

**NSLPP MEETING HELD ON 01/03/2023****SECTION 4.55 APPLICATION REPORT****Attachments:**

1. Site Plan
2. Architectural Plans
3. To Preview Original Report Click on this link
4. To Preview Previous S4.55 (D269/21/2) Report Click on this Link

ADDRESS/WARD: 372 Military Road (aka 75 & 75A Parraween Street), Cremorne

APPLICATION No: D269/21/4

PROPOSAL: Section 4.55(2) application seeking modifications to Development Consent (D269/21) including various design changes to an approved five (5) storey mixed use development.

PLANS REF:

Plan No.	Description	Prepared by	Dated
DA 101 Issue F	Floor Plans: L1 - L3	PA Studio	29/11/22
DA 102 Issue F	Floor Plans: L4 & Roof Plan	PA Studio	29/11/22
DA 200 Issue E	Section A-A	PA Studio	29/11/22
DA 201 Issue E	Section B-B	PA Studio	29/11/22
DA 202 Issue E	Section C-C & D-D	PA Studio	29/11/22
DA 300 Issue E	North and West Elevations	PA Studio	29/11/22
DA 301 Issue E	South & East Elevations	PA Studio	29/11/22

OWNER: Canopy Investment Holding Pty Ltd

APPLICANT: Platino Properties Pty Ltd

AUTHOR: Robin Tse, Senior Assessment Officer

DATE OF REPORT: 16 February 2023

DATE LODGED: 12 January 2023

RECOMMENDATION: Approval (In-part)

EXECUTIVE SUMMARY

This application under Section 4.55 of the Environmental Planning and Assessment Act 1979 seeks to modify Development Consent (D269/21) modifications to the approval for a five (5) storey mixed use development at No.372 Military Road, Cremorne.

The application is reported to NSLPP for determination because the proposed modifications involve changes to the approved building design that was required by a deferred commencement conditions imposed by the Panel in accordance with the directions of the Minister for Planning. Council's notification of the proposal has attracted two submissions raising concerns about the increase in the number of apartments and the adverse impacts of the proposal on the character and the streetscape settings of the adjoining heritage item.

The proposed modifications are considered to be generally consistent with the originally approved development application and s.4.55 of the EP & A Act 1979.

The proposed modifications would result in a development which is substantially the same development, being a mixed-use building, as originally approved as the proposal would not materially change the building typology, building height and the use of the development as approved in the original deferred commencement consent.

However, the proposed design modifications to the southern (Military Road) façade on Level 4 is not supported because the reduced setback with its stepped form will create visual clutter and will visually compete with the stepped Art Deco parapet wall of the heritage listed Orpheum Theatre. Therefore, this aspect of the subject Section 4.55 application is recommended for deletion from this consent.

The other aspects of the proposed modifications, such as changes to internal layout on Level 3 to provide 1 x studio and 1 x 3 bedroom apartment, can be supported because there would be no change to the approved building envelope for Level 3 and no material amenity of the adjoining properties in terms of the loss of significant views, solar access, visual and acoustic privacy.

The issues raised in the submissions received have been addressed in this report.

The proposed modifications, with the exception of the design modifications to the southern (Military Road) façade on Level 4, were found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(2) application be approved with modifications to existing conditions of consent and addition of new conditions.

DESCRIPTION OF PROPOSAL

The applicant seeks NSLPP approval for modifications to the deferred commencement approval for a five (5) storey mixed use development.

The proposed modifications are listed as follows:

- (a) Modify building setback of the southern façade on Level 4;
- (b) Changes to the southern (Military Road) and eastern façades;
- (c) Modifications to the approved four (4) bedroom apartment on Level 3 to provide 1 x 3 Bedroom apartment (Unit 301) and 1 x studio apartment (Unit 302).
- (d) The overall number of apartments within the development increases from six (6) to seven (7).
- (e) Internal reconfiguration of Unit 401 on Level 4 and addition of a terrace to the southern side of the apartment;
- (f) Amendments to Conditions C40 and C41 in relation to changes to Section 7.11 Contributions;
- (g) Deletion of Conditions AA1 (Deferred Commencement – Design Modifications) and C50 (External Colours and Materials).



Figure 1: Proposed modified southern (Military Road) elevation.



Figures 2 – 4: Proposed modifications

Referral to NSLPP:

The NSLPP granted deferred commencement approval for the original DA with the requirement for design modifications to the southern façade of Level 4 to provide an 8m setback from the Military Road boundary to provide a more sympathetic transition of the built form and building height for the adjoining heritage listed Orpheum Theatre in Condition AA1 of the deferred commence consent.

An operative consent has also been issued with a building design consistent with the requirements of Condition AA1.

The application is reported to NSLPP for determination because the proposed modifications involve changes to the approved building design that was required by a deferred commencement conditions originally imposed by the Panel in accordance with the Minister's direction.

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – B4 (mixed Use)
- Item of Heritage - No
- In Vicinity of Item of Heritage – Yes (No.378-380 Military Road, Hayden Orpheum Theatre)
- Conservation Area – No

Environmental Planning & Assessment Act 1979 (As amended)

- SEPP (Resilience and Hazards) 2021
- SEPP (Biodiversity and Conservation) 2021
- SEPP 65 – Design Quality of Residential Apartment Development
- SEPP (Building Sustainability Index: BASIX) 2004
- Local Development
- North Sydney Local Infrastructure Contributions Plan 2020

POLICY CONTROLS

DCP 2013

Apartment Design Guidelines (ADG)



Figure 5: Zoning



Figure 6: Building Height

DESCRIPTION OF LOCALITY

The subject site is located on the northern side of Military Road to the west of Langley Avenue. The property has a legal description of Lot 100 DP615583 also known as No. 372 Military Road (aka Nos 75 & 75A Parraween Street), Cremorne. The site is flat and rectangular in shape with a total area of 303.3sqm.

The site is occupied by a two storey brick shop top housing building with street frontages to Military Road and Parraween Street. The two (2) ground floor tenancies fronting Military Road are being used as restaurants and a hair salon occupying the ground floor tenancy that faces Parraween Street. The first floor of the building is occupied by 2 x 3 bedroom apartments. There is no vehicular access to the subject site.



Figures 7 & 8: Existing Development

The subject site is located on the eastern edge of the Cremorne Town Centre and is surrounded by other commercial/mixed use buildings with varying heights between two and eight storeys to the east, west and south of the subject site on land zoned B4 (mixed Use). To the north of the subject site across Parraween Street is a group of semi-detached/detached dwellings on land zoned R4 (High Density Residential).

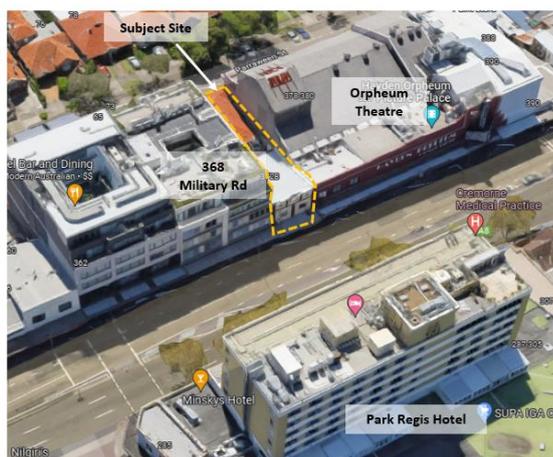


Figure 9: The Locality

To the east of the subject is the heritage listed “Hayden Orpheum Picture Palace” (commonly known as the Orpheum Theatre) at No. 380 Military Road. A five (5) storey mixed use /shop top housing development is located to the west of the subject site at No. 368 Military Road (aka No.73 Parraween Street). Vehicular access to this adjoining mixed use building is via Parraween Street.

An eight (8) storey building containing retail on the lower three levels with hotel uses (trading as Park Regis Hotel) on the upper levels occupies the property to the south across Military Road.

To the north of the subject site across Parraween Street is a single storey detached dwelling at No.82 Parraween Street.

RELEVANT HISTORY

Previous applications

- **28 February 2014** – Development Consent (**D444/13**) was approved under delegated authority for the conversion of the first floor for use as 2 x 3 bedroom apartments.
- **10 August 2021** – Development Application (**D236/21**) for the demolition of the existing building and the construction of a five (5) storey mixed use building was rejected due to insufficient information.
- **6 April 2022** – A deferred comment consent (**D269/21**) was granted by NSLPP for the redevelopment of the subject site including the demolition of the existing two storey shop top housing building and the construction of a five (5) storey shop top housing (mixed use) development containing seven (7) apartments, a ground floor retail tenancy and basement parking. Condition AA1 was imposed by the NSLPP requiring the following design changes to the top level (Level 4) in order to ensure that the design of the development would complement the streetscape and the heritage significance of the adjoining Orpheum Theatre:

Deferred Commencement Matters

AA1. *Amended plans, addressing the following matters, must be submitted for the written approval of Council's Manager Development Services:*

(a) Design Modifications

The design of proposed building be modified to provide an 8m setback between the southern building line on the fourth floor of the building and the southern (Military Road) property boundary to minimise the visibility of the top level of the proposed building and to provide a more sympathetic transition of built form and building height for the adjoining heritage listed Orpheum Theatre to the east of the subject site.

The modified fourth floor southern building line shall match the southern wall of the proposed lift shaft/overrun. The internal layout of the fourth floor shall be modified to a three bedroom apartment similar in layout to the other three bedroom apartments proposed on the first and second floor.

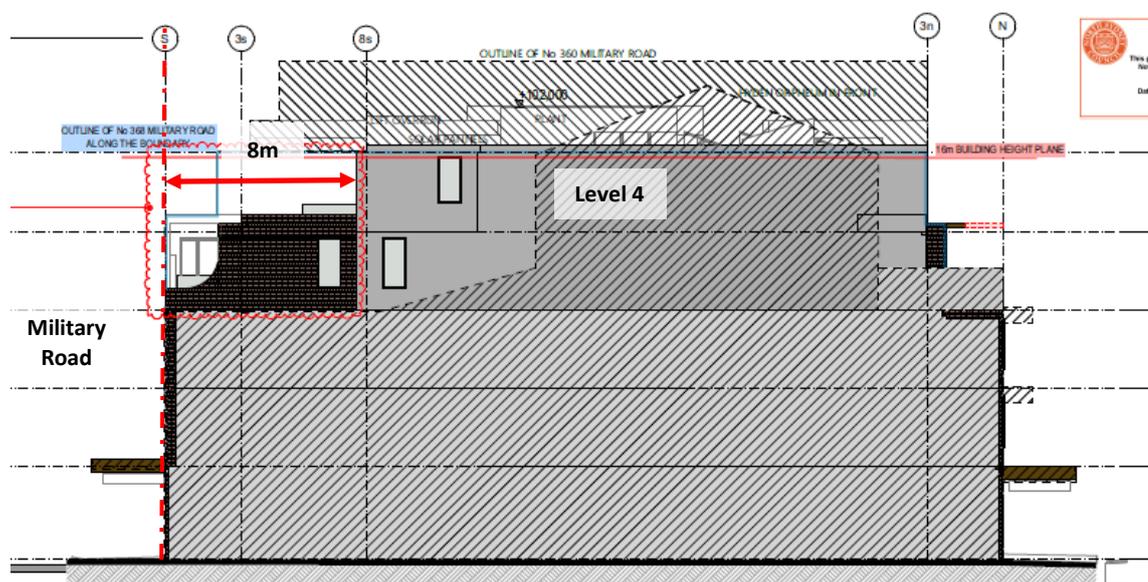
(Reason: To ensure that the development complements the locality in terms of streetscape and heritage significance of the adjoining Orpheum Theatre.)

- **21 June 2022** – A section 4.55(2) application (**D269/21/2**) seeking various modifications, including changes to the design for the southern side of the building on Level 4 was lodged with Council (**Figure 10**).

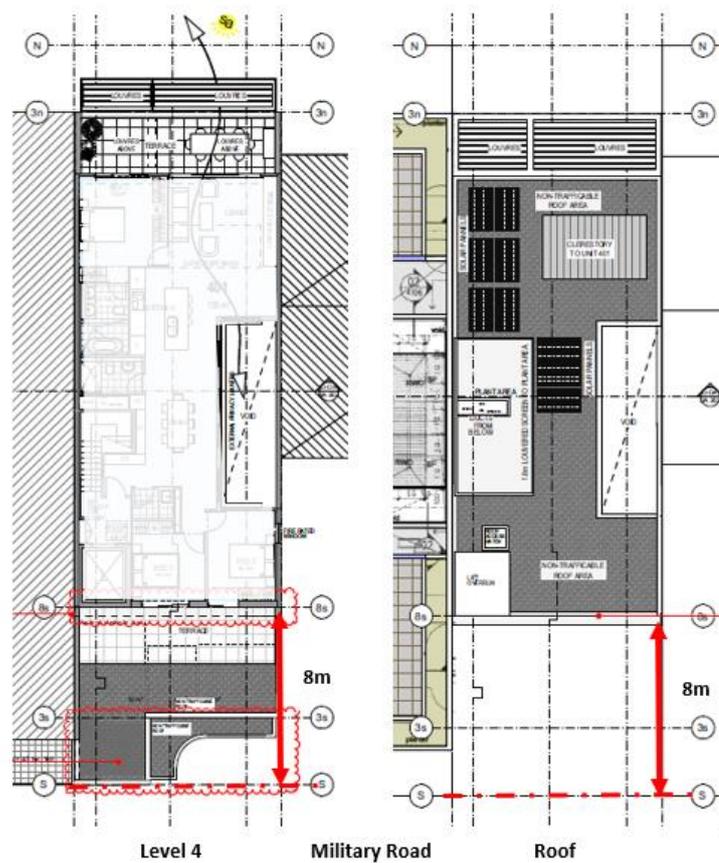


Figure 10: Military Road façade as proposed under D269/21/2

- **7 September 2022** – The Section 4.55(2) application (**D269/21/2**) was approved by NSLPP subject to the deletion of the proposed changes to the southern (Military Road) façade on Levels 3 and 4.
- **27 October 2022** – An application seeking a Section 8.2 review (**RD6/22**) of the determination of the Section 4.55 (2) application (**D269/21/2**) was rejected because the application was lodged outside the time frame as specified in Clause 244(2)(a) of the Environmental Planning and Assessment regulations 2021.
- **21 December 2022** – The operative consent for **D269/21** was issued following the approval of the plans submitted to satisfy Condition AA1 of the Development Consent. The approved plans feature an eight (8)m building setback for Level 4 from the Military Road boundary as required by the deferred commencement conditions (see **Figures 11-13** below).



