

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA18/0890.01
Proposed development:	Review of Determination - Proposed Construction of a Five (5) Storey Residential Flat Building with Basement Car Parking
Property address:	36 Rodley Avenue, PENRITH NSW 2750 38 Rodley Avenue, PENRITH NSW 2750
Property description:	Lot 58 DP 33490 Lot 59 DP 33490
Date received:	26 August 2019
Assessing officer	Ian Dencker
Zoning:	Zone R4 High Density Residential - LEP 2010
Class of building:	Class 2 , Class 7a
Recommendations:	Refuse

Executive Summary

Council is in receipt of a Review of Determination Application lodged pursuant to Division 8.2 of the Environmental Planning and Assessment Act 1979 (EPAA), related to the 24 May 2019 determination to refuse Development Application DA18/0890, from Morson Group Pty Ltd.

DA18/0890 (as refused) proposed the demolition of existing structures and construction of a six (6) storey residential flat building containing twenty (20) apartments and two (2) levels of basement car parking at 36-38 Rodley Avenue, Penrith.

The applicant on 26 August 2019 has submitted revised documentation in support of the Section 8.2 Review. As permitted under Section 8.3(3) of the EPAA, the applicant has listed the following changes to the DA that was refused, including a reduction of units from 20 to 17 and a reduction of storeys from 6 to 5.

1. The building is 5 levels. Residential units on Level 6 have been deleted.
2. Communal open space occupies the entire rooftop.
3. The rear setback to the water course boundary has been increased to 6m.
4. Side setbacks for the "Bedroom Wings" reduced to 4m
5. Waste collection is on site within the basement.
6. Stormwater and flood storage design has been coordinated into the design.
7. Landscape Plan - an amended plan accompanies this submission incorporating the revised design.

The subject site is zoned R4 High Density Residential under Penrith Local Environmental Plan 2010 (LEP 2010). Development for the purposes of a residential flat building is permissible with consent in the zone.

The Minister for Planning has given directions under Section 9.1 of the Environmental Planning and Assessment Act 1979 (EPAA) with regard to development applications that are to be determined on behalf of Council by a Local Planning Panel. These directions, dated 23 February 2018, outline development within the Penrith Local Government Area that is for a residential flat building under the provisions of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development, require determination by a Local Planning Panel.

Pursuant to Section 8.3(5) of the EPAA "The review of a determination or decision made by a local planning panel is also to be conducted by the panel." The EPAA limits the time in which a Review of Determination can be undertaken, to six (6) months after the original determination was made - in this case 24 May 2019 - thus it is

recommended that this report be tabled at the PLPP meeting held 13 November 2019, which is within the 6 month timeframe.

The Section 8.2 Review was advertised in the local newspaper and notified to the owners and occupiers of adjoining and nearby properties. The public exhibition period for the proposal was from 13 to 27 September 2019. During this period, one joint submission (representing two adjoining owners) was received.

Key issues identified for the proposed development (as amended) include:

- Non compliance with maximum height requirements.
- Non compliance with ADG requirements, including building separations.
- Servicing of the site in relation to stormwater and waste.
- Impacts on visual privacy and solar access to adjacent developments.

The amended plans were presented to Council's Urban Design Review Panel on 30 October 2019 who has provided the following urban design advice:

The amended scheme has not sufficiently addressed or resolved the design issues raised following the original Urban Design Review Panel presentation or the design matters identified which resulted in the refusal with the proceeding determination. The outstanding matters that require resolution by way of built form and design amendments are as follows:-

- *The descending basement ramp and exposed driveway condition to the side (eastern) boundary and the proposed unit adjacent to the ramp is unacceptable. The basement ramp should be incorporated into the built form, preserving the side setback of landscaping and open space as well as assisting to reduce the impact of noise and vehicle movements to the adjacent neighbouring development.*
- *The ground floor provides poor amenity and outlook adjacent to the basement ramp. There is also inadequate demonstration of solar access to the ground floor eastern unit.*
- *The width of the front pedestrian entry and its alignment to the internal floor layout does not provide suitable lines of sight to a useable lobby or ground floor open space. The entry presents to the front door of unit which is an unacceptable interface and results in unacceptable internal amenity. The pedestrian entry and resulting gradient should provide for and enable seating and congregation space if a widened entry is pursued. It is also noted that diagrammatically it presents as a driveway ramp which is not a positive streetscape outcome.*
- *The proposal provides inadequate ground floor communal open space. While roof top open space is proposed and supported, opportunities for ground floor open space in addition to roof top allocation should be pursued.*
- *There is inadequate separation and delineation between private and communal open space / setbacks at the ground floor.*
- *The ground floor internal circulation corridor should be amended to extend east to west subject to finished ground levels. The indicated private open space terrace adjacent to bedrooms is inaccessible and disconnected from the unit living areas.*
- *Natural light and ventilation is not provided from building edge to edge. Unit amendments for upper floors could be made or conditioned to easily achieve this outcome however the ground floor requires more substantial amendment.*
- *The vergola treatment to the front elevation is not supported at the top most level. The stepped setback is not to be filled as a recessive building form at this level is warranted.*
- *There is also inadequate justification for the proposed variation to building height noting the above concerns. The proportions of the building do not reasonably support the height exceedance given these concerns, which is further breached by the ancillary open space features suggested on the roof.*

The matters identified within this advice do not enable the Urban Design Review Panel to support the proposed review of determination application.

An assessment under Section 4.15 of the EPAA and a Section 8.2 Review under the EPAA have been undertaken, and the application is recommended for refusal.

Site & Surrounds

The subject site is known as 36 - 38 Rodley Avenue, Penrith and is legally described as Lots 58 and 59 of DP 33490. The site is rectangular in shape with a frontage onto Rodley Avenue of 30.5m and a depth of 36.6m resulting in an overall site area of 1,112.8m². Each lot is currently provided with a single storey residential dwelling and associated structures. The subject site is relatively flat and there is a drainage easement registered on the western boundary of Lot 58, DP 33490. This easement connects to a drainage easement located on the adjacent site to the south, Penrith Paceway (No. 127-141 Station Street, Penrith), which is a large parcel of land that runs from Mulgoa Road on the west to Station Street to the east.

Rodley Avenue and surrounds is currently in a state of transition from traditional detached dwellings to higher density development (reflecting its current R4 High Density Zoning) with a number of approvals recently granted for the construction of residential flat buildings, however, currently it remains largely low density residential. In this regard, to the west of the subject site (No. 50-54 Rodley Avenue) is a 6 storey residential flat building containing 42 apartments with basement car parking (approved under DA16/0262). To the north west of the subject site (No. 12 Vista Street, Penrith) are two 6 storey residential flat buildings containing 79 apartments and basement car parking (approved under DA17/0311).

Proposal

The development (as amended) pursuant to Section 8.3(3) of the EPAA proposes the demolition of existing structures and construction of a five (5) storey residential flat building containing 17 apartments and two levels of basement car parking. Specifically, the proposed development (as amended) includes the following key aspects;

Lower Basement

- The provision of a total of 20 residential car parking spaces including 2 accessible spaces and 3 stacked spaces,
- 17 residential storage spaces,
- Ramp access for vehicles to upper basement, and
- One lift, and one set of fire stairs, and
- One pump room

Upper Basement

- The provision of a total of 7 car parking spaces including 4 visitor spaces and 1 car wash/service space,
- Bicycle parking containing 6 spaces,
- Waste bin storage room and bulky waste storage
- Ramp access for vehicles to ground level, and
- One lift and one set of fire stairs.

Ground Floor Level

- Vehicular access to the basement level from Rodley Avenue,
- Provision of 1 x 3 bedroom unit, 1 x 2 bedroom unit and 1 x 1 bedroom unit, each with a separate private open space terrace area,
- Foyer entry area and circulation core providing for lift, waste chutes and service cupboards, and
- Stairs to basement levels and stairs to upper floors.

Level 1

- The provision of 2 x 3 bedroom units and 2 x 2 bedroom units each with an associated balcony, and
- Lobby area with circulation core providing for lift, fire stairs, waste chutes, and service cupboards.

Level 2-3

- The provision of 2 x 3 bedroom units and 2 x 2 bedroom units each with an associated balcony, and
- Lobby area with circulation core providing for lift, fire stairs, waste chutes and service cupboards.

Level 4

- The provision of 1 x 3 bedroom unit and 1 x 2 bedroom unit each with an associated balcony, and
- Lobby area with circulation core providing for lift, fire stairs, waste chutes and service cupboards.

Level 5

- Lobby area with circulation core providing for lift, fire stairs, waste chutes and service cupboards, and
- The provision of a communal open space area (totalling 207.5m² in size) with planter walls, tables and chairs.

The proposed apartment mix is provided by the following table below;

Unit Type	No of units
1 bedroom unit	1
2 bedroom unit	8
3 bedroom unit	8

Background

The Section 8.2 review was subject to a pre-lodgement meeting held with relevant Council staff members on 18 June 2019. In addition, the application has been subject to an Urban Design Review Panel Meeting (UDRP) held with Council on 19 June 2019. A preliminary assessment was conducted on the application with a subsequent additional information request provided to the applicant on 24 October 2019. In response to this request, additional information has been provided which has been considered as part of this assessment report.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 65—Design Quality of Residential Flat Development
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 8.2 - Review of determination

Pursuant to Section 8.3 of Environmental Planning and Assessment Act 1979, an applicant may request Council to review its determination of a Development Application. The request to review must be lodged and determined within 6 months of the date of Council's notice of determination. As the original application was determined by the Penrith Local Planning Panel, the determination of a review application from a panel decision shall be determined by different members of the panel to those who made the original determination as stipulated by Schedule 1 - 'Operational Procedures' of the Local Planning Panel Direction signed by the Minister of Planning on the 23 February, 2018

As per the requirements of Section 8.3(3), Council must be satisfied that the development as amended (if amended at all), is substantially the same development as that described in the original application. In this regard, a review of the submitted plans confirms that while amendments have been made, the proposal meets the "substantially the same development" test in that the proposal is of the same essence and remains to be for the demolition of existing structures and construction of a revised five (5) (originally six (6)) storey residential flat building containing a revised 17 apartments (as compared to the original 20 apartments) with a communal roof top terrace and two (2) levels of basement car parking with substantially the same building footprint, albeit with an altered design including a basement waste management solution.

The reasons for refusal of the original development application under DA18/0890 are reviewed in turn below, relative to the refused proposal and having regard to the plans and documents submitted with this Review of Determination application. Further, the development has been assessed in accordance with the matters for consideration under Section 4.15 and Division 8.2 of the Environmental Planning and Assessment Act 1979 as detailed within this report.

Reason for Refusal 1

The application fails to satisfy the development standard for building height and the request for a variation to the development standard is not supported because the proposed development will not be in the public interest as it will not ensure a high level of a residential amenity, provide a high quality urban form or reflect the desired future character of the area, being the objectives of the zone and height standard.

Officer's Response

The application has been accompanied by a revised Clause 4.6 Variation Request prepared by Stimson & Baker Planning dated August 2019 in relation to the building height non-compliance. The request has provided for an evaluation with reference to Clause 4.6(3)(a) and (b) and the identified variation in relation to Clause 4.3 of the LEP.

The commentary provided by the accompanying 4.6 Variation Request in relation to the non-compliant height is not considered to have adequately addressed why compliance with the development standard is unreasonable and unnecessary in this instance.

The part of the building that exceeds the building height standard results in additional overshadowing and amenity impacts for neighbouring dwellings. The overshadowing and privacy impacts relate to and exacerbate the impact of the Apartment Design Guide non-compliant landscaping and the non-compliant separation distances to the front, rear, and side boundaries for the proposed building to neighbouring properties.

The overall height is not considered consistent with the surrounding approvals granted for residential flat buildings currently under construction when considered together with all other non-compliances outlined in this report.

Noting all of the above, a departure from the height development standard of 2.9m (16.11%) is not acceptable in this specific instance and the reason for refusal is therefore maintained.

Reason for Refusal 2

The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the provisions of Penrith Local Environmental Plan 2010 as follows:

- (i) Clause 1.2 Aims of the Plan The proposal is inconsistent with the aims of the Plan in relation to promotion of development consistent with Council's vision for Penrith, to meet the emerging needs of Penrith's communities while safeguarding residential amenity and ensuring that the development incorporates the principles of sustainable development.*
- (ii) Clause 2.3 Zone Objectives The proposal is inconsistent with the objectives of the R4 High Density Residential zone, particularly (d) The design of the proposed development does not ensure that a high level of residential amenity is achieved and maintained, and (f) to ensure that development reflects the desired future character and dwelling density of the area.*
- (iii) Clause 7.2 The proposal does not comply with Council's Policy in relation to overland flow management on the site.*
- (iv) Clause 7.6 The proposal has not provided sufficient information to assess the impact of the development on salinity.*
- (v) Clause 7.7 The proposal does not meet the requirements for waste and stormwater servicing.*

Officer's Response

A review of the plans submitted with this Review of Determination Application does not sufficiently resolve the above reasons for refusal in relation to points (i) and (ii) in that the adverse amenity impacts on future occupants, in regards to the inadequate communal open space provided and inadequate separation distances for the proposed built form, is considered likely to result in low levels of visual privacy and solar access for future occupants and adjoining residents, and is not aligned with Council's vision for development in Penrith.

The development presents poorly to the street and it will detract from streetscape quality with no deep soil capable of accommodating medium to large canopy tree planting within the site's frontage.

The design of the proposed development does not ensure that a high level of residential amenity is achieved and maintained, in that the application has not demonstrated that building separation, solar access, communal open space and landscaping standards have been satisfactorily achieved in accordance with the Apartment Design Guide.

In relation to points (iii) and (v) both waste and stormwater servicing remains unresolved as detailed in this report. Only point (iv) has been resolved with the submission of a soil salinity assessment dated 13 August 2019.

On balance, the Reason for Refusal 2 is maintained – except for point (iv) which has been resolved.

Reason for Refusal 3

The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the provisions of State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development and the accompanying Apartment Design Guide as follows:

(i) Clause 30(2)(a) - compliance with the design quality principles specified in the Apartment Design Guide:

- Principle 1: Context and Neighbourhood Character
- Principle 2: Built form and scale
- Principle 3: Density
- Principle 4: Sustainability
- Principle 5: Landscape
- Principle 6: Amenity

(ii) Clause 30(2)(b) - compliance with the objectives specified in the Apartment Design Guide:

- 3B Orientation
- 3C Public domain interface
- 3D Communal and public open space
- 3F Visual privacy
- 4A Solar and Daylight Access
- 4E Private open space and balconies
- 4H Acoustic privacy
- 4O Landscape design
- 4U Energy efficiency
- 4W Waste management

Officer's Response

Principle 1: Context and Neighbourhood Character - While the current review has provided for the removal of the previous residential units on Level 6, the inability of the design to provide a compliant waste management solution has resulted in an undesirable design solution, in particular the Ground Floor. The current proposal is therefore not considered to have responded adequately to the existing constraints of the subject site and this reason for refusal is maintained.

Principle 3: Density – The development proposes a non-compliant waste infrastructure solution which is considered to have adverse impacts (both internally and externally) on residential amenity, and which will create traffic and safety issues for pedestrians. The width of the front pedestrian entry and its alignment to the internal floor layout does not provide suitable lines of sight to a useable lobby or ground floor open space. The entry presents to the front door of Unit 03 which is an unacceptable interface and results in unacceptable internal amenity. This reason for refusal is maintained.

Principle 4: Sustainability - As discussed within this report, the design as amended is considered to maintain amenity concerns for future occupants, primarily via solar access to southern units as well as easily accessible communal open space and natural ventilation non compliances from building edge to edge. In this regard, the amended design is not considered to have adequately resolved its appropriateness to the constraints of the subject site and this reason for refusal is maintained.

Principle 5: Landscaping - Landscaping proposed is not consistent with the landscape character of the streetscape in that the landscaping provided within the front setback is minimal. Opportunities for landscaping in the form of front setback planting are limited by the presence of the servicing which are prominently located in the building frontage. Landscaping on the western boundary is proposed as a combination of small shrubs and medium sized trees within the easement, and planter boxes with larger trees on the private terrace areas. Planting and any structures (such as stairs and fencing) within the easement are not supported by Council, and this limitation will result in minimal planting to the side boundary to assist in providing privacy screening. In this regard, the previous

reason for refusal is not considered resolved.

Principle 6: Amenity - As the review of the amended proposal is not considered to resolve all solar access and natural ventilation concerns (Unit 03 in particular) this reason for refusal is maintained.

3B Orientation - The submitted shadow diagrams have identified that the adjoining properties to the east and west of the subject site will be impacted by additional overshadowing.

3C Public domain interface - A location for an electrical substation has been identified within the front setback on the north western corner of the subject site. The hydrant booster is nominated on the north eastern corner of the front boundary. Both locations are in prominent positions in the site frontage, and coupled with the proposed non compliant waste management solution results in a poor public domain interface.

3D Communal and public open space - 278.5m² of COS is required under the ADG (25% of total site area). Submitted plans state that only 207.5m² of the site is provided as COS, which equates to 18.65%. The area of COS is provided to the roof top level.

3F Visual privacy – The ADG calls up local DCP controls in respect of front setback, in this case the average of the two adjoining properties being 6.4m. The proposal at 4.9m does not comply.

4A Solar and Daylight Access – as mentioned earlier in this report, natural light and ventilation is not provided from building edge to edge.

4E Private open space and balconies – compliance has been achieved and air conditioning units are now located on the roof.

4H Acoustic privacy – except for Unit 03, the amenity of all units in relation to acoustic privacy are not considered to be adversely impacted.

4O Landscape design - building separations to the boundaries as well as communal open space is non-compliant. In combination with the extent of intrusion by servicing in the reduced front setback (booster, substation, driveway, easement, OSD system) limiting landscaping opportunities to the streetscape, it is considered that the proposal has not satisfactorily met the objectives for landscaped area.

As this review indicates, this previous reason for refusal is considered largely unresolved (4E excepted) and remains relevant.

Reason for Refusal 4

The development application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014:

(i) The application has not satisfied Council with respect to the requirements under Part B - 'DCP Principles', specifically:

- The proposal has not been designed with consideration for the health, recreational and social needs of residents, and the proposal does not minimise its ecological footprint or promote sustainable production and consumption.

(ii) The application has not satisfied Council with respect to the requirements under Section C1 'Site Planning and Design Principles', specifically:

- The built form and scale of the proposal does not adequately respond to the context of the site.

(iii) The application has not satisfied Council with respect to the requirements under Section C5 'Waste Management', specifically:

- The proposal provides for street collection and waste bin storage rooms on the ground floor.

(iv) The application has not satisfied Council with respect to the requirements under Section C6 'Landscape Design', specifically:

- The proposal does not include landscaping to the site that responds to the context of the site or complements the built form or minimises the impacts of the scale of the development.

(v) The application has not satisfied Council with respect to the requirements under Section C10 'Transport, Access and Parking', specifically:

- The indented bay for waste collection is not supported.

(vi) The application has not satisfied Council with respect to the requirements under Section C13 'Infrastructure and Services', specifically:

- The proposal does not meet the requirements for engineering works in relation to the stormwater easement.

(vii) The application has not satisfied Council with respect to the requirements under Section D2 'Residential Development', specifically:

- Clause D2.5.5 The landscaped area does not meet the minimum 35% required for the site. The landscaping provided is compromised by servicing requirements.

- Clause D2.5.8 The proposal does not achieve a high level of visual or acoustic privacy for future occupants or adjoining neighbours.

- Clause D2.5.9 *The proposal results in overshadowing of the private open space of adjoining development.*

Officer's Response

A detailed review of the accompanying documentation with this Review of Determination has been undertaken in relation to compliance with Penrith Development Control Plan 2014 as set out in the Appendix – Development Control Plan Compliance of this report. As the review indicates, this previous reason for refusal is considered unresolved and remains relevant.

Reason for Refusal 5

The application is not satisfactory for the purpose of Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979 as the proposal was not accompanied by all the information as required under Schedule 1 Forms of the Regulations or as required to properly consider the proposal, as follows:

- Clause 50 (1A)(1AB) of the Environmental Planning and Assessment Regulation 2000 requires a statement from a qualified designer to be submitted.
- An updated BASIX Certificate.
- A Geotechnical Report.

Officer's Response

A review of the accompanying documentation with this Review of Determination has identified that a Geotechnical Report, (dated 13 August 2019) has accompanied the proposal. However, the following documents have not been received:

- A statement from a qualified designer
- An updated BASIX Certificate

The previous reason for refusal is therefore considered largely unresolved and remains relevant.

Reason for Refusal 6

The development application is not satisfactory for the purpose of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in terms of the likely impacts of that development including those related to:

- (i) Streetscape and character,
- (ii) Context and landscaping,
- (iii) Bulk and scale,
- (iv) Solar access and privacy impacts,
- (v) Amenity, safety and security impacts related to the ground floor layout,
- (vi) Communal open space,
- (vii) Access, traffic and parking,
- (viii) Energy efficiency,
- (ix) Waste management impacts.

Officer's Response

Of the above reasons for refusal, it is considered that none of the above points have been resolved. The application as amended is considered to inadequately cater for maintenance of amenity for existing adjoining neighbours, currently in the form of 1 and 2 storey single dwellings and dual occupancies. The proposal is provided with non-compliant front setback and non-compliant side and rear setbacks in accordance with the ADG and the DCP. The overbearing visual impact created by the development when viewed from the adjacent properties to the east and west, combined with adverse impacts to visual privacy and overshadowing of private open space, results in a development that has insufficiently considered the context of the site.

Noting the above, this reason for refusal are not considered to have been appropriately resolved and remains relevant.

Reason for Refusal 7

The application is not satisfactory for the purpose of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 as the site is not suitable for the scale of the proposed development.

Officer's Response

The proposal is an over development of the site for the reasons expressed above and, in this regard, this reason for refusal remains relevant.

Reason for Refusal 8

Based on the above deficiencies and submissions received, approval of the proposed development would not be in

Officer's Response

The application subject to this current review is not considered satisfactory for the purpose of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, and is not in the public interest. In this regard, this reason for refusal remains relevant.

As this review indicates, all previous reasons for refusal are considered unresolved and remain relevant.

Section 79C(1)(a)(i) The provisions of any environmental planning instrument

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

This Policy ensures the implementation of the BASIX scheme that encourages sustainable residential development. It requires certain kinds of residential development to be accompanied by a list of commitments to be carried out by applicants.

This application is subject to these requirements as it involves BASIX affected development.

BASIX Certificate No. 952452M dated 16 August 2018 was originally submitted with the Development Application demonstrating compliance with set sustainability targets for water and energy efficiency and thermal comfort. It is noted that an amended BASIX certificate has not accompanied the revised set of plans provided for Council's consideration.

Should the application be approved, any development consent would include a condition requesting an updated BASIX certificate to ensure the commitments in the original certificate are maintained during the life of the proposed development.

State Environmental Planning Policy No 55—Remediation of Land

Clause 7 of State Environmental Planning Policy No. 55 (SEPP 55) outlines the following requirements that a consent authority must consider prior to the issue of a consent for any development:

A consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

There is no record that the subject site is contaminated. The proponent has outlined that the site has been historically used for residential purposes while the surrounding area is also used for residential purposes. In this regard, given the residential use of the subject site and surrounding properties, it is not considered that further analysis is required as the proposal is not a change of land use being residential to residential. While so, should any 'unexpected findings' occur during excavation and earthworks, work is to cease immediately and Penrith City Council is to be notified. This may be addressed by way of recommended conditions of consent should the application be approved.

State Environmental Planning Policy No 65—Design Quality of Residential Flat Development

An assessment has been undertaken of the development proposal against the aims and objectives and specific provisions of State Environmental Planning Policy No. 65—Design Quality of Residential Apartment Development. In particular, the development proposal has been assessed against Clause 30 of the Policy which states that:

"Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to the design quality principles,

Clause 50 (1A)(1AB) of the Environmental Planning and Assessment Regulation 2000 specifies:

50(1A) If a development application that relates to residential apartment development is made on or after the commencement of the Environmental Planning and Assessment Amendment (Residential Apartment Development) Regulation 2015, the application must be accompanied by a statement by a qualified designer.

50 (1AB) The statement by the qualified designer must:

- (a) verify that he or she designed, or directed the design, of the development, and*
- (b) provide an explanation that verifies how the development:*
 - (i) addresses how the design quality principles are achieved, and*
 - (ii) demonstrates, in terms of the Apartment Design Guide, how the objectives in Parts 3 and 4 of that guide have been achieved.*

It is noted that the development application and request for a review of determination have not been submitted with a design verification statement.

An assessment against Schedule 1 'Design Quality Principles', of the Policy has been undertaken and is included in **Table 1** and an assessment against the accompanying Apartment Design Guide is also provided in **Table 2** below.

Table 1: Assessment Against Schedule 1 - Design Quality Principles		Discussion
Principle 1: Context and neighbourhood character	<p>Good design responds and contributes to its context.</p> <p>Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character.</p> <p>Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p>The design is not considered to respond to the context of the site in that the development as proposed does not have regard to required building separation distances as required under the Apartment Design Guide.</p> <p>The neighbourhood character is undergoing change with the R4 high Density zoning allowing for lots to achieve higher yields than what has been traditionally a low to medium density suburban environment.</p> <p>Notwithstanding future intensification of uses in the vicinity, by providing non-compliant separation distances, the proposed development is considered to have little regard for its current context amongst existing 1 and 2 storey dwellings as well as maintaining consistent and compliant setbacks for any future residential flat buildings in accordance with the Apartment Design Guide.</p> <p>Due to non-compliant building separations of the bedroom "wings" of 4m (6m required), the landscaped area and treatment is considered to be insufficient to balance the built form and is inconsistent with the character of landscaping in the neighbourhood.</p>

<p>Principle 2: Built form and scale</p>	<p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook</p>	<p>The bulk and scale of the proposal is not considered likely to be representative of the desired future character of the neighbourhood noting the non-compliant building separations provided.</p> <p>The visual presentation of the built form is considered an unacceptable addition to a streetscape which is currently in transition from older low scale residential dwellings to larger residential flat buildings.</p>
<p>Principle 3: Density</p>	<p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Appropriate densities are consistent with the area's existing or projected population.</p> <p>Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p>The development is considered to provide for generally acceptable internal and external amenity for residents. However, the development proposes a non-compliant waste infrastructure solution which is considered to have adverse impacts (both internally and externally) on residential amenity, and which will create traffic and safety issues for pedestrians.</p>
<p>Principle 4: Sustainability</p>	<p>Good design combines positive environmental, social and economic outcomes.</p> <p>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs.</p> <p>Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<p>The application is not considered to adequately identify that solar access is provided in accordance with the Apartment Design Guide rates.</p>

<p>Principle 5: Landscape</p>	<p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity.</p> <p>A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p> <p>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long-term management.</p>	<p>Some deep soil areas have been co-located with private open space areas for ground floor apartments, however the proposed communal open space is located on the rooftop, and therefore separated from the deep soil areas.</p> <p>Landscaping proposed is not consistent with the landscape character of the streetscape in that the landscaping provided within the front setback is minimal. Opportunities for landscaping in the form of front setback planting are limited by the presence of the servicing which are prominently located in the building frontage.</p> <p>Landscaping on the western boundary is proposed as a combination of small shrubs and medium sized trees within the easement, and planter boxes with larger trees on the private terrace areas. Planting and any structures (such as stairs and fencing) within the easement are not supported by Council, and this limitation will result in minimal planting to the side boundary to assist in providing privacy screening.</p> <p>Whilst landscaping to the communal roof area is considered to offer some areas of relief for future residents using this area, its limited useable area and practicality is questioned and which has resulted in non-compliant height.</p>
<p>Principle 6: Amenity</p>	<p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>Room dimensions are acceptable.</p> <p>Solar access is considered to be adequate with the exception of Unit 03 which will enjoy relatively poor access to sunlight.</p>

Principle 7: Safety	<p>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>The application is considered to have appropriate regard to the principles of Crime Prevention through Environmental Design. The proposal will present to Rodley Avenue with casual surveillance achieved via the location of balconies and windows to all elevations.</p> <p>The building design is not considered to create areas of concealment with clear lines provided in separating public and private areas. The lobby is within view of the entry, however, the lift is not, which is not considered an appropriate design solution.</p>
Principle 8: Housing Diversity and Social Interaction	<p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	<p>The mix of units in the development is acceptable.</p>
Principle 9: Aesthetics	<p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p>As detailed elsewhere in this table and in the assessment of the development against the Apartment Design Guide (ADG) below, non-compliances in relation to building separation distances, communal open space, design of waste storage and service requirements, solar access, and landscaping have been identified.</p>

Table 2: Assessment Against the Apartment Design Guide (ADG)

Part 3	Required	Discussion	Complies?
3A-1	Each element in the Site Analysis Checklist should be assessed.	A Site Analysis plan was included in the original package of documents and a modified ADG compliance table included on the amended plans to identify applicable elements as required within the Checklist.	Yes.
3B-1	Buildings to address street frontages.	The building frontage onto Rodley Ave is naturally orientated to north and allows for direct access from the street.	Yes.

3B-2	Living areas, Private Open Space (POS) and Communal Open Space (COS) to received compliant levels of solar access.	Refer discussion under Part 3D and 4A.	No.
	Solar access to living rooms, balconies and private spaces of neighbours should be considered.	The submitted shadow diagrams have identified that the adjoining properties to the east and west of the subject site will be impacted by additional overshadowing.	No.
	If the proposal will significantly reduce the solar access of neighbours, building separation should be increased.	As discussed above, inadequate information has been submitted with the development application to enable an accurate assessment in this regard. It is also noted that the proposed building has been orientated at 90 degrees to the boundary with neighbouring properties to minimise overshadowing created. However, from the information submitted it appears that the solar access currently enjoyed by the south facing private open space of the adjacent neighbour at 34b Rodley Avenue will be reduced by the development as indicated in the Shadow Diagrams provided by the applicant. These indicate that between 15% and 29% of sunlight will be lost between 2pm and 3pm respectively on June 21st.	No.
3C-1	Terraces, balconies and courtyard apartments should have direct street entry, where appropriate.	Unit 01 has no direct access to Rodley Avenue via the terrace. Any stairs from the terrace to the ground level would need to be located outside the stormwater easement should the application be approved. No structures (stairs, fencing) are to be located within the easement.	No.
	Changes in level between private terraces, front gardens and dwelling entries above the street level provide surveillance and improve visual privacy for ground level dwellings.	Limited level difference (up to 200mm) is provided between the pavement height and the finished floor height of the ground floor apartments fronting Rodley Avenue.	Yes.
	Upper level balconies and windows to overlook the street.	All apartments along the street frontage overlook Rodley Avenue.	Yes.
	Length of solid walls should be limited along street frontages.	The presentation of the northern elevation fronting Rodley Avenue is provided with acceptable openings.	Yes.
	Opportunity for concealment to be minimised.	While the front entry is separate and allows linear sight lines into the main lobby area, the lift is not located in sight of the front entry door but in the circulation space.	No.

	<p>Opportunities should be provided for casual interaction between residents and the public domain.</p> <p>Design solutions may include seating at building entries, near letter boxes and in private courtyards adjacent to streets.</p>	No seat is provided near the building entry or on other levels. Letterboxes are located inside the main entry doors however no seating is available in this location.	No.
3C-2	Mail boxes should be located in lobbies, perpendicular to the street alignment or integrated into front fences where individual street entries are provided.	The mail box location is nominated on plans inside the main entry doors and perpendicular to the front boundary which is considered an appropriate design solution.	Yes.
	Substations, pump rooms, garbage storage areas and other service requirements should be located in basement carpark or out of view.	<p>A location for an electrical substation has been identified within the front setback on the north western corner of the subject site.</p> <p>The hydrant booster is nominated on the north eastern corner of the front boundary.</p> <p>Both locations are in prominent positions in the site frontage.</p>	No.
3D-1	Communal Open Space (COS) to have minimum area of 25% of site.	<p>278.5m² of COS is required under the ADG (25% of total site area).</p> <p>Submitted plans state that 207.5m² of the site is provided as COS, which equates to 18.65%. The area of COS is provided to the roof top level.</p> <p>The proposed COS area is assessed to provide a moderate level of amenity and usable space for residents, with landscape plans indicating seating is provided.</p> <p>Equitable access to this area provided from all levels via a lift core.</p>	No.
	Achieve a minimum of 50% direct sunlight to the principle usable part of the communal open space.	The communal open space is proposed to the roof area, and shadow diagrams demonstrate that while some solar access is achieved, the minimum 50% sunlight for 2 hours is not maintained to the principal usable areas as the COS is continually overshadowed by the lift core.	No
	COS to be consolidated into a well-designed, usable area.	Refer to discussion above.	No.
	COS to be co-located with deep soil.	As the communal open space is located to the roof level, co-existence with deep soil area is not provided for.	No.
3D-2	COS is to be provided with facilities such as barbeque areas and seating.	No barbeque areas are provided within the COS area.	No.

	COS is to be well lit and readily visible from habitable rooms.	The location of the communal open space to the roof level does not provide for visibility from habitable rooms. However, and separate to concerns raised in relation to its overall size and overshadowing. This area is not considered to provide for any areas of entrapment.	No, but acceptable in this instance.
3D-4	Boundaries should be clearly defined between public open space and private areas.	<p>Boundaries between public and private space are clear noting the use of planter boxes on the front elevation of the building to the boundaries of the Unit 01 terrace.</p> <p>Fencing has been provided between private open space areas on the ground floor and areas accessible from Rodley Avenue to minimise inappropriate movement of persons.</p> <p>As fencing cannot be located within the stormwater easement on the western elevation, the fence to the private open spaces of Unit 01 requires an appropriate design.</p> <p>A detailed fence design has not been submitted with the DA, however, this could be provided as a condition of consent should the application be approved.</p>	Yes.
3E-1	Deep soil is to be provided at a rate 7% with a minimum dimension of 3m.	<p>77.9m² of deep soil is required under the ADG (7% of total site area).</p> <p>Submitted plans state that 168m² of the site is provided as deep soil. A review of the deep soil provided reveals that much of the space does not meet the minimum 3m depth required by the ADG. However, the deep soil within the 3m strip on the eastern boundary of the site equals approximately 109.8m² and therefore the deep soil provided, is compliant with the ADG.</p>	Yes.

3F-1	<p>Minimum required shared separation distances between habitable rooms and balconies are to be as follows:</p> <p>1-4 Storeys – 6m</p> <p>5-8 storeys – 9m</p>	<p>Building separation is as follows (measured from the face of the balcony/building to the side boundary):</p> <p><u>North Separation</u></p> <p>Ground*: building 4.9m (7.8m to terrace).</p> <p>Levels 1-3: 4.5m</p> <p>Level 4: 4.9m</p> <p>Level 5: 7m to roof top communal space</p> <p>*ADG calls up local DCP controls in respect of front setback, in this case the average of the two adjoining properties being 6.4m. The proposal at 4.9m does not comply.</p> <p><u>South Separation</u></p> <p>It is noted that the subject site directly adjoins the trotting track to the rear but while so, the proposal is provided with non-compliant separations to level 4.</p> <p>Ground: 1m to terrace, 6m to building</p> <p>Levels 1-3: 6m</p> <p>Level 4: 6m</p> <p>Level 5: 9m to rooftop communal open space</p> <p><u>Western Separation</u></p> <p>The proposal is provided with non-compliant separation distances to all levels.</p> <p>Ground: 2.5m to terrace, 4m to building</p> <p>Levels 1-3: 4m</p> <p>Level 4: 9m</p> <p>Level 5: 9m to rooftop communal open space</p> <p><u>East Separation</u></p> <p>The proposal is provided with non-compliant separation distances to all levels.</p> <p>Ground: 7.8m to terrace, 10m to building</p> <p>Levels 1-3: 4m</p> <p>Level 4: 9m</p> <p>Level 5: 9m to rooftop communal open space</p>	No.
3F-2	<p>Communal open space, common areas and access paths to be separated from private open space and windows to apartments.</p>	<p>The proposal is provided with landscaping and fencing to allow for appropriate separation.</p>	Yes.

	Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	An acceptable separation has been provided between habitable rooms and circulation spaces.	Yes.
	Balconies, and private terraces should be located in front of living rooms to increase internal privacy.	Balconies are generally provided adjacent to living rooms.	Yes.
	Windows should be offset from the windows of adjacent buildings.	An offset is provided between proposed windows and openings on adjoining properties, particularly in consideration of likely redevelopment of sites to the east and west of the site. Notwithstanding, the reduced separation distances are considered likely to result in negative impacts on visual privacy.	Yes.
3G-1	Building entries to be clearly identifiable.	The entryway is adequately articulated and defined by planter boxes, with direct connection to the pedestrian access from the frontage.	Yes.
3G-2	Building access ways and lift lobbies to be clearly visible from the public domain and communal spaces.	The main building entry is visible from the street. The lift is located within the lobby but is not visible from the front door.	No.
3H-1	Carpark access should be integrated with the building's overall façade.	The entry to the basement carpark is adequately integrated into the building with access directly off Rodley Avenue. The location of the driveway limits the ability of the development to provide for a landscaped buffer to minimise the visual impact of the basement entry. Shrub planting is proposed to the eastern boundary and between the driveway and pedestrian entry.	Yes.
	Clear sight lines to be provided for drivers and pedestrians.	The proposed one-way ramp means that inadequate sight lines are provided for pedestrians or drivers exiting the basement.	No.
	Garbage collection, loading and servicing areas are screened.	The bulky waste and garbage areas are integrated within Basement 1. However, they are non-compliant with Penrith DCP controls relating to location and scale.	No.
3J-1	The site is not located within 800m of a railway station and is required to comply with the car parking rates as stipulated within the Penrith DCP 2014.	Refer discussion under Penrith DCP 2014.	N/A
3J-2	Secure undercover bicycle parking should be provided for motorbikes and scooters.	6 secure bicycle parking spaces (no motor bikes or scooter bikes) are provided within the basement levels.	No.

3J-3	Carpark design and access is safe and secure - A clearly defined and visible lobby area or waiting area should be provided to lifts and stairs.	Lift lobby areas within the basements are clearly defined and appropriately located. Ramp access however, is non-compliant.	No.
4A-1	Living rooms and private open spaces of at least 70% of apartments to receive 2 hours direct sunlight between 9am and 3pm mid-winter.	The application advises that "82% (14/17) apartments receive 2 hours of direct sunlight."	Yes.
	A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid winter.	The application advises that "None of the apartments receive no direct sunlight between 9am & 3pm at mid-winter."	Yes.
4A-2	Courtyards, skylights and high level windows (with sills of 1,500mm or greater) are used only as a secondary light source in habitable rooms.	Unit 03 living/kitchen/dining area is provided with highlight windows and a terrace for light source.	No.
4A-3	Sun shading devices are to be utilised.	Shading devices are provided to the north, east and west facing units and on the rooftop communal open space.	Yes.
4B-3	60% of apartments are naturally ventilated and overall depth of cross-through apartments 18m maximum glass-to-glass line.	The submitted plans indicate that 16 out of 17 units can achieve natural cross ventilation.	Yes.
4C-1	Finished floor to finished ceiling levels are to be 2.7m for habitable rooms, 2.4m for non-habitable rooms.	The proposal is for a 2.7m finished floor to underside of ceiling level, which is compliant with the ADG.	Yes.
4D-1	<p>Apartments are to have the following min. internal floor areas:</p> <p>1 bed – 50sqm 2 bed – 70sqm 3 bed – 90sqm</p> <p>Additional bathroom areas increase minimum area by 5sqm.</p>	Apartment sizes comply with the ADG requirements.	Yes.
4D-2	In open plan layouts the maximum habitable room depth is 8m from a window.	All units comply with this requirement.	Yes.
4D-3	Master bedrooms to be 10sqm's and other rooms 9sqm's.	All units comply with this requirement.	Yes.
	Bedrooms to have a minimum dimension of 3m.	All units comply with this requirement.	Yes.
	Living rooms to have minimum width of 3.6m for a 1 bedroom unit and 4m for 2 & 3 bedrooms.	All units comply with this requirement.	Yes.
4E-1	<p>All units to have the following primary balcony areas:</p> <p>1 bed – 8sqm (2m deep) 2 bed – 10sqm (2m deep) 3 bed – 12sqm (2.4m deep)</p>	All units comply with the balcony size and area requirements.	Yes.
4E-3	Air-conditioning units should be located on roofs, in basements, or fully integrated into the building design.	Air conditioning units are located on the roof.	Yes.

