



## **Clause 4.6 Variation – Height of Buildings**

### **Westmead Private Hospital Stage 3 – Alterations and Additions**

12, 12A, 14, 14B and 14C Mons Road, Westmead  
Lot 1 DP213094, Lot 1 DP515289, Lot 4 DP1242123, Lot 17  
SP66259 and Lot 2 SP97469

**Prepared by Willowtree Planning Pty Ltd on behalf  
of Ramsay Health Care**

**August 2019**



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## PART A PRELIMINARY

### 1.1 INTRODUCTION

This Clause 4.6 Variation request has been prepared to support a Development Application for the proposed demolition of the existing entry canopy, construction of new consulting suites, inpatient unit, theatres and Cath labs as well as the reconfiguration of the at-grade car parking within Westmead Private Hospital at 12, 12A, 14, 14B and 14C Mons Road, Westmead (Lot 1 DP213094, Lot 1 DP515289, Lot 4 DP1242123, Lot 17 SP66259 and Lot 2 SP97469). The proposed alterations and additions specifically comprise the construction of a building extension along the southern elevation to facilitate the creation of consulting suites and a new inpatient unit and the small extension at the northern end of the site to include theatres and Cath lab.

The proposed non-compliances are with the following development standards under the *Parramatta Local Environmental Plan 2011* (PLEP2011):

- Clause 4.3 Height of Buildings

This Variation Request has therefore been prepared in accordance with the requirements of Clause 4.6 of the PLEP2011, which includes the following objectives:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

### 1.2 PROPOSED NON-COMPLIANCE

Under the provisions of Clause 4.3 of the PLEP2011, the site is subject to a maximum building height of 12m. The proposal involves the extension the existing Westmead Private Hospital. The proposed extension generally does not breach the 12m maximum building height except for the expansion of the existing plant room which is located in the north eastern portion of site. This breach in the maximum height limit is clearly depicted in Drawing Number DA 5003 Rev P13 of the Architectural Drawings in **Appendix 3** of the Statement of Environmental Effects. Additionally, the proposed non-compliance with Clause 4.3 of the PLEP2011 has been set out in the **Table 1** below.

Table 1. CLAUSE 4.3 PROPOSED NON-COMPLIANCE				
PLEP CLAUSE	COMPLIANT HEIGHT	EXISTING HEIGHT	PROPOSED HEIGHT	VARIATION
<b>Clause 4.3 Height of Buildings</b>	12m	Existing technical non-compliance 14.29m	14.24m from ground level.	18.67% variation from the development standard

It is important to note that this breach of the maximum building height is located within a small portion of the site and is required to ensure the continued operation of Westmead Private Hospital and the proposed extension.

### 1.3 STRATEGIC JUSTIFICATION

This Clause 4.6 Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards under PLEP2011. It considers various planning controls, strategic planning objectives and existing characteristics of the site and concludes that the proposed building height non-compliance is the best means of achieving the objectives



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of encouraging orderly and economic use and development of land under Section 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).



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## PART B THRESHOLDS THAT MUST BE MET

### 2.1 CLAUSE 4.6 OF PLEP2011

In accordance with Clause 4.6 of the PLEP2011 Council is required to consider the following Subclauses:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless—*
  - (a) *the consent authority is satisfied that—*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider—*
  - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

These matters are responded to in **Part D** of this Clause 4.6 Variation.

### 2.2 CASE LAW

Relevant case law on the application of the standard Local Environmental Plan Clause 4.6 provisions have established the following principles:

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, which emphasised that the proponent must address the following:
  - Compliance with the development standard is unreasonable and unnecessary in the circumstances;
  - There are sufficient environmental planning grounds to justify contravening the development standard;
  - The development is in the public interest;
  - The development is consistent with the objectives of the particular standard; and
  - The development is consistent with the objectives for development within the zone;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, which held that the degree of satisfaction required under Subclause 4.6(4) is a matter of discretion for the consent authority;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827, which emphasized the need to demonstrate that the objectives of the relevant development standard are nevertheless achieved, despite the



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numerical standard being exceeded. Justification is then to be provided on environmental planning grounds. *Wehbe* sets out five ways in which numerical compliance with a development standard might be considered unreasonable or unnecessary as follows:

- The objectives of the standard are achieved notwithstanding the non-compliance with the standard;
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

These matters are responded to in **Part D** of this Clause 4.6 Variation.



