
Bayside Planning Panel

12/09/2017

Item No	5.5
Application Type	Development Application
Application Number	DA-2017/105
Lodgement Date	28 September 2016
Property	109-110 The Grand Parade Brighton Le Sands
Owner	Proprietors of SP 1727
Applicant	Mr C Hafouri
Proposal	Integrated Development - Construction of a four (4) storey residential flat building containing 11 apartments, basement car parking, private and communal roof top terrace areas and demolition of existing structures
No. of Submissions	26 letters (Multiple submissions from 8 of 10 objectors i.e. 2 - 5 letters)
Cost of Development	\$5,302,943
Report by	Fiona Prodromou – Senior Assessment Planner

Officer Recommendation

- A That Development Application DA-2017/105 for the construction of a four (4) storey residential flat building containing 11 apartments, basement car parking, private and communal roof top terrace areas and demolition of existing structures be REFUSED pursuant to Section 80(1)(b) of the Environmental Planning and Assessment Act 1979, for the following reasons:
- 1 Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following principles of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development:
 - a) Principle 1 – Context and Neighbourhood Character
 - b) Principle 2 – Built Form and Scale
 - c) Principle 3 – Density
 - d) Principle 6 – Amenity
 - e) Principle 9 – Aesthetics
 - 2 Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following requirements of the Apartment Design Guide:
 - a) 3D - Communal Open Space
 - b) 3F - Visual Privacy
 - c) 4E – Private open space and balconies

- 3 Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following requirements or objectives of Rockdale LEP 2011:
 - a) Clause 4.3 – Height of Buildings
 - b) Clause 4.4 – Floor Space Ratio
 - c) Clause 4.6 – Exceptions to Development Standards
 - d) Clause 5.6 – Architectural Roof Features
- 4 The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the objectives and provisions of Rockdale Development Control Plan 2011 including:
 - a) 4.1.9 - Lot Size and Site Consolidation
 - b) 4.4.2 Solar Access - Residential Flat Buildings
 - c) 4.4.5 - Acoustic Privacy
 - d) 4.6 - Car Parking Access and Movement
 - e) 4.7 - Site Facilities
- 5 Pursuant to the provisions of Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, the suitability of the site for the proposed development has not been adequately demonstrated.
- 6 Having regard to the previous reasons noted above and the number of submissions received by Council against the proposed development, pursuant to the provisions of Section 79C(1)(d) and Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.

B That the objectors be advised of the Bayside Planning Panel's decision.

Attachments

- 1 Assessment Report
 - 2 Appendix 1 to Assessment Report - View Loss Assessment
 - 3 Photomontage
 - 4 Site Plan
 - 5 Streetscape Elevation
 - 6 Elevations
 - 7 Finishes Schedule
 - 8 Section
 - 9 Shadow Diagrams
 - 10 Elevational Shadow Diagrams
 - 11 Landscape Plans
 - 12 Clause 4.6 Justification to FSR and Height
 - 13 Architectural Rooftop Feature Justification
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Location Plan



Fig 1 – Location Plan

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2017/105
Date of Receipt:	28 September 2016
Property:	109 - 110 The Grand Parade, BRIGHTON LE SANDS (SP 1727)
Owner:	The Prop Of Strata Plan 1727
Applicant:	Mr Carlos Hafouri
Proposal:	Integrated Development - Construction of a four (4) storey residential flat building containing 11 apartments, basement car parking, private and communal roof top terrace areas and demolition of existing structures
Recommendation:	Refused
No. of submissions:	26 letters (Multiple submissions from 8 of 10 objectors i.e. 2 - 5 letters)
Author:	Fiona Prodromou
Date of Report:	28 July 2017

Key Issues

The subject site is located on The Grand Parade, which is a classified road and is zoned R4 High Density Residential under Rockdale Local Environmental Plan 2011 (RLEP 2011). The site currently comprises a two storey residential flat building comprising 4 units with associated garaging within the rear of the site.

The proposal seeks to demolish existing structures on site and construct a four (4) storey residential flat building comprising 11 units, basement level car parking and associated communal and private rooftop terrace areas.

In December 2015, the NSW Government passed the Strata Schemes Development Act 2015 (NSW). The Act permits the owners of lots within a free hold strata scheme to redevelop their site whereby 75% of lot owners agree. The subject property comprises 4 lot owners, whom all agree to redevelop the subject site.

The proposal seeks to vary the requirements of the Apartment Design Guide with respect to communal open space provision, minimum balcony size and building separation. As a consequence of the reduced building separation the proposal results in unsatisfactory visual privacy and acoustic impacts to neighbouring properties, in particular to existing residential units to the south within 112 The Grand Parade. The proposed separation distances have been assessed on their merits and deemed unacceptable for the reasons outlined within this report. An assessment of the proposal under State Environmental Planning Policy 65 identifies that the proposal does not satisfy principles in relation to context and neighbourhood character, bulk and scale, density, amenity and aesthetics.

The proposal seeks to vary the maximum FSR standard by 24sq/m and height limit by 0.8m - 1.3m. A Clause 4.6 Exceptions to Development Standards has been submitted by the applicant and is not supported in this instance for the reasons discussed within this report.

The proposal indicates non compliances to the requirements of DCP 2011 with respect to minimum allotment width, solar access, loading and unloading and site facilities. These matters have been discussed further and supported within the planning report.

The proposal was publicly notified on two occasions, with originally submitted plans notified from 8 October - 14 November 2016 and amended plans notified from 3 - 21 April 2017. The final revised plans submitted to Council in June 2017 were not publicly re-notified, given the minor extent of changes and the provisions of DCP 2011. Notwithstanding final revised plans were made publicly available upon Councils website. A total of 26 individual letters of objection were received following the aforementioned notification periods. Multiple submissions i.e. 2 - 5 letters were received from 8 of the 10 objectors, whom wrote to Council. The issues raised by objectors have been considered as part of the assessment of this application and are detailed within the planning report.

Given the cumulative non complying elements of the proposal and resultant adverse impacts to neighbouring properties, it is considered prudent that the applicant further pursue the acquisition of the northern adjoining site or redesign the proposal to minimise adverse impacts and provide a more sympathetic response within the established context of the site. The design in its current form cannot be supported and the proposal is recommended for Refusal.

Recommendation

A. That Development Application DA-2017/105 for the construction of a four (4) storey residential flat building containing 11 apartments, basement car parking, private and communal roof top terrace areas and demolition of existing structures be REFUSED pursuant to Section 80(1)(b) of the Environmental Planning and Assessment Act 1979, for the following reasons:

1. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following principles of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

- a) Principle 1 – Context and Neighbourhood Character
- b) Principle 2 – Built Form and Scale
- c) Principle 3 – Density
- d) Principle 6 – Amenity
- e) Principle 9 – Aesthetics

2. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following requirements of the Apartment Design Guide:

- a) 3D - Communal Open Space
- b) 3F - Visual Privacy
- c) 4E – Private open space and balconies

3. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following requirements or objectives of Rockdale LEP 2011:

- a) Clause 4.3 – Height of Buildings
- b) Clause 4.4 – Floor Space Ratio
- c) Clause 4.6 – Exceptions to Development Standards
- d) Clause 5.6 – Architectural Roof Features

4. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the objectives and provisions of Rockdale Development Control Plan 2011 including:

- a) 4.1.9 - Lot Size and Site Consolidation
- b) 4.4.2 Solar Access - Residential Flat Buildings
- c) 4.4.5 - Acoustic Privacy
- d) 4.6 - Car Parking Access and Movement
- e) 4.7 - Site Facilities

5. Pursuant to the provisions of Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, the suitability of the site for the proposed development has not been adequately demonstrated.

6. Having regard to the previous reasons noted above and the number of submissions received by Council against the proposed development, pursuant to the provisions of Section 79C(1)(d) and Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.

B. That the objectors be advised of the Bayside Planning Panel's decision.

Background

History

28 September 2016

DA submitted to Council

8 October - 14 November 2016

Public notification of original plans. On 19 October the original proposal was reviewed by the Design Review Panel, following of which the applicant amended their plans and re submitted the revised scheme to Council on 9 December 2016.

2 March 2017

Written correspondence to applicant identifying issues of concern, including but not limited to height, FSR, overshadowing, view loss, narrow side setbacks, accessibility, excessive screening to bedrooms, extent of roof top structures, lack of loading / unloading bay, deficiency in communal and private open spaces, insufficient information and the like.

3 - 21 April 2017

Public notification of amended plans submitted to Council 9 December 2016.

Following the second notification period, a meeting was held with the applicant to discuss outstanding concerns which had previously been identified in Councils correspondence issued on 2 March and in order to seek to find means to resolve these issues. Final amended plans were submitted to Council for assessment on 14 June 2016.

Proposal

The proposal seeks to demolish the existing two storey residential flat building and associated structures on site and erect a 4 storey residential flat building comprising 11 dwellings (3 x 1 bed / 3 x 2 bed / 5 x 3 bed), two levels of basement car parking and private / communal roof top terrace areas. The proposal comprises as follows:

Basement 2

8 car spaces, vehicular/pedestrian circulation, residential storage areas, fire stairs, lift core and adjoining residential lobby.

Basement 1

12 car spaces including 3 accessible (3 visitor / 9 resident) fire stairs, lift core and adjoining residential lobby, bin storage area, motorbike space, carwash bay.

Ground Floor

Vehicular access adjoining northern side boundary with associated loading/unloading and passing bay within the front setback of the site. 1m high fire hydrant/booster structure adjoining loading/unloading/passing bay. Turfed area within the front setback of the site and main pedestrian entry adjoining southern side boundary with associated letter boxes. Three units are proposed at ground level being 1 x 3 bed unit fronting The Grand Parade with associated terrace and bbq area, 1 x 1 bedroom and 1 x 2 bedroom unit with associated raised courtyard spaces. Adjoining the rear boundary of the site is a proposed communal area located at existing ground level. Periphery planting is proposed along portions of the northern and southern side boundaries above the basement level along with a fire stair proposed to be positioned along the southern side boundary midway into the site.

Level 1 - 2 (3 units per floor)

1 x 3 bed / 1 x 1 bed / 1 x 2 bed units with associated balcony spaces.

Level 3

2 x 3 bedroom units with associated balcony spaces.

Rooftop

Communal open space area to the rear portion of the building and private open space area for unit 10 to the front of the proposed building. A portion of the private open space area is covered by a rooftop pergola structure proposed of gold alucobond.

The proposed development incorporates a range of colours, finishes and materials, including but not limited to render, face brick cladding, glazed balustrades, gold alucobond features, aluminium blades etc.

The proposal incorporates a central residential lobby which is open to the southern side with a planter at balustrade height at each level. The lobby at the top level of the development is open to the northern

and southern sides. A central single lift core and associated stairwell service the proposed development. Associated stormwater and landscaping works are proposed on site.



Proposed development and adjoining existing buildings

Site location and context

The subject site is a rectangular shaped allotment with a frontage of 15.355m and overall site area of 847.4m². The site is approximately up to 0.7m higher at the front than the rear. The property is currently occupied by a two storey residential flat building comprising a total of 4 units, with detached garaging and outbuilding within the rear of the site. The existing block of flats is strata subdivided. The rear third of the site is traversed diagonally by a Sydney Water sewer and there is no significant vegetation on the subject site.



Figure 2 - Aerial Context



Figure 3 - View of site and neighbouring buildings from The Grand Parade

To the north lies 106 the grand parade, comprising a two storey residential flat building with detached garaging within the rear of the property. Adjacent to the northern adjoining neighbour is a pedestrian walkway linking the Grand Parade to Hercules Road. This area comprises a footpath and associated turf, trees and shrubs. Further to the north are a range of residential flat buildings ranging in height from 2 - 4 storeys in height.

To the south lies 112 The Grand Parade a four storey residential flat building. Further to the south are residential flat buildings ranging in height from 2 - 4 storeys, with a 7 storey flat building at 122-123 The Grand Parade and a two storey function centre / restaurant at 128/128A The Grand Parade. To the east lies The Grand Parade, with the Botany Bay foreshore directly opposite the subject site.



Figure 4 - Opposite the site

To the rear of the site is 30 Hercules Road a two storey residential flat building, to the north west is a four storey RFB at 28 Hercules Road and to the south west at 32 Hercules Road is another 2 storey residential flat building.



Figure 5 - Hercules Road properties to the rear of the site

The site and immediately surrounding area is zoned R4 High density residential. The subject site is affected by the following:

- Frontage to a State Road
- 15.24m Building Height Civil Aviation Regulations / OLS
- Class 4 ASS
- In vicinity of a heritage item, LEP 2011 (Cook Park - Botany Bay Foreshore)

Statutory Considerations

Environmental Planning and Assessment Act, 1979

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

S.91A - Development that is Integrated Development

The proposal includes excavation works for two (2) levels of basement car parking that will transect the water-table and require temporary dewatering during the construction phase. The proposal is therefore Integrated Development pursuant to Section 91 of the Environmental Planning and Assessment Act

1979, and requires approval from the NSW Office of Water (NOW). The NOW deemed that the construction dewatering proposed for the project would be an 'aquifer interference activity' in accordance with the definition in the Water Management Act 2000, and issued General Terms of Approval (GTA's) appropriate to this activity on 23 November 2016. The proposal is satisfactory in this regard.

S.79C(1) - Matters for Consideration - General

S.79C(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

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

The applicant has submitted a BASIX Certificate for the proposed development. The Certificate number is 744994M_02.

The commitments made result in the following reductions in energy and water consumption:

Reduction in Energy Consumption 30

Reduction in Water Consumption 41

Thermal Comfort Pass

The proposal is satisfactory in relation to this SEPP.

State Environmental Planning Policy (Infrastructure) 2007

Clause 101 - Development with frontage to classified road

The proposed development is located on land with a frontage to a classified road i.e. The Grand Parade. In this regard, clause 101- Development with frontage to a classified road, of the SEPP must be considered.

The proposed development retains vehicular access to and from the site via The Grand Parade as no alternative secondary access is possible. The proposal seeks to widen the existing driveway to The Grand Parade to 6.1m width, incorporating a dual passing / loading unloading bay within the front setback of the site to enable two way vehicular movement

Accordingly, the proposal has been sent to the Roads & Maritime Service (RMS) who responded as follows:

1. The driveway is to be 5.5m wide at the crossover on The Grande Parade and for at least 6 metres from the property boundary in accordance Australian Standards. Therefore the site/ground floor plans should be amended to show the proposed driveway being at least 5.5m in width at the crossover on The Grand Parade, and for 6 metres into the site. The maximum grade for the first 6 metres from property boundary shall be 1 in 20 (5%). This will allow vehicles to enter and exit the property simultaneous. Furthermore, this will reduce impact on the traffic movements on The Grand Parade as vehicles don't have to be stationary and wait on The Grand Parade.

2. The driveway should not be used as a loading zone and should be kept clear at all times for vehicles to pass by and manoeuvre on the driveway.

As noted above, the RMS do not support the provision of the proposed dual SRV loading / unloading and passing bay within the front setback of the site. As a result of the above a loading / unloading bay is required to be provided within the proposed basement level. Should the proposal have been supported, the application could be conditioned to require the provision of 2 van spaces within the proposed basement levels.

The application is consistent with the provisions of the SEPP and is acceptable in this regard.

Clause 102 - Impact of road noise or vibration on non-road development,

The proposed development is for a residential flat building and is on land adjacent to a road with an annual average daily traffic volume of more than 40,000 vehicles, that the consent authority considers is likely to be adversely affected by road noise or vibration. Accordingly, Clause 102 - Impact of road noise or vibration on non-road development, of SEPP Infrastructure is required to be considered as part of this assessment.

The requirements of this clause for a residential use are:

The consent authority must not grant consent to the development for residential use unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- (a) in any bedroom in the building-35 dB(A) at any time between 10 pm and 7 am,*
- (b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway)-40 dB(A) at any time.*

The proposal was accompanied by an Acoustic Report, prepared by Acoustic Noise and Vibration Solutions Pty Ltd and dated 31 August 2016, which considered the potential impact of road noise on the proposed development. The report concludes that the development will satisfy the noise level requirements as outlined in the SEPP, should the recommendations in the report be incorporated into construction. Accordingly, the proposal satisfies the requirements of this clause.

Clause 45 - Works within the vicinity of electricity infrastructure

The application is subject to clause 45 of the SEPP as the development proposes works within the vicinity of electricity infrastructure i.e. power lines along the frontage of the site and therefore in accordance with clause 45(2) the consent authority must give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and take into consideration any response to the notice that is received within 21 days after the notice is given.

Accordingly, the proposal has been sent to Ausgrid. The authority has responded during the required legislative timeframe and recommended standard conditions of consent, should the proposal have been supported, to ensure that existing electricity infrastructure is safeguarded. The application is consistent with the provisions of the SEPP in this regard.

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

In accordance with clause 28(2) of this policy, the consent authority must take into consideration the following:

a. The advice of the Design Review Panel (DRP)

The proposal was reviewed by the Design Review Panel on 19 October 2016. The DRP raised concerns including but not limited to height, FSR, narrow setbacks, lack of deep soil, overshadowing, privacy and amenity impacts on site and to neighbouring properties and inaccuracies in submitted documentation. The design quality principles have been considered in the assessment of the proposal and the proposal is deemed to be unsatisfactory as discussed below.

Principle 1 – Context and Neighborhood Character

The DRP noted as follows:

"The site currently has a two storey apartment building and is located in an established row of older style 2-4 storey apartments. The site is located on the Grand Parade a busy arterial road and has views to the east to Botany Bay. The site is narrow with a 15.3m frontage and adjacent apartment buildings are built close to the side boundary. The applicant presented a proposal that significantly exceeds the height and FSR controls for the site. The justification presented was that buildings located in the neighbourhood exceeded these controls and therefore established a precedent. The precedent buildings were from a different time and set of controls and the Panel does not see at this stage justification for significant variations to Council's controls. Given the constraints of the site including the narrow frontage and an established context, the proposal appears to be a significant over development of the site."

Comment: The subject street block bound by Hercules and Teralba Roads, Kings Lane and The Grand Parade predominately comprises established older style traditional brick buildings with pitched roofing forms. Directly adjoining the site to the north, south and west are established 2-4 storey brick walk up flat buildings also with pitched roofs. Flat roof buildings are located further to the south beyond the subject street block in excess of 100m away.

Following the DRP comments above, the scheme on site evolved as follows:

- Reduction in number of storeys and overall height from 5 to 4 with retention of rooftop communal and private open space areas and rooftop pergola structure.
- Retention of 3m side setbacks to all levels.
- FSR reduction from 1.39:1 to 1.02:1. This represents a reduction in surplus gross floor area from 347.6sq/m to 24sq/m.
- Number of units reduced from 15 to 11 as currently proposed.
- Recessing of awning structure at rooftop 3m back from front building alignment.
- Retention of modern contemporary style with flat roof form.

Notwithstanding the above, the proposal in its final form maintains non compliances with respect to height and FSR upon the subject site and retains a modern style using contemporary building materials. The style of the proposal as designed is in contrast to the existing character of surrounding flat buildings and is not considered to have had sufficient regard to the existing elements, character and roofscape which predominates within the subject street block.

The retention of the pergola structure at rooftop level, whilst recessed in the final scheme, gives the proposed development the perception of a fifth level on site. Proposed gold alucobond banding features on the northern and southern elevation link the rooftop pergola structure to the building below and exacerbate the perception of height.



Beyond the proposed lift core, the basement level protrudes up to 0.96m above existing ground level. This contributes to the overall height of the development, results in raised ground level private courtyard areas and high side boundary fencing (up to 2.76m) to directly adjoining northern and southern neighbouring sites. This is inconsistent with existing properties and fencing as established surrounding the site resulting in a disproportionate sense of enclosure. When viewed from The Grand Parade, existing flat buildings comprise low front boundary fencing to delineate between public and private domain. The proposal does not seek to provide designated front boundary fencing.

The proposal in its current form, as a direct result of its overall height and design, is not considered to respond to or contribute positively to the established surrounding context or neighbourhood character.

Principle 2 – Built Form and Scale

The DRP noted as follows:

- *"Scale is out of context with development in the immediate neighbourhood. The form disregards the impact on adjacent neighbouring properties and its configuration is assertively horizontal to The Grand Parade and out of context"*

Comment: Whilst the height of the development has been reduced given the deletion of 1 residential level, as noted in Principle 1, the overall height of the development is accentuated as a result of the prominent rooftop structure. The gold alucobond feature trim on the northern and southern elevations, in addition to the black louvered screens add to the bulk of the building and emphasise the horizontal bulk of the proposal. Further design modifications are deemed necessary to minimise the bulk and scale of the building and provide consistency within the established context.

- *Overshadowing impacts on adjacent buildings particularly the existing apartment building to the south. Impacts should be demonstrated (sun's eye view analysis or elevation studies) and inform a revised building strategy;*

Comment: Elevational shadow diagrams were submitted by the applicant in order to demonstrate the potential impact of the proposed development in midwinter onto the six (6) units within the southern adjoining neighbouring building at 112 The Grand Parade. The matter of overshadowing has been discussed in detail within part 4.42 of this report. The proposal is unsatisfactory in this regard.

- *The over-scaled roof feature. This exacerbates the height of the building to the street and should be significantly reduced and setback to reduce its impact;*

Comment: As noted above, the final scheme illustrates that the rooftop structure has been recessed 3m

from the front building alignment. Notwithstanding and as discussed above, the rooftop structure exacerbates the perception of height on the subject site, results in further unnecessary shadow impacts to the private open space and habitable windows of the southern top floor neighbour from 12pm onwards and is thus unsatisfactory.

- *The entrance portico adds additional clutter to the street is out of character and blocks views from ground level apartments."*

Comment: The entrance portico referred to above has since been deleted.

Given the site limitations, including the reduced frontage and east / west orientation, and as a direct result of the design of the proposal, the proposed overall height, bulk and scale is unsatisfactory within the existing context of the site.

Principle 3 – Density

The DRP noted that the *'FSR of the proposed development is in excess of 1.39. The FSR is 1.1. The Panel does not see any justification for exceeding the Council's control. The lobbies do not appear to be included in the floor space calculation and would add an additional 64 sq.m to the building GFA.'*

Comment: The applicant has since amended their plans. Following an assessment of the revised scheme, whilst the overall FSR and gross floor area has been reduced, the proposal maintains a surplus of 24sq/m of gross floor area in excess of the maximum permitted. As discussed further within this report, there are no site or development specific circumstances which are considered to warrant a variation to the FSR upon the subject site in this instance. Given the constrained nature of the site within an established context, compliance with the FSR standard is paramount. The proposal is unsatisfactory with regard to this principle.

Principle 4 - Sustainability

The DRP identified that the original design *"provides no substantial tree planting proposals. This impacts on the local micro climate and requires increased energy consumption in summer time. Large trees should be provided in the design, particularly at the front and back of the site (trees nominated in the planting schedule do not meet this requirement). To provide this deep soil zones it may be desirable to remove some storage area at the front and some parking basement at the rear (6m minimum consolidated deep soil zone)."*

Comment: Following the above, plans were amended by the applicant and the final scheme incorporates a 5m - 5.9m wide area of deep soil within the rear of the site. This is proposed to comprise a communal open space area for future residents and incorporates a range of shrubs and trees with a mature height of 3.5m - 8m in total. Further to the aforementioned, the proposed development complies with the ADG in relation to the provision of solar access and cross ventilation to units and was accompanied by a BASIX certificate which confirms energy efficiency measures proposed to be implemented on site. The proposal is satisfactory in this regard.

