

20 June 2017

Luis Melim
Manager Development Services
Bayside Council
444-446 Princes Highway
ROCKDALE NSW 2216

Dear Luis

42 CHURCH STREET, MASCOT – (2016DYE095)

I refer to the deferral of the abovementioned Development Application on the 01 June 2017, where the Planning Panel requested further clarification on overshadowing, first floor retail/commercial uses, Sydney Trains concurrence and agreement on Section 94 Contributions. Each of these matters are addressed below and urgently request the Development Application be sent back to Sydney Central Planning Panel for approval.

Overshadowing

Calculation of the Temp Building common open space now includes the swimming pool and adjoining gymnasium. The amount of additional overshadowing is less than 12% for one moment in time (considerably less for all other times) and mostly covers paved areas and the gymnasium roof. The accompanying amended shadow diagrams also show the swimming pool in shade from the residents own 1.9m high privacy wall and not our proposed development. Even our site will be overshadowed by the future development to the north of us which will cover the future open space area for the wider community in mid-winter. People living in a high density town centre cannot expect that all sunlight can be protected. This fact is supported by case law as stated in the first Council report to the Planning Panel.

First Floor Retail

The Planning Panel suggested start-up businesses or affordable housing on the first floor, which neither are required under Council's Local Environmental Plan or Development Control Plan. The Planning Panel request for these uses was to compensate the community for not providing 3.3m floor to ceiling heights that is stated in the Apartment Design Guidelines. A 3.3m floor to ceiling height is not a mandatory requirement under the Apartment Guidelines, and has rarely been provided in the Mascot Town Centre. Figure 4C.1 on Page 86 of the Apartment Design Guidelines states:-

*"Greater than minimum ceiling heights for retail and commercial floors of mixed use developments are **encouraged** to promote flexibility of use"*

This wording only encourages minimum ceiling heights on the first level and not stipulating a mandatory requirement. Therefore we do not in fact need to provide a 3.3m floor to ceiling height at all.

From a community perspective, Meriton has just completed the Mascot Town Centre Shopping precinct, which is located across the road from the site. The businesses we have provided include a Woolworths Supermarket, child care centres, cafes, restaurants, hairdresser, medical centre, chemist, dry cleaner and florist. Most importantly we have just completed a large park providing a playground, barbeques and seating amongst a landscaped setting.

As you will appreciate, Meriton has been responsible for driving the redevelopment of the Mascot Town Centre into a thriving economic hub, and we are continuing to do so with more business uses along the Bourke Street frontage and another park for the community along our northern boundary.

I have also attached written correspondence from Urbis Pty Ltd that explains in detail that retail/commercial uses are not required on the first floor.

Notwithstanding all this, we have reviewed the plans and if the Planning Panel still require the first floor to have a 3.3m floor to ceiling height (even though not a mandatory requirement), then we **can** provide this and are shown on the attached plans.

I still would also like to point out that a 3.3m floor to ceiling height on the first level is futile in reality. Once a residential unit on the first level is fitout, subdivided and sold then it will remain as a residential unit because the cost and return as a small office suite is far less than a residential use, and therefore the likelihood of the use changing is miniscule. Not to mention that any residential unit can also be used at any time for the purposes of a home occupation.

A 3.3m high first floor results in a slight change in the height of the top of the building by 30cm. We have amended the Clause 4.6 Variation report to justify this minor height change. The shadow diagrams presented to address the adjoining open space incorporates the change in height.

Sydney Trains

Sydney Trains has now given Council the relevant Concurrence letter, which addresses this matter.

Section 94 Contributions

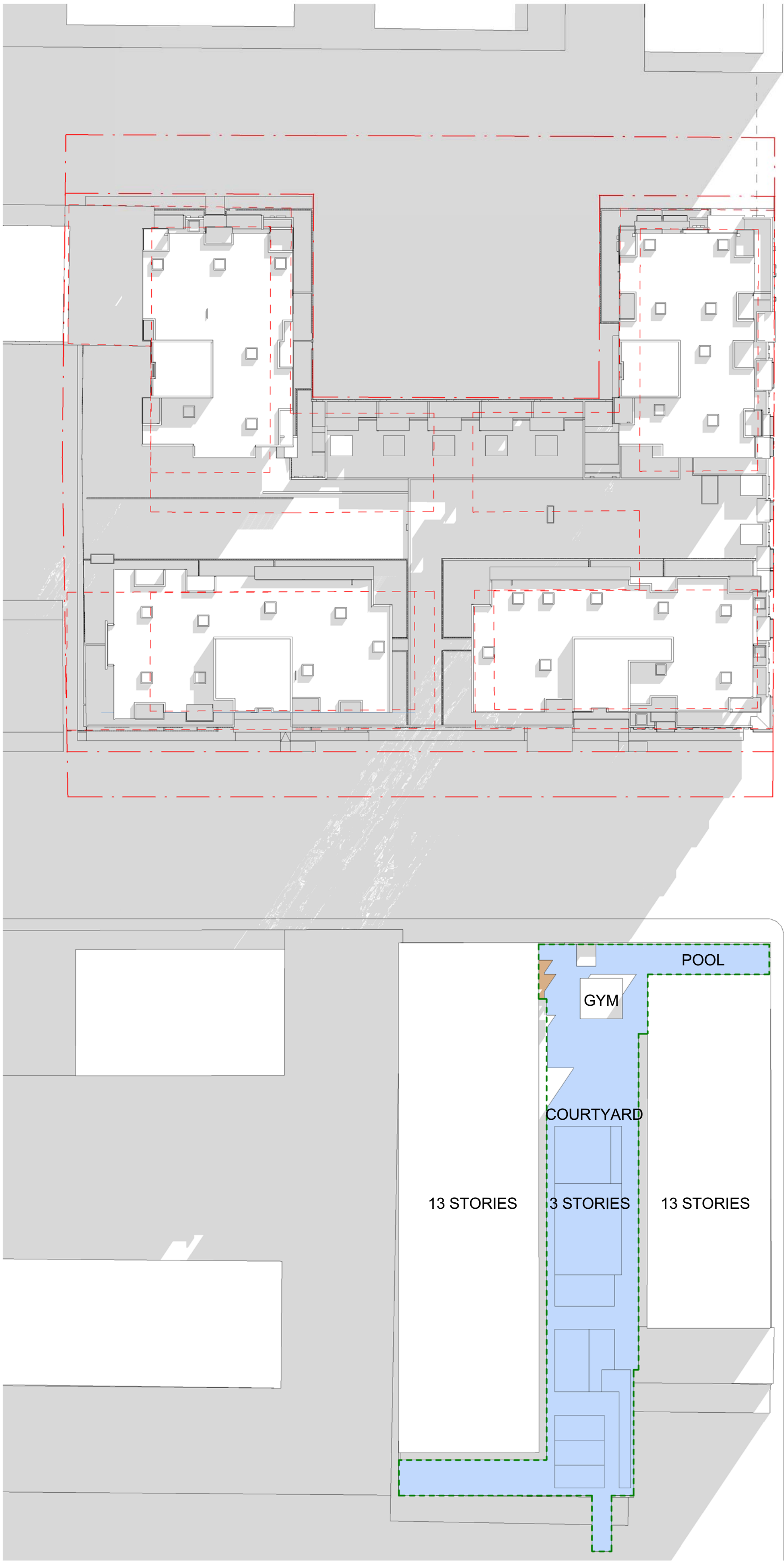
The matter of Section 94 Contributions is resolvable to issue an approval.

