



RESPONSE TO NOTICE OF APPLICATION

Five objections have been received. Grounds of objection are summarised as follows:

- Traffic concerns;
- Lack of on street car parking;
- Waste management;
- Reduction in visitor spaces;
- Entry and exit of the subject site;
- Visual bulk of the top storey;
- Lack of detail on the development and landscape plans;
- Overlooking; and
- Lack of articulation.

REFERRAL OF APPLICATION

Internal Referrals

Heritage

- The heritage status of the site has not changed, and it remains a site which is not afforded heritage protection;
- The reduction in overall height reduces the impact on adjacent heritage places, albeit a minor reduction;
- The change in roof form of the third floor from flat to a pitch appears to reflect the predominant surrounding pitched roof forms when viewed graphically on the drawings, however, in reality it is unlikely to have an impact due to the overall building height and the low pitch of the roof;
- The alterations to the floor plans and the resultant changes to the massing and elevations of the building has unfortunately increased the bulk, simplified the volumes and reduced the articulation of the elevations – particularly the southern elevation (Dawsons Avenue).

Engineering Unit

No objection subject to conditions.

Vegetation

No objection subject to amended landscape plan which requires a planting schedule and which includes container size for all trees to be planted and includes reference to the City of Ballarat's Landscape Design Manual (Section 5).

Traffic Unit

No objection subject to ensuring the car parking standards are in accordance with Clause 52.06-9 and that a separate application is made for a vehicle crossing permit for a crossover in Dawsons Avenue.

All works required, including remedial works, shall be arranged by and be at the cost of the Applicant.

KEY ISSUES

The principal issues relevant to the application are as follows:

- Strategic justification;
- Heritage, urban and neighbourhood character impacts;
- Amenity impacts;
- Car parking provision;
- Traffic impacts and road safety;
- On-site amenity;
- Landscaping;
- Tree impacts;
- Waste storage and collection; and
- Footpath construction.

Strategic Justification

The principle of developing the site for higher density infill has been established by the grant of Planning Permit PLP/2014/495. Since the issue of the planning permit, Council's settlement and housing policy provisions in the Municipal Strategic Statement have been updated (via Amendment C194 which was introduced in December 2016). The site is located within the designated 'Convenience Living' area as set out in the Housing Framework Plan at Clause 21.02. This area expressly contemplates growth in density and diversity of housing. Strategies include, amongst other matters, facilitating higher intensity and priority residential infill development in areas which are within 200 metres from an identified network of high frequency public transport corridors. The site is less than 200 metres from Sturt Street, an identified public transport corridor.

There is clear policy support at the state and local level for higher density development at the subject location.

Heritage, Urban and Neighbourhood Character Impacts

The changes to the external appearance of the approved development will have a negligible impact on the heritage, urban and neighbourhood character of the area. Arguably, the changes provide for an improved character response, one that responds more favourably to local heritage and design policy than the original development approved by VCAT.

A reduction in building height, albeit a minor reduction, lessens the prominence of the building in views from Wendouree Parade and Dawsons Avenue. The modified roof form, now incorporating a shallow hipped roof, provides a more traditional design detail that is more in keeping with neighbouring built form. Importantly, the more recessive form of the hipped roof assists in reducing the scale and prominence of the building. The modified roof form is considered an improved character response. The narrowing of the basement entry to one lane reduces the prominence of this service element in views from Dawsons Avenue, again an improved streetscape response.

The top floor of the development is brought nearer to Dawsons Avenue as well as to the southern boundary. This is not fatal to the proposal given the considerable setback from Dawsons Avenue that is maintained by the revised proposal. The top floor remains set back

from the first floor and will read as a subordinate building element. It remains modest and recessive. The hipped roof element of the top floor ably assists in this regard. The top storey also remains comfortably in proportion to the rest of the building, an attribute of the original design that the VCAT member observed as being acceptable.

The proposed changes to front and side setbacks are all acceptable in a character sense, with all of them considered minor in scale in terms of the magnitude of change. Some elements of the facades are brought nearer to boundaries while others are set further back from that originally approved. Importantly, the facades remain well-articulated, incorporating a range of material finishes. Balconies remain a feature that offers visual relief and moderation to the facades visible from neighbouring streets. Although the hipped roof form at the top level is more traditional, the bulk of the building retains its flat roof contemporary form, one that was judged by VCAT as being acceptable.

The development continues to comply with ResCode in respect to site coverage and permeability. The site coverage is significantly less than the 60% maximum and the permeability is more than double the minimum 20% requirement. As noted by the VCAT member, the proposal's performance against these requirements suggests a *'moderate, rather than intensive, level of growth'*.

In heritage terms the interface with the heritage-listed property at 205 Wendouree Parade remains a key issue. The VCAT member found the original building's relationship to this property to be acceptable. The amended proposal does not bring the development any closer to no. 205 other than a very small section at the top storey, which is negligible in the scale of the overall development. A small section of the building is set further from no.205. It is concluded that the amended building's physical relationship with no.205 is acceptable and that the interface is an appropriate heritage outcome.

The revised design does not conflict with the Schedule to the Design and Development Overlay. The front section of the building remains two storeys in height, as envisaged by the Schedule. As already noted, a reduction in building height is proposed and the siting of the building is largely the same as that approved. The garden area remains largely unchanged and the group of trees at the northeastern corner continue to be retained, an important landscape character element. Like the original proposal, the revised proposal is considered an appropriate response in the context of the requirements of the Schedule to the Design and Development Overlay.

In May 2018, the State Government introduced a minimum garden area requirement for residential buildings in the General Residential Zone (Clause 32.08-4). In order to comply with this requirement, the development must achieve a minimum 35% garden area. The amended proposal achieves a 44% garden area, well in excess of the minimum requirement. This is a further indicator of a development that suggests a moderate, rather than intensive, level of growth.

Amenity Impacts

The only sensitive amenity interface is to 205 Wendouree Parade, to the west, as it was when the original proposal was considered by VCAT in 2015. The adjoining lot to the south remains void of any development.

VCAT determined that the original development's amenity interface with the western property was acceptable save for two elements, the proximity and orientation of the ground and first floor private areas, serving unit 6 and 12 respectively. VCAT imposed an amended plans condition requiring the re-siting of these external areas to the south, avoiding a direct interface with the entry to 205 Wendouree Parade. The revised design takes account of these

requirements, with the ground and first floor units (now unit 6 and unit 13 respectively) oriented south. This represents a positive change to the development in residential amenity terms.

Importantly, the revised western side setback is positioned so that it complies with the prescribed ResCode building envelope, consistent with the original proposal. This is indicative of a development that does not present an unacceptable visual bulk impact to neighbouring residents. Overlooking is not increased to an extent greater than the original development approved by VCAT. Sunlight and daylight impacts to 205 Wendouree Parade remain within acceptable parameters as per the original proposal.

The setback from the southern boundary has reduced to 6.65 metres along the boundary of dwellings 7, 14 and 17 then steps in to the site further for dwellings 6, 13 and the southern boundary of dwelling 15. An increase in the building footprint to the east towards Dawson Avenue is minimal. Cantilevered balconies are provided at the first floor which form part of the increase.

Additional articulation measures such as the cantilevered balconies, variation in window fenestrations and variation in finished materials ensure the building's presentation to the south provides visual interest and ensures the height, scale and bulk of the building to the south and east is deemed satisfactory.

Car Parking Provision

The revised housing mix results in an increase in car parking provision for residents of the scheme. The development responds accordingly, with resident car parking increased to comply with the required minimum which in this case is 22 on-site spaces. The revised proposal seeks a reduction of three visitor car spaces, noting that in addition to the dwelling number increase the revised proposal omits the previously provided visitor space in the basement carpark. Council's Traffic Unit does not raise objection to the reduction sought, observing there is ample parking on-street. The revised parking layout complies with the requirements of Clause 52.06-9 of the Planning Scheme as per recommendations from Council's Traffic and Transport Unit.

The increase in bicycle space provision is acceptable noting the level of provision exceeds the requirements of Clause 52.34 of the Planning Scheme.

Traffic Impacts and Road Safety

The revised proposal is supported by a Traffic Impact Assessment that has been reviewed by Council's Traffic Unit. Council's Traffic Unit does not raise an objection to the revised development on traffic or safety grounds. The proposed access location is consistent with the previously approved development. Two convex mirrors are proposed either side of the revised one lane basement ramp, to assist with sightlines for drivers entering and exiting the basement. This arrangement is not uncommon in urban areas and is deemed acceptable.

The Traffic Impact Assessment anticipates the proposed additional dwellings will generate 28 additional daily vehicle movements, or an extra three vehicle movements in the peak hour periods. Officers agree with the Traffic Impact Assessment which describes the change in traffic generation as negligible.

On-Site Amenity

The original design afforded every dwelling an adequate level of internal amenity. The revised proposal achieves the same. Private open space (POS) provision for each dwelling is appropriate. The removal of communal gardens is not fatal to the amenity levels for future occupants given the level of POS provision. All ground floor private gardens and terraces will receive adequate sunlight access. As with the original scheme, the revised proposal does not

require screening at upper levels to prevent direct overlooking in order to comply with ResCode Standard B22, reflective of a well-considered design response.

Landscaping

Changes to the landscaping scheme that was considered by VCAT are very minor. The most important aspect of the landscaping plan is maintained, that being the retained group of established trees at the northeastern corner of the site. This is an important landscape character element, as it assists in framing the development and softening views of it from the street. It also assists in maintaining the garden character of the area, a valued character element of the neighbourhood and a requirement of the Schedule to the Design and Development Overlay.

Additional landscape planting (greater scale and variety) is proposed along the site's western boundary. This not only offers an improved landscape character outcome to the benefit of the broader neighbourhood, it offers an improved residential amenity interface for the occupants of 205 Wendouree Parade.

Additional landscaping is proposed along the southern boundary also, ensuring the development sits within the landscape character along all property boundary interfaces.

Council's Landscape Officer does not object to the proposed landscape planting changes although does request further details regarding species locations and container sizes. This is a matter appropriately addressed by permit condition.

Tree Impacts

The proposed changes to the building envelope do not result in any implications for the trees designated for retention, as the building footprint is not brought any closer to the root protection areas (RPA) of the retained trees other than for Tree 15 (T15). The encroachment into T15's RPA is very limited. A tree management plan was a conditional requirement imposed by VCAT. The condition remains necessary to protect retained trees and is reasonable to ensure an appropriate landscape outcome is realised. It is recommended this condition is retained.

Waste Storage and Collection

The changes to the development have no bearing on waste storage and collection, as the original methods in this regard remain unchanged. It is noted that VCAT did not support Council's incorporation of bin store hardstand areas to Dawsons Avenue owing to the adverse visual impact that would result. Officers consider it prudent that this requirement is not pursued, in accordance with VCAT's position on the matter.

A condition requiring a Waste Management Plan is to remain on any approved permit. This will require the permit holder to ensure residential waste collection is managed onsite.

Footpath Construction

Council recommended to VCAT that a condition ought to be imposed requiring the permit holder to construct footpaths along the site's street frontages. VCAT did not support this requirement. Officers again consider it prudent that this requirement is not pursued.

Storm Management

Clause 53.18 'Stormwater Management in Urban Development' was incorporated in the Planning Scheme in October 2018. This requires an application of this nature to be accompanied by details of the proposed stormwater management system, including drainage works and retention. This information will be required prior to VCAT deciding on the amended proposal.

Officer Position in Respect to Proposed Amendment to the Approved Development

Having regard to the originally approved development and the position adopted by VCAT in approving the proposal, Council's discretion rests with the specific impacts associated with the now sought amendments to the plans.

In short, Council does not have the discretion to re-prosecute a position in respect to the overall development as this has been previously determined by VCAT.

Having said this, the merits review of the proposed amendments to the development is such that it is considered that the impact of the proposed amendments deliver no further adverse impact which would justify Council forming a view to argue for the rejection of the amended plans. Therefore, it is recommended that Council provide formal support for the amended plans to be approved by VCAT with the amended conditions as detailed in the recommendation to this report.

LEGISLATION, COUNCIL PLAN, STRATEGY AND POLICY IMPLICATIONS

Clauses relevant to the application include the following:

State Planning Policy Framework (SPPF)

Clause 11 – Settlement
 Clause 15 – Built Environment and Heritage
 Clause 16 – Housing
 Clause 18 – Transport

Local Planning Policies

Clause 21.02 – Settlement and Housing;
 Clause 21.03 - Ballarat's Strategic Framework;
 Clause 21.06 – Built Form, Heritage and Design

In addition:

- *Charter of Human Rights and Responsibilities Act 2006*;
- *Planning and Environment Act 1987*;
- *Subdivision Act 1988*;
- City of Ballarat Council Plan 2017-2021; and
- Ballarat Planning Scheme.

REPORTING AND COMPLIANCE STATEMENTS

Implications	Considered in Report?	Implications Identified?
Human Rights	Yes	No
Social/Cultural	Yes	No
Environmental/Sustainability	Yes	No
Economic	No	No
Financial /Resources	No	No
Risk Management	Yes	No
Implementation and Marketing	No	No
Evaluation and Review	No	No

Human Rights and Social/Cultural- The application has been assessed in accordance with the requirements of the *Planning and Environment Act 1987* and the Ballarat Planning Scheme. The assessment is considered to accord with the *Charter of Human Rights and Responsibilities Act 2006*. Specifically:

- Freedom of Expression (part 2 section 15);
- A fair hearing (part 2 section 24); and
- Entitlement to participate to public life (part 2 section 18).

Environmental/Sustainability – the proposed development is considered to have had regard to the environment.

Risk Management – conditions are recommended on any approved permit which will ensure the construction of the development will be managed to ensure all risks are mitigated within the construction management plan.

OFFICERS DECLARATIONS OF INTEREST

Council officers affirm that no direct or indirect interests need to be declared in relation to the matter of this Report.

REFERENCE DOCUMENTS

- *Planning and Environment Act 1987*; and
- Ballarat Planning Scheme.

ATTACHMENTS

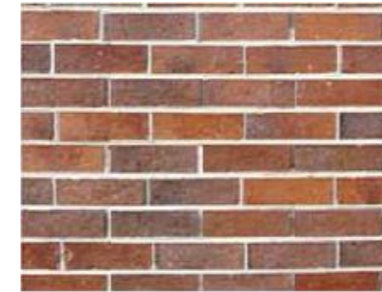
1. PLP 2014 495 A 203 & 203 A Wendouree Parade Lake Wendouree Plans **[10.4.1]**
2. PLP 2014 495 A 203 & 203 A Wendouree Parade Lake Wendouree Landscape Plan(2) **[10.4.2]**
3. VCAT Decision P 589 2015 Wendouree Parade **[10.4.3]**

ELEVATION LEGEND KEY

- ① METAL CLADDING - TYPE 1
STANDING SEAM - COLOURBOND FINISH
- ② METAL CLADDING - TYPE 2
FLAT SHEET - COLOURBOND FINISH
- ③ FACE BRICKWORK - TYPE 1
PRESSED BRICK - NUBRIK - GRAMPIANS BLUE
- ④ FACE BRICKWORK - TYPE 2
PRESSED BRICK - PGH - MATTERHORN
- ⑤ BRICKWORK - HIT & MISS BRICK SCREEN
- ⑥ OFF FORM CONCRETE WALL - CLEAR SEAL FINISH
- ⑦ ALUMINIUM FRAME GLASS SLIDING DOOR
POWDERCOAT FINISH
- ⑧ ALUMINIUM FRAME WINDOW TYPE 1 - FIXED
GLASS/OPENABLE SASH POWDERCOAT FINISH
- ⑨ ALUMINIUM FRAME WINDOW TYPE 2 - 'BREEZEWAY' LOUVRE
POWDERCOAT FINISH
- ⑩ ALUMINIUM WINDOW TYPE 3 - OPERABLE
ANEETA SASHLESS SLIDING
- ⑪ ALUMINIUM WINDOW TYPE 4 - AWNING WINDOW
- ⑫ ALUMINIUM SHADE LOUVRES
POWDERCOAT FINISH
- ⑬ TIMBER SCREEN FENCE - CLEAR SEALED
- ⑭ BALCONY - CANTILEVERED
- ⑮ GLASS BALUSTRADE - BALCONY
- ⑯ ALUMINIUM FRAMED / GLAZED DOOR
- ⑰ LIFT OVERRUN
- ⑱ SKYLIGHT
- ⑲ COLORBOND SHEET ROOF

- ⑳ PEDESTRIAN ENTRY
- ㉑ LOW HEIGHT BRICKWALL
- ㉒ REAR ENTRY GATE
- ㉓ POWDERCOAT STEEL FENCE
- ㉔ RUBBISH BIN ENCLOSURE
- ㉕ BASEMENT CAR PARK ENTRY/EXIT
- ㉖ GARDEN STEPS
- ㉗ ADJUSTABLE SUNSHADE / PELMET
- ㉘ RAISED PLANTER
- ㉙ ENTRY CANOPY
- ㉚ MAIL/LETTER BOXES

EXTERNAL FINISHES



BRICK TYPE 1 - GRAMPIANS BLUE



BRICK TYPE 2 - MATTERHORNE



BRICK TYPE 1 - GRAMPIANS BLUE



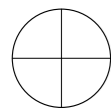
SUGGESTED BALCONY DETAIL & POWDERCOAT ALUMINIUM FRAME WINDOWS



METAL CLADDING TYPE 1
STANDING SEAM COLORBOND FINISH



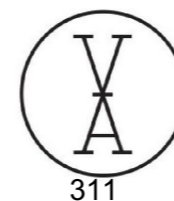
OFF FORM CONCRETE
LOW HEIGHT GARDEN WALLS



NOTE

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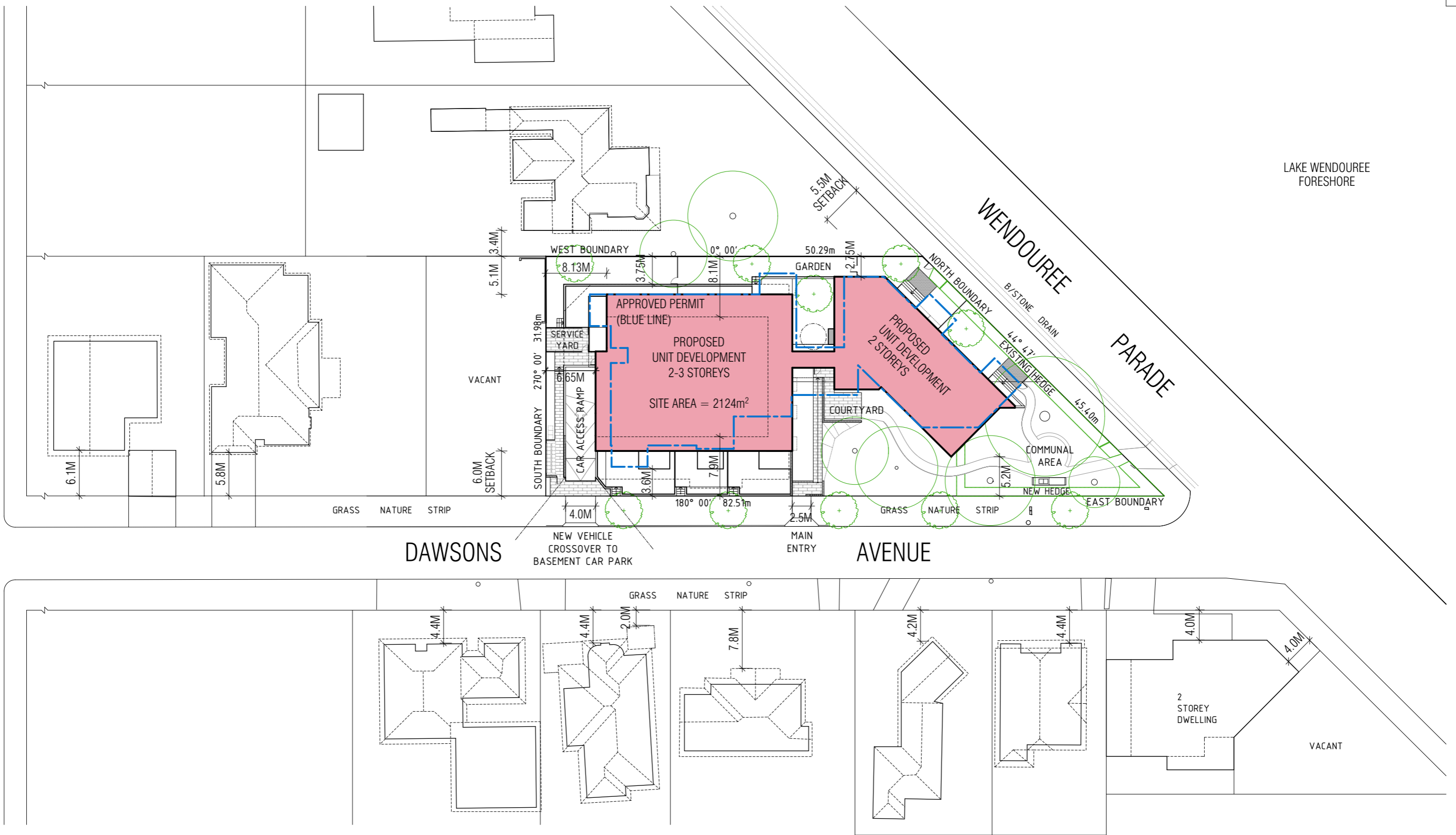
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203 WENDOUREE PARADE
LAKE WENDOUREE 3350

Scale
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Date
2.11.18
Revision
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Drawing
LEGEND KEY, EXTERNAL FINISHES
Job No
138
Drawing No
AO.1

STREET

STURT



SITE PLAN
SCALE 1:500 @ A3

NOTE

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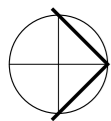
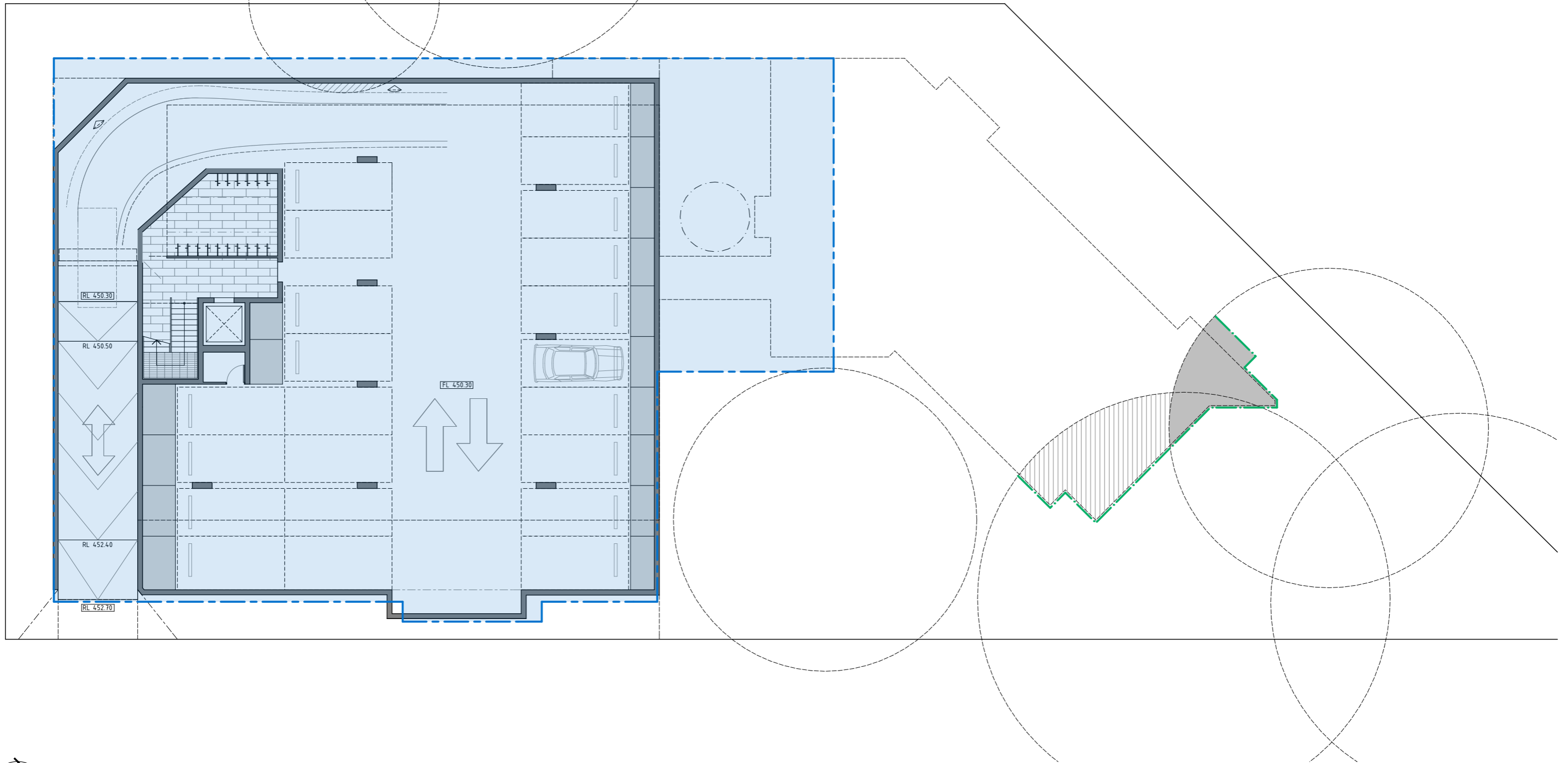
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SITE PLAN

Job No
138

Drawing No
A1.0



BASEMENT FLOOR PLAN
SCALE 1:200 @ A3

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BUILDING AREAS
TOTAL FLOOR AREA = 696m²
(plus RAMP = 59.8m²)
22 CAR SPACES TOTAL

PERMIT APPROVED
TOTAL FLOOR AREA = 848m²
20 CAR SPACES TOTAL WITH 1 No VISITOR BAY

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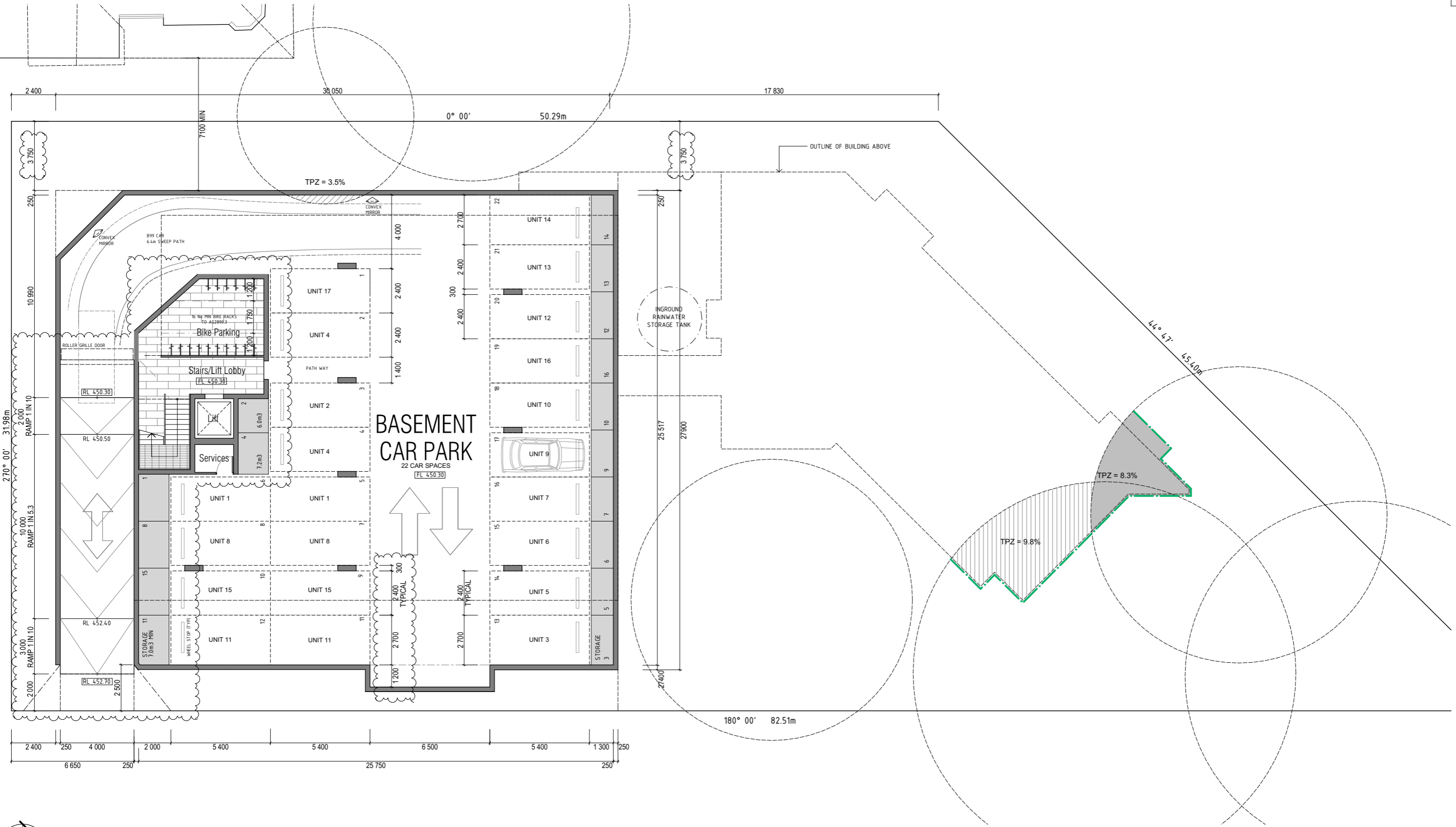
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Drawing
BASEMENT FLOOR PLAN

