The non-compliance is illustrated in Figure 3 below, which provides context to the minimum and maximum height variation of



Clause 4.6 Request - Height of Building

4. UNREASONABLE OR UNNECESSARY

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a) of the LEP.

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. See *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe).

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; (First Test)
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; (Second Test)
3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; (Third Test)
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; (Fourth Test) and
5. The zoning of the land is unreasonable or inappropriate. (Fifth Test)

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

Nonetheless, we have considered each of the ways as follows.

4.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The following table considers whether the objectives of the development standard are achieved notwithstanding the proposed variation (First test under Wehbe).

Table 1 Consistency with Objectives of Clause 4.3 of NSLEP.

OBJECTIVE	DISCUSSION
4.3 Height of buildings	
(1) The objectives of this clause are as follows—	
(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,	Building forms on Willoughby Road are influenced by the topography, and generally step to conform with the land as its falls from a high point at Falcon St towards Albany Street. The

Clause 4.6 Request - Height of Building

streetscape on the western side of Willoughby Road in the vicinity of the site is provided in Figure 4.



Figure 4: Ridgeline of Willoughby Road, stepping down towards Albany Street

The two adjoining sites being 130 Willoughby Road (north) and 118-124 Willoughby Road (south) each present a three-storey façade to the street. The proposed building complements this pattern by also proposing a three-storey façade. The parapet of the façade mediates between the height of the adjoining properties, being lower than the property to south and higher than that to the north, creating a stepping pattern which is characteristic feature of Willoughby Road. This is demonstrated in Figure 5 below.