4F-1	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>Where a development is unable to achieve the design criteria, a higher level of amenity for common lobbies, corridors and apartments should be demonstrated.</p>	The application provides for a maximum of 4 units to levels 1 to 3.	Yes.
4F-1	Daylight and natural ventilation to be provided to all common circulation spaces.	Windows are provided to all circulation spaces to allow for natural light.	Yes.
4F-1	<p>Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed.</p> <p>Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.</p>	All primary bedroom and living room windows do not directly front onto common circulation spaces. In this regard, visual and acoustic privacy is maintained.	Yes.
4G-1	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided:</p> <p>1 bed – 4m³ 2 bed – 6m³ 3 bed – 10m³</p> <p>With 50% of the above to be provided within the Units.</p>	<p>Submitted plans indicate that storage cages are provided with the basement carpark.</p> <p>Adequate area for internal storage is also accommodated within apartments.</p>	Yes.
4H-1	Noise transfer is minimised through the siting of buildings and building layout.	The amenity of all units in relation to acoustic privacy are not considered to be adversely impacted.	Yes.
4K-1	Flexible apartment configurations are provided to support diverse household types.	The development proposes 1, 2 and 3 bedroom apartments.	Yes.
4L-1	Direct street access should be provided to ground floor apartments.	See 3C-1 commentary.	No.
4M-1	Building facades to be well resolved with an appropriate scale and proportion to the streetscape and human scale.	The proposed street elevation provides for varied building elements, with face brick to walls and rendered painted finishes to balconies. The façade is provided with both horizontal and vertical elements with stacked balconies creating clearly identifiable vertical lines while horizontal division is provided via dominant storey levels.	Yes.

4O-1	Landscape design to be sustainable and enhance environmental performance.	<p>Its questionable whether the proposed landscaping design will allow for small sized trees and shrubs to be incorporated within the planter boxes provided to the rooftop level.</p> <p>Whilst the nature of the landscaping proposed is considered to allow for some screening of apartments from adjoining premises in association with boundary fencing, minimal to no streetscape planting is provided.</p> <p>The landscaping area available within the front setback is reduced by the placement of the driveway, footpath, substation, easement and OSD system.</p> <p>The proportion of the site covered by the building footprint, terraces and driveways is leaving limited opportunities for meaningful landscaping to be provided.</p> <p>In this regard, the proposed landscaping is considered to not enhance the environmental performance of the structure and negatively impacts on streetscape.</p>	No.
4Q-2	Adaptable housing is to be provided in accordance with the relevant Council Policy.	A total of 2 adaptable units are proposed – Units 01 and 41.	Yes.
4U-1	Adequate natural light is provided to habitable rooms.	Except for Unit 03, apartment depths and open floor plan arrangements allow light into most kitchens, dining and living areas. However, as detailed previously, inadequate solar analysis has been provided to demonstrate availability of natural light.	No.
4V-2	Water sensitive urban design systems to be designed by suitably qualified professional.	The development application was referred to Council's internal Environmental Waterways Unit. The WSUD plans generally comply with Council's policy. Should development consent be granted, the WSUD proposal could be supported provided amended plans were submitted prior to issue of a Construction Certificate, along with other conditions.	No - but subject to amended plans being submitted proposal could be supported subject to conditions

4W-1	A Waste Management Plan is to be provided.	The development application was referred to Council's Waste Management Officer. The waste management proposal is not supported based on non-compliance with the Penrith DCP including safety, location, area and manoeuvrability.	No.
	Circulation design allows bins to be easily manoeuvred between storage and collection points.	Waste areas and manoeuvring is non-compliant with Council's DCP.	No.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria with Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997). This Policy aims *“to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context”*. The Policy requires Council to assess development applications with regard to general and specific considerations, policies and strategies.

The proposal is not found to be contrary to these general and specific aims, planning considerations, planning policies and recommended strategies of the plan. The site is not located within a scenic corridor of local or regional significance and it is considered that the proposed development will not significantly impact on the environment of the Hawkesbury-Nepean River either in a local or regional context.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Does not comply - See discussion
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 2.7 Demolition requires development consent	Complies
Clause 4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings	Complies
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.4 Floor Space Ratio	N/A
Clause 4.6 Exceptions to development standards	Does not comply - See discussion
Clause 5.6 Architectural roof features	Complies
Clause 7.1 Earthworks	Complies
Clause 7.2 Flood planning	Does not comply - See discussion
Clause 7.4 Sustainable development	Complies
Clause 7.6 Salinity	Complies - See discussion
Clause 7.7 Servicing	Does not comply - See discussion

Clause 1.2 Aims of the plan

The proposal is not considered to comply with the following aims of the LEP:

(b) to promote development that is consistent with the Council's vision for Penrith, namely, one of a sustainable and prosperous region with harmony of urban and rural qualities and with a strong commitment to healthy and safe communities and environmental protection and enhancement

(c) to accommodate and support Penrith's future population growth by providing a diversity of housing types, in areas well located with regard to services, facilities and transport, that meet the current and emerging needs of Penrith's communities and safeguard residential amenity

The adverse amenity impacts on future occupants, in regards to the inadequate communal open space provided and inadequate separation distances for the proposed built form, is considered likely to result in low levels of visual privacy and solar access for future occupants and adjoining residents, and is not aligned with Council's vision for development in Penrith.

The development presents poorly to the street and it will detract from streetscape quality with no deep soil capable of accommodating medium to large canopy tree planting within the site's frontage.

Clause 2.3 Zone objectives

The subject site is located within the R4 High Density Residential zone. The objectives of the zone include:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To encourage the provision of affordable housing.*
- *To ensure that development reflects the desired future character and dwelling densities of the area.*

The design of the proposed development does not ensure that a high level of residential amenity is achieved and maintained, in that the application has not demonstrated that building separation, solar access, communal open space and landscaping standards have been satisfactorily achieved in accordance with the Apartment Design Guide.

Clause 4.3 Height of buildings

The subject site is provided with a maximum building height of 18m under the LEP. The application is provided with a lift overrun of RL47.800. This provides for a height non compliance on the subject site of 2.9m (overall height of 20.9m or 16.11% above the maximum height required) to the lift overrun.

In this regard, the application was accompanied with a '4.6 Exception to development standard' document which has discussed the nature of the height non compliance. Discussion in regard to the non compliance is provided below.

Clause 4.6 Exceptions to development standards

The application is non-compliant with the height of buildings development standard as discussed above under Clause 4.3 'Height of Buildings' of the Penrith Local Environmental Plan 2010.

Clause 4.6 of the Penrith Local Environmental Plan 2010 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

- (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 of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (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 Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Secretary must consider:*
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The application has been accompanied by a revised Clause 4.6 Variation Request prepared by Stimson & Baker Planning dated August 2019 in relation to the building height non-compliance. The request has provided for an evaluation with reference to Clause 4.6(3)(a) and (b) and the identified variation in relation to Clause 4.3 of the LEP.

The commentary provided by the accompanying 4.6 Variation Request in relation to the non-compliant height is not considered to have adequately addressed why compliance with the development standard is unreasonable and unnecessary in this instance.

The part of the building that exceeds the building height standard results in additional overshadowing and amenity impacts for neighbouring dwellings. The overshadowing and privacy impacts relate to and exacerbate the impact of the Apartment Design Guide non-compliant landscaping and the non-compliant separation distances to the front, rear, and side boundaries for the proposed building to neighbouring properties.

The overall height is not considered consistent with the surrounding approvals granted for residential flat buildings currently under construction when considered together with all other non-compliances outlined in this report.

Noting all of the above, a departure from the height development standard of 2.9m (16.11%) is not acceptable in this specific instance.

Clause 7.2 Flood planning

The subject site is mapped as being affected by overland flows. An existing 6 foot (1.8m) stormwater easement is located on the western boundary of Lot 58, DP 33490. It is also noted that the site is located adjacent to a trapped low point within the roadway, and the proposal is required to adequately demonstrate that overland flows can be conveyed around the development over the proposed easement.

The application proposes to create a new easement on the western boundary of Lot 59, 33490. Part 2.6 of Council's Policy on Stormwater Drainage Specifications for Building Developments indicates that based on the 450mm pipe diameter required to accommodate over flows from the upstream catchment, an easement width of 2.5m is required. Council's Development Engineer has reviewed the proposal and has indicated that a variation on the Policy may be acceptable due to the location of the basement 2.36m from the western boundary and in this instance a minimum width of 2.3m would be required.

The applicant has provided amended stormwater and architectural plans. The stormwater plans show a 2.3m wide drainage easement along the western boundary of the site, noting that a 2.5m wide easement is not achievable due to conflict with the adjoining basement wall. However, the architectural plans show a 2.5m wide drainage easement that is clear of the basement footprint. The plans shall be consistent with each other. Note: Development Engineering has previously given a dispensation for the width of the easement due to conflict with the basement wall, however a 2.5m wide easement is still preferred if achievable.

Importantly, the easement impacts on the quality of landscaping able to be provided along this elevation.

Clause 7.6 Salinity

The amended application has been supported by a geotechnical report prepared by a suitably qualified person for the basement car parking areas addressing excavation adjacent to Council infrastructure (with reference to *RMS Technical Direction GTD 2012/2001 Excavation adjacent to RMS infrastructure*), ground water movement, salinity and contamination. In this regard, the application adequately considers the impact of the proposed development on salinity processes.

Clause 7.7 Servicing

Clause 7.7 of the LEP specifies that:

- (1) The objective of this clause is to ensure that development of land to which this Plan applies reflects the availability of services.*
- (2) Before granting development consent for development on any land to which this Plan applies, the consent authority must be satisfied that:*
 - (a) the development will be connected to a reticulated water supply, if required by the consent authority, and*
 - (b) the development will have adequate facilities for the removal and disposal of sewage, and*
 - (c) if the development is for seniors housing, the development can be connected to a reticulated sewerage system, and*
 - (d) the need for public amenities or public services has been or will be met.*

It is considered that the development is non-compliant with Clause 7.7(2)(d) as the need for public services, in terms of the waste infrastructure provided and the capacity to collect waste on the site, have not been demonstrated to meet the standards required for servicing in accordance with Council policy. This is discussed further in relation to DCP Section C5 of this report.

In addition, the stormwater easement has not been designed to meet the requirements of Council policy and therefore sufficient public services for the efficient disposal of stormwater are not available.

Section 79C(1)(a)(ii) The provisions of any draft environmental planning instrument

Draft Environment State Environmental Planning Policy

The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.

Changes proposed include consolidating a total of seven existing SEPPs being:

- *State Environmental Planning Policy No. 19 – Bushland in Urban Areas*
- *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*
- *State Environmental Planning Policy No. 50 – Canal Estate Development*
- *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*
- *Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997)*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property.*

It is noted that the proposed changes to State Environmental Planning Policy No 19 – Bushland in Urban Areas (SEPP 19) are not considered to impact the proposed development. In addition, the amendments to Sydney Regional Environmental Plan No 20 – Hawkesbury – Nepean River (No. 2 – 1997) do not impact the proposed development. In this regard, the proposal is not inconsistent with the provisions of this Draft Instrument.

Draft Remediation of Land SEPP

The Department of Planning and Environment has announced a Draft Remediation of Land SEPP, which will repeal and replace the current State Environmental Planning Policy No 55—Remediation of Land.

The proposed new land remediation SEPP will:

- provide a state-wide planning framework for the remediation of land,
- maintain the objectives and reinforce those aspects of the existing framework that have worked well,
- require planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land,
- clearly list the remediation works that require development consent, and
- introduce certification and operational requirements for remediation works that can be undertaken without development consent.

It is also proposed that it will transfer the requirements to consider contamination when rezoning land to a direction under Section 9.1 of the Environmental Planning and Assessment Act 1979.

Whilst the proposed SEPP will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land. Noting the above, the Draft SEPP will not alter or affect the findings in respect to contamination of the site.

Section 79C(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
DCP Principles	Does not comply - see Appendix - Development Control Plan Compliance
C1 Site Planning and Design Principles	Does not comply - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Complies
C3 Water Management	Does not comply - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies
C5 Waste Management	Does not comply - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Does not comply - see Appendix - Development Control Plan Compliance
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Does not comply - see Appendix - Development Control Plan Compliance
D2.1 Single Dwellings	N/A
D2.2. Dual Occupancies	N/A
D2.3 Secondary Dwellings	N/A
D2.4 Multi Dwelling Housing	N/A
D2.5 Residential Flat Buildings	Does not comply - see Appendix - Development Control Plan Compliance
D2.6 Non Residential Developments	N/A

Section 79C(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements applying to this application.

Section 79C(1)(a)(iv) The provisions of the regulations

The relevant prescribed conditions of the Regulations, such as the requirement for compliance with the Building Code of Australia and fire safety requirements, could be imposed as conditions of consent where applicable. Subject to the recommended conditions of consent, the proposed development complies with the requirements of the *Environmental Planning and Assessment Regulation 2000*.

As previously indicated, Clause 50 (1A)(1AB) of the Environmental Planning and Assessment Regulation 2000 specifies:

50(1A) If a development application that relates to residential apartment development is made on or after the commencement of the Environmental Planning and Assessment Amendment (Residential Apartment Development) Regulation 2015, the application must be accompanied by a statement by a qualified designer.

The development application as amended has not been submitted with a Design Verification Statement.

Section 79C(1)(b)The likely impacts of the development

Context and Landscaping

It is noted that the subject site and its surrounds are currently in a state of transition from a previously lower density zone to its current high density zoning, with a number of land parcels either in Rodley Avenue or in the vicinity currently subject to or have been granted approval for the construction of residential flat buildings. This is evident in the provision of a new residential flat building to the west of the subject site at 50-54 Rodley Avenue and further construction works to the north of the subject site also providing for multi level apartment buildings.

Notwithstanding the future character of the vicinity, the application is considered to inadequately cater for maintenance of amenity for existing adjoining neighbours, currently in the form of 1 and 2 storey single dwellings and dual occupancies. The proposal is provided with non-compliant front setback and non-compliant side and rear setbacks in accordance with the ADG and the DCP. The overbearing visual impact created by the development when viewed from the adjacent properties to the east and west, combined with adverse impacts to visual privacy and overshadowing of private open space, results in a development that has insufficiently considered the context of the site.

The 4.9m front building setback to the ground floor fronting Rodley Avenue is not consistent with immediately adjacent properties and the landscaping provided within the front setback area, in the form of trees and shrubs, combined with the location of multiple utility services within this area, is not considered to adequately minimise the visual impact of the building and allow for an improved integration with the existing streetscape.

Little to no canopy or medium to large trees could be suitably sustained within the site's frontage or side setbacks.

Solar Access

Insufficient solar analyses have been provided with the application to demonstrate compliance with solar access requirements under the ADG and DCP. In particular, the private open space of 34b Rodley Avenue adjoining the subject site to the east is unacceptably impacted by the additional overshadowing created by the proposal.

Overlooking

The reduced building separations provided by the application are considered likely to result in unacceptable impacts on visual privacy to either side of the subject site, with particular regard to the private open space of 34b Rodley Avenue and the elevated terrace areas to Unit 03.

Access, Traffic and Parking

The proposal will generate an increase in traffic volume, but while so, it is considered that the application has adequately demonstrated that the local road network has capacity to cater for the development. Off-street parking spaces are provided in accordance with the DCP requirements. A double width driveway is proposed from Rodley Avenue, however this reduces to a ramp for one way traffic only. It is acknowledged that a signal system is proposed, however the proposed one-way ramp is inadequate for two direction traffic particularly in that the ramp will also be utilised for a waste truck. Traffic is discussed further in the DCP Appendix to this report.

Waste Management

The application was supported by a Waste Management Plan which has detailed the way in which all waste and materials resulting from the excavation, construction and on-going use of the building on the site are to be dealt with.

Council's Waste Management Officer and Traffic Engineer have indicated that they do not support the applicant's proposed waste management solution. Waste is discussed further in the DCP Appendix to this report.

Section 79C(1)(c) The suitability of the site for the development

The site is considered to be unsuitable for the proposed development as the proposal does not respond to the constraints and the size of the site in accommodating a development of the scale proposed. This is evidenced by the non-compliant building separations, limited landscaped area provided by the proposal, non-compliant one-way access ramp to the basement, as well as the inability to adequately service the site with on-site waste removal as required by Council's Policy.

Section 79C(1)(d) Any Submissions

Community Consultation

The development application was advertised in the local newspaper and notified to owners and occupiers of adjoining and nearby properties pursuant to the recommendations of the Regulations and in accordance with Council's Development Control Plan. Affected property owners and occupiers were notified in the surrounding area and invited to make a submission on the proposal during the exhibition period from 13 September 2019 to 27 September 2019. During this period, one (1) submission was received representing two landowners.

The concerns raised in these submissions are discussed below.

Summary of issues raised in submissions

<i>Issue</i>	<i>Comment</i>
1. Non-compliance with intent of planning legislation to ensure the wellbeing, privacy, safety, security and comfort of existing residents is maintained	The application has been assessed against the relevant planning legislation and on balance is not considered to meet key objectives and standards contained within those Acts and Policies, as discussed in this report.
2. Rodley Avenue is a quiet, narrow street with existing on street parking problems. The number of new developments in the street will exacerbate that problem.	Council's Traffic Engineer has reviewed the application and has indicated that the design of the single width basement parking ramps is not supported by Council.
3. Overshadowing of adjoining properties will result in dampness, health issues, additional electricity costs and inefficient solar panel operation.	The reduced front, side and rear setbacks of the proposed development in combination with the orientation of the private open space at the adjacent dual occupancy development to the east at 34a and 34b Rodley Avenue is likely to result in overshadowing of the private open space, such that the minimum solar access requirement of 3 hours of sunlight to 40% of the private open space between 9am and 3pm on 21 June (DCP section D2 clause 2.5.9) is not achieved.
4. Visual impact of the development from the adjoining properties, particularly in relation to the reduced front, side, and rear setbacks.	The proposed development provides reduced front, side and rear setbacks and in the context of single and two storey development adjoining the site, the proposal is considered to present overbearing visual impacts when viewed from adjacent properties.
5. Negative impact on privacy, particularly in relation to overlooking from the balconies and rooftop garden of the development into the private open space of adjoining properties.	The proposed development provides reduced rear and side setbacks, which when combined with the elevation of balcony areas is considered to adversely impact on the visual and acoustic privacy of adjoining private open space at 34a and 34b Rodley Avenue.
6. The development does not allow for enough open space between boundaries and the construction and is oversized in relation to the site.	The ADG non-compliant building separation distances on all elevations and limited landscaping provided by the development have been discussed previously in this report and is not considered acceptable.

7. The development does not meet the objectives of the height of building standard.	This is discussed in relation to the Clause 4.6 variation request for the proposed building height which is considered supportable in this instance.
8. The development will have a negative economic impact on the value of neighbouring properties.	The proposed development is considered likely to inhibit future development opportunities for development on adjacent sites, in that the ability of those sites to develop in accordance with the development controls is likely to be restricted by the subject proposal.
9. Concerns about proper precautionary measures with regard to asbestos and demolition of the existing dwellings, and subsidence damage caused as a result of excavations for the development.	Should the application be approved, these aspects can be appropriately managed through conditions of consent related to asbestos demolition and disposal and underpinning of adjacent development.
10. Overdevelopment of Penrith generally and lack of commensurate infrastructure to manage issues caused by development in the area.	The development is located within an R4 High Density Residential zone, and as such is permissible with consent. Strategic planning and housing targets for the local government area are broader issues and not able to be resolved within the context of a single development application.

Referrals

The application was referred to the following stakeholders and their comments have formed part of the assessment:

Referral Body	Comments Received
Building Surveyor	No objections
Development Engineer	Not supported
Environmental - Environmental management	No objections
Environmental - Waterways	No objections - subject to conditions
Waste Services	Not supported
Traffic Engineer	Not supported

Section 79C(1)(e)The public interest

The public interest is best served by the orderly and economic use of land for purposes permissible under the relevant planning regime and in accordance with the prevailing planning controls. In this regard, the proposed works are inconsistent with the relevant planning provisions related to the development of residential flat buildings and on balance, it is considered that the application is unsupportable primarily in relation to the impacts on the inadequate building separation provided, inability to service the site with regards to waste, a non-compliant one-way ramp to the basement, lack of landscaped area provided, adverse impacts on residential amenity for future occupants of the proposed development and issues raised in submissions in relation to the development.

Section 94 - Developer Contributions Plans

Development contributions apply to the subject proposal, however as the application is recommended for refusal, a condition of consent requiring their payment prior to the issue of a Construction Certificate is not recommended.

Conclusion

The proposed development has been assessed in accordance with the relevant provisions of the environmental planning instruments and Development Control Plan pertaining to the land. The provision of a residential flat building is a permissible use under the site's R4 High Density Residential zoning. As the development application is for a residential flat building under the provisions of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development, the application is provided for determination to the Penrith Local Planning Panel.

This review of determination of the refusal to DA18/0890 dated 24 May 2019 has been undertaken pursuant to Division 8.2 of the Environmental Planning and Assessment Act 1979. It has been assessed against the relevant heads of consideration contained in Section 4.15 of the *Environmental Planning and Assessment Act, 1979* and on balance - noting the commentary contained within this report - has been found to be unsatisfactory. The site is unsuitable for the proposed development and the proposal in its current form is not considered to be in the public interest. The proposal is therefore recommended for refusal.

Recommendation

1. That pursuant to Section 8.4 of the Environmental Planning and Assessment Act 1979, the refusal of DA18/0890 at 36-38 Rodley Avenue, Penrith - providing for the demolition of existing structures and construction of a five (5) storey residential flat building containing seventeen (17) apartments and two (2) levels of basement car parking - be confirmed, subject to the attached reasons for refusal.
2. That those persons who made submissions in relation to the proposal are notified of the determination.

Refusal

1 **X Special 02 (Refusal under Section 79C(1)(a)(i) of EPA Act 1979)**

The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the provisions of Penrith Local Environmental Plan 2010 as follows:

(i) Clause 1.2 Aims of the Plan -The proposal is inconsistent with the aims of the Plan in relation to promotion of development consistent with Council's vision for Penrith, to meet the emerging needs of Penrith's communities while safeguarding residential amenity and ensuring that the development incorporates the principles of sustainable development.

(ii) Clause 2.3 Zone Objectives - The proposal is inconsistent with the objectives of the R4 High Density Residential zone, particularly (d) The design of the proposed development does not ensure that a high level of residential amenity is achieved and maintained, and (f) to ensure that development reflects the desired future character and dwelling density of the area.

(iii) Clause 4.6 - The application fails to satisfy the development standard for building height and the request for a variation to the development standard is not supported because the proposed development will not be in the public interest as it will not ensure a high level of a residential amenity, provide a high quality urban form or reflect the desired future character of the area, being the objectives of the zone and height standard.

(iv) Clause 7.2 - The proposal does not comply with Council's Policy in relation to overland flow management on the site.

(v) Clause 7.7 - The proposal does not meet the requirements for waste and stormwater servicing.

DELETED (Clause 7.6 The proposal has not provided sufficient information to assess the impact of the development on salinity)

Amended 13 November, 2019 under DA18/0890 in accordance with Section 8.3 of the Environmental Planning and Assessment Act 1979

2 X Special 03 (Refusal under Section 79C(1)(a)(i) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the provisions of State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development and the accompanying Apartment Design Guide as follows:

(i) Clause 30(2)(a) - compliance with the design quality principles specified in the Apartment Design Guide:

- Principle 1: Context and Neighbourhood Character
- Principle 2: Built form and scale
- Principle 3: Density
- Principle 4: Sustainability
- Principle 5: Landscape
- Principle 6: Amenity

(ii) Clause 30(2)(b) - compliance with the objectives specified in the Apartment Design Guide:

- 3B Orientation
- 3C Public domain interface
- 3D Communal and public open space
- 3F Visual privacy
- **3G Building entry**
- **3H Carpark access**
- **3J Undercover parking**
- 4A Solar and Daylight Access
- **4E DELETED (Private open space and balconies)**
- 4H Acoustic privacy
- **4L Direct street access**
- 4O Landscape design
- 4U Energy efficiency
- 4W Waste management

Amended 13 November, 2019 under DA18/0890 in accordance with Section 8.3 of the Environmental Planning and Assessment Act 1979

3 X Special 04 (Refusal under Section 79C(1)(a)(iii) of EPA Act 1979)

The development application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014:

(i) The application has not satisfied Council with respect to the requirements under Part B - 'DCP Principles', specifically:

- The proposal has not been designed with consideration for the health, recreational and social needs of residents, and the proposal does not minimise its ecological footprint or promote sustainable production and consumption.

(ii) The application has not satisfied Council with respect to the requirements under Section C1 'Site Planning and Design Principles', specifically:

- The built form and scale of the proposal does not adequately respond to the context of the site.

(iii) The application has not satisfied Council with respect to the requirements under Section C5 'Waste Management', specifically:

- **The proposal provides for a non-compliant basement waste management design.**

(iv) The application has not satisfied Council with respect to the requirements under Section C6 'Landscape Design', specifically:

- The proposal does not include landscaping to the site that responds to the context of the site, or complements the built form or minimises the impacts of the scale of the development.

- **Unsatisfactory streetscape presentation**

(v) The application has not satisfied Council with respect to the requirements under Section C10 'Transport, Access and Parking', specifically:

- **The non-compliant one-way access ramp is not supported.**

(vi) The application has not satisfied Council with respect to the requirements under Section C13 'Infrastructure and Services', specifically:

- The proposal does not meet the requirements for engineering works in relation to the stormwater easement.

(vii) The application has not satisfied Council with respect to the requirements under Section D2 'Residential Development', specifically:

- Clause D2.5.5 The landscaped area does not meet the minimum 35% required for the site. The landscaping provided is compromised by servicing requirements.

- **Clause D2.5.6 The front setback does not comply with that of the immediate neighbours and/or the minimum requirement set by the DCP**

- Clause D2.5.8 The proposal does not achieve a high level of visual or acoustic privacy for future occupants or adjoining neighbours.

- Clause D2.5.9 The proposal results in overshadowing of the private open space of adjoining development.

Amended 13 November, 2019 under DA18/0890 in accordance with Section 8.3 of the Environmental Planning and Assessment Act 1979

4 X Special 06 (Refusal under Section 79C(1)(a)(iv) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979* as the proposal was not accompanied by all of the information as required under Schedule 1 Forms of the Regulations or as required to properly consider the proposal, as follows:

- Clause 50 (1A)(1AB) of the *Environmental Planning and Assessment Regulation 2000* requires a statement from a qualified designer to be submitted.

- An updated BASIX Certificate.

- **DELETED (A Geotechnical Report)**

Amended 13 November, 2019 under DA18/0890 in accordance with Section 8.3 of the Environmental Planning and Assessment Act 1979

5 [X Special 07 \(Refusal under Section 79C\(1\)\(b\) of EPA Act 1979\)](#)

The development application is not satisfactory for the purpose of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in terms of the likely impacts of that development including those related to:

- (i) Streetscape and character,
- (ii) Context and landscaping,
- (iii) Bulk and scale,
- (iv) Solar access and privacy impacts,
- (v) Amenity, safety and security impacts related to the ground floor layout,
- (vi) Communal open space,
- (vii) Access, traffic and parking,
- (viii) Energy efficiency,
- (ix) Waste management impacts.

6 [X Special 08 \(Refusal under Section 79C\(1\)\(c\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* as the site is not suitable for the scale of the proposed development.

7 [X Special 9 \(Refusal under Section 79C\(1\)\(d\) of EPA Act 1979\)](#)

Based on the above deficiencies and submissions received, approval of the proposed development would not be in the public interest pursuant to Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part B - DCP Principles

The proposal is contrary to the principles, commitments and objectives of the DCP, specifically as follows:

Principle 2: Achieve long term economic and social security

The building has not been designed with the health, recreational and leisure needs of future occupants in mind as the size of the communal open space is inadequate to meet the needs of residents. Limited opportunity for social interaction are provided by the development.

Principle 4: Enable communities to minimise their ecological footprint.

The proposed development does not provide for adequate waste infrastructure, and because communal open space is being provided at rooftop level and other Apartment Design Guide non-compliances, insufficient planting is able to be provided.

Part C - City-wide Controls

C1 Site Planning and Design Principles

Clause C1.2.3 provides for the following considerations with regards to building form, including the height, bulk and scale of a development:

a) Context: An applicant must demonstrate how all proposed buildings are consistent with the height, bulk and scale of adjacent buildings and buildings of a similar type and use.

d) Overshadowing: Building locations, height and setbacks should seek to minimise any additional overshadowing of adjacent buildings and/or public spaces where there would be a significant reduction in amenity for users of those buildings/spaces.

e) Setbacks/Separations: Buildings should be sufficiently set back from property boundaries and other buildings to:

i) Maintain consistency with the street context and streetscape character, especially street/front setbacks;

ii) Maximise visual and acoustic privacy, especially for sensitive land uses;

iii) Maximise deep root planting areas that will support landscape and significant tree plantings integrated with the built form, enhancing the streetscape character and reducing a building's visual impact and scale;

iv) Maximise permeable surface areas for stormwater management; and

v) Minimise overshadowing.

The proposed development has not appropriately considered the context of the infill site in relation to the adverse overlooking, visual impact and overshadowing created in relation to adjoining 1 and 2 storey properties. Front, side and rear building setbacks and separations are demonstrated to be non-compliant with the ADG and DCP controls. Landscaping does not enhance the streetscape character or reduce the building's visual impact and scale, due to limitations created by the service infrastructure and easement on the western boundary. In this regard, it is considered that the development is non-compliant with Section C1 of the DCP.

C5 Waste Management

The proposal includes waste bin storage and bulky waste rooms in Basement 1, and a waste chute system is incorporated into the design.

Council's Waste Management Officer has reviewed the proposal and does not support the on site collection because of non-compliances with the DCP including that the proposed manoeuvring of the waste vehicle in the basement is not operationally feasible.

C6 Landscape Design

The relevant objectives of Section C6 of the DCP are as follows:

- a) To promote landscape design and planning as part of a fully integrated approach to site development;*
- b) To ensure landscape design takes into account the site's context, landscape and visual character, existing landscape features and amenity, both at the local and regional scale;*
- c) To encourage the development of quality landscape design associated with new development that is consistent with industry best-practice;*
- e) To ensure landscape design adequately complements the proposed built form and minimises the impacts of scale, mass and bulk of the development in its context;*
- f) To encourage landscape design that can be effectively maintained to a high standard for the life of that development*

The front setback of the proposed development is dominated by servicing infrastructure (including substation, driveway, easement, OSD system) which effectively limits landscaping opportunities presented to the streetscape. The limitation of the western side setback to accommodate the stormwater drainage easement, prevents effective screen planting on those elevations in order to promote privacy. The shrubs and small-medium sized trees provided do not assist in ameliorating the impact of the bulk and scale of the built form and or provide adequate green buffers to the development.

The landscaping proposed is inconsistent with objectives a, b, c, e and f as listed above.

C10 Transport, Access and Parking

The following on-site car parking rate is required to be provided in relation to the proposed residential flat building development;

Land Use Element	Parking Rate	Required
Residential Flat Buildings	1 space per 1 or 2 bedrooms	9
	2 spaces per 3 or more bedrooms	16
	1 space per 40 units for service vehicles	1
	Visitor parking: 1 space per 5 dwellings	3
	1 space for car washing for every 50 units	1
Total Required		30 spaces

It is noted that the application is compliant with the required car parking rate, via the provision of a total of 30 parking spaces (including 3 stacked spaces) over two basement levels. These parking spaces have also included a designated car wash bay, service vehicle bay and three accessible car parking spaces associated with the provision of adaptable apartments. In this regard, it is considered that adequate parking facilities are provided to cater for future occupants and visitors of the proposed apartments.

However, the application was referred to Council's Traffic Engineering Section who has raised objections to the application in with the following comments made:

The proposed basement access ramp does not comply with AS2890.1 required width for a two-way access ramp and will lead to conflict between opposing vehicles and reversing manoeuvres, which are a safety concern. The provision of convex mirrors at ramp entrances (as proposed on the plans) is not appropriate nor adequate to mitigate the potential for vehicular conflict and reversing manoeuvres.

There is no adequate separation between the waste vehicle loading area and the car park area. Reversing of waste collection vehicles in the car park, where residents and drivers of other vehicles will be present, is not supported and is a safety concern.

If the applicant subsequently seeks to submit amended plans proposing on-street waste collection as a solution to this problem and in response to... comments above, this will not be supported. If waste collection and adequate ramp widths cannot be provided and fit on the site without non-compliances, then it is clear evidence of an overdevelopment of the site.

The proposed ramp (in this instance) is the only access point to the basement car park. Therefore it facilitates two-way traffic movements and, as such, it is a two-way ramp by definition.

This is entirely consistent with AS2890.1 whereby the requirements for a one-way ramp are set forth implicitly to facilitate a single direction of travel only (in instances where you may, for example, have a separate entry ramp and exit ramp).

The proponent is confusing a "one-way" ramp (as outlined in the Standard) with a "single lane width" ramp (which is what is being proposed). These are not the same thing.

...AS2890.1 allows one-way ramps to facilitate a single direction of travel only (even though it is not stated, it is implicit in the terminology).

Where non-compliances are permitted by Council it should be on a case-by-case basis only and in the most exceptional of circumstances, and should always be accompanied by mitigating engineering solutions (such as the inclusion of access point traffic signal systems, which themselves are undesirable for a number of reasons).

If Council were to concede that a two-way access ramp can be defined as a one-way ramp under the Standard, then there would be no reason for any developer to ever offer to construct a two-way ramp again.

C13 Infrastructure and Services

The stormwater easement as proposed does not comply with Clause C13.4 in that it requires all engineering works to be undertaken in accordance with the provisions of Council's Policy on Stormwater Drainage for Building Developments. This has been discussed in more detail in relation to LEP clause 7.4.

D2 Residential Development

The proposal has been assessed against the applicable provisions of this section and is found to be generally acceptable. Particular clauses which have provided for non compliances or relevant discussion points are identified below:

Clause D2.5.5 Landscaped Area

Clause D2.5.5 Landscaped Area of the DCP provides the following development control in relation to landscaped area for a R4 High Density Residential in which the subject site is located;

Zone: R4 High Density Residential

Minimum Landscaped area % of the site: 35%

In addition to the above, landscaped areas are to have a minimum width of 2m, with no basement encroachment, may include terraces and patios located no higher than 0.5m above ground and pedestrian pathways to building and dwelling entrances but does not include

substantially-paved areas such as buildings, driveways and covered garages. Noting these controls, an assessment of the provided plans has identified that with a site area of 1,112m², a total of 389m² landscaping area is required. 509.5m² landscaping area has been provided (private terraces and deep soil zones) with the proposal and is therefore compliant by 120.5m². Note: These figures do not include the rooftop community open space of 207.5m² and planter boxes.

While it is acknowledged that the proposal has provided for a technically compliant landscape area, building separations to the boundaries as well as communal open space is non-compliant. In combination with the extent of intrusion by servicing in the front setback (booster, substation, driveway, easement, OSD system) limiting landscaping opportunities to the streetscape, it is considered that the proposal has not satisfactorily met the objectives for landscaped area.

Clause D2.5.6 Front and Rear Setbacks

Clause D2.5.6 Front and Rear Setbacks within the DCP provides the following development control in relation to front and rear setbacks:

1) Determine the maximum development footprint for your site:

- a) The minimum rear setback for a single storey building (or any single storey component of a building) is 4m*
- b) The minimum rear setback for a two storey building (or any two storey component of a building) is 6m.*

2) Within the rear boundary setback:

- a) there shall be no building encroachments either above or below ground (eaves excepted);*
- b) maximise the amount of undisturbed soil, encouraging rapid growth of healthy trees and shrubs;*
- c) where there are physical encumbrances such as open drains, increase the setback accordingly.*

3) Determine an appropriate front setback:

- a) either average the setbacks of the immediate neighbours; or*
- b) 5.5m minimum whichever is the greater dimension.*

Level 4 includes a rear setback of 6m to the balcony and in this regard the proposed development does not comply with the rear setback controls.

The existing front setbacks of the adjoining dwellings is 7.5m (40 Rodley Avenue) and 5.4m (34 Rodley Avenue) which provides an average of 6.4m. The development provides a 4.9m setback to the front wall of the building which is not considered consistent with the immediate neighbours and does not comply with the Penrith DCP requirements.

D2.5.8 Visual and Acoustic Privacy and Outlook

The objectives of clause D2.5.8 are as follows:

- a. Provide an outlook from dwellings and their private open space, and achieve levels of acoustic and visual privacy that are reasonable for a medium-density residential neighbourhood.*
- b. To provide a high level of visual and acoustic privacy for residents and neighbours in dwellings and private open space.*
- c. To ensure that building design minimises overlooking problems.*

The location of the terraces to Unit 02 and Unit 03 are elevated above the ground level on the adjacent properties by approximately 700mm and 1200mm respectively, is considered to have the potential to result in adverse privacy impacts through overlooking into the primary private gardens of both 34b and 40 Rodley Avenue.

D2.5.9 Solar Planning

The reduced rear and side setbacks of the proposed development in combination with the orientation of the private open space at the adjacent dual occupancy development to the east at 34a and 34b Rodley Avenue is likely to result in overshadowing of the private open space, such that the minimum solar access requirement of 3 hours of sunlight to 40% of the private open space between 9am and 3pm on 21 June (DCP section D2 clause 2.5.9) is not achieved.

Inadequate solar analyses have been submitted with the application to demonstrate achievement of solar access requirements.

PROPOSED RESIDENTIAL FLAT BUILDING

36-38 Rodley Avenue, Penrith, NSW, 2750



DEVELOPMENT DETAILS			
Site Area	1112m²		
Gross Floor Area (GFA)	1645m²		
Zoning	R4 High Density Residential		
	Allowable	Proposed	
Floor Space Ratio (FSR)*	n/a	1.48:1	
Total Storeys	6	6	

Communal Open Space	25%	217m²	20%
Deep Soil Zones	7%	168m²	15%

*LEP REQUIREMENT
*SEPP 65 REQUIREMENT
REFER SHEET DA02 FOR DETAILS

UNITS TYPES	
Type	Count
1B	1
2B	8
3B	8
TOTAL APARTMENTS: 17	

GROSS FLOOR AREA	
Level	Area
GROUND LEVEL	295.1 m²
LEVEL 1	378.4 m²
LEVEL 2	378.4 m²
LEVEL 3	378.4 m²
LEVEL 4	206.6 m²
LEVEL 5	8.3 m²
Grand total: 6	1645.2 m²

COMMON OPEN SPACE	
Area	% of Site
217.3 m²	19.54

DEEP SOIL AREA	
Area	% the Site
167.9 m²	15.06

CAR SPACES REQUIRED	
1 Bed units: 1	1
2 Bed units Adaptable: 2	2
2 Bed units: 6	6
3 Bed units: 8	16
Visitors (1/5)	4
Service vehicles (1/40)	1
Washing bay (1/50)	
Grand total	30

CAR SPACES - TYPES	
Type	Number
Disabled - 2400w x 5400d	2
Service - 2500w x 5400d	7
STANDARD - 2500w x 5400d	35
Visitor - 2500w x 5400d	28
Grand total: 72	72

Compliance Schedule (SEPP65-2015 Apartment Design Guide - Design Criteria & Objectives)

Design Criteria		Compliance	Proposal												
3D-1	<p>1. Communal open space has a minimum area equal to 25% of the site</p> <p>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)</p>	-	<p>1. The Common Open Space is 217m² comprising 20% of the site. The Common Area is less than the required size for the site area. The units facing the south and those on ground have Terraces and Balconies which are in excess of the ADG minimums which are intended to offset the reduction in common area provided. The location and quality of the common area exceeds the requirements of the ADG and is a better design outcome as opposed to locating a compliant sized Common area at ground level in the rear corner of the site. The location of the Common Area at Level 5 being further setback from the side boundaries will have a lesser impact on the neighbouring properties.</p> <p>2. Sunlight Access Requirements are unable to be met due to the location of the Common area on the roof facing the views instead of the Northern Sunlight.</p>												
		Yes													
3E-1	<p>1. Deep soil zones are to meet the following minimum requirements:</p> <table><tr><th>Site Area</th><th>Min. Dimension</th><th>Deep Soil Zone (% of site Area)</th></tr><tr><td><50m²</td><td>-</td><td>-</td></tr><tr><td>50m²-1,500m²</td><td>3m</td><td>7%</td></tr><tr><td>>1,500m²</td><td>6m</td><td>-</td></tr></table>	Site Area	Min. Dimension	Deep Soil Zone (% of site Area)	<50m ²	-	-	50m ² -1,500m ²	3m	7%	>1,500m ²	6m	-	Yes	<p>1. Deep soil zones provided well exceed the minimum requirements. The site provides for a total area of 168m² of deep soil zone or 15% of total site.</p>
	Site Area	Min. Dimension	Deep Soil Zone (% of site Area)												
<50m ²	-	-													
50m ² -1,500m ²	3m	7%													
>1,500m ²	6m	-													
3F-1	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Min required separation distances from buildings to the side and rear boundaries are as follows:</p> <table><tr><th>Building Height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr><tr><td>up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>12.01m - 15m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>15.01m - 18m (9-12 storeys)</td><td>12m</td><td>6m</td></tr></table> <p>Gallery access circulation treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building Height	Habitable rooms and balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	12.01m - 15m (5-8 storeys)	9m	4.5m	15.01m - 18m (9-12 storeys)	12m	6m	-	<p>Setbacks: Northern Boundary: (NOTE: Street Frontage of Rodley Ave, residential housing across the road) Setback from 4.5m to 5.5m (Ground-Level 4) Setback from 8.0m to 9.1m (Level 5) Southern Boundary: Setback from 6.0m to 9.1m (Ground-Level 3) Setback 9.00m (Levels 4) Setback 16.9m (Levels 5) Western Boundary: Setback from 4.0m to 8.0m (Ground-Level 4) Setback 9.00m (Levels 4) Setback 12m (Levels 5) Eastern Boundary: Setback from 4.0m to 6.0m (Ground-Level 4) Setback 9.00m (Levels 4) Setback 12m (Levels 5)</p>
	Building Height	Habitable rooms and balconies	Non-habitable rooms												
up to 12m (4 storeys)	6m	3m													
12.01m - 15m (5-8 storeys)	9m	4.5m													
15.01m - 18m (9-12 storeys)	12m	6m													
4A-1	<p>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.</p> <p>3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter</p>	Yes	<p>1. 82% [14-17] of apartments receive 2 hours of direct sunlight.</p> <p>3. None of the apartments receive no direct sunlight between 9am & 3pm at mid winter</p>												
4B-3	<p>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</p> <p>3. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line</p>	Yes	<p>1. 94% [16-17] of apartments are cross-ventilated</p>												
		n/a													
4C-1	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height for apartment and mixed use buildings</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area</td></tr><tr><td></td><td>2.4m for second floor, where its area does not exceed 50% of the apt area.</td></tr></table>	Minimum ceiling height for apartment and mixed use buildings		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area		2.4m for second floor, where its area does not exceed 50% of the apt area.	Yes	<p>Minimum ceiling heights are in accordance with the design criteria</p>		
	Minimum ceiling height for apartment and mixed use buildings														
Habitable rooms	2.7m														
Non-habitable	2.4m														
For 2 storey apartments	2.7m for main living area														
	2.4m for second floor, where its area does not exceed 50% of the apt area.														