Job No
138

Drawing No
A2.0



BASEMENT FLOOR PLAN
SCALE 1:200 @ A3

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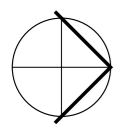
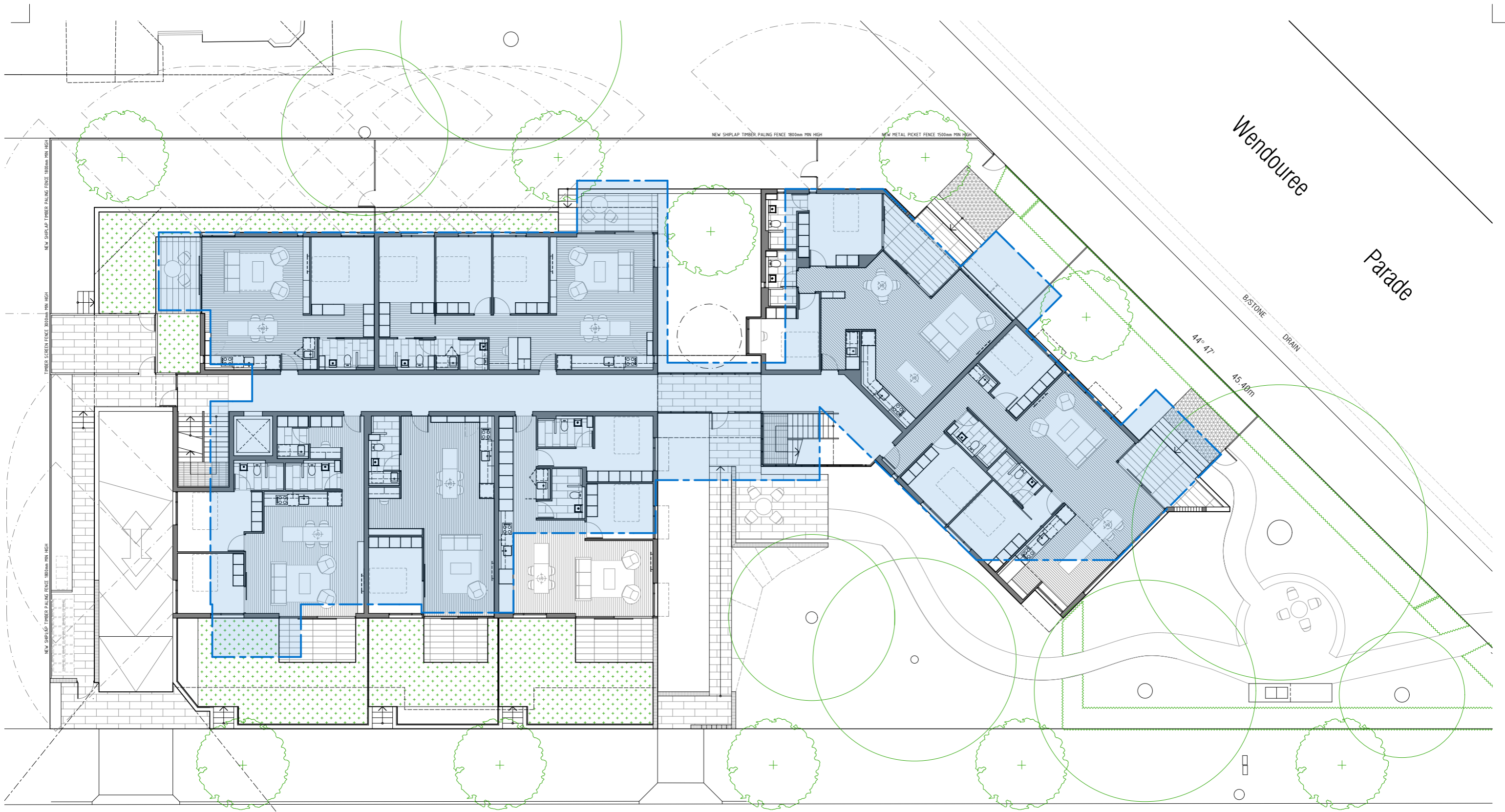
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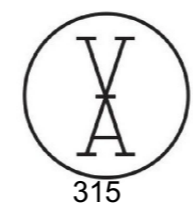
GROUND FLOOR PLAN
SCALE 1:200 @ A3

Dawsons Avenue

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BUILDING AREAS
TOTAL FLOOR AREA = 788.0m²
APPROVED PERMIT
TOTAL FLOOR AREA = 706m²

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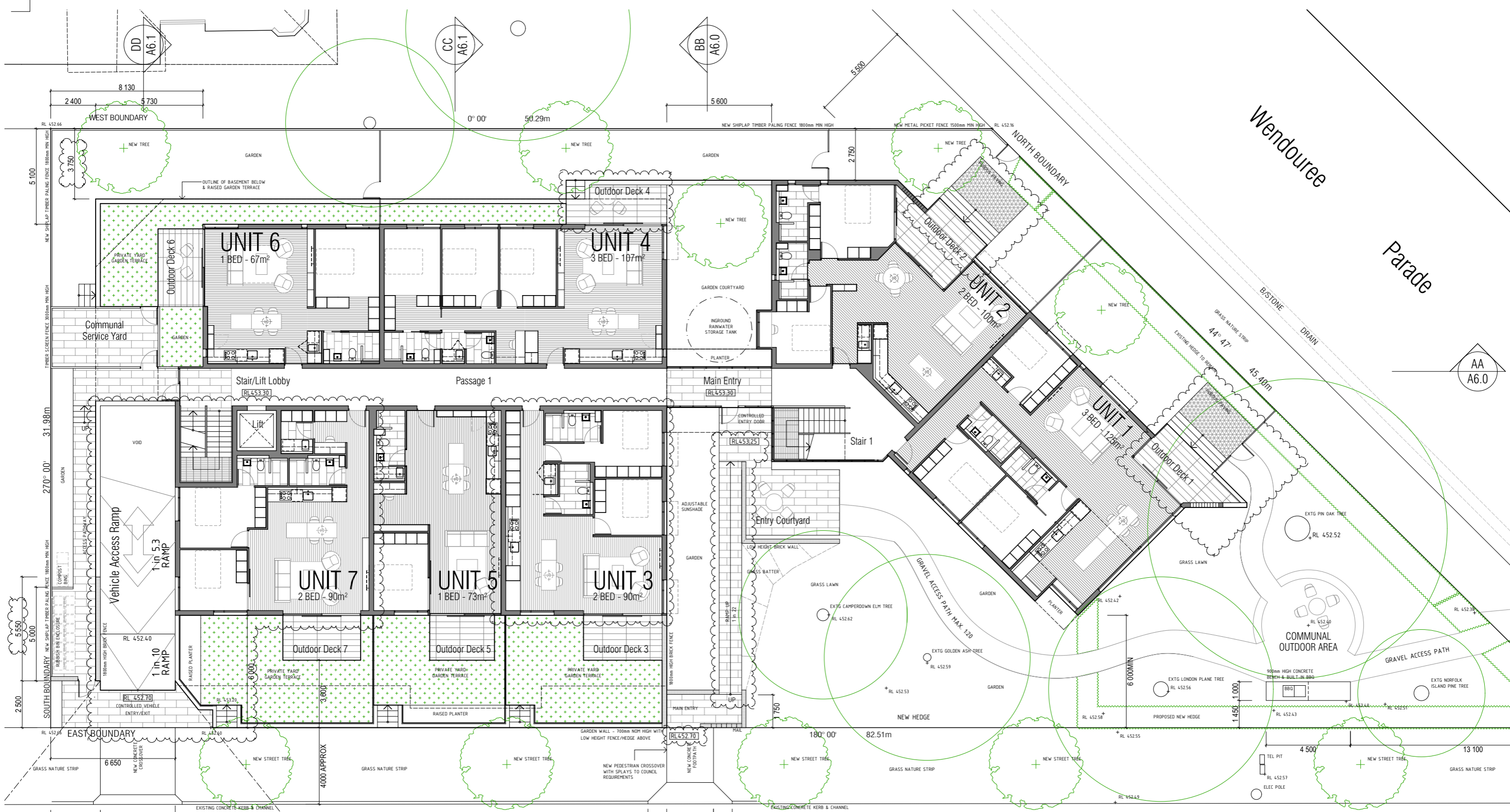
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GROUND FLOOR PLAN

Job No 138
Drawing No A2.1



GROUND FLOOR PLAN
SCALE 1:200 @ A3

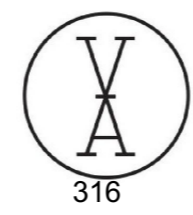
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Clause 72 MINIMUM GARDEN AREA
942 / 2124 = 44.3%
(35% minimum requirement)

Site Area 2124m²
Garden Area

BUILDING AREAS
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APPROVED PERMIT
TOTAL FLOOR AREA = 706m²

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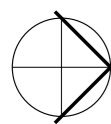
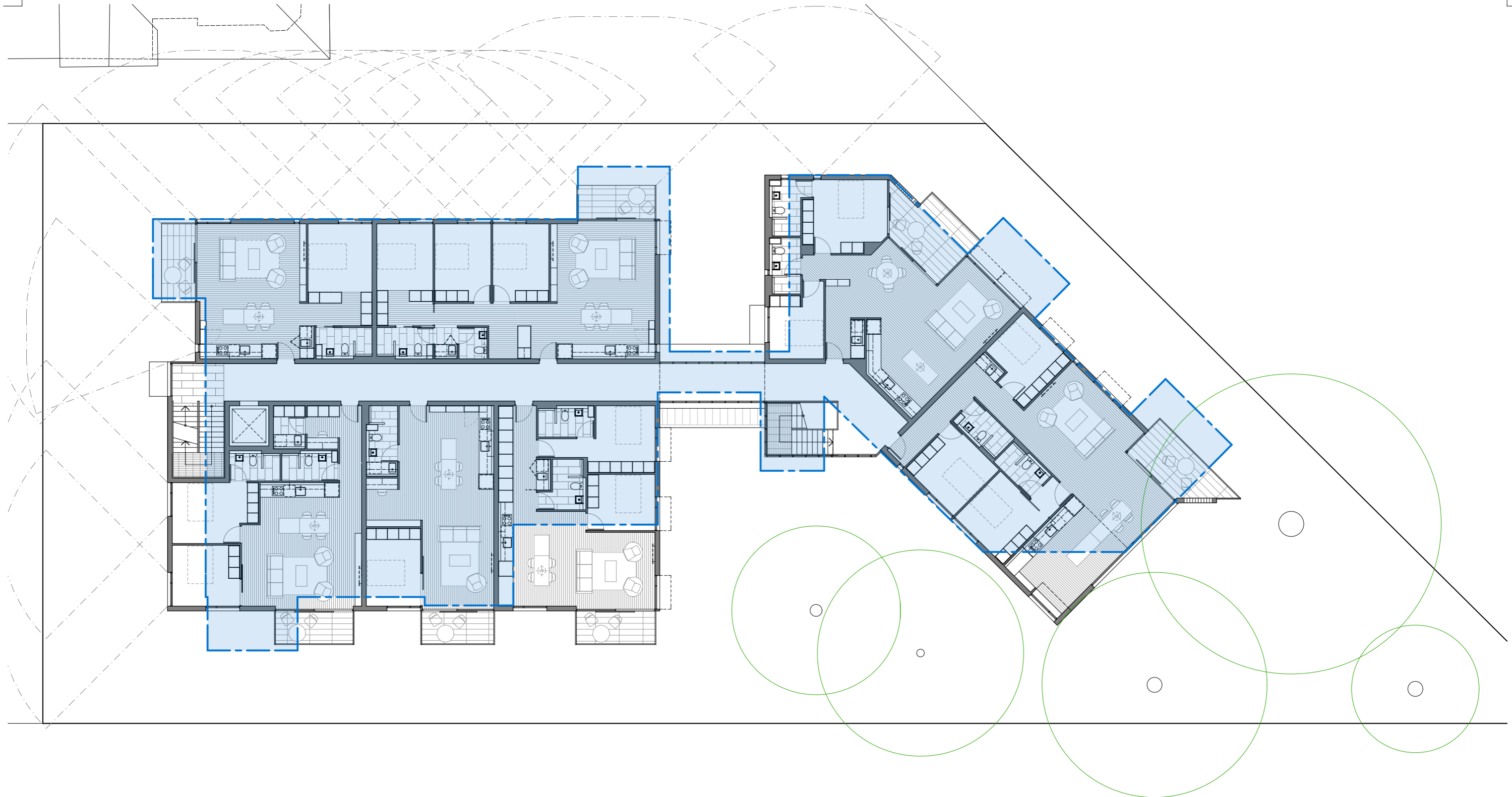
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FIRST FLOOR PLAN
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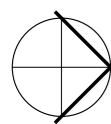
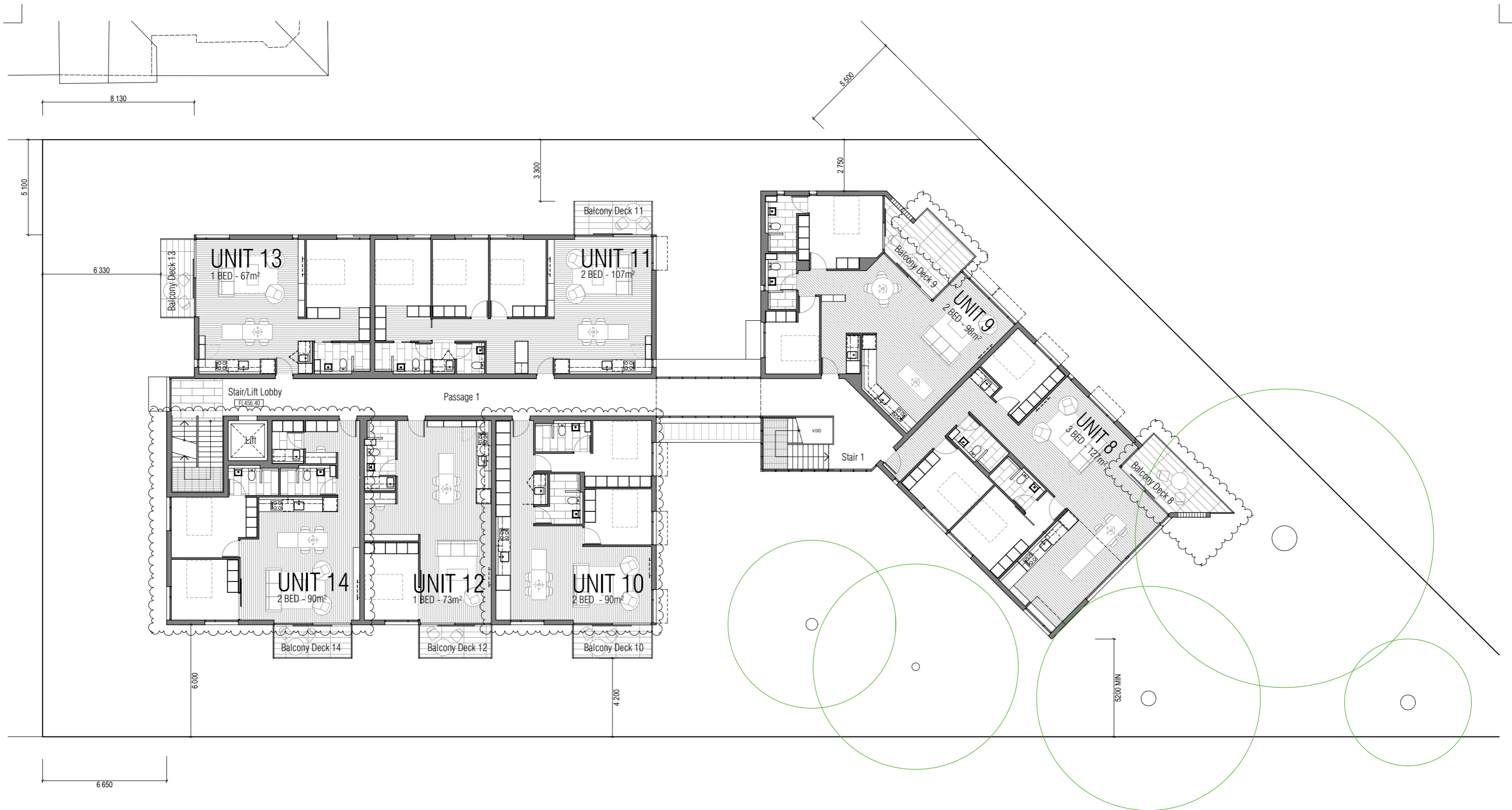
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Drawing
FIRST FLOOR PLAN

Job No
138
Drawing No
A2.2



FIRST FLOOR PLAN
SCALE 1:200 @ A3

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BUILDING AREAS
FIRST FLOOR AREA = 788.0m²
PERMIT APPROVED
TOTAL FLOOR AREA = 688.0m²

Architect



David Vernon Architect

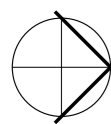
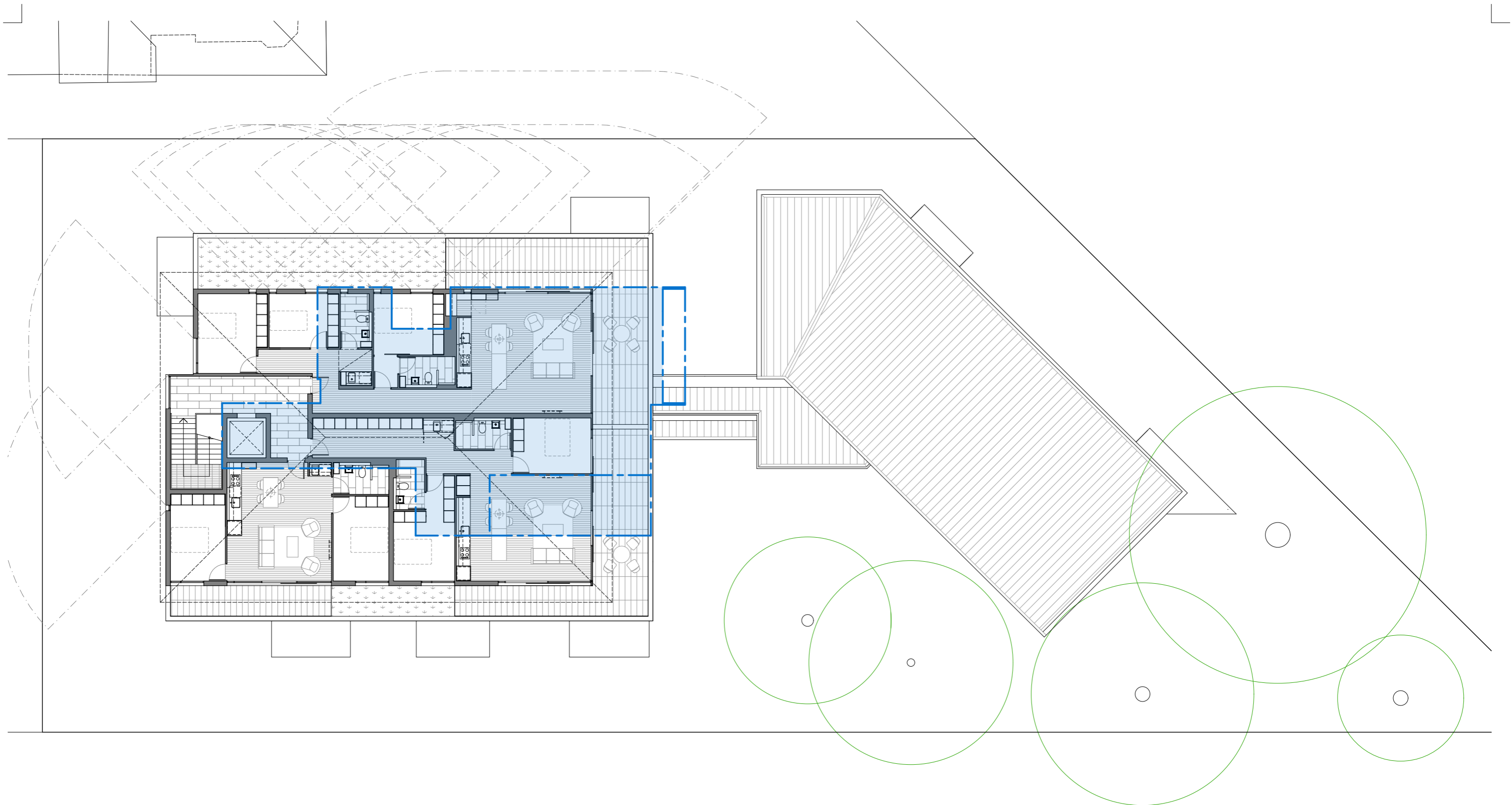
T 03 9531 9005
M 0418 147 949
F 03 9531 9004
PO Box 340 Balaclava VIC 3183
www.vernon.com.au
david@vernon.com.au
ABN 75 218 548 800 ARBV 15144

Project
PROPOSED UNIT DEVELOPMENT
203 WENDOUREE PARADE
LAKE WENDOUREE 3350

Scale
1:200@A3
Date
2.11.18
Revision
E

Drawing
FIRST FLOOR PLAN

Job No
138
Drawing No
A2.2

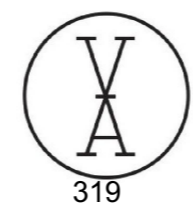


SECOND FLOOR PLAN
SCALE 1:200 @ A3

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BUILDING AREAS	
TOTAL FLOOR AREA	= 335m ²
ROOF TERRACES	= 123m ²
PERMIT APPROVED	
TOTAL FLOOR AREA	= 196.3m ²
ROOF TERRACE	= 25.6m ²

Architect



**David
Vernon
Architect**

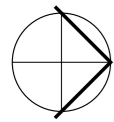
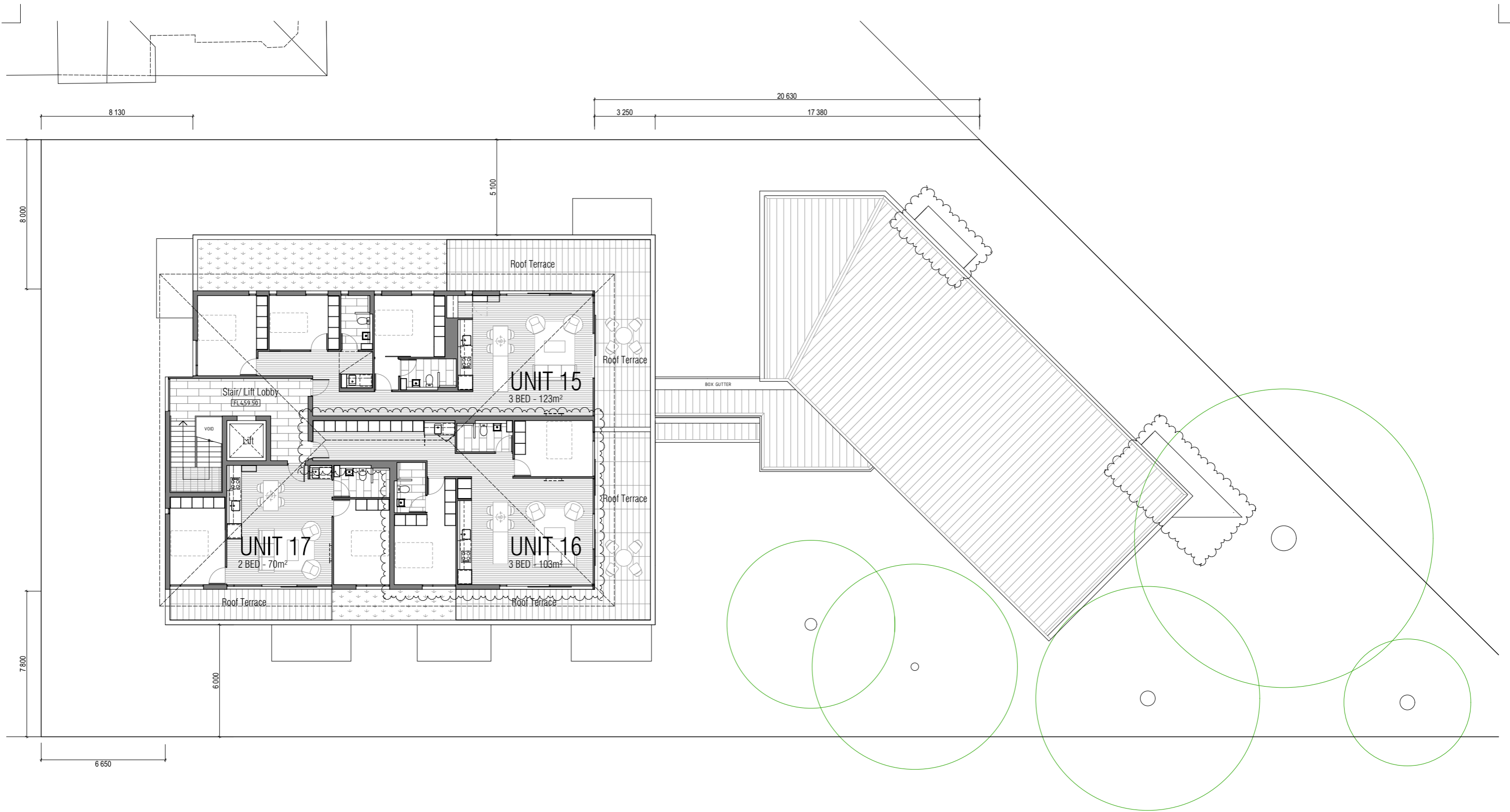
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1:200@A3
Date
2.11.18
Revision
E

Drawing
SECOND FLOOR PLAN

Job No
138
Drawing No
A2.3



SECOND FLOOR PLAN

SCALE 1:200 @ A3

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Vernon
Architect**

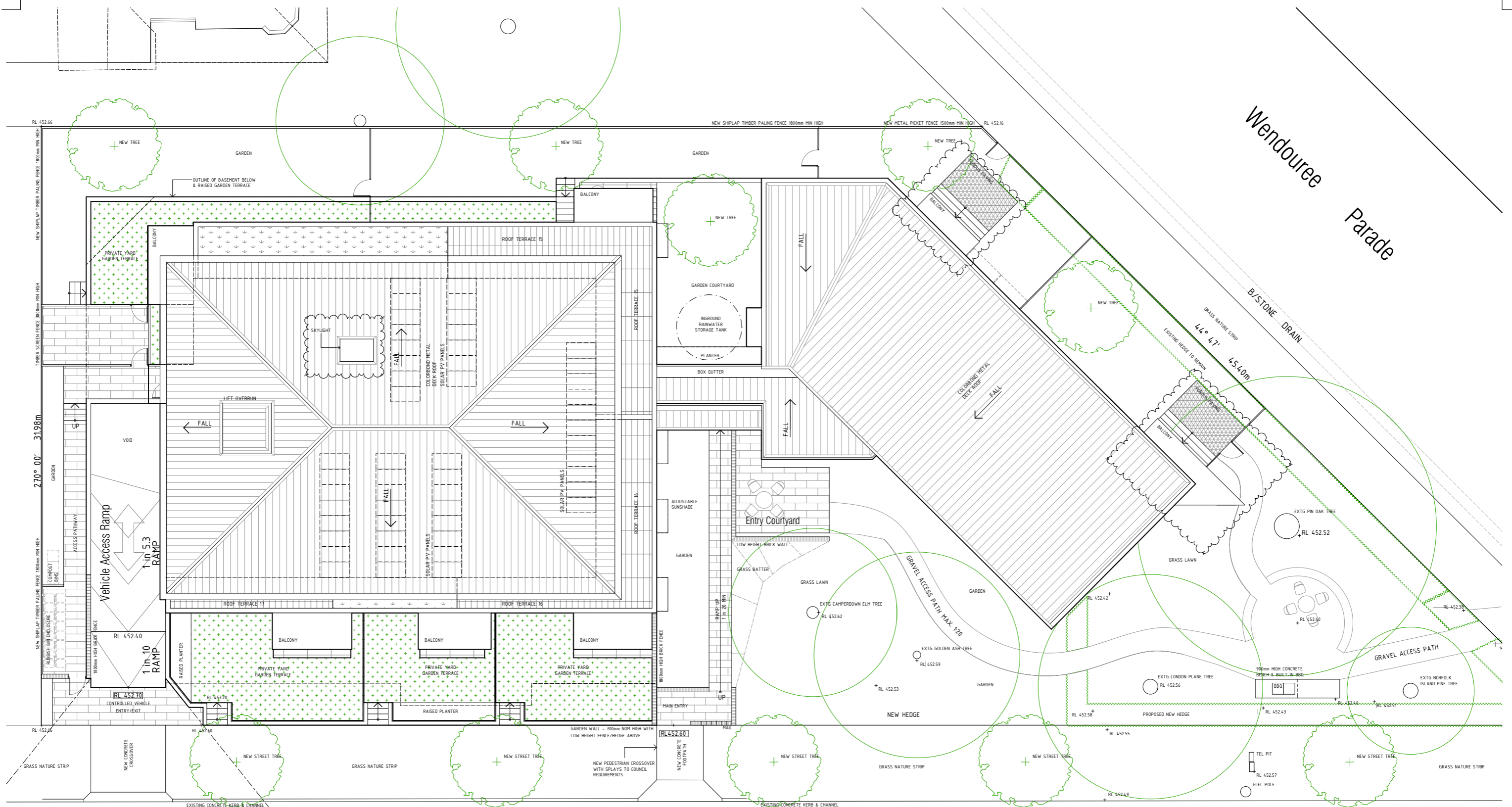
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Scale
1:200@A3
Date
2.11.18
Revision
E

Drawing
SECOND FLOOR PLAN

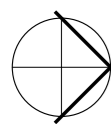
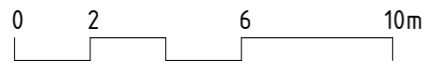
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Drawing No
A2.3



Wendouree Parade

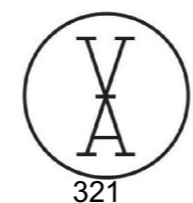
Dawsons Avenue

ROOF PLAN
SCALE 1:200 @ A3



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Date
2.11.18

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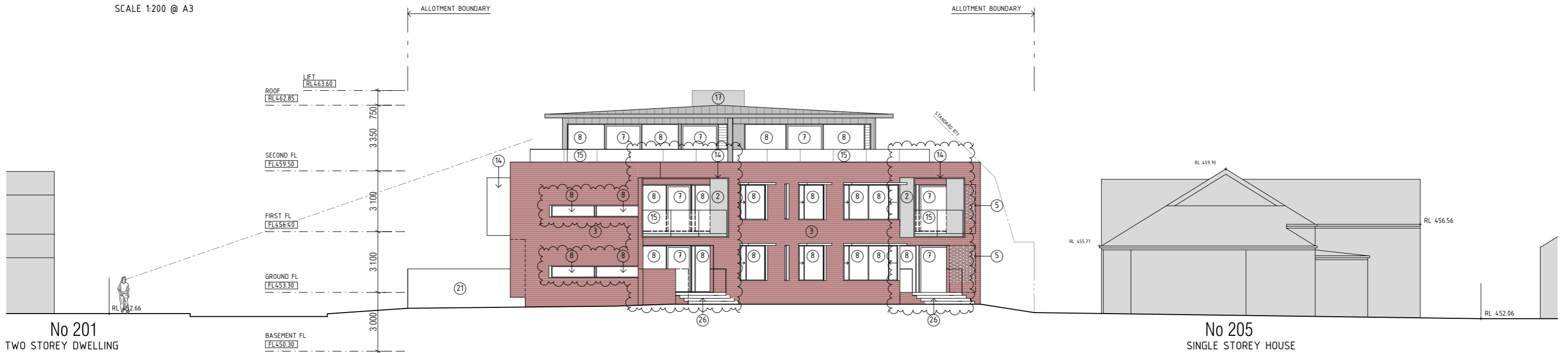
Drawing
ROOF PLAN