Clause 4.6 Request - Height of Building

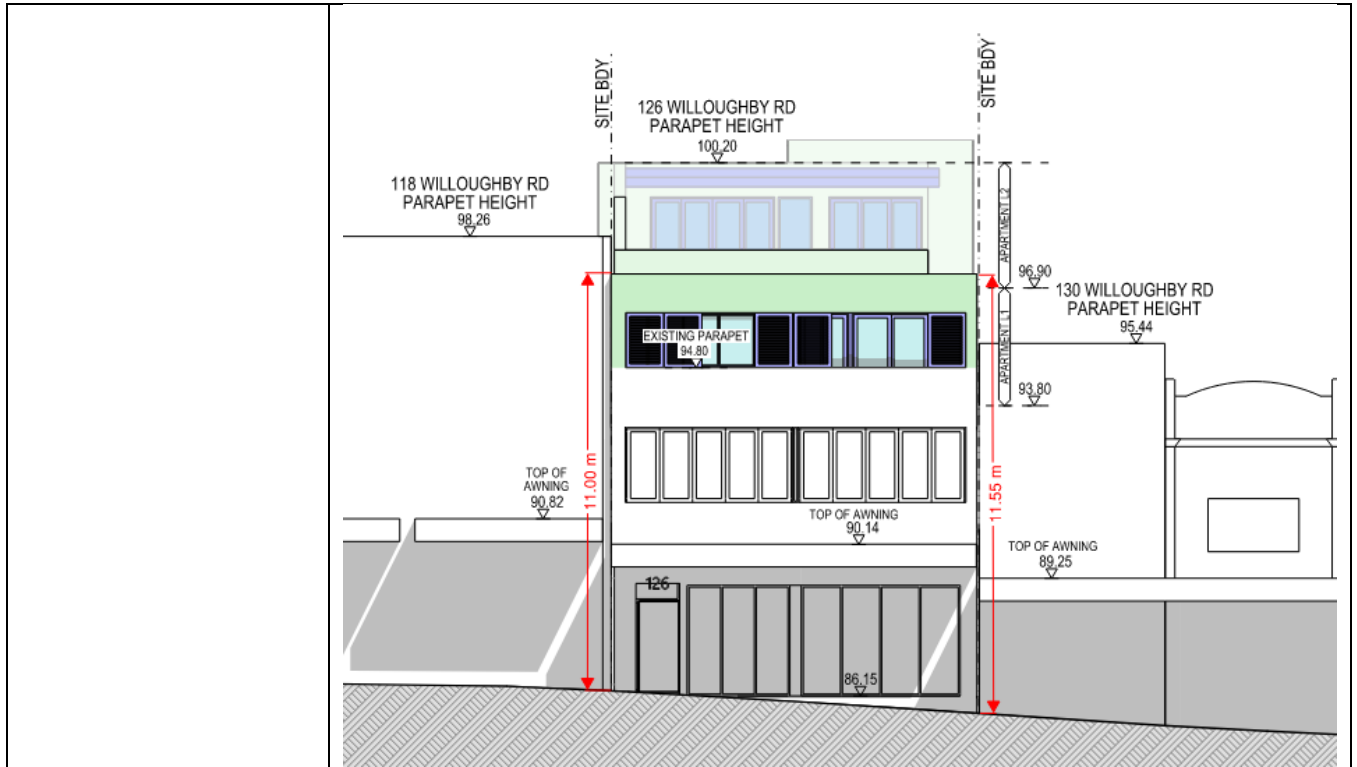


Figure 5: Extract of East Elevation (Source: Into Architecture)

The fourth storey is setback from Willoughby Road by 4.05m to the external face and 2.10m from the balcony edge (refer Figure 6). The setbacks define the podium edge and minimise visibility of the upper storey which is partially screened from view by the parapet.

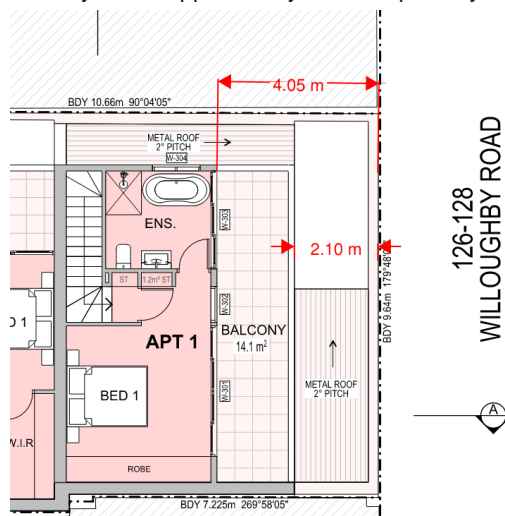

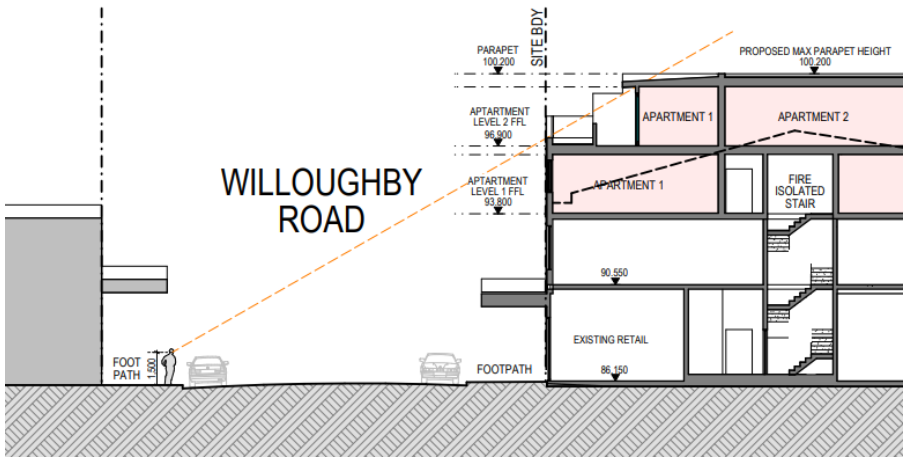


Figure 6: Extract of Level 3 Apartments Upper Plan (Source: Into Architecture)

