



Thursday, 27 August 2020

Stuart Ratcliff  
Executive Assessment Officer  
Ku-ring-gai Council  
818 Pacific Highway, Gordon, NSW 2072  
[sratcliff@kmc.nsw.gov.au](mailto:sratcliff@kmc.nsw.gov.au)

Copied to:  
Ms. Kim Holt, The Secretariat;  
Panel Chair, The Honourable Peter Debnam, Sydney North Planning Panel  
[kim.holt@planning.nsw.gov.au](mailto:kim.holt@planning.nsw.gov.au)

Dear Ms. Holt,

**RE: Response to Assessment Report**  
**Ppty: Roseville Memorial Club – DA0134/18 | PPS-2018SNH040**

Thank you for the opportunity to provide this response to the Assessment Report dated 10 August 2020 as prepared by Ku-ring-gai Council, scheduled for a Sydney North Planning Panel (SNPP) teleconference on September 2, 2020.

We note that on page 18 of the Report the author notes that in response to the SNPP requests in the original meeting that the amended plans and further information regarding previous contributions paid by the club now *"provide a suitable allocation of parking spaces for the club component of the development"* and satisfactorily resolves this issue. In response to the comments from Councils engineering department on p9 of the Report, we have again reviewed the plans and have identified an opportunity to add an additional car spot to further satisfy this matter in the mind of the Panel.

The attached plans, which show an amended basement plan, increase the number of basement spaces allocated to the club to 11.

In light of these comments from the assessment report it is presented that the submission of the attached amended basement plans and supporting stormwater/traffic reports are supplementary to the current DA0134/18. We would have no objection if the Panel required the development to be carried out in accordance with these further basement plans by condition

The submitted plans are a direct reflection of basement design development which has allowed the provision of an additional parking space to the memorial club.

We are thankful, twenty-eight months since lodgement of the Application, to have the opportunity to respond to the assessment report to the SNPP.

We thank you for your time in both reading this letter and naturally, we urge the Panel to considered the attached amending plans in the assessment of the application.

Kind Regards,

**John Whitworth**  
President  
Roseville Memorial Club

**Stephen Abolakian**  
Managing Director  
Hyecorp Property Group

**Attachments:**

- Architectural Plans prepared by PBD
- Stormwater Justification prepared by Jones Nicholson
- Parking/Traffic Justification prepared by Colston Budd Rogers and Kafes (CBRK)

PROJECT INFORMATION

64-66 Pacific Highway, Roseville	
Site Area	1,375 sqm
FSR (Permissible)	2:1 @ No. 66 & 2.8:1 @ No. 64
Zoning	B2 - Local Centre
Height Control	14.5m @ No. 66 - 20.5m @ No. 64
Allowable GFA	3,523.5 sqm
Allowable FSR	2.56 : 1 (total average for the whole development site)
Proposed GFA	3,523 sqm
Proposed FSR	2.56 : 1

UNIT MIX - 33 UNITS

Level	Bed: 1	Bed: 2	Bed: 3	Total
GF (Club)	0	0	0	0
LEVEL 1	2	5	1	8
LEVEL 2	2	5	1	8
LEVEL 3	2	5	1	8
LEVEL 4	3	1	2	6
LEVEL 5	0	1	2	3
TOTAL	9	17	7	33
	27%	52%	21%	100%

CAR PARKING REQUIREMENTS

	Rate	No. of Units	Required	Proposed
<b>Residential</b>				
1 Bed	0.6 - 1 per unit	9	9	9
2 Bed	0.9 - 1.25 per unit	17	17	21
3 Bed	1 - 2 per unit	7	14	14
			40	40
Accessible	5 (15%)			included
Visitor	1 per 6 unit		5.5	6
<b>Club</b>			5	11
TOTAL			50.5	57

Lot / Address	Site Area (sqm)	Allowable FSR	Allowable GFA (sqm)
64 Pacific Hwy (DP202148)	966.9	2.8 : 1	2707.3
66 Pacific Hwy (DP505371)	251.6	2.0 : 1	503.2
Part 62 Pacific Hwy (DP202148)	156.5	2.0 : 1	313
Total	1,375		3,523.5

OTHER CONTROLS

	Council/ADG Req	Required	Proposed
Platinum Level Units	15%	4.95	5 Units
Silver Level Units	100%	33	33/33 = 100%
Cross Flow	60%	19.8	22/33 = 66%
Solar Access	70%	23.1	26/33 = 79%

OPEN SPACES

	Council/ADG Req	Required	Proposed
Communal Open Space	25% (ADG)	343.8 sqm	353 sqm (25.6%)

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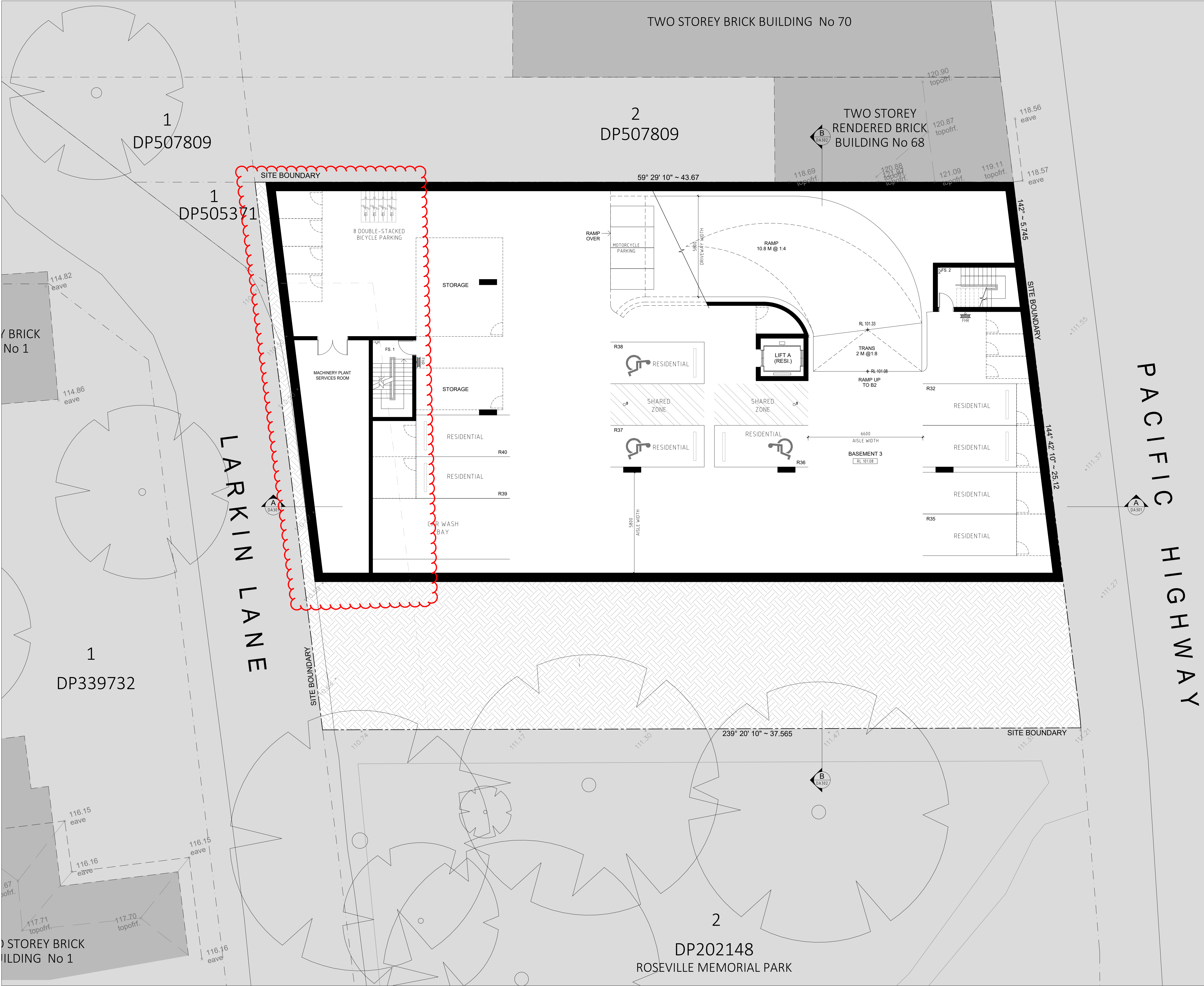
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HYECORP PROPERTY GROUP

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**PBD | ARCHITECTS**  
ABN 36 147 035 550  
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Level 2, 52 Albion Street, Surry Hills NSW 2010

PROJECT:  
**64 - 66 PACIFIC HIGHWAY,  
ROSEVILLE  
(MIXED-USE DEVELOPMENT)**

DRAWING TITLE:  
**PROJECT SUMMARY**

SCALE: 1:100 @ A1 / 1:200 @A3	DRAWING NO: <b>DA001</b>	ISSUE: <b>F</b>
PROJECT NO: 1732		



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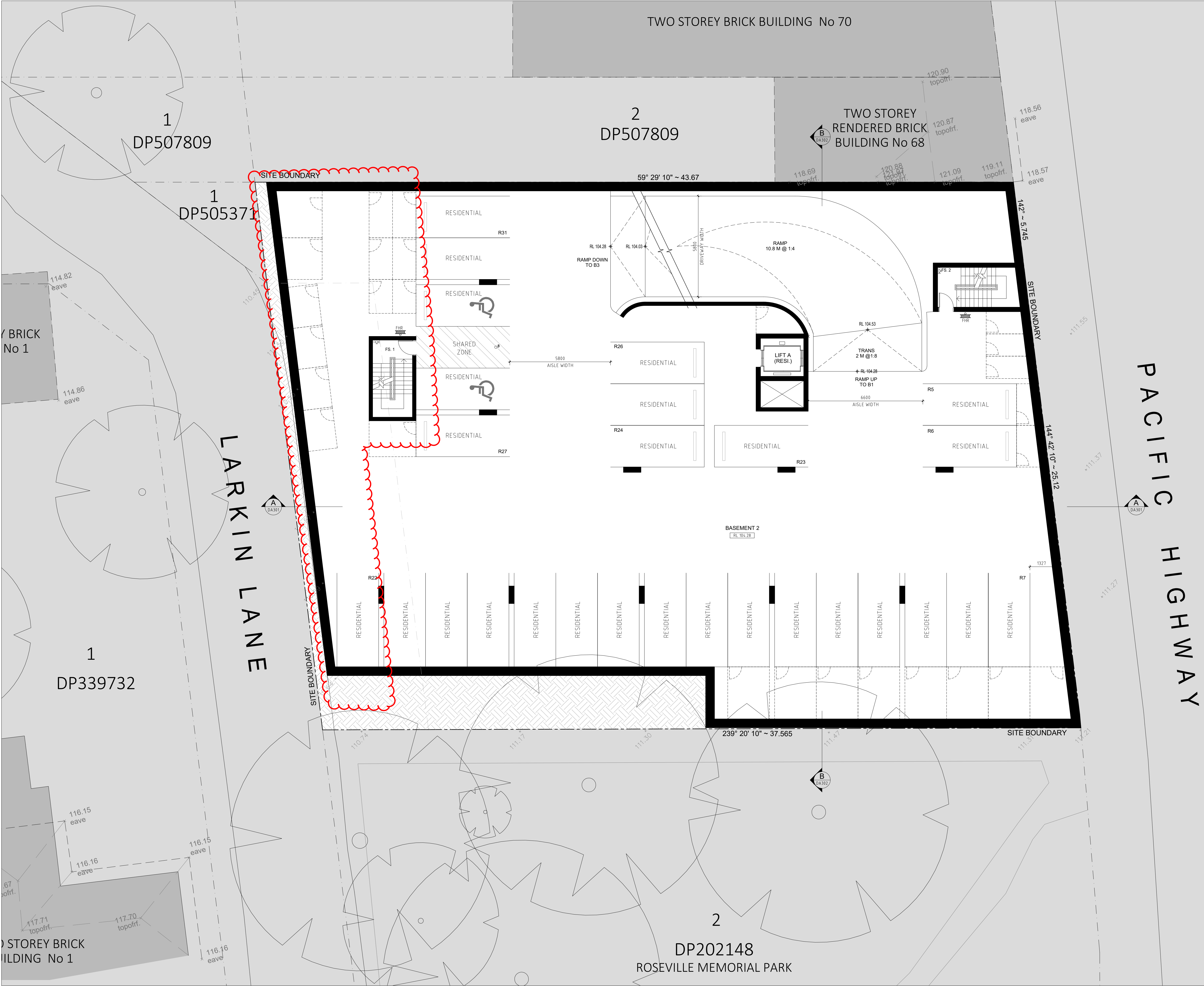
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PROJECT:  
**64 - 66 PACIFIC HIGHWAY,  
ROSEVILLE  
(MIXED-USE DEVELOPMENT)**

DRAWING TITLE:  
**BASEMENT 3 PLAN**

SCALE: 1:100 @ A1 / 1:200 @ A3	DRAWING NO: <b>DA100</b>	ISSUE: <b>F</b>
PROJECT NO: 1732		





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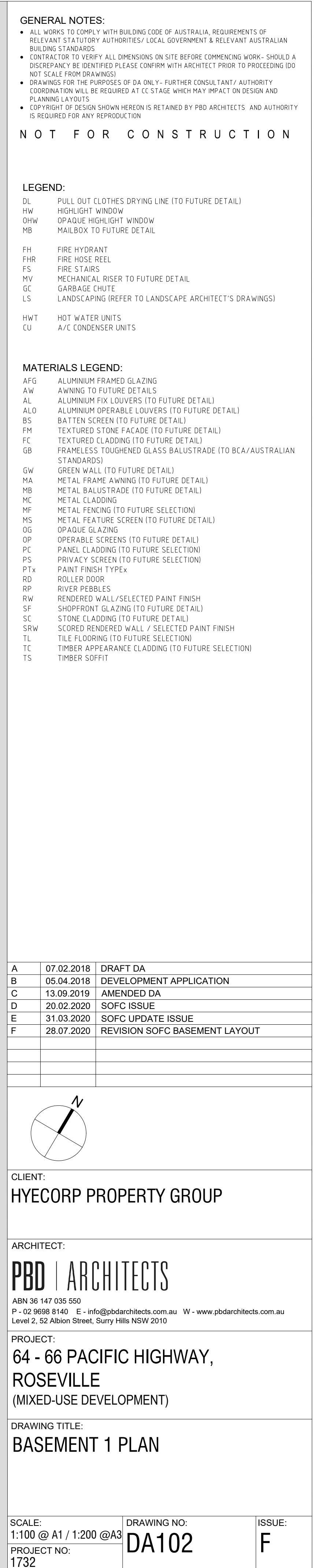
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PROJECT:  
**64 - 66 PACIFIC HIGHWAY,  
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DRAWING TITLE:  
**BASEMENT 2 PLAN**

SCALE: 1:100 @ A1 / 1:200 @ A3	DRAWING NO: <b>DA101</b>	ISSUE: <b>F</b>
PROJECT NO: 1732		









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PROJECT:  
**64 - 66 PACIFIC HIGHWAY,  
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DRAWING TITLE:  
**GROUND FLOOR PLAN**

SCALE: 1:100 @ A1 / 1:200 @ A3 PROJECT NO: 1732	DRAWING NO: <b>DA103</b>	ISSUE: <b>F</b>
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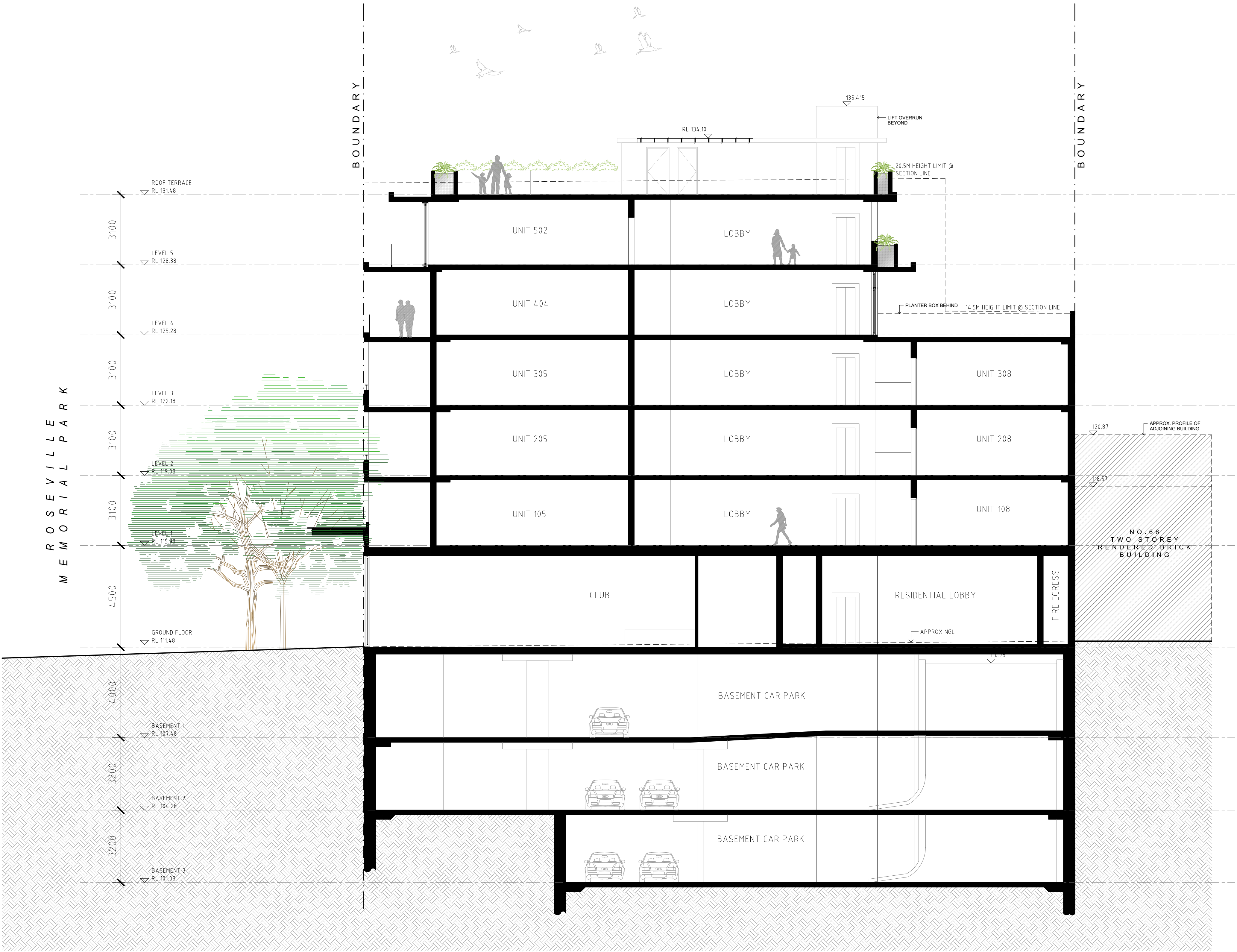
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DRAWING TITLE:  
**SECTION AA**