Now that we have addressed all of the issues, we urgently require the Development Application be referred back to the Planning Panel for the next available meeting as over 500 workers have been placed on hold.

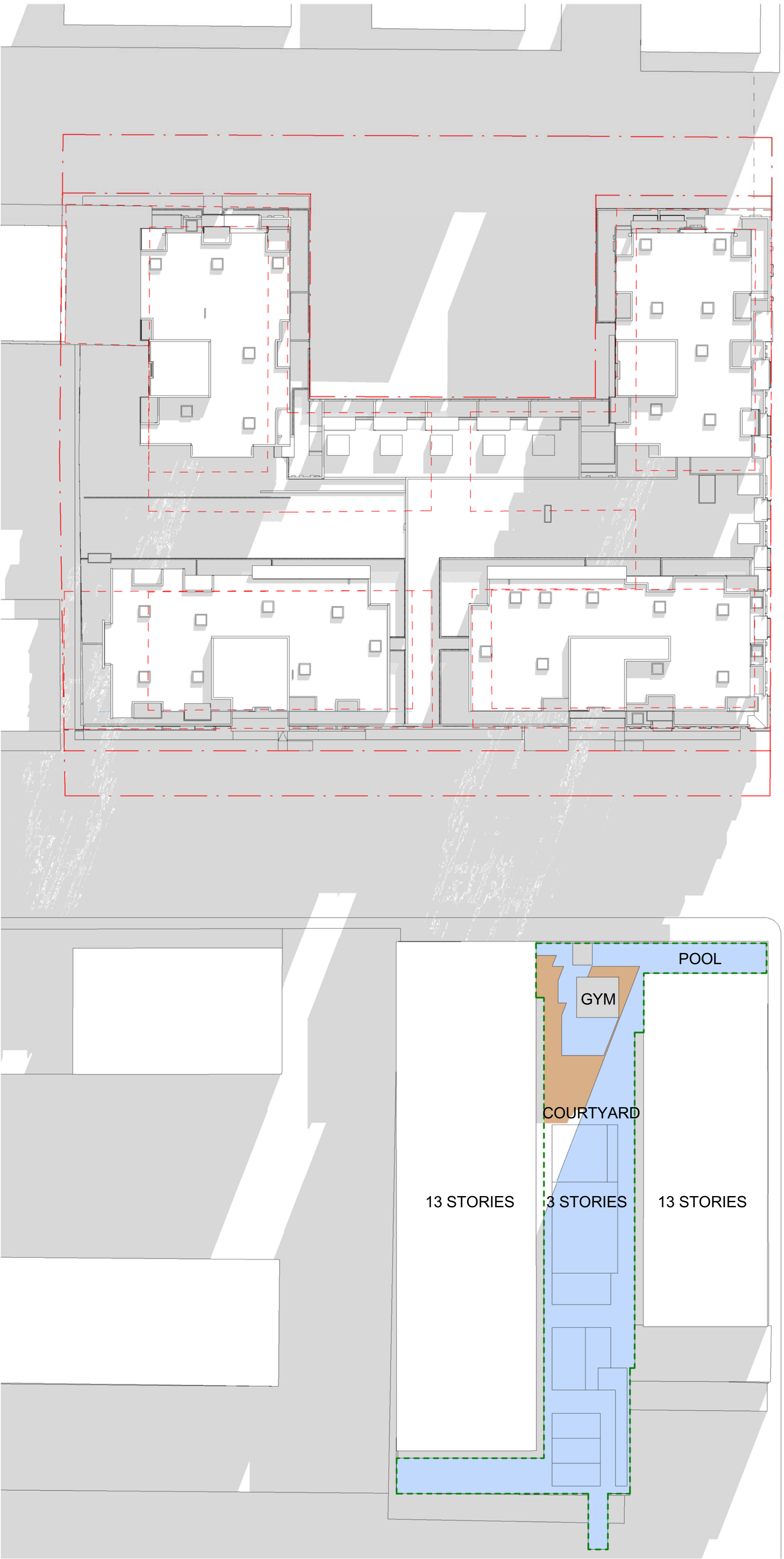
Yours faithfully
MERITON GROUP



Walter Gordon
Head of Planning and Development



1 SHADOW ANALYSIS - 21 June 9am
SCALE 1 : 500
0.60 % OVERSHADOWING ON COS
8.43 sqm on 1.395 sqm



2 SHADOW ANALYSIS - 21 June 10am
SCALE 1 : 500
10.46 % OVERSHADOWING ON COS
145.93 sqm on 1.395 sqm

% of COS Overshadowing

09 am = 0.60%
10 am = 10.46%
11 am = 11.51%
12 pm = 8.25%
01 pm = 2.43%
02 pm = 2.17%
03 pm = 0.67%

Average % Overshadowing = 5.15%

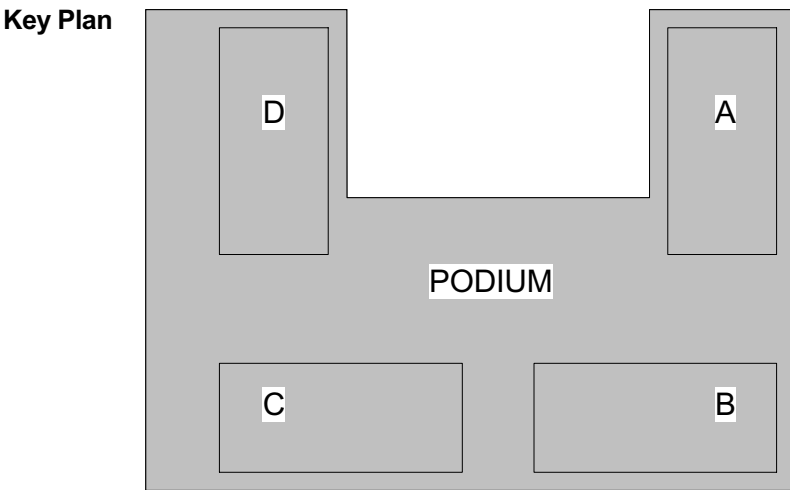
- DCP Building Envelope
- Proposed Building Overshadowing on COS
- Existing Building Overshadowing on COS
- Communal Open Space (COS) including Pool 1.395 sqm
- Boundary Line



14 July 2016. Shadow on swimming pool mid-winter exists
Image source: Near Maps

Notes			
All dimensions and setbacks to be verified prior to commencement, omissions or discrepancies to be notified to the architect.			
Copyright			
© CRONE PARTNERS PTY LTD (CRONE)			
The copyright of this drawing together with any other documents created by CRONE remains the property of CRONE. Subject to full payment of our charges crone grants one licence to use this document for the purpose for which it has been created. The licence is not transferable without the written permission of CRONE.			