Clause 4.6 Request - Height of Building

OBJECTIVE	DISCUSSION
<p>(b) to promote the retention and, if appropriate, sharing of existing views,</p>	<p>There is an east facing outlook over the site towards Willoughby Road from 31 Albany Street. This is a typical urban outlook and does not constitute a view. The proposed development does not impact any views.</p>
<p>e) to ensure compatibility between development, particularly at zone boundaries,</p>	<p>The site is located within the limited portion of Willoughby Rd, that adjoins land to the west and north with height controls of 16m and 26m. Notably, the neighbouring site to the rear at 31 Albany Street has a height of 30.06m which exceeds the permissible height by 4.06m.</p> <p>The St Leonards and Crows Nest 2036 plan identifies the importance of transitioning between development of different forms and densities. The proposed development will provide a transition between the lower height (10m) development on Willoughby Road to the taller development (26m) to the west and create greater compatibility between development addressing Hume Lane.</p>  <p><i>Figure 7: View from intersection of Willoughby Road and Albany Street</i></p> <p>The proposed development is also compatible with the lower scale development on Willoughby Road as:</p> <ul style="list-style-type: none"> • The proposal presents a three-storey podium to Willoughby Road, matching the scale of the adjoining developments and presenting a human scale building to the public domain. • The podium height responds to the topography of Willoughby Road, sitting below the building to the south and above that to the north, creating a stepping in the parapet line.

Clause 4.6 Request - Height of Building

OBJECTIVE	DISCUSSION
	<ul style="list-style-type: none"> The fourth storey is setback from the front boundary and is largely screened from view by the proposed podium parapet and No. 116 Willoughby Road, when viewed from east and south (refer Figure 8).  <p><i>Figure 8: Sightlines from Willoughby Road (Source: Into Architecture)</i></p> <ul style="list-style-type: none"> The variation to the height of building development standard does not result in any adverse shadowing impact on Willoughby Road. The carefully selected materials, colours and finishes responds to the streetscape in accordance with the existing and future character of the area.
<p>(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,</p>	<p>The St Leonards / Crows Nest Planning Area Character Statement within the NSDCP provides the following commentary in regard to the character of Willoughby Road:</p> <p><i>“Crows Nest Town Centre is smaller in scale in comparison to St Leonards, with 19th Century, two storey shopfront parapets along Willoughby Road and the Pacific Highway”.</i></p> <p>The St Leonards and Crows Nest 2036 plan identifies the importance of transitioning between development of different forms and densities. Development in the immediate vicinity of the site is not uniform and offers an opportunity to provide a transition towards existing and permissible higher densities to the north, west and east.</p> <p>The scale and character of development on Willoughby Road varies between Falcon and Albany Streets. Its southern end has a uniform and main streetscape character with traditional shop fronts. The character changes as you move northward with the higher density developments on Willoughby Road and Albany Street becoming part of the visual character.</p> <p>The design similarly responds to existing adjoining development on Willoughby Road. The proposal complements the existing pattern of development by providing a three-storey</p>

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OBJECTIVE	DISCUSSION
	<p>podium to the street. The parapet of the façade mediates between the height of adjoining properties, being lower than the property to south and higher than that to the north, creating a stepping pattern which is characteristic feature of the streetscape. This design solution is also consistent with the St Leonards / Crows Nest Planning Area Character Statement within the North Sydney Development Control Plan (NSDCP). The proposed parapet wall height will reinforce the rhythm of the streetscape parapet line as heights step down the street frontage, retaining the character when viewed from the southern portion of Willoughby Road. This relationship is outlined in Figure 9 below.</p> <div data-bbox="496 842 1513 1406" data-label="Image"> </div> <p><i>Figure 9: Photomontage Image 1 – Stepping Façade (Source: Into Architecture)</i></p> <p>The scale and density of developments to the north and west of the site is variable. The permitted height ranges from 13m – 26m, with a 30.06m building adjoining the site. The proposal is considered to be consistent with the character of the area given the following:</p> <ul style="list-style-type: none"> • The proposal retains the ground level retail interface, maintaining activation of the site at street level and supporting the existing street edge. • The proposal maintains the existing commercial development at Level 1, supporting the vitality of the locality and retaining accessible services for residents. • The three-storey podium maintains a suitable scale to the street and aligns with existing neighbouring built forms. It similarly steps with the topography of the Willoughby Road and provides a recessive fourth storey. • The proposed building form of a podium level with setback upper floor is consistent with that sought by the character statement.