Principle 5 – Landscape

The DRP noted as follows:

a) "The design includes ground floor landscape spaces and a communal rooftop space. It is unclear if ground floor landscape is privately owned or is part of communal open space. This requires clarification. Of particular concern is the relationship of landscape 'communal' space to 'private' courtyards of the ground level apartments to the rear (Units 3 and Unit 2). If this is communal open space, this layout requires complete redesign to provide appropriate privacy and amenity. Deep soil should be provided as noted above in accordance with Council's minimum requirement of 15%. This should be landscaped with large trees."

Comment: Plans have been revised in order to delineate between private and communal open spaces on site, with fencing details provided. Amenity issues associated with proposed private and communal areas on site have been discussed in detail below in Principle 6 - Amenity. The proposal illustrates a total of 116.6sq/m (13.7%) of deep soil planting on site, whilst deficient of the 15% nominated by DCP 2011, the proposal complies with and exceeds that required by the Apartment Design Guide.

b) ' The design of the rooftop space with a centrally located water feature is potentially highly problematic in regard to maintenance, water leakage and usability. Furthermore, the design does not provide a consistent buffer along the edges to minimize overlooking to surrounding apartments and should be redesigned. Consideration should be given to providing more planting and less paving. The design proposes a hedge planting using a single species for a large proportion of the site. A more diverse planting strategy should be explored that responds to varying solar access. Unusable lawn spaces should be removed and replaced with planting."

Comment: The water feature referred to above has since been deleted, with consistent buffer planting (Indian Hawthorn maximum height 1.2m) proposed to the periphery of the proposed communal rooftop terrace within a raised 1.2m high masonry planter. The matters of hard paving and useability have been discussed under Principle 6 - Amenity.

d) All services including hydrants, substations and detention tanks should be clearly shown on all drawings. These should be located clear of deep soil zones and external garden spaces and integrated into the building footprint.

Comment: Final plans illustrate the provision of hydrant boosters adjoining the proposed loading bay within the front setback of the site. Amended stormwater plans were not submitted with the final revised scheme, as such it is unclear whether the proposed on site detention tank remains as originally proposed beneath the pedestrian walkway and a portion of the deep soil area within the front setback of the site.

e) Insufficient details have been provided on vertical gardens. This is of concern given the proximity of neighbouring apartments and potential for planting failure. A Built Form solution to address privacy issues should be pursued rather than relying on planting that may not provide adequate cover.

Comment: Details in relation to vertical gardens have not been submitted for assessment. It is understood that these were intended to be deleted from plans as they do not appear upon elevations, but remain illustrated upon only the Level 1 floor plan. This is deemed likely a drafting error.

The proposal is deemed to be satisfactory in regards to this principle.

Principle 6 – Amenity

The DRP noted that the *'building configuration and narrow setbacks have created a range of amenity issues. Of particular concern is Unit 2 and above which is compromised by the location of the dining space in Unit 3 and above and the constrained outlook for the living space which results in the need for significant screening along the northern façade. It would be preferable to either have one unit to the rear of the site facing the rear open space or a revised arrangement where both units at the rear building are oriented to the rear open space, with unimpeded outlook. Bedrooms facing inadequate side boundaries and requiring privacy screens should be minimised and bedroom sizes (Bedroom 2 in Units 1 and 4) should comply with the ADG requirements. Studies in Unit 2 and above would benefit from a window.'*

Comment: Whilst improvements have been made to the scheme i.e. addition of windows to studies, bedrooms comprising a minimum area of 10sq/m, highlight windows provided to south facing bedrooms in lieu of screens, it is considered that the design of the building and its floor layouts could be further improved to maximise amenity for future occupants and better respond to the constraints of the site as noted by the DRP above.

"Units have excessive corridors, particularly Units 3 and similar units above and should be redesigned. The room dimensions seem very tight and should be reviewed."

Comment: Corridor spaces to units facing the rear of the site remain. Bedrooms within units comprise a minimum area of 10sq/m, complying with the provisions of the ADG.

"Rooftop space requires redesign to maximize use and provide adequate privacy for neighbouring properties."

Comment: The inner edge of proposed communal / private roof top spaces on site, are positioned 3.7m from the common southern side property boundary. The rooftop space is located 3.7m higher than the top floor level of the southern neighbouring flat building at 112 The Grand Parade and is positioned 5.9m from the northern façade of this neighbouring building. Despite this area being raised and periphery planting as proposed, given the reduced building separation with the southern neighbour, a direct line of sight to balconies of units within this southern neighbouring building will be possible from this rooftop space in the event of persons standing along the southern periphery. It is considered that planting alone should not be relied upon as a design response or means for achieving privacy between neighbours.

"The balcony design includes wide expanses of clear balustrades. This presents privacy issues for residents and presents poorly to the street. Solid balustrades should be used."

Comment: The above in relation to balustrades is noted and should the proposal have been recommended for approval this matter could have been conditioned.

The ground floor plan illustrates a communal open space area within the rear of the site at existing ground level i.e. 5.9RL. Raised courtyards are proposed to units 2 and 3 on site. These are raised (6.65RL) given the basement protrusion as earlier discussed. A 1.8m high fence is proposed to the western end of courtyards 2 and 3, above the protruding basement. This results in a minimum 2.55m high fence to the eastern side of the rear communal area. Fencing to this height on site is likely to result in a sense of enclosure and combined with the lack of any facilities in this area and its isolated location, disassociated from proposed units is not conducive to a well designed communal area on site.

Concern is also raised in regards to the design of the proposed rooftop communal open space area. This area is exposed and comprises significant hard paved areas which given its western orientation would require some form of shading or weather protection to be erected in future in order to render this space useable. Additionally, nil facilities associated with communal open spaces i.e. kitchenette, bbq etc are proposed and as such amenity for future occupants in relation to communal open space areas on site is limited and can be improved.

Design improvements are deemed to be warranted to the proposal in its current form in order to confidently state that the proposal satisfies this principle and maximises amenity for future occupants and existing neighbours.

Principle 7 - Safety

The DRP noted that the *"position of the access/entry down a long side walkway is undesirable and raises security concerns. Consideration should be given to a visually unobtrusive security gate at the front of the building."*

Comment: Plans have been amended to address the above via the addition of a 1.8m high open form security gate with accompanying intercom positioned 1m behind the proposed building line. The provision of the aforementioned is deemed to resolve the concern raised by the DRP above as access to the physical building entry and lobby is thus restricted. Further, residential apartments, communal open space & car parking areas will be accessible via a secure electronic system. Common areas are proposed to be well lit with clearly defined pathways. The proposal is satisfactory in regards to this principle.

Principle 8 - Housing Diversity and Social Interaction

The DRP is of the view that the *"current mix is acceptable."*

Comment: The proposal provides for a range of units and thus housing options within the proposed development which will enable changing lifestyle needs and cater to different household types and income groups. The proposal is satisfactory in regard to housing diversity. As referred to above within Principle 6 - Amenity, the communal open space areas on site could be improved in order to encourage and facilitate social interaction between future residents.

Principle 9 – Aesthetics

The DRP noted that the *"view provided of the elevation from the front appears to not have supporting structure for the balconies or the over-scaled roof/ pergola. This misrepresents the actual façade treatment and should be resolved. The uncompromising horizontal concrete and glass façade is not in context with surrounding development."*

Comment: Final revised plans illustrate that the horizontality in building design referred to by the DRP and provision of concrete and glass as primary elements to the façade remain. The proposal incorporates a mix of modern contemporary materials and elements within the design, which are not visually responsive to the existing established context. The design of the development should be more sympathetic to its established surrounding context and thus the proposal is not satisfactory in this regard.

c. the Apartment Design Guide

The proposal has been assessed against the design criteria of the Apartment Design Guide (ADG) as follows:

CLAUSE	DESIGN CRITERIA			COMMENTS	COMPLIES
3D - Communal Open Space	25% Site Area (211.85sq/m) 50% (105.9sq/m) direct sunlight to principle useable part of COS for 2 hours in midwinter between 9am - 3pm			84.8sq/m rear of site / 70.8sq/m useable area at communal rooftop terrace Total = 155.6sq/m 2 hours direct sunlight achievable to proposed areas of COS	No - 56.25sq/m COS deficient. Yes
3E - Deep Soil Zones	7% (59.3sq/m) site area Minimum dimensions of 3m			116.6sq/m (13.7%) of the site is retained as deep soil area with dimensions > 3m	Yes
4D – Apartment size and layout	Apartment type		Minimum internal area	1 bed = 50sq/m 2 bed = 76sq/m - 80sq/m 3 bed = 90sq/m - 93sq/m	Yes
	1 bedroom		50M²		
	2 bedroom		70m²		
	3 bedroom		90m²		
4C – Ceiling heights	Minimum ceiling heights:			2.7m habitable 2.4m non habitable	Yes
	Habitable		2.7m		
	Non-habitable		2.4m		
3F Visual Privacy	Building height	Habitable rooms and balconies	Non habitable rooms	3m side building setbacks to the north and south common side boundaries	No - See discussion below.
	Up to 12m (4 storeys)	6m	3m		
4A – Solar and daylight access	Living rooms + POS of at least 70% (8/11) of apartments receive min 2hrs direct sunlight b/w 9am & 3 pm mid-winter Max 15%(2/11) apartments receive no direct sunlight b/w 9am & 3pm mid-winter			All units receive 2 hours of solar access in midwinter Nil units receive no direct sunlight in midwinter	Yes Yes

4F – Common circulation and spaces	Max apartments off a circulation core on a single level is eight.			Three units off a single core	Yes
4E – Private open space and balconies	Dwelling type	Minimum area	Minimum depth	1 bedroom units (5/8) - 6.4sq/m / Min depth 2.1m	No - An area of balcony 0.279m wide, which wraps the northern side of these units has been included within overall area calculations. As per ADG, minimum balcony depth to be counted as contributing to balcony area is 1m. Yes Yes Yes
	1 bed	8m ²	2m		
	2 bed	10m ²	2m		
	3+ bed	12m ²	2.4m		
	Ground level, podium or similar -POS provided instead of a balcony: min area 15m ² and min depth of 3m.			2 bedroom units - 23sq/m / Min depth 3.4m 3 bedroom units - 49sq/m / Min depth 2.5m Ground level units comprise courtyards >15sq/m in area with minimum depth of 3m.	
4B – Natural ventilation	Min 60% (7/11) of apartments are naturally cross ventilated in the first nine storeys of the building.			All units are naturally cross ventilated	Yes
4G – Storage	Dwelling type	Storage size volume		Appropriate storage provision within units	Yes
	1 bed	6M ²			
	2 bed	8m ²			
	3 bed	10m ²			

3F - Visual Privacy

Plans illustrate the provision of proposed habitable rooms within 3m of the common side boundaries to both adjoining neighbours at 106 and 112 The Grand Parade. Building separation between existing neighbouring buildings and the proposed development are identified in the table below.

Property	Existing setback from common side boundary with subject site	Proposed Development side setback to all levels	Building Separation

112 The Grand Parade (rear 3 units)	Balconies – 2.165m Northern façade – 3.1m	3m	5.165m neighbouring balcony to proposed southern façade. 6.1m northern façade of neighbouring building to southern façade of proposed development
112 The Grand Parade (3 x street facing units)	Balconies – 3.9m Northern façade – 5.5m	3m	6.9m neighbouring balcony to proposed southern façade. 8.5m northern façade of neighbouring building to southern façade of proposed development
106 The Grand Parade	Southern façade – 2.4m	3m	5.4m southern façade of neighbouring building to northern façade of proposed development

Habitable windows i.e. bedrooms, dining and living areas exist upon the northern façade of 112 The Grand Parade, with kitchen windows upon the southern façade of 106 The Grand Parade. As can be seen above, the proposal departs from the building separation requirements of the ADG. As such consideration is to be given to the objectives of the building separation requirements, which is to retain reasonable levels of external and internal visual privacy between residential neighbours.

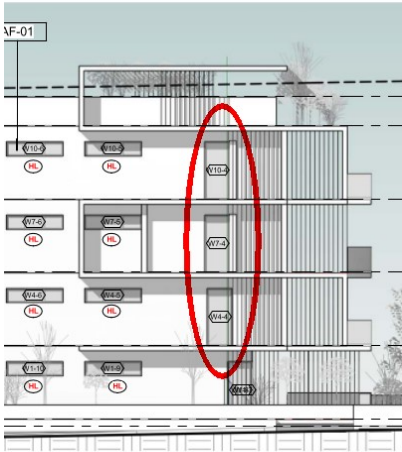
The applicant has sought to retain visual privacy between residential neighbours via the provision of the following to northern and southern facades:

- Highlight and/or vertically screened windows to bedrooms, studies and living areas.
- Opaque windows and/or horizontal screens are proposed to ensuite / bathrooms.

Given the reduced building separation noted above, the provision of highlight windows to the northern and southern facades to bedrooms and studies is considered to resolve privacy issues between neighbours as given the height of proposed windows, direct sightlines to neighbouring properties are not possible.

Living areas to proposed units 4/7/10 are oriented to front the street. Full height glazing is provided to the eastern end of these units, with full height glazed windows also proposed to northern and southern facades. This is intended to maximise solar access, outlook and views of Botany Bay to these units. As can be seen below, proposed privacy screening directly adjoin balcony spaces and a portion of the living / dining room windows, however the full extent of these windows is not screened.

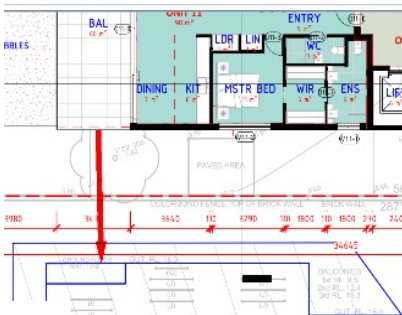
Given the reduced building separation and existing habitable windows (living / dining areas) and balcony spaces to the neighbouring 3 units fronting the street within 112 The Grand Parade, the lack of screening to proposed full height living room windows on the southern façade is unsatisfactory and has the potential to result in adverse visual privacy impacts to habitable windows and private open spaces of southern adjoining neighbours.



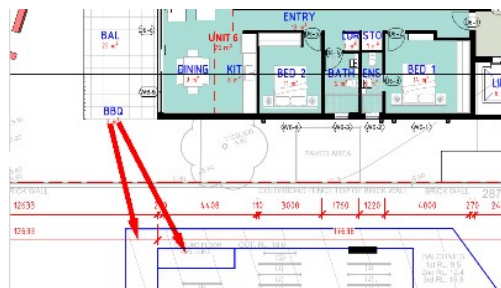
Potential privacy impacts

An existing two storey flat building is positioned upon 106 The Grand Parade. A full height glazed dining room window is proposed to unit 7 at level 1 on the northern façade, 5.4m directly opposite 1 x south facing kitchen window to a unit within this adjoining building. This results in the direct overlooking of this neighbour.

Plans illustrate the provision of rear facing balconies to proposed units 6/9/11 at levels 1/2 and 3 on site. Balconies to these units are not provided with appropriate privacy screening to the southern side and given the reduced separation i.e. 5.165m balcony to balcony in this instance, adverse privacy impacts arise to the habitable windows and private open space areas of the 3 units within the rear of the southern adjoining block at 112 The Grand Parade. This is unsatisfactory.

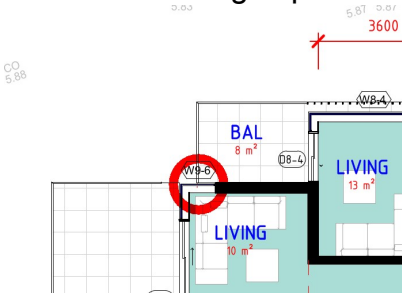


Overlooking at level 3



Overlooking at level 1

Further to the above, privacy concerns are evident on site as a result of the design of the proposal which incorporates full height windows to the northern living room wall of units 3/6/9 which allows the direct overlooking of private open spaces to units 2/5/8 as can be seen below.



Given the above, it cannot be said that the proposal satisfies the objectives of the requirement.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R4 High Density Residential	Yes	Yes - see discussion
2.7 Demolition requires consent	Yes	Yes - see discussion
4.3 Height of buildings	No - see discussion	No - see discussion
4.4 Floor space ratio - Residential zones	No - see discussion	No - see discussion
4.6 Exceptions to development standards	No - see discussion	No - see discussion
5.6 Architectural roof features	No - see discussion	No - see discussion
5.10 Heritage conservation	Yes	Yes - see discussion
6.1 Acid Sulfate Soil - Class 4	Yes	Yes - see discussion
6.2 Earthworks	Yes	Yes - see discussion
6.7 Stormwater	Yes	Yes - see discussion
6.12 Essential services	Yes	Yes - see discussion

2.3 Zone R4 High Density Residential

The subject site is zoned R4 - High Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as a residential flat building which constitutes a permissible development only with development consent. The proposed development is consistent with the objectives of the zone.

2.7 Demolition requires consent

The proposed development seeks consent for the demolition of the existing residential flat building and hence satisfies the provisions of this Clause.

4.3 Height of buildings

A maximum height limit of 14.5m applies to the subject site. The height of the proposed development is as follows:

Rooftop of building 19RL = 13.12m - 12.42m (complies)

Top of balustrades at rooftop 20.2RL= 14.01m - 14.29m (complies)

Top Lift / Stair Overrun 21.8RL= 15.77m - 15.8m (1.27m - 1.3m variation)

Top of Rooftop structure 21.5RL= 15.31m (0.81m variation)

As can be seen above, the proposed development seeks to vary the maximum height limit on site by 0.81m - 1.3m to the top of the lift / stair overrun and rooftop structure on site. This is a proposed variation of 5.5% - 8.9% to the maximum permissible height limit on site.

The applicant has submitted both a clause 4.6 variation to development standard in relation to the proposed above exceedance in addition to justification under the provisions of clause 5.6 - Architectural Roof Features, seeking to utilise the provisions of this clause for the proposed rooftop structure.

The above non compliances have been addressed within Clause 4.6 and 5.6 of this report.

The proposal is deemed to be inconsistent with the following objectives of clause 4.3 Height of Building

for the reasons discussed within Clause 4.6 and Clause 5.6 of this report.

(c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,

(d) to nominate heights that will provide an appropriate transition in built form and land use intensity.

4.4 Floor space ratio - Residential zones

The subject site has a maximum 1:1 FSR. Given the site area, this is equivalent to a maximum gross floor area of 847sq/m. The proposal comprises an overall gross floor area of 871sq/m and thus a resultant floor space of 1.02:1. This indicates a 24sq/m gross floor area variation which is a 2.8% exceedance to the maximum permitted FSR for the site.

The applicant has submitted a clause 4.6 variation to development standard in relation to the proposed above exceedance. The above has been addressed within Clause 4.6 of this report. The proposal is deemed to be inconsistent with the following objectives of clause 4.4 FSR for the reasons outlined within Clause 4.6.

4.6 Exceptions to development standards

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

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

(3)(b) that there are sufficient environmental planning grounds to justify the variation.

In considering the applicant's submission, the consent authority must be satisfied that:

(i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.

5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and

5(b) the public benefit of maintaining the development standard.

The variations to the height standard has been assessed below.

The proposal has further been assessed against the principles established by the Land and Environment court judgement *Four2Five v Ashfield Council* [2015] NSWLEC 90, where it was established that justification was required in order to determine whether the development standard was unreasonable or unnecessary on grounds other than whether the development achieved the objectives of the development standard. Consideration is to be given to the particular site circumstances of the site and development.

Variation Sought - Height

As noted within Clause 4.3 Height of Buildings, the proposal seeks to vary the maximum 14.5m height standard applicable to the subject site as follows:

Top Lift / Stair Overrun 21.8RL= 15.77m - 15.8m (1.27m - 1.3m variation)

Top of Rooftop structure 21.5RL= 15.31m (0.81m)

The proposed development seeks to vary the maximum height limit on site by 0.81m - 1.3m to the top of the lift / stair overrun and rooftop structure on site. This is a proposed variation of 5.5% - 8.9% to the maximum permissible height limit on site.



Non compliant building elements in yellow

Applicants Height Justification

A summary of the key arguments of the applicant's clause 4.6 arguments in respect of the height development standard are summarized as follows;

- A better planning outcome is provided by varying the standard in this instance.
- The non-complying height of the proposed building mainly results from the proposed lift shaft and staircase to the communal roof terrace on the rooftop of the building which will result in an increased amenity for residents. This area, with water views and landscaping, allows for a better planning outcome on the site than if communal open space was only provided at ground level.
- Minimal impacts on the amenity of adjoining properties given there are no unreasonable impacts on views, privacy or overshadowing arising from the additional height. The proposal is largely orientated to the street and rear communal open space and away from the adjoining properties, reducing overlooking opportunities, while the shadow cast arises mainly from the building itself and not the additional height given this area comprises a small lift shaft and staircase roof.
- The proposal will have minimal impact on the streetscape given any potential visual impact arising from the proposal and its additional height above the standard is minimised by, among other things, the proposed building articulation and architectural detailing proposed for the built form on the site, which is provided within the additional height.
- The elaborate roof structure, which also adds to the non-complying building height non-compliance, provides the building with a defined 'top' and provides visual interest from the street and adjoining properties.
- The proposal, with the additional height, is consistent with the desired future character of the area and is consistent with other buildings in the vicinity including buildings at 94, 117 and 122 The Grand Parade Brighton
- The subject site largely remains the only undeveloped or under-developed site in the street. The vast majority of the street consists of three to four storey residential flat buildings, with the exception of the subject site which remains as a small two storey multi-unit building. In this respect, the subject site is, in effect, an isolated site.
- This isolated nature of the subject site results in sufficient environmental planning grounds being evident on the site to allow an exceedance of the building height development standard
- This existing site constraint, being virtually the last remaining development site in the street, provides an opportunity unique to this site, to provide for a 11 unit development which generally complies with the minimum unit sizes under the ADG and provides for a high level of amenity with a variety of unit sizes. This unique site attribute represents sufficient environmental planning grounds to justify varying this development standard in this instance.