Design Criteria		Compliance	Proposal															
4D-1	<p>1. Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each</p> <p>2. 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.</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Yes	Minimal internal areas are in accordance with the design criteria					
	Apartment type	Minimum internal area																
Studio	35m ²																	
1 bedroom	50m ²																	
2 bedroom	70m ²																	
3 bedroom	90m ²																	
		Yes																
4D-2	<p>1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height</p> <p>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p>	Yes	Habitable room depths are in accordance with the design criteria															
		Yes																
4D-3	<p>1. Master bedrooms have a minimum area of 10m² and other bedrooms to have 9m² (excluding wardrobe space)</p> <p>2. Bedrooms have a minimum dimension of 3m (excl. wardrobe space)</p> <p>3. Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none">3.6m for studio and 1 bed apartments4m for 2 and 3 bedroom apartments	Yes	All bedrooms are 9m ² & Master bedrooms 10m ² .															
		Yes	All bedrooms have minimum dimension of 3m. All living rooms have minimum dimension of 4m.															
4E-1	<p>1. All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>1.2m</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p> <p>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m</p>	Dwelling type	Minimum area	Minimum depth	Studio apartments	4m ²	1.2m	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Yes	1. Balconies provided to apartments are in accordance with this design criteria.
	Dwelling type	Minimum area	Minimum depth															
Studio apartments	4m ²	1.2m																
1 bedroom apartments	8m ²	2m																
2 bedroom apartments	10m ²	2m																
3+ bedroom apartments	12m ²	2.4m																
		Yes	2. Terraces provided to apartments are in accordance with this design criteria.															
4F-1	<p>1. The maximum number of apartments off a circulation core on a single level is eight</p> <p>2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40</p>	Yes	1. All levels provide 4 or less apartments off a circulation core.															
		n/a																
4G-1	<p>1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Apartment type</th><th>Storage size volume</th></tr><tr><td>Studio</td><td>4m³</td></tr><tr><td>1 bedroom</td><td>6m³</td></tr><tr><td>2 bedroom</td><td>8m³</td></tr><tr><td>3+ bedroom</td><td>10m³</td></tr></table> <p>At least 50% of the required storage is to be located within the apartment</p>	Apartment type	Storage size volume	Studio	4m ³	1 bedroom	6m ³	2 bedroom	8m ³	3+ bedroom	10m ³	Yes	All storage requirements are in accordance with this design criteria. Storage Cages are provided in the basement in addition to storage cupboards provided within the apartment.					
	Apartment type	Storage size volume																
Studio	4m ³																	
1 bedroom	6m ³																	
2 bedroom	8m ³																	
3+ bedroom	10m ³																	

Design Statement (SEPP65-2015 SCHEDULE 1 - Design Quality Principles)				
Principle 1: Context and Neighbourhood Character	Principle 2: Built Form and Scale	Principle 3: Density	Principle 4: Sustainability	
<p>Low-density Residential: The remaining neighbouring properties to the North, along Rodley Ave to the East, and South side of Rodley Ave, predominantly consist of low density single and two storey residential dwellings (houses and townhouses). The majority of these lots contain single low-density housing located on long rectangular lots with the short boundary facing the street. Scattered throughout the low-density housing are some medium-density villa and townhouse developments which are generally consist of central 'gun-barrel' driveways with terraces on either side.</p> <p>Short term to future growth pattern: We note the urban fabric is changing from a low-density to an urban high-density with recent legislative amendments in the Penrith LGA. To clarify, the change in scale is from a one or two storey single dwelling per lot to a 5-6 storey residential development.</p> <p>Context, Neighbourhood Character and UDPR recommendations have been taken into consideration during the design. It is believed that the design responds and contributes to its context, setting a good example for the future proposed developments in the area.</p>	<p>The design responds to its associated context (identified in Principle 1). The proposal is to construct a single tower addressing Rodley Ave. The facade is well articulated and the footprint sits well within the regular shaped site, mimicking the layout pattern of dwellings along Rodley Ave. Common open space is located on Level 5 at the rear of the property to maximise access to the views. The result is an outcome which allows cross ventilation and natural light to a large number of the units. The cross ventilation meets the minimum requirements as well as the direct sunlight between 9am & 3pm at mid winter.</p> <p>UDRP panel recommended design solutions have been taken on board and integrated into the design. Facade articulation and innovation is successfully achieved through both form and colours reducing bulk and scale. The design achieves a positive outcome for built form, scale, context and neighbouring character.</p> <p>R4 zoning and SEPP65 setbacks and height controls have been generally adopted in the proposal. In order to accommodate the stepping of upper storeys and for the building to be well articulated, proposed setbacks and height may vary in parts from the minimum SEPP65 requirements.</p> <p>It is assumed that the proposed setbacks and heights would be found acceptable.</p> <p>The highest height intrusion is the top of lift shaft at nominal 1.89m above the allowable 1.9m height control and has an RL 45.840. The lift shaft being centrally located within the site presents no adverse impacts on neighbouring properties.</p>	<p>The Penrith LGA has recently seen an upzoning of residential areas to R4 High-Density Residential.</p> <p>As there is no FSR control on the site, the density of the proposed development is controlled by the height limits and setbacks as per the ADG Tower Separation Controls.</p> <p>Moreover, Communal Open Spaces and Deep Solis zones in the proposed development meet the minimum requirements of the ADG, further controlling the allowable density on the site.</p> <p>The proposal consists of a mixture of large 2 and 3 bedroom apartments.</p> <p>It is believed that the proposed development seeks full compliance in this SEPP 65 Principle.</p>	<p>The Apartment Design Guide 2015 aims to deliver improved sustainability through better traffic and transport solutions, greater building adaptability and robustness, improved energy efficiency and water sensitive urban design.</p> <p>The proposed development aims to exceed the minimum standards of the ADG 2015 wherever possible. Consideration has been given to the increased apartment areas throughout the development to facilitate future sustainable growth of Sydney's outer suburbs.</p> <p>Bicycle parking has been located on basement 1 to promote the use of active transport to the Penrith area in lieu of vehicle use. (See Principle 6 for details). The development also features landscape areas in accordance with the requirements of the ADG 2015 design criteria. (See Principle 5 for details).</p> <p>The development also features well designed apartments with cross ventilation and solar access to the vast majority of the apartments, and well exceeds the minimum ADG 2015 requirements. Use of awnings will reduce the energy consumption in summer months by protecting west-facing apartments and controlling the internal conditions of the apartments.</p>	
Principle 5: Landscape	Principle 6: Amenity	Principle 7: Safety	Principle 8: Housing Diversity & Social Interaction	Principle 9: Aesthetics
<p>Deep soil planting has been embellished along all boundaries allowing full height trees to grow and provide privacy between the neighbouring properties and potential future adjacent developments.</p> <p>Due to the easement division to the western boundary canopy trees are unable to be provided in the deep soil area in this location. To compensate for this planters on structure have been provided adjacent the easement so that canopys trees can be provided to the western setback.</p> <p>Deep soil pockets were maximized and replacement trees are proposed to accommodate landscaping complementing the design and street frontages.</p> <p>The parking levels have been designed to minimize the footprint but accommodate all the necessary parking and services.</p> <p>Landscaping has been maximised through locating planters on the ground level structure and also at level 5 to provide amenity to the Common Open Space.</p>	<p>Penrith Progression 2015 identifies walking & cycling as a "Shaping Element" to make Penrith an Active City (2.7).</p> <p>The site is located about 1.1km walking distance to the Penrith Train Station and 0.4km to Penrith Westfields. On site Bicycle Parking has been provided to promote active transport in and around the Penrith CBD.</p> <p>This design consideration is intended to improve the amenity of the internal living areas of the apartments by maximizing the amount of daylight access and natural cross ventilation, as per the ADG minimum requirements.</p> <p>The apartment layouts are efficient and meet the minimum ADG requirements. 10% of the units have been provided as accessible per the NCC requirements.</p> <p>Sunshading Devices have been applied to the facade to improve the internal environment of each apartment, exceeding minimum standards with regards to BASIX compliance.</p> <p>The Common Open Space has been provided on Level 5 to achieve the highest degree of amenity. The Common Area has access to the best views of the proposal and features gardens and planting to provide amenity.</p>	<p>Secure pedestrian entry into the site has been logically located through the centre of the building along side the vehicle entry and expressed in the facade to read as such. Intercom access & CCTV at the entry provides security from street.</p> <p>Although the pedestrian and vehicle entries are co-located, each access point is separated with a separate access point.</p> <p>Entry into the basement carpark is via a roller shutter control point with swipe card security to gain access</p> <p>Side Fences at the building line secure the external areas of the development. Gates are provided in the side fences to allow for egress and access to services within the development such as the stormwater easement and bollardation bed.</p>	<p>Residential areas of Penrith have traditionally included a mix of detached housing (2br+) with a scattering of villa developments closer to the Penrith CBD (2br+). With the recent rezoning to R4 High-Density Residential, the proposed development aligns itself to the existing demographic while providing increase density to respond to the demands of the growing outer suburban ring of Western Sydney.</p> <p>The development features a mix of 2br & 3br apartments which also responds to current market demands in the area. Located in Western Sydney, apartments prices are considerably lower than inner city equivalents which facilitates affordability by default.</p> <p>Social interaction between residents of the development is enriched by the design of the lift lobbies and the Level 5 Common Area.</p> <p>Lift Lobbies are pleasant spaces to interact as they are Open at 2 sides with views to the outside world and direct connection to the lift access points.</p>	<p>The character of the building reflects the context in which it's located (as identified in Principle 1).</p> <p>Rodley Ave frontage is set in a moderately quiet residential context. The composition of facade elements is sympathetic to the scale of the surrounding residential houses and lower scale buildings.</p> <p>The combination of facade articulation and landscaping successfully emphasize the building entry.</p> <p>The facades of the building define a hierarchy for the site. Rodley Ave facade is primary and the facades looking to the side setbacks maintain a secondary role. However, through materials & facade articulation & colour, both facades pursue rationally, clarity, proportion and rhythm which results in a simple elegance (values frequently lost).</p>

ISSUE	DATE	AMENDMENT
A	04-09-2018	DA SUBMISSION
B	31-07-2019	DA SUBMISSION
C	22-08-2019	DA SUBMISSION

ISSUE	DATE	AMENDMENT
A	04-09-2018	DA SUBMISSION
B	31-07-2019	DA SUBMISSION
C	22-08-2019	DA SUBMISSION

PROJECT 7	PROPOSED RESIDENTIAL FLAT BUILDING	
ADDRESS 36-38 Rodley Avenue, Penrith, NSW, 2750		CLIENT Inglow Investments Two

MORSON GROUP

NOMINATED ARCHITECT - P.F.
MORSON REGISTRATION NUMBER 8100
ACN 159 480 056, ABN 41 159 480 056
www.morsongroup.com
(02) 9380 4946
PO Box 170, Potts Point, NSW 1535

SHEET SIZE: A1 SHEET NAME: **SEPP 65 COMPLIANCE SUMMARY & DESIGN STATEMENT** DRAWING NUMBER: **DA02**
 SCALE: E ISSUE NO.: **C**

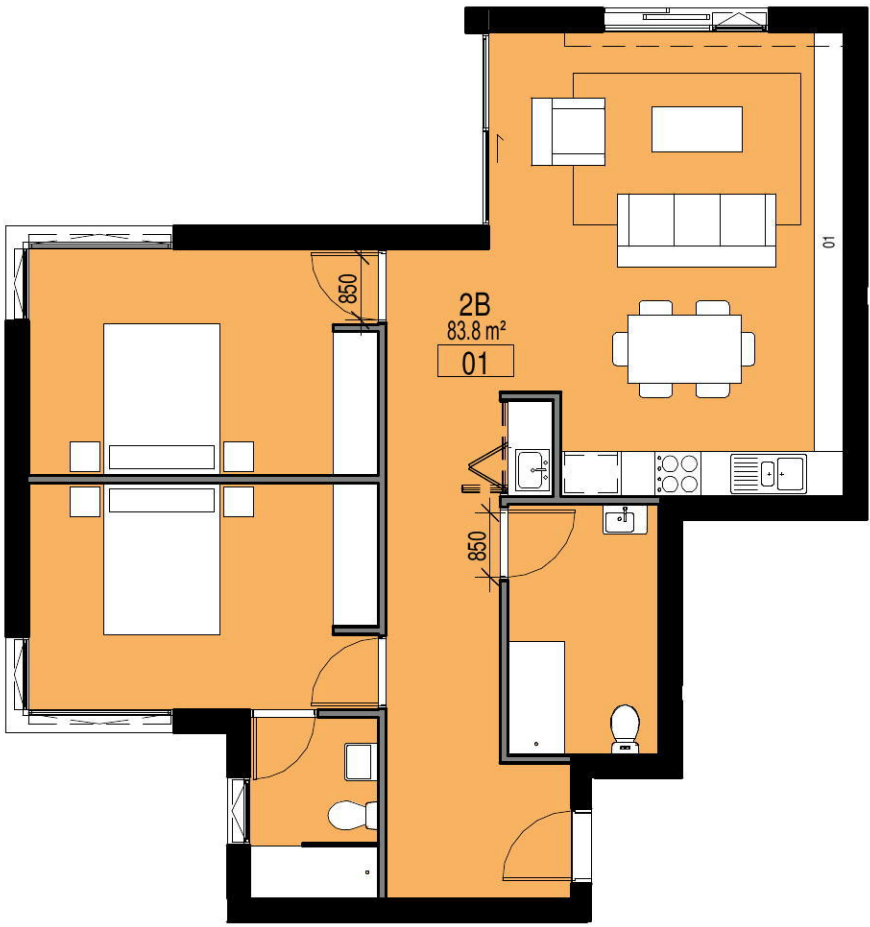
Document Set ID: 8919200
Version: 1, Version Date: 07/11/2019

STORAGE

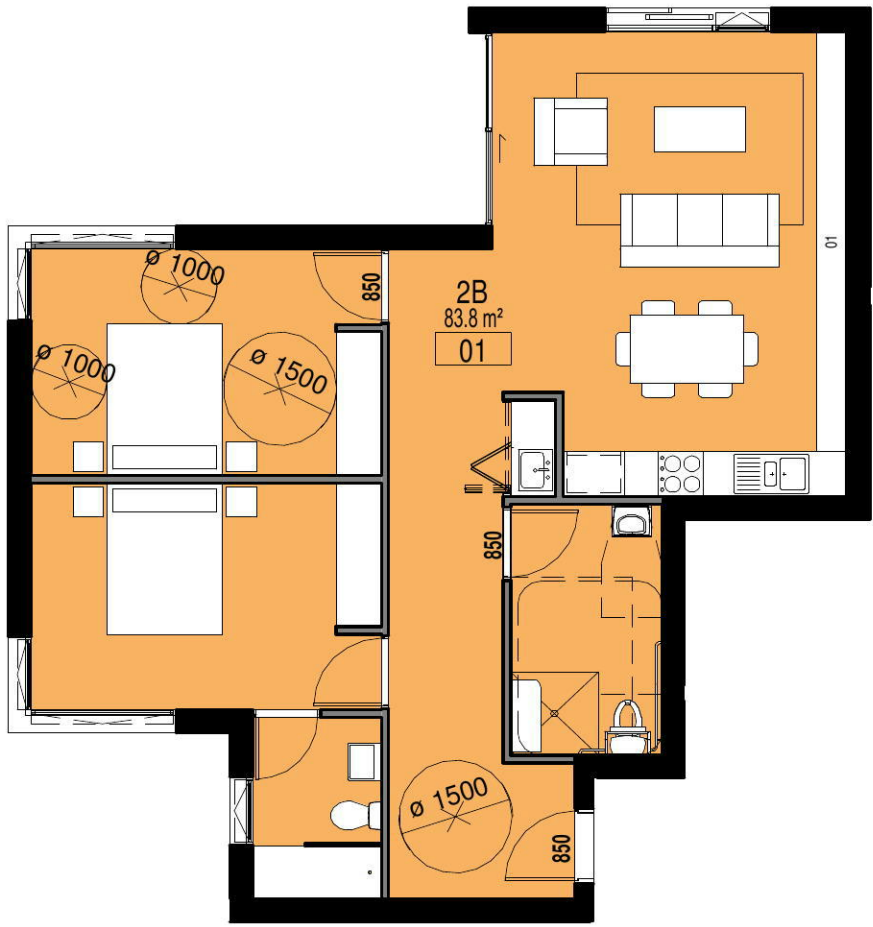
Unit / Location	Height	Depth	Width	Volumen
01				
Basement	2700	1240	1618	5.41 m³
Unit	2700	400	5557	6.00 m³
				11.42 m³
02				
Basement	2700	2800	2180	16.48 m³
Unit	2700	550	700	1.04 m³
Unit	2700	600	1600	2.59 m³
				20.11 m³
03				
Basement	2700	1500	1585	6.42 m³
Unit	2400	700	2600	4.37 m³
				10.79 m³
10				
Basement	2700	2500	1140	7.70 m³
Unit	2700	600	1900	3.08 m³
				10.77 m³
11				
Basement	2700	2500	2180	14.72 m³
Unit	2700	600	1600	2.59 m³
Unit	2700	700	550	1.04 m³
				18.35 m³
12				
Basement	2700	2800	2180	16.48 m³
Unit	2700	600	1600	2.59 m³
Unit	2700	700	550	1.04 m³
				20.11 m³
13				
Basement	2700	2800	1140	8.62 m³
Unit	2700	700	2220	4.20 m³
				12.81 m³
20				
Basement	2700	1240	1480	4.95 m³
Unit	2700	600	1900	3.08 m³
				8.03 m³
21				
Basement	2700	1240	2200	7.36 m³
Unit	2700	600	1600	2.59 m³
Unit	2700	700	550	1.04 m³
				10.99 m³
22				
Basement	2700	1240	2200	7.36 m³
Unit	2700	600	1600	2.59 m³
Unit	2700	700	550	1.04 m³
				10.99 m³
23				
Basement	2700	1268	1480	5.07 m³
Unit	2700	700	2220	4.20 m³
				9.26 m³
30				
Basement	2700	1240	1480	4.95 m³
Unit	2700	600	1900	3.08 m³
				8.03 m³
31				
Basement	2700	1240	2200	7.36 m³
Unit	2700	600	1600	2.59 m³
Unit	2700	700	550	1.04 m³
				10.99 m³
32				
Basement	2700	1240	2200	7.36 m³
Unit	2700	600	1600	2.59 m³
Unit	2700	700	550	1.04 m³
				10.99 m³
33				
Basement	2700	1268	2200	7.53 m³
Unit	2700	700	2220	4.20 m³
				11.73 m³
40				
Basement	2700	1500	1585	6.42 m³
Unit	2700	600	1670	2.71 m³
				9.12 m³
41				
Basement	2700	1240	1480	4.95 m³
Unit	2700	900	3600	8.75 m³
				13.70 m³

PRE & POST ADAPTABLE UNIT 01

PRE & POST ADAPTABLE UNITS 41



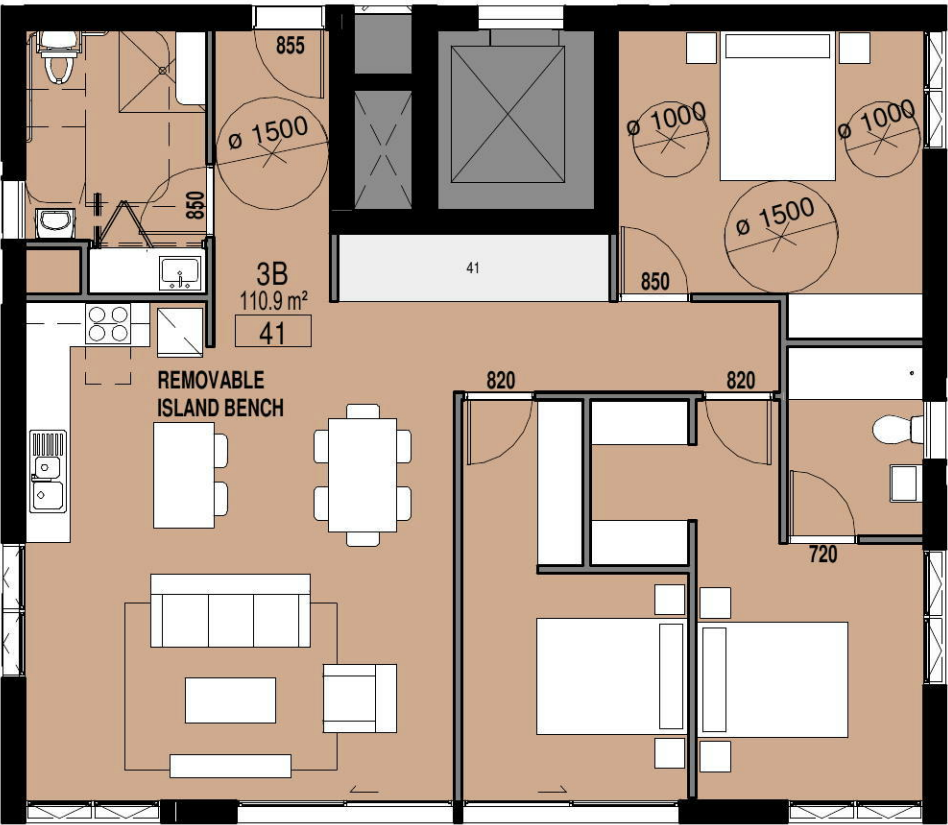
PRE-ADAPTABLE UNIT 01



POST-ADAPTABLE UNIT 01



PRE-ADAPTABLE UNIT 41



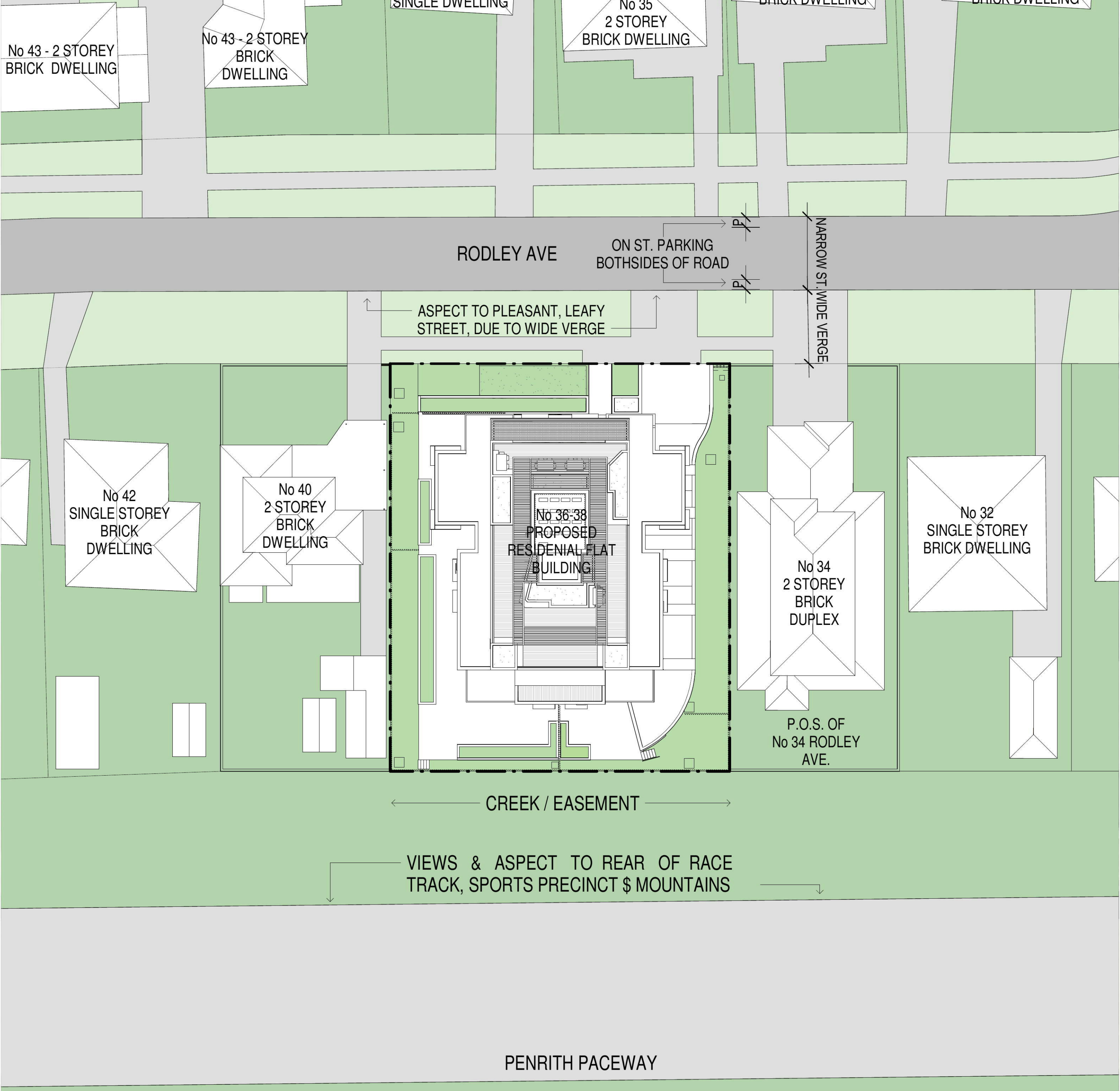
POST-ADAPTABLE UNIT 41

SEPP 65 COMPLIANCE TABLE						
No.	Type	Area	Cross Ventilation	Solar & Daylight Access	Kitchen 8m from Window	Adaptable Unit
GROUND LEVEL						
01	2B	83.8 m²	Yes	Yes	Yes	Yes
02	3B	96.1 m²	Yes	No	Yes	No
03	1B	63.5 m²	No	No	Yes	No
LEVEL 1						
10	2B	82.3 m²	Yes	Yes	Yes	No
11	3B	96.1 m²	Yes	No	Yes	No
12	3B	96.1 m²	Yes	Yes	Yes	No
13	2B	75.3 m²	Yes	Yes	Yes	No
LEVEL 2						
20	2B	82.3 m²	Yes	Yes	Yes	No
21	3B	96.1 m²	Yes	Yes	Yes	No
22	3B	96.1 m²	Yes	Yes	Yes	No
23	2B	75.3 m²	Yes	Yes	Yes	No
LEVEL 3						
30	2B	82.3 m²	Yes	Yes	Yes	No
31	3B	96.1 m²	Yes	Yes	Yes	No
32	3B	96.1 m²	Yes	Yes	Yes	No
33	2B	75.3 m²	Yes	Yes	Yes	No
LEVEL 4						
40	2B	78.6 m²	Yes	Yes	Yes	No
41	3B	110.9 m²	Yes	Yes	Yes	Yes
UNITS: 17		1482.0 m²	94%	82%	100%	

CROSS VENTILATION	SOLAR & DAYLIGHT ACCESS	ADAPTABLE UNIT
 CV - GROUND LEVEL	 SA - GROUND LEVEL	 AD - GROUND LEVEL
 CV - LEVEL 1	 SA - LEVEL 1	 AD - LEVEL 1
 CV - LEVEL 2	 SA - LEVEL 2	 AD-LEVEL 2
 CV - LEVEL 3	 SA - LEVEL 3	 AD-LEVEL 3
 CV - LEVEL 4	 SA - LEVEL 4	 AD-LEVEL 4



1 SITE PLAN - 1500
DA14 1:1500



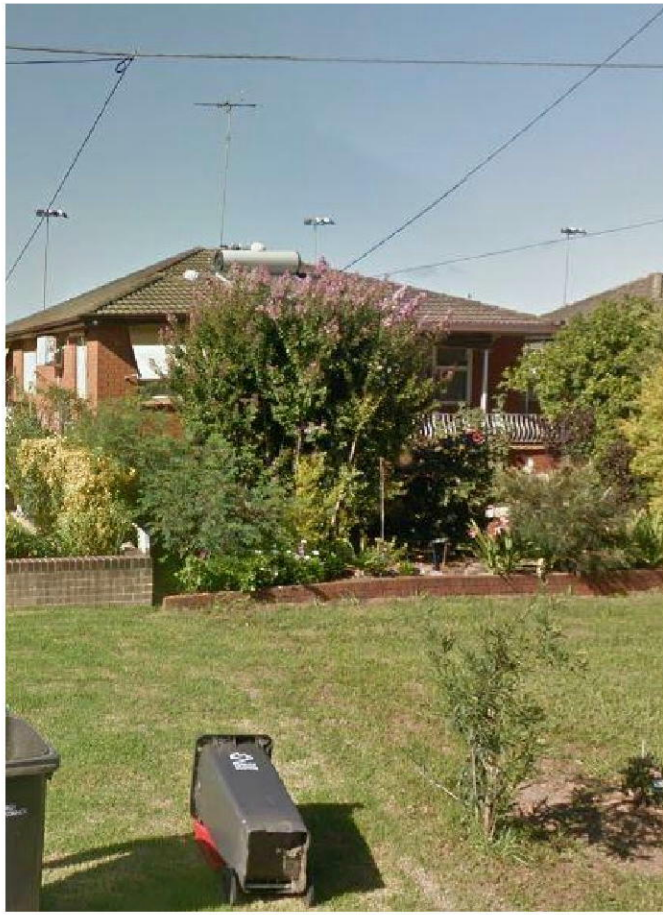
2 SITE PLAN & ANALYSIS - 500
DA14 1:250



No 36 & No 34 BOUNDARY



No 36 EASTERN BOUNDARY



No 36 FROM RODLEY ST



CREEK



No 38 WESTERN BOUNDARY

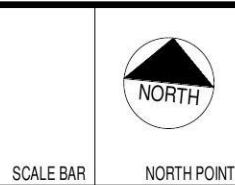


No 38 & No 40 SIDE BOUNDARY



No 38 & No 40 SIDE BOUNDARY

ISSUE	DATE	AMENDMENT
A	04-09-2018	DA SUBMISSION
B	31-07-2019	DA SUBMISSION
C	22-08-2019	DA SUBMISSION



PROJECT
PROPOSED RESIDENTIAL FLAT BUILDING
ADDRESS
36-38 Rodley Avenue, Penrith, NSW, 2750

CLIENT
Inglow Investments Two



NOMINATED ARCHITECT - P/F
MORSON REGISTRATION NUMBER B100
ACN 139 460 056, ABN 41 139 460 056
www.morsongroup.com.au
PO Box 170, Penrith, NSW 1505

SHEET SIZE: A1
SCALE
As Indicated

SHEET
NAME

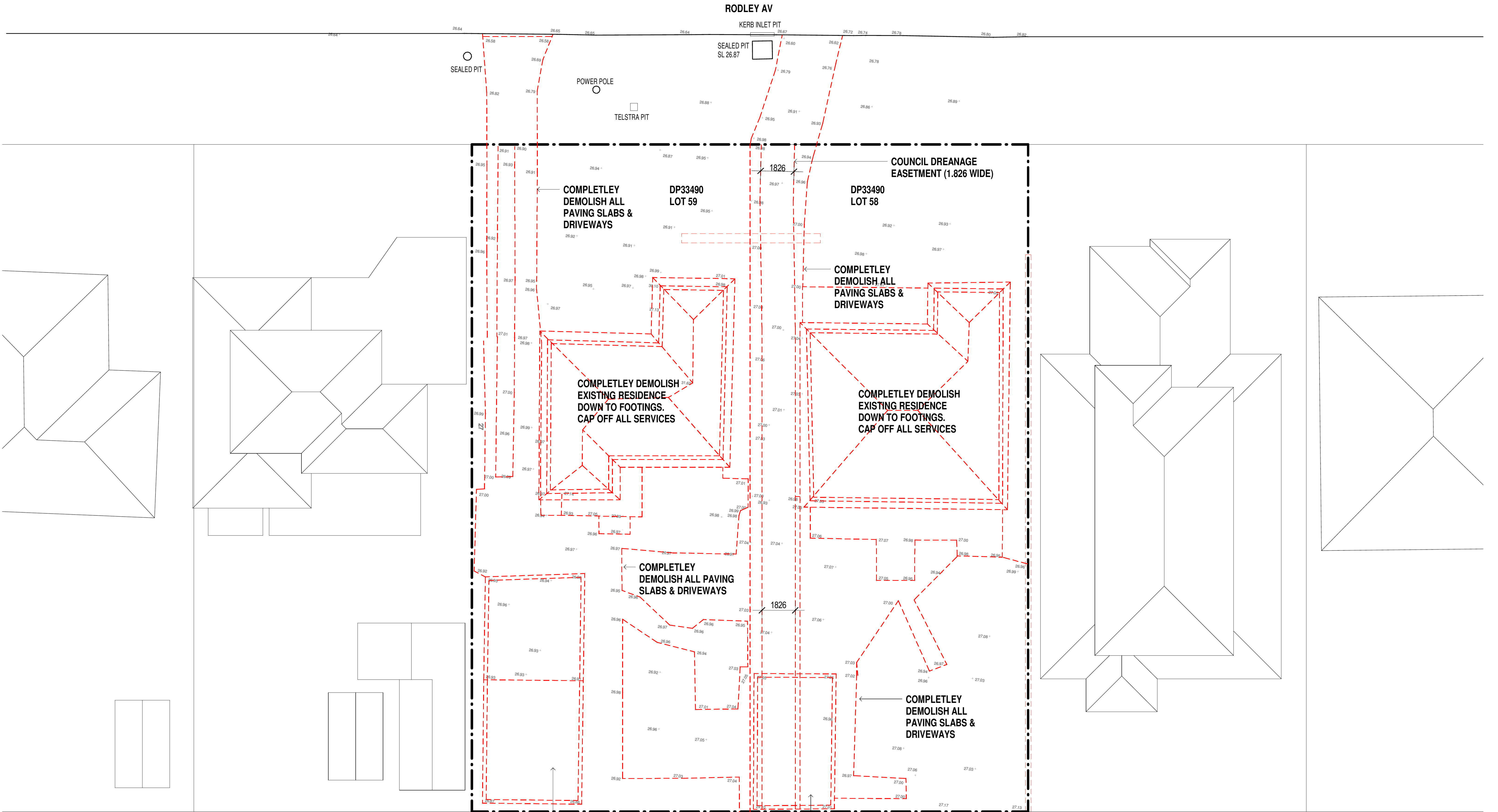
SITE PLAN

DRAWING NUMBER

DA04

ISSUE NO.

C

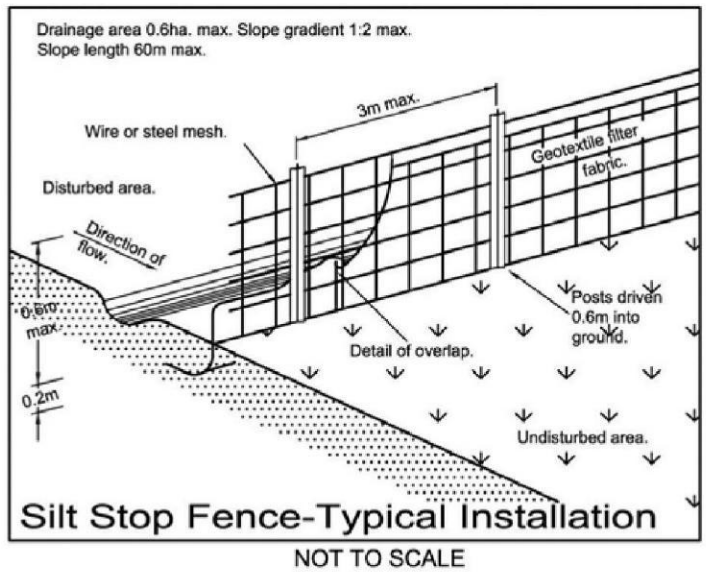


NOTE:

1. ALL DEMOLITION WORK TO BE CARRIED OUT IN ACCORDANCE WITH AS 2601-2001 (THE DEMOLITION OF STRUCTURES)
2. THIS DEMOLITION DRAWING GIVES AN INDICATION OF THE SCOPE REQUIRED TO CARRY OUT THE ALTERATIONS & ADDITIONS AS PROPOSED. THE BUILDER IS ASSUMED TO HAVE INSPECTED THE SITE DURING TENDERING & ALLOWED FOR ALL DEMOLITION INCLUDING SUNDRY WORKS NOT INDICATED ON THIS DRAWING THAT ARE REQUIRED IN ORDER TO CONSTRUCT THE WORKS.

SEDIMENT & EROSION CONTROL

1. THE CONTRACTOR SHALL IMPLEMENT EROSION AND SEDIMENT CONTROL MEASURES TO THE COUNCIL'S SPECIFICATION PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AND DURING CONSTRUCTION.
2. ALL EROSION & SEDIMENT CONTROL DEVICES SHALL BE MAINTAINED IN A SATISFACTORY WORKING ORDER DURING THE CONSTRUCTION PERIOD. INSPECTIONS OF THESE DEVICES SHALL BE CARRIED OUT AFTER EACH STORM. REPAIRS AND/OR DE-CLOGGING SHALL BE CARRIED OUT TO ENSURE PROPER OPERATION OF THE DEVICE.
3. STORAGE OF MATERIALS AND EQUIPMENT SHALL BE WITHIN SEDIMENT CONTROLLED AREAS.
4. REMOVE SILT STOP FENCING AND DRAINAGE STRUCTURE SEDIMENT CONTROL TRAPS AFTER VEGETATION IS ESTABLISHED.