Rev	DESCRIPTION	By	Date
A	Revised DA Submission	DP	14/06/2017

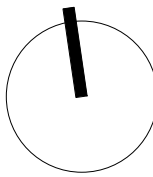


Builder
MERITON
Meriton Group
Level 11, Meriton Tower
528 Kent St, Sydney 2000
Client
MERITON
Meriton Group
Level 11, Meriton Tower
528 Kent St, Sydney 2000

CRONE
ARCHI
TECTS

Cronepartners
level 2, 364 kent street,
sydney, nsw 2000, australia
Ph: +61 2 8295 5300
Fax: +61 2 8295 5301

0 2000 4000 6000 8000 10000mm
SCALE 1:200 AT ORIGINAL SIZE



Scale
As indicated @
A1
50% @ A3
Date: 14/06/2017
Drawn: Author
Checked:

Project
6-7 BOURKE STREET
6-7 Bourke Street
Mascot, NSW 2020

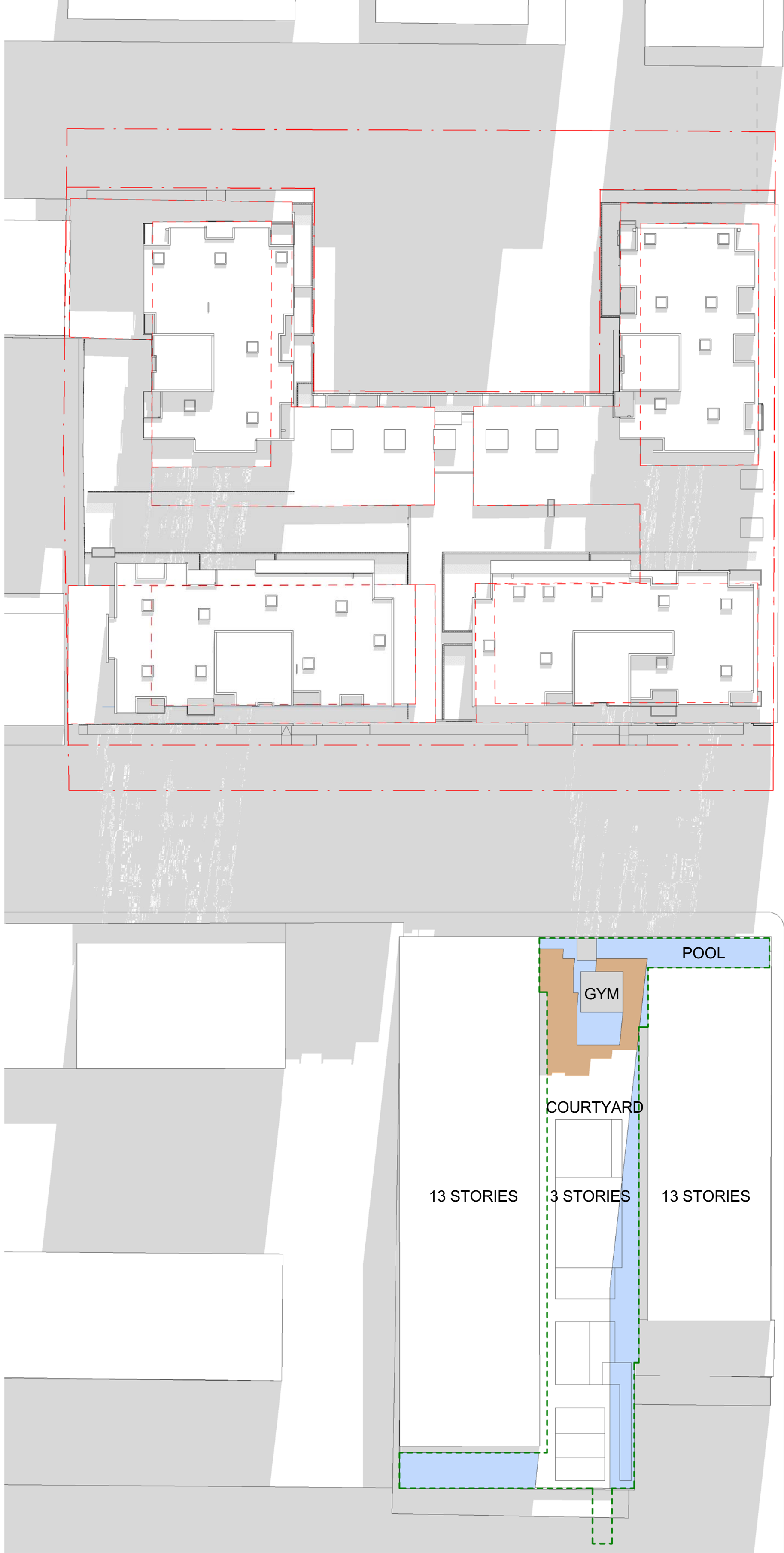
Drawing Title
SHADOW ANALYSIS -
WINTER SOLSTICE

