

## 5 HILLWAY, NEDLANDS – AMENDMENT TO DEVELOPMENT APPROVAL (REDUCTION IN NUMBER OF DWELLINGS)

### Form 2 – Responsible Authority Report (Regulation 17)

<b>DAP Name:</b>	Metro Inner-North JDAP	
<b>Local Government Area:</b>	City of Nedlands	
<b>Proposed Amendments:</b>	Modification to approved plans to reduce the number of dwellings from 10 as approved to 9.	
<b>Applicant:</b>	Element Advisory Pty Ltd	
<b>Owner:</b>	Hillway 20 Pty Ltd and Hillway 80 Pty Ltd	
<b>Value of Amendment:</b>	N/A	
<b>Responsible Authority:</b>	City of Nedlands	
<b>Authorising Officer:</b>	Peter Mickleson, Director Planning and Development	
<b>LG Reference:</b>	DA20/55430	
<b>DAP File No:</b>	DAP/20/01741	
<b>Date of Original DAP decision:</b>	29 September 2020	
<b>Application Received Date:</b>	13 October 2020	
<b>Application Statutory Process Timeframe:</b>	60 Days	
<b>Attachment(s):</b>	<ol style="list-style-type: none"> <li>1. Amended Plans date stamped 28 October 2020</li> <li>2. Applicant Letter and overview dated 9 October 2020</li> <li>3. Previous Determination Notice and approved plans.</li> <li>4. Letter from Lavan Legal dated 8 October 2020</li> </ol>	
<b>Is the Responsible Authority Recommendation the same as the Officer Recommendation?</b>	<input type="checkbox"/> Yes	Complete Responsible Authority Recommendation section
	<input checked="" type="checkbox"/> N/A	
	<input type="checkbox"/> No	Complete Responsible Authority and Officer Recommendation sections

#### Responsible Authority Recommendation

That the Metro Inner-North Joint Development Assessment Panel resolves to:

1. **Accept** that the DAP Application reference DAP/20/01741 as detailed on the DAP Form 2 dated 6 October 2020 is appropriate for consideration in accordance with regulation 17 of the *Planning and Development (Development Assessment Panels) Regulations 2011*;
2. **Approve** DAP Application reference DAP/20/01741 and accompanying plans date stamped 28 October 2020 in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning*

*Schemes) Regulations 2015* and the provisions of City of Nedlands Local Planning Scheme No.3, for the proposed minor amendment to the approved residential development (10 multiple dwellings) at 5 Hillway, Nedlands, subject to the following conditions:

### **Amended Conditions**

1. Amend Condition 24 to read as follows:

*Vegetation screening located on the rear balconies of Units 301, 302, 401, 402 and 501 is to be planted and maintained at all times to a minimum height of 1.6 metres above the finished floor level of the balcony to ensure compliance with Element 3.5 of the Residential Design Codes.*

2. Amend Condition 25 to read as follows:

*Two (2) multiple dwellings (Units 101 and 501) on the hereby approved plans shall meet 'Silver Level' universal access requirements as defined by the Liveable Housing Design Guidelines.*

### **New Conditions**

1. Nil.

### **Amended Advice Notes**

1. Nil.

### **New Advice Notes**

1. Nil.

All other conditions and requirements detailed on the previous approval dated 29 September 2020 shall remain unless altered by this application.

### **Details: outline of development application**

Region Scheme	Metropolitan Region Scheme
Region Scheme Zone/Reserve	Urban
Local Planning Scheme	City of Nedlands Local Planning Scheme No.3
Local Planning Scheme Zone/Reserve	Mixed Use R-AC3
Use Class (proposed) and permissibility:	Residential (Multiple Dwelling) 'P' (Permitted)
Lot Size:	911m <sup>2</sup>
Plot Ratio:	1.91 (Acceptable outcome 2.0)
Number of Dwellings:	10 (approved) 9 (proposed)
Existing Land Use:	Residential (Single House)
State Heritage Register	No

Local Heritage All setbacks, built	<input checked="" type="checkbox"/> N/A <input type="checkbox"/> Heritage List <input type="checkbox"/> Heritage Area
Design Review	<input checked="" type="checkbox"/> N/A <input type="checkbox"/> Local Design Review Panel <input type="checkbox"/> State Design Review Panel <input type="checkbox"/> Other
Bushfire Prone Area	No
Swan River Trust Area	No

**Proposal:**

It is proposed to reduce the number of dwellings in the multiple dwelling complex from 10 as approved on 29 September 2020 to 9. This will be achieved by deletion of Apartment 303 on Level 4. The floor area previously occupied by this dwelling will be taken up by expanding Apartments 301 and 302. The new layout of Apartments 301 and 302 will be similar to that on approved Apartments 401 and 402 located on Level 5. A revised set of plans and applicant overview are included at **Attachments 1 and 2** respectively.

The layout of Level 4 as approved on 29 September 2020 is shown below left. The proposed layout of Level 4 subject to this report is shown below right.



All setbacks, wall lengths, building height, car parking and landscaping remain unaltered from the form approved. External changes are limited to Level 4 only. These changes are:

- Rear (northwest) elevation – Balcony removed, living/dining windows replaced by windows to Master Bedroom and ensuite and planter boxes and screening provided.
- Side (northeast and southwest) elevations – window changes to suit revised internal layout.

The deletion of Apartment 303 has required a change to the nominated Silver Level accessible dwellings. The approved plan indicated Apartments 101 and 303 would be constructed to Silver Level as defined by the *Liveable Housing Design Guidelines*. The provision of two dwellings (20% of total) met Acceptable Outcome A4.9.1(a) of the Residential Design Codes Volume 2. The revised plans now indicate that Apartments 101 and 501 will be constructed to Silver Level requirements.

The revised plans include the provision of a visitor car parking space in the ground floor car parking area. This addresses Condition 13 of the approval.

### **Background:**

The Metro Inner-North JDAP granted conditional approval to the development of 10 multiple dwellings at the subject site on 29 September 2020. A copy of the determination and approved plans is included at **Attachment 3**.

Approval is now being sought to amend the development. The amendment is considered to be minor in nature as it is reducing the number of dwellings without material change to the proposed building. There are no changes to the key characteristics of the development in terms of setbacks, height, bulk, car parking or landscaping.

The applicant has engaged legal counsel to provide advice regarding the ability of the JDAP to consider the amendment. This advice is included at **Attachment 4**.

### **Legislation and Policy:**

#### Legislation

- Planning and Development Act 2005 (P&D Act)
- Planning and Development (Local Planning Schemes) Regulations 2015 (LPS Regulations)
- Planning and Development (Development Assessment Panel) Regulations 2011
- Metropolitan Region Scheme
- City of Nedlands Local Planning Scheme No. 3 – clauses 9, 16, 18, 32 and 34

#### State Government Policies

- State Planning Policy 7.0 – Design of the Built Environment (SPP7.0)
- State Planning Policy 7.3 – Residential Design Codes Volume 2 – Apartments (R-Codes Vol. 2)



## Structure Plans/Activity Centre Plans

- Specialised Activity Centre Plan – QEII Medical Centre / UWA / Broadway (being prepared)

## Local Policies

- Local Planning Policy – Interim Built Form Design Guidelines – Broadway Mixed Use Zone (Council adopted – subject to WAPC final endorsement)
- Local Planning Policy – Waste Management (Council adopted – subject to WAPC final endorsement)
- Local Planning Policy – Consultation of Planning Proposals
- Local Planning Policy – Parking

## **Consultation:**

### Public Consultation

The proposed amendment to approved plans has not been subject to public consultation. The amendment is minor in nature and does not materially affect the characteristics of the development as previously advertised. The amendment seeks to reduce the number of dwellings and to remove a rear-facing balcony. This is considered to reduce the impact of the development on neighbouring properties when compared to the proposal as approved.

### Referrals/consultation with Government/Service Agencies

Nil.

### Design Review Panel Advice

The City of Nedlands currently does not have a Design Review Panel. However, architectural and landscape architectural review of proposals has been conducted through engagement of suitably qualified practitioners.

As the proposed amendments relate primarily to internal layout only, no design review has been conducted.

## **Planning Assessment:**

### Residential Design Codes Volume 2

The proposed amendment does not seek to modify building height, setbacks, plot ratio, building depth of building separation (i.e. the primary controls). In relation to siting the development (Part 3 of the R-Codes), no change is proposed for all elements except visual privacy and car and bicycle parking. All elements of designing the building (Part 4) are unaffected with the exception of solar and daylight access, storage and universal design.

#### *Element 3.5 Visual Privacy*

The development as approved required as acceptable outcomes a visual privacy setback of 6m from the balcony on Level 4 to the rear boundary. A 4.5m setback was

required from the Living / Dining windows to the rear balcony. The outdoor living area has been removed and the rooms reconfigured to provide for bedrooms on the rear elevation. The acceptable outcome visual privacy setback has subsequently reduced from 6m to 3m. However, the building remains setback to the rear boundary at 6.0m from the outer edge of the planter box and 7.3m from the windows. The proposed narrow balcony is 0.6m wide to allow access for maintenance of the planter boxes and window cleaning. It is not considered outdoor living space and is not subject to visual privacy requirements.

The reconfiguration of the internal layout has introduced a lounge area on the side elevations. The approved plans included windows to bedrooms on the side elevations. The acceptable outcome visual privacy setback of 3.0m was met by the development. The acceptable outcome for a lounge room is 4.5m to boundaries. However, the current amendments propose highlight windows to the lounges on both side elevations, removing the need for a visual privacy requirement.

Whilst not required to meet the element objectives, the amendments introduce a planter and screen along the rear elevation to augment the visual privacy setback. This approach was previously approved for Levels 5 and 6.

The amendments proposed improve visual privacy by removal of the rear-facing balcony and replacement of a living area with bedrooms on Level 4. All above ground outdoor living areas are now located at the front of the building overlooking the street.

#### *Element 3.9 Car and Bicycle Parking*

There is no change in overall parking provision for the development, notwithstanding the reduction in the number of dwellings. In order to address Condition 13, one resident space has been set aside as a third visitor space. This reduces the total number of resident spaces from 23 to 22. This provision exceeds the acceptable outcome requirement of 12 spaces. The development is now fully compliant with the acceptable outcomes for car and bicycle parking.

#### *Element 4.1 Solar and Daylight Access*

The approved development proposed 3 dwellings (30%) that did not achieve a minimum of 2 hours of daylight on 21 June. This met the acceptable outcome of 70% of dwellings enjoying at least 2 hours of daylight. The amended proposal reduces the number of dwellings that do not achieve 2 hours of daylight to 2 or 23%. This is a slight improvement over the approved plans.

#### *Element 4.2 Storage*

The approved development provided 10 storerooms of 10m<sup>2</sup> to 18m<sup>2</sup> with an average size of 12.2m<sup>2</sup>. The amended plans propose 9 storerooms of 10m<sup>2</sup> to 18m<sup>2</sup> with an average size of 13.6m<sup>2</sup>. The minimum dimension of the storerooms is 2.2m. Each storeroom exceeds the acceptable outcomes of 5m<sup>2</sup> and minimum dimension of 1.5m.

#### *Element 4.9 Universal Design*

The approved plans indicated Apartments 101 and 303 would be constructed to the Silver Level as defined by the *Liveable Housing Design Guidelines*. As Apartment 303 has been removed, it is now proposed that Apartments 101 and 501 are constructed

to Silver Level requirements. The acceptable outcome requirement of 20% of dwellings being constructed to this requirement is met by the amended proposal.

#### Effect on Conditions of Approval

Condition 13 relating to the provision of 3 visitor car parking spaces has been addressed by the amendment.

Condition 24 will require modification in the event that the amended plans are approved. This condition currently refers to the vegetation screening proposed for Apartments 401, 402 and 501. The reconfiguration of Level 4 has introduced similar screening for Apartments 301 and 302. It is recommended that the condition be reworded to include the Level 4 apartments in the event the amended plans are approved.

Condition 25 relates to the provision of Silver Level requirements to Apartments 101 and 303. In the event of approval of the amended plans, this condition will require rewording to refer to Apartments 101 and 501.

#### **Conclusion:**

The amendment being sought is minor in nature and reduces the intensity of development when compared to the development as approved. The amendment proposes primarily internal changes to the development, with removal of a rear-facing dwelling on Level 4 (Apartment 303). Associated changes with the deletion of Apartment 303 are removal of a rear-facing balcony and reconfiguration of windows on both side and the rear elevations. Screening of the rear elevation is proposed through the use of screening and plantings in the same manner as previously approved for Level 5.

The applicant has contended that the JDAP is in a position to determine the amendment request. The legal advice provided on behalf of the applicant is supported by the City of Nedlands.

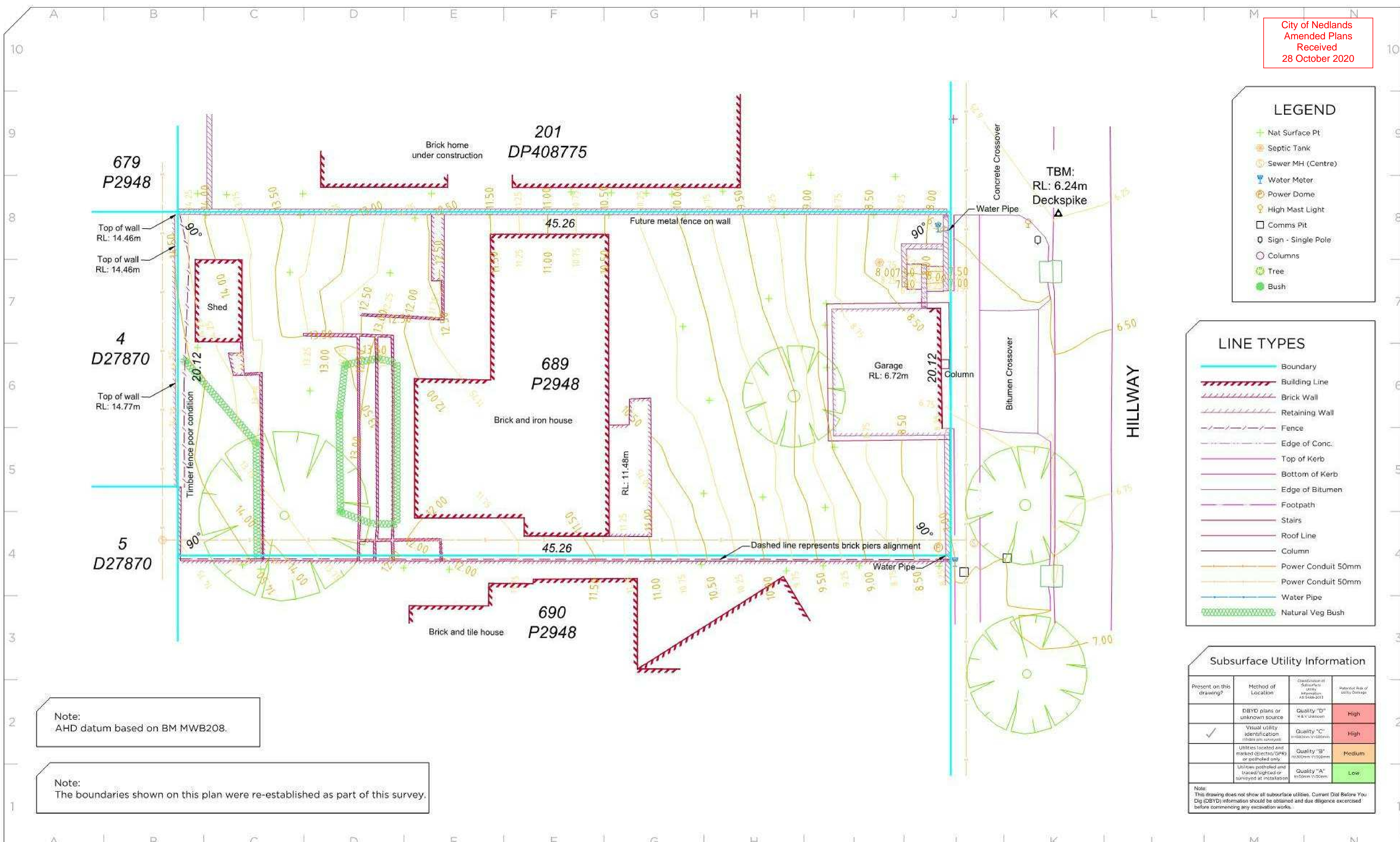
Approval of the amended plans reducing the number of dwellings to nine is supported.







City of Nedlands  
Amended Plans  
Received  
28 October 2020



### LEGEND

- Nat Surface Pt
- Septic Tank
- Sewer MH (Centre)
- Water Meter
- Power Dome
- High Mast Light
- Comms Pit
- Sign - Single Pole
- Columns
- Tree
- Bush

### LINE TYPES

- Boundary
- Building Line
- Brick Wall
- Retaining Wall
- Fence
- Edge of Conc.
- Top of Kerb
- Bottom of Kerb
- Edge of Bitumen
- Footpath
- Stairs
- Roof Line
- Column
- Power Conduit 50mm
- Water Pipe
- Natural Veg Bush

### Subsurface Utility Information

Present on this drawing?	Method of Location	Classification of Subsurface Utility Information AS 2884-2013	Potential Risk of Utility Damage
	DBVD plans or unknown source	Quality "D" (N & V Unknown)	High
✓	Visual utility identification (visual pit survey)	Quality "C" (N & V Unknown)	High
	Utilities located and marked (Electro/GPR) or potholed only	Quality "B" (N & V Unknown)	Medium
	Utilities potholed and traced/signaled or surveyed at installation	Quality "A" (N & V Unknown)	Low

Note: This drawing does not show all subsurface utilities. Current Dial Before You Dig (DBVD) information should be obtained and due diligence exercised before commencing any excavation works.

Note:  
AHD datum based on BM MWB208.

Note:  
The boundaries shown on this plan were re-established as part of this survey.

5 HILLWAY, NEDLANDS  
PHONE: 9444 8711 EMAIL: info@rmsurveys.com.au WEBSITE: rmsurveys.com.au  
BLUEWAYS GROUP

0 2 4 6 8 10 12 14 16  
SCALE 1:200  
ALL DISTANCES IN METRES

Surveyor: JC  
Survey Date: 18/10/19  
Vertical Datum: AHD  
Horizontal Datum: PCG94

PAPER SIZE: A3

Client: Blueways Group

Rev	Description	Drawn	Chkd	Appvd	Date
0	Initial Issue	LHa	JC	KB	28/10/19

### FEATURE AND CONTOUR SURVEY

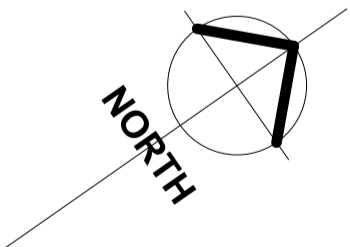
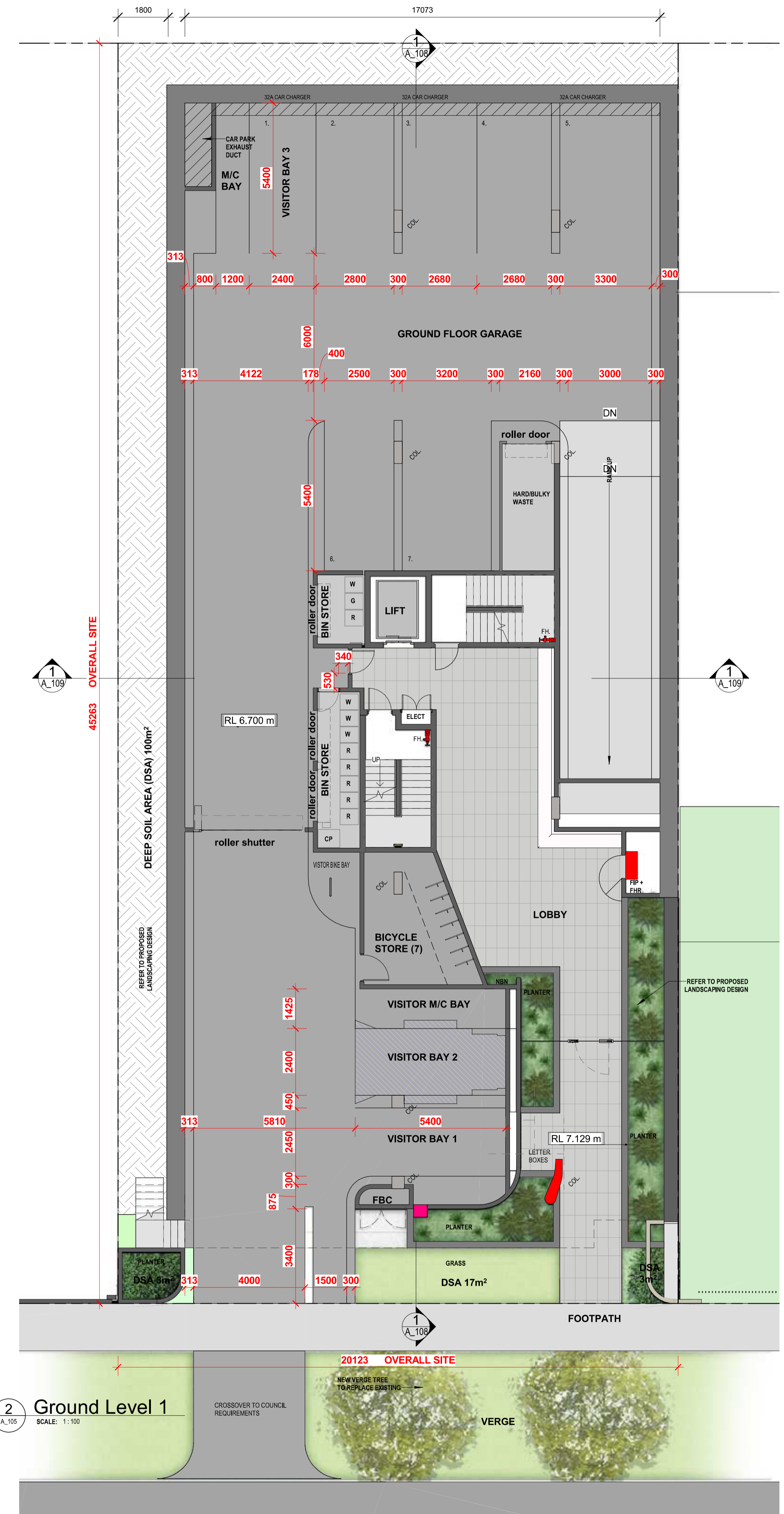
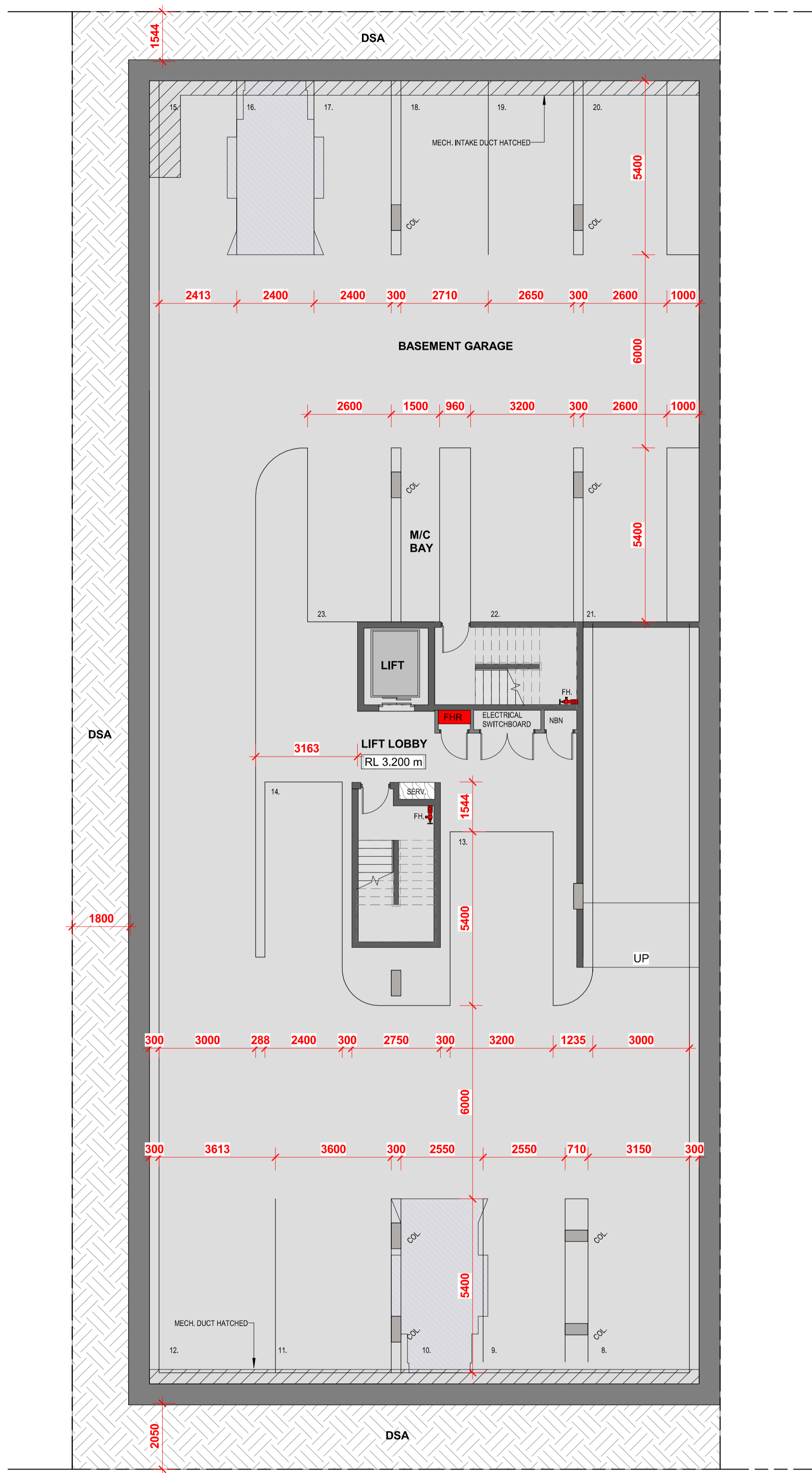
Lot 689 (#5) Hillway  
Nedlands

GIORGI architects & builders  
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Job No: BLUE-HILL  
Drawing No: BLUE-HILL-01

Revision: 01  
SCALE: A\_100  
DATE: 01 JUN 2020

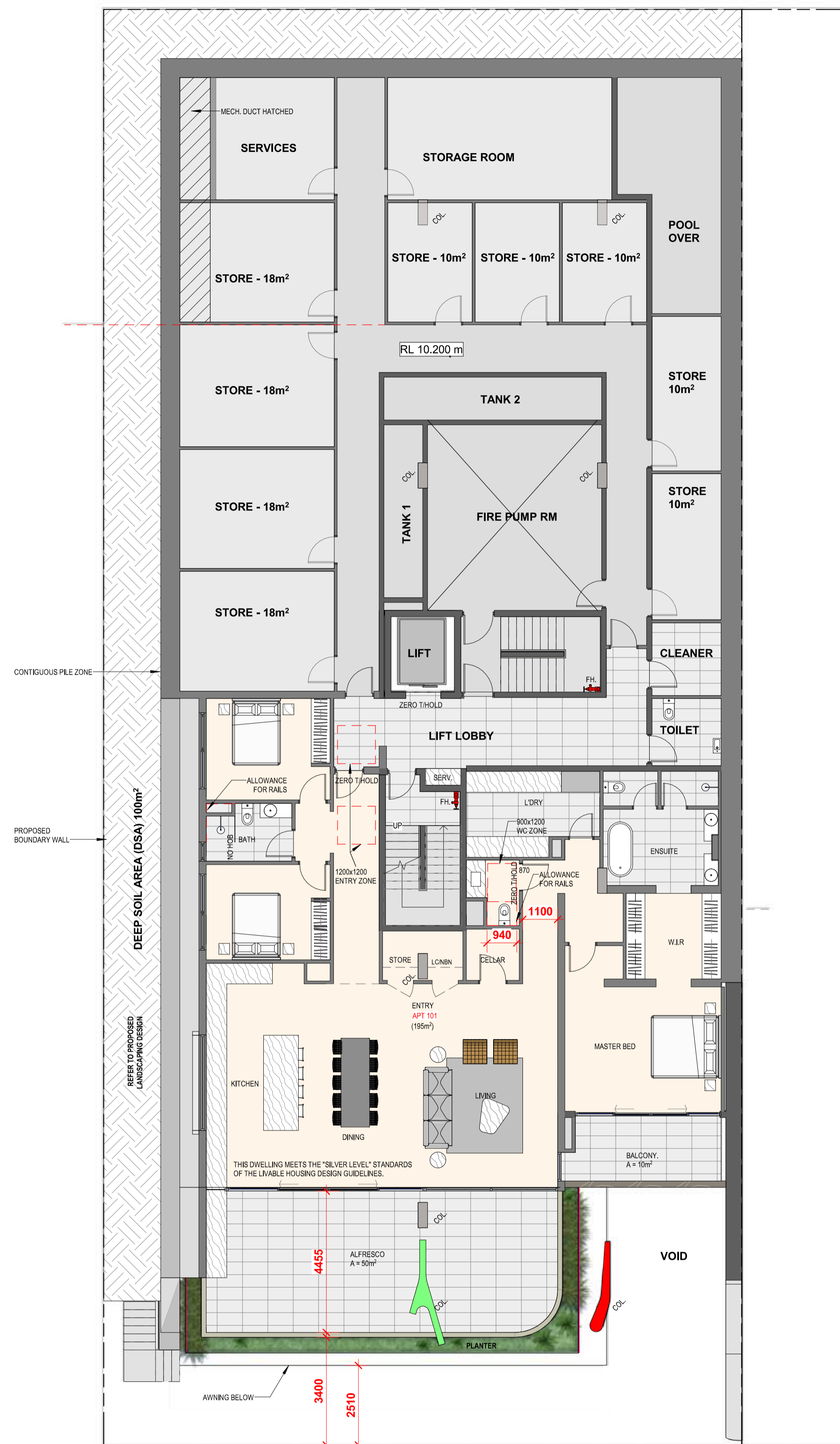






**SILVER LEVEL CRITERIA**  
Applicable to Apartments 101 & 501

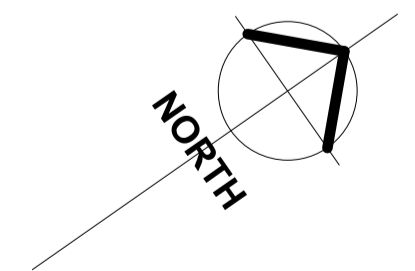
1. DWELLING ACCESS
  - 1a. Entirely step free
  - 1b. All passages are more than 1000mm wide
  - 1c. Each apartment has 1 car bay that is 3200mm wide
  - 1d+. There are no steps or ramps in the path of travel
2. DWELLING ENTRANCE
  - 2a. Door width is wider than 820mm and is step free
  - 2b. The Landing is larger than 1200mmx1200mm
  - 2c+d. The paths of travel are step free
3. INTERNAL DOORS & CORRIDORS
  - 3a. All internal doors have a clear opening of 820mm
  - 3b. All passages are more than 1000mm wide
4. TOILET
  - 4a. At least 1 toilet has a clear wall width of 900mm
  - 4a.ii. At least 1 toilet has a clear space in front of 1200mm
  - 4a.iii. At least 1 toilet has provision for future grabrails
5. SHOWER
  - 5a. All showers are hobless
  - 5b. All showers are in the corner
6. REINFORCEMENT OF BATHROOM & TOILET WALLS
  - 6a. All walls will be constructed of solid masonry
7. INTERNAL STAIRWAYS
  - This item is not applicable



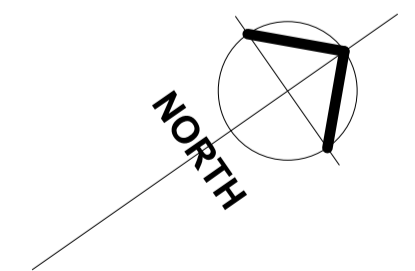
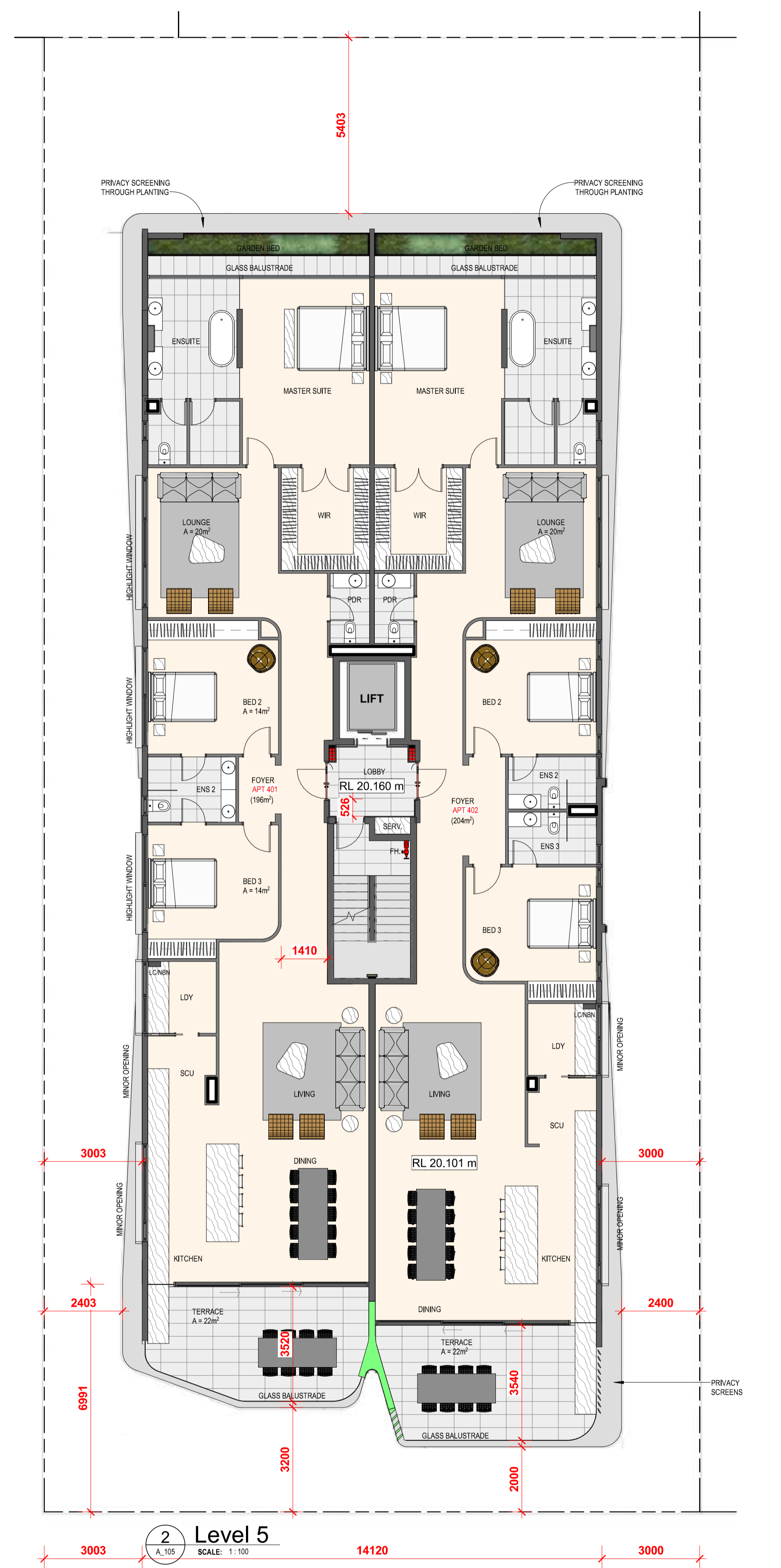
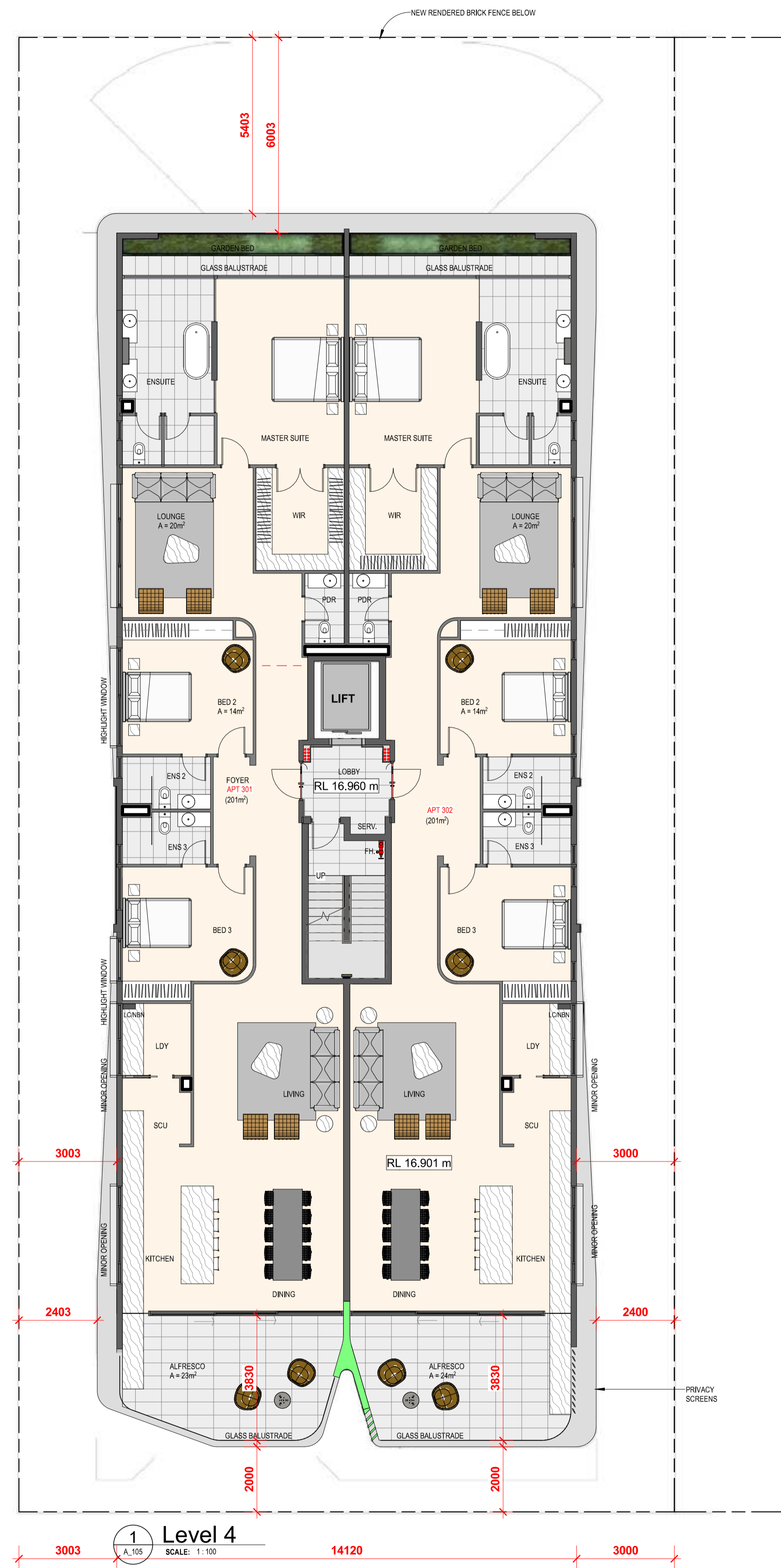
1 Level 2  
A\_105 SCALE: 1:100



2 Level 3  
A\_105 SCALE: 1:100



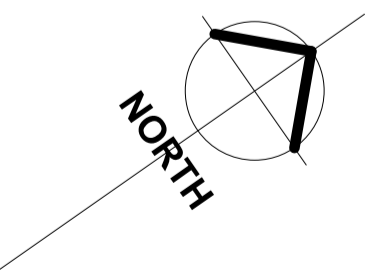
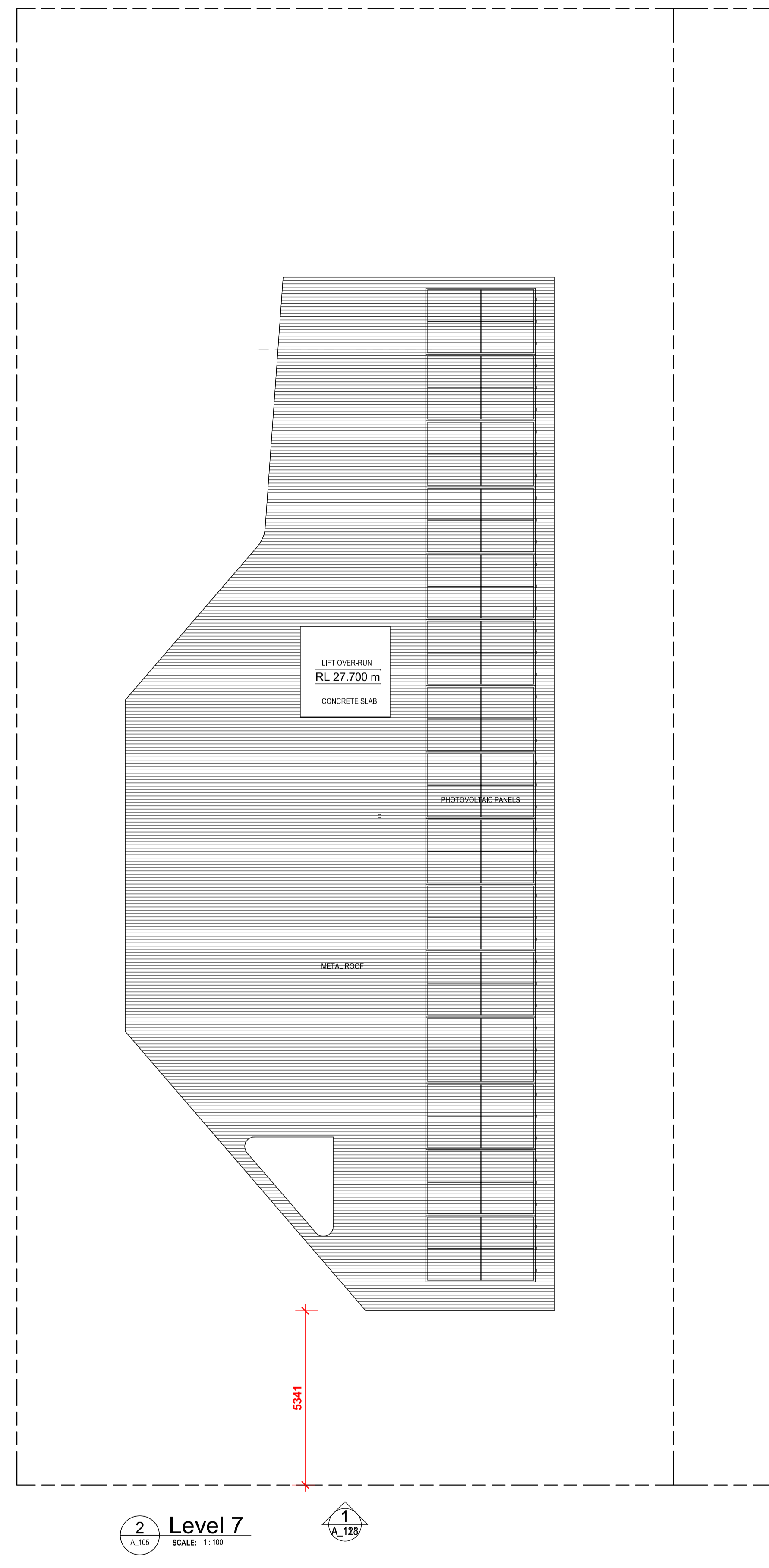
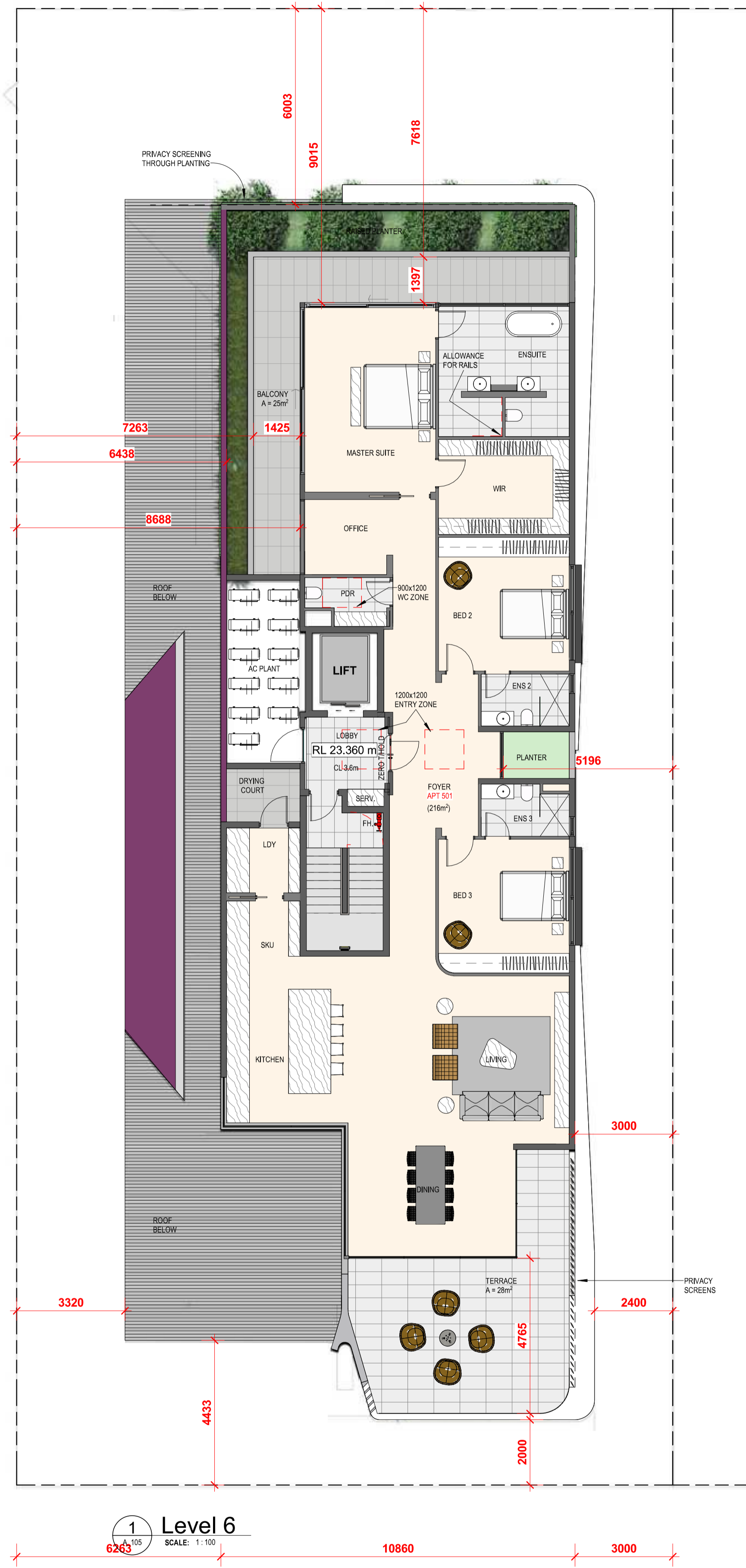


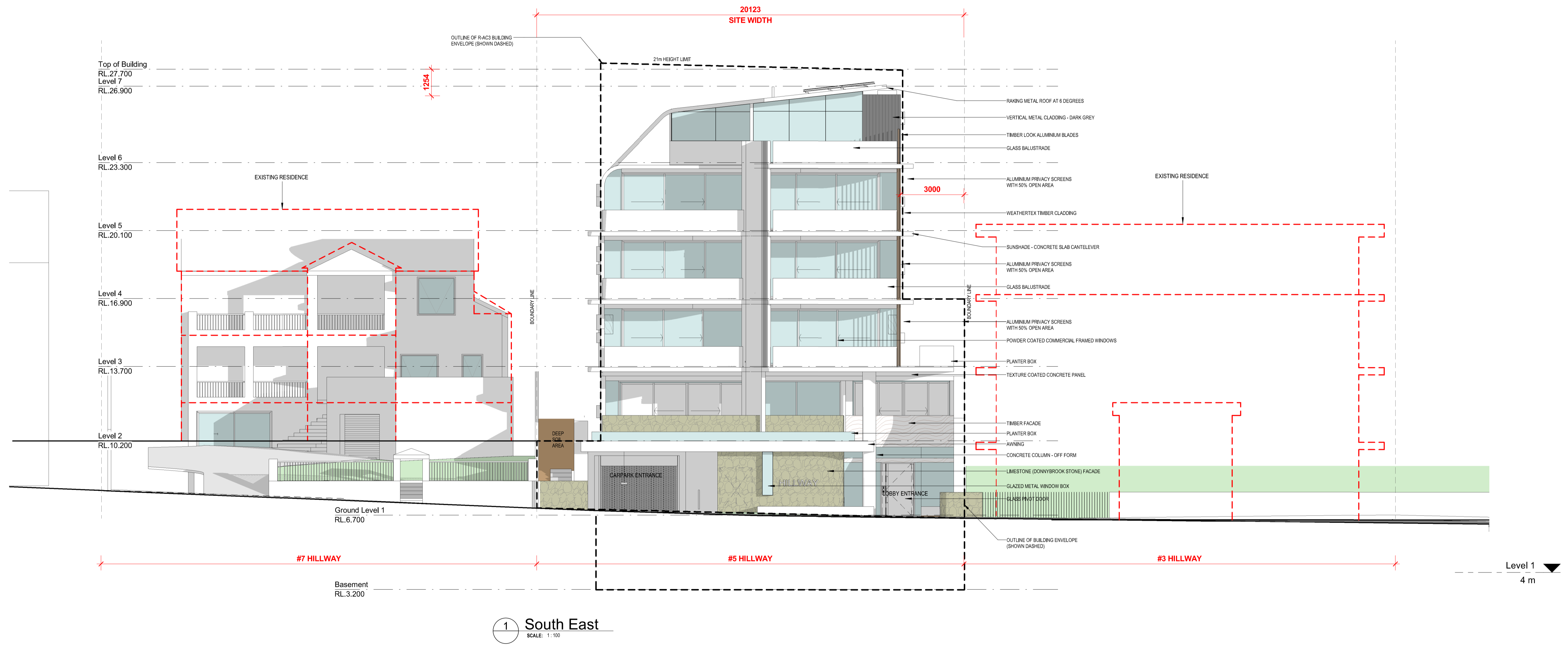


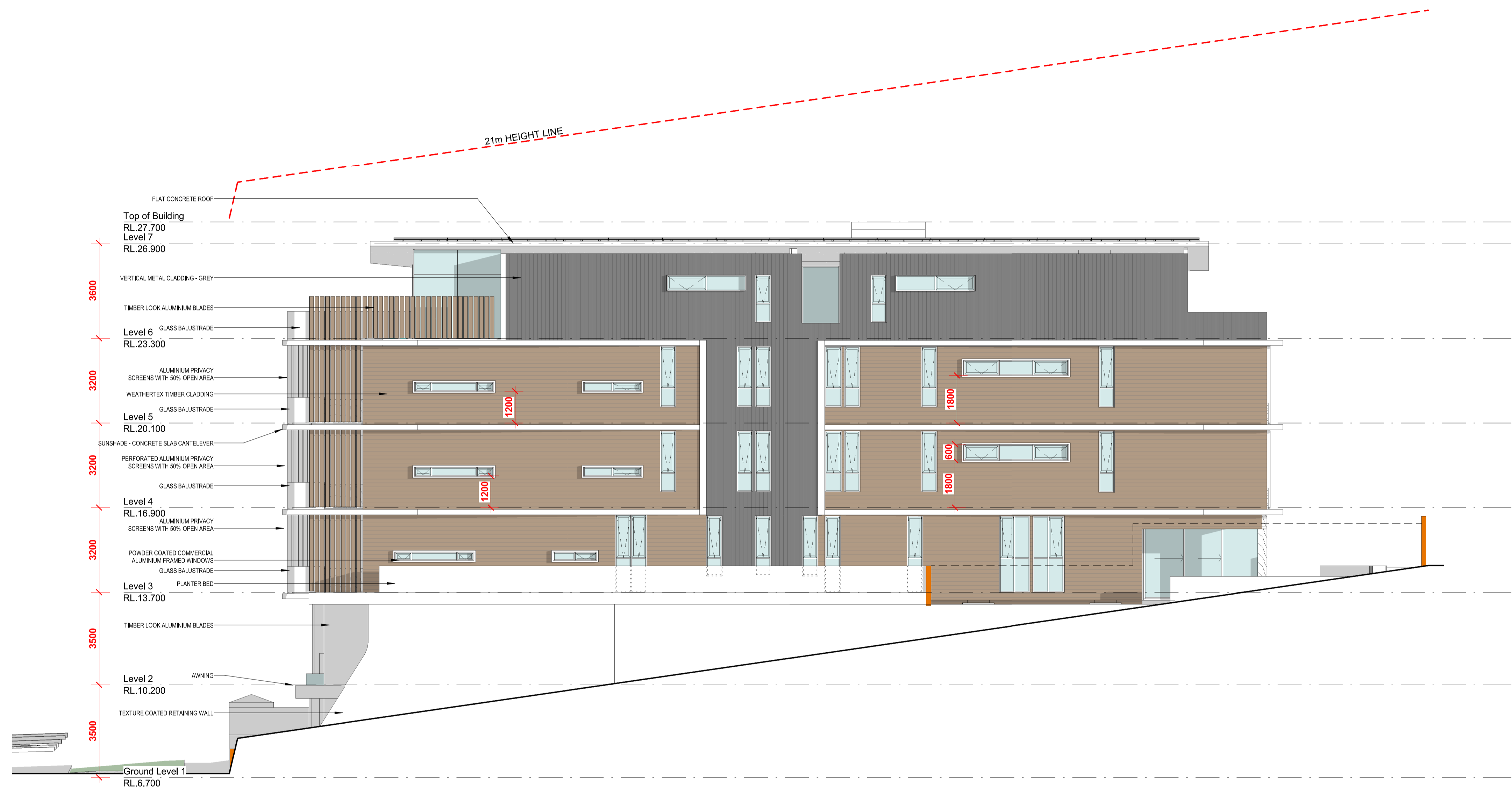


**SILVER LEVEL CRITERIA**  
Applicable to Apartments 101 & 501

1. DWELLING ACCESS
  - 1a. Entirely step free
  - 1b. All passages are more than 1000mm wide
  - 1c. Each apartment has 1 car bay that is 3200mm wide
  - 1d+e. There are no steps or ramps in the path of travel
2. DWELLING ENTRANCE
  - 2a. Door width is wider than 820mm and is step free
  - 2b. The Landing is larger than 1200mmx1200mm
  - 2c+d. The paths of travel are step free
3. INTERNAL DOORS & CORRIDORS
  - 3a. All internal doors have a clear opening of 820mm
  - 3b. All passages are more than 1000mm wide
4. TOILET
  - 4a. At least 1 toilet has a clear wall width of 900mm
  - 4a.ii. At least 1 toilet has a clear space in front of 1200mm
  - 4a.iii. At least 1 toilet has provision for future grabrails
5. SHOWER
  - 5a. All showers are hobless
  - 5b. All showers are in the corner
6. REINFORCEMENT OF BATHROOM & TOILET WALLS
  - 6a. All walls will be constructed of solid masonry
7. INTERNAL STAIRWAYS
  - This item is not applicable