Height Discussion

The applicants written request has satisfactorily addressed the provisions of clause 4.6(3). Following a review of the application, the height variation to the rooftop structure as proposed is not supported for the following reasons:

- a) The pergola structure at rooftop level, whilst recessed, gives the proposed development the appearance of a five storey building. The proposed gold alucobond banding features on the northern and southern elevation link the rooftop pergola structure to the building below and exacerbate the height of the building form. The design of the proposed development does not respond to the existing urban context and this non-compliant element exacerbates the overall perception of height when viewed from neighbouring properties and the public domain.
- b) The additional height as proposed results in unnecessary shadow impacts in midwinter to the private open space and habitable windows of the top floor street facing unit within the southern neighbouring building at 112 The Grand Parade from 12pm onwards and is thus unsatisfactory.
- c) The visual catchment surrounding the site contains a number of buildings which are of a reduced height i.e. 2 storeys, including the adjoining neighbour to the north and buildings to the rear, and the proposed development will negatively influence upon the setting and character. Buildings referred to by the applicant, i.e. 94, 117 and 122 The Grand Parade Brighton are in excess of 65m away from the subject site.
- d) The non-compliant rooftop structure is a significant element of the buildings design and is clearly visible from most locations in the vicinity of the site, including the public realm. The proposal has the potential to set an undesirable precedent in terms of height for development in the vicinity of the site.
- e) The proposal is inconsistent with the objectives of Clause 4.3 - Height of Building, in that the proposed building height does not provide an appropriate transition in built form and height within the existing context.
- f) Given the constrained nature of the site and its east / west orientation the maximum height limit that applies to the subject site is not unreasonable or unnecessary in this instance.
- g) The proposal in its current form is not considered to achieve a better outcome on the subject site than a development which complies in full with the relevant height standard. The proposal is thus not in the public interest.
- h) Whilst the subject site has been acquired by the applicant and relevant legislation enables its potential redevelopment, as per the Land and Environment court judgement *Four2Five v Ashfield Council* [2015] NSWLEC 90, there are no site or development specific circumstances which would otherwise warrant support of a Height variation for the subject site. Given the site limitations in particular the east / west orientation, the maximum height standard that applies to the subject site is not unreasonable or unnecessary in this instance. Given the impacts arising from the proposed development in its current form, the maximum building height permissible may not be achievable.
- i) The subject site is not the only property within the Brighton Le Sands locality which comprises an older style residential flat building, with a non compliant frontage width, that could otherwise be acquired and potentially redeveloped in future, as suggested by the applicant. Other properties exist and are all

located within the R4 - High Density Residential zone, thus subject to the relevant Height requirements of Rockdale LEP 2011 which apply to the subject site. As such, it is important to ensure that an undesirable precedent is not set with respect to the Height standard.

Given the above, the proposed additional height sought by the applicant is considered to be unreasonable in this instance and is not supported.

Variation Sought - FSR

The subject site has a maximum 1:1 FSR. Given the site area, this is equivalent to a maximum gross floor area of 847sq/m. The proposal comprises an overall gross floor area of 871sq/m and thus a resultant floor space of 1.02:1. This indicates a 24sq/m gross floor area variation which is a 2.8% exceedance to the maximum permitted FSR for the site.

Applicants FSR Justification

A summary of the key arguments of the applicant's clause 4.6 arguments in respect of the FSR development standard are as follows;

- *The non-complying FSR of the proposed building largely results from the open foyers on Level 3 and Level 2. This additional FSR allows for greater apartment sizes within the development and a greater housing choice on the site on an isolated site which is a better planning outcome. This development allows for a better planning outcome on the site than if smaller units and less housing choice was only provided.*
- *The proposed non-compliance is also considered to have minimal impacts on the amenity of adjoining properties given there are no unreasonable impacts on views, privacy or overshadowing arising from the additional FSR.*
- *The proposal will have minimal impact on the streetscape given any potential visual impact arising from the proposal and its additional FSR above the standard is minimised by, among other things, the proposed building articulation and architectural detailing proposed for the built form on the site. This building design and articulation allows the additional FSR within the built form to be broken up to reduce bulk and scale over the FSR limit. This assists in reducing the potential visual impact of the proposal when viewed from adjoining properties and the street.*
- *The proposal, with the additional FSR, is consistent with the desired future character of the area and is consistent with other buildings in the vicinity including buildings at 94, 117 and 122 The Grand Parade Brighton*
- *The proposal is considered to be a better planning outcome on the site as the proposed development allows for the provision of a variety of unit sizes within a well-designed development which generally complies with the requirements of the ADG. The proposed variation will ensure a more efficient use of the subject site. The units will achieve a high standard of accommodation given it generally exceeds the minimum area requirements, achieves sufficient ventilation and solar access and provides private open space areas for the enjoyment of future occupants.*
- *The proposal seeks to increase the available floor space of the built form which is located in a convenient location close to various uses and bus services which is a preferred planning outcome given greater housing choice is provided.*
- *Overall the variation with the FSR standard allows for a better planning outcome while it minimises the impacts to the surrounding properties and ensures an appropriate bulk and scale transition along The Grand Parade.*
- *This existing site constraint, being virtually the last remaining development site in the street, provides an opportunity unique to this site, to provide for a 11 unit development which generally complies with the minimum unit sizes under the ADG and provides for a high level of amenity with a*

variety of unit sizes. This unique site attribute represents sufficient environmental planning grounds to justify varying this development standard in this instance.

FSR Discussion

The applicant's written request has appropriately addressed clause 4.6(3). Following a review of the application, the FSR variation as proposed is not supported for the following reasons:

- a) Whilst the subject site has been acquired by the applicant and relevant legislation enables its potential redevelopment, as per the Land and Environment court judgement *Four2Five v Ashfield Council* [2015] NSWLEC 90, there are no site or development specific circumstances which would otherwise warrant support of an FSR variation for the subject site. Given the site limitations, in particular the east / west orientation, the maximum FSR standard that applies to the subject site is not unreasonable or unnecessary in this instance.
- b) The proposal generates adverse visual privacy and overshadowing impacts to neighbouring properties as previously detailed in this report. As such, the proposal is inconsistent with objective (b) of Clause 4.4 - Floor Space Ratio, in that the proposed development results in adverse environmental effects on the use or enjoyment of adjoining properties.
- c) Given the potential adverse visual privacy impacts referred to in (b) above, the proposal is inconsistent with design criteria of Clause 3F - Visual Privacy of the Apartment Design Guide.
- d) The proposed development does not maintain an appropriate visual relationship with the existing character and urban context of the area, thus is inconsistent with objective (c) of Clause 4.4 - Floor Space Ratio.
- e) The proposal in its current form does not achieve a better outcome on the subject site than a development which complies in full with the relevant FSR standard. The proposal is thus not in the public interest.
- f) The proposed bulk and scale of the development does not provide an appropriate transition in built form within the existing established context. Buildings referred to by the applicant, i.e. 94, 117 and 122 The Grand Parade Brighton are in excess of 65m away from the subject site.
- g) The subject site is not the only property within the Brighton Le Sands locality which comprises an older style two storey residential flat building, with a non compliant frontage width, that could otherwise be acquired and potentially redeveloped in future as suggested by the applicant. Other properties exist and are all located within the R4 - High Density Residential zone, thus subject to the relevant FSR requirements of Rockdale LEP 2011 which apply to the subject site. As such, it is important to ensure that an undesirable precedent is not set with respect to the FSR standard.
- h) The proposal is inconsistent with Principle 1 - Context and Neighbourhood Character, Principle 2 - Built Form and Scale, Principle 3 - Density, Principle 6 - Amenity of State Environmental Planning Policy - Design Quality of Residential Apartment Development . for those reasons previously discussed within this report.

Despite the arguments presented by the applicant, the FSR and Height variations proposed by the applicant are not supported. The applicable height and FSR development standards referred to above are deemed reasonable and necessary in this instance.

5.6 Architectural roof features

The matter of height and the rooftop structure has been detailed within Clause 4.6 of this report. In their submission, the applicant also sought to utilise the provisions of this clause to their benefit, with respect to the proposed rooftop structure. An assessment has thus been carried out below.

As per the provisions of this clause, development consent must not be granted to an architectural roof feature unless the consent authority is satisfied that:

(a) the architectural roof feature:

(i) comprises a decorative element on the uppermost portion of a building, and

Comment: The proposed rooftop structure is intended to provide weather protection from the wind and sun to future users of the rooftop private open space area. It is also provided as a decorative element and is tied into the building form below.

(ii) is not an advertising structure, and

Comment: The proposed rooftop structure is not an advertising structure.

(iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and

Comment: Whilst the proposed rooftop structure does not include floor space, its dimensions i.e. 8.7m depth x 10.7m width and location at the edge of the southern and northern building line could enable potential modification in future to incorporate additional floor area.

(iv) will cause minimal overshadowing, and

Comment: The proposed rooftop structure generates unnecessary additional overshadowing to north facing living / dining room window and private open space of top floor street facing unit of the southern adjoining neighbour at 112 The Grand Parade between the hours of 12pm - 3pm in midwinter as can be seen below. Given the constrained east / west orientation of the site, the proposed rooftop structure unreasonably exacerbates shadow impacts to this southern neighbour.



21st JUNE 12 NOON
scale: 1:100



21st JUNE 1 PM
scale: 1:100



21st JUNE 2 PM
scale: 1:100



21st JUNE 3 PM
scale: 1:100

(b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.

Comment: The proposed rooftop structure does not contain or support associated fire stairs or lift overruns. The aforementioned are separate detached structures which exceed the height limit independently of the rooftop structure.

Given the above, it is considered that the proposal is inconsistent with the requirements of this clause and the rooftop structure should not be supported.

5.10 Heritage conservation

The proposed development is located in the vicinity of heritage item, being Cook Park which lies opposite the site on the eastern side of the Grand Parade. Cook Park is a major public open space area 42 hectares in size, extending to the north and south beyond the site boundaries, along the shoreline of Botany Bay from Sans Souci to the Cooks River.

Established in 1886 Cook Park provides evidence of the late 19th century development of the area as the creation of the park was in direct response to the expanding urbanisation. The dominant tree in the park is the *Araucaria heterophylla* commonly known as Norfolk Island Pine. The tree is endemic to Norfolk Island but has been cultivated in Australia since the 19th century. Some of the trees are mature and were probably planted circa 1886, other trees were planted in the 1930's. Cook Park also has historical associations with early developers Saywell and Cook. Aesthetically Cook Park is significant in its role as defining the character of the suburb and the edge of Botany Bay.

The proposed development lies opposite Cook Park, with a horizontal separation distance of 32m from the front boundary of the site to the property boundary of Cook Park. The subject site is considered to be sufficiently separated from Cook Park so as not to result in any adverse environmental impacts upon the recreation area or impact upon the existing, mature and iconic Norfolk Island Pines.

The proposed development is unlikely to adversely impact upon the integrity or significance of the heritage item and thus the qualities that makes the heritage item and its setting significant will not be diminished. The proposal is satisfactory in this regard.

6.1 Acid Sulfate Soil - Class 4

Acid Sulfate Soils (ASS) – Class 4 affect the property. Development Consent is required as the proposal involves works greater than 2m below the natural ground level that may lower the water table. As per the provisions of 6.1(3) an Acid Sulfate Soils management plan is required to be submitted for consideration. The application was accompanied by a Geotechnical and Acid Sulfate Soils Investigation Report prepared by Geo - Environmental Engineering dated 18/05/2016. The report concluded as follows:

'Based on the subsurface soil conditions encountered beneath the site, the field screening test results, and laboratory test results, GEE considers that the soil profile beneath the site and within the depth of proposed excavation does not contain ASS or PASS. Consequently GEE considers that an acid sulfate soil management plan is not warranted'.



Locations of borehole testing onsite

Given the above confirmation by a suitably qualified engineering consultant, an ASS management plan is not required in this instance. The proposal is satisfactory with regards to the objectives of this clause.

6.2 Earthworks

The proposal involves extensive excavation within the site to accommodate the basement levels. The impacts of the proposed earthworks have been considered in the assessment of this proposal. Conditions of consent have been imposed in the draft Notice of Determination to ensure minimal impacts on the amenity of surrounding properties, drainage patterns and soil stability. The proposal meets the objectives of this clause.

6.7 Stormwater

The proposal involves the construction of both an on site detention system within the basement and a retention system within the front yard to manage stormwater. Should the proposal have been supported appropriate conditions could have been imposed in relation to stormwater. The proposal is satisfactory in regards to the provisions of this clause.

6.12 Essential services

Services will generally be available on the site. Additional conditions have been incorporated in the draft Notice of Determination requiring consultation with relevant utility providers in regards to any specific requirements for the provision of services on the site.

S.79C(1)(a)(ii) - Provisions of any Draft EPI's

Draft ISEPP

The NSW Department of Planning has released for public comment its amendments to the State Environmental Planning Policy (Infrastructure) 2007 (the Infrastructure SEPP). The amendments to the Infrastructure SEPP propose to simplify the delivery and maintenance of social infrastructure including health facilities, correctional centres, emergency and police services, and council services. They will simplify the approval process while still ensuring appropriate levels of environmental assessment and consultation are undertaken for these activities. The draft changes do not affect the proposed development.

S79C(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

Rockdale Development Control Plan 2011

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is

provided below:

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.1 Views and Vista	Yes	Yes - see discussion
4.1.2 Heritage Conservation - Vicinity of Heritage Item	Yes	Yes
4.1.3 Water Management	Yes	Yes
4.1.3 Groundwater Protection	Yes	Yes
4.1.4 Soil Management	Yes	Yes
4.1.9 Lot size and Site Consolidation - Residential flat buildings	No - see discussion	No - see discussion
4.2 Streetscape and Site Context - Fencing	Yes	Yes - see discussion
4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing	No - see discussion	No - see discussion
4.4.5 Acoustic privacy	No - see discussion	No - see discussion
4.5.1 Social Equity - Housing Diversity and Choice	Yes	No - see discussion
4.5.2 Social Equity - Equitable Access	No - see discussion	No - see discussion
4.6 Parking Rates Residential Flat Buildings	Yes	Yes - see discussion
4.6 Car Park Location and Design	Yes	Yes
4.6 Vehicles Enter and Exit in a Forward Direction	Yes	Yes
4.6 Basement Parking - General	No - see discussion	No - see discussion
4.6 Driveway Widths	Yes	Yes
4.6 Basement Parking - Residential Flat Buildings	Yes	Yes
4.6 Access to Parking	Yes	Yes
4.6 Design of Loading Facilities	No - see discussion	No - see discussion
4.6 Car Wash Facilities	Yes	Yes - see discussion
4.6 Pedestrian Access and Sustainable Transport	Yes	Yes
4.7 Air Conditioning and Communication Structures	No - see discussion	No - see discussion
4.7 Waste Storage and Recycling Facilities	Yes	Yes - see discussion
4.7 Service Lines/Cables	Yes	Yes
4.7 Laundry Facilities and Drying Areas	Yes	Yes - see discussion
4.7 Letterboxes	Yes	Yes - see discussion
4.7 Hot Water Systems	Yes	No - see discussion
5.2 RFB - Site Coverage	Yes	Yes - see discussion
5.2 RFB Front Setback	Yes	Yes - see discussion
5.2 RFB - Side Setbacks	No - see discussion	No - see discussion
5.2 RFB - Rear Setbacks	Yes	No - see discussion
5.2 RFB - Building Entry	Yes	No - see discussion
5.2 RFB - Lift Size and Access	Yes	Yes

4.1.1 Views and Vista

Refer to Appendix 1 for view loss assessment.

4.1.9 Lot size and Site Consolidation - Residential flat buildings

Variation to Minimum 24m Lot Width - Control 1(e) of Part 4.1.9 of RDCP 2011

The application involves the redevelopment of the subject site which comprises a site frontage of 15.355m and overall site area of 847.4sq/m as per the submitted survey. The existing frontage falls 8.6m short of the minimum 24m frontage required by the provisions of this clause.

Plans and documentation submitted with the application have led the assessing planner to form the view that the subject site is isolated and an infill development is proposed. The subject site is surrounded by existing strata subdivided residential flat buildings to the south, north and west. It is understood that the applicant has sought to purchase the adjoining existing residential flat building to the north, 106 The Grand Parade, which comprises 10 residential dwellings, yet was unsuccessful. As such the applicant has proceeded with the subject application.

The proposal is considered to satisfy objectives (A)(B)(C)(E) of this clause for the following reasons:

(A) The proposal is providing an the existing residential flat building use on site, albeit on a larger scale, providing for residential accommodation in an accessible and desirable location thus making efficient use of the land.

(B) The applicant has sought to amalgamate the site with the adjoining northern neighbour at 106 The Grand Parade. Negotiations between neighbours has failed. The subject site is of suitable overall area and dimensions to accommodate a reasonable increase in density.

(C) The proposal includes car parking and deep soil areas which comply with the ADG requirement and provides pedestrian access at ground floor level, continuing an active street frontage which provides adequate passive surveillance of the street.

(E) Adjoining sites as existing are currently developed as residential flat buildings and are thus likely to be able to be economically developed in their own right.

The proposal however does not satisfy objective (D) *"To maintain amenity in relation to overshadowing, privacy and views by having sensitive layout of buildings"* in relation to privacy, given the reasons discussed within this report. Accordingly, it would be prudent for the applicant to further pursue the acquisition of the northern adjoining neighbouring site or redesign the proposal in order to resolve adverse impacts generated by the proposed development in its current form.

As such it cannot be stated that the proposal satisfies this clause.

4.2 Streetscape and Site Context - Fencing

As per the provisions of this clause, front fencing is to be a maximum height of 1.2m above footpath level. Plans do not illustrate the provision of a designated front fence to the proposed development, rather masonry structures to a maximum height of 1m adjoining the vehicular and pedestrian entries to delineate between the public and private domain, with landscaped area between.



As proposed



Existing neighbouring front fencing

Given the predominant existing low front boundary fencing in context of the site, the provision of a low front boundary fence to a maximum height of 1m would be more appropriate, in lieu of the current design as proposed. Whilst the proposal technically complies with the provisions of this clause, the proposal could be improved as discussed above.

4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing

As per the objectives and requirements of this clause new development is not to unreasonably diminish sunlight to neighbouring properties and must be designed to minimise the extent of shadows it casts upon the private open space and habitable rooms of adjoining developments.

New developments are to be sited to reduce overshadowing on adjoining properties by increasing setbacks, staggering of design, variations in roof form and/or reducing building bulk and height. The living rooms and private open spaces for at least 70% of apartments of adjoining properties should receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter. Given the aforementioned, the proposed development is thus required to ensure that a minimum of 4 of 6 of the residential units within 112 The Grand Parade receive a minimum of 3 hours of direct solar access in midwinter between the hours of 9am - 3pm.

Of the shadow diagrams submitted for the midwinter period, the following is noted with regard to impact upon units within 112 The Grand Parade which is positioned directly south of the subject site:

a) The three units at the front of the block facing The Grand Parade, receive 1 hour of morning sun at 9am to their east facing balconies and to a portion of their east facing habitable areas. By 10am, this sunlight is restricted to a small portion of their east facing balconies. Units on L1 and L2 receive nil sunlight for the rest of the day. The unit on the top floor (L3) receives partial sun to its northern bedroom / dining room window and balcony space between 2pm - 3pm. Overall these units will receive 1 - 2 hours of solar access at most in midwinter.



1 21st JUNE 9 AM
scale: ..



2 21st JUNE 10 AM
scale: ..



3 21st JUNE 11 AM
scale: ..

b) Of the three units within the rear of the block, two units (1 x L2 / 1 x L3) will receive a total of 3 hours of solar access in midwinter from 12pm - 3pm as depicted by elevational shadow diagrams. The L1 unit within the rear of the block receives partial sunlight to a portion of its west facing balcony at 12pm, and a minimum of 2 hours of solar access from 1pm - 3pm in midwinter.



4 21st JUNE 12 NOON
scale: ..



2 21st JUNE 1 PM
scale: ..



3 21st JUNE 2 PM
scale: ..



4 21st JUNE 3 PM
scale: ..

Given the above the proposal does not comply with the provisions or objectives of this clause and is unsatisfactory in this regard.

4.4.5 Acoustic privacy

Given the reduced building separation as previously discussed in this report, proposed rooftop communal open space area and in particular the location of private open spaces positioned opposite those with the three residential units within the rear of 112 The Grand Parade, it cannot be confidently stated that the proposal complies with the following objective:

"To site and design buildings to ensure acoustic and visual privacy for occupants and neighbours".

4.5.1 Social Equity - Housing Diversity and Choice

The proposal is required to provide the following unit mix as per the provisions of this clause.

Control	Requirement	Proposed	Complies
10%-30%studio / 1 bed	2 - 4	3	Yes
50%-75% 2 bed	6 - 9	3	No
10% - 20% 3 bed	2 - 3	5	No

As can be seen above the proposal does not comply with the required unit mix on site. Notwithstanding, the proposal provides a range of housing options within the proposed development which will enable changing lifestyle needs and cater to different household types and income groups. The proposal is considered to be consistent with the objectives of this clause. A variation in this instance is deemed satisfactory.

4.5.2 Social Equity - Equitable Access

As per the provisions of this clause, a minimum of two (2) adaptable units are required to be provided within the development. Plans identify one (1) unit within the development as being a dedicated adaptable unit (unit 1) and two accessible residential car spaces in basement level 1. This illustrates a shortfall of 1 adaptable unit.

Notwithstanding the above, the floor layout of units 4/7/10 directly above unit 1 are identical to adaptable unit 1 and as such it is likely that either of these units could be modified to accommodate persons with a disability and / or mobility impairment.

Whilst the proposal is technically non compliant in this regard, should the proposal have been supported, conditions requiring compliance could have been applied.

4.6 Parking Rates Residential Flat Buildings

As per the provisions of this clause a total of 19 car spaces (16 residential / 3 visitor) are required for the development. A dedicated car wash bay is also required. Plans illustrate the provision of 19 car spaces within the proposed basement levels in addition to a dedicated car wash bay. The proposal complies with the requirements of this clause.

4.6 Basement Parking - General

The provisions of this clause require basement car parking to be adequately ventilated, located within the building footprint to enable deep soil planting and be located fully below ground level, unless the site is flood affected, whereby a maximum protrusion of 1m is permitted.

The proposal seeks to construct two basement levels on site, positioned directly upon both side boundaries and a minimum of 5m from the rear property boundary. Plans illustrate that the proposed basement is located beyond the building footprint, with the rear portion of the basement raised up to 0.96m above existing ground level on site.

Given the site is not flood affected, basement levels should be located fully below ground level. Raising of the basement level beyond the proposed central lift core results in adverse impacts on site and to neighbouring properties as previously discussed within this report.

The proposal is unsatisfactory in this regard with respect to the provisions of this clause.

4.6 Design of Loading Facilities

An SRV loading / unloading area with dimensions 6.4m length x 2.3m width x 3.5m clearance height is required to be provided on site.

Plans illustrate the provision of a loading / unloading area within the front setback of the site which is intended to double as a passing bay, enabling two way entry and exit in and out of the site. Given the location of the site on a classified road, the aforementioned is not acceptable to the RMS as this has the potential to result in queuing, traffic delays and potential conflict within the classified road. As such, an appropriately sized, located and designated loading / unloading area is required to be provided within the basement on site in order to facilitate furniture removalists for future occupants.

The proposal is therefore unsatisfactory with regards to the provisions of this clause.

4.6 Car Wash Facilities

Plans illustrate the provision of an appropriately located and dimensioned car wash bay within the basement of the proposed development.

4.7 Air Conditioning and Communication Structures

Plans do not illustrate the proposed location of air conditioning services. The proposal is thus unsatisfactory in relation to the provisions of this clause.

4.7 Waste Storage and Recycling Facilities

Waste storage facilities for the proposed development are proposed within basement level 1 on site. Bin storage areas are of appropriate overall dimensions and area for the proposed development.

4.7 Laundry Facilities and Drying Areas

Plans illustrate the provision of internal laundry facilities within residential units.

4.7 Letterboxes

Plans illustrate the provision of letter boxes adjoining the main pedestrian entrance to the site.

