



**KU-RING-GAI LOCAL PLANNING PANEL MEETING
TO BE HELD ON MONDAY, 17 NOVEMBER 2025 AT 11:00 AM
BY ZOOM CONFERENCING**

Items GB.1 and GB.2 will be determined offline as these items do not fit the criteria for a public meeting (it is not contentious – does not have more than 10 objectors). These items will be determined and published on Council's website after 48 hours of the closing of the determination meeting.

AGENDA

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NOTE: For Full Details, See Council's Website –
www.krg.nsw.gov.au under the link to business papers

APOLOGIES

DECLARATIONS OF INTEREST

GENERAL BUSINESS

- GB.1 **21 Mahratta Avenue Wahroonga - Alterations and Additions to the Existing Principal Dwelling House** **3**

File: EDA0438/25

Alterations and additions to the existing principal dwelling house.

RECOMMENDATION

THAT the Ku-ring-gai Local Planning Panel, exercising the functions of Ku-ring-gai Council, as the consent authority, pursuant to Section 4.16 of the Environment Planning and Assessment Act 1979, refuse development consent to eDA0438/25 for alterations and additions to the existing principal dwelling house on land at 21 Mahratta Avenue Wahroonga, for the reasons provided in the Development Assessment Report (**Attachment 1**).

- GB.2 **1 Russell Avenue, Lindfield - Demolition of existing structures and construction of a residential flat building with basement carparking and associated works** **81**

File: EDA0313/25

Demolition of existing dwelling and construction of a residential flat building with basement car parking and associated works.

RECOMMENDATION

THAT the Ku-ring-gai Local Planning Panel exercising the functions of Ku-ring-gai Council, as the consent authority, pursuant to Section 4.16 of the Environment Planning and Assessment Act 1979, refuse development consent to eDA0313/25 for demolition of existing dwelling and construction of a residential flat building with basement car parking and associated works on land at 1 Russell Avenue Lindfield, for the reasons provided in the Development Assessment Report (**Attachment A1**).

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DEVELOPMENT APPLICATION

SUMMARY SHEET

REPORT TITLE:	21 MAHRATTA AVENUE WAHROONGA - ALTERATIONS AND ADDITIONS TO THE EXISTING PRINCIPAL DWELLING HOUSE
ITEM/AGENDA NO:	GB.1

APPLICATION NO:	eDA0438/25
ADDRESS:	21 Mahratta Avenue Wahroonga
WARD:	Comenarra
DESCRIPTION OF PROPOSAL:	Alterations and additions to the existing principal dwelling house
APPLICANT:	WPP Pty Ltd
OWNER:	Mr AJ Noble, Ms SSF Lee
DATE LODGED:	18 August 2025
SUBMISSIONS:	No submissions received
ASSESSMENT OFFICER:	Asmaa Rabiee
RECOMMENDATION:	Refusal

KLPP REFERRAL CRITERION:	Departure from a development standard in excess of 10%.
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PURPOSE OF REPORT

To determine Development Application No eDA0438/25 for 21 Mahratta Avenue, Wahroonga.

This application is reported to the Ku-ring-gai Local Planning Panel for determination as it proposes a departure from a development standard in excess of 10% in accordance with the Minister's S 9.1 Local Planning Panels Direction.

RECOMMENDATION

THAT the Ku-ring-gai Local Planning Panel, exercising the functions of Ku-ring-gai Council, as the consent authority, pursuant to Section 4.16 of the Environment Planning and Assessment Act 1979, refuse development consent to eDA0438/25 for alterations and additions to the existing principal dwelling house on land at 21 Mahratta Avenue Wahroonga, for the reasons provided in the Development Assessment Report (**Attachment 1**).

Asmaa Rabiee
Executive Assessment Officer

Jonathan Goodwill
Team Leader Development Assessment

Shaun Garland
Acting Director Development and Regulation

Attachments:	A1	Development Assessment Report	2025/311425
	A2	Location Sketch	2025/346297
	A3	Zoning Sketch	2025/346295
	A4	Architectural Plans	2025/255249
	A5	Clause 4.6 Variation Request	2025/255252
	A6	Statement of Environment Effects	2025/255246

DEVELOPMENT APPLICATION

ASSESSMENT REPORT

REPORT TITLE	21 Mahratta Avenue Wahroonga - Alterations and additions to the existing dwelling house
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APPLICATION NO	eDA0438/25
PROPERTY DETAILS	21 Mahratta Avenue Wahroonga Lot 4 DP 18640 853.60m ² R2 Low Density Residential
WARD	Comenarra
PROPOSAL/PURPOSE	Alterations and additions to the existing dwelling house
TYPE OF DEVELOPMENT	Local
APPLICANT	WPP Pty Ltd
OWNER	Mr AJ Noble, Ms SSF Lee
DATE LODGED	18 August 2025
RECOMMENDATION	Refusal

PURPOSE OF REPORT

To determine Development Application No eDA0438/25 for alterations and additions to the existing dwelling house.

This application is reported to the Ku-ring-gai Local Planning Panel for determination in accordance with the Minister's Section 9.1 Local Planning Panels Direction as it proposes a departure from a development standard in excess of 10%.

INTEGRATED PLANNING AND REPORTING

Places, Spaces & Infrastructure

Community Strategic Plan Long Term Objective	Delivery Program Term Achievement	Operational Plan Task
P2.1 A robust planning framework is in place to deliver quality design outcomes and maintain the identity and character of Ku-ring-gai.	Applications are assessed in accordance with state and local plans.	Assessments are of a high quality, accurate and consider all relevant legislative requirements.

EXECUTIVE SUMMARY

Issues	Floor Space Ratio (FSR)
Submissions	Nil
Land and Environment Court	N/A
Recommendation	Refusal

HISTORY

Site history

The site has a history of residential use.

Previous applications history

A Pre-DA consultation was not undertaken with Council prior to the lodgement of this Development Application.

Council's records show a history of relevant applications relating to the site as follows:

Type	Application	Description	Decision	Date
DA	DA0149/15	Demolish existing structures and construct new dwelling with secondary occupancy	Approved	29/4/2015
Section 96	MOD0049/16	Modification to DA0149/15 proposing to remove Conditions 19 and 20 relating to external service pipes and noise from mechanical plant	Approved	15/4/2016

Current Development Application History

Date	Action
18 August 2025	Application lodged.
29 August 2025	The application was notified to neighbouring property owners for a period of 14 days. No submissions were received.
29 September 2025	Council sent a letter to the applicant advising that the application is unsatisfactory for the following reasons: i. insufficient POS and adverse amenity impact The letter confirmed that, when the relevant portion of the garage is included in the GFA calculation in accordance with the definition under the KLEP and the applicable KDCP controls, the proposal results in a variation to the FSR development standard exceeding 10% and the DA must be determined by the KLPP.
2 October 2025	The applicant submitted a response to Council's letter.

THE SITE



Figure 1: Aerial photograph of the subject site highlighted (Source: Geocortex, 2025)

Site description

The subject site is described as Lot 4 in DP 18640 and is known as No. 21 Mahratta Avenue, Wahroonga. The site is at the head of a small cul-de-sac section of Mahratta Avenue. The site is irregular in shape with an arced street frontage of 12.09 metres, an eastern boundary of 41.22 metres, a southern rear boundary of 45.72 metres and a western boundary of 29.12 metres. The site has an area of 853.60m² and is positioned on the high side of Mahratta Avenue. The site falls approximately 4.3 metres in a diagonal direction from the higher south-eastern corner to the lower north-western corner at its street frontage.

The site contains an existing two-storey dwelling, an attached secondary dwelling, and an attached double and single garage, all approved under DA0149/15.



Figure 2: Existing building as viewed from Mahratta Avenue



Figure 3: Existing outdoor covered area



Figure 4: Existing lawn area adjacent to the outdoor covered area

Constraint:	Application:
Visual character study category	Not categorised on map.
Easements/rights of way	No
Heritage Item - Local	No
Heritage Item - State	No
Heritage conservation area	No
Within 100 metres of a heritage item	Yes – Heritage Items 1922 (58 Fox Valley Road), 1923 (62 Fox Valley Road) and 1926 (97 Fox Valley Road).
Bush fire prone land	No
Natural Resources Biodiversity	Yes – Area of Biodiversity Significance
Natural Resources Greenweb	Yes – Canopy Remnant & Biodiversity Corridors and Consolidation & Support for Core Biodiversity
Natural Resources Riparian	No
Within 25m of Urban Bushland	No
Contaminated land	No

Surrounding development

The predominant character surrounding the development site is one and two-storey residential dwellings houses on large, landscaped allotments. To the west of the site is a public pedestrian pathway, Mahratta Walk, which provides access between Fox Valley Road and Mahratta Avenue.

THE PROPOSAL

The application proposes the following alterations and additions:

- erecting a full-height wall to the southern elevation of the existing outdoor area;
- installing glass sliding stacker doors to the eastern and northern perimeter of the existing outdoor area;
- replacing glass sliding doors between the existing principal dwelling house and the existing outdoor area with new doors;
- removing the existing steps to the southern elevation and replacing them with steps on the eastern elevation; and

- installing a transparent screen above the existing wall near the BBQ.

The above works enclose the outdoor area.

CONSULTATION

Community

In accordance with Appendix 1 of the Ku-ring-gai Community Participation Plan, owners of surrounding properties were given notice of the application. In response, no submissions were received.

Referrals

No internal or external referrals were required for this application.

STATUTORY PROVISIONS

State Environmental Planning Policy (Resilience and Hazards) 2021 - Chapter 4 Remediation of land

The provisions of Chapter 4 require Council to consider the potential for a site to be contaminated. The subject site has a history of residential use and as such, it is unlikely to contain any contamination and further investigation is not warranted in this case.

State Environmental Planning Policy (Biodiversity & Conservation) 2021 - Chapter 6 Water Catchments

The provisions of Clause 6.6 'Water quality and quantity' and Clause 6.7 'Aquatic ecology' have been considered in the assessment of the proposal. The proposal is consistent with these provisions as the existing roof catchment area is unchanged and runoff from the new steps will be directed to landscaped areas resulting in minimal and acceptable impacts.

Draft State Environmental Planning Policy (Remediation of Land)

The draft SEPP is a relevant matter for consideration as it is an Environmental Planning Instrument that has been placed on exhibition. New provisions will be added in the SEPP to:

- *require all remediation work that is to be carried out without development consent, to be reviewed and certified by a certified contaminated land consultant*
- *categorise remediation work based on the scale, risk and complexity of the work*
- *require environmental management plans relating to post-remediation management of sites or ongoing operation, maintenance and management of on-site remediation measures (such as a containment cell) to be provided to Council*

The site is unlikely to contain any contamination, and further investigation is not warranted in this case.

Ku-ring-gai Local Environmental Plan 2015

Part 1 Preliminary

Clause 1.2 Aims of the Plan

The proposal has been considered against the relevant aims of the KLEP 2015. The proposal is inconsistent with the following aims:

- *to facilitate development that compliments and enhances amenity for residential uses and public spaces,*
- *to protect the character of low-density residential areas and the special aesthetic values of land in the Ku-ring-gai area.*

The proposal represents an overdevelopment of the site that is incompatible with the established low-density residential character of the area. The excessive floor space ratio is inconsistent with the scale and density expected within low-density residential zones.

Part 2 Permitted or prohibited development

Clauses 2.1 – 2.3 Zoning & permissibility

The site is zoned R2 Low Density Residential under the KLEP 2015. The proposed alterations and additions are for the purposes of the existing dwelling house land use, which is a permissible form of development within the zone.

The objectives of this zone are:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for housing that is compatible with the existing environmental and built character of Ku-ring-gai.*

The proposed development is inconsistent with the third objective, as it results in the dwelling having excessive density that is incompatible with the low-density residential context due to the non-compliant floor space ratio.

Clause 2.7 Demolition requires development consent

Demolition works are proposed as part of the application. The demolition works are acceptable.

Part 4 Principal development standards

KLEP 2015 COMPLIANCE TABLE – Development standards		
Development standard	Proposed	Complies
CI 4.4 - Floor space ratio (FSR): Subclause 2A Calculation 0.39:1 Gross Floor Area = 333.4m ²	382.5m ² (0.448:1)	NO

Clause 4.4 Floor space ratio:

The applicant has submitted GFA diagrams indicating that the proposed development has a GFA of 355m², which equates to an FSR of 0.415:1. The submitted diagrams exclude the entire area allocated to the existing attached triple garage (**Attachment 4**).

In accordance with the definition of Gross Floor Area under the KLEP 2015:

Gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and excludes car parking to meet any requirements of the consent authority (including access to that car parking).

Control 6 of Part 4B.2 of KDCP states:

Internal access to car parking and the required car parking area is to be no greater than 31m². Car parking and access to that car parking, exceeding the requirements of this control will not be excluded from the gross floor area as defined in KLEP 2015. The area of garage in excess of 31m² is excluded from the floor space calculation.

It is further noted that Control 1 of Part 5B.2 of the KDCP requires that:

Car parking for secondary dwellings is to be limited to an open hardstand area only (minimum dimensions of 2.5m x 5.4m). No garage or carport structure is permitted.

This control applied at the time of assessment of original consent for the existing dwelling house and secondary dwelling - DA0149/15. The assessment report for DA0149/15 expressly states:

"No car parking has been provided for the secondary dwelling."

This confirms that the third garage car space was not approved to be used for the secondary dwelling parking. Accordingly, only 31m² of the existing triple garage is to be excluded from the GFA calculation. On this basis, the proposed development results in a total GFA of 382.5m², which exceeds the maximum FSR development standard by 14.72% or 49.1m².

The applicant has submitted a Clause 4.6 to support the variation, however, this request incorrectly relies on the FSR calculation of 0.415:1. Council issued a letter to the applicant on 29 September 2025, advising the application was unsatisfactory, partly in relation to this issue. The letter identified the inconsistency in the GFA calculation and advised the applicant that due to the degree of variation to the FSR development standard, the application was required to be determined by the KLPP, as per the Minister's Section 9.1 Local Planning Panels Direction.

As a result of the above, the discussion below regarding the submitted Clause 4.6 written request, when referring to the applicant's response, cites the incorrect FSR of 0.415:1 and a 6.4% variation. Council does not raise this inconsistency as an issue when responding to the applicant's arguments in the following section.

Clause 4.6 Exceptions to development standards

The proposed development breaches the FSR development standard outlined above. In support of the variation the applicant has made a submission pursuant to Clause 4.6 seeking to vary that development standard (**Attachment 5**). Clause 4.6 provides flexibility in applying certain development standards, and an assessment of the request to vary the development standard is provided below:

(1) *The objectives of this clause are as follows—*

- a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

- a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Subclause 4.6(3)(a) requires an applicant submit a written request demonstrating that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. Neither the *EPA Act* nor the LEP provides a definition of the terms “*unreasonable*” or “*unnecessary*.” These are limiting words to some extent in subclause (3)(a) in that what is “unreasonable or unnecessary” must relate to “the circumstances of the case”. The circumstances of the case are not defined suggesting a wide scope in the meaning of that phrase (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]).

The Court’s decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827 provides guidance by identifying five separate methods through which an applicant may demonstrate that compliance with a development standard is unreasonable or unnecessary for the purpose of a Clause 4.6 variation request.

The applicant relies on the first method established in *Wehbe v Pittwater Council* [2007] NSWLEC 827, asserting that the objectives of Clause 4.4 are achieved notwithstanding the non-compliance with Clause 4.4(1) of the KLEP 2015. In support of this position, the applicant provides the following response to each objective of the FSR development standards (summarised below):

- (a) to enable development with a built form and density that is compatible with the size of the land to be developed, its environmental constraints and its contextual relationship,*
 - *The proposed alterations will not change the existing building envelope, roofline, or height.*
 - *The proposed works are limited to enclosing the outdoor area with glass sliding doors and a full-height wall.*
 - *The development is compatible with the site’s environmental*

constraints, with no additional impacts anticipated.

- The development is consistent with the surrounding context and will not adversely impact nearby land uses or residential amenity.

(b) to provide for floor space ratios compatible with a range of uses,

- The proposal seeks to enclose an existing outdoor area (22m²), increasing the GFA from 333m² to 355m². This results in a floor space ratio (FSR) increase from 0.39:1 to 0.415:1, exceeding the KLEP standard by 0.025:1 (approx. 6.4%).
- The exceedance relates to a numerical standard only and does not improve design outcomes if strictly applied.
- The works remain within the existing building envelope and will not increase the bulk or scale of the dwelling.
- The increase in GFA will not result in a discernible intensification above the current use of the land.
- The development achieves the underlying purpose of the standard.

(c) to ensure that development density is appropriate for the scale of the different centres within Ku-ring-gai,

- The site is not located within a designated 'centre' under the Ku-ring-gai LEP.
- The proposal is consistent with the scale of surrounding low-density residential development.
- The proposal will not change the bulk or scale of the dwelling.

(d) to ensure that development density provides a balanced mix of uses in buildings in the employment and mixed use zones.

- The subject land is not within an employment or mixed-use zone

The applicant's arguments in relation to compliance with the FSR development standard being unreasonable and unnecessary are not accepted for the following reasons:

- In line with the decisions in *Wehbe v Pittwater Council* [2007] NSWLEC 827, the proposal is not considered to meet the first test. The proposed development does not satisfy the first objective of Clause 4.4 of KLEP 2015, as the proposed development density is not compatible with the land size. Further, there are no environmental constraints identified on the site that contribute to the non-compliance with the FSR development standard. The non-compliant FSR is incompatible with the existing character of the R2 Low Density Residential zone.
- The applicant's argument that an absence of impact, of itself, is not a sufficient reason.

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

The second matter required by Subclause 4.6(3)(b), the grounds relied on by the applicant in their submitted Clause 4.6 must be "environmental planning grounds" by their nature. Environmental planning grounds is a phrase of wide generality (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]), as they refer to grounds that relate to the subject

matter, scope and purpose of the EPA Act, including the objects in Section 1.3 of the EPA Act.

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [24] states:

*The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

Environmental planning grounds is not a defined term, however the Land and Environment Court describes this term as grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EPA Act. Environmental planning grounds are not the benefits of carrying out the development or the benefits of breaching the development standard. Environmental planning grounds must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.

The applicant states that the following environmental planning grounds, as detailed in the bullet points, justify contravening the development standard. A merit assessment comment follows each claim:

- *FSR variation allows for improved liveability of the dwelling house. The proposed enclosure of the outdoor area will allow it to be used in all-weather conditions. The enclosure will provide a natural extension of the indoor living areas, and strict compliance with the FSR control would result in a less functional outcome for the occupants.*

The above statement does not constitute an environmental planning ground. It merely describes the benefits of carrying out the development. The statement does not identify any planning grounds or circumstance that necessitates the proposed contravention of the development standard, nor does it provide justification for the variation.

- *FSR variation does not result in an increase in the building envelope, roofline, or height. Both the principal and secondary dwellings are of a bulk and scale consistent with the surrounding locality, and the proposed works will not significantly change the appearance of the development. The alterations are complementary to the varied density and desired future character of the area, and the additional GFA will have no noticeable impact on the amenity of neighbouring properties or the public domain.*

The absence of adverse environmental impacts, or the suggestion that the proposal is

consistent with the existing character, does not in itself constitute a planning ground capable of justifying a contravention of the development standard.

- *FSR variation will not result in any significant material impacts. It will not create additional overshadowing to adjoining dwellings, nor will it give rise to adverse privacy impacts, as the works are confined to the existing outdoor area. When viewed from the street or neighbouring properties, the visual impact will be negligible. Accordingly, the built form and density of the development remain compatible with the site's size, environmental constraints, and surrounding context.*

The above statement does not constitute an environmental planning ground. The absence of material impacts or adverse effects is not in itself, form a planning ground capable of justifying a contravention of the development standard.

The environmental planning grounds advanced by the applicant are not sufficient for the following reasons:

- i) On an environmental planning basis, the existing private open space (POS) for the dwelling is adequate, it is covered, of reasonable size and has a garden outlook. The POS performs its intended function as an area for outdoor recreation. The dwelling also has adequate indoor living spaces which includes an open plan living/kitchen/dining space with an area of 68.5m². The dwelling already provides indoor and outdoor areas of a suitable size to meet the reasonable amenity expectations for a dwelling house in the R2 Low Density Residential zone.
- ii) The applicant has not demonstrated that a nexus exists between the non-compliant FSR and any unique site circumstances that would justify an unavoidable contravention of the standard. The existing dwelling already achieves a balanced and liveable outcome through functional indoor and outdoor areas.

Authority to determine variation

Any variation to a numerical standard that exceeds 10% must be considered by the Ku-ring-gai Local Planning Panel for determination.

Development standards that cannot be varied.

The variation to the development standard is not contrary to the requirements in subclauses (6) or (8) of Clause 4.6.

Part 5 Miscellaneous provisions

Clause 5.10 – Heritage conservation

The subject site does contain a heritage item although it is located within 100 metres of Nos. 58, 62 and 97 Fox Valley Road, which are locally listed heritage items. The proposed alterations will not be visible from the items, which are located to the rear of the subject site. Given the separation and the fact that the proposed works cannot be seen from the nearby items ensures there will be no significant impacts. Council's Heritage Advisor reviewed the application at the time of its allocation and determined that no further heritage assessment was not required given the circumstances.

The proposed works do not affect any known archaeological or Aboriginal objects or Aboriginal places of heritage significance.

Part 6 Additional local provisions

Clause 6.1 – Acid sulphate soils

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. The land is mapped as Class 5 Acid sulfate soils. Development consent is required for works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land. The proposal is not subject to this Clause as the works are more than 500m of adjacent Class 1, 2, 3 or 4 land.

Clause 6.2 – Earthworks

The proposed development will not restrict the existing or future use of the site, adversely impact on neighbouring amenity, the quality of the water table or disturb any known relics.

Clause 6.3 - Biodiversity protection

The site is mapped as land comprising biodiversity significance. The works maintain the existing diversity and condition of native vegetation and habitat.

Clause 6.5- Stormwater and water sensitive urban design

The objective of this clause is to avoid or minimise the adverse impacts of urban stormwater on the land on which development is to be carried out, adjoining properties, native bushland, waterways and groundwater systems. The proposed works do not require any changes to the existing stormwater design of the site, consequently the development remains consistent with this objective.

Ku-ring-gai Development Control Plan

Sections of the KDCP relevant to the proposal are considered below.

The table below addresses the assessment criteria contained under Section A, Part 2 – **Site Analysis**.

DCP COMPLIANCE TABLE SECTION A - Part 2: Site analysis		
Development control	Proposed	Complies
Part 2 Site Analysis		
Development applications are to contain a site analysis	No site analysis plan was submitted but the information provided on the site plan and Statement of Environmental Effects is satisfactory for the purposes of assessment.	YES

The table below addresses the assessment criteria contained under Section A Part 4 – **Dwelling Houses**.

KDCP COMPLIANCE TABLE SECTION A - Part 4 Dwelling houses		
Development control	Proposed	Complies
4A – Site Design		
4A.1 Local Character and Streetscape		
Visual Character Design components of new development are to be based on the existing predominant and high quality visual character of the local neighbourhood.	The proposed enclosed area is not highly visible from Mahratta Avenue.	YES
The appearance of the dwelling is to maintain the local visual character by considering the following elements: i) visibility of on-site development when viewed from the street, public reserves and adjacent properties; and ii) relationship to the scale, layout and character of the tree dominated streetscape of Ku-ring-gai.	The scale and bulk of the proposed enclosed area, as viewed from the adjoining rear properties at Nos. 83 and 85 Fox Valley Road, is considered acceptable.	YES
The prominent and high quality characteristics of the neighbourhood are to be identified and considered as part of the site analysis.	No site analysis plan was submitted but the information provided on the site plan and Statement of Environmental is satisfactory for the purposes of assessment.	YES
Public Domain and Communal Space Development is to integrate with surrounding sites by: i) being of an appropriate scale retaining consistency with the surrounds when viewed from the street, public domain or adjoining development and not exceeding two storeys; ii) minimising overshadowing; and iii) integrating built form and soft landscaping (gardens and trees) within the tree canopy that links the public and private domain throughout Ku-ring-gai.	The proposal maintains the existing building height with minimal impact upon landscaping.	YES
4A.3 Built-Up Area		
Max BUA 56% (478.01m ²)	48.3% (413m ²)	YES
The proposal is to include a reasonable provision of built elements, normally associated with a residential property, such as pathways, and show consideration of these elements at an early stage of the design process	Complies	YES
4C – Building Design and Sustainability		

KDCP COMPLIANCE TABLE SECTION A - Part 4 Dwelling houses		
Development control	Proposed	Complies
4C.1 Building Envelopes		
The following matters are to be considered with regard to the potential impact on neighbouring properties and local character: i) opportunities to minimise overshadowing of living and private open space areas and solar panels; ii) opportunities to minimise overlooking of living and private open space areas; iii) opportunities to minimise adverse impacts on any significant bushland, or distant views; iv) the relationship with the streetscape.	The proposed enclosure of the outdoor area is located wholly within the existing building envelope.	YES
Development is to avoid the creation of an overbearing effect upon adjoining development by: i) ensuring appropriate side setbacks and landscaping are incorporated in the design; ii) ensuring all built structures are within the building height plane as illustrated in Figure 4C.1-2 of the DCP (4 metres @ 45°); iii) the relationship with the streetscape.	The proposed enclosure of the outdoor area is located wholly within the existing building envelope.	YES
4C.2 Building facades		
Extensive blank or unarticulated walls to street frontages will not be permitted.	The proposed enclosed area does not incorporate extensive blank or unarticulated walls and is not highly visible from Mahratta Avenue.	YES
All external facades are to be articulated to reduce the apparent building mass and present a human scale. This may be achieved through the use of bay window openings, window awnings, chimney and alcove features, verandas, pergolas, balconies, entry porches, staggered wall planes, a combination of materials and finishes, decorative architectural elements including brick corbelling, banding and recesses.	The proposed enclosed area does not result in an unsatisfactory external façade outcome.	YES
The maximum length for an unrelieved wall is 12 metres.	The proposed southern wall addition has a length of 5.2 metres.	YES
Side elevations are to avoid unrelieved walls. This may be achieved by:	Satisfactory	YES

KDCP COMPLIANCE TABLE SECTION A - Part 4 Dwelling houses		
Development control	Proposed	Complies
i) dividing walls into sections, bays or modules; ii) separating wall sections with recesses or courtyards.		
Alterations and additions to an existing dwelling are to be: i) designed so that they are integrated into the existing building; ii) result in the new and old structures appearing as one building from the street. This may be achieved through the choice of materials, detailing, building proportion and configuration.	The proposed enclosed area is integrated with the main building.	YES
Building design is to integrate soft landscaping and natural site features and make provision for tall shrub plantings.	Satisfactory	YES
4C.4 Private Open Space		
At least one area of useable private open space which has a minimum depth of 5m and a minimum area of 50m ² is to be provided on each site. On steep sites Council may consider a reduction in the minimum depth requirement.	The rear landscape area complies with these requirements.	YES
Landscape areas are to provide functional outdoor areas that: i) are useable and relate well to indoor living areas; ii) have a character that is consistent with or enhances the landscape character of the area; iii) are located in consideration of noise, temperature, shade and screening; iv) are not dominated by adjoining development (in terms of overshadowing and overlooking);	Satisfactory	YES
Private open space is to constitute at least one north facing area providing adequate solar access.	Satisfactory	YES
4C.6 Natural Ventilation		
Building design is to incorporate measures for natural cross ventilation as specified in Control 1.	Satisfactory	YES
4C.9 Waste Management		
During the design of the development, construction waste is to be minimised by: i) using recycled materials, selecting materials that reduce waste or do not	A satisfactory waste management plan has been submitted.	YES

KDCP COMPLIANCE TABLE SECTION A - Part 4 Dwelling houses		
Development control	Proposed	Complies
require disposal, or can be reused or recycled in the future;		
ii) designing with minimal site disturbance by avoiding unnecessary excavation or fill.		
4C.10 Materials and Finishes		
External walls must be constructed of high quality and durable materials and finishes.	Complies	YES
Large, unbroken expanses of any single material and finish (rendered or not) to building facades must be avoided.	Complies	
The exterior finish material (e.g. sandstone or brick) must be integral to the overall building façade design and must not appear to be cosmetic.	Complies	YES
Where additions and alterations are proposed, external materials and finishes must complement the existing building.	Complies	YES
Colours		
The selection of a colour scheme for new development and in the restoration of existing facades is to comply with the guidelines in control 8.	Complies	YES

Ku-ring-gai Development Control Plan

Section B

Part 15 – Land Contamination

The site is not mapped as being contaminated. The proposal has been assessed against the provisions of the State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of land. The proposal is satisfactory in this regard.

Part 18 – Biodiversity

The development has been designed to protect and maintain the existing diversity and condition of native vegetation and habitat.

Part 19 – Heritage and Conservation Areas

The site is within 100 metres of other heritage items at Nos. 58, 62 and 97 Fox Valley Road, but is not listed as a heritage item or within a heritage conservation area.

The proposal will not have a significant impact on the nearby heritage items given the location of the works and the separation.

Ku-ring-gai Development Control Plan

Section C

KDCP COMPLIANCE TABLE SECTION C		
Development control	Proposed	Complies
21.1 Earthworks and Slope		
Development is to be accommodated within the natural slope of the land. Level changes across the site are to be primarily resolved within the building footprint. This may be achieved by: i) stepping buildings down a site; and ii) locating the finished ground floor level as close to existing ground level as practicable.	The proposed development maintains the topography of the site.	YES
Existing ground level is to be maintained for a distance of 2 metres from any boundary.	Complies	YES
For any dwelling house development, excavation within the building footprint must not exceed 1 metre depth relative to ground level (existing), fill must not exceed 1 metre relative to ground level, with a maximum level difference across the building footprint of 2 metres.	Complies	YES
23.7 General Acoustic Privacy		
When designing and siting active open space areas (eg BBQ areas, swimming pools, communal areas etc) regard is to be paid to potential noise impacts on adjacent rooms and buildings, such as bedrooms.	Complies	YES
23.8 General Visual Privacy		
Private open spaces and principal living spaces of the proposed dwelling/s and adjacent dwellings are to be protected from direct or unreasonable overlooking from all new residential and non-residential developments.	Complies	YES
23.9 Construction, Demolition and Disposal		
Site disturbance during construction or demolition is to be minimised by: i) avoiding excavation beyond the building area; ii) restricting machinery and vehicle movement to the building footprint and access corridor; iii) locating service lines close to the building or within previously excavated areas where possible; and iv) locating storage areas to areas outside the tree protection zones of trees to be retained.	Complies	YES
A Waste Management Plan (WMP) is to be submitted with the application, in accordance with Part 23R.8 of the DCP and controls 3 and 4 of Part 23.10.	An adequate waste management plan has been submitted.	YES
All development applications are to be accompanied by an 'Erosion and Sediment	If approval were recommended a ESCP	YES

KDCP COMPLIANCE TABLE SECTION C		
Development control	Proposed	Complies
Control Plan' (ESCP) that describes the measures undertaken at development sites to minimise land disturbance and to control sediment pollution. The ESCP is to be prepared in accordance with "Managing Urban Stormwater, Soil and Construction, 2006 (Landcom)".	could be required by condition.	
24 Water Management		
This Part facilitates development in achieving the requirements of the clause titled 'Stormwater and water sensitive urban design' in KLEP 2015.	Complies	YES

Section 7.12 Development Contributions Plan 2023

The proposed works are quoted as \$31,000.00, being less than \$100,000 the payment of a contribution in accordance with Section 4.17 (1) of the Environmental Planning and Assessment Act 1979 and Ku-ring-gai Section 7.12 Contributions Plan 2023 therefore a contribution is not required.

REGULATION

Section 61(1) of the Environmental Planning & Assessment Regulation 2021 requires the consent authority to consider the provisions of *Australian Standard AS 2601-2001: The demolition of structures*. If the application was being recommended for approval, a condition to ensure compliance with the Australian Standard would have been recommended.

LIKELY IMPACTS

The impacts of the development are unlikely to be significant.

SUITABILITY OF THE SITE

The site is zoned for residential purposes and is suitable for residential development. However, the site is not suitable in this instance for the proposed development for the reasons outlined within this report.

PUBLIC INTEREST

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by the Panel ensuring that any adverse effects on the surrounding area and the environment are minimised. The proposed development includes a departure from a development standard which is not well founded for the reasons provided within the assessment report and contained in the recommended reasons for refusal.

CONCLUSION

Having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be satisfactory.

RECOMMENDATION**PURSUANT TO SECTION 4.16(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

THAT the Ku-ring-gai Local Planning Panel, exercising the functions of Ku-ring-gai Council, as the consent authority, pursuant to Section 4.16 of the Environment Planning and Assessment Act 1979, refuse development consent to eDA0438/25 for alterations and additions to the existing dwelling house on land at 21 Mahratta Avenue Wahroonga, for the following reasons:

1. Floor space ratio

The proposed building exceeds the 0.39:1 floor space ratio (FSR) development standard set out in Clause 4.4 of the Ku-ring-gai Local Environmental Plan 2015.

Particulars:

- (a) The proposed floor space ratio is calculated as 0.448:1. The 14.72% variation to the numerical standard is unacceptable.
- (b) The request pursuant to Clause 4.6 of the Ku-ring-gai Local Environmental Plan 2015 to vary the floor space ratio development standard is not well-founded. The request has not demonstrated that compliance with the development standard is unreasonable or unnecessary, nor has it provided sufficient environmental planning grounds to justify contravening the development standard, as follows:
 - i. The proposed development does not satisfy the first objective of Clause 4.4 of KLEP 2015, because the density is not compatible with the land size. There are no environmental constraints identified on the site that contribute to the non-compliance with the development standard. The non-compliance is incompatible with the existing character of the R2 Low Density Residential zone.
 - ii. Demonstration of an absence of impact, of itself, is not a sufficient reason.
 - iii. On an environmental planning basis the existing private open space (POS) for the dwelling is adequate, it is covered, of reasonable size and has a garden outlook. The POS performs its intended function as an area for outdoor recreation. The dwelling also has adequate indoor living spaces which include an open plan living/kitchen/dining space with an area of 68.5m². The dwelling already provides indoor and outdoor areas of a suitable size to meet the reasonable amenity expectations for a dwelling house in the R2 Low Density Residential zone.

The applicant has not demonstrated that a nexus exists between the non-compliant FSR and any unique site circumstances that would justify an unavoidable contravention of the standard. The existing dwelling already achieves a balanced and liveable outcome through functional indoor and outdoor areas.

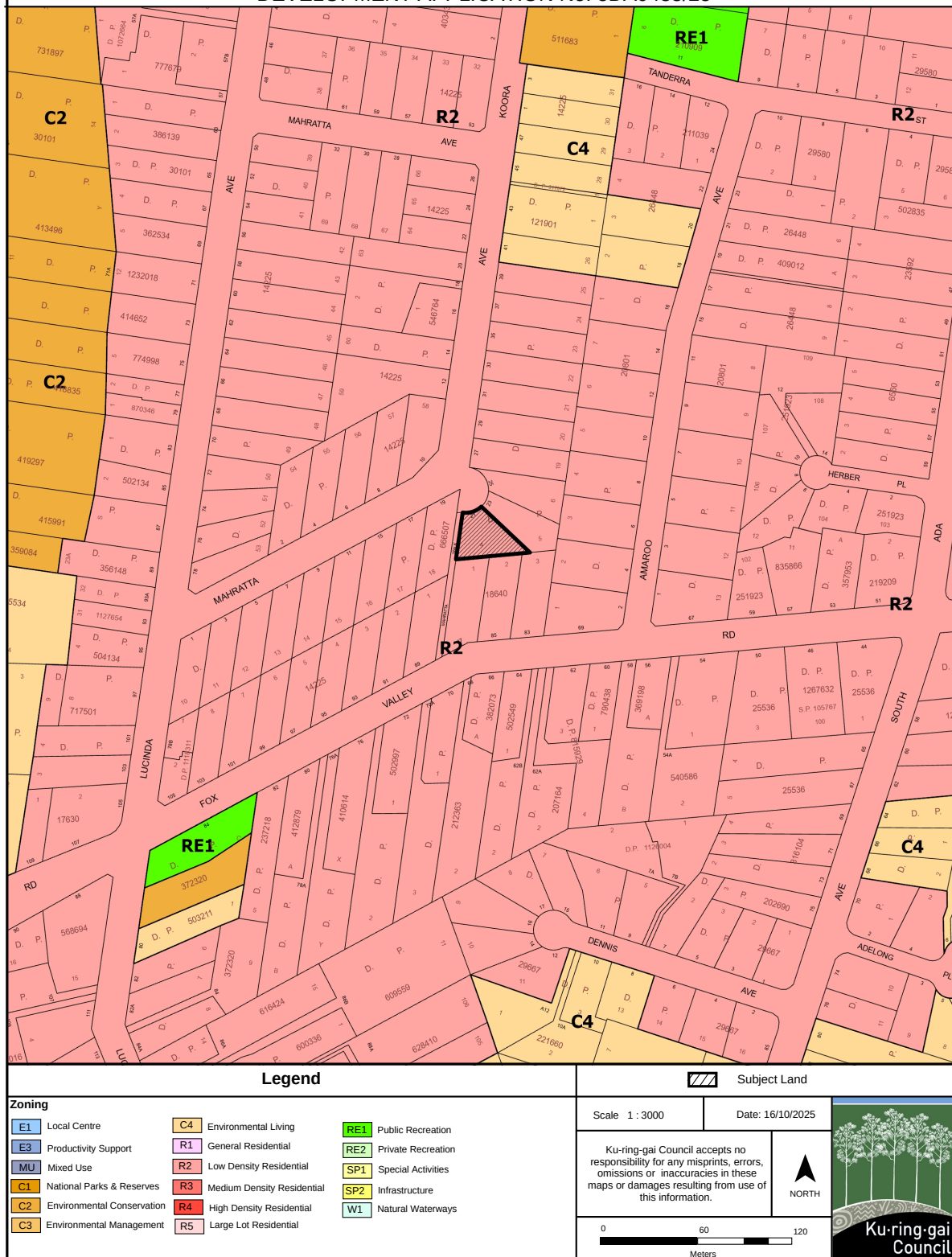
2. Public interest

- (a) For the reasons expressed above the variation to the development standard is not consistent with the requirements of clause 4.6 'Exceptions to development standards' of KLEP 2015, therefore approval of the application would be contrary to the public interest.



KU-RING-GAI LEP 2015 ZONING EXTRACT

21 Mahratta Avenue WAHROONGA NSW 2076
DEVELOPMENT APPLICATION No. eDA0438/25



DA DRAWING SCHEDULE

A00	COVER SHEET
A01	SITE PLAN
A02	EXISTING GROUND FLOOR PLAN
A03	PROPOSED GROUND FLOOR PLAN
A04	FSR CALCULATIONS
A05	ELEVATIONS
A06	EXISTING 3D'S
A07	PROPOSED 3D'S



NOBLE RESIDENCE **EJE** Integrity
21 MAHRATTA AVENUE, WAHROONGA, NSW 2076 Innovation
Inspiration

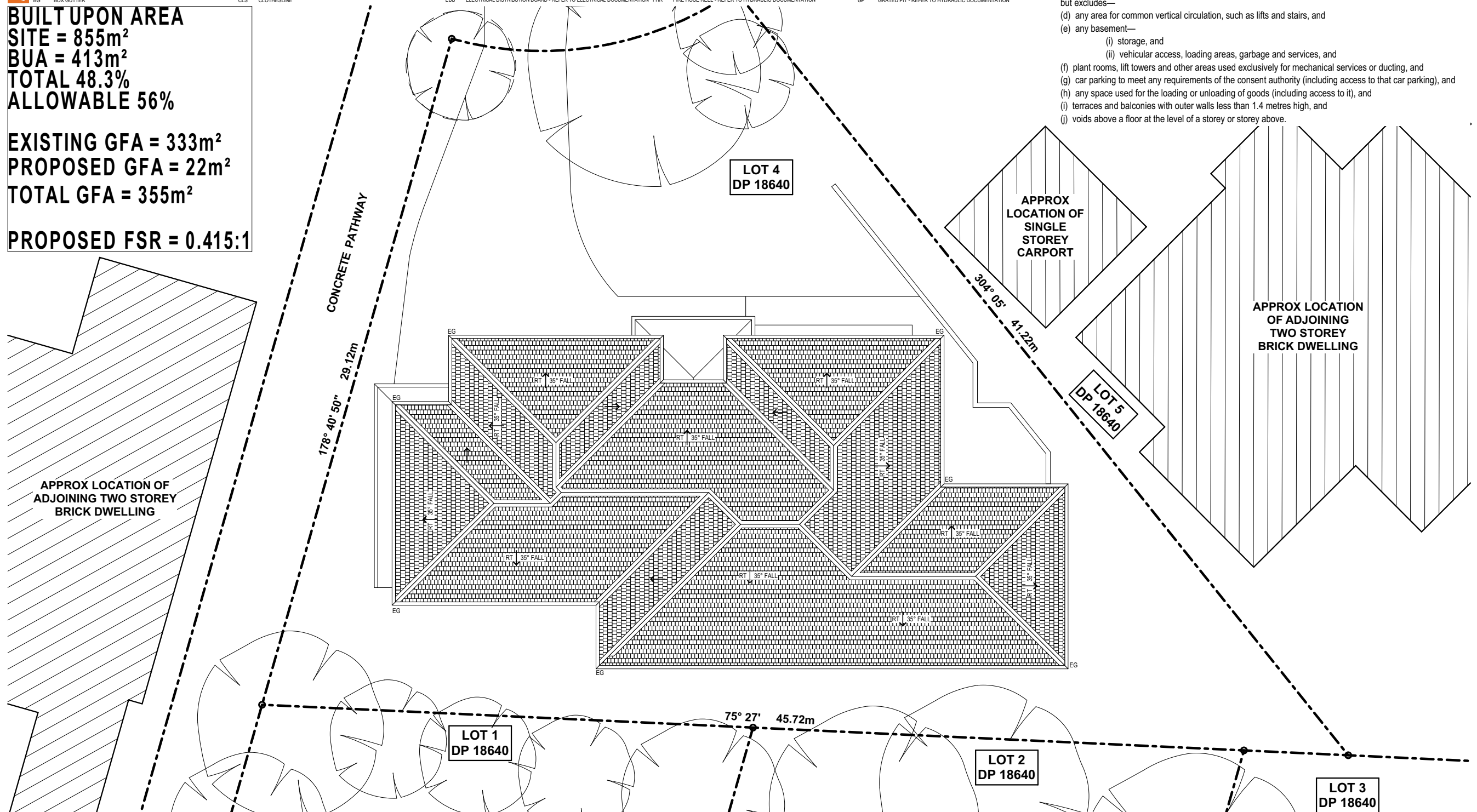
ABBREVIATIONS		ABBREVIATIONS		ABBREVIATIONS		ABBREVIATIONS		ABBREVIATIONS	
AC	AIR CONDITIONING - REFER TO MECHANICAL DOCUMENTATION	BH	BULKHEAD	COL	COLUMN - REFER TO STRUCTURAL DOCUMENTATION	EF	EXHAUST FAN	FI	FIRE INDICATOR PANEL TO CONSULTANTS REQUIREMENTS
ACP	ALUMINIUM COMPOSITE PANEL	BN	BARGE BIN	CONC	CONCRETE	EG	EAVES GUTTER - REFER TO HYDRAULIC DOCUMENTATION	FL	FLASHING
ACS	SOLID SURFACE	CB	CONCRETE BLOCKWORK	CONF	CONFIRM ON SITE	EP	EXPANSION JOINT	FLM	FLAME
ADJ	ADJUSTABLE SHELF	BRK	BRICKWORK	CPC	COLORBOND PARAPET CAPPING	ELP	ELECTRICAL PLATE	FR	FIRE RESISTANCE
AHD	AUSTRALIAN HEIGHT DATUM	BOL	BOLLARD	CPD	CURBPOARD	ENS	ENSUITE	FRP	FIREPLACE
		ALU	ALUMINIUM LOUVER	BEN	BENCH SEAT	EPF	EPOXY FLOORING	FS	FIXED SHELF
ALB	ALUMINIUM BATTEN	BT	BOTTLE TRAP	CR	CREMENT RENDER	EPS	EXPANDED POLYSTYRENE CLADDING SYSTEM	FT	FLOOR TILES
ALS	VERTICAL ALUMINIUM SCREEN	BTH	BATHTUB	CRN	CORNICE	EQ	EQUAL SPACING	FW	FLOOR WASTE
AP	ACCESS PANEL	CBP	CAPPING	CRT	CURTAIN	FAB	FABRIC UPHOLSTERY	G	GLASS
AR	ARCHITRAVE	CB	CEMENT RENDER	CRN	CURTAIN RAIL	FAN	FAN	GA	GREASE ARRESTOR
AS	AUSTRALIAN STANDARD	CBG	COLORFINISHED STEEL	CS	CLEANERS SINK	FB	FACE BRICK	GC	GARBAGE CHUTE
BB	BARBIE BOARD	CGC	COMPRESSED FIBRE CEMENT	CS	CLEANERS SINK	FB	FACE BRICK	GD	GRATED DRAIN
BAL	BALUSTRADE	CH	COAT HOOK	CS	CLEANERS SINK	FB	FACE BRICK	GL	GLASS LOUVRES
BC	BABY CHANGE TABLE	CJ	CONSTRUCTION / CONTROL JOINT	CW	COLD WATER	FE	FIRE EXTINGUISHER	GR	GRAB RAIL
BCT	BENCHTOP	CL	CENTRE LINE	DR	DOOR	FFL	FINISHED FLOOR LEVEL	GRD	GARAGE DRIVE
BFD	B-FOLD DOOR	CLD	CLADDING	DR	DOOR	FG	FIXED GLASS	GRV	GRAVEL
BG	BUX GUTTER	CLS	CLOTHESLINE	DS	DOOR STOP	FI	FIRE HYDRANT - REFER TO HYDRAULIC DOCUMENTATION	GR	GRATED PIT - REFER TO HYDRAULIC DOCUMENTATION
				EDB	ELECTRICAL DISTRIBUTION BOARD - REFER TO ELECTRICAL DOCUMENTATION	FHR	FIRE HOSE REEL - REFER TO HYDRAULIC DOCUMENTATION		

Gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

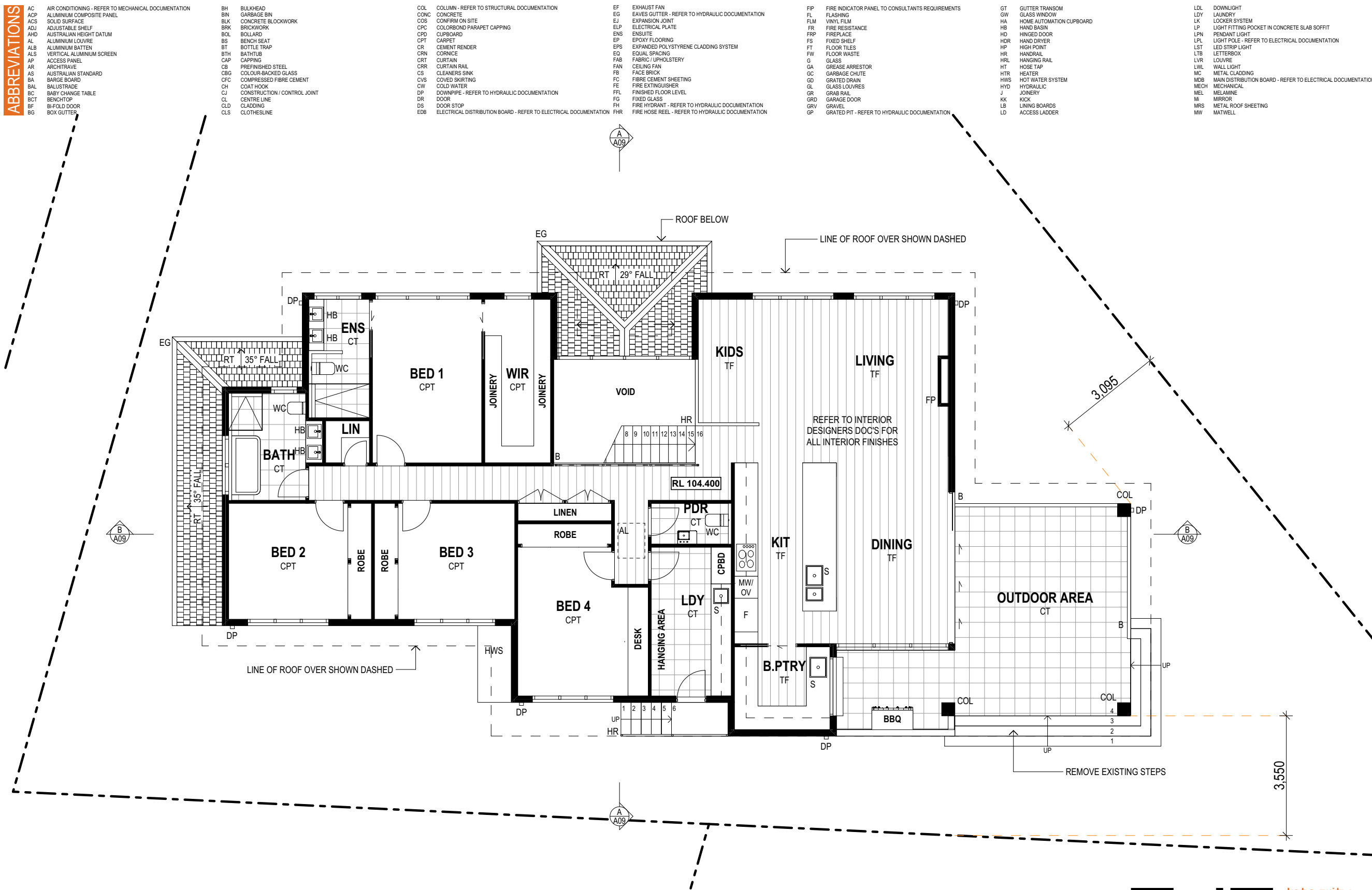
- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement—

- (i) storage, and
- (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.



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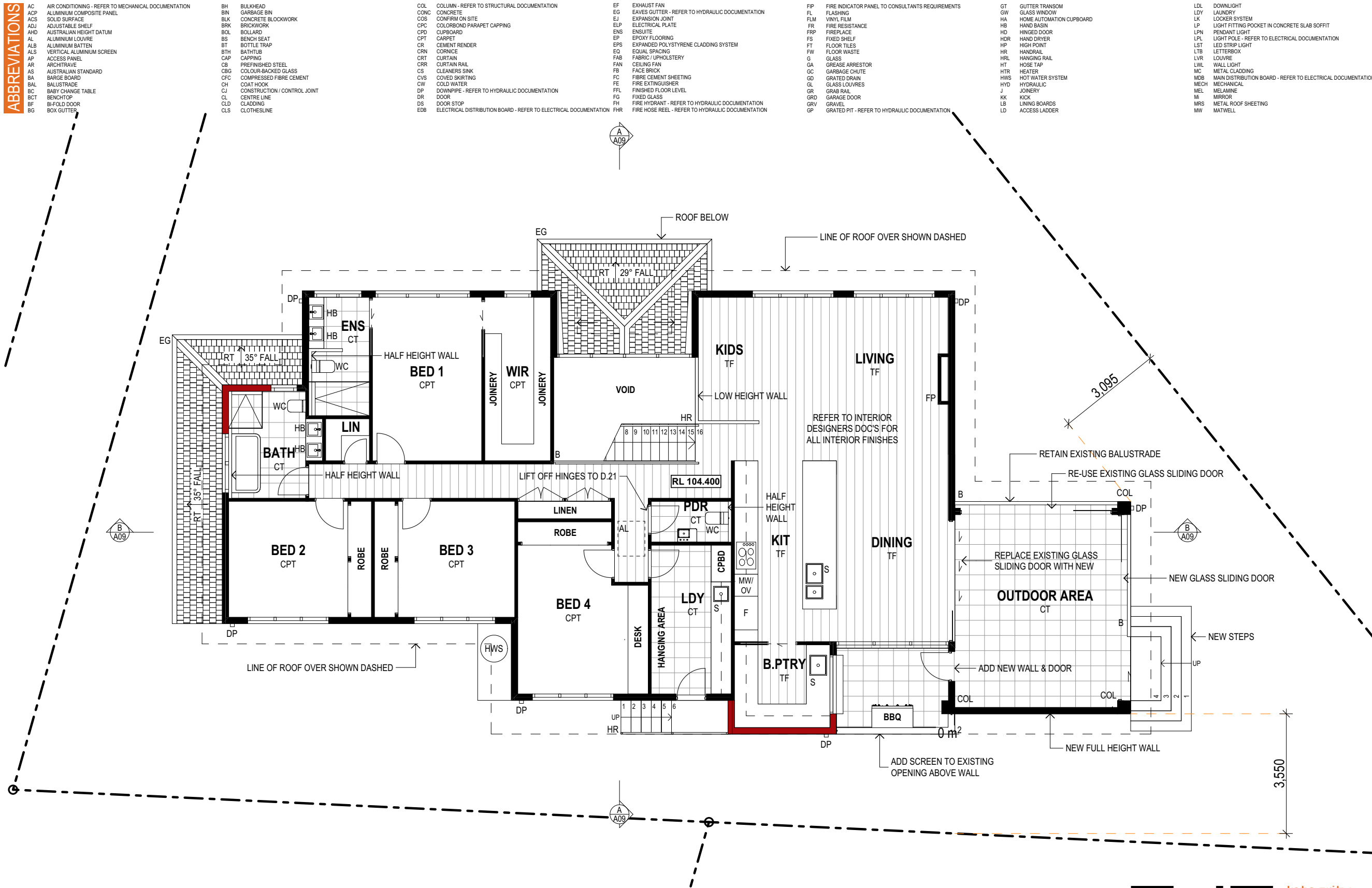
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NOBLE RESIDENCE : EXISTING GROUND FLOOR PLAN

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NOBLE RESIDENCE : PROPOSED GROUND FLOOR PLAN

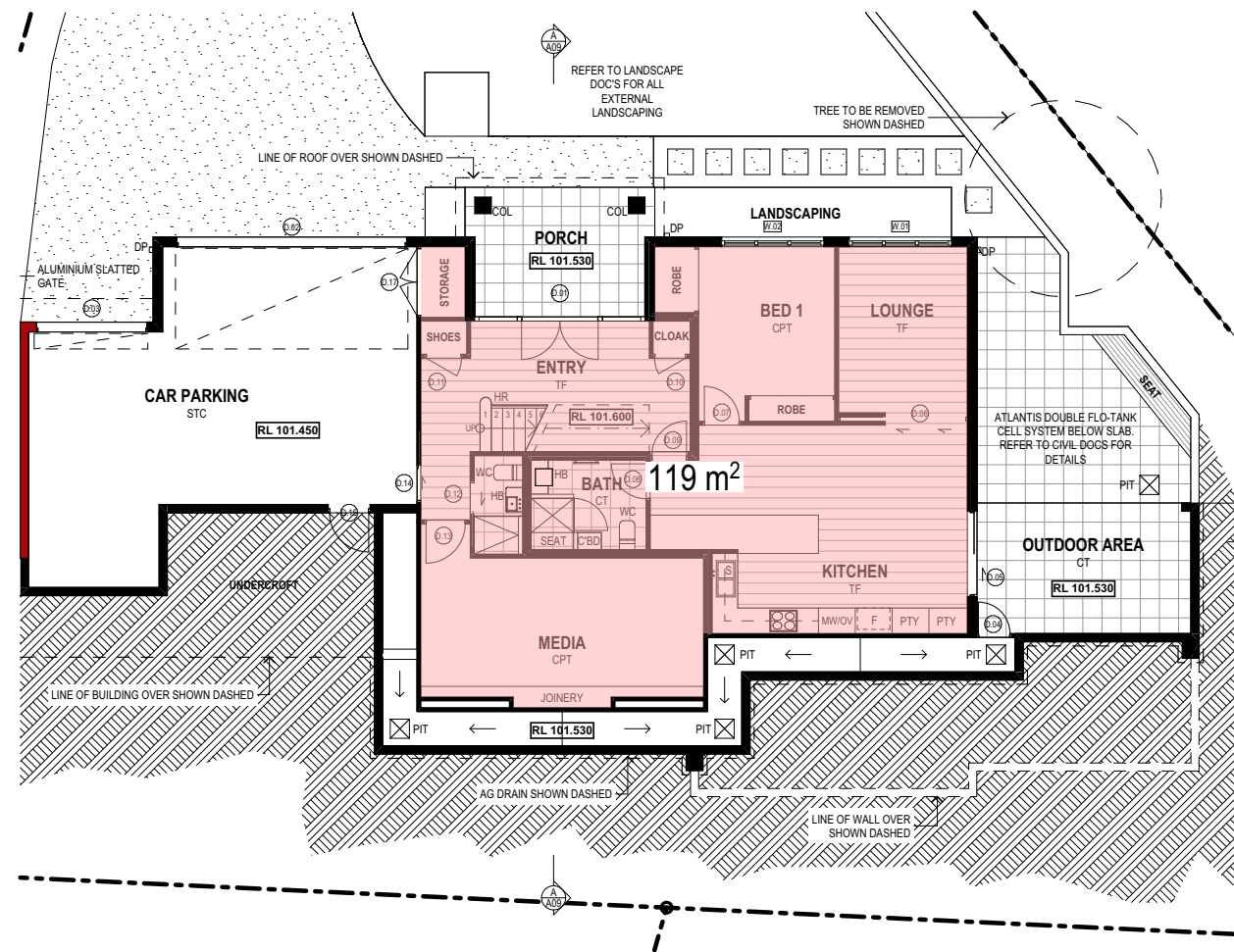
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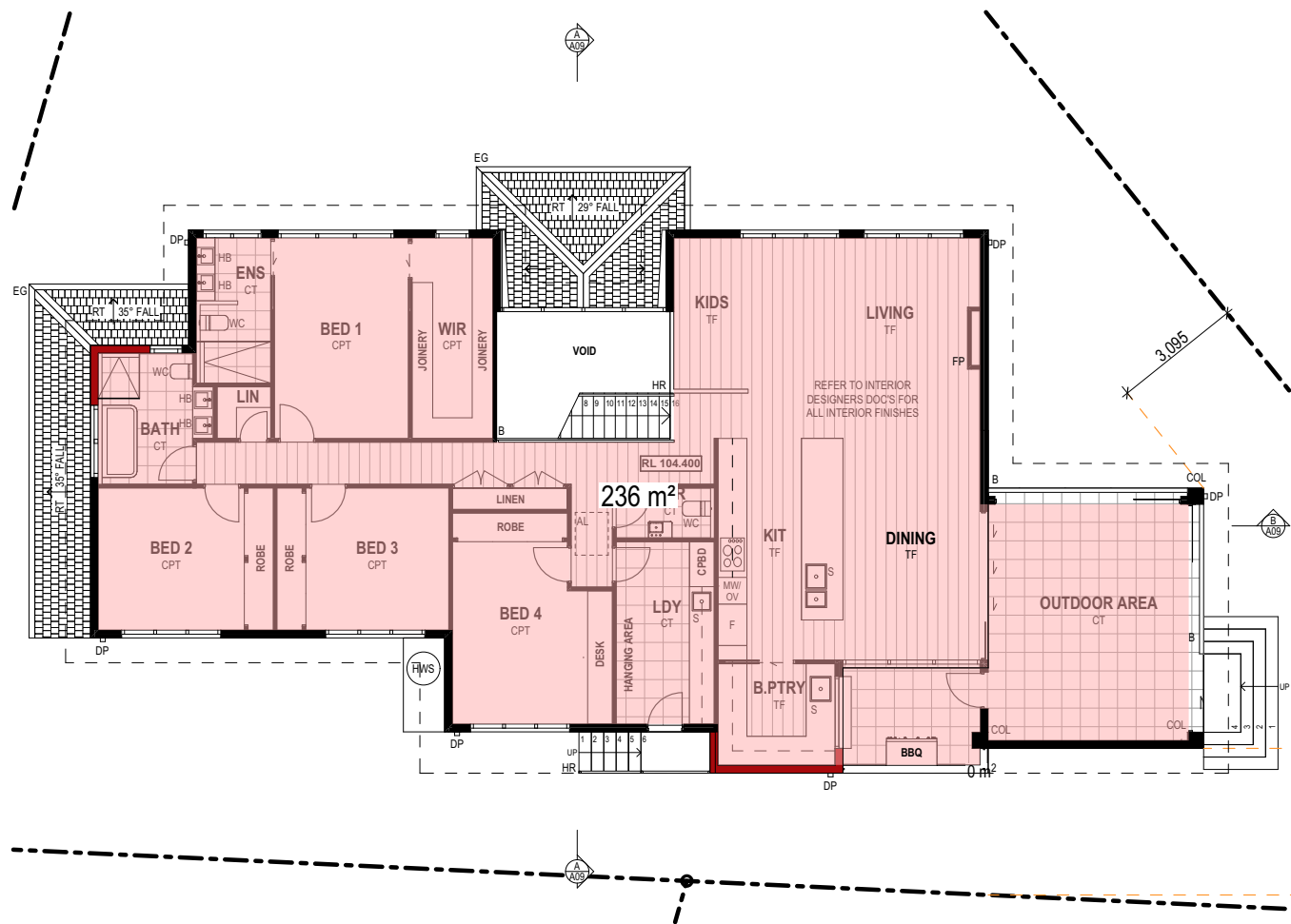
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ABBREVIATIONS

AC	AIR CONDITIONING - REFER TO MECHANICAL DOCUMENTATION	BH	BULKHEAD	COL	COLUMN - REFER TO STRUCTURAL DOCUMENTATION	EF	EXHAUST FAN	FIP	FIRE INDICATOR PANEL TO CONSULTANTS REQUIREMENTS	GT	GUTTER TRANSOM	LDL	DOWNLIGHT
ACP	ALUMINIUM COMPOSITE PANEL	BIN	GARBAGE BIN	CONC	CONCRETE	EG	EAVES GUTTER - REFER TO HYDRAULIC DOCUMENTATION	FL	FLASHING	GW	GLASS WINDOW	LDY	LAUNDRY
ACS	SOLID SURFACE	BK	CONCRETE BLOCKWORK	COS	CONCRETE ON SITE	EJ	EXPANSION JOINT	FLM	VINYL FILM	HA	HOME AUTOMATION CUPBOARD	LK	LOCKER SYSTEM
ADJ	ADJUSTABLE SHELF	BRK	BRICKWORK	CPC	COLORBOND PARAPET CAPPING	ELP	ELECTRICAL PLATE	FR	FIRE RESISTANCE	HB	HAND BASIN	LP	LIGHT FITTING POCKET IN CONCRETE SLAB SOFFIT
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BA	BARGE BOARD	CFC	COMPRESSED FIBRE CEMENT	CVS	COVERED SKIRTING	CW	COLD WATER	FC	FIBRE CEMENT SHEETING	HWS	HOT WATER SYSTEM	MDB	MAIN DISTRIBUTION BOARD - REFER TO ELECTRICAL DOCUMENTATION
BAL	BALUSTRADE	CH	COAT HOOK	CJ	CONSTRUCTION / CONTROL JOINT	DP	DOWNPIPE - REFER TO HYDRAULIC DOCUMENTATION	FE	FIRE EXTINGUISHER	GL	GLASS LOUVRES	MECH	MECHANICAL
BC	BABY CHANGE TABLE	CL	CENTRE LINE	CLS	CLOTHESLINE	DR	DOOR	FFL	FINISHED FLOOR LEVEL	GR	GRAB RAIL	J	JOINERY
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BF	BI-FOLD DOOR					EDB	ELECTRICAL DISTRIBUTION BOARD - REFER TO ELECTRICAL DOCUMENTATION	FH	FIRE HYDRANT - REFER TO HYDRAULIC DOCUMENTATION	GRV	GRAVEL	LB	LINING BOARDS
BG	BOX GUTTER							FHR	FIRE HOSE REEL - REFER TO HYDRAULIC DOCUMENTATION	GP	GRADED PIT - REFER TO HYDRAULIC DOCUMENTATION	LD	ACCESS LADDER



GROUND FLOOR

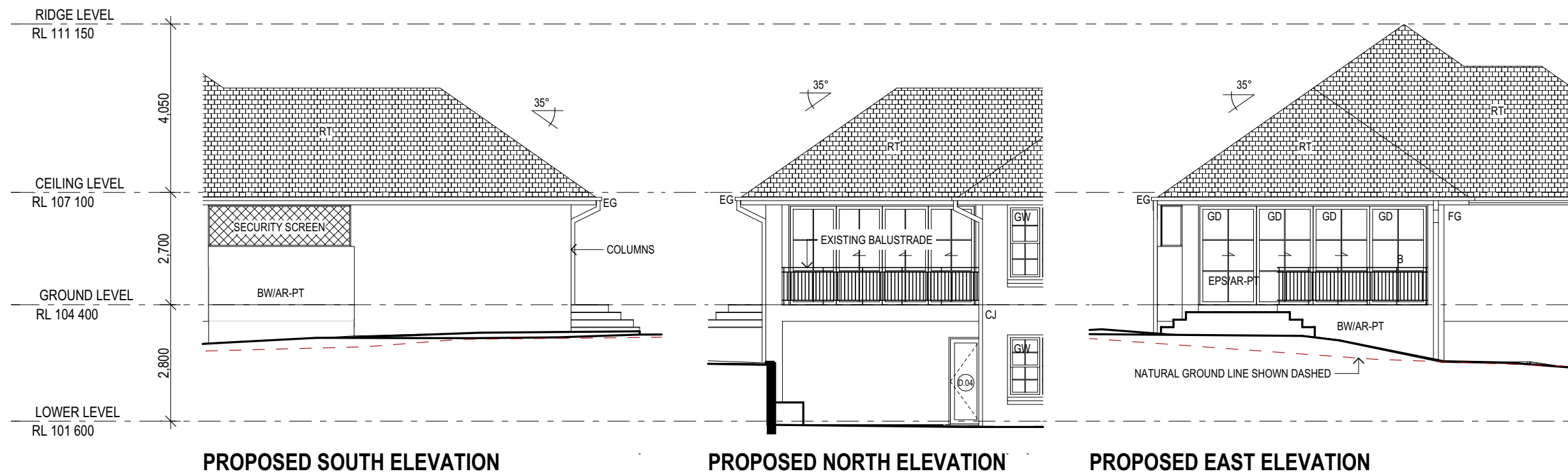
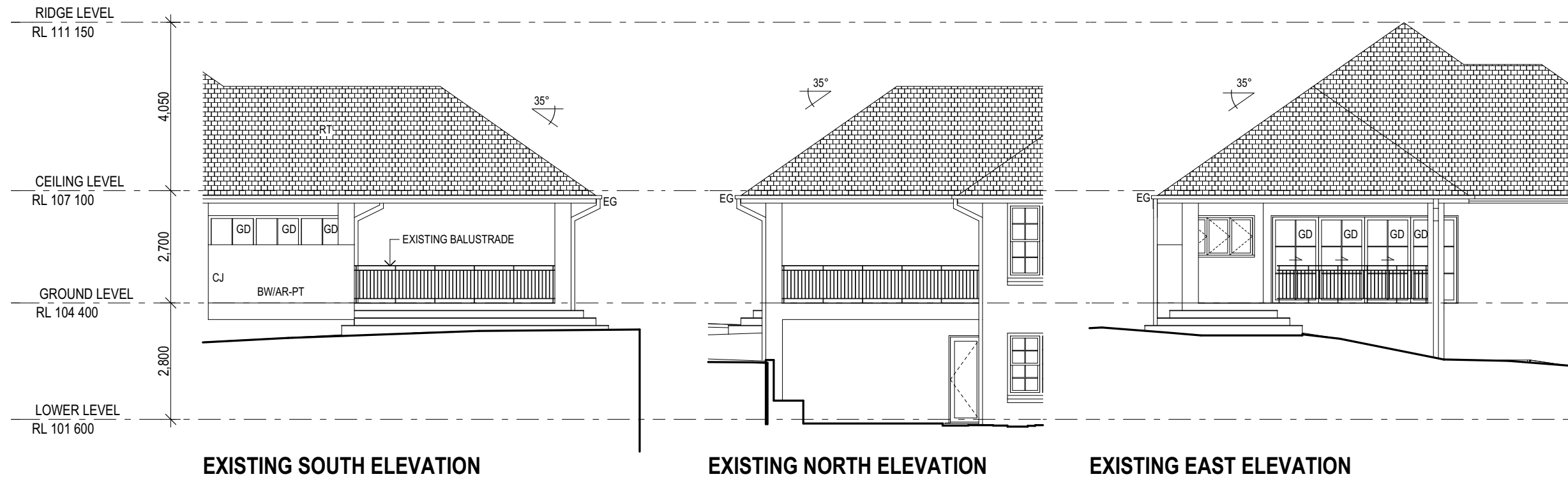


FIRST FLOOR

NOBLE RESIDENCE : FSR CALCULATIONS

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NOBLE RESIDENCE : ELEVATIONS

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NOBLE RESIDENCE : EXISTING 3D'S

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NOBLE RESIDENCE : PROPOSED 3D'S

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SOUTHERN ELEVATION - EXISTING (SOUTHERN FENCE AND LANDSCAPING HIDDEN FOR CLARITY)



SOUTHERN ELEVATION - PROPOSED (SOUTHERN FENCE AND LANDSCAPING HIDDEN FOR CLARITY)

NOBLE RESIDENCE : SOUTHERN 3D'S

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Clause 4.6 Variation Request

CLAUSE 4.4 FLOOR SPACE RATIO, KLEP 2015

**Proposed alterations and additions to existing
Principal Dwelling Housing**

21 Mahratta Avenue Wahroonga (Lot 4 DP 18640)

June 2025

Ref: 1390_CI 4.6 FSR

CLAUSE 4.6 VARIATION REQUEST FOR
Alteration to existing Principal Dwelling House

WPP Pty Ltd

Address:
60 Denison Street Hamilton East NSW 2303

Contact:
ph: 0484 694 122
email: anthonywilliams@wppgroup.com.au

DOCUMENT STATUS

Issue	Date	Description	By
1	04/06/2025	Draft	KC
2	18/06/2025	Final	AW
3	06/08/2025	Revised	KC

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This document has been authorised by Anthony Williams
Date 6 August 2025

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This document has been registered with our solicitors along with a copy of all previous materials.

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ATTACHMENTS

Appendix 1 – Architectural Plans

1 Introduction

This written request has been prepared in accordance with Clause 4.6 of the Ku-ring-gai Local Environmental Plan 2015 (KLEP) to justify a variation to the Floor Space Ratio (FSR) development standard to accompany a development application for minor alterations to the existing principal dwelling house at 21 Mahratta Avenue Wahroonga (the site).

The standard to be varied is Clause 4.4 (2A) of the KLEP. Applying the calculations under this Clause, the site is subject to a maximum floor space ratio of 0.39:1, allowing for a gross floor area (GFA) of 333.75m² on the 855m² site.

The proposal is for a minor alteration to the existing principal dwelling to allow for the existing outdoor area to be enclosed. The existing GFA is 333m² and the outdoor area is 22m². Therefore, the total GFA would increase to 355m², resulting in an increase in the floor space ratio from 0.39:1 to 0.415:1. This equates to an exceedance of 6.4% of the floor space ratio development standard in KLEP.

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

This Request has been prepared pursuant to the Department of Planning and Environment's *Guide to Varying Development Standards* (November 2023) – 'the Guide'.

Clause 4.6 requires that a consent authority be satisfied of two matters before granting consent to a development that contravenes a development standard. These two matters are:

1. That the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances (clause 4.6[3][a]); and
2. That the applicant has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6[3][b]).

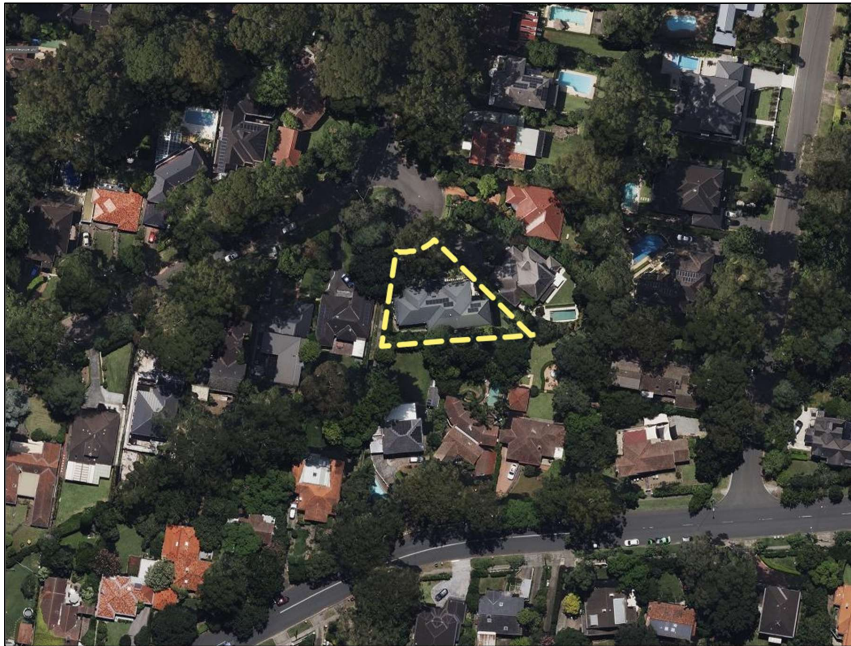
The relevant matters for consideration are addressed in the following sections.

2 The Site

The subject site is located in Wahroonga, an established suburb within the Ku-ring-gai local government area.

As shown in **Figure 1**, the site comprises an irregular shaped allotment, legally described as Lot 4 DP 18640. The site has an area of approximately 855m² with a frontage of approximately 13m to Mahratta Avenue. The surrounding area is largely characterised by low density residential development. The immediate locality surrounding the site largely accommodates single and two storey dwelling houses.

Figure 1 – Site Location



Additional details of the site and its surrounds are provided within the *Statement of Environmental Effects* (SEE) prepared by WPP Pty Ltd, submitted with this application

3 The Proposed Development

The proposal comprises alterations and additions to the existing principal dwelling house.

No changes are proposed to the existing secondary dwelling.

The proposed alterations and additions are permitted with consent in the zone, however exempt and complying development does not apply to a dwelling with a secondary dwelling attached. Therefore, the proposed alterations and additions to the principal dwelling house are subject to a development application.

As shown in **Figures 2 to 8**, the proposed alterations and additions are to the existing outdoor area of the existing dwelling house at ground level. This is located on the eastern side of the dwelling. The alterations and additions include:

- erecting a full height wall to the southern elevation of the existing outdoor area;
- installing glass sliding stacker doors to the eastern and northern perimeter of the existing outdoor area;
- replacing glass sliding doors between the existing principal dwelling house and the existing outdoor area;
- removing the existing steps on the southern elevation and replace with steps on the eastern elevation; and
- installing a transparent screen above the existing wall near the BBQ.

A full set of architectural plans is provided within the accompanying SEE.

The proposed development will result in an increase to the floor space ratio from 0.39:1 to 0.415:1, which exceeds the floor space ratio development standard (Clause 4.4 2A) in the KLEP by approximately 6.4%. Accordingly, this written request to vary the development standard pursuant to Clause 4.6 of the KLEP forms part of the development application.

The proposed alterations and additions will result in minimal change to the overall appearance of the principal existing principal dwelling house. There are no changes proposed to the height, roof line or building envelope. The proposal is simply to facilitate the ability to enclose the outdoor area.