Approved Eastern Elevation



Approved plans – Level 4 & Roof

Figures 11 & 12: Approved eastern elevation and floor plan with the required 8m setback for Level 4 from Military Road boundary



Figure 13: A montage showing the approved development including the required 8m setback for Level 4 from Military Road boundary

- **22 December 2022** – A Section 4.55(2) application (**D269/21/3**) was rejected because of insufficient information.

Current Application

- **12 January 2023** – The subject Development Application (**D269/21/4**) seeking various modifications, including changes to the design for the southern side of the building on Level 4 was lodged with Council.
- **27 January to 10 February 2023** – The owners of the adjoining properties and the Harrison and Brightmore Precincts were notified for 14 days. The notification attracted two (2) submissions.

REFERRALS - INTERNAL

BUILDING

The proposed works the subject of this application have not been assessed in accordance with compliance with the National Construction Code of Australia. This would need to be undertaken prior to the issue of a Construction Certificate. Should significant changes be required to achieve compliance with NCC standards, a further Section 4.55 application would be necessary.

HERITAGE

The application was referred to Council's Conservation Planner for review.

The Panel may wish to note that the following comments are provided by a different Conservation Planner because this assessment also serves as a peer review of the proposal given the similarities of the design concepts as featured in the current proposal and the previous Section 4.55 proposals.

HERITAGE STATUS

The subject property is not a heritage item and is not located within a conservation area. It is however, located adjacent to the Cremorne Orpheum Cinema which is currently a locally listed heritage item.

At Council's 3768th Extraordinary Council Meeting held on 7 November 2022, it was resolved after receiving the heritage report prepared by Lucas Stapleton Johnson & Partners,

'THAT Council resolve to nominate the Hayden Orpheum Picture Palace for inclusion on the State Heritage Register for listing under the Heritage Act 1977 and commence the process with the Office of Environment and Heritage.'

On investigation of Heritage NSW's website it was noted that the state nomination has not yet been placed on public exhibition and that no determination had been made.

*Notwithstanding this, the cinema is a local item and is noted as being one of the best surviving examples of an Art Deco style cinema in Sydney. It was constructed for the Virgona family in 1935. Described as "Sydney's first suburban city theatre" being the highly decorative theatre that was considered to be a new concept when compared to the modest shed-like picture theatres of the suburbs that were contemporary to this cinema. It was designed to incorporate the spirit of modernity from the external elevation, acoustics, interiors, fixtures and furnishings. When completed, it was described in an article in the journal *Decoration and Glass*, (November 1935) as the "apotheosis of all theatre progress."*

The Hayden Orpheum is unusual in that it originally had a total of six shops along its street frontage, all incorporated into its original design, a refreshment area, as well as a ballroom. Whilst much of the interior has been removed or was adapted in the 1980s to accommodate multi-screen cinemas, the exterior form is still clearly evident with its:

- *smooth rendered wall finishes,*
- *rich colour,*
- *horizontal strip mouldings,*
- *stylized zigzag graphics and*
- *dramatic bold tepped facade*

ASSESSMENT

*The proposal **does not** satisfy the following clause in NSLEP:*

'5.10 Heritage conservation

(1) Objectives

The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of North Sydney,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views...'*

The reduced setback with its stepped form will create visual clutter and will visually compete with the stepped Art Deco parapet wall of the cinema which is already negatively impacted by the complex roof additions, ducting and ancillary plant located behind the parapet wall of the cinema when viewed from the west.

The very dark tone of the brickwork will also dominate the immediate streetscape and will compete with the aesthetically significant rich colour of the cinema's facade.

By default, the proposal does not comply with Part B Section 13.4 Development in the Vicinity of a Heritage Item of NSDCP 2013 that states:

Objectives:

'Objective O1 Ensure that new work is designed and sited so as to not detrimentally impact upon the heritage significance of the heritage item and its setting' - The setting of the heritage item in the streetscape will be negatively impacted.'

Provisions:

P1 Respect and respond to the curtilage, setbacks, form, scale and style of the heritage item in the design and siting of new work - The proposal competes with the style of the stepped facade on the cinema

P2 Maintain significant public domain views to and from the heritage item – Satisfied

P3 Ensure compatibility with the orientation and alignment of the heritage item- The alignment of the proposed stepped facade of the development will visually compete with the cinema. A single setback is recommended by the deletion of Bedroom 3 on Level 4.

P4 Provide an adequate area around the heritage item to allow for its interpretation- Satisfied.

P5 Retain original or significant landscape features that are associated with the heritage item or that contribute to its setting - N/A

P6 Protect and allow interpretation of archaeological features (as appropriate and relevant)- N/A

RECOMMENDATIONS

It is recommended that:

- *Bedroom 3 be deleted from Level 4 with the associated southern and eastern walls at this level being set back accordingly; and*
- *Modifications to **Condition C50 (External Colours and Materials)** so that the colour of the brickwork on Levels 3 and 4 façade be amended to a mid-range tone or a pale colour similar to the attached property located at 372B Military Road, such that the rich red and yellow tones of the Art Deco cinema stand out in the streetscape.*

The significance of the heritage item should not be detracted from the proposed development.

Comment:

Council's Conservation Planner's comments are noted and concurred with.

It is recommended that Condition C50 be modified and a new condition C51 be imposed as follows:

External Colours and Materials – Levels 3 & 4, Southern (Military Road) Elevation

C50. The colours and materials on the southern (Military Road) elevation for Levels 3 and 4 shall be amended to a mid-range tone or a pale colour similar to the attached property located at 368 Military Road in order to differentiate the subject building from the rich red and yellow tones of the adjoining heritage item (The Orpheum Theatre).

Amended plans showing the revised architectural treatments and colours of this level are to be submitted for the written approval of Council's Manager, Development Services prior to the issue of any Construction Certificate.

Council's approval letter, plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: Heritage conservation)

Design Modifications

C51. The design of Level 4 shall be amended as follows :

- (a) Deletion of Bedroom 3 of the proposed apartment on Level 4 (Unit 401) with the associated eastern and southern walls at this level being set back accordingly;
- (b) The southern building line of Level 4 must provide a minimum 8m setback from the southern (Military Road) property boundary; and
- (c) The design of the southern elevation and the southern terrace for the modified apartment on Level 4 and the internal layout of this apartment, shall be consistent with those as shown on the approved DA drawings (Drawing Nos. DA102 Issue F dated 29 November 2022 and DA301 Issue E dated 21 November 2022, all prepared by PA Studio).

The modified design must be submitted for the written approval of Council's Manager Development Service.

Plans and specifications complying with this condition, together with Council's written approval, must be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate. The Certifying Authority must ensure that the building plans and specification submitted fully satisfy the requirements of this condition.

(Reason: To maintain the significance of the adjoining heritage listed building)

ENGINEERING

The proposed modifications do not involve additional earth works and other engineering works and no further changes to the engineering requirements would be necessary.

CONSIDERATION

Council is required to assess the s4.55 application under the EPA Act 1979 (As amended) having regard to the following matters:

Section 4.55 (2)

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and**
- (c) it has notified the application in accordance with—**
 - (i) the regulations, if the regulations so require, or**
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.**

Comments are provided on the above matters in section 4.55 (2) as follows:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and**

The application involves modifications to building design on Levels 3 and 4, an additional apartment on Level 3 and associated internal layout changes and amendments to various conditions. The proposed modifications would not materially change the overall building typology, building height and the use of the approved development. Consequently, the proposal is considered to be “substantially the same”.

- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and**

The proposed modifications do not require further approvals from the relevant minister, public authority and or approval body.

- (c) Whether the application has been notified and, if so, were there any submissions**

The application was notified to adjoining properties and the Brightmore and Harrison Precincts under section 3.6 of the North Sydney Community Engagement Protocol inviting comment on the proposal. The notification of the application has attracted two (2) submissions from the notified precinct committees. The issues raised in the submission are summarised as follows:

- Concerns raised about overdevelopment of the subject site arising from the proposed increase in the number of apartments from six (6) to seven (7).
- Concerns are raised about the adverse impacts of the proposal on the character and streetscape settings of the adjoining heritage listed building (The Orpheum Theatre).
- The proposed modifications to the DA are unwarranted and support the original Local Planning Panel decision on setbacks.

The issues raised in the submission received will be addressed later in this report.

Pursuant to section 4.55 (3) in the EPA ACT 1979 (as amended) Council must also consider the matters that need to be addressed under section 4.15 (Evaluation) and the reasons for the original approval that are considered later in this report.

MERIT ASSESSMENT

4. **Any relevant considerations under Section 4.15(1) of the Environmental Planning and Assessment Act 1979.**

In determination of a development application, a consent authority is to take into consideration the following matters relevant to the development application:

- *The provisions of any environmental planning instrument or draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority.*

(i) SEPP (Resilience and Hazards) 2021 - Chapter 4

SEPP 55 (Remediation of Land) has been consolidated into the new **SEPP (Resilience and Hazards) 2021** and the provisions of the former SEPP are contained under Chapter 4 of the new SEPP. The proposed modifications do not offend the provisions/requirements of the SEPP because the proposal does not involve additional earthworks/excavation within the subject site.

(ii) SEPP (Biodiversity and Conservation) 2021 - Chapter 6

Having regard to the relevant provisions of the above SEPP, the proposed modifications are not considered to be detrimental to the Harbour and will not unduly impose upon the character of the foreshore given the subject site is not visible from the harbour as the site is far enough away from the foreshores of Sydney Harbour as to have no impacts on the harbour and its foreshores. As such, the development satisfies the provisions contained within the above SEPP.

(iii) SEPP 65 - Design Quality of Residential Flat Buildings

Consideration has been given to the primary design principles in the SEPP as follows:

Principles 1 and 2: Context, Built Form and Scale

Whilst the proposed mixed use building would generally maintain the approved mixed use/shop top housing style design, the proposed design modifications to Levels 3 and 4 are considered to be unsatisfactory because the reduced setback with its stepped form will create visual clutter and will visually compete with the stepped Art Deco parapet wall of the cinema which is already negatively impacted by the complex roof additions, ducting and ancillary plant located behind the parapet wall of the cinema when viewed from the west.

Principle 3: Density

The proposed modifications would increase the number of apartments within the approved mixed use building by one (1) unit as compared to the previous S4.55 approval and no change to the original DA approval. Therefore, the proposal would have no material impacts in the overall density given the quantum of apartments within the locality.

Principle 4: Sustainability

The proposed modifications would not change the overall thermal performance of the approved development. The applicant has submitted a revised BASIX Certificate for the modified development.

Principle 5: Landscape

The proposed modifications do not involve significant changes to the landscaping treatments as originally approved by the NSLPP.

Principle 6: Amenity

The proposal for the internal layout changes on Level 3 to provide a studio apartment and a 3 bedroom apartment would achieve compliance with the relevant ADG requirements including unit size, solar access, cross ventilation and private open space.

Principle 7: Safety

The proposed modifications would not materially change the level of safety within the approved development and the modified works are subject to compliance with the relevant building requirements under the National Construction Codes.

Principle 8: Housing Diversity and Social Dimensions

The proposed modifications involve internal layout changes on Level 3 to provide 1 x Studio and 1 x 3 Bedroom apartments. This would re-instate the total number of units and unit mix of the original DA as follows:

Unit Type	Original DA (%)	Approved S4.55 (D269/21/2) (%)	Proposed modifications (D269/21/4) (%)
Studio	1 (14%)	0 (0%)	1 (14%)
1 Bedroom	2 (28%)	2 (33%)	2 (28%)
2 Bedroom	0 (0%)	0 (0%)	0 (0%)
3 Bedroom and above	4 (58%)	4 (67%)	4 (58%)
Total	7 (100%)	6 (100%)	7 (100%)

The proposed additional unit would provide greater diversity in unit mix to satisfy Principle 8 of the SEPP.

Principle 9: Aesthetics

As indicated earlier in this report, the proposed modifications with a revised design for Levels 3 and 4 on the southern (Military Road) elevation of the proposed mixed use development is considered to be unsatisfactory because the reduced setback with its stepped form will create visual clutter and will visually compete with the stepped Art Deco parapet wall of the cinema which is already negatively impacted by the complex roof additions, ducting and ancillary plant located behind the parapet wall of the cinema when viewed from the west.

The very dark tone of the brickwork will also dominate the immediate streetscape and will compete with the aesthetically significant rich colour of the cinema's facade.

Therefore, it is recommended that the colours and materials on the southern (Military Road) elevation for Level 3 shall be modified to a mid-range tone or a pale colour similar to the attached property located at 368 Military Road in order to differentiate the subject building from the rich red and yellow tones of the adjoining heritage listed Orpheum Theatre (**Condition C50**).

