
Bayside Planning Panel

27/03/2018

Item No	6.5
Application Type	Section 96 Application – Residential Flat Building
Application Number	DA-2013/56/03
Lodgement Date	24 November 2017
Property	13A Church Avenue, Mascot Lot 1 in DP 547700
Owner	A & S & S Mohebbaty
Applicant	A & S & S Mohebbaty
Proposal	Section 96(2) Application to modify Development Consent No. 13/56 to increase and alter the design of the building in respect of apartment size, car parking, and unit mix, to increase FSR and height, review Section 94 contribution and deletion of level 3 basement.
No. of Submissions	6 (six) objections
Cost of Development	N/A
Report by	Olivia Yana, Acting Senior Development Assessment Planner

Officer Recommendation

- 1 That Development Application No. 2013/56/03 for Section 96(2) Application to modify Development Consent No. 2013/56 to increase and alter the design of the building in respect of apartment size, car parking, and unit mix, to increase FSR and height, review Section 94 contribution and deletion of level 3 basement at 13A Church Avenue, Mascot be REFUSED pursuant to Section 80(1)(B) of the Environmental Planning and Assessment Act 1979 for the following reasons:
 - a. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to satisfy the aims of Botany Bay Local Environmental Plan 2013, as the proposal fails to create a highly liveable urban place through the promotion of design excellence in all elements of the built environment and public domain and fails to protect residential amenity.
 - b. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal does not meet the objectives of Clause 4.3 Height of Buildings in Botany Bay Local Environmental Plan 2013, as the proposed increase in height will result in adverse visual impact and disruption of views.
 - c. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to fulfil the design quality principles of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development in terms of built form and scale, density, sustainability and amenity.

- d. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the excessive form of development is inconsistent with the maximum floor space ratio control and does not meet the objectives of Clause 4.4 Floor Space Ratio in Botany Bay Local Environmental Plan 2013 in that the proposed increase in floor space ratio will result in building form that is not compatible with the bulk and scale of the existing and desired future character of the locality, will adversely affect the streetscape when viewed from the public domain, and will not minimise adverse environmental effects on the use of enjoyment of adjoining properties and the public domain.
- e. Pursuant to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to comply with the objectives and controls of Botany Bay Development Control Plan 2013, including:
 - i. Part 4C.2.2 – Streetscape Presentation;
 - ii. Part 4C.2.3 – Height;
 - iii. Part 4C.2.5 – Open Space;
 - iv. Part 4C.4.1 – Dwelling Mix and Layout; and
 - v. Part 4C.4.4 – Views.
- f. Pursuant to Section 79C(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposal will result in a form of development entirely inconsistent with the context, scale, built form and density of the surrounding land and will adversely compromise the future development of Mascot Station Town Centre Precinct and its ability to respond to the emerging character of the locality.
- g. Having regard 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 proposed Section 96(2) modification application is not in the public interest.

2 That the objectors are advised of Councils decision.

Attachments

- 1 Planning Assessment Report
 - 2 Statement of Environmental Effects
 - 3 Architectural Plans
 - 4 Schedule of Materials and Finishes
 - 5 View Sharing Letter
 - 6 View Sharing Analysis
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Location Plan

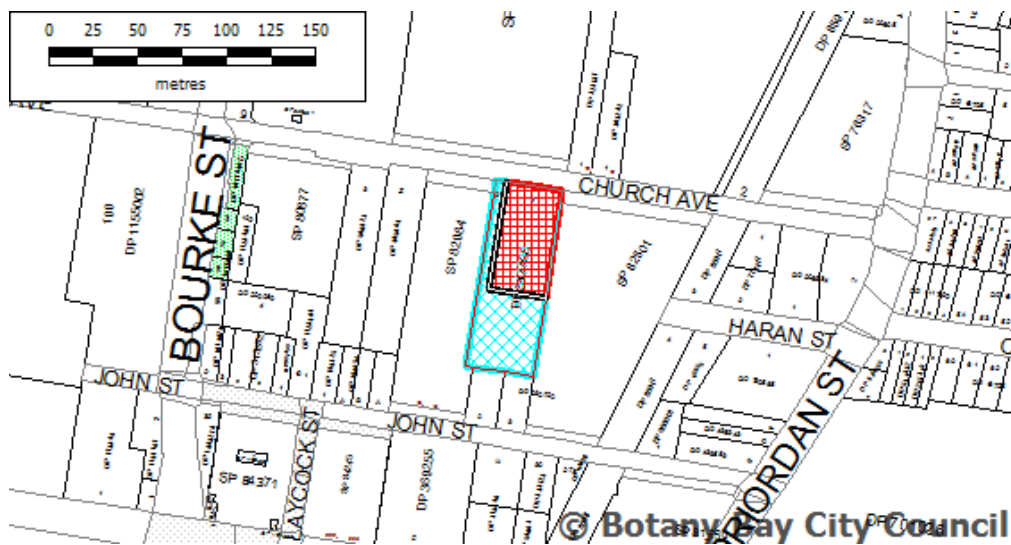


Figure 1: Locality Plan

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	2013/56/03
Date of Receipt:	24 November 2017
Property:	13A Church Street, Mascot Lot 1 in DP 547700
Owners:	A & S & S Mohebbaty
Applicant:	A & S & S Mohebbaty
Proposal:	Section 96(2) Application to modify Development Consent No. 13/56 to increase and alter the design of the building in respect of apartment size, car parking, and unit mix, to increase FSR and height, review Section 94 contribution and deletion of level 3 basement.
Recommendation:	Refusal
Value:	N/A
No. of submissions:	Six (6) objections
Author:	Olivia Yana, Acting Senior Development Assessment Planner
Date of Report:	1 March 2018

Key Issues

The former City of Botany Bay Council received Development Application No. 2013/56 on 28 March 2013 for the redevelopment of the site being the demolition of the existing building and the construction of multi-unit building comprising 80 units and 3 basement levels car parking for 138 vehicles, and new landscaping works at 13A Church Avenue, Mascot. This was approved by Council on 4 June 2014.

A Section 96(1) Application was received by Council on 18 June 2014. The Application sought consent to modify Development Consent No. 2013/56 by amending Condition 1 to reflect the correct issue number of the Architectural Plans, maximum height of the development, and to amend the description to include the number of units approved. This was approved by Council on 1 July 2014.

The subject Section 96(2) Application No. 2013/56/03 was received on 24 November 2017 seeking consent to modify Development Consent No. 13/56 to increase the number of residential apartments from 80 to 103 units, to delete basement car parking (Level 3) that reduces the number of parking from 138 spaces to 110 spaces to align with the Apartment Design Guide, increase FSR and height of the building by 2.7 metres, review of Section 94 contribution and numerous modifications to conditions for the approved development at 13A Church Avenue, Mascot.

The application was placed on public exhibition period from 20 December 2017 to 15 January 2018. Six (6) objections were received during the notification period and have been discussed below.

The proposed modifications will result in the increase of FSR and height for an approved 13 storey residential flat building. The massing of additional GFA however fails to be distributed within the approved building footprint, as the application has not taken into consideration the additional GFA from the surplus car parking. Despite proposing a compliant height, the additional 2.7 metres of height raises concerns relating to adverse impacts to the streetscape and surrounding development including view loss.

Given the extent of impact from the proposed development, the proposed modification to Development Consent No. 2013/56 to increase the number of residential apartments from 80 to 103 units, to delete basement car parking (Level 3) that reduces the number of parking from 138 spaces to 110 spaces to align with the Apartment Design Guide, increase FSR and height, and numerous modifications to conditions for the approved development at 13A Church Avenue, Mascot cannot be supported and the proposal is recommended for REFUSAL.

Recommendation

It is RECOMMENDED that the Bayside Planning Panel, resolve:

1. That Development Application No. 2013/56/03 for Section 96(2) Application to modify Development Consent No. 2013/56 to increase and alter the design of the building in respect of apartment size, car parking, and unit mix, to increase FSR and height, review Section 94 contribution and deletion of level 3 basement at 13A Church Avenue, Mascot be REFUSED pursuant to Section 80(1)(B) of the Environmental Planning and Assessment Act 1979 for the following reasons:
 - a) Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to satisfy the aims of Botany Bay Local Environmental Plan 2013, as the proposal fails to create a highly liveable urban place through the promotion of design excellence in all elements of the built environment and public domain and fails to protect residential amenity.
 - b) Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal does not meet the objectives of Clause 4.3 Height of Buildings in Botany Bay Local Environmental Plan 2013, as the proposed increase in height will result in adverse visual impact and disruption of views.
 - c) Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to fulfil the design quality principles of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development in terms of built form and scale, density, sustainability and amenity.
 - d) Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the excessive form of development is inconsistent with the maximum floor space ratio control and does not meet the objectives of Clause 4.4 Floor Space Ratio in Botany Bay Local Environmental Plan 2013 in that the proposed increase in floor space ratio will result in building form that is

not compatible with the bulk and scale of the existing and desired future character of the locality, will adversely affect the streetscape when viewed from the public domain, and will not minimise adverse environmental effects on the use of enjoyment of adjoining properties and the public domain.

- e) Pursuant to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to comply with the objectives and controls of Botany Bay Development Control Plan 2013, including:
 - i. Part 4C.2.2 – Streetscape Presentation;
 - ii. Part 4C.2.3 – Height;
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 - v. Part 4C.4.4 – Views.
- f) Pursuant to Section 79C(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposal will result in a form of development entirely inconsistent with the context, scale, built form and density of the surrounding land and will adversely compromise the future development of Mascot Station Town Centre Precinct and its ability to respond to the emerging character of the locality.
- g) Having regard 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 proposed Section 96(2) modification application is not in the public interest.

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

Background

History

Approved Development

In its approved form, the development included:

- Demolition of the existing structures on site and construction of a 12 storey residential flat building comprising 80 units, 3 levels basement car parking for 138 car parking spaces, vehicular access via Right of Way from Church Avenue, and associated landscaping.
- The development approved 80 units which comprise of the following:
 - 12 x Studio units
 - 26 x One bedroom units
 - 41 x Two bedroom units
 - 1 x Three bedroom units
- The approved 138 car parking spaces are allocated in the following manner:
 - Studio units: 12 car spaces
 - One bedroom units: 26 car spaces
 - Two bedroom units: 84 car spaces

- Three bedroom units: 2 spaces
- Visitor spaces: 16 car spaces

The following table was the key controls assessed under the original DA that are relevant to the proposal:

Control	Required	Approved
Site Area	N/A	2005.4m ²
FSR	2:1 (GFA = 4010.8m ²) Under BBLEP 1995 and 3.2:1 (GFA = 6417.28m ²) Under BBLEP 2013	4.24:1 (GFA = 8493m ²) 3.79:1 (GFA = 7604.63m ²) – including lobby area
Height	44 metres (maximum)	39.8 metres Although the architectural plans indicate maximum height of RL 48.14 AHD, the approved height is actually RL46.94m AHD, including the height of lift over run.
Site Coverage	45% (902.43m ²) under BBDCP 2013	1359.8m ² (67%) – excluding basement 1640.9m ² - including basement
Car Parking	1 space/studio or one bedroom dwelling (38 required); 2 spaces/ two (2) or more bedrooms dwelling (84 required); 1 designated visitor space/ 7 dwellings (12 required) Required: 134 spaces	138 spaces provided (approved with 4 surplus car spaces)
Landscaped Area	Deep soil area not provided due to the water table.	Approved public domain works.

Control	Required	Approved
Communal Open Space	20%	22% (441.18m ²)
Building Separation	<p><u>One to four storeys/<12m:</u></p> <p>12 metres between habitable rooms</p> <p>9 metres between habitable/balconies and non-habitable rooms</p> <p>6 metres between non-habitable rooms</p> <p><u>Five to eight storeys/up to 25m height:</u></p> <p>18 metres between habitable rooms</p> <p>13 metres between habitable/balconies and non-habitable rooms</p> <p>9 metres between non-habitable rooms</p> <p><u>Nine storeys +/>25m height:</u></p> <p>24m between habitable rooms/balconies</p> <p>18m between habitable/balconies and non-habitable rooms</p> <p>12m between non-habitable rooms</p>	Privacy louvres approved for non-compliant building separation.
Unit Mix	Total number of studio/one bedroom = Maximum 35%	47.5% - as market research demonstrates demand for 1 bedroom apartments

The following montages and plans demonstrate the approved proposal.



Figure 1. View from Church Avenue



Figure 2. Approved Elevations

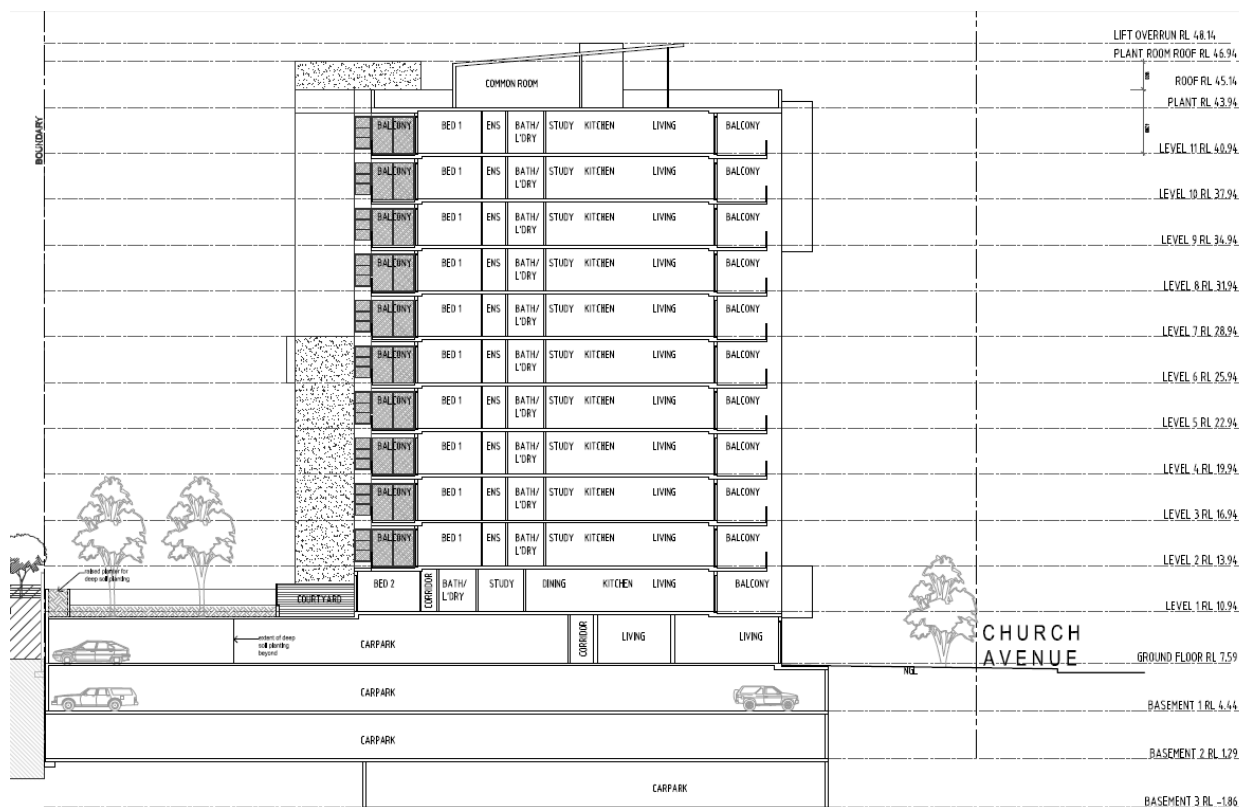


Figure 3. Approved Section

Note: Despite the RL indicated on the plans, the approved building height under DA-2013/56 is RL 46.94 AHD.

Description of the Proposed S96 Modifications

The Section 96(2) modification application was received on 24 November 2017 and seeks to modify Development Consent No. 2013/56 in the following manner:

- Changes to the building footprint;
- Increase overall building height by 2.7 metres from RL 46.94 AHD (39.8 metres) to RL 49.64 AHD (42.5 metres) measured to the top of the lift over run;
- Reconfiguration of unit layouts and modify unit mix by increasing number of units from 80 to 103, including an additional 3 bedroom unit on the roof top;
- Increase the size of communal room on the roof top;
- Delete basement (Level 3) and reduce the number of car parking spaces from 138 to 110;
- Increase all floor levels including ground floor level from RL 7.44 AHD to RL 7.59 AHD, floor to ceiling height of the ground floor from 3.35 metres to 3.5 metres, and floor to ceiling height of typical floor level from 3 metres to 3.1 metres. The floor level increases consequently raises the building height as measured to the roof top floor level by 1.1 metres from RL 43.94 AHD to RL 45.04 AHD;
- Delete condition requiring roof mounted solar collector on the roof top, which was required for hot water to the units;
- Increase height of lift over run from 3 metres to 4.6 metres;
- Review Section 94 contribution;
- Amend various conditions to reflect proposed modifications; and
- External façade changes, including modification to the approved colours and materials.

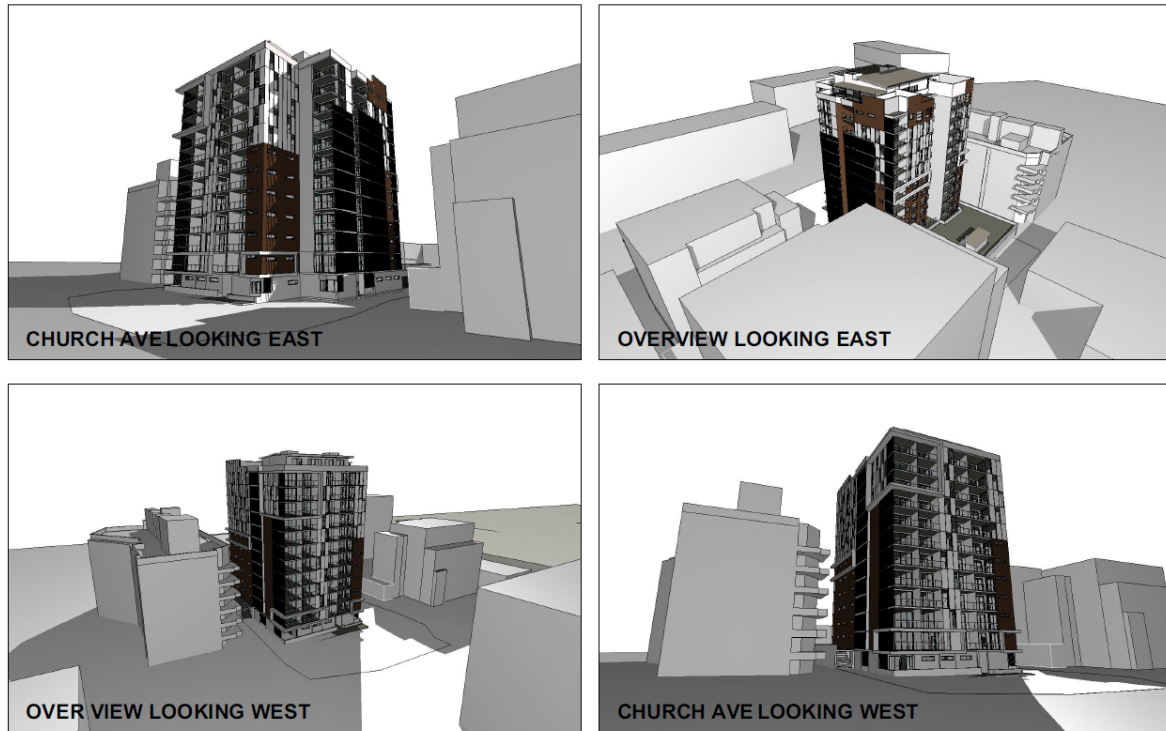


Figure 4. Proposed Modifications

In greater detail, the amended proposal includes the following:

Control	Approved Proposal	Amended Proposal
FSR (3.2:1)	3.79:1	3.9:1
BBLEP 2013	(7604.63m ²)	(7822.28m ²) – including storage on ground floor level, or 3.99:1 (8003.72m ²) – including surplus car parking of 14 spaces, or 4.07:1 (8172.2m ²) – including surplus car parking of 27 spaces
Building height (44m max)	RL 46.94 AHD	RL 49.64 AHD
BBLEP 2013	(39.8 metres)	(42.5 metres)
Parking spaces	138	110
Number of units	80	103
Unit mix	12 x Studio units 26 x One bedroom units	22 x Studio units 22 x One bedroom units

	41 x Two bedroom units 1 x Three bedroom units	56 x Two bedroom units 3 x Three bedroom units
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Site Description

The subject site is located on the southern side of Church Avenue between O’Riordan Street to the east and Bourke Street to the west. The subject site is a rectangular shaped allotment with an area of 2005.4m² and has a 32.765 metres frontage to Church Avenue. The rear boundary has a length of 33 metres, the eastern side boundary is 60.96 metres and the western side boundary is 61.01 metres. The site is flat and contains little vegetation.

The site is encumbered by a right of way approximately 6.705 metres along the western boundary rising to 12.19 metres in width along the northern boundary (Church Avenue). The right of way benefits No. 13B Church Avenue to the south of the site and Nos. 19-21 John Street to the west.

The site is located within B4 Mixed Use zone and currently contains a brick industrial building with a metal roof, with car parking on site external to the building for approximately 23 vehicles.

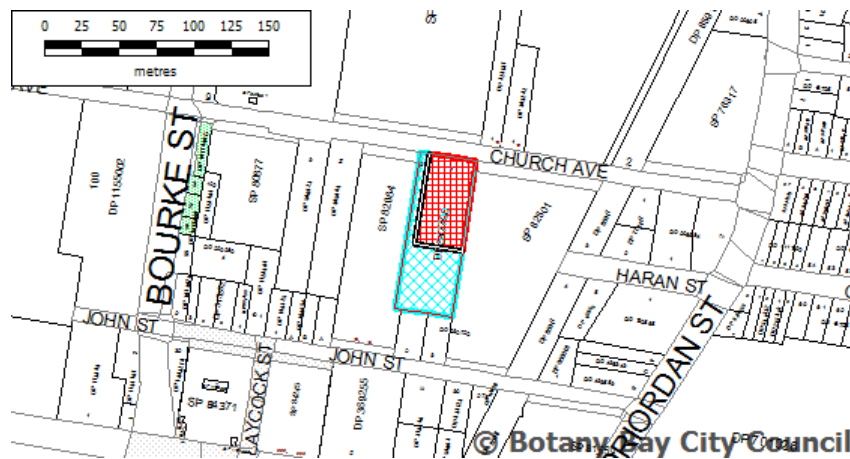


Figure 5. Locality Plan



Figure 6. Front elevation of subject site

To the north, east and west of the site are recently constructed mixed-use developments comprising commercial offices on the ground floor and residential dwellings above. The immediate adjoining premises to the west (10-14 John Street) is occupied by a six storey mixed residential and commercial development having frontage to both Church Avenue and John Street. The immediate adjoining property to the east (3-9 Church Avenue) comprises of the Rina Apartments which consist of three residential flat buildings which have a maximum height of eight storeys. To the immediate south of the site is a landlocked property known as 13B Church Avenue, which currently comprises a similar industrial building than that which now exists at the subject site, and is accessed via the right of way. To the immediate north across of Church Avenue is 635 Gardeners Road, a dual frontages five storey mixed development with commercial on the ground floor and residential flat building above. Further east of the site is Linear Park, which runs diagonally from the northern to southern side of the block and is in line with the Southern Western Suburbs Ocean Outfall Sewer (SWSOOS).

The subject site is located within the Mascot Station Town Centre Precinct, which is centred on Mascot Railway Station to the west. The precinct is located in close proximity to major regional road networks and Port Botany and situated approximately 1km from Sydney Domestic Airport Terminal and 3km from Sydney International Airport Terminal. As such, the site has excellent accessibility to major transport and employment opportunities. This area has been earmarked for future population and employment growth in State and Local planning strategies and has been identified as a future town centre in the Metropolitan Plan for Sydney.

Due to the past industrial uses of the majority of the land in the locality, land in the area is susceptible to contamination, resulting in the majority of sites requiring some level of remediation. In addition, shallow groundwater is present in this locality. These two factors alone contribute to the high cost associated with development in the locality.

The site is situated within the Mascot Station Town Centre Precinct, Urban Block 4, which is bounded by Gardeners Road to the north, O'Riordan Street to the east, Coward Street to the south and Bourke Street to the west. The precinct is comprised of a number of sites that have already been redeveloped or are currently at various stages of the construction process. The subject site is one of the few remaining undeveloped sites in the precinct.



Figure 7. Adjoining property at 3-9 Church Avenue

Assessment of the Proposed S96 Modifications

Additional Units

The approved unit sizes and apartment layouts were compliant with the larger DCP unit sizes in BBDCP 2013. The Section 96(2) application seeks to provide unit sizes that are consistent with the new ADG sizes. The proposed unit layout is generally acceptable, except for the study room of typical level in unit T-08 and the bedroom (B2) of typical level in unit T-07. These rooms do not comply and need to be modified. Door to study room in unit T-08 should be deleted as it will create substandard room and door to the bedroom (B2) in unit T-07 should be replaced with a sliding door to avoid a snorkel bedroom. An additional 23 units are to be incorporated within the approved 13 storey residential flat building by modifying the footprint of the approved built form on each levels and adding an additional floor area on the roof top for communal room extension and a new three bedroom unit.

The table below demonstrates the changes in the unit mix.

Unit Mix	Approved units	Proposed Units
Studio units	12 (15%)	22 (21.36%)
1 bed units	26 (32.5%)	22 (21.36%)
2 bed units	41 (51.25%)	56 (54.37%)
3 bed units	1 (1.25%)	3 (2.91%)
Total	80 units	103 units

The development was already approved with a non-compliance of unit mix for studio and 1 bedroom units and the modification proposes a further non-compliance with the numbers of studio and one bedroom units.

Previously the development was approved with 1 car space per one-bedroom unit, two car spaces per two/three bedroom units and 1 visitor car space per 7 units. The amended proposal demonstrates compliance with the requirement under the ADG car parking rates from the RMS Guide to Traffic Generating Developments which requires 0.6 car spaces per one-bedroom unit, 0.9 car spaces per two-bedroom units and 1.4 car spaces per three-bedroom units. The amount of visitor car parking spaces has not changed. The change in the car parking is resultant to the location of the subject site being within 800m of Mascot Station. Based on the ADG parking rates, the proposed modification will result in 27 surplus car parking spaces. The ADG car parking rates do not specify the car parking required for studio units. If the studio units were calculated as per the one bedroom unit car parking requirement, the surplus car spaces will equate to 14 spaces.

The BBLEP 2013 definition for gross floor area does not exclude surplus car parking, as stated below.

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes:

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement:
- (i) storage, and

- (ii) vehicular access, loading areas, garbage and services, and*
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above.*

The actual additional GFA proposed under this modification is therefore 399.09m² including 14 surplus car spaces, or 567.57m² including 27 surplus car spaces. Nonetheless, most of the additional GFA is contained within the approved footprint, except for the increase on the roof top/level 12 for the communal room extension and a new three bedroom unit.

As further discussed in the BBLEP below, even though the additional GFA is not inconsistent with surrounding development within Mascot Station that has been approved with an FSR ranging from 2.08:1 to 4.5:1, the additional GFA on the roof top if taken consideration with the proposed additional height will not be compatible with the approved built form and will adversely impact the streetscape and the surrounding development including overshadowing, visual privacy and view loss.

Additional Height

The modification proposes to increase the overall height of the development by 2.7 metres from RL 46.94 AHD (39.8 metres) to RL 49.64 AHD (42.5 metres) as measured to the top of the lift over run to accommodate the increase in the ground floor level and the floor to ceiling height of all levels, and the additional three bedroom unit on the roof top.

In the original approval of the building, the Design Review Panel recommended a communal room with light weight roof on the roof top to improve the building occupant's amenity given the site constraints and allocation of area to satisfy the car parking requirements to the extent that the rear part of the ground floor level is dedicated for 14 car parking spaces. The roofed communal/BBQ area was approved with over 6 metres setbacks from the northern boundary/Church Avenue façade to minimise the impact of the roof top level from the streetscape and public domain/parks.

Nonetheless, the proposed modification fails to satisfy the intent of the roof top purpose and does not take into consideration the surplus car parking spaces on the ground floor level.

The changes proposed nevertheless are inconsistent with the approved building footprint particularly for the additional bulk and scale on the roof top. The reduction in setbacks from the façade and solid materials proposed for the structures present as a whole new floor level that would be visible from the streetscape, which are also exacerbated with the proposed increase in the overall building height by 2.7 metres and the height of lift over run from 3 metres to 4.6 metres.

The applicant has provided justification that the proposed height complies with BBLEP 2013 requirement and that sufficient setbacks from the building edges have been provided as the following.

- 5.075 metres to the north (Church Avenue),
- 6.575 metres to the south, and
- 6.8 metres to the west.

The roof plan submitted with application however shows that the private open space of the roof top unit and the BBQ area are located within the setbacks. The actual setbacks are less than stipulated by the proposal.

As measured on the plan, the roof from the roof top unit private open space is setback only 2.5 metres from the northern edge of the building. The intent of the use of roof top level is not satisfied by the proposed modifications as the additional structures are no longer set back from the facades and providing articulation to the skyline of the building, refer to Figure 8.



Figure 8. Proposed photomontage demonstrating the proposed bulk and additional level from streetscape level

View Loss

As a result of the additional height, view loss has been taken into consideration, particularly the impact that it would have when viewed from the development to the south at 214-220 Coward Street.

In consideration of the planning principle relating to view loss, in particular to *Tenacity Consulting v Warringah [2004] NSW LEC 140*, Council requested that the applicant address the view loss issue. The applicant has provided the following commentary in regard to view loss:

Applicant response:

The reasonableness of the proposed development is considered in light of the view sharing principles set out in Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC268. In Tenacity, Senior Commissioner Roseth set out a four step assessment to be applied in determining whether the level of view sharing that will result from a proposed development is reasonable.

- 1) What views are to be affected?*
- 2) How are the views obtained and assessed?*
- 3) Extent of the impact?; and*
- 4) Is the proposal reasonable?*

What views are affected?

The views available from the unit are partial city and sky views. The unit also has iconic views of Sydney Tower.

It is noted that the development is subject of a development consent and therefore this assessment if whether the modified parts of the building are reasonable in terms of view sharing.

How are the views obtained and assessed?

The views are obtained from a seating and standing position in the living area and balcony across the front boundary.

It is likely and reasonable to expect that a building would be built on the subject site. The modified parts of the building are still fully compliant with the maximum permitted height of 44 metres under Botany Bay LEP 2013.

Extent of impact?

The accompanying image demonstrates that view sharing is still achieved and the minor extent of the impact. The modified parts of the building will result in a minor loss of city views, with the main reduction being part of the sky. The unit still retains expansive city views and in particular the iconic view of Sydney Tower.

Is the proposal reasonable?

The proposal is reasonable and this does not result from a non compliance with the height control. The accompanying image demonstrates that view sharing is still achieved. The modified parts of the building will result in a minor loss of city views, with the main reduction being part of the sky. The unit still retains expansive city views and in particular the iconic view of Sydney Tower. This does not result from a non compliance with the height control.

The minor increase in building height, which is still below the maximum permitted height, is due to the increase in floor to floor heights to improve the amenity of the apartments and ensure the development can meet the requirements of the ADG in regards to floor to ceiling heights.

Overall, the view loss is reasonable as the development as modified maintains compliance with the height control and maintains a high level of view sharing.

The proposed development meets the Tenacity test, achieves reasonable view sharing, and therefore this should not impact on the approval of the modified development.



Figure 8. View Analysis submitted by the applicant

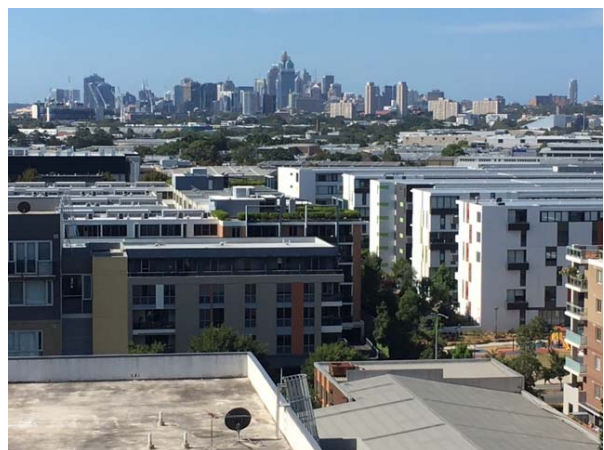


Figure 8. Photographs taken by the Assessing Officer standing from the middle of level 11 balcony of 214-220 Coward Street adjoining to the main living room

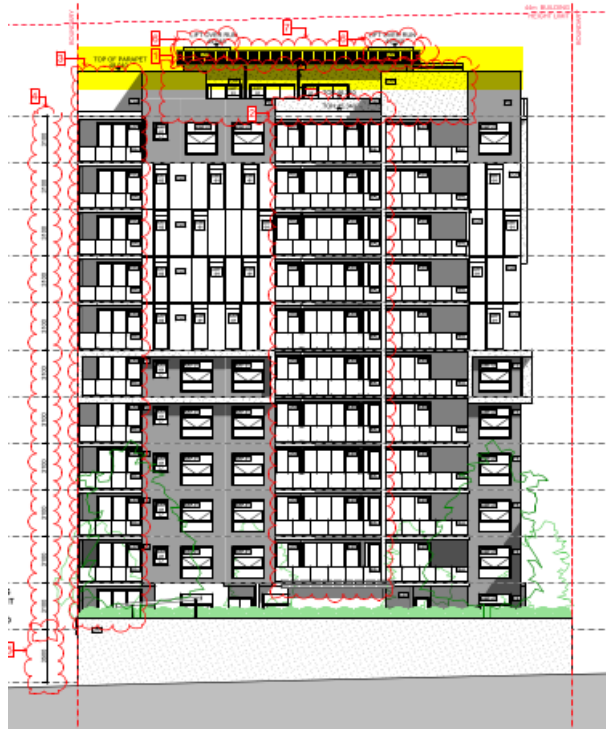


Figure 9. Additional bulk on South Elevation highlighted in yellow

The view analysis provided by the applicant in Figure 7 is based on an angled view photograph taken from the objectors' property situated on level 11 at 214-220 Coward Street while standing on the edge of the balcony adjoining to the main living room. The view analysis does not clearly identify the differences between the approved and proposed development as the analysis is provided on an angled perspective. The proposed additional height of 2.7 metres that is almost equivalent to an entire new level has not been demonstrated on the view analysis. The bulk and scale of the entire building and not just the roof top/level 13 are actually increased. While the modification to height is lower than the maximum applicable height for the site as stipulated within the BBLEP 2013, the main bulk of the building has been raised by 1.1 metres, refer to Figure 9 above.