4.7 Hot Water Systems

As per the provisions of this clause all hot water systems/units located on the balcony of a dwelling must be encased in a recessed box on the balcony with the lid/cover of the box designed to blend in with the building. All associated pipe work is to be concealed. Plans do not illustrate the location of the aforementioned, notwithstanding this is a matter which could be conditioned should the proposal have been supported.

5.2 RFB - Site Coverage

As per the provisions of this clause, the maximum building footprint, area of land measured at finished ground level which is enclosed by the external walls of a building, permitted for residential flat buildings is to be limited to 35% (296.5sq/m) of the site area.

A manual assessment of plans illustrates that the proposal comprises a building footprint of 33.7% (286sq/m) and complies with the provisions of this clause.

5.2 RFB Front Setback

As per the provisions of this clause the front setback of the proposed development is to be consistent with the prevailing setback along the street. The front setback of established neighbouring

developments fronting The Grand Parade is as follows, noting the splayed nature of the front property boundary to sites in this location:

- 105 The Grand Parade - 6m - 7.5m
- 106 The Grand Parade - 3m - 4.1m
- 112 The Grand Parade - 7m - 8m
- 113 The Grand Parade - 2.7m - 3.5m

The proposal comprises a front setback of 5.9m - 6.3m to the balcony edge of street facing units. The proposed front setback is not overly dissimilar with the prevailing established front setbacks along The Grand Parade and is deemed to be satisfactory.

5.2 RFB - Side Setbacks

As per the requirements of this clause, a 3m side setback is required up to level 2 of the development, with level 3 (top level) to be provided with a 4.5m side boundary setback. Plans illustrate the provision of a 3m side setback to all levels to both sides of the development. This illustrates a variation of 1.5m to 4.5m side setback requirement for the top floor level of the development. Notwithstanding the above, the building separation requirements of the ADG take precedence and the impacts of reduced building setbacks and separation i.e. Visual Privacy, Overshadowing and the like have been discussed previously within this report.

5.2 RFB - Rear Setbacks

A minimum 12m rear setback is required from the rear property boundary to the balcony edge of the proposed development as per the provisions of this clause. The proposal comprises a rear setback of 10m to the balcony edge and 12.7m - 13.2m to the proposed rear building alignment. This is a variation of 2m.

Notwithstanding the above, the intention of this clause is to ensure privacy to residential neighbours to the rear is retained.

The following is noted with regards to rear building separation between the proposed development and existing residential flat buildings to the rear of the site.

Property	Existing Rear Setback	Proposed Rear Building Setback to Balcony Edge	Building Separation Proposed balcony edge to existing rear building line
28 Hercules Road	9.5m	10m	19.5m
30 Hercules Road	12.5m	10m	22.5m
32 Hercules Road	13m	10m	23m

As can be seen above, substantial building separation is provided between the rear balcony edge of the proposed building and rear building alignment of existing buildings upon 28/30/32 Hercules Road. The building separation noted above between sites is generally consistent with the building separation requirements of the Apartment Design Guide, i.e. 12m, which takes precedent over the provisions of DCP 2011.

Given the above building separation identified, the proposed rear building setback is not unreasonable or likely to generate adverse privacy impacts with rear neighbour, beyond that which could otherwise be considered acceptable within the R4 high density residential zone.

5.2 RFB - Building Entry

As noted by the Design Review Panel, concern is raised in relation to the side entrance to the proposed development. The provisions of Clause 5.2.24 require that the entry of the development be designed so that it is a clearly identifiable element of the building in the street. The proposed building entry is recessed behind the building line and a significant distance from the street. Whilst this is contrary to the requirements of this clause, adequate regard has been given to the safety and security of future occupants via the incorporation of security access and the location of the entrance is not dissimilar to the side entries of neighbouring residential flat buildings. The proposal is satisfactory in this regard.

S.79C(1)(a)(iv) - Provisions of regulations

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

S.79C(1)(b) - Likely Impacts of Development

Potential impacts associated with the proposed development have been discussed in detail within this report.

S.79C(1)(c) - Suitability of the site

As previously mentioned in this report, the subject site is of suitable overall area and dimensions to accommodate a reasonable increase in density. The design of the proposal however is not suitable for the subject site for the reasons previously detailed within this report.

S.79C(1)(d) - Public submissions

The proposal was notified to neighbours on two occasions, in accordance with the provisions of Rockdale DCP 2011. A total of 26 individual letters of objection were received following the aforementioned notification periods. Multiple submissions i.e. 2 - 5 letters were received from 8 of the 10 objectors, whom wrote into Council. The issues raised in the submissions are discussed below:

Privacy impacts to neighbours

Comment: The matter of visual privacy has previously been discussed within this report. The proposal has the potential to result in adverse visual privacy impacts to the southern neighbouring units within 112 The Grand Parade.

Object to the number of trees proposed in rear of site blocking views from balcony and bedroom windows of units 11 and 12 on top floor within 30 Hercules Road

Comment: The matter of view loss has been addressed in Appendix 1 of this report. With respect to the provision of trees within the rear communal open space area on site, landscape plans indicate the provision of Dwarf Magnolia and Bradford Pear trees capable to growing to a maximum height of 6m - 8m. Whilst the aforementioned trees would be taller than the existing single storey garage structures in the rear of this site and result in a reduction in views for the units referred to above, it is reiterated that

the subject site is zoned R4 High Density Residential, is subject to a 14.5m height limit and is not yet developed to its full potential.

Adverse acoustic impacts from rooftop communal open space

Comment: As previously discussed within this report, the periphery of the proposed communal rooftop terrace comprises a raised 1.2m high masonry planter proposed to be planted with Indian Hawthorn capable of growing to a maximum height of 1.2m. The aforementioned will assist in keeping users away from the edge of the space, thus increasing separation and reducing potential overlooking of neighbours. Should the proposal have been supported, an appropriate plan of management could assist in ensuring that acoustic impacts to neighbouring properties from the use of the private and communal rooftop spaces does not arise.

Overshadowing impacts

Comment: The matter of overshadowing has been previously discussed within this report. The property at 28 Hercules Road will not be overshadowed by the development given the location of this site to the north west of the property.

A high brick wall located along the southern boundary of the proposed development will create an unnecessary obstruction to sight line views of traffic along The Grand Parade for all driving owners attempting to exit the driveway of No.112. Exiting into traffic on The Grand Parade already poses a challenge / The drawing of the front driveway is incorrect. It appears that the new building has encroached on the driveway of 112 The Grand Parade as the garden bed on the north side of the driveway is not shown and they have erected a wall.

Comment: As previously stated, should the proposal have been supported, the proposal could be conditioned to resolve the matters raised above by objectors.

Concerns regarding basement proposed on side boundaries with neighbouring properties

Comment: Should the proposal have been supported conditions of consent could have been imposed to ensure the structural integrity of adjoining properties.

Adverse streetscape and character impacts / Lack of architectural merit / Inappropriate rooftop structure resulting in 5th level on site / Design is not in keeping with existing buildings

Comment: The matters of context and neighbourhood character have been discussed previously within this report.

Non compliance with relevant SEPP, LEP and DCP provisions i.e. side and rear setbacks, building separation, minimum frontage, FSR, Height, solar access, fencing, visual privacy and the like

Comment: This report details both how the proposal complies and does not comply with relevant legislative requirements and whether non compliances are or are not considered to be reasonable.

Excessive bulk and scale / Exceeds height and FSR standards / Overdevelopment of the site

Comment: The above is noted, the height and FSR variations as proposed are not supported in this

instance.

Proposal exceeds maximum 35% site coverage requirement of DCP 2011

Comment: A manual assessment of plans illustrates that the proposal comprises a building footprint of 33.7% (286sq/m) and complies with the provisions of the clause referred to by the objector.

Adverse traffic and carparking impacts on The Grand Parade / Existing difficulty finding on street parking in the area, this will be compounded by the development

Comment: The proposal provides adequate parking on site for proposed residential dwellings in accordance with the provisions of DCP 2011. Concern is however raised in relation to the location of the loading / unloading bay and potential traffic impact this may have upon The Grand Parade, as discussed earlier within this report.

Excessive number of garbage bins to be presented for collection to the street, this will take up the entire frontage of the site

Comment: Should the proposal have been supported, conditions of consent could be imposed requiring the provision of 1100 litre bins, in lieu of 240 litre bins, thus reducing the number of bins to be presented on the street on collection day.

Construction noise, dust and interference

Comment: Should the proposal have been supported conditions could be imposed in order to ensure that any temporary noise, disturbance, dust and the like arising from the redevelopment of the site are kept to a minimum and controlled during construction.

Devaluation of property

Comment: No evidence to substantiate this claim has been submitted to Council. Further, devaluation is not a matter for consideration by S79C of the Environmental Planning and Assessment Act 1979 (as amended).

View Loss impacts to neighbouring properties

Comment: The matter of view loss has been addressed in detail within Appendix 1 of this report.

Parking obstructions by consumers of nearby restaurants

Comment: The above matter is beyond the scope of this application.

S.79C(1)(e) - Public interest

The proposal is not in the public interest for the reasons previously outlined within this report.

S94 Contribution towards provision or improvement of amenities or services

S94 contributions apply to the proposed development given the resultant increase in residential density on site. Should the proposal have been supported appropriate conditions of consent could be applied.

Schedule 1 - Draft Conditions of consent

Development specific conditions

The following conditions are specific to the Development Application proposal.

1. Stormwater and drainage systems are not to be located in, or under those areas shown as landscaped beds, or where existing or proposed trees are located.
2. Screening landscaping to an expected height of 2.5 - 3.5 m shall be provided in the following locations:

Northern boundary fence line, (not Ficus microcarpa)

Southern boundary fence line

Western boundary fence line, (not Ficus microcarpa)

3. A minimum soil depth of 800mm is required for planted areas (other than turf) on podiums or roof-tops or any other concrete slab.
4. Podium landscaping and paved areas shall be drained into the stormwater drainage system. All waterproofing for planters on slab shall be installed and certified by a licensed waterproofing contractor.
5. All pavements shall comply with AS/NZ 4586:1999 standards Class W (low) for slip resistance on both private and Council property.
6. The approved completed landscape works shall be maintained for a period not less than 12 months.

On completion of the maintenance period, a Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council if Council is not the principal certifying authority) stating the landscape maintenance has been carried out in accordance with approved landscape plans and designated specifications before release of the nominated landscape bond.

Prior to issue of occupation certificate or commencement of use

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

7. All landscape works are to be carried out in accordance with the approved landscape plans prior to the issue of an Occupation Certificate for the approved development. The landscaping is to be maintained to the approved standard at all times.
8. A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation.

APPENDIX 1 to Assessment Report - View Loss Assessment

The subject site is zoned R4 High Density Residential and is an infill development in an area of established residential flat buildings. The subject site is not developed to its full potential.

The existing 2 storey RFB on site comprises a 1.1m setback to the southern common side boundary, 2.95m setback to the common northern side boundary and a maximum building height of 9.6m to the ridge. This building has an existing front setback of 5.5m – 6.9m given the splayed nature of the front boundary and the existing building is 17.3m in length.

The Land and Environment Court has established “planning principles” in relation to impacts on views from neighbouring properties. In *Tenacity Consulting P/L v Warringah Council* (2004) NSWLEC 140 Roseth SC, states that “*the notion of view sharing is involved when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment*”.

“Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable. In deciding whether or not view sharing is reasonable, Commissioner Roseth set out a 4 step assessment in regards to reasonable sharing of view”. The steps are as follows;

1. *Description and assessment of views to be affected by proposal and the value of these views.*
2. *Ascertain whether view retention expectations are realistic. Consider from what part of the property the views are obtained.*
3. *Assess the extent of the impact for the whole property. The impact should be qualified on a scale from negligible to devastating.*
4. *Assess the reasonableness of the proposal that is causing the impact, taking into account any non-compliance that is causing view loss. (A development that complies with all the planning controls would be more reasonable than one that breaches them).*

An assessment of the above has been undertaken below.

Units within buildings to the rear of the site at 28/30/32 Hercules Road currently benefit from views over the site to the east, south east and north east to Botany Bay, given the site is not developed to its full potential.



28 Hercules Road

28 Hercules Road is located to the north west of the subject site and comprises a total of 9 units, being 4 storeys in height above ground level garaging. Three units face the rear of this property, with those two units at levels 2 and 3 benefiting from south easterly views over 109-110 The Grand Parade, towards Botany Bay.

These two units also benefit from north easterly views towards Botany Bay via a view corridor over 106 The Grand Parade and Kings Lane.

The proposal results in a reduction of south easterly views to these units and their habitable areas is not unreasonable given the location of the site, retention of alternative view corridors and that 109-110 The Grand Parade is not developed to its full potential. View loss impacts to this property are not unreasonable.



30 and 32 Hercules Road

30 and 32 Hercules Road are two storey residential flat buildings with semi basement car parking and detached single storey garages adjoining part of the rear boundary with the subject site. Each building comprises 12 units. 30 Hercules Road is positioned directly behind the subject site, with 32 Hercules Road to the south west of the site.



The top floor (level 2) of both 30 and 32 Hercules Road comprise 2 balconies (1 upon each building) which are oriented to the rear of the property in addition to two bedroom windows.

Given the two storey nature and height of the existing building upon 109-110 The Grand Parade and that upon 30 and 32 Hercules Road, existing views towards the east to Botany Bay from bedroom windows and balconies would likely be limited and achieved via an existing view corridor down the

driveway of 112 The Grand Parade and over the subject site given it is not developed to its full potential.

As a result of the proposed development, the two top floor rear facing units within 30 and 32 Hercules Road are likely to retain minimal views via windows given the following view corridor opportunities:

- Existing driveway upon 112 The Grand Parade
- Proposed 3m side setbacks upon the subject site.

It is noted that any existing views from the balcony of the rear facing top floor unit at 30 Hercules Road will be eliminated as a result of the increase in height proposed on the subject site. This is unfortunate and a direct consequence of the site not being developed to its full potential.



112 The Grand Parade

The building on this site is a 4 storey residential flat building with garaging at ground level and 3 levels of residential above. A total of six (6) units are within this building, being three at the front and three in the rear of the block.



The three street facing units comprise balconies adjoining internal living areas which front The Grand Parade with a narrower portion which wraps to the north of the building. A dining / living room window and bedroom window to these units is located on the northern façade. The living areas of these units benefit from a direct easterly outlook and view to Botany Bay.



Units at levels 2 and 3 also benefit from northern distant city skyline and expanded Botany Bay views, of which are obtained over the subject site, via the narrower portion of the balcony, 1 bedroom and 1 living room window, given the height of the existing building upon 109-110 The Grand Parade.



As a result of the proposed development, the street facing units at levels 2 and 3 within 112 The Grand Parade which benefit from northern distant city skyline and expanded Botany Bay views will have a moderate level of these views reduced to 1 bedroom, 1 living room window and from the narrow northern portion of their balconies given the proposed increase in building height upon 109 – 110 The Grand Parade.

Whilst the development incorporates a non-compliance with regards to the height standard, this non-compliance is limited to the proposed lift/stair overrun and rooftop structure. The building as proposed to the rooftop level complies with the height standard. As such any development to be built upon the subject site, would result in the elimination of northerly views to the aforementioned units. This is unavoidable.

The affected units will retain their existing direct easterly views towards Botany Bay. The reduction in northerly views across the subject site is not an unreasonable impact to these neighbours, given the site is not developed to its full potential and complies with the front setback requirements of DCP 2011.

The three units within the rear of the block at 112 The Grand Parade, comprise balconies which are oriented to the east and have narrower components which wrap the building to the north and west (rear).

The primary area of balcony for these units is facing east. This component of the balcony has the largest dimensions and is the most useable. The rear three units comprise an eastern outlook to

Botany Bay via a view corridor down their existing driveway and partially as a result of the 1.1m side setback of the existing building upon 109-110 The Grand Parade.



The top level unit in the rear of the block also benefits from north easterly distant city skyline and expanded views across Botany Bay from its balcony and 2 living room windows, albeit at oblique angles. The view from the secondary sliding door to the kitchen area as shown below, is that of northern neighbouring buildings and is not considered to be 'magnificent'.



The proposed development is setback 3m from the common side boundary with 112 The Grand Parade, this is a 1.9m increase to the existing setback provided upon 109-110 The Grand Parade. An increased side setback on the subject site will result in the widening of the existing eastern view corridor to Botany Bay for the three aforementioned units, providing a wider degree of view of Botany Bay and the foreshore from their primary balconies. This is an improvement to the existing view corridor enjoyed by these residents.

Given the proposed height increase and length of the proposed building, the north easterly views currently enjoyed by the top level unit in the rear of this block will be eliminated.

Whilst the above view loss would occur, the aforementioned unit will retain a wider unobstructed eastern view corridor to Botany Bay from its main living and balcony areas, providing reasonable amenity and outlook for this unit.

As previously discussed, whilst the development incorporates a non-compliance with regards to the height standard, this non-compliance is limited to the proposed lift/stair overrun and rooftop structure. The building as proposed to the rooftop level complies with the height standard. As such any development to be built upon the subject site, would likely result in the elimination of the north easterly views this unit currently enjoys. This is unavoidable.

The proposal is considered satisfactory with regards to the objectives and requirements of this clause and is deemed to satisfy the established Land and Environment Court Principles in relation to view loss for the reasons discussed within this assessment. View loss impacts are not deemed to be unreasonable given the circumstances of the case in this instance.

7/06/2017 7:10:37 PM G:\Projects\Dropbox\005-ROWEL\34-109 The Grand Pde Brighton\20170523\109 The Grand Pde Brighton-20170607-RS.rvt



PROPOSED APARTMENT BUILDING 109 The Grand Pde Brighton Le Sands

DRAWING LIST	
DA000	PERSPECTIVE & DRAWING LIST
DA001	PHOTO MONTAGE
DA002	BASIX COMMITMENTS & NATHERS SUMMARY
DA003	SITE ANALYSIS PLAN
DA004	LOCATION MAP & DEVELOPMENT DATA
DA004.1	FSR DIAGRAM
DA005	EXTERNAL FINISH SCHEDULE
DA006	STREETSCAPE ELEVATION
DA100	SITE/ROOF PLAN
DA101	BASEMENT 2 PLAN
DA102	BASEMENT 1 PLAN
DA103	SITE & GROUND FLOOR PLAN
DA104	LEVEL 1
DA105	LEVEL 2
DA106	LEVEL 3
DA108	ROOF LEVEL
DA109	ADAPTABLE UNIT
DA110	DRIVEWAY / SWEPT PATH PLAN
DA201	EAST & WEST ELEVATIONS
DA202	NORTH ELEVATION
DA203	SOUTH ELEVATION
DA301	INDICATIVE SECTION 01
DA302	INDICATIVE SECTION 02
DA303	RAMP SECTION & RAMP DETAILS
DA601	DOORS & WINDOWS SCHEDULE
DA602	SHADOW DIAGRAM - WINTER
DA603	SHADOW DIAGRAM - SUMMER
DA604	SHADOW DIAGRAM - EQUINOX
DA606	3D SHADOW DIAGRAMS - WINTER
DA607	SUN PATH SHADOW DIAGRAMS - WINTER (GROUND)
DA608	SUN PATH SHADOW DIAGRAMS - WINTER (LEVEL 1)
DA609	SUN PATH SHADOW DIAGRAMS - WINTER (LEVEL 2)
DA610	SUN PATH SHADOW DIAGRAMS - WINTER (LEVEL 3)
DA611	ELEVATION SHADOW DIAGRAMS - WINTER
DA612	ELEVATION SHADOW DIAGRAMS - WINTER
DA701	SOIL EROSION & SEDIMENT CONTROL PLAN
DA703	REDUCED SURVEY PLAN
DA704	TYPICAL FENCE AND GATE DETAILS
DA-01	NOTIFICATION PLAN

Grand total: 39

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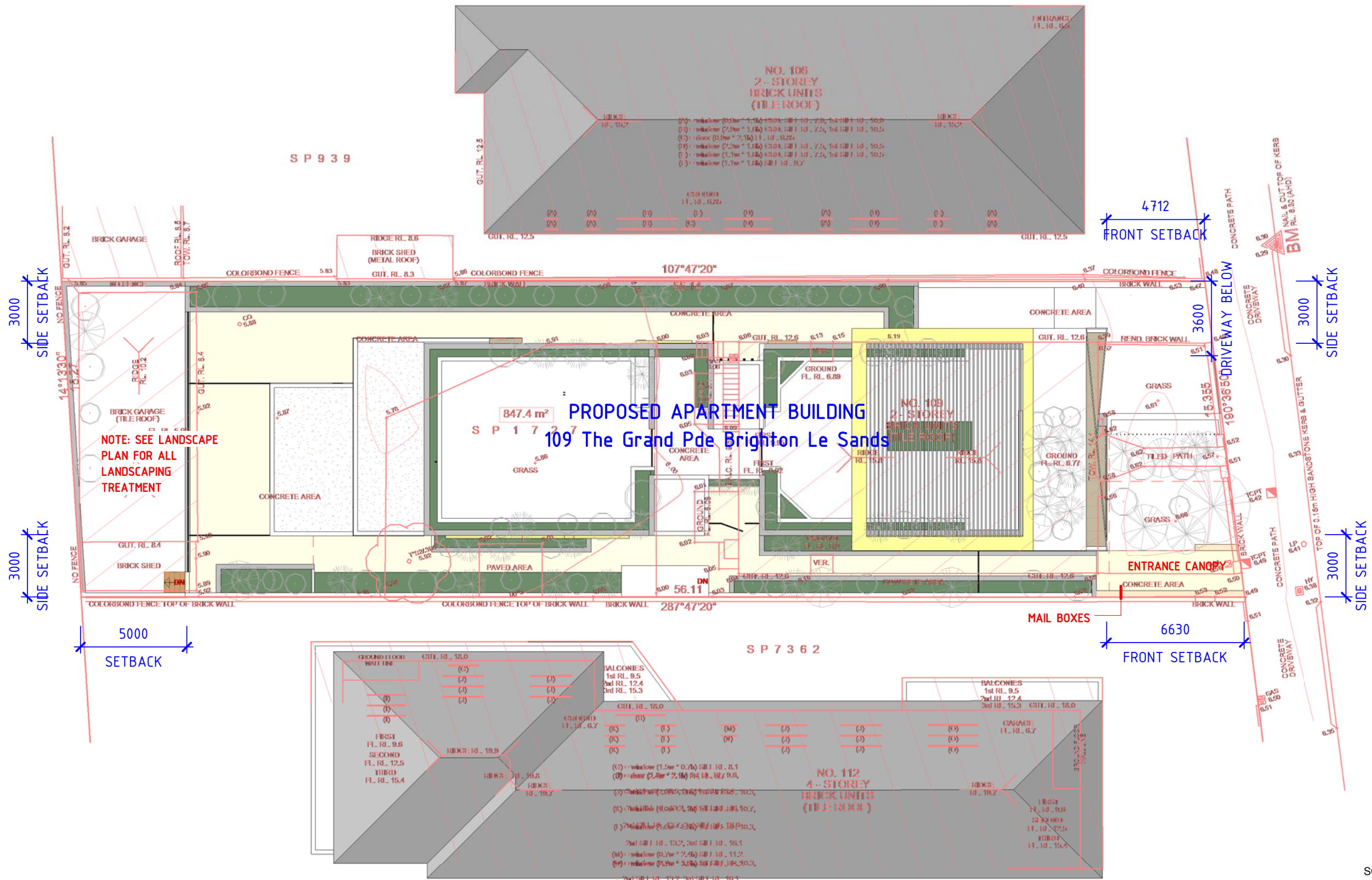
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2	ISSUED FOR DA	21.03.2017
3	ISSUED FOR DA	25.05.2017