Figure 2: FSR Calculations - ground floor plan

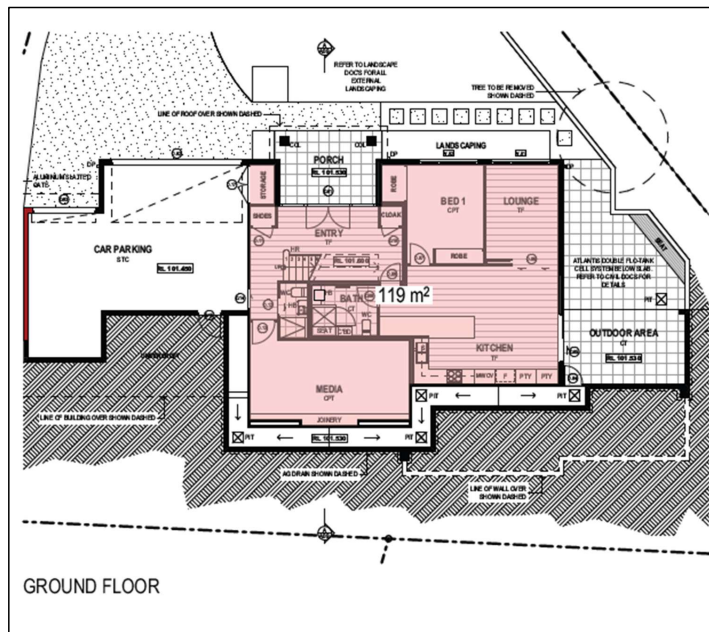
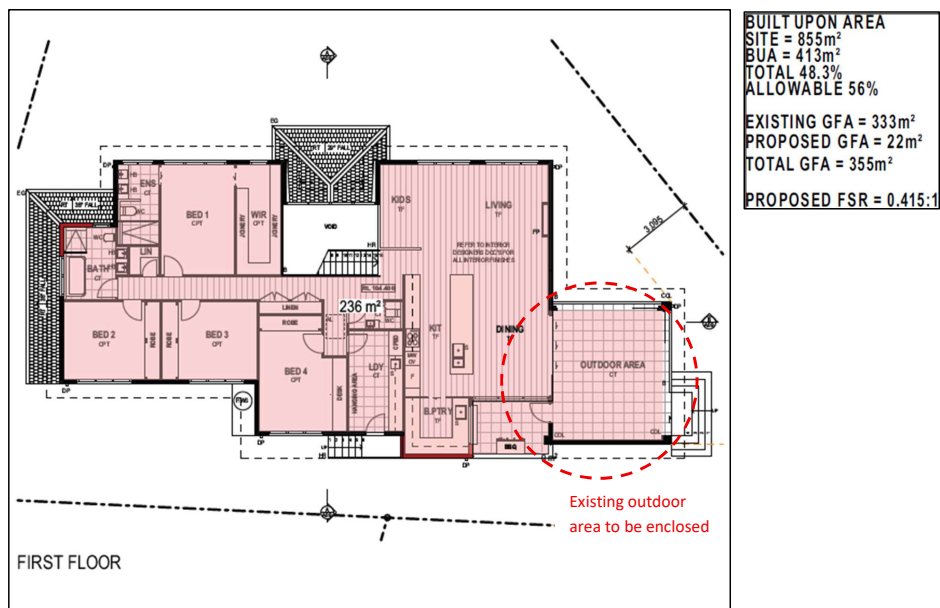


Figure 3: FSR calculations – first floor



Clause 4.6 Variation Request | 21 Mahratta Avenue Wahroonga

Figure 4: Existing and proposed elevations

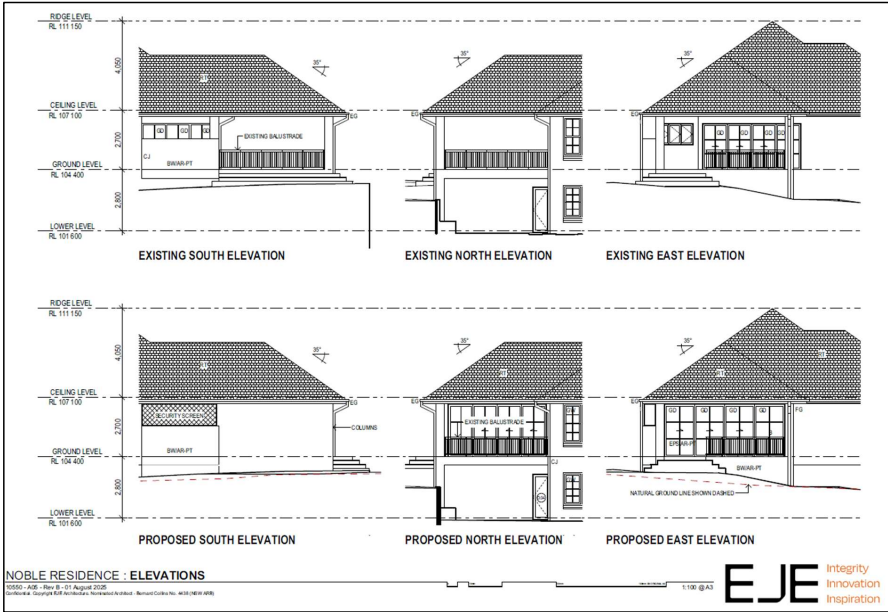


Figure 5: 3D Existing Elevations



Figure 6: 3D Proposed Elevations



Figure 7: 3D Existing presentation to Mahratta Avenue



Figure 8: 3D Proposed presentation to Mahratta Avenue



4 Development Standard to be Varied

The development standard proposed to be varied is Clause 4.4(2A) of the KLEP. The objectives of the development standard are set out in **Section 6.1.1** of this request.

Subclause 4.4(2) states:

The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).

However, subclause 4.4(2A) states:

*Despite subclause (2), the floor space ratio for a building on land in **Zone R2 Low Density Residential** where the site area is within a specified range in Column 1 of the table to this subclause must not exceed the ratio specified opposite in Column 2 of the table.*

<u>Column 1</u>	<u>Column 2</u>
<i>More than 1,700 square metres</i>	0.3:1
<i>More than 1,000 square metres but not more than 1,700 square metres</i>	$((170 + (0.2 \times \text{site area})) / \text{site area}):1$
<i>More than 800 square metres but not more than 1,000 square metres</i>	$((120 + (0.25 \times \text{site area})) / \text{site area}):1$
<i>800 square metres or less</i>	0.4:1

The subject site is within Zone R2 Low Density Residential and has a site area of 855 square metres (that is, more than 800 square metres but not more than 1,000 square metres).

Applying the calculations under this Clause, the site is subject to a maximum floor space ratio of 0.39:1, allowing for a gross floor area (GFA) of 333.75m² on the 855m² site.

The proposal is for a minor alteration to the existing principal dwelling to allow for the existing outdoor area to be enclosed. As shown on the Architectural Plans at **Appendix 2**, the existing GFA is 333m² and the outdoor area is 22m². Therefore, the total GFA would increase to 355m², resulting in an increase in the floor space ratio from 0.39:1 to 0.415:1. This equates to an exceedance of 6.4% of the floor space ratio development standard in KLEP.

Accordingly, a written request to vary this development standard pursuant to Clause 4.6 of the KLEP forms part of the application. A copy is provided at **Appendix 3**.

The change in floor space ratio is considered to be minor in nature. The proposed alterations and additions will result in minimal change to the overall appearance of the principal existing principal dwelling house. There are no changes proposed to the height, roof line or building envelope. The proposal is simply to facilitate the ability to enclose the outdoor area.

5 Extent of Variation Sought

As stated previously, the maximum proposed floor space ratio for the subject land is 0.39:1. The proposed floor space ratio as a result of the proposed development application for alterations and additions is 0.415:1.

Therefore, the extent of the variation sought is **0.025:1**.

6 Justification for the Proposed Variation

6.1 Unreasonable or Unnecessary (Clause 4.6[3][a])

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

As established via caselaw (*Wehbe v Pittwater Council* [2007] NSWLEC 827) and set out within the Guide, there are 5 common ways in which to establish whether compliance with the development standard is unreasonable or unnecessary in the circumstances. This '5-part test' can be summarised as follows:

Compliance with the development standard is unreasonable or unnecessary if the:

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

Importantly, it is only necessary that an application satisfy one part of the 5-part test, rather than all 5 parts.

In this case, it is submitted that Part 1 of the test is satisfied, in that the objectives of the floor space ratio development standard are achieved notwithstanding the non-compliance – refer to **Section 6.1.1** below for details.

6.1.1 Objectives of the Development Standard are Achieved

The objectives of the floor space ratio development standard are set out in Clause 4.4 (1) of the KLEP.

Clause 4.4 – Floor Space Ratio

(1) The objectives of this Clause are as follows:

- a) *to enable development with a built form and density that is compatible with the size of the land to be developed, its environmental constraints and its contextual relationship,*
- b) *to provide for floor space ratios compatible with a range of uses,*
- c) *to ensure that development density is appropriate for the scale of the different centres within Ku-ring-gai,*
- d) *to ensure that development density provides a balanced mix of uses in buildings in the employment and mixed use zones.*

These objectives are addressed as follows:

(a) to enable development with a built form and density that is compatible with the size of the land to be developed, its environmental constraints and its contextual relationship,

- The proposed development is for minor alterations and additions to the existing principal dwelling on the subject site. The alterations and additions will not result in a change to the building envelope, roof line or building height. The alterations and additions are to enable the existing outdoor area to be enclosed by glass sliding doors on two sides and one full height wall on another.
- The proposed development is compatible with the environmental constraints of the land to be developed. It is within the existing building envelope and therefore no additional impacts on environmental constraints are anticipated.

- The proposed development is compatible with the contextual relationship of the land to be development. It is in keeping with nearby development and will not adversely impact upon nearby land uses. The proposal will not result in any adverse amenity impacts on nearby residences.
- Therefore, the built form and density of the proposed development continues to be compatible with the size of the land to be developed, its environmental constraints and its contextual relationship.

(b) to provide for floor space ratios compatible with a range of uses,

- The proposal is for alterations and additions to the existing principal dwelling to allow for the existing outdoor area to be enclosed. The existing GFA is 333m² and the outdoor area is approximately 22m². Therefore, the total GFA would increase to 355m², resulting in an increase in the floor space ratio from 0.39:1 to 0.415:1. This equates to an exceedance of 0.025:1, or approximately 6.4% of the floor space ratio standard in KLEP.
- The development standard is a 'numerical' development standard used to define a limitation or requirement on development. Strict adherence to this standard in this instance will not result in an improved design outcome. The proposed development is contained within the existing building envelope and will not result in an increase in the scale or bulk of the existing principal dwelling house and secondary dwelling.
- The proposed increase in GFA will not result in a discernible intensification above the current use of the land.
- The proposed development still achieves the underlying purpose of the standard. Therefore the strict application of the numerical standard in this instance is considered to be unreasonable and unnecessary.

(c) to ensure that development density is appropriate for the scale of the different centres within Ku-ring-gai,

- The subject land is not within a 'centre' within Ku-ring-gai local government area.
- Notwithstanding, the proposed development is in keeping with the scale of the surrounding low density residential development. As outlined in the accompanying SEE, the proposed development is considered to be inconsequential as the construction of one external wall and glass sliding doors to an existing outdoor area will not result in a change to the scale or bulk of the existing principal dwelling house.

(d) to ensure that development density provides a balanced mix of uses in buildings in the employment and mixed use zones.

- The subject land is not within an employment or mixed use zone, therefore this objective does not apply to the proposed development.

6.2 Unreasonable or Unnecessary (Clause 4.6[3][a])

In this section it is demonstrated why there are sufficient environmental planning grounds to justify the contravention of the development standard, as required by clause 4.6(3)(b) of the KLEP.

The Guide notes that the term 'environmental planning grounds' *refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the EP&A Act. The scope of environmental planning grounds is wide as exemplified by the court decisions in this area... The grounds must:*

- *be sufficient to justify the contravention*
- *focus on the aspect of the development that contravenes the development standard, not the development as a whole (p12).*

In the circumstances of this case, the following environmental planning grounds are submitted to justify contravening the maximum floor space ratio. The below grounds are not general propositions and are unique circumstances to the proposed development.

1. Floor Space Ratio variation allows for improved liveability of the dwelling house

- The proposed marginal gross floor area exceedance will allow for the existing outdoor area to be utilised in all-weather situations.
- The alterations and additions are to enable the existing outdoor area to be enclosed by glass sliding doors on two sides (specifically, the north and east elevations) and one full height wall on another (the south elevation).
- The outdoor area adjoins the existing dwelling and provides a natural extension of the indoor living areas. Insistence on compliance with the FSR control would result in a less functional outdoor area for the existing dwelling.

2. Floor Space Ratio variation does not result in an increase in the building envelope

- The proposed marginal gross floor area exceedance will not result in a change to the building envelope, roof line or building height of the existing development.
- The existing principal dwelling and secondary dwelling are of a bulk and scale in keeping with the surrounding locality. The proposed alterations and additions will not result in a significant change to the current appearance of the existing development on the site. It is complementary to the local context, which contains a varied density, and the desired future character of the area.
- Accordingly, the additional GFA does not noticeably impact the amenity of neighbouring properties or the public domain.

3. Floors Space Ratio variation will not result in any significant material impacts.

- The proposed marginal gross floor area exceedance is not considered to result in any significant material impacts. Specifically:
 - a. The extent of the additional GFA creates no additional overshadowing impacts to adjoining dwellings.

- b. Being limited to the existing outdoor area attached to the existing principal dwelling, the additional GFA does not result in any additional adverse privacy impacts.
 - c. When viewed from the street and adjoining development, the visual impact of the additional GFA would be negligible.
- Therefore, the built form and density of the proposed development is considered to be compatible with the size of the land to be developed, its environmental constraints and its contextual relationship

6.2.1 Floor Space Ratio (Clause 4.4)

The floor space ratio objectives contained in clause 4.4 of the KLEP 2015 are addressed at **Section 6.1.1 above**.

6.2.2 Objectives of the Zone

Clause 4.6(4)(a)(ii) requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. As demonstrated in **Table 1**, the proposal is considered to be consistent with the objectives of the R2 zone.

Table 1 – Consistency with R2 Zone Objectives

Objectives	Comment
To provide for the housing needs of the community within a low density residential environment.	The proposal will continue the ongoing residential use of the site, that is in an accessible location with good access to services and public transport. The proposal will provide a high level of internal and external amenity within a built form outcome consistent with a low density residential environment, and compatible with the varied mix of built form in the area. The proposed alterations and additions will not result in any change to the housing needs of the community within the low density residential zone.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposed development will not conflict with landuses that provide facilities or services to meet the day to day needs of residents.
To provide for housing that is compatible with the existing environmental and built character of Kuring-gai.	The proposal the alterations and additions will result in a minor change to the built form of the existing principal dwelling that is compatible with the existing environmental and built character of Wahroonga. It is in keeping with nearby development and will not adversely impact upon nearby land uses. As discussed in Section 6, the proposal will not result in any adverse amenity impacts on nearby residences.

7 Conclusion

This submission requests a variation under Clause 4.6 of the Ku-ring-gai Local Environmental Plan 2015 to the floor space ratio development standard and demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this proposed development as the proposal achieves the objectives of the development standard notwithstanding the non-compliance (Part 1 of the '5-Part Test'); and
- There are sufficient environmental planning grounds to justify the contravention.

With respect to the public interest, the Council as consent authority can be satisfied as required that the development achieves the objectives of the development standard and is consistent with the objectives of the R2 zone notwithstanding non-compliance with the FSR standard.

Having regard to the above, it is considered appropriate for the Council as consent authority to exercise the flexibility provided by clause 4.6 in the circumstances of this application and agree to vary the FSR development standard as proposed.



STATEMENT OF ENVIRONMENTAL EFFECTS

**Alterations and additions and additions to the
Existing Principal Dwelling House**

21 Mahratta Avenue Wahroonga

Lot 4/-/DP 18640

August 2025

Ref: 1390_SEE

**STATEMENT OF ENVIRONMENTAL EFFECTS FOR
Alterations and additions and additions to the Existing Principal Dwelling House**

WPP Pty Ltd

Address:

60 Denison Street Hamilton East NSW 2303

Contact:

ph: 0484 694 122

email: anthonywilliams@wppgroup.com.au

DOCUMENT STATUS

Issue	Date	Description	By
1	11/06/2025	Draft	KC
2	18/06/2025	Final	AW
3	06/08/2025	Revised	KC
4			

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This document has been authorised by Anthony Williams

Date 06/08/2025

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This document has been registered with our solicitors along with a copy of all previous materials.

EXECUTIVE SUMMARY

This Statement of Environmental Effects (SEE) has been prepared by WPP Pty Limited (WPP) on behalf of the proponents to accompany a development application (DA) for minor alterations and additions to an existing principal dwelling house at 21 Mahratta Avenue, Wahroonga. Key components of the proposal include the erection of a full height wall to the southern side of the existing outdoor area, the installation of glass sliding doors to the northern and eastern sides of the existing outdoor area, replacing glass sliding doors between the existing principal dwelling house and the existing outdoor area; and the installation of a transparent screen above the existing wall near the BBQ. The cost of construction for the proposal is \$34,830 (inclusive of GST).

The subject land is zoned R2 Low Density Residential under the *Ku-ring-gai Local Environmental Plan 2015*. The subject land has an existing principal dwelling house and secondary dwelling erected upon it. The proposed alternations and additions are permitted with consent in the zone.

It is acknowledged that the proposed development will result in a minor exceedance to the maximum floor space ratio development standard prescribed for the site under Clause 4.4(2A) of KLEP (from 0.39:1 to 0.415:1). Accordingly, a request to vary this development standard pursuant to Clause 4.6 of the KLEP forms part of the application.

This SEE has been prepared pursuant to Section 4.12 of the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2021*. The SEE seeks to:

- Describe the proposed development and its context (immediate / local / regional);
- Determine the applicable development assessment pathway (e.g. State Significant / Regional / Local)
- Assess the proposal against the applicable planning controls and guidelines; and
- Assess the potential environmental impacts and describe any measures to mitigate impacts.

This SEE finds the proposed alterations and additions and additions are in keeping with the existing and emerging local character of the area. The design is such that qualities of the local streetscape are maintained, while also providing a functional and attractive addition to the principal dwelling house.

The site is not constrained by any environmental conditions which might preclude the proposed alterations and additions. The site and locality are therefore capable of supporting this minor alteration of an established and permitted land use. For the above stated reasons, this SEE finds the proposal to be in the public interest and worthy of Council's approval.

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ATTACHMENTS

- Appendix 1 – Architectural Plans
- Appendix 2 – Clause 4.6 Variation Request
- Appendix 3 – Waste Management Plan
- Appendix 4 – Estimated Cost of Works

1 Introduction

This Statement of Environmental Effects (SEE) has been prepared by WPP on behalf of the proponents and landowners, in support of a development application to make minor alterations and additions to the existing principal dwelling house.

The key components of the proposal are as follows:

Proposal	Minor alterations and additions and additions to the existing principal dwelling house <u>Note:</u> no changes are proposed to the attached secondary dwelling
Site Location	21 Mahratta Avenue Wahroonga NSW 2076 Lot 4 DP 18640
Zoning	R2 – Low Density Residential
Proposed Use	Dwelling House
Applicant	Andrew and Susan Noble
Land Owner	As above

This report is supported by the following documentation:

- Architectural Plans EJE Architecture
- Clause 4.6 Variation Request WPP Pty Ltd
- Waste Management Plan WPP Pty Ltd
- Estimated Cost of Works EJE Architecture

This SEE has been prepared in accordance with Clause 2(1)(c) & 4 of Schedule 1 of the *Environmental Planning & Assessment Regulation 2021*, having regard to Section 4.15 of the *Environmental Planning & Assessment Act 1979*. It provides a description of the existing land, as improved, and the site context in Section 2, with details of the proposed development in Section 3. The environmental planning controls applying to the site and an assessment of compliance with these controls are set out in Section 4. Section 5 contains concluding comments in respect of the proposed development.

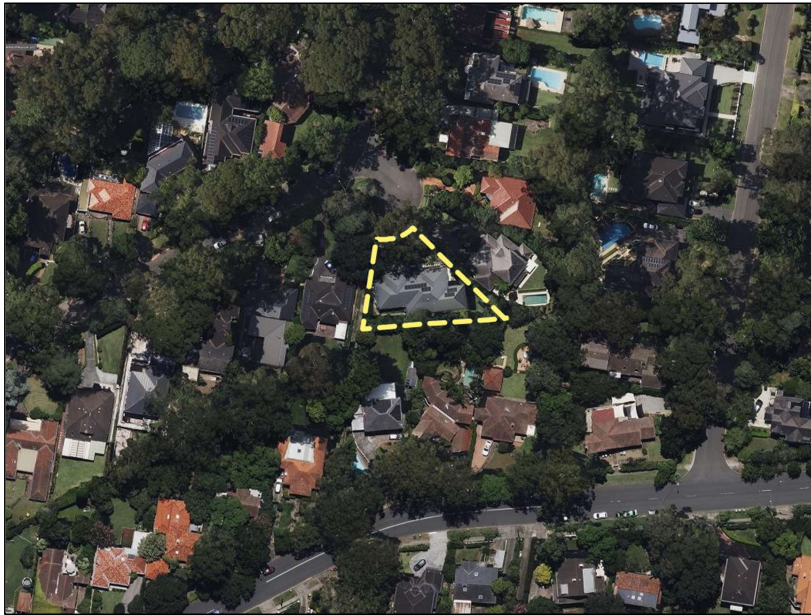
2 The Site and Context

2.1 Site Location & Characteristics

The subject site is located in Wahroonga, an established suburb within the Ku-ring-Gai local government area.

As shown in **Figure 1**, the site comprises an irregular shaped allotment, legally described as Lot 4 DP 18640. The site has an area of approximately 855m² with a frontage of approximately 13m to Mahratta Avenue. The surrounding area is largely characterised by low density residential development. The immediate locality surrounding the site largely accommodates single and two storey dwelling houses.

Figure 1: Site location and context



The site contains an existing dwelling house and secondary dwelling, approved under DA0149/2015. As shown in **Figure 2**, the development presents as a two-storey dwelling house from Mahratta Avenue to the north and to the side boundary to the west. It presents as a single storey dwelling house to the rear boundary to the south and the side boundary to the east. **Figures 3 and 4** show the elevations of the principle dwelling house and secondary dwelling (from DA0149/2015 stamped plans).

Figure 2: Perspective of the existing dwelling from Mahratta Avenue



Figure 3: North and East Elevation – DA0149/2015 Stamped Plans

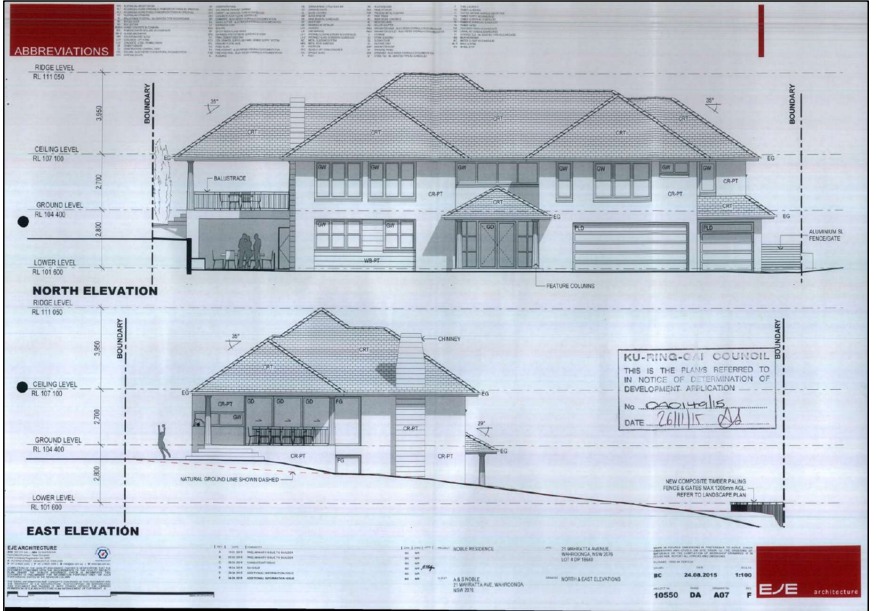
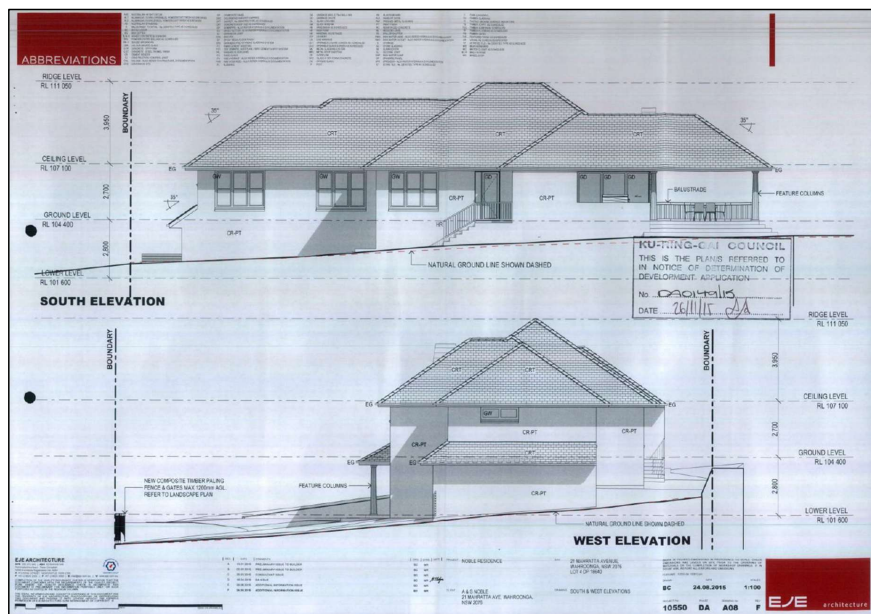


Figure 4: South and West Elevation – DA0149/2015 Stamped Plans



A desktop analysis of the site indicates that:

- The site is not bushfire prone;
- The site is not identified as flood prone;
- The site is not affected by a local heritage listing, within a conservation area or in proximity to a heritage listed item;

3 Proposed Development

The proposal comprises alterations and additions to the existing principal dwelling house.

No changes are proposed to the existing secondary dwelling.

As shown in **Figures 5 to 9**, the proposed alterations and additions are to the existing outdoor area of the existing dwelling house at ground level. This is located on the eastern side of the dwelling. The alterations and additions include:

- erecting a full height wall to the southern elevation of the existing outdoor area;
- installing glass sliding stacker doors to the eastern and northern perimeter of the existing outdoor area;
- replacing glass sliding doors between the existing principal dwelling house and the existing outdoor area;
- removing the existing steps to the southern elevation and replace with steps the eastern elevation; and
- installing a transparent screen above the existing wall near the BBQ.

A full set of architectural plans is provided at **Appendix 1**.

Due to the extent of the works proposed and material selection, the proposed alterations and additions will result in minimal change to the overall appearance of the principal existing principal dwelling house. There are no changes proposed to the building envelope, roof line or building height.

The purpose of the alterations and additions are to enable the existing outdoor area to be enclosed by glass sliding doors on two sides (the northern and eastern elevations) and one full height wall on another side (the southern elevation) to improve its functionality and usability throughout the year. While the space is capable of being enclosed, it is not intended that the space will function as an internal living space. This is reflected in the materials and finishes selected for the proposal.

Figure 5: Existing ground floor plan

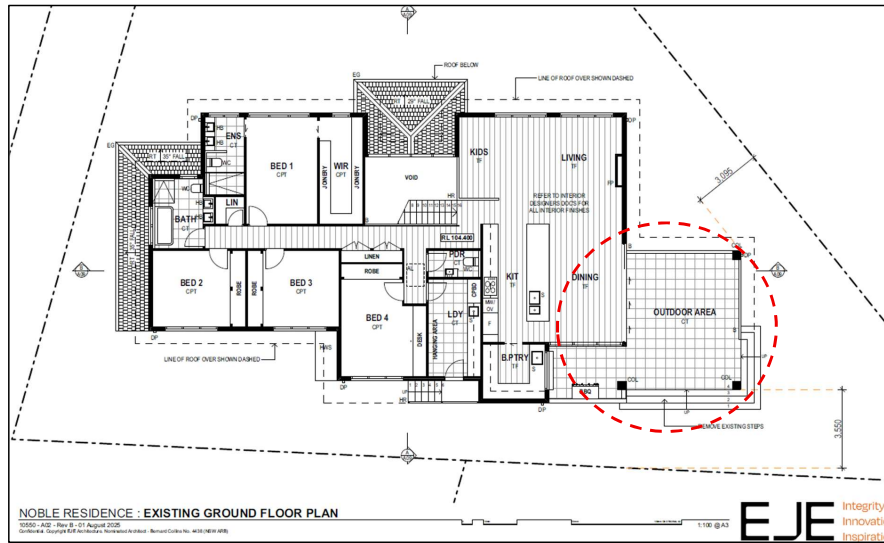


Figure 6: Proposed ground floor plan

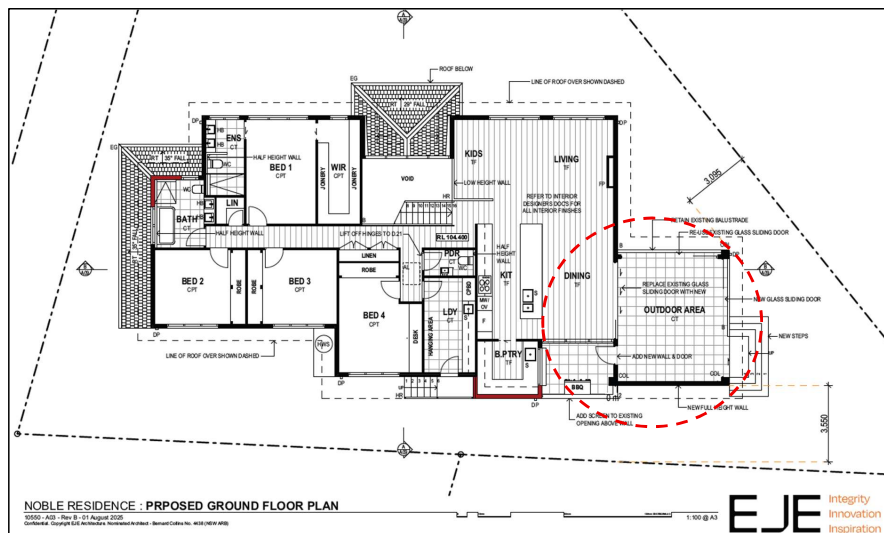


Figure 7: Comparison of existing and proposed elevations to the south, north and east

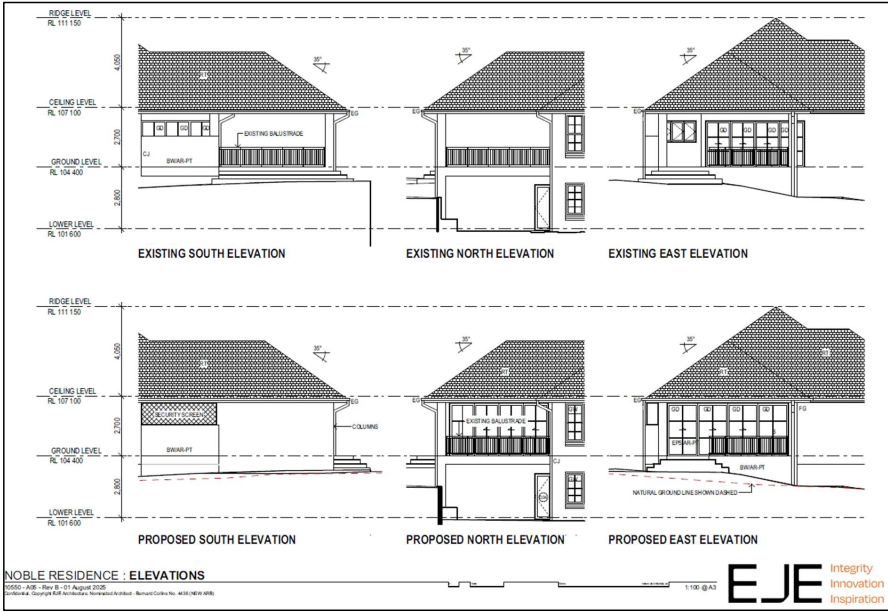


Figure 8: 3Ds of existing elevations and presentation to Mahratta Avenue



Figure 9: 3Ds of proposed elevations and presentation to Mahratta Avenue



3.1 Waste Management

During the construction phase there will be a designated signposted area for storage of recyclable and non-recyclable waste within the site. A waste management plan is provided at **Appendix 3**.

The alterations and additions will not result in an intensification of the existing land use or generate any new waste streams or additional quantities over and above that of a typical private dwelling. Accordingly, ongoing operational waste will be collected as per current practices. This site is serviced by standard residential waste bins collected from the street by Council's kerbside-collection service, as is typical for residential waste.

4 Planning Framework

This section summarises the approval requirements for the proposal, including its permissibility under relevant planning instruments, and the application of other environmental legislation.

The legislation and environmental planning instruments relevant and applicable to the subject site and proposal include:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- State Environmental Planning Policy (Resilience and Hazards) 2021;
- State Environmental Planning Policy (Sustainable Buildings) 2022;

- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Ku-ring-gai Local Environmental Plan 2015; and
- Ku-ring-gai Development Control Plan 2024.

Where relevant, these controls are addressed below.

4.1 Assessment and Approvals Pathway

In accordance with Section 4.2 of the EP&A Act 1979 and Part 3 of the EP&A Regulations the proposal is development that needs consent and is therefore subject to the provisions of Part 4 of the EP&A Act. Based on the cost of works the proposal is neither state significant development or regional development as described in SEPP (Planning Systems) 2021.

4.1.1 Integrated Development

In accordance with Section 4.46 of the EP&A Act, consideration has been given as to whether the proposal constitutes “integrated development” requiring approval under other legislation.

The subject site is not identified as bushfire prone land, nor is it located within a designated mine subsidence district. The proposed works do not involve any activity or land use that would trigger the need for concurrence or approval under any of the Acts listed in Section 4.46 of the EP&A Act.

Accordingly, the development is not integrated development

4.2 Relevant Legislation

4.2.1 Environmental Planning and Assessment Act 1979

The EP&A Act provides the framework for environmental planning and development approvals and includes provisions to ensure that the potential environmental impacts of a development are assessed and considered in the decision-making process.

As outlined in Section 4.1, the proposal is subject to assessment under Part 4 of the EP&A Act.

4.2.1.1 Objects of the EP&A Act

The objects of the EP&A Act are:

- (a) *to promote 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,*
- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) *to promote the orderly and economic use and development of land,*
- (d) *to promote the delivery and maintenance of affordable housing,*
- (e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) *to promote good design and amenity of the built environment,*
- (h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

For the reasons set out below, it is considered that the proposed development satisfies the above stated objects of the EP&A Act:

- The proposal will continue to facilitate the orderly and economic use and development of land as the site is of an appropriate size, location and land use zoning to accommodate the proposed alterations and additions;
- The proposal will continue to promote the delivery and maintenance of housing diversity as there will be no change to the housing configuration, being an existing principal dwelling house and secondary dwelling house;
- The proposed development is attractively designed to respect and complement surrounding built form and the minor alterations and additions are proposed to be sympathetically integrated into this existing built form;
- Appropriate utility services continue to be available to serve the subject site; and
- There will be no unreasonable adverse environmental impacts.

4.2.1.2 Designated Development

The proposal is not designated development, as described in Section 4.10 of the EP&A Act.

4.2.1.3 Section 4.15 Evaluation

Section 4.15 of the EP&A Act specifies the matters which a consent authority must consider when determining a DA.

The relevant matters for consideration under Section 4.15 are addressed in **Table 1** below.

Table 1 – Section 4.15 Considerations

Section 4.15	Reference within this SEE
(a) the provisions of:	
(i) any environmental planning instrument, and	Refer to Section 4.3 of this SEE
(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and	Refer to Section 4.3.5 of this SEE
(iii) any development control plan, and	Refer to Section 4.4 of this SEE
(iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and	No reference. No planning agreement has been entered into with respect to the site or proposed development.

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and	Refer to Section 4.2.2 of this SEE
(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),	N/A
(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	Refer to Section 4.5 of this SEE and associated technical reports and plans.
(c) the suitability of the site for the development,	Refer to Section 4.6 of this SEE and associated technical reports and plans.
(d) any submissions made in accordance with this Act or the regulations,	To be considered as part the assessment process.
(e) the public interest	Refer to Section 4.7 of this SEE.

4.2.2 Environmental Planning and Assessment Regulation 2021

This application satisfies relevant clauses of the Regulation as follows:

- Clause 61 - Demolition will be undertaken in accordance with AS 2601 - 1991: The Demolition of Structures;
- Clauses 64 - All building work will be carried out in accordance with the provisions of the Building Code of Australia;
- All information required in Schedule 1 of the Regulation has been submitted.

4.3 Environmental Planning Instruments

4.3.1 State Environmental Planning Policy (Resilience and Hazards) 2021

A desktop evaluation of the site indicates that the potential sources of contamination present a low to negligible risk to receptors, and the ongoing use of the site is for residential purposes. On this basis, and given the historic and ongoing use of the site for residential purposes, it is considered that the site is considered to be suitable for the proposed development in accordance with Clause 4.6 of SEPP (Resilience and Hazards) 2021. No further investigations have been undertaken or considered necessary in this instance.

4.3.2 State Environmental Planning Policy (Sustainable Buildings) 2022

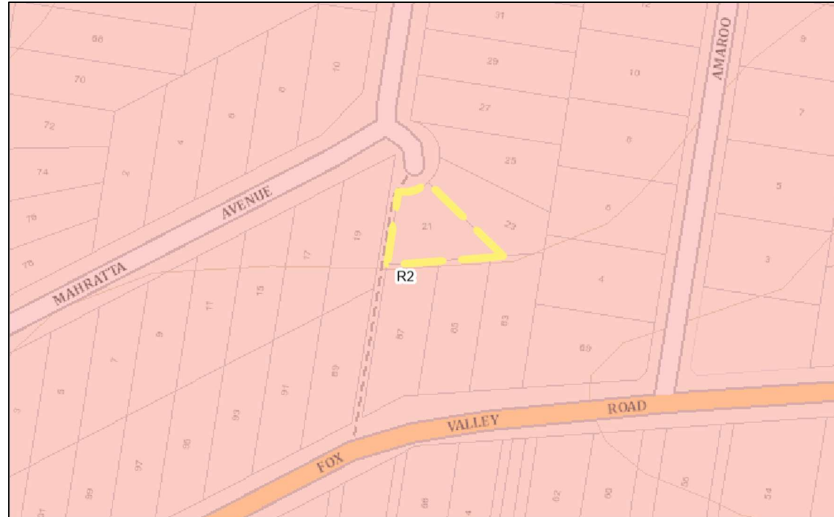
The construction cost of the proposed alterations and additions is less than \$50,000, therefore a BASIX certificate is not required.

4.3.3 Ku-ring-gai LEP 2015

4.3.3.1 Land Use Zone and Zone Objectives

The proposed development is subject to the provisions of *Ku-ring-gai Local Environmental Plan 2015* (KLEP). The subject site is zoned R2 Low Density Residential under the KLEP (see Figure 10).

Figure 10: Land Use Zoning Map



The objectives of the zone are as follows:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for housing that is compatible with the existing environmental and built character of Ku-ring-gai.

The proposed alterations and additions are consistent with the objectives of the R2 Low Density Residential Zone. It will not result in any change to the housing needs of the community within the low density residential zone. It will not conflict with landuses that provide facilities or services to meet the day to day needs of residents. Furthermore, the alterations and additions will result in a minor change to the built form of the existing principal dwelling that is compatible with the existing environmental and built character of Wahroonga. No adverse amenity or environmental impacts are anticipated, including with respect to privacy and overshadowing. As such, the proposal is consistent with the objectives of the zone.

4.3.3.2 Statutory Definition and Permissibility

The subject site is within Zone R2 Low Density Residential under KLEP. “Dwelling houses” and “secondary dwellings” are permitted with consent in the R2 Low Density Residential Zone. The site benefits from an existing principal dwelling house and secondary dwelling house, approved under development consent DA0149/2015.

Part 3 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) allows for alterations and additions to dwelling houses to be undertaken by way of a CDC where certain conditions are met, with provision for some external alterations also available under Part 4. However, Part 3 does not apply to development that is attached to a secondary dwelling, while Part 4 does not allow for an increase in floor area.

The proposed alterations and additions are permitted with consent in the R2 zone, however as there is a secondary dwelling attached to the principal dwelling house, it is understood that exempt and complying development does not apply in this situation.

Accordingly, the proposed alterations and additions to the existing principal dwelling house are best assessed by way of a separate development application.

4.3.3.3 Ku-ring-gai LEP 2015 – Other Provisions

Clause 4.4 – Floor Space Ratio

The objectives of this Clause are as follows:

- a) to enable development with a built form and density that is compatible with the size of the land to be developed, its environmental constraints and its contextual relationship,
- b) to provide for floor space ratios compatible with a range of uses,
- c) to ensure that development density is appropriate for the scale of the different centres within Ku-ring-gai,
- d) to ensure that development density provides a balanced mix of uses in buildings in the employment and mixed use zones.

Subclause 4.4(2) states:

The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).

However, subclause 4.4(2A) states:

*Despite subclause (2), the floor space ratio for a building on land in **Zone R2 Low Density Residential** where the site area is within a specified range in Column 1 of the table to this subclause must not exceed the ratio specified opposite in Column 2 of the table.*

Column 1	Column 2
More than 1,700 square metres	0.3:1
More than 1,000 square metres but not more than 1,700 square metres	$((170 + (0.2 \times \text{site area})) / \text{site area}):1$

**More than 800 square metres but not more than $((120 + (0.25 \times \text{site area})) / \text{site area}):1$
1,000 square metres**

800 square metres or less

0.4:1

The subject site is within Zone R2 Low Density Residential and has a site area of 855 square metres (that is, more than 800 square metres but not more than 1,000 square metres).

Applying the calculations under this Clause, the site is subject to a maximum floor space ratio of 0.39:1, allowing for a gross floor area (GFA) of 333.75m² on the 855m² site.

The proposal is for a minor alteration to the existing principal dwelling to allow for the existing outdoor area to be enclosed. As shown on the Architectural Plans at **Appendix 3**, the existing GFA is 333m² and the outdoor area is 22m². Therefore, the total GFA would increase to 355m², resulting in an increase in the floor space ratio from 0.39:1 to 0.415:1. This equates to an exceedance of 0.025:1, or approximately 6.4% of the floor space ratio development standard in KLEP.

Accordingly, a written request to vary this development standard pursuant to Clause 4.6 of the KLEP forms part of the application. A copy is provided at **Appendix 2**.

The change in floor space ratio is considered to be minor in nature. The proposed alterations and additions will result in minimal change to the overall appearance of the principal existing principal dwelling house. There are no changes proposed to the height, roof line or building envelope. The proposal is simply to facilitate the ability to enclose the outdoor area.

Clause 6.1 – Acid Sulfate Soils

The subject site is identified as containing Class 5 Acid Sulfate Soils. The KLEP 2015 provides the circumstances under which development consent must not be granted for carrying out of works unless an acid sulfate soils management plan has been prepared. In the case of Class 5 soils, this requirement comes into effect when works are proposed 5m or more below the natural ground surface or when the works are likely to lower the water table.

No works are proposed 5m or more below the natural ground level. Therefore, an acid sulfate soils management plan is not required.

Clause 6.2 – Earthworks

The objective of this clause is to ensure that earthworks for development consent will not have a detrimental impact on the built and environmental environments. The proposed development involves ancillary earthworks for the construction of the full height wall on the southern side of the existing outdoor area.

Earthworks will be undertaken in accordance with *AS3798-2007 Guidelines on Earthworks for Commercial and Residential Developments*. Appropriate sediment and erosion control measures would be put in place to manage the potential for soil impacts during the construction phase.

4.3.4 Any Draft Environmental Planning Instruments

No draft environmental planning instruments apply to the proposed development.

4.4 Ku-ring-gai Development Control Plan 2024

The Ku-ring-gai Development Control Plan 2024 (the DCP) applies to the proposed development.

Table 2 demonstrates that the proposed alterations and additions are compliant with the prescriptive controls of the DCP, and more importantly, consistent with all relevant objectives and / or performance-based controls.

Table 2 – Ku-ring-gai DCP 2024 Compliance

The proposed development is subject to the provisions of the Ku-ring-gai Development Control Plan 2024 (KDCP). Compliance with the DCP is generally demonstrated through satisfaction of its specific prescriptive controls. Where strict compliance with a control is not achievable or appropriate due to the particular characteristics of the site or existing built form, a performance-based justification has been provided to demonstrate consistency with the relevant objectives.

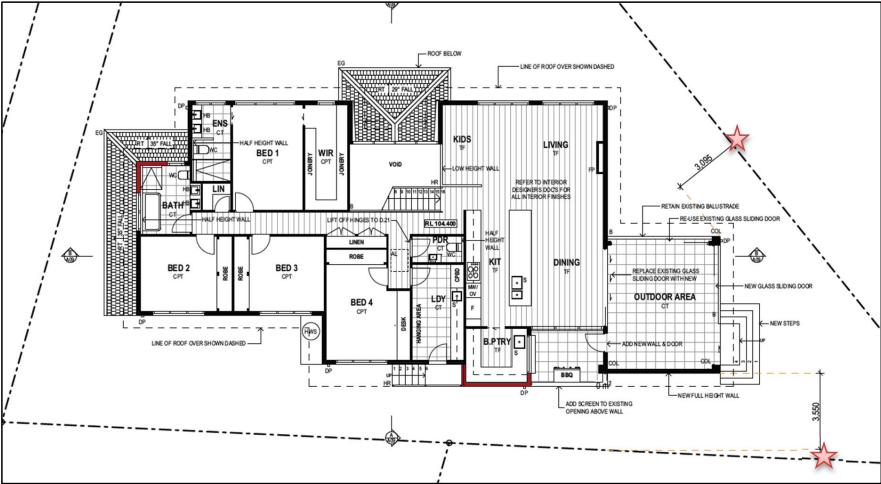
Controls or chapters not explicitly addressed in this report have been reviewed and deemed not applicable to the proposed works, based on the minor nature of the development.

The assessment below demonstrates that the proposal is compliant with the majority of applicable controls and, importantly, remains wholly consistent with the overarching objectives of the DCP. The development represents a suitable and low-impact outcome for the site that aligns with the intent of the planning framework.

KDCP Provision	Comply?	Comment
Section A - Part 2 – Site Analysis		
Site Analysis		
Site Analysis	Yes	A site analysis is provided in Section 2 of this Statement of Environmental Effects, including site description, site characteristics, standard of documentation and additional information provided at the relevant Appendices.
Section A - Part 4 - Dwelling Houses		
4A Site Design		
4A.1 Local Character and Streetscape	Yes	The proposed alterations and additions are considered to be minor in nature and will result in minimal impact on the streetscape. They are not considered to adversely affect the local character, and will be integrated into the existing built form. When viewed from the street and adjacent properties, the building materials will blend with the existing built form and be sympathetic to the existing high quality visual character of the local neighbourhood. As presented below, the proposed alterations and additions will be predominantly obscured from the public domain by the existing dwelling and landscaping / vegetation within the allotment. As such, any impacts arising from the proposal on the prevailing character of the streetscape will be minimal and inconsequential.

Statement of Environmental Effects | Lot 4 DP 18640

KDCP Provision	Comply?	Comment
		
4A.2 Building Setbacks	Yes	There will be no change to the existing building setbacks as a result of the proposed alterations and additions. - The existing dwelling house is set well back from the street, Mahratta Avenue - The western boundary is not impacted by the proposed development in any way.

KDCP Provision	Comply?	Comment
		- The eastern boundary retains the generous 3m setback. The boundary has been landscaped which also provides a soft screening between the existing outdoor area and the adjoining property. The existing dwelling on the adjoining property to the east is approximately 4m from the boundary, creating a total separation distance of over 7m between the adjoining dwelling and the proposed development. - The southern boundary retains the 3.5m setback. The proposed erection of the full height wall to the southern boundary will result in improved privacy for both the existing dwelling house and the adjoining property. The dwelling on the adjoining property to the south is approximately 15m from the rear boundary. 

KDCP Provision	Comply?	Comment
4A.3 Built-Upon Area	Yes	The maximum built upon area (BUA) for a two storey development on a site with an area of 800-899m² is 56%. The subject site has an area of 855m². The built upon area is 413m², including the modification to the steps on the eastern side of the existing outdoor area. Based on these calculations, the maximum built upon area for the site is 48.3%. There will be no discernible difference in the built upon area of the site as a result of the proposed alterations and additions.
4A.4 Landscaping	n/a	There will be no change to the existing landscaping, trees and vegetation as a result of the proposed alterations and additions.
4B Access and Parking		
4B.1 Vehicle Access	n/a	There will be no change to the existing vehicular access to the subject site as a result of the proposed alterations and additions.
4B.2 Car Parking	n/a	There will be no change to the existing car parking provided as a result of the proposed alterations and additions.
4B.3 Carports and Garages	n/a	There will be no change to the existing garages as a result of the proposed alterations and additions.
4C Building Design and Sustainability		
4C.1 Building Envelopes	Yes	There will be no change to the existing building envelope as a result of the proposed alterations and additions. The proposed alterations and additions are contained within the existing building envelope. There will be no change to the maximum height of the dwelling or to the building height plane. The proposed alteration and additions will not result in any overshadowing impacts on neighbouring properties. The relationship of the existing dwelling to the streetscape will not be adversely affected by the proposed alterations and additions as the proposal is minor in nature and set well back from the street.
4C.2 Building Facades	Yes	The proposed alterations and additions to the existing principal dwelling house will be designed so that they are integrated into the existing building. The existing development will continue to present as one building from the street.

Statement of Environmental Effects | Lot 4 DP 18640

KDCP Provision	Comply?	Comment
		The erection of a full height wall to the southern side of the outdoor area will be constructed to blend with the existing facade. The proposed wall will be recessed back from the existing BBQ area, creating an articulated façade to the southern boundary which does not exceed 8m of unrelieved wall.
4C.3 First Floor Design and Roof Forms	n/a	There will be no change to the existing first floor design and roof forms as a result of the proposed alterations and additions. The proposed alterations and additions will not result in an overbearing bulk/scale relationship with neighbouring properties.
4C.4 Private Open Space	n/a	There will be no change to the existing private open space as a result of the proposed alterations and additions. The relocation of the steps to the eastern side will improve the connection between the existing outdoor area attached to the principal dwelling and the existing private open space.
4C.5 Solar Access	n/a	There will be no change to the existing solar access as a result of the proposed alterations and additions. There will be no change to the building envelope that would affect the solar access to the existing dwelling house.
4C.6 Natural Ventilation	n/a	There will be no change to the existing natural ventilation as a result of the proposed alterations and additions. The installation of glass sliding stacker doors will continue to provide for natural, cross ventilation.
4C.7 Ancillary facilities	n/a	There will be no change to the ancillary facilities as a result of the proposed alterations and additions.
4C.8 Fencing	n/a	There will be no change to the existing fencing as a result of the proposed alterations and additions.
4C.9 Waste Management	Yes	This is addressed in Section 3.1 of this SEE and a waste management plan is provided at Appendix 3 .
4C.10 Materials and Finishes	Yes	The external materials and finishes of the proposed alterations and additions will complement the existing building. The external wall proposed on the southern side of the existing outdoor area will be constructed of high quality and durable materials and finishes that blend with the existing built form.

KDCP Provision	Comply?	Comment
Section C – General Requirements		
Section C - Part 21 - General Site Design		
21.1 Earthworks and Slope	Yes	There will be no change to the existing building envelope as a result of the proposed alterations and additions. The proposed alterations and additions are contained within the existing building envelope. Works are confined to the construction of the full height wall to the southern elevation of the existing outdoor area and the relocation of the steps leading from the outdoor area to the existing private open space. The proposed development does not involve site regrading or excavation.
21.2 Landscape Design	Yes	The proposed development will continue to make a positive contribution to the landscape character of Ku-ring-gai. All existing vegetation and landscaping will not be impacted by the proposed development.
Section C - Part 22 – General Access and Parking		
22.1 to 22.8	Yes	The proposed development has been reviewed against this chapter of the DCP. There will be no changes to the existing general access and parking arrangements.
Section C - Part 23 – General Building Design and Sustainability		
23.1 to 23.9	Yes	The proposed development has been reviewed against this chapter of the DCP and Section 4 – 4C Building Design and Sustainability. There will be no changes to the existing general building design and sustainability. The proposed alterations and additions to the existing outdoor area of the existing principal dwelling house will not result in any adverse impact on the local amenity and the quality streets and public areas.

Statement of Environmental Effects | Lot 4 DP 18640

KDCP Provision	Comply?	Comment
		The external materials and finishes of the proposed alterations and additions will be of high quality and complement the existing dwelling. In addition to this, refer to Section 4 - 4C Building Design and Sustainability above and Waste Management Plan provided at Appendix 3.
Section C - Part 24 – Water Management		
24A to 24F.1	Yes	The proposed development has been reviewed against this chapter of the DCP. There will be no changes to the existing water management for the existing dwelling house and secondary dwelling.
Section C - Part 25 – Waste Management		
25A to 25B.2	Yes	The proposed development has been reviewed against this chapter of the DCP. No adverse impacts are anticipated with respect to waste handling during either construction or the ongoing use of the dwelling. There will be no changes to the existing waste management for the existing principal dwelling and secondary dwelling. A Waste Management Plan is provided at Appendix 3.

4.5 Likely Impacts

As discussed in this SEE, the likely impacts of the proposed development are considered to be minor in nature. The proposed alterations and additions will result in minimal change to the overall appearance of the principal existing principal dwelling house. There are no changes proposed to the height, roof line or building envelope. The purpose of the proposal is simply to facilitate the ability to enclose the existing outdoor area to improve its functionality and usability. Further, the proposal will not result in any intensification of the existing residential land use.

There are no environmental impacts to either the natural and built environments. There are no social or economic impacts arising from the proposal requiring further consideration. Accordingly, no further assessment is required.

4.6 Suitability of the Site

The subject site is considered suitable for the proposed development for the following reasons:

- The scale and intensity of the proposed development (that is, minor alterations and additions) are consistent with the existing built form on the site and adjoining properties;
- The proposed development is compatible with the long standing residential use of the land;
- The likely impacts of the proposal on the surrounding environment will be minimal and inconsequential.
- The proposal is generally compliant with the statutory planning framework applicable to the site and intended use.

4.7 The Public Interest

Pursuant to case law of *Ex Gratia P/L v Dungog Council* (NSWLEC 148), the question that needs to be answered is “Whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development”.

There are no unreasonable impacts that will result from the proposed development and it will maintain the character of the local area in terms of scale, materiality and built form. Therefore, the benefits of approving will have an overall public benefit and therefore approval is thought to be in the public interest.

5 Conclusion

This report provides an assessment of the proposed alteration and additions to the existing principal dwelling house in accordance with the provisions of S.4.15 of the EP&A Act 1979. In this respect this report has addressed all relevant environmental planning instruments including *Ku-ring-gai LEP 2015* and relevant guidelines including the Ku-ring-gai DCP 2024.

In evaluating the proposed development against the relevant statutory planning framework applicable to the site and proposed development, it is evident that the likely impacts of the proposed development will be acceptable. Additionally, in considering the environmental characteristics of the site and scale the proposed development, the site can suitably accommodate the proposal.

On this basis the proposal is considered to be in the public interest and can be approved.

DEVELOPMENT APPLICATION

SUMMARY SHEET

REPORT TITLE:	1 RUSSELL AVENUE, LINDFIELD - DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING WITH BASEMENT CARPARKING AND ASSOCIATED WORKS
ITEM/AGENDA NO:	GB.2

APPLICATION NO:	eDA0313/25
ADDRESS:	1 Russell Avenue, Lindfield
WARD:	Roseville
DESCRIPTION OF PROPOSAL:	Demolition of existing dwelling and construction of a residential flat building with basement car parking and associated works
APPLICANT:	PSI Architects Pty Ltd
OWNER:	Salerno Holdings Pty Ltd
DATE LODGED:	27 June 2025
SUBMISSIONS:	4 submissions
ASSESSMENT OFFICER:	Brodee Gregory
RECOMMENDATION:	Refusal

KLPP REFERRAL CRITERION:	Departure from a development standard in excess of 10% and sensitive development to which Chapter 4 (Design of Residential Apartment Development) of SEPP (Housing) 2021 applies.
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PURPOSE OF REPORT

To determine Development Application No eDA0313/25 for demolition of existing dwelling and construction of a residential flat building with basement car parking and associated works.

This application is reported to the Ku-ring-gai Local Planning Panel in accordance with the Minister's Section 9.1 Local Planning Panels Direction, as it:

- (a) is sensitive development to which Chapter 4 (Design of Residential Apartment Development) of SEPP (Housing) 2021 applies and
- (b) proposes departures from development standards in excess of 10%.

RECOMMENDATION

THAT the Ku-ring-gai Local Planning Panel exercising the functions of Ku-ring-gai Council, as the consent authority, pursuant to Section 4.16 of the Environment Planning and Assessment Act 1979, refuse development consent to eDA0313/25 for demolition of existing dwelling and construction of a residential flat building with basement car parking and associated works on land at 1 Russell Avenue, Lindfield for the reasons provided in the Development Assessment Report **(Attachment A1)**.

Brodee Gregory
Executive Assessment Officer

Selwyn Segall
Team Leader - Development Assessment

Shaun Garland
Acting Director Development and Regulation

Attachments:	A1	Development Assessment Report	2025/237698
	A2	Location Sketch	2025/309791
	A3	Zoning Sketch	2025/309788
	A4	Architectural Plans	2025/257761
	A5	Landscape Plans	2025/199430
	A6	Stormwater Plans	2025/203107
	A7	Clause 4.6 Variation Request - Number of storey control	2025/257760
	A8	Clause 4.6 Variation Request - Building height	2025/199441
	A9	Clause 4.6 Variation Request - Minimum allotment dimensions	2025/199439
	A10	Clause 4.6 Variation Request - Floor Space Ratio	2025/257762
	A11	Statement of Facts and Contentions	2025/351046

DEVELOPMENT APPLICATION

ASSESSMENT REPORT

REPORT TITLE	1 Russell Avenue, Lindfield - Demolition of existing dwelling and construction of a residential flat building with basement car parking and associated works
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APPLICATION NO	eDA0313/25
PROPERTY DETAILS	1 Russell Avenue, Lindfield Lot B DP 412764 1,131.3m ² R3 Medium Density Residential, Additional Permitted Use – No. 1 Russell Avenue, Lindfield (Schedule 1 KLEP – Residential Flat Building)
WARD	Roseville
PROPOSAL/PURPOSE	Demolition of existing dwelling and construction of a residential flat building with basement car parking and associated works
TYPE OF DEVELOPMENT	Local
APPLICANT	PSI Architects Pty Ltd
OWNER	Salerno Holdings Pty Ltd
DATE LODGED	27 June 2025
RECOMMENDATION	Refusal

PURPOSE OF REPORT

To determine Development Application No eDA0313/25 for demolition of the existing dwelling and construction of a residential flat building with basement car parking and associated works.

The application is reported to the Ku-ring-gai Local Planning Panel in accordance with the Minister's Section 9.1 Local Planning Panels Direction, as it:

- (a) is sensitive development to which Chapter 4 (Design of Residential Apartment Development) of SEPP (Housing) 2021 applies, and
- (b) involves departures to numerical development standards of more than 10%.

INTEGRATED PLANNING AND REPORTING

Places, Spaces & Infrastructure

Community Strategic Plan Long Term Objective	Delivery Program Term Achievement	Operational Plan Task
P2.1 A robust planning framework is in place to deliver quality design outcomes and maintain the identity and character of Ku-ring-gai.	Applications are assessed in accordance with state and local plans.	Assessments are of a high quality, accurate and consider all relevant legislative requirements.

EXECUTIVE SUMMARY

Issues

Minimum site dimensions
 Landscape area
 Building height
 Number of storeys
 Floor Space Ratio
 Building setbacks and separation
 Deep soil zones
 Response to site topography
 Residential amenity
 Desired future character
 Tree impacts
 Landscape design and canopy tree planting
 Site analysis
 Basement design
 Driveway access
 Bicycle parking

Insufficient information
Flooding and stormwater

Submissions

First notification period: 3
Second notification period: 1

Land and Environment Court

Yes - Deemed Refusal

Recommendation

Refusal

HISTORY**Site history**

The site has a history of low-density residential use.

Previous applications history

A Pre-DA consultation was not undertaken with Council for the proposed development.

Council's records show previous applications relating to the site as follows:

Type	Application	Description	Decision	Date
PreLodge	PRE0115/13	Residential Flat Building (Affordable Rental Housing)	Completed	20/09/2013
DA	DA0375/14	Demolition of the existing dwelling and construct a residential flat building (affordable housing) consisting of 12 units, landscaping, basement parking and associated works	Approved (LEC)	18/07/2018
DA	DA0286/18	Development Application to amend DA0375/14 (approved by the Land and Environment Court Proceedings No.11186 of 2015) to increase the total number of units from 10 to 14	Approved (LEC)	14/05/2019

Current Development Application History

Date	Action
11/06/2025	State Environmental Planning Policy (Housing) 2021 was amended pursuant to Ku-ring-gai Local Environmental Plan (Housing) (Map Amendment No 1).
13/06/2025	Ku-ring-gai Local Environmental Plan (Housing) (Map Amendment No. 1) commenced when it was published on the NSW Legislation

	Website. Under the amendment, the subject site is not mapped within a Transport Oriented Development area.
18/06/2025	The Development Application was lodged on the NSW Planning Portal (PAN-545905).
27/06/2025	The Development Application was accepted by Council.
17/07/2025 – 18/08/2025	The application was notified to neighbouring property owners for a period of 30 days. In response, three submissions were received.
6/08/2025	A letter was sent to the applicant advising that the proposed development had been incorrectly lodged under Chapter 5 (Transport Oriented Development) provisions of State Environmental Planning Policy (Housing) 2021 [SEPP Housing] and that consent could not be granted under these provisions.
18/06/2025	The application documentation was amended to reflect the development being lodged pursuant to Chapter 6 (Low and Mid Rise Housing) of SEPP Housing.
27/08/2025 – 10/09/2025	The application was re-notified for a period of 14 days. One further submission was received which reiterated the concerns raised previously.

Land and Environment Court appeal history

There is a current Class 1 appeal against the deemed refusal of the subject Development Application, which was filed with the Land and Environment Court (Court) on 19 September 2025. The Statement of Facts and Contentions (SOFAC) was filed with the Court on 20 October 2025 (**Attachment 11**).

THE SITE



Figure 1: Aerial photograph of subject site and surrounding properties

Site description

The site is legally described as Lot B in DP 412764 and is known as No. 1 Russell Avenue, Lindfield (**Figure 1**). The site is situated at the intersection of Russell Avenue and Lindfield Avenue and is located on the southern (high) side of Russell Avenue and the eastern (low) side of Lindfield Avenue. Russell Avenue is classified as the primary street frontage.

The site is an irregular shaped allotment with a depth of 44.52 metres. The site has a variable width of between 16.47 metres and 33.82 metres. The site area is not identified on the site survey but is detailed in the application documentation as 1,131.3m².

The site is gently sloping with a fall of approximately 3 metres from its south-western corner to its north-eastern corner.

Development currently on the site comprises a dilapidated single storey dwelling house located in the south-western part of the site. A bitumen area exists in the northern part of the site. A low masonry retaining wall exists along both site frontages.

Vehicular access to the site is via an existing crossover from Lindfield Avenue.

Constraint:	Application:
Visual character study category	1920-1945
Easements/rights of way	No
Heritage Item - Local	No
Heritage Item - State	No
Heritage conservation area	No.
Within 100m of a heritage item	Yes – No. 5 Middle Harbour Road, No. 19 Russell Avenue, Lindfield Station and No. 1-5 Tryon Road ('St Albans Church')
Bush fire prone land	No
Natural Resources Biodiversity	No
Natural Resources Greenweb	No
Natural Resources Riparian	No
Within 25m of Urban Bushland	No
Contaminated land	No
Flood Hazard Map	Yes – Hazard Category – Low

Surrounding development

The site is in the vicinity of the Lindfield Local Centre and there are a variety of land uses in the locality (**Figure 2**). The subject site and the three adjoining properties at 4-10 Middle Harbour Road, to the south are zoned R3 Medium Density Residential. These properties currently support single dwelling houses.

Land to the east of the R3 Medium Density Residential is zoned R2 Low Density Residential. The land is currently occupied by single dwelling houses. Directly adjoining the subject site to the east is No. 3 Russell Avenue. Development on this site comprises a single storey dwelling house with ancillary development.

To the north of the subject site, across Russell Avenue, is land zoned R4 High Density Residential. This land is currently occupied by a residential flat building at Nos. 2-6 Russell Avenue and a multi-dwelling housing development at Nos. 8-10 and 12-18 Russell Avenue.

To the west of the site is the North Shore railway corridor. To the north-west is land zoned E1 – Local Centre, which supports commercial development.

The site is impacted by the 1% AEP (Annual Exceedance Probability) overland flow (**Figure 3**).

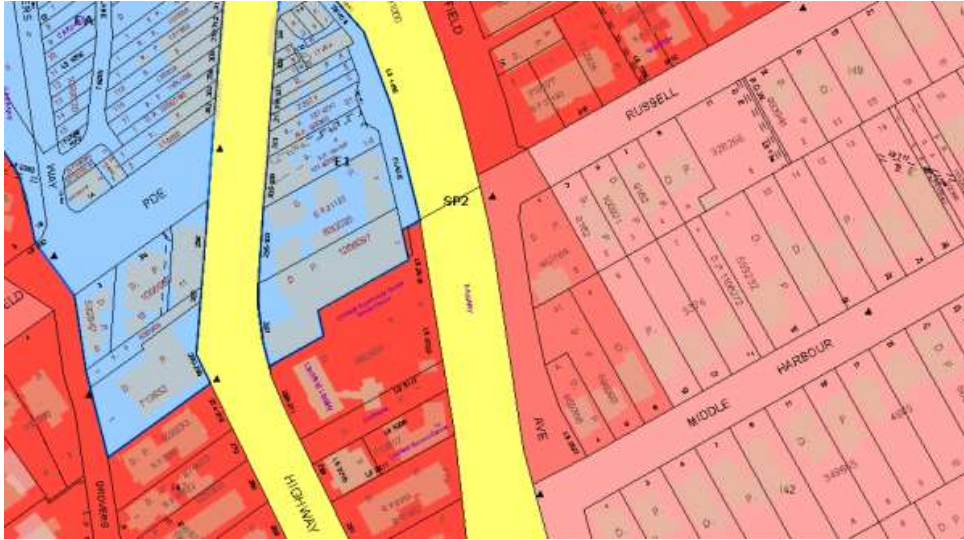


Figure 2: Zoning extract showing land uses surrounding the site

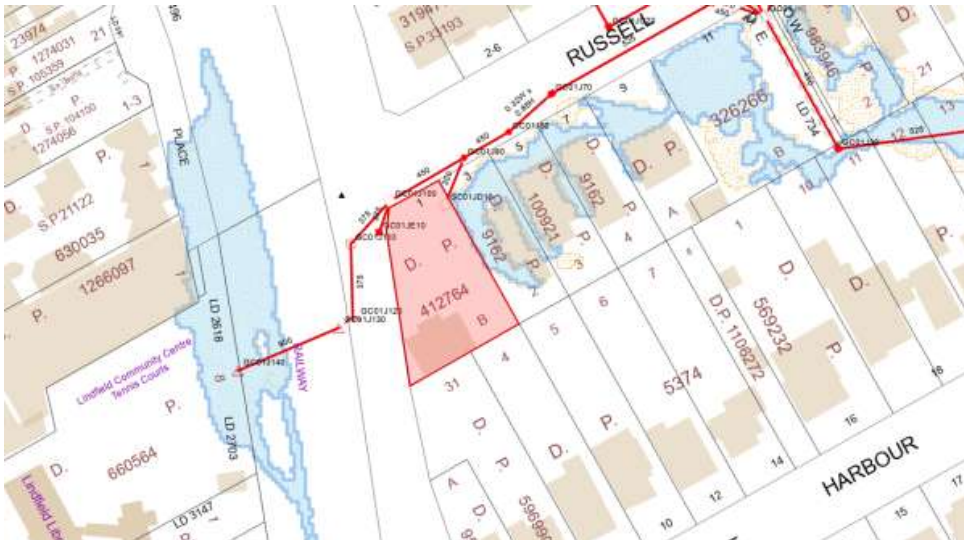


Figure 3: Excerpt from Council's flood mapping showing the 1% AEP overland flow in blue

Strategic context:

The site is not located within a Transport Oriented Development (TOD) Area pursuant to Kuring-gai Local Environmental Plan (Housing) (Map Amendment No. 1) which was made on 11 June 2025.

Under Council's exhibited Alternative TOD scenario, the site is proposed to be zoned R4 High Density Residential (**Figure 4**). Under the Alternative TOD scenario, the site has a maximum building height of 29 metres and a maximum Floor Space Ratio (FSR) of 1.8:1 (**Figures 5 and 6**).

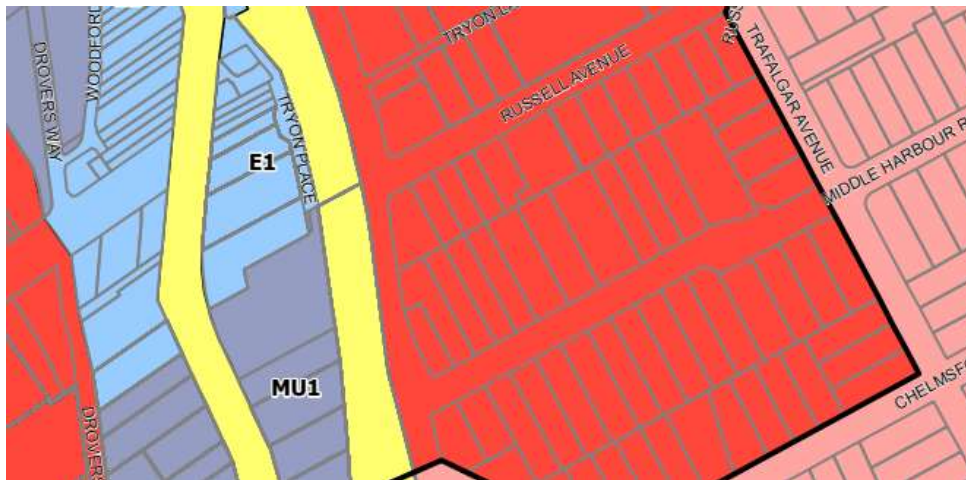


Figure 4: Proposed zoning under Alternative TOD



Figure 5: Proposed building height under Alternative TOD



Figure 6: Proposed FSR under Alternative TOD

Several Development Applications have been lodged in the vicinity of the site under the Transport Oriented Development (TOD) provisions of SEPP Housing. These include Development Application No. eDA0219/25 at Nos. 24-26 Russell Avenue and eDA0182/25 at Nos. 5-7 Middle Harbour Road. Class 1 Appeals have been lodged for these development applications, with the NSW Land and Environment Court.

A State Significant Development (SSD) Application has been lodged for No. 24-28 Middle Harbour Road (SSD-82548708) and is currently under assessment by the Department of Planning and Environment.

THE PROPOSAL

The application proposes demolition of the existing dwelling house and ancillary structures and construction of a residential flat building. The proposed residential flat building includes:

- i. three storeys of basement including:
 - 34 x resident parking spaces (5 x accessible spaces)
 - 7 x visitor parking spaces
 - resident storage areas
 - pump room
 - air conditioning plant
 - bulky waste area
 - waste room
 - motorbike parking
 - 30 x bicycle storage racks
- ii. nine storeys of residential units containing 28 units in total with the following unit mix:
 - 1 x one bedroom units
 - 11 x two bedrooms units
 - 14 x three bedrooms units
 - 2 x four bedrooms units
- iii. rooftop communal open space including swimming pool and spa, accessible water-closet and pool pump room
- iv. rooftop mechanical plant room
- v. vehicular access from Russell Avenue

- vi. pedestrian access from Lindfield Avenue
- vii. stormwater works including an on-site detention tank and rainwater tank beneath the driveway
- viii. landscaping works

All apartments are designed as Platinum level units under the Livable Housing Guidelines. Five apartments (Unit 04, Unit 08, Unit 12, Unit 18 and Unit 20) are identified as being 'adaptable units' on the architectural plans and within the submitted Access report.

The proposed development includes six 'affordable' dwellings under the provisions of Chapter 2 of State Environmental Planning Policy (Housing) 2021. The proposed affordable apartments are Unit 01, Unit 04, Unit 05, Unit 07, Unit 08 and Unit 16.

External finishes for the proposed development include face-brick and rendered brickwork with metal cladding and palisades to the balconies.

The application involves removal of five trees located on the site.

CONSULTATION

Community

In accordance with Appendix 1 of the Ku-ring-gai Community Participation Plan, owners of surrounding properties were given notice of the application. In response, submissions from the following were received.

1. C.Ong – No. 5 Russell Avenue, Lindfield
2. Y. Wang and Y. Huang – No. 3 Russell Avenue, Lindfield
3. J. Chu – No. 9 Russell Avenue, Lindfield

The submissions raised the following issues:

Hazards to vehicles/pedestrians at intersection of Russell Avenue and Lindfield Avenue; dangers arising from drivers performing 'u-turns' to find parking

Council is finalising design work for the street upgrade of Lindfield Avenue and Tryon Road. Council's Strategic Traffic Engineer has reviewed the proposed development and has raised concerns in relation to conflict between the proposed driveway location and the planned upgrades. This issue forms a recommended reason for refusal.

Stormwater impacts to adjoining properties including No. 3 Russell Avenue

The proposed stormwater design does not satisfy the requirements of Clause 6.5 of the Ku-ring-gai Local Environmental Plan (KLEP) and Part 24 of the Ku-ring-gai Development Control Plan (KDCP) with respect to stormwater management. This issue forms a recommended reason for refusal.

Houses becoming derelict due to Housing reforms and likely redevelopment

The course of urban renewal is not a matter for consideration under section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Excessive building height

A maximum building height of 22 metres applies under SEPP Housing, although affordable housing provisions under Section 16(3), Chapter 2 of SEPP Housing, allow an additional building height of 30% or 6.6 metres, resulting in a maximum building height of 28.6 metres. The proposed development has a height of 30.9 metres which does not comply with this development standard. A Clause 4.6 variation request has been submitted in support of the variation however it does not reference the correct provisions of the SEPP and therefore cannot be supported. This issue forms a recommended reason for refusal.

Overshadowing impacts to neighbouring properties including No. 3 Russell Avenue (living areas and bedrooms) – non-compliance with KDCP requirements

The proposed development maintains 3 hours solar access to the living room and primary areas of private open space to existing adjoining properties including No. 3 Russell Avenue. However, solar modelling has not been provided to demonstrate that the proposed development will not hinder the development potential of adjoining properties. This issue forms part of a recommended reason for refusal.

Noise impacts from rooftop pool, communal open space

The submitted Noise Impact Assessment, prepared by Rodney Stevens Acoustic dated 6 June 2025, considers impacts from the proposed rooftop pool and provides recommendations in relation to maximum number of users and hours of use. A condition concerning maximum number of uses would not be practical as it would be difficult to enforce. However, a condition of consent restricting the hours of use could be included in the event of an approval.