SCALE: 1:100 @ A1 / 1:200 @A3	DRAWING NO: <b>DA301</b>	ISSUE: <b>F</b>
PROJECT NO: 1732		



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  - ALO ALUMINIUM OPERABLE LOUVERS (TO FUTURE DETAIL)
  - BS BATTEN SCREEN (TO FUTURE DETAIL)
  - FM TEXTURED STONE FACADE (TO FUTURE DETAIL)
  - FC TEXTURED CLADDING (TO FUTURE DETAIL)
  - GB FRAMELESS TOUGHENED GLASS BALUSTRADE (TO BCA/AUSTRALIAN STANDARDS)
  - GW GREEN WALL (TO FUTURE DETAIL)
  - MA METAL FRAME AWNING (TO FUTURE DETAIL)
  - MB METAL BALUSTRADE (TO FUTURE DETAIL)
  - MC METAL CLADDING
  - MF METAL FENCING (TO FUTURE SELECTION)
  - MS METAL FEATURE SCREEN (TO FUTURE DETAIL)
  - OG OPAQUE GLAZING
  - OP OPERABLE SCREENS (TO FUTURE DETAIL)
  - PC PANEL CLADDING (TO FUTURE SELECTION)
  - PS PRIVACY SCREEN (TO FUTURE SELECTION)
  - PTx PAINT FINISH TYPEx
  - RD ROLLER DOOR
  - RP RIVER PEBBLES
  - RW RENDERED WALL /SELECTED PAINT FINISH
  - SF SHOPFRONT GLAZING (TO FUTURE DETAIL)
  - SC STONE CLADDING (TO FUTURE DETAIL)
  - SRW SCORED RENDERED WALL / SELECTED PAINT FINISH
  - TL TILE FLOORING (TO FUTURE SELECTION)
  - TC TIMBER APPEARANCE CLADDING (TO FUTURE SELECTION)
  - TS TIMBER SOFFIT

A	07.02.2018	DRAFT DA
B	05.04.2018	DEVELOPMENT APPLICATION
C	13.09.2019	AMENDED DA
D	20.02.2020	SOFC ISSUE
E	31.03.2020	SOFC UPDATE ISSUE
F	27.07.2020	REVISION SOFC BASEMENT LAYOUT

CLIENT:  
**HYECORP PROPERTY GROUP**

ARCHITECT:  
**PBD | ARCHITECTS**  
ABN 36 147 035 550  
P - 02 9698 8140 E - info@pbdarchitects.com.au W - www.pbdarchitects.com.au  
Level 2, 52 Albion Street, Surry Hills NSW 2010

PROJECT:  
**64 - 66 PACIFIC HIGHWAY,  
ROSEVILLE  
(MIXED-USE DEVELOPMENT)**

DRAWING TITLE:  
**SECTION BB**

SCALE: 1:100 @ A1 / 1:200 @A3	DRAWING NO: <b>DA302</b>	ISSUE: <b>F</b>
PROJECT NO: 1732		



31 July 2020

HPG GENERAL PTY LTD (Hyecorp)  
PO Box 779  
ARTARMON NSW 1570  
Attn: Mark Thompson



Our Ref: CRPT- 17011201.01A

Dear Mark,

**Re: Civil Stormwater Design Report**

**Project:** Mixed Use Development & Roseville RSL Club  
**Address:** 64-66 Pacific Highway  
Roseville NSW 2069

**Updated Plans**

- DA001 – Project Summary-F
- DA100 - Basement 3 Plan-F
- DA101 - Basement 2 Plan-F
- DA102 - Basement 1 Plan-F
- DA103 - Ground floor Plan-F
- DA301 – Section AA-F

**REVIEW OF AMENDMENTS**

JN have reviewed the updated plans listed above. The revised plans do not have any significant impact on the proposed stormwater drainage design for the development.

For and on behalf of JN

Yours faithfully

A handwritten signature in black ink, appearing to read 'Scott McMillan', written over a horizontal line.

Scott McMillan

**Civil Manager**

BE (Hons) DipEngPrac MIEAust CPEng NER

**jn.com.au**

JONES NICHOLSON PTY LTD  
ABN: 51 003 316 032

BRISBANE  
GOLD COAST  
SINGLETON  
SOUTHERN HIGHLANDS

SYDNEY-CBD  
SUTHERLAND  
WOLLONGONG  
GOULBURN

# Colston Budd Rogers & Kafes Pty Ltd

as Trustee for C & B Unit Trust  
ABN 27 623 918 759

Our Ref: TR/11448/jj

30 July 2020

Hyecorp Property Group  
PO Box 779  
ARTARMON NSW 1570

Transport Planning

Traffic Studies

Parking Studies

**Attention: Mark Thompson**  
**Email: [mark@hyecorp.com.au](mailto:mark@hyecorp.com.au)**

Dear Sir,

## **RE: ROSEVILLE MEMORIAL CLUB REDEVELOPMENT** **PARKING REVIEW**

- I. As requested, we have reviewed the parking matters raised by the Sydney North Planning Panel (SNPP) at its meeting on 4 March 2020 and in Council's Statement of Facts and Contentions (SOFC) dated 31 January 2020. These are set out below.

### SNPP

*Clarify Car Parking Credits (obtained by the historic monetary contributions paid to Council) and reconsideration of the allocation of spaces between the residential and Club with a view to increasing the number of car spaces for the club staff and patrons.*

### Council SOFC

#### *Contention 17 - Access and Car Parking*

*The car parking and vehicular access fails to demonstrate compliance with Part 8B.2-15, Volume A of the DCP.*

#### *Particulars*

- a) *The number of spaces allocated to the retail component does not meet the minimum spaces as specified under Volume A Part 8B.2-15, of the DCP. 'Car Parking Rates'.*
- b) *The minimum parking spaces required for the retail component is 21, however only 5 retail spaces are required.*



2. Since the DA was considered by the SNPP on 4 March the plans have been amended (REV F dated 27 July 2020, prepared by PBD Architects) to increase on-site parking provision to 57 spaces with 46 allocated to the residential component (40 residential spaces and 6 visitor spaces) and 11 spaces allocated to the club (an increase of 6 club spaces).
3. The findings of our review are set out below through the following sections:
  - residential parking;
  - club parking ;and
  - summary

#### Residential Parking

4. Part 8B.2 of Section A of the Ku-ring-gai Local Centres DCP sets out minimum and maximum parking rates for the residential component of mixed use developments with the Roseville local centre. Parking requirements for the proposed development using these rates are set out in Table 1.

<b>Table 1: DCP Residential Parking Requirements</b>					
<b>Dwelling Type</b>	<b>No. of Units</b>	<b>Min. Parking Rate</b>	<b>Min. Spaces Required</b>	<b>Max. Parking Rate</b>	<b>Max. Parking Required</b>
1-bed	9	0.6 spaces/unit	5.4	1.0 spaces/unit	9
2-bed	17	1.0 spaces/unit	17	1.25 space/unit	21.2
3-bed	7	1.4 spaces/unit	9.8	2.0 spaces/unit	14
Visitor		1 space/ 6 units	5.5	1 space/ 6 units	5.5
<b>Total</b>	<b>33</b>	<b>-</b>	<b>37.7</b>	<b>-</b>	<b>49.7</b>

5. Examination of Table 1 reveals that the residential component requires a minimum of 38 spaces (32 residential and 6 visitor spaces) and could provide a maximum of 50 spaces (44 residential and 6 visitor spaces). The proposed provision of 46 spaces (40 residential and 6 visitor spaces) complies with the requirements of the Local Centres DCP.

#### Club Parking

6. In its SOFC, Council has identified a requirement for a minimum of 21 parking spaces for the club. The amended plans provided 11 on site spaces for the club.

7. In 2004, Council approved alterations to the club (DAI366/02). Condition 54 of the consent related to the payment to Council of \$152,636 for the future provision of car parking work as a result of the proposed development. Condition 54 is set out below:

*54. The applicant shall enter into a developers agreement satisfactory to Council for the payment of \$152,636 for the future provision of car parking works required as a result of the proposed development. The agreement shall be in accordance with the development application, as amended by the applicant's written offer made to Council in letter, dated 16 January 2004. The agreement shall be executed and the payment made to Council prior to the issue of a construction certificate.*

8. On 1 December 2005, the club paid to Council \$157,281 which included the \$152,636 contribution for parking (copy of the tax invoice is provided in Attachment A).
9. The Council assessment report for the alterations to the club (undated) had the following conclusion with regards to parking:

*On these grounds it is recommended that approval of the subject development be subject to a condition requiring a cash contribution in accordance with the Section 94 plan for expansion of the Larkin Lane car park. This contribution is recommended to be set at compensating for the shortfall of 23 car spaces not provided by the club. Furthermore it is recommended that the applicant be required to construct the 2 car spaces proposed, in accordance with Council infrastructure requirements.*

10. Therefore the cash contribution of \$152,636 paid by the club in December 2005 (as required by Condition 54 of Consent DAI366/02) related to compensation for a shortfall of 23 parking spaces not provided by the club. Thus the existing club has a credit of 23 parking spaces.
11. When the existing credit of 23 spaces is added to the 11 spaces proposed for the club within the basement car park, the overall club parking provision is 34 spaces This provision satisfies the minimum number of club parking spaces required by Council (21 spaces as set out in its SOFC).

#### Summary

12. In summary the proposed parking provision for the proposed redevelopment of Roseville Memorial Club for a mixed use development satisfies the



## Colston Budd Rogers & Kafes Pty Ltd

requirements of Part 8B.2 of Section A of the Ku-ring-gai Local Centres DCP as set out below:

- the 46 spaces provided for the residential component satisfies the minimum (38 spaces) and maximum of (50 spaces) provisions Local Centres DCP;
- the club has a credit for 23 spaces as a result of payment to Council in 2005 of \$152,636 in accordance with Condition 54 of the consent issued in March 2004 for DA1366/02; and
- when the credit for 23 spaces is added to the 11 club spaces now proposed in the basement car park, the 34 spaces provided satisfies the Council requirement for 21 spaces as set out in its SOFC.

13. We trust the above provides the information you require. Finally, if you should have any queries, please do not hesitate to contact us.

Yours faithfully,

COLSTON BUDD ROGERS & KAFES PTY LTD

A handwritten signature in black ink, appearing to read 'T Rogers', with a stylized flourish at the end.

T Rogers  
Director

ATTACHMENT A

# Colston Budd Rogers & Kafes Pty Ltd

02-12-05 12:00 FROM-MERLOT CONSTRUCTIONS A-61288500068  
+61288500068

T-848 P002/002 F-604



**Ku-ring-gai Council**  
ABN: 86-408-856-411  
818 Pacific Highway Gordon  
Locked Box 1056  
Pymble NSW 2073  
DX 8703 Gordon  
PH 9424-0888 Fax 9424-0880

## TAX INVOICE OFFICIAL RECEIPT

01/12/2005 Receipt No: 66622

To Roseville Memorial Club

64 Pacific H'wy  
Roseville 2069

DA1366/02

Qty/ Applic	Reference	Amount
	964 Infrast test	\$1,445.00
GL Receipt 1	802 Contrib to	\$152,636.00
GL Receipt 1	874 Long Servic	\$1,500.00
GL Receipt	875 Bonds Tree	\$1,000.00
GL Receipt	875 Bonds Tree	\$1,000.00
GL Receipt	875 Bonds Tree	\$1,000.00
To GL Receipt:		

Total Amount: \$157,281.00

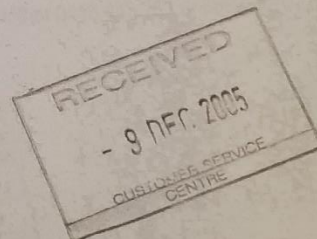
Includes GST of: \$0.00

### Amounts Tendered

Cheque	\$157,281.00
Total	\$157,281.00
Rounding	\$0.00
Change	\$0.00
Nett	\$157,281.00

Thankyou for your Payment

Printed 01/12/2005 14:32:22



000191197





Thursday, 27 August 2020

Stuart Ratcliff  
Executive Assessment Officer  
Ku-ring-gai Council  
818 Pacific Highway, Gordon, NSW 2072  
[sratcliff@kmc.nsw.gov.au](mailto:sratcliff@kmc.nsw.gov.au)

Copied to:  
Ms. Kim Holt, The Secretariat;  
Panel Chair, The Honourable Peter Debnam, Sydney North Planning Panel  
[kim.holt@planning.nsw.gov.au](mailto:kim.holt@planning.nsw.gov.au)

Dear Mr Ratcliff,

**RE: Response to Assessment Report**  
**PPty: Roseville Memorial Club – DA0134/18 | PPS-2018SNH040**

Thank you for the opportunity to provide this response to the Assessment Report dated 10 August 2020 as prepared by Ku-ring-gai Council.

Roseville Memorial Club (The Club) has been working with its partner Hyecorp Property Group in our redevelopment for over four years to help us achieve a brand new, sustainable vision of a community facility. Our goal is to ensure the short, medium and long-term survival of the Club and prevent its closure, which would bring to an abrupt end its pivotal role in the Roseville community, spanning over seven decades.

Roseville Memorial Club has been serving the community since 1947 and has been the home of the Roseville sub-branch of the RSL. It has been not only a place for social interaction for the local community but also home to many community-based and non-profit organisations. Additionally, the Club has been responsible for honouring and respecting the RSL calendar, holding various commemorative events throughout the year most notably, the Club is home to ANZAC Day remembrance ceremonies which are attended by several thousand members of the local community.

Like all Clubs, over the years, as one generation has handed the baton to the next and as demographics have evolved, we have experienced a dwindling patronage and a change in the expectations of our members, guests and wider community. As such, together, Roseville Memorial Club and Hyecorp embarked on the journey to save the Club and ensure its survival for future generations. The Club decided not to give up and 'sell the farm' but instead to undertake the daunting process of creating a new Club. After much deliberation, a Development Application was submitted in April 2018 – twenty eight (28) months ago.

Today, twenty eight (28) months later, the Club is in a substantially worse situation following the COVID19 outbreak. Income and patronage continues to decline, key staff have resigned due to job insecurity, maintenance bills are exponentially increasing, long term patrons and enjoyers of the Club have moved their events to alternative venues due to uncertainty, the list goes on. Meanwhile, the Directors of the Club, who serve voluntarily without pay, have persevered in their determination to save the Club.

During the twenty eight months since lodgement of the DA, despite dozens and dozens of requests to discuss the future of the Club in the Roseville community, we were only afforded **a sole (1) meeting** with the planning consultant and Council.

We are thankful, twenty eight (28) months later, to finally have the opportunity to respond to the assessment report to the SNPP.

We thank you for your time in both reading this letter and also the following responses to issues raised in the assessment report.

Naturally, we urge the Panel to **Approve** the Application and **save the Roseville Memorial Club**.

Kind Regards,

**John Whitworth**  
President  
Roseville Memorial Club

**Stephen Abolakian**  
Managing Director  
Hyecorp Property Group

**Itemised Response to Planning Assessment Report dated 10 August, 2020. Original report dated 4 February 2020.**

The below is our response to the reasons for refusal presented from the amended assessment report which now identifies 9 reasons for refusal compared to the 22 points in the February report. For the purposes of clarity, where reasons of refusal have not changed from the original 4 Feb, 2020 assessment report, we have referred back to our original submission dated 27 February 2020 ("Previous Submission"). The original submission dated 27 February is attached at **Appendix 1**.

At the outset, it should be noted that an overwhelming majority of the "*reasons for refusal*" in the amending assessment report still relate to the sole issue of the addition of a 156.8m<sup>2</sup> strip of land at the rear of the current Club – the land is currently owned by Council and is in the process of being divested (sold). Additionally, the Council has provided landowners consent for the Application before the panel. These have been communicated to us as "the subdivision issue" yet also directly relate to refusal points 2,3,4,6 and 9 respectively.

