

# Wollongong Local Planning Panel Assessment Report | 7 May 2024

<b>WLPP No.</b>	Item No. 1
<b>DA No.</b>	DA-2023/761
<b>Proposal</b>	Alterations and additions to serviced apartments and 7 additional parking spaces
<b>Property</b>	Wollongong Golf Course 151-161 Corrimal Street Wollongong
<b>Applicant</b>	Wollongong Golf Course
<b>Responsible Team</b>	Development Assessment and Certification - City Centre Team (NM)
<b>Lodgement date</b>	27 September 2023
<b>Prior WLPP meeting</b>	N/A

## ASSESSMENT REPORT AND RECOMMENDATION

### Executive Summary

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#### Reason for consideration by Local Planning Panel

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. Under Schedule 2 of the Local Planning Panels Direction of 6 September 2023, the proposal involves departures from Development Standards exceeding 10% (height).

The existing building exceeds the maximum height limit and this is not proposed to increase with this proposal. The proposed works are above the maximum height limit because they are located within the existing non-compliant building height.

#### Proposal

Alterations and additions to existing service apartments to increase number of units and the provision of additional parking.

#### Permissibility

The site is zoned RE2 Private Recreation pursuant to Wollongong Local Environmental Plan 2009 (WLEP). The proposal is categorised as serviced apartments, which is permissible as per the Existing Use Provisions contained within Division 4.11 of the EP&A Act. The Serviced Apartment use has previously been approved on the site, in conjunction with the primary use of the site as a Registered Club, which is permissible with consent in the zone.

#### Consultation

The proposal was exhibited in accordance with Council's Community Participation Plan. No submissions were received.

#### Main Issues

The main issues are:

- Flooding and parking location
- Height variation

#### RECOMMENDATION

It is recommended that DA-2023/761 be approved subject to the recommended conditions of consent in Attachment (4).

## **1 APPLICATION OVERVIEW**

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### **1.1 PLANNING CONTROLS**

The following planning controls apply to the proposal:

#### State Environmental Planning Policies

- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021

#### Local Environmental Planning Policies

- Wollongong Local Environmental Plan 2009 (WLEP)

#### Development Control Plans

- Wollongong Development Control Plan 2009 (WDCP)

#### Other Policies

- Wollongong City Wide Development Contributions Plan
- Wollongong Community Participation Plan

### **1.2 DETAILED DESCRIPTION OF PROPOSAL**

The proposal comprises the following:

#### Demolition

- Internal demolition on parts of levels 2 and 4 to facilitate an increased number of serviced apartments.

#### Alterations and Additions

- Internal
  - Construction of new internal walls and room fit out to increase the number of serviced apartments on both floors 2 and 3 from 10 to 17 (total increase from 20 to 34). Each room will be provided with individual bathrooms and private balconies.
- External
  - Construction of 7 additional parking spaces and 1 additional accessible parking space
  - Installation of balustrades and partitions externally on the existing balconies to match the proposed room configuration.

### **1.3 BACKGROUND**

#### Current Application

The application was formally lodged/accepted by Council on 27 September 2023. Neighbour notification commenced on 6 October 2023 and concluded on 20 October 2023.

Initially unsatisfactory responses to referrals were received from Council's Stormwater and Traffic Engineers, due to the flood risk associated with the proposed location of additional parking on the site. Amended information was submitted by the applicant that relocated the proposed parking spaces outside the flood affected portion of the site.

It was not considered necessary to renotify the amended plans, given the limited changes proposed.

Satisfactory responses to the referrals were consequently received from both Traffic and Stormwater Engineers subject to the recommended conditions of consent.

## Previous Prelodgement Meeting

*PL-2021/83*

A prelodgement meeting (PL-2021/83) was held on 16 June 2021, for a similar proposal to the subject application.

The proposed development has been altered from the design discussed at the pre-lodgement however, it was agreed that the proposal was supportable in relation to flooding/stormwater and parking being addressed.

Additionally, it was advised at the time that although the building is existing, works are occurring above the maximum building height, and therefore requires a Cl 4.6 variation request to the Maximum Height Development Standard, and the consent authority is Wollongong Local Planning Panel.

### **1.4 SITE DESCRIPTION**

The site is located at 151-161 Corrimal Street Wollongong, within the Wollongong Golf Course site. There are several lots that make up the property address, however the work is entirely located within Lots 1 and 2 DP 1088105. The site is irregular in shape, relatively flat.

The property contains Wollongong Golf Course, golf club and associated facilities. The particular lots which are the subject of this application contain the golf club/serviced apartment building and parking area.

Surrounding land contains a mixture of residential and recreational land uses, surrounded by predominantly residential flat buildings to the north and a mixture of dwelling houses and residential flat buildings to the west. The surrounding golf course is located to the east and south of the club building. Further south, past the golf course is a seniors housing facility.

#### Property constraints

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

- Acid Sulfate Soils – Class 3: no concerns are raised as minimal excavation is proposed.
- Flood precinct under review. No impact on flooding on the site is expected, as works are predominantly internal within the building, and on already developed parts of the parking area.
- Coastal zone: no impact expected. Refer to discussion in Resilience and Hazards SEPP.

There are no restrictions on the title.



Figure 1: Aerial photograph



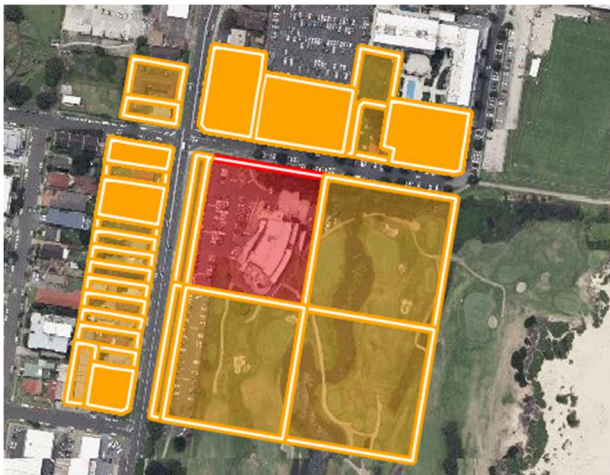
Figure 2: WLEP 2009 zoning map



**Figure 3:** Golf club and parking area

## 1.5 SUBMISSIONS

The application was notified in accordance with Council's Community Participation Plan 2019. No submissions were received.



**Figure 4:** Notification map

## 1.6 CONSULTATION

### 1.6.1 INTERNAL CONSULTATION

#### **Stormwater Engineer**

Council's Development Engineer has reviewed the amended plans provided by the applicant and raised no concern subject to recommended conditions of consent.

#### **Traffic Planner**

Council's Traffic Planner has reviewed the proposal, including the amended plans provided by the applicant. A conditionally satisfactory referral was received.

#### **BCA Officer**

Council's BCA Officer has reviewed the proposal and raised no concern subject to conditions of consent.

### 1.6.2 EXTERNAL CONSULTATION

None required

## **2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

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### **2.1 OTHER RELEVANT LEGISLATION**

#### **2.1.1 ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (HOUSING AND PRODUCTIVITY CONTRIBUTIONS) ORDER 2023**

This application was lodged prior to the commencement of the Housing and Productivity Contributions ministerial order.

### **2.2 SECTION 4.15(1)(A)(1) ANY ENVIRONMENTAL PLANNING INSTRUMENT**

#### **2.2.1 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021**

##### **Chapter 2 Coastal management**

The development site is located within the Coastal Use Area and is therefore within the Coastal Zone.

##### **Section 2.11 Coastal Use Area**

The proposed development is unlikely to have an adverse impact on access to and from the coastal area, overshadowing, window funnelling or views, visual amenity and the scenic quality of the coast or any places of cultural or Aboriginal heritage.

##### **Section 2.12 Development in coastal zone generally—development not to increase risk of coastal hazards**

The proposed development is appropriate for the site and unlikely to cause increased risk of coastal hazard on the site or surrounding area given that the majority of the works are to be contained within the existing building envelope.

##### **Section 2.13 Development in coastal zone generally—coastal management programs to be considered**

Council has a coastal zone management plan developed in accordance with the prior legislation applicable to the site. As per the Coastal Management Act 2016, existing coastal management plans can be considered as coastal management programs for the purpose of this SEPP until 31 December 2023 or until replaced by a Coastal Management Program.

This application was lodged while the Wollongong CZMP was a relevant matter for consideration and has been considered in the assessment of this application.

The proposed development is generally consistent with the objectives and controls within the CZMP. The proposed development is appropriate for the site, is consistent with the land use zone, and unlikely to result in a significant impact on the coastal zone or surrounding area.

##### **Chapter 4 Remediation of land**

##### **4.6 Contamination and remediation to be considered in determining development application.**

A desktop audit via Council's land information system database for property constraints and previous uses was undertaken to understand the likelihood of contamination issues.

The audit revealed there are no constraints or past uses that give rise to concerns or the need for further investigation regarding land contamination and Council as consent authority can be satisfied that clause 4.6 matters are thus satisfied. A specific condition of consent is proposed relating to an unexpected finds protocol.

## 2.2.2 STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

### **Division 17 Roads and Traffic**

#### **Subdivision 2 Development in or adjacent to road corridors and road reservations**

##### **2.119 Development with frontage to classified road**

The site has a direct frontage to Corrimal Street, which is a State Classified Road.

The proposal is compliant with the provisions of this Section. No change to vehicular access to the site is proposed, which will remain from a road other than the classified road.

No impact on the safe, efficient operation of the classified road is expected because of the development.

The development is predominantly internal, within the existing building. No change of use is proposed. Existing noise prevention measures will be maintained. There is also a substantial setback between the existing building and the classified road. The development is therefore not considered to be a development which is sensitive to traffic noise or vehicle emissions and has been appropriately designed to limit any impacts.

##### **2.120 Impact of road noise or vibration on non-road development**

This section applies to development for residential accommodation. As per the Standard Instrument definitions, the proposal is considered to be **serviced apartments**, which is a form of **tourist and visitor accommodation**, rather than residential accommodation. As such, the provisions of this clause do not apply to the proposed development.

Notwithstanding, the proposal is not considered likely to be impacted by noise and vibrations from the classified road. All works relating to the serviced apartment use is internal, within a part of the building already being used for that purpose.

##### **2.122 Traffic Generating Development**

This section does not apply to the development, as the criteria listed in Schedule 3 of the SEPP for referral to TfNSW are not met. 50 or more additional parking spaces are not proposed, and it is not expected that the works will result in more than 50 vehicle movements per hour.

## 2.2.3 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

The use appears consistent with the definitions of both hotel and motel accommodation and serviced apartments. The applicant has identified the proposal as serviced apartments, which is in accordance with the approval previously granted.

### **Clause 1.4 Definitions**

**serviced apartment** means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.

**hotel or motel accommodation** means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that—

- a) comprises rooms or self-contained suites, and
- b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles,

but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

## **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 RE2 Private Recreation.

### Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

- *To enable land to be used for private open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*

The proposal is satisfactory with regard to the above objectives.

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

#### ***Permitted with consent***

*Animal boarding or training establishments; Aquaculture; Boat building and repair facilities; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Centre-based child care facilities; Community facilities; Entertainment facilities; Environmental facilities; Environmental protection works; Extensive agriculture; Function centres; Kiosks; Markets; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Restaurants or cafes; Roads; Signage; Take away food and drink premises; Water recreation structures*

#### ***Prohibited***

*Any development not specified in item 2 or 3*

Serviced apartments, hotel or motel accommodation or Tourist and Visitor Accommodation are not permitted within the RE2 zone.

The continued use of the site for serviced apartments is considered permissible as per the Existing Uses provisions provided in Division 4.11 of the EP&A Act.

### **EP&A Act Division 4.11 Existing Uses**

*In this Division, existing use means—*

- (a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and*
- (b) the use of a building, work or land—*
  - (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
  - (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.*

#### ***Approval history***

The use of the site for the purpose of Registered Club (of which the serviced apartments were considered a subservient component) was approved by Council under DA-2003/656 (as amended) on 2 April 2004. The application has been modified several times, with the most recent (modification G) approved on 14 March 2006. The works and use approved as part of this consent has commenced, with the construction certification and occupation certificate for works recorded under application PC-2004/752/A.

A condition of consent was placed on that approval as follows:



**129 Use of Serviced Apartments**  
**The serviced apartments must only be used and managed in conjunction with and as part of the registered club. In this regard, strata subdivision of the serviced apartments is not permitted.**

At the time of approval, the serviced apartments were considered a subservient component of the registered club (see notes from Informal Planning conference), which was permissible with consent under WLEP 1990. Registered club is also permissible under the current LEP, however, as per planning circular PS 21-008 (dated 2 December 2021), the serviced apartment component of the development is considered to serve its own purpose, and therefore is considered to be a dominant use in its own right and cannot rely only on the permissibility of the registered club use. Existing use rights are discussed below.

### ***The Act***

Under s4.66, an existing use may continue, irrespective of any Environmental Planning Instrument.

Under s4.67, the regulations may make provisions for alterations, extensions to or the rebuilding of a building for an existing use. Refer to Regulation subheading below.

Under s4.70, *Nothing in an environmental planning instrument prohibits, or requires a further development consent to authorise, the carrying out of development in accordance with a consent that has been granted and is in force.* The use of the land approved under DA-2003/656, can be an *existing use* immediately following the coming into force of an environmental planning instrument prohibiting that use. Accordingly existing use rights can apply to an existing use, if use has not been abandoned. The power of S4.70 can still allow consent to be granted (see *O'Donnell v Sutherland Shire Council* (No.2) [2011] NSWLEC 184).

### ***The Regulations***

As per clause 163, an existing use may be (a) enlarged, expanded or intensified, or (b) be altered or extended.

#### **Clause 164 Enlargement, expansion and intensification of existing uses**

This application is considered to involve an intensification of the existing use on the site (being the serviced apartment use), through the provision of additional rooms. It is noted that the floor space associated with the use is not proposed to change, however, several rooms are being replaced by an increased number of smaller rooms within the same floor space.

To be permissible, the intensification must be for the existing use and no other use and be carried out only on the land on which the existing use was carried out.

The proposed intensification of use is located within the existing building constructed as part of the original consent and is located on the same land the original consent was granted on. The intensification is only for the purpose of serviced apartments and does not involve any additional use. The use of the land is maintained as currently approved.

#### **Clause 165 Alteration of buildings and works**

The proposed development is considered to be an alteration of an existing building, to enable the intensification of the existing use.

To be permissible, the alteration must be for the existing use of the building or work and for no other use, and erected or carried out only on the land on which the building or work was carried out.

The alterations are primarily internal and relate to the existing use only and no other use. The work is proposed on the land where the original approval for the building was granted.

As per the above, it is considered the proposed alterations to the building to increase the number of serviced apartments on the site is permissible as per the Existing Use provisions in the Act. The proposed development is consistent with the relevant provisions within the Act and Regulations.

Clause 2.7 Demolition requires development consent

Minor internal demolition is proposed to enable refurbishment of levels 2 and 3 of the building. Appropriate conditions relating to demolition will be included.