Noise impacts from mechanical plant have not been assessed

The noise impact assessment states that a further acoustic survey would be required by an acoustic consultant once mechanical plant schedules have been finalised. Conditions of consent could be included in the event of an approval requiring amended expert documentation limiting, at all times, noise impacts from mechanical plant, prior to issue of the Construction Certificate.

Inconsistencies in noise impact assessment including references to a proposed child-care centre

It is agreed that the noise impact assessment contains inconsistencies – incorrect references. This issue forms a recommended reason for refusal.

Inconsistency with revised TOD scheme

Council's exhibited Alternative TOD scheme includes the subject site within the TOD area with a maximum building height of 29 metres and a maximum Floor Space Ratio (FSR) of 1.8:1. The proposed building height of 30.9 metres and FSR of 2.918:1 exceeds both these proposed development standards.

Scale of development is inconsistent with zoning

The site is zoned R3 Medium Density Residential which does not ordinarily permit residential flat buildings. However, the site is subject to an additional permitted use (APU) under Schedule 1 of the KLEP, which permits residential flat buildings on the subject site.

The current development standards applying to the site under the KLEP permit a maximum building height of 11.5 metres and a maximum FSR of 0.85:1. Irrespective of these

development standards, the provisions of State Environmental Planning Policy – Housing (SEPP Housing) apply to the site, which override the local controls and permits a maximum building height of 28.6 metres and a maximum FSR of 2.86:1.

Lack of articulation and modulation as required by KDCP controls

The proposed development includes large areas of unrelieved wall and does not comply with the articulation requirements of Part 7C.6 of Ku-ring-gai Development Control Plan (KDCP). This issue forms a recommended reason for refusal.

Building setbacks – non-compliances with KDCP

Control 1 of Part 7A.3 of KDCP requires minimum building setbacks of 10 metres from both street frontages. The objectives of this requirement are to ensure buildings are in a garden setting by providing sufficient area for effective deep soil zones. The proposed development is set back 6.4 metres from northern primary frontage and 3.9 metres from the western secondary frontage and does not meet the requirements or objectives of Part 7A.3. This issue forms a recommended reason for refusal.

Privacy impacts to No. 3 Russell Avenue – living areas and bedrooms and rear yard

The proposed development does not meet the minimum building separation requirements under Objective 3F-1 of the ADG, nor does it meet the minimum building setback requirements under Part 7A.3 of KDCP resulting in likely privacy impacts. This issue form a recommended reason for refusal.

Insufficient deep soil – non-compliance with KDCP

Control 1 of Part 7A.6 of KDCP requires a minimum deep soil area of 40% of the site. The proposed development includes a deep soil area of 5.72% of the site area and does not comply with the objectives of this control. Consequently, this issue forms part of a recommended reason for refusal.

Removal of significant trees

The proposal does not involve the removal of any significant trees, however it will likely result in adverse impacts to Tree 3 *Jacaranda mimosifolia* (*Jacaranda*) which is proposed for retention. The detrimental impact to this tree forms a recommended reason for refusal.

Insufficient on-site parking provided

The proposed number of residential car parking spaces meets the minimum requirements of SEPP Housing and Ku-ring-gai Development Control Plan (KDCP).

Inconsistency with neighbourhood character

The proposed development does not maintain the local character as it does not provide sufficient deep soil area failing provide an appropriate garden setting reflective of the scale of the proposed development. Additionally, the proposal does not comply with several of Council's design requirements, as discussed in the report. These issues form recommended reasons for refusal.

Inadequate waste management facilities (location and screening)

The proposed development includes a waste and recycling storage room within Basement

Level 01, as well as a bulky waste storage room. The location of the proposed waste storage rooms meets the requirements of Part 25 of KDCP.

Internal Referrals

Urban Design

Council's Urban Design Consultant has reviewed the proposed development and raised concerns with inadequate site analysis, building setbacks and separation, residential amenity, inconsistency with desired future character, sustainability, site analysis, architectural plans, buildability and Design Verification Statement. These issues are agreed and form part of the recommended reasons for refusal.

Landscaping

Council's Senior Landscape and Tree Assessment Officer has reviewed the proposed development and raised concerns with minimum landscape and deep soil provision, impacts to retained trees and landscape design. These issues are agreed and form recommended reasons for refusal.

Engineering

Council's Consultant Stormwater Engineer has reviewed the proposed development and has raised concerns in relation to flooding and stormwater management. These issues are agreed and form part of the recommended reasons for refusal.

Operations

Council's Drainage Engineer has reviewed the proposed development and has raised concerns in relation to flooding and stormwater management. These issues are agreed and form part of the recommended reasons for refusal.

Strategic Traffic Engineer

Council's Strategic Traffic Engineer has reviewed the proposed development and has raised concerns in relation to basement and driveway design, and bicycle storage. These issues are agreed and form part of the recommended reasons for refusal.

Building

Council's Senior Building Surveyor has reviewed the proposed development and has raised no objections, subject to the inclusion of conditions concerning access and fire safety. These conditions are agreed and would be included if the application were recommended for approval.

External Referrals

Sydney Trains

The application was referred to Sydney Trains in accordance with Section 2.99 of State Environmental Planning Policy (Transport and Infrastructure) 2021. The following comments were received:

[Reference is made] to Council's referral via the NSW Planning Portal

requesting concurrence for the above Development Application (DA) in accordance with Section 2.99 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP).

Council is advised that TfNSW, via Instruments of Delegation, has been delegated to act as the rail authority for the heavy rail corridor operated by Sydney Trains (including infrastructure), and to process the concurrence for this Development Application.

As such, TfNSW (as Rail Authority) advises that the proposed development has been assessed in accordance with the requirements of Section 2.99(4) of the Transport and Infrastructure SEPP being:

- a) the potential effects of the development (whether alone or cumulatively with other development or proposed development) on:*
 - i. the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and*
 - ii. the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and*
- b) what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects.*

We have taken the above requirements into consideration and have decided to grant concurrence to the development proposed in Development Application eDA0313/25 subject to Council imposing the operational conditions as written in Attachment A that will need to be complied with.

The recommended conditions would be included if the application were recommended for approval.

STATUTORY PROVISIONS

State Environmental Planning Policy (Resilience and Hazards) 2021 - Chapter 4 Remediation of land

The provisions of Chapter 4 require Council to consider the potential for a site to be contaminated. The subject site has a history of low-density residential use and as such, it is unlikely to contain any contamination, and further investigation is not warranted in this case.

State Environmental Planning Policy (Transport and Infrastructure) 2021 – Division 15 Railways

Section 2.99 of State Environmental Planning Policy (Transport and Infrastructure) 2021 requires the consent authority to give written notice of the application to the rail authority where the application involves ground penetration to a depth of 2 metres within 25 metres of the rail corridor. Accordingly, the subject application was referred to Sydney Trains and the response is detailed above.

State Environmental Planning Policy (Sustainable Buildings) 2022 – Chapter 2 Standards for residential development – BASIX

A valid BASIX certificate has been submitted and the proposal is consistent with commitments identified in the certificate. As per the requirements of Clause 2.1(5) the consent authority is

satisfied that the application includes information in which the embodied emissions attributable to the development have been quantified.

State Environmental Planning Policy (Housing) 2021

SEPP Housing contains several principles including the promotion of the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services.

The subject application seeks development consent for a residential flat building on land that is zoned R3 High Density Residential. The site is located within the 'Low and Mid Rise Area' as defined in Chapter 6, being land within 400 metres walking distance of the public entrance to Lindfield Railway Station. Additionally, the subject application seeks to provide in-fill affordable housing under Chapter 2, more than the minimum affordable housing requirements under Chapter 6.

The relevant sections of Chapters 2, 4 and 6 of SEPP Housing are considered below-

Chapter 2 – Affordable housing

The subject application proposes a residential flat building which is permitted under Schedule 1 of KLEP and Chapter 5 of SEPP Housing.

The affordable housing component of the development is 15.4% satisfying the minimum 10% requirement prescribed under Section 15C of SEPP Housing. Nonetheless, the applicant has not demonstrated that the affordable housing component will be managed by a registered community housing provider as required by Section 21 of the SEPP. This issue forms a recommended reason for refusal.

The affordable housing requirements for additional FSR and building height as well as the non-discretionary development standards are discussed in the table below –

Development standard	Proposed	Complies
S 16 (1) - Affordable housing requirements for additional floor space ratio Maximum permissible floor space - 2.5:1 plus additional 30% (based on minimum affordable housing component) $\text{affordable housing component} = \frac{\text{additional floor space ratio}}{(\text{as a percentage})} \div 2$	The subject site is subject to a maximum FSR of 2.2:1. Under the provisions of Section 16(1), the site is eligible for additional gross floor area (GFA) of up to 30%. The site is therefore subject to a maximum FSR of 2.86:1 (3,235.51m² GFA), subject to provision of additional affordable housing GFA.	NO

Development standard	Proposed	Complies
	The proposal includes 501m² of affordable housing which complies with the minimum requirement of 10% of GFA. However, the proposal has a total GFA of 3,301.2m² (FSR 2.91.1) which does not comply with the development standard. A Clause 4.6 variation request has been provided and is considered below.	
S 16 (3) – Maximum permissible building height Maximum permissible building height (RFB_ - 22 metres plus same % as the additional floor space permitted under (1)	The site is subject to a maximum building height of 22 metres. Under the provisions of Section 16(3), the site is subject to an additional building height of 30% (6.6 metres), resulting in a maximum building height of 28.6 metres. The proposed development has a building height of 30.9 metres and does not comply with the development standard. A Clause 4.6 variation request has been provided and is considered below.	NO

Development standard	Proposed	Complies
S 19 - Non-discretionary development standards—the Act, s 4.15		
Site area – 450m² (minimum)	Site area is 1,131.3m ² .	YES
Minimum landscape area, the lesser of – (i) 35m ² per dwelling, or (ii) 30% of the site area,	The proposal provides a landscape area of 108.6m ² representing 9.6% of the site area.	NO
Car parking		
Number of parking spaces for dwellings used for affordable housing— (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, (iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space,	5 spaces are proposed for 9 affordable dwellings (1 x 1 bedroom and 8 x 2 bedroom).	YES
Number of parking spaces for dwellings not used for affordable housing – (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 1 parking space, (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,	29 spaces are proposed for 19 market dwellings (3 x 3 bedroom and 16 x 3+ bedroom).	YES
Minimum internal area – as per ADG	See ADG table	YES
S 20 – Design requirements The design of the residential development is compatible with – (a) the desirable elements of the character of the local area, or (b) for precincts undergoing transition—the desired future character of the precinct.	The design of the development is not compatible with the existing or desired local character of the area.	NO
S 21 - Must be used for affordable housing for at least 15 years If providing affordable housing component under section 16, 17 or 18 and the affordable housing component will be managed by a registered community housing provider	Details of the registered housing provider have not been provided.	NO

Chapter 4 – Design of residential apartment development

The proposed development does not achieve the aims of this chapter because of the unsatisfactory built form and aesthetics of the building and consequential impacts on the streetscape, as discussed within the report.

Consideration is given below to the quality of the design of the residential apartment development when evaluated in accordance with the design principles set out in Schedule 9 of SEPP Housing –

1 Context and neighbourhood character

The proposed development does not appropriately respond to context, as detailed by Council's Urban Design Consultant.

2 Built form and scale

The proposed development includes insufficient building setbacks which will hinder the provision of equitable building separation with adjoining sites. Additionally, the proposed height and FSR are excessive and not supported by well-founded Clause 4.6 variation requests.

3 Density

The development fails to comply with the maximum FSR development standard provided by SEPP Housing.

4 Sustainability

Passive thermal design measures could be improved through the provision of on-site power generation and storage, charging for electric vehicles, ceiling fans to bedrooms, and decarbonisation of energy supply (gas should be avoided for cooking, hot water and heating).

5 Landscape

The proposed development includes insufficient landscaped area and insufficient deep soil zone area to support the provision of canopy trees.

6 Amenity

More design attention should be given to facades impacted by noise and pollution from the railway and heavy vehicles along Lindfield Avenue. Acoustic treatments to this façade would also assist in reducing heat loads to this façade, as no shading protection is proposed.

Only one lift is proposed to service ten residential levels and three basement levels, which is likely to result in long wait times. Amenity would be improved through the provision of an additional lift.

7 Safety

Only one fire stair is proposed. Clarification is required as to whether an additional fire stair is required.

8 Housing diversity and social interaction

The proposed development includes a mix of apartment types and an area of communal open space which will facilitate social interaction.

9 Aesthetics

As noted by Council's Urban Design Consultant, the eastern and southern elevations include significant areas of blank walls which impact negatively on the streetscape and residential

amenity. Further, the development relies on an excessive use of rendered wall surfaces which is likely to weather poorly over time.

Consideration is also given in the table below to the Apartment Design Guide.

ADG COMPLIANCE TABLE	
Guideline	Compliance
<i>Objective 3A-1</i> Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context	NO
<i>Objective 3B-1</i> Building types and layouts respond to the streetscape and site while optimising solar access within the development	NO
<i>Objective 3B-2</i> Overshadowing of neighbouring properties is minimised during mid-winter	NO
<i>Objective 3C-1</i> Transition between private and public domain is achieved without compromising safety and security	YES
<i>Objective 3C-2</i> Amenity of the public domain is retained and enhanced	YES
<i>Objective 3D-1</i> An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping	YES
Design criteria	
1 Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)	YES
2 Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)	YES
<i>Objective 3D-2</i> Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting	YES
<i>Objective 3D-3</i> Communal open space is designed to maximise safety	YES
<i>Objective 3E-1</i> Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality	NO

ADG COMPLIANCE TABLE			
Guideline			Compliance
Design criteria			
Deep soil zones are to meet the following minimum requirements:			NO
Site area	Minimum dimensions	Deep soil zone (% of site area)	
650m ² - 1,500m ²	3 metres	2%	
Objective 3F-1			NO
Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy			
Design criteria			
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:			NO
Building height	Habitable rooms and balconies	Non-habitable rooms	Proposal
up to 12m (4 storeys)	6 metres	3 metres	3 metres (habitable rooms)
up to 25m (5-8 storeys)	9 metres	4.5 metres	5.5 to 6 metres (habitable rooms and balconies)
over 25m (9+ storeys)	12 metres	6 metres	6 metres (habitable rooms and balconies)
Note:	Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2) Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties		
Objective 3F-2			NO
Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space			
Objective 3G-1			YES
Building entries and pedestrian access connects to and addresses the public domain			
Objective 3G-2			YES
Access, entries and pathways are accessible and easy to identify			

ADG COMPLIANCE TABLE	
Guideline	Compliance
Objective 3H-1 Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	YES
Design guidance	
Car park access should be integrated with the building's overall facade. Design solutions may include: - the materials and colour palette to minimise visibility from the street - security doors or gates at entries that minimise voids in the facade - where doors are not provided, the visible interior reflects the facade design and the building services, pipes and ducts are concealed	YES
Objective 3J-1 1 Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas	YES
Design criteria	
1 For development on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street.	YES
Objective 3J-2 Parking and facilities are provided for other modes of transport	NO
Objective 3J-3 Car park design and access is safe and secure	YES
Objective 3J-4 Visual and environmental impacts of underground car parking are minimised	YES
Objective 4A-1 To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space	YES

ADG COMPLIANCE TABLE											
Guideline		Compliance									
Design criteria											
1	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas	YES									
3	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	YES									
Objective 4A-2 Daylight access is maximised where sunlight is limited		YES									
Objective 4A-3 Design incorporates shading and glare control, particularly for warmer months		NO									
Objective 4B-1 All habitable rooms are naturally ventilated		NO									
Objective 4B-3 The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents		YES									
Design criteria											
1	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed	YES									
2	Overall depth of a cross-over or cross-through apartment does not exceed 18 metres, measured glass line to glass line	YES									
Objective 4C-1 Ceiling height achieves sufficient natural ventilation and daylight access		YES									
Design criteria											
Measured from finished floor level to finished ceiling level, minimum ceiling heights are:		YES									
<table> <tr> <th colspan="2">Minimum ceiling height for apartment and mixed use buildings</th><th>Proposal</th></tr> <tr> <td>Habitable rooms</td><td>2.7 metres</td><td>2.85 metres</td></tr> <tr> <td>Non-habitable</td><td>2.4 metres</td><td>2.85 metres</td></tr> </table>		Minimum ceiling height for apartment and mixed use buildings		Proposal	Habitable rooms	2.7 metres	2.85 metres	Non-habitable	2.4 metres	2.85 metres	
Minimum ceiling height for apartment and mixed use buildings		Proposal									
Habitable rooms	2.7 metres	2.85 metres									
Non-habitable	2.4 metres	2.85 metres									
Objective 4C-2 Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms		YES									

ADG COMPLIANCE TABLE			
Guideline		Compliance	
Objective 4C-3 Ceiling heights contribute to the flexibility of building use over the life of the building		YES	
Objective 4D-1 The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity		YES	
Design criteria			
Apartments are required to have the following minimum internal areas:		YES	
Apartment type	Minimum internal area		Proposal
1 bedroom	50m ²		60m ²
2 bedroom	70m ²		77m ²
3 bedroom	90m ²		103m ²
The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each			
A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each			
Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms			
Objective 4D-2 Environmental performance of the apartment is maximised		NO	
Design criteria			
1	Habitable room depths are limited to a maximum of 2.5 x the ceiling height	YES	
2	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8 metres from a window	NO	
Objective 4D-3 Apartment layouts are designed to accommodate a variety of household activities and needs		YES	

ADG COMPLIANCE TABLE		
Guideline		Compliance
Design criteria		
1	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)	YES
2	Bedrooms have a minimum dimension of 3 metres (excluding wardrobe space)	YES
3	Living rooms or combined living/dining rooms have a minimum width of: 3.6 metres for studio and 1 bedroom apartments 4 metres for 2 and 3 bedroom apartments	YES
Objective 4E-1 Apartments provide appropriately sized private open space and balconies to enhance residential amenity		NO
Design criteria		
All apartments are required to have primary balconies as follows:		NO
Dwelling type	Minimum area	Minimum depth
1 bedroom apartments	8m ²	2 metres
2 bedroom apartments	10m ²	2 metres
3+ bedroom apartments	12m ²	2.4 metres
Note: The minimum Balcony depth to be counted as contributing to the balcony area is 1 metres		
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 15m ² and a minimum depth of 3 metres		
Objective 4E-2 Primary private open space and balconies are appropriately located to enhance liveability for residents		YES
Objective 4E-3 Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building		YES
Objective 4E-4 Private open space and balcony design maximises safety		YES
Objective 4F-1 Common circulation spaces achieve good amenity and properly service the number of apartments		YES

ADG COMPLIANCE TABLE		
Guideline		Compliance
Design criteria		
1	The maximum number of apartments off a circulation core on a single level is eight	YES
2	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40	YES
Objective 4F-2 Common circulation spaces promote safety and provide for social interaction between residents		YES
Objective 4G-1 Adequate, well-designed storage is provided in each apartment		NO
Design criteria		
In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:		NO
Dwelling type	Storage size volume	
1 bedroom apartments	6m ³	
2 bedroom apartments	8m ³	
3+ bedroom apartments	10m ³	
At least 50% of the required storage is to be located within the apartment		
Objective 4G-2 Additional storage is conveniently located, accessible and nominated for individual apartments		NO
Objective 4H-1 Noise transfer is minimised through the siting of buildings and building layout		YES
Objective 4H-2 Noise impacts are mitigated within apartments through layout and acoustic treatments		YES
Objective 4J-1 In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings		NO
Objective 4J-2 Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission		NO

ADG COMPLIANCE TABLE	
Guideline	Compliance
<i>Objective 4K-1</i> A range of apartment types and sizes is provided to cater for different household types now and into the future	YES
<i>Objective 4K-2</i> The apartment mix is distributed to suitable locations within the building	YES
<i>Objective 4L-1</i> Street frontage activity is maximised where ground floor apartments are located	YES
<i>Objective 4L-2</i> Design of ground floor apartments delivers amenity and safety for residents	NO
<i>Objective 4M-1</i> Building facades provide visual interest along the street while respecting the character of the local area	YES
<i>Objective 4M-2</i> Building functions are expressed by the façade	YES
<i>Objective 4N-1</i> Roof treatments are integrated into the building design and positively respond to the street	YES
<i>Objective 4N-2</i> Opportunities to use roof space for residential accommodation and open space are maximised	YES
<i>Objective 4N-3</i> Roof design incorporates sustainability features	NO
<i>Objective 4O-1</i> Landscape design is viable and sustainable	NO
<i>Objective 4O-2</i> Landscape design contributes to the streetscape and amenity	NO
<i>Objective 4P-1</i> Appropriate soil profiles are provided	NO
<i>Objective 4P-2</i> Plant growth is optimised with appropriate selection and maintenance	YES
<i>Objective 4P-3</i> Planting on structures contributes to the quality and amenity of communal and public open spaces	NO

ADG COMPLIANCE TABLE	
Guideline	Compliance
<i>Objective 4Q-1</i> Universal design features are included in apartment design to promote flexible housing for all community members	YES
<i>Objective 4Q-2</i> A variety of apartments with adaptable designs are provided	YES
<i>Objective 4Q-3</i> Apartment layouts are flexible and accommodate a range of lifestyle needs	YES
<i>Objective 4U-1</i> Development incorporates passive environmental design	NO
<i>Objective 4U-2</i> Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer Adequate natural ventilation minimises the need for mechanical ventilation	YES
<i>Objective 4U-3</i> Adequate natural ventilation minimises the need for mechanical ventilation	YES
<i>Objective 4V-1</i> Potable water use is minimised	YES
<i>Objective 4V-2</i> Urban stormwater is treated on site before being discharged to receiving waters	NO
<i>Objective 4V-3</i> Flood management systems are integrated into site design	NO
<i>Objective 4W-1</i> Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents	YES
<i>Objective 4W-2</i> Domestic waste is minimised by providing safe and convenient source separation and recycling	YES
<i>Objective 4X-1</i> Building design detail provides protection from weathering	NO
<i>Objective 4X-2</i> Systems and access enable ease of maintenance	YES
<i>Objective 4X-3</i> Material selection reduces ongoing maintenance costs	NO

The above departures are not acceptable because the development does not meet their underlying objectives.

Chapter 6

Development standard	Proposed	Complies
S 175 Development standards – low and mid rise housing inner area Maximum permissible building height is 22 metres and 6 storeys	Proposed building height is 30.9 metres and 10 storeys. Refer to the provisions of Chapter 2 above.	NO
Consideration		
S 177 Landscaping – residential flat building or shop top housing Consent authority is to consider the Tree Canopy Guide for Low and Mid Rise Housing	The proposal is inconsistent with Table 7 of SEPP Housing enhanced provisions and fails to deliver the intended landscape outcomes of increased tree canopy, improved amenity, and consistency with the prevailing landscape character of the locality.	NO
S 178 Minimum lot size for residential flat buildings or shop top housing A requirement specifies in another Environmental Planning Instrument or development control plan does not apply to development that meets the standards in Section 180(2) or (3) – (a) maximum Floor Space Ratio of 2.2:1 (b) maximum building height of 22 metres (for residential flat buildings)	The proposal has a maximum building height of 30.9 metres and a FSR of 2.918:1. Refer to the provisions of Chapter 2 above.	NO
S 180 Section 180(2) or (3) – (a) maximum Floor Space Ratio of 2.2:1 (b) maximum building height of 22 metres (for residential flat buildings)	The proposal has a maximum building height of 30.9 metres and a FSR of 2.918:1 and does not comply with Section 180. Therefore, the provisions of Section 178 do not	NO

Development standard	Proposed	Complies
	apply to the proposed development and the development is subject to minimum lot size and width requirements. Refer to Clause 6.6 of the KLEP.	

Any inconsistencies with other Environmental Planning Instruments

The development standards referred to in the above table prevail to the extent of any inconsistency with another Environmental Planning Instrument including KLEP 2015.

The following controls under KLEP 2015 are not inconsistent with the above-mentioned SEPP Housing provisions and as such they continue to apply to the assessment of the subject application.

Ku-ring-gai Local Environmental Plan 2015

Clause 1.2 Aims of the Plan

The proposal has been assessed against the relevant Aims of the Plan. The proposal is inconsistent with the Aims for the reasons given within the assessment report.

Zoning and permissibility:

The site is zoned R3 Medium Density Residential with an additional permitted use (residential flat building) under Schedule 1 of the KLEP.

The proposed development is defined as a residential flat building and is permissible with development consent, as prescribed under Schedule 1 of the KLEP.

Zone objectives:

The objectives of this zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide a transition between low density residential housing and higher density forms of development.*

The proposal is inconsistent with the objectives of the zone as it does not provide for the housing needs of the community within a medium density residential environment, nor does it provide an appropriate transition between low density residential housing and higher density forms of development within the area.

Development standards:

Development standard	Proposed	Complies
CI 4.3 - Height of buildings: Maximum Building Height - 11.5 metres	The proposal has a building height of 30.9 metres. Refer to Chapter 2 provisions above.	NO
CI 4.4 - Floor space ratio (FSR): Maximum Floor Space Ratio - 0.85:1	The proposal has a Floor Space Ratio of 2.918:1 (GFA 3,301.2m ²). Refer to Chapter 2 provisions above.	NO
CI 6.6 - Requirements for multi dwelling housing and residential flat buildings: Minimum site area of 1,200m ² and minimum dimensions (width and depth) of 30 metres if the area of the land is less than 1,800m ²	The site has a minimum width of 16.47 metres.	NO

The proposed development breaches the building height, FSR and minimum site requirement development standards contained within the KLEP, as well as the building height, FSR and number of storeys development standards contained within SEPP Housing. Per Section 8(1) of SEPP Housing, where there is any inconsistency between SEPP Housing and another environmental planning instrument, the provisions of SEPP Housing prevail. Consequently, the building height and FSR development standards of the SEPP prevail over the KLEP.

The applicant has submitted a Clause 4.6 variation request for the building height (**Attachment 7**). However, the request incorrectly refers to the provisions of Chapter 5, Section 155 of SEPP Housing. As the Clause 4.6 variation request references the incorrect provisions of SEPP Housing, it cannot be considered well founded. Accordingly, a detailed assessment of this Clause 4.6 variation request has not been undertaken. The inadequacy of the Clause 4.6 variation request forms a recommended reason for refusal.

The applicant has also submitted a Clause 4.6 variation request with respect to the number of storeys control in Chapter 6, Section 175(2) (**Attachment 8**). The request is considered below.

In addition, the applicant has submitted Clause 4.6 variation request to Clause 6.6 of the KLEP - minimum site width component (**Attachment 9**). The Clause 4.6 request is considered below. Of note, the variation cannot be considered well founded as it references Chapter 5 of SEPP Housing, which is not relevant to the proposal.

Lastly, the applicant has submitted a Clause 4.6 variation request to the maximum FSR control contained in Chapter 2, Section 16 of SEPP Housing (**Attachment 10**). The Clause 4.6 variation request to this development standard is considered below.

Clause 4.6 Exceptions to development standards

Clause 4.6 provides flexibility in applying certain development standards. An assessment of the requests to vary the development standards, as noted earlier, is provided below:

(1) *The objectives of this clause are as follows:*

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention by demonstrating:

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

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

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

(a) the consent authority is satisfied that:

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

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

(b) the concurrence of the Director-General has been obtained.

The following is an assessment of the Clause 4.6 variation request for Floor Space Ratio (FSR).

Whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, the Court established five ways to demonstrate that compliance with a development standard is unreasonable or unnecessary. The applicant has adopted the first way (the development meets the underlying objectives of the standard) established in this case to demonstrate that compliance with the FSR development standard is unreasonable and unnecessary for the following reasons (summarised):

- *The proposed residential flat building development consistent with the objectives and principles of SEPP Housing because:*

- i. *The extent of the 2% FSR variation is negligible, and the built form respects the intended massing outcome and achieves the visual and environmental objectives the density is intended to support.*
- ii. *The FSR variation results in an increase in the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households. No existing affordable housing is being reduced, and the proposal does not result in any adverse climate or environmental impacts.*
- iii. *The proposed residential flat building will provide for a greater number of housing options and housing diversity in a growing area that is well located with regards to goods, services and public transport.*

The applicant's arguments that compliance with the development standard is unreasonable and unnecessary are not acceptable for the following reasons:

- The provision of affordable housing is not sufficient means to justify the proposed exceedance from the FSR development standard. The provisions of Chapter 2 require a minimum GFA of 485.33m² of affordable housing. The proposed development includes a GFA of 501m² of affordable housing, thereby exceeding the minimum requirement by 15.67m². Nevertheless, the proposed FSR exceedance amounts to 65.682m² and comprises an additional 50.012m² of 'market rate' GFA.
- The proposed development includes a range of apartment types. Achievement of housing diversity is not dependent on the additional GFA proposed and housing diversity could equally be achieved with a compliant FSR.

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

The applicant states that the following environmental planning grounds exist to justify contravention of the development standard (summarily):

1. *The proposal is consistent with the aims and objectives of Housing SEPP as it seeks to maximise residential density on a well-located corner gateway site through the delivery of a high-quality apartment development. The extent of the negligible 2% FSR variation will not contribute to the perceived height or bulk of the development when viewed from the public domain and is essential to achieving high standards of amenity and building performance. The FSR variation results in an increase in the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.*
2. *The proposal is consistent with the future character as a result of the other saved TOD developments. The site is located within the visual context of a number of proposed developments which were saved as part of the TOD Centre for Lindfield including an FSR of 3.25:1 including:*
 - No. 24-26 Russell Avenue – 3.25:1 FSR
 - No. 59-63 Trafalgar Avenue 1A & 1B Valley Road – 3.25:1 FSR
 - No. 16-20 Middle Harbour Road – 3.25:1 FSR
3. *The proposal will result in less visual bulk than that of a scheme under the draft Kuring-gai Council strategy. The site is recommended for an increase in height from 22 metres to 29 metres as part of the TOD Alternative. This translates to a maximum height of 37.7 metres when utilising the 30% height bonus under Chapter 2 of the Housing SEPP.*

4. *There is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. The 2% negligible FSR breach does not result in additional overshadowing, privacy or view loss impacts to adjoining development when considered against the backdrop of a compliant building envelope formulated by the 28.6 metres height limit.*
5. *The proposal delivers a well-balanced mix of two and three bedroom apartments, supporting a range of household types, including multi-generational families, and responding to emerging demographic trends within the Ku-ring-gai Local Government Area (LGA). Strict compliance with the FSR standard would result in a reduction in both the number and variety of dwellings including affordable rental housing, undermining the proposal's ability to meet these strategic goals.*

The applicant's environmental planning grounds are not acceptable for the following reasons:

- The provision of affordable housing does not justify the proposed exceedance of the FSR development standard. As detailed above, the proposed FSR exceedance amounts to 'market rate' GFA.
- It is not agreed that the departure will result in an absence of environmental impacts. The proposed development includes non-compliant and inadequate landscaping and deep soil provision, as well as insufficient building setbacks and excessive site coverage, along with other urban design issues that relate to the unacceptable bulk and scale of the proposed development, as discussed earlier.
- The outcome of other saved TOD developments is uncertain at this time as the applications are either subject to Class 1 deemed refusal appeals or under assessment by the Department of Planning, Housing and Infrastructure.
- It is not agreed that the proposal will result in lesser visual bulk than a compliant proposal under the Alternative TOD. A proposal under the Alternative TOD (utilising the Chapter 2 bonus provision) would potentially be of greater height than the proposed development. However, the proposal would be supported by generous setbacks and deep soil provision per Council's intended DCP controls. This would better achieve the desired future character, which comprises residential flat buildings within a garden setting.
- Whilst it is agreed that the proposed development achieves a mix of apartment types, this mix cannot be attributed to the additional FSR proposed.

None of the above reasons demonstrate unique site circumstances or constraints that justify the variation to the development standard on environmental planning grounds, as established under *Wehbe v Pittwater Council*. The failure to justify the variation to the FSR development standard forms a recommended reason for refusal.

Authority to determine variation

Any variation to a numerical standard that exceeds 10% or relates to a non-numerical standard must be considered by the Ku-ring-gai Local Planning Panel or the Sydney North Planning Panel. As the variation to the numerical FSR standard is less than 10%, the application is not required to be referred to the Ku-ring-gai Local Planning Panel. Notwithstanding, the proposal is required to be determined by KLPP for the reasons given at the beginning of the report.

Development standards that cannot be varied.

The variation to the development standard is not contrary to the requirements in subclauses (6) or (8) of clause 4.6.

The following is an assessment of the Clause 4.6 variation request regarding minimum lot dimensions.

Whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

As with the Clause 4.6 submission for the FSR breach, the applicant adopts the first way in *Wehbe v Pittwater Council* [2007] NSWLEC 827, to establish that compliance with the minimum lot dimensions development standard is unreasonable and unnecessary in the circumstances of the case for the following reasons (summarised):

- *Whilst the Russell Avenue frontage width is non-compliant with the minimum 24m dimension requirement by 7.53 metres, the balance of the allotment geometry/ dimension in both width and depth exceeds the minimum 24 metres standard.*
- *Under SEPP Housing the site is subject to a minimum 450m² lot size and under the SEPP Housing TOD provisions the lot is to be at least 21 metres wide at the front building line. That is, the geometry of the allotment which also exceeds the applicable minimum lot size and site width development standard will facilitate the siting of a residential flat building which will provide for the orderly and economic development of residential land while maintaining the local character.*
- *The development can still accommodate generous landscaped areas, appropriate setbacks, and sufficient separation to protect the amenity of adjoining properties and support the desired future character of the locality.*

The applicant's arguments that compliance with the development standard is unreasonable and unnecessary are not acceptable for the following reasons:

- The proposed development does not meet the objectives of the standard as the proposal does not include generous landscaped areas and setbacks to maintain the amenity of adjoining properties and the desired future character of the area. Specifically, the development does not achieve a garden setting, which is the desired future character, and will result in adverse visual impacts to adjoining properties due to insufficient building setbacks and landscaping. As discussed elsewhere in this report, the proposed development does not comply with the minimum landscape requirements of Section 19(2)(b)(ii) of Chapter 2 of SEPP Housing. By virtue of this, the development is prohibited development.

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

The applicant states that the following environmental planning grounds justify contravention of the development standard (summarily):

1. *A Clause 4.6 Variation Request has been prepared on the basis of abundant caution. The site area is 1,131.3m² and the front building line to Lindfield Avenue is 41.385 metres in compliance with the minimum size area and site width design criteria under Sections 19 and 159 of SEPP (Housing). Clause 6.6(2)(a) of the KLEP is not applicable, as this is a minimum lot size restriction, and in accordance with Section 158 of SEPP (Housing) enables the development consent authority to grant development consent to the development despite a minimum lot size restriction.*

2. *The non-compliance is both quantitatively and qualitatively minor. The variation will not give rise to adverse streetscape, heritage conservation or residential amenity impacts.*
3. *The variation does not compromise the development's ability to achieve the objective of Chapter 2 of SEPP Housing.*
4. *Approval of the development will promote the delivery of housing consistent with objective 1.3(d) of the Act.*

The applicant's environmental planning grounds are not acceptable for the following reasons:

- A minor breach and/ or lack of impacts are not an environmental planning ground.
- The applicant has failed to demonstrate any site specific circumstances that lead to the development needing to vary the standard.
- The proposed development includes deficient landscape area and does not comply with Section 19(2)(b)(ii) of Chapter 2 of SEPP Housing. By virtue of this, the development is prohibited development.
- A superior planning outcome could be achieved under the Alternative TOD which would enable consolidation of the allotment with adjoining properties to the east and south (**Figure 4**). Lodgement of the proposed development under Chapter 6 of SEPP Housing is premature when gazettal of the Alternative TOD is relatively certain and imminent.

In addition to the above, the submitted Clause 4.6 variation request cannot be considered well founded as it references Chapter 5 of SEPP Housing which is not relevant to the amended proposal. This error, and the abovementioned merit concerns, forms a recommended reason for refusal.

Authority to determine variation

Any variation to a numerical standard that exceeds 10% or relates to a non-numerical standard must be considered by the Ku-ring-gai Local Planning Panel or the Sydney North Planning Panel. The proposed variation to the site requirement development standard is 31.3% and the application is consequently referred to the Ku-ring-gai Local Planning Panel for determination on this ground.

Development standards that cannot be varied.

The variation to the development standard is not contrary to the requirements in subclauses (6) or (8) of clause 4.6.

Number of storeys

The proposed development includes variation to the number of storeys development standard under Section 175(2) of SEPP Housing. The applicant has submitted a Clause 4.6 variation request to this development standard which is assessed below.

Whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

With reference to *Wehbe v Pittwater Council* [2007] NSWLEC 827, as with the earlier variation requests, the applicant adopts the first way to establish compliance with the number of storeys development standard is unreasonable and unnecessary for the following reasons (summarily):

- *There are no objectives relating specifically to the maximum number of storeys standard, however, any underlying objective, in this case the principles of the Housing SEPP policy, would be considered relevant in terms of enabling low and mid rise housing development.*
- *The proposed residential flat building will provide for a greater number of housing options and diversity in an area that is well located with regards to goods, services and public transport.*
- *The built form respects the intended massing outcome and achieves the visual and environmental objectives the storey limit is intended to support.*

The applicant's arguments are not supported for the following reasons:

- There are no stated objectives for the subject development standard. The applicant has attempted to demonstrate that the development meets the aim of Chapter 6 of SEPP Housing which is to 'encourage the development of low and mid rise housing in areas that are well located with regards to good, services and public transport.' The proposed development is inconsistent with this aim as it does not comprise low and mid rise housing, by virtue of its ten storey height.
- The proposed apartment mix cannot be attributed to the additional building height (four storeys) proposed as the lower six storeys include a mixture of one, two and three bedroom units. Additionally, all proposed affordable units (Unit 01, Unit 04, Unit 05, Unit 07, Unit 08 and Unit 16) are located within the lower six storeys of the building.
- As aforementioned, it is not agreed that the proposal will result in lesser visual bulk than a compliant proposal under the Alternative TOD.

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

The applicant states that the following environmental planning grounds justify contravening the development standard (summarily):

1. *Provision of additional housing density. All proposed height variations are limited to ancillary building elements such as roof overruns, plant enclosures, privacy screens and parapets.*
2. *Responsiveness to site constraints and amenity enhancement. The proposed development has been designed to respond to these topographical and spatial constraints. The modest height exceedances proposed are necessary to achieve key design outcomes including provision of cross-through apartments, maintenance of consistent slab levels and avoidance of single aspect apartments.*
3. *Absence of adverse environmental impacts. The storey count breach does not result in additional overshadowing, privacy or view loss impacts to adjoining development when considered against a compliant building envelope formulated by the 28.6 metres height limit.*

4. *Provision of diverse and well designed housing. The proposal delivers a well-balanced mix of two and three apartments supporting a range of household types and responds to emerging demographic trends in Ku-ring-gai.*

The applicant's environmental planning grounds are not acceptable for the following reasons:

- The applicant has failed to establish any clear environmental planning grounds which justify the proposed departure from the development standard. The proposed height exceedance is beyond minor and comprises four additional storeys. An exceedance of this extent cannot reasonably be attributed to site topography.
- As established in caselaw, the written request by the applicant must justify the contravention of the standard not simply promote the benefits of carrying out the development as a whole. A clear nexus is not established by the applicant in relation to the proposed departure from the development standard and cross-ventilation and apartment mix outcomes.
- Additionally, the proposed ground plane treatment results in several subterranean units with poor amenity. Better amenity would be achieved by increasing the ground level floor of the building and deleting one of more of the upper storeys.

The abovementioned issues form a recommended reason for refusal.

Authority to determine variation

Any variation to a numerical standard that exceeds 10% or relates to a non-numerical standard must be considered by the Ku-ring-gai Local Planning Panel or the Sydney North Planning Panel. The proposed variation to the number of storeys development standard is 66.6% and the application is consequently referred to the Ku-ring-gai Local Planning Panel for determination on this ground.

Development standards that cannot be varied.

The variation to the development standard is not contrary to the requirements in subclauses (6) or (8) of clause 4.6.

Part 5 Miscellaneous provisions

Clause 5.10 – Heritage conservation

The subject site does not contain a heritage item and is not located within a heritage conservation area. The site is located within 100 metres of heritage items at No. 5 Middle Harbour Road, No. 19 Russell Avenue, Lindfield Station and No. 1-5 Tryon Road ('St Albans Church').

The proposed development is sufficiently removed from these items to mitigate against adverse heritage impacts.

The proposed works do not affect any known archaeological or Aboriginal objects or Aboriginal places of heritage significance.

5.21 – Flood planning

The objectives of this clause relate to minimising flood risk, allowing development that is compatible with flood functions, avoiding adverse or cumulative impacts on flood behaviour and enabling the safe occupation and evacuation in the event of a flood.

Clause 5.21(2) states that development consent must not be granted to development unless the consent authority is satisfied the development is compatible with flood function and behaviour, will not adversely affect flood behaviour, will not adversely affect the safe occupation and efficient evacuation of people, incorporates measures to minimise risk and will not adversely affect the environment.

Council's Consultant Engineer has advised that the proposed driveway access will be impacted by 1% AEP Overland flow, however the application fails to provide flood mitigation measures to protect the basement from inundation. Consequently, Council is not satisfied that the objectives of Clause 5.21 are met, and the application is accordingly recommended for refusal on this ground.

Part 6 Additional local provisions

Clause 6.1 – Acid sulphate soils

The objective of this clause is to ensure that development does not disturb, expose, or drain acid sulfate soils and cause environmental damage. The land is mapped as Class 5 Acid sulfate soils. Development consent is required for works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water-table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land. The proposal is not subject to this clause as the works are more than 500 metres of adjacent Class 1, 2, 3 or 4 land.

Clause 6.2 – Earthworks

The objective of this clause is to ensure that earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of surrounding land.

Clause 6.2(2) states that in deciding whether to grant development consent for development involving earthworks, consideration must be given to (amongst other things), the likely disruption of drainage patterns, and the effect of the development on the existing and likely amenity of adjoining properties.

As outlined above, appropriate measures have not been proposed to protect the basement from flooding. In addition, the proposed excavation and level changes within the setback areas limit the available area for meaningful deep soil landscaping, resulting in adverse amenity and landscape character impacts. These issues form recommended reasons for refusal.

Clause 6.5 – Stormwater and water sensitive urban design

The objective of this clause seeks to minimise the adverse impacts of urban water on the site and within the catchment. The proposed stormwater design is inadequate as insufficient regard has been given to the functionality of the Council stormwater system to which it is proposed to connect. In addition, the applicant has failed to provide adequate calculations and modelling to support the proposed stormwater design. These issues form a recommended reason for refusal.

Clause 6.6 – Requirements for multi dwelling housing and residential flat buildings

The objectives of this clause are –

- (a) to provide site requirements for development for the purposes of multi dwelling housing and residential flat buildings to provide for the orderly and economic development of residential land while maintaining the local character, and
- (b) to ensure that lot sizes and dimensions of medium and high density residential sites allow for generous landscaped areas and setbacks to ensure the amenity of adjoining properties and to support the desired future character of these areas.

Clause 6.6(2)(a) states that consent must not be granted for the erection of a residential flat building unless the lot has minimum dimensions (width and depth) of at least 24 metres, where the area of the land is less than 1,800m².

The subject site has a minimum width of 16.47 metres (northern boundary) and a minimum depth of 44.527 metres. The minimum width is therefore non-compliant.

A Clause 4.6 variation request has been submitted for the proposed development, however it is inadequate and therefore the consent authority cannot be satisfied that the requirements of Subclause (3)(a) and (b) are met.

Policy Provisions (DCPs, Council policies, strategies and management plans)

Ku-ring-gai Development Control Plan

Part 1A.5 General aims of the DCP

The proposed development has been assessed against the general aims of this DCP and is found to be unacceptable for the reasons given throughout this report.

Part 2: Site analysis

The site analysis has not adequately identified existing site conditions and considerations within the KDCP. This issue forms a recommended reason for refusal.

Part 7: Residential Flat Buildings

COMPLIANCE TABLE		
Development Control	Proposed	Complies
Part 7 Residential Flat Buildings		
7A.1 – Local character and streetscape		
All Residential Flat Buildings are to be designed by an architect registered with the NSW Architects Registration Board.	The development has been designed by a registered architect per the Design Verification Statement.	YES
All residential flat buildings are to demonstrate how they provide a garden setting with buildings surrounded by landscaped gardens, including tall trees, on all sides.	A garden setting is not provided due to insufficient deep soil area.	NO

Design components of new development are to be based on the existing predominant and high quality characteristics of the local neighbourhood.	Design components do not reflect high quality characteristics of neighbourhood.	NO
The appearance of the development is to maintain the local visual character by considering the following elements: i) visibility of on-site development when viewed from the street, public reserves and adjacent properties; and ii) relationship to the scale, layout and character of the tree dominated streetscape of Ku-ring-gai.	The development does not have an appropriate relationship to the scale, layout and character of the streetscape.	NO
The predominant and high quality characteristics of the local neighbourhood are to be identified and considered as part of the site analysis.	The submitted site analysis is insufficient.	NO
Development is to integrate with surrounding sites by: i.being of an appropriate scale retaining consistency with the surrounds when viewed from the street, public domain or adjoining development; ii.minimising overshadowing; and iii.integrating built form and soft landscaping (gardens and trees) within the tree canopy that links the public and private domain throughout Ku-ring-gai.	The proposed development is not of an appropriate scale and is not well integrated with soft landscaping.	NO
Development on visually prominent sites is to: i.be of high architectural and aesthetic quality; ii.be integrated into the existing landscape through the site planning process and avoid tall and bulky structures; iii.have a selection of external colours and finishes that are sensitive to the site and locality; iv.retain significant landscape and vegetation elements; v.consider views to the site as well as those from the site; and vi.soften visual impact by extensive landscaping including tall and medium trees and shrubs.	The site is visually prominent however the proposed development is not of high aesthetic quality.	NO
7A.2 – Site layout		

The site layout is to demonstrate a clear and appropriate design strategy and arrangement of building mass in response to the Site Analysis in Part 2 Site Analysis of this DCP. Demonstration of design strategies to address opportunities and constraints based on Site Analysis are to include: i. building location and orientation on the site optimising northern aspect; relationship with neighbouring developments; building setbacks; geographical aspect; views; access etc; ii. response of building development in maintaining site characteristics within the subject site, such as topography, vegetation, significant trees, any special features, etc. iii. building separation and internal layouts of buildings that respond to (i) above and be consistent with the requirements of the DCP. iv. limited apartments with no direct sunlight.	The proposed development does not appropriately respond to the contextual surrounding of the site.	NO
A drawing and supporting written information is to demonstrate how the building and its layout has applied and responded to the site analysis required by Part 2 of the DCP.	The written site analysis (Urban Design Report) contains inconsistencies and fails to reflect existing and desired future urban character.	NO
Development near noise sources is to comply with Section B Part 20 Development Near Rail Corridors and Busy Roads of the DCP.	A Rail Noise and Vibration Impact Assessment has been provided which considers the DCP controls.	YES
Any building with a frontage to the street is to address that street.	The proposed development addresses both street frontages.	YES
Where a site has two or more frontages, the buildings are to address and provide building entry points from all street frontages	Pedestrian access is proposed from Lindfield Avenue only.	NO
Hard landscaping is to be minimised and to maximise opportunities for landscape planting	Opportunities for landscape planting are not maximised.	NO
Long straight driveways are not permitted, except where necessary for battle-axe sites. Driveways are to be designed to be of minimal visual impact.	A long straight driveway is not proposed.	YES

Provide a single pedestrian entry point into the development from the street. Other entries may be permitted where several buildings address the street along an extended street or where there are dual frontage sites.	One entrance point is provided from Lindfield Avenue.	NO
Three hours of direct sunlight between 9am and 3pm on 21st June is to be maintained to the living rooms, primary private open spaces and any communal open spaces within i. existing residential flat buildings and multi-dwelling housing on adjoining lots, and ii. residential development in adjoining lower density zones. Note: Where an adjoining property does not currently receive the required hours of solar access, the proposed building is to ensure that solar access to neighbours is not reduced by more than 20%.	3 hours solar access is retained to adjoining properties.	YES
Overshadowing should not compromise the development potential of the adjoining yet to be redeveloped sites.	It has not been demonstrated that overshadowing will not compromise the development of adjoining properties.	NO
Developments are to allow the retention of a minimum of 4 hours direct sunlight between 9am to 3pm on 21st June to all existing solar collectors and solar hot water services on neighbouring buildings.	The proposed development does not overshadow adjoining solar collectors.	YES
7A.3 – Building setbacks		
Residential flat buildings are to meet the following street setback requirements: i. 10m from the street boundary; ii. on corner sites and sites with multiple street frontages at 10m setback is to be provided on all street frontages.	The proposed development is set back 6.4 metres from the northern (primary) frontage and 3.9 metres from the western (secondary) frontage.	NO
Residential flat buildings are to provide a 2.0m articulation zone behind the street setback, and no more than 40% of this zone (in plan) is to be occupied by the building.	An articulation zone has not been provided.	NO
The building line to any street is to be parallel to the prevailing building line in the streetscape. For angled sites, a stepped façade may be appropriate.	The building lines are parallel to the street frontages.	YES

Residential flat buildings are to meet the following side and rear setback requirements to ensure deep soil, landscaping and tall trees are accommodated to all sides of the building: i) a minimum of 6m from the side boundary for all levels up to the fourth storey. ii) a minimum of 9m to the fifth storey and above.	Up to fourth storey: setbacks of 2.3 metres and 1.9 metres are proposed from the eastern (side) and southern (rear) boundaries. Fifth storey and above: setbacks of 3.4 metres and 2.5 metres are proposed from the eastern (side) and southern (rear) boundaries.	NO
Side setback areas behind the building line are not to be used for driveways or for vehicular access into the building.	Side setbacks behind the building line are not proposed for driveways/vehicular access.	YES
Driveways are to be set back a minimum of 6m from the side boundary within the street setback to allow for deep soil planting.	The driveway is set back 0.5 metres from the eastern boundary.	NO
Setbacks are to respond to the attributes identified in the site analysis, conducted as required by Section A, Part 2 Site Analysis of the DCP, including consideration of the location of adjoining buildings and views of the site.	The site analysis does not properly consider location of adjoining buildings which are of a lower density than the development proposed.	NO
Side and rear setbacks at a zone interface Residential flat buildings are to provide the following side and rear setbacks to land which is zoned differently for lower density residential development: i. minimum 9m from the side and rear boundary up to the 4 th storey ii. minimum 12m from the side and rear boundary for the 5 th storey and above iii. greater setbacks may be required where residential flat building is located upslope from a lower density zone	A zone interface is not proposed to the east, which is zoned R2 Low Density Residential, contrary to this control	NO

Encroachments i. Basements do not encroach into any setback areas ii. Ground floor terrace/courtyard walls min 8m to street boundary / 4m to rear & side boundaries / 7m adjacent to lower density residential zone iii. No encroachments where site area is < 1800m ² iv. No encroachments are permitted where minimum side setbacks have not been achieved. v. A maximum of 15% of the street setback area occupied by private terraces/courtyards	The site area is less than 1,800m ² in area and the proposed basement encroaches into all building setbacks which is contrary to this provision and not acceptable.	NO
7A.4 – Building Separation		
The minimum separation between residential buildings on the development site is to comply with the following controls: Up to 4 th storey: 12m between habitable rooms/balconies 9m between habitable rooms/balconies and non-habitable rooms 6m between non-habitable rooms 5 th storey & above: 18m between habitable rooms/balconies 13.5m between habitable rooms/balconies and non-habitable rooms 9m between non-habitable rooms	Up to 4 th storey: 3 metres setback is proposed which is insufficient to achieve the required 12 metres separation. 5 th storey & above: 6 metres setback is proposed which is insufficient to achieve required 18 metres separation.	NO
Buildings are to be located so that apartments benefit from views into and through onsite landscaped gardens.	Apartments have views to on-site gardens.	YES
7A.5 – Site coverage		
The site coverage may be up to a maximum of 30% of the site area, provided that the deep soil landscaping requirements in Section A Part 7A.6 Deep Soil Landscaping are met.	Site coverage is 41.5%.	NO
7A.6 – Deep soil landscaping		
A minimum deep soil landscaping area of 40% for a site area less than 1800m ² and 50% for a site area of 1800m ² or more.	Deep soil area of 5.72% (64.8m ²) of the site area is proposed.	NO

Deep soil zones are to be configured to retain healthy and significant trees on the site and adjoining sites, where possible.	The proposed development results in unacceptable encroachments into the tree protection zone for Tree 3 - <i>Jacaranda mimosifolia</i> .	NO
Deep soil zones are to be configured to allow for required tree planting including tall tree planting and garden and screen planting at front, side and rear boundaries.	The proposed deep soil area does not allow for sufficient canopy tree planting.	NO
Deep soil landscaping is to be provided in the common areas as a buffer between buildings that softens the bulk and scale of the buildings.	The proposed deep soil area does not provide a suitable buffer to all boundaries, contrary to this control	NO
Driveways are not to dominate the street setback area. Deep soil landscaping areas in the street setback are to be maximised.	Deep soil area is not provided within the Russell Avenue street frontage and is provided to only part of the Lindfield Avenue street frontage, contrary to this provision	NO
Lots with the following sizes are to support a minimum number of tall trees capable of attaining a mature height of at least 18m on shale, transitional soils and 15m on sandstone derived soils. i. 1200m² or less – 1 tall tree per 400m² or part thereof ii. 1201m² – 1800m² – 1 tall tree per 350m² or part thereof iii. 1801m² + - 1 tall tree per 300m² or part thereof	The proposal is required to support 3 canopy trees, however, only 1 canopy tree in an unsuitable location is proposed.	NO
In addition to the tall trees, a range of medium trees, small trees and shrubs are to be selected to ensure that vegetation softens the building form and creates a garden setting. At least 50% of all tree plantings are to be locally occurring trees and spread around the site.	Small and medium trees are proposed.	YES
Trees are to be planted within all setback areas. At least 30% of the required number of tall trees are to be planted within the front setback.	Small trees are proposed within all setback areas. Less than one third of trees are proposed within the primary street frontage (Russell Avenue).	NO

7B – Access and parking																	
7B.1 – Car parking provision																	
All residential flat developments are to provide on-site car parking within basements.	Basement carparking is proposed.	YES															
Basement car park areas are to be consolidated under building footprints.	Basement is not consolidated beneath the building footprint.	NO															
The use of single lane tunnels and single lane spiral ramps is not permitted. Double lane spiral ramps may be allowed where there are no other options, but can only link a maximum of 2 floor levels.	A single lane driveway is proposed.	NO															
The basement car park is not to project more than 1.0m above existing ground level.	Basement does not project more than 1 metre above ground level.	YES															
Single lane aisles, straight ramps and tunnels max 12.0m in length.	Satisfactory.	YES															
Direct and continuous internal pedestrian access from basement car park is provided to each level of the building	Lifts and fire stairs are proposed from the basement to each level of the building.	YES															
Car park entry is to be integrated within the building and located behind the building line.	Car park entry is located behind the building line.	YES															
Car parking design is to be in accordance with requirements for Silver and Platinum Level dwellings as required in this DCP and by the <i>Livable Housing Guidelines</i> . Circulation areas, roadways and ramps are to comply with AS2890.1. Where a conflict occurs, the <i>Livable Housing Guidelines 2012</i> is to take precedence.	Five accessible spaces are proposed (Unit 04, Unit 08, Unit 12, Unit 16 and Unit 20).	YES															
Car parking rates for residential flat developments on sites within 800 metres walking distance of a railway station entry: <table border="1"> <thead> <tr> <th>Type</th><th>Minimum</th><th>Maximum</th></tr> </thead> <tbody> <tr> <td>Studio</td><td>0 spaces</td><td>0.5 spaces</td></tr> <tr> <td>One bedroom</td><td>0.6 spaces</td><td>1 space</td></tr> <tr> <td>Two bedrooms</td><td>0.9 space</td><td>1.25 spaces</td></tr> <tr> <td>Three or more bedrooms</td><td>1.4 space</td><td>2 spaces</td></tr> </tbody> </table> Visitors: 1 per 6 units (at least one is accessible)	Type	Minimum	Maximum	Studio	0 spaces	0.5 spaces	One bedroom	0.6 spaces	1 space	Two bedrooms	0.9 space	1.25 spaces	Three or more bedrooms	1.4 space	2 spaces	The KDCP requires a minimum of 34 residential car parking spaces and a maximum of 47 spaces. In addition, 5 visitor spaces are required. The proposal includes 34 resident parking spaces and 7 visitor spaces.	YES
Type	Minimum	Maximum															
Studio	0 spaces	0.5 spaces															
One bedroom	0.6 spaces	1 space															
Two bedrooms	0.9 space	1.25 spaces															
Three or more bedrooms	1.4 space	2 spaces															

Min 1 visitor parking space complies with the requirements of AS2890.6		
At least one visitor car space is to be accessible and be provided within the site for every 6 apartments or part thereof and is to comply with the dimensional and locational requirements of AS2890.6.	An accessible visitor space is not proposed.	NO
A clearly signposted parking bay for temporary parking of service and removalist vehicles is to be provided. The space is to have the following standards: i) a minimum dimension of 3.5m x 6m; ii) a minimum manoeuvring area 7m wide.	A loading bay with suitable dimensions and manoeuvring space is proposed.	YES
One visitor parking bay is to be provided with a tap, to make provision for on-site car washing.	Provision has not been made for car washing.	NO
At least one car share space is to be provided in the basement per 90 dwellings, or part thereof.	A car share space is not proposed.	NO
Parking areas are to be designed and constructed so that electric vehicle charging points can be installed.	Provision has not been made for electric vehicle charging.	NO
7B.2 – Bicycle parking and support facilities provision		
Provide on-site, secure bicycle parking spaces and storage at the following rates: i) 1 bicycle parking space per 5 units or part thereof for residents within the residential car park area; and ii) 1 bicycle parking space (in the form of a bicycle rail) per 10 units for visitors in the visitor car park area.	Bicycle parking for 30 bikes is provided.	YES
All on-site bicycle parking spaces and storage are to be designed to AS2890.3.	It is unclear if the proposed bicycle racks comply; additional information is required.	NO
7C – Building design and sustainability		
Part 7C.1 - SEPP 65 and Apartment Design Guide requirements		
All residential flat buildings are to comply with the objectives, Design Criteria and Design Guidance of the following <i>Apartment Design Guide</i> sections:	Refer to the ADG compliance table.	NO

3F Visual Privacy 4A Solar and Daylight Access 4B Natural Ventilation 4C Ceiling Heights 4D Apartment Size and Layout 4E Private Open Space and Balconies 4F Common Circulation and Spaces 4G Storage		
7C.2 – Communal open space		
At least 10% of the site area must be provided as communal open space. Each parcel of communal open space is to have a minimum dimension of 5 metres.	A rooftop terrace of 189m ² is proposed (16% of the site area).	YES
At least one single parcel of primary communal open space with a minimum area of 80m ² and a minimum dimension of 8m is to be provided.	The rooftop terrace has a minimum dimension of 6 metres.	NO
The primary communal open space is to be directly accessible from the internal common circulation areas.	Lift access is proposed to the rooftop terrace.	YES
The primary communal open space is to be located at or above finished ground level behind the building line. Roof top primary communal open space may be provided where the ground level cannot meet performance requirements or is undesirable.	Roof top primary communal open space is proposed as there is insufficient area at ground level.	YES
Access to and within the primary communal open space is to be provided for people with a disability Part 2 Section 7 of AS1428.	Lift access is proposed to the rooftop terrace.	YES
The location and design of the primary communal open space is to optimise opportunities for active and passive social and recreation activities, solar access and orientation, summer shade, outlook, and maintain the privacy of residents on adjoining sites zoned differently for lower density residential development sites.	Communal open space includes areas for passive recreation, a swimming pool and spa.	YES
At least 50% of the area of the primary communal open space and any secondary communal open space are to receive direct sunlight for at least two hours between 9am and 3pm on 21st June.	50% receives 2 hours + direct sunlight.	YES
Communal open space is to be integrated with any significant natural feature(s) of the site and soft landscaping areas.	There are no significant natural features on the site.	YES

The communal open space is to have surveillance from at least two onsite apartments for safety reasons.	Passive surveillance of the communal open space is not possible.	NO
Communal open space design is to avoid creation of concealment or entrapment areas.	No entrapment areas are proposed.	YES
Shared facilities such as barbecue facilities, shade structures, play equipment and seating, are to be provided within the primary communal open space.	Shared facilities such as seating, a pool, spa and outdoor work-station are proposed.	YES
Garden maintenance storage areas, drainage and connections to water taps are to be provided with the primary communal open space. Secondary communal open spaces are to have adequate connections to water for maintenance purposes.	No garden maintenance storage is proposed.	NO
7C.3 – Ground floor apartments		
Ground floor apartments are to be separated from noise sources such as common areas, communal open space and the public domain.	Ground floor apartments are separated from the public domain by landscaping.	YES
Ground and podium level apartments are to have private outdoor areas differentiated from communal areas by at least one of the following: i) a change in level; ii) walls to deflect noise; iii) planting, such as hedges and low shrubs; iv) a fence/wall to a maximum height of 1.8m. Any solid wall component is to be a maximum height of 1.2m with at least 30% transparent component above.	Ground floor units appear to be differentiated from communal areas by level changes, though there is insufficient detail to clearly ascertain level differences.	NO
A gate is to be provided from each ground floor apartment private open space into common areas where practical.	Gates are not proposed from private open space to common areas.	NO
No subterranean rooms to any part of any apartment	Units 01 and 03 are partly subterranean.	NO
No ground floor apartments created as a result of excessive excavation.	Units 01 and 03 result from excessive excavation.	NO
No part of any wall used to accommodate any residential apartment uses, including storage areas outside the apartment, is to be in direct contact with soil or rely on any form of tanking including spaces that act as tanking.	Storage areas in the basement adjoin the basement walls.	NO
Tanking may only be provided to basement	It is unclear if the	NO

parking levels. Where basement storage is located adjacent to external walls, they are to be separated from the tanked wall by an accessible maintenance passage.	proposed basement is tanked. Regardless, an accessible maintenance passage is not provided.	
The internal finished floor level of any part of a ground floor apartment and/or private open space is not to be more than 0.9m below existing ground level at the building line.	Units 01 and 03 are subterranean (1.7 metres to 3.35 metres below ground level).	NO
Where the internal finished floor level of a ground floor apartment and/or private open space is not more than 0.9m below the existing ground level at the building line, the ground level adjacent to the building is to be levelled to the finished floor level for a distance of 3m from the building line.	Ground level is levelled for 1.5 metres adjacent to Unit 01 and a minimum of 1.6 metres adjacent to Unit 03.	NO
All obstructions, such as retaining walls or fences, are to be located below a 45° control plane, drawn from the finished ground level at the building line. Landscaping plants may project beyond the 45° control plane.	Satisfactory.	YES
7C.4 – Apartment mix and accessibility		
Range of apartment sizes (one, two, three bedroom) included within the development	A range of apartment sizes is proposed.	YES
Mix of 1, 2 & 3 bedroom apartments located on the ground level.	1 and 4 bedroom units are proposed at ground floor level.	NO
All apartments are to be designed to Silver Level under the Livable Housing Design Guidelines	All units are designed to Silver level.	YES
At least 15% of the dwellings (or part thereof) are to be designed to Platinum Level under the Livable Housing Design Guidelines.	14.2% (4/28) units are 'adaptable' per the Statement of Environmental Effects, however the architectural plans show 17.8% (5/28) adaptable units. Consequently, the application is unclear in this regard.	NO
At least 70% of all dwellings are visitable.	All units appear to	YES

	be visitable.	
7C.5 – Building entries		
The residential flat building entry is to be clearly expressed using appropriate architectural elements.	The entry is expressed using architectural elements including arches and glazing.	YES
Buildings are to address the street by providing visible entry points with the following: i) main building entrances that are level and directly accessible from the street; or, ii) where site configuration is conducive to having a side entry, the path to the building entrance is readily visible from the street, and the building entrance is signalled with appropriate architectural elements.	The main entry point is visible and accessible from the street.	YES
Entry foyers are to be no more than 1m above ground level. Any ramped access required is to be integrated into the design of the building or landscape. Mechanical chairlifts and the like will not be accepted.	Entry foyer is located at RL94.1 which is 1.7 metres above existing ground level.	NO
Buildings are to have a clearly visible building entry for each vertical circulation core with clear way-finding signs integrated into the external circulation pathway system.	Entry is clearly visible.	YES
The building entry is to be legible and integrated with horizontal and vertical building facade architectural elements. At street level, the entry is to be articulated with awnings, porticos, recesses or projecting bays for clear identification.	Vertical elements are proposed to articulate the entry however horizontal elements are not used.	NO
All entry areas are to be well lit and designed to avoid any concealment or entrapment areas and avoid dog leg entry foyers. All light spill is prohibited.	Entry does not include spaces for entrapment and is capable of being well lit.	YES
Lifts are to be directly visible from the building entry doorway.	Lift is visible from foyer.	YES
Lockable mail boxes are to be: provided close to the street; and be at 90 degrees to the street and to Australia Post standards; and integrated with front fences or building entries.	Lockable mailboxes are not shown.	NO

All entries are to be integrated into the external circulation pattern of the development.	Entry is accessible from Council's public footpath.	YES
Buildings on corner sites are to address both street frontages and provide entry points and direct level access from both street frontages.	Level pedestrian access is provided from the secondary frontage (Lindfield Avenue) only.	NO
Building entry paths are to be minimum 1.2m wide and located within the common area with a minimum dimension of 1.2m on either side for landscape planting. Paths are to provide extra width at building entries to allow easy passing between pedestrians and to allow effective turning.	Entry path is 2.3 metres wide with the southern landscape area only 800 millimetres wide.	NO
All common circulation corridors are to be at least 1.5m wide, and the area outside lifts is to be at least 1.8m wide.	A circulation area of 1.8 metres is proposed outside the lift. Corridors have a width of 1.8 metres.	YES
7C.6 – Building Form and Facades		
All building facades at ground level are to be designed to avoid the creation of entrapment areas.	Entrapment areas are not proposed.	YES
No single wall plane is to exceed 81m ² in area.	A wall plane of 107m ² is proposed on the upper levels of the eastern elevation.	NO
The following are to be avoided on all building elevations: i) large flat walls; ii) undifferentiated window openings; iii) applied treatments; iv) one single predominant finish or material.	Large flat walls are proposed to the eastern and southern elevations.	NO
All facades are to place entries, habitable room windows, and balconies so that they maximise outlook and passive surveillance of the street and to common areas surrounding the building.	Balconies are located to maximise passive surveillance of the street.	YES
All building elements including shading devices, signage, drainage pipes awnings/colonnades and communication devices are to be coordinated and integrated into the overall facade design.	Capable of being resolved via condition.	YES
Air conditioning condensers are to be located within the basement or within the roof	Air conditioning condensers are	YES

structure of the upper most roof. Air conditioning condensers are not to be located on: i) the building façade; ii) the top of a flat roof; iii) terraces; iv) private or communal open spaces; or v) balconies.	proposed to be located in the basement.	
Screening between adjacent apartments is to be integrated into the overall building design.	Screening is proposed between adjacent balconies (Unit 06 and 07 typical).	YES
Notches, slots or indentations in the perimeter of the building are to be at least as wide as they are deep.	Notches or indentations are not proposed.	YES
Facade elements that result in poor architectural design outcomes for internal spaces, such as snorkel windows, are not permitted.	Snorkel windows are not proposed.	YES
All facades are to be designed to minimise on-going maintenance and weathering through measures such as: i) selecting appropriate robust materials/finishes; and ii) including appropriate building edge, balcony edge, sill, head and parapet detailing that demonstrates protection from prevailing weather and harsh solar aspects.	Excessive use of rendered finishes is relied upon.	NO
Facade Articulation		
All building facades are to be articulated with wall planes varying in depth by not less than 0.6m, and supplemented with architectural elements.	Wall planes of varying depth are not proposed.	NO
Facade articulation is to be well composed with attractive proportions and coherent rhythms and integrated into the building form and structure. Methods of achieving articulated facades include: i) defining a base, middle and top relating to the overall proportion of the building; ii) expressing the internal building layout or structure, such as vertical bays or party walls; iii) using a variety of window types to create rhythm or express the building uses;	Insufficient shading is proposed to the western elevation. Furthermore, the eastern and southern elevations include excessive blank walls.	NO

iv) using recessed balconies and deep windows to add visual depth; v) use of eaves, louvres and sun shading devices to openings. vi) using elements that cast shadow and accentuate the appearance of depth; vii) using changes of material, texture and colour integrated with the building articulation to break down large or repetitive facades and reduce the bulk and scale of the building.		
Blade walls are not to be the sole element used to provide articulation.	Blade walls are not proposed.	YES
All developments are to utilise shading/glare control devices to articulate the facade and contribute to the streetscape. Design solutions can include: i) providing external horizontal shading to north-facing windows, such as eaves, overhangs, pergolas, awnings, colonnades, upper floor balconies, and/or deciduous vegetation; ii) providing vertical shading to east and west windows, such as sliding screens, adjustable louvres, blinds and/or shutters; iii) providing shading to glazed and transparent roofs; iv) integration of shading devices with solar energy collection technology.	Inadequate shade protection is provided to glazing on the western elevation.	NO
Building Length		
The continuous length of a single building on any elevation is not to exceed 36m.	The length of the building is 28.9 metres.	YES
The length of a single building elevation facing the side or rear boundary may exceed 36m provided that: i) the façade is recessed in depth and width to appear as distinctive and separate building bays or wings; and ii) the recess is retained as common area with landscaping which includes at least one medium tree (at least 8m canopy diameter at maturity).	The elevation facing the rear boundary has a length of 12 metres.	YES
Balconies		
Balcony or terrace design may incorporate building elements such as pergolas, sun screens, shutters, operable walls and the like to respond to the street context, building orientation and residential amenity. The use	Balcony design does not include screens or shutters.	NO

of such building elements are not to enable the balcony or terrace to be used as a habitable room.						
Balconies that run the full length of the building facade are not permitted.	Balconies run the full length of the northern façade.	NO				
Continuous transparent or translucent balustrades are not permitted to balconies or terraces.	Continuous transparent balconies are proposed to the upper levels.	NO				
Balconies are not to project more than 1.5m from the outermost wall of the building facade.	Balconies along the northern façade project up to 3.6 metres.	NO				
Corner Sites						
Street corners are to be emphasised architecturally by accentuating parts of the building facade. This may be through: i) changes in height, colour or facade materials; ii) changes at the corner; iii) change in building articulation; iv) facade orientation; v) change in roof expression; vi) splayed setbacks or curves; vii) providing corner building entries.	The street corner is not emphasised architecturally.	NO				
7C.7 – Building storeys						
Sites with the following maximum building heights under the KLEP are to have a maximum number of storeys above the basement as in the table below: <table><tr><td>Maximum building height</td><td>Maximum number of storeys</td></tr><tr><td>11.5m</td><td>3</td></tr></table>	Maximum building height	Maximum number of storeys	11.5m	3	30.9 metres and 10 storeys.	NO
Maximum building height	Maximum number of storeys					
11.5m	3					
7C.8 – Top storey design and roof forms						
The top storey of a building is to be designed so that: i) the GFA of the top storey of a residential flat building does not exceed 60% of the GFA of the storey immediately below it; and ii) for the purposes of this section, the top storey applies to the building as a whole and does not apply to the top level of each part of a stepped building.	GFA of Level 10 comprises 8% of GFA of level 9.	YES				
The top storey of a building is to be set back a minimum of 2.4m from the outer face of the	The top storey is not set back from	NO				

floors below on all sides (roof projection is allowed beyond the outer face of the top storey).	the floor below at the western elevation.	
The upper storeys of residential buildings are to be articulated with differentiated roof forms, maisonettes or mezzanine penthouses and the like.	The upper storey is articulated and includes an awning and open terrace areas.	YES
Service elements are to be integrated into the overall design of the roof and not be visible from the public domain or any surrounding development. These elements include lift overruns, plant equipment, air conditioning units, chimneys, vent stacks, water storage, communication devices and signage.	Service elements are integrated into the roof design.	YES
Roof design is to respond to solar access and prevailing weather with the use of eaves, skillion roofs, awnings and the like with a minimum overhang of 0.6m	Roof includes eaves.	YES
Lightweight pergolas, sun screens, privacy screens and planters are permitted on the roof or podium, provided they are integrated with the building and facade design and do not increase the bulk of the building, create visual clutter or impact on significant views from adjoining properties.	Lightweight awning and planter boxes are proposed upon the roof. These elements are integrated and do not add in excessive bulk.	YES
Roof top gardens for private or communal use are encouraged.	Rooftop communal open space is proposed.	YES
7C.9 – Laundry and air clothes drying facilities		
Each apartment is required to have access to an external air clothes drying area, such as a screened balcony, a terrace or clothes lines within the common area.	External clothes drying areas have not been provided.	NO
Storage volume calculation within laundries is to exclude the space required to accommodate a washing tub, washing machine and dryer.	Insufficient information regarding storage volume has been provided.	NO
Where clothes drying is provided within private open space within a communal open space, its area is to be additional to that required for the private open space or communal open space.	Clothes drying areas are not proposed.	YES
7C.10 – Fencing		
Front boundary fences and walls (to a public street) and side boundary fences within the	Front fence has a height of 1 metre	YES

street setback are not to be higher than: i) 0.9m if of closed construction (such as masonry, lapped and capped timber or brushwood fences); or ii) 1.2m if of open construction (such as open paling and picket fences).	and is of open design.	
Fences and walls are to step down and follow the natural contours of the site.	Front fence is of a style which follows the contours of the site.	YES
Hedges and shrub planting are preferred to the street frontage, but no higher than 1.2m along the entire front boundary, or 1.8m on a site fronting a busy road.	Hedging of 2.5-3 metres is proposed.	NO
All fencing is to be designed to highlight entrances and be compatible with buildings and letterbox areas.	Fencing highlights building entry.	YES
External finishes for fencing are to be robust and graffiti resistant.	Proposed fence has a metal finish.	YES
Ground floor private open space, courtyard and terrace wall and fence heights are not to exceed i) 1.2m to any street frontage ii) 1.8m to any side or rear boundary with a maximum 1.2m high solid component and a minimum 30% transparent component above.	Courtyards are unfenced and set within retaining walls of 950 millimetres in height.	YES
7C.11 – Acoustic Privacy		
Noise levels associated with air conditioning, kitchen, bathroom, laundry ventilation, other mechanical ventilation systems and other plant are to comply with the requirements in Part 23.8 of the DCP.	Noise levels have not been assessed by the acoustic consultant.	NO

Ku-ring-gai Development Control Plan

Section B

Part 19 – Heritage items and Heritage Conservation Areas

The subject site does not contain a heritage item and is not located within a heritage conservation area. The site is located within 100 metres of heritage items at No. 5 Middle Harbour Road, No. 19 Russell Avenue, Lindfield Station and No. 1-5 Tryon Road ('St Albans Church'). The proposed development is sufficiently removed from these items to mitigate against adverse heritage impacts.

Part 20 – Development near Road or Rail noise

A Rail Noise and Vibration Impact Assessment (prepared by Rodney Stevens Acoustics dated 6 June 2025) has been provided and adequately considers the DCP requirements.

Ku-ring-gai Development Control Plan**Section C****Part 24 – Water management**

The proposed development has not been designed to manage urban stormwater as per the requirements of the KDCP. This issue forms a recommended reason for refusal.

Ku-ring-gai Contributions Plan 2010

The development, if approved, would attract a Section 7.11 contribution. If the Panel is of a mind to approve the application, it is recommended a condition requiring payment of the required contribution to be included in the determination.

Housing and Productivity Contribution

The development, if approved, would attract a contribution under the Housing and Productivity Contribution requirement.