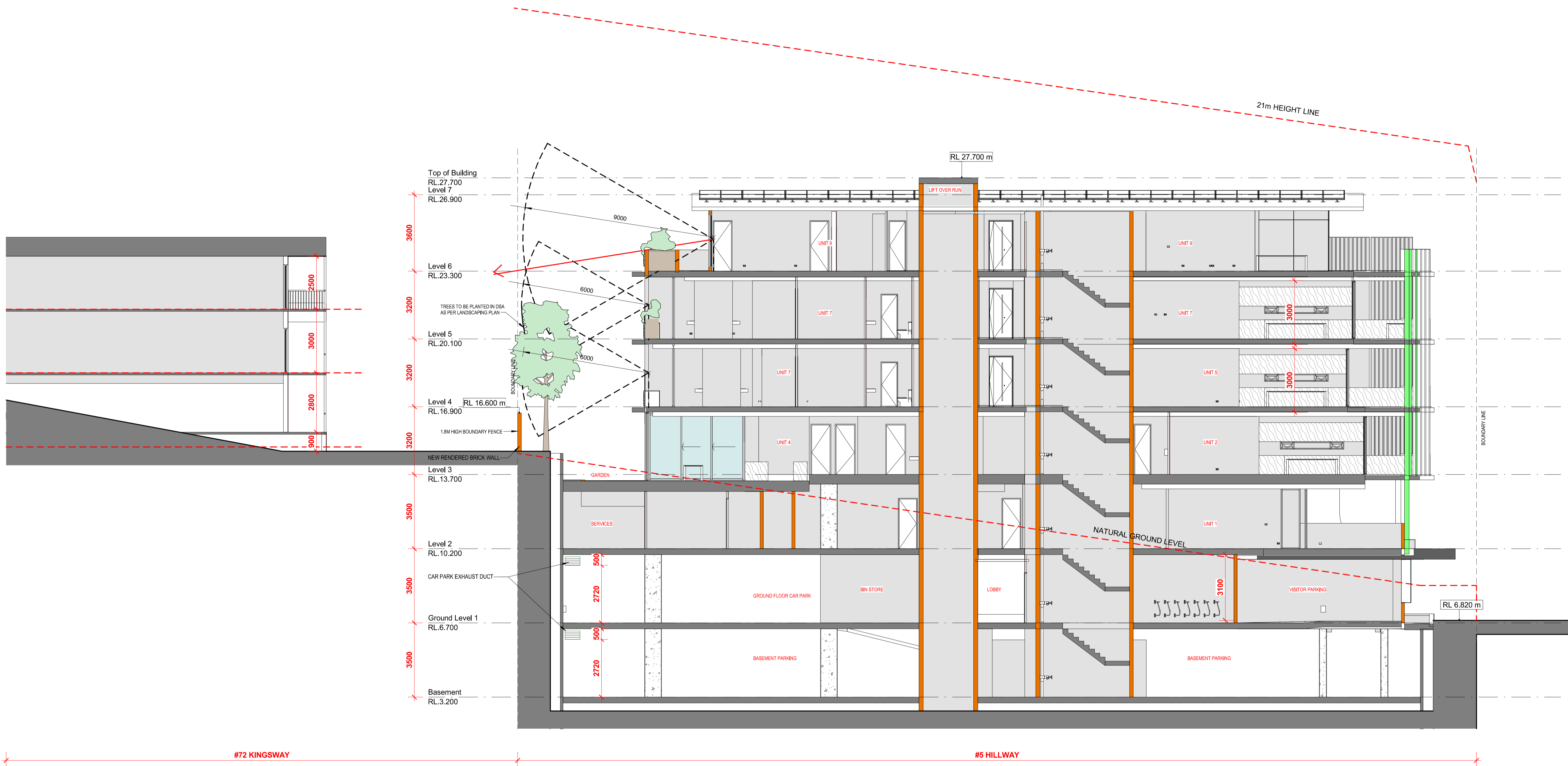




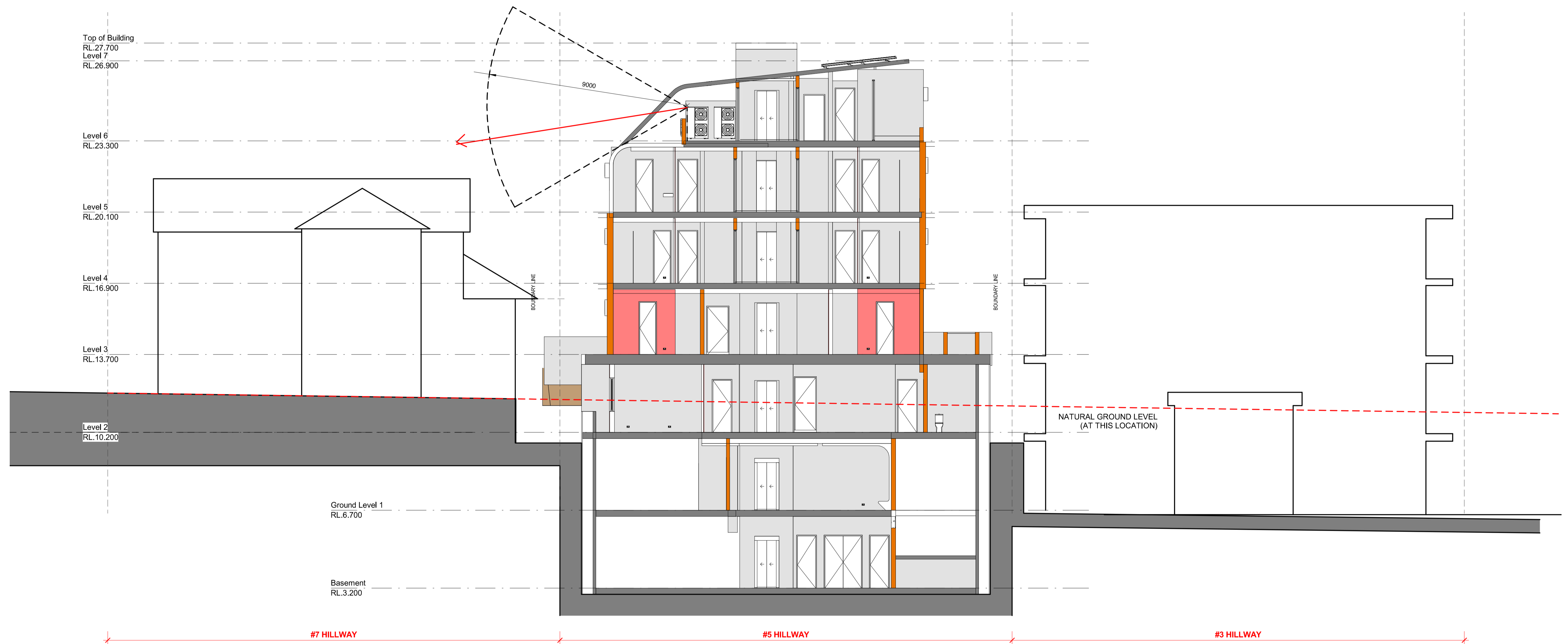
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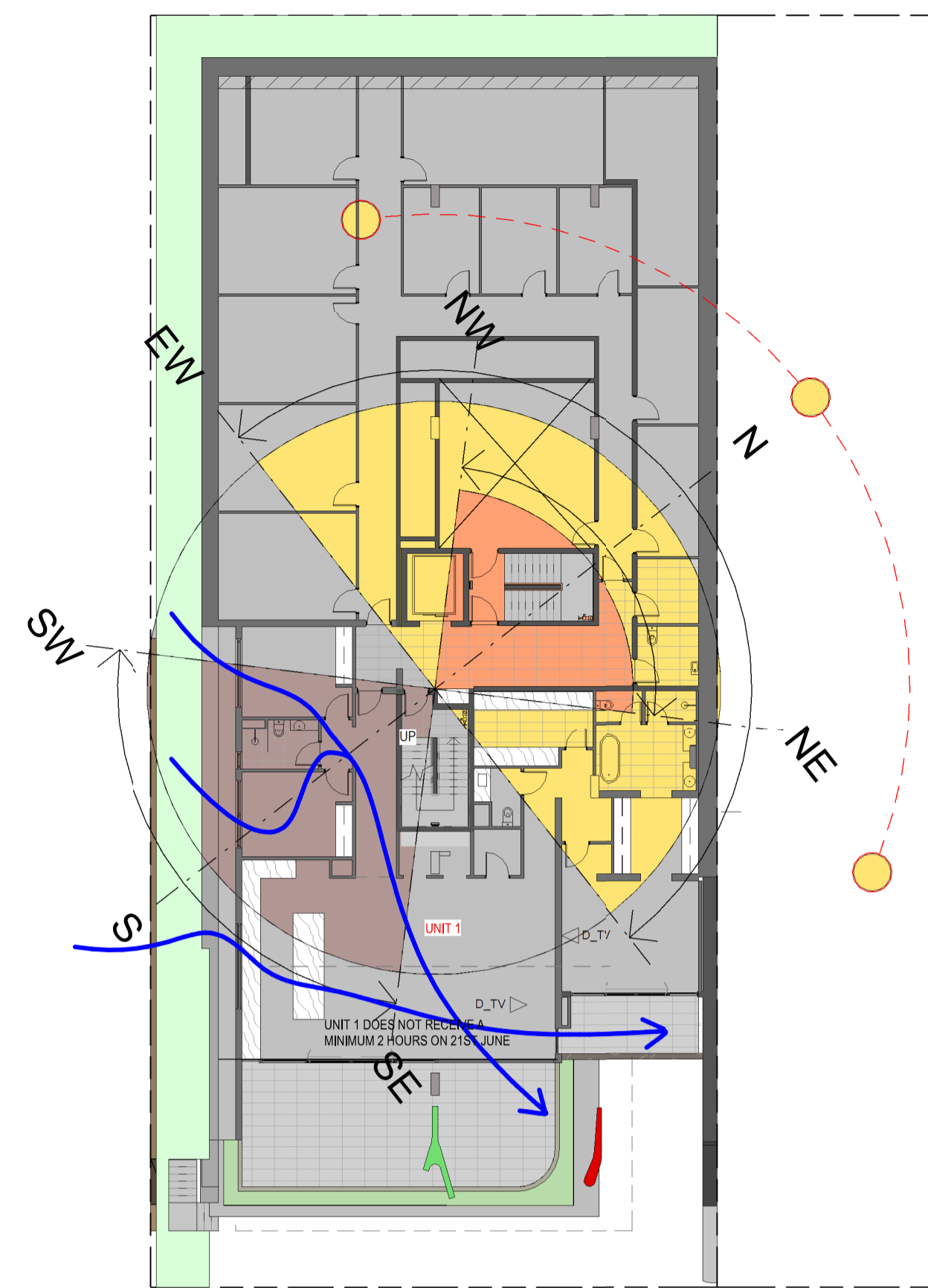


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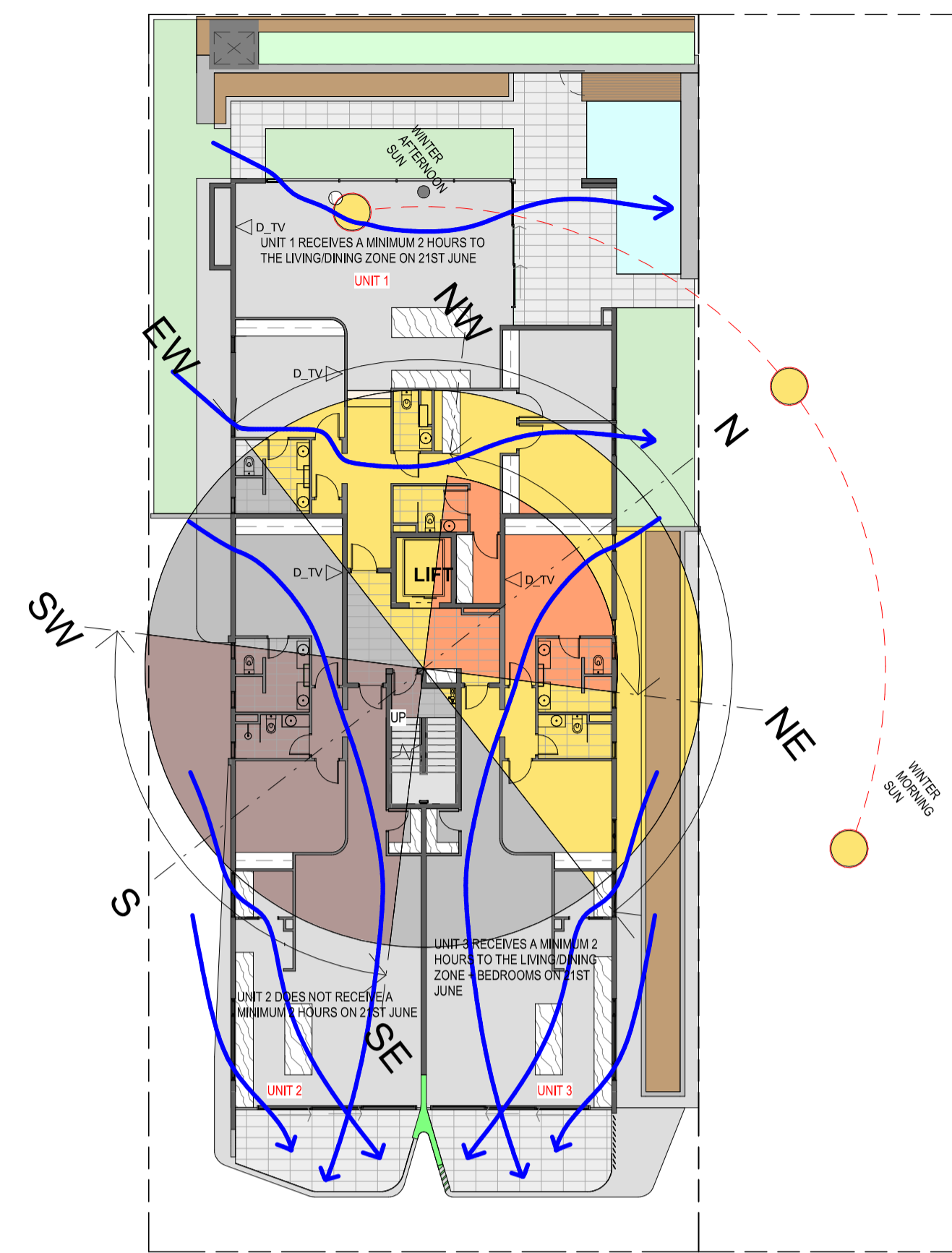


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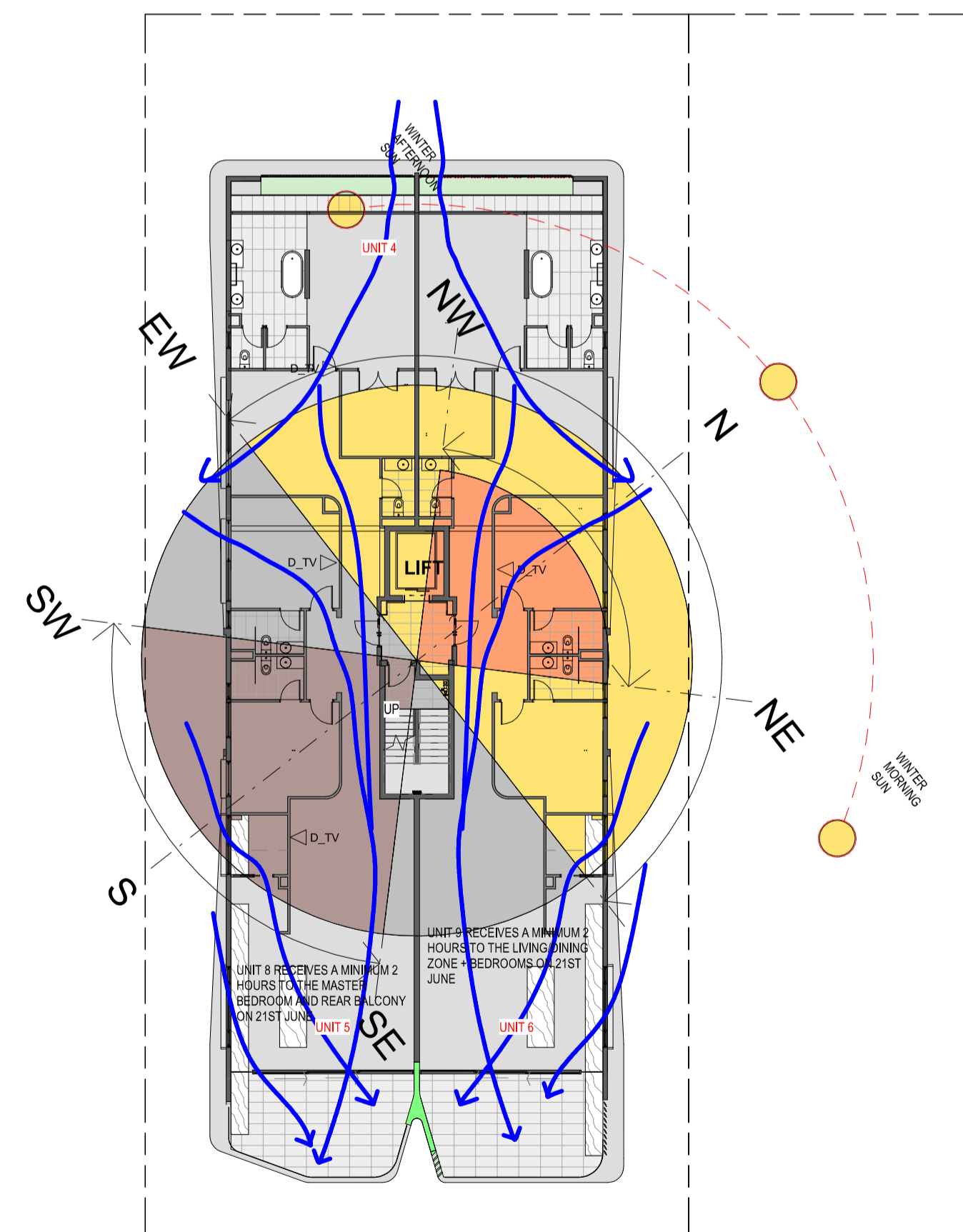




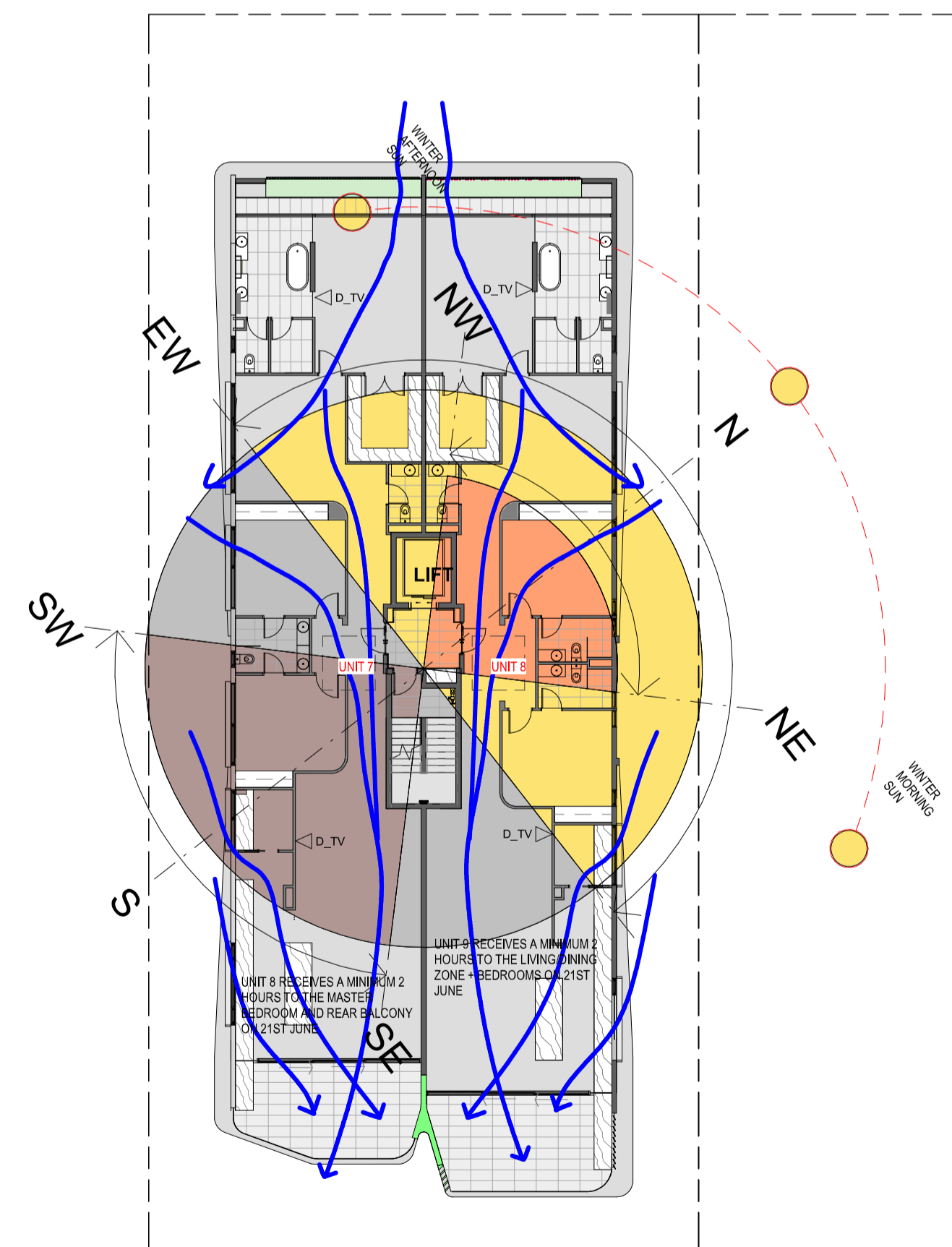
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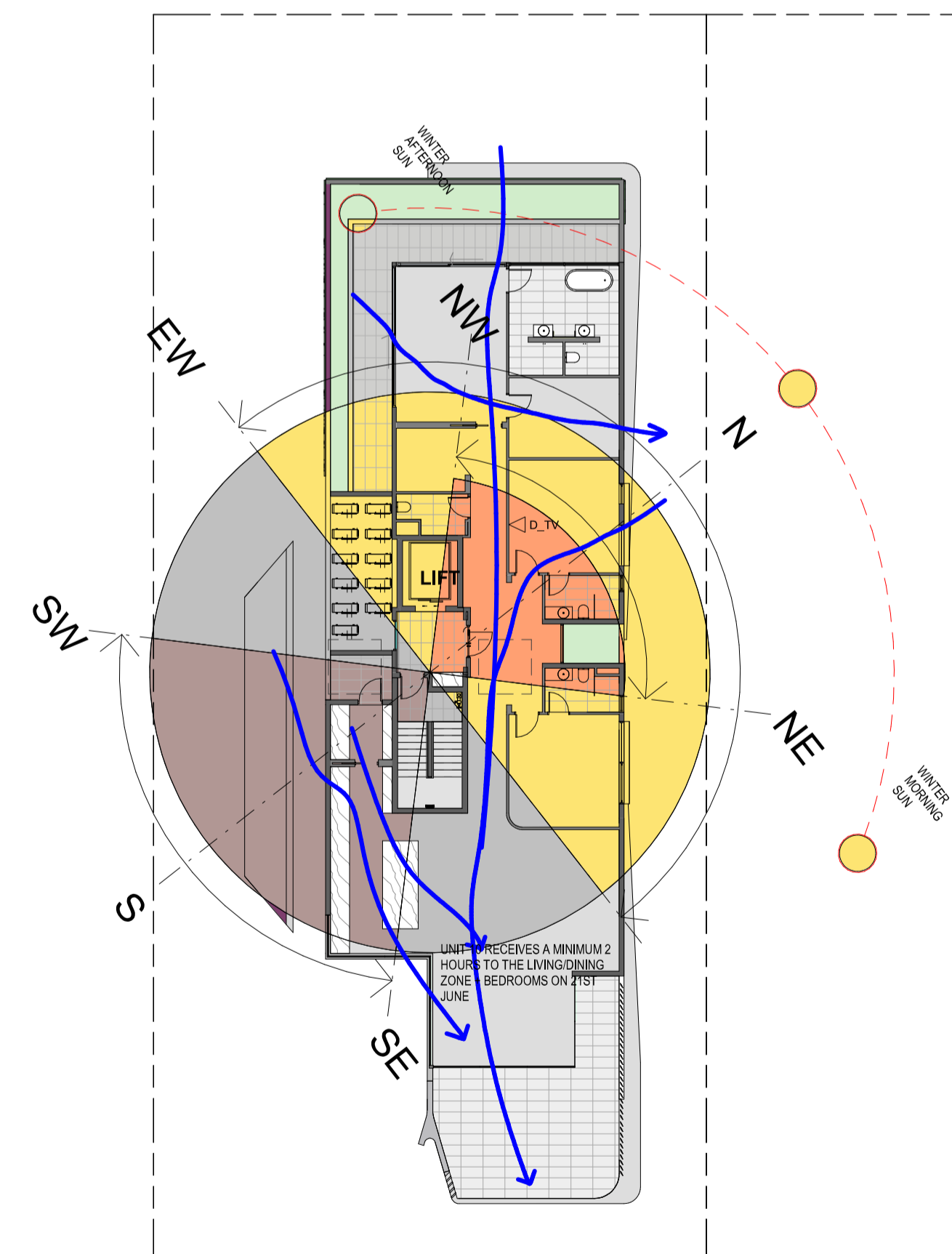
1 Level 3 Solar/Breeze Plan  
SCALE: 1:200



2 Level 4 Solar/Breeze Plan  
SCALE: 1:200



3 Level 5 Solar/Breeze Plan  
SCALE: 1:200



4 Level 6 Solar/Breeze Plan  
SCALE: 1:200

MINIMUM 2 HOURS OF SOLAR ACCESS ON JUNE 21ST

- UNIT 201 - NO
- UNIT 301 - NO
- UNIT 302 - YES
- UNIT 303 - YES
- UNIT 401 - YES
- UNIT 402 - YES
- UNIT 501 - YES
- UNIT 502 - YES
- UNIT 601 - YES

7/9 = 77% (MIN. REQ. = 70%)

architects & builders

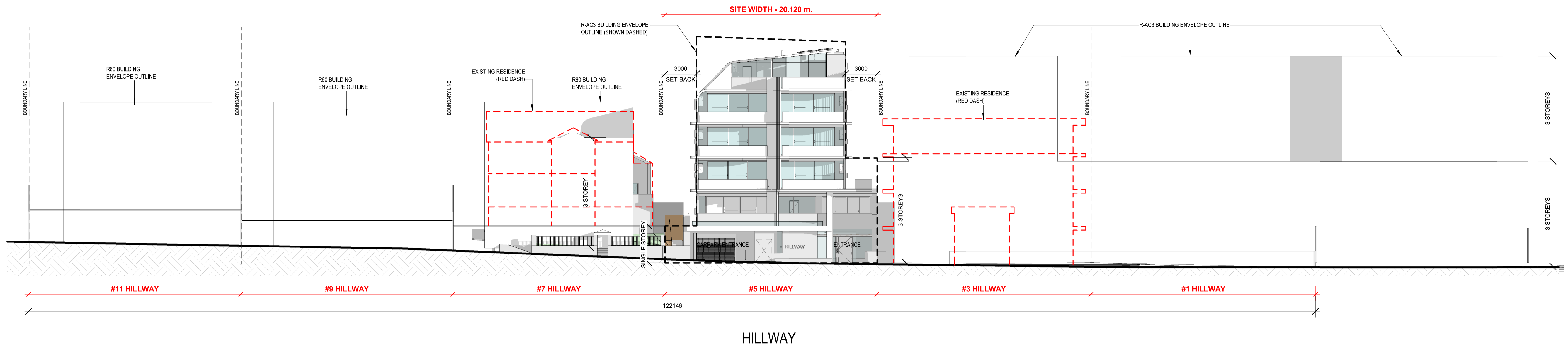
**GIORGI**

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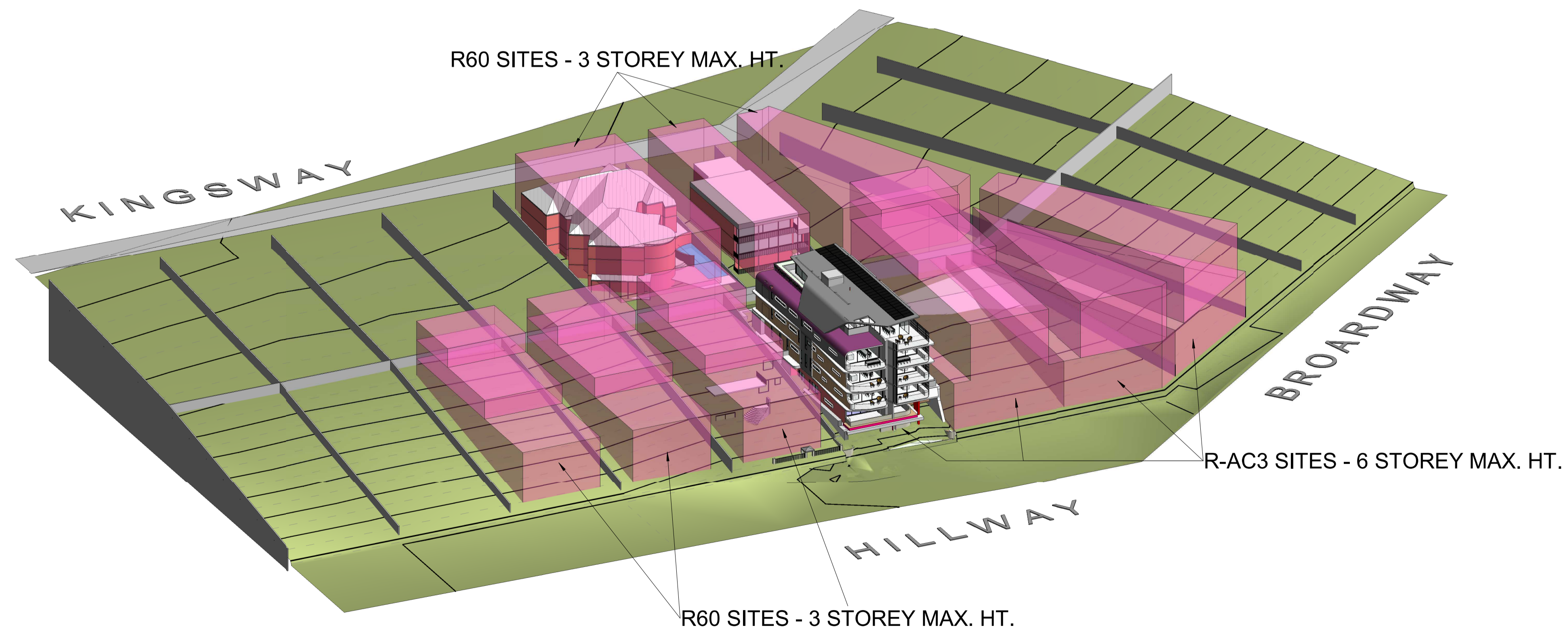
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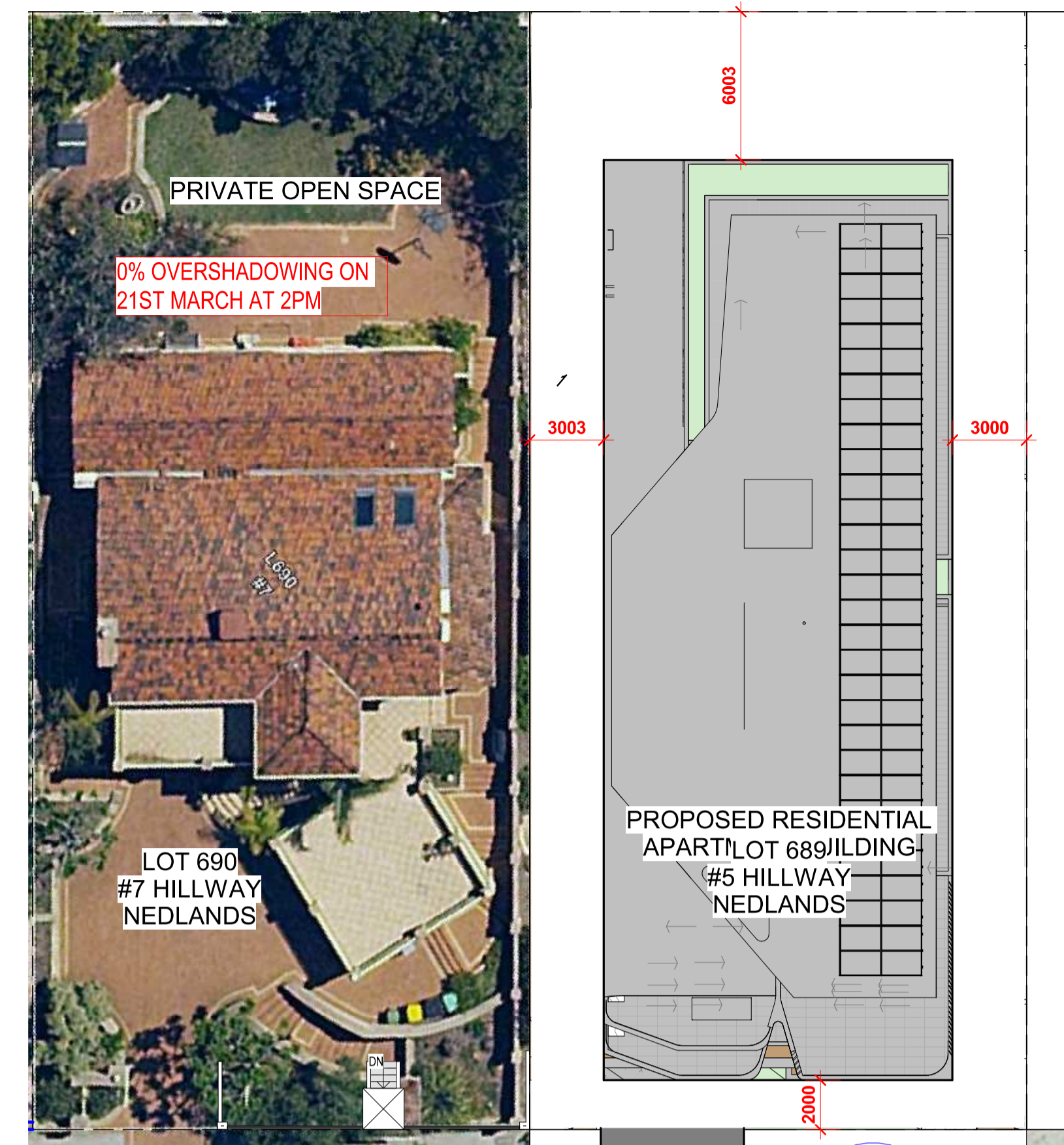
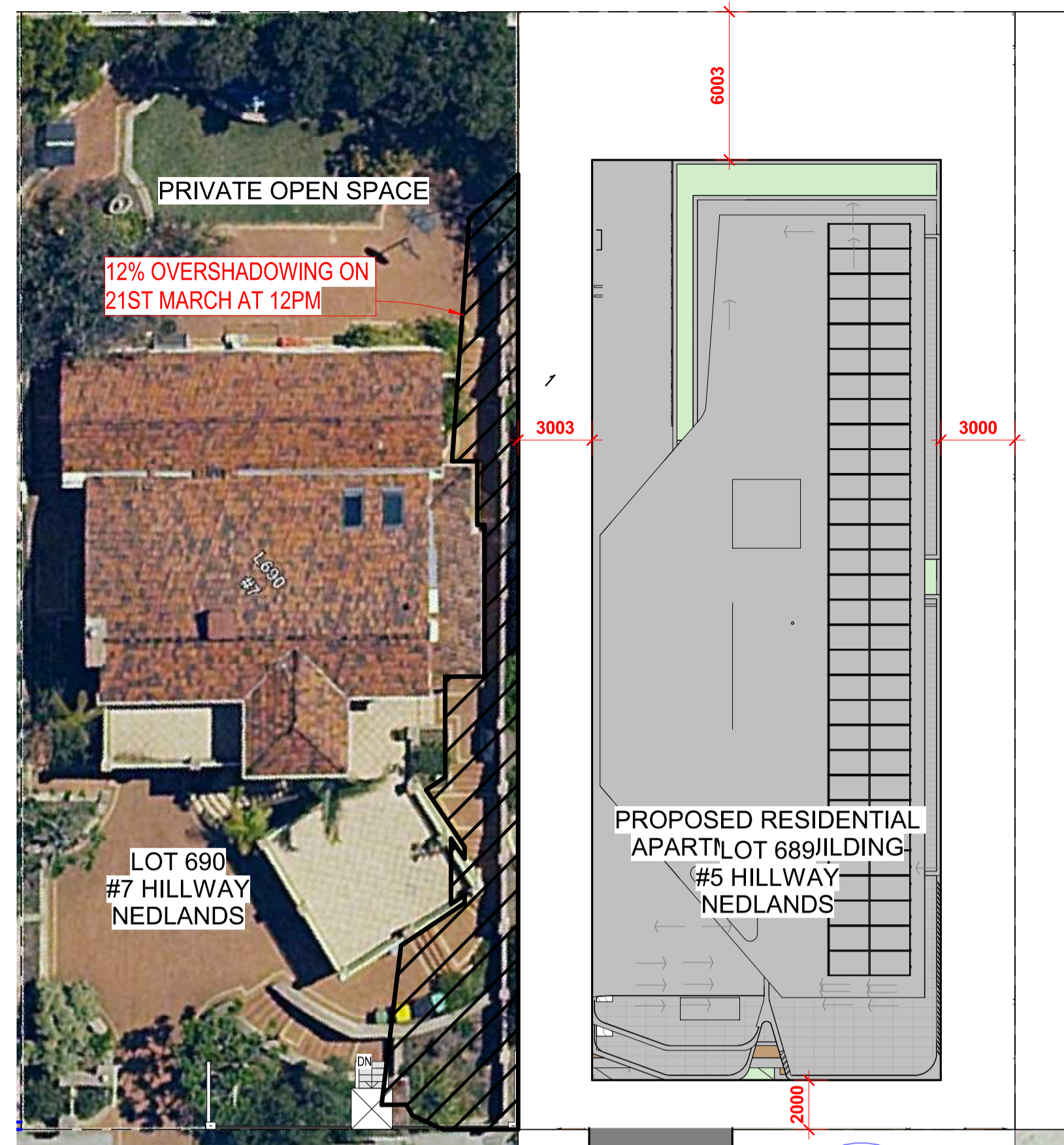
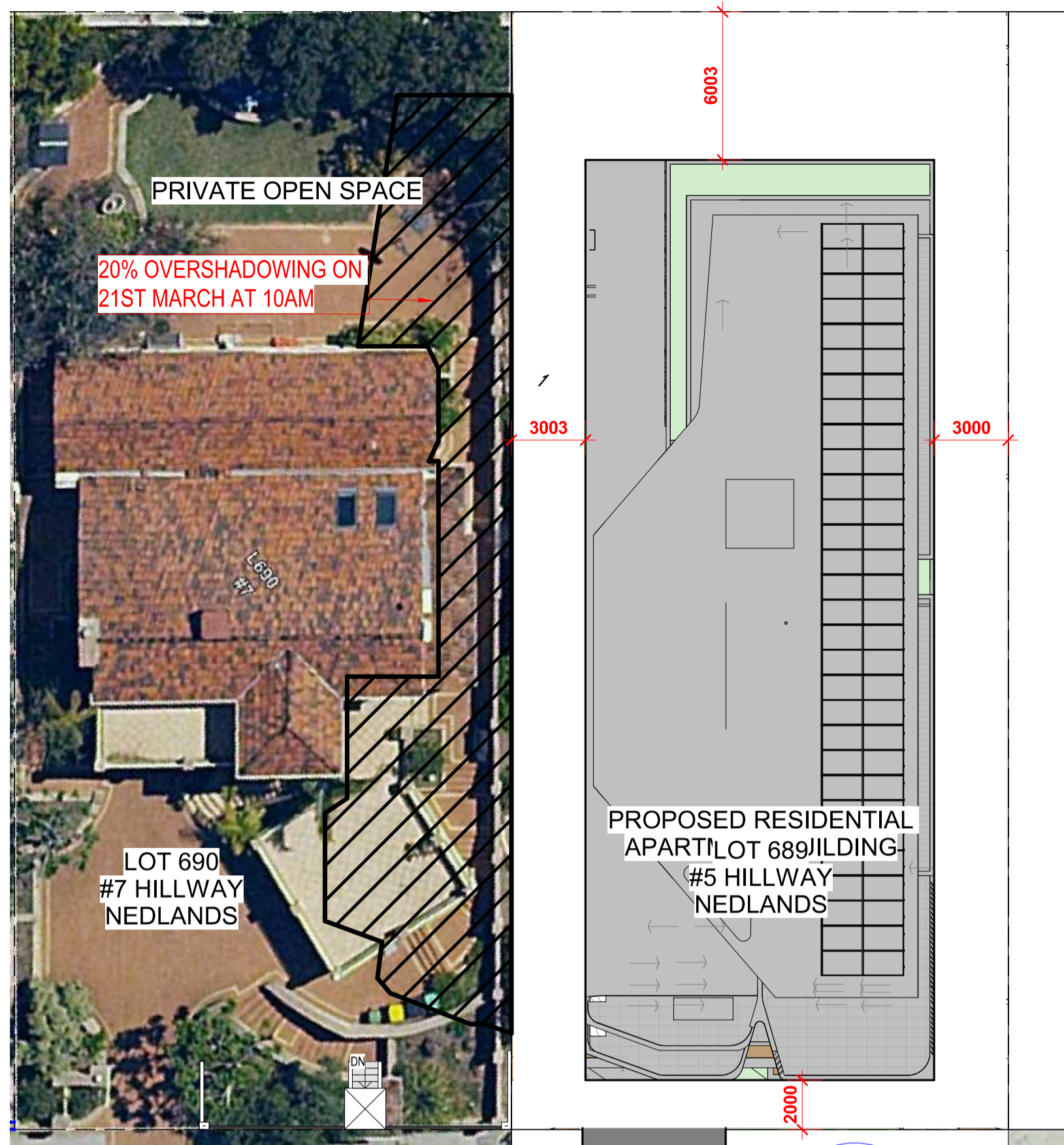


1 South East - Possible Future Development - Hillway Streetfront  
SCALE: 1:200



2 Future Development 3D view (Not to Scale)  
SCALE:

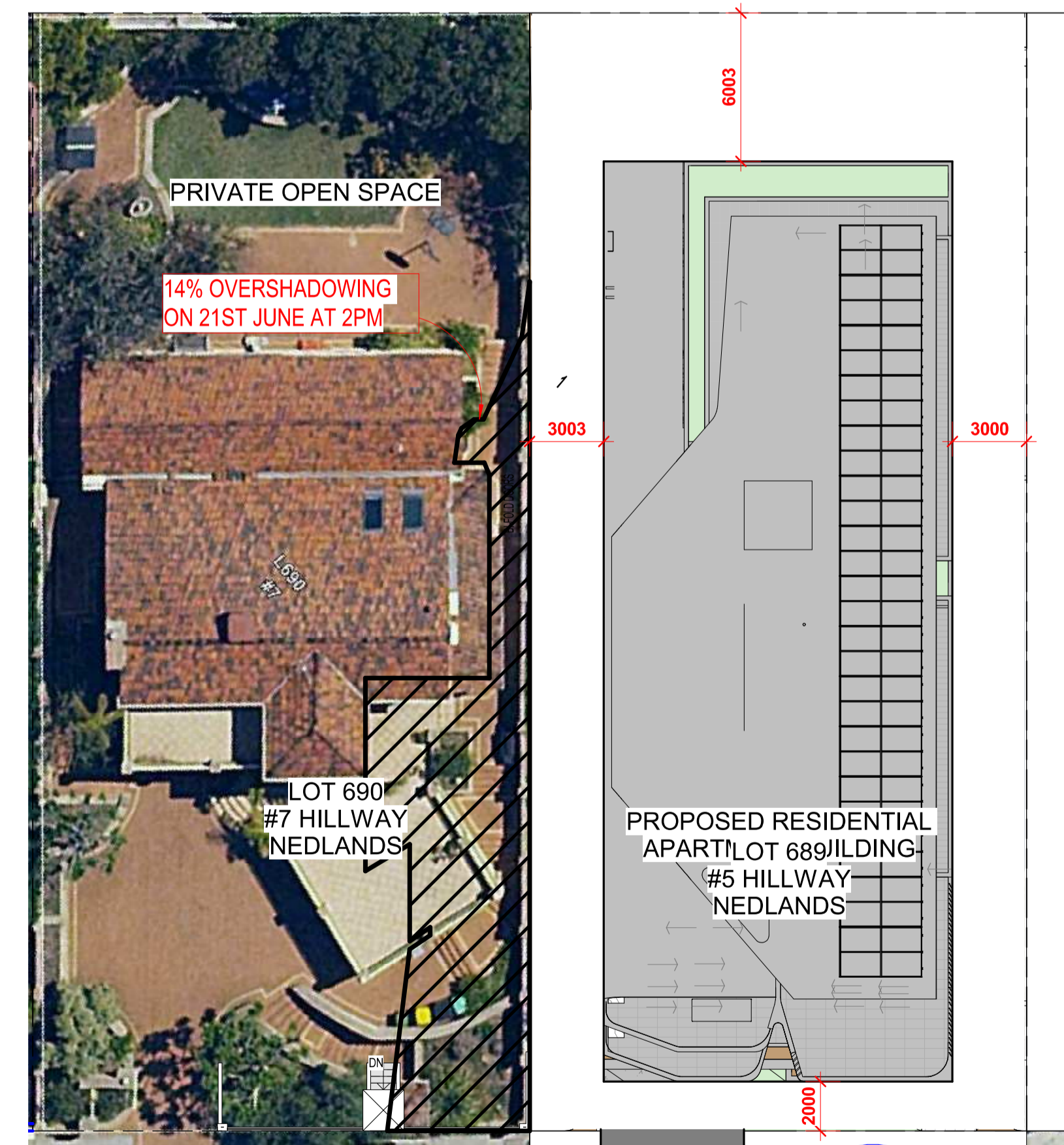
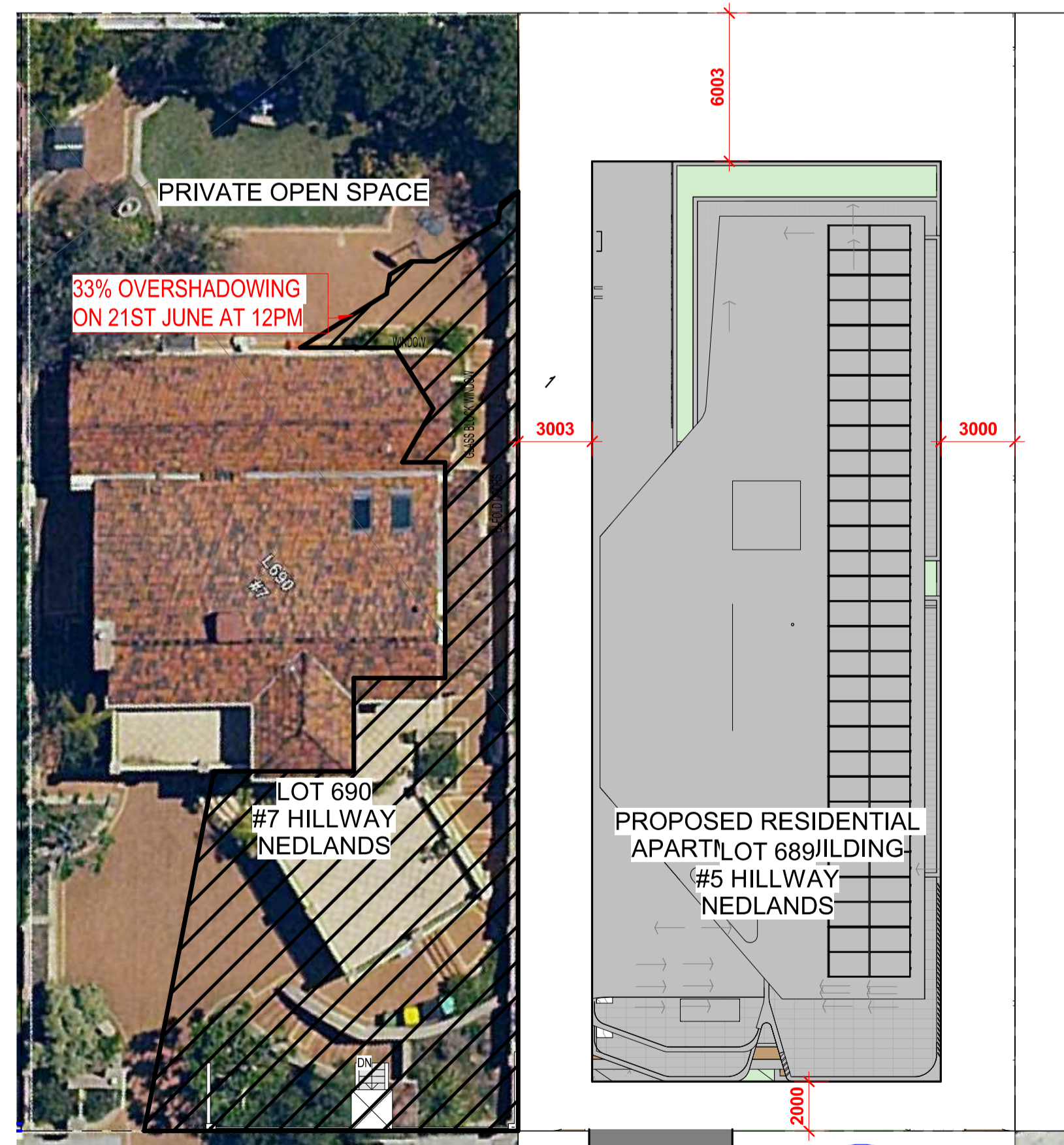
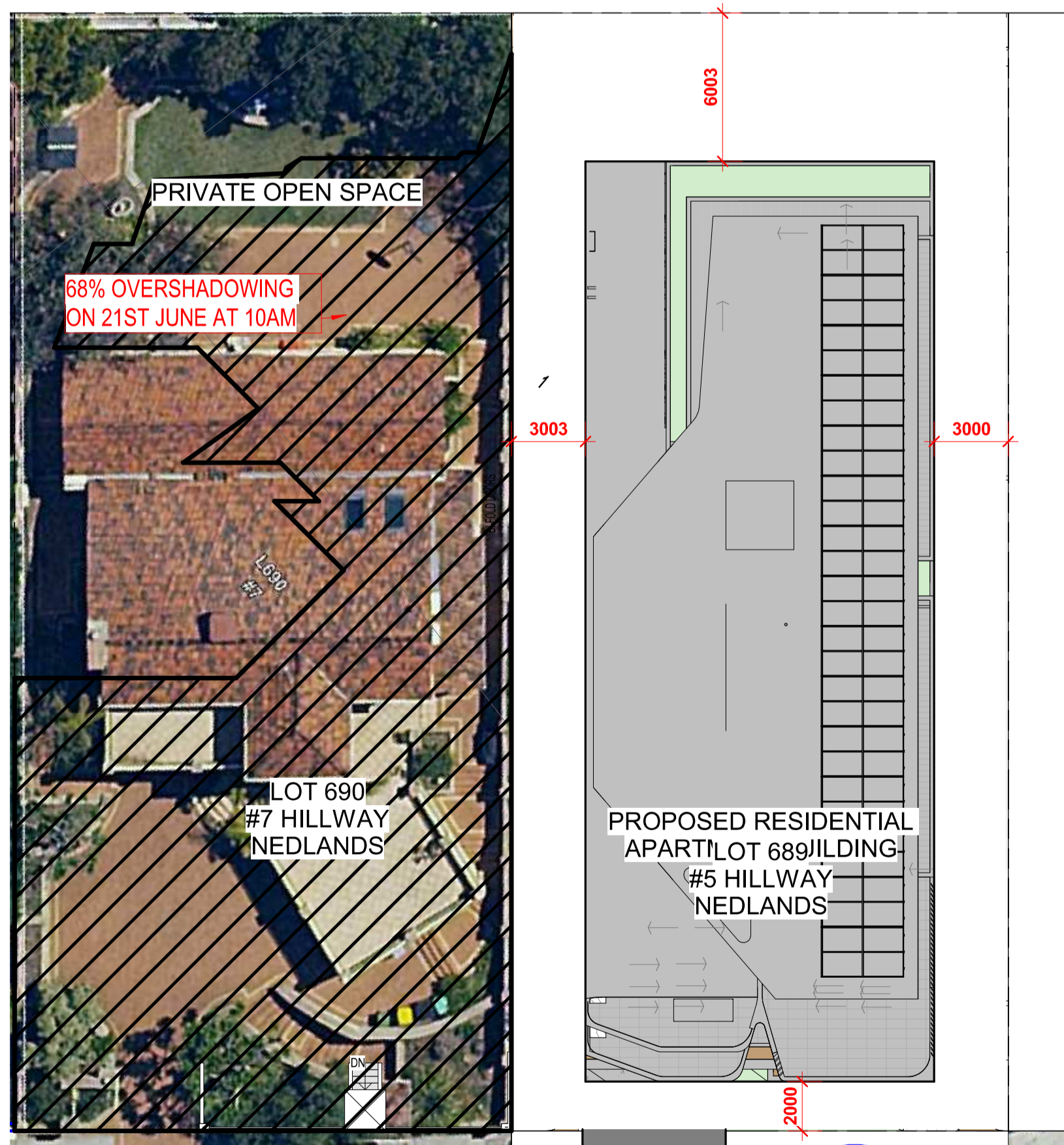




1 Overshadowing Diagram 21st MARCH 10am with Existing Building  
SCALE: 1:200

2 Overshadowing Diagram 21st MARCH 12pm with Existing Building  
SCALE: 1:200

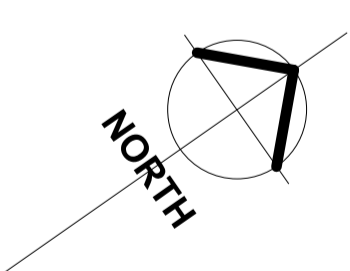
3 Overshadowing Diagram 21st MARCH 2pm with Existing Building  
SCALE: 1:200