PROPOSED APARTMENT BUILDING

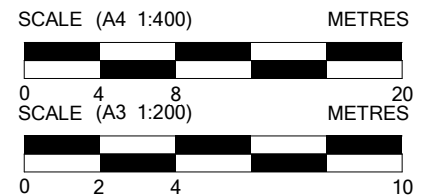
109 The Grand Pde Brighton Le Sands

PERSPECTIVE & DRAWING LIST

Project number	201510107	DA000
Date	21.03.2017	
Drawn by	RS/KB/JD/EN	
Checked by	RS / CJH	
Scale		Page 48 1 : 350



1 SITE/ROOF PLAN
scale: 1 : 200



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3	ISSUED FOR DA	25.05.2017

PROPOSED APARTMENT BUILDING

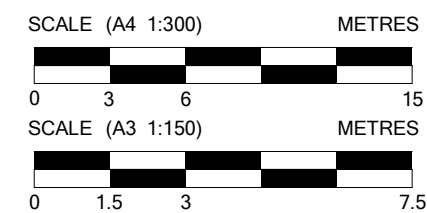
109 The Grand Pde Brighton Le Sands

SITE/ROOF PLAN

Project number	201510107
Date	21.03.2017
Drawn by	RS/KB/JD/EN
Checked by	RS / CJH

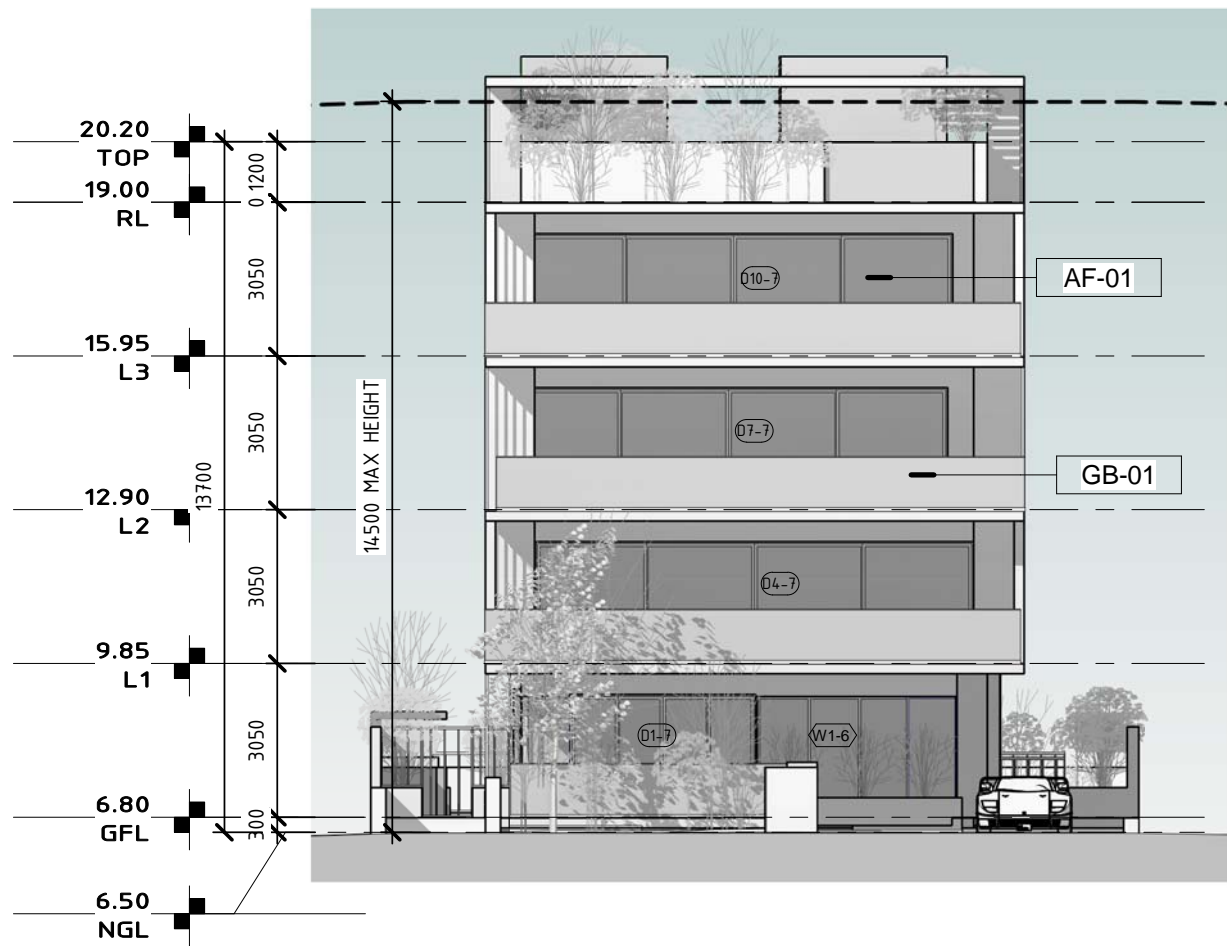
DA100

Page 49
Scale 1 : 200

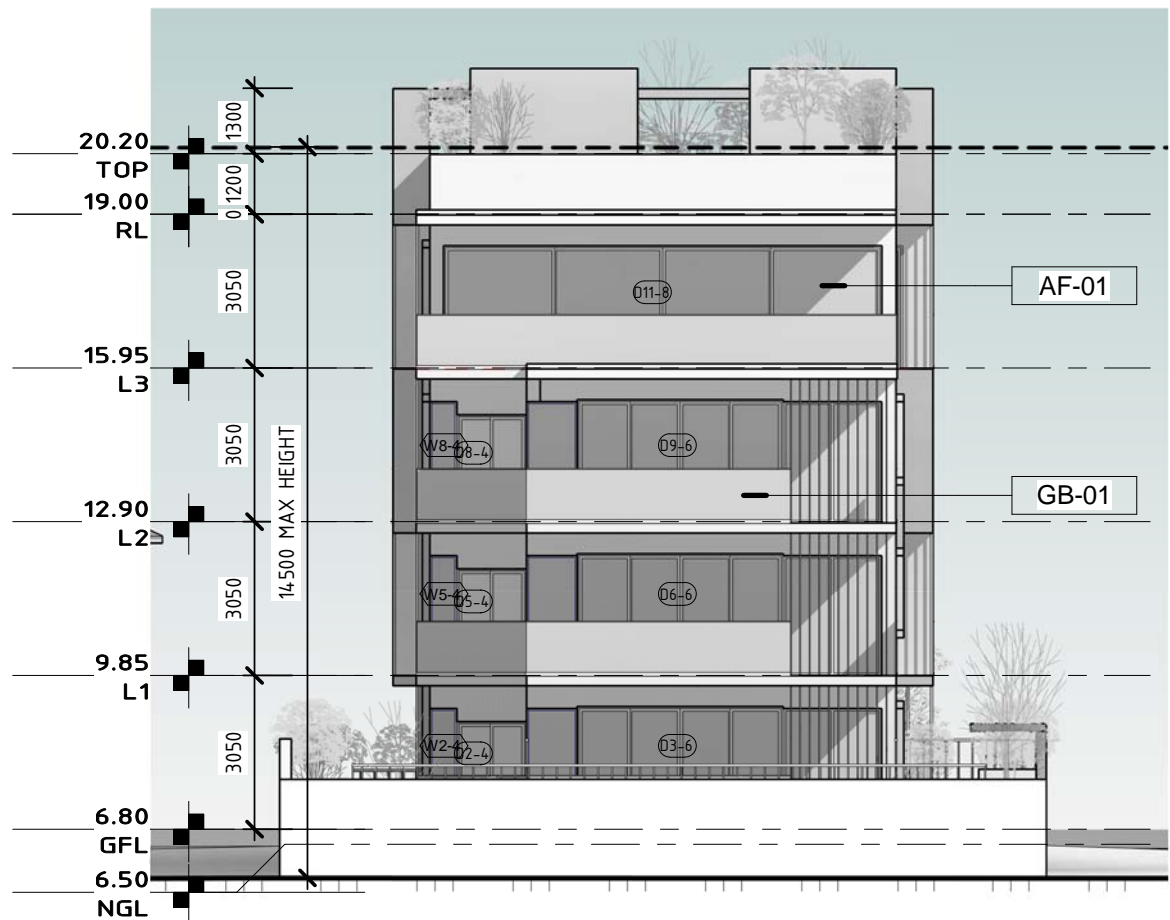


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KEYNOTE LEGEND	
Key Value	Keynote Text
AF-01	ALUMINIUM SLIDING WINDOWS & DOORS: DULUX 'APO GREY' OR EQUAL
GB-01	FRAMELESS GLASS BALUSTRADE



1 EAST ELEVATION (FRONT)
scale: 1 : 150



2 WEST ELEVATION (REAR)
scale: 1 : 150



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3	ISSUED FOR DA	25.05.2017

PROPOSED APARTMENT BUILDING

109 The Grand Pde Brighton Le Sands

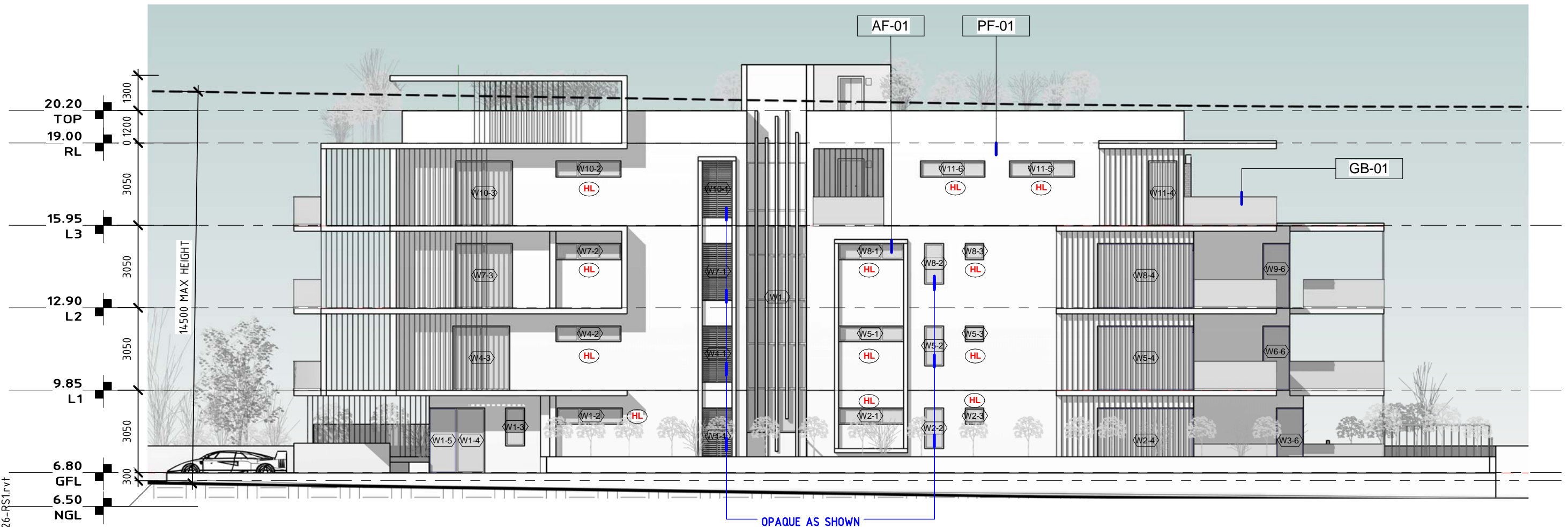
EAST & WEST ELEVATIONS

Project number	201510107
Date	21.03.2017
Drawn by	RS/KB/JD/EN
Checked by	RS / CJH

DA201
Page 51
Scale 1 : 150

26/05/2017 4:52:05 PM G:\Projects\Dropbox\005-ROWEL\34-109 The Grand Pde Brighton\20170523\109 The Grand Pde Brighton-20170526-RS1.rvt

KEYNOTE LEGEND	
Key Value	Keynote Text
AF-01	ALUMINIUM SLIDING WINDOWS & DOORS: DULUX 'APO GREY' OR EQUAL
GB-01	FRAMELESS GLASS BALUSTRADE
PF-01	ALUMINIUM COMPOSITE PANEL CLADDING
HL	HIGHLIGHT WINDOW



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PROPOSED APARTMENT BUILDING

109 The Grand Pde Brighton Le Sands

NORTH ELEVATION

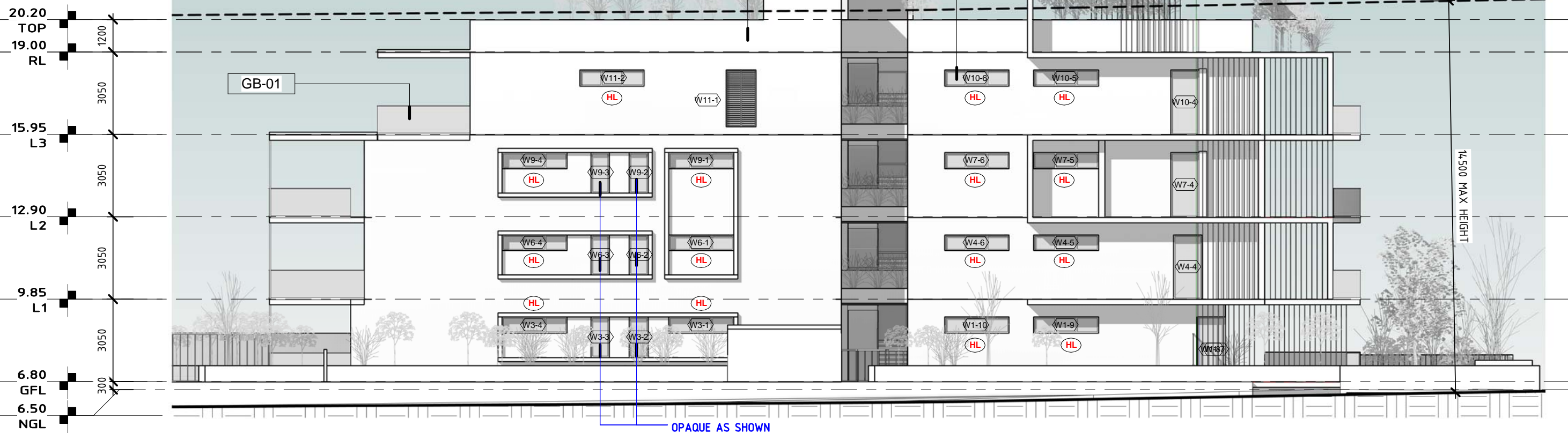
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Date	21.03.2017
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Checked by	RS / CJH

DA202

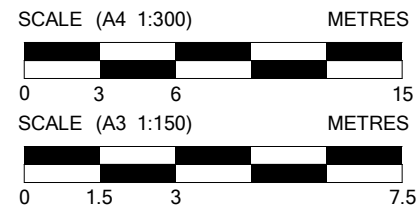
Page 52 1 : 150

26/05/2017 4:52:12 PM G:\Projects\Dropbox\005-ROWEL\34-109 The Grand Pde Brighton\20170523\109 The Grand Pde Brighton-20170526-RS1.rvt

KEYNOTE LEGEND	
Key Value	Keynote Text
AF-01	ALUMINIUM SLIDING WINDOWS & DOORS: DULUX 'APO GREY' OR EQUAL
GB-01	FRAMELESS GLASS BALUSTRADE
PF-01	ALUMINIUM COMPOSITE PANEL CLADDING
HL	HIGHLIGHT WINDOW



 **SOUTH ELEVATION (LEFT SIDE)**
scale: 1 : 150



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3	ISSUED FOR DA	25.05.2017

PROPOSED APARTMENT BUILDING

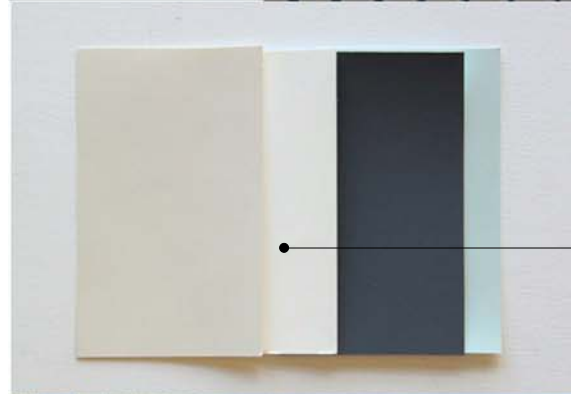
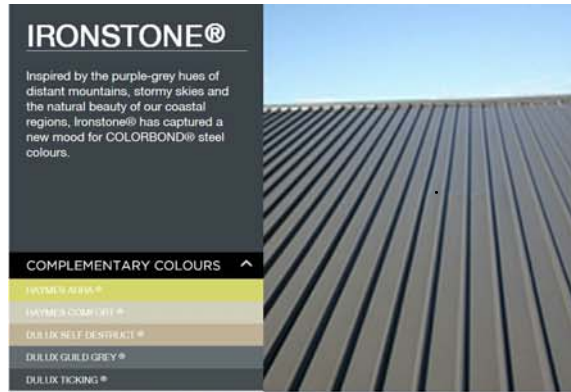
109 The Grand Pde Brighton Le Sands

SOUTH ELEVATION

Project number	201510107
Date	21.03.2017
Drawn by	RS/KB/JD/EN
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DA203	
Page 53	1 : 150

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PF-01

AF-01

GB-01

SCREEN

SS-01



PC-ROOF

CLAD-04



KEYNOTE LEGEND

Key Value	Keynote Text
AF-01	ALUMINIUM SLIDING WINDOWS & DOORS: DULUX 'APO GREY' OR EQUAL
CLAD-04	ALUCOBOND CLADDING, GOLD METALLIC
GB-01	FRAMELESS GLASS BALUSTRADE
PC-ROOF	POLYCARBONATE ROOF TO FUTURE DETAIL
PF-01	ALUMINUM COMPOSITE PANEL CLADDING
SCREEN	BLACK SCREEN TO FUTURE DETAIL
SS-01	SELECTED FACE BRICK CLADDING

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3	ISSUED FOR DA	25.05.2017

PROPOSED APARTMENT BUILDING

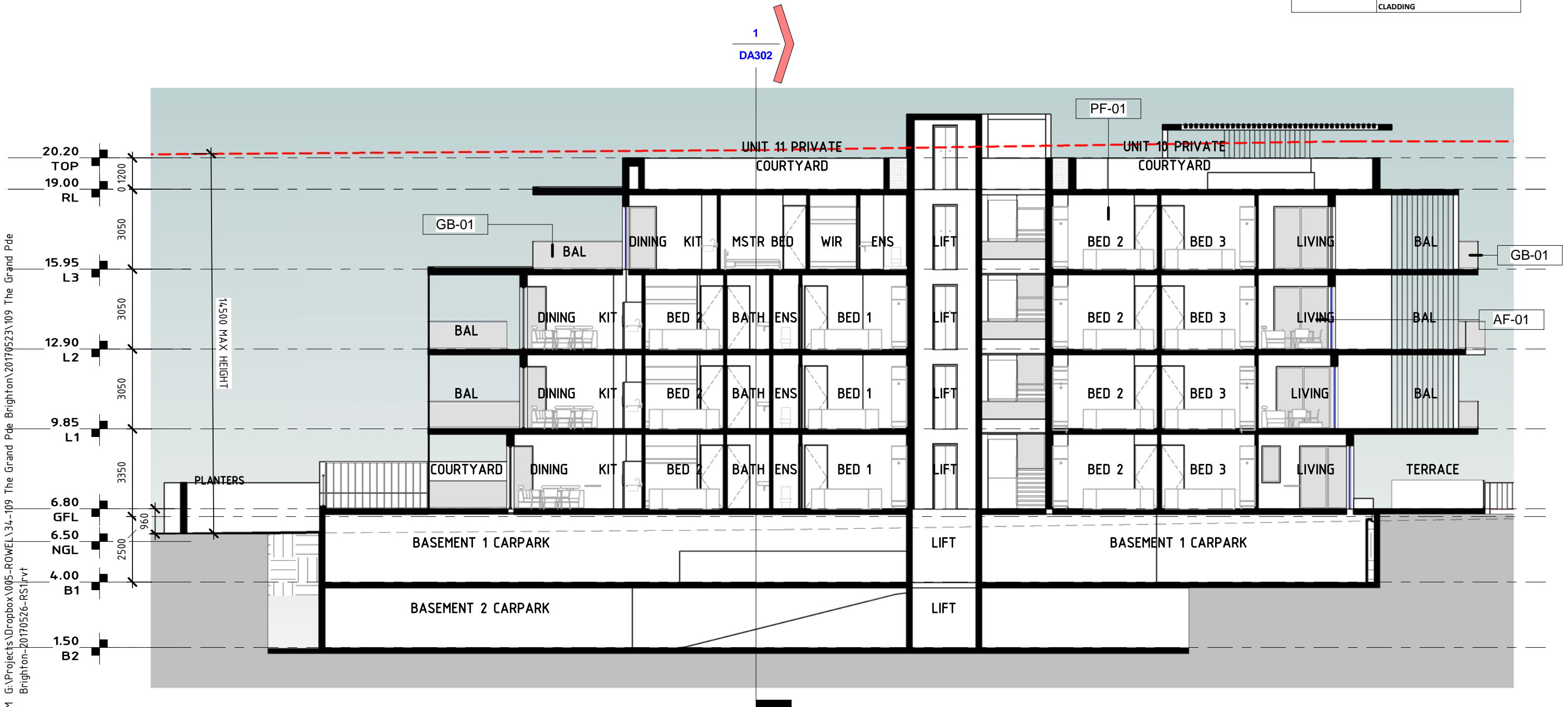
109 The Grand Pde Brighton Le Sands

EXTERNAL FINISH SCHEDULE

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Date	21.03.2017	
Drawn by	RS/KB/JD/EN	
Checked by	RS / CJH	
Scale	1 : 700	Page 54

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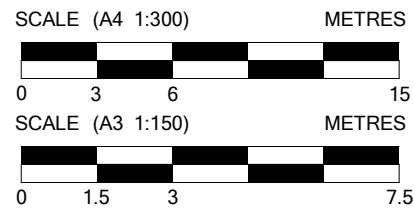
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Key Value	Keynote Text
AF-01	ALUMINIUM SLIDING WINDOWS & DOORS: DULUX 'APO GREY' OR EQUAL
GB-01	FRAMELESS GLASS BALUSTRADE
PF-01	ALUMINIUM COMPOSITE PANEL CLADDING