REGULATION

Section 61(1) of the Environmental Planning & Assessment Regulation 2021 requires the consent authority to consider the provisions of *Australian Standard AS 2601-2001: The demolition of structures*. If the application was recommended for approval, conditions to manage demolition would be included in the recommendation.

The application relates to residential apartment development and the development application was required to be accompanied by a Design Verification Statement (DVS) from a qualified designer under Section 29 of the Regulation. The submitted DVS is inadequate consequently it forms a recommended reason for refusal.

LIKELY IMPACTS

The likely impacts of the development have been considered and are deemed to be unacceptable for the reasons outlined in this report.

SUITABILITY OF THE SITE

The site is suitable for the proposed development.

PUBLIC INTEREST

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by the Panel ensuring that any adverse effects on the surrounding area and the environment are minimised. The proposal has been assessed against the relevant environmental planning instruments and is deemed to be unacceptable as detailed throughout the report and recommended reasons for refusal.

CONCLUSION

Having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory for the reasons advanced in the recommendations of this report.

RECOMMENDATION

PURSUANT TO SECTION 4.16(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

THAT the Ku-ring-gai Local Planning Panel exercising the functions of Ku-ring-gai Council, as the consent authority, pursuant to Section 4.16 of the Environment Planning and Assessment Act 1979, refuse development consent to eDA0313/25 for the demolition of existing dwelling and construction of a residential flat building with basement car parking and associated works on land at 1 Russell Avenue Lindfield, for the following reasons:

1. Minimum site dimensions

The site does not meet the minimum dimensions specified in Clause 6.6(2)(b) in Ku-ring-gai Local Environmental Plan and the proposed development is therefore prohibited.

Particulars:

- a) Subclause (2) in Clause 6.6 in KLEP provides –
 - (2) *Despite any other provision of this Plan, development consent must not be granted for the erection of multi dwelling housing or a residential flat building on a lot in a residential zone unless the lot has an area of at least 1,200 square metres and minimum dimensions (width and depth) of at least—*
 - (a) *if the area of the land is less than 1,800 square metres—24 metres, or*
 - (b) *if the area of the land is 1,800 square metres or more—30 metres.*
- b) The Development Application proposes a residential flat building. The site has a total area of 1,131.3m². The site has the following dimensions having a primary frontage to Russell Avenue –
 - a. Minimum site width (northern boundary) – 16.47 metres
 - b. Minimum site depth (eastern boundary) – 44.527 metres
- c) Given the site has an area less than 1,800m² according to Clause 6.6(2)(a), it must meet the minimum dimensions of 24 metres for both width and depth.
- d) As detailed in particular (b) above, the width of the site is only 16.47 metres at the northern end which is non-compliant with Clause 6.6 (2)(b) in KLEP 2015.
- e) A Clause 4.6 variation request has been submitted for the proposed development, however the consent authority cannot be satisfied that compliance with the development standard is unreasonable and unnecessary, as required by Clause 4.6(3)(a). The objective of Clause 6.6, as outlined in subclause (1)(b), relates to the provision of *'generous landscaped areas and setbacks to ensure the amenity of adjoining properties and to support the desired future character of these areas.* The

proposed development includes deficient landscaped area and by virtue of this, is a prohibited development as outlined in Reason 2.

- f) In addition, the consent authority cannot be satisfied that there are sufficient environmental planning grounds to support the proposed departure, as required by Clause 4.6(3)(b). The applicant's arguments are not agreed with for the reasons outlined below:
- a. The proposed development results in significant adverse impacts resulting from non-compliant landscaped area, inadequate deep soil area and insufficient canopy tree planting.
 - b. The proposed development does not result in a better planning outcome compared to a compliant development, which could be achieved under the Alternative TOD.
- g) The submitted Clause 4.6 variation request cannot be considered well founded as it references Chapter 5 of State Environmental Planning Policy (Housing) 2021 [SEPP Housing], which is not relevant to the amended proposal.

2. Inadequate landscape area – prohibited development

There is inadequate landscape area proposed, contrary to Chapters 2 and 6 of State Environmental Planning Policy (Housing) 2021.

Particulars:

- a) The proposal does not comply with the minimum landscape development standard of 30% of the site area as outlined in Section 19(2)(b)(ii) of Chapter 2 State Environmental Planning Policy (Housing) 2021 (SEPP Housing). The proposal provides a landscape area of 108.6m², which represents 9.6% of the site area and is non-compliant.
- b) Chapter 2, Section 19(2)(b)(ii) contains a non-discretionary development standard and approval cannot be granted to the proposed development without a well justified Clause 4.6 variation request. No Clause 4.6 variation request has been submitted in support of the breach of this development standard.
- c) Chapter 6, Section 177(2) of SEPP Housing requires the consent authority to consider the *Tree Canopy Guide for Low and Mid Rise Housing* (the Guide). The proposed development is inconsistent with the requirements of Table 7 of the Guide (enhanced provisions) and fails to deliver the intended landscape outcomes of increased tree canopy, improved amenity, and consistency with the prevailing landscape character of the locality. In particular, the proposal fails to demonstrate compliance with the following minimum requirements:
 - i. Tree canopy cover: 15% of the site area (169.7m²).
 - ii. Deep soil zone with minimum 3 metres dimension: 10% of the Site area (113.1m²).
 - iii. Tree planting rate: a minimum of 4 medium trees are required.

3. Non-compliant building height

The proposed development results in a non-compliant building height, which is not supported by a well-founded Clause 4.6 variation request to excuse compliance with Section 18(2) of SEPP Housing.

Particulars:

- a) A Clause 4.6 variation request has been provided but incorrectly refers to the provisions of Chapter 5, Section 155 of SEPP Housing. As the Clause 4.6 variation request references the incorrect provisions of SEPP Housing, the Clause 4.6 variation request cannot be considered to be well founded. As the development standard has not been correctly identified, the consent authority cannot be satisfied that compliance with the development standard is unreasonable and unnecessary as required by Clause 4.6(3)(a) of KLEP.

4. Non-compliant number of storeys

The proposed development does not comply with the maximum number of storeys for 'Low and Mid Rise development' as referenced in Chapter 6, Section 175(2) of SEPP Housing.

Particulars:

- a) The applicant has submitted a Clause 4.6 variation request with respect to the number of storeys development standard in Chapter 6, Section 175(2) of SEPP Housing.
- b) As the 'bonus provisions' of Chapter 2, Section 18 may be utilised to increase building height subject to provision of additional affordable housing, it is unclear whether the provisions of Chapter 6, Section 175 are applicable to the proposed development.
- c) In the event that the provisions of Chapter 6, Section 175(2) are applicable, the consent authority cannot be satisfied that compliance with the development standard is unreasonable and unnecessary in the circumstances as required by Clause 4.6(3)(a). The proposal seeks to vary the development standard by four storeys (40% variation), which results in a ten-storey residential flat building. The scale of the resulting development cannot be classified as 'low and mid rise housing' and is therefore inconsistent with the aims of Chapter 6 of SEPP Housing.
- d) In addition, the consent authority cannot be satisfied that sufficient environmental planning grounds exist to vary the development standard as required by Clause 4.6(3)(b), as the reasons advanced by the applicant do not provide sufficient justification for the proposed variation. The applicant's arguments are not agreed with for the reasons outlined below:
 - i. The proposed height exceedance is beyond minor and comprises four additional storeys. An exceedance of this extent cannot reasonably be attributed to the site topography.
 - ii. Whilst compliance with the ADG requirements for cross-ventilation is claimed by the applicant, it is unclear how compliance is achieved by the units located in the north-eastern corner of the building as these units feature openings to the northern elevation only.
 - iii. The proposed apartment mix cannot be attributed to the additional building height (four storeys) proposed. The lower six storeys include a mixture of one, two and three bedroom units. Additionally, all proposed affordable units (Unit 01, Unit 04, Unit 05, Unit 07, Unit 08 and Unit 16) are located within the lower six storeys.
 - iv. The proposed ground plane treatment results in several subterranean units with poor amenity. Better amenity would be achieved by increasing the

ground level floor of the building and deleting one or more of the upper storeys.

5. Non-compliant Floor Space Ratio

The proposed development results in a non-compliant Floor Space Ratio (FSR) which is not supported by a well-founded Clause 4.6 variation request to Section 16(1) of SEPP Housing.

Particulars:

- a) The applicant has submitted a Clause 4.6 variation request to Section 16(1) of SEPP Housing which states that compliance with the development standard is unreasonable and unnecessary because:
 - i. The extent of the FSR variation is negligible.
 - ii. The FSR variation results in an increase in the delivery of housing to meet the needs of low-income people.
 - iii. The proposed development will result in greater housing diversity.
- b) Further, the applicant submits that the following environmental planning grounds exist to vary the development standard:
 - i. The proposal is consistent with the aims and objectives of SEPP Housing as it seeks to maximise residential density in an appropriate location.
 - ii. The proposal is consistent with future character as a result of saved TOD developments in the locality.
 - iii. The proposal will result in less bulk than a complying proposal.
 - iv. There is an absence of impacts attributed to the additional FSR.
 - v. The proposal includes a good mix of housing types.
- c) The consent authority cannot be satisfied that sufficient environmental planning grounds exist to vary the development standard as required by Clause 4.6(3)(b), as the reasons advanced by the applicant do not provide sufficient justification for the proposed variation. The applicant's arguments are not agreed with for the reasons outlined below:
 - i. The provision of affordable housing is not sufficient means to justify the proposed exceedance from the FSR development standard. The provisions of Chapter 2 require a minimum GFA of 485.33m² of affordable housing. The proposed development includes a GFA of 501m² of affordable housing, thereby exceeding the minimum requirement by 15.67m². The proposed FSR exceedance amounts to 65.682m² and comprises an additional 50.012m² of 'market rate' GFA.
 - ii. Contrary to what is claimed by the applicant, the development will result in detrimental environmental impacts. The proposed development includes non-compliant and inadequate landscaping and deep soil provision, as well as insufficient building setbacks and excessive site coverage.
 - iii. It is not agreed that the proposal will result in lesser visual bulk than a compliant proposal under the Alternative TOD. A proposal under the Alternative TOD (which utilises the bonus provisions of Chapter 2) may be of greater height than the proposed development but would be bolstered by larger building setbacks and additional deep soil area as the FSR development standard would be less (1.8:1 plus 30%). This would better achieve the desired future character, which comprises residential flat buildings within a garden setting; and one that benefits from large-canopy

trees. Sections 7A and 7C of the KDCP make a direct link between garden setting, “mature canopy tree cover” and “desired future character”; Development is to be “in keeping with the garden character of Ku-ring-gai where the tree canopy dominates the landscape, by making provision for quality deep soil landscaping ... tall trees to the streetscape; in-between and to all elevations of buildings on the development site; in-between buildings on the development site and on adjacent sites”. In this regard, reference is also made to Section 20(3) of SEPP (see recommended reason for refusal 10).

- iv. Whilst it is agreed that the proposed development achieves a good mix of apartment types, this mix cannot be attributed to the additional FSR proposed.

6. Water management

The Development Application does not take all reasonable management actions to avoid, minimise or mitigate adverse impacts to adjoining properties, contrary to Clause 6.5 of KLEP 2015. Further, the Development Application is not accompanied by sufficient particulars to enable an assessment against Clause 6.5 of KLEP 2015. Development consent cannot be granted.

Particulars:

- a) Clause 6.5 of KLEP 2015 provides that, before granting development consent to development on any land to which the LEP applies, the consent authority must be satisfied that, relevantly:
 - i. The stormwater management system includes all reasonable management actions to avoid any adverse impacts on the land to which the development is to be carried out, adjoining properties, native bushland, waterways and groundwater systems; and
 - ii. If a potential adverse environmental impact cannot be feasibly avoided, the development minimises and mitigates the adverse impacts of stormwater runoff on adjoining properties, native bushland, waterways and groundwater systems.
- b) The proposed on-site detention (OSD) tank connects into a realigned Council stormwater pit in Russell Avenue. The design has not considered the functionality of the Council stormwater system in relation to impacts on the OSD system resulting from a submerged outlet and hydraulic grade line (HGL) assessment of the Council system. The HGL assessment must consider the critical storm for the 1% AEP design storm event and demonstrate overflows from the OSD tank are not directed to the basement.
- c) No hydrological and hydraulic modelling based on DRAINS software has been provided to enable assessment of the hydraulic performance of the Council and the property's stormwater system.
- d) No supporting hydraulic calculations have been submitted to demonstrate compliance with Part 24C.3-4 of the KDCP that requires rainwater retention and re-use to be provided to achieve a 50% reduction in runoff days. A water balance model has not been submitted.
- e) The application is not supported by Flood Impact Assessment based on TUFLOW software prepared in accordance with the requirements outlined in 'Part 24D.2 - Flood Studies and the Design Flood Standard' and Part 24R.7 of the KDCP to enable

assessment of potential inundation of the basement.

7. Insufficient building setbacks and building separation

The proposed development has inadequate building setbacks and building separation, resulting in adverse amenity impacts and non-compliances with Part 3F of the Apartment Design Guide (ADG) and Part 7A.3 of Ku-ring-gai Development Control Plan (KDCP).

Particulars:

- a) The proposed development does not meet the minimum requirements outlined in Objective 3F-1 of the ADG. The ADG requires a minimum setback of 6 metres for habitable rooms/balconies with a height of up to 4 storeys, 9 metres for habitable rooms/balconies with a height of 5-8 storeys and 12 metres for habitable rooms/balconies with a height of nine storeys or more. Instead, the proposed development includes setbacks of 3 metres up to four storeys and 6 metres for 5 storeys and upwards. This not only compromises the internal amenity of habitable rooms in the proposed development but also places an undue burden on neighbouring properties to achieve adequate amenity and compliance with the ADG if they are developed in future. The minimum separation distances under Objective 3F are based on achieving reasonable visual privacy between buildings, with the total separation shared equally across the boundary - meaning any reduction on one site reduces the available distance on the other.
- b) The proposed setbacks of 6.4 metres to the northern (primary) street frontage and 3.9 metres to the western (secondary) street frontage are non-compliant with Control 1 of Part 7A.3 of KDCP. The proposed setbacks do not support the provision of a garden setting and are also inconsistent with Objectives 1-4 and 7 of Part 7A.3.
- c) The proposed side and rear setbacks of 2.3 metres from the eastern (side) boundary and 1.9 metres from the southern (rear) boundary are non-compliant with Control 5(i) of Part 7A.3 of the KDCP which requires a minimum setback of 6 metres up to the fourth storey.
- d) The proposal provides setbacks of 3.4 metres (to the eastern boundary) and 2.5 metres (to the southern boundary) to the fifth storey and above and is non-compliant with Control 5(ii) which requires setbacks of 9 metres for the upper levels. In this regard the proposal is inconsistent with Objectives 8, 10, 11, 13 and 15 of Part 7A.3.
- e) In addition, the proposed eastern side setback is inconsistent with Controls 9, 10(i) and (ii) of Part 7A.3 of KDCP and does not satisfy Objective 9 of this Part which aims to provide a transition to adjoining sites zoned differently for lower density residential development.
- f) The proposed basement encroaches on all building setbacks and is contrary to Controls 11, 13 and 14 of Part 7A.3 of KDCP. The proposal is contrary to Objectives 7, 11, 14 and 15 of this Part as the resulting development provides insufficient deep soil zones within the setback areas.

8. Inadequate deep soil zones

The proposed development includes inadequate deep soil zones contrary to Part 3E of the ADG and Part 7A.6 of the KDCP.

Particulars:

- a) The proposed development results in a deep soil area of 2%, contrary to the minimum deep soil zone requirements of Objective 3E-1 of the ADG which require a minimum deep soil zone of 7% of the site area and a suggested deep soil area of 10% for sites between 650m² and 1,500m² in area. Deep soil zones, as defined by the ADG, must have a minimum dimension of 6 metres.
- b) The proposed deep soil areas are fragmented by retaining walls and fences. This fragmentation prevents the establishment of tall canopy trees and diminishes the environmental and amenity benefits that continuous deep soil areas are intended to deliver. The proposed outcome is inconsistent with the ADG objectives to support landscape character, urban ecology, and residential amenity.
- c) Additionally, the proposal does not comply with Control 1 in Part 7A.6 of KDCP, which requires a minimum deep soil zone of 40% of the site area. As defined under the KDCP, the proposed development includes a total deep soil area of 64.8m², equivalent to 5.72% of the site area. The proposal is inconsistent with Objectives 1-3 and 5 of Part 7A.6 for the following reasons:
 - i. The development fails to contribute to the intended garden character of the locality.
 - ii. The landscape design is not in scale with the bulk of the proposed development or consistent with the surrounding context.
 - iii. The limited deep soil areas do not allow the inclusion of tall canopy trees, particularly within the site frontage where they are critical to achieving streetscape amenity and long term tree canopy outcomes as envisaged under the current controls and the Alternative TOD.
- d) The proposal does not comply with Control 4 of Part 7A.6 of KDCP, which provides that deep soil landscaping is to be provided within common areas to provide a buffer between buildings and soften their bulk and scale. Several deep soil areas proposed on the site appear to be located within private open spaces, with fencing and (potentially) retaining walls subdividing these zones. This limits the available space for meaningful tree planting and is contrary to Objectives 6 and 7 of Part 7A.6.
- e) The proposed driveway is set back 0.5 metres from the eastern side boundary, contrary to Control 8 and Objective 6 of Part 7A.3 of KDCP, which aim to ensure driveways do not compromise the landscape setting or neighbouring amenity.
- f) A site coverage of approximately 42% is proposed, contrary to Control 1 and Objectives 1-5 of Part 7A.5 of KDCP which permits a maximum site coverage of 30% if deep soil requirements are met.

9. Unsatisfactory response to site topography

The proposed development does not appropriately address the site's topography, resulting in adverse amenity and streetscape impacts. An appropriate response to topography would be one that adequately addresses the technical issues of natural stormwater flows and flooding but also demonstrates how the proposed development responds to the integral mix of vegetation and terrain that is a key feature of Ku-ring-gai's character.

Particulars:

- a) The site currently sits approximately 1.3 metres below the public domain along the

western frontage (Lindfield Avenue). The proposed ground level is at RL 90.95, which is approximately 710 millimetres below the lower level of the existing site. This creates the following landscape concerns:

- i. To address the level difference of approximately 2.35 metres along the Lindfield Avenue frontage, the proposal includes a series of retaining walls that form two stepped deep soil zones, at 1.2 metres and 2.4 metres wide respectively. These narrow and divided deep soil areas do not provide sufficient space for tree planting at a scale proportionate to the development, resulting in limited canopy potential and reduced amenity for ground-floor dwellings and private open spaces.
 - ii. The private open space of the ground-level units, together with the associated deep soil areas, is located below the public domain level by approximately 2 to 3.8 metres, necessitating the inclusion of several retaining walls within the deep soil areas to achieve the required finished public domain levels. This design outcome is inconsistent with Objectives 1, 2, 3, 4, and Controls 2, 3, 4 ii), 7 v), 7vi) in Part 7A.1; Objectives 1, 3, 6 Control 6, 7, in Part 7A.2; Objectives 1, 2, 3, 7, and Controls 3, 4, 7, 8, 9 in Part 7A.6 and Controls 1, 3, in Part 21.1 of the KDCP. The division of deep soil areas results in non-compliance with the minimum deep soil requirements specified under the ADG and KDCP (refer to Reason 8).
 - iii. The minimal dimensions of the proposed deep soil areas do not satisfy KDCP tree replenishment standards, resulting in a poor landscape outcome and an unacceptable impact on local character (refer to Reason 13).
 - iv. The eastern portion of the development also demonstrates an unsuitable landscape response, both in relation to the proposed building and its interface with adjoining properties.
- b) The architectural and landscape plans lack critical information in relation to natural ground line on sections and elevations. As a result of this lack of information, it is unclear if the number of storeys has been depicted correctly in accordance with Control 1 of Part 7C.7 of KDCP.
 - c) There is insufficient information about the proposed ground levels. The landscape plan contains incomplete finished levels for courtyards and no finished ground levels for garden areas.
 - d) Two units facing Lindfield Avenue on Level 01 floorplan appear to be subterranean. Unit 01 appears to be 3.35 metres below street level whilst Unit 03 appears to be 1.7 metres to 3 metres below street level. The proposal is therefore contrary to Control 5 of Part 7C.3 of KDCP, which states that units are not to be accommodated as a result of excessive excavation and Control 8, which states that the finished floor level is not to be more than 0.9 metres below existing ground level. The proposal therefore fails to satisfy Objective 1 of this Part.
 - e) The proposal also includes narrow, subterranean terraces (such as to Unit 01) which are less than 3 metres in width as required by Control 9 of Part 7C.3 of KDCP. As a result, the amenity of these areas of private open space is compromised and is contrary to Objective 1 of this Part.
 - f) The proposed ground level apartments do not maximise street frontage activity and are inconsistent with ADG Objective 4L-1.

10. Inadequate residential amenity

The proposed development does not provide a high level of residential amenity for future residents and is contrary to the requirements of Parts 4D, 4E and 4G of the ADG and Parts 7C.3 and 7C.9 of the KDCP.

Particulars:

- a) The proposed development includes apartments with a depth exceeding 8 metres (Units 02, 05, 06, 10, 18, 22), which is inconsistent with the design guidance provided for Objective 4D-2 of the ADG that specifies a maximum habitable room depth of 8 metres from a window.
- b) The proposed development includes apartments with a living room width of less than 4 metres (Units 05, 09, 17) and is inconsistent with the design guidance provided for Objective 4D-3 of the ADG.
- c) The proposed private open space for Unit 03 includes a balcony with a useable width of 2 metres and does not meet the minimum requirements established by the design criteria associated with Objective 4E-1 of the ADG which require a minimum width of 3 metres.
- d) The proposed development is inconsistent with Controls 5 and 8 and Objectives 1 and 3 of Part 7C.3 of KDCP as it includes subterranean apartments such as Units 01 and 03, which are located 3.35 metres and 1.7-3 metres below street level respectively.
- e) The proposed development does not include external air clothes drying areas and is inconsistent with Control 1 and Objective 1 of Part 7C.9 of KDCP.
- f) The proposed basement includes storage areas adjacent to external walls which is contrary to Control 7 and Objective 5 of Part 7C.3 of KDCP.
- g) The proposed development does not appropriately respond to its context. More design attention should be given to facades impacted by noise and pollution from the railway and heavy vehicles. Acoustic treatments to this façade would assist in reducing heat loads as no shading is proposed currently. Shading devices should also be provided to the western elevation as required by Control 14 of Part 7C.6 of KDCP.
- h) Only one lift is proposed to service ten residential levels and three basement levels, which could result in long wait times. Amenity would be improved through the provision of an additional lift.

11. Inconsistency with desired future character

The proposed development is not compatible with the desirable elements of the character of the local area and is inconsistent with the desired future character of the area. As a result, the proposal fails to meet the requirements of Section 20(3) of SEPP Housing.

Particulars:

- a) Section 20(3) of SEPP Housing provides that development consent must not be granted unless the consent authority has considered whether the design of the development is compatible with the desirable character elements of the area, or for precincts undergoing transition, the desired future character of the area.

- b) Part 7A of the KDCP requires development to be designed within a landscaped setting where tall trees, deep soil zones, and generous planting areas surround buildings and reinforce the treed character of the area. It provides that the landscape should remain the dominant visual element on the site, with tree canopy visible from both the public domain and adjoining properties. The KDCP calls for deep soil areas on all sides of a site, specifically to support the planting and long-term viability of tall trees. Additional guidance for corridor and precinct-based development reinforces the *desired future character* is one where buildings are set within generous landscaping, and mature trees remain a dominant feature. These controls collectively ensure that new development continues the legacy of Ku-ring-gai's garden suburb identity, where tree canopy and landscaped settings define the area's visual and environmental character.
- c) The proposed development is not compatible with the existing or desired character for the following reasons:
 - i. The proposed development provides inadequate building setbacks as outlined in Reason 7.
 - ii. The proposed development provides inadequate landscape and deep soil areas as outlined in Reasons 2 and 8.
 - iii. The proposed development includes insufficient area for the planting of canopy trees as outlined in Reason 13.
- d) The proposed development addresses only one street frontage of the site contrary to Control 11 and Objective 2 of Part 7C.5 of KDCP which requires buildings on corner sites to address both street frontages and provide entry points from both street frontages.
- e) The proposed development includes unarticulated walls to the eastern and southern elevations, contrary to Control 3 and Objective 2 of Part 7C.5 of KDCP which states that large flat walls are to be avoided.
- f) The proposed development includes excessive areas of render, contrary to Control 3(i) and (iv) and Control 12(vii) and Objective 1 of Part 7C.6 of KDCP.

11. Sustainability

The proposed development is not environmentally responsive and is inconsistent with Schedule 9(4) of SEPP Housing and ADG Objective 4J-1.

Particulars:

- a) Passive thermal design measures could be improved including through greater attention to passive shading and façade performance, the provision of on-site power generation and storage, charging for electric vehicles, ceiling fans to bedrooms and decarbonisation of energy supply.

12. Unacceptable tree impacts

The proposed development results in adverse and unacceptable impacts to Tree 3 *Jacaranda mimosfolia* (Jacaranda) which is the only tree on the site proposed for retention.

Particulars:

- a) The submitted Arboricultural Impact Assessment (AIA) Report identifies a 5.7% basement encroachment into the Tree Protection Zone (TPZ) of Tree 3. The report also identifies that above-ground structures, including the ground floor and upper levels, will encroach by 25.1%, which constitutes a major encroachment under AS 4970–2025.
- b) Contrary to the above, Council's assessment calculates the basement encroachment to be 14.5%, which is a major encroachment. This encroachment is proposed in addition to the above-ground encroachments, which are agreed to be major.
- c) There is insufficient information to determine whether retention of Tree 3 is feasible. A detailed pruning plan must be provided to specify the extent of pruning required, together with an assessment of impacts from the proposed building envelope and the scaffolding necessary during construction.
- d) As a result of the above encroachments, the proposed development fails to meet Control 3 in Part 7A.5 of KDCP, which requires deep soil zones to be configured to retain healthy and significant trees on site and on adjoining sites where possible.

13. Inadequate landscape design and insufficient canopy tree planting

The proposed landscape design is inadequate and does not meet the requirements of Part 4O of the ADG and Parts 7A.6 and 7C.5 of KDCP.

Particulars:

- a) The landscape design does not adequately enhance streetscape or residential amenity and fails to satisfy Objective 4O-1 of the ADG. The proposed deep soil areas are fragmented rather than consolidated, limiting the ability to plant trees in communal ownership. As a result, there is insufficient buffer planting to soften the scale of the development, which would otherwise contribute positively to the streetscape.
- b) The proposed landscape design fails to satisfy Objective 4O-1 of the ADG, which requires the development to provide at least one tall tree capable of reaching a mature height of 13–18 metres within an appropriately sized deep soil area. While the submitted landscape plan includes a tall tree, its location is in close proximity to proposed structures. This creates a conflict that will restrict the tree's ability to achieve full, healthy development. The current layout cannot adequately support a tall tree.
- c) The proposal fails to provide the minimum tree replenishment for this development site to satisfy Controls 7 to 9 in Part 7A.6 of the KDCP. For this site, at least three tall trees capable of attaining a minimum mature height of 18 metres in local conditions are required. Tree species are to be consistent with the local landscape character and be placed to allow adequate space for mature growth without conflict with structures or services.
- d) The main entry path is 2.3 metres wide and the landscape area to the north of the path forms part of a private courtyard, while the southern landscape area is only 800 millimetres wide, rather than the required 1.2 metres as required by Control 12 of Part 7C.5 of KDCP. As a result, the building entry impacts adversely on the streetscape and is contrary to Objective 6 of Part 7C.5.

14. Insufficient site analysis

The proposed development has not been informed by a robust site analysis as the submitted site analysis and Urban Design Report (UDR) contain inconsistencies and fail to reflect the existing and desired urban character.

Particulars:

- a) The submitted site analysis does not illustrate that design decisions have been based on opportunities and constraints of the site and their relationship to the surrounding context as required by Objective 3A-1 of the ADG. Notably, key contextual features such as the adjacent railway corridor and the public domain interface along Lindfield Avenue are omitted from the architectural drawings. These are not minor oversights but critical contextual elements that influence amenity, outlook, noise, materiality, privacy, and the site's visual prominence. A proper site analysis is a foundational design task. The failure to identify these contextual constraints at the outset indicates that they have not informed the design as thoroughly as they would be expected to in order to properly satisfy the ADG.
- b) A written site analysis has been submitted in the form of the UDR. However, the UDR includes the following inconsistencies.
 - i. The UDR fails to acknowledge the visual prominence of the site, which is highly visible from the east.
 - ii. The UDR states that the proposal has generous setbacks and landscape frontages, which is inaccurate.
 - iii. The UDR states that the desired future character of the site comprises setbacks of 10 metres (street boundary), 6 metres (ground to 4 storeys) and 9 metres (from 5 storeys and above). This is inconsistent with the proposed development.
 - iv. The UDR references existing side setbacks of 1.5 metres to 3 metres but fails to note that these setbacks apply to single storey dwellings.
 - v. The UDR references potential future uplift under the Housing SEPP but fails to provide diagrams or modelling of future adjoining built form and/or assess implications for ADG compliance.

15. Basement design, driveway access and carparking

The development fails to comply with AS2890.1:2004 'Parking facilities Part 1: Off-street car parking' and proposes an unsatisfactory basement design. The proposal also includes inconsistent information in relation to driveway access and is contrary to Council's planned intersection upgrade.

Particulars:

- a) The proposal is to widen the existing driveway crossing towards Lindfield Avenue to approximately 5.6 metres wide (as indicated on the Civil Plans), narrowing to a single lane ramp entry into Basement Level 01. This conflicts with the proposed 6.4 metres wide access indicated in Attachment 2 of the Transport Impact Assessment (TIA).
- b) According to the Architectural Plans, the gradient of the driveway is a 5% fall for the first 4.5 metres within the site, contrary to AS2890.1, which requires a 5% gradient for the first 6 metres into the site. This conflicts with the Civil Plans, which show a 5% gradient for the first 6 metres into the site, consequently it needs to be clarified.

- c) The vehicle clearance assessment for the driveway adopts an incorrect B85 vehicle clearance of 159 millimetres. The requirements outlined in AS2890.1 require the assessment based on 120 millimetres vehicle ground clearance.
- d) The driveway clearance has not been assessed for the B99 vehicle in accordance with the requirements outlined in AS2890.1.
- e) The proposal includes a dedicated loading area in the Basement 01 level with a height clearance of 2.6 metres, designed to accommodate Council's waste collection vehicle, as well as smaller service and removalist vehicles. However, swept paths in the Transport Impact Assessment (TIA) indicate that a manoeuvring service vehicle would sweep over the shared zone of an accessible car parking space (**Figure 1**). Additionally, the location of the bollard is not compliant with AS2890.6.

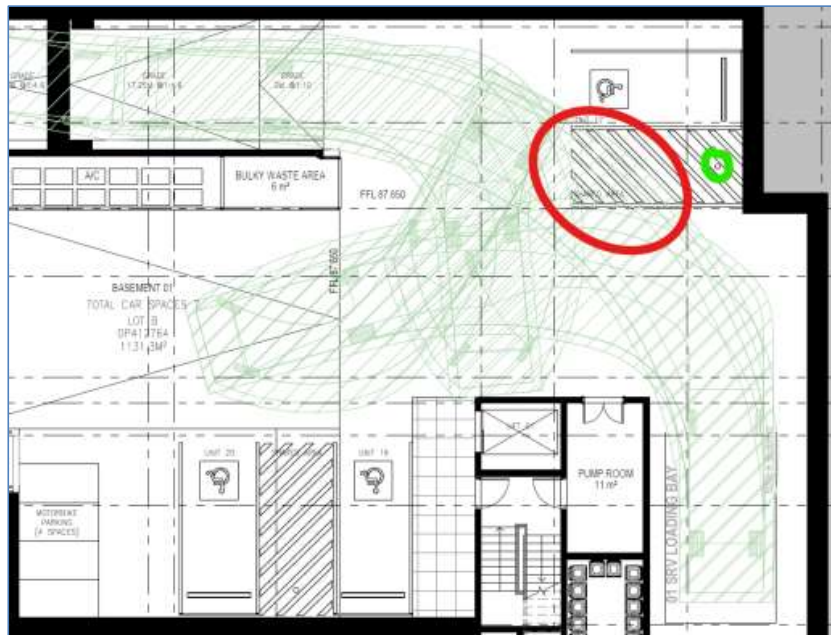


Figure 1: Conflict between accessible parking space and manoeuvring

- f) The TIA proposes traffic signal operation to manage access. There is no indication of the location of traffic signal display at the access point for the entry movement, and the proposal is likely to detract from Council's desired streetscape outcomes. Alternative options are to be investigated including amendments to the access ramp layout, provision of a passing bay and use of on-site convex mirrors.
- g) The proposed driveway access point conflicts with Council's proposed streetscape upgrade of Lindfield Avenue and Tryon Road as a pedestrian refuge is proposed in Russell Avenue at the intersection with Lindfield Avenue (**Figure 2**). Widening the existing driveway crossing of No. 1 Russell Avenue towards Lindfield Avenue may result in vehicle and service vehicle access issues due to the presence of the proposed pedestrian refuge which will adversely impact on entry and exit movements. Updated swept paths of passenger vehicles and service vehicles need to be provided. If the conflict cannot be resolved, the access driveway would need to be relocated to the Lindfield Avenue frontage.

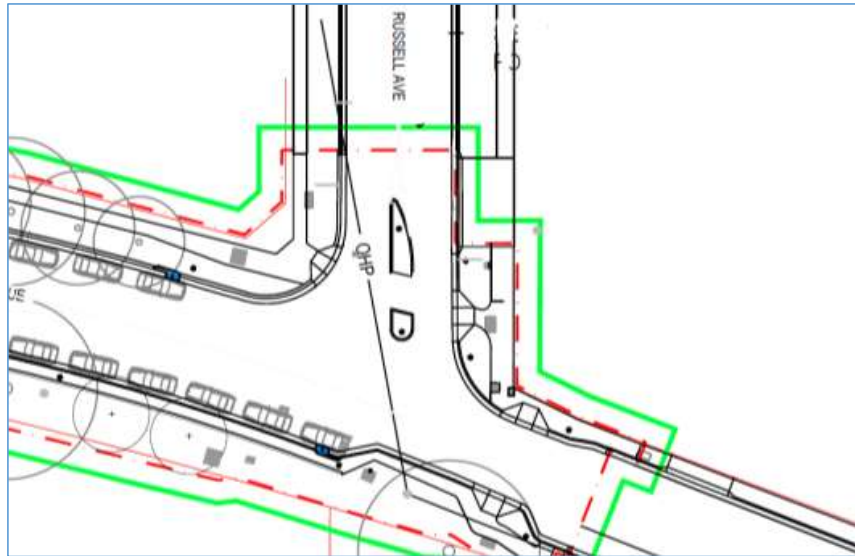


Figure 2: Proposed streetscape upgrade and pedestrian island

- h) To facilitate home deliveries (e.g. groceries, parcels etc), bulky goods waste collection and other service vehicles that cannot access the basement due to the 2.6 metre height clearance, the development should also provide an on-site loading area (a separate hardstand area is not permitted). The position of the loading area must not prevent access to and from the basement level car park, with at least one travel lane to be maintained at all times while loading/unloading takes place on the driveway.
- i) The proposal is contrary to Control 3 of Part 22.4 of KDCP which requires at least one visitor car space to be accessible.

16. Provision for bicycle parking and access

Provision for practical and safe bicycle parking and access has not been made.

Particulars:

- a) The TIA states that 30 bicycle parking spaces are provided in accordance with the KDCP. The architectural plans show double-tier bicycle storage on the Basement 01 level, with racks able to hold 30 bicycles. It is unclear what type of parking facilities/devices these are, but the top tier is unlikely to be practical for most bicycle riders, as they only suit fit riders with light bicycles. Therefore, the type of bicycle parking device facility needs to be clarified and needs to comply with AS2890.1 having regard to the relevant security level.
- b) The proposed ramp connecting Russell Avenue to the Basement 01 level has gradients of up to 1:4.6 (22%), which generally will exceed the capability of many bicycle users to remain mounted with stability (1:12, or 8% is practical). Therefore, the lifts and lobbies should be of a suitable size such that residents can transport their bicycles between the bicycle parking area and ground/street level without using the car park ramp.

- c) It is assumed that some of the double-tiered bicycle spaces are intended for visitor bicycles. Similar ramp grade accessibility issues as residents arise, and there is the practicality and convenience of visitors entering the secure parking area to access the bicycle parking from the main car park entry ramp. For convenience and practicality of all visitors arriving by bicycle, visitor parking is to be located near the building entry.

17. Inadequate information regarding affordable housing

There is insufficient detail to confirm compliance with Section 21 of SEPP Housing.

Particulars:

- a) Section 21 of SEPP Housing states that development consent under Part 2, Division 1 of SEPP Housing must not be granted unless the consent authority is satisfied that for a period of 15 years commencing on the day the Occupation Certificate is issued, the development will include the affordable housing component required under Sections 16, 17 or 18 and the affordable housing component will be managed by a registered community housing provider.
- b) The consent authority cannot be satisfied that the affordable housing component will be managed by a registered community housing provider as the details of such a provider have not been submitted.

18. Inadequate information regarding acoustic impacts

The submitted acoustic impact assessment contains errors and inconsistencies.

Particular:

- a) The following errors and inconsistencies are identified in the Rail Noise and Vibration Impact Assessment prepared by Rodney Stevens Acoustics (dated 6 June 2025):
- i. Building height inconsistency (page 5) – The noise report describes the proposal as an “eight-storey multi-storey residential development”, whereas the amended Statement of Environmental Effects confirms a 10-storey building. This raises concern that the acoustic modelling may not reflect the current design.
 - ii. Incorrect land use reference (page 16) – The noise report refers to a “childcare centre” when discussing noise from the rooftop pool. The application is for a residential flat building.
 - iii. Level 01 of the architectural plans (Rev 2, dated 25 June 2025) shows an area labelled “MSR” with a total area of 8m². Clarification is required as to whether this space is intended to be a mechanical services room or a main switch room, as this could represent an additional location for noise-producing equipment which may not have been assessed by the acoustic engineer.

19. Insufficient architectural plans

The architectural plans are insufficiently documented to permit assessment of and compliance with the ventilation, storage and solar access provisions of the ADG, as follows.

Particulars:

- a) Compliance with ADG Objective 4B-1, which requires that the area of unobstructed window openings should be equal to at least 5% of the floor area served, has not been demonstrated. Additionally, Objective 4D-1 requires every habitable room to have a window with a minimum glass area of no less than 10% of the floor area of the room. Apartments proposed on the eastern side of the building feature bedrooms with narrow, angled windows only. The area of the windows cannot be assessed as no window schedule has been submitted
- b) Compliance with ADG Objective 4B-3, which requires 60% of apartments to be naturally cross-ventilated, has not been sufficiently demonstrated. The applicant claims that 24 out of 28 apartments (86% of apartments) receive natural cross-ventilation however at least four of those apartments (those occupying Levels 01-05 in the north-eastern corner) may not comply as they are proposed to rely on ventilation from the northern elevation only.
- c) The proposed development does not provide sufficient information to demonstrate compliance with the Design Criteria associated with Objective 4G-1 of the ADG. A storage schedule is required which clearly demonstrates that adequate internal and external storage for each apartment is provided.
- d) The submitted solar access modelling does not demonstrate that the proposed development will not unreasonably overshadow future development on adjoining sites. Modelling of future development is required.

20. Insufficient landscape plan

The proposed landscape design is inadequate and does not meet the requirements of Parts 4O and 4P of the ADG and Part 7A.6 of KDCP.

Particulars:

- a) The landscape plan does not include an ongoing maintenance strategy and fails to satisfy Objective 4O-1 of the ADG. Details regarding drainage for planters and irrigation for all planting above structures have not been provided, preventing assessment of the suitability and long-term viability of the proposed landscape design.
- b) The submitted landscape and architectural plans do not provide sufficient detail to assess the viability of the proposed planting above structures, and compliance with Objectives 4P-1, 4P-2 and 4P-3 of the ADG. There is insufficient information to assess compliance with ADG requirements for planting above structures, as follows:
 - i. The submitted landscape and architectural plans do not provide sufficient detail to assess the viability of the proposed planting. Key information is missing, including top of wall and top of slab levels, which are necessary to confirm whether adequate soil depths and volumes have been provided for planting areas above structures.
 - ii. Dimensions and construction details of planter beds are required to demonstrate soil depth and volume.
 - iii. Specifications of fences around the communal open space are required, including the pool area, with clear plans for planting both inside and outside the fencing to ensure a high-quality landscape outcome visible from the public domain.

21. Buildability issues

The architectural plans do not provide sufficient documentation to demonstrate compliance with the National Construction Code (NCC) and the requirements of the Building Design and Practitioners Act (BD&P). Whilst demonstrating compliance with the NCC and DB&P may not be specifically required for development approval, the safety, functionality and organisation of the building – in both plan and section - needs to align with performance targets and objectives. This is especially the case where the proposed bulk and height of a building exceed planning and design controls at the outset and there is no foreseeable way to further vary these aspects at a later stage.

Particulars:

- a) It is unclear how the proposed fire stair egress is to comply with the NCC. The requirement for at least two fire stairs appears to have been met with a double-loaded stair for the upper levels of the building but it is not clear how egress is to be managed at the lower two residential levels especially with regard to the required carpark exits and the associated entry foyer and street activation objectives of the KDCP.
- b) The proposed development shows a nominal floor-to-floor height of 3,150 millimetres. To satisfy requirements of the DB&P Act this may need to be increased, to account for slab set-down requirements and waterproofing mandates, thereby increasing the overall height of the building.

22. Design Verification Statement

The submitted Design Verification Statement does not meet the relevant statutory requirements.

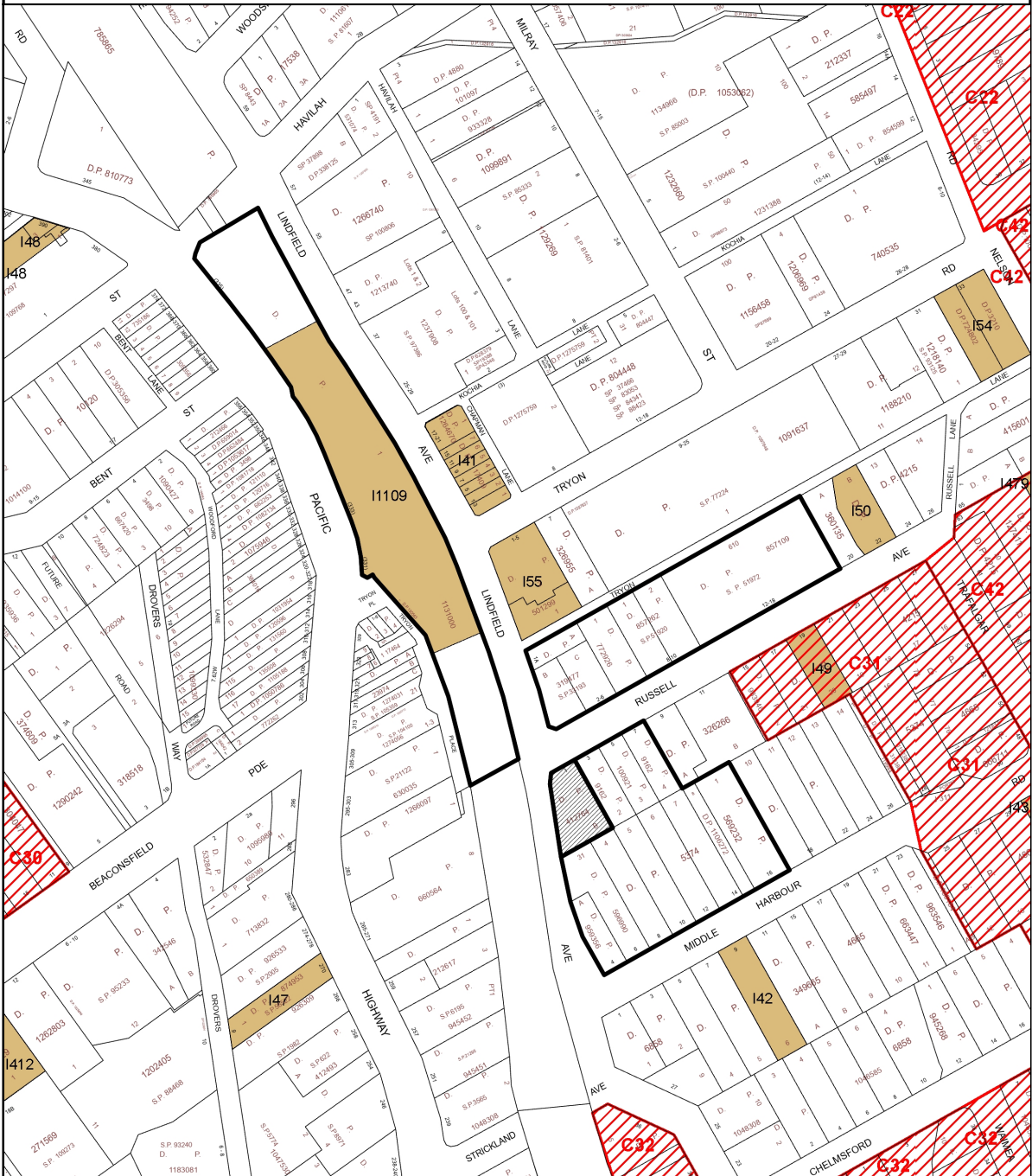
Particulars:

- a) The submitted Design Verification Statement (DVS), prepared by P. S. Issa, comprises a brief statement only and is insufficient. Under Section 29 of the Regulation, the DVS must explain *how* the development addresses the design principles for residential apartment development and the objectives of Parts 3 and 4 of the ADG. A separate UDR has been provided but has not been prepared by the same nominated architect (N. R. Dickson). A revised DVS is required to meet the statutory requirements.

LOCATION SKETCH 1 Russell Avenue LINDFIELD NSW 2070 DEVELOPMENT APPLICATION No.
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1 Russell Avenue LINDFIELD NSW 2070
DEVELOPMENT APPLICATION No.

DEVELOPMENT APPLICATION No.	
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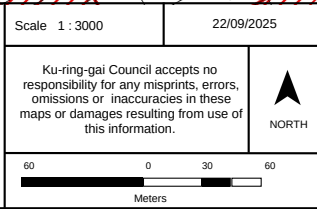
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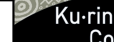
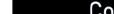
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	SUBMISSION		HERITAGE ITEM
	PETITION		CONSERVATION AREA

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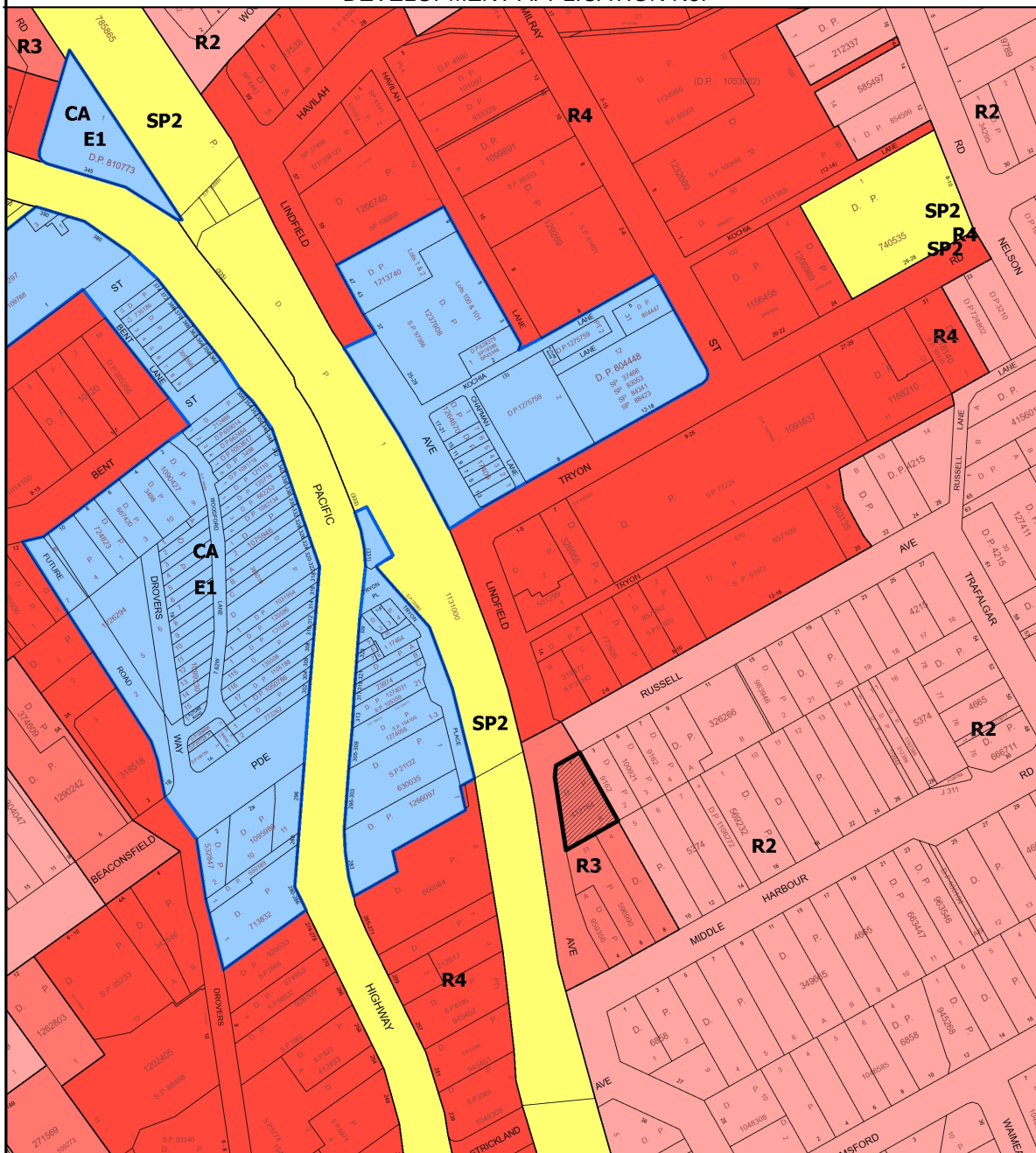


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KU-RING-GAI LEP 2015 ZONING EXTRACT

1 Russell Avenue LINDFIELD NSW 2070

DEVELOPMENT APPLICATION No.



Legend

Zoning

E1 Local Centre	C4 Environmental Living	RE1 Public Recreation
E3 Productivity Support	R1 General Residential	RE2 Private Recreation
MU Mixed Use	R2 Low Density Residential	SP1 Special Activities
C1 National Parks & Reserves	R3 Medium Density Residential	SP2 Infrastructure
C2 Environmental Conservation	R4 High Density Residential	W1 Natural Waterways
C3 Environmental Management	R5 Large Lot Residential	



Subject Land

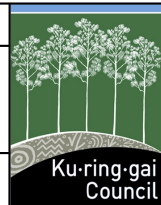
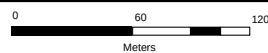
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NORTH





1 3D PERSPECTIVE



LOCATION MAP
NTS

LOT B DP 412764
1 RUSSELL AVENUE,
LINDFIELD, NSW 2070

DRAWING SCHEDULE			
SHEET NO.	TITLE	SCALE	REV
000	COVER SHEET		3
101	EXISTING SITE PLAN	1 : 200	1
102	DEMOLITION SITE PLAN	1 : 200	1
103	PROPOSED SITE PLAN	1 : 200	1
104	SITE ANALYSIS	1 : 200	1
201	BASEMENT 03 PLAN	1 : 100	1
202	BASEMENT 02 PLAN	1 : 100	1
203	BASEMENT 01 PLAN	1 : 100	1
204	LEVEL 01 FLOOR PLAN	1 : 100	1
205	LEVEL 02 FLOOR PLAN	1 : 100	2
206	LEVEL 03 & 04 FLOOR PLAN	1 : 100	2
208	LEVEL 05 FLOOR PLAN	1 : 100	2
209	LEVEL 06 FLOOR PLAN	1 : 100	2
210	LEVEL 07-09 FLOOR PLAN	1 : 100	2
213	LEVEL 10 FLOOR PLAN	1 : 100	1
214	ROOF PLAN	1 : 100	1
301	SECTION AA	1 : 100	2
302	SECTION BB	1 : 100	2
310	NORTH ELEVATION	1 : 100	2
311	EAST ELEVATION	1 : 100	2
312	SOUTH ELEVATION	1 : 100	2
313	WEST ELEVATION	1 : 100	2
601	AREA PLANS AND SCHEDULES	1 : 500	3
605	SHADOW DIAGRAMS	1 : 500	1
610	SOLAR AND CROSS VENTILATION ANALYSIS	1 : 500	1

REV	DATE	DESCRIPTION	BY
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2	05.08.2025	DA ISSUE	AG

NOTES

LEGEND

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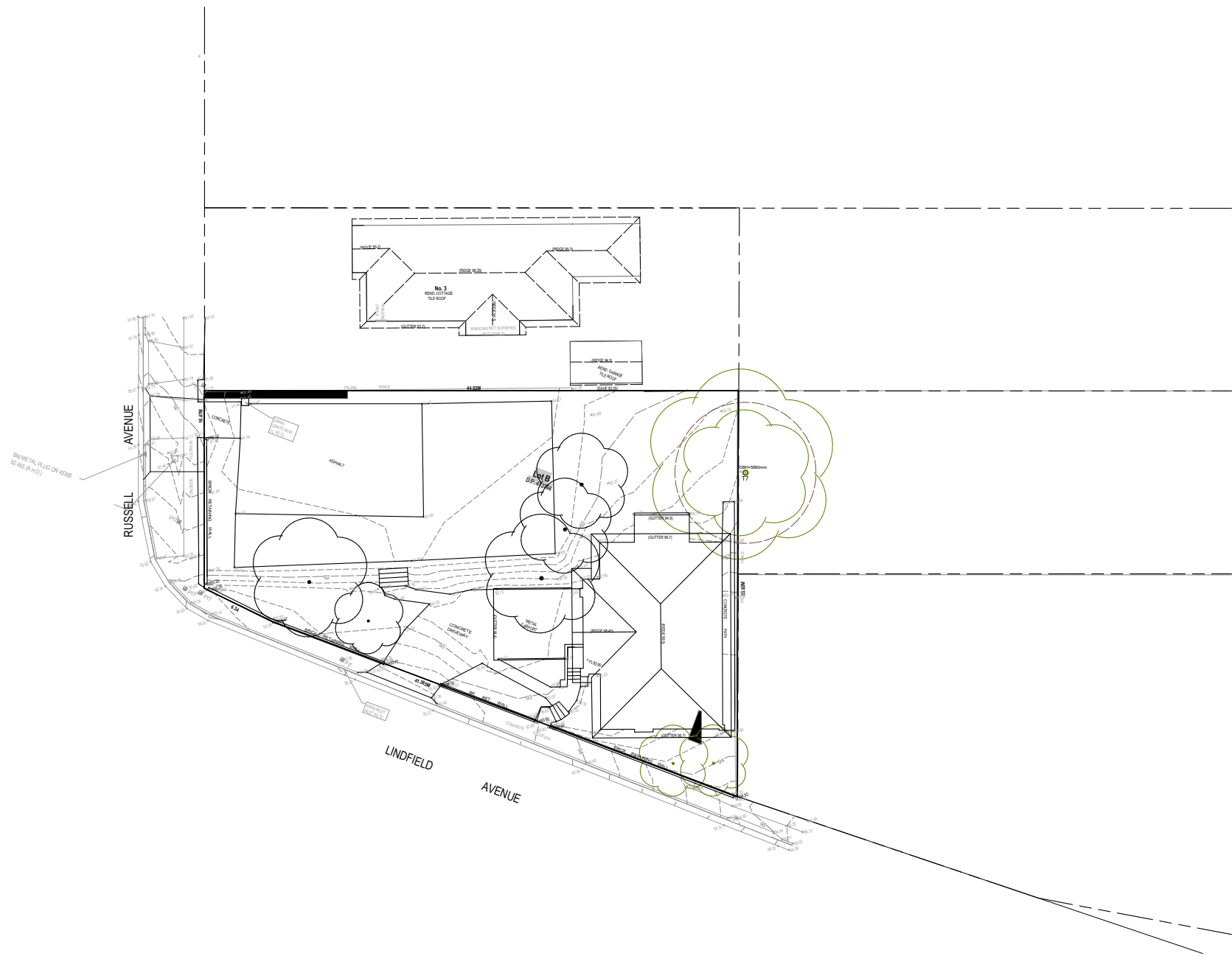
PROJECT ADDRESS
1 RUSSELL AVENUE LINDFIELD
NSW 2070

PSIARCHITECTS
psia@psiaarchitects.com.au
renewable architect | Part 5, Item 10
0457 185 599

PROJECT
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DA ISSUE		
DRAWN	DRAWING TITLE	
AG	COVER SHEET	
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PI		0195
APPROVED	DRAWING NUMBER	REV
AG	000	3



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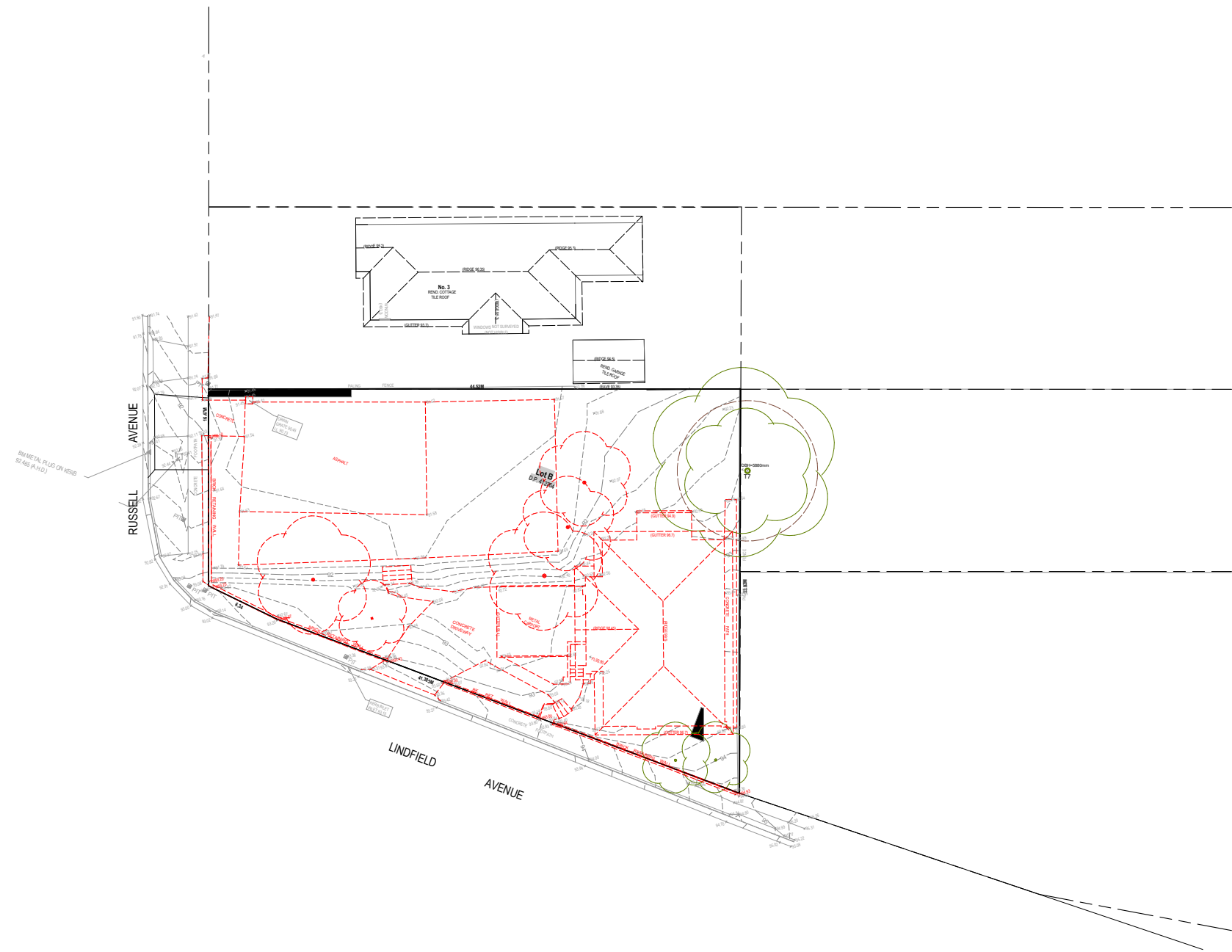
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paul@psiarchitects.com.au
registered architect (NSW) Page 5 of 5
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DRAWING TITLE		PROJECT NUMBER	
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1	13/06/2025	DA ISSUE	AG

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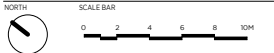
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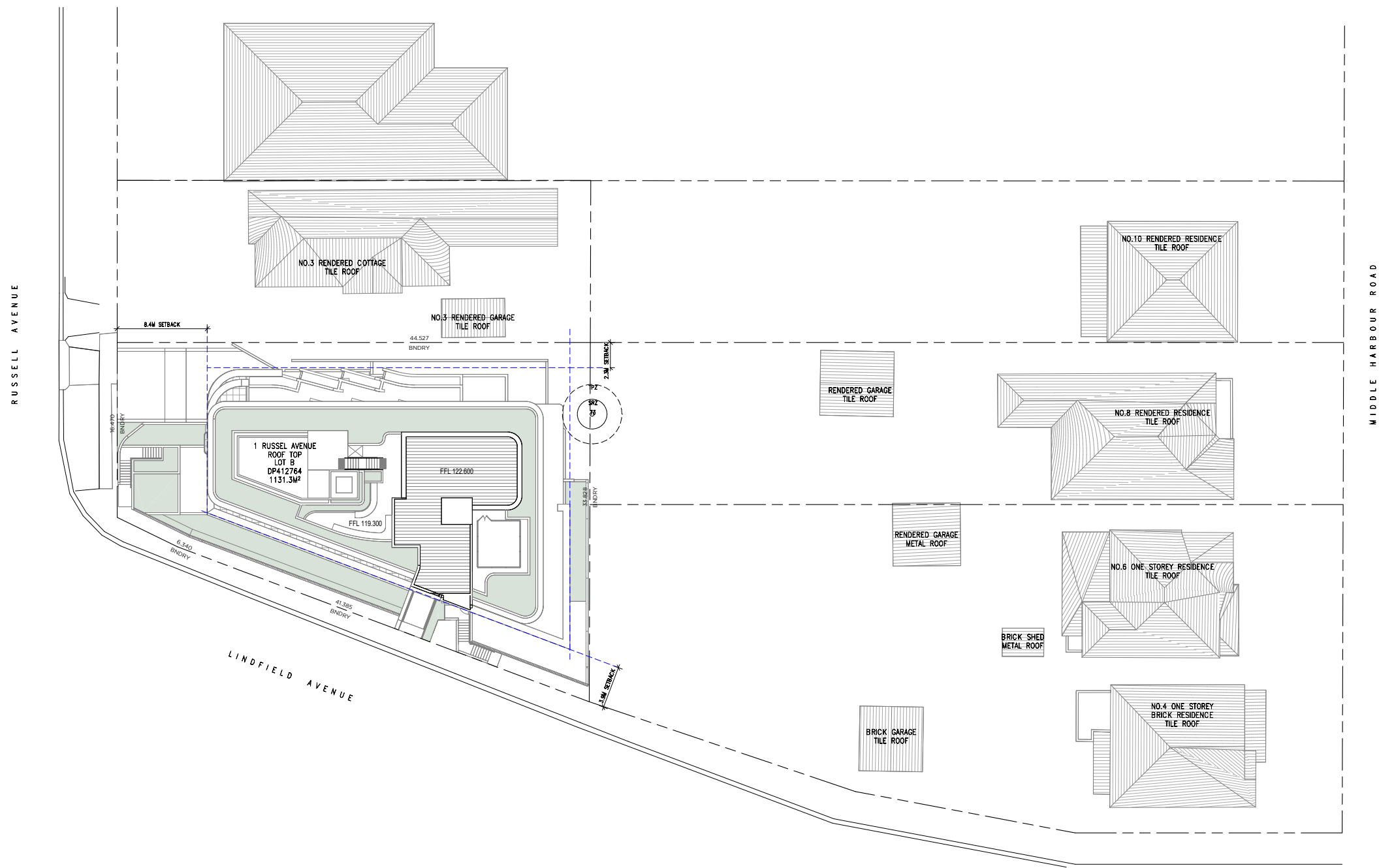
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paul@psiarchitects.com.au
Registered Architect (NSW) **Paul S. Jones**
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AG	102	



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PSIARCHITECTS
paul@psiarchitects.com.au
registered architect (NSW) **Paul S. Jones**
0457 185 599

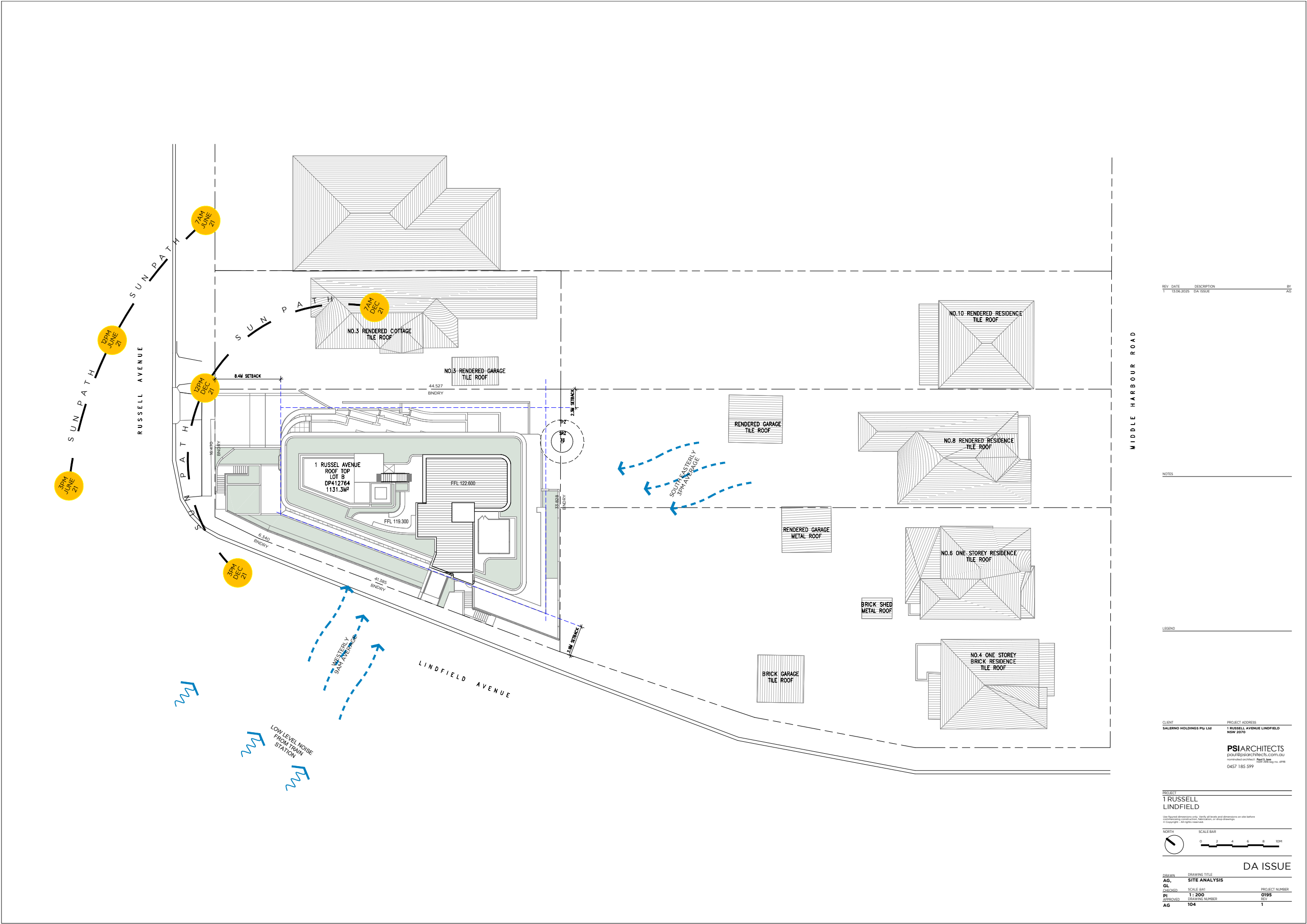
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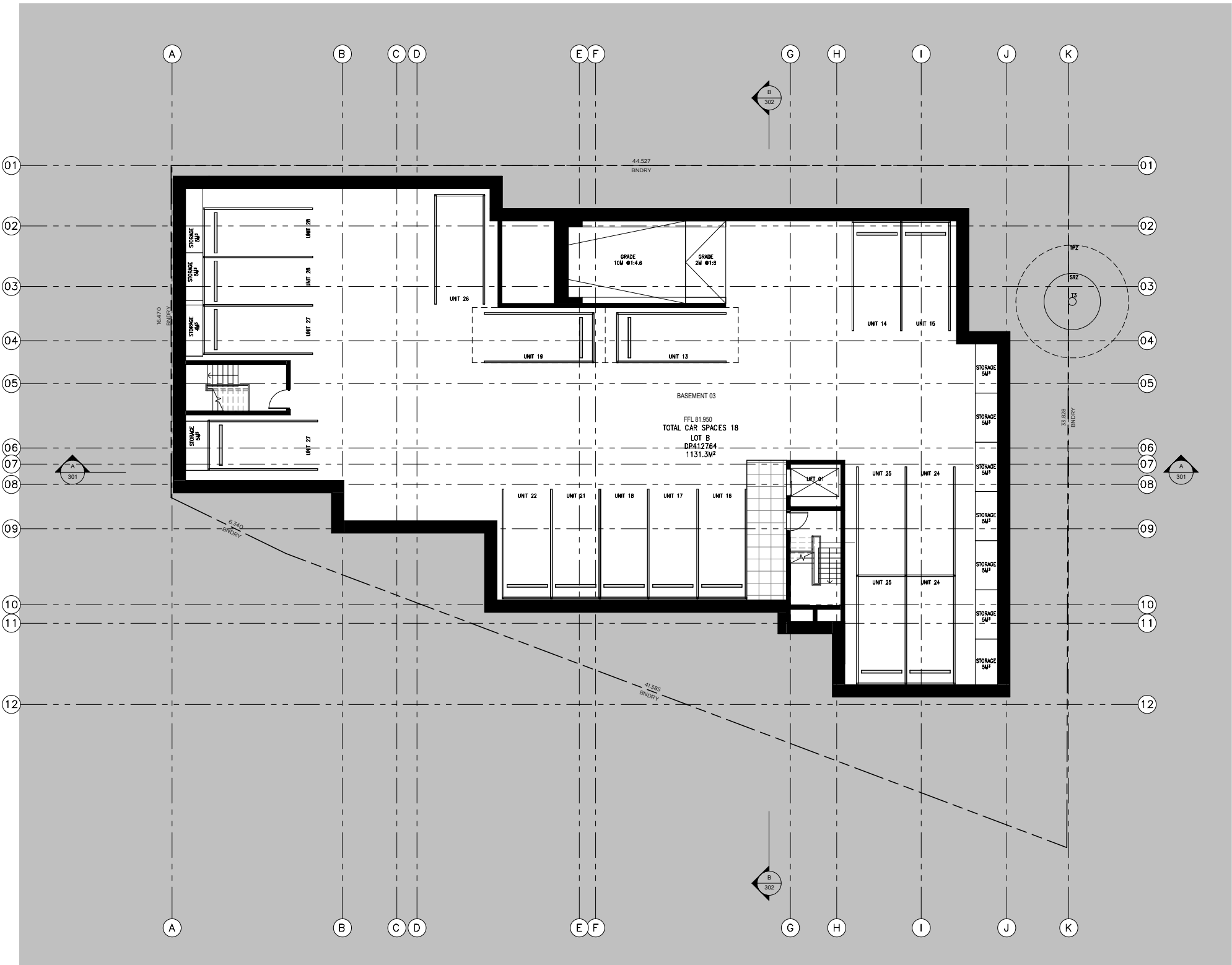
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APPROVED	DRAWING NUMBER	
AG	103	





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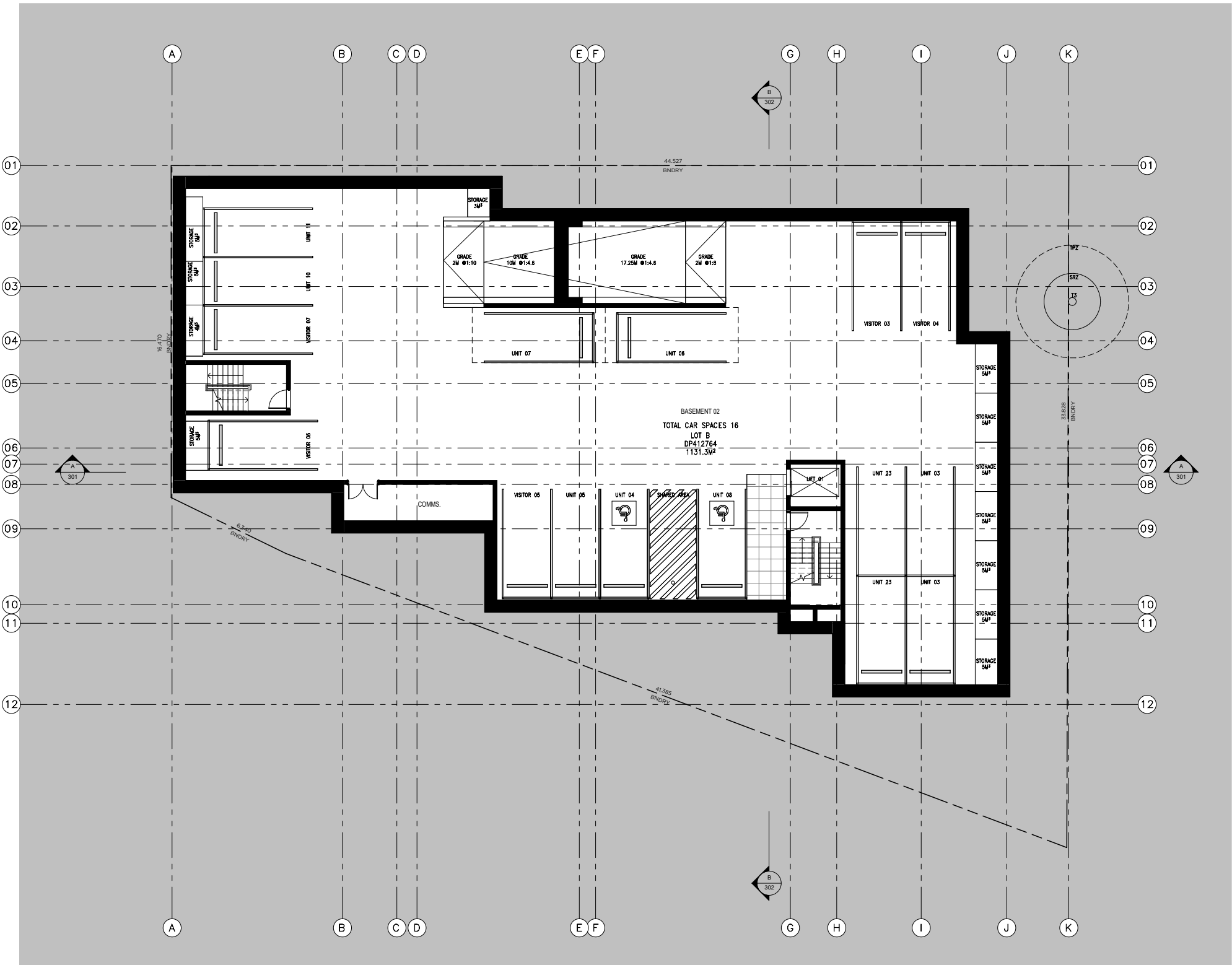
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renewable architect
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AG	201		