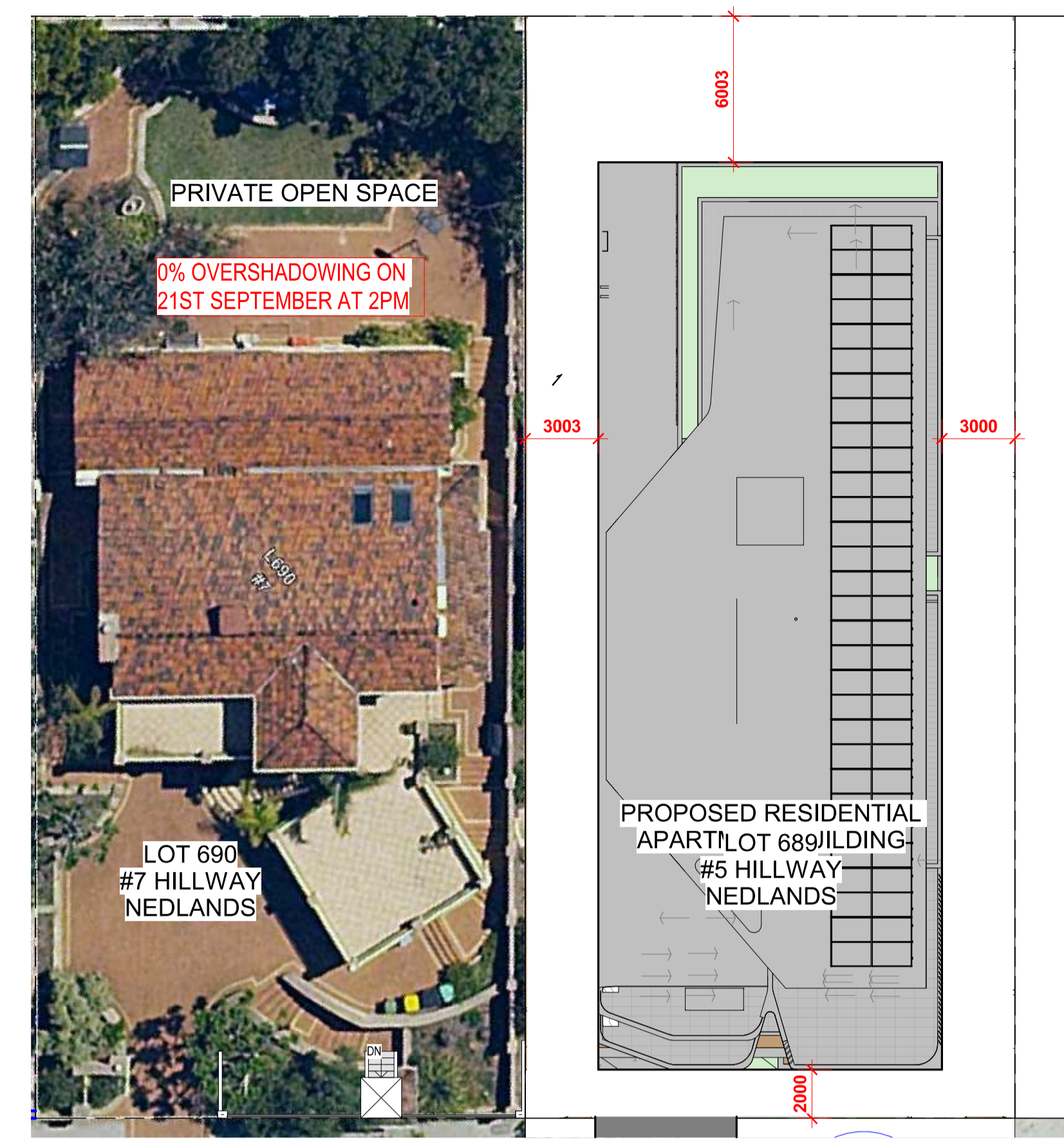
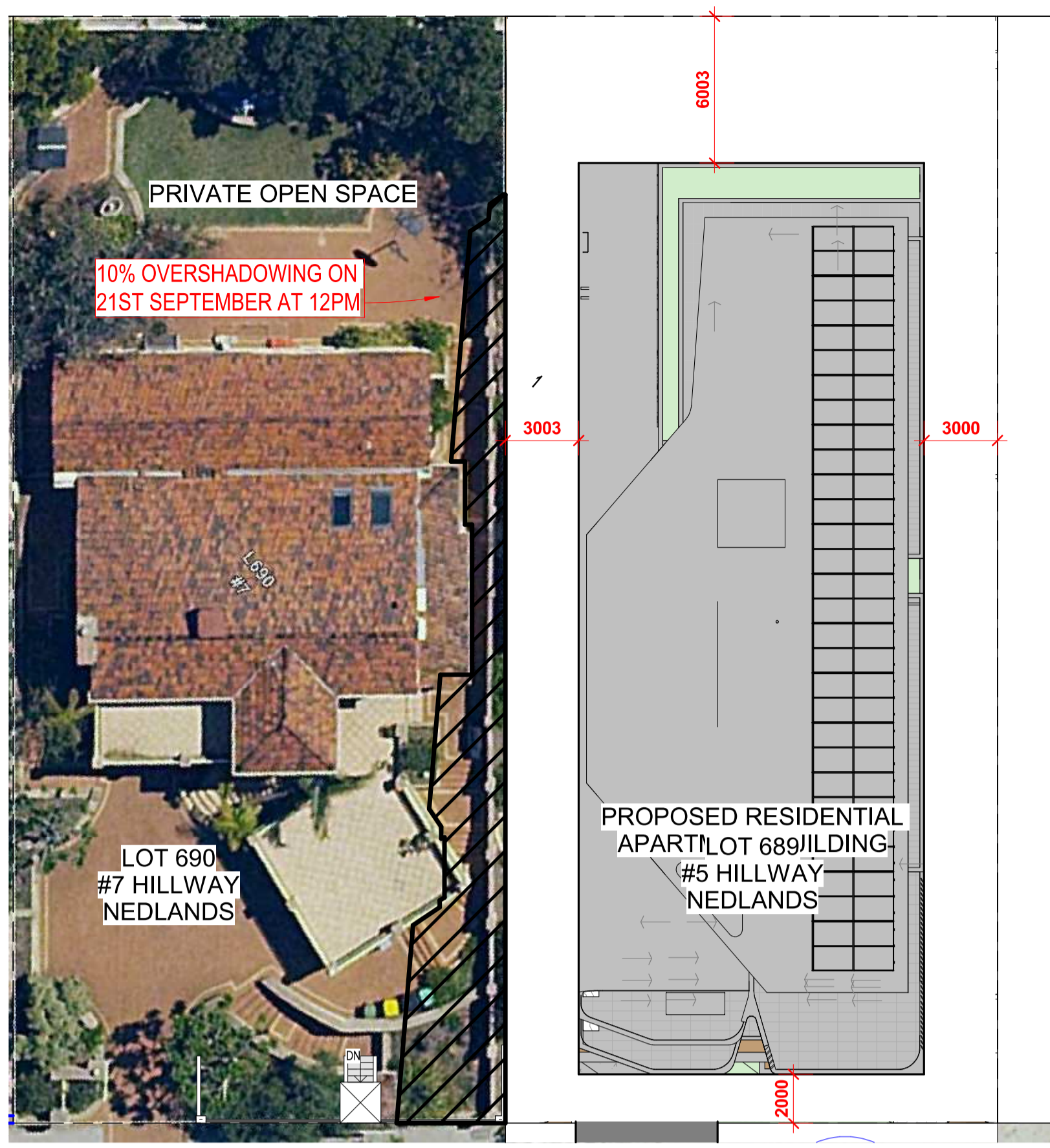
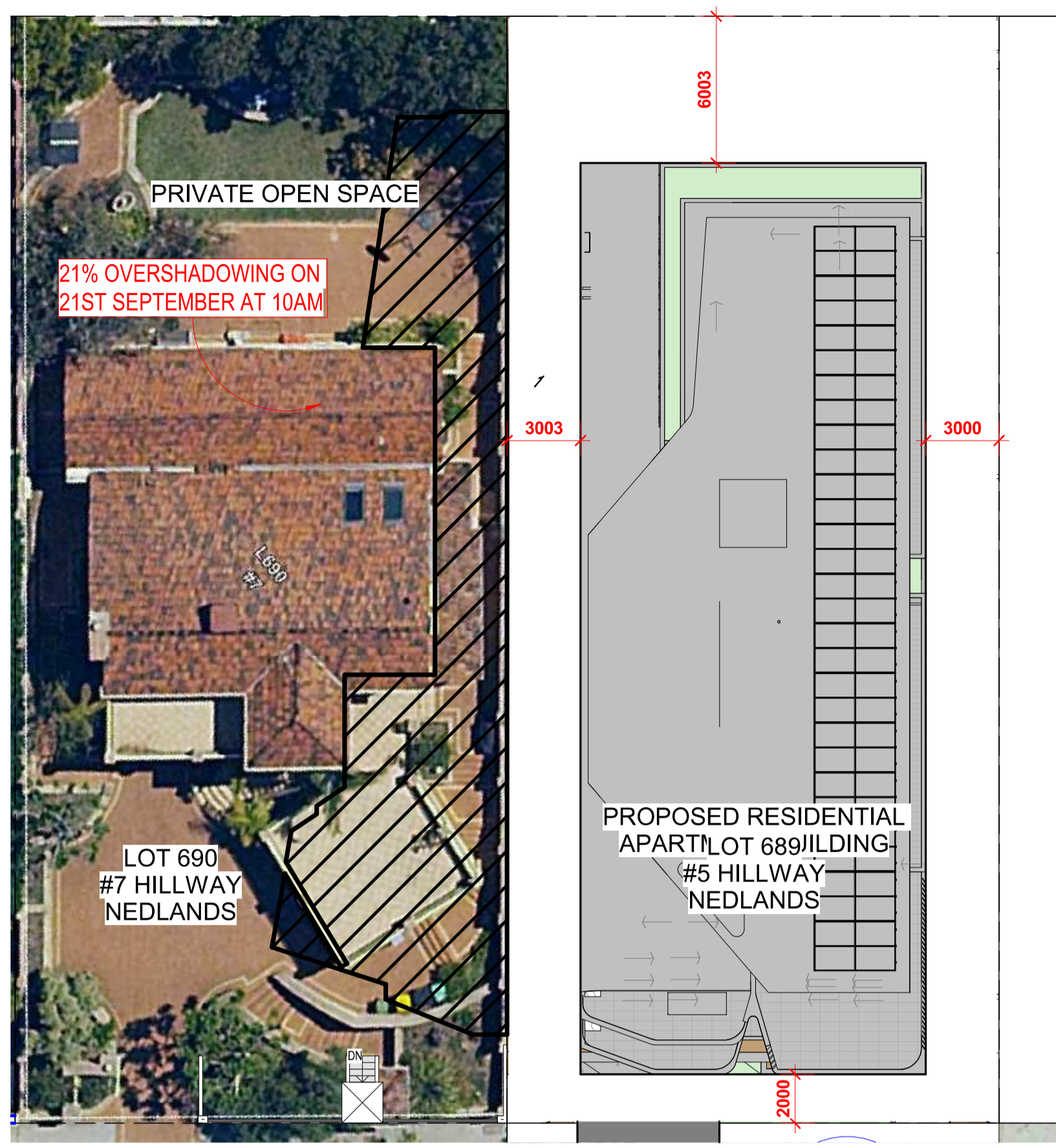
4 Overshadowing Diagram 21st JUNE 10am with Existing Building  
SCALE: 1:200

5 Overshadowing Diagram 21st JUNE 12pm with Existing Building  
SCALE: 1:200

6 Overshadowing Diagram 21st JUNE 2pm with Existing Building  
SCALE: 1:200



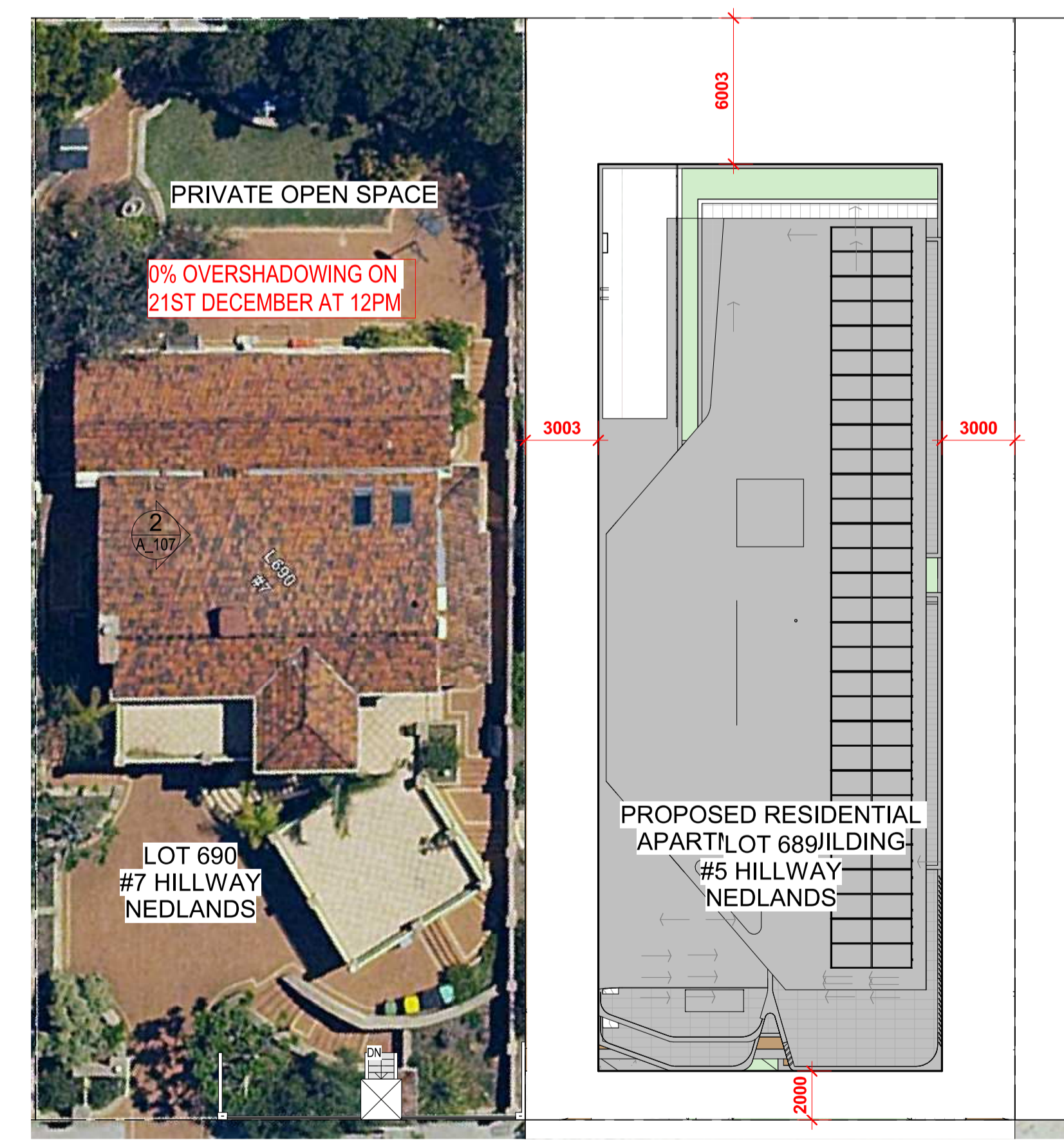
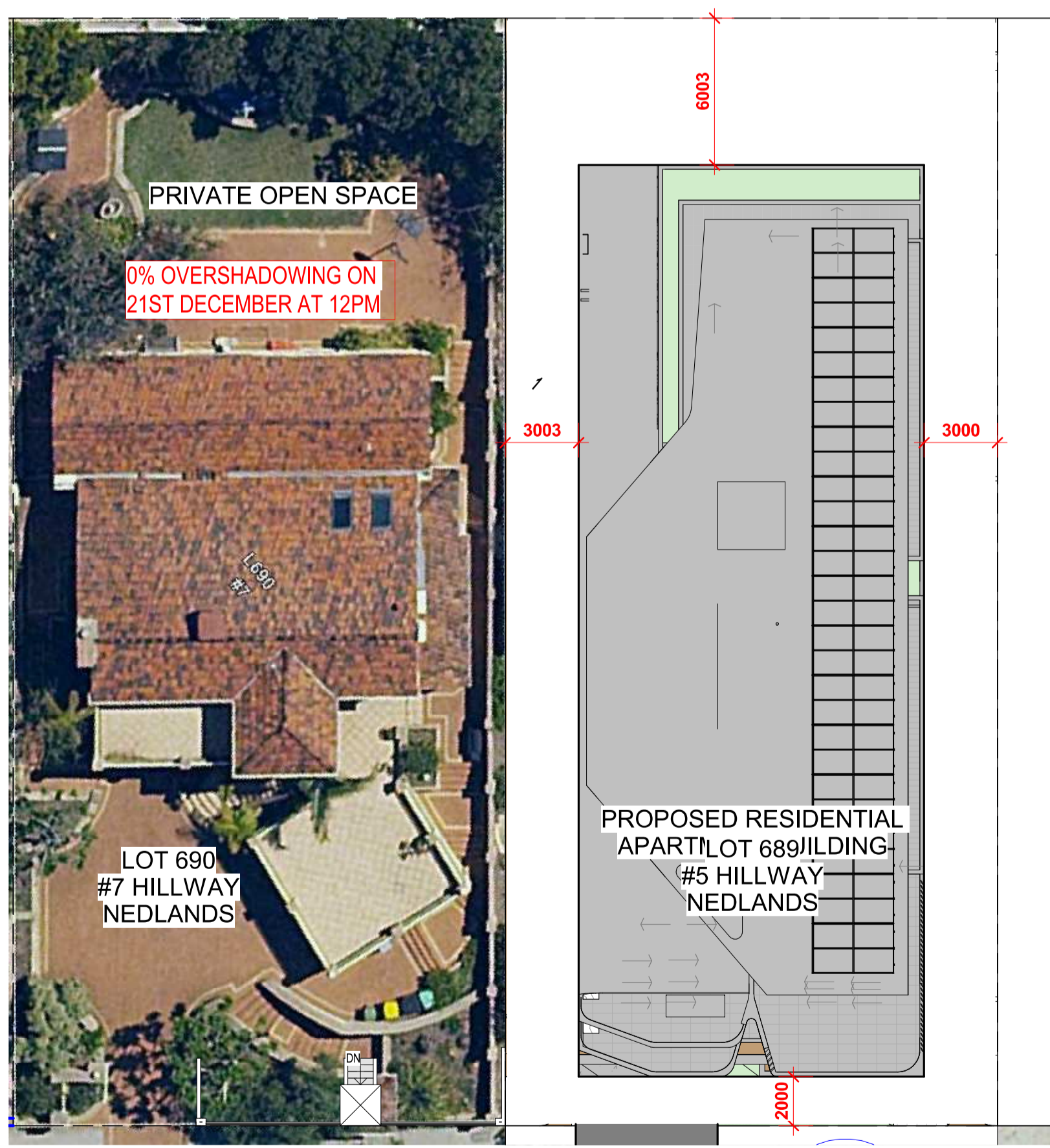
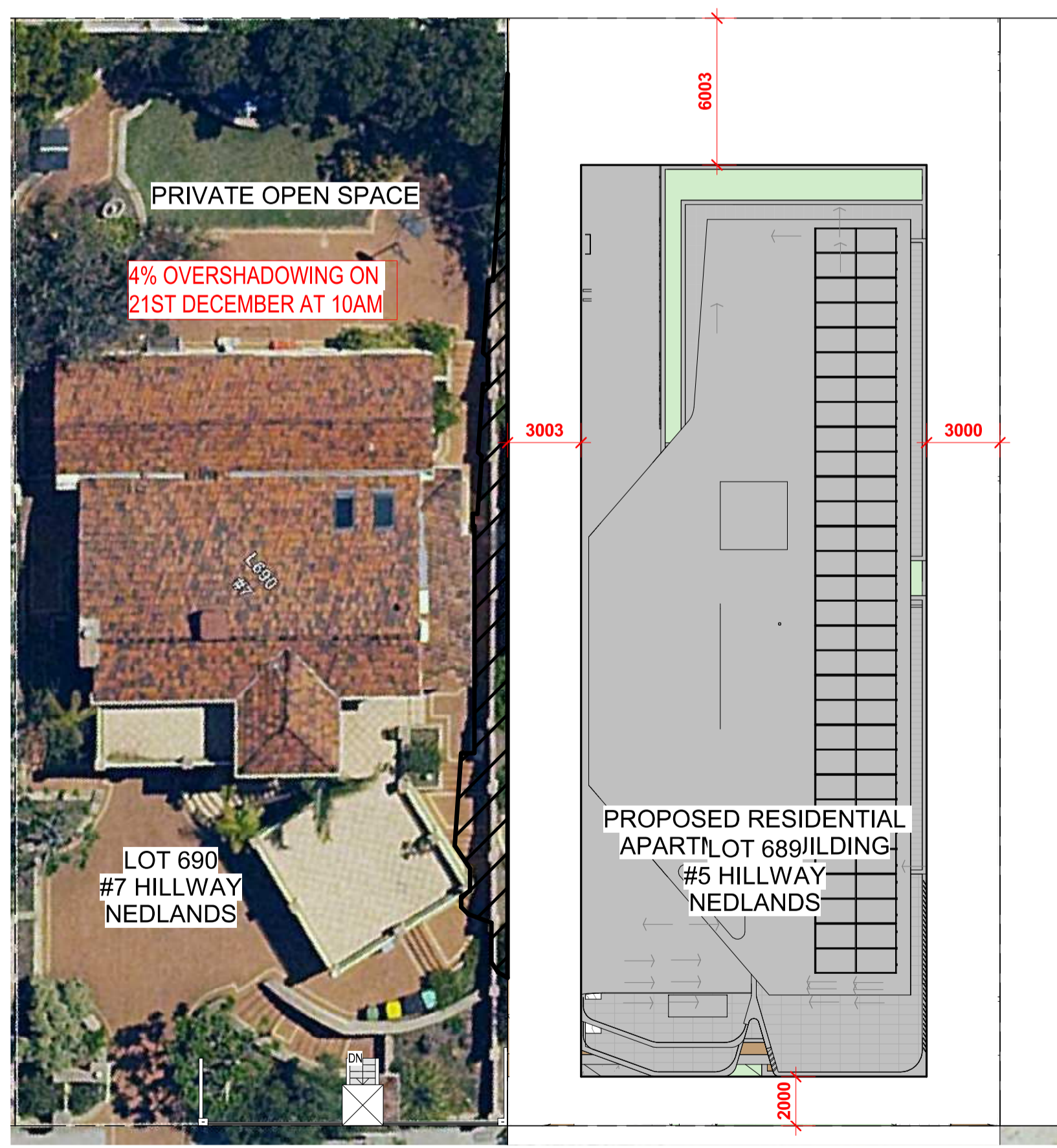




1 Overshadowing Diagram 21st SEPT 10am with Existing Building  
SCALE: 1:200

2 Overshadowing Diagram 21st SEPT 12pm with Existing Building  
SCALE: 1:200

3 Overshadowing Diagram 21st SEPT 2pm with Existing Building  
SCALE: 1:200

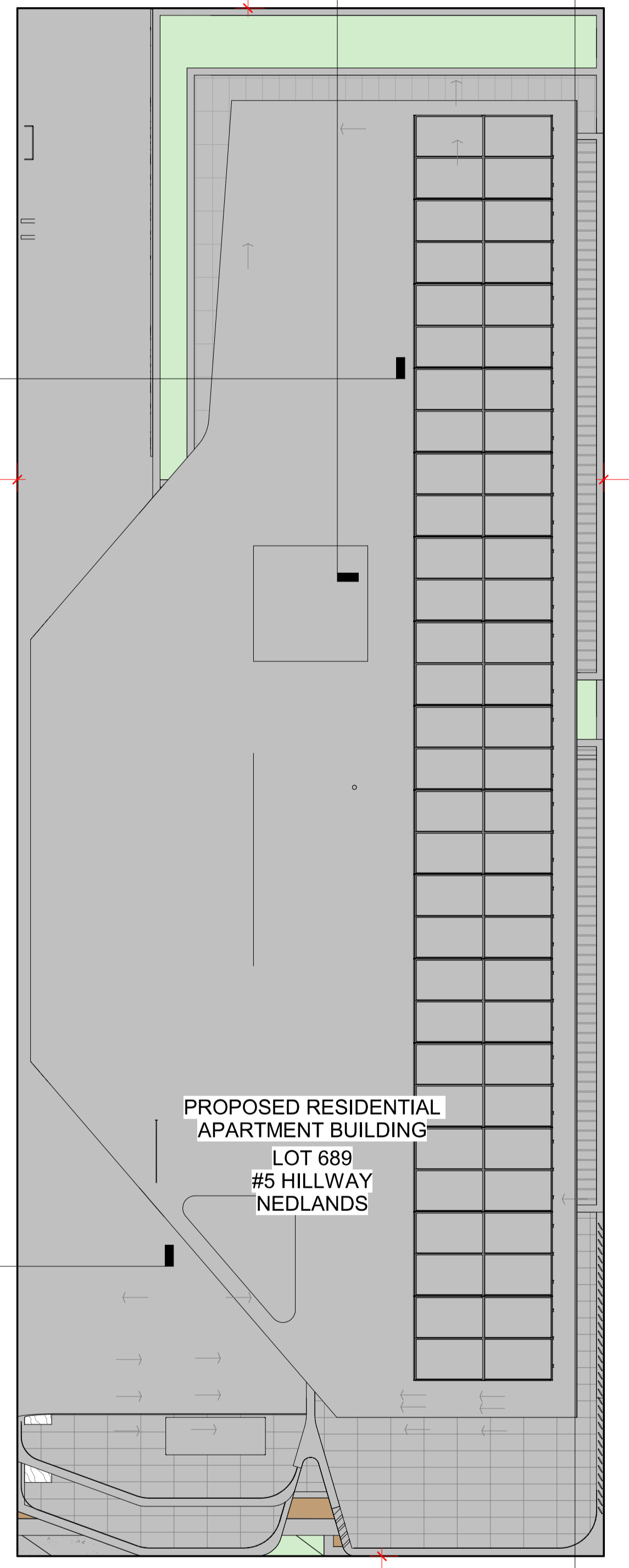
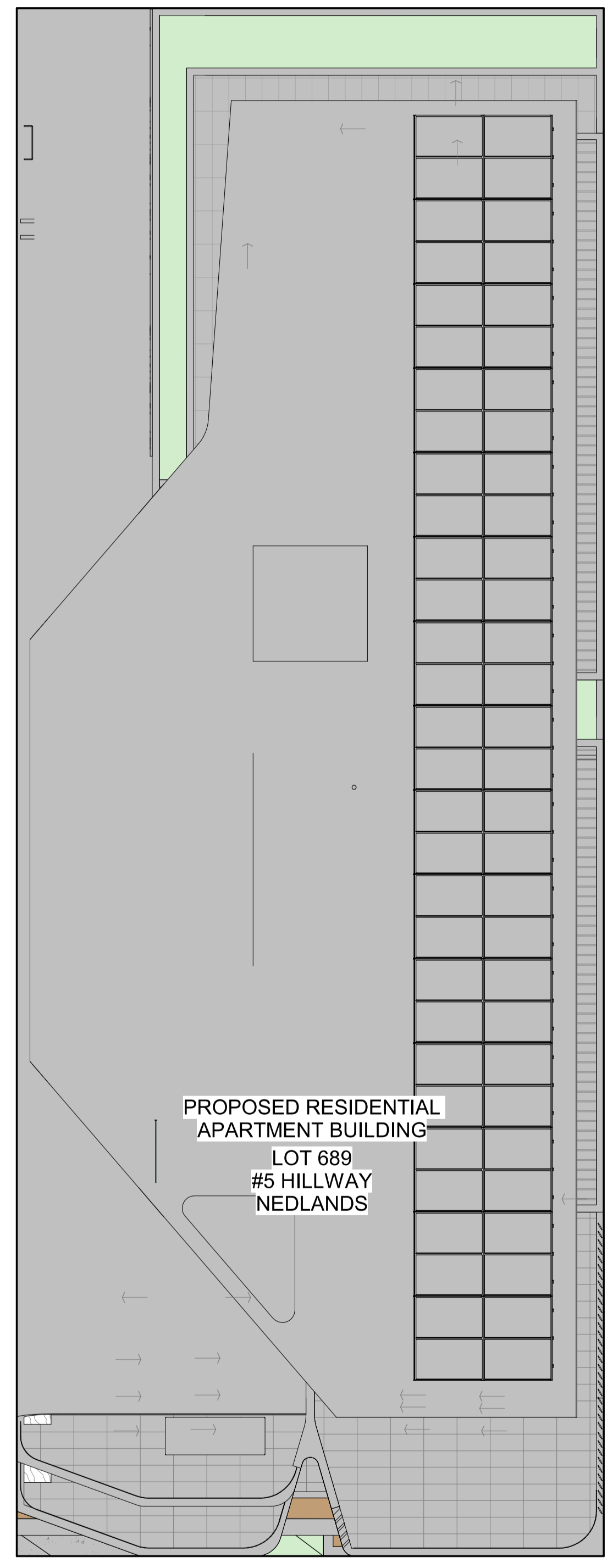


4 Overshadowing Diagram 21st DEC 10am with Existing Building  
SCALE: 1:200

5 Overshadowing Diagram 21st DEC 12pm with Existing Building  
SCALE: 1:200

6 Overshadowing Diagram 21st DEC 2pm with Existing Building  
SCALE: 1:200





1 Overshadowing Diagram 21st JUNE 12pm as Vacant Site  
SCALE: 1:100

2 Overshadowing Diagram 21st JUNE 12pm and Existing Building  
SCALE: 1:100





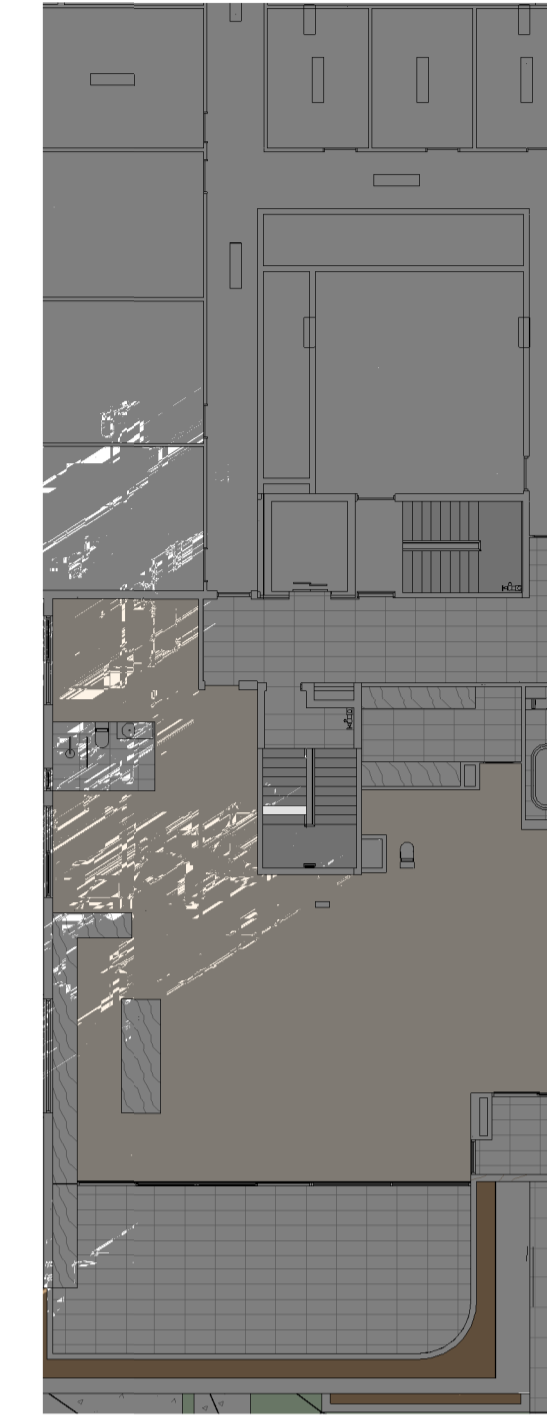
1 L2 June 21st at 9am  
SCALE:



2 L2 June 21st at 10am  
SCALE:



3 L2 June 21st at 11am  
SCALE:



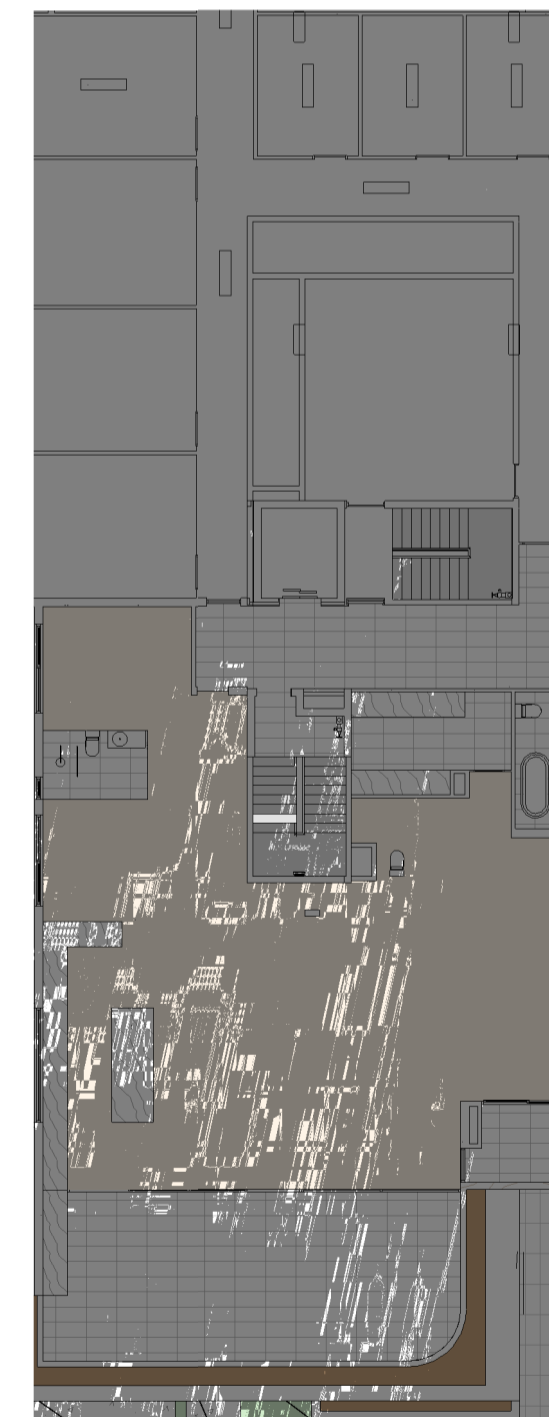
4 L2 June 21st at 12pm  
SCALE:



5 L2 June 21st at 1pm  
SCALE:

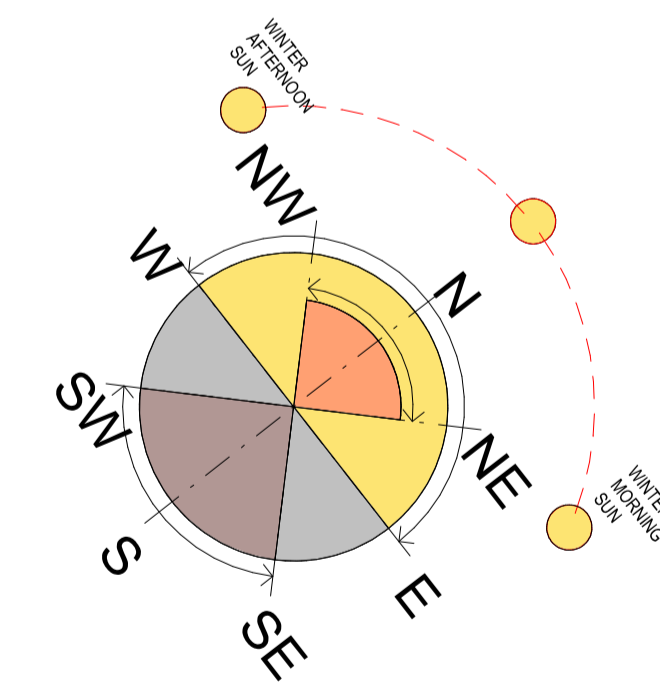


6 L2 June 21st at 2pm  
SCALE:

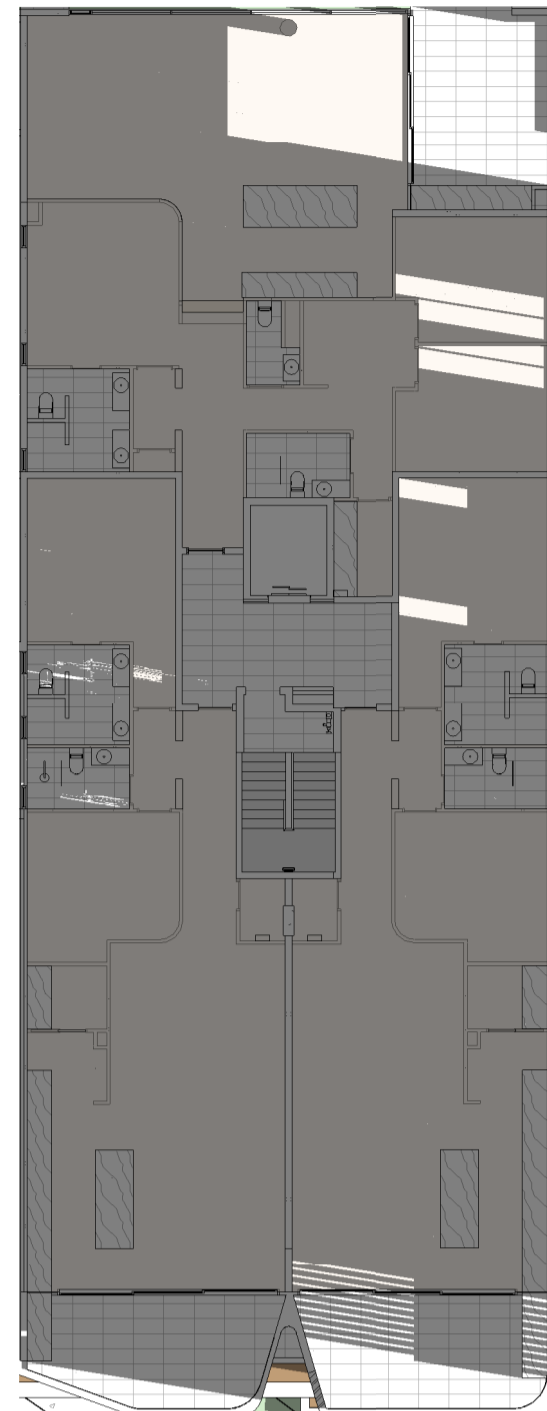


7 L2 June 21st at 3pm  
SCALE:

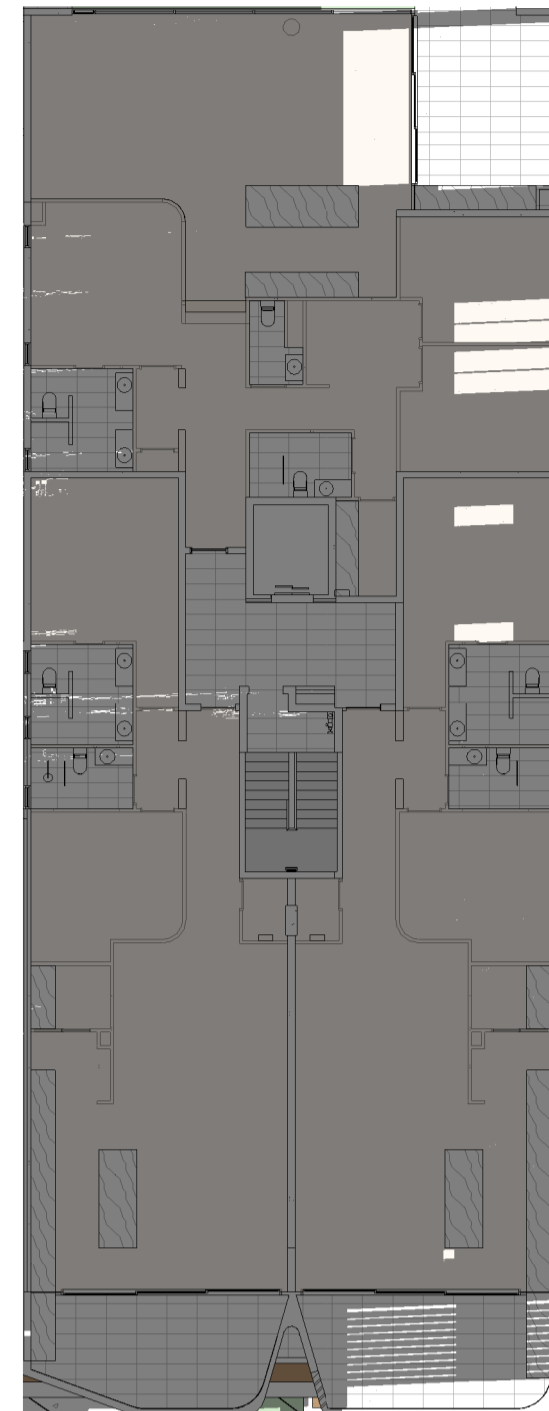
L2 INTERNAL SOLAR ANALYSIS



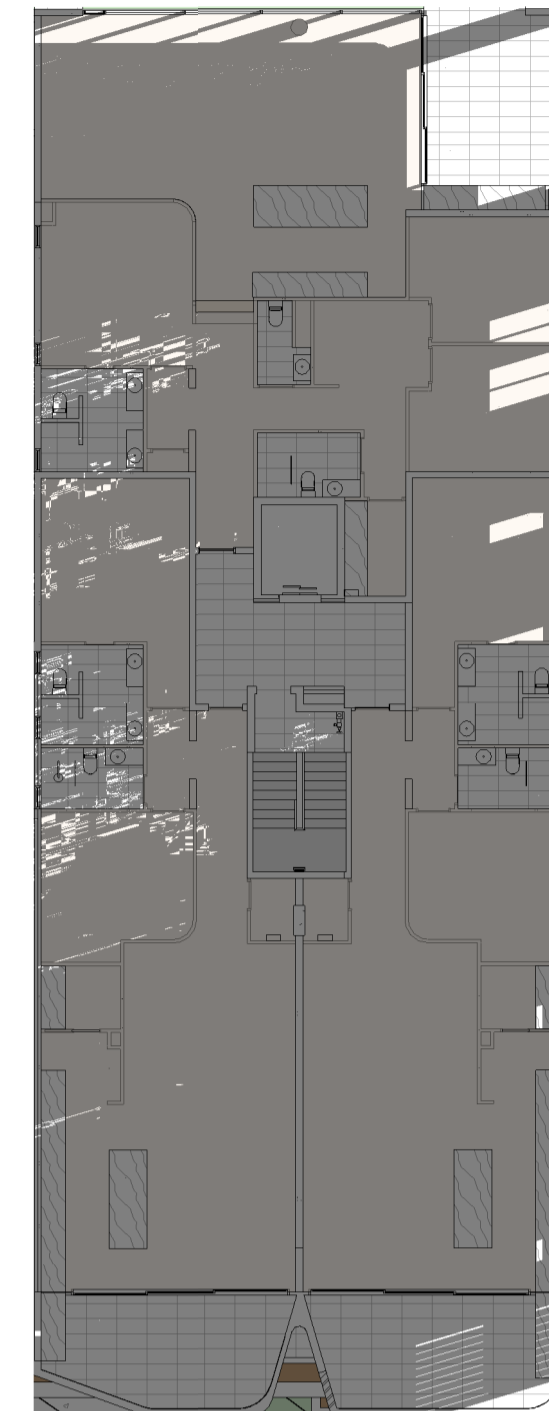
THE 1 APARTMENT ON LEVEL 2 DOES NOT ACHIEVE A MINIMUM OF 2 HOURS PER DAY OF DIRECT SUNLIGHT BETWEEN 9AM AND 3PM



1 L3 June 21st at 9am  
SCALE:



2 L3 June 21st at 10am  
SCALE:



3 L3 June 21st at 11am  
SCALE:



4 L3 June 21st at 12pm  
SCALE:



5 L3 June 21st at 1pm  
SCALE:

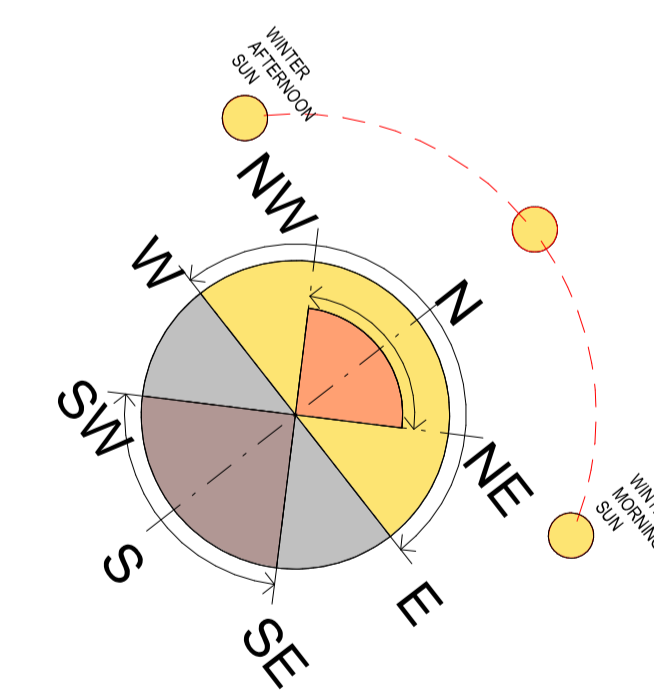


6 L3 June 21st at 2pm  
SCALE:



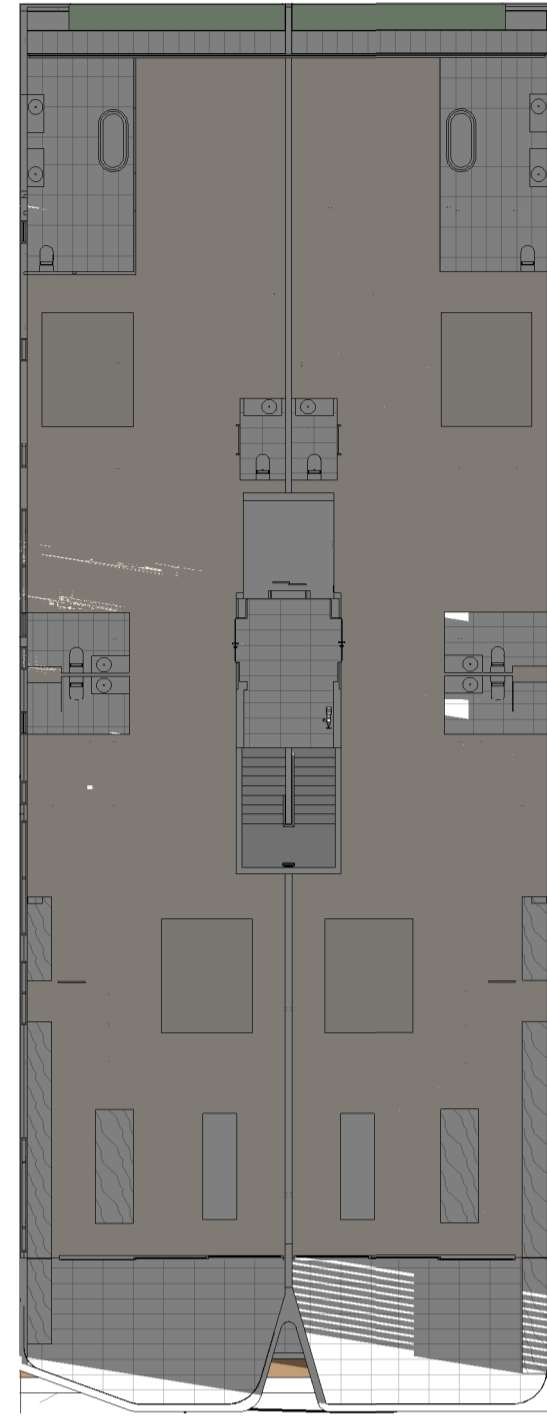
7 L3 June 21st at 3pm  
SCALE:

L3 INTERNAL SOLAR ANALYSIS

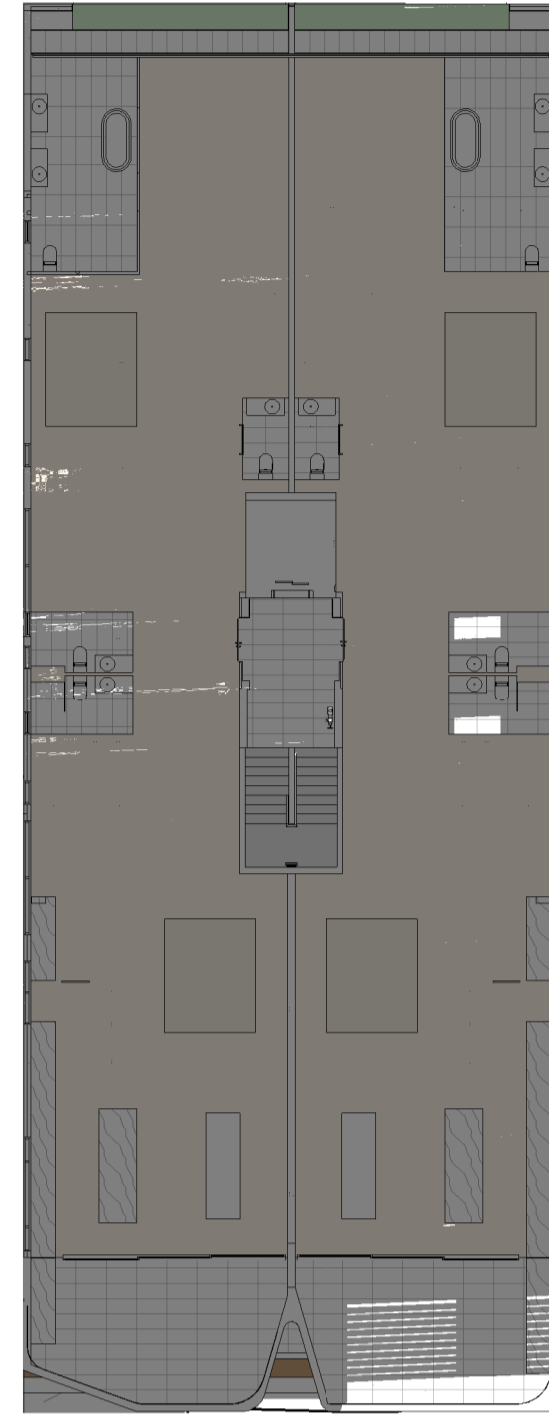


OUT OF 3 APARTMENTS ON LEVEL 3  
ACHIEVES A MINIMUM OF 2 HOURS PER DAY  
OF DIRECT SUNLIGHT BETWEEN 9AM AND 3PM

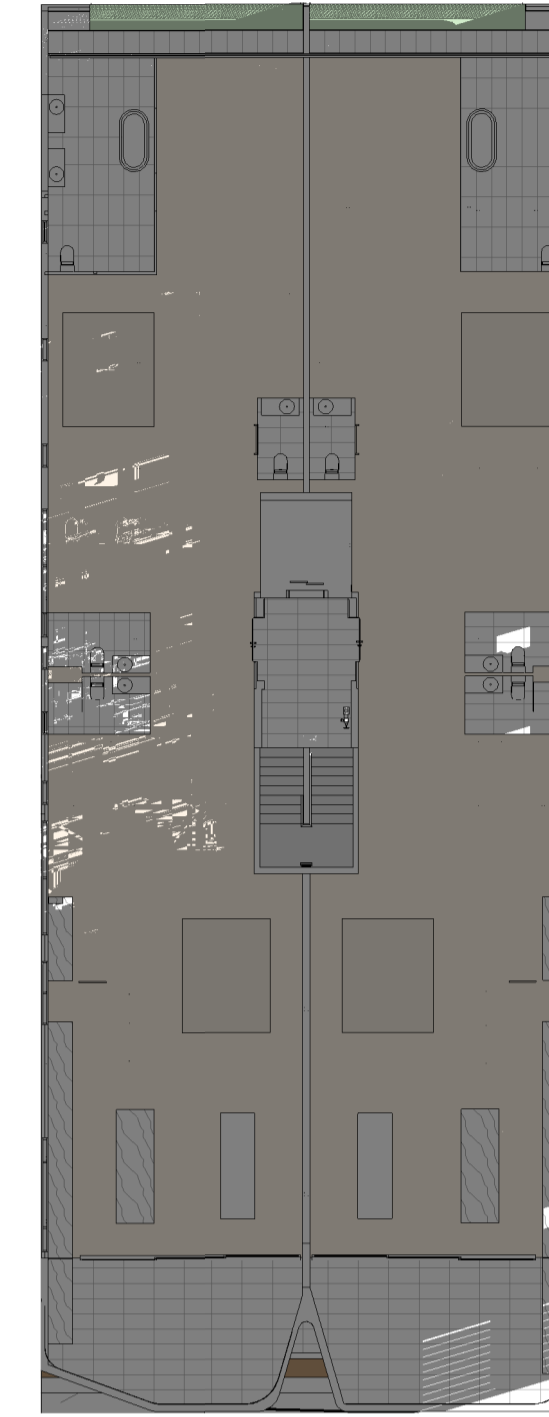




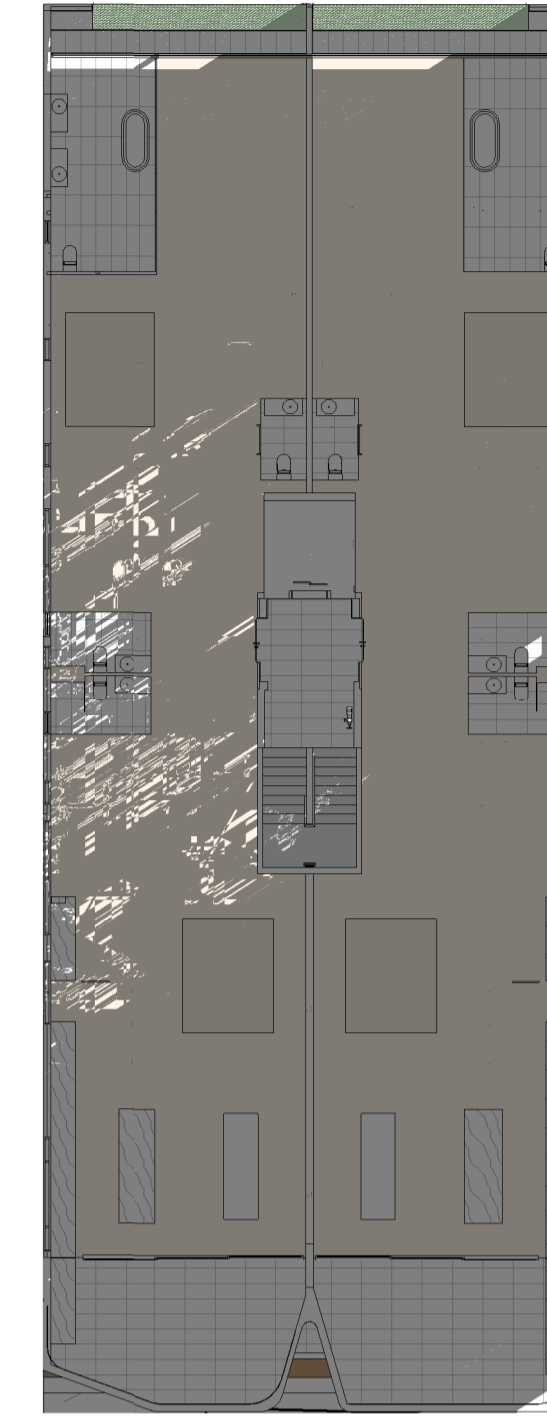
1 L4 June 21st at 9am  
SCALE:



2 L4 June 21st at 10am  
SCALE:



3 L4 June 21st at 11am  
SCALE:



4 L4 June 21st at 12pm  
SCALE:



5 L4 June 21st at 1pm  
SCALE:

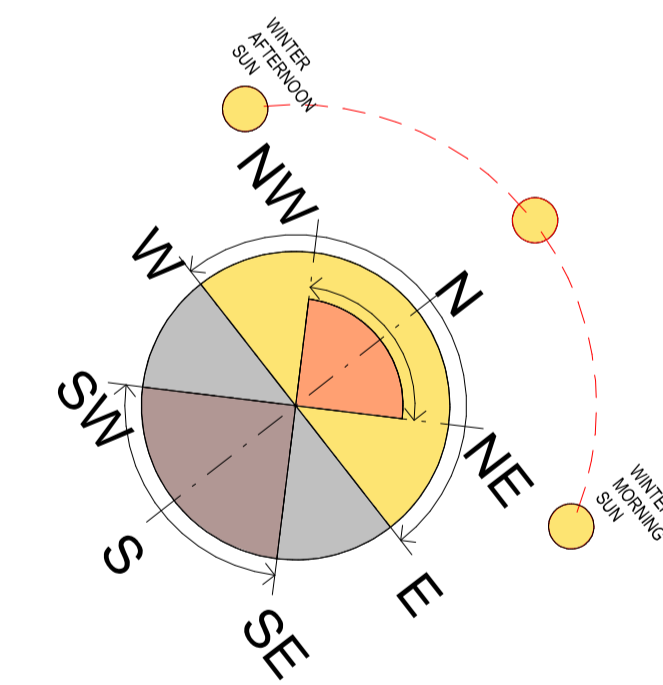


6 L4 June 21st at 2pm  
SCALE:

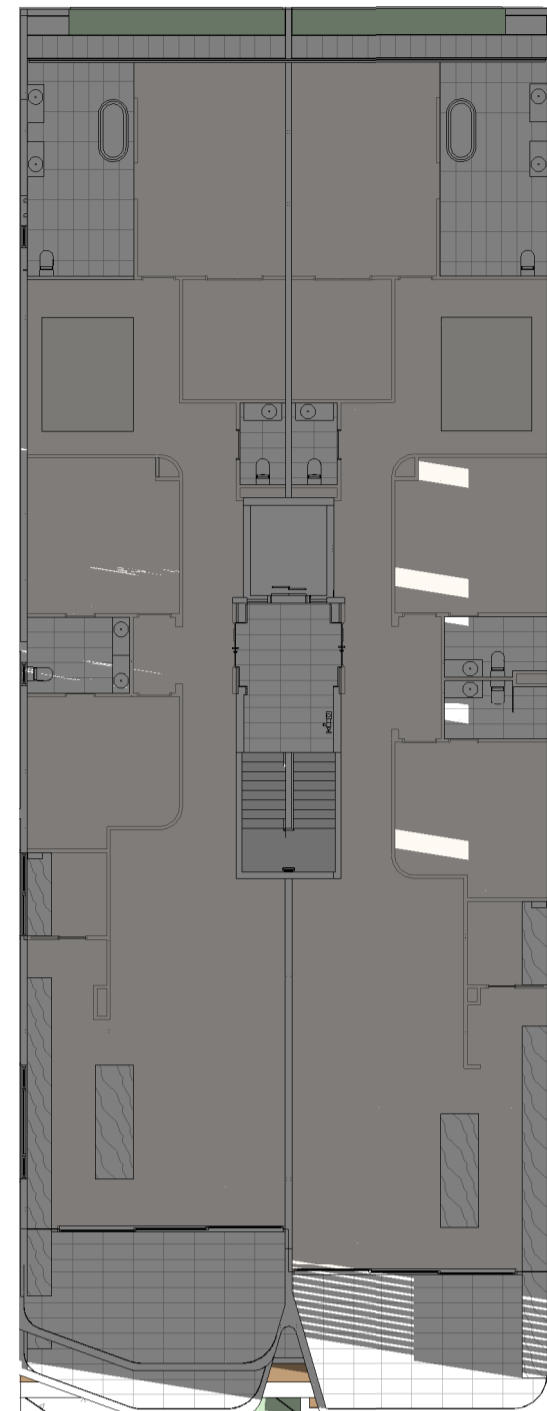


7 L4 June 21st at 3pm  
SCALE:

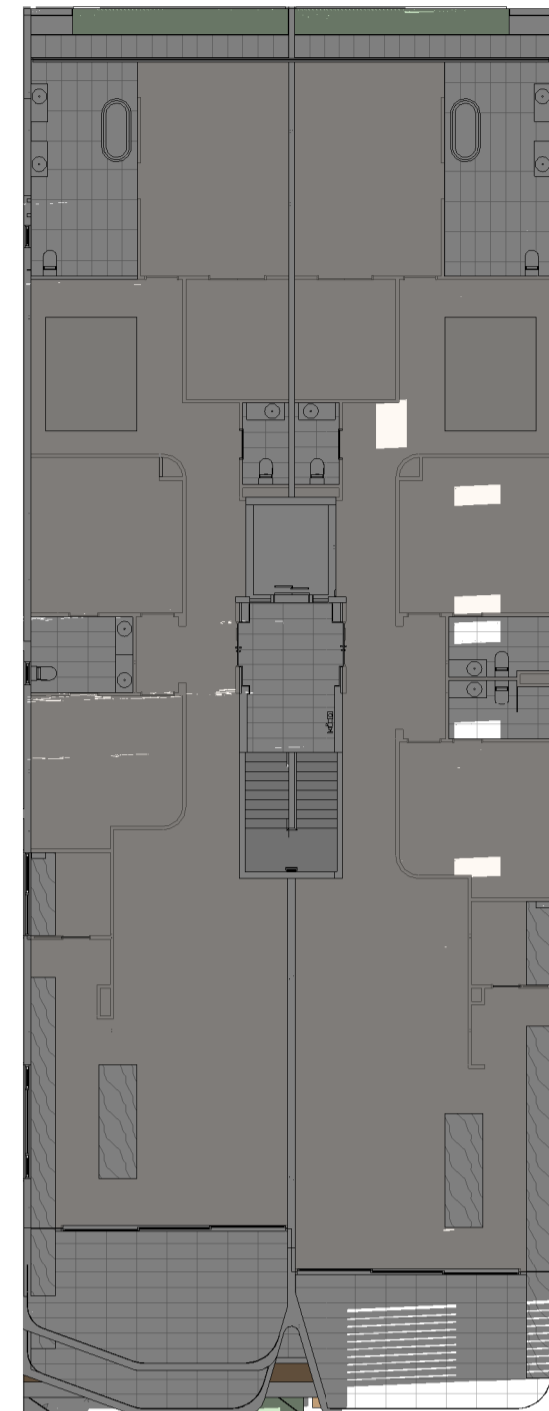
L4 INTERNAL SOLAR ANALYSIS



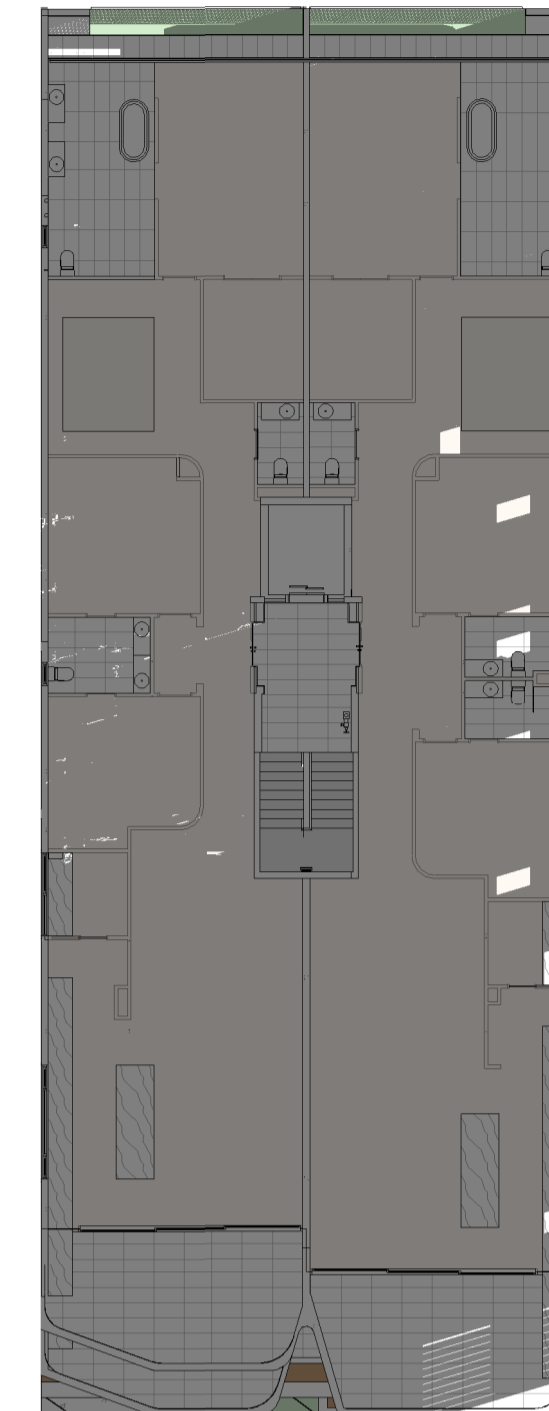
2 OUT OF 2 APARTMENTS ON LEVEL 4  
ACHIEVES A MINIMUM OF 2 HOURS PER DAY  
OF DIRECT SUNLIGHT BETWEEN 9AM AND 3PM



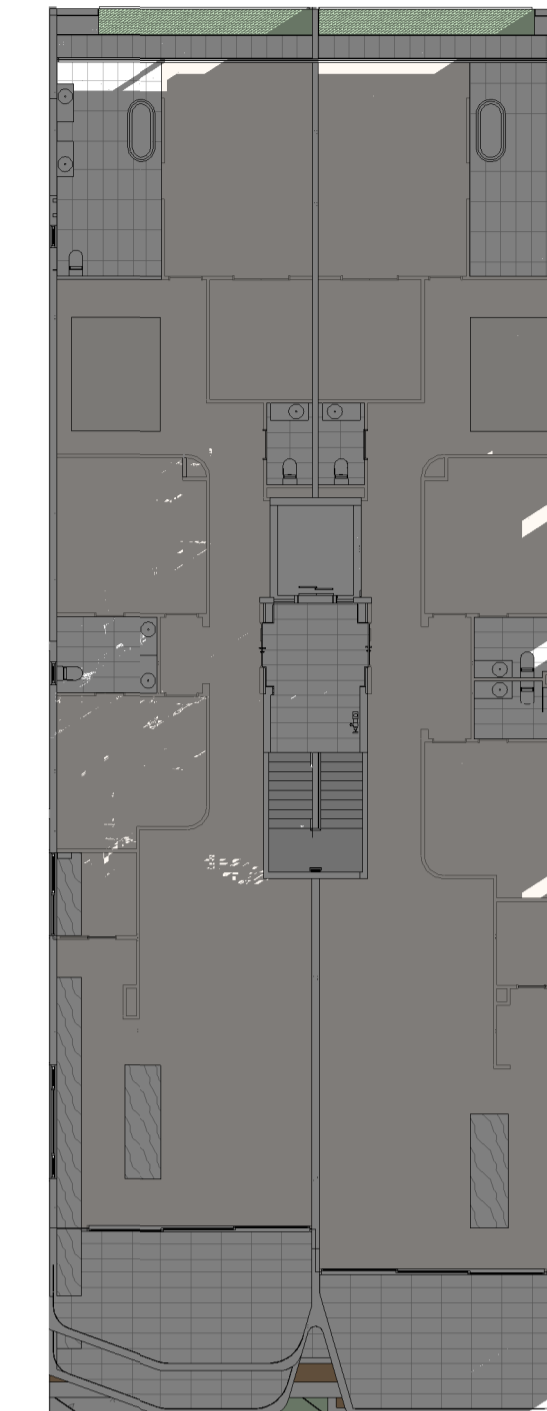
1 L5 June 21st at 9am  
SCALE:



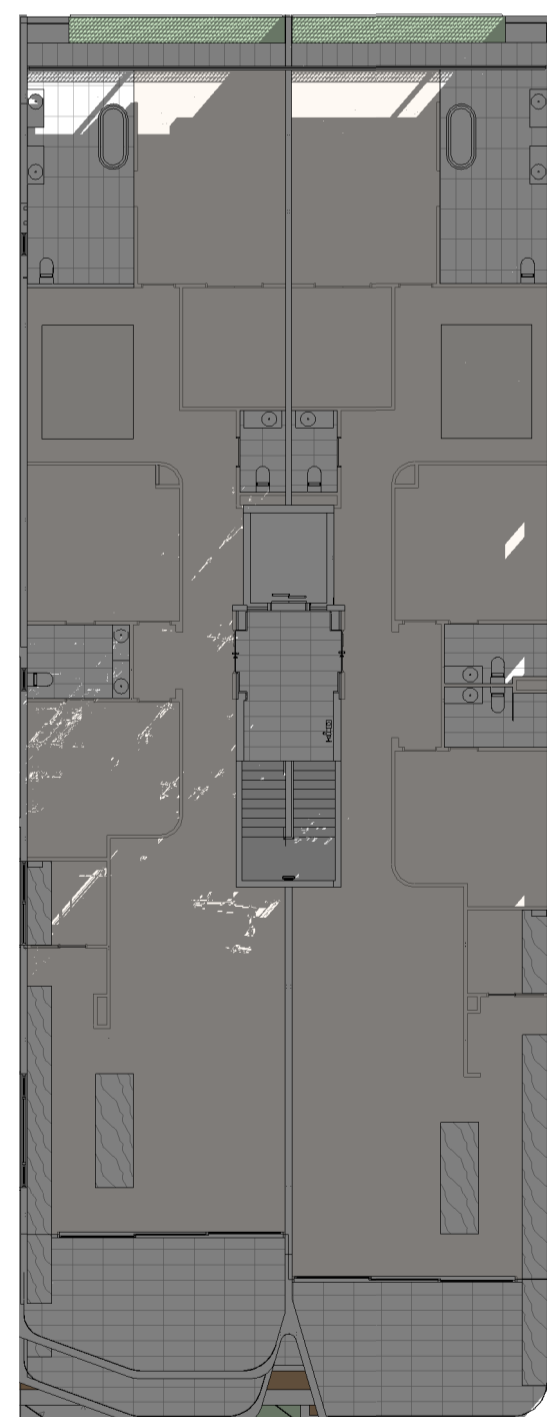
2 L5 June 21st at 10am  
SCALE:



3 L5 June 21st at 11am  
SCALE:



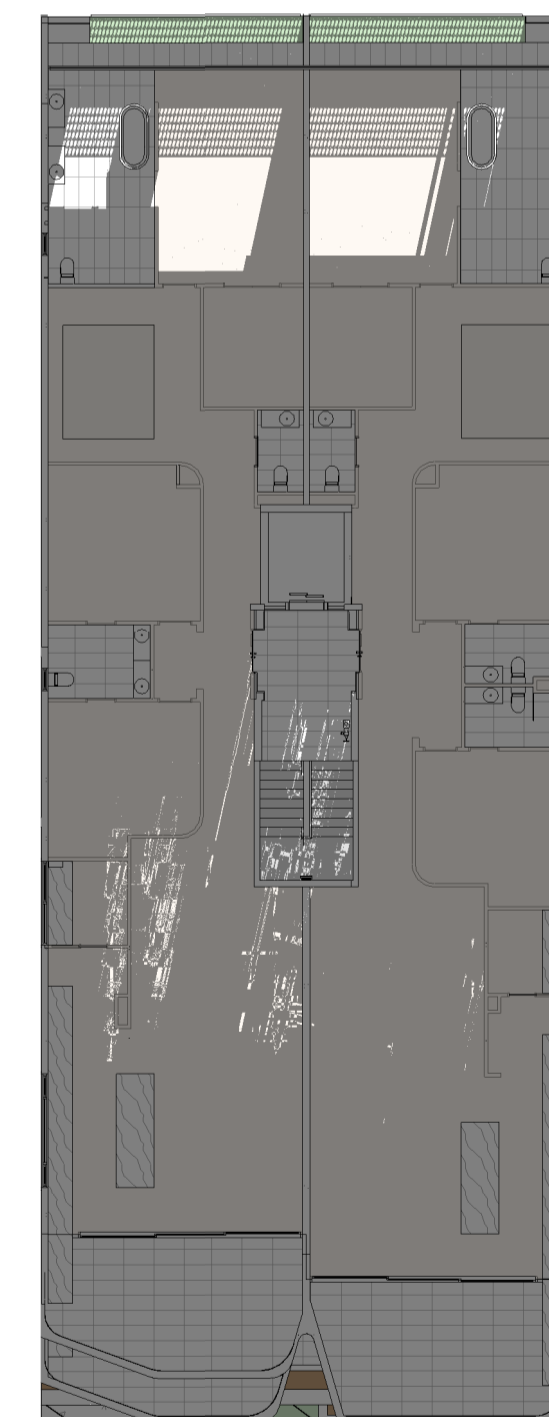
4 L5 June 21st at 12pm  
SCALE:



5 L5 June 21st at 1pm  
SCALE:

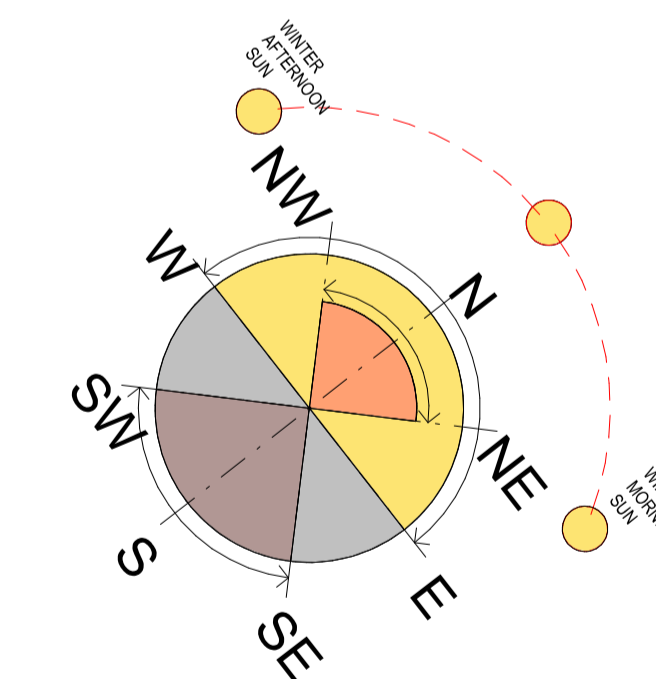


6 L5 June 21st at 2pm  
SCALE:



7 L5 June 21st at 3pm  
SCALE:

L5 INTERNAL SOLAR ANALYSIS



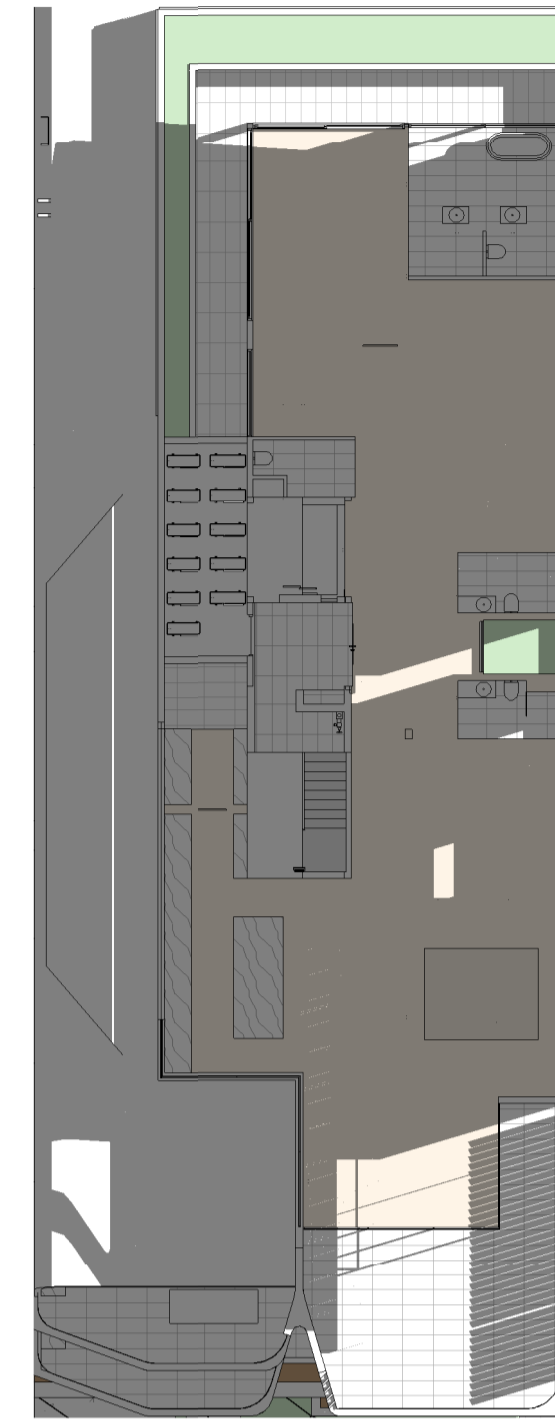
2 OUT OF 2 APARTMENTS ON LEVEL 5  
ACHIEVES A MINIMUM OF 2 HOURS PER DAY  
OF DIRECT SUNLIGHT BETWEEN 9AM AND 3PM



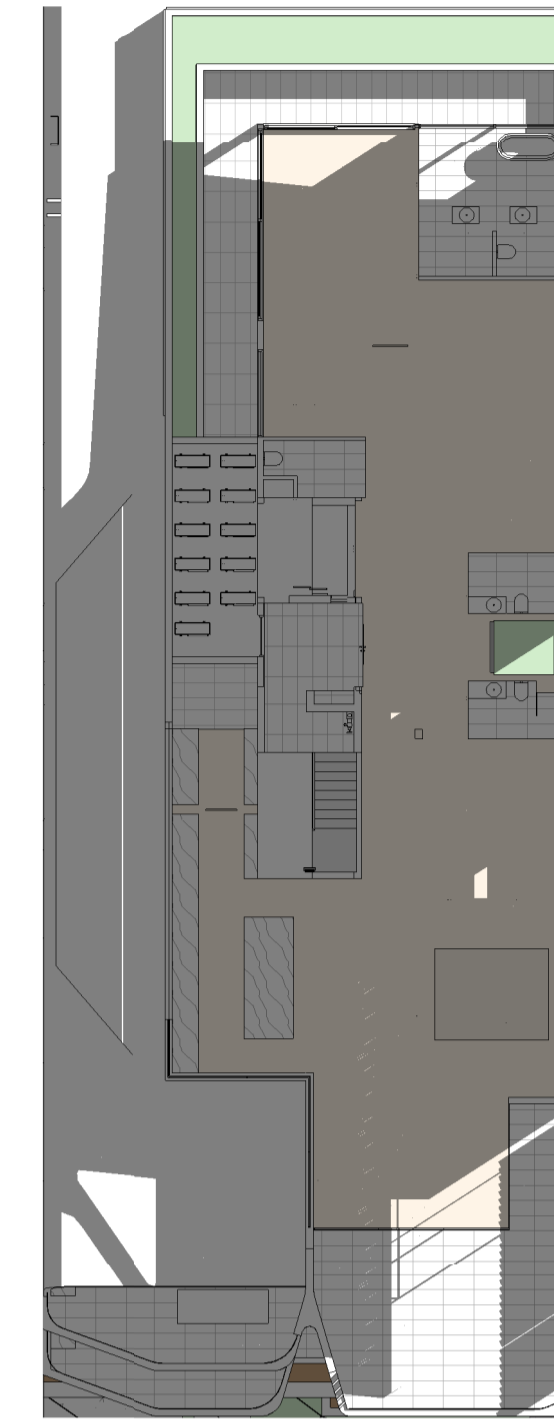
1 L6 June 21st at 9am  
SCALE:



2 L6 June 21st at 10am  
SCALE:



3 L6 June 21st at 11am  
SCALE:



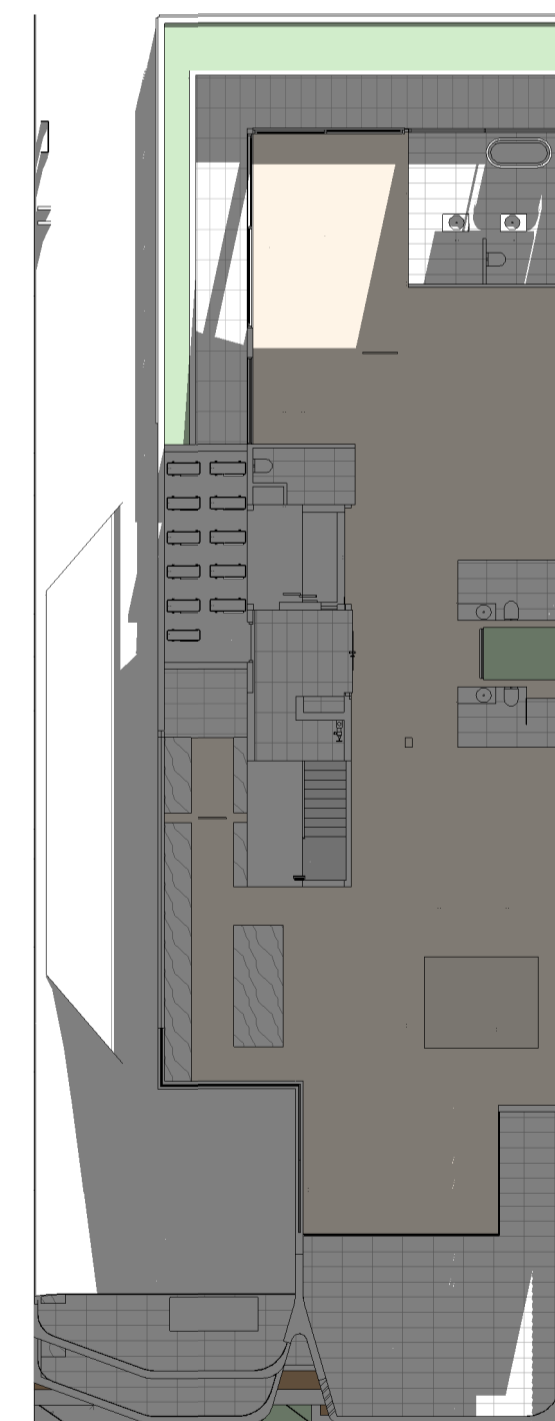
4 L6 June 21st at 12pm  
SCALE:



5 L6 June 21st at 1pm  
SCALE:

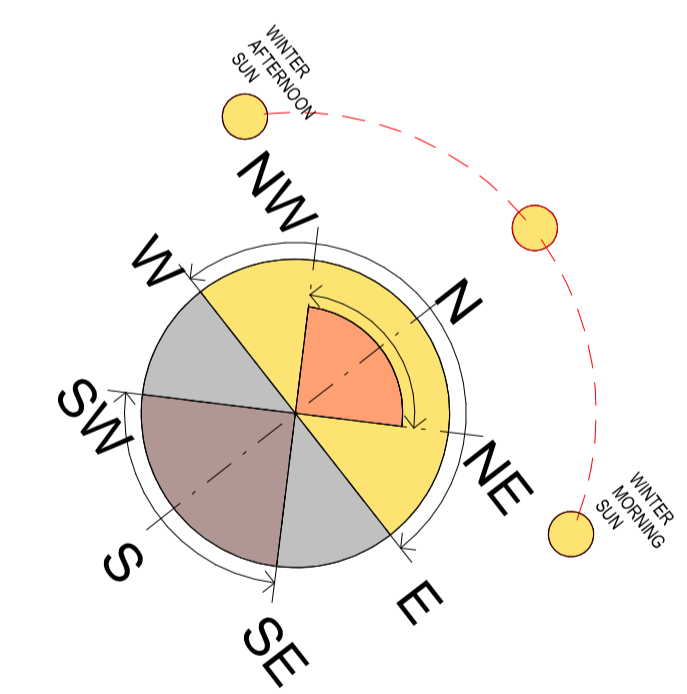


6 L6 June 21st at 2pm  
SCALE:



7 L6 June 21st at 3pm  
SCALE:

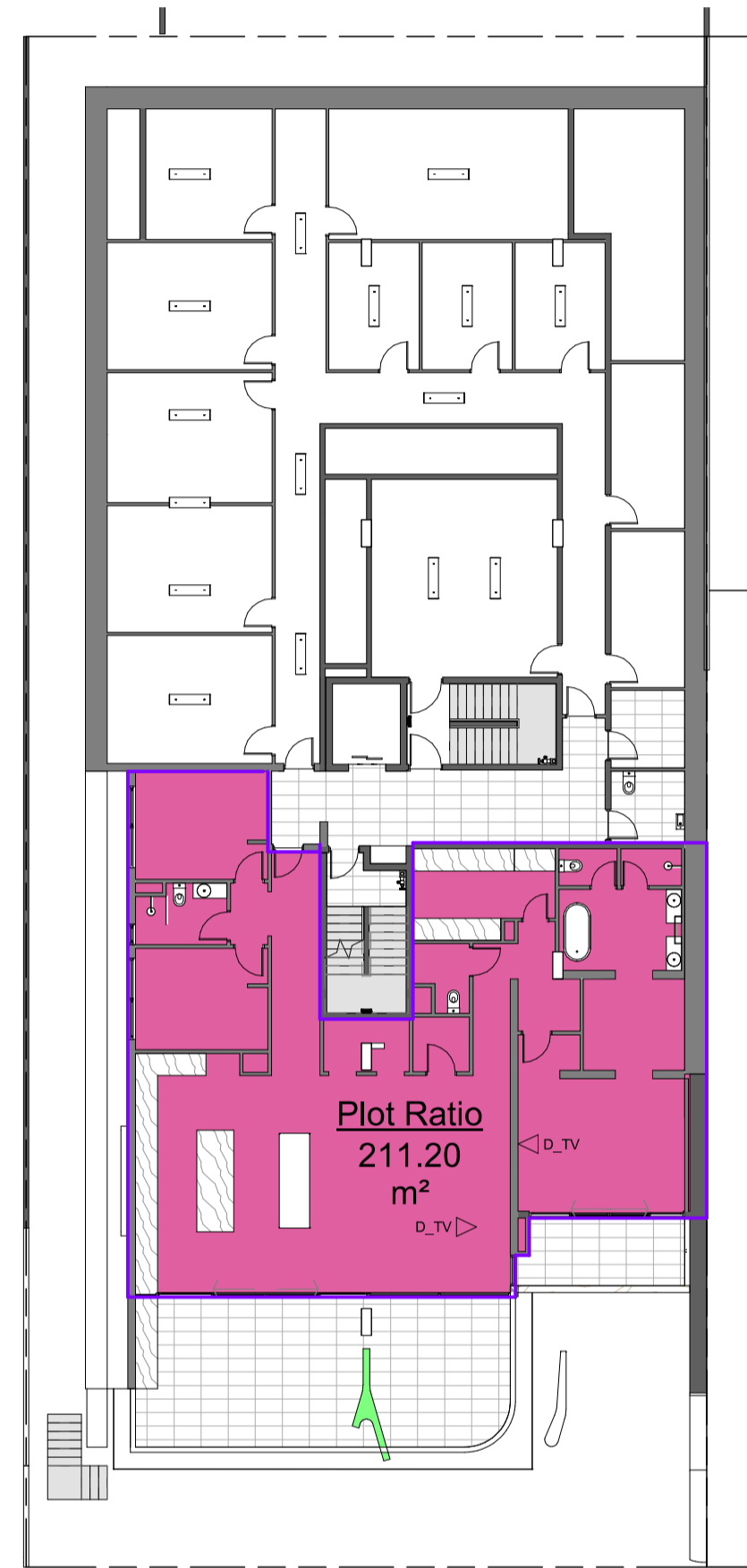
L6 INTERNAL SOLAR ANALYSIS



THE 1 APARTMENT ON LEVEL 6 ACHIEVES A MINIMUM OF 2 HOURS PER DAY OF DIRECT SUNLIGHT BETWEEN 9AM AND 3PM

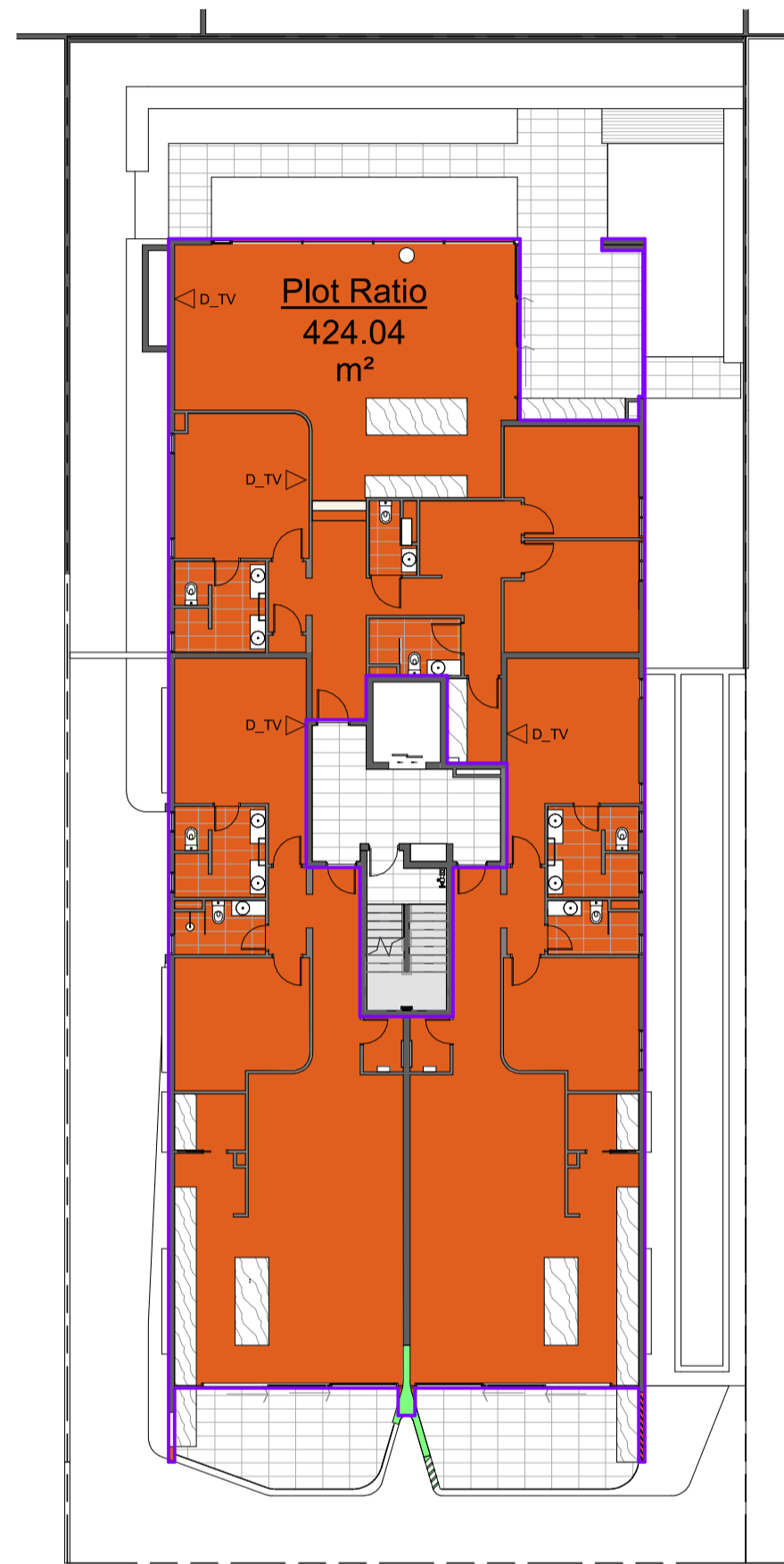


211 m<sup>2</sup>



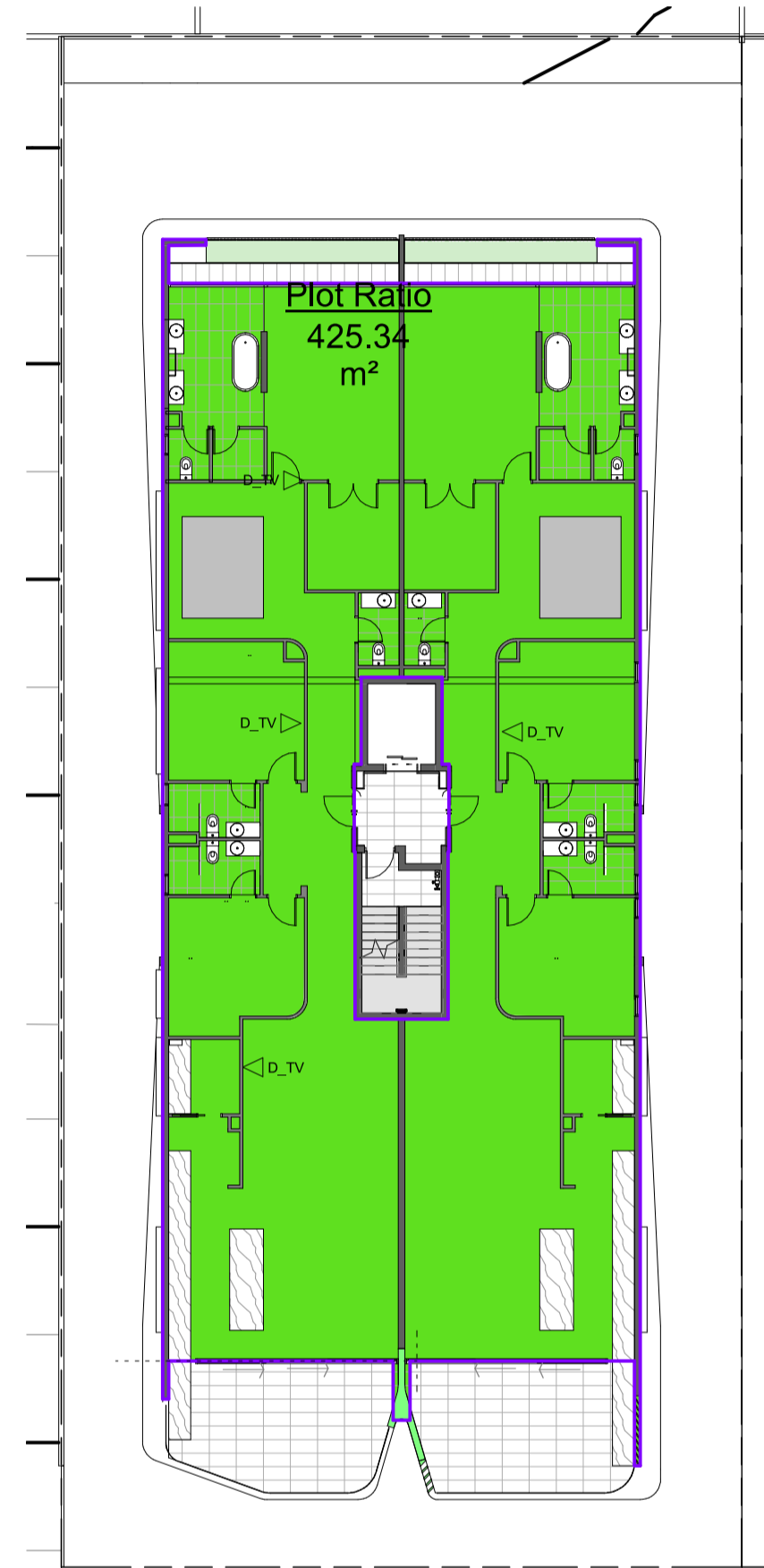
1 Level 2  
A\_105 SCALE: 1:200

424 m<sup>2</sup>



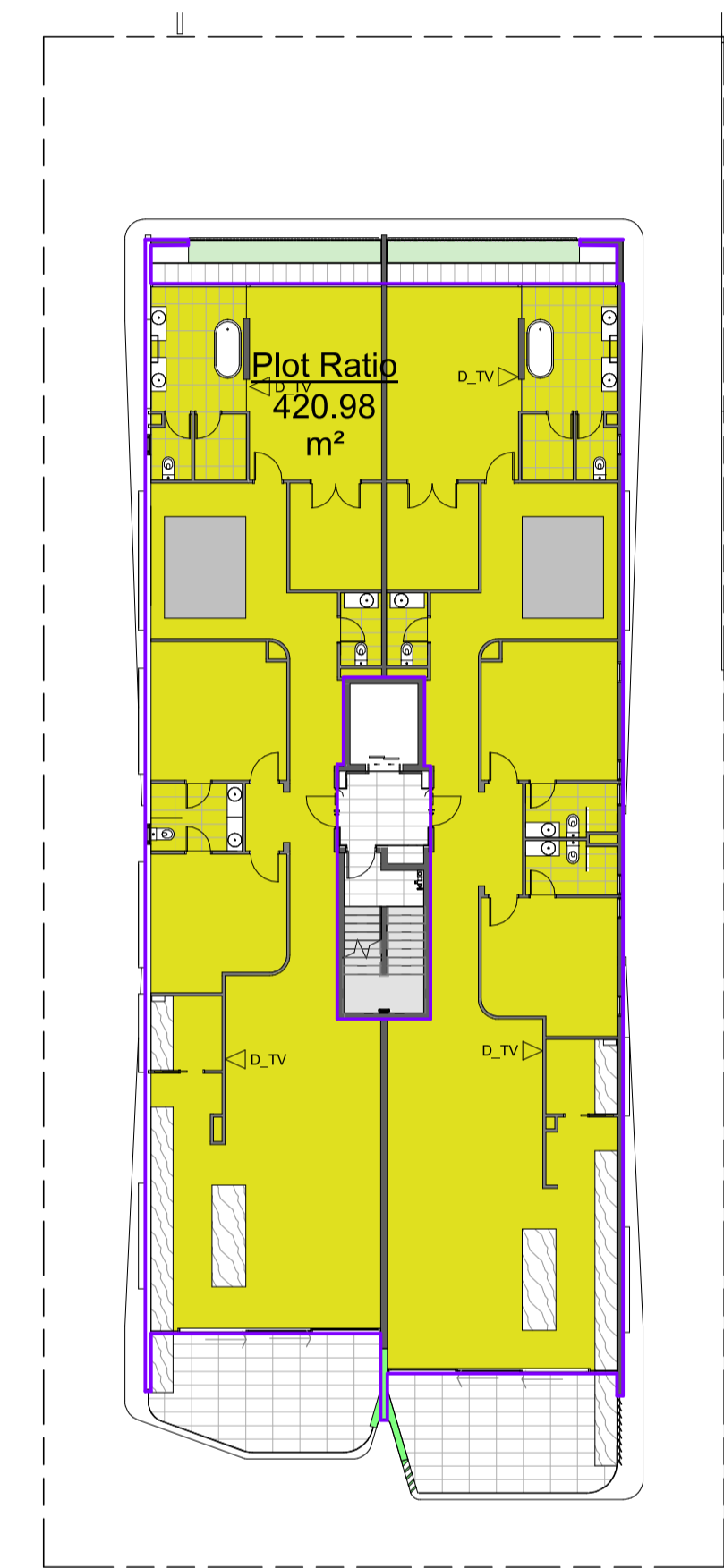
2 Level 3  
A\_105 SCALE: 1:200

425 m<sup>2</sup>



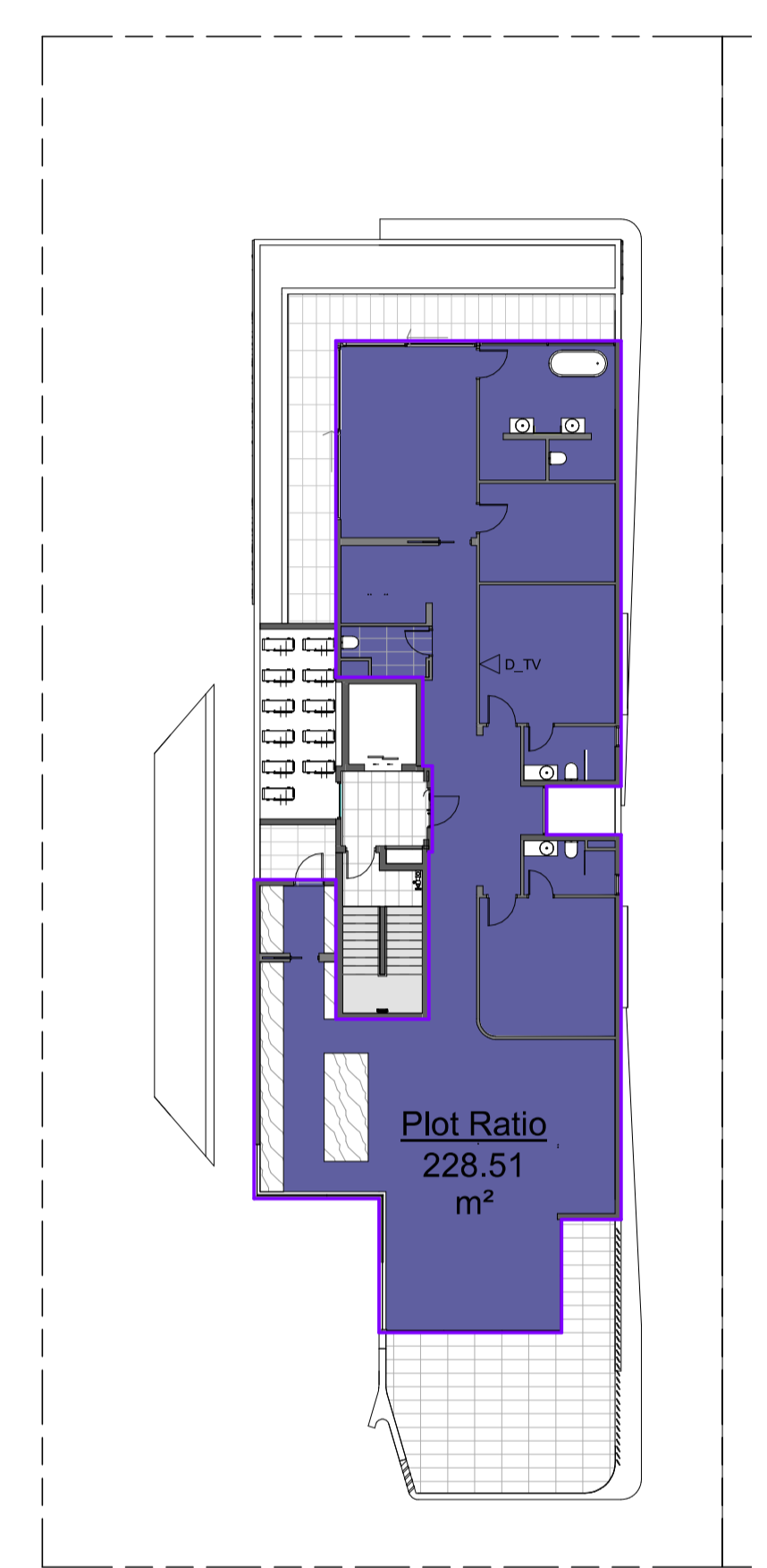
3 Level 4  
A\_105 SCALE: 1:200

421 m<sup>2</sup>



4 Level 5  
A\_105 SCALE: 1:200

229 m<sup>2</sup>



5 Level 6  
A\_105 SCALE: 1:200

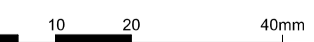
Plot Ratio		
Name	Area	Perimeter
Plot Ratio	211 m <sup>2</sup>	76
Plot Ratio	424 m <sup>2</sup>	120
Plot Ratio	425 m <sup>2</sup>	113
Plot Ratio	421 m <sup>2</sup>	105
Plot Ratio	229 m <sup>2</sup>	99
	1710 m <sup>2</sup>	513

ALLOWABLE PLOT RATIO AT 2:1 = 1820m<sup>2</sup>

architects & builders

**GIORGI**

unit 1/24 parkland road, osborne park wa 6017  
t: 08 9444 8711 f: 08 9444 8733  
www.giorgi.com.au  
Sheet Size A1  
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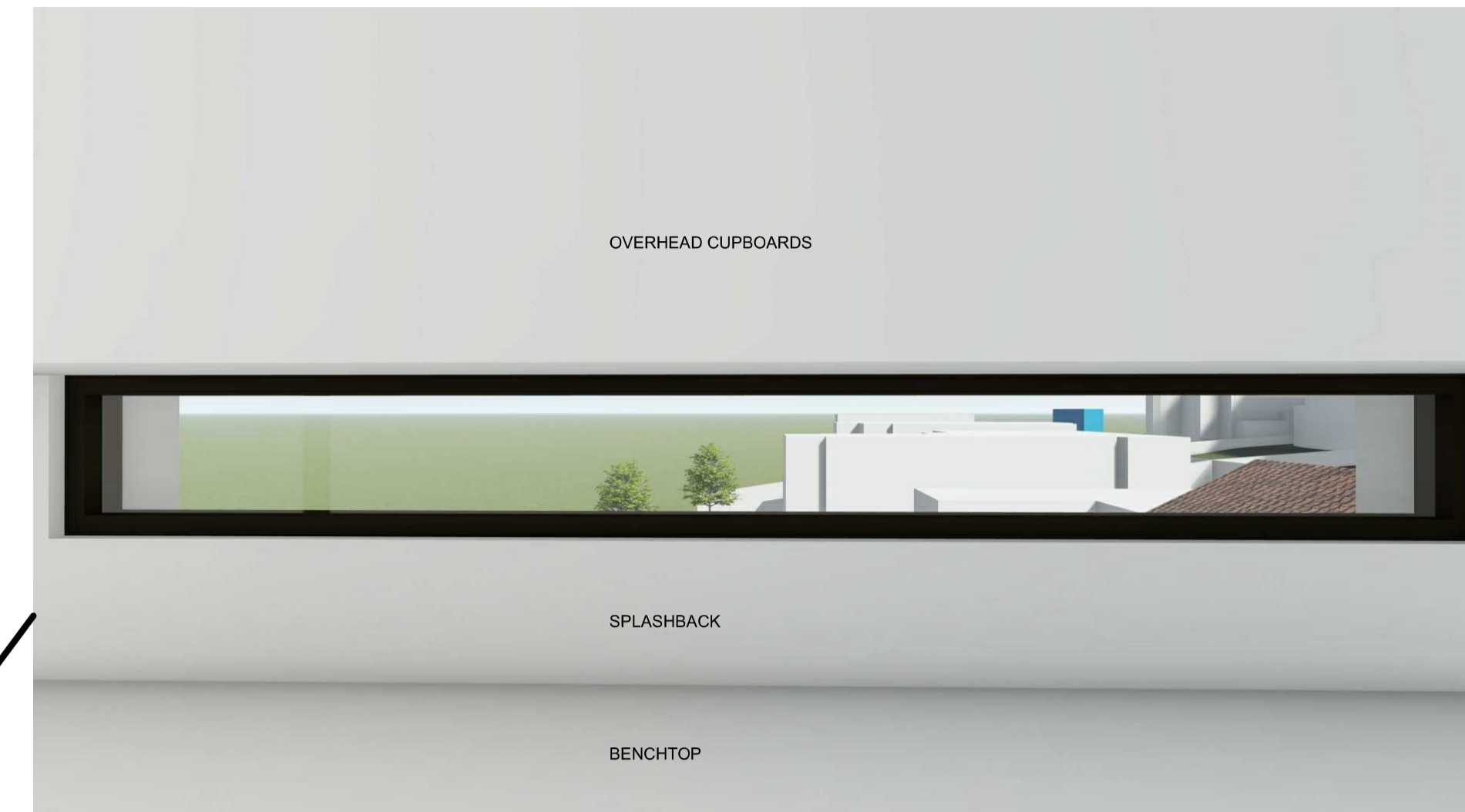