Assessment Report Point	Response
<b>1: Proposed subdivision does not promote orderly development of land or use of infrastructure</b>	<p>Refer to <u>Previous Submission</u> (Appendix 1) which adequately responds to this issue.</p> <p>It is worth re-noting:</p> <ol style="list-style-type: none"> <li>1. Council has <b>classified the land as operational</b> (able to be sold);</li> <li>2. Council has <b>resolved to excise that strip of land</b> from its adjoining land holdings and <b>divest</b> of (sell) the strip</li> <li>3. Council resolved to <b>enter into negotiations</b> with the Club,</li> <li>4. Council, as land owner, has <b>provided land owners consent</b> to the Club</li> <li>5. Council has <b>negotiated the contracts and terms</b> of sale referred to in point (3)</li> </ol> <p>Additionally, a letter from Mills Oakley has also been prepared and can be found at Appendix 2. These demonstrate the subdivision does promote orderly development of land or use of infrastructure.</p>
<b>2: Draft Planning Agreement does not provide a public purpose</b>	Refer to Previous Submission which adequately responds to this issue and the Mills Oakley legal submission at Appendix 2 for further clarification.
<b>3: The development will jeopardise the realisation of the planned strategic outcomes of the precinct.</b>	<p>Refer to <u>points 4+5 of the Previous Submission</u> which adequately responds to this issue.</p> <p>The proposal has been designed with regards to the existing LEP and DCP controls.</p>
<b>4: Building Heights Exceed the Development Standard</b>	<p>Refer to <u>points 6 of the Previous Submission</u> which adequately responds to this issue. In response to the comments raised on p14-15 of the assessment report, we provide the following response:</p> <p>Drawing DA628 Issue E provides the height plane over the site and demonstrates that at the highest point (lift over-run), the height is measured 3.427m above the 20.5m max height plane.</p> <p>This is correctly stated in the (new) Clause 4.6 request on page 6. Thus the highest point, has the overall height of 23.927m, being 3.427m above the height plane.</p> <p>In response to the table on page 15 of the Report, following a forensic review we have identified that an error occurred in the previously submitted plans and Clause 4.6. These have now both been superseded and rectified <b>correctly</b> in the May 2020 Clause 4.6 and Architectural Plans.</p> <p>In physical terms, the building height has actually been reduced. It is worth noting that the floor level of the rooftop communal open space is below the height limit.</p>



<b>5: Floor Space Ratio Exceeds the Development Standard</b>	<p>Refer to <u>point 7 of the Previous Submission</u> which adequately responds to this issue. Refer to the Clause 4.6 variation which justifies the proposed FSR variation.</p> <p>Additionally, the above should be read in conjunction with the Mills Oakley letter in Appendix 2.</p>
<b>6: Development does not provide active uses at the street level.</b>	<p>Refer to <u>point 8 of the Previous Submission</u> which adequately responds to this issue.</p> <p>The ground floor being a Club, actively opens onto the park and addresses the corner of the park and Pacific Highway, therefore constituting an active use at street level.</p>
<b>7: Non-compliance with DCP street wall setback</b>	<p>Refer to <u>point 10 of the Previous Submission</u> which adequately responds to this issue.</p> <p>Imagery showing the future development potential along Pacific Highway was submitted in the "Previous Submission". This shows the merit of the proposed design which, by flexibility of the street wall requirement of the DCP, has allowed a landmark building to be designed on the corner, providing an anchor role in accordance with the following clause 7 (vi) of the DCP '<i>Design a landmark corner building for the site adjoining Memorial Park</i>' that will transition to the neighbouring future development as well as Section 14F.9 Precinct R2 '<i>Roseville cinema and the RSL provide an anchor role</i>'</p>
<b>8: Section 4.15 (1 b, c and e) of the Environmental Planning and Assessment Act 1979 and the public interest</b>	<p>Refer to <u>point 18 of the Previous Submission</u> which adequately responds to this issue.</p> <p>The proposal is considered to be in the public interest as it is not expected to result in unacceptable impacts to shadow, loss of privacy or loss of views, nor impact on heritage items and, most importantly, is permissible in the current zoning.</p>
<b>9: Public Interest</b>	<p>Refer to <u>point 18 Previous Submission</u> which adequately responds to this issue.</p>

#### Appendix List

Appendix 1 – Original SNPP submission dated February 27, 2020.

Appendix 2 – Mills Oakley legal letter



Thursday, 27 February 2020

Stuart Ratcliff  
Executive Assessment Officer  
Ku-ring-gai Council  
818 Pacific Highway, Gordon, NSW 2072  
[sratcliff@kmc.nsw.gov.au](mailto:sratcliff@kmc.nsw.gov.au)

Copied to:  
Ms. Kim Holt, The Secretariat;  
Panel Chair, The Honourable Peter Debnam, Sydney North Planning Panel  
[kim.holt@planning.nsw.gov.au](mailto:kim.holt@planning.nsw.gov.au)

Dear Mr Ratcliff,

**RE: Response to Assessment Report**  
**Ppty: Roseville Memorial Club – DA0134/18 | PPS-2018SNH040**

Thank you for the opportunity to provide this response to the Assessment Report dated 4 February 2020 as prepared by Ku-ring-gai Council.

Roseville Memorial Club (The Club) has been working with its partner Hyecorp Property Group in our redevelopment for over four years to help us achieve a brand new, sustainable vision of a community facility. Our goal is to ensure the short, medium and long-term survival of the Club and prevent its closure, which would bring to an abrupt end its pivotal role in the Roseville community, spanning over seven decades.

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Today, twenty-two months later, the Club is in a substantially worse situation. Income and patronage continues to decline, key staff have resigned due to job insecurity, maintenance bills are exponentially increasing, long term patrons and enjoyers of the Club have moved their events to alternative venues due to uncertainty, the list goes on. Meanwhile, the Directors of the Club, who serve voluntarily without pay, have persevered in their determination to save the Club.

During the twenty-two months since lodgement of the DA, despite dozens and dozens of requests to discuss the future of the Club in the Roseville community, we were only afforded **a sole (1) meeting** with the planning consultant and Council.

We are thankful, twenty-two months later, to finally have the opportunity to respond to the assessment report to the SNPP.

We thank you for your time in both reading this letter and also the following responses to issues raised in the assessment report.

Naturally, we urge the Panel to **Approve** the Application and **save the Roseville Memorial Club**.

Kind Regards,

**John Whitworth**  
President  
Roseville Memorial Club

**Stephen Abolakian**  
Managing Director  
Hyecorp Property Group





### Itemised Response to Planning Assessment Report dated 4 February 2020

The below is our response to the reasons for refusal presented from page 75 onwards of the assessment report.

At the outset, it should be noted that an overwhelming majority of the “reasons for refusal” in the assessment report relate to the sole issue of the addition of a 156.8m<sup>2</sup> strip of land at the rear of the current Club – the land is currently owned by Council and in the process of being divested (sold). These have been communicated to us as “the subdivision issue”.

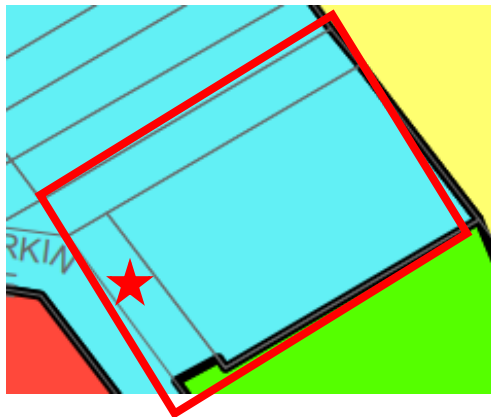
At the crux of it, the planning consultant has disagreed with Council's decision that the strip of land should be sold to the Club, despite the following:

1. Council has **classified the land as operational** (able to be sold) in their amendment of Schedule 4 of Ku-ring-gai LEP (Local Centres) 2012 (Amendment No. 4) dated 9 December 2016;
2. Council has **resolved to excise that strip of land** from its adjoining land holdings and **divest** of (sell) the strip in their Ordinary Meeting held 13 June 2017;
3. Council resolved to **enter into negotiations** with the Club, as the agreed natural purchaser on 9 April 2019;
4. Council, as land owner, has **provided land owners consent** to the Club and its permission for the Club to lodge the subject development application on 10 April 2018;
5. Council has **negotiated the contracts and terms** of sale referred to in point (3) above with the Club.

When development applications are determined, a consent authority is not permitted to have any regard to who the underlying land owner of a property subject to a development application is (*Jonah Pty Limited v Pittwater Council* [2006] NSWLEC 99 at [34]-[35]). In relation to DA0134/18, however, the sole meeting over 22 months we had with the planning consultant, was focused on this very issue. Additionally, the only two letters received from the consultant over the course of 22 months stated “*The subdivision element of the development proposal is not considered supportable...If the subdivision is not supportable then the broader built elements of the development, which rely upon that subdivision, have limited utility*”. These words were repeated in each of the only two correspondences received over 22 months.

### Points 1 + 2 of Assessment Report – Subdivision and Public Interest

- As stated above, Council has already 1) resolved to classify the strip of land as operational, 2) resolved to subdivide the strip, 3) resolved to sell the strip, 4) resolved to sell the strip to The Club, 5) provided Owners Consent to the Club to lodge the development application over the strip and 6) negotiated the terms of sale of the strip with the Club.
- The strip of land (marked \* below) is zoned B2 - Local Centre



- Our Development Proposal is to transform this current unmaintained strip of asphalt, into a safe, well presented pedestrian footpath and landscaped area.
- Currently, there is no safe connection linking the Memorial Park to the balance of Larkin Lane. Our proposal will create this safe link between the two and the Club, as the owner of the land, will maintain this area into perpetuity, taking a significant burden off the public.
- Additionally, the development application proposes any services and utilities required will be upgraded and provided along this strip with easements and positive covenants in favour of Council. These terms have been negotiated with Council and is a common, well recognised approach to the orderly development of land across the State.



- Easements and positive covenants resolve all genuine merit issues regarding the availability of public infrastructure. Infrastructure is 'public' if the community (via their local council) enjoy property rights over it. It does not matter that the registered Torrens title proprietor of the underlying land may not be the Council.

Attached in **Appendix 1** is a letter by Mills Oakley dated 16 September 2019 outlining the legal errors in the assessment approach and the incorrect classification of the strip as a "road".

### **Point 3 - Draft Planning Agreement**

- The Draft Planning Agreement of December 2019 responds to the Council's unanimous resolution to classify the rear strip of land (Lot 2 in DP212148) as "operational" (sellable) in the public interest, as published as LEP amendment No. 4 on 9 December 2016. Through its acquisition, the Council receives multiple easements in its favour including full rights of footway and carriageway including its maintenance and insurance.
- Even if the Council does not proceed with the property disposal as currently proposed, there are no implications for the determination of the development application. The necessary right of way and positive covenant can be required by a condition of the development consent. The entry into the planning agreement, itself, is not necessary in order for the development consent to be favourably determined.
- To be clear, the granting of a development consent does not affect the proprietary rights of a third party—such as the Council: *Rothwell Boys Pty Ltd v Coffs Harbour City Council* (2012) 186 LGERA 366 at [5]; *Sydney City Council v Ipoh Pty Ltd* [2006] NSWCA 300 at [84].
- Ultimately, for the subdivision to be carried out, there will need to be an agreement between the Council and the Club as to the title of the consolidated lot. The likelihood of this agreement being reached — and the potential terms of the agreement — are legally irrelevant to the determination of the development application.
- In the Court of Appeal decision known as *Ipoh* it was made clear (at [2]-[3]) that the question of whether a person can lawfully carry out development on land depends upon both (1) considerations associated with title to the land and (2) considerations associated with questions of environmental planning. The judgment said that the granting of development consent concerns (2) **but not (1)**.
- In short, the consent authority should not consider whether the land, once consolidated, will be owned by the Club, the Council, by both (in some joint venture) or by a third party. Any easements and positive covenant favouring the Council will be sufficient to ensure that merit issues concerning the availability of public infrastructure are resolved. As stated above, these can be required by a development consent condition, independent of any planning agreement.

### **Point 4+5 – Subdivision and Setbacks**

- The DCP does not require a setback to Larkin Lane.
- The underlying reasons for this omission are irrelevant since the consent authority cannot lawfully apply a more onerous standard than the one set out in the DCP. Updated plans were submitted to Council redesigning our proposed plans to provide a 6-metre setback to include a new kerb and gutter, safe footpath and landscaped area.
- The proposal is **consistent** with the DCP objective 1 of Section 3A.1 - "*to ensure consolidation and subdivision create usable and regularly shaped lots that relate to the site conditions and the context.*"
- The proposal is **consistent** with the DCP objective 2 for Section 3B Land Consolidation, which seeks to "*...allow for development which is suited to the site, its context and strategic intent.*"
- The proposal will "square-off" the allotment, so it is a natural continuum northward from the park with the provision of planting and footpath.
- The proposal will create a landmark building which addresses the Memorial Square and Highway, **consistent** with objectives of this specific precinct (Section 14F.1 Roseville Local Centre Context – Precinct R2 - Planned Future Character and Built Form)

### **Point 6 – Height**

- The balustrade **does not** exceed the 14.5m height control as suggested.
- Whilst elevation drawing DA202 creates a graphic impression that a section of the balustrade exceeds the height control, it is merely the drawing interpretation of an angled balustrade line parallel with Larkin Lane.
- Any doubt about this (in the mind of the consent authority) can be readily dealt with by a consent condition.



*Blue line represents the two height planes that relate to the site being 14.5m and 20.5m*

- Only the roof terrace and associated lift overrun, plant room and stairs exceed the 20.5m height limit. The lift and stairs provide equitable access to the communal open space and the roof terrace achieves high amenity.
- The structures are integrated and setback from the edges of the building with a garden wall reducing visual impact.
- A Clause 4.6 request has been submitted which demonstrates the proposal is in the public interest because it is consistent with the objectives of the standard and objectives of the zone and sufficient environmental planning grounds to justify the variation.
- The proposal steps down towards Larkin Lane at the rear and the northern adjoining developments, thus **complying** with the intent of the change in zoning and height controls whilst allowing a transition between the two.



*Street view of the proposed development from the North-East with the future potential development to the north of the subject site*

- In **Appendix 2** we have provided additional view angles prepared by PBD Architects identifying the appropriate design and low impact of the roof top terrace.

#### **Point 7 – Floor Space Ratio (FSR)**

- The Site Area calculation (and therefore the FSR calculation) in the Assessment report **omits** the strip of land at the rear of the site. The strip of land can legally be included in the calculation of FSR.
- The FSR of our proposal **is fully compliant** and below the maximum permissible gross floor area, should the sites be developed individually.
- Given that implementation of the development consent requires a new consolidated lot, it is actually the new proposed consolidated lot that should be used for the purposes of floor space ratio calculation. This is because the Land and Environment Court has determined that where the subdivision of land is proposed as part of the application - and that subdivision is integral to the application - the lot to be created by the subdivision should be regarded as the lot for the purpose of clause 4.5(3): *Matthew Lam v Inner West Council* [2017] NSWLEC 1332 at [66] and *Marrickville Development No.3 Pty Ltd v Inner West Council* [2019] NSWLEC 1132 at [29]-[31]. A similar approach has been taken in relation to the similar word 'allotment' in earlier provisions of environmental planning instruments (*Demihale Pty Ltd v Ku-ring-gai Municipal Council* [2002] NSWLEC 178 at [18]; cf *Issa v Burwood Council* (2005) 137 LGERA 221).
- In any event, even if the existing lots were used to calculate the floor space ratio, the outcome is the same. In *TK Commercial Property Holdings Pty Ltd v Canterbury-Bankstown Council* [2017] NSWLEC 144 the Land and Environment Court said that some excavation, the construction of a masonry stairway, the creation of new pathways and ramps and the construction of a new sewer main and new drainage infrastructure was sufficient to constitute 'significant development' and therefore justify the



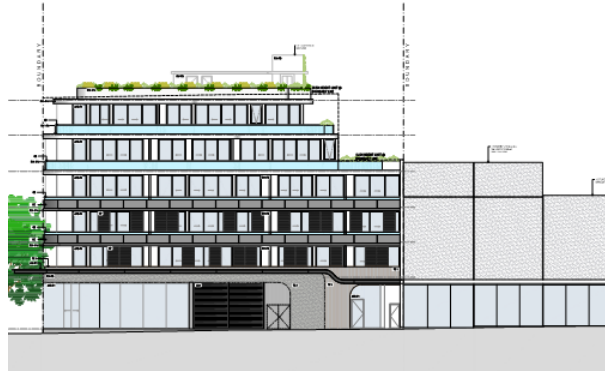
inclusion of the lot in site area for the purposes of floor space ratio calculation (at [96]). The works proposed in the strip of land are generally of a similar order to those in *TK Commercial Property Holdings*.

**Points 8 and 9 – Active Frontage**

- The relevant clause of the DCP, Section B, Part 14F.9, 7(iii) specifies: *“Provide active street frontages along the Pacific Highway and the frontage to Memorial Park.”*
- A revised Plan, prepared by PBD Architects can be found in **Appendix 3** which shows a total active street frontage in accordance with the DCP of 80% along Pacific Hwy and Memorial Park.
- In our proposal, the ground floor use, being a Club, actively opens onto the park and addresses the corner of the park and Pacific Highway. An outdoor terrace is provided in the southern corner overlooking the park and wrapping around to Larkin Lane.