Council's Assessing officer has also visited the site to understand the view and carry out the view loss assessment. The photographs taken from by the assessing officer in Figure 8 from standing in the middle of the balcony adjoining to the main living room.

As indicated in all photographs, the view currently available directly north of the unit includes the entire city skyline with Sydney Tower in the middle. The approved built form of the subject building and the adjoining development at 6-8 John Street will impact on the view in a north-eastern direction to Green Square and eastern Sydney.

While it is imminent that the existing city skyline could not be entirely protected due to the location of the approved development and the objector's property, the reasonableness of the proposal causing impact is not considered to be acceptable. As discussed above, even though the proposed modification will comply with the maximum height permissible on the site, the main bulk of the building could have been reconsidered. The fourth step of the view loss assessment stated that with a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. In this circumstance, additional articulation could have been further applied on the proposed south elevation of the plant rooms

to allow for further modulation of the additional structures on the roof top and allow a more reasonable view sharing outcome.

In overall, the additional bulk and scale at its current form are not supportable due to the above factors.

Overshadowing

Due to the additional bulk and scale proposed, additional overshadowing will result from the development. However, due to the orientation of the site and approved height of the building, the additional shadow will be mainly cast on the adjoining streets, refer to Figure 10 below.

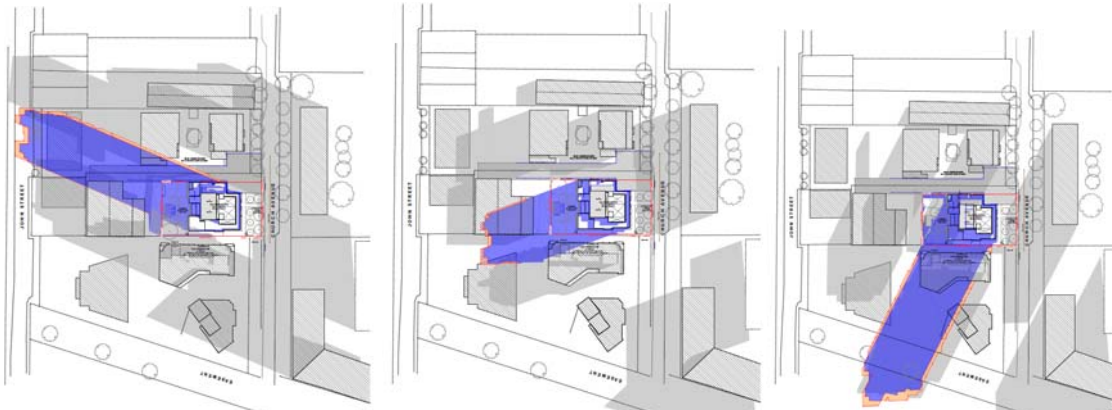


Figure 10. Shadow Diagrams Winter Solstice 9am (L), 12pm (Middle) & 3pm (R)

Sustainability

The modification proposes to delete a condition requiring the provision of roof mounted solar collector to reduce the reliance on technology and operation costs of heating the hot water units. This proposed modification is not supported as it will not contribute to the sustainability of the future development.

Further to that, wind report submitted with the original application provided the following recommendation.

“wind conditions within and around the various outdoor areas of the site will be acceptable for their intended uses. This is largely due to the inclusion of the following features, as proposed in the architectural drawings:

- *densely foliating evergreen trees along Church Avenue, capable of growing to a height of 5 metres with a 4 metre canopy;*
- *densely foliating trees on the Level 1 Community Courtyard area capable of growing to a height of 5 metres with a 4 metre canopy;*
- *1.2 metre high impermeable balustrade around the perimeter of the Level 1 Communal courtyard area.”*

If the proposal was to be supported, an updated wind report should be provided to ensure that the wind mitigation measures would not render as GFA.

External façade changes

Proposed changes to the building façade is not supported given that the overall development is not considered to be satisfactory.

Section 94 Contribution

The applicant provided the following review of Section 94 Contribution.

The S94 applicable under the relevant S94 plans are as follows:

Section 94 Contributions Plan 2005-2010

- Small dwelling - $\$3,444 \times 44 = \$151,536$
- Medium dwelling - $\$6,947 \times 59 = \$409,873$
- Large dwelling - $\$9,427 \times 1 = \$9,427$
- Total \$570,836

Mascot Station Precinct S94 Plan

- One bedroom – 44 units
- Two bedroom – 112 units
- Three bedroom – 6 units
- Total 162 units $\times \$2,278 = \$369,036$

Therefore the total contribution payable (subject to indexing at time of payment) is \$939,872.

If the proposed additional units are to be supported, the correct contribution should have been \$1,085,792, plus the plan requires some road widening at nil cost to Council. Regarding the extra 23 dwellings, the calculation is based on the Section 94 plan applicable at the time of the original application, indexed to 2017/18. Accordingly, the contribution for 103 dwellings as \$1,784,543 (an average \$17,325.66 per dwelling).

Summary of Proposed Changes to Conditions

The following provided a list of changes to the approved conditions if the proposed modifications were to be approved.

- Amend Condition No. 1 to reference amended plans and documents;
- Amend Condition Nos. 2(d) and 3 relating to the Section 94 Contribution;
- Amend Condition No. 50 to update the maximum height permissible for the development as stipulated by SACL;
- Amend Condition No. 53 to update the minimum unit size requirements within the development;
- Amend Condition Nos. 76 and 143 to update the car parking numbers proposed as part of this application;
- Amend Condition No. 77 for an updated BASIX certificate;
- Amend Condition No. 79 relating to Architect's written confirmation;
- Amend Condition No. 141 to reflect the modification to consent under the subject S96 application; and

- Delete Condition No. 142 relating to the roof mounted solar collector panels.

Statutory Considerations

Section 96(2) Modification Considerations

Section 96(2) of the *Environmental Planning & Assessment Act 1979* states that “a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:”

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

The Section 96(2) modification application relates to amendments bulk and scale and units and car parking reconfiguration with associated modification to conditions, and as such, the proposed modifications will result in substantially the same development as approved under DA-2013/56 and as previously modified. The proposed amendments are not suitable in the context of the site and the locality, given the impacts on view loss and the resulting bulk and scale impacts on the streetscape and locality.

- b) ***It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and***

The modification does not require consultation with the Minister.

- c) ***It has notified the application in accordance with (i) the regulations, if the regulations so require, and (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and***

In accordance with Part 2 – Advertising & Notification of the Botany Bay Development Control Plan (BBDCP) 2013, the modification application was notified and advertised for 14 days from 20 December 2017 to 15 January 2018.

- d) ***It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.***

The modification application received a total of 6 objections. The key issues that were raised in the objections are as follows:

- View loss resultant from the proposed development

Comment: A number of the objections raised concerns relating to the view loss from the approved development as well as from the additional level. This has been considered in the assessment of the proposed changes above.

- *Visual privacy and overshadowing*

Comment: No additional visual privacy is anticipated from the development apart from the area proposed on the roof top. Slight additional overshadowing will be resulted from the development. The proposed modification however has not been supported as discussed above.

- *Impact on property value*

Comment: The development is located within the Mascot Station Precinct and is consistent with the original approval. There is no substantial evidence to suggest that the proposal will devalue the adjoining properties.

- *Decrease in parking*

Comment: The proposed modification as discussed above will result in surplus parking according to the ADG parking rates.

- *Overdevelopment and inconsistent with the immediate surrounding development*

Comment: Concern is raised that the approved and amended proposal is not consistent with the immediate surrounding development, particularly related to storey height. The immediate surrounding development to the east and west has a maximum storey height of 7-9 metres however the original development has been as 13 storey building. The proposed additional height is not supported as discussed above.

- *Impact of construction onto surrounding properties- parking, noise and vibration*

Comment: Concern is raised that during construction, noise and vibration will cause nuisance to the surrounding development. Appropriate conditions had been included in the original consent relating to appropriate construction management of the site. The consent also includes conditions relating to dilapidation reports.

- *Separation distance*

Comment: The separation distance will be consistent as the original approved development.

- *Reduction in property values*

Comment: Concern is raised that the approved and proposed development will reduce the property value of the surrounding development. This is initially as a result of the height and potential view loss proposed. Property values fall outside the scope of the development however the height and view loss implications have been discussed in greater detail in the report.

- *Insufficient infrastructure to manage increase*

Comment: This issue was considered as part of the original development application. Council has plans to widen John Street along its northern side therefore this was considered in the original development application. Mascot Station is an important infrastructure addition to the area and is heavily utilised by the general public. Additionally, works are being undertaken along Bourke Street and Gardeners Road relating to WestConnex which will provide infrastructure improvements in the area.

- *Lack of green space requirement within Mascot Station Precinct*

Comment: The amount of green space within the Mascot Station Precinct falls outside the scope of this application however the site is in close proximity to the proposed Linear Park which is to be an open space area for the residents and workers to enjoy.

Section 96(2)(3) Modification Considerations

Section 96(2)(3) of the Environmental Planning and Assessment Act 1979 states that "In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application."

An assessment of the application has been carried out under the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979. The matters of relevance to this application have been considered.

- a) *Section 79(C)(1)(a) the provisions of any Environmental Planning Instrument and Development Control Plan and any other matters prescribed by the Regulations.***

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was accompanied by an amended BASIX Certificate No. 474684M_02 prepared by Gradwell Consulting committing to environmental sustainable measures.

State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land

The provisions of SEPP No. 55 were considered within the original development application. There is no change to the excavation and remediation on the site and therefore SEPP No. 55 has been satisfied.

State Environmental Planning Policy No. 65 – Quality Design for Residential Apartment Buildings

The original development application was approved under State Environmental Planning Policy 65- Design Quality of Residential Flat Development and the Residential Flat Design Code (RFDC) and the proposal was considered satisfactory. The SEPP was amended on 17 July 2015 and applied to applications to modify a development consent. An assessment of the proposed modification against the ADG requirements are provided below.

Apartment Design Guide

The proposal has now been assessed against the Apartment Design Guide (ADG). An assessment against the SEPP and ADG provisions has been prepared by Edifice Design. The proposed development is considered to have performed adequately in respect to the objectives and design criteria contained within the ADG. The relevant issues are discussed below:

Clause	Design Criteria	Comments	Complies
3B Orientation	<p>Objective 3B-1 Building types and layouts respond to the streetscape and site while optimising solar access within the development</p> <p>Objective 3B-2 Overshadowing of neighbouring properties is minimised during mid winter</p>	<p>The approved development is slightly higher than the surrounding sites which have a 8-9 storey height limit. The site to the south has a 14 storey height limit which is significantly higher the subject development. Overshadowing of the approved and proposed development onto the southern property has been considered and is still compliant.</p>	Yes
3C Public Domain	<p>Objective 3C-1 Transition between private and public domain is achieved without compromising safety and security</p> <p>Objective 3C-2 Amenity of the public domain is retained and enhanced</p>	<p>The entrance lobby off Church Avenue remains unaltered.</p> <p>The amenity of the public Domain to the north of the site along Church Avenue remains unaltered from the approved development. Road widening of Church Avenue continues to apply.</p>	Yes
3D- Communal	<p>Objective 3D-1 An adequate area of communal open space is provided to enhance</p>	<p>The amended proposal provides compliant communal open space of</p>	Yes

and Public Open Space	<p>residential amenity and to provide opportunities for landscaping</p> <p><u>Design Criteria:</u></p> <ul style="list-style-type: none">• Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)• Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter) <p>Objective 3D-2 Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</p> <p>Objective 3D-3 Communal open space is designed to maximise safety</p> <p>Objective 3D-4 Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood</p>	658m². The communal open space continues to be distributed on the ground and rooftop area. The communal open space on the rooftop will receive direct sunlight for a minimum of 2 hours.													
3E- Deep Soil zones	<p>Objective 3E-1 Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality</p> <p><u>Design Criteria:</u></p> <ul style="list-style-type: none">• Deep soil zones are to meet the following minimum requirements: <table><tr><th>Site area</th><th>Minimum dimension s</th><th>Deep soil zone (% of site area)</th></tr><tr><td>less than 650m2</td><td>-</td><td rowspan="4">7%</td></tr><tr><td>650m2 - 1,500m2</td><td>3m</td></tr><tr><td>greater than 1,500m2</td><td>6m</td></tr><tr><td>greater than 1,500m2</td><td>6m</td></tr></table>	Site area	Minimum dimension s	Deep soil zone (% of site area)	less than 650m2	-	7%	650m2 - 1,500m2	3m	greater than 1,500m2	6m	greater than 1,500m2	6m	The amount of deep soil proposed has not been modified from the approved development. The basement continues to be located to the edge of the boundaries. Therefore this is an existing non-compliance.	Existing non-compliance
Site area	Minimum dimension s	Deep soil zone (% of site area)													
less than 650m2	-	7%													
650m2 - 1,500m2	3m														
greater than 1,500m2	6m														
greater than 1,500m2	6m														

	with significant existing tree cover																
3F- Visual Privacy	<p>Objective 3F-1 Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy</p> <p><u>Design Criteria</u></p> <p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table><tr><td>Building height</td><td>Habitable rooms and balconies</td><td>Non-habitable rooms</td></tr><tr><td>up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p> <p>Objective 3F-2 Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space</p>			Building height	Habitable rooms and balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	up to 25m (5-8 storeys)	9m	4.5m	over 25m (9+ storeys)	12m	6m	As existing.	As existing.
Building height	Habitable rooms and balconies	Non-habitable rooms															
up to 12m (4 storeys)	6m	3m															
up to 25m (5-8 storeys)	9m	4.5m															
over 25m (9+ storeys)	12m	6m															
3H- Vehicle Access	<p>Objective 3H-1 Vehicle access points are designed and located to achieve safety, minimise conflicts between</p>			Vehicular access has not been modified from the approved development.	N/A												

	pedestrians and vehicles and create high quality streetscapes		
3J- Bicycle and Car Parking	<p>Objective 3J-1 Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas</p>	The car parking rates are in accordance with the RMS Guide to Traffic Generating Developments due to its proximity to Mascot Station. The proposed 55 car parking spaces comply with the required amount of spaces and this is further discussed in Part 3A below.	Yes
4A- Solar and daylight access	<p>Objective 4A-1 To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space</p> <p><u>Design Criteria</u></p> <ul style="list-style-type: none"> • Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter • In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter • A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter 	The amended proposal will result in 76% out of 103 units continue to comply with the minimum number of units requiring sunlight at mid-winter. The POS of all these units receive direct sunlight.	Yes
4B- Natural Ventilation	<p>Objective 4B-1 All habitable rooms are naturally ventilated</p> <p>Objective 4B-3 The number of apartments with natural cross ventilation is Maximised to create a comfortable indoor environment for residents</p> <p><u>Design Criteria:</u></p> <ul style="list-style-type: none"> • At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure 	60% of 103 units in the first 9 storeys are naturally ventilated.	Yes

	<p>of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed</p> <ul style="list-style-type: none">• Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line														
4C- Ceiling Heights	<p>Objective 4C-1 Ceiling height achieves sufficient natural ventilation and daylight access</p> <p><u>Design Criteria:</u> Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1"><tr><td colspan="2">Minimum ceiling height for apartment and mixed use buildings</td></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table> <p>These minimums do not preclude higher ceilings if desired</p>	Minimum ceiling height for apartment and mixed use buildings		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<p>The development proposes 3.1 metres FFL to FFL to allow for 2.7m height FFL to FCL and room for services. The ceiling height is acceptable.</p>	Yes
Minimum ceiling height for apartment and mixed use buildings															
Habitable rooms	2.7m														
Non-habitable	2.4m														
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area														
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope														
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use														

4D- Apartment Size and Layout	<p>Objective 4D-1</p> <p>The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity</p> <p><u>Design Criteria:</u></p> <ul style="list-style-type: none">• Apartments are required to have the following minimum internal areas <table><tr><td>Apartment type</td><td>Minimum internal area</td></tr><tr><td>Studio</td><td>35m2</td></tr><tr><td>1 bedroom</td><td>50m2</td></tr><tr><td>2 bedroom</td><td>70m2</td></tr><tr><td>3 bedroom</td><td>90m2</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m2 each</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m2 each</p> <ul style="list-style-type: none">• Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms• Habitable room depths are limited to a maximum of 2.5 x the ceiling height• In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window <p>Objective 4D-3</p>	Apartment type	Minimum internal area	Studio	35m2	1 bedroom	50m2	2 bedroom	70m2	3 bedroom	90m2	<p>The proposed unit sizes comply.</p> <p>Studio = 39 – 51m² 1 bed = 53 – 56m² 2 bed = 75 – 107m² 3 bed = 95 – 117m²</p> <p>Door to study room in unit T-08 should be deleted as it will create substandard room and door to the bedroom (B2) in unit T-07 should be replace with sliding door to avoid a snorkel bedroom.</p> <p>All habitable rooms continue to have a window that is not less than 10% and all kitchens continue to be located within 8 metres from a window or POS.</p> <p>The dimensions of the bedrooms for both master and regular comply with the sizes provided within the ADG and the width of the apartments are acceptable.</p>	Yes
Apartment type	Minimum internal area												
Studio	35m2												
1 bedroom	50m2												
2 bedroom	70m2												
3 bedroom	90m2												

	<p>Apartment layouts are designed to accommodate a variety of household activities and needs</p> <p><u>Design Criteria:</u></p> <ul style="list-style-type: none"> • Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space) • Bedrooms have a minimum dimension of 3m (excluding wardrobe space) • Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> ▪ 3.6m for studio and 1 bedroom apartments ▪ 4m for 2 and 3 bedroom apartments 																	
4E- Private Open Space and Balconies	<p>Objective 4E-1 Apartments provide appropriately sized private open space and balconies to enhance residential amenity</p> <p><u>Design Criteria:</u></p> <p>All apartments are required to have primary balconies as follows</p> <table> <tr> <th>Dwelling type</th> <th>Minimum area</th> <th>Minimum depth</th> </tr> <tr> <td>Studio apartments</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m²</td> <td>2.4m</td> </tr> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwelling type	Minimum area	Minimum depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	All private open space areas continue to comply with the ADG regulations.	Yes
Dwelling type	Minimum area	Minimum depth																
Studio apartments	4m ²	-																
1 bedroom apartments	8m ²	2m																
2 bedroom apartments	10m ²	2m																
3+ bedroom apartments	12m ²	2.4m																
4F- Common circulation spaces	<p>Objective 4F-1</p>	The development continues to have two lifts to accommodate the development therefore it complies.	Yes															

	<p><i>Common circulation spaces achieve good amenity and properly service the number of apartments</i></p> <p><u>Design Criteria:</u></p> <ul style="list-style-type: none">• 10 storeys and over, Maximum apartments sharing a single lift is 40.												
4G- Storage	<p>Objective 4G-1</p> <p>Adequate, well designed storage is provided in each apartment</p> <p><u>Design Criteria:</u></p> <table><tr><th>Dwelling type</th><th>Minimum area</th></tr><tr><td>Studio apartments</td><td>4m2</td></tr><tr><td>1 bedroom apartments</td><td>8m2</td></tr><tr><td>2 bedroom apartments</td><td>10m2</td></tr><tr><td>3+ bedroom apartments</td><td>12m2</td></tr></table> <p>This is in addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <p>At least 50% of the required storage is located within apartment</p>	Dwelling type	Minimum area	Studio apartments	4m2	1 bedroom apartments	8m2	2 bedroom apartments	10m2	3+ bedroom apartments	12m2	All units continue to have storage within the units and within the basement. Condition No. 141(c) continues to comply in regards to allocation of storage within the basement. The condition has been amended to ensure that compliance with the minimum storage areas has been met.	Yes, conditioned
Dwelling type	Minimum area												
Studio apartments	4m2												
1 bedroom apartments	8m2												
2 bedroom apartments	10m2												
3+ bedroom apartments	12m2												
4H- Acoustic Privacy	<p>Objective 4H-1</p> <p>Noise transfer is minimised through the siting of buildings and building layout</p>	Acoustic privacy continues to be similar to approved development. Amended acoustic report has been provided.	N/A										
4K- Apartment Mix	<p>Objective 4K-1</p> <p>A range of apartment types and sizes is provided to cater for different household types now and into the future.</p> <p>The apartment mix is appropriate, taking into consideration:</p> <ul style="list-style-type: none">▪ the distance to public transport, employment and education centres▪ the current market demands and projected future demographic trends▪ the demand for social and affordable housing different	The amended proposal now includes a unit mix breakdown as discussed above is appropriate as it provides a mixture of primary one and two-bedroom units with the two highest levels being three-bedroom. The apartment is in close proximity to Mascot Station and employment land.	Acceptable										

	cultural and socioeconomic groups		
4L- Ground Floor Apartments	Objective 4L-1 Street frontage activity is maximised where ground floor apartments are located	There is no change to the ground floor street frontage.	N/A
4M- Facades	Objective 4M-1 Building facades provide visual interest along the street while respecting the character of the local area	The approved façade has been maintained with minor changes to the material and setbacks along the eastern and northern sides of the buildings. The material and colours proposed continue to be appropriate with the general streetscape.	Yes
4O- Landscape Design	Objective 4O-1 Landscape design is viable and sustainable Objective 4O-2 Landscape design contributes to the streetscape and amenity	The landscaped area has not been significantly altered from the approved development. Amended landscape plans have been provided demonstrating the minor modifications to the ground floor and communal rooftop area. The landscaped area located at the front of the site is not proposed to be modified as part of this application.	Yes
4Q- Universal Design	Objective 4Q-1 Universal design features are included in apartment design to promote flexible housing for all community members Objective 4Q-2 A variety of apartments with adaptable designs are provided Objective 4Q-3 Apartment layouts are flexible and accommodate a range of lifestyle needs	Development is able to comply with adaptable units to cater for disabled persons. There is a good unit mix proposed of 1 and 2-bedroom units with two 3 bedroom units also proposed. All units provide storage and some of the units provide bathtubs. Family friendly units are provided in the BBDGP 2013 section below.	Yes

4U- Energy Efficiency	Objective 4U-1 Development incorporates passive environmental design	A majority of the apartments are either north or east facing to allow for adequate solar access to be received to the units. The amended proposal provides natural ventilation that is compliant.	Yes
	Objective 4U-2 Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer Objective 4U-3 Adequate natural ventilation minimises the need for mechanical ventilation	The modification proposes to delete a condition requiring the provision of roof mounted solar collector to reduce the reliance on technology and operation costs of heating the hot water units.	Not supported
4W- Waste Management	Objective 4W-1 Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents	The location of the off-street garbage and waste holding rooms continue to be maintained and is appropriate for the development.	Yes

Botany Bay Local Environmental Plan 2013

The provisions of the Botany Bay Local Environmental Plan 2013 (BBLEP 2013) have been considered in the assessment of this Modification Application and the following information is provided:

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Landuse Zone	Yes	The site is zoned B4 Mixed Use zone.
Is the proposed use/works permitted with development consent?	Yes	The application for a residential flat building and basement car park is permissible subject to Council's consent.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives of the B4 Mixed Use zone: <ul style="list-style-type: none"> - To provide a mixture of compatible land uses; - To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
What is the height of the building?		The maximum permissible height is 44 metres in accordance with the BBLEP 2013.

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Does the height of the building comply with the maximum building height?	Yes	<p>The development application approved a height of 39.8 metres.</p> <p>The amended proposal will have a maximum height of 42.5 metres.</p> <p>The amended height continues to comply with the maximum LEP height requirement.</p>
<p>What is the proposed FSR?</p> <p>Does the FSR of the building comply with the maximum FSR?</p>	No – Refer to Note 1	<p>The maximum permissible FSR is 2:1 in accordance with the BBLEP 2013.</p> <p>The development application approved FSR of 3.79:1 (7604.63m²).</p> <p>The amended application will have FSR of 3.9:1 (7822.28m²) – including storage on ground floor level, or 3.99:1 (8003.72m²) – including surplus car parking of 14 spaces, or 4.07:1 (8172.2m²) – including surplus car parking of 27 spaces.</p>
Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m ² min and maximum height of 22 metres and maximum FSR of 1.5:1?	N/A	The subject site is not located within an R3 or R4 zone.
<p>Is the site within land marked “Area 3” on the FSR Map?</p> <p>If so, does it comply with the sliding scale for FSR in Clause 4.4A?</p>	N/A	The subject site is not located within Area 3 of the FSR map.
Is the land affected by road widening? (Clause 5.1 – Relevant Acquisition)	Yes	Road widening has been considered in the original application. There is no change to this.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not heritage listed nor is it within a heritage conservation area.
<p>The following provisions in Part 6 of BBLEP apply–</p> <ul style="list-style-type: none"> • 6.1 – Acid Sulfate Soils • 6.2 – Earthworks • 6.3 – Stormwater Management 	N/A	Clauses 6.1, 6.2, 6.3, 6.8 and 6.9 have been considered in the original report and there are no changes proposed as part of the modifications.

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
<ul style="list-style-type: none"> • 6.8 – Airspace Operations • 6.9 – Development in areas subject to aircraft noise • 6.16 – Design Excellence 		In regards to Clause 6.16, the proposal is similar in design excellence to what was approved in the original proposal with some slight modifications to the external façade.

Note 1

As the application is a modification application, the applicant was not required to provide a Clause 4.6 variation to justify the FSR of the development, however the applicant has provided justification to argue the additional bulk of the development. The justification is provided below:

The proposed development will still achieve the above objectives, as discussed below:

- The density of the development will not significantly increase and will generally be within or setback from the approved envelope;
- The scale and bulk of the building will be highly consistent with the approved form and surrounding development within the Mascot precinct;
- The proposed modifications will not significantly alter the materials and finishes of the approved building ensuring the development remains consistent with the streetscape; and
- The development will not detrimentally affect adjoining properties by way of shadow, overlooking and/or scale.

Overall, the bulk and scale of the approved development will not be significantly increased by the proposed modifications and the original design intent will be maintained. A variation to the maximum FSR control is appropriate in the circumstances of this development, as was determined with the original approval.

It is considered that the increase in FSR and the modification of the proposal are inconsistent with the objectives of the B4 Mixed Use zone and the development standard. The proposed modification will potentially result in additional 567.57m² including maximum surplus of car parking spaces. The additional floor area has not been distributed appropriately within the building footprint and the proposed modification is seeking additional height that will detract from the visual amenity of the streetscape and result in disruption of view and view loss to the adjoining properties. Even though the proposed FSR is consistent with surrounding development within Mascot Station which have been approved with an FSR ranging from 2.08:1 to 4.5:1, the amount of FSR will result in additional bulk on the roof top that presents as a whole new floor level. The proposed increase in FSR is not considered as acceptable.

Botany Bay Development Control Plan 2013

The applicable sections of the BBDCP 2013 that relate to the proposed modification to the approved development are provided below:

Part 3A – Car Parking and Access

Control C2 of Part 3A.2 of the BBDCP 2013 requires that any development comply with the car parking rates. The approved development approved a total of 138 car parking spaces. The amended proposal has reduced that figure to 110 car parking spaces to comply with the parking rates under the ADG as the original proposal was approved under the RFDC and BBDCP 2013 car parking rates at the time. The table below demonstrates a breakdown of the approved and proposed car parking rates applicable for this proposal:

BBDCP car parking rate (BBDCP 2013) (at time of approval)	ADG car parking rate	Proposed car parking
C2 Multi dwelling housing/residential flat building <ul style="list-style-type: none"> • 1 space/studio or one bedroom dwelling (38 required); • 2 spaces/two (2) or more bedroom dwellings (86 required); • 1 designated visitor parking space/7 dwellings (MSP) (16 required) <p>Total required: 138 car spaces</p>	<p>Car parking is based on the RMS Traffic Generating Guide</p> <p><u>Residential</u></p> <ul style="list-style-type: none"> • 0.6 space x 1 bed unit = 13.2 • 0.9 space x 2 bed unit = 50.4 • 1.4 space x 3 bed unit = 4.2 • 1 visitor space / 7 dwellings = 14.7 <p>Total Residential: 82.5 or 83</p>	<p>The proposal results in 27 surplus car spaces.</p>

Although the proposal complies with the car parking rate required under the ADG and continues to have appropriate vehicular access into and within the basement car parking levels, the amended proposal may result in additional GFA.

Part 3N – Waste Minimisation and Management

The waste management plan that was submitted with the original development application continues to comply as there is no changes proposed with the waste generated on site and the process of removal and maintenance during the ongoing use of the residential development.

Part 4C – Residential Flat Building

The modifications to the approved development have been assessed against Part 4C of the BBDCP. The relevant controls within this chapter have been elaborated upon in the table below:

4C.2.2 Streetscape Presentation	Compatible with bulk & scale of adjoining residential developments; Max building length 24m; Walls >12m must be articulated; Street presentation.	The height of the development is inconsistent with what has been approved. The additional height has not been provided with appropriate setbacks from the	Not acceptable
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		<p>Church Avenue frontage.</p> <p>The building length of the development remains unaltered.</p> <p>Street presentation is not satisfied as the proposed bulk and scale could be seen from the public domain.</p>	
4C.2.4 Landscaped Area and Deep Soil Planting	<p>Min Landscaped Area: 35%</p> <p>Max hard landscaped area: 20%</p>	As existing.	N/A
4C.2.5 Open Space	Through location, arrangement and design provide functional, usable and liveable spaces for a mix of recreational pursuits	Private and communal open space on the roof top has to be provided with amended wind report to review suitability of use.	Conditional.
4C.4.1 Dwelling Mix & layout	<p>C1 Developments with 10 or more apartments to provide a range of sizes including studio, 1, 2, 3 bedrooms</p> <p>C2 Developments with more than 10 apartments, 25% max no. of combined studio and 1bed units</p> <p>C1 Dwellings with 3 or more bedrooms are to have two separate living spaces.</p>	<p>The amended development includes 52 apartments with a mix of one, two and three-bedroom units. The amended unit mix has been broken down as follows:</p> <p>1 bed unit: 16/52 = 31%</p> <p>2 bed unit: 34/52 = 65%</p> <p>3 bed unit: 2/52 = 4%</p> <p>The original development included two, three-bedroom apartments. Neither of these apartments have two separate living spaces however it was considered that the units were acceptable.</p>	<p>Yes</p> <p>No – Refer to Note 3</p> <p>Existing non-compliance</p>
4C.4.2 Family Friendly Apartment Buildings	C1 Family apartments are apartments with 2 or more bedrooms.	The original approval did not approve units with the Family Friendly controls as	Yes, conditioned

	<p>C2 Family apartments are to include a study.</p> <p>C3 Bedrooms are to be large enough for a single bed, desk, and space for playing.</p> <p>C4 Floor surface of entry, dining and kitchen are to be water-resistant. No carpet.</p> <p>C5 Two bathrooms required. Bathtub to be provided in one bathroom.</p> <p>C6 Private open space to be visible from kitchen.</p> <p>C7 Entry and corridors to permit room for toys etc.</p> <p>C8 ADG sets out storage rates. Storage room is to be located near the entry.</p>	<p>these were considered and adopted at a later amendment to the DCP. However, as the proposal does carry out significant internal changes to the units to reduce the unit size, a number of the family friendly controls could be utilised such as water-resistant surfaces, POS to be visible from the kitchen, and storage rates. This has been conditioned in the consent.</p>	
4C.4.3 Internal Circulation	<p>Provide multiple cores.</p> <p>More than 4 storeys require elevators.</p>	<p>The development continues to have one core with two lifts to service the 52 apartments.</p>	Yes
4C.4.4 Views	<p>View sharing – Tenacity Consulting v Warringah (2004) NSWLEC 140</p>	<p>As discussed above, the proposal will result in significant loss of view from the adjoining property.</p>	Not supported

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

The proposed development is not inconsistent with the relevant provisions of the *Environmental Planning and Assessment Regulation 2000*.

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

The proposed modification relates to increase the number of residential apartments, reduce the number of car parking to align the proposal with the ADG, increase the height of the development by 2.7 metres and modifications to conditions. The massing of additional GFA however fails to be distributed within the approved building footprint, as the application has not taken into consideration of additional GFA from the surplus car parking. Despite of proposing a compliant height, the additional 2.7 metres of height raised concerns relating to adverse impacts to the streetscape and surrounding development including view loss. The proposed changes to the approved development will result in a significant change to the

intensity of the site from that which was originally envisaged by Council in the approved development and the BBDCP 2013 controls.

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

The proposed modifications do not alter previous conclusions regarding site suitability.

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

In accordance with Part 2 – Advertising & Notification of the Botany Bay Development Control Plan (BBDCP) 2013, the development application was notified and advertised for 14 days from 10 May to 24 May 2017. Five (5) objections were received and these have been discussed in greater detail in the report above.

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

The proposed amendment will have significant adverse impact upon the public interest, streetscape or onto adjoining properties. While the height remains compliant, the additional bulk and scale require further redistribution to minimise its impact.

Conclusion

The Section 96(2) Application seeks to modify Development Consent No. 2013/56 to increase the number of residential apartments from 80 to 103 units, to delete basement car parking (Level 3) that reduces the number of parking from 138 spaces to 110 spaces to align with the Apartment Design Guide, increase FSR and height, and numerous modifications to conditions for the approved development at 13A Church Avenue, Mascot.

The proposed modifications will result in the increase of FSR and height for an approved 13 storey residential flat building. The massing of additional GFA however fails to be distributed within the approved building footprint, as the application has not taken into consideration of additional GFA from the surplus car parking. Despite of proposing a compliant height, the additional 2.7 metres of height raised concerns relating to adverse impacts to the streetscape and surrounding development including view loss.

Given the extent of impact from the proposed development, the proposed modification to Development Consent No. 2013/56 at 13A Church Avenue, Mascot cannot be supported and the proposal is recommended for REFUSAL.