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## PART C STANDARD BEING OBJECTED TO

### 3.1 CLAUSE 4.3 HEIGHT OF BUILDINGS

Under the provisions of Clause 4.3 of the PLEP2011, the site is subject to a maximum building height of 12m. The proposal involves the extension the existing Westmead Private Hospital. The proposed extension generally does not breach the 12m maximum building height except for the expansion of the existing plant room which is located in the north eastern portion of site. This breach in the maximum height limit is clearly depicted in Drawing Number DA 5003 Rev P13 of the Architectural Drawings in **Appendix 3** of the Statement of Environmental Effects. Additionally, the proposed non-compliance with Clause 4.3 of the PLEP2011 has been set out in the **Table 2** below.

Table 2. CLAUSE 4.3 PROPOSED NON-COMPLIANCE				
PLEP2011 CLAUSE	COMPLIANT HEIGHT	EXISTING HEIGHT	PROPOSED HEIGHT	VARIATION
Clause 4.3 Height of Buildings	12m	Existing technical non-compliance 14.29m	14.24m from ground level.	18.67% variation from the development standard

It is important to note that this breach of the maximum building height is located within a small portion of the site and is required to ensure the continued operation of Westmead Private Hospital and the proposed extension.

**Figure 1** demonstrates that extent of the variation requested. Drawing Number DA 5003 Rev P13 has also been provided at **Appendix 1** of this Clause 4.6 Report.

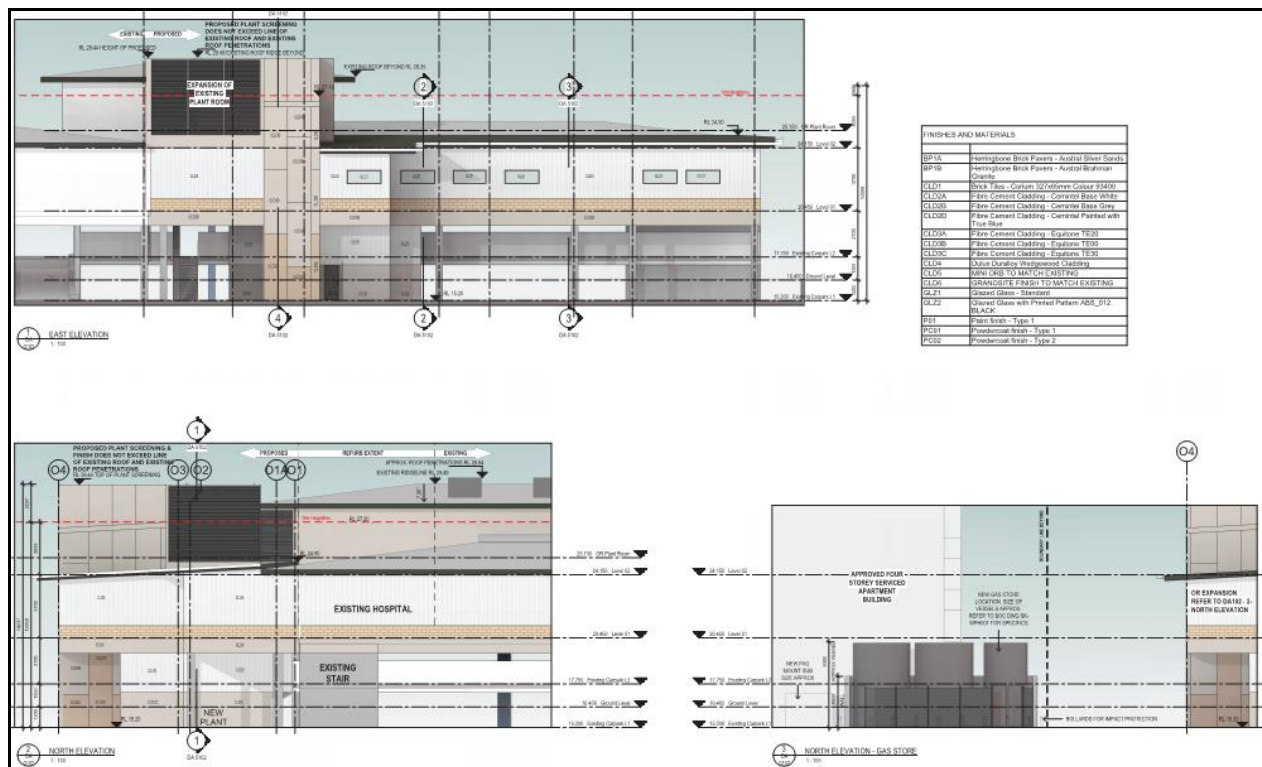


Figure 1: Proposed Variation to Building Height (STH, 2019)