**Part 4 Principal development standards**

Clause 4.3 Height of buildings

The site has a maximum building height of 8m.

The existing building on the site has a maximum height of 19m, which was approved by DA-2003/656 (as amended).

Works proposed as part of this application are on levels 2 and 3, and include internal alterations to the floor plan, and the placement of barriers/screening on balconies, to correspond with the increased number of rooms. All proposed works (apart from car parking changes), including that which is located internally and externally is above the maximum building height permissible on the site (but within the existing approved building height).

No concern is raised regarding works which is entirely internal.

External work including the installation of screening on balconies is located above the building height which is not permissible. A Variation request under Clause 4.6 of the WLEP has been submitted to support the proposed development.

Clause 4.6 Exceptions to development standards

(Note: Changes were made to clause 4.6 on 1 November 2023 however savings applied and the previous wording of clause 4.6 applies to applications lodged prior to this date.)

The proposal seeks a development departure for height of building as per Clause 4.3 of the LEP and a variation is provided in accordance with this clause below.

WLEP 2009 clause 4.6 proposed development departure assessment	
Development departure	Clause 4.3 building height
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, and	The applicant has provided a satisfactory clause 4.6 variation request as contained at Attachment 3.
(b) that there are sufficient environmental planning grounds to justify the contravention of the development standard.	Yes The applicant's Clause 4.6 Statement identifies the environmental planning grounds that are considered sufficient to support the development departure regarding the specifics of the proposed development and unique site circumstances
4.6 (4) (a) Consent authority is satisfied that:	
(i) the applicant's written request has adequately addressed the matters	The applicant's request is based on the rationale outlined in the first way in Wehbe v Pittwater Council [2007] NSWLEC827.

<p>required to be demonstrated by subclause (3), and</p>	<p><i>1. The objectives of the standard are achieved notwithstanding noncompliance with the standard (First Way)</i></p> <p>The applicant argues the following.</p> <p>Correlation between the height and the floor space given that the site has an area of 10.45ha and the existing serviced apartments have a total GFA of 975.3m<sup>2</sup>. There is no change proposed to the GFA by the alterations and additions.</p> <p>High quality urban form in that there will be no dramatic change to the existing form and scale of the building which maintains a modern appearance and consistency with the existing built form. The works do not result in any unreasonable loss of amenity to any of the adjoining properties.</p> <p>Views and solar access, no change is proposed to the height of existing building or gross floor area to create any impact on views or solar access.</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>The proposed development will be in the public interest because it is consistent with the objectives of the building height standard and the objectives for development within the zone will be achieved.</p> <p>It is considered that strict compliance with the height standard in the context of the proposal and the subject site would not result in any significant public benefit in this specific instance.</p> <p>The objective of clause 4.3 are:</p> <ul style="list-style-type: none"> <li><i>(a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved</i></li> <li><i>(b) to permit building heights that encourage high quality urban form</i></li> <li><i>(c) to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight</i></li> </ul> <p>Regarding objective ‘a’ no increase in FSR is proposed and no change to the existing built form is proposed.</p> <p>Regarding objective ‘b’ All works including the screens will be located below the existing maximum building height envelope, and are within existing balconies, which will not contribute to additional increased bulk and scale. The proposed departure from the height control will not substantially impact on the ability for the development to achieve a high-quality urban form.</p> <p>Regarding objective ‘c’ no impact on views or solar access is expected and no additional bulk and scale is proposed. There will continue to be a high degree of amenity and quality of urban form without significantly reducing the solar access of adjoining and adjacent development or public spaces.</p> <p>The objectives for development within the RE2 Private Recreation zone are:</p> <ul style="list-style-type: none"> <li>• <i>To enable land to be used for private open space or</i></li> </ul>

	<p><i>recreational purposes.</i></p> <ul style="list-style-type: none"> <li>• <i>To provide a range of recreational settings and activities and compatible land uses.</i></li> <li>• <i>To protect and enhance the natural environment for recreational purposes.</i></li> </ul> <p>The proposal is consistent with the above objectives as it will continue to provide a range of recreational settings and activities and compatible land uses for recreational purposes compatible with surrounding development.</p> <p>The Clause 4.6 submission has provided reasonable justification that the development achieves the objectives of the standard and the objectives of the zone and has sufficient planning grounds to justify the variation. Requiring compliance with the maximum height limit is not necessary in this instance due to the existing urban form. The alterations are considered minor with regard to the scale of the existing building.</p> <p>As the development is consistent with the objectives of the standard and objectives of the zone, the proposed variation to the building height is considered to be in the public interest.</p>
(b) the concurrence of the Planning Secretary has been obtained.	Not required.

Clause 4.4 Floor space ratio

No additional Gross Floor Area is proposed.

**Part 5 Miscellaneous provisions**

Clause 5.10 Heritage conservation

The site is not heritage listed or located in the vicinity of other heritage listed sites.

Clause 5.21 Flood planning

Council's Stormwater officer has reviewed the proposal with regard to flooding and the provisions of this clause and has recommended suitable conditions of consent.

**Part 7 Local provisions – general**

Clause 7.1 Public utility infrastructure

The development is already serviced by electricity, water and sewerage services.

No additional demand is expected as a result of this application.

Clause 7.5 Acid Sulfate Soils

The site contains Class 3 Acid Sulfate Soils. No excavation is proposed, and no concern is raised.

Clause 7.12 Serviced Apartments

The objective of this clause is to prevent conversion of serviced apartments to a residential use.

There is an existing condition on the original consent for the construction and use of the site which prevents the strata subdivision of serviced apartments. This condition would continue to apply to any approval granted as part of this application.

A condition will be included on any consent to confirm that conditions on DA-2003/656 (as amended) continue to apply to the use.

## **Part 8 Local Provisions – Wollongong City Centre**

The proposal is consistent with the objectives for development within the Wollongong City Centre and is considered acceptable. There are no additional controls of relevance to the proposed development within this Part.

### **2.3 SECTION 4.15(1)(A)(II) ANY PROPOSED INSTRUMENT**

None applicable.

### **2.4 SECTION 4.15(1)(A)(III) ANY DEVELOPMENT CONTROL PLAN**

#### **2.4.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009**

The development has been assessed against the relevant Chapters of the WDCP 2009, and the complete assessment can be viewed at Attachment 2 of this report.

No DCP Variations are sought as part of this application.

#### **2.4.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN**

##### Wollongong City-Wide Development Plan - City Wide

The Wollongong City-Wide Development Contributions Plan applies to the subject property. This Plan levies a contribution based on the estimated cost of development.

- The proposed cost of development\* is over \$200,001 – a levy rate of 1% applies.

$$\text{Contribution Amount} = \text{Cost of Works } \$1,920,000 \times 1\% \text{ levy rate} = \$19,200.00$$

### **2.5 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**

There are no planning agreements entered into or any draft agreement offered to enter into under S7.4 which affect the development.

### **2.6 SECTION 4.15(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)**

#### **Environmental Planning and Assessment Regulation 2021**

##### 61 Additional matters that consent authority must consider

Conditions of consent are recommended with regard to demolition.

##### 62 Consideration of fire safety

Appropriate conditions relating to fire safety will be included on the consent, as recommended by Council's BCA Officer.

##### 64 Consent authority may require upgrade of buildings

The application has been referred to Council's BCA Officer, who has recommended conditions of consent.

### **2.7 SECTION 4.15(1)(B) THE LIKELY IMPACTS OF DEVELOPMENT**

The proposal is considered acceptable with regard to the likely impacts.

This is demonstrated through the following:

- The proposal is satisfactory with regard to the applicable planning controls as detailed in the body of this report
- Referrals are satisfactory as detailed in this report

- The proposal is consistent with the existing established use of the land.
- Although the proposed development results in an intensification of the serviced apartment use, this is permissible as per the existing uses provisions discussed in this report. Furthermore, the proposed intensification (increasing the number of serviced apartments from 20 to 37), is not considered likely to have a significant or unacceptable impact on the land or the surrounding area. No changes to the built form are proposed, and the alterations and additions can be catered within the existing building footprint. The alterations and additions results in a reduction in room sizes/number of bedrooms in the serviced apartment rooms, as such, the total number of people accommodated is relatively similar. In addition, any increase in servicing requirements or parking requirements are able to be catered for within the existing building envelope and parking area. No impact on landscaping to provide additional parking or additional building works are required to enable the intensification of use. No impacts are therefore expected.

## **2.8 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 with regard to the zoning of the site and is not expected to have any negative 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.

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

Refer to Section 1.5.

## **2.10 SECTION 4.15(1)(E) THE PUBLIC INTEREST**

The proposed development is considered to be in the public interest as it has a negligible impact, is consistent with the applicable planning controls, is generally compatible with development in the surrounding areas, no submissions objecting to the proposal were received and satisfactory internal referrals have been received.

The height of building variation request is considered acceptable in the circumstances and supportable. A satisfactory variation request was provided with the application, which adequately demonstrated the proposal would not result in a determinantal impact despite the height variation, and the proposal is in the public interest.

The intensification of the serviced apartment use is not expected to have a significant negative impact on the surrounding area. All works are able to be catered in the existing building, and parking changes are catered within the existing parking area.

## **3 CONCLUSION**

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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 proposal does not fully comply with the building height standard under WLEP 2009. The applicant has followed the process set out in clause 4.6 of WLEP 2009 and adequately justified the development standard departures. The character and form of the development is consistent with the zoning and reasonably responds to the surrounding context and the applicable controls. No

change to the serviced apartment use is proposed, and the alterations and additions are considered acceptable as discussed in the body of this report.

No submissions raised during public exhibition and referrals are generally satisfactory subject to conditions of consent. The application is considered acceptable regarding the likely impacts as discussed above. It is considered that the proposed development has 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**

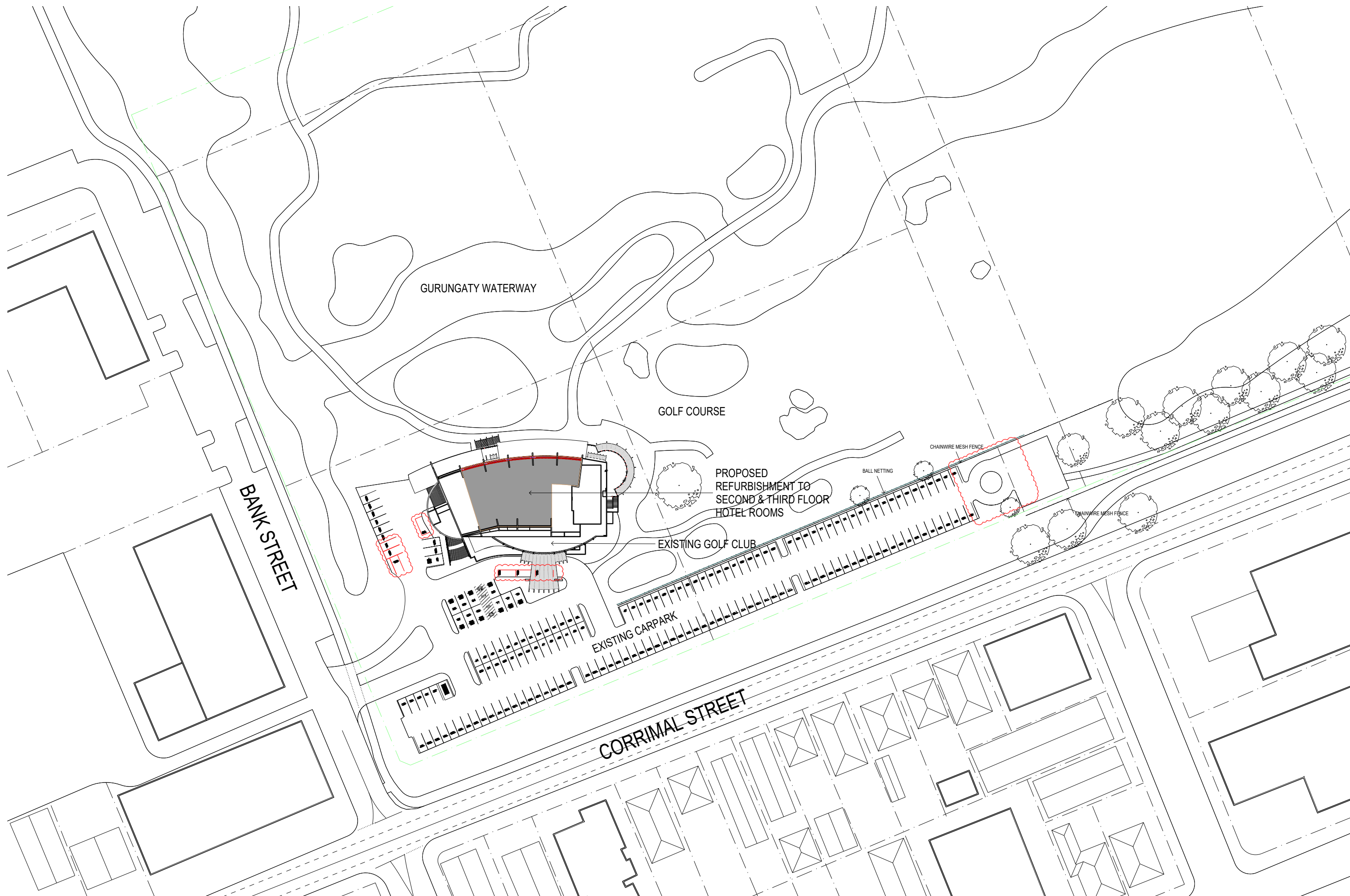
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DA-2023/761 be approved subject to the recommended conditions of consent contained in Attachment 4.