Job No
138

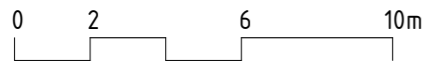
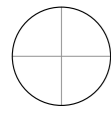
Drawing No
A4.0



EAST ELEVATION
DAWSONS AVENUE FRONTAGE
 SCALE 1:200 @ A3



NORTH ELEVATION
WENDOUREE PARADE FRONTAGE
 SCALE 1:200 @ A3



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 203 WENDOUREE PARADE
 LAKE WENDOUREE 3350

Scale
 1:200@A3

Date
 2.11.18

Revision
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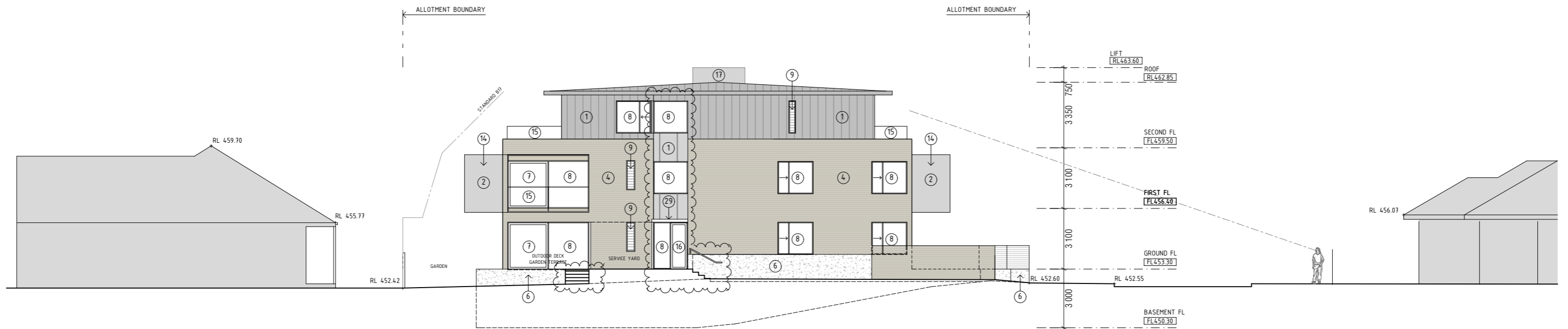
Drawing
 ELEVATIONS - SHEET 1

Job No
 138

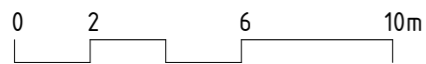
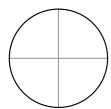
Drawing No
 A5.0



WEST ELEVATION
SCALE 1:200 @ A3



SOUTH ELEVATION
SCALE 1:200 @ A3



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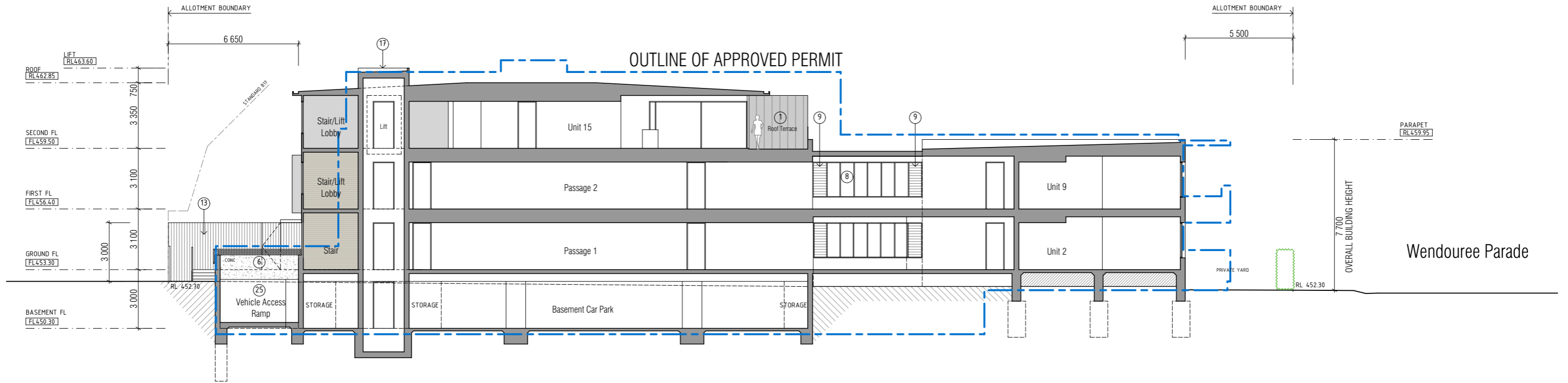
Date
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Revision
E

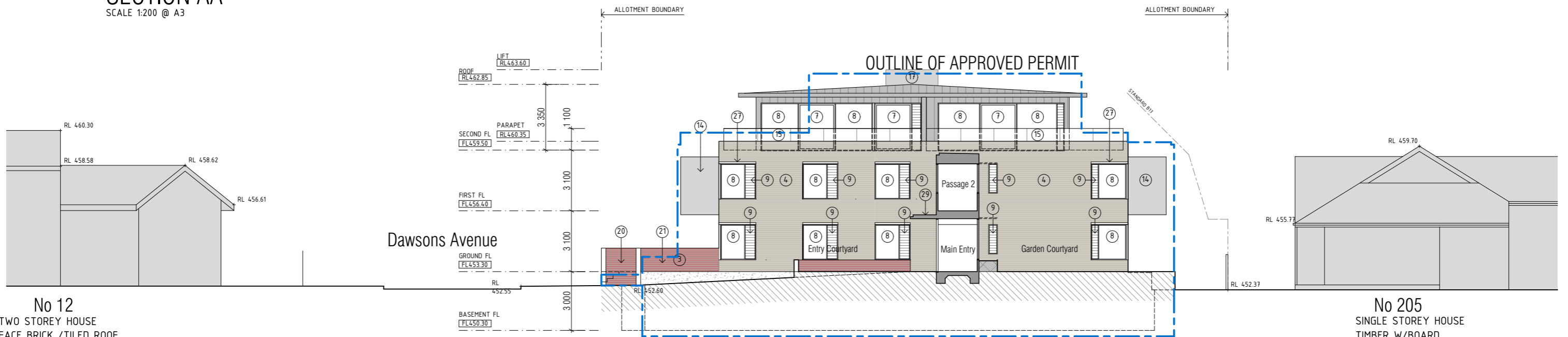
Drawing
ELEVATIONS - SHEET 2

Job No
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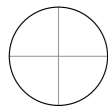
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SECTION AA
SCALE 1:200 @ A3



SECTION BB
SCALE 1:200 @ A3



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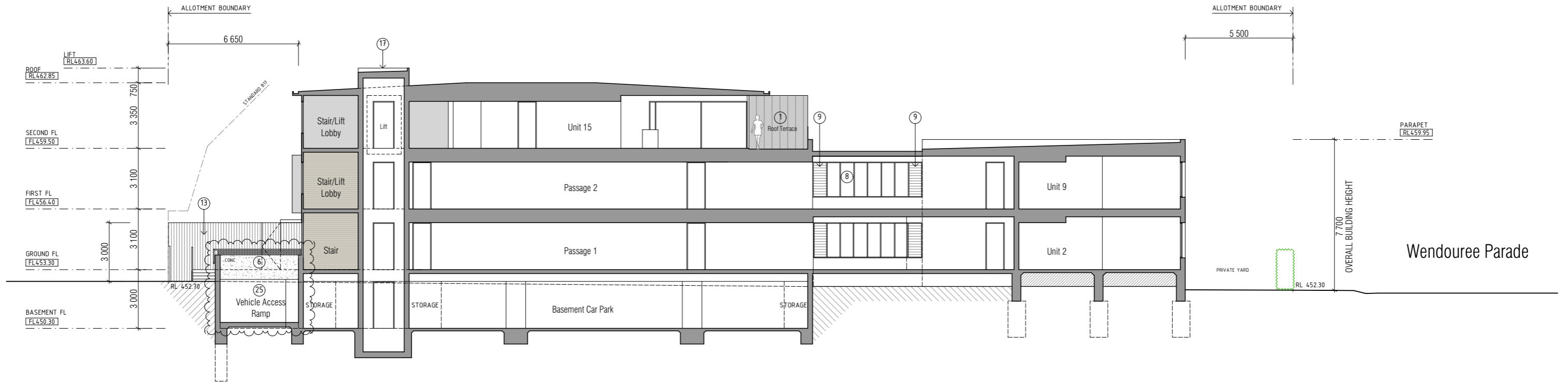
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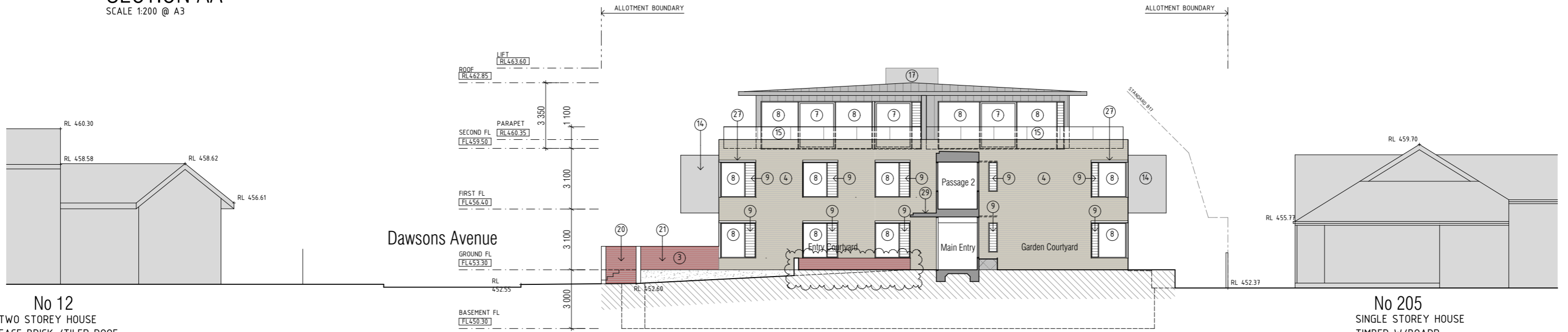
Drawing
SECTION AA, BB

Job No
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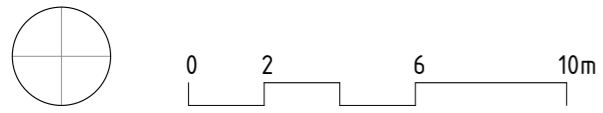
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SECTION AA
SCALE 1:200 @ A3



SECTION BB
SCALE 1:200 @ A3



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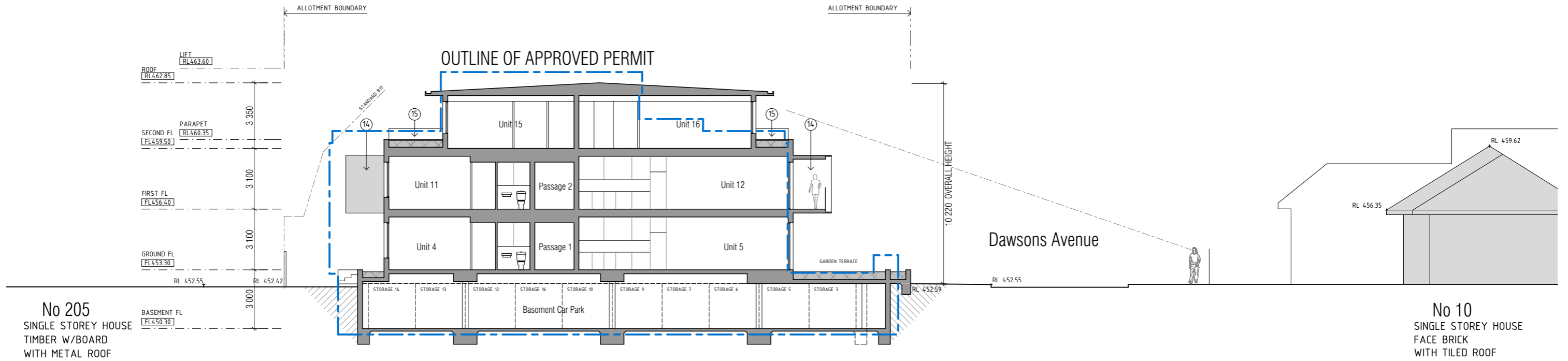
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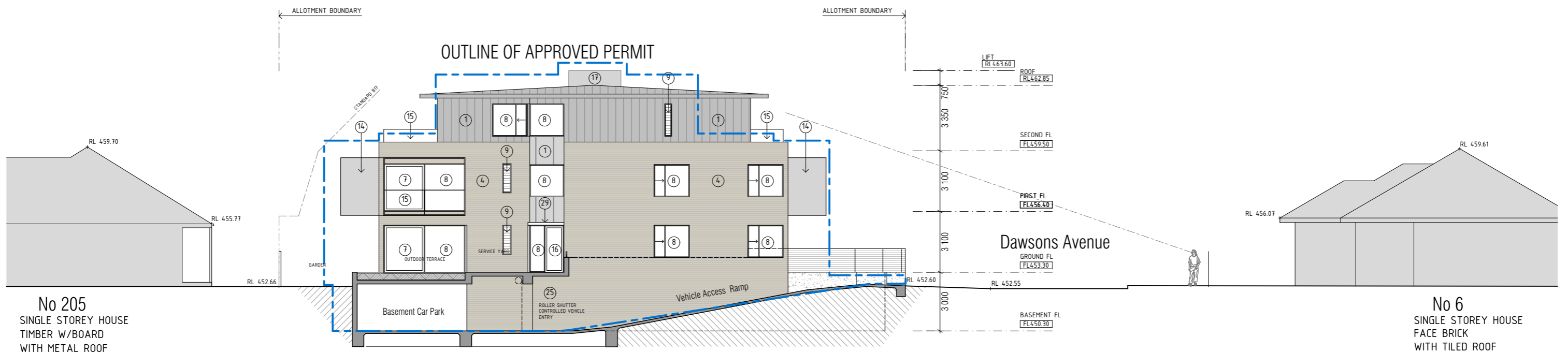
Drawing
SECTION AA, BB

Job No
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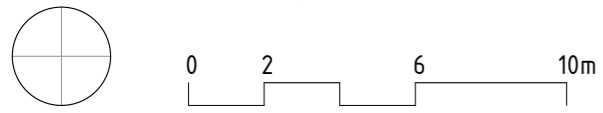
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SECTION CC
SCALE 1:200 @ A3



SECTION DD
SCALE 1:200 @ A3



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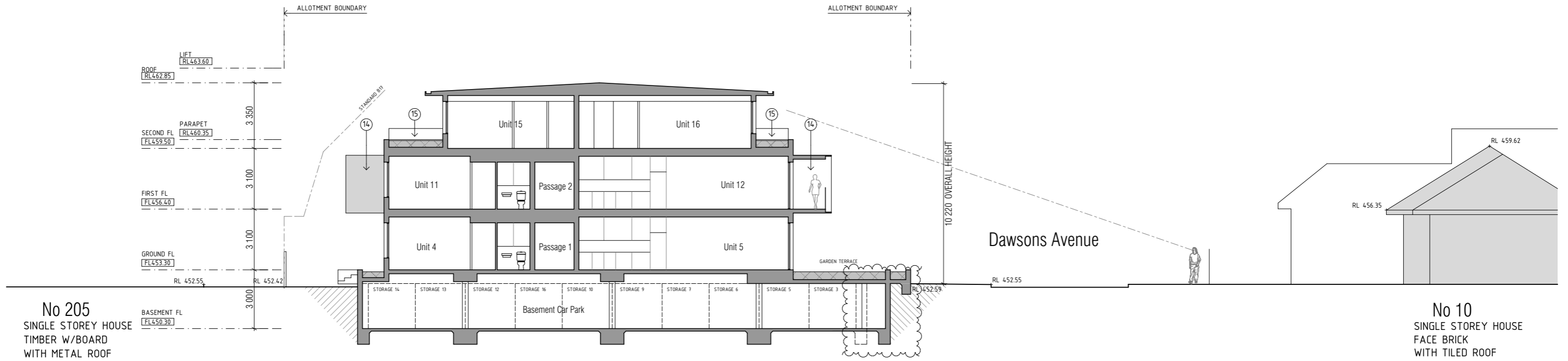
Date
2.11.18

Revision
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Drawing
SECTION CC, DD

Job No
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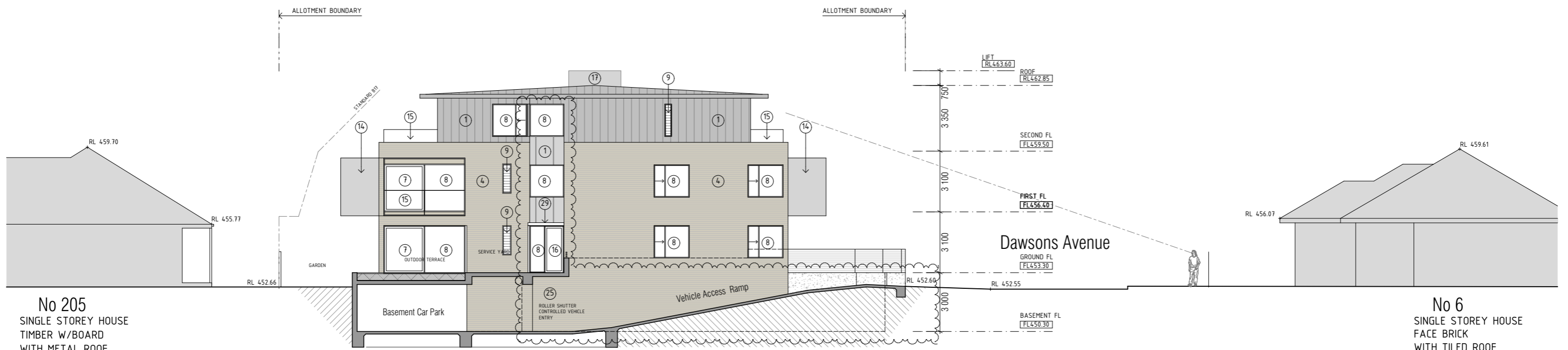
Drawing No
A6.0



No 205
SINGLE STOREY HOUSE
TIMBER W/BOARD
WITH METAL ROOF

No 10
SINGLE STOREY HOUSE
FACE BRICK
WITH TILED ROOF

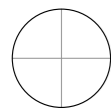
SECTION CC
SCALE 1:200 @ A3



No 205
SINGLE STOREY HOUSE
TIMBER W/BOARD
WITH METAL ROOF

No 6
SINGLE STOREY HOUSE
FACE BRICK
WITH TILED ROOF

SECTION DD
SCALE 1:200 @ A3



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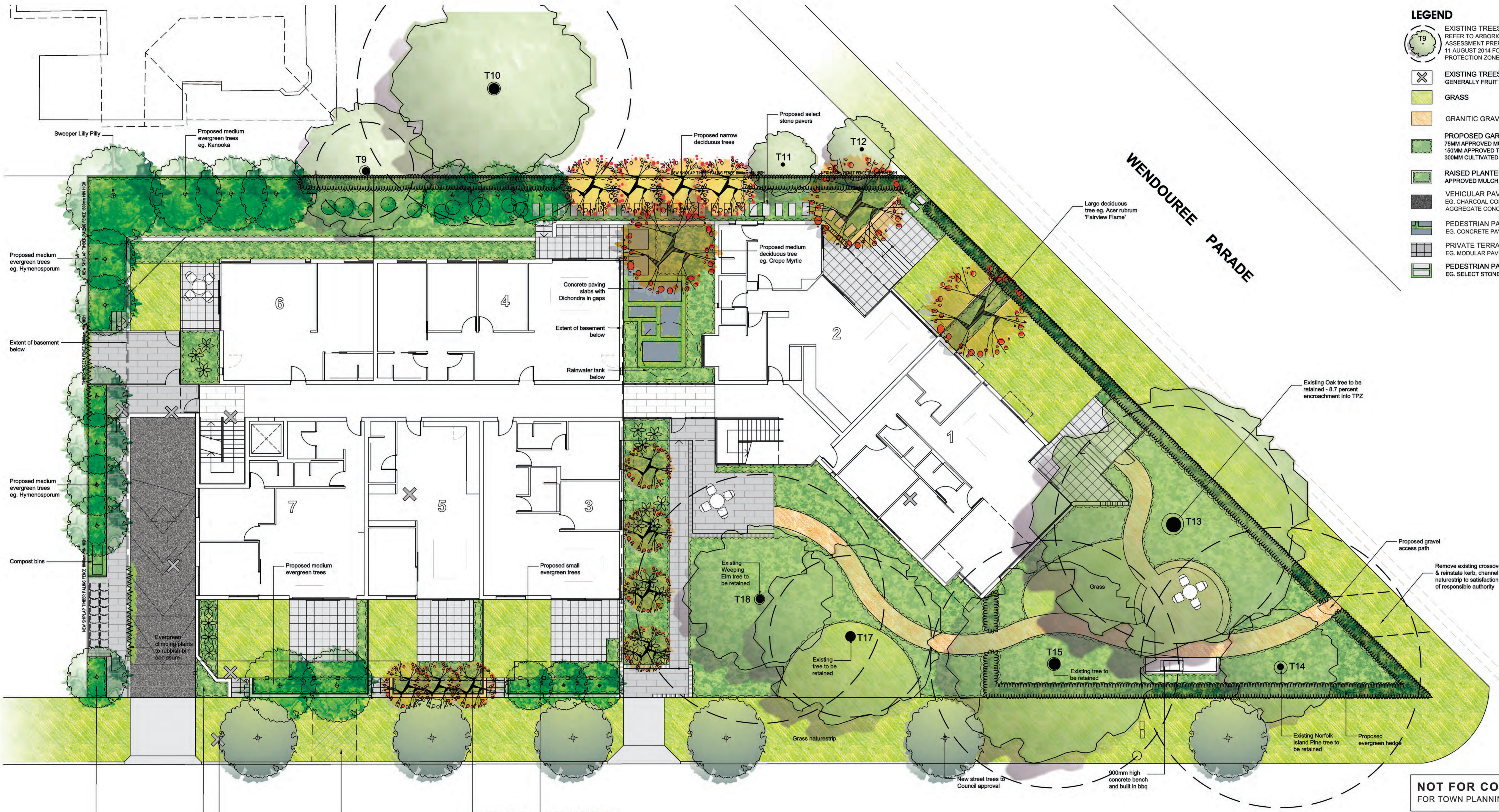
Revision
E

Drawing
SECTION AA, BB

Job No
138

Drawing No
A6.1

- ### LEGEND
- EXISTING TREES TO BE RETAINED
REFER TO ARBORICULTURAL IMPACTS ASSESSMENT PREPARED BY TREE DIMENSIONS 11 AUGUST 2014 FOR TREE NUMBERS AND TREE PROTECTION ZONES
 - EXISTING TREES TO BE REMOVED
GENERALLY FRUIT TREES LESS THAN 4m HIGH
 - GRASS
 - GRANITIC GRAVEL
 - PROPOSED GARDEN BED PLANTING
75MM APPROVED MULCH
150MM APPROVED TOPSOIL
300MM CULTIVATED SUB-GRADE
 - RAISED PLANTERS
APPROVED MULCH, SOIL MIX & DRAINAGE
 - VEHICULAR PAVING
EG. CHARCOAL COLOURED EXPOSED AGGREGATE CONCRETE
 - PEDESTRIAN PAVING
EG. CONCRETE PAVING SLABS
 - PRIVATE TERRACE PAVING
EG. MODULAR PAVING
 - PEDESTRIAN PAVING
EG. SELECT STONE PAVERS



NOT FOR CONSTRUCTION
FOR TOWN PLANNING PURPOSES ONLY

Rev	Date	Description
A-P4	22.11.2018	Preliminary for comment
A-P3	09.11.2018	Preliminary for comment
A-P2	08.11.2018	Preliminary for comment
A-P1	07.11.2018	Preliminary for comment
	04.05.2014	Issued for Town Planning

VERNON PROPERTY TRUST
203 WENDOUREE PARADE - BALLARAT

LANDSCAPE CONCEPT PLAN
Scale: 1:100 @ B1 size

CDA Design Group Pty Ltd
Landscape Architecture
Urban Design
185 Faraday Street
Carlton Victoria 3053
T 03 9349 8565
F 03 9349 5877
E office@cdaesigngroup.com.au

Project No. 13026
Date: MAY 2014
Drawn by: CA
Checked: TV
Drawing No. TPO1 B

PLANT SCHEDULE

SYMBOL	BOTANICAL NAME	COMMON NAME	MATURE HEIGHT RANGE	MATURE SPREAD RANGE	SYMBOL	BOTANICAL NAME	COMMON NAME	MATURE HEIGHT RANGE	MATURE SPREAD RANGE
	MEDIUM EVERGREEN TREES eg. <i>Hymenosporum flavum</i> <i>Tristanopsis laurina</i> <i>Waterhousea floribunda</i> 'Sweeper'	Native Frangipani Kanooka Sweeper Lilly Pilly	9.0 10.0 10.0	4.0 4.0-5.0 6.0		TALL / MEDIUM EVERGREEN SHRUB <i>Callistemon 'Little John'</i>	Bottlebrush	1.4	1.0
	LARGE AND MEDIUM DECIDUOUS TREES eg. <i>Acer rubrum</i> 'Fairview Flame' <i>Lagerstroemia indica</i> x 'fauriei' 'Natchez' <i>Pyrus calleryana</i> 'Chanticleer'	Red Maple Crepe Myrtle - White Chanticleer Pear	11.0 8.0 11.0	7.0 6.0 6.0		CLIPPED EVERGREEN HEDGES eg. <i>Murraya paniculata</i> <i>Prunus laustanica</i>	Murraya Portuguese Laurel	clipped to 1.7 1.7	0.8 0.8
	NARROW DECIDUOUS TREES eg. <i>Pyrus calleryana</i> 'Capital'	Capital Callery Pear	11.0	3.0		SHRUBS, GROUND COVER AND STRAP-LEAF PLANTING eg. <i>Cerastium tomentosum</i> <i>Dianella caerulea</i> 'Little Jess' <i>Lomandra longifolia</i> 'Tanika' <i>Dielsia grandiflora</i> <i>Dichondra repens</i> <i>Brachycome 'White Delight'</i> Flower Carpet Rose	Snow in Summer Little Jess Spiny-headed Mat Lily Wild Iris Kidney Weed Native Daisy Rose Flower Carpet Scarlet	0.3 0.5 0.7 0.7 0.1 0.3 0.3	1.5 0.5 0.7 0.5 1.0 0.5 0.8
	SMALL DECIDUOUS TREES eg. <i>Acer palmatum</i> 'Sango Kaku'	Coral Bark Maple	4.0	3.0		FEATURE PLANTING eg. <i>Cycas revoluta</i>	Japanese Sago Palm	1.5	1.0
	SMALL EVERGREEN TREES eg. <i>Magnolia grandiflora</i> 'Little Gem'	Magnolia	5.0	3.0		EVERGREEN CLIMBING PLANTING <i>Trachelospermum jasminoides</i>	Chinese Star Jasmine	1.0	1.0

TREE IMAGES



Kanooka

Little Gem Magnolia

Chanticleer Pear

Capital Callery Pear

Japanese Maple

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P589/2015
PERMIT APPLICATION NO. PLP/2014/495

CATCHWORDS

Ballarat Planning Scheme; s77 *Planning and Environment Act 1987*; Lake Wendouree environs; two-storey building with recessive third level; neighbourhood character; off-site amenity impacts; traffic and parking.

APPLICANT	David Vernon
RESPONSIBLE AUTHORITY	Ballarat City Council
RESPONDENTS	R Hawley, K Chevalier-Donoghue, N Woolley, N Richards, D Geddes, A Geddes, M Kaufmann & J Wheeler
SUBJECT LAND	203 & 203A Wendouree Parade, Lake Wendouree
WHERE HELD	Melbourne
BEFORE	Michael Nelthorpe, Member
HEARING TYPE	Hearing
DATE OF HEARING	2 and 3 September 2015
DATE OF ORDER	25 September 2015
CITATION	Vernon v Ballarat CC [2015] VCAT 1515

ORDER

- 1 Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:
 - Prepared by: David Vernon Architect
 - Drawing numbers: A0.1, A1.0, A2.0, A2.1, A2.2, A2.3, A4.0, A5.0, A5.1, A5.2, A6.0 and A6.1 – all Revision C.
- 2 The decision of the Responsible Authority is set aside.

3 In permit application PLP/2014/495 a permit is granted and directed to be issued for the land at 203 & 203A Wendouree Parade, Lake Wendouree in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:

- *Development of two or more dwellings on three lots in the General Residential Zone;*
- *The construction of a building and the carrying out of works on three lots in the Design and Development Overlay Schedule 3; and*
- *Removal of one tree in Vegetation Protection Overlay Schedule 2.*

Michael Nelthorpe
Member

APPEARANCES

For Applicant

Mr Paul Naughton, solicitor of Planning and Property Partners, Lawyers and Consultants.

He called the following witnesses:

- Mr Mark Sheppard, urban designer of David Lock & Associates Pty Ltd; and
- Mr John Patrick, landscape architect, of John Patrick Pty Ltd.

Photomontage imagery of the proposed development was prepared by Mr Michael Thomas of Stab Studio and circulated as a Statement of Evidence. Mr Thomas was not called to present his evidence.

For Responsible Authority

Mr Greg Tobin, solicitor of Harwood Andrews.

For P Donoghue & K
Chevalier-Donoghue, N
Richards, D Geddes, M
Kaufmann & A Geddes

Ms Tania Cincotta, solicitor of Best Hooper Lawyers.

She called the following witness:

- Mr Damien Isles, town planner of Hansen Partnership Pty Ltd.

