

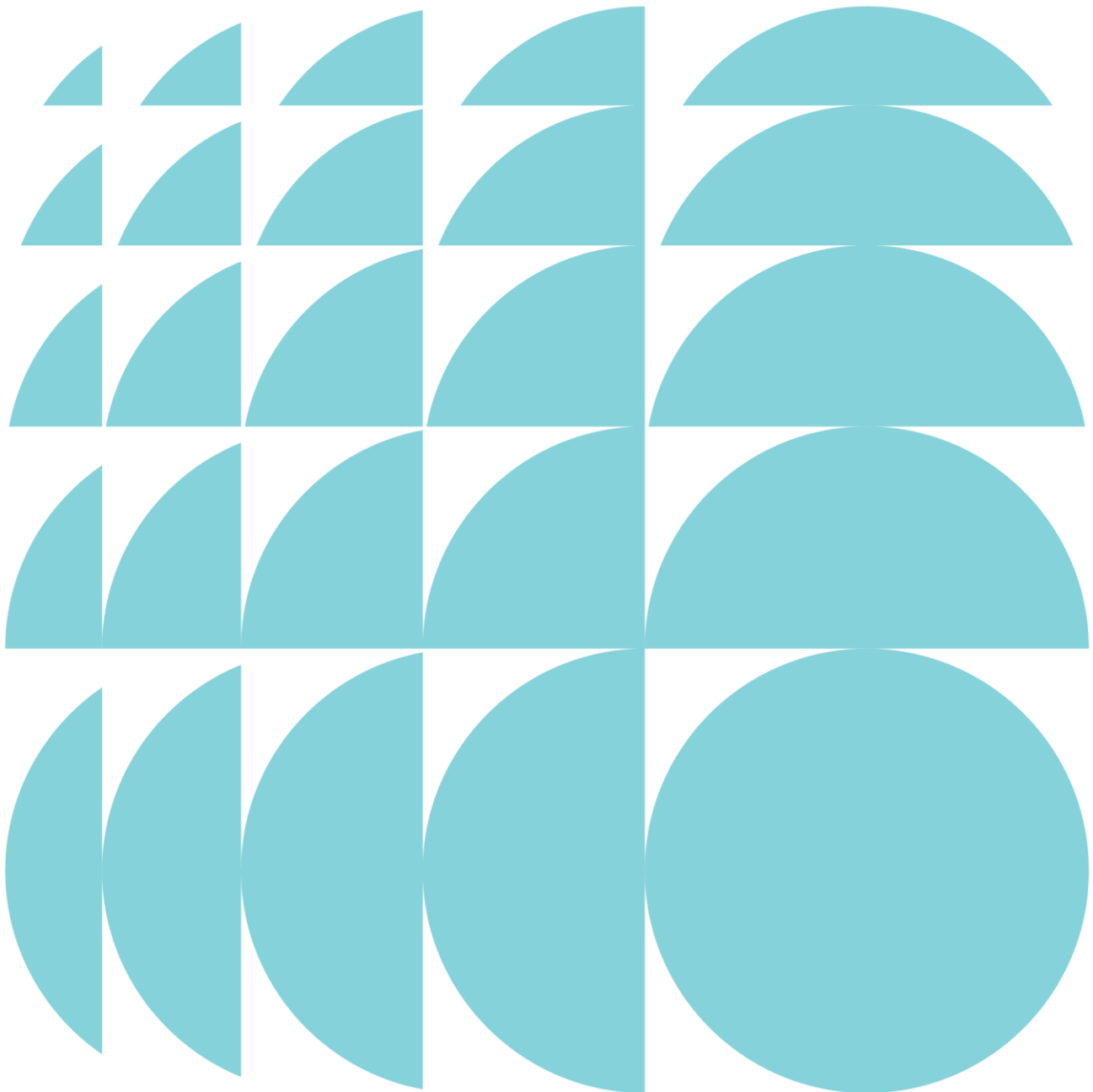
# ETHOS URBAN

## Clause 4.6 Variation

2-6 Pilgrim Avenue & 11-13 Albert Road,  
Strathfield  
Mixed Use Development

Submitted to Strathfield Municipal Council  
On behalf of Convertia Pty Ltd

29 June 2021 | 2200600



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	<i>Kennedy Associates Architects</i>	

## 1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of Convertia Pty Ltd. It is submitted to Strathfield Municipal Council (Council) in support of a development application (DA) Council for a mixed use development at 2-6 Pilgrim Avenue & 11-13 Albert Road, Strathfield (the site).

Clause 4.6 of the *Strathfield Local Environmental Plan 2012* (Strathfield LEP 2012) enables Council to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

This clause 4.6 variation request relates to the development standard for Floor Space Ratio (FSR) under clause 4.4 of the Strathfield LEP 2012 and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated 22 December 2020, and covering letter prepared by Ethos Urban dated 30 June 2021 in response to Council's request for information, design review panel comments and local planning panel comments.

This clause 4.6 variation request demonstrates that compliance with the FSR development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.

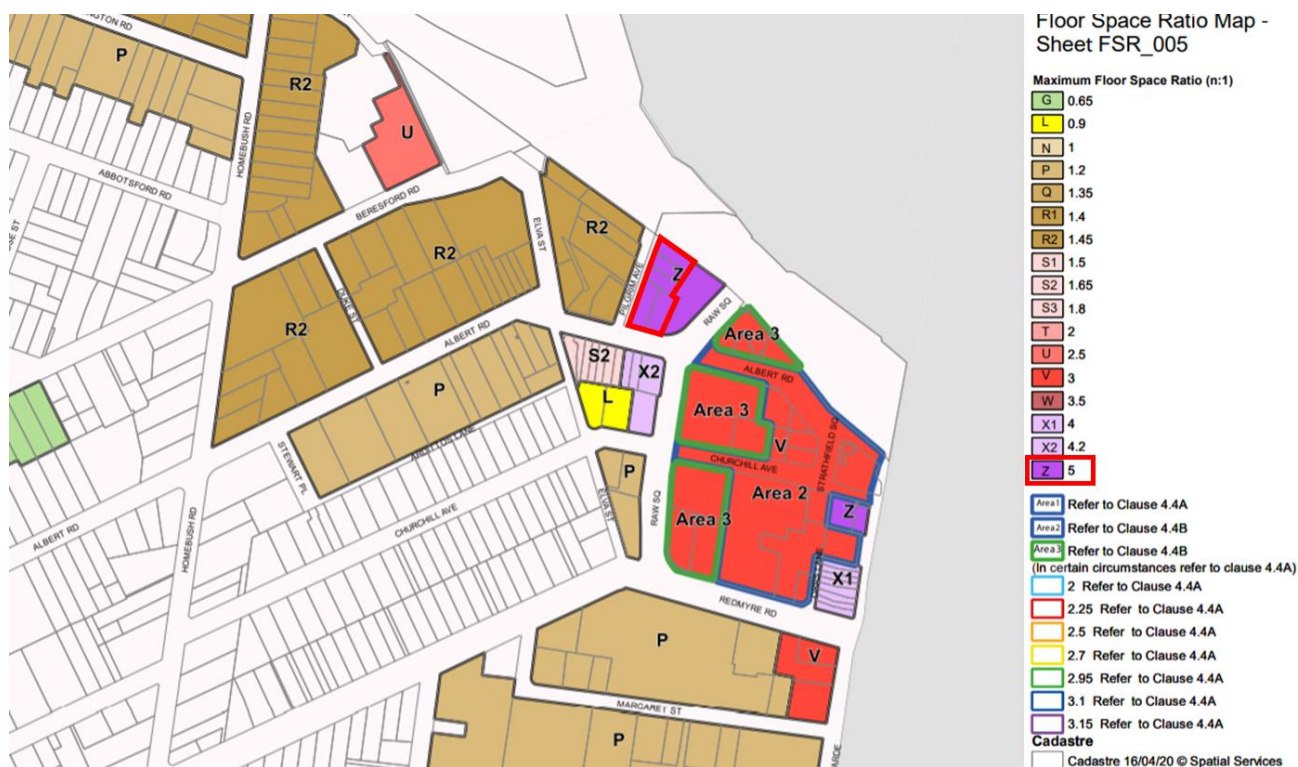
This clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the FSR development standard, the proposed development:

- Prioritises the satisfaction of Sydney Trains' anti-throw measures to maintain safe operation of the adjacent railway corridor;
- Has an identical built form and envelope as a development without semi-enclosed balconies facing the railway corridor;
- Does not result in any adverse impacts related to visual bulk and scale or environmental amenity;
- Exhibits a high-quality façade composed of fixed fins and glass louvres to the railway corridor, along which the greatest numbers of viewers of the site will pass;
- Fulfills the strategic intent of the 30 Minute City, reflected in the recent re-zoning of the site to permit high-density mixed-use commercial and residential development close to public transport; and
- Is consistent with the high density built form scale of Strathfield Town Centre.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the Strathfield LEP 2012.