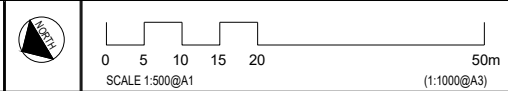
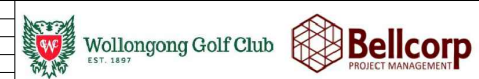
#### **5 ATTACHMENTS**

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- 1 Architectural Plans
- 2 WDCP 2009 Compliance Table
- 3 Clause 4.6 Variation Request
- 4 Recommended Conditions of Consent



ISSUE	DATE	AMENDMENT
A	20-09-2023	DA SUBMISSION
B	06-03-2024	AMENDED PARKING LAYOUT



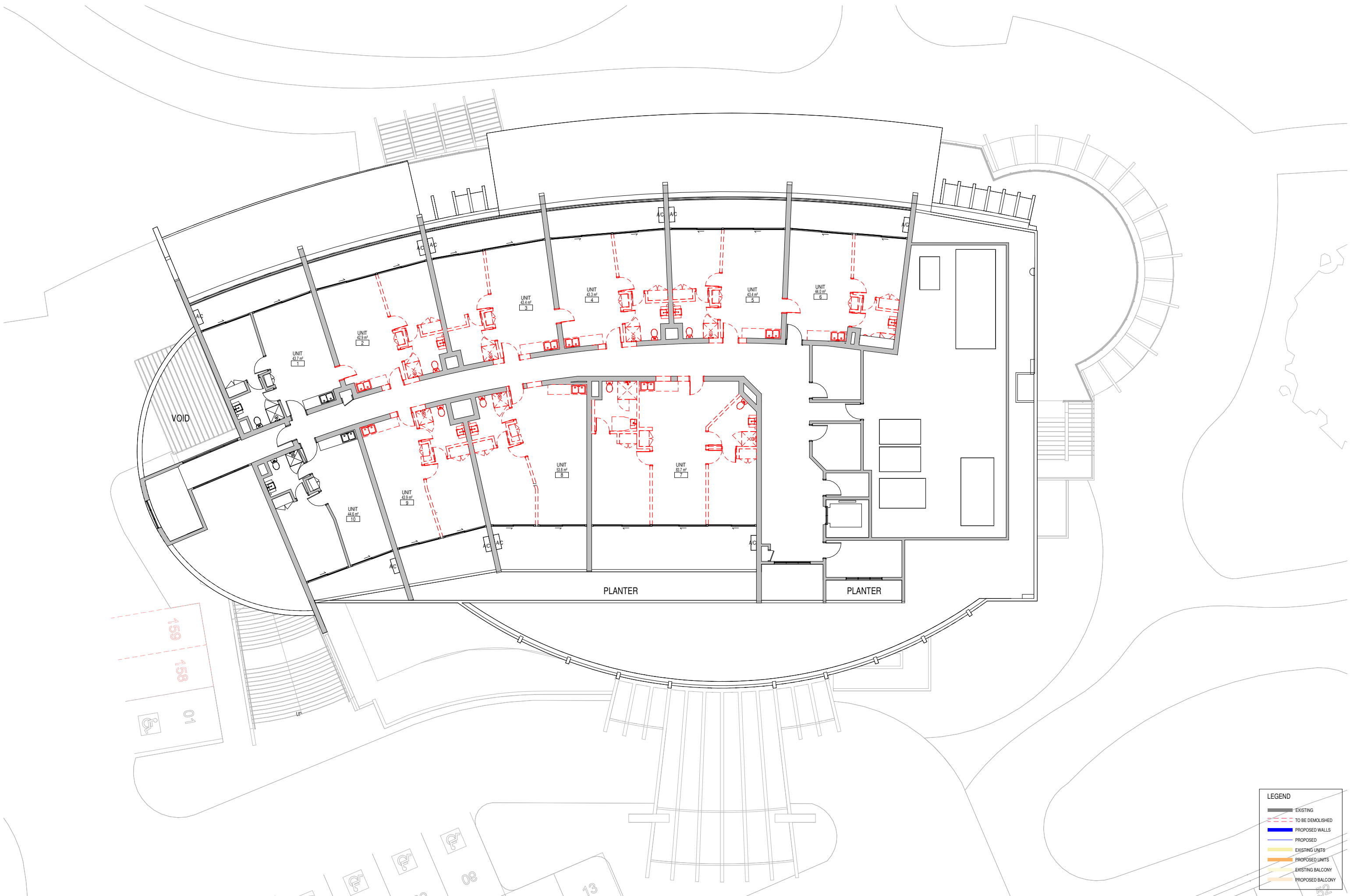
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**PROPOSED REFURBISHMENT TO SECOND & THIRD FLOOR HOTEL ROOMS AT WOLLONGONG GOLF CLUB**  
 ADDRESS  
 CORRIMAL STREET WITH BANK STREET, WOLLONGONG NSW 2500

PROJECT No. **22044**  
 CLIENT  
 BELLCORP

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 SHEET NAME: **SITE PLAN**  
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DRAWING No. **DA02**  
 ISSUE No. **B**

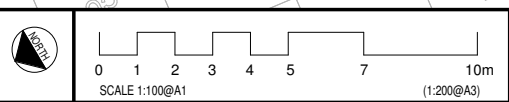




**LEGEND**

- EXISTING
- - - TO BE DEMOLISHED
- PROPOSED WALLS
- PROPOSED
- EXISTING UNITS
- PROPOSED UNITS
- EXISTING BALCONY
- PROPOSED BALCONY

ISSUE	DATE	AMENDMENT
A	20-09-2023	DA SUBMISSION



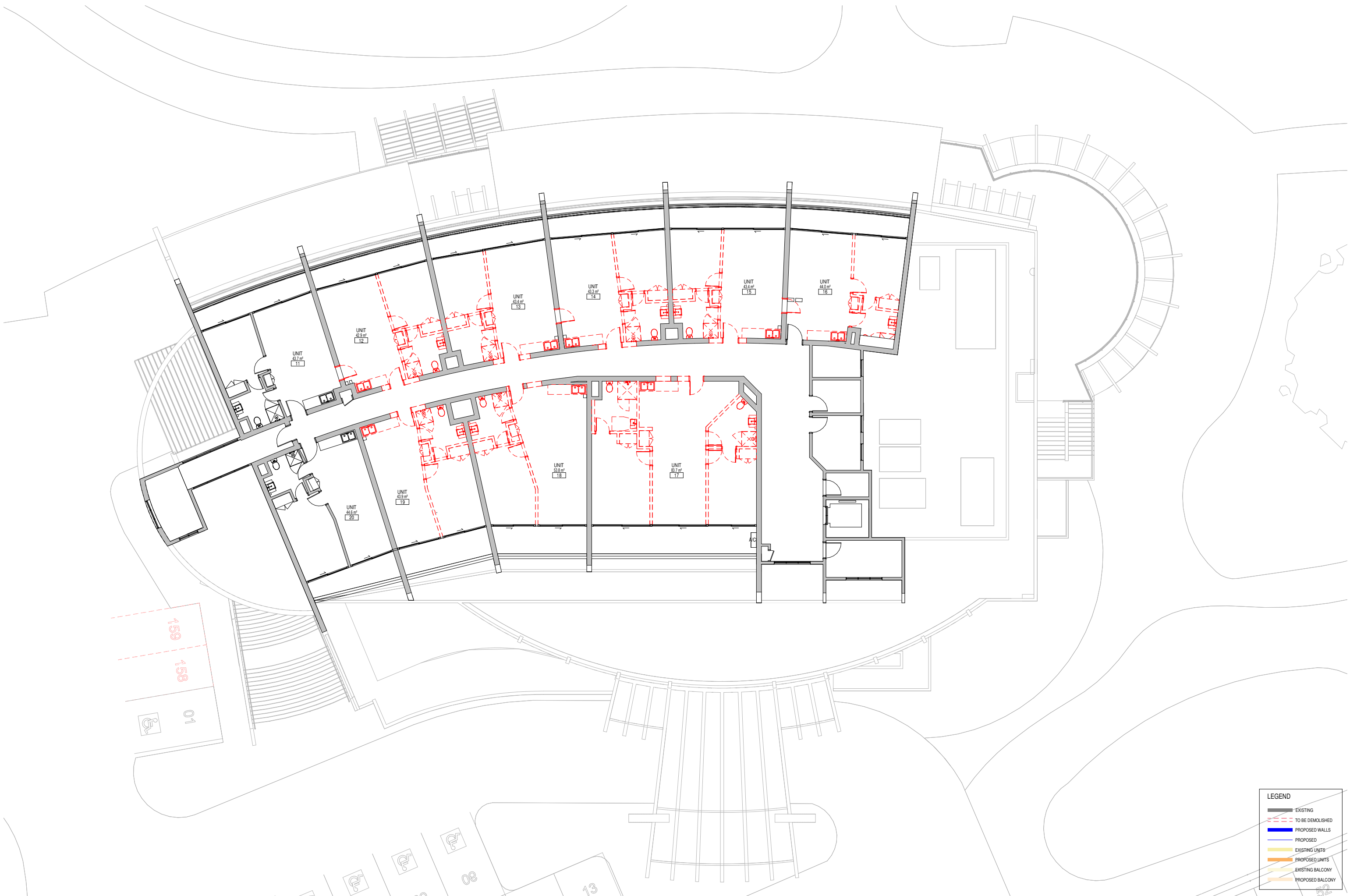
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 WOLLONGONG GOLF CLUB  
 ADDRESS  
 CORNER OF CORRIMAL & BANK STREET, WOLLONGONG NSW 2500

PROJECT No. **22044**  
 CLIENT  
 BELLCORP

SHEET  
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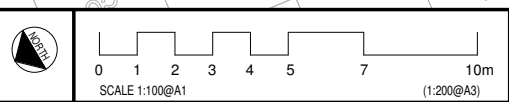
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DRAWING No. **DA03**  
 ISSUE No. **A**



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	PROPOSED
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	PROPOSED BALCONY

ISSUE	DATE	AMENDMENT
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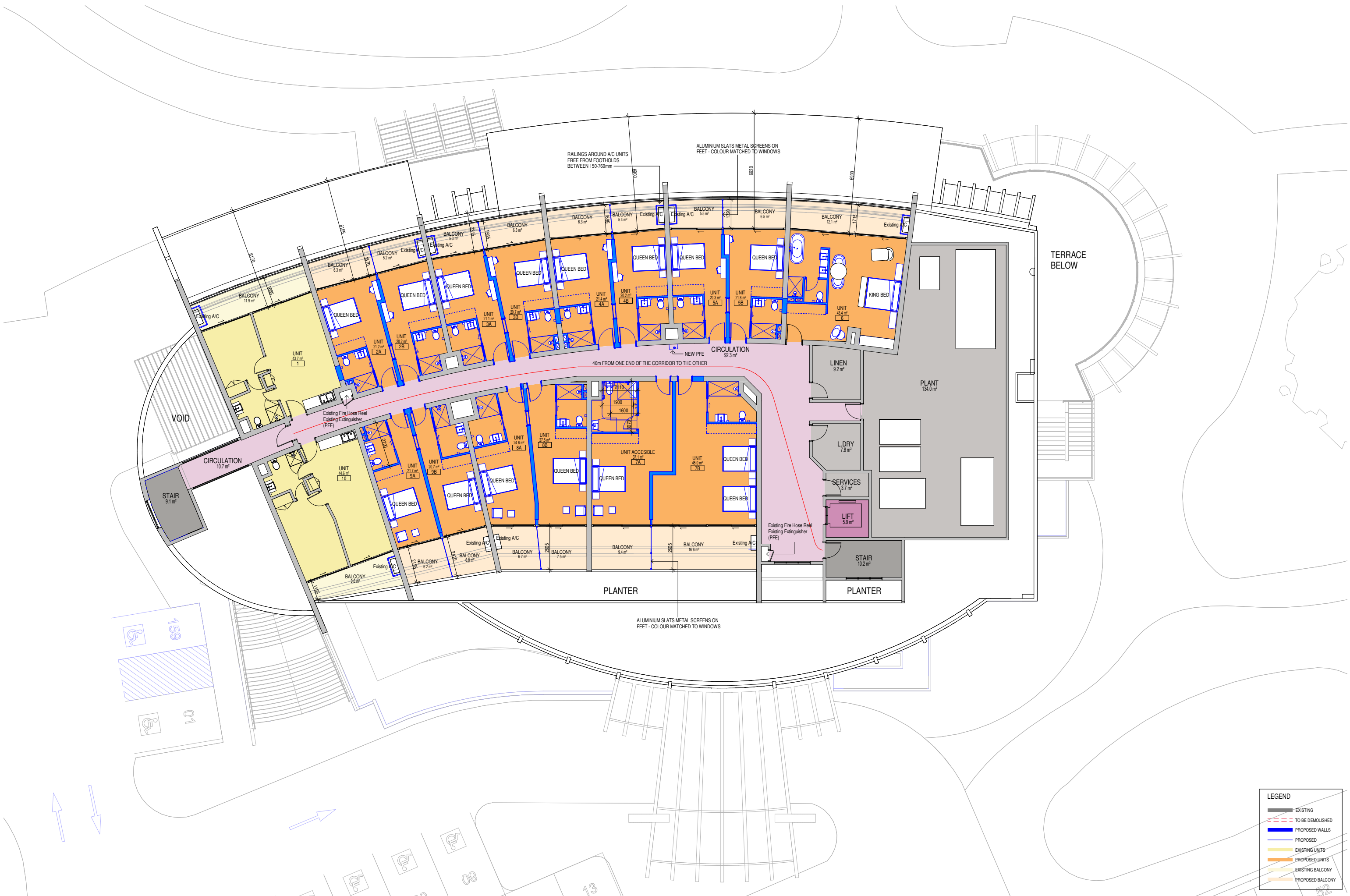


PROJECT PROPOSED REFURBISHMENT TO SECOND & THIRD FLOOR AT WOLLONGONG GOLF CLUB  
 ADDRESS CORNER OF CORRIMAL & BANK STREET, WOLLONGONG NSW 2500

PROJECT No. 22044  
 CLIENT BELLCORP

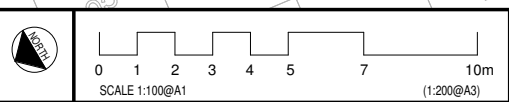
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 ISSUE No. A



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	TO BE DEMOLISHED
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	PROPOSED
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	PROPOSED BALCONY