DEVELOPMENT APPLICATION

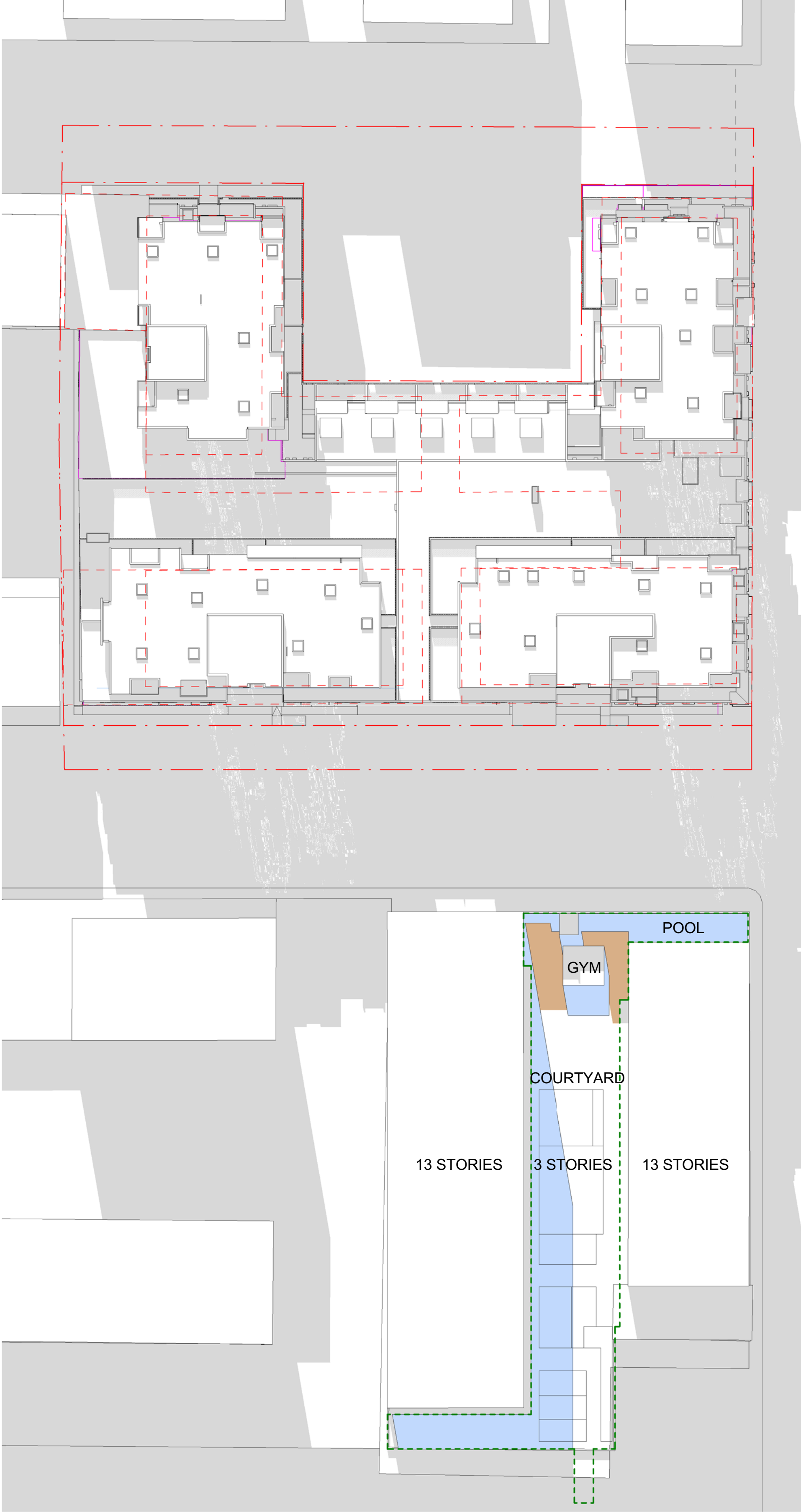
Project No.
CA 3392

Drawing Phase.
0060

Rev
A



1 SHADOW ANALYSIS - 21 June 11 am
SCALE 1 : 500
11.51 % OVERSHADOWING ON COS
160.67 sqm on 1.395 sqm



2 SHADOW ANALYSIS - 21 June 12 pm
SCALE 1 : 500
8.25 % OVERSHADOWING ON COS
115.09 sqm on 1.395 sqm

% of COS Overshadowing

09 am = 0.60%
10 am = 10.46%
11 am = 11.51%
12 pm = 8.25%
01 pm = 2.43%
02 pm = 2.17%
03 pm = 0.67%

Average % Overshadowing = 5.15%

- DCP Building Envelope
- Proposed Building Overshadowing on COS
- Existing Building Overshadowing on COS
- Communal Open Space (COS) including Pool 1.395 sqm
- Boundary Line

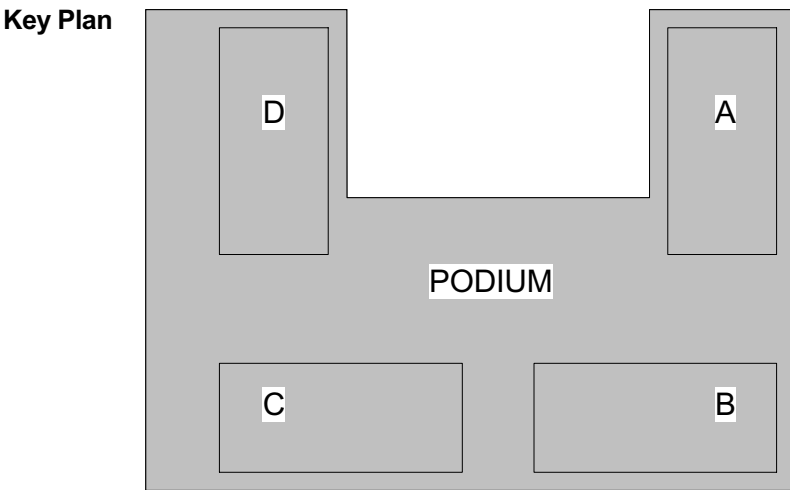


14 July 2016. Shadow on swimming pool mid-winter exists
Image source: Near Maps

Notes
All dimensions and setbacks to be verified prior to commencement, omissions or discrepancies to be notified to the architect.

Copyright
© CRONE PARTNERS PTY LTD (CRONE)
The copyright of this drawing together with any other documents created by CRONE remains the property of CRONE. Subject to full payment of our charges crone grants one licence to use this document for the purpose for which it has been created. The licence is not transferable without the written permission of CRONE.

Rev	DESCRIPTION	By	Date
A	Revised DA Submission	DP	14/06/2017



Builder
MERITON
Meriton Group
Level 11, Meriton Tower
528 Kent St, Sydney 2000
Client
MERITON
Meriton Group
Level 11, Meriton Tower
528 Kent St, Sydney 2000

CRONE
ARCHI
TECTS

Cronepartners
level 2, 364 kent street,
sydney, nsw 2000, australia
Ph: +61 2 8295 5300
Fax: +61 2 8295 5301