**Point 10 – Street Wall Requirement**

- The images below show the future potential development which may occur to the north of the Site along Pacific Hwy. These images show the merit of the proposed design which, by flexibility of the street wall requirement of the DCP, has allowed a landmark building to be designed on the corner, providing an anchor role in accordance with the following clause 7 (vi) of the DCP *‘Design a landmark corner building for the site adjoining Memorial Park’* that will transition to the neighbouring future development as well as Section 14F.9 Precinct R2 *‘Roseville cinema and the RSL provide an anchor role’* (Additional 3D views can be seen in **Appendix 2**)



*Shows the street wall height with the future potential development to the North*

Further street views are prepared in **Appendix 4**.

**Point 11 – Vegetation SEPP**

- Extensive assessment and consideration of the trees in Roseville Memorial Park were undertaken by a qualified arborist consultant, Margot Blues, prior to and as part of the development application as well as during the development assessment process over the last twenty-two months since April 2018. This included extensive root mapping and detailed assessment of the potential pruning required, including the impact during scaffolding.
- The development in all accounts was found to be acceptable.



**Point 12 – Remediation**

- In February 2020, new information was provided by Council in relation to SEPP55, not previously disclosed at any time of the development assessment process. As a result, we have initiated a Stage 2 Detailed Site Investigation to assess the information now provided. These investigation results can be provided to the Panel once complete (in approximately four weeks).
- Prior to this, all records indicated that the Stage 1 report submitted with the development application was adequate and concluded the site was suitable for the intended use.

**Point 13 – Floor-to-floor heights**

- Confirmation by our consulting engineers that the minimum 2.7 metre ceiling height can be achieved with a 3040mm floor-to-floor level is provided in **Appendix 5**.

**Point 14 – Unit 403 study**

- This issue can be addressed by a condition requiring a minor amendment to the architectural plans to reflect the removal of the enclosed study wall. We would accept such a condition.
- A copy of the proposed redesign can be found in **Appendix 6**.

**Point 15 – Balcony Glazing**

- A condition can be imposed amending the balustrades on Levels 4 and 5 be fitted with a translucent film up to 760mm which provides privacy whilst not impacting on design nor views of the Memorial Park from inside the unit dwelling.

**Point 16 – Subdivision**

- Please refer to notes herein at Point 1.

**Point 17 – Access and Car Parking**

- The Assessment Report on Page 9, confirms the car parking provided is *“technically consistent with the requirements of Council’s DCP”*.
- This is confirmed by our traffic engineers in their traffic report submitted with the development application which provides for the reduction of the size of the proposed new club and therefore *‘would not result in a significant change to existing parking demand’*.
- Currently, the Club has no (zero) car parking on site. Although we are reducing the size of the Club, we have provided an additional five carspaces for the Club on site in the proposed development application.
- According to the Club’s records, historically, the Club has made s94 contributions in lieu of car parking provisions onsite.

**Point 18 – Public Interest**

- The proposal does not cause any additional noise to the public, is not expected to result in unacceptable impacts to shadow, loss of privacy or loss of views, nor impact on heritage items and, most importantly, is permissible in the current zoning.
- A large number of the submissions provided to Council during the exhibition period of the Application were in **support** of the redevelopment from members of the public.
- Roseville Memorial Club is the only memorial club in Ku-ring-gai and hosts 1,000+ members of the public each Anzac Day.
- It is the current home of various public groups – Chatswood Rotary, Roseville Toastmasters, North Shore Junior Cricket, Porsche Club, NSW Teachers Federation, Ferrari Club, American Civil War Group, Davidson Branch Liberal Party, Bradfield Branch Liberal Party;
- It currently sponsors public sports groups such as the Roseville Rugby Club, Roseville Cricket Club, Lindfield Rugby Club, Lindfield Cricket Club, & UTS Bats Cricket Club.
- It currently holds public charity fund raisers – Paralympics, Trish Foundation, Bowel Cancer Australia & Prostate Cancer Foundation. The Club has in the past donated over \$200,000 to these public groups and charities.
- Consequently, all things considered, we believe this proposal is in the public interest.

**Point 19 – Noise and Pollution**

- The proposed design complies with acoustic requirements.
- The Assessment Report refers to the City of Sydney draft natural ventilation guide, however, this guide is not adopted in any form in the Ku-ring-gai DCP.
- Further, the ADG recognises at Section 4J that properties located near major roads require special design responses through guidelines (which are mandatory requirements) that, in this case, require mechanical ventilation to enable windows to be closed.
- The issues raised in the Assessment Report state this to be a reason for refusal, when in fact, it is a design requirement recommended in the Guideline and our proposal complies with these requirements.





**Point 20 – Stormwater**

- For the avoidance of doubt, in **Appendix 7**, we have included updated Stormwater plans with additional information now notated on the plans.

**Point 21 – Building Performance**

- The proposed design complies with all BASIX requirements.
- We have engaged experts in BASIX and NatHERS assessment who have already addressed the implications for ceiling heights, open spaces and maximum building height within the development application and confirmed that the proposal complies with all requirements.
- We include an additional letter for clarification in **Appendix 8**.

**Point 22 - Dimensions**

- We have provided additional dimension measurements for ease of reference on our plans in **Appendix 9**.

**Appendix List**

Appendix 1 – Letter from Mills Oakley  
Appendix 2 – Building views  
Appendix 3 – Active Street Frontage  
Appendix 4 – Street Wall  
Appendix 5 – Floor to Floor Engineers Letter  
Appendix 6 – Unit 403  
Appendix 7 – Stormwater  
Appendix 8 – BASIX  
Appendix 9 – Dimensions



**THE ROSEVILLE  
CLUB**



## **Appendix 1 – Letter from Mills Oakley**

16 September 2019

Mills Oakley  
ABN: 51 493 069 734

**Privileged and confidential**

Your ref:  
Our ref: AXGS/3316283

Roseville Returned Servicemen's Memorial Club  
Limited t/a Roseville Memorial Club  
PO Box 779  
ARTARMON NSW 1570

All correspondence to:  
PO Box H316  
AUSTRALIA SQUARE NSW 1215

**Partner**  
Aaron Gadiel +61 2 8035 7858  
Email: agadiel@millsOakley.com.au

**By email:** stephen@hyecorp.com.au;  
sgunnis@pcg.com.au

**Attention:** Stephen Abolakian

Dear Stephen

**Advice re 64-66 Pacific Hwy, development application DA0134/18**

You have asked us to provide legal advice in relation to the above development application (**the development application**).

You have asked us to give our legal opinion in response to the position of Vince Hardy — the external town planner engaged by the Ku-ring-gai Council (**the Council**) — that the development application should not be approved. However, you only wish us to respond to one aspect of his view. That is, his view that the Council land should not be sold.

**Summary advice**

In our opinion:

- It is plain that the strip of Council land is not a 'park' — nor functionally part of a park — within the meaning of the *Local Government Act 1993*.
- The strip of Council land is not a 'park' (or part of a 'park') in any legal or substantive sense.
- The strip of Council land is not, in reality or in law, set aside for public use.
- The fact that both the *Ku-ring-gai Local Environmental Plan (Local Centres) 2012* and *Ku-ring-gai Local Centres Development Control Plan* recognises that the strip of Council land does not form part of the adjacent park is material to any decision made on this aspect of the development application.
- The proposal complies with the control set out in section 14F.3 of the DCP in relation to the provision of key community infrastructure. It is unlawful for a consent authority to require a more onerous standard with respect to an aspect of a development than those set out in a development control plan. Any attempt to refuse the development application based on section 14F.3 of the DCP must be unlawful.
- The controls in section 14F.4 of the DCP have nothing to say about the strip of Council land. There is no legal basis for the development application to be refused or conditioned as a consequence of section 14F.4 of the DCP ('setbacks').
- The development application is not seeking approval for any change in ownership for the Council strip of land. It is legally irrelevant as to who might own the consolidated site or the public footpath that is proposed to be located within the site.

- The development application cannot, on any reasonable basis, be refused or conditioned because the strip of Council land forms part of Larkin Lane. This is because no part of the strip of Council land does form part of Larkin Lane. The strip of Council land is, like other land, merely **adjacent** to Larkin Lane.
- The LEP plainly identifies that the land is not community land and is, in fact, operational land. This is reinforced by the zoning of the land (which is different from the zoning of balance of Lot 2). The relevant zone objectives do not envisage or facilitate any decision by a consent authority that would treat the strip of Council land differently from other land in the B2 Local Centre zone.

## Background

We understand and assume the relevant facts to be as follows:

- You lodged the development application on 12 April 2018.
- The development application is for the following:
 

Demolish existing structures (including Roseville RSL Club and retail tenancy) and construct mixed-use building comprising new ground floor RSL Club, shop-top housing of 33 residential dwellings, basement parking and associated works
- The development application seeks approval for the 'Plan of consolidation of Lot 1 in DP202148, Lot 2 in DP505371 and Lot 3 in the proposed subdivision of Lot 2 in DP202148' prepared by Dane Joseph Preston and dated 7 April 2019.
- This plan will, if registered, result in:
  - two lots that are presently owned by you being amalgamated (**the existing club land**); and
  - the augmentation of those two lots with a further strip of land presently owned by the Council (**the strip of Council land**).
- The strip of Council land presently forms part of Lot 2 DP 202148 (**Lot 2**).
- You are seeking to acquire the strip of Council land and you are in the midst of negotiations with Council's property division. Your intention is to acquire the strip of Council land before the consolidation takes place.
- The consolidated site would then be developed under the intended development consent.
- The strip of Council land is currently asphalted and serves as a car park for your premises (under an arrangement you have with the Council). Its present appearance is the same or close to its appearance in October 2016 as shown by Google Street view below:



- The documents that accompany the development application include 'Table of compliance for 64-66 Pacific Highway, Roseville' prepared by City Plan Services (April 2018).
- The development application has been assessed by an external town planner, Mr Vince Hardy. Mr Hardy's current position is set out in his letter to the Council dated 12 September 2018.
- Mr Hardy says that:

The development relies upon a reconfiguration of the subject lands through the subdivision and consolidation of the relevant land parcels. However, this element of the development is problematic ...

Please tell us if any of the above facts are not correct, as it may change our advice.

#### Detailed advice

#### 1. Whether the strip of Council land is a 'park'

##### 1.1 Mr Hardy says:

[T]he proposed subdivision would see the narrow section of Roseville **Park** that sits between Larkin Lane and the Club building (i.e. Part lot 2 DP 202148) consolidated with the larger club site (bold added).

##### 1.2 Under the dictionary of the *Local Government Act 1993* (the **LG Act**) a 'park' is defined as follows:

in relation to land, means an area of open space used for recreation, not being bushland.

##### 1.3 In our view, it is plain that the strip of Council land is not a 'park' — nor functionally part of a park — within the meaning of the LG Act. The strip is being used as a car park for private premises. It is covered with asphalt. It is obviously not practicable or safe for it to be used for recreation. This would be apparent to any reasonable member of the public.

##### 1.4 The *Macquarie Dictionary* (online) says the ordinary English-language definition of the word 'park' is (relevantly) as follows:

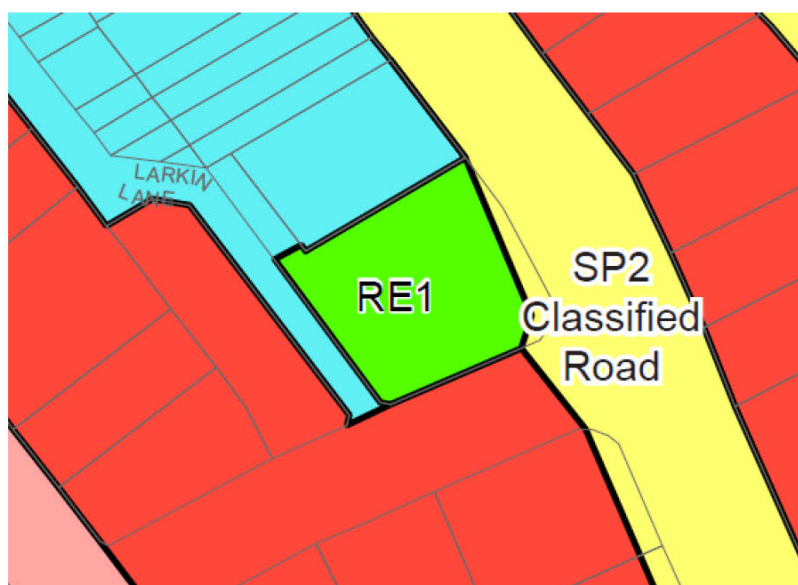
an area of land within a town, set aside for public use, often landscaped with trees and gardens, and with recreational and other facilities: Hyde Park.

##### 1.5 The strip of Council land is not, as a matter of reality, set aside for public use. It is presently set aside for the use of your private premises.

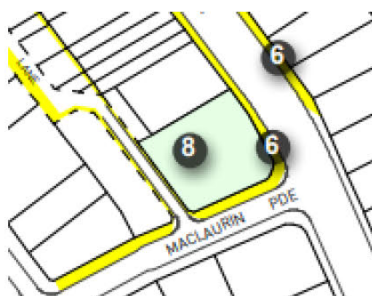
##### 1.6 As a matter of law, it is also not set aside for public use.



- 1.7 Lot 2 is identified in part 2 of schedule 4 of the *Ku-ring-gai Local Environmental Plan (Local Centres) 2012 (the LEP)* as 'operational land'.
- 1.8 This means that it is not 'community land' under the LG Act.
- 1.9 There is no requirement for the Council to:
- (a) manage operational land under a plan of management; or
  - (b) retain operational land in public ownership.
- 1.10 This distinguishes it from community land. Local councils are obliged to retain community land in public ownership.
- 1.11 In short, in our view, the strip of Council land is not a 'park' (or part of a 'park') in any legal or substantive sense.
- 1.12 The status of the land is reinforced by its zoning. The relevant zoning map that forms part of the LEP is sheet LZN\_015C (map identification number: 4500\_CEN\_LZN\_015C\_005\_20121112). An extract appears below:



- 1.13 The light blue shading over the strip of Council land zones that land as 'B2 Local Centre' (B2). The balance of Lot 2 is zoned 'RE1 Public Recreation' (RE1).
- 1.14 Furthermore the *Ku-ring-gai Local Centres Development Control Plan (the DCP)* is in force under the *Environmental Planning and Assessment Act 1979 (the EP&A Act)*.
- 1.15 This is an extract from figure 14F.3-1 in the DCP showing the Council strip of land:



- 1.16 The legend for this figure identified the green shaded area as a  
New or existing park...

- 1.17 It should be noted that all of Lot 2 — **other than the strip of Council land** — is identified as a 'new or existing park'.
- 1.18 The LEP is a mandatory relevant consideration in the determination of the development application (as per section 4.15(1)(a)(i) of the EP&A Act). Similarly, the DCP is a mandatory relevant consideration (as per section 4.15(1)(a)(iii) of the EP&A Act).
- 1.19 In our opinion the fact that both the LEP and the DCP recognises that the strip of Council land does not form part of the adjacent park is material to any decision made on this aspect of the development application.

## 2. DCP requirements

### 2.1 Mr Hardy says:

[The consolidation of the strip of Council land with the larger club site] would be inconsistent with Council's DCP ... as it would not allow the achievement of the following:

- Section 14F.3 Proposed community infrastructure — requires a footpath to be provided on the eastern side of Larkin Lane Section.
- Section 14.5 Setbacks — requires land dedication on the eastern side of Larkin Lane.

### **Section 14F.3 — key community infrastructure**

#### 2.2 The control set out in section 14F.3 of the DCP says:

All development within the Roseville local centre is to be designed to support the planned future character of the centre through the provision of Key Community Infrastructure as stated in the Ku-ring-gai Contributions Plan 2010 and outlined in **Figure 14F.3-1**. This is to be done through the Proposed Community Infrastructure requirements for each Precinct as stipulated in this DCP (bold added).

- 2.3 An extract from figure 14F.3-1 is reproduced in paragraph 1.15 above. It shows that portion of your site **fronting the Pacific Highway** is adjacent to a yellow strip. The yellow strip is identified by the legend to be 'footpath embellishment'.
- 2.4 The 'Table of compliance' that forms part of the development application says that the proposed development will provide the required footpath embellishment along the Pacific Highway.
- 2.5 The proposal therefore complies with the control set out in section 14F.3 of the DCP.
- 2.6 It is unlawful for a consent authority to require a more onerous standards with respect to an aspect of a development than those set out in a development control plan (section 4.15(3A) of the EP&A Act).
- 2.7 In our view, any attempt to refuse the development application based on section 14F.3 of the DCP must be unlawful, given that the application complies with the only control in section 14F.3.

### **Section 14F.4 — setbacks**

- 2.8 Mr Hardy's reference to section 14.5 of the DCP (titled 'setbacks') appears to be an erroneous reference to section 14.4. (Section 14.5 is titled 'built form'.)
- 2.9 There are two controls set out in section 14.4. The second control is specific to nominated addresses (and your site is not one of those addresses). The first control (control 1) says:

All development within the Roseville local centre, as outlined in **Figure 14F.4-1**, is to be designed to support and enhance the planned future character of the centre. This is to be done through the Setback requirements for each Precinct as stipulated in this DCP (bold added).

2.10 An extract from figure 14F.4-1 appears below:



2.11 The legend for the above figure is as follows:

Legend			
10m	- 10m setback	variable	- variable setback
6m	- 6m setback		
4m	- 4m setback		
			- Land dedication

2.12 It is plain that the strip of Council land is not subject to either a setback or any expectation of dedication.

2.13 In our opinion there is no legal basis for the development application to be refused or conditioned as a consequence of section 14F.4 of the DCP.