ISSUE	DATE	AMENDMENT
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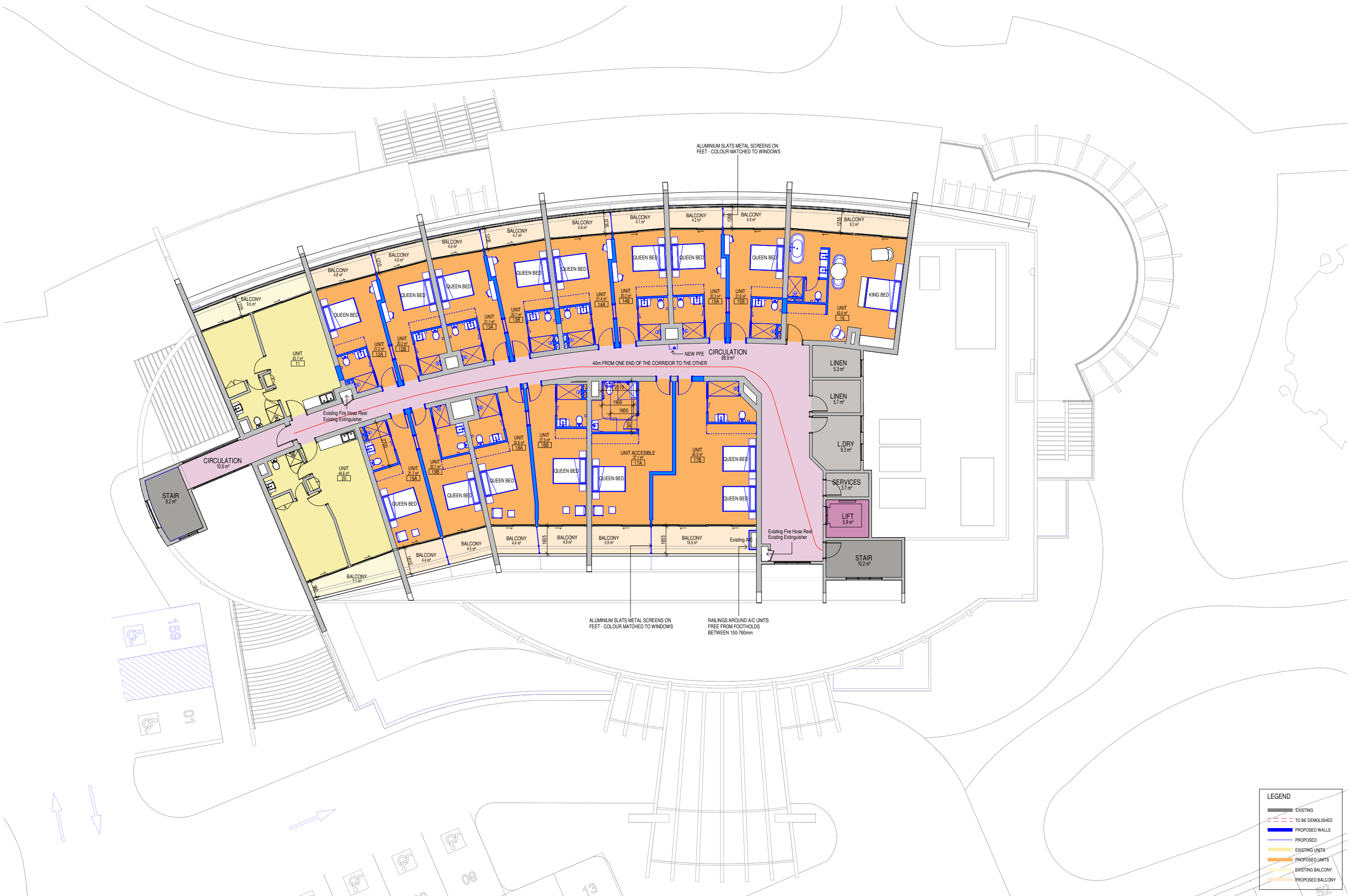


PROJECT PROPOSED REFURBISHMENT TO SECOND & THIRD FLOOR AT WOLLONGONG GOLF CLUB  
 ADDRESS CORNER OF CORRIMAL & BANK STREET, WOLLONGONG NSW 2500

PROJECT No. 22044  
 CLIENT BELLCORP

MORSON GROUP  
HONORABLE ARCHITECT - P/F  
 NSW ARCHITECTURE REGISTRATION NUMBER 8110  
 A/CN/139 480 024 - 488 41 139 480 024  
 www.morsongroup.com.au  
 825 926 4944  
 PO Box 170, Potts Point, NSW 1535

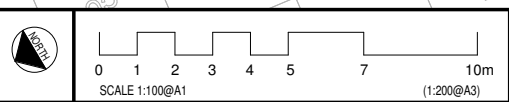
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 ISSUE No. A



**LEGEND**

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- - - TO BE DEMOLISHED
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- PROPOSED
- EXISTING UNITS
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- EXISTING BALCONY
- PROPOSED BALCONY

ISSUE	DATE	AMENDMENT
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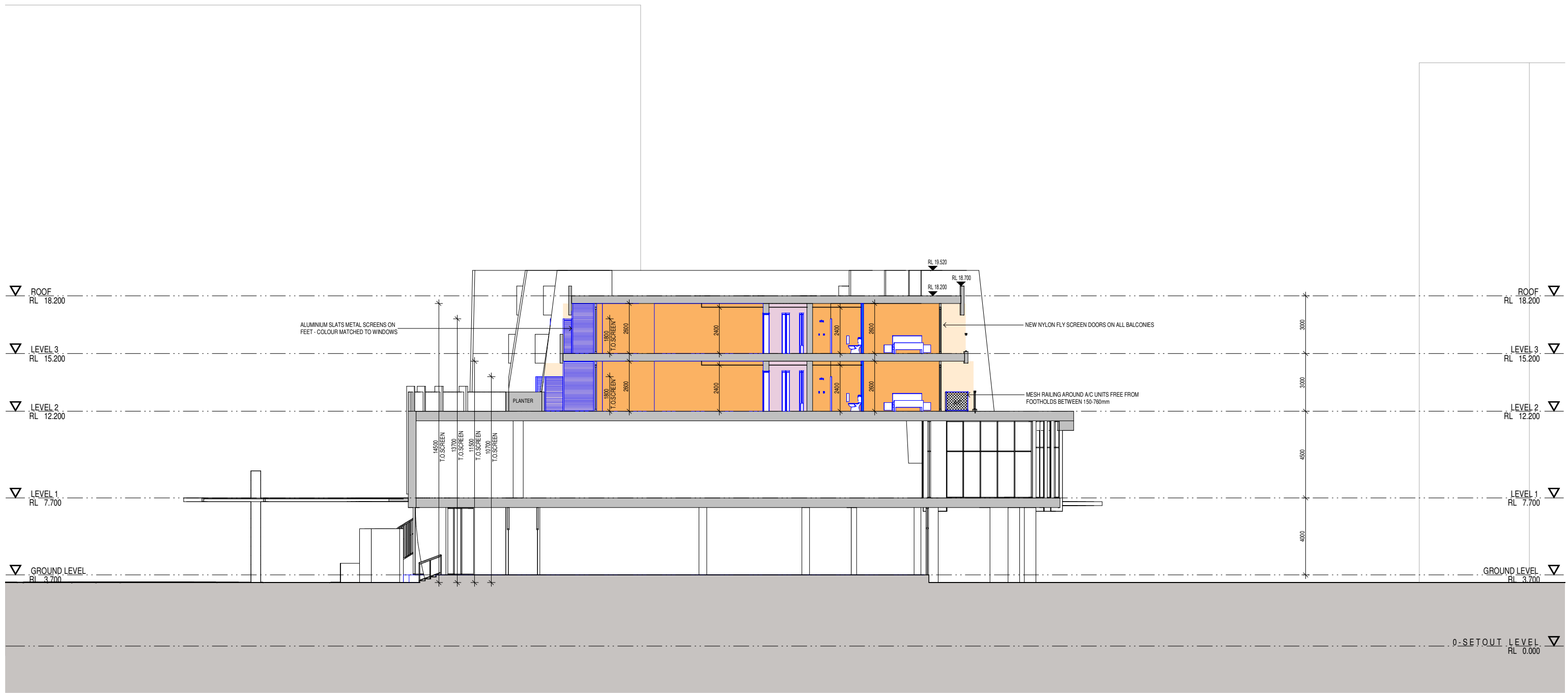
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 ADDRESS: CORNER OF CORRIMAL & BANK STREET, WOLLONGONG NSW 2500

PROJECT No. 22044  
 CLIENT: BELLCORP

HOMERATED ARCHITECT - P/F  
 ARCHITECT REGISTRATION NUMBER 8110  
 A/CN 131 480 034 - MHN 41 131 480 034  
 www.morsongroup.com.au  
 825 926 4944  
 PO Box 170, Potts Point, NSW 1535

SHEET SIZE: A1  
 SCALE: 1:100  
 SHEET NAME: PROPOSED THIRD LEVEL  
 DRAWING No. DA06  
 ISSUE No. A





▽ ROOF  
RL 18.200

▽ LEVEL 3  
RL 15.200

▽ LEVEL 2  
RL 12.200

▽ LEVEL 1  
RL 7.700

▽ GROUND LEVEL  
RL 3.700

▽ ROOF  
RL 18.200

▽ LEVEL 3  
RL 15.200

▽ LEVEL 2  
RL 12.200

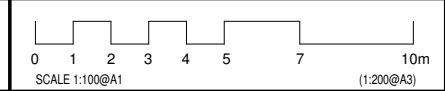
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▽ GROUND LEVEL  
RL 3.700

▽ 0-SETOUT LEVEL  
RL 0.000

LEGEND	
	EXISTING
	TO BE DEMOLISHED
	PROPOSED WALLS
	PROPOSED
	EXISTING UNITS
	PROPOSED UNITS
	EXISTING BALCONY
	PROPOSED BALCONY

ISSUE	DATE	AMENDMENT
A	20-09-2023	DA SUBMISSION



PROJECT  
**PROPOSED REFURBISHMENT TO SECOND & THIRD FLOOR AT WOLLONGONG GOLF CLUB**  
ADDRESS  
CORNER OF CORRIMAL & BANK STREET, WOLLONGONG NSW 2500

