



Section 4.55(2) Modification Application to DA35/2024

1 Gatacre and 1-5 Allison Avenues, Lane
Cove

ON BEHALF OF

GATACRE LC PTY LTD

APRIL 2025



Project

1 Gatacre Avenue and 5 Allison Avenue, Lane Cove

Contact

info@patchplanning.com.au

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3				
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1 Introduction

1.1 Introduction

This Modification Report has been prepared by Patch Planning on behalf of WINIM and is submitted to Lane Cove Council (Council) in support of the proposed modification to the approved residential flat building development at 1 Gatacre and 1-5 Allison Avenues, Lane Cove. The subject development was approved by the Sydney North Planning Panel (SNPP) under application **DA35/2024** on 04 October 2024. **DA35/2024** granted development consent for:

Demolition of existing multi-storey motel building and dwelling house and construction of a Part 4, Part 5, and Part 6 residential flat Building with 43 apartments and two levels of basement parking.

This application is made pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and is lodged directly with Council. For the purpose of this environmental assessment, the proposed modification is subject to the provisions of Section 4.55(2) of the EP&A Act.

The Section 4.55(2) Modification Application should be read in conjunction with:

- **Appendix 1** Architectural Plans
- **Appendix 2** Architectural Design Statement
- **Appendix 3** Landscape Plans
- **Appendix 4** BASIX Certificate
- **Appendix 5** NatHERS Certificate
- **Appendix 6** BASIX Stamped Plans
- **Appendix 7** Landscape Report
- **Appendix 8** DA35/2024 Stamped Architectural Plans

The proposed amendments sought under this application are driven by continued design development. The development as modified will result in substantially the same development as the development for which consent was granted under **DA35/2024** with no measurable environmental impact resulting from the modifications proposed, beyond those identified in this report.

1.2 Summary of Proposed Modifications

The overall intent of the modification proposed is to optimise the approved development in response to market demand.

The modifications sought in relation to the approved development include amendments to the conditions of consent and approved architectural plans as detailed in Table 2. In summary, the proposed modifications generally comprise of the following:

- Modification to basement;
- Modification to internal layouts;
- Conversion previously non trafficable terraces into a private open space for units 205, 302, 401, and 402;
- Unit 205 has been expanded;
- Relocation of air condition plant to the roof;
- Refinement of communal areas;

- Increased resident storage areas;
- Reduction in the number of PV panels to accommodate air conditioning plant;.
- Modification to building height; and
- Modification to landscaping.

The proposed modifications are further explained in the ensuing sections of this statement.

2 The Site

2.1 Site Description

The site is known as 1 Gatacre Avenue and 5 Allison Avenue, Lane Cove and legally referred to as Lot A in DP 415448 and Lots 45 and 46 in DP 11416. The site has a total area of approximately 2,965.8sqm.

The subject site is an irregularly shaped allotment with a dual street frontage, located on the southern side of Gatacre Avenue and the northern side of Allison Avenue as depicted in Figure 1 below.



Figure 1: Aerial image of the subject site
Source: MetroMap annotated by Patch Planning

The allotment has a primary street frontage to Gatacre Avenue of 38.25m and a secondary street frontage to Allison Avenue of 27.43m. The site has a (combined) north-eastern (side) boundary of 92.1m shared with the R4 High Density Residential zone and a staggered south-western (side) boundary of 91.9m shared with the R2 Low Density Residential Zone, with an indent of 11.19m to the centre of the site.

The subject site contains a varied topography which undulates across all boundaries. From Gatacre to Allison Avenue, the site falls by approximately 2m to 3m along the length of the site. From the northern to western corner, the site has a cross fall of approximately 5.5m, whilst from the eastern to southern corner, a cross fall of 4.5m.

Currently, the subject site contains a mixture of commercial and residential land uses.

The site is burdened by a sewage easement that runs along the southern boundary of Lot A in DP 415448 which will be maintained.

3 Proposed Modification

This Section 4.55(2) application seeks consent to modify the approved residential flat building with 43 apartments and two levels of basement parking to facilitate a more appropriate development outcome which achieves an improved level of residential amenity and responds to the desired design outcome in the context of the site and it's surrounds.

This application proposes structural and design amendments to the approved development which have been driven by continued design development. The proposed modifications to the development include an increase in building height as a result of relocating air conditioning plant to the roof of Building A, and the introducing of balustrades to convert previously non-trafficable roof terraces into private open space for units.

3.1 Key Numerical Overview

Table 1 provides a comparison of the key numeric development information parameters compared to that of the approved development.

Table 1. Development Comparison				
Aspect of the Development	Required	As Approved DA35/2024	Proposed Modification	Difference
Site Area	-	2,965.8sqm	2,965.8sqm	-
Total Apartments	-	43 Apartments	43 Apartments	-
Apartment Mix	Mix	1 Bed: 5 (12%) 2 Bed: 18 (42%) 3 Bed: 18 (42%) 3 Bed Town House: 2 (5%)	1 Bed: 5 (12%) 2 Bed: 18 (42%) 3 Bed: 18 (42%) 3 Bed Town House: 2 (5%)	-
Total GFA	7,117.92sqm	5,020sqm	5,025sqm	+5sqm
FSR	2.4:1	1.69:1	1.69:1	-
Building Height	15m	14.990m	16.290m (measured at top of service plant fence)	+1.3m
Landscaped Area	1,186.3sqm (40%)	1,249sqm (42.23%)	1,230sqm (41.49%)	-19sqm
Deep Soil	741.5sqm (25%)	817sqm (27.5%)	816sqm (27.5%)	-1sqm
Communal Open Space	741.5sqm (25%)	756sqm (25%)	756sqm (25%)	-
Solar Access	30 (70%)	30 (70%)	30 (70%)	-
Cross Ventilation	26 (60%)	29 (67%)	28 (65%)	-1
Visitable	35 (80%)	35 (81%)	35 (81%)	-
Livable	9 (20%)	9 (21%)	9 (21%)	-

Table 1. Development Comparison				
Aspect of the Development	Required	As Approved DA35/2024	Proposed Modification	Difference
Adaptable	9 (20%)	9 (21%)	9 (21%)	-
Car Parking	84	85	85	-
Bicycle Parking	17	17	17	-
Motorcycle Parking	6	6	6	-

3.2 Summary of Physical Works

The modifications sought in relation to the approved development include amendments to the conditions of consent and approved development plans. Table 2 below provides a detailed breakdown of the proposed modifications. Detailed architectural plans, prepared by PBD Architects, accompany this application as **Appendix 1**.

Table 2. Schedule of Amendments		
#	Design Element	Detail
1	Relocation of accessible bays and storage	2 accessible parking bays have been moved from B1 to B2.
2	Basement 1 slab RL lowered	Slab RL lowered by 150mm to increase ceiling clearance.
3	Relocation of bike racks	Bike racks have been repositioned within the development.
4	Shoring wall alignment with basement below	No changes in deep soil from the approved da.
5	Addition of storage area	A new storage space has been added beneath the approved terraces on the upper ground floor.
6	Reconfigured communal area	The entertainment area has been transformed into a fitness space, an accessible restroom has been added, and the cellar area has been reconfigured for improved functionality.
7	Relocated mechanical fan exhaust	The mechanical fan exhaust has been moved to the rooftop.
8	Apartment size increase	Apartment sizes have been expanded beneath the approved terraces on the upper ground floor.
9	Standardized apartment layouts	Interior layouts have been amended for uniformity across all apartments.
10	Terrace modification	A previously non trafficable terrace has been converted into a private open space for units 205, 302, 401, and 402.
11	Amended rooftop area design	The BBQ area has been repositioned for better accessibility and functionality. General utility sink and rubbish bin added to COS.

Table 2. Schedule of Amendments

#	Design Element	Detail
12	Increased apartment size	Unit 205 has been expanded.
13	Added highlight windows	A highlight window has been added to the wall between the communal open space and units 304 and 305 to improve solar amenity.
14	AC unit relocation	Air conditioning units have been moved to the roof level.
15	Reduction in solar panel capacity	The number of PV panels has been reduced from 175 to 130, decreasing rooftop solar capacity from 78kw to 57kw.
16	Improved landscaping	Larger trees have been introduced along the boundary with 7 Allison avenue, boardwalk has been realigned and timber fence to incorporate acoustically treated materials and metal posts.

3.3 Proposed Changes

3.3.1 Building Height and GFA

As a result of relocating the air conditioning plant from Level 3 to the roof of Building A the maximum building height of the development has been marginally increased, resulting in a maximum **RL112.90**, a varying increase of **1.27m** to **1.29m** and a revised maximum building height of to **16.290m** measured at top of service plant fence. This represents a 9% exceedance.

The proposal also seeks to increase the GFA by 5sqm, resulting in no change to the existing FSR of **1.69:1**. The increase in GFA is a direct result of modifications to the floorplates and the relocation of the chiller plant to the roof. The modifications to the floor plates have improved the unit layout and standardized layouts to enable a more efficient construction process.

3.3.2 Basement 2

Changes proposed to the Basement 2 are limited to:

- Change 1 - 2 accessible parking bays have been moved from B1 to B2.

A comparison between the approved and proposed design of the Basement 2 is demonstrated in Figure 2 and Figure 3.

3.3.3 Basement 1

Minor changes are proposed to Basement 1 including:

- Change 2 - Basement 1 slab RL lowered by 150mm to increase ceiling clearance; and
- Change 3 - Bike racks have been repositioned within the development (no change to quantum provided is proposed).

A comparison between the approved and proposed design of the Basement 1 is demonstrated in Figure 4 and Figure 5.

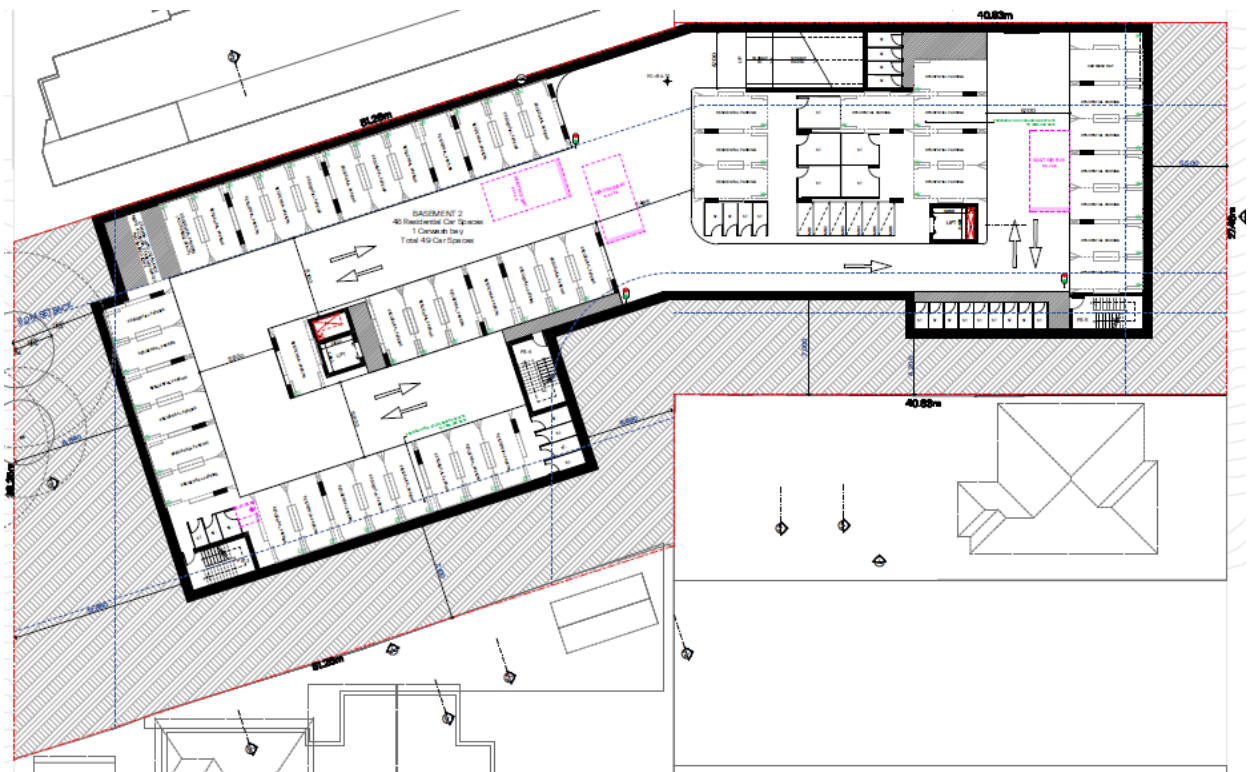


Figure 2: Approved Basement 2 Design
Source: PBD Architects



Figure 3: Proposed Basement 2 Design
Source: PBD Architects

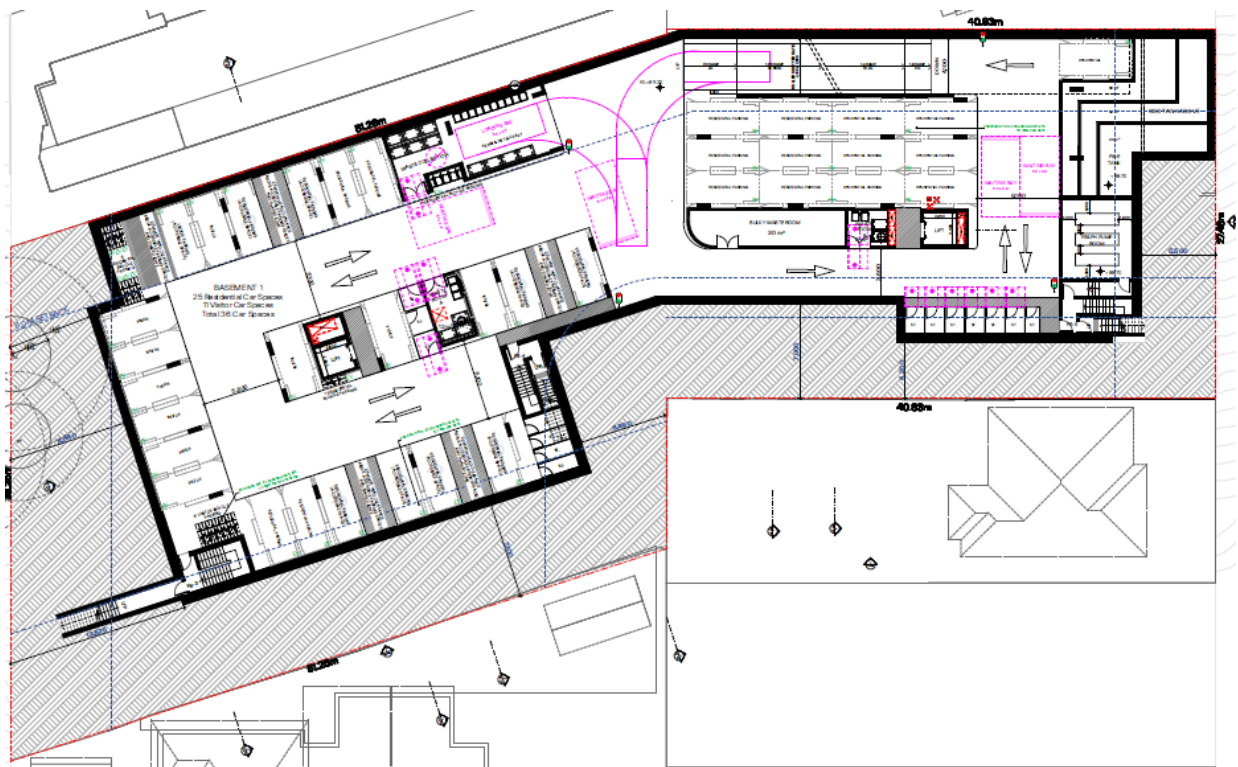


Figure 4: Approved Basement 1 Design
Source: PBD Architects



Figure 5: Proposed Basement 1 Design
Source: PBD Architects

3.3.6 Lower Ground Floor

Minor changes are proposed to the Lower Ground Floor including:

- Change 4 - Shoring wall alignment with basement below (no changes in deep soil from the approved DA);
- Change 5 - A new storage space has been added beneath the approved terraces on the Upper Ground Floor;
- Change 6 - The entertainment area has been reconfigured and transformed into a fitness space, an accessible restroom has been added, and the cellar area has been reconfigured for improved functionality;
- Change 7 - Relocated mechanical fan exhaust to the rooftop;
- Change 8 - Units G03 and G04 have been expanded beneath the approved terraces on the Upper Ground Floor;
- Change 9 - Standardized apartment layouts: Interior layouts have been amended for uniformity across all apartments; and
- Change 16 - Larger trees have been introduced along the boundary with 7 Allison Avenue, boardwalk has been realigned and timber fence to incorporate acoustically treated materials and metal posts to satisfy sub conditions 2 D, E and H.