JOB NUMBER DATE SCALE 1:200  
DRAWING NO. A\_120 DATE AUG 2020

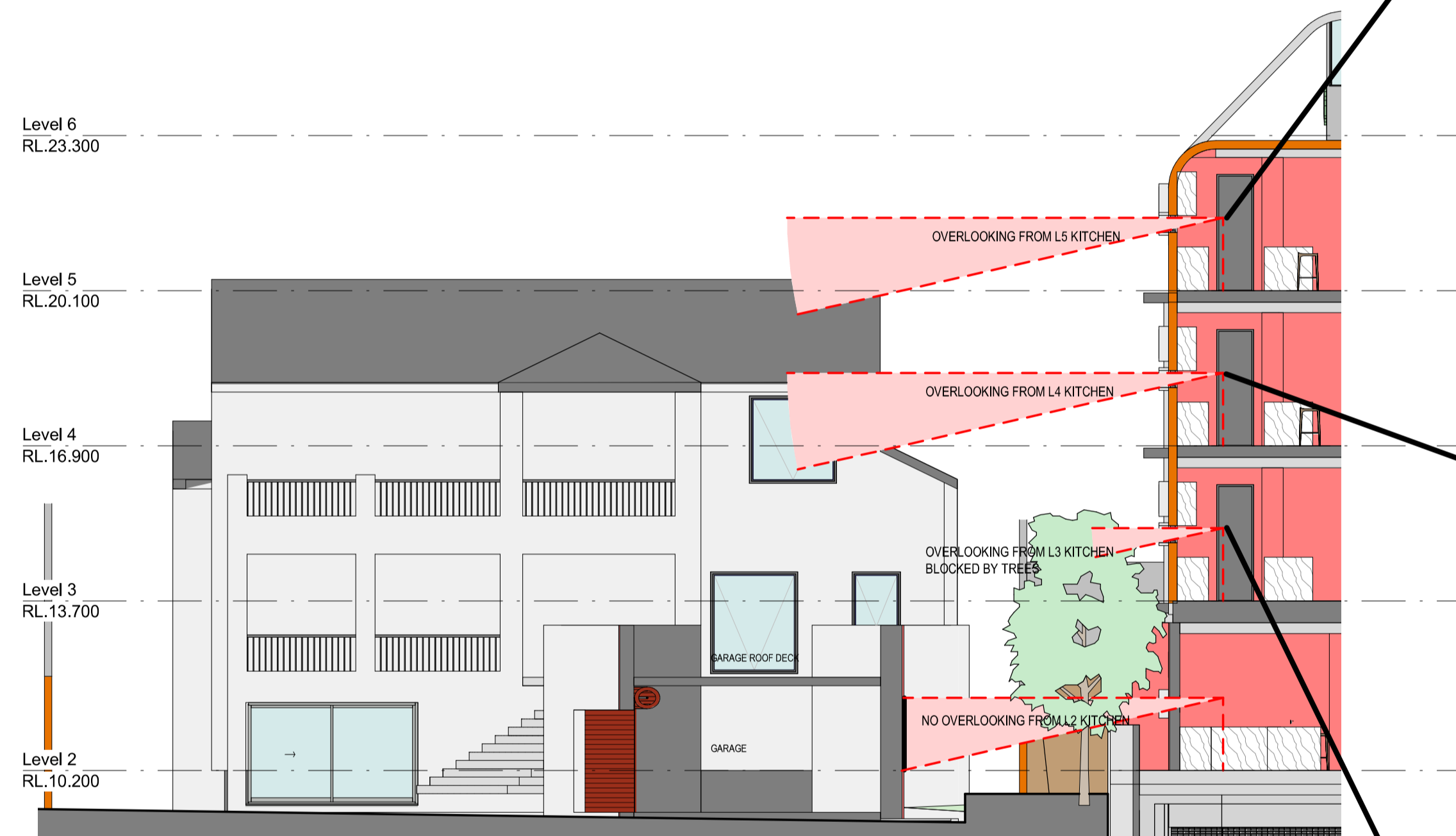




VIEW FROM #7 HILLWAY FRONT TERRACE LOOKING BACK



VIEW FROM L5 KITCHEN LOOKING OUT



1 Section 2  
A\_114 SCALE: 1:100



VIEW FROM L4 KITCHEN LOOKING OUT



VIEW FROM L3 KITCHEN LOOKING OUT

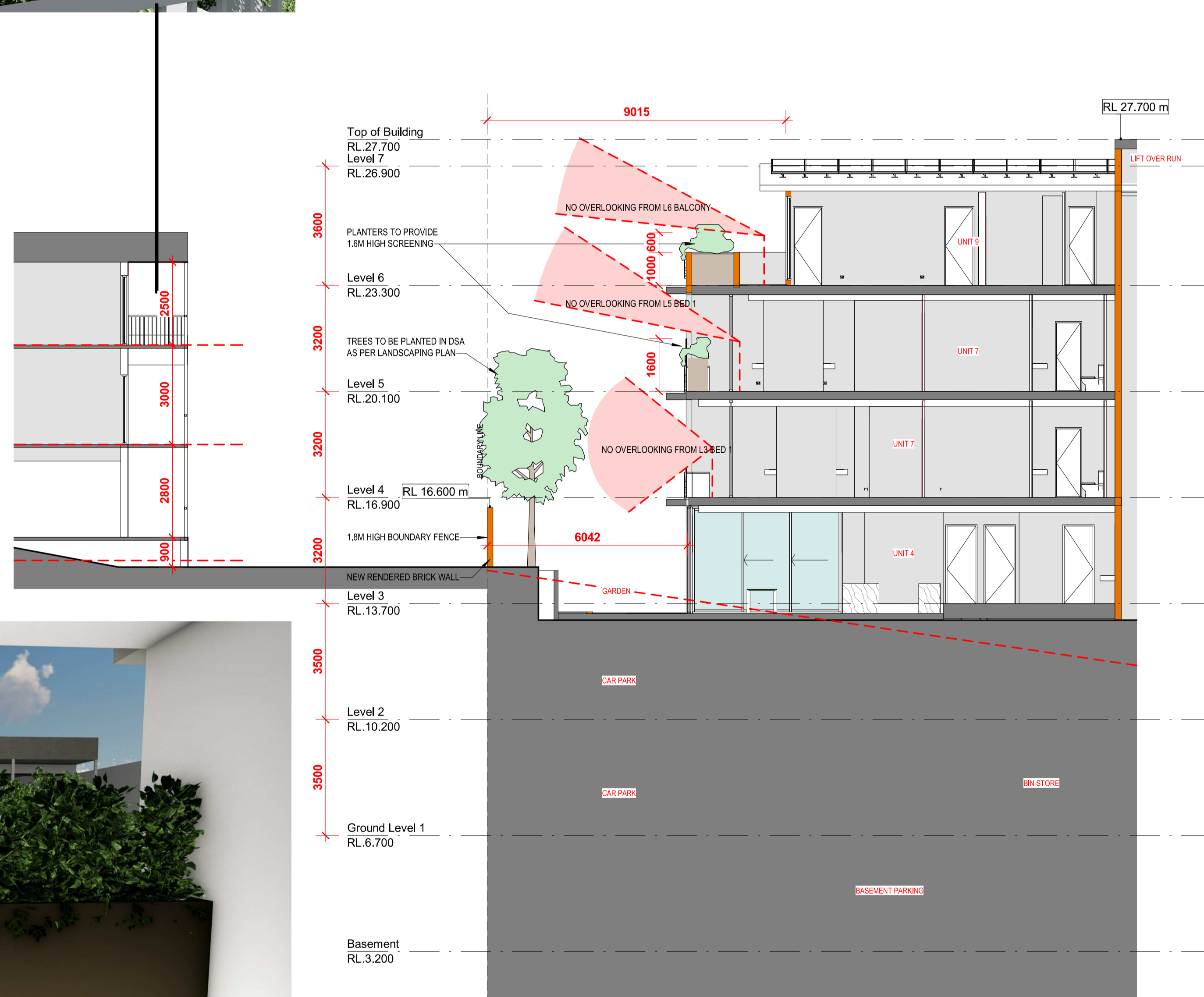
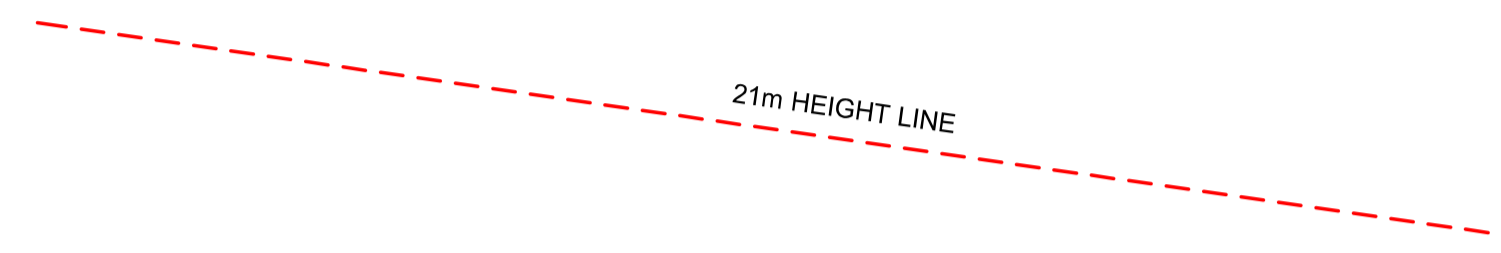




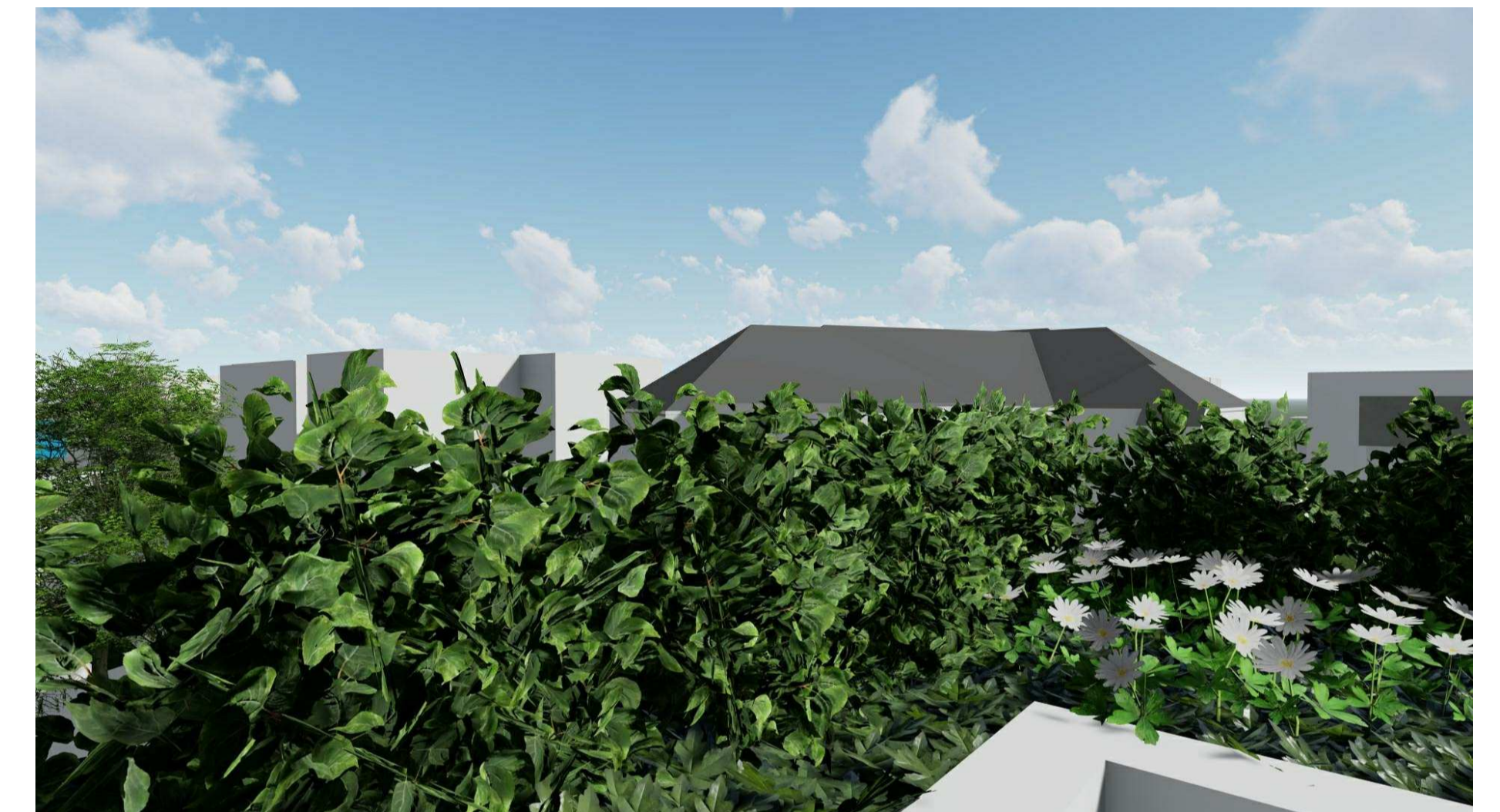
VIEW FROM #72 KINGSWAY LOOKING BACK



VIEW FROM L6 BED 1 LOOKING TOWARDS #72 KINGSWAY



1 Section B  
SCALE: 1:100



VIEW FROM L6 BED 1 LOOKING TOWARDS #74 KINGSWAY



VIEW FROM L5 BED 1 LOOKING TOWARDS #72 KINGSWAY



VIEW FROM L6 BED 1 LOOKING TOWARDS #7 HILLWAY

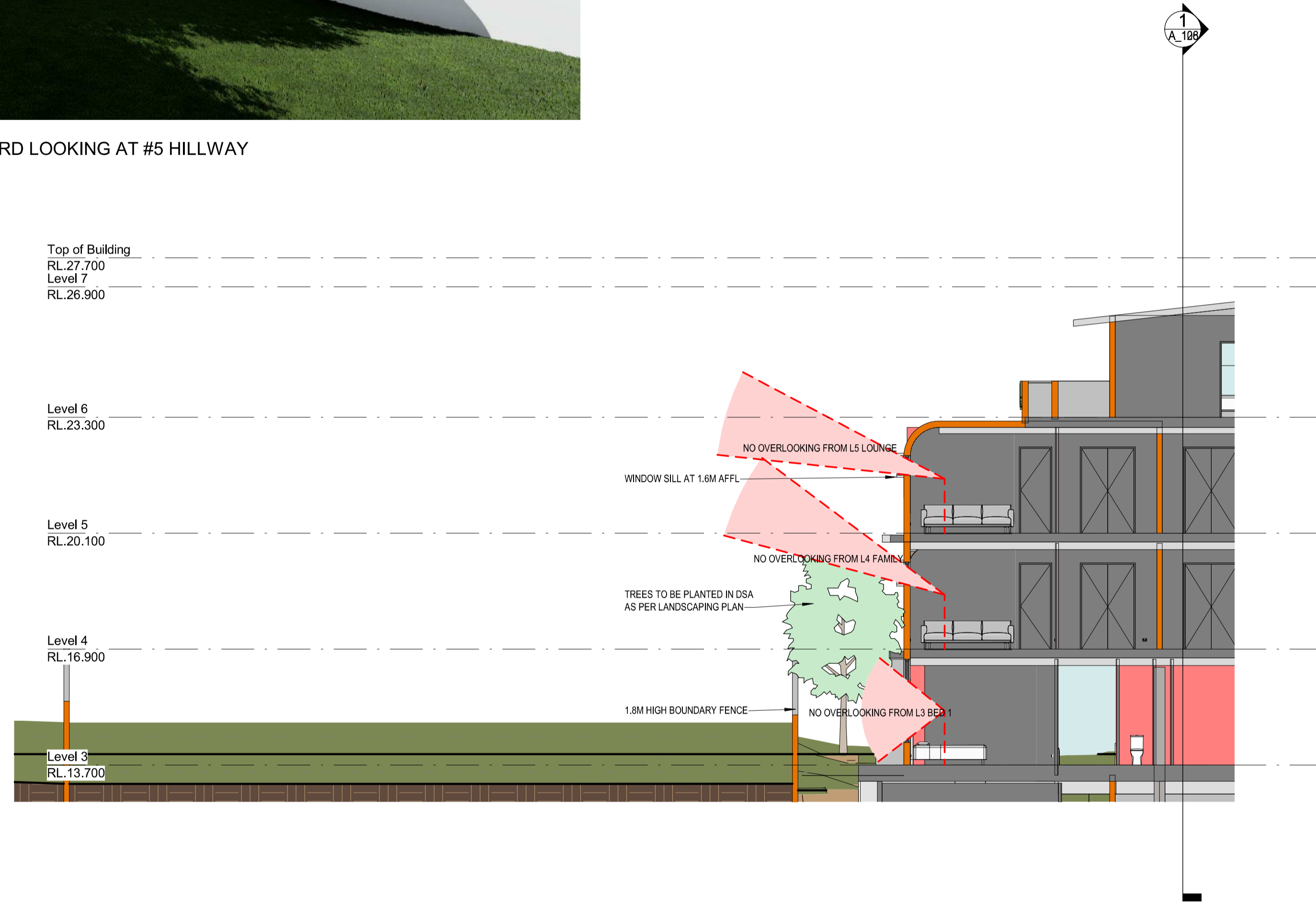




VIEW FROM #7 HILLWAY BACK YARD LOOKING AT #5 HILLWAY



VIEW FROM L4 FAMILY LOOKING TOWARDS #7 HILLWAY



1 Section 3  
A\_114 SCALE: 1:100



VIEW FROM L3 BED 1 LOOKING TOWARDS #7 HILLWAY



Our Ref: 19-510  
CoN Ref: DA20/43894  
DAP Ref: DAP/20/01741

9 October 2020

City of Nedlands  
electronic submission

Attention: Roy Winslow – Principal Planner (Urban Planning)

Dear Roy,

**5 HILLWAY, NEDLANDS – JDAP APPROVED APARTMENT DEVELOPMENT – FORM 2 APPLICATION FOR A MINOR AMENDMENT – FROM 10x APARTMENTS TO 9x**

Following from the recent approval granted by the Metro Inner-North Joint Development Assessment Panel (JDAP) for the ten apartment development at 5 Hillway, Nedlands (subject site), **element** is pleased to present this Form 2 application seeking a minor amendment to reduce the number of apartments, from ten as approved to nine.

Due to recent amendments to the Planning and Development (Development Assessment Panel) Regulations 2011, the applicant can now elect for Regulation 17 (Form 2) applications to be determined by either the JDAP or the responsible authority (the City of Nedlands). In this instance, the applicant elects for the application to be determined by the JDAP.

In accordance with the City of Nedlands and JDAP requirements, please find enclosed:

- A completed and signed Form 2;
- A completed and signed City of Nedlands DA Form;
- A completed and signed MRS Form 1;
- The proposed amended development plans; and
- A letter prepared by Lavan Legal confirming the suitability of the DAP Form 2 application pathway for this proposed minor amendment.

We understand that the City will confirm the DA fee in due course, for subsequent payment.

**Existing Approval**

At its meeting of 29 September 2020 the JDAP approved a six storey apartment building comprising ten apartments, subject to conditions. For the purposes of this minor amendment application, the approved development is broadly summarised as follows:

Basement

- Residential parking area.

Ground (Level 1)

- Residential lobby and parking area (visitor and resident bays).

Level 2

- 1x apartment and resident stores.

Level 3

- 3x apartments.

Level 4

- 3x apartments (1x rear facing three-bedroom apartment and 2x street facing two-bedroom apartments).

Level 5

- 2x apartments.

Level 6

- 1x apartment.

**Proposed Minor Amendment**

This application seeks the following minor amendments:

Ground (Level 1)

- Conversion of one resident car bay into one visitor car bay (behind the security shutter).

Level 4

- Conversion of 3x approved apartments into 2x proposed (deletion of the approved rear facing apartment), resulting in 2x three-bedroom apartments.

No change to the approved built form/mass/scale, plot ratio, building height or setbacks is proposed by this application. Accordingly, overshadowing is also unchanged.

**Planning Assessment**

The proposed minor amendment decreases the total number of apartments, from ten to nine, representing a decrease in the density and intensity of approved development on the site. This is considered to represent a positive change from the neighbour's perspective, and the impact of the development on the locality more generally noting:

- Deletion of the rear facing Level 4 apartment removes the full height glazing of the living and dining area, and the adjacent balcony that was facing the rear boundary, thereby improving the perception of privacy as viewed from the neighbouring rear property (72 Kingsway), notwithstanding the approved design met the Visual Privacy setback of 6 metres as per Table 3.5 of the Residential Design Codes.

This interface is proposed to be replaced by the Master Suite and Ensuite along with the garden bed and outdoor circulation space, of two apartments. Both of these apartments are provided with generous balconies (23-24sqm) facing Hillway, these being located as contiguous outdoor living areas adjacent Kitchen and Dining areas, and therefore likely to be readily utilised as living areas. This is in contrast to the garden bed and outdoor circulation space proposed to face the rear boundary.

These outdoor spaces have a width of 0.6 metres and adjoin the Master Suite and Ensuite, and so are not intended to be used as living areas on this basis, noting the Hillway-facing balconies available. The proposed changes entail the architectural treatment of these Level 4 apartments, facing the rear boundary, replicating those on Level 5 above. There will be no change to the performance/compliance of the proposal against Table 3.5 of the Residential Design Codes.

- In accordance with Condition 13 of the JDAP approval, via the proposed conversion of one resident car bay into one visitor car bay, there will be a total of three visitor car bays available within the development, consistent with the 2.25 (3x) required by the Residential Design Codes. The proposed increase in visitor bays, and the decrease in the total number of apartments (and resident bays), will result in a reduced impact on the surrounding road network in terms of vehicle movements. With reference to the Transport Impact Statement submitted with the original application, this forecast 10x peak hour vehicle trips would be generated by the ten apartments (based on 0.95 trips per dwelling in the AM peak and 0.99 trips per dwelling in the PM peak). On this basis the proposed reduction in apartment numbers to nine is forecast to reduce the peak hour vehicle trips to 9x.
- The total number of bedrooms (and therefore potential building occupants) is decreasing by one.
- This proposed change results in an increase of on-structure landscaped area across the development, via the introduction of rear-facing garden beds now proposed on Level 4, as compared to the approved arrangement of the full height glazing of the living and dining area, and the adjacent balcony.
- The reduction in the number of apartments still requires 2x (20%) Silver Level apartments as per the Liveable Housing Design Guidelines. The apartments on Level 2 and Level 6 have been designed to achieve the Silver Level design requirements.

As discussed in the enclosed letter prepared by Lavan Legal, there is no legal impediment for this proposed minor amendment being pursued via a Form 2 application, for determination by the JDAP.

### **Conditions of Approval**

The following conditions of the JDAP approval of 29 September 2020 are considered relevant for this minor amendment application:

- 13 – requiring three visitor car parking bays. As outlined above, this minor amendment application proposes to change one approved resident car bay to one visitor car bay, resulting in a total of three visitor car parking bays as required by Condition 13. This visitor bay will be located behind the security shutter, which can be made readily available to visitors via the installation of an intercom/remote-access system. This is a common arrangement for residential apartment buildings and it is noted that the JDAP has recently approved such an arrangement for the development at 93-95 Broadway.
- 16 – updated Waste Management Plan (WMP). A final and updated WMP is required by Condition 16, prior to the issue of a building permit. In this regard the proposed change from ten to nine apartments can be appropriately addressed via this updated WMP that is required to be prepared, submitted and approved by the City at a later date.
- 18 – amended landscaping plan. As outlined above, this this minor amendment application proposes to increase the on-structure landscaped area on Level 4. This proposed change can be appropriately addressed via the amended landscaping plan that is required to be prepared, submitted and approved by the City at a later date.

### **Summary and Conclusion**

As outlined above, this proposed minor amendment application decreases the total number of apartments, from ten to nine, representing a decrease in the density and intensity of approved

development on the site. This is considered to represent a positive change in terms of the potential impact of the development on the locality. In this regard the City of Nedlands' support and the Metro Inner-North Joint Development Assessment Panel's approval is respectfully requested.

Should you have any queries or require clarification on the above matter, please do not hesitate to contact the undersigned on 9289 8300.

Yours sincerely

**element**



Dan Lees

Principal – Planning





LG Ref: DA20-43894  
DAP Ref: DAP/20/01741  
Enquiries: (08) 6551 9919

State Administrative Tribunal  
565 Hay Street  
PERTH WA 6000

Dear Sir/Madam

**STATE ADMINISTRATIVE TRIBUNAL REVIEW OUTCOME – DR 111/2020**

Property Location:	No. 5 (Lot 689) Hillway, Nedlands
Application Details:	10 Multiple Dwellings

Please be advised that the Metro Inner-North Joint Development Assessment Panel reconsidered the above-mentioned development application, SAT ref DR 111/2020, pursuant to section 31 of the *State Administrative Tribunal Act 2004* on 29 September 2020.

The Notice of Determination is attached.

Yours sincerely,

**DAP Secretariat**

1 October 2020

Encl: Amended DAP Determination Notice

Cc: Hillway 80 Pty Ltd (C/- Lavan)

State Solicitor's Office

Mr Roy Winslow  
City of Nedlands

Planning Appeals





## ***Planning and Development Act 2005***

### **City of Nedlands Local Planning Scheme No.3.**

#### **Metro Inner-North Joint Development Assessment Panel**

## **Determination on Development Assessment Panel Application for Planning Approval**

**Property Location:** No. 5 (Lot 689) Hillway, Nedlands

**Application Details:** 10 Multiple Dwellings

Pursuant to section 31 of the *State Administrative Tribunal Act 2004*, the Metro Inner-North JDAP, at its meeting on 29 September 2020, has reconsidered its decision dated 22 May 2020 in respect to the above application, SAT Ref. DR 111/2020 and has resolved to:

**SET ASIDE the decision and substitute a new** decision for DAP Application reference DAP/20/01741 and accompanying plans date stamped 7 August 2020 in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015* and the provisions of City of Nedlands Local Planning Scheme No. 3, subject to the following conditions:

#### **Amended Conditions**

1. Pursuant to clause 26 of the Metropolitan Region Scheme, this approval is deemed to be an approval under clause 24(1) of the Metropolitan Region Scheme.
2. This decision constitutes planning approval only and is valid for a period of four years from the date of approval. If the subject development is not substantially commenced within the specified period, the approval shall lapse and be of no further effect.
3. The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.
4. This approval is for residential (multiple dwellings). Development shall be in accordance with this land use as defined within Local Planning Scheme No. 3, the approved plan(s), any other supporting information, and the conditions of approval.
5. Prior to occupation of the development the finish of the parapet walls is to be finished in accordance with the hereby approved plans.





### Stormwater / Geotechnical

6. All stormwater generated on site is to be retained on site. An onsite storage/infiltration system is to be provided within the site for a 1 in 100-year storm event. No stormwater will be permitted to enter the City of Nedlands's stormwater drainage system unless otherwise approved.
7. A stormwater management strategy is to be prepared and submitted for approval to the City of Nedlands prior to issue of the building permit.
8. Prior to the issue of a building permit, a geotechnical report addressing the development area is to be prepared by a suitably qualified practitioner at the applicant's cost and submitted to the City of Nedlands and be implemented to the satisfaction of the City of Nedlands. The report will give due consideration to any potential impacts on neighbouring properties including but not limited to: ground water management, excavation or modifications to existing ground levels; vibration or consolidation of material throughout the demolition and construction phase of the project. The geotechnical report will identify any remedial treatments required to mitigate any adverse impacts and will be lodged with the building permit application, together with certification that the design is suitable for the site conditions as outlined in the geotechnical report.

### Demolition and Construction

9. A Demolition and Construction Management Plan being provided to the City which addresses the control of; vibration, dust, noise, waste, sand, sediment, temporary fencing, hoardings, gantries, site access / egress, site deliveries, heavy construction machinery and traffic control shall be provided to the City of Nedlands with or before the demolition permit and building permit approval applications are submitted and shall be implemented to the satisfaction of the City of Nedlands.
10. A dilapidation report is to be prepared and its findings implemented to the satisfaction of the City of Nedlands at the building permit stage for 1-3 Hillway, 7 Hillway, 9 & 9A Hillway, 70 Kingsway, 72 Kingsway, 74 Kingsway and 76 Kingsway.

### Noise

11. A suitably qualified acoustic engineer [who is suitable for Membership of either the Australian Acoustical Society (AAS) or the Association of Australian Acoustical Consultants (AAAC)] is to prepare and submit prior to issue of the building licence an acoustic report for the development demonstrating compliance with *the Environmental Protection (Noise) Regulations 1997*. The report shall incorporate likely noise levels to be received at all noise sensitive receivers (to be impacted by the proposed development) and include noise from all mechanical equipment, bin collection areas and plant and plant rooms.





12. Prior to the lodgement of a building permit, a noise management plan is to be submitted detailing measures that will be undertaken to ensure noise levels from the development are compliant with the assigned levels prescribed in the *Environmental Protection (Noise) Regulations 1997*. The plan is to be prepared by a suitably qualified consultant and is to include:
  - a) sound proofing measures used in the design and construction of the development;
  - b) predictions of likely noise levels;
  - c) control measures to be undertaken (including monitoring procedures), and identified noise sensitive receivers;
  - d) a complaint response procedure; and
  - e) demonstration that all dwellings exceed the minimum requirements of the National Construction Code as it relates to acoustic management.

All noise attenuation measures, identified by the plan or as additionally required by the City, are to be implemented prior to occupancy of the development or as otherwise required by the City and the requirements of the plan are to be observed at all times.

#### Vehicle Access and Parking

13. A minimum of three (3) on-site visitor parking bays being provided and identified as visitor parking to the satisfaction of the City of Nedlands.
14. Prior to occupation, the proposed car parking and vehicle access areas shall be sealed, drained, paved and line marked in accordance with the approved plans and are to comply with the requirements of AS2890.1 to the satisfaction of the City of Nedlands.
15. Walls, fences and other structures truncated or reduced to no higher than 0.75m within 1.5m of where walls, fences, other structures adjoin vehicle access points where a driveway meets a public street.

#### Waste Management

16. Prior to the issue of a building permit, an updated waste management plan is to be submitted and approved by the City of Nedlands. Once approved it will form part of this development approval and shall be complied with at all times to the satisfaction of the City of Nedlands.
17. The responsible entity (strata/corporate body) shall be liable for all bin replacement costs and/or repair costs relating to damage caused as a result of the bin compaction process

#### Landscaping

18. Prior to commencement of development, an amended landscaping plan, including where feasible the use of 500L tree planting, prepared by a suitably qualified landscape designer shall be submitted to and approved by the City of Nedlands. Landscaping shall be installed and maintained in accordance with that plan, or any modifications approved thereto, for the lifetime of the development thereafter, to the satisfaction of the City of Nedlands.





19. Prior to the lodgement of a building permit, an arborist report shall be submitted to the City of Nedlands, demonstrating that the construction and built development will not adversely affect the health of any tree located on Lots 201 (1) and 690 (7) Hillway, Nedlands and Lot 4 (72) Kingsway Nedlands, to the satisfaction of the City of Nedlands.
20. Prior to the occupation of the development, the removal of the existing verge tree is to be replaced with a suitable mature tree on the north side of verge as proposed on plan, at the cost of the applicant and to the satisfaction of the City of Nedlands. The tree species selected must accord with the City of Nedlands Street Tree Preferred Species list.
21. Landscaping is to be designed and maintained at all times to ensure passive surveillance from the vehicle and pedestrian entries to the street and from the street to the entries.

#### Entry and Lighting

22. Prior to occupation, the applicant shall arrange a suitably qualified consultant to prepare a lighting plan which demonstrates that the proposed development will not cause adverse amenity impacts on the surrounding locality and comply with the relevant Australian Standard:
  - a) A full site plan indicating the proposed siting of lighting columns including details of their proposed height;
  - b) Times of operation;
  - c) A Management Plan to detail the methods that will be employed to mitigate the impacts of light penetration and glare to the occupiers of adjacent property, including the use of an automatic timing device;
  - d) Details of orientation and hooding and/or other measures to minimise their impact in the interests of pedestrian and/or vehicular safety and amenity; and
  - e) Details where the proposed floodlighting is sited in close proximity to residential property, the spread of lighting from the lighting installation must be restricted in accordance with the relevant Australian Standard.

#### Visual Privacy

23. All major openings, balconies, and private open space are to comply with the visual privacy setbacks to adjoining properties in accordance with Table 3.5 of *State Planning Policy 7.3 Residential Design Codes Volume 2 - Apartments* or shall be screened by either:
  - a) fixed obscured or translucent glass to a height of 1.60 metres above finished floor level, or
  - b) Timber screens, external blinds, window hoods and shutters to a height of 1.6m above finished floor level that are at least 75% obscure.
  - c) a minimum sill height of 1.60 metres as determined from the internal floor level, or
  - d) an alternative method of screening approved by the City of Nedlands.

The required screening shall be thereafter maintained to the satisfaction of the City of Nedlands.





24. Vegetation screening located on the rear balconies of Units 401, 402 and 501 is to be planted and maintained at all times to a minimum height of 1.6 metres above the finished floor level of the balcony to ensure compliance with Element 3.5 of the Residential Design Codes.

#### Building Design

25. Two (2) multiple dwellings (Units 101 and 303) on the hereby approved plans shall meet 'Silver Level' universal access requirements as defined by the *Liveable Housing Design Guidelines*.
26. All habitable rooms to have a minimum of one (1) window on an external wall with a minimum glazed area of all windows in a habitable room to be at least 10% of the floor area. Such glazing is to be a minimum of 50% clear glazing.
27. Circulation and common spaces are to be designed and constructed for universal access in accordance with the *Disability (Access to premises – Buildings) Standards 2010* and AS1428.1

#### Services

28. Any future electrical infrastructure or equipment is to be located internally within the development, or otherwise inconspicuously along the street frontage so as to avoid it dominating the development's streetscape appearance.
29. Services and utilities are to be located such that they can be safely maintained, are not visually obtrusive from the street and do not have an acoustic impact on functionality of outdoor living areas or internal storage.

#### **Advice Notes**

##### Advice on Conditions

1. In relation to the stormwater management strategy, this is to incorporate minimisation of potable water use through efficient water fixtures and fittings, waterwise irrigation measures such as the harvesting of roof runoff and subsequent reuse for irrigation purposes.
2. In relation to the geotechnical report, this is to demonstrate how they will contain and dispose of a 1-100-year run-off within their land holding to the satisfaction of the City and any other relevant State Government agencies.





3. In relation to the demolition and construction management plan, this is to address, but is not limited to the following matters:
- a) hours of construction;
  - b) traffic management;
  - c) parking management;
  - d) access management;
  - e) management of loading and unloading of vehicles;
  - f) heavy vehicle access;
  - g) dust management;
  - h) waste management (where applicable)
  - i) protection of infrastructure and street trees within the road reserve;
  - j) the need for a dilapidation report of adjoining properties;
  - k) if required, details of and reasons for construction work on the construction site that is likely to be carried out other than between 7.00 am and 7.00 pm on any day which is not a Sunday or public holiday;
  - l) if required, details of and duration of activities on the construction site likely to result in noise emissions that fail to comply with the standard prescribed under regulation 7 of the Environmental Protection (Noise) Regulations 1997;
  - m) predictions of noise emission on the construction site;
  - n) use of City car parking bays for construction related activities;
  - o) protection of infrastructure and street trees within the road reserve;
  - p) security fencing around construction sites;
  - q) gantries;
  - r) Staging plan for the entire works;
  - s) Applicable timeframes and assigned responsibilities for tasks;
  - t) Onsite storage of materials and equipment;
  - u) Parking for contractors;
  - v) Waste management;
  - w) Management of noise in accordance with the requirements of the Environmental Protection (Noise) Regulations 1997;
  - x) Management of vibrations;
  - y) Complaints and incidents; and
  - z) Site signage showing the builder's direct contact details (telephone number and email address).
  - aa) dewatering management plan;
  - bb) contact details;
  - cc) site offices;
  - dd) details of measures to be implemented to control noise (including vibration) emissions;
  - ee) complaint response procedure to be adopted;
  - ff) details of how dust will be suppressed (e.g. by use of water tanker, independently powered water pumps, high volume hoses) or whether an approval from the water corporation for hydrant standpipe has been granted; and
  - gg) details of how dust and sand drift will be controlled in the event that the landscape remains bare for any period of time after demolition (consideration of more permanent dust suppression or sand drift measures such as hydromulching); and
  - hh) any other relevant matters.





4. In relation to the waste management plan, the applicant is advised that the updated waste management plan is to be generally in accord with the Waste Management Plan dated August 2020 and include the following modifications:
  - a) Bulk collection placement area to be specified – **action required** please include a diagram on WMP.
  - b) Bin allocation for future FOGO 240L bin –**action required** update the bin enclosure diagram on WMP (currently showing only waste and recycling bin bins) **Please note minimum floor area requirement for 10x 240L bins storage is 6.8m<sup>2</sup> excluding compactor space. Action required-** Please confirm the total floor area for the residential bin store including compactor space.
  - c) Confirmation of the Waste Compactor specification and dimensions - **action required** Please include on the WMP.
  - d) The responsible entity (strata/corporate body) shall be liable for all bin replacement costs and/or repair costs relating to damage caused as a result of the bin compaction process- **action required-** please include on the WMP.
  - e) Bin weight shall not exceed 70kg on each 240L waste bin- **action required-** please include on the WMP.
  - f) Bins on the verge for collection -maximum number of 240L bins allowed on the verge for collection is 8 (3xwaste and 5x recycling/FOGO ). However, residents are entitled to a free second recycling bin. As a result, potentially the City may issue 5 additional recycling bins (based on WMP compacted proposal). **action required** -Please clarify the methodology and management process ensuring 5x240L recycling bin allocation is being complied with.
  
5. In relation to the landscaping plan, this is to detail the following:
  - a) Demonstrate compliance with Table 4.12 of the State Planning Policy *Residential Design Codes Volume 2 - Apartments*
  - b) Water permeable paving where located within the deep soil area located on the first floor
  - c) Comprehensive maintenance plan for all planting on structure including an irrigation plan.
  
6. In relation to the tree protection, the Arborist is to provide:
  - a) a Tree Protection Zone and development impact assessment for trees to neighbouring properties to confirm building does not impact on TPZ.
  - b) A plan as to how the arborist will engage the builder during construction to provide methodology and works, as required.





7. In relation to lighting, the applicant is advised that:
- a) a Suitably qualified lighting consultant – is to be a Member of the illuminating Engineering Society of Australia and New Zealand.
  - b) the Relevant Australian Standard is Australian Standard AS.4282 – Control of the Obtrusive Effects of Outdoor Lighting.
  - c) certification by a suitably qualified lighting consultant shall demonstrate that the development is in compliance with the relevant Australian Standard. On completion of the installation, the consultant is to confirm that the lighting conforms to the relevant Australian Standard and if not, remedial measures are to be undertaken to rectify the situation and bring about compliance with the relevant Australian Standard. The requirement for confirmation certification on completion of the installation is to be included as a condition on all Planning Approvals granted by the City.
  - d) the City seeks larger windows to provide more ventilation, solar access, and horizon outlook.

#### Environmental Health Advice

8. The applicant is advised:
- a) That all internal water closets and ensuites without fixed or permanent window access to outside air or which open onto a hall, passage, lobby or staircase, shall be serviced by a mechanical ventilation exhaust system which is ducted to outside air, with a minimum rate of air change equal to or greater than 25 litres / second.
  - b) That all mechanical equipment (e.g. air-conditioner, swimming pool or spa) is required to comply with the Environmental Protection (Noise) Regulations 1997, in relation to noise.
  - c) To consult the City's Acoustic Advisory Information in relation to locating any mechanical equipment (e.g. air-conditioner, swimming pool or spa) such that noise, vibration impacts on neighbours are mitigated. The City does not recommend installing any equipment near a property boundary where it is likely that noise will intrude upon neighbours;
  - d) That laundry facilities are to be compliant with the requirements of the Health Act (Laundries and Bathrooms) Regulations and City of Nedlands Health Local Laws 2017. Laundries are not to be located within a room where food is prepared, stored or consumed. Where a laundry is located adjacent to a room where food is stored, prepared or consumed the laundry is to be separated by a wall or approved partition extending from the floor to the roof or ceiling. The door, which when closed shall completely fill the opening.





9. The applicant is advised that:
  - a) Prior to the commencement of any demolition works, any Asbestos Containing Material (ACM) in the structure to be demolished, shall be identified, safely removed and conveyed to an appropriate landfill which accepts ACM.
  - b) Removal and disposal of ACM shall be in accordance with Health (Asbestos) Regulations 1992, Regulations 5.43 - 5.53 of the Occupational Safety and Health Regulations 1996, Code of Practice for the Safe Removal of Asbestos 2nd Edition, Code of Practice for the Management and Control of Asbestos in a Workplace, and any Department of Commerce Worksafe requirements.
  - c) Where there is over 10m<sup>2</sup> of ACM or any amount of friable ACM to be removed, it shall be removed by a Worksafe licensed and trained individual or business.
  
10. The applicant is advised that the development is to be provided with suitable enclosures for the storage and cleaning of waste receptacles on the premises per the following requirements:
  - a) Constructed of brick, concrete, corrugated compressed fibre cement sheet or other material of suitable thickness approved by the City;
  - b) Walls not less than 1.8m in height and access of not less than 1.0 metre in width fitted with a self-closing gate;
  - c) Smooth and impervious floor not less than 75mm thick and evenly graded to an approved liquid refuse disposal system;
  - d) Easily accessible to allow for the removal of the receptacles;
  - e) Provided with a ramp into the enclosure having a gradient of no steeper than 1:8 unless otherwise approved by the City; and
  - f) Provided with a tap connected to an adequate supply of water;
  - g) Adequately ventilated to mitigate odour.





### Technical Services Advice

11. The applicant is advised that:
- a) All works within the adjacent thoroughfare, i.e. road, kerbs, footpath, verge, crossover or right of way, also require a separate approval from the City of Nedlands prior to construction commencing.
  - b) A new crossover or modification to an existing crossover will require a separate approval from the City of Nedlands prior to construction commencing.
  - c) The existing crossover is to be removed and the nature-strip / verge reinstated with grass or landscaping.
  - d) The contractor/developer shall protect the City's street trees from any damage that may be caused by the scope of works covered by this contract for the duration of the contract. All work carried out under this contract is to comply with the City's policies, guidelines and Australian Standards relating to the protection of trees on or adjacent to development sites (AS 4870-2009).
  - e) All street tree assets in the nature-strip (verge) shall not be removed. Any approved street tree removals shall be undertaken by the City of Nedlands and paid for by the owner of the property where the development is proposed, unless otherwise approved by the City of Nedlands.

### Building Advice

12. The applicant is advised that BA20 forms may be required from two side neighbours or potential adverse effects of basement construction. Please refer to the City's Building Department for further detail.

### General Advice

13. The applicant is advised that developers are responsible for providing telecommunications infrastructure in their developments. To provide this infrastructure, they need to contract a carrier to install telecommunications infrastructure in their new development. If you choose National Broadband Network (NBN) to service your development, you will need to enter into a developer agreement with NBN. The first step is to register the development via <http://www.NBNco.com.au/develop-or-plan-with-the-NBN/new-developments.html>, once registered NBN will be in contact to discuss the specific requirements for the development. NBN requires you to apply at least six months before the required service date. All telecommunications infrastructure should be built to NBN guidelines found at <http://www.NBNco.com.au/develop-or-plan-with-the-NBN/new-developments/builders-designers.html>

Where an approval has so lapsed, no development shall be carried out without further approval having first been sought and obtained, unless the applicant has applied and obtained Development Assessment Panel approval to extend the approval term under regulation 17(1)(a) or local government approval under regulation 17A of the *Planning and Development (Development Assessment Panels) Regulations 2011*.



City of Nedlands  
Received  
7 August 2020

**DEVELOPMENT  
ASSESSMENT PANEL**

**APPROVED**

**29-Sep-2020**

**LEGEND**

- Nat Surface Pt
- Septic Tank
- Sewer MH (Centre)
- Water Meter
- Power Dome
- High Mast Light
- Comms Pit
- Sign - Single Pole
- Columns
- Tree
- Bush

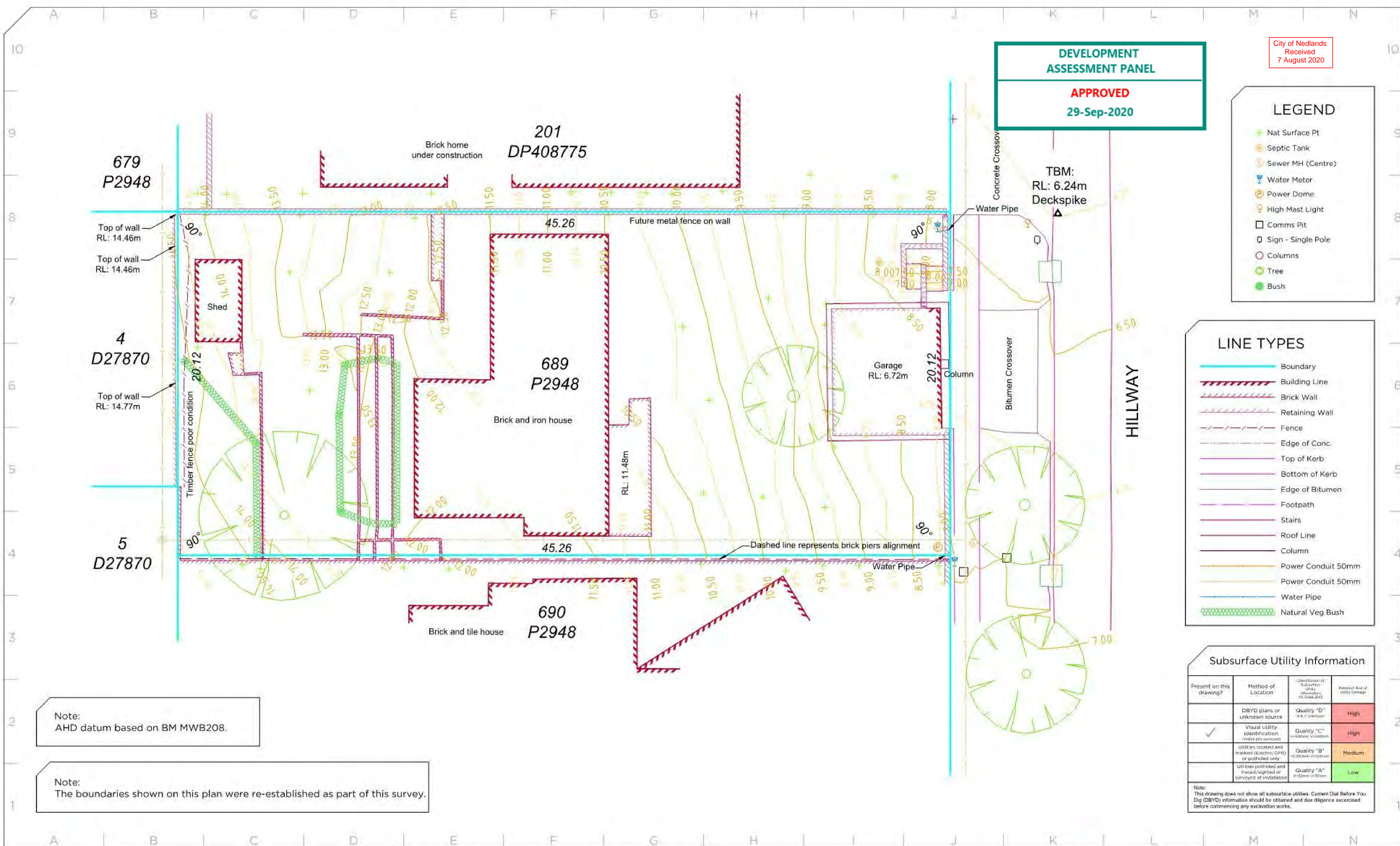
**LINE TYPES**

- Boundary
- Building Line
- Brick Wall
- Retaining Wall
- Fence
- Edge of Conc.
- Top of Kerb
- Bottom of Kerb
- Edge of Bitumen
- Footpath
- Stairs
- Roof Line
- Column
- Power Conduit 50mm
- Power Conduit 50mm
- Water Pipe
- Natural Veg Bush

**Subsurface Utility Information**

Present on this drawing?	Method of Location	Classification of Subsurface Utility Information AS 5444-2013	Potential Risk of Utility Damage
	DBYD plans or unknown source	Quality 'D' (4 & 5 Unknown)	High
✓	Visual utility identification (visible pit/surveyed)	Quality 'C' (3 Visible/1 Unknown)	High
	Utilities located and marked (Electro/GPR) or potholed only	Quality 'B' (2 200mm/1 500mm)	Medium
	Utilities potholed and traced/sighted or surveyed at installation	Quality 'A' (1 500mm/1 500mm)	Low

Note:  
This drawing does not show all subsurface utilities. Current Dial Before You Dig (DBYD) information should be obtained and due diligence exercised before commencing any excavation works.



Note:  
AHD datum based on BM MWB208.

Note:  
The boundaries shown on this plan were re-established as part of this survey.

