

Wollongong Local Planning Panel | 21 May 2020

WLPP No.	Item No.2
DA No.	DA-2019/1375
Proposal	Residential - Demolition of existing structures and construction of a residential flat building
Property	2 Market Place, WOLLONGONG
Applicant	ADM Architects
Responsible Team	Development Assessment and Certification - City Centre Team (NL)

ASSESSMENT REPORT AND RECOMMENDATION

Executive Summary

Reason for consideration by Local Planning Panel - Determination

The proposal has been referred to Local Planning Panel for determination pursuant to clause 2.19(1)(a) of the Environmental Planning and Assessment Act 1979. The proposal is captured by Schedule 3 & 4(b) of the Local Planning Panels Direction of 1 March 2018. The proposal involves a departure from the minimum site width required by clause 7.14 of WLEP 2009

Proposal

The proposal is for demolition of the existing building and construction of a four-storey residential flat building with one level of basement car parking.

Permissibility

The site is zoned R1 General Residential pursuant to Wollongong Local Environmental Plan 2009. The proposal is categorised as a residential flat building and is permissible in the zone with development consent.

Consultation

The proposal was notified in accordance with Council policy and received 6 submissions which are discussed at section 2.9 of the assessment report.

Council's Traffic, Geotechnical, Environment and Landscape Officers have provided satisfactory referrals.

The NSW Heritage Council have reviewed the proposal in respect of archaeological heritage matters and have recommended conditions of consent.

The National Trust of Australia (New South Wales) Illawarra Shoalhaven Regional Branch also reviewed the proposal and raised a number of concerns which are discussed at section 1.4.2 of this report.

Main Issues

The main issues are as follows:

- Potential impacts to foundations of adjoining buildings arising from excavation
- Variation to minimum site width
- Variation to deep soil requirement
- Variation to setbacks

RECOMMENDATION

It is recommended that the proposal be approved subject to the conditions contained at **Attachment 7**.

ASSESSMENT OVERVIEW

1.1 PLANNING CONTROLS

The following planning controls have been considered:

State Environmental Planning Policies

- SEPP 55 – Remediation of Land
- SEPP 65 Design Quality of Residential Apartment Development (N/A as discussed below)
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Coastal Management) 2018

Local Environmental Plans

- Wollongong Local Environmental Plan (WLEP) 2009

Development Control Plans

- Wollongong Development Control Plan (WDPC) 2009

Other policies

- Wollongong City-Wide Development Contributions Plan 2019

1.2 DETAILED DESCRIPTION OF PROPOSAL

The proposal comprises the following:

- Demolition of a single storey building.
- Construction of a four-storey residential flat building comprised of two, 3-bedroom units and one 4-bedroom unit.
- Excavation to a depth of approximately 2.6m for basement car parking for 7 cars

1.3 BACKGROUND

DA-2015/1242 for a similar type of development was considered by Council's former Independent Hearing and Assessment Panel on 27 April 2016. The Panel deferred determination of the application subject to several recommendations, including that the basement be setback from the side boundaries by 1.5m. That application was ultimately withdrawn.

1.4 SITE DESCRIPTION

The site is located at 2 Market Place, Wollongong and the title reference is Lot 2 DP 1105419.

The site is regular in shape and relatively flat with an area of 489.3m².

Adjoining development is as follows:

- North: Vacant land fronting Harbour Street
- East: Three storey residential flat building
- South: Market square public open space
- West: Three storey residential flat buildings

Development surrounding market square is 1-6 storey in height and of varying architectural style, generally incorporating brick construction.

The site is located within the Market Square / Courthouse special area which extends from Market Square down to Belmore Basin.

Property constraints

Council records identify the land as being impacted by the following constraints:

- Acid sulphate soils: See discussion at clause 7.5 of WLEP 2009 below.
- Heritage: The site is located in the Market Square / Courthouse special area. Other heritage items within the vicinity include St Mary’s College on the eastern side of Market Square, the Illawarra Historical Society Museum on the south western corner of Market Square, and no. 4 Market Place which is identified as an item of potential heritage significance. Heritage impacts are discussed in detail at clause 5.10 of WLEP.

1.5 SUBMISSIONS

The application was notified in accordance with Council policy. Six submissions were received, and the issues identified are discussed below.



Figure 1: Notification map

Table 1: Submissions

Concern	Comment
The site width does not meet the minimum 24m required for residential flat buildings and that the variation request is not well founded.	A variation request has been provided in accordance with clause 4.6 of WLEP 2009 as contained at Attachment 5. The variation statement is supported in this instance as

Concern	Comment
	discussed at clause 4.6 of WLEP 2009 in the body of this report.
The lot should amalgamate with the one to the rear.	Amalgamation with the lot to the rear would not provide a compliant site width nor be a logical lot configuration that would provide benefits to the built form. A more logical amalgamation would be for the adjoining two vacant lots to the east to be consolidated.
The podium and planter will obstruct sight lines for vehicles exiting Marlborough Court to the west of the site.	<p>The podium is setback 900mm from the side boundary, 3.15m from the front boundary and 1.1m high at the western boundary with hedge planting above. This is considered to provide suitable sight lines for vehicles exiting Marlborough Court.</p> <p>Council's Traffic Officer has reviewed the proposal in this regard and has given a satisfactory referral.</p> <p>The DRP considered that the height of the planter (behind the carpark ramp on the east and behind the building line on the west) should be raised to approximately 1.5m, as viewed from neighbouring properties. This would allow the walls to read as an appropriate scaled boundary wall and assist in reducing potential privacy issues. Given the concerns raised this was not pursued and is discussed below.</p>
Proposal does not satisfy heritage controls in DCP.	<p>The proposal is of a bulk and scale that is compatible with buildings surrounding Market Square which vary from 1-6 storeys.</p> <p>The facade incorporates a mixture of materials and finishes including face brickwork which are considered to suitably respond to the character of the locality.</p> <p>The proposal complies with the sun access requirements in respect of overshadowing to Market Square.</p> <p>The proposal is not considered to have adverse heritage impacts and was reviewed by Councils heritage Officer as satisfactory.</p>
Are the PV cells on the roof included in the height of the building?	PV cells are included, and the proposal remains compliant with the maximum building height.
The deep soil zone is only 3m in width whereas the controls recommend 6m in width.	The deep soil planting is split between a 3m wide area at the rear and a similar area within the front setback. The overall area is considered to provide suitable amenity and the distribution allows for allows for significant planting the

Concern	Comment
	front and rear of the site. Councils landscape Officer has reviewed the proposal as satisfactory
The landscaping to the street frontage is unimpressive.	The landscaped areas are considered to address Council controls and to soften the appearance of the building and provide amenity to the public domain. Council's Landscape Officer has also reviewed the proposal in respect of compliance with Council's Public Domain Technical Manual and the DCP and has provided a satisfactory referral.
The proposal is overdevelopment	<p>The proposal is below the maximum permitted height and FSR and is satisfactory regarding the setbacks and likely impacts to adjoining land.</p> <p>The proposal comprises of three units that would not pose a significant strain to infrastructure and services.</p> <p>In this respect, the proposal is not considered to represent overdevelopment of the site.</p>
Overshadowing impacts to 4 Market Place	<p>Shadow diagrams have been submitted including views from the sun with the adjoining developments illustrated to better understand the overshadowing impacts from the proposal. From 11am onwards the proposal does not overshadow the building to the west.</p> <p>Setbacks are acceptable and the built form is not considered to unreasonably overshadow adjoining buildings.</p> <p>A further shadow analysis has been undertaken of a building with compliant setbacks and going to the maximum permitted height. A comparison of the two illustrates minimal additional overshadowing to the ground floor front window of 4 Market Street at 10am. This window is considered difficult to protect given its location at ground level towards the southern end of the building. Otherwise, the overshadowing of the proposed built form is not significantly different to that of a compliant one.</p> <p>It is noted the building is below the maximum 16m height limit and below the maximum FSR applicable and the top floor is stepped in. In respect of overshadowing, the design is considered to facilitate reasonable solar access outcomes for adjoining buildings.</p>

Concern	Comment
<p>A dilapidation report should be undertaken by an independent expert in respect of potential impacts to Marlborough Court (see Chapter E19, Clause 4.1(6))</p> <p>The foundations for Marlborough Court are shallow and unreinforced and sit on a clay layer of reactive soil with the rock layer some 1.0-1.5 metres below the surface. A Geotechnical Report commissioned by owners for a previous DA for the subject site (DA-2015/1242) raised concern that excavation of a basement adjacent to the common boundary would post potential risk to Marlborough Court.</p> <p>DA-2015/1242 was considered by the IHAP who recommended setting the basement back from the boundary by 1.5m.</p> <p>Standard conditions of consent should not apply to the proposal with respect to excavation and potential impacts to Marlborough Court.</p>	<p>A condition of consent is recommended with regard to preparation of a dilapidation report.</p> <p>The application has been supported by a geotechnical report prepared by a suitably qualified consultant. In addition, a basement excavation methodology report has been submitted which verifies that the basement will be retained by a shoring system on all boundaries prior to excavation and anchors will not be required.</p> <p>That reports have been reviewed by Council's Geotechnical engineer who has recommended a suite of specific conditions of consent with respect to excavation in order to protect the adjoining buildings.</p>
<p>It is not clear how the building will be constructed without impacting on access to the adjoining property.</p>	<p>It will be a requirement of the consent that access to the adjoining land not be impeded during the construction process.</p>
<p>Impacts of drainage design (e.g. basement pump) on subsurface conditions should be detailed.</p>	<p>Council's Geotechnical Officer has recommended conditions of consent with respect to this issue. He has advised that a fully tanked basement is an appropriate solution supported by geotechnical advice for its design and supervision for its construction. The nominated geotechnical consultant will have to sign off on design and construction.</p>
<p>Potential impacts of vibration during demolition / excavation on the adjacent building should be provided.</p>	<p>Council's Geotechnical Officer has recommended conditions of consent regarding vibration impacts.</p>

1.6 CONSULTATION

1.6.1 INTERNAL CONSULTATION

Council's Geotechnical, Stormwater, Heritage, Landscape and Traffic Officers have provided satisfactory referrals subject to conditions of consent.

1.6.2 EXTERNAL CONSULTATION

NSW Heritage Council

The NSW Heritage Council were referred the application under the requirements of clause 5.10 of WLEP 2009. They have provided recommended conditions of consent in respect of archaeological heritage matters as contained at Attachment 7.

The National Trust of Australia – Illawarra Shoalhaven Regional Branch

The Trust contends that the proposed development does not positively contribute to reinforcing the character of Market Square which today is an example of medium density residential development from the interwar years until the present.

The proposed development will be on an 'isolated lot' being narrower than the minimum 24m requirement.

The proposed bulk, massing and modulation of the façade, along with the selection of materials (not seen in the Square) and finishes, are designed to draw attention to the development.

The proposal is too high resulting in overshadowing

The proposal is deficient regarding deep soil Zone/Planting, side setbacks and width of proposed driveway is not wide enough for two-way traffic.

Response

- Isolated lot considerations are not considered to relate directly to heritage matters and are discussed separately in this report
- The proposal is below the maximum height and FSR applicable to the site. The upper level is recessed from the front boundary, reducing the apparent bulk and height of the building as viewed from the public domain.
- The setbacks are reasonable as discussed separately in this report.
- Detailed shadow analysis has been provided illustrating the impact on adjoining buildings and are considered to be acceptable. The building complies with the sun access plane requirements and will not adversely overshadow Market Square.
- Deep soil planting is discussed in the body of this report and is considered acceptable.
- Side setbacks are acceptable and not to adversely impact on neighbours.
- The driveway width provides for two directional traffic and has been reviewed by Council's Traffic Officer as satisfactory.

Design Review Panel (DRP)

The DRP reviewed the proposal on the 20 January 2020 as contained at Attachment 4. It is noted the DRP review was not a legislative requirement given the proposal is not development to which SEPP 65 applies. Some minor amendments were suggested by the DRP which have been incorporated into the design. Of note are the following:

Concern:	Comment
<p>The podium will effectively create a side boundary fence to the eastern and western neighbours. Consideration should be given to raising the height of the planter (behind the carpark ramp on the east and behind the building line on the west) to approximately 1.5m, as viewed from neighbouring properties. This will allow the walls to read as an appropriate scaled boundary wall and assist in reducing potential privacy issues between neighbours. A deeper planter (created by the increased wall height) will also assist in providing for better quality landscaping, allowing for medium shade trees / feature trees.</p>	<p>In response to this matter, the applicant has noted that raising the side walls of the planters will increase building bulk along the boundaries. The west wall is set back from the boundary by 900mm and the east wall would be higher than what is on the adjoining property.</p> <p>If raising of the side walls remained a concern, the applicant has indicated they would not object to that being conditioned.</p> <p>Under the circumstances, it is not considered that this would be an optimum outcome having regard to objections.</p> <p>Privacy concerns are discussed further below.</p>
<p>A narrow-paved area has been created between side boundary planters and the proposed building. If this space is utilised as habitable space by the ground floor unit it will create the potential for privacy issues with neighbouring properties. These spaces should be utilised for service access only. They should be narrow (500mm approximately) and finished with a different material to the habitable courtyard spaces.</p>	<p>Side pathways have been narrowed from approximately 800mm to 500mm as requested by the panel as illustrated on drawing A-103</p>
<p>Sight lines between the rear ground floor courtyard and neighbouring properties should be analysed, to establish if privacy screens are necessary on the eastern and western edges of the terrace.</p>	<p>The adjoining property to the west has a driveway and parking areas adjacent this side with separation between the adjoining building and proposed courtyard being in excess of 6m. To the east, the separation between the courtyard and adjoining building is approximately 8m.</p> <p>On-podium planting should further provide some visual screening once established and an additional requirement is recommended at condition 21c that a 1.8m high privacy screen be erected to the eastern and western edges of the rear courtyard.</p>
<p>The proposed roof terrace servicing unit 3, consolidates its built form mass centrally on the building, providing 6m setbacks to both the eastern and western side boundaries and extending its roof form to align with the street façade. The resultant form does not comply with council's sun plane requirements, as set out in WLEP.</p> <p>The form of the roof level terrace must be developed to address this issue.</p>	<p>The roof terrace level has been redesigned to comply with WLEP. This has been achieved by setting back the building line 11.175m from the southern boundary as shown on drawing A-106.</p> <p>Compliance is demonstrated on the east and west elevations on drawings A-202 and A-204.</p>

Concern:	Comment
<p>To allow the building form to be developed in response to its context, it is recommended that the contextual study is developed. This must include three dimensional models of neighbouring buildings. This will allow the upper level terrace to be developed and tested in its context. In particular, a suns eye view study will play an important role in determining the proposals impact upon its neighbours and thus assist in developing an appropriate building form.</p>	<p>A sun eye view of overshadowing including the adjoining buildings has been provided.</p>
<p>Setting the roof terrace form back from the street will help to consolidate open space, creating a larger terrace orientated towards Market Place. The reduction of the built form side setbacks on the roof terrace should be possible but must be tested and justified (as outline above). This may require screening to the east and western sides of the terraces and focusing outlook and consolidating open space on the northern and southern edges of the terrace.</p>	<p>The balcony is generally separated from the edge of the rooftop raised planters. It is also noted that the rooftop terrace interfaces with the rooftops of the adjoining buildings.</p> <p>The arrangement of the rooftop is considered acceptable regarding impacts to neighbours.</p>
<p>The proposal should aim to develop a stronger connection with Market Place / Market Square. One way of achieving this, would be to increase the size of balconies to the level 1 and 2 family rooms. The balconies could be cantilevered to extend closer to the street. However, if the building form is to remain consistent with the street scape the cantilever must remain behind the building line of the eastern neighbour (28 Harbour street). This strategy will create a more articulated street façade that steps to align with neighbouring buildings.</p>	<p>The applicant has not modified the built form in this regard, arguing that enlarging balconies would encroach into the minimum front setback requirement and that increasing the setback for the building to accommodate projecting balconies would require significant change with minimal aesthetic improvement.</p> <p>It is generally considered that the front façade of the building is suitably articulated.</p>
<p>Opportunities to harvest rainwater for use in maintaining any plantings established on the building or the site should be integrated. Other water minimization measures should be considered including the reuse of rainwater for toilet flushing and use in washing machines.</p>	<p>A 3kL rainwater tank is to be in the basement and used to irrigate landscaped areas.</p>
<p>Species selection for any plantings should aim to support council's commitment to maintaining local biodiversity and natural landscapes, and preventing future weed problems.</p>	<p>The proposed landscaping has been reviewed by Council's Landscape Officer as being satisfactory regarding Council requirements.</p>
<p>The public domain has been shown as a paved verge – this feels inappropriate and should be revised to be in keeping with the surrounding properties – planted verge, path and planting to front setback – avoiding lawn seems appropriate.</p>	<p>The proposed paving is consistent with Council's Public domain technical manual and has been given a satisfactory referral by Council's Landscape Officer.</p>

Concern:	Comment
An opportunity exists to enlarge the planter above the carpark entry outside the U1 kitchen. This would give a green feature to the entry and also to the kitchen (if a window is introduced as suggested).	The landscape planter at this location has not changed. There is minimal opportunity for this to occur whilst maintaining suitable access for maintenance.
Any additional deep soil possible to allow trees on corners or other prominent locations is encouraged	The deep soil in the front setback has been increased to between 2.6m to 3.1m. The proposal is considered to now provide adequate opportunity for deep soil planting to maximise amenity.
The thin strips of planting to each side setback, between wall and boundary should be considered as part of the neighbouring properties and the building wall is to form the fence to avoid a 300mm wide redundant pocket of space. A min depth of 450 topsoil should be provided.	Planting is provided along each side boundary. On the western boundary this is unencumbered below. On the eastern boundary this is unencumbered for approximately half the depth of the site beyond which the basement extends to the boundary with a shallow soil layer above. This is considered acceptable.
Access to all planters on structure should be considered to ensure they can be easily and safely maintained. The logic of the access path on the GF does not seem to have been applied to the roof.	Service access to planters will include fall arrest systems in compliance with work cover and Australian Standards.
Species should all be low water use if possible and align with council's preferred species. Irrigation should be provided and ideally this should use water collected from the building itself.	The landscaping has been reviewed as satisfactory by Council's Landscape Officer. Rainwater is captured for use in irrigation.
Consideration should be given to providing a window to the kitchens. The window could be located between bench tops and overhead cupboards. They should be tested in their context to ensure sight lines likely to create privacy issues are not being created (utilising the contextual model, see comments above, built Form). It this study raises concerns in regard to privacy an opaque window can be used.	An opaque slot window to each kitchen has been added as suggested.
The provision of a wheelchair lift in the narrow entry space is unfortunate. Consideration should be given to discharging the fire stair at the same level as the foyer to create a wider entry, that will more comfortably accommodate a chair lift. In any reconfiguration of the entry/foyer area consider also: -Undercover access from garage stair -Direct access to rising stair	The basement has been lowered to the extent possible to maintain compliant driveway grades and manoeuvring areas. This does leave the ground floor elevated above natural ground level. Due to the small size of the site, achieving a ramped entry to the foyer would not be possible without dedicating a large proportion of the frontage to a ramp. The provision of a wheelchair lift at the entry is a workable solution under the circumstances.

Concern:	Comment
Planters and landscaping located within the street set back should be configured to maintain clear sight line (vehicles and pedestrians) for vehicles exiting the site.	This is considered acceptable as discussed above subject to conditions of consent.
The location of service risers, car park exhausts, AC condensers, down pipes and fire hydrant boosters should be accommodated in a way that does not clutter the expression of the building.	AC condensers are shown on the plans at each level. The locations are well screened from public view. Downpipes will be concealed in concrete columns. Mechanical riser will be concealed within building footprint and extend to roof for discharge. This riser has also been added to the drawings.

2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

2.1 SECTION 4.15(1)(A)(1) ANY ENVIRONMENTAL PLANNING INSTRUMENT

2.1.1 STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND

Council records do not indicate any historic use that would contribute to the contamination of the site and the land is not identified as being contaminated on Council mapping. The site has been historically used for residential purposes since approximately 1961. No concerns are raised regarding contamination as relates to the intended use of the land and the requirements of clause 7. It is considered that the land is suitable for the proposed development.

2.1.2 STATE ENVIRONMENTAL PLANNING POLICY NO 65—DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

4 Application of Policy

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed-use development with a residential accommodation component if:

(a) the development consists of any of the following:

(i) the erection of a new building,

(ii) the substantial redevelopment or the substantial refurbishment of an existing building,

(iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

This policy does not apply as the development comprises only three dwellings.

2.1.3 STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

The proposal is BASIX affected development to which this policy applies. In accordance with Schedule 1, Part 1, 2A of the Environmental Planning and Assessment Regulation 2000, a BASIX Certificate has been submitted in support of the application demonstrating that the proposed scheme achieves the BASIX targets.

The BASIX certificate was issued no earlier than 3 months before the date on which the development application was lodged.

2.1.4 SEPP (COASTAL MANAGEMENT) 2018

The site is identified as being within the coastal use area under this policy.

Division 4 Coastal use area

14 Development on land within the coastal use area

(1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*

(a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*

(i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

N/A

(ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*

The proposal does not overshadow the foreshore. No significant wind funnelling impacts are expected. Views from public places to the foreshore are not considered to be significantly impacted.

(iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*

The proposal is not considered to have adverse impacts in this regard.

(iv) *Aboriginal cultural heritage, practices and places,*

The site is not impacted by Aboriginal and cultural heritage matters.

(v) *cultural and built environment heritage, and*

The proposal has been reviewed by Council's Heritage Officer who has raised issues.

(b) *is satisfied that:*

(i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*

Discussed above.

(ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*

Discussed above

(iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*

Discussed above

(c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

These matters are addressed elsewhere in this report.

(2) *This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

Division 5 General

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Satisfactory.

16 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

The site is not impacted by coastal hazards nor is the site located on the foreshore.

17 Other development controls not affected

Subject to clause 7, for the avoidance of doubt, nothing in this Part:

- (a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or*
- (b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.*

N/A

18 Hierarchy of development controls if overlapping

If a single parcel of land is identified by this Policy as being within more than one coastal management area and the development controls of those coastal management areas are inconsistent, the development controls of the highest of the following coastal management areas (set out highest to lowest) prevail to the extent of the inconsistency:

- (a) the coastal wetlands and littoral rainforests area,*
- (b) the coastal vulnerability area,*
- (c) the coastal environment area,*
- (d) the coastal use area.*

2.1.5 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Clause 1.4 Definitions

residential flat building means a building containing 3 or more dwellings but does not include an attached dwelling or multi dwelling housing.

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned R1 General Residential.

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal is satisfactory regarding the above objectives.

The land use table permits the following uses in the zone.

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental facilities; Exhibition homes; Group homes; Hostels; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Serviced apartments; Shop top housing; Signage; Tank-based aquaculture

The proposal is categorised as a *residential flat building* as defined above and is permissible in the zone with development consent.

Part 4 Principal development standards

Clause 4.3 Height of buildings

The proposed building height of 15m does not exceed the maximum of 16m permitted for the site.