A comparison between the approved and proposed design of the Lower Ground Floor is demonstrated in Figure 6 and Figure 7.

3.3.7 Upper Ground Floor

The changes proposed to the Upper Ground Floor are limited to:

- Change 9 - Standardized apartment layouts: Interior layouts have been amended for uniformity across all apartments.

A comparison between the approved and proposed design of the Upper Ground Floor is demonstrated in Figure 8 and Figure 9.

3.3.8 Level 1

The changes proposed to Level 1 are limited to:

- Change 9 - Standardized apartment layouts: Interior layouts have been amended for uniformity across all apartments.

A comparison between the approved and proposed design of the Level 1 is demonstrated in Figure 4 and Figure 5.

3.3.9 Level 2

The changes proposed to Level 2 are limited to:

- Change 9 - Standardized apartment layouts: Interior layouts have been amended for uniformity across all apartments.

A comparison between the approved and proposed design of the Level 2 is demonstrated in Figure 12 and Figure 13.

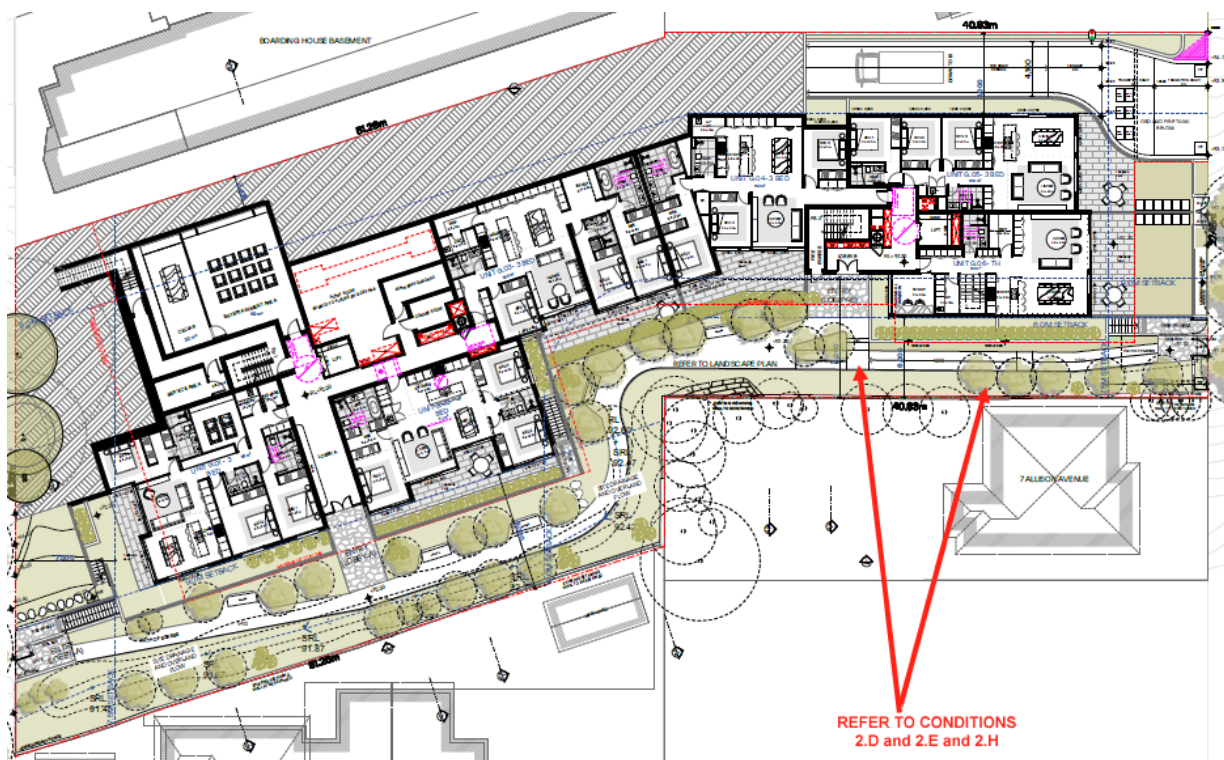


Figure 6: Approved Lower Ground Floor Design
Source: PBD Architects

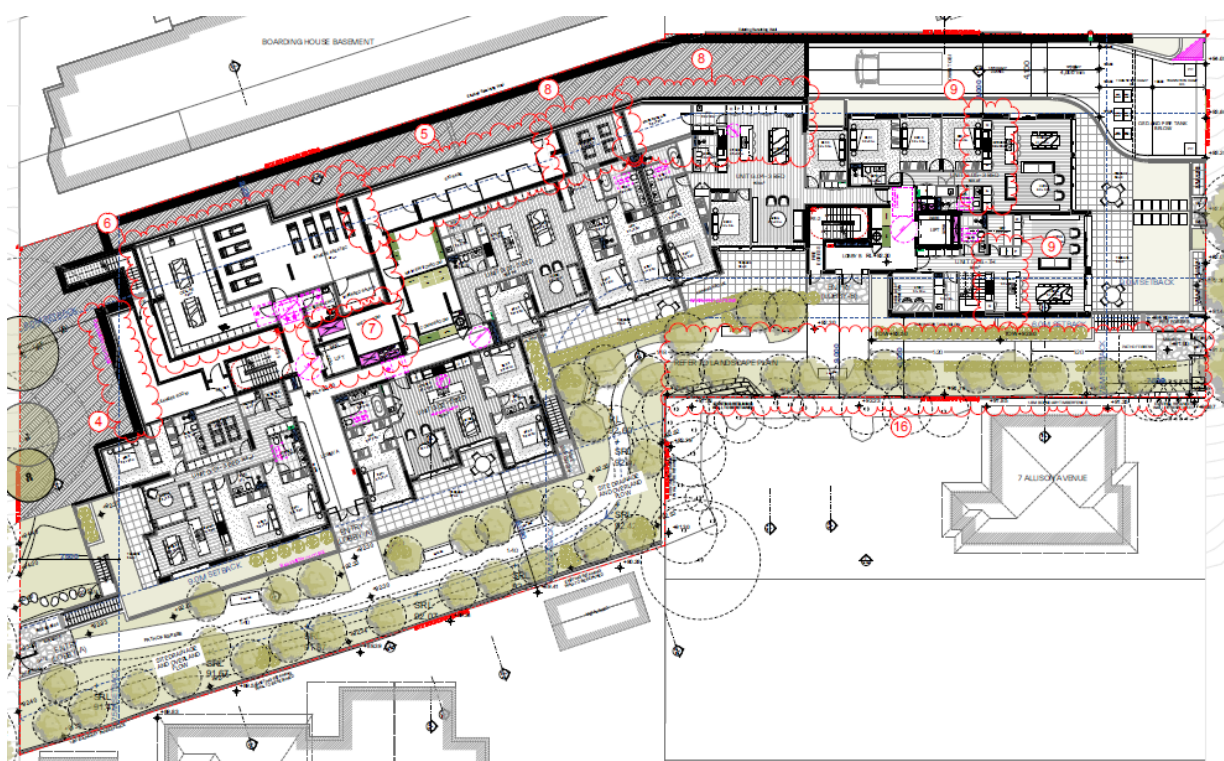


Figure 7: Proposed Lower Ground Floor Design
Source: PBD Architects

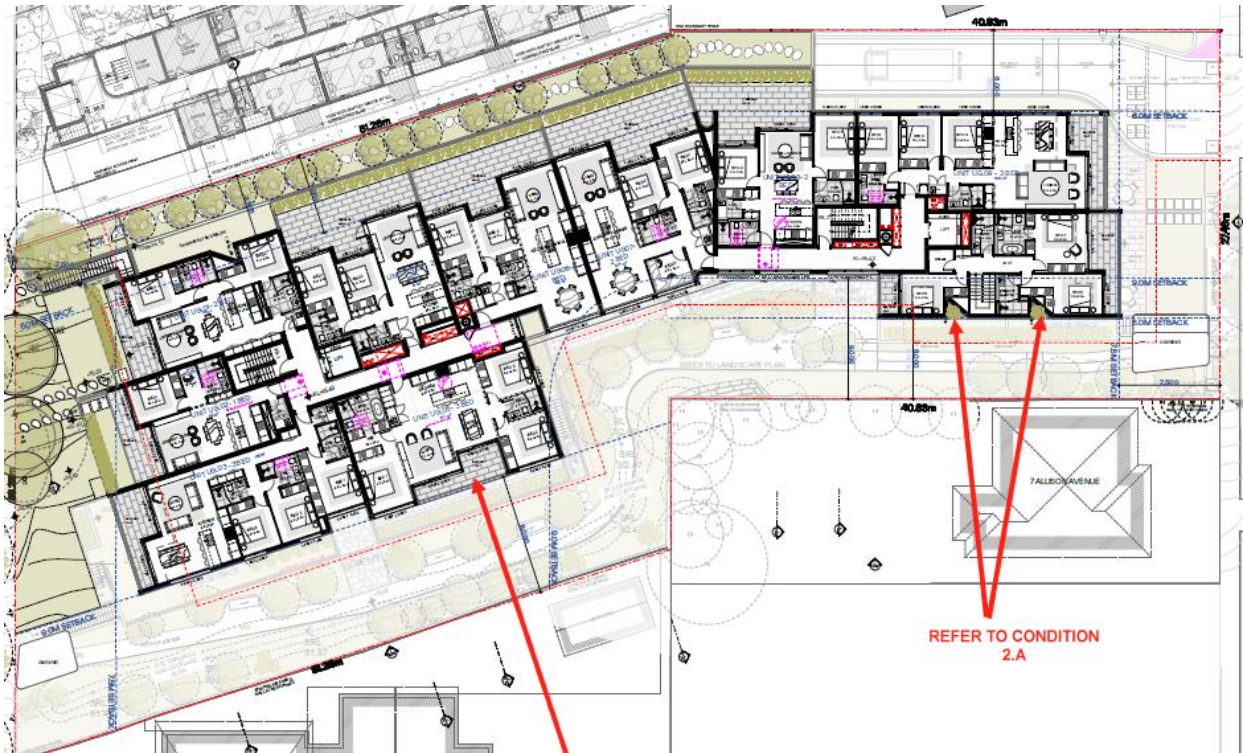


Figure 8: Approved Upper Ground Floor Design
Source: PBD Architects

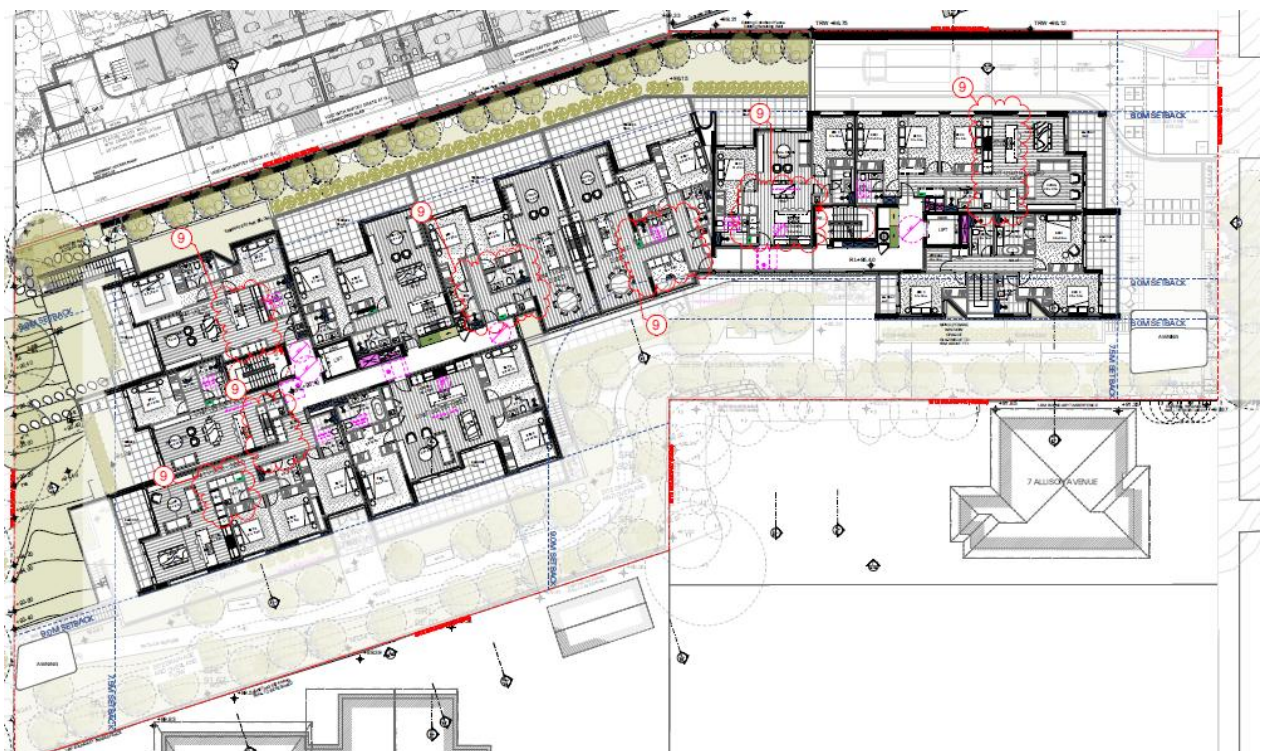


Figure 9: Proposed Upper Ground Floor Design
Source: PBD Architects

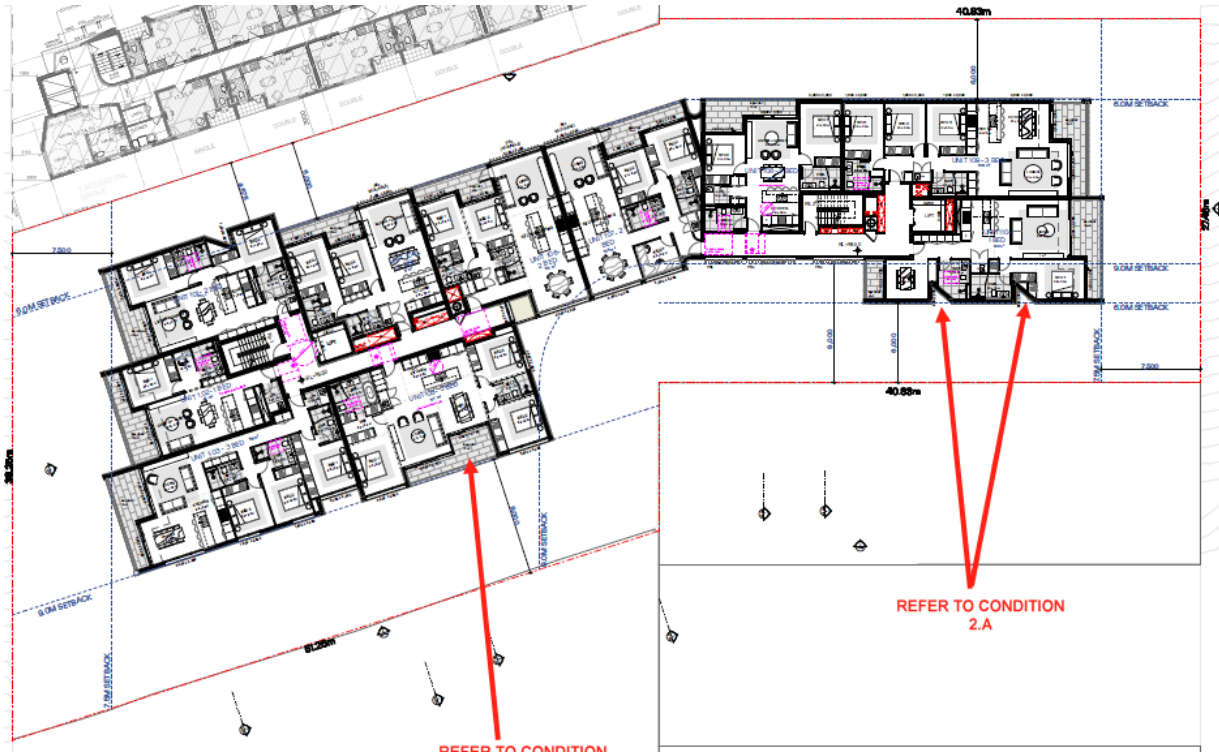


Figure 10: Approved Level 1 Design
Source: PBD Architects

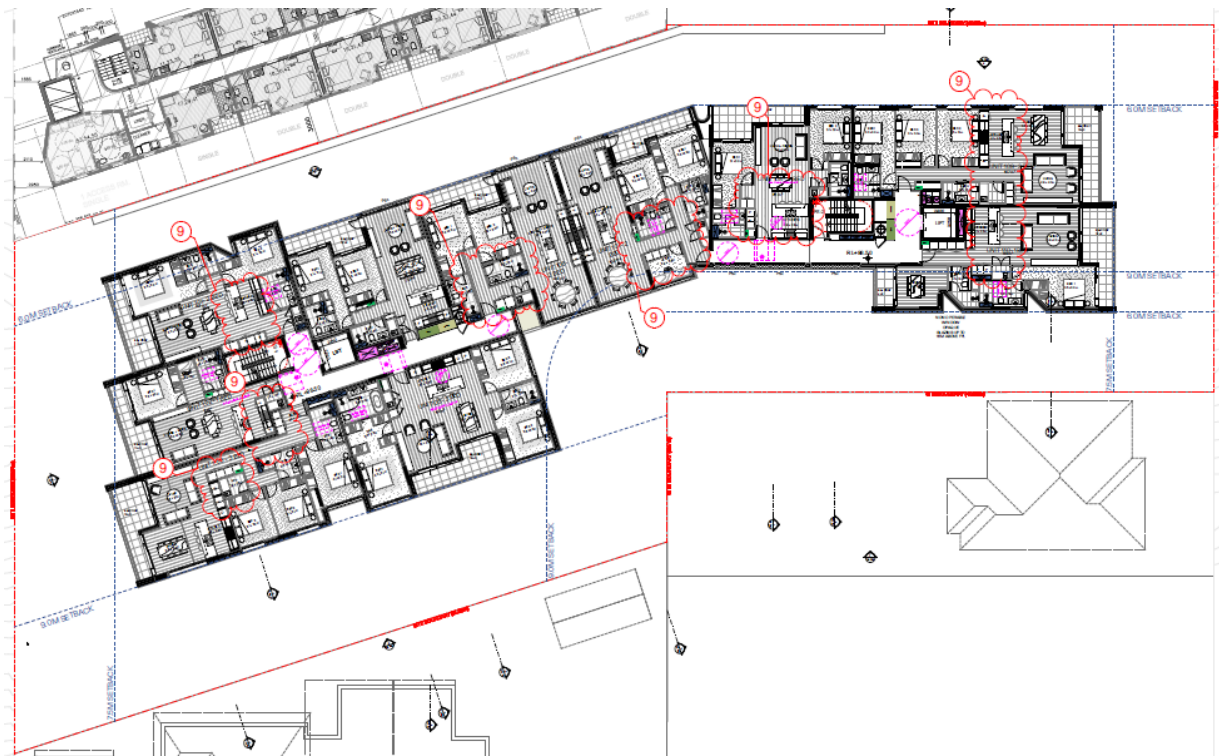


Figure 11: Proposed Level 1 Design
Source: PBD Architects

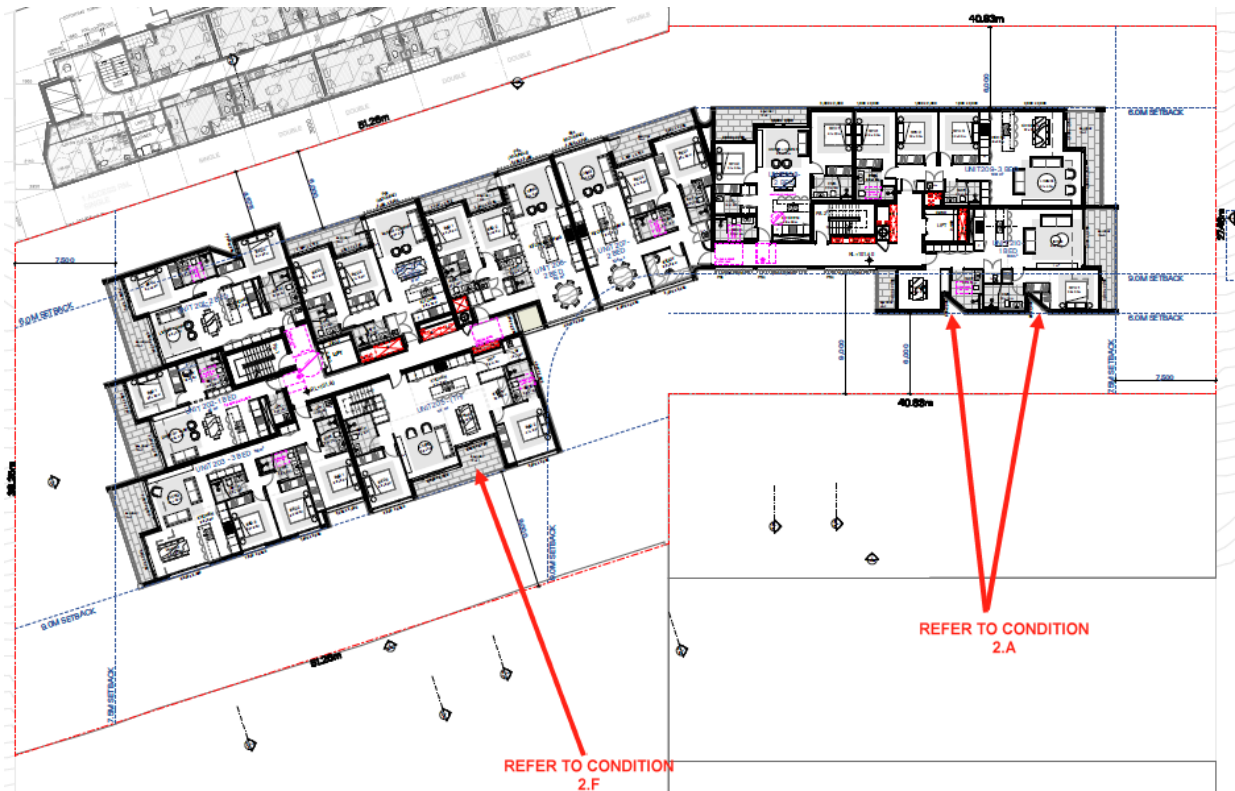


Figure 12: Approved Level 2 Design
Source: PBD Architects

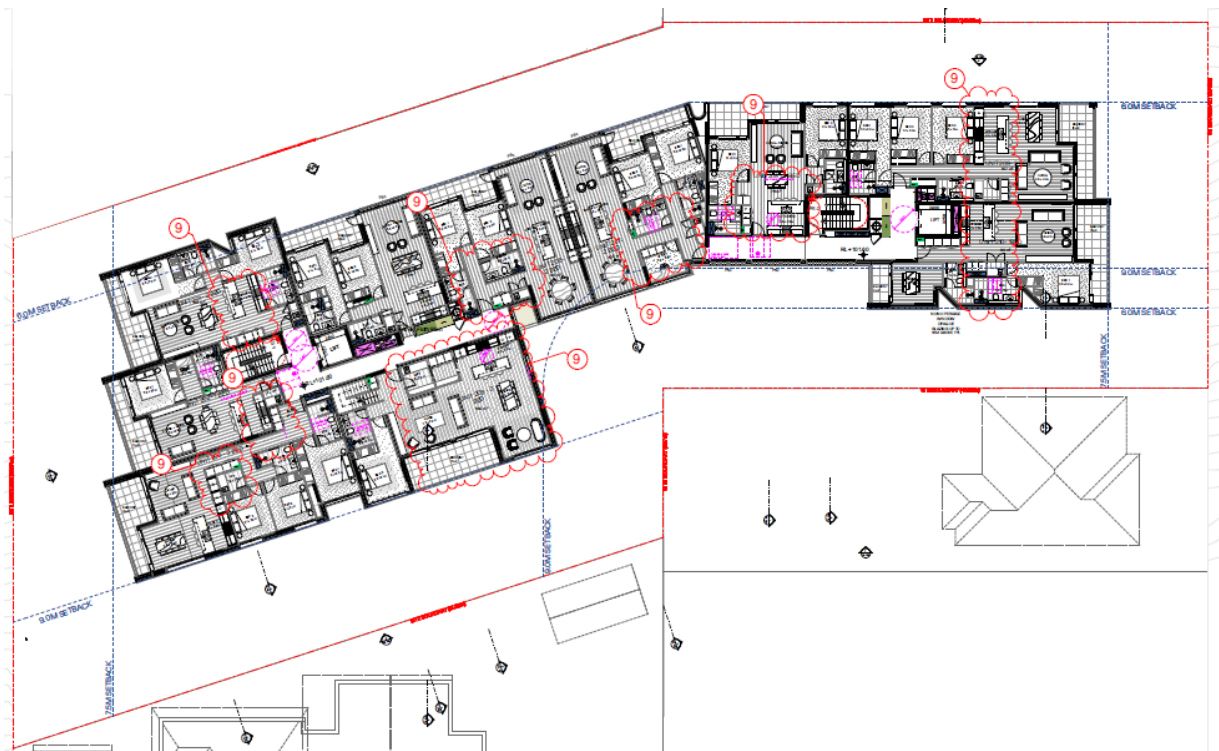


Figure 13: Proposed Level 2 Design
Source: PBD Architects

3.3.11 Level 3