## 2.0 Development Standard to be Varied

This clause 4.6 variation request seeks to justify contravention of the development standard set out in clause 4.4 of the Strathfield LEP 2012. Clause 4.4 provides that the maximum FSR permitted on the site is 5:1, as shown on the Floor Space Ratio Map (sheet FSR\_005) (see **Figure 1** below).



**Figure 1 Floor Space Ratio that applies to the site**

Source: Strathfield LEP 2012

The area of the site is 2,868m<sup>2</sup>, which, based on the 5:1 FSR development standard, provides for a total developable floor space of 14,340m<sup>2</sup>. The proposal provides a total gross floor area (GFA) of 14,881.8m<sup>2</sup>, which equates to an FSR of 5.2:1. The proposed additional 541.8m<sup>2</sup> of GFA (which relates purely to 'enclosed' balconies) therefore results in an exceedance of the maximum FSR development standard by 0.2:1 which equates to a minimal 3.78% variation.

### Context to the Proposed Variation

The principle reason for the variation is a result of the site's location immediately adjacent to the main east-west railway corridor within the Sydney metropolitan area (servicing the T1, T2 and T9 rail lines), which necessitates the inclusion of design safety measures that are required by Sydney Trains where buildings are within 20m of the railway boundary. These design measures are required to be included to maintain the safety of Sydney Trains' staff and assets in accordance with the Department of Planning's *Development near Rail Corridors and Busy Roads – Interim Guide 2008*. This includes preventing opportunities for objects to land or be thrown onto Sydney Trains land from the windows and balconies of adjoining properties within 20m of a railway corridor.

In response to the site-specific consequences, a combination of fixed open fins and adjustable glass louvres above a balustrade are proposed for the 41 balconies on Level 2 and above which face the railway corridor, to prevent opportunities for objects to be thrown onto the railway corridor. These fins and louvres have a maximum opening width of 80mm to comply with Sydney Trains' requirements and are proposed for the sole purpose of meeting the anti-throw requirements.

As a first principle, balconies that have a balustrade of maximum 1.4m in height are not counted as GFA. Given the proposed balcony balustrades have a height of 0.9m, they would not be counted as GFA but for their semi-enclosure. The key issue is whether their semi-enclosure with adjustable louvres would render the balconies internal space and be counted as GFA.

This matter is addressed in *Haralambis Management Pty Ltd v Council of the City of Sydney* [2013] NSWLEC 1009. In this matter, the Court held that the floor area inside closeable bi-fold windows over solid balustrades and closable aluminium framed glass louvres, was to be included in the calculation of GFA (at [56]). In contrast, the Court agreed and accepted that the floor area inside permanently open louvres above a solid balustrade were to be excluded

from the calculation of GFA. Critically, the Court noted that “For a balcony to be open space there should be a degree of openness and exposure to the elements. An area that can by choice be permanently enclosed and used as a habitable room would not be open space.” Therefore, the key factors are the degree of openness to the elements (being wind, rain and other weather events) and opportunity for permanent enclosure of the balcony.

**Table 1 Vertical façade area calculations**

Unit	Vertical balustrade area (m <sup>2</sup> )		Vertical fixed open area (m <sup>2</sup> )		Vertical adjustable glass louvres area (m <sup>2</sup> )		Total vertical area of balcony (m <sup>2</sup> )
P023	9.70	39.0%	4.76	19.15%	10.40	41.8%	24.86
P033	9.70	36.4%	5.32	19.97%	11.62	43.6%	26.64
P043	9.70	30.3%	7.00	21.89%	15.28	47.8%	31.98
P053	9.70	39.0%	4.76	19.15%	10.40	41.8%	24.86
P063	9.70	39.0%	4.76	19.15%	10.40	41.8%	24.86
P073	9.70	39.0%	4.76	19.15%	10.40	41.8%	24.86
P083	9.70	39.0%	4.76	19.15%	10.40	41.8%	24.86
P093	9.70	39.0%	4.76	19.15%	10.40	41.8%	24.86
P103	9.70	36.4%	5.32	19.97%	11.62	43.6%	26.64
P113	9.70	39.0%	4.76	19.15%	10.40	41.8%	24.86
P123	9.70	36.4%	5.32	19.97%	11.62	43.6%	26.64
P133	9.70	39.0%	4.76	19.15%	10.40	41.8%	24.86
P143	9.70	29.5%	7.27	22.12%	15.89	48.4%	32.86
P024	4.37	39.0%	2.56	22.86%	4.27	38.1%	11.20
P034	4.37	36.4%	2.86	23.83%	4.77	39.8%	12.00
P044	4.37	30.3%	3.76	26.11%	6.27	43.5%	14.40
P054	4.37	39.0%	2.56	22.86%	4.27	38.1%	11.20
P064	4.37	39.0%	2.56	22.86%	4.27	38.1%	11.20
P074	4.37	39.0%	2.56	22.86%	4.27	38.1%	11.20
P084	4.37	39.0%	2.56	22.86%	4.27	38.1%	11.20
P094	4.37	39.0%	2.56	22.86%	4.27	38.1%	11.20
P104	4.37	36.4%	2.86	23.83%	4.77	39.8%	12.00
P114	4.37	39.0%	2.56	22.86%	4.27	38.1%	11.20
P124	4.37	36.4%	2.86	23.83%	4.77	39.8%	12.00
P134	4.37	39.0%	2.56	22.86%	4.27	38.1%	11.20
P144	4.37	29.5%	3.91	26.42%	6.52	44.1%	14.80
P025	3.57	39.0%	2.20	24.04%	3.38	36.9%	9.15
P035	3.57	36.4%	2.46	25.08%	3.78	38.5%	9.81
P045	3.57	30.3%	3.24	27.50%	4.97	42.2%	11.78
P055	5.65	39.0%	5.46	37.68%	3.38	23.3%	14.49
P065	5.65	39.0%	5.46	37.68%	3.38	23.3%	14.49
P075	5.65	39.0%	5.46	37.68%	3.38	23.3%	14.49
P085	5.65	39.0%	5.46	37.68%	3.38	23.3%	14.49
P095	5.65	39.0%	5.46	37.68%	3.38	23.3%	14.49
P105	5.65	36.4%	6.09	39.24%	3.78	24.4%	15.52
P115	5.65	39.0%	5.46	37.68%	3.38	23.3%	14.49
P125	5.65	36.4%	6.09	39.24%	3.78	24.4%	15.52