Clause 4.4A Floor space ratio – Wollongong city centre

Site area: 489.3m²

Total GFA (including 2 surplus car parking spaces): 538m²

FSR proposed: 1.1:1

Maximum FSR permitted: 1.5:1

Clause 4.6 Exceptions to development standards

The proposal seeks to vary the minimum site width requirement under clause 7.14 and a clause 4.6 variation is therefore applicable.

WLEP 2009 clause 4.6 proposed development departure assessment.	
Development departure	Clause 7.14, minimum site width. Requires that development consent must not be granted for development for the purposes of a residential flat building unless the site area on which the development is to be carried out has a dimension of at least 24 metres
Is the planning control in question a development standard?	Yes
4.6 (3) Written request submitted by applicant contains a justification:	
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	A satisfactory clause 4.6 variation has been submitted at attachment 5

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.	Yes
(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	<p>The applicant’s written request seeks to justify that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case based on the following rationale:</p> <p>Market Place is characterised by development of a comparable type and scale. The lots comprising Market Place have site widths varying between 16 and 22m with the majority containing RFBs between 2 and 4 storeys in height. A functional building which better relates to the neighbouring sites can be provided including carparking, access, landscaping, private open space.</p> <p>Apart from site width the development generally complies with the numerical standards of WLEP2009 and DCP 2009. Strict compliance with the control would effectively prohibit an RFB despite being permissible.</p> <p>The development provides for the economic and orderly use of the land.</p> <p>A functional building can be provided without detrimentally affecting surrounding properties or other adverse planning outcomes.</p> <p>The constrained and isolated nature of the site makes a fully compliant building difficult to achieve. Furthermore, the strata titling of adjoining buildings makes amalgamation not feasible.</p> <p>The development is consistent with the objectives of the zone and provides a more efficient use of the land.</p> <p>The variation further explains that Council has abandoned the standard.</p> <p>The applicant’s Clause 4.6 Statement forms attachment 5. The written request has adequately addressed the matters required to be addressed under subclause (3). However, Council refutes the claim that it has abandoned the standard. Whilst there are examples of the standard being varied, these have been assessed on a case by case basis having regard to how</p>

	<p>specific designs respond to unique land constraints in the circumstances of each case.</p>
<p>(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</p>	<p>There is a public benefit in allowing flexibility in application of the minimum lot width in dense urban areas, where the proposed building form sits comfortably within the streetscape. The R1 zone objectives encourage higher densities, and height and FSR controls facilitate those densities. Compliance with the development standard i.e. strictly prohibiting residential apartment buildings on lots less than 24m, would be at odds with the desired height, FSR and other DCP controls established for the zone. The building typology is more aligned with existing apartment buildings located in the vicinity. The proposed development has demonstrated that a functional building can be provided on the site, including appropriate carparking and access, landscaping and private open space areas, without detrimentally impacting the surrounding properties.</p> <p>There is no objective for clause 7.14 minimum site width control in WLEP 2009. However, WDCP 2009 does provide some guidance. Clause 6.2.2 of chapter B1 also requires for a minimum site width of 24m and states that variations may be considered where in the opinion of Council, the proposed development will not cause any significant adverse overshadowing, privacy or amenity impact upon any adjoining development.</p> <p>The objectives of DCP 2009 clause 6.2.2 include:</p> <ul style="list-style-type: none"> <i>(a) allow for development of sites, which are of sufficient width to accommodate the required building envelope, car parking and landscaping requirements</i> <i>(b) To promote the efficient utilisation of land.</i> <i>(c) To encourage amalgamation of allotments to provide for improved design outcomes including greater solar access and amenity.</i> <p>The proposed variation to the standard is considered to be consistent with these objectives. The building provides a suitable building envelope and satisfies car parking requirements. Whilst there is a variation to the deep soil area, this is considered supportable as detailed at Chapter A1. Solar access and amenity</p>

	<p>for occupants is of a high standard and the proposal is not considered to unreasonable impacts on adjoining development.</p> <p>The objectives of the R1 General Residential zone are:</p> <p style="padding-left: 40px;"><i>To provide for the housing needs of the community.</i></p> <p style="padding-left: 40px;"><i>To provide for a variety of housing types and densities.</i></p> <p style="padding-left: 40px;"><i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></p> <p>The proposed development has regard to the objectives of the R1 zone, and despite the constraints on the site, the proposed development is less than the FSR and Height controls. The proposed development would provide for housing needs of the community and would contribute to achieving a variety of housing types in the area and the existing high-density environment. Regarding unreasonableness of requiring 24m, the applicant would need to acquire the adjoining site to the west or east. It is not considered appropriate to amalgamate with the site to the north. The site to the east is a strata titled three storey building containing six strata units. The site to the west contains two strata titled buildings containing eight strata units. It is not considered viable to purchase the adjoining properties in order to amalgamate and achieve a larger, compliant site width. The proposal is an efficient use of the land.</p> <p>It is considered that in this instance there are sufficient environmental planning grounds specific to the site to justify contravening the development standard</p>
(b) the concurrence of the Secretary has been obtained	Concurrence is not required as the LPP is the determining authority.

Part 5 Miscellaneous provisions

Clause 5.10 Heritage conservation

The site is located within the Market Square Courthouse special area and Market Square also contains a heritage item of local significance, being the “Bandstand and marble plaque commemorating Bass and Flinders’ landing”. Other heritage items within the vicinity include St Mary’s College, the Illawarra

Historical Society Museum and no. 4 Market Place which is identified as an item of potential heritage significance.

The application was supported by a Historical Heritage Assessment and Statement of Heritage Impact report recommending conditions of consent regarding potential archaeological heritage matters.

The NSW Heritage Council were referred the application under the requirements of clause 5.10 of WLEP 2009 and have recommended conditions of consent in respect of archaeological heritage matters.

Council's Heritage Officer has also reviewed the proposal in respect of the heritage context. Conditions of consent have been recommended however there remains outstanding concern regarding the lack of symmetry of the southern elevation and the relationship with other buildings around Market Square. However, given the support of the Design Review Panel for the aesthetic of the proposal, this issue has not been pursued further.

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

Conditions are recommended with respect to specific utility providers for the connection of electricity, water and sewage to service the development.

Clause 7.5 Acid Sulfate Soils

The proposal is identified as being affected by class 5 acid sulphate soils. An acid sulphate soils management plan is not required as the proposal does not involve works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

Clause 7.6 Earthworks

The proposal comprises excavation to a depth of approximately 2.5m. The earthworks are not expected to have a detrimental impact on environmental functions and processes, neighbouring uses or heritage items and features surrounding land. Potential impacts to adjoining buildings arising from excavation are discussed in detail under section 1.4.2.

Clause 7.14 Minimum site width

(2) Development consent must not be granted for development for the purposes of a residential flat building unless the site area on which the development is to be carried out has a dimension of at least 24 metres.

The proposal is defined under the LEP as a residential flat building and does not have a site width of 24m (being only 17.56m).

A suitable variation request has been provided in this regard in accordance with clause 4.6 as detailed above.

Clause 7.18 Design excellence in Wollongong city centre and at key sites

(1) The objective of this clause is to deliver the highest standard of architectural and urban design.

(2) This clause applies to development on any of the following land involving the construction of a new building or external alterations to an existing building—

(a) land within the Wollongong city centre,

The site is within the Wollongong City Centre.

(b) land shown edged heavy black and distinctively coloured on the Key Sites Map (a key site).

(3) *Development consent must not be granted to development to which this clause applies unless, in the opinion of the consent authority, the proposed development exhibits design excellence.*

See discussion below.

(4) *In considering whether development to which this clause applies exhibits design excellence, the consent authority must have regard to the following matters:*

(a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*

The design of the building is currently not considered appropriately integrate with the setting.

(b) *whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,*

The proposal is considered to be of a bulk and scale that is compatible with other buildings surrounding Market Square.

The street frontage footpath will be upgraded including provision of a street tree and landscape deep soil planting within the setback.

Whilst being contemporary in appearance, the proposal has a mixed palette incorporating brickwork to relate to other buildings surrounding the square.

(c) *whether the proposed development detrimentally impacts on view corridors,*

No view corridors are expected to be impacted.

(d) *whether the proposed development detrimentally overshadows an area shown distinctively coloured and numbered on the Sun Plane Protection Map,*

The proposal satisfies the controls for sun plane protection at clause 8.3.

(e) *how the proposed development addresses the following matters:*

(i) *the suitability of the land for development,*

Satisfactory

(ii) *existing and proposed uses and use mix,*

Satisfactory

(iii) *heritage issues and streetscape constraints,*

Heritage considerations are discussed at clause 5.10 above. There are no particular streetscape constraints that would preclude the proposal.

(iv) *the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*

Satisfactory

(v) *bulk, massing and modulation of buildings,*

The bulk of the building is comparable to adjoining buildings and others surrounding Market Square.

The façade is articulated and incorporates a mixed palette.

The building is below the maximum height and floor space ratio permitted for the land.

(vi) *street frontage heights,*

N/A

(vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,

The proposal is satisfactory regarding sustainable design.

Overshadowing impacts are acceptable.

The building is not of a size or scale that will generate significant wind impacts.

The building does not incorporate significant glazed areas that would result in glare impacts.

(viii) the achievement of the principles of ecologically sustainable development,

The proposal meets BASIX requirements and PV panels are incorporated into the rooftop.

(ix) pedestrian, cycle, vehicular and service access, circulation and requirements,

The proposal provides compliant car parking and servicing arrangements.

(x) impact on, and any proposed improvements to, the public domain.

Satisfactory

Part 8 Local provisions—Wollongong city centre

Clause 8.1 Objectives for development in Wollongong city centre

The proposal is satisfactory with regard to the provisions of this clause.

Clause 8.3 Sun plane protection

Market Square: The sun access control for any point on land shown coloured yellow on the Sun Plane Protection Map and marked "Market Square—North" is:

(a) 16 metres above the point, or

(b) if the point is within 10.6 metres of the northern boundary of Market Place— $12 + (0.6061 \times (D - 4))$ metres above the point,

where D is the shortest distance in metres between the point and the northern boundary of Market Place.

The residential facade is within 10.6m from the northern boundary of Market Place.

Roof terrace level

$12 + (0.6061 \times (4 - 4)) = 12.6\text{m}$. The height of the roof terrace is 11.4m.

Roof level

$12 + (0.6061 \times (11.175 - 4)) = 16.3\text{m}$. The height of the roof level is 14.3m.

The building complies with the sun plane protection controls as illustrated above and, in the sketch below.

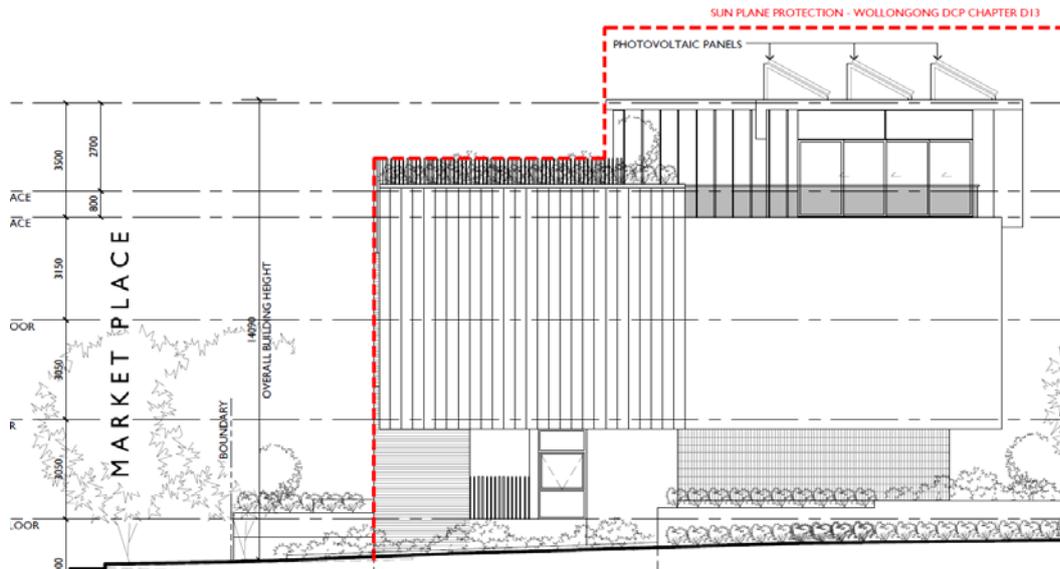


Figure 2: Sun plane protection diagram

2.2 SECTION 4.15(1)(A)(II) ANY PROPOSED INSTRUMENT

None applicable.

2.3 SECTION 4.15(1)(A)(III) ANY DEVELOPMENT CONTROL PLAN

2.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

Attachment 6 contains compliance tables for the DCP except for variations to controls which are discussed at Chapter A1 below.

CHAPTER A1 – INTRODUCTION

8 Variations to development controls in the DCP

Variations to the site width, setbacks and deep soil area are discussed in accordance with this chapter below.

Site width

(a) The control being varied;

Chapter B1, 6.2 Minimum Site Width Requirement: 24m minimum site width.

The site width variation is discussed at clause 4.6 above.

Deep soil

(a) The control being varied;

Chapter D13, 2.7 Deep soil zone: The deep soil zone should preferably be provided in one continuous block and shall have a minimum dimension (width or length) of 6 metres.

(b) The extent of the proposed variation and the unique circumstances as to why the variation is requested; and

The proposal has an approximately 3m wide deep soil area to the rear representing ~11% of the site area. An additional deep soil planting area between 2.67 and 3.15m in width is provided in the front setback that brings the total area up to in excess of 15%.

The variation is sought primarily due to the small size of the site and dimensions required for the basement car parking to ensure compliant manoeuvring and parking.

(c) Demonstrate how the objectives are met with the proposed variations; and

The objectives of the control are as follows:

- a) To provide an area on sites that enables soft landscaping and deep soil planting, permitting the retention and/or planting of trees that will grow to a large or medium size.*
- b) To limit building bulk on a site and improve the amenity of developments, allowing for good daylight access, ventilation, and improved visual privacy.*
- c) To provide passive and active recreational opportunities.*

The proposal is considered to be satisfactory regarding these objectives and the proposed deep soil planting is considered to provide visual amenity at both the front and rear of the site.

(d) Demonstrate that the development will not have additional adverse impacts as a result of the variation.

The deep soil area is considered to provide suitable amenity for occupants and softening of the appearance of the development. The deep soil not being a contiguous area is not considered to result in a compromised outcome or to have adverse impacts.

Side setbacks

(a) The control being varied;

Chapter D13 – 2.5 Side and rear building setbacks and building separation

(b) The extent of the proposed variation and the unique circumstances as to why the variation is requested; and

The proposal seeks the following variations:

Recommended		Proposed
<u>Up to 12m</u>		
Habitable rooms with openings and balconies		
<ul style="list-style-type: none"> 6m Side 	West:	1.7m to bed 3 on all levels which is dog eared to avoid overlooking and permit natural light. ~3m to edge of roof terrace
<ul style="list-style-type: none"> 6m rear 	Rear:	3m to court edge
Non-habitable rooms and habitable rooms without openings		
<ul style="list-style-type: none"> 3m Side; 	West:	2.550m
<u>Residential uses above 24m</u>		
Habitable with openings and balconies		
<ul style="list-style-type: none"> 9m rear 		6m to “winter garden” on roof terrace level.

The variations are primarily driven by the small size of the site.

(c) Demonstrate how the objectives are met with the proposed variations; and

The objectives of the control are satisfied as follows:

a) To ensure an appropriate level of amenity for building occupants in terms of daylight, outlook, view sharing, ventilation, wind mitigation, and privacy.

The layout of the development has one unit per floor with cross through ventilation and northerly aspect to living areas as well as southerly aspect to the park.

The development is of a small scale and not expected to result in any significant wind impacts.

Privacy of occupants or adjoining development is not compromised. Side elevations either have openings or no direct interface with adjoining development. The deep soil planting at the rear will provide privacy screening to future development on the adjoining vacant land to the north.

View impacts are considered acceptable given the prevailing built form and permitted height and floor space for the site and the fact that primary outlook for adjoining development is towards the park.

b) To achieve usable and pleasant streets and public domain areas in terms of wind mitigation and daylight access.

The development provides upgrades to the footpath including street tree planting as well as landscaping within the front setback.

The proposal complies with the sun access plane requirements.

(d) Demonstrate that the development will not have additional adverse impacts as a result of the variation.

As discussed above.

Front setback

(a) The control being varied;

Chapter D13, 2.2 Building to street alignment and street setbacks: A 4m front setback is required.

(b) The extent of the proposed variation and the unique circumstances as to why the variation is requested;

The residential portion of the building complies. However, the basement podium is between 3.15 and 2.67m from the front boundary, extending approximately 1-1.2m above natural ground level. The basement is not located fully below natural ground as lowering it would make it difficult to achieve the driveway grades to the basement.

(c) Demonstrate how the objectives are met with the proposed variations;

The objectives of the control are as follows:

- a) *To provide a hierarchy of street edges from commercial core with no street setbacks to residential locations with landscaped setbacks.*
- b) *To establish the desired spatial proportions of the street and define the street edge.*
- c) *To increase a clear transition between public and private space.*
- d) *To locate active uses, such as shopfronts, closer to pedestrian activity areas.*
- e) *To assist in achieving visual privacy to apartments from the street.*
- f) *To create good quality entry spaces to lobbies, foyers or individual dwelling entrances.*
- g) *To allow an outlook to, and surveillance of, the street.*
- h) *To allow for street landscape character, where appropriate.*
- i) *To maintain shared views to the ocean.*
- j) *To maintain sun access to the public domain.*

The basement encroachment is considered minor and not to result in adverse impacts on the streetscape. The podium is generally screened with landscaping and sufficient sight lines are provided for the neighbouring building and for vehicles exiting the site and adjoining development. The entry and court to unit one provides good quality entry spaces to the unit entrance as well as providing an outlook to, and surveillance of, the street. The sun access plain to Market Square is not impacted. The encroachment is satisfactory regarding the objectives above.

(d) Demonstrate that the development will not have additional adverse impacts as a result of the variation.

As discussed above.

2.3.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN 2019

A 1% levy is applicable to the development under this plan.

2.4 SECTION 4.15(1)(A) (IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 7.4

Section 4.15(a)(iv) the There are no planning agreements entered into or any draft agreement offered to enter into under S7.4 which affect the development.

2.5 REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)

92 What additional matters must a consent authority take into consideration in determining a development application?

Conditions of consent are recommended regarding demolition.

2.6 SECTION 4.15(1)(B) THE LIKELY IMPACTS OF DEVELOPMENT

The proposal is considered acceptable regarding the likely impacts.

2.7 SECTION 4.15(1)(C) THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT

Does the proposal fit in the locality?

The proposal is considered appropriate regarding the zoning of the site and is not expected to have any significant adverse impacts on the amenity of the locality or adjoining developments.

Are the site attributes conducive to development?

There are no site constraints that would prevent the proposal.

2.8 SECTION 4.15(1)(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS

Submissions are discussed at section 1.5.

2.9 SECTION 4.15(1)(E) THE PUBLIC INTEREST

The application is not expected to have any unreasonable impacts on the environment or the amenity of the locality. It is considered appropriate with consideration to the zoning and the character of the area and is considered to be in the public interest.

3 CONCLUSION

This application has been assessed having regard to the Heads of Consideration under Section S4.15(1) of the Environmental Planning and Assessment Act 1979. The proposed development is permissible with consent and has regard to the objectives of the zone and is consistent with the applicable provisions of the relevant planning instruments including Wollongong LEP 2009, relevant state policies, Council DCPs, Codes and Policies. The design of the development is appropriate regarding the controls outlined in these instruments.

The lot width is less than that specified in WLEP 2009 for residential flat buildings. The applicant has followed the process set out in clause 4.6 of WLEP 2009 and adequately justified the development standard departure. Potential lot isolation has been adequately addressed. The proposal involves variations to front, side setback and deep soil requirements under WDCP2009. Variation request statements has been submitted and assessed as reasonable. The recommendations of the Design Review Panel have been adopted in the revised plans and matters raised by the Panel are satisfactorily resolved. Internal referrals are satisfactory, and submissions have been considered in the assessment.

It is considered that the proposed development has otherwise been designed appropriately given the nature and characteristics of the site and is unlikely to result in significant adverse impacts on the character or amenity of the surrounding area.

4 RECOMMENDATION

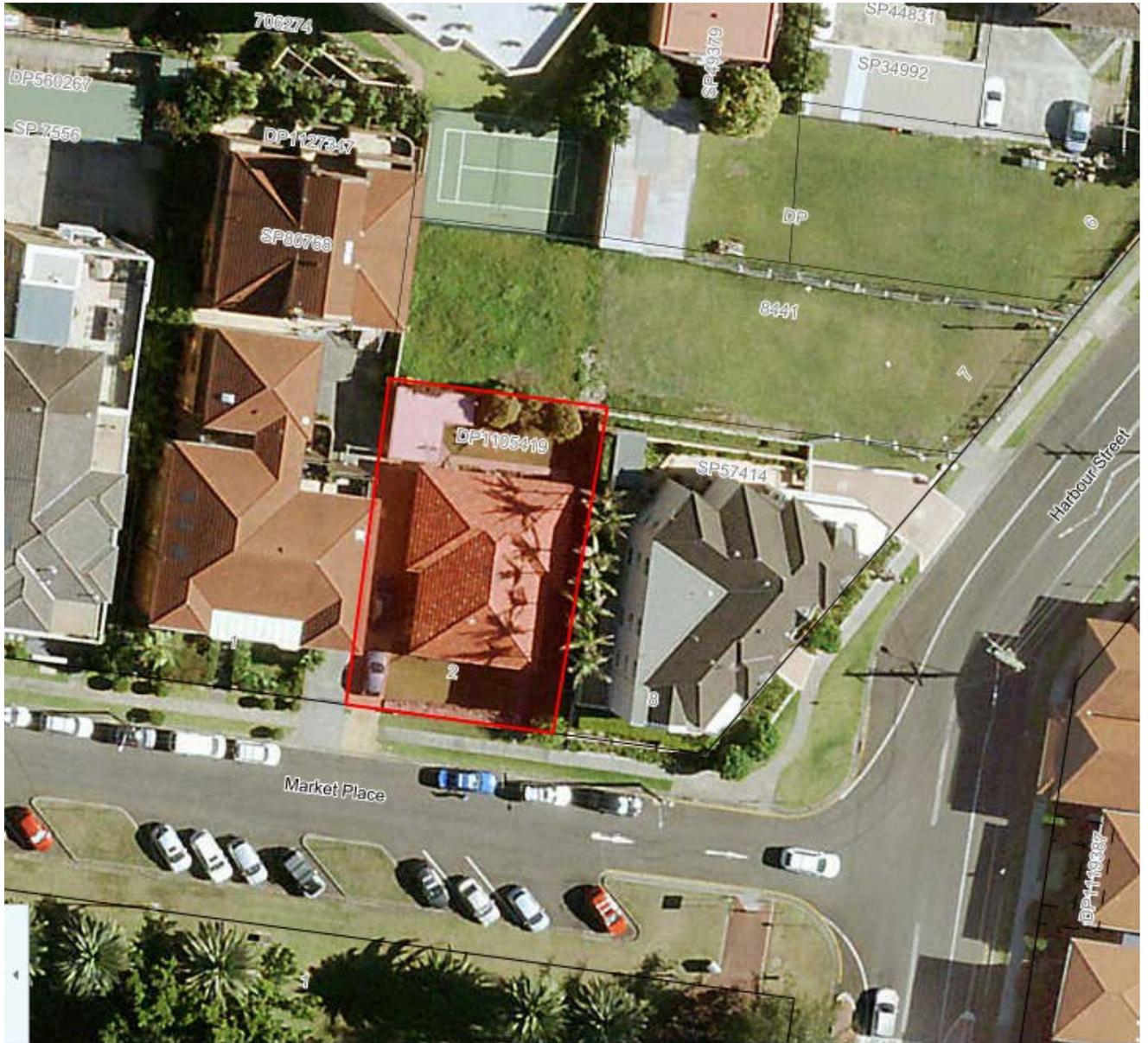
It is recommended that development application DA-2019/1375 be approved subject to the draft conditions of consent at **Attachment 7**.