INDICATIVE SECTION 01

scale: 1 : 150

NOTE: FUTURE COLUMNS AND BEAMS
TO STRUCTURAL ENG'S DESIGN



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3	ISSUED FOR DA	25.05.2017

PROPOSED APARTMENT BUILDING

109 The Grand Pde Brighton Le Sands

INDICATIVE SECTION 01

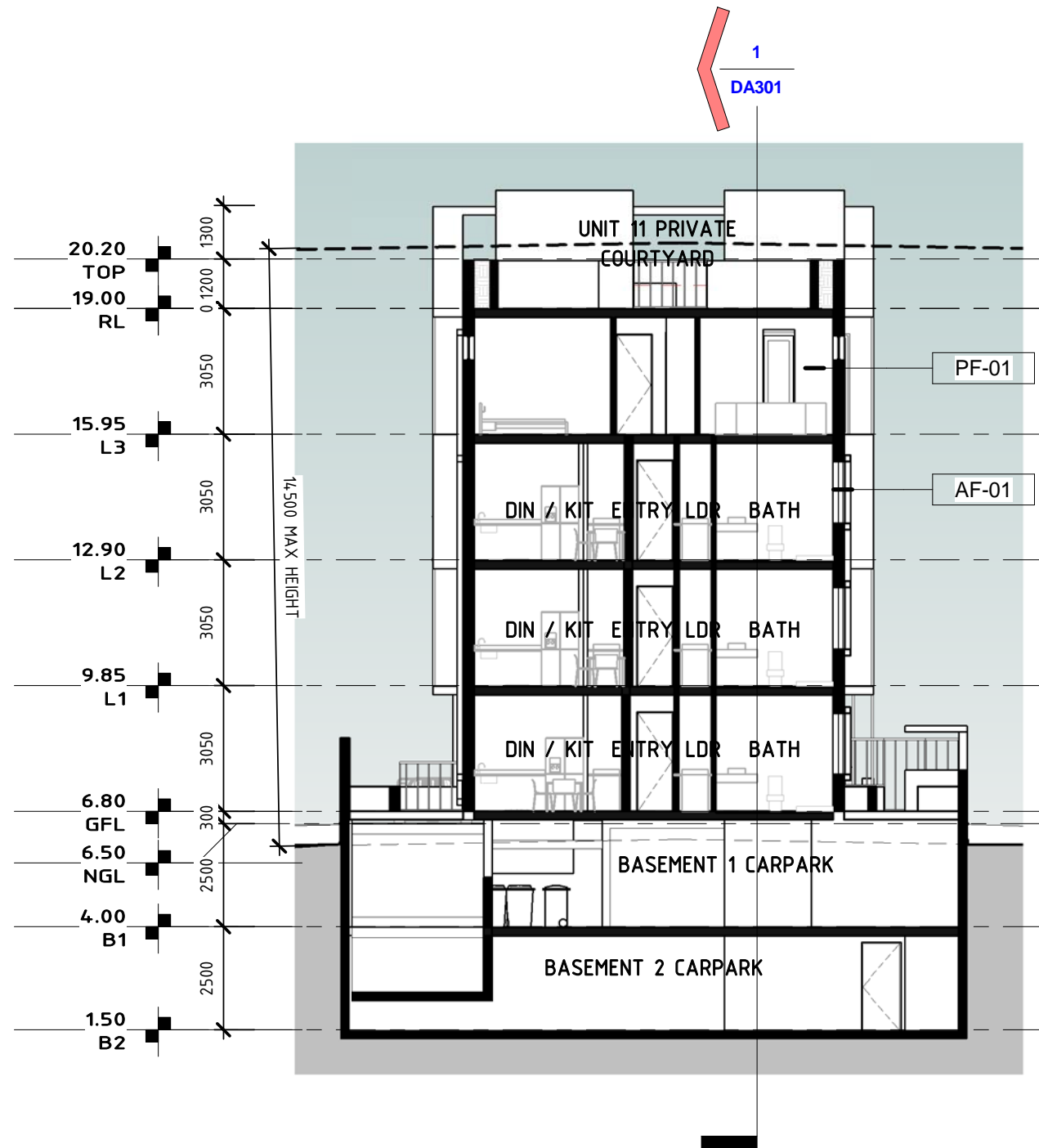
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Date	21.03.2017
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DA301

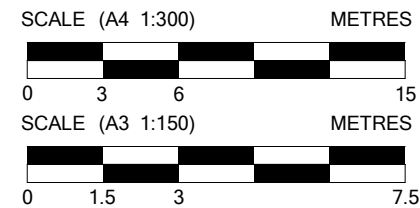
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KEYNOTE LEGEND	
Key Value	Keynote Text
AF-01	ALUMINIUM SLIDING WINDOWS & DOORS: DULUX 'APO GREY' OR EQUAL
PF-01	ALUMINUM COMPOSITE PANEL CLADDING



INDICATIVE SECTION 02
scale: 1 : 150



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3	ISSUED FOR DA	25.05.2017

PROPOSED APARTMENT BUILDING

109 The Grand Pde Brighton Le Sands

INDICATIVE SECTION 02

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Date	21.03.2017
Drawn by	RS/KB/JD/EN
Checked by	RS / CJH

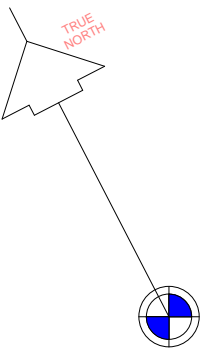
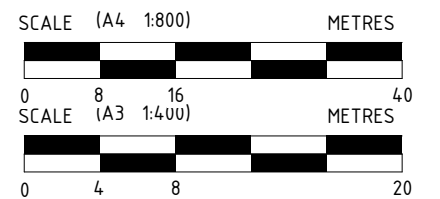
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Page 56
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1 21st JUNE 9 AM
scale:1 : 400

2 21st JUNE 12 NOON
scale:1 : 400

3 21st JUNE 3 PM
scale:1 : 400



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PROPOSED APARTMENT BUILDING

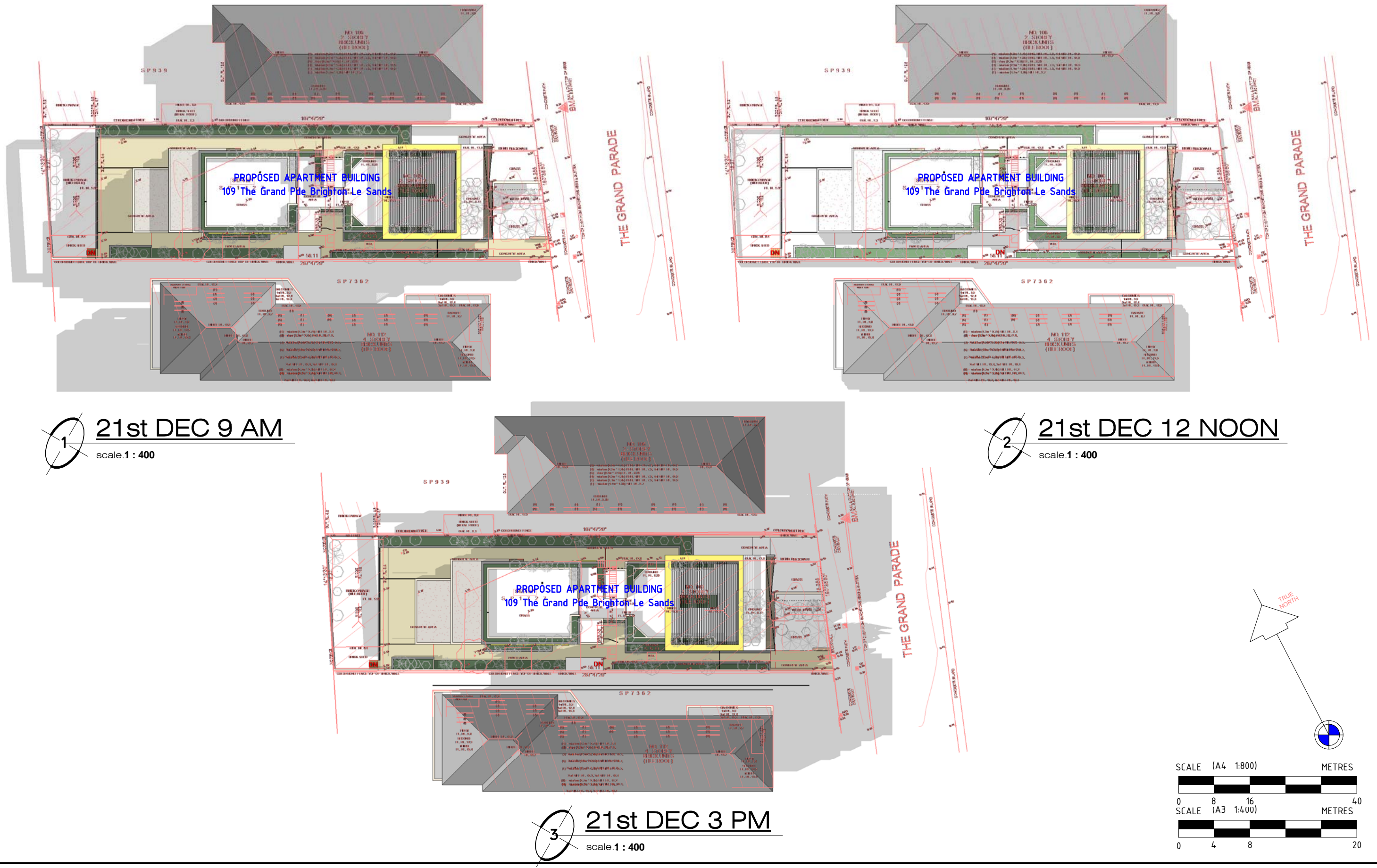
109 The Grand Pde Brighton Le Sands

SHADOW DIAGRAM - WINTER

Project number	201510107
Date	21.03.2017
Drawn by	RS/KB/JD/EN
Checked by	RS / CJH

DA602

Page 57
1 : 400



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NO	DESCRIPTION	DATE
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3	ISSUED FOR DA	25.05.2017

PROPOSED APARTMENT BUILDING

109 The Grand Pde Brighton Le Sands

SHADOW DIAGRAM - SUMMER

Project number	201510107
Date	21.03.2017
Drawn by	RS/KB/JD/EN
Checked by	RS / CJH

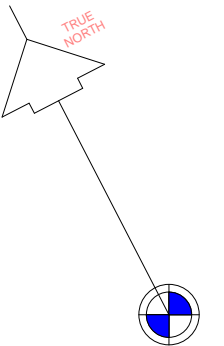
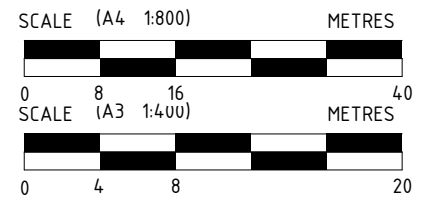
DA603

Page 58
1 : 400

1 21st MARCH 9 AM
scale:1 : 400

2 21st MARCH 12 NOON
scale:1 : 400

3 21st MARCH 3 PM
scale:1 : 400



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3	ISSUED FOR DA	25.05.2017

PROPOSED APARTMENT BUILDING

109 The Grand Pde Brighton Le Sands

SHADOW DIAGRAM - EQUINOX

Project number	201510107
Date	21.03.2017
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Checked by	RS / CJH

DA604

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1 : 400

18/05/2017 5:23:45 PM G:\Projects\Dropbox\005-ROWEL\34-109 The Grand Pde Brighton\20170512\109 The Grand Pde Brighton-shadow set 2-RS.rvt



1 21st JUNE 9 AM
scale.:



2 21st JUNE 10 AM
scale.:



3 21st JUNE 11 AM
scale.:

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NO	DESCRIPTION	DATE
1	ISSUED FOR DA	26.09.2016
2	ISSUED FOR DA	21.03.2017
3	ISSUED FOR DA	17.05.2017

PROPOSED APARTMENT BUILDING

109 The Grand Pde Brighton Le Sands

ELEVATION SHADOW DIAGRAMS - WINTER

Project number 201510107

Date 21.03.2017

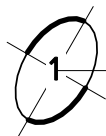
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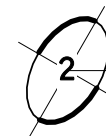
Page 60

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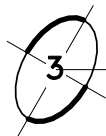
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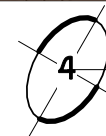
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Resolut Building Solutions

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in association with



Nominated Architect:

C. Munayer

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PROPOSED APARTMENT BUILDING

109 The Grand Pde Brighton Le Sands

ELEVATION SHADOW DIAGRAMS - WINTER

Project number 201510107

Date 21.03.2017

Drawn by RS/KB/JD/EN

Checked by RS / CJH

DA612

Scale

Page 61

NTS

LA-000	COVER PAGE
LA-001	CONCEPT LANDSCAPE PLAN
LA-002	LANDSCAPE DETAILS

- NOT FOR CONSTRUCTION
- FOR ALL DRAINAGE WORKS, INCLUDING OSD, PIT AND DRAINAGE LINE LOCATION, TANK SIZING AND SPECIFICATION, REFER TO HYDRAULICS ENGINEER'S PLANS AND DETAILS..
- ALL LANDSCAPE DRAWINGS ARE TO BE READ IN CONJUNCTION WITH THE ARCHITECT'S AND ADDITIONAL CONSULTANT'S DRAWINGS, SPECIFICATIONS AND REPORTS.
- ALL LANDSCAPED AREA ARE TO HAVE A MINIMUM 1:100 FALL AWAY FROM DWELLING FOR POSSIBLE OVERLAND WATER DRAINAGE
- CONTRACTORS TO CONFIRM ALL 'TOW' AND GROUND LEVEL ARE CORRECT, ADEQUATE AND COMPLY WITH STANDARDS PRIOR TO ANY EXCAVATION WORKS TO NATURAL GROUND LEVEL
- ALL PUBLIC UTILITY SERVICES ARE TO BE LOCATED ON SITE BY THE CONTRACTOR PRIOR TO THE COMMENCEMENT OF WORKS. THE LOCATION, PRESENCE AND EXTENT OF SERVICES SHOWN ARE NOT GUARANTEED COMPLETE OR CORRECT.
- NO TREES PROTECTED UNDER THE LOCAL COUNCIL'S TREE PRESERVATION ORDER ARE TO BE REMOVED UNLESS APPROVED BY DEVELOPMENT CONSENT OR PERMIT OBTAINED FROM COUNCIL.
- ALL PAVING IS INDICATIVE, TO BE TO FUTURE SPECIFICATION, AND SET OUT ON SITE.
- ALL WORK TO BE CARRIED OUT IN ACCORDANCE WITH THE LOCAL COUNCIL'S APPROVAL, STANDARDS AND CODES.

Trees/Palms	SYMBOL	BOTANICAL NAME	COMMON NAME	QUANTITY	POT SIZE	MATURE SIZE	STAKING	COMMENTS
	FH	Ficus microcarpa 'Hill'	Ficus Hilli	40	100Ltr	4m	Yes	Hedge
	LI	Lagerstroemia indica	Crepe Myrtle	1	100Ltr	6m	Yes	
	MA	Michelia alba	Michelia Alba	7	100Ltr	5m	Yes	
	MG	Magnolia grandiflora 'Lil Gem'	Dwarf Magnolia	5	100Ltr	6m	Yes	
	OE	Olea europaea	Ornamental Olive	2	200Ltr	5m	Yes	
	PB	Pyrus Calleryana 'Bradford'	Bradford Pear	1	100Ltr	8m	Yes	
Shrubs & Hedges								
	An	Alpinia nutans	Dwarf Cardamon	5	300 mm	1m		
	Ap	Agave parryi	Parry's Agave	21	200 mm	0.6m		
	Ap	Aloe plicatilis	Fan Aloe	9	200 mm	0.6m		
	Bm	Buxus microphylla 'Balls'	Buxus Balls	13	300mm	0.7m		
	Cr	Cycas revoluta	Sago Palm	3	200mm	1.2m		
	Ee	Echinopsis peruviana	Peruvian Cactus	16	200mm	1.5m		
	Pl	Prunus lusitanica	Portugal Laurel	11	500mm	2.5m		
	Ps	Polystichium setiferum	Soft Shield Fern	18	300mm	1m		
	Rt	Ritopsisporum tobira	Australian laurel	4	300mm	1m		
	Rsl	Raphiolepis indica 'Snow Maiden'	Indian Haw thorn	68	300mm	1.2m		
	Tf	Teucrium fruticans	Shrubby Germander	10	300mm	1.2m		
	Vs	Viburnum suspensum	Viburnum Suspensum	21	300mm	3.5m		
	Wf	Westringia fruticosa 'Mund'	Coastal Rosemary	4	200 mm	0.5m		
	Zf	Zamia furfuracea	Carboard Palm	2	300mm	1.5m		
Grasses & Ground Covers								
	Ca	Correa alba	White Correa	8	200 mm	0.5m		
	Cb	Clivia miniata 'Belgian'	Olivia	3	200mm	0.6m		
	De f	Dichondra argentea 'Silver Falls'	Dichondra	15	150 mm	0.3m		
	Hh	Hedera helix	Common Ivy	25	150mm	0.3m		
	Pj	Pandorea jasminoides	Pandorea	10	150 mm	0.2m		
	Pt	Pachysandra terminalis	Japanese spurge	12	150 mm	0.2m		
	Ss	Senecio mandraliscae	Blue Chalk Sticks	34	150 mm	0.2m		
	Tj	Trachelospermum jasminoides	Star Jasmine	56	150 mm	0.4m		
	Vh	Viola hederacea	Native Violet	224	150mm	0.2m		
Turf								
		Stenotaphrum secundatum 'Sir Walter'	Sir Walter Buffalo	1802	Rolls	NA		

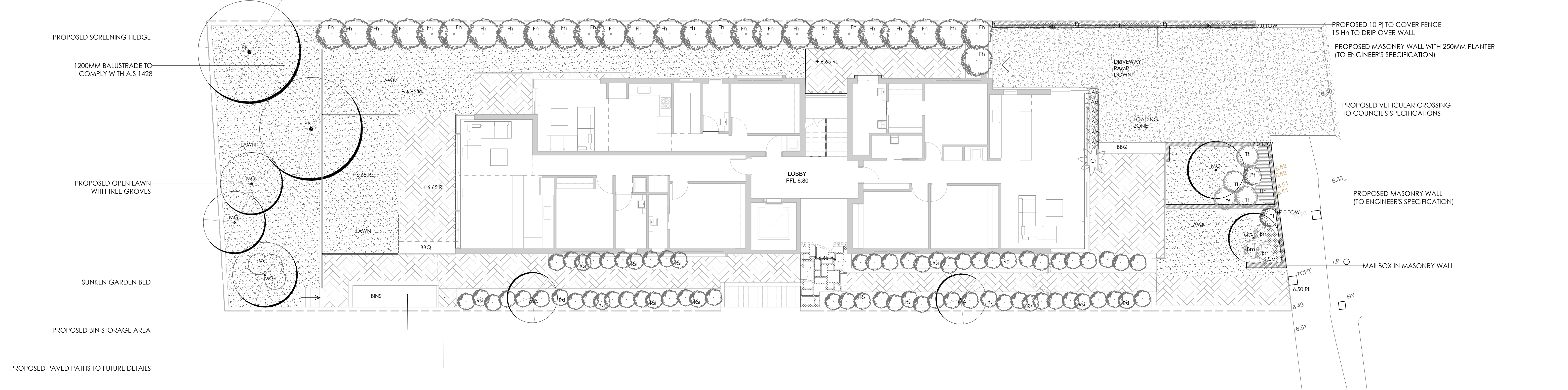
LANDSCAPE SPECIFICATION with 52 WEEK MAINTENANCE PERIOD

12.0 PRACTICAL COMPLETION AND MAINTENANCE 12.1 At the end of the landscape construction period an inspection of the landscape works by the Superintendent is to be carried out with the contractor. Any defects or changes to the works required by the Superintendent are to be noted by the Contractor and a copy of the list is to be given to the Superintendent within three days. 12.2 Defects and changes listed are to be carried out immediately. 12.3 The Superintendent will issue a written notice of practical completion once the works are completed to the Superintendent's satisfaction. 12.4 A 26 week maintenance period is to begin on receipt of practical completion at the end of the landscape construction period. 12.5 During the maintenance period, regularly mow turf to maintain a height of 40mm, weed turf and planted areas, and top up mulch layer as required. Prune plants as required and fertilize mass planted and turf areas and individual trees in turf with appropriate fertilizers at recommended rates. Replace dead plants with healthy new stock as indicated on the plan and plant schedule. Where existing plants are damaged and/or removed these are to be replaced with advanced specimens of the same species.

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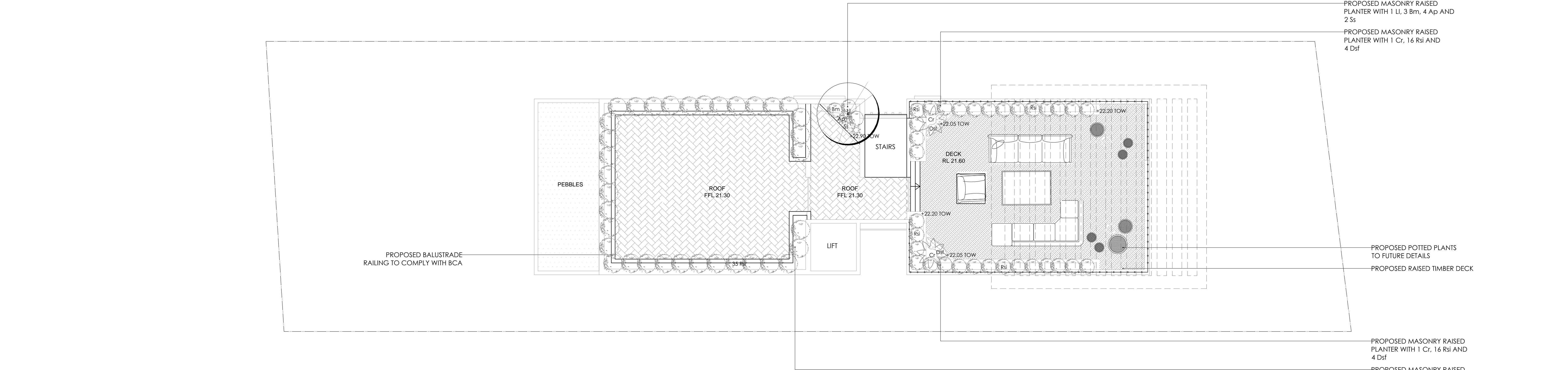
CONCEPT LANDSCAPE PLAN - GROUND FLOOR

SCALE - 1:100 @ A1



CONCEPT LANDSCAPE PLAN - ROOFTOP

SCALE - 1:100 @ A1



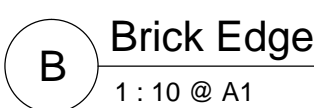
PLANTER BOX - LEVEL 1, 2, 3 AND 4

SCALE - 1:50 @ A1



SCALE - VARIES

- 1- EACH DRAWING IS TO BE READ IN CONJUNCTION WITH LANDSCAPE WORKS SPECIFICATION AND DETAILS.
- 2- DO NOT SCALE OFF DRAWING. REFER TO DIMENSIONS SHOWN ON PLAN.
- 3- ALL SERVICES ARE TO BE CHECKED AND VERIFIED ON SITE.
- 4- PROVIDE ALL NECESSARY STRUCTURAL DETAILS. REFER TO ENGINEER'S DRAWINGS.
- 5- PRIOR TO LANDSCAPE WORKS, REMOVE ALL BUILDERS DERBIS AND RIP ALL GARDEN BEDD AND TURF AREAS TO A MINIMUM DEPTH OF 300MM. THE AREA WITHIN THE DRIP ZONE OF EXISTING TREES AND SHRUBS TO BE RETAINED ARE TO BE HAND DUG.