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A catalyst for this change in development scale and densities in Crows Nest is the Crows Nest Metro Station Link. As outlined in the St Leonards Crows Nest 2036 Plan, land surrounding the Crows Nest Metro Station Link

“provides logical place for increased density delivered as transit-oriented development and will take advantage of the precinct’s increased accessibility to deliver more jobs”.

The Metro Link is located approximately 80m west of the site on the corner of Hume Street and Clarke Street. It will offer increased connectivity and accessibility for the locality, with expected completion to be in 2024. The context of the Metro Station is provided below.

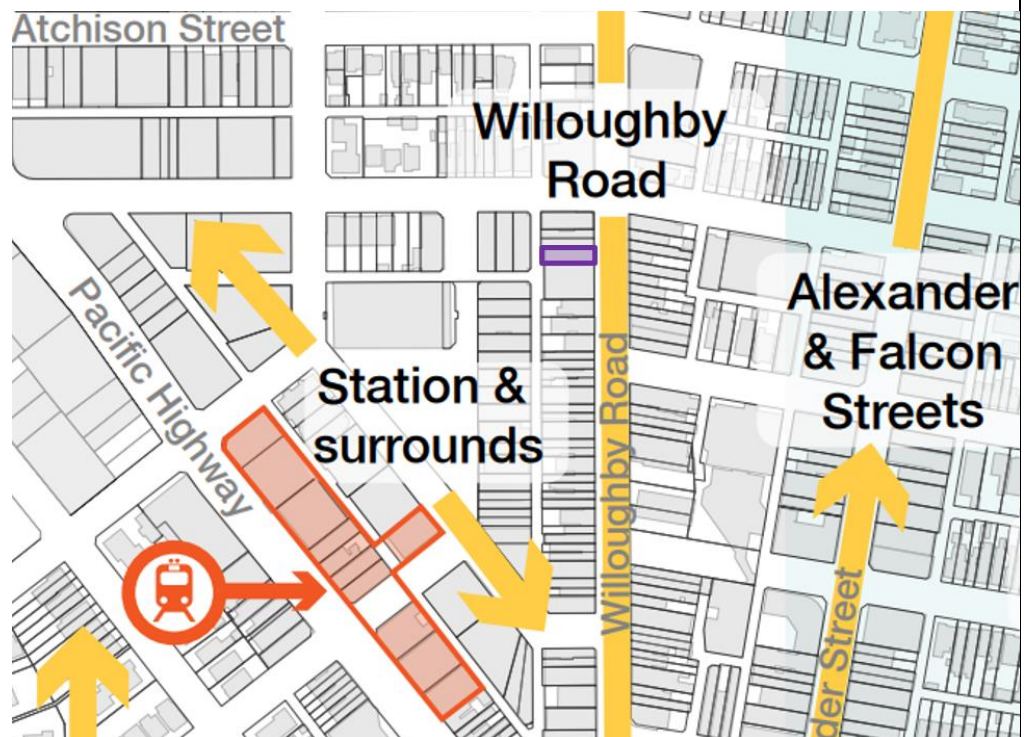


Figure 10: Local context of Crows Nest Metro Station, site outlined purple (Source: North Sydney Council, annotated by GYDE)

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Figure 11: Construction of Crows Nest Metro Station, 80m west, image taken from the roof of the site.

Development to the south and west along the Pacific Highway is increasing in scale, with a number of new high density mixed and residential developments. For instance, St Leonards Square which is located approximately 280m to the west of the site which provides a high-density development within a few hundred metres of St Leonards Train Station and adjacent the new Metro Link. This development is visible from Hume Lane to the rear of the subject site, indicated in Figure 12 below.