5 ATTACHMENTS

1. Aerial photograph
2. WLEP zoning map
3. Plans
4. Design Review Panel notes
5. Clause 4.6 variation request
6. WDCP 2009 compliance table
7. Draft conditions of consent

DA-2019/1375

Attachment 1 – Aerial photograph



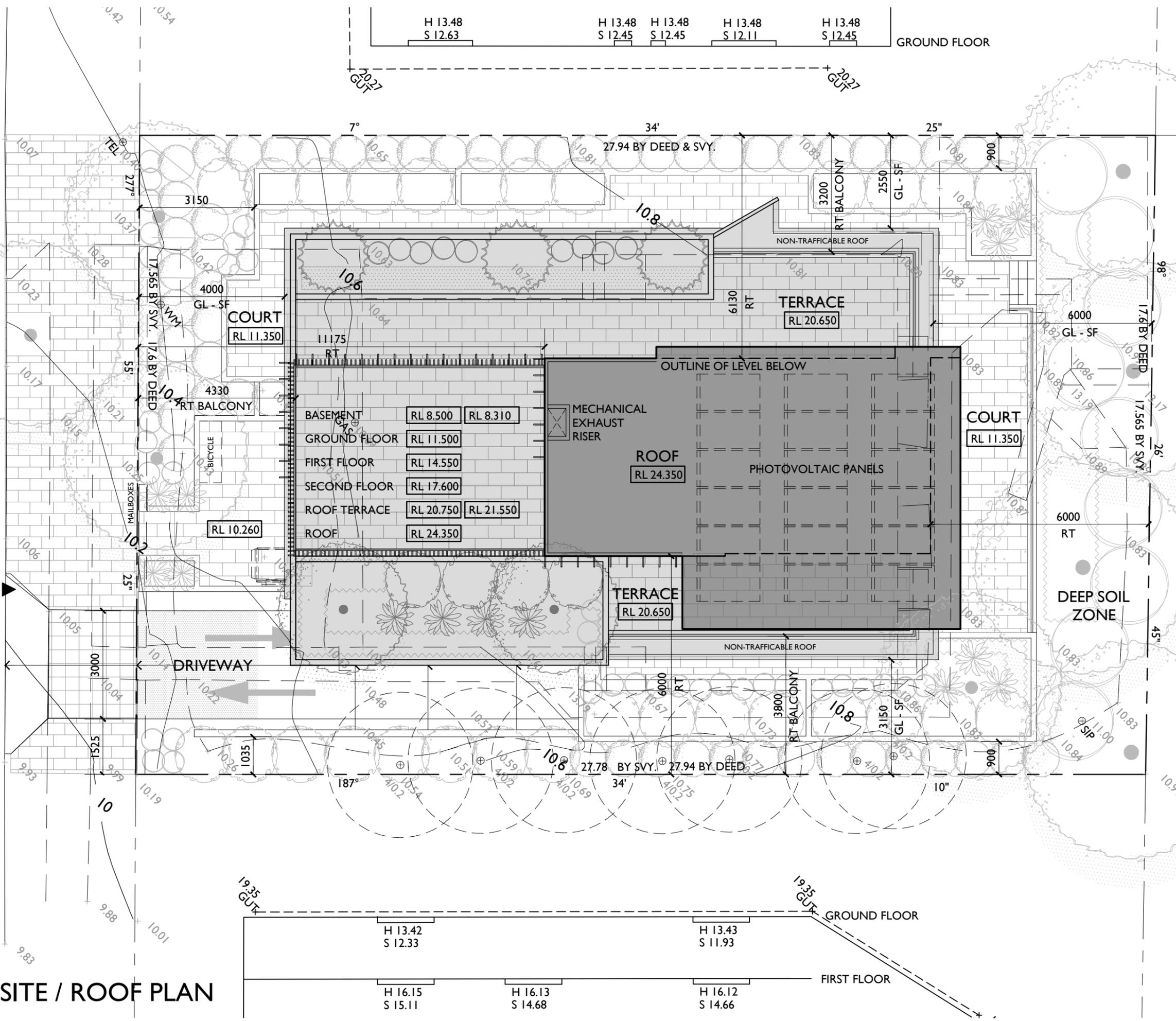
DA-2019/1375

Attachment 2 – WLEP 2009 zoning map



MARKET

PLACE



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B	28.02.20	AMENDED FOR DA
C	08.04.20	AMENDED FOR DA

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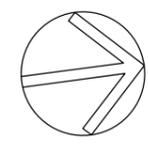
Project
 3 BOUTIQUE APARTMENTS
 OVER BASEMENT PARKING

At
 2 MARKET PLACE
 WOLLONGONG, NSW

For
THESTEX PTY LTD

Title DEVELOPMENT APPLICATION SITE / ROOF PLAN	
Scale 1:100@A3	Date APRIL 2020
Drawn DP JS	Checked
Project No. 2019-12	Drawing No. A-101
	Issue C

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SITE / ROOF PLAN

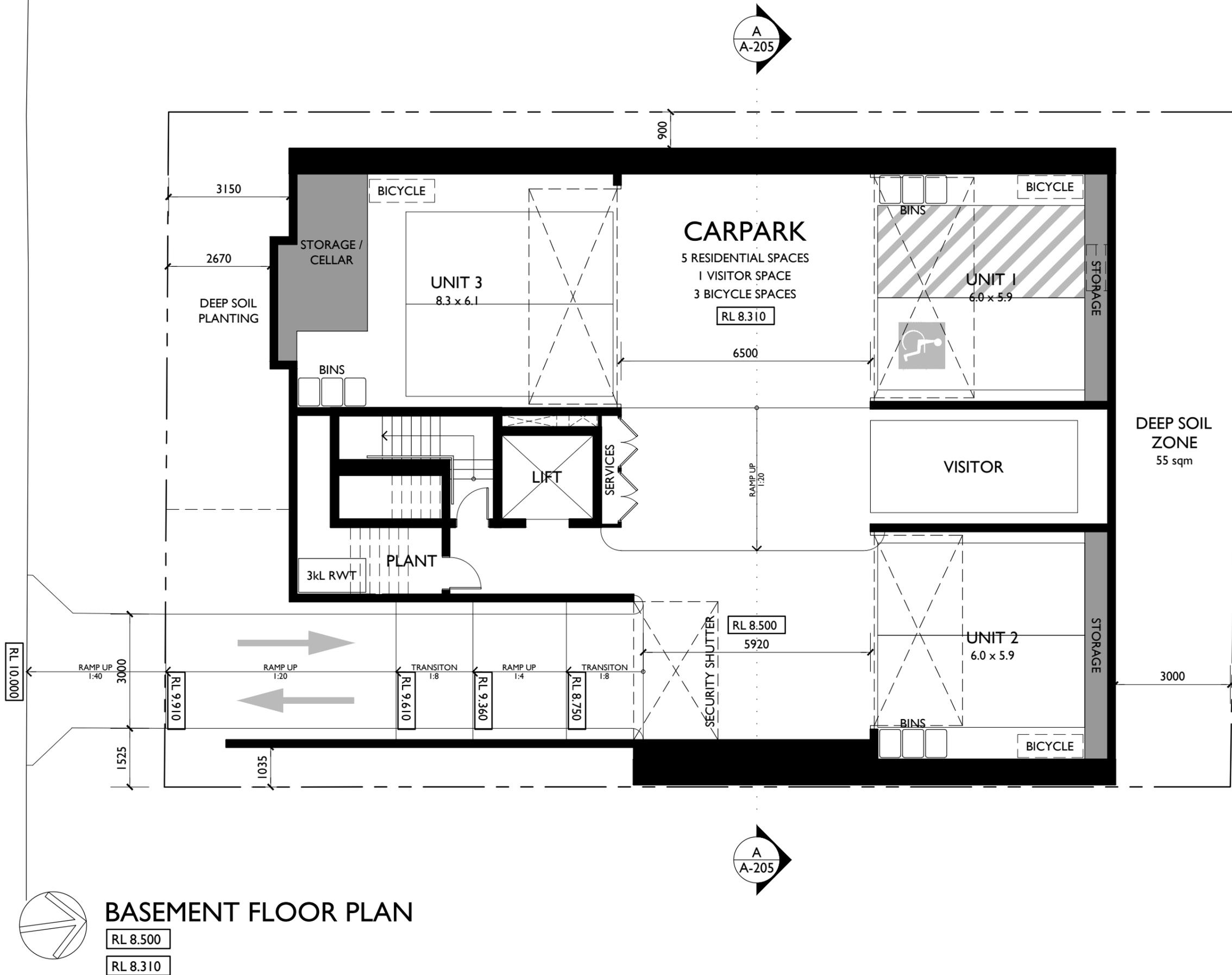
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BASEMENT FLOOR PLAN

RL 8.500

RL 8.310



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For
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Project No.
 2019-12

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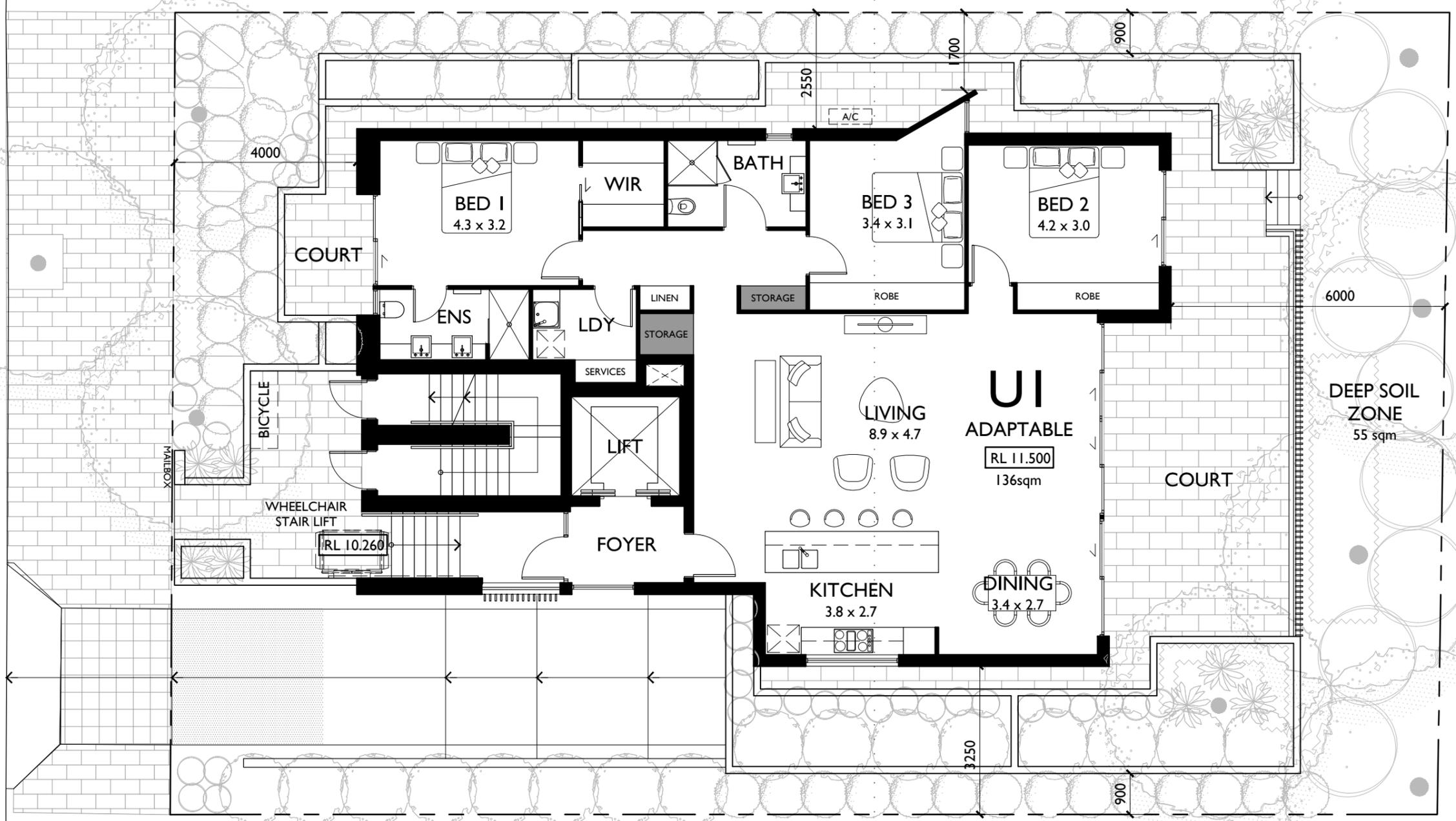
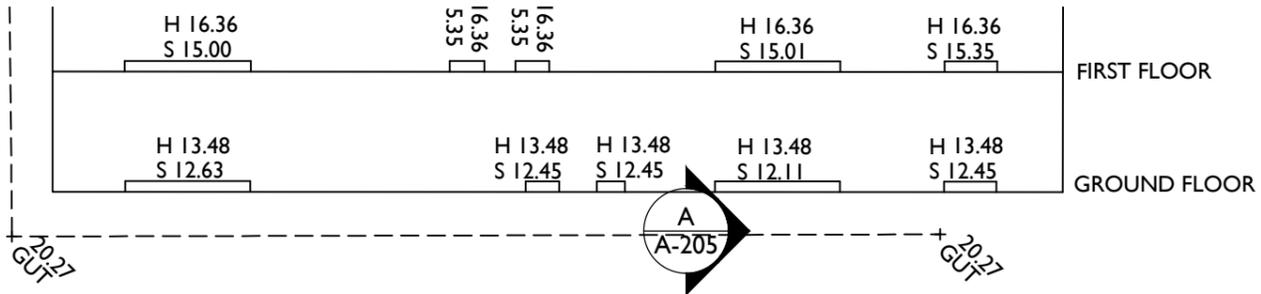
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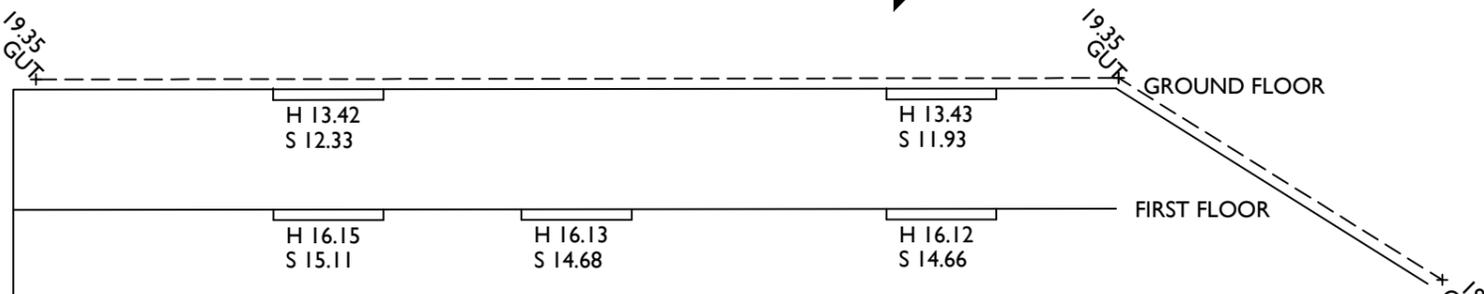
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GROUND FLOOR PLAN

RL 11.500



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Project
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At
 2 MARKET PLACE
 WOLLONGONG, NSW

For
 THESTEX PTY LTD

Title
 DEVELOPMENT APPLICATION
 GROUND FLOOR PLAN

Scale
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Date
 APRIL 2020

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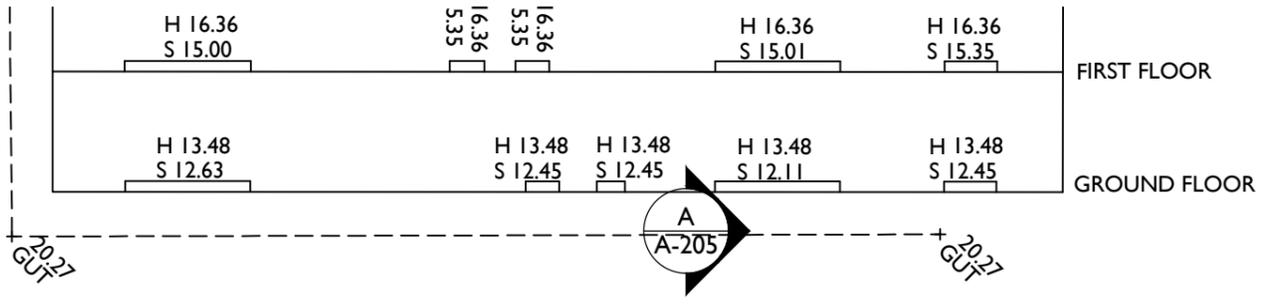
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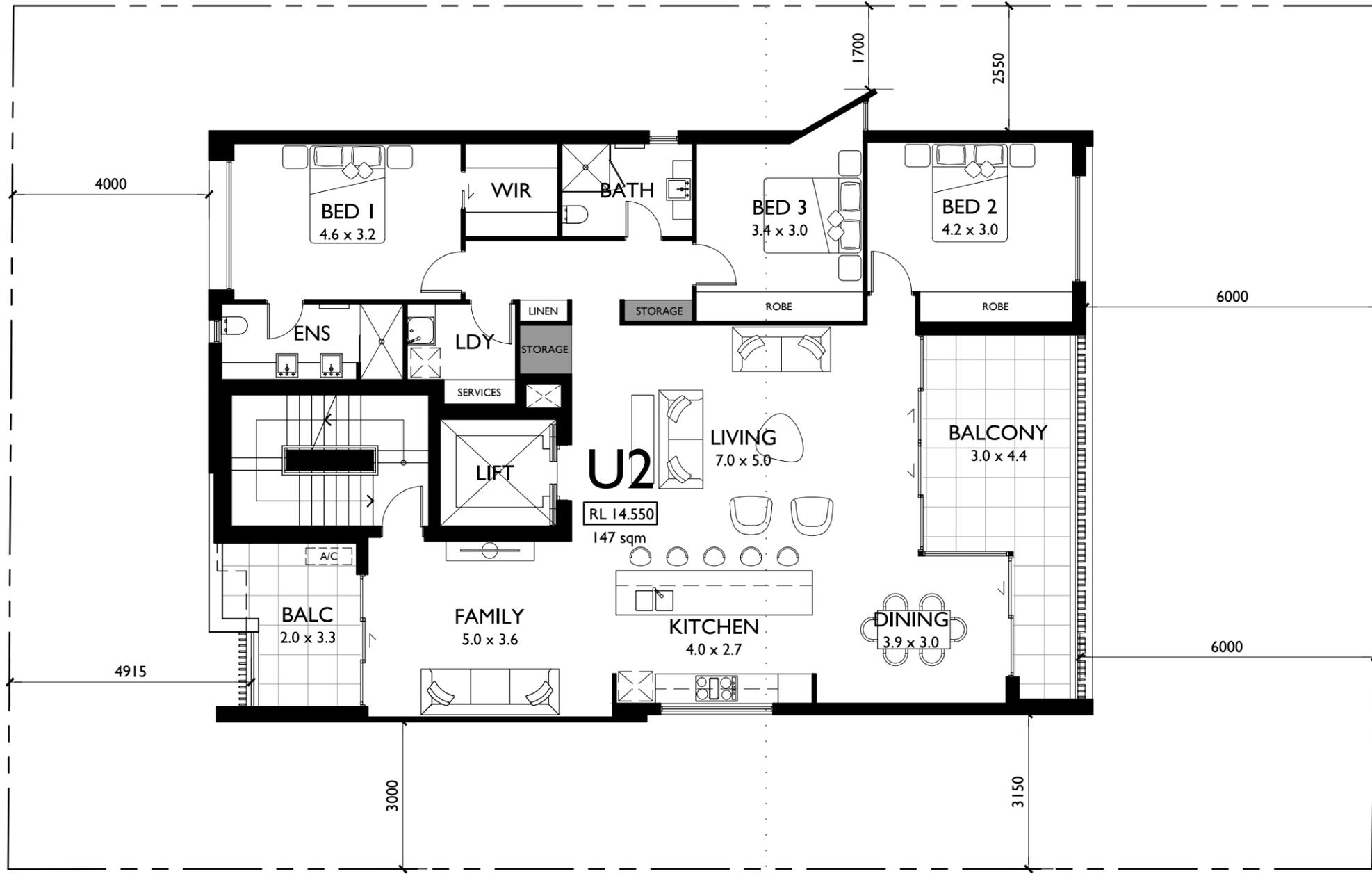
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Project
 3 BOUTIQUE APARTMENTS
 OVER BASEMENT PARKING

At
 2 MARKET PLACE
 WOLLONGONG, NSW

For
 THESTEX PTY LTD

Title
 DEVELOPMENT APPLICATION
 FIRST FLOOR PLAN

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Date
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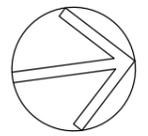
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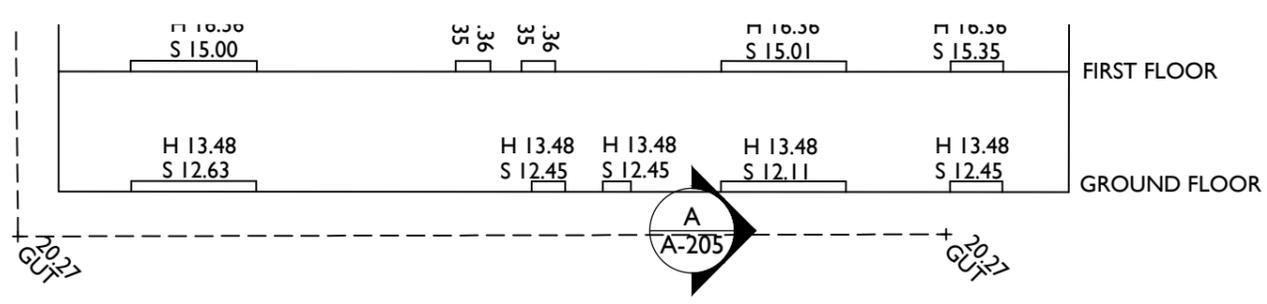
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FIRST FLOOR PLAN