Unit	Vertical balustrade area (m <sup>2</sup> )		Vertical fixed open area (m <sup>2</sup> )		Vertical adjustable glass louvres area (m <sup>2</sup> )		Total vertical area of balcony (m <sup>2</sup> )
P135	5.65	39.0%	5.46	37.68%	3.38	23.3%	14.49
P145	5.65	29.5%	8.33	43.50%	5.17	27.0%	19.15
P026	3.08	39.0%	1.38	17.49%	3.43	43.5%	7.89
P036	3.08	36.4%	1.54	18.20%	3.84	45.4%	8.46
<b>Total vertical area (m<sup>2</sup>)</b>	<b>256.28</b>	-	<b>174.59</b>	-	<b>266.28</b>	-	<b>697.15</b>
<b>% of vertical façade</b>	<b>37%</b>	-	<b>25%</b>	-	<b>38%</b>	-	<b>100%</b>

An analysis of the proposed balcony facades shows that on average, 37% of each balcony façade is balustrade, 25% is composed of fixed open fins, and the remaining 38% is composed of adjustable glass louvres. As over a quarter of the balcony façade has is permanently open, it is arguable that the balconies are open space. Moreover, only approximately one third of the balcony façades are able to be closed by choice. Further diagrams and details relating to these calculations are provided at **Appendix A**. As such, it is the Applicant's view that the 'semi-enclosed' balconies fall within the characterisation of 'open space' in *Haralambis* and therefore should not be counted as GFA. Notwithstanding this, this clause 4.6 variation request has been prepared to assist the Sydney Eastern City Planning Panel in determining the application, given the environmental merits of the proposed FSR exceedance.

Importantly, the GFA exceedance of 541.8m<sup>2</sup> is directly attributed solely to the inclusion of these 'semi-enclosed' balconies as GFA. Therefore, notwithstanding the balconies facing the railway corridor, the proposed development is entirely compliant with the permissible FSR of the site, having 14,338.9m<sup>2</sup> of GFA (5:1). Further, the detailed percentage of balcony enclosure can be more precisely defined by calculating the percentage of balcony frontage that consists of fixed-open fins, as opposed to balustrades and adjustable glass louvres that 'enclose' the balconies. As demonstrated in **Table 1** above, on average, 25% of the balcony facades are permanently fixed open.

Accordingly, the GFA exceedance could be reduced by 25% to 406.35m<sup>2</sup>. Notwithstanding, the variation sought by this Clause 4.6 Variation request seeks 0.2:1 above the 5:1 FSR development standard, being 541.8m<sup>2</sup>.

The overall extent of the GFA exceedance is summarised in **Table 2** below.

**Table 2 Floor space ratio calculations**

Key Numerics	
Site Area	2,868m <sup>2</sup>
Total Permissible GFA	14,340m <sup>2</sup>
Commercial GFA	201.3m <sup>2</sup>
Residential GFA	14,137.6m
'Semi-enclosed' Balcony GFA	542.9m <sup>2</sup>
Total Variation above permissible GFA	541.8m <sup>2</sup>
Total GFA	14,881.8m <sup>2</sup>
Total FSR	5.2:1
<b>Total GFA (excluding 'semi-enclosed' balconies)</b>	<b>14,338.9m<sup>2</sup></b>
<b>Total FSR (excluding 'semi-enclosed' balconies)</b>	<b>5:1</b>



### 3.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Strathfield LEP 2012 provides that:

#### 4.6 Exceptions to development standards

- (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.*

Further, clause 4.6(4)(a) of the Strathfield LEP 2012 provides that:

- (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.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council [2007] NSW LEC 827; and*
2. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009.*
3. *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 (Initial Action);*
4. *Baron Corporation Pty Ltd v The Council of the City of Sydney [2018] NSWLEC 1552 (Baron Corporation); and*
5. *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245 (Al Maha).*

The relevant matters contained in clause 4.6 of the Strathfield LEP 2012, with respect to the Floor Space Ratio development standard, are each addressed below, including with regard to these decisions.

#### Role of the consent authority

The role of the consent authority in considering a request for a clause 4.6 variation has been explained by the NSW Court of Appeal in *Initial Action* and in *Al Maha* to require that the consent authority needs to be satisfied in relation to two matters:

- That the applicant's request has adequately addressed the matters in in clause 4.6(4)(a)(i); and
- That the proposed development will be in the public interest because of its consistence with the objectives of the development standard and the zone objectives.

The consent authority is required to form these two opinions first before it considers the merits of the DA and it can only consider the merits of the DA if it forms the required satisfaction in relation to the matters. In particular, the consent authority needs to be satisfied that there are proper planning grounds to grant consent and that the contravention of the standard is justified. This report provides the basis for the consent authority to reach this level of satisfaction.



Accordingly, the relevant matters contained in clause 4.6 of the Strathfield LEP 2012, with respect to the floor space ratio development standard, are each addressed below, including with regard to the above decisions.

### 3.1 **Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the Strathfield LEP 2012 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- 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 (**Fourth Method**).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the First Method.

#### 3.1.1 **The underlying objectives or purposes of the development standard**

The relevant objectives of the development standard contained in clause 4.4 of the Strathfield LEP 2012 are:

- (a) to ensure that dwellings are in keeping with the built form character of the local area,
- (b) to provide consistency in the bulk and scale of new dwellings in residential areas,
- (c) to minimise the impact of new development on the amenity of adjoining properties,
- (d) to minimise the impact of development on heritage conservation areas and heritage items,
- (e) in relation to Strathfield Town Centre—
  - (i) to encourage consolidation and a sustainable integrated land use and transport development around key public transport infrastructure, and
  - (ii) to provide space for the strategic implementation of economic, social and cultural goals that create an active, lively and people-orientated development,
- (f) in relation to Parramatta Road Corridor—to encourage a sustainable consolidation pattern that optimises floor space capacity in the corridor.

### 3.1.2 The objectives of the standard are achieved notwithstanding non-compliance with the standard

The objectives of the FSR standard predominantly set out to ensure that the new residential development has a density, bulk and scale that is consistent with its surrounding built form character. Furthermore, it seeks to minimise the impact of new development on the amenity of adjoining properties and heritage items. This is reflected in the objectives outlined below:

- a) to ensure that dwellings are in keeping with the built form character of the local area,
- b) to provide consistency in the bulk and scale of new dwellings in residential areas,
- c) to minimise the impact of new development on the amenity of adjoining properties,
- d) to minimise the impact of development on heritage conservation areas and heritage items

It is noted that objectives in clause 4.4(1)(e)-(f) are not relevant to the proposed development as the site is not located in Strathfield Town Centre (albeit adjacent to) or on the Parramatta Road Corridor.

These objectives are satisfied by the proposal despite the numerical variation from the FSR standard. The proposed development, including the additional GFA, will continue to achieve the objectives of the standard for the following reasons set out below.

#### Objective (a): to ensure that dwellings are in keeping with the built form character of the local area

The proposed development is consistent with the built form character of the area surrounding Strathfield Town Centre in that it is of a residential flat building typology that is increasingly prevalent in the immediate and broader area. It is clear that increased density on the site is desirable and acceptable, as the site was the subject of a gazetted planning proposal in July 2020 which increased the height and FSR of the site, in keeping with its strategic location near the Strathfield Town Centre and Railway Station. When complete, the proposed development will form the final piece of high-rise residential development at the gateway to Strathfield Town Centre on Raw Square and Albert Road.

The proposed development is consistent with the surrounding residential flat buildings that also have balconies (not enclosed) orientated towards the railway corridor such as Regal Court at 5 Albert Road, constructed over two decades ago before anti-throw measures were introduced. It is only because of recently imposed anti-throw measures in 2008, that the north-facing balconies require semi-enclosure. Strict compliance with the permissible FSR would result in a poor, unsafe planning outcome and contextually inappropriate outcome, especially for commuters and rail workers.

Therefore, the proposed mixed-use development is consistent with the surrounding built form of residential flat buildings and the orientation of balconies facing the railway corridor.