PROJECT No. **22044**  
CLIENT  
BELLCORP

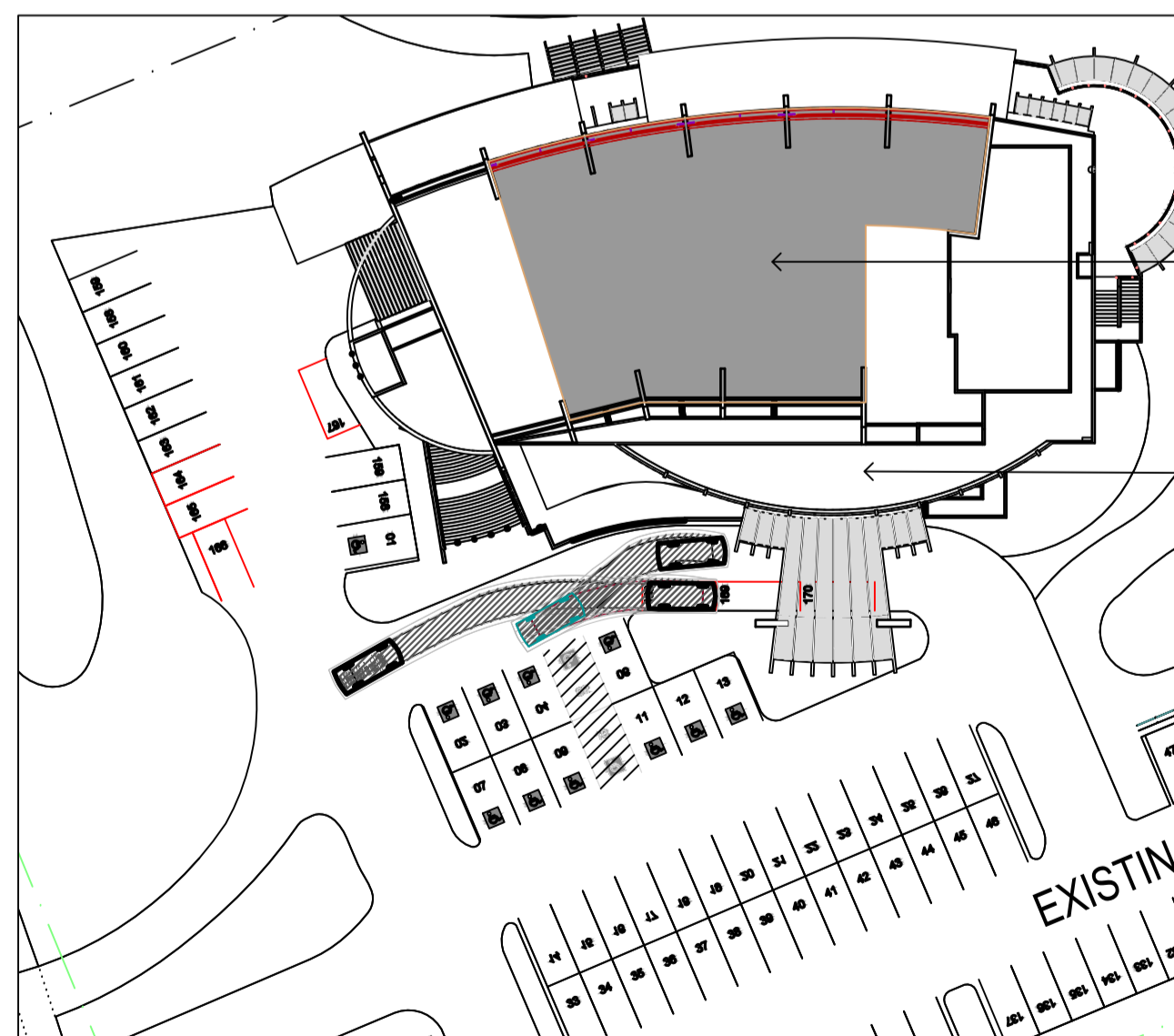
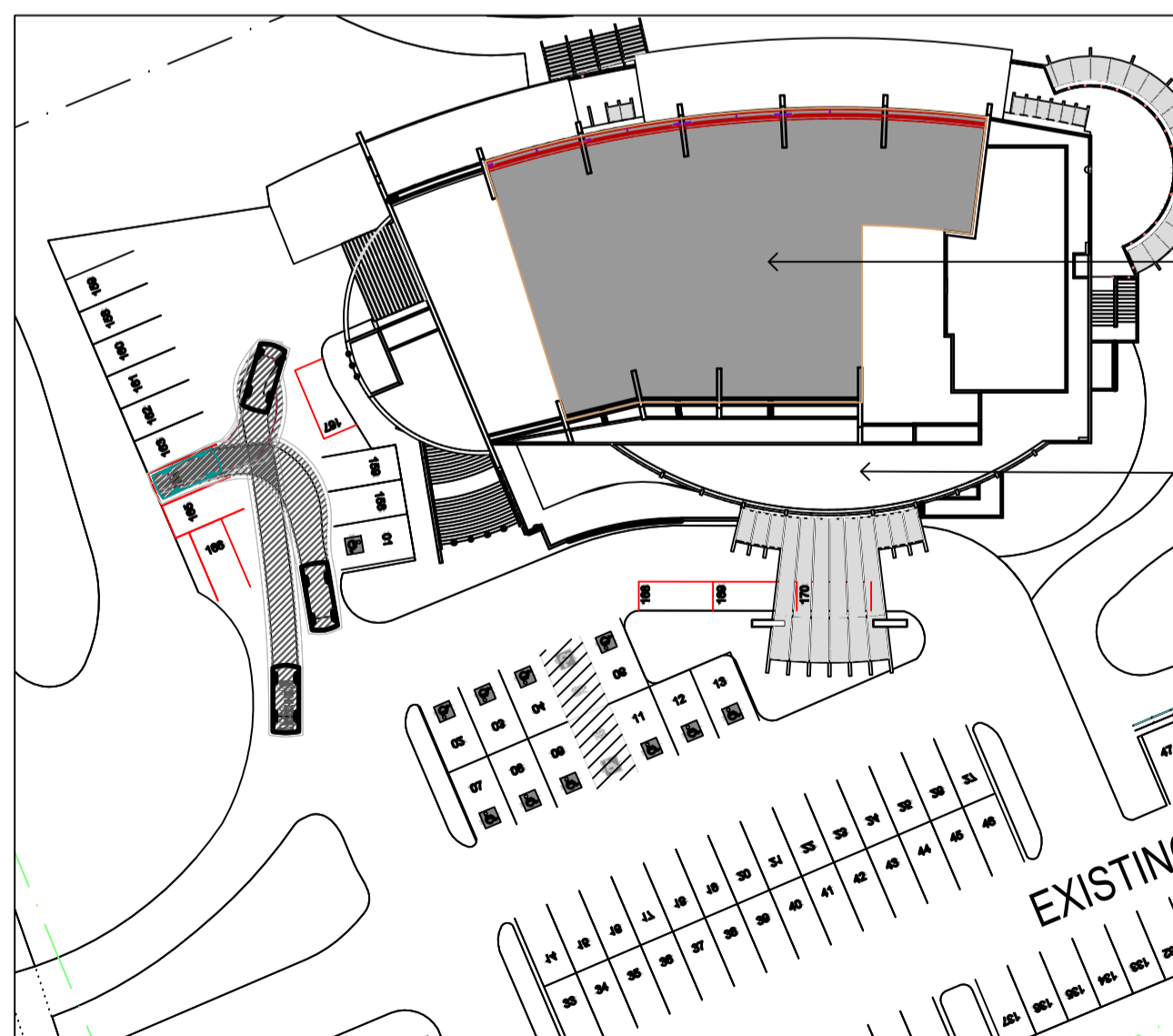
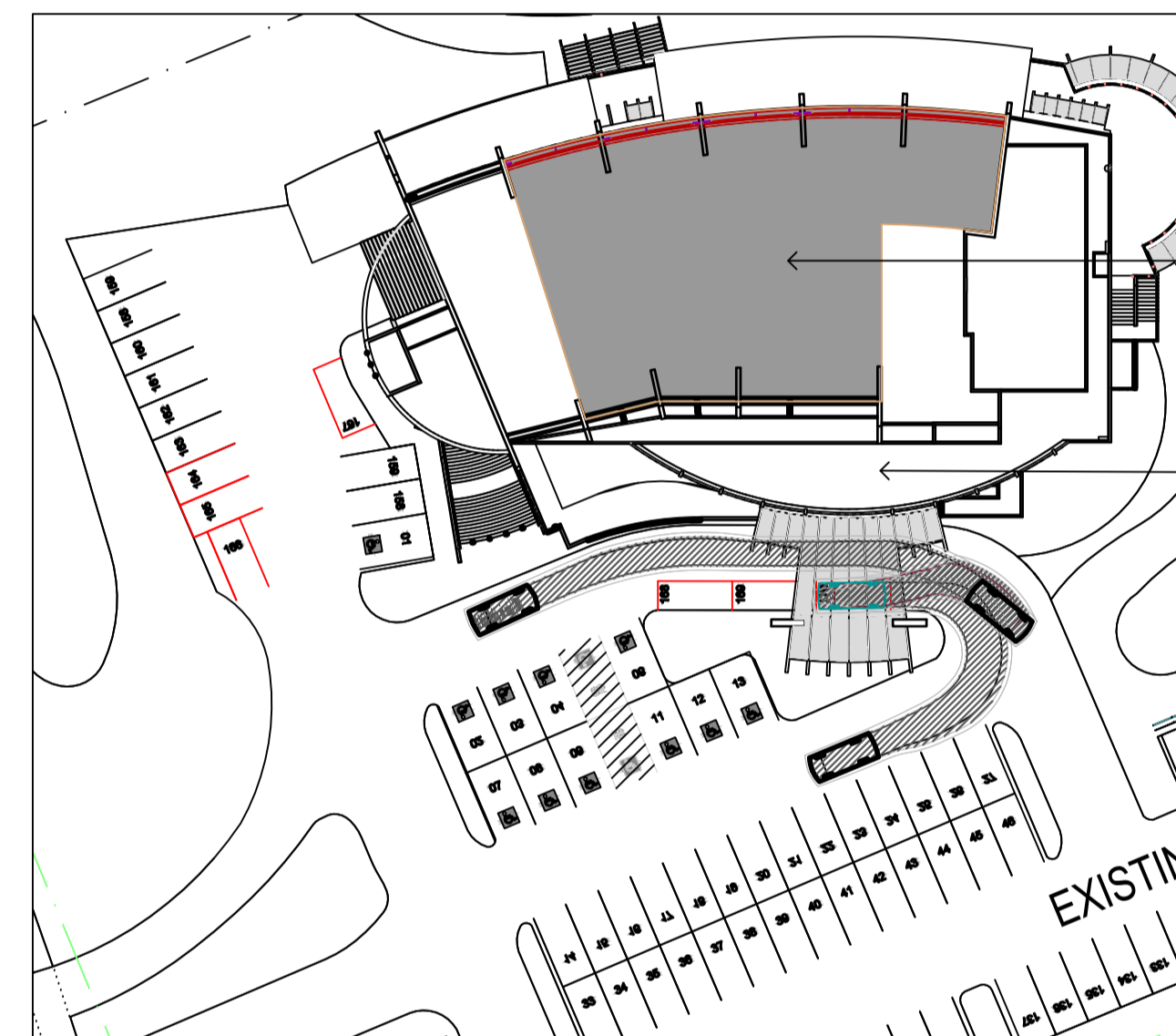
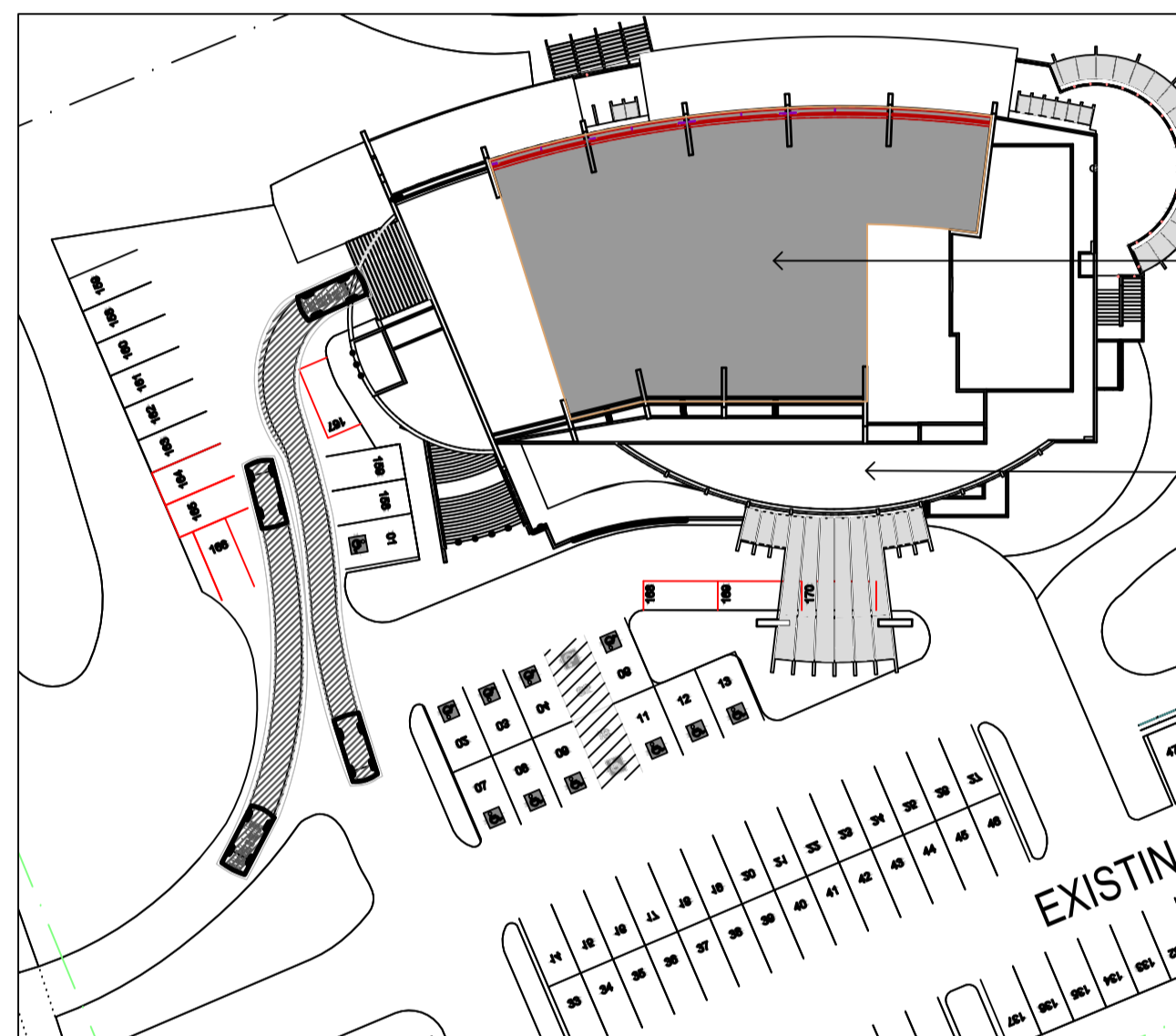
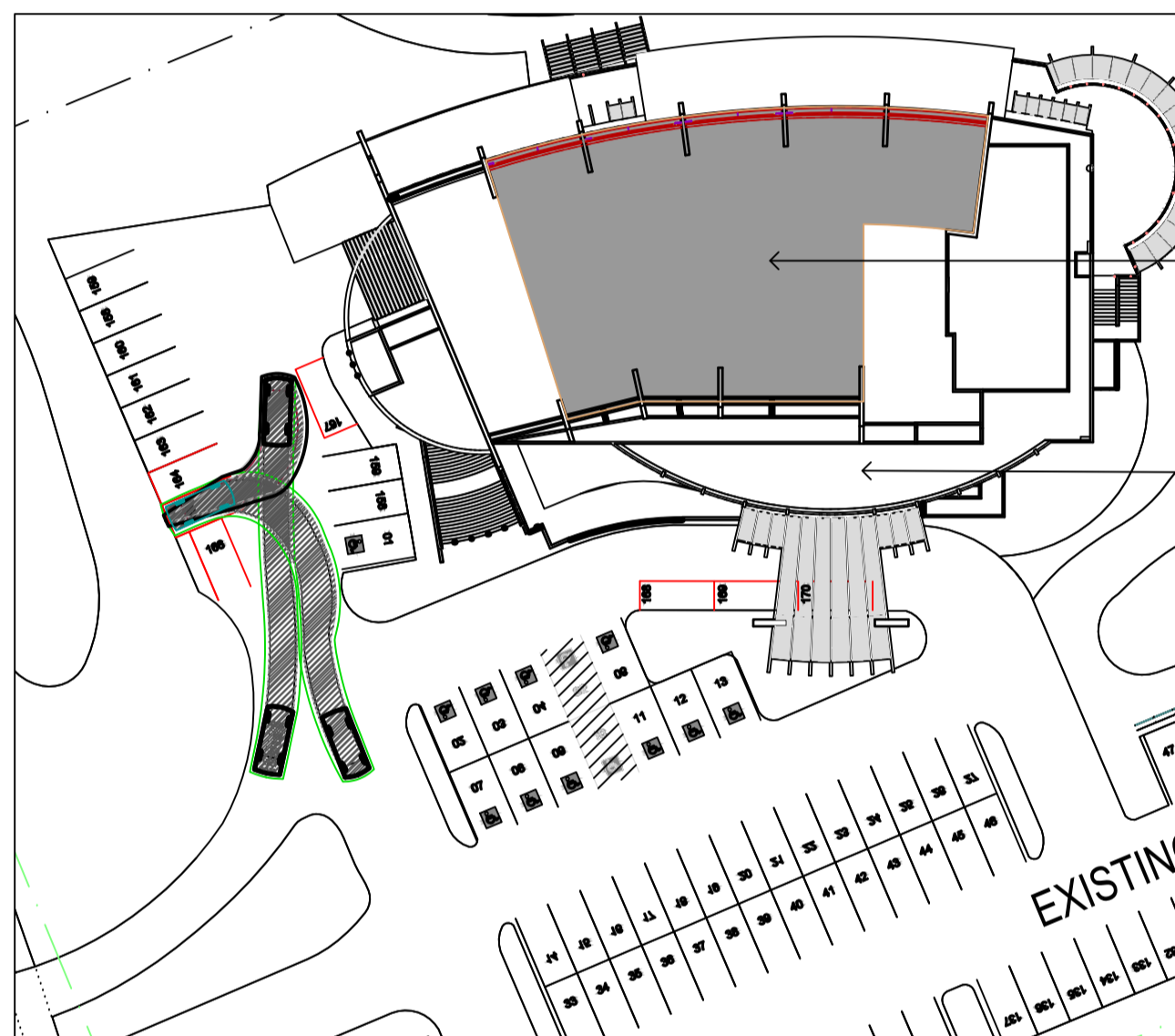
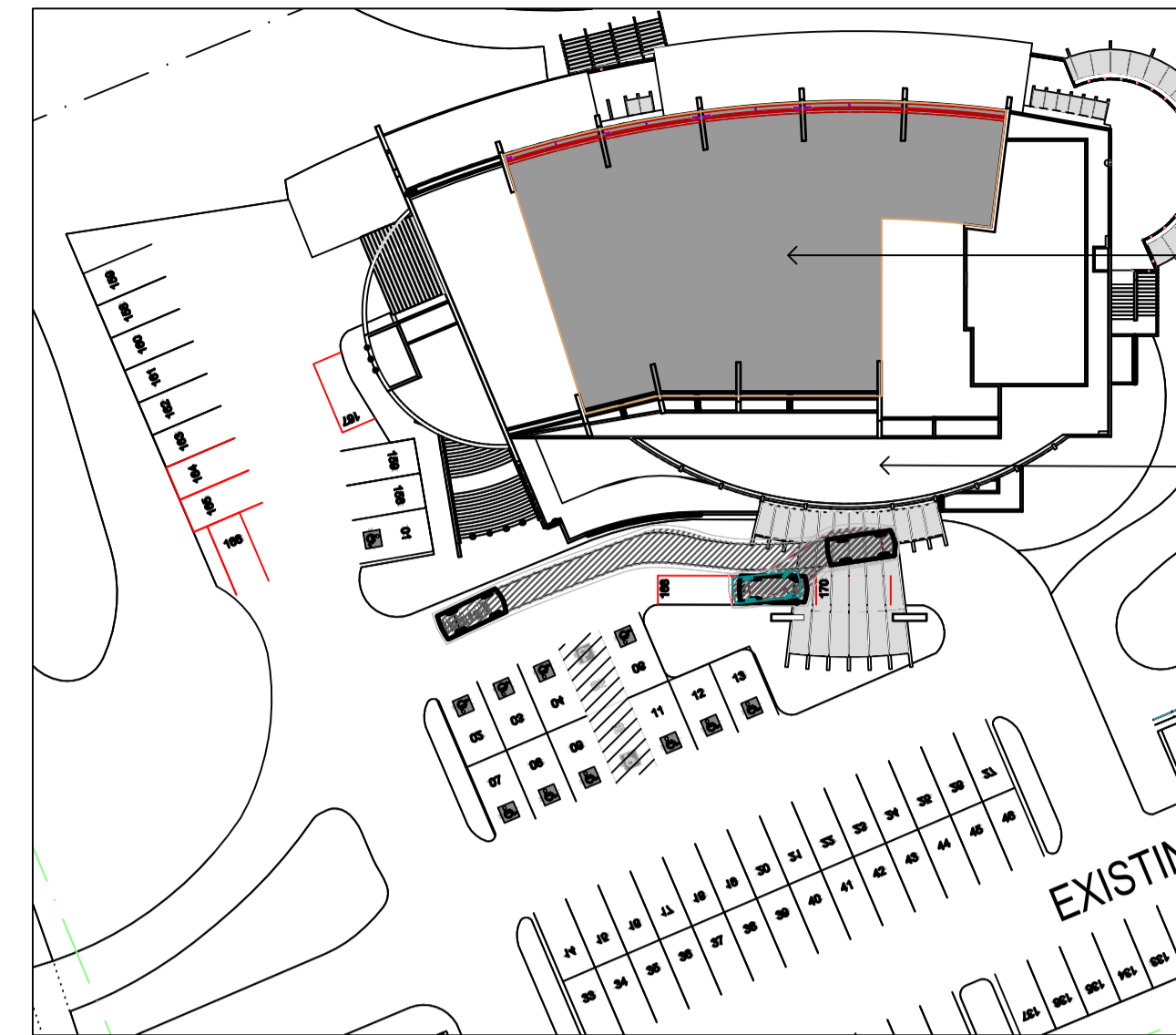
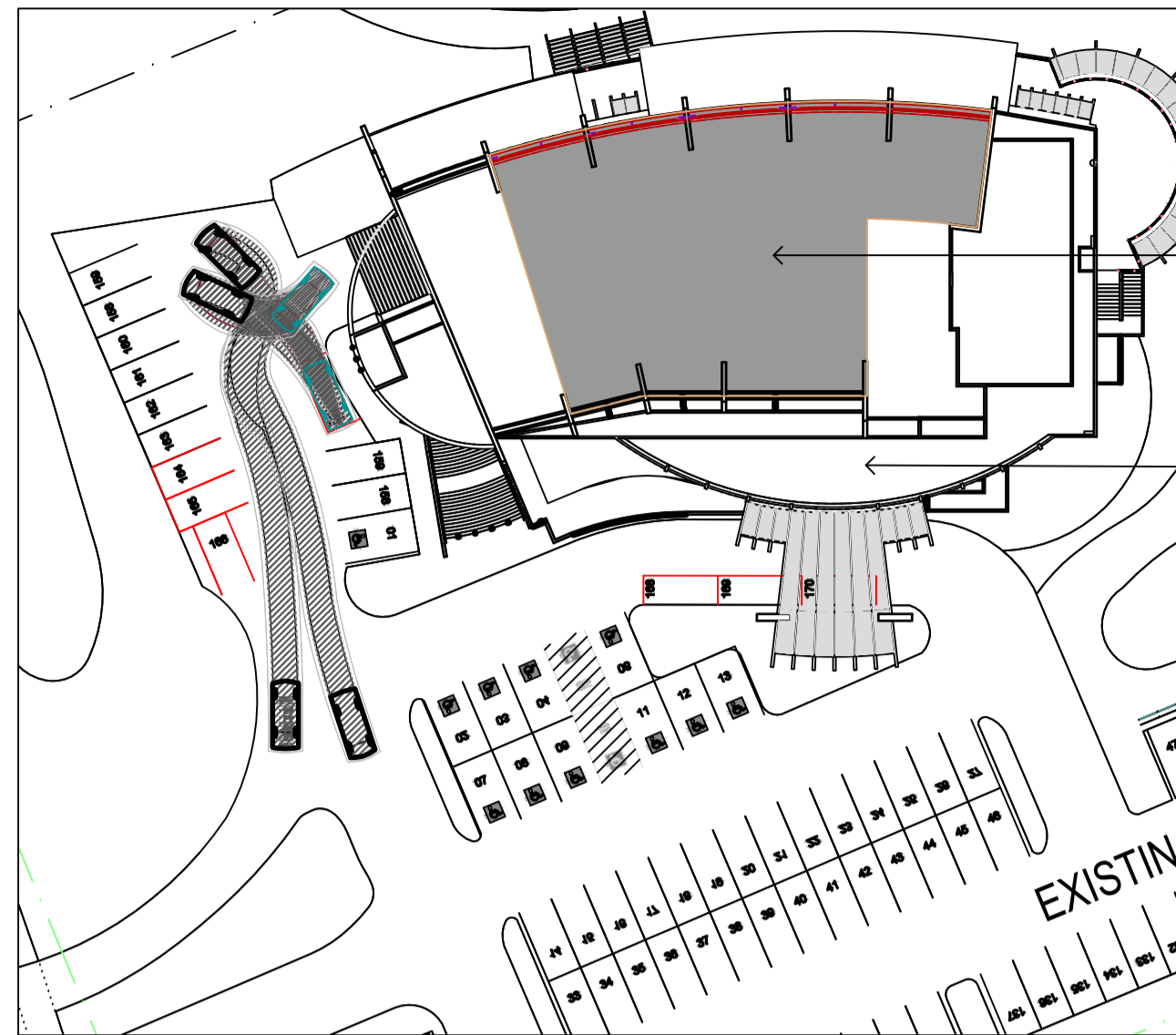
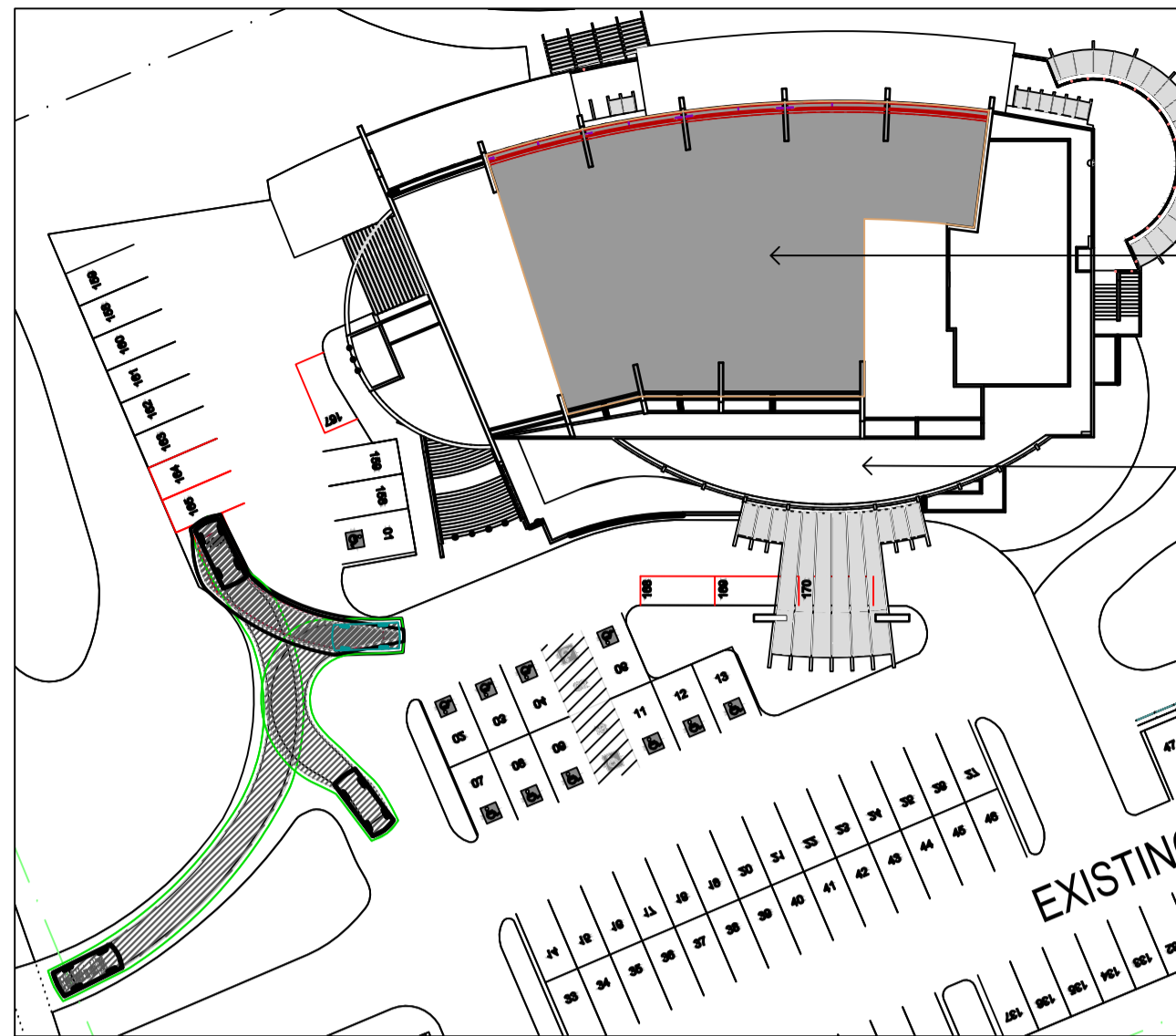