RL 14.550





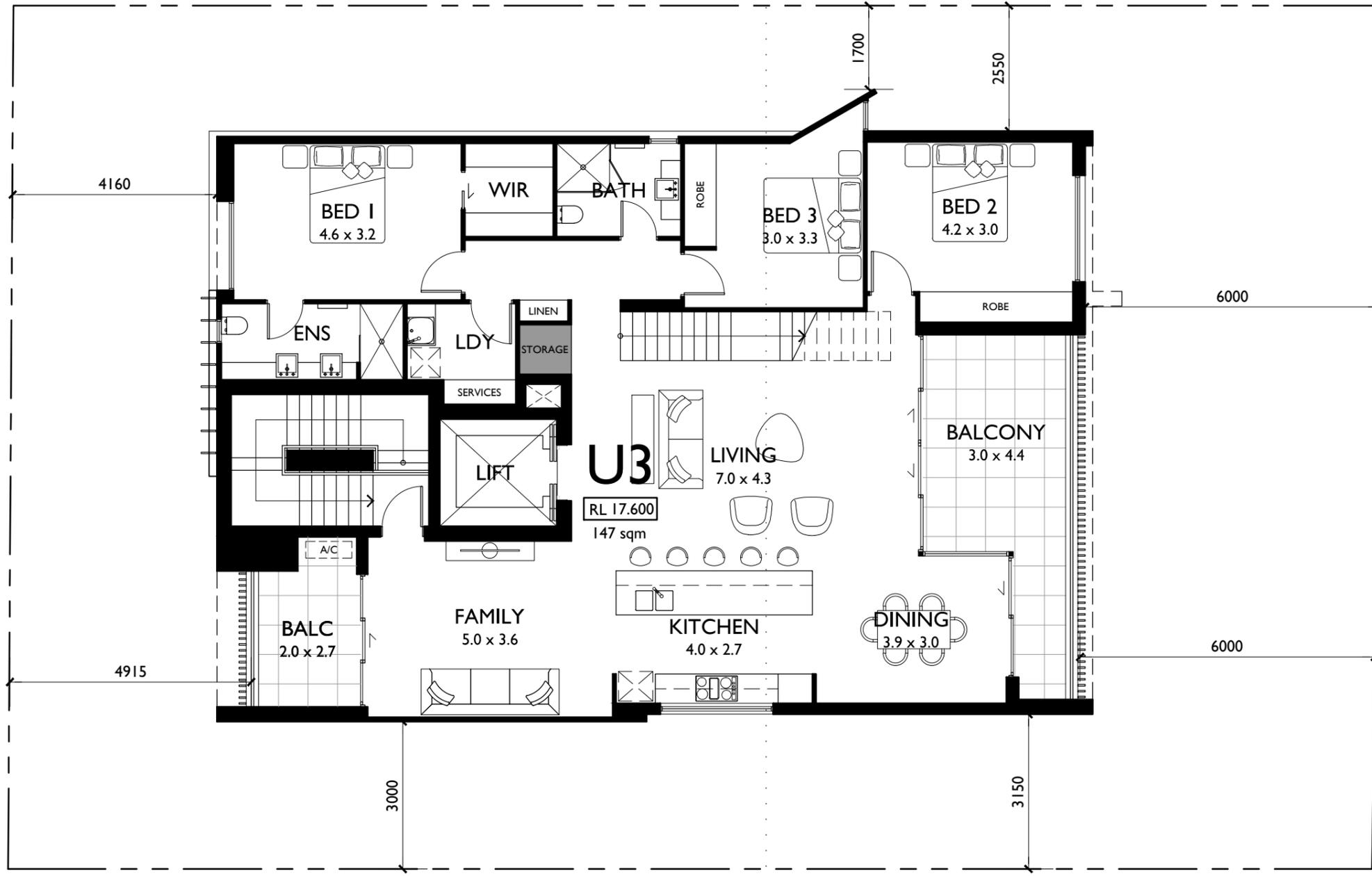
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ISSUE	DATE	DESCRIPTION
A	25.11.19	ISSUE FOR DA
B	08.04.20	AMENDED FOR DA

NOT FOR CONSTRUCTION

MARKET

PLACE



94 Kembla St, Wollongong NSW 2500 PO Box 3061 Wollongong
 ph: 02 4228 6400 fax: 02 4228 6455 www.admarchitects.com.au

Project
 3 BOUTIQUE APARTMENTS
 OVER BASEMENT PARKING

At
 2 MARKET PLACE
 WOLLONGONG, NSW

For
 THESTEX PTY LTD

Title
 DEVELOPMENT APPLICATION
 SECOND FLOOR PLAN

Scale
 1:100@A3

Date
 APRIL 2020

Drawn
 DP

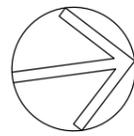
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Project No.
 2019-12

Drawing No.
 A-105

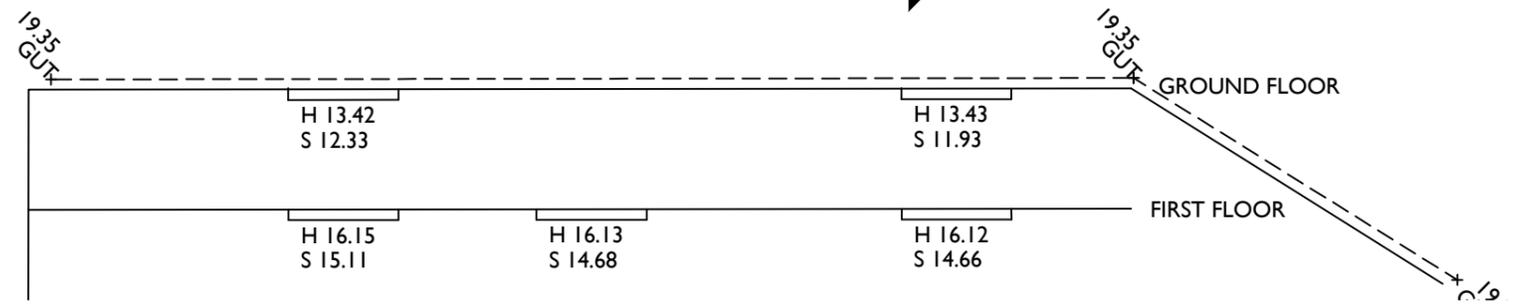
Issue
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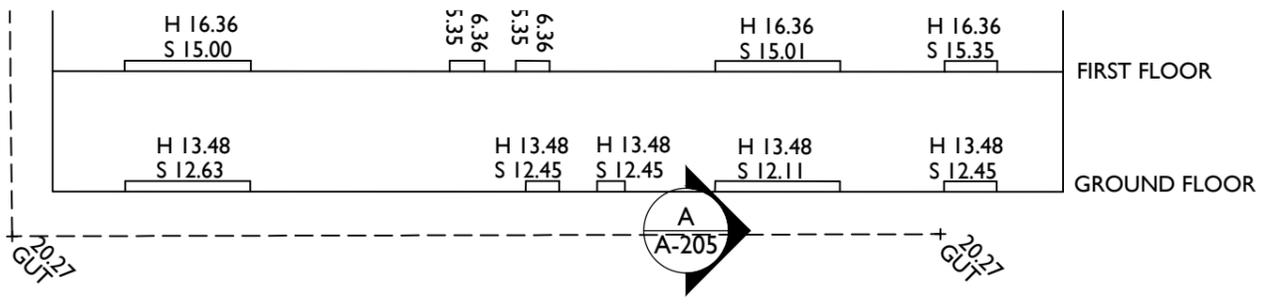
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SECOND FLOOR PLAN

RL 17.600





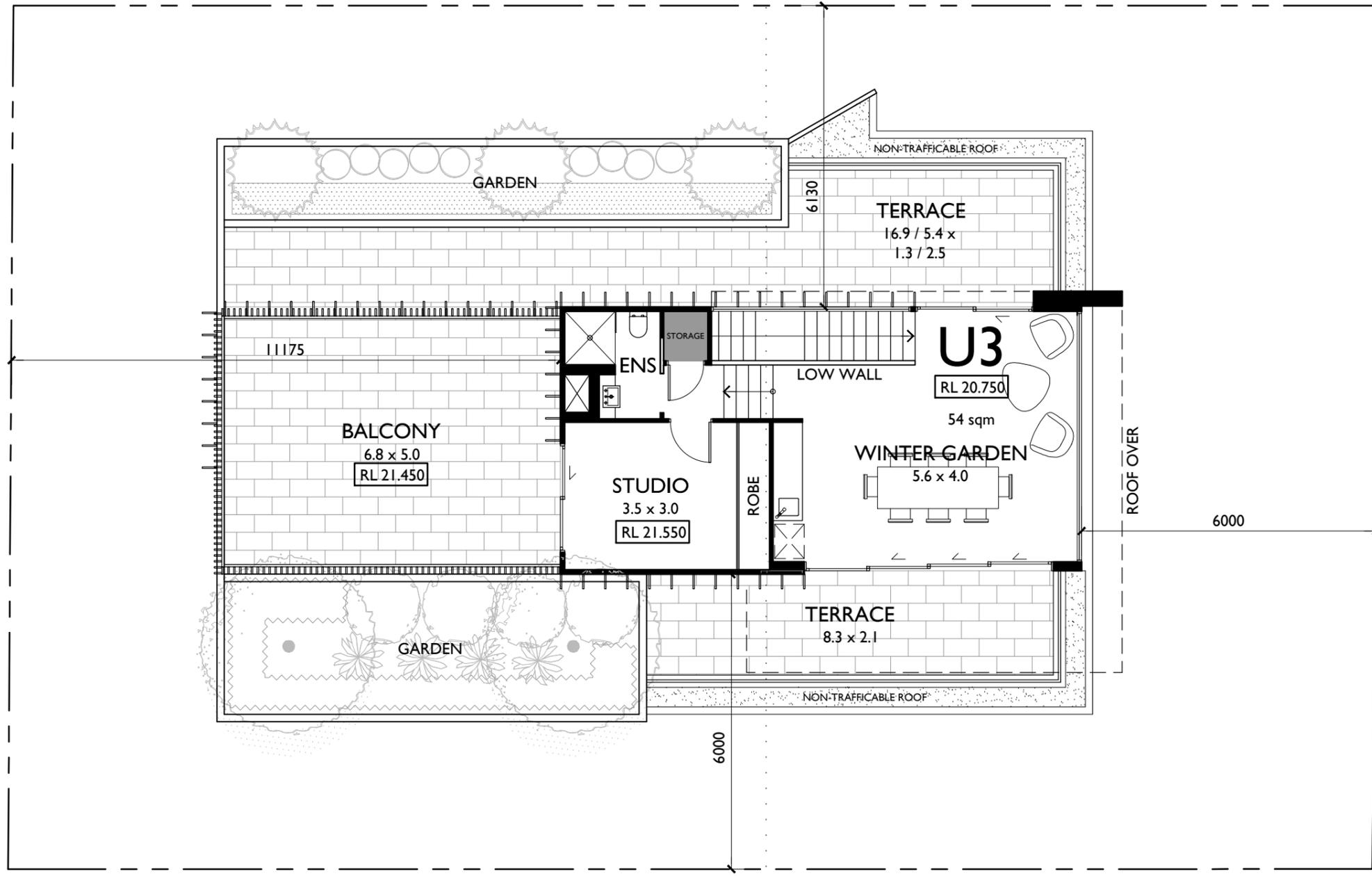
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B	28.02.20	AMENDED FOR DA
C	08.04.20	AMENDED FOR DA

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MARKET

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 ph: 02 4228 6400 fax: 02 4228 6455 www.admarchitects.com.au

Project
 3 BOUTIQUE APARTMENTS
 OVER BASEMENT PARKING

At
 2 MARKET PLACE
 WOLLONGONG, NSW

For
 THESTEX PTY LTD

Title
 DEVELOPMENT APPLICATION
 ROOF TERRACE PLAN

Scale
 1:100@A3

Date
 APRIL 2020

Drawn
 DP JS

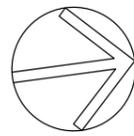
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Project No.
 2019-12

Drawing No.
 A-106

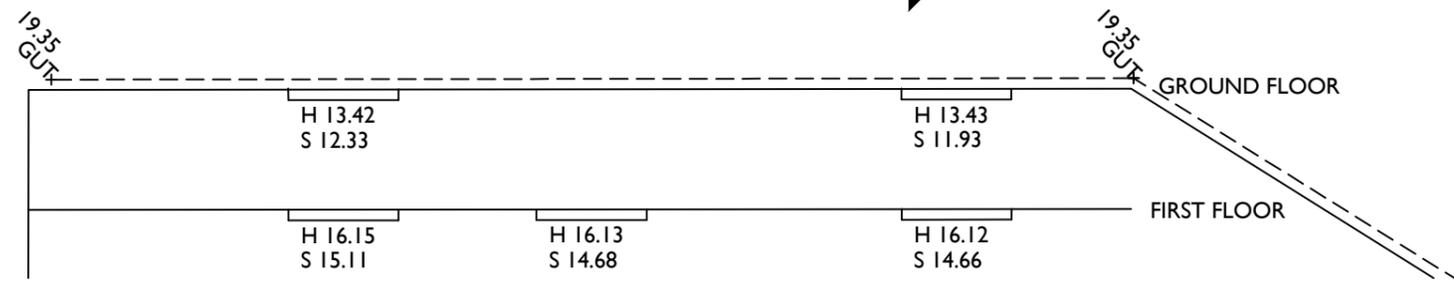
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ROOF TERRACE PLAN

RL 21.550
 RL 20.750



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SOUTH ELEVATION


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 ph: 02 4228 6400 fax: 02 4228 6455 www.admarchitects.com.au

Project
 3 BOUTIQUE APARTMENTS
 OVER BASEMENT PARKING

At
 2 MARKET PLACE
 WOLLONGONG, NSW

For
 THESTEX PTY LTD

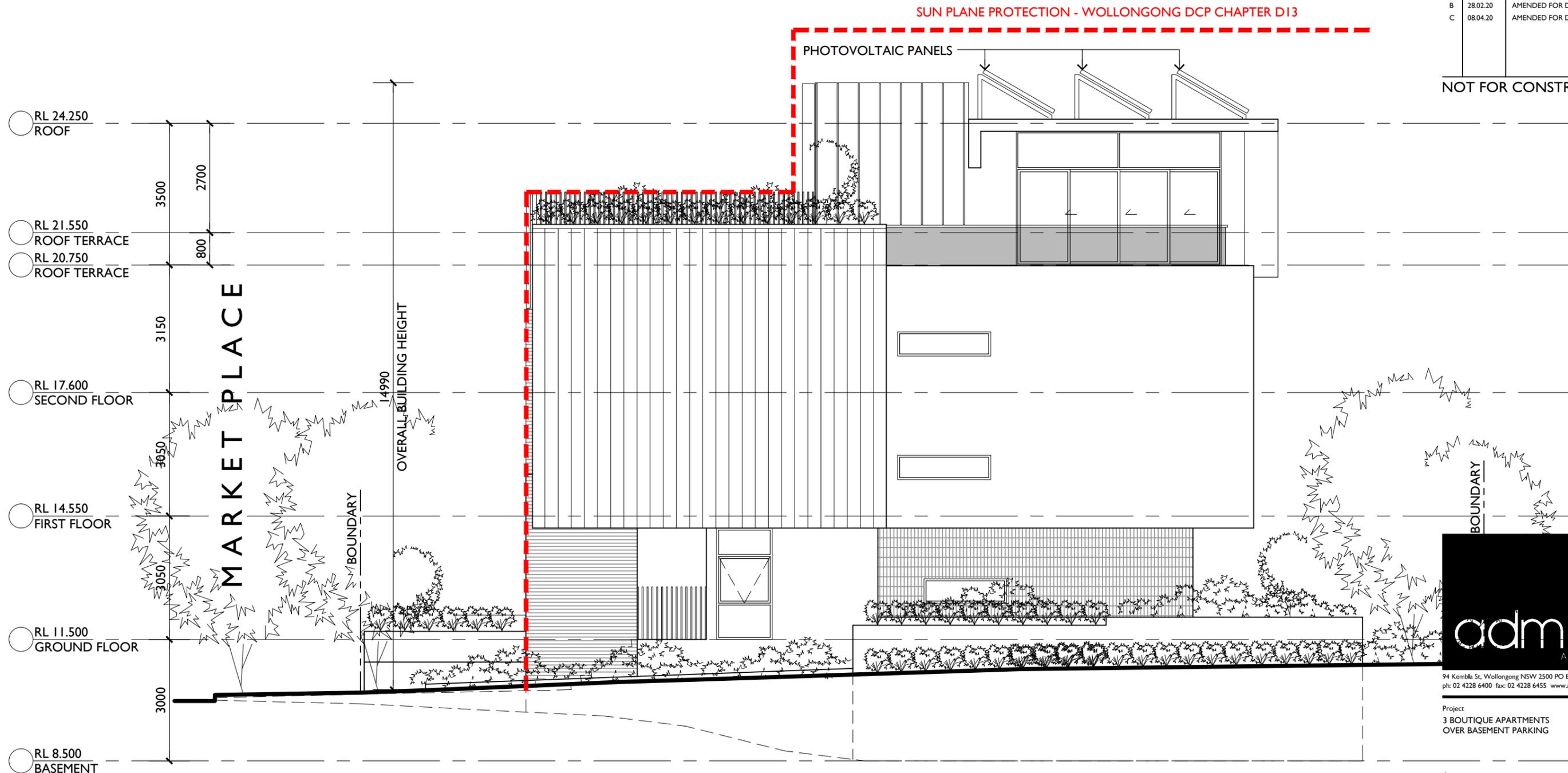
Title
 DEVELOPMENT APPLICATION
 SOUTH ELEVATION

Scale	Date	
1:100@A3	APRIL 2020	
Drawn	Checked	
DP JS		
Project No.	Drawing No.	Issue
2019-12	A-201	C

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EAST ELEVATION


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 ph: 02 4228 6400 fax: 02 4228 6455 www.admarchitects.com.au

Project
 3 BOUTIQUE APARTMENTS
 OVER BASEMENT PARKING

At
 2 MARKET PLACE
 WOLLONGONG, NSW

For
 THESTEX PTY LTD

Title
 DEVELOPMENT APPLICATION
 EAST ELEVATION

Scale	Date
1:100@A3	APRIL 2020

Drawn	Checked
DP JS	

Project No.	Drawing No.	Issue
2019-12	A-202	C

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NORTH ELEVATION


 94 Kembla St, Wollongong NSW 2500 PO Box 3061 Wollongong
 ph: 02 4228 6400 fax: 02 4228 6455 www.admarchitects.com.au

Project
 3 BOUTIQUE APARTMENTS
 OVER BASEMENT PARKING

At
 2 MARKET PLACE
 WOLLONGONG, NSW

For
 THESTEX PTY LTD

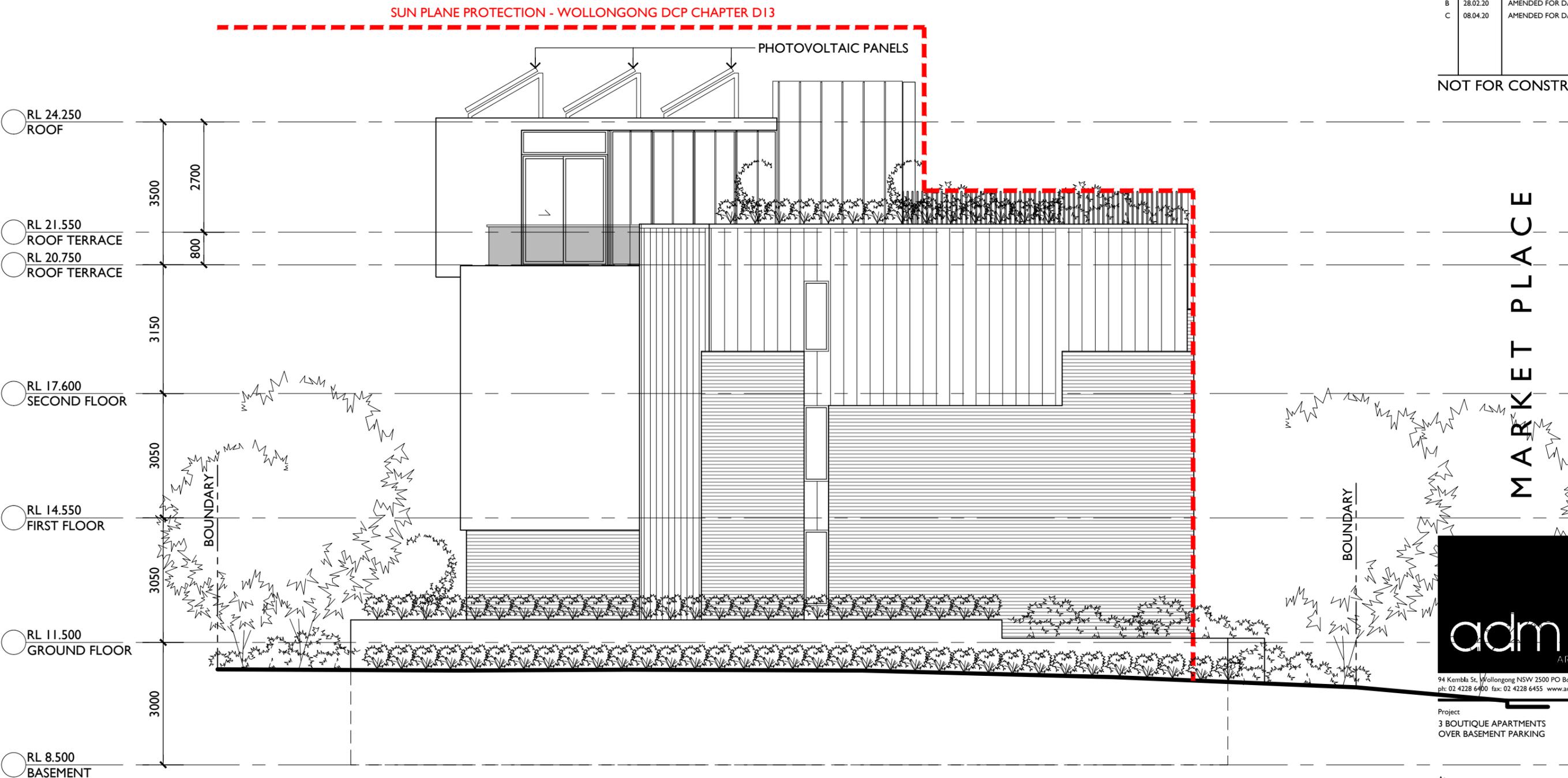
Title
 DEVELOPMENT APPLICATION
 NORTH ELEVATION

Scale	Date	
1:100@A3	APRIL 2020	
Drawn	Checked	
DP JS		
Project No.	Drawing No.	Issue
2019-12	A-203	C