An evidence statement of Mr Lachlan Andrews, arborist of ArborSafe Australia Pty Ltd was circulated prior to the hearing. Mr Andrews was not called to give evidence, as the parties agree on the tree protection measures he recommends.

For N Woolley

Herself

For J Wheeler

Herself

For R Hawley

Herself

INFORMATION

Description of Proposal

Thirteen dwellings in a part-two/part three-storey apartment building with basement car parking.

Nature of Proceeding

Application under Section 77 of the *Planning and Environment Act* 1987 – to review the refusal to grant a permit.

Zone and Overlays

General Residential Zone

Design and Development Overlay Schedule 6

Vegetation Protection Overlay Schedule 2

Permit Requirements

Clause 32.08-4: to construct two or dwellings on a lot;

Clause 43.02-2: to construct a building or construct or carry out works; and

Clause 42.02-2: to remove, destroy or lop vegetation that is at least 4 metres high and located in a private front garden or within the road reserve.

Relevant Scheme, policies and provisions

Clauses 10, 11, 15, 16, 21.02, 21.03, 21.04, 21.05, 32.08, 42.02, 43.01, 43.02, 52.06, 52.34, 55 and 65.

Land Description

The site is located on the north-west corner of Wendouree Parade and Dawsons Avenue. It comprises three lots with an overall site area of 2,124 square metres. Its most noticeable features are its size and its sharply angled frontage to Wendouree Parade.

An older style, attractive single-storey timber dwelling occupies the north-west section of the site. It sits within a gracious garden of substantial trees in the north-east corner, small trees, shrubs and outbuildings to the rear and a long, curved driveway to the east of the dwelling.

Lake Wendouree is to the north of the site across a relatively wide expanse of grassed reserve containing scattered, established trees. The Steve Moneghetti Track, which circumnavigates the Lake, runs past the site near the lake's edge.

Tribunal Inspection

4 September 2015

REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 The Vernon family propose to redevelop their property at 203 & 203A Wendouree Parade. They propose to demolish the existing single-storey timber home and erect a two-storey apartment building, with a recessive third floor, over a basement car park.
- 2 The Ballarat City Council refused to grant a planning permit for the apartment building. It says the building is an unacceptable response to its strategic and physical context because it does not follow the design cues of Schedule 3 to the Design and Development Overlay.
- 3 The main Objectors' case is similar. They say the site's strategic context encourages moderate growth that respects the neighbourhood's character. They say the building represents intensive growth, particularly given the site's exposed and sensitive location. They also say it unreasonably impacts on the amenity of the site to the west at 205 Wendouree Parade through its bulk and overshadowing. They rely on Mr Isle's opinion. He sees the building as jarring element in the Wendouree Parade streetscape and as excessive where it faces Dawsons Avenue.
- 4 The individual objectors raise issues of neighbourhood character, amenity and traffic and parking impacts. They agree with the Council and main objectors on neighbourhood character issues. Its impact on the 'lakeside amenity' of their neighbourhood concerns them. They also expect it will lead to more cars being parked on Dawsons Avenue. They say this would be a poor outcome given this street's narrow pavement and high levels of congestion at times of peak activity on Lake Wendouree.
- 5 The Vernon family dispute these contentions. They rely on the Council officer's assessment, which is diametrically opposed to the Council's decision. The officer's say the building delivers what the planning controls require. They also rely Mr Sheppard's urban design evidence and the revised plans that incorporate his recommendations.
- 6 He says that the planning controls envisage a building of this height and form. He says its front setback is acceptable because angled frontages are less sensitive. He says the amenity of the adjoining properties to the side and rear is reasonably protected by the building's compliance with ResCode standards.
- 7 The Vernon family also rely on the landscape evidence of Mr Patrick. He values the retention of the group of large scale mature trees at the site's north-east corner. He believes the proposal can deliver a landscape outcome that is better outcome than most other new developments nearby.

¹ I have considered the submissions of all the parties that appeared, all the written and oral evidence, all the exhibits tendered by the parties, and all the statements of grounds filed. I do not recite or refer to all of the contents of those documents in these reasons.

- 8 From this summary, I consider the questions I must address are:
- Is the building an acceptable response to its context?
 - What weight should I give to the impact on its neighbours' amenity?
And
 - Are the building's traffic and parking impacts acceptable?
- 9 Having reviewed the plans, heard submissions and evidence, and having inspected the site I have decided to grant a permit. I find:
- a) The site's strategic context, as informed by Schedule 3 to the Design and Development Overlay, anticipates a building of this height and mass on this large site;
 - b) The building follow the design cues of Schedule 3 to the Design and Development Overlay;
 - c) The proposal's impact on the amenity of 205 Wendouree Parade is acceptably managed through its side setbacks, articulation and landscaping, except that the courtyard of Unit 6 and the balcony of Unit 12 intrude too strongly on that dwelling's entry;
 - d) The proposal's impact on the general amenity of properties on Dawsons Avenue is acceptable as Schedule 3 to the Design and Development Overlay, anticipates a building of this height and mass on this large site;
 - e) The proposal's traffic impacts are acceptable because Dawsons Avenue and Wendouree Parade have the capacity to accommodate the likely amount of traffic generated; and
 - f) The proposal's parking impacts are acceptable because the basement has more car parking spaces than the Planning Scheme requires.
- 10 I elaborate on these reasons below.

IS THE BUILDING AN ACCEPTABLE RESPONSE TO ITS CONTEXT?

The strategic context

- 11 The Council and objectors say the building is too large. Their argument on the site's strategic context is that the Planning Scheme's focus is for moderate, rather than substantial, growth on this site. I agree with this, yet I find what constitutes 'moderate growth' must be interpreted in light of the planning controls that apply.
- 12 Most specifically, development abutting Lake Wendouree must meet the objectives of Schedule 3 of the Design and Development Overlay. This Overlay applies to all properties with an interface to the lake and allows for two-storey development at the front of a building. By exclusion, this

implies that additional storeys are permissible beyond this point, subject to the height objectives and standards of ResCode.

- 13 Otherwise, the Schedule constrains a site's development potential by quantitative requirements on front and side setbacks, while ResCode objectives and standards apply to other quantitative measures such as site coverage and permeability.
- 14 The building complies with the quantitative measures of two-storey height at the frontage and the side setback requirements of the Schedule to the Overlay. Its 44% site coverage is substantially less than the permitted 60% and its provision of 43% permeability greatly exceeds the 20% requirement of ResCode.
- 15 I find this level of compliance suggests a moderate, rather than intensive, level of growth. I accept the building's non-compliance with the ResCode standard on height raises an issue regarding the building's intensity. Yet only one apartment occupying 7.7% of the site's area is proposed to exceed this standard. I find this is moderate, rather than intensive.
- 16 I also accept the building's 5.6 metre front setback with protruding balconies exceeds the 9 metres of the ResCode standard. I also accept that one cannot quantitatively assess this setback under the Schedule to the Overlay, as the requirement is to be consistent with the dominant front setback on the street block. Notwithstanding this, I favour the Schedule's direction because it applies specifically to this site and others around the lake.
- 17 I find there is no prevailing front setback in the street block between Dawsons Avenue and White Avenue. The setbacks vary from 6.6 metres at 207 Wendouree Parade to approximately 18 metres at 205 Wendouree Parade². Further to this, the front setbacks vary in this block given many lots have angled frontages. My impression is that the setbacks are predominantly in the 6.6 metre to 10 metre range of 207-215 Wendouree Parade. I accept that the proposed front setback is 1 metre less than the smallest in this range, yet I find this does not tip the building from moderate to intensive growth. The building occupies less than half of the frontage and is setback, on average, more than 10 metres from Dawsons Avenue. In terms of the building's intensity, I find this adequately compensates for the reduced front setback. It suggests a moderate, rather than intensive, response to the site's features.
- 18 Separate from the question of moderate/intensive growth, the objectors say the site's strategic context is informed by its proximity to the heritage-listed

² The first measurement is taken from the Land Feature Survey Plan by NNH Land Surveyors (Nov 2013) that formed part of the permit application documents. The second measurement is scaled from that plan with the measurement taken perpendicular to the street and within 205 Wendouree Parade's boundary. I do not rely on the dimensioned measurement of 15.5 metres, as it is not taken within that property's boundary.

property at 205 Wendouree Parade and to Lake Wendouree itself. They say these aspects of the site's surrounds temper the site's development potential. I find the site's proximity to a heritage listed property goes to issues of physical context and built form, rather than being a factor that inherently tempers development potential.

- 19 In terms of its impact on the site's physical context, the most critical factor is that the site itself is not affected by the Heritage Overlay. As such, the Overlay does not constrain development on the site. Further to this, I accept Mr Naughton's argument that the heritage context is patchy along this section of Wendouree Parade. The majority of properties to the west between the review site and Loreto College are not affected by this Overlay. To the east, the Overlay applies to some stretches of Wendouree Parade and not to others. As such, the physical context is one where some properties, including the site, can accommodate new development as they are not constrained by heritage considerations, whereas others may not be able to. I find this constitutes the mixed built form context of the site and surrounds.
- 20 With regard to the site's proximity to Lake Wendouree, I find that Schedule 6 to the Design and Development Overlay is highly relevant. Once more, it offers built form guidance rather than inherently tempering development potential. It does not specify whether growth on Wendouree Parade should be intensive or moderate.
- 21 Finally, the objectors say that Schedule to the Vegetation Protection Overlay that applies to the site a relevant part of its context. Once more, the effect of this Overlay is to limit built form, rather than inherently tempering development potential.
- 22 In summary, I do not accept the Council and objectors submissions that the size and intensity of this building is discouraged in this location. I find the proposal represents modest housing growth, albeit on a site that is larger than its neighbours.

The physical context

- 23 There are four distinguishing features of the site.
- 24 The first is that it is large. Consequently, it has a wide frontage and long boundaries to the east and west. Indicative of its size is that it faces four properties on Dawsons Avenue and it extends for almost two-thirds of the depth of the adjoining property at 205 Wendouree Parade.
- 25 The second is that it has a copse of five mature trees in its north-east corner. These trees are a sculptural landscape element that announce the corner and frame the existing dwelling and driveway. They are a graceful element of the site, both in their size and their spacing from each other and the site's boundaries. They form a legible link to the landscape of mature trees in the wide lakeside reserve. This link is more pronounced on the site than on any other in this section of Wendouree Parade.

- 26 The third is the site's steeply angled frontage to Wendouree Parade. This alignment exposes the front of the site, particularly to views from the west and adds to the site's length along Dawsons Avenue.
- 27 The fourth factor is the existing dwelling is sited entirely in front of its neighbour at 205 Wendouree Parade. Its full length can be seen from the west. This notes and emphasises the uncommon stepped setback of the three properties immediately west of Dawsons Avenue and the two properties to the east, on the opposite side of the street. In combination with the wide lakeside reserve, it forms a feature of this part of Wendouree Parade.
- 28 The most noticeable features of the site's surrounds are its interface with 205 Wendouree Parade, its relationship to the modest scale of Dawsons Avenue, and its lakeside setting.
- 29 Its interface with 205 Wendouree Parade is challenging. Any development on the site, including the existing dwelling, impacts on the privacy of 205 Wendouree Parade's deep front yard. The depth of this yard combined with the angled frontages of the two properties results in any development on this site being exposed to views from the west.
- 30 The challenge with its interface to Dawsons Avenue is that its frontage is uncommonly long. As I said earlier, the frontages of four properties face the site, and the street itself is quite short. Consequently, any new development on the site is likely to have a strong presence on this street. Dawsons Avenue's scale is modest and single-storey in comparison to the grander, single and double storey of Wendouree Parade. In this setting, many views from this street contain glimpses of Wendouree Parade's two-storey development. They also contain oblique, framed views of the open expanse of the lake and its reserve, in comparison to Wendouree Parade's direct, outward views of this space. Finally, the double storey dwelling on the corner of Sturt Street forms a bookend to this short street and forms part of its character.
- 31 The third element of the site's surrounds is its lakeside setting. Here, it forms part of a large circuit of lakeside development. It is predominantly dwellings, yet contains other uses including schools and a hotel. The properties along Wendouree Parade form the dress circle to the lake. Built form from most eras of Ballarat's development is found along the lake's edge, including grand buildings from the past and large homes from more recent times.
- 32 Overall, any reasonable change from the existing setting of a single-storey dwelling in a large, gracious garden will be abrupt when viewed from the west or from Dawsons Avenue. The issue is not whether change should occur. It is contemplated in the site's zoning and in the absence of heritage controls. It is envisaged and guided by the Design and Development Overlay. In physical terms, built form change is occurring regularly along

Wendouree Parade and, to a lesser degree, on Dawsons Avenue. The question is whether the built form response is acceptable.

The built form response

- 33 The Council and objectors the built form response say the built form response is unacceptable. The Council says the building does not follow the design cues of the Schedule to the Design and Development Overlay. The objectors expand on this to say the building does not respect the neighbourhood's character.
- 34 Much was made of the first and second design objectives of the Schedule, being to:
- Retain and enhance the traditional scale and garden setting of residential development on Wendouree Parade; and
 - To encourage new development that complements existing development on Wendouree Parade in scale, height and siting.
- 35 Against these objectives, it was said that the site's exposed location could not accommodate a large two-storey building with a recessive third floor. It was said that this exposure meant the building would be a 'jarring element' when viewed from the west, particularly when set against the deep front yard of 205 Wendouree Parade. It was said that siting of the building close to the west boundary and the frontage led to an inappropriate landscape response on the west boundary. The Council described it as a vegetated screen that inappropriately contrasted with the manicured but informal landscape environment of its surrounds.
- 36 Further to this, it was said that the building was out of scale with the modest dwellings of Dawsons Avenue. It was said that the building's height combined with the long frontage to Dawsons Avenue meant the building would impose on this streetscape. Exacerbating this was Mr Sheppard's recommendation to move the third level further to the south as this increased its exposure from this street.
- 37 I disagree with these submissions. I accept Mr Sheppard's opinion that the building clearly takes its design cues from the Schedule. The front section of the building is two storeys in height, as envisaged by the Schedule. The design cues for the building's side boundaries do not apply, yet the building's setbacks meet the intent of this guideline. On the west side, they are generally comparable to others on Wendouree Parade, while a very generous setback is provided to the east in order to protect the copse of trees and acknowledge their spacious setting.
- 38 As a result, I find these elements of the building uncontentious. The height of the front of the building is consistent with what the Schedule says is the traditional scale of residential development along Wendouree Parade. Its scale, in terms of height and side setbacks must be seen as complementing existing development on this street in the terms outlined in the Schedule.

- 39 This has implications for the legitimacy of its response to Dawsons Avenue. It is of a different size and scale to that street's dwelling yet the scale is set by its primary address to Wendouree Parade. Any future development on this site is likely to orient towards the lake and adopt the grander scale of this setting. Some degree of moderation may be expected in order to respect this change in scale yet I find this can legitimately be a response in setback and articulation rather than height.
- 40 The proposed front setback and the recessive second floor are contentious. The building relies on the front setback of the existing house and the smaller setback of the approved development on the opposite side of Dawsons Avenue. This is lesser front setback than all others in the street block. Further to this, the front wall of the building runs parallel to the frontage, whereas all other dwellings are perpendicular to the site boundaries, leaving a triangular front garden. Consequently, the building disrupts the regular stepping of built form along this frontage.
- 41 Apart from this, the reduced front setback increases the length of the building's wall adjacent to 205 Wendouree Parade. Providing the ResCode front setback of 9 metres would reduce its length by 3.4 metres and open the front corner of that property's front garden.
- 42 Despite these issues, I find the front setback is acceptable. Mr Sheppard's opinion persuades me that streets with angled frontages and stepped built form are less sensitive to encroachments into front setbacks. I find it is the case here. The steep stepping of built form here can accommodate this variation in setback. It sharply contrasts with its neighbour, yet the building appears logically sited on the lot.
- 43 I find the design response of running the building parallel to the frontage is acceptable, despite being uncommon on the street. It is acceptable because it occupies only half the frontage. Occupying half the frontage is a highly respectful response, as it retains the important copse of trees in the north-east corner. It is also acceptable because the building is well articulated where it turns the corner from the side boundary to the frontage. The design incorporates a six metre wide break in the built form at this point. This break articulates the building and separates the front 'pod' from the longer, more regular form along the west boundary. I disagree with Mr Isle's opinion that this break will not be clearly read from the west. Its width is discernible and it is open to the sky where the remainder of the building is roofed.
- 44 I am not persuaded that opening the front corner of 205 Wendouree Parade's garden by providing a nine metre setback is a major benefit to that property. I find the impact on the dwelling and front garden of 205 Wendouree Parade is mainly caused by the proposed built form deeper in the review site.

- 45 I find the building's relationship to the dwelling and front yard of 205 Wendouree Parade is acceptable, principally because it results from the configuration of these two lots. It is reasonable to expect a two storey building oriented to the lake on this site and is it inevitable that such a building would sit forward of the dwelling at 205 Wendouree Parade. I find the proposed building has responded in an acceptable fashion through its reasonably deep setback from the boundary and its articulated form. I acknowledge that the Heritage Overlay constrains redevelopment of 205 Wendouree Parade yet this does not alter my findings.
- 46 The recessive third level is contentious because it exceeds the ResCode height standard and will be visible from the west and from Dawsons Avenue. While it is contentious, I find it is not out of place in its setting. It is a particularly large site amongst its neighbours and has capacity to accommodate a modest, recessive second floor on this reasonably large building. I find it will have an acceptable impact when viewed from the west because it is comfortably in proportion to the rest of the building. I expect it will read as a suitable element on a large building facing Wendouree Parade. There are numerous large dwellings that maximise views of the lake through large windows and upstairs decks. This second floor reflects this form yet is more subdued because of its deep setback to the frontage and reasonable setbacks to the side boundaries.
- 47 I find it has little impact on its Dawsons Avenue neighbours because it is well set back from the ground and first floors below. The impact on this streetscape's character is mainly formed by the ground and first floor's height and setbacks. While the building is tall, the setbacks are generous. The building is setback 8.6 metres from the rear boundary and an average of 10 metres or thereabouts from the side boundary. The setback allows the retention of the copse of established trees which demonstrate the design's respect for its context and partially screens the building. Further to this, the Dawsons Avenue frontage is highly articulated. The apartments facing the street step back from its frontage before the entry porch, then crease back towards the copse of trees. This articulation reduces the perception of its mass and clearly frames the valued trees. Given the site's context, with its emphasis on responding to its lakeside setting, this response to Dawsons Avenue's streetscape is acceptable.
- 48 The proposal's garden setting is its final contentious element. The Schedule's design objective is to reflect the traditional scale and garden setting of residential development on Wendouree Parade. Further objectives are to retain the existing garden character and the visual connection between the street space and private land. The Council is particularly critical of the proposed screen of landscaping along the site's western boundary.
- 49 I find it is inappropriate to isolate this element from the remainder of the landscape response. Overall, the design response is shaped by the decision

to retain the copse of established trees. This makes the strongest landscape contribution in this section of Wendouree Parade. Retaining it is a positive aspect of the design. Mr Patrick proposes continuing the evergreen hedge on the frontages, planting new hedges along Dawsons Avenue and adding canopy trees planted in natural soil across both street frontages. This is an appropriate landscape response.

- 50 The design also provides a sufficient setback from the west boundary to protect existing trees at 205 Wendouree Parade. Apart from benefitting the Parade's garden setting, these trees soften the appearance of the proposed building. In this context, providing one canopy tree that complements these plantings coupled with a more vertical vegetative screen near the building is acceptable. I note that the owners of 205 Wendouree Parade have planted upright species near the shared boundary, possibly in anticipation of the site's redevelopment. I expect that Mr Patrick's scheme can accommodate this or can be modified if need be.
- 51 In the broader setting of Wendouree Parade, the proposed tree retention and replanting makes a substantial contribution to the street's landscape setting. The manicured yet informal copse of trees provides the site's garden setting and connects the site to the street space. This should not be undervalued. The garden scheme along Dawsons Avenue adopts a scale that is comparable to its neighbours on this street. Overall, I find the landscape response provides the garden setting envisaged by the Schedule.
- 52 In summary, I find the building responds to the Schedule's design cues. The site's size allows for a large building on this site, including the recessive third level. The building's mass is acceptable because it responds to the site's features and is suitably articulated. The greatest impact is to 205 Wendouree Parade yet I find the response is acceptable in terms of that street's character due to the less sensitive stepping pattern of dwellings in this part of the street.

WHAT WEIGHT SHOULD I GIVE TO THE IMPACT ON ITS NEIGHBOURS' AMENITY?

- 53 The Council and objectors contend the proposal will adversely impact on the neighbours' amenity. The Council notes that the 205 Wendouree Parade will suffer the greatest impact and accepts that the overlooking of this property can be addressed by screening the balcony of Unit 12. The objectors say it will excessively overshadow 205 Wendouree Parade and cause a loss of solar access. They also contend that overlooking from the building will result in a loss of privacy for the residents of 205 Wendouree Parade. They contend the building's bulk will unreasonably affect the amenity of the valued and landscaped generous front garden of that property. Finally, residents of Dawsons Avenue contend that the scale, height and mass of the building will result in a net loss of their amenity.

- 54 I accept that the proposal significantly changes the setting of 205 Wendouree Parade. Presently, the single-storey, weatherboard dwelling on the review site presents as an obvious, yet modest, neighbour. It has some unusual aspects. It sits forward of their dwelling and contains no landscaping along the boundary. This means its full western elevation is visible from the entrance and front garden of 205 Wendouree Parade. It has a series of double-sash windows to habitable rooms along this elevation and a 1.2 metre high side fence for much of the shared boundary. These aspects limit the privacy of the front garden of 205 Wendouree Parade and of the existing dwelling on the review site. Finally, it has a path leading to a side door in the dwelling, meaning that anyone on that path has a full view of the front garden of 205 Wendouree Parade.
- 55 The current setting is that this relationship will be replaced by a two-storey wall running deeper into the lot than the existing house, with layers of landscaping along much of its boundary. This will change the ambience of the front garden and vistas from the verandah and front rooms of the dwelling.
- 56 I find this is acceptable because the Planning Scheme does not specifically protect these aspects of a dwelling's amenity. The amenity of a front garden is not protected from impacts such as overlooking or overshadowing by the provisions of clause 55 (ResCode). Such protection is afforded to areas of secluded private open space, which is typically rear yards or courtyards.
- 57 In a similar fashion, the Planning Scheme does not specifically protect views to Lake Wendouree. Schedule 6 to the Design and Development Overlay seeks to retain a '*visual connection between the street space and private land*', which I interpret by reference to the front and side setback requirements for new development. Retaining these setbacks provides a spaciousness that visually links the street with private land. I find its intent is to benefit the public realm given the Schedule's purpose relates to '*the context and visual quality of Lake Wendouree*'. The Schedule's design objectives also seek to retain views from the street to landmark features around the Lake. Once more, this relates to the public realm, rather than private front gardens.
- 58 Thus, it is a question of the building's impact on the general amenity of 205 Wendouree Parade. I accept the building will increase the sense of enclosure from the west. Yet, there is currently a sense of enclosure caused by the existing dwelling. This adds to the sense of the front yard's depth and frames views from the dwelling. I am not persuaded that changing the built form on this elevation from single-storey with a pitched roof to double-storey with a flat roof is unacceptable.
- 59 I have already determined that the Schedule to the Design and Development Overlay envisages two-storey built form. More than this, there are

numerous examples of two-storey development around Lake Wendouree. As such, it is reasonable to expect two-storey form on the review site.

- 60 The proposed two-storey form generally exceeds the side setback standards of clause 55. The western wall of Unit 2 and the two protruding vertical bands of the balconies of Units 4 & 10 and 6 & 12 meet the standard's minimum requirement. The remainder of this wall is setback 5.1 metres, which is well in excess of the standard, or is open to the sky, where the standard does not apply.
- 61 Aside from this, this elevation is well articulated. The generous gap containing the communal courtyard adds depth to the elevation, as does the contrast between the vertical balcony elements and the recessed unit walls. It is designed so that two of the three elements that meet the minimum requirement of the standard are reasonably distant from the dwelling at 205 Wendouree Parade and sit beyond the established trees of this garden. I find this acknowledges the amenity of 205 Wendouree Parade.
- 62 I find the building's third level, comprising Apartment 13, does not significantly impact on the amenity of 205 Wendouree Parade. It will be partially visible from the western half of that property's front garden but will have less impact than the two-storey wall. It is well within the side setbacks required by clause 55.
- 63 I am satisfied that Mr Patrick's landscape concept will, in time, soften views of the building. He proposes evergreen hedge planting on the boundary and small trees within the site. 205 Wendouree Parade's amenity will be improved where the hedge replaces the existing garage wall. To the north of this, the hedge and other plantings will provide a green edge that lessens the building's visual impact.
- 64 While I am generally satisfied with the amenity impacts caused to 205 Wendouree Parade, I find the courtyard of Unit 6 and balcony of Unit 12 unreasonably intrude on the entry to the dwelling on that property. This entry is located on the western side of the dwelling and is accessed via the space along the boundary. The proposed courtyard and balcony are within 2.75 metres of the shared boundary and are 5.5 metres from the verandah's edge. I find this level of enclosure unreasonably impacts on 205 Wendouree Parade, particularly in concert with the acceptable, yet still considerable, impact of the building's west elevation. Consequently, I will require Units 6 and 12 to be re-oriented so that they mainly face towards the south. I will allow a small balcony return on Unit 12 given that this unit's design should accommodate views to the Lake.
- 65 Ms Cincotta contends the Unit 10 balcony impacts unreasonably on 205 Wendouree Parade. I do not agree. I accept it impacts on the privacy of the front yard yet, as mentioned earlier, the Planning Scheme does not protect the privacy of this space. Practically, it is open to the street and is visible to passers-by on Wendouree Parade.

- 66 The height and mass of the building will have an impact on views from properties on the east side of Dawsons Avenue, particularly No.'s 6, 10 and 14. I am satisfied that this impact is acceptable. The impact is on the views from the front of these houses, which is a question of general amenity. Such amenity is not specifically protected by the Planning Scheme.
- 67 The main impacts are a loss of the sense of spaciousness that currently links the review site to Lake Wendouree and the loss of views to the lake. Yet, such losses are to be expected with any redevelopment of the review site. Apart from this, the building's east elevation is well articulated and has generous setbacks, particularly near the established copse of trees. Otherwise, I find that Mr Patrick's landscape concept would soften the building's appearance closer to the south boundary and that this is acceptable.
- 68 Once more, I find the building's third floor is acceptable because it is a relatively small, recessive element. I accept there is a section of sheer wall, comprising the bedroom walls of Units 3 and 9 and the balustrade of Unit 13's terrace, yet this is an 8 metre length in a building that is close to 50 metres long. As such, I consider it is not a dominant element.
- 69 Similarly, I find the impact on the properties to the south is acceptable. The building is setback a generous distance from the south boundary and the third level is generally set back well within the building's form. The impact on dwellings further to the south is generally what I would anticipate with any two-storey redevelopment of the review site. I find the third level does not make a significant impact on this context.

ARE THE BUILDING'S TRAFFIC AND PARKING IMPACTS ACCEPTABLE?

- 70 A number of objectors raised concerns about the building's traffic and parking impacts. The number of car parking spaces provided is acceptable because the building provides more car parking spaces than the Planning Scheme requires.
- 71 In terms of traffic impacts, I accept that Dawsons Avenue has a narrow pavement. I accept that only one narrow through lane is available when cars are parked on both sides of the street. Based on this, I recognise that the travelling on this street would be difficult when activities on the lake lead to it being congested with parked cars.
- 72 Yet, this is not fatal to the proposal. The test is whether the street has the capacity to accommodate the additional traffic generated by the building. This is likely to be in the order of 80 traffic movements per day, which is less than five per hour, if all movements occurred in the 16 hours between 7am and 11pm. This is a small impost.

WHAT CONDITIONS ARE APPROPRIATE?

- 73 We discussed draft conditions at the hearing. In the main, I have adopted the Tree Management condition prepared by Ms Cincotta, as the Council and the Vernon's agree to it. I have deleted that conditions requirement for a monetary bond, as agreed by the parties. On my own volition, I have deleted the presumption that the demolition of any infrastructure within the tree protection zones is likely to exclude the use of machinery, as I consider this will be determined by the arborist and will form part of the Tree Management Plan.
- 74 With regard to Condition 1, which requires amended plans, I have deleted draft condition 1a), which requires hardstand bin areas at the kerb on Dawsons Avenue and Wendouree Parade. I have also deleted draft condition 12, which requires these hardstand areas to be constructed to the Council's satisfaction. I consider such areas will have adverse visual impacts well beyond the benefit they provide. I find the existing streetscape of both streets have a pleasant informality that would be disrupted by these works. On a separate issue, I find it is inequitable to require these works in a medium density development given they are not a requirement of single dwellings or many other types of development. I acknowledge that Mr Naughton proposed an alternative condition requiring future residents to put the bins out and back within 24 hours, yet I will not impose this condition as I consider it is unnecessary. Once more, I see no reason why residents of medium density development should be singled out by this condition.
- 75 I have also deleted draft condition 1b), which requires a dedicated bin storage area along the western boundary accessible from Wendouree Parade. I have included a condition requiring a Waste Management Plan to be prepared to the Responsible Authority's satisfaction in its place.
- 76 I have deleted draft condition 1d), which requires footpaths to be shown along both street frontages. I have also deleted the related condition 11, which requires these footpaths to be constructed at the permit holder's cost. I find it is inequitable to require these works in a medium density development given they are not a requirement of single dwellings or many other types of development. Further to this, footpath construction in existing residential and commercial areas is the Council's responsibility and there is not a sufficient nexus between the proposal and these footpaths to justify a condition requiring their construction.
- 77 I have deleted draft condition 1e) because I have addressed it in the new Condition 4.
- 78 I have included requirements for protection against unreasonable overlooking from Unit 12's balcony, as proposed by Mr Sheppard and for boundary fences, as proposed by Ms Cincotta. I trust that this screening will be carefully designed to provide outward views, given this is one of the

site's advantages. I have also included a 'catch all' sub-condition for any changes required by the Tree Management Plan required by Condition 7.