Issue	Date	Description
C	31.05.17	CONCEPT LANDSCAPE PLAN FOR DEVELOPMENT APPLICATION
B	30.03.17	CONCEPT LANDSCAPE PLAN FOR DEVELOPMENT APPLICATION
A	30.08.16	CONCEPT LANDSCAPE PLAN FOR DEVELOPMENT APPLICATION



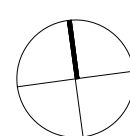
Project

**PROPOSED RESIDENTIAL FLAT
DEVELOPMENT**

**109 THE GRAND PARADE, BRIGHTON LE SANDS, NSW
2216, SP 1727**



LANDSCAPE DETAILS



Issue
Issue
C

**APPENDIX B – CLAUSE 4.6 OF ROCKDALE LEP 2011: EXCEPTIONS
TO DEVELOPMENT STANDARDS –HEIGHT OF BUILDING
VARIATION**

FOR A PROPOSED RESIDENTIAL FLAT BUILDING

AT

109 THE GRAND PARADE BRIGHTON

**CLAUSE 4.3(2) OF ROCKDALE LOCAL ENVIRONMENTAL PLAN 2011 –
MAXIMUM BUILDING HEIGHT**

1. Introduction

This written Clause 4.6 variation request accompanies a Development Application (DA) submitted to Rockdale City Council for a proposed residential flat building. The subject site is legally described as SP 1727 and is known as No 109 The Grand Parade Brighton.

Approval is sought for the following:-

- Demolition of the existing dwellings and associated structures on the site; and
- Construction of a four (4) storey residential flat building with basement parking comprising the following:-
 - Basement levels – 20 car parking spaces (including 3 disabled spaces) comprising 17 residential spaces, 3 visitor parking spaces with 1 as a car wash bay, motorcycle parking, bicycle parking, storage areas and lift access are proposed across two (2) levels of basement (basement 1 and basement 2);
 - Ground floor – comprising one x 3 bedroom, one x 2 bedroom and one x 1 bedroom units and their associated terrace areas as well as a bin storage area and ramp in the front area of the site;
 - Level 1 - comprising one x 3 bedroom, one x 2 bedroom and one x 1 bedroom units and their associated terrace areas;
 - Level 2 - comprising one x 3 bedroom, one x 2 bedroom and one x 1 bedroom units and their associated terrace areas; and
 - Level 3 - comprising two x 3 bedroom, units and their associated terrace areas.

2. Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the *Rockdale Local Environmental Plan 2011* (“RLEP 2011”) aims to provide an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances (Clause 4.6(1)).

Clause 4.6 Exceptions to development standards states:-

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
 - i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- Note.** When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition, R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4,
 - (ca) clause 4.3 (2A), 4.4 (2A), (2B), (2C) or (2D), unless it is for a demonstrable public benefit, such as the provision of pedestrian links,
 - (cb) clause 4.3A.

Development consent may, subject to Clause 4.6(2), be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause. Clauses 4.6(6) and (8) do not specifically exclude the development standard at Clause 4.3(2) of the RLEP 2011. Accordingly, this development standard can be varied to allow the proposal. Clause 4.6(7) and (8) do not require any further consideration in this variation.

A written request from the applicant that seeks to justify the contravention of the development standard is required before development consent can be granted, demonstrating the following (Cl 4.6((3)):-

- 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.*

These matters are considered in Section 7 of this submission.

Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), the proposed development will be in the public interest (proposal is consistent with the zone and development standard objectives) and the concurrence of the Secretary has been obtained (Cl 4.6(4)).

These matters are considered in Section 7 below.

The 'five part test'

The long-standing 5 part test was set out in *Winten Property v North Sydney* (2001) 130 LGERA 79 for SEPP 1 objections (the relevant requirement at the time) as:

1. *Is the planning control in question a development standard?*
2. *If so, what is the underlying object or purpose of the standard?*
3. *Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979?*
4. *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (A related question is: would a development which complies with the standard be unreasonable or unnecessary?)*
5. *Is the objection well founded?*

Webbe v Pittwater Council [2007] NSW LEC 827 shed light on this test for the assessment of a SEPP 1 objection with *Chief Justice* Preston in his reconsideration, setting out a new 5 part test and rephrased the assessment process as follows:

1. *The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
2. *The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and*
3. *It is also important to consider:*
 - a. *whether non-compliance with the development standard raises any matter of significance for State or regional planning; and*
 - b. *the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

Preston CJ then stated that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
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;*
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.*

In *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90, and the subsequent appeal against the Commissioner's decision, it was established that the key elements which are required to be addressed in any Clause 4.6 written request, in order to satisfy the tests contained in clause 4.6, are:

- (a) *Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*
- (b) *Clause 4.6(3)(b) - Are there are sufficient environmental planning grounds to justify contravening the development standard?*
- (c) *Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest? – is it consistent with the objectives of the development standard and the objectives of the particular zone?*

The Commissioner found that consistency with the objectives is required elsewhere (by Clause 4.6(4)(a)(ii)) and accordingly, could not be relied upon to satisfy the test in clause 4.6(3)(a). The Commissioner found that additional considerations are required in order to establish that compliance would be unreasonable or unnecessary.

The environmental planning grounds relied upon to justify the contravention of the standard must be “*particular to the proposed development on the site*”. That is, the environmental planning grounds relied upon cannot be benefits which apply to any development of the site or surrounding sites which would provide the same outcome. In the Commissioner's view, environmental planning grounds which were not particular to a site were not sufficient to justify the contravention of the standard.

Four2Five Pty Limited has established that although the first test in *Webbe v Pittwater Council* [2007] NSWLEC 827 remains a relevant consideration, it can no longer be the only basis upon which an applicant submits that compliance is unreasonable or unnecessary. Something additional needs to be established. The Court of Appeal decision has confirmed that the other *Webbe* tests (2 to 5) may still be applied and relied upon.

These matters are considered in Section 7 below.

3. The Development Standard to be varied

Clause 4.3(2) of the RLEP 2011 states the following:-

“The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map”.

The maximum height of buildings for the subject site pursuant to the Height of Buildings Map is 14.5 metres as illustrated in **Figure 1**.

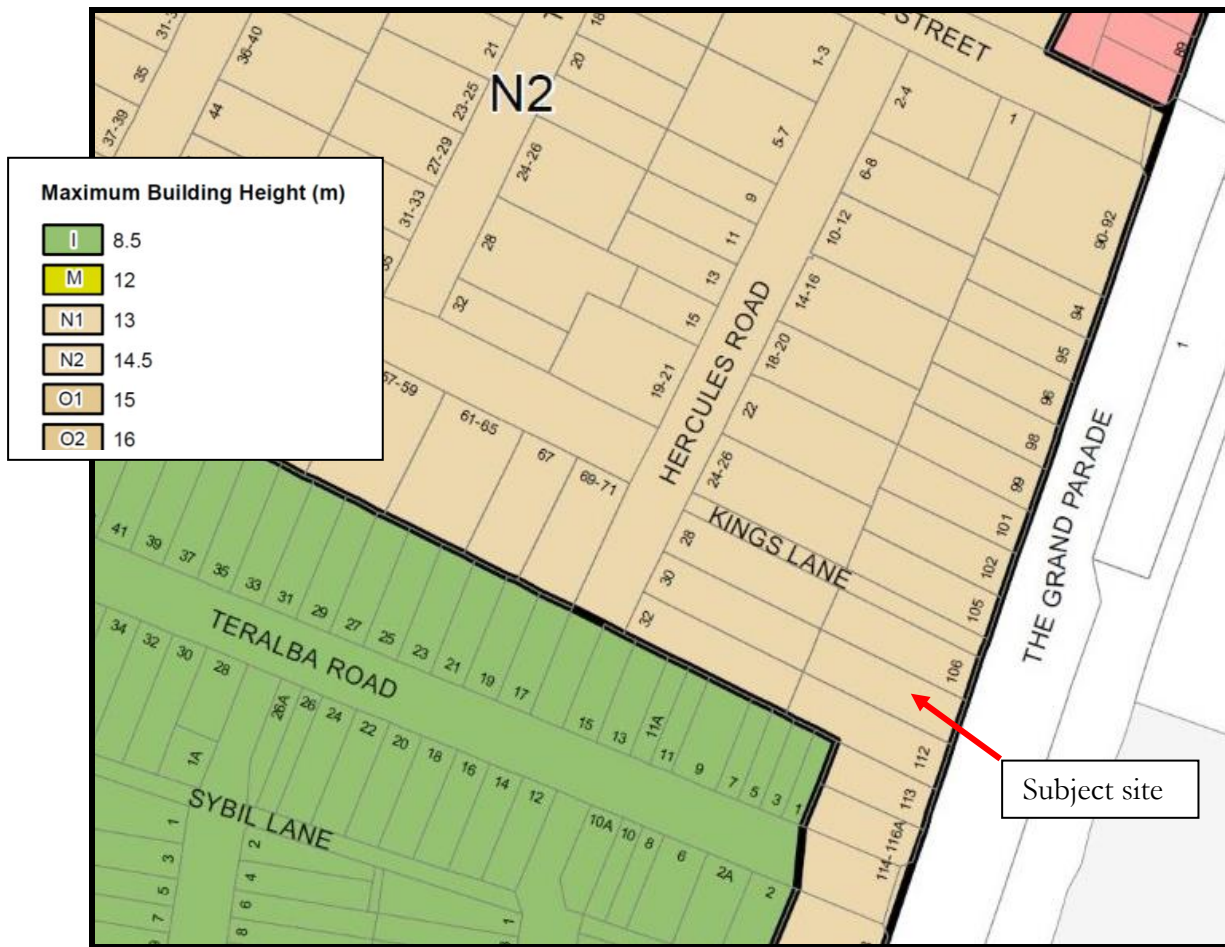


FIGURE 1: HEIGHT OF BUILDINGS MAP (SOURCE: WWW.LEGSLAITON.NSW.GOV.AU)

4. Extent of Variation to the Development Standard

The proposed development involves a maximum height of 15.5 metres (highest point of roof is RL 22.0 with a ground level at RL 6.5) on a site with a maximum height limit of 14.5 metres. Therefore, the proposal exceeds the maximum building height development standard by 1.0 metres representing a 7% variation to the development standard contained in Clause 4.3(2) of the RLEP 2011. This variation is outlined in Table 2 of the Statement of Environmental Effects (“SEE”).

5. Objectives of the Development Standard

The objectives of the Height of Buildings development standard, pursuant to Clause 4.3(1) of the RLEP 2011, state:-

- (a) to establish the maximum limit within which buildings can be designed and floor space can be achieved,
- (b) to permit building heights that encourage high quality urban form,
- (c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.

6. Objectives of the Zone

The objectives of the R4 High Density Residential zone pursuant to Clause 2.3 of the RLEP 2011 are:-

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

7. Assessment

Pursuant to Clause 4.6 and following the *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90 decision outlined above, the following matters are required to be considered in this assessment:-

- (a) Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?
- (b) Clause 4.6(3)(b) - Are there are sufficient environmental planning grounds to justify contravening the development standard?
- (c) Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest. – is it consistent with the objectives of the standard and zone as set out above.

These matters are considered below.

7.1 Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

It is considered that the development standard is unreasonable and unnecessary in the circumstances of this case as a better planning outcome is provided by varying the standard in this instance.

The non-complying height of the proposed building mainly results from the proposed lift shaft and staircase to the communal roof terrace on the rooftop of the building which will result in an increased amenity for residents. This area, with water views and landscaping, allows for a better planning outcome on the site than if communal open space was only provided at ground level.

The proposed non-compliance is also considered to have minimal impacts on the amenity of adjoining properties given there are no unreasonable impacts on views, privacy or overshadowing arising from the additional height. The proposal is largely orientated to the street and rear communal open space and away from the adjoining properties, reducing overlooking opportunities, while the shadow cast arises mainly from the building itself and not the additional height given this area comprises a small lift shaft and staircase roof. This increased shadow would be minimal.

The proposal will have minimal impact on the streetscape given any potential visual impact arising from the proposal and its additional height above the standard is minimised by, among other things, the proposed building articulation and architectural detailing proposed for the built form on the site, which is provided within the additional height. The additional building height

within the built form allows it to be broken up to reduce bulk and scale over the height limit. This assists in reducing the potential visual impact of the proposal when viewed from adjoining properties and the street. The elaborate roof structure, which also adds to the non-complying building height non-compliance, provides the building with a defined ‘top’ and provides visual interest from the street and adjoining properties. The design of the development is illustrated in **Figure 2**.



FIGURE 2: PROPOSED DEVELOPMENT

(Source: Resolut Building Solutions, September 2016)

The proposal, with the additional height, is consistent with the desired future character of the area and is consistent with other buildings in the vicinity including buildings at 94, 117 and 122 The Grand Parade Brighton as illustrated in **Figure 3**. Requiring compliance with this development standard would therefore prevent a building that does not adversely affect the amenity of the existing adjoining residential development from being achieved on the subject site.

The additional building height is also considered to result in no adverse environmental impact. It is also considered that the additional building height of does not raise any matters of state or regional planning significance.

The proposal is considered to be a better planning outcome on the site as the proposed development allows for the provision of a variety of unit sizes within a well-designed development which generally complies with the requirements of the ADG. The proposed variation will ensure a more efficient use of the subject site. The units will achieve a high standard of accommodation given it generally accords with minimum area requirements, achieves sufficient ventilation and solar access and provides private open space areas for the enjoyment of future occupants.

The proposal seeks to increase the available floor space of the built form which is located in a bay side, high amenity, convenient location close to various uses and bus services which is a preferred planning outcome given greater housing choice is provided. Overall the variation with the building height standard allows for a better planning outcome while it minimises the impacts to

the surrounding properties and ensures an appropriate bulk and scale transition along The Grand Parade.



Figure 3: Developments at No 94, 122-123 & 117-118 along The Grand Parade

Accordingly, it is considered that the development standard is unreasonable and unnecessary in the circumstances of this case for the reasons outlined above.

7.2 Clause 4.6(3)(b) - Are there are sufficient environmental planning grounds to justify contravening the development standard?

The subject site largely remains the only undeveloped or under-developed site in the street. The vast majority of the street consists of three to four storey residential flat buildings, with the exception of the subject site which remains as a small two storey multi-unit building.

In this respect, the subject site is, in effect, an isolated site. The adjoining sites comprise approximately 10 units (No 106) and 6 units (No 112) and are unlikely to be developed over more than their current area. By comparison, the subject site contains only four (4) units. Given the maximum building height and FSR controls allow for a much larger building than what is currently on the site, this results in the current use of the site not being the highest and best use of the site.

This isolated nature of the subject site results in sufficient environmental planning grounds being evident on the site to allow an exceedence of the building height development standard which would better achieve the objects of the *Environmental Planning and Assessment Act 1979* ("EP&A Act"), including the orderly and economic development of land. These objects pursuant to Section 5 of the EP&A Act include:-

(a) to encourage:

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

The proposal is considered to be consistent with the objects of the EP&A Act, in particular Section 5(a)(ii), despite this non-compliance, as the proposed development will allow for the promotion and co-ordination of the orderly and economic use and development of land by allowing additional housing opportunities on an isolated site for residential development. These objects would not be obtained if strict compliance with this development standard were required given the proposal would not be able to offer the level of communal open space on the site, the variety of unit sizes and levels of accessibility without the additional building height.

It is therefore considered that compliance with the maximum building height development standard would be inconsistent with the aims of the Policy, in that requiring compliance with this development standard would hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act as outlined above.

This existing site constraint, being virtually the last remaining development site in the street, provides an opportunity unique to this site, to provide for a 11 unit development which generally complies with the minimum unit sizes under the ADG and provides for a high level of amenity with a variety of unit sizes. This unique site attribute represents sufficient environmental planning grounds to justify varying this development standard in this instance

given such a variation would allow for additional housing opportunities in a well serviced location on an isolated site.

Following *Four2Five Pty Limited*, it is clear that this environmental planning ground, in effect being an isolated site, is particular to the proposed development on this site and does not apply to the development of any surrounding sites which would provide the same outcome. That is, this is a large site in the context of the locality and presents a unique opportunity to provide additional housing in area which is close to the services of the Brighton town centre and other local facilities in a development which is compatible with existing development in the street.

In the circumstances of this case, there are sufficient planning grounds to justify the maximum building height development standard variation sought.

7.3 Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest? Is it consistent with the objectives of the standard and zone as set out above?

It is considered that the proposal is in the public interest given additional housing opportunities will be provided in close proximity to transport and services and within an accessible building. This will allow for the accommodation of a variety of households in terms of number of bedrooms as well as accessibility. The proposal, notwithstanding the non-compliance with the maximum building height development standard, is consistent with the objectives of the development standard and the zone (outlined below).

This residential development provides for a high level of amenity and makes efficient use of the site area. The proposal results in an appropriate bulk and scale along The Grand Parade due to the design and location of other residential flat buildings of a similar size and scale. There is also a lack of amenity impacts which further demonstrates that the proposal and its associated building height are in the public interest. The proposal is generally consistent with the remainder of the planning controls and therefore is in the public interest.

The proposal is considered to be consistent with the objectives of the building height development standard as outlined above for the following reasons:-

- The proposal involves a building height which seeks to maximise the FSR on the site as well as being designed within the context set by other existing developments along The Grand Parade as illustrated in **Figure 3** (above). The proposal, with the additional height, is considered to be consistent with Objective (a) for building height;
- The proposal provides a high quality urban form with an appropriate level of articulation and architectural detailing achieved through the use of a variety of materials and the design of the development with changes in building alignment and use of building recesses. The proposal will maintain an appropriate visual relationship between new development and the existing character of the area due to the prevalence of three and four storey residential flat buildings in the street, the mix of development within the locality due to the proximity to the Brighton town Centre and the range of housing densities. In these ways, the proposal is consistent with Objective (b) for building height;
- The increased building height does not adversely affect the amenity or enjoyment of the adjoining residential properties. There will be limited overlooking opportunities, there will be some overshadowing but will be within the planning controls and there will be no view loss arising from the additional building height proposed on the

subject site. there will also be no significant overshadowing of the public domain. In these ways, the proposal is consistent with Objective (c) for building height; and

- The proposed building height will be compatible with other development in the area to the north and south along The Grand Parade (No 94, 122-123 & 117-118) and will allow for an appropriate transition along the streetscape to the adjoining four (4) storey residential flat building to the south (No 112 The Grand Parade) of the subject site. This is illustrated in **Figure 3**. In these ways, the proposal is consistent with Objective (d) for building height;

The proposal is considered to be consistent with the objectives of the R4 Zone as outlined above for the following reasons:-

- The proposal provides for the housing needs of the community in a high density environment.
- The proposal provides a variety of housing types in that there are one, two and three bedroom units proposed as well as an adaptable dwelling and accessibility throughout the proposed development. The provision of ground floor as well as upper level units allows for a variety of households to be accommodated including single person households through to families requiring ground floor with larger terrace areas.
- The proposal provides for landscaping opportunities which will assist in minimising runoff and providing an aesthetically pleasing development when viewed from the street and outdoor open space areas.

The proposal is therefore considered to be consistent with the objectives of the development standard for building height and the objectives of the zone as outlined above, despite the non-compliance, which is consistent with the first *Wehbe* test.

8. Conclusion

While the proposed development does not strictly comply with the maximum height development standard in Clause 4.3(2) of the Rockdale LEP 2011, it nevertheless satisfies the stated/underlying objectives of the development standard and the broader planning and zoning objectives.

The design and siting of the proposal minimises adverse impacts that may arise from the proposed additional building height of the proposal. The non-compliance in building height does not result in any significant or unreasonable amenity impacts to the neighbouring property or any significant adverse impact in relation to visual amenity. The proposal provides for an appropriate form of development, and will make a positive contribution to the visual amenity and character of the surrounding residential locality.

It is considered that this objection is well founded in that the aims of the Policy are better served by allowing the development standard to be varied given the resulting development achieves the objects of the Act. Furthermore, the proposal, notwithstanding its non-compliance with the maximum building height development standard, is consistent with the development standard objectives as well as the zone objectives.

As outlined above, it is considered that compliance with the maximum building height development standard is unreasonable and unnecessary in the circumstances of this case and refusal of the development application as a result of the proposed non-compliance with the maximum building height development standard is not warranted.

**APPENDIX C – CLAUSE 4.6 OF ROCKDALE LEP 2011: EXCEPTIONS
TO DEVELOPMENT STANDARDS – FSR VARIATION**

FOR A PROPOSED RESIDENTIAL FLAT BUILDING

AT

109 THE GRAND PARADE BRIGHTON

**CLAUSE 4.4(2) OF ROCKDALE LOCAL ENVIRONMENTAL PLAN 2011 –
FLOOR SPACE RATIO**

1. Introduction

This written Clause 4.6 variation request accompanies a Development Application (DA) submitted to Rockdale City Council for a proposed residential flat building. The subject site is legally described as SP 1727 and is known as No 109-110 The Grand Pde, Brighton-Le-Sands.

Approval is sought for the following:-

- Demolition of the existing dwellings and associated structures on the site; and
- Construction of a five (4) storey residential flat building with basement parking comprising the following:-
 - Basement levels – 20 car parking spaces (including 3 disabled spaces) comprising 17 residential spaces, 3 visitor parking spaces with 1 as a car wash bay, motorcycle parking, bicycle parking, storage areas and lift access are proposed across two (2) levels of basement (basement 1 and basement 2);
 - Ground floor – comprising one x 3 bedroom, one x 2 bedroom and one x 1 bedroom units and their associated terrace areas as well as a bin storage area and ramp in the front area of the site;
 - Level 1 - comprising one x 3 bedroom, one x 2 bedroom and one x 1 bedroom units and their associated terrace areas;
 - Level 2 - comprising one x 3 bedroom, one x 2 bedroom and one x 1 bedroom units and their associated terrace areas; and
 - Level 3 - comprising two x 3 bedroom units and their associated terrace areas.

2. Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the *Rockdale Local Environmental Plan 2011* (“RLEP 2011”) aims to provide an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances (Clause 4.6(1)).

Clause 4.6 Exceptions to development standards states:-

- (9) *The objectives of this clause are as follows:*
- (c) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (d) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (10) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (11) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (c) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

- (d) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (12) *Development consent must not be granted for development that contravenes a development standard unless:*
- (c) *the consent authority is satisfied that:*
 - iii) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - iv) *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*
 - (d) *the concurrence of the Secretary has been obtained.*
- (13) *In deciding whether to grant concurrence, the Secretary must consider:*
- (d) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (e) *the public benefit of maintaining the development standard, and*
 - (f) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (14) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
- (c) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (d) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note.** *When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition, R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.*
- (15) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (16) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (d) *a development standard for complying development,*
 - (e) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (f) *clause 5.4,*
 - (ca) *clause 4.3 (2A), 4.4 (2A), (2B), (2C) or (2D), unless it is for a demonstrable public benefit, such as the provision of pedestrian links,*
 - (cb) *clause 4.3A.*

Development consent may, subject to Clause 4.6(2), be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause. Clauses 4.6(6) and (8) do not specifically exclude the development standard at Clause 4.4(2) of the RLEP 2011. Accordingly, this development standard can be varied to allow the proposal. Clause 4.6(7) and (8) do not require any further consideration in this variation.