REV	DATE	DESCRIPTION	BY
1	13/08/2025	DA ISSUE	AG

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renewable architect
0457 185 599

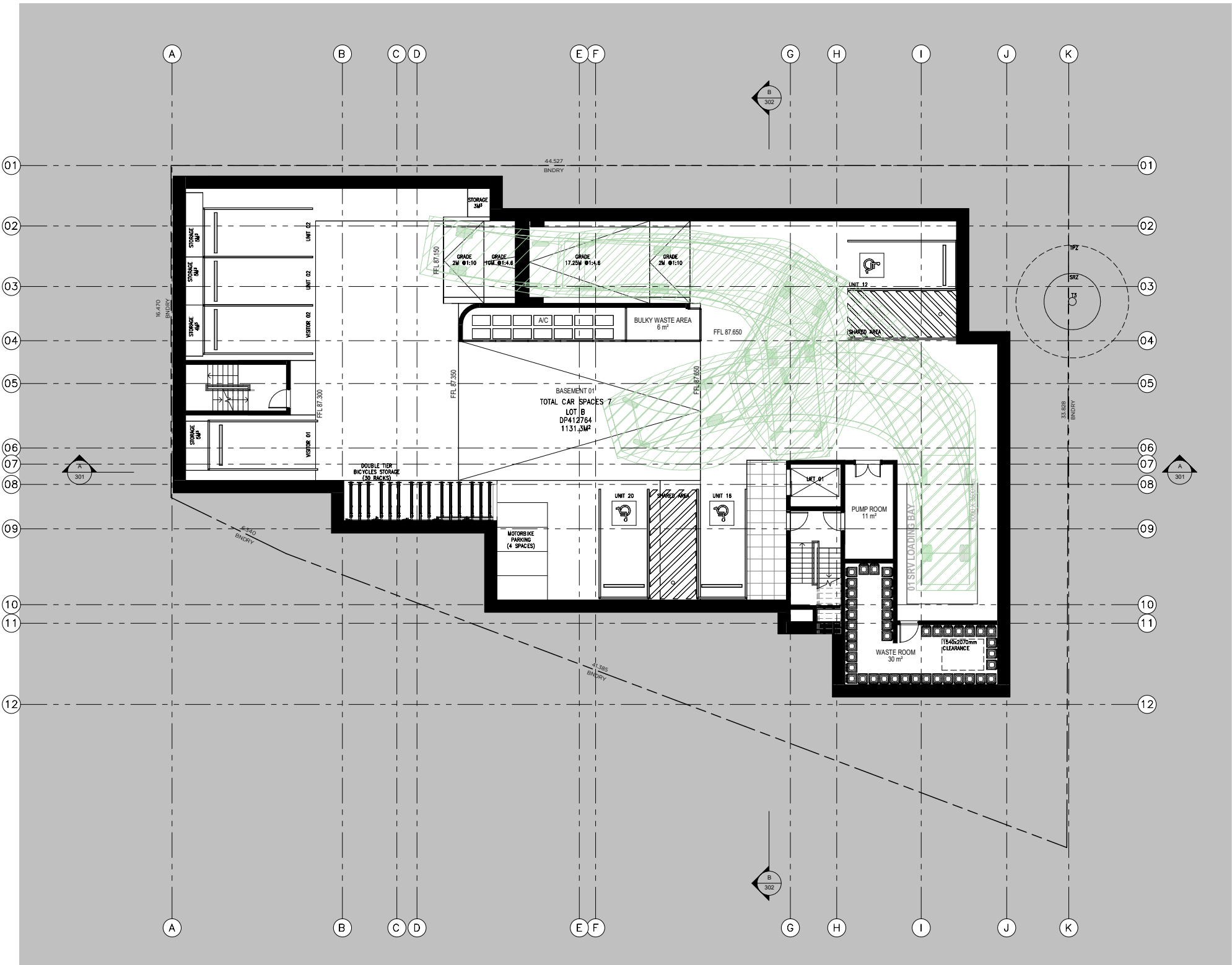
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AG	202
PROJECT NUMBER	REV
0195	1



REV	DATE	DESCRIPTION	BY
1	13/08/2025	DA ISSUE	AG

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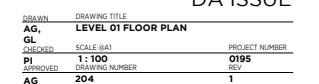
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paul@psiarchitects.com.au
renewable architect
0457 185 599

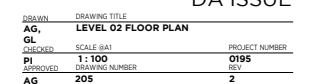
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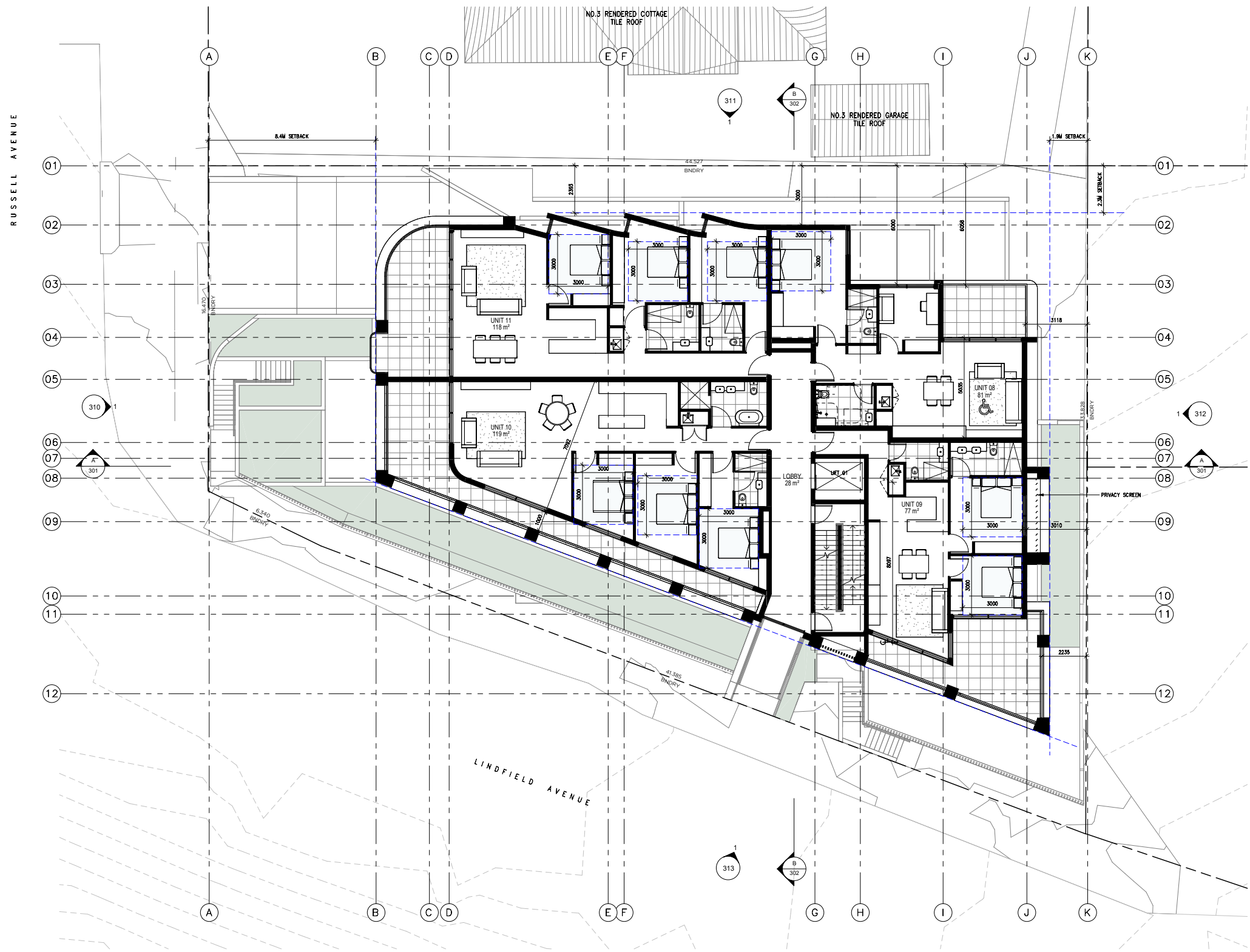
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REV	DATE	DESCRIPTION	BY
1	15.06.2025	DA ISSUE	AG
2	25.06.2025	DA ISSUE	AG

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paul@psiarchitects.com.au
renewable architect
0457 185 599

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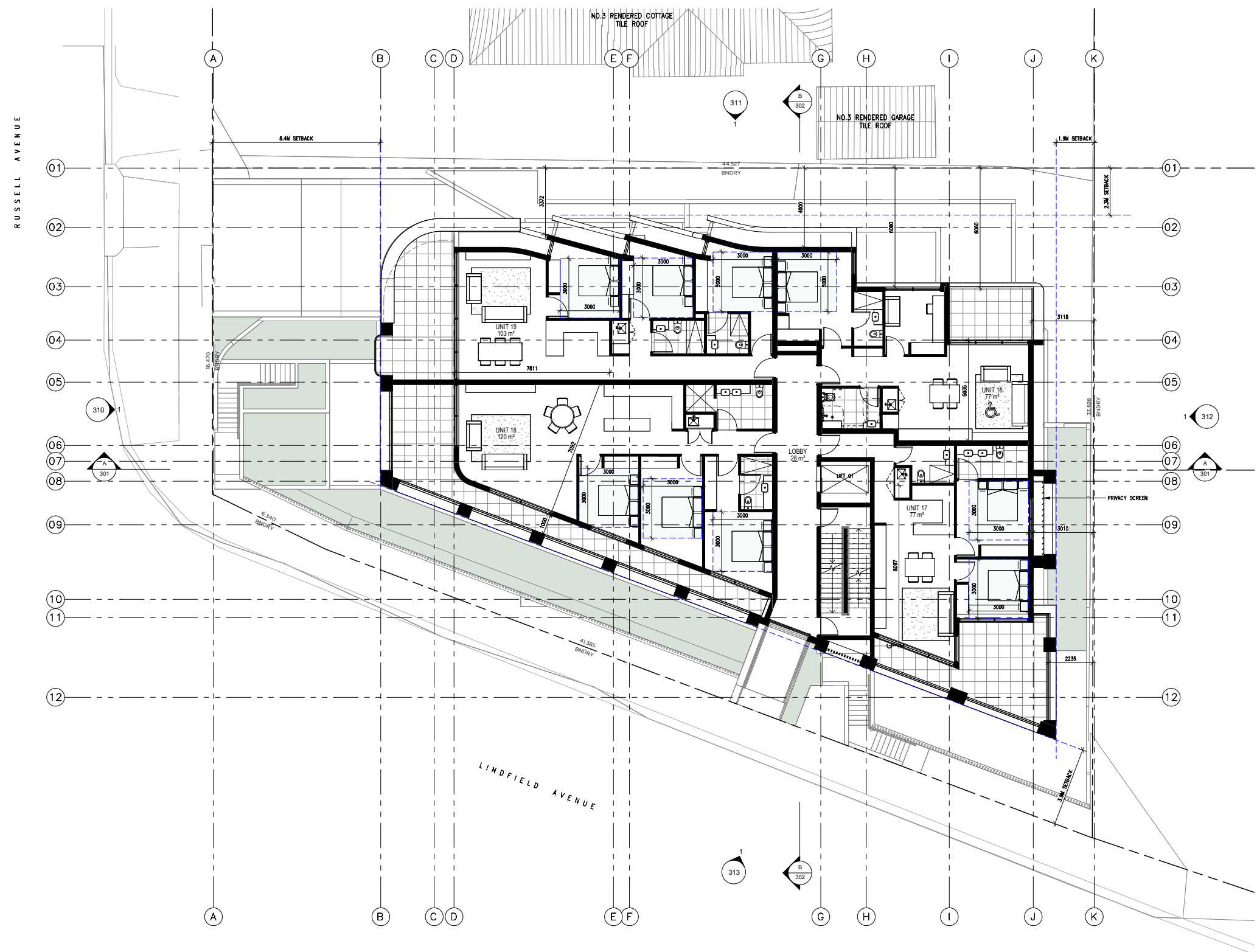
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APPROVED	DRAWING NUMBER
AG	206

PROJECT NUMBER
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REV	DATE	DESCRIPTION	BY
1	15.06.2025	DA ISSUE	AG
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LEGEND

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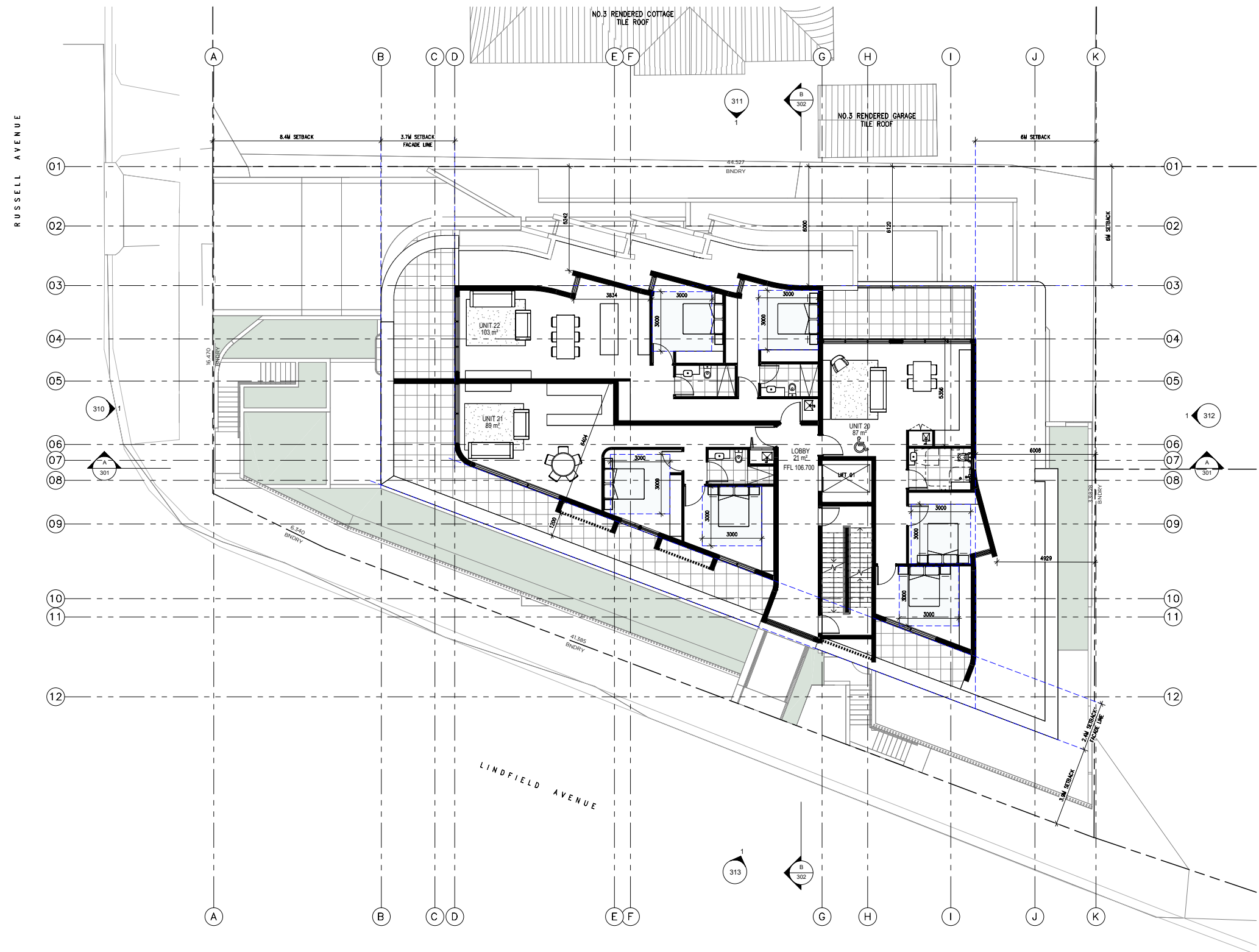
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paul@psiarchitects.com.au
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DRAWN	DRAWING TITLE	PROJECT NUMBER
AG, GL	LEVEL 05 FLOOR PLAN	0195
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APPROVED	DRAWING NUMBER	
AG	208	



REV	DATE	DESCRIPTION	BY
1	15.06.2025	DA ISSUE	AG
2	25.06.2025	DA ISSUE	AG

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LEGEND

CLIENT	PROJECT ADDRESS
SALEHNO HOLDINGS Pty Ltd	1 RUSSELL AVENUE LINDFIELD NSW 2070

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paul@psiarchitects.com.au
renewable architect
0457 185 599

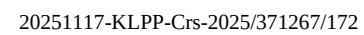
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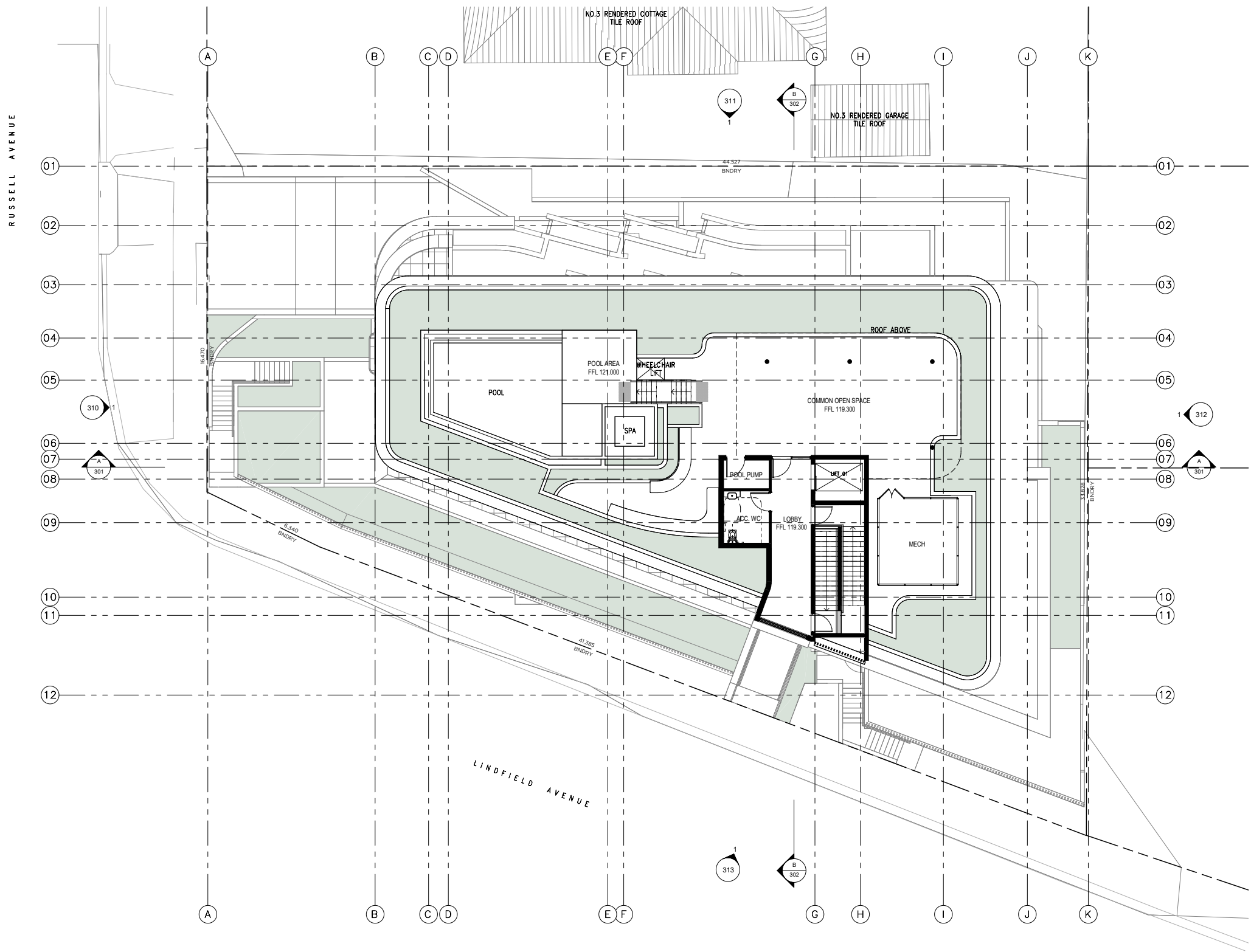
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APPROVED	DRAWING NUMBER	
AG	209	





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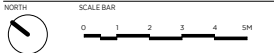
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PSIARCHITECTS
paul@psiarchitects.com.au
renewable architecture | **DA Issue**
0457 185 599

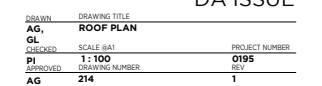
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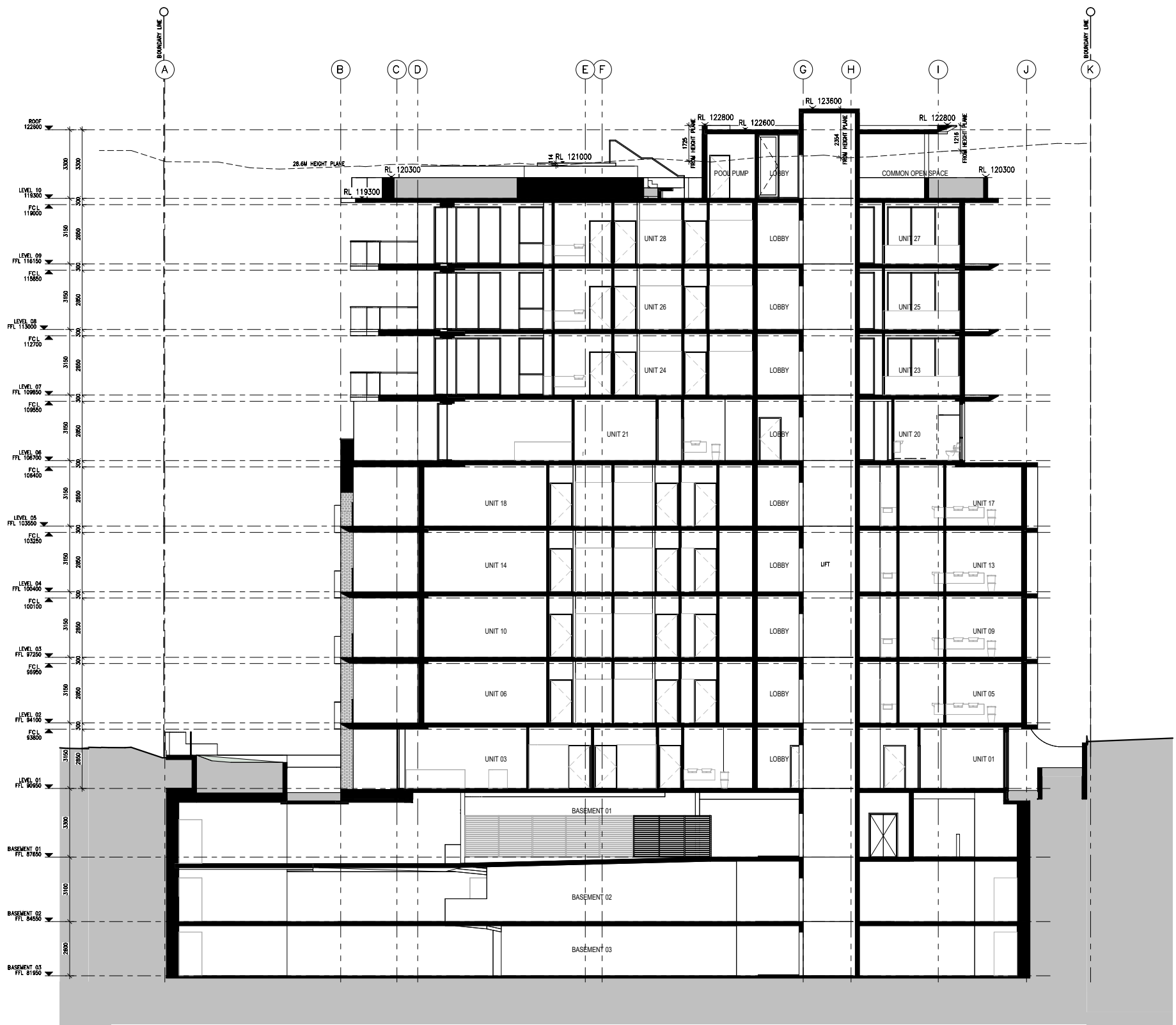
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APPROVED	DRAWING NUMBER	REV
AG	213	1





REV	DATE	DESCRIPTION	BY
1	15.06.2025	DA ISSUE	AG
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CLIENT	PROJECT ADDRESS
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PSIARCHITECTS
paul@psiarchitects.com.au
renewable architect
0457 185 599

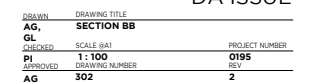
PROJECT
1 RUSSELL
LINDFIELD

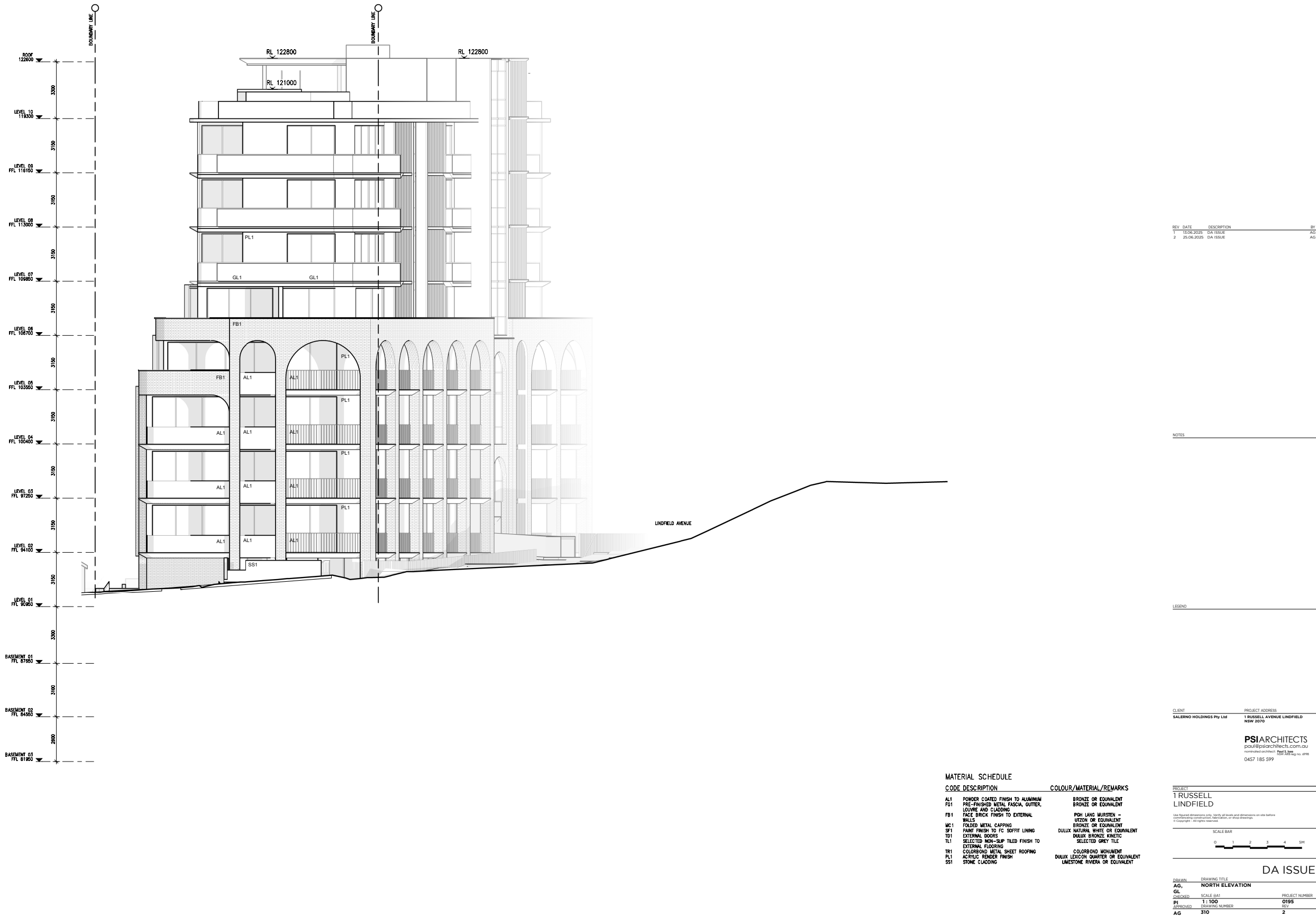
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DA ISSUE

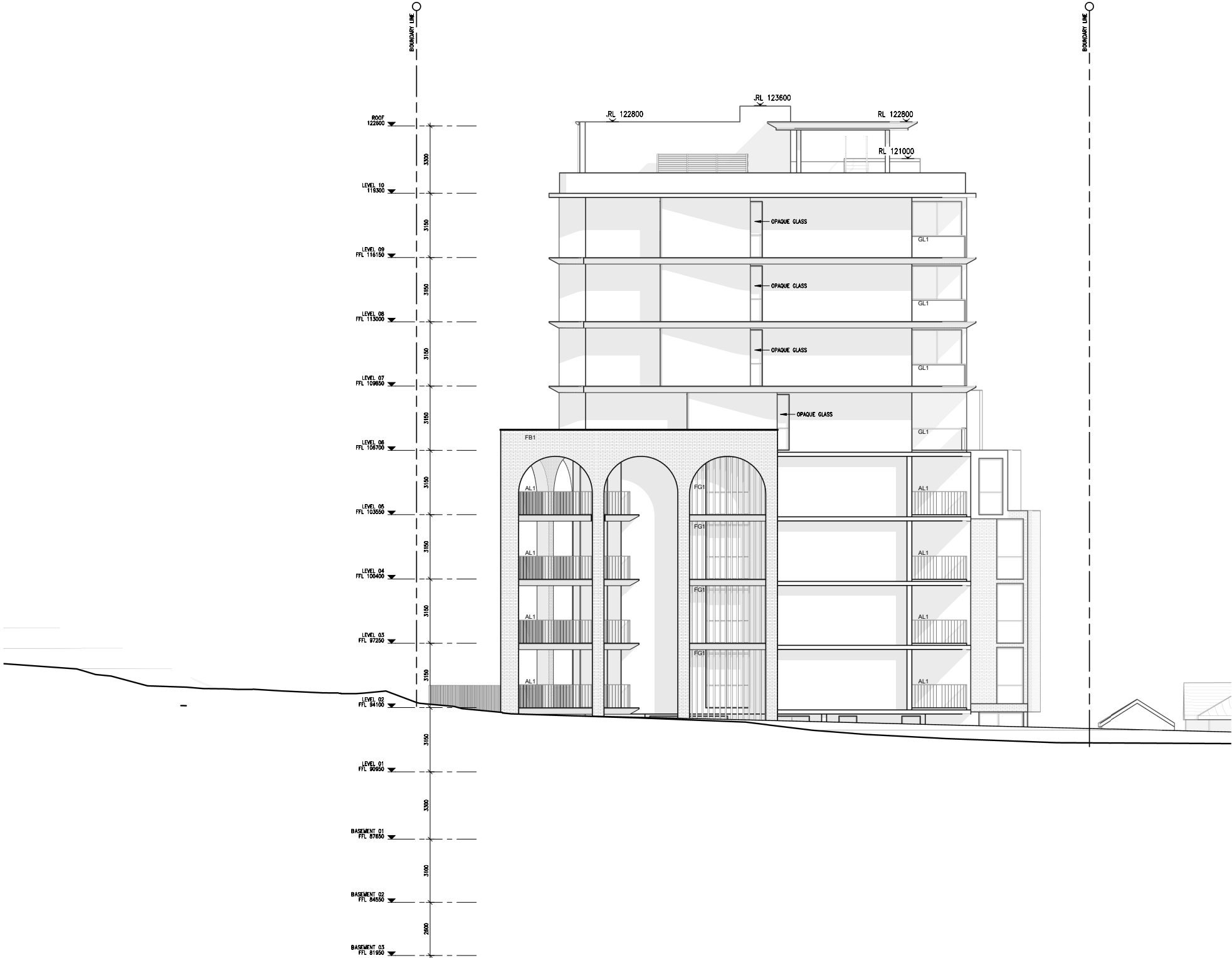
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AG	SECTION AA
QC	SCALE BAR
PI	PROJECT NUMBER
AG	DRAWING NUMBER
301	0195
	2







DRAWN	DRAWING TITLE	
AG	EAST ELEVATION	
GL		
CHECKED	SCALE (S1)	PROJECT NUMBER
PI	1 : 100	0195
APPROVED	DRAWING NUMBER	REV
AG	311	2



REV	DATE	DESCRIPTION	BY
1	15.06.2025	DA ISSUE	AG
2	25.06.2025	DA ISSUE	AG

NOTES

LEGEND

CLIENT	PROJECT ADDRESS
SALEHNO HOLDINGS Pty Ltd	1 RUSSELL AVENUE LINDFIELD NSW 2070

PSIARCHITECTS
psiairchitects.com.au
Registered Architect (NSW) 15015
0457 185 599

PROJECT
1 RUSSELL LINDFIELD

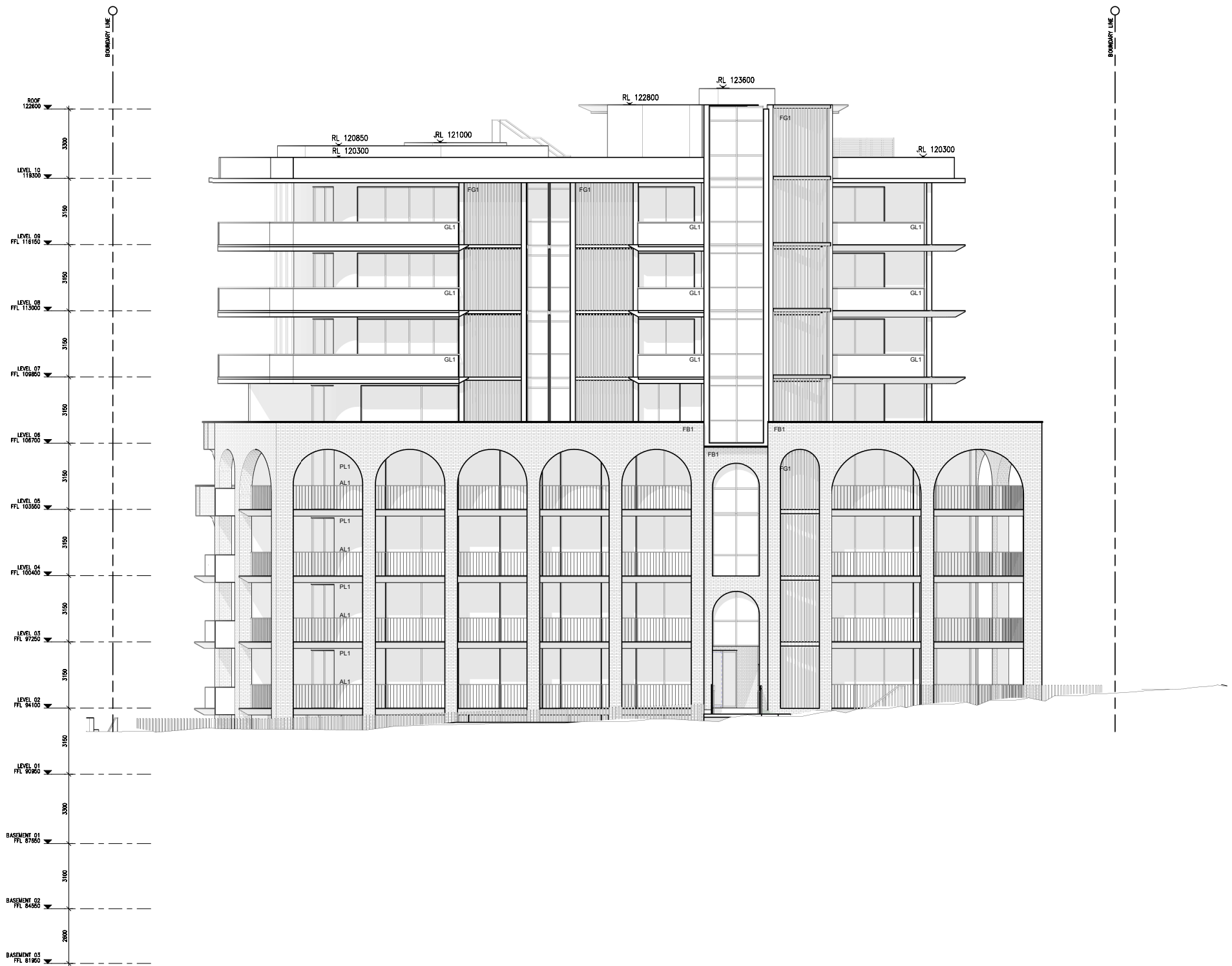
Use figures dimensions only. Verify all levels and dimensions on site before construction. Measurements, materials, or shop drawings.
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DA ISSUE

DRAWN	DRAWING TITLE
AG, GL	SOUTH ELEVATION
CHECKED	SCALE BAR
PI	1 : 100
APPROVED	DRAWING NUMBER
AG	312

PROJECT NUMBER
0195
REV
2



REV	DATE	DESCRIPTION	BY
1	15.06.2025	DA ISSUE	AG
2	25.06.2025	DA ISSUE	AG

NOTES

LEGEND

CLIENT	PROJECT ADDRESS
SALEHNO HOLDINGS Pty Ltd	1 RUSSELL AVENUE LINDFIELD NSW 2070

PSIARCHITECTS
paul@psiarchitects.com.au
www.psiarchitects.com.au
0457 185 599

PROJECT
1 RUSSELL LINDFIELD

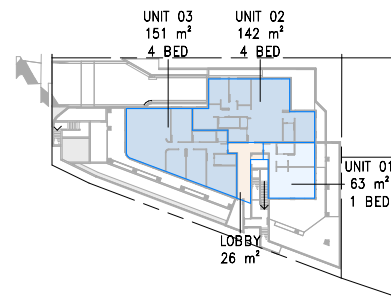
Use figure dimensions only. Verify all levels and dimensions on site before commencing construction. Material and shop drawings. © Copyright - All rights reserved.



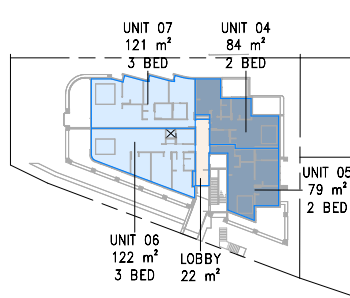
DA ISSUE

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AG	WEST ELEVATION
CHECKED	SCALE BAR
PI	1 : 100
APPROVED	DRAWING NUMBER
AG	313

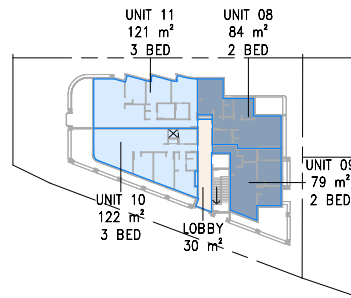
PROJECT NUMBER
0195
REV
2



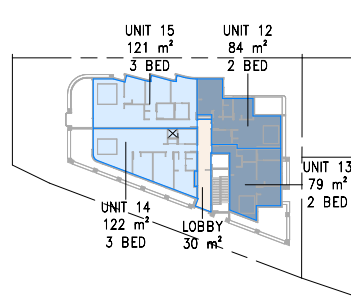
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1:500



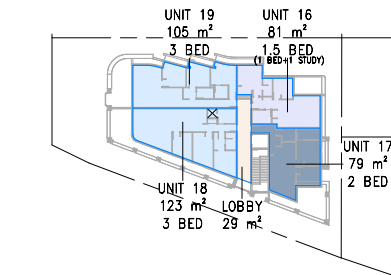
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1:500



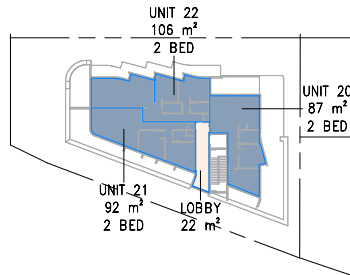
3 LEVEL 03
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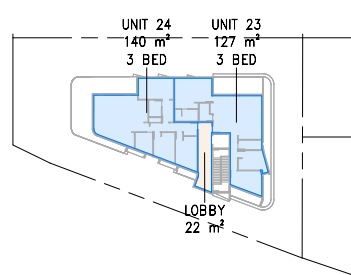
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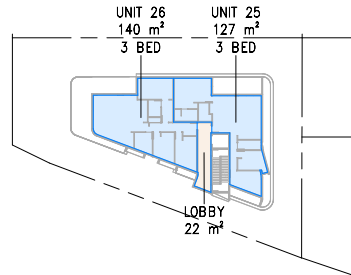
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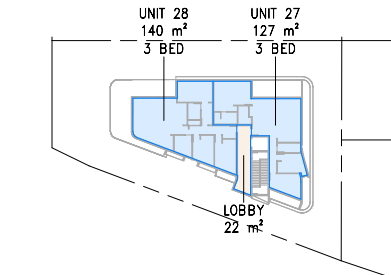
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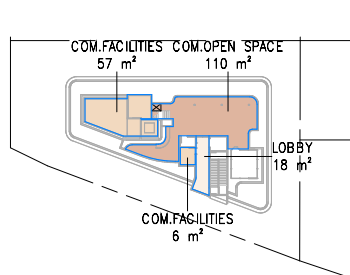
7 LEVEL 07
1:500



8 LEVEL 08
1:500



9 LEVEL 09
1:500



10 LEVEL 10
1:500

APARTMENT TYPE				
UNIT	No. OF BEDROOMS	AREA	No. OF PARKING	PARKING LEVEL
LEVEL 01	1	63 m²	0	N/A
UNIT 02	4	142 m²	2	B1
UNIT 03	4	151 m²	2	B2
LEVEL 02	2	84 m²	1	B2
UNIT 05	2	79 m²	1	B2
UNIT 06	3	122 m²	1	B2
UNIT 07	3	121 m²	1	B2
LEVEL 03	2	84 m²	1	B2
UNIT 08	2	79 m²	1	B2
UNIT 10	3	122 m²	1	B2
UNIT 11	3	121 m²	1	B2
LEVEL 04	2	84 m²	1	B1
UNIT 12	2	79 m²	1	B3
UNIT 13	2	79 m²	1	B3
UNIT 14	3	122 m²	1	B3
UNIT 15	3	121 m²	1	B3
LEVEL 05	1.5	81 m²	1	B3
UNIT 17	2	79 m²	1	B3
UNIT 18	3	123 m²	1	B3
UNIT 19	3	105 m²	1	B3
LEVEL 06	2	87 m²	1	B1
UNIT 20	2	92 m²	1	B3
UNIT 21	2	106 m²	1	B3
UNIT 22	2	286 m²	3	
LEVEL 07	3	127 m²	2	B2
UNIT 23	3	140 m²	2	B3
LEVEL 08	3	127 m²	2	B3
UNIT 25	3	140 m²	1	B3
UNIT 26	3	267 m²	3	B3
LEVEL 09	3	127 m²	2	B3
UNIT 27	3	140 m²	2	B3
UNIT 28	3	267 m²	4	B3
TOTAL AREA: 28		3050 m²	34	

COMMON AREA	
NAME	AREA
LEVEL 01	26 m²
LOBBY	26 m²
LEVEL 02	22 m²
LOBBY	22 m²
LEVEL 03	30 m²
LOBBY	30 m²
LEVEL 04	30 m²
LOBBY	30 m²
LEVEL 05	30 m²
LOBBY	29 m²
LEVEL 06	22 m²
LOBBY	22 m²
LEVEL 07	22 m²
LOBBY	22 m²
LEVEL 08	22 m²
LOBBY	22 m²
LEVEL 09	22 m²
LOBBY	22 m²
LEVEL 10	57 m²
COM.FACILITIES	6 m²
COM.OPEN SPACE	110 m²
LOBBY	18 m²
TOTAL AREA: 13	418 m²

APARTMENT MIX	
APARTMENT TYPE (No. BEDROOMS)	No. APARTMENTS
1	1
1.5 (1 BED+1 STUDY)	1
2	10
3	14
4	2
TOTAL	28

FSR AREA CALCULATION

TYPE	FSR	AREA
SITE AREA		1131.3m²
TOTAL FLOOR SPACE		3380m²
TOTAL COMMON OPEN SPACE		191m²
TOTAL FSR	3.137	3549m²
ALLOWED FSR	2.2	2488.89m²
BONUS FSR 30%	0.86	746.65m²
TOTAL ALLOWED FSR	2.86	3235.51m²
AFFORDABLE HOUSING 15% (GFAx15%)		485.32m²
PROPOSED AFFORDABLE UNITS		
UNIT No.	AREA	
UNIT 01	60m²	
UNIT 04	81m²	
UNIT 05	77m²	
UNIT 07	121m²	
UNIT 08	81m²	
UNIT 16	81m²	
TOTAL	501m²	

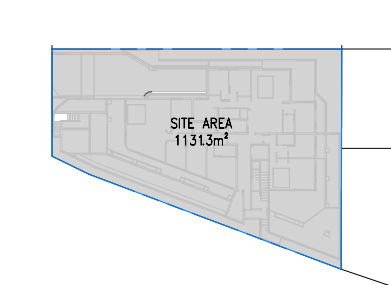
PARKING CALCULATION

TYPE	No.	LEVEL
VISITOR CAR PARKING*	7	B1,B2
TOTAL APARTMENT CAR PARKING	14	B1,B2,B3
TOTAL CAR PARKING PROPOSED	41	
MOTORBIKE PARKING	4	B1
BICYCLE PARKING REQUIRED	28	
BICYCLE PARKING PROPOSED	30	B1
*DISABLED VISITOR CAR PARKING	4.67	

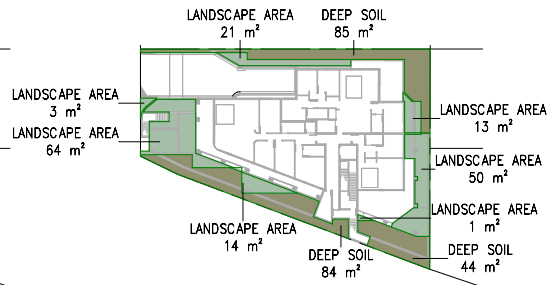
REV	DATE	DESCRIPTION	BY
1	15.06.2025	DA ISSUE	AG
3	05.08.2025	DA ISSUE	AG

NOTES

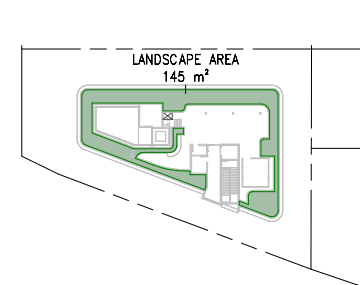
LEGEND



11 SITE AREA
1:500



12 LANDSCAPE PLAN
1:500



13 LEVEL 10
1:500

LANDSCAPE		
Level	TYPE	AREA
LEVEL 01	LANDSCAPE AREA	1 m²
LEVEL 01	LANDSCAPE AREA	3 m²
LEVEL 01	LANDSCAPE AREA	13 m²
LEVEL 01	LANDSCAPE AREA	14 m²
LEVEL 01	LANDSCAPE AREA	21 m²
LEVEL 01	LANDSCAPE AREA	50 m²
LEVEL 01	LANDSCAPE AREA	84 m²
LEVEL 10	LANDSCAPE AREA	145 m²
TOTAL AREA		312 m²

DEEP SOIL		
Level	TYPE	AREA
LEVEL 01	DEEP SOIL	44 m²
LEVEL 01	DEEP SOIL	64 m²
LEVEL 01	DEEP SOIL	213 m²

LANDSCAPE AREA CALCULATION

	AREA	%
SITE AREA	1131.3m²	
PROPOSED LANDSCAPE AREA	304m²	26.8
PROPOSED DEEP SOIL AREA	197m²	17.4
ADD - REQUIRED DEEP SOIL	79.19	7

CLIENT	PROJECT ADDRESS
SALEBNO HOLDINGS Pty Ltd	1 RUSSELL AVENUE LINDFIELD NSW 2070

PSIARCHITECTS
psia@psiaarchitects.com.au
0457 185 599

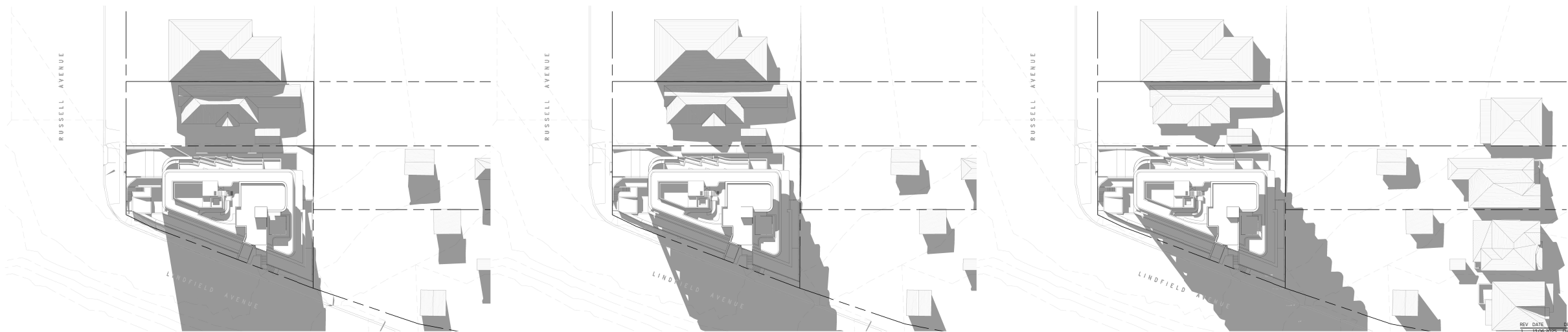
PROJECT
1 RUSSELL
LINDFIELD

Use figured dimensions only. Verify all levels and dimensions on site before commencing construction. Refer to all drawings for details and shop drawings.



DA ISSUE

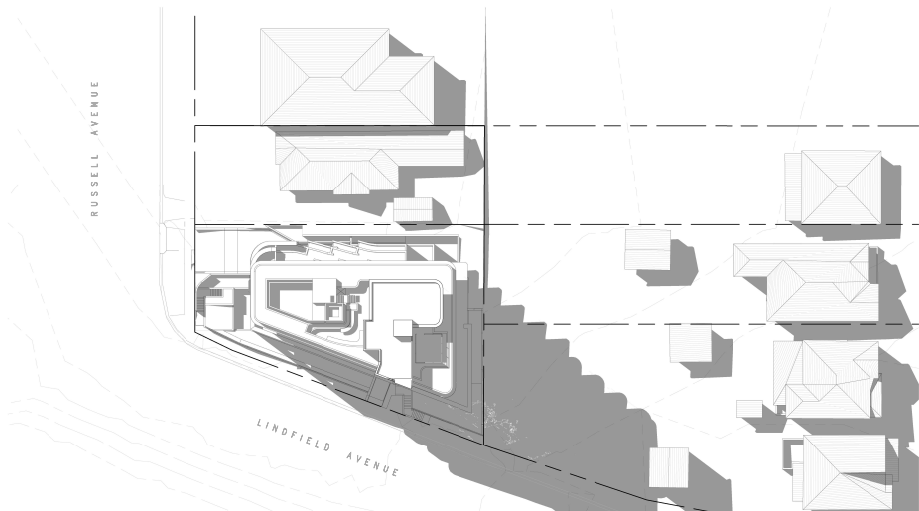
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AG, GL	AREA PLANS AND SCHEDULES
CHECKED	SCALE 1:500
APPROVED	PROJECT NUMBER 0195
PI	DRAWING NUMBER 501



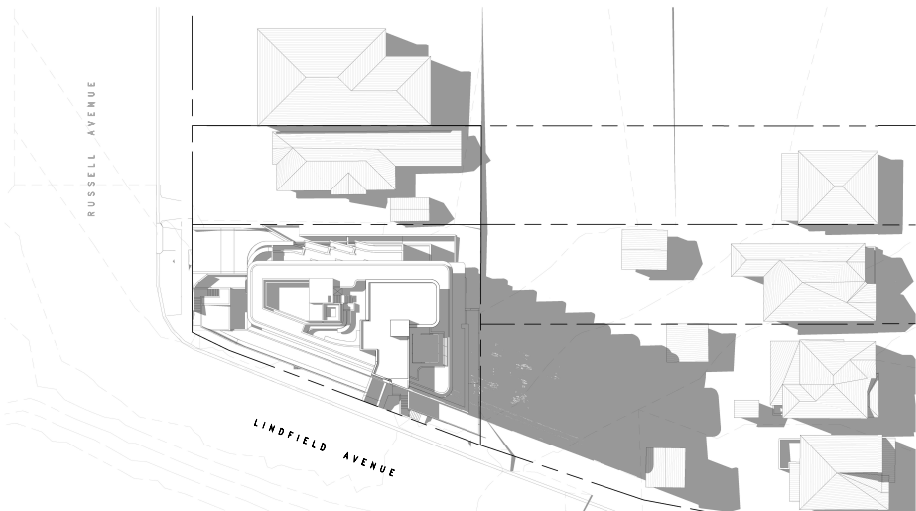
1 SHADOW - 21 JUNE - 9AM
1:500

2 SHADOW - 21 JUNE - 10AM
1:500

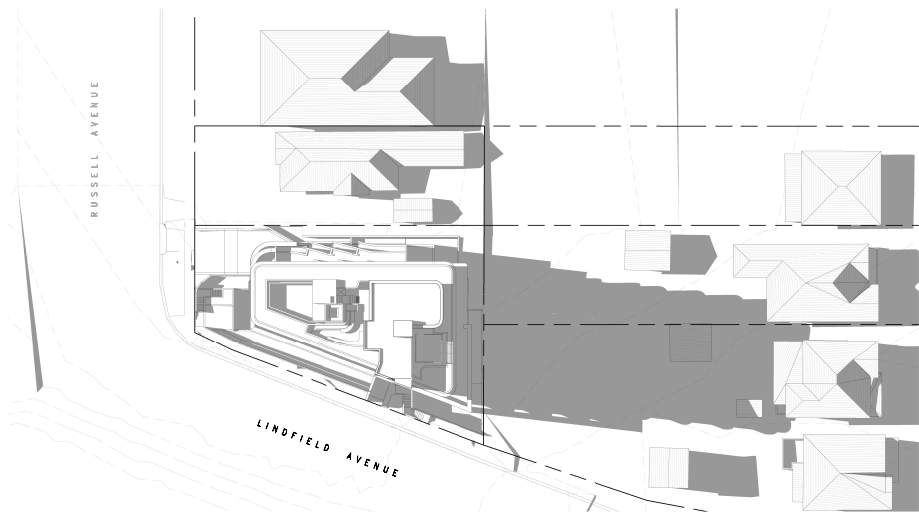
3 SHADOW - 21 JUNE - 11AM
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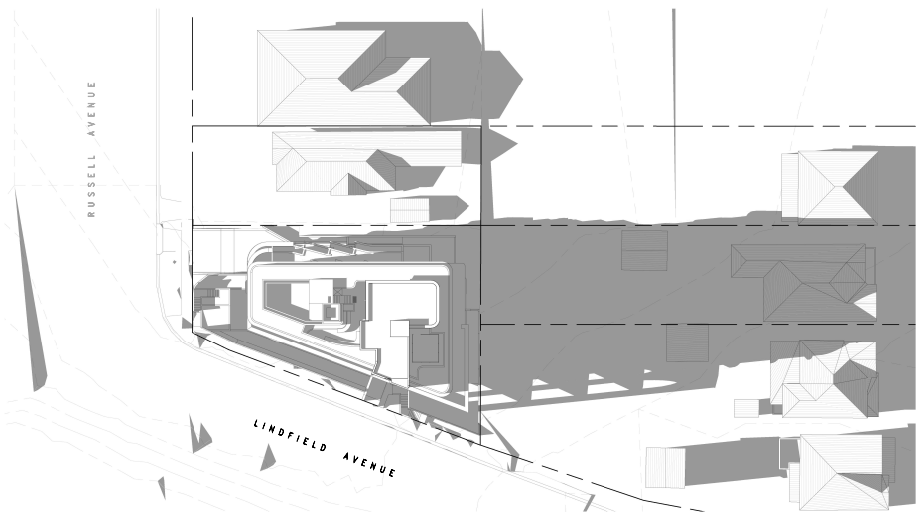
4 SHADOW - 21 JUNE - 12PM
1:500



5 SHADOW - 21 JUNE - 1PM
1:500



6 SHADOW - 21 JUNE - 2PM
1:500



7 SHADOW - 21 JUNE - 3PM
1:500

REV	DATE	DESCRIPTION	BY
1	18/06/2025	DA ISSUE	AG

NOTES

LEGEND

PROJECTED SHADOW

CLIENT
SALEHNO HOLDINGS Pty Ltd

PROJECT ADDRESS
1 RUSSELL AVENUE LINDFIELD
NSW 2070

PSIARCHITECTS
paul@psiarchitects.com.au
renewable architect - Part 5, Item 1
0457 185 599

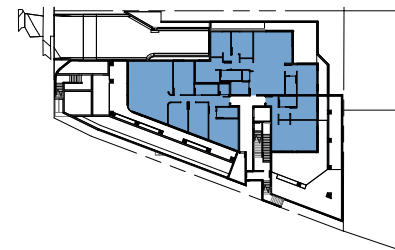
PROJECT
1 RUSSELL
LINDFIELD

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commencing construction. Refer to Part 5, Item 1 of the Building Code of Australia
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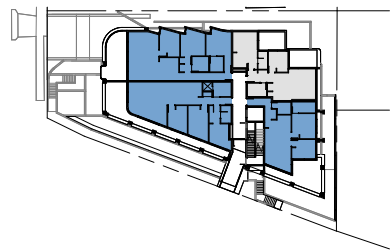
NORTH
SCALE BAR
0 5 10 15 20M

DA ISSUE

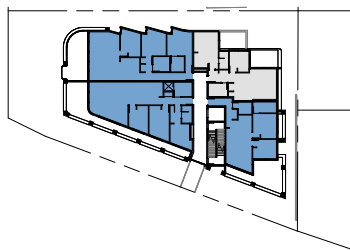
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CHECKED	SCALE BAR	REV
PI	1:500	1
APPROVED	DRAWING NUMBER	
AG	505	



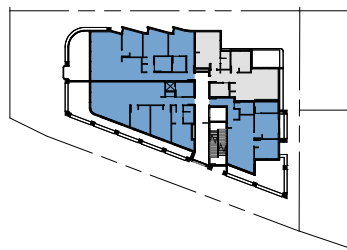
1 LEVEL 01 - CROSS VENT
1:500



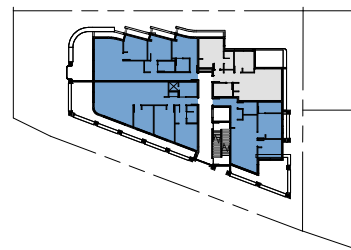
2 LEVEL 02 - CROSS VENT
1:500



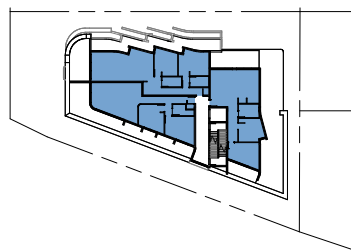
3 LEVEL 03 - CROSS VENT
1:500



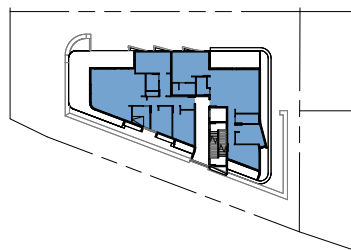
4 LEVEL 04 - CROSS VENT
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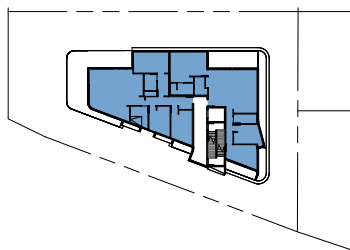
5 LEVEL 05 - CROSS VENT
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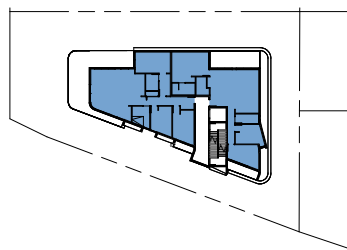
6 LEVEL 06 - CROSS VENT
1:500



7 LEVEL 07 - CROSS VENT
1:500



8 LEVEL 08 - CROSS VENT
1:500



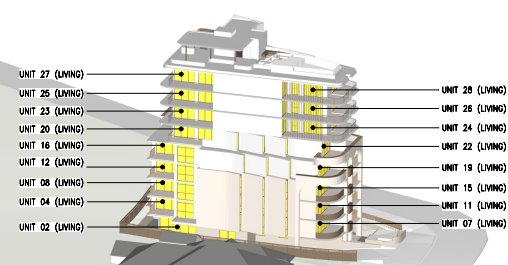
9 LEVEL 09 - CROSS VENT
1:500

CROSS VENTILATION SUMMARY

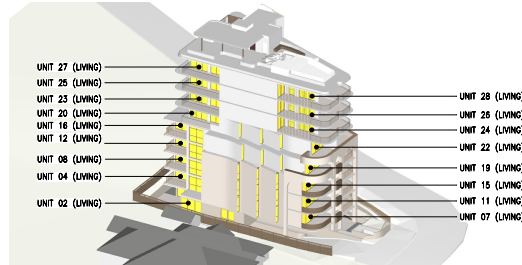
	No. OF UNITS	%
CROSS VENTILATED	24	86%
NOT CROSS VENTILATED	4	14%

REV	DATE	DESCRIPTION	BY
1	15/06/2025	DA ISSUE	AG

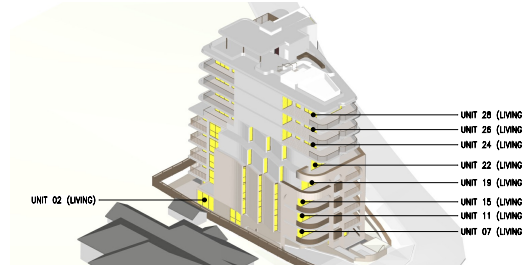
NOTES



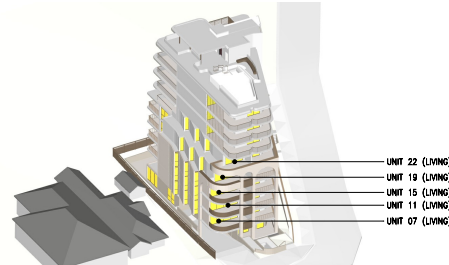
10 SOLAR ACCESS - 9AM



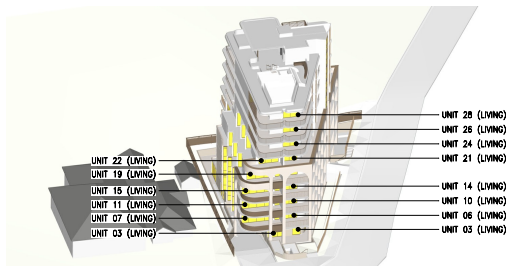
11 SOLAR ACCESS - 10AM



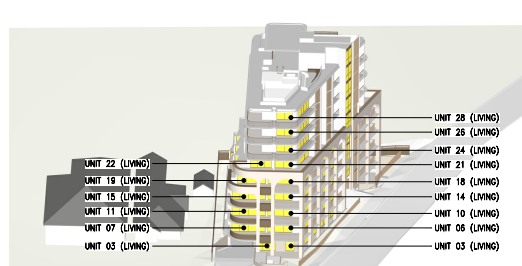
12 SOLAR ACCESS - 11AM



13 SOLAR ACCESS - 12PM



14 SOLAR ACCESS - 1PM



15 SOLAR ACCESS - 2PM



16 SOLAR ACCESS - 3PM

SOLAR ACCESS 21/06	
UNIT	SOLAR
LEVEL 01	
UNIT 01	NO SOLAR ACCESS
UNIT 02	2 HOURS +
UNIT 03	2 HOURS +
LEVEL 02	
UNIT 04	2 HOURS +
UNIT 05	LESS THAN 2 HOURS
UNIT 06	2 HOURS +
UNIT 07	2 HOURS +
LEVEL 03	
UNIT 08	2 HOURS +
UNIT 09	LESS THAN 2 HOURS
UNIT 10	2 HOURS +
UNIT 11	2 HOURS +
LEVEL 04	
UNIT 12	2 HOURS +
UNIT 13	LESS THAN 2 HOURS
UNIT 14	2 HOURS +
UNIT 15	2 HOURS +

SOLAR ACCESS 21/06	
UNIT	SOLAR
LEVEL 05	
UNIT 16	2 HOURS +
UNIT 17	LESS THAN 2 HOURS
UNIT 18	2 HOURS +
UNIT 19	2 HOURS +
LEVEL 06	
UNIT 20	2 HOURS +
UNIT 21	2 HOURS +
UNIT 22	2 HOURS +
LEVEL 07	
UNIT 23	2 HOURS +
UNIT 24	2 HOURS +
LEVEL 08	
UNIT 25	2 HOURS +
UNIT 26	2 HOURS +
LEVEL 09	
UNIT 27	2 HOURS +
UNIT 28	2 HOURS +

SOLAR ACCESS SUMMARY (21/06)

SOLAR (9AM TO 3PM)	No. OF UNITS	%
2 HOURS OR MORE	23	82%
LESS THAN 2 HOURS	4	14%
NO SOLAR ACCESS	1	4%
TOTAL	28	

LEGEND	
 	CROSS VENTILATED
 	NOT CROSS VENTILATED

CLIENT	PROJECT ADDRESS
SALERNO HOLDINGS Pty Ltd	1 RUSSELL AVENUE LINDFIELD NSW 2070

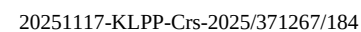
PSI ARCHITECTS
psia@psiaarchitects.com.au
0457 185 599

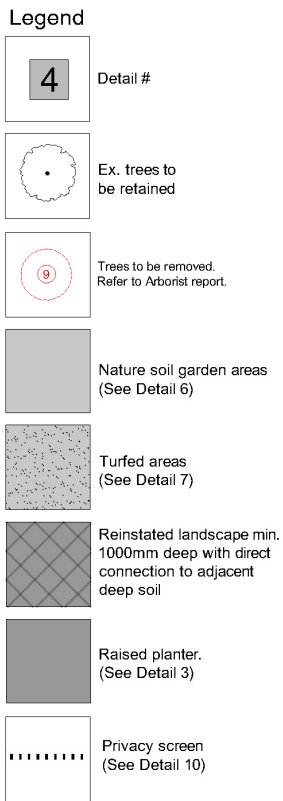
PROJECT	
1 RUSSELL LINDFIELD	

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DRAWING TITLE	
AG, GL	SOLAR AND CROSS VENTILATION ANALYSIS
DATE	15/06/2025
PI	1:500
APPROVED	DRAWING NUMBER
AG	510

DA ISSUE





Amendments

C	18.6.25	-
B	17.6.25	-
A	29.5.25	-



PAUL SCRIVENER

LANDSCAPE

PO Box 4050. ACT 2602
ABN: 16 949 100 279

Phone: 02 9907 8011
www.scrivener-design.com
Email: paul@scrivener-design.com

Project: New Development
1 Russell Ave
Lindfield

Dwg: Details plan - Ground level

Date: 18.6.25 Scale: 1:100 @A1

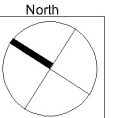
Job Ref: 25/2872 Sheet No: 2 of 6

Builder must verify all dimensions of the site before work commences.
Figured dimensions should be used in preference to those scaled off.

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2 of 5
ISSUE-C



Planting schedule

Symbol	Botanical name	Common name	Cont. size	Staking	Mature height	No. req.
Trees						
CUP	<i>Acropycopsis ancardioides</i>	Tuckeroo (small to medium native tree - Hardy street tree)	75L	3-50x50x1800	5-7.0 M	4
LAJ	<i>Lucyphylla plurius</i>	Blackbutt (small to medium tall tree)	200	3-50x50x1800	3-5.0 M	1
LAJ	<i>Lagerstroemia indica</i>	Crape Myrtle	45L	3-50x50x1800	20-30 CM	1
PVC	<i>Pyrus calleryana 'Capital'</i>	Ornamental Pear (medium deciduous narrow tree)	75L	2-50x50x1800	7-10.0 M	1
SVF	<i>Waterhousea floribunda</i> (Sweeper	Sweeper Waterhousea (Crowned & Dow20)	75L	3-36x36x1800	8-10.0 M	1
SVF(W)	<i>Waterhousea floribunda</i> (Sweeper	Sweeper Waterhousea (Crowned & Dow20)	75L	3-36x36x1800	8-10.0 M	2
MLG	<i>Melaleuca quinquenervia</i>	Flax / Iron Paperbark (deciduous tree)	75L	3-50x50x1800	12-15.0 M	2
Shrubs / standards / small feature trees						
CS	<i>Callistix sassafras saurogus</i>	Carrollia sassafras (small shaped Camellia)	300mm	2x50x50x1800	2-2.5 M	3
CS	<i>Callistix citrinus</i> Endeavour	Endeavour Camellia / Bottlebrush (growing native small tree)	300mm	2x50	2-3.0 M	5
MP	<i>Murraya paniculata</i>	Orange Jessamine (growing screening plant)	300mm	hedged	2-3.0 M	27
RM (SM)	<i>Raphiolepis indica</i> Smoove	Smooze Maid (narrow deep flowering plant)	300mm	1	1.0M	34
WFB	<i>Westringia fruticosa</i> 'Blue Gem'	Dwarf Blue Westringia (parch low growing plant)	150mm	hedged	1-2.1.5 M	10
Ferns / Palms / Succulents / shade tolerant understorey						
AGV	<i>Agave attenuata</i>	Century plant (stalking small leaved succulent)	200mm	nil	0.5M	14
APC	<i>Archontophoenix cunninghamiana</i>	Bangalow Palm (tropical style tall palm)	Semi adv	wire guys	8-12.5 M	3
CHM	<i>Chlorocardia humilis</i>	Burcinea Fern (tender small - med palm)	300mm	3-5.0 M	0	1
CA	<i>Cratichneumon australis</i>	Tall Fern (Native tree fern)	500mm	nil	2-4.0 M	7
DFD	<i>Dracaena draco</i>	Dragon Tree (stalking feature plant)	semi adv	nil	2-5.3 M	7
LAV	<i>Lyonia australis</i>	Cabbage Palm (indigenous palm)	semi adv	wire guys	8-12.0 M	3
RHA	<i>Raphis excelsior</i>	Lady Finger Palm	300mm	nil	2-2.5 M	7

Symbol	Botanical name	Common name	Cont. size	Staking	Mature height	No. req.
Groundcovers/Climbers						
DEF	Dichondra Silver Falls	Silver Falls (cascading groundcover in roof garden)	200mm	nil	0.15M	62
HIS	Hibbertia scandens	Guinea Flower (flowering climber / groundcover)	200mm	nil	0.3M	8
TJA	Trachelospermum asiaticum	Flatmat Star Jasmine (Fls. Crabbed hybrid groundcover)	200mm	nil	0.2M	41
VH	Vib. hederacea	Native Violets (native low groundcover)	tubes	nil	0.1M	60
Ornamental grasses/strappy leaved plants						
AGW	Agapanthus orientalis 'Blue'	Blue Lily of the Nile (strappy leaved groundcover)	200mm	nil	0.5M	44
CM	Cyrtaninia minima	Red Clivia (shade tolerant groundcover)	200mm	nil	0.5M	34
BIC	Dianella caerulea	Blue Flax Lily (native ornamental grass)	100mm	nil	0.4M	48
DGS	Datisa grandifolia 'Grand Star'	Grand Star (climbed subterr hybrid Low seedling variety)	150mm	nil	0.7M	5
UM	Urolophus Evergreen Giant	Turf Lily (shade tolerant groundcover)	150mm	nil	0.4M	16
LOT	Lomandra Tanika	Dwarf Lomandra (ornamental grass)	150mm	nil	0.4M	58
PHN	Pennisetum alopecuroides Nafay	NAFRAY® 'PA300' PBR (flowering ornamental grass)	150mm	nil	0.8-1.0M	40
Silver / grey foliage plants						
SEN	Senecio serpens	Blue Chalk Sticks (silver blue low succulent groundcover)	200mm	nil	0.2M	8
RUS						3

All trees to be provided with written confirmation from the supplier for compliance to Natspec guidelines in compliance with A.S. 2003:2018. Planting schedule species to be sourced from local nurseries supplying plants of local provenance wherever possible.

Landscape contractor is to check plant numbers on plan against the schedule prior to submitting tender price. Contact landscape architect if any number discrepancies are found.

Council compliance controls require that any substitution of species variety or container size **MUST** be confirmed with landscape architect to ensure a compliance certificate can be issued that meets the specific development consent conditions of the approved development.