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## PART D PROPOSED VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

### 4.1 OBJECTIVE OF CLAUSE 4.3 HEIGHT OF BUILDINGS STANDARD UNDER PLEP2011

A key determination of the appropriateness of a Clause 4.6 variation to a development standard is the proposed development's compliance with the underlying objectives and purpose of that development standard. Indeed, *Wehbe v Pittwater Council* recognized this as one of the ways in which a variation to development standards might be justified (refer to **Section 2.2**). In *Four2Five Pty Ltd v Ashfield Council*, it was found that the proponent must demonstrate compliance with these objectives (refer to **Section 2.2**).

Therefore, while the site is subject to a specified numerical control for building height, the objectives and underlying purpose behind the development standard are basic issues for consideration in the development assessment process.

#### 4.1.1 Height of Buildings

The objectives of Clause 4.3 under PLEP2011 are responded to as follows:

- (a) *to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,*

The proposed height non-compliance relates to the extension of the existing plant equipment that is located in the north eastern portion of the site. The extension of the area of plant equipment allows for the ongoing operation of Westmead Private Hospital and the proposed extension. Given that the proposed extension to the plant equipment is lower than the highest point of the existing building it is considered that the transition in built form is acceptable.

- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*

The proposed plant equipment will be adequately screened to minimise the visual impact from the streetscape. The proposed plant equipment will not have any impact on loss of privacy and loss of solar access to the existing development on site or surrounding development.

- (c) *to require the height of future buildings to have regard to heritage sites and their settings,*

The proposed plant equipment and associated screening has considered the height of the existing building and buildings within close proximity. The proposed plant will be lower than the highest point of the existing building and is lower than the existing buildings to the north of the site. Additionally, the area to east of the site is predominately characterised by car parking.

The proposed development is not identified as a heritage item, nor is the site located within a heritage conservation area.

- (d) *to ensure the preservation of historic views,*

The proposed development is not identified as a heritage item, nor is the site located within a heritage conservation area. Additionally, the proposed plant room and associated screening is lower than the highest point of the existing building. Therefore, the proposed development would not harm the historic views within the area.

- (e) *to reinforce and respect the existing character and scale of low density residential areas,*



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The only low-density residential properties are located to the west of the site and would not be affected by the proposed plant equipment and associated screening on the eastern façade.

- (f) *to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.*

The proposed development is lower than the highest point and does not rise over three storeys in height. Therefore, it is considered that there would not be any impact on sky exposure or daylight to existing buildings.

## 4.2 OBJECTIVES OF THE ZONE

The site is zoned B4 Mixed Use zone under the PLEP2011 and the proposed development is permissible with consent. The proposed development is consistent with the following B4 zone objectives:

- *To provide a mixture of compatible land uses.*

The proposed development proposes an extension of the existing private hospital within the Westmead Health and Education Precinct. Therefore, it is considered that the proposed development is compatible with the surrounding land uses.

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

Westmead Private Hospital is located within proximity of existing and future public transport networks. This includes both Wentworthville and Westmead Train Stations, bus stops and access to the future Parramatta Light Rail and Sydney Metro West. Therefore, the provision of additional health services facilities within proximity to public transport is supported by relevant strategic planning documentation as described within the Statement of Environmental Effects.

- *To encourage development that contributes to an active, vibrant and sustainable neighbourhood.*

The proposed extension of Westmead Private Hospital will provide additional inpatient units and consulting suites to cater for the existing and future demand for specialist health services. In addition, the proposed development will provide a more activated street frontage along Darcy Road through increased legibility. Additionally, the proposal will increase safety through additional casual surveillance.

- *To create opportunities to improve the public domain and pedestrian links.*

As stated above, the proposed development will improve pedestrian links along Darcy Road through increased legibility and increase safety through casual surveillance. Further to this, the proposed development would also result in additional planting along Darcy Road and would further improving the pedestrian links along Darcy Road.

- *To support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.*

The proposed development is for the extension to a private hospital and would not detract from the B3 Commercial Core zone.