Figure 12: St Leonards Square, approximately 280m from the site.

In regard to the immediate context, 31 Albany Street to the rear of the site, is an eight-storey mixed use development with a height of 30.06m. This development exceeds the 26m height limit applicable to the site by 4.06m (approved under DA327/16/2). The mixed-use development at 101 Willoughby Road, to the northeast of the site, presents a part four – part

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six built form with a total height of 27.02m (as modified under DA 327/15/5). These developments are depicted in Figure 13 and Figure 14 below.



Figure 13: Mixed use development at 101 Willoughby Road, adjacent the site to the northeast



Figure 14: Eight storey mixed-use development to the rear of the site at 31 Albany Street (Source: Google Maps)

The rear of the development provides a four-storey built form when viewed from Hume Lane. Levels 3 and 4 of the proposal are recessed 2.40m from the boundary, to align with the neighbouring built form at 118-124 Willoughby Road (south).


This context is provided in Figure 15 below.



Figure 15: Hume Lane streetscape, indicating existing 4-storey character (Source: Google Maps)

The adjacent development at 31 Albany Street has a 4-storey brick podium to Hume Lane with the upper level residential setback to define the podium. The proposed development similarly establishes a 4-storey scale at the rear, with a podium established by the upper-level

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OBJECTIVE	DISCUSSION
	<p>setbacks, to provide an appropriate scale and density responsive to existing surrounding development. The context of 31 Albany Street and the subject site is provided in Figure 16.</p>  <p><i>Figure 16: Rear of 31 Albany Street, from Hume Lane (Source: Google Maps)</i></p> <p>The rear of the development provides a suitable scale that promotes the character of the area. In addition, establishes a suitable pedestrian scale along Hume Lane when read from the public domain.</p>
<p>(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,</p>	<p>The proposed development has been designed to protect the solar access to existing nearby dwellings and the street.</p> <p>The adjoining site at 118-124 Willoughby Road (south) will be subject to additional shadows that will be cast over the northern portion of the non-trafficable rooftop. There is no change to the solar access to existing private open space, balcony areas or windows of this development.</p> <p>Shadows will fall on the adjoining northern orientated void of 118-124 Willoughby Road. This void provides natural light for bathrooms of residential units and does not provide amenity for primary rooms within the development. Solar access living rooms and bedrooms will remain</p>

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as existing. Extracts of shadow diagrams, prepared by Into Architecture, have been provided in Figure 17 – Figure 19 below.



Figure 17: Proposed shadows, June 21 9:00am (Source: Into Architecture)