### 3. Transfer of ownership of public infrastructure

3.1 Mr Hardy says:

[T]he proposed subdivision and ultimate transfer of those [sic] land to the club would also result in existing public infrastructure, i.e. part of Larkin Lane inclusive of kerb and gutter, footpaths etc, being located within privately owned land.

3.2 **Firstly**, the development application is not seeking approval for any change in ownership for the Council strip of land. It is legally irrelevant as to who might own the consolidated site. It is well-established in law that planning and development consents are concerned with the acts done or to be done and the use, not the identity of the actor or user (*Jonah Pty Limited v Pittwater Council* [2006] NSWLEC 99 at [34]).

3.3 Hence, in undertaking the merit determination of whether to grant a development consent, it is irrelevant to enquire as to who is the current landowner, or who might be the future landowner (*Jonah* at [35]).

3.4 The owner could be you, it could be the Council it could be some other entity, public or private. The ownership is irrelevant. A merit assessment should focus on the land use.

3.5 As we understand it the development application proposes the construction and maintenance of a public footpath on what is now the Council strip of land. (Public access would be ensured by an easement in gross benefiting the Council.)

3.6 The identity of the person who might own that public footpath is, by law, a legally irrelevant consideration. If the public footpath in itself (as a land use) is satisfactory, it will (in our opinion) be unlawful for the development application to be refused merely because the registered proprietor of the public footpath may be a private entity.

3.7 **Secondly**, no part of the strip of Council land forms part of Larkin Lane. Larkin Lane is the name of a public road. The strip of Council land is not part of any public road reserve. The strip of Council land is, like other land, merely adjacent to Larkin Lane.

3.8 The development application cannot, on any reasonable basis, be refused or conditioned because the strip of Council land forms part of Larkin Lane. This is because this is plainly not the case.

**4. Whether the strip of Council land should be treated as if it were community land**

4.1 In our opinion the status of given land as 'community land' under the LG Act is a relevant consideration that may inform what type of development should be permitted on the land. In such instances, a consent authority may permit a narrower range of land uses to take place, irrespective of the land's underlying zoning.

4.2 However, in the present case, the LEP plainly identifies that the land is not community land, and is, in fact, operational land (see paragraph 1.7). To the extent that the status of the land within the Council's portfolio is relevant, the LEP must be taken into consideration (section 4.15(1)(i) of the EP&A Act). That would weigh in favour of treating the land like any other land that is freely tradeable in the open marketplace.

4.3 Furthermore, the zoning of the land under the LEP reinforces this (see paragraph 1.12). It is plain that the statutory planning intent for the Council strip of land is that it **not** be treated as if it were RE1 land. That is, the objectives of the RE1 zone (which, among other things, are to 'enable land to be used for public open space or recreational purposes') **do not apply** to the strip of Council land.

4.4 The relevant objectives are the B2 zone objectives. They are as follows:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To provide for residential housing close to public transport, services and employment opportunities.
- To encourage mixed use buildings that effectively integrate suitable business, office, residential, retail and other development.

4.5 The consent authority is required to have regard to these under clause 2.3(2) of the LEP.

4.6 These objectives do not envisage or facilitate any decision by a consent authority that would treat the strip of Council land differently from other land in the B2 zone.

Please do not hesitate to contact me on (02) 8035 7858 if you would like to discuss this advice.

Yours sincerely




**Aaron Gadiel**  
**Partner**

Accredited Specialist — Planning and Environment Law



**THE ROSEVILLE  
CLUB**



## **Appendix 2 – Building views**





01 STREET VIEW 1



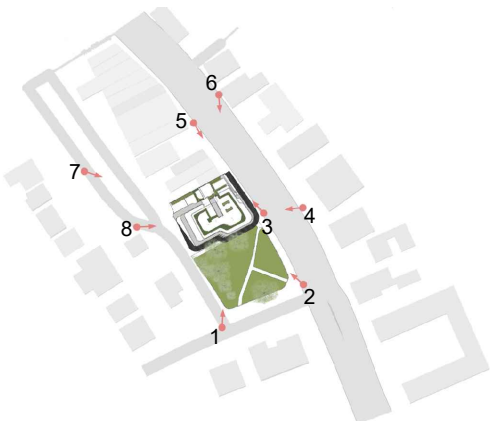
02 STREET VIEW 2



03 STREET VIEW 3



04 STREET VIEW 4



- GENERAL NOTES:
- ALL WORKS TO COMPLY WITH BUILDING CODE OF AUSTRALIA, REQUIREMENTS OF RELEVANT STATUTORY AUTHORITIES/ LOCAL GOVERNMENT & RELEVANT AUSTRALIAN BUILDING STANDARDS
  - CONTRACTOR TO VERIFY ALL DIMENSIONS ON SITE BEFORE COMMENCING WORK - SHOULD A DISCREPANCY BE IDENTIFIED PLEASE CONFIRM WITH ARCHITECT PRIOR TO PROCEEDING (DO NOT SCALE FROM DRAWINGS)
  - DRAWINGS FOR THE PURPOSES OF DA ONLY - FURTHER CONSULTANT/ AUTHORITY COORDINATION WILL BE REQUIRED AT CC STAGE WHICH MAY IMPACT ON DESIGN AND PLANNING LAYOUTS
  - COPYRIGHT OF DESIGN SHOWN HEREON IS RETAINED BY PBD ARCHITECTS AND AUTHORITY IS REQUIRED FOR ANY REPRODUCTION

NOT FOR CONSTRUCTION

- LEGEND:
- DL PULL OUT CLOTHES DRYING LINE (TO FUTURE DETAIL)
  - HW HIGHLIGHT WINDOW
  - DHW OPAQUE HIGHLIGHT WINDOW
  - MB MAILBOX TO FUTURE DETAIL
  - FH FIRE HYDRANT
  - FHR FIRE HOSE REEL
  - FS FIRE STAIRS
  - MV MECHANICAL RISER TO FUTURE DETAIL
  - GC GARBAGE CHUTE
  - LS LANDSCAPING (REFER TO LANDSCAPE ARCHITECT'S DRAWINGS)
  - HWT HOT WATER UNITS
  - CU A/C CONDENSER UNITS

- MATERIALS LEGEND:
- AFG ALUMINIUM FRAMED GLAZING
  - AW AWNING TO FUTURE DETAILS
  - AL ALUMINIUM FIX LOUVERS (TO FUTURE DETAIL)
  - ALO ALUMINIUM OPERABLE LOUVERS (TO FUTURE DETAIL)
  - BS BATTEN SCREEN (TO FUTURE DETAIL)
  - FM TEXTURED STONE FACADE (TO FUTURE DETAIL)
  - FC TEXTURED CLADDING (TO FUTURE DETAIL)
  - GB FRAMELESS TOUGHENED GLASS BALUSTRADE (TO BCA/AUSTRALIAN STANDARDS)
  - GW GREEN WALL (TO FUTURE DETAIL)
  - MA METAL FRAME AWNING (TO FUTURE DETAIL)
  - MB METAL BALUSTRADE (TO FUTURE DETAIL)
  - MC METAL CLADDING
  - MF METAL FENCING (TO FUTURE SELECTION)
  - MS METAL FEATURE SCREEN (TO FUTURE DETAIL)
  - OG OPAQUE GLAZING
  - OP OPERABLE SCREENS (TO FUTURE DETAIL)
  - PC PANEL CLADDING (TO FUTURE SELECTION)
  - PS PRIVACY SCREEN (TO FUTURE SELECTION)
  - PTX PAINT FINISH TYPEX
  - RD ROLLER DOOR
  - RP RIVER PEBBLES
  - RW RENDERED WALL/SELECTED PAINT FINISH
  - SF SHOPFRONT GLAZING (TO FUTURE DETAIL)
  - SC STONE CLADDING (TO FUTURE DETAIL)
  - SRW SCORED RENDERED WALL / SELECTED PAINT FINISH
  - TL TILE FLOORING (TO FUTURE SELECTION)
  - TC TIMBER APPEARANCE CLADDING (TO FUTURE SELECTION)
  - TS TIMBER SOFFIT

A	20.02.2020	SOFC ISSUE



CLIENT:  
HYECORP PROPERTY GROUP

ARCHITECT:  
**PBD | ARCHITECTS**  
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Level 2, 52 Albion Street, Surry Hills NSW 2010

PROJECT:  
**64 - 66 PACIFIC HIGHWAY,  
ROSEVILLE  
(MIXED-USE DEVELOPMENT)**

DRAWING TITLE:  
**STREET VIEWS 1**

SCALE: 1:100 @ A1 / 1:200 @A3	DRAWING NO: <b>DA702</b>	ISSUE: <b>A</b>
PROJECT NO: 1732		



01 STREET VIEW 5



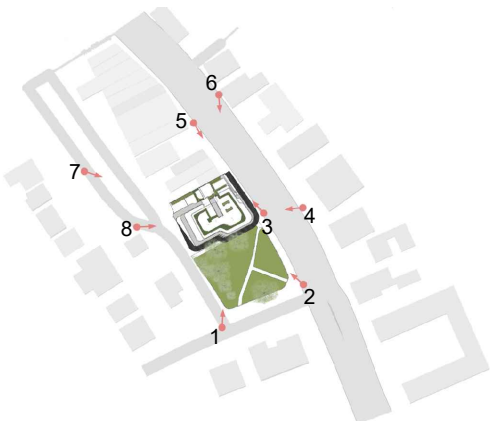
02 STREET VIEW 6



03 STREET VIEW 7



04 STREET VIEW 8



- GENERAL NOTES:
- ALL WORKS TO COMPLY WITH BUILDING CODE OF AUSTRALIA, REQUIREMENTS OF RELEVANT STATUTORY AUTHORITIES/ LOCAL GOVERNMENT & RELEVANT AUSTRALIAN BUILDING STANDARDS
  - CONTRACTOR TO VERIFY ALL DIMENSIONS ON SITE BEFORE COMMENCING WORK - SHOULD A DISCREPANCY BE IDENTIFIED PLEASE CONFIRM WITH ARCHITECT PRIOR TO PROCEEDING (DO NOT SCALE FROM DRAWINGS)
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  - COPYRIGHT OF DESIGN SHOWN HEREON IS RETAINED BY PBD ARCHITECTS AND AUTHORITY IS REQUIRED FOR ANY REPRODUCTION

NOT FOR CONSTRUCTION

- LEGEND:
- DL PULL OUT CLOTHES DRYING LINE (TO FUTURE DETAIL)
  - HW HIGHLIGHT WINDOW
  - DHW OPAQUE HIGHLIGHT WINDOW
  - MB MAILBOX TO FUTURE DETAIL
  - FH FIRE HYDRANT
  - FHR FIRE HOSE REEL
  - FS FIRE STAIRS
  - MV MECHANICAL RISER TO FUTURE DETAIL
  - GC GARBAGE CHUTE
  - LS LANDSCAPING (REFER TO LANDSCAPE ARCHITECT'S DRAWINGS)
  - HWT HOT WATER UNITS
  - CU A/C CONDENSER UNITS

- MATERIALS LEGEND:
- AFG ALUMINIUM FRAMED GLAZING
  - AW AWNING TO FUTURE DETAILS
  - AL ALUMINIUM FIX LOUVERS (TO FUTURE DETAIL)
  - ALO ALUMINIUM OPERABLE LOUVERS (TO FUTURE DETAIL)
  - BS BATTEN SCREEN (TO FUTURE DETAIL)
  - PM TEXTURED STONE FACADE (TO FUTURE DETAIL)
  - FC TEXTURED CLADDING (TO FUTURE DETAIL)
  - GB FRAMELESS TOUGHENED GLASS BALUSTRADE (TO BCA/AUSTRALIAN STANDARDS)
  - GW GREEN WALL (TO FUTURE DETAIL)
  - MA METAL FRAME AWNING (TO FUTURE DETAIL)
  - MB METAL BALUSTRADE (TO FUTURE DETAIL)
  - MC METAL CLADDING
  - MF METAL FENCING (TO FUTURE SELECTION)
  - MS METAL FEATURE SCREEN (TO FUTURE DETAIL)
  - OG OPAQUE GLAZING
  - OP OPERABLE SCREENS (TO FUTURE DETAIL)
  - PC PANEL CLADDING (TO FUTURE SELECTION)
  - PS PRIVACY SCREEN (TO FUTURE SELECTION)
  - PTX PAINT FINISH TYPEX
  - RD ROLLER DOOR
  - RP RIVER PEBBLES
  - RW RENDERED WALL/SELECTED PAINT FINISH
  - SF SHOPFRONT GLAZING (TO FUTURE DETAIL)
  - SC STONE CLADDING (TO FUTURE DETAIL)
  - SRW SCORED RENDERED WALL / SELECTED PAINT FINISH
  - TL TILE FLOORING (TO FUTURE SELECTION)
  - TC TIMBER APPEARANCE CLADDING (TO FUTURE SELECTION)
  - TS TIMBER SOFFIT

A	20.02.2020	SOFC ISSUE



CLIENT:  
HYECORP PROPERTY GROUP

ARCHITECT:  
**PBD | ARCHITECTS**  
ABN 36 147 035 550  
P - 02 9698 8140 E - info@pbdarchitects.com.au W - www.pbdarchitects.com.au  
Level 2, 52 Albion Street, Surry Hills NSW 2010

PROJECT:  
**64 - 66 PACIFIC HIGHWAY,  
ROSEVILLE  
(MIXED-USE DEVELOPMENT)**

DRAWING TITLE:  
**STREET VIEWS 2**

SCALE:  
1:100 @ A1 / 1:200 @A3  
PROJECT NO:  
1732

DRAWING NO:  
**DA703**

ISSUE:  
**A**

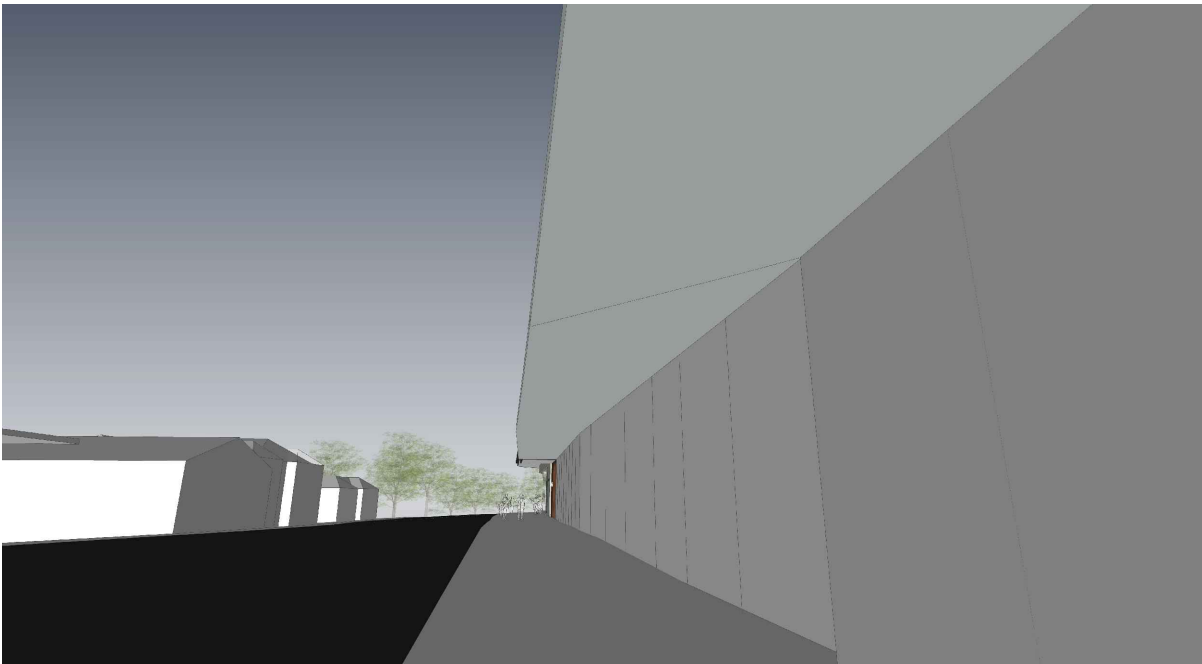




01 STREET VIEW 3



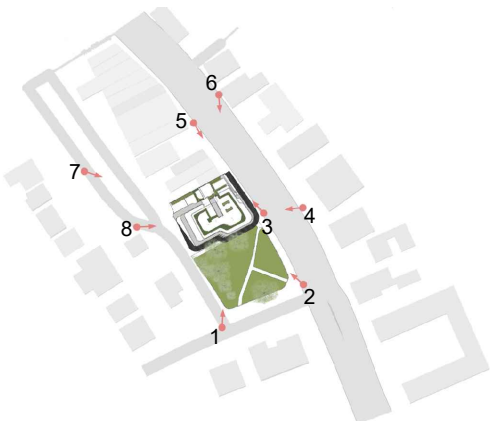
02 STREET VIEW 4



03 STREET VIEW 5



04 STREET VIEW 6



- GENERAL NOTES:
- ALL WORKS TO COMPLY WITH BUILDING CODE OF AUSTRALIA, REQUIREMENTS OF RELEVANT STATUTORY AUTHORITIES/ LOCAL GOVERNMENT & RELEVANT AUSTRALIAN BUILDING STANDARDS
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NOT FOR CONSTRUCTION