#### Objective (b): to provide consistency in the bulk and scale of new dwellings in residential areas

The proposed development is of a similar or lesser height, bulk and scale than a number of existing developments such as Regal Court at 5 Albert Road and recently constructed developments in the locality such as 38 Albert Road and 23-25 Churchill Avenue. At Albert Road, the proposed Building A is the same height as the 11-storey mixed used development on the southern side of Albert Road (38 Albert Road). Moreover, the slender form of the two towers with a maximum height of 15 storeys is of a lesser bulk, height and scale as the 17-storey Regal Court on the eastern side of Raw Square which presents a comparatively bulkier and higher development. As the proposed development is further from Strathfield Town Centre, the proposed stepping down in height and scale on the site is a contextually appropriate and consistent urban design response. It is noted that the 'semi-enclosure' of the north facing balconies does not affect the bulk and scale of the building, as non-enclosed balconies (being the existing balconies without the semi-enclosure to address anti-throw measures), which do not count as GFA, would still be present to an identical form and scale.

The visual catchment of the northern façade is also an important contextual consideration. The north-facing balconies do not affect the perceived bulk and scale by pedestrians on Raw Square, as they can only be seen from the railway corridor. Conversely, the use of fins and louvres on the northern façade (which incidentally have resulted in a potential FSR exceedance) assist in articulating an otherwise blank façade which would have an appearance of greater bulk, producing a better planning and design outcome. This is beneficial as Council's Design Review Panel

noted in a meeting held on 19 May 2021, that the northern-façade required high-quality articulation as it is likely to be the most viewed façade, owing to the number of commuters along the major railway corridor.

**Objective (c): to minimise the impact of new development on the amenity of adjoining properties**

The proposed development does not affect the visual privacy, solar access or residential amenity of any adjoining or nearby properties. With respect to the north-facing balconies, they do not adjoin any properties as they front onto the railway corridor, and therefore cannot affect the amenity of any adjoining properties. In fact, the semi-enclosure of these balconies, from which the FSR exceedance stems, is integral to maintaining safety and useability of the railway corridor, to prevent any throwing of objects that may impact passing trains.

**Objective (d): to minimise the impact of development on heritage conservation areas and heritage items**

There are no heritage items or heritage conservation areas in the surrounding area. Therefore, the proposed development meets this objective.

**3.1.3 Conclusion on clause 4.6(3)(a)**

Compliance with the FSR development standard is also unreasonable in the circumstances of the case as the objectives of the standard to ensure that the new residential development has a density, bulk and scale that is consistent with its surrounding built form character are achieved notwithstanding non-compliance with the standard.

The necessity to satisfy anti-throw measures far outweighs the lack of any adverse impact from non-compliance with the FSR development standard.

**3.2 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard**

Clause 4.6(3)(b) of the Strathfield LEP 2012 requires the contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole.

Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (Initial *Action* at [24]). Further, compliance with other planning instruments, such as SEPP65 and the Apartment Design Guide, does not justify non-compliance with the development standard and is not sufficient environmental planning grounds to justify contravening the development standard (*Baron Corporation* at [58]).

There are sufficient environmental planning grounds to justify contravention of the floor space ratio development standard in this specific instance, as described below.

**3.2.1 Ground 1: Rail Corridor Safety**

Compliance with the FSR development standard is unreasonable in the circumstances of the case as the 'semi-enclosure' of the balconies on the north façade is a direct and mandatory response to Sydney Train's anti-throw measures. It is paramount that the proposed development responds to its site-specific context that requires the maintenance of safe operation of the railway corridor.

**3.2.2 Ground 2: Provision of Strategically Located Housing**

The site is well-located near Strathfield Railway Station and Strathfield Town Centre. The high degree of accessibility to public transport resulted in the recent uplift in development potential for the site, enabled by a gazetted Planning Proposal in response to the NSW Government's strategic vision for a '30 Minute City'. As such, any setting back of the proposed development to avoid anti-throw measures would not fulfill Sydney's strategic planning objectives, as maximum development yield would not be achieved.

**3.2.3 Ground 3: Improved Building Articulation**

As explained above, the proposed fixed open fins and louvres improve the façade articulation, detailing and overall presentation to the railway corridor which will be visible to the greatest number of people, being commuters. While

architectural merit is not the primary reason for the semi-enclosure of the balconies, this improved design outcome demonstrates that exceedance of the FSR standard does not result in adverse impacts related to building bulk, form or scale. It is important to note that the semi-enclosure of the balconies does not change the building envelope when compared to a scheme with open balconies facing the railway corridor.

### 3.2.4 Ground 4: No adverse environmental impacts

Inclusion of the semi-enclosed balconies does not result in any unacceptable overshadowing impacts on the surrounding area. With the shadowing over the proposed scheme being consistent with that of a scheme that didn't include the semi-enclosed balconies. The proposed variation therefore does not result in an unacceptable amenity impact on existing surrounding residential properties.

### 3.2.5 Conclusion on clause 4.6(3)(b)

Therefore, there are sufficient environmental planning grounds to contravene the FSR development as:

- Maintaining safe operation of the railway corridor is of paramount importance and requires mandatory compliance.
- The footprint of the proposed development maximises the site's strategic planning potential.
- There are no adverse visual bulk or scale impacts as a result of the semi-enclosure of the balconies, which conversely improve the articulation of the development's most-viewed façade.
- The semi-enclosed balconies do not result in any unacceptable amenity impacts on the surrounding area.

## 3.3 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

In *Initial Action* at [27], it was held that it is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

### 3.3.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the FSR development standard, for the reasons discussed in section 3.1.2 of this report.

### 3.3.2 Consistency with objectives of the zone

The proposed development is consistent with the objectives of the B4 Mixed Use Zone, as demonstrated below.

#### Objective (a): To provide a mixture of compatible land uses

The proposed development provides residential and retail/commercial development which is compatible with the site's location adjacent the Strathfield Railway Station and Strathfield Town Centre, and contributes to the concentration of high density development near the major public transport node. Given the site's strategic location, the basement also provides 30 parking spaces to be dedicated to Council for commuter parking.

#### Objective (b): 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

As above, the site integrates residential and retail/commercial development, with ample commercial and Council-dedicated commuter parking, on a site which is within a 2-minute walk to Strathfield Railway Station. This high degree of accessibility will encourage residents to walk to Strathfield Railway Station and the Town Centre, while also encouraging visitors to walk from the adjacent Town Centre to the retail/commercial tenancies proposed on the ground floor.

**Objective (c): To facilitate mixed use urban growth around railway stations and transport nodes and corridors, commercial centres and open space**

The proposed development comprises a mixed-use residential and retail/commercial development. It is well-located within a 2-minute walking catchment of Strathfield Railway Station, a major transport interchange along Sydney's largest transport corridor between Parramatta to Sydney CBD. It is also located adjacent to Strathfield Town Centre.

**Objective (d): To provide local and regional employment and live and work opportunities**

The site's location near Strathfield Railway Station, allows for residents to easily commute to local and strategic centres such as Strathfield and Burwood, and to regional centres like Parramatta within 30 minutes. This provides many opportunities for residents to live and work in the same region to fulfill the strategic vision of a 30 minute city for Sydney.

### 3.4 Other Matters for Consideration

Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General must consider the following matters:

- (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 addressed in detail below.

#### 3.4.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation of the FSR development standard does not raise any matter of significance for State or regional planning. We do note, however, that the proposal is consistent with the most recent metropolitan plan for Sydney, A Plan for Growing Sydney in that it:

- Provides accommodation and services to meet the needs of the local population, both at the present time and in the future as Sydney's population grows and ages.
- Is well located to a major public transport interchange, providing efficient connections to nearby strategic and regional centres to fulfill to the 30 minute city vision.
- Does not affect any heritage assets.

#### 3.4.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

As demonstrated above, there is no public benefit in maintaining the FSR development standard in terms of State and regional planning objectives. More importantly, maintaining the FSR development in this circumstance would be detrimental to the safety of commuters along Sydney's most-travelled railway corridor. It is clear that the maintenance of safety along the rail corridor far outweighs the lack of any adverse environmental impacts.