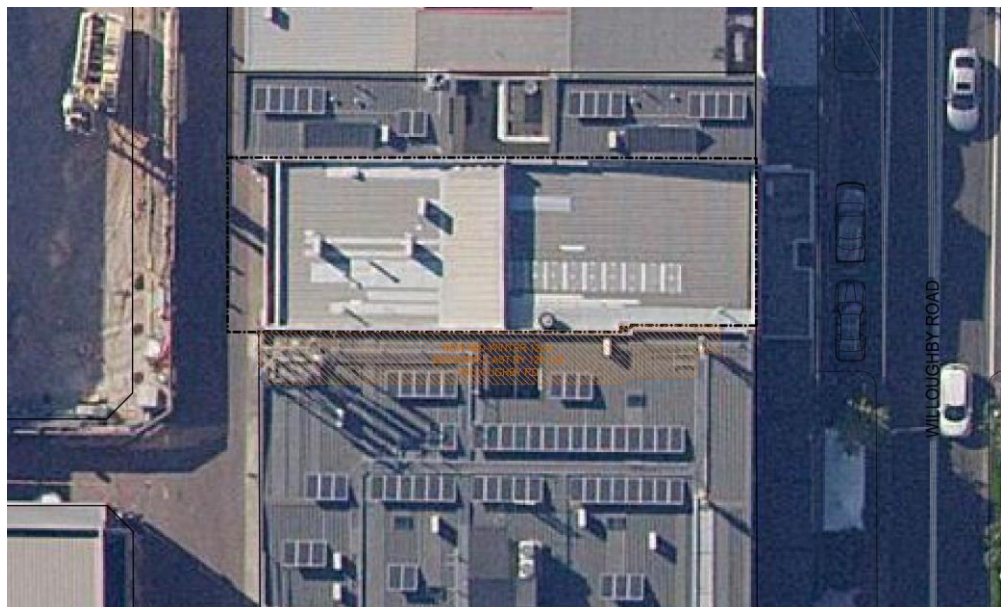

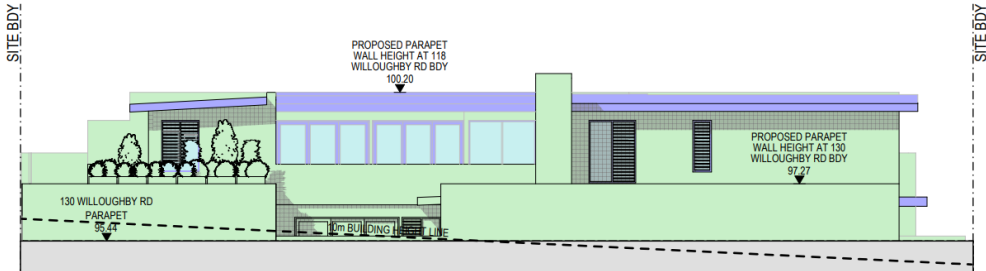
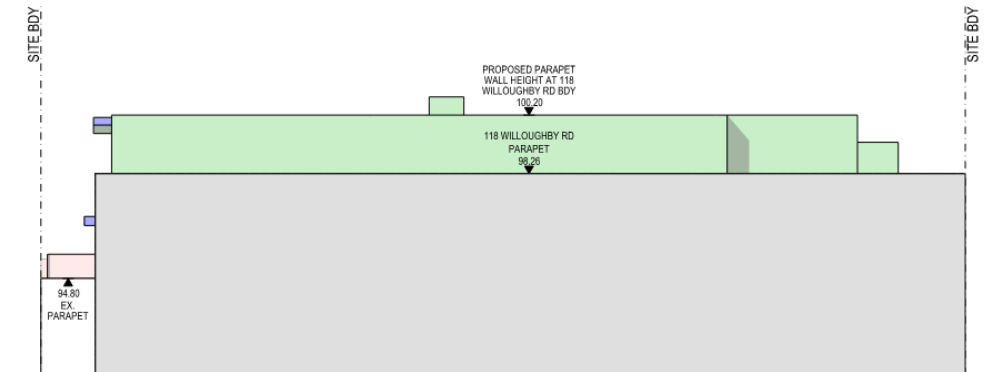


Figure 18: Proposed shadows, June 21 12:00pm (Source: Into Architecture)

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OBJECTIVE	DISCUSSION
	 <p data-bbox="497 1155 1299 1184"><i>Figure 19: Proposed shadows, June 21 3:00pm (Source: Into Architecture)</i></p> <p data-bbox="497 1218 1437 1314">Sunlight access to Willoughby Road to the east and Hume Lane to the west is also unaffected by the proposed development. There are no additional shadows cast into the public domain.</p>
<p data-bbox="172 1350 472 1514">(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,</p>	<p data-bbox="497 1350 1484 1447">The portions of the proposed development which contravene the height standard do not cause any unacceptable privacy impacts to residents of existing dwellings or potential future development.</p> <p data-bbox="497 1458 1493 1834">Apartment 1 is located on levels 3 and 4 and addresses Willoughby Road. Level 3 includes a balcony within the northeast corner of the site, that is accessed via the Living Room. The balcony has solid side walls to provide acoustic privacy for adjoining residential development and limit visual sightlines over the side boundary. Level 4 has a private balcony which serves Bedroom 1. It is setback 2.3m from the front boundary and 1.5m from the northern side boundary. Landscaped planters have been added to the northern boundary to further reduce any visual impacts. It provides adequate building separation to development on the eastern side of Willoughby Road with a distance of 17m to the footpath and 20m to the external face of adjacent development. Given these areas are predominately orientated over the front boundary, the separation is considered sufficient in reducing overlooking on side boundaries and protecting visual privacy.</p> <p data-bbox="497 1845 1485 1977">Apartment 2 is located within the central portion of the development. The external wall of the Living Room and Bedroom 1 on Level 4 are setback 3.5m from the north side boundary and the balcony is setback by 1.3m. Opportunities are available for visual screening to be provided along the boundary line in the event of future neighbouring development. Privacy</p>