Minor changes are proposed to Level 3 including:

- Change 9 - Standardized apartment layouts: Interior layouts have been amended for uniformity across all apartments;
- Change 10 - Terrace modification: A previously non trafficable terrace has been converted into a private open space for units 205, 302, 401, and 402;
- Change 11 - Amended rooftop area design. The BBQ area has been repositioned for better accessibility and functionality and a general utility sink and rubbish bin added;
- Change 12 - Unit 205 has been expanded; and
- Change 13 - Highlight windows have been added to the wall between the communal open space and Units 304 and 305 to improve solar amenity.

A comparison between the approved and proposed design of the Level 3 is demonstrated in Figure 14 and Figure 15.

3.3.12 Level 4

Minor changes are proposed to Level 4 including:

- Change 10 - Terrace modification: A previously non trafficable terrace has been converted into a private open space for units 205, 302, 401, and 402;
- Change 12 - Unit 205 has been expanded; and
- Change 15 - The number of PV panels has been reduced from 175 to 130 to accommodate the relocated chiller plant, decreasing rooftop solar capacity from 78kw to 57kw.

A comparison between the approved and proposed design of the Level 4 is demonstrated in Figure 16 and Figure 17.

3.3.13 Roof

Minor changes are proposed to the roof including:

- Change 10 - Terrace modification: A previously non trafficable terrace has been converted into a private open space for units 205, 302, 401, and 402;
- Change 12 - Unit 205 has been expanded;
- Change 14 - Air conditioning units have been moved to the roof level; and
- Change 15 - The number of PV panels has been reduced from 175 to 130 to accommodate the relocated chiller plant, decreasing rooftop solar capacity from 78kw to 57kw.

A comparison between the approved and proposed design of the roof is demonstrated in Figure 18 and Figure 19.