#### 3.4.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.

The proposed variation to the FSR development standard will facilitate the orderly and economic redevelopment of a site that has recently been re-zoned to permit high-density mixed-use commercial and residential development close to public transport. The proposed development will therefore assist in the achievement and of the strategic objectives of A Metropolis of Three Cities and the LEP.

## 4.0 Conclusion

The assessment above demonstrates that compliance with the Floor Space Ratio development standard contained in clause 4.4 of the Strathfield LEP 2013 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

It is important to note that according to the case of *Haralambis*, the degree of fixed openness of the 'semi-enclosed' balconies should be characterised as open space, and therefore not counted as GFA. In this case, the proposed development is entirely compliant with the site's permissible FSR, as the GFA exceedance is solely attributed to the debatable inclusion of the 'semi-enclosed' balconies as GFA.

Notwithstanding, this clause 4.6 variation demonstrates that, despite the non-compliance with the Floor Space Ratio development standard, the proposed development:

- Prioritises the satisfaction of Sydney Trains' anti-throw measures to maintain safe operation of the adjacent railway corridor.
- Has an identical built form and envelope as a development without semi-enclosed balconies facing the railway corridor.
- Does not result in any adverse impacts related to visual bulk and scale or environmental amenity.
- Exhibits a high-quality façade composed of fixed fins and glass louvres to the railway corridor, along which the greatest numbers of viewers of the site will pass.
- Fulfills the strategic intent of the 30 Minute City, reflected in the recent re-zoning of the site to permit high-density mixed-use commercial and residential development close to public transport.
- Is consistent with the high density built form scale of Strathfield Town Centre.

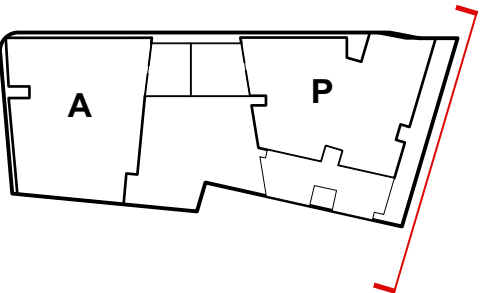
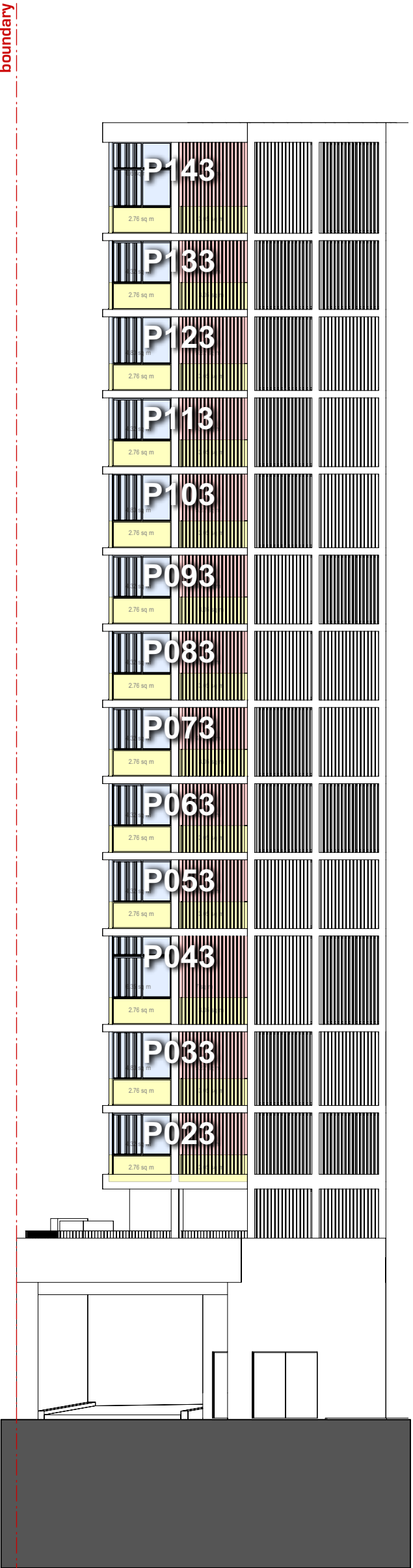
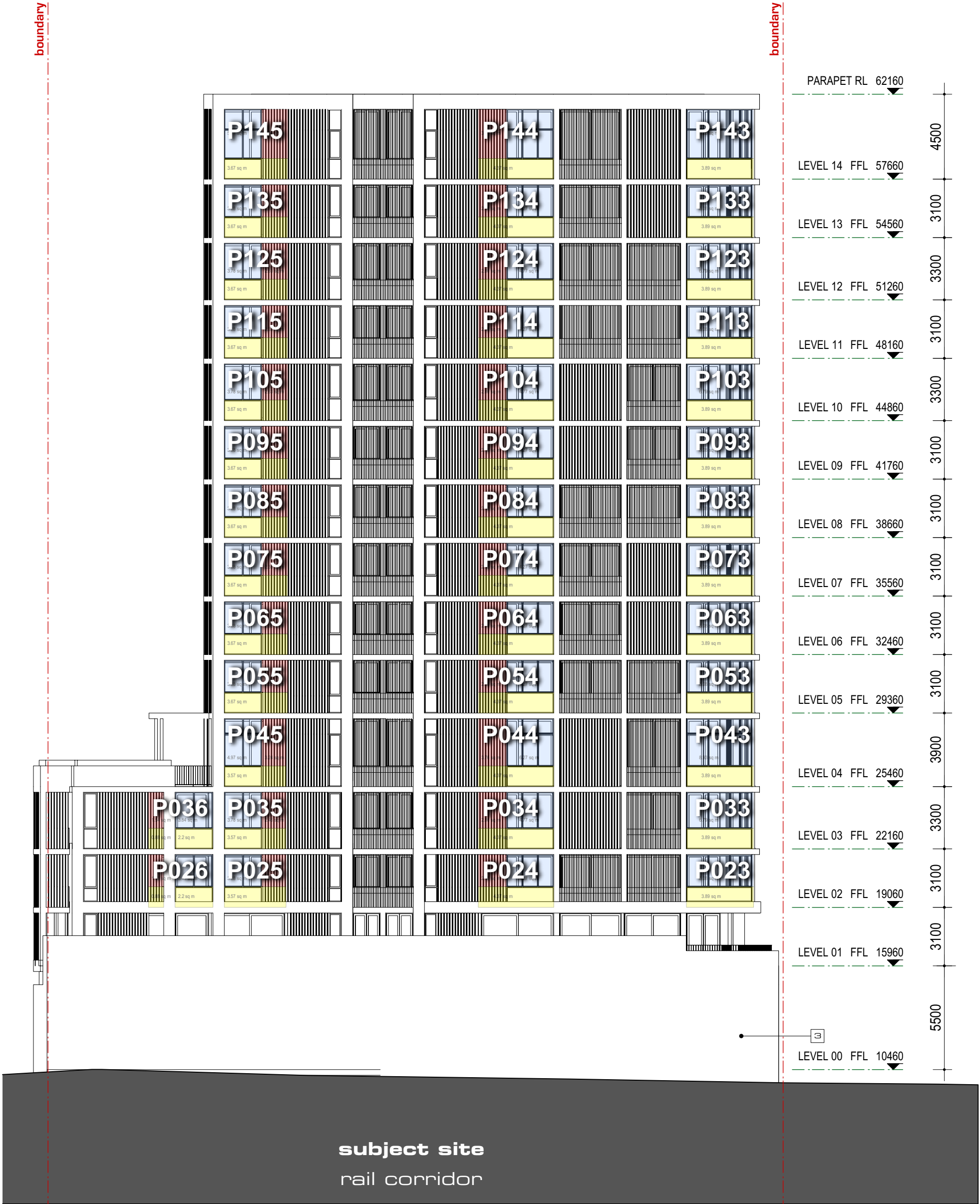
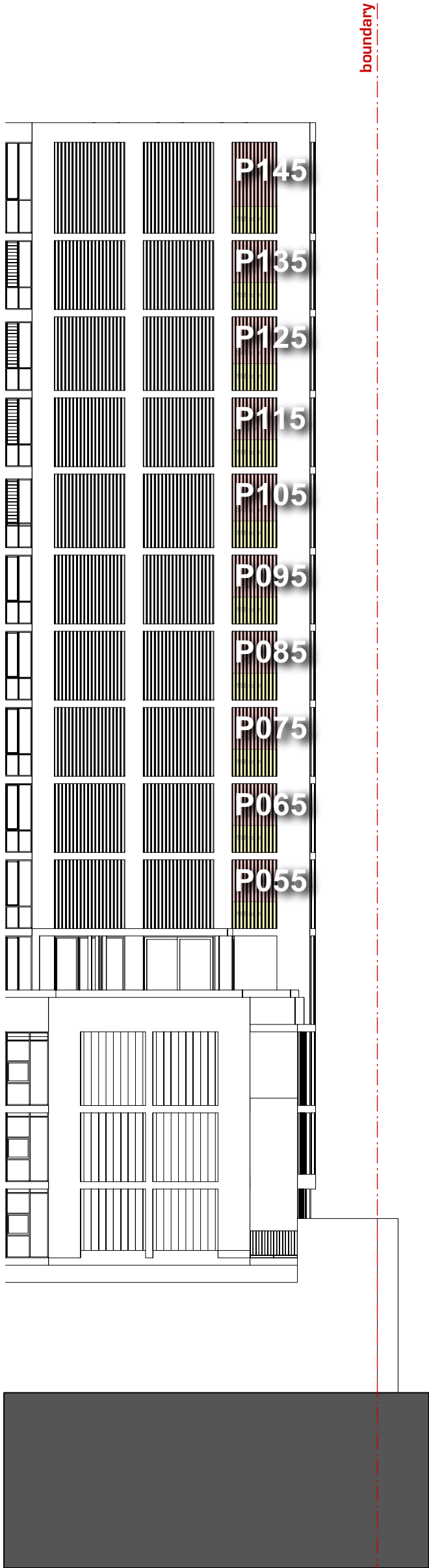
Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the Strathfield LEP 2012.