A written request from the applicant that seeks to justify the contravention of the development standard is required before development consent can be granted, demonstrating the following (Cl 4.6((3)):-

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

These matters are considered in Section 7 of this submission.

Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), the proposed development will be in the public interest (proposal is consistent with the zone and development standard objectives) and the concurrence of the Secretary has been obtained (Cl 4.6(4)).

These matters are considered in Section 7 below.

The 'five part test'

The long-standing 5 part test was set out in *Winten Property v North Sydney* (2001) 130 LGERA 79 for SEPP 1 objections (the relevant requirement at the time) as:

6. *Is the planning control in question a development standard?*
7. *If so, what is the underlying object or purpose of the standard?*
8. *Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979?*
9. *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (A related question is: would a development which complies with the standard be unreasonable or unnecessary?)*
10. *Is the objection well founded?*

Webbe v Pittwater Council [2007] NSW LEC 827 shed light on this test for the assessment of a SEPP 1 objection with *Chief Justice* Preston in his reconsideration, setting out a new 5 part test and rephrased the assessment process as follows:

4. *The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
5. *The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and*
6. *It is also important to consider:*
 - c. *whether non-compliance with the development standard raises any matter of significance for State or regional planning; and*
 - d. *the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

Preston CJ then stated that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

6. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
7. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
8. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
9. *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;*
10. *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.*

In *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90, and the subsequent appeal against the Commissioner's decision, it was established that the key elements which are required to be addressed in any Clause 4.6 written request, in order to satisfy the tests contained in clause 4.6, are:

- (d) *Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*
- (e) *Clause 4.6(3)(b) - Are there are sufficient environmental planning grounds to justify contravening the development standard?*
- (f) *Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest? – is it consistent with the objectives of the development standard and the objectives of the particular zone?*

The Commissioner found that consistency with the objectives is required elsewhere (by Clause 4.6(4)(a)(ii)) and accordingly, could not be relied upon to satisfy the test in clause 4.6(3)(a). The Commissioner found that additional considerations are required in order to establish that compliance would be unreasonable or unnecessary.

The environmental planning grounds relied upon to justify the contravention of the standard must be “*particular to the proposed development on the site*”. That is, the environmental planning grounds relied upon cannot be benefits which apply to any development of the site or surrounding sites which would provide the same outcome. In the Commissioner's view, environmental planning grounds which were not particular to a site were not sufficient to justify the contravention of the standard.

Four2Five Pty Limited has established that although the first test in *Webbe v Pittwater Council* [2007] NSWLEC 827 remains a relevant consideration, it can no longer be the only basis upon which an applicant submits that compliance is unreasonable or unnecessary. Something additional needs to be established. The Court of Appeal decision has confirmed that the other *Webbe* tests (2 to 5) may still be applied and relied upon.

These matters are considered in Section 7 below.

3. The Development Standard to be varied

Clause 4.4(2) of the RLEP 2011 states the following:-

“The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map”.

The maximum FSR for the subject site pursuant to the Floor Space Ratio Map is 1:1 or 847.4m² as illustrated in **Figure 1**.

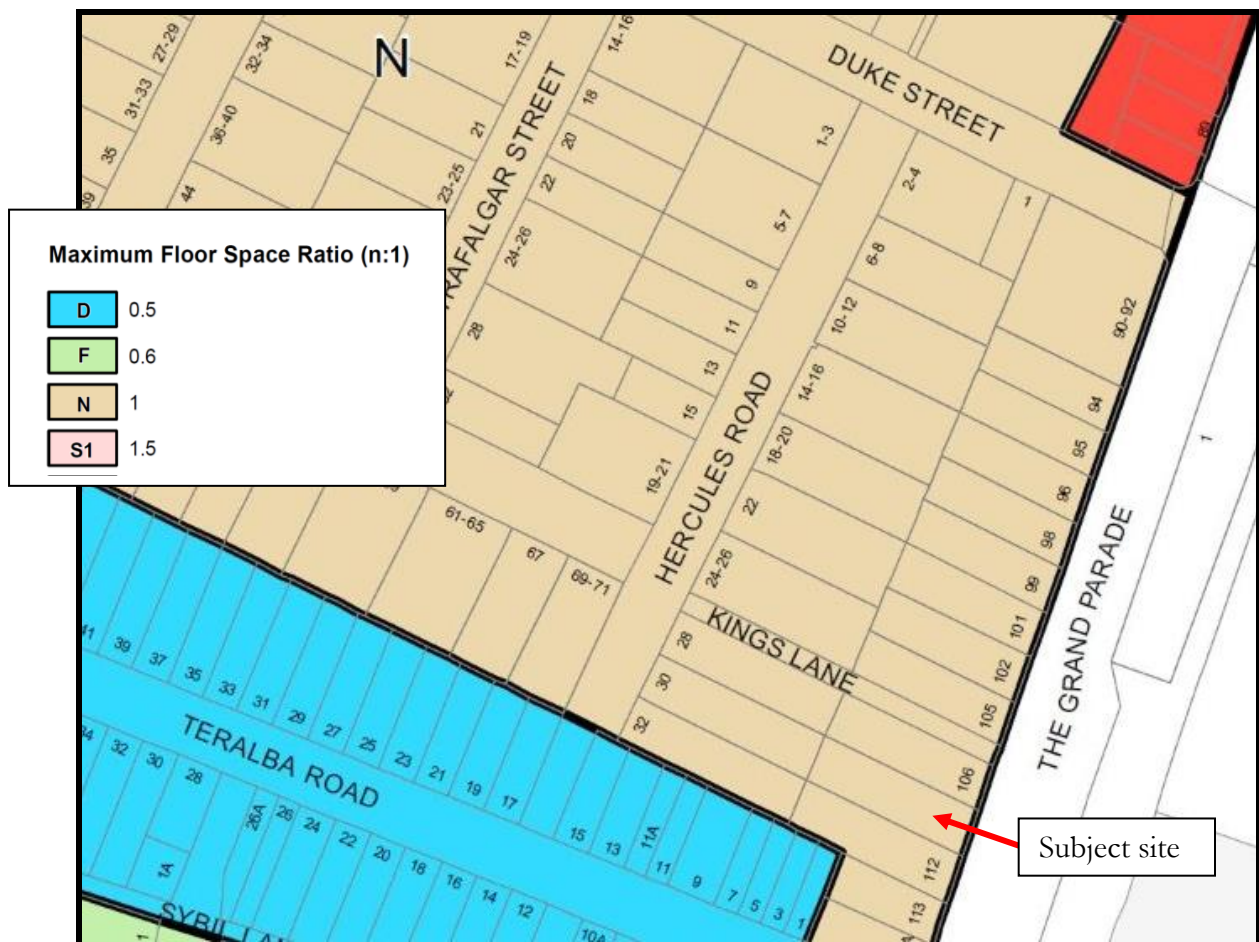


FIGURE 1: FSR MAP (SOURCE: WWW.LEGSLAITON.NSW.GOV.AU)

4. Extent of Variation to the Development Standard

The proposed development involves a gross floor area of 871m² on a site with a total area of 847.4m², resulting in an overall FSR of 1.02:1. Therefore, the proposal exceeds the maximum FSR development standard by 24m² representing a 2.8% variation to the development standard contained in Clause 4.4(2) of the RLEP 2011. This variation is outlined in Table 2 of the Statement of Environmental Effects (“SEE”).

5. Objectives of the Development Standard

The objectives of the FSR development standard, pursuant to Clause 4.4(1) of the RLEP 2011, state:-

- (a) to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale,
- (b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties,
- (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation.

6. Objectives of the Zone

The objectives of the R4 High Density Residential zone pursuant to Clause 2.3 of the RLEP 2011 are:-

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

7. Assessment

Pursuant to Clause 4.6 and following the *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90 decision outlined above, the following matters are required to be considered in this assessment:-

- (d) Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?
- (e) Clause 4.6(3)(b) - Are there are sufficient environmental planning grounds to justify contravening the development standard?
- (f) Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest. – is it consistent with the objectives of the standard and zone as set out above.

These matters are considered below.

7.1 Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

It is considered that the development standard is unreasonable and unnecessary in the circumstances of this case as a better planning outcome is provided by varying the standard in this instance.

The non-complying FSR of the proposed building largely results from the open foyers on Level 3 and Level 2. This additional FSR allows for greater apartment sizes within the development and a greater housing choice on the site on an isolated site which is a better planning outcome. This development allows for a better planning outcome on the site than if smaller units and less housing choice was only provided.

The proposed non-compliance is also considered to have minimal impacts on the amenity of adjoining properties given there are no unreasonable impacts on views, privacy or overshadowing arising from the additional FSR. The proposal is largely orientated to the street and rear communal open space and away from the adjoining properties, reducing overlooking opportunities, while the shadow cast arises mainly from the building itself and not the additional FSR. This increased shadow would be minimal.

The proposal will have minimal impact on the streetscape given any potential visual impact arising from the proposal and its additional FSR above the standard is minimised by, among other things, the proposed building articulation and architectural detailing proposed for the built form on the site. This building design and articulation allows the additional FSR within the built form to be broken up to reduce bulk and scale over the FSR limit. This assists in reducing the potential visual impact of the proposal when viewed from adjoining properties and the street. The design of the development is illustrated in **Figure 2**.



FIGURE 2: PROPOSED DEVELOPMENT

(Source: Resolut Building Solutions, September 2016)

The proposal, with the additional FSR, is consistent with the desired future character of the area and is consistent with other buildings in the vicinity including buildings at 94, 117 and 122 The Grand Parade Brighton as illustrated in **Figure 3**. Requiring compliance with this development standard would therefore prevent a building that does not adversely affect the amenity of the existing adjoining residential development from being achieved on the subject site.

The additional building FSR is also considered to result in no adverse environmental impact. It is also considered that the additional building height of does not raise any matters of state or regional planning significance.

The proposal is considered to be a better planning outcome on the site as the proposed development allows for the provision of a variety of unit sizes within a well-designed development which generally complies with the requirements of the ADG. The proposed variation will ensure a more efficient use of the subject site. The units will achieve a high standard of accommodation given it generally exceeds the minimum area requirements, achieves sufficient ventilation and solar access and provides private open space areas for the enjoyment of future occupants.

The proposal seeks to increase the available floor space of the built form which is located in a convenient location close to various uses and bus services which is a preferred planning outcome given greater housing choice is provided. Overall the variation with the FSR standard allows for a better planning outcome while it minimises the impacts to the surrounding properties and ensures an appropriate bulk and scale transition along The Grand Parade.



Figure 3: Developments at No 94, 122-123 & 117-118 along The Grand Parade

Accordingly, it is considered that the development standard is unreasonable and unnecessary in the circumstances of this case for the reasons outlined above.

7.2 Clause 4.6(3)(b) - Are there are sufficient environmental planning grounds to justify contravening the development standard?

The subject site largely remains the only undeveloped or under-developed site in the street. The vast majority of the street consists of three to four storey residential flat buildings, with the exception of the subject site which remains as a small two storey multi-unit building.

In this respect, the subject site is, in effect, an isolated site. The adjoining sites comprise approximately 10 units (No 106) to 6 units (No 112) and are unlikely to be developed over more than their current area. By comparison, the subject site contains only four (4) units. Given the maximum building height and FSR controls allow for a much larger building than what is currently on the site, this results in the current use of the site not being the highest and best use of the site.

This isolated nature of the subject site results in sufficient environmental planning grounds being evident on the site to allow an exceedence of the FSR development standard which would better achieve the objects of the *Environmental Planning and Assessment Act 1979* (“EP&A Act”), including the orderly and economic development of land. These objects pursuant to Section 5 of the EP&A Act include:-

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

The proposal is considered to be consistent with the objects of the EP&A Act, in particular Section 5(a)(ii), despite this non-compliance, as the proposed development will allow for the promotion and co-ordination of the orderly and economic use and development of land by allowing additional housing opportunities on an isolated site for residential development. These objects would not be obtained if strict compliance with this development standard were required given the proposal would not be able to offer the larger apartment sizes, the variety of unit sizes and levels of accessibility without the additional FSR.

It is therefore considered that compliance with the maximum FSR development standard would be inconsistent with the aims of the Policy, in that requiring compliance with this development standard would hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act as outlined above.

This existing site constraint, being virtually the last remaining development site in the street, provides an opportunity unique to this site, to provide for a 11 unit development which generally complies with the minimum unit sizes under the ADG and provides for a high level of amenity with a variety of unit sizes. This unique site attribute represents sufficient environmental planning grounds to justify varying this development standard in this instance

given such a variation would allow for additional housing opportunities in a well serviced location on an isolated site.

Following *Four2Five Pty Limited*, it is clear that this environmental planning ground, in effect being an isolated site, is particular to the proposed development on this site and does not apply to the development of any surrounding sites which would provide the same outcome. That is, this is a large site in the context of the locality and presents a unique opportunity to provide additional housing in area which is close to the services of the Brighton town centre and other local facilities in a development which is compatible with existing development in the street.

The provision of additional FSR which does not comply with the development standard allows the proposal to achieve a greater housing choice and internal areas which reduces impacts to surrounding properties.

In the circumstances of this case, there are sufficient planning grounds to justify the maximum FSR development standard variation sought.

7.3 Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest? Is it consistent with the objectives of the standard and zone as set out above?

It is considered that the proposal is in the public interest given additional housing opportunities will be provided in close proximity to transport and services and within an accessible building. This will allow for the accommodation of a variety of households in terms of number of bedrooms as well as accessibility. The proposal, notwithstanding the non-compliance with the maximum FSR development standard, is consistent with the objectives of the development standard and the zone (outlined below).

This residential development provides for a high level of amenity and makes efficient use of the site area. The proposal results in an appropriate bulk and scale along The Grand Parade due to the design and location of other residential flat buildings of a similar size and scale. There is also a lack of amenity impacts which further demonstrates that the proposal and its associated FSR are in the public interest. The proposal is generally consistent with the remainder of the planning controls and therefore is in the public interest.

The proposal is considered to be consistent with the objectives of the FSR development standard as outlined above for the following reasons:-

- The proposal involves an amount of floor space that seeks to maximise the development density and intensity of the proposed land use on the site, given the availability of infrastructure in the area. The proposal is capable of distributing the traffic generated by it easily throughout the surrounding road network given the proximity of the arterial road along the front boundary of the site. In these ways, the proposal is consistent with Objective (a) for FSR;
- The proposal does not significantly adversely affect the amenity or enjoyment of the adjoining residential properties. There will be limited overlooking opportunities, there will be some overshadowing but will be within the planning controls and there will be no view loss arising from the additional floor space proposed on the subject site. In these ways, the proposal is consistent with Objective (b) for FSR;
- The proposal will maintain an appropriate visual relationship between new development and the existing character of the area due to the compatibility with other

development in the area to the north and south along The Grand Parade (No 94, 122-123 & 117-118) and will allow for an appropriate transition along the streetscape to the adjoining four (4) storey residential flat building to the south (No 112 The Grand Parade) of the subject site. This is illustrated in **Figure 3**. In these ways, the proposal is consistent with Objective (c) for FSR;

- The proposal provides a high quality urban form with an appropriate level of articulation and architectural detailing achieved through the use of a variety of materials and the design of the development with changes in building alignment and use of building recesses.
- The proposal with its increased floor space, does not adversely affect the environment as there are minimal trees to be removed, there is limited landform change and landscaping is proposed to soften the development and provide stormwater benefits.

The proposal is considered to be consistent with the objectives of the R4 Zone as outlined above for the following reasons:-

- The proposal provides for the housing needs of the community in a high density environment.
- The proposal provides a variety of housing types in that there are one, two and three bedroom units proposed as well as an adaptable dwelling and accessibility throughout the proposed development. The provision of ground floor as well as upper level units allows for a variety of households to be accommodated including single person households through to families requiring ground floor with larger terrace areas.
- The proposal provides for landscaping opportunities which will assist in minimising runoff and providing an aesthetically pleasing development when viewed from the street and outdoor open space areas.

The proposal is therefore considered to be consistent with the objectives of the development standard for FSR and the objectives of the zone as outlined above, despite the non-compliance, which is consistent with the first *Webb* test.

8. Conclusion

While the proposed development does not strictly comply with the floor space ratio development standard in Clause 4.4(2) of the Rockdale LEP 2011, it nevertheless satisfies the stated/underlying objectives of the development standard and the broader planning and zoning objectives.

The design and siting of the proposal minimises adverse impacts that may arise from the proposed additional floor space of the proposal. The non-compliance in floor space ratio does not result in any significant or unreasonable amenity impacts to the neighbouring property or any significant adverse impact in relation to visual amenity. The proposal provides for an appropriate form of development, and will make a positive contribution to the visual amenity and character of the surrounding residential locality.

It is considered that this objection is well founded in that the aims of the Policy are better served by allowing the development standard to be varied given the resulting development achieves the objects of the Act. Furthermore, the proposal, notwithstanding its non-compliance with the floor

space ratio development standard, is consistent with the development standard objectives as well as the zone objectives.

As outlined above, it is considered that compliance with the floor space ratio development standard is unreasonable and unnecessary in the circumstances of this case and refusal of the development application as a result of the proposed non-compliance with the floor space ratio development standard is not warranted.

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ADDITIONAL PLANNING JUSTIFICATION FOR CL 5.6 ARCHITECTURAL ROOF FEATURE ROCKDALE LEP 2011

109 THE GRAND PARADE BRIGHTON-LE-SANDS 2216

DEMOLITION OF EXISTING AND CONSTRUCTION OF FOUR STOREY RESIDENTIAL
FLAT BUILDING AND ASSOCIATED WORKS



Source: Google Earth 2017

PROJECT DETAILS

Legal Description	SP1727	Property Address	109 The Grand Parade Brighton Le Sands NSW 2216
Project Reference	225-17		
Date	08/05/17	Revision	A
Client	Resolut Building Solutions	Land Owner	

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PROPOSAL

The proposal seeks development consent for demolition of existing and construction of four storey residential flat building comprising of fourteen units on land known as 109 The Grand Parade Brighton-Le-Sands NSW 2216.

Additional planning justification has been provided as per below in relation to the proposed architectural roof feature which is considered to comprise of an roof structure above the roof top communal open space for the front eastern portion of the building. This element of the proposal has been considered against the relevant objectives and clauses under LEP template standard clause contained within Section 5.6 Architectural Roof Features of the Rockdale Local Environmental Plan 2011.

5.6 Architectural roof features

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

(a) *to permit variations to maximum building height standards for roof features of visual interest,*

Comment: The proposed roof structure exceeds the height of building maximum prescribed by the Rockdale Local Environmental Plan 2011 as 14.5m. This element of the proposal seeks a maximum height limit of RL 21.1 which thereby exceeds the height limit by between 300 and 450mm. The proposal seeks a permitted variation on the basis of visual interest which is considered to be acceptable for the reasons contained within below;

- The proposal seeks a minor decorative roof feature which is both decorative and functional whereby the design of the roof is carried through the formwork along the northern and southern side elevations which wrap around the front portion of the building windows and front balconies through from the ground floor to the roof top floor. This essentially reads as one combined integrated design adding character and differentiation between that of other built forms within the visual catchment. This reads as an integrated aspect of the development reading up down and vice versa.
- The design of the roof structure is cantilevered at the rear following the zig-zag wrap around pattern of the remainder of the formwork below. This element does not form a basic structure i.e. roof with four supporting columns. This also contains two privacy screens along the northern and southern side elevations which are off-set from the privacy screens below on levels 1-3. This alternation in design elements with the use of the roof and privacy screens play on the visual interest and using differentiation to add character.
- The design of the built form has been modified from the original proposal which is now reduced in depth by 2.5m. This setback is recessed from the front façade and planter box and visually presents as a stepped subservient element of the proposal. The built form is linear and sleek which appears visually light weighted when compared to the solid walls elements of the remainder of the building.
- The colour tone of the built form has been modified from the original proposal from a visually striking yellow to a contemporary black. This contemporary colour tone is considered to be less visually distinguishable. The roof profile has been reduced in thickness to a more slender dimension, this is considered to result in a less visually imposing element of the proposal.

- The rationale of the roof structure was form an integrated design rather than a “add-on” addition with no relationship to the remainder of the building. The design of the roof structure adopts a contemporary tone and uses similar and compatible lines (being horizontal) also used for the vertical privacy screens (vertical) along the side elevations for units on level 1 – 3. This assists in shaping and containing the building mass along the horizontal and vertical planes without appearing heavy.
- The roof structure is open and is not closed. This therefore acts primarily as an architectural feature with some functionality in providing some weather protection from the elements in relation to sun and rain for the common open space. This is considered to be different to that of a fully roofed structure of which the primary purpose is to provide weather protection.
- The roof structure has been reduced in height by 400mm and is 400mm below the maximum height of the lift overrun. This is considered to result in this element of the proposal being appropriately integrated into the remainder of the proposal. As a whole, roof structure occupies approximately one-third of the building footprint which is considered to be reasonable and not overly excessive.

(b) to ensure that roof features are decorative elements and that the majority of the roof is contained within the maximum building height standard.

Comment: The majority of the roof is contained within the prescribed 14.5m maximum building height limit. The extent for the variation relates to the front portion of the building only. A separate clause 4.6 Variation accompanies the development application in relation to height exceedance of the lift overrun.

(2) Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.

Comment: The proposal seeks development consent for an architectural roof feature that exceeds the height of buildings.

(3) Development consent must not be granted to any such development unless the consent authority is satisfied that:

(a) the architectural roof feature:

(i) comprises a decorative element on the uppermost portion of a building, and

Comment: The extent of the variation is an architectural roof feature. The extent of the variation is considered to be located at the upper most portion of the building with the exception of the lift overrun which is slightly higher at + 400mm. This is considered to be visually apparent when viewed from the public domain at street level.

(ii) is not an advertising structure, and

Comment: The element of the proposal is not an advertising structure.

(iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and

Comment: The roof structure is not enclosed and does not have any solid walls enclosing the area below. The proposal does seek two minor privacy screens along the northern and southern side elevations however these elements are minor and do not run the length of the

sides. This is an open structure and is not capable of being converted to floor space area nor is the design intention.

(iv) will cause minimal overshadowing, and

Comment: The proposed roof structure has been reduced in depth from the original proposal as also has reduced the thickness of the open roof element. This acts as somewhat semi filtered and not solid for the purposes of overshadowing consideration. Given the east-west orientation of the site, the additional filtered overshadowing impact is negligible as during Winter Solstice the shadow falls to the south; being to the rear of 112 The Grand Parade at 9.00am, the middle of that adjoining building at 12.00pm and onto that adjoining front setback and road at 3.00pm.

(b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.

Comment: The extent of the variation does not comprise of plant, lift motor rooms, fire stairs or the like.

For the reasons above, it is respectfully requested that Bayside Council as the consent authority considers the roof structure on its merits as an architectural feature. The roof structure is well designed and integrated into the remainder of the building and is not considered to unreasonably offend the objectives or intent of the controls contained within this subsection.

Kind regards,

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