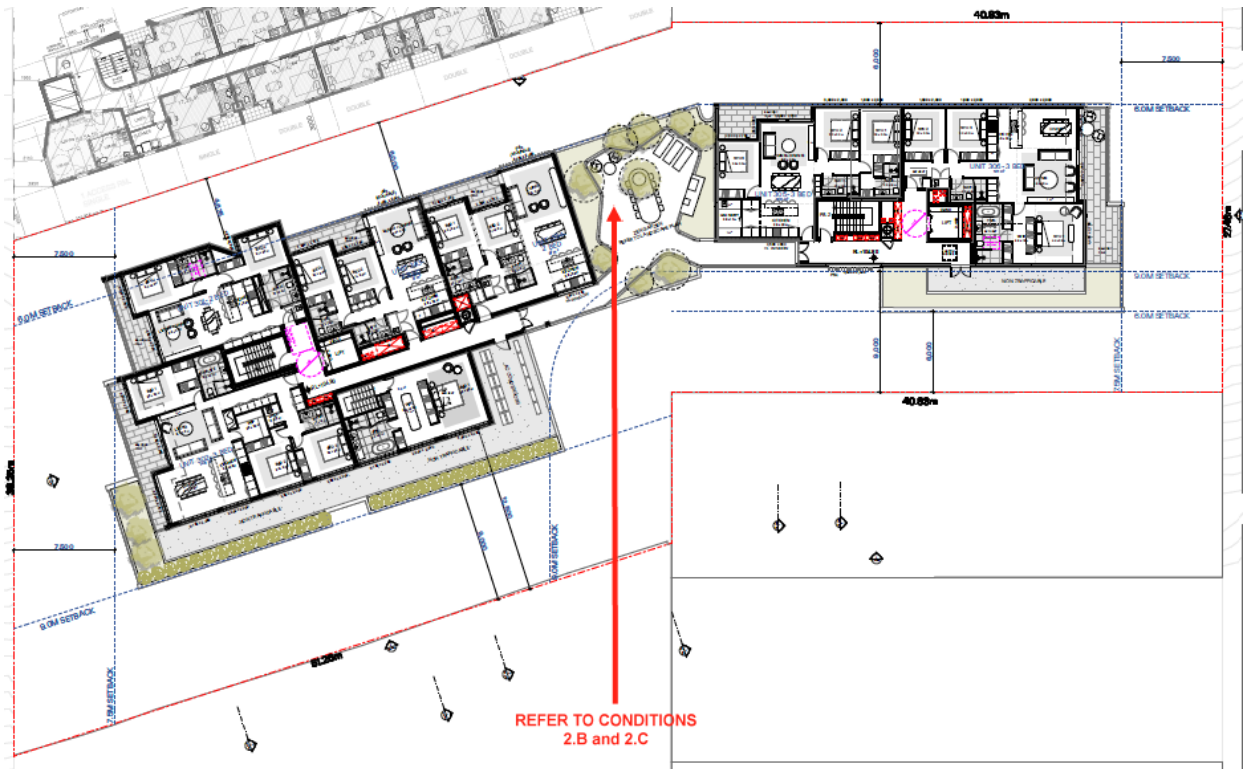


Figure 14: Approved Level 3 Design
Source: PBD Architects

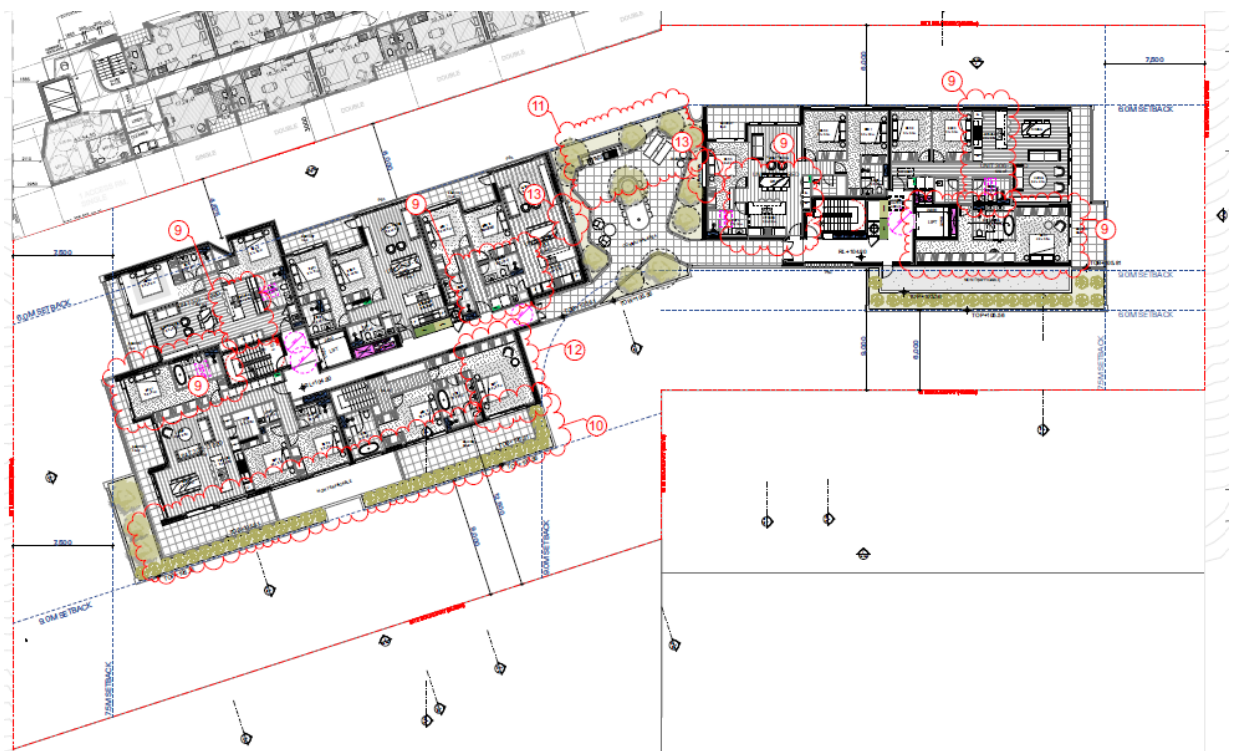


Figure 15: Proposed Level 3 Design
Source: PBD Architects

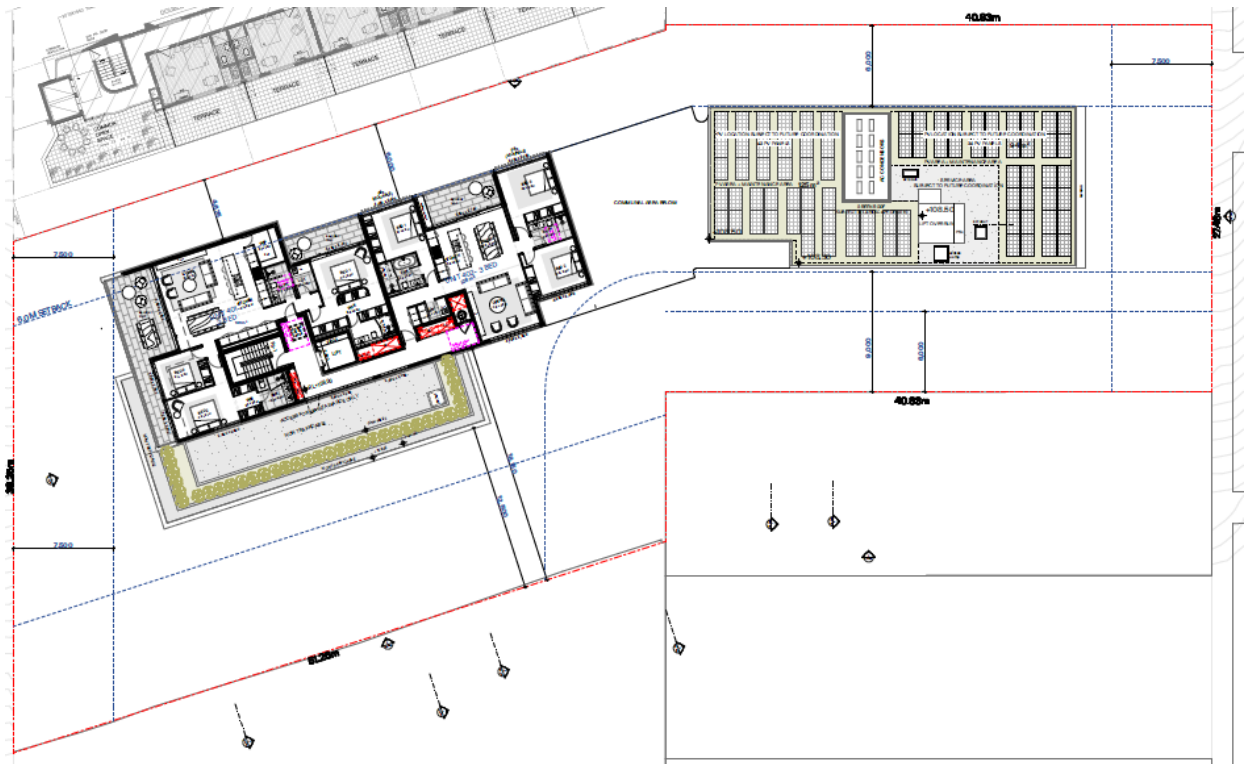


Figure 16: Approved Level 4 Design
Source: PBD Architects

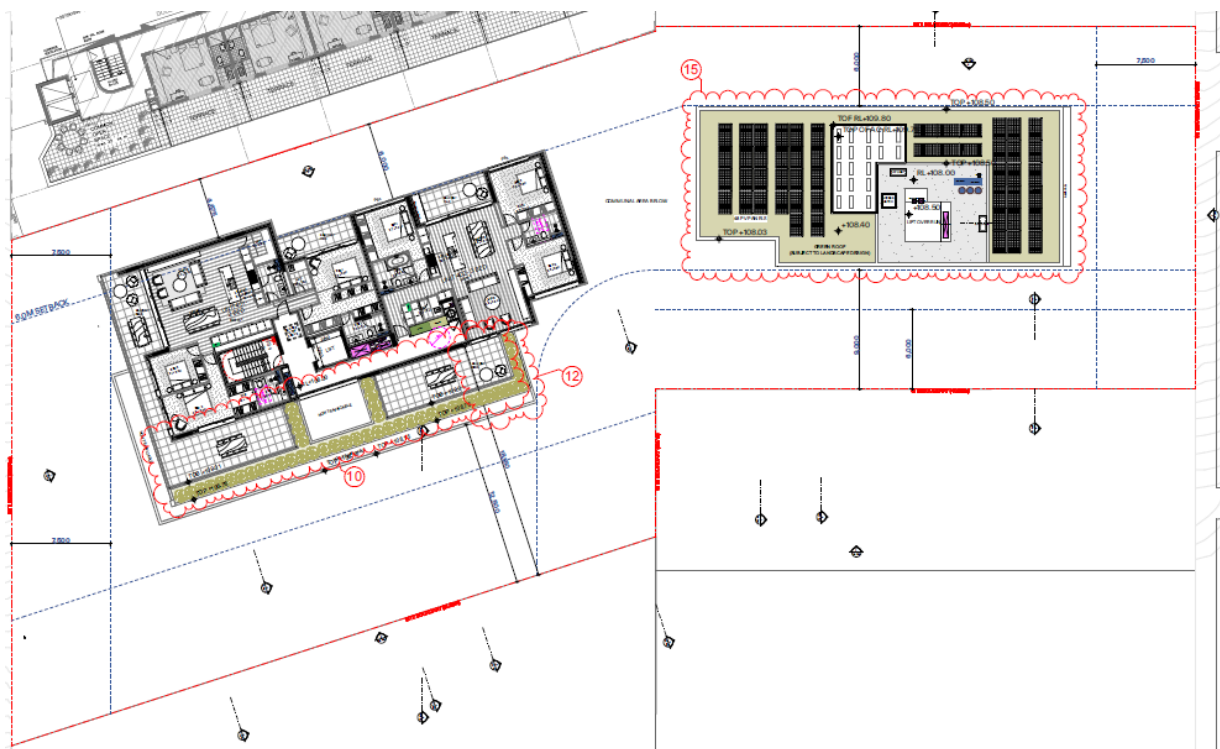


Figure 17: Proposed Level 4 Design
Source: PBD Architects

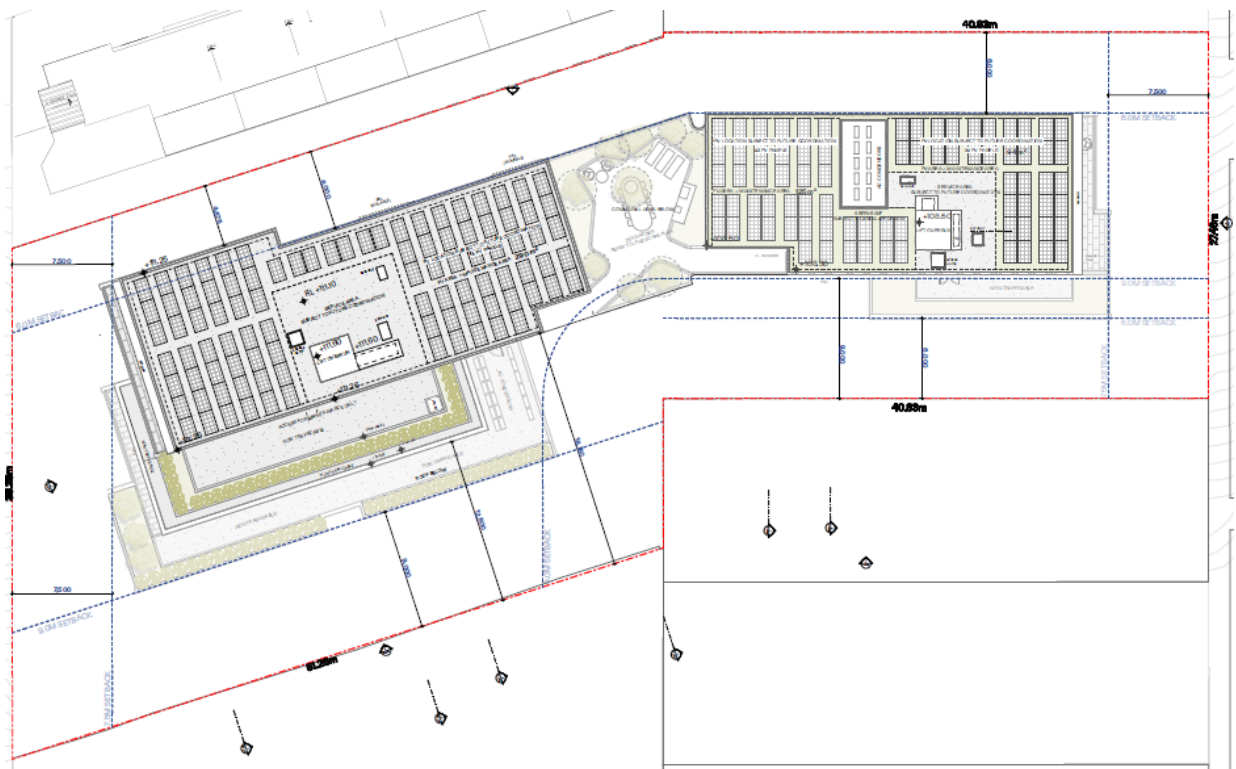


Figure 18: Approved Roof Design
Source: PBD Architects

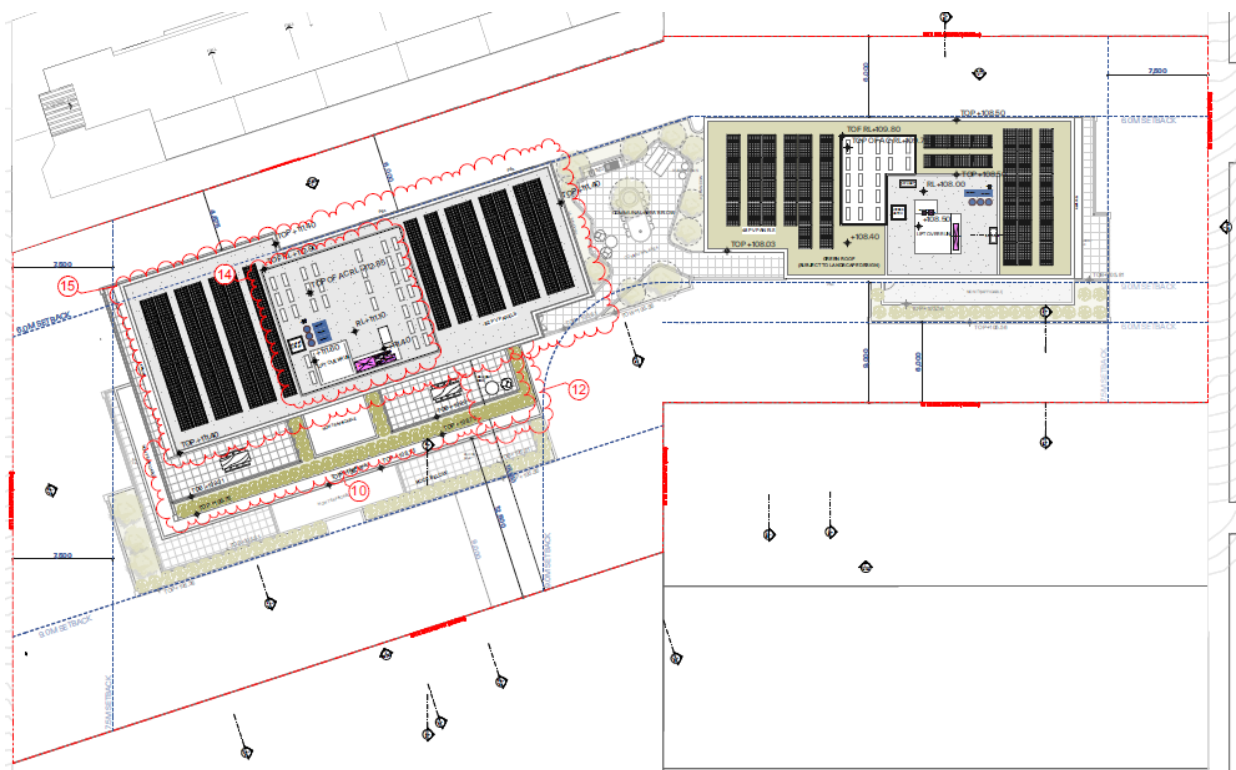


Figure 19: Proposed Roof Design
Source: PBD Architects

3.3.15 North Elevation

Minor changes are proposed to the approved northern elevation including:

- Change 2 - Basement 1 slab RL lowered by 150mm to increase ceiling clearance;
- Change 13 - Highlight windows have been added to the wall between the communal open space and Units 304 and 305 to improve solar amenity; and
- Change 14 - Air conditioning units have been moved to the roof level.