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OBJECTIVE	DISCUSSION
	<p>louvers are also provided for north orientated windows for the ensuite of Apartment 1 and bedroom 2 for Apartment 3, as outlined in Figure 20 below.</p>  <p><i>Figure 20: Extract of north elevation plan (Source: Into Architecture)</i></p> <p>A minimum building separation of 6m is provided between the rear balconies of Apartments 3 and 4 on Level 3 and the adjacent residential development at 31 Albany Street. The rear external face of Level 3 is setback 8.3m, which includes a 2.3m set back from the Hume Lane frontage. The Level 4 component is likewise setback 8.3m from development to the rear, however, the windows on this elevation serve bedrooms with the living areas being located on the level below. The proposes setbacks provide suitable privacy given the context.</p> <p>A blank wall is provided on the southern frontage (adjoining 118 Willoughby Road) to limit sightlines over this side boundary and to not prohibit future redevelopment of the adjoining site.</p>  <p><i>Figure 21: Extract of south elevation plan (Source: Into Architecture)</i></p>
<p>(g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4</p>	<p>The site is located in Zone B4 Mixed Use zone and therefore objective (g) is not relevant to this proposal.</p>



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OBJECTIVE	DISCUSSION
Environmental Living.	

As demonstrated in Table 1 above, the objectives of the Height of building development standard are achieved notwithstanding the proposed variation.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31], therefore, compliance with the Height of building development standard is demonstrated to be unreasonable or unnecessary and the requirements of clause 4.6(3)(a) have been met on this way alone.

For the sake of completeness, the other recognised ways are considered as follows.

4.2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;

The underlying objective or purpose is relevant to the development and therefore is not relied upon.

4.3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;

This basis is not relied upon.

4.4. 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;

The standard has not been abandoned by Council actions in this case and so this reason is not relied upon.

4.5. The zoning of the land is unreasonable or inappropriate.

The zoning of the land is reasonable and appropriate and is therefore not relied upon.



5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The environmental planning grounds to justify the departure of the Height of Building standard are as follows:

- **Object 1.3(a) of the EP&A Act** - The proposed variation to the height of building development standard assists in promoting "the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources" as it enables the provision of high-quality well-located housing, near to existing commercial, community and transport services.

The site is within the transitioning Crows Nest Local Centre and will deliver housing the supports North Sydney's growing and changing population, in accordance with Local Planning Priority 1 (Diverse housing options that meet the needs of the North Sydney community) of the North Sydney Local Strategic Planning Statement (LSPS). The soon to be completed Crows Nest Metro will enhance access to public transport, service and amenity for future residents. State Government investment through the Metro will inevitably lead to future city shaping through increased investment in the local centre.