REGISTERED ARCHITECT - P.F.  
MORSON REGISTRATION NUMBER 8110  
MORSON 139 480 024 - MOB 41 139 480 024  
www.morsongroup.com.au  
825 930 8944  
PO Box 170, Potts Point, NSW 1535

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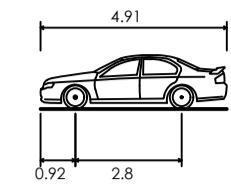
SHEET NAME: **PROPOSED SECTION**

DRAWING No. **DA08**  
ISSUE No. **A**



NOT TO BE USED FOR CONSTRUCTION

AMDT	DATE	DESCRIPTION	BY
A	25.08.23	ISSUED FOR DA	DJ
B	15.09.23	ISSUED FOR DA	AW
C	08.03.24	ISSUED FOR DA	JF



B85 Vehicle (Realistic min radius) (2004)

Overall Length	4.910m
Overall Width	1.870m
Overall Body Height	1.421m
Min Body Ground Clearance	0.159m
Track Width	1.770m
Lock-to-lock time	4.00s
Curb to Curb Turning Radius	5.750m



STATUS  
ISSUED FOR DA

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DISCIPLINE  
CIVIL DESIGN

PROJECT  
PROPOSED HOTEL - INTERNAL  
REFURBISHMENTS - WGC

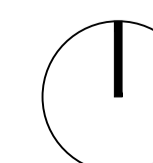
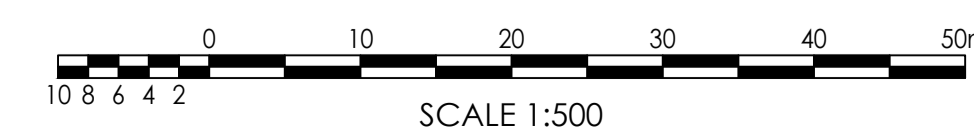
DRAWING TITLE  
SWEEP PATH ANALYSIS

ADDRESS  
CORRIMAL & BANK STREETS  
WOLLONGONG, NSW, 2500

PROJECT DETAILS

DESIGN	SF	Q0230031
DRAWN	JF	
DATE	AUG 23	C500 c
DRG SIZE	A1	
SCALE	AS SHOWN	
PROJECT	SF	
MGR		

WWW.JN.COM.AU



## **ATTACHMENT 2 – Wollongong DCP Compliance Table**

### **CHAPTER D13: WOLLONGONG CITY CENTRE PRECINCT**

The application proposes an intensification of the approved serviced apartment use on the site. The intensification is permissible as per the existing uses provisions contained within the Act, as discussed in this report, and the proposed intensification is considered compatible with the existing broader use of the site, the zoning of the land, and the surrounding land uses. No significant amenity, environmental or built form impacts are expected as a result of the alteration and additions proposed as part of this application.

#### 2 Building Form

No change to the existing appearance of the building is proposed. Changes include the addition of screening on balconies to separate areas for each room. The visual changes are minor and unlikely to be easily visible from any public space, nor to impact the bulk or scale of the building.

Although 7 additional parking spaces are proposed, these spaces are able to be provided within the existing developed parking area. No impact on landscaped areas is proposed.

No impact on the adjacent classified road is expected.

#### 3 Pedestrian Amenity

No impact on any public area is proposed or expected as a result of the development.

No change to vehicle access to and from the site is proposed.

No signage is proposed.

#### 4 Access, Parking and Servicing

The proposed parking and access arrangement is considered satisfactory subject to conditions of consent. The intensification of the serviced apartment requires the provision of 7 additional parking spaces, which have been provided within the established parking area. Existing servicing areas are expected to be able to cater to the proposed use.

### **CHAPTER E1: ACCESS FOR PEOPLE WITH A DISABILITY**

At grade access is provided on the ground floor. A lift is provided to access the second floor.

An appropriate condition is recommended to ensure the development is compliant with the relevant Disability Discrimination Act.

### **CHAPTER E2: CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

<i>Control/objective</i>	<i>Comment</i>
<u>3.1 Lighting</u>	Lighting is already provided to the parking lot.
<u>3.2 Natural surveillance and sightlines</u>	
<u>3.4 Building design</u>	Views from the street to the parking area and pedestrian entrance are maintained.
<u>3.5 Landscaping</u>	The building design is considered acceptable. Large windows which overlook the street are positioned on the front elevation.
	Suitable landscaping throughout the parking lot and around the site in general is already existing. No impacts are proposed.

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

#### **7 Parking demand and servicing requirements**

Council's traffic officer has reviewed the proposal and raised no concern subject to suitable conditions of consent.



## 7.1 Car Parking, Motor Cycle, Bicycle Requirements and Delivery / Servicing Vehicle Requirements

The submission is supported by a Traffic and Parking Assessment Report submitted by the applicant. The required number of parking spaces is consistent with Council's DCP, and is appropriate for the site, given the existing parking available and the proposed amendments to the floor plans.

7 additional parking spaces are proposed.

The original plans submitted proposed providing the 7 parking spaces on the southern corner of the parking area by removing some existing landscaping and the existing turning circle. Concerns were raised regarding the placement of this parking, given the potential for vehicle conflicts and the high velocity flood path on the site. The proposal was amended to maintain the existing landscaping and turning circle, and provide the 7 additional parking spaces within the existing established parking area. The parking locations are considered acceptable, and turning circle/swept path plans have been submitted to verify appropriate access to parking spaces can be achieved.

Council's Traffic and Transport Planner has reviewed the proposal, including the relocated parking locations as per the amended plans submitted by the applicant and raised no concern subject to the recommended conditions of consent. Council's Stormwater Engineer has also reviewed the amendment and raised no concern.

The proposed intensification of use is not expected to result in additional servicing requirements to the site, and the existing servicing areas, including loading areas, bin storage, access etc. are able to support the increased number of rooms.

### **8 Vehicular access**

No change to existing vehicular access to the site is proposed.

### **10 Pedestrian access**

No change to the existing pedestrian access to the site is proposed.

## **CHAPTER E6: LANDSCAPING**

No impacts on existing landscaping on the site is proposed as part of this application.