Legend



Ex. trees to be removed



Ex. trees to be retained . Refer to Arborists report



Plant symbols
(See schedule
this sheet)

Amendments

C	18.6.25	
B	17.6.25	-
A	29.5.25	-



PAUL SCRIVENER

LANDSCAPE

PO Box 4050. ACT 2602
ABN: 16 949 100 279

Phone: 02 9907 8011
www.scrivener-design.com
Email: paul@scrivener-design.com

Project: New Development
1 Russell Ave
Lindfield

Dwg:	Planting plan schedules & notes
------	------------------------------------

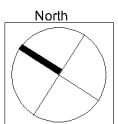
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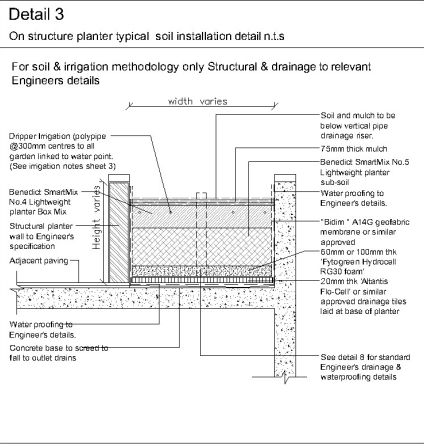
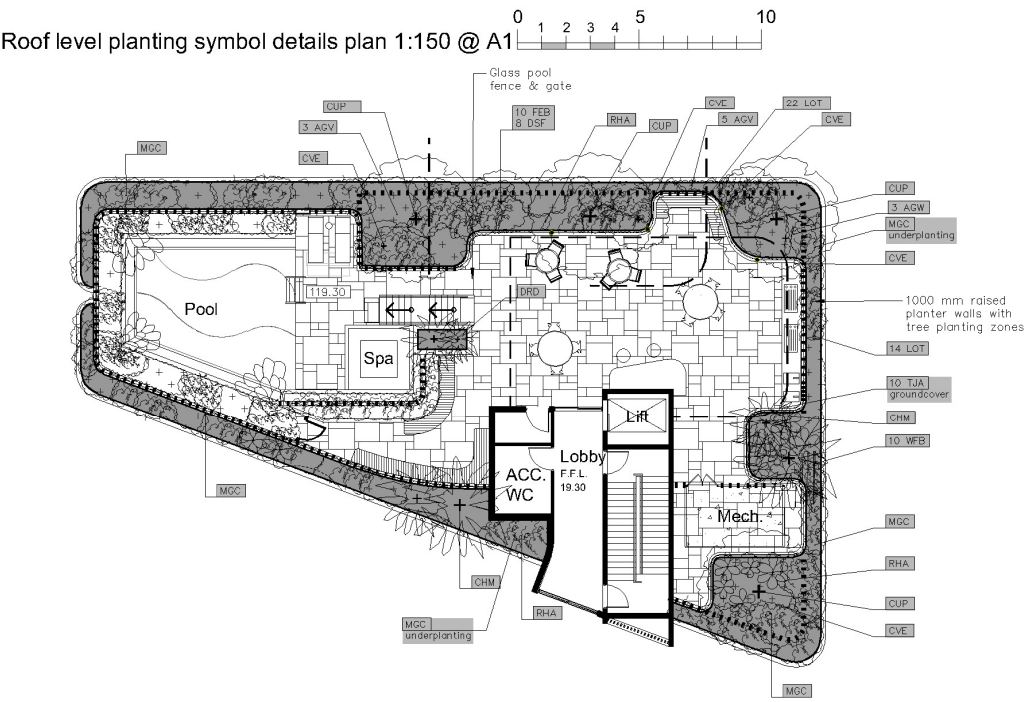
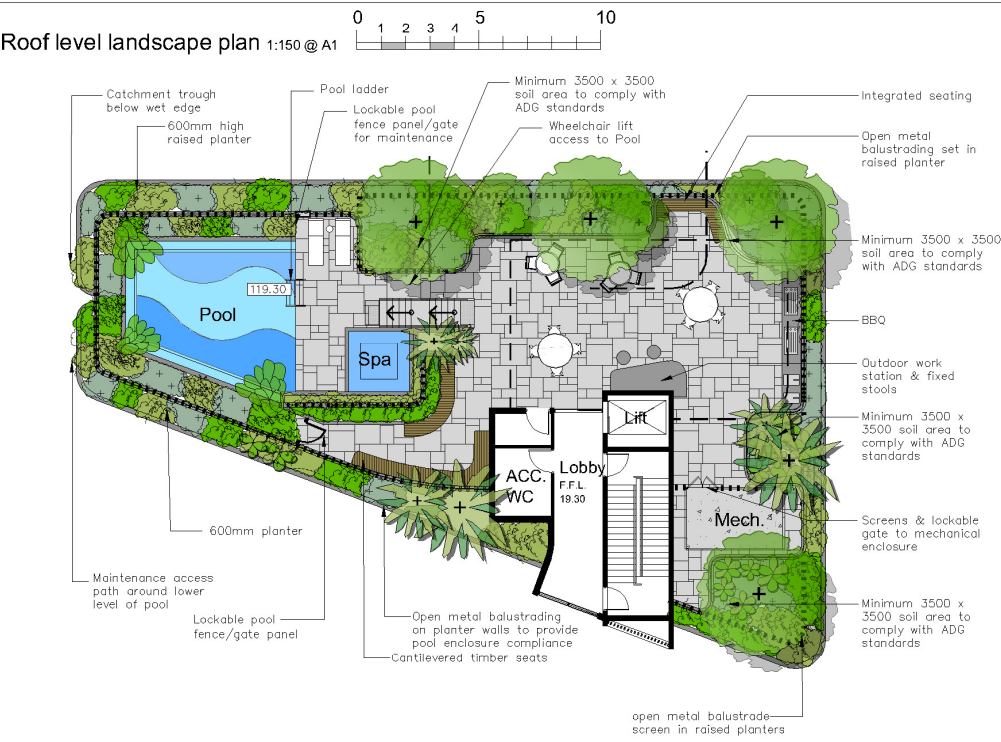
Job Ref: 25/2872 Sheet No: 3 of 6

Builder must verify all dimensions of the site before work commences.
Figured dimensions should be used in preference to those scaled off.

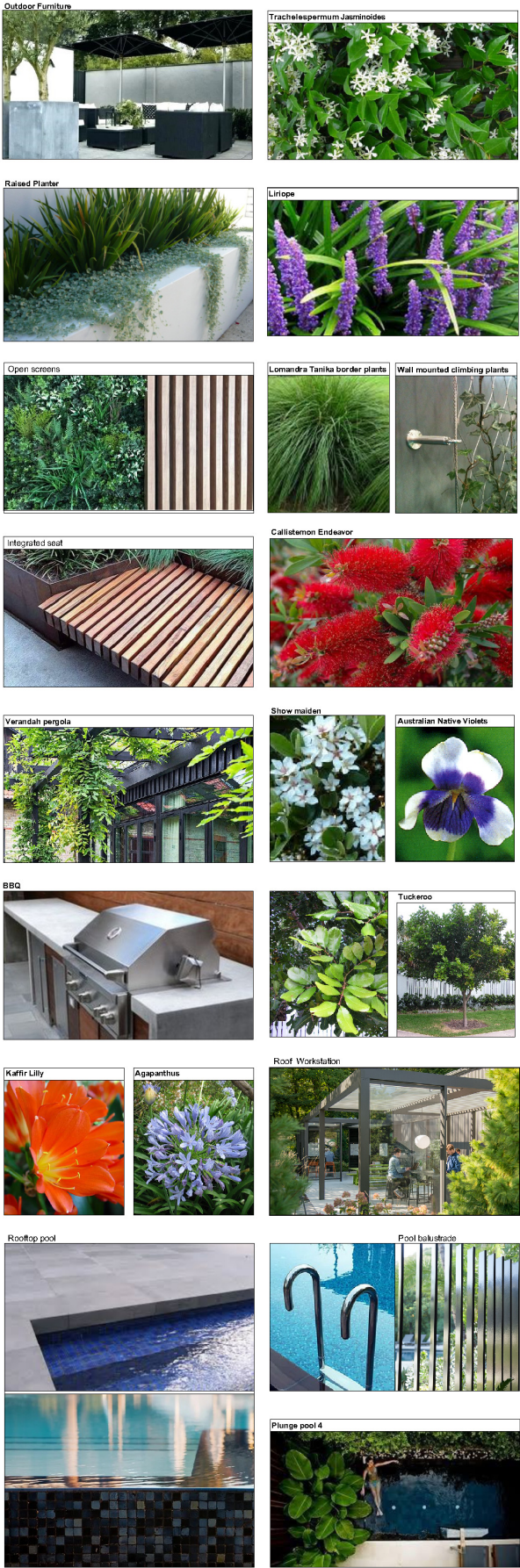
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3 of 5
ISSUE-C





Typical images



Legend

4 Detail #

Raised planter. (See Detail 3)

PLU Planting symbol (See schedule, sheet 3)

Amendments

C	18.6.25
B	17.6.25 -
A	30.5.25 -

PAUL SCRIVENER
LANDSCAPE
PO Box 4050, ACT 2602
ABN: 16 949 100 279
Phone: 02 9907 8011
www.scrivener-design.com
Email: paul@scrivener-design.com

Project: New Development
1 Russell Ave
Lindfield

Dwg: Roof level

Date: 18.6.25 Scale: 1:150 @A1

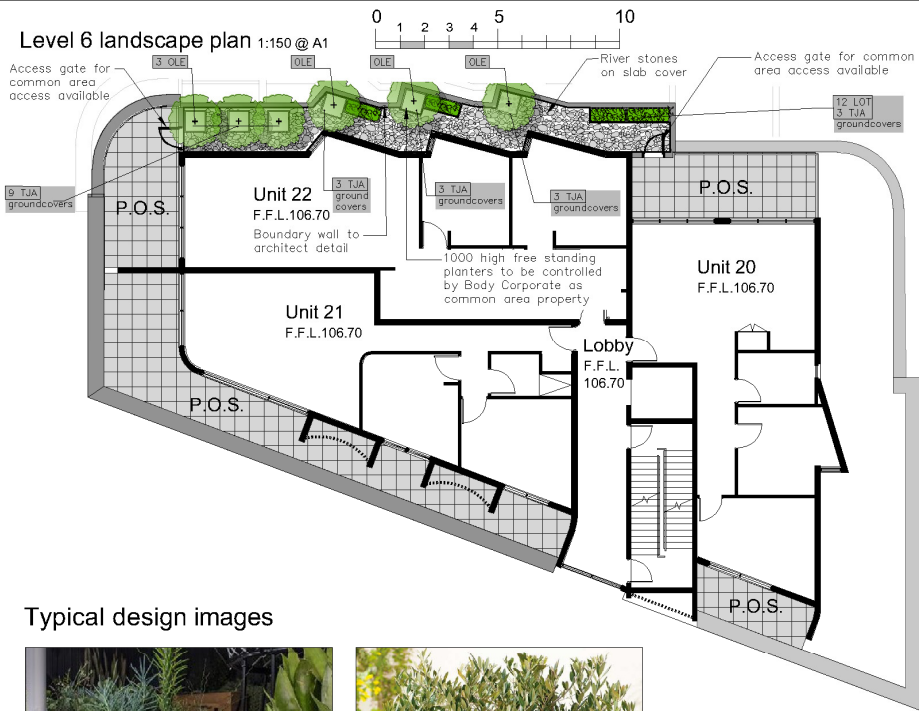
Job Ref: 25/2872 Sheet No: 4 of 6

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4 of 5
ISSUE-C

North



Typical design images



Planting schedule

Symbol	Botanical name	Common name	Cont. size	Staking	Mature height	No req.
LOT	Lomandra Tanika	Dwarf Lomandra (ornamental grass)	200mm	nil	0.4M	12
OLE	Olea Europa 'Swan Hill'	Swan Hill non fruiting Olive	300mm	2x50x40x1800	3-4.0M	6
TJA	Trachelospermum asiaticum	Flatmat Star Jasmine (FT01 Ozbbreed hyrid groundcover)	300mm	nil	0.2M	18

All trees to be provided with written confirmation from the supplier for compliance to Natspec guidelines in compliance with A.S. 2003:2015. Planting schedule species to be sourced from local nurseries supplying plants of local provenance wherever possible.

Landscape contractor is to check plant numbers on plan against the schedule prior to submitting tender price. Contact landscape architect if any number discrepancies are found.

Council compliance controls require that any substitution of species variety or container size MUST be confirmed with landscape architect to ensure a compliance certificate can be issued that's meets the specific development consent conditions of the approved development.

General installation notes

- Site preparation**
Any existing trees and vegetation to be retained shall be preserved and protected from damage of any sort during the execution of landscape work. In particular, root systems of existing plants must not be disturbed if possible. Any nearby site works should be carried carefully using hand tools. To ensure the survival and growth of existing trees during landscaping works, protect by fencing or armoring where necessary.
- Soil preparation**
All proposed planting areas to be deep ripped to 200mm (where possible) and clay soils to be treated with clay breaker.. Apply at least 200mm depth good quality garden soil mix to all garden planting areas. To comply with AS 4419. Turfed areas as noted to be laid over 100mm min. good quality turf underlay over existing soil which is to be deep ripped to 200mm depth prior to installation. To be worked in with rotary hoe except where tree root damage would otherwise occur. In such situations care to be taken to hand cultivate in any area where existing tree roots exist to preserve health of trees and to comply with the requirements of the Arborists report. Where planting is to occur in existing soil profiles ensure soil conditioners and compost worked into the top 200mm profile. To comply with AS 4454:1999.
- New plantings**
Newly planted trees and large shrubs should be secured to stakes with hessian ties to prevent rocking by wind. Planting holes for plant material should be large enough in size to take root ball with additional space to take back filling of good quality planting mix. (Please note mature heights of planting as shown on planting schedule can vary due to site conditions, locations in constricted deep soil or over slab planters and so forth)
- Mulching**
All planting areas to be mulched with a minimum 75mm thick cover of recycled hard wood chip mulch and then all plant areas to be thoroughly soaked with water. To comply with AS 4454
- Fertiliser**
All planting areas to be fertilised with 9 month 'NPK' slow release fertiliser.
- Staking**
To those plants indicated on the planting schedules provide: hardwood stakes as nominated and driven into ground to a depth able to achieve rigid support. No staking in raised planters to avoid damaging waterproofing installation
- Turfing**
Turfed areas to be to be Soft leaf Buffalo laid over 100mm good quality turf underlay over existing soil which is to be deep ripped to 200mm depth prior to installation.

Maintenance schedule

The Landscape Contractor shall maintain the contract areas by accepted horticultural practices as well as rectifying any defects that become apparent in the works under normal use. The Landscape Contractor shall maintain the works and make good all defects for a period of twenty six (26) weeks after the date of practical completion. Practical completion of the landscape works shall include but not be limited to the replacement of plants which have failed or been damaged or stolen during work under the contract. Landscape maintenance shall include but not be limited to the following: watering, rubbish removal, spraying and wiping leaf surfaces, replacing failed plants, maintaining mulch, pruning, insect and disease control, cleaning of surrounding areas. Mow the turf when it is established at regular intervals to maintain an average height of 50mm.

The owners of the residence are responsible for the ongoing maintenance and viability of the gardens and ongoing maintenance shall include the following:

- Regular hand watering of gardens if installed drip line irrigation system is turned off. Irrigation to be installed and maintained as per manufacturers specifications including regular checks for function of system, to check for leaks and to ensure general good working operation.
- Mulch is to be regularly topped up every 6 months to ensure an even 75mm coverage in all garden beds
- Regular pruning of plants is to be undertaken to ensure continued uniform growth of canopy and foliage of trees and shrubs.
- Regular assessment of plants for evidence of insect attack or disease. Appropriate pest oil, white oil of Yates pest spray or equivalent is to be employed if required
- Garden/lawn edging to be inspected regularly after practical completion to ensure it is maintained in good order. Replace where required if defective sections are discovered
- All garden refuse, rubbish and associated items that arise from the regular garden maintenance procedures are to be collected and stored in appropriate general waste or green waste containers as is appropriate. Excess waste unable to be stored in Council waste containers is to be removed from the site in a timely manner.

Irrigation notes

Automatic drip line watering system to be selected. To extend to ALL garden areas nominated on the deep soil and planter box areas and is to include all raised planter boxes over slab. (all lawn areas to be excluded) Water supply tap hosecocks as indicated on CC stage drawings.(To be coordinated with Hydraulic and Structural Engineer's details). Dripline supply system only to be incorporated.

Prior to approval by the project manager and prior to installation the Contractor responsible for the irrigation installation is to provide an irrigation design to meet the following requirements.

Generally: Supply an automatic drip line irrigation system. To include all piping to solenoids either PVC lines and/or class 12 pressure pipe or low density, rubber modified polypropylene reticulation as required to provide water supply to the nominated areas. To be coordinated with Hydraulic engineers plans. To include all bends, junctions, ends, ball valves, solenoids and all other ancillary equipment. Backwash valve: An approved backwash prevention valve is to be located at the primary water source for top up valves to rainwater tanks (where applicable).

Ensure rain sensor is installed for common area garden zones connected to timers

Root inhibiting system. Driplines to be 'Netafim Techline AS XR' drip tubing or approved equivalent

Automatic Controller: Provide automatic 2 week timer with hourly multi-cycle operation for each zone as noted on the irrigation areas plan on sheet Battery timers to isolated planter boxes is acceptable and to be maintained by the owners corporation as part of the ongoing property maintenance.

Performance: It shall be the Landscape Contractor's responsibility to ensure and guarantee satisfactory operation of the irrigation system. The system is to be fit for the purpose and should utilize sufficient solenoids to provide for the varying watering requirements of landscape areas to allow all plants and lawn areas to thrive and attain long term viability.

Testing: After the system has been installed to the satisfaction of the project manager, the installation shall be tested under working conditions. Acceptance of the installed plant and equipment shall be subject to these being satisfactory.

Warranty: A twelve month warranty is to be provided in writing by the Landscape Contractor, which shall commit the Landscape Contractor to rectify the system (the items they have installed) to the satisfaction of the project manager or nominated representative. This will apply should any fault develop, or the capacity or efficiency fall below that guaranteed, or should the discharge or pressure be inadequate, or should defects develop in the filter unit or control heads, or any blockages that may develop in the system.

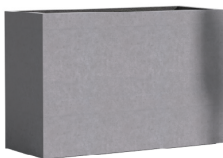
Approvals: The Landscape Contractor is to liaise as necessary, to ensure that the irrigation system conforms with all Water Board, Council and Australian standards (AS)

Detail 01

Quatro Design N.T.S.
www.quatrodesign.com.au

SF-PT5

Quatro narrow tall planter
- 1500 X 600 X 1000(h)

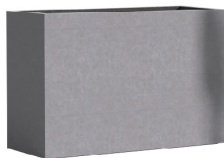


Detail 02

Quatro Design N.T.S.
www.quatrodesign.com.au

SF-PT5

Quatro narrow tall planter
- 1500 X 600 X 1000(h)



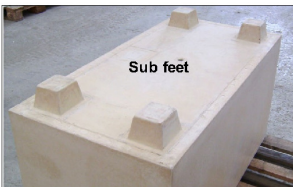
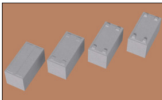
Detail 03

Quatro Design N.T.S.
www.quatrodesign.com.au

SF-PTF

Quatro planter feet options

- Feet options for planter boxes
- Square and rectangular planter boxes come standard with 10 mm high strip feet cast into the base.
- Depending on size, most planter boxes can also be customised with 15, 40 or 65 mm high block feet if added height is required.



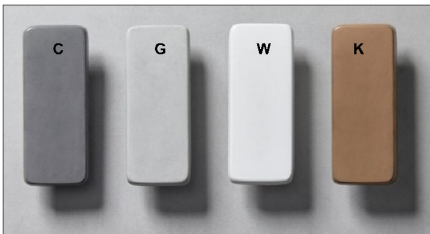
Detail 04

Quatro Design N.T.S.
www.quatrodesign.com.au

SF-PTC

Quatro planter colour options

- Colours and Finishes
- White — made with pure white cement
 - Kalgsorlie — made by adding coloured mineral oxide during manufacture
 - Concrete Grey — made with general purpose cement
 - Charcoal — made by adding coloured mineral oxide during manufacture



Amendments

C	18.6.25
B	17.6.25 -
A	29.5.25 -



PAUL SCRIVENER

LANDSCAPE

PO Box 4050, ACT 2602
ABN: 16 949 100 279

Phone: 02 9907 8011
www.scrivener-design.com
Email: paul@scrivener-design.com

Project: New Development
1 Russell Ave
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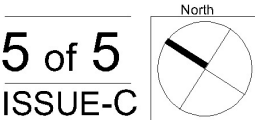
Dwg: Level 5 and 6 /
Elevations

Date: 18.6.25 Scale: 1:150 @A1

Job Ref: 25/2872 Sheet No: 4 of 6

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STORMWATER

CIVIL

FLOODING

STRUCTURAL

REMEDIAL

20250209

PROPOSED STORMWATER DRAINAGE PLANS

Proposed Residential Flat Building Development
1 Russell Avenue Lindfield 2070

Reference

20250209-DA-SW-DWG-01

Client

Salerno Holding Pty Ltd

Architect

AG Projects Pty Ltd



Drawing Register		
Number	Name	Revision
S100	Cover Sheet	01
S101	Specifications Sheet	01
S200	Basement 03 Plan	01
S201	Basement 02 Plan	01
S202	Basement 01 Plan	01
S203	Ground Floor Plan	01
S300	Details Sheet 1 of 4	01
S301	Details Sheet 2 of 4	01
S302	Details Sheet 3 of 4	01
S303	Details Sheet 4 of 4	01
S400	Erosion and Sediment Control Plan	01

General Notes
1. All work shall be carried out in accordance with council's requirements, building code of Australia, NSW code of practice and the to the relevant service codes. 2. These drawings shall be read in conjunction with all architectural and other consultants' drawings and specifications and with such other written instructions as may be issued during the course of the contract. All discrepancies shall be referred to the superintendent for decision before proceeding with the work. 3. All dimensions shown on the drawings are in millimeters (u.n.o.). Dimensions shall not be obtained by scaling of these drawings. Use figured dimensions only. 4. Benchmarks have been established where indicated on the drawings. All Levels are to Australian height datum A.H.D.). The contractor shall undertake all necessary survey work to ensure that the works are constructed to design line and level. 5. Setting out dimensions and levels shown on the drawings shall be verified by the contractor. 6. All materials shall be in accordance with the requirements of the relevant codes and the by-laws and ordinances of the relevant building authorities. 7. It is the contractor's responsibility to provide all safety fences, warning signs, traffic diversions and the like during construction. All works to comply with work health and safety requirements and other relevant authority safety requirements. 8. No trees shall be removed, cutback or relocated without the written instruction from the superintendent. 9. Where new works about existing the contractor shall ensure that a smooth even profile, free from abrupt changes is obtained. 10. All works shall be carried out in accordance with the details shown on the drawings and these specifications. 11. Design levels given are to finished surface level and inclusive of topsoil. (topsoil depth varies) 12. The contractor shall arrange all survey set out to be carried out by a registered surveyor. 13. Care is to be taken when excavating near existing services. No mechanical excavations are to be undertaken over telecommunications or electrical services. Hand excavate in these areas. 14. The locations of underground services shown on the drawing have been plotted from diagrams provided by service authorities. This information has been prepared solely for the authorities own use and may not necessarily be updated or accurate. 15. The position of services as recorded by the authority at the time of installation may not reflect changes in the physical environment after installation. 16. Deboke Engineering Consultants do not guarantee that the services information shown on the drawing shows more than the presence or absence of services, and will accept no liability for inaccuracies in the services information shown from any cause whatsoever. 17. It is the contractor's responsibility to obtain from the utility services authorities a current copy of underground services search for the location of all existing services prior to commencement of any work and notify any conflict with the drawings immediately. Clearance shall be obtained from the relevant regulatory authority. Contractor to keep copy of underground services search on site at all times. Any damages to services or services adjustments shall be carried out by the contractor or relevant authority at the contractor's expense. 18. Visit the site before submitting the final tender price to assess 'on site' conditions. Failure to do so will forfeit any claim for not being aware of conditions affecting the tender. 19. The contractor shall prepare accurate work-as-executed drawings following the completion of all works. 20. It is the contractor's responsibility to have in place & maintain traffic facilities at all times during construction. 21. Contractor to provide workshop coordinated drawings prior to commencing works on site. Workshop drawings to be reviewed and approved by design engineer.

Stormwater Notes
1. Contractor must verify all dimensions & existing levels, services & structures on site prior to commencement of work. 2. Plans to be read in conjunction with approved Architectural, Landscape, Structural, Hydraulic, & other services drawings & specifications. If any discrepancies exist between the drawings, the builder shall report the discrepancies to the engineer prior to commencement of any works. 3. Where subsoil drainage lines pass under floor slabs & vehicular pavements, slotted uPVC sewer grade pipe shall be used. 4. Charged lines to be sewer grade & sealed. 5. All pipes to have min 150mm cover if located within property. 6. All pits in driveways to be concrete & all pits in landscaped areas may be plastic. 7. Pits less than 600mm deep may be brick, precast or concrete. 8. All balconies & roofs to be drained & to have safety overflows in accordance with relevant Australian standards. 9. All grates to have child proof locks. 10. All drainage works to avoid tree roots. 11. Council's issued footway design levels to be incorporated into the finished levels once issued by council. 12. All works shall be in accordance with NCC BCA 2019 & A.S.3500.3. 13. Care to be taken around existing sewer. Structural advice required for sewer protection against additional loading from new pits, pipes, retaining walls & OSD basin water levels. 14. All Ø300 drainage pipes & larger shall be class 2 approved spigot & socket RCP pipes with rubber ring joints (U.N.O.). All drainage pipes up to & including ø225 shall be sewer grade uPVC with solvent weld joints (U.N.O.). 15. All pipe junctions, bends & tapers up to & including ø450 shall be via purpose made fittings. 16. Contractor to supply & install all fittings including various pipe adaptors to ensure proper connection between dissimilar pipe work. 17. All connections to existing drainage pits shall be made in accordance with the NCC BCA 2019 and relevant Australian Standards. The internal wall of the pit at the point of entry shall be cement rendered to ensure a smooth finish. 18. Bedding shall be type H1 (U.N.O.), in accordance with current relevant Australian standards. 19. Where stormwater lines pass under floor slabs, sewer grade rubber ring joints are to be used. 20. All pipes in covered balconies to be ø65 uPVC cast in concrete slab. 21. Ø65 PVC @ min 1.0% Ø90 PVC @ min 1.0% Ø100 PVC @ min 1.0% Ø150 PVC @ min 1.0% Ø225 PVC @ min 0.5% Ø300 PVC @ min 0.4% Unless Noted Otherwise 22. Contractor to provide a break / open void in rail / balustrade for stormwater emergency overflow. 23. All enclosed areas/planter boxes be fitted with floor wastes. 24. Downpipes to be checked by architect & plumber prior to construction. 25. Provide 3.0m length of ø100 subsoil drainage pipe wrapped in fabric sock, at upstream end of each pit. 26. All the cleaning eyes (or inspection eyes) for the underground pipes must be taken up to the finished ground level for easy identification & maintenance purposes. 27. All sub-soil drainage shall be provided with a filter sock. The subsoil drainage shall be installed in accordance with details to be provided by the landscape architect. 28. Prior to commencing any works, the builder shall ensure that the invert levels of where the site stormwater system connects into the council's kerb/drainage system matched the design levels. Any discrepancies shall be reported to the design engineer immediately. 29. For stormwater drainage pipes that exceed 1.5 grade, reinforced concrete anchor blocks shall be installed. Anchor blocks to be constructed to specifications set out in AS3500.3-2003 section 8.10 30. Existing services shown in approximate locations only. Confirm exact locations and depths on site prior to commencing work. 31. Coordinate the installation of new services with all new & existing services & structural provisions as determined on site. 32. All pipework is to be tested in accordance with the requirements as set out in AS3500.3-2003. All in-ground pipework to be inspected by the superintendent under test conditions prior to backfilling. Backfilling and bedding to AS3500.3-2003. 33. Pipes shall be true to grades shown and aligned so that the centre of the inlet pipe intersects with the centre of the outlet pipe at the downstream face of the pit. 34. Lay and joint all pipes in accordance with the manufacturer's recommendations and AS3725-2007: design for installation of buried concrete pipes. 35. Allow to test all pipes and pits to local authority's requirements. 36. Excavate trenches and stockpile all material for inspection with regard to reuse for trench backfill. Remaining material to be removed from site. 37. Backfill pipes with imported fill. Provide 200mm side support and 150mm overlay above pipe crown. Trench fill above the embedment zone to the underside of the road pavement or the footway shall be as follow:- Under roadway Trench fill material shall consist of imported fill as specified herein of either high grade compaction sand or approved crushed road gravel conforming to TNSW QA specification 3051 or similar. Other than roadway Trench material excavated shall consist of select fill as specified herein and shall not contain more than 20% of stones of size between 25mm and 75mm and none larger than 75mm. Prior to use of the excavated material it shall be inspected and approved by the engineer. 38. Compact bedding. Embedment and trench fill materials as follow:- Embedment:- For granular fill material (non-cohesive soil) e.g. Coarse aggregate fill, the density index (di) shall be not less than 70%. Trench fill:- For granular material (non cohesive soils). The density index (di) shall be not less than 70%. For non-granular fill material (cohesive soils), the dry density ratio (rd) shall be not less than 95%. 39. Existing services Utility information shown on the plans is not intended to depict more than the presence of any services. Actual locations should be verified by hand excavation prior to construction. 40. The contractor shall allow for the capping off, excavation and removal (if required) of all existing services in areas affected by the works. 41. The contractor shall ensure that services to all buildings not affected by the works are not disrupted at all times. The contractor shall construct temporary services to maintain existing supply to buildings remaining where required. Once the works are complete and commissioned the contractor shall remove all such temporary services and make good all disturbed areas. 42. Existing pipes which form no part of the drainage system shall be removed or sealed as indicated on the plans. 43. Where downpipes pass under floor slabs, sewer grade uPVC with rubber ring joints are to be used. 44. Minimum grade to drainage pipes to be 1% (U.N.O.), min. Size 100mm diameter (U.N.O.). 45. Pipe installation under trafficable areas shall be in accordance with concrete pipe association of Australia publication "concrete pipe selection & installation" type HS3 support. 46. Equivalent strength FRC pipes may be used subject to authority approval. 47. Minimum pipe cover to be 600mm under trafficable areas and 300mm elsewhere (U.N.O.). 48. Contractor to supply and install all fittings and specials including various pipe adaptors to ensure proper connection between dissimilar pipework. 49. Provide cleaning eyes to all downpipes not directly connected to pits. 50. Stormwater drainage connections to council's system shall be to the requirements and the satisfaction of the local council. 51. Drainage pits Pits deeper than 1200mm to be fitted with step irons at 300 centres to AS1657-2013: fixed platforms, walkways, stairways and ladders - design, construction and installation. 52. All exposed edges to be rounded with 20mm radius, or chamfered 20mm x 20mm. 53. Pit reinforcement - mesh SL82 lap to be 400mm min. Clear cover 40 mm. Cast against blinding or formwork. Corner returns may be fabric or equivalent bars. 54. Benching to be half outgoing pipe depth. Concrete for benching to be 20mpa mass concrete. 55. Approved precast pits may be used. 56. 100mm diameter hole for subsoil drainage outlet to be located 100mm above invert of all inlet pipes. Subsoil drainage to extend for a distance of 3m upstream of pit (at each inlet trench) with the upstream end sealed. 57. Pit grate, frames and solid covers shall be Class B in non traffic areas and Class D in trafficable areas in accordance with AS3996. 58. Maximum front entry pipe:- a. Straight entry - Ø750 b. Skew entry 45° - Ø525 59. Subsoil drainage Subsoil pipes shall be laid at a min grade of 0.5% (U.N.O.). 60. Additional subsoil drainage shall be laid to suit site conditions and groundwater presence as directed. 61. Subsoil pipes shall be laid behind kerbs in cut areas of the site. 62. Grates to pits in footpath areas shall be heel safe complying with the disabled access code 63. Contractor to provide workshop coordinated drawings prior to commencing works on site. Workshop drawings to be reviewed and approved by design engineer. 64. All external area to have a minimum 1% fall to outlets provided. 65. Provide overflows to all areas to architect's specifications. 66. All rainwater outlets to open areas shall be SPS TRUFLO type TIA100F unless noted otherwise. Do not install balcony outlets or similar in areas subject to direct rainfall.

Legend
>>> >>> RAINWATER TANK LINES >>> >>> STORMWATER LINE SSD SSD SUBSOIL LINE SWRM SWRM STORMWATER RISING MAIN HL HL HIGH LEVEL STORMWATER LINE OF OF OVERFLOW LINE e e EXISTING STORMWATER LINE SW SW AUTHORITY STORMWATER LINE S S AUTHORITY SEWER LINE W W AUTHORITY WATER LINE G G AUTHORITY GAS LINE E E AUTHORITY ELECTRICITY LINE UE UE AUTHORITY UNDERGROUND ELECTRICITY LINE FO FO AUTHORITY FIBRE OPTIC LINE TEL TEL AUTHORITY COMMS LINE FENCE LINE GRATED SURFACE INLET PIT JUNCTION PIT KERB INLET PIT EXISTING KERB INLET PIT eTEL EXISTING TELSTRA PIT eHYD EXISTING HYDRANT eSV EXISTING STOP VALVE ePP EXISTING POWER POLE eSMH EXISTING SEWER MANHOLE OFF OVERLAND FLOW PATH RWO RAINWATER OUTLET CO CLEAR OUT POINT CAPPING DOWNPIPE DROP DP DOWNPIPE FSL SPOT LEVELS BENCHMARK

DBYD DECLARATION

BEFORE

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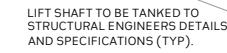
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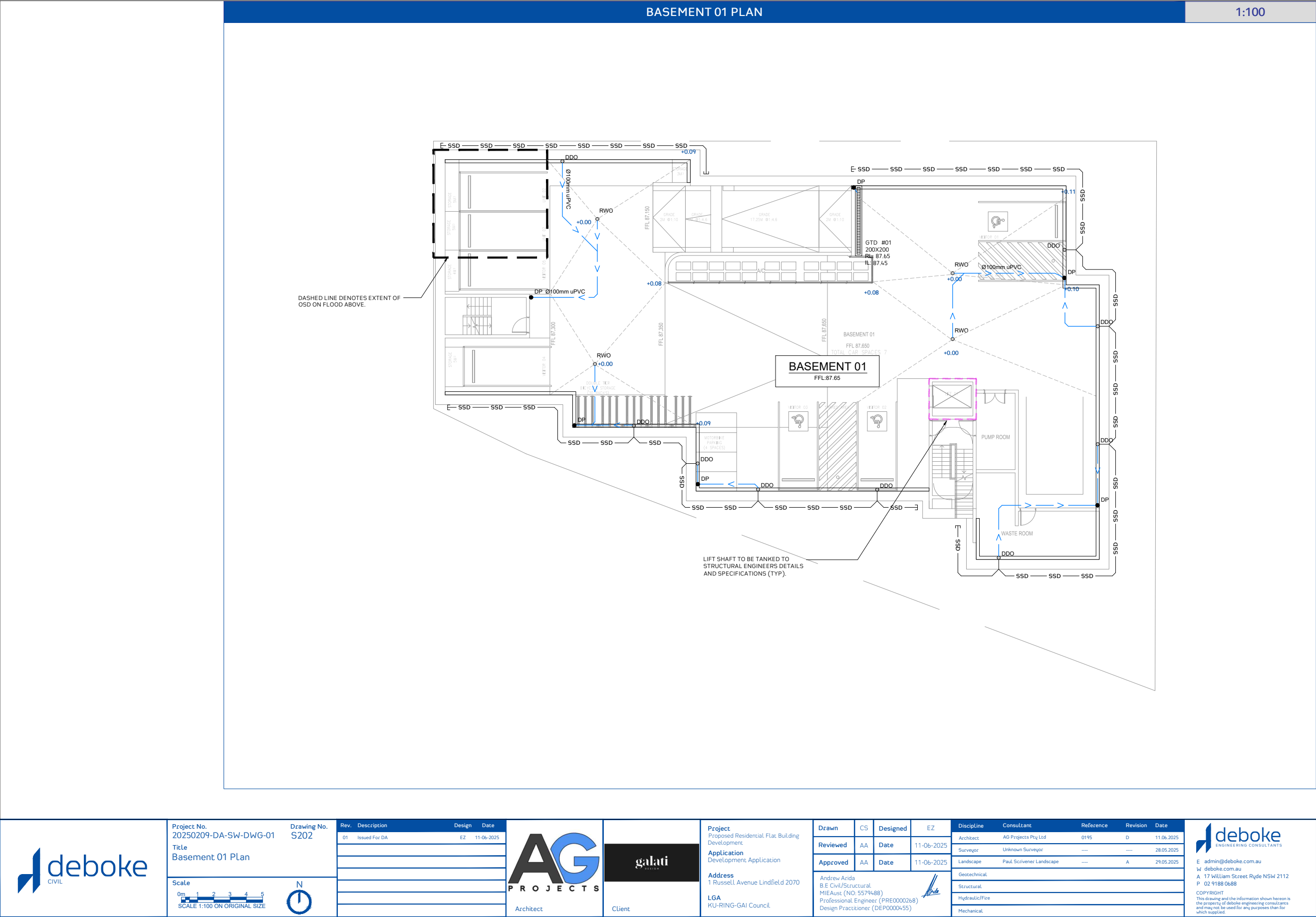
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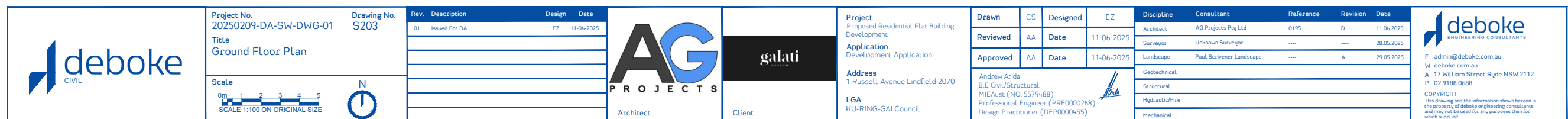
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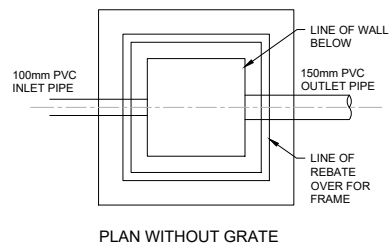
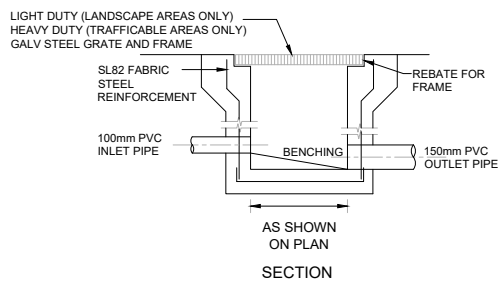
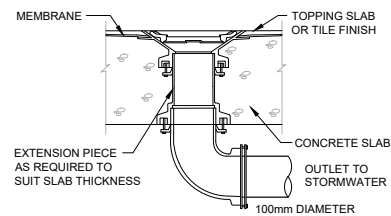
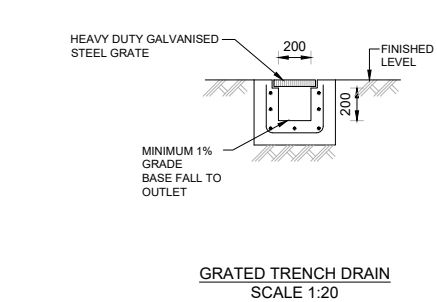
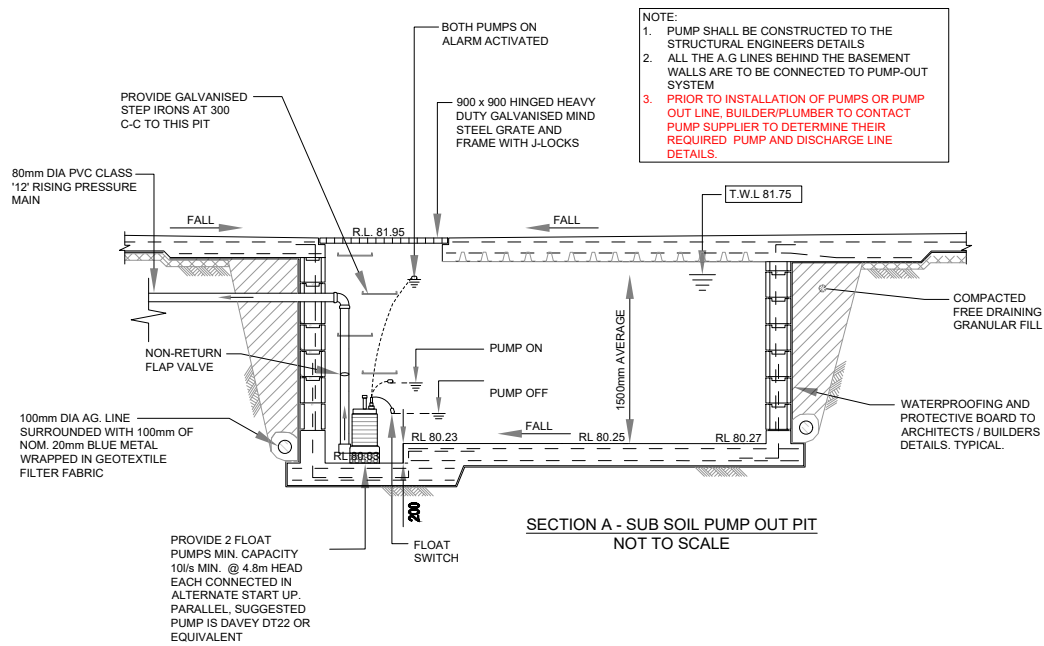
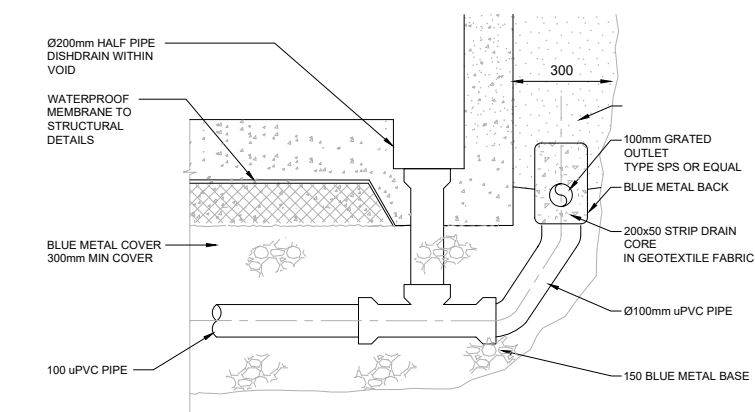
Erosion and Sediment Control Notes
1. Before earthworks can commence the erosion & sediment control measures must be in place. 2. During the construction period, these control measures will need to be inspected & maintained regularly, especially after storm events, by the contractor. 3. All work is to be carried out to prevent erosion, contamination & sedimentation of the storage site, surrounding areas & drainage systems. 4. Minimize disturbed area covered with natural vegetation. Only those areas directly required for construction are to be disturbed. 5. Install erosion/sediment control measures prior to commencement of construction or excavation operations. 6. Provide silt fence/straw bale barriers to the low side of all exposed earth excavations. Tie sediment fencing material to cyclone wire security fence. Sediment control fabric shall be an approved material. (eg. Humes propex silt stop) standing 300mm above ground & extending 150mm below ground. 7. Isolate existing stormwater pits with straw bales or silt traps to filter all incoming flows. 8. Do not stockpile excavated material on the roadway. 9. Divert clean water from undisturbed areas around the working areas. 10. Construction entry/exit shall be via the location noted on the drawing. Contractor shall ensure all droppable soil & sediment is removed prior to construction traffic exiting site. Contractor shall ensure all construction traffic entering and leaving the site do so in a forward direction. 11. Treat the stormwater runoff with suspended solids so the discharge water quality to council stormwater drainage system has a maximum concentration of suspended solids that does not exceed 50 milligrams per litre in accordance with the protection of the environment operation act (poee 1997) and shall be approved by local council. 12. Adopt temporary measures as may be necessary for erosion & sediment control, including but not limited to the following:- - Drains: temporary drains and catch drains. - Spreader banks or other structures: to disperse concentrated runoff. - Silt traps: construction and maintenance of silt traps to prevent discharge of scoured material to downstream areas. 13. After rain, inspect, clean, and repair if required, temporary erosion & sediment control measures. 14. Remove temporary erosion & sediment control measures when they are no longer required. 15. Comply with the requirements of Landcom's Managing Urban Stormwater - Soil and Construction The Blue Book' latest edition 16. The erosion & sediment control plan provided is only indicative. The contractor should prepare a detailed ESCP suitable for the specific site conditions

deboke CIVIL	Project No. 20250209-DA-SW-DWG-01	Drawing No. S101	<table><tr><th>Rev.</th><th>Description</th><th>Design</th><th>Date</th></tr><tr><td>01</td><td>Issued For DA</td><td>EZ</td><td>11-06-2025</td></tr><tr><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td></tr></table>	Rev.	Description	Design	Date	01	Issued For DA	EZ	11-06-2025																									AG PROJECTS Architect	galati DESIGN Client	Project Proposed Residential Flat Building Development Application Development Application Address 1 Russel Avenue Lindfield 2070 LGA KU-RING-GAI Council	<table><tr><th>Drawn</th><th>CS</th><th>Designed</th><th>EZ</th></tr><tr><td>Reviewed</td><td>AA</td><td>Date</td><td>11-06-2025</td></tr><tr><td>Approved</td><td>AA</td><td>Date</td><td>11-06-2025</td></tr></table> Andrew Arida B.E Civil/Structural MIEAust (NO: 5579488) Professional Engineer (PRE0000268) Design Practitioner (DEP0000455) 	Drawn	CS	Designed	EZ	Reviewed	AA	Date	11-06-2025	Approved	AA	Date	11-06-2025	<table><tr><th>Discipline</th><th>Consultant</th><th>Reference</th><th>Revision</th><th>Date</th></tr><tr><td>Architect</td><td>AG Projects Pty Ltd</td><td>0195</td><td>D</td><td>11-06-2025</td></tr><tr><td>Surveyor</td><td>Unknown Surveyor</td><td>---</td><td>---</td><td>28-05-2025</td></tr><tr><td>Landscape</td><td>Paul Scrivener Landscape</td><td>---</td><td>A</td><td>29-05-2025</td></tr><tr><td>Geotechnical</td><td></td><td></td><td></td><td></td></tr><tr><td>Structural</td><td></td><td></td><td></td><td></td></tr><tr><td>Hydraulic/Fire</td><td></td><td></td><td></td><td></td></tr><tr><td>Mechanical</td><td></td><td></td><td></td><td></td></tr></table>	Discipline	Consultant	Reference	Revision	Date	Architect	AG Projects Pty Ltd	0195	D	11-06-2025	Surveyor	Unknown Surveyor	---	---	28-05-2025	Landscape	Paul Scrivener Landscape	---	A	29-05-2025	Geotechnical					Structural					Hydraulic/Fire					Mechanical					deboke ENGINEERING CONSULTANTS E admin@deboke.com.au W deboke.com.au A 17 William Street Ryde NSW 2112 P 02 9188 0688 COPYRIGHT This drawing and the information shown hereon is the property of deboke engineering consultants and may not be used for any purposes than for which supplied.
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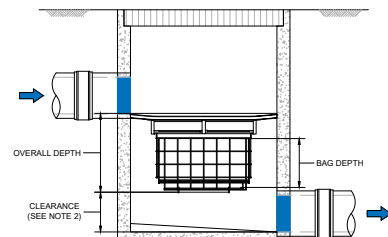
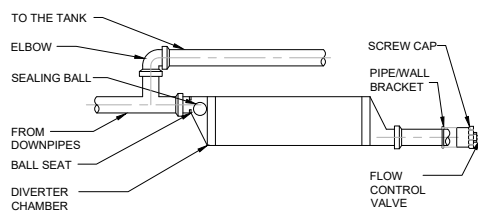
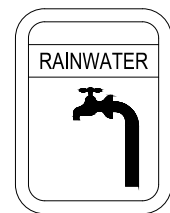




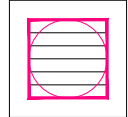




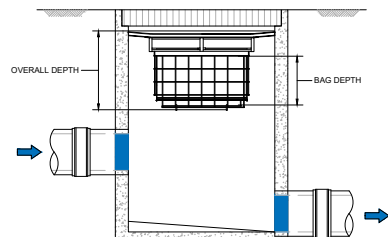
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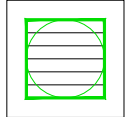
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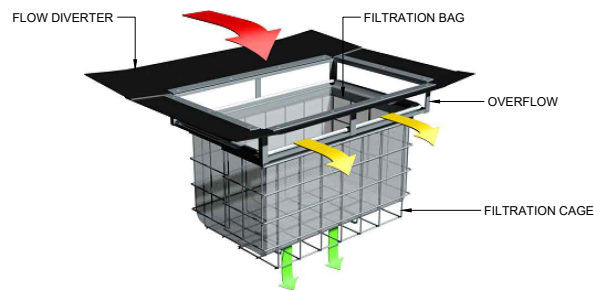
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OCEANGUARD - TYPE 2
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OCEANGUARD - TYPE 2
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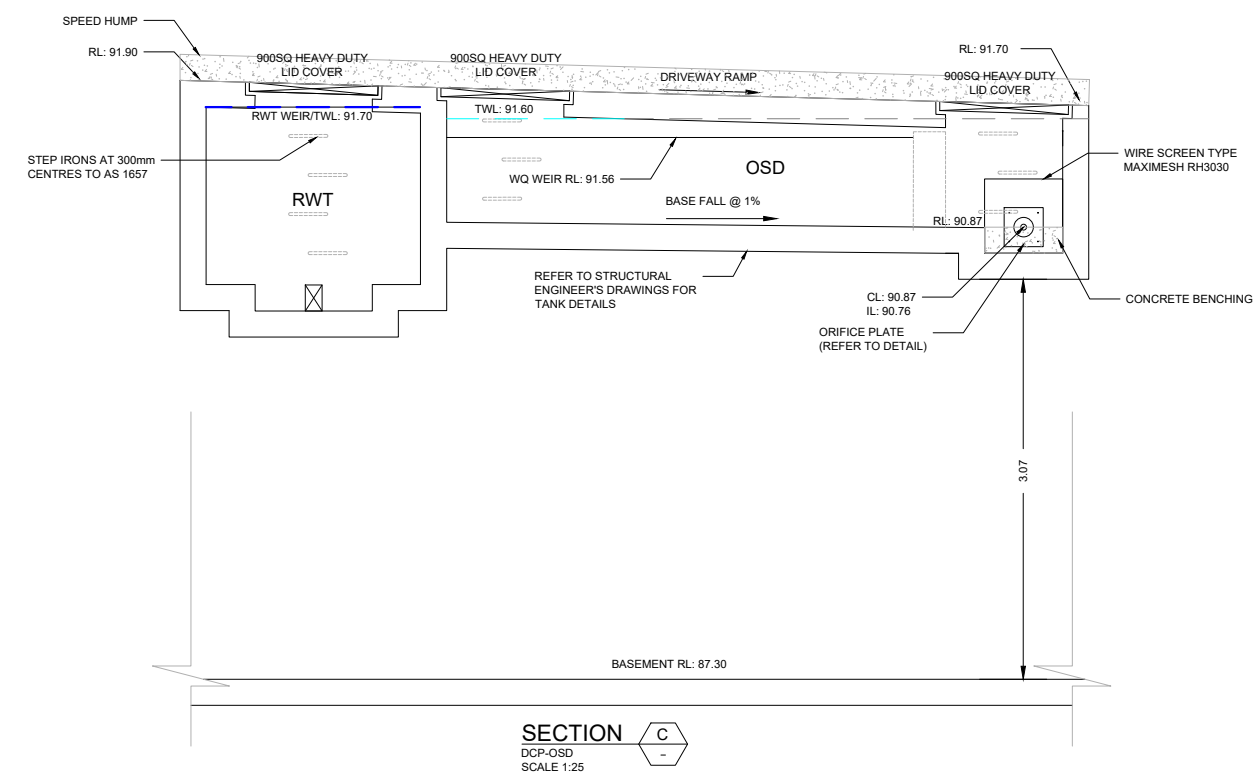
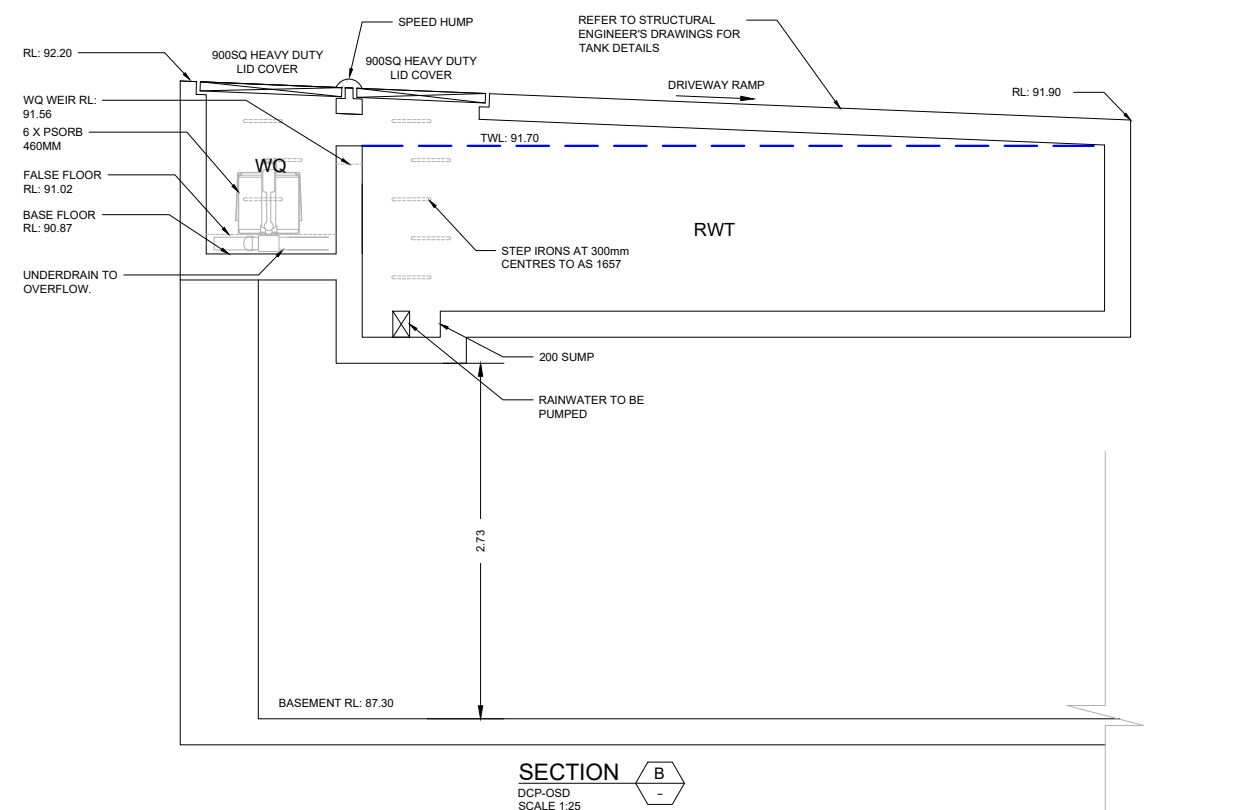
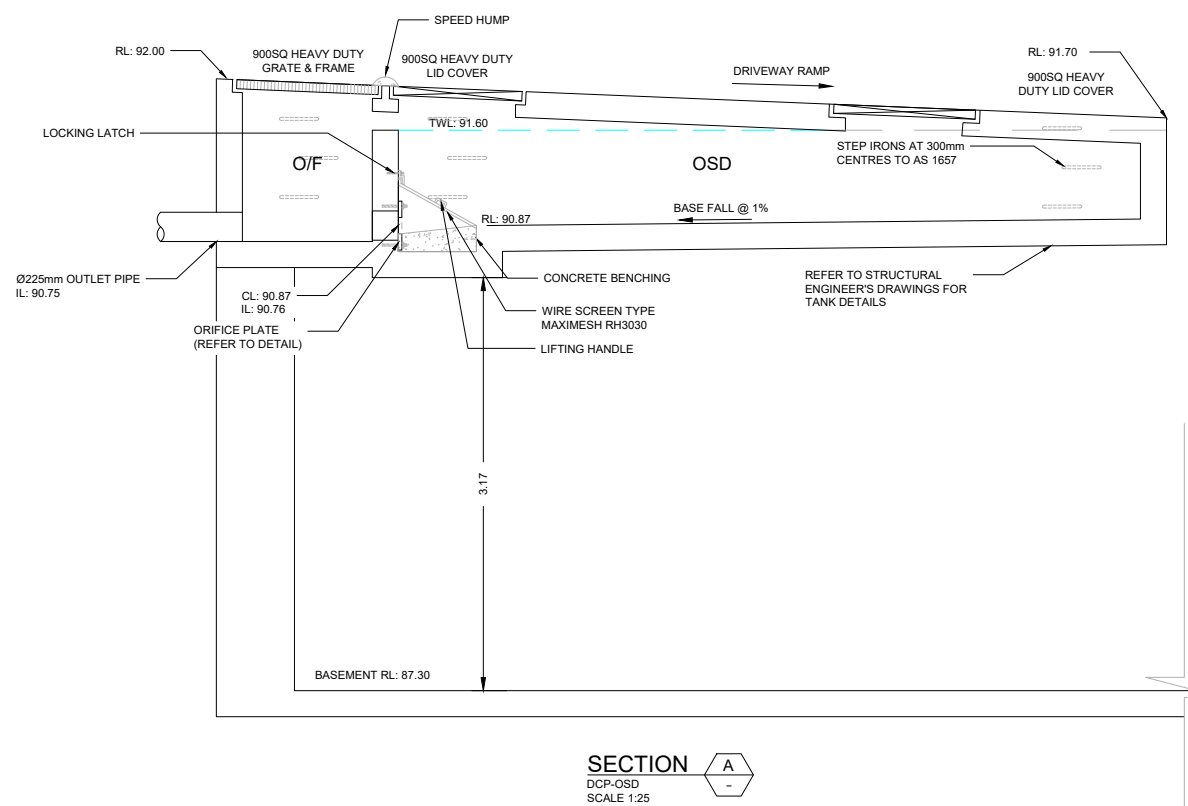
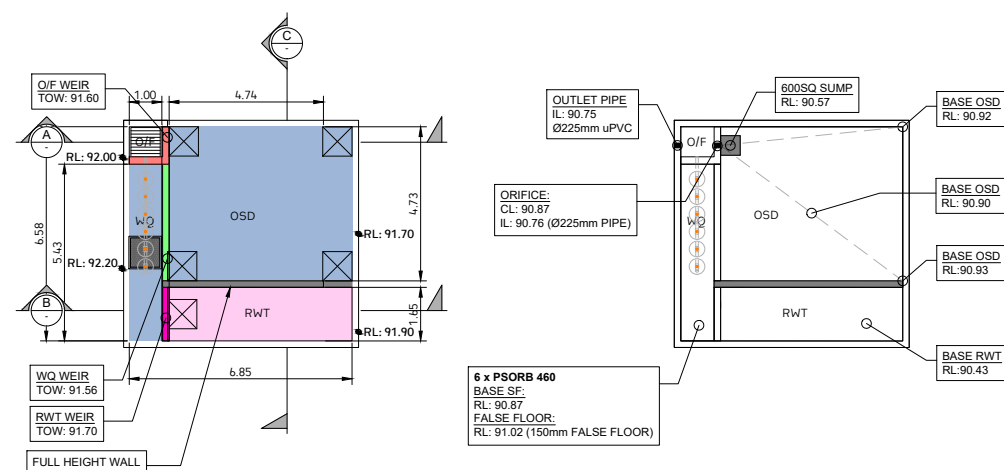
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S		450mm x 450mm	
M		600mm x 600mm	
L		900mm x 900mm	
XL		1200mm x 1200mm	
DEPTH ID	BAG DEPTH	OVERALL DEPTH	
1	170	270	
2	300	450	
3	600	700	

PLAN ID	DEPTH ID			
	1	2	3	
	S	■	■	■
	M	■	■	■
	L	■	■	■
	XL	■	■	■

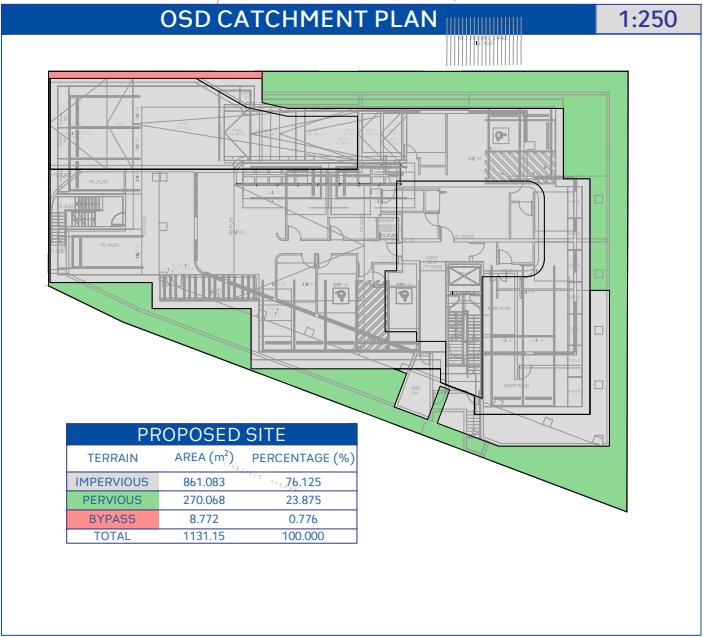
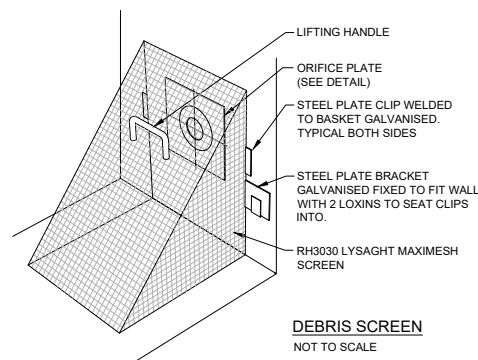
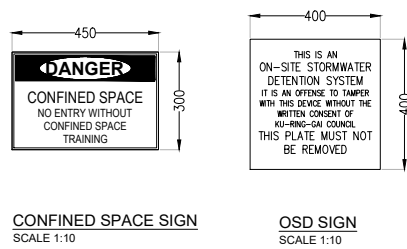
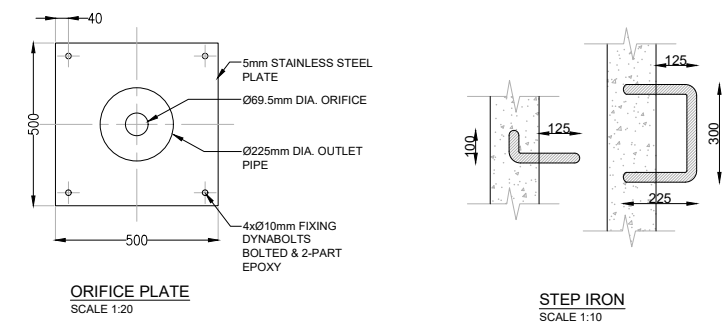
GENERAL NOTES

- THE MINIMUM CLEARANCE DEPENDS ON THE CONFIGURATION (SEE NOTE 2) AND THE LOCAL COUNCIL REQUIREMENTS.
- CLEARANCE FOR ANY PIT WITHOUT AN INLET PIPE (ONLY USED FOR SURFACE FLOW) CAN BE AS LOW AS 50mm. FOR OTHER PITS, THE RECOMMENDED CLEARANCE SHOULD BE GREATER OR EQUAL TO THE PIPE OBVERT SO AS NOT TO INHIBIT HYDRAULIC CAPACITY.
- OCEAN PROTECT PROVIDES TWO FILTRATION BAG TYPES - 200 MICRON BAGS FOR HIGHER WATER QUALITY FILTERING AND A COARSE BAG FOR TARGETING GROSS POLLUTANTS.
- DRAWINGS NOT TO SCALE.

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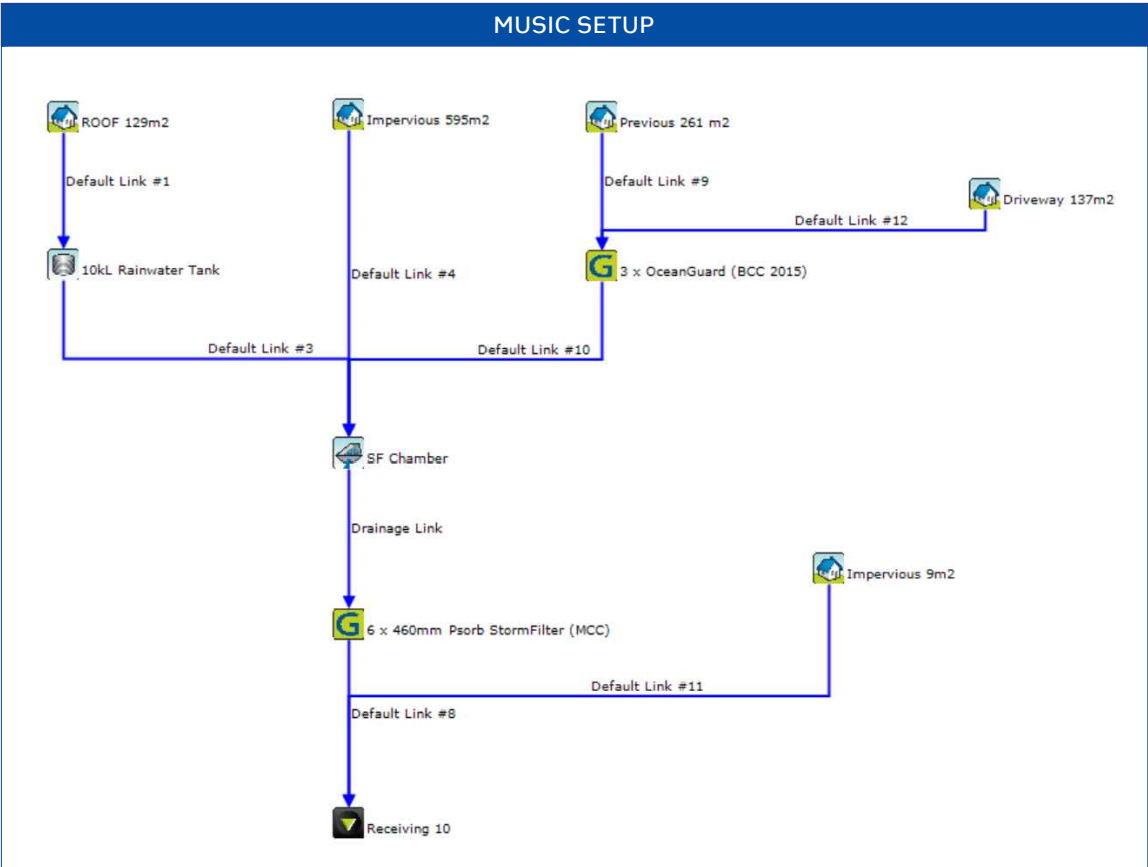


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	Title Details Sheet 2 of 4										Reviewed	AA	Date	11-06-2025	Surveyor	Unknown Surveyor	---	---	28.05.2025										
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																		Structural											
															Hydraulic/Fire														
															Mechanical														



ON-SITE DETENTION CALCULATIONS KU-RING-GAI COUNCIL				
Project:	Proposed Residential Flat Building			
Job No:	20250209			
Location:	1 Russell Avenue Lindfield 2070			
CATCHMENT CODE	GC1	Moores Creek		
CATCHMENT DISCHARGE RATE	128.0	l/s/ha		[A]
CATCHMENT STORAGE RATE	336.0	m³ / ha		[B]
SITE DETAILS				
SITE AREA	1131.231	m²		
60% OF SITE AREA	678.7386	m²		[C]
AREAS NOT DRAINING TO OSD	8.772	m²		
TOTAL IMPERVIOUS AREA	861.083	m²		[D]
IMPERVIOUS AREA BYPASSING OSD	0	m²		[E]
PERMITTED SITE DISCHARGE				
C x A	8.69	l/s		[FLOW 1]
ADJUSTMENT FOR ANY UNCONTROLLED IMPERVIOUS FLOW				
E / D (<0.25)	0.00			[F]
FLOW 1 x F	0.00	l/s		[FLOW 2]
FLOW 1 - FLOW 2	8.69	l/s		PSD
SITE STORAGE REQUIREMENT				
C x B	22.81	m³		[SSR 1]
IF THE STORAGE IS IN A LANDSCAPED BASIN				
SSR 1 x 1.2	27.37	m³		[SSR 2]
ORIFICE CALCULATIONS				
HEIGHT DIFFERENCE BETWEEN TOP WATER SURFACE LEVEL AND THE CENTRE OF ORIFICE				
ORIFICE DIAMETER	21.85 x SQRT(PSD/(SQRT(G)))	=	0.73 m	[G]
			69.5 mm	

	Project No. 20250209-DA-SW-DWG-01	Drawing No. S302	Rev. Description Design Date			Project Proposed Residential Flat Building Development Application Development Application Address 1 Russell Avenue Lindfield 2070 LGA KU-RING-GAI Council	Drawn CS Designed EZ	Discipline Consultant Reference Revision Date	 E admin@deboke.com.au W deboke.com.au A 17 William Street Ryde NSW 2112 P 02 9188 0688 COPYRIGHT This drawing and the information shown hereon is the property of deboke engineering consultants and may not be used for any purposes than for which supplied.
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	Scale 0m 1 2 3 4 5 SCALE 1:100 ON ORIGINAL SIZE						Approved AA Date 11-06-2025	Surveyor Unknown Surveyor --- 28-05-2025	
							Andrew Acida B.E Civil/Structural MIEAust (NO: 5579488) Professional Engineer (PRE0000268) Design Practitioner (DEP0000455)	Landscaper Paul Scrivener Landscape --- A 29-05-2025	
				Architect	Client			Geotechnical Structural Hydraulic/Fire Mechanical	

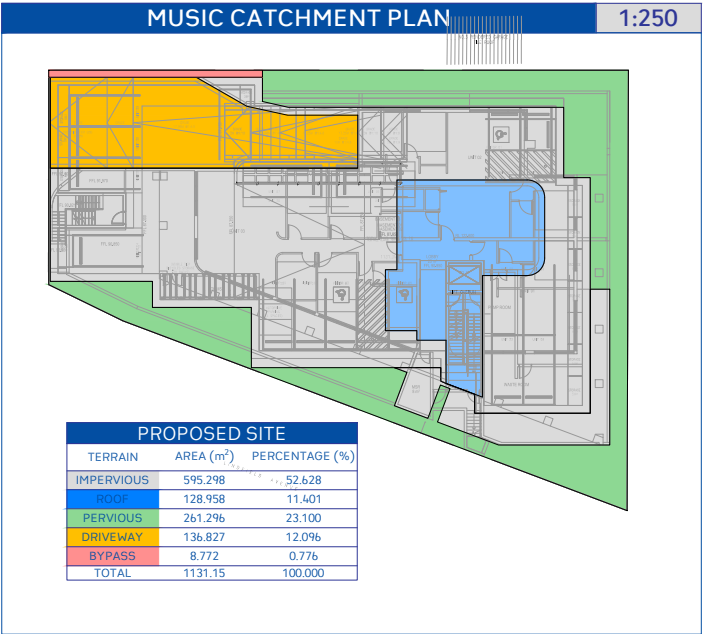


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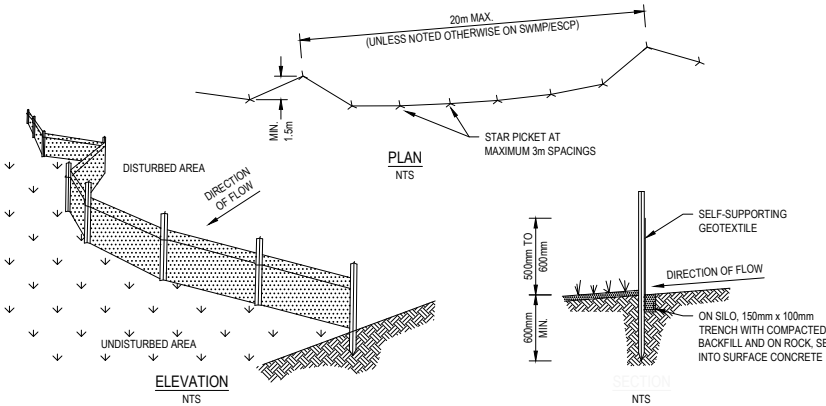
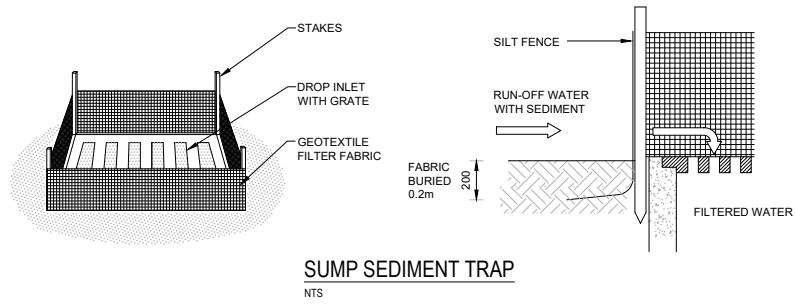
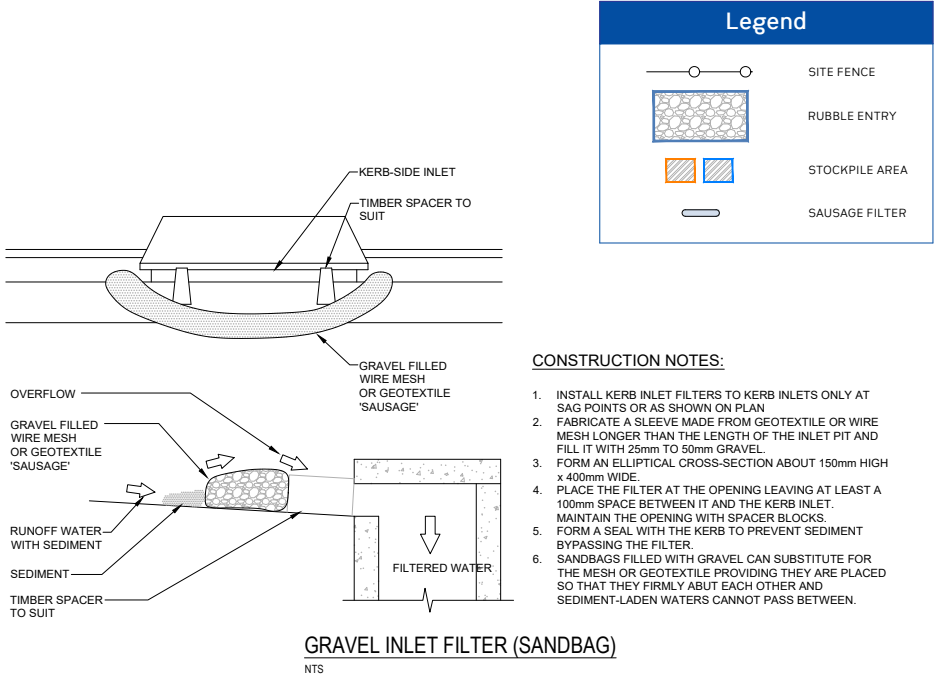
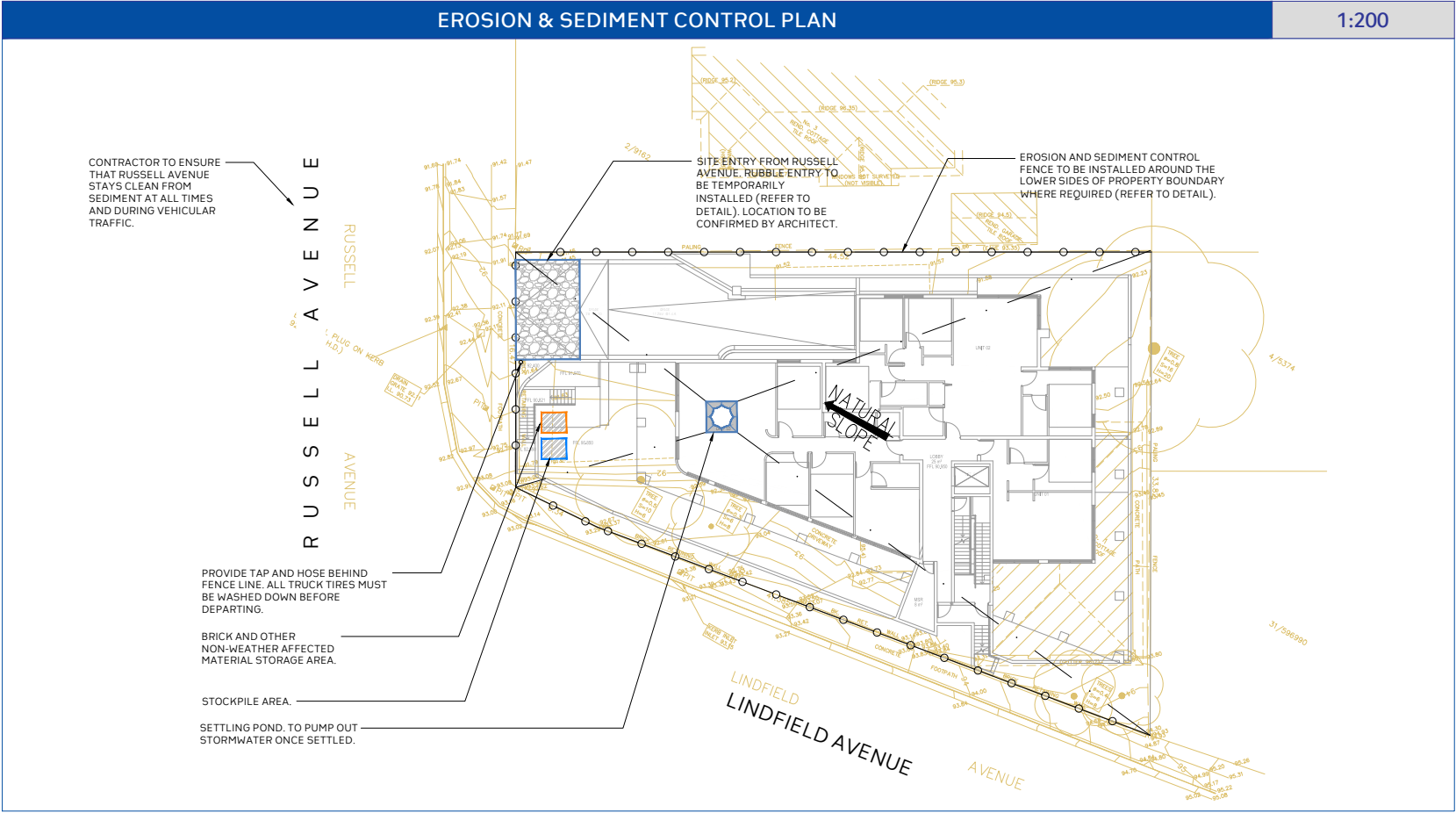
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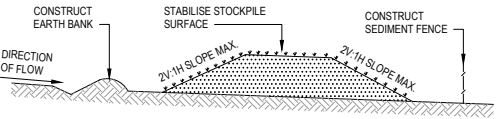
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Other Nodes				
Receiving Nodes				
Receiving 10				
REPORT				
Flow Reduction	None	None	7.423 %	✓
GP Reduction	70	None	98.852 %	✓
TN Reduction	45	None	55.66 %	✓
TP Reduction	65	None	78.981 %	✓
TSS Reduction	85	None	85.146 %	✓



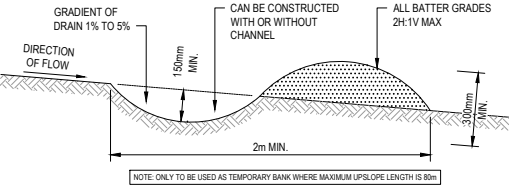
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							Landscape Paul Scrivener Landscape --- A 29.05.2025		
							Geotechnical		
			Structural						
			Hydraulic/Fire						
			Mechanical						



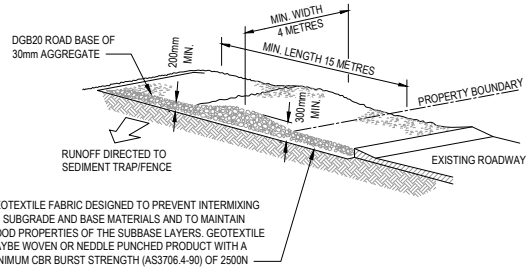
- GENERAL CONSTRUCTION NOTES**
1. CONSTRUCTION SEDIMENT FENCES AS CLOSE AS POSSIBLE TO PARALLEL TO THE CONTOURS OF THE SITE
 2. DIVE 1.5m LONG STAR PICKETS INTO GROUND, 3m APART
 3. DIG A 150mm DEEP TRENCH ALONG THE UPSLOPE LINE OF THE FENCE FOR THE BOTTOM OF THE FABRIC TO BE ENTRENCHED
 4. BACKFILL TRENCH OVER BASE OF FABRIC
 5. FIX SELF-SUPPORTING GEOTEXTILE TO UPSLOPE SIDE OF POSTS WITH WIRE TIES OR AS RECOMMENDED BY GEOTEXTILE MANUFACTURER
 6. JOIN SECTIONS OF FABRIC AT A SUPPORT POST WITH A 150mm OVERLAP



- GENERAL CONSTRUCTION NOTES**
1. LOCATE STOCKPILE AT LEAST 5m FROM EXISTING VEGETATION, CONCENTRATED WATER FLOWS, ROADS AND HAZARD AREAS
 2. CONSTRUCT ON THE CONTOUR AS A LOW, FLAT, ELONGATED MOUND
 3. WHERE THERE IS SUFFICIENT AREA TOPSOIL STOCKPILES SHALL BE LESS THAN 2m IN HEIGHT
 4. REHABILITATE IN ACCORDANCE WITH THE SWMP/ESCP
 5. CONSTRUCT EARTH BANK ON THE UPSLOPE SIDE TO DIVERT RUN OFF AROUND THE STOCKPILE AND A SEDIMENT FENCE 1 TO 2m DOWNSLOPE OF STOCKPILE



- GENERAL CONSTRUCTION NOTES**
1. CONSTRUCT WITH GRADIENT OF 1% TO 5%
 2. AVOID REMOVING TREES AND SHRUBS IF POSSIBLE
 3. DRAINS TO BE CIRCULAR, PARABOLIC OR TRAPEZOIDAL CROSS SECTION NOT V-SHAPED
 4. EARTH BANKS TO BE ADEQUATELY COMPACTED IN ORDER TO PREVENT FAILURE
 5. PERMANENT OR TEMPORARY STABILISATION OF THE EARTH BANK TO BE COMPLETED WITHIN 10 DAYS OF CONSTRUCTION
 6. ALL OUTLETS FROM DISTURBED LANDS ARE TO FEED INTO A SEDIMENT BASIN OR SIMILAR
 7. DISCHARGE RUNOFF COLLECTED FROM UNDISTURBED LANDS ONTO EITHER A STABILISED OR AN UNDISTURBED DISPOSAL SITE WITHIN THE SAME SUBCATCHMENT AREA FROM WHICH THE WATER ORIGINATED
 8. COMPACT BANK WITH A SUITABLE IMPLEMENT IN SITUATIONS WHERE THEY ARE REQUIRED TO FUNCTION FOR MORE THAN FIVE DAYS
 9. EARTH BANKS TO BE FREE OF PROJECTIONS OR OTHER IRREGULARITIES THAT WILL IMPEDED NORMAL FLOW



- STABILISED SITE ACCESS CONSTRUCTION NOTES:**
1. STRIP THE TOPSOIL, LEVEL THE SITE AND COMPACT THE SUBGRADE.
 2. COVER THE AREA WITH NEEDLE - PUNCHED GEOTEXTILE.
 3. CONSTRUCT A 200mm THICK PAD OVER THE GEOTEXTILE USING ROAD BASE OR 30mm AGGREGATE.
 4. ENSURE THE STRUCTURE IS AT LEAST 15 METRES LONG OR TO BUILDING ALIGNMENT AND AT LEAST 3 METRES WIDE.
 5. WHERE A SEDIMENT FENCE JOINS ONTO THE STABILISED ACCESS, CONSTRUCT A HUMP IN THE STABILISED ACCESS TO DIVERT WATER TO SEDIMENT FENCE.