A comparison between the approved and proposed design of the northern elevation is demonstrated below in Figure 20 and Figure 21.

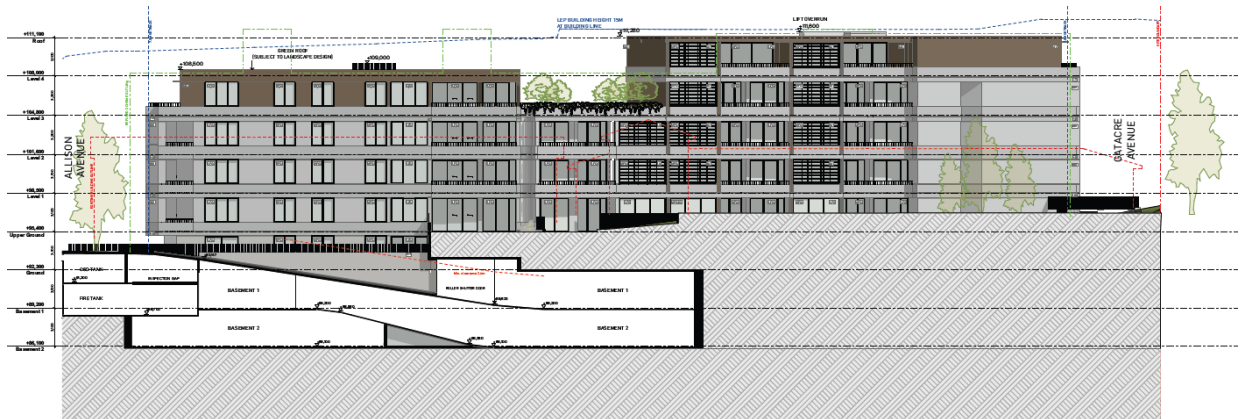


Figure 20: Approved Northern Elevation Design

Source: PBD Architects

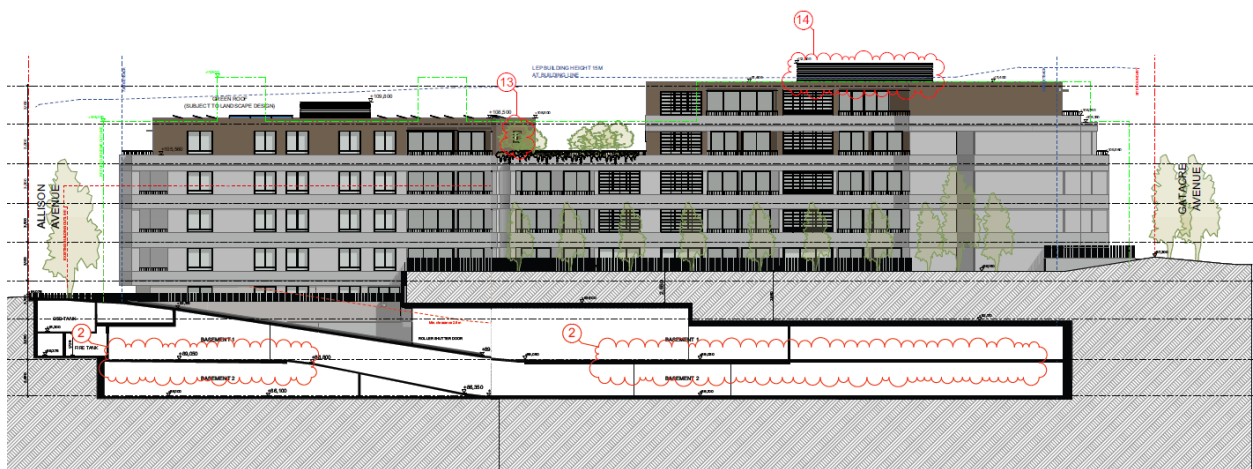


Figure 21: Proposed Northern Elevation Design

Source: PBD Architects

3.3.16 South Elevation

Minor changes are proposed to the approved southern elevation including:

- Change 10 - Terrace modification: A previously non trafficable terrace has been converted into a private open space for units 205, 302, 401, and 402;
- Change 12 - Unit 205 has been expanded; and
- Change 14 - Air conditioning units have been moved to the roof level.

A comparison between the approved and proposed design of the southern elevation is demonstrated below in Figure 22 and Figure 23.

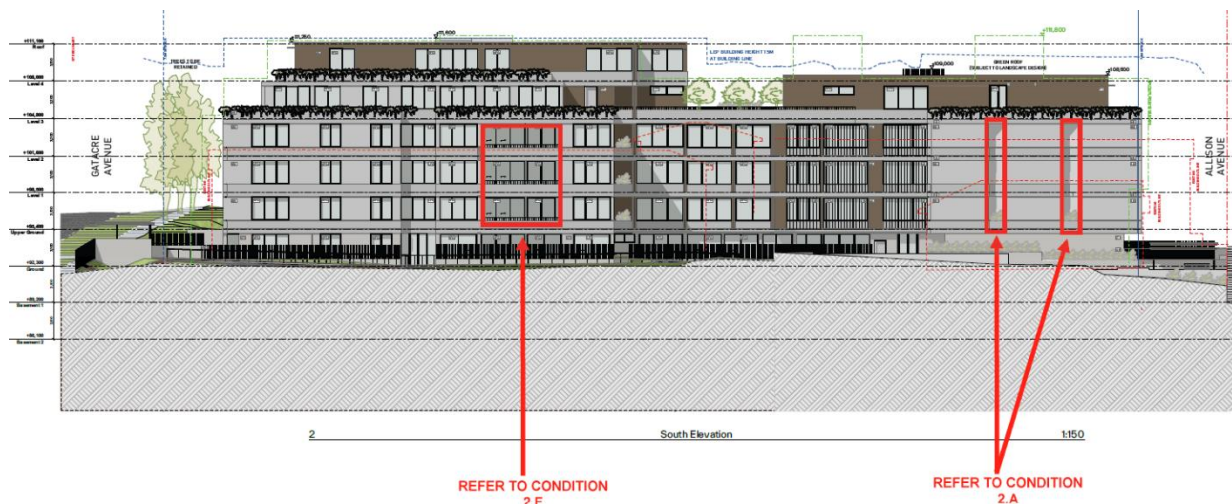


Figure 22: Approved Southern Elevation Design
Source: PBD Architects



Figure 23: Proposed Southern Elevation Design
Source: PBD Architects

3.3.17 East Elevation

No changes are proposed to the approved eastern elevation.

3.3.18 West Elevation

Minor changes are proposed to the approved western elevation including:

- Change 10 - Terrace modification: A previously non trafficable terrace has been converted into a private open space for units 205, 302, 401, and 402; and
- Change 14 - Air conditioning units have been moved to the roof level.

A comparison between the approved and proposed design of the western elevation is demonstrated below in Figure 24 and Figure 25.



Figure 24: Approved Western Elevation Design
Source: PBD Architects



Figure 25: Proposed Western Elevation Design
Source: PBD Architects

3.3.19 Landscaping

Minor changes are proposed to the approved landscape scheme to accommodate the proposed architectural changes and resolve landscape related items in Condition 2.

The proposed modification will result in a net loss of 19sqm of landscaped area (still 41.49% of site) and 1sqm of deep soil landscaping (still 27.5% of deep soil) as per Table 1.

Full details of the changes can be found in the Landscape Design Report within **Appendix 3**.

3.4 Administrative Changes

This Section 4.55(2) application seeks to modify numerous conditions as listed in **DA35/2024**. Text proposed to be deleted has been indicated by ~~strikethrough~~ and text proposed to be added has been indicated in **red**.

3.4.1 Condition 1. A.1 - Approved plans and supporting documentation

Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Plan	Revision	Plan Title	Drawn By	Dated
Architectural Plans				
DA000	E G	Cover Page	pbd	30/07/2024 10/04/2025
DA003	E G	Demolition Plan	pbd	30/07/2024 10/04/2025
DA004	E G	Site Analysis 1	pbd	30/07/2024 10/04/2025
DA005	E G	Site Analysis 2	pbd	30/07/2024 10/04/2025
DA006	E G	Site Analysis 3	pbd	30/07/2024 10/04/2025
DA007	E G	Site Analysis 4	pbd	30/07/2024 10/04/2025
DA008	E G	Site Plan	pbd	30/07/2024 10/04/2025
DA100	E G	Basement 2 Floor Plan	pbd	30/07/2024 10/04/2025
DA101	E G	Basement 1 Floor Plan	pbd	30/07/2024 10/04/2025
DA102	E G	Ground Floor Plan	pbd	30/07/2024 10/04/2025
DA103	E G	Upper Ground Floor Plan	pbd	30/07/2024 10/04/2025
DA104	E G	Level 1 Plan	pbd	30/07/2024 10/04/2025
DA105	E G	Level 2 Plan	pbd	30/07/2024 10/04/2025
DA106	E G	Level 3 Plan	pbd	30/07/2024 10/04/2025
DA107	E G	Level 4 Plan	pbd	30/07/2024 10/04/2025
DA108	E G	Roof Plan	pbd	30/07/2024 10/04/2025

Plan	Revision	Plan Title	Drawn By	Dated
DA200	F G	North South Elevation	pbd	30/07/2024 10/04/2025
DA201	F G	East & West Elevation	pbd	30/07/2024 10/04/2025
DA300	F G	Sections 1	pbd	30/07/2024 10/04/2025
DA301	F G	Sections 2	pbd	30/07/2024 10/04/2025
DA302	F G	Sections 3	pbd	30/07/2024 10/04/2025
DA303	F G	Sections 4	pbd	30/07/2024 10/04/2025
DA304	F G	Sections 5	pbd	30/07/2024 10/04/2025
DA400	F G	Finishes Schedule	pbd	30/07/2024 10/04/2025
Landscape Plans				
000	F G	Cover Page	ARCADIA	02/08/2024 25/03/25
001	F G	3.2 Site Plan	ARCADIA	02/08/2024 25/03/25
100	F G	Existing site Plan	ARCADIA	02/08/2024 25/03/25
101	F G	Landscape Masterplan	ARCADIA	02/08/2024 25/03/25
400	F G	Plant Schedule	ARCADIA	02/08/2024 25/03/25
401	F G	Planting Plan Ground Floor 01	ARCADIA	02/08/2024 25/03/25
402	F G	Planting Plan Ground Floor 02	ARCADIA	02/08/2024 25/03/25
403	F G	Planting Plan Ground Level 03	ARCADIA	02/08/2024 25/03/25
403	F G	Planting Plan Ground Level 04	ARCADIA	02/08/2024 25/03/25
600	F G	Landscape Detail	ARCADIA	02/08/2024 25/03/25
700	F G	Landscape Specification	ARCADIA	02/08/2024 25/03/25
Civil Plans				
CIV100	05	Cover Sheet	Civil Stormwater Engineering Group	31/07/2024
CIV101	05	General Notes	Civil Stormwater Engineering Group	31/07/2024
CIV200	05	Civil Driveway Design	Civil Stormwater Engineering Group	31/07/2024
CIV201	05	Long Section A-A	Civil Stormwater Engineering Group	31/07/2024
CIV202	05	Footpath Civil Design Allison Avenue	Civil Stormwater Engineering Group	31/07/2024

Plan	Revision	Plan Title	Drawn By	Dated
CIV203	05	Footpath Long Section B-B	Civil Stormwater Engineering Group	31/07/2024
CIV204	05	Footpath Civil Design Gatacre Avenue 1 of 2	Civil Stormwater Engineering Group	31/07/2024
CIV205	05	Footpath Long Section C-C 1 of 2	Civil Stormwater Engineering Group	31/07/2024
CIV206	05	Footpath Long Section C-C 2 of 2	Civil Stormwater Engineering Group	31/07/2024
CIV300	05	Standard Details 1 of 3	Civil Stormwater Engineering Group	31/07/2024
CIV301	05	Standard Details 2 of 3	Civil Stormwater Engineering Group	31/07/2024
CIV302	05	Standard Details 3 of 3	Civil Stormwater Engineering Group	31/07/2024
CIV400	05	Erosion & Sediment Control Plan	Civil Stormwater Engineering Group	31/07/2024
CIV400	05	Erosion & Sediment Control Plan Sections	Civil Stormwater Engineering Group	31/07/2024
Survey				
220804 Sheet 1 of 2	7	Partial Boundary, Detail & Levels Survey at 1 Gatacre Avenue & NO's 3-5 Allison Avenue Lane Cove	Mitch Ayers Surveying	05/03/2024
220804 Sheet 2 of 2	7	Partial Boundary, Detail & Levels Survey at 1 Gatacre Avenue & NO's 3-5 Allison Avenue Lane Cove	Mitch Ayers Surveying	05/03/2024
200082-DET 1 of 2	1	Plan Showing Levels & Detail Over Lot A in DP 415448 & Lots 45 & 46 in DP 11416	Metwest Surveys	19/10/2020
200082-DET 2 of 2	1	Plan Showing Levels & Detail Over Lot A in DP 415448 & Lots 45 & 46 in DP 11416	Metwest Surveys	19/10/2020

Document Title	Ref./Version No.	Prepared By	Dated
Traffic and Parking Assessment Report	23152 Rev D	ttpa	July 2024
BCA Assessment Report	R1.3	Steve Watson & Partners	10/04/2024
Arboricultural Development Impact Assessment Report	Rev E	Bords Tree Consultancy	22/04/2024
Acoustic Assessment	20240128.1 – Rev 1	Acoustic Logic	25/03/2024

Access Report	IAR-0234 Rev B	iAccess Residential	17/04/2024
Preliminary Site Investigation P2008014JR03V01	1	martens	04/05/2021
Preliminary Site Investigation Supporting Letter P2008014JC03V01	-	martens	27/05/2022
Operational Waste Management Plan	Revision F	Elephants Foot Consulting	10/04/2024
Construction and Demolition Waste Management Plan	Revision C	Elephants Foot Consulting	13/03/2024
BASIX Certificate	1741369M_05 1741369M_07	JHA Consulting Engineers (NSW) Pty Ltd	23/04/2024 25/03/2025
NatHERs Certificate	0009331920	JHA Consulting Engineers (NSW) Pty Ltd	23/04/2024 25/03/2025
Geotechnical Investigation Report	P2008014JR01V Rev 06	WINIM Developments Pty Ltd	04/04/2024
Solar Access Report	-	Walsh Analysis	01/08/2024
Urban Design Expert Opinion	-	ae	22/04/2024
Stormwater Management Report	QU2024.21	Civil Stormwater Engineering Group	18/03/2024
Visual Assessment Statement	-	Urbis	11/04/2024

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Note: an inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

Patch Planning Comment: The proponent is seeking to amend the approved details listed under Condition 1 to formally substitute revised drawings and technical reports which incorporate the proposed modifications subject of this application.

3.4.2 Condition 2. Design Amendments:

Before the issue of the relevant construction certificate, the certifier must ensure the approved construction certificate plans (and specifications) detailing the following required amendments to the approved plans and supporting documentation stamped by Council.

The following design amendments are required to be submitted to Council for assessment and approval:

A. All oblique, diagonal facing windows **from habitable rooms** on the southern external walls must be non-operable and be an obscure finish up to 1.6m above finished floor level.