Attachment



SECTION 96(2)
APPLICATION
PLANNING REPORT

13A CHURCH AVENUE,
MASCOT
DA/2013/56

23 November 2017

CONTENTS

1.0 INTRODUCTION	3
2.0 LOCALITY AND SITE DESCRIPTION	4
3.0 PROPOSED AMENDMENTS & JUSTIFICATION	7
4.0 ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 ASSESSMENT ..	15
4.1 Consideration of Section 96 Applications	15
4.2 Requirements of Section	15
4.3 Planning Controls and Regulations	16
4.4 The Likely Impacts	48
4.5 The Suitability of the Site for the Development	48
4.6 Submissions	48
4.7 The Public Interest	48
5.0 CONCLUSION	49

SUPPORTING DOCUMENTATION

1. Amended Drawings prepared by Bureau SRH Architecture
2. Amended BASIX Certificate
3. SEPP 65 Verification Statement by Bureau SRH Architecture
4. Amended Traffic Report prepared by Motion Traffic Engineers
5. Amended Landscaping Plan prepared by A Total Concept
6. Amended Accessibility Report prepared by PSE Access Consulting

1.0 INTRODUCTION

- 1.1 This Planning Report accompanies a Section 96(2) application to amend the approved 12 storey residential apartment building at 13A Church Avenue, Mascot.
- 1.2 Development Application DA-13/56 was approved on 4 June 2014 for the redevelopment of the site for the demolition of the existing building and construction of a new multi-unit building comprising 80 residential units with associated car parking for 138 vehicles and new landscaping works.
- 1.3 On 18 June 2014, a Section 96(1) was approved by Council to reflect the correct architectural plan issue and to update development description to reflect the number of approved units, being 80 and the number of car spaces being 138 rather than 135. Conditions 1 and 141 were modified to ensure consistency.
- 1.4 This Section 96(2) application seeks to modify the approved development in the following way:
 - Increase overall building height from RL46.94 to RL49.64 (42.5m);
 - Reconfiguration of unit layouts to be consistent with the Apartment Design Guide minimum size requirements resulting an overall increase in units from 80 to 103;
 - Reconfiguration of the basement car parking levels to accommodate required car parking spaces due to modified unit mix and servicing requirements;
 - Modify unit mix;
 - Modify number of car parking spaces;
 - Increase overall building height to achieve 3.1 metres floor to floor;
 - Amend condition 2(d) and 3 to reflect the correct calculation of S94 contributions;
 - Amend Condition 50 in regards to the height of the lift overrun'
 - Amend Condition 53 to be consistent with the Apartment Design Guide minimum unit size requirements;
 - Amend Condition 76 to reflect number of car spaces;
 - Amend Condition 79 in relation to balcony sizes;
 - Delete Condition 142 which requires roof mounted solar collectors; and
 - Amend development description to reflect the amended number of units from 80 to 103 and reflect the number of car parking spaces which decreases from 138 to 110.
- 1.5 As a result of the modifications the GFA increases by 193m² to 3.89:1 and the height increases to 42.5m. The proposed modifications are discussed in more detail within the report.
- 1.6 This report provides information on the subject site, the proposed development and undertakes an assessment against the relevant heads of consideration set out in the Environmental Planning and Assessment Act 1979. The amended development is considered to be

substantially the same development and this will be further addressed in Section 4 of this report.

2.0 LOCALITY AND SITE DESCRIPTION

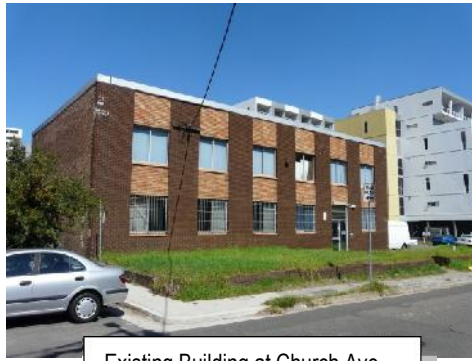
Locality

- 2.1 The Subject site is located in the local government area of the City of Botany Bay. It is located in the Mascot Station Precinct (MSP).
- 2.2 The MSP which is bound by Gardeners Road, O'Riordan Street, Coward Street and Kent Road is an evolving precinct which is seeing the transformation from industrial warehouse uses to a mixed use area with an emerging residential trend.
- 2.3 The centre of the MSP is the underground Mascot station which enhances the excellent accessibility of the area. The precinct is located in close proximity to major regional road networks, Port Botany and Sydney Airport within 2 km of the precinct. As such the site has excellent accessibility to major transport and employment opportunities.
- 2.4 The precinct has traditionally comprised primarily light industrial uses including manufacturing, foundries, engineering services, tanneries, textiles and pharmaceutical products. Over the last 10 years the precinct has been evolving with the introduction and now dominance of a residential population in the precinct.
- 2.5 Due to the past industrial use of the majority of the land in the Precinct, land in the area is highly susceptible to land contamination, resulting in the majority of sites requiring some level of remediation. In addition, most sites within the MSP have water table issues. These two factors alone contribute to the high cost associated with development in the MSP.
- 2.6 Given Mascot's excellent location to access major services, public transport, major roads, employment, shopping facilities, sporting grounds, regional parks and local conveniences it is considered an appropriate development opportunity. The location of the site is shown below:



Site

- 2.7 The site is located at 13A Church Avenue, Mascot. It contains 1 lot and is legally described as:
- Lot 1 DP 547700
- 2.8 The subject site is known as No.13A Church Avenue, Mascot, Lot 1 DP 547700. The site is located on the southern side of Church Avenue between O'Riordan Street to the east and Bourke Street to the west. The site is a rectangular shaped allotment with an area of 2005.4sq.m and a frontage to Church Avenue of 32.765m. The site is flat and contains little vegetation.
- 2.9 The site is encumbered by a right of way approximately 6.705m along the western boundary and benefits from the increasing rights of way to 12.19m in width along the northern boundary at Church Avenue. The various rights of way benefit 13A Church Avenue and burden 13B Church Avenue to the south of the site and No. 19 -21 Church Ave to the West.
- 2.10 Situated on the site is a brick industrial building with a metal roof, with open car parking for approximately 23 vehicles. Surrounding development is mixed in nature however this area is undergoing significant change from industrial to residential/commercial. The following photos identify the existing site:



Existing Building at Church Ave



Concrete driveway on western boundary

- 2.11 To the immediate south of the site is the property known as No. 13B Church Avenue, and is accessed via the right of way as discussed in the report.
- 2.12 A development application was submitted to Council for No. 13B Church Avenue, Mascot on 24 November 2008 for the demolition of the existing building and the construction of a 10 storey residential flat building containing 35 units and car parking. However this application was withdrawn by the applicant on 2 March 2010. To our knowledge no further applications have been submitted to Council. Consistent with the previous DA, the form and position of the proposed building under the withdrawn DA has been considered as part of this assessment.

3.0 PROPOSED AMENDMENTS & JUSTIFICATION

3.1 This Section 96(2) application seeks to amend the approved development as follows:

- Increase overall building height from RL46.94 to RL49.64 (42.5m);
- Reconfiguration of unit layouts to be consistent with the Apartment Design Guide minimum size requirements resulting an overall increase in units from 80 to 103;
- Reconfiguration of the basement car parking levels to accommodate required car parking spaces due to modified unit mix and servicing requirements;
- Modify unit mix;
- Modify number of car parking spaces;
- Increase overall building height to achieve 3.1 metres floor to floor;
- Amend condition 2(d) and 3 to reflect the correct calculation of S94 contributions;
- Amend Condition 50 in regards to the height of the lift overrun'
- Amend Condition 53 to be consistent with the Apartment Design Guide minimum unit size requirements;
- Amend Condition 76 to reflect number of car spaces;
- Amend Condition 79 in relation to balcony sizes;
- Delete Condition 142 which requires roof mounted solar collectors; and
- Amend development description to reflect the amended number of units from 80 to 103 and reflect the number of car parking spaces which decreases from 138 to 110.

3.2 A more detailed summary of the changes is provided as follows:

Basement L03

- This basement has been deleted as is no longer required. Car parking spaces have been reduced based on new car parking rates, as stated in the RTA Guide to Traffic Generating Developments – Metropolitan Sub-Regional Centres.

Basement L02

- Minor reconfiguration to the layout of car spaces, 47 car spaces was approved and basement can now accommodate the proposed increase to 50 car spaces.

Basement L01

- Minor reconfiguration in layout of car spaces.

Ground Floor Plan

- Minor reconfiguration in layout of car spaces, 18 spaces approved and proposed to reduce to 14 car spaces.

- Substation and location of hydrant booster valve have been relocated further south but will continue to be accessed via easement roadway.
- 3 units were approved and proposed reconfiguration will provide 6 units. This includes 3 double storey units G-01, G-02 and G-06.
- Change from approved 3 x one bedroom units to 2 x studio, 2 x two bedroom (G-02 & G-06 over 2 storeys) and 2 x three bedroom units (G-01 over 2 levels) .

Level 01

- Reconfiguration of internal layout.
- 7 units were approved and proposed reconfiguration will provide 6 units, which also includes upper storey of G-01, G-02 & G-06, being units on the ground level.
- Change from approved mix of 2 x studio, 3 x one bedroom, 1 x two bedroom and 1 x three bedroom to 2 x one bedroom and 4 x two bedroom.

Typical Level

- Reconfiguration to Internal layout
- 7 units approved and proposed reconfiguration will provide 9 units.
- Change from approved mix of 1 x studio, 2 x one bedroom and 4 x two bedroom to 2 x studio, 2 x one bedroom and 5 x two bedroom.

Level 12

- External private open space relocated to west of Common Room, same square metre area as approved.
- Common Room square metre area retained as approved.
- Additional 3 bedroom unit proposed.
- Building envelope increased due to inclusion of additional unit to level 12.

Roof Level

- Structure changed to allow natural light into common area via a gable window.
- New flat membrane roof over proposed unit 3B

Elevations

- Changes to openings to reflect the changes to each level
- Increase floor to floor heights by 100mm to achieve a 3.1m floor to floor heights for all levels and 3.5m to the ground level.

- 3.3 The modifications are clearly shown and bubbled and/or coloured on the accompanying plans and listed within the SEPP 65 Report, both prepared by Bureau SRH Architecture.
- 3.4 The majority of the unit changes result from the introduction of the Apartment Design Guide (ADG) and the subsequent changes to the Botany DCP which encourages smaller unit sizes. Subsequently, the proposed floor layouts result in an increase in the number of residential units.
- 3.5 The modification will reduce the number of car parking space given the ADG guidelines and proximity to Mascot Station.

- 3.6 The floor to floor height changes have increased the overall building height to RL 49.640 having a maximum height of 42.5m to the top of the lift overrun. This will enable a floor to floor height of 3.1m to all levels except 3.5m to the ground level improving internal amenity for future occupants. Overall, the building will still be 1.5 metres below the maximum permitted building height of 44 metres under the BLEP 2013.
- 3.7 The development will result in minor additional shadow but due to the site orientation being east to west it will have no significant impact on adjoining sites. The minor shadow cast by the height increase will not be significant, as indicated on the accompanying comparative shadow diagrams.
- 3.8 The changes will have no detrimental impact on the surrounding properties with regard to privacy, with the living areas and balconies generally in the same location and windows on side elevations maintaining a mixture of high level or obscured glazing. The application as amended results in the deletion of windows on the eastern façade which will improve visual privacy to the neighbours.
- 3.9 Car parking will be reduced from 138 spaces to 110 spaces. All changes will be contained within the basement levels with adequate parking to be provided within the existing basement levels to accommodate the changes to the unit mix. This reduction will enable Basement Level 03 to be deleted.
- 3.10 Overall, the modified development maintains high residential amenity with 76% of apartments receiving more than 2 hours of sunlight on the 21 June and 60% of apartments being naturally cross-ventilated.
- 3.11 The proposed amendments are further discussed below.

Level 12 Modifications

- 3.12 The application seeks to relocation the external outdoor BBQ facilities to the western side of the common room and the addition of a 3 bedroom unit to the north of the common room on Level 12.
- 3.13 Level 12 will be setback 5.075m from the north (street facing) elevation of the Levels below. While a 6.575m setback will be provided from the southern side boundary and 6.8m from the western side boundary. These setbacks ensure the upper level, including the additional unit, is not highly visible from the street below.
- 3.14 As shown in accompanying shadow diagrams the additional height, which still achieves compliance with the LEP maximum, will not create any unreasonable shadow impacts for adjoining properties.
- 3.15 The proposed setback and position of the external outdoor BBQ area will not unreasonably affect privacy of properties to the west due to setbacks and position of the ROW, which is unlikely to be built upon due to its width. The changes to Level 12 enhance the facilities available to residents and accordingly the residential amenity of the building.

Increased Floor to Floor Levels

- 3.16 It is proposed to increase the floor to floor levels throughout the development by 100mm to provide greater floor to ceiling heights and improve the internal amenity of all units. This will result in a height increase of 2.7m to the approved top of building height.
- 3.17 The building was approved with a maximum RL46.94 being 39.8 metres. The proposed increase will still comply with the 44 metre maximum building height permitted under the Botany LEP 2013. The maximum building height will be 42.5 metres equating to RL 49.64.
- 3.18 The accompanying shadow diagrams illustrate that the minor increase in height will not create any detrimental shadow for adjoining properties or the public way.

Reduced Unit Sizes and Unit Mix Modification

- 3.19 At the time of approval Clause 25 of the Mascot Station Precinct DCP required the following minimum unit sizes:

Studio - 60 sqm

1 bedroom - 75 sqm

2 bedrooms - 100 sqm

3 bedrooms - 130 sqm

- 3.20 The current Botany Bay DCP 2013 no longer contains a requirement for minimum unit sizes, in any event the requirements in the Apartment Design Guide prevail.
- 3.21 As a result the units have been reconfigured internally to respond to the ADG unit sizes. This subsequently results in an increase in residential units and changes the mix of units as follows:

Approved Unit mix	Proposed Unit mix
Studio x 12 (15%)	Studio x 22 (21.36%)
One bed x 26 (32.5%)	One bed x 22 (21.36%)
Two bed x 41 (51.25%)	Two bed x 56 (54.36%)
Three bed x 1 (1.25%)	Three bed x 3 (2.92%)
TOTAL - 80	TOTAL - 103

- 3.22 The modified unit mix will still provide a variety of unit sizes consistent with the ADG and DCP. The modification increases the number of three bed units consistent with the DCP as well as providing all 2 and 3 bedroom units with studies and ensuites.
- 3.23 Adequate storage, car parking, private open space will be maintained as well as communal open space.
- 3.24 As demonstrated above the proposed units will achieve the requirements of the ADG and intent of the DCP with regard to an appropriate mix of units with adequate car parking provided.

- 3.25 Overall, the proposed changes will not detrimentally affect adjoining properties by way of overlooking, bulk and scale and/or overshadowing. Refer to accompanying architectural drawings.

Car Parking and Car Park Layout

- 3.26 The ADG allows for reduced car parking to be provided when a site is located within 800 metres of a railway station. The site is located within 800m of Mascot Station and as such the *RTA Guide to Traffic Generating Developments – Metropolitan Sub-Regional Centres* applies.
- 3.27 The approved development provided a total of 138 car spaces, which included 122 resident spaces and 16 visitor spaces.
- 3.28 Based on the RTA's rate the car parking requirements can be reduced as follows:
- 0.6 for 1 bed = 13.2
 - 0.9 for 2 bed = 50.4
 - 1.4 for 3 bed = 4.2
 - 0.5 for visitor per dwelling = 20.6
- Total = 89 car spaces**
- 3.29 A total of 110 car spaces will be provided on-site, this will be suitable for the proposed unit mix.
- 3.30 The reduction in the number of car spaces required has allowed the deletion of Basement Level 03, resulting in less excavation.
- 3.31 The number of car spaces will be sufficient to accommodate the number of residential units proposed and will result in less environmental impact with less excavation and reduced car parking rate.
- 3.32 Consistent with the original DA consent, all tandem spaces will be allocated to the same unit.
- 3.33 In addition, a total of 14 bike spaces will still be provided on site in accordance with Part 3A of the DCP.

Internal Reconfiguration

- 3.34 As shown on the accompanying architectural drawings, this application seeks to reconfigure the floor layouts due to a reduction in the size of the residential units to align with the ADG.
- 3.35 The proposed changes will not detrimentally affect the envelope of the approved building with all changes generally occurring within the approved envelope.
- 3.36 The internal reconfiguration has result in some balcony changes (north and south elevations) and windows changes on all elevations, as highlighted on the accompanying drawings. The setbacks, as approved, will be maintained with the exception of the unit on Level 12.

- 3.37 The proposed modifications to the elevations will not create any unreasonable overlooking beyond the current approved development. The development reduces living areas facing the east elevation which will have a positive effect on the privacy of Rina Apartments.

Correction to Section 94 Contributions

- 3.38 Condition 3 of DA 13/056 states the following:

The payment of the following monetary contributions in accordance with Council's Section 94 Contributions Plan 2005-2010 to be paid prior to the issue of Construction Certificate:-

a) *Section 94 Contribution 2005-2010*

- i) *Residential Component \$1,600,000.00*

Note: *The Section 94 Contribution fees are subject to annual review and the current rates are applicable for the financial year in which your consent is granted. If you paid the contribution in a later financial year you will be required to pay the fee applicable at the time.*

- 3.39 The rate applied, at the time of determination, was based on the *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012*, where the Minister for Planning (the Minister) issued a Direction under Section 94E of the EP&A Act which took effect on 16 September 2010.
- 3.40 The Direction provided for the following in relation to the contributions that can be levied under Section 94 of the EP&A Act for residential development:
- *a cap of \$20,000 per dwelling/lot for established areas,*
 - *a cap of \$30,000 per dwelling/lot for greenfield areas,*
 - *an exemption for areas where development applications been lodged (including those that had been determined) and remain valid, as of 31 August 2010, for more than 25% of the expected yield from the development area or contributions plan.*
 - *the Minister to consider, on the application of a council and request of a developer, approving a higher contribution amount.*
- 3.41 The Direction took effect on 4 March 2011. Council passed a resolution on 18 March 2009 to comply with the cap and impose the payment of \$20,000 per unit. As a result the development conditions imposed a requirement for \$20,000 per unit which equalled \$1,600,000 based on the approved number of units, being a total of 80 units.
- 3.42 The cap imposed by the Minister was the maximum payable and was not a wholesale change to increase all Contribution Rates to \$20,000. The rates payable are subject to the relevant adopted Section 94 plan applicable at the time of DA approval. If the rates in the plan were above \$20,000 then the rate payable was capped at \$20,000. In this instance, the adopted Section 94 which is given statutory force under Section 94B of the Act which are below the maximum cap apply.
- 3.43 The Section 94 Contributions Plan 2005-2010 applied the following rates to dwelling sizes as shown in the table below:

Contribution Unit	Community Facilities	Open Space & Recreation (Mascot Station Precinct)	Administration	Transport Management – All other Residential (incl: Mascot Station Precinct)
Small Dwelling (under 75m ²)	\$1,492	\$1,336	\$42	\$574
Medium Dwelling (75- under 110m ²)	\$2,534	\$3,019	\$96	\$1,298
Large Dwelling (110 – under 150m ²)	\$3,439	\$4,097	\$130	\$1,761
Very large dwelling (150m ² or more) and New Lot Subdivision	\$4,719	\$5,621	\$178	\$2,417

- 3.44 The Mascot Station Precinct Section 94 Plan provides the following rates under Table 2C as the development includes public road land dedications:

Contribution Unit	Cost per one unit of contribution
Open Space	\$1,020
Road and Footpath Works	\$1,258

- 3.45 The S94 applicable under the relevant S94 plans are as follows:

Section 94 Contributions Plan 2005-2010

- Small dwelling - \$3,444 x 44 = \$151,536
- Medium dwelling - \$6,947 x 59 = \$409,873
- Large dwelling - \$9,427 x 1 = \$9,427
- Total \$570,836

Mascot Station Precinct S94 Plan

- One bedroom – 44 units
- Two bedroom – 112 units
- Three bedroom – 6 units
- Total 162 units x \$2,278 = \$369,036

3.46 Therefore the total contribution payable (subject to indexing at time of payment) is \$939,872.

3.47 It is therefore requested that Council amend Conditions 2(d) and 3 to provide the Section 94 Contribution rates based on the proposed unit mix under the Section 94 Contributions Plan 2005-2010 and Mascot Station Precinct Contributions Plan which applied at the time of determination.

Amendment to conditions

3.48 As a result of this Section 96(2) application, it is requested that the following conditions be amended:

- Development description to modify approved car spaces from 138 to 110 car spaces.
- Condition 1 shall be amended to reflect the amended architectural plans and supporting documentation submitted under this Section 96(2) application.
- Condition 2(d) and 3 to reflect the revised unit mix for calculation of S94 contributions.
- Condition 50 as a new General Terms of Approval will be required due to the proposed increase in Building Height.
- Condition 53(a) to require the minimum unit size to be consistent with the Apartment Design Guide.
- Amend Condition 76(a) to reflect modified car parking spaces, reducing to 110.
- Condition 79 to be amended to refer to the requirements of the Apartment Design Guide.
- Delete Condition 142 as this requires the provision of solar collector panels on the roof. The energy efficiency requirements are governed by the BASIX legislation for apartment development. It is unreasonable to require additional measures beyond BASIX. It is therefore requested that this condition be deleted.

3.49 There are no other conditions that require modification as a result of this application. Conditions relating to the height of the building remain as per the approved conditions of consent.

4.0 ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 ASSESSMENT

4.1 Consideration of Section 96 Applications

- 4.1.1 This Section 96(2) application is not subject to the complying, prohibited, designated, or advertised development provisions of the Act. There are no issues relating to endangered flora or fauna, watercourses or bush fire.
- 4.1.2 The application is submitted pursuant to the provisions of Section 96(2) of the Act which states:

Other Modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

- 4.1.3 An assessment of the requirements of Section 96(2) is contained in the following section.
- 4.1.4 The Environmental Planning and Assessment Act 1979, requires the assessment of development proposals against the relevant 'heads of consideration' set out in Section 79(C) and the requirements of 96(AA) of the EPA Act. These are addressed below.

4.2 Requirements of Section 96(2)

- 4.2.1 The proposed amendments are considered to satisfy the test for a section 96(2) application for the following reasons:

Substantially the same development

- 4.2.2 Whether a development is substantially the same development is a question of fact. This involves a qualitative and quantitative analysis. The analysis involves a comparison between

the development as modified and the development originally approved. In the case of *Scrap Realty v Botany Bay City Council* [2008] the Chief Judge described the exercise as being:

“The power of a consent authority to modify a consent is a power to alter without radical transformation of a consent”

- 4.2.3 The comparison of the approved v proposed development is both as qualitative and quantitative.
- 4.2.4 In terms to the quantitative analysis, the test for substantially the same development does not limit the change that may occur. In this instance, the DA remains for the demolition of the existing structures and construction of a multi-storey residential unit development. The question is whether the difference would radically transform the consent. Given the nature of the amendments and that the unit changes will not adversely alter the approved envelope, in my opinion the answer to this is no. The changes maintain the architectural integrity of the approved design with improved application and the new unit on Level 12 will be setback significantly to minimise bulk and scale when viewed from the public domain.
- 4.2.5 In terms of the qualitative analysis, the development stills involves the demolition of the existing structures and construction of a multi-storey residential unit development. The scale, landscaped areas, access and car parking generally remain as approved with a large portion of the modifications occurring within the approved envelope, this embodies the essence of the original consent. The amendments result in an increase in density by the reconfiguration of approved units, minor increase in the floor area of some units and increased height. However, the additional height will be below the maximum LEP height of 44 metres. The modifications will not result in a substantially different development with majority of changes not being highly discernible when viewed from the street and/or adjoining sites.
- 4.2.6 It is therefore considered that the impacts of the development are not substantially different.
- 4.2.7 The application as amended is considered ‘substantially the same development’ and therefore meets the test under Section 96(2) of the Environmental Planning & Assessment Act 1979.

Notification of the amendments

- 4.2.8 The proposed modifications will be notified in accordance with Council’s notification policy.

Any submissions made

- 4.2.9 Any submissions made will be considered at the close of notification. However, it is considered that the proposed modifications will have no adverse impact on surrounding properties and maintains a superior development outcome.

4.3 Planning Controls and Regulations

- 4.3.1 The relevant planning controls applicable to the Section 96 application are listed below:

- State Environmental Planning Policy No. 65
- State Environmental Planning Policy No. 55
- State Environmental Planning Policy (BASIX) 2004

- State Environmental Planning Policy (Infrastructure)
- Botany Bay Local Environmental Plan 2013
- Botany Bay Development Control Plan 2013
- Apartment Design Guide

4.3.2 Compliance with the provisions of the above mentioned planning controls are discussed below.

State Environmental Planning Policy No. 65 – Design Quality of Residential Flats

4.3.3 The modifications to the height, FSR, unit mix and internal configuration have been considered in relation to the requirements of SEPP 65 and the Apartment Design Guide.

4.3.4 The changes do not affect the developments compliance with the 9 Design Quality Principles. The 9 principles and requirements of the Apartment Design Guide are addressed in detail in the accompanying SEPP 65 Design Verification Statement prepared by the Bureau SRH Architecture.

4.3.5 As amended the changes are appropriate and not contrary to the principles embodied in the Apartment Design Guide. Refer to the ADG assessment below which addresses the relevant sections affected by the proposed modifications.

State Environmental Planning Policy No. 55

4.3.6 Clause 7 of State Environmental Planning Policy No. 55 – Remediation of Land requires the consent authority to consider whether land is contaminated prior to granting of consent to the carrying out of any development on that land.

4.3.7 The approved development determined that the site was suitable for the proposed use.

4.3.8 The proposed modifications will not affect the suitability of the site, which was determined to be acceptable for residential uses.

State Environmental Planning Policy (BASIX) 2004

4.3.9 State Environmental Planning Policy (BASIX) 2004 applies to all residential dwellings including multi-unit housing. It is an online assessment process that requires a development to meet water and energy targets.

4.3.10 A BASIX assessment was undertaken with the approved development and achieved the targets.

4.3.11 An amended BASIX assessment accompanies this application and indicates that the modified development will continue to achieve the required targets for energy and water usage reduction.

State Environmental Planning Policy (Infrastructure)

- 4.3.12 The policy assists the NSW Government, local councils and the communities they support by simplifying the process for providing infrastructure in areas such as education, hospitals, roads, railways, emergency services, water supply and electricity delivery.
- 4.3.13 The policy consolidates and updates 20 previous State planning instruments which included infrastructure provisions. It also includes specific planning provisions and development controls for 25 types of infrastructure works or facilities.
- 4.3.14 Under Clause 104 and Schedule 3, the previous development was referred to the RMS for comment as the development was classified as a traffic generating development. As the current development application proposes an increase in the number of units, referral to RMS may be required.
- 4.3.15 However, the proposed increase in residential units will not unreasonably impact on the existing traffic conditions; no additional parking is required or proposed to accommodate the additional units.

Botany Bay Local Environmental Plan 2013

Zoning

- 4.3.16 The subject site is zoned B4 Mixed Use under Botany Bay LEP 2013. The development as approved and proposed to be amended is permissible with development consent.

Height

- 4.3.17 Clause 4.3 of the LEP relates to Height of Buildings. The modifications proposed under this application increase the approved height of the building by increasing the floor level to floor heights by 100mm. This results in an overall increase of 2.7 metres to the top of the lift overrun.
- 4.3.18 The building was approved, by the Council, with a height of RL 46.94 (39.8m), complying with the 44 metre maximum building height. The maximum height was measured to the top of the lift overrun.
- 4.3.19 The proposed modifications will result in an increased maximum building height RL 49.640 (42.5m) measured to the lift overrun. This will still be significantly below the maximum 44 metre height limit.
- 4.3.20 The minor increase in height will improve the internal amenity for the proposed units by enabling clear floor to ceiling heights of 2.7 metres. Overall, the additional height will have no detrimental impact in terms of additional shadow for adjoining properties, as illustrated in the accompanying shadow diagrams.
- 4.3.21 Notwithstanding the minor height increase above, the development will still achieve compliance with the height control maximum and the objectives.
- 4.3.22 The objectives of the height control are:

- a) *to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,*

- b) *to ensure that taller buildings are appropriately located,*
- c) *to ensure that building height is consistent with the desired future character of an area,*
- d) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- e) *to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities.*

4.3.23 The development maintains compliance with the objective as follows:

- The increased height will not unreasonably affect adjoining properties by way of overshadowing and privacy as demonstrated on the accompanying shadow diagrams and architectural plans. The height will still comply with the LEP maximum.
- The design of the apartments, window location combined with setbacks and privacy film to windows ensures the privacy of surrounding residents is maintained and the privacy for the proposed residents achieves high residential amenity.
- The scale and density of the development as amended will fit with the desired future character of the area which Bayside Council is seeking higher residential densities within close proximity to a railway station and in this instance Mascot Station.
- The increased height combined with the modifications proposed across each level will still ensure the building design is appropriate for the locality while achieving a high level of amenity for future residents.
- The increased height of the building will have no impact on the development potential of adjoining land.

Floor Space Ratio

- 4.3.24 Clause 4.4 of the LEP provides for the maximum floor space ratio (FSR). The accompanying map identifies a maximum FSR of 3.2:1 for the subject site.
- 4.3.25 The original development application was lodged under Botany LEP 1995. As such the approved FSR was 4.24:1 (8493.84m²). Subsequently, the Botany Bay LEP 2013 came into effect which changed the definition of gross floor area.
- 4.3.26 The amended GFA calculation, based on current Botany Bay LEP 2013, equated to 7604.63m² being 3.79:1. However, the original approval did not include the lobby areas. The strict interpretation of the definition includes this area and to ensure an accurate comparison the approved DA is 7212.48m² being 3.6:1. At the time of determination, a SEPP No.1 Objection was supported to vary the requirements of Botany Bay LEP 1995.
- 4.3.27 The modified development seeks to increase the overall GFA by approximately 193m², resulting in an increased FSR of 3.89:1.
- 4.3.28 As this application is a Section 96 application, the provisions of Clause 4.6 of the LEP do not apply.
- 4.3.29 The additional floor space will not be highly discernible from the public way with the majority of increase relating to the new unit that is setback on Level 12 with the remainder being the infill of internal corridors and movement of external walls as shown on the accompanying drawings.
- 4.3.30 Notwithstanding the variation, the proposed modifications will still ensure the objectives are met, as shown below.

4.3.31 The floor space objectives are:

- a) *to establish standards for the maximum development density and intensity of land use,*
- b) *to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*
- c) *to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*
- d) *to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,*
- e) *to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- f) *to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- g) *to facilitate development that contributes to the economic growth of Botany Bay.*

4.3.32 The proposed development will still achieve the above objectives, as discussed below:

- The density of the development will not significantly increase and will generally be within or setback from the approved envelope;
- The scale and bulk of the building will be highly consistent with the approved form and surrounding development within the Mascot precinct;
- The proposed modifications will not significantly alter the materials and finishes of the approved building ensuring the development remains consistent with the streetscape; and
- The development will not detrimentally affect adjoining properties by way of shadow, overlooking and/or scale.

4.3.33 Overall, the bulk and scale of the approved development will not be significantly increased by the proposed modifications and the original design intent will be maintained. A variation to the maximum FSR control is appropriate in the circumstances of this development, as was determined with the original approval.

Airspace Operations

4.3.34 Clause 6.8 requires referral to the relevant Commonwealth body if the development is likely to penetrate the Limitation or Operations Surface.

4.3.35 As the development will increase in height by 2.7m referral is likely.

Development in Areas Subject to Aircraft Noise

4.3.36 Clause 6.9 requires Council to consider whether the development will result in an increase in the number of dwellings or people affected by aircraft noise as well as the ANEF zone.

4.3.37 The proposed changes will not alter the acoustic requirements conditioned in the approved DA; this will still be required to be implemented with the modified development to maintain compliance.

Active Street Frontages

- 4.3.38 Clause 6.15 of the LEP requires an active street frontage to be provided along Church Avenue frontage on the site.
- 4.3.39 Clause 6.15(5) states that *a building has an **active street frontage** if all premises on the ground floor of the building facing the street are used for the purposes of business premises or retail premises.*
- 4.3.40 This Section 96 does not change the approved ground level uses and this will remain as approved with ground level units being consistent with the desired future character along Church Avenue.

Design Excellence

- 4.3.41 As the subject site is located within the Mascot Station Precinct, Clause 6.16 requires the consent authority to have regard to the following design excellence requirements:
- whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
 - whether the form and external appearance of the development will improve the quality and amenity of the public domain,*
 - whether the development detrimentally impacts on view corridors,*
 - the achievement of the principles of ecologically sustainable development.*
- 4.3.42 The approved building was deemed to exhibit a high degree of design excellence. The key architectural elements of the approved scheme have been maintained to ensure a continuation of design excellence. In summary these include:
- The buildings have been architecturally designed to respond to the transitional environment of the Mascot Station Precinct and Council's desired future character for the area.
 - The height of the approved development will remain below the maximum permitted under the Botany Bay LEP 2013; this amending DA does not exceed the maximum height control. The form maintains a strong building edge definition along Church Avenue.
 - The development will not affect any view corridors.
- 4.3.43 There are no other provisions in the plan relevant to the subject application. Compliance with the requirements of the LEP remains as per the original approval.

Botany Bay Development Control Plan 2013

- 4.3.44 Botany Bay DCP 2013 was adopted by Council and came into effect on 12th December 2013, it has been amended various times since.
- 4.3.45 The DCP supplements the provisions of the LEP, but provides more detailed controls.
- 4.3.46 Section 1 provides general information about the plan and its structure.
- 4.3.47 Section 2 provides details about notification and advertising.

- 4.3.48 Section 3 provides a series of general provisions that apply generally to a wide variety of development.
- 4.3.49 Section 4C provides specific planning requirements for residential flat buildings, which does not strictly apply to the proposed development.
- 4.3.50 Section 8 provides character precincts of particular localities, in the case of this development the Mascot Precinct.
- 4.3.51 Section 9A contains specific provisions for sites located within the Mascot Station Town Centre Precinct. These controls apply as site is located within this precinct.
- 4.3.52 The following table provides a summary of the requirements of Section 3, 4C, 8 and 9A applicable to the development application:

Table 8: Assessment against requirements of Botany Bay DCP 2013.