	Project No. 20250209-DA-SW-DWG-01	Drawing No. S400	Rev. Description Design Date		Project Proposed Residential Flat Building Development Application Development Application Address 1 Russell Avenue Lindfield 2070 LGA KU-RING-GAI Council	Drawn CS Designed EZ	Discipline Consultant Reference Revision Date	
	Title Erosion and Sediment Control Plan		01 Issued For DA EZ 11-06-2025			Reviewed AA Date 11-06-2025	Architect AG Projects Pty Ltd 0195 D 11-06-2025	
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							Landscape Paul Scrivener Landscape --- A 29-05-2025	
							Geotechnical	
							Structural	
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E admin@deboke.com.au
W deboke.com.au
A 17 William Street Ryde NSW 2112
P 02 9188 0688

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Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control



Clause 4.6 Variation Request Statement

Number of Storeys Control (Clause 175(2) of Housing SEPP)

Residential flat building – 1 Russell Avenue, Lindfield



Prepared by Paro Consulting

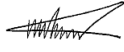
August 2025

Paro Consulting (Paro Planning Pty Ltd)
T 0422 983 710
E daniel@paroconsulting.com.au
A 1.02, 38 Waterloo Street, Surry Hills



Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control

Document status

Revision	Date	Name	Signature
1	06/08/2025	Daniel Barber, Director B.Plan (Hons) M.ProDev, MPlA, CPP	
		Wilson Perdigao, Principal Planner B.Plan (Hons)	

Contact Details

Item	Details
Company	Paro Consulting (Paro Planning Pty Ltd) ABN 80 661 609 383
Postal Address	Suite 1.02, 38 Waterloo Street, Surry Hills NSW 2010
Email	daniel@paroconsulting.com.au
Phone	0422 983 710

Disclaimer

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Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control

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Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control

1. Introduction

This Clause 4.6 variation request statement has been prepared in relation to the development standard for number of storeys contained within Chapter 6, Part 4, Division 1, Clause 175(2) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).

Clause 4.6 of the Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) enables a consent authority to grant consent for a development even though the development contravenes a development standard of the LEP or another environmental planning instrument, such as in this case, the Housing SEPP.

This variation request is to accompany a development application (DA) for 1 Russell Street, Lindfield (the site) seeking approval for the demolition of the existing buildings and structures and the construction of a ten (10) storey residential flat building development containing 28 residential units inclusive of infill affordable rental housing above three (3) levels of basement parking, communal rooftop terrace level and associated landscaping and site works (the proposal).

The application has been lodged pursuant to the provisions of Chapters 2 Affordable housing (AH) and Chapter 6 Low and Mid Rise Housing (LMR) of State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

Clause 175(2) stipulates that a maximum six (6) storey control applies to development that is for the purposes of a residential flat building on land located in the low and midrise housing inner area, as identified in Chapter 6 of the Housing SEPP. In the context of the site, the land is located within the 'inner area' of the low and mid rise housing area and the proposal is for the purpose of a residential flat building with a total of ten (10) storeys over three (3) basement levels. This represents a four (4) storey variation, or 67% variation to the number of storey control when considered against Clause 175(2).

This written variation request has been prepared pursuant to Clause 4.6 of the Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) and forms a written request that justifies the contravention of the storey control development standard based upon specific circumstances of this proposal. It is submitted that permitting the proposed variation to Clause 175(2) of the Housing SEPP will allow for improved planning outcomes at the site.

This request has been prepared in accordance with Clause 35B of the *Environmental Planning and Assessment Regulation 2021* (the Regulation) which requires that a DA involving contravention of development standard must be accompanied by a document that sets out the grounds that demonstrates compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

This request has been prepared having regard to the Department of Planning and Environment's Guide to Varying Development Standards (November 2023) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (Court).

This request is structured to explicitly address the matters required to be addressed by the applicant under Clause 4.6(3)(a) and (b) for which the consent authority must be satisfied has been demonstrated according to Preston CJ in *Wehbe v Pittwater Council* (2007) NSW LEC 827 ('Wehbe').



Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control

2. Relevant planning instrument, development standard and proposed variations

2.1 Environmental Planning Instrument to be varied

The Environmental Planning Instrument (EPI) to be varied is State Environmental Planning Policy (Housing) 2021 (Housing SEPP). Chapter 6 (Low and mid rise housing) of the Housing SEPP applies to the site. More specifically under Section 174 of the SEPP the site is located within a Low and Mid Rise Housing Area-Inner Area and an LGA where this chapter is applicable. Following the 2023 planning reforms, Clause 4.6 of the relevant Local Environmental Plan (LEP) - in this case, the KLEP 2015 - must be used to vary development standards within Environmental Planning Instruments (EPIs), including any relevant SEPPs. Which in this case is the Housing SEPP. The request is seeking to vary the maximum numeric number of storey as it applies to the site and proposal.

2.2 Development standard to be varied

The standard that is proposed to be varied is the maximum number of storeys development standard for the construction of a residential flat building in the 'low and mid rise inner area' as set out in Clause 175(2) of the Housing SEPP.

Clause 175(2) of the Housing SEPP states:

"175 Development standards—low and mid rise housing inner area

(1) This section applies to land in a low and mid rise housing inner area in Zone R3 Medium Density Residential or R4 High Density Residential.

(2) Development consent must not be granted for development for the purposes of residential flat buildings with a building height of up to 22m unless the consent authority is satisfied the building will have 6 storeys or fewer.

(3) Development consent must not be granted for development for the purposes of a building containing shop top housing with a building height of up to 24m unless the consent authority is satisfied the building will have 6 storeys or fewer.

(4) In this section, a storey does not include a basement within the meaning of the standard instrument."

Clause 175(2) of the Housing SEPP stipulates that a maximum six (6) storey control applies to development that is for the purposes of a residential flat building on land located in the low and midrise housing inner area, as identified in Chapter 6 of the Housing SEPP. In the context of the site, the land is located within the 'inner area' of the low and mid rise housing area and the proposal is for the purpose of a residential flat building with a total of ten (10) storeys above three (3) basement levels.

2.3 Extent of Variation

Clause 175(2) of the Housing SEPP stipulates a maximum of six (6) storeys applies to development that is for the purposes of a residential flat building on land located in the low and midrise housing inner area, as identified in Chapter 6 of the Housing SEPP. In the context of the site, the land is located within the 'inner area' of the low and mid rise housing area and the proposal is for the purpose of a residential flat building with a total of ten (10) storeys.

This represents a four (4) storey variation, or 67% variation to the number of storeys control when considered against Clause 175(2) of the Housing SEPP.



Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control

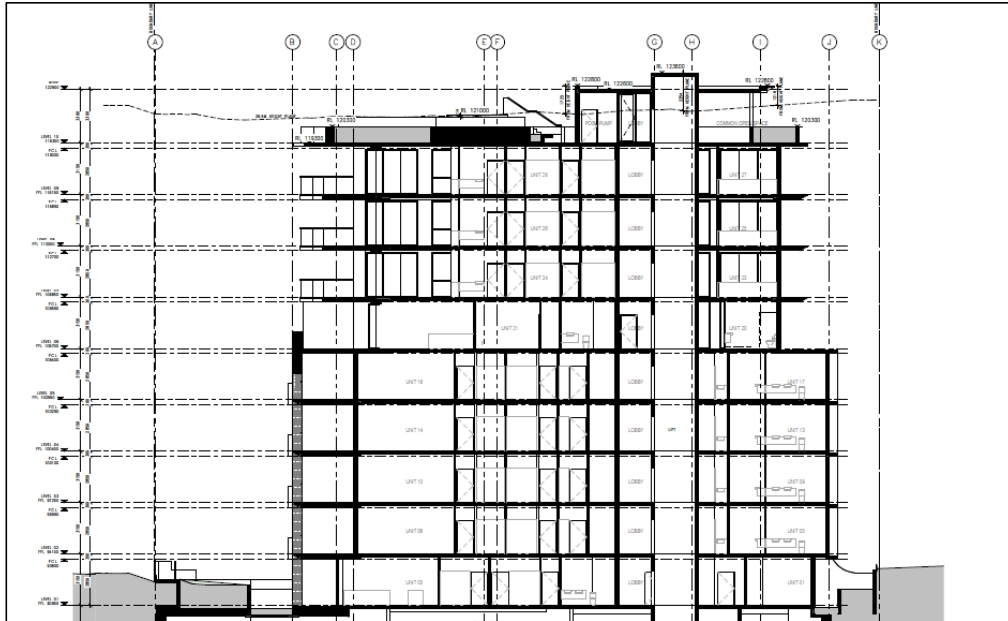


Figure 1: Section of the proposed development indicating the number of storeys



Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control

3. Objectives and Provisions of Clause 4.6

The objectives and provisions of Clause 4.6 of the KLEP 2015, are as follows:

“(1) The objectives of this clause are as follows—

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note—

The [Environmental Planning and Assessment Regulation 2021](#) requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note.

When this Plan was made it did not include all of these zones.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,*



Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5".

It is noted that Clause 175 of the Housing SEPP is not "expressly excluded" from the operation of Clause 4.6 in the KLEP 2015.

4. Key questions

Is the Planning Control a Development Standard?

The standard to be varied is a Development Standard to which Clause 4.6 applies.

Clause 175(2) of the Housing SEPP is contained within a clause which is titled 'Development standards—low and mid rise housing inner area' and is a numeric development standard capable of being varied under clause 4.6 of the LEP.

The standard instrument defines a 'development standard' as:

"development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of—

(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,

(b) the proportion or percentage of the area of a site which a building or work may occupy,

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

(d) the cubic content or floor space of a building,

(e) the intensity or density of the use of any land, building or work,

(f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,

(g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,

(h) the volume, nature and type of traffic generated by the development,

(i) road patterns,

(j) drainage,

(k) the carrying out of earthworks,

(l) the effects of development on patterns of wind, sunlight, daylight or shadows,

(m) the provision of services, facilities and amenities demanded by development,



Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control

(n) the emission of pollution and means for its prevention or control or mitigation, and

(o) such other matters as may be prescribed.”

Based on the above definition, and with previous decisions of the Land & Environment Court in relation to matters which constitute development standards it is considered that the wording of the maximum number of storeys control for residential flat buildings in the low and mid rise housing area in Clause 175(2) of the Housing SEPP constitutes a “development standard” as it is described as a numeric measure of building height, bulk and scale.

Is the Development Standard Excluded from the Operation of Clause 4.6?

The development standard is not excluded from the operation of clause 4.6 as it is not listed within clause 4.6(6) or clause 4.6(8) of KLEP 2015. It is also noted that Clause 175(2) of the Housing SEPP is not “expressly excluded” from the operation of Clause 4.6 in the KLEP 2015. It is also noted that clause 175 does not contain a provision which specifically excludes the application of clause 4.6.

On this basis it is considered that clause 175 is a development standard for which clause 4.6 applies.

4.1 Unreasonable and Unnecessary (Clause 4.6(3)(a))

In this Section, we demonstrate 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 KLEP 2015.

Clause 4.6(3)(a) of the KLEP 2015, requires the consent authority to be satisfied that the applicant’s written request has adequately addressed clause 4.6(3)(b), by demonstrating that:

“compliance with the development standard is unreasonable or unnecessary in the circumstances”

In *Wehbe V Pittwater Council (2007)* NSW LEC 827 (‘Wehbe’) Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

“An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

The judgement goes on to state that:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

In *Wehbe*, Preston CJ identified five ways in which it could be shown that application of a development standard was unreasonable or unnecessary. However, His Honour said that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways. The five methods outlined in *Wehbe* are as follows (with our emphasis placed on the **First Method** for the purposes of this Clause 4.6 variation statement):



Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control

"1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).

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

5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method). Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the First Method".

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to Wehbe and states:

"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Test 1: The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The first test of Wehbe requires demonstration that the objectives of a development standard can be achieved notwithstanding noncompliance with that particular standard. Notwithstanding variation to the storey control in the Housing SEPP, the objective and aims of the standard are achieved as outlined below.

The objectives and aims Division 1 of Chapter 6 of the Housing SEPP for Low and Mid Rise Housing are provided below, with a response as to how these have been met despite the variation to number of storey control.

Section 162 Aim of chapter in Part 6 of the Housing SEPP for Low and Mid Rise housing states:

"The aim of this chapter is to encourage the development of low and mid rise housing in areas that are well located with regard to goods, services and public transport."

There are no objectives relating specifically to the maximum number of storeys standard, however, any underlying objective, in this case the principles of the Housing SEPP policy, would be considered relevant in terms of enabling low and mid rise housing development. The principles of the policy stipulated in clause 3 are:

- (a) enabling the development of diverse housing types, including purpose-built rental housing,
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,
- (c) ensuring new housing development provides residents with a reasonable level of amenity,
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,



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- (e) minimising adverse climate and environmental impacts of new housing development,*
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- (g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- (h) mitigating the loss of existing affordable rental housing.*

The proposed residential flat building development is considered to be consistent with these principles.

The proposed residential flat building will provide for a greater number housing options and housing diversity in a growing area that is well located with regards to goods, services and public transport, that will meet the needs of households in need of housing. It also provides high amenity for future residents in compliance with Apartment Design Guide (ADG) and Chapter 4 Design of Residential Apartment Development of the Housing SEPP. Furthermore, no existing affordable housing is being reduced, and the proposal does not result in any adverse climate or environmental impacts.

Importantly, while the proposal exceeds the maximum number of storeys control. The built form respects the intended massing outcome and achieves the visual and environmental objectives the storey limit is intended to support.

For the above reasons, I am of the view that the variation requested, and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted. Consequently, I conclude that strict compliance with the development standard is unreasonable and unnecessary.

In accordance with the decision in *Wehbe*, compliance with a development standard is demonstrated to be unreasonable or unnecessary in this one way alone. On this basis, the requirements of Clause 4.6(3)(a) are satisfied.

Summary

In accordance with the decision in *Wehbe*, compliance with a development standard is demonstrated to be unreasonable or unnecessary in two ways (Test 1). On this basis, the requirements of Clause 4.6(3)(a) are satisfied. Notably, under Clause 4.6(3)(b) a consent authority must now be satisfied that there are sufficient planning grounds for the contravention of a development standard. Clause 4.6(3)(b) is addressed in the Section below.

4.2 Sufficient Environmental Planning Grounds (Clause 4.6(3)(b))

In this Section, we demonstrate there are sufficient environmental planning grounds to justify contravening the number of storey development standard as required by clause 4.6(3)(b) of the LEP. In *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 2018*, 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.

Clause 4.6(3)(b) of the KLEP 2015, requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating that:

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

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (Initial Action) (paragraph 24) states:



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“The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15].

Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].”

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as summarised in Initial Action.

On the above basis, the following environmental planning grounds are submitted to justify contravening the maximum number of storeys development standard:

1. Provision of Additional Housing Density

In accordance with the aim of Chapter 5 and 6 of the Housing SEPP, the proposal seeks to maximise residential density on a well-located site through the delivery of a high-quality apartment development. The design responds to the intent of the SEPP by promoting efficient land use, increased housing supply, and diverse dwelling types in an accessible urban setting.

All proposed height variations are limited to ancillary building elements, such as roof overruns, plant enclosures, privacy screens, and parapets. These elements do not contribute to the perceived height or bulk of the development when viewed from the public domain and are essential to achieving high standards of amenity and building performance.

Strict compliance with the number of storey standard would necessitate either the removal of apartments and/or high-quality communal open space, or the redistribution of floor space, resulting in smaller, lower-quality apartments on lower levels. Both outcomes would be contrary to the Aim of Chapter 6, which seek to encourage the development of low and mid rise housing in areas that are well located with regard to goods, services and public transport.

2. Responsiveness to Site Constraints and Amenity Enhancement

The site presents a natural ground level fall from RL 94.3m at the southern boundary to RL 91.45m at the northern boundary, with a narrowing footprint towards the north. The proposed building has been carefully designed to respond to these topographical and spatial constraints in a manner that is both contextually appropriate and performance-driven.

The development is predominantly contained within the 28.6 metre height limit, with minor and localised variations occurring where the slope is steepest. These modest exceedances are considered necessary to achieve key design outcomes, including:

- Provision of full-floor, cross-through apartments, enhancing natural ventilation and daylight access;
- Maintenance of consistent slab levels, avoiding inefficient internal stepping and improving accessibility and construction efficiency;



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- Avoidance of single-aspect apartments, thereby ensuring adequate solar access and improved residential amenity.

The proposed design represents a balanced and site-responsive approach, delivering high-quality housing outcomes while aligning with the intent of relevant planning controls.

3. Absence of Adverse Environmental Impacts

It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:

- The design supports functional living environments for future residents, incorporating compliance with ADG and Housing SEPP controls for solar access, natural ventilation, privacy, and open space.
- The storey count breach does not result in additional overshadowing, privacy or view loss impacts to adjoining development when considered against the backdrop of a compliant building envelope formulated by the 28.6m height limit.
- The built form respects the intended massing outcome and achieves the visual and environmental objectives the storey limit is intended to support.

4. Provision of Diverse and Well-Designed Housing

The proposal delivers a well-balanced mix of two- and three-bedroom apartments, supporting a range of household types, including multi-generational families, and responding to emerging demographic trends within the Ku-ring-gai Local Government Area (LGA). Key demographic indicators include:

- 55% of households in Ku-ring-gai are family households (ABS);
- A growing culturally and linguistically diverse (CALD) population; and
- A projected 24.2% of residents aged 65 and over by 2041 (forecast.id).

This mix of apartment types directly supports strategic planning objectives around housing diversity, accessibility, and liveability, as outlined in the Ku-ring-gai Local Strategic Planning Statement (LSPS) and the North District Plan.

The loss of Levels to achieve strict storey height compliance would result in a reduction in both the number and variety of dwellings, undermining the proposal's ability to meet these strategic goals. In this context, the variation are not only justified but necessary to deliver a high-quality, inclusive, and future-ready residential development. The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development.

Insistence on compliance with the height development standard will result in the removal of the rooftop communal area and/or the loss of three (3) levels containing apartments and result in a redistribution of floor space which is a disproportionate outcome given the limited impacts of the proposal. Specifically, the storey height breach does not significantly impact the amenity of surrounding properties when considered against the backdrop of the planning controls and has been designed to address the public domain and ensure the non-compliance is not visual jarring from the public domain or neighbouring properties.

It is noted that in Initial Action, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. *The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant*



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development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome compared to a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Insistence on compliance with the number of storey development standard will result in the proposal failing to meet the development of low and mid rise housing in areas that are well located with regard to goods, services and public transport and housing needs of the locality.

It is noted that in Initial Action, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. *The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 69(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*
87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome compared to a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.



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5. Conclusion

Having regard to the provisions within both Section 175(2) of the Housing SEPP and 4.6 of the KLEP 2015, we have formed the considered opinion that:

- The contextually responsive development is consistent with aims that relate to low and mid-rise housing with infill affordable rental housing contained within Chapter 2 and 5 of the Housing SEPP, and
- The application does not propose a variation to a Clause that is subject to the application of Clause 4.6(8) of the KLEP 2015 or a development prohibition within another EPI, and
- There are sufficient environmental planning grounds to justify contravening the building height development standard, and
- That having regard to a) and b), compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case.

Pursuant to Clause 4.6(3) of the KLEP 2015, the consent authority can therefore be satisfied that the applicant's written request has adequately demonstrated that:

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

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

In conclusion, we believe that in working with both the constraints of the site and the desired outcomes of the Housing SEPP, the proposed number of storey contravention present better planning, housing delivery and design outcomes when compared to alternative and more compliant options that were explored throughout the design process. Further, we have formed the considered opinion that there is no statutory or environmental planning impediment to the approval of a number of storey contravention in this instance. As this written request has satisfied statutory requirements pursuant to Clause 4.6 of the KLEP 2015, the proposed variation to the number of storey development standard can be approved.



Clause 4.6 Variation Request – Height of Building



Clause 4.6 Variation Request Statement

Height of Buildings Development Standard (Clause 16(3) and 155(2) of the Housing SEPP)

Residential flat building – 1 Russell Avenue, Lindfield



Prepared by Paro Consulting

June 2025



Clause 4.6 Variation Request – Height of Building

Document status

Revision	Date	Name	Signature
1	17/06/2025	Daniel Barber, Director B.Plan (Hons) M.ProDev, MPIA, CPP	
		Wilson Perdigao, Principal Planner B.Plan (Hons)	

Contact Details

Item	Details
Company	Paro Consulting (Paro Planning Pty Ltd) ABN 80 661 609 383
Postal Address	Suite 1.02, 38 Waterloo Street, Surry Hills NSW 2010
Email	daniel@paroconsulting.com.au
Phone	0422 983 710

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Clause 4.6 Variation Request – Height of Buildings

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1. Introduction

This Clause 4.6 variation request statement has been prepared in relation to the development standard for building height contained within Chapter 2, Part 2, Division 1, Clause 16(3) and Chapter 5, Clause 155(2) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).

Clause 4.6 of the Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) enables a consent authority to grant consent for a development even though the development contravenes a development standard of the LEP or another environmental planning instrument, such as in this case, the Housing SEPP.

This variation request is to accompany a development application (DA) for 1 Russell Street, Lindfield (the site) seeking approval for the demolition of the existing buildings and structures and the construction of a ten (10) storey residential flat building development containing 28 residential units inclusive of infill affordable rental housing above three (3) levels of basement parking, communal rooftop terrace level and associated landscaping and site works (the proposal).

The application has been lodged pursuant to the provisions of Chapters 2 Affordable housing (AH) and Chapter 5 Transport orientated development (TOD) of State Environmental Planning Policy (Housing) 2021 (Housing SEPP). The DA proposes an exceedance of the 28.6 metre building height development standard that applies to the site pursuant to section 16 of the Housing SEPP. Under the SEPP a maximum building height of 22 metres permitted for development in designated Transport Oriented Development (TOD) areas, which can be further lifted by 30% under the infill affordable housing provisions.

The proposed development includes variably sized breaches of the combined maximum building height development standards under the Housing SEPP - with a maximum proposed building height for part of the development being 30.9 metres. These variations primarily affect a portion of the south and eastern parts of rooftop parts of the building including swimming pool, lift overruns, stairs, plant equipment and roof structure.

This written variation request has been prepared pursuant to Clause 4.6 of the Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) and forms a written request that justifies the contravention of the building height development standard based upon specific circumstances of this proposal. It is submitted that permitting the proposed variation to Sections 16(3) and 155(2) of the Housing SEPP will allow for improved planning outcomes at the site.

This request has been prepared in accordance with Clause 35B of the *Environmental Planning and Assessment Regulation 2021* (the Regulation) which requires that a DA involving contravention of development standard must be accompanied by a document that sets out the grounds that demonstrates compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

This request has been prepared having regard to the Department of Planning and Environment's Guide to Varying Development Standards (November 2023) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (Court).

This request is structured to explicitly address the matters required to be addressed by the applicant under Clause 4.6(3)(a) and (b) for which the consent authority must be satisfied has been demonstrated according to Preston CJ in *Wehbe v Pittwater Council* (2007) NSW LEC 827 ('Wehbe').



2. Relevant planning instrument, development standard and proposed variations

2.1 Environmental Planning Instrument to be varied

The Environmental Planning Instrument (EPI) to be varied is State Environmental Planning Policy (Housing) 2021 (Housing SEPP). Chapter 5 (Transport-Oriented Development) of the Housing SEPP applies to the site. More specifically under Section 152 of the SEPP the site is located within a Transport Oriented Development Area and an LGA where this chapter is applicable. Additionally, Section 16(3) of Chapter 2 Division 1 In-fill affordable housing of the Housing SEPP also applies, which permits an additional height increase of 30%. Following the 2023 planning reforms, Clause 4.6 of the relevant Local Environmental Plan (LEP) - in this case, the KLEP 2015 - must be used to vary development standards within Environmental Planning Instruments (EPIs), including any relevant SEPPs. Which in this case is the Housing SEPP. The request is seeking to vary the maximum numeric height of building as it applies to the site and proposal.

2.2 Development standard to be varied

The Environmental Planning Instrument (EPI) to be varied is State Environmental Planning Policy (Housing) 2021 (Housing SEPP). Despite Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) permitting a maximum building height of a 11.5m for the site, the site is also identified as a TOD site. Therefore, the proposed height of the development has been determined through the combined application of Sections 155 and 16 of the Housing SEPP, as follows:

“155 Maximum building height and maximum floor space ratio

(1) This section identifies development standards for development under this chapter that, if complied with, prevent the consent authority from requiring more onerous standards for the matters. Note— See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

(2) The maximum building height for a residential flat building in a Transport Oriented Development Area is 22m.

(3) The maximum building height for a building containing shop top housing in a Transport Oriented Development Area is 24m.

(4) The maximum floor space ratio for a residential flat building or a building containing shop top housing in a relevant residential zone or relevant employment zone in a Transport Oriented Development Area is 2.5:1.

(5) This section does not apply to the extent a provision of another chapter of this policy or another environmental planning instrument permits a greater maximum building height or floor space ratio for a residential flat building or building containing shop top housing on the land”.

The provisions of section 155 of the Housing SEPP are satisfied for the purposes of the subject DA given that:

- The site located within the Ku-ring-gai LGA,
- The proposal is for a residential flat building in a relevant zone, and
- The site is located within a Transport Oriented Development (TOD) area (refer to Figure 1).



Clause 4.6 Variation Request – Height of Buildings

The prescribed maximum permitted building height development standard that applies to the site pursuant to section 155(2) of the Housing SEPP is 22 metres.

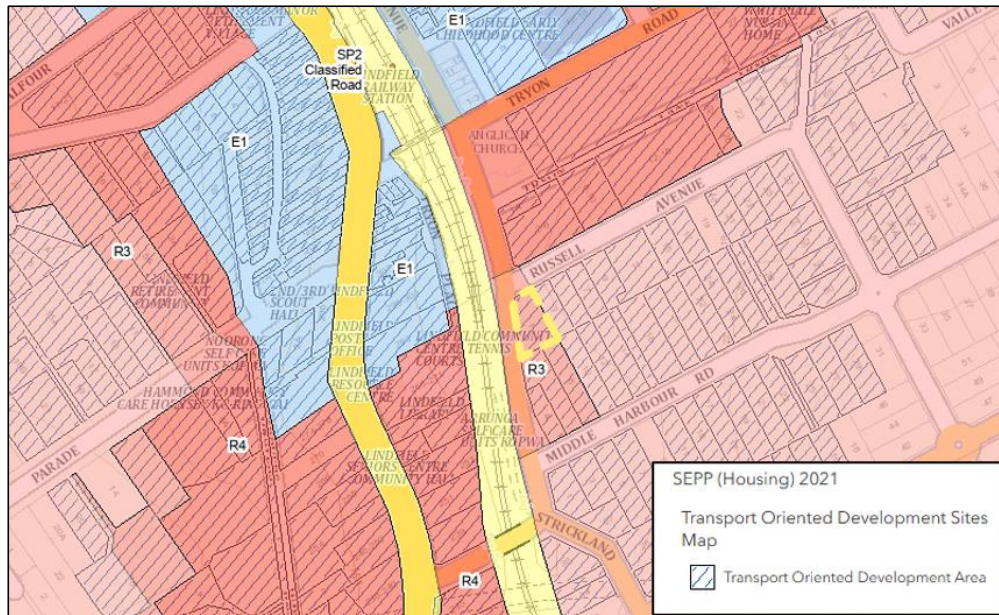


Figure 1: An extract of the TOD site and area mapping, which denotes areas that are subject to Chapter 5 of the Housing SEPP. The subject site is denoted by the yellow border, the TOD sites are denoted by blue shading (Source: NSW Planning Portal)

In addition, pursuant to Section 16 of the Housing SEPP, the proposal benefits from a 30% increase in building height above the base maximum height of 22 metres, as permitted under Chapter 5 (Transport Oriented Development) and Clause 155(2) of the Housing SEPP. For reference, Section 16 provides the following:

“16 Affordable housing requirements for additional floor space ratio

- (1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the development on the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).
- (2) The minimum affordable housing component, which must be at least 10%, is calculated as follows—

$$\text{affordable housing component} = \frac{\text{additional building height}}{(\text{as a percentage})} \div 2$$

- (3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the development on the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).

Example—



Clause 4.6 Variation Request – Height of Buildings

Development that is eligible for 20% additional floor space ratio because the development includes a 10% affordable housing component, as calculated under subsection (2), is also eligible for 20% additional building height if the development involves residential flat buildings or shop top housing.

(4) This section does not apply to development on land for which there is no maximum permissible floor space ratio.”

Section 16 allows additional floor space and FSR if the development includes a shop top housing development and meets certain pre-conditions as outlined in Section 15C. Under Clause 16(3), an additional 30% height above the ‘maximum permissible building height for the land’ (which is separately defined in the Housing SEPP) can be applied under the condition that the development also meets requirements specified under Clause 16(1) and 16(2).

Clause 16(3) of the SEPP permits a bonus additional building height of 30% for the land above the applicable height standard as an affordable housing component is to be provided (equating to a minimum 15% of the total GFA of the development).

The Housing SEPP defines “maximum permissible building height” as:

“maximum permissible building height means the maximum building height permitted on the land under Chapter 5 or 6, where relevant, an environmental planning instrument, other than this Policy, or a development control plan.”

Under the KLEP 2015 the maximum permitted building height for the site is 11.5 metres. When the prescribed building height development standard for the site, pursuant to Sections 155(2) and 16(3) of the Housing SEPP, is applied to the site the maximum HOB is 28.6 metres. Therefore, the proposed variation relates to a numerical development standard as it applies to the site and proposal and seeks to vary the HOB of 28.6 metres.

2.3 Details of proposed building height development standard variation

Areas of the development that are subject to exceedance in the maximum permitted 28.6 metre building height relates to the communal rooftop terrace (see Figures 2-5). Elements that are proposed to breach the 28.6 metre building height standard and degree of variation to the building height is as follows:

- Swimming pool, deck and balustrade to the north corner of the communal rooftop (1m variation); and
- Communal stair/lift and rooftop structure to the southern corner of the communal rooftop (2.3m variation).

Due to the site’s sloped topography, the size of variations associated with the above elements varies, with the most sizable variations relate to the communal rooftop terrace lift, stair,

As demonstrated by Figures 2-5 below, the greatest point of non-compliance when measured from existing ground level is the lift overruns, with a maximum height of 30.9 metres. The maximum height of the building constitutes a 2.3 metre (or 8%) variation to the 28.6 metre building height development standard permitted by Sections 155(2) and 16(3) of the Housing SEPP.



Clause 4.6 Variation Request – Height of Buildings

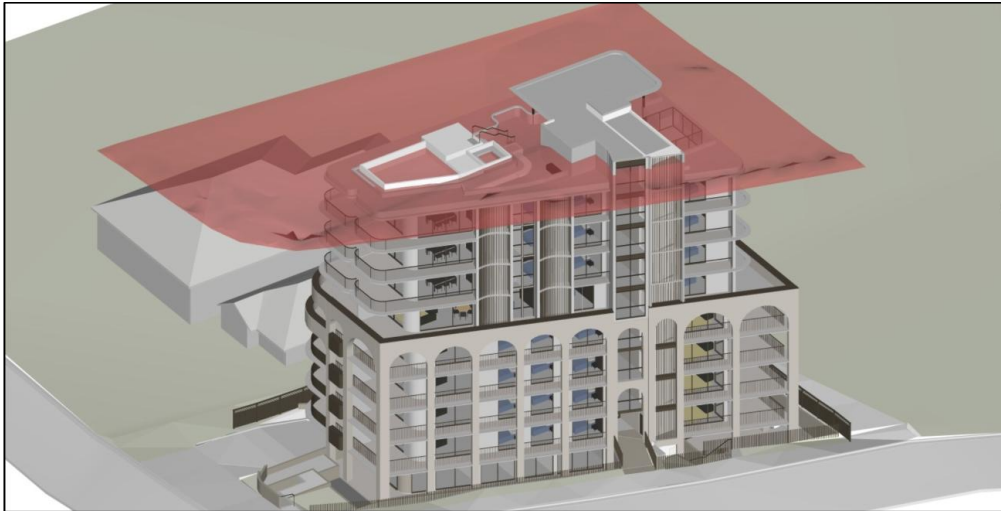


Figure 2: A 3D model of the development as viewed from the west, showing proposed elements that do not comply with the 28.6 metre building height overlay (denoted by the red overlay) Source: PSI Architects, 2025

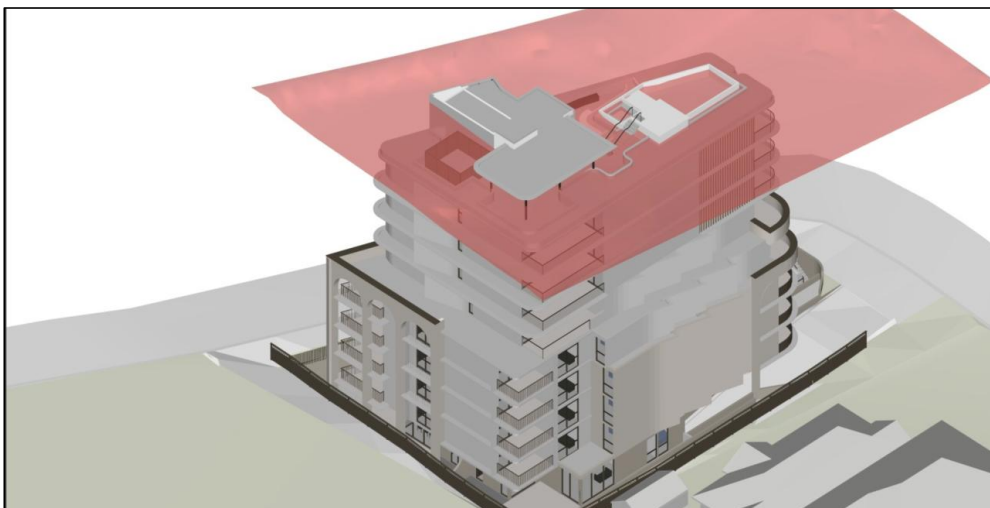


Figure 3: A 3D model of the development as viewed from the east, showing proposed elements that do not comply with the 28.6 metre building height overlay (denoted by the red overlay) Source: PSI Architects, 2025



Clause 4.6 Variation Request – Height of Buildings

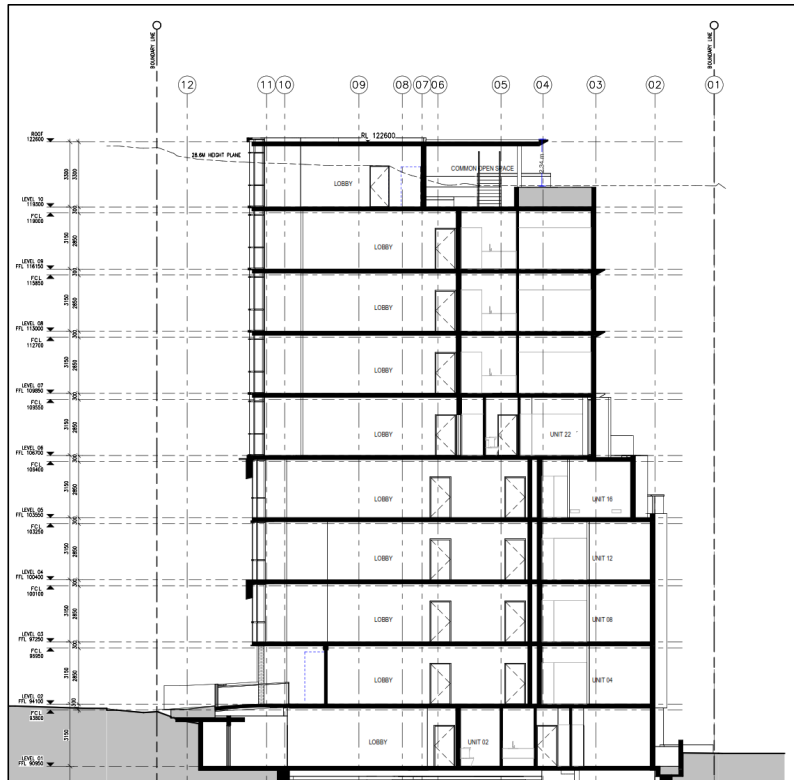


Figure 4: A short cross section of the development, shows the proposed elements to the 28.6 metre building height limit (denoted by the dotted line) Source: PSI Architects, 2025



Clause 4.6 Variation Request – Height of Buildings

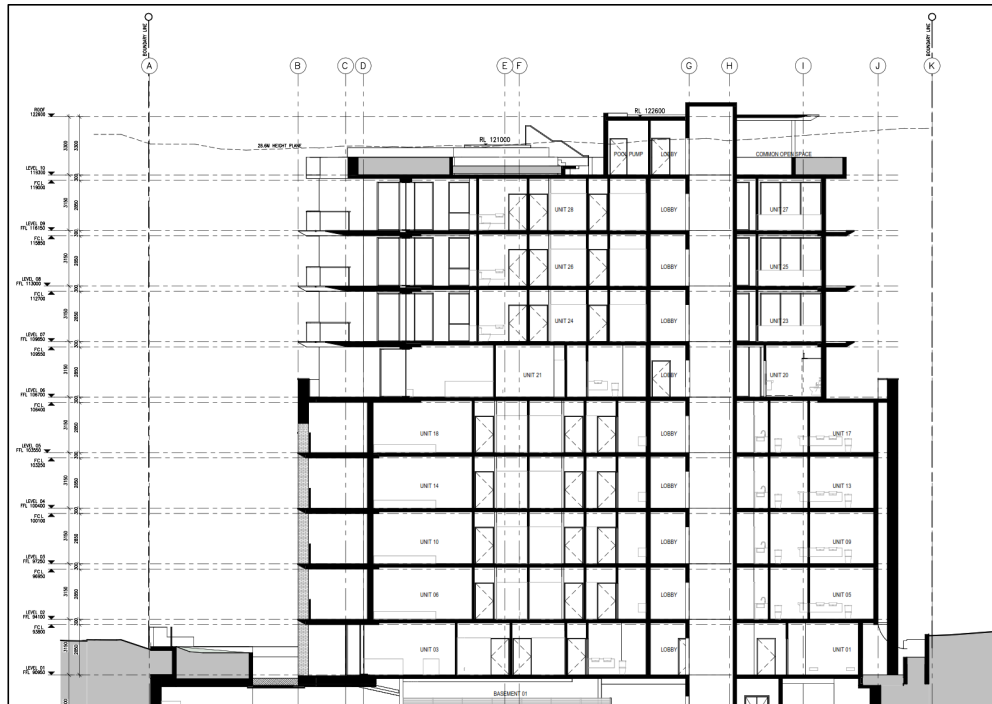


Figure 5: A long cross section of the development, shows the proposed elements to the 28.6 metre building height limit (denoted by the dotted line) Source: PSI Architects, 2025



3. Objectives and Provisions of Clause 4.6

The objectives and provisions of Clause 4.6 of the KLEP 2015, are as follows:

“(1) The objectives of this clause are as follows—

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note—

The [Environmental Planning and Assessment Regulation 2021](#) requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note.

When this Plan was made it did not include all of these zones.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,*



Clause 4.6 Variation Request – Height of Buildings

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5".

It is noted that Clause 16 and 155 of the Housing SEPP is not "expressly excluded" from the operation of Clause 4.6 in the KLEP 2015.

4. Key questions

Is the Planning Control a Development Standard?

The standards to be varied is a Development Standard to which Clause 4.6 applies.

Clause 16 of the Housing SEPP is expressed as 'additional' floor space ratio and building height on land and is a numeric development standard capable of being varied under clause 4.6 of the LEP.

The standard instrument defines a 'development standard' as:

"development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of—

(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,

(b) the proportion or percentage of the area of a site which a building or work may occupy,

(c) the character, location, siting, bulk, scale, shape, size, **height**, density, design or external appearance **of a building or work**,

(d) the cubic content or floor space of a building,

(e) the intensity or density of the use of any land, building or work,

(f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,

(g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,

(h) the volume, nature and type of traffic generated by the development,

(i) road patterns,

(j) drainage,

(k) the carrying out of earthworks,

(l) the effects of development on patterns of wind, sunlight, daylight or shadows,



Clause 4.6 Variation Request – Height of Buildings

- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed.”*

Based on the above definition, and with previous decisions of the Land & Environment Court in relation to matters which constitute development standards it is considered that the wording of the maximum building height standard constitutes a “development standard” as it is described as a numeric measure of building height, bulk and scale – so it is a numeric development standard capable of being varied under clause 4.6 of the KLEP 2015.

Is the Development Standard Excluded from the Operation of Clause 4.6?

The development standard is not excluded from the operation of clause 4.6 as it is not listed within clause 4.6(6) or clause 4.6(8) of the KLEP 2015. It is also noted that Clause 16(3) are not “expressly excluded” from the operation of Clause 4.6 in the KLEP 2015. It is also noted that this clause does not contain a provision which specifically excludes the application of clause 4.6. On this basis it is considered that these clauses are development standards for which clause 4.6 applies.

4.1 Unreasonable and Unnecessary (Clause 4.6(3)(a))

In this Section, we demonstrate 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 KLEP 2015.

Clause 4.6(3)(a) of the KLEP 2015, requires the consent authority to be satisfied that the applicant’s written request has adequately addressed clause 4.6(3)(b), by demonstrating that:

“compliance with the development standard is unreasonable or unnecessary in the circumstances”

In *Wehbe V Pittwater Council (2007)* NSW LEC 827 (‘Wehbe’) Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

“An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

The judgement goes on to state that:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

In *Wehbe*, Preston CJ identified five ways in which it could be shown that application of a development standard was unreasonable or unnecessary. However, His Honour said that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways. The five methods outlined in *Wehbe* are as follows (with our emphasis placed on the **First Method** for the purposes of this Clause 4.6 variation statement):



"1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).

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

5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method). Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the First Method".

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to Wehbe and states:

"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Test 1: The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The first test of Wehbe requires demonstration that the objectives of a development standard can be achieved notwithstanding noncompliance with that particular standard. Notwithstanding variation to the combined building height controls in the Housing SEPP, the objective and aims of the standards are achieved as outlined below.

The objectives and aims Division 1 of Chapter 2 of the Housing SEPP for In-fill affordable housing and Chapter 5 Transport Oriented Development are provided below, with a response as to how these have been met despite the variation to building height.

Section 15A Objective of Division 1 in Part 2 of the Housing SEPP for infill affordable housing states:

"The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households".

There are no objectives relating specifically to the maximum building height standard to be varied, however, any underlying objective, in this case the principles of the Housing SEPP policy, would be considered relevant in terms of enabling residential flat buildings with a component of affordable rental housing. The principles of the policy stipulated in clause 3 are:

- (a) enabling the development of diverse housing types, including purpose-built rental housing,*
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*
- (c) ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*



- (e) minimising adverse climate and environmental impacts of new housing development,*
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- (g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- (h) mitigating the loss of existing affordable rental housing.*

The proposed residential flat building development is considered to be consistent with these principles.

The proposed residential flat building development will provide for a greater number of housing options and housing diversity in a growing area that is well located with regards to goods, services and public transport, that will meet the needs of households in need of housing. It also provides high amenity for future residents in compliance with Apartment Design Guide (ADG) and Chapter 4 Design of Residential Apartment Development of the Housing SEPP. Furthermore, affordable housing in accordance with the infill affordable housing provisions is provided, and the proposal does not result in any adverse climate or environmental impacts.

Importantly, while the proposal exceeds the maximum building height control, it complies with the FSR standard under Clause 16(1) of the Housing SEPP. The proposed built form respects the intended massing outcome and achieves the visual and environmental objectives the height limit is intended to support.

For the above reasons, I am of the view that the variation requested, and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted. Consequently, I conclude that strict compliance with the development standard is unreasonable and unnecessary.

Summary

In accordance with the decision in *Wehbe*, compliance with a development standard is demonstrated to be unreasonable or unnecessary in one way (*Test 1*) alone. On this basis, the requirements of Clause 4.6(3)(a) are satisfied. Notably, under Clause 4.6(3)(b) a consent authority must now be satisfied that there are sufficient planning grounds for the contravention of a development standard. Clause 4.6(3)(b) is addressed in the Section below.

4.2 Sufficient Environmental Planning Grounds (Clause 4.6(3)(b))

In this Section, we demonstrate there are sufficient environmental planning grounds to justify contravening the height development standard as required by clause 4.6(3)(b) of the LEP. In *Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018*, 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.

Clause 4.6(3)(b) of the KLEP 2015, requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating that:

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

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (Initial Action) (paragraph 24) states:



“The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15].

Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].”

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as summarised in Initial Action.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome compared to a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

This request supports a modest contravention (8%) of the maximum building height standard under the Housing SEPP, on the grounds that the proposal results in an improved planning outcome relative to a strictly compliant scheme. There are numerous and substantive environmental planning grounds to justify the departure, which are set out below.

1. Provision of Additional Housing Density

In accordance with the aims of Chapter 5 of the Housing SEPP, the proposal seeks to maximise residential density on a well-located site through the delivery of a high-quality apartment development. The design responds to the intent of the SEPP by promoting efficient land use, increased housing supply, and diverse dwelling types in an accessible urban setting.

All proposed height variations are limited to ancillary building elements, such as roof overruns, plant enclosures, privacy screens, and parapets. These elements do not contribute to the perceived height or bulk of the development when viewed from the public domain and are essential to achieving high standards of amenity and building performance.

Strict compliance with the height standard would necessitate either the removal of apartments and/or high-quality communal open space, or the redistribution of floor space, resulting in smaller, lower-quality apartments on lower levels. Both outcomes would be contrary to Objectives (a) and (b) of Chapter 5, which seek to increase the supply of housing in accessible locations and promote design that responds to the housing needs of the community.

The proposal therefore represents a balanced and justified planning outcome, delivering increased housing capacity without adverse environmental or amenity impacts.



2. Responsiveness to Site Constraints and Amenity Enhancement

The site presents a natural ground level fall from RL 94.3m at the southern boundary to RL 91.45m at the northern boundary, with a narrowing footprint towards the north. The proposed building has been carefully designed to respond to these topographical and spatial constraints in a manner that is both contextually appropriate and performance-driven.

The development is predominantly contained within the 28.6 metre height limit, with minor and localized variations occurring where the slope is steepest. These modest exceedances are considered necessary to achieve key design outcomes, including:

- Provision of full-floor, cross-through apartments, enhancing natural ventilation and daylight access;
- Maintenance of consistent slab levels, avoiding inefficient internal stepping and improving accessibility and construction efficiency;
- Avoidance of single-aspect apartments, thereby ensuring adequate solar access and improved residential amenity.

Further excavation to strictly comply with height limits would result in subterranean ground-floor spaces, significantly diminishing residential amenity and compromising the quality of internal living environments. Such outcomes would be inconsistent with the design principles of the Apartment Design Guide (ADG) and the Ku-ring-gai Development Control Plan (DCP), particularly in relation to solar access, natural ventilation, and internal amenity.

The proposed design represents a balanced and site-responsive approach, delivering high-quality housing outcomes while aligning with the intent of relevant planning controls.

3. Absence of Adverse Environmental Impacts

The minor height exceedances proposed do not give rise to adverse impacts in terms of overlooking, visual privacy, or overshadowing. These variations are modest in scale, occur only where the site's natural slope is steepest, and are not visually discordant with the emerging built form character of the locality.

Importantly, the built form and associated amenity impacts would remain largely unchanged even if strict compliance with the height limit were enforced. However, such compliance would necessitate the removal of several dwellings, thereby undermining housing supply objectives and compromising the delivery of diverse, high-quality apartments.

In this context, requiring full compliance with the height standard is considered unreasonable and unnecessary, particularly given the proposal's strong alignment with the Apartment Design Guide (ADG), the Ku-ring-gai DCP, and broader strategic planning goals related to housing diversity, sustainability, and urban consolidation.

4. Provision of Diverse and Well-Designed Housing

The proposal delivers a well-balanced mix of two- and three-bedroom apartments, supporting a range of household types, including multi-generational families, and responding to emerging demographic trends within the Ku-ring-gai Local Government Area (LGA). Key demographic indicators include:

- 55% of households in Ku-ring-gai are family households (ABS),
- A growing culturally and linguistically diverse (CALD) population, and
- A projected 24.2% of residents aged 65 and over by 2041 (forecast.id).

This mix of apartment types directly supports strategic planning objectives around housing diversity, accessibility, and liveability, as outlined in the Ku-ring-gai Local Strategic Planning Statement (LSPS) and the North District Plan.



The loss of Level 9 apartments to achieve strict height compliance would result in a reduction in both the number and variety of dwellings, undermining the proposal's ability to meet these strategic goals. In this context, the minor height variations are not only justified but necessary to deliver a high-quality, inclusive, and future-ready residential development.

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development.

Insistence on compliance with the height development standard will result in the removal of the rooftop communal area and/or the loss of Level 9 apartments and result in a redistribution of floor space which is a disproportionate outcome given the limited impacts of the proposal. Specifically, the additional height does not significantly impact the amenity of surrounding properties when considered against the backdrop of the planning controls and has been designed to address the public domain and ensure the non-compliance is not visual jarring from the public domain or neighbouring properties.

It is noted that in Initial Action, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. *The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*
87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome compared to a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.



5. Conclusion

Having regard to the provisions within both Section 155(2) of the Housing SEPP and 4.6 of the KLEP 2015, we have formed the considered opinion that:

- The contextually responsive development is consistent with objectives that relate to building height within Chapter 5 of the Housing SEPP, and
- The application does not propose a variation to a Clause that is subject to the application of Clause 4.6(8) of the KLEP 2015 or a development prohibition within another EPI, and
- There are sufficient environmental planning grounds to justify contravening the building height development standard, and
- That having regard to a) and b), compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case.

Pursuant to Clause 4.6(3) of the KLEP 2015, the consent authority can therefore be satisfied that the applicant's written request has adequately demonstrated that:

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

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

In conclusion, we believe that in working with both the constraints of the site and the desired outcomes of the Housing SEPP, the proposed building height contraventions present better planning, housing delivery and design outcomes when compared to alternative and more compliant options that were explored throughout the design process. Further, we have formed the considered opinion that there is no statutory or environmental planning impediment to the approval of a building height contravention in this instance. As this written request has satisfied statutory requirements pursuant to Clause 4.6 of the KLEP 2015, the proposed variation to the building height development standard can be approved.



Clause 4.6 Variation Request – Minimum lot dimension (width and depth)



Clause 4.6 Variation Request Statement

Minimum lot dimension (width and depth) (Clause 6.6(2)(a)
of the KLEP)

Residential flat building – 1 Russell Avenue, Lindfield



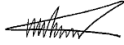
Prepared by Paro Consulting

June 2025



Clause 4.6 Variation Request – Minimum lot dimension (width and depth)

Document status

Revision	Date	Name	Signature
1	18/06/2025	Daniel Barber, Director B.Plan (Hons) M.ProDev, MPIA, CPP	
		Wilson Perdigao, Principal Planner B.Plan (Hons)	

Contact Details

Item	Details
Company	Paro Consulting (Paro Planning Pty Ltd) ABN 80 661 609 383
Postal Address	Suite 1.02, 38 Waterloo Street, Surry Hills NSW 2010
Email	daniel@paroconsulting.com.au
Phone	0422 983 710

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Clause 4.6 Variation Request – Minimum lot dimension (width and depth)

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Clause 4.6 Variation Request – Minimum lot dimension (width and depth)

1. Introduction

This Clause 4.6 variation request statement has been prepared in relation to the development standard for minimum lot dimension (width and depth) restriction for residential flat buildings contained within Part 4, Clause 6.6(2)(a) of the *Ku-ring-gai Local Environmental Plan 2015* (KLEP 2015)

Clause 4.6 of the Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) enables a consent authority to grant consent for a development even though the development contravenes a development standard of the LEP or another environmental planning instrument, such as in this case, the KLEP 2015.

This variation request is to accompany a development application (DA) for 1 Russell Street, Lindfield (the site) seeking approval for the demolition of the existing buildings and structures and the construction of a ten (10) storey residential flat building development containing 28 residential units inclusive of infill affordable rental housing above three (3) levels of basement parking, communal rooftop terrace level and associated landscaping and site works (the proposal).

The application has been lodged pursuant to the provisions of Chapters 2 Affordable housing (AH) and Chapter 5 Transport orientated development (TOD) of State Environmental Planning Policy (Housing) 2021 (Housing SEPP). The site comprises a total area of 1,131.3m² with a 16.47m frontage to Russell Avenue and a frontage of 41.385m to Lindfield Avenue. Clause 6.6(2) of the Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) stipulates development consent must not be granted for the erection of a residential flat building on a lot in a residential zone unless the lot has an area of at least 1,200m² and minimum dimensions (width and depth) of at least (a) if the area of the land is less than 1,800m² - 24 metres.

Clause 158 of SEPP (Housing) stipulates development consent may be granted to development for the purposes of residential flat buildings or shop top housing on land in a Transport Oriented Development Area, despite a minimum lot size restriction. Further, clause 149 of SEPP (Housing) stipulates development consent must not be granted to development for the purposes of residential flat buildings, independent living units or shop top housing on a lot in a Transport Oriented Development Area, unless the lot is at least 21m wide at the front building line.

We are of the view the Clause 6.6(2) of the KLEP 2015 is not applicable in this instance as a result of clause 158 of SEPP (Housing). Notwithstanding, this clause 4.6 variation request has been prepared for abundant caution.

This written variation request has been prepared pursuant to Clause 4.6 of the Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) and forms a written request that justifies the contravention of the building height development standard based upon specific circumstances of this proposal. It is submitted that permitting the proposed variation to Clause 6.6(2) of the KLEP 2015 will allow for improved planning outcomes at the site.

This request has been prepared in accordance with Clause 35B of the *Environmental Planning and Assessment Regulation 2021* (the Regulation) which requires that a DA involving contravention of development standard must be accompanied by a document that sets out the grounds that demonstrates compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

This request has been prepared having regard to the Department of Planning and Environment's Guide to Varying Development Standards (November 2023) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (Court).

This request is structured to explicitly address the matters required to be addressed by the applicant under Clause 4.6(3)(a) and (b) for which the consent authority must be satisfied has been demonstrated according to Preston CJ in *Wehbe v Pittwater Council* (2007) NSW LEC 827 ('Wehbe').

Paro Consulting (Paro Planning Pty Ltd)
A 1.02, 38 Waterloo Street, Surry Hills
T 0422983710 E daniel@paroconsulting.com.au



Clause 4.6 Variation Request – Minimum lot dimension (width and depth)

2. Relevant planning instrument, development standard and proposed variations

2.1 Environmental Planning Instrument to be varied

The Environmental Planning Instrument (EPI) to be varied is the Ku-ring-gai Local Environmental Plan 2015 (KLEP).

2.2 Development standard to be varied and objectives of the standard

Clause 6.6(2) of the KLEP 2015 includes a minimum allotment dimension standard for residential flat buildings. Pursuant to clause 6.6(2) development consent must not be granted for the erection of a residential flat building on a lot in a residential zone unless the lot has an area of at least 1,200 square metres and minimum dimensions (width and depth) of at least

“(a) if the area of the land is less than 1,800 square metres—**24 metres**, or

(b) if the area of the land is 1,800 square metres or more—30 metres”.

The stated objectives of this clause are as follows:

“(a) to provide site requirements for development for the purposes of multi dwelling housing and residential flat buildings so as to provide for the orderly and economic development of residential land while maintaining the local character, and

(b) to ensure that lot sizes and dimensions of medium and high density residential sites allow for generous landscaped areas and setbacks to ensure the amenity of adjoining properties and to support the desired future character of these areas”.

2.3 Details of proposed building height development standard variation

The allotment has a total area of 1,131.4m² and accordingly a minimum dimension (width and depth) of 24 metres applies. The site is irregular in shape which tapers in dimension towards the Russell Avenue frontage and has a width between 16.47 – 33.832 metres in width being non-compliant by 7.53m. A survey extract is at Figure 1.

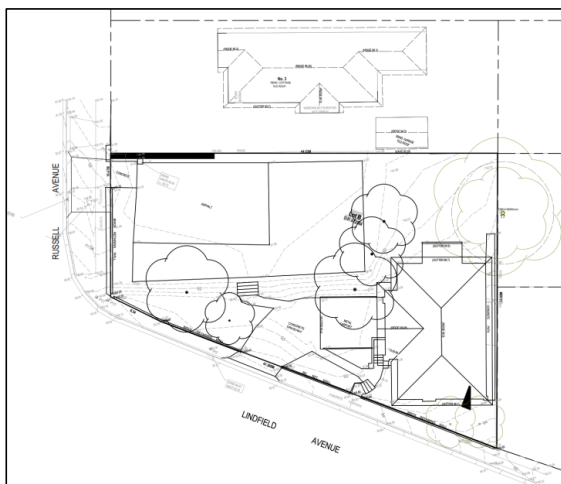


Figure 1. Site Survey

Paro Consulting (Paro Planning Pty Ltd)
A 1.02, 38 Waterloo Street, Surry Hills
T 0422983710 E daniel@paroconsulting.com.au



Clause 4.6 Variation Request – Minimum lot dimension (width and depth)

3. Objectives and Provisions of Clause 4.6

The objectives and provisions of Clause 4.6 of the KLEP 2015, are as follows:

“(1) The objectives of this clause are as follows—

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note—

The [Environmental Planning and Assessment Regulation 2021](#) requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note.

When this Plan was made it did not include all of these zones.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,*



Clause 4.6 Variation Request – Minimum lot dimension (width and depth)

(c) clause 5.4,

(caa) clause 5.5”.

It is noted that Clause 6.6(2) of the KLEP 2015 is not “expressly excluded” from the operation of Clause 4.6 in the KLEP 2015.

Clause 4.6(1) of KLEP provides the following objectives:

“(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances”.

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of Initial Action the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in Initial Action is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of KLEP provides:

“Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause”.

This clause applies to the clause 6.6(2)(a) Minimum allotment dimension standard of KLEP 2015.

Clause 4.6(3) of KLEP provides:

“Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

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

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

The proposed development does not strictly comply with the minimum dimension provision at clause 6.6(2)(a) of KLEP 2015 which specifies a maximum site dimension however strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.



Clause 4.6 Variation Request – Minimum lot dimension (width and depth)

4. Key questions

Is the Planning Control a Development Standard?

The standards to be varied is a Development Standard to which Clause 4.6 applies.

Clause 6.6 Requirements for multi dwelling housing and residential flat buildings of the KLEP 2015 is expressed as a numeric development standard capable of being varied under clause 4.6 of the LEP.

The standard instrument defines a 'development standard' as:

“development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of—

(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,

(b) the proportion or percentage of the area of a site which a building or work may occupy,

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

(d) the cubic content or floor space of a building,

(e) the intensity or density of the use of any land, building or work,

(f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,

(g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,

(h) the volume, nature and type of traffic generated by the development,

(i) road patterns,

(j) drainage,

(k) the carrying out of earthworks,

(l) the effects of development on patterns of wind, sunlight, daylight or shadows,

(m) the provision of services, facilities and amenities demanded by development,

(n) the emission of pollution and means for its prevention or control or mitigation, and

(o) such other matters as may be prescribed.”

Based on the above definition, and with previous decisions of the Land & Environment Court in relation to matters which constitute development standards it is considered that the wording of the standard constitutes a “development standard” as it is described as a site numeric dimension requirement that seeks to control the minimum size and geometry of an allotment for residential flat development – so it is a numeric development standard capable of being varied under clause 4.6 of the KLEP 2015.

Is the Development Standard Excluded from the Operation of Clause 4.6?

Paro Consulting (Paro Planning Pty Ltd)
A 1.02, 38 Waterloo Street, Surry Hills
T 0422983710 E daniel@paroconsulting.com.au



Clause 4.6 Variation Request – Minimum lot dimension (width and depth)

The development standard is not excluded from the operation of clause 4.6 as it is not listed within clause 4.6(6) or clause 4.6(8) of the KLEP 2015. It is also noted that Clause 6.6 is not “expressly excluded” from the operation of Clause 4.6 in the KLEP 2015. It is also noted that this clause does not contain a provision which specifically excludes the application of clause 4.6. On this basis it is considered that these clauses are development standards for which clause 4.6 applies.

4.1 Unreasonable and Unnecessary (Clause 4.6(3)(a))

In this Section, we demonstrate 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 KLEP 2015.

Clause 4.6(3)(a) of the KLEP 2015, requires the consent authority to be satisfied that the applicant’s written request has adequately addressed clause 4.6(3)(b), by demonstrating that:

“compliance with the development standard is unreasonable or unnecessary in the circumstances”

In *Wehbe v Pittwater Council* (2007) NSW LEC 827 (‘Wehbe’) Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

“An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

The judgement goes on to state that:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

In *Wehbe*, Preston CJ identified five ways in which it could be shown that application of a development standard was unreasonable or unnecessary. However, His Honour said that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways. The five methods outlined in *Wehbe* are as follows (with our emphasis placed on the **First Method** for the purposes of this Clause 4.6 variation statement):

“1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).

4. The development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Method).

5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone



Clause 4.6 Variation Request – Minimum lot dimension (width and depth)

(Fifth Method). Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the First Method”.

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

“...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

Test 1: The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

An assessment as to the consistency of the proposal against the stated objectives of this clause is as follows.

“(a) to provide site requirements for development for the purposes of multi dwelling housing and residential flat buildings so as to provide for the orderly and economic development of residential land while maintaining the local character”

The site comprises a total area of 1,131.3m² with a 16.47m frontage to Russell Avenue and a frontage of 41.385m to Lindfield Avenue. These site dimensions are depicted in the survey extract at Figure 1.

Whilst the Russell Avenue frontage width is non-compliant with the minimum 24m dimension requirement by 7.53m the balance of the allotment geometry/ dimension in both width and depth exceeds the minimum 24m standard. Further, under the SEPP (Housing) affordable housing provisions the site is subject to a minimum 450m² lot size and under the SEPP Housing TOD provisions the lot is to be at least 21m wide at the front building line. That is, the geometry of the allotment which also exceeds the applicable minimum lot size and site width development standard will facilitate the siting of a residential flat building which will provide for the orderly and economic development of residential land while maintaining the local character.

Notwithstanding the allotment dimension variation the proposal satisfies this objective.

“(b) to ensure that lot sizes and dimensions of medium and high density residential sites allow for generous landscaped areas and setbacks to ensure the amenity of adjoining properties and to support the desired future character of these areas”.

In response to Objective (b) of the relevant development standard, the proposal demonstrates that the variation in allotment dimension is appropriately offset by the compliant geometry of the remainder of the site. This ensures that the development can still accommodate generous landscaped areas, appropriate setbacks, and sufficient separation to protect the amenity of adjoining properties and support the desired future character of the locality.

Notwithstanding the non-compliance, the proposal satisfies the intent of the standard by delivering a site layout that is functional, well-proportioned, and capable of supporting a high-quality residential outcome.

Having regard to the above, it is submitted that the non-compliant allotment geometry achieves the objectives of the standard to at least the same degree as a fully compliant site. As such, strict compliance is considered both unreasonable and unnecessary in this instance, particularly given the proposal’s consistency with the broader planning objectives and its ability to deliver a contextually appropriate and high-amenity development.

Summary

In accordance with the decision in *Wehbe*, compliance with a development standard is demonstrated to be unreasonable or unnecessary in one way (Test 1) alone. On this basis, the requirements of Clause 4.6(3)(a) are satisfied. Notably, under Clause 4.6(3)(b) a consent authority must now be satisfied that there are sufficient planning grounds for the contravention of a development standard. Clause 4.6(3)(b) is addressed in the Section below.



Clause 4.6 Variation Request – Minimum lot dimension (width and depth)

4.2 Sufficient Environmental Planning Grounds (Clause 4.6(3)(b))

In this Section, we demonstrate there are sufficient environmental planning grounds to justify contravening the height development standard as required by clause 4.6(3)(b) of the LEP. In *Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018*, 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.

Clause 4.6(3)(b) of the KLEP 2015, requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating that:

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

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (Initial Action) (paragraph 24) states:

"The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15].

Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31]."

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as summarised in Initial Action.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome compared to a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

This request supports a modest contravention of the minimum lot dimension standard under clause 6.6(2)(a) of the KLEP 2015, on the grounds that the proposal results in an improved planning outcome relative to a strictly compliant scheme. There are numerous and substantive environmental planning grounds to justify the departure, which are set out below.

1. Clause 4.6 prepared on the basis of abundant caution

Clause 159 of SEPP (Housing) stipulates the lot is at least 21m wide at the front building line

Further, Clause 19 of SEPP (Housing) stipulates a minimum non-discrepancy standard of 450m² for residential development subject to the affordable housing infill provisions.



Clause 4.6 Variation Request – Minimum lot dimension (width and depth)

Furthermore, clause 158 of SEPP (Housing) stipulates:

“(1) This section applies if another environmental planning instrument applying to the land specifies a minimum lot size for development for the purposes of residential flat buildings or shop top housing (a minimum lot size restriction).

(2) Development consent may be granted to development for the purposes of residential flat buildings or shop top housing on land in a Transport Oriented Development Area, despite a minimum lot size restriction”.

The site area is 1,131.3m² and the front building line to Lindfield Avenue is 41.385m in compliance with the minimum size area and site width design criteria under Clause 19 and 159 of the SEPP (Housing). Further, in my view clause 6.6(2)(a) of the KLEP 2015 is not applicable, as this is a minimum lot size restriction, and in accordance with Clause 158 of SEPP (Housing) enables the development consent authority to grant development consent to the development despite a minimum lot size restriction. Therefore, in my view the clause 4.6 variation request is not required, and this report has been submitted for abundant caution.

2. Lack of impact

The site is irregular in shape which tapers in dimension towards the Russell Avenue frontage which is 16.47m in width being a maximum non-compliant by 7.53m. Notwithstanding this, the average site width is 25.151m, and site width is predominantly greater than 24m wide and area of non-compliance predominately relates to the front setback area and not building envelope.

The non-compliance is appropriately described both quantitatively and qualitatively as minor. The variation will restrict development on the land to the extent that it will give rise to adverse streetscape, heritage conservation or residential amenity impacts. Consistent with the findings of Commissioner Walsh in *Eather v Randwick City Council* [2021] NSWLEC 1075 and Commissioner Grey in *Petrovic v Randwick City Council* [2021] NSW LEC 1242, the particularly small departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.

3. Objective of Chapter 2 SEPP Housing

The variation is quantitatively and qualitatively appropriately described as minor and does not compromise the development's ability to achieve the objective of Chapter 2 of SEPP Housing as previously outlined. In fact, approval of the minor variation will facilitate a development of exceptional design quality which will appropriately increase housing density within 400m of the Lindfield Station in a building form which is well designed, of appropriate bulk and scale and which provides exceptional amenity and liveability whilst also providing affordable housing to meet the needs of essential workers and vulnerable members of the community.

4. Objectives of the Environmental Planning and Assessment Act 1979

Approval of the minor variation will promote the delivery of housing consistent with objective 1.3(d) of the Act.

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

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development.

Insistence on compliance with the minimum lot development standard of the LEP would be incongruous with the provisions of SEPP Housing. It is noted that in *Initial Action*, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. *The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of*



Clause 4.6 Variation Request – Minimum lot dimension (width and depth)

minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome compared to a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.



Clause 4.6 Variation Request – Minimum lot dimension (width and depth)

5. Conclusion

Having regard to the provisions within both Section 158 and 159 of the Housing SEPP and 4.6 of the KLEP 2015, we have formed the considered opinion that:

- Insistence on compliance with the minimum allotment dimension development standard of the LEP would be incongruous with the provisions of SEPP Housing,
- The application does not propose a variation to a Clause that is subject to the application of Clause 4.6(8) of the KLEP 2015 or a development prohibition within another EPI,
- There are sufficient environmental planning grounds to justify contravening the development standard, and
- That having regard to the above, compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case.

Pursuant to Clause 4.6(3) of the KLEP 2015, the consent authority can therefore be satisfied that the applicant's written request has adequately demonstrated that:

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

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

In conclusion, we believe that in working with both the constraints of the site and the desired outcomes of the Housing SEPP, the proposed development present better planning, housing delivery and design outcomes. Further, we have formed the considered opinion that there is no statutory or environmental planning impediment to the approval of a minimum allotment dimension contravention in this instance. As this written request has satisfied statutory requirements pursuant to Clause 4.6 of the KLEP 2015, the proposed variation to the minimum allotment development standard can be approved.