0 2000 4000 6000 8000 10000mm
SCALE 1:200 AT ORIGINAL SIZE

Project
6-7 BOURKE STREET
6-7 Bourke Street
Mascot, NSW 2020

Drawing Title
SHADOW ANALYSIS -
WINTER SOLSTICE

Project No.
CA 3392

Rev
A

Scale
As indicated @
A1
50% @ A3

Date:
14/06/2017

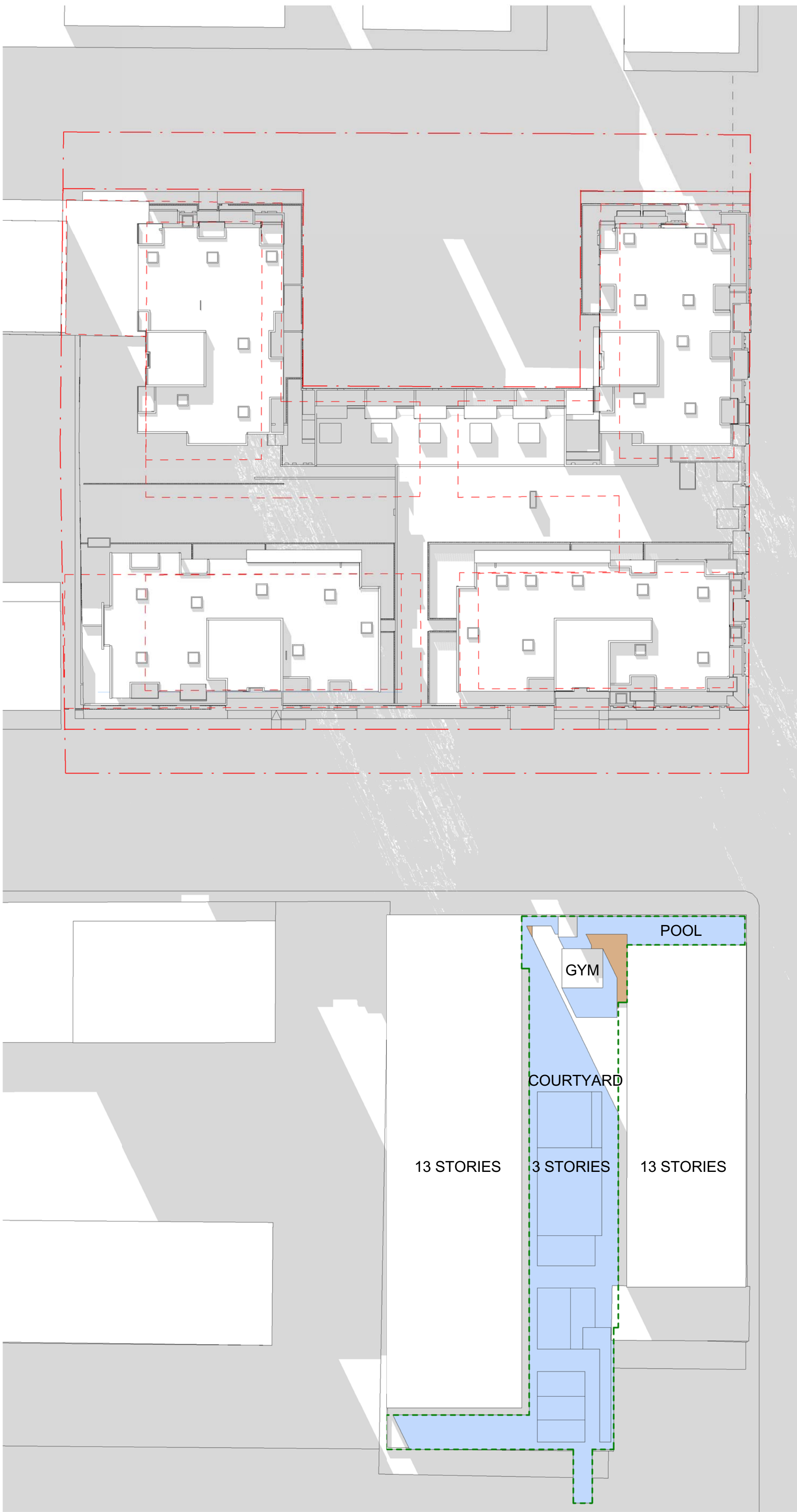
Drawn:
Author

Checked:

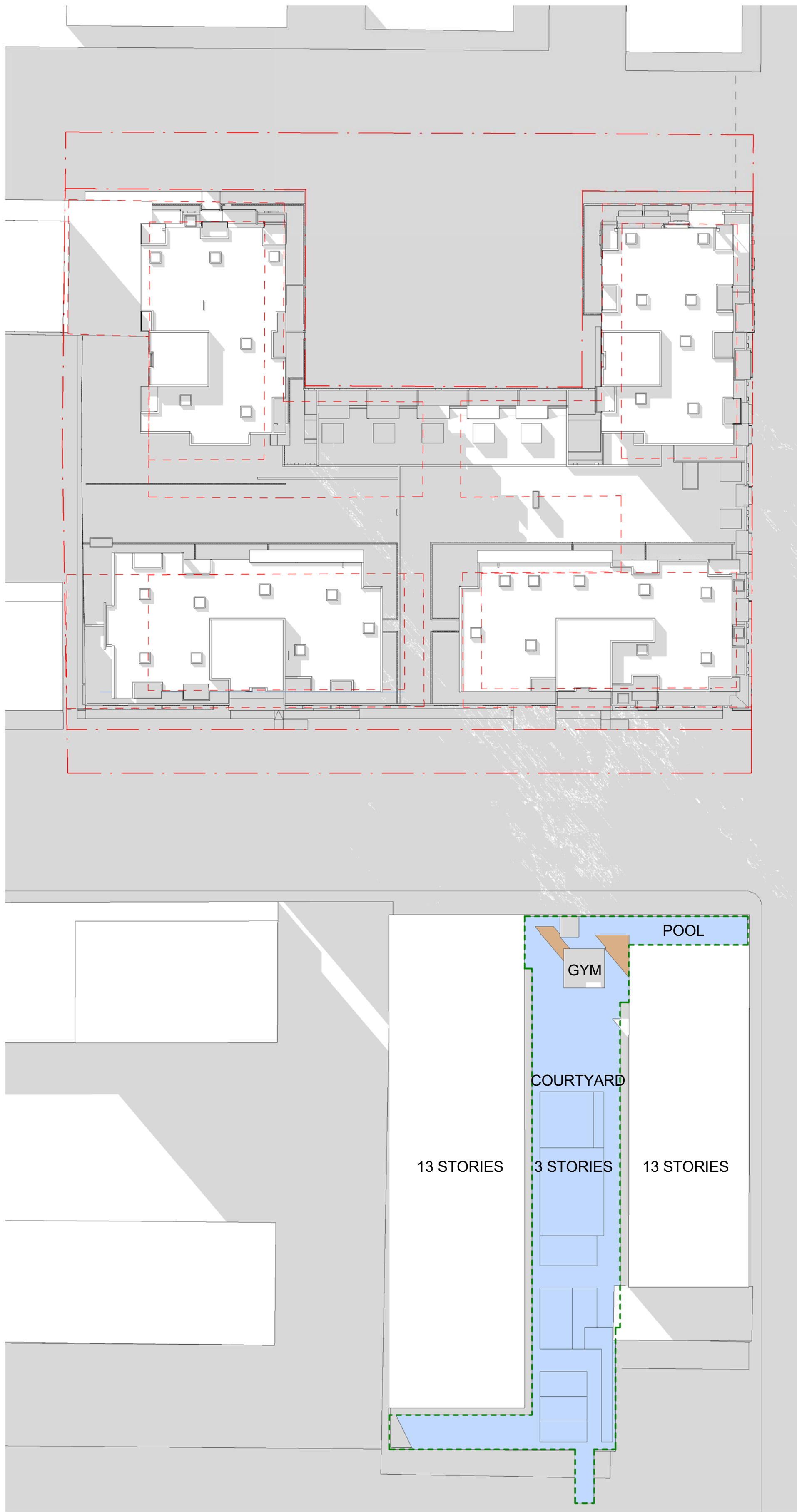
Drawing Phase.