A requirement to comply with the height of building control would result in the loss of housing opportunity within a transitioning locality.
- **Object 1.3(c) and 1.3(d) of the EP&A Act** - The development assists in promoting "*the delivery and maintenance of affordable housing*" and "*the orderly and economic use of land*" by establishing a mixed-use development with the addition of a residential component, which is permissible with consent in the B4 Zone. It is well designed, comprises a suitable built form and is compatible with the neighbouring developments and character of the area. The proposal similarly retains existing private investment (ground floor retail and first floor commercial use) to support the vitality of the local centre and ongoing orderly / economic use of the land
- **Object 1.3(g) of the EP&A Act** - The proposed variation to the height of building development standard promotes "good design and amenity of the built environment". The proposed building (inclusive of the proposed height variation) is a skilful architectural response to the site and context, providing a height, bulk and scale which is consistent with the topographic landscape of Willoughby Road, prevailing building heights and desired future character of the locality.

The proposed building is carefully massed to break up its bulk and scale. It has established a three storey podium and features a mix of materials and architectural treatments to make it visually sympathetic to neighbouring buildings.
- Importantly, the variation to the height of building development standard does not result in any unreasonable amenity impacts with the adjoining properties maintaining a high level of solar access, visual and aural privacy;

For the reasons contained in this application there are sufficient environmental grounds to justify the variation to the development standard, as required in Clause 4.6(3)(b).



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6. PUBLIC INTEREST

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. This is required by clause 4.6(4)(a)(ii) of the LEP.

In section 4 it was demonstrated that the proposed development overall achieves the objectives of the development standard notwithstanding the variation of the development standard.

The table below considers whether the proposal is also consistent with the objectives of the zone.

Table 2 Consistency with Zone B4 Mixed Use

OBJECTIVES OF ZONE B4 MIXED USE	DISCUSSION
To provide a mixture of compatible land uses.	The proposal establishes a compatible mix of land uses that are permitted with consent in the B4 Mixed Use zone (commercial and residential). The residential component will support the vitality of surrounding business and recreational 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.	The proposed development provides the integration of office, retail, and residential uses within a Mixed-Use development. It is within an accessible location, being located approximately 700m east of St Leonard Train Station. The Crows Nest Metro Station is under construction 80m west of the site and anticipated to be open to the public in 2024. It supports transport patronage by being within walking distance to the site and promotes increase accessibility / connectivity for the Crows Nest locality.
To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.	The proposal contributes positively to the existing Crows Nest Local Centre by establishing a shop top housing development, amongst compatible land uses. The residential component has been designed in accordance with the criteria of the Apartment Design Guide (ADG) to provide a high level of residential amenity.
To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.	The proposal retains the existing ground floor commercial use and office uses above on the Mezzanine and Level 1. The proposed addition of four (4) residential apartments are located above on Levels 2 & 3 to establish a mixed-use development, which is permitted with consent in the B4 Zone and compatible with neighbouring development.

As demonstrated in Table 2, the proposal is consistent with the objectives of the zone and in Section 4 it was demonstrated that the proposal is consistent with the objectives of the development standard. According to clause 4.6(4)(a)(ii), therefore, the proposal is in the public interest.



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7. STATE OR REGIONAL ENVIRONMENTAL PLANNING

This section considers whether contravention of the development standard raises any matter of significance for State or regional environmental planning, the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by clause 4.6(5).

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

As demonstrated already, the proposal is consistent with the objectives of the zone and the objectives of the development standard and in our opinion, there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.



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8. CONCLUSION

This submission requests a variation, under clause 4.6 of the *North Sydney Local Environmental Plan 2013*, to the Height of building development standard and demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- The development achieves the objectives of the development standard (Webb Test 1) and is consistent with the objectives of the B4 Mixed Use Zone;
- There are sufficient environmental planning grounds to justify the contravention;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

The consent authority can be satisfied to the above and that the development achieves the objectives of the development standard and is consistent with the objectives of the B4 Mixed Use Zone notwithstanding non-compliance with the height of buildings standard and is in the public interest. The proposed development facilitates additional housing opportunities within a transitioning locality, and responds to the emerging density delivered by the Crows Nest Metro Station.

The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 18-003.

On this basis, therefore, it is appropriate to exercise the flexibility provided by clause 4.6 in the circumstances of this application.