- 79 I have included a new Condition 4 referring to Mr Patrick's landscape plan in, as I am satisfied that it is an appropriate response to the building, the site and the surrounds.
- 80 I have retained draft condition 5, except for the option of paying the Council \$750 per street tree in lieu of planting them as part of the proposal. I accept this condition only on the basis that Mr Naughton agrees to its retention. I have removed the option of deferring the planting of these street trees, as I consider Mr Naughton's 'offer' is made on the basis that these trees are linked to the proposal. I have removed the associated draft condition on Street Tree Removal on this basis.
- 81 I have revised draft condition 8 that requires a Construction Management Plan by amending the sub-condition on the management of Dawsons Avenue and Wendouree Parade during construction. I consider it is unreasonable to disallow the parking of the builder's vehicles along either street. Separately, I have not adopted the reduced construction hours sought by Ms Cincotta, as the proposed hours are those that generally apply in residential areas.
- 82 I have deleted draft condition 9a) that requires the materials used to construct the basement car park and ramp to be nominated as this is shown on the plans.
- 83 I have revised draft condition 10 that requires two disabled persons car spaces to be shown in the basement because this is not a requirement of the Planning Scheme.
- 84 I have deleted draft condition 14 that relates to reinstating the existing crossovers in Wendouree Parade. The proposal does not require them, so there appears to be no reason to reinstate them. If the intent is to reinstate the nature strips in their place, then I find that draft condition 15 on Nature strips addresses this.
- 85 I have retained draft condition 17 that requires an assessment of potential contamination of the site. I accept Mr Tobin's explanation its the general application in this area.
- 86 I have deleted draft condition 18 on Sediment on Roadways as I have incorporated it in the Construction Management Plan.
- 87 I have deleted draft condition 21 that requires management of the use and development so that the amenity of the area is not detrimentally affected. I find this condition is inappropriate as the residential use of the land does not require a permit and the development will be managed through the endorsed plans and other conditions on the permit.
- 88 Finally, I have replaced the permit expiry condition with the wording preferred by the Tribunal.

CONCLUSION

89 For the reasons explained above, the decision of the Responsible Authority is set aside. A permit is issued subject to conditions.

Michael Nelthorpe
Member

APPENDIX A

PERMIT APPLICATION NO:	PLP/2014/495
LAND:	203 and 203A Wendouree Parade, Lake Wendouree
WHAT THE PERMIT ALLOWS:	
<ul style="list-style-type: none"> • Construction of 13 dwellings; and • Vegetation removal <p>in accordance with the endorsed plans.</p>	

CONDITIONS

Amended Plans

- 1 Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with drawings, prepared by David Vernon Architect, submitted to the Tribunal for substitution on 16 July 2015 entitled 'VCAT Submission' but modified to show:
 - a) The gravel access path on the landscape plan to be shown on the ground floor plan drawing no.A2.1C;
 - b) Two car spaces in the basement allocated for sole use by visitors;
 - c) Colours and materials in accordance with condition 3. NOTE Zinalume materials will not be supported;
 - d) Units 6 and its ground floor patio and 12 and its first floor balcony re-oriented to face southward, by relocating the sliding doors between the indoor spaces and the outdoor recreational spaces to the building's south wall. Unit 6's ground floor patio is to replace the proposed communal courtyard and may retain an 800mm return on the building's west side (in the location of the existing patio). Unit 12's balcony may have a similar 800mm return on the building's west side (in the location of the existing balcony);

- e) Screening to Unit 12's balcony return to avoid unreasonable overlooking of the entry and habitable room windows of 205 Wendouree Parade;
- f) A fence along the western boundary comprising a 1.5 metre high, open-style picket fence, constructed in a powder-coated metal or timber extending from the Wendouree Parade frontage to the first west-facing window of Unit 2, with the balance of the fence being of a shiplap style timber paling fence at a height of 1.8 metres, except where it transitions to the 1.5 metre height of the picket fence. This fence is to be provided at the permit holder's cost and is to incorporate any changes required by the Tree Management Plan.
- g) A 1.8 metre high shiplap paling fence along the southern boundary at the permit holder's cost.

Buildings and Works

- 2 The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. All buildings and works must be constructed and or undertaken in accordance with the endorsed plans to the satisfaction of the Responsible Authority prior to the commencement of the use. All buildings and works must be located clear of any easements or water and sewer mains unless written approval is provided by the relevant authority.

Colours and Materials

- 3 Before the development starts, a schedule of construction materials, external finishes and colours must be submitted to and approved by the Responsible Authority. When approved, the schedule will be approved to form part of the permit.

Completion and Maintenance of Landscaping Works

- 4 Before the development starts, a landscape plan generally in accordance with the Landscape Plan for VCAT, Proposed development 203 & 203A Wendouree Parade, Lake Wendouree, Drawing No VCAT01 by John Patrick Pty Ltd dated August 2015 must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and three copies must be provided.
- 5 Prior to the occupation of the development, all landscape works forming part of the approved Landscape Plans must be completed to the satisfaction of the Responsible Authority. The landscaping shown on the approved landscape plans must be maintained to the satisfaction of the Responsible Authority for 18 months from the practical completion of the landscaping. During this period, any dead, diseased or damaged plants or landscaped areas are to be repaired or replaced during the period of maintenance and must not be deferred until the completion of the maintenance period.

Street Tree Provision

- 6 Prior to any works commencing on site, the permit holder shall prepare a plan for the provision of street trees within the road reserve adjacent to and within the proposed development at locations approved by the Responsible Authority. The street tree locations must accord with the requirements of section 5 of Council's Landscape Design Manual (August 2012).

Prior to occupation of the development, the street trees shall be planted within the road reserve in accordance with the approved plan. The trees shall be of semi-mature age and approved species and supplied, planted and maintained in accordance with the Responsible Authority's Tree Planting Guidelines. The permit holder is to provide a bond in the amount of \$500 per street tree. The tree/s shall be maintained for a period of 18 months from planting to the satisfaction of the Responsible Authority. The bond will be returned 18 months after completion of planting and maintenance works to the satisfaction of the Responsible Authority.

Tree Protection During Construction

- 7 Prior to the commencement of any works on site, a Tree Management Plan (TMP) must be prepared by a suitably qualified arborist to the satisfaction of the Responsible Authority. The arborist must be qualified to AQF Level 5 or more.

Once prepared, the TMP must be submitted to, and approved by the Responsible Authority. Once approved, the TMP will be endorsed and will then form part of this permit.

The TMP must be prepared to incorporate:

- a) All of the tree protection measures as set out in section 5.3 of the report titled '*Arboricultural Impacts Assessment Report*' prepared by the firm Tree Dimensions dated 11 August 2014. Such tree protection measures must include the site and the adjoining property at No.205 Wendouree Parade, Lake Wendouree; and
- b) All of the tree protection measures as set out in section 11.2 of the Arbor Safe '*Arboricultural Report & Expert Witness Statement*' dated 18 August 2015 in relation to the Sweet Gum, Japanese Maple and Silver Birch on the adjoining property at No. 205 Wendouree Parade, Lake Wendouree.

In addition to the above, the TMP must be prepared pursuant to the Australian Standard *AS:4970-2009 Protection of Trees on Development Sites* and be further structured to include (but is not limited to) the following sections:

- a) Supervision, monitoring and reporting of all on and off site arboricultural works and actions;
- b) Pre-construction/demolition details to include the following:
 - Establishment of tree protection zones;

- Types and heights of barriers to be installed around the tree protection zones;
 - The amounts and types of mulch to be placed above the tree protection zones;
 - Irrigation and/or nutritional requirements of retained trees and the methods of cutting and managing any roots or branches that extend beyond the established tree protection zones;
 - Details on the demolition of infrastructure within the tree protection zones of any retained trees on either property;
 - The approval of tree protection measures (once established) by the Responsible Authority and/or the project arborist, prior to the commencement of any works;
 - The exact location and construction method for the basement excavation adjacent to the protected trees on the adjoining property at No.205 Wendouree Parade to be determined, as alterations to the extent of the basement would increase the future health impacts upon them e.g via battering of the basement excavations in a westerly direction; and
 - No site levelling/scraping is to occur within the tree protection zones of any of the subject trees.
- c) During Construction, details to include the following:
- Watering regimes during construction and the methods of protecting any exposed/severed roots and protecting canopy branches;
 - Provision for the project arborist to visit the site on a monthly or fortnightly basis during the period of construction to assess tree protection fencing, mulching and soil moisture levels etc. to ensure the retained trees are being effectively managed;
 - Details as to the demolition and construction of proposed boundary fencing, as this could have a significant impact upon the subject trees at 205 and 205 Wendouree Parade. These details need to be known prior to any construction as it could have a significant impact upon the trees at both properties;
 - The need for underground services (of all types) to be placed outside the tree protection zones of all retained trees. If this cannot be achieved, then a provision for them to be bored underground at a depth determined by the project arborist must be made;
 - Landscaping plans must detail the exact location and level of any proposed turf, irrigation and/or paved areas within the tree protection zone of any retained tree and must avoid soil

levelling/scraping and the laying of impervious surfaces within them.

- d) Post Construction details to include the following:
- The installation of any permanent watering systems and undertaking any necessary remedial works; and
 - A final inspection of the site and the subject trees on both properties must be made by the project arborist and thereafter approval given for tree protection fencing to be dismantled. Any further arboricultural and/or plant health care requirements that are applicable at this time are to be discussed with the site/project manager(s).

All works and actions specified in the endorsed TMP must be implemented at the prescribed times and to the satisfaction of the Responsible Authority.

Construction Management Plan (CMP)

- 8 Prior to the commencement of works, a CMP must be prepared to the satisfaction of the Responsible Authority and endorsed as part of this permit. The CMP must detail:
- a) Construction hours limited to 7.30am to 6.00pm weekdays and 8.00am to 1.00pm Saturdays, these hours do not relate to any rock excavation or blasting works required by the proposal;
 - b) Any rock excavation or blasting works required to be undertaken on the site are only permitted to be undertaken between the hours of 8.00am to 5.00pm weekdays and 9.00am to 1.00pm Saturdays.
 - c) Management of Dawsons Avenue and Wendouree Parade to ensure that free vehicle passage maintained to abutting benefitting properties at all times, unless with the written consent of the Responsible Authority;
 - d) Methods to contain dust, dirt and mud within the site and on the adjoining streets including the method and frequency of clean up procedures and the management of on-site storage waste construction bins and vehicle washing;
 - e) Management of parking of construction machinery and workers vehicles to prevent adverse impact on nearby properties;
 - f) Management of staging of heavy vehicles, site deliveries and unloading and lifting points with expected frequency, and traffic management in the vicinity to ensure routes to and from the site minimise disruption to residential properties;
 - g) Measures to minimise noise and other amenity impacts from mechanical equipment, including idling trucks, and demolition or construction activities;

- h) The provision of adequate environmental awareness training for all on-site contractors and sub-contractors; and
- i) A liaison officer for contact by the public and the Responsible Authority in the event of relevant queries or problems experienced.

All works on the land must be undertaken in accordance with the endorsed CMP to the satisfaction of the Responsible Authority.

Internal Access Ways and Car Parking

- 9 Prior to the occupation of the development, the areas set aside for the parking of vehicles and access lanes as shown on the approved plans must to the satisfaction of the Responsible Authority be:
- a) Properly formed to such levels that they can be used in accordance with the plans;
 - b) Drained; and
 - c) Two visitor spaces signed as being designated for visitors only.
- Car spaces and access lanes must be maintained and kept available for these purposes at all times.

Prior to the occupation of the development, all works shall be completed in accordance with plans submitted to and approved by the Responsible Authority.

Waste Management Plan

- 10 A waste management plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plan must be drawn to scale with dimensions and three (3) copies provided. When endorsed, the plan will form part of the permit.

Vehicle Access

- 11 Prior to the commencement of the use and/or development, vehicle access to the site must be constructed in accordance with plans and specifications set under an approved Vehicle Crossing Permit to the satisfaction of the Responsible Authority.

Naturestrips

- 12 Prior to the occupation of the development, the naturestrip fronting the development shall be constructed in accordance with levels and specifications submitted to and approved by the Responsible Authority.
- The works shall include:
- a) The reshaping of the naturestrip;
 - b) Topdressing the area with a 75mm rolled depth of good quality loamy topsoil free of any weed or seed; and
 - c) Seeding the area with an appropriate seed mix.

All works shall be completed in accordance with Council's Landscape Design Manual to the satisfaction of the Responsible Authority prior to an occupancy permit being issued.

Drainage Plans and Construction (Use)

- 13 Prior to works commencing on site, drainage and/or stormwater detention and/or stormwater treatment plans must be submitted to and approved by the Responsible Authority. The drainage and/or stormwater detention plans must accord with the Infrastructure Design Manual and/or Council's Water Sensitive Urban Design guidelines and/or Council's Site Stormwater Management Systems Policy. All drainage works must be constructed in accordance with the approved plans and completed to a standard satisfactory to the Responsible Authority prior to the commencement of the development/use hereby approved.

Any proposed discharge of stormwater requiring a direct and/or modifying and existing connection to a designated waterway (as defined by the Water Act 1989) will require approval by the relevant Catchment Management Authority.

Contamination Assessment (Use)

- 14 Prior to works commencing on site a Preliminary Site Investigation Report prepared in accordance with AS4482.1-2005 shall be submitted to the Responsible Authority.

Should the Preliminary Site Investigation Report indicate that contaminating activities took place on the site or that contaminants are present, a Detailed Site Investigation in accordance with AS4482.1-2005 shall be undertaken. The Detailed Site Investigation report shall include any recommended remediation works.

If the Report is accepted by the Responsible Authority, the remediation works shall be completed by the applicant to the satisfaction of the Responsible Authority prior to the use hereby permitted commencing.

If there are concerns about the nature and extent of the contamination found in the Preliminary and Detailed Site Investigation reports, the Responsible Authority reserves the right to require a statutory environmental audit to be undertaken. In this case either:

- a) A certificate of environmental audit shall be issued for the land in accordance with Part IXD of the Environment Protection Act 1970 prior to the issue of the Statement of Compliance; OR
- b) An environmental auditor appointed under the Environmental Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the intended use prior to the use hereby permitted commencing on the site;
- c) Where a Statement of Environmental Audit is issued for the land, the development including subdivision hereby approved must comply with all the directions and conditions contained within the Statement

- d) Where a Statement of Environmental Audit is issued for the land, prior to the issue of a Statement of Compliance for each stage, letter prepared by an Environmental Auditor appointed under section 53S of the Environment Protection Act 1970 or such other qualified person to the satisfaction of the Responsible Authority must be submitted to the Responsible Authority to verify that the directions and conditions contained within the statement have been satisfied; and
- e) Unless otherwise approved in writing by the Responsible Authority, where a Statement of Environmental Audit is issued for the land, and any condition of that Statement requires any maintenance or monitoring of an ongoing nature, prior to the issue of a Statement of Compliance for any stage of the subdivision authorised by this permit, the permit holder must enter into an Agreement with the Responsible Authority pursuant to section 173 of the Planning and Environment Act 1987. All costs associated with setting up the Agreement must be borne by the owner. The Agreement must be registered on Title and run with the land, and must provide to the satisfaction of the Responsible Authority:
 - i. That the registered proprietor will undertake all required maintenance and/or monitoring in accordance with the statement; and
 - ii. Prior to the development commencing, application must be made to the Registrar of Titles to Register the section 173 Agreement on the title to the land under section 181 of the Planning and Environment Act 1987

Plant/Equipment or Features on Roof

- 15 No plant, equipment or related services other than those shown on the approved plans are permitted above the roof level of the building/s hereby approved without the further written consent of the Responsible Authority.

Lighting

- 16 External lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land to the satisfaction of the Responsible Authority.

Permit Expiry - Development Only

- 17 This permit will expire if one of the following circumstances applies:
- (a) The development is not started within two years of the issued date of this permit.
 - (b) The development is not completed within four years of the issued date of this permit.

In accordance with Section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

--- End of Conditions ---

10.5. PLP/2018/852 307-309 MAIR STREET BALLARAT CENTRAL BUILDINGS AND WORKS ASSOCIATED WITH A TAVERN, USE OF LAND FOR SALE AND CONSUMPTION OF LIQUOR (ON PREMISES LICENCE), WAIVER OF CAR PARKING REQUIREMENTS AND DISPLAY OF BUSINESS IDENTIFICATION SIGNAGE

Division: Infrastructure and Environment
Director: Terry Demeo
Author/Position: Stephanie Durant – Principal Statutory Planner

OFFICER RECOMMENDATION

Council resolves to:

- 1. Issue a Planning Permit PLP/2018/852 for the land located at 307-309 Mair Street, Ballarat Central, for Buildings and works associated with a tavern, use of land for sale and consumption of liquor (on premises licence), waiver of car and bicycle parking and display of business identification signage subject to the following Conditions:**

- 1. Buildings and works**

The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. All buildings and works must be constructed and or undertaken in accordance with the endorsed plans to the satisfaction of the Responsible Authority prior to the commencement of the use. All buildings and works must be located clear of any easements or water and sewer mains unless written approval is provided by the relevant authority.

- 2. Approved plans**

The serving and consumption of liquor is restricted to the licensed area shown on the approved plans and must not be altered without the further written consent of the Responsible Authority

- 3. Signs Not Altered**

The location and details of signs including those of the supporting structure, as shown on the approved plans must not be altered without the further written consent of the Responsible Authority.

- 4. No Sign Illumination**

The signage must not be illuminated by external or internal light except with the further written consent of the Responsible Authority.

- 5. Limit on number of patrons**

Without the prior written consent of the Responsible Authority, not more than 141 patrons may be present on the premises at any one time. If a lesser number of patrons is determined acceptable by a Registered Building Surveyor and/or the Victorian Commission for Gambling and Liquor Regulation, the lesser number will apply.

6. Sale and Consumption of Liquor – Hours

Without the prior written consent of the Responsible Authority, the sale and consumption of liquor shall only occur within the licensed area between the following hours:

12pm to 11pm – Monday to Sunday.

7. Amenity

The use and development must be managed so that the amenity of the area is not detrimentally affected, through the:

- a) transport of materials, goods or commodities to or from the land;
- b) appearance of any building, works or materials;
- c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
- d) presence of vermin or otherwise;

In the event of any nuisance being caused to the neighbourhood by activities related to the use and development the Responsible Authority may direct, in writing, such actions or works, as deemed appropriate, to eliminate or mitigate such nuisance be undertaken.

8. Patron Management Plan

Before the use starts, a Patron Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will form part of the permit. The plan must include but is not limited to:

- a) Staffing and security arrangements for the premises designed to ensure the orderly arrival and departure of patrons;
- b) Signage to be used to encourage responsible off-site patron behaviour;
- c) The training of staff in the management of patron behaviour;
- d) Measures to control noise emissions from the premises;
- e) Measures to manage patrons queuing to enter the premises;
- f) Collection of rubbish from roads, car parks and public reserves in the vicinity of the premise and external areas used by premise patrons.
- g) A documented complaint response procedure to the satisfaction of the responsible authority including the provision of a:
 - i. Contact point during hours of operation
 - ii. Investigation and assessment process
 - iii. Record management of complaints and corrective action taken to resolve the concern.

The Patron Management Plan must be implemented to the satisfaction of the Responsible Authority. The patron management plan must not be modified unless with the further written consent of the Responsible Authority

9. Management/Supervision of Premises

At all times during the operation of the use, there must be present on the premises a person over the age of eighteen (18) years who is responsible for ensuring that the activities on the premises and the conduct of persons attending the premises do not have a detrimental impact on the amenity of

the locality to the satisfaction of the Responsible Authority (referred to in this permit as "the manager").

The manager must be authorised by the operator under this permit to make statements at any time on his / her behalf to any officer of the Responsible Authority and any member of the Victoria Police and/or of Liquor Licensing Victoria authorised under section 129 of the *Liquor Control Reform Act 1998*; and/or to take action on his/her behalf in accordance with a direction by such officer.

10. **Waste Collection**

Waste collection from the site must only take place between 9am and 10pm Monday to Saturday except with the further written consent of the Responsible Authority.

11. **Background Music Only**

The provision of music on the premises must be limited to background music only unless with the further written consent of the Responsible Authority. No music is to be played or amplified externally of the building without the further written consent of the Responsible Authority.

12. **Noise from Premises**

Noise levels emanating from the premises must not exceed those required to be met under State Environment Protection Policy (Control of music noise from public premises) No. N-2. Any works required to ensure and maintain the noise levels from the premises in compliance with this policy must be completed prior to the commencement of the use or occupation of the site and maintained thereafter, all to the satisfaction of the Responsible Authority.

13. **Expiry Date**

The signage approved by this permit expires 15 years from the date of issue. All signage must be removed to the satisfaction of the Responsible Authority by this date.

14. **Permit Expiry**

This Permit will expire if:

- a) The use does not start within two (2) years of the date of the permit; or
- b) Once commenced, if the use is discontinued for a period of two years.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within six months afterwards (for a request to extend the time to commence the use).

NOTES:

Tobacco Act 1987

An application for, and assessment of, outdoor drinking and dining compliance under the *Tobacco Act 1987* must be made with Council's

Environmental Health Unit prior to its construction and use. Detailed floor and elevation plans will form the basis of that assessment and must be submitted for initial approval. A schedule of fixtures fittings and materials used for the fit out is also required.

Any proposed alteration to food or liquor licensed premises for the purpose of facilitating the consumption of tobacco products must be designed in accordance with requirements of the Smoke Free Guide: Licensed Premises and Outdoor Dining or Drinking Areas.

Building Act 1993

This permit does not constitute any authority to carry out any building works or occupy the building or part of the building unless all relevant building permits are obtained. The works hereby approved must accord with the requirements of the *Building Act 1993*, Building Regulations 2006 and Building Code of Australia 2014.

Sanitary and amenity facilities must be provided in accordance with the requirements of the Building Code of Australia.

Food Act 1984

An application for, and assessment of, food premises construction compliance under the *Food Act 1984* must be made with Council's Environmental Health Unit prior to its construction and use. Detailed floor and elevation plans will form the basis of that assessment and must be submitted for initial approval. A schedule of fixtures fittings and materials used for the fit out is also required.

Any proposed alteration to a food premises must be designed in accordance with requirements of the FSANZ Food Standards Code and Australian Standard 4674

EXECUTIVE SUMMARY

On 12 December 2019 an Application was lodged for buildings and works associated with a tavern, use of land for sale and consumption of liquor (on premises licence), waiver of car and bicycle parking and display of business identification signage at 307-309 Mair Street Ballarat Central.

The subject site is a former retail premises (used for second-hand whitegoods sales) which is located opposite the refurbished Civic Hall and the GovHub construction site. The further investment and redevelopment of properties within this precinct is in keeping with the strategic directions under Council's adopted CBD Strategy and the policy position articulated in the Ballarat Planning Scheme and Ballarat Strategy.

It is considered that a further tavern in this location to further invigorate the precinct is an appropriate planning response subject to conditions to manage the premises accordingly. The Application was advertised, and Council received one objection which has been withdrawn. It is recommended that Council issue a Planning Permit subject to conditions.

APPLICATION DETAILS

Applicant:	Torquil Neilson
Owner:	Lyle Jest Pty Ltd
Date Lodged:	12 December 2018
Subject Site:	307-309 Mair Street Ballarat Central
Current use:	Vacant Shop
Zone:	Commercial 1 Zone
Overlays:	Heritage Overlay—Schedule 171 (Lydiard Street Heritage Precinct)
Permit triggers:	Clause 34.01-4 buildings and works associated with a tavern Clause 52.05- advertising signage Clause 52.06 -car parking reduction Clause 52.27-licenced premises Clause 52.34 -bicycle facilities reduction
Ward:	Central Ward
Number of Objections:	None
Mediation Meeting:	No
Council Referral Trigger:	Liquor licence associated with a tavern and for a footpath trading area
Covenant or S173	No
CHMP Required:	No

PROPOSAL

This application involves internal and external alterations to the existing building, so it can be retrofitted for the purposes of a tavern, use of land for the sale and consumption of liquor (on premises licence), waiver of car and bicycle parking requirements and the display of business identification signage. The proposal is summarised as follows:

Liquor Licence

- The use of land for a liquor licence associated with a tavern (a planning permit is not required to use land for a tavern). The licenced area is outlined in the red line plan included at Attachment 1. The licenced area includes footpath seating. The licenced hours are proposed to be between 12:00pm and 11:00pm Monday to Sunday with a maximum of 141 patrons permitted on the site at any one time.

Buildings and works

- Minor buildings and works are proposed including removal of paintwork on the front façade to expose original bluestone and repainting of the front door in a neutral tone. Plans and elevations are included at Attachment 1.

Business Identification Signage

- One 2.5m x 1m decal sign attached to front window. The sign has a white background with a black, white and yellow logo with the words “The Comfort of Strangers”.
- One 0.98m x 0.25m decal sign attached to front door. The sign has a white background with a black, white and yellow logo with the words “The Comfort of Strangers”.

Plans of the proposed signage are included at Attachment 1.

Car and Bicycle Parking

The increased patron numbers also prompt the application to involve a reduction in the car parking requirements set out at Clause 52.06 and bicycle parking requirements at Clause 52.34. A Parking Impact Assessment Report was submitted with the application and a copy is provided at Attachment 2.

SITE AND SURROUNDS

The subject site is located on the southern side of Mair Street approximately 25 metres west of the corner of Armstrong Street North.

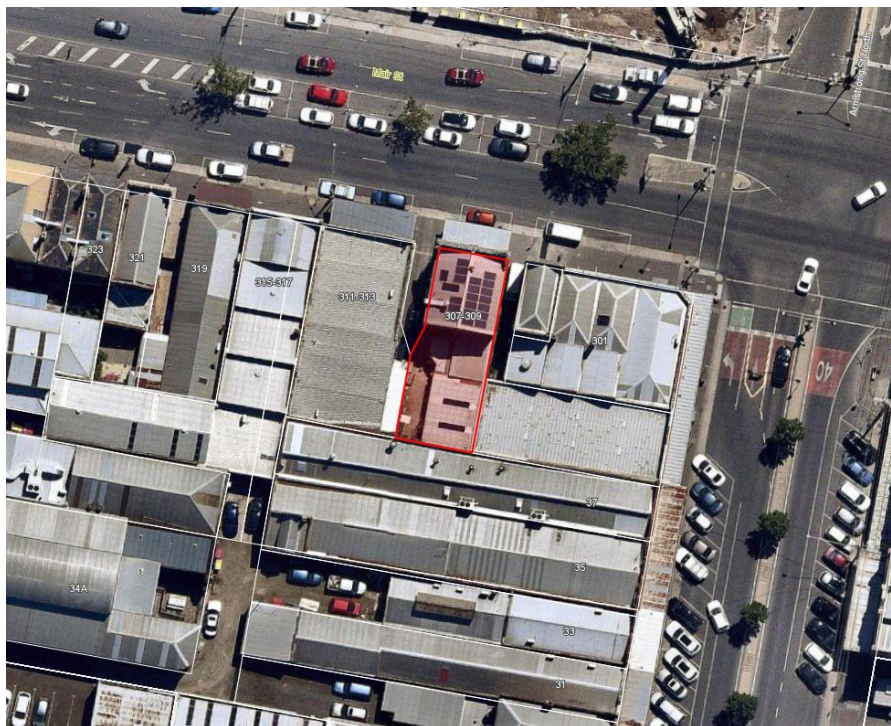
The rectangular shaped site measures approximately 229.33 square metres and currently contains a double fronted double storey building. The eastern side of the building is currently vacant whilst the western side of the building is currently used as a café.

The site is situated in the Commercial 1 Zone and is affected by the Heritage Overlay (HO171) - the Lydiard Street Heritage Precinct. The existing building is listed as being contributory to the heritage precinct.

Taxi ranks are located approximately 355 metres east of the site at Camp Street and 400 metres southeast of the site on Lydiard Street. A bus station is located approximately 340 metres south of the site on Sturt Street and the Ballarat Railway Station is located 355 metres northeast of the site.

Mair Street is a fully constructed road with kerb, channel and footpaths on both sides. Mair Street is an arterial road under the management of VicRoads and formalised car parking spaces are provided along the road.

An aerial map, zoning map and site photo is provided below. The subject site is outlined in red.





NOTICE OF APPLICATION

The application was subject to advertising with a sign onsite and notices to immediate neighbours. One objection was received during the notice period however this objection has since been withdrawn.

REFERRAL OF APPLICATION**External Referrals****VicRoads**

No objection was received to the application and there were no conditions required to be attached to any permit issued.

VicPolice

No response has been received to date.

Internal Referrals**Traffic and Transport Unit**

No objection was received to the application with feedback provided as follows:

No parking is available on site and previous uses have relied on dispensation. A Tavern or Hotel premises would normally be required to provide parking at 0.4 spaces per patron. This equates to 56 spaces for the 141 patron license proposal. A shortfall also applied to the previous use in this CBD precinct.

A parking demand survey undertaken on a Thursday and a Saturday in March 2018 by a suitably qualified Traffic consultant has demonstrated that of the 510 on-street spaces available 320 and 346 vehicles respectively occupied those spaces during evening peak times. This suggests that some on-street capacity is available when the new business expects to be busiest.

Heritage

No objection was received to the application. Comment was made about the positive decision to remove the existing paintwork, so it re-exposes the original bluestone.

Environmental Health

No objection was received to the application subject to standard conditions relating to the licensing of food premises and compliance with related legislation.

Local Laws

No objection was received to the application and there were no conditions required to be attached to any permit issued.

KEY ISSUES

The principal issues relevant to the application are as follows:

Commercial 1 Zone

The site is located within the Commercial 1 Zone and forms part of the Ballarat Central Business District, Ballarat's Principal Activity Centre. It is the purpose of commercial areas to create "*vibrant mixed-use commercial centres for retail, office, business, entertainment and community uses.*" The proposal is supported by the State and Local Planning Policy Framework. The Central Highlands Regional Growth Plan (Clause 11.08) is relevant as the proposal will "*maintain Ballarat's Central Business District as the primary focus for commercial, retail and service activity in the city and region.*"

Clause 17 (Economic Development) is also relevant to the application as the proposed tavern will provide a venue to meet the needs of the local population within an existing activity centre in accordance with the strategies identified at Clause 17.01-1 (Business).

Local policy at Clause 21.07 (Economic Development) sets out economic growth and activity centre strategies and objectives, including the identification of the Ballarat Central Business District as a Regional Activity Centre, where the strategic direction is to *“encourage significant new mixed-use development which supports the knowledge sector and retail employment opportunities, more inner city living and street level and out-of-hours activation.”*

The proposal will directly implement Strategy 5.1 of Clause 21.07 as it will seek to activate the mixed-use precinct by widening the offering of entertainment uses within the Ballarat CBD.

The proposed tavern will allow for the sale and consumption of liquor and provide for a new food and drink experience within the Ballarat CBD.

The granting of a planning permit will directly implement the objectives and strategies for activity centres as outlined at Clause 21.07, Strategy 4.2 of the Ballarat Planning Scheme as demonstrated above and it will also contribute to the economic strength of the Ballarat CBD providing additional employment opportunities.