## Appendix A. Balcony GFA Diagrams and Calculations

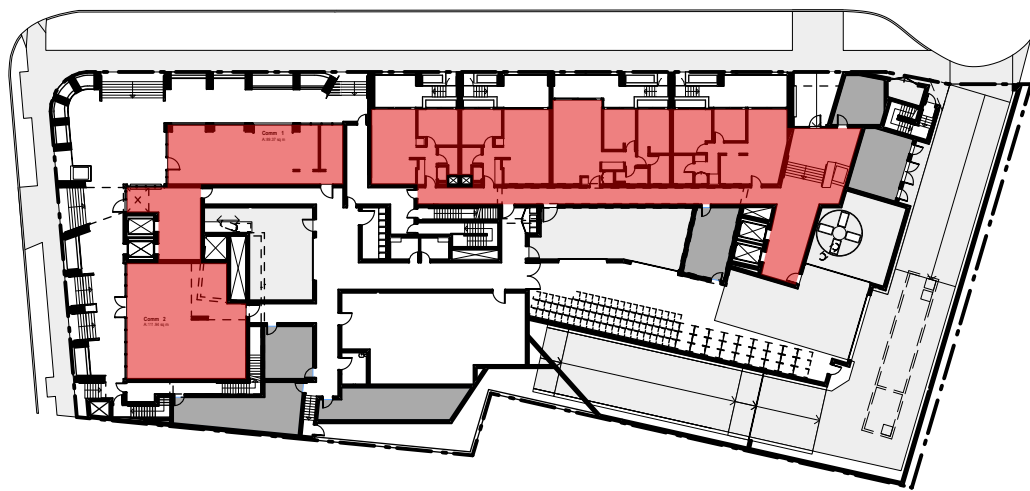


BALCONY OPENING AREAS

UNIT	BALUSTRADE		FIXED OPEN		ADJUSTABLE GLASS LOUVRES		TOTAL
	sqm	%		%	sqm	%	sqm
P023	9.70	39.0%	4.76	19.2%	10.40	41.8%	24.87
P033	9.70	36.4%	5.32	20.0%	11.62	43.6%	26.64
P043	9.70	30.3%	7.00	21.9%	15.28	47.8%	31.97
P053	9.70	39.0%	4.76	19.2%	10.40	41.8%	24.87
P063	9.70	39.0%	4.76	19.2%	10.40	41.8%	24.87
P073	9.70	39.0%	4.76	19.2%	10.40	41.8%	24.87
P083	9.70	39.0%	4.76	19.2%	10.40	41.8%	24.87
P093	9.70	39.0%	4.76	19.2%	10.40	41.8%	24.87
P103	9.70	36.4%	5.32	20.0%	11.62	43.6%	26.64
P113	9.70	39.0%	4.76	19.2%	10.40	41.8%	24.87
P123	9.70	36.4%	5.32	20.0%	11.62	43.6%	26.64
P133	9.70	39.0%	4.76	19.2%	10.40	41.8%	24.87
P143	9.70	29.5%	7.27	22.1%	15.89	48.3%	32.86
P024	4.37	39.0%	2.56	22.9%	4.27	38.1%	11.20
P034	4.37	36.4%	2.86	23.9%	4.77	39.7%	12.00
P044	4.37	30.3%	3.76	26.1%	6.27	43.5%	14.40
P054	4.37	39.0%	2.56	22.9%	4.27	38.1%	11.20
P064	4.37	39.0%	2.56	22.9%	4.27	38.1%	11.20
P074	4.37	39.0%	2.56	22.9%	4.27	38.1%	11.20
P084	4.37	39.0%	2.56	22.9%	4.27	38.1%	11.20
P094	4.37	39.0%	2.56	22.9%	4.27	38.1%	11.20
P104	4.37	36.4%	2.86	23.9%	4.77	39.7%	12.00
P114	4.37	39.0%	2.56	22.9%	4.27	38.1%	11.20
P124	4.37	36.4%	2.86	23.9%	4.77	39.7%	12.00
P134	4.37	39.0%	2.56	22.9%	4.27	38.1%	11.20
P144	4.37	29.5%	3.91	26.4%	6.52	44.1%	14.80
P025	3.57	39.0%	2.20	24.1%	3.38	36.9%	9.16
P035	3.57	36.4%	2.46	25.1%	3.78	38.5%	9.82
P045	3.57	30.3%	3.24	27.5%	4.97	42.2%	11.78
P055	5.65	39.0%	5.46	37.6%	3.38	23.4%	14.49
P065	5.65	39.0%	5.46	37.6%	3.38	23.4%	14.49
P075	5.65	39.0%	5.46	37.6%	3.38	23.4%	14.49
P085	5.65	39.0%	5.46	37.6%	3.38	23.4%	14.49
P095	5.65	39.0%	5.46	37.6%	3.38	23.4%	14.49
P105	5.65	36.4%	6.09	39.2%	3.78	24.4%	15.53
P115	5.65	39.0%	5.46	37.6%	3.38	23.4%	14.49
P125	5.65	36.4%	6.09	39.2%	3.78	24.4%	15.53
P135	5.65	39.0%	5.46	37.6%	3.38	23.4%	14.49
P145	5.65	29.5%	8.33	43.5%	5.17	27.0%	19.15
P026	3.08	39.0%	1.38	17.5%	3.43	43.5%	7.89
P036	3.08	36.4%	1.54	18.2%	3.84	45.4%	8.45