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WEST ELEVATION


 94 Kembla St, Wollongong NSW 2500 PO Box 3061 Wollongong
 ph: 02 4228 6400 fax: 02 4228 6455 www.admarchitects.com.au

Project
 3 BOUTIQUE APARTMENTS
 OVER BASEMENT PARKING

At
 2 MARKET PLACE
 WOLLONGONG, NSW

For
 THESTEX PTY LTD

Title
 DEVELOPMENT APPLICATION
 WEST ELEVATION

Scale
 1:100@A3

Date
 APRIL 2020

Drawn
 DP JS

Checked

Project No.
 2019-12

Drawing No.
 A-204

Issue
 C



1	COLORBOND "MONUMENT" MATT METAL CLADDING
2	PGH BRICKS MANHATTAN "TRIBECA" WALLING
3	PGH BRICKS MORADA "NERO" WALLING
4	DULUX "LEXICON QUARTER" CONCRETE WALLING & SLAB EDGES
5	DULUX "COLORBOND MONUMENT" WALLING
6	DULUX DURATEC ZEUS "MONUMENT" WINDOWS & BALUSTRADES
7	VITRACORE G2 "BRUSHED COPPER" SUN SHADES

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ISSUE	DATE	DESCRIPTION
A	25.11.19	ISSUE FOR DA
B	28.02.20	AMENDED FOR DA

NOT FOR CONSTRUCTION

COLOURS & MATERIALS SCHEDULE



2



3



3



1



1



7



7

PRECEDENTS



Project
 3 BOUTIQUE APARTMENTS
 OVER BASEMENT PARKING

At
 2 MARKET PLACE
 WOLLONGONG, NSW

For
THESTEX PTY LTD

Title
 DEVELOPMENT APPLICATION
 COLOURS & MATERIALS SCHEDULE

Scale 1:100@A3	Date FEBRUARY 2020
Drawn DP, JS	Checked
Project No. 2019-12	Drawing No. A-501
	Issue B

**Wollongong Design Review Panel
Meeting minutes and recommendations**

Date	20 January 2020
Meeting location	Wollongong City Council Administration Offices
Panel members	David Jarvis Tony Tribe Marc Deuschle
Apologies	Pier Panozzo – City centre & Major Development Manager
Council staff	Nigel Lamb - City centre & Major Development Manager (Acting)
Guests/ representatives of the applicant	Angelo Di Martino – ADM Architects Dejan Panic – ADM Architects Renzo Garato – Thestex Pty Ltd Lauren Turner – MMJ Wollongong
Declarations of Interest	Nil
Item number	2
DA number	DA-2019/1375
Determination pathway	Clause 7.18 WLEP 2009
Property address	2 Market Place, Wollongong 2500
Proposal	Demolition of existing structures and construction of residential flat building - re-notified due to change of development description
Applicant or applicant's representative address to the design review panel	
Background	The site was Inspected by the Panel on 20 January 2020. This proposal contains only 3 units, as such SEPP 65 / ADG do not technically apply to this building. However, many of the objectives within the ADG outline good design practice that remain relevant, to a building of this scale in this context. As such the ADG will still be referenced in this report as a benchmark for appropriate design.
Design quality principals SEPP 65	
Context and Neighbourhood Character	The proposal is located fronting the heritage listed Park, Market Square. It is surrounded by modestly scaled residential flat buildings (3 to 4 storeys). The current proposal is largely consistent with this context, pending further refinement of the buildings upper level.
Built Form and Scale	<u>Side setbacks</u> The proposal is largely compliant with both ADG and council's built form controls. With the exception of the western side boundary set back, which is 2550mm from the boundary (WLEP and ADG require a minimum of 3m). The minor non-compliance with the western side boundary setback has limited impact upon the amenity of the proposal or the neighbour to the west (4 Market Place). The spatial quality between 4 Market Place and the proposed development also remains consistent with the spatial quality of the street. It is also noted that the proposal is significantly below both the maximum permissible height and FSR for this site. <u>Street setback</u> The proposed street setback (4m) is approximately midway between the street setbacks of neighbouring buildings (4 Market Place and 28 Harbour street). This is a reasonable strategy,

consistent with the current street scape.

Relation to natural ground level

To accommodate a basement car park on the tight constraints of the site, the proposal is raised approximately 1m above street level. This has created a podium base to the building that abuts both side boundaries. The podium will effectively create a side boundary fence to the eastern and western neighbours. Consideration should be given to raising the height of the planter (behind the carpark ramp on the east and behind the building line on the west) to approximately 1.5m, as viewed from neighbouring properties. This will allow the walls to read as an appropriate scaled boundary wall and assist in reducing potential privacy issues between neighbours. A deeper planter (created by the increased wall height) will also assist in providing for better quality landscaping, allowing for medium shade trees / feature trees.

A narrow-paved area has been created between side boundary planters and the proposed building. If this space is utilised as habitable space by the ground floor unit it will create the potential for privacy issues with neighbouring properties. These spaces should be utilised for service access only. They should be narrow (500mm approximately) and finished with a different material to the habitable courtyard spaces.

Sight lines between the rear ground floor courtyard and neighbouring properties should be analysed, to establish if privacy screens are necessary on the eastern and western edges of the terrace.

Roof terrace

The proposed roof terrace servicing unit 3, consolidates its built form mass centrally on the building, providing 6m setbacks to both the eastern and western side boundaries and extending its roof form to align with the street façade. The resultant form does not comply with council's sun plane requirements, as set out in WLEP. The form of the roof level terrace must be developed to address this issue.

To allow the building form to be developed in response to its context, it is recommended that the contextual study is developed. This must include three dimensional models of neighbouring buildings. This will allow the upper level terrace to be developed and tested in its context. In particular, a suns eye view study will play an important role in determining the proposals impact upon its neighbours and thus assist in developing an appropriate building form.

Setting the roof terrace form back from the street will help to consolidate open space, creating a larger terrace orientated towards Market Place. The reduction of the built form side setbacks on the roof terrace should be possible, but must be tested and justified (as outline above). This may require screening to the east and western sides of the terraces and focusing outlook and consolidating open space on the northern and southern edges of

	<p>the terrace.</p> <p><u>Family room balconies</u></p> <p>The proposal should aim to develop a stronger connection with Market Place / Market Square. One way of achieving this, would be to increase the size of balconies to the level 1 and 2 family rooms. The balconies could be cantilevered to extend closer to the street. However, if the building form is to remain consistent with the street scape the cantilever must remain behind the building line of the eastern neighbour (28 Harbour street). This strategy will create a more articulated street façade that steps to align with neighbouring buildings.</p>
Density	<p>The proposal is acceptable and will not present as an over development of the site, pending further developments to the roof terrace as outlined above.</p>
Sustainability	<p>The proposal will provide good solar access and natural cross ventilation to all units.</p> <p>Opportunities to harvest rainwater for use in maintaining any plantings established on the building or the site should be integrated. Other water minimization measures should be considered including the reuse of rainwater for toilet flushing and use in washing machines.</p> <p>Species selection for any plantings should aim to support council's commitment to maintaining local biodiversity and natural landscapes, and preventing future weed problems.</p>
Landscape	<p>The public domain has been shown as a paved verge – this feels inappropriate and should be revised to be in keeping with the surrounding properties – planted verge, path and planting to front setback – avoiding lawn seems appropriate.</p> <p>An opportunity exists to enlarge the planter above the carpark entry outside the U1 kitchen. This would give a green feature to the entry and also to the kitchen (if a window is introduced as suggested).</p> <p>Deep soil to the front and rear setbacks are acceptable for a site this size. Any additional deep soil possible to allow trees on corners or other prominent locations is encouraged.</p> <p>The thin strips of planting to each side setback, between wall and boundary should be considered as part of the neighbouring properties and the building wall is to form the fence to avoid a 300mm wide redundant pocket of space. A min depth of 450 topsoil should be provided.</p> <p>Access to all planters on structure should be considered to ensure they can be easily and safely maintained. The logic of the access path on the GF does not seem to have been applied to the roof. Species should all be low water use if possible and align with</p>

	council's preferred species. Irrigation should be provided and ideally this should use water collected from the building itself.
Amenity	<p>Units are generously proportioned and will provide a reasonable level of amenity.</p> <p>Consideration should be given to providing a window to the kitchens. The window could be located between bench tops and over head cupboards. They should be tested in their context to ensure sight lines likely to create privacy issues are not being created (utilising the contextual model, see comments above, built Form). It this study raises concerns in regard to privacy an opaque window can be used.</p> <p>The provision of a wheelchair lift in the narrow entry space is unfortunate. Consideration should be given to discharging the fire stair at the same level as the foyer to create a wider entry, that will more comfortably accommodate a chair lift. In any reconfiguration of the entry/foyer area consider also:</p> <ul style="list-style-type: none"> -Undercover access from garage stair -Direct access to rising stair
Safety	Planters and landscaping located within the street set back should be configured to maintain clear sight line (vehicles and pedestrians) for vehicles exiting the site.
Housing Diversity and Social Interaction	The proposal will provide an appropriate housing option for this area.
Aesthetics	<p>Both material selection and the composition of the building form have been developed in a competent manner. Further refinements to the building form as outlined above should assist in refining the proposal to provide a building that will provide a positive contribution to this neighbourhood.</p> <p>Servicing of the building must be considered at this stage of the design process. The location of service risers, car park exhausts, AC condensers, down pipes and fire hydrant boosters should be accommodated in a way that does not clutter the expression of the building.</p>
Design Excellence WLEP2009	
Whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved	A competent aesthetic has been developed for the proposal. Pending further refinements (as outlined in the report above). The proposal will provide a positive contribution to this neighbourhood.
Whether the form and external appearance of the proposed development will improve the quality and	A competent aesthetic has been developed for the proposal.

amenity of the public domain,	
Whether the proposed development detrimentally impacts on view corridors,	Further contextual analysis and potential modelling of the upper levels of the building form are recommended.
Whether the proposed development detrimentally overshadows an area shown distinctively coloured and numbered on the Sun Plane Protection Map,	Further development required.
How the development addresses the following:	
the suitability of the land for development,	The proposal is appropriately located.
existing and proposed uses and use mix	The proposal will provide an appropriate housing option for this neighbourhood.
heritage issues and streetscape constraints,	Further development to the upper levels of the proposal are required. To limit over shadowing of Market Square.
the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,	NA
bulk, massing and modulation of buildings	Further development of the upper level of the building is recommended.
street frontage heights	Upper level to be recessed further, resulting in a three storey presentation to the street.
environmental impacts such as sustainable design, overshadowing, wind and reflectivity	Further contextual analysis is recommended.
the achievement of the principles of ecologically sustainable development	Good solar access and natural cross ventilation has been provided to all units. Further commitments to sustainable design (as outlined above sustainability) are required.
pedestrian, cycle, vehicular and service access, circulation and requirements	Further development of the pedestrian entry is required (as outlined above Amenity)
impact on, and any proposed improvements to, the public domain	Acceptable.
Key issues, further Comments & Recommendations	<p>The form and expression of the current proposal are considered to be an appropriate response to sites immediate context that will provide a positive contribution to this neighbour hood pending resolution of the following issues:</p> <ul style="list-style-type: none"> - Remodelling upper level of building to comply with council's controls and respond to a more detailed contextual analysis. - Refinements to the building base.

	<ul style="list-style-type: none">- Development of a more generously proportioned building entry/foyer area incorporating comments above.
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6-8 Regent Street
Wollongong NSW 2500
Telephone: (02) 4229 5555
Facsimile: (02) 4226 5741

EXCEPTION TO DEVELOPMENT STANDARD VARIATION STATEMENT

Site Width – Wollongong LEP 2009

Address: 2 Market Place, Wollongong
Proposal: Proposed New Residential Flat Building (3 Units)
Date: November 2019

1 Introduction

The purpose of this variation statement is to outline the justification for seeking an exception to the site width (being a development standard) contained within the *Wollongong Local Environmental Plan (WLEP) 2009*. This variation statement has been prepared in consideration of Clause 4.6 and Clause 7.14 (Minimum Site Width) in *WLEP 2009* and the NSW Department of Planning, Infrastructure and Environment's (DPIE) *"Varying development standards: a guide"* (August 2011).

The advice herein relates to an application for the proposed demolition of existing buildings/structures and construction of a new four (4) storey residential flat building (RFB) at 2 Market Place, Wollongong (the site). The site is legally referred to as Lot 2 DP 1105419. The site is isolated by existing three (3) storey strata titled apartment complexes either side and a single street frontage (to Market Place).

The Development Application seeks consent to undertake the following works:

- Demolition of all existing buildings/structures (existing single storey dual occupancy and detached outbuildings);
- Excavation and site preparation to accommodate a single level basement;

- Construction of a new four (4) storey RFB containing three (3) residential apartments. The building is to be an exclusive boutique complex, offering one unit per level for Units 1 & 2 and two (2) levels for Unit 3 penthouse;
- Basement parking for six (6) cars (5 x resident and 1 x visitor), with additional bike spaces; and
- Associated landscaping and stormwater drainage.

The details of this proposal are shown within the development drawings prepared by ADM Architects (attached to the application).

The proposed Development Application seeks to provide an appropriate and balanced development/environmental outcome for the subject site, and the Wollongong City Centre. In doing so, an exception to a development standard contained within *Wollongong Local Environmental Plan (LEP) 2009* is requested. In this regard, the proposed development generally accords with all *LEP* controls, apart from a numerical variation being requested to the minimum 24 metre site width development standard contained within *Clause 7.14 Minimum site width*. The subject allotment has a site width of 17.56m and is isolated by existing three (3) storey strata titled apartment complexes either side and a single street frontage (to Market Place). It is considered that requiring amalgamation to address the site width requirement would be unreasonable and unnecessary in this case as it cannot be viably achieved due to the complexities of such negotiations with the numerous property owners. Hence the purpose of this statement.

The request is in writing to address the relevant provisions within *Clause 4.6*, to demonstrate that strict compliance with the development standard is unreasonable in the circumstances of the case, and that there are sufficient environmental planning grounds to justify the proposed variation sought.

This statement has been prepared in accordance with the NSW Department of Planning Infrastructure (DPI) guideline "*Varying Development Standards: A Guide*" dated August 2011. Applications to vary development standards should also address the 'five-part test' established by the NSW Land and Environment Court (LEC) to determine whether the objection is well founded. An assessment of this applicant against the 'five-part test' is included in this statement.

The commentary provided herein outlines the development standard variation being proposed, which should be read in conjunction with the Statement of Environmental Effects and other documentation submitted to Council in support of the application.

Accordingly, the information below addresses the afore-mentioned requirements.



Figure 1: Proposed Development – Artist Impression (*Source: ADM Architects)

2 Overview of Clause 4.6

Clause 4.6 provides a framework for varying the applicable development standards under a Local Environmental Plan (LEP).

The objectives of this clause are as follows:-

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

Sub *Clauses (3)(a)* and *(3)(b)* state that development consent must not be granted unless the consent authority has considered a written request from the applicant that seeks to justify the contravention by demonstrating:

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

This is Statement provides a written request seeking to demonstrate the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard based on the following rationale (summary):

- Apart from this LEP site width control, the development complies with the numerical standards of the LEP and DCP with the only exceptions being minor variation to DCP Housing Choice and Mix, and deep soil requirements.
- The constraining isolated nature of the subject site making fully compliant development of this nature extremely difficult to achieve.
- The development is consistent with the objectives of the R1 General Residential Zone.

With regards to *Clauses (3)(a)*, there are no objectives for Clause 7.14. However, WDCP2009 does provide guidance and provides for development of sites, which are of sufficient width to accommodate the required building envelope, car parking and landscaping and to promote the efficient use of land. In this regard the subject proposal entails the demolition of a single storey dual occupancy and construction of a development containing 3 dwellings and provides for a more efficient use of the land and an improved design outcome.

As outlined in this report, the proposed development has regard to the objectives of the R1 General Residential zone, and despite the constraints on the site, the proposed development is below the maximum FSR and Height controls.

There are no unreasonable impacts from the proposal, despite this departure and other minor WDCP 2009 variations. With regard to context and setting, Market Place itself is characterised by development of a comparable type and scale. The lots that comprise Market Place have site widths varying between approximately 16 and 22m, with the majority containing existing RFBs (2 – 4 storeys in height) of varying age and architectural style. The proposed development has demonstrated that a functional building can be provided, including appropriate carparking and access, landscaping and private open space areas, without detrimentally impacting the surrounding properties.

In summary, it is concluded that the development standard is unreasonable or unnecessary in the circumstances of the case.

With regards to *Clauses (3)(b)*, the site is constrained by the adjoining developments, which are strata titled. It is considered that requiring amalgamation to address the site width requirement would be unreasonable and unnecessary in this case as it cannot be viably achieved due to the complexities of such negotiations with the numerous property owners and the existing types of development (i.e. existing three storey apartment buildings).

The minimum site width controls do not take into account that in a number of instances (such as this case), site amalgamation is not feasible. Despite this, an appropriate built form can still be achieved in this instance as outlined above.

Assessment of the proposal under the applicable planning controls has determined that besides the proposed variation to site width requirement and minor WDCP 2009 variations, the development is largely compliant with the applicable controls. A result of the narrow site width is a non-compliant side setback. However, as demonstrated in this report, the proposed design mitigates any adverse impacts from the reduced side setbacks. In addition, solar access is not compromised to adjoining lots and amenity, (privacy, visual, acoustic etc.) of the surrounding lots and general area will not be unreasonably impacted by the development.

The proposed building has been designed to respond appropriately to the limitations posed by the narrow site width and is considered to be a reasonable development outcome for the site. The proposed building will not detrimentally impact solar access or visual and acoustic privacy, and is an appropriate urban form that will contribute positively to the streetscape.

In summary it is considered that there are sufficient site specific environmental planning grounds to justify contravening the development standard.

Furthermore sub *Clause 4(a)(i)* and *(ii)* provide that development consent must not be granted 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.*

This written request has adequately addressed the matters required to be demonstrated by subclause (3). It is considered that the departure from the minimum site width requirement, is in the public interest as outlined above in (3) (a) and (3) (b).

In deciding whether concurrence is to be granted or assumed, the following considerations are relevant:-

- (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.*

It is noted that as of 21 May 2014, Council has assumed concurrence of the Secretary in relation to development applications that contravene development standards.

3 Details of the environmental planning instrument, the applicable development standard and proposed variation.

3.1 What is the applicable environmental planning instrument (EPI)?

Wollongong Local Environmental Plan (WLEP) 2009.

3.2 What is the zoning of the land?

The site is zoned R1 General Residential under the WLEP 2009, as shown in the extract from the Land Zoning Map in *Figure 2* below.



*Figure 2: Extract of the WLEP 2009 Zoning Map (*Source: NSW Planning Portal)*

3.3 What are the objectives of the zone?

Residential flat buildings are permitted with development consent and are consistent with the objectives of the zone, as detailed in the table below.

R1 Zone Objectives	Comment
<ul style="list-style-type: none"> • To provide for the housing needs of the community. 	The proposed development will provide additional housing supply (i.e. three (3) new residential apartments) to meet the needs of the community.
<ul style="list-style-type: none"> • To provide for a variety of housing types and densities. 	The proposed residential flat building provides an increased density and the single level apartments will provide an exclusive option in this sought-after location. The form and density of development is appropriate in the R1 General Residential zone.
<ul style="list-style-type: none"> • To enable other land uses that provide facilities or services to meet the day-to-day needs of residents 	This objective is not applicable to the proposal, however the development does not compromise the achievement of this objective on nearby and/or surrounding land.

3.4 What is the development standard being varied?

The minimum site width dimension of 24m for residential flat buildings contained in Clause 7.14 Minimum site width is stated as:

(2) Development consent must not be granted for development for the purposes of a residential flat building unless the site area on which the development is to be carried out has a dimension of at least 24 metres.

As aforementioned, the subject site is an isolated site, with a single street frontage of less than the required 24 metres in site width.

3.5 What are the objectives of the standard?

There are no stated objectives for Clause 7.14 under the *LEP*, however, the objectives stated in *Section 6.2* of the *Wollongong Development Control Plan 2009 (WDCP 2009) - Chapter B1* in relation to minimum site width are considered most relevant in this instance, and provide for the following:

- a) To allow for development of sites, which are of sufficient width to accommodate the required building envelope, car parking and landscaping requirements.*
- b) To promote the efficient utilisation of land.*

c) To encourage amalgamation of allotments to provide for improved design outcomes including greater solar access and amenity.

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

Clause 7.14(2) requires a minimum site width of 24 metres.

3.7 How do the existing and proposed numeric values relate to the development standard? What is the percentage variation (between the proposal and the environmental planning instrument)?

Minimum Site Width		
Smith Street Frontage (primary)		
Current Site Width	Minimum Site Width required under WLEP2009	Percentage variation
17.56m	24m	27%

4 Assessment of Proposed Variation

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

Yes, compliance with the development standard is unreasonable in the circumstances.

In *Wehbe v Pittwater Council* [2007] NSWLEC827 (*Wehbe*), Preston CJ identified five (5) ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. While *Wehbe* related to objections pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 because subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

The five (5) ways outlined in *Wehbe* include:

1. The objectives of the standard are achieved notwithstanding noncompliance with the standard (First Way)
2. The underlying objective of purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way)
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way)
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way)
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).

Additionally, of note, in the judgment in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 the Chief Judge upheld the Commissioner's approval of large variations to height and FSR controls on appeal. He noted that under Clause 4.6, the consent authority (in that case, the Court) did not have to be directly satisfied that compliance with the standard was unreasonable or unnecessary, rather that the applicant's written request adequately addresses the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary.

In this regard, this written request establishes and adequately addresses the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary because the objectives of the standard are achieved irrespective of the non-compliance with the minimum site frontage standard, and accordingly justifies the variation to the minimum site frontage control pursuant to the First Way and Forth Way outlined in *Wehbe*, as follows.

As noted, there are no stated objectives for Clause 7.14 under the *LEP*, however, the objectives stated in *Section 6.2* of the *Wollongong Development Control Plan 2009 (WDCP 2009) - Chapter B1* in relation to minimum site width are considered most relevant in this instance, and provide for the following:

- a) To allow for development of sites, which are of sufficient width to accommodate the required building envelope, car parking and landscaping requirements.*
- b) To promote the efficient utilisation of land.*
- c) To encourage amalgamation of allotments to provide for improved design outcomes including greater solar access and amenity.*

In this regard, it is considered that the above objectives are achieved as follows:

- Apart from the development standard in question, the overall development proposal largely complies with the numerical standards of the *LEP* and *DCP* with the only exceptions being minor variation to *DCP* Housing Choice and Mix control and deep soil zone requirements.
- Strict application and compliance with the control would effectively prohibit a residential flat building development being undertaken on the subject site, despite it being a permitted form of development within the *R1* General Residential zone and despite other development standards in place promoting higher density outcomes at this location.
- The proposed new 4 x storey *RFB* will replace a single storey dual occupancy, effectively continuing the multiple residential occupation of the land (replacing old units with new units).
- The relationship between the existing neighboring sites (which contain three storey apartment buildings) and the new development on the site will be more in keeping with the streetscape that what is currently presented.
- The reduced site width does not result in any undue privacy or overlooking impacts to adjoining properties, by virtue of the proposed architectural

interface treatment to these edges (restricted window treatments and dwelling orientations to these boundaries, etc.).