Patch Planning Comment: The proponent is seeking to amend sub condition 2A, as it has been demonstrated that only the oblique, diagonal facing windows from habitable rooms on the southern external walls require privacy measures, as per Figure 26. The oblique windows from the ensuite bathrooms in their current form (operable with clear glazing) will not impact 7 Allison Avenues privacy.

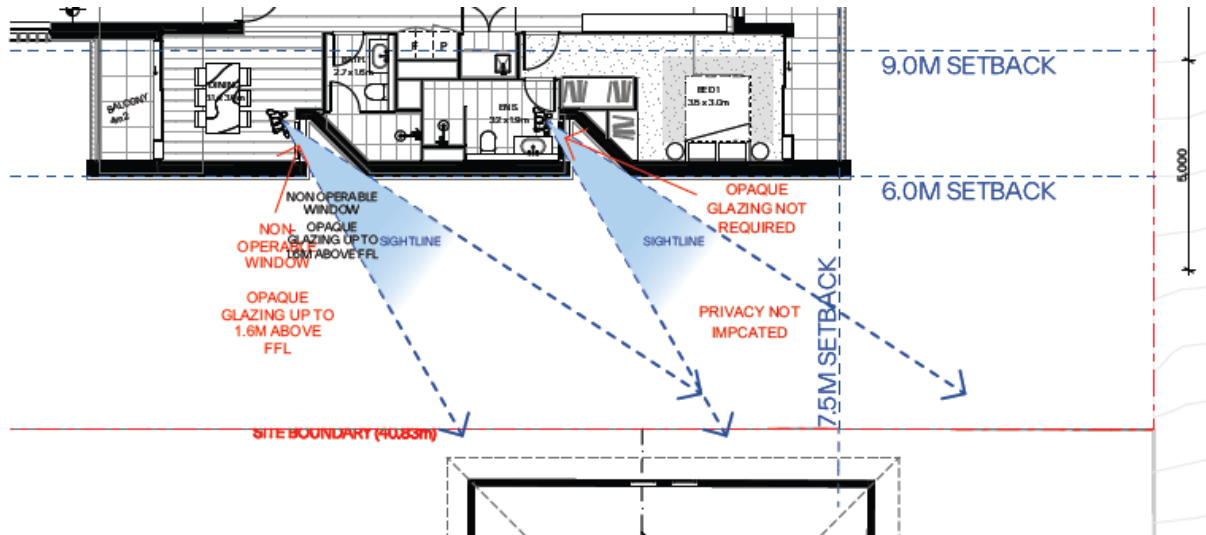


Figure 26: Sightline Diagram for Southern Oblique Windows
Source: PBD Architects

B. The proposed evergreen tree species located on the Level 3 open space, must be changed to predominantly deciduous species. Trees must be positioned to maximise sunlight infiltration through the rooftop space to properties south of this development. Revised species selection and placement to be shown in the Landscape Documentation, which is to be approved by the Council Landscape Architect prior to the issue of the Construction Certificate.

C. The roof top communal space and ground floor landscaping areas is also to accommodate these general items:

- A general utility sink; and
- Rubbish bins;

D. The applicant is to submit revised landscape plans to Council's Landscape Architect showing an increase of vegetation screening adjacent to 7 Allison Avenue. This screening located west of the boardwalk, must include:

- 3 x 300L Syncarpia glomulifera
- 8 x 200L Acmena smithii
- 6 x 200L Eleocarpus reticulatus

E. To accommodate for the introduction of larger trees against the boundary of 7 Allison Avenue, the boardwalk must be realigned closer to the building/ rainwater tank portion. Additionally, the screening against the building to the east of the boardwalk must include large shrubs which grow to a minimum of 4 metres in height.

~~F. The balustrades of the south facing balconies of Units UG.05, 105 and 2.05 are to be constructed with solid obscure finishes up to 1.2m above FFL.~~

Patch Planning Comment: The proponent is seeking to delete sub condition 2F, as it has been demonstrated that altering the balustrades of the south facing balconies of Units UG.05, 105 and 2.05 to be constructed with solid obscure finishes up to 1.2m above FFL, will not enhance privacy for 2A Gatacre and would undermine the design intent, as per Figure 27.

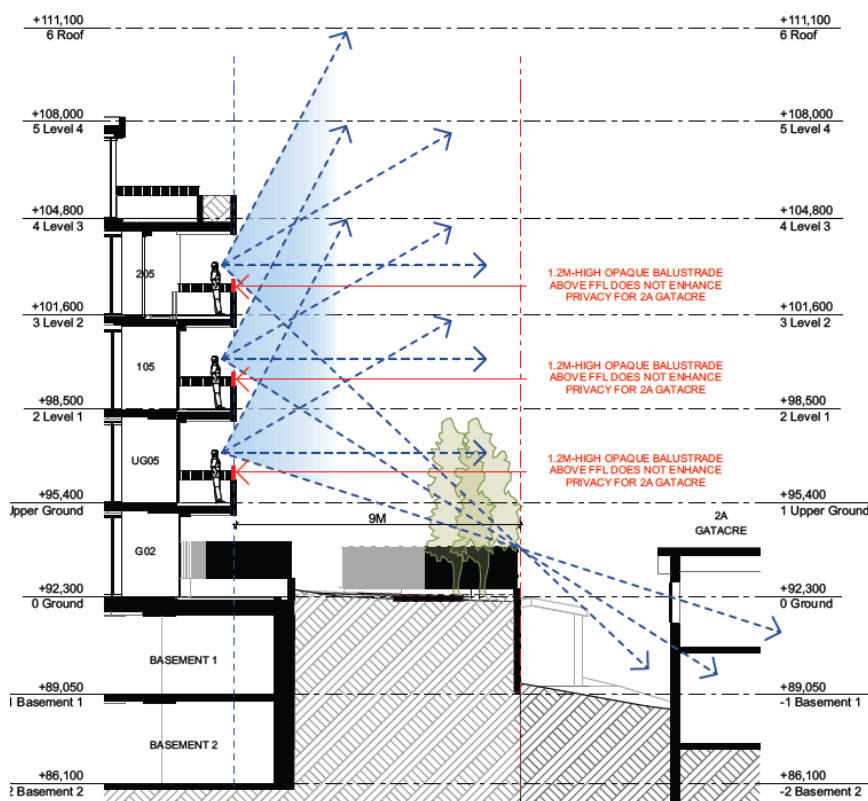


Figure 27: Sightline Diagram for Southern Balconies
Source: PBD Architects

G. Additional southern boundary sections with 7 Allison Avenue (at multiple intervals at the front yard, dwelling house, and rear yard) and 2A Gatacre (multiple intervals of the boundary retaining wall) are to be submitted demonstrating that the proposed boundary fence and retaining walls and associated footings in proximity to boundary will not adversely impact the dry-stone-wall and neighbouring trees.

H. The 1.8m high southern side boundary timber fence with 7 Allison Avenue is to incorporate acoustically treated materials to reduce potential noise impacts. The timber fence also is to include galvanized steel posts for structural stability. The fence is to be wholly located within the subject development site. Details are to be provided to Council for approval.

Reason: To require minor amendments to the approved plans and supporting documentation following assessment of the development.

Patch Planning Comment: The remaining design amendments have been incorporated into this modification application to be approved by Council.

4 Substantially the Same Development

Section 4.55(2)(a) of the EP&A Act states that a consent authority may modify a development consent if *“it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)”*.

The modifications sought to development consent **DA35/2024** for Development Application warrants consideration of the provisions of Section 4.55(2) of the EP&A Act. The provisions of Section 4.55(2) of the EP&A Act are provided in Table 3 below.

Table 3. Section 4.55(2) Assessment	
Clause	Response
<i>(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—</i>	
<i>(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</i>	As per Section 4 of this report, the proposed modification is substantially the same development as what was approved under DA35/2024. This is further described in the section below.
<i>(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and</i>	The proposal is not integrated development requiring concurrence, regardless it is expected that Council will reconsult with the relevant Minister, public authority or approval bodies where required.
<i>(c) it has notified the application in accordance with— (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and</i>	The application upon submission shall be notified for 14 days in accordance with the Lane Cove Development Control Plan. Council will be required to make a reasonable attempt to notify persons who made a submission.
<i>(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.</i>	It is acknowledged that Council must consider any submissions that are received concerning the proposed modification.
<i>(5) (Repealed)</i>	Noted.

4.1 Realize

In order to satisfy the requirements for the proposed development to be approved through a s4.55(2) application, it must satisfy the test of being substantially the same. As per the recent decision of the Chief Judge of the Land and Environment Court (LEC) in the case of *Canterbury-Bankstown Council v Realize Architecture Pty Ltd* [2024] NSWLEC 31 (Realize). The Chief Judge in his decision advocated for a 'balanced' approach based on 'instinct' or the 'look and feel' of the modified proposal when determining the test of substantially the same.

This involves the judgement passed down from the Commissioner, with whom the Chief Judge later agreed with. In reference to the Realize case, the Commissioner stated the following in her judgement:

“Whilst the development will alter the building envelope and to a certain degree, the appearance, the development will remain as a multi-storey, mixed-use development with ground floor commercial uses and communal open spaces and residential floor area above. Importantly, the overall architectural character of the development will not be adversely modified and the proposed changes will maintain the approved design language.”

Preston CJ confirmed that (at [7]) in determining whether the development as modified is substantially the same development as the development originally approved, three tasks need to be undertaken:

*“(a) **Finding the primary facts:** This involves drawing inferences of fact from the evidence of the respects in which the originally approved development would be modified. These respects include the components or features of the development that would be modified, such as height, bulk, scale, floor space, open space and use, and the impacts of the modification of those components or features of the development.*

*(b) **Interpreting the law:** This involves interpreting the words and phrases of the precondition in s 4.55(2) as to their meaning.*

*(c) **Categorising the facts found:** This involves determining whether the facts found regarding the respects in which the development would be modified fall within or without the words and phrases of the precondition in s 4.55(2). The decision-maker’s task is to determine whether the facts found fall within or without the statutory description, “according to the relative significance attached to them” by the decision-maker:”*

An assessment of the 3-step formula acknowledged by the Chief Judge in Realize has been set out below in relation to the proposal.

THE FIRST STEP: FINDING THE PRIMARY FACTS

The overall intent of the modification proposed is to optimise the approved development in response to market demand, and to improve internal and external amenity for future residents. The development as modified will result in substantially the same development as the development for which consent was granted under **DA35/2024** with no measurable environmental impacts beyond those identified in this report resulting from the modifications proposed. In summary, the proposed modifications generally comprise of the following:

1. Modification to basement;
2. Modification to internal layouts;
3. Modification to building height; and
4. Modification to landscaping.

THE SECOND STEP: INTERPRETING THE LAW

The ‘traditional’ approaches to undertaking the relevant comparisons to interpret the ‘substantially the same’ test has been undertaken below to assist in informing the second step of the process outlined by Preston CJ.

Comparing the “quantitative” and “qualitative” differences

Quantitative Assessment

Whilst it is acknowledged that the proposal does include some quantitative changes to the approved development, these are not considered to be substantial or comprise a critical element of the development. Further, from a qualitative perspective the development retains its identity as a residential flat building.

The proposed development, as modified, and subject to this modification application, relocates the mechanical plant and converts previously non-trafficable roof areas to private open space. Consequently the building height of the overall built form has been marginally increased to accommodate the proposed modifications resulting in a maximum **RL112.90**, a varying increase of **1.27m** to **1.29m** and a revised maximum building height of to **16.290m** measured at top of service plant fence. This represents a 9% exceedance. The above will not result in a noticeable change to the built form, bulk or scale of the proposal when compared to that which was originally approved.

The proposed non-compliance will be concentrated to only the rooftop chiller plant and the balustrades to new private open spaces, and will continue to not give rise to overshadowing impact and provide a negligible contribution to the building bulk and scale.

The proposal also seeks to increase the GFA by 5sqm, resulting in no change to the existing FSR of **1.69:1**. The increase in GFA is a direct result of modifications to the floorplates and the relocation of the chiller plant to the roof. The modifications to the floor plates have improved the unit layout and standardized layouts to enable a more efficient build process.

The increase in GFA of **5sqm** will not increase the bulk of the built form nor will it detrimentally impact the amenity of future residents or adjoining properties.

Qualitative Assessment

The modification will not change the inherent nature of the development as the use of the site will remain solely for the purposes of a residential flat building, consistent with the approved development.

A qualitative assessment of the proposed modifications indicates that no additional amenity impacts over the already approved is likely in terms of solar access, traffic, parking and noise. This is evidenced by the supporting Architectural Plans (refer to **Appendix 1**),. The parking provision and acoustic treatments under the originally approved design will continue to satisfactorily accommodate the modified development.

As such, it can be concluded that the proposed modified development is substantially the same as the approved development.

Comparing the “material and essential features” or “critical elements”

The phrase “material and essential features” or a “material and essential physical element” of the development, which has been adopted in several decisions derives from judicial interpretations of the statutory test that the modified development be “substantially the same” development as the originally approved development.

In terms of material and essential features or critical elements, the inherent nature of the development as a residential flat building, will not change because of the modification proposed, with key features of the original proposal retained.

The public benefits of the scheme, including the provision of a revitalised site for the purpose of providing 43 additional dwellings in the Lane Cove locality, will continue to be delivered by the modification.

Comparing the “consequences such as the environmental impacts”

The consequences and environmental impacts (and assessment response) are detailed in Section 5 below.

THE THIRD STEP: CATEGORISING THE FACTS

This final step is an “evaluative one” that “involves assigning relative significance or weight to the different facts and a balancing of the facts, as weighted.” In this sense, the final step involves a subjective element of opinion.

Noting the above, it is considered that having regard to the factual differences and the comparative assessment undertaken, the proposed modification is readily capable of being considered ‘substantially the same’ development as the development approved by the Original Consent for the following primary reasons:

- The modification remains a residential flat building which retains the approved primary land uses, and proposes no substantial change to this fundamental element of the approval;
- The modification will not result in an intensification of the approved building bulk, scale, design or use;
- There are no detrimental quantitative changes to the approved building bulk and scale that will impact the amenity of the proposed development (as modified);
- The internal reconfigurations to the building are not considered to inherently alter the primary operations of the building or affect the amenity of its residents; and
- The proposal would not adversely impact on neighbouring amenity of that of the public domain.

Through assessing the development in respect to the outcome of the Realize case, it is determined that the proposed development subject to this modification application would be substantially the same as the original development as detailed above.

5 Environmental and Planning Assessment

Under section 4.55(3) of the EP&A Act, the consent authority must take into consideration the relevant matters to the application referred to in section 4.15(1) of the EP&A Act and the reasons given by the consent authority for the grant of the original consent.

The following assessment considers the relevant matters under section 4.15(1) and demonstrates that the environmental impacts of the proposed modifications to the development will be adequately mitigated against or are not detrimental to the overall objectives of the development and the surrounding environment.

5.1 Planning Assessment

The consistency and compliance of the proposed development with the relevant environmental planning instruments is considered in the sections below. Overall, the assessment remains substantially the same as the assessment undertaken for **DA35/2024**.

5.1.1 State Environmental Planning Policies

The relevant State Environmental Planning Policies (SEPPs) are assessed in below.