Cl. CONTROL	COMMENT	
General Provisions		
3A Parking & Access		
3A.2. Parking Provisions of Specific Uses		
All required car parking and bicycle parking to be provided on-site	Complies	<input checked="" type="checkbox"/>
Studio/1 bed =1 space 2 or more beds = 2 spaces Visitor = 1 space per 5 dwellings. (MSPDCP permits 1 per 7) (round calculations up before being added together) 1 x car wash bay As the site is within 800m of a railway station, the provisions of the ADG and Guide to Traffic Generating Developments applies. 0 spaces per studio 0.6 spaces per 1 bed 0.9 spaces per 2 bed 1.4 spaces per 3 bed Visitors 1 per 5 units	Based on the ADG requirements, the amending DA (inclusive of the components on the original DA) requires: 0 spaces for studios $0.6 \times 22 = 13.2$ $0.9 \times 56 = 50.4$ $1.4 \times 3 = 4.2$ Visitor = 20.6 Total residential required 89 The approved development seeks to reduce the number of spaces from 138 to 110 spaces.	<input checked="" type="checkbox"/>
Max of 2 tandem spaces and be allocated to the same unit.	Noted. All tandem spaces will be allocated to the same unit.	<input checked="" type="checkbox"/>
Small parking spaces only allocated to visitors and max of 5%.	Two small spaces have been allocated for residential purposes. However, they will be appropriately signed and part of the strata plan to ensure future occupants are aware.	x

CI. CONTROL	COMMENT	
	Given the small parking spaces are limited to 2, it is acceptable in this instance.	
RFBs greater than 600m ² provide secure bicycle storage as per AS 2890.3.	Bicycle storage is provided with the ground level car park area.	☑
3A.3.1 Car Park Design		
Comply with AS2890.1 and AS2890.6 (for people with disabilities).	Noted. The modified car parking and services are capable of complying with the Australian Standards. Refer to the accompanying amended traffic report.	☑
Entry and exit in a forwards direction.		
Small car spaces to comply with AS2890.1.		
Swept path analysis to be provided.		
Parking bays to be clearly designated		
Stormwater disposal systems to comply with Stormwater Management Technical Guidelines.		
Walking routes to be clearly delineated.		
Off-streets parking not permitted within front setback, have safe and direct access and not to dominate the streets.		
Separate pedestrian and vehicular entry points. Max of 1 entry per property. Provided from secondary street or lane where possible. Max gradient for first 6 metres 1 in 20 (5%). Location of vehicle control points to allow for sufficient queuing areas.	No changes under this Section 96.	☑
Landscaping to comply with Part 3L – Landscaping.	Noted. Refer to the accompanying amended landscape plan.	☑
Basement parking preferred directly beneath building footprints. Ventilation grilles and screening to be integrated into the façade and landscape design.	No changes under this Section 96.	☑
Tandem spaces permitted when allocated to same dwelling. Min 5.5m for 2-way access driveway.	No changes under this Section 96.	☑
Internal circulation areas to be sealed.	No changes under this Section 96.	☑
Adequate lighting to be provided.	No changes under this Section 96.	☑
Accessible spaces to comply with AS2890.6 and be located near lifts.	No changes under this Section 96, all accessible spaces will be located within close	☑

CI. CONTROL	COMMENT	
Spaces to have a permanent sign. Adaptable housing must be allocated accessible spaces.	proximity of a lift. Notwithstanding the above, refer to the accompanying amended accessibility report.	
Waste vehicles All loading to occur on level site. Min vertical clearance of 4.5m. Enter and exit in a forward direction. Max grades 1:20 for 1 st 6m then max 1:8 with a transition of 1:12 for 4 meters at the lower end. Min turning circle of 10.5m. Waste collection points to be located within the basement for residential developments.	No changes under this Section 96.	<input checked="" type="checkbox"/>
3A.3.2 Bicycle Park Design		
Comply with AS2890.3. Minimise conflict with vehicles. Be located underground in secure place.	Noted, capable of complying.	<input checked="" type="checkbox"/>
3A.3.3 Traffic and Transport Plans and Reports		
Traffic and parking assessment required for development listed in Schedule 3 of SEPP (Infrastructure) 2007.	The proposed modifications will not detrimentally affect traffic flow given the modifications will result in car parking decreasing from 138 to 110 spaces.	<input checked="" type="checkbox"/>
3A.3.4 On-site Loading and Unloading Facilities		
1 service bay per 50 dwellings	A loading bay will be provided within the ground level car parking area.	<input checked="" type="checkbox"/>
3B Heritage		
3B.7 Development in the Vicinity of Heritage Item or Conservation Areas		
3B.7.1 General Requirements		
Maintain character of the streets and setting form.	Not Applicable	<input checked="" type="checkbox"/>
Colours and materials to be recessive.		
Roofscape and materials to relate to nearby heritage items. Include hipped and gabled forms.		
Landscaping to minimise visual appearance of building and be compatible with the area.		
Setbacks to reflect orientation of a heritage items.		
Fences and gates of new development to be contemporary, simple and compatible in style and in materials to adjoining heritage items.		

CI. CONTROL	COMMENT	
3C Access and Mobility		
3C.1.2 Requirements for Submitting a Development Application		
DA to be accompanied by an Access Report prepared by a suitably qualified and experienced person.	Noted. Refer to the accompanying amended accessibility report.	<input checked="" type="checkbox"/>
3C.2 Access, Mobility and Adaptability		
<p>Comply with the provisions of the DDA, Premises Standards and relevant Australian Standards.</p> <p>Min of 20% to be adaptable in accordance with Adaptable Housing Australian Standard 4299 Class B (min of 21).</p> <p>50% of adaptable units to be allocated an accessible car space.</p>	<p>The development is capable of complying with the relevant requirements</p> <p>Refer to the accompanying amended accessibility report.</p>	<input checked="" type="checkbox"/>
3G Stormwater Management		
3G.2 Stormwater Management		
<p>Comply with Stormwater Management Technical Guidelines.</p> <p>Protect the quality of receiving waters.</p>	No changes under this Section 96.	<input checked="" type="checkbox"/>
3G.3 Water Sensitive Urban Design		
<p>New developments to adopt the 10 WSUD design elements:</p> <p>(i) Integrating the design;</p> <p>(ii) Respecting the site;</p> <p>(iii) Conserving water;</p> <p>(iv) Preventing increased flooding;</p> <p>(v) Preventing increased stream erosion;</p> <p>(vi) Maintaining water balance;</p> <p>(vii) Reducing ecotoxic risk;</p> <p>(viii) Controlling stormwater pollution;</p> <p>(ix) Managing the construction site; and</p> <p>(x) Ensuring long-term effectiveness</p>	No changes under this Section 96.	<input checked="" type="checkbox"/>
<p>C6 - C7</p> <p>RFBs require:</p> <ul style="list-style-type: none"> Compliance with State Environmental Planning Policy - Building Sustainability Index (BASIX); Site analysis; Detailed Water Sensitive Urban Design Strategy (WSUD Strategy); Erosion and Sediment Controls Plan (for sites with 	An amended BASIX certificate accompanies this application and demonstrates that the additional units achieve the Water, energy and thermal comfort targets of BASIX.	<input checked="" type="checkbox"/>

CI. CONTROL	COMMENT	
area _ 2,500m ²); <ul style="list-style-type: none"> • Soil and Water Management Plan (for sites with area > 2,500m²); • Water Management Statement (for development containing 15 dwellings); and • Integrated Water Cycle Plan (for development containing > 15 dwellings) 		
3G.4 Stormwater Quality		
Satisfy the objectives of "Botany Bay & Catchment Water Quality Improvement Plan.	No changes under this Section 96.	<input checked="" type="checkbox"/>
3I Crime Prevention Safety and Security		
Design development taking into consideration the CPTED principles.	No changes under this Section 96.	<input checked="" type="checkbox"/>
More than 20 dwellings requires formal crime risk assessment.	No changes under this Section 96.	<input checked="" type="checkbox"/>
3J Aircraft Noise and OLS		
Development greater than 15.24m in height is required to be referred to Sydney Airport Corporation.	Council may refer the application to SAC, as the development will increase the maximum building height by 2.7m.	<input checked="" type="checkbox"/>
Indoor design sound levels for determination of aircraft noise to be considered including AS2021.2000. Consider ANEF charts applicable to the City of Botany Bay Council – applies to all development within the 20ANEF range.	No change under this Section 96 and the same requirements will be applied to the modified development.	<input checked="" type="checkbox"/>
3K Contamination		
Consider Contaminated Land Management Act 1997 and provision of SEPP 55	No changes under this Section 96.	<input checked="" type="checkbox"/>
Consider the 5 Steps of Investigation: <ol style="list-style-type: none"> 1) Initial Evaluation; 2) Preliminary Investigation; 3) Detailed Investigation; 4) Site Remedial Action Plan; and 5) Validation & Reporting. 	No changes under this Section 96.	<input checked="" type="checkbox"/>
Containment or Capping of Contaminated Material is not encouraged.	Noted.	<input checked="" type="checkbox"/>
3L Landscaping		
New RFBs require a: <ul style="list-style-type: none"> • Tree survey and arboriculture Report/Tree Assessment. 	Refer to accompanying amended landscape plan.	<input checked="" type="checkbox"/>

CI. CONTROL	COMMENT	
<ul style="list-style-type: none"> Detailed landscape documentation, site analysis and schedule of finishes. Landscape Maintenance Schedule. <p>Minimum of 80% of plants to be native.</p> <p>Maintain and embellish the visual and environmental amenity of the City.</p> <p>Ensure new development incorporates high quality landscaping and planting designs integral to overall development.</p> <p>Ensure landscaping is responsive, retains trees and provides adequate and appropriate landscaping.</p>		
Deep soil landscape zone required for all development and must comply with Part 4 – Residential Development.	No change under this amended DA.	<input checked="" type="checkbox"/>
<p>Green roof encouraged for RFBs with a GFA greater than 2000m²: As a guide the size of the green roof is as follows:</p> <p>(i) 2000m² - 9999m² = 30% of the roof area.</p> <p>(ii) 10,000m² - 19,999m² = 45% of the roof area; and</p> <p>(iii) 20,000m² or greater = 60% of the roof area.</p>	Noted. The approval did not incorporate a green roof.	<input checked="" type="checkbox"/>
3N Waste Minimisation & Management		
<p>Site waste minimisation and Management Plan be prepared and submitted with DA in accordance with Section 3N of the DCP.</p> <p>Multi-unit waste generation is approximately 80L per unit per week and recyclable materials is 40L per unit per week.</p>	Adequate waste facilities will be provided.	<input checked="" type="checkbox"/>
<p>RFBs must provide following:</p> <ul style="list-style-type: none"> 1 x 240L recyclable bin per 2-3 dwellings or part thereof; 1 x 240L waste bin per 2-3 dwellings or part thereof; and 1 x 240L per 5 dwellings (optional) green waste bins per 5 dwellings or part thereof. 	<p>Adequate waste facilities will be provided including:</p> <ul style="list-style-type: none"> 37 recyclable bins 37 waste bins 	<input checked="" type="checkbox"/>
<p>Buildings with 4 or more storeys are required to provide a garbage chute system for access on each level.</p> <p>Multi-storey developments with 10 or more dwellings must provide a caged area with a minimum volume of 4m³ and be allocated for the storage of discarded bulky items</p>	No changes under this Section 96.	<input checked="" type="checkbox"/>
4C Residential Flat Buildings		
4C.2.1 General Objectives and Controls		

CI. CONTROL	COMMENT	
Development will comply with the principles and provisions of SEPP No. 65 and the provisions of the ADG. The provisions of this DCP are in addition to the provisions contained within the ADG. In a Development Application, applicants must demonstrate how a development achieves the objectives outlined in Parts 3 and 4 of the ADG, in addition to controls found within the Botany Bay DCP.	Noted. The amended development will still achieve the intent of SEPP No. 65 and the ADG.	<input checked="" type="checkbox"/>
4C.2 Site Design		
4C.2.1 Design Excellence		
Development has to demonstrate design excellence.	The approved building form will be maintained and will continue to achieve design excellence.	<input checked="" type="checkbox"/>
4C.2.2 Streetscape Presentation		
<ul style="list-style-type: none"> Maximum length of building = 24m 	Noted. The length of the building will generally remain as approved.	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> Articulate facades. 	All facades will be articulated and modulated.	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> Compatibility with streetscape with buildings designed address the street frontage. 	The modified building will continue to address Church Avenue.	<input checked="" type="checkbox"/>
4C.2.3 Height		
Comply with LEP height maximum of 44m. Maximum No. Storeys 13 for undeveloped sites.	The height of the amended building will be less than 44 metres and will be consistent with the maximum 13 storey built form for undeveloped sites within the Mascot Station Precinct.	<input checked="" type="checkbox"/>
4C.2.4 Landscaped Area and Deep Soil Planting		
<ul style="list-style-type: none"> Landscaped area = min 35% 	No change to approved DA.	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> Maximum hard surface area of 20% 	No change to approved DA.	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> No more than one-third (1/3) of the front landscaped setback will be paved. 	No change to approved DA.	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> Driveways and pathways will be located at least 1.5 metres from common boundaries. 	No change to approved DA.	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> Planter beds to be a minimum of 1 metre in width. 	No change to approved DA.	<input checked="" type="checkbox"/>
4C.2.5 Open Space		
Open space should be considered early on during site planning to provide a visual focus for the development.	Noted.	<input checked="" type="checkbox"/>
4C.2.6 Setbacks		
No part of a building or structure (including basement car park, driveways and OSD/infiltration systems) is to	Noted. The approved setbacks from ground to Level 11 will remain as approved.	<input checked="" type="checkbox"/>

CI. CONTROL	COMMENT	
encroach into the front, side and rear building setback zone.	Level 12 will be setback further than Level 11 from all frontages, this will minimise bulk and scale as well as shadow and is considered appropriate. Refer to the accompanying drawings.	
All front, side and rear setbacks are to provide deep soil zones to allow unencumbered planting areas.	As approved under the original DA, the front setback will continue to be landscaped.	<input checked="" type="checkbox"/>
Building setbacks from the existing front boundary must match the setback of adjoining properties, but must be a minimum of 3 metres or 4 metres if fronting a classified road.	Noted. The front setbacks are maintained.	<input checked="" type="checkbox"/>
4C.3 Building Design		
4C.3.1 Building Entries		
<ul style="list-style-type: none"> • Separate pedestrian to vehicle entry points. • Main pedestrian entry to be provided. • Street numbering and mail boxes to be clearly visible. 	The building entry will be more identifiable with the proposed ground floor modifications.	<input checked="" type="checkbox"/>
4C.3.2 Fences		
Not Applicable		N/A
4C.3.3 Materials and Finishes		
A Schedule of Finishes and a detailed Colour Scheme for the building facade will accompany all Development Applications involving building works (refer to Council's Development Application Guide).	The approved materials and finishes will be incorporated into the modified design and will continue to be appropriate.	<input checked="" type="checkbox"/>
4C.4 Building Configuration		
4C.4.1 Dwelling Mix and Layout		
Developments of ten or more apartments are to provide a range of apartment sizes, including studio, 1, 2, and 3+ apartments so as to meet the needs of residents and accommodate a range of household types.	<p>The following unit mix is proposed:</p> <p>Studio = 22</p> <p>1 bed = 22</p> <p>2 bed = 56</p> <p>3 bed = 3</p> <p>The unit mix is appropriate and some units provide study areas.</p>	<input checked="" type="checkbox"/>
For development with ten or more apartments, the following unit mix control will apply: (i) A maximum of 25% of apartments are to be Studio and 1 Bedroom; (ii) All 2 Bedroom apartments are to satisfy the amenity controls for Family Apartments; and (iii) All 3+ Bedroom apartments are to satisfy the amenity controls for Family Apartments. See Part 4C.5.2 - Family Friendly Apartment Buildings.	<p>The proposed mix of studios and 1 bedroom units will be improved from 47.5% to 42.7%.</p> <p>All 2 and 3 bedroom units will contain a study and ensuite to meet family apartment amenity.</p> <p>The amendments result in a positive change to the unit mix.</p>	x <input checked="" type="checkbox"/>

CI. CONTROL	COMMENT	
Dwellings with 3 or more bedrooms are to have two (2) separate and appropriately sized living spaces. A study alcove may be located within the second living space. Should a freestanding study alcove be provided the height of the walls enclosing the study are to be a maximum of 1500mm.	Noted. The new 3 bedroom unit on Level 12 has incorporated 2 living spaces.	<input checked="" type="checkbox"/>
Designs which utilise light corridors and saddle back bedroom designs are not acceptable. Kitchens are to be naturally ventilated.	Noted.	<input checked="" type="checkbox"/>
4C.4.2 Family Friendly Apartment Building		
Family apartments are apartments with two or more bedrooms designed so as to accommodate the living needs of families with children. Family apartments are to include a study to meet the needs of couple families with dependents households. The design of the study should allow for a parent to easily work from home whilst supervising a child. Other than the master bedroom, each bedroom is to be large enough to accommodate a single bed, a desk or table, and floor space for playing, to be illustrated on a standard apartment layout plan	The proposed unit reconfiguration accommodates additional space with 2 and 3 bedroom units incorporating a study area. Refer to accompanying plans. All bedrooms are of sufficient size.	<input checked="" type="checkbox"/>
4C.4.3 Internal Circulation		
Provide multiple cores.	Two cores are provided.	<input checked="" type="checkbox"/>
4C.4.4 Views		
Development is to preserve views of significant topographical features such as the urban skyline, landmark buildings and areas of high visibility. Building design, location and landscaping is to encourage view sharing between properties. Existing significant view corridors as viewed to and from public places must be protected. The opportunity to create new view line corridors will be taken wherever possible and appropriate Note: For principles on view sharing refer to Tenacity Consulting v Warringah (2004) NSWLEC 140 of the Land and Environment Court NSW.	No significant views affected by the development.	<input checked="" type="checkbox"/>
4C.4.5 Acoustic Privacy		
An acoustic report prepared by a certified acoustic consultant will be submitted with the development application addressing the requirements detailed in Controls C2, C3 and C4 below. Aircraft noise and road/rail noise are considerations.	The modified development will still achieve compliance with the endorsed acoustic report.	<input checked="" type="checkbox"/>
4C.4.6 Vibration and Excavation		

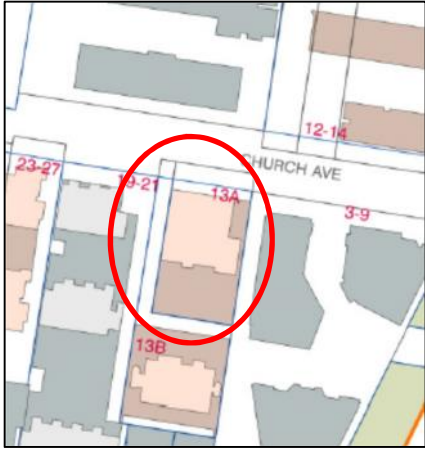
CI. CONTROL	COMMENT	
To ensure that dwellings are not adversely impacted upon by vibrations from railways and roadways.	No change with the amended development than already approved.	<input checked="" type="checkbox"/>
4C.4.7 Site Facilities		
<p>Development must not be carried out on the land until arrangements satisfactory to Sydney Water have been made for the provision to the land of water and sewerage services.</p> <p>Mailboxes will be located indoors in accordance with Australia Post's requirements.</p> <p>Adequate and appropriate unit numbering is to be provided.</p> <p>The name and address of the premises will be displayed in a position that is clearly visible from the street and / or service lane to assist identification and deliveries.</p> <p>Garbage storage and collection points comply with the provisions of Part 3N - Waste Minimisation and Management.</p> <p>Satellite dishes where they are situated in rear courtyards, etc are to be less than 1.8 metres above ground or not visible above any fence surrounding the site.</p> <p>Only one (1) telecommunications/TV antenna will be permitted for each building.</p> <p>The existing above ground electricity and telecommunication cables within the road reserve and within the site will be replaced, at the applicant's expense, by underground cable and appropriate street light standards, in accordance with the Energy and Communication Provider's guidelines. The applicant will bear the cost of the new installation and the first 12 months of additional street light charges.</p> <p>Roller type security shutters on windows and doors are not suitable.</p> <p>Where security devices are required they will be integrated into the overall design.</p> <p>Any electrical kiosk, fire booster assembly or similar utilities are to comply with the provisions of Part 3L – Landscaping.</p>	Remain as approved, no significant changes proposed under this modification.	<input checked="" type="checkbox"/>
4C.4.8 Safety and Security		
Applications must comply with Part 3I - Crime Prevention, Safety and Security. Note: Applications will be referred to the NSW Police Service for comment.	The approved development determined that the building form was appropriate. The proposed changes will not significantly alter the original approval.	<input checked="" type="checkbox"/>
4C.4.9 Car and Bicycle Parking and Vehicle Access		
Development that is located within this Mascot Precinct Area must comply with the provisions of the ADG.	Noted.	<input checked="" type="checkbox"/>
Internal layout and circulation to comply with requirements in Part 3A – Car Parking.	The proposed layout will be able to achieve compliance.	<input checked="" type="checkbox"/>

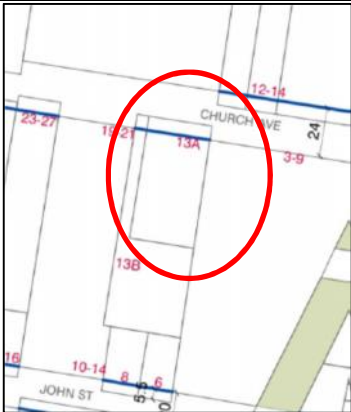
CI. CONTROL	COMMENT	
Small car parking bays are not permitted for apartment buildings.	As discussed above, only 2 resident car spaces will be allocated as 'small car parking spaces'.	☑
Visitor's car parking spaces will be labelled clearly and resident car parking will be numbered to the relevant dwelling.	Noted.	☑
Provision is to be made for furniture removalist vehicles (if more than 20 units).	A service space is provided within the car park.	☑
Vehicular access driveways and the top part of ramps visible from the street must be part of the overall landscape design.	Noted. No change with this Section 96.	☑
Basement car parking: <ul style="list-style-type: none"> Must not protrude further than 1.2 metres out of the ground when measured from natural ground to the underside of the slab at ground floor level of the building; Must be located under the building footprint of the development; Must not extend under dwelling balconies or setback areas; 	Noted. Remains as approved.	☑
4C.5 Social Requirements		
4C.5.1 Adaptable Housing		
A statement from the architect or builder must be submitted with the development application certifying that the adaptable dwelling has been designed in accordance with the provisions of the Australian Standards AS 4299-1995 Adaptable Housing. Adaptable and accessible housing are to be provided in accordance with Part 3C – Access and Mobility.	Able to remain compliant with modified plans. Refer to the accompanying amended accessibility report.	☑
4C.5.2 Access		
All applications are to include a statement on how the development will comply with the provisions of the Disability Discrimination Act and comply with Part 3C - Access and Mobility. Developments will have night lighting along all driveways and footpaths throughout the site. Ramps should have gradients not exceeding 1 in 14, and have an even, non-slip surface. Unnecessary barriers to direct access will be avoided.	Able to comply. Refer to the accompanying amended accessibility report.	☑
Part 8 Character Precincts		
8.7 Mascot Character Precinct		
8.7.1 Existing Character		

CI. CONTROL	COMMENT	
Mascot abuts the Airport, contains Mascot Station Precinct and is linked to major regional and State road networks. Dominant land uses are industrial/airport related uses, residential and retail. The uses are clearly segmented with industrial uses being located in the area bound by O'Riordan St, Alexandra Canal, Gardeners Road and the Airport. Linear retail strips are situated along Botany Road and Gardeners Road and residential occupies remaining parts of precinct.	The Section 96 will further enhance the approved DA which results in a revitalisation of redundant commercial land.	<input checked="" type="checkbox"/>
8.7.2 Desired Future Character		
Function & Diversity: <ul style="list-style-type: none"> Enhance public domain and streetscapes. Focus and limit activity to MSTCP Non-residential along street frontage Encourage different housing styles Consistent streetscape 	The Section 96 does not alter the significantly improved public domain with the redevelopment of the site. Residential uses are maintained under the original DA along the Church Ave frontage as approved. The generous lobby entry will continue to activate and improve the public domain.	<input checked="" type="checkbox"/>
Form, Massing, Scale & Streetscape: <ul style="list-style-type: none"> Facilitate 12 storey development in MSTCP Promote site access and facilities that do not dominate streetscape. New development to complement existing development Maintain roof forms. 	The approved part 12 part 13 storey building envelope is consistent with the MSTCP desired future character. This Section 96 does not result in a breach of the 44m height control.	<input checked="" type="checkbox"/>
Setbacks: <ul style="list-style-type: none"> Retain consistent front setbacks Retain consistent side setbacks 	Level 12 will be setback significantly from Level 11 below and this minimises bulk and scale when viewed from the public domain.	<input checked="" type="checkbox"/>
Landscaping: <ul style="list-style-type: none"> Maintain view lines Encourage landscaping of setbacks Promote landscaping in rear POS for privacy 	Refer to accompanying amended landscape plan.	<input checked="" type="checkbox"/>
Heritage: <ul style="list-style-type: none"> Promote Urban design and uses to enhance the character Conserve and enhance heritage items 	Not Applicable	<input checked="" type="checkbox"/>
Fencing: <ul style="list-style-type: none"> Encourage and retain fencing consistent with the street. 	Not Applicable	<input checked="" type="checkbox"/>
Noise:	No changes under this Section 96.	<input checked="" type="checkbox"/>

CI. CONTROL	COMMENT	
<ul style="list-style-type: none"> Minimise traffic and aircraft transmission. 		
Subdivision: <ul style="list-style-type: none"> Retain rectilinear grid 	Not Applicable	<input checked="" type="checkbox"/>
Public Domain & Environment: <ul style="list-style-type: none"> Encourage links to open space with pedestrian linkages Encourage landscaping Enhance pedestrian amenity 	No changes under this Section 96.	<input checked="" type="checkbox"/>
Solar Access: <ul style="list-style-type: none"> Maximise solar access to adjoining properties and public domain. Preserve solar access to adjoining properties. 	The development will result in some minor increase in overshadowing but due to site orientation and setbacks this will not detrimentally affect adjoining sites, as shown in accompanying shadow diagrams. The minor increase is negligible.	<input checked="" type="checkbox"/>
Traffic & Access: <ul style="list-style-type: none"> New development to have minimal impact on traffic flow and demand for on street parking and public open spaces. Provide adequate on-site parking. Discourage through traffic throughout the Precinct. 	The car parking spaces and layout will be reconfigured based on the proposed modifications. However, compliance with the Australian Standards will be met and will not have a significant effect on the surrounding traffic network. Refer to the accompanying amended Traffic Report.	<input checked="" type="checkbox"/>
Views: <ul style="list-style-type: none"> Retain existing views 	No changes under this Section 96.	<input checked="" type="checkbox"/>
Part 9A Mascot Station Town Centre Precinct		
General Provisions		
9A.3 Urban Block Character Statements		
9A.3.1.2 Existing Character – Urban Block 4		
Sites west of the Sydney Water SWOOS have been recently redeveloped or upgraded and redevelopment is unlikely. Sites east of the SWOOS are predominantly residential uses. Buildings between the SWOOS and O’Riordan Street are 1 and 2 storeys and up to 7 storeys.	Noted.	<input checked="" type="checkbox"/>
9A.3.5 Desired Future Character – Urban Block 4		
Land uses: <ul style="list-style-type: none"> The existing character of predominantly apartment buildings on O’Riordan Street is generally appropriate although proposed public domain improvements within the road reserves will further consolidate and improve the streetscape; and Remaining potential redevelopment sites will provide 	The proposed modification will present as a 12 storey building with the upper level setback at the top of the building. This is consistent with the desired future character.	<input checked="" type="checkbox"/>

CI. CONTROL	COMMENT	
for apartment buildings up to 13 storeys in height.		
Public Domain: <ul style="list-style-type: none"> Permission has been gained for the use of the Southern Western Suburbs Ocean Outfall Sewer land (SWSOOS), owned by Sydney Water as public space. This will provide useful landscaped open space in the eastern part of the Town Centre, adjacent to many recently built and recently approved residential developments. The SWSOOS will also provide a pedestrian link between Gardeners Road and Coward Street. 	No changes under this Section 96.	<input checked="" type="checkbox"/>
Road Widening: <ul style="list-style-type: none"> Additional road widening within Urban Block 4 has been identified on BBEP 2013 Land Reservation Map – Sheet LRA_001; and Road widening is required along the southern and northern sides of Church Avenue and John Street (applies to sites that have not been redeveloped to date). For Church Avenue the land to be dedicated is calculated by measuring the appropriate distance from the centre line of the existing road. The road reserve is to be 12 metres from each side of this centre line. For John Street, the land to be dedicated is to be calculated by measuring from the centre line of the existing road. The new road reserve is to be 10 metres each side of this centre line. 	No changes under this Section 96. The development as amended achieves the required street front.	<input checked="" type="checkbox"/>
9A.4 General Controls		
9A.4.2 General Control Plans		
Identifies an approved and unbuilt DA for the subject site.	Noted.	<input checked="" type="checkbox"/>
9A.4.3.1 Height		
Comply with Botany Bay LEP 2013 Clause 4.3 – 44m	The proposed height under this Section 96 complies with the LEP control of 44 metres.	<input checked="" type="checkbox"/>
Council may require a reduction in height if the building has unacceptable adverse impacts: overshadowing, view loss, design excellence, inappropriate transition etc.	The development as amended does not unreasonably affect surrounding properties, as shown in the accompanying architectural drawings and shadow diagrams. Accordingly there will be no detrimental impact by way of overshadowing, view loss or privacy. This application does not increase the height beyond the maximum 44m control. Adequate separation has been provided with	<input checked="" type="checkbox"/>

CI. CONTROL	COMMENT	
	adjoining sites and internally on the same site to minimise privacy and overlooking impacts.	
Conform to maximum height in Urban Block 4 as shown in Figure 20. Site identified as having approval but being unbuilt.	The development as amended by this Section 96 increases the height from the current approval, however, this remains consistent with Clause 9A.3.5 Desired Future Character – Urban Block 4, which identifies the character as being up to 13 storeys for undeveloped sites.	☑
9A.4.3.2 FSR		
Comply with Botany Bay LEP 2013 Clause 4.4 – 3.89:1.	The proposed FSR has been justified in the LEP discussion within the SEE.	x
Council may require a reduction in FSR if the building has unacceptable adverse impacts: overshadowing, view loss, design excellence, inappropriate transition etc.	Noted. The site can sustain the proposed FSR as justified within the SEE. The bulk and scale of the building was already deemed appropriate in the approval of DA 13/056. This Section 96 maintains the key elements of that approval.	☑
Development must comply with the future layout and built form controls for Urban Block 4 refer to Figure 15. This requirement may not result in the FSR being achieved. Figure 15 is shown below: 	The height of the building is generally consistent with the approved building form. The additional height and reconfiguration of the residential unit layouts will not significantly change the building form and it will still remain consistent with the desired future character of the area.	☑
9A.4.3.3 Site Amalgamation and Subdivision		
Must conform to amalgamation pattern shown in Figure 25.	Not Applicable	☑
Lot alignments to conform to Figure 29.	No changes under this Section 96, the road will still be widened in accordance with Figure 29.	☑

CI. CONTROL	COMMENT	
		
Subdivision plan will be required where land needs to be excised to create new parks, public domain spaces or roadways.	Noted.	<input checked="" type="checkbox"/>
9A.4.3.4 Street Setbacks		
Urban Block 4 to comply with setbacks in Figure 34 and 35: <ul style="list-style-type: none"> No setbacks specified due to approved building. 	No changes under this Section 96. Level 12 will have a greater setback from the levels below and this will assist in minimising bulk and scale.	<input checked="" type="checkbox"/>
All development within Urban Blocks 1 and 4 must comply with the section plans in Figures 36, 37, 38, 39, 40, 41 and 42:	Not Applicable. Notwithstanding, the building form as approved will be maintained with the exception of Level 12 which will be setback 5.075m from Level 11 below. This is appropriate.	<input checked="" type="checkbox"/>
All property boundary front setbacks must be deep soil (landscaped area) and must not have underground intrusions such as basement car parking or OSD.	No changes under this Section 96. Deep soil planting will be provided along the Church Avenue frontage.	<input checked="" type="checkbox"/>
9A.4.4.1 Design Excellence		
Require SEPP 65 Design Statement.	Refer to accompanying statement.	<input checked="" type="checkbox"/>
Development must comply with Part 4 Development.	Noted. The development achieves design excellence and will make a substantial contribution to the public domain.	<input checked="" type="checkbox"/>
The proposed building design and form must identify and justify: (i) How it will define the public domain and contribute to the character of the streetscape; and (ii) How it will meet the SEPP 65 Residential Flat Design Code recommendations.	No changes under this Section 96. As discussed above, the proposed street setbacks and ground level residential uses are consistent with the desired future character of Church Avenue. The building as approved and proposed under this Section 96 maintains a strong street edge that will define the public domain. While the proposed street plantings will soften the public	<input checked="" type="checkbox"/>

CI. CONTROL	COMMENT	
	domain and built form while improving the amenity for pedestrians.	
Drawings and examples must be provided regarding the building features, textures, materials, finishes and colours suitable to the site, building type and context.	Refer to accompanying photomontages and materials and finishes schedule.	☑
Prior to its lodgement as a Development Application, the proposed development must be presented to the City of Botany Bay Design Review Panel.	Noted, the approved DA was presented to the DRP and their previous comments were considered in the approval of DA13/56.	☑
9A.4.4.2 Streetscape and Building Form		
A 'sense of place' and contemporary character for the precinct is to be maintained via a high quality built form and energy efficient architectural design.	The building, as amended by this S96, has been architecturally designed and will provide a high quality built form.	☑
Buildings must have a consistent street wall height (in terms of the number of storeys) and provide a continuous street frontage along all significant streets.	No change under this Section 96. The additional unit on Level 12 is appropriately setback.	☑
Diversity and activity is to be ensured via providing a variety of frontage widths for retail shops along the street.	Noted.	☑
Blank walls are to be avoided fronting principal streets and the public domain.	Blank walls have been avoided.	☑
9A.4.4.3 Public Domain Interface at Ground Level		
<ul style="list-style-type: none"> Clearly definable entry and address to the street. Primary outdoor open space not to be located on the street frontage. Ground floor residential with a street frontage must incorporate landscaping, ideally as part of the common area/setback, with such landscaping to provide for privacy as well as for a consistent, attractive and well maintained landscape frontage. The private terraces should also contain some landscaping. The landscaped street setback area shall be on one level or at a slightly battered grade, not terraced or stepped or containing narrow planter boxes, to allow adequate lateral root space and soil volume for medium to large canopy trees. Side or rear boundary fencing is not permitted fronting the public domain except where appropriate landscaping is located in front of the fence. The visual connection between the building frontage and the public domain must be considered carefully in all development. 	<p>No changes under this Section 96.</p> <p>Landscaping still provided along Church Avenue setback.</p>	☑