Ballarat CBD Strategy

The Ballarat CBD Strategy is a long-term plan to guide growth and change in the CBD over the next 20 to 25 years. This CBD Strategy identifies the subject site as being within the Mair Street precinct which is designated as a core office and commercial area. The CBD Strategy specifies that at the western end of Mair Street there are a number of significant heritage buildings, some of which have been successfully adapted to new uses. New development in this part of Mair Street must respect this heritage context while providing contemporary design solutions for new development.

The proposal will facilitate the full reutilisation of the historic shopfront and is generally in accordance with the CBD Strategy. It is noted that no changes to the building façade apart from the signage are proposed as part of this application.

Licensed Premises

Clause 52.27 (Licensed Premises) is relevant to this application. The purpose of this clause is:

- *To ensure that licensed premises are situated in appropriate locations;*
- *To ensure that the impact of the licensed premises on the amenity of the surrounding area is considered.*

Pursuant to Clause 52.27 (Licensed Premises), a planning permit is required to use the land to sell or consume liquor where a licence is required under the *Liquor Control Reform Act 1998*.

As noted above, the site is located within an established commercial area, which is a designated Principal Activity Centre in the Ballarat Planning Scheme. Given the proposed layout of the existing building and the nature of the uses in the immediate surrounding context, including retail, food and drink premises and other commercial enterprises, it is unlikely that any adverse amenity impacts would occur as a result of the proposed liquor licence.

Noise impacts associated with the licence are also not likely to be an issue. The licence applied for as part of this application is an on-premises licence to allow for consumption of liquor on the premises and therefore as all liquor will be consumed onsite it is unlikely that there will be any unreasonable noise impacts. In addition, music would be restricted to background music, which would be played indoors only to an acceptable level.

The proposed hours of operation for the licence are consistent with the general operating hours of surrounding businesses which will allow for trade on Monday to Sunday including public holidays (12:00pm to 11.00pm). As demonstrated in the assessment of cumulative impact, surrounding land comprises a variety of uses, some with liquor licences (of varying types) with varying hours. The nearest residentially zoned land is currently located approximately 270 metres to the north of the site on Doveton Crescent. These properties are buffered from the site by existing commercial buildings and land uses as well as physically separated by the Ballarat to Maryborough/Ararat railway line.

Issues such as anti-social behaviour and crime are legitimate concerns with applications of this nature. However, such behavioural matters are not a planning consideration and are a regulatory issue, which are to be addressed through relevant regulations including through Victoria Police. If there are behavioural issues as a result of the proposed use, then this is a matter for Victoria Police and is not a planning issue.

Cumulative Amenity Impacts

The Department of Environment, Land, Water and Planning *Practice Note 61: Licensed Premises: Assessing Cumulative Impact June 2015* sets out guidelines to be used by Councils when assessing licensed premises including a food and drink premises.

Cumulative impact refers to both positive and negative impacts that can result from clustering a particular land use or type of land use. Potential cumulative impact from a cluster of licensed premises will vary between locations, depending on the mix and number of venues and whether the area is a destination for activities associated with the supply of alcohol.

Cumulative impact is a product of the number and type of venues present, the way they are managed and the capacity of the local area to accommodate those venues.

As the site is located in the Ballarat CBD there are a number of licensed premises located within a 500-metre radius of the site. A majority of these premises generally close at 12.00am or earlier as a majority of the premises are licensed restaurants and hotels with several late-night licences within the surrounding context.

As noted in the previous sections of this report, the proposal is consistent with the planning outcomes sought by both State and local planning policy and the planning controls for the area.

The following provides a suitable analysis of the potential for negative cumulative amenity impact:

- The hours of operation are generally similar to the hours of existing premises (restaurant and café licences) within the Ballarat CBD;
- The site is located in a commercial zone where the predominant use is for retail/offices and food and drink premises. The site is located on a main road (Mair Street) and where a variety of uses exist;
- The hours of operation of the licenced premises does not meet the definition of a 'late night premises' as it will not operate after 11pm;
- The site is located in the Ballarat CBD where a variety of transport options are available. Taxi services are available in the surrounding area and the site is in walking distance to train and bus services.

The above indicates that the proposal will not increase or create a cumulative amenity impact in the area immediately surrounding the subject site.

Car Parking

Car parking requirements are designated in Clause 52.06 of the Ballarat Planning Scheme and these provisions require that a use must not commence, or the floor area of an existing use must not be increased until the required car spaces have been provided on the land.

The Applicant has undertaken a parking assessment based on the proposed alterations and the previous land uses. Parking requirements for the proposed use as required by Clause 52.06 require 0.4 spaces per patron permitted for a 'tavern' land use. The maximum number of 141 patrons require 56 car parking spaces to be provided on-site.

ESR Transport Planning have provided a Parking Impact Assessment Report in support of the application, which is provided at Attachment 2. As part of this assessment, a parking demand survey was undertaken in March 2018 and data from parking surveys undertaken in 2014 and 2015 were also reviewed.

In summary, these parking surveys found that:

- Approximately 290 vacant spaces are available during peak evening times within a convenient proximity of the site;
- Throughout the daytime, both on-street parking and Civic Hall parking is heavily utilised, with occupancy rates in the order of 70-90%; and
- During the evening, on-street parking has mixed occupancy levels, however notably lower occupancies are experienced north of Mair Street and west of Doveton Street (in close proximity to the subject site).

The ESR Parking Impact Assessment Report also recognises that whilst the GovHub project will result in losses to public car parking at the Civic Hall site, the Ballarat CBD Car Parking Action Plan will facilitate additional, significant car parking spaces within the CBD over the next three years, offsetting these losses.

It is noted that the dispensation of car parking has been assessed as acceptable by Council's Traffic and Transport Unit.

Therefore, the reduction of the statutory car parking requirement is considered acceptable having regard to the following observations:

- Availability of on-street car parking in the locality;
- Availability of public transport in the locality, via the nearby bus stop, taxi ranks and the train station;
- Car parking credits which should be allowed for the car parking demand deemed to have been associated with the previous patronage of the land;
- Anticipated lower rates of car dependency as patrons cannot drink and then drive home so will be more likely to rely on taxis, ubers or car pool with a designated driver;
- The tavern's location in the CBD facilitates a lower patron dependence on cars as there is a higher likelihood of shared trips (e.g. walking from a nearby workplace or other nightlife venue) and good walking, taxi and public transport opportunities; and Council's Traffic and Transport Unit do not object to the proposal.

Bicycle Parking

Clause 52.34 (Bicycle Facilities) of the Ballarat Planning Scheme sets out planning controls with respect to the provision of bicycle facilities such as parking and change room facilities. Table 1 to Clause 52.34-3 specifies provision rates for various land uses. A permit can be granted to vary, reduce or waive these requirements.

The existing building occupies the majority of the site and new bicycle parking facilities cannot be installed on-site within the title boundaries without damage to the existing heritage building and therefore a dispensation pursuant to Clause 52.34 is required.

Existing bicycle parking hoops are already provided in the public footpaths nearby.

Heritage Overlay

The subject site is affected by the Heritage Overlay (HO171) - the Lydiard Street Heritage Precinct. The existing building is listed as being contributory to the heritage precinct. The purpose of the Heritage Overlay as relevant to the proposal is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To conserve and enhance heritage places of natural or cultural significance.
- To conserve and enhance those elements which contribute to the significance of heritage places.
- To ensure that development does not adversely affect the significance of heritage places.
- To conserve specified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

Pursuant to Clause 43.01-1 (HO171) a planning permit is required for buildings and works associated with removal of paintwork on the front façade to expose original bluestone and repainting of the front door in a neutral tone and for signage.

The application was referred to Councils Heritage Advisor who had no concerns regarding the buildings and works or the proposed signage. The proposed works are considered to improve the visual appearance of the front façade of the building by exposing the original bluestone and the signage and repainting of the door in a neutral tone are considered sympathetic to the building.

Advertising Signage

The application also proposes a new suite of advertising signage associated with the new tavern. The signage is detailed above in this report and is generally consistent in its theme and styling. Consideration rests with Clause 52.06 (Advertising signage) which includes the purpose of:

- To regulate the development of land for signs and associated structures;
- To ensure signs are compatible with the amenity and visual appearance of an area, including the existing or desired future character;
- To ensure signs do not contribute to excessive visual clutter or visual disorder; and
- To ensure that signs do not cause loss of amenity or adversely affect the natural or built environment or the safety, appearance or efficiency of a road.

The site is included within Category 1 (Commercial Areas) under Clause 52.05-11. Clause 52.05-8 (Decision Guidelines) requires a number of matters to be considered when determining whether the display of signage is appropriate. In response to these Guidelines, the following is noted:

- The signs proposed are simple in nature, attached to the glass windows of the building and are kept to a practical minimum.
- The proposed signs are discreet, non-illuminated and are compatible with other business identification signage on other nearby commercial premises and the theme of low scale advertising established within the area

Waste Collection

A permit condition will require waste collection to be undertaken at hours which are less likely to disturb the residential amenity of the area.

LEGISLATION, COUNCIL PLAN, STRATEGY AND POLICY IMPLICATIONS

Clauses relevant to the application include the following:

State Planning Policy Framework (SPPF)

- Clause 17 Economic Development

Municipal Strategic Statement

- Clause 21.01 Municipal Overview
- Clause 21.07 Economic Development

Particular Provisions

- Clause 52.05 Advertising Signage
- Clause 52.06 Car Parking
- Clause 52.27 Licensed Premises
- Clause 52.34 Bicycle Facilities

In addition:

- *Charter of Human Rights and Responsibilities Act 2006*;
- *Planning and Environment Act 1987*;
- City of Ballarat Council Plan 2017-2021; and
- Ballarat Planning Scheme.

REPORTING AND COMPLIANCE STATEMENTS

Implications	Considered in Report?	Implications Identified?
Human Rights	Yes	Yes
Social/Cultural	Yes	Yes
Environmental/Sustainability	No	No
Economic	No	No
Financial /Resources	No	No
Risk Management	No	No
Implementation and Marketing	No	No
Evaluation and Review	No	No

Human Rights and Social/Cultural – The application has been assessed in accordance with the requirements of the *Planning and Environment Act 1987* and the Ballarat Planning Scheme. The assessment is considered to accord with the *Charter of Human Rights and Responsibilities Act 2006*. Specifically:

- Freedom of Expression (part 2 section 15);
- A fair hearing (part 2 section 24); and
- Entitlement to participate in public life (part 2 section 18).

OFFICERS DECLARATIONS OF INTEREST

Council Officers affirm that no direct or indirect interests need to be declared in relation to the matter of this Report.

REFERENCE DOCUMENTS

- *Planning and Environment Act 1987*;
- Ballarat Planning Scheme;
- Ballarat Activity Centres Strategy, 2012; Hill PDA & Hansen.
- Making Ballarat Central – The CBD Strategy, 2011.
- Department of Transport Planning and Local Infrastructure Practice Note 61:

ATTACHMENTS

1. PLP/2018/852 307-309 Mair Street Ballarat Plans **[10.5.1]**
2. PLP/2018/852 307-309 Mair Street Ballarat Central Parking Impact Assessment **[10.5.2]**

**TOWN PLANNING DRAWINGS FOR
PROPOSED WINE BAR AT
307 MAIR STREET, BALLARAT CENTRAL**



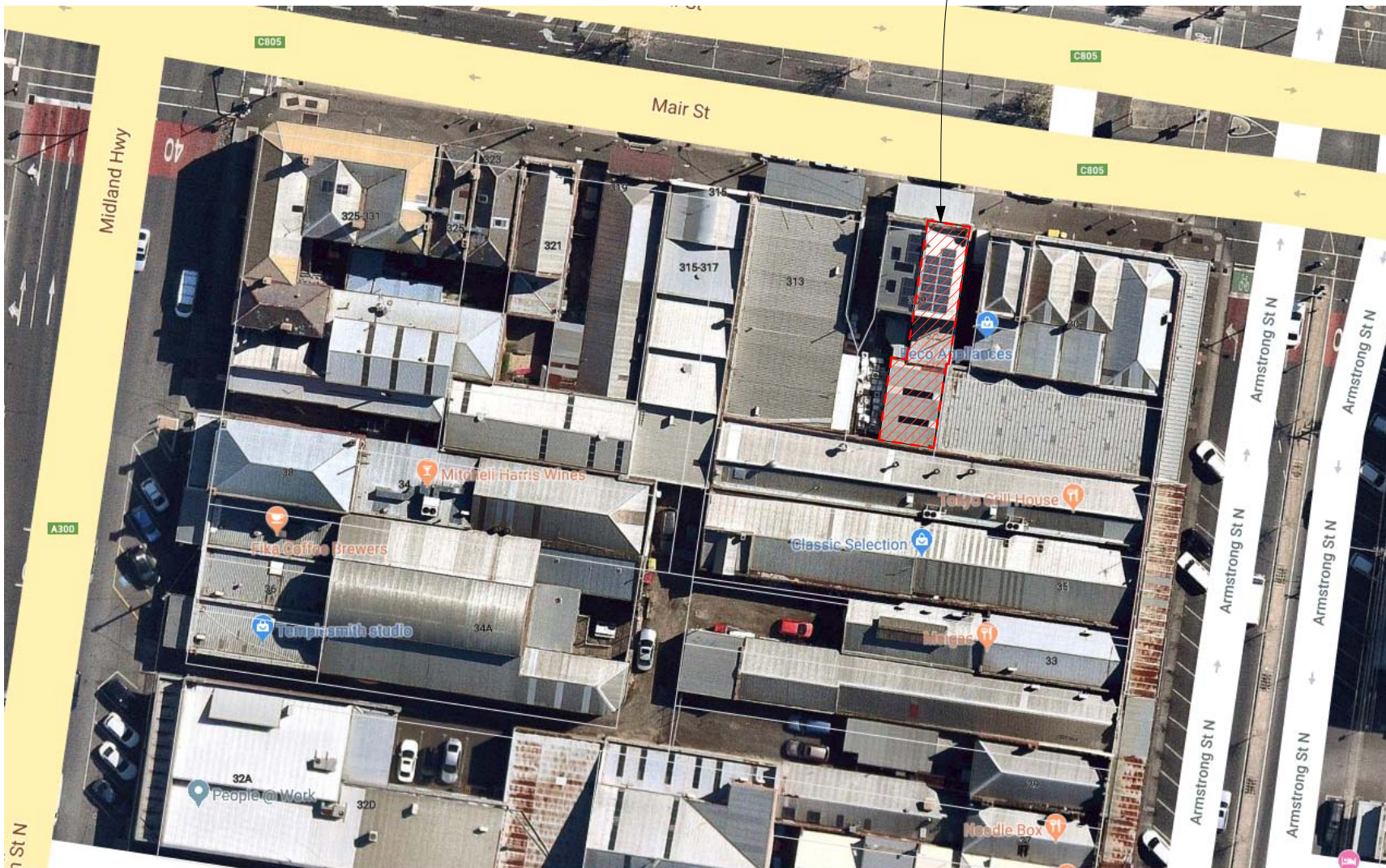
THE
COMFORT
OF
STRANGERS

 Ryan
Adamson
Design

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PLANNING REVISION A:
LANEWAY SEATING REMOVED AND
REDLINE AREA REDUCED ACCORDINGLY.

SUBJECT PROPERTY

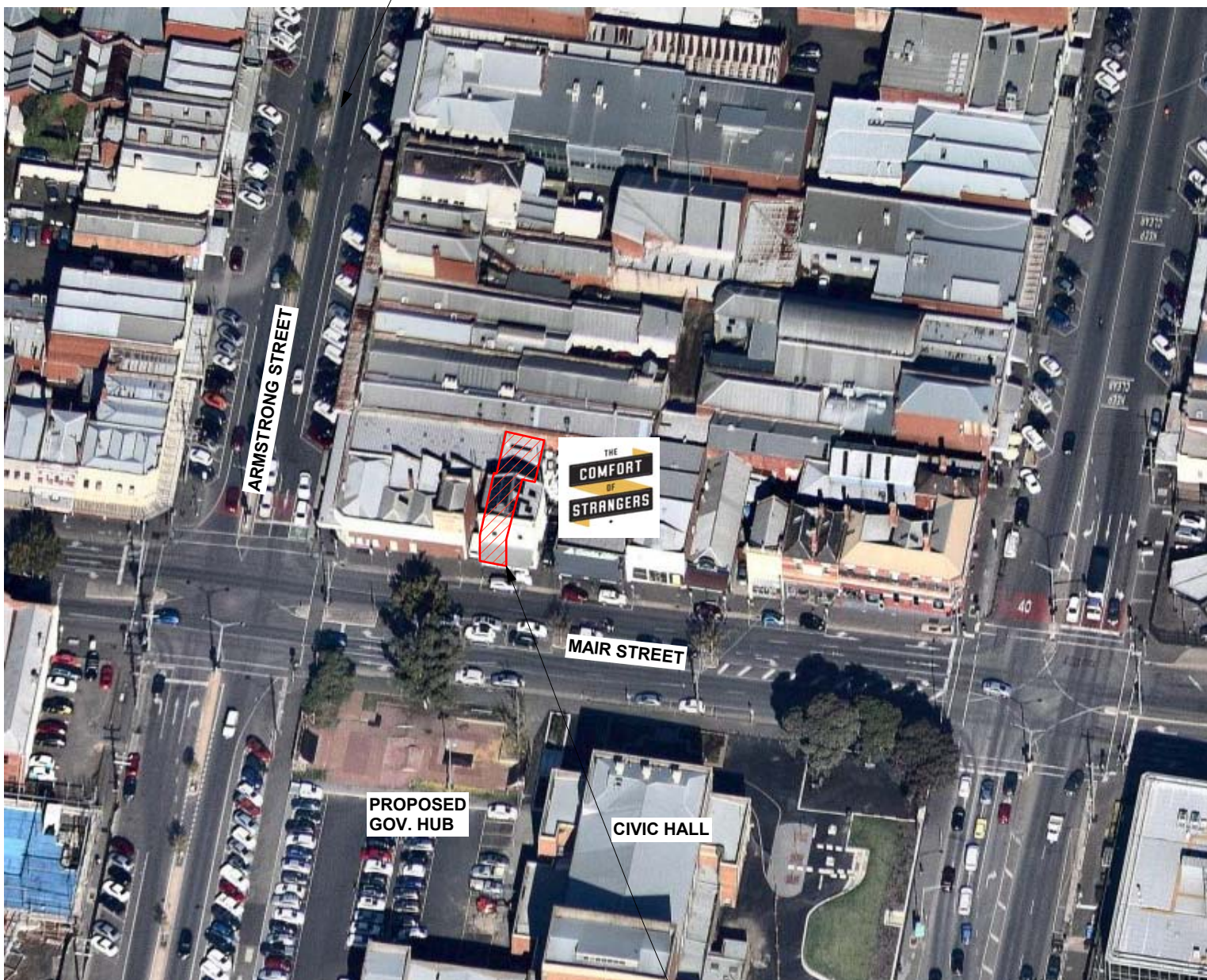


NORTH



PHOTOMAP IMAGE

ARMSTRONG STREET



PHOTOMAP PANORAMA IMAGE

SUBJECT PROPERTY



IMAGE PROPOSED GOV. HUB

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In Association with:

Rev.	Amendments	Date
CPS		10/18
CPS		16/10/18
	FINAL LIQUOR PLAN	06/11/18

The builder shall check and verify all dimensions and verify all errors and omissions to the Designer. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Designer for construction.

Client
Torquil Neilson
 Project Name
COMFORT OF STRANGERS
 Project Address
307 MAIR STREET, BALLARAT CENTRAL

Drawing Title:
LOCATION PLAN

Scale: as noted	Date: 2/28/2019
Status: PLANNING	Checked By: RKA

Project No: ARC810161	Drawing No.: A.02.2
---------------------------------	-------------------------------



EXISTING FACADE (LOOKING SOUTH)



VIEW FROM EAST SIDE OF SHOP LOOKING WEST

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In Association with:

Rev.	Amendments	Date
CPI		10/18
CF2		10/18
CF3		16/10/18
	FINAL LIQUOR PLAN	09/11/18

The builder shall check and verify all dimensions and verify all errors and omissions to the Designer. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Designer for construction.

Client
Torquil Neilson
 Project Name
COMFORT OF STRANGERS
 Project Address
307 MAIR STREET, BALLARAT CENTRAL

Drawing Title:
EXISTING BUILDING PHOTO'S

Scale: as noted Date: 2/28/2019

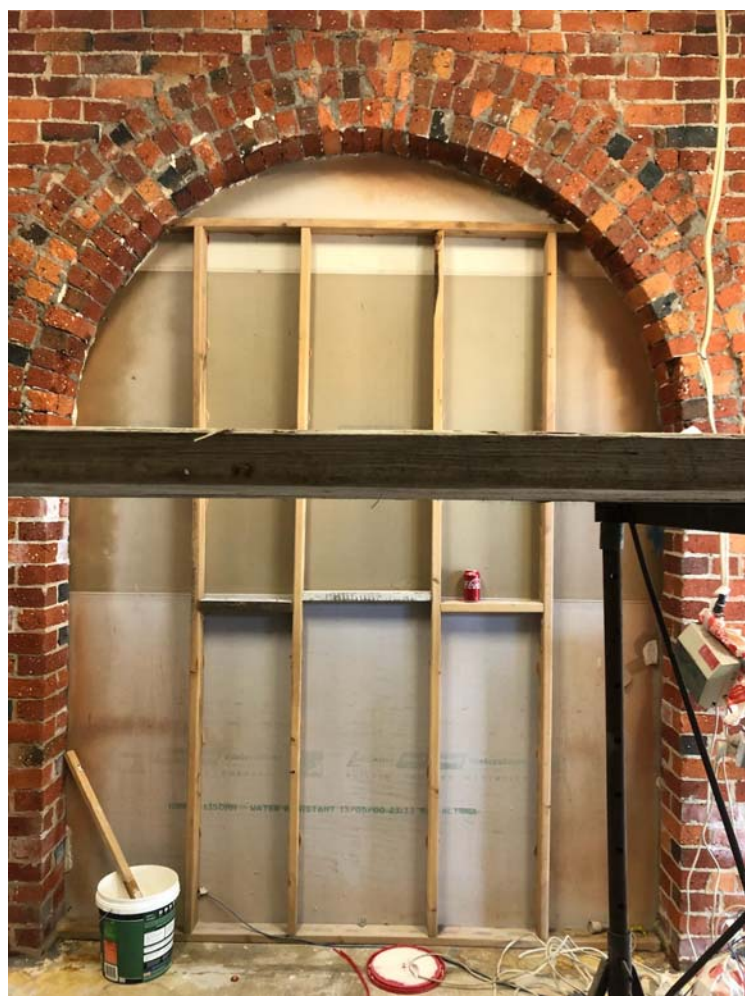
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Project No.: **ARC810161** Drawing No.: **A.02.3**

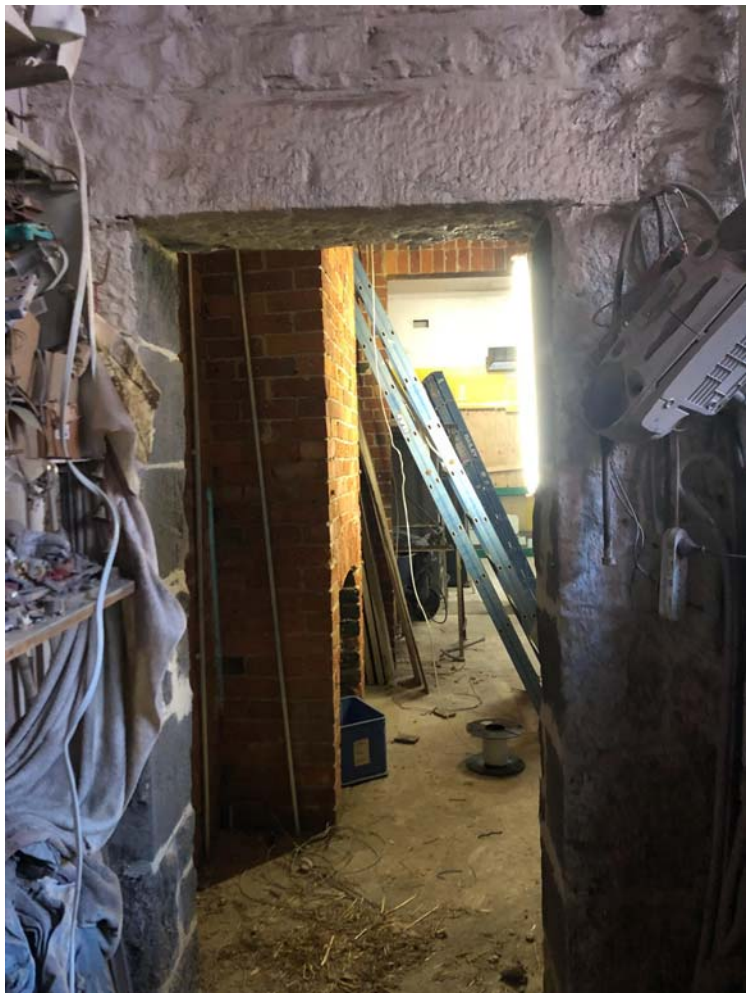
Plot Date: 2/28/2019



VIEW OF MIDDLE ROOM



VIEW OF EXISTING ARCH BETWEEN TENANCY 1 & 2



VIEW LOOKING FROM EXISTING WC'S OUT TO MAIR ST.



VIEW LOOKING ENTRY DOOR TOWARDS REAR



VIEW OF BACK ROOM

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In Association with:

Rev.	Amendments	Date
CPS		10/18
CPS		10/18
CPS		16/10/18
	FINAL LIQUOR PLAN	09/11/18

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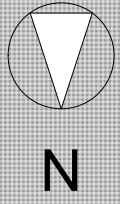
Client
Torquil Neilson
 Project Name
COMFORT OF STRANGERS
 Project Address
307 MAIR STREET, BALLARAT CENTRAL

Drawing Title:
EXISTING BUILDING PHOTO'S

Scale: as noted Date: 2/28/2019
 Status: PLANNING Checked By: RKA

Project No.:
ARC810161 Drawing No.:
A.02.4

Plot Date: 2/28/2019



301
DOUBLE STOREY
DOUBLE BRICK
BUILDING.
(CAMPANO'S)

NEIGHBOURING
BRICK WALL

NEIGHBOURING
BRICK WALL

ACCESSIBLE
(UNISEX)

ROLLER DOOR

REAR
YARD

DOOR IS NOT AN
EXIT DOOR

WC

WC

WC

NEIGHBOURING
BRICK WALL

LANE-WAY

309
DRIVEWAY

313 MAIR ST
SINGLE STOREY
BRICK BUILDING
(BALLARAT BICYLES)

TENANCY 1

309B
TENANCY 2

301
DOUBLE STOREY
DOUBLE BRICK
BUILDING.
(CAMPANO'S)



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In Association with:

Rev.	Amendments	Date
CP1		10/18
CP2		10/18
CP3		16/10/18
	FINAL LIQUOR PLAN	09/11/18

The builder shall check and verify all dimensions and verify all errors and omissions to the Designer. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Designer for construction.

Client
Torquil Neilson
Project Name
COMFORT OF STRANGERS
Project Address
307 MAIR STREET, BALLARAT CENTRAL

Drawing Title:
EXISTING FLOOR PLAN

Scale: as noted **Date:** 2/28/2019
Status: PLANNING **Checked By:** RKA

Project No.: ARC810161 **Drawing No.:** A.02.5

Plot Date: 2/28/2019

EXISTING 980mm WIDE
DOOR

0.980 by 2.500

0.980 by 2.500

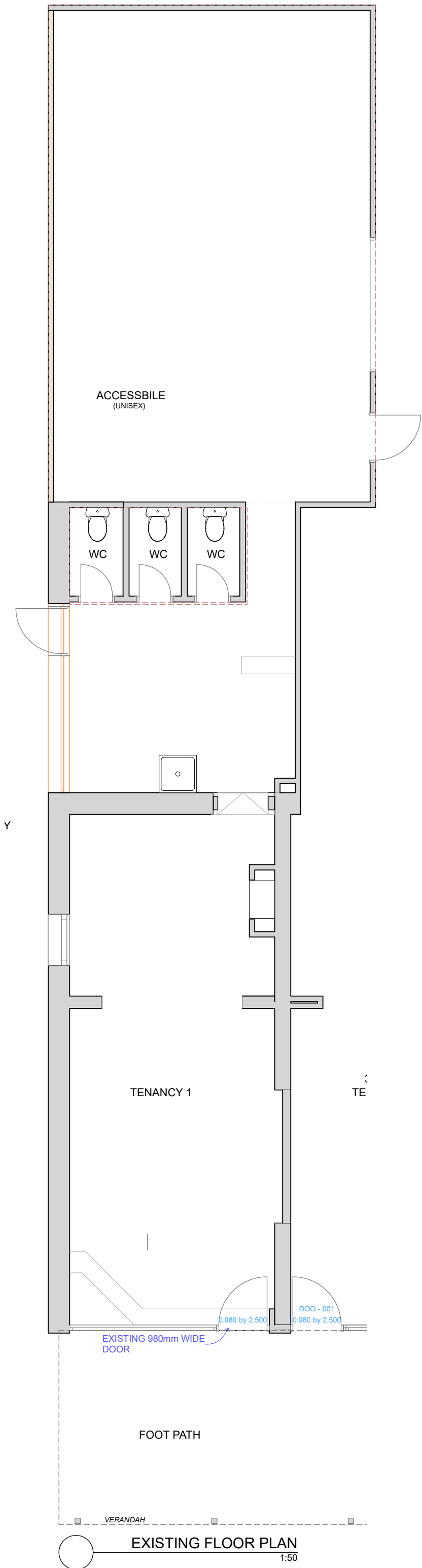
FOOT PATH

VERANDAH

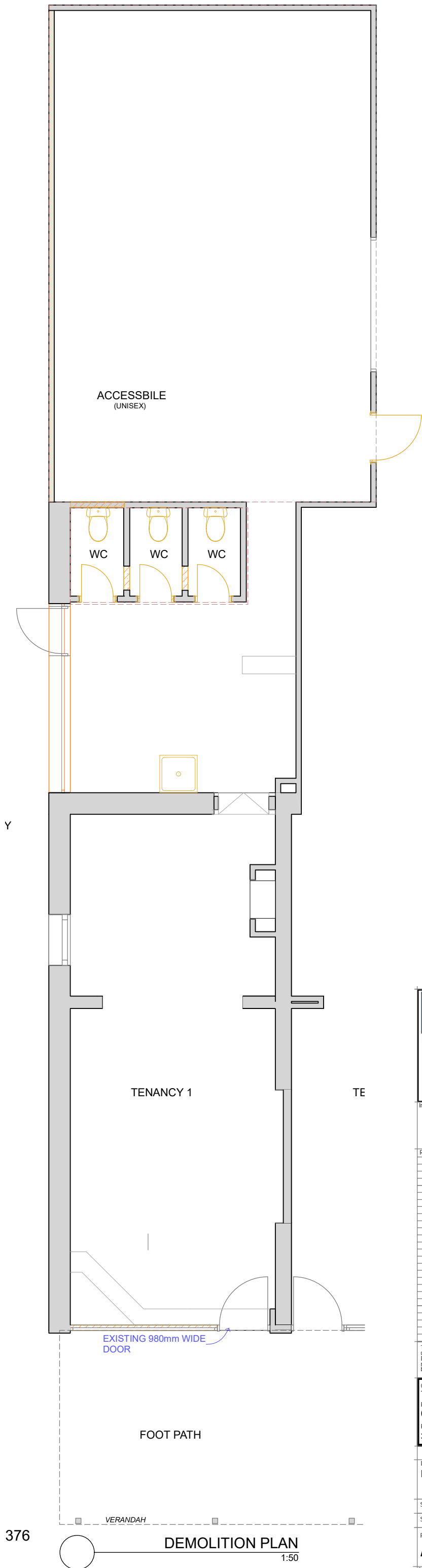
375

BLUESTONE DRAIN

EXISTING SITE/FLOOR PLAN
1:50



EXISTING FLOOR PLAN
1:50



DEMOLITION PLAN
1:50

376

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In Association with:

Rev.	Amendments	Date
CP1		10/18
CP2		10/18
CP3		16/10/18
	FINAL LIQUOR PLAN	09/11/18

The builder shall check and verify all dimensions and verify all errors and omissions to the Designer. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Designer for construction.