LEVEL 00



LEVEL 01



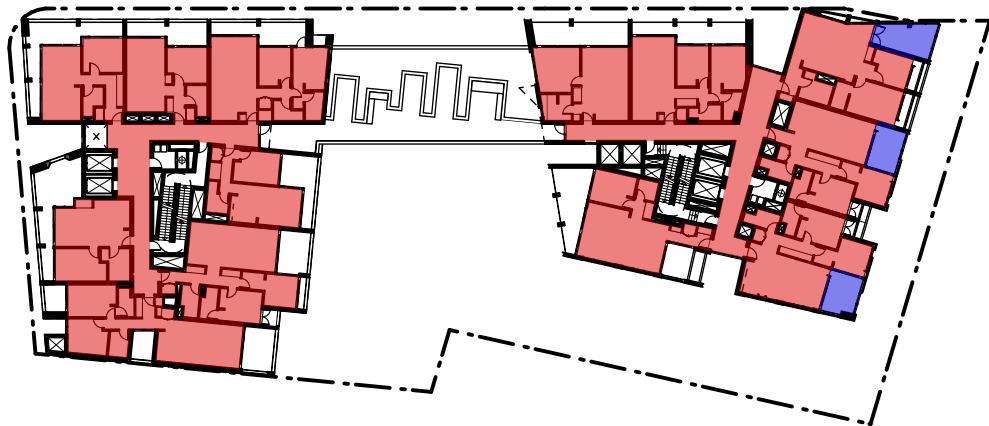
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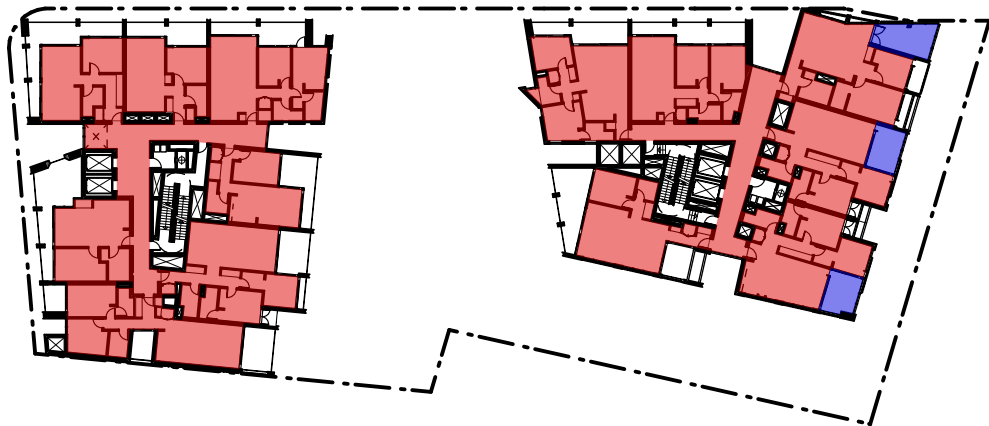
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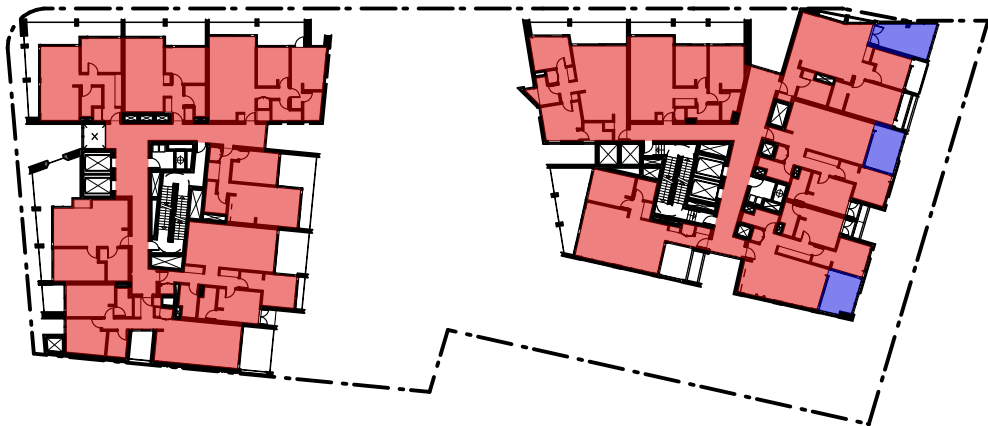
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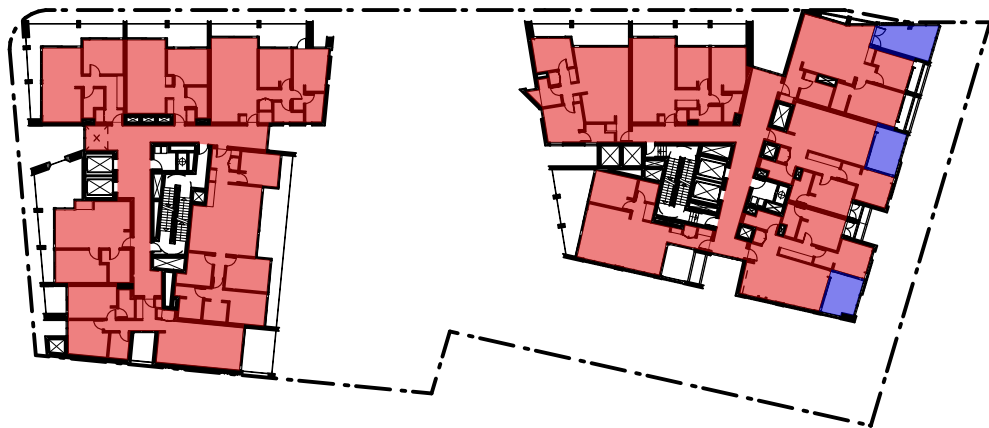
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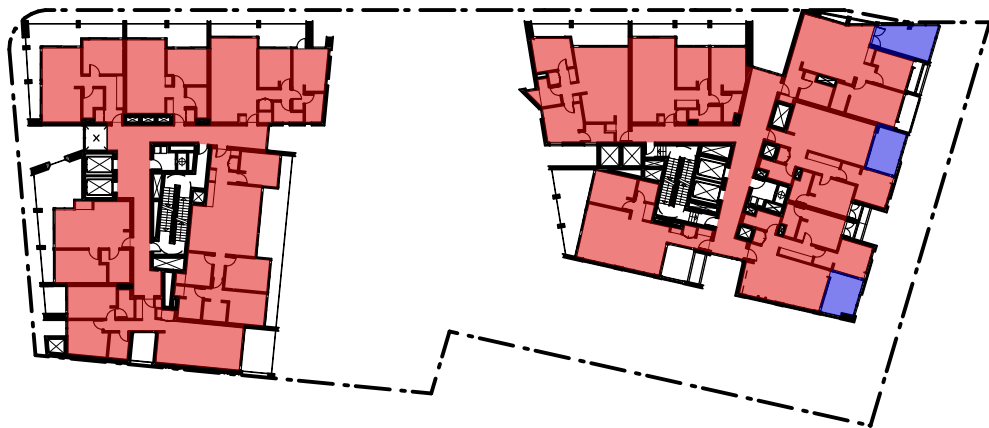
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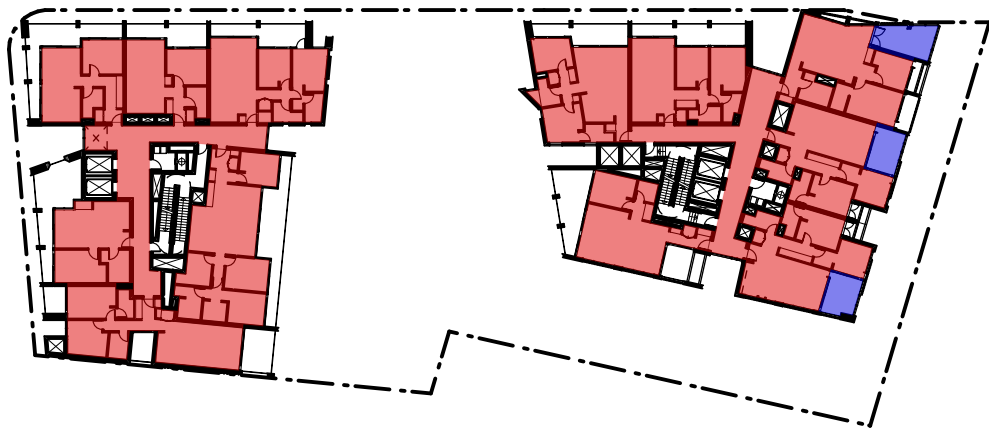
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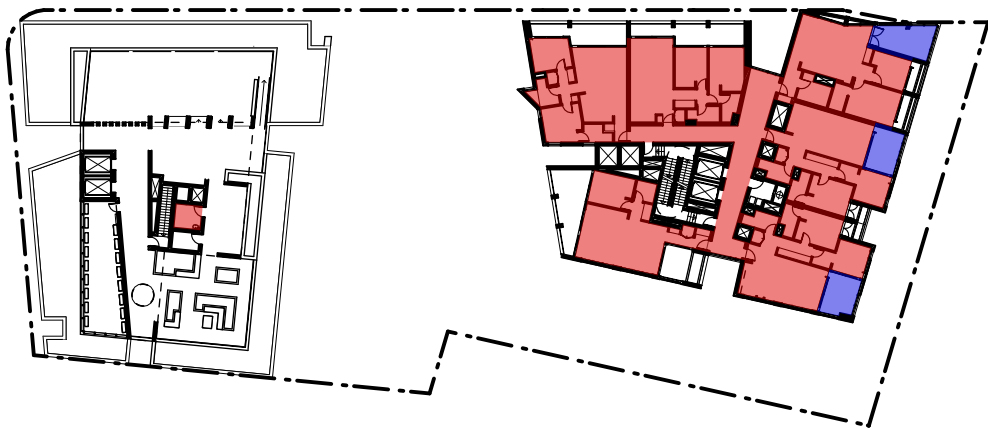
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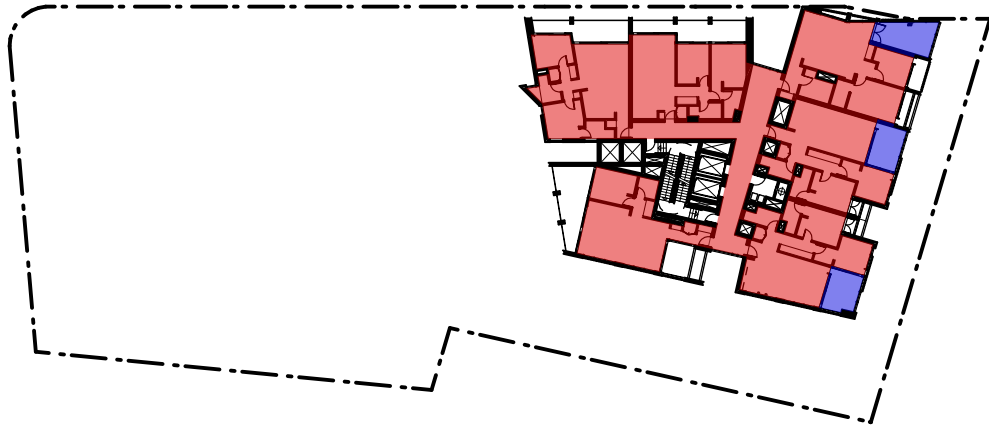
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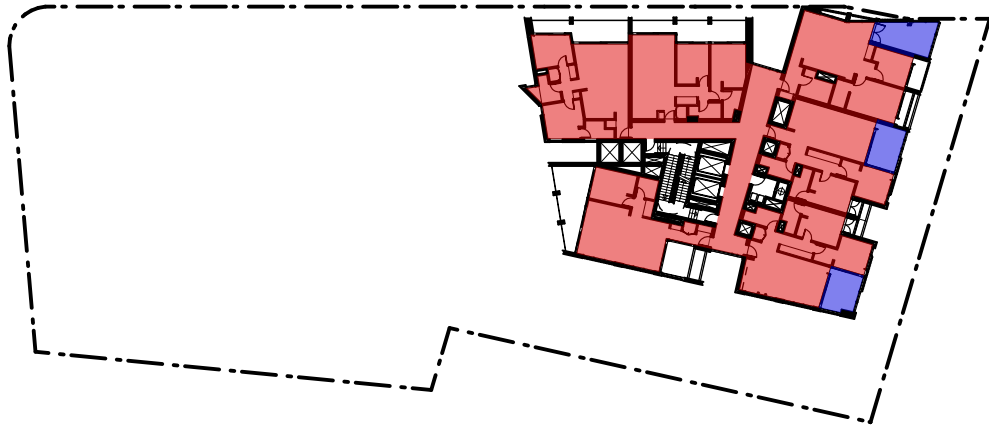