(iv) Apartment Design Guide (ADG)

A compliance table is provided below for a number of relevant ADG controls:

Amenity	Design Criteria	Comment	Compliance
<p>Building Separation (between buildings : non-habitable rooms – habitable rooms)</p>	<p>Up to 4 storeys: 6m – 12m</p> <p>5 - 8 storeys: 9m – 18m</p>	<p><i>Southern (Military Road) Elevation</i></p> <p>The separation between the proposed building and the nearby commercial properties across Military Road would be in excess of 30m.</p> <p><i>Side (eastern and western) Elevations</i></p> <p>There is a non-compliance with the building separation on the eastern and western elevations where there is a 0m setback between the proposed building and the neighbouring Orpheum Theatre to the east and No. 368 Military Road to the west.</p> <p>The applicant has proposed a number of fire rated windows on the third and fourth floor on the eastern elevation to the airspace above the Orpheum Theatre. It is noted that these windows are secondary windows for the respective habitable rooms to provide an additional source of light. This aspect of the proposal is considered to be acceptable given that these windows would not cause impacts on the amenity of the adjoining theatre building and can be closed/removed should there be new development within the adjoining site.</p> <p>There would be no windows on the western elevation of the proposed development adjoining the side property boundary wall of the existing mixed use building to the west at No. 368 Military Road.</p> <p><i>Northern (Parraween Street) Elevation</i></p> <p>There would be no further changes to the 25m building separation between the balconies on the north-western elevation of the proposed mixed use building and the habitable room windows/verandah on the front (street) elevation of No. 82 Parraween Street.</p> <p>The proposed modifications are considered to be acceptable in this regard.</p>	<p>Yes</p> <p>No (acceptable on merit)</p> <p>Yes</p>

<p>Visual privacy</p>	<p>6m (between habitable rooms and balconies to side/rear boundaries)</p>	<p>As mentioned above, the proposed building would provide adequate building separation to minimise any visual privacy impacts for the adjoining properties along Military Road and Parraween Street.</p> <p>Despite the absence of any setback from the side property boundaries, the third and fourth floor windows on the eastern wall would overlook the roof of the Orpheum Theatre only. There would be no windows on the walls along western property boundary. Therefore, there would be no material visual privacy impacts on the adjoining mixed use building to the west at No. 368 Military Road.</p> <p>In addition, there would be no further changes to the separation between the proposed bedroom windows looking into the lightwell.</p> <p>The proposal is therefore considered to be acceptable.</p>	<p>Yes</p> <p>No (acceptable on merit)</p> <p>No change</p>
<p>Solar and daylight access</p>	<p>70% off apartments to receive 2 hours of direct sunlight</p>	<p>Four out of the 7 apartments (57%) will receive 2 hours of direct solar access to living spaces and private open space.</p> <p>The applicant acknowledged the non-compliance with the ADG's requirements is due to the site circumstances such as the small site area and the elongated shape of the property.</p> <p>Notwithstanding the above, daylight access to the third floor studio on the Military Road elevation, particularly the balcony, would be improved with the recommendation for the deletion of the Level 4 bedroom above.</p> <p>The proposal is acceptable subject to the deletion of the Level 4 bedroom (Condition C51).</p>	<p>No (acceptable on merit)</p>
<p>Natural ventilation</p>	<p>60% of apartments are naturally cross ventilated</p>	<p>Five of the 7 apartments (71%) of the apartments would achieve cross ventilation.</p>	<p>Yes</p>
<p>Ceiling Heights</p>	<p>2.7m (habitable rooms)</p>	<p>2.7m</p>	<p>Yes</p>
<p>Apartment size and layout</p>	<p>35 m² (Studio) 50 m² (1B) 70 m² (2B) 90 m² (3B)</p>	<p>40 m²(Studio) 61m²(1B) N/A(2B) >142m²(3B+)</p>	<p>Yes</p>
<p>Apartment size and layout</p>	<p>Master bedrooms have a minimum area of 10 m²</p> <p>All secondary bedrooms have a minimum width of 3m</p>	<p>All master bedrooms are suitably sized in excess of 10 m²</p> <p>The secondary bedrooms comply with the minimum width of 3m.</p> <p>The rooms on the western side of the lightwell have been amended to "Study" as the width of these rooms are under the required 3m in</p>	<p>Yes</p> <p>Yes</p>

	Living rooms have a minimum width of 3.6m (S and 1B) and 4m (2B and 3B)	accordance with Condition C48 in the original consent Studio/1B – 4.2m min. 3B+ – 5.5m min.	Yes
	The maximum habitable room depth is 8m from a window	All habitable areas would be within 8m from windows.	Yes
Private open space and balconies	S – 4 m ² 1B – 8m ² 2B – 10m ² 3B – 12m ²	Studio - 5m ² 1B - 8m ² 2B – N/A 3B+ – >19m ²	Yes
Common circulation and spaces	Maximum number of apartments off a circulation core on a single level is 8	A maximum of 2 apartments on all levels.	Yes
Storage	6m ³ (1B) 8m ³ (2B) 10m ³ (3B)	Satisfactory storage areas are provided within the apartments and on the basement levels.	Yes
Communal and public open space	Communal open space has a minimum area equal to 25% of the site	The proposal does not provide communal areas within the development. This is considered to be acceptable due to the small scale of the proposal for seven (7) apartments.	No (acceptable on merit)
Apartment Mix	A range of apartment types and size to cater for different household types	The modified proposal would provide a range of apartments including 1 x Studio, 2 x 1B and 4 x 3B units The proposal is consistent with the ADG objective to provide a range of units for different household types. Furthermore, the proposal would also allow flexibility for the development to be adapted to future needs in accordance with ADG Objectives 4Q 1 – 3.	Yes

The proposed modifications are considered to be generally satisfactory having regard to the design criteria as specified in the ADG. As detailed in the table above, where strict compliance is not achieved, the non-compliances are unlikely to materially compromise the amenity of the apartments.

It is concluded that the proposed modifications are acceptable having regard to the relevant requirements/provisions of SEPP 65 and the ADG with the exception of the treatments of the southern façade on Levels 3 and 4 and to maintain the approved 8m setback from Military Road in order to ensure appropriate heritage/streetscape outcomes for the development and the adjoining heritage listed Orpheum Theatre (**Conditions C50 and C51**).

(v) SEPP (Building Sustainability Index – BASIX) 2004

The applicant has submitted a revised BASIX certificate (1224852M_09) to reflect the proposed modifications. It is considered that the submission a further BASIX certificate is required in order to incorporate the design changes required for Level 4.

Therefore, it is recommended that **Condition C44** be modified to include a note that the BASIX Certificate number is subject to a revision to reflect the design changes as required by the **Condition C51**.

(vi) North Sydney Local Environmental Plan 2013 (NSLEP 2013)

Compliance Table:

Principal Development Standards – North Sydney Local Environmental Plan 2013				
Site Area – 303.3m²	Approved	Proposed	Control	Complies
Clause 4.2 – Heights of Building	17.99m (Top of screen for plant area)	16.5m (Modified southern roof slab)	16m	NO
Clause 4.4A – Non-residential Floor Space Ratio	196 m ² (FSR - 0.64:1)	196 m ² (FSR - 0.64:1)	0.5:1 min.	Yes (No change)

Permissibility with the Zone

The land affected by the proposed development is zoned B4 (Mixed Use) pursuant to the North Sydney LEP 2013, and development for the purpose of “shop top housing” is permissible in the zone with the consent of Council.

Zone Objectives

The proposed modifications are generally consistent with the objectives of the B4 (Mixed Use) zone subject to modifications to **Conditions C50 and C51** as indicated earlier in this report.

Building Height

The proposed modifications would not change the overall building height of the approved development at RL102.0 for the top of plant and RL101.8 for the lift overrun.

However, the proposed bedroom 3 on Level 4 and its roof slab on the southern side of the proposed mixed use building would cause further non-compliance with the LEP 16m height limit as illustrated below:

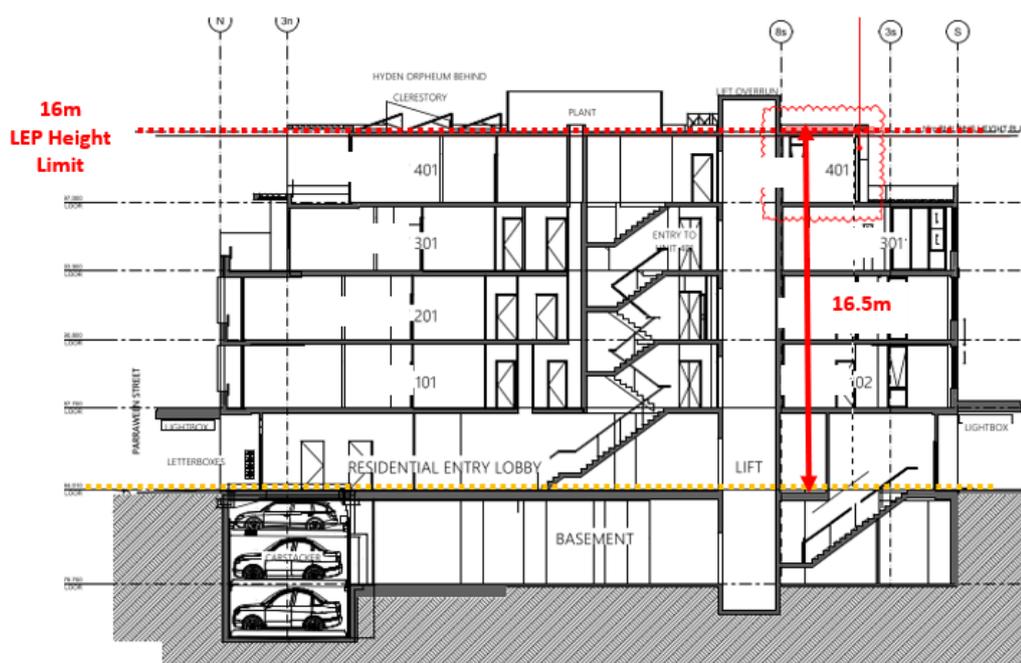


Figure 14: Proposed development and LEP building height limit

In accordance with the findings by Justice Lloyd in *Gann & Anor v Sutherland Shire Council [2008] NSWLEC 157*, the modification of a development consent pursuant to Section 4.55 (formerly Section 96) which results in a new or modified variation to a development standard, does not require the submission of an objection pursuant to SEPP 1 or a request for variation to the Development Standard under Clause 4.6 of the LEP. In this regard, reference is made to the provisions of S4.55(4) of the Act which distinguishes between the modification of a development consent pursuant to S4.55 and the granting of development consent.

In addition, consideration has been given to the objectives of the LEP building height control and the environmental grounds justifying the proposed building height variation as a measure of the performance of the proposed modifications. These matters have been considered below:

(1)(a) To promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient

The proposed modifications would not change the overall landform within the subject site.

(1)(b) To promote the retention and, if appropriate, sharing of existing views

(1)(c) To maintain solar access to existing dwellings, public reserves and streets, and to promote solar access to future development

It is considered that the modified roof slab on the southern side of the building would have no material view and shadowing impacts because the modified structure is unlikely to obstruct any significant views as seen from the roof terrace at No.368 Military Road and the additional shadows would primarily fall on Military Road or the roof of the Orpheum Theatre.

(1)(d) To maintain privacy for residents of existing dwelling and to promote privacy for residents of new buildings

The modified building elements in breach of the LEP maximum height limit would be the modified roof slab on the southern side of the building.

There would be no material privacy impacts resulting from the revised southern roof slab above the LEP maximum building height limit because these roof structures would have no openings and would not cause overlooking onto other properties. Furthermore, the roof slab would be only trafficable for maintenance purposes only, hence any material privacy impacts are unlikely.

(1)(e) To ensure compatibility between development, particularly at zone boundaries

(1)(f) To encourage an appropriate scale and density of development that is in accordance with, and promotes the character of the area

As indicated earlier in this report, proposed modifications with a revised design for Levels 3 and 4 on the southern (Military Road) elevation of the proposed mixed use development is considered to be unsatisfactory because the reduced setback with its stepped form will create visual clutter and will visually compete with the stepped Art Deco parapet wall of the cinema which is already negatively impacted by the complex roof additions, ducting and ancillary plant located behind the parapet wall of the cinema when viewed from the west.

There are insufficient environmental planning grounds to justify the proposed changes to southern (Military Road) façade on Level 4.

Therefore, it is recommended that the proposed bedroom 3 on Level 4 be deleted and the approved 8m setback from the Military Road boundary be maintained in order to ensure appropriate heritage/streetscape outcomes for the development and the adjoining heritage listed Orpheum Theatre (**Condition C51**).

Earthworks

The proposed modifications would not change the scope of earthworks as approved in the original deferred commencement consent.

(v) North Sydney Development Control Plan 2013:

Consideration has been given to the relevant DCP controls as follows:

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2 - Commercial and Mixed Use Development		
	<i>complies</i>	<i>Comments</i>
2.2 Function		
2.2.3 Mixed Residential Population – Size of units	Yes	<i>Unit Mix:</i> The proposal contains 1 x studio, 2 x 1 Bedroom and 4 x 3 Bedroom apartments. This complies with the DCP requirement for a minimum of two dwelling types (i.e. studio, 1B, 2B and 3B) within residential flat buildings containing less than twenty (20) units.
	No (acceptable on merit)	<i>Adaptable Units:</i> The applicant has proposed one (1) adaptable unit (16%) within the modified development. The non-compliance with the DCP minimum of 20% of the total number of units to be adaptable is considered to be acceptable under the site circumstance given the narrow and elongated shape of the property and the modest nature of the proposed development with only seven (7) apartments.

2.4 Quality built form		
2.4.1 Context	No	<p>Whilst the overall design of the proposed mixed use building is generally consistent with other new mixed use development along Military Road to the west of the subject site, the proposed design modifications to Levels 3 and 4 are unsatisfactory because the reduced setback with its stepped form will create visual clutter and will visually compete with the stepped Art Deco parapet wall of the cinema which is already negatively impacted by the complex roof additions, ducting and ancillary plant located behind the parapet wall of the cinema when viewed from the west.</p> <p>It is therefore recommended that Condition C51 be imposed requiring an 8m setback from Military Road for Level 4 as required to ensure appropriate heritage and streetscape outcomes.</p>
2.4.3 Setbacks	Yes	<p>The proposal complies with the DCP character statement for Neutral Bay/Cremorne Town Centre requiring buildings to be built to Military Road frontage.</p> <p>The proposed zero side boundary setbacks are also consistent with the character of existing developments along Military Road.</p> <p>The applicant has also proposed a variable podium height on the Military Road frontage, to provide a transition of building heights along the street frontage.</p> <p>Whilst this aspect of the proposal is generally consistent with the DCP requirement, the building setbacks for the structures above the podium from Military Road must have regard to the built forms of the heritage listed Orpheum Theatre to the east of the subject site and the group of building to the west of the subject site.</p> <p>The required 8m setback for the southern (Military Road) façade for Level 4 as recommended in Condition C51 is considered to be appropriate in order to provide a development sympathetic to the heritage listed Orpheum Theatre immediately to the east of the subject site.</p>
2.4.4 Podiums 2.4.5 Building Design	No	<p>The proposed modifications would not change the building design with zero front and side setbacks and the use of ground floor for commercial/retail purposes is generally consistent with the character of similar mixed use buildings along Military Road.</p> <p>As indicated earlier in this report, the proposed design modifications to Levels 3 and 4 are unsatisfactory because the reduced setback with its stepped form will create visual clutter and will visually compete with the stepped Art Deco parapet wall of the cinema which is already negatively impacted by the complex roof additions, ducting and ancillary plant located behind the parapet wall of the cinema when viewed from the west.</p> <p>Therefore conditions C50 and C51 are recommended in order to address the above issues and to ensure appropriate heritage and streetscape outcomes.</p>
2.4.8 Balconies - Apartments	Yes	<p>The proposal would provide complying balconies to all apartments to ensure access to functional private open space for the future residents.</p>
2.4.10 Streetscape	No	<p>As indicated earlier in this report, the design modifications to Levels 3 and 4 of the proposed mixed use building are unsatisfactory. Therefore conditions C50 and C51 are recommended in order to address the above issues and to ensure appropriate heritage and streetscape outcomes.</p>