Drawing No.
0061

Rev
A



1 SHADOW ANALYSIS - 21 June 1 pm
SCALE 1 : 500
2.43 % OVERSHADOWING ON COS
34 sqm on 1.395 sqm



2 SHADOW ANALYSIS - 21 June 2pm
SCALE 1 : 500
2.17 % OVERSHADOWING ON COS
30.30 sqm on 1.395 sqm

% of COS Overshadowing

09 am = 0.60%
10 am = 10.46%
11 am = 11.51%
12 pm = 8.25%
01 pm = 2.43%
02 pm = 2.17%
03 pm = 0.67%

Average % Overshadowing = 5.15%

- DCP Building Envelope
- Proposed Building Overshadowing on COS
- Existing Building Overshadowing on COS
- Communal Open Space (COS) including Pool 1.395 sqm
- Boundary Line

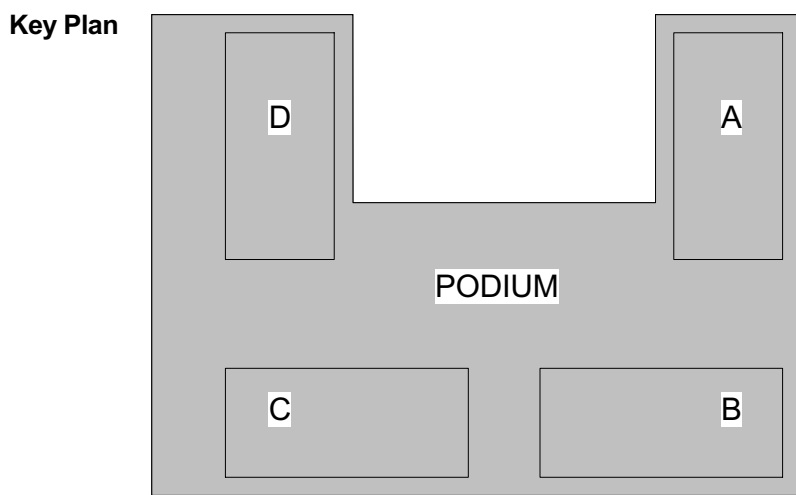


14 July 2016. Shadow on swimming pool mid-winter exists
Image source: Near Maps

Rev	DESCRIPTION	By	Date
A	Revised DA Submission	DP	14/06/2017

Notes
All dimensions and setbacks to be verified prior to commencement, omissions or discrepancies to be notified to the architect.

Copyright
© CRONE PARTNERS PTY LTD (CRONE)
The copyright of this drawing together with any other documents created by CRONE remains the property of CRONE. Subject to full payment of our charges crone grants one licence to use this document for the purpose for which it has been created. The licence is not transferable without the written permission of CRONE.

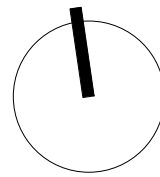


Builder
MERITON
Meriton Group
Level 11, Meriton Tower
528 Kent St, Sydney 2000
Client
MERITON
Meriton Group
Level 11, Meriton Tower
528 Kent St, Sydney 2000

CRONE
ARCHI
TECTS

Cronepartners
level 2, 364 kent street,
sydney, nsw 2000, australia
Ph: +61 2 8295 5300
Fax: +61 2 8295 5301

0 2000 4000 6000 8000 10000mm
SCALE 1:200 AT ORIGINAL SIZE



Scale
As indicated @
A1
50% @ A3
Date: 14/06/2017
Drawn: Author
Checked:

Project
6-7 BOURKE STREET
6-7 Bourke Street
Mascot, NSW 2020

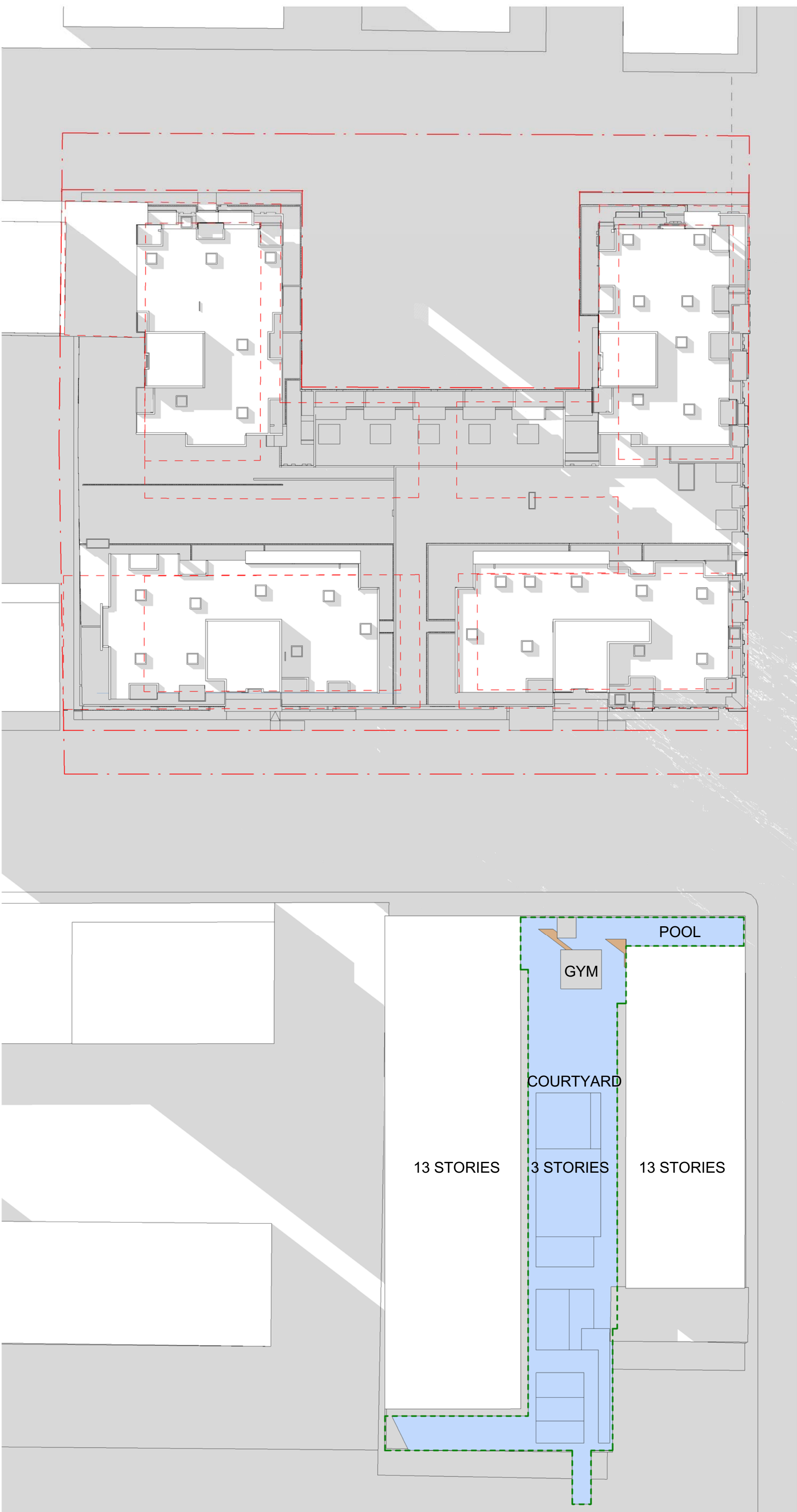
Drawing Title
SHADOW ANALYSIS -
WINTER SOLSTICE