- Whilst the proposed numerical and percentage variation not necessarily minor, the proposed development in the context of the overall development will not result in any adverse environmental or planning implications.
- The proposed development provides a boutique high quality design that is in demand in the area.

In relation to the Fourth Way “*The development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way)*” – it is noted that the following approvals have proposed the same variation and have been approved:

DA-2019/213: 29 Carr Street TOWRADGI NSW 2518

Residential – demolition of existing structures, tree removals and construction of multi dwelling housing – three (3) attached townhouses

DA-2018/323: 30 Kemblawarra Road WARRAWONG NSW 2502

Residential – demolition of existing structures and construction of multi dwelling housing

DA-2018/1219: 151-153 Princes Highway CORRIMAL NSW 2518

Demolition of existing building and construction of a shoptop housing development including Subdivision – Strata title – 10 lots

DA-2017/732: 14 Russell Street BALGOWNIE NSW 2519

Residential – construction of multi dwelling housing – six (6) townhouses

DA-2017/1727: 94 New Mount Pleasant Road MOUNT PLEASANT NSW 2519

Residential – demolition of existing structures, tree removal, construction of multi unit development and Subdivision – Strata title

DA-2017/1379: 8 Railway Parade THIRROUL NSW 2515

Mixed use development – demolition of existing structures and construction of retail premises and nine (9) residential units, basement parking and associated landscaping works

DA-2017/1196: 30 Cross Street CORRIMAL NSW 2518

Demolition of existing structures and construction of multi dwelling housing (3 townhouses)

Thus, there are multiple examples of where Council have accepted variations to site width parameters are warranted, and in our view deeming strict compliance with the minimum site width is unwarranted in the circumstances of this particular case also.

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

“Environmental planning grounds” take their colour from the subject matter, scope and purpose of the *Environmental Planning and Assessment Act 1979 (EPA Act)*, including its objects. The below provide a breakdown of the key environmental planning grounds which support the proposed variation request, including:

- The development is a boutique residential flat building with a unique offering one unit per level for Units 1 & 2 and two (2) levels for Unit 3 penthouse.
- The proposed development resulting from this variation will result in no unacceptable adverse environmental impacts.
- The proposed development complies with the objectives of the R1 zone in this location.
- The layout and built form of the proposed development is contemporary in character and has been designed to reflect the amenity of the area. The redevelopment of the site will make a positive contribution to the locality through the replacement of aged/inefficient building structures with a new contemporary and sustainability designed product.
- The development has been specifically designed to provide a suitable environment for all future inhabitants of the dwellings, whilst respecting the considerations of adjoining land uses.
- Acoustic privacy for future visitors and neighbouring land uses has been taken into account, with the proposed development being designed to limit noise intrusion into adjoining properties through the use of appropriate building materials and associated landscaping noise control treatments. This is shown in the layout of the floor plans and orientation of both windows and private open space balconies throughout.

- The proposal satisfies the objectives and development controls in relation to minimum site width contained within Clause 6.2 Minimum Site Width Requirement of Chapter B1 of the DCP, as the site in itself is of sufficient size to accommodate the required building envelopes, parking and landscaping requirements. Section 6.2 of Chapter B1 of the DCP states that the 24 metre site width requirement can be varied for irregular shaped lots or where the development meets the intent of setbacks, private open space, visual amenity, solar access, built form and landscaping development controls. The proposed development satisfies the intent of all of the above-mentioned DCP development controls.
- Council are seeking to encourage higher density housing and living in the locality and this form of development is identified in the desired future character statement for Wollongong in Chapter D1, in particular, the design principle to “ensure high quality design of buildings and public areas”.
- The Illawarra Shoalhaven Regional Plan identifies the need for 14,600 additional new homes within the Wollongong LGA by 2036. The proposed development would directly contribute to this target and provide housing to meet the needs of the community.
- The development as proposed will allow for the orderly and economic use of the subject land.
- The relationship between the existing neighboring sites (which contain three storey apartment buildings) and the new development on the site will be more in keeping with the streetscape that what is currently presented.

Overall, it is evident from the above commentary if there are sufficient planning grounds to justify contravening the maximum height development standard identified. To this end, strict compliance with the numerical development standards are both unwarranted and unnecessary in this instance.

4.3 Is the proposed development in the public interest because it is consistent with the underlying intent of the development standard and the objectives for development in the zone?

Yes, the proposed development is in the public interest because it is consistent with the underlying intent of *Wollongong LEP 2009* to encourage a range of housing choices consistent with the capacity of the land. The development is permissible within the R1 zone as part of a residential flat building development and meets the objectives of the zone by providing for the housing needs of the community. The capacity of the site enables the proposed development through its architectural design response and will provide an improved residential amenity outcome for the site.

4.4 Does contravening the development standard raise any matters of significance for the State or regional environmental planning?

No, contravening the development standard in this case does not raise any matters of State or Regional planning significance.

4.5 How would strict compliance hinder the attainment of the objectives specified in Section 1.3 (a) and (c) of the Act?

The objectives set down in *Section 1.3 (a)* and *(c)* are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources; and*
- (c) to promote the orderly and economic use and development of land.*

Compliance with the standard would not hinder the attainment of the above-mentioned objectives, which aim to encourage development that promotes the social and economic welfare of the community and a better environment, and co-ordinate the orderly and economic use of land.

4.6 Is there public benefit in maintaining the development standard?

Broadly speaking, there is public benefit in maintaining the development standard across the LGA as it encourages consistency in development outcomes. However, fundamentally the development standard does not allow for circumstances where a reduced site width is required due to site constraints.

4.7 Is the objection well founded?

For the reasons outlined in the previous sections above, the objection is considered to be well founded in this particular instance. Granting an exception to the development standard can therefore be supported in the circumstances of the case.

The proposed development will be consistent with the outcomes envisaged in the zoning and policy framework. The development is also compatible with the relevant objectives specified in *Section 1.3* of the *EPAA 1979*.

5 Conclusion

The proposed variation is based on the reasons contained within this request for an exception to the *Minimum Site Width* requirement being a development standard contained within *Clause 7.14* of *Wollongong LEP 2009*. The proposal will not result in any adverse impacts with regards to the amenity of the adjoining properties.

The proposed non-compliance is unlikely to result in any future precedents given the surrounding pattern of development and the combination of zoning and other associated controls currently in place. In conclusion, the objection is considered to be well founded and compliance with the standard is unreasonable in the circumstances of the case.

Yours faithfully,

MARTIN MORRIS & JONES PTY LTD



LUKE ROLLINSON

BUrbRegPlan DipArchTech MPIA

DIRECTOR - TOWN PLANNER

Attachment 6 – WDCP 2009 compliance tables**CHAPTER A2 – ECOLOGICALLY SUSTAINABLE DEVELOPMENT**

Development controls to improve the sustainability of development throughout Wollongong are integrated into the relevant chapters of this DCP.

Generally speaking, the proposal is considered to be consistent with the principles of Ecologically Sustainable Development as follows:

- water capture and reuse in landscape areas
- high quality internal amenity in terms of natural ventilation and light.
- solar panels on the roof

CHAPTER B1 – RESIDENTIAL DEVELOPMENT**4.0 General Residential controls**4.13 Fire Brigade Servicing

The site is accessible by fire fighting vehicles.

4.16 View sharing

The proposal is not considered to adversely impact on significant views.

CHAPTER D13 – WOLLONGONG CITY CENTRE**2 Building form**

Objectives/controls

Comment

2.2 Building to street alignment and street setbacks

4m minimum setback

Complies

2.3 Street frontage heights in commercial core

N/A

2.4 Building depth and bulk

18m maximum

Complies

2.5 Side and rear building setbacks and building separation

Building condition	Minimum side setback	Minimum rear setback
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Variations are proposed to setbacks as discussed at Chapter A1.

Residential uses up to 12m in height

- habitable rooms with openings and balconies	6m	6m
- non-habitable rooms and habitable rooms without openings	3m	4.5m

Residential uses between 12m & 24m

- habitable rooms with openings and balconies	9m	9m
-non-habitable rooms and habitable rooms without openings	4.5m	4.5m

2.6 Mixed used buildings

N/A

<i>Objectives/controls</i>	<i>Comment</i>
<p><u>2.7 Deep soil zone</u></p> <p>15% of site area</p> <p><u>2.8 Landscape design</u></p> <p>Satisfactory</p> <p><u>2.9 Green roofs, green walls and planting on structures</u></p> <p>Satisfactory</p> <p><u>2.10 Sun access planes</u></p> <p>The building complies with the sun plane protection controls as detailed at clause 8.3 of WLEP above.</p> <p><u>2.11 Development on classified roads</u></p> <p>N/A</p>	<p>Rear: 55m² (11.2%)</p> <p>Front 19.5m² (15% overall)</p> <p>See variation discussion at Chapter A1.</p>

3 Pedestrian amenity

<i>Objectives/controls</i>	<i>Comment</i>
<p><u>3.2 Permeability</u></p> <p>N/A</p> <p><u>3.3 Active street frontages</u></p> <p>N/A</p> <p><u>3.4 Safety and security</u></p> <p>Satisfactory</p> <p><u>3.5 Awnings</u></p> <p>N/A</p> <p><u>3.6 Vehicular footpath crossings</u></p> <p>Satisfactory</p> <p><u>3.7 Pedestrian overpasses, underpasses and encroachments</u></p> <p>N/A</p> <p><u>3.8 Building exteriors</u></p> <p>a) Adjoining buildings (particularly heritage buildings) are to be considered in the design of new buildings in terms of:</p> <ul style="list-style-type: none"> i) Appropriate alignment and street frontage heights. ii) Setbacks above street frontage heights. iii) Appropriate materials and finishes selection. iv) Façade proportions including horizontal or vertical emphasis. v) The provision of enclosed corners at street intersections. <p>b) Balconies and terraces should be provided, particularly where buildings overlook parks and on low rise parts of buildings.</p>	<p>Setbacks are considered to appropriately respond to the streetscape and adjoining built form.</p> <p>The exterior of the building incorporates a mixed palette of materials and is articulated to provide visual interest.</p> <p>Satisfactory</p>

Objectives/controls	Comment
Gardens on the top of setback areas of buildings are encouraged.	
c) Articulate facades so that they address the street and add visual interest.	Satisfactory
d) External walls should be constructed of high quality and durable materials and finishes with 'selfcleaning' attributes, such as face brickwork, rendered brickwork, stone, concrete and glass.	Satisfactory
e) Finishes with high maintenance costs, those susceptible to degradation or corrosion from a coastal or industrial environment or finishes that result in unacceptable amenity impacts, such as reflective glass, are to be avoided.	Satisfactory
f) To assist articulation and visual interest, avoid expanses of any single material.	A variety of materials and finishes are incorporated into the façade.
g) Limit opaque or blank walls for ground floor uses to 30% of the street frontage.	N/A
h) Maximise glazing for retail uses, but break glazing into sections to avoid large expanses of glass.	N/A
i) Highly reflective finishes and curtain wall glazing are not permitted above ground floor level (see Section 5.3).	Complies
j) A materials sample board and schedule is required to be submitted with applications for development over \$1 million or for that part of any development built to the street edge.	A schedule of materials and finishes has been provided.
k) Minor projections up to 450mm from building walls in accordance with those permitted by the Building Code of Australia may extend into the public space providing it does not fall within the definition of gross floor area and there is a public benefit, such as:	N/A
i) Expressed cornice lines that assist in enhancing the streetscape,	
ii) Projections such as entry canopies that add visual interest and amenity, and	
iii) Provided that the projections do not detract from significant views and vistas (see Figure 3.12).	
l) The design of roof plant rooms and lift overruns is to be integrated into the overall architecture of the building.	N/A
<u>3.9 Advertising and signage</u>	
N/A	
<u>3.10 Views and view corridors</u>	
	No significant views or view corridors are impacted by the proposal.

4 Access, parking and servicing

Objectives/controls	Comment
<u>4.2 Pedestrian access and mobility</u>	
a) Main building entry points should be clearly visible from primary street frontages and enhanced as appropriate with awnings, building signage or high quality architectural features that improve clarity of building address and contribute to visitor and occupant amenity.	Y
b) The design of facilities (including car parking requirements) for disabled persons must comply with the relevant Australian Standard (AS 1428 Pt 1 and 2, AS 2890 Pt 1, or as amended) and the Disability Discrimination Act 1992 (as amended).	Complies
c) The development must provide at least one main pedestrian entrance with convenient barrier free access in all developments to at least the ground floor.	<p>A wheelchair stair lift is provided at the entry. This is not considered ideal and it was investigated whether there were opportunities for level entry to be provided.</p> <p>The primary issue driving the elevated ground floor is the small size of the site and constraint on lowering the basement. If the basement were to be lower, it would be difficult to achieve compliant grades for the driveway and manoeuvring areas in the basement.</p> <p>Providing ramped entry to the building is further constrained by the limited frontage. The chair lift is considered an acceptable outcome given the circumstances and small number of units within the development.</p>
d) The development must provide continuous access paths of travel from all public roads and spaces as well as unimpeded internal access.	See discussion above.
e) Pedestrian access ways, entry paths and lobbies must use durable materials commensurate with the standard of the adjoining public domain (street) with appropriate slip resistant materials, tactile surfaces and contrasting colours in accordance with Council's Public Domain Technical Manual.	Satisfactory.
f) Building entrance levels and footpaths must comply with the longitudinal and cross grades specified in AS 1428.1:2001, AS/NZS 2890.1:2004 and the Disability Discrimination Act.	Satisfactory.
<u>4.3 Vehicular driveways and manoeuvring areas</u>	
a) Driveways should be:	
i) Provided from lanes and secondary streets rather than the primary street, wherever practical.	N/A

Objectives/controls	Comment
ii) Located taking into account any services within the road reserve, such as power poles, drainage pits and existing street trees.	Satisfactory.
iii) Located a minimum of 6 metres from the perpendicular of any intersection of any two roads.	N/A
iv) If adjacent to a residential development setback a minimum of 1.5m from the relevant side property boundary.	Complies.
b) Vehicle access is to be designed to:	
i) Minimise the impact on the street, site layout and the building façade design; and	The driveway is considered to be integrated into the frontage.
ii) If located off a primary street frontage, integrated into the building design.	Satisfactory
c) All vehicles must be able to enter and leave the site in a forward direction without the need to make more than a three point turn.	Complies
d) Design of driveway crossings must be in accordance with Council's standard Vehicle Entrance Designs, with any works within the footpath and road reserve subject to a s138 Roads Act approval.	The crossover will comply with Council requirements.
e) Driveway widths must comply with the relevant Australian Standards.	Complies
f) Car space dimensions must comply with the relevant Australian Standards.	Complies
g) Driveway grades, vehicular ramp width/grades and passing bays must be in accordance with the relevant Australian Standard, (AS 2990.1).	Complies
h) Vehicular ramps less than 20m long within developments and parking stations must have a maximum grade of 1 in 5 (20%). Ramp widths and design must be in accordance with AS 2890.1.	Complies
i) Access ways to underground parking should not be located adjacent to doors or windows of the habitable rooms of any residential development.	Complies
j) For residential development in the General Residential zone, use semi-pervious materials for all uncovered parts of driveways/spaces to provide for some stormwater infiltration.	N/A
4.4 On-site parking	
a) On-site parking must meet the relevant Australian Standard (AS2890.1 2004 – Parking facilities, or as amended).	Satisfactory
b) Council may require the provision of a supporting geotechnical report prepared by an appropriately qualified professional as information to accompany a development application to Council.	
c) Car parking and associated internal manoeuvring areas which are surplus to Council's specified parking requirements will count towards the gross floor area,	

<i>Objectives/controls</i>	<i>Comment</i>
<p>but not for the purpose of determining the necessary parking.</p> <p>d) Any car parking provided in a building above ground level is to have a minimum floor to ceiling height of 2.8m so it can be adapted to another use in the future.</p> <p>e) On-site vehicle, motorcycle and bicycle parking is to be provided in accordance with Part E of this DCP</p> <p>Residential flat buildings</p> <p>a) On-site parking is to be accommodated underground, or otherwise integrated into the design of the building.</p> <p><u>4.5 Site facilities and services</u></p> <p><i>Mail boxes</i></p> <p>a) Provide letterboxes for residential building and/or commercial tenancies in one accessible location adjacent to the main entrance to the development.</p> <p>b) They should be integrated into a wall where possible and be constructed of materials consistent with the appearance of the building.</p> <p>c) Letterboxes shall be secure and large enough to accommodate articles such as newspapers.</p> <p>Communication structures, air conditioners and service vents</p> <p>Waste (garbage) storage and collection</p> <p>Location requirements for Waste Storage Areas and Access</p> <p>Service docks and loading/unloading areas</p> <p>Fire service and emergency vehicles</p> <p>Utility Services</p>	<p>Complies</p> <p>Satisfactory</p> <p>Satisfactory</p> <p>Waste bins storage is provided within each unit garage area and servicing is to be from the kerb.</p> <p>As above.</p> <p>N/A</p> <p>Direct access to the development is available from the street frontage.</p> <p>The site is connected to utilities and would not require substantial augmentation to accommodate the proposal. No substation would be required.</p>

5 Environmental management

<i>Objectives/controls</i>	<i>Comment</i>
<p><u>5.2 Energy efficiency and conservation</u></p> <p>New dwellings, including multi-unit development within a mixed use building and serviced apartments intended or capable of being strata titled, are to demonstrate compliance with State Environmental Planning Policy – Building Sustainability Index (BASIX). Council encourages all applicants to go beyond minimum BASIX requirements incorporating passive solar design and energy efficiency measures for residential development.</p>	<p>BASIX compliance has been demonstrated.</p>

5.3 Water conservation

New dwellings, including a residential component within a mixed use building and serviced apartments intended or capable of being strata titled, are to demonstrate compliance with State Environmental Planning Policy – Building Sustainability Index (BASIX). Council encourages all residential development to go beyond the minimum BASIX requirements and enhance the water efficiency for their development.

BASIX compliance has been demonstrated.

5.4 Reflectivity

N/A

5.5 Wind mitigation

N/A

5.6 Waste and recycling

- a) To minimise waste generation and disposal to landfill with careful source separation, reuse and recycling.
- b) To avoid the generation of waste through design, material selection and building practices.
- c) To plan for the types, amount and disposal of waste to be generated during demolition, excavation and construction of the development.
- d) To ensure efficient storage and collection of waste and quality design of facilities

Waste bins storage is provided within each unit garage area and servicing is to be from the kerb.

6 Residential development standards

Objectives/controls

Comment

6.1 SEPP 65

N/A

6.2 Housing choice and mix

N/A - Only three units are proposed

6.3 Dwelling houses

N/A

6.4 Multi dwelling housing

N/A

6.5 Dual occupancy

N/A

Objectives/controls

Comment

6.6 Basement Carparks

- a) The scale and siting of the basement car park must not impact upon the ability of the development to satisfy minimum landscaping and deep soil zone requirements.
- b) The roof of any basement podium, measured to the top of any solid wall located on the podium, must not be greater than 1.2m above natural or finished ground level, when measured at any point on the outside walls of the building. On sloping sites, a change in level in the basement must be provided to achieve this maximum 1.2m height. Generally variation to this 1.2m height will not be supported however Council recognises that there may be occasions where this standard cannot be achieved. Should such a circumstance arise, the additional portion of the basement podium above 1.2m height must be included in the total gross floor area calculation for the development.
- c) In addition, the following must be satisfied:
 - i) Landscaped terraces are provided in front of the basement podium to reduce the overall visual impact;
 - ii) The height of the basement does not result in the building having a bulk and scale which dominates the streetscape; and
 - iii) The main pedestrian entry to the building is identifiable and readily accessible from the street frontage.
- d) The following setbacks from front, side and rear boundaries apply to basement podiums:
 - i) Where the height of the basement podium (measured to the top of any solid wall located on the podium) is less than 1.2m above natural or finished ground level (whichever distance is greater), the basement podium may extend to the property boundary. A minimum 1.5m wide landscaped planter must be provided on the perimeter of any section of the basement podium which is located on a side or rear property boundary. Such planter must prevent direct access to the outer edge of the podium, to minimise direct overlooking of adjacent dwellings and open space areas.
 - ii) Any portion of the basement which exceeds 1.2m above natural or finished ground level (whichever distance is greater) must be setback from the property boundaries by a ratio 1:1

The basement extends approximately 600mm above natural ground level however is suitably screened with landscape beds.

6.7 Communal open space

Not required for under 10 dwellings.