Clause 4.6 Variation Request – Clause 16 maximum FSR control



Clause 4.6 Variation Request Statement

Floor Space Ratio Standard (Clause 16 of Housing SEPP)

Residential flat building – 1 Russell Avenue, Lindfield



Prepared by Paro Consulting

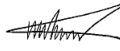
August 2025

Paro Consulting (Paro Planning Pty Ltd)
T 0422 983 710
E daniel@paroconsulting.com.au
A 1.02, 38 Waterloo Street, Surry Hills



Clause 4.6 Variation Request – Clause 16 maximum FSR control

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Revision	Date	Name	Signature
2	7/08/2025	Daniel Barber, Director B.Plan (Hons) M.ProDev, MPIA, CPP	
		Wilson Perdigao, Principal Planner B.Plan (Hons)	

Contact Details

Item	Details
Company	Paro Consulting (Paro Planning Pty Ltd) ABN 80 661 609 383
Postal Address	Suite 1.02, 38 Waterloo Street, Surry Hills NSW 2010
Email	daniel@paroconsulting.com.au
Phone	0422 983 710

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Clause 4.6 Variation Request – Clause 16 maximum FSR control

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Clause 4.6 Variation Request – Clause 16 maximum FSR control

1. Introduction

This Clause 4.6 variation request statement has been prepared in relation to the Floor Space Ratio development standard for within Chapter 2, Part 2, Division 1, Clause 16 of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).

Clause 4.6 of the Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) enables a consent authority to grant consent for a development even though the development contravenes a development standard of the LEP or another environmental planning instrument, such as in this case, the Housing SEPP.

This variation request is to accompany a development application (DA) for 1 Russell Street, Lindfield (the site) seeking approval for the demolition of the existing buildings and structures and the construction of a ten (10) storey residential flat building development containing 28 residential units inclusive of infill affordable rental housing above three (3) levels of basement parking, communal rooftop terrace level and associated landscaping and site works (the proposal).

The application has been lodged pursuant to the provisions of Chapters 2 Affordable housing (AH) and Chapter 6 Low and Mid Rise Housing (LMR) of State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

Clause 16 Housing SEPP stipulates a maximum FSR Standard of 2.86:1 (3,235.518m²), which is calculated based on the 2.2:1 permissible floor space ratio (FSR) for the development on the land under the LMR plus an additional FSR of up to 30%. The proposal includes an FSR of 2.918:1 (3,301.2m² GFA) which results in a 0.05:1 (65.682m²) non-compliance with the FSR standard.

This written variation request has been prepared pursuant to Clause 4.6 of the Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) and forms a written request that justifies the contravention of the FSR development standard based upon specific circumstances of this proposal. It is submitted that permitting the proposed variation to Clause 16 of the Housing SEPP will allow for improved planning outcomes at the site.

This request has been prepared in accordance with Clause 35B of the *Environmental Planning and Assessment Regulation 2021* (the Regulation) which requires that a DA involving contravention of development standard must be accompanied by a document that sets out the grounds that demonstrates compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

This request has been prepared having regard to the Department of Planning and Environment's Guide to Varying Development Standards (November 2023) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (Court).

This request is structured to explicitly address the matters required to be addressed by the applicant under Clause 4.6(3)(a) and (b) for which the consent authority must be satisfied has been demonstrated according to Preston CJ in *Wehbe v Pittwater Council* (2007) NSW LEC 827 ('Wehbe').



Clause 4.6 Variation Request – Clause 16 maximum FSR control

2. Relevant planning instrument, development standard and proposed variations

2.1 Environmental Planning Instrument to be varied

The Environmental Planning Instrument (EPI) to be varied is State Environmental Planning Policy (Housing) 2021 (Housing SEPP). Chapter 2 Affordable Housing (AH) of the Housing SEPP applies to the site. Following the 2023 planning reforms, Clause 4.6 of the relevant Local Environmental Plan (LEP) – in this case, the KLEP 2015 – must be used to vary development standards within Environmental Planning Instruments (EPIs), including any relevant SEPPs. Which in this case is the Housing SEPP. The request is seeking to vary the maximum FSR standard as it applies to the site and proposal.

2.2 Development standard to be varied

The standard that is proposed to be varied is the maximum Floor Space Ratio (FSR) standard set out in Clause 16 of the Housing SEPP. Clause 16 of the Housing SEPP states:

“16 Affordable housing requirements for additional floor space ratio

(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the development on the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).

(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows—

$$\text{affordable housing component} = \frac{\text{additional floor space ratio}}{(\text{as a percentage})} \div 2$$

(3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the development on the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).

Example—

Development that is eligible for 20% additional floor space ratio because the development includes a 10% affordable housing component, as calculated under subsection (2), is also eligible for 20% additional building height if the development involves residential flat buildings or shop top housing.

(4) This section does not apply to development on land for which there is no maximum permissible floor space ratio”.

Under Clause 16 Housing SEPP a maximum FSR Standard of 2.86:1 (3,235.518m²), which is calculated based on the 2.2:1 permissible floor space ratio (FSR) for the development on the land under the LMR plus an additional FSR of up to 30%. The FSR bonus is conditional on 15% of the total residential floor area be provided as affordable rental housing for 15 years and managed by a registered community housing provider.



Clause 4.6 Variation Request – Clause 16 maximum FSR control

2.3 Extent of Variation

The proposal includes an FSR of 2.918:1 (3,301.2m² GFA) which results in a 0.05:1 (65.682m²) non-compliance with the FSR standard or a 2% variation.

This written variation request has been prepared pursuant to Clause 4.6 of the Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) and forms a written request that justifies the contravention of the FSR control development standard based upon specific circumstances of this proposal. It is submitted that permitting the proposed variation to Clause 16 of the Housing SEPP will allow for improved planning outcomes at the site.



Clause 4.6 Variation Request – Clause 16 maximum FSR control

3. Objectives and Provisions of Clause 4.6

The objectives and provisions of Clause 4.6 of the KLEP 2015, are as follows:

“(1) The objectives of this clause are as follows—

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note—

The [Environmental Planning and Assessment Regulation 2021](#) requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note.

When this Plan was made it did not include all of these zones.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,*



Clause 4.6 Variation Request – Clause 16 maximum FSR control

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5".

It is noted that Clause 16 of the Housing SEPP is not "expressly excluded" from the operation of Clause 4.6 in the KLEP 2015.

4. Key questions

Is the Planning Control a Development Standard?

The standard to be varied is a Development Standard to which Clause 4.6 applies.

The FSR Standard included within Clause 16 of the Housing SEPP is a numeric development standard capable of being varied under clause 4.6 of the LEP.

The standard instrument defines a 'development standard' as:

"development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of—

(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,

(b) the proportion or percentage of the area of a site which a building or work may occupy,

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

(d) the cubic content or floor space of a building,

(e) the intensity or density of the use of any land, building or work,

(f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,

(g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,

(h) the volume, nature and type of traffic generated by the development,

(i) road patterns,

(j) drainage,

(k) the carrying out of earthworks,

(l) the effects of development on patterns of wind, sunlight, daylight or shadows,

(m) the provision of services, facilities and amenities demanded by development,

(n) the emission of pollution and means for its prevention or control or mitigation, and



Clause 4.6 Variation Request – Clause 16 maximum FSR control

(o) such other matters as may be prescribed.”

Based on the above definition, and with previous decisions of the Land & Environment Court in relation to matters which constitute development standards it is considered that the wording of the maximum FSR control for residential flat buildings in Clause 16 of the Housing SEPP constitutes a “development standard” as it is described as a numeric measure of bulk and scale.

Is the Development Standard Excluded from the Operation of Clause 4.6?

The development standard is not excluded from the operation of clause 4.6 as it is not listed within clause 4.6(6) or clause 4.6(8) of KLEP 2015. It is also noted that Clause 16 of the Housing SEPP is not “expressly excluded” from the operation of Clause 4.6 in the KLEP 2015. It is also noted that clause 16 does not contain a provision which specifically excludes the application of clause 4.6. On this basis it is considered that clause 16 is a development standard for which clause 4.6 applies.

4.1 Unreasonable and Unnecessary (Clause 4.6(3)(a))

In this Section, we demonstrate 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 KLEP 2015.

Clause 4.6(3)(a) of the KLEP 2015, requires the consent authority to be satisfied that the applicant’s written request has adequately addressed clause 4.6(3)(b), by demonstrating that:

“compliance with the development standard is unreasonable or unnecessary in the circumstances”

In *Wehbe v Pittwater Council* (2007) NSW LEC 827 (‘Wehbe’) Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

“An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

The judgement goes on to state that:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

In *Wehbe*, Preston CJ identified five ways in which it could be shown that application of a development standard was unreasonable or unnecessary. However, His Honour said that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways. The five methods outlined in *Wehbe* are as follows (with our emphasis placed on the **First Method** for the purposes of this Clause 4.6 variation statement):

“1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).”



Clause 4.6 Variation Request – Clause 16 maximum FSR control

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Method).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method). Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the First Method”.*

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to Wehbe and states:

“...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

Test 1: The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The first test of Wehbe requires demonstration that the objectives of a development standard can be achieved notwithstanding non-compliance with that particular standard. Notwithstanding variation to the FSR control in the Housing SEPP, the objective and aims of the standard are achieved as outlined below.

The objective of 15A Objectives of division of Division 1 of Part 2 of the Housing SEPP stipulates:

“The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households”.

There are no objectives relating specifically to the maximum FSR standard, however, any underlying objective, in this case the principles of the Housing SEPP policy, would be considered relevant in terms of enabling low and mid rise housing development including affordable rental housing provision. The principles of the policy stipulated in clause 3 are:

- (a) *enabling the development of diverse housing types, including purpose-built rental housing,*
- (b) *encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*
- (c) *ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) *promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- (e) *minimising adverse climate and environmental impacts of new housing development,*
- (f) *reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- (g) *supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*



Clause 4.6 Variation Request – Clause 16 maximum FSR control

(h) mitigating the loss of existing affordable rental housing.

The proposed residential flat building development is considered to be consistent with the above objectives and principles of the policy for the following reasons:

- The extent of the 2% FSR variation is considered to be negligible and the built form respects the intended massing outcome and achieves the visual and environmental objectives the density is intended to support.
- The FSR variation results in an increase in the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households. No existing affordable housing is being reduced, and the proposal does not result in any adverse climate or environmental impacts.
- The proposed residential flat building will provide for a greater number of housing options and housing diversity in a growing area that is well located with regards to goods, services and public transport, that will meet the needs of households in need of housing. It also provides high amenity for future residents in compliance with Apartment Design Guide (ADG) and Chapter 4 Design of Residential Apartment Development of the Housing SEPP.

For the above reasons, I am of the view that the variation requested, and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted. Consequently, I conclude that strict compliance with the development standard is unreasonable and unnecessary.

In accordance with the decision in *Wehbe*, compliance with a development standard is demonstrated to be unreasonable or unnecessary in this one way alone. On this basis, the requirements of Clause 4.6(3)(a) are satisfied.

Summary

In accordance with the decision in *Wehbe*, compliance with a development standard is demonstrated to be unreasonable or unnecessary in two ways (Test 1). On this basis, the requirements of Clause 4.6(3)(a) are satisfied. Notably, under Clause 4.6(3)(b) a consent authority must now be satisfied that there are sufficient planning grounds for the contravention of a development standard. Clause 4.6(3)(b) is addressed in the Section below.

4.2 Sufficient Environmental Planning Grounds (Clause 4.6(3)(b))

In this Section, we demonstrate there are sufficient environmental planning grounds to justify contravening the FSR development standard as required by clause 4.6(3)(b) of the LEP. In *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 2018*, 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.

Clause 4.6(3)(b) of the KLEP 2015, requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating that:

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

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (Initial Action) (paragraph 24) states:

"The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or



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element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15].

Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].”

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as summarised in Initial Action.

On the above basis, the following environmental planning grounds are submitted to justify contravening the maximum FSR development standard:

1. The proposal is considered consistent with the aims and objectives of Housing SEPP

In accordance with the aim of Chapter 5 and 6 of the Housing SEPP, the proposal seeks to maximise residential density on a well-located corner gateway site through the delivery of a high-quality apartment development. The design responds to the intent of the SEPP by promoting efficient land use, increased housing supply, and diverse dwelling types in an accessible urban setting located with regard to goods, services and 150m walking distance of Lindfield Station.

The extent of the negligible 2% FSR variation will not contribute to the perceived height or bulk of the development when viewed from the public domain and are essential to achieving high standards of amenity and building performance. It also provides high amenity for future residents in compliance with Apartment Design Guide (ADG) and Chapter 4 Design of Residential Apartment Development of the Housing SEPP.

The FSR variation results in an increase in the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.

2. The proposal is considered consistent with the future character as a result of the other saved TOD developments

The site was subject to a maximum FSR of 3.25:1 under chapter 2 and 5 of SEPP Housing when included within the Lindfield TOD Centre. The proposal has been amended to be made under chapter 2 and 6 of SEPP Housing which results in a reduction of the maximum FSR standard from 3.25:1 to 2.86:1. The site is located within the visual context of a number of proposed developments which were saved as part of the TOD Centre for Lindfield including an FSR of 3.25:1. An FSR of 2.918:1 is not considered out of context with the future character of the immediate context of the site, particularly as the subject site is located close to Lindfield station than the referred development site (see below).

- 24-26 Russell Avenue – 3.25:1 FSR
- 59-63 Trafalgar Avenue 1A & 1B Valley Road – 3.25:1 FSR
- 16-20 Middle Harbour Road – 3.25:1 FSR



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Figure 1. 24-26 Russell Avenue (Source: Ku-ring-gai Council)



Figure 2. 59-63 Trafalgar Avenue 1A & 1B Valley Road (Source: Ku-ring-gai Council)

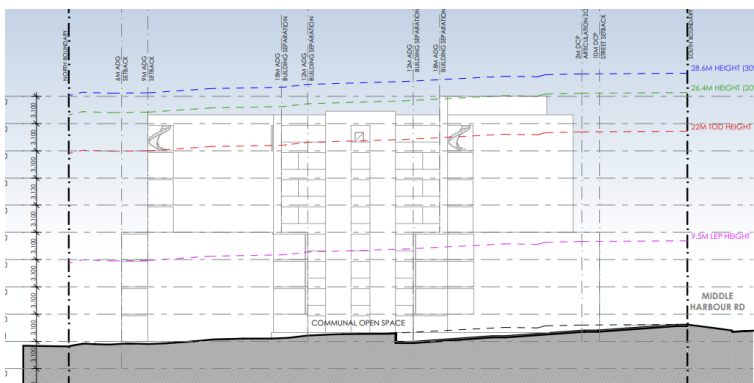


Figure 3. 16-20 Middle Harbour Road (Source: Ku-ring-gai Council)

Paro Consulting (Paro Planning Pty Ltd)
T 0422 983 710
E daniel@paroconsulting.com.au
A 1.02, 38 Waterloo Street, Surry Hills



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3. The proposal is considered to result in less of a visual bulk than that of a scheme under the draft KMC strategy

The site is recommended for an increase in height from 22m to 29m as part of the proposed alternative planning proposal for Lindfield. This translates to a maximum height of 37.7m when utilising the 30% height bonus under Chapter 2 of the Housing SEPP. The proposal is subject to a 28.6m height standard and is considered to result in a significantly lessor visual bulk that a residential tower under the current draft KMC strategy. Further, the site to the west of the site is proposed to be increase in height from 23.5m to 51.5m and to include an FSR of 5:1. Comparably the proposed FSR of 2.918:1 is considered to be compatible relative to the future visual bulk surrounding the site.

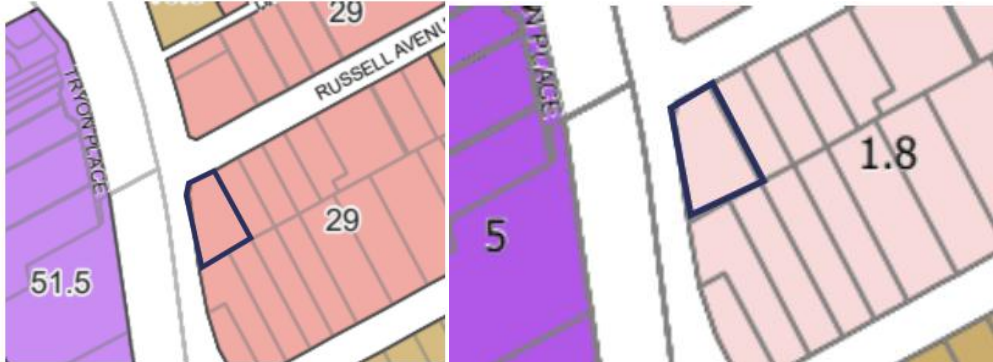


Figure 4. Draft height and FSR standard proposed to Context of the site (Source: Ku-ring-gai Council)

4. Absence of Adverse Environmental Impacts

It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:

- The design supports functional living environments for future residents, incorporating compliance with ADG and Housing SEPP controls for solar access, natural ventilation, privacy, and open space.
- The 2% negligible FSR breach does not result in additional overshadowing, privacy or view loss impacts to adjoining development when considered against the backdrop of a compliant building envelope formulated by the 28.6m height limit.
- The built form respects the intended massing outcome and achieves the visual and environmental objectives the density limit is intended to support.

5. Provision of Diverse and Well-Designed Housing

The proposal delivers a well-balanced mix of two- and three-bedroom apartments, supporting a range of household types, including multi-generational families, and responding to emerging demographic trends within the Ku-ring-gai Local Government Area (LGA). Key demographic indicators include:

- 55% of households in Ku-ring-gai are family households (ABS);
- A growing culturally and linguistically diverse (CALD) population; and
- A projected 24.2% of residents aged 65 and over by 2041 (forecast.id).



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This mix of apartment types directly supports strategic planning objectives around housing diversity, accessibility, and liveability, as outlined in the Ku-ring-gai Local Strategic Planning Statement (LSPS) and the North District Plan.

Strict compliance with the FSR standard would result in a reduction in both the number and variety of dwellings including affordable rental housing, undermining the proposal's ability to meet these strategic goals. In this context, the variation are not only justified but necessary to deliver a high-quality, inclusive, and future-ready residential development. The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development.

Insistence on compliance with the negligible 2% FSR development standard will not result in a noticeable change to the visual bulk of the building. Specifically, the FSR breach does not significantly impact the amenity of surrounding properties when considered against the backdrop of the planning controls and has been designed to address the public domain and ensure the non-compliance is not visual jarring from the public domain or neighbouring properties.

It is noted that in Initial Action, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. *The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*
87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome compared to a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Insistence on compliance with the FSR development standard will result in the proposal failing to meet the development of low and mid rise housing in areas that are well located with regard to goods, services and public transport and housing needs of the locality.

It is noted that in Initial Action, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. *The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 69(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual*



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intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome compared to a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.



Clause 4.6 Variation Request – Clause 16 maximum FSR control

5. Conclusion

Having regard to the provisions within both Section 175(2) of the Housing SEPP and 4.6 of the KLEP 2015, we have formed the considered opinion that:

- The contextually responsive development is consistent with aims that relate to low and mid-rise housing with infill affordable rental housing contained within Chapter 2 and 5 of the Housing SEPP, and
- The application does not propose a variation to a Clause that is subject to the application of Clause 4.6(8) of the KLEP 2015 or a development prohibition within another EPI, and
- There are sufficient environmental planning grounds to justify contravening the building height development standard, and
- That having regard to a) and b), compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case.

Pursuant to Clause 4.6(3) of the KLEP 2015, the consent authority can therefore be satisfied that the applicant's written request has adequately demonstrated that:

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

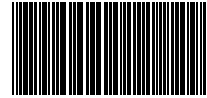
(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

In conclusion, we believe that in working with both the constraints of the site and the desired outcomes of the Housing SEPP, the proposed FSR contravention present better planning, housing delivery and design outcomes when compared to alternative and more compliant options that were explored throughout the design process. Further, we have formed the considered opinion that there is no statutory or environmental planning impediment to the approval of a FSR contravention in this instance. As this written request has satisfied statutory requirements pursuant to Clause 4.6 of the KLEP 2015, the proposed variation to the FSR development standard can be approved.





Filed: 20 October 2025 3:40 PM



D00028V451

Statement of Facts and Contentions

COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2025/00360708

TITLE OF PROCEEDINGS

First Applicant	Salerno Holdings Pty limited
First Respondent	Ku-ring-gai Council ABN 86408856411

FILING DETAILS

Filed for	Ku-ring-gai Council, Respondent 1
Legal representative	CATHERINE LOUISE MORTON
Legal representative reference	
Telephone	02 9373 3555

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Statement of Facts and Contentions (FINAL Draft SOFAC - eDA031325 1 Russell Avenue Lindfield v2 20-10-2025.pdf)

[attach.]

Filed: 20/10/2025 15:40 PM

STATEMENT OF FACTS AND CONTENTIONS**COURT DETAILS**

Court	Land and Environment Court of New South Wales
Class	1
Case number	2025/360708

TITLE OF PROCEEDINGS

Applicant **Salerno Holdings Pty Ltd**

Respondent **KU-RING-GAI COUNCIL**

FILING DETAILS

Filed for	Ku-ring-gai Council, Respondent
Legal representative	Catherine Morton, Sparke Helmore
Legal representative reference	KUR955-00230
Contact name and telephone	Catherine.morton@sparke.com.au

PART A – FACTS

The Respondent says that the facts relevant to the determination of Development Application (eDA0313/25) ("**the Development Application**") are as follows:

THE APPLICATION

1. This appeal has been lodged pursuant of Section 8.7 of the Environmental Planning and Assessment Act 1979 against the deemed refusal of Development Application No. eDA0313/25. The appeal was filed with the Court on 19 September 2025.

THE PROPOSAL

2. The applicant seeks development consent for the demolition of the existing dwelling house and ancillary structures and construction of a residential flat building on land at No. 1 Russell Avenue, Lindfield (**Site**). The proposed residential flat building includes:
 - a) Three levels of basement, comprising:
 - i. 34 x resident parking spaces (5 x accessible spaces)

- ii. 7 x visitor parking spaces
- iii. resident storage areas
- iv. pump room
- v. air conditioning plant
- vi. bulky waste area
- vii. waste room
- viii. motorbike parking
- ix. 30 x bicycle storage racks

b) Nine storeys of residential units (28 units in total), comprising:

- i. 1 x one-bedroom units
- ii. 11 x two-bedroom units
- iii. 14 x three-bedroom units
- iv. 2 x four-bedroom units
- v. rooftop communal open space including swimming pool and spa, accessible watercloset and pool pump room
- vi. rooftop mechanical plant room
- vii. vehicular access from Russell Avenue
- viii. pedestrian access from Lindfield Avenue
- ix. stormwater works including an on-site detention tank and rainwater tank beneath the driveway
- x. landscaping works

3. All proposed apartments are designed as Platinum level units under the Livable Housing Guidelines. Five apartments (Unit 04, Unit 08, Unit 12, Unit 18 and Unit 20) are identified as being 'adaptable units.'
4. The proposed development includes six 'affordable' dwellings under the provisions of Chapter 2 of State Environmental Planning Policy (Housing) 2021 (**SEPP Housing**). The proposed affordable apartments are Unit 01, Unit 04, Unit 05, Unit 07, Unit 08 and Unit 16.
5. External finishes for the proposed development include facebrick and rendered brickwork with metal cladding and palisades to the balconies.
6. The application involves removal of five trees located on the Site.

THE SITE

7. The Site is legally described as Lot B in DP 412764 and is known as No. 1 Russell Avenue, Lindfield (**Figure 1**). The Site is situated at the intersection of Russell Avenue and Lindfield Avenue and is located on the southern (high) side of Russell Avenue and the eastern (low) side of Lindfield Avenue. The primary street frontage is to Russell Avenue.
8. The Site is an irregular shaped allotment with a depth of 44.52 metres. The Site has a variable width of between 16.47 metres and 33.82 metres. The site area is not identified on the site survey but is identified in the application documentation as 1,131.3m².
9. The Site is gently sloping with a fall of approximately 3 metres from its south-western corner to its north-eastern corner.
10. Existing development on the Site comprises a dilapidated single storey dwelling house located in the south-western part of the Site. A bitumen area exists in the northern part of the Site. A low masonry retaining wall exists along both Site frontages.
11. Vehicular access to the Site is via an existing crossover from Lindfield Avenue.
12. The Site is zoned R3 Medium Density Residential under the Ku-ring-gai Local Environmental Plan (**KLEP**) (Figure 1).
13. The Site is identified as having a maximum Floor Space Ratio (**FSR**) of 0.85:1 under Clause 4.4(2) of KLEP (Figure 2). The Site has a maximum building height of 11.5 metres under Clause 4.3(2) of the KLEP (Figure 3).



Figure 1: Zoning extract showing subject site and surrounding land



Figure 2: Extract showing Floor Space Ratio map (0.85:1)



Figure 3: Extract showing Height of Buildings map (11.5 metres maximum)

14. An aerial photograph depicting the Site and surrounding development is provided below:



Figure 4: Aerial photograph of Site and surrounding properties

15. The Site was included within the Transport Oriented Development (**TOD**) Area as originally gazetted on 29 May 2025.

16. On 11 June 2025, Ku-ring-gai Local Environmental Plan (Housing) (Map Amendment No 1) was made, and the Site was subsequently excluded from the TOD provisions. The Map Amendment No.1 commenced when it was published on the NSW Legislation Website on 13 June 2025.
17. Council's exhibited Alternative TOD scenario is currently under consideration by the Department of Planning, Housing and Infrastructure. Under Council's Alternative TOD scenario, the Site is proposed to be zoned R4 High Density Residential (Figure 5). Under the Alternative TOD scenario, the Site has a maximum building height of 29 metres and a maximum FSR of 1.8:1 (Figures 6 and 7).

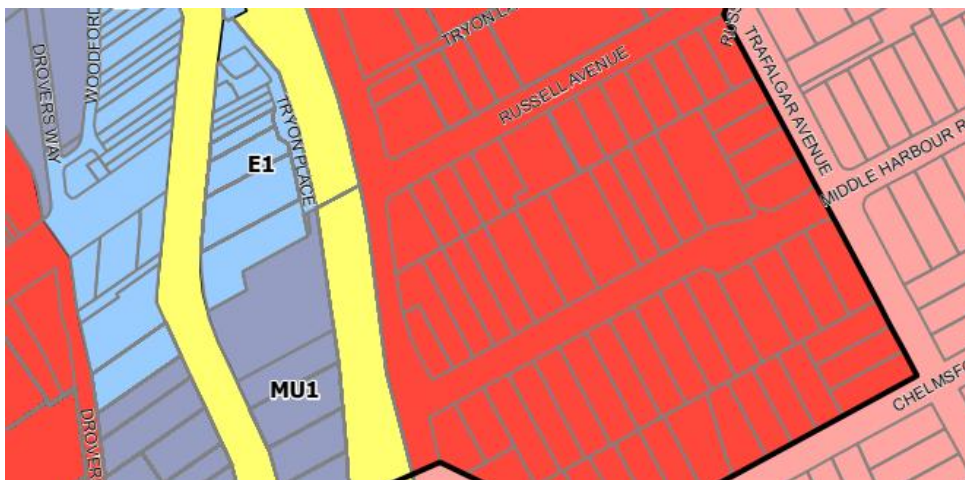


Figure 5: Proposed zoning under Alternative TOD

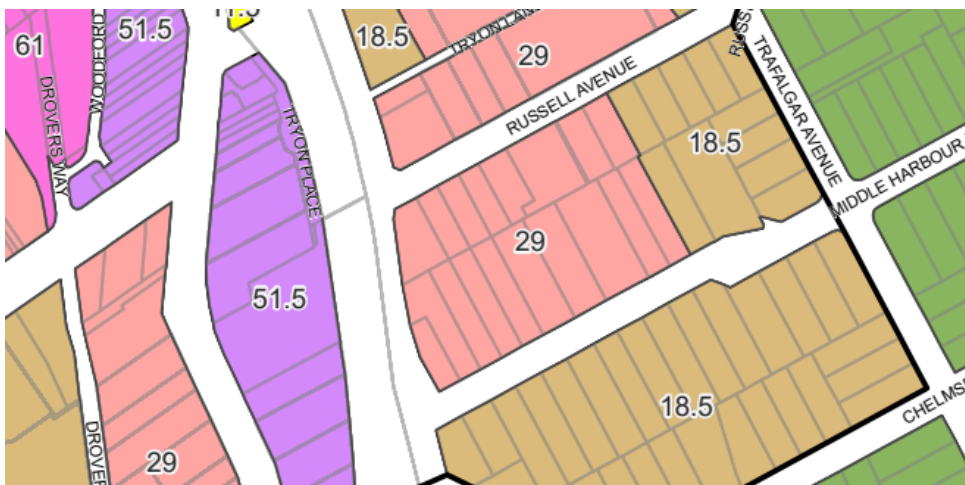


Figure 6: Proposed building height under Alternative TOD

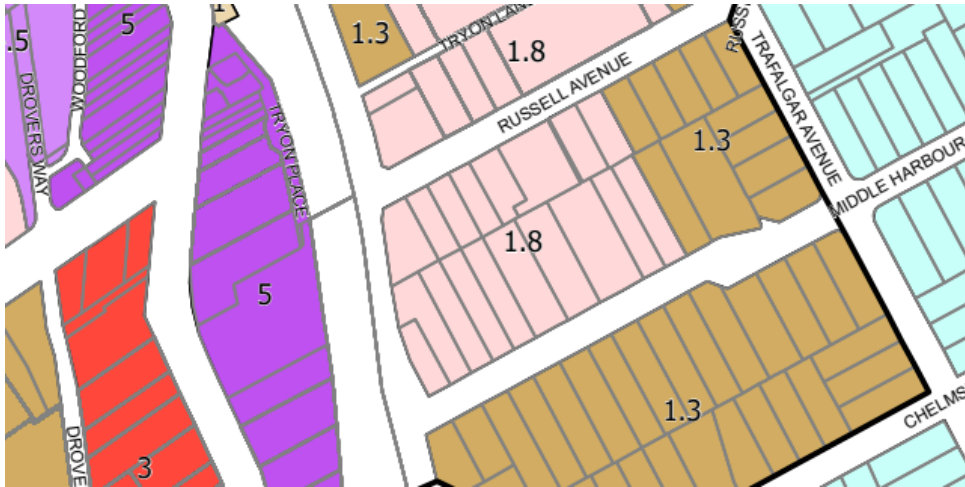


Figure 7: Proposed FSR under Alternative TOD

THE LOCALITY

18. The Site is in the vicinity of the Lindfield Local Centre and there is a variety of land uses in the locality. The Site and three properties to the immediate south are zoned R3 Medium Density Residential. The adjoining properties to the south are known as Nos. 4-10 Middle Harbour Road and development on these properties currently comprises single occupancy dwelling houses.
19. To the east of the land zoned R3 Medium Density Residential, is land zoned R2 Low Density Residential. That land is currently occupied by single occupancy dwelling houses. Directly adjoining the Site to the east, is a property known as No. 3 Russell Avenue, which contains a single storey dwelling house with ancillary development.
20. To the north of the Site, across Russell Avenue, is land zoned R4 High Density Residential. That land is currently occupied by a low rise residential flat building at Nos. 2-6 Russell Avenue and multi-dwelling housing development at Nos. 8-10 and 12-18 Russell Avenue.
21. To the west of the Site is the rail corridor for the North Shore line. To the north-west is land zoned E1 – Local Centre, which supports commercial development.
22. The Site is situated at a topographical high point at the junction of the ridgelines which run north/south (along the railway corridor) and east/west (from Lindfield to East Lindfield) (Figure 8).



Figure 8: Topographical map showing the terrain of the locality (Source: bit.ly/4otHgb0)

23. The Site is impacted by the 1% AEP (Annual Exceedance Probability) overland flow (Figure 9).

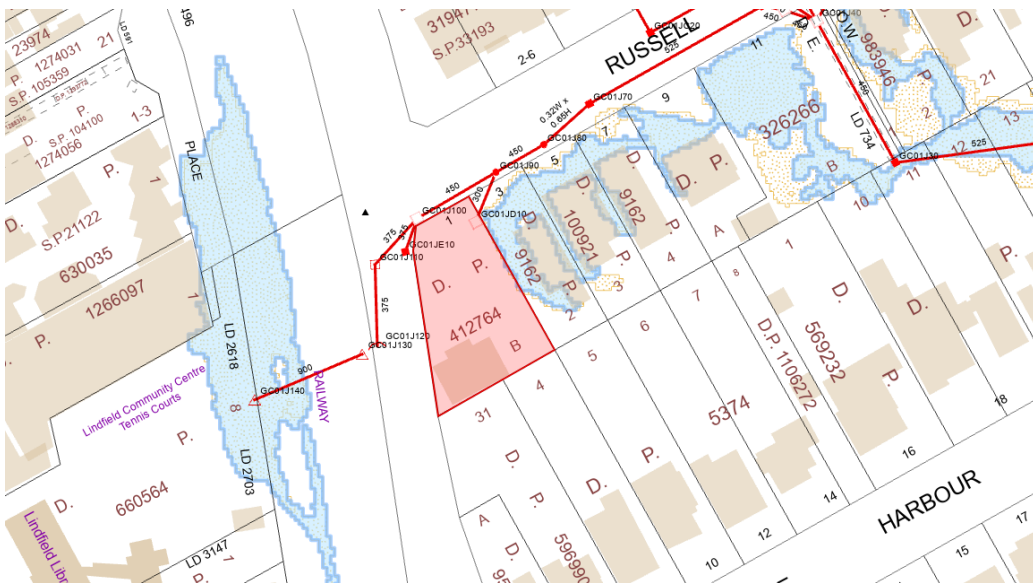


Figure 9: Excerpt from Council's flood mapping showing the 1% AEP overland flow in blue

THE STATUTORY CONTROLS

24. The statutory instruments applicable to the Development Application are as follows:

- a) Environmental Planning and Assessment Act 1979 (“**EPA & Act**”)
- b) State Environmental Planning Policy (Housing) 2021 (“**SEPP Housing**”)
- c) State Environmental Planning Policy (Resilience and Hazards) 2021
- d) State Environmental Planning Policy (Biodiversity and Conservation) 2021
- e) State Environmental Planning Policy (Transport and Infrastructure) 2021
- f) Draft State Environmental Planning Policy Environment
- g) Ku-ring-gai Local Environmental Plan 2015 (“**KLEP**”)
- h) Ku-ring-gai Local Centres Development Control Plan (“**KDCP**”)
- i) Ku-ring-gai Contributions Plan 2010
- j) Apartment Design Guide (“**ADG**”)
- k) Tree Canopy Guide for Low and Mid Rise Housing (“**the Guide**”)

ACTIONS OF THE RESPONDENT CONSENT AUTHORITY

25. The Development Application was lodged via the Planning Portal on 18 June 2025 (PAN-545905). The Development Application was accepted by Council on 27 June 2025

26. The Development Application was notified to owners and occupiers of surrounding properties from 17 July 2025 to 18 August 2025. Three submissions against the development were received and raised concerns in relation to:

- a) Hazards to vehicles/pedestrians at intersection of Russell Avenue and Lindfield Avenue
- b) Stormwater impacts to adjoining properties including No. 3 Russell Avenue
- c) Houses becoming derelict due to reforms and likely redevelopment
- d) Excessive building height
- e) Overshadowing impacts to neighbouring properties including No. 3 Russell Avenue
- f) Noise impacts from rooftop pool and communal open space
- g) Noise impacts from mechanical plant have not been assessed by the Acoustic Consultant
- h) Errors and inconsistencies in Noise Impact Assessment – references to child care centre
- i) Inconsistency with TOD Alternative scheme
- j) Scale of development is inconsistent with zoning
- k) Lack of articulation and modulation as required by KDCP controls

- l) Building setbacks -non-compliances with KDCP
 - m) Privacy impacts to No. 3 Russell Avenue – living rooms and rear yard
 - n) Insufficient deep soil – non-compliance with KDCP
 - o) Removal of significant trees
 - p) Insufficient on-site parking provided
 - q) Inconsistency with neighbourhood character
 - r) Inadequate waste management facilities
27. On 6 August 2025, the applicant was issued with a preliminary assessment letter, indicating that the proposed development had been incorrectly lodged under Chapter 5 of SEPP Housing and that consent could not be granted as those provisions no longer applied to the Site.
28. On 18 June 2025, the application was amended so it could be lodged under Chapter 6 of SEPP Housing.
29. Between 27 August 2025 and 10 September 2025, the application was re-notified for a period of 14 days. One further submission was received which reiterated the concerns raised previously.
30. On 24 September 2025, the Council was served with the Class 1 Application.

PART B - CONTENTIONS

The Respondent says that the contentions relevant to the determination of the Development Application are as follows:

B1 – CONTENTIONS THAT THE APPLICATION BE REFUSED

1. Minimum site dimensions - prohibited development

The Site does not meet the minimum dimensions specified in Clause 6.6(2)(b) in Ku-ring-gai Local Environmental Plan (**KLEP**) and the proposed development is therefore prohibited.

Particulars:

a) Subclause (2) in Clause 6.6 in KLEP provides –

(2) *Despite any other provision of this Plan, development consent must not be granted for the erection of multi dwelling housing or a residential flat building on a lot in a residential zone unless the lot has an area of at least 1,200 square metres and minimum dimensions (width and depth) of at least—*

- (a) *if the area of the land is less than 1,800 square metres—24 metres, or*
- (b) *if the area of the land is 1,800 square metres or more—30 metres.*

b) The Development Application proposes a residential flat building. The Site has a total area of 1,131.3m². The Site has the following dimensions having a primary frontage to Russell Avenue –

- i. Minimum site width (northern boundary) – 16.47 metres
- ii. Minimum site depth (eastern boundary) – 44.527 metres

c) Given the Site has an area less than 1,800m² according to clause 6.6(2)(a), it must meet the minimum dimensions of 24 metres for both width and depth.

d) As detailed in particular b) above, the width of the Site is only 16.47 metres at the northern end which is non-compliant with clause 6.6 (2)(b) in KLEP 2015.

e) A Clause 4.6 Variation Request has been submitted for the proposed development, however the consent authority, or the Court on Appeal cannot be satisfied that compliance

with the development standard is unreasonable and unnecessary as required by Clause 4.6(3)(a). The objective of Clause 6.6, as outlined in subclause (1)(b), relates to the provision of *'generous landscaped areas and setbacks to ensure the amenity of adjoining properties and to support the desired future character of these areas'*. The proposed development includes deficient landscaped area and by virtue of this, is a prohibited development as outlined in Contention 2.

- f) In addition, the consent authority or the Court on Appeal cannot be satisfied that there are sufficient environmental planning grounds to support the proposed departure for Clause 6.6, as required by Clause 4.6(3)(b). The applicant's arguments are not agreed for the reasons outlined below:
- i. The proposed development results in significant adverse impacts resulting from non-compliant landscaped area, inadequate deep soil area and insufficient canopy tree planting.
 - ii. The proposed development does not result in a better planning outcome compared to a compliant development, which could be achieved under the Alternative TOD.

2. Inadequate landscape area – prohibited development

There is inadequate landscape area proposed, contrary to Chapters 2 and 6 of State Environmental Planning Policy (Housing) 2021.

Particulars:

- a) The proposal does not comply with the minimum landscape development standard of 30% of the site area as outlined in Section 19(2)(b)(ii) of Chapter 2 State Environmental Planning Policy (Housing) 2021 (**SEPP Housing**). The proposal provides a landscape area of 108.6m², which represents 9.6% of the Site area and is non-compliant.
- b) Chapter 2, Section 19(2)(b)(ii) contains a non-discretionary development standard and approval cannot be granted to the proposed development without a well justified Clause 4.6 Variation Request. No Clause 4.6 Variation Request has been submitted in support of the breach of this development standard.
- c) Chapter 6, Section 177(2) of SEPP Housing requires the consent authority to consider the *Tree Canopy Guide for Low and Mid Rise Housing* (the Guide). The proposed development is inconsistent with the requirements of Table 7 of the Guide (enhanced provisions) and fails to deliver the intended landscape outcomes of increased tree canopy, improved

amenity, and consistency with the prevailing landscape character of the locality. In particular, the proposal fails to demonstrate compliance with the following minimum requirements:

- i. Tree canopy cover: 15% of the Site area (169.7m²).
- ii. Deep soil zone with minimum 3 metres dimension: 10% of the Site area (113.1m²).
- iii. Tree planting rate: a minimum of 4 medium trees are required.

3. Non-compliant building height

The proposed development results in a non-compliant building height, which is not supported by a well-founded Clause 4.6 Variation Request to excuse compliance with Section 18(2) of SEPP Housing.

Particulars:

- a) A Clause 4.6 Variation Request has been provided but incorrectly refers to the provisions of Chapter 5, Section 155 of SEPP Housing. As the Clause 4.6 Variation Request references the incorrect provisions of SEPP Housing, the Clause 4.6 Variation Request cannot be considered to be well founded. As the development standard has not been correctly identified, the consent authority cannot be satisfied that compliance with the development standard is unreasonable and unnecessary as required by Clause 4.6(3)(a) of KLEP.

4. Non-compliant number of storeys

The proposed development does not comply with the maximum number of storeys for 'Low and Mid Rise development' as referenced by Chapter 6, Section 175(2) of SEPP Housing.

Particulars:

- a) The applicant has submitted a Clause 4.6 Variation Request with respect to the number of storeys development standard in Chapter 6, Section 175(2) of SEPP Housing.
- b) As the 'bonus provisions' of Chapter 2, Section 18 may be utilised to increase building height subject to provision of additional affordable housing, it is unclear whether the provisions of Chapter 6, Section 175 are applicable to the proposed development.

- c) In the event that the provisions of Chapter 6, Section 175(2) are applicable, the consent authority cannot be satisfied that compliance with the development standard is unreasonable and unnecessary in the circumstances of the proposal as required by Clause 4.6(3)(a). The proposal seeks to vary the development standard by four storeys (40% variation), which results in a ten-storey residential flat building. The scale of the resulting development cannot be classified as 'Low and Mid Rise Housing' and is therefore inconsistent with the aims of Chapter 6 of SEPP Housing.
- d) In addition, the consent authority cannot be satisfied that sufficient environmental planning grounds exist to vary the development standard as required by Clause 4.6(3)(b), as the reasons advanced by the applicant do not provide sufficient justification for the proposed variation. The applicant's arguments are not agreed with for the reasons outlined below:
- i. The proposed height exceedance is beyond minor and comprises four additional storeys. An exceedance of this extent cannot reasonably be attributed to the Site topography.
 - ii. Whilst compliance with the ADG requirements for cross-ventilation is claimed by the applicant, it is unclear how compliance is achieved by the units located in the north-eastern corner of the building as these units feature openings to the northern elevation only.
 - iii. The proposed apartment mix cannot be attributed to the additional building height (four storeys) proposed. The lower six storeys include a mixture of one-, two- and three-bedroom units. Additionally, all proposed affordable units (Unit 01, Unit 04, Unit 05, Unit 07, Unit 08 and Unit 16) are located within the lower six storeys.
 - iv. The proposed ground plane treatment results in a number of subterranean units with poor amenity. Better amenity would be achieved by increasing the ground level floor of the building and deleting one or more of the upper storeys.

5. Non-compliant Floor Space Ratio

The proposed development results in a non-compliant Floor Space Ratio (**FSR**) which is not supported by a well-founded Clause 4.6 Variation Request to Section 16(1) of SEPP Housing.

Particulars:

- a) The applicant has submitted a Clause 4.6 Variation Request to Section 16(1) of SEPP Housing which states that compliance with the development standard is unreasonable and unnecessary because:

- i. The extent of the FSR variation is negligible.
 - ii. The FSR variation results in an increase in the delivery of housing to meet the needs of low-income people.
 - iii. The proposed development will result in greater housing diversity.
- b) The consent authority cannot be satisfied that sufficient environmental planning grounds exist to vary the development standard as required by Clause 4.6(3)(b), as the reasons advanced by the applicant do not provide sufficient justification for the proposed variation. The applicant's arguments are not agreed, for the reasons outlined below:
 - i. The provision of affordable housing is not sufficient means to justify the proposed exceedance from the FSR development standard. The provisions of Chapter 2 require a minimum GFA of 485.33m² of affordable housing. The proposed development includes a GFA of 501m² of affordable housing, thereby exceeding the minimum requirement by 15.67m². The proposed FSR exceedance amounts to 65.682m² and comprises an additional 50.012m² of 'market rate' GFA.
 - ii. Contrary to what is claimed by the applicant, the development will result in detrimental environmental impacts. The proposed development includes non-compliant and inadequate landscaping and deep soil provision, as well as insufficient building setbacks and excessive site coverage.
 - iii. It is not agreed that the proposal will result in lesser visual bulk than a compliant proposal under the Alternative TOD. A proposal under the Alternative TOD (which utilises the bonus provisions of Chapter 2) may be of greater height than the proposed development but would be bolstered by larger building setbacks and additional deep soil area as the FSR development standard would be less (1.8:1 plus 30%). This would better achieve the desired future character, which comprises residential flat buildings within a garden setting; and one that benefits from large-canopy trees. Sections 7A and 7C of the KDCP make a direct link between garden setting, "*mature canopy tree cover*" and "*desired future character*"; Development is to be "*in keeping with the garden character of Ku-ring-gai where the tree canopy dominates the landscape, by making provision for quality deep soil landscaping ... tall trees to the streetscape; in-between and to all elevations of buildings on the development site; in-between buildings on the development site and on adjacent sites*". In this regard, reference is also made to Section 20(3) of SEPP (see Contention 11).
 - iv. Whilst it is agreed that the proposed development achieves a good mix of apartment types, this mix cannot be attributed to the additional FSR proposed.

6. Water Management

The Development Application does not take all reasonable management actions to avoid, minimise or mitigate adverse impacts to adjoining properties, contrary to clause 6.5 of KLEP 2015. In the alternative, the Development Application is not accompanied by sufficient particulars to enable an assessment against clause 6.5 of KLEP 2015. Development consent cannot be granted.

Particulars:

- a) Clause 6.5 of KLEP 2015 provides that, before granting development consent to development on any land to which the LEP applies, the consent authority must be satisfied that, relevantly:
 - i. The stormwater management system includes all reasonable management actions to avoid any adverse impacts on the land to which the development is to be carried out, adjoining properties, native bushland, waterways and groundwater systems; and
 - ii. If a potential adverse environmental impact cannot be feasibly avoided, the development minimises and mitigates the adverse impacts of stormwater runoff on adjoining properties, native bushland, waterways, and groundwater systems.
- b) The proposed on-site detention (**OSD**) tank connects into a realigned Council stormwater pit in Russell Avenue. The design has not considered the functionality of the Council stormwater system in relation to impacts on the OSD system resulting from a submerged outlet and hydraulic grade line (**HGL**) assessment of the Council system. The HGL assessment must consider the critical storm for the 1% AEP design storm event and demonstrate overflows from the OSD tank are not directed to the basement.
- c) No hydrological and hydraulic modelling based on DRAINS software has been provided to enable assessment of the hydraulic performance of the Council and property stormwater system.
- d) No supporting hydraulic calculations have been submitted to demonstrate compliance with Part 24C.3-4 of the KDCP that requires rainwater retention and re-use to be provided to achieve a 50% reduction in runoff days. A water balance model has not been submitted.
- e) The application is not supported by Flood Impact Assessment based on TUFLOW software

prepared in accordance with the requirements outlined in 'Part 24D.2 - Flood Studies and the Design Flood Standard' and Part 24R.7 of the KDCP to enable assessment of potential inundation of the basement.

7. Insufficient building setbacks and building separation

The proposed development includes inadequate building setbacks and building separation, resulting in adverse amenity impacts and non-compliances with Part 3F of the Apartment Design Guide (**ADG**) and Part 7A.3 of Ku-ring-gai Development Control Plan (**KDCP**).

Particulars:

- a) The proposed development does not meet the minimum requirements outlined in Objective 3F-1 of the ADG. The ADG requires a minimum setback of 6 metres for habitable rooms/balconies with a height of up to 4 storeys, 9 metres for habitable rooms/balconies with a height of 5-8 storeys and 12 metres for habitable rooms/balconies with a height of nine storeys or more. Instead, the proposed development includes setbacks of 3 metres up to four storeys and 6 metres for 5 storeys upwards. This not only compromises the internal amenity of habitable rooms in the proposed development, but also places an undue burden on neighbouring properties to achieve adequate amenity and comply with the ADG if they are developed in future. The minimum separation distances under Objective 3F are based on achieving reasonable visual privacy between buildings, with the total separation shared equally across the boundary - meaning any reduction on one site reduces the available distance on the other.
- b) The proposed setbacks of 6.4 metres to the northern (primary) street frontage and 3.9 metres to the western (secondary) street frontage are non-compliant with Control 1 of Part 7A.3 of KDCP. The proposed setbacks do not support the provision of a garden setting and are also inconsistent with Objectives 1-4 and 7 of Part 7A.3.
- c) The proposed side and rear setbacks of 2.3 metres from the eastern (side) boundary and 1.9 metres from the southern (rear) boundary are non-compliant with Control 5(i) of Part 7A.3 of the KDCP which requires a minimum setback of 6 metres up to the fourth storey.
- d) The proposal provides setbacks of 3.4 metres (to the eastern boundary) and 2.5 metres (to the southern boundary) to the fifth storey and above and is non-compliant with Control 5(ii) which requires setbacks of 9 metres for the upper levels. In this regard the proposal is inconsistent with Objectives 8, 10, 11, 13 and 15 of Part 7A.3.

- e) In addition, the proposed eastern side setback is inconsistent with Controls 9, 10(i) and (ii) of Part 7A.3 of KDCP and does not satisfy Objective 9 of this Part which aims to provide a transition to adjoining sites zoned differently for lower density residential development.
- f) The proposed basement encroaches on all building setbacks and is contrary to Controls 11, 13 and 14 of Part 7A.3 of KDCP. The proposal is contrary to Objectives 7, 11, 14 and 15 of this Part as the resulting development provides insufficient deep soil zones within the setback areas.

8. Inadequate deep soil zones

The proposed development includes inadequate deep soil zones contrary to Part 3E of the ADG and Part 7A.6 of the KDCP.

Particulars:

- a) The proposed development results in a deep soil area of 2%, contrary to the minimum deep soil zone requirements of Objective 3E-1 of the ADG which require a minimum deep soil zone of 7% of the Site area and a suggested deep soil area of 10% for sites between 650m² and 1,500m² in area. Deep soil zones, as defined by the ADG, must have a minimum dimension of 6 metres.
- b) The proposed deep soil areas are fragmented by retaining walls and fences. This fragmentation prevents the establishment of tall canopy trees and diminishes the environmental and amenity benefits that continuous deep soil areas are intended to deliver. The proposed outcome is inconsistent with the ADG objectives to support landscape character, urban ecology, and residential amenity.
- c) Additionally, the proposal does not comply with Control 1 in Part 7A.6 of KDCP, which requires a minimum deep soil zone of 40% of the Site area. As defined under the KDCP, the proposed development includes a total deep soil area of 64.8m², equivalent to 5.72% of the Site area. The proposal is inconsistent with Objectives 1-3 and 5 of Part 7A.6 for the following reasons:
 - i. The development fails to contribute to the intended garden character of the locality.

- ii. The landscape design is not in scale with the bulk of the proposed development or consistent with the surrounding context.
 - iii. The limited deep soil areas do not allow the inclusion of tall canopy trees, particularly within the Site frontage where they are critical to achieving streetscape amenity and long-term tree canopy outcomes as envisaged under the current controls and the Alternative TOD.
- d) The proposal does not comply with Control 4 of Part 7A.6 of KDCP, which provides that deep soil landscaping is to be provided within common areas to provide a buffer between buildings and soften their bulk and scale. Several deep soil areas proposed on the Site appear to be located within private open spaces, with fencing and (potentially) retaining walls subdividing these zones. This limits the available space for meaningful tree planting and is contrary to Objectives 6 and 7 of Part 7A.6.
- e) The proposed driveway is set back 0.5 metres from the eastern side boundary, contrary to Control 8 and Objective 6 of Part 7A.3 of KDCP, which aim to ensure driveways do not compromise the landscape setting or neighbouring amenity.
- f) A Site coverage of approximately 42% is proposed, contrary to Control 1 and Objectives 1-5 of Part 7A.5 of KDCP which permits a maximum site coverage of 30% if deep soil requirements are met.

9. Unsatisfactory response to Site topography

The proposed development does not appropriately address the Site's topography, resulting in adverse amenity and streetscape impacts. An appropriate response to topography would be one that adequately addresses the technical issues of natural stormwater flows and flooding but also demonstrates how the proposed development responds to the integral mix of vegetation and terrain that is a key feature of Ku-ring-gai's character.

Particulars:

- a) The Site currently sits approximately 1.3 metres below the public domain along the western frontage (Lindfield Avenue). The proposed ground level is at RL 90.95, which is approximately 710 millimetres below the lower level of the existing Site. This creates the following landscape concerns:
- i. To address the level difference of approximately 2.35 metres along the Lindfield Avenue frontage, the proposal includes a series of retaining walls that form two stepped deep soil zones, at 1.2 metres and 2.4 metres wide respectively. These

- narrow and divided deep soil areas do not provide sufficient space for tree planting at a scale proportionate to the development, resulting in limited canopy potential and reduced amenity for ground-floor dwellings and private open spaces.
- ii. The private open space of the ground-level units, together with the associated deep soil areas, is located below the public domain level by approximately 2 to 3.8 metres, necessitating the inclusion of several retaining walls within the deep soil areas to achieve the required finished public domain levels. This design outcome is inconsistent with Objectives 1, 2, 3, 4, and Controls 2, 3, 4 ii), 7 v), 7vi) in part 7A.1; Objectives 1, 3, 6 Control 6, 7, in Part 7A.2; Objectives 1, 2, 3, 7, and Controls 3, 4, 7, 8, 9 in Part 7A.6 and Controls 1, 3, in Part 21.1 of the KDCP. The division of deep soil areas results in non-compliance with the minimum deep soil requirements specified under the ADG and KDCP (refer to Contention 8).
 - iii. The minimal dimensions of the proposed deep soil areas do not satisfy KDCP tree replenishment standards, resulting in a poor landscape outcome and an unacceptable impact on local character (refer to Contention 14).
 - iv. The eastern portion of the development also demonstrates an unsuitable landscape response, both in relation to the proposed building and its interface with adjoining properties.
- b) The architectural and landscape plans lack critical information in relation to natural ground line on sections and elevations. As a result of this lack of information, it is unclear if the number of storeys has been depicted correctly in accordance with Control 1 of Part 7C.7 of KDCP.
- c) There is insufficient information about the proposed ground levels. The landscape plan contains incomplete finished levels for courtyards and no finished ground levels for garden areas.
- d) Two units facing Lindfield Avenue on Level 01 floorplan appear to be subterranean. Unit 01 appears to be 3.35 metres below street level whilst Unit 03 appears to be 1.7 metres to 3 metres below street level. The proposal is therefore contrary to Control 5 of Part 7C.3 of KDCP, which states that units are not to be accommodated as a result of excessive excavation and Control 8, which states that the finished floor level is not to be more than 0.9 metres below existing ground level. The proposal therefore fails to satisfy Objective 1 of this Part.

- e) The proposal also includes narrow, subterranean terraces (such as to Unit 01) which are less than 3 metres in width as required by Control 9 of Part 7C.3 of KDCP. As a result, the amenity of these areas of private open space is compromised and is contrary to Objective 1 of this Part.
- f) The proposed ground level apartments do not maximise street frontage activity and are inconsistent with ADG Objective 4L-1.

10. Inadequate residential amenity

The proposed development does not provide a high level of residential amenity for future residents and is contrary to the requirements of Parts 4D, 4E and 4G of the ADG and Parts 7C.3 and 7C.9 of the KDCP.

Particulars:

- a) The proposed development includes apartments with a depth exceeding 8 metres (Units 02, 05, 06, 10, 18, 22), which is inconsistent with the Design guidance provided for Objective 4D-2 of the ADG that specifies a maximum habitable room depth of 8 metres from a window.
- b) The proposed development includes apartments with a living room width of less than 4 metres (Units 05, 09, 17) and is inconsistent with the Design guidance provided for Objective 4D-3 of the ADG.
- c) The proposed private open space for Unit 03 includes a balcony with a useable width of 2 metres and does not meet the minimum requirements established by the Design criteria associated with Objective 4E-1 of the ADG which require a minimum width of 3 metres.
- d) The proposed development is inconsistent with Controls 5 and 8 and Objectives 1 and 3 of Part 7C.3 of KDCP as it includes subterranean apartments such as Units 01 and 03, which are located 3.35 metres and 1.7-3 metres below street level, respectively.
- e) The proposed development does not include external air clothes drying areas and is inconsistent with Control 1 and Objective 1 of Part 7C.9 of KDCP.
- f) The proposed basement includes storage areas adjacent to external walls which is contrary to Control 7 and Objective 5 of Part 7C.3 of KDCP.

- g) The proposed development does not appropriately respond to its context. More design attention should be given to facades impacted by noise and pollution from the railway and heavy vehicles. Acoustic treatments to this façade would assist in reducing heat loads as no shading is proposed currently. Shading devices should also be provided to the western elevation as required by Control 14 of Part 7C.6 of KDCP.
- h) Only one lift is proposed to service ten residential levels and three basement levels, which could result in long wait times. Amenity would be improved through the provision of an additional lift.

11. Inconsistency with desired future character

The proposed development is not compatible with the desirable elements of the character of the local area and is inconsistent with the desired future character of the area. As a result, the proposal fails to meet the requirements of Section 20(3) of SEPP Housing.

Particulars:

- a) Section 20(3) of SEPP Housing provides that development consent must not be granted unless the consent authority has considered whether the design of the development is compatible with the desirable elements of the character of the area, or for precincts undergoing transition, the desired future character of the area.
- b) Part 7A of the KDCP requires development to be designed within a landscaped setting where tall trees, deep soil zones, and generous planting areas surround buildings and reinforce the treed character of the area. It provides that the landscape should remain the dominant visual element on the Site, with tree canopy visible from both the public domain and adjoining properties. The KDCP calls for deep soil areas on all sides of a site, specifically to support the planting and long-term viability of tall trees. Additional guidance for corridor and precinct-based development reinforces that the *desired future character* is one where buildings are set within generous landscaping, and mature trees remain a dominant feature. These controls collectively ensure that new development continues the legacy of Ku-ring-gai's garden suburb identity, where tree canopy and landscaped settings define the area's visual and environmental character.
- c) The proposed development is not compatible with the existing or desired character for the following reasons:

- i. The proposed development provides inadequate building setbacks as outlined in Contention 7.
 - ii. The proposed development provides inadequate landscape and deep soil areas as outlined in Contentions 2 and 8.
 - iii. The proposed development includes insufficient area for the planting of canopy trees as outlined in Contention 14.
- d) The proposed development addresses only one street frontage of the Site contrary to Control 11 and Objective 2 of Part 7C.5 of KDCP which requires buildings on corner sites to address both street frontages and provide entry points from both street frontages.
- e) The proposed development includes unarticulated walls to the eastern and southern elevations, contrary to Control 3 and Objective 2 of Part 7C.5 of KDCP which states that large flat walls are to be avoided.
- f) The proposed development includes excessive areas of render, contrary to Control 3(i) and (iv) and Control 12(vii) and Objective 1 of Part 7C.6 of KDCP.

12. Sustainability

The proposed development is not environmentally responsive and is inconsistent with Schedule 9(4) of SEPP Housing and ADG Objective 4J-1.

Particulars:

- a) Passive thermal design measures could be improved including through greater attention to passive shading and façade performance, the provision of on-site power generation and storage, charging for electric vehicles, ceiling fans to bedrooms and decarbonisation of energy supply.

13. Unacceptable tree impacts

The proposed development results in adverse and unacceptable impacts to Tree 3 *Jacaranda mimosfolia* (Jacaranda) which is the only tree on the Site proposed for retention.

Particulars:

- a) The submitted Arboricultural Impact Assessment (**AIA**) Report identifies a 5.7% basement encroachment into the Tree Protection Zone (**TPZ**) of Tree 3. The report also identifies that above-ground structures, including the ground floor and upper levels, will encroach by 25.1%, which constitutes a major encroachment under AS 4970–2025.
- b) Contrary to the above, Council's assessment calculates the basement and ground floor encroachment to be 14.5%, which is a major encroachment. This encroachment is proposed in addition to the above-ground encroachments, which are agreed to be major.
- c) There is insufficient information to determine whether retention of Tree 3 is feasible. A detailed pruning plan must be provided to specify the extent of pruning required, together with an assessment of impacts from the proposed building envelope and the scaffolding necessary during construction.
- d) As a result of the above encroachments, the proposed development fails to meet Control 3 in Part 7A.5 of KDCP, which requires deep soil zones to be configured to retain healthy and significant trees on Site and on adjoining sites where possible.

14. Inadequate landscape design and insufficient canopy tree planting

The proposed landscape design is inadequate and does not meet the requirements of Part 4O of the ADG and Parts 7A.6 and 7C.5 of KDCP.

Particulars:

- a) The landscape design does not adequately enhance streetscape or residential amenity and fails to satisfy Objective 4O-1 of the ADG. The proposed deep soil areas are fragmented rather than consolidated, limiting the ability to plant trees in communal ownership. As a result, there is insufficient buffer planting to soften the scale of the development, which would otherwise contribute positively to the streetscape.
- b) The proposed landscape design fails to satisfy Objective 4O-1 of the ADG, which requires the development to provide at least one tall tree capable of reaching a mature height of 13–18 metres within an appropriately sized deep soil area. While the submitted landscape plan includes a tall tree, its location is in close proximity to proposed structures. This creates a conflict that will restrict the tree's ability to achieve full, healthy development. The current layout cannot adequately support a tall tree.

- c) The proposal fails to provide the minimum tree replenishment for this development site to satisfy Controls 7 to 9 in Part 7A.6 of the KDCP. For this Site, at least three tall trees capable of attaining a minimum mature height of 18 metres in local conditions are required. Tree species are to be consistent with the local landscape character and be placed to allow adequate space for mature growth without conflict with structures or services.
- d) The main entry path is 2.3 metres wide and the landscape area to the north of the path forms part of a private courtyard, while the southern landscape area is only 800 mm wide, rather than the required 1.2 metres as required by Control 12 of Part 7C.5 of KDCP. As a result, the building entry impacts adversely on the streetscape and is contrary to Objective 6 of Part 7C.5.

15. Insufficient site analysis

The proposed development has not been informed by a robust site analysis as the submitted site analysis and Urban Design Report (**UDR**) contain inconsistencies and fail to reflect the existing and desired urban character.

Particulars:

- a) The submitted site analysis does not illustrate that design decisions have been based on opportunities and constraints of the Site and their relationship to the surrounding context as required by Objective 3A-1 of the ADG. Notably, key contextual features such as the adjacent railway corridor and the public domain interface along Lindfield Avenue are omitted from the architectural drawings. These are not minor oversights but critical contextual elements that influence amenity, outlook, noise, materiality, privacy, and the site's visual prominence. A proper site analysis is a foundational design task. The failure to identify these contextual constraints at the outset indicates that they have not informed the design as thoroughly as they would be expected to in order to properly satisfy the ADG.
- b) A written site analysis has been submitted in the form of the UDR. However, the UDR includes the following inconsistencies.
 - i. The UDR fails to acknowledge the visual prominence of the Site, which is highly visible from the east.
 - ii. The UDR states that the proposal has generous setbacks and landscape frontages, which is inaccurate.
 - iii. The UDR states that the desired future character of the Site comprises setbacks

- of 10 metres (street boundary), 6 metres (ground to 4 storeys) and 9 metres (from 5 storeys and above). This is inconsistent with the proposed development.
- iv. The UDR makes reference to existing side setbacks of 1.5 metres to 3 metres but fails to note that these setbacks apply to single storey dwellings.
 - v. The UDR makes reference to potential future uplift under the Housing SEPP but fails to provide diagrams or modelling of future adjoining built form and/or assess implications for ADG compliance.

16. Basement design, driveway access and carparking

The development fails to comply with AS2890.1:2004 'Parking facilities Part 1: Off-street car parking' and proposes an unsatisfactory basement design. The proposal also includes inconsistent information in relation to driveway access and is contrary to Council's planned intersection upgrade.

Particulars:

- a) The proposal is to widen the existing driveway crossing towards Lindfield Avenue to approximately 5.6 metres wide (as indicated in the Civil Plans), narrowing to a single lane ramp entry into Basement Level 01. This conflicts with the proposed 6.4 metres wide access indicated in Attachment 2 of the TIA.
- b) According to the Architectural Plans, the gradient of the driveway is a 5% fall for the first 4.5 metres within the Site, contrary to AS2890.1, which requires a 5% gradient for the first 6 metres into the Site. This conflicts with the Civil Plans, which show a 5% gradient for the first 6 metres into the Site and needs to be clarified.
- c) The vehicle clearance assessment for the driveway adopts an incorrect B85 vehicle clearance of 159mm. The requirements outlined in AS2890.1 require the assessment based on 120mm vehicle ground clearance.
- d) The driveway clearance has not been assessed for the B99 vehicle in accordance with the requirements outlined in AS2890.1.
- e) The proposal includes a dedicated loading area in the Basement 01 level with a height clearance of 2.6 metres, designed to accommodate Council's waste collection vehicle, as well as smaller service and removalist vehicles. However, swept paths in the Transport Impact Assessment (**TIA**) indicate that a manoeuvring service vehicle would sweep over

the shared zone of an accessible car parking space (Figure 1). Additionally, the location of the bollard is not compliant with AS2890.6.



Figure 1: Conflict between accessible parking space and manoeuvring

- f) The TIA proposes traffic signal operation to manage access. There is no indication of the location of traffic signal display at the access point for the entry movement, and the proposal is likely to detract from Council's desired streetscape outcomes. Alternative options are to be investigated including amendments to the access ramp layout, provision of a passing bay and use of on-site convex mirrors.
- g) The proposed driveway access point conflicts with Council's proposed streetscape upgrade of Lindfield Avenue and Tryon Road as a pedestrian refuge is proposed in Russell Avenue at the intersection with Lindfield Avenue (Figure 2). Widening the existing driveway crossing of No. 1 Russell Avenue towards Lindfield Avenue may result in vehicle and service vehicle access issues due to the presence of the proposed pedestrian refuge which will adversely impact on entry and exit movements. Updated swept paths of passenger vehicles and service vehicles need to be provided. If the conflict cannot be resolved, the access driveway would need to be relocated to the Lindfield Avenue frontage.

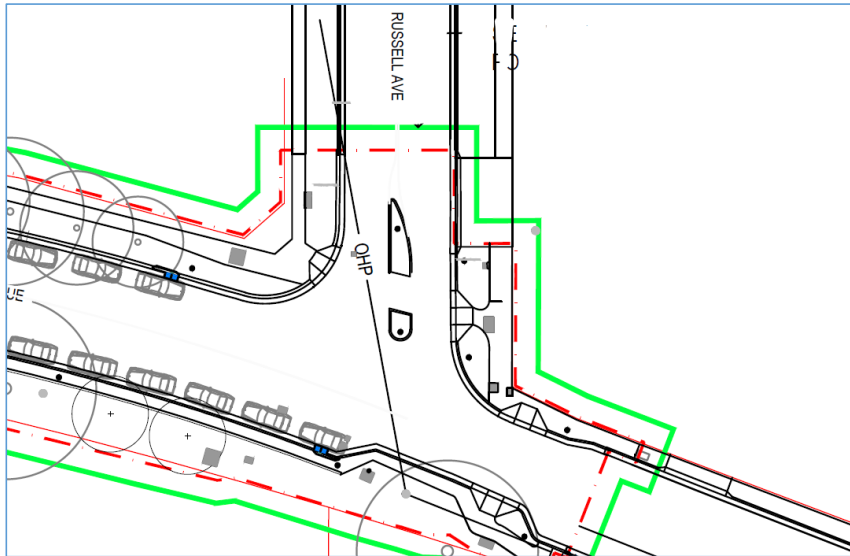


Figure 2: Proposed streetscape upgrade and pedestrian island

- h) To facilitate home deliveries (e.g., groceries, parcels etc), bulky goods waste collection and other service vehicles that cannot access the basement due to the 2.6 metre height clearance, the development should also provide an on-site loading area (a separate hardstand area is not permitted). The position of the loading area must not prevent access to and from the basement level car park, with at least one travel lane to be maintained at all times while loading/unloading takes place on the driveway.
- i) The proposal is contrary to Control 3 of Part 22.4 of KDCP which requires at least one visitor car space to be accessible.

17. Provision for bicycle parking and access

Provision for practical and safe bicycle parking and access has not been made.

Particulars:

- a) The TIA states that 30 bicycle parking spaces are provided in accordance with the KDCP. The architectural plans show double-tier bicycle storage on the Basement 01 level, with racks able to hold 30 bicycles. It is unclear what type of parking facilities/devices these are, but the top tier is unlikely to be practical for most bicycle riders, as they only suit fit riders with light bicycles. Therefore, the type of bicycle parking device facility needs to be clarified and needs to comply with AS2890.1 having regard to the relevant security level.

- b) The proposed ramp connecting Russell Avenue to the Basement 01 level has gradients of up to 1:4.6 (22%), which generally will exceed the capability of many bicycle users to remain mounted with stability (1:12, or 8% is practical). Therefore, the lifts and lobbies should be of a suitable size such that residents can transport their bicycles between the bicycle parking area and ground/street level without using the car park ramp.
- c) It is assumed that some of the double-tiered bicycle spaces are intended for visitor bicycles. Similar ramp grade accessibility issues as residents arise, and there is the practicality and convenience of visitors entering the secure parking area to access the bicycle parking from the main car park entry ramp. For convenience and practicality of all visitors arriving by bicycle, visitor parking is to be located near the building entry.

B2 – CONTENTIONS WHICH MAY BE RESOLVED BY CONDITIONS OF CONSENT

Nil

B3 – CONTENTIONS WHICH MAY BE RESOLVED WITH ADDITIONAL INFORMATION**18. Inadequate information regarding affordable housing**

There is insufficient detail to confirm compliance with Section 21 of SEPP Housing.

Particulars:

- a) Section 21 of SEPP Housing states that development consent under Part 2, Division 1 of SEPP Housing must not be granted unless the consent authority is satisfied that for a period of 15 years commencing on the day the Occupation Certificate is issued, the development will include the affordable housing component required under Sections 16, 17 or 18 and the affordable housing component will be managed by a registered community housing provider.
- b) The consent authority cannot be satisfied that the affordable housing component will be managed by a registered community housing provider as the details of such a provider have not been submitted.

19. Inadequate information regarding acoustic impacts

The submitted acoustic impact assessment contains errors and inconsistencies.

Particular:

- a) The following errors and inconsistencies are identified in the Rail Noise and Vibration Impact Assessment prepared by Rodney Stevens Acoustics (dated 6 June 2025):
- i. Building height inconsistency (page 5) – The noise report describes the proposal as an “eight-storey multi-storey residential development”, whereas the amended Statement of Environmental Effects confirms a 10-storey building. This raises concern that the acoustic modelling may not reflect the current design.
 - ii. Incorrect land use reference (page 16) – The noise report refers to a “childcare centre” when discussing noise from the rooftop pool. The application the subject of this appeal is for a residential flat building.
 - iii. Level 01 of the architectural plans (Rev 2, dated 25 June 2025) shows an area labelled “MSR” with a total area of 8m². Clarification is required as to whether this space is intended to be a Mechanical Services Room or a Main Switch Room, as this could represent an additional location for noise-producing equipment which may not have been assessed by the acoustic engineer.

20. Insufficient architectural plans

The architectural plans are insufficiently documented to permit assessment of and compliance with the ventilation, storage, and solar access provisions of the ADG, as follows.

Particulars:

- a) Compliance with ADG Objective 4B-1, which requires that the area of unobstructed window openings should be equal to at least 5% of the floor area served, has not been demonstrated. Additionally, Objective 4D-1 requires every habitable room to have a window with a minimum glass area of no less than 10% of the floor area of the room. Apartments proposed on the eastern side of the building feature bedrooms with narrow, angled windows only. The area of the windows cannot be assessed as no window schedule has been submitted

- b) Compliance with ADG Objective 4B-3, which requires 60% of apartments to be naturally cross-ventilated, has not been sufficiently demonstrated. The applicant claims that 24 out of 28 apartments (86% of apartments) receive natural cross-ventilation however at least four of those apartments (those occupying Levels 01-05 in the north-eastern corner) may not comply as they are proposed to rely on ventilation from the northern elevation only.
- c) The proposed development does not provide sufficient information to demonstrate compliance with the Design Criteria associated with Objective 4G-1 of the ADG. A storage schedule is required which clearly demonstrates that adequate internal and external storage for each apartment is provided.
- d) The submitted solar access modelling does not demonstrate that the proposed development will not unreasonably overshadow future development on adjoining sites. Modelling of future development is required.

21. Insufficient landscape plan

The proposed landscape design is inadequate and does not meet the requirements of Parts 4O and 4P of the ADG and Part 7A.6 of KDCP.

Particulars:

- a) The landscape plan does not include an ongoing maintenance strategy and fails to satisfy Objective 4O-1 of the ADG. Details regarding drainage for planters and irrigation for all planting above structures have not been provided, preventing assessment of the suitability and long-term viability of the proposed landscape design.
- b) The submitted landscape and architectural plans do not provide sufficient detail to assess the viability of the proposed planting above structures, and compliance with Objectives 4P-1, 4P-2 and 4P-3 of the ADG. There is insufficient information to assess compliance with ADG requirements for planting above structures, as follows:
 - i. The submitted landscape and architectural plans do not provide sufficient detail to assess the viability of the proposed planting. Key information is missing, including top of wall and top of slab levels, which are necessary to confirm whether adequate soil depths and volumes have been provided for planting areas above structures.
 - ii. Dimensions and construction details of planter beds are required to demonstrate soil depth and volume.

- iii. Specifications of fences around the communal open space are required, including the pool area, with clear plans for planting both inside and outside the fencing to ensure a high-quality landscape outcome visible from the public domain.

22. Buildability issues

The architectural plans do not provide sufficient documentation to demonstrate compliance with the National Construction Code (**NCC**) and the requirements of the Building Design and Practitioners Act (**BD&P**). Whilst demonstrating compliance with the NCC and DB&P may not be specifically required for development approval, the safety, functionality, and organization of the building – in both plan and section - needs to align with performance targets and objectives. This is especially the case where the proposed bulk and height of a building exceed planning and design controls at the outset and there is no foreseeable way to further vary these aspects at a later stage.

Particulars:

- a) It is unclear how the proposed fire stair egress is to comply with the NCC. The requirement for at least two fire stairs appears to have been met with a double-loaded stair for the upper levels of the building but it is not clear how egress is to be managed at the lower two residential levels especially with regard to the required carpark exits and the associated entry foyer and street activation objectives of the KDCP.
- b) The proposed development shows a nominal floor-to-floor height of 3,150mm. To satisfy requirements of the DB&P Act this may need to be increased, to account for slab set-down requirements and waterproofing mandates, thereby increasing the overall height of the building.

23. Design Verification Statement

The submitted Design Verification Statement does not meet the relevant statutory requirements.

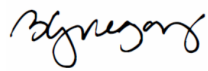
Particulars:

- a) The submitted Design Verification Statement (**DVS**), prepared by P. S. Issa, comprises a brief statement only and is insufficient. Under section 29 of the Regulation, the DVS must explain *how* the development addresses the design principles for residential apartment development and the objectives of Parts 3 and 4 of the ADG. A separate UDR has been

provided but has not been prepared by the same nominated architect (N. R. Dickson). A revised DVS is required to meet the statutory requirements.

SIGNATURE

Signature of authorised officer of
respondent consent authority



Name of authorised officer

Brodee Gregory

Capacity

Executive Assessment Officer

Date of signature

20 October 2025