**RM SURVEYS**  
LICENSED SURVEYORS

5 HILLWAY, NEDLANDS  
PHONE: 9444 8771  
EMAIL: INFO@RMSURVEYS.COM.AU  
WEBSITE: RMSURVEYS.COM.AU

0 2 4 6 8 10 12 14 16  
SCALE 1:200  
ALL DISTANCES IN METRES

Surveyor JC  
Survey Date 18/10/19

Vertical Datum AHD  
Horizontal Datum PCG94

PAPER SIZE A3

Client  
**Blueways Group**

Rev	Description	Drawn	Chkd	Appvd	Date
0	Initial Issue	LHa	JC	KB	28/10/19

**FEATURE AND CONTOUR SURVEY**  
Lot 689 (#5) Hillway  
Nedlands

architects & builders  
**GIORGI**

unit 1/24 parkland road, osborne park wa 6017  
t 08 9444 8711 f 08 9444 8733  
www.gorgiexclusive.com

Job No. **BLUE-HILL**  
Drawing No. **BLUE-HILL-01**

Revision  
SCALE DATE 0 JUN 2020









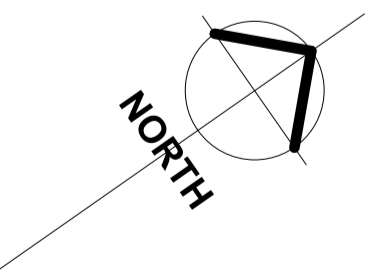
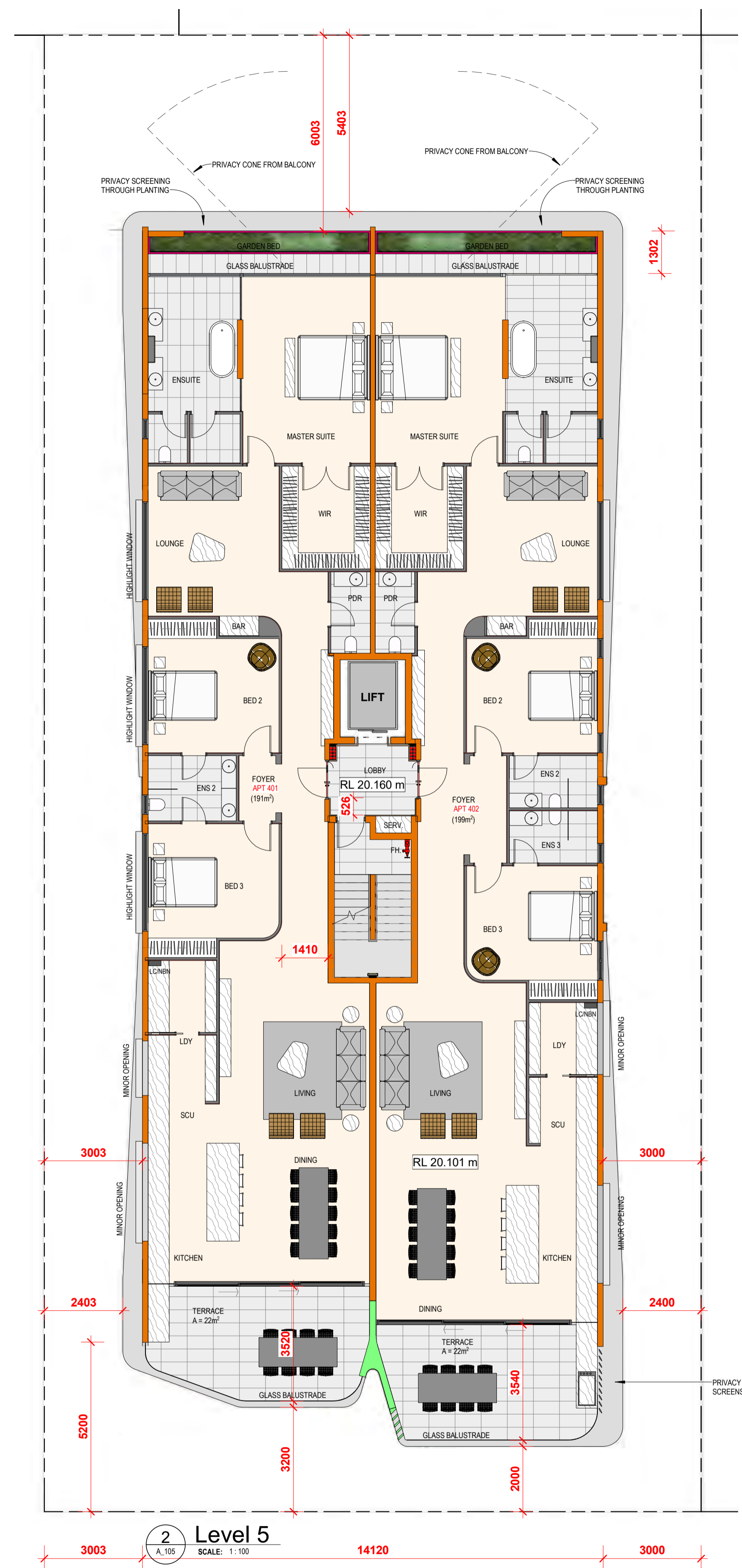
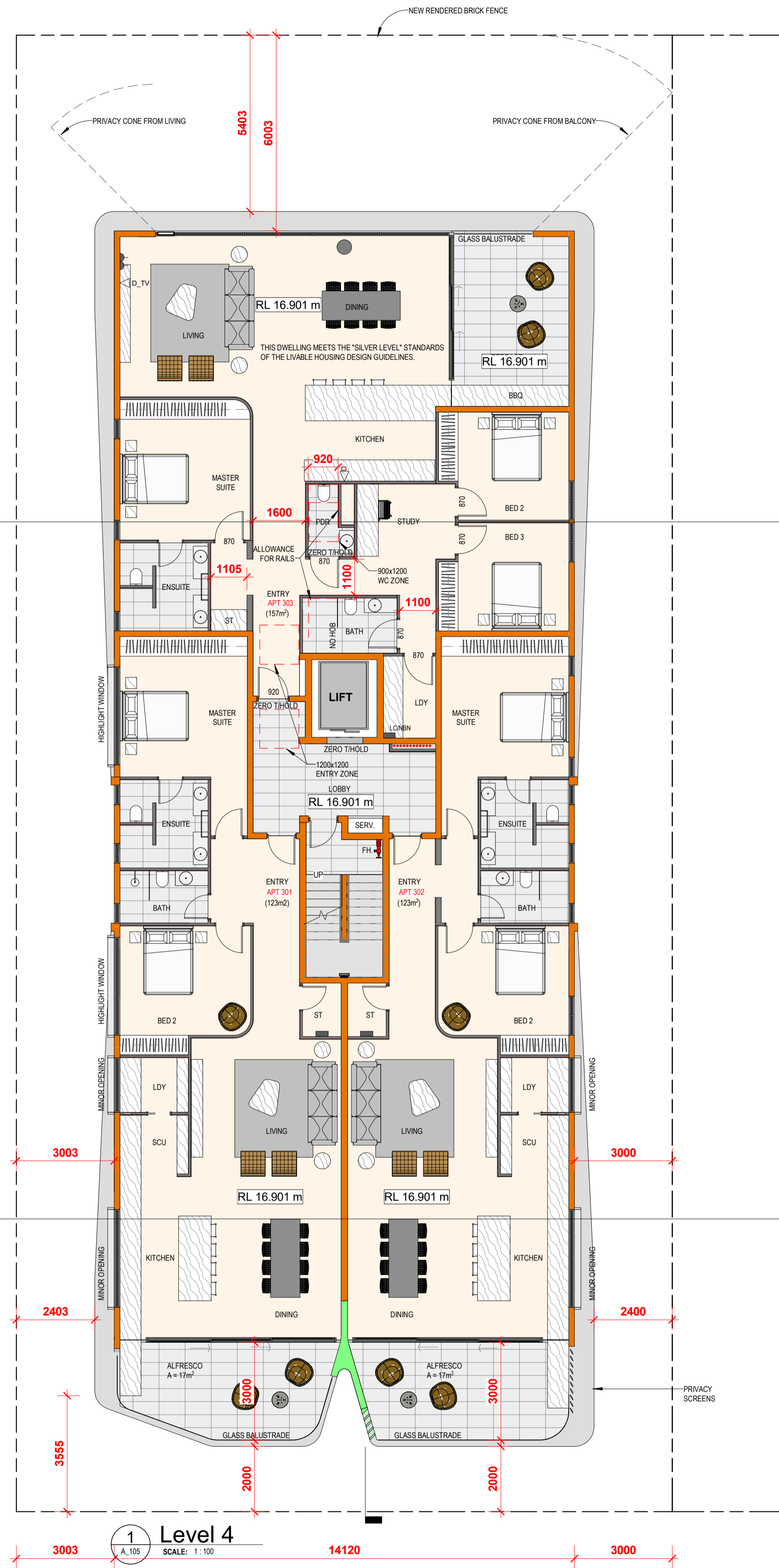


**DEVELOPMENT  
ASSESSMENT PANEL**

**APPROVED**

**29-Sep-2020**

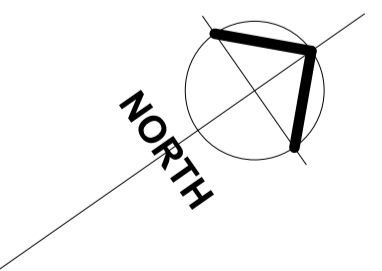
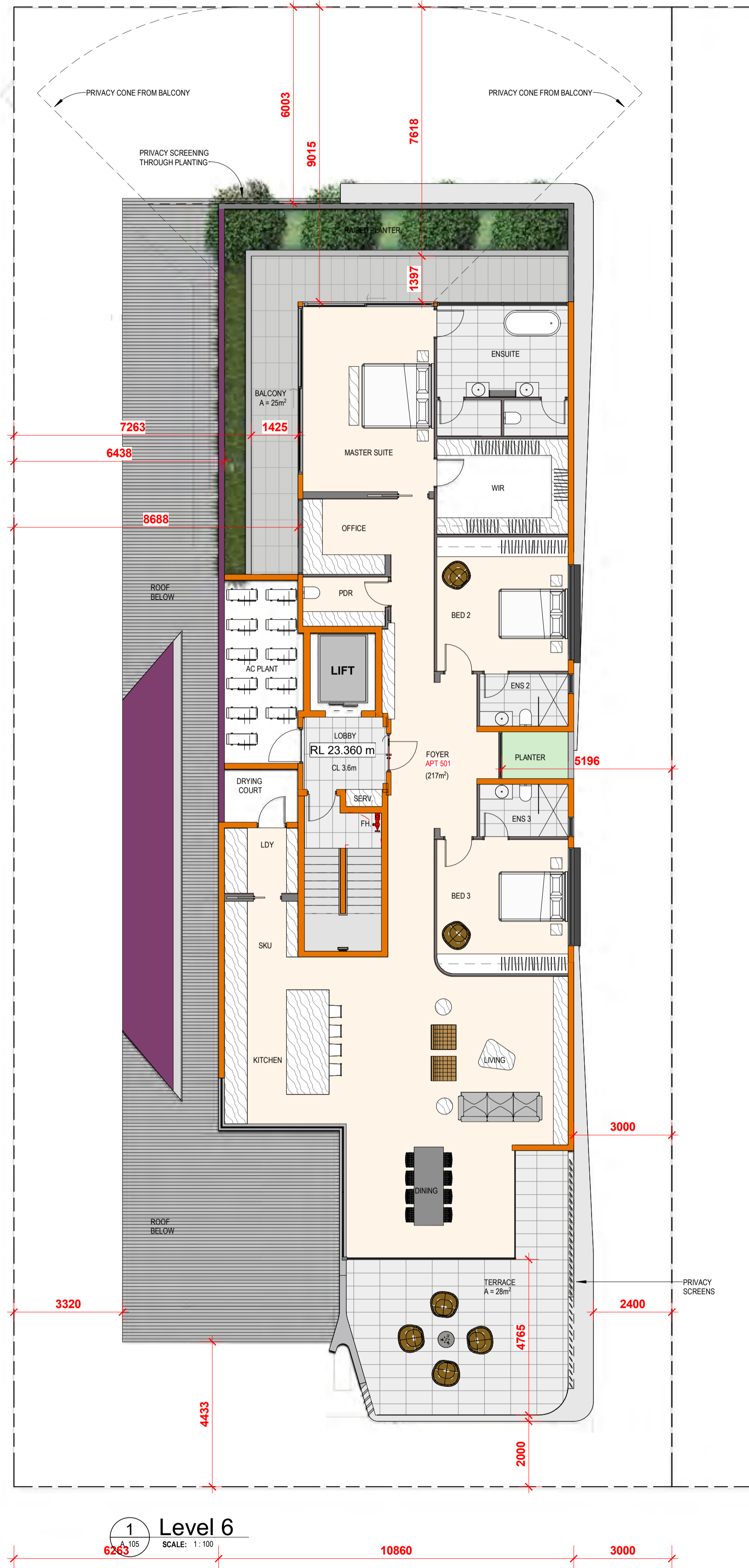
- SILVER LEVEL CRITERIA**  
Applicable to Apartments 101 & 303
- DWELLING ACCESS**
    - Entry step free
    - All passages are more than 1000mm wide
    - Each apartment has 1 car bay that is 3200mm wide
    - d+e. There are no steps or ramps in the path of travel
  - DWELLING ENTRANCE**
    - Door width is wider than 820mm and is step free
    - The Landing is larger than 1200mmx1200mm
    - d+e. The paths of travel are step free
  - INTERNAL DOORS & CORRIDORS**
    - All internal doors have a clear opening of 820mm
    - All passages are more than 1000mm wide
  - TOILET**
    - At least 1 toilet has a clear wall width of 900mm
    - At least 1 toilet has a clear space in front of 1200mm
    - At least 1 toilet has provision for future grabrails
  - SHOWER**
    - All showers are hobless
    - All showers are in the corner
  - REINFORCEMENT OF BATHROOM & TOILET WALLS**
    - All walls will be constructed of solid masonry
  - INTERNAL STAIRWAYS**
    - This item is not applicable





**DEVELOPMENT  
ASSESSMENT PANEL**

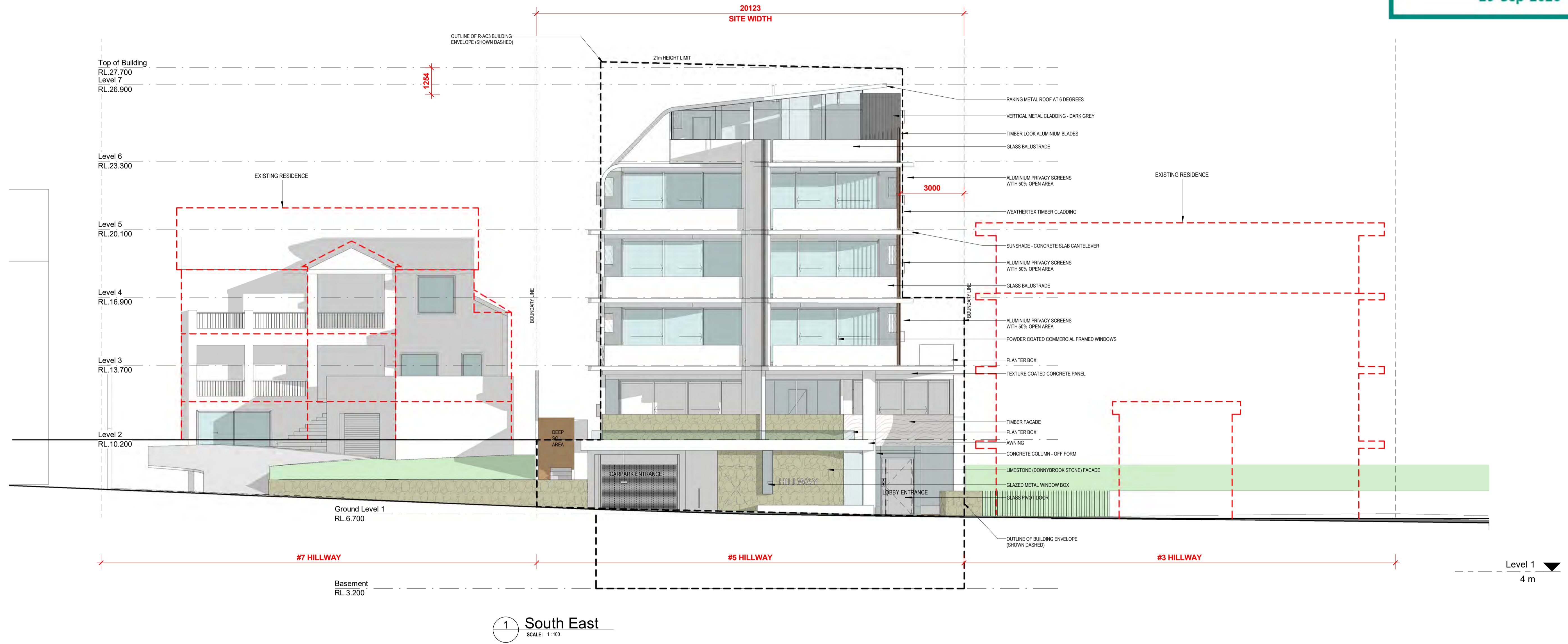
**APPROVED**  
29-Sep-2020





DEVELOPMENT  
ASSESSMENT PANEL

APPROVED  
29-Sep-2020





DEVELOPMENT  
ASSESSMENT PANEL

APPROVED  
29-Sep-2020





**DEVELOPMENT  
ASSESSMENT PANEL**

**APPROVED**

**29-Sep-2020**

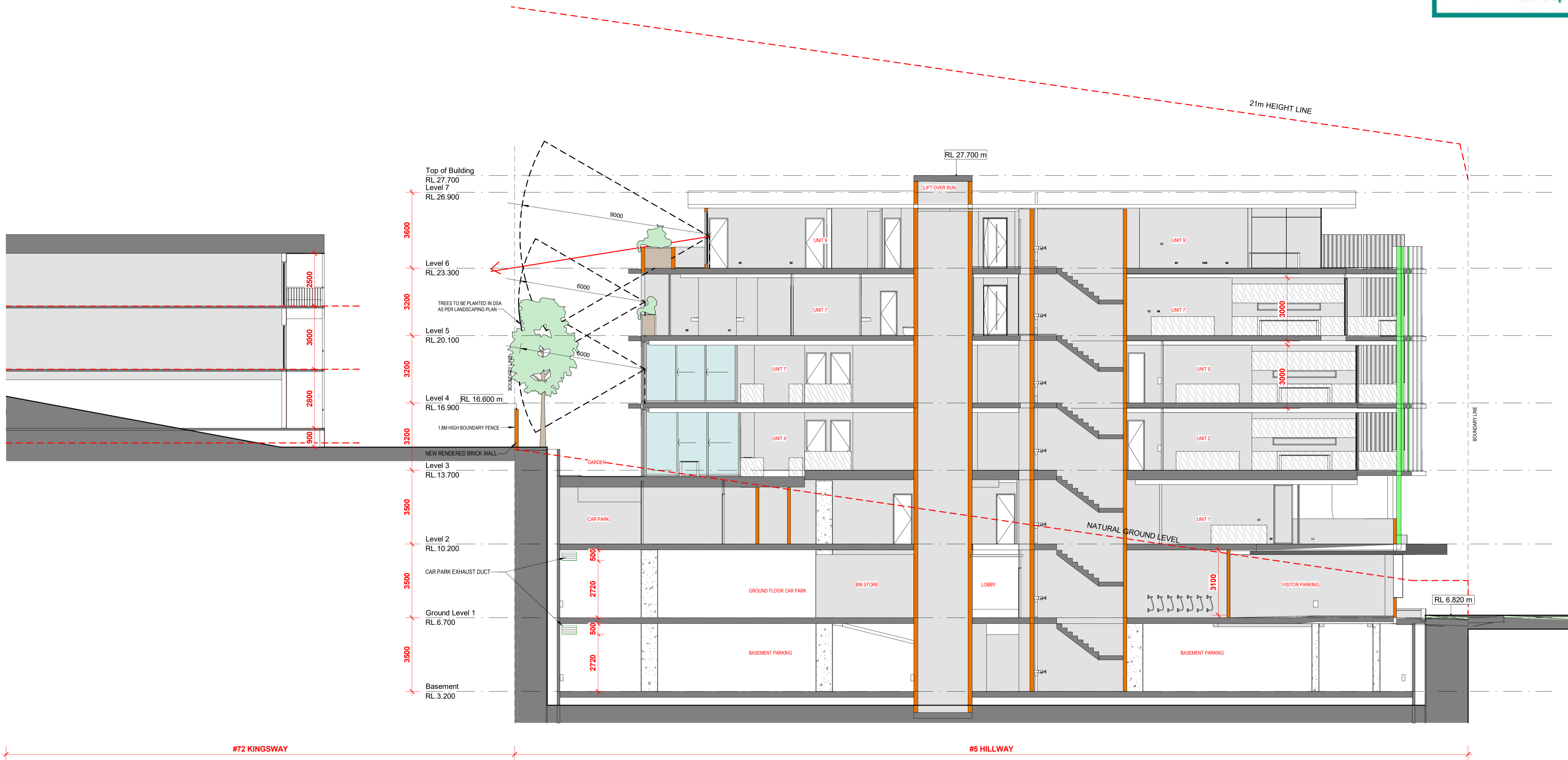




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ASSESSMENT PANEL**

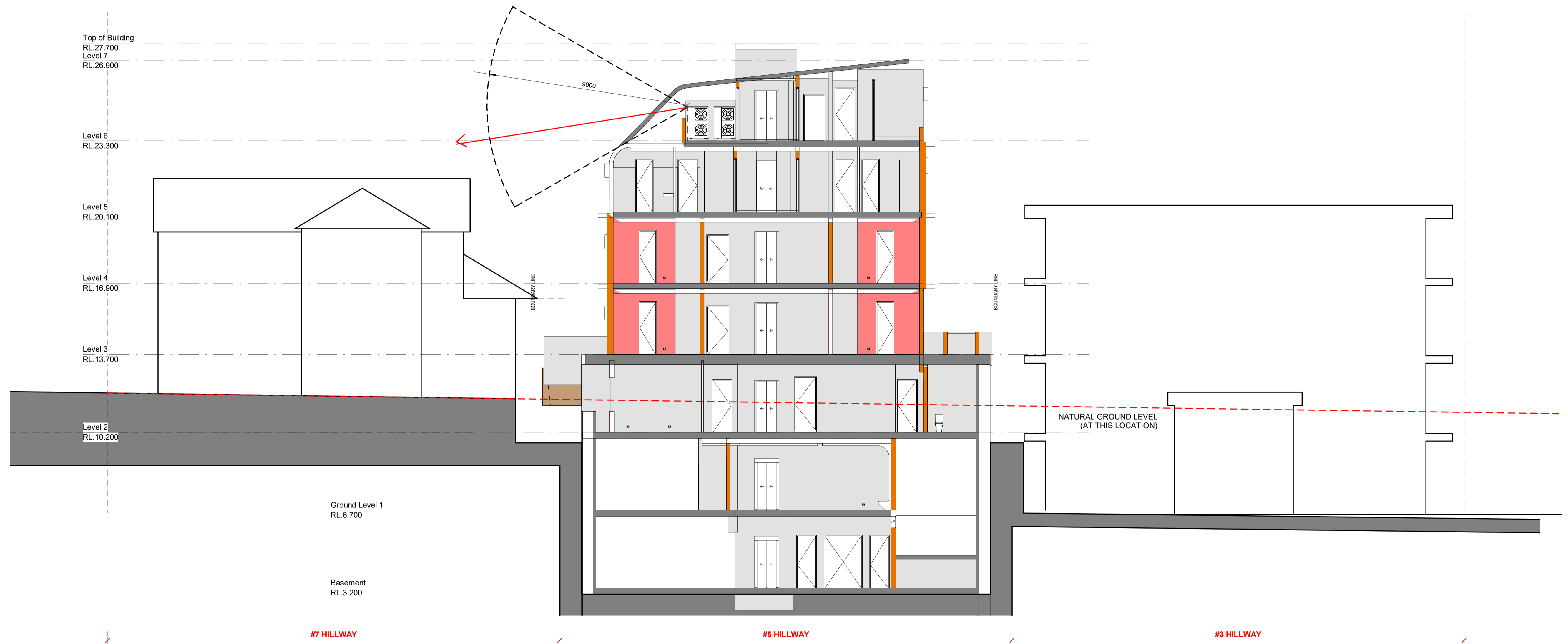
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**APPROVED**  
29-Sep-2020



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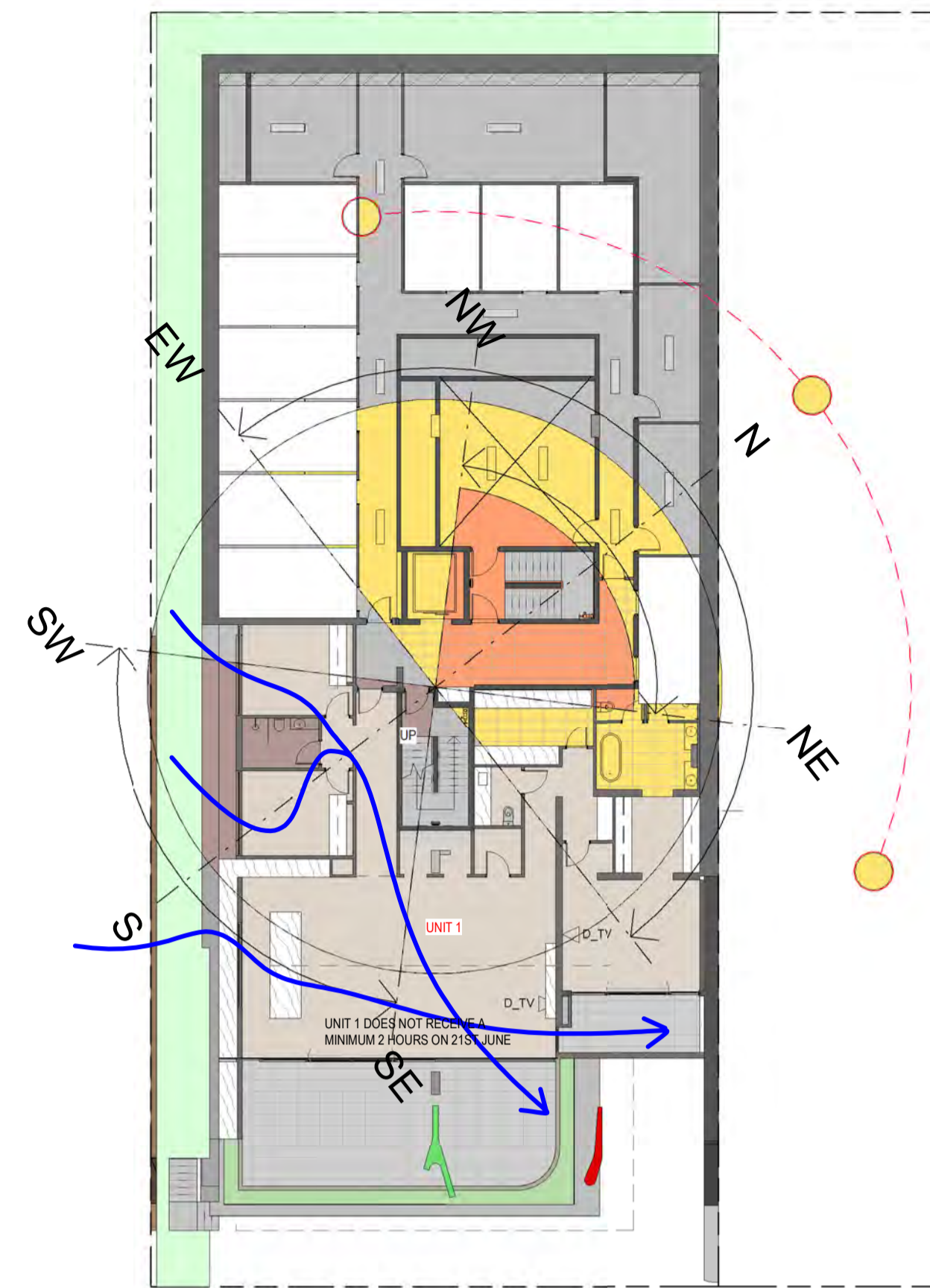
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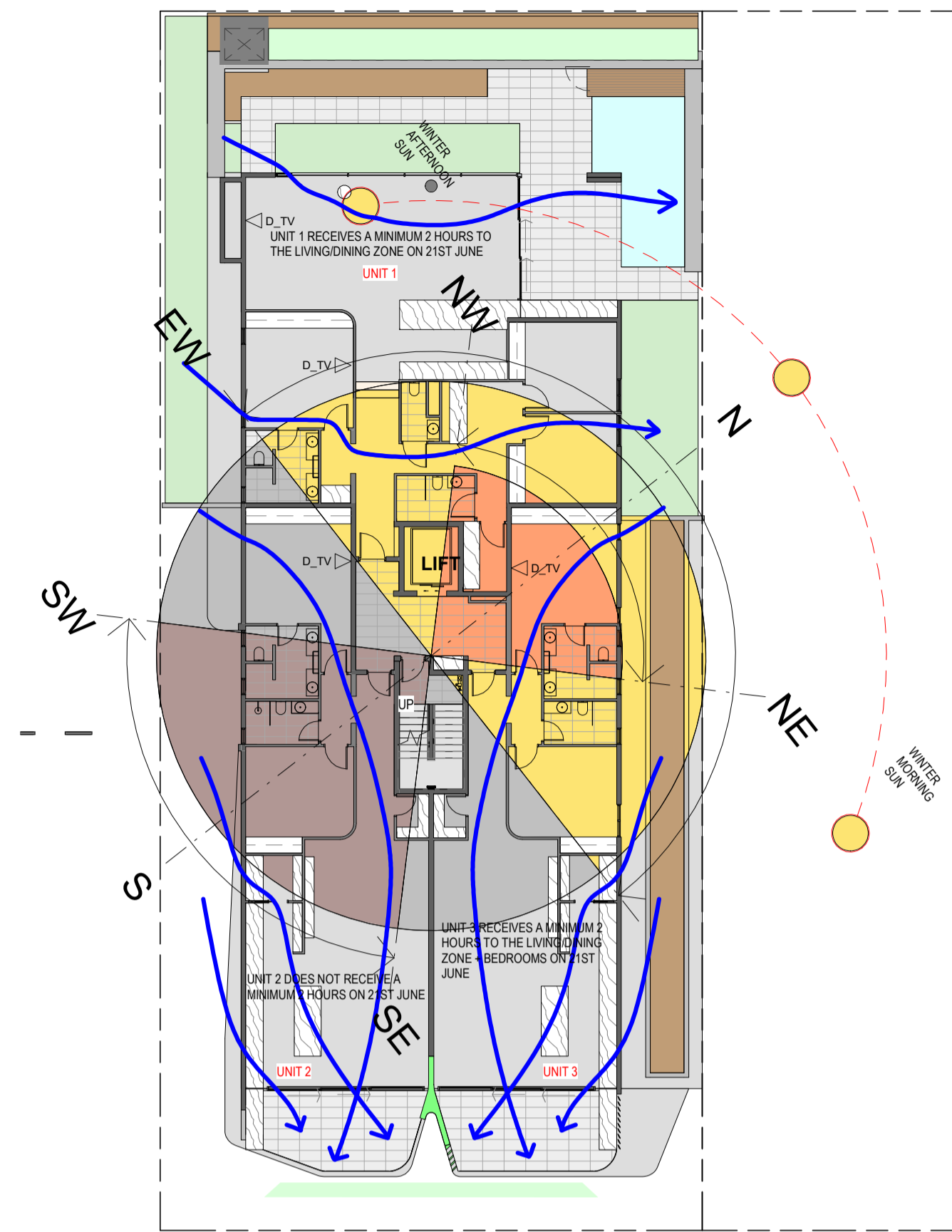
**DEVELOPMENT  
ASSESSMENT PANEL**

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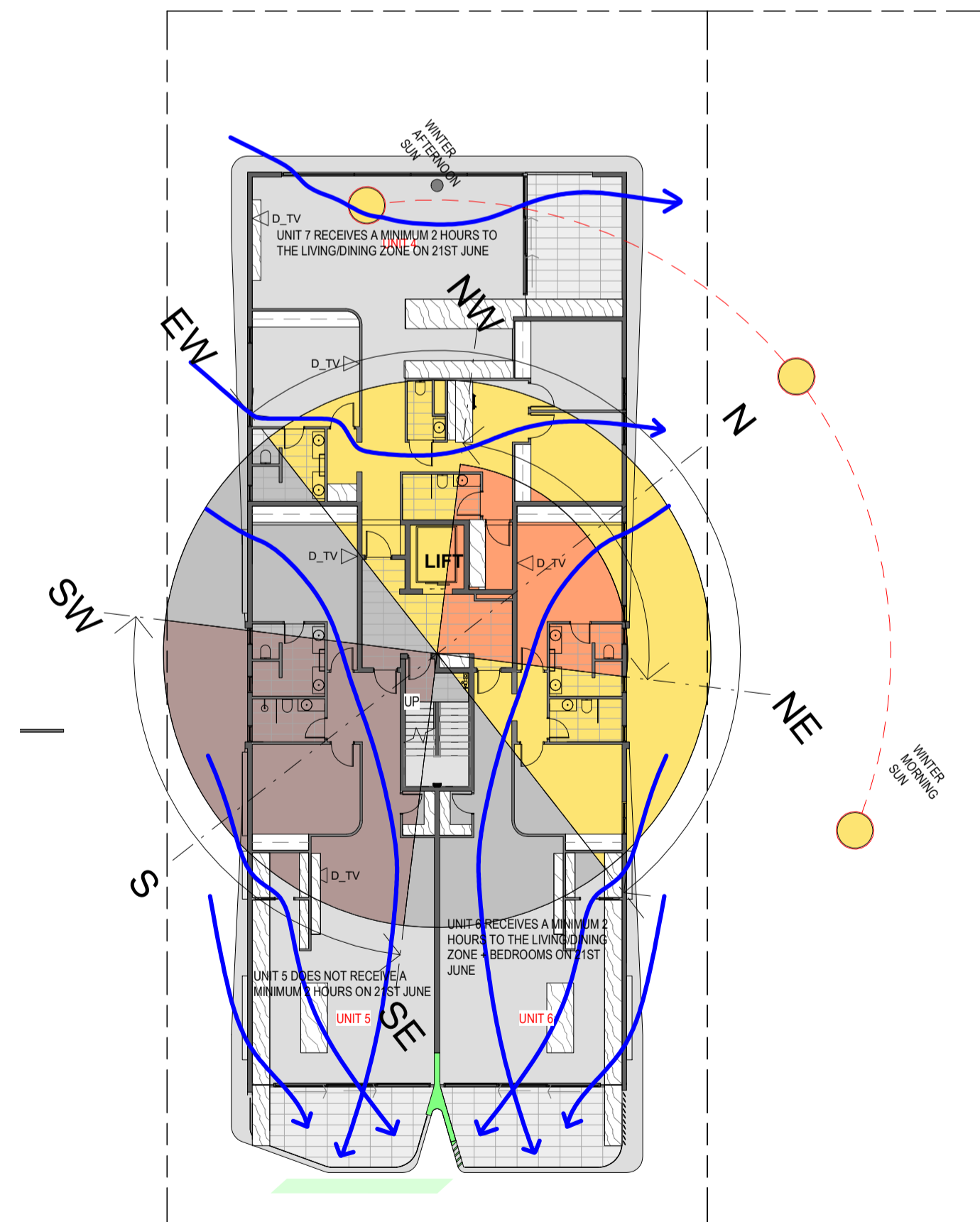
**APPROVED**  
29-Sep-2020



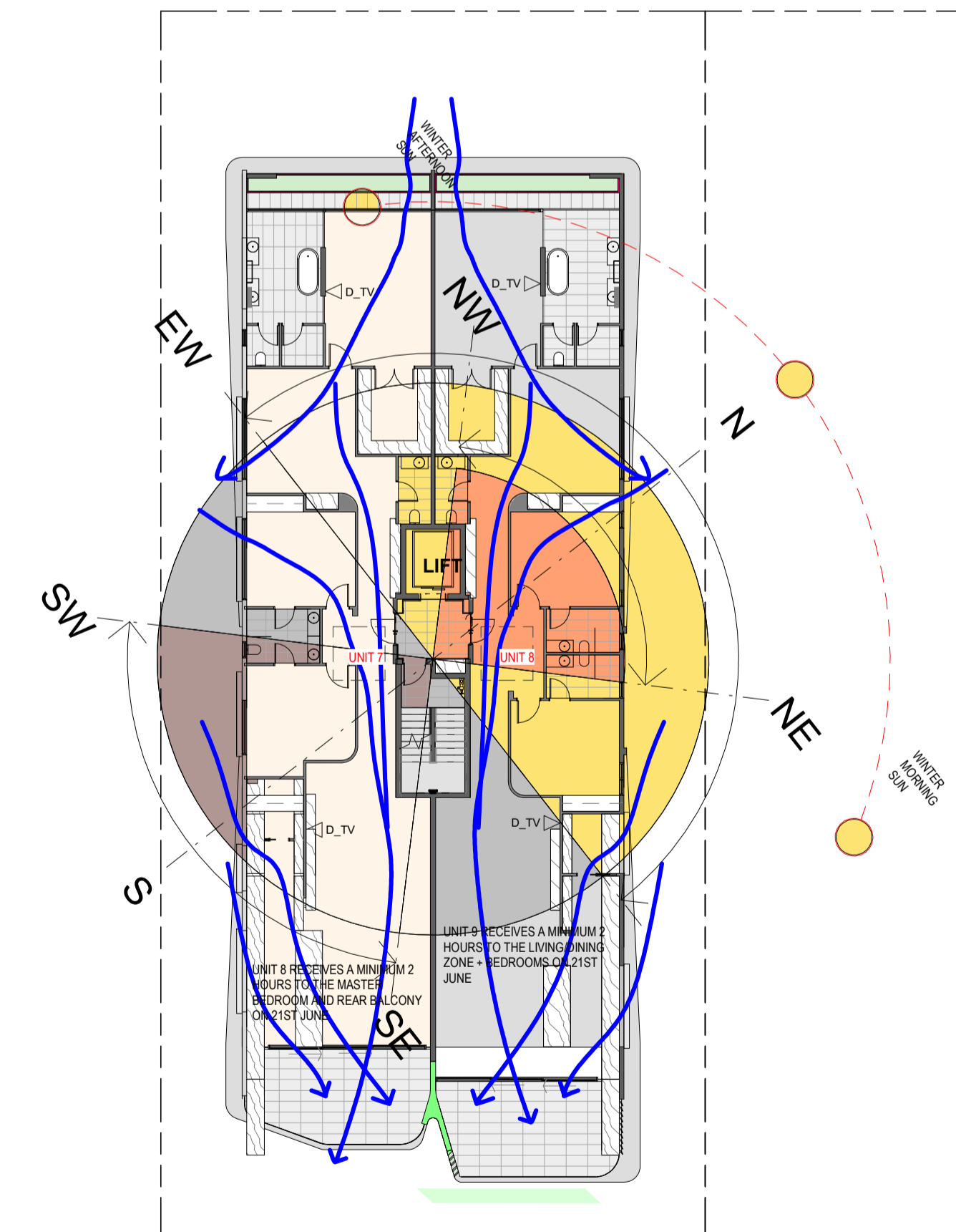
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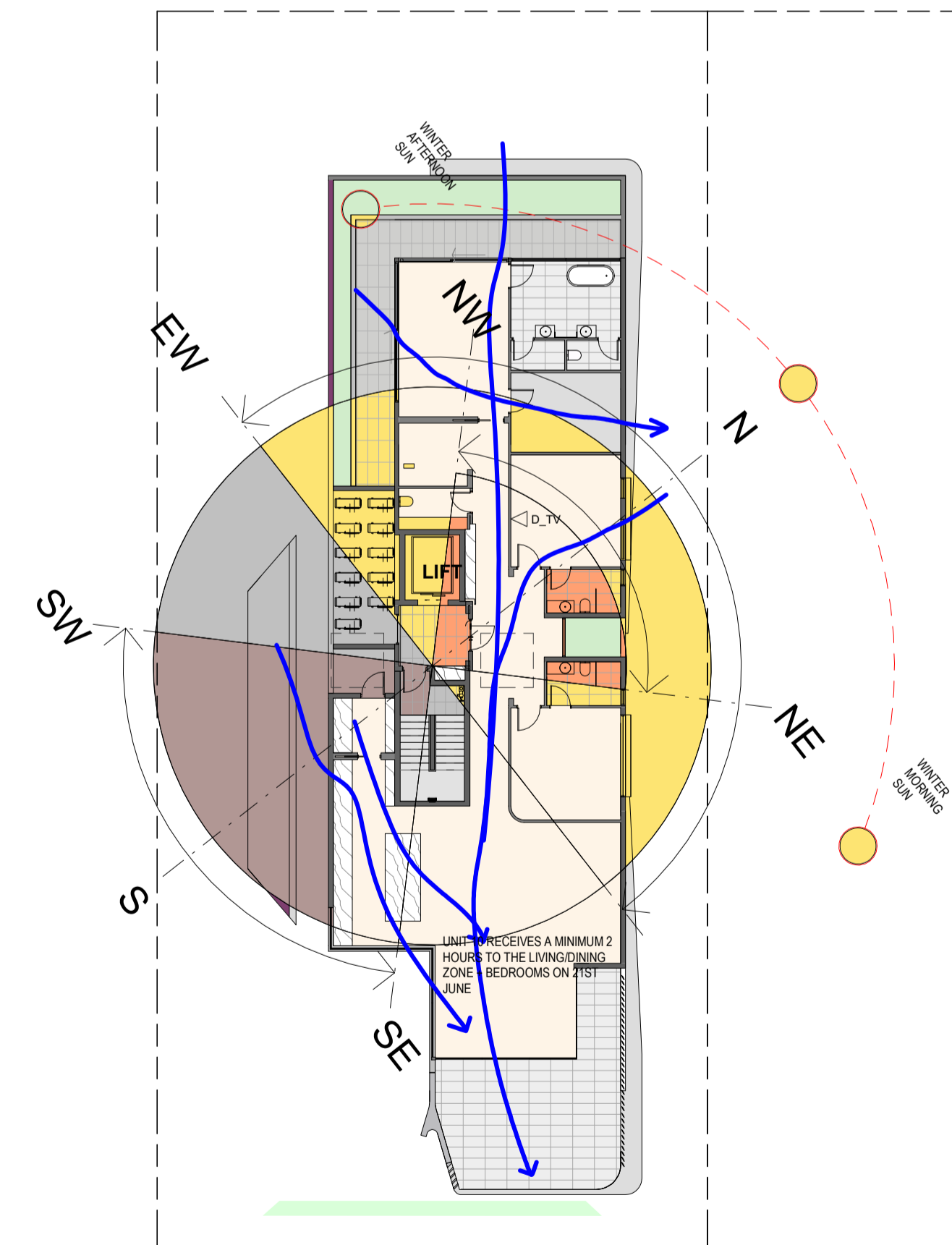
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SCALE: 1:200



2 Level 4 Solar/Breeze Plan  
SCALE: 1:200



3 Level 5 Solar/Breeze Plan  
SCALE: 1:200



4 Level 6 Solar/Breeze Plan  
SCALE: 1:200

MINIMUM 2 HOURS OF SOLAR ACCESS ON JUNE 21ST

- UNIT 1 - NO
- UNIT 2 - NO
- UNIT 3 - YES
- UNIT 4 - YES
- UNIT 5 - NO
- UNIT 6 - YES
- UNIT 7 - YES
- UNIT 8 - YES
- UNIT 9 - YES
- UNIT 10 - YES

7/10 = 70% (MIN. REQ. = 70%)

architects & builders

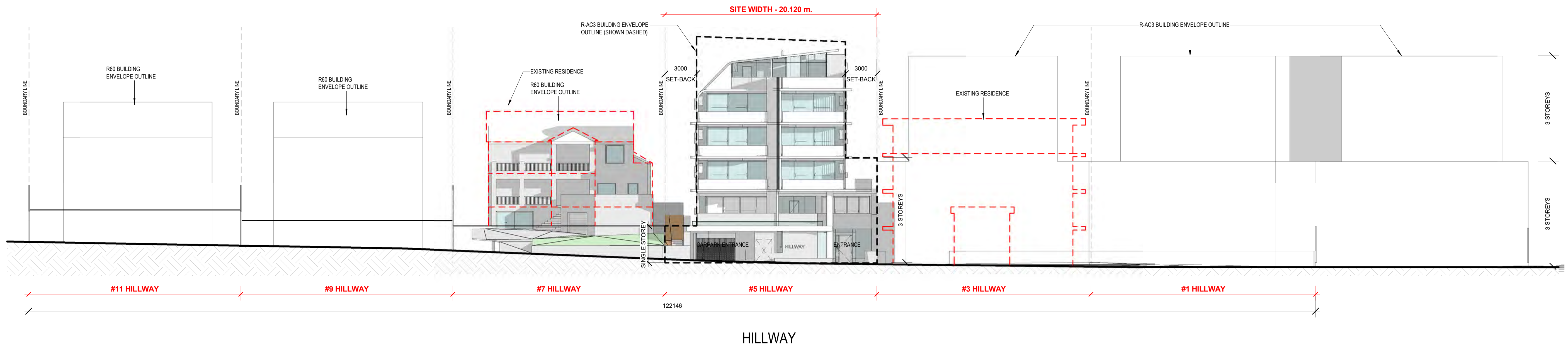
**GIORGI**

unit 1/24 parkland road, osborne park wa 6017  
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www.giorgi.com.au  
Sheet Size A1  
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JOB NUMBER: A\_110 SCALE: 1:200  
DRAWING NO. DATE: AUG 2020

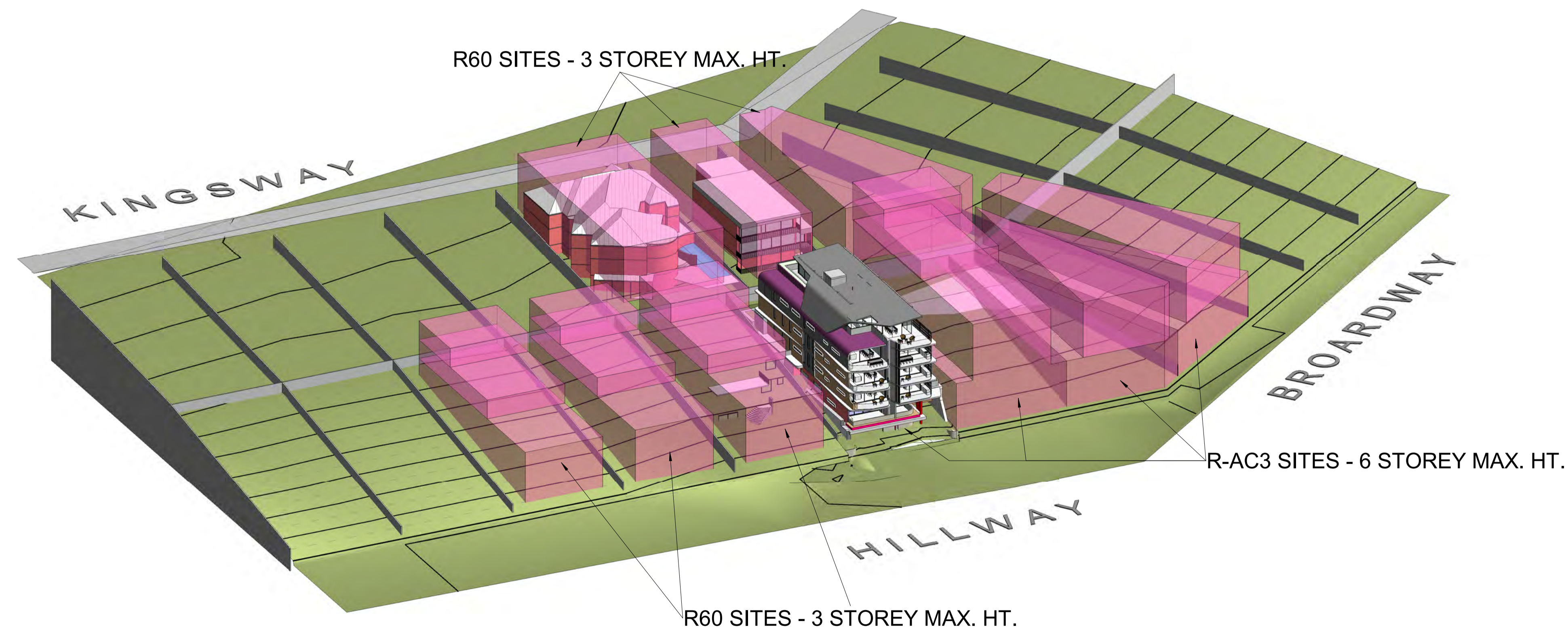




1 South East - Possible Future Development - Hillway Streetfront  
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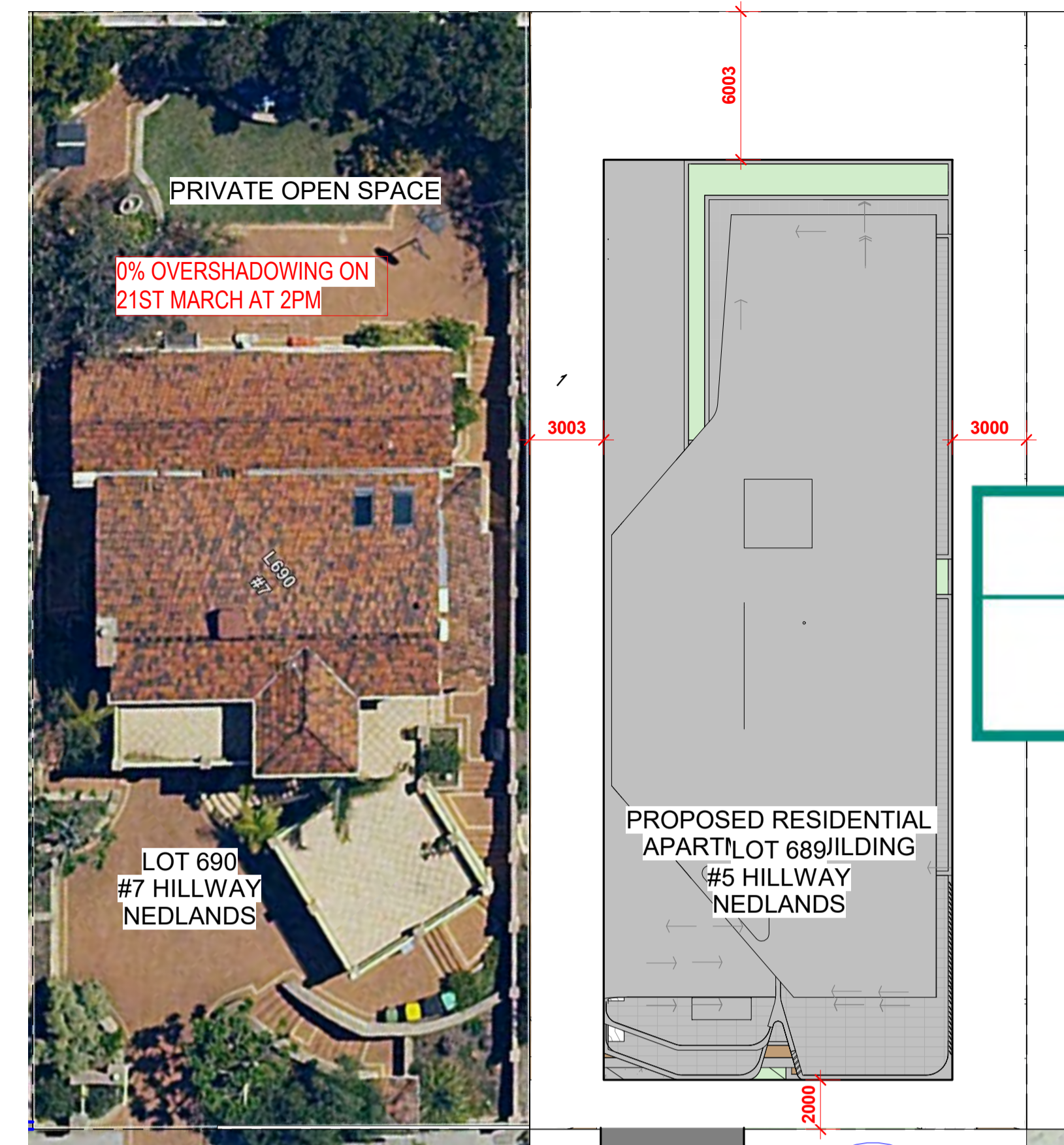
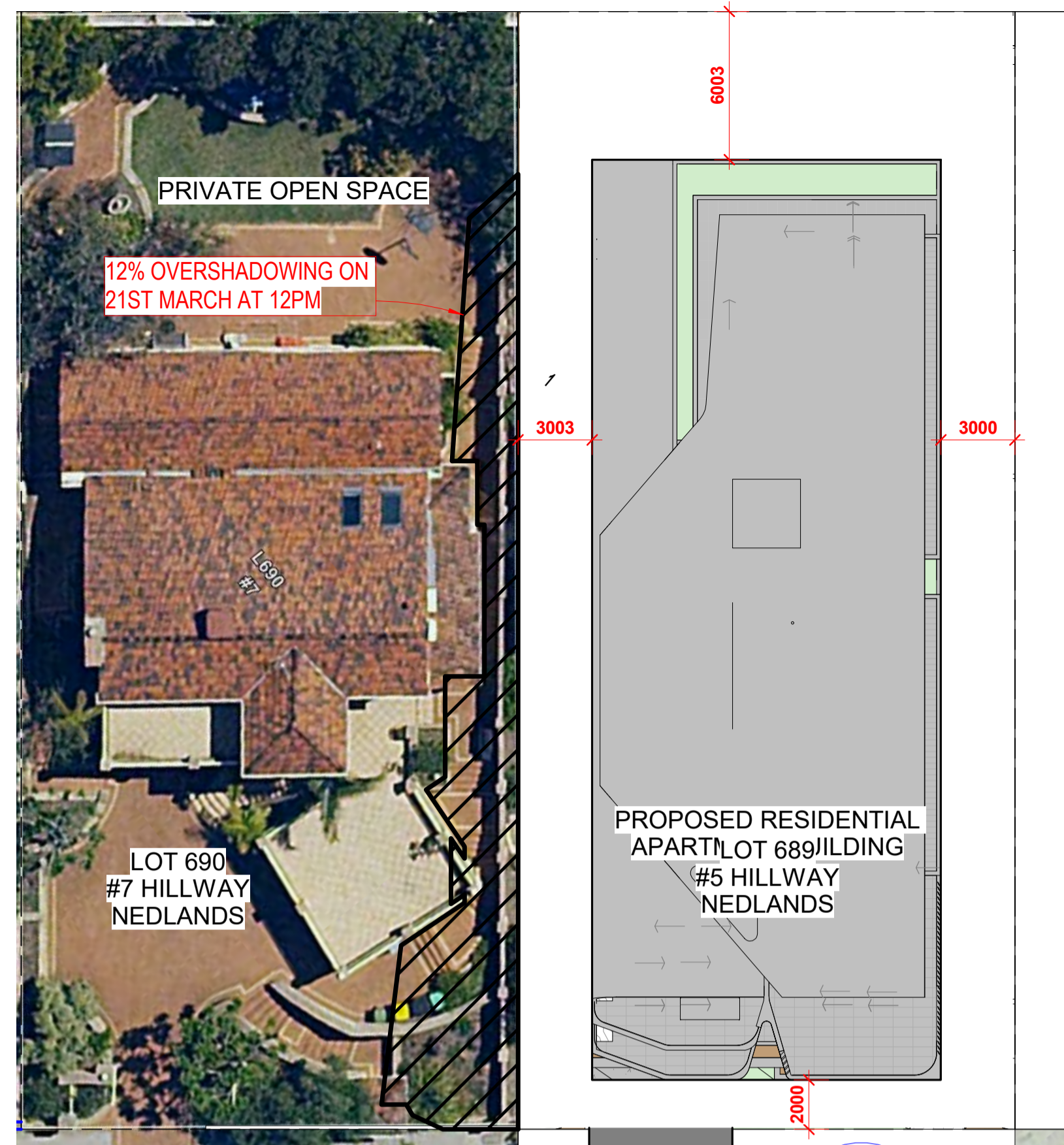
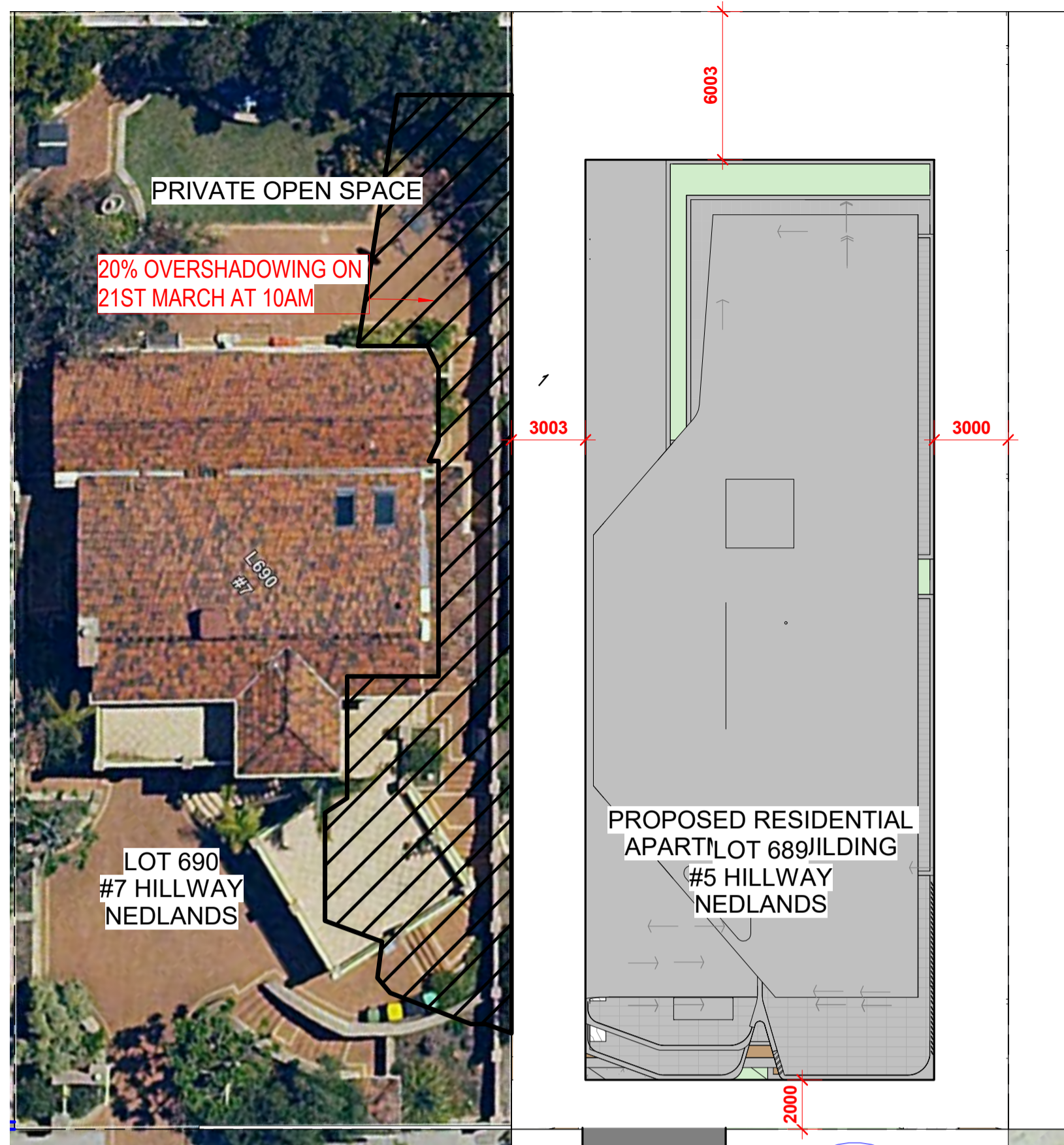
**DEVELOPMENT  
ASSESSMENT PANEL**