Objectives/controls	Comment
<p><u>6.8 Private open space</u></p> <ul style="list-style-type: none"> i) Avoid locating the primary balconies where they address side setbacks. ii) The balcony must have a minimum area of 12m² open space a minimum depth of 2.4 metres. iii) The primary balcony of at least 70% of the dwellings within a multi dwelling housing development shall receive a minimum of three hours of direct sunlight between 9.00am and 3.00pm on June 21. iv) Balconies must be designed and positioned to ensure sufficient light can penetrate into the building at lower levels. v) Individual balcony enclosures are not supported. Balcony enclosures must form part of an overall building façade design treatment and should not compromise the functionality of a balcony as a private open space area. 	<p>Complies</p>
<p><u>6.9 Overshadowing</u></p> <ul style="list-style-type: none"> a) The design of the development must have regard to the existing and proposed level of sunlight which is received by living areas and private open space areas of adjacent dwellings. Sensitive design must aim to retain the maximum amount of sunlight for adjacent residents. Council will place greatest emphasis on the retention of sunlight within the lower density residential areas. b) Adjacent residential buildings and their public spaces must receive at least 3 hours of direct sunlight between 9.00am and 3.00pm on 21 June. c) In determining access to sunlight, overshadowing by fences, roof overhangs and changes in level must be taken into consideration. Overshadowing by vegetation should also be considered, where dense vegetation appears as a solid fence. Refer to Land and Environment Court Planning Principles – Parsonage vs Ku-Rin-Gai Council (2004). d) In areas undergoing change, the impact of overshadowing on development likely to be built on adjoining sites must be considered, in addition to the impacts on existing development. 	<p>Shadow diagrams have been provided as well as view from the sun diagrams indicating the degree of overshadowing to adjoining properties.</p> <p>The overshadowing is not considered unreasonable with respect to the applicable planning controls, setbacks of adjoining buildings and scale of the proposed building.</p>
<p><u>6.10 Solar access</u></p> <ul style="list-style-type: none"> a) Residential apartment buildings must aim to maximise their level of northern exposure to optimise the number of dwellings having a northern aspect. Where a northern aspect is available, the living spaces and balconies of such apartments must typically be orientated towards the north. b) The development must maximise the number of apartments with a dual orientation. Single aspect, single storey apartments should preferably have a northerly or easterly aspect and a reduced depth to allow for access of natural light to all habitable spaces. 	<p>All units within the building will received in excess of the minimum solar access requirements. ‘</p> <p>All units are flow through units within aspect to the north and south.</p> <p>Eastern and western facades contain minimal openings.</p>

Objectives/controls	Comment
<ul style="list-style-type: none"> c) Shading devices should be utilised where necessary, particularly where windows of habitable rooms are located on the western elevation. d) The living rooms and private open space of at least 70% of apartments should receive a minimum of three hours of direct sunlight between 9.00am and 3.00pm. e) The number of single aspect apartments with a southerly aspect (south-westerly to south-easterly) is limited to a maximum of 10% of the total number of apartments proposed. f) Provide vertical shading to eastern and western windows. Shading can take the form of eaves, awnings, colonnades, balconies, pergolas, external louvres and planting. 	
<p><u>6.11 Natural ventilation</u></p>	
<ul style="list-style-type: none"> a) Provide residential apartment buildings with a building depth of between 10 and 18m. The depth is measured across the shortest dimension of the building. Dwellings should be a maximum depth of 21m measured from the outside of the balcony. b) Variation to this standard will only be considered where it can be demonstrated that apartments will achieve the minimum requirements with regard to natural ventilation. This may be achieved where apartments have a wider frontage, or increased ceiling and window height to allow for greater penetration of natural light. The building depth is measured across the shortest access, excluding the depth of any unenclosed balconies. c) A minimum of sixty percent (60%) of all residential apartments shall be naturally cross ventilated. d) Twenty five percent (25%) of kitchens within a development must have access to natural ventilation. Where kitchens do not have direct access to a window, the back of the kitchen must be no more than 8m from a window. e) Single aspect apartments must be limited in depth to 8m from a window. 	<p>Complies</p>
<p><u>6.12 Visual privacy</u></p>	
<ul style="list-style-type: none"> 1. New buildings should be sited and oriented to maximise visual privacy between buildings through compliance with minimum front, side and rear setback / building separation requirements. 2. The internal layout of buildings should be designed to minimise any direct overlooking impacts occurring upon habitable rooms and private balcony / open space courtyards, wherever possible by separating communal open space and public domain areas from windows of rooms, particularly sleeping room and living room areas. 3. Buildings are to be designed to increase privacy without compromising access to sunlight and natural ventilation through the following measures: 	<p>Side elevations where they contain windows, are oriented away from the adjoining buildings or are obscure glazing or high sill.</p>

Objectives/controls

Comment

- (a) Off-setting of windows in new buildings from windows in existing adjoining building(s).
- (b) Recessed balconies and / or vertical fin elements between adjoining balconies to improve visual privacy.
- (c) Provision of solid, semi-solid or dark tinted glazed balustrading to balconies.
- (d) Provision of louvers or screen panels to windows and / or balconies.
- (e) Provision of perimeter landscaped screen / deep soil planting.
- (f) Incorporating planter boxes onto apartment balconies to improve visual separation between apartments within the development and adjoining buildings.
- (g) Provision of pergolas or shading devices to limit overlooking of lower apartments or private open space courtyards / balconies.

6.13 Acoustic Privacy

1. Residential apartments should be arranged in a mixed use building, to minimise noise transition between apartments by:
 - (a) Locating busy, noisy areas next to each other and quieter areas, next to other quieter areas (eg living rooms with living rooms and bedrooms with bedrooms);
 - (b) Using storage or circulation zones within an apartment to buffer noise from adjacent apartments, mechanical services or corridors and lobby areas; and
 - (c) Minimising the amount of party (shared) walls with other apartments.
2. All residential apartments within a mixed use development should be designed and constructed with double-glazed windows and / or laminated windows, solid walls, sealing of air gaps around doors and windows as well as insulating building elements for doors, walls, roofs and ceilings etc; to provide satisfactory acoustic privacy and amenity levels for occupants within the residential and / or serviced apartment(s).
3. Noise transmission from common corridors or outside the building is to be minimised by providing seals at entry doors.

Satisfactory

6.14 Storage

5m² / 10m³ of storage to be provided.

Complies

7 Planning controls for special areas

Objectives/controls	Comment
<p><u>7.1 Special areas with heritage items</u></p> <p>The site is located in the Market Square / Courthouse special area.</p> <p><i>7.1.1 Development of Heritage Items Generally</i></p> <p>a) To facilitate the conservation and protection of heritage items and Heritage Conservation Areas and their settings.</p> <p>b) To reinforce the special attributes and qualities of heritage items by ensuring that development has regard to the fabric and prevailing character of the item or special area e.g., scale, proportions, materials and finishes.</p> <p>c) To conserve, maintain and enhance existing views and vistas to buildings and places of historic and aesthetic significance.</p>	<p>The building located on the site is not a heritage item.</p> <p>The proposal is a modern design and will be a notable addition to the existing buildings around Market Square. Notwithstanding, the design is considered to incorporate a suitable mixture of materials and finishes. The bulk and scale is comparable with that on of buildings on adjoining land.</p> <p>Significant views are not considered to be impacted by the proposal.</p>
<p><i>Conservation Criteria</i></p>	<p>The scale is comparable with adjoining development and the building is below the maximum height and FSR permitted.</p> <p>The building is appropriately sited. The development respects key heritage concerns relating to existing setbacks and building heights around Market Square and does not overshadow the conservation area or its contributing elements.</p> <p>There is a minor encroachment into the front setback for the basement podium as discussed at Chapter A1 which is not considered to result in adverse impacts.</p>
<ul style="list-style-type: none"> • Scale 	
<ul style="list-style-type: none"> • Siting 	
<ul style="list-style-type: none"> • Architectural form 	<ul style="list-style-type: none"> • The architectural form represents a modern mix of building materials in a purposely asymmetrical form. In terms of its relationship to surrounding architectural forms, the proposed development has incorporated stylistic elements from adjacent buildings including: • The flat face, square form is equal to No 6 Market Place which is 3 levels plus a recessed entertainment level and has a height of brickwork close to the window sill of the ground floor resembling a plinth. • The brick colour of the proposed 'tribeca' brick facing will weather to shades similar of the cream brick of No 6 Market Place. • The flat roof of the upper entertainment level is equal to No 6 and No 8A Market Place.

Objectives/controls

Comment

<ul style="list-style-type: none">• Architectural detailing• Materials and finishes• Use• Original fabric• The ageing process• Curtilage• Infill development	<ul style="list-style-type: none">• Buildings at No 4, 6 and 8 Market Place and 28A Harbour Street, which are all 3 storey buildings.• Charcoal powder coat colour to the external cladding, and Nero brickwork are equal in colour to the sun shades and painted fibre cement wall cladding at St Mary's Star of the Sea school buildings. <p>As above.</p> <p>AS above.</p> <p>Satisfactory</p> <p>N/A</p> <p>N/A</p> <p>N/A</p> <p>As above.</p>
<p><i>7.2.5 Area 5: Market Square</i></p>	
<p>Objectives</p>	
<p>a) To retain the established residential character and moderate scale of development on land surrounding Market Square.</p> <p>b) To maintain a high level of daylight access to the public domain.</p>	
<p>Development Controls</p>	
<p>a) Development in Area 5 must comply with the conservation criteria and development controls provided under section 7.1.</p> <p>b) The maximum height of all development must not exceed heights defined in the LEP 2007.</p> <p>c) A minimum front setback of four metres for new development is required to enhance the spatial definition of the edges of Market Square.</p>	<p>See above</p> <p>Complies</p> <p>A minor variation to this requirement is proposed as discussed at Chapter A1.</p>
<p><u>7.2 Special areas and Development Standards</u></p>	
<p>Objectives</p>	
<p>a) To retain the established residential character and moderate scale of development on land surrounding Market Square.</p> <p>b) To maintain a high level of daylight access to the public domain.</p>	<p>The building is below the maximum height limit for the site. The 4 storey height is not excessive considering a building height of between 1-6 storeys surrounding Market Square and the recessed nature of the upper floor.</p> <p>Solar access to the public domain is acceptable as discussed at clause 8.3 of WLEP 2009.</p>

<i>Objectives/controls</i>	<i>Comment</i>
<p><i>Development Controls</i></p> <p>a) Development in Area 5 must comply with the conservation criteria and development controls provided under section 7.1.</p> <p>b) The maximum height of all development must not exceed heights defined in the LEP 2007.</p> <p>c) A minimum front setback of four metres for new development is required to enhance the spatial definition of the edges of Market Square.</p> <p><u>7.3 Non-residential development in the enterprise corridor zone</u></p> <p>N/A</p> <p><u>7.4 Special area design guidelines</u></p> <p>N/A</p> <p><u>7.5 Design excellence</u></p> <p>See discussion at clause 7.18 of WLEP 2009</p>	<p>See above.</p> <p>The building height is below the maximum permitted under the LEP.</p> <p>A minor variation to this requirement is proposed as discussed at Chapter A1.</p>

8 Works in the public domain

The proposal will involve upgrading the footpath for the street frontage in accordance with Council's Public Domain Technical Manual.

CHAPTER E1: ACCESS FOR PEOPLE WITH A DISABILITY

The proposal provides an adaptable unit and an accessible car parking space as well as an accessible platform lift at the entry.

CHAPTER E2: CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is satisfactory with regard to the principles of CPTED.

CHAPTER E3: CAR PARKING, ACCESS, SERVICING/LOADING FACILITIES AND TRAFFIC MANAGEMENT

6 Traffic impact assessment and public transport studies

6.1 Car Parking and Traffic Impact Assessment Study

A traffic impact assessment was not required for the development.

6.2 Preliminary Construction Traffic Management Plan

N/A

7 Parking demand and servicing requirements

Car parking

The applicable car parking rates is as follows:

- 0.75 / <70m²;
- 1 / 70-110m²;
- 1.25 / >110m²

- 0.2 / dwelling for visitors

Three units are proposed which require the following car parking:

- Unit 1: 3 bedroom (1.25)
- Unit 2: 3 bedroom (1.25)
- Unit 3: 4 bedroom (1.25)

Visitor parking: 0.2 x 3 (1)

Total required: 5

Total proposed: 7 (2 additional spaces are counted as GFA)

8 Vehicular access

Driveway grades and sight distances comply.

9 Loading / unloading facilities and service vehicle manoeuvring

The development complies with AS 2890.2.

There are only three units and waste servicing is therefore proposed to occur from the kerb. There is sufficient street frontage for this to occur.

10 Pedestrian access

The proposal is satisfactory with regard to pedestrian access into the site and along the frontage.

11 Safety & security (Crime Prevention through Environmental Design) measures for car parking areas

The proposal is satisfactory with regard to the principles of CPTED.

CHAPTER E6: LANDSCAPING

A Landscape Concept Plan prepared by a suitably qualified consultant has been provided which is satisfactory with regard to this chapter.

CHAPTER E7: WASTE MANAGEMENT

A Site Waste Minimisation and Management Plan has been provided in accordance with this chapter.

The proposal involves demolition of the existing building and a demolition plan has accordingly been provided.

Suitable waste storage and servicing arrangements have been provided.

CHAPTER E9 HOARDINGS AND CRANES

Conditions of consent are recommended with regard to use of hoardings or cranes.

CHAPTER E11 HERITAGE CONSERVATION

See discussion at clause 5.10 of WLEP 2009.

CHAPTER E12 GEOTECHNICAL ASSESSMENT

The site is not identified as being unstable or impacted by fill.

CHAPTER E13 FLOODPLAIN MANAGEMENT

Council's stormwater engineer has reviewed the proposal with respect to the provisions of this chapter and clause 7.3 of WLEP 2009 and has recommended conditions of consent.

CHAPTER E14 STORMWATER MANAGEMENT

Stormwater is proposed to be disposed of to the existing stormwater system. Council's stormwater engineer has reviewed the proposal with respect to the provisions of this chapter and has recommended conditions of consent.

CHAPTER E19 EARTHWORKS (LAND RESHAPING WORKS)

The proposal involves excavation for a basement to approximately 2.6m below natural ground level. The basement is offset from the side boundaries by 900m to the west and 1m for half the building footprint along the eastern boundary.

It is noted that structural impacts to adjoining property has been a key concern in submissions. The application has been reviewed by Council's Geotechnical Engineer in relation to potential impacts to the structural integrity of adjoining buildings and a suit of conditions have been recommended. This is further discussed under the submissions in section 1.3 of the assessment report.

The proposed earthworks are considered to be satisfactory with regard to this chapter.

CHAPTER E21 DEMOLITION AND HAZARDOUS BUILDING MATERIALS MANAGEMENT

Conditions of consent are recommended with regard to demolition.

CHAPTER E22 SOIL EROSION AND SEDIMENT CONTROL

Conditions of consent are recommended in regard to appropriate sediment and erosion control measures to be in place during works.

ATTACHMENT 7 – DA-2019/1375

Draft conditions of consent

Approved Plans and Specifications

- 1 The development shall be implemented substantially in accordance with the details and specifications set out on:

Site/Roof Plan A-101-C dated 8 April 2020 prepared by ADM Architects

Basement Floor Plan A-102-C dated 8 April 2020 prepared by ADM Architects

Ground Floor Plan A-103-C dated 8 April 2020 prepared by ADM Architects

First Floor Plan A-104-B dated 8 April 2020 prepared by ADM Architects

Second Floor Plan A-105-B dated 8 April 2020 prepared by ADM Architects

Roof Terrace Plan A-106-C dated 8 April 2020 prepared by ADM Architects

South Elevation Plan A-201-C dated 8 April 2020 prepared by ADM Architects

East Elevation Plan A-202-C dated 8 April 2020 prepared by ADM Architects

North Elevation Plan A-203-C dated 8 April 2020 prepared by ADM Architects

West Elevation Plan A-204-C dated 8 April 2020 prepared by ADM Architects

Colours & Materials Schedule A-501-B dated 28 February 2020 prepared by ADM Architects

and any details on the application form, and with any supporting information received, except as amended by the conditions specified and imposed hereunder.

General Matters

2 Geotechnical

- a The submitted geotechnical information is insufficient to support the development proposal. Supplementary geotechnical information is required to address the site geotechnical constraints with respect to the proximity of basement excavations to side boundaries and nearby structures sensitive to change in soil conditions.
- b This geotechnical investigation is required to determine subsurface conditions; soil and rock parameters and general site geotechnical constraints needed to support the structural design of the proposed basement retaining structures and to make recommendations for the construction of these retaining structures.
- c No disturbance of ground is to occur beyond the side boundaries. A minimum buffer between the side boundaries and for the construction of the retaining structures is to be recommended by the geotechnical consultant to ensure the adjoining property is unaffected by the development.
- d A dilapidation report is required for all structures located within the zone of influence of the proposed earthworks as determined by the geotechnical consultant.
- e The geotechnical consultant is to determine the peak vibration velocity for nearby structures sensitive to vibration.
- f The geotechnical consultant is to undertake site monitoring of actual vibration velocities generated by construction works to ensure they are below the allowable peak values.
- g Architectural plans are to be amended to incorporate the construction buffer recommended by the geotechnical consultant in compliance with Geotechnical Condition 3.
- h Retaining wall design is not to include anchors extending on to adjoining property without the written consent of the adjoining property owner.
- i Foundation systems are to be designed for Class P soils with all footings to be founded within the underlying weathered bedrock.

- j The structural designs for all retaining structures and foundations are to be endorsed by the geotechnical consultant that all known site geotechnical constraints have been accommodated in the designs.
- k An earthworks plan is to be developed by the geotechnical consultant prior to start of earthworks.
- l All recommendations of the geotechnical consultant in their geotechnical report commissioned in compliance with Geotechnical Conditions 1 and 2 are to be accommodated in the earthworks plan.
- m The earthworks plan may require modification in light of any subsequent geotechnical reports commissioned to address unforeseen geotechnical conditions encountered during the earthworks.
- n There is to be no unsupported excavations with all cuts to be immediately supported by retaining wall construction.
- o Due to the sensitivity of structures on adjoining properties to changing geotechnical conditions, all site preparation earthworks including construction of retaining structures must be undertaken with Level 1 geotechnical supervision as defined in Australian Standard AS3798 Guidelines for Earthworks for Commercial and Residential Developments.
- p Hard bedrock where encountered will be difficult to excavate. Alternative excavation methods should be considered to minimise noise and vibration.
- q At the completion of site preparation earthworks including construction of retaining structures a works-as-executed geotechnical report is required to confirm satisfactory completion of works; to confirm that generated vibration during construction was within the nominated limit from Geotechnical Condition 5; to detail any residual geotechnical constraints on development and to make recommendations for development of the prepared site.
- r Natural soil moisture equilibrium is to be maintained.

3 **Building Work - Compliance with the Building Code of Australia**

All building work must be carried out in compliance with the provisions of the Building Code of Australia.

4 **Construction Certificate**

A Construction Certificate must be obtained from Council or an Accredited Certifier prior to work commencing.

A Construction Certificate certifies that the provisions of Clauses 139-148 of the Environmental Planning and Assessment Amendment Regulations, 2000 have been satisfied, including compliance with all relevant conditions of Development Consent and the Building Code of Australia.

Note: The Certifier must cause notice of its determination to be given to the consent authority, and to the council, by forwarding to it, within two (2) days after the date of the determination, the plans and documentation referred to in clause 142 (2) of the Environmental Planning and Assessment Regulation 2000.

5 **Occupation Certificate**

An Occupation Certificate must be issued by the Principal Certifier prior to occupation or use of the development. In issuing an Occupation Certificate, the Principal Certifier must be satisfied that the requirements of section 6.9 of the Environmental Planning and Assessment Act 1979, have been complied with as well as all of the conditions of the Development Consent.

6 **Tree Retention and Transplant**

The Developer shall retain and transplant the existing palms to an appropriate location on site by an experienced and qualified contractor.

The palms shall be protected in accordance with the Australian Standard AS4970:2009 Protection of Trees on Development Sites.

Prior to the Issue of the Construction Certificate

7 Flows from Adjoining Properties

Flows from adjoining properties shall be accepted and catered for within the site. Finished ground and top of retaining wall levels on the boundary shall be no higher than the existing upslope adjacent ground levels.

Overland flow paths shall be provided around the perimeter of the building. Flow paths shall be designed to have adequate capacity to capture the upslope runoff from adjoining and convey the runoff to the street.

The above requirements must be clearly shown on construction certificate plans prior to the release of the construction certificate.

8 Measures shall be provided to ensure that there is no potential runoff to the adjoining land.

9 Plinth Level Maintenance Access and Drainage

The plinth level shall incorporate suitable access for maintenance purposes and an overflow drain to the on-site gravity drainage system. These requirements shall be reflected on the Construction Certificate plans and supporting documentation.

10 Existing/Proposed Levels

Existing and proposed levels to Australian Height Datum (AHD), including floor, ground, grate, pipe inverts and pavement levels shall be shown on the detailed drainage design. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.

11 Basement Waterproofing

Full engineering details of the proposed wall around the basement car park must be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate. These must include construction details indicating that no ingress of stormwater is possible into the basement levels. This applies to any proposed opening such as doors or ventilation louvres. The problem of backwater from the stormwater pipeline entering the basement car park level shall be addressed by a method such as a flap gate or one-way valve system.

12 Basement Subsurface Drainage

Subsurface drainage for the basement car park shall be wholly contained within the subject site. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.

13 Pump System

A pump system must be provided in association with the detailed drainage design for the site to cater for stormwater from a prolonged/extreme storm event entering the basement. The pump system shall be designed by a suitably qualified and experienced civil engineer and reflected on the Construction Certificate plans and supporting documentation.

14 Heritage – Interpretation Plan

Prior to the release of the construction certificate the developer is to prepare a Heritage Interpretation Plan for the proposed development site. This plan should provide detailed recommendations for the delivery of onsite heritage interpretation material and interpretive devices, to reference the history of the site, its past ownership by CT Smith and its significance in the history of the development of Wollongong and Market Square. The Plan should also allow for the integration of any relics found on site through the archaeological investigations.

The plan must be prepared by a suitably qualified and experienced heritage consultant and is to be provided to Council for written endorsement prior to the release of the Construction Certificate.

15 Present Plans to Sydney Water

Approved plans must be submitted online using Sydney Water Tap, available through www.sydneywater.com.au to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

The Principal Certifier must ensure that Sydney Water has issued an approval receipt prior to the issue of a Construction Certificate.

Visit www.sydneywater.com.au or telephone 13 20 92 for further information.

16 **Car Parking and Access**

The development shall make provision for a total of 7 car parking spaces and 3 secure (Class B) bicycle spaces. This requirement shall be reflected on the Construction Certificate plans. Any change in above parking numbers shown on the approved DA plans shall be dealt with via a section 4.55 modification to the development. The approved car parking spaces shall be maintained to the satisfaction of Council, at all times.

17 The parking dimensions, internal circulation, aisle widths, kerb splay corners, head clearance heights, ramp widths and grades of the car parking areas are to be in conformity with the current relevant Australian Standard AS2890.1, except where amended by other conditions of this consent. Details of such compliance are to be reflected on the Construction Certificate plans.

18 **Water/Wastewater Entering Road Reserve**

Provision shall be made for a minimum 200mm wide grated box drain along the boundary of the property at the vehicular crossing/s to prevent surface water entering the road reserve. This requirement shall be reflected on the Construction Certificate plans.

19 The depth and location of all services (ie gas, water, sewer, electricity, telephone, traffic lights, etc) must be ascertained and reflected on the Construction Certificate plans and supporting documentation.

20 **Landscaping**

The submission of a final Landscape Plan will be required in accordance with the requirements of Wollongong City Council DCP 2009 Chapter E6 and the approved Landscape Plan (ie as part of this consent) for the approval by the Principal Certifier, prior to the release of the Construction Certificate.

21 The submission of a final Landscape Plan to the Principal Certifying Authority, prior to the release of the Construction Certificate. The final Landscape Plan shall address the following requirements:

- a planting of four indigenous plant species native to the Illawarra Region within the Deep Soil Zone such as: *Brachychiton acerifolius* Illawarra Flame Tree, *Syzygium smithii* (syn *Acmena smithii*) Lilly pilly, *Glochidion ferdinandii* Cheese tree, *Syzygium paniculatum* Brush cherry.
A further list of suitable suggested species may be found in Wollongong Development Control Plan 2009 – Chapter E6: Landscaping;
- b a schedule of proposed planting, including botanic name, common name, expected mature height and staking requirements as well as number of plants and pot sizes;
- c A 1.8m high privacy screen is to be provided to the eastern and western edges of the rear courtyard area.
- c the location of all proposed and existing overhead and underground service lines. The location of such service lines shall be clear of the dripline of existing and proposed trees; and
- d any proposed hard surface under the canopy of existing trees shall be permeable and must be laid such that the finished surface levels match the existing level. Permeable paving is to be installed in accordance with the manufacturer's recommendations.

The completion of the landscaping works as per the final approved Landscape Plan is required, prior to the issue of Occupation Certificate.

22 The submission of certification from a suitably qualified and experienced landscape designer and drainage consultant to the Principal Certifier prior to the release of the Construction Certificate, confirming that the landscape plan and the drainage plan are compatible.

23 The implementation of a landscape maintenance program in accordance with the approved Landscape Plan for a minimum period of 12 months to ensure that all landscape work becomes well established by regular maintenance. Details of the program must be submitted with the Landscape Plan to the Principal Certifier prior to release of the Construction Certificate.