Table 4. Assessment Against SEPPs	
SEPP	Comment
<i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>	The assessment undertaken for DA (DA35/2024) concluded that the site can be made suitable for the intended residential uses. This application does not impact the original assessment, as the proposed modifications do not give rise to any further contamination issues, and therefore the site remains suitable for the approved use.
<i>State Environmental Planning Policy (Housing) 2021</i>	A detailed assessment on the proposal's consistency with the relevant provisions in the Housing SEPP is provided in Section 5.1.2.
<i>State Environmental Planning Policy (Sustainable Buildings) 2022</i>	The proposed modifications are submitted with a new BASIX Certificate (see Appendix 4) and an updated NatHERS Certificate (see Appendix 5) which demonstrates modified proposal achieves the required targets.
<i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	The original proposal was subject to clause 2.120 of the T&I SEPP. An Acoustic Report was prepared by Acoustic Logic in support of the original application; which demonstrated that the development is able to comply with the requirements of the T&I SEPP subject to identified mitigation measures being adopted. The proposed modification is consistent with the findings of the original Acoustic Report, with no changes having been made to the design that would impact compliance with clause 2.120 of the T&I SEPP. Assessment in relation to this section remains unchanged from the original approval.
<i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>	Chapter 2 of the Biodiversity and Conservation SEPP details provisions regarding the preservation and management of vegetation in non-rural areas. The site is zoned R4 High Density Residential and is located within the Lane Cove LGA, the provisions of this chapter apply to the proposed development. This proposal does not include any provisions to remove additional trees or biodiversity, and therefore the existing assessment for the approved development remains relevant.

5.1.2 State Environmental Planning Policy (Housing) 2021

The Housing SEPP sets the standards for the development of different forms of residential accommodation across the State. Specifically, the Housing SEPP provides provisions for residential flat buildings.

The key provisions of the Housing SEPP have been considered in the preparation of this application and are addressed in , a compliance assessment against the key ADG controls is provided within and within a Design Verification Statement at **Appendix 2**. Importantly, the proposed modification has not altered the proposal's compliance with any of the key controls within the ADG.

Table 5. Relevant Provisions of the Housing SEPP		
Clause	Control	Compliance assessment
Chapter 4 Design of residential apartment development		
Clause 146 Referral to design review panel for modification applications	(1) <i>This section applies to a modification application for residential apartment development, other than State significant development.</i> (2) <i>If the statement by the qualified designer required to accompany the modification application under the Environmental Planning and Assessment Regulation 2021, section 102(1) does not verify that the qualified designer designed, or directed the design of, the original development, the consent authority must refer the modification application to the relevant design review panel for advice before determining the modification application.</i> (3) <i>The consent authority may also refer a modification application for residential apartment development to the relevant design review panel for advice before determining the modification application.</i>	The modification has been designed by the same designer as the original approval, as per the Architectural Design report at Appendix 2. The development that was approved in DA35/2024 had been designed in accordance with the outcome of consultation with both Council Officers and the Design Review Panel. The proposed modification retains the fundamental architectural elements of the approved design and referral to the design review panel is not required.
Clause 147 Determination of development applications and modification applications for residential apartment development	(1) <i>Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following—</i> (a) <i>the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,</i> (b) <i>the Apartment Design Guide (the ADG),</i> (c) <i>any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.</i>	The assessment of the quality of the design of the development in accordance with the design principles for residential apartment development set out in Schedule 9 has been provided within the Architectural Design report at Appendix 2. An assessment of the modification against the key components of the ADG has been provided within Table 8.
Clause 148 Non-discretionary development standards for residential apartment development—the Act, s 4.15	(1) <i>The object of this section is to identify development standards for particular matters relating to residential apartment development that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.</i> <i>Note— See the Act, section 4.15(3), which does not prevent development consent being granted if a non-</i>	No change is proposed to the quantum of parking provided within the development approved under DA35/2024. All internal apartment areas, room sizes and ceiling heights have been designed in accordance with ADG requirements, refer to the

Table 5. Relevant Provisions of the Housing SEPP		
Clause	Control	Compliance assessment
	<i>discretionary development standard is not complied with.</i> <i>(2) The following are non-discretionary development standards—</i> <i>(a) the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,</i> <i>(b) the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide,</i> <i>(c) the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.</i>	Architectural Design report at Appendix 2.
Clause 149 Apartment Design Guide prevails over development control plans	<i>(1) A requirement, standard or control for residential apartment development that is specified in a development control plan and relates to the following matters has no effect if the Apartment Design Guide also specifies a requirement, standard or control in relation to the same matter—</i> <i>(a) visual privacy,</i> <i>(b) solar and daylight access,</i> <i>(c) common circulation and spaces,</i> <i>(d) apartment size and layout,</i> <i>(e) ceiling heights,</i> <i>(f) private open space and balconies,</i> <i>(g) natural ventilation,</i> <i>(h) storage.</i> <i>(2) This section applies regardless of when the development control plan was made.</i>	The proposed development continues to achieve the design criteria outlined in the Apartment Design Guide which is further detailed in the Architectural Design report at Appendix 2.
Schedule 9 Design principles for residential apartment development		
A detailed response to the design quality principles is provided by PBD Architects at Appendix 2.		

5.2 Lane Cove Local Environmental Plan 2009

The *Lane Cove Local Environmental Plan 2009* (LCLEP) is the primary environmental planning instrument that applies to the site. An assessment of the proposed development against the relevant standards and provisions of the LCLEP is provided in Table 6.

Table 6. Review of the Relevant LCLEP Controls

Clause	Development Standards	Response
R4 High Density Residential zone	- To provide for the housing needs of the community within a high density residential environment. - To provide a variety of housing types within a high density residential environment. - To provide for a high concentration of housing with good access to transport, services and facilities. - To ensure that the existing amenity of residences in the neighbourhood is respected. - To avoid the isolation of sites resulting from site amalgamation. - To ensure that landscaping is maintained and enhanced as a major element in the residential environment.	The proposal will remain consistent with the objectives of the R4 High Density Residential Zone as the proposed modifications will provide improved amenity to the approved residential dwellings in a location with good access to transport, services and facilities.
4.3 Height of buildings	15m	As a result of relocating the air conditioning plant from Level 3 to the roof of Building A the maximum building height of the development has been marginally increased, resulting in a maximum RL112.90 , a varying increase of 1.27m to 1.29m and a revised maximum building height of to 16.290m measured at top of service plant fence. This represents a 9% exceedance of the 15m HOB development standard.
4.4 Floor space ratio (FSR)	2.4:1 (7,117.92sqm)	The proposal seeks to increase GFA across the site by 5sqm increasing the total GFA across the site to 5,025sqm. This represents an FSR of 1.69:1 which remains unchanged from the original approval.

5.2.1 Lane Cove Development Control Plan 2009

The proposed development is generally consistent with the *Lane Cove Development Control Plan 2009* (LCDCP) and largely remains unchanged from the original assessment. summarises the additional assessment undertaken resulting from the proposed modifications.

Table 7. Consistency with the LCDCP

Control	Comment	Compliance
C3 Residential Flat Buildings		
3.9 Design of Roof Top Areas	The layout of the communal 'Zen Garden' in the Level 3 void has been slightly refined in this proposal to satisfy Condition 2. However, size and function has not changed. The design of exterior private open space such as roof top gardens considers the visual and acoustic privacy, safety, security, and wind effects.	✓
3.10 Size and Mix of Dwellings	The sizes of all proposed dwellings are compliant with the minimum area required.	✓
3.13 Storage	Additional areas for residential storage are proposed on the Lower Ground Level. The additional space for storage is above and beyond the requirements. The rest of the storage spaces within the development remain unchanged.	✓

Table 7. Consistency with the LCDCP		
Control	Comment	Compliance
3.18 Landscaped Area	The total landscaped area has been reduced by 19sqm, however the proposal will deliver 1,230sqm (41.49%) of landscaping which exceeds the 40% control.	✓
Part J Landscaping and Tree Preservation		
2.4.4 Deep Soil Landscape Requirements	The total area of deep soil has been reduced by 1sqm, however the proposal will deliver 816sqm (27.5%) of deep soil which exceeds the 25% control.	✓
Part S Environmental Sustainability		
2.2 On-site solar	The number of PV panels has been reduced from 175 to 130, decreasing rooftop solar capacity from 78kw to 57kw. The proposal will still result in approximately 90% of the applicable roof area as PV panels.	✓

5.3 Environmental Assessment

The SEE submitted with the approved DA application also considered a range of potential environmental impacts, including:

- Built Form;
- Urban Design;
- Privacy;
- Solar Access;
- Overshadowing;
- Cross Ventilation;
- View Impact;
- Tree Removal & Landscaping;
- Ecologically Sustainable Development;
- Access, Parking & Traffic;
- Acoustic;
- Safety and Security;
- Stormwater Management;
- Building Code of Australia, Equitable Access & Fire Safety;
- Contamination;
- Geotechnical;
- Construction Management; and
- Waste Management.

The following assessment considers the impacts of the additional height and FSR facilitated by the proposed modification.

5.4 Context and Setting

The proposed modification retains the primary and critical elements of the approved development as a residential flat building which is permitted with consent in, and achieves the objectives of, the R4 High Density Residential Zone. The modifications sought under this application respond to the context of the site, to achieve a higher level of residential amenity for both residents of the site and surrounding properties.

The proposed does not seek significant modifications to the approved built form and scale of the building and will have no material impact on the character of the locality or give rise to any environmental or amenity impacts.

The proposal is considered to satisfy the objectives of the R4 zone which encourages additional housing and compatibility with the high density scale of the surrounding environment. Further, the proposal continues to be sensitive to the R2 zone interface along its southern boundary.

The proposal will ensure adequate solar access is achieved to both the apartments and adjoining properties, minimising overshadowing on the public domain. In terms of the visual impact, the proposal is considered as reasonable as the height exceedance will not cause undue view loss over that of the approved scheme, nor will it interrupt or alter important views.

Overall, the proposed modifications are considered to be substantially the same as the development previously approved under **DA35/2024** and will remain sympathetic to surrounding context, resulting in no adverse impacts to the existing streetscape.

5.5 Residential Amenity

The proposed development has been designed to provide all dwellings with high quality internal amenity and outlook, commensurate with the premium location and product proposed. As outlined in the Design Verification Statement provided at **Appendix 2**, the proposal has been designed in accordance with the nine principles of the Apartment Design Guide (ADG), as enforced by Schedule 9 of the Housing SEPP.

An assessment of the proposal's consistency with the key ADG controls is summarised in Table 8 below.

Table 8. Compliance With the ADG				
Component	Required Amount	DA35/2024	Proposed	Compliance
Communal Open Space	741.5sqm (25%)	756sqm (25%)	756sqm (25%)	✓
Solar Access	30 (70%)	30 (70%)	30 (70%)	✓
Cross Ventilation	26 (60%)	29 (67%)	28 (65%)	✓
Deep Soil	741.5sqm (25%)	817sqm (27.5%)	816sqm (27.5%)	✓
Apartment size and layout	1 bedroom = 50sqm 2 bedroom = 70sqm 3 bedroom = 90sqm	Compliant with the minimum required area for all dwellings	Compliant with the minimum required area for all dwellings	✓

5.6 Built Form

5.6.1 Building Height

The proposed building height is generally consistent with the building height development standard under LCLEP, with some minor departures as a result of:

- Relocating air conditioning plant from Level 3 to the roof of Building A; and
- Conversion of previously non-trafficable roof terraces into private balconies, resulting in the proposed balustrades exceeding the height plane in some locations.

The above will not result in a noticeable change to the built form, bulk or scale of the proposal when compared to that which was originally approved. This is demonstrated in Figure 28 and Figure 28 overleaf.

The proposal (as modified) continues to provide a design outcome that responds to the site, surrounding context and the existing and anticipated built form around the sites, as well as ensuring a suitable level of amenity is achieved.

As a result of relocating the air conditioning plant from Level 3 to the roof of Building A the maximum building height of the development has been marginally increased, resulting in a maximum **RL112.90**, a varying increase of **1.27m to 1.29m** and a revised maximum building height of to **16.290m** measured at top of service plant fence. This represents a 9% exceedance.

The proposal also seeks to increase the GFA by 5sqm, resulting in no change to the existing FSR of **1.69:1**. The increase in GFA is a direct result of modifications to the floorplates and the relocation of the chiller plant to the roof. The modifications to the floor plates have improved the unit layout and standardized layouts to enable a more efficient build process.

The increase in GFA of **5sqm** will not increase the bulk of the built form nor will it detrimentally impact the amenity of future residents or adjoining properties.



Figure 28. Approved Height Plane Axonometric Facing Gatacre Avenue
Source: PBD Architects

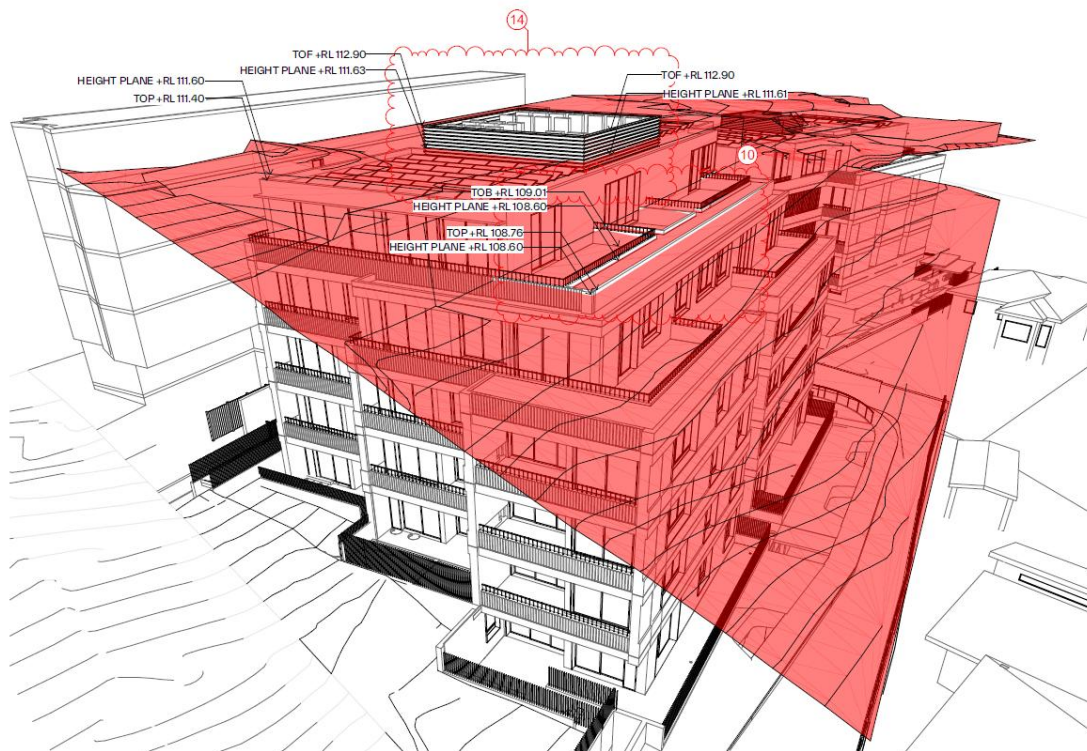


Figure 29. Proposed Exceedance to Maximum Building Height Facing Gatacre Avenue
Source: PBD Architects

5.6.2 Bulk and Scale

The visual catchment of the development is small as visibility of the DA decreases significantly and immediately, from all other locations west of and beyond the neighbouring dwellings downslope along Gatacre and Allison Avenues.

The approved built form includes a stepped form (at its northern end in particular) and a central lower section between taller forms, which creates a 'visual break' in development and will assist in reducing the perception of bulk and scale. The proposed modification retains the steps in the built form and merely seeks to relocate plant equipment from Level 3 to the roof (with its massing focused away from the southern boundary) and extend Unit 205. The proposed conversion of previously non-trafficable roof terraces to private balconies will not add visual bulk or result in negative view impacts.

The proposed development will not result in a noticeable change to the built form, bulk or scale of the proposal when compared to that which was originally approved. The proposed development will continue to be consistent with the desired built form of the surrounding locality and would not compromise the amenity of the future occupants of the site or those within surrounding properties.

The site conditions were considered in the placement of the built form, to ensure the least disruption to neighbouring properties, and surrounding locality. The design and appearance of the building is considered satisfactory and will not impact on the amenity of the surrounding land uses in any way.