2.5 Quality Urban Environment																											
2.5.1 Accessibility	Yes	The modified development, including the ground floor commercial/retail tenancies and the apartments on the upper levels, would be accessible.																									
2.5.2 Safety and Security	Yes	The design of the proposal has considered personal safety and security with secured access and passive surveillance from the apartments above the building entrance.																									
2.5.4 High Quality Residential Accommodation		<p><u>Unit Size</u></p> <table border="1"> <thead> <tr> <th>Dwelling Type:</th> <th>Proposed</th> <th>Control</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>40sqm</td> <td>40sqm</td> <td>Yes</td> </tr> <tr> <td>1 Bedroom</td> <td>61m²</td> <td>50sqm</td> <td>Yes</td> </tr> <tr> <td>2 Bedroom</td> <td>N/A</td> <td>80sqm</td> <td>N/A</td> </tr> <tr> <td>3 Bedroom +</td> <td>145m² (minimum)</td> <td>100sqm</td> <td>Yes</td> </tr> </tbody> </table> <p>All the proposed apartments would comply with the DCP's unit size requirements.</p> <p><u>Width of Apartments</u></p> <p>The proposed apartments would have variable widths. It is noted that the width of the apartments comply with the ADG requirements as detailed earlier in this report.</p> <p><u>Single Aspect Apartments</u></p> <p>The living areas of the single aspect apartments would be within 8m from a window. It is noted that the entrance corridors of the southern apartments on the first and second floors would be in excess of 8m from windows, however, this is considered to be acceptable because such areas would primarily be used for circulation only.</p>	Dwelling Type:	Proposed	Control	Compliance	Studio	40sqm	40sqm	Yes	1 Bedroom	61m ²	50sqm	Yes	2 Bedroom	N/A	80sqm	N/A	3 Bedroom +	145m ² (minimum)	100sqm	Yes					
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3 Bedroom +	145m ² (minimum)	100sqm	Yes																								
2.5.5 Lightwells	No change	The applicant has not proposed changes to the lightwell as previously approved.																									
2.5.6 Private Open Space	Yes	The proposal complies with the DCP open space requirements for all apartments.																									
2.5.7 Vehicular Access	No change	The applicant has not proposed further changes to the vehicular access arrangements via the basement of the adjoining mixed use development at No.368 Military Road as previously approved.																									
2.5.8 Car Parking	No (via condition)	<p>The applicant has not proposed further changes to the parking provisions as previously approved:</p> <table border="1"> <thead> <tr> <th>Parking Type:</th> <th>Approved</th> <th>Current S4.55</th> <th>Control (Max.)</th> <th>Complies</th> </tr> </thead> <tbody> <tr> <td>Residential: - Car</td> <td>9</td> <td>9</td> <td>6</td> <td>No</td> </tr> <tr> <td>Residential - Motorcycle</td> <td>0</td> <td>0</td> <td>1 (1sp/10car)</td> <td>No</td> </tr> <tr> <td>Disabled</td> <td>1</td> <td>1</td> <td>1 (1sp/each adaptable unit)</td> <td>Yes</td> </tr> <tr> <td>Non-residential</td> <td>0</td> <td>0</td> <td>3</td> <td>No</td> </tr> </tbody> </table>	Parking Type:	Approved	Current S4.55	Control (Max.)	Complies	Residential: - Car	9	9	6	No	Residential - Motorcycle	0	0	1 (1sp/10car)	No	Disabled	1	1	1 (1sp/each adaptable unit)	Yes	Non-residential	0	0	3	No
Parking Type:	Approved	Current S4.55	Control (Max.)	Complies																							
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Residential - Motorcycle	0	0	1 (1sp/10car)	No																							
Disabled	1	1	1 (1sp/each adaptable unit)	Yes																							
Non-residential	0	0	3	No																							

		<p>It is noted that a car stacker is proposed on the northern side of the basement to accommodate eight (8) cars and the remaining two (2) parking spaces are provided on the opposite side of the car stacker include one (1) parking space for people with disabilities. The design of the basement car parking is generally consistent with the one considered in the original DA.</p> <p>A condition (C1) has been imposed in the original consent requiring amendments to the basement carpark to provide parking for the commercial tenancies and motorcycles.</p> <p>The applicant has not proposed changes to the Condition C1. The parking allocation as specified in Conditions C1 is considered to be appropriate for the modified proposal because the parking needs generated by different components within proposed development are being catered for.</p>
2.5.9 Garbage Storage	No (acceptable on merit and via condition)	<p>The absence of a garbage chute and recycle bin storage on all residential levels is considered to be acceptable having regard to the small number of seven (7) apartments within the development and the constrained floor plan to accommodate various facilities particularly on the ground floor.</p> <p>The applicant has not sought changes to the waste management conditions in the original deferred commencement consent.</p>
2.6 Efficient Use of Resources		
2.6.1 Energy Efficiency	Yes (via condition)	<p>The applicant has submitted a revised BASIX certificate (1224852M_09) to reflect the proposed modifications. It is considered that the submission a further BASIX certificate is required in order to incorporate the design changes required in Condition C51.</p> <p>It is recommended that Condition C44 be modified to include a note that the BASIX Certificate number is subject to a revision to reflect the design changes as required by Condition C51.</p>

North Cremorne Planning Area (Neutral Bay and Cremorne Town Centres)

The proposed design modifications to Levels 3 and 4 are unsatisfactory because the reduced setback with its stepped form will create visual clutter and will visually compete with the stepped Art Deco parapet wall of the heritage listed Orpheum Theatre.

Therefore, an 8m setback from Military Road for Level 4 should be maintained as required by **Condition C51** to ensure a respectful built form that would complement the heritage listed Orpheum Theatre and the Military Road streetscape.

NORTH SYDNEY LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN 2020

The proposed modifications would result in a total of seven (7) apartments within the development as compared to the previous S4.55 approval under D269/21/2. There would be no further change to the non-residential floorspace at 196sqm.

Consequently the modified proposal has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and is to payment of contributions towards the provision of local infrastructure. The contributions payable have been calculated in accordance with Council's Contributions Plan as follows:

Development type	Existing	Approved (D269/21/2)	Proposed	Change from Existing
Residential accommodation	2 dwellings	6 dwellings	7 dwellings	Increase: 5 dwellings
Non-Residential Floorspace	297sqm	196sqm	196sqm	Decrease: 101sqm

Contribution amounts payable: \$73,420.87

Applicable contribution type: s7.11 contribution		
	Open space and recreation facilities:	\$44,366.81
	Public domain:	\$18,033.80
	Active transport:	\$1,029.39
	Community facilities:	\$8,911.25
	Plan administration and management:	\$1,079.62
	Total:	\$73,420.87

It is noted that the applicant has not paid the S7.11 Contribution as required by **Condition C40** in the original development consent.

Accordingly, it is recommended that **Conditions C40 and C41** be modified to incorporate the above revised contribution.

REASONS FOR THE ORIGINAL APPROVAL

Section 4.55 (3) requires the reasons given by the consent authority for the granting of consent that is sought to be modified. In this case, the reasons for granting the original permission, which is sought through this application to be modified, are set out in the notice of determination of the original DA.

The reasons given by the NSLPP for the deferred commencement approval of the original application are as follows:

- *The Panel considers the plans must be amended with the Officer's recommendation to ensure that the building has a respectful transition to the adjoining heritage item.*
- *These design changes are also considered appropriate in the context of a more sensitive design to reduce view impacts for the adjoining property.*
- *While the front façade of the existing building remains somewhat intact above the awning, the remainder of the building has been extensively modernised and does not warrant retention in the context of current planning controls.*
- *The application, subject to the above changes is satisfactory on a merits assessment and further modification is not required.*

The proposal for modifications to the design of the southern (Military Road) façade on Levels 3 and 4 is contrary to the key reason for granting the original approval because the reduced setback with its stepped form will create visual clutter and will visually compete with the stepped Art Deco parapet wall of the heritage listed Orpheum Theatre. This aspect of the subject Section 4.55 application is not supported by Council's Conservation Planner.

The other aspects of the proposed modifications, such as changes to internal layout on Level 3 to provide 1 x studio and 1 x 3 bedroom apartment, are not contrary to the reasons for approval for the original development consent and can be supported.

ENVIRONMENTAL APPRAISAL	CONSIDERED
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and Carparking provision	Yes
6. Loading and Servicing facilities	N/A
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes
10. Section 89 LGA 93 including Clause 12 Consideration of Local Government (Approvals) Regulation 1993	Yes

PUBLIC INTEREST

The proposed modifications, with the exception of the proposed modifications to the southern (Military Road) façade of the proposed mixed use building, are considered to be in the public interest for the reasons stated throughout this report.

SUITABILITY OF THE SITE

The proposal would be located in a B4 (Mixed use) zone where shop top housing/mixed use development is a permissible form of development. Consequently, the proposed modifications, with the exception of the proposed modifications to the southern (Military Road) façade of the proposed mixed use building, are considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

COMMUNITY VIEWS

The application was notified to adjoining properties and the Brightmore and Harrison Precincts under section 3.6 of the North Sydney Community Engagement Protocol inviting comment on the proposal. The notification of the application has attracted two (2) submissions from the notified precinct committees. The issues raised in the submission are addressed below.

- ***Concerns raised about overdevelopment of the subject site arising from the proposed increase in the number of apartments from six (6) to seven (7).***

Comment:

It is noted that the proposed development contained seven (7) apartments in the original approved scheme and was modified to six (6) apartments through amalgamation of a studio and a 3 bedroom apartment on Level 3 under the previous S4.55 application. The current proposal has been amended to include the re-configuration of a single apartment on Level 3 back to a studio and a 3 bedroom apartment.

In addition, there would be no material internal changes to the approved building envelope and floor space area on Level 3. The proposal is also consistent with the ADG objective to provide a range of units for different household types. This aspect of the proposal is considered to be acceptable.

- ***Concerns raised about the adverse impacts of the proposal on the character and streetscape settings of the adjoining heritage listed building (The Orpheum Theatre).***
- ***The submitter Supports previous Local Planning Panel decision on setbacks.***

Comment:

As indicated throughout this report, the design of the southern (Military Road) façade on Level 4 is contrary to the key reason for granting the original approval because the reduced setback with its stepped form will create visual clutter and will visually compete with the stepped Art Deco parapet wall of the heritage listed Orpheum Theatre. Therefore, it is recommended that this aspect of the proposal is deleted from this consent (**Condition C51**).

CONCLUSION & REASONS

The proposed modifications are considered to be generally consistent with the originally approved development application and s.4.55 of the EP & A Act 1979.

The proposed modifications would result in a development which is substantially the same development, being a mixed-use building, as originally approved as the proposal would not materially change the building typology, building height and the use of the development as approved in the original deferred commencement consent.

However, the proposed design modifications to the southern (Military Road) façade on Level 4 is not supported because the reduced setback with its stepped form will create visual clutter and will visually compete with the stepped Art Deco parapet wall of the heritage listed Orpheum Theatre. Therefore, this aspect of the subject Section 4.55 application is recommended for deletion from this consent.

The other aspects of the proposed modifications, such as changes to internal layout on Level 3 to provide 1 x studio and 1 x 3 bedroom apartment, can be supported because there would be no change to the approved building envelope for Level 3 and no material amenity of the adjoining properties in terms of the loss of significant views, solar access, visual and acoustic privacy.

The issues raised in the submissions received have been addressed in this report.

The proposed modifications, with the exception of the design modifications to the southern (Military Road) façade on Level 4, were found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(2) application be approved with modifications to existing conditions of consent and addition of new conditions.

RECOMMENDATION

PURSUANT TO SECTION 4.55 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Planning Panel exercising the functions of Council approve the modification of development consent D269/21 dated 6 March 2022 in respect of a proposal to the redevelopment of the subject site including the demolition of the existing two storey shop top housing building and the construction of a five (5) storey shop top housing (mixed use) development at No.372 Military Road, Cremorne under the provisions of Section 4.55 of the Environmental Planning and Assessment Act only insofar as will provide for the following:

- 1. To modify the development consent (D269/21) and modify conditions C40, C41, C42, C50 and C45 to read as follows:***

Section 7.11 Contributions

C40. Monetary contribution pursuant to the provisions of Section 7.11 of the Environmental Planning and Assessment Act 1979, in accordance with the North Sydney Council Local Infrastructure Contribution Plan 2020 for the public amenities/ services detailed below, must be paid to Council.

Contribution Categories/Facilities:	Contribution(\$)
Open space and recreation facilities:	\$44,366.81
Public domain:	\$18,033.80
Active transport:	\$1,029.39
Community facilities:	\$8,911.25
Plan administration and management:	\$1,079.62
Total:	\$73,420.87

- * Contribution required for the current proposal offset by credit from the existing commercial development

The contribution MUST BE paid prior issue of any Construction Certificate.

The above amount will be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

A copy of the North Sydney Local Infrastructure Contribution Plan 2020 can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at www.northsydney.nsw.gov.au.

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new development)

Security Deposits/Guarantee Schedule

- C41. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security Deposit/Guarantee	Amount (\$)
Footpath Damage Bond	\$30,000.00
Engineering Construction Bond	\$36,000.00
TOTAL BONDS	\$66,000.00

Note: The following fees applicable

Fees	
S7.11 Contribution	\$73,420.87
TOTAL FEES	\$73,420.87

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date. (Reason: Compliance with the development consent)

(Reason: Compliance with the development consent)

BASIX Commitments

- C42. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. 1224852M_09 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Note: A revised BASIX Certificate may be required to reflect the modified design as required by Condition C51 of this consent.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

External Colours and Materials – Levels 3 and 4, Southern (Military Road) Elevation

- C50. The colours and materials on the southern (Military Road) elevation for Levels 3 and 4 shall be amended to a mid-range tone or a pale colour similar to the attached property located at 368 Military Road in order to differentiate the subject building from the rich red and yellow tones of the adjoining heritage item (The Orpheum Theatre).