24 **Tree Protection and Management**

The existing trees are to be retained upon the subject property and any trees on adjoining properties shall not be impacted upon during the excavation or construction phases of the development. This will require the installation and maintenance of appropriate tree protection measures, including (but not necessarily limited to) the following:

- a Installation of Tree Protection Fencing - Protective fencing shall be 1.8 metre cyclone chainmesh fence, with posts and portable concrete footings. Details and location of protective fencing must be indicated on the architectural and engineering plans to be submitted to the Principal Certifying Authority prior to release of the Construction Certificate.
- b Irrigate: Areas within the Tree Protection Zone are to be regularly watered in accordance with the arborist's recommendations.

25 **Stormwater Connection to Kerb**

Connection across footways shall be by means of one or two (maximum), sewer grade UPVC pipe(s), 100mm diameter pipes with a continuous downslope gradient to the kerb. Connection to the kerb shall be made with a rectangular, hot dipped galvanised mild steel weephole(s) shaped to suit the kerb profile, with each weephole having the capacity equal to a 100mm diameter pipe. Alternatively, a maximum of two 150mm x 100mm hot dipped galvanised steel pipes may be used across footways, with the 150mm dimension being parallel to the road surface to suit the kerb profile.

26 **Pier and Beam Footings Adjacent to any Drainage Easement**

Buildings and structures (including brick fences) adjacent to easements shall be supported on pier and beam footings outside the easement. The base of the piers shall be a minimum 900 mm below ground level and shall extend below the invert level of the drainage pipelines within the easement. Structural engineers details are required detailing the size and levels of the existing drainage pipelines and the design levels for the base of the piers adjacent to the easement.

27 Bicycle parking facilities must have adequate weather protection and provide the appropriate level of security as required by the current relevant Australian Standard AS2890.3 - Bicycle Parking Facilities. This requirement shall be reflected on the Construction Certificate plans.

28 **Property Addressing Policy Compliance**

Prior to the issue of any construction certificate, the developer must ensure that any site addressing complies with Council's **Property Addressing Policy** (as amended). Where appropriate, the developer must also lodge a written request to Council's **Infrastructure Systems & Support – Property Addressing** (propertyaddressing@wollongong.nsw.gov.au), for the site addressing prior to the issue of the construction certificate. Please allow up to 3-5 business days for a reply. Enquiries regarding property addressing may be made by calling 4227 8660.

29 **Footpath Paving City Centre**

The developer is responsible for the construction of footpath paving for the entire frontage of the development for the full width of the verge. The type of paving for this development shall be in accordance with the Wollongong City Council Public Domain Technical Manual.

A nominal two percent (2%) minimum one percent (1%), maximum two and a half percent (2.5%) cross fall to be provided from property line to back of kerb. Any changes of level, ramps or stairs and associated tactile markers and handrails are to be contained within the property boundary.

The driveway entry threshold from the property boundary line to the face of kerb is to match the footpath material and be designed to withstand predicted traffic loadings.

The driveway threshold finish within property boundary line is to contrast with driveway entry.

The footpath and driveway entry on the council property must be installed to the satisfaction of WCC Manager of Works.

A Landscape Plan is to be submitted to Council for approval prior to the issue of the Construction Certificate showing proposed paving, footpath design levels, street tree details and location of all services.

30 **Street Trees City Centre**

The Developer must address the street frontage by installing street tree planting. The number and species for this development is one *Lagerstroemia indica* x *L. faurieri* 'Sioux' 200 litre container size in accordance with AS 2303:2018 Tree stock for landscape use. Tree pit detailing is to be in accordance with the Wollongong City Council Public Domain Technical Manual. Dial Before You Dig must be consulted prior to any excavation on site. Pot holing must be carried out to determine service location. Location of street tree plantings to be sited to ensure no conflict occurs with street light poles.

Tree pits must be adequately mulched, plants installed and tree guard/staking/tree grille/edging installed to the satisfaction of WCC Manager of Development Engineering.

These requirements shall be reflected on the Construction Certificate plans and any supporting documentation.

31 **Sizing of Drainage**

All roof gutters, downpipes, pits, and pipelines draining roof areas and other impervious surfaces shall be designed to cater for a 1 in 100 year ARI storm event in accordance with AS 3500.3 – Plumbing and Drainage (Stormwater Drainage). Details of gutter/downpipe/pipeline sizes and locations shall be reflected on the Construction Certificate plans

32 **Stormwater Drainage Design**

A detailed drainage design for the development must be submitted to and approved by the Principal Certifier prior to the release of the Construction Certificate. The detailed drainage design must satisfy the following requirements:

- a Be prepared by a suitably qualified civil engineer in accordance with Chapter E14 of Wollongong City Council's Development Control Plan 2009, Subdivision Policy, conditions listed under this consent, and generally in accordance with the concept plan/s lodged for development approval, prepared by Jones Nicholson, Drawing No. 19020079_C002 and C003, issue P3 dated October 2019.
- b Include details of the method of stormwater disposal. Stormwater from the development must be piped to Council's existing stormwater drainage system.
- c Engineering plans and supporting calculations for the stormwater drainage system are to be prepared by a suitably qualified engineer and be designed to ensure that stormwater runoff from upstream properties is conveyed through the site without adverse impact on the development or adjoining properties. The plan must indicate the method of disposal of all stormwater and must include rainwater tanks, existing ground levels, finished surface levels on all paved areas, estimated flow rates, invert levels and sizes of all pipelines.
- d Overflow paths shall be provided to allow for flows of water in excess of the capacity of the pipe/drainage system draining the land, as well as from any detention storage on the land. Blocked pipe situations with 1 in 100 year ARI events shall be incorporated in the design. Overflow paths shall also be provided in low points and depressions. Each overflow path shall be designed to ensure no entry of surface water flows into any building and no concentration of surface water flows onto any adjoining property. Details of each overflow path shall be shown on the detailed drainage design.

33 **Council Footpath Reserve Works – Driveways and Crossings**

All redundant vehicular crossings and laybacks rendered unnecessary by this development must be reconstructed to normal kerb and gutter or existing edge of carriageway treatment to match the existing. The verge from the back of kerb to the boundary must be removed and the area appropriately graded, topsoiled and turfed in a manner that conforms with adjoining road reserve. The area forward of the front boundary must be kept smooth, even and free from any trip hazards. All alterations of public infrastructure where necessary are at the developer's expense.

All new driveway laybacks and driveway crossings must be designed in accordance with Wollongong City Council Standards. Details and locations are to be shown on the Construction Certificate Plans.

34 **Dilapidation Survey**

A dilapidation survey and report shall be submitted to the Principal Certifier.

The dilapidation survey and report shall accurately reflect the condition of existing public and private infrastructure in the adjacent street(s) fronting the lots.

The report shall outline measures for the protection of existing public and private infrastructure during the works.

Any damage to infrastructure items and relics which is caused by the developer shall be repaired to the satisfaction of the Principal Certifier prior to the issue of a Certificate of Practical Completion for Subdivision works.

35 **Development Contributions**

Pursuant to Section 4.17 of the Environmental Planning and Assessment Act 1979 and the Wollongong City-Wide Development Contributions Plan, a monetary contribution of \$16,210.00 (subject to indexation) must be paid to Council towards the provision of public amenities and services, prior to the release of any associated Construction Certificate.

This amount has been calculated based on the estimated cost of development and the applicable percentage rate.

The contribution amount will be subject to indexation until the date of payment. The formula for indexing the contribution is:

$$\text{Contribution at time of payment} = \$C \times (\text{CP2}/\text{CP1})$$

Where:

\$C is the original contribution as set out in the Consent

CP1 is the Consumer Price Index; All Groups CPI; Sydney at the time the consent was issued

CP2 is the Consumer Price Index; All Groups CPI; Sydney at the time of payment

Details of CP1 and CP2 can be found in the Australian Bureau of Statistics website – Catalogue No. 6401.0 - Consumer Price Index, Australia.

The following payment methods are available:

METHOD	HOW	PAYMENT TYPE
Online (Full payment only)	http://www.wollongong.nsw.gov.au/applicationpayments Your Payment Reference: 1183192	<ul style="list-style-type: none"> • Credit Card
In Person	Wollongong City Council Administration Building - Customer Service Centre Ground Floor 41 Burelli Street, WOLLONGONG	<ul style="list-style-type: none"> • Cash • Credit Card • Bank Cheque
PLEASE MAKE BANK CHEQUE PAYABLE TO: Wollongong City Council (Personal or company cheques are not accepted)		

A copy of the Wollongong City-Wide Development Contributions Plan and accompanying Fact Sheet may be inspected or obtained from the Wollongong City Council Administration Building, 41 Burelli Street, Wollongong during business hours or on Council's web site at www.wollongong.nsw.gov.au

Prior to the Commencement of Works

36 Heritage Act permit

As the Historical Heritage Assessment has identified that the proposal is highly likely to impact upon archaeological relics, the Applicant will therefore need to obtain an approved s.140 permit under the Heritage Act 1977 prior to any ground disturbing activities commencing. The permit application will need to clearly outline what mitigation measures are proposed to avoid harm to any significant deposits.

Reason: The subject site has potential to contain historical archaeological relics which are protected under s.139 of the Heritage Act 1977. The Applicant must obtain an approval under s.141 of the Heritage Act 1977 prior to any harm occurring to relics.

37 Interpretation Strategy

The Applicant must prepare a draft Interpretation Strategy framework for the site, in the case of the discovery of State significant archaeology and/or relics. The Interpretation Strategy should help the public understand the history and significance of the site. A draft version of the Interpretation Strategy framework shall be submitted to the Heritage Council of NSW or its delegate for approval within six (6) months of the completion of the archaeological program.

Reason: The site has been interpreted in the Historical Heritage Assessment which supports the DA application as having potential to contain archaeology of State significance.

38 Appointment of Principal Certifier

Prior to commencement of work, the person having the benefit of the Development Consent and a Construction Certificate must:

- a Appoint a Principal Certifier (PC) and notify Council in writing of the appointment irrespective of whether Council or an accredited private certifier is appointed; and
- b notify Council in writing of their intention to commence work (at least two days notice is required).

The Principal Certifier must determine when inspections and compliance certificates are required.

39 Sign – Supervisor Contact Details

Before commencement of any work, a sign must be erected in a prominent, visible position:

- a stating that unauthorised entry to the work site is not permitted;
- b showing the name, address and telephone number of the Principal Certifier for the work; and
- c showing the name and address of the principal contractor in charge of the work site and a telephone number at which that person can be contacted at any time for business purposes.

This sign shall be maintained while the work is being carried out and removed upon the completion of the construction works.

40 Temporary Toilet/Closet Facilities

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided must be:

- a a standard flushing toilet; and
- b connected to either:
 - i the Sydney Water Corporation Ltd sewerage system or
 - ii an accredited sewage management facility or
 - iii an approved chemical closet.

The toilet facilities shall be provided on-site, prior to the commencement of any works.

- 41 **Enclosure of the Site**
The site must be enclosed with a suitable security fence to prohibit unauthorised access, to be approved by the Principal Certifier. No building work is to commence until the fence is erected.
- 42 **Demolition Works**
Demolition shall be carried out in accordance with Australian Standard AS2601 (2001): The Demolition of Structures or any other subsequent relevant Australian Standard and the requirements of the SafeWork NSW.

No demolition materials shall be burnt or buried on-site. The person responsible for the demolition works shall ensure that all vehicles leaving the site carrying demolition materials have their loads covered and do not track soil or waste materials onto the road. Any unforeseen hazardous and/or intractable wastes shall be disposed of to the satisfaction of the Principal Certifier. In the event that the demolition works may involve the obstruction of any road reserve/footpath or other Council owned land, a separate application shall be made to Council to enclose the public place with a hoarding or fence over the footpath or other Council owned land.
- 43 **Demolition Notification to Surrounding Residents**
Demolition must not commence unless at least two (2) days written notice has been given to adjoining residents of the date on which demolition works will commence.
- 44 **Consultation with SafeWork NSW – Prior to Asbestos Removal**
A licensed asbestos removalist must give written notice to SafeWork NSW at least five (5) days before licensed asbestos removal work is commenced.
- 45 **Contaminated Roof Dust**
Any existing accumulations of dust in ceiling voids and wall cavities must be removed prior to any demolition work commencing. Removal must take place by the use of an industrial vacuum fitted with a high efficiency particulate air (HEPA) filter.
- 46 **Support for Neighbouring Buildings**
This consent requires the preservation and protection of neighbouring buildings from any damage and if necessary, requires the underpinning and support of any neighbouring building in an approved manner. The applicant or the contractor carrying out the work must at least seven days in advance of any excavation works below the level of the base of the footings of a building on an adjoining allotment, including a public road or place, give written notice of intention to carry out such works to the property owner of the affected adjoining building and furnish specific written details and supporting plans or other documentation of the proposed work.

The adjoining property owner of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.
- 47 **Supervising Arborist – Tree Inspection and Installation of Tree Protection Measures**
Prior to the commencement of any demolition, excavation or construction works, the supervising arborist must certify in writing that tree protection measures have been inspected and installed in accordance with the arborist’s recommendations and relevant conditions of this consent.
- 48 **Certification from Arborist - Adequate Protection of Trees to be Retained**
A qualified arborist is required to be engaged for the supervision of all on-site excavation or land clearing works. The submission of appropriate certification from the appointed arborist to the Principal Certifier is required which confirms that all trees and other vegetation to be retained are protected by fencing and other measures, prior to the commencement of any such excavation or land clearing works.
- 49 **Works in Road Reserve - Minor Works**
Approval, under Section 138 of the Roads Act must be obtained from Wollongong City Council’s Development Engineering Team prior to any works commencing or any proposed interruption to pedestrian and/or vehicular traffic within the road reserve caused by the construction of this development.

The application form for Works within the Road Reserve – Section 138 Roads Act can be found on Council’s website. The form outlines the requirements to be submitted with the application, to give approval to commence works under the roads act. It is advised that all applications are submitted and fees paid, five (5) days prior to the works within the road reserve are intended to commence. The Applicant is responsible for the restoration of all Council assets within the road reserve which are impacted by the works/occupation. Restoration must be in accordance with the following requirements:

- a All restorations are at the cost of the Applicant and must be undertaken in accordance with Council’s standard document, “Specification for work within Council’s Road reserve”.
- b Any existing damage within the immediate work area or caused as a result of the work/occupation, must also be restored with the final works.

50 **Works in Road Reserve – Major Works**

Any occupation, use, disturbance or work on the footpath or road reserve for construction purposes, which is likely to cause an interruption to existing pedestrian and/or vehicular traffic flows requires Council consent under Section 138 of the Roads Act 1993.

The application form for Works within the Road Reserve – Section 138 Roads Act can be found on Council’s website. The form outlines the requirements to be submitted with the application, to give approval to commence works under the roads act. It is advised that all applications are submitted and fees paid, five (5) days prior to the works within the road reserve are intended to commence. An application must be submitted must be obtained from Wollongong City Council’s Development Engineering Team prior to any works commencing where it is proposed to carry out activities such as, but not limited to, the following:

- a Digging or disruption to footpath/road reserve surface;
- b Loading or unloading machinery/equipment/deliveries;
- c Installation of a fence or hoarding;
- d Stand mobile crane/plant/concrete pump/materials/waste storage containers;
- e Pumping stormwater from the site to Council's stormwater drains;
- f Installation of services, including water, sewer, gas, stormwater, telecommunications and power;
- g Construction of new vehicular crossings or footpaths;
- h Removal of street trees;
- i Carrying out demolition works.

Restoration must be in accordance with the following requirements:

- a All restorations are at the cost of the Applicant and must be undertaken in accordance with Council’s standard document, “Specification for work within Council’s Road reserve”.
- b Any existing damage within the immediate work area or caused as a result of the work/occupation, must also be restored with the final works.

51 **Tree Protection**

Prior to commencement of any work on the site, including any demolition, all trees not approved for removal as part of this consent that may be subjected to impacts of this approved development must be protected in accordance with Section 4 of the Australian Standard Protection of Trees on Development Sites (AS 4970-2009).

Tree protection zones must be established prior to the commencement of any work associated with this approved development.

No excavation, construction activity, grade changes, storage of materials stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted within Tree Protection Zones.

During Demolition, Excavation or Construction

52 Stop Work - Unexpected Finds

The Applicant must ensure that if any unexpected archaeological deposits or relics not identified and considered in the supporting documents for this approval are discovered, work must cease in the affected area(s) and the Heritage Council of NSW must be notified as required by s146 of the Heritage Act 1977. Additional assessment and approval may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Reason: To comply with s.146 of the Heritage Act 1977.

53 Heritage - Unanticipated Finds of Aboriginal Cultural Heritage

If unanticipated Aboriginal objects or human skeletal remains are found during works, all work must stop without causing further harm to the suspected Aboriginal objects. Wollongong City Council must be contacted immediately on 4227 7111. The OEH must also be contacted immediately by calling Environment Line on 131 555. An Aboriginal Heritage Impact Permit (AHIP) under the National Parks & Wildlife Act 1974 may be required if harm to Aboriginal objects cannot be avoided. NSW Police must also be notified if human skeletal remains are found.

54 Piping of Stormwater to Existing Stormwater Drainage System

Stormwater for the land must be piped to Council's existing stormwater drainage system.

55 No Adverse Run-off Impacts on Adjoining Properties

The design and construction of the development shall ensure there are no adverse effects to adjoining properties, as a result of flood or stormwater run-off. Attention must be paid to ensure adequate protection for buildings against the ingress of surface run-off.

Allowance must be made for surface run-off from adjoining properties. Any redirection or treatment of that run-off must not adversely affect any other property.

56 Copy of Consent to be in Possession of Person carrying out Tree Removal

The Developer/Applicant must ensure that any person carrying out tree removal is in possession of this development consent and/or the approved landscape plan, in respect to the tree(s) which has/have been given approval to be removed in accordance with this consent.

57 Restricted Hours of Construction Work

The developer must not carry out any work, other than emergency procedures, to control dust or sediment laden runoff outside the normal working hours, namely, 7.00 am to 5.00 pm, Monday to Saturday, without the prior written consent of the Principal Certifier and Council. No work is permitted on public holidays or Sundays.

Any request to vary these hours shall be submitted to the **Council** in writing detailing:

- a the variation in hours required (length of duration);
- b the reason for that variation (scope of works);
- c the type of work and machinery to be used;
- d method of neighbour notification;
- e supervisor contact number;
- f any proposed measures required to mitigate the impacts of the works.

Note: The developer is advised that other legislation may control the activities for which Council has granted consent, including but not limited to, the Protection of the Environment Operations Act 1997.

58 Asbestos – Removal, Handling and Disposal Measures/Requirements Asbestos Removal by a Licensed Asbestos Removalist

The removal of any asbestos material must be carried out by a licensed asbestos removalist if over 10 square metres in area of non-friable asbestos, or if any type of friable asbestos in strict accordance with SafeWork NSW requirements (< <http://www.safework.nsw.gov.au> >).

59 Asbestos Waste Collection, Transportation and Disposal

Asbestos waste must be prepared, contained, transported and disposed of in accordance with SafeWork NSW and NSW Environment Protection Authority requirements. Asbestos waste must only be disposed of at a landfill site that can lawfully receive this type of waste. A receipt must be retained and submitted to the Principal Certifier, and a copy submitted to Council (in the event that Council is not the Principal Certifier), prior to commencement of the construction works.

60 **Provision of Waste Receptacle**

The developer must provide an adequate receptacle to store all waste generated by the development, pending disposal. The receptacle must be regularly emptied and waste must not be allowed to lie or accumulate on the property other than in the receptacle. Consideration should be given to the source separation of recyclable and re-usable materials.

61 **Provision of Taps/Irrigation System**

The provision of common taps and/or an irrigation system is required to guarantee that all landscape works are adequately watered. The location of common taps and/or irrigation system must be implemented in accordance with the approved Landscape Plan.

62 **Screen Planting**

To mitigate impact to adjoining dwelling a continuous hedge is to be established along the eastern and western boundary for the length of the building.

Recommended species:

- a *Syzygium australe* "Aussie Southern",
- b *Syzygium australe* "Aussie Compact",
- c *Syzygium luehmannii* x *S.wilsonii* "Cascade".

Minimum spacing 900mm.

Minimum pot size 25 lt.

A further list of suitable suggested species may be found in Wollongong Development Control Plan 2009 – Chapter E6: Landscaping.

63 **Podium Planting**

All podium planting areas are to have a waterproofing membrane that can provide a minimum 10 year warranty on product. Protective boarding is to be installed to protect membrane from damage.

All podium planting areas to be provided with an adequate drainage system connected to the stormwater drainage system. The planter box is to be backfilled with free draining planter box soil mix.

If selected mulch is decorative pebbles/gravel, the maximum gravel pebble size is 10mm diameter.

64 **Heritage – Documentation and Correspondence**

The developer is to provide a copy to Council of any and all archaeological reporting and all correspondence with NSW Heritage in relation to the Excavation Permit Application and its requirements and any findings of the archaeological investigation (including a copy of the interim and final archaeological reports).

Prior to the Issue of the Occupation Certificate

65 **Heritage Act Approval Requirements**

Prior to the issue of the Occupation Certificate by Council and/or the Principal Certifying Authority, the Applicant shall supply a copy of written correspondence from the Heritage Council of NSW or its delegate confirming that their requirements under any Heritage Act 1977 approval have been satisfied.

Reason: This is consistent with requirements of s.146(8) of the Heritage Act 1977.

66 **Drainage WAE**

The developer shall obtain written verification from a suitably qualified civil engineer, stating that all stormwater drainage and related work has been constructed in accordance with the approved plans. In addition, full works-as-executed plans, prepared and signed by a Registered Surveyor must

be submitted. These plans must include levels and location for all drainage structures and works, buildings (including floor levels) and finished ground and pavement surface levels. This information must be submitted to the Principal certifying Authority prior to the issue of the final occupation certificate.

67 **Heritage - Interpretation Works**

Prior to the release of the occupation certificate, the developer is to complete any works that are recommended as detailed in the endorsed Heritage Interpretation Plan.

68 **Drainage**

The developer must obtain a certificate of Hydraulic Compliance (using Council's M19 form) from a suitably qualified civil engineer, to confirm that all stormwater drainage have been constructed in accordance with the approved plans. In addition, full works-as-executed plans, prepared and signed by a Registered Surveyor must be submitted. These plans and certification must satisfy all the stormwater requirements stated in Chapter E14 of the Wollongong DCP2009. This information must be submitted to the Principal Certifier prior to the issue of the final Occupation Certificate.

69 **BASIX**

An Occupation Certificate must not be issued unless accompanied by the BASIX Certificate applicable to the development. The Principal Certifier must not issue the final occupation certificate unless satisfied that selected commitments have been complied with as specified in the relevant BASIX Certificate. NOTE: Clause 154B of the Environmental Planning and Assessment Regulation 2000 provides for independent verification of compliance in relation to certain BASIX commitments.

70 **Completion of Landscape Works**

The completion of the landscaping works as per the final approved Landscape Plan is required prior to the issue of Occupation Certificate.