CI. CONTROL	COMMENT	
9A.4.4.4 Active Street Frontages and Awnings		
All development within Urban Blocks 1 and 4 must provide retail or commercial street frontages where shown in Figures 49, 50, 51 and 52.	No commercial or retail frontage requirements for site in Figure 52. Residential maintained at ground level, as approved.	<input checked="" type="checkbox"/>
All development within Urban Blocks 1 and 4 must provide awnings where shown in Figures 53, 54, 55 and 56. Awning widths must accommodate street tree planting to Council specifications.	No awnings required in Figure 56.	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> Awnings must allow for continuous and contiguous street tree planting. Outdoor dining to provide safe pedestrian circulation. Minimum passage of 2m between adjacent buildings and leased outdoor area. Number of tables and chairs to be based on leased area. No A-frame advertisements permitted. 	Not applicable.	N/A
9A.4.4.5 Residential and Non-Residential Interface		
<ul style="list-style-type: none"> Clear boundaries between public and private domain. Shadow diagrams required for summer and winter solstices at 9am, 12pm and 3pm. Design and positioning of plant and equipment to be included in early design process. 	No changes under this Section 96. Clear boundaries were provided between landscaping and the built form features. This amending DA maintains compliant shadow.	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
9A.4.4.6 Building Articulation		
<ul style="list-style-type: none"> Corner buildings to address both streets. Blank external walls of greater than 100m² to be avoided. 	No changes under this Section 96. Site is not a corner site and blank walls are not proposed.	<input checked="" type="checkbox"/>
9A.4.4.7 Crime Prevention, Safety and Security		
<ul style="list-style-type: none"> Any construction plans with the development application must show the location of smoke detectors, together with a specification on their installation in accordance with the Building Code of Australia (BCA). Development must comply with Part 3I - Crime Prevention, Safety and Security. Building and open space designed to enable casual surveillance, minimise access between areas within the development and provide adequate lighting. 	No changes under this Section 96. The building maintains their opportunities for casual surveillance and has a secure entry point with an easily definable entry. All this ensures safety of future residents and visitors.	<input checked="" type="checkbox"/>

CI. CONTROL	COMMENT	
<ul style="list-style-type: none"> Secure entry and exit points. Blank walls to be avoided. Provide clear signage. 		
9A.4.4.8 Loading and Unloading		
<ul style="list-style-type: none"> Development must comply with Part 3A - Car Parking. All commercial developments and mixed use developments must provide onsite loading and unloading areas. Loading and unloading areas should be well hidden or screened from the public domain and should be located underground where practical. Loading docks must be located so that vehicles do not stand on any public road, footway, laneway or service road Where possible vehicles using the loading and unloading areas should entering and leaving in a forward direction. Loading docks should comply with AS 2890/2 (2002) – Off street commercial vehicle facilities. 	<p>No changes under this Section 96.</p> <p>The RFB will provide one service space.</p>	☑
9A.4.5.1 Acoustic Privacy		
Acoustic Report may be required.	No changes under this Section 96. The building will comply with the recommendations of the approved Acoustic report.	☑
9A.4.5.2 Sustainable Building Design		
<p>Comply with Part 3H – Sustainable Design.</p> <p>Comply with provisions of SEPP (BASIX).</p> <p>Comply with SEPP 65 and ADG.</p>	Refer to accompanying BASIX certificate which confirms that the amending DA achieves energy, water and thermal requirements.	☑
9A.4.5.3 Views		
Development to preserve views and encourage view sharing between sites	No views affected.	☑
9A.4.5.4 Wind Mitigation		
Wind report may be requested.	No changes under this Section 96. The approved building envelope is generally consistent.	☑
9A.4.5.5 Reflectivity		
<p>Reflectivity not to exceed 20%.</p> <p>A reflectivity report may be necessary.</p>	No changes under this Section 96.	☑

CI. CONTROL	COMMENT	
9A.4.5.6 Stormwater Management and Flooding.		
Development must comply with Part 3G – Stormwater Management and Council's Stormwater Management Technical Guidelines.	No changes under this Section 96.	<input checked="" type="checkbox"/>
9A.4.6.1 Maintenance		
Consider easy maintenance material.	No changes under this Section 96. The approved materials and finishes will require low maintenance.	<input checked="" type="checkbox"/>
9A.4.6.2 Signage		
Not Applicable	N/A	<input checked="" type="checkbox"/>
9A.4.6.3 Fencing		
Not Applicable	N/A	<input checked="" type="checkbox"/>
9A.5 Public Domain Works		
9A.5.1 Overview		
To be in accordance with Council requirements.	No changes under this Section 96.	<input checked="" type="checkbox"/>
9A.5.2 Streets		
New streets and changes to existing streets are to be provided in accordance with Figures 57, 58, 59 and 60 , the Public Domain Strategy and Appendix A of the Mascot Town Centre Precinct Masterplan.	No changes under this Section 96.	<input checked="" type="checkbox"/>
9A.5.3 Parks		
New parks and changes to existing open space areas are to be provided in accordance with Figures 57, 58, 59 and 60 , the Public Domain Strategy and Appendix A of the Mascot Town Centre Precinct Masterplan.	The subject site is not identified as being required to provide a new park. No changes under this Section 96.	<input checked="" type="checkbox"/>
9A.6 Development Contributions and Planning Agreements		
To be discussed with and agreed to with Council.	No changes under this Section 96.	<input checked="" type="checkbox"/>

4.3.53 It is therefore considered that the development as amended is appropriate and compliant with the provisions of the DCP.

Apartment Design Guide

- 4.3.54 The Apartment Design Guide supports nine design quality principles identified in the amended State Environmental Planning Policy No. 65 — Design Quality of Residential Flat Development (Amendment No.3). It supplies detailed information about how development proposals can achieve these principles.
- 4.3.55 The provisions of the ADG apply to this development. The following table provides an assessment of the modified development against the applicable guidelines in the ADG:

Table 10: Assessment against the Apartment Design Guide

Guide Requirements	Comments	Complies
PART 2. DEVELOPING THE CONTROLS		
2B Building Envelopes		
The building envelope is the three dimensional volume that defines the outermost part of a site that the building can occupy.	<i>The proposed modifications will not significantly alter the approved envelope form. Refer to accompanying architectural plans.</i>	<input checked="" type="checkbox"/>
2C Building Height		
Building height helps shape the desired future character of a place relative to its setting and topography. It defines the proportion and scale of streets and public spaces and has a relationship to the physical and visual amenity of both the public and private realms. Where FSR is defined, heights should be tested against the FSR to ensure a good fit.	<i>The proposed increased height can be accommodated on this site and will not detrimentally affect surrounding sites, refer to LEP height discussion above.</i>	<input checked="" type="checkbox"/>
2D Floor Space Ratio		
Floor space ratio (FSR) is the relationship of the total gross floor area (GFA) of a building relative to the total site area it is built on. It indicates the intended density. FSR is a widely used method for estimating the development potential of a site. The maximum FSR may not be achievable when considering all planning requirements for privacy, separation, lot size and shape, heritage etc. FSR is not a measure of the maximum capacity of the building envelope – approximately 70% of the envelope is likely to be utilised.	<i>Refer to LEP FSR discussion above, the minor increase is justified.</i>	<input checked="" type="checkbox"/>
2E Building Depth		
10-18 metres from glass line to glass line for adequate daylight and natural ventilation. Buildings facing east-west capture more sun from both aspects and may have apartments up to 18m wide. While buildings facing north-south should be narrower to limit number of south facing apartments. Buildings having a smaller depth over a greater height	<i>The proposed modifications will reduce the depth of the building footprint and this is an improvement to the amenity of the building. The reconfigured unit sizes are acceptable, refer to discussion in Section 3 above.</i>	<input checked="" type="checkbox"/>

Guide Requirements	Comments	Complies
<p>have higher amenity than wider shorter buildings.</p> <p>Greater depths may be possible where higher ceiling heights are provided.</p> <p>Mixed-use buildings to be transitioned. Deeper commercial or retail podiums and narrower residential above.</p>		
2F Building Separation		
<p>Building Separation</p> <p>Buildings up to 4 storeys / 12 metres</p> <ul style="list-style-type: none"> • 12 metres between habitable rooms/balconies • 9 metres between habitable /balconies and non-habitable rooms • 6 metres between non-habitable rooms <p>For buildings five to eight storeys / 25 metres</p> <ul style="list-style-type: none"> • 18 metres between habitable rooms/balconies • 13 metres between habitable /balconies and non-habitable rooms • 9 metres between non-habitable rooms <p>For buildings nine storeys and above</p> <ul style="list-style-type: none"> • 24 metres between habitable rooms/balconies • 18 metres between habitable /balconies and non-habitable rooms • 12 metres between non-habitable rooms <p>An additional 3m separation to be provided between residential apartment development site and an adjacent lower density zone change.</p> <p>No separation required where there is a blank party wall.</p> <p>Required setbacks may need to be greater to achieve better amenity outcomes.</p>	<p><i>As approved, no changes proposed that affect the approved separation distances.</i></p> <p><i>The application modifies the placement of high level or obscure windows along the eastern and western elevations (side boundaries). However, the setbacks remain as approved and the use of high level windows and obscure glazing will still continue to be implemented as originally intended.</i></p> <p><i>Level 12 will be setback 6m from the western boundary and 6.572m from the eastern boundary. The new 3 bedroom unit will not have windows located along these elevations to maintain privacy and this is appropriate.</i></p> <p><i>The BBQ area will be located within the 6m setback from the western boundary; however, this is appropriate due to the adjacent easement which is unlikely to be built on.</i></p> <p><i>Noted.</i></p> <p><i>Noted. Level 12 has increased setbacks.</i></p>	<p>☑</p> <p>☑</p> <p>☑</p> <p>☑</p>
2G Street Setbacks		
Identify the desired streetscape character and the common setback in the street.	<p><i>No change to front setbacks, remaining as approved between ground and Level 11.</i></p> <p><i>Level 12 has an increased setback which is appropriate.</i></p>	☑
Align street setbacks with building use (i.e zero in mixed use zone)	<i>No change.</i>	☑
Consider a maximum percentage that may be constructed to the front building line, where one is set, to	<i>The facades will retain adequate modulation.</i>	☑

Guide Requirements	Comments	Complies
ensure a modulated frontage.		
Consider secondary upper level setbacks.	<i>The building floor plate is reduced at Level 12.</i>	<input checked="" type="checkbox"/>
Promote setbacks that will allow balconies or windows to promote passive surveillance to the street.	<i>As approved, balconies and windows will continue to overlook the street.</i>	<input checked="" type="checkbox"/>
2H Side and Rear Setbacks		
Test side and rear setbacks with height controls for overshadowing of the site, adjoining properties and open spaces.	<i>As approved, no change from ground to Level 11. Level 12 has increased setbacks which is appropriate.</i>	<input checked="" type="checkbox"/>
Test side and rear setbacks against building separation, privacy, communal and private open space and deep soil requirements.		
Consider zero setbacks where desired character is for continuous street wall.		
PART 3 SITING THE DEVELOPMENT		
3B Orientation		
Living rooms and POS of at least 70% of apartments to receive a minimum of 2 hours of direct sunlight between 9am and 3pm mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong LGAs.	<i>76% of units within the development will receive in excess of 2 hours of sunlight. Refer to accompanying architectural drawings.</i>	<input checked="" type="checkbox"/>
In all other areas, living rooms and POS of at least 70% of apartments receive a minimum of 3 hours of direct sunlight between 9am and 3pm mid-winter.	<i>Not applicable.</i>	N/A
A maximum of 15% of apartments to receive no direct sunlight between 9am and 3pm at mid-winter.	<i>All apartments will receive sunlight during the day.</i>	<input checked="" type="checkbox"/>
Communal open space to have a minimum area of 25% of the site with a minimum of 50% to receive direct sunlight to the principle usable area for a minimum of 2 hours between 9am and 3pm on 21 June.	<i>As approved, no change.</i>	<input checked="" type="checkbox"/>
Must consider solar access to neighbouring properties. Where adjoining properties receive less than the required hours of solar access the development should not reduce by more than 20%. Increased setbacks may be required to minimise overshadowing and maintain privacy.	<i>The additional height will not unreasonably affect adjoining properties, refer to the accompanying shadow diagrams and LEP height discussion above.</i>	<input checked="" type="checkbox"/>
A minimum of 4 hours of solar access to be retained to solar collectors on neighbouring buildings.	<i>Noted. Solar collectors will not be affected on adjoining properties.</i>	<input checked="" type="checkbox"/>
3F Visual Privacy		
Visual privacy Maintain compliance with building separation controls to ensure sufficient privacy between buildings. No separation required between blank walls.	<i>Sufficient separation is provided to maintain privacy to all residents. Direct overlooking of adjoining properties is avoided by building layout, location and design of windows. The proposed modifications</i>	<input checked="" type="checkbox"/>

Guide Requirements	Comments	Complies
Gallery access circulation should be treated as habitable space when measuring separation distances.	<i>will not unreasonably affect adjoining properties, refer to accompanying architectural drawings.</i>	
3H Vehicle Access		
Car park access to be integrated into the design of the building's façade and behind the building line. Locate entrance on secondary streets where possible. Screen garbage collection. Generally limit the width of driveways to a minimum. Locate vehicle entries away from main pedestrian entries.	<i>The modifications to the basement car park will still be capable of complying with the Australian Standards.</i>	<input checked="" type="checkbox"/>
3J Bicycle and Car Parking		
For sites within 800m of a railway station or light rail stop in the Sydney Metro area or on land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre must provide parking in accordance with the Guide to Traffic Generating Developments, or the Council DCP, whichever is the lessor. Provide car parking off-street. Where a car share scheme operates locally, provide car share parking spaces within the development. Where less car parking is provided, Council should not offer on street resident parking permits.	<i>The site is located within 800m of Mascot Railway station. The following minimum rates apply for metropolitan sub-regional centres: 0.6 spaces per 1 bed unit(22) = 13.2 0.9 spaces per 2 bed unit(56) = 50.4 1.4 spaces per 3 bed unit(3) = 4.2 1 space per 5 units for visitors = 20.6 Total car spaces required = 89 (rounded up) A total of 110 car spaces are proposed being a reduction of 28 car spaces from the original approval.</i>	<input checked="" type="checkbox"/>
Provide convenient bicycle parking that is secure and undercover.	<i>14 bicycle parking spaces will still be provided within the basement.</i>	<input checked="" type="checkbox"/>
PART 4 Designing the Building		
Amenity		
4A Solar and Daylight Access		
Daylight access 70% of living rooms and private open space to receive a minimum of 2 hours solar access between 9am to 3pm mid-winter in Sydney Metro area, Newcastle and Wollongong. All other areas to be 3 hours.	<i>76% (103) of the new units will achieve 2 hours of sunlight on 21 June.</i>	<input checked="" type="checkbox"/>
Maximum of 15% of units in the building receive no direct sunlight between 9am and 3pm mid-winter.	<i>Complies.</i>	<input checked="" type="checkbox"/>
4B Natural Ventilation		
All habitable rooms to be naturally ventilated.	<i>All modified habitable rooms will be naturally ventilated.</i>	<input checked="" type="checkbox"/>
Area of unobstructed window opening to be equal to 5% of the floor area served.	<i>The unobstructed window opening of the modified units will be equal or greater than 5% of the floor area served.</i>	<input checked="" type="checkbox"/>

Guide Requirements	Comments	Complies
Light wells not primary air source for habitable rooms. Min 60% of apartments to be naturally cross-ventilated.	<i>Light-wells will not be primary source of air.</i> <i>60% of required units in the first 9 storeys are naturally cross-ventilated.</i>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
4C Ceiling Heights		
Minimum ceiling heights measured from FFL to finished ceiling level are: <ul style="list-style-type: none"> • 2.7m – habitable rooms • 2.4m – non-habitable rooms • For two storey units, 2.7m for main living area floor and 2.4m for second floor, where its area does not exceed 50% of the apartment area. • Attic spaces – 1.8m at edge of room with a 30 degree minimum ceiling slope. • If located in mixed use area – 3.3m for ground and first floor to promote future flexibility of use. Higher ceilings are possible if desired, the above are a minimum.	<i>All units will be capable of achieving a minimum floor to ceiling height greater than 2.7 metres for habitable rooms, due to the proposed 100mm increase for floor to floor heights.</i>	<input checked="" type="checkbox"/>
4D Apartment Size and Layout		
Minimum apartment size: <ul style="list-style-type: none"> • Studio – min 35m² • One bed – min 50m² • Two bed – min 70m² • Three bed – min 90m² The above include only 1 bathroom. Size increases by an extra 5m ² for each additional bathroom. Each additional bedroom over 3 bed will increase unit size minimum by 12m ² .	<i>All units will satisfy the minimum size requirements, refer to accompanying schedule within the architectural drawings.</i>	<input checked="" type="checkbox"/>
Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	<i>The modified design of the units is capable of complying.</i>	<input checked="" type="checkbox"/>
4E Private Open Space and Balconies		
Min balcony size and width: <ul style="list-style-type: none"> • Studio – 4m² min & no min width • 1 bed – 8m² & min & width of 2m • 2 bed – 10m² & width of 2m • 3 bed + - 12m² & width of 2.4m Balcony must have minimum depth of 1m to count towards balcony area.	<i>The proposed new unit and all approved units will all contain a compliant private balcony equal to or greater than 8m², 10m² or 12m².</i>	<input checked="" type="checkbox"/>
4G Storage		
Storage Provide storage areas as follows: Studio – 4m ³	<i>Adequate storage areas have been provided for the modified units. Refer to accompanying architectural drawings, Unit Schedule and SEPP</i>	<input checked="" type="checkbox"/>

Guide Requirements	Comments	Complies
One bed – 6m ³ Two bed – 8m ³ Three + bed – 10m ³ At least 50% to be located within the apartment.	65 Statement.	
Configuration		
4K Apartment Mix		
Provide a variety and diversity of apartment types.	<i>The proposed development will provide the following unit mix:</i> <ul style="list-style-type: none"> • 22 x studio • 22 x one bedroom; • 56 x two bedrooms; and • 3 x three bedrooms. <i>The mix of units remains appropriate.</i>	<input checked="" type="checkbox"/>
4M Facades		
Building facades provide visual interest along the street while respecting the character of the local area. Building functions are expressed by the facade.	<i>Refer to the accompanying Architectural Plans. The modified facade details will not be highly discernible and will remain highly articulated with depth to minimise bulk and scale.</i>	<input checked="" type="checkbox"/>
4Q Universal Design		
Minimum of 20% of apartments to incorporate Liveable Housing Guidelines silver level universal; design features. Provide a variety of apartments with adaptable designs.	<i>Capable of complying. Refer to the accompanying amended accessibility report.</i>	<input checked="" type="checkbox"/>
4S Mixed Use		
Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement. Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents	<i>Not applicable development is for a RFB only.</i>	N/A
Performance		
4U Energy Efficiency		
Incorporate passive solar environmental design. Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer. Adequate natural ventilation minimises the need for mechanical ventilation.	<i>The modified development complies with the requirements of BASIX, refer to the amended BASIX Certificate accompanying this application.</i>	<input checked="" type="checkbox"/>

4.3.56 As demonstrated above, the modified development will satisfy the applicable sections of the ADG. The above table addresses the controls in the ADG that are affected by the proposed modifications only, all other applicable sections are satisfied and remain unchanged by the modified development.

4.4 The Likely Impacts

- 4.4.1 It is considered that the amendments sought under this application will have no unreasonable adverse impact. The changes improve the functionality of the development without additional impact to surrounding properties.
- 4.4.2 The minor increase to the shadow cast by the increased height of the development will not adversely affect adjoining properties, as shown in the accompanying shadow diagrams. The architectural design and intent of the approved development will be retained and the building will be highly consistent with the desired future character of the Mascot Station Precinct.
- 4.4.3 The proposed modification will result in a GFA increase of 193m², this results in the overall FSR of 3.89:1. The proposed addition of the new unit on Level 12 will not be highly visible from the public domain or adjoining sites due the proposed setbacks and the design of the building will retain adequate depth and modulation.
- 4.4.4 Sufficient parking is provided and maintained within the approved basement levels to accommodate the minor increase in density and changes to the unit mix.
- 4.4.5 Overall, the proposed changes have been justified in the report and will not detrimentally affect the locality.

4.5 The Suitability of the Site for the Development

- 4.5.1 As with the original development application, the site is suitable for the proposed development.

4.6 Submissions

- 4.6.1 Any submissions received at the close of the public exhibition period will be considered by the applicant. However, given the nature of the amendments, it is unlikely to raise any issues with surrounding properties.

4.7 The Public Interest

- 4.7.1 It is in the public interest to allow development that reasonably complies with planning controls, has no adverse environmental, economic or social impacts, and has general merit.
- 4.7.2 The proposed modifications will not detrimentally affect adjoining properties by way of overshadowing and the increased density will not create detrimental bulk and scale, as demonstrated in the report above. The increased height is to achieve a better internal amenity for the units.
- 4.7.3 The amendments sought to the approved development are not contrary to the public interest.

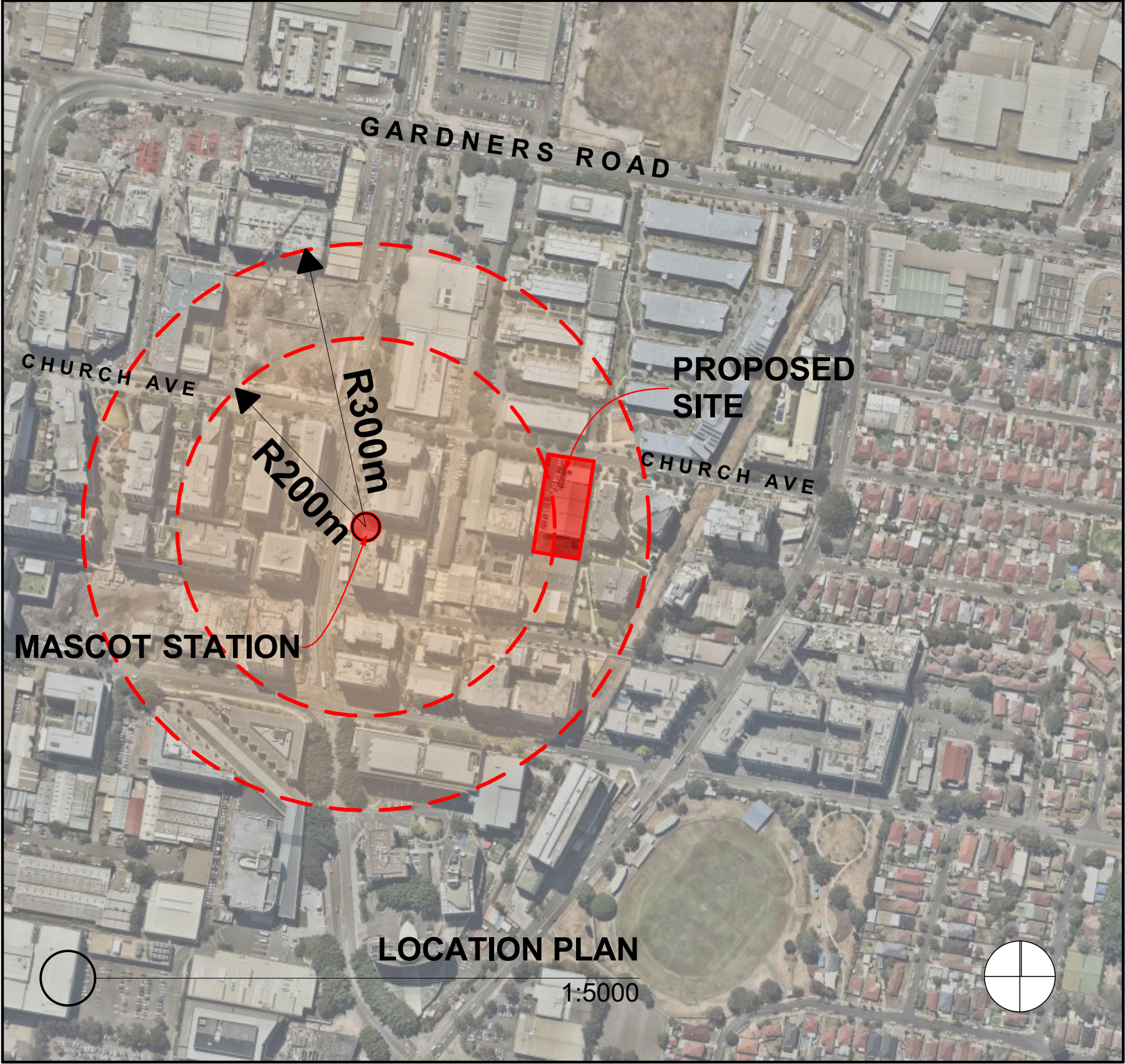
5.0 CONCLUSION

- 5.1 The proposed amendments are considered appropriate and satisfy the test under Section 96(2) of the Environmental Planning & Assessment Act 1979.
- 5.2 The relevant planning controls have been considered in the forgoing assessment i.e.:
- State Environmental Planning Policy No. 65
 - State Environmental Planning Policy No. 55
 - State Environmental Planning Policy (BASIX) 2004
 - State Environmental Planning Policy (Infrastructure)
 - Botany Bay Local Environmental Plan 2013
 - Botany Bay Development Control Plan 2013
 - Apartment Design Guide
- 5.3 Accordingly, it is recommended that the modifications proposed to DA13/56 under Section 96(2) of the Environmental Planning and Assessment Act 1979 be approved.



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SHEET INDEX

NO	SHEET NAME	NO
S96 000	COVER SHEET & LOCATION PLAN	NTS
S96 001	PHOTO MONTAGE	NTS
S96 002	BASIX-DWELLING	NTS
S96 003	BASIX-DWELLING	NTS
S96 004	BASIX-COMMON	NTS
S96 050	SITE MANAGEMENT PALN	1:200
S96 100	SITE ANALYSIS	1:200
S96 101	SITE PLAN	1:200
S96 101.5	BASEMENT L03	1:100
S96 102	BASEMENT L01	1:100
S96 103	BASEMENT L02	1:100
S96 104	GROUND FLOOR PLAN	1:100
S96 105	LEVEL1 PLAN	1:100
S96 106	TYPICAL LEVEL PLAN	1:100
S96 107	LEVEL 12 PLAN	1:100
S96 108	ROOF PLAN	1:100
S96 120	SHADOW DIAGRAMS WINTER SOLSTICE 9AM	1:500
S96 121	SHADOW DIAGRAMS WINTER SOLSTICE 12PM	1:500
S96 122	SHADOW DIAGRAMS WINTER SOLSTICE 3PM	1:500
S96 150	ADG & GFA CALCULATIONS	1:300
S96 200	ELEVATIONS NORTH	1:100
S96 202	ELEVATIONS EAST	1:100
S96 203	ELEVATIONS SOUTH	1:100
S96 204	ELEVATIONS WEST	1:100
S96 300	SECTIONS	1:100
S96 400	PERSPECTIVE VIEWS	NTS
S96 800	EXTERNAL FINISHES BOARD	NTS





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S96 001 PHOTOMONTAGE

ISSUED FOR SECTION 96 APPLICATION

13a CHURCH AVE, MASCOT, NSW, 2020

BASIX REQUIREMENTS-RESIDENTIAL FLAT BUILDINGS - Building1 (a) Dwellings

WATER

- a)The applicant must plant indigenous or low water use species of vegetation throughout the area of land specified for the dwelling in the "Indigenous species" column of the table below, as private landscaping for that dwelling. (This area of indigenous vegetation is to be contained within the "Area of garden and lawn" for the dwelling specified in the "Description of Project" table).
- b) The applicant must not install a private swimming pool or spa for the dwelling, with a volume exceeding that specified for it in the table below..
- c) The pool or spa must be located as specified in the table.
- d) The applicant must install, for the dwelling, each alternative water supply system, with the specified size, listed for that dwelling in the table below. Each system must be configured to collect run-off from the areas specified (excluding any area which supplies any other alternative water supply system), and to divert overflow as specified. Each system must be connected as specified.
- e) The applicant must install, for the dwelling, each alternative water supply system, with the specified size, listed for that dwelling in the table below. Each system must be configured to collect run-off from the areas specified(excluding any area which supplies any other alternative water supply system), and to divert overflow as specified. Each system must be connected as specified.

Fixtures						Appliances		Individual pool				Individual spa		
Dwelling no.	All shower-heads	All toilet flushing systems	All kitchen taps	All bathroom taps	HW recirculation or diversion	All clothes washers	All dish-washers	Volume (max volume)	Pool cover	Pool location	Pool shaded	Volume (max volume)	Spa cover	Spa shaded
All dwellings	3 star (> 4.5 but <= 6 L/min)	4 star	5 star	5 star	no	-	-	-	-	-	-	-	-	-

Alternative water source								
Dwelling no.	Alternative water supply systems	Size	Configuration	Landscape connection	Toilet connection (s)	Laundry connection	Pool top-up	Spa top-up
None	-	-	-	-	-	-	-	-

ENERGY

- a) The applicant must install each hot water system specified for the dwelling in the table below, so that the dwelling's hot water is supplied by that system. If the table specifies a central hot water system for the dwelling, then the applicant must connect that central system to the dwelling, so that the dwelling's hot water is supplied by that central system.
- b) This commitment applies to each room or area of the dwelling which is referred to in a heading to the "Natural lighting" column of the table below (but only to the extent specified for that room or area). The applicant must ensure that each such room or area is fitted with a window and/or skylight.

Hot water		Bathroom ventilation system		Kitchen ventilation system		Laundry ventilation system	
Dwelling no.	Hot water system	Each bathroom	Operation control	Each kitchen	Operation control	Each laundry	Operation control
All dwellings	gas instantaneous 5.5 star	individual fan, ducted to façade or roof	manual switch on/off	individual fan, ducted to façade or roof	manual switch on/off	individual fan, ducted to façade or roof	manual switch on/off

Cooling			Heating		Artificial lighting						Natural lighting	
Dwelling no.	living areas	bedroom areas	living areas	bedroom areas	No. of bedrooms &/or study	No. of living &/or dining rooms	Each kitchen	All bathrooms/ toilets	Each laundry	All hallways	No. of bathrooms &/or toilets	Main kitchen
G.01, G.05, 12.01	1-phase airconditioning 2 Star (new rating)	1-phase airconditioning 2 Star (new rating)	1-phase airconditioning 2 Star (new rating)	1-phase airconditioning 2 Star (new rating)	3	1	yes	yes	yes	yes	0	no
2.08, 3.08, 4.08, 5.08, 6.08, 7.08, 8.08, 9.08, 10.08, 11.08	1-phase airconditioning 2 Star (new rating)	1-phase airconditioning 2 Star (new rating)	1-phase airconditioning 2 Star (new rating)	1-phase airconditioning 2 Star (new rating)	2	1	yes	yes	yes	yes	0	yes
2.09, 3.09, 4.09, 5.09, 6.09, 7.09, 8.09, 9.09, 10.09, 11.09	1-phase airconditioning 2 Star (new rating)	1-phase airconditioning 2 Star (new rating)	1-phase airconditioning 2 Star (new rating)	1-phase airconditioning 2 Star (new rating)	1	1	yes	yes	yes	yes	0	yes
1.04, 1.05, 2.05, 2.06, 3.05, 3.06, 4.05, 4.06, 5.05, 5.06, 6.05, 6.06, 7.05, 7.06, 8.05, 8.06, 9.05, 9.06, 10.05, 10.06, 11.05, 11.06	1-phase airconditioning 2 Star (new rating)	1-phase airconditioning 2 Star (new rating)	1-phase airconditioning 2 Star (new rating)	1-phase airconditioning 2 Star (new rating)	2	1	yes	yes	yes	yes	1	no

ENERGY - Continued

Dwelling no.	Cooling		Heating		Artificial lighting						Natural lighting	
	living areas	bedroom areas	living areas	bedroom areas	No. of bedrooms &/or study	No. of living &/or dining rooms	Each kitchen	All bathrooms/toilets	Each laundry	All hallways	No. of bathrooms &/or toilets	Main kitchen
1.02, 1.06, 2.02, 2.07, 3.02, 3.07, 4.02, 4.07, 5.02, 5.07, 6.02, 6.07, 7.02, 7.07, 8.02, 8.07, 9.02, 9.07, G.02, G.06, 10.02, 10.07, 11.02, 11.07	1-phase airconditioning 2 Star (new rating)	1-phase airconditioning 2 Star (new rating)	1-phase airconditioning 2 Star (new rating)	1-phase airconditioning 2 Star (new rating)	2	1	yes	yes	yes	yes	0	no
All other dwellings	1-phase airconditioning 2 Star (new rating)	1-phase airconditioning 2 Star (new rating)	1-phase airconditioning 2 Star (new rating)	1-phase airconditioning 2 Star (new rating)	1	1	yes	yes	yes	yes	0	no

Dwelling no.	Individual pool		Individual spa		Appliances & other efficiency measures							
	Pool heating system	Timer	Spa heating system	Timer	Kitchen cooktop/oven	Refrigerator	Well ventilated fridge space	Dishwasher	Clothes washer	Clothes dryer	Indoor or sheltered clothes drying line	Private outdoor or unsheltered clothes drying line
All dwellings	-	-	-	-	gas cooktop & electric oven	-	no	-	-	-	no	no

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BASIX REQUIREMENTS-RESIDENTIAL FLAT BUILDINGS - Building1 (a) Dwellings

THERMAL COMFORT

- a) Where there is an in-slab heating or cooling system, the applicant must:
I) Install insulation with an R-value of not less than 1.0 around the vertical edges of the perimeter of the slab; or
II) On a suspended floor, install insulation with an R-value of not less than 1.0 underneath the slab and around the vertical edges of the perimeter of the slab.
- b) The applicant must construct the floors and walls of the development in accordance with the specifications listed in the table below.