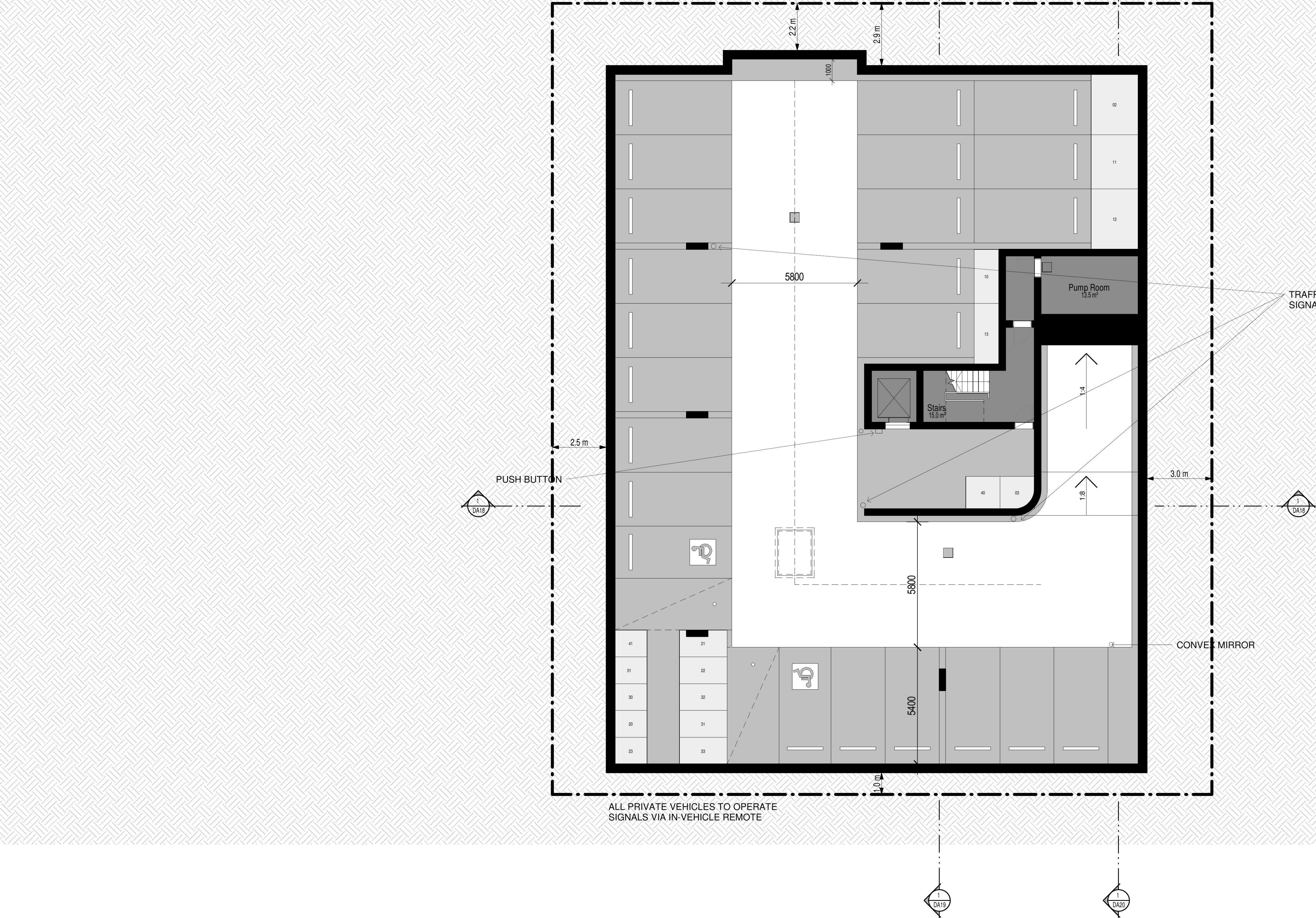


ISSUE	DATE	AMENDMENT	LEGEND	PROJECT	CLIENT	SHEET NAME	DRAWING NUMBER
A	04-09-2018	DA SUBMISSION	NEW WALL/WORK	PROPOSED RESIDENTIAL FLAT BUILDING	Inglow Investments Two	DEMOLITION PLAN	DA05
B	22-08-2019	DA SUBMISSION	EXISTING WALL	ADDRESS: 36-38 Rodley Avenue, Penrith, NSW, 2750			B
			DEMOLITION				
			TREE TO BE REMOVED				
			TREE TO BE RETAINED				
			NEW PLANTING				
			RL PROPOSED LEVEL				



Document Set ID: 8919200
Version: 1, Version Date: 07/11/2019





THERMAL PERFORMANCE SPECIFICATIONS: (20331 – 36 Rodley Ave)

The following specifications take precedence over other plan notations for the construction of this building.

NOTE: In addition to BASIX commitments, building compliance is required to comply with the 'New South Wales Additions' in the current edition of the NCC – Vol. 1, at the time of building.

This includes New South Wales Part J(A). Specifically:

- Building thermal construction is in accordance with part J1.2
- loss of ceiling insulation is compensated for by increased roof insulation in accordance with Part J1.3(c)
- where metal frames are used that thermal breaks are installed in accordance with Part J1.3(d) and J1.5(c)
- Any roof lights, windows, doors and exhaust fans are sealed in accordance Part J3
- Any new air-conditioning system is installed in accordance with Parts J5.2(a), J5.2(b), J5.2(c), J5.2(d), J5.2(f) & J5.2(g)
- Any new mechanical ventilation system is installed in accordance with Part J5.3
- Any new miscellaneous exhaust system is installed in accordance with Part J5.4
- Any new heated water system is installed in accordance Part J7.2
- Energy monitoring equipment is installed in accordance Part J8.3

WINDOWS (total product specification – glass + frame)

U-value 6.70 (or less than) & SHGC 0.70 (+/-5%) (Default: Plain Glass in AL frame)

EXTERNAL WALL (Medium colour)

Brick Veneer – R2.5 – 90mm thick Bulk insulation with reflective airgap

INTERNAL WALL

Cavity Panel/Concrete – No Insulation

Partition walls – No thermal insulation required

EXTERNAL FLOOR

Concrete Slab on Ground – No insulation

Suspended Concrete (above Basement areas) – R1.3 Bulk insulation

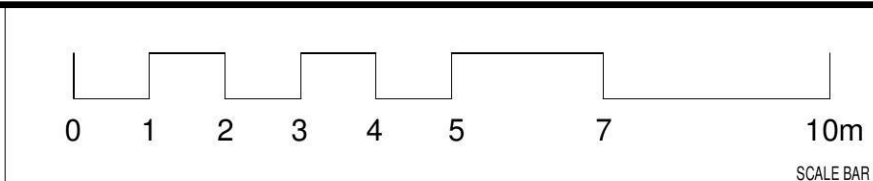
EXTERNAL CEILING/ROOF (Medium colour)

Concrete / Plasterboard – R1.3 bulk insulation (where roofspace or balcony above)

RATED either with NO DOWNLIGHTS or with LED downlights which do not penetrate ceiling insulation (ie: IC rated)



ISSUE	DATE	AMENDMENT
A	04-09-2018	DA SUBMISSION
B	19-03-2019	DA SUBMISSION
C	31-07-2019	DA SUBMISSION
D	22-08-2019	DA SUBMISSION



NORTH POINT

PROJECT
PROPOSED RESIDENTIAL FLAT BUILDING
ADDRESS
36-38 Rodley Avenue, Penrith, NSW, 2750

CLIENT
Inglow Investments Two

MORSON GROUP

NOMINATED ARCHITECT - P.F.
MORSON REGISTRATION NUMBER 8100
ACN 131 480 056 ABN 41 131 480 056
www.morsongroup.com
223 FRODO DRIVE
PO Box 170, Penrith, NSW 1505

SHEET SIZE: A1
SCALE
1:100

SHEET NAME
ELEVATION NORTH

DRAWING NUMBER
DA14
ISSUE NO.
D

THERMAL PERFORMANCE SPECIFICATIONS: (20331 – 36 Rodley Ave)

The following specifications take precedence over other plan notations for the construction of this building.

NOTE: In addition to BASIX commitments, building compliance is required to comply with the 'New South Wales Additions' in the current edition of the NCC – Vol. 1, at the time of building.

This includes New South Wales Part J(A). Specifically:

- Building thermal construction is in accordance with part J1.2
- loss of ceiling insulation is compensated for by increased roof insulation in accordance with Part J1.3(c)
- where metal frames are used that thermal breaks are installed in accordance with Part J1.3(d) and J1.5(c)
- Any roof lights, windows, doors and exhaust fans are sealed in accordance Part J3
- Any new air-conditioning system is installed in accordance with Parts J5.2(a), J5.2(b), J5.2(c), J5.2(d), J5.2(f) & J5.2(g)
- Any new mechanical ventilation system is installed in accordance with Part J5.3
- Any new miscellaneous exhaust system is installed in accordance with Part J5.4
- Any new heated water system is installed in accordance Part J7.2
- Energy monitoring equipment is installed in accordance Part J8.3

WINDOWS (total product specification – glass + frame)

U-value 6.70 (or less than) & SHGC 0.70 (+/-5%) (Default: Plain Glass in AL frame)

EXTERNAL WALL (Medium colour)

Brick Veneer – R2.5 – 90mm thick Bulk insulation with reflective airgap

INTERNAL WALL

Cavity Panel/Concrete – No Insulation

Partition walls – No thermal insulation required

EXTERNAL FLOOR

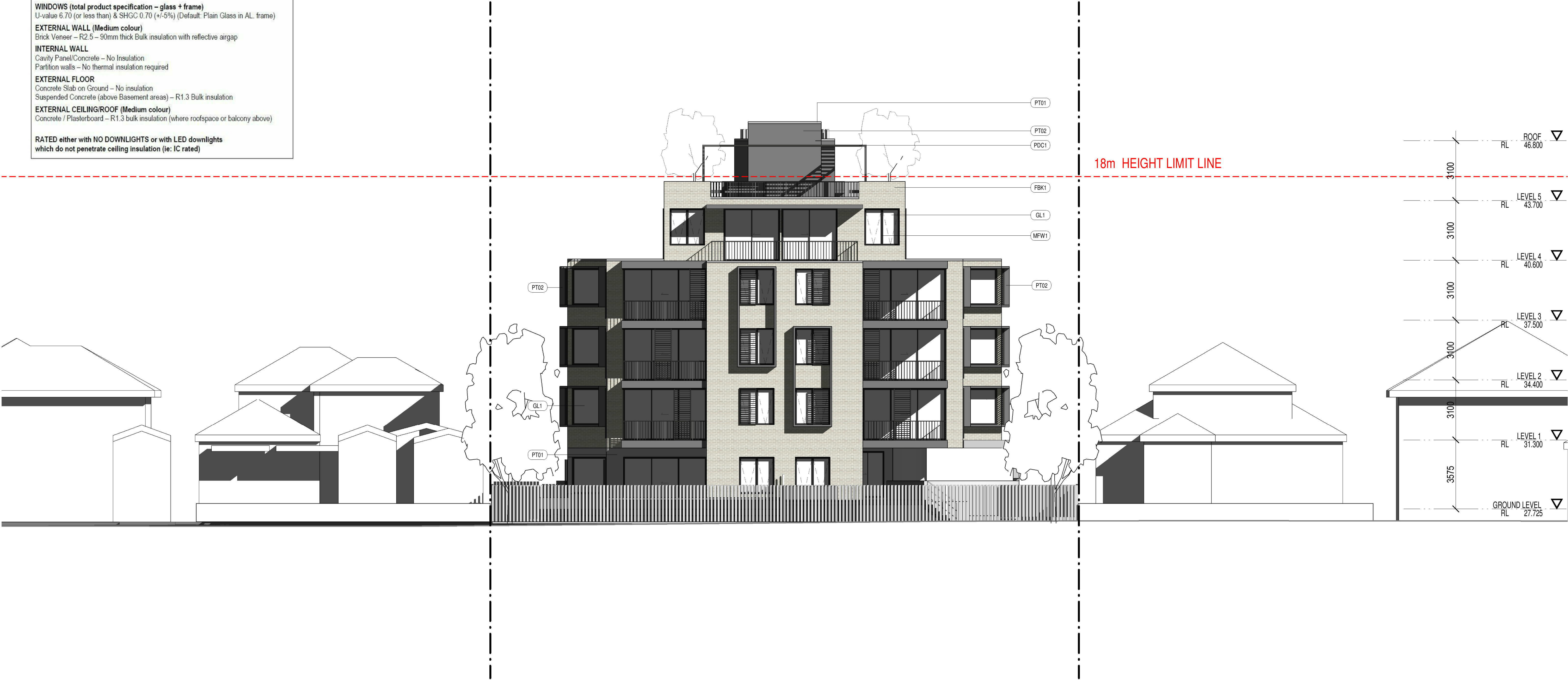
Concrete Slab on Ground – No insulation

Suspended Concrete (above Basement areas) – R1.3 Bulk insulation

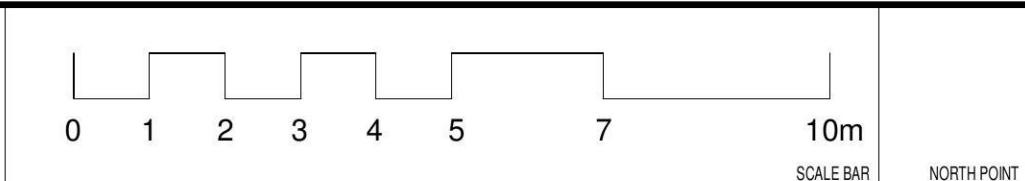
EXTERNAL CEILING/ROOF (Medium colour)

Concrete / Plasterboard – R1.3 bulk insulation (where roofspace or balcony above)

RATED either with NO DOWNLIGHTS or with LED downlights which do not penetrate ceiling insulation (ie: IC rated)



ISSUE	DATE	AMENDMENT
A	04-09-2018	DA SUBMISSION
B	19-03-2019	DA SUBMISSION
C	31-07-2019	DA SUBMISSION
D	22-08-2019	DA SUBMISSION



PROJECT
PROPOSED RESIDENTIAL FLAT BUILDING
ADDRESS
36-38 Rodley Avenue, Penrith, NSW, 2750

CLIENT
Inglow Investments Two

MORSON GROUP

NOMINATED ARCHITECT - P.F.
MORSON REGISTRATION NUMBER 8100
ACN 139 480 056 ABN 41 139 480 056
www.morsongroup.com
203 F380 4946
PO Box 170, Penrith, NSW 1505

SHEET SIZE: A1
SCALE
1:100

SHEET NAME
ELEVATION SOUTH

DRAWING NUMBER
DA15
ISSUE NO.
D

THERMAL PERFORMANCE SPECIFICATIONS: (20331 – 36 Rodley Ave)

The following specifications take precedence over other plan notations for the construction of this building.

NOTE: In addition to BASIX commitments, building compliance is required to comply with the 'New South Wales Additions' in the current edition of the NCC – Vol. 1, at the time of building.

This includes New South Wales Part J(A). Specifically:

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- loss of ceiling insulation is compensated for by increased roof insulation in accordance with Part J1.3(c)
- where metal frames are used that thermal breaks are installed in accordance with Part J1.3(d) and J1.5(c)
- Any roof lights, windows, doors and exhaust fans are sealed in accordance Part J3
- Any new air-conditioning system is installed in accordance with Parts J5.2(a), J5.2(b), J5.2(c), J5.2(d), J5.2(f) & J5.2(g)
- Any new mechanical ventilation system is installed in accordance with Part J5.3
- Any new miscellaneous exhaust system is installed in accordance with Part J5.4
- Any new heated water system is installed in accordance Part J7.2
- Energy monitoring equipment is installed in accordance Part J8.3

WINDOWS (total product specification – glass + frame)

U-value 6.70 (or less than) & SHGC 0.70 (+/-5%) (Default: Plain Glass in AL frame)

EXTERNAL WALL (Medium colour)

Brick Veneer – R2.5 – 90mm thick Bulk insulation with reflective airgap

INTERNAL WALL

Cavity Panel/Concrete – No Insulation

Partition walls – No thermal insulation required

EXTERNAL FLOOR

Concrete Slab on Ground – No insulation

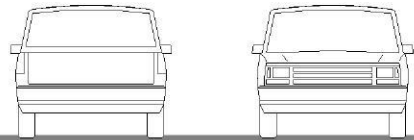
Suspended Concrete (above Basement areas) – R1.3 Bulk insulation

EXTERNAL CEILING/ROOF (Medium colour)

Concrete / Plasterboard – R1.3 bulk insulation (where roofspace or balcony above)

RATED either with NO DOWNLIGHTS or with LED downlights which do not penetrate ceiling insulation (ie: IC rated)

RODLEY AVE



FBK1

PT07

PT02

GLV1

PT07

RL 47.800

PT02

PDC1

PT02

GL1

PDC1

PT02

PDC1

PT01

18m HEIGHT LIMIT LINE

ROOF
RL 46.800

LEVEL 5
RL 43.700

LEVEL 4
RL 40.600

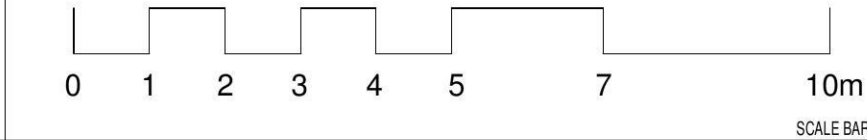
LEVEL 3
RL 37.500

LEVEL 2
RL 34.400

LEVEL 1
RL 31.300

GROUND LEVEL
RL 27.725

ISSUE	DATE	AMENDMENT
A	04-09-2018	DA SUBMISSION
B	19-03-2019	DA SUBMISSION
C	21-05-2019	DA SUBMISSION
D	31-07-2019	DA SUBMISSION
E	22-08-2019	DA SUBMISSION



NORTH POINT

PROJECT
PROPOSED RESIDENTIAL FLAT BUILDING
ADDRESS
36-38 Rodley Avenue, Penrith, NSW, 2750

CLIENT
Inglow Investments Two

MORSON GROUP

NOMINATED ARCHITECT - P.F.
MORSON REGISTRATION NUMBER 8100
ACN 139 480 256 ABN 41 139 480 256
www.morsongroup.com
203 9380 4944
PO Box 170, Penrith Point, NSW 1505

SHEET SIZE: A1
SCALE
1:100

SHEET NAME
ELEVATION WEST

DRAWING NUMBER
DA16
ISSUE NO.
E

THERMAL PERFORMANCE SPECIFICATIONS: (20331 – 36 Rodley Ave)

The following specifications take precedence over other plan notations for the construction of this building.

NOTE: In addition to BASIX commitments, building compliance is required to comply with the 'New South Wales Additions' in the current edition of the NCC – Vol. 1, at the time of building.

This includes New South Wales Part J(A). Specifically:

- Building thermal construction is in accordance with part J1.2
- loss of ceiling insulation is compensated for by increased roof insulation in accordance with Part J1.3(c)
- where metal frames are used that thermal breaks are installed in accordance with Part J1.3(d) and J1.5(c)
- Any roof lights, windows, doors and exhaust fans are sealed in accordance Part J3
- Any new air-conditioning system is installed in accordance with Parts J5.2(a), J5.2(b), J5.2(c), J5.2(d), J5.2(f) & J5.2(g)
- Any new mechanical ventilation system is installed in accordance with Part J5.3
- Any new miscellaneous exhaust system is installed in accordance with Part J5.4
- Any new heated water system is installed in accordance Part J7.2
- Energy monitoring equipment is installed in accordance Part J8.3

WINDOWS (total product specification – glass + frame)

U-value 6.70 (or less than) & SHGC 0.70 (+/-5%) (Default: Plain Glass in AL frame)

EXTERNAL WALL (Medium colour)

Brick Veneer – R2.5 – 90mm thick Bulk insulation with reflective airgap

INTERNAL WALL

Cavity Panel/Concrete – No Insulation

Partition walls – No thermal insulation required

EXTERNAL FLOOR

Concrete Slab on Ground – No insulation

Suspended Concrete (above Basement areas) – R1.3 Bulk insulation

EXTERNAL CEILING/ROOF (Medium colour)

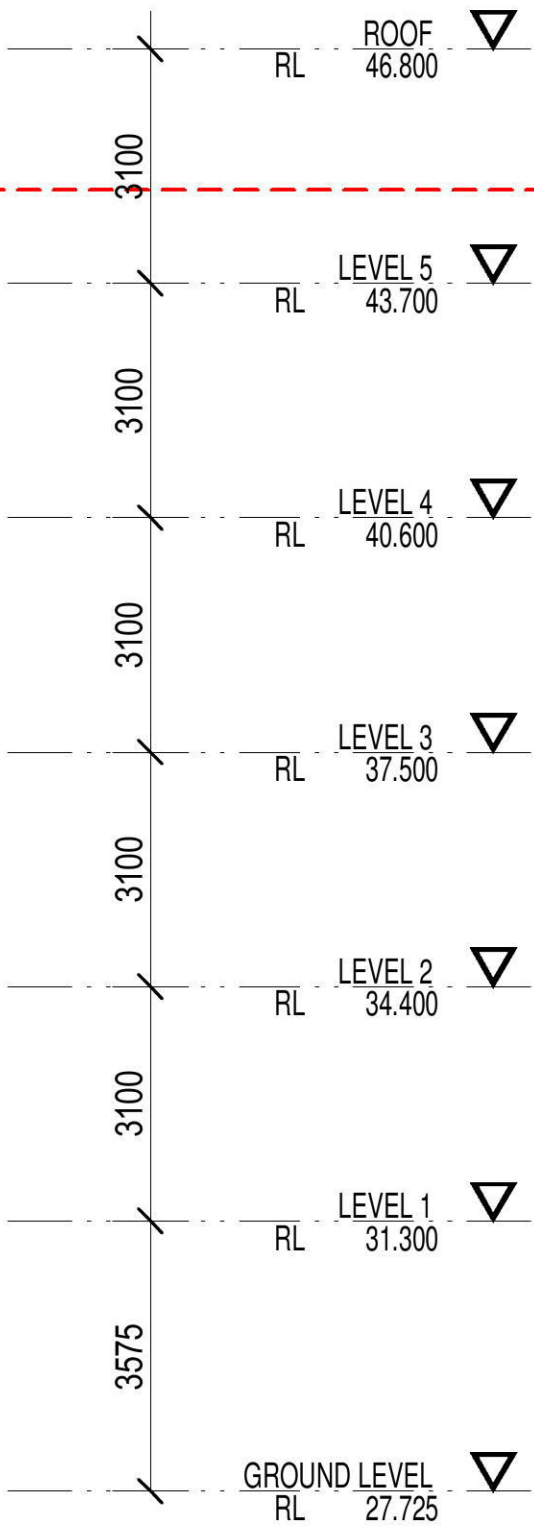
Concrete / Plasterboard – R1.3 bulk insulation (where roofspace or balcony above)

RATED either with NO DOWNLIGHTS or with LED downlights which do not penetrate ceiling insulation (ie: IC rated)

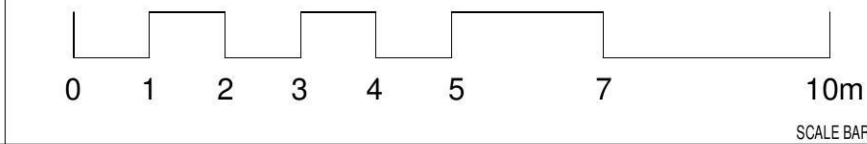


18m HEIGHT LIMIT LINE

RODLEY AVE



ISSUE	DATE	AMENDMENT
A	04-09-2018	DA SUBMISSION
B	19-03-2019	DA SUBMISSION
C	21-05-2019	DA SUBMISSION
D	31-07-2019	DA SUBMISSION
E	22-08-2019	DA SUBMISSION



NORTH POINT

PROJECT
PROPOSED RESIDENTIAL FLAT BUILDING
ADDRESS
36-38 Rodley Avenue, Penrith, NSW, 2750

CLIENT
Inglow Investments Two

MORSON GROUP

NOMINATED ARCHITECT - P/F
MORSON ARCHITECTURE NUMBER 8100
ACN 131 480 256 ABN 41 131 480 256
www.morsongroup.com
203 9380 4944
PO Box 170, Penrith, NSW 1505

SHEET SIZE: A1
SCALE
1:100

SHEET NAME
ELEVATION EAST

DRAWING NUMBER
DA17
ISSUE NO.
E

RATED either with NO DOWNLIGHTS or with LED downlights which do not penetrate ceiling insulation (ie: IC rated)



RATED either with NO DOWNLIGHTS or with LED downlights which do not penetrate ceiling insulation (ie: IC rated)



DRAWING NUMBER **DA19**
ISSUE NO. **D**

THERMAL PERFORMANCE SPECIFICATIONS: (20331 – 36 Rodley Ave)

The following specifications take precedence over other plan notations for the construction of this building.

NOTE: In addition to BASIX commitments, building compliance is required to comply with the 'New South Wales Additions' in the current edition of the NCC – Vol. 1, at the time of building.

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- Any new miscellaneous exhaust system is installed in accordance with Part J5.4
- Any new heated water system is installed in accordance Part J7.2
- Energy monitoring equipment is installed in accordance Part J8.3

WINDOWS (total product specification – glass + frame)

U-value 6.70 (or less than) & SHGC 0.70 (+/-5%) (Default: Plain Glass in AL frame)

EXTERNAL WALL (Medium colour)

Brick Veneer – R2.5 – 90mm thick Bulk insulation with reflective airgap

INTERNAL WALL

Cavity Panel/Concrete – No Insulation

Partition walls – No thermal insulation required

EXTERNAL FLOOR

Concrete Slab on Ground – No insulation

Suspended Concrete (above Basement areas) – R1.3 Bulk insulation

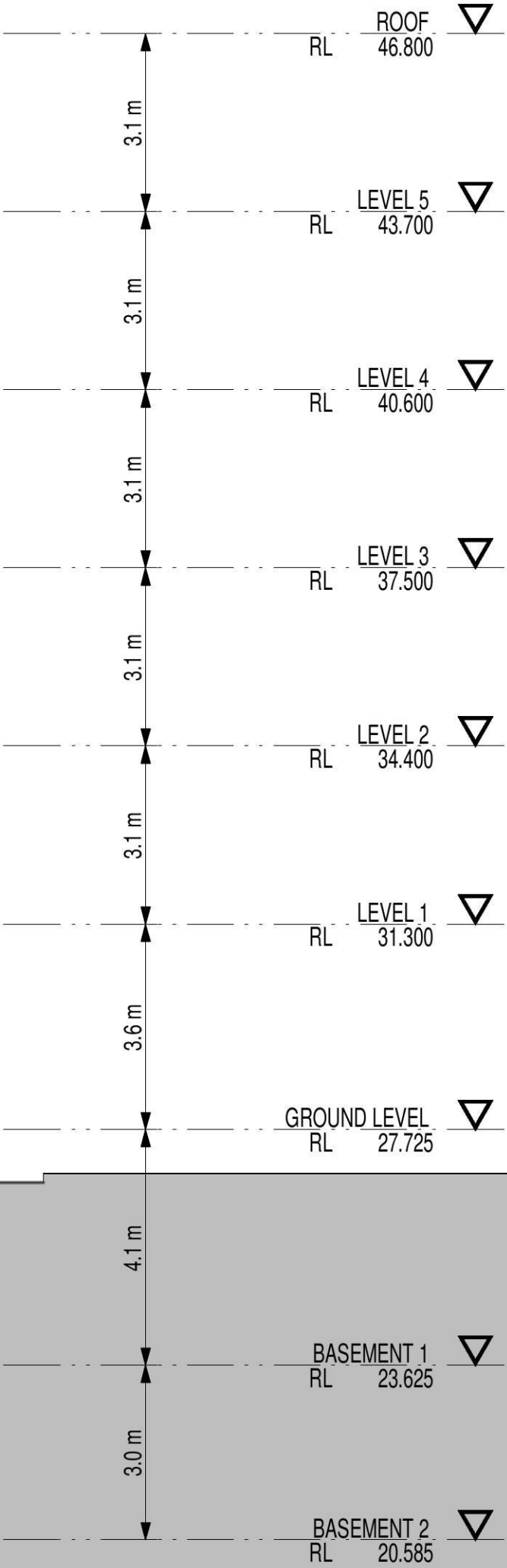
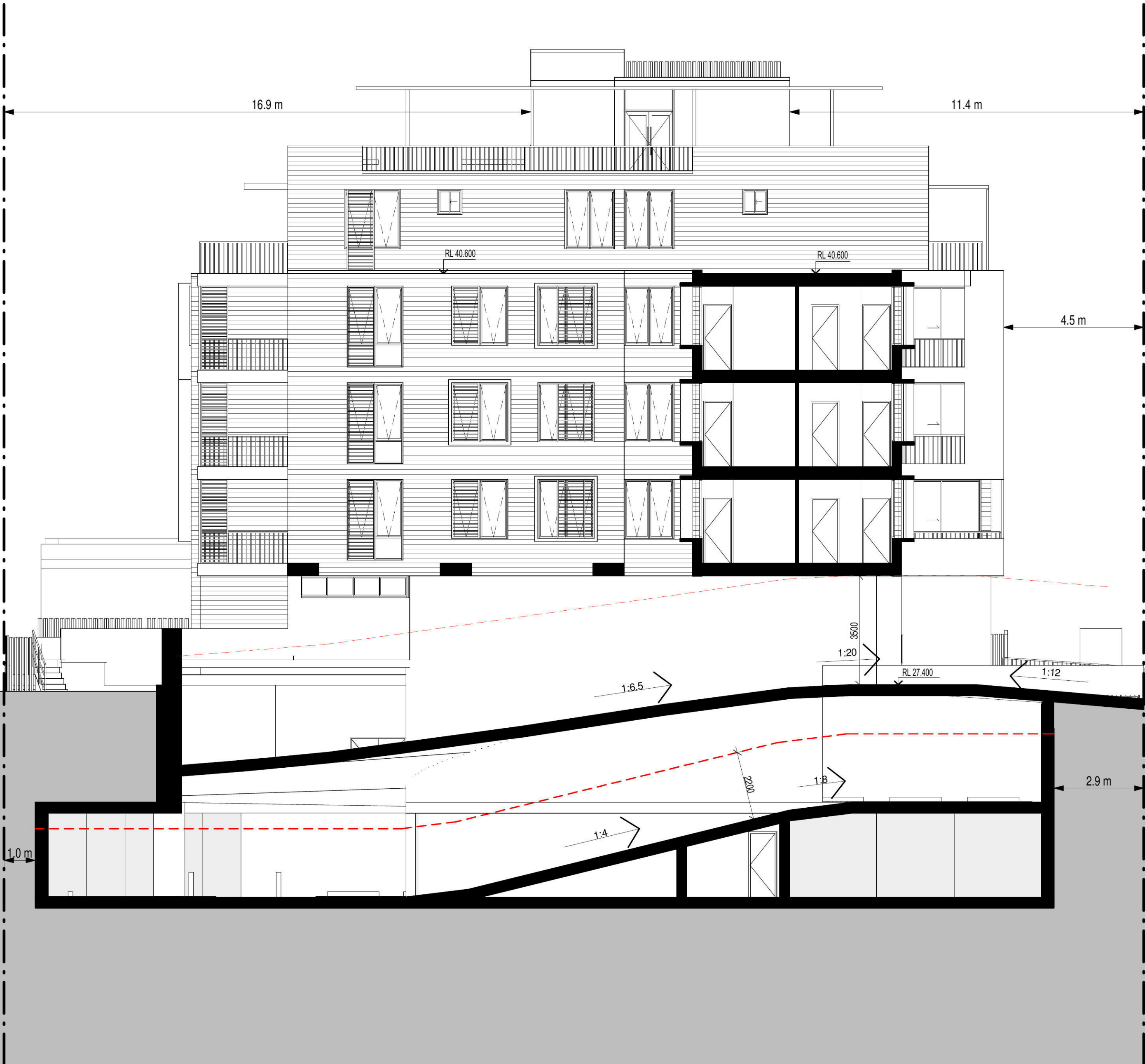
EXTERNAL CEILING/ROOF (Medium colour)

Concrete / Plasterboard – R1.3 bulk insulation (where roofspace or balcony above)

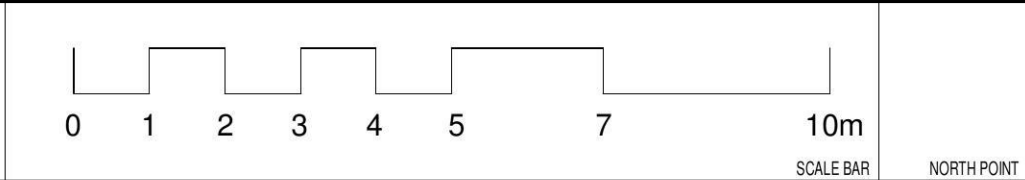
RATED either with NO DOWNLIGHTS or with LED downlights which do not penetrate ceiling insulation (ie: IC rated)

CREEK

RODLEY AVE



ISSUE	DATE	AMENDMENT
A	04-09-2018	DA SUBMISSION
B	31-07-2019	DA SUBMISSION
C	22-08-2019	DA SUBMISSION



PROJECT
PROPOSED RESIDENTIAL FLAT BUILDING
ADDRESS
36-38 Rodley Avenue, Penrith, NSW, 2750

CLIENT
Inglow Investments Two

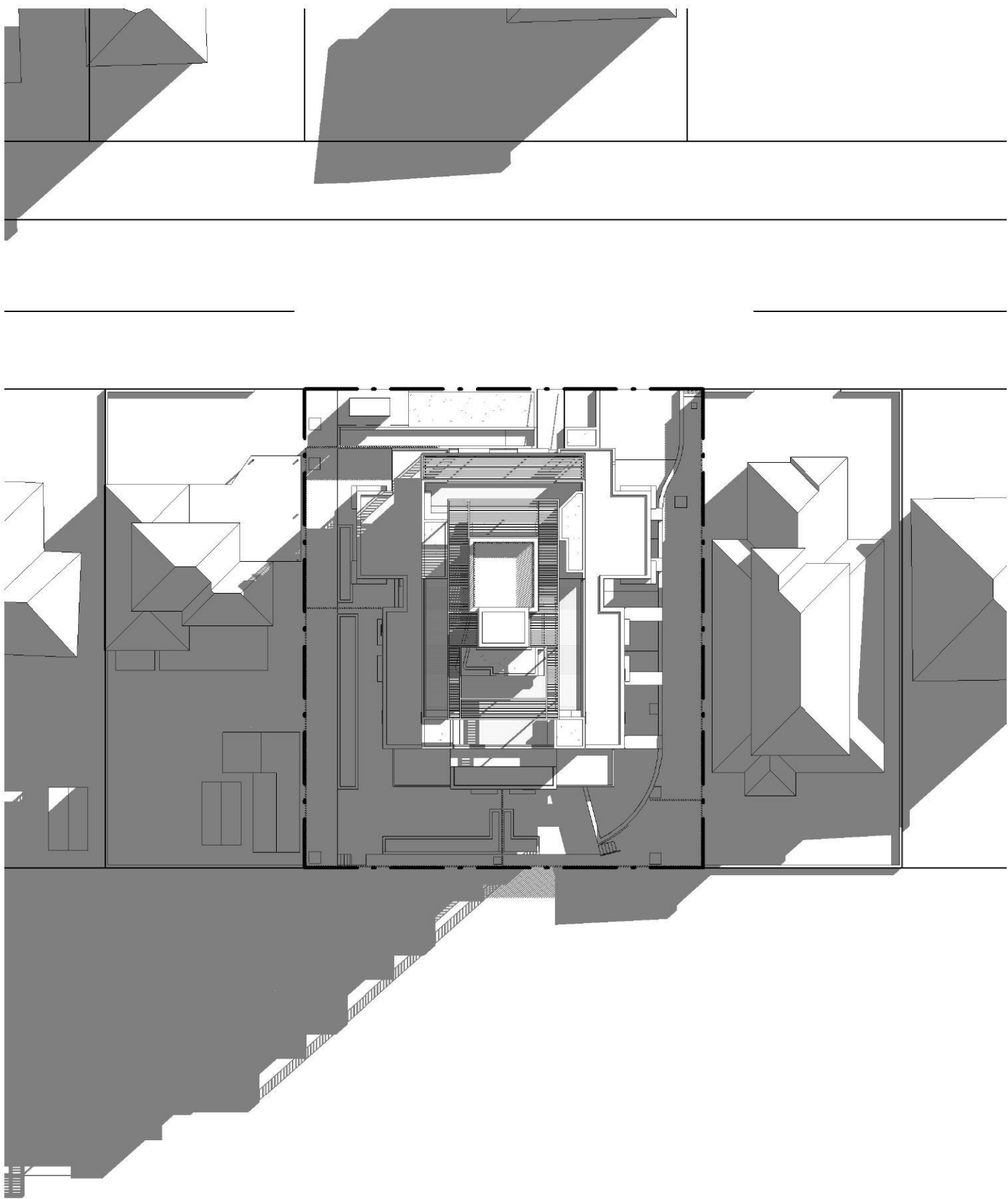
MORSON GROUP

NOMINATED ARCHITECT - P.F.
MORSON REGISTRATION NUMBER B100
ACH-139 480-056 AREA 41 139 480-056
www.morsongroup.com
203 9380 4944
PO Box 170, Penrith, NSW 1505

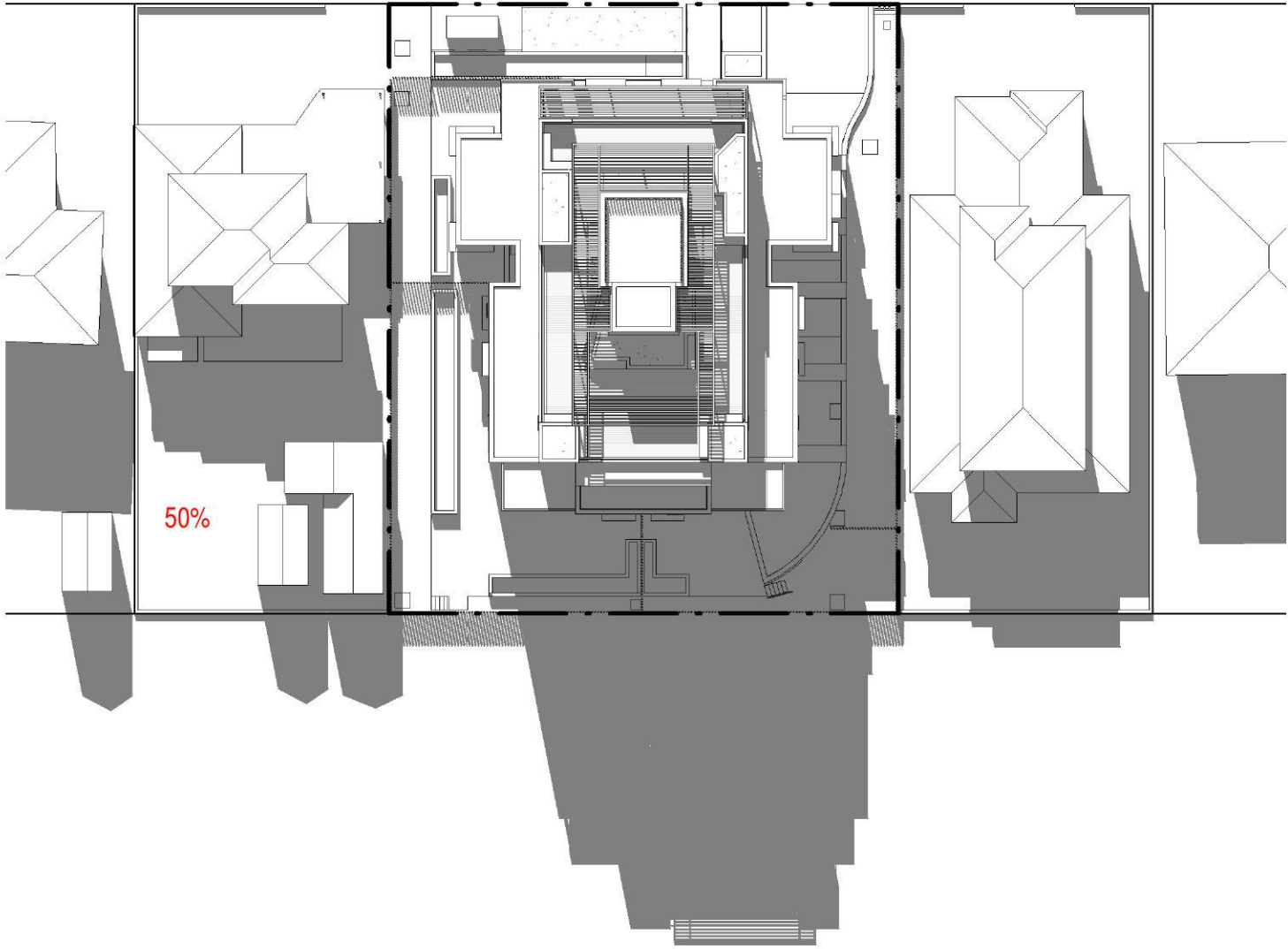
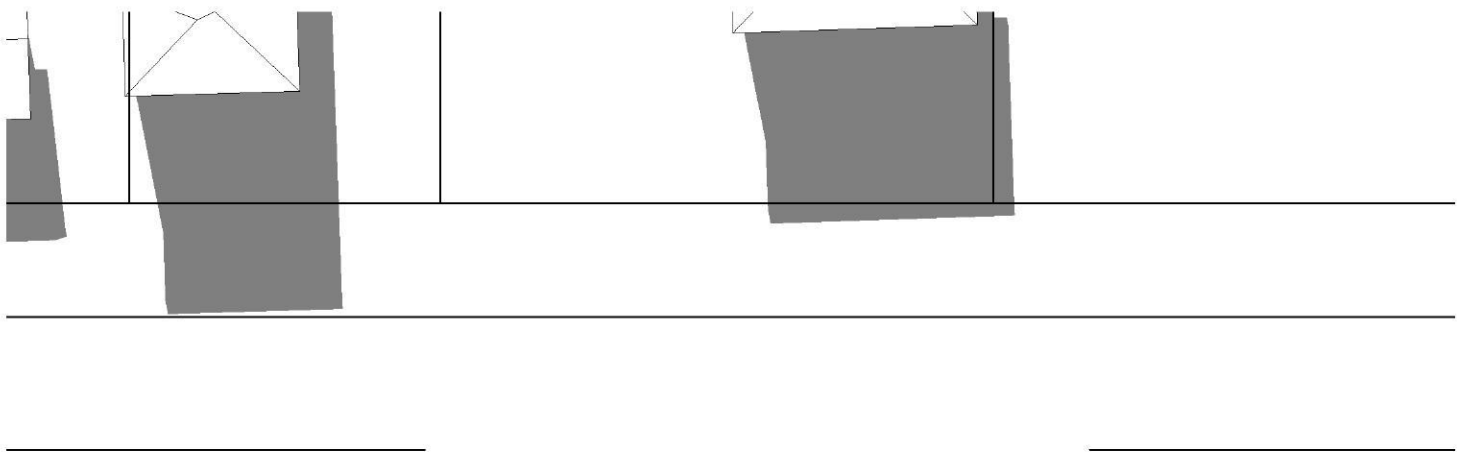
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SCALE
1:100