The additional parking spaces are provided within the already developed parts of the parking area.

Existing landscaping on the site, including within and around the parking area is well established, and maintained as part of this proposal.

## **CHAPTER E7: WASTE MANAGEMENT**

Appropriate standard conditions will be included relating to waste management during construction. No additional requirements for waste servicing are considered necessary for this proposal.

## **CHAPTER E13 FLOODPLAIN MANAGEMENT**

Council's Stormwater Engineer originally raised concern with the location of additional parking spaces, noting that the parking may impact the flow of flood waters.

Amended plans were received which relocated the parking elsewhere on the site, and a satisfactory referral subject to conditions of consent was then received.

## **CHAPTER E14 STORMWATER MANAGEMENT**

Council's Stormwater Engineer has reviewed the proposal and raised no concern subject to recommended conditions of consent.

## **CHAPTER E21 DEMOLITION AND HAZARDOUS BUILDING MATERIALS MANAGEMENT**

Partial internal demolition is proposed. Appropriate Standard Conditions of consent are recommended.

## **CHAPTER E22 SOIL EROSION AND SEDIMENT CONTROL**

Conditions of consent will be included relating to appropriate sediment and erosion control measures during works.



## Appendix A – LEP Variations

### Introduction

This Clause 4.6 Variation Request has been prepared to support a development application under Division 4.3 of the Environmental Planning and Assessment (EP&A) Act 1979, for the proposed alterations and additions to existing serviced apartments at Lot 1 DP 1088105, 151-161 Corrimal Street, Wollongong. The site is known as the Wollongong Golf Club.

This request satisfies the requirements of Clause 4.6 of the Wollongong Local Environmental Plan 2009 in demonstrating that:

- (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 Variation Request is seeking to vary Clause 4.3(2) of Wollongong Local Environmental Plan 2009 (WLEP 2009) and should be read in conjunction with the architectural plans provided with the Development Application.*

The alterations and additions do not increase the height of the building on the site. The subject site allows a maximum building height of 8m. The existing development on the site is 4 storeys and currently well in excess of 8m. The alterations and additions propose aluminium screens to some of the external balconies at a height of 14.5m (55% increase). As such, these additions will be located above the maximum height and do not strictly comply with the applicable development standard in this regard.

Notwithstanding, the proposed development is considered minor and it is deemed that there are sufficient planning grounds to justify a variation to the building height in this instance. Therefore, a clause 4.6 variation to development standards is requested.

This variation has been prepared in accordance with the NSW Department of Planning Infrastructure (DPI) guideline “*Varying Development Standards: A Guide*” dated August 2011 and addresses the ‘five-part test’ established by the NSW Land and Environment Court (LEC) to determine whether the objection is well founded.

### Subject land

The subject site is located at the southeastern end of the Wollongong City Centre, on the southeastern corner of Corrimal Street and Bank Street, south of WIN Stadium. Known as 151-161 Corrimal Street, Wollongong, the property contains multiple allotments described as follows:

*Lot 4 Sec 22 DP 759104*

*Lot 102 DP 1074438*

*Lot 1, Lot 2, Lot 3 Lot 4 and Lot 5 DP 1088105*

The combined site has a frontage to Corrimal Street in the order of approximately 450 metres and frontage of approximately 210 metres to Bank Street, resulting in a site area of



approximately 10.4ha. The site has an eastern boundary to Wollongong Beach and residential development to the south.

The property currently incorporates the Wollongong Golf Club including playing greens and 4 storey licensed club premises including pro shop and external BBQ area, serviced apartments and at grade parking and signage. The site is developed throughout for the purpose of a Golf Club with parking and facilities to the northwest of the site and the green space to the remaining area.

The site is not identified as a heritage item, adjoining or adjacent a heritage item or within a heritage conservation area. The site is not identified as being affected by flooding or bushfire, but is identified as having Class 3 Acid Sulfate soils. The site is noted as having a watercourse at the southern end of the site but is otherwise free of environmental constraints.

### Proposed Development

The proposal seeks consent for the proposed alterations and additions to the existing serviced apartments within Wollongong Golf Club, as detailed in the architectural drawings prepared by Morson Group at Lot 1 DP 1088105, 151-161 Corrimal Street (refer extracts below) and described in the following sections of this SEE.

Key development details include:

1. Internal demolition of existing Unit 2 – Unit 9 on Level 2, refurbishment of Unit 6 and creation of 7 new apartments within Unit 2 – Unit 5 and Unit 7 – Unit 9
2. Internal demolition of existing Unit 12 – Unit 19 on Level 3, refurbishment of Unit 16 and creation of 7 new apartments within Unit 12 – Unit 15 and Unit 17 – Unit 19
3. Aluminium slats to the front of the apartments to divide the existing balcony between the new apartments
4. Railing to A/C Units
5. New accessible car space near the entrance of the site
6. Demolition of the existing round-a-bout and creation of eight new car spaces adjoining the existing car parking adjoining the Corrimal Street frontage.

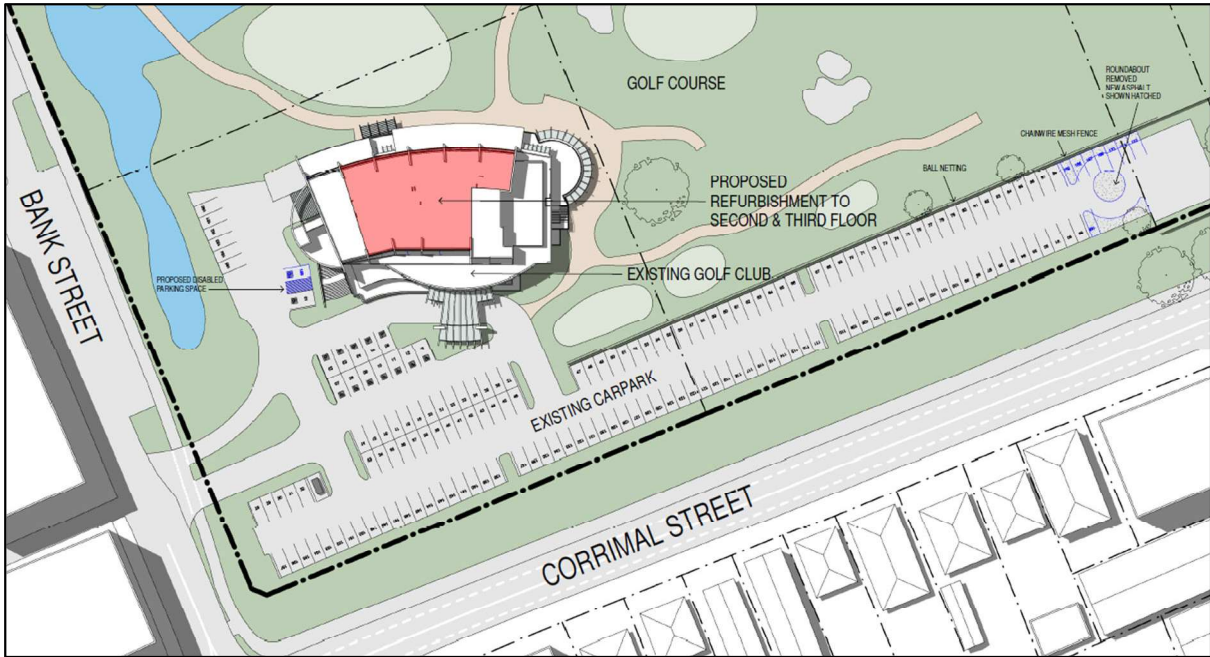


FIGURE 1: SITE PLAN AND DESCRIPTION OF WORKS (MORSON GROUP)



FIGURE 2: NORTH-WEST ELEVATION (MORSON GROUP)

### Applicable Environmental Planning Instrument & Development Standard

The applicable Environmental Planning Instrument subject to this Variation Request is the Wollongong Local Environmental Plan 2009

Wollongong Local Environmental Plan 2009 (WLEP 2009) provides the key development standards applicable to the development and includes the aims and objectives for the development within the Wollongong Local Government Area. In particular, this Variation Request is seeking to vary the development standard Clause 4.3(2) of WLEP 2009.

### Objectives of the Zone

The site is zoned RE2 Private Recreation and R2 Low Density Residential under *WLEP 2009*. The objectives of the zone are:

- To enable land to be used for private open space or recreational purposes.

- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

### Objectives of the Development Standard

To satisfy the requirements of Clause 4.6 and demonstrate that compliance with the standard is unreasonable or unnecessary, it is important to understand the intent and objectives of the development standard being varied.

The objective of this Clause 4.3 is as follows—

- (a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.*

The expression ‘**development standards**’ is defined in section 4(1) of the EPA Act as follows:

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

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed. The key elements of a development standard are as follows: i. It must be a provision of an EPI or the regulations made under the EPA Act (thus excluding, among other things, a DCP). ii. The provision must be one ‘in relation to’ the carrying out of development. iii. The provision must be one by or under which one or more requirements are specified, or one or more standards are fixed, in respect of any aspect of that development. In this regard, the minimum site area requirement pursuant to cl. 4.1E(4) is a development standard as it prescribes a specified minimum site area standard for the erection of a dual occupancy.*



In *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), Chief Justice Preston stated that

*“Development standards are not an ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieving anyway) and unreasonable (no purpose would be served)”.*

This Clause 4.6 Variation Request demonstrates how the proposed development achieves the ends (environmental or planning objectives), despite its departure from the means (development standard).

### Description of the Variation

The alterations and additions do not increase the height of the building on the site. The subject site allows a maximum building height of 8m. The existing development on the site is 4 storeys and currently well in excess of 8m. The alterations and additions propose aluminium screens to some of the external balconies at a height of 14.5m (55% increase). As such, these additions will be located above the maximum height and do not strictly comply with the applicable development standard in this regard.

Refer extract below:

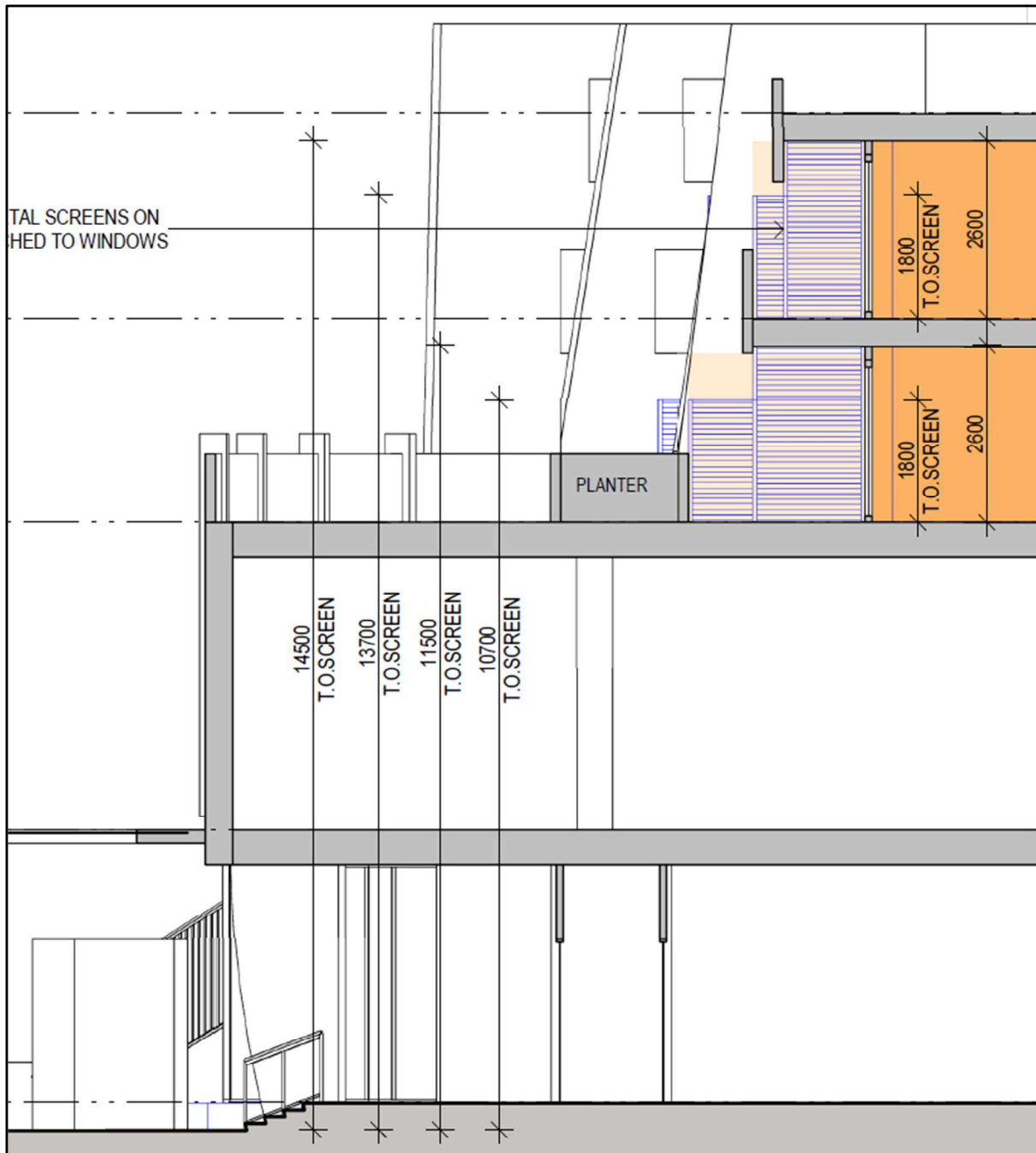


FIGURE 3: SECTION SHOWING SCREEN HEIGHT (MORSON GROUP)

### How is compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

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 or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way)*
3. *The underlying objective 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 and accordingly justifies the variation pursuant to the **First Way** outlined in *Wehbe*, as follows.

**Objective of the Development Standard:**

Under WLEP 2009, Clause 4.3(2) has the following objectives in relation to the Maximum Building Height development standard:

- (a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.*

**Correlation between the height and the floor space.**

The site has an area of 10.45ha and the existing serviced apartments on the site have a total GFA of 975.3m<sup>2</sup>. No change is proposed to the GFA by the alterations and additions. Hence, the proposal complies with the applicable development standard in this regard. The breach of the standard therefore does not result in an inconsistency with this objective.



### **High Quality Urban Form**

There will be no dramatic change to the existing form and scale of the serviced apartments building, however, for privacy, slatted aluminium is proposed between the new units at Level 3 and Level 4. The development maintains a modern appearance, while maintaining consistency with its existing built form. The vertical arrangement of panels, vertical and horizontal articulation elements (including, window hoods, glass and cladding), all contribute to a modulated façade presentation. The positioning of the screens sit within the envelope of the façades, and will not contribute to significant exposure of elements or features.

The existing / proposed bulk, massing and modulation of the building is acceptable and does not result in any unreasonable loss of amenity to any of the adjoining properties. The proposal will have no significant adverse environmental impacts in terms of sustainability, wind and/or reflectivity. Access to the site is maintained to the site from Bank Street and new carparking is proposed adjoining the existing parking along the Corrimal Street frontage as has historically been allowed.