Amended plans showing the revised architectural treatments and colours of this level are to be submitted for the written approval of Council's Manager, Development Services prior to the issue of any Construction Certificate.

Council's approval letter, plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: Heritage conservation)

2. To insert a new conditions A6 and C51 to read as follows:

Terms of Consent (D269/21/4)

A6. Approval is granted for the following modifications only:

- (a) Modifications to the approved four (4) bedroom apartment on Level 3 to provide 1 x 3 Bedroom apartment (Unit 301) and 1 x studio apartment (Unit 302).
- (b) The overall number of apartments within the development increases from six (6) to seven (7).

No approval is given or implied in this consent for any other works, both internal and external, particularly the proposed modifications to the southern (Military Road) façade on Level 4, within the subject property unless specified in the consent.

(Reason: To ensure the terms of the consent are clear.)

Design Modifications

C51. The design of Level 4 shall be amended as follows :

- (a) Deletion of Bedroom 3 of the proposed apartment on Level 4 (Unit 401) with the associated eastern and southern walls being set back accordingly;
- (b) The southern building line of Level 4 must provide a minimum 8m setback from the southern (Military Road) property boundary; and
- (c) The design of the southern elevation and the southern terrace for the modified apartment on Level 4 and the internal layout of this apartment, shall be consistent with those as shown on the approved DA drawings (Drawing Nos. DA102 Issue F dated 29 November 2022 and DA301 Issue E dated 21 November 2022, all prepared by PA Studio).

The modified design must be submitted for the written approval of Council's Manager Development Service.

Plans and specifications complying with this condition, together with Council's written approval, must be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate. The Certifying Authority must ensure that the building plans and specification submitted fully satisfy the requirements of this condition.

(Reason: To maintain the significance of the adjoining heritage listed building)

ROBIN TSE
SENIOR ASSESSMENT OFFICER

ROBYN PEARSON
TEAM LEADER ASSESSMENTS

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES



STREET VIEW ALONG MILITARY ROAD



STREET VIEW ALONG PARRAWEEN STREET



SITE PLAN 1:500

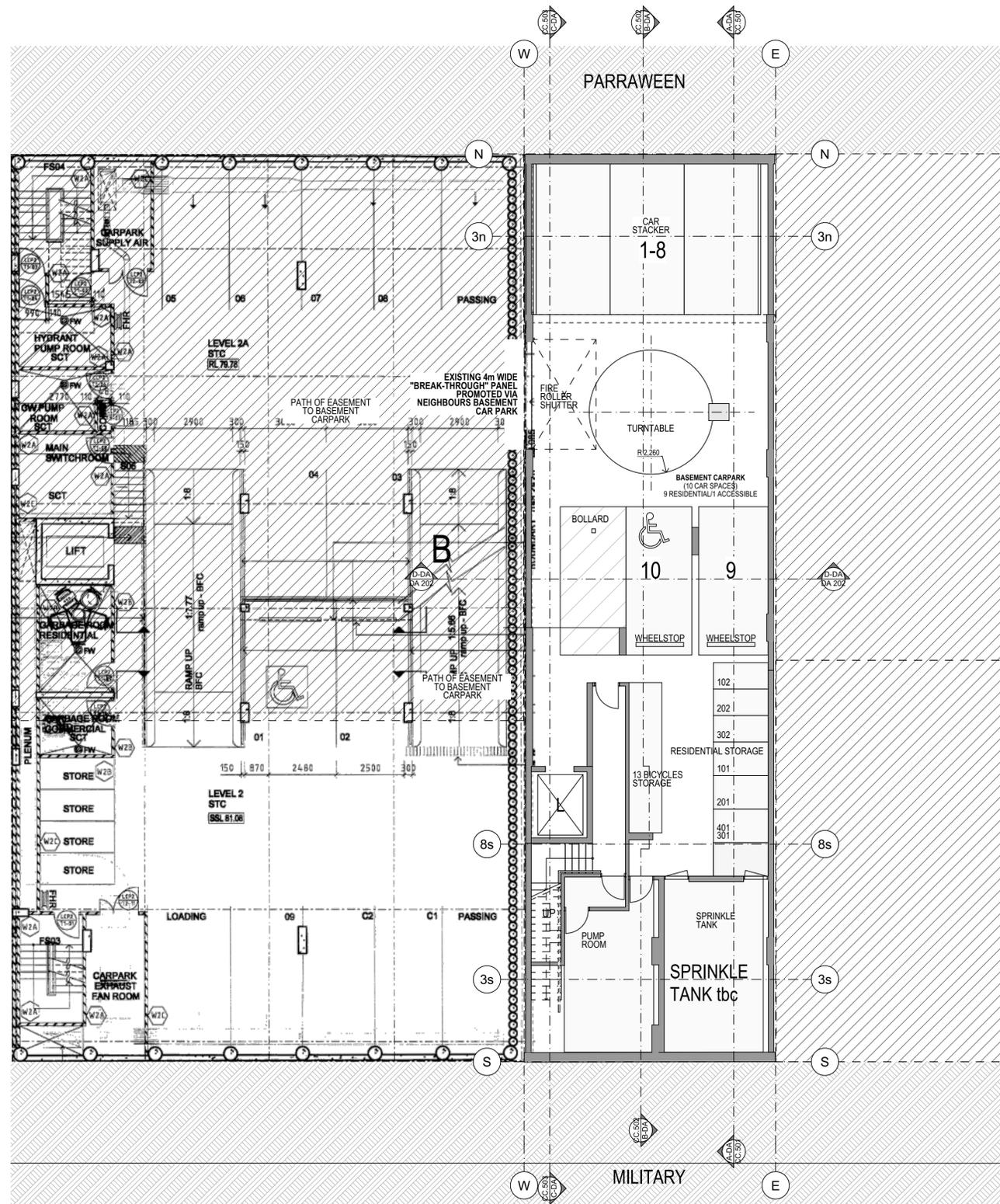
General Notes
 The Builder shall check all dimensions and levels on site prior to construction. Notify any errors, discrepancies or omissions to the architect. Drawings shall not be used for construction purposes until issued for construction. Do not scale drawings. All boundaries and contours subject to survey
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Printed 9/01/2023

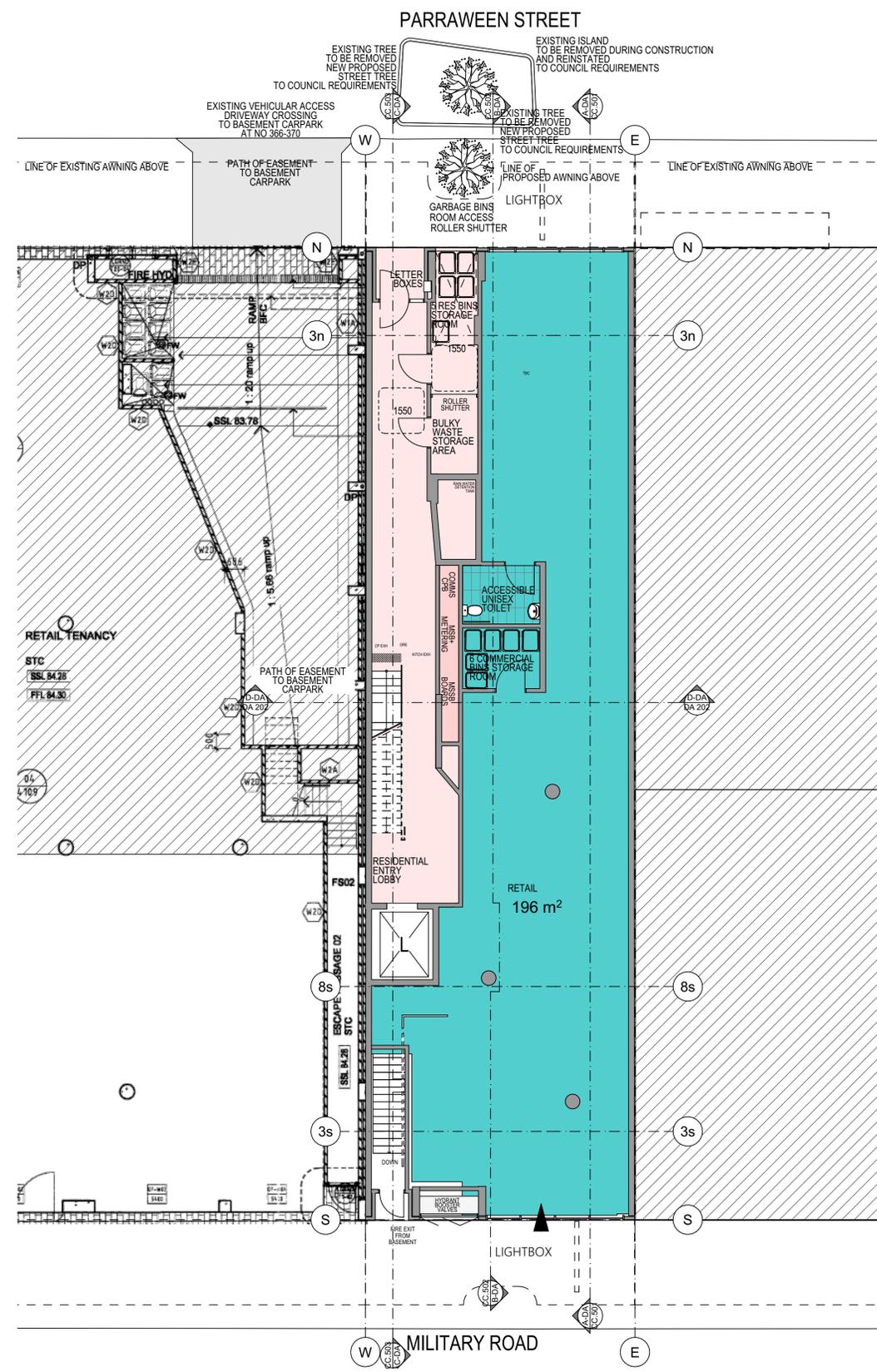
ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
				C	SECTION 4.55		29.11.22
				B	UPDATE TO COUNCIL GUIDELINES		18.11.21
				A	ORIGINAL ISSUE FOR DA		15.02.22

PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

SCALE:		SITE PLAN		DRAWING SET ID:	ISSUE
1:100 @A1	1:200 @A3	PA STUDIO		SUBSET: SITE AND LOCATION	
		LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089 TEL: 8968 1900 FAX: 8968 1999 ACN: 603 389 288		DRAWN BY: WH	
				FILE: PAR75 CC v2 J 11 2022.pln	DA 001
				NOMINATED GEORGE REVAY ARCHITECT REG. NO. 3954	



BASEMENT FLOOR



GROUND FLOOR

General Notes
 The Builder shall check all dimensions and levels on site prior to construction.
 Notify any errors, discrepancies or omissions to the architect.
 Drawings shall not be used for construction purposes until issued for construction.
 Do not scale drawings.
 All boundaries and contours subject to survey

FILE PATH: Z:\IPAR75\PAR75 CC v2 J 11 2022.pln

Printed 9/01/2023

ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
				C	SECTION 4.55		29.11.22
				B	UPDATE TO COUNCIL GUIDELINES		18.11.21
				A	ORIGINAL ISSUE FOR DA		15.02.22

PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

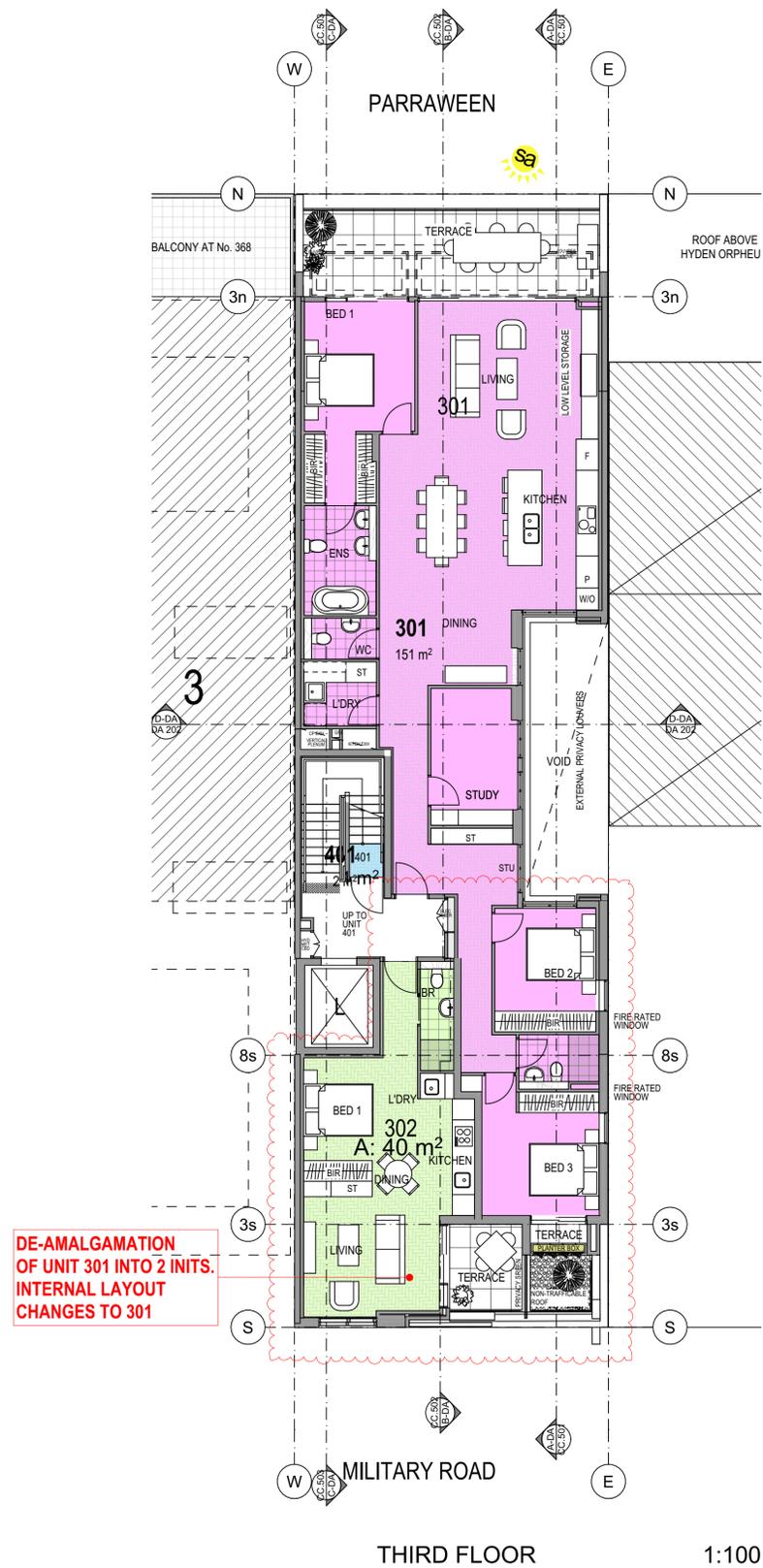
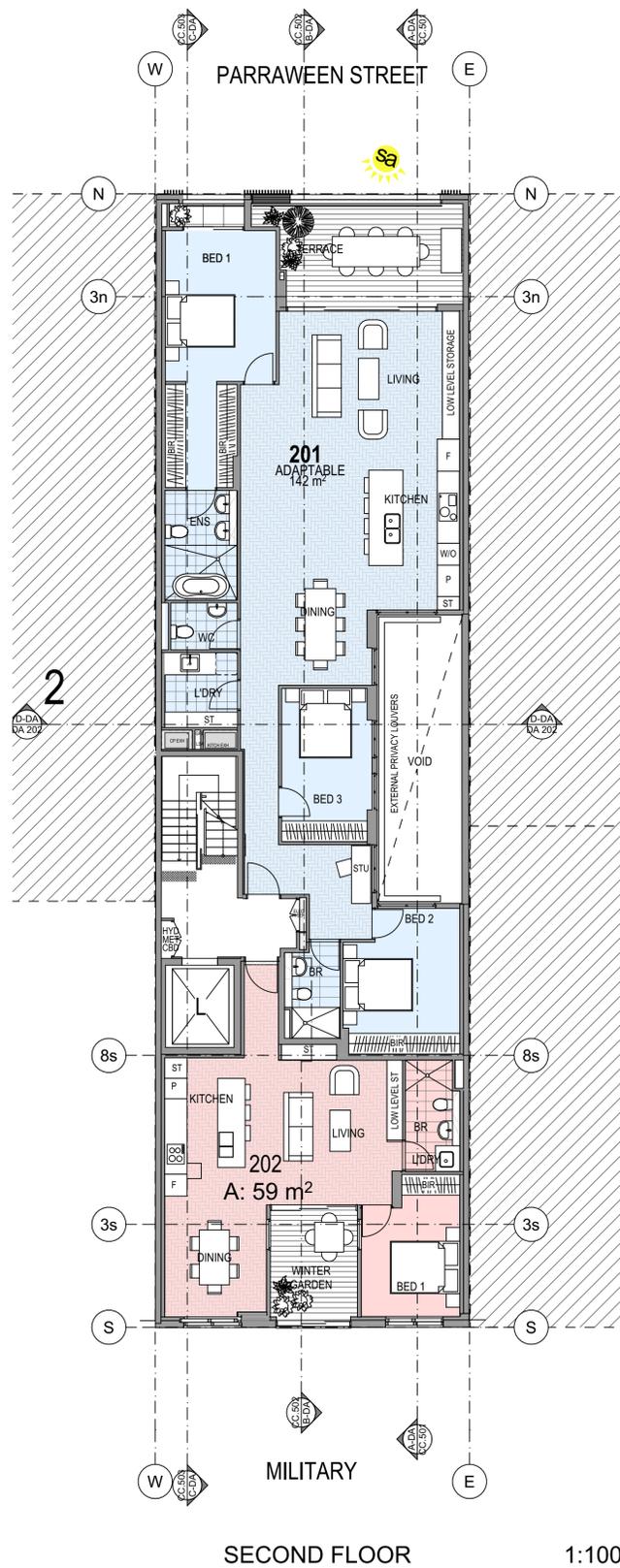
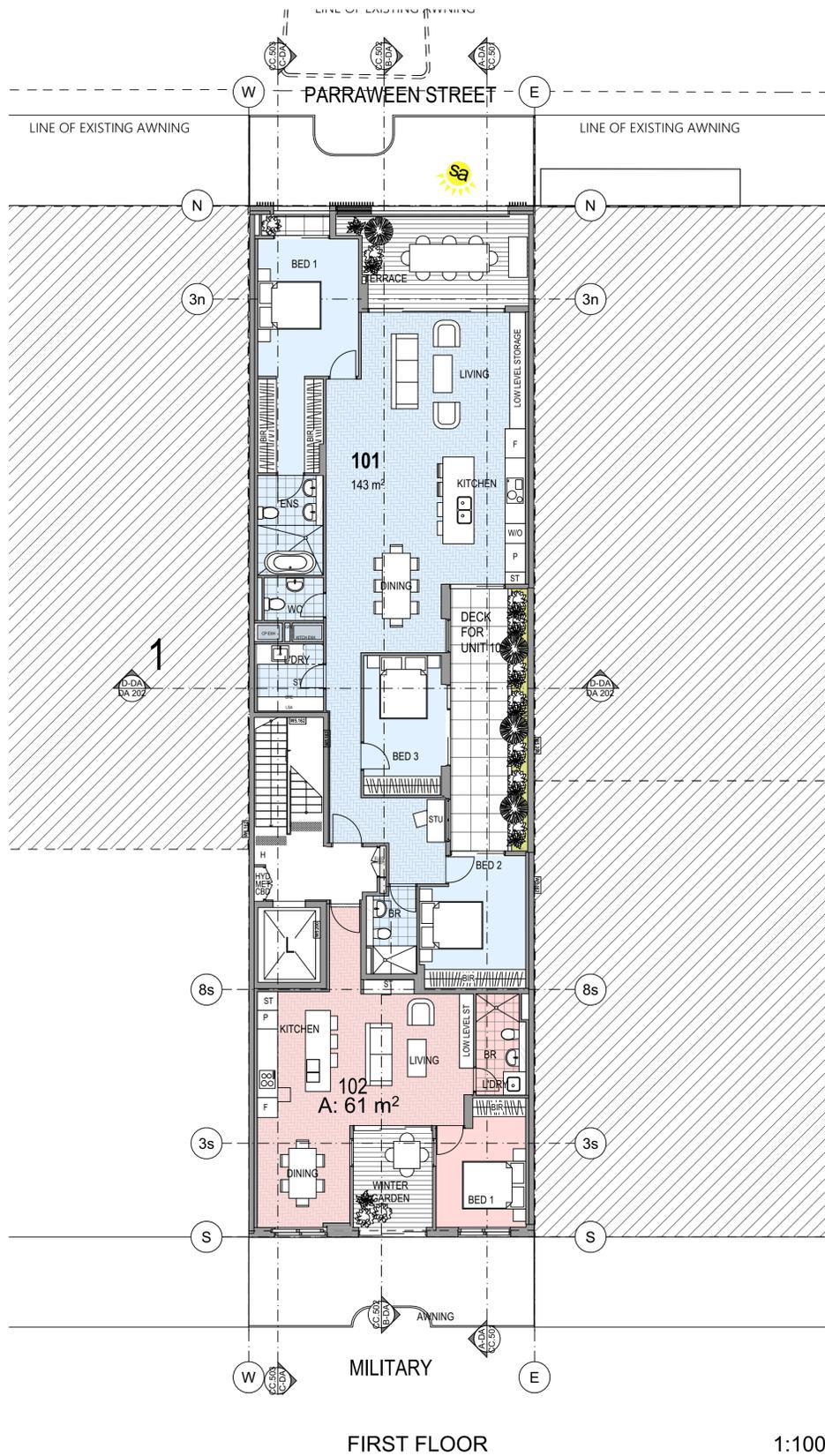
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 SUBSET: DA PLANS
 DRAWN BY: WH
 FILE: PAR75 CC v2 J 11 2022.pln
 NOMINATED ARCHITECT: GEORGE REVAY
 REG. NO. 3954

SCALE:
 1:100 @ A1
 1:200 @ A3

BASEMENT & GROUND FLOOR

PA STUDIO
 LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089
 TEL: 8968 1900 FAX: 8968 1999 ACN: 603 389 288

DA 100	ISSUE	
	C	



General Notes
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FILE PATH: Z:\PAR75\PAR75 CC v2 J 11 2022.pln

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ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
				D	UPDATE TO COUNCIL GUIDELINES		19.07.22
				C	UPDATE TO COUNCIL GUIDELINES		16.06.22
F	SECTION 4.55		29.11.22	B	UPDATE TO COUNCIL GUIDELINES		18.11.21
E	SECTION 8.2 REVIEW		29.11.22	A	ORIGINAL ISSUE FOR DA		15.02.22

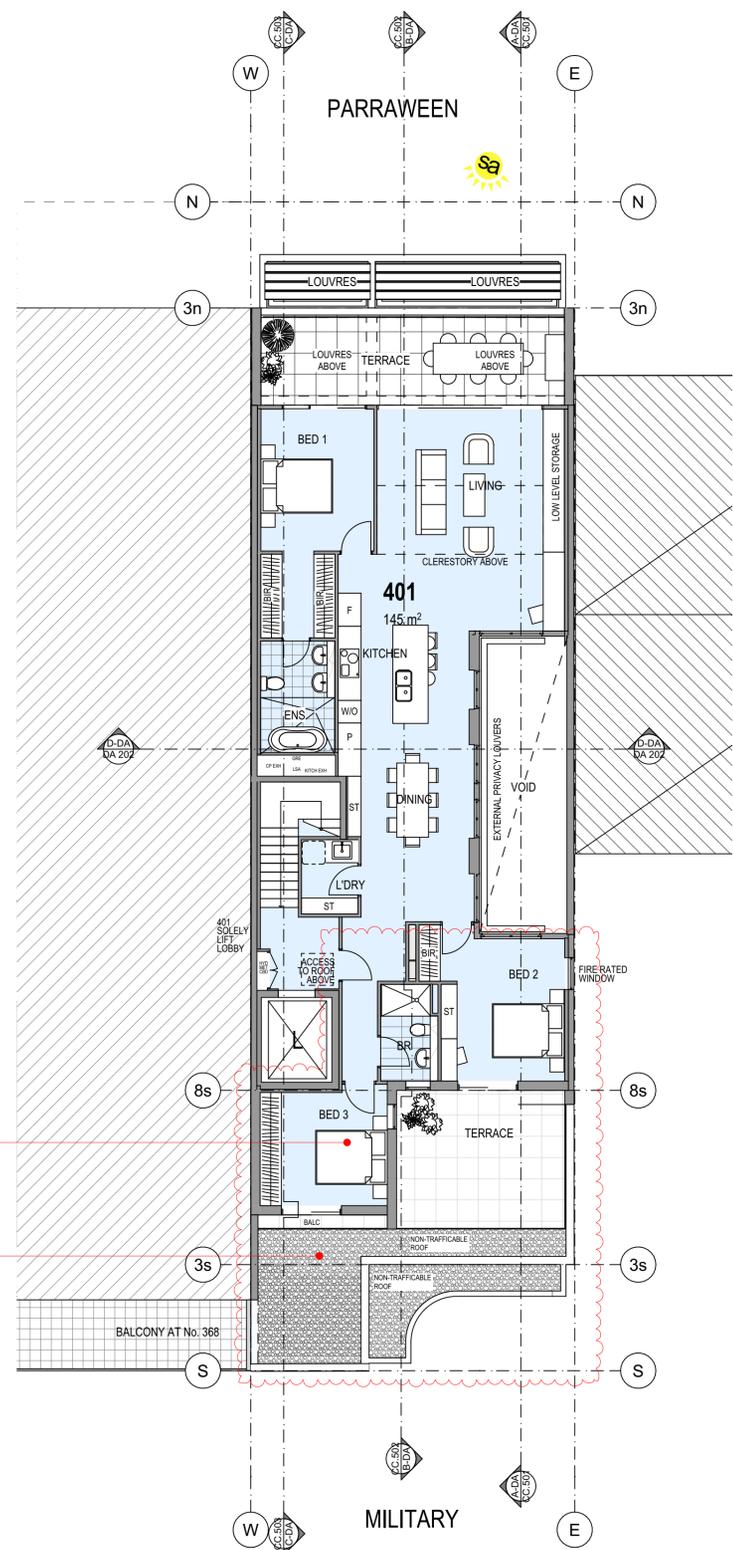
PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

DRAWING SET ID: SUBSET: DA PLANS		DA 101	ISSUE F
DRAWN BY: WH			
FILE: PAR75 CC v2 J 11 2022.pln			
NOMINATED ARCHITECT: GEORGE REVAY			
REG. NO. 3954			