- LEGEND:
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  - HW HIGHLIGHT WINDOW
  - DHW OPAQUE HIGHLIGHT WINDOW
  - MB MAILBOX TO FUTURE DETAIL
  - FH FIRE HYDRANT
  - FHR FIRE HOSE REEL
  - FS FIRE STAIRS
  - MV MECHANICAL RISER TO FUTURE DETAIL
  - GC GARBAGE CHUTE
  - LS LANDSCAPING (REFER TO LANDSCAPE ARCHITECT'S DRAWINGS)
  - HWT HOT WATER UNITS
  - CU A/C CONDENSER UNITS

- MATERIALS LEGEND:
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  - SRW SCORED RENDERED WALL / SELECTED PAINT FINISH
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  - TC TIMBER APPEARANCE CLADDING (TO FUTURE SELECTION)
  - TS TIMBER SOFFIT

A	20.02.2020	SOFC ISSUE



CLIENT:  
HYECORP PROPERTY GROUP

ARCHITECT:  
**PBD | ARCHITECTS**  
ABN 36 147 035 550  
P - 02 9698 8140 E - info@pbdarchitects.com.au W - www.pbdarchitects.com.au  
Level 2, 52 Albion Street, Surry Hills NSW 2010

PROJECT:  
**64 - 66 PACIFIC HIGHWAY,  
ROSEVILLE  
(MIXED-USE DEVELOPMENT)**

DRAWING TITLE:  
**STREET VIEWS (11.5M WALL)**

SCALE:  
1:100 @ A1 / 1:200 @A3  
PROJECT NO:  
1732

DRAWING NO:  
**DA704**

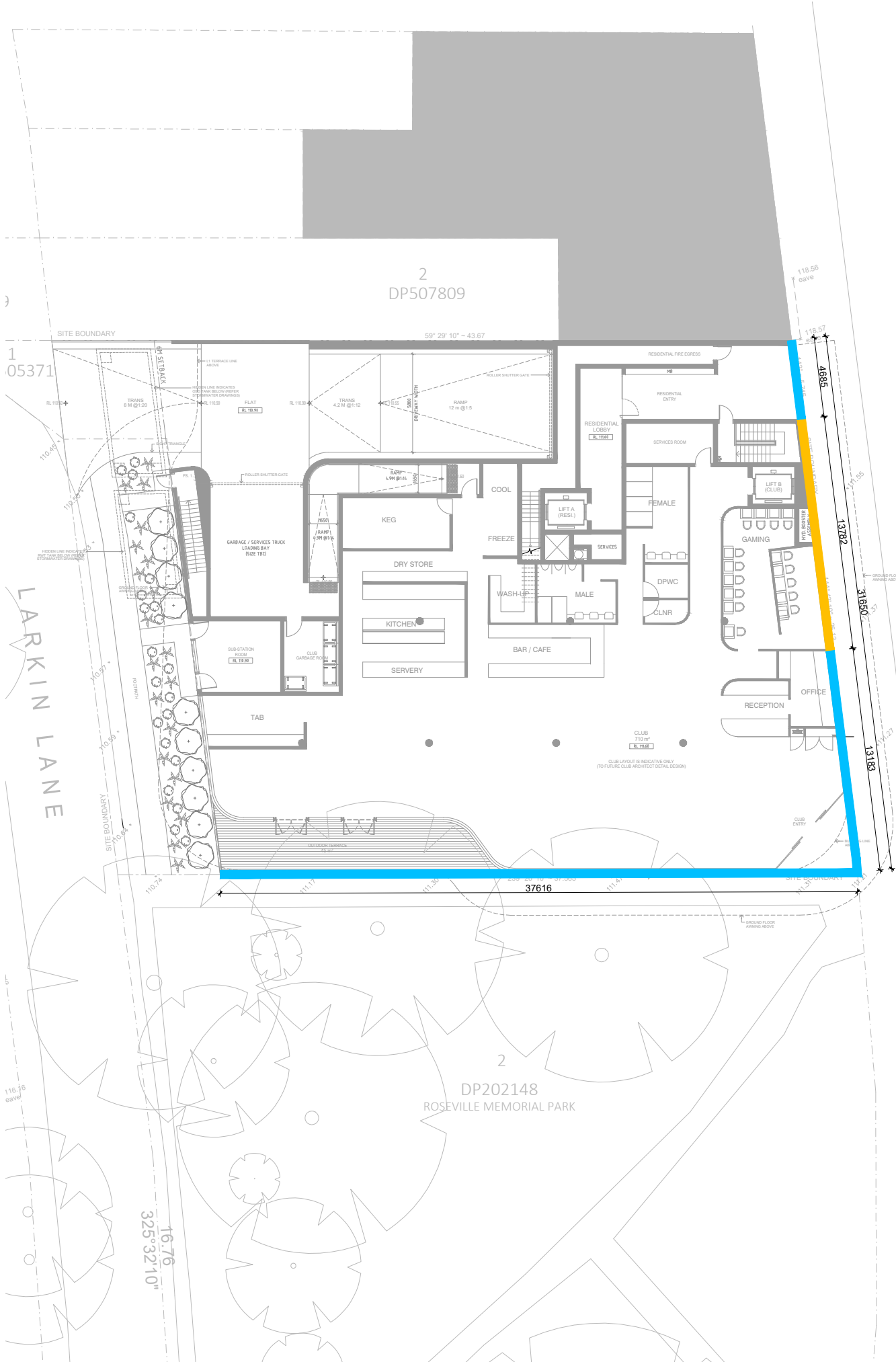
ISSUE:  
**A**



**THE ROSEVILLE  
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## **Appendix 3 – Active Street Frontage**



STREET ACTIVATION

Active Frontage:

Pacific Highway: 17.868 m (56%)

Memorial Park: 37.616 m (100%)

Total Active Frontage : 55.484 m (80%)

LEGEND

- ACTIVE FRONTAGE
- NON-ACTIVE FRONTAGE

GENERAL NOTES:

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NOT FOR CONSTRUCTION

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  - DHW OPAQUE HIGHLIGHT WINDOW
  - MB MAILBOX TO FUTURE DETAIL
  - FH FIRE HYDRANT
  - FHR FIRE HOSE REEL
  - FS FIRE STAIRS
  - MV MECHANICAL RISER TO FUTURE DETAIL
  - GC GARBAGE CHUTE
  - LS LANDSCAPING (REFER TO LANDSCAPE ARCHITECT'S DRAWINGS)
  - HWT HOT WATER UNITS
  - CU A/C CONDENSER UNITS

- MATERIALS LEGEND:
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  - TS TIMBER SOFFIT

A	07.02.2018	DRAFT DA
B	05.04.2018	DEVELOPMENT APPLICATION
C	13.09.2019	AMENDED DA
D	20.02.2020	SOFC ISSUE



CLIENT:  
HYECORP PROPERTY GROUP

ARCHITECT:  
**PBD | ARCHITECTS**  
ABN 36 147 035 550  
P - 02 9698 8140 E - info@pbdarchitects.com.au W - www.pbdarchitects.com.au  
Level 2, 52 Albion Street, Surry Hills NSW 2010

PROJECT:  
**64 - 66 PACIFIC HIGHWAY,  
ROSEVILLE  
(MIXED-USE DEVELOPMENT)**

DRAWING TITLE:  
**STREET ACTIVATION DIAGRAM**

SCALE:	DRAWING NO:	ISSUE:
PROJECT NO: 1732	<b>DA570</b>	<b>D</b>

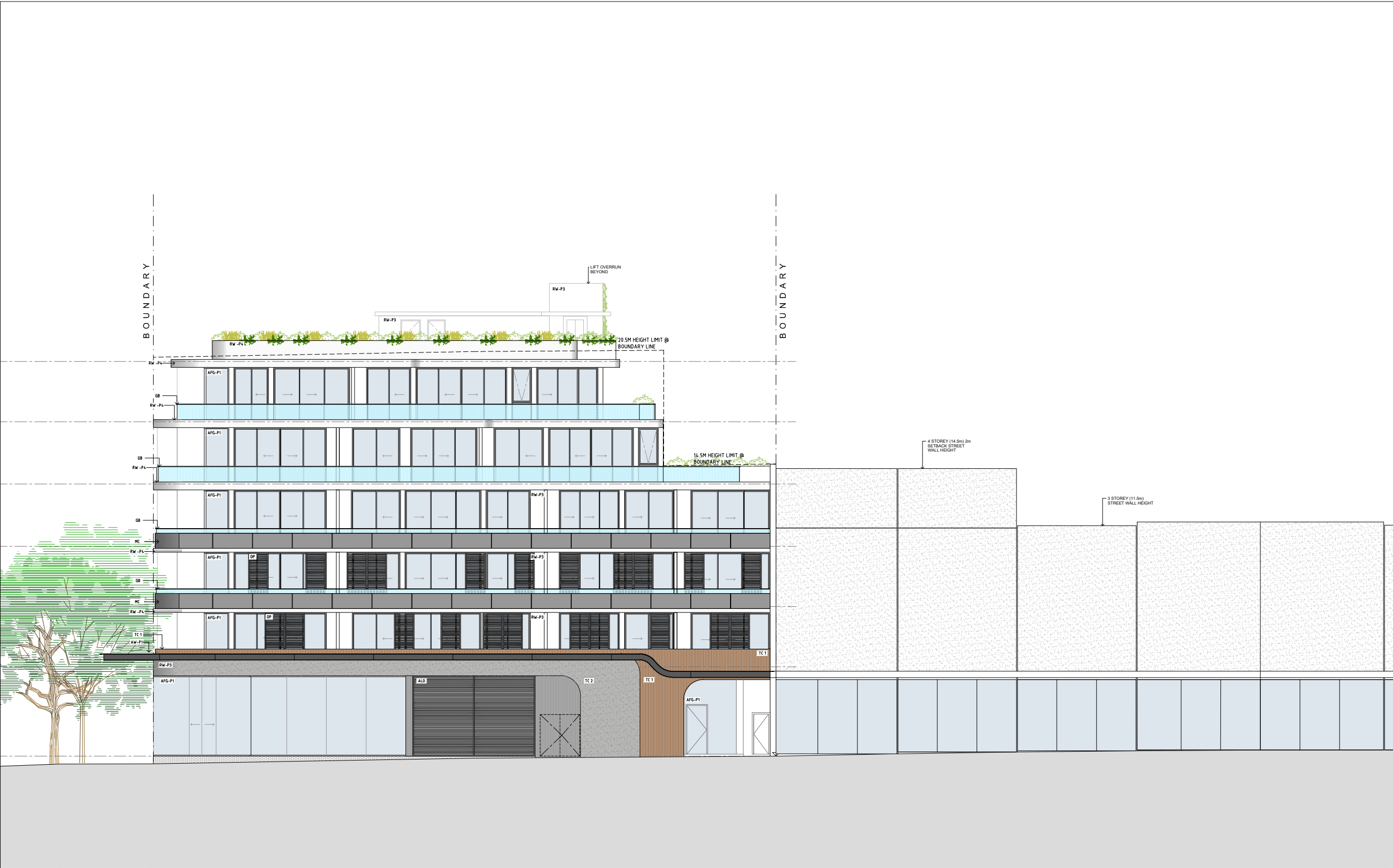




**THE ROSEVILLE  
CLUB**



## **Appendix 4 – Street Wall**



GENERAL NOTES:

- ALL WORKS TO COMPLY WITH BUILDING CODE OF AUSTRALIA, REQUIREMENTS OF RELEVANT STATUTORY AUTHORITIES/ LOCAL GOVERNMENT & RELEVANT AUSTRALIAN BUILDING STANDARDS
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NOT FOR CONSTRUCTION

LEGEND:

DL PULL OUT CLOTHES DRYING LINE (TO FUTURE DETAIL)  
HW HIGHLIGHT WINDOW  
DHW OPAQUE HIGHLIGHT WINDOW  
MB MAILBOX TO FUTURE DETAIL

FH FIRE HYDRANT  
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GC GARBAGE CHUTE  
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MATERIALS LEGEND:

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SRW SCORED RENDERED WALL / SELECTED PAINT FINISH  
TL TILE FLOORING (TO FUTURE SELECTION)  
TC TIMBER APPEARANCE CLADDING (TO FUTURE SELECTION)  
TS TIMBER SOFFIT

A	20.02.2020	SOFC ISSUE

CLIENT:  
HYECORP PROPERTY GROUP

ARCHITECT:  
**PBD | ARCHITECTS**  
ABN 36 147 035 550  
P - 02 9698 8140 E - info@pbdarchitects.com.au W - www.pbdarchitects.com.au  
Level 2, 52 Albion Street, Surry Hills NSW 2010

PROJECT:  
64 - 66 PACIFIC HIGHWAY,  
ROSEVILLE  
(MIXED-USE DEVELOPMENT)

DRAWING TITLE:  
EAST ELEVATION (11.5M WALL)

SCALE: 1:100 @ A1 / 1:200 @A3	DRAWING NO: <b>DA205</b>	ISSUE: <b>A</b>
PROJECT NO: 1732		



**THE ROSEVILLE  
CLUB**



## **Appendix 5 – Floor to Floor Engineers Letter**

ATTACHMENT

REF: 2000155

25 February 2020

**Gleb Zinger**

Design Manager

**Hyecorp Property Group**

Heritage House

Suite 1, 256 Victoria Avenue

Chatswood NSW 2067

[gleb@hyecorp.com.au](mailto:gleb@hyecorp.com.au)

**RE: 66 PACIFIC HIGHWAY - ROSEVILLE  
MEP & STORWATER ENGINEERING SERVICES ADVICE**

Thank you for requesting our advice on the above project. We understand that the issue of substance is the reduced Floor-to-Floor height from 3100mm to 3040.

We have reviewed the preliminary DA drawings produced by PBD Architects and have investigated design options that can be implemented to fully service each of the apartments whilst achieving a minimum 2700mm clear internal height within habitable spaces.

In our opinion, based on multiple projects of this nature, whilst the reduced FtF height will present some challenges, these are all able to be met. Moreover, there are multiple solutions available in respect to:

- Ventilation;
- Air Conditioning
- Fire Sprinklers
- Sanitary Plumbing;
- Roof and balcony drainage;
- Lighting; and
- Power reticulation

that can be applied to deal with the reduced FtF height without impacting on the minimum 2700mm clearance in habitable spaces.

Consequently, we are happy to endorse the reduced Floor-to-Floor height and confirm that this will permit the final design to maintain a 2700mm in habitable spaces and be fully serviced in respect to building engineering services.

Yours faithfully,



**Jim Ferretti BE (UNSW) MBA MIEAust CPEng**  
Director of Building Engineering

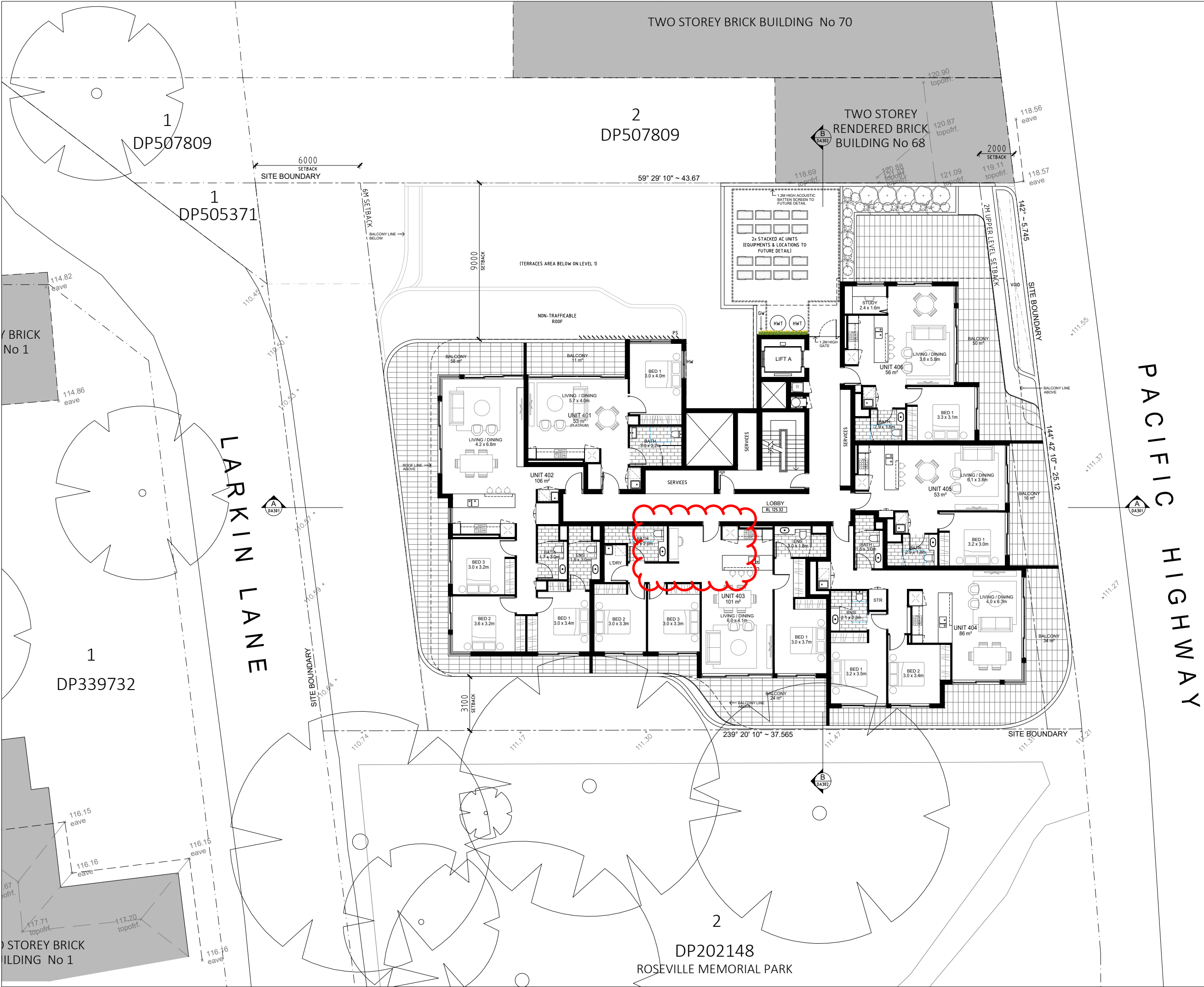


**THE ROSEVILLE  
CLUB**



## **Appendix 6 – Unit 403**





GENERAL NOTES:

- ALL WORKS TO COMPLY WITH BUILDING CODE OF AUSTRALIA, REQUIREMENTS OF RELEVANT STATUTORY AUTHORITIES/ LOCAL GOVERNMENT & RELEVANT AUSTRALIAN BUILDING STANDARDS
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LEGEND:

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HW HIGHLIGHT WINDOW  
OHW OPAQUE HIGHLIGHT WINDOW  
MB MAILBOX TO FUTURE DETAIL

FB FIRE HYDRANT  
FHR FIRE HOSE REEL  
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LS LANDSCAPING (REFER TO LANDSCAPE ARCHITECT'S DRAWINGS)

HWT HOT WATER UNITS  
CU A/C CONDENSER UNITS

MATERIALS LEGEND:

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TS TIMBER SOFFIT

A	07.02.2018	DRAFT DA
B	05.04.2018	DEVELOPMENT APPLICATION
C	13.09.2019	AMENDED DA
D	20.02.2020	SOFC ISSUE



CLIENT:  
HYECORP PROPERTY GROUP

ARCHITECT:  
**PBD | ARCHITECTS**  
ABN 36 147 035 550  
P - 02 9698 8140 E - info@pbdarchitects.com.au W - www.pbdarchitects.com.au  
Level 2, 52 Albion Street, Surry Hills NSW 2010

PROJECT:  
64 - 66 PACIFIC HIGHWAY,  
ROSEVILLE  
(MIXED-USE DEVELOPMENT)

DRAWING TITLE:  
LEVEL 4 PLAN

SCALE: 1:100 @ A1 / 1:200 @A3	DRAWING NO: <b>DA106</b>	ISSUE: <b>D</b>
PROJECT NO: 1732		



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## **Appendix 7 – Stormwater**











**THE ROSEVILLE  
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## **Appendix 8 – BASIX**

25 February 2020

Ku-ring-gai Council  
818 Pacific Highway  
GORDON NSW 2072

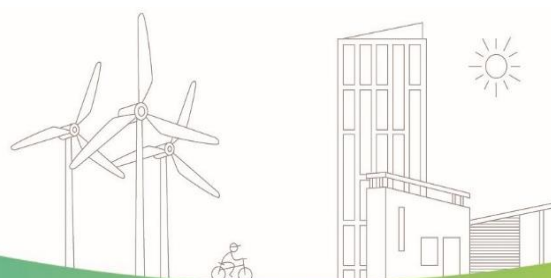
To Whom It May Concern,

**RE: MIXED USE DEVELOPMENT – 64-66 PACIFIC HIGHWAY, ROSEVILLE  
SUSTAINABILITY – BUILDING PERFORMANCE – Point 24.**

Efficient Living Pty Ltd is an Independent Expert trading in the area of BASIX and NatHERS Assessments and was engaged by Hyecorp in March 2018 to provide NatHERS and BASIX Certification based on the proposed residential units to be constructed at the above address. The Assessment reviewed the proposed construction materials, modelled the units in BERS 4.3 software and respectively nominated the appropriate insulation values required to meet compliance BASIX Thermal Comfort Protocol (refer to Table A: Maximum loads for single dwellings and average all dwellings in multi dwelling developments from BASIX Thermal Comfort Protocol).

It is our understanding that Council require further clarification regarding ceiling insulation requirements for the ceilings of Units 301, 302, 303, 306, 307, 308, 401, 402, 403, 404, 405, 406, 501, 502 and 503, and in particular the issue of installing insulation to the external envelope (ceiling insulation where roof or balcony above) which may pose issues for the proposed floor-to-floor height accessible thresholds for private open space of Platinum Level units, and maximum building height.

Insulation is required to all ceiling areas that form part of the external building envelope, whether it has balcony or roof above. It is not required to ceilings with conditioned internal spaces above (eg. neighbouring dwelling above). With regards to space issues; there are many different products and installation methods available for ceiling insulation. Popular methods include battening out a space below the underside of exposed slab and placing plasterboard with bulk insulation in the cavity space between the plasterboard and the concrete above. Different cavity spaces are required depending on the thermal performance value (R-value) of the nominated ceiling insulation and the nominated product. We recommend that if there are floor to ceiling height space limitations that a direct stick high performance product such as Kingspan Kooltherm K10 G2 Soffit Board be used. The above nominated units require either R2.0 or R3.0 insulation; with the use of such a high performance product an R2.0 Kooltherm K10 rigid soffit board has a product thickness of 50mm and an R3.0 board has a product thickness of 60mm.





Efficient Living Pty Ltd  
13/13 Lagoon Street  
NARRABEEN NSW 2101  
Ph: (02) 9970 6181  
E: dani@efficientliving.com.au

*I believe this particular product thickness will not pose a problem and is achievable with the current design.*

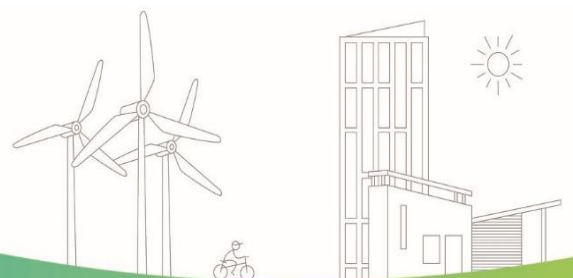
*Please do not hesitate to contact me should you require any further information.*

*Yours faithfully,*

Danielle Grumont  
Sustainable Building Consultant  
E: dani@efficientliving.com.au

**Sustainable Building Consultants**

p. 02 9970 6181 e. admin@efficientliving.com.au  
www.efficientliving.com.au





**THE ROSEVILLE  
CLUB**



## **Appendix 9 – Dimensions**





**GENERAL NOTES:**

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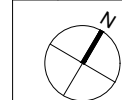
**N O T F O R C O N S T R U C T I O N**

LEGEND:	
DL	PULL OUT CLOTHES DRYING LINE (TO FUTURE DETAIL)
HW	HIGHLIGHT WINDOW
OHW	OPAQUE HIGHLIGHT WINDOW
MB	MAILBOX TO FUTURE DETAIL
FH	FIRE HYDRANT
FHR	FIRE HOSE REEL
FS	FIRE STAIRS
NV	MECHANICAL RISER TO FUTURE DETAIL
GC	GARBAGE CHUTE
LS	LANDSCAPING (REFER TO LANDSCAPE ARCHITECT'S DRAWINGS)
HWT	HOT WATER UNITS
CU	A/C CONDENSER UNITS

## MATERIALS LEGEND:

AFG	ALUMINUM FRAMED GLAZING
AW	AWNING TO FUTURE DETAILS
AL	ALUMINUM FIX LOUVERS (TO FUTURE DETAIL)
ALO	ALUMINUM OPERABLE LOUVERS (TO FUTURE DETAIL)
ES	BATTEN SCREEN (TO FUTURE DETAIL)
FM	TEXTURED STONE FLAKE (TO FUTURE DETAIL)
FC	TEXTURED LAUGHING FLOWERS
GB	FRAMELESS TOUGHED GLASS BALUSTRADE (TO BCA/AUSTRALIAN STANDARDS)
GW	GREEN WALL (TO FUTURE DETAIL)
MA	METAL FRAME AWNING (TO FUTURE DETAIL)
MB	METAL BALUSTRADE (TO FUTURE DETAIL)
MC	METAL CLADDING
MF	METAL FENCING (TO FUTURE SELECTION)
MS	METAL FEATURE SCREEN (TO FUTURE DETAIL)
OG	OPAQUE GLAZING
OP	OPERABLE SCREENS (TO FUTURE DETAIL)
PC	PANEL CLADDING (TO FUTURE SELECTION)
PS	PRIVACY SCREEN (TO FUTURE SELECTION)
PTX	PAINT FINISH TYPEX
RD	ROLLER DOOR
RRP	RIVER PEBBLES
RW	RENDERED WALL/SELECTED PAINT FINISH
SF	SHOPFRONT GLAZING (TO FUTURE DETAIL)
SC	STONE CLADDING (TO FUTURE DETAIL)
SRW	SCORED RENDERED WALL / SELECTED PAINT FINISH
TL	FLOOR TILING (TO FUTURE SELECTION)
TC	TIMBER APPEARANCE CLADDING (TO FUTURE SELECTION)
TS	TIMBER SOFFIT

A	07.02.2018	DRAFT DA
B	05.04.2018	DEVELOPMENT APPLICATION
C	13.09.2019	AMENDED DA
D	20.02.2020	SOFC ISSUE



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PROJECT:  
64 - 66 PACIFIC HIGHWAY,  
ROSEVILLE  
(MIXED-USE DEVELOPMENT)

DRAWING TITLE:  
**GROUND FLOOR PLAN**

SCALE: 1:100 @ A1 / 1:200 @ A3	DRAWING NO: <b>DA103</b>	ISSUE: <b>D</b>
PROJECT NO: 1732		



GENERAL NOTES:

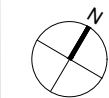
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- LEGEND:
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  - DHW OPAQUE HIGHLIGHT WINDOW
  - MB MAILBOX TO FUTURE DETAIL
  - FH FIRE HYDRANT
  - FHR FIRE HOSE REEL
  - FS FIRE STAIRS
  - MV MECHANICAL RISER TO FUTURE DETAIL
  - GC GARBAGE CHUTE
  - LS LANDSCAPING (REFER TO LANDSCAPE ARCHITECT'S DRAWINGS)
  - HWT HOT WATER UNITS
  - CU A/C CONDENSER UNITS

- MATERIALS LEGEND:
- AFG ALUMINIUM FRAMED GLAZING
  - AW AWNING TO FUTURE DETAILS
  - AL ALUMINIUM FIX LOUVERS (TO FUTURE DETAIL)
  - ALO ALUMINIUM OPERABLE LOUVERS (TO FUTURE DETAIL)
  - BS BATTEN SCREEN (TO FUTURE DETAIL)
  - FM TEXTURED STONE FACADE (TO FUTURE DETAIL)
  - FC TEXTURED CLADDING (TO FUTURE DETAIL)
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  - MA METAL FRAME AWNING (TO FUTURE DETAIL)
  - MB METAL BALUSTRADE (TO FUTURE DETAIL)
  - MC METAL CLADDING
  - MF METAL FENCING (TO FUTURE SELECTION)
  - MS METAL FEATURE SCREEN (TO FUTURE DETAIL)
  - OG OPAQUE GLAZING
  - OP OPERABLE SCREENS (TO FUTURE DETAIL)
  - PC PANEL CLADDING (TO FUTURE SELECTION)
  - PS PRIVACY SCREEN (TO FUTURE SELECTION)
  - PTX PAINT FINISH TYPEX
  - RD ROLLER DOOR
  - RP RIVER PEBBLES
  - RW RENDERED WALL/SELECTED PAINT FINISH
  - SF SHOPFRONT GLAZING (TO FUTURE DETAIL)
  - SC STONE CLADDING (TO FUTURE DETAIL)
  - SRW SCORED RENDERED WALL / SELECTED PAINT FINISH
  - TL TILE FLOORING (TO FUTURE SELECTION)
  - TC TIMBER APPEARANCE CLADDING (TO FUTURE SELECTION)
  - TS TIMBER SOFFIT

A	07.02.2018	DRAFT DA
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PROJECT:  
64 - 66 PACIFIC HIGHWAY,  
ROSEVILLE  
(MIXED-USE DEVELOPMENT)

DRAWING TITLE:  
LEVEL 1 PLAN

SCALE: 1:100 @ A1 / 1:200 @A3	DRAWING NO: <b>DA104</b>	ISSUE: <b>D</b>
PROJECT NO: 1732		



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HW HIGHLIGHT WINDOW  
OHW OPAQUE HIGHLIGHT WINDOW  
MB MAILBOX TO FUTURE DETAIL

FH FIRE HYDRANT  
FHR FIRE HOSE REEL  
FS FIRE STAIRS  
MV MECHANICAL RISER TO FUTURE DETAIL  
GC GARBAGE CHUTE  
LS LANDSCAPING (REFER TO LANDSCAPE ARCHITECT'S DRAWINGS)

HWT HOT WATER UNITS  
CU A/C CONDENSER UNITS

MATERIALS LEGEND:

AFG ALUMINIUM FRAMED GLAZING  
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BS BATTEN SCREEN (TO FUTURE DETAIL)  
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MB METAL BALUSTRADE (TO FUTURE DETAIL)  
MC METAL CLADDING  
MF METAL FENCING (TO FUTURE SELECTION)  
MS METAL FEATURE SCREEN (TO FUTURE DETAIL)  
OG OPAQUE GLAZING  
OP OPERABLE SCREENS (TO FUTURE DETAIL)  
PC PANEL CLADDING (TO FUTURE SELECTION)  
PS PRIVACY SCREEN (TO FUTURE SELECTION)  
PTX PAINT FINISH TYPEX  
RD ROLLER DOOR  
RP RIVER PEBBLES  
RW RENDERED WALL/SELECTED PAINT FINISH  
SF SHOPFRONT GLAZING (TO FUTURE DETAIL)  
SC STONE CLADDING (TO FUTURE DETAIL)  
SRW SCORED RENDERED WALL / SELECTED PAINT FINISH  
TL TILE FLOORING (TO FUTURE SELECTION)  
TC TIMBER APPEARANCE CLADDING (TO FUTURE SELECTION)  
TS TIMBER SOFFIT

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PROJECT:  
64 - 66 PACIFIC HIGHWAY,  
ROSEVILLE  
(MIXED-USE DEVELOPMENT)

DRAWING TITLE:  
LEVEL 2-3 PLAN

SCALE: 1:100 @ A1 / 1:200 @A3	DRAWING NO: <b>DA105</b>	ISSUE: <b>D</b>
PROJECT NO: 1732		





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  - MS METAL FEATURE SCREEN (TO FUTURE DETAIL)
  - OG OPAQUE GLAZING
  - OP OPERABLE SCREENS (TO FUTURE DETAIL)
  - PC PANEL CLADDING (TO FUTURE SELECTION)
  - PS PRIVACY SCREEN (TO FUTURE SELECTION)
  - PTX PAINT FINISH TYPE x
  - RD ROLLER DOOR
  - RP RIVER PEBBLES
  - RW RENDERED WALL/SELECTED PAINT FINISH
  - SF SHOPFRONT GLAZING (TO FUTURE DETAIL)
  - SC STONE CLADDING (TO FUTURE DETAIL)
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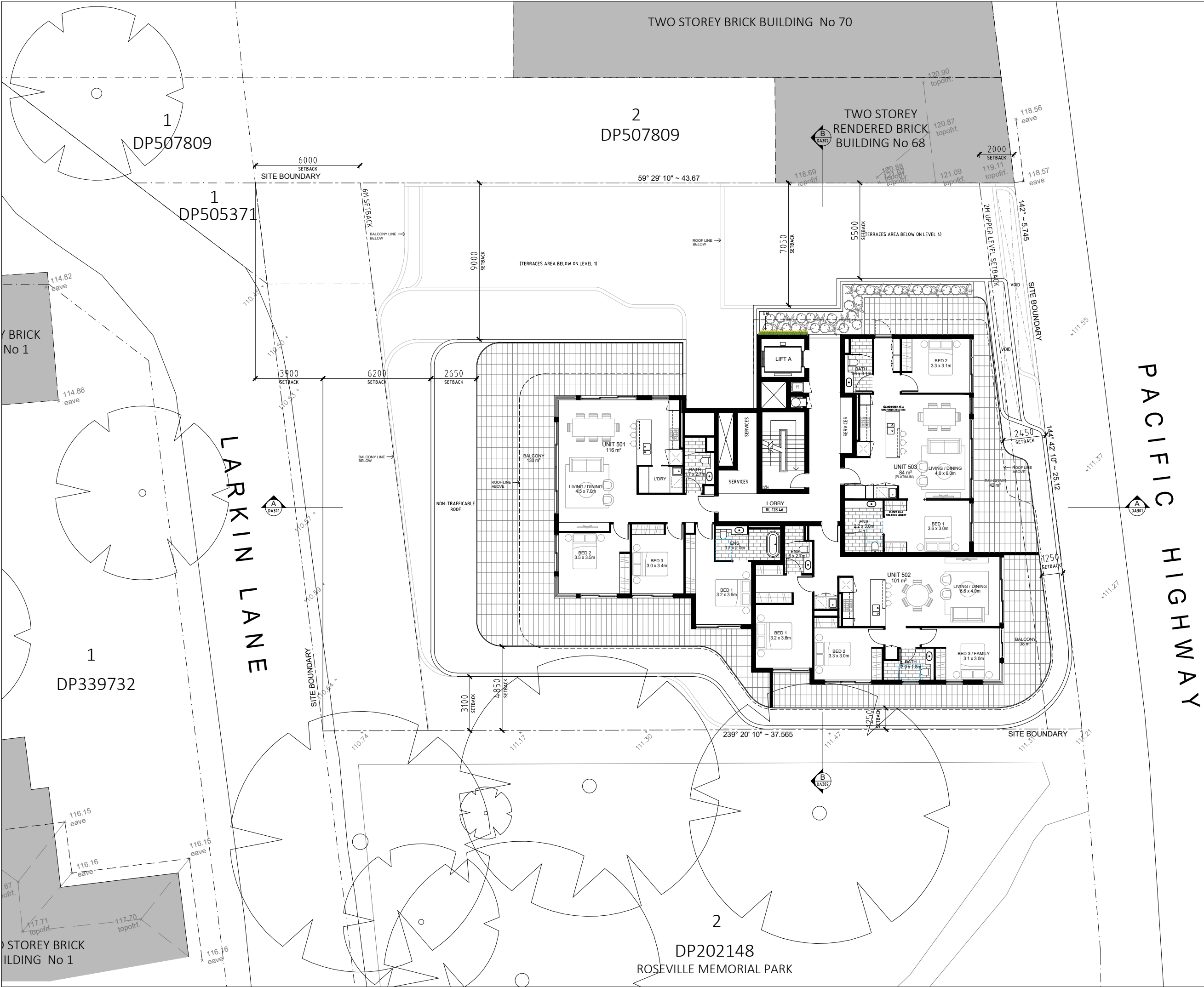
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PROJECT:  
64 - 66 PACIFIC HIGHWAY,  
ROSEVILLE  
(MIXED-USE DEVELOPMENT)