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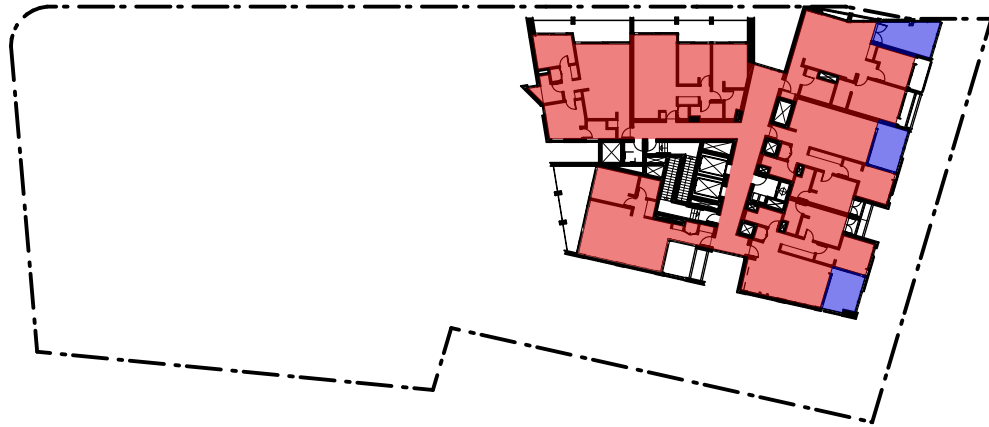
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LEVEL 12



LEVEL 13



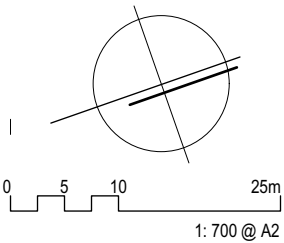
LEVEL 14

LEGEND

- indicates extent of GFA
- indicates extent of enclosed balconies

AREA CALCULATIONS

Site Area (sq m)	2868.0		
	FSR	GFA (sqm)	Enclosed Balconies (sqm)
Level 00		635	0
Level 01		1363	0
Level 02		1424	53
Level 03		1419	53
Level 04		1246	29
Level 05		1028	41
Level 06		1043	41
Level 07		1038	41
Level 08		1018	41
Level 09		1013	41
Level 10		1018	41
Level 11		527	41
Level 12		522	41
Level 13		522	41
Level 14		522	41
Total Permissible	5.0:1	14340.0	
Sub-total Proposed		14338.9	542.9
Total Proposed	5.2:1	14881.8	



summary of GFA calculations (balconies)  
proposed development

FOR INFORMATION ONLY - 16.06.21