SHEET NAME
SECTION 3

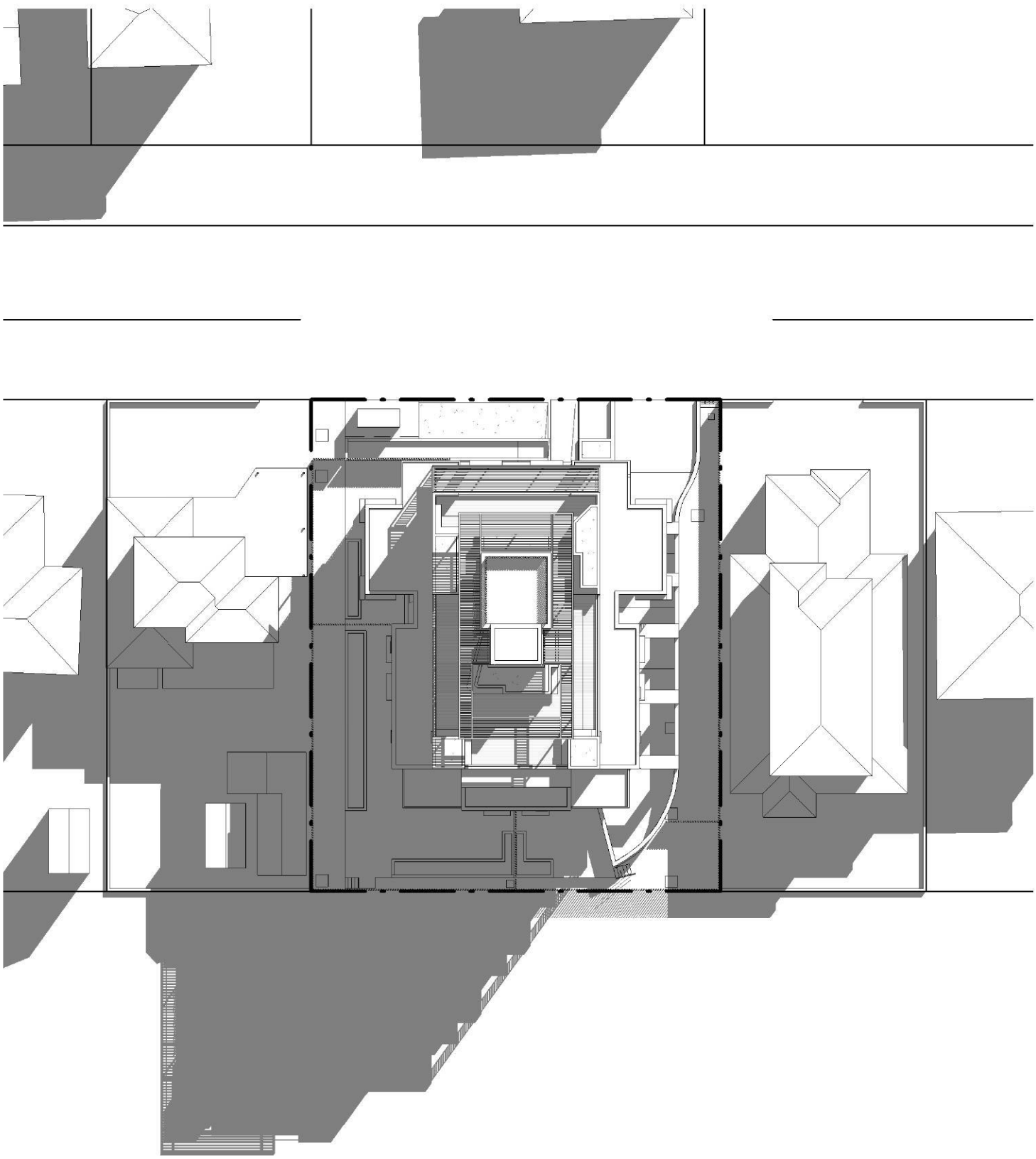
DRAWING NUMBER
DA20
ISSUE NO.
C



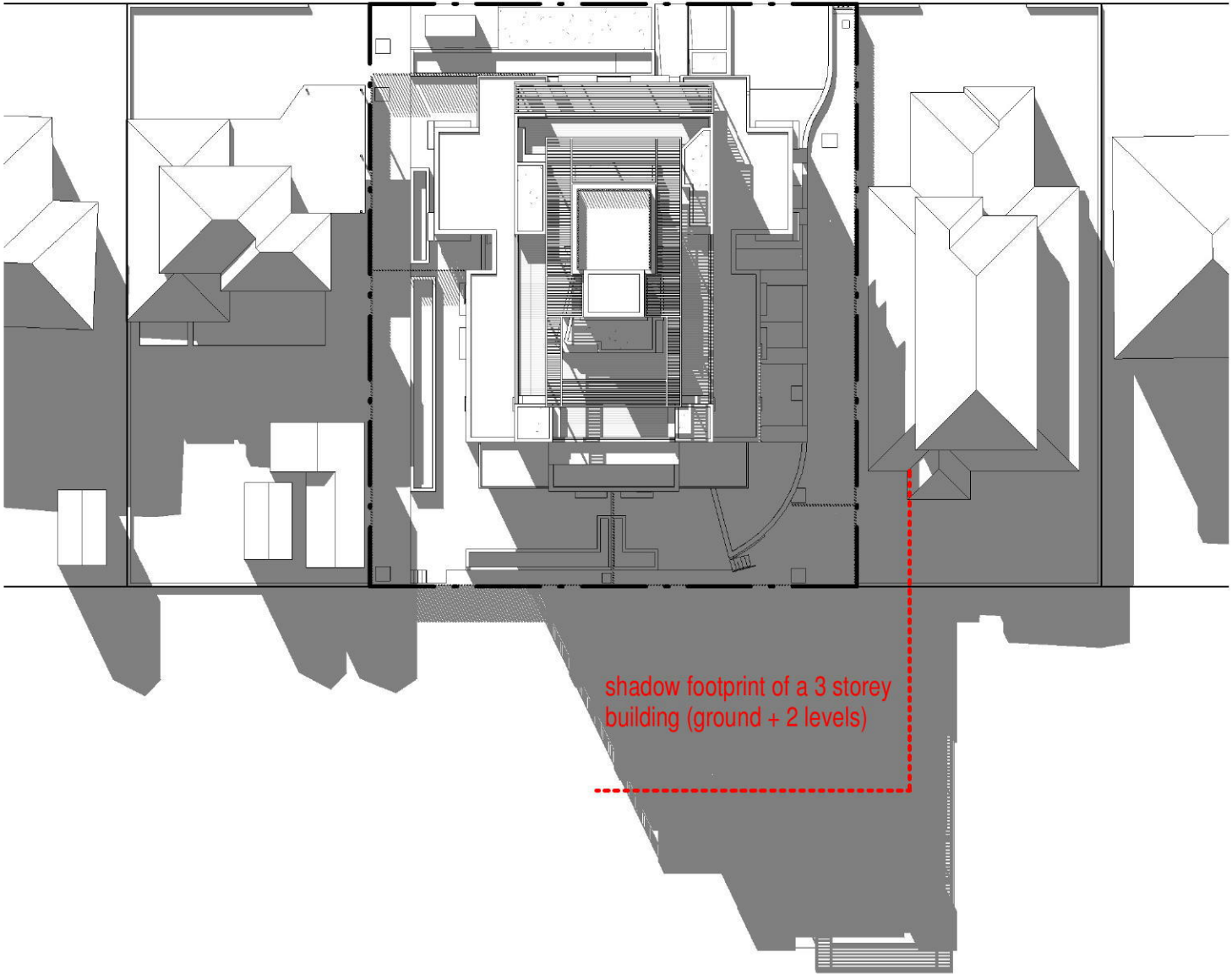
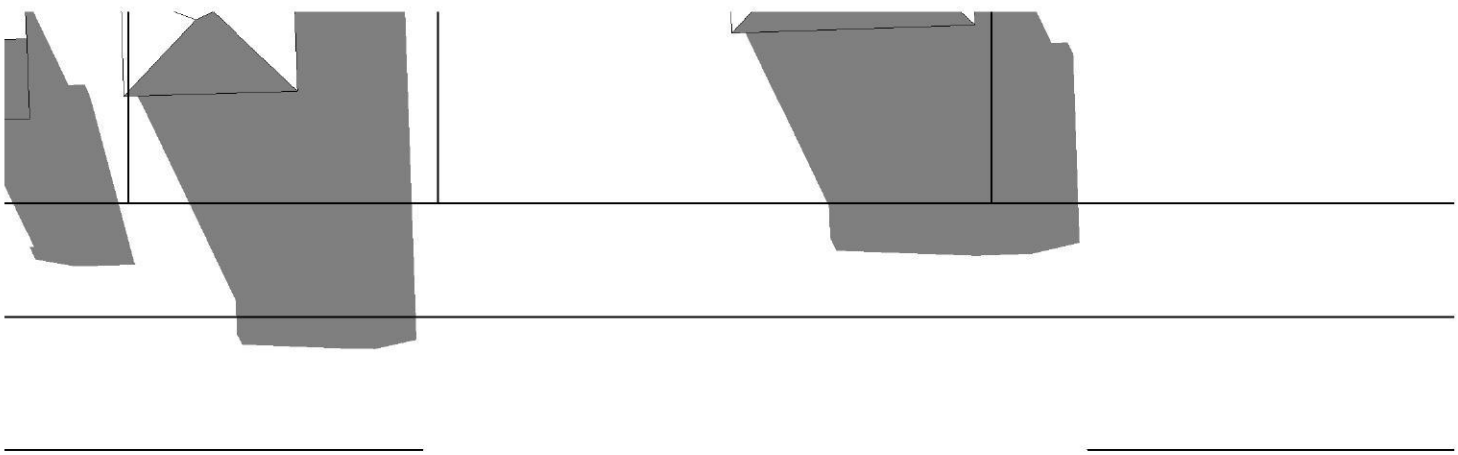
1 SHADOWS - JUNE 21st 9AM
DA14 1:400



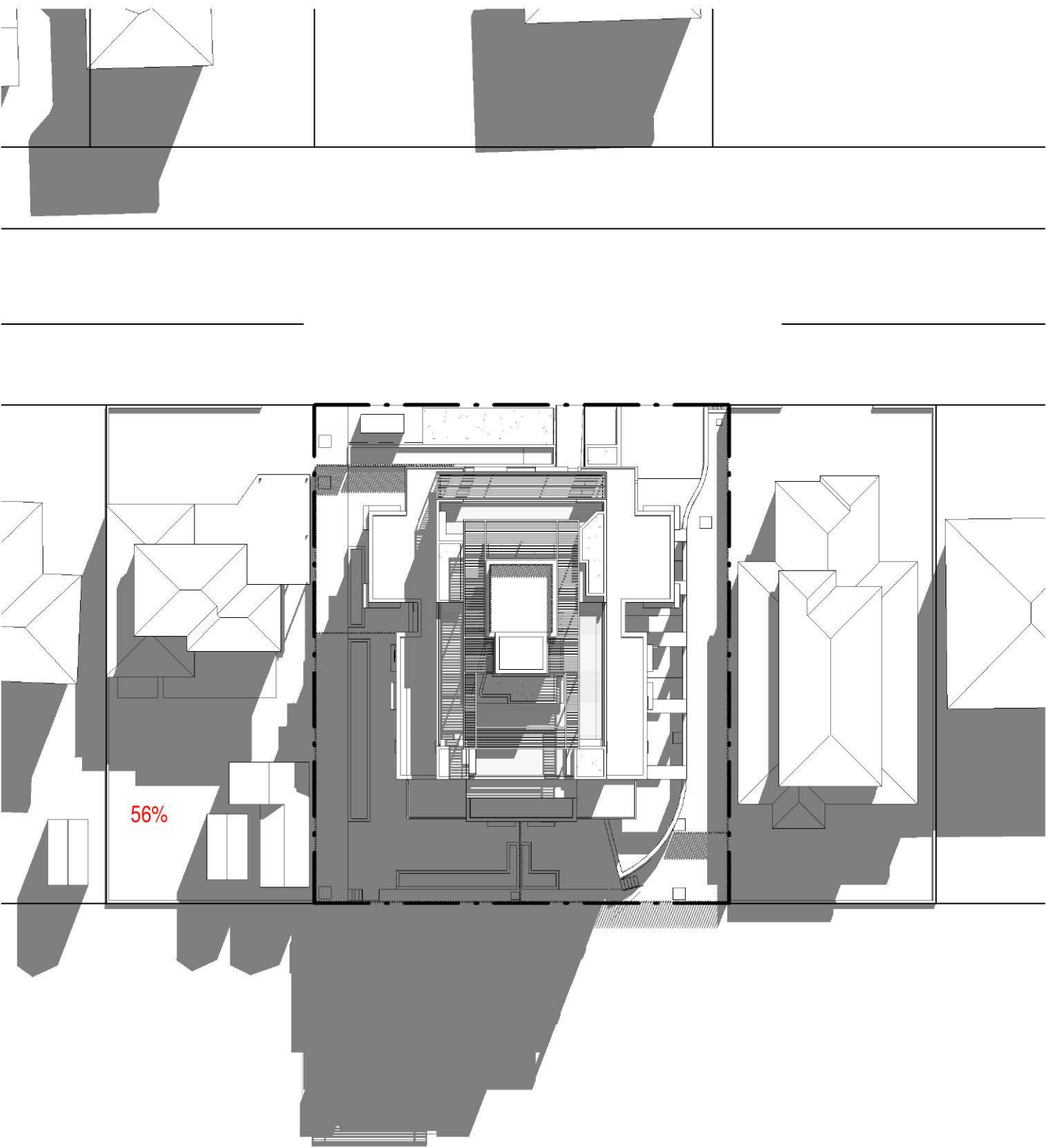
5 SHADOWS - JUNE 21st 13PM
DA14 1:400



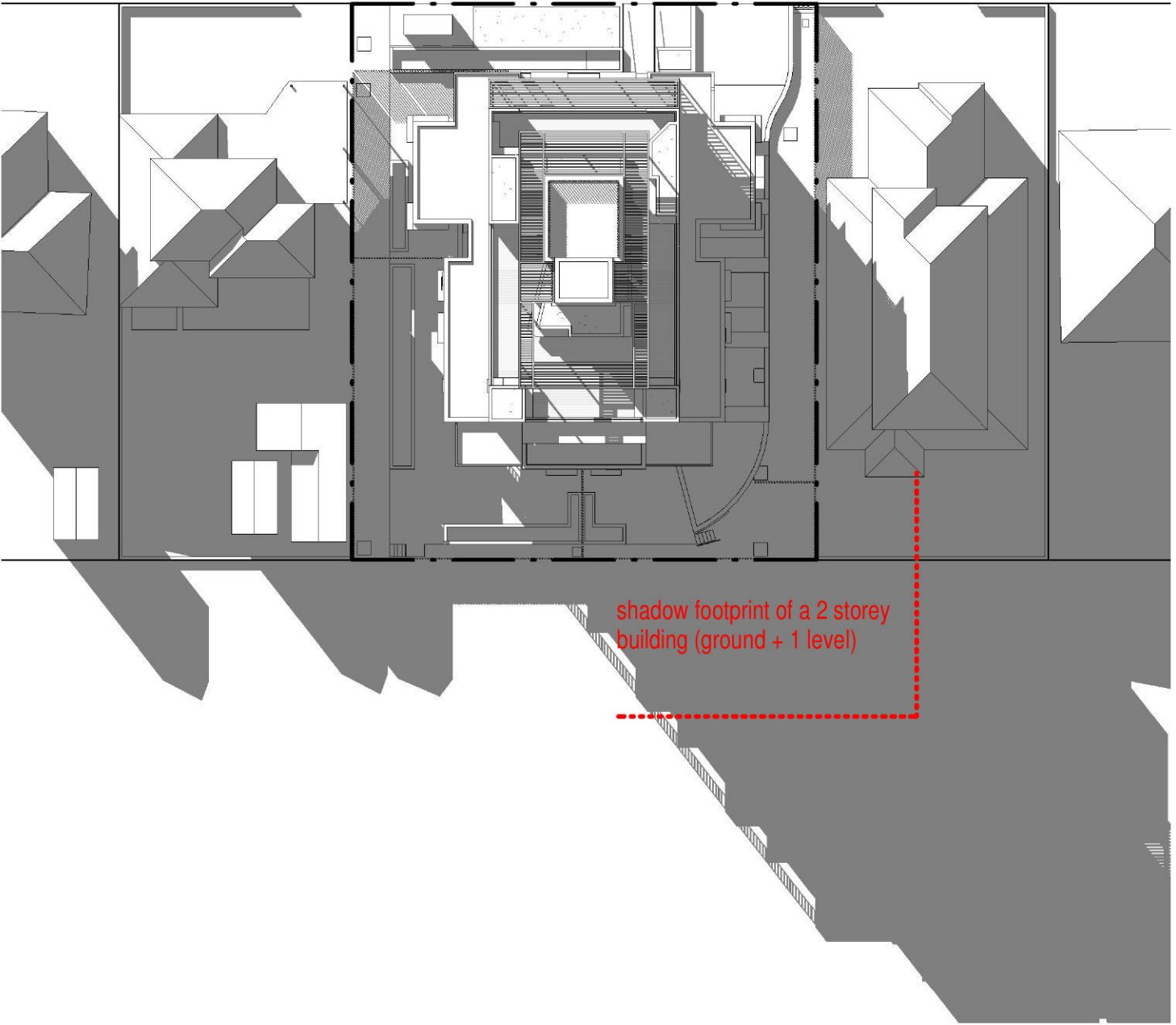
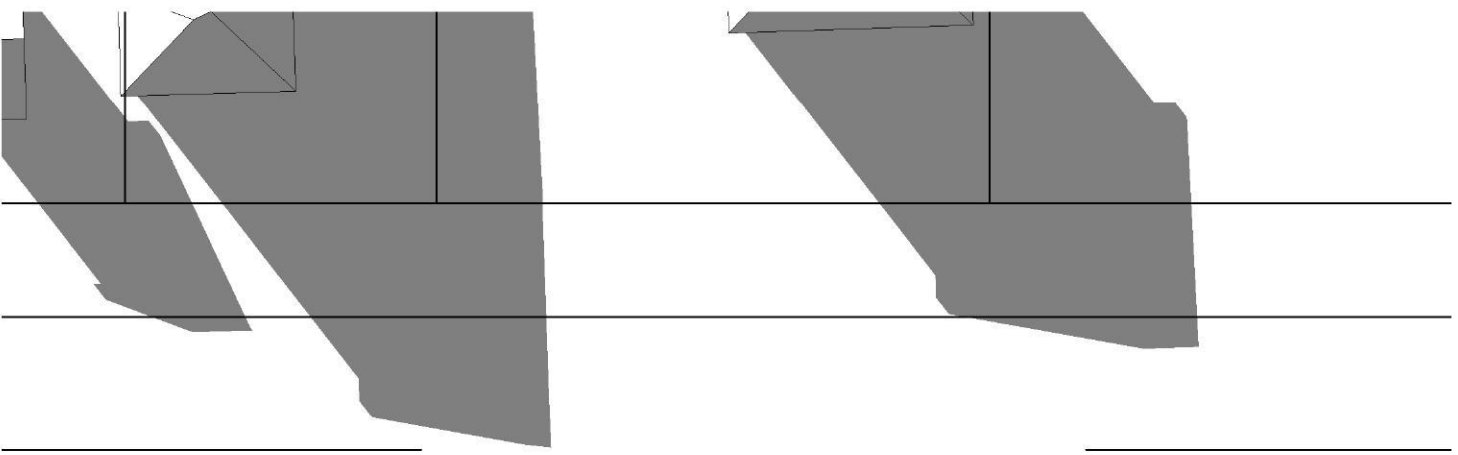
2 SHADOWS - JUNE 21st 10AM
DA14 1:400



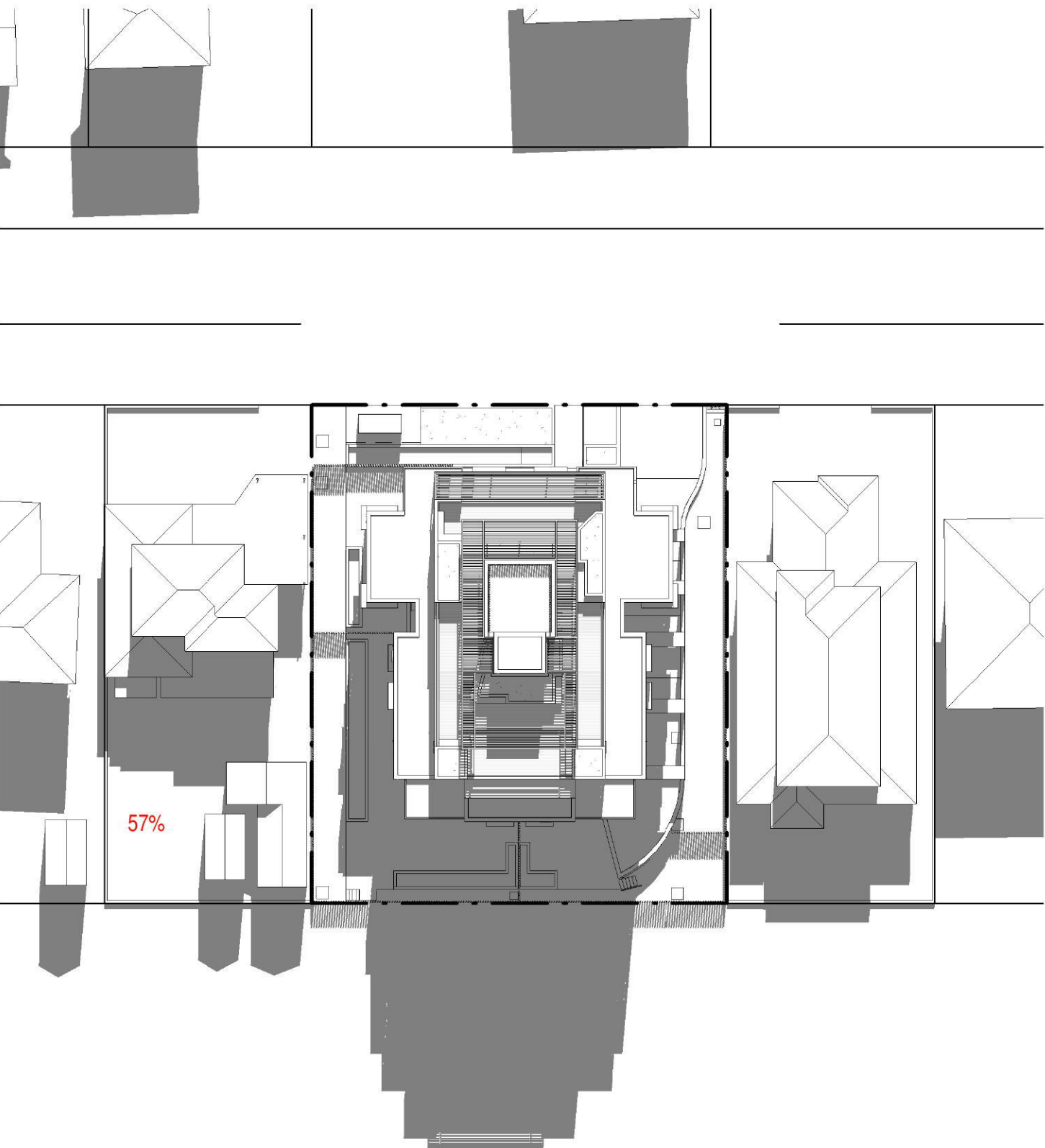
6 SHADOWS - JUNE 21st 14PM
DA14 1:400



3 SHADOWS - JUNE 21st 11AM
DA14 1:400



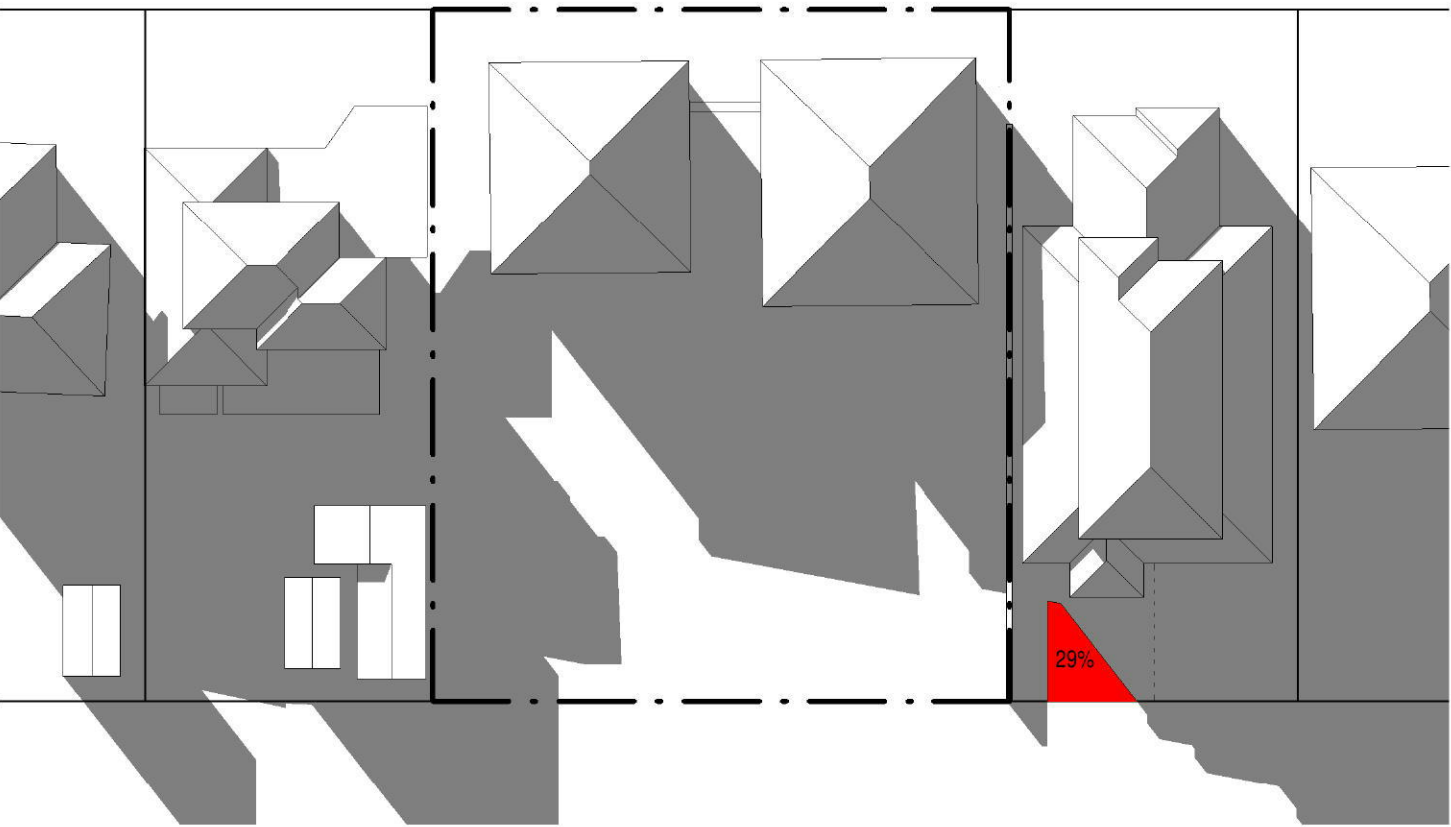
7 SHADOWS - JUNE 21st 15PM
DA14 1:400



4 SHADOWS - JUNE 21st 12PM
DA14 1:400

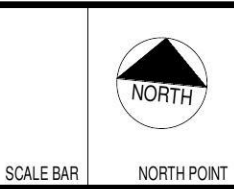


8 SHADOWS - JUNE 21st 14PM Existing
DA14 1:400



9 SHADOWS - JUNE 21st 15PM Existing
DA14 1:400

ISSUE	DATE	AMENDMENT
A	04-09-2018	DA SUBMISSION
B	19-02-2019	DA SUBMISSION
C	21-05-2019	DA SUBMISSION
D	31-07-2019	DA SUBMISSION
E	22-08-2019	DA SUBMISSION



PROJECT
PROPOSED RESIDENTIAL FLAT BUILDING
ADDRESS
36-38 Rodley Avenue, Penrith, NSW, 2750

CLIENT
Inglow Investments Two



NOVATED ARCHITECT - P/L
MORSON REGISTRATION NUMBER 8100
ACN 139 480 056 ABN 41 139 480 056
www.morsongroup.com.au
PO Box 170, Penrith, NSW 1505

SHEET SIZE: A1
SCALE
1:400

SHEET
NAME

SHADOW DIAGRAMS

DRAWING NUMBER

DA21

ISSUE NO.

E



ISSUE	DATE	AMENDMENT	PROJECT	CLIENT	MORSON GROUP	DESIGNATED ARCHITECT - P.F.	SHEET NAME	DRAWING NUMBER
A	04-09-2018	DA SUBMISSION	PROPOSED RESIDENTIAL FLAT BUILDING	Inglow Investments Two	MORSON GROUP	MORSON ARCHITECTURE - P.F. ACN 131 480 256, ABN 41 131 480 256 www.morsongroup.com PO Box 170, Potts Point, NSW 1535	VIEWS	DA22
B	19-02-2019	DA SUBMISSION						
C	31-07-2019	DA SUBMISSION						
D	22-08-2019	DA SUBMISSION						

SCALE BAR

NORTH POINT

CLIENT
Inglow Investments Two

DESIGNATED ARCHITECT - P.F.
MORSON ARCHITECTURE - P.F.
ACN 131 480 256, ABN 41 131 480 256
www.morsongroup.com
PO Box 170, Potts Point, NSW 1535

SHEET SIZE: A1
SCALE
DATE

ISSUE NO.
D



AB-Bricks-Whitsunday Brampton
230x76-110-240-NAT

Level 1-4



Dulux Eternity Titanium Pearl Satin 90087728

Louvres and Window Frames



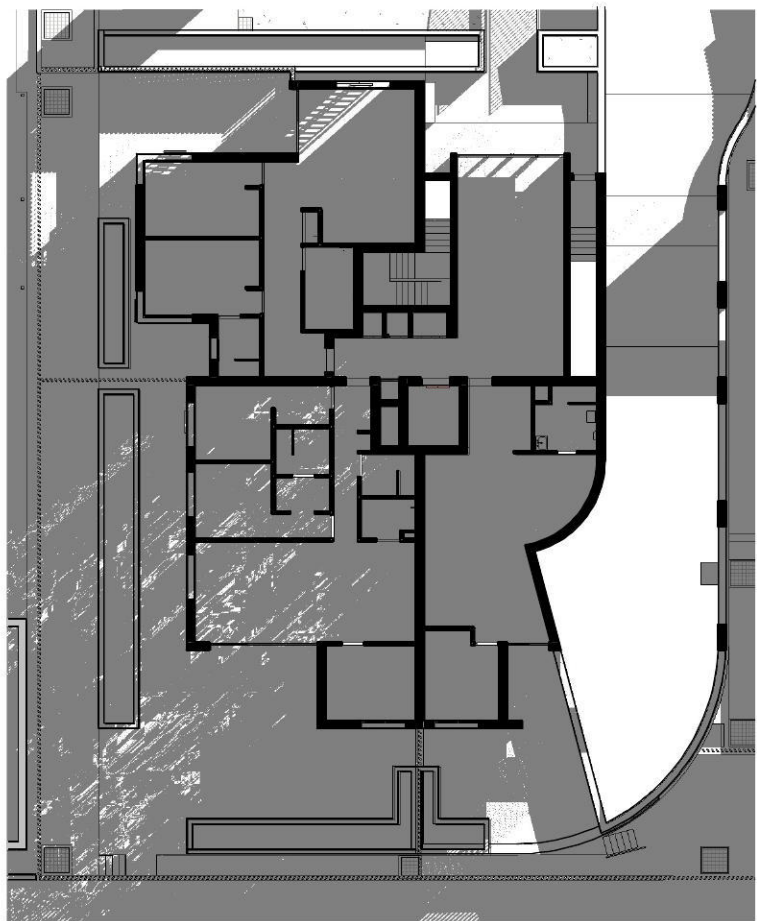
Render Painted Finish
Dulux Chanson Grey