Client
Torquil Neilson
 Project Name
COMFORT OF STRANGERS
 Project Address
307 MAIR STREET, BALLARAT CENTRAL

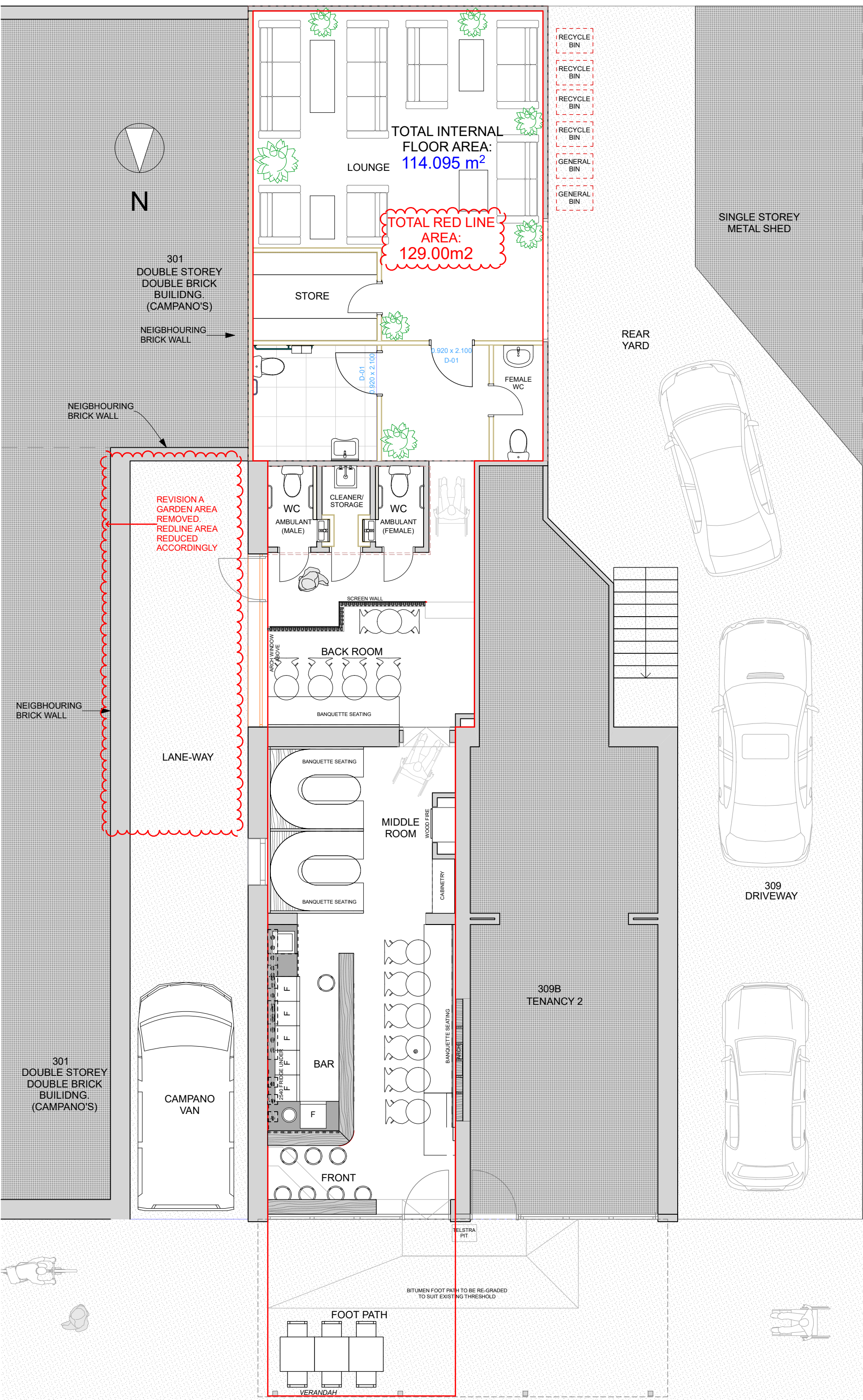
Drawing Title:
EXISTING & DEMOLITION PLAN

Scale: as noted	Date: 2/28/2019
Status: PLANNING	Checked By: RKA

Project No: ARC810161	Drawing No.: A.02.6
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Plot Date: 2/28/2019

IMPORTANT NOTE:
 THESE DRAWINGS ARE TO BE
 READ IN STRICT ACCORDANCE WITH
 VINCE McDONALD ARCHITECT'S
 ACCESS REPORT & DOCUMENTATION



PROPOSED SITE/FLOOR PLAN
 1:50

377

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In Association with:

Rev.	Amendments	Date
CPS1		10/18
CPS2		10/18
CPS3		16/10/18
	FINAL LIQUOR PLAN	09/11/18

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Client
 Torquil Neilson
Project Name
 COMFORT OF STRANGERS
Project Address
 307 MAIR STREET, BALLARAT CENTRAL

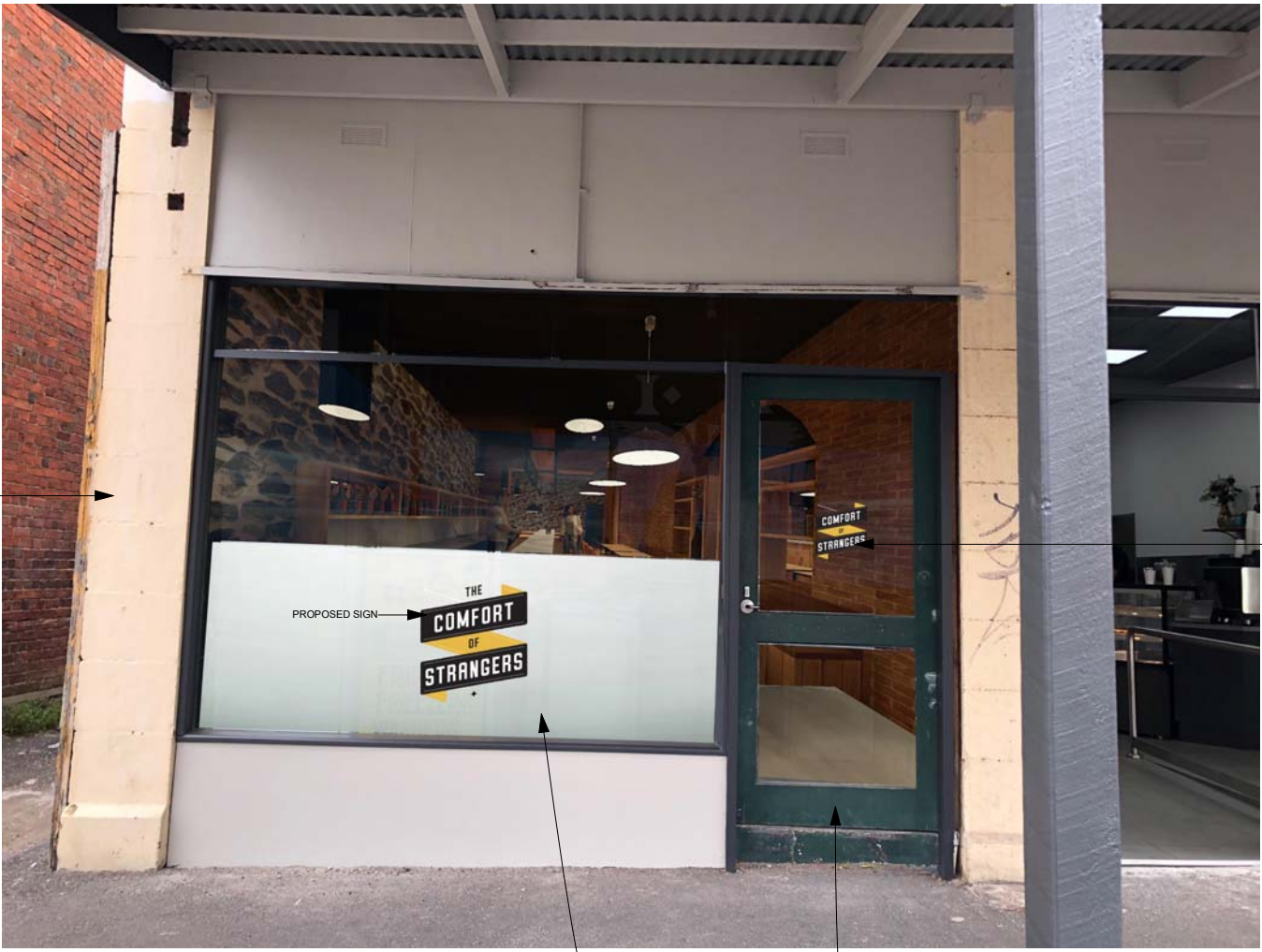
Drawing Title:
 PROPOSED FLOOR PLAN

Scale: as noted Date: 2/28/2019

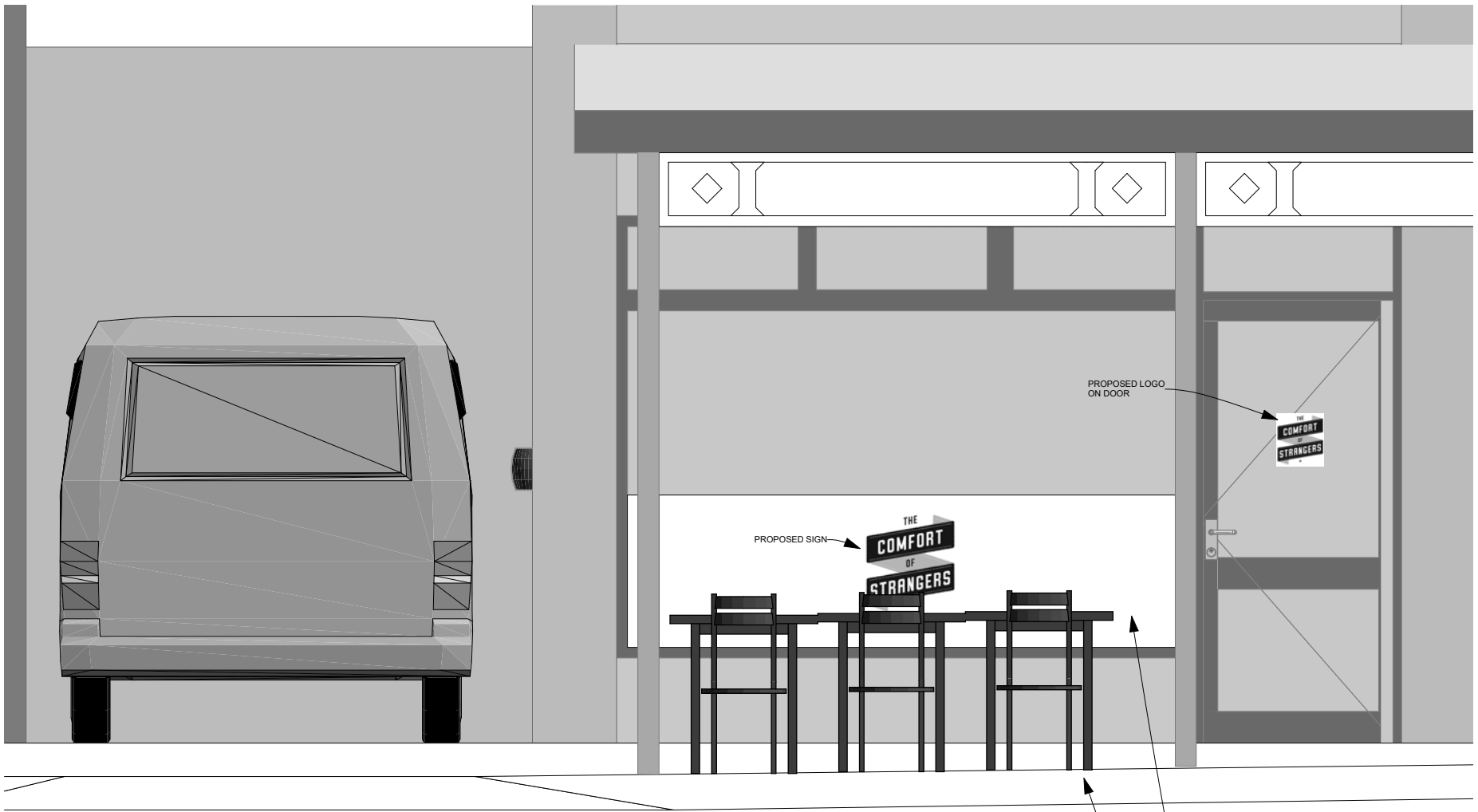
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Project No: ARC810161 Drawing No.: A.02.7

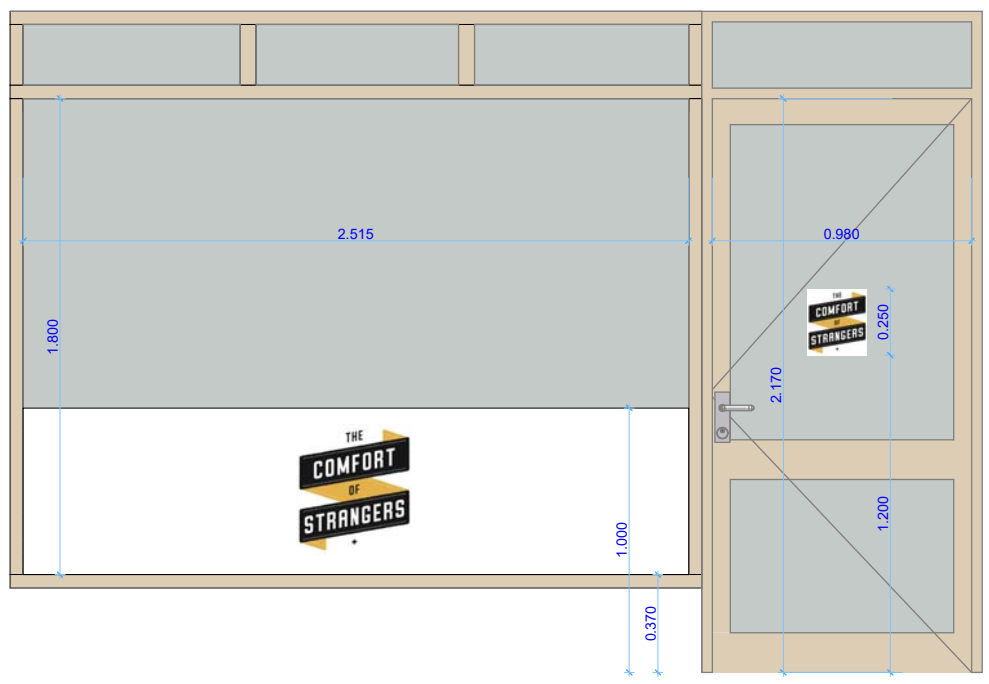
Plot Date: 2/28/2019



PROPOSED SHOP FRONT SIGNAGE



SHOP FRONT ELEVATION 1:20



SHOP WINDOW ELEVATION 1:20

378

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In Association with:

Rev.	Amendments	Date
CPS1		10/18
CPS2		10/18
CPS3		16/10/18
	FINAL LIQUOR PLAN	09/11/18

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Client
Torquil Neilson
 Project Name
COMFORT OF STRANGERS
 Project Address
307 MAIR STREET, BALLARAT CENTRAL

Drawing Title:
SHOP FRONT

Scale: as noted Date: 2/28/2019

Status: PLANNING Checked By: RKA

Project No:
ARC810161 Drawing No.:
A.02.8

Plot Date: 2/28/2019

PROPOSED FOOD AND DRINK PREMISES 307-309 MAIR STREET, BALLARAT CENTRAL

Parking Impact Assessment Report



efficient safe reliable    

ESR Transport Planning Pty Ltd 1/34A Doveton Street North, Ballarat VIC 3350

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DOCUMENT CONTROL

Date: 26/02/19
Filename: 190226-PIAR-307 Mair St
Our Ref: H0360
Author: Drew Matthews

CONTACT

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PREPARED FOR

The Comfort of Strangers Pty Ltd

DISCLAIMER

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Contents

1	Introduction.....	1
1.1	Overview.....	1
1.2	Scope of This Report	1
1.3	Referenced Information.....	1
2	Existing Conditions.....	2
2.1	Site.....	2
2.2	Road Network.....	2
2.3	Public Transport	3
2.4	Walking & Cycling	3
2.5	Car Parking.....	3
2.6	CBD Parking Management	6
3	Proposal	7
4	Car Parking Assessment.....	8
4.1	Planning Scheme Standard Provision Requirements	8
4.2	Car Parking Deficiency Associated with Existing Use.....	8
4.3	Practicality of Providing Car Parking On-Site	8
4.4	Character of Surrounding Area	8
4.5	Empirical Assessment of Peak Parking Demand	8
4.6	Variation by Time of Day and Week	9
4.7	Availability of Public Car Parking	9
4.8	Activity Centre Parking Management	9
4.9	Sustainable Transport Alternatives	10
4.10	Parking Assessment Summary	10
5	Bicycle Parking Assessment.....	11
Appendix A 2014 & 2015 Parking Survey Results		

1 Introduction

1.1 Overview

A planning permit is being sought for a proposed change of land use to a food and drink premises at 307-309 Mair Street, Ballarat Central. To assist in the consideration of the proposal, ESR Transport Planning has been engaged to assess relevant transport implications.

1.2 Scope of This Report

This report documents a parking impact assessment which investigates the following:

- Existing transport conditions in the vicinity of the site.
- Statutory transport planning requirements.
- Parking demands generated by the proposed land use.
- Anticipated impacts on local car parking conditions.

1.3 Referenced Information

- Existing and Proposed Floor Plans prepared by Ryan Adamson Design dated 09/11/18.
- Ballarat Planning Scheme.
- City of Ballarat, 2019, *Proposed Smarter Parking Plan* (www.mysay.ballarat.vic.gov.au/proposed-smarter-parking-plan).
- City of Ballarat, 2016, *Ballarat CBD Car Parking Action Plan*.
- Provic Building Approvals, *Report From Registered Building Surveyor for Application for Liquor License at 307 Mair Street, Ballarat Central, 10/11/18*.
- Public Transport Victoria, maps and timetables (www.ptv.vic.gov.au).
- VicRoads traffic volume data and Crashstats data (www.data.vic.gov.au).

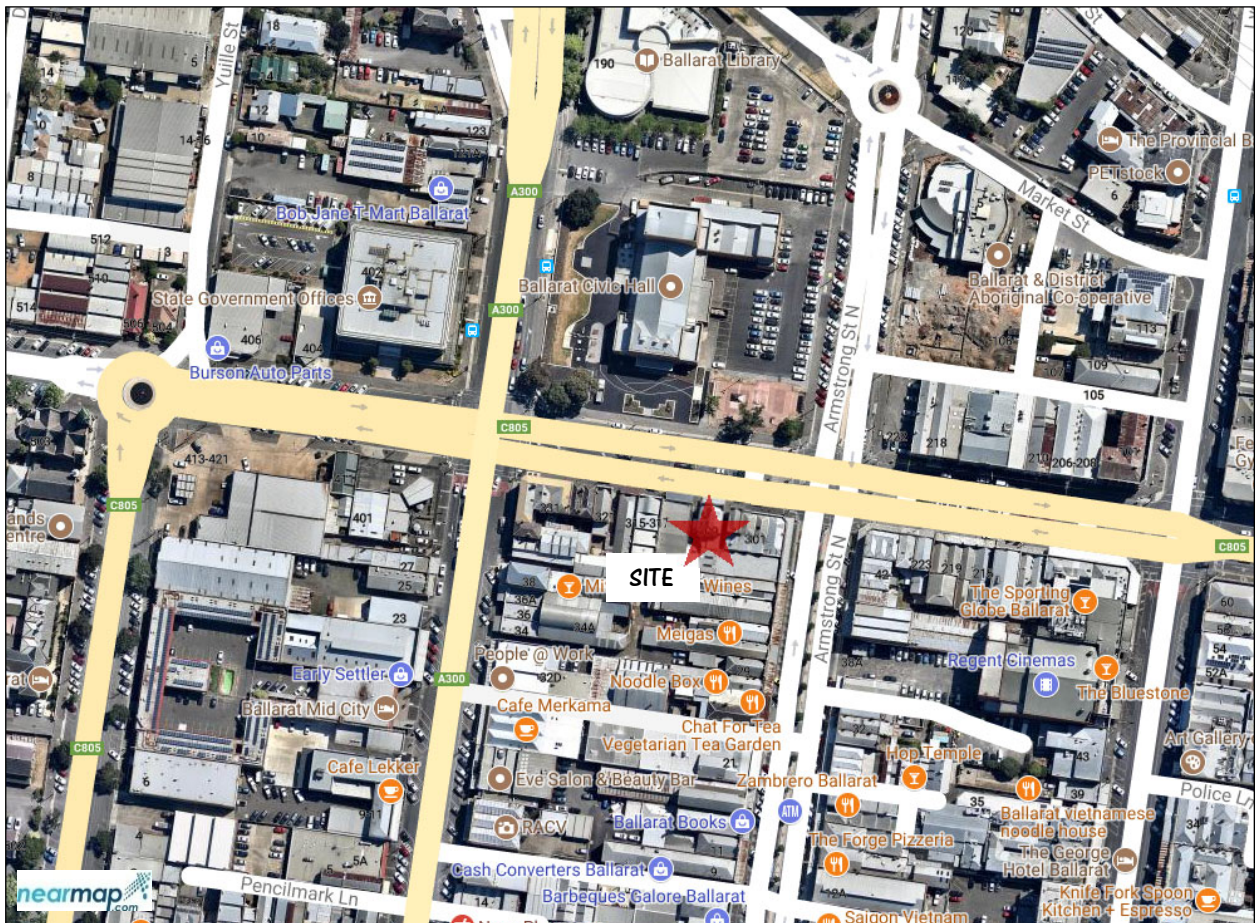
2 Existing Conditions

2.1 Site

The site is located on the south side of Mair Street. A two-storey building stands on the site which at ground level is divided into 2 tenancies. Tenancy 1 is to be the location of the proposed change of land use which has previously been used as a retail premises (appliance sales and repairs) with a floor area of approximately 114m². Tenancy 2 is currently used as a retail premises (café). Laneways or right of ways are located along either side of the building and a veranda covers the footpath in front of the building. No on-site car parking exists.

The site is within the Commercial 1 land use zoning that encompasses Ballarat's CBD. The Civic Hall and GovHub (under construction) are located on the opposite side of Mair Street.

Figure 2.1 Subject Site and Surrounds



2.2 Road Network

Mair Street is an Arterial Road subject to a 50kph speed limit. Adjacent the site, its existing cross section accommodates two-way traffic flow plus kerbside and centre of road car parking. As part of the Mair Street upgrade project, nearby centre of road car parking will be removed.

The laneway adjacent the site's eastern boundary is approximately 2.4m wide. It is a cul-de-sac approximately 15m in length accessed from Mair Street.

The laneway adjacent the sites western boundary is approximately 3.0m wide. It is a cul-de-sac approximately 14m in length accessed from Mair Street.

Both laneways appear to be utilised for parking by vehicles associated with nearby premises.

2.3 Public Transport

Ballarat Station is located a short distance northeast of the site (within 500m). The majority of Ballarat's route bus services have their terminus at the station. The site is therefore very well serviced by public transport.

Taxi services operate throughout the CBD with CitySafe taxi ranks located near the corner of Sturt and Lydiard Streets and in Camp Street.

2.4 Walking & Cycling

Given its CBD location, the site is surrounded by pedestrian facilities providing a high degree of pedestrian accessibility.

The Mair Street upgrade project will deliver on-road bicycle lanes.

Bicycle parking opportunities are available within nearby footpath areas including dedicated parking rails within the Mair Street south side footpath neighbouring the site to the west.

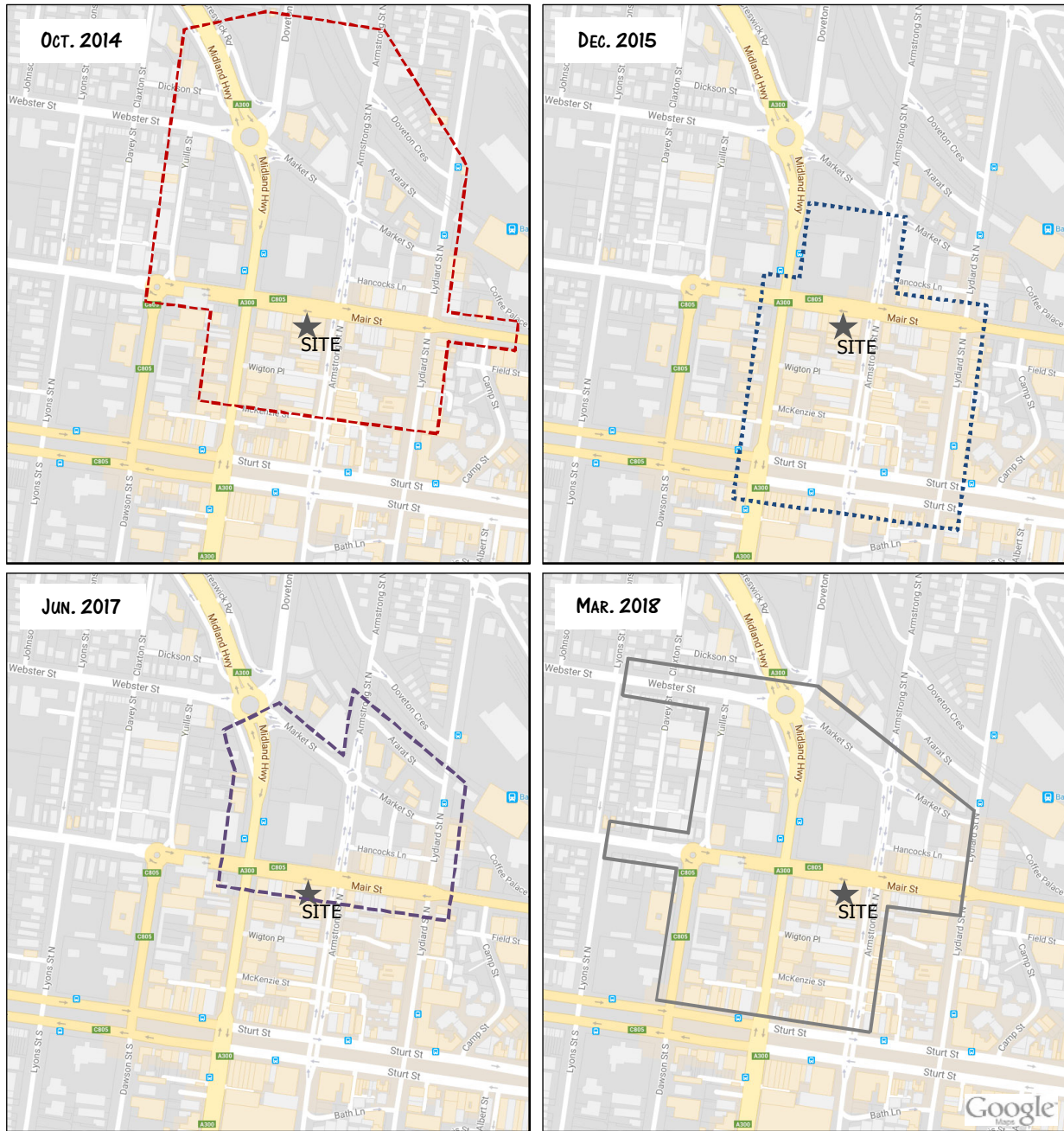
2.5 Car Parking

Most public parking in the site's vicinity incorporates time restrictions and in some cases fees payable. Local restrictions typically apply between 9:00am – 5:30pm Monday – Saturday, with 1P and 2P most prevalent. Fees are payable south of and including Mair Street.

Prior to the GovHub construction which is currently underway, the Civic Hall site included ~200 ticketed all day public car parking spaces, plus 24 short term spaces (2-hour) adjacent the Library.

ESR Transport Planning has previously collated car parking utilisation data for nearby car parking on various occasions including October 2014, December 2015, May-June 2017 and March 2018 with corresponding survey areas as shown in Figure 2.2.

Figure 2.2 Car Parking Survey Areas



Figure's summarising the parking demands observed during the 2014 and 2015 surveys are presented in Appendix A.