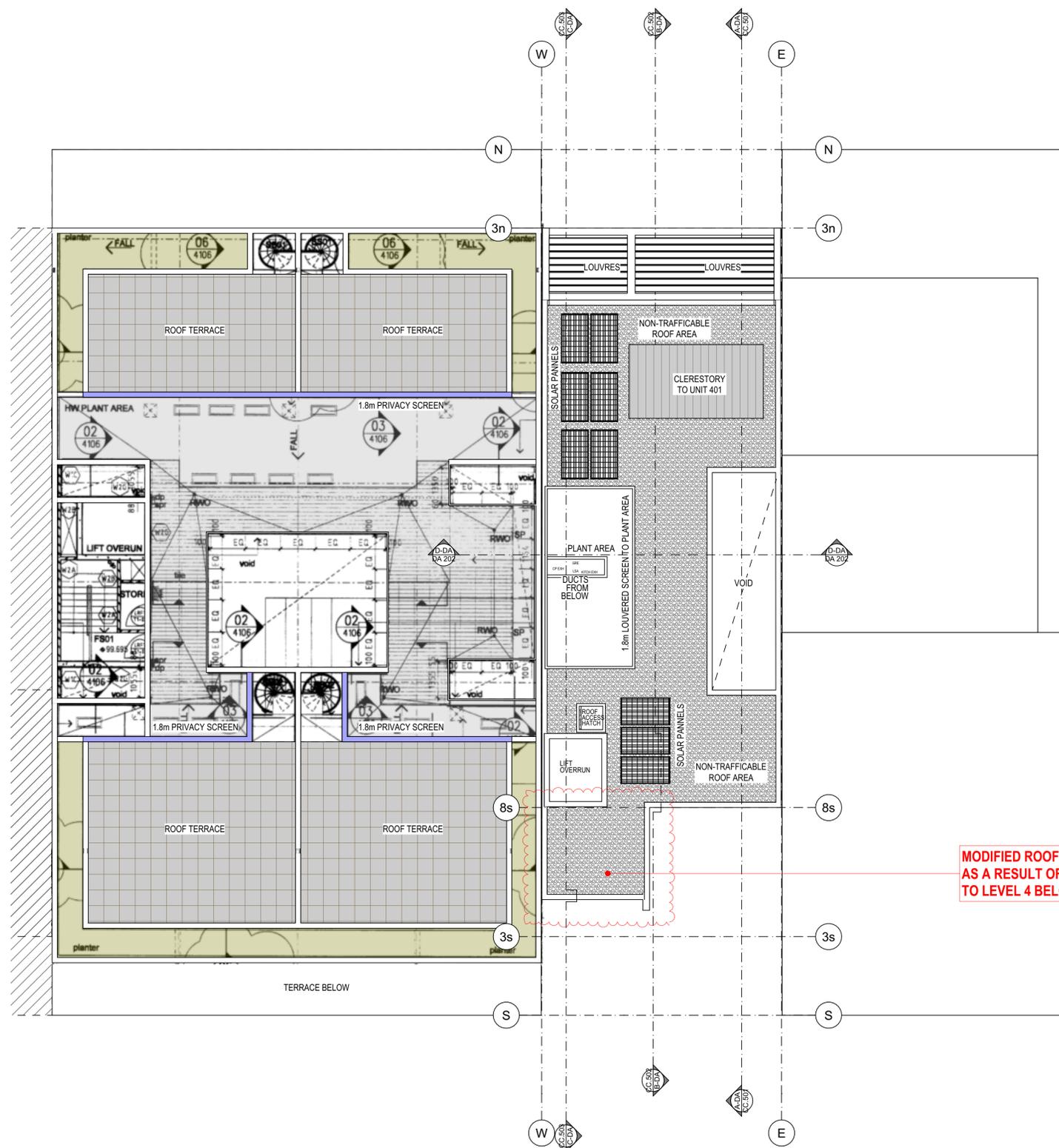
FLOOR PLANS: L1-L3

SCALE:
 1:100 @ A1
 1:200 @ A3

PA STUDIO
 LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089
 TEL: 8968 1900 FAX: 8968 1999 ACN: 603 389 288



FOURTH FLOOR 1:100



ROOF 1:100

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 FILE PATH: Z:\PAR75\PAR75 CC v2 J 11 2022.pln

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ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
				D	UPDATE TO COUNCIL GUIDELINES		19.07.22
				C	UPDATE TO COUNCIL GUIDELINES		16.06.22
F	SECTION 4.55		29.11.22	B	UPDATE TO COUNCIL GUIDELINES		18.11.21
E	SECTION 8.2 REVIEW		04.10.22	A	ORIGINAL ISSUE FOR DA		15.02.22

PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

FLOOR PLANS: L4 & ROOF PLAN

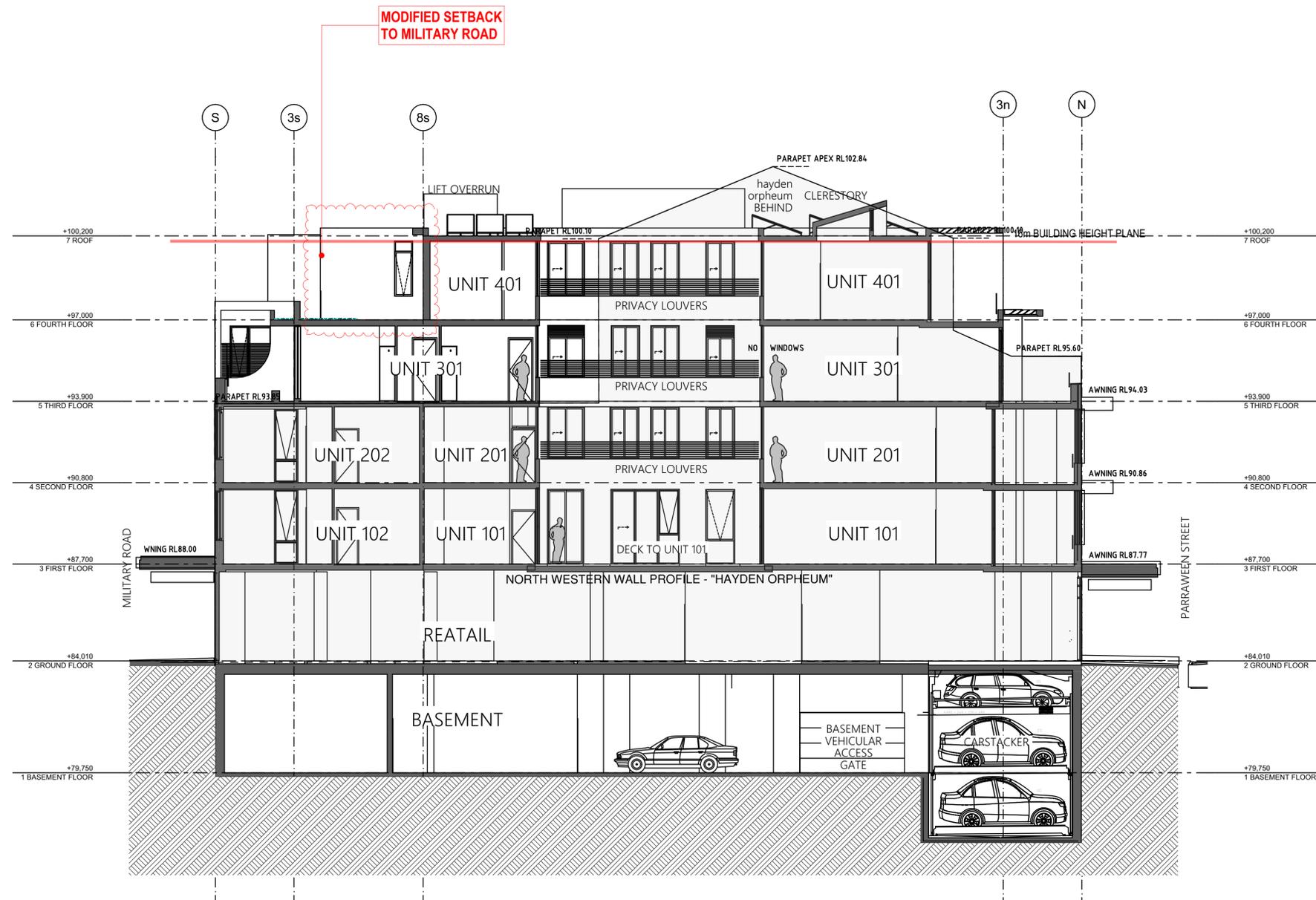
SCALE:
 1:100 @ A1
 1:200 @ A3

PA STUDIO
 LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089
 TEL: 8968 1900 FAX: 8968 1999 ACN: 603 389 288

DRAWING SET ID:
 SUBSET: DA PLANS
 DRAWN BY: WH
 FILE: PAR75 CC v2 J 11 2022.pln
 NOMINATED ARCHITECT: GEORGE REVAY
 REG. NO. 3954

DA 102

ISSUE
F



SECTION A-A

1:100



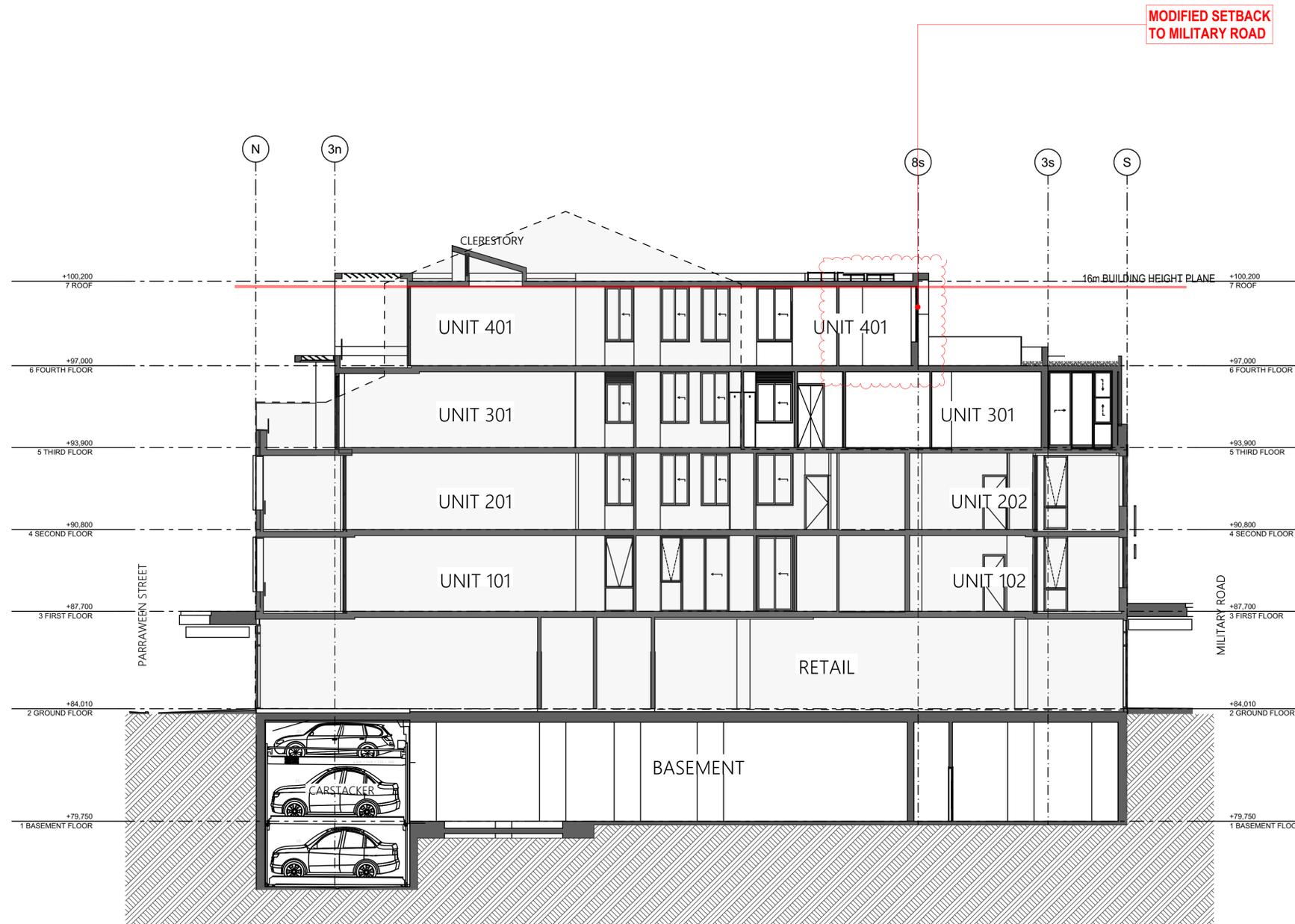
General Notes
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ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
				D	SECTION 8.2 REVIEW		04.10.22
				C	UPDATE TO COUNCIL GUIDELINES		16.06.22
				B	UPDATE TO COUNCIL GUIDELINES		18.11.21
E	SECTION 4.55		29.11.22	A	ORIGINAL ISSUE FOR DA		15.02.22

PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

SCALE:		SECTION A-A		DRAWING SET ID:		DA 200	ISSUE
1:100 @ A1	1:200 @ A3			SUBSET: DA SECTIONS			
PASTUDIO		DRAWN BY: WH		FILE: PAR75 CC v2 J 11 2022.pln			
		LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089 TEL: 8968 1900 FAX: 8968 1999 ACN: 603 389 288		NOMINATED ARCHITECT		GEORGE REVAY REG. NO. 3954	