Ground level and level 5

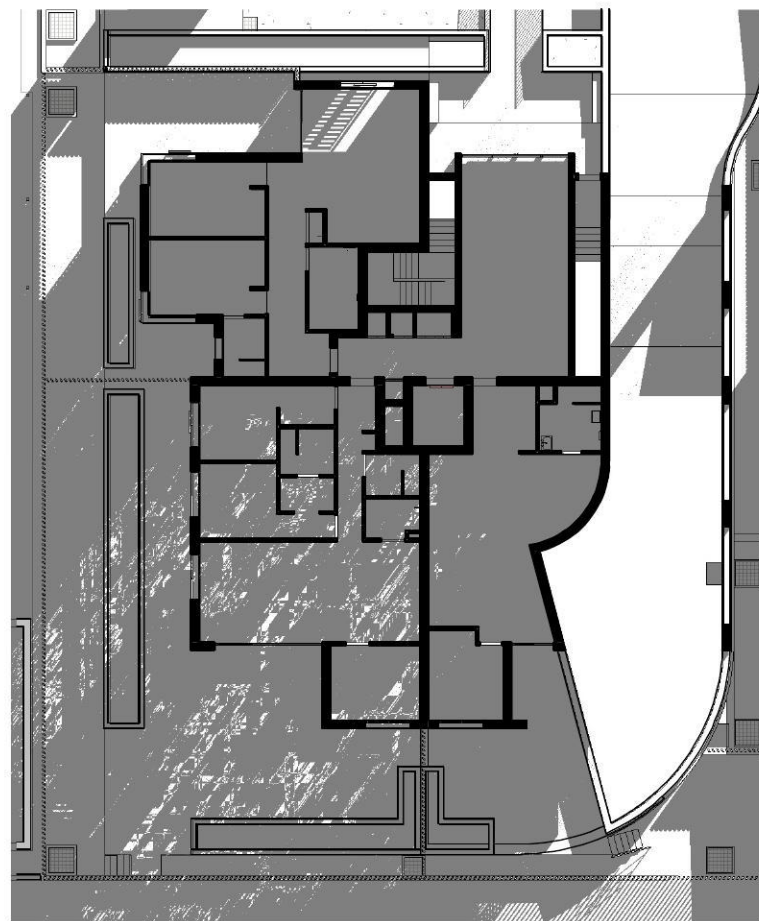


Render Painted Finish
Dulux Charcoal Essence 88590

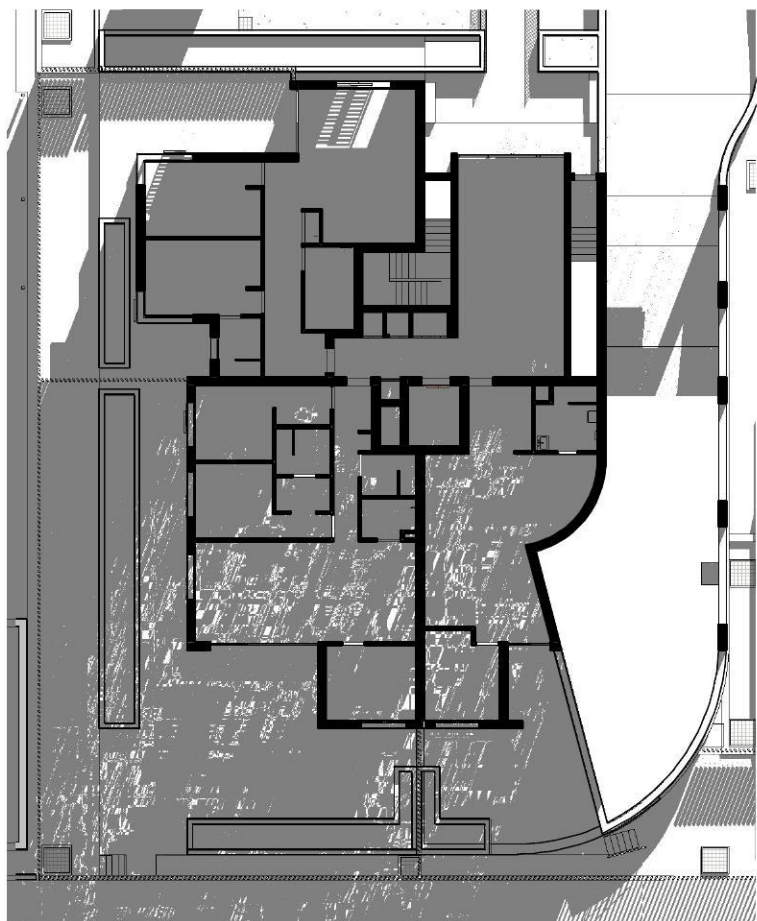
Balconies and Awnings



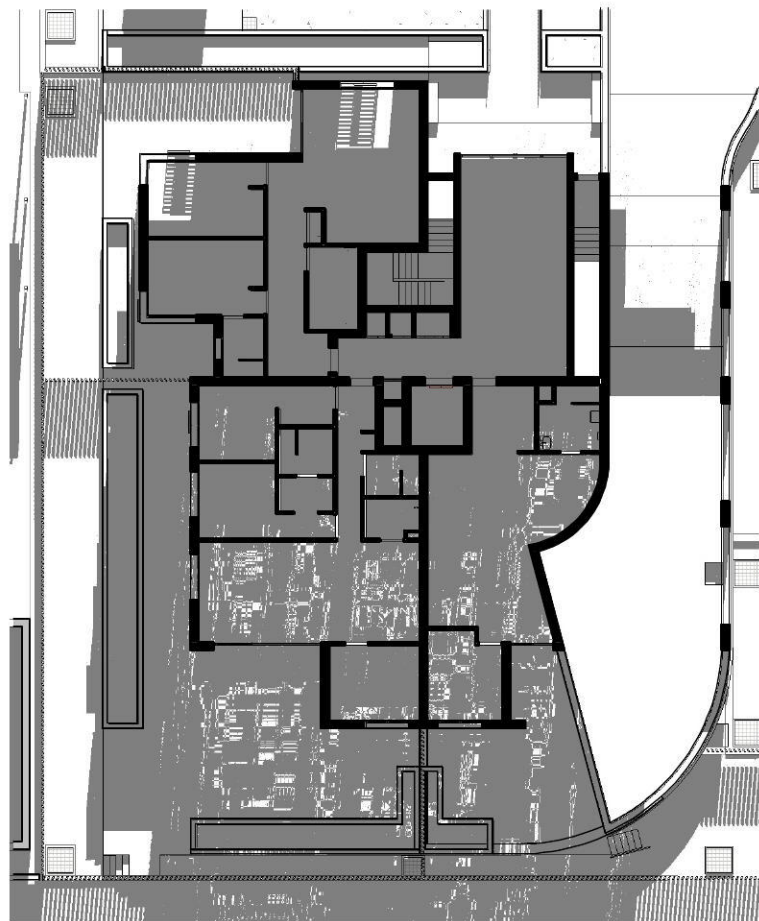
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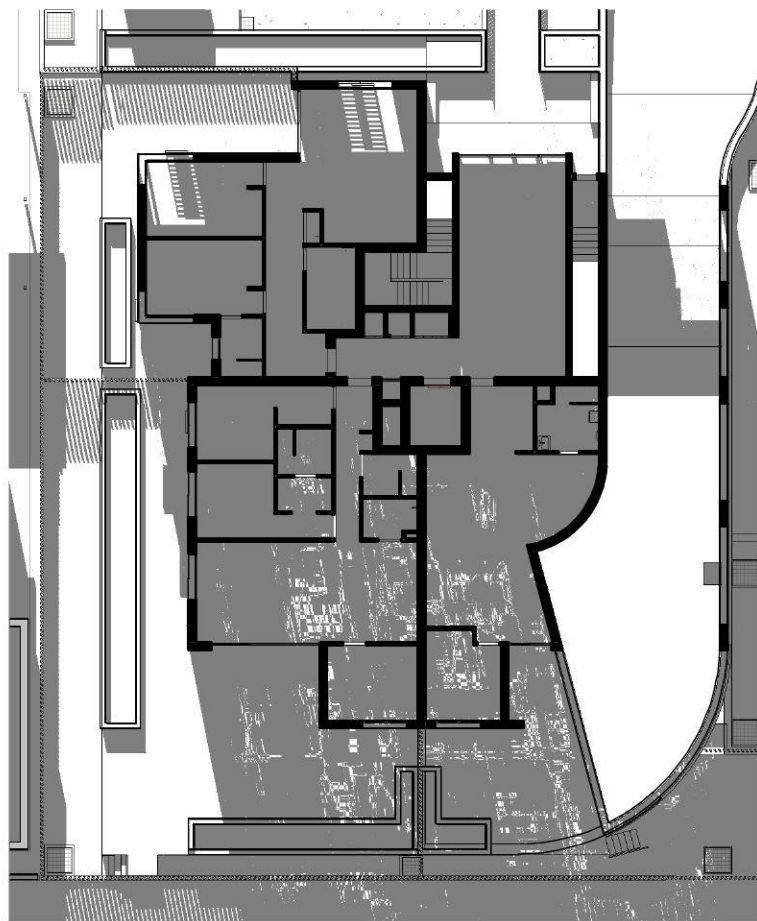
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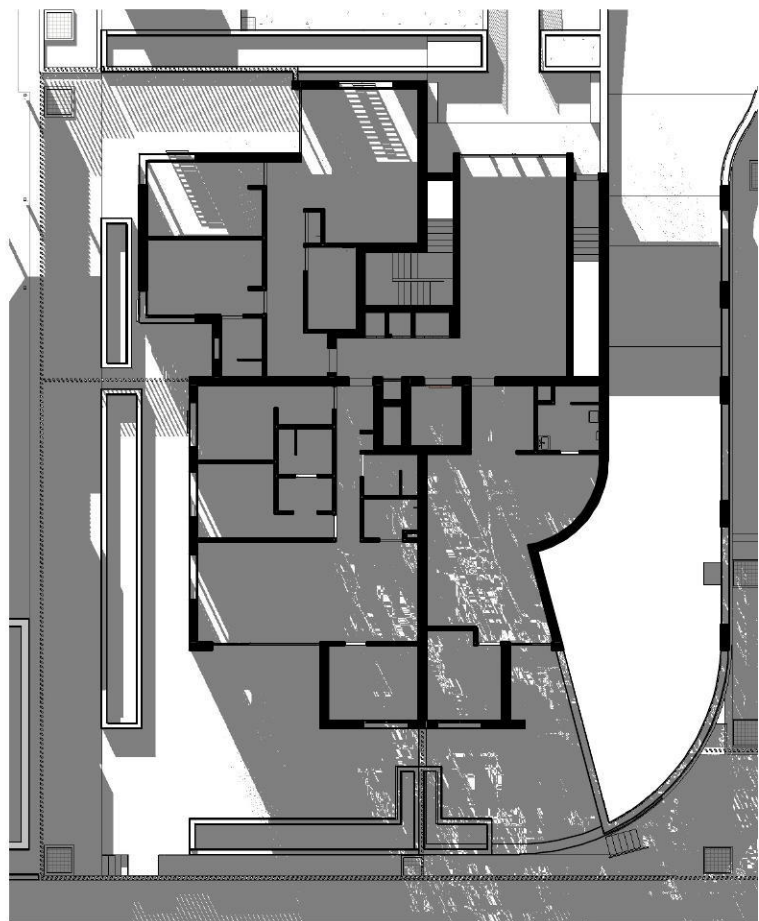
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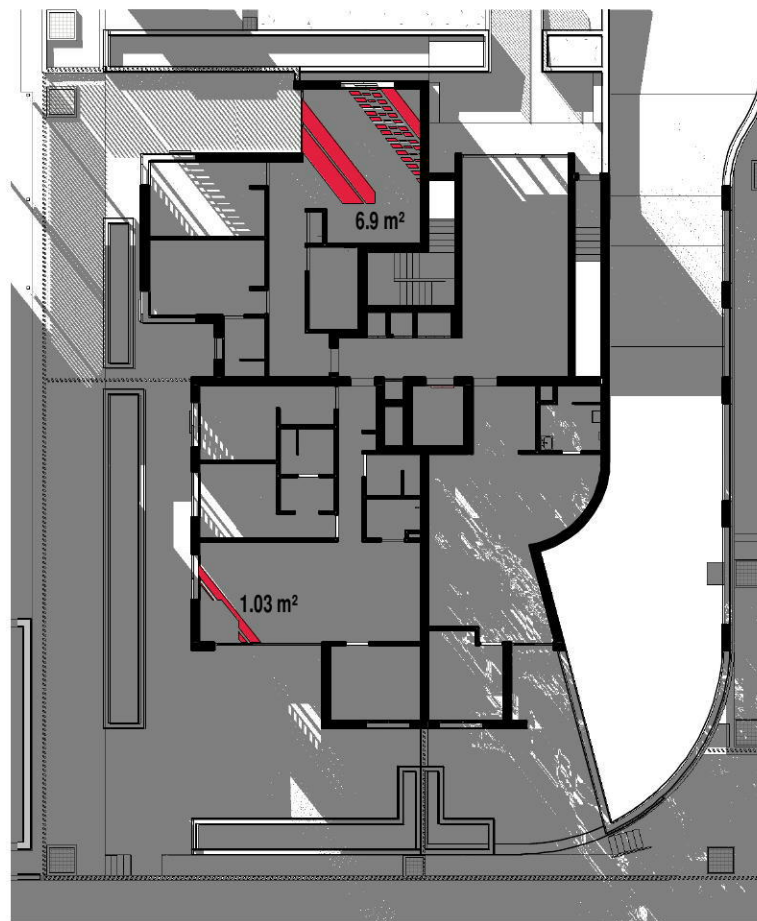
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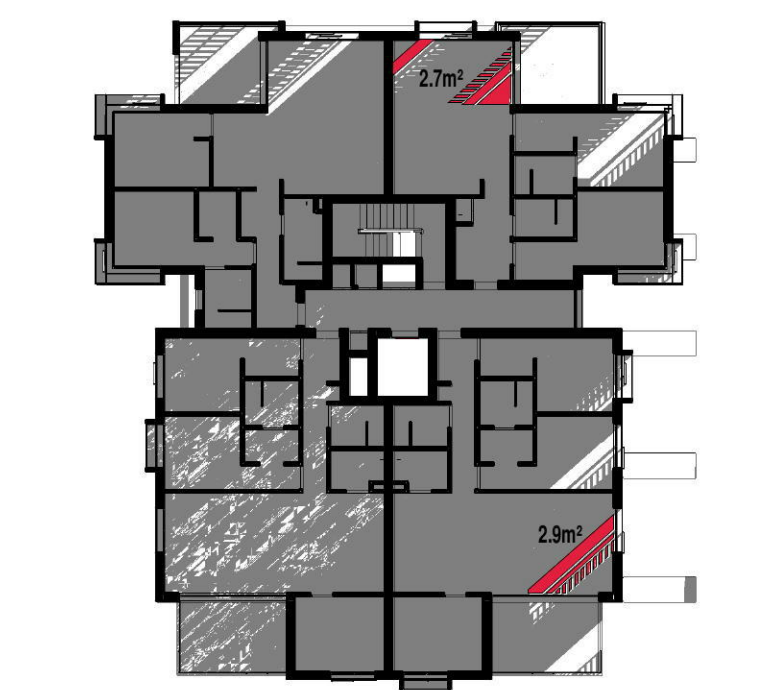
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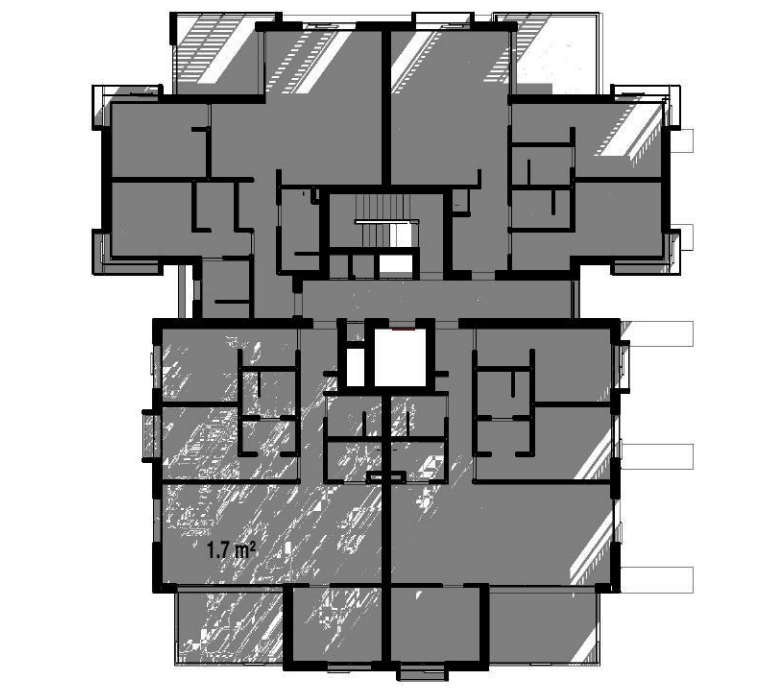
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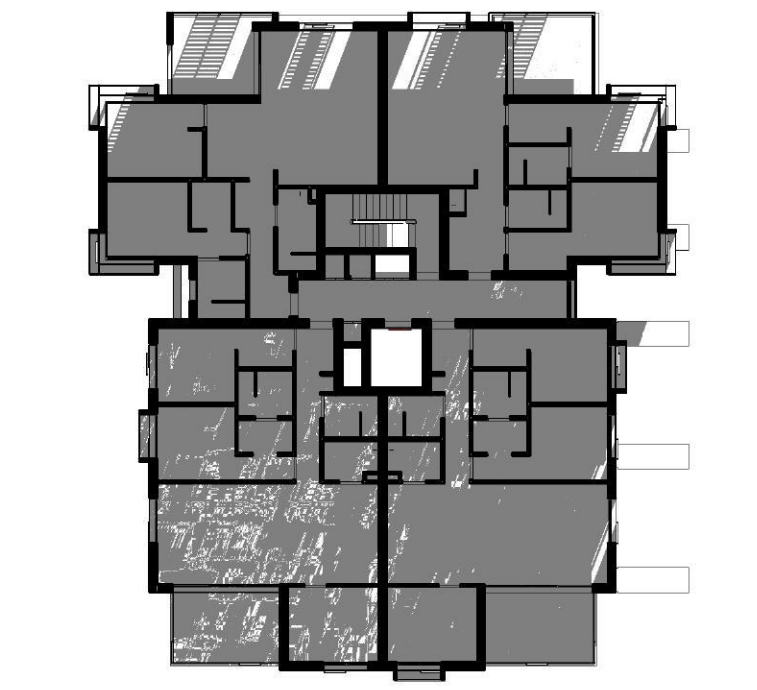
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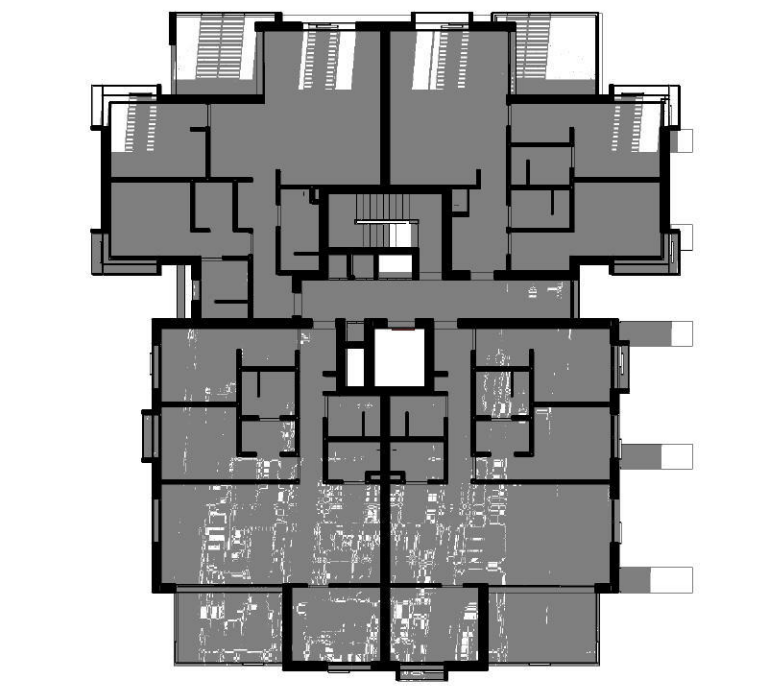
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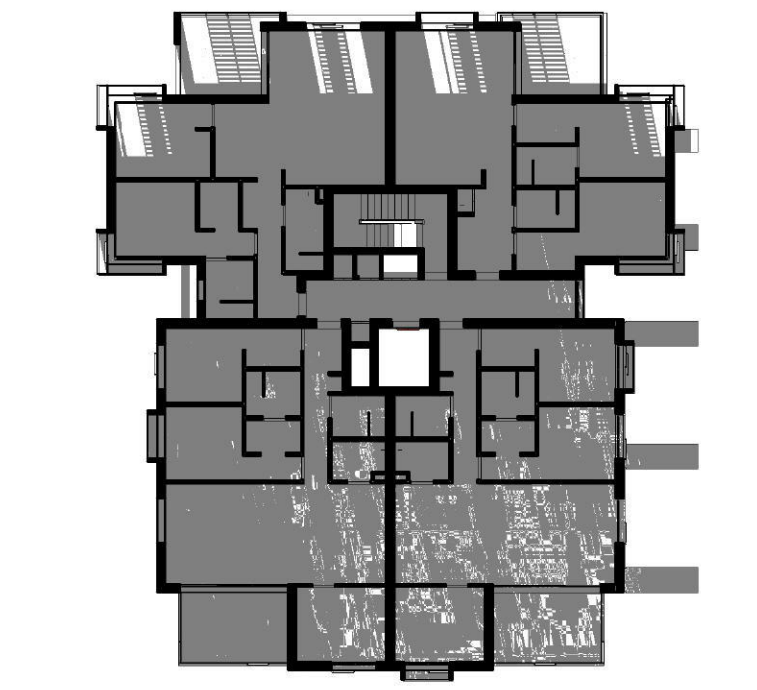
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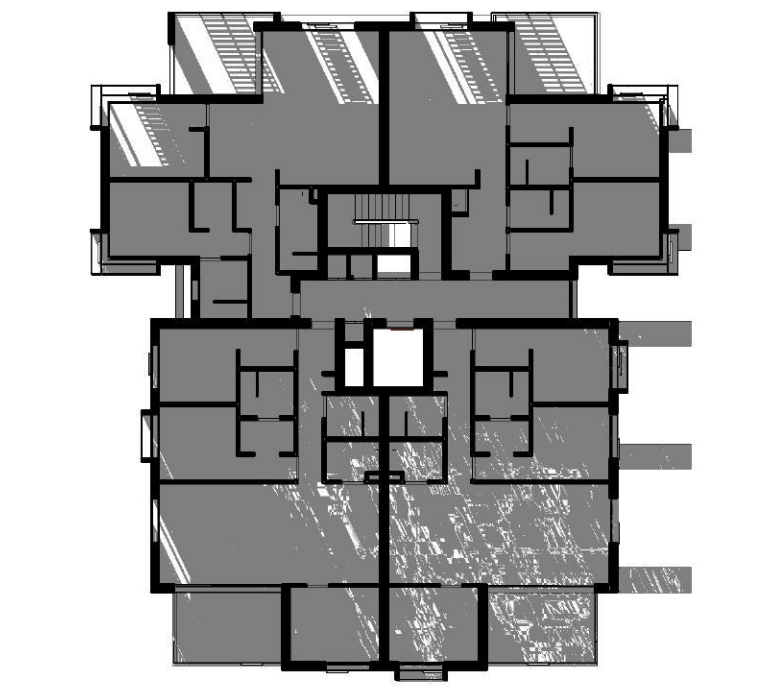
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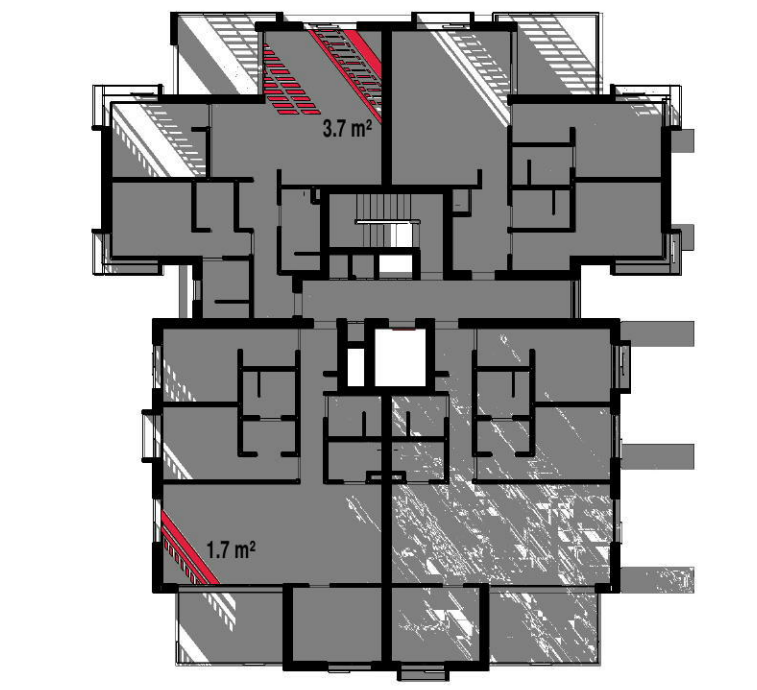
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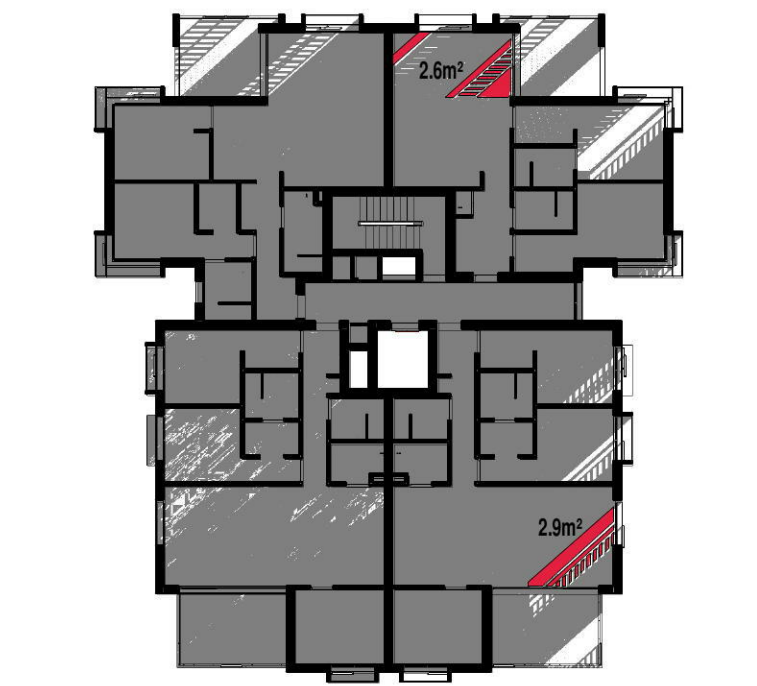
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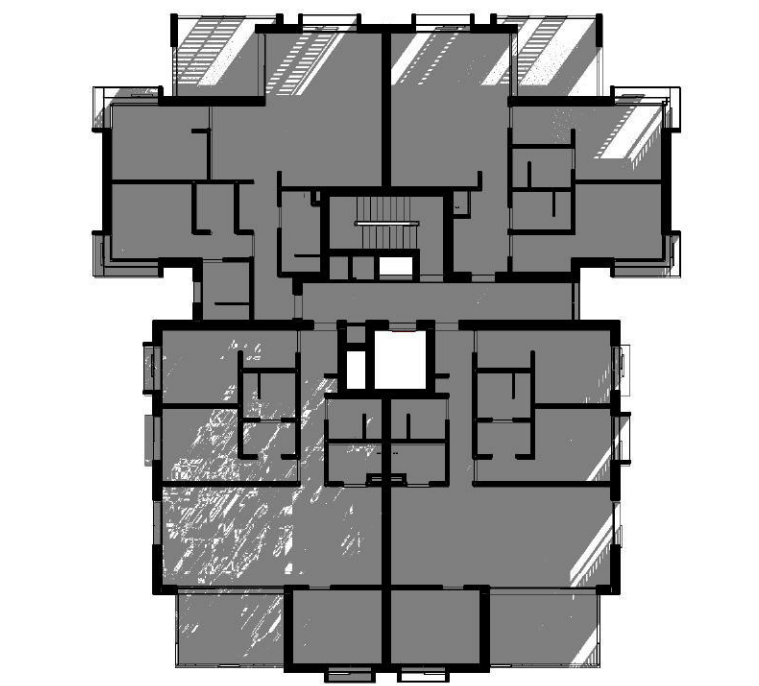
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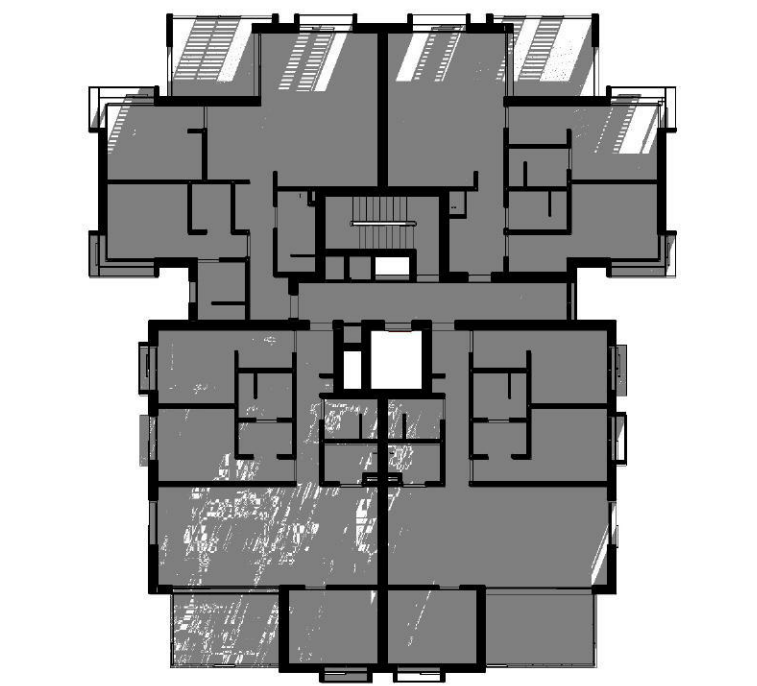
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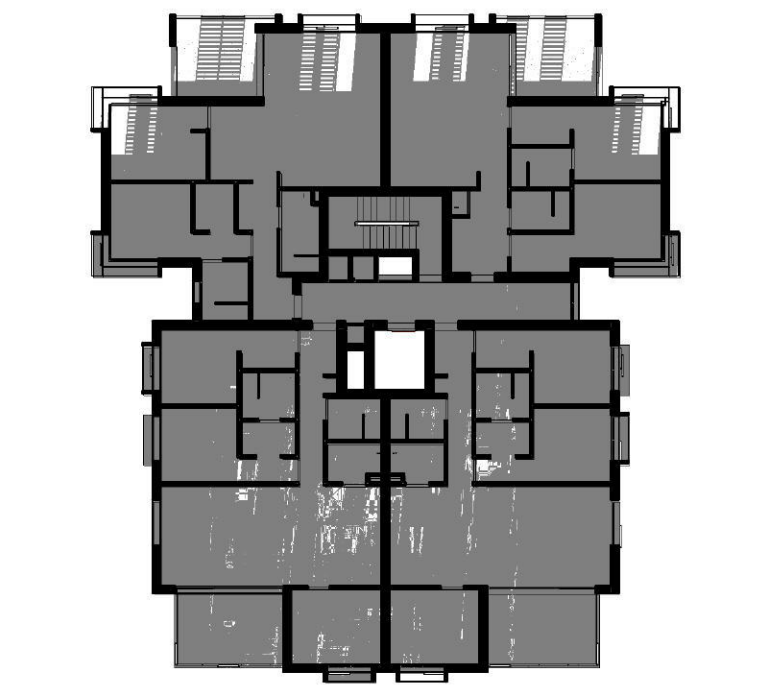
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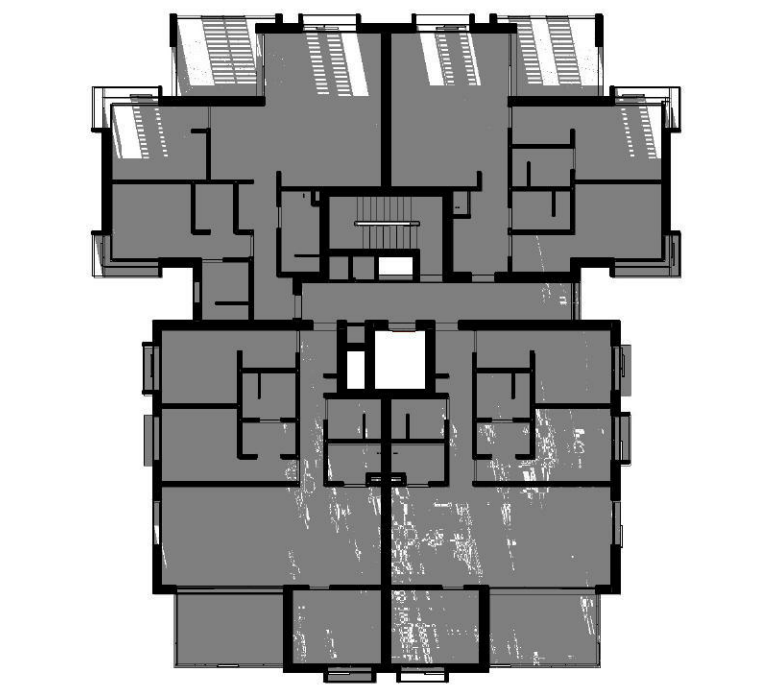
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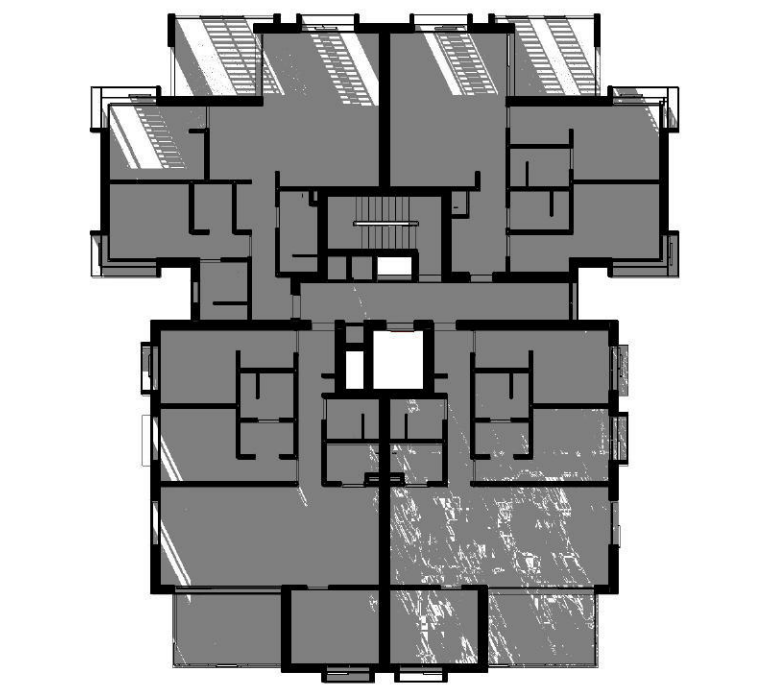
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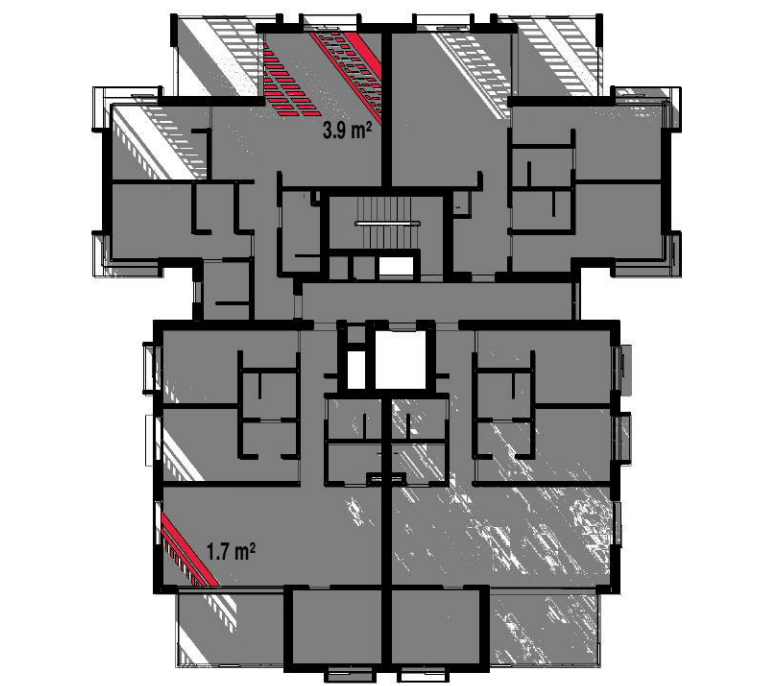
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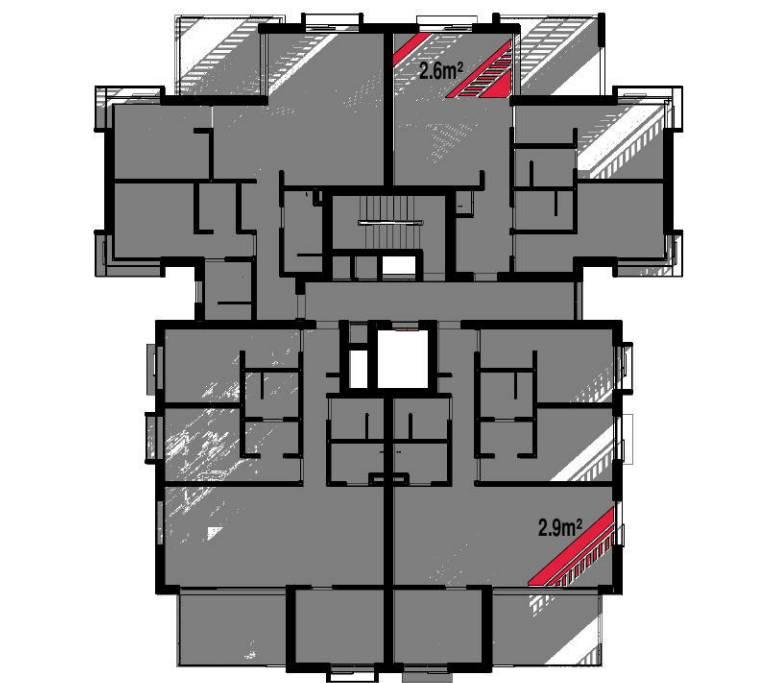
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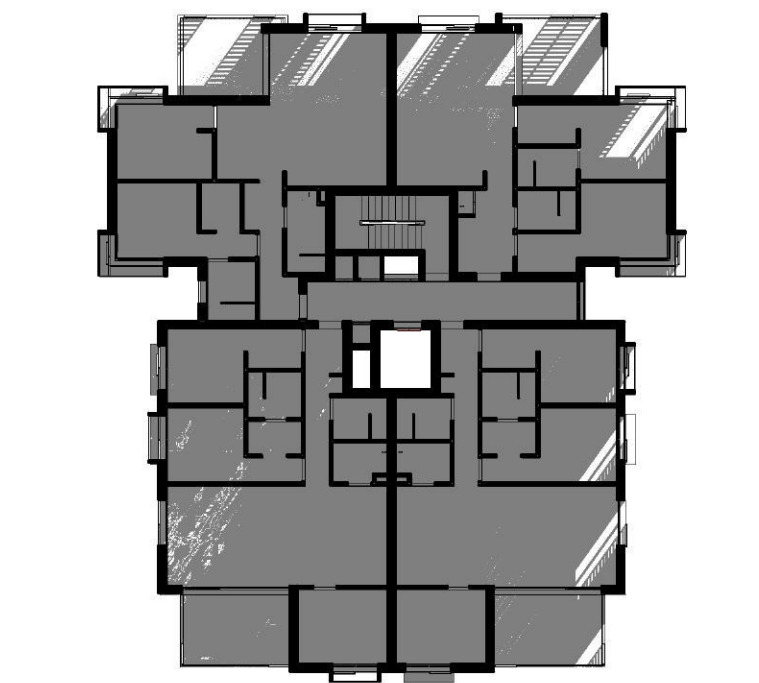
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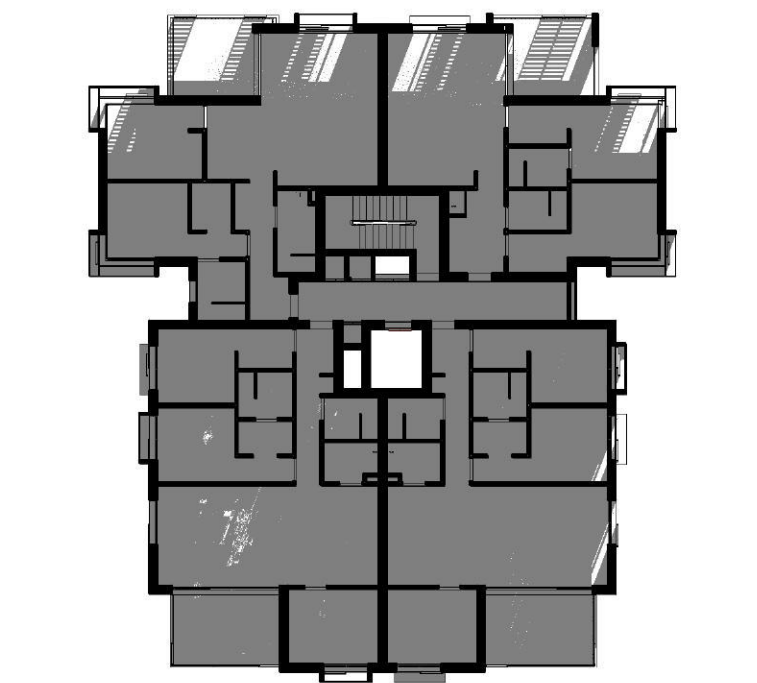
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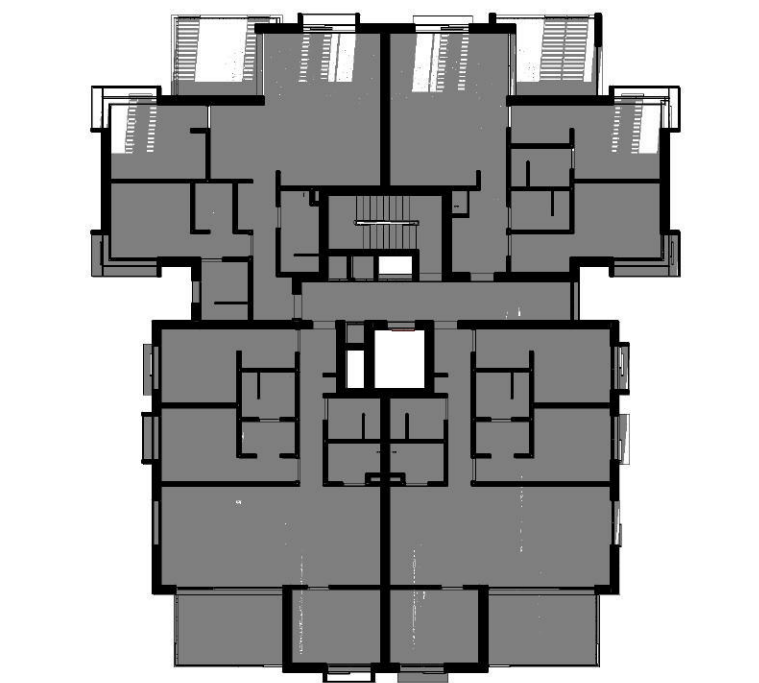
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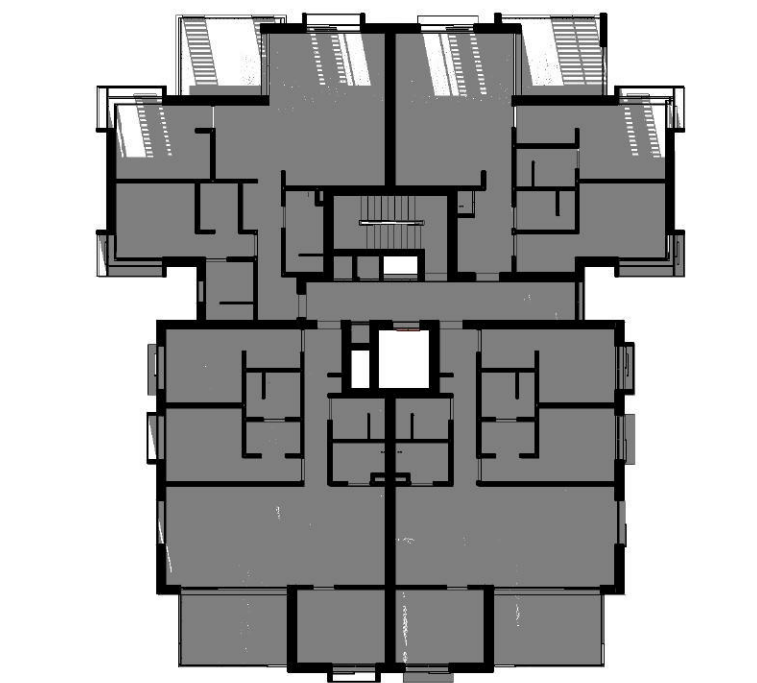
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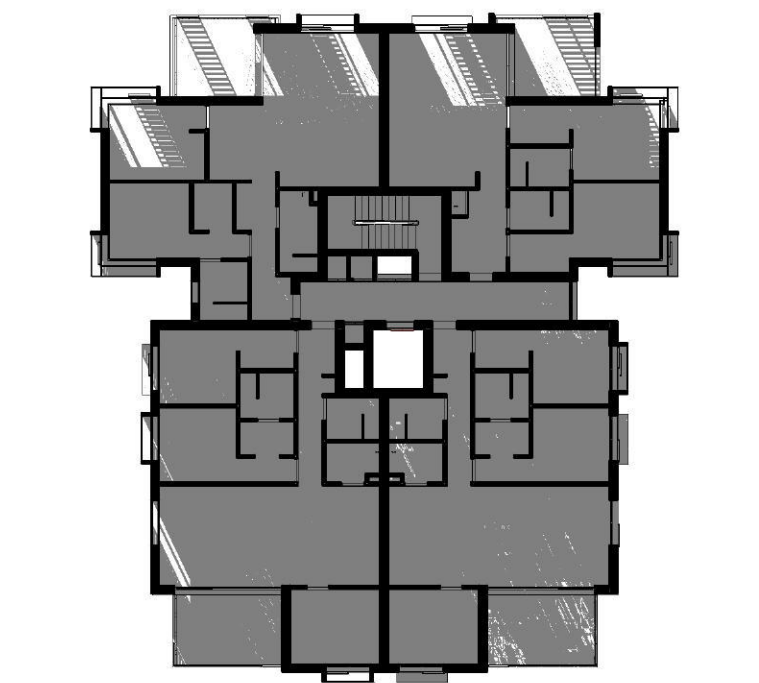
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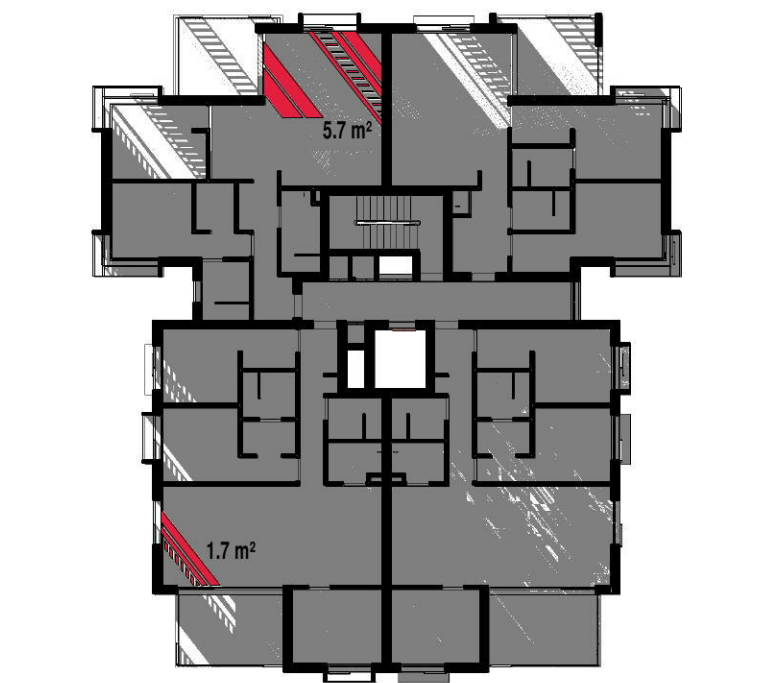
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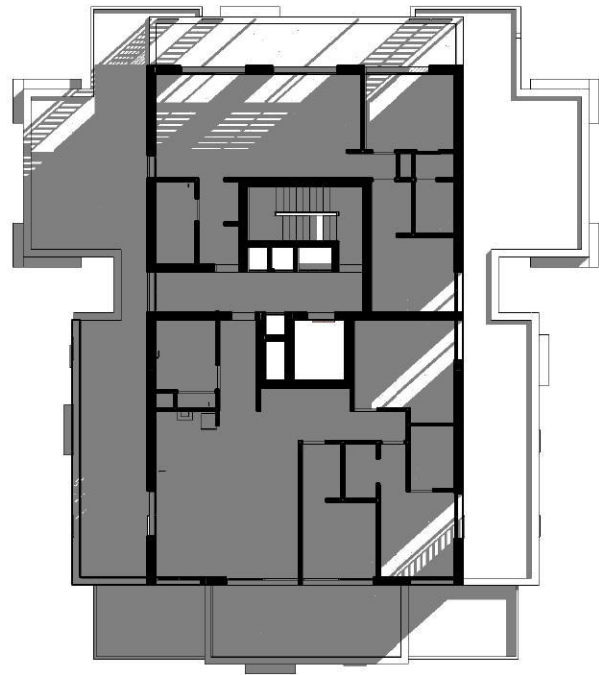
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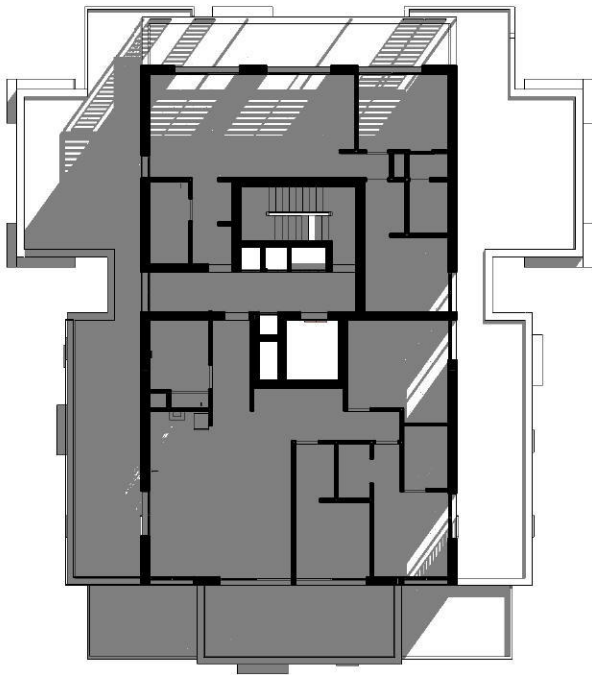
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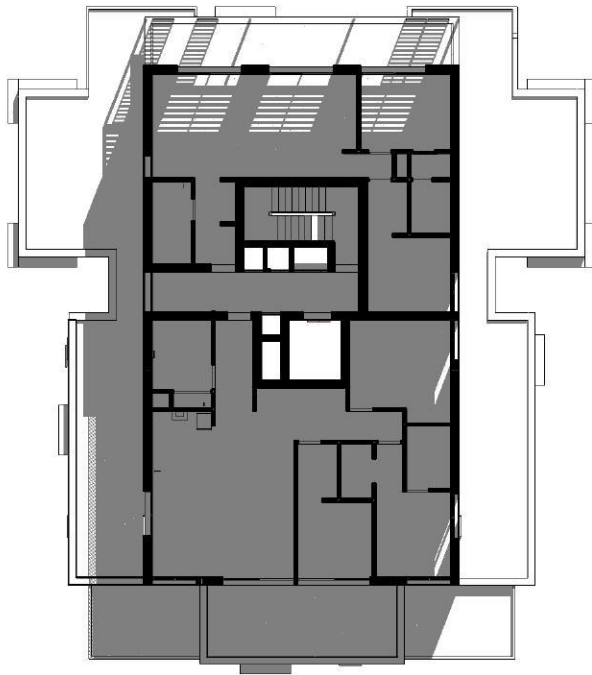
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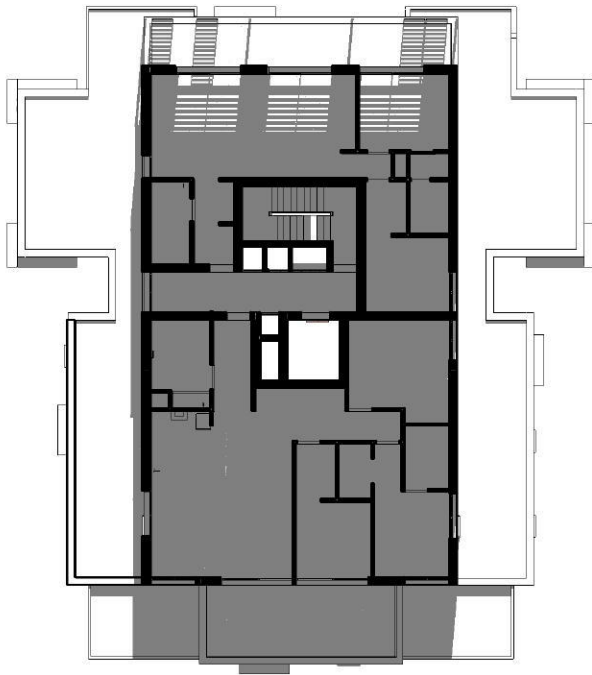
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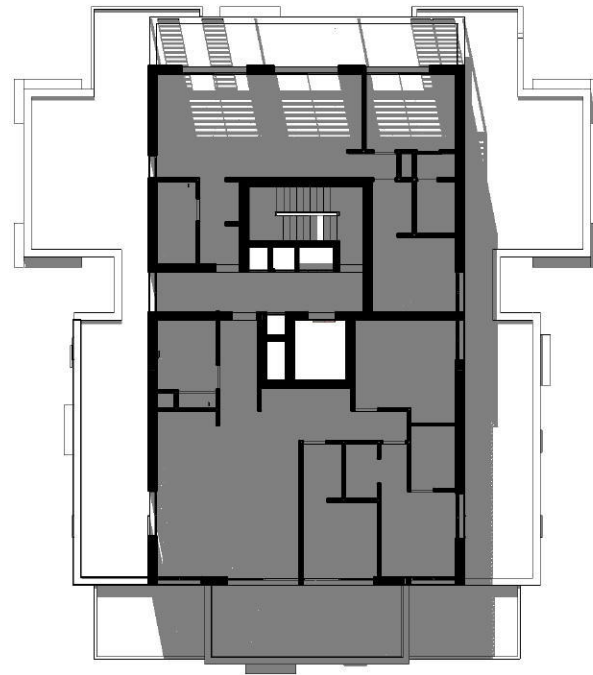
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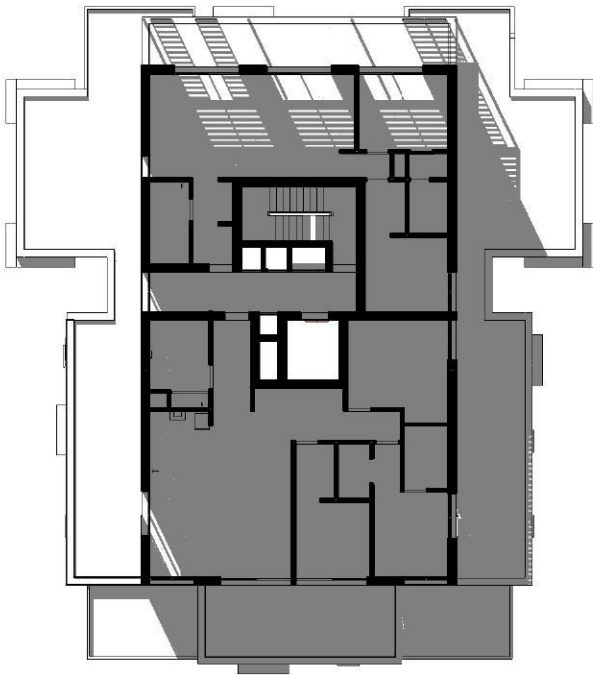
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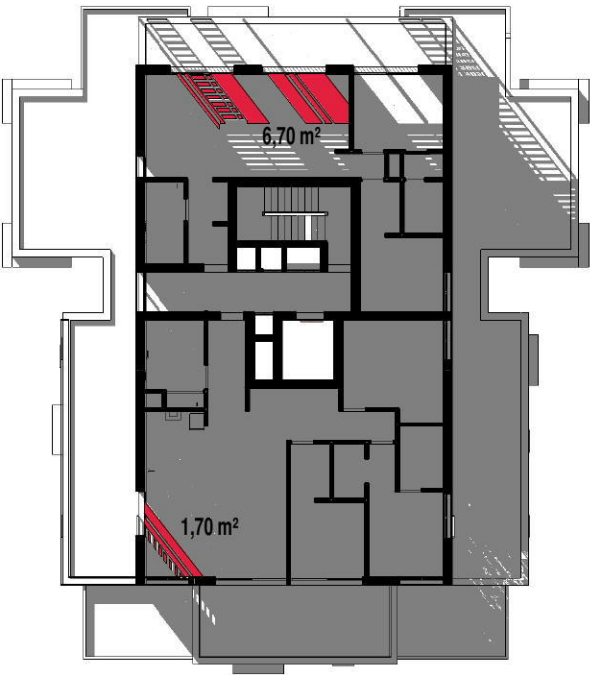
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Shadow Plan - L4 - 3pm