	Thermal loads	
Dwelling no.	Area adjusted heating load (in mJ/m²/yr)	Area adjusted cooling load (in mJ/m²/yr)
1.01	23.0	12.0
1.02	16.0	12.0
1.03	28.0	12.0
1.04	15.0	11.0
1.05	55.0	12.0
1.06	55.0	10.0
2.01	19.0	12.0
2.04	14.0	15.0
2.05	14.0	11.0
2.06	29.0	12.0
2.07	34.0	11.0
2.08	30.0	16.0
G.01	44.0	12.0
G.02	56.0	9.0
G.03	58.0	15.0
G.04	37.0	18.0
G.05	46.0	12.0
G.06	46.0	7.0
11.01	46.0	15.0
11.02	26.0	18.0
11.03	26.0	8.0
11.05	31.0	9.0
11.06	38.0	8.0
11.07	45.0	8.0
11.08	48.0	12.0
11.09	37.0	11.0
2.02, 2.09	14.0	13.0
7.01, 8.01	27.0	9.0
7.02, 8.02	23.0	17.0
7.04, 8.04	22.0	10.0
7.05, 8.05	21.0	8.0
7.09, 8.09	22.0	11.0
9.01, 10.01	37.0	15.0
9.02, 10.02	24.0	17.0
9.03, 10.03	25.0	8.0
9.04, 10.04	23.0	10.0
9.09, 10.09	23.0	11.0
11.04, 12.01	28.0	10.0
3.01, 4.01, 5.01, 6.01	25.0	9.0
3.05, 4.05, 5.05, 6.05	20.0	8.0
3.06, 4.06, 5.06, 6.06	35.0	7.0
3.07, 4.07, 5.07, 6.07	41.0	8.0
3.08, 4.08, 5.08, 6.08	32.0	11.0
7.06, 8.06, 9.06, 10.06	37.0	8.0
7.07, 8.07, 9.07, 10.07	42.0	8.0
7.08, 8.08, 9.08, 10.08	33.0	11.0
2.03, 3.02, 4.02, 5.02, 6.02	19.0	8.0
3.04, 3.09, 4.04, 4.09, 5.04, 5.09, 6.04, 6.09	21.0	10.0
All other dwellings	22.0	8.0

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SECTION 96		STAGE:						DRAWING TITLE:		DRAWING No:	
		S96 003						BASIX-DWELLING 2		REVISION:	
CLIENT: S & A & S Mohebbaty				REVISION:							
		DRAWN: MB CHECKED: HHH									
		DATE: 23/11/2017 APPROVED: SH									
								A			

BASIX REQUIREMENTS-RESIDENTIAL FLAT BUILDINGS - Building1 (b) Common areas and central systems/facilities

WATER

a) The applicant must install (or ensure that the development is serviced by) the alternative water supply system(s) specified in the "Central systems" column of the table below. In each case, the system must be sized, be configured, and be connected, as specified in the table.

b) A swimming pool or spa listed in the table must not have a volume (in kLs) greater than that specified for the pool or spa in the table.

Common area	Showerheads rating	Toilets rating	Taps rating	Clothes washers rating
All common areas	no common facility	no common facility	no common facility	no common laundry facility

Central systems	Size	Configuration	Connection (to allow for...)
Central water tank - rainwater or stormwater (No. 1)	5000.0	To collect run-off from at least: - 816.0 square metres of roof area of buildings in the development - 0.0 square metres of impervious area in the development - 0.0 square metres of garden/lawn area in the development - 0.0 square metres of planter box area in the development (excluding, in each case, any area which drains to, or supplies, any other alternative water supply system).	- irrigation of 480.0 square metres of common landscaped area on the site - car washing in 0 car washing bays on the site
Fire sprinkler system (No. 1)	-	So that fire sprinkler test water is contained within the fire sprinkler system for re-use, rather than disposed.	-
Fire sprinkler system (No. 2)	-	-	-
Fire sprinkler system (No. 3)	-	-	-

ENERGY

a) The applicant must install the systems and fixtures specified in the "Central energy systems" column of the table below. In each case, the system or fixture must be of the type, and meet the specifications, listed for it in the table.

Common area ventilation system			Common area lighting		
Common area	Ventilation system type	Ventilation efficiency measure	Primary type of artificial lighting	Lighting efficiency measure	Lighting control system/BMS
Basement 1	ventilation exhaust only	carbon monoxide monitor + VSD fan	fluorescent	time clock and motion sensors	No
GF Carpark	ventilation exhaust only	carbon monoxide monitor + VSD fan	fluorescent	time clock and motion sensors	No
Basement 2	ventilation exhaust only	carbon monoxide monitor + VSD fan	fluorescent	time clock and motion sensors	No
Lift car (No. 1)	-	-	compact fluorescent	connected to lift call button	No
Lift car (No. 2)	-	-	compact fluorescent	connected to lift call button	No
Garbage room	ventilation exhaust only	-	fluorescent	manual on / manual off	No
Bulky Waste	ventilation exhaust only	-	fluorescent	manual on / manual off	No
Common room	ventilation (supply + exhaust)	time clock or BMS controlled	compact fluorescent	motion sensors	No
Substation	ventilation exhaust only	interlocked to light	fluorescent	manual on / manual off	No
GF Plant Room	ventilation exhaust only	interlocked to light	fluorescent	manual on / manual off	No
GF Service Core	ventilation exhaust only	interlocked to light	fluorescent	manual on / manual off	No
Level 1 WC	ventilation exhaust only	interlocked to light	compact fluorescent	manual on / manual off	No
Level 1 Service Core	ventilation exhaust only	interlocked to light	fluorescent	manual on / manual off	No
Level 2 Service Core	ventilation exhaust only	interlocked to light	fluorescent	manual on / manual off	No
Level 3 Service Core	ventilation exhaust only	interlocked to light	fluorescent	manual on / manual off	No
Level 4 Service Core	ventilation exhaust only	interlocked to light	fluorescent	manual on / manual off	No
Level 5 Service Core	ventilation exhaust only	interlocked to light	fluorescent	manual on / manual off	No
Level 6 Service Core	ventilation exhaust only	interlocked to light	fluorescent	manual on / manual off	No
Level 7 Service Core	ventilation exhaust only	interlocked to light	fluorescent	manual on / manual off	No
Level 8 Service Core	ventilation exhaust only	interlocked to light	fluorescent	manual on / manual off	No
Level 9 Service Core	ventilation exhaust only	interlocked to light	fluorescent	manual on / manual off	No
Level 10 Service Core	ventilation exhaust only	interlocked to light	fluorescent	manual on / manual off	No
Level 11 Service Core	ventilation exhaust only	interlocked to light	fluorescent	manual on / manual off	No
Level 12 Plant Rooms	ventilation exhaust only	interlocked to light	fluorescent	manual on / manual off	No
Level 12 Service Core	ventilation exhaust only	interlocked to light	fluorescent	manual on / manual off	No
Ground floor lobby	ventilation (supply + exhaust)	time clock or BMS controlled	compact fluorescent	time clock and motion sensors	No
Level 1 lobby	ventilation (supply + exhaust)	time clock or BMS controlled	compact fluorescent	time clock and motion sensors	No
Level 12 lobby	ventilation (supply + exhaust)	time clock or BMS controlled	compact fluorescent	time clock and motion sensors	No
Level 2 lobby	ventilation (supply + exhaust)	time clock or BMS controlled	compact fluorescent	time clock and motion sensors	No
Level 3 lobby	ventilation (supply + exhaust)	time clock or BMS controlled	compact fluorescent	time clock and motion sensors	No
Level 4 lobby	ventilation (supply + exhaust)	time clock or BMS controlled	compact fluorescent	time clock and motion sensors	No
Level 5 lobby	ventilation (supply + exhaust)	time clock or BMS controlled	compact fluorescent	time clock and motion sensors	No
Level 6 lobby	ventilation (supply + exhaust)	time clock or BMS controlled	compact fluorescent	time clock and motion sensors	No
Level 7 lobby	ventilation (supply + exhaust)	time clock or BMS controlled	compact fluorescent	time clock and motion sensors	No
Level 8 lobby	ventilation (supply + exhaust)	time clock or BMS controlled	compact fluorescent	time clock and motion sensors	No
Level 9 lobby	ventilation (supply + exhaust)	time clock or BMS controlled	compact fluorescent	time clock and motion sensors	No
Level 10 lobby	ventilation (supply + exhaust)	time clock or BMS controlled	compact fluorescent	time clock and motion sensors	No
Level 11 lobby	ventilation (supply + exhaust)	time clock or BMS controlled	compact fluorescent	time clock and motion sensors	No

WATER - (non-building specific)

a)The applicant must install (or ensure that the development is serviced by) the alternative water supply system(s) specified in the "Central systems" column of the table below. In each case, the system must be sized, be configured, and be connected, as specified in the table.

b) A swimming pool or spa listed in the table must not have a volume (in kLs) greater than that specified for the pool or spa in the table.

Common area	Showerheads rating	Toilets rating	Taps rating	Clothes washers rating
All common areas	no common facility	no common facility	no common facility	no common laundry facility

ENERGY

a)The applicant must install the systems and fixtures specified in the "Central energy systems" column of the table below. In each case, the system or fixture must be of the type, and meet the specifications, listed for it in the table.

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LEGEND:

REV. DATE
1 23/11/17

AMENDMENT

13a CHURCH AVE, MASCOT

STAGE:

SECTION 96

DRAWING TITLE:

BASIX-COMMON

PROJECT No: 16081

DRAWING No:

S96 004

REVISION:

A

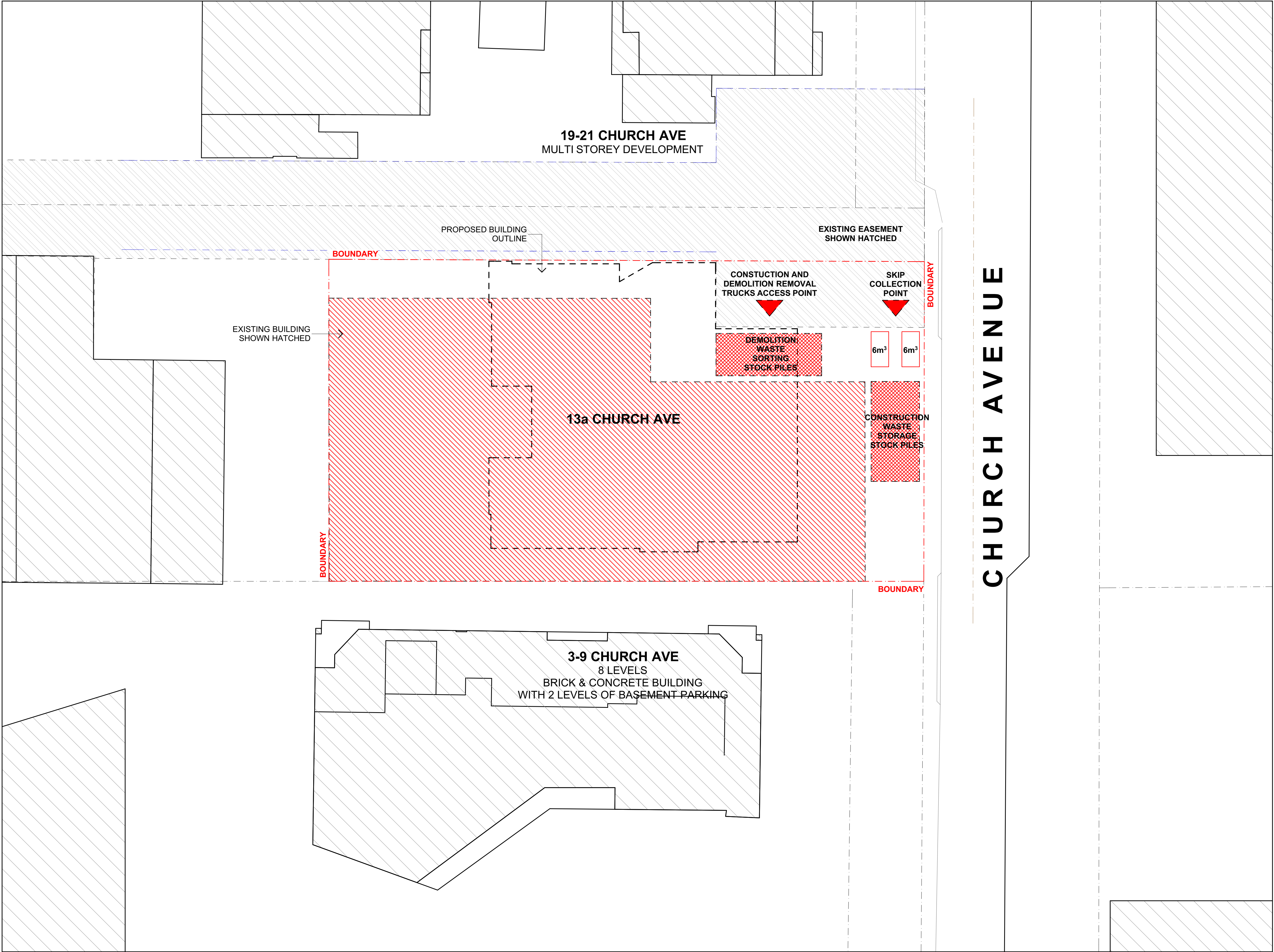
CLIENT: S & A & S Mohebbaty

DRAWN: MB

CHECKED: HHH

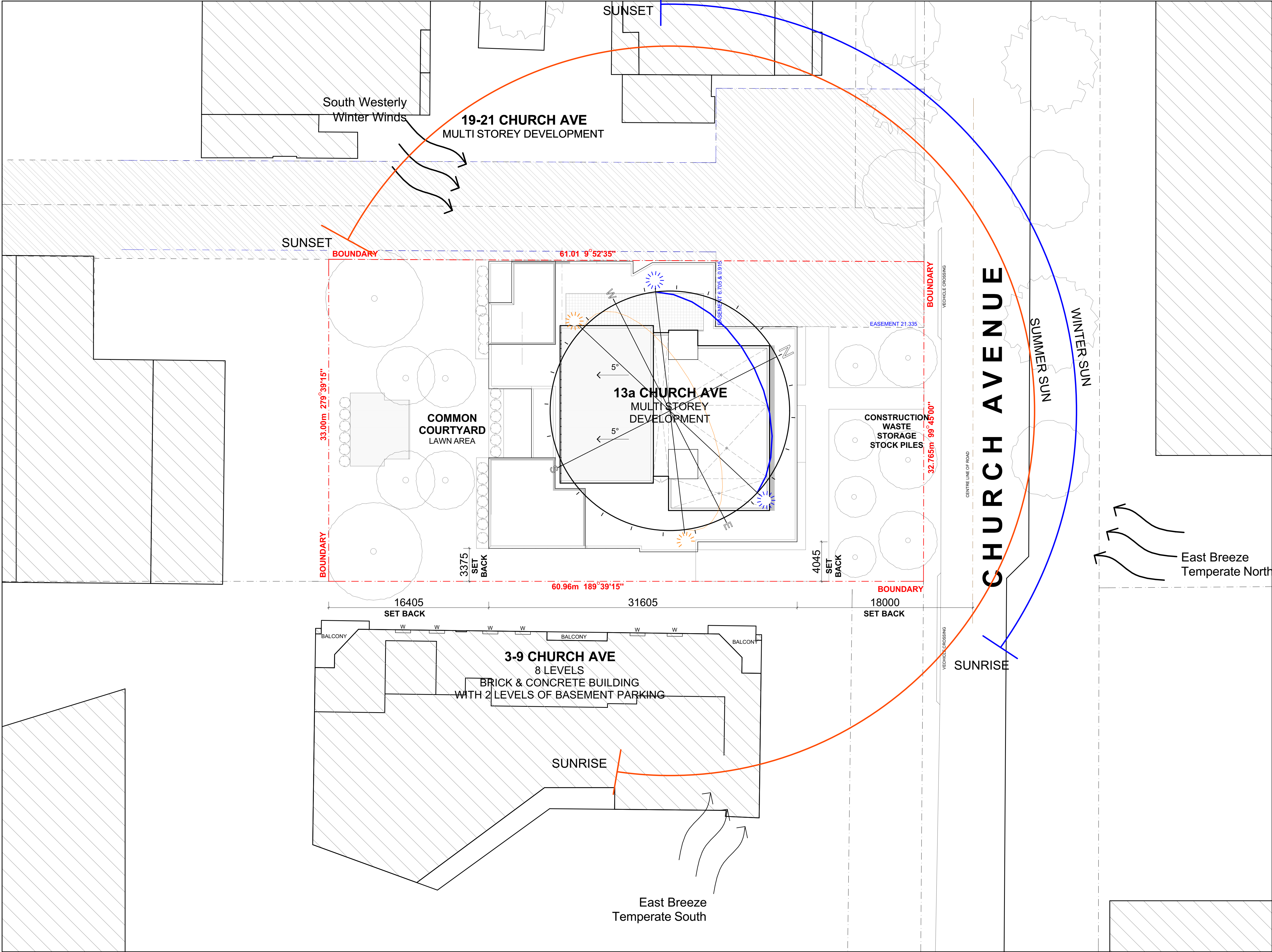
DATE: 23/11/2017

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LEGEND: <div><div></div> STOCK PILES</div>			SCALE @ A1: 1:200			CLIENT: S & A & S Mohebbaty	
The Recycling and Waste Management Plan which shows: The location of areas that will be used for the sorting of demolition and construction recyclables/waste; The location of areas that will be used for the storage of demolition and construction recyclables/waste, including the location of any associated waste containers/skip bins; and The point at which vehicles removing demolition and construction recyclables/waste will access the site			NORTH: 			DRAWN: MB DATE: 23/11/2017	
			AMENDMENT 1 23/11/17 ---			CHECKED: HHH APPROVED: SH	
						REVISION: A	



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LEGEND:

REV.	DATE	AMENDMENT
1	23/11/17	---

13a CHURCH AVE, MASCOT

STAGE:
SECTION 96

SCALE @ A1:

1:200

NORTH:

DRAWING TITLE:

SITE ANALYSIS PLAN

CLIENT: **S & A & S Mohebbaty**

DRAWN: **MB**

DATE: **23/11/2017**

CHECKED: **HHH**

APPROVED: **SH**

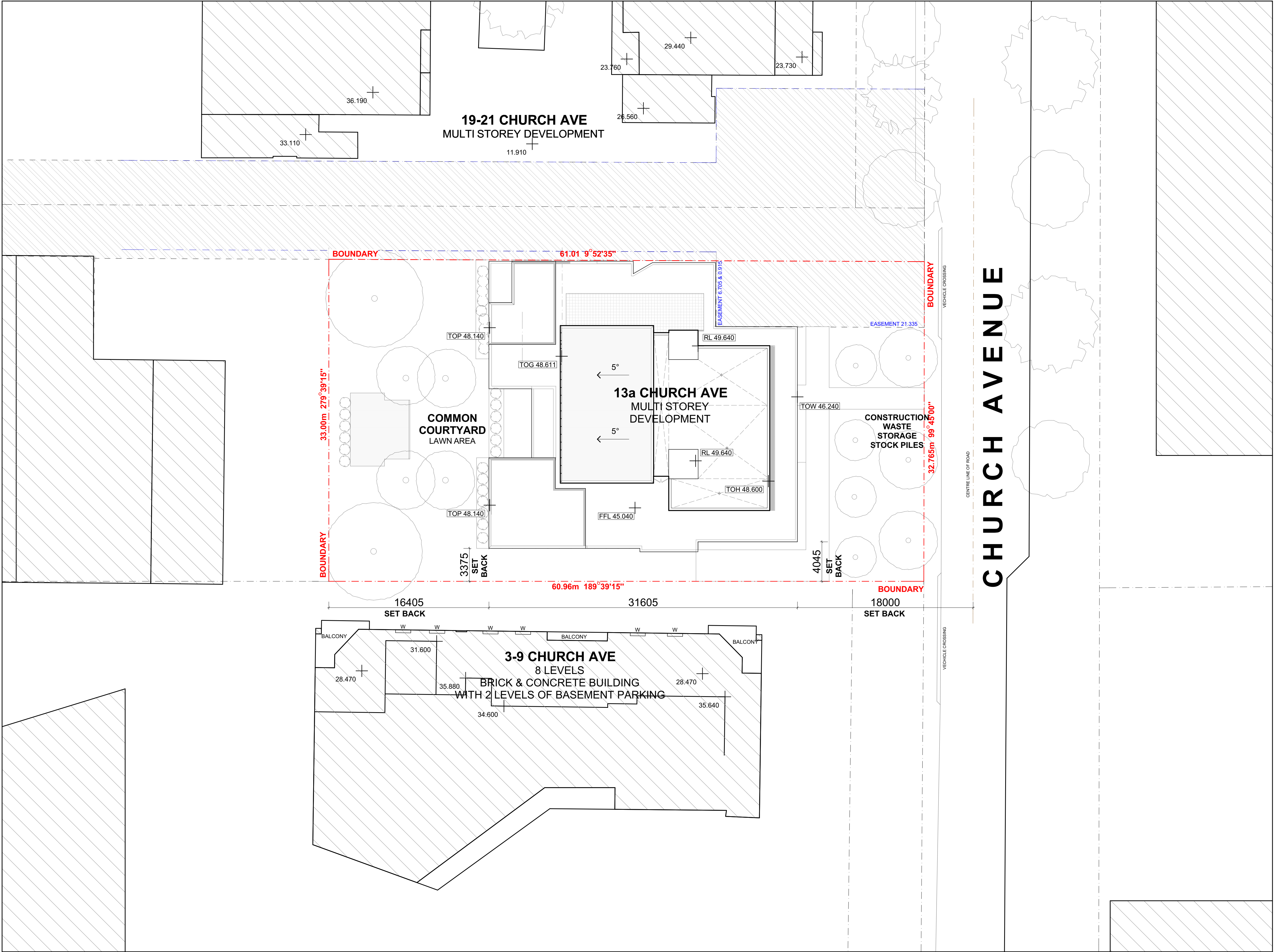
PROJECT No: **16081**

DRAWING No:

S96 100

REVISION:

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REV.	DATE	AMENDMENT
1	23/11/17	---

13a CHURCH AVE, MASCOT

STAGE:
SECTION 96

DRAWING TITLE:
SITE PLAN

PROJECT No: **16081**

DRAWING No:

S96 101

SCALE @ A1:

1:200

NORTH:



CLIENT: **S & A & S Mohebbaty**

DRAWN: **MB**

DATE: **23/11/2017**

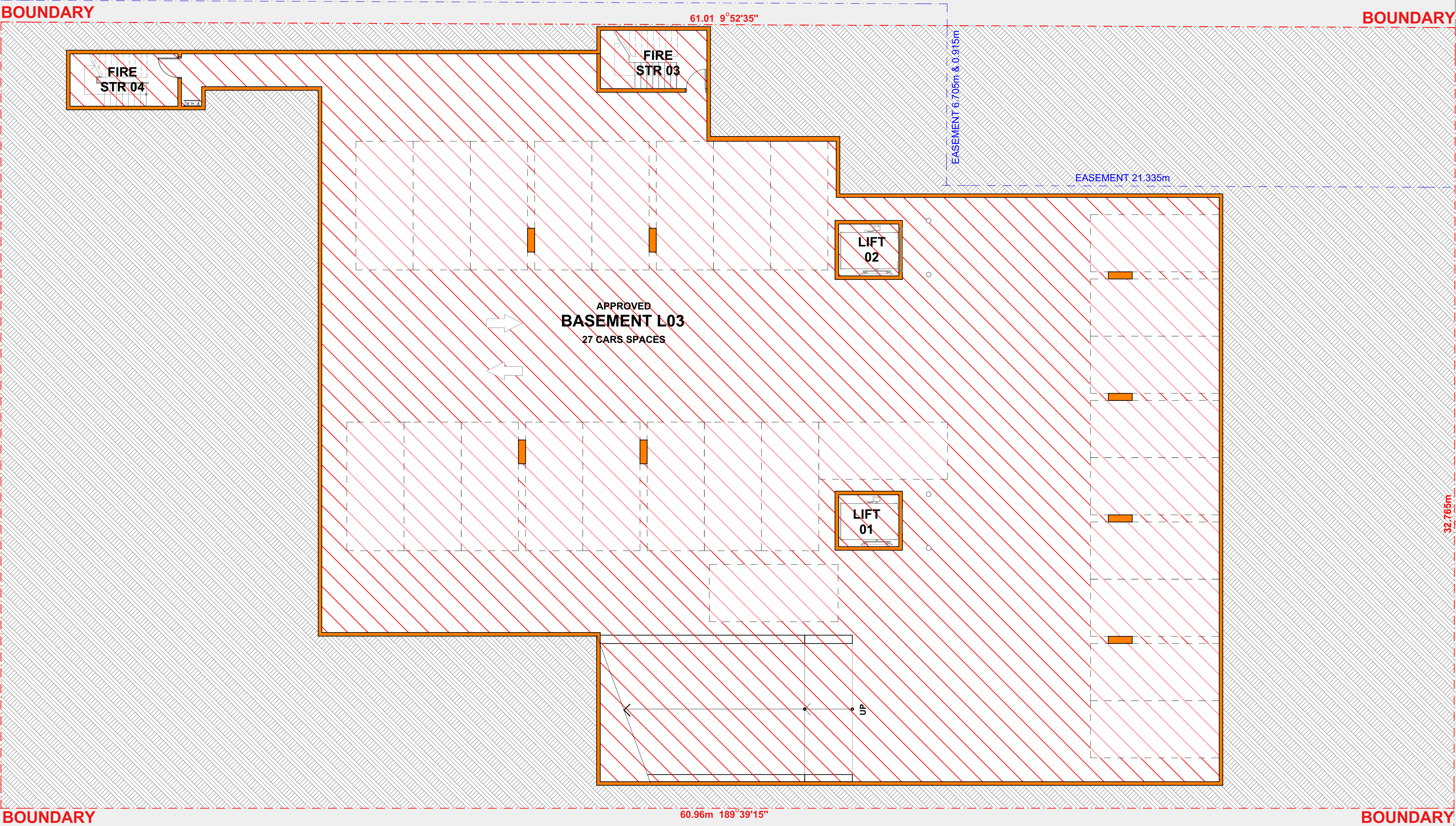
CHECKED: **HHH**

APPROVED: **SH**

REVISION:

A

BASEMENT LEVEL REMOVED REFER TO NOTE



SECTION 96 LIST OF AMENDMENTS

- a. Basement L03 was removed as not required, car parking spaces was reduced based on new car parking rates, as stated in the RTA Guide to Traffic Generating Developments - Metropolitan Sub-Regional Centers

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LEGEND:

- STRUCTURE REMOVED
 SLAB REMOVED

REV.	DATE	AMENDMENT
1	23/11/17	---

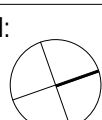
13a CHURCH AVE, MASCOT

STAGE:
SECTION 96

SCALE @ A1:

1:100

NORTH:



DRAWING TITLE:

BASEMENT L03

CLIENT: **S & A & S Mohebbaty**

DRAWN: **MB**

DATE: **23/11/2017**

CHECKED: **HHH**

APPROVED: **SH**

NOT FOR CONSTRUCTION

PROJECT No: **16081**

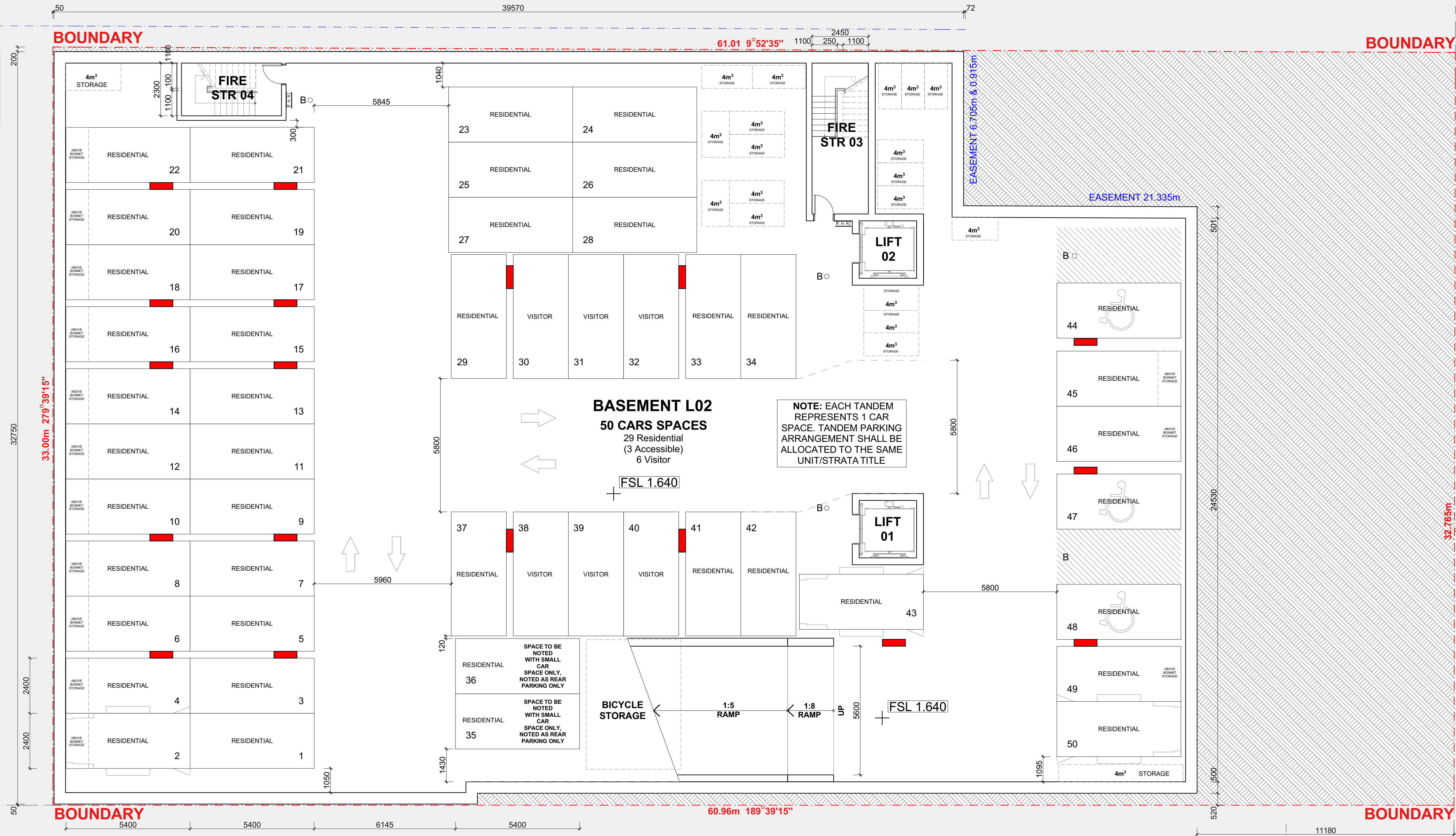
DRAWING No:

S96 101.5

REVISION:

A

SECTION 96 LIST OF AMENDMENTS
a. Minor Amendments in layout of car spaces, there are 47 car spaces approved, proposed increased to 50 car spaces



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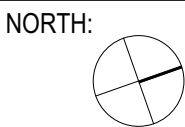
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LEGEND:
STRUCTURAL COLUMN

REV.	DATE	AMENDMENT
1	23/11/17	---

SCALE @ A1:
1:100

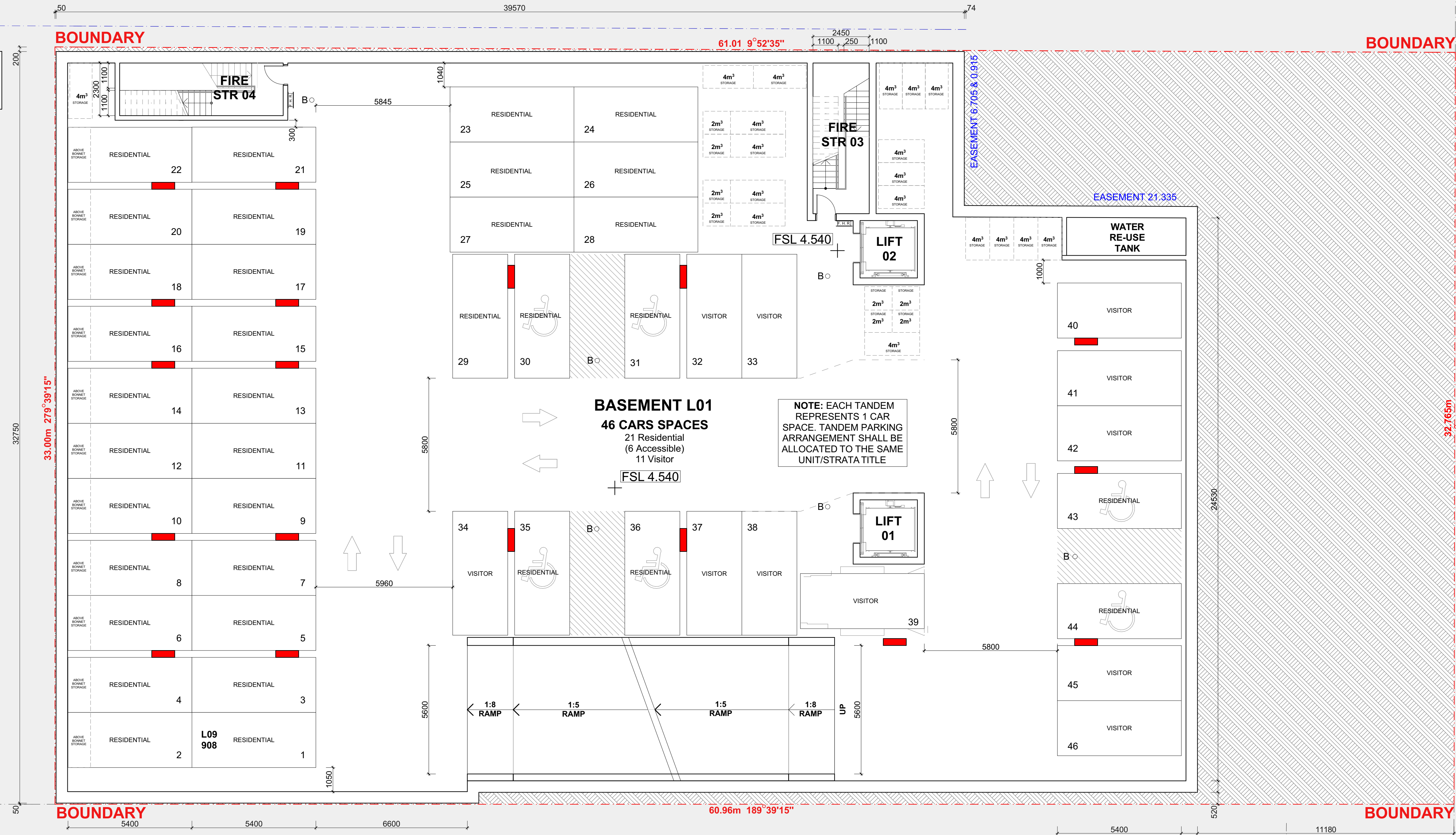


CLIENT: **S & A & S Mohebbaty**
DRAWN: **MB**
DATE: **23/11/2017**
CHECKED: **HHH**
APPROVED: **SH**

REVISION:
A

SECTION 96 LIST OF AMENDMENTS

a. Minor Amendments in layout of car spaces, number of spaces retained from approved number 46