DEVELOPMENT APPLICATION

Project No.
CA 3392

Drawing Phase.
0062

Rev
A



1 SHADOW ANALYSIS - 21 June 3pm
0063 SCALE 1 : 500
0.67 % OVERSHADOWING ON COS
9.43 sqm on 1.395 sqm

% of COS Overshadowing

- 09 am = 0.60%
- 10 am = 10.46%
- 11 am = 11.51%
- 12 pm = 8.25%
- 01 pm = 2.43%
- 02 pm = 2.17%
- 03 pm = 0.67%

Average % Overshadowing = 5.15%

- DCP Building Envelope
- Proposed Building Overshadowing on COS
- Existing Building Overshadowing on COS
- Communal Open Space (COS) including Pool 1.395 sqm
- Boundary Line



14 July 2016. Shadow on swimming pool mid-winter exists
Image source: Near Maps

Rev	DESCRIPTION		By	Date
	A	Revised DA Submission	DP	14/06/2017

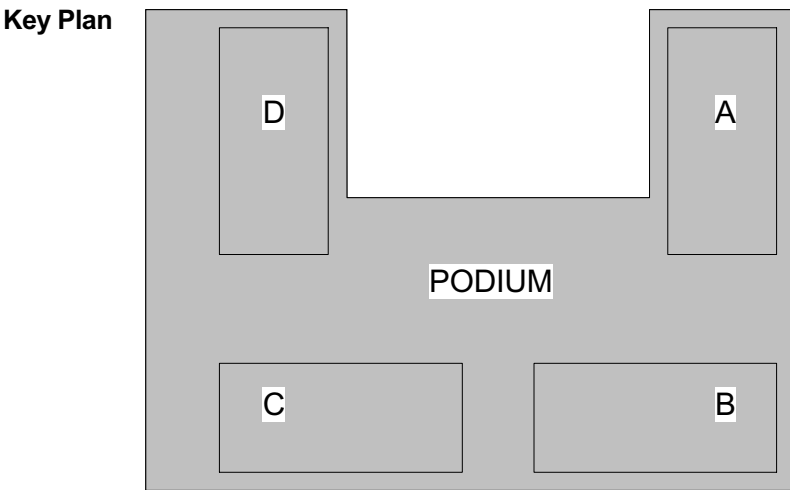
Notes

All dimensions and setbacks to be verified prior to commencement, omissions or discrepancies to be notified to the architect.

Copyright

© CRONE PARTNERS PTY LTD (CRONE)

The copyright of this drawing together with any other documents created by CRONE remains the property of CRONE. Subject to full payment of our charges crone grants one licence to use this document for the purpose for which it has been created. The licence is not transferable without the written permission of CRONE.



Builder
MERITON
Meriton Group
Level 11, Meriton Tower
528 Kent St, Sydney 2000
Client
MERITON
Meriton Group
Level 11, Meriton Tower
528 Kent St, Sydney 2000

CRONE

ARCHI

TECTS

Cronepartners
level 2, 364 kent street,
sydney, nsw 2000, australia
Ph: +61 2 8295 5300
Fax: +61 2 8295 5301

0200040006000800010000mm

SCALE 1:200 AT ORIGINAL SIZE

Project 6-7 BOURKE STREET 6-7 Bourke Street Mascot, NSW 2020		Drawing Title SHADOW ANALYSIS - WINTER SOLSTICE	
Project No. CA 3392		DEVELOPMENT APPLICATION	
Scale A1 50% @ A3	Date: 14/06/2017	Drawing Phase.	Drawing No. 0063
Drawn: Author	Checked:	Rev A	

APARTMENT DESIGN GUIDE

Objective 4C-1
Ceiling height achieves sufficient natural ventilation and daylight access

Design criteria

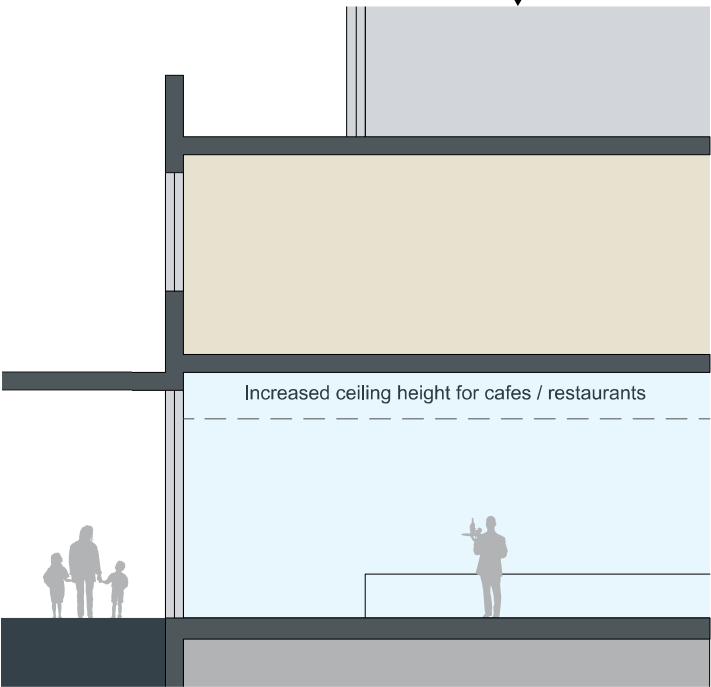
1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