LANDSCAPE WORK SPECIFICATION

PRELIMINARIES

1.01 GENERAL

The following general conditions should be considered prior to the commencement of landscape works:

- The landscape plans should be read in conjunction with the architectural plans, project arborist's assessment, hydraulic plans, service plans and survey prepared for the proposed development.
- All services including existing drainage should be accurately located prior to the commencement of landscape installation. Any proposed tree planting which falls close to services will be relocated on site under the instruction of the landscape architect.
- Installation of conduit for required irrigation, electrical and other services shall be completed prior to the commencement of landscape works and handover point.
- All outdoor lighting specified by architect or client to be installed by qualified electrician
- Anomalies that occur in these plans should be brought to our immediate attention.
- Where an Australian Standard applies for any landscape material testing or installation technique, that standard shall be followed.

1.02 PROTECTION OF ADJACENT FINISHES

The Contractor shall take all precautions to prevent damage to all or any adjacent finishes by providing adequate protection to these areas / surfaces prior to the commencement of the Works

1.03 PROTECTION OF EXISTING TREES

Existing trees identified to be retained shall be done in accordance with **(AS)4970-Protection of trees on development sites** as well as in accordance with the tree protection measures prepared by project arborist.

Where general works are occurring around such trees, or pruning is required, a qualified Arborist shall be engaged to oversee such works and manage tree health.

Existing trees designated on the drawing for retention shall be protected at all times during the construction period. Any soil within the drip-line of existing trees shall be excavated and removed by hand only. No stockpiling shall occur within the root zone of existing trees to be retained.

Any roots larger in diameter than 50mm shall only be severed under instruction by a qualified arborist. Roots smaller than 50mm diameter shall be cut cleanly with a saw.

Temporary fencing shall be installed around the base of all trees to be retained prior to the commencement of landscape works. Where possible this fencing will be located around the drip line of these trees, or a minimum of 3m from the trunk. The fencing shall be maintained for the full construction period.

1.04 EROSION & POLLUTION CONTROL

The Contractor shall take all proper precautions to prevent the erosion of soil from the subject site. The contractor shall install erosion & sediment control barriers and as required by council, and maintain these barriers throughout the construction period. Note that the sediment control measures adopted should reflect the soil type and erosion characteristics of the site.

Erosion & pollution control measures shall incorporate the following:

- Construction of a sediment trap at the vehicle access point to the subject site.
- Sediment fencing using a geotextile fabric liner in the location indicated on the erosion control plan or as instructed on site by the landscape architect.
- Earth banks to prevent scour of stockpiles
- Sandbagged kerb sediment traps
- Straw bale & geotextile sediment filter
- Exposed banks shall be pegged with an approved Jute matting in preparation for mass planting

Refer to "Siltway Reference Kit" as prepared by DLWC & WSROC (1997) for construction techniques

SOIL WORKS

2.01 MATERIALS

Specified Soil Conditioner (Generally to improve site soil)

The specified soil conditioner for site top-soil improvement shall be an organic mix, equal to "Botany Humus", as supplied by ANL. Note that for sites where soil testing indicates toxins or extremes in pH, or soils that are extremely poor, allow to excavate and supply 300mm of imported soil mix.

New gardens & proposed Planting

New garden and planting areas shall consist of a 50/50 mix of clean site soil (refer d) below) and imported "Organic Garden Mix" as supplied by ANL or approved equal. All mixes are to comply with AS 4419 Soils for landscaping & garden use, & AS 4544 Composts, Soil conditioners & mulches.

Specified Soil Mix - Turf

The specified soil mix for all turf areas shall be a min 75mm layer of imported soil mix consisting of 80% washed river sand (reasonably coarse), and 20% composted organic matter equivalent to mushroom compost or soil conditioner, or other approved lawn top dress.

Site Topsoil

Site topsoil is to be clean and free of unwanted matter such as gravel, clay lumps, grass, weeds, tree roots, sticks, rubbish and plastics, and any deleterious materials and materials toxic to plants. The topsoil must have a pH of between 5.5 and 7. Use 100% imported soil mix when site soil runs out.

2.02 INSTALLATION (TO GARDEN OUTSIDE OF TREE PROTECTION ZONES OF TREES RECOMMENDED TO BE RETAINED)

Note: No level changes (Cut or Fill), soil ripping within the Tree Protection Zones of trees to be retained

a) Testing

All testing is to be conducted in accordance with AS 1289 Methods for testing soils for engineering purposes. Site soil shall be given a pH test prior to modifying to ensure conditions are appropriate for planting as stated above. Tests shall be taken in several areas where planting is proposed, and the pH shall be adjusted accordingly with sulphur or lime to suit.

Note that a soil test conducted by the "Sydney Soil Lab" or approved equal shall be prepared for all commercial, industrial and multi-unit residential sites. The successful landscape contractor shall implement the recommendations of this test.

b) Set Out of Individual Trees & Mass Planting Areas

All individual tree planting positions and areas designated for mass planting shall be set out with stakes or another form of marking, ready for inspection and approval. Locate all services.

c) Establishing Subgrade Levels outside of tree protection zones of trees to be retained

Subgrade levels are defined as the finished base levels prior to the placement of the specified material (i.e. soil conditioner). The following subgrade levels shall apply:

- Mass Planting Beds - 300mm below existing levels with specified imported soil mix.
- Turf areas - 100mm below finished surface level.

Note that all subgrades shall consist of a relatively free draining natural material, consisting of site topsoil placed previously by the Civil Contractor. No builders waste material shall be acceptable.

d) Subgrade Cultivation

Cultivate all subgrades to a minimum depth of 100mm in all planting beds and all turf areas, ensuring a thorough breakup of the subgrade into a reasonably coarse lith. Grade subgrades to provide falls to surface and subsurface drains, prior to the placement of the final specified soil mix.

e) Drainage Works

Install surface and subsurface drainage where required and as detailed on the drawing. Drain subsurface drains to outlets provided, with a minimum fall of 1:100 to outlets and / or service pits.

f) Placement and Preparation of Specified Soil Conditioner & Mixes.

- Trees in turf & beds - Holes shall be twice as wide as root ball and minimum 100mm deeper - backfill hole with 50/50 mix of clean site soil and imported "Organic Garden Mix" as supplied by ANL or approved equal.
- Mass Planting Beds - Install specified soil conditioner to a compacted depth of 100mm

Place the specified soil conditioner to the required compacted depth and use a rotary hoe to thoroughly mix the conditioner into the top 300mm of garden bed soil. Ensure thorough mixing and the preparation of a reasonably fine lith and good growing medium in preparation for planting.

- Turf Areas - Install specified soil mix to a minimum compacted depth of 75mm.

Place the specified soil mix to the required compacted depth and grade to required finished soil levels, in preparation for planting and turfing.

PLANTING

3.01 MATERIALS

a) Quality and Size of Plant Material

All trees supplied above a 25L container size must be grown and planted in accordance with **AS 2303:2018 'TREE STOCK FOR LANDSCAPE USE'** Certification that trees have been grown to AS 2303:2018 is to be provided upon request of Council's Tree Management Officer.

Above - Ground Assessment

The following plant quality assessment criteria should be followed:

Plant true to type, Good vigour and health, free from pest & disease, free from injury, self-supporting, good stem taper, has been pruned correctly, is apically dominant, has even crown symmetry, free from included bark & stem junctions, even trunk position in pot, good stem structure

Below - Ground Assessment

Good root division & direction, rootball occupancy, rootball depth, height of crown, non-suckering For further explanation and description of these assessment criteria, refer to Ross Clark's book.

All Plant material shall be to the type and size specified. No substitutions of plant material shall be permitted without written prior approval by the Landscape Architect. No plant shall be accepted which does not conform to the standards listed above.

b) Stakes and Ties

Provide min. 3 No. Stakes and ties to all plants identified as trees in the plant schedule. Stakes shall be sound, unpainted, straight hardwood, free of knots and pointed at one end. They shall be 2200mm x 50mm x 50mm Hardwood, or approved alternative. Ties shall be 50mm wide hessian webbing material.

c) Fertilisers

Fertilisers shall be approved slow release fertilisers suitable for the proposed planting types. Note that for native plants, specifically Proteaceae family plants including Grevillea species, low phosphorus fertilizers shall be used.

d) Mulch

Mulch for general planter bed shall be an approved equal to "Forest Blend" as supplied by ANL. Mulch shall be completely free from any soil, weeds, rubbish or other debris. Mulch for bio-retention/rain garden area where is required shall be non-floatable materials that could include crushed rock, gravel, coarse river sand, scoria or river pebbles. 4-7mm screenings or similar.

e) Turf

Turf for project site shall be soft leaf Buffalo ("Sir Walter" or equivalent unless stated otherwise), free from any weeds and other grasses, and be in a healthy growing condition. Re-turfing to nature strip where is required shall use species that match existing on street.

3.02 INSTALLATION

a) Setting Out

All planting set out shall be in strict accordance with the drawings, or as directed. Note that proposed tree planting located near services should be adjusted at this stage. Notify Landscape Architect for inspection for approval prior to planting.

b) Planting

All plant material shall be planted as soon after delivery as possible. Planting holes for trees shall be excavated as detailed and specified. Plant containers shall be removed and discarded, and the outer roots gently teased from the soil mass. Immediately set plant in hole and backfill with specified soil mix, incorporating the approved quantity of fertiliser for each plant type. Ensure that plants are set plant vertically and root balls set to the consolidated finished grades detailed on the drawings. Compact the backfilled soil and saturate by hand watering to expel any remaining air pockets immediately after planting.

c) Staking and Tying

Staking and tying shall be in strict accordance with the drawings and shall occur immediately following plant placement and soil backfilling. All plants identified as "Trees" on the planting schedule shall be staked with a min. 3 stakes.

d) Mulching

Mulch for general planter bed shall be an approved equal to "Forest Blend" as supplied by ANL. Mulch shall be completely free from any soil, weeds, rubbish or other debris. Mulch for bio-retention/rain garden area where is required shall be non-floatable materials that could include crushed rock, gravel, coarse river sand, scoria or river pebbles. 4-7mm screenings or similar.

e) Turling

Moisten soil prior to the turf being laid. Turf shall be neatly butt jointed and true to grade to finish flush with adjacent surfaces. Incorporate a lawn fertilizer and thoroughly water in. Keep turf moist until roots have taken and sods/rolls cannot be lifted. Keep all traffic off turf until this has occurred. Allow for top dressing of all turf areas. All turf shall be rolled immediately following installation.

f) Brick garden edging

Where is required, the Contractor shall install brick garden edging as detailed on the drawings, to all mass planting beds adjoining turf or gravel mulched areas, and where required. The resultant edge shall be true to line and flush with adjacent surfaces. However, no edging shall be used within the Structural Root Zone (SRZ) of trees to be retained.

g) Earth retaining structure

All walls which form part of drainage works must be built as detailed by the hydraulic engineer. All walls exceeding 600mm shall be of gab timber construction materials, construction details to be provided by a qualified engineer. Install wall to suit site levels and to manufacturer's specification.

LANDSCAPE WORKS

4.01 GENERAL

The Contractor shall undertake the installation of all landscape works as detailed on the drawing, or where not detailed, by manufacturers specification.

- Paving - refer to typical details provided, and applicable Australian Standards. Permeable paving may be used as a suitable means of satisfying Council permeable surface requirements, while providing a useable, hardwearing, practical surface. In most instances, the client shall nominate the appropriate paving material to be used.

Australian Standards shall be adhered to in relation to all concrete, masonry & metal work. Some details are typical and may vary on site. All landscape works shall be setout as per the drawings, and inspected and approved by the Landscape Architect prior to installation. All workmanship shall be of the highest standard. Any queries or problems that arise from landscape variations should be sought to the attention of the Landscape Architect.

Your attention is directed to any obligations or responsibilities under the Dividing Fences Act, 1991 in respect of adjoining property owners which may arise from this application. Any enquiries in this regard may be made to the Crown Lands Division on (02) 8836 5332.

IRRIGATION WORKS

5.01 GENERAL (PERFORMANCE SPECIFICATION)

New irrigation systems to planting areas shall be a Commercial Grade Irrigation System conforming to all relevant Australian standards, including AS 3500 & the Electrical Safety Act 2002, Workplace Health & Safety Act 1995, & the latest Sydney Water Code

An automated drip-irrigation system is to be installed to all gardens, planters and lawn areas in accordance with the approved Irrigation Design.

This system shall be designed and installed by a qualified and licensed irrigation specialist, to the highest industry standards and to maximise the efficient usage of water.

The Installer is required to obtain all approvals necessary for the completion of works in accordance with the Laws of Australia, Laws of the State of NSW, PENRITH Council By-Laws and Ordinances.

Drawings:

- The Landscape Contractor nominated Licensed Irrigation Specialist shall provide irrigation drawings for approval upon engagement.

Design Requirements:

- The irrigation system shall be installed prior to all planting works. It shall incorporate a commercially available irrigation system, with sub-surface dripper lines to irrigate all gardens, planters and lawn areas.
- It shall incorporate a suitable back flow prevention device for the scale of works, an in-line filter, check valves, and suitable high and low density poly hose fittings and PVC piping to achieve flow rates suitable for specified planting.
- The irrigation application rate shall not exceed the infiltration rate of the soil or creates run-off.
- The landscape contractor shall check the existing pressure available from the ring mains and size irrigation piping to suit. Supply shall be from local hose cock where available.
- All piping and fittings shall be buried 50mm below the finished soil levels in garden and lawn areas, and secured in position at 500mm centres with galv wire pins.
- Size of pipes shall be selected to ensure the working pressure at the end of the line does not decrease by more than 5%.

Services Co-ordination:

- Co-ordination required by Landscape Contractor or Project Manager to provide required conduit, pipe work and penetration through slabs and planter walls for water and power provisions.
- The Landscape Contractor shall be engaged with the Irrigation Specialist to co-ordinate with the Project Manager to identify the preferred service and conduit locations.
- Project Manager and Landscape Contractor to establish area suitable for irrigation control system with required area, power provision and water supply.

Testing & Defects:

- Upon completion of installation, the system shall be tested, including:
 - Main Line Pressure Test: The main line is pressurised to test for leaks. All valves are shut and the pressure is taken over a determined length of time.
 - Dripper Pressure Test: Measurement at flushing valves are taken and the pressure gauged to make sure it conforms to the manufacturer recommendations. The inlet pressure is then tested under the same conditions to check it does not exceed 300Kpa.
- All components are to be satisfactorily functional and operational prior to approval. Should any defect develop, or the capacity or efficiency of the system decline during the agreed maintenance system, then these faults shall be immediately rectified.

Warranty:

- A full 12 month warranty shall be included to cover labour and all parts.

Further Documentation:

- On request, a detailed irrigation performance specification report can be issued.

CONSOLIDATION AND MAINTENANCE

6.01 GENERAL

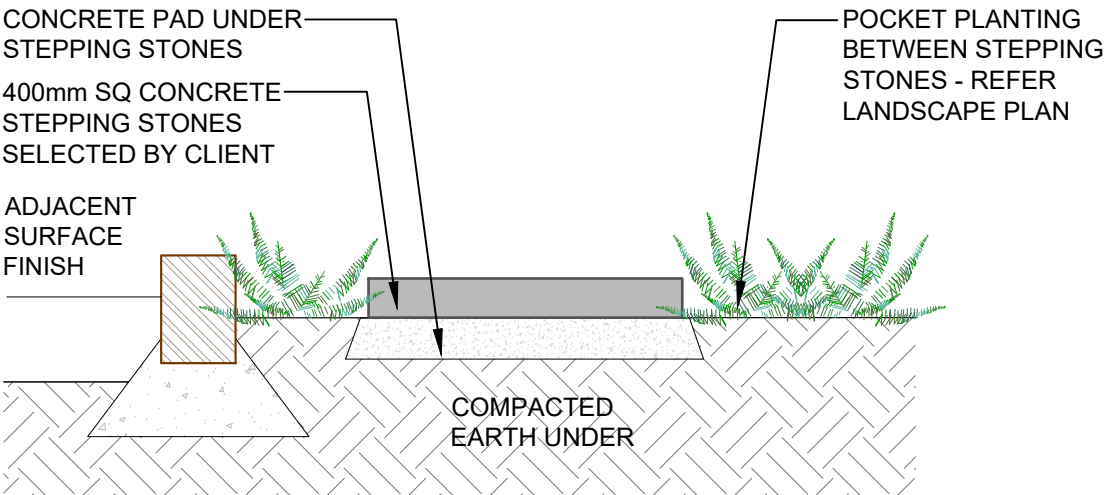
The consolidation and maintenance period shall be 12 months beginning from the approved completion of the specified construction work (Practical Completion). A qualified landscape maintenance contractor shall undertake the required landscape maintenance works. Consolidation and maintenance shall mean the care and maintenance of Contracted works by accepted landscaping or horticultural practices, ensuring that all plants are in optimum growing conditions and appearance at all times, as well as rectifying any defects that become apparent in the contracted works.

This shall include, but not be limited to, the following items where and as required:

- Watering all planting and lawn areas / irrigation maintenance.
- Clearing litter and other debris from landscaped areas.
- Removing weeds, pruning and general plant maintenance.
- Replacement of damaged, stolen or unhealthy plants.
- Make good areas of soil subsidence or erosion.
- Topping up of mulched areas.
- Spray / treatment for insect and disease control.
- Fertilizing with approved fertilizers at correct rates.
- Mowing lawns & trimming edges each 14 days in summer or 18 days in winter
- Adjusting ties to Stakes
- Maintenance of all paving, retaining and landscape elements.

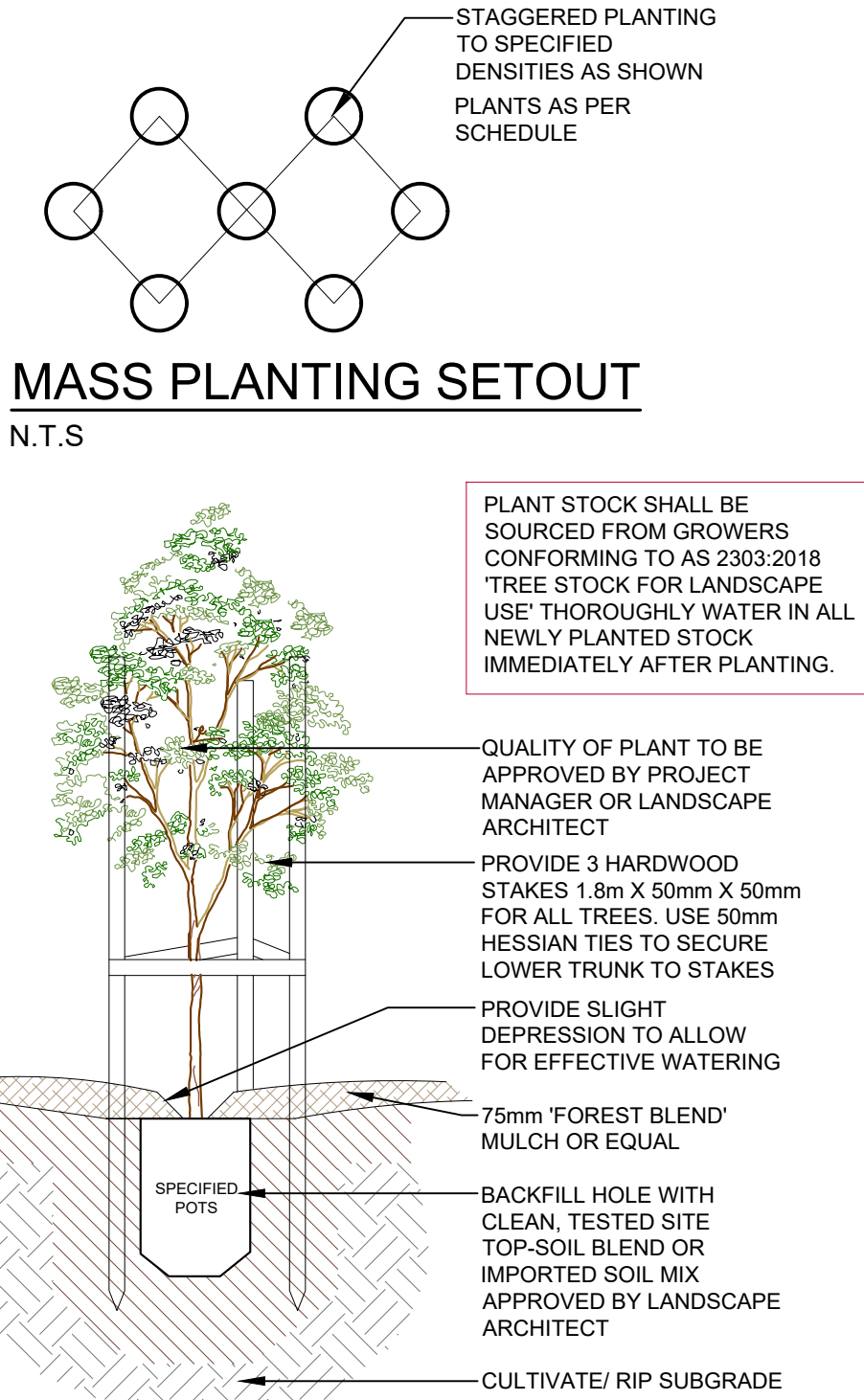
On the completion of the maintenance period, the landscape works shall be inspected and at the satisfaction of the superintendent of landscape architect, the responsibility will be signed over to the client.

 ARCHITECT: MORSON GROUP | LANDSCAPE ARCHITECT: Suit 101, 506 Miller Street, CAMMERHAY NSW 2062 Phone: 9922 5312 Fax: 9209 4862 Mob: 0413 861 351 www.concept.net.au enquiries@concept.net.au | COUNCIL PENRITH CLIENT INGLOW INVESTMENT TWO PTY LTD | | REV | DATE | NOTATION/AMENDMENT | |-----|----------|------------------------------------------------------------------| | A | 13.08.18 | Preliminary DA prepared for review | | B | 30.08.18 | Co-ordinated with amended architectural plan & stormwater plan | | C | 03.09.18 | Co-ordinated with Client & Architect's comments & finalized plan | | D | 04.09.18 | Co-ordinated with Client & Architect's comments | | E | 20.08.19 | For 82A submission | | PROJECT: PROPOSED RESIDENTIAL APARTMENT DEVELOPMENT 36-38 RODLEY AVENUE PENRITH | TITLE: SPECIFICATION & DETAIL DWG No: LPDA 19 - 40 PAGE NUMBER: 3 | STATUS: DEVELOPMENT APPLICATION SCALE: NTS @ A1 DATE MAY 2019 DRAWN: R.H CHECKED: R.F || GENERAL NOTE: Figured dimensions take preference to scale readings. Verify all dimensions on site prior to any digging or construction. Do not start any excavation or construction until you have received written approval from the Council or the relevant authority. Do not start any excavation or construction until you have received written approval from the Council or the relevant authority. Do not start any excavation or construction until you have received written approval from the Council or the relevant authority. www.dialbeforeyoudig.com.au ALA Associate | | | | | | | |



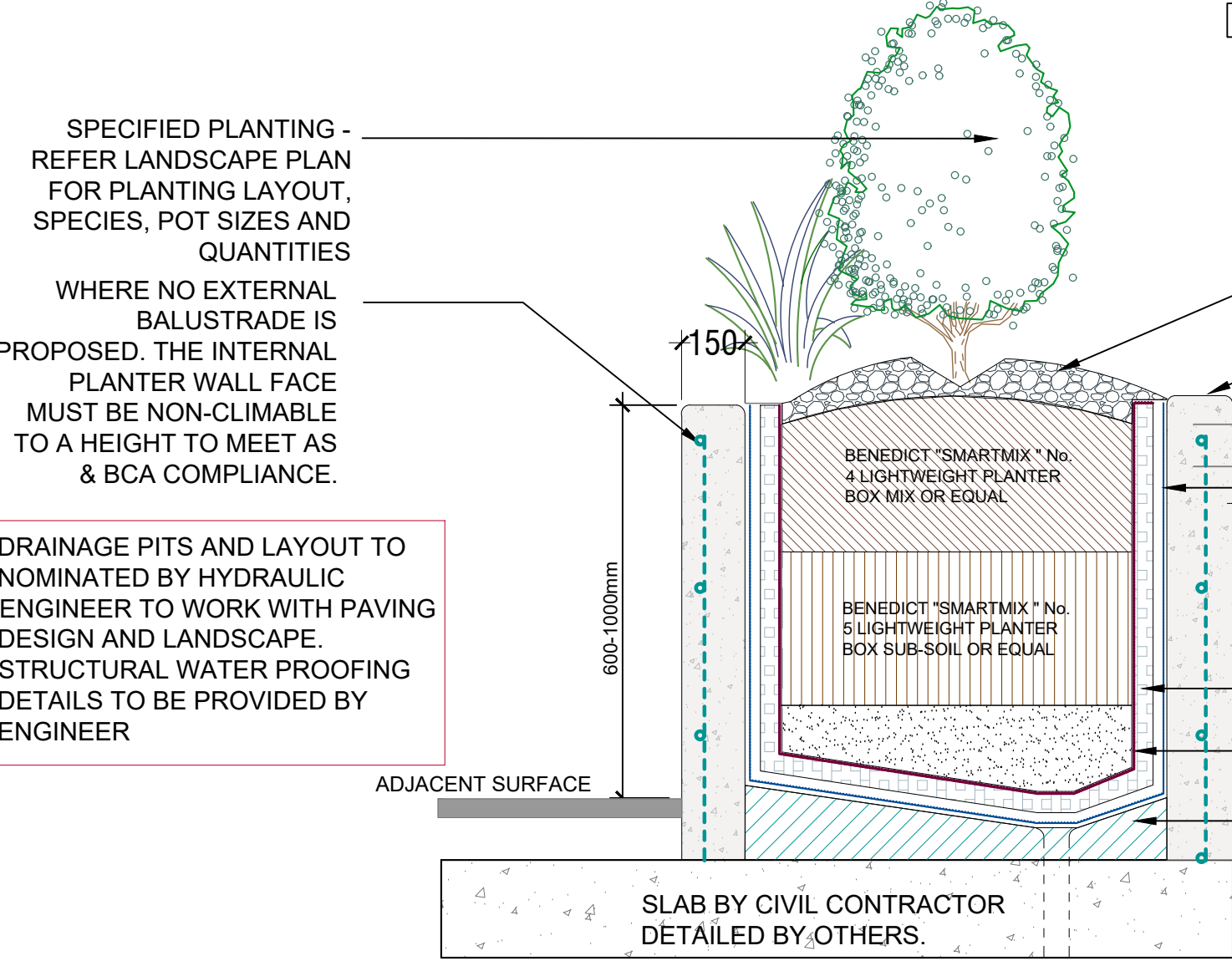
STEPPING STONES IN GROUNDCOVER PLANTING

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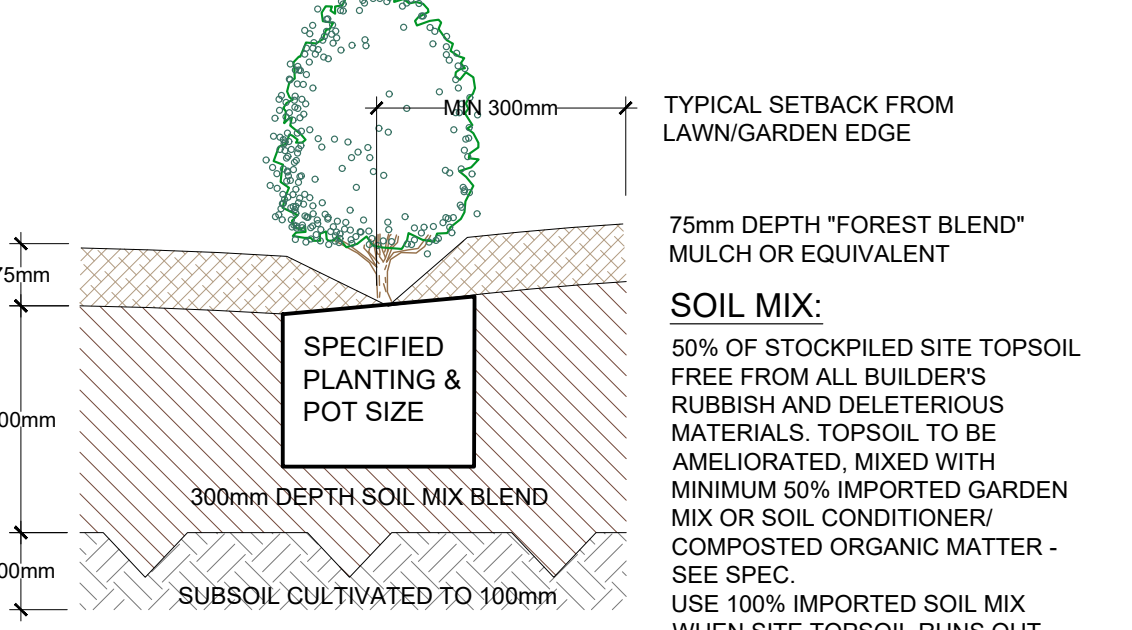
TREE PLANTING DETAIL

SCALE: 1:10
(ONLY APPLICABLE FOR PLANTING AREA OUTSIDE TREE PROTECTION ZONE OF TREES TO BE RETAINED. NO CHANGES ARE TO OCCUR TO EXISTING LEVELS, INCLUDING RIPPING/CULTIVATING OF THE SOIL WITHIN THE TPZ OF TREES TO BE RETAINED ON SITE)