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LEGEND:

STRUCTURAL COLUMN

REV.	DATE	AMENDMENT
1	23/11/17	---

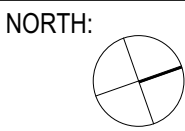
13a CHURCH AVE, MASCOT

STAGE:

SECTION 96

SCALE @ A1:

1:100



DRAWING TITLE:

BASEMENT L01

CLIENT: S & A & S Mohebbaty

DRAWN: MB

CHECKED: HHH

DATE: 23/11/2017

APPROVED: SH

PROJECT No: 16081

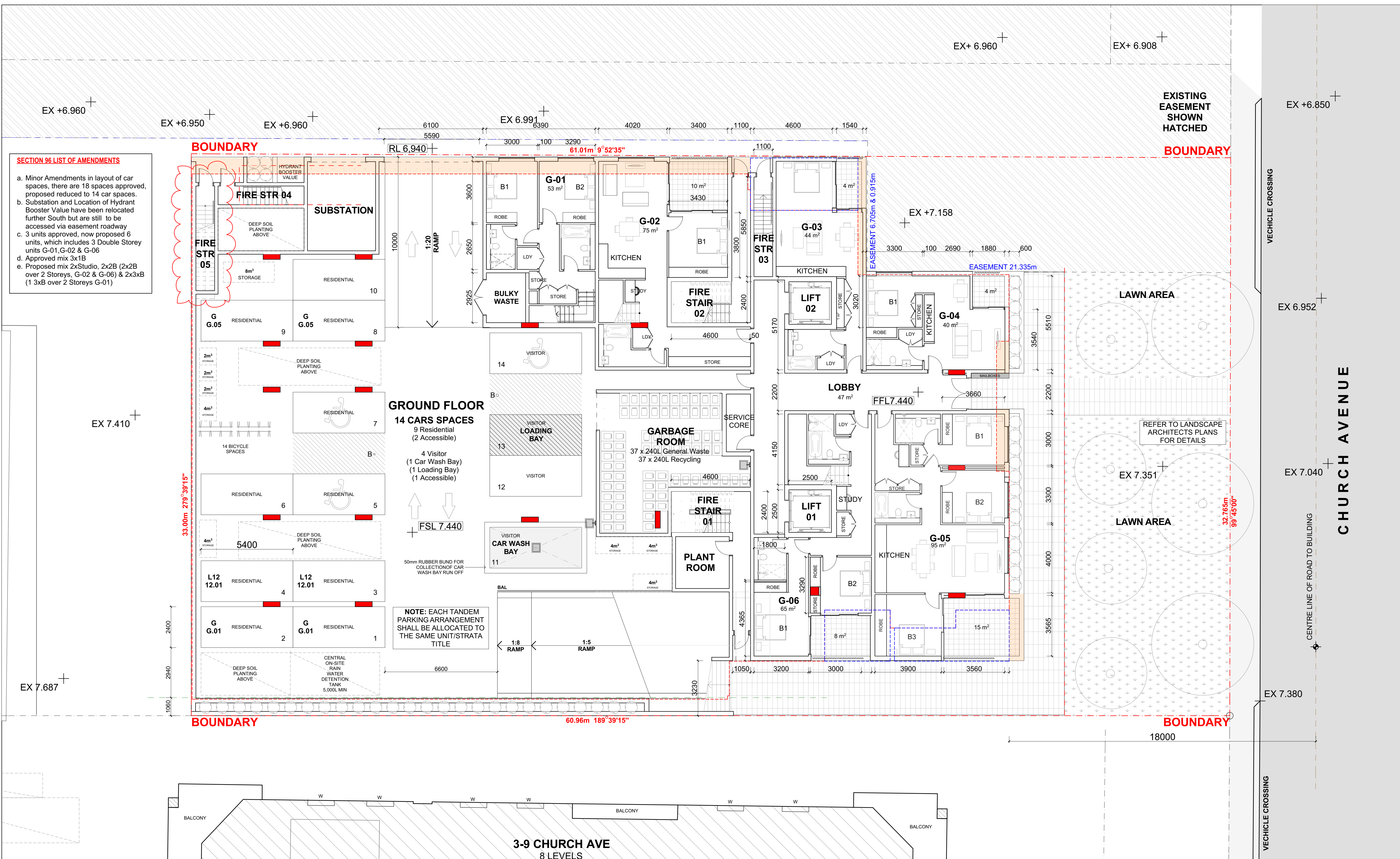
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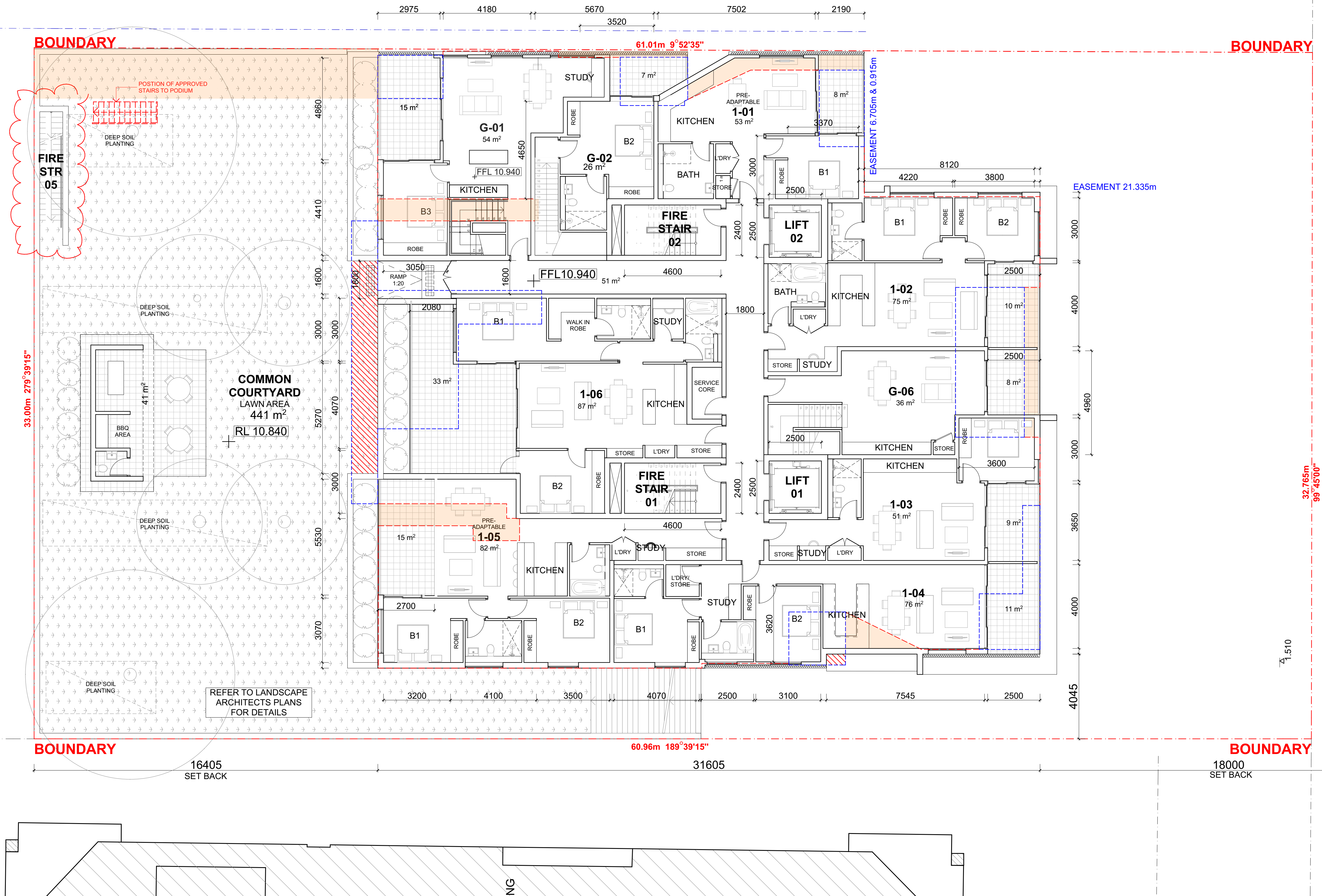
REVISION:

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NOT FOR CONSTRUCTION



- SECTION 96 LIST OF AMENDMENTS**
- a. General Amendments to Internal layout
 - b. Approved 2xStudio, 3x1B, 1x2B and 1x3B
 - c. 7 units approved, proposed 6 units, which also includes upper storey of G-01, G-02 & G-06
 - d. 6 Units proposed 2 x 1B & 4x 2B



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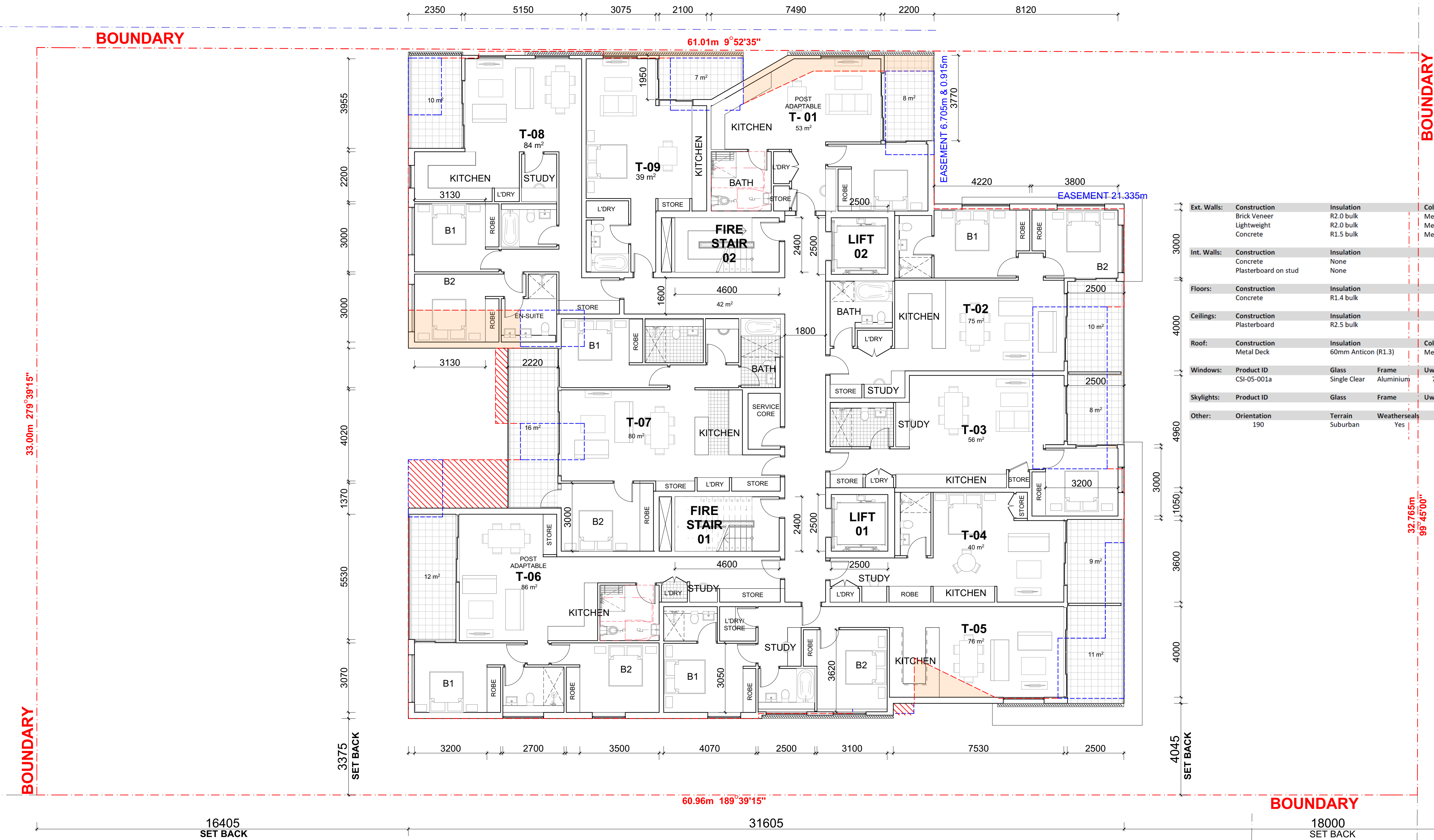
- LEGEND:**
- APPROVED BUILDING OUTLINE
 - APPROVED BALCONY OUTLINE
 - //// REMOVED AREA
 - ADDITIONAL AREA
 - STAIR RELOCATED

REV.	DATE	AMENDMENT
1	23/11/17	---

13a CHURCH AVE, MASCOT		PROJECT No: 16081	
STAGE:	DRAWING TITLE:	CLIENT:	DRAWING No:
SECTION 96	LEVEL 01	S & A S Mohebbaty	S96 105
SCALE @ A1:	NORTH:	DATE:	REVISION:
1:100		23/11/2017	A
APPROVED: SH		APPROVED: SH	

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- SECTION 96 LIST OF AMENDMENTS
- a. General Amendments to Internal layout
 - b. 7 units approved, proposed 9 units
 - c. Approved mix 1xStudio, 2x1B and 4x2B
 - d. Proposed mix 2xStudio, 2x1B and 5x2B



BERS Pro
house energy rating software

☐ single-dwelling rating stars MJ/m²

☒ multi-unit development (attach listing of ratings)

Accreditation Number VICBDAV121451

Signature *Al Padell* Date *20/11/2017*

Ext. Walls:	Construction	Insulation	Colour	As per plans
	Brick Veneer	R2.0 bulk	Medium	As per plans
	Lightweight Concrete	R1.5 bulk	Medium	As per plans
Int. Walls:	Construction	Insulation	Details	Intertency
	Concrete	None	Intertency	As per plans
	Plasterboard on stud	None	Intertency	As per plans
Floors:	Construction	Insulation	Details	Where car park below
	Concrete	R1.4 bulk	Details	As per plans
Ceilings:	Construction	Insulation	Details	Unit 12.01 only
	Plasterboard	R2.5 bulk	Details	As per plans
Roof:	Construction	Insulation	Colour	Details
	Metal Deck	60mm Anticon (R1.3)	Medium	As per plans
Windows:	Product ID	Glass	Frame	Uw/SHGCw
	CSI-05-001a	Single Clear	Aluminium	7.63/0.75
Skylights:	Product ID	Glass	Frame	Uw/SHGCw
				Details
Other:	Orientation	Terrain	Weatherseals	Exhaust Dampers
	190	Suburban	Yes	Yes
Recessed Downlights				
No				
This certificate may not be valid if downlights are present.				

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NOMINATED ARCHITECT: SIMON HANSON # 6739

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LEGEND:

- APPROVED BUILDING OUTLINE
- APPROVED BALCONY OUTLINE
- REMOVED AREA
- ADDITIONAL AREA

REV.	DATE	AMENDMENT
1	23/11/17	---

13a CHURCH AVE, MASCOT

STAGE: SECTION 96

SCALE @ A1: 1:100

DRAWING TITLE: TYPICAL LEVEL 2-11

CLIENT: S & A & S Mohebbaty

DRAWN: MB

CHECKED: HHH

DATE: 23/11/2017

APPROVED: SH

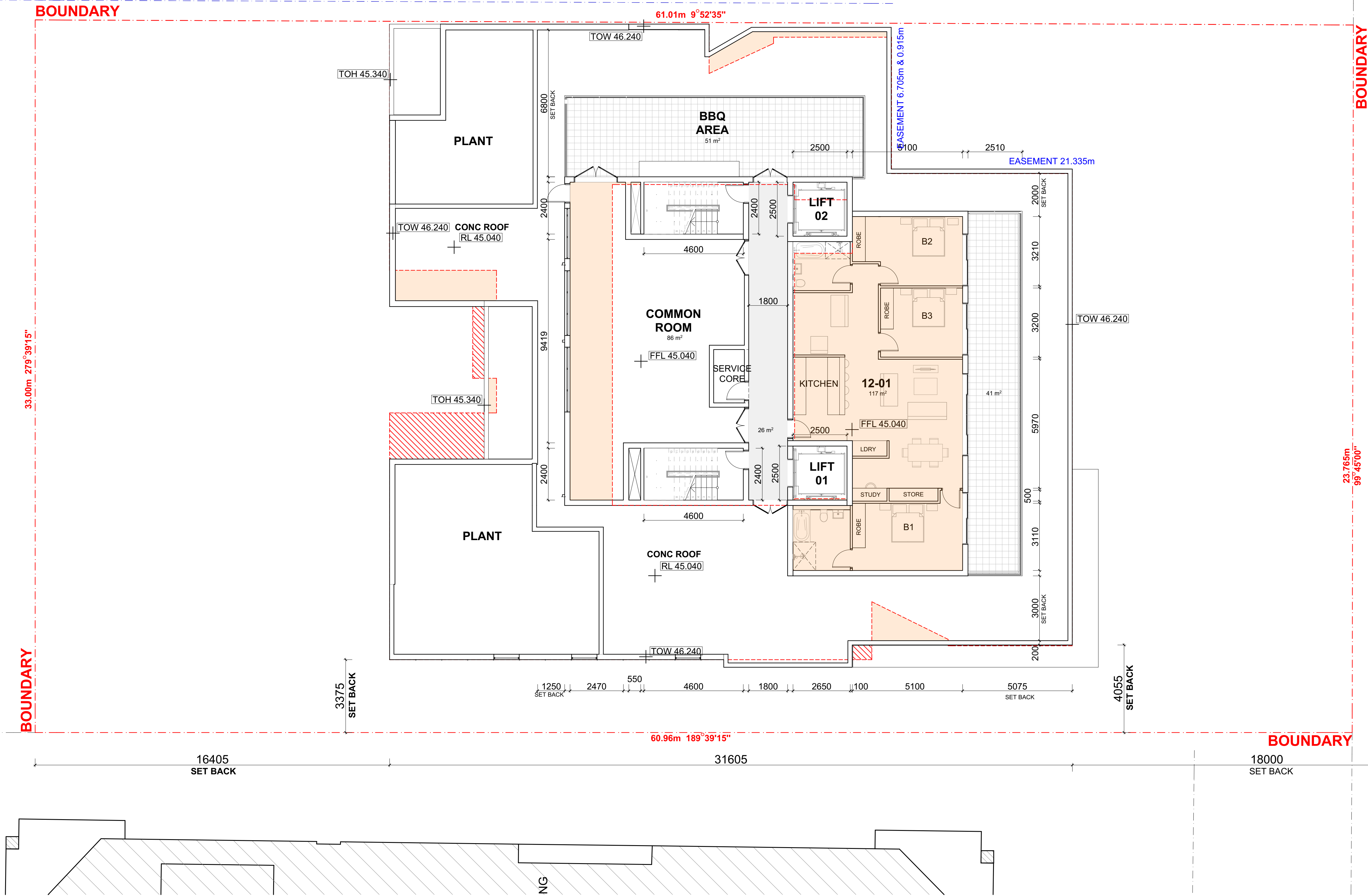
PROJECT No: 16081

DRAWING No: S96 106

REVISION: A

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- SECTION 96 LIST OF AMENDMENTS**
- a. External Private open space relocated to West of Common Room, same sqm area as approved.
 - b. Common Room sqm area retained as approved
 - c. Additional 3 bedroom unit proposed
 - d. Building envelope increased due to inclusion of additional unit



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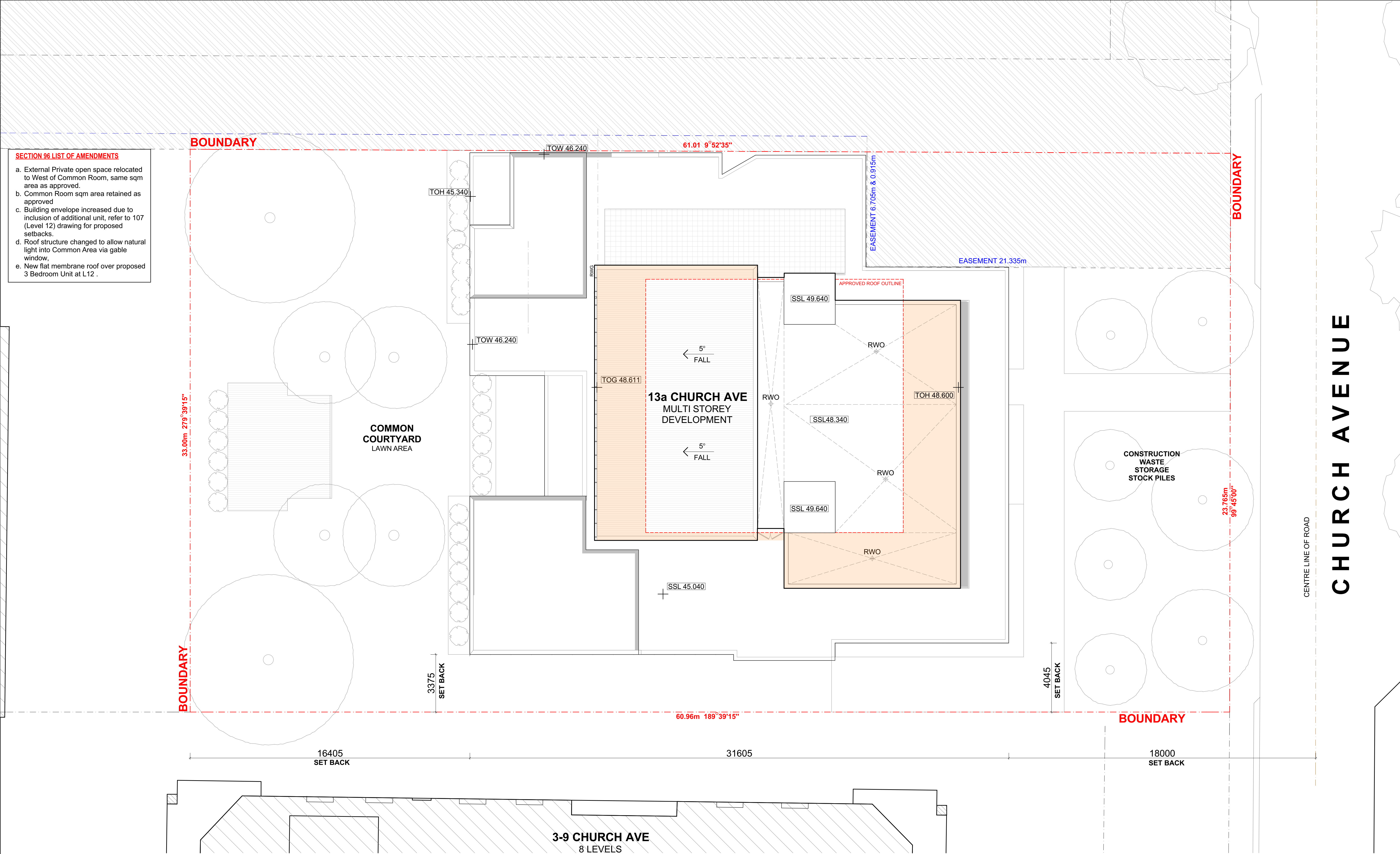
NOMINATED ARCHITECT: SIMON HANSON # 6739
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- LEGEND:**
- APPROVED BUILDING OUTLINE
 - APPROVED BALCONY OUTLINE
 - REMOVED AREA
 - ADDITIONAL AREA

REV.	DATE	AMENDMENT
1	23/11/17	---

13a CHURCH AVE, MASCOT		PROJECT No: 16081	
STAGE:	DRAWING TITLE:	CLIENT:	DRAWING No:
SECTION 96	LEVEL 12	S & A & S Mohebbaty	S96 107
SCALE @ A1:	NORTH:	CLIENT:	REVISION:
1:100		S & A & S Mohebbaty	A
		DRAWN: MB	
		CHECKED: HHH	
		DATE: 23/11/2017	
		APPROVED: SH	

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LEGEND:

- APPROVED
- EXISTING
- S96 ADDITIONAL SHADOW

REV.	DATE	AMENDMENT
1	23/11/17	---

13a CHURCH AVE, MASCOT

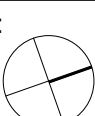
STAGE:

SECTION 96

SCALE @ A1:

1:500

NORTH:



DRAWING TITLE:

WINTER SOLSTICE 9am

CLIENT: S & A & S Mohebbaty

DRAWN: MB

DATE: 23/11/2017

CHECKED: HHH

APPROVED: SH

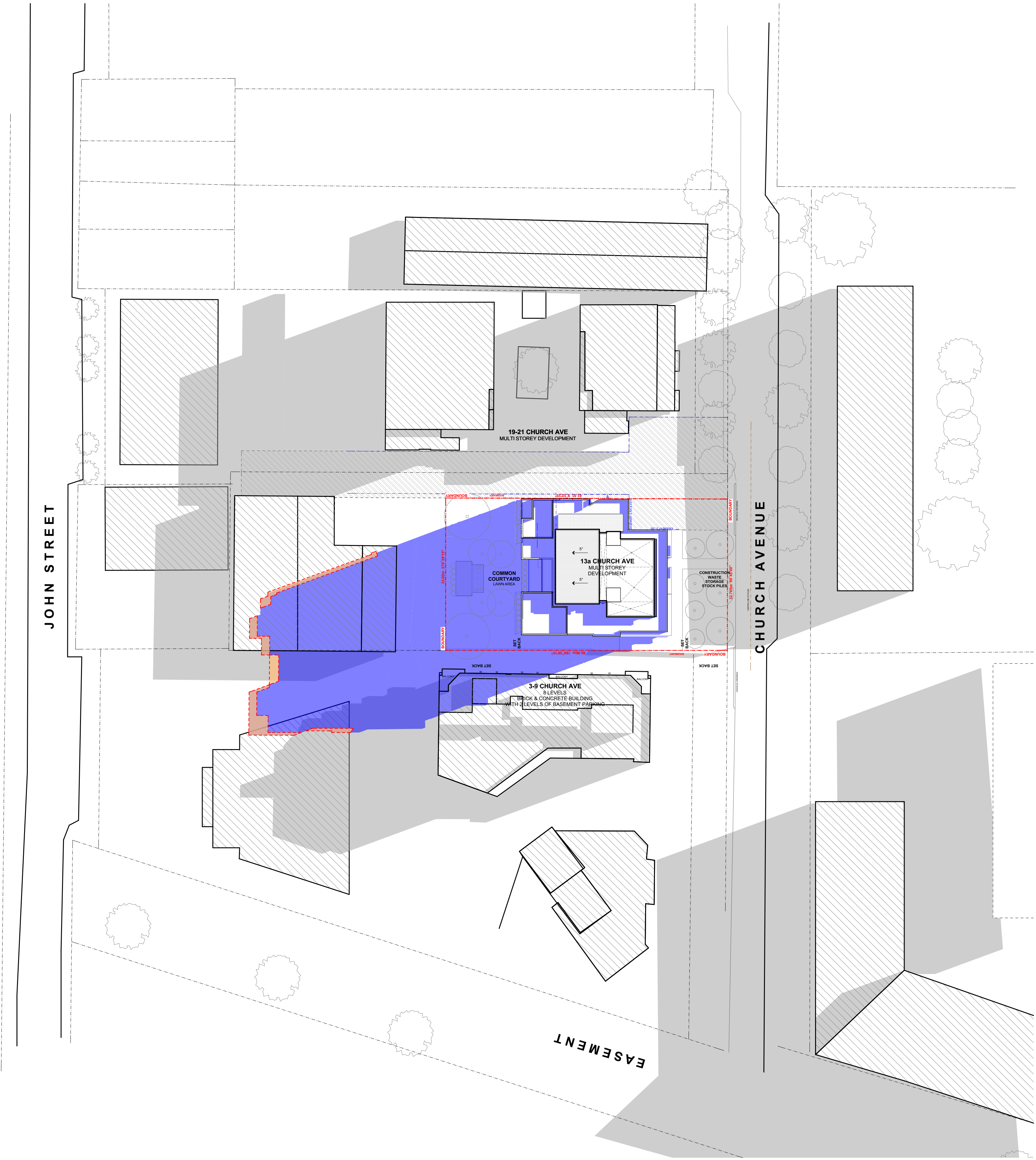
PROJECT No: 16081

DRAWING No:

S96 120

REVISION:

A



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- LEGEND:
- APPROVED
 - EXISTING
 - S96 ADDITIONAL SHADOW

REV.	DATE	AMENDMENT
1	23/11/17	---

13a CHURCH AVE, MASCOT		PROJECT No: 16081	
STAGE:	SECTION 96	DRAWING TITLE:	DRAWING No:
SCALE @ A1:	NORTH:	CLIENT: S & A & S Mohebbaty	REVISION:
1:500		DRAWN: MB	A
		CHECKED: HHH	
		DATE: 23/11/2017	APPROVED: SH

**WINTER SOLSTICE
12pm**

S96 121



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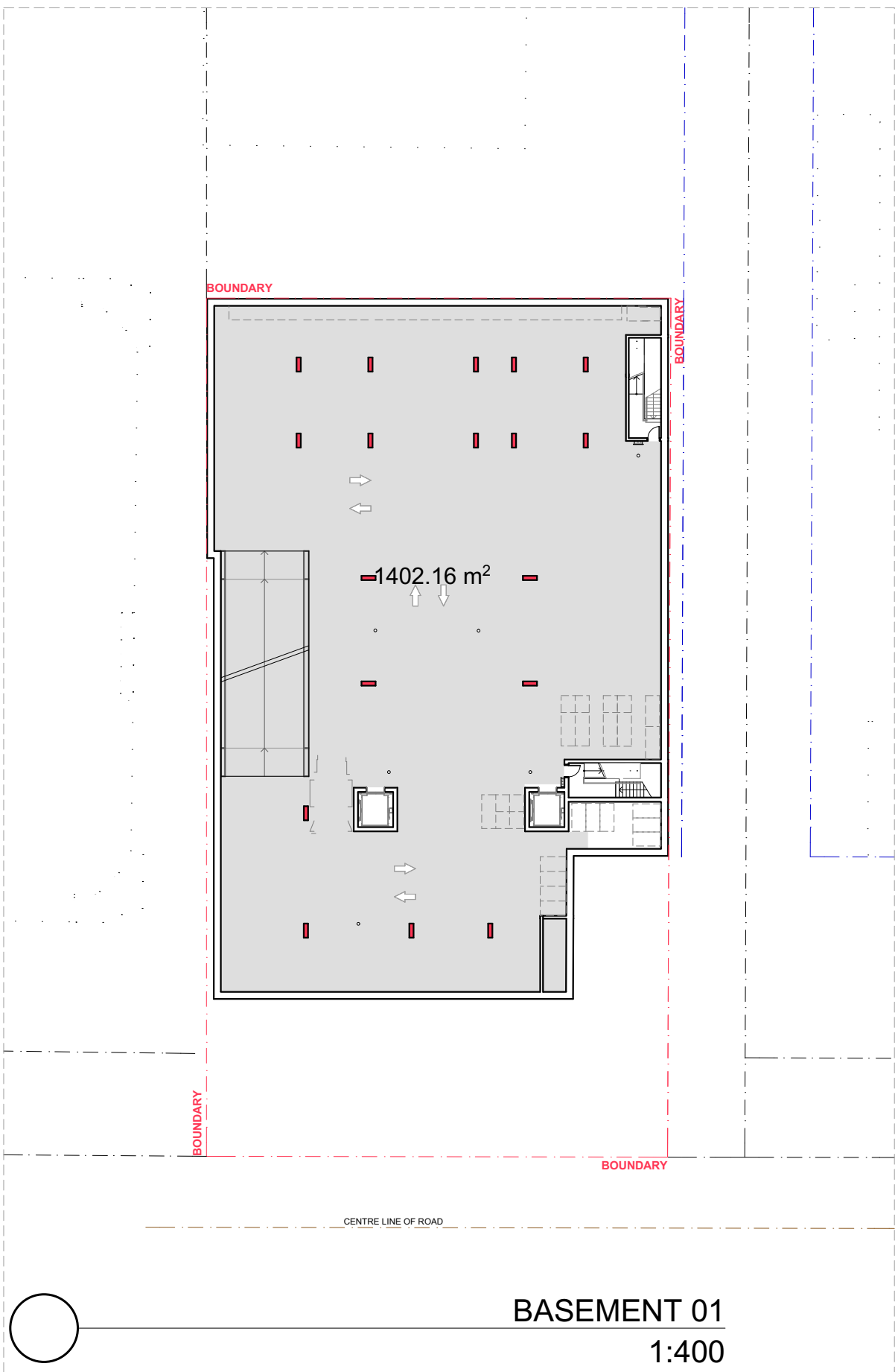
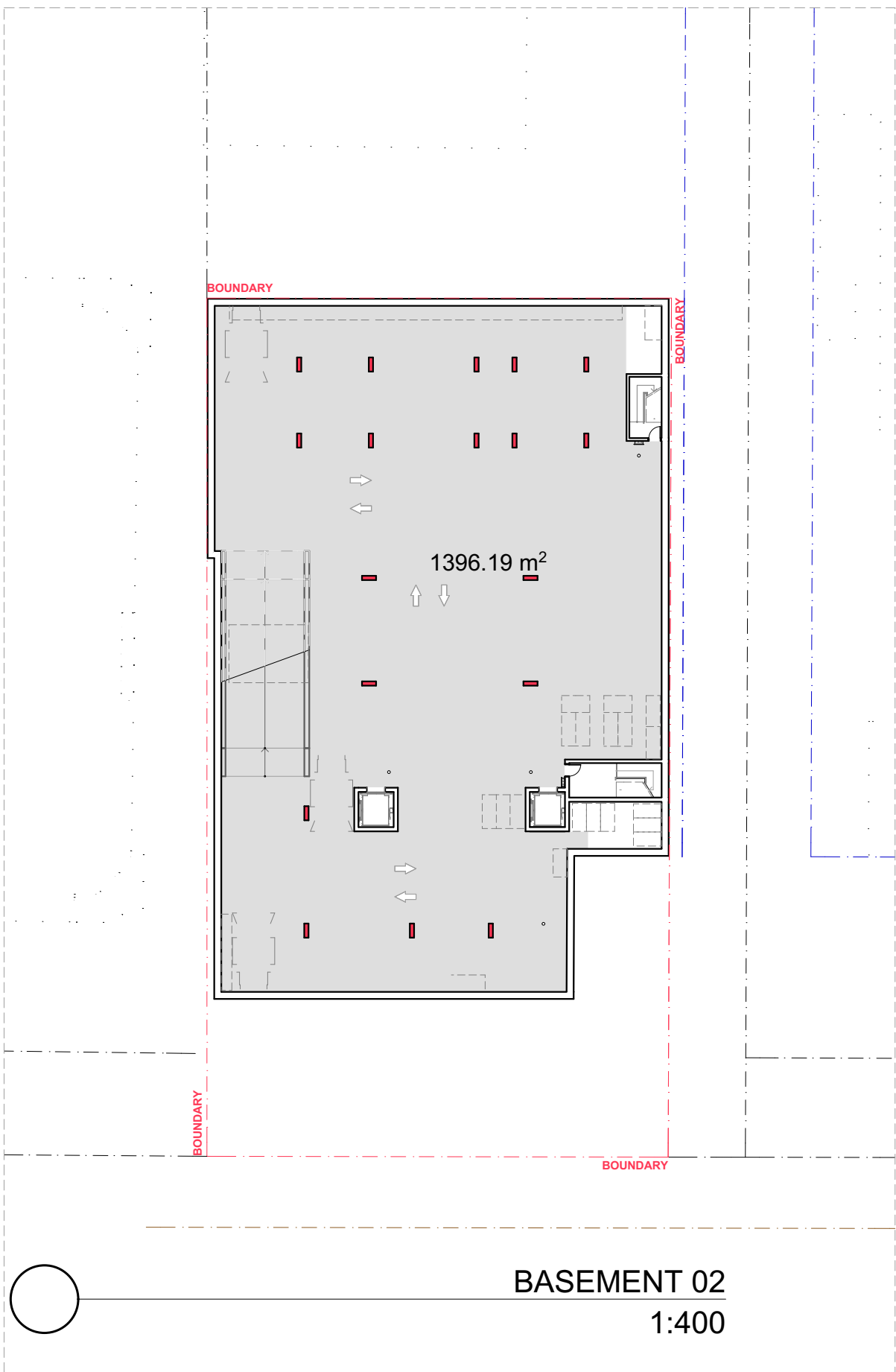
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LEGEND:

- APPROVED
- EXISTING
- S96 ADDITIONAL SHADOW

REV.	DATE	AMENDMENT
1	23/11/17	---

13a CHURCH AVE, MASCOT		PROJECT No: 16081	
STAGE:	SECTION 96	DRAWING TITLE:	DRAWING No:
SCALE @ A1:	1:500	CLIENT: S & A & S Mohebbaty	S96 122
NORTH:		DRAWN: MB	REVISION:
DATE: 23/11/2017	CHECKED: HHH	APPROVED: SH	A



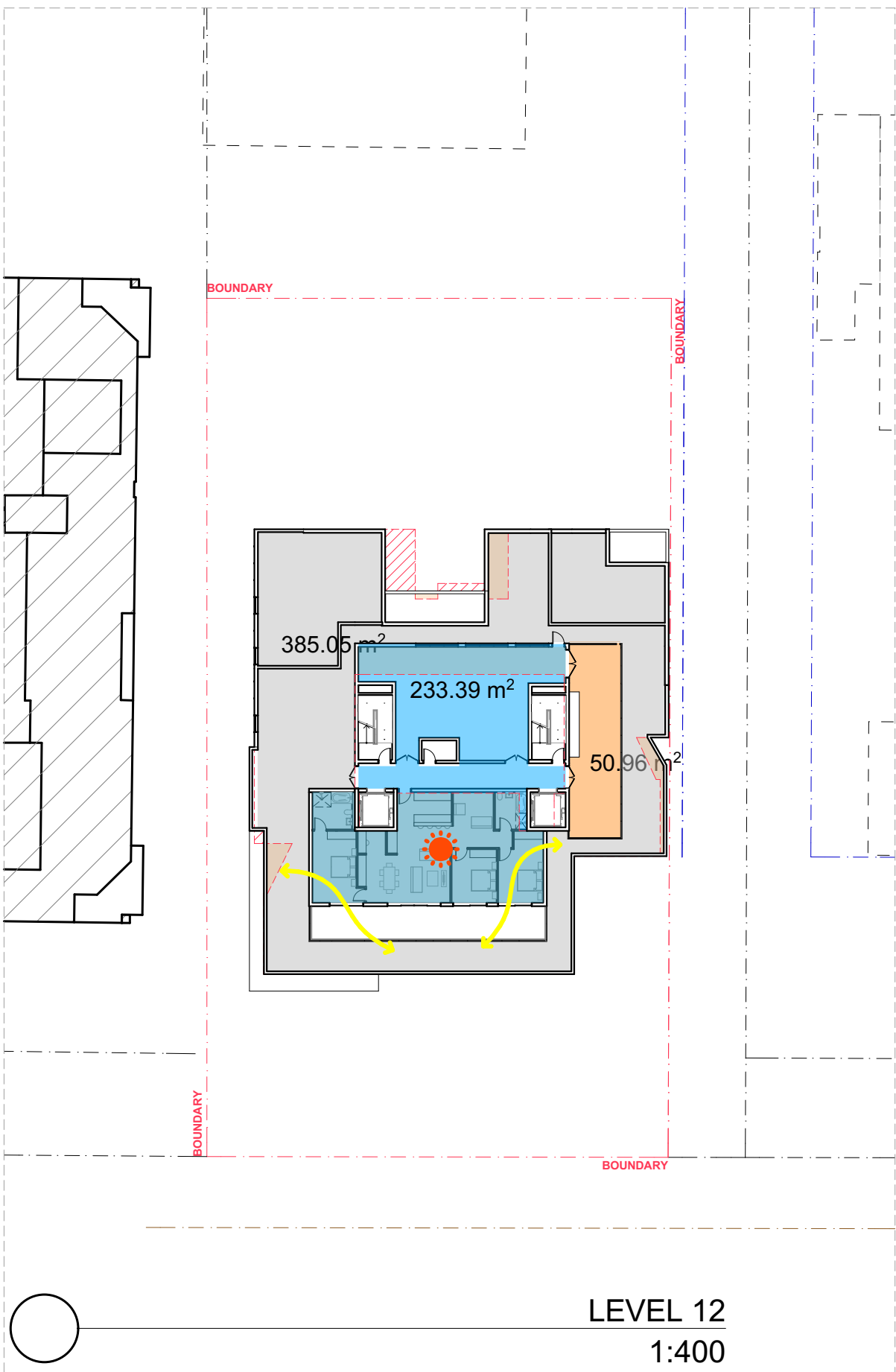
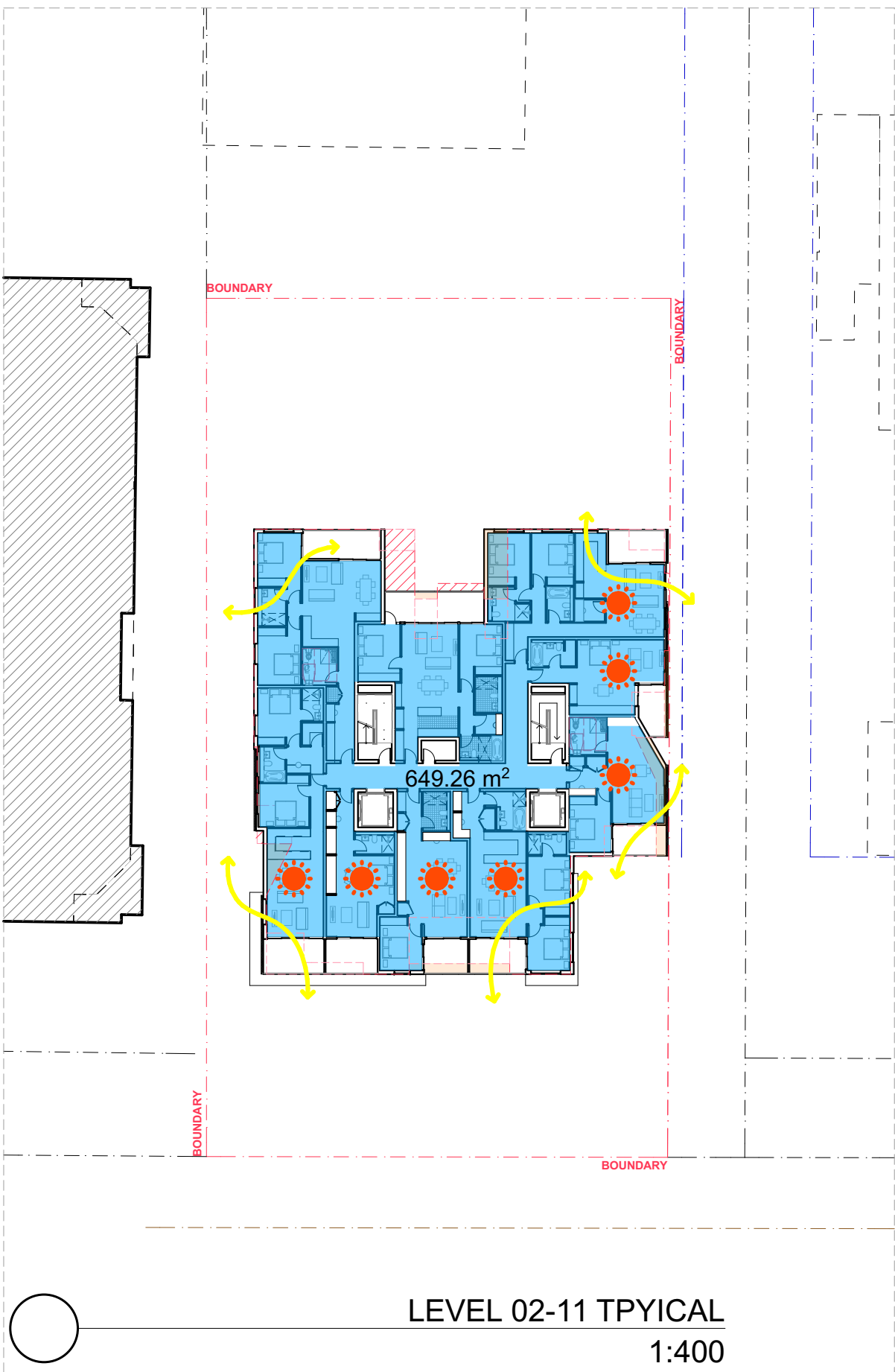
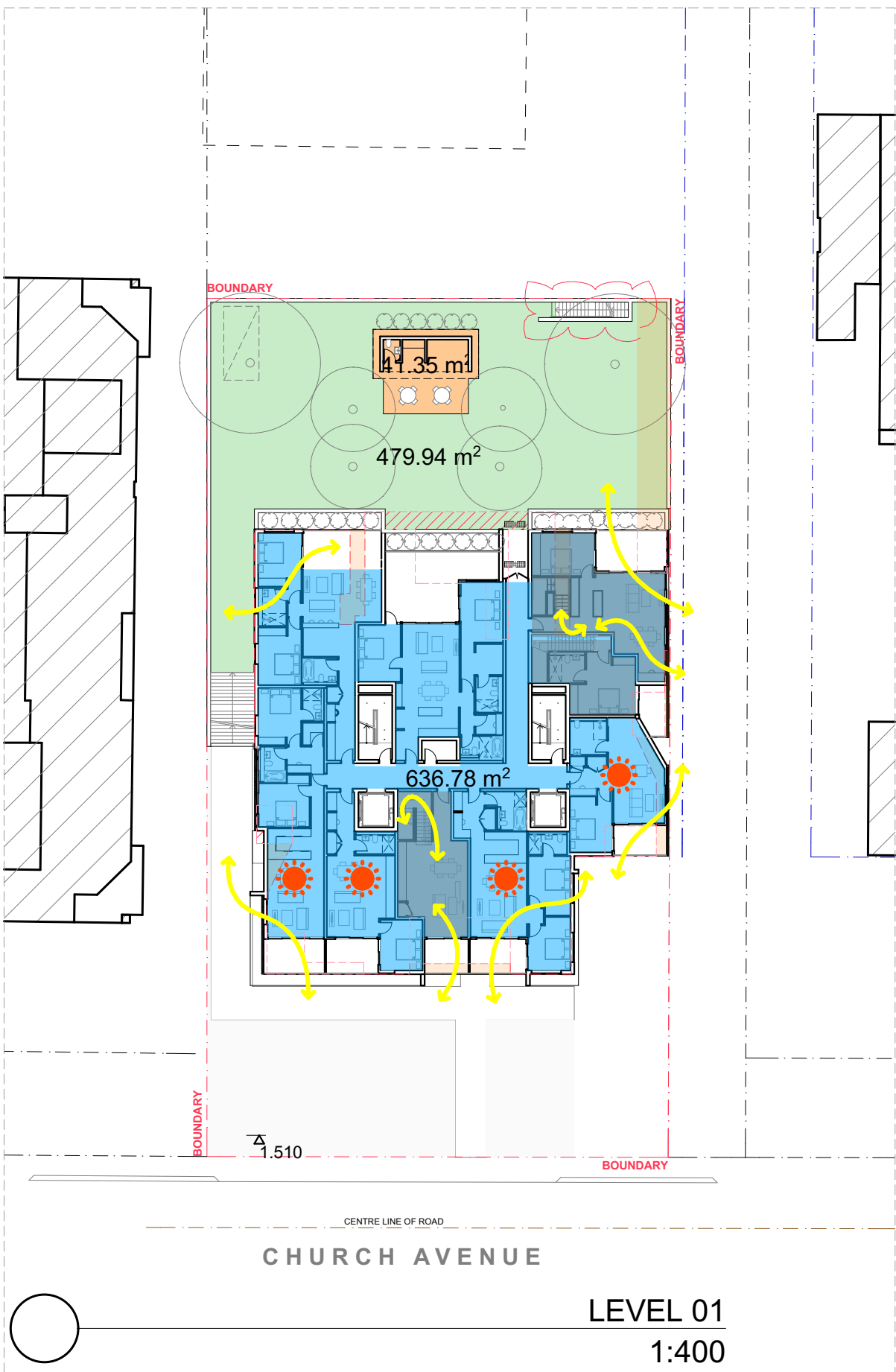
LEGEND

- APARTMENT ACHIEVING NATURAL VENTILATION
- APARTMENT ACHIEVING SOLAR ACCESS
- APARTMENT COUNTED ON GROUND FLOOR LEVEL

TOTAL APT 103

LEVEL	SOLAR	NAT VENT	
GROUND	4 APT	6 APT	
LEVEL 01	3 APT	4 APT	
LEVEL 02	7 APT	5 APT	
LEVEL 03	7 APT	5 APT	
LEVEL 04	7 APT	5 APT	
LEVEL 05	7 APT	5 APT	
LEVEL 06	7 APT	5 APT	
LEVEL 07	7 APT	5 APT	
LEVEL 08	7 APT	5 APT	
LEVEL 09	7 APT	45 (75)	
LEVEL 10	7 APT		
LEVEL 11	7 APT		
LEVEL 12	1 APT		
TOTAL	78		

CROSS VENT SOLAR ACCES **60% 76%**



SITE AREA 2005.4m²

LEVEL	GFA	
GROUND	425m²	
LEVEL 01	636m²	
LEVEL 02	650m²	
LEVEL 03	650m²	
LEVEL 04	650m²	
LEVEL 05	650m²	
LEVEL 06	650m²	
LEVEL 07	650m²	
LEVEL 08	650m²	
LEVEL 09	650m²	
LEVEL 10	650m²	
LEVEL 11	650m²	
LEVEL 12	233m²	
TOTAL	7,794m²	

SITE AREA 2005.4m² FSR 3.89:1

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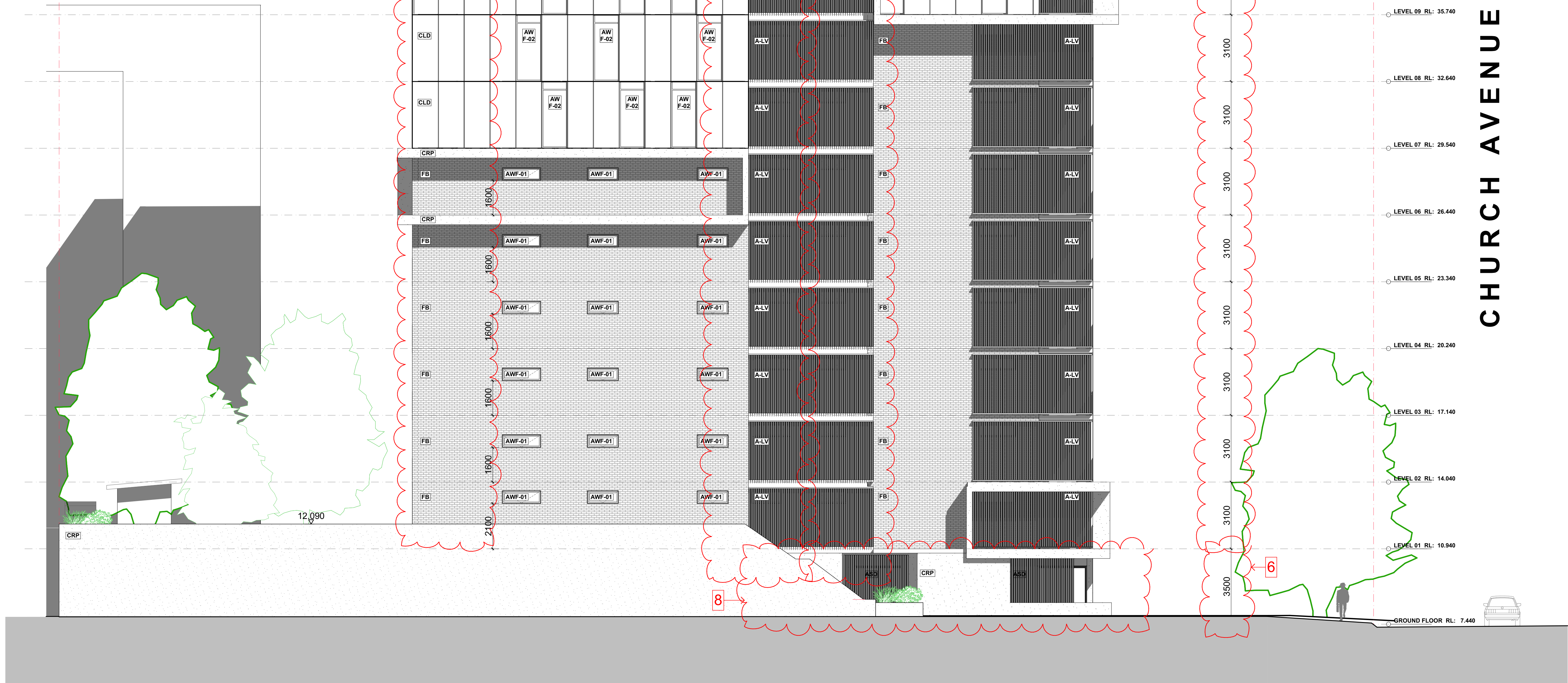
NOTES- EAST_FACING RINA APARTMENTS

1. Balcony removed and replaced with Bedroom.
2. "Angled slot" removed
3. Window associated with approved Kitchen area, South East corner of the development deleted (11 in total) from Podium to Roof Level.
4. Building envelope of level 12 increased due to inclusion of additional unit, refer to 107 (Level 12) drawing for proposed setbacks.
5. Floor to Floor Typical increased to 3.1m from 3.0m
6. Ground Floor Level Floor to Floor increased to 3.5m from 3.35m
7. Building Height increased from RL48.14 to RL49.64 to Lift Over Run
8. Additional Units added at Ground Floor
9. Roof structure changed to allow natural light into Common Area via gable window, New flat membrane roof over proposed 3 Bedroom Unit at L12.

LEGEND

MT	COLOURBOND METAL ROOF SHEETING
AWF-01	ALUMINIUM WINDOW FRAME
AWF-02	ALUMINIUM WINDOW FRAME-PRIVACY FILM TO 1600 AFFL
ASD	ALUMINIUM SLIDING DOOR
A-LV	ALUMINIUM LOUVRE
FB	FACE BRICKWORK
CRP	CEMENT RENDER WITH PAINT FINISH
BAL	GLASS BALUSTRADE
CLD	PANEL CLADDING

NOTE: SEE MATERIALS BOARD FOR FINISHES



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LEGEND:



FACADE AREA AMENDED TO SUIT INTERNAL LAYOUT

REV. DATE

1 23/11/17

AMENDMENT

13a CHURCH AVE, MASCOT

STAGE:

SECTION 96

DRAWING TITLE:

EAST ELEVATIONS

PROJECT No: 16081

DRAWING No:

S96 201

REVISION:

A

SCALE @ A1:

1:100

NORTH:



CLIENT: S & A S Mohebbaty

DRAWN: MB

DATE: 23/11/2017

CHECKED: HHH

APPROVED: SH

NOTES- SOUTH FACING OPEN SPACE

1. Building envelope of level 12 increased due to inclusion of additional unit, refer to 107 (Level 12) drawing for proposed setbacks Approved Studio Unit replaced with 2 Bedroom unit South East corner of development
2. North/South facing 2x 2 bedroom units replaced with single orientation (South) 2 bedroom unit
3. Bedroom to South West corner of the development replaced with Living and Dining Area
4. Floor to Floor Typical increased to 3.1m from 3.0m
5. Ground Floor Level Floor to Floor increased to 3.5m from 3.35m
6. Building Height increased from RL48.14 to RL49.64 to Lift Over Run
7. Roof structure changed to allow natural light into Common Area via gable window, New flat membrane roof over proposed 3 Bedroom Unit at L12 .

LEGEND

MT COLOURBOND METAL ROOF SHEETING
AWF-01 ALUMINIUM WINDOW FRAME
AWF-02 ALUMINIUM WINDOW FRAME-PRIVACY FILM TO 1600 AFFL
ASD ALUMINIUM SLIDING DOOR
A-LV ALUMINIUM LOUVRE
FB FACE BRICKWORK
CRP CEMENT RENDER WITH PAINT FINISH
BAL GLASS BALUSTRADE
CLD PANEL CLADDING

NOTE: SEE MATERIALS BOARD FOR FINISHES

19-21 CHURCH AVE
MULTI STOREY DEVELOPMENT

EXISTING
EASEMENT
SHOWN
HATCHED

44m BUILDING
HEIGHT LIMIT

RINA APARTMENTS
3-9 CHURCH AVE
8 LEVELS
BRICK & CONCRETE BUILDING
WITH 2 LEVELS OF BASEMENT PARKING

LEVEL 12 RL: 45.040

LEVEL 11 RL: 41.940

LEVEL 10 RL: 38.840

LEVEL 09 RL: 35.740

LEVEL 08 RL: 32.640

LEVEL 07 RL: 29.540

LEVEL 06 RL: 26.440

LEVEL 05 RL: 23.340

LEVEL 04 RL: 20.240

LEVEL 03 RL: 17.140

LEVEL 02 RL: 14.040

LEVEL 01 RL: 10.940

RL: 7.440

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LEGEND:

REV. DATE
1 23/11/17

AMENDMENT

13a CHURCH AVE, MASCOT

STAGE:
SECTION 96

DRAWING TITLE:
SOUTH ELEVATIONS

PROJECT No: 16081

DRAWING No:

S96 202

SCALE @ A1:
1:100

NORTH:

CLIENT: S & A & S Mohebbaty
DRAWN: MB
DATE: 23/11/2017

CHECKED: HHH
APPROVED: SH

REVISION:

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CHURCH AVE LOOKING EAST



OVERVIEW LOOKING EAST



OVER VIEW LOOKING WEST



CHURCH AVE LOOKING WEST

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LEGEND:

REV.	DATE	AMENDMENT
1	23/11/17	---

13a CHURCH AVE, MASCOT		PROJECT No: 16081	
STAGE:	DRAWING TITLE:	DRAWING No:	
SECTION 96	PRESPECTIVE VIEW	S96 400	
NORTH: 	CLIENT: S & A & S Mohebbaty	REVISION:	
	DRAWN: MB	CHECKED: HHH	A
	DATE: 23/11/2017	APPROVED: SH	



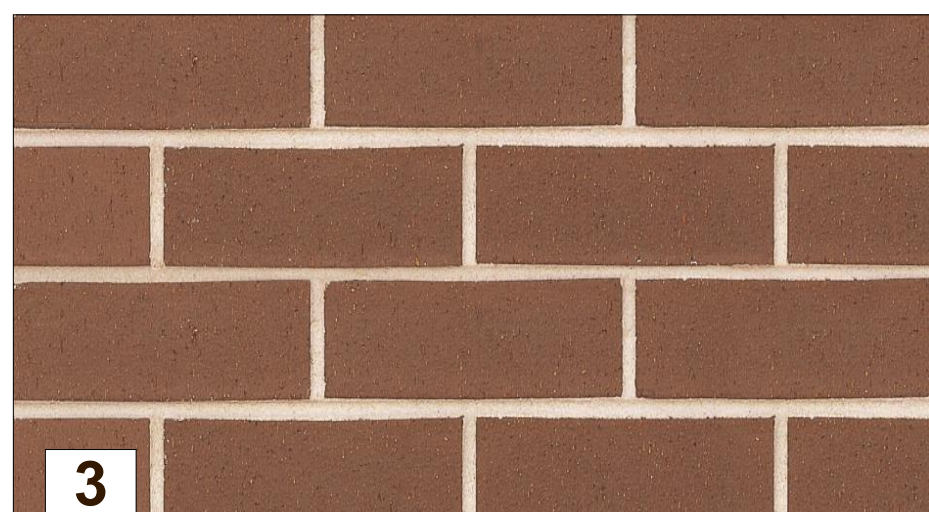
1

A-LV
ALUMINIUM LOUVRE - WOODLAND GREY OR
SIMILAR



2

BAL
CLEAR GLASS BALUSTRADE



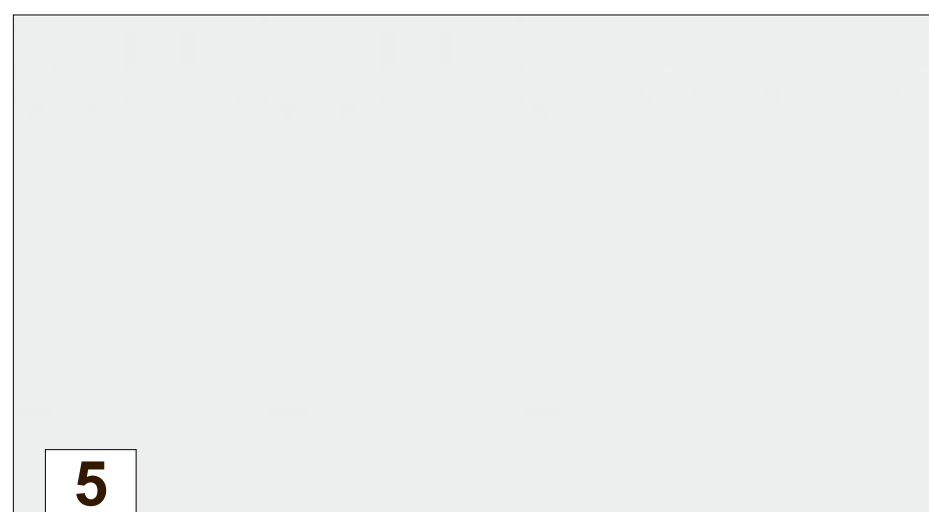
3

FB
FACEBRICK - BORAL SUBIACO RED OR
EQUIVALENT



4

CLD
NON-COMBUSTIBLE ALUMINIUM CLADDING - PALE
GREY



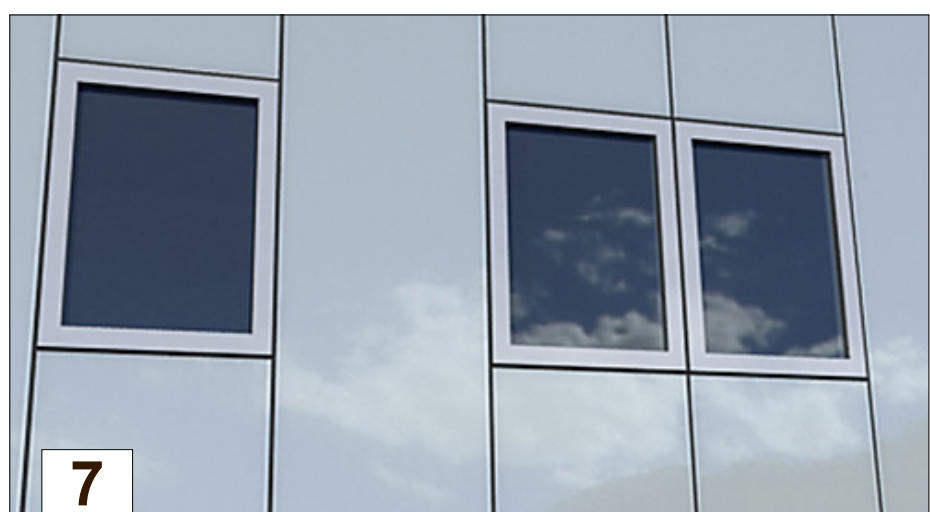
5

CRP
CEMENT RENDER PAINT FINISH - DULUX LEXICON
50% OR EQUIVELANT



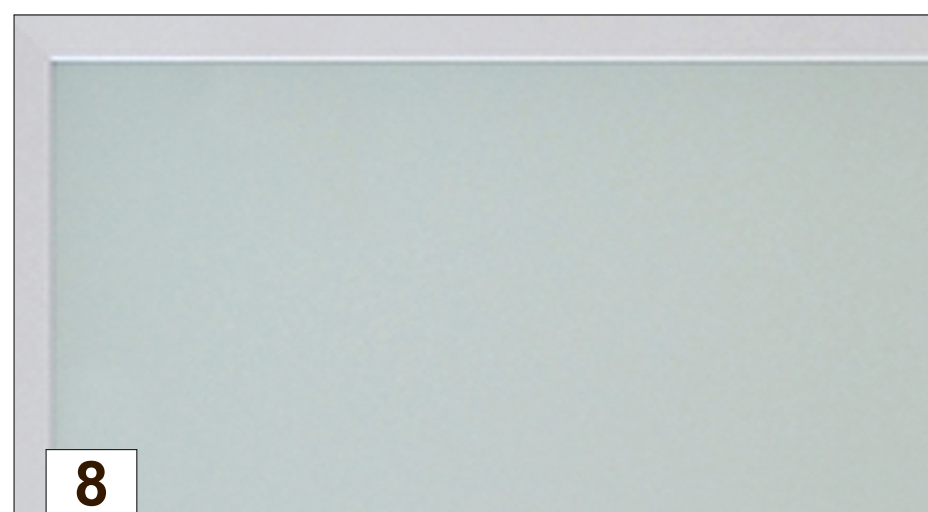
6

ASD
ALUMINIUM SLIDING DOOR - WOODLAND GREY
OR SIMILAR



7

AWF-01/02
ALUMINIUM WINDOW FRAME - CHAMPAGNE
PEARL OR SIMILAR



8

NVP
NON VISIBILITY PANEL - OPAQUE FILM TO
GLAZING



9

MT
METAL SHEET ROOFING - COLORBOND
WOODLAND GREY OR EQUIVALENT

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ABN 94 115 880 834 | NOMINATED ARCHITECT - SIMON HANSON #6739

ISSUED FOR SECTION 96 APPLICATION

A800 PHOTOMONTAGE

13a CHURCH AVE, MASCOT, NSW, 2020



12 February 2018

Ms Olivia Yana
Senior Town Planner
Bayside Council
444-446 Princess Highway
ROCKDALE NSW 2216

Dear Olivia.

**S96 13A CHURCH AVE, MASCOT
RESPONSE TO SUBMISSIONS**

- 1.1 I refer to the above mentioned S96 and my previous response to the submissions dated 8 February 2018. As foreshadowed in my submission, this letter addresses the issues raised surrounding view loss.
- 1.2 The submission raised concern with the impact of the modified development on views from unit 1107/214-220 Coward Street, Mascot.
- 1.3 The reasonableness of the proposed development is considered in light of the view sharing principles set out in *Tenacity consulting Pty Ltd v Warringah Council* (2004) NSLEC 268. In *Tenacity*, Senior Commissioner Roseth set out a four-step assessment to be applied in determining whether the level of view sharing that will result from a proposed development is reasonable.
 - 1) What views are to be affected?;
 - 2) How are the views obtained and assessed?;
 - 3) Extent of the impact?; and
 - 4) Is the proposal reasonable?.

What views are affected?

- 1.4 The views available from the unit are partial city and sky views. The unit also has iconic views of Sydney Tower.
- 1.5 It is noted that the development is subject of a development consent and therefore this assessment is whether the modified parts of the building are reasonable in terms of view sharing.

How are the views obtained and assessed?

- 1.6 The views are obtained from a sitting and standing position in the living area and balcony across the front boundary.
- 1.7 It is likely and reasonable to expect that a building would be built on the subject site. The modified parts of the building are still fully compliant with the maximum permitted height of 44 metres under Botany Bay LEP 2012.

Extent of the Impact?

- 1.8 The accompanying image demonstrates that view sharing is still achieved and the minor extent of the impact. The modified parts of the building will result in a minor loss of city views, with the main reduction being part of the sky. The unit still retains expansive city views and in particular the iconic view of Sydney tower.

Is the proposal reasonable?

- 1.9 The proposal is reasonable and this does not result from a non-compliance with the height control. The accompanying image demonstrates that view sharing is still achieved. The modified parts of the building will result in a minor loss of city views, with the main reduction being part of the sky. The unit still retains expansive city views and in particular the iconic view of Sydney tower. This does not result from a non-compliance with the height control.
- 1.10 The minor increase in building height, which is still below the maximum permitted height, is due to the increase in floor to floor heights to improve the amenity of the apartments and ensure the development can meet the requirements of the ADG in regards to floor to ceiling heights.
- 1.11 Overall, this view loss is reasonable as the development as modified maintains compliance with the height control and maintains a high level of view sharing.
- 1.12 The proposed development meets the Tenacity test, achieves reasonable view sharing and therefore this should not impact on the approval of the modified development.

I trust that the above addresses the comments raised by Council.

Should you wish to discuss this matter further please contact Larissa Brennan on 0414 730 842 or via email Larissa@ljbplanning.com.au

Yours sincerely



Larissa Brennan

Director

LJB Urban Planning Pty Ltd

Attachment: View sharing analysis