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

These minimums do not preclude higher ceilings if desired

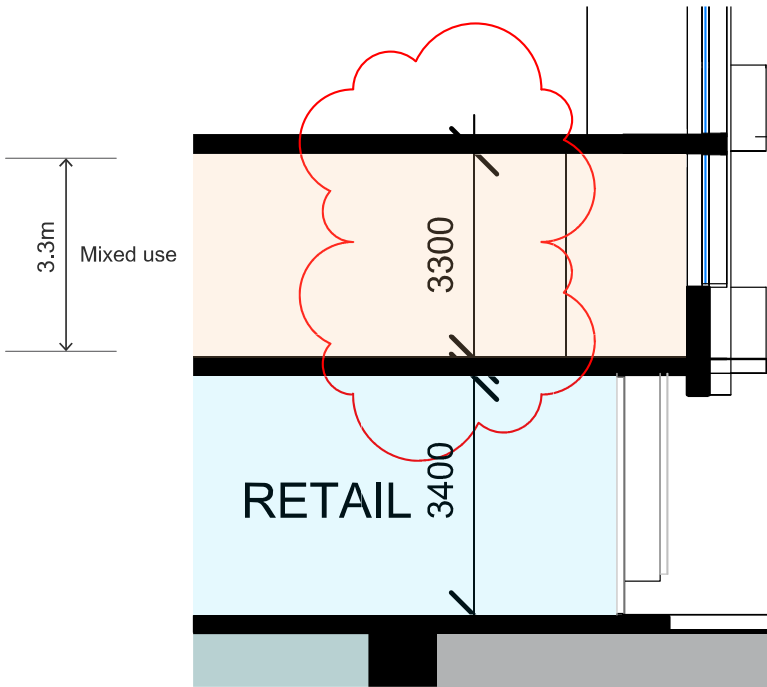
Design guidance

Ceiling height can accommodate use of ceiling fans for cooling and heat distribution



ADG - Figure 4C.1 greater ceiling height for mixed-use area

6 BOURKE STREET



Section - 6 Bourke St showing greater ceiling heights for ground and first floor in keeping with the ADG

6 BOURKE STREET CEILING HEIGHT STUDY



**TOWER 2, LEVEL 23
DARLING PARK, 201 SUSSEX ST
SYDNEY NSW 2000**

URBIS.COM.AU
Urbis Pty Ltd
ABN 50 105 256 228

05 June 2017

Mr Walter Gordon
Head of Planning and Development
Meriton Group
Level 11, Meriton Tower
528 Kent Street
Sydney NSW 2000

Dear Walter,

DA 16/150 42 CHURCH AVENUE, MASCOT

INTRODUCTION

I refer to our recent discussion concerning the above DA which was Deferred by The Sydney Central Planning Panel on the 1st June 2017. Specifically, you have requested an advice on the reasonableness of otherwise of the second reason for deferral, being

An employment/commercial demand study for Mascot Station Precinct to justify the applicant's additional residential levels. This is to be peer reviewed by Council.

Furthermore, the Notice of Deferral requires this information (together with the other matters listed in the Notice) be submitted to Council within 2 weeks.

ADVICE

In my opinion the reason for deferral is manifestly unreasonable for the following reasons:

- I understand that the proposal is largely compliant with the relevant LEP height control, relying on clause 4.6 of the LEP to justify a minor height variation for a lift overrun.
- Council's Mascot TC DCP contains objectives and controls to guide the development of this significant precinct. The DCP has been in place for many years and as such has provided a clarity of expectations for design and land use at ground level and levels above.
- Notably the DCP includes a Vision Statement that includes the following statement in relation to Retail and Commercial Development. (Emphasis had been added were considered relevant for the purposes of this advice).

*As identified in Figures 3 and 4, the main Town Centre retail area is located in the western part of the Precinct. This area will provide for retail uses at **ground level along the Bourke Street spine with residential above**. A new supermarket will be located off Bourke Street and Church Avenue surrounded by retail.*

Ground level commercial is to be located on the major surrounding town centre roads of Gardeners Road, Kent Road and Coward Street. In Coward Street residential may be constructed above the commercial buildings at the eastern end of the strip while the western end will be purely commercial buildings.

The main retail and commercial area will allow for small and medium scale business and retail opportunities including commercial offices, banks, post offices, hairdressers, convenience stores and cafes and restaurants looking out on to a new park. It is also anticipated that the retail and commercial area will provide for various community based uses.

- An extract of Figure 4 from the DCP referenced in the above quote is included below. The proposed development is entirely consistent with Figure 4.

Figure 4 - Anticipated Landuses



- The proposed development is consistent with this DCP requirement insofar that it contains a ground level activated retail frontage to Bourke Street and wrapping around the Church frontage.

- This design response further aligns with the Desired Future Character Statement of Urban Block 1 expressed in Mascot TC DCP which includes the following statements (again with added emphasis):

*A mixed use area **with retail ground floor uses** on Bourke Street, Coward Street and Kent Road, and predominantly residential and **commercial uses elsewhere** within the urban block*

*Bourke Street is to be the major, thriving main street in the Mascot Station Town Centre Precinct. **Ground level retail**, generous footpaths for pedestrians, a bike lane and bike facilities for cyclists, bus services, street trees and street furniture and paving are to denote Bourke Street as the active spine of the Town Centre; (p.20)*

- Based on the above, there is no nexus between the proposed development and its approval being dependent upon a precinct wide study in the first instance.
- The Mascot TC DCP makes it very clear that commercial uses are to be concentrated “*elsewhere*” within the precinct, and this is visually expressed again in Figure 4 of the DCP. This location is on the corner of Coward and Kent Street, and has been deliberately set aside for such due to ANEF noise contours that would otherwise preclude residential uses. This is a logical strategic planning response.
- Furthermore, the Mascot TC is immediately adjacent to significant employment lands that are recognised for their strategic importance at both Metropolitan and District Planning levels. To suggest a specific demand study for commercial uses at the TC level does not align with efforts by the State to reinforce the primary employment role of immediately adjacent lands. This is reflected by significant levels of commercial development activity, including projects currently under construction, immediately to the south of the TC in O’Riordan Street.

RELATIONSHIP TO SEPP 65/ADG

SEPP 65 contains provisions that state that any DCP controls that are inconsistent with the ADG in relation to floor to ceiling heights, the ADG prevails. The Mascot TC DCP does not contain any such provisions, therefore there are no inconsistencies.

Rather, the ADG encourages that floor to ceiling heights at the ground the first-floor levels in mixed use areas be increased to promote future flexibility of use and by inference facilitate the achievement of mixed use precinct consistent with zone objectives.

This objective needs to be taken in context. As explained above, Council has made it very clear through its long-standing TC DCP that it does NOT wish to have commercial uses above ground floor. Rather it wishes to spread retail activity at ground level throughout the precinct and concentrate commercial uses in specific locations elsewhere within the Precinct. This is merely an alternative approach/solution that still achieves the planning objective of creating a mixed-use precinct.

CONCLUDING REMARKS

Statutory land use planning law is underpinned by the *Wednesbury Principle*, established some decades ago in the UK and cited in numerous Land and Environment Court judgments. The Principle is based on the concept of *reasonableness*. In a practical sense, there must be a clear nexus



between the issue at hand and the response required to address that issue. As demonstrated above, in my view it is manifestly unreasonable to ask for the study when the development aligns with long standing LEP and DCP controls.

If you have any questions please don't hesitate to contact me on 0418655998.

Yours sincerely,

A handwritten signature in black ink, appearing to read "David Hoy", with a stylized flourish at the end.

David Hoy
Regional Director