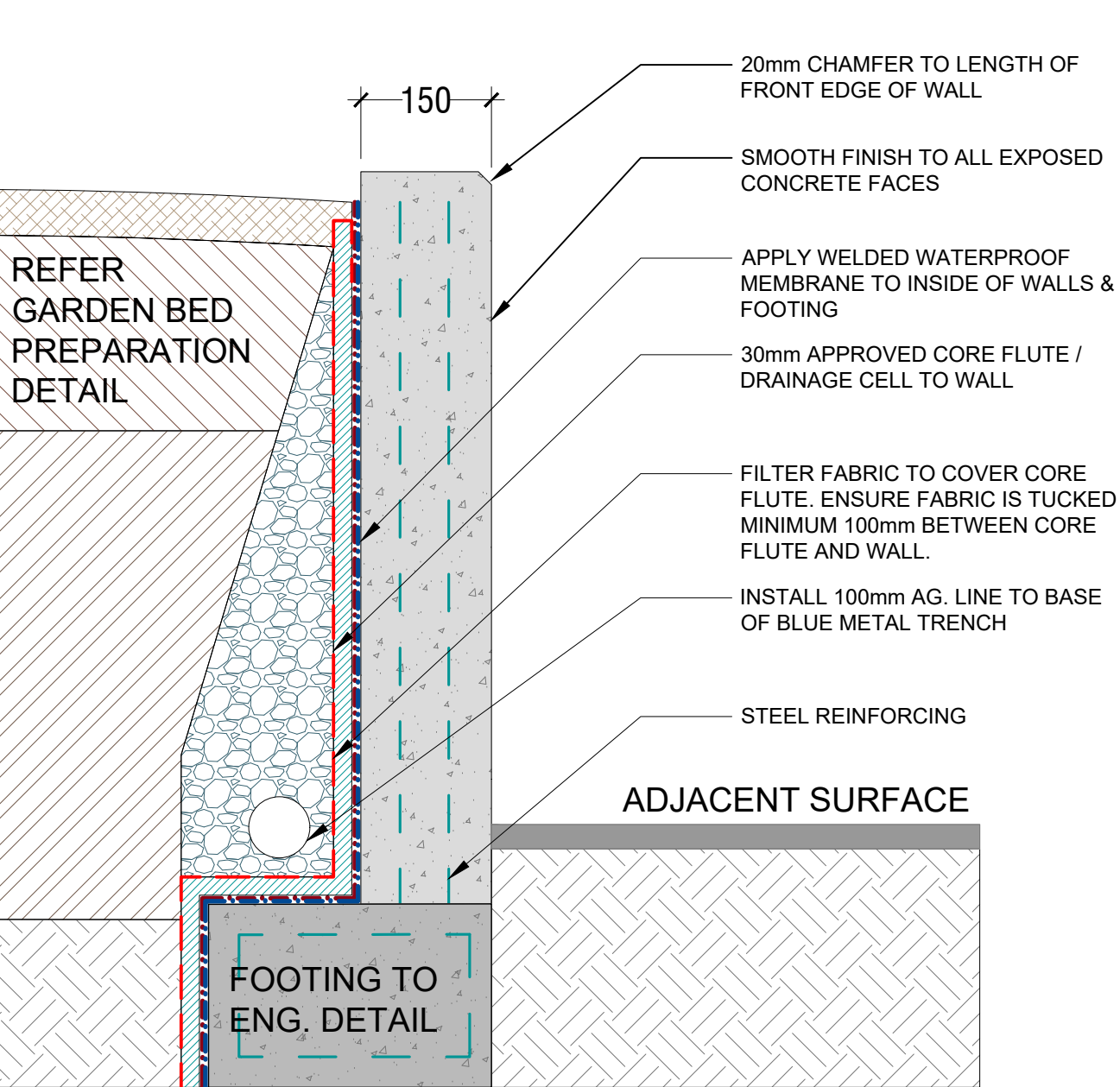
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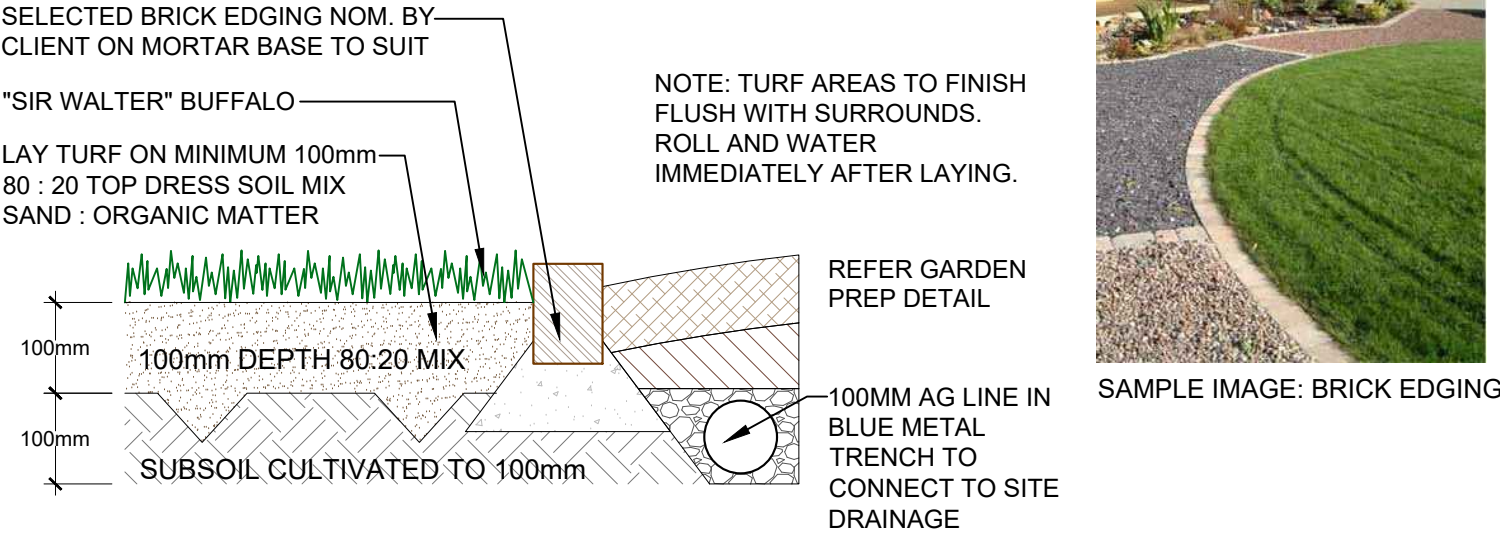
TYPICAL GARDEN PREPARATION DETAIL

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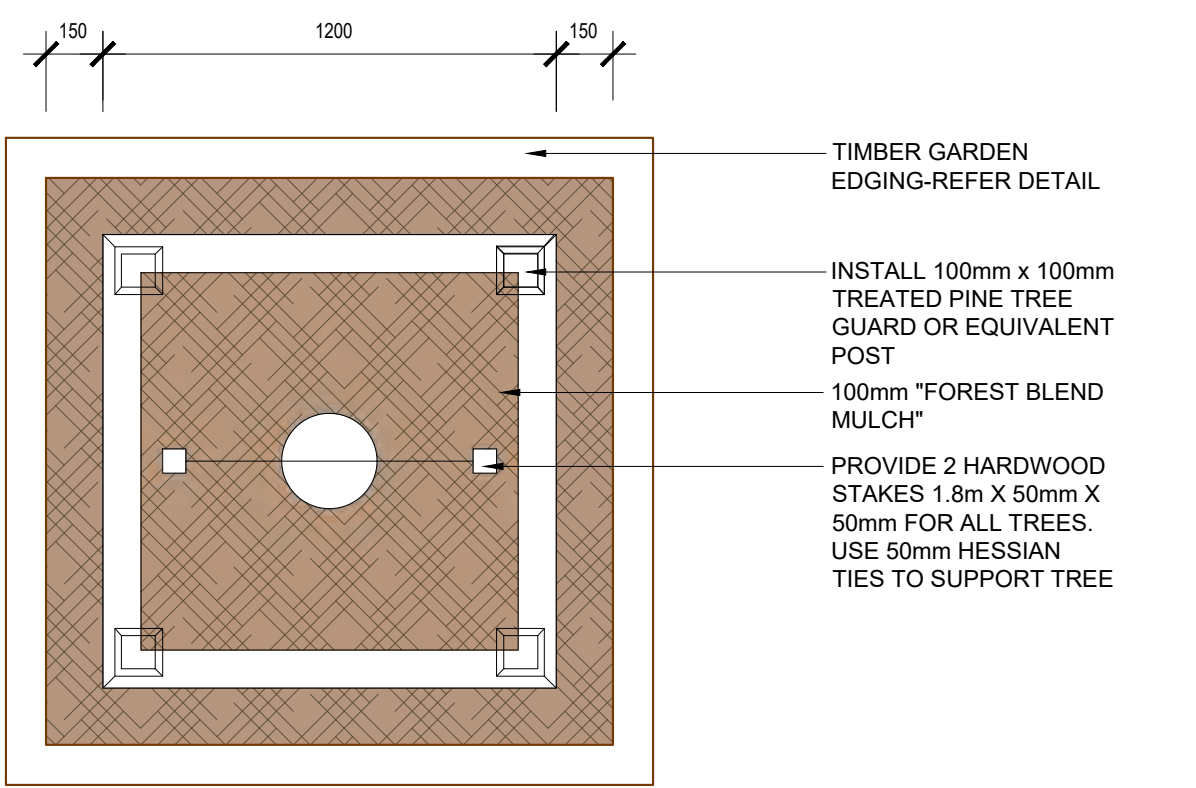
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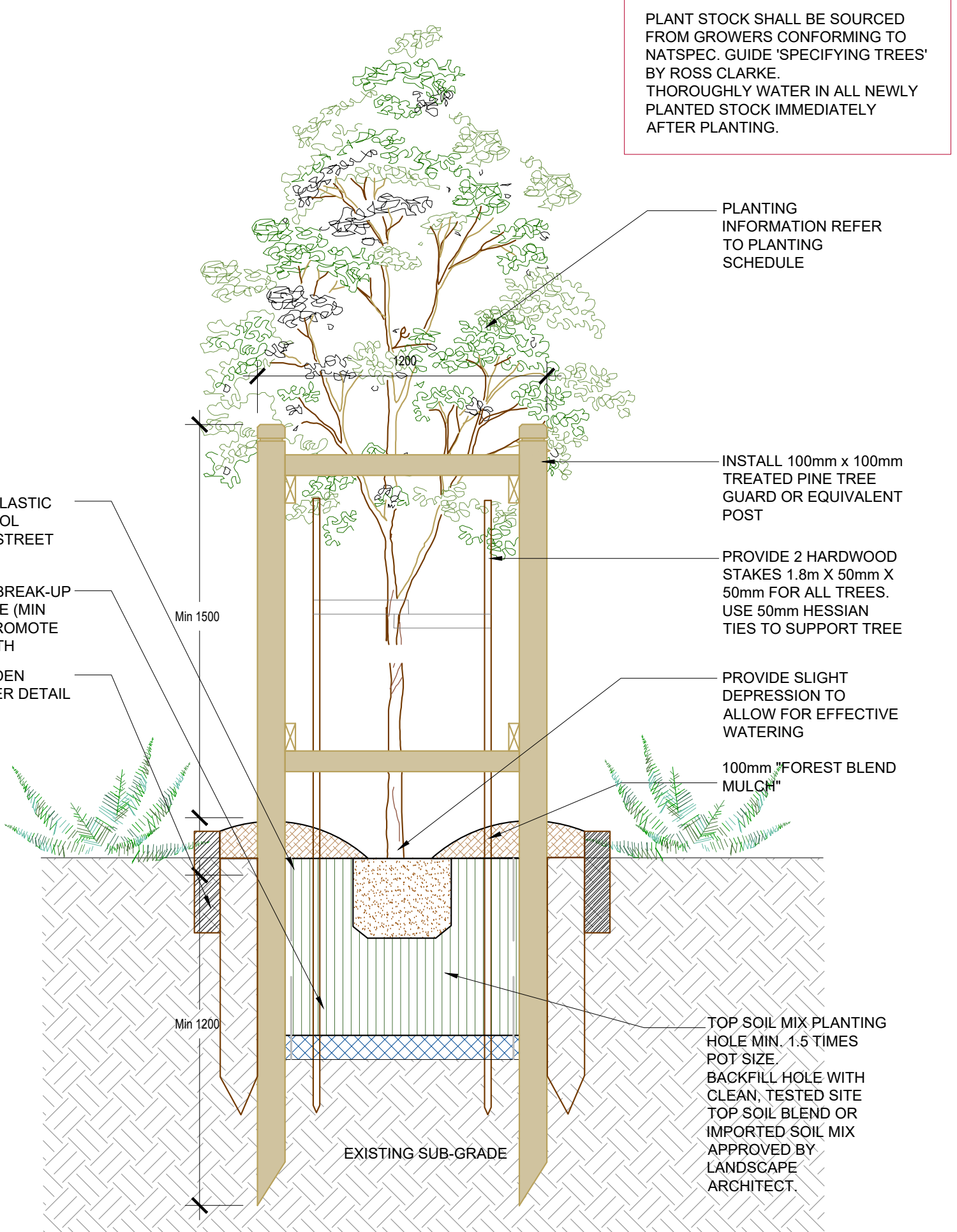
TYPICAL TURF AND BRICK EDGE DETAIL

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TREE GUARD PLAN

SCALE: 1:10




TREE GUARD DETAIL


SCALE: 1:5

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www.dialbeforeyoudig.com.au



ALA Associate

ARCHITECT:

MORSON GROUP



Suit 101, 506 Miller Street, CAMMERHAY NSW 2062
Phone: 9922 5312
Fax: 9209 4862
Mob: 0413 861 351
www.concept.net.au
enquiries@concept.net.au

COUNCIL

PENRITH

CLIENT

INGLOW INVESTMENT TWO PTY LTD

REV	DATE	NOTATION/AMENDMENT
A	13.08.18	Preliminary DA prepared for review
B	30.08.18	Co-ordinated with amended architectural plan & stormwater plan
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E	20.08.19	For 82A submission

PROJECT:

PROPOSED RESIDENTIAL APARTMENT DEVELOPMENT

36-38 RODLEY AVENUE

PENRITH

TITLE:

SPECIFICATION & DETAIL

DWG No:

LPDA 19 - 40

PAGE NUMBER:

3

STATUS:

DEVELOPMENT APPLICATION

SCALE:

NTS @ A1

DATE

MAY 2019

DRAWN:

R.H

CHECKED:

R.F

Our Ref: 18.027
Your Ref: DA18/0890



22 August 2019

General Manager
Penrith City Council
PO Box 60
Penrith NSW 2751

Penrith
Suite 5 488 High Street
P 4731 2730

Tamworth
Suite 6, 493 Peel Street

All mail to
PO Box 1912 Penrith NSW 2751

Dear Sir,

Re: Division 8.2 Review Request – DA18/0890, 36-38 Rodley Ave, Penrith

This correspondence forms the basis of a request to review a decision relating to DA18/0890, 36-38 Rodley Avenue, Penrith, in accordance with Division 8.2 of the *Environmental Planning and Assessment Act 1979*.

Section 8.3(3) of the Act allows the applicant to amend the proposal, so long as the consent authority is satisfied that the proposal is substantially the same to that which was originally considered. In this context, discussions have been undertaken with the Council, pre-lodgement and Urban Design Review Panel meetings have been attended to and through those discussions, no concern has been raised on that point. We submit the proposed development remains substantially the same and that the amendments represented in these plans reflect design changes that will further improve the general amenity of the development. Council can have comfort that the same land use is proposed, and that the scale of the development is no greater than that which was originally proposed.

The main amendments proposed as part of this scheme include the following:

1. The building is 5 levels only. Residential units on Level 6 have been deleted.
2. Communal open space occupies the entire rooftop.
3. The rear setback to the water course boundary has been increased to 6m.
4. Side setbacks for the 'Bedroom Wings' only reduced to 4m (as supported by Gabriel Morrish in the UDRP Meeting).
5. Waste collection is on site within the basement.
6. Stormwater and flood storage design has been coordinated into the design.
7. Landscape Plan – an amended plan accompanies this submission incorporating the revised design.

We have considered below the proposed amendments in the context of the reasons for refusal issued for the original proposal.

Reason for Refusal	Comment
<p>1. The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the provisions of Penrith Local Environmental Plan 2010 as follows:</p> <p>(i) Clause 1.2 Aims of the Plan The proposal is inconsistent with the aims of the Plan in relation to promotion of development consistent with Council's vision for Penrith, to meet the emerging needs of Penrith's communities while safeguarding residential amenity and ensuring that the development incorporates the principles of sustainable development.</p>	<p>The proposed design has been amended significantly from the time at which this decision was initially made. Primarily, boundary setbacks have been increased, and waste collection has been incorporated on-site. These measures will ensure the amenity of adjoining residents will be preserved.</p>

(ii) Clause 2.3 Zone Objectives The proposal is inconsistent with the objectives of the R4 High Density Residential zone, particularly (d) The design of the proposed development does not ensure that a high level of residential amenity is achieved and maintained, and (f) to ensure that development reflects the desired future character and dwelling density of the area.	Increased setbacks and reduced height and overlooking opportunities in the amended scheme, will significantly improve the general amenity enjoyed by adjoining neighbours.
(iii) Clause 7.2 The proposal does not comply with Council's Policy in relation to overland flow management on the site.	These aspects are now incorporated into the current design documentation.
(iv) Clause 7.6 The proposal has not provided sufficient information to assess the impact of the development on salinity.	A report responding to this matter accompanies this submission.
(v) Clause 7.7 The proposal does not meet the requirements for waste and stormwater servicing.	These aspects are now incorporated into the current design documentation.
2. The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the <i>Environmental Planning and Assessment Act 1979</i> as the proposal is inconsistent with the provisions of State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development and the accompanying Apartment Design Guide as follows: ...	A revised statement against the provisions of SEPP 65 accompanies this submission. In summary, the design amendments proposed with the increased setbacks, reduced yield and on-site waste collection, will ensure these provisions are satisfied.
3. The development application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the <i>Environmental Planning and Assessment Act 1979</i> , as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014:	
(i) The application has not satisfied Council with respect to the requirements under Part B - 'DCP Principles', specifically: - The proposal has not been designed with consideration for the health, recreational and social needs of residents, and the proposal does not minimise its ecological footprint or promote sustainable production and consumption	This reason for refusal has not been clarified. The proposal does incorporate a range of measures that broadly support this principle that have been accepted by the Council in other like developments.
(ii) The application has not satisfied Council with respect to the requirements under Section C1 'Site Planning and Design Principles', specifically: - The built form and scale of the proposal does not adequately respond to the context of the site.	The amended design is intended to respond to these concerns raised.
(iii) The application has not satisfied Council with respect to the requirements under Section C5 'Waste Management', specifically: - The proposal provides for street collection and waste bin storage rooms on the ground floor.	On site collection is now proposed as part of this amended design.
(iv) The application has not satisfied Council with respect to the requirements under Section C6 'Landscape Design', specifically: - The proposal does not include landscaping to the site that responds to the context of the site or complements the built form or minimises the impacts of the scale of the development.	An amended landscape plan accompanies this submission. We submit this plan responds to this reason for refusal.
(v) The application has not satisfied Council with respect to the requirements under Section C10 'Transport, Access and Parking', specifically:	

<ul style="list-style-type: none"> - The indented bay for waste collection is not supported. 	<p>On site waste collection is now proposed within these amended plans.</p>
<p>(vi) The application has not satisfied Council with respect to the requirements under Section C13 'Infrastructure and Services', specifically:</p>	
<ul style="list-style-type: none"> - The proposal does not meet the requirements for engineering works in relation to the stormwater easement. 	<p>Full documentation in relation to these matters has now been provided and accompanies the application.</p>
<p>(vii) The application has not satisfied Council with respect to the requirements under Section D2 'Residential Development', specifically:</p>	
<ul style="list-style-type: none"> - Clause D2.5.5 The landscaped area does not meet the minimum 35% required for the site. The landscaping provided is compromised by servicing requirements. 	<p>An amended landscape plan accompanies this submission responding to Council's concerns. We are advised that the proposal may not require a substation to be constructed on the site. Whilst this has been allocated space on the accompanying plans, that space may revert to landscaped open space in the event it is confirmed the substation is not required.</p>
<ul style="list-style-type: none"> - Clause 0 2.5.8 The proposal does not achieve a high level of visual or acoustic privacy for future occupants or adjoining neighbours. 	<p>Increased setbacks now provide ample separation and in turn, preserve the amenity currently enjoyed by adjoining neighbours.</p>
<p>Clause D2.5.9 The proposal results in overshadowing of the private open space of adjoining development.</p>	<p>Revised shadow diagrams based on the current scheme demonstrate that this aspect of the development is acceptable.</p>
<p>4. The application is not satisfactory for the purpose of Section 4.15(1)(a)(iv) of the <i>Environmental Planning and Assessment Act 1979</i> as the proposal was not accompanied by all of the information as required under Schedule 1 Forms of the Regulations or as required to properly consider the proposal, as follows:</p> <ul style="list-style-type: none"> - Clause 50 (1A)(1AB) of the <i>Environmental Planning and Assessment Regulation 2000</i> requires a statement from a qualified designer to be submitted. - An updated BASIX Certificate. - A Geotechnical Report. 	<p>These inputs are now provided as part of this application.</p>
<p>5. The development application is not satisfactory for the purpose of Section 4.15(1)(b) of the <i>Environmental Planning and Assessment Act 1979</i> in terms of the likely impacts of that development including those related to:</p> <ul style="list-style-type: none"> (i) Streetscape and character, (ii) Context and landscaping, (iii) Bulk and scale, (iv) Solar access and privacy impacts, (v) Amenity, safety and security impacts related to the ground floor layout, (vi) Communal open space, (vii) Access, traffic and parking, (viii) Energy efficiency, 	<p>The revised proposal is considered to be acceptable given the increased setbacks, reduced yield, and the relocation of the waste collection solution on to the site.</p>

(ix) Waste management impacts.

<p>6. The application is not satisfactory for the purpose of Section 4.15(1)(c) of the <i>Environmental Planning and Assessment Act 1979</i> as the site is not suitable for the scale of the proposed development.</p>	<p>The site is zoned to allow for this proposal, and the revised scheme forming this application demonstrates there are no unacceptable impacts arising from it.</p>
<p>7. Based on the above deficiencies and submissions received, approval of the proposed development would not be in the public interest pursuant to Section 4.15(1)(d) of the <i>Environmental Planning and Assessment Act 1979</i>.</p>	<p>Given the amendments made, the development is considered to be in the public interest and can be supported by Council accordingly.</p>
<p>8. The application fails to satisfy the development standard for building height and the request for a variation to the development standard is not supported because the proposed development will not be in the public interest as it will not ensure a high level of a residential amenity, provide a high quality urban form or reflect the desired future character of the area, being the objectives of the zone and height standard</p>	<p>The attached Request to Vary a Development Standard under Clause 4.6 of the LEP respond to this matter in more detail.</p>

We trust this satisfies the concerns raised by Council in the original application. Please contact me on 0401 449 101 if you would like any further information.

Sincerely

Stimson & Baker Planning



Warwick Stimson RPIA

Director

Att: Request to Vary Development Standard under Clause 4.6 of the Penrith LEP



Amended Clause 4.6 Variation Request

Proposed Demolition of Existing Structures and Construction of a Residential Flat
Building

36-38 Rodley Ave, Penrith

August 2019

Inglow Investment Two Pty Ltd

Stimson & Baker Planning
ACN: 167 096 371
ABN: 34 824 672 534

Suite 5,
488 High Street
Penrith NSW 2750

P 02 4731 2730
F 02 4731 2370

www.stimsonandbaker.com.au

This submission has been prepared by



Warwick Stimson MPiA CPP
Director



This submission dated August 2019 is provided to 'the client' exclusively. No liability is extended for any other use or to any other party. Whilst the report is derived in part from our knowledge and expertise, it is based on the conditions prevailing at the time of the report and upon the information provided by the client.

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1 Introduction

The NSW planning system provides flexibility in planning controls by providing the ability for a council to vary development standards in certain circumstances.

Stimson & Baker Planning has been engaged by Inglow Investment Two Pty Ltd to prepare a request to vary one development standard in respect of its proposed residential flat building at 36-38 Rodley Avenue, Penrith. This submission accompanies plans that have been separately submitted to Council.

The development proposes a breach in the *height of building* development standard and this submission aims to address those aspects of the application.

The proposed breach in height is considered to be minor, with the resultant built form not resulting in any unacceptable visual impact, or any unacceptable impacts on neighbouring properties. The breach arises from the need to raise the freeboard of the building to accommodate local overland flooding.

It is also noted that the breach occurs in a very localised position on the roof top, being the lift overrun and pergola. This is a very minor portion of the entire site.

It is considered there are sufficient environmental planning grounds to support the variations. Primarily these include the ability for the development to, at the same time, accommodate the physical constraints of the land, whilst also delivering the envisaged built form and housing numbers within the zone in this locality.

Significantly, we note the approach of Council to new development in this locality and cite specific examples of breaches that have been supported by the relevant consent authority. The proposed breach is consistent with that approach.

2 Variation Consideration

The NSW Land and Environment Court has resolved a number of matters that have guided the way in which requests to vary development standards are to be considered by the consent authority.

2.1 NSW Land and Environment Court: Case Law (tests)

The key elements are outlined below.

Winten v North Sydney Council

The decision in *Winten v North Sydney Council* established the basis on which the former Department of Planning and Infrastructure's Guidelines for varying development standards was formulated.

The questions that needed to be considered included:

- Is the planning control in question a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act?
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)? and
- Is the objection well founded?

Wehbe v Pittwater [2007] NSW LEC 827

The decision in *Wehbe v Pittwater [2007] NSW LEC 827* expanded on the findings in *Winten v North Sydney Council* and established a five (5) part test to determine whether compliance with a development standard is unreasonable or unnecessary considering the following questions:

- Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives;
- Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard is unnecessary;
- Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;
- Has Council by its own actions, abandoned or destroyed the development standard, by granting consents that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or
- Is the "zoning of particular land" unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied

to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.

Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

- Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
- Whether there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
- That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs; and
- All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential

Moskovich v Waverley Council [2016] NSWLEC 1015

The court further reflected on the recent Four2Five decisions and noted:

- Clause 4.6(3)(a) is similar to clause 6 of SEPP 1 and the *Wehbe* ways of establishing compliance are equally appropriate. One of the most common ways is because the objectives of the development standard are achieved.
- Whereas clause 4.6(4)(a)(ii) is worded differently and is focused on consistency with objectives of a standard. Consequently, a consideration of consistency with the objectives of the standard required under clause 4.6(4)(a)(ii) to determine whether non-compliance with the standard would be in the public interest is different to consideration of achievement of the objectives of the standard under clause 4.6(3).
- The written request should address the considerations in the granting of concurrence under clause 4.6(5).

2.2 What is the name of the environmental planning instrument that applies to the land?

Penrith Local Environmental Plan 2010.

2.3 What is the zoning of that land?

The subject site is zoned R4 High Density Residential.

2.4 What are the objectives of the zone?

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To encourage the provision of affordable housing.*
- *To ensure that development reflects the desired future character and dwelling densities of the area.*

The proposed development is consistent with the objectives in that:

- The additional high-density development in this locality is consistent with the zoning controls and will contribute to the housing needs and diversity in the area.
- As the proposal largely satisfies the planning controls, SEPP 65 and AGD provisions, a high level of amenity will be provided for.
- The proposal is consistent with the future character of this high-density locality.

2.5 What is the development standard being varied?

Height of Building

2.6 Under what clause is the development standard listed in the environmental planning instrument?

Clause 4.3 Height of Building.

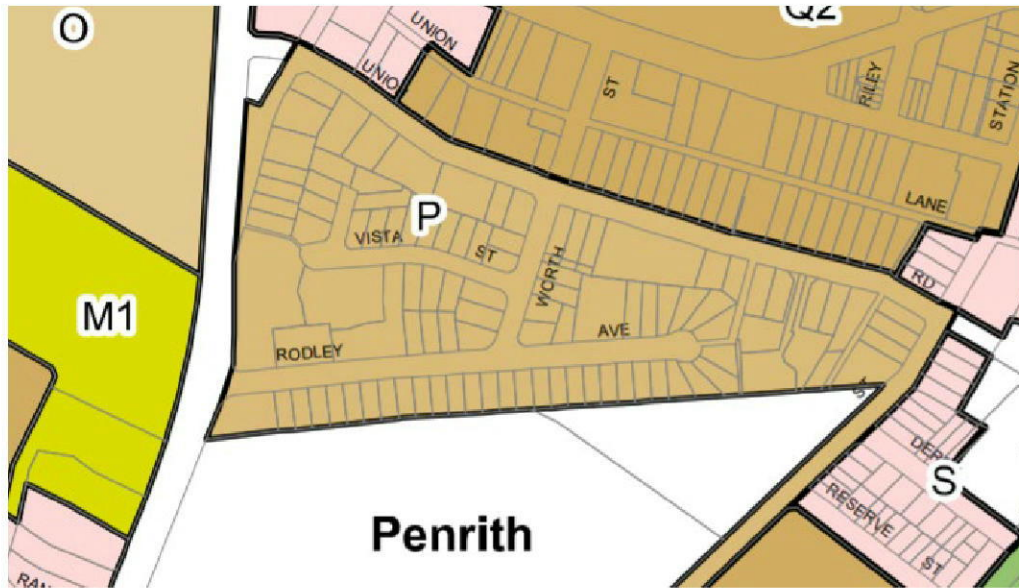


Figure 1: Height of Buildings Map (extract Penrith Local Environmental Plan 2010)

2.7 What are the objectives of the development standard?

Clause 4.3 Height of Building objectives include:

- (a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes,*
- (c) *to minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance,*
- (d) *to nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.*

2.8 What is the numeric value of the development standard in the environmental planning instrument?

The maximum building height is 18m.

2.9 What is proposed numeric value of the development standard in your development application?

The proposal exceeds the building height at varying heights across the building to accommodate the design and to fully utilise the building envelope. Plan DA11 details the height breach across the roof top area.

As has been the case with other residential development in Penrith, the levels associated with localised overland flow flooding require the floor levels of buildings to be raised. In this instance, we are advised that the building has had to be placed 650mm above the street RL. In addition to that, the architect has designed a floor to floor height of 3.1m (instead of the usual 3m) in order to guarantee 2.7m internal height clearances.

The end result is that the lift overrun rises above the 18m height limit by 2.79m (15.5%). The north-western corner exceeds the height limit by 1.47m (8.2%), the north-eastern corner by 1.6m (8.8%), the south-western corner by 1.63m (9%) and the south-eastern corner by 1.52m (8.4%).

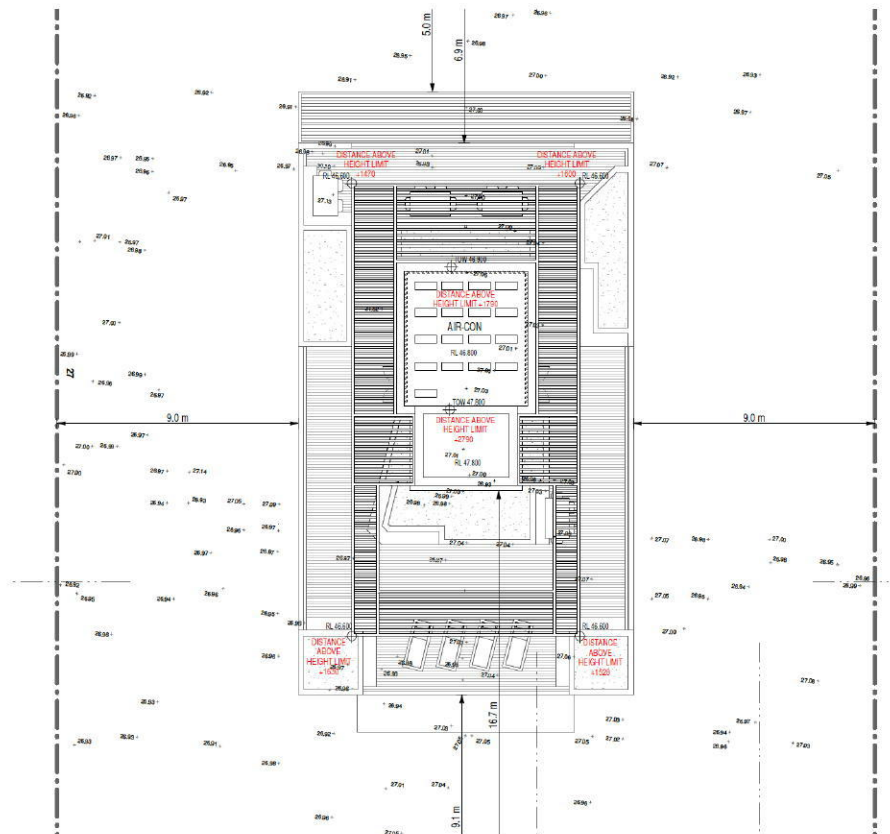


Figure 2 Height limit breaches

2.10 What is the percentage variation (between your proposal and the environmental planning instrument)?

In simplistic terms, the maximum variation to the height of building control (top of lift) is 15.5% although this is limited to a very small area of the roof top that is centrally located. The remaining breaches range between 8.2% and 9.9%.

Figure 10: Shadow study of the proposed building. The figure consists of 12 panels showing shadows cast by the building at various times on June 21st. The top row shows four panels from 11 AM to 12 PM. The middle row shows two panels from 11 AM and 12 PM, with the 12 PM panel including a red box labeled "PROPOSED 12 PM SHADOWS OF EXISTING BUILDING". The bottom row shows four panels from 1 PM to 3 PM, with the 3 PM panel including a red box labeled "PROPOSED 3 PM SHADOWS OF EXISTING BUILDING". Each panel includes a north arrow and a scale bar.

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- The proposal does not impact on the visual amenity, reduces views or minimises loss of privacy or solar access.
- There is no heritage item on the site.
- The proposal provides a high-quality urban form and provides a building that can contribute to a varying skyline given the recent increase in height limit in this area.
- The high-quality form of the proposal has been supported through the Council's own Urban Design Review Panel process.
- It is unreasonable to apply the height limit across the site in this case as the proposal does not impact on the visual amenity nor does it reduce views or minimises loss of privacy or solar access. The orientation of the building, the stepping of the building and façade treatment minimises shadow impacts with the majority of the shadow falling on the Paceway site to the south.
- The proposed development meets the objectives of the zone and the height of building clause, it contributes to the provision of necessary land uses within the Penrith City in locations in close proximity to services and facilities.

Given the spatial context of the building, the proposed encroachment will not present as an overly perceptible element. It is considered that the proposal is in the public interest and strict compliance with the standard in this instance is both unreasonable and unnecessary.

2.12 How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?

Section 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* provide:

The objects of this Act are:

(a) *to encourage:*

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*
- (iii) *the protection, provision and co-ordination of communication and utility services,*
- (iv) *the provision of land for public purposes,*
- (v) *the provision and co-ordination of community services and facilities, and*
- (vi) *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
- (vii) *ecologically sustainable development, and*
- (viii) *the provision and maintenance of affordable housing, and*

(b) *to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*

(c) *to provide increased opportunity for public involvement and participation in environmental planning and assessment.*

It is submitted that the height encroachment still maintains an appropriate bulk and scale, and also maintains the objectives of the clause within the LEP that relate to the zone and the height of building. The objects of the Act are not hindered through the proposed variation being supported.

Complying with the height will not alter the outcome in relation to visual bulk, scale, amenity and solar access and it is considered the proposal provides a good planning outcome. To require compliance with the height limit, an entire level of apartments would need to be deleted.

It is against the objects of the Act and not in the public interest to comply with the 18m height limit as this would not be orderly and economic use of the land and its would reduce the opportunity for additional residential accommodation to be provided within the Penrith City Centre.

2.13 Is the development standard a performance-based control?

No, it is prescriptive.

2.14 Would strict compliance with the standard, in your particular case, would be unreasonable or unnecessary?

2.14.1 Height of Building

Strict compliance with the standard in this particular case is unreasonable and unnecessary as the variation sought as part of this development application is considered appropriate in the context and setting of the site. The proposed development meets the objectives of the zone, it meets the objectives of the height of buildings clause and it is considered that the objectives of the Act would not be undermined by supporting the variation.

It is submitted that the development standard is unnecessary given the negligible resultant environmental impacts arising from the proposal and is unreasonable given the benefits that the development as proposed would bring to the City of Penrith, over a strictly compliant development.

In supporting the variation, it is noted that the public interest is retained in that some key objectives of the planning controls have been achieved as a result of the development. Those include:

- Compliance with the objects of the zone.
- Compliance with the objects of the development standard.
- Consistent with all other planning controls applicable to the site.
- Building Alignment to existing context - Preparing for future context and potential neighbouring buildings
- Minimal Shadow Impacts as it has the Paceway site located to the south

It is also important to note the consistent approach by Council to the issue of height breaches in this locality. Often justified on the same basis, relating to responding to overland flood controls in the locality, the relevant consent authority has supported several breaches of this nature.

The following diagram shows the breaches that have occurred in the locality. The average height of these developments is 20.4m, and the proposed development is below this.



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

There are a number of positive environmental planning grounds that arise as a result of this development, and specifically the breach in the height limit, as follows.

1. The physical constraints are accommodated on the site whilst still achieving the development outcomes sought under the LEP.
2. High quality design being achieved through the Council Urban Design Review Panel process.
3. The Council has acknowledged the specific development constraints within the locality and has responded by supporting reasonable variations to the height limit in order to support appropriate development within this zone.

3 Specific consideration of cl4.6(4) of Penrith Local Environmental Plan 2010

A recent decision of the NSW Land and Environment Court (*Initial Action Pty Ltd v Woollahra Municipal Council*) further clarified the correct approach to the consideration of Clause 4.6 requests. This included clarifying that the Clause does not require that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not.

Clause 4.6 of a standard instrument LEP permits a consent authority to grant development consent for development that would contravene a development standard where the consent authority is satisfied that:

- cl4.6(4)(a)(i): a written request from the applicant adequately demonstrates that compliance with the development standard is unreasonable or unnecessary (cl4.6(3)(a)), and that there are sufficient environmental planning grounds to justify the contravention (cl4.6(3)(b)), and
- cl4.6(4)(a)(ii): the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development within the relevant zone.

To clearly consider this case and its applicability to the proposed development, the clauses have been tabulated below, and considered against the above Court case, the proposal, and this very submission.

Penrith Local Environmental Plan 2010	36-38 Rodley Avenue, Penrith
(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	Subclause (3) requires the following to be demonstrated for the purposes of this consideration:
	(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.
	In respect of the height of building variation, the reasons why compliance is unreasonable or unnecessary are provided in Section 2.11.1.
	We also note that the objectives of the standards have been achieved notwithstanding the non-compliance with those standards (<i>Wehbe v Pittwater Council</i>) as follows:
	Height of Building
	<ul style="list-style-type: none"> • The height, bulk and scale of the proposal is consistent with that of the desired future character of

the locality, as demonstrated in the accompanying architectural plans.

- There will be no loss of views to or from public areas, nor any loss of solar access.
- The height proposed is considered to result in a building that will present as a high-quality architectural element in this locality, represents a scale and bulk generally consistent with the desired future character.
- The proposed development is able to achieve design excellence, as evidenced by progressing through Council's own Urban Design Panel.

The objective of each of the development standards can be satisfied through this development as proposed.

It follows that this aspect of Clause 4.6 has been satisfied.

As to there being 'sufficient environmental planning' grounds to justify the variation, 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. In this context the following is submitted in relation to the two development standards:

Height of Building

The position we submit has been (we believe) adequately presented earlier in this submission. In summary, strict compliance of the development standard would limit the amount of residential development envisaged for this precinct. The benefits outweigh the non-compliance, noting the non-compliance is limited to small areas of the buildings roof, and there being no perceptible impacts arising as a result. We also note the ability for the proposal to achieve a high-quality design as demonstrated by the positive comments from Council's own Urban Design Panel. We believe that we have adequately addressed this matter.

(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*

The proposed development is consistent with both the development standards that are proposed to be varied, as well as the objectives of development in the zone. The development is therefore in the public interest (see para 27 of the judgement).

Given the assessment above, it is considered the Clause 4.6 is well founded and can be supported in the context of this most recent court case.

4 Conclusion

This submission provides the required form requesting a variation to the height of building development standard within the LEP. It is considered that the proposed variation is warranted, and that the development as proposed provides a better planning outcome as detailed in this request.

Compliance with the development standard in relation to the maximum height of building control is unnecessary and unreasonable in the circumstances of this development and there are sufficient planning grounds to justify the variation. It satisfies the consideration required under Clause 4.6 of the LEP and can be supported on that basis.