The proposed modification will not result in a noticeable change to the visibility and perception of the bulk and scale of the development or negatively impact views from the south as demonstrated in Figure 30 and Figure 31 as a result of the steep level changes.



Figure 30. Approved Development Visual Impact Study
Source: PBD Architects



Figure 31. Proposed Development Visual Impact Study
Source: PBD Architects

5.7 Privacy

The proposed conversion of previously non trafficable terraces into a private open space for units 205, 302, 401, and 402 will not result in additional impact on neighbouring properties visual privacy, as per Figure 32 due to the landscaped buffer provided by the approved planter boxes. Similarly, the proposed modifications to the wording of Condition 2 will not result in any additional privacy concerns as demonstrated in Figure 26 and Figure 27.

5.8 Overshadowing

The proposed modification will technically result in minor additional overshadowing to the rear private open space for 7 Allison Avenue, as per Figure 33. However, it is important to consider the actual site conditions, which are heavily vegetated. When the existing and proposed landscaping are incorporated into the overshadowing model, there is no additional overshadowing experienced beyond what was approved under **DA35/2024** as per Figure 34.

No changes to overshadowing of 2A Gatacre Avenue will occur as a result of the modification.

5.9 Other Matters for Consideration

All other matters for consideration have been previously assessed as part of **DA35/2024** and remain unaffected by the proposed modifications.

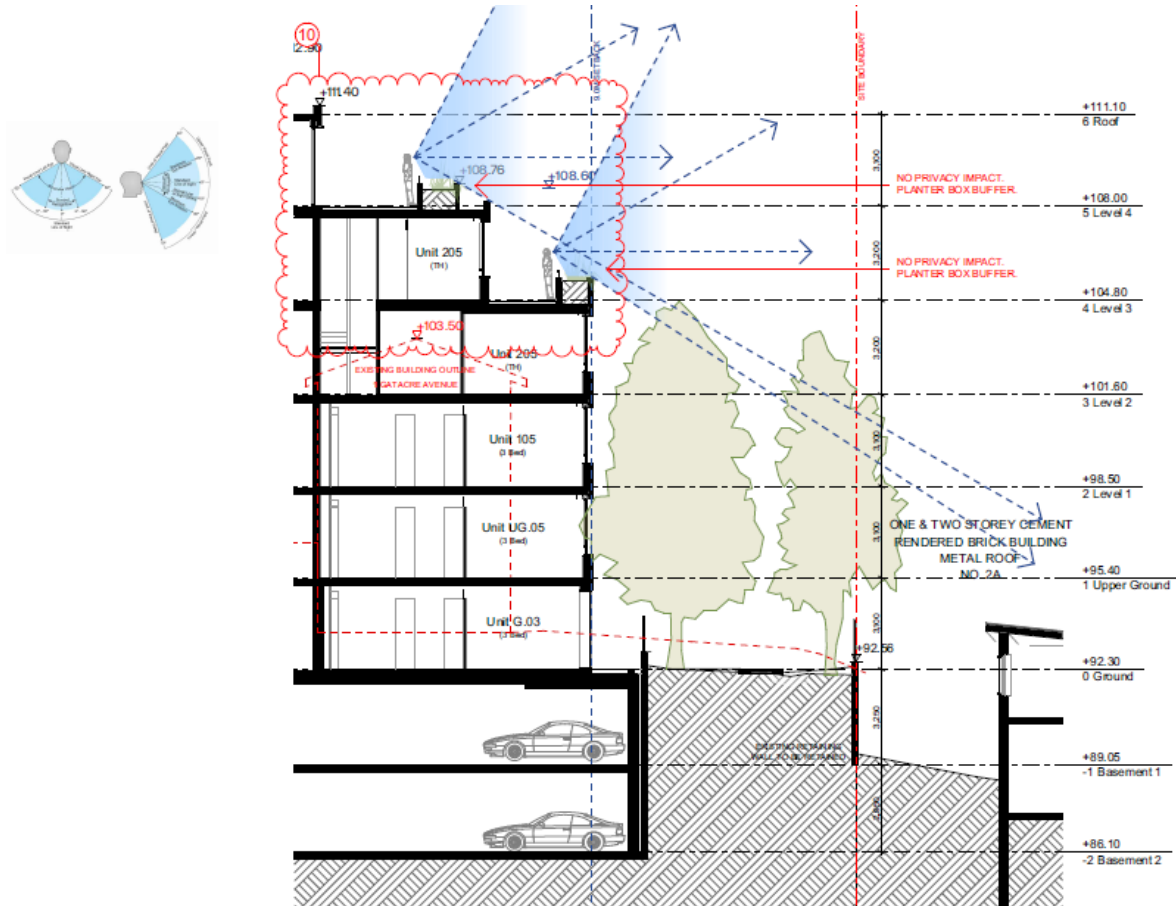


Figure 32. Proposed Development Visual Impact Study
Source: PBD Architects

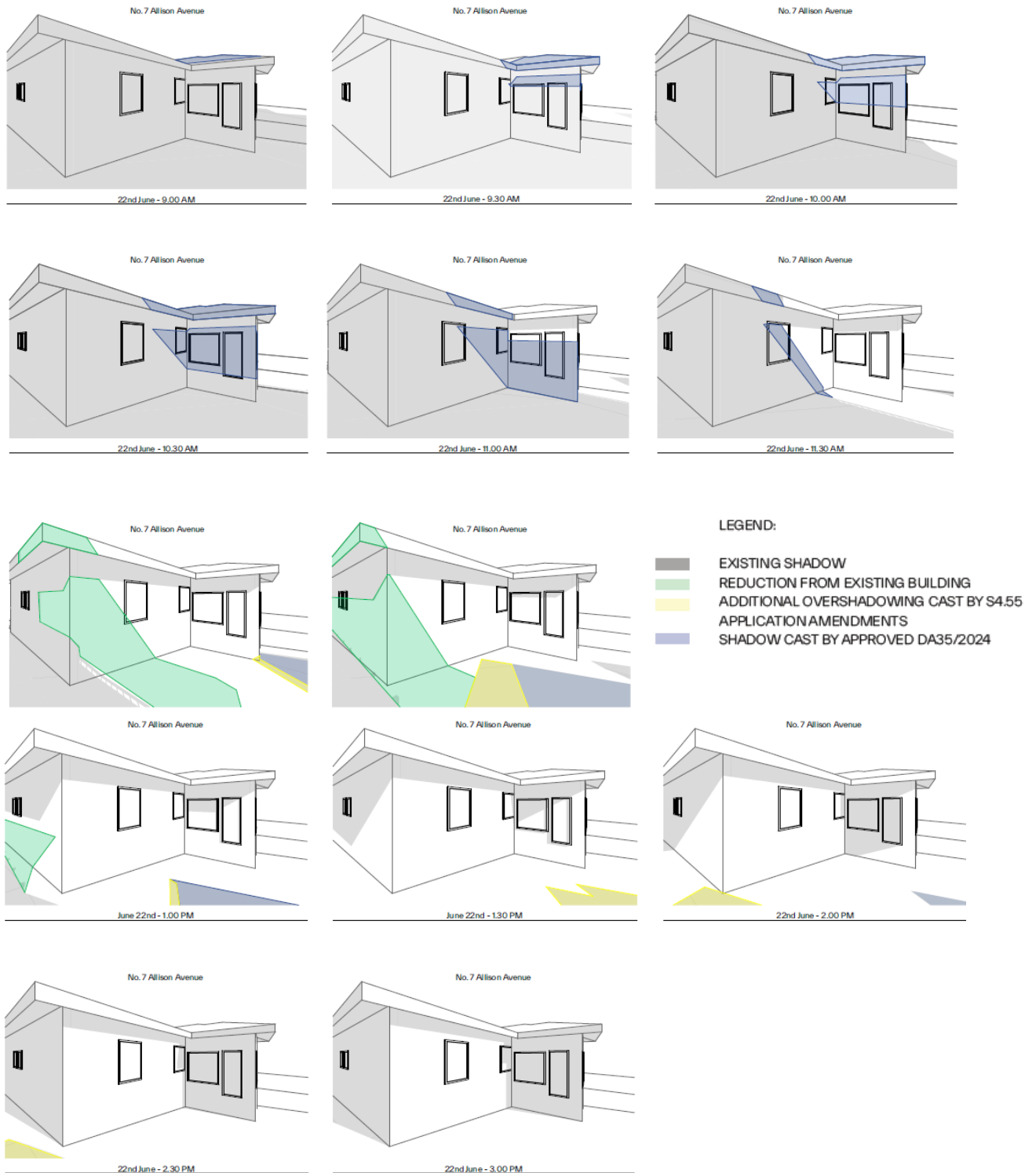


Figure 33. Proposed Overshadowing to 7 Allison Avenue
Source: PBD Architects

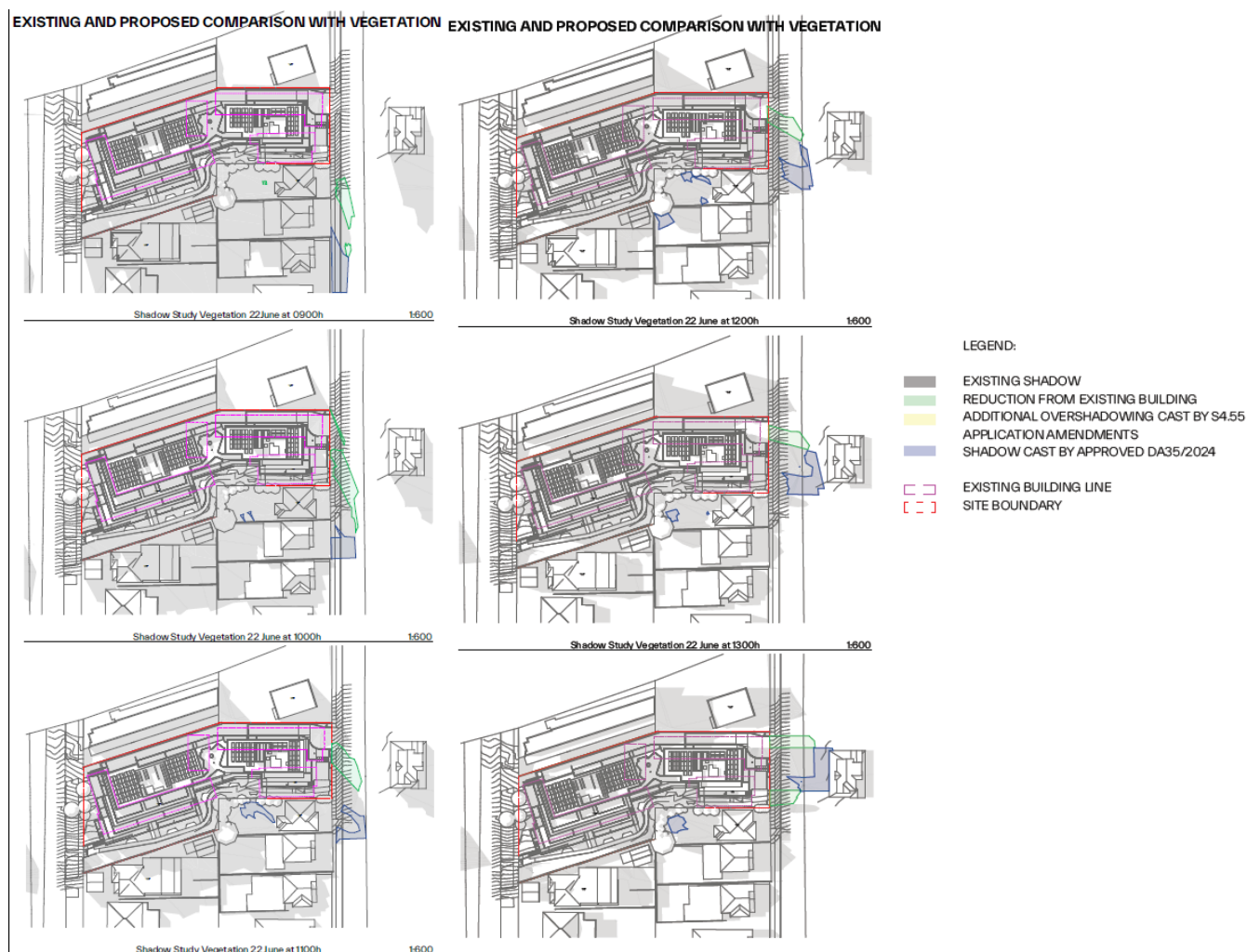


Figure 34. Proposed Actual Overshadowing (incorporating landscaping)
Source: PBD Architects

5.10 Reasons Given for Granting Consent

In accordance with Section 4.55(3) of the EP&A Act, the consent authority is required to take into consideration the reasons given by the consent authority for the granting of the consent that is sought to be modified. The SNPP listed several reasons for their approval of the development including:

"The Panel notes the application is significantly below the permitted Floor Space Ratio development standard, complies with the Height development standard and generally meets with the Part C Residential Development Objectives of the Lane Cove Development Control Plan 2009. The amended design also addresses both the Council and L & E Court concerns raised in the previously refused scheme.

The Panel concurs with Council that the proposal provides for dwellings within a high-density residential environment while providing appropriate design, setbacks and landscaping to mitigate impacts to the adjoining R2 zone. The design responds to the challenging topographic restraints of the site and the built form appropriately steps with the streetscape transition.

The application aligns with the objectives of the Lane Cove Housing Strategy, complies with the Apartment Design Guide and principles of SEPP 65 and would provide an appropriate dwelling mix of high amenity residential apartments serving the needs of the local area in a highly accessible location.

The Panel concurs with Council that the application has been properly assessed against all relevant planning legislation and controls and consequently the Panel believes approval would be in the community interest."

The development as proposed to be modified remains substantially the same as the approved development. The assessment provided demonstrates that the development as proposed to be modified retains the planning merits identified by the SNPP as the reasons given for granting consent, with the exception of complying with the height control. However, the proposed exceedances are limited and will not result in a fundamentally different built form outcome.

5.11 Site Suitability

The site remains suitable for the purpose of a residential flat building that will respond to the characteristics of the site and surrounding locality.

5.12 Submissions

No submissions have been received at the time of writing this statement. Any submissions received post lodgement shall be reviewed and considered.

5.13 The Public Interest

The development as modified would have no adverse impact on the public interest. The proposed modifications would improve the functionality and amenity of an approved residential flat building, with no adverse visual or amenity impacts for neighbouring properties or the public domain beyond those identified in this report.

6 Conclusion

This report has been prepared in support of a 4.55 Application to modify the approved residential flat building approved under **DA35/2024** at the site known as 1 Gatacre and 1-5 Allison Avenues, Lane Cove.

The proposal has been prepared after taking into consideration the following key issues:

- The development history of the site;
- Previously approved development;
- The context of the site and locality;
- The relevant heads of consideration under Section 4.55(2) of the EP&A Act; and
- The aims, objectives and provisions of the relevant statutory and non-statutory planning instruments.

As detailed throughout this statement and the supporting documentation, the proposed modification is considered to deliver a development outcome which remains contextually appropriate for the site, improves residential amenity, whilst resulting in a development substantially the same as that originally approved.

The proposed development, as modified, has been assessed against the 3-step formula acknowledged by the Chief Judge in **Realize**. The assessment concludes having regard to the factual differences and the comparative assessment undertaken, the proposed modification is readily capable of being considered 'substantially the same' development as the development approved by the Original Consent.

In light of the above, the modifications proposed to **DA35/2024** are considered worthy of support by Lane Cove Council.



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Patch Planners Pty Ltd

E info@patchplanning.com.au

www.patchplanning.com.au