SECTION B-B

1:100



General Notes
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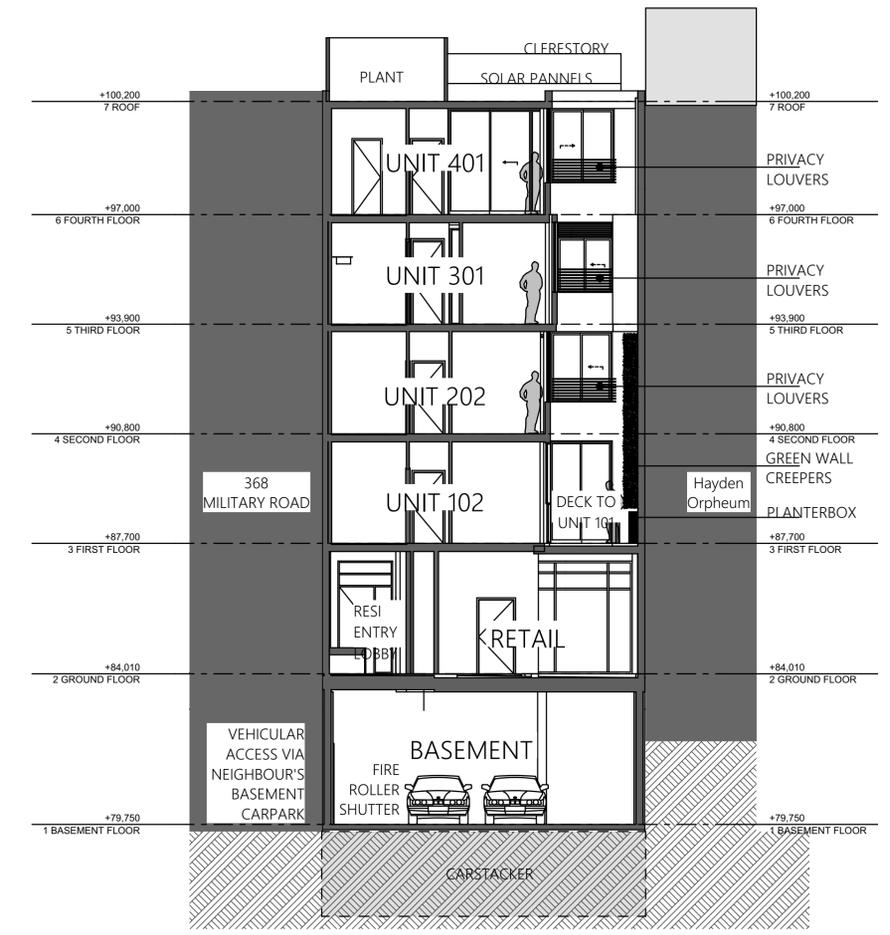
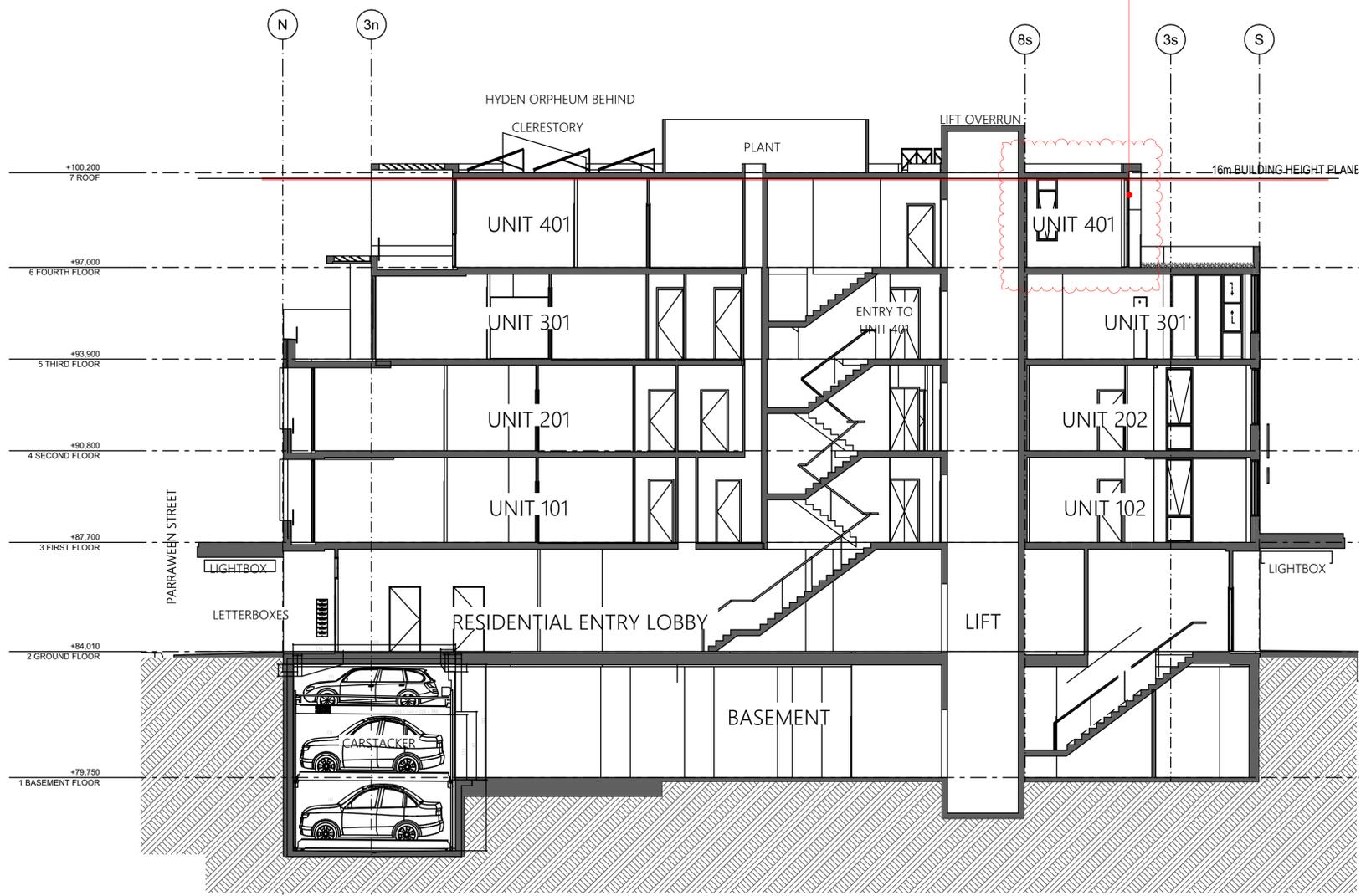
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ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
				D	SECTION 8.2 REVIEW		04.10.22
				C	UPDATE TO COUNCIL GUIDELINES		16.06.22
				B	UPDATE TO COUNCIL GUIDELINES		18.11.21
E	SECTION 4.55		29.11.22	A	ORIGINAL ISSUE FOR DA		15.02.22

PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

SCALE:		SECTION B-B		DRAWING SET ID:	ISSUE
1:100 @ A1	1:200 @ A3	PASTUDIO			
LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089 TEL: 8968 1900 FAX: 8968 1999 ACN: 603 389 288		DRAWN BY: WH		FILE: PAR75 CC v2 J 11 2022.pln	E
		NOMINATED ARCHITECT			

MODIFIED SETBACK TO MILITARY ROAD



General Notes
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FILE PATH: Z:\PAR75\PAR75 CC v2 J 11 2022.pln

Printed 9/01/2023

ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
				D	SECTION 8.2 REVIEW		04.10.22
				C	UPDATE TO COUNCIL GUIDELINES		16.06.22
				B	UPDATE TO COUNCIL GUIDELINES		18.11.21
E	SECTION 4.55		29.11.22	A	ORIGINAL ISSUE FOR DA		15.02.22

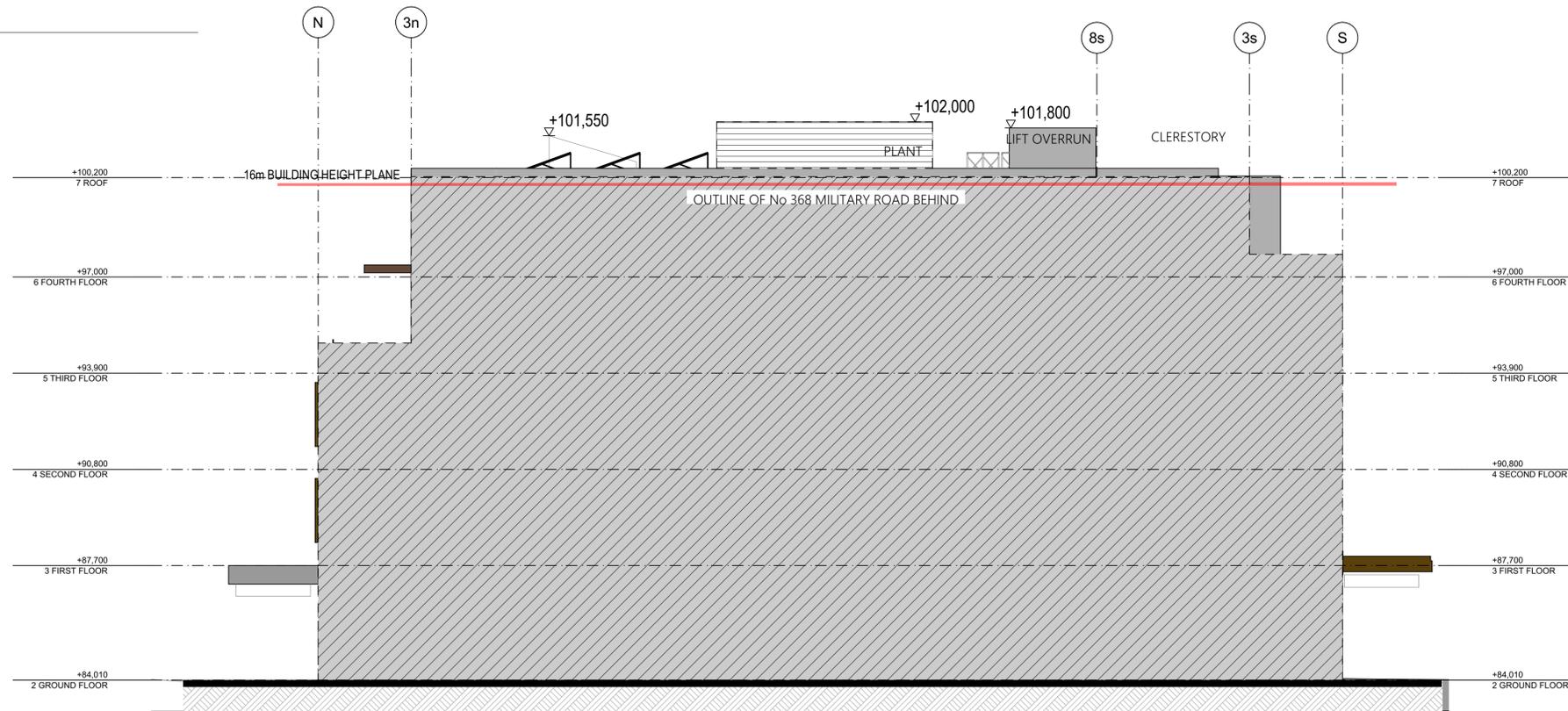
PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

SCALE: 1:100 @ A1 1:200 @ A3		SECTIONS C-C AND D-D PA STUDIO LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089 TEL: 8968 1900 FAX: 8968 1999 ACN: 603 389 288		DRAWING SET ID: SUBSET: DA SECTIONS DRAWN BY: WH FILE: PAR75 CC v2 J 11 2022.pln NOMINATED ARCHITECT: GEORGE REVAY REG. NO. 3954	DA 202 ISSUE E
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PARRAWEEN STREET

NORTH ELEVATION



WEST ELEVATION

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ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
				D	SECTION 8.2 REVIEW		04.10.22
				C	UPDATE TO COUNCIL GUIDELINES		16.06.22
				B	UPDATE TO COUNCIL GUIDELINES		18.11.21
E	SECTION 4.55		29.11.22	A	ORIGINAL ISSUE FOR DA		15.02.22

PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

NORTH & WEST ELEVATIONS

SCALE:
 1:100 @ A1
 1:200 @ A3

PA STUDIO
 LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089
 TEL: 8968 1900 FAX: 8968 1999 ACN: 603 389 288

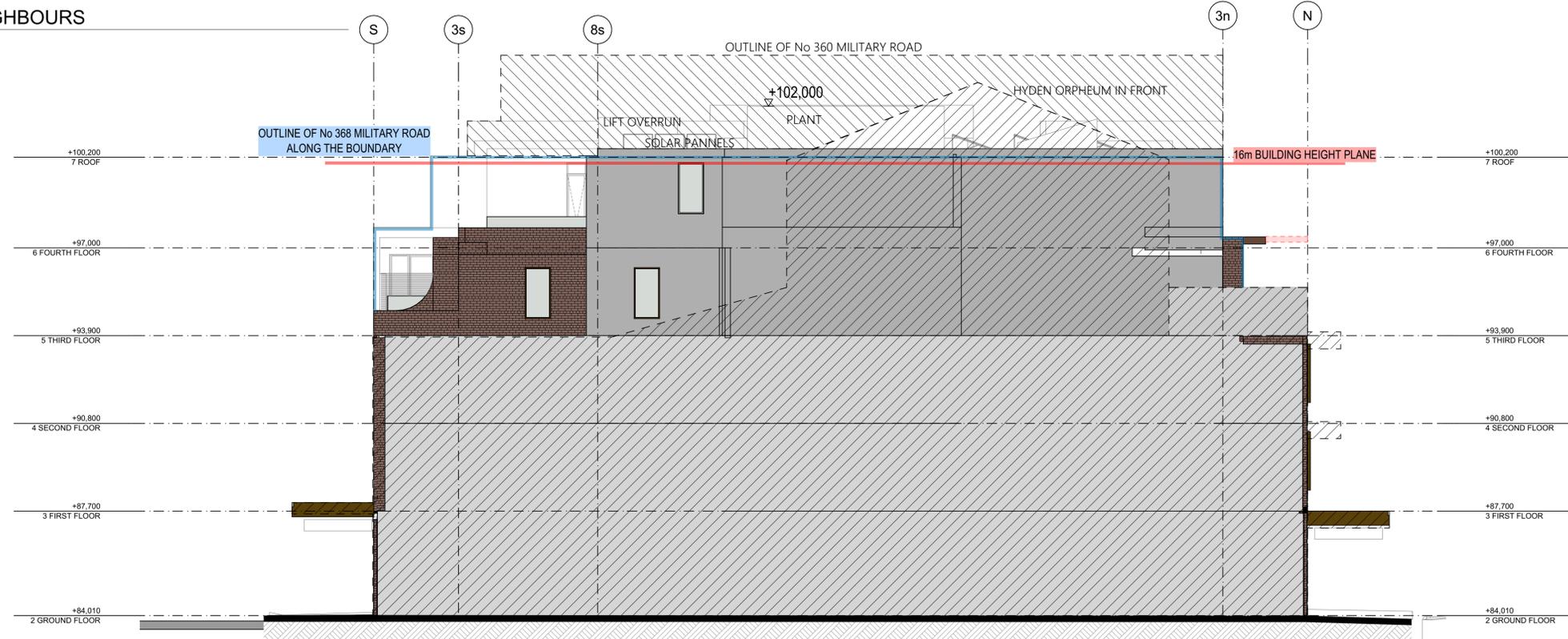
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 DRAWN BY: WH
 FILE: PAR75 CC v2 J 11 2022.pln
 NOMINATED ARCHITECT: GEORGE REVAY
 REG. NO. 3954

DA 300

ISSUE
E



SOUTH ELEVATION WITH NEIGHBOURS



EAST ELEVATION

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FILE PATH: Z:\PAR75\PAR75 CC v2 J 11 2022.pln

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ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE	ISSUE	REVISIONS	COUNCIL BUILDER OTHERS	DATE
				D	SECTION 8.2 REVIEW		04.10.22
				C	UPDATE TO COUNCIL GUIDELINES		16.06.22
				B	UPDATE TO COUNCIL GUIDELINES		18.11.21
				A	ORIGINAL ISSUE FOR DA		15.02.22
E	SECTION 4.55		29.11.22				

PROJECT:
MIXED USE DEVELOPMENT
 372 MILITARY ROAD CREMORNE NSW 2090

SOUTH & EAST ELEVATIONS

SCALE:
 1:100 @ A1
 1:200 @ A3

PA STUDIO
 LEVEL 2, 20 YOUNG ST. NEUTRAL BAY, NSW 2089
 TEL: 8968 1900 FAX: 8968 1999 ACN: 603 389 288

DRAWING SET ID:	DA 301	E
SUBSET: DA ELEVATIONS		
DRAWN BY: WH		
FILE: PAR75 CC v2 J 11 2022.pln		
NOMINATED ARCHITECT: GEORGE REVAY		
REG. NO. 3954		