- *To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.*

The proposed development is not located within the Parramatta City Centre.



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### 4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

Subclause 4.6(3)(a) and the judgement in *Four2Five Pty Ltd v Ashfield Council* (refer to **Section 2.2**) emphasise the need for the proponent to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances.

As shown in **Section 4.1**, the proposed development is considered consistent with the objectives of Clause 4.3.

Compliance with the Clause 4.3 requirement is considered unnecessary given that the objectives of the site are achieved notwithstanding the non-compliance, and the underlying objective of the development standard would be defeated in the event a compliant scheme was proposed.

### 4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

As demonstrated in **Section 4.1** the proposed development would result in a built form outcome which meets the future desired outcome of the site as prescribed by the PLEP2011. The proposed development is permissible with consent at the site, maintains the existing use of the site and is consistent with objectives of the B4 zone.

The proposed development is justified on the following environmental planning grounds:

- The proposed development is entirely consistent with the underlying objectives or purposes of the standards as demonstrated in **Section 4.1**;
- The proposed development is entirely consistent with the underlying objective or purpose of the B4 High Mixed Use zone as demonstrated in **Section 4.2**;
- Strict compliance with these development standards would result in the inability to co-locate plant equipment required to service Westmead Private Hospital; and
- The proposed development would not result in significant environmental or amenity impacts.

### 4.5 PUBLIC INTEREST

As outlined in **Section 2.2**, *Four2Five Pty Ltd v Ashfield Council* emphasised that it is for the proponent to demonstrate that the proposed non-compliance with the development standard is in the public interest. Subclause 4.6(4)(a)(ii) requires the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

**Section 4.1** and **4.2** have already demonstrated how the proposed development is consistent with the objectives of both Clause 4.3 and the B4 zone under the PLEP2011.

In *Lane Cove Council v Orca Partners Management Pty Ltd* (No 2) [2015] NSWLEC 52, Sheahan J referred to the question of public interest with respect to planning matters as a consideration of whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development.

The public advantages of the proposed development are as follows:

- The additional provision of health services facilities in the Westmead Health and Education Precinct including, but not limited to, the provision of additional inpatient units and consulting suites; and
- Provide a development outcome that is compatible with the surrounding health and education precinct.



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There are no significant public disadvantages which would result from the proposed development. The proposed development is therefore considered to be justified on public interest grounds.

#### **4.6 MATTERS OF STATE AND REGIONAL SIGNIFICANCE**

The proposed non-compliances with Clause 4.3 would not arise any matters of significance for State or Regional Environmental Planning. It would also not conflict with any State Environmental Planning Policy or Ministerial Directives under Section 117 of the EP&A Act.

Planning circular PS 08-014, issued by the NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by Council rather than under delegation. The proposed development would result in exceedances of the relevant planning controls as follows:

- Variation of maximum building height control of 18.67% departure from the Council's development standards.

The non-compliance is more than 10% prescribed in this planning circular.

#### **4.7 PUBLIC BENEFIT IN MAINTAINING THE STANDARD**

Strict compliance with Clause 4.3 would result in:

- Minimising opportunities to develop the site for future occupiers; and
- Preventing the renovation and rejuvenation of the site;

As such, there is no genuine public benefit in maintaining the strict building height control for the site.

#### **4.8 SUMMARY**

For the reasons outlined above, it is considered that the objection to Clause 4.3 of the PLEP2011 are well-founded in this instance and the granting of a Clause 4.6 variation to this development standard is appropriate in the circumstances. Furthermore, the objection is considered to be well-founded for the following reasons as outlined in Clause 4.6 of the MLEP 2013, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*.

- Compliance with the development standard is unreasonable and unnecessary in the circumstances;
- There are sufficient environmental planning grounds to justify contravening the development standard;
- The development is in the public interest;
- The development is consistent with the objectives for development within the zone;
- The objectives of the standard are achieved notwithstanding the non-compliance with the standard;
- The development does not negatively impact on any matters of State and regional significance; and
- The public benefit in maintaining strict compliance with the development standard would be negligible.

Further to this, it is submitted that:

- Strict compliance with the standards would not result in a better planning outcome for the land as it may prevent the development of a well considered proposal;
- No unreasonable impacts are associated with the proposed development.



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Overall it is considered that the proposed Clause 4.6 variation to the building height control is appropriate and can be justified having regard to the matters listed above.