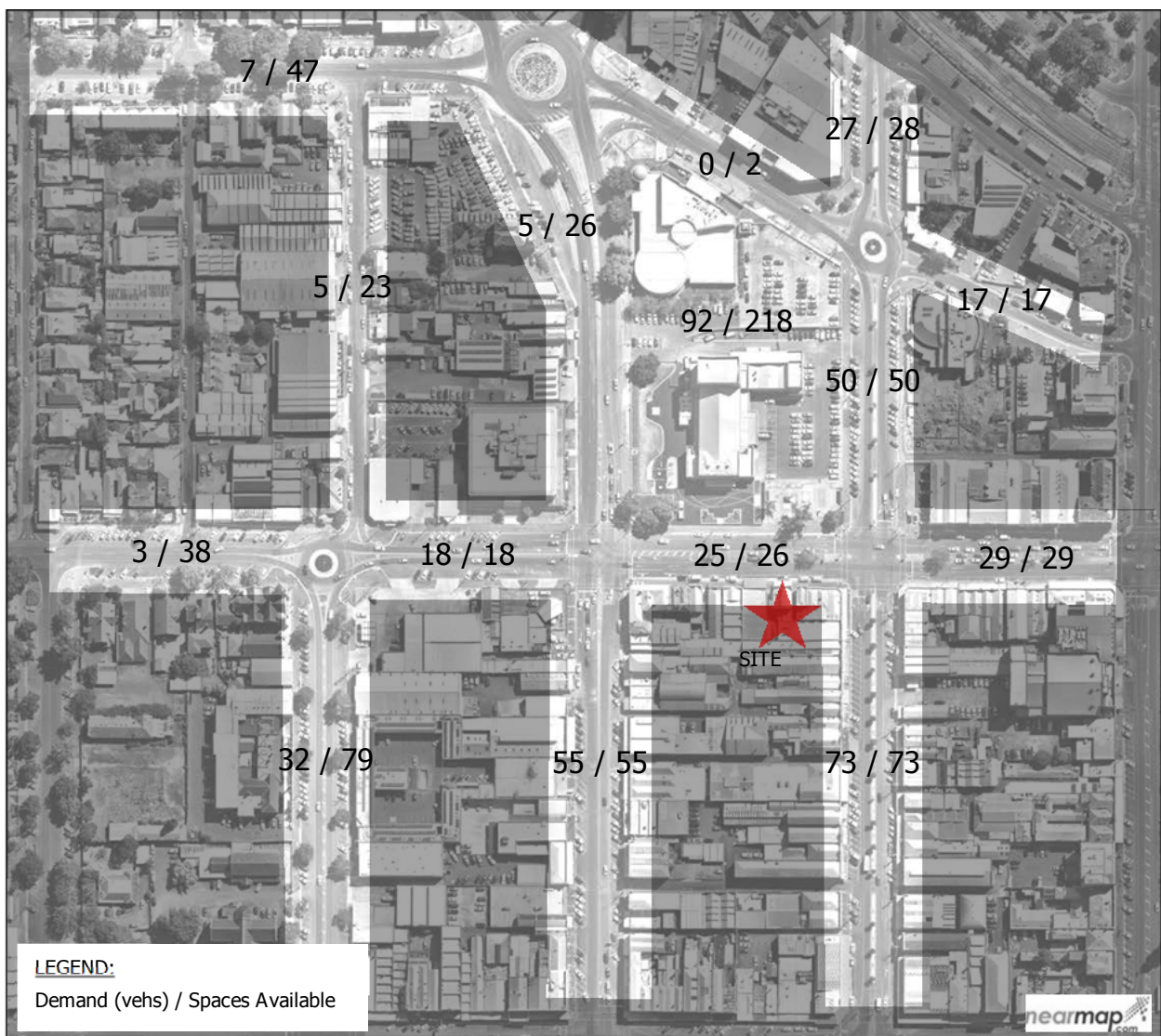
There have been consistent outcomes of the parking surveys as follows:

- Throughout the daytime, both on-street parking and Civic Hall parking is heavily utilised, with occupancy rates in the order of 70-90%.
- During the evening, on-street parking has mixed occupancy levels. In the area bound by Sturt, Doveton, Mair and Lydiard Streets, evening on-street parking demands can exceed supply. Lower occupancies are experienced north of Mair Street and west of Doveton Street.

- During the evening, Civic Hall parking experiences low occupancy levels with numerous vacant spaces available even when nearby parking within Mair and Armstrong Streets are heavily utilised.

Within the survey area for the latest March 2018 surveys, a total of ~510 on-street spaces were identified and 218 Civic Hall spaces were available to the public. A parking demand survey on Thursday 22/03/18 at 7:30pm observed 320 vehicles on-street and 42 vehicles within the Civic Hall. A parking demand survey on Saturday 24/03/18 at 7:30pm observed 346 vehicles on-street and 92 vehicles within the Civic Hall. Therefore, ~290 vacant spaces are available during peak evening times within a convenient proximity of the site. Figure 2.3 maps the Saturday evening parking demands observed and parking spaces available. It shows that numerous parking spaces remain available north and west of the site at peak times.

Figure 2.3 Parking Demands 7:30pm Saturday 24/03/18 versus Car Parking Spaces Available



The GovHub project which replaces the majority of the Civic Hall site public car parking spaces, will provide approximately 220 car parking spaces available to tenants.

The Victorian Government has recently provided \$2 million towards Council's Car Parking Action Plan to assist offset the impacts of the GovHub project and as part of an election promise has committed to a \$14 million project for the provision of 1,000 free car parks within the Ballarat CBD.

2.6 CBD Parking Management

Management of car parking within the city area is a key task for the City of Ballarat.

The adopted Ballarat CBD Car Parking Action Plan (City of Ballarat, 2016) followed a 2011 Ballarat CBD Parking Strategy. Its strategies included parking restriction changes to provide more 2-hour parking zones and additional spaces throughout the CBD. Further investigation into opportunities for new off-street carparks was also recommended.

In February 2019, Council adopted the Smarter Parking Plan. The plan aims to address car parking stress within the CBD, Health and Knowledge Precinct and immediate surrounds now and into the future. Key features include a new schedule for parking fees, changes to time restrictions, a residential permit parking scheme, improved technology for parking tickets and enforcement and working with the state government for the provision of 1,000 free car parks.

3 Proposal

The proposal involves building works to establish a food and drink premises (bar) within Tenancy 1 at the site. Outdoor seating areas are proposed utilising area on the footpath underneath the buildings front veranda and part of the laneway adjacent the east side of the building.

The bar will serve drinks along with some snack food. Opening hours are to be 12noon to 11:30pm 7 days a week. It is anticipated that initially 3 staff will be on premises. Floor area available to the public will be 70.3m² internally plus 36.5m² externally. Plans show very limited standing room and a total of approximately 77 seats (61 internal plus 16 external). Liquor licensing patron capacity is calculated as 141 patrons (93 internal plus 48 external).

The first 6m of the laneway adjacent the east side of the building will not be changed maintaining its use for service vehicle parking and access associated with nearby premises.

The existing building envelope remains the same and therefore no on-site parking opportunities exist.

4 Car Parking Assessment

4.1 Planning Scheme Standard Provision Requirements

Clause 52.06 (Car Parking) of the Ballarat Planning Scheme sets out planning controls with respect to car parking and Table 1 to Clause 52.06-5 specifies parking provision rates for various land uses. The Planning Scheme also states that the standard provision can be reduced or fully waived.

The proposed use could be defined as a "hotel" or "tavern" which both have the same Clause 52.06 parking provision rate of 0.4 spaces per patron permitted. Applied to the 141 patron capacity, this equates to a 56 space provision requirement.

Where a proposal seeks to reduce or waive the standard parking provision requirement, the Planning Scheme lists a series of decision guidelines for consideration when making such an assessment. The sections that follow provide discussion on those decision guidelines relevant to the proposed development.

4.2 Car Parking Deficiency Associated with Existing Use

With built form encompassing the entire site, any use of the site, such as the previous retail use, will generate a shortfall of car parking. A shop use of the site would have a parking deficiency of 5 spaces.

4.3 Practicality of Providing Car Parking On-Site

The site is relatively small with an established building encompassing the entire area and it is within a heritage overlay area. Accordingly, it is not practical to provide car parking on-site.

4.4 Character of Surrounding Area

The site is within Ballarat's CBD which incorporates many entertainment venues such as the Regent Multiplex Cinema, Her Majesty's Theatre and numerous hotels, restaurants and the like. The author is not aware of any of these types of uses nearby that provide customer car parking on-site and it is common for CBD buildings to rely significantly on public parking facilities.

4.5 Empirical Assessment of Peak Parking Demand

Empirical data for peak parking generation rates for food and drink premises such as hotels and restaurants can vary. In some instances, peak rates are in the order of 0.2-0.3 spaces per patron.

Lower rates of patron arrivals as a car driver and subsequent lower parking demands could be anticipated at venues where there may be difficulty parking, a likelihood of shared trips (eg. walking from a nearby workplace) and good walking, taxi and public transport opportunities. The site has these attributes. Accordingly, the proposed development could be anticipated to generate lower demands than estimated by applying the Clause 52.06 Planning Scheme rate.

4.6 Variation by Time of Day and Week

Venues of this nature typically generate peak demands on Friday and Saturday evenings, with significantly lower parking demands during most other times throughout a week.

The Clause 52.06 parking provision assessment above is based on demands for a 141 patron attendance, which is a liquor licensing figure based on 1 patron for every 0.75m² of internal and external floor area. A more realistic venue maximum due to the proposed seating plan would be 80 patrons. With significantly fewer patrons anticipated for most other times throughout a week.

For comparison, assuming two thirds of seats were occupied and a parking generation rate of 0.2 spaces per patron, the 52 patrons in attendance could be expected to generate parking demands of 10 spaces.

4.7 Availability of Public Car Parking

As noted in Section 2.5, prior to the GovHub construction, there were over 700 public car parking spaces available within a 400m walking distance of the site.

While at times nearby parking facilities can experience high occupancy rates, during evenings which are the peak time for venues of this nature, numerous vacant parking opportunities exist convenient to the site.

Council's Smarter Parking Plan, incorporating the state governments commitment to provide 1,000 free car parks, aims to manage car parking congestion within the CBD and surrounds.

4.8 Activity Centre Parking Management

A 'centre based' approach to car parking is a common planning response where individual sites have a car parking shortfall within a busy activity centre. The Victorian Civil and Administrative Tribunal (VCAT) has considered many cases with these circumstances and has provided direction on these matters citing the 'centre based' approach to car parking, described as follows:

The basic approach in these decisions is that in important activity centres car parking considerations should not be determinative, instead the land use mix in a centre should arise from a combination of strategic planning and economic forces at work in the centre. Car parking issues have a part to play in this but should not dominate. At the level of the individual site where there is a change in circumstances, car parking shortfalls should be waived if it is consistent with the strategic plan for the centre, firstly because the most equitable solution is to deal with car parking on a centre wide basis, and secondly because, even in saturated car parking conditions, a balance will occur between the level of activity and the car parking supply.

The 'centre based' approach responds to the fact that a municipality can cater for parking in centralised shared facilities, which is far more efficient than individual sites with small inefficient layouts of unshared parking.

Strategies and projects are in place to increase nearby parking provision and manage parking provision into the future as CBD growth and change occurs.

4.9 Sustainable Transport Alternatives

Within the Ballarat Planning Scheme, there are various policies, strategies and objectives encouraging the following:

- Reduced reliance on private motor vehicles.
- Promotion of sustainable transport.
- Efficient car parking through the consolidation of facilities and their shared use.
- Concentrating higher intensity development within activity zones leading to sustainable transport outcomes.

The proposed development is considered to be in an ideal location to facilitate sustainable transport choices as opposed to private motor vehicle travel.

4.10 Parking Assessment Summary

Given all of the above, there are strong grounds supporting a full waiver of car parking associated with the proposed change of use of the site building.

5 Bicycle Parking Assessment

Clause 52.34 (Bicycle Facilities) of the Ballarat Planning Scheme sets out planning controls with respect to the provision of bicycle facilities such as parking and change room facilities. Table 1 to Clause 52.34-3 specifies provision rates for various land uses. A permit can be granted to vary, reduce or waive these requirements.

Rates of bicycle parking provision for both employees and visitors apply to a "hotel" use, but not a "tavern" use.

A range of matters indicate that the provision of new dedicated bicycle parking facilities would be onerous in these circumstances. These include that the proposal involves re-use of an existing building, very low cycling rates could be expected, public bicycle parking facilities are available nearby and provision of on-site bicycle parking would be out of character with the area and nearby similar land premises. It is further noted that storage areas within the site will likely provide secure informal staff bicycle parking opportunities.

Appendix A 2014 & 2015 Parking Survey Results

Figure A1 Car Parking Survey Results by Time of Day – On-Street

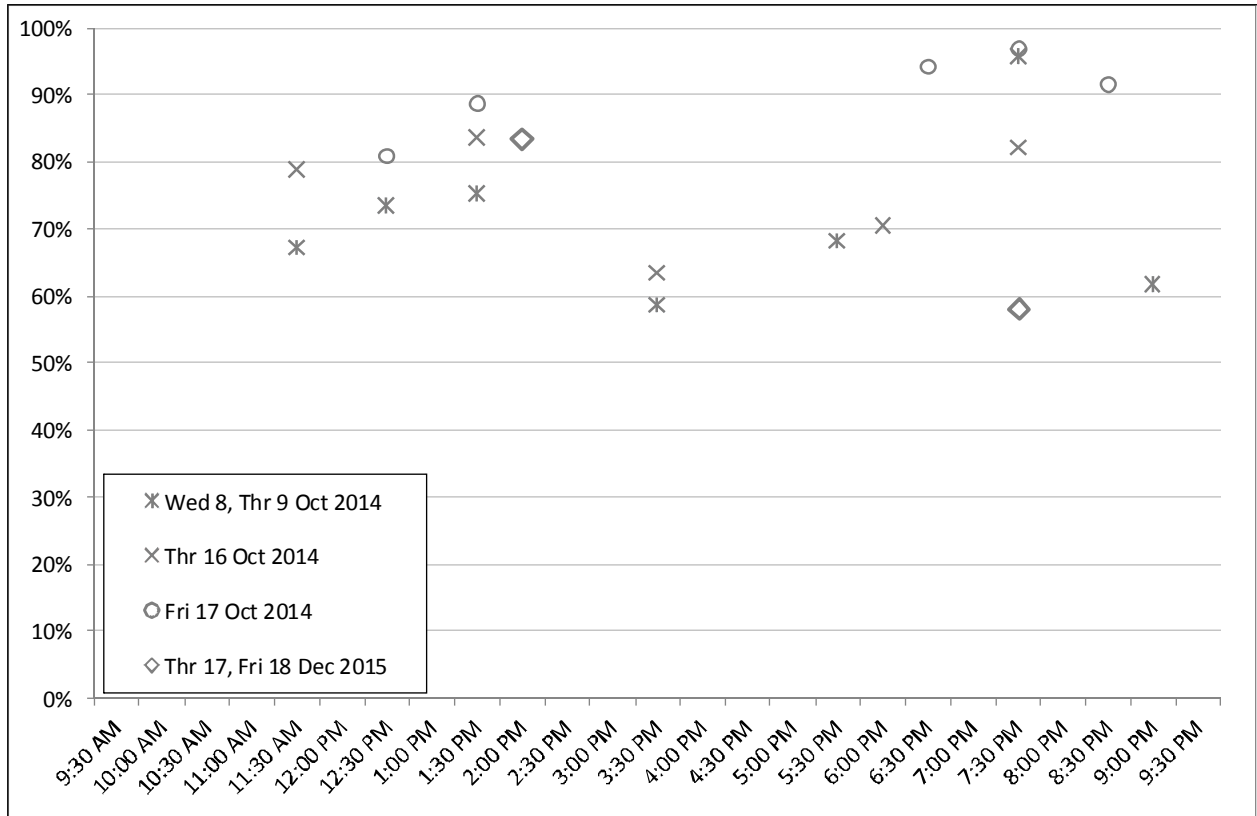
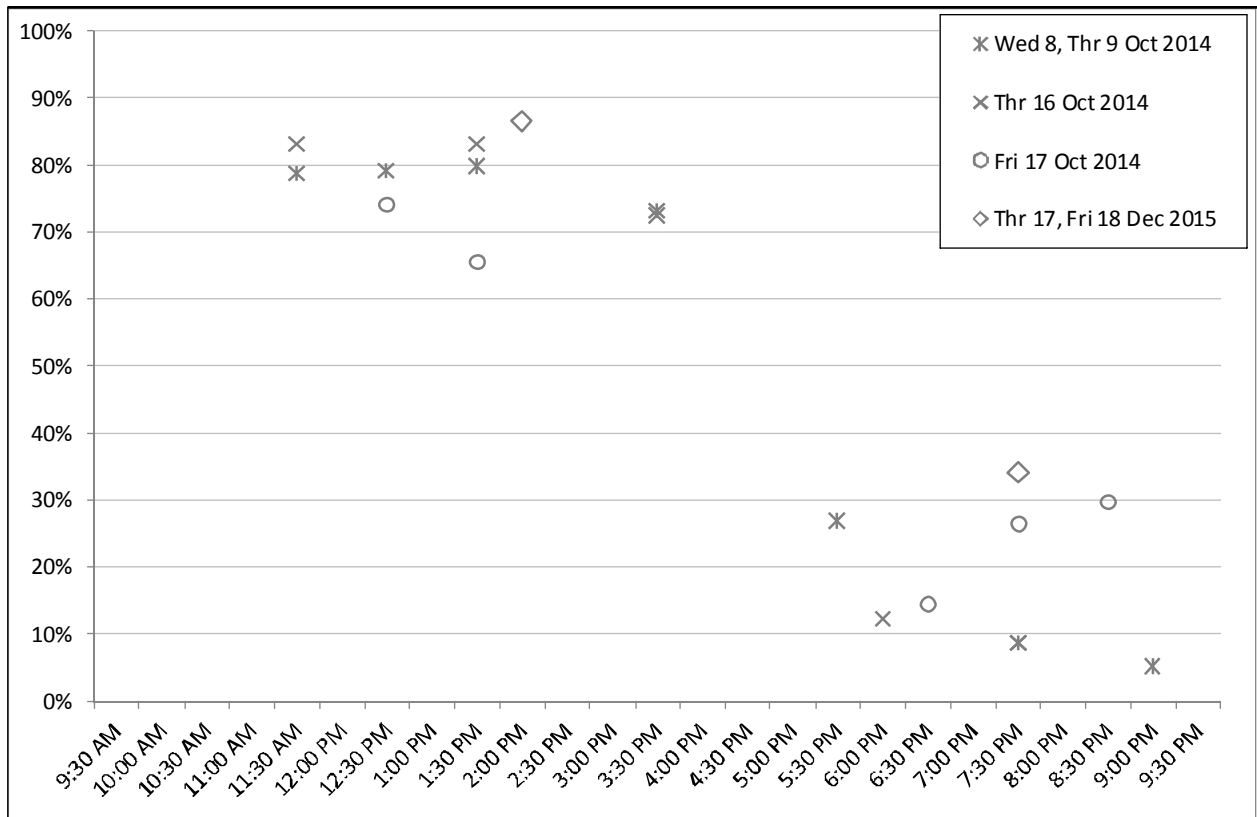


Figure A2 Car Parking Survey Results by Time of Day – Civic Hall Site



10.6. PLP/2019/38 - 28 MAIN ROAD, BAKERY HILL

Division: Development and Planning
Director: Terry Demeo
Author/Position: Heath Steward - Statutory Planner (Contractor)

OFFICER RECOMMENDATION

Council resolves to:

1. Issue Planning Permit PLP/2019/038 for the land located at 28 Main Road, Bakery Hill for the use of land to sell and consume liquor associated with a General Licence subject to the following conditions:

1. Amended Plans Required

Before the use starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the advertised plans (11062 - Red Line Plan dated December 2018) received on 8 March 2018 but modified to show:

- a) The red line plan amended to show a 1.8 metre separation between the building and the footpath trading area for the unimpeded movement of pedestrians.
- b) Tables and chairs in the footpath trading area and parklet area in accordance with condition 4.

Unless otherwise approved in writing by the Responsible Authority, all buildings and works are to be constructed and or undertaken in accordance with the endorsed plans to the satisfaction of the Responsible Authority prior to the commencement of the use.

2. Approved Plans

The serving and consumption of liquor is restricted to the licensed area shown on the approved plans and must not be altered without the further written consent of the Responsible Authority.

3. Sale and Consumption of Liquor – Hours

Without the prior written consent of the Responsible Authority, the sale and consumption of liquor shall only occur within the licensed area between the following hours:

Inside and Rear Courtyard:

- Sunday to Wednesday – 7am until 11pm;
- Thursday to Saturday – 7am until 1am; and
- Good Friday and ANZAC Day – 12pm until 11pm.

Footpath and Parklet:

- Sunday to Wednesday – 7am until 11pm;
- Thursday to Saturday – 7am until 11pm; and
- Good Friday and ANZAC Day – 12pm until 11pm.

4. Sale and Consumption of Liquor with Food

Between the hours of 7am and 10am across the site and at all times in the footpath trading area and parklet area, the serving and consumption of alcohol must be associated with seated meals prepared and consumed on the premises to the satisfaction of the Responsible Authority.

5. Patron Management Plan

Before the use starts, a Patron Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will form part of the permit. The plan must include but is not limited to:

- a) Staffing and security arrangements for the premises designed to ensure the orderly arrival and departure of patrons;
- b) Signage to be used to encourage responsible off-site patron behaviour;
- c) The training of staff in the management of patron behaviour;
- d) Measures to control noise emissions from the premises;
- e) Measures to manage patrons queuing to enter the premises;
- f) Collection of rubbish from roads, car parks and public reserves in the vicinity of the premises and external areas used by premises patrons;
- g) A documented complaint response procedure to the satisfaction of the Responsible Authority including the provision of a:
 - i. Contact point during hours of operation;
 - ii. Investigation and assessment process; and
 - iii. Record management of complaints and corrective action taken to resolve the concern.

The Patron Management Plan must be implemented to the satisfaction of the Responsible Authority. The Patron Management Plan must not be modified unless with the further written consent of the Responsible Authority.

6. Limit on Number of Patrons

Without the prior written consent of the Responsible Authority, not more than 140 patrons may be present on the premises at any one time.

If a lesser number of patrons is determined acceptable by a Registered Building Surveyor and/or the Victorian Commission for Gambling and Liquor Regulation, the lesser number will apply.

7. Entertainment Noise

Noise levels emanating from the premises must not exceed those required to be met under State Environment Protection Policy (Control of music noise from public premises) No. N-2.

8. Amenity

The use and development must be managed so that the amenity of the area is not detrimentally affected, through the:

- a) transport of materials, goods or commodities to or from the land;
- b) appearance of any building, works or materials;
- c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
- d) presence of vermin or otherwise; or
- e) presence of loose litter.

In the event of any nuisance being caused to the neighbourhood by activities related to the use and development the Responsible Authority may direct, in writing, such actions or works, as deemed appropriate, to eliminate or mitigate such nuisance be undertaken.

9. Permit Expiry

The permit will expire if the use does not commence within two years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within three months afterwards.

Notes:

Building Approvals

This permit does not constitute any authority to carry out any building works or occupy the building or part of the building unless all relevant building permits are obtained. The works hereby approved must accord with the requirements of the *Building Act 1993*, Building Regulations 2006 and Building Code of Australia 2014.

Food Act 1984

An application for, and assessment of, food premises construction compliance under the *Food Act 1984* must be made with Council's Environmental Health Unit prior to its construction and use. Detailed floor and elevation plans will form the basis of that assessment and must be submitted for initial approval. A schedule of fixtures, fittings and materials used for the fit out is also required.

Any proposed alteration to a food premises must be designed in accordance with requirements of the FSANZ Food Standards Code and Australian Standard 4674

Footpath Trading

A footpath trading permit must be obtained from Council's Local Laws Department before Footpath Trading commences.

Tobacco Act 1987

An application for, and assessment of, outdoor drinking and dining compliance under the *Tobacco Act 1987* must be made with Council's Environmental Health Unit prior to its construction and use. Detailed floor and elevation plans will form the

basis of that assessment and must be submitted for initial approval. A schedule of fixtures, fittings and materials used for the fit out is also required.

Any proposed alteration to food or liquor licensed premises for the purpose of facilitating the consumption of tobacco products must be designed in accordance with requirements of the Smoke Free Guide: Licensed Premises and Outdoor Dining or Drinking Areas.

EXECUTIVE SUMMARY

On 16 January 2019 an application was lodged for a liquor licence associated with a hotel and inclusive of footpath trading.

The proposal in this instance is to amend the current liquor licence in the 'Main Bar' premises located in the Bakery Hill / Main Road precinct which Council has invested heavily in with on-street infrastructure. This application seeks to amend the existing licence to accommodate the on-street parklet infrastructure, including footpath trading and take-away local wines, beers and ciders, as part of the overall licenced premises.

The application was advertised with no objections received. It is recommended that Council issue a Planning Permit subject to conditions.

APPLICATION DETAILS

Applicant and Owner:	G R Stevens
Date Lodged:	16 January 2019
Subject Site:	28 Main Road, Bakery Hill
Current use:	Licensed Restaurant
Zone:	Commercial 1 Zone
Overlays:	Heritage Overlay, Schedule 176
Permit triggers:	Clause 52.27 (Licensed Premises) a permit is required to use land to sell or consume liquor if a different licence or category of licence is required from that which is in force.
Ward:	Central
Number of Objections:	None
Mediation Meeting:	No
Council Referral Trigger:	The application involves licensing a proposed (new) hotel with a footpath dining area
Covenant or S173	No
CHMP Required:	Not Applicable

PROPOSAL

This application proposes to change the existing licensed restaurant operating under a Restaurant and Café Licence and a Limited (takeaway) Licence to a new Hotel (as of right use) operating under a General Licence and including footpath trading and take-away local wines, beers and ciders.

The permit applicant seeks approval for a General Licence which seeks to license most of the site generally consistent with the existing liquor licence, with the addition of the parklet recently constructed in front of the site. The maximum number of patrons proposed onsite at any one time is not changing from 140 patrons and the business seeks to operate seven days per week as follows:

- Sunday to Wednesday – 7am to 11pm;
- Thursday to Saturday – 7am to 1am; and
- Good Friday and ANZAC Day 12 noon to 11pm.

Breakfast, lunch and dinner options of pizza, restaurant and deli/café style food will continue to be offered as both take-away and eat-in. The site will continue to offer live music both internally and in the rear courtyard, with the ability to record artist’s performances to promote live music in Ballarat. The site will also cater for bookings for private functions (birthdays, celebrations, weddings, etc.) and performances (music, theatre, art, etc.) with a few whole venue bookings per year.

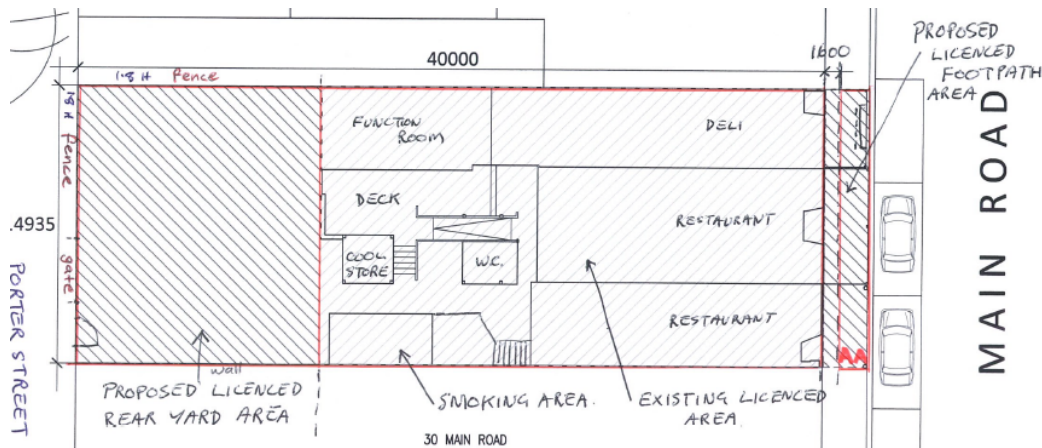


Image 1. Existing Licensed Area

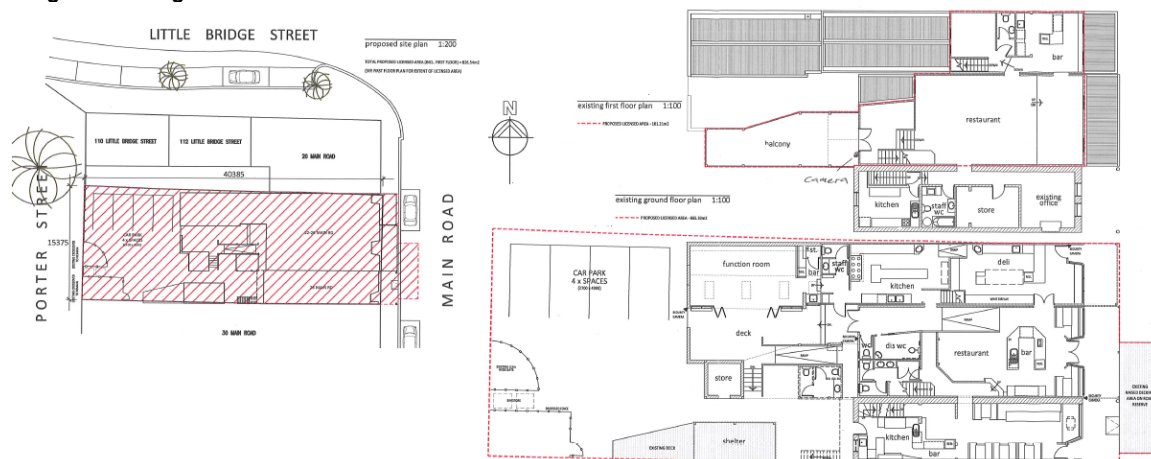


Image 2. Proposed Licensed Area

No works are proposed as part of the application. A complete set of floor plans and reports are appended at Attachment 1.

SITE AND SURROUNDS

The subject site is located at 28 Main Road, Bakery Hill in the heart of central Ballarat’s main dining and retail precinct adjacent to Bridge Mall. The subject site is located on the west side of Main Road, approximately 15 metres south of its intersection with Little Bridge Street. The regular shaped site measures 607.79 square metres in area and is the consolidation of three abutting buildings. The land is currently occupied by the Main Bar; a pizza restaurant, café and live music venue licensed for 140 patrons that has been operating and evolving for over 10 years. The land is captured in the Commercial 1 Zone (C1Z) and Heritage Overlay (HO176) under the Ballarat Planning Scheme.

The subject building appears as 3 double storey buildings from Main Road however is connected internally with a bar, restaurant area, 2 kitchens, deli, multipurpose space, toilets,