DRAWING TITLE:  
LEVEL 4 PLAN

SCALE: 1:100 @ A1 / 1:200 @A3	DRAWING NO: <b>DA106</b>	ISSUE: <b>D</b>
PROJECT NO: 1732		



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  - FH FIRE HYDRANT
  - FHR FIRE HOSE REEL
  - FS FIRE STAIRS
  - MV MECHANICAL RISER TO FUTURE DETAIL
  - GC GARBAGE CHUTE
  - LS LANDSCAPING (REFER TO LANDSCAPE ARCHITECT'S DRAWINGS)
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  - CU A/C CONDENSER UNITS

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  - OG OPAQUE GLAZING
  - OP OPERABLE SCREENS (TO FUTURE DETAIL)
  - PC PANEL CLADDING (TO FUTURE SELECTION)
  - PS PRIVACY SCREEN (TO FUTURE SELECTION)
  - PTX PAINT FINISH TYPE X
  - RD ROLLER DOOR
  - RP RIVER PEBBLES
  - RW RENDERED WALL /SELECTED PAINT FINISH
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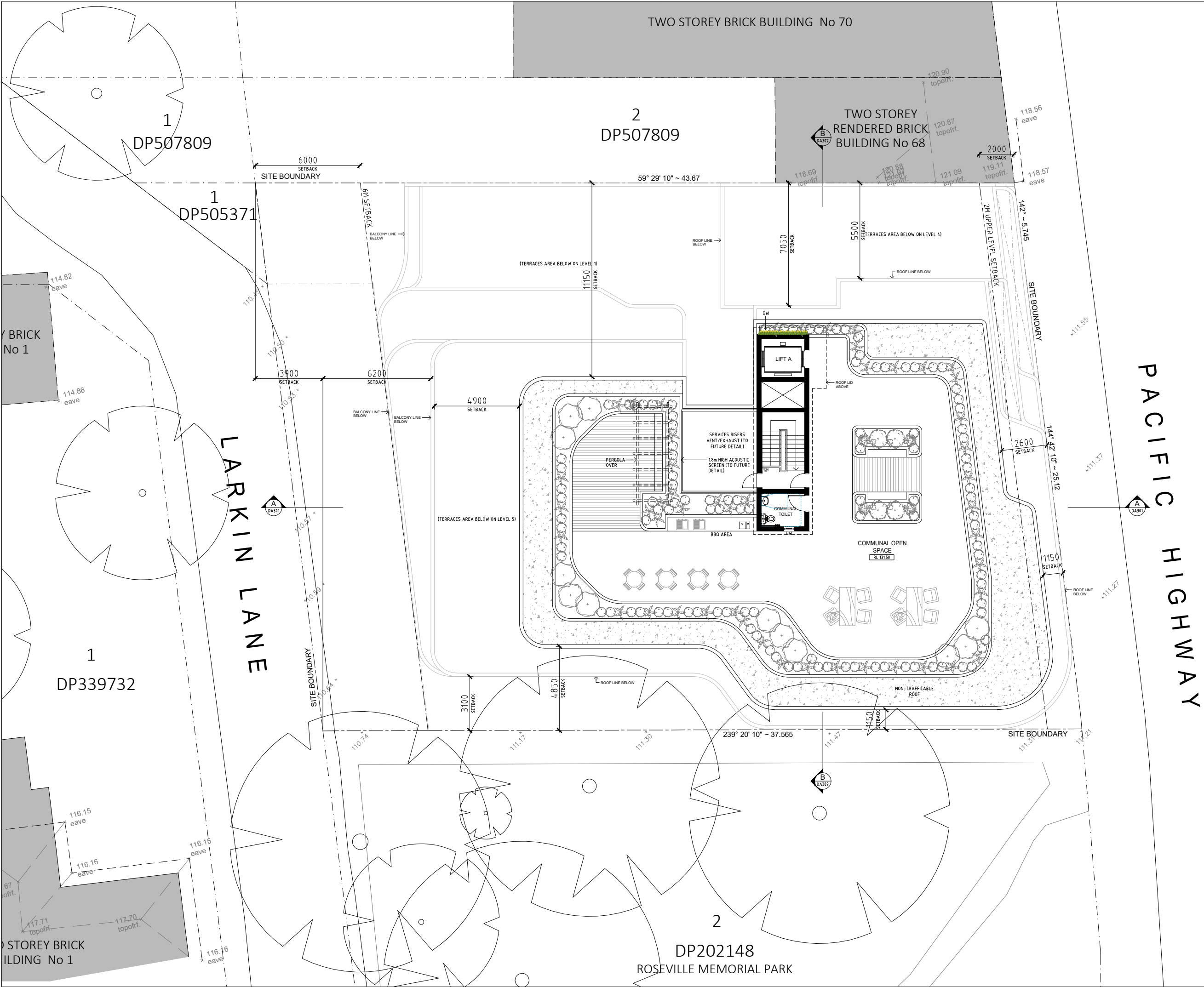
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PROJECT:  
64 - 66 PACIFIC HIGHWAY,  
ROSEVILLE  
(MIXED-USE DEVELOPMENT)

DRAWING TITLE:  
LEVEL 5 PLAN

SCALE: 1:100 @ A1 / 1:200 @A3	DRAWING NO: <b>DA107</b>	ISSUE: <b>D</b>
PROJECT NO: 1732		





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DHW OPAQUE HIGHLIGHT WINDOW  
MB MAILBOX TO FUTURE DETAIL

FB FIRE HYDRANT  
FHR FIRE HOSE REEL  
FS FIRE STAIRS  
MV MECHANICAL RISER TO FUTURE DETAIL  
GC GARBAGE CHUTE  
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HWT HOT WATER UNITS  
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MATERIALS LEGEND:

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A	07.02.2018	DRAFT DA
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PROJECT:  
64 - 66 PACIFIC HIGHWAY,  
ROSEVILLE  
(MIXED-USE DEVELOPMENT)

DRAWING TITLE:  
LEVEL 6 PLAN (ROOF TERRACE)

SCALE: 1:100 @ A1 / 1:200 @ A3	DRAWING NO: <b>DA108</b>	ISSUE: <b>D</b>
PROJECT NO: 1732		

26 August 2020

**Mills Oakley**  
ABN: 51 493 069 734

**Privileged and confidential**

Your ref:  
Our ref: AXGS/3412786

Roseville Returned Servicemen's Memorial Club  
Limited t/a Roseville Memorial Club  
PO Box 779  
ARTARMON NSW 1570

All correspondence to:  
PO Box H316  
AUSTRALIA SQUARE NSW 1215

**Contact**  
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Email: [kdoyle@millsOakley.com.au](mailto:kdoyle@millsOakley.com.au)

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**By email:** [stephen@hyecorp.com.au](mailto:stephen@hyecorp.com.au);  
[sgunnis@pcg.com.au](mailto:sgunnis@pcg.com.au)

**Attention:** Stephen Abolakian

Dear Stephen

**Advice re 64-66 Pacific Hwy, development application DA0134/18**

You have asked us to provide legal advice in relation to the above development application (**the development application**).

You have asked us to address certain limited matters arising from the supplementary assessment report dated 10 August 2020 (prepared by Vince Hardy - Urban Planning Consultant, Cityscape Planning + Projects).

**Summary advice**

In our opinion:

- The status of the 'Lot 3' land as operational land is plainly relevant and therefore must be taken into consideration by the consent authority when determining the development application.
- The fact that a small part of Lot 3 presently serves a purpose in facilitating the movement of vehicles on Larkin Lane is a reason pointing to the **approval** of the development application, rather than suggesting any refusal. If the development does not proceed, there will be no legal assurance that any part of Lot 3 will be available to facilitate the movement of vehicles on Larkin Lane. If development consent is granted, such assurance will be available as a consequence of the easement proposed (specifically the 'right of carriageway') as part of the amended development application.
- There is no 'standard condition of consent' which could generally require the construction of a path on Council-owned operational land. The type of condition the assessment report appears to be referring to is a condition applicable to a public road reserve adjacent to a development site. Lot 3 is not part of the public road reserve. In the present case, there is no need for condition requiring the construction of the path — as this is already proposed by the applicant.
- A floor space ratio and height variation made on the basis of the clause 4.6 requests would be legally sound.
- The suggestion that the applicant cannot act outside clause 4.5 ('Calculation of floor space ratio and site area') of the LEP is incorrect. Clause 4.5 only has relevance because of clause 4.4 ('Floor space ratio'). A clause 4.6 request that is supported by a consent authority can authorise a contravention of clause 4.4. This includes a contravention that arises from how clause 4.4 would normally be applied (because of clause 4.5).
- Issues of landownership are not a legally relevant consideration in the determination of a development application. It is sufficient, for the consent authority's purposes, that all relevant landowners have

consented to the making of the development application. Issues of land title that may arise (if consent is granted) are a matter for those landowners. The mere grant of development consent does not pre-empt or prejudice any person's legal property rights.

- The development consent does not need to contain a condition requiring a planning agreement to be entered into. Whether or not the Council enters into a planning agreement is a matter for it — and is not determinative for any aspect of this development application

## Detailed advice

### 1. The relevance of the 'operational' status of the strip of Council-owned land ('Lot 3')

#### 1.1 The supplementary assessment report says:

The fact that the land is classified as Operational and not Community Land under the Local Government Act, 1993 is irrelevant.

#### 1.2 We provided advice on mandatory relevant (and irrelevant considerations) to you on 16 September 2019. We note that you have previously shared this advice with the Council. We also note that it currently forms part of the development application documents.

#### 1.3 As we explained in that advice, Lot 3 is identified in part 2 of schedule 4 of the *Ku-ring-gai Local Environmental Plan (Local Centres) 2012 (the LEP)* as 'operational land'.

#### 1.4 This means that it is not 'community land' under the LG Act.

#### 1.5 There is no requirement for the Council to:

- (a) manage operational land under a plan of management; or
- (b) retain operational land in public ownership.

#### 1.6 This distinguishes it from community land. Local councils are obliged to retain community land in public ownership.

#### 1.7 The LEP is a mandatory consideration in the determination of the development application (as per section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979 (the EP&A Act)*).

#### 1.8 In our view, the status of the land as operational land is plainly relevant and therefore must be taken into consideration by the consent authority when determining the development application.

### 2. Whether the existing strip of Council-owned land ('Lot 3') operates as a public road

#### 2.1 The assessment report says that Lot 3

currently accommodates a bitumen road surface that operates as a public road

#### 2.2 Lot 3 is not, in law, a public road. This means that, as a matter of law, there is no assurance that any member of the public may use any part of it for vehicular or pedestrian movement.

#### 2.3 We consider the fact that a small part of Lot 3 presently serves a purpose in facilitating the movement of vehicles on Larkin Lane **is a reason pointing to the approval of the development application**, rather than suggesting any refusal.

#### 2.4 This is because, if the development does not proceed, there will be no legal assurance that any part of Lot 3 will be available to facilitate the movement of vehicles on Larkin Lane. If development consent is granted, such assurance will be available — as a consequence of the easement proposed (specifically the 'right of carriageway') as part of the amended development application. The necessary detail is set out in the letter from City Plan to the Council dated 21 May 2020 (and its annexures).

### 3. Condition of consent requiring the construction of a footpath on Lot 3

#### 3.1 The assessment report says that:

Simply put, that same public benefit could be just as readily obtained through the imposition of a standard condition of development consent that required the developer to construct a footpath at the site Larkin Lane frontage.

#### 3.2 It is not clear that some other hypothetical development application would enable a condition to be imposed of the kind that the assessment report suggests. There may be a lack of 'nexus' (given that Lot 3 is not a public road reserve) or it may represent an unreasonable burden.

#### 3.3 Firstly, it is proposed, as part of the development application, that such a footpath be constructed. It is not necessary for a condition of consent to be imposed for this reason.

#### 3.4 Secondly, there is no 'standard condition of consent' for this situation. The type of condition the assessment report appears to be referring to is a condition applicable to a public road reserve adjacent to a development site. Lot 3 is not part of the public road reserve.

#### 3.5 Thirdly, such a condition, if imposed, might require the construction a footpath (where, for example, nexus existed because it was necessary for the proper function of the development). However, it would not provide any legal assurance of public access to that footpath. The applicant's proposal provides that assurance (see section 2 above).

### 4. Legal basis of the clause 4.6 requests

#### 4.1 The assessment report says:

no legal advice was provided to support the position represented in the [floor space ratio] Clause 4.6 Request

#### 4.2 We confirm that we have carefully reviewed the current (revised) clause 4.6 requests on both height and floor space ratio.

#### 4.3 In order for a clause 4.6 request to be legally sound it must (under clause 4.6(3)) seek to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

#### 4.4 In our opinion, each of the clause 4.6 requests plainly do this. We do not consider that there is any doubt about the validity of the requests. The case law cited in the requests is, in our opinion, relevant (in the way that they are advanced in the requests) and current.

#### 4.5 In order for the consent authority to actually approve the clause 4.6 requests, the consent authority must be satisfied that:

- (a) the requests have adequately addressed the matters outlined in paragraph 4.3 above (clause 4.6(4)(a)(i)); and
- (b) the proposed development will be in the public interest because it is consistent with:
  - (i) the objectives of the particular standard; and

- (ii) the objectives for development within the zone in which the development is proposed to be carried out

(clause 4.6(4)(a)(ii)).

- 4.6 This means that if the consent authority is not satisfied as to the matters in paragraph 4.5, a development consent could not be lawfully granted on the strength of the clause 4.6 requests (if clause 4.6 actually applied).
- 4.7 In our opinion:
  - (a) the clause 4.6 requests are sufficient to allow the consent authority to be satisfied in the way that is required by clause 4.6(4)(a); and
  - (b) nothing in the clause 4.6 requests will cause the consent authority to take into account an irrelevant consideration.
- 4.8 In short, we consider that floor space ratio and height variations made on the basis of the clause 4.6 requests would be legally sound.
- 4.9 The assessment report says that:
 

Clause 4.5 of KLEP is not a development standard but is rather an instructional clause that sets out the manner in which Site Area and FSR calculations are made. It is therefore not accepted that the Applicant can lawfully seek to vary or contravene Clause 4.5.
- 4.10 It is correct that clause 4.5 ('Calculation of floor space ratio and site area') is a definitional provision, not an operative provision. Its role is to define or determine the way that floor space ratio is to be calculated under clause 4.4 ('Floor space ratio'). The clause does not set standards or have any independent operation (*Mulpha Norwest Pty Ltd v The Hills Shire Council (No 2)* [2020] NSWLEC 74 at [58]).
- 4.11 For this reason, we consider that the suggestion that the applicant cannot act outside clause 4.5 the LEP is incorrect. Clause 4.5 only has relevance because of clause 4.4. A clause 4.6 request that is supported by a consent authority can authorise a contravention of clause 4.4. This includes a contravention that arises from how clause 4.4 would normally be applied (because of clause 4.5).

## 5. The relevance of the planning agreement

- 5.1 The assessment report includes the following reason for refusal:
 

The Draft Planning Agreement is not consistent with section 7.4 of the EP&A Act as it does not provide 'public purpose'.
- 5.2 The applicant is not asking the consent authority to place any weight on the draft planning agreement. The applicant does not say that the development consent should be granted because there is an offer to enter into a planning agreement.
- 5.3 The development consent does not need to contain a condition requiring a planning agreement to be entered into.
- 5.4 Whether or not the Council enters into a planning agreement is a matter for it — and is not (in our view) determinative for any aspect of this development application.
- 5.5 Our letter of advice dated 16 September 2019 explained that issues of landownership are not a legally relevant consideration in the determination of a development application. In our view, it is sufficient — for the consent authority's purposes — that all relevant landowners have consented to the making of the development application. Issues of land title that may arise (if consent is granted) are a matter for those landowners. The mere grant of consent does not pre-empt or prejudice any person's legal property rights.



Please do not hesitate to contact me on (02) 8035 7858 or Kalinda Doyle on (02) 8035 7918 if you would like to discuss this advice.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Aaron Gadiel', is positioned above the printed name.

**Aaron Gadiel**  
**Partner**

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