The breach of the standard does not result in an inconsistency with this objective.

### **Views and Solar Access**

As noted, the alterations and additions are for internal reconfiguration of the existing serviced apartments and external screening between the existing balconies to create new spaces for the additional rooms proposed. No change is proposed to the height of existing building or gross floor area to create an impact on views or solar access. The breach of the standard does not affect consistency with this objective.

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

Yes, there are sufficient environmental planning grounds in the circumstances of the case to justify contravening the development standard. These include:

- The site is of a sufficient width, depth and size to accommodate the proposed height, without resulting in any significant adverse impacts on the public domain or any adjoining properties;
- The scale of the existing development and proposed alterations and additions are considered appropriate within the strategic planning context of the RE2 Recreation zone and is consistent with the relevant zone objectives;
- The proposal satisfies the objectives and development controls in relation to the maximum permitted Height contained within Clause 4.3 of the *WLEP 2009*;
- Non-compliance with the standard will not result in any adverse environmental impacts; and
- The development as proposed will allow for the orderly and economic use of the subject land.



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 proposal will provide additional recreational space, as serviced apartments, to support the ongoing economic objectives for the Wollongong City Centre and meet the needs of the local community. The development is consistent with the underlying intent of the development standard as noted, and the objectives for development in the zone, as noted.

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.

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.

### Conclusion

This Clause 4.6 Variation Request has been prepared to support a development application for a mixed-use building at Lot 1 DP 1088105, 151-161 Corrimal Street, Wollongong. This request satisfies the requirements of Clause 4.6 of the Wollongong Local Environmental Plan 2009 (WLEP 2009) and demonstrates that compliance with the standard is both unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify varying the standard in this instance.

## Attachment 4 - DRAFT CONDITIONS FOR:

### DA-2023/761

For Office Use Only – Do Not Mail

### GENERAL CONDITIONS

Conditions				
<b>1. Approved Plans and Supporting Documentation</b>				
Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.				
Plan No	Revision No	Plan Title	Drawn By	Dated
DA02	B	Site Plan	Bellcorp	6 March 2024
DA03	A	Existing/Demolished Second Level	Bellcorp	20 September 2023
DA04	A	Existing/Demolished Third Level	Bellcorp	20 September 2023
DA05	A	Proposed Second Level	Bellcorp	20 September 2023
DA06	A	Proposed Third Level	Bellcorp	20 September 2023
DA07	A	Proposed Elevations	Bellcorp	20 September 2023
DA08	A	Proposed Section	Bellcorp	20 September 2023
In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.				
<b>Note:</b> An inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.				
<u>Reason:</u> To ensure all parties are aware of the approved plans and supporting documentation.				
<b>2. Compliance with the Building Code of Australia (BCA)</b>				
Building work must be carried out in accordance with the requirements of the BCA.				
<u>Reason:</u> To ensure the development is built in accordance with the Building Code of Australia.				
<b>3. Construction Certificate</b>				
A Construction Certificate must be obtained from Council or a Registered Certifier prior to work commencing.				
A Construction Certificate certifies that the provisions of Part 3 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 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 Section 13 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

Reason:

To satisfy the requirements of the legislation.

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**4. 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.

Reason:

To satisfy the requirements of the legislation.

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**5. Disability Discrimination Act 1992**

This consent does not imply or confer compliance with the requirements of the Disability Discrimination Act 1992.

It is the responsibility of the applicant to guarantee compliance with the requirements of the Disability Discrimination Act 1992. The current Australian Standard AS 1428.1:2009: Design for Access and Mobility is recommended to be referred for specific design and construction requirements, in order to provide appropriate access to all persons within the building.

Reason:

To satisfy the requirements of the legislation.

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**6. Separate Consent Required for Advertising Signage**

This consent does not authorise the erection of any advertising signage. Any such advertising signage will require separate Council approval, in the event that such signage is not exempt development, under an Environmental Planning Instrument.

Any new application for advertising signage must be submitted to Council in accordance with Chapter C1 – Advertising and Signage Structure of Wollongong Development Control Plan 2009.

Reason:

To ensure all parties are aware separate consent required.

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**7. Payment of Building and Construction Industry Long Service Levy**

Before the issue of a construction certificate, the applicant is to ensure that the person liable pays the long service levy to the Long Service Corporation or Council under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 and provides proof of this payment to the certifier.

Reason:

To ensure the long service levy is paid.

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**8. Development Contributions**

In accordance with Section 4.17(1)(h) of the Environmental Planning and Assessment Act 1979 and the Wollongong City Wide Development Contributions Plan (2022), a monetary contribution of \$19,200.00 (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/Subdivision Certificate.

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

The contribution amount will be indexed quarterly until the date of payment using Consumer Price Index; All Groups, Sydney (CPI) based on the formula show in the Contributions Plan.

To request an invoice to pay the contribution go to [www.wollongong.nsw.gov.au/contributions](http://www.wollongong.nsw.gov.au/contributions) and submit a contributions enquiry. The following will be required:

- Application number and property address.
- Name and address of who the invoice and receipt should be issue to.
- Email address where the invoice should be sent.

A copy of the Contributions Plan and accompanying information is available on Council's website [www.wollongong.nsw.gov.au](http://www.wollongong.nsw.gov.au).

Reason:

To ensure the development contributes to the provision of local infrastructure, through the payment of development contributions.

## BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

### Conditions

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

Reason:

To comply with Council's Development Control Plan.

#### 10. Parking Area Levels

Parking area levels shall be designed and constructed giving regard to vehicle stability in terms of depths and velocity during inundation by floodwaters, ensuring that each proposed car parking space is within hydraulic hazard category H1 during a 1 % AEP flood, as shown in Figure 3 of Chapter E13 of the Wollongong DCP2009. Evidence that these requirements have been satisfied shall be submitted to the Principal Certifier prior to the release of any Construction Certificate.

Reason:

To comply with Council's Development Control Plan.

#### 11. Car Parking and Access

The development shall make provision for an additional 7 car parking spaces as shown on the stamped DA plans. This requirement shall be reflected on the Construction Certificate plans.

Reason:

To comply with Council's Development Control Plan.

#### 12. Parking Dimensions

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 AS 2890.1, except where amended by other conditions of this consent. Details of such compliance are to be reflected on the Construction Certificate plans.

Reason:

To ensure compliance with Australian Standards.

### **13. Fire Safety Schedule**

When issuing a Construction Certificate, a Principal Certifier must attach a Fire Safety Schedule specifying all of the fire safety measures required for the building to ensure the safety of persons in the building in the event of fire.

Reason:

To satisfy the requirements of the legislation.

### **14. Disabled Access and Facilities**

The provision of disabled access throughout the development is required and shall be in compliance with the Building Code of Australia Part D3 "Access for People with Disabilities" and Australian Standard AS 1428.1:2009: Design for Access and Mobility – Part 1 General Requirements for Access – Buildings. This requirement shall be reflected on the Construction Certificate plans.

Reason:

To satisfy the requirements of the legislation.

## **BEFORE BUILDING WORK COMMENCES**

### **Conditions**

#### **15. 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 and notify Council in writing of the appointment irrespective of whether Council or a Registered Certifier is appointed; and
- b. notify Council in writing of their intention to commence work (at least two [2] days' notice is required).

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

Reason:

To satisfy the requirements of the legislation.

#### **16. Demolition Works**

The demolition of the existing structures / building elements shall be carried out in accordance with Australian Standard AS 2601:2001: The Demolition of Structures or any other subsequent relevant Australian Standard and the requirements of 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.

Reason:

To satisfy the requirements of the legislation and Australian Standards.

#### **17. Signs On Site**

A sign must be erected in a prominent position on any site on which building work or demolition work is being carried out:

- a. showing the name, address and telephone number of the Principal Certifier for the work, and
- b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- c. stating that unauthorised entry to the worksite is prohibited.

Any such sign is to be maintained while the building work or demolition work is being carried out but must be removed when the work has been completed.

**Note:** This does not apply in relation to building work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

Reason:

To satisfy the requirements of the legislation.

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### **18. Temporary Toilet/Closet Facilities**

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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.

Reason:

To satisfy the requirements of the legislation.

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### **19. Structural Engineer's Details**

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Structural Engineer's details for all structurally designed building works such as reinforced concrete footings, reinforced concrete slabs and structural steelwork must be submitted to the Principal Certifier, prior to the commencement of any works on the site.

Reason:

To ensure structural integrity.

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### **20. Enclosure of the Site**

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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.

Reason:

To ensure safety.

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### **21. Demolition Notification to Surrounding Residents**

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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.

Reason:

To advise neighbourhood.

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### **22. Waste Management**

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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 reusable materials.

Reason:

To protect neighbourhood amenity.

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**23. All-weather Access**

An all-weather stabilised access point must be provided to the site to prevent sediment leaving the site as a result of vehicular movement. Vehicular movement should be limited to this single accessway.

Reason:

To protect neighbourhood amenity.

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**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 1.8m cyclone chainmesh fence, with posts and portable concrete footings;
- b. installation of Tree Protection Fencing - a one (1) metre high exclusion fence must be installed around the extremity of the dripline of the tree/trees to be retained prior to any site works commencing. The minimum acceptable standard is a 3-strand wire fence with star pickets at 1.8m centres. This fence must be maintained throughout the period of construction to prevent any access within the tree protection area;
- c. mulch Tree Protection Zone: areas within a Tree Protection Zone are to be mulched with minimum 75mm thick 100% recycled hardwood chip/leaf litter mulch;
- d. irrigate: areas within the Tree Protection Zone are to be regularly watered in accordance with the Arborist's recommendations.

The tree protection fencing shall be installed prior to the commencement of any demolition, excavation or construction works and shall be maintained throughout the entire construction phases of the development.

Reason:

To ensure all parties are aware of the approved plans and supporting documentation.

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**25. Depth/Location of Services**

The depth and location of all services (ie stormwater, gas, water, sewer, electricity, telephone, etc) must be ascertained and reflected on the plans and supporting documentation issued for construction.

Reason:

To ensure services are not impacted.

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**26. Notification to Council of any Damage to Council's Infrastructure**

Council must be notified in the event of any existing damage to any of Council's infrastructure including, but not limited to the road, kerb and gutter, road shoulder, footpath, drainage structures and street trees fronting the development prior to the commencement of work. Adequate protection must be provided to Council infrastructure prior to work commencing and during the construction period. Any damage to Council's assets shall be restored in a satisfactory manner prior to the issue of the Occupation Certificate.

Reason:

To ensure services are not impacted.



### **27. Adjustment to Public Utility Service**

The arrangements and costs associated with any adjustment to a public utility service shall be borne by the applicant/developer. Any adjustment, deletion and/or creation of public utility easements associated with the approved works are the responsibility of the applicant/developer. The submission of documentary evidence to the Principal Certifier which confirms that satisfactory arrangements have been put in place regarding any adjustment to such services is required prior to any works commencing on site.

Reason:

To ensure services are not impacted.

### **28. 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.

Reason:

To satisfy the requirements of the legislation.

### **29. Demolition Works**

The demolition of the existing structures shall be carried out in accordance with Australian Standard AS 2601-2001: The Demolition of Structures or any other subsequent relevant Australian Standard and the requirements of 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. Hazardous and/or intractable wastes shall be disposed of to the satisfaction of Council. 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.

Reason:

To satisfy the requirements of the legislation and Australian Standards.

### **30. 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.

Reason:

To ensure all parties are aware of the approved plans and supporting documentation.

## DURING BUILDING WORK

### Conditions

#### 31. 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.

Reason:

To comply with Council's Development Control Plan.

#### 32. Piping of Stormwater to Existing Stormwater Drainage System

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

Reason:

To ensure all parties are aware of the approved plans and supporting documentation.

#### 33. 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.

Reason:

To comply with Council's Development Control Plan.

#### 34. Hours of Work

The Principal Certifier must ensure that building work, demolition or vegetation removal is only carried out between:

- 7:00am to 5:00pm on Monday to Saturday.

The Principal Certifier must ensure building work, demolition or vegetation removal is not carried out on Sundays and public holidays, except where there is an emergency.

Unless otherwise approved within a construction site management plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Any variation to the hours of work requires Council's approval.

Any request to vary the approved 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; and
- f. any proposed measures required to mitigate the impacts of the works.

**Note:** The developer is advised that other legislation, such as Noise Guidelines for Local Government January 2023, may control the activities for which Council has granted consent, including but not limited to, the *Protection of the Environment Operations Act 1997*.

Reason:

To protect the amenity of the surrounding area.

**35. Cut and Fill Retained**

All proposed cut and filling works must be adequately retained with all battered slopes being no steeper than 2H:1V.

Reason:

To ensure ongoing protection of the environment and neighbourhood amenity.

**36. 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.

Reason:

To comply with Council's Development Control Plan.

## BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

**Conditions****37. Flood Affection Certification**

The submission of a report from a suitably qualified and experienced civil (hydrology) engineer to the Principal Certifier is required, prior to the issue of the Occupation Certificate and commencement of use. This report is required to certify that the 'as-constructed' development will not have any detrimental effects to adjoining properties or upon the subject land with respect to the loss of flood storage, changes in flood levels and alteration of flood conveyance, as a result of flooding or stormwater runoff.

Reason:

To comply with Council's Development Control Plan.

**38. Drainage Works-As-Executed (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 Construction Certificate plans. In addition, full WAE plans, prepared and signed by a Registered Surveyor shall be submitted. These plans shall include levels and location for all drainage structures and works, buildings (including floor levels), and finished ground and pavement surface levels. This information shall be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason:

To comply with the relevant Standards.

**39. Fire Safety Certificate**

A Fire Safety Certificate must be issued for the building prior to the issue of an Occupation Certificate. As soon as practicable after a Fire Safety Certificate is issued, the owner of the building to which it relates:

- a. Must cause a copy of the certificate (together with a copy of the current fire safety schedule) to be given to the Commissioner of New South Wales Fire Brigades, and
- b. must cause a further copy of the certificate (together with a copy of the current fire safety schedule) to be prominently displayed in the building.

Reason:

To satisfy the requirements of the legislation.

**40. Removal of Waste Upon Completion**

Before the issue of an Occupation Certificate, the Principal Certifier must ensure all refuse, spoil and material unsuitable for use on-site is removed from the site and disposed of in accordance

with the approved waste management plan. Written evidence of the removal must be supplied to the satisfaction of the Principal Certifier.

Before the issue of a partial Occupation Certificate, the applicant must ensure the temporary storage of any waste is carried out in accordance with the approved waste management plan to the Principal Certifier's satisfaction.

Reason:

To ensure waste material is appropriately disposed or satisfactorily stored.

## **OCCUPATION AND ONGOING USE**

<b>Conditions</b>
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<b>41. Fire Safety Measures</b>
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All new and existing fire safety measures shall be maintained in working condition at all times.

Reason:

To satisfy the requirements of the legislation.