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## PART E CONCLUSION

It is requested that City of Parramatta Council and the Parramatta Local Planning Panel exercise their discretion (as identified in *Randwick City Council v Micaul Holdings Pty Ltd* – refer to **Section 2.2**) and find that this Clause 4.6 variation adequately addresses the matters required to be demonstrated by Subclause 4.6(3) of the PLEP2011 (refer to **Section 2.1**).

This is particularly the case given the proposed development is otherwise compliant with the PLEP2011, and the suitability of the site for the proposed development.



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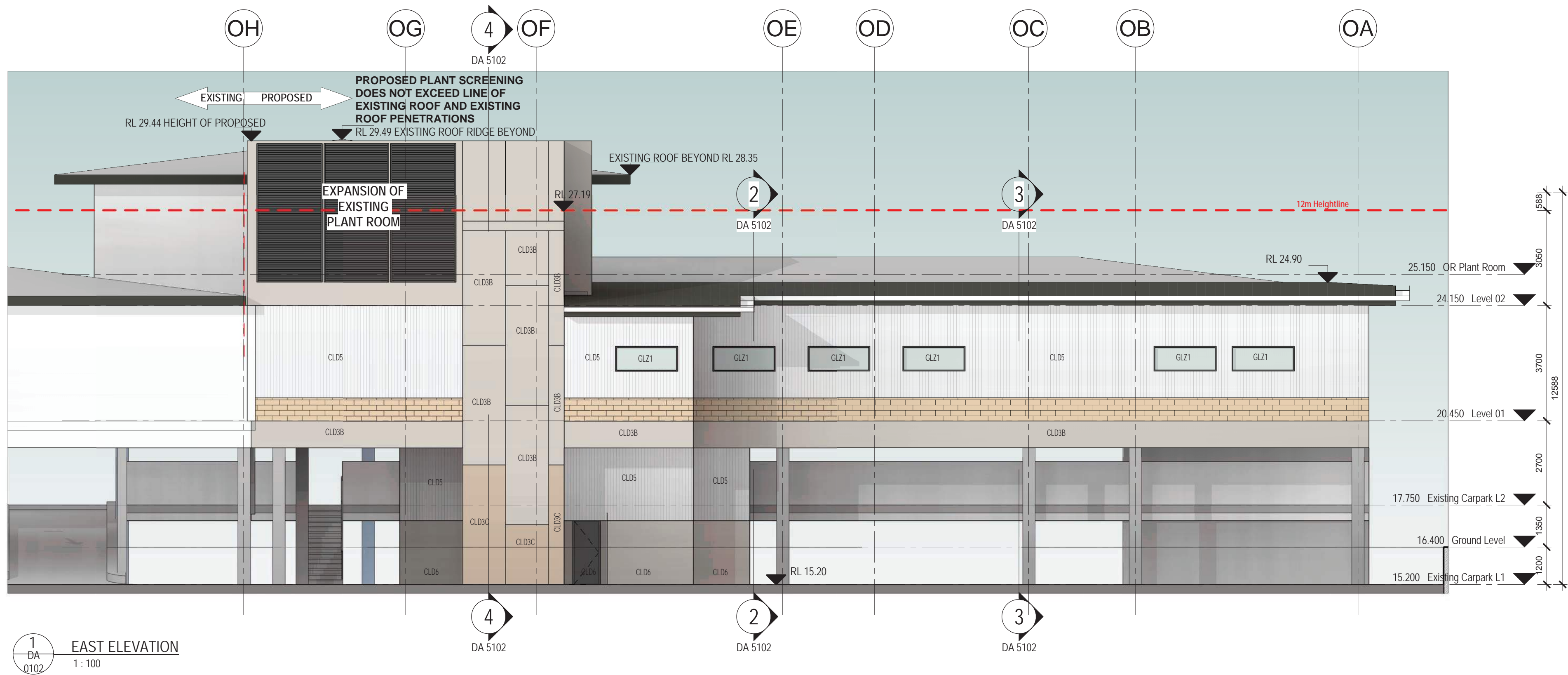
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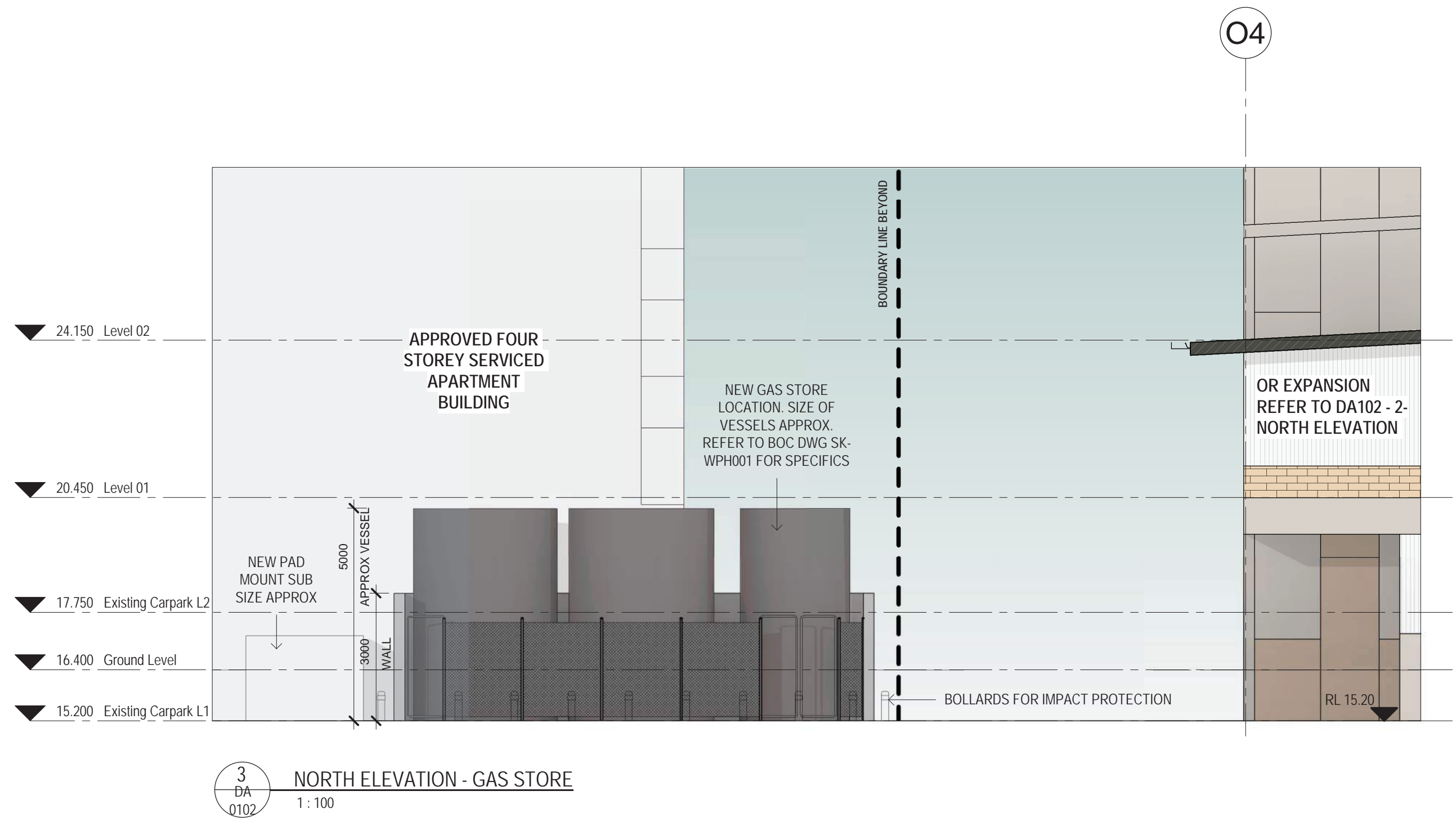
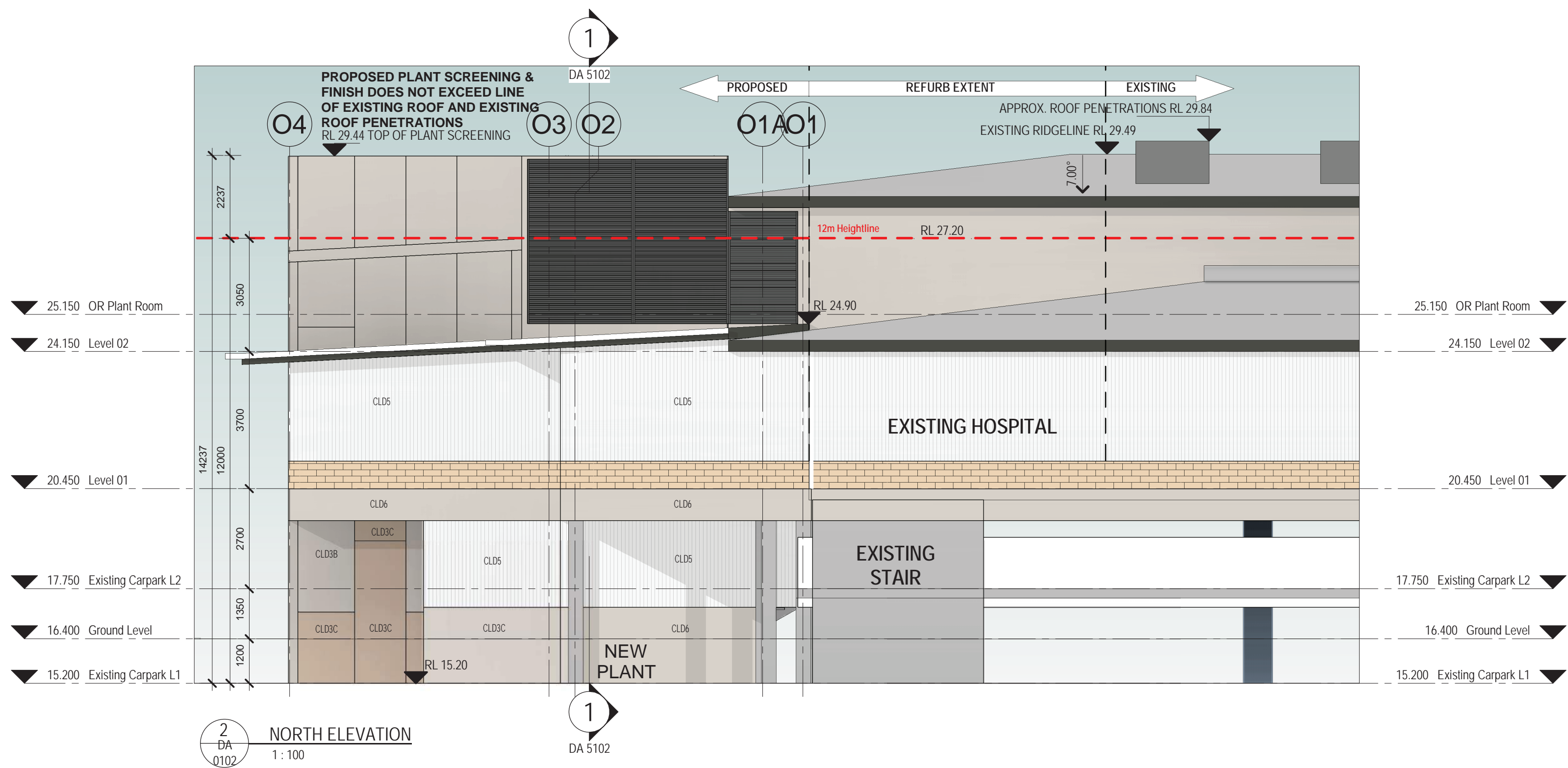
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### **APPENDIX 1 – Drawing Number DA 5003 Rev 13**





FINISHES AND MATERIALS	
BP1A	Herringbone Brick Pavers - Austral Silver Sands
BP1B	Herringbone Brick Pavers - Austral Brahman Granite
CLD1	Brick Tiles - Corium 327x65mm Colour 93400
CLD2A	Fibre Cement Cladding - Cemintel Base White
CLD2B	Fibre Cement Cladding - Cemintel Base Grey
CLD2D	Fibre Cement Cladding - Cemintel Painted with True Blue
CLD3A	Fibre Cement Cladding - Equitone TE20
CLD3B	Fibre Cement Cladding - Equitone TE00
CLD3C	Fibre Cement Cladding - Equitone TE30
CLD4	Dulux Duralloy Wedgewood Cladding
CLD5	MINI ORB TO MATCH EXISTING
CLD6	GRANOSITE FINISH TO MATCH EXISTING
GLZ1	Glazed Glass - Standard
GLZ2	Glazed Glass with Printed Pattern ABS_012. BLACK
P01	Paint finish - Type 1
PC01	Powdercoat finish - Type 1
PC02	Powdercoat finish - Type 2



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