**APPROVED**  
29-Sep-2020



2 Future Development 3D view (Not to Scale)  
SCALE:





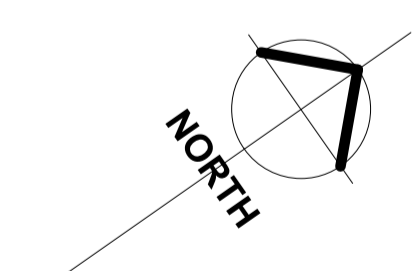
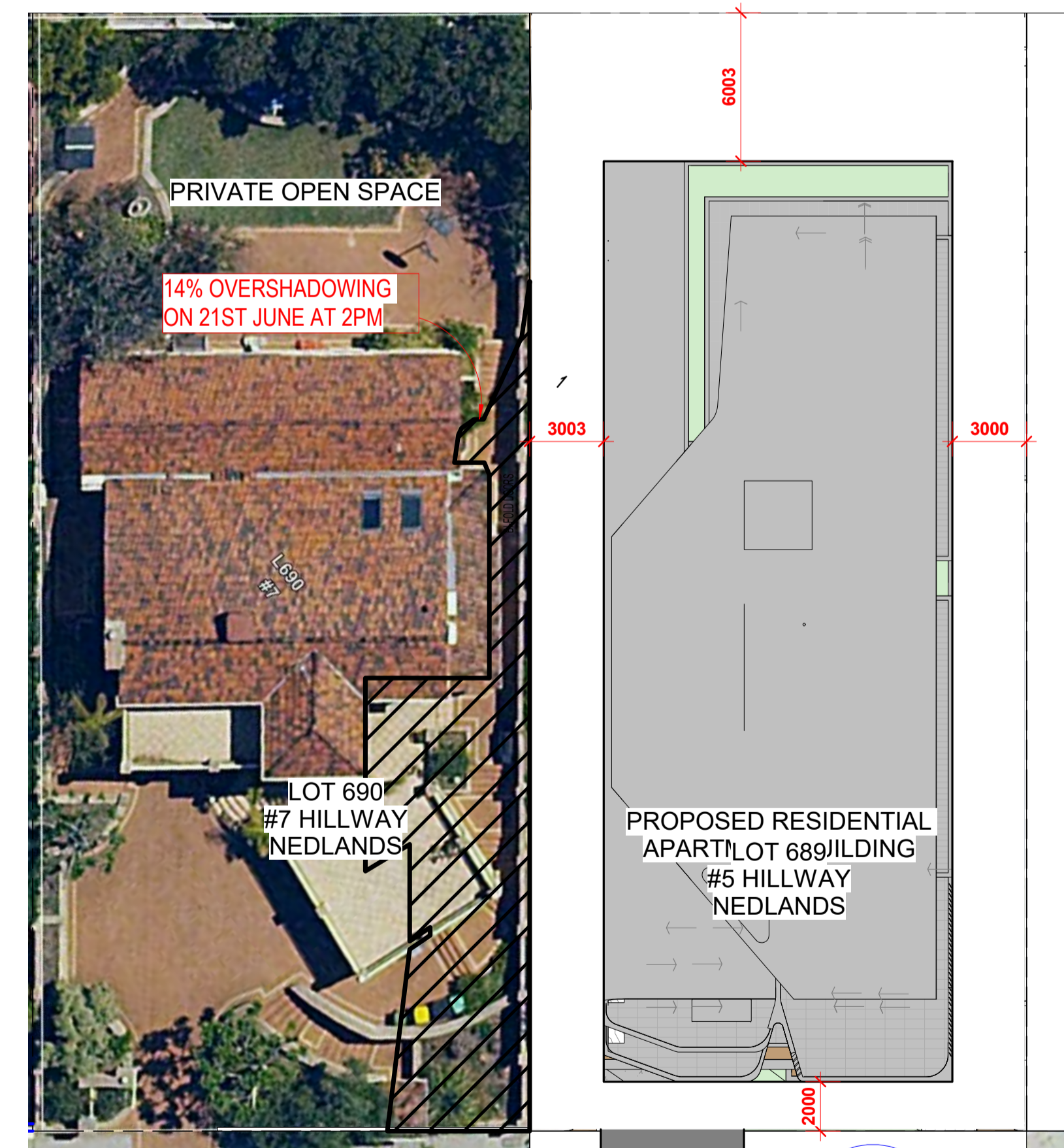
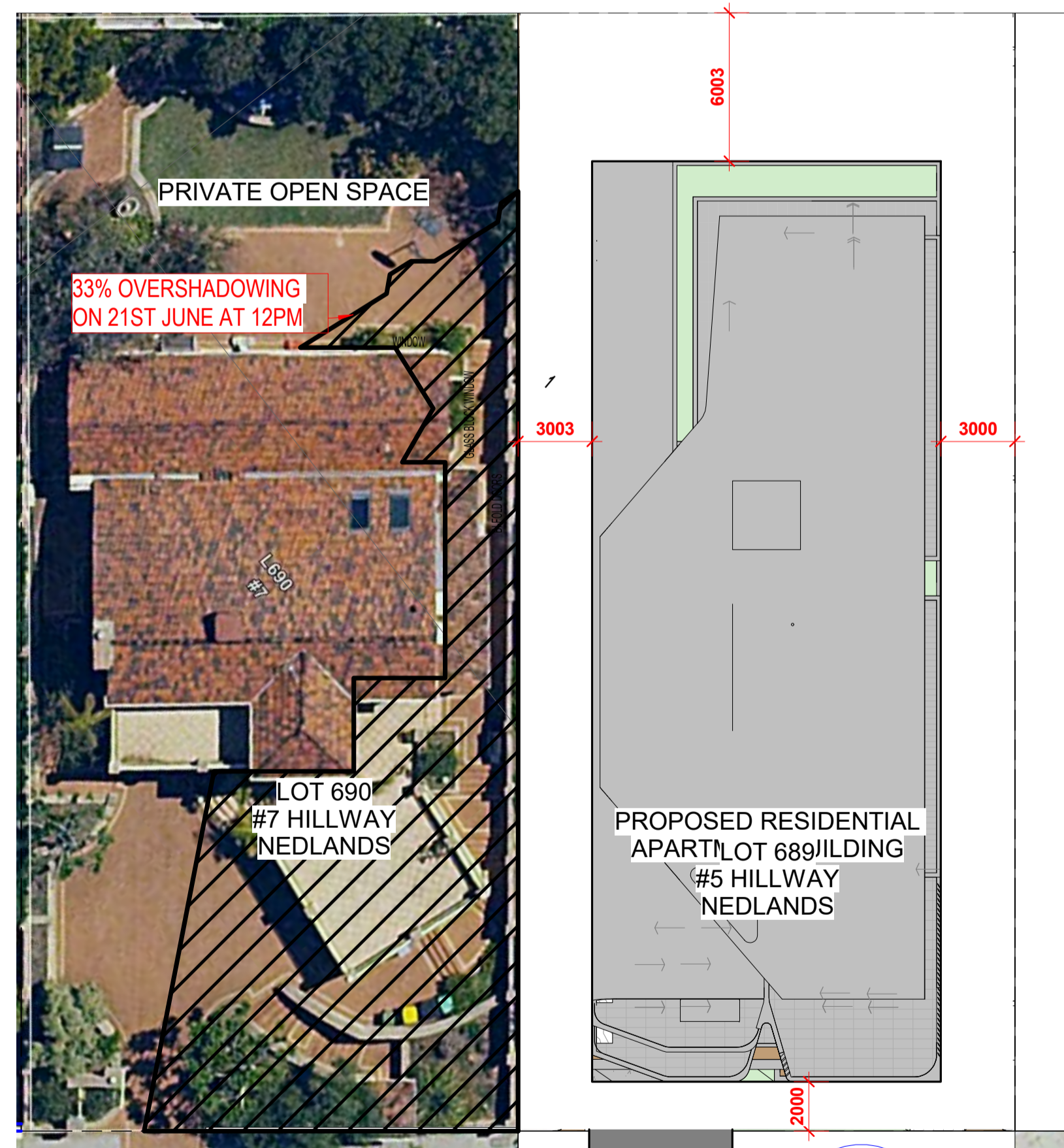
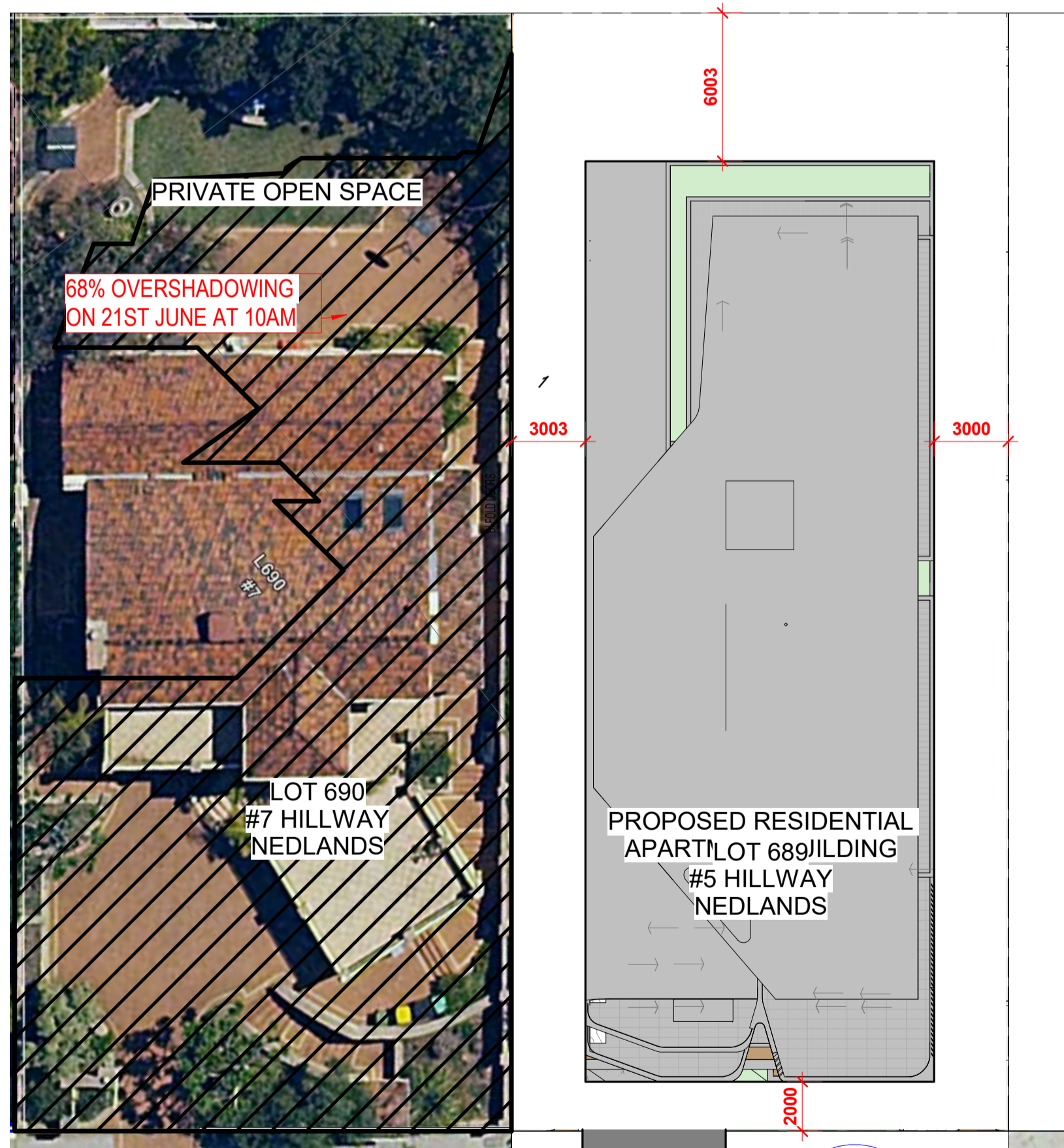
City of Nedlands  
Received  
7 August 2020

**DEVELOPMENT  
ASSESSMENT PANEL**  
**APPROVED**  
29-Sep-2020

1 Overshadowing Diagram 21st MARCH 10am with Existing Building  
SCALE: 1:200

2 Overshadowing Diagram 21st MARCH 12pm with Existing Building  
SCALE: 1:200

3 Overshadowing Diagram 21st MARCH 2pm with Existing Building  
SCALE: 1:200



4 Overshadowing Diagram 21st JUNE 10am with Existing Building  
SCALE: 1:200

5 Overshadowing Diagram 21st JUNE 12pm with Existing Building  
SCALE: 1:200

6 Overshadowing Diagram 21st JUNE 2pm with Existing Building  
SCALE: 1:200

architects &  
builders

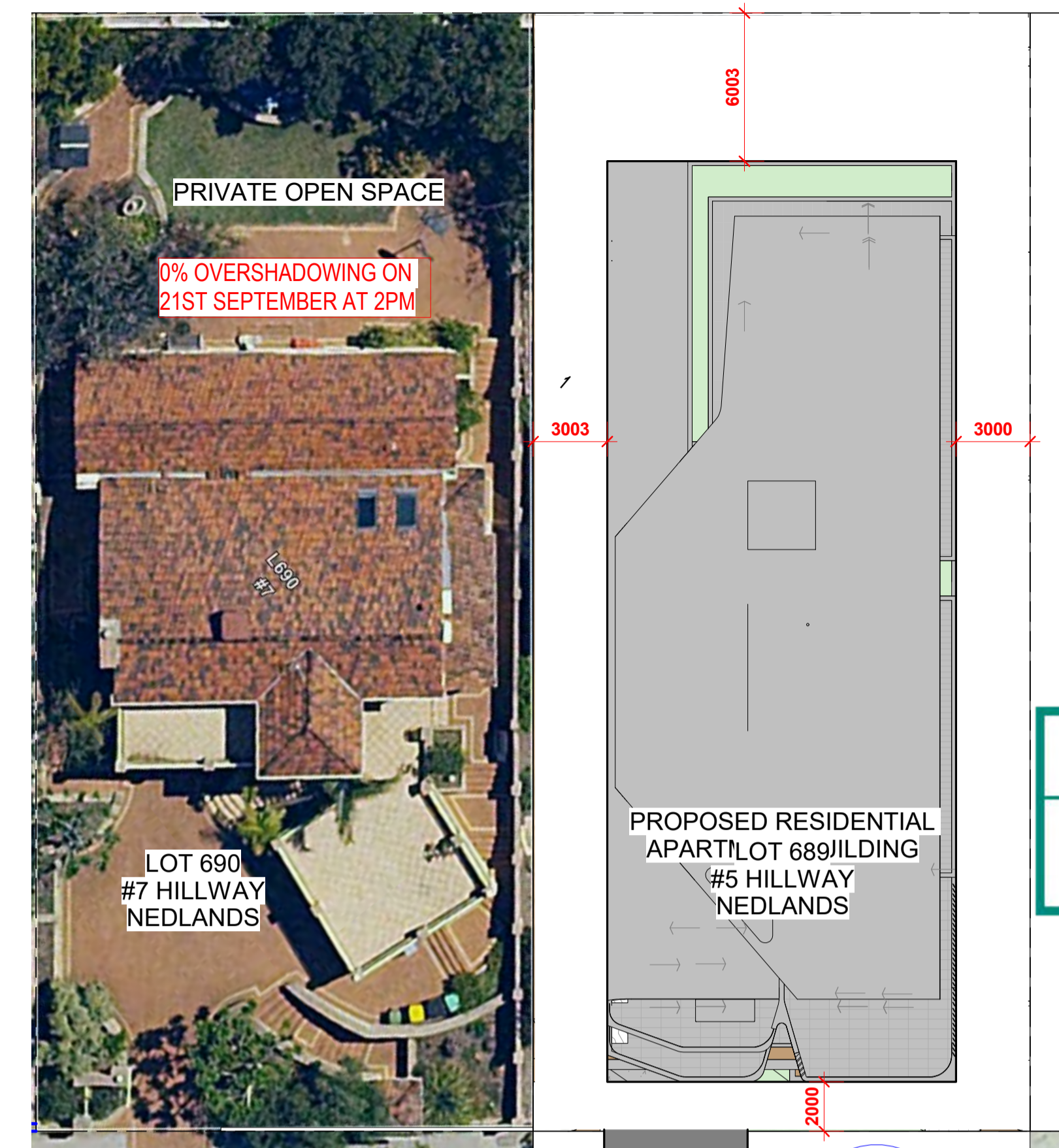
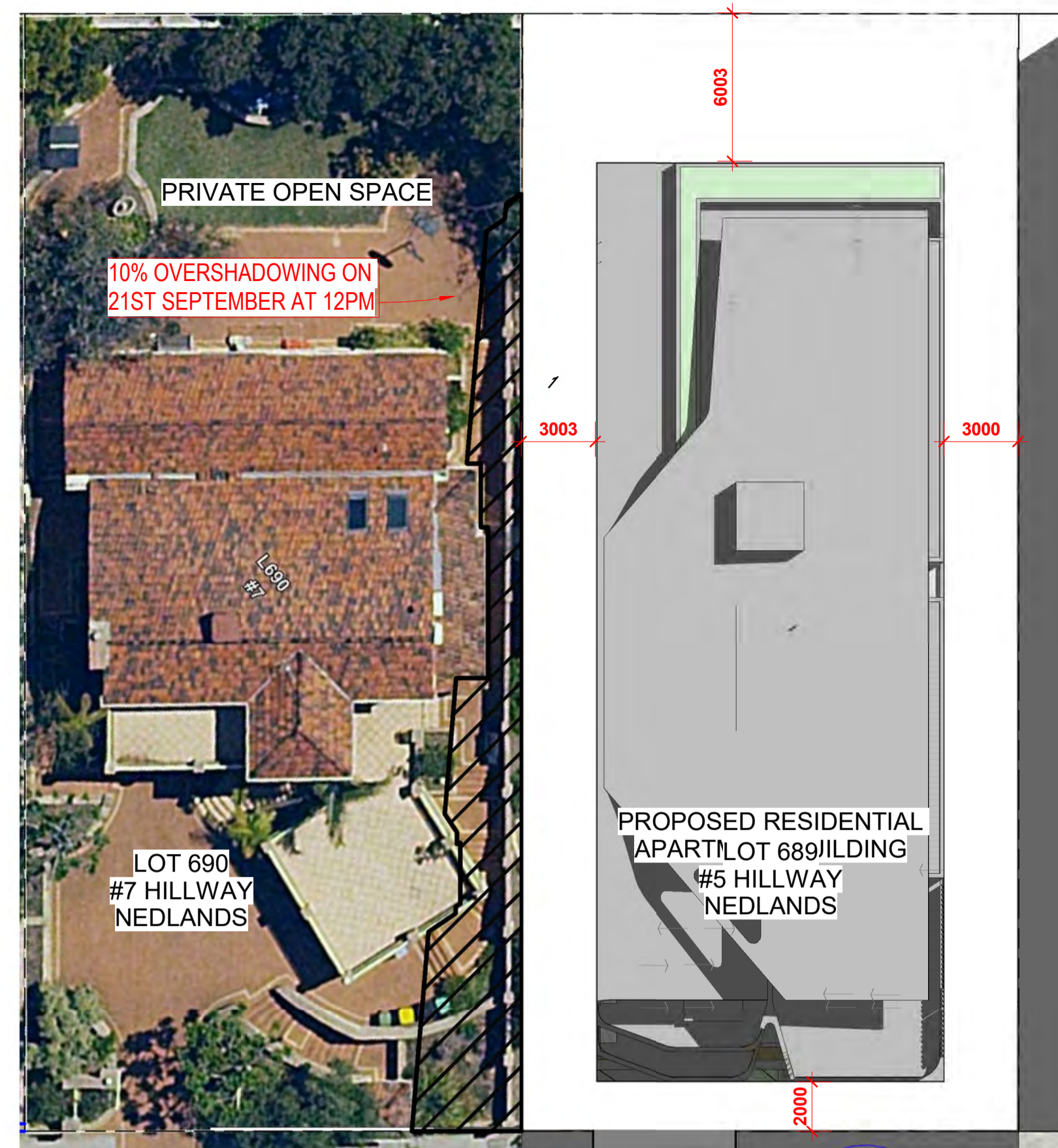
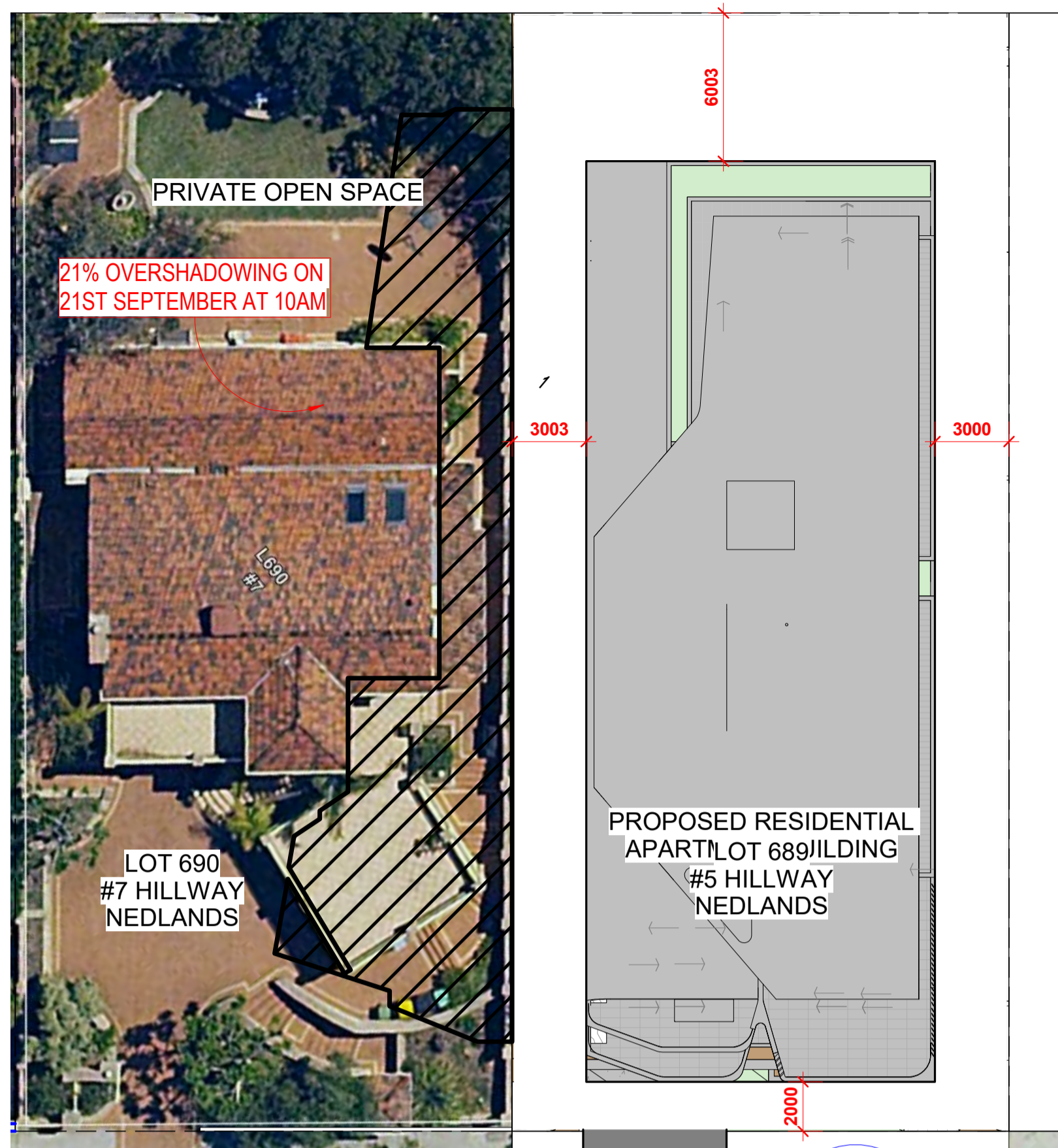
**GIORGI**

unit 1/24 parkland road, osborne park wa 6017  
t: 08 9444 8711 f: 08 9444 8733  
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Sheet Size A1  
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JOB NUMBER: A\_112 SCALE: 1:200  
DRAWING NO. DATE: AUG 2020





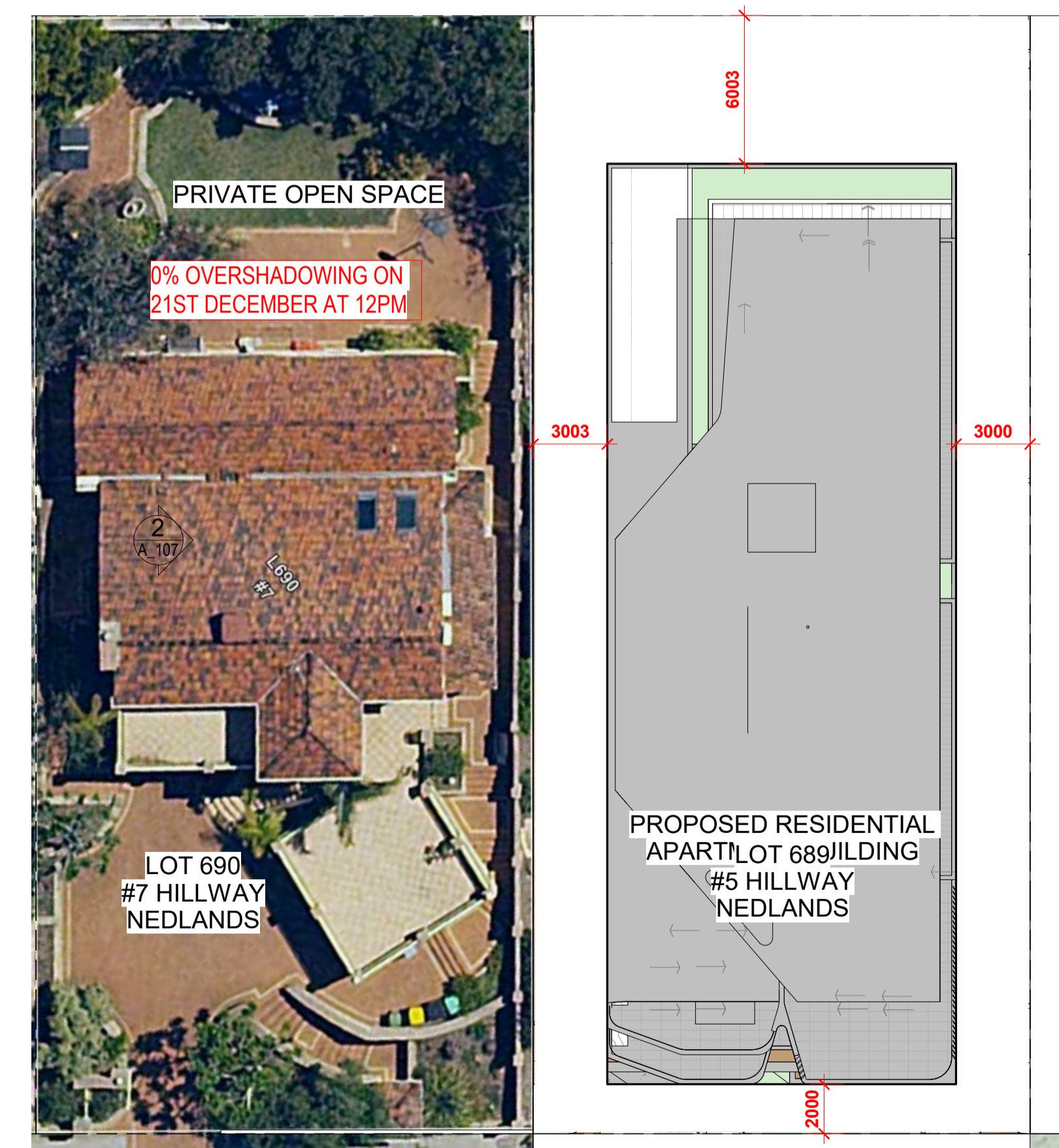
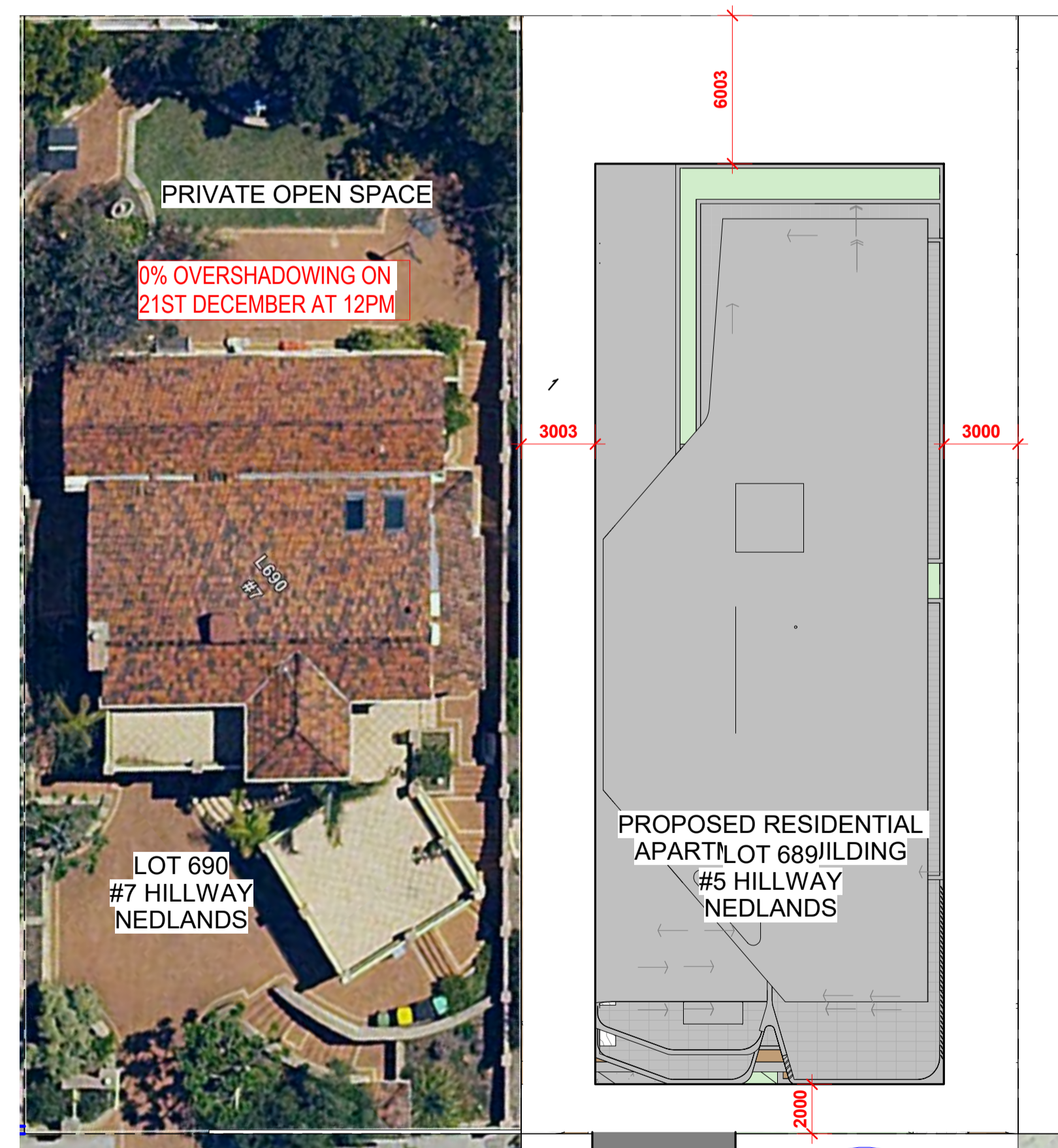
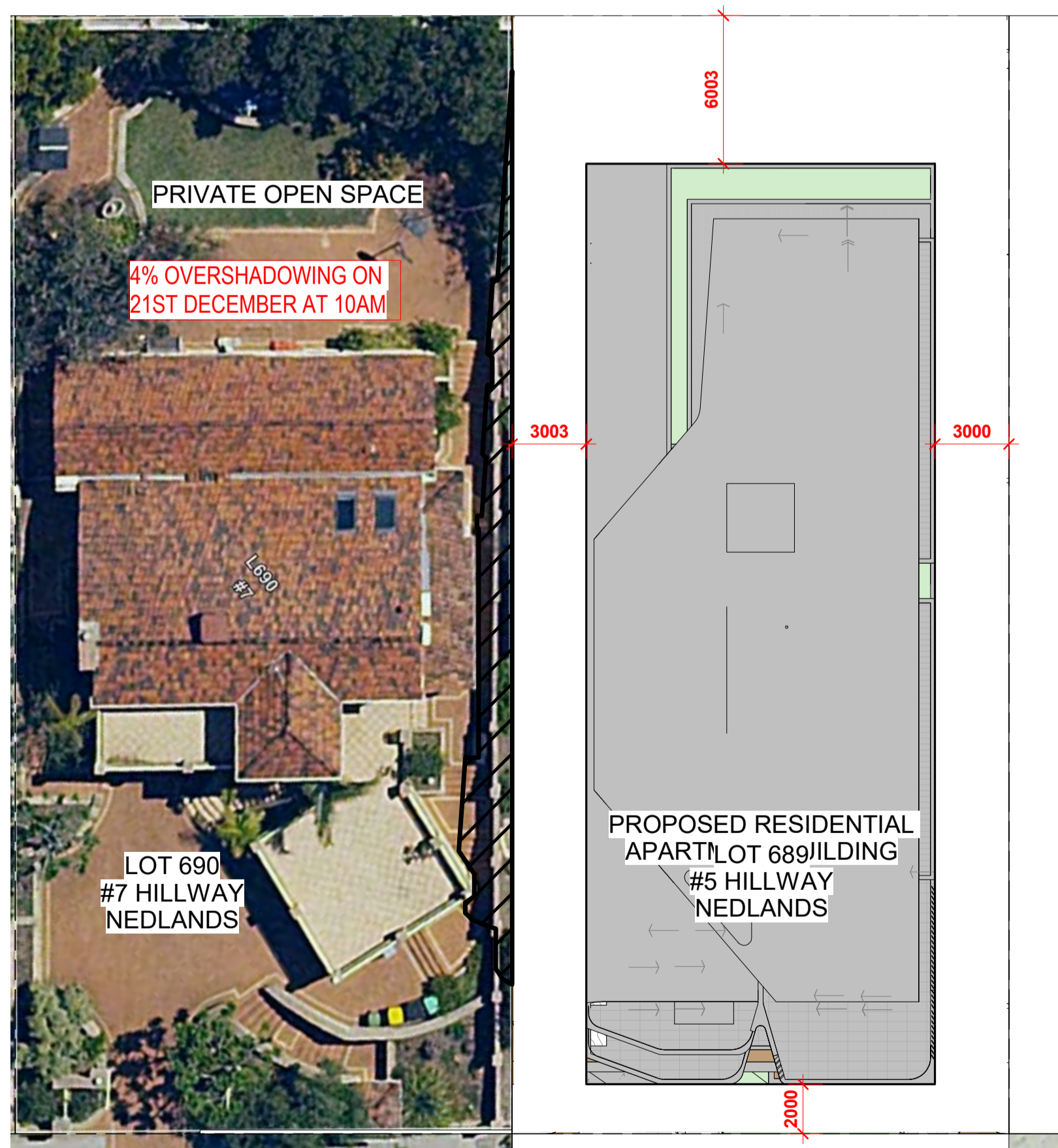
City of Nedlands  
Received  
7 August 2020

DEVELOPMENT  
ASSESSMENT PANEL  
**APPROVED**  
29-Sep-2020

1 Overshadowing Diagram 21st SEPT 10am with Existing Building  
SCALE: 1:200

2 Overshadowing Diagram 21st SEPT 12pm with Existing Building  
SCALE: 1:200

3 Overshadowing Diagram 21st SEPT 2pm with Existing Building  
SCALE: 1:200



4 Overshadowing Diagram 21st DEC 10am with Existing Building  
SCALE: 1:200

5 Overshadowing Diagram 21st DEC 12pm with Existing Building  
SCALE: 1:200

6 Overshadowing Diagram 21st DEC 2pm with Existing Building  
SCALE: 1:200

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JOB NUMBER: A\_113  
DRAWING NO.:  
SCALE: 1:200  
DATE: AUG 2020

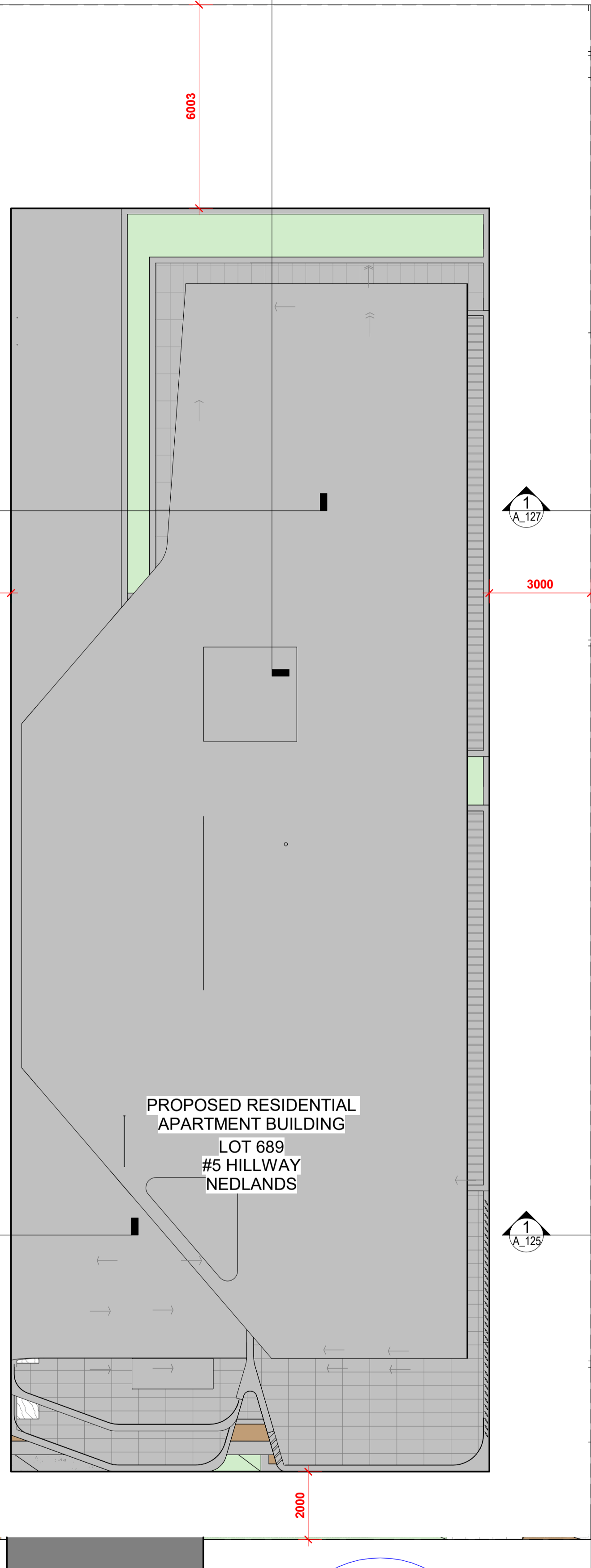




43% OVERSHADOWING  
ON 21ST JUNE AT 12PM

PRIVATE OPEN SPACE

LOT 690  
#7 HILLWAY  
NEDLANDS



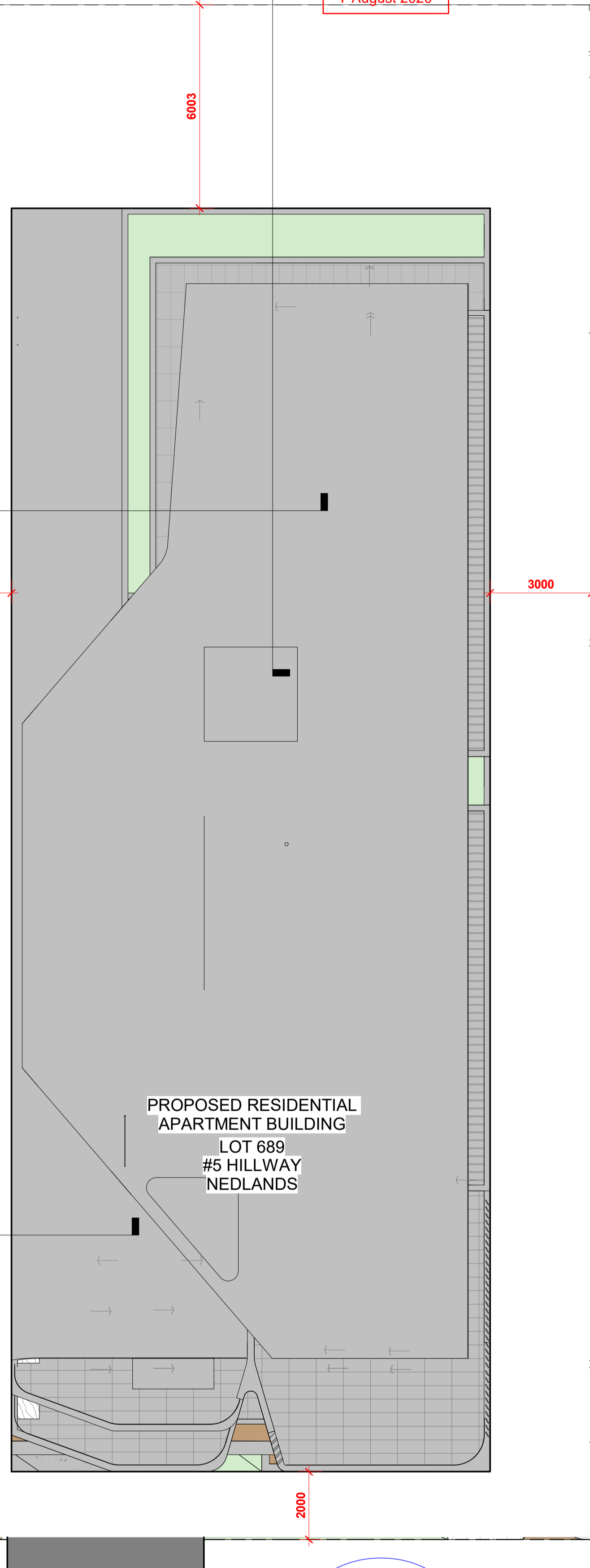
PROPOSED RESIDENTIAL  
APARTMENT BUILDING  
LOT 689  
#5 HILLWAY  
NEDLANDS



33% OVERSHADOWING  
ON 21ST JUNE AT 12PM

PRIVATE OPEN SPACE

LOT 690  
#7 HILLWAY  
NEDLANDS



PROPOSED RESIDENTIAL  
APARTMENT BUILDING  
LOT 689  
#5 HILLWAY  
NEDLANDS

1 Overshadowing Diagram 21st JUNE 12pm as Vacant Site  
SCALE: 1:100

2 Overshadowing Diagram 21st JUNE 12pm and Existing Building  
SCALE: 1:100

DEVELOPMENT  
ASSESSMENT PANEL

APPROVED  
29-Sep-2020





1 L2 June 21st at 9am  
SCALE:



2 L2 June 21st at 10am  
SCALE:



3 L2 June 21st at 11am  
SCALE:



4 L2 June 21st at 12pm  
SCALE:



5 L2 June 21st at 1pm  
SCALE:



6 L2 June 21st at 2pm  
SCALE:



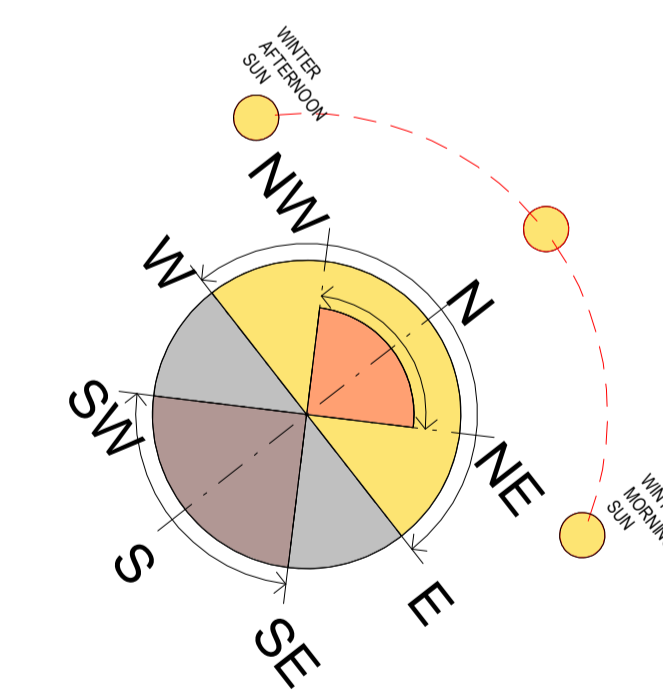
7 L2 June 21st at 3pm  
SCALE:

**DEVELOPMENT  
ASSESSMENT PANEL**

**APPROVED**

**29-Sep-2020**

L2 INTERNAL SOLAR ANALYSIS

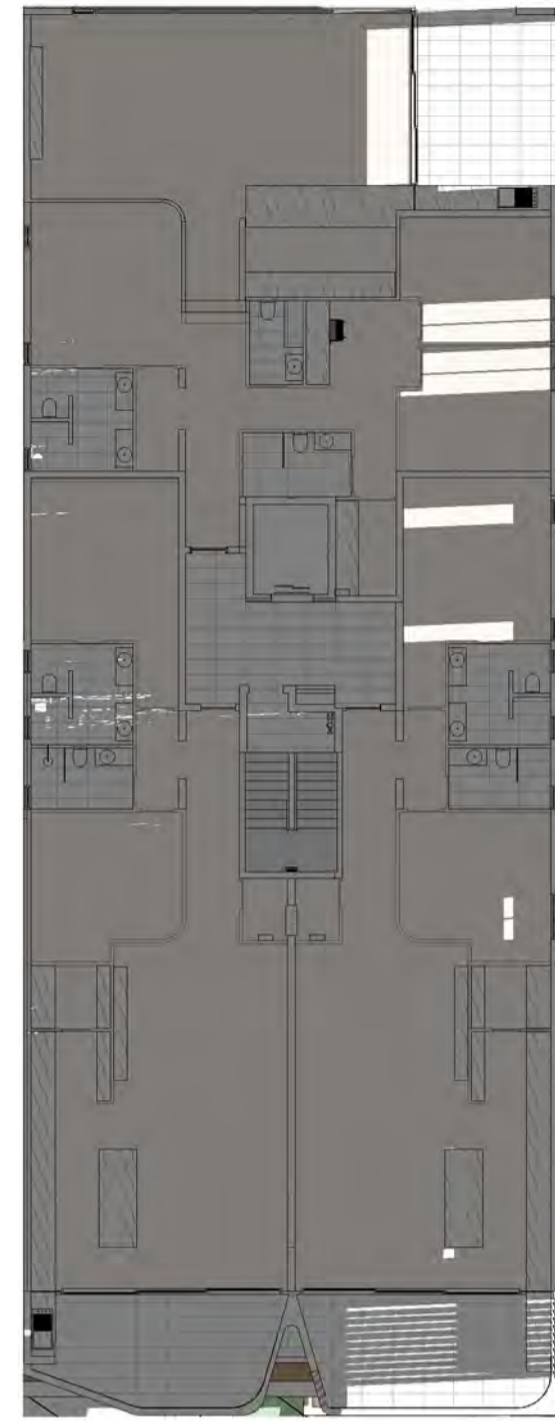


THE 1 APARTMENT ON LEVEL 2 DOES NOT  
ACHIEVE A MINIMUM OF 2 HOURS PER DAY OF  
DIRECT SUNLIGHT BETWEEN 9AM AND 3PM





1 L3 June 21st at 9am  
SCALE:



2 L3 June 21st at 10am  
SCALE:



3 L3 June 21st at 11am  
SCALE:



4 L3 June 21st at 12pm  
SCALE:



5 L3 June 21st at 1pm  
SCALE:



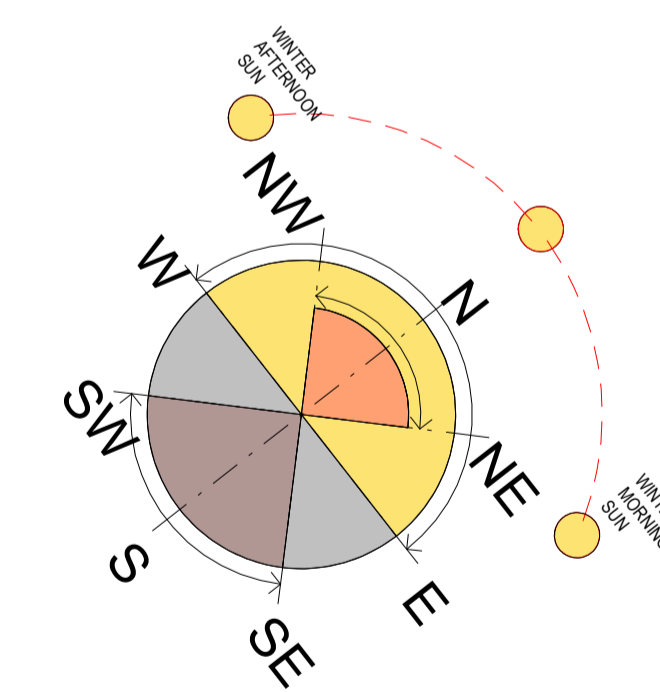
6 L3 June 21st at 2pm  
SCALE:



7 L3 June 21st at 3pm  
SCALE:

DEVELOPMENT  
ASSESSMENT PANEL  
**APPROVED**  
29-Sep-2020

L3 INTERNAL SOLAR ANALYSIS



OUT OF 3 APARTMENTS ON LEVEL 3  
ACHIEVES A MINIMUM OF 2 HOURS PER DAY  
OF DIRECT SUNLIGHT BETWEEN 9AM AND 3PM





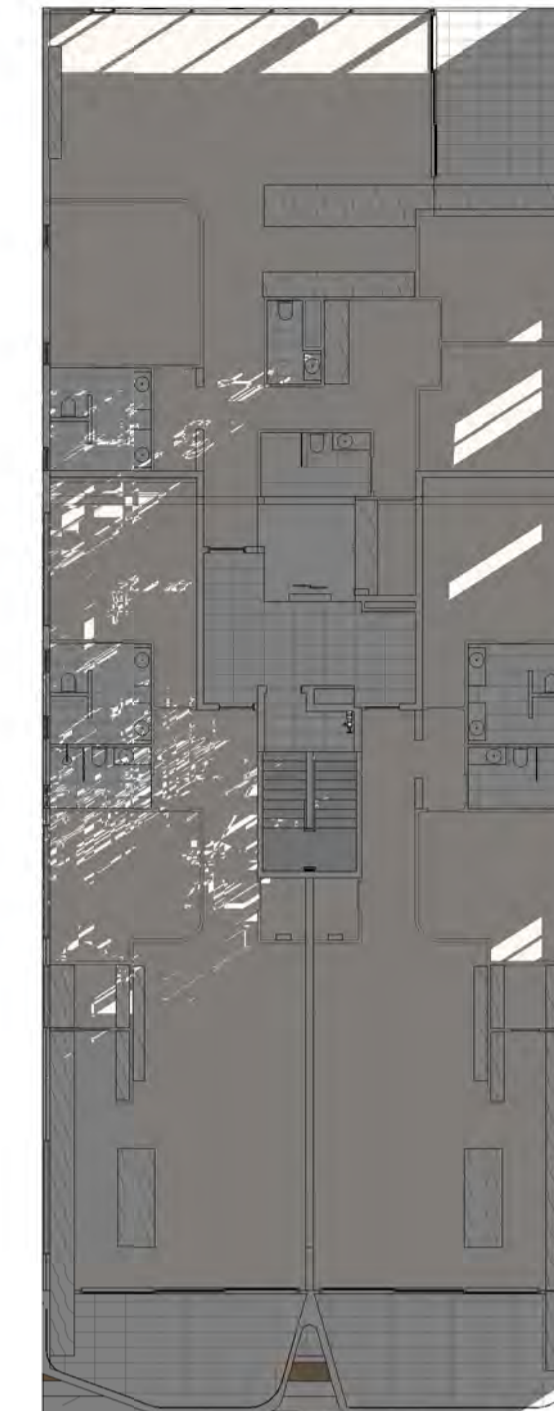
1 L4 June 21st at 9am  
SCALE:



2 L4 June 21st at 10am  
SCALE:



3 L4 June 21st at 11am  
SCALE:



4 L4 June 21st at 12pm  
SCALE:



5 L4 June 21st at 1pm  
SCALE:



6 L4 June 21st at 2pm  
SCALE:

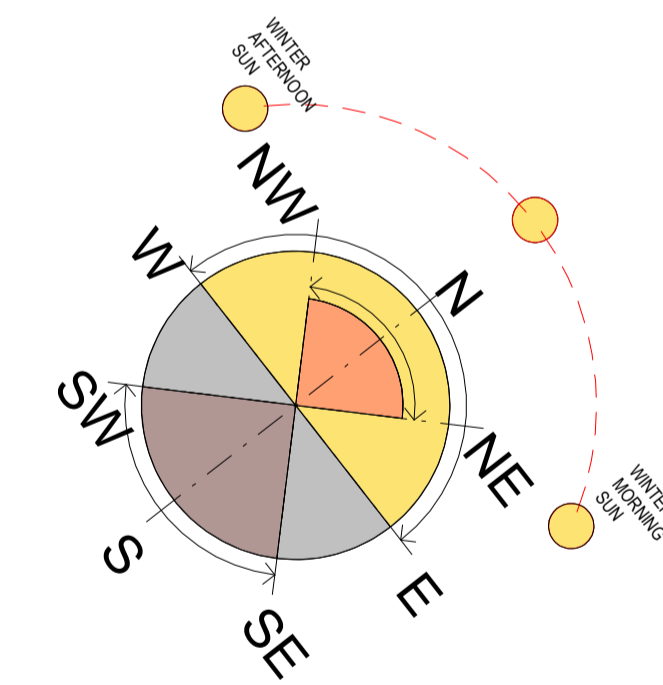


7 L4 June 21st at 3pm  
SCALE:

**DEVELOPMENT  
ASSESSMENT PANEL**

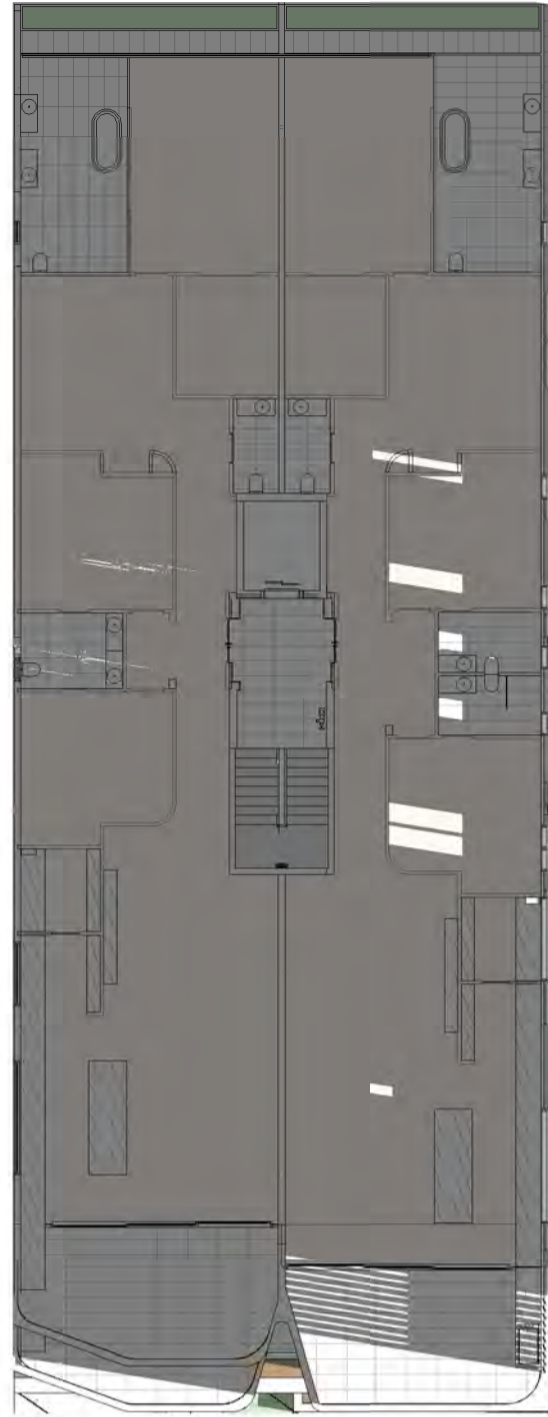
**APPROVED**  
29-Sep-2020

L4 INTERNAL SOLAR ANALYSIS

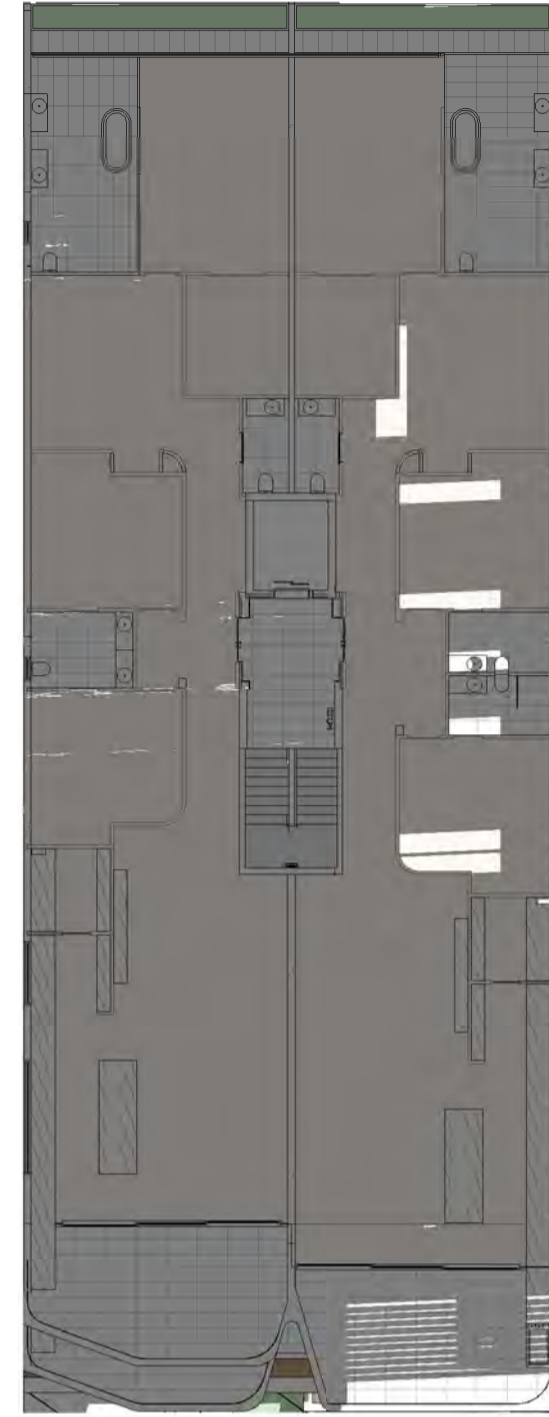


2 OUT OF 3 APARTMENTS ON LEVEL 4  
ACHIEVES A MINIMUM OF 2 HOURS PER DAY  
OF DIRECT SUNLIGHT BETWEEN 9AM AND 3PM

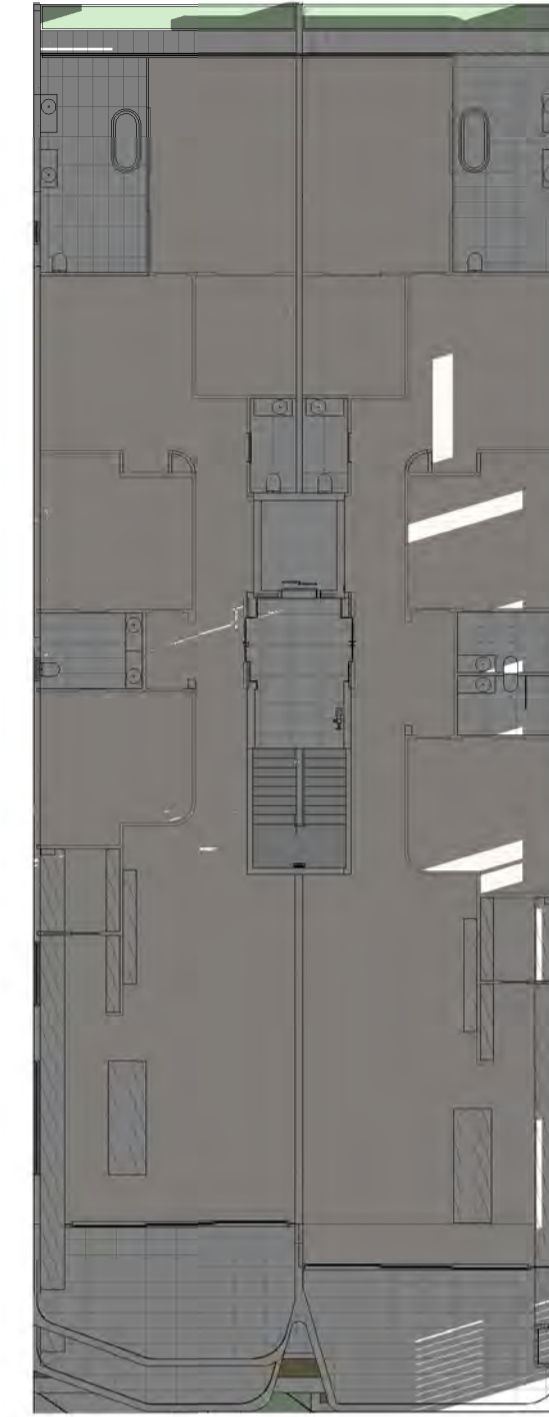




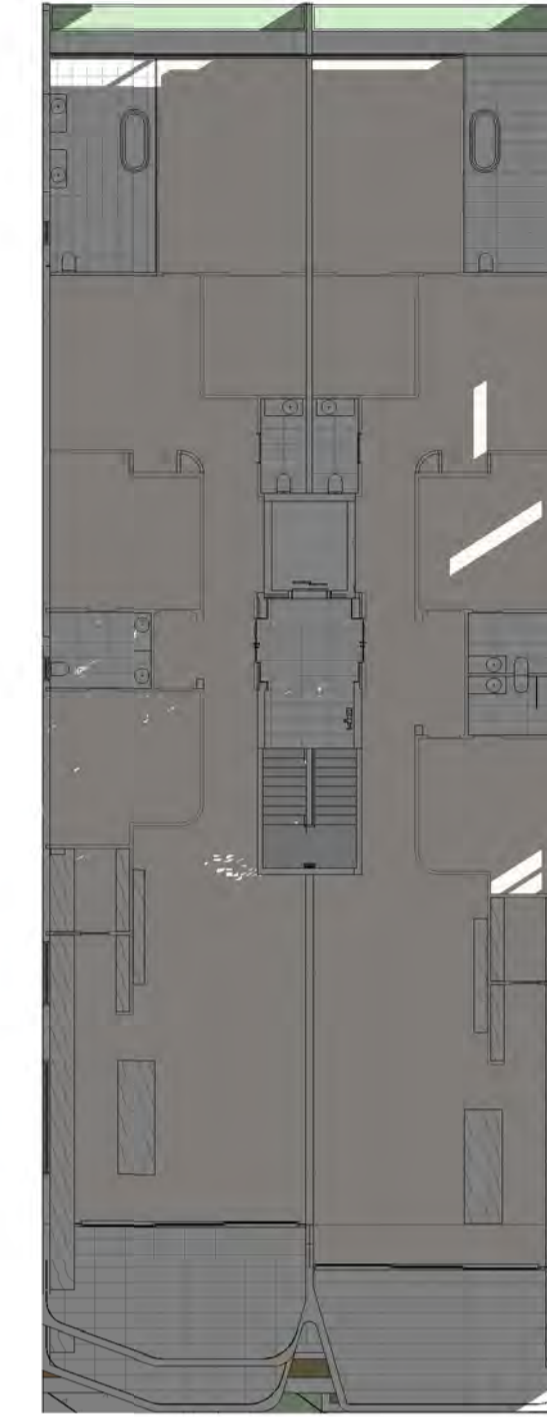
1 L5 June 21st at 9am  
SCALE:



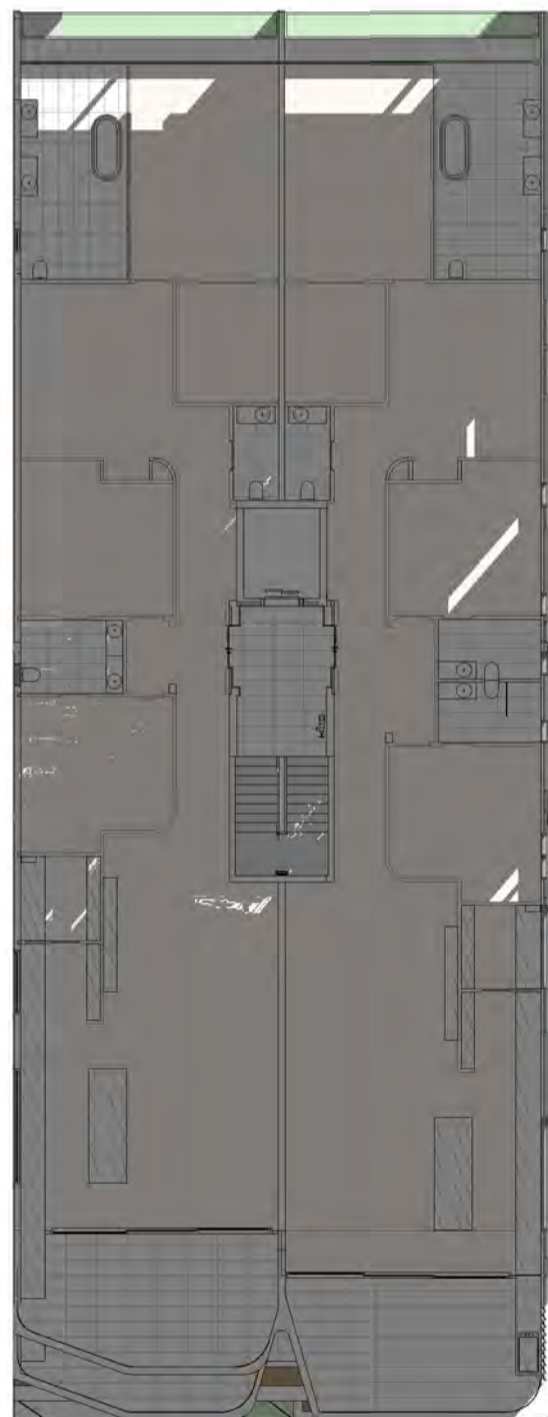
2 L5 June 21st at 10am  
SCALE:



3 L5 June 21st at 11am  
SCALE:



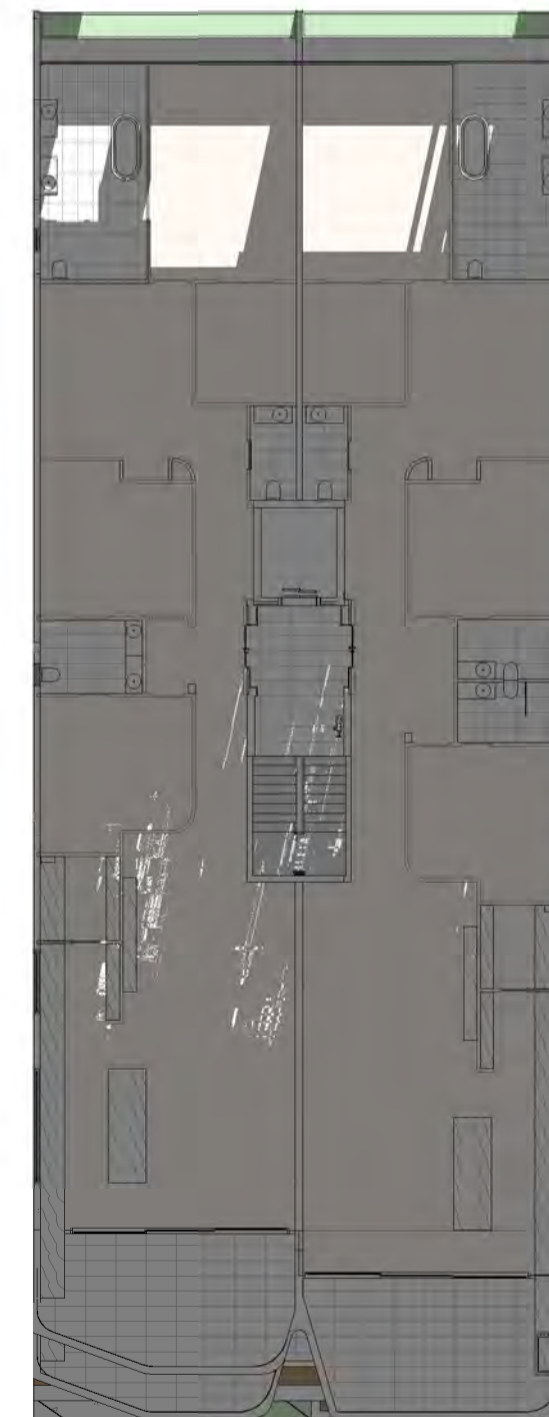
4 L5 June 21st at 12pm  
SCALE:



5 L5 June 21st at 1pm  
SCALE:



6 L5 June 21st at 2pm  
SCALE:

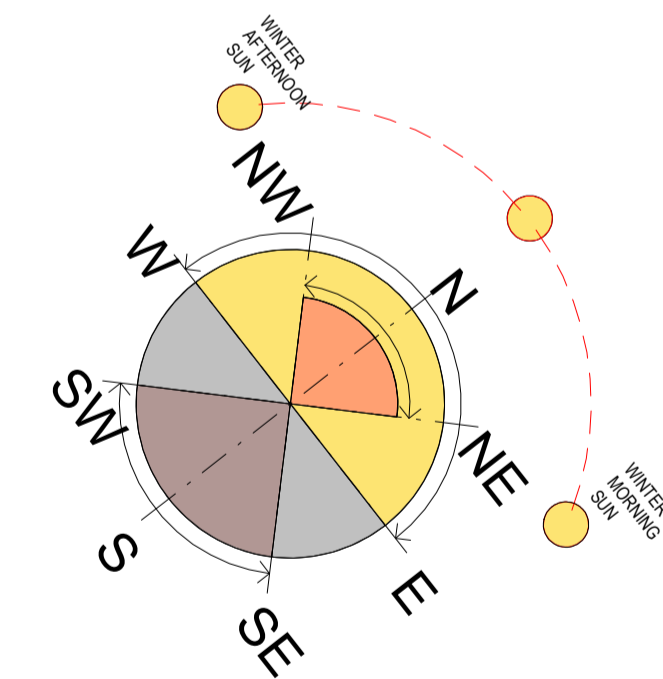


7 L5 June 21st at 3pm  
SCALE:

**DEVELOPMENT  
ASSESSMENT PANEL**

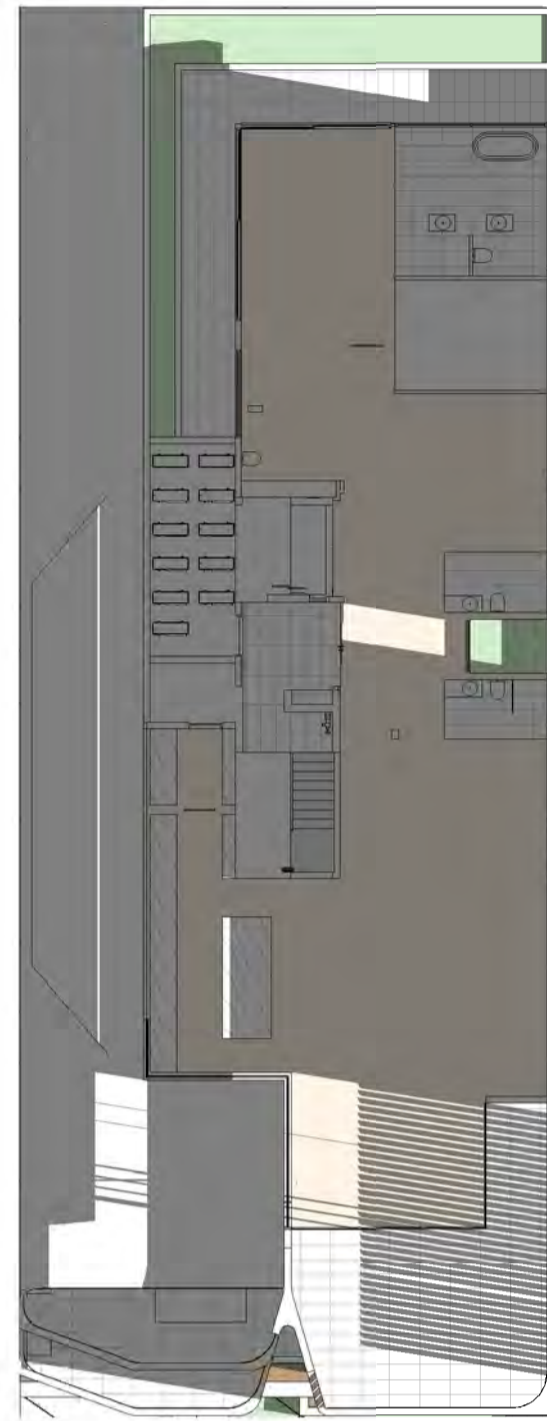
**APPROVED**  
29-Sep-2020

L5 INTERNAL SOLAR ANALYSIS



2 OUT OF 2 APARTMENTS ON LEVEL 5  
ACHIEVES A MINIMUM OF 2 HOURS PER DAY  
OF DIRECT SUNLIGHT BETWEEN 9AM AND 3PM

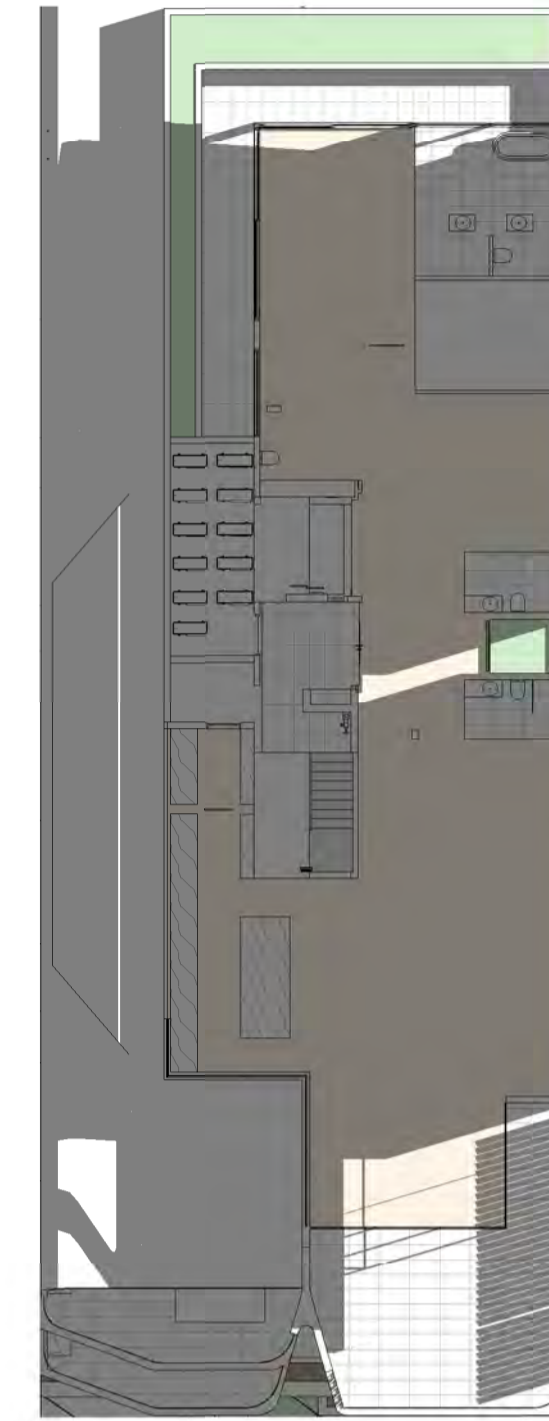




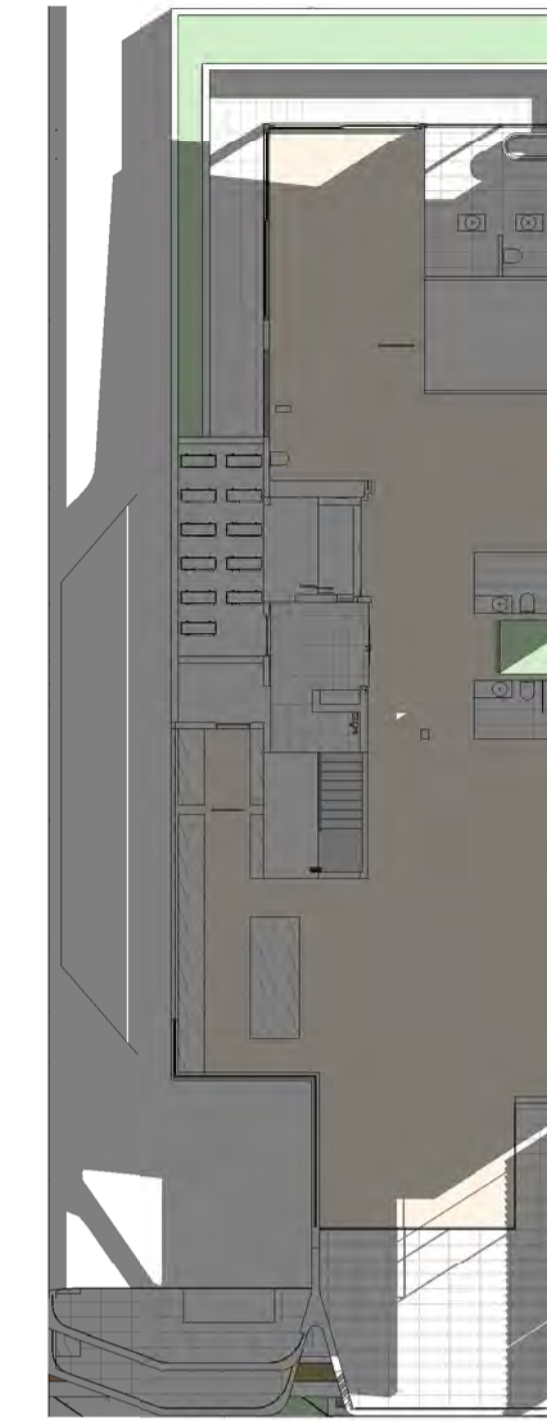
1 L6 June 21st at 9am  
SCALE:



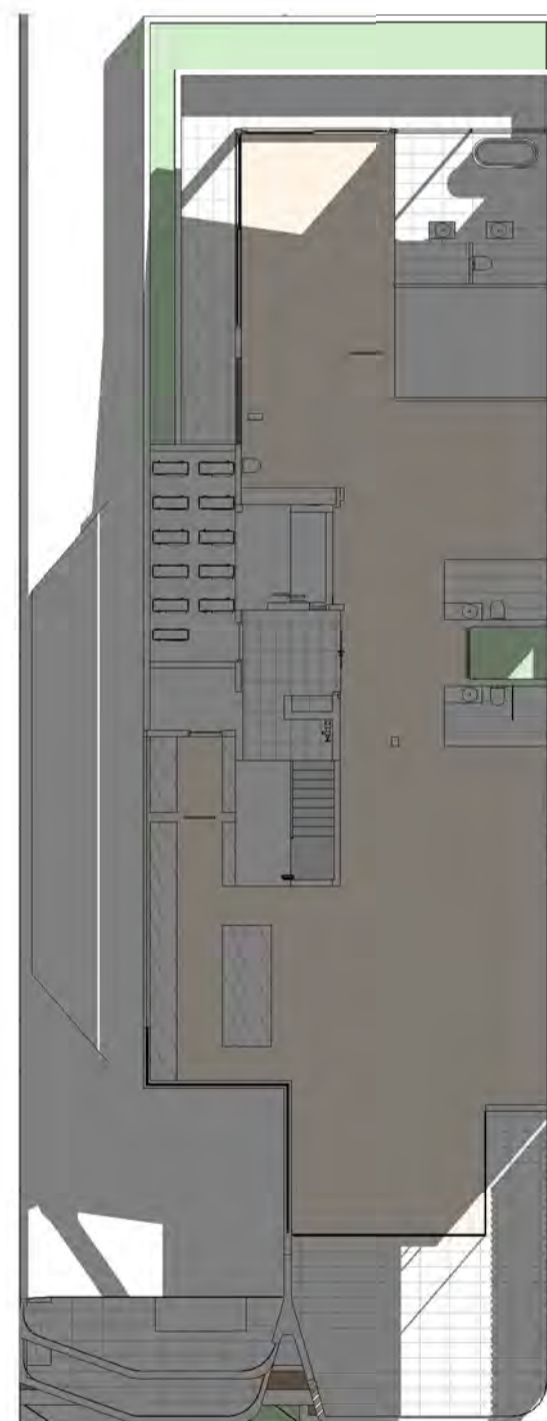
2 L6 June 21st at 10am  
SCALE:



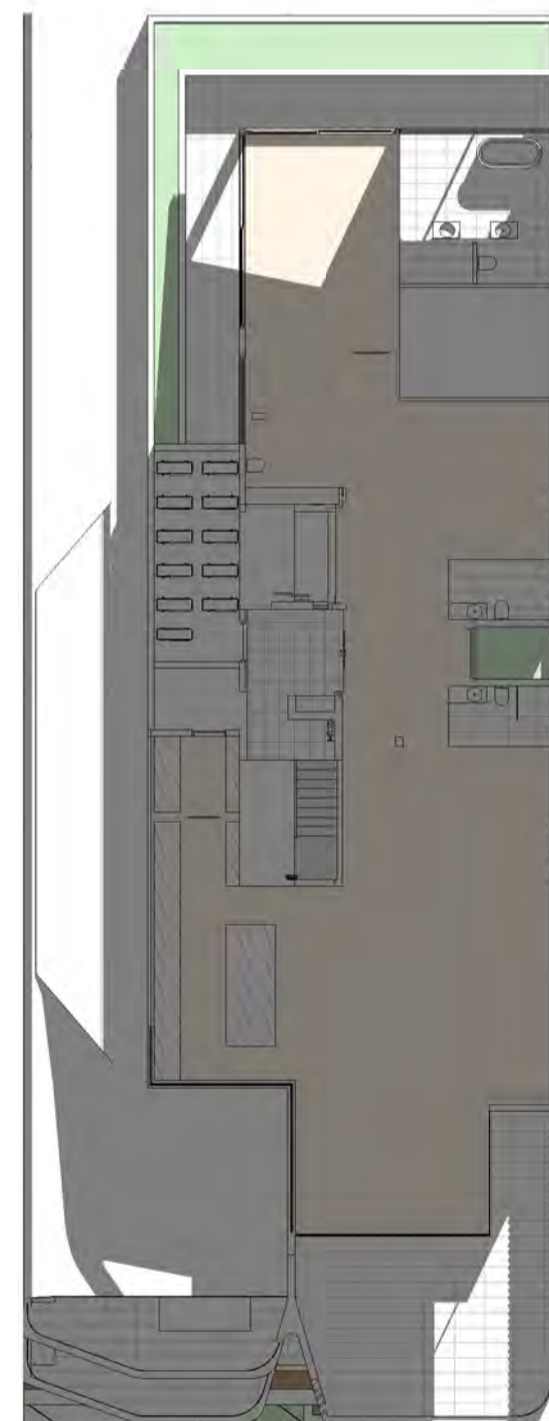
3 L6 June 21st at 11am  
SCALE:



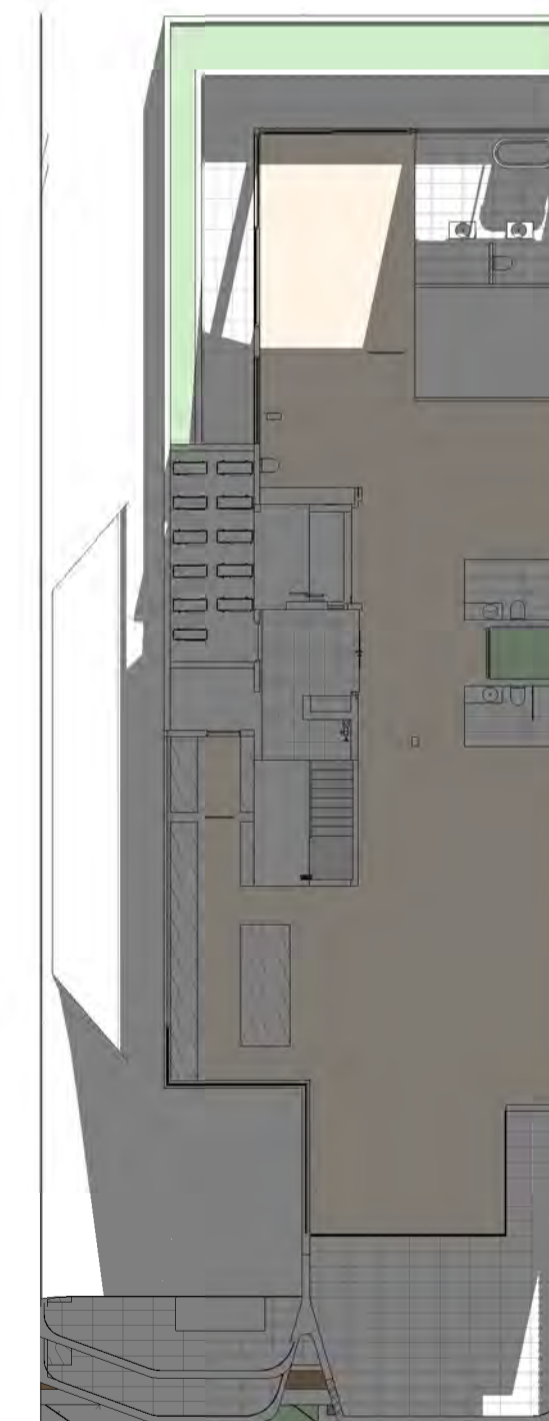
4 L6 June 21st at 12pm  
SCALE:



5 L6 June 21st at 1pm  
SCALE:



6 L6 June 21st at 2pm  
SCALE:



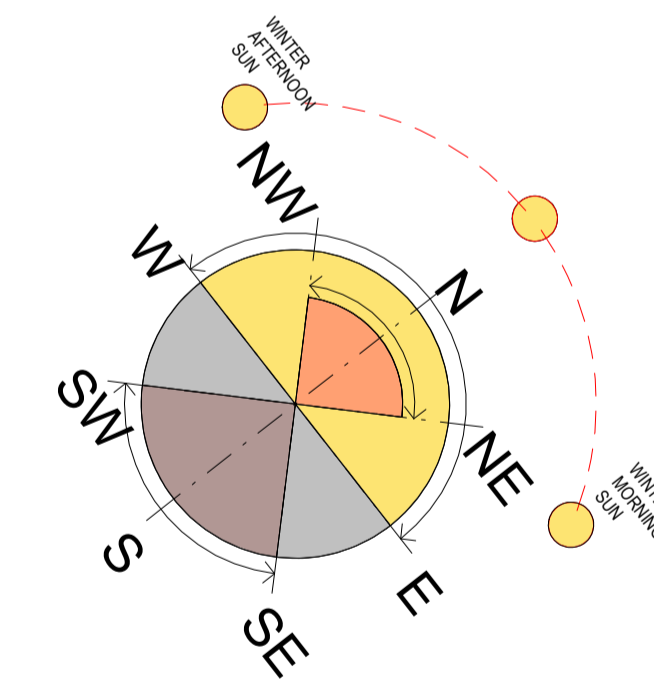
7 L6 June 21st at 3pm  
SCALE:

**DEVELOPMENT  
ASSESSMENT PANEL**

**APPROVED**

**29-Sep-2020**

L6 INTERNAL SOLAR ANALYSIS



THE 1 APARTMENT ON LEVEL 6 ACHIEVES A  
MINIMUM OF 2 HOURS PER DAY OF DIRECT  
SUNLIGHT BETWEEN 9AM AND 3PM



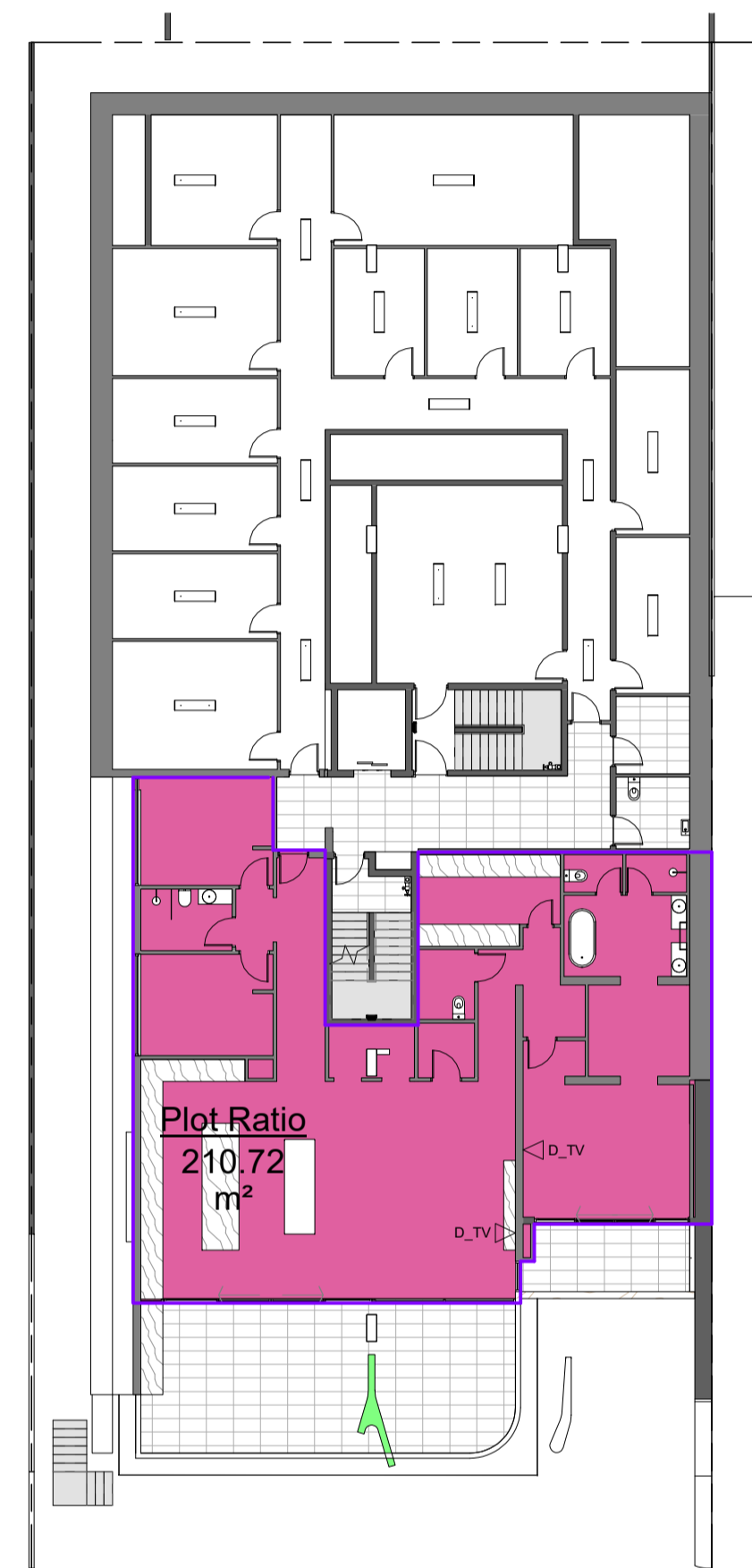
211 m<sup>2</sup>

424 m<sup>2</sup>

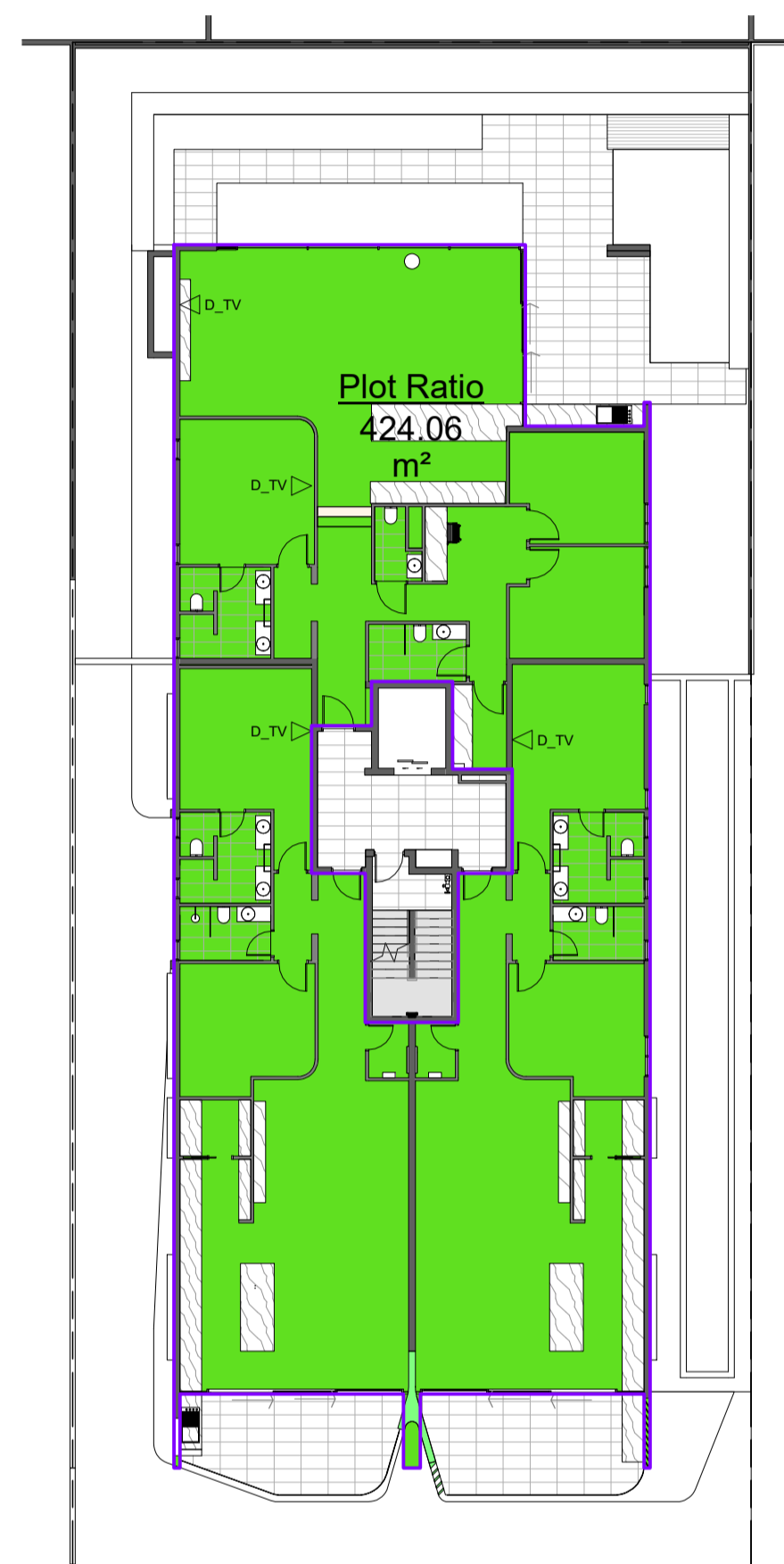
425 m<sup>2</sup>

422 m<sup>2</sup>

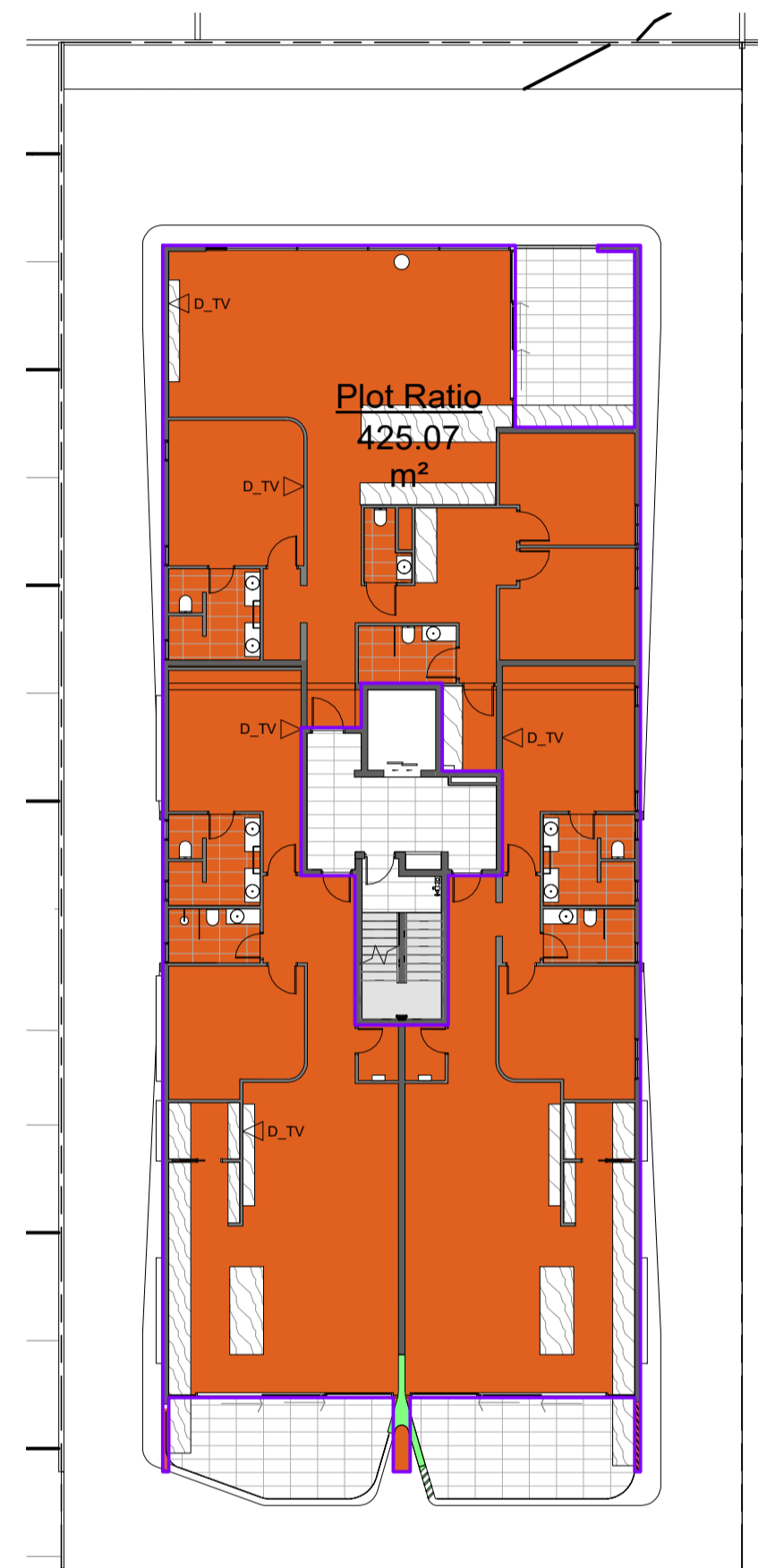
229 m<sup>2</sup>



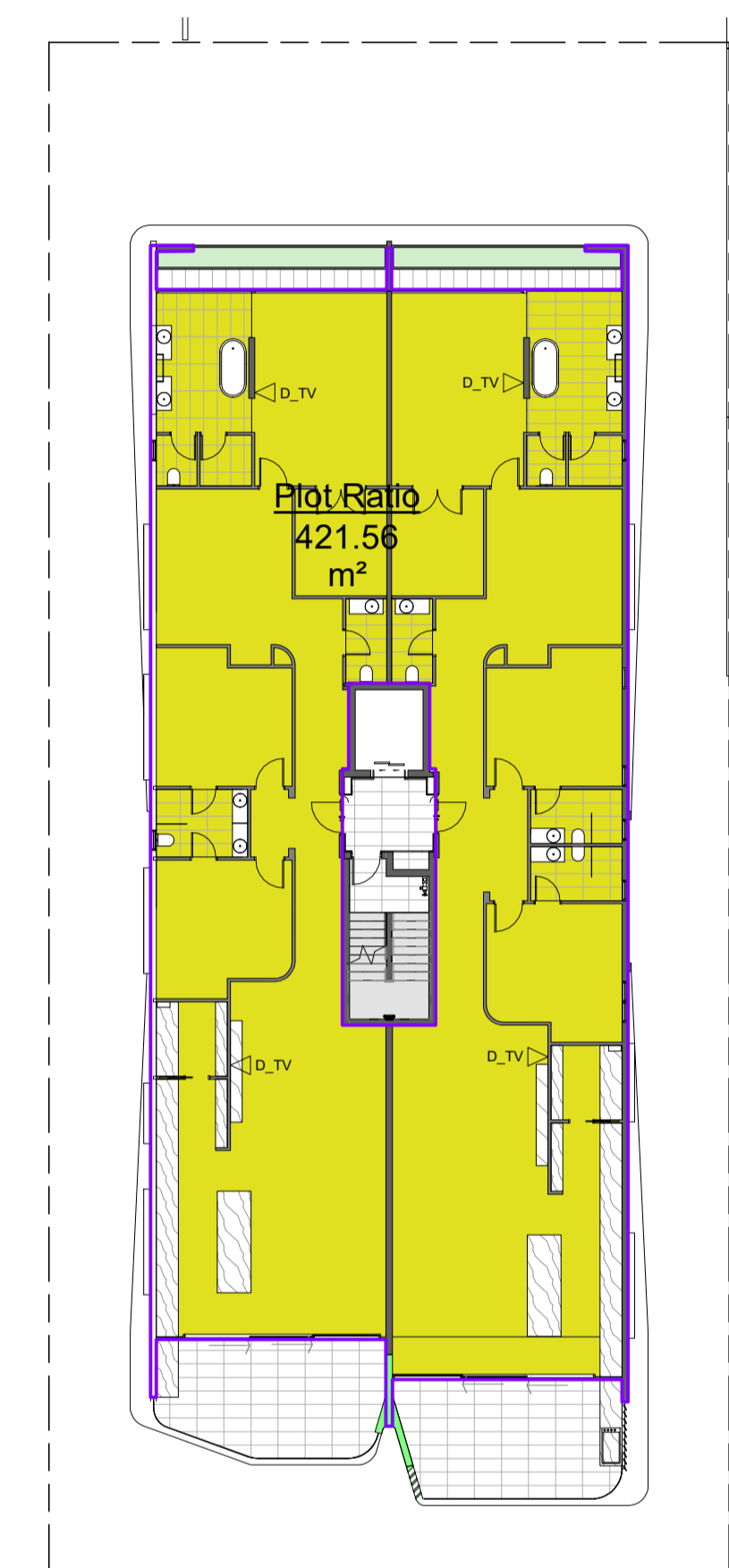
1 Level 2  
A\_105 SCALE: 1:200



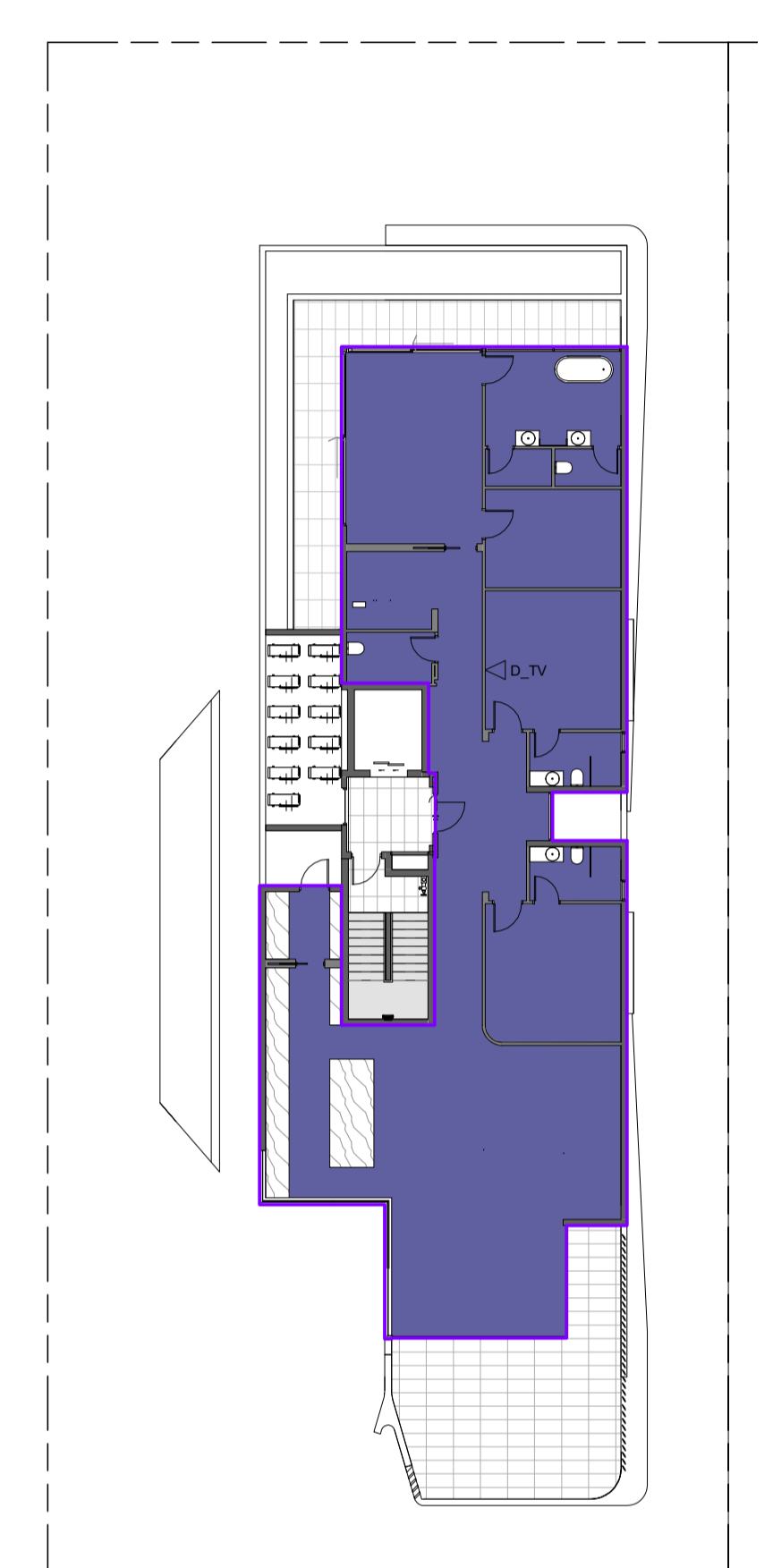
2 Level 3  
A\_105 SCALE: 1:200



3 Level 4  
A\_105 SCALE: 1:200



4 Level 5  
A\_105 SCALE: 1:200



5 Level 6  
A\_105 SCALE: 1:200

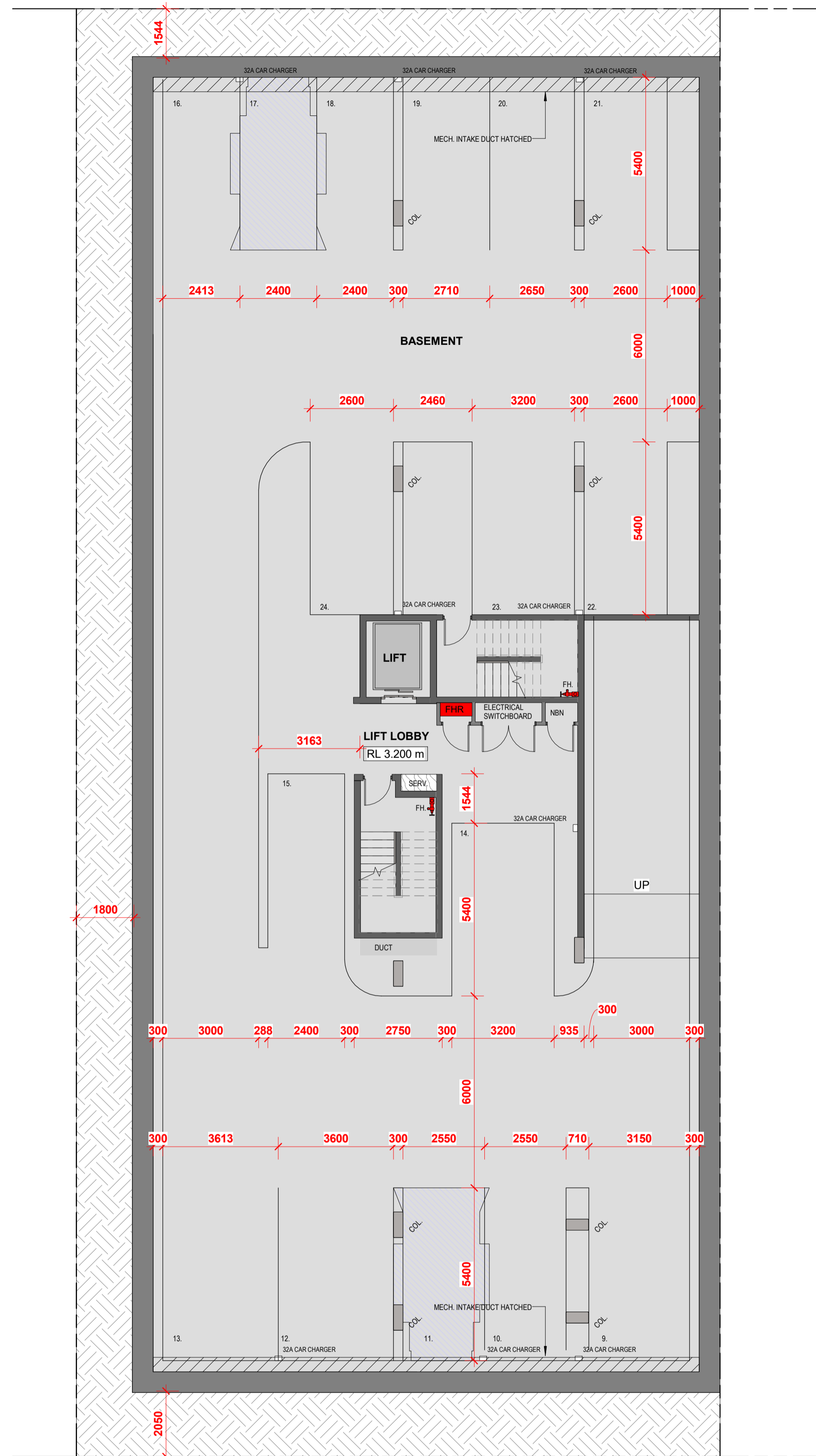
Plot Ratio		
Name	Area	Perimeter
Plot Ratio	211 m <sup>2</sup>	75
Plot Ratio	424 m <sup>2</sup>	111
Plot Ratio	425 m <sup>2</sup>	122
Plot Ratio	422 m <sup>2</sup>	112
Plot Ratio	229 m <sup>2</sup>	99
Plot Ratio	1710 m <sup>2</sup>	520

ALLOWABLE PLOT RATIO AT 2:1 = 1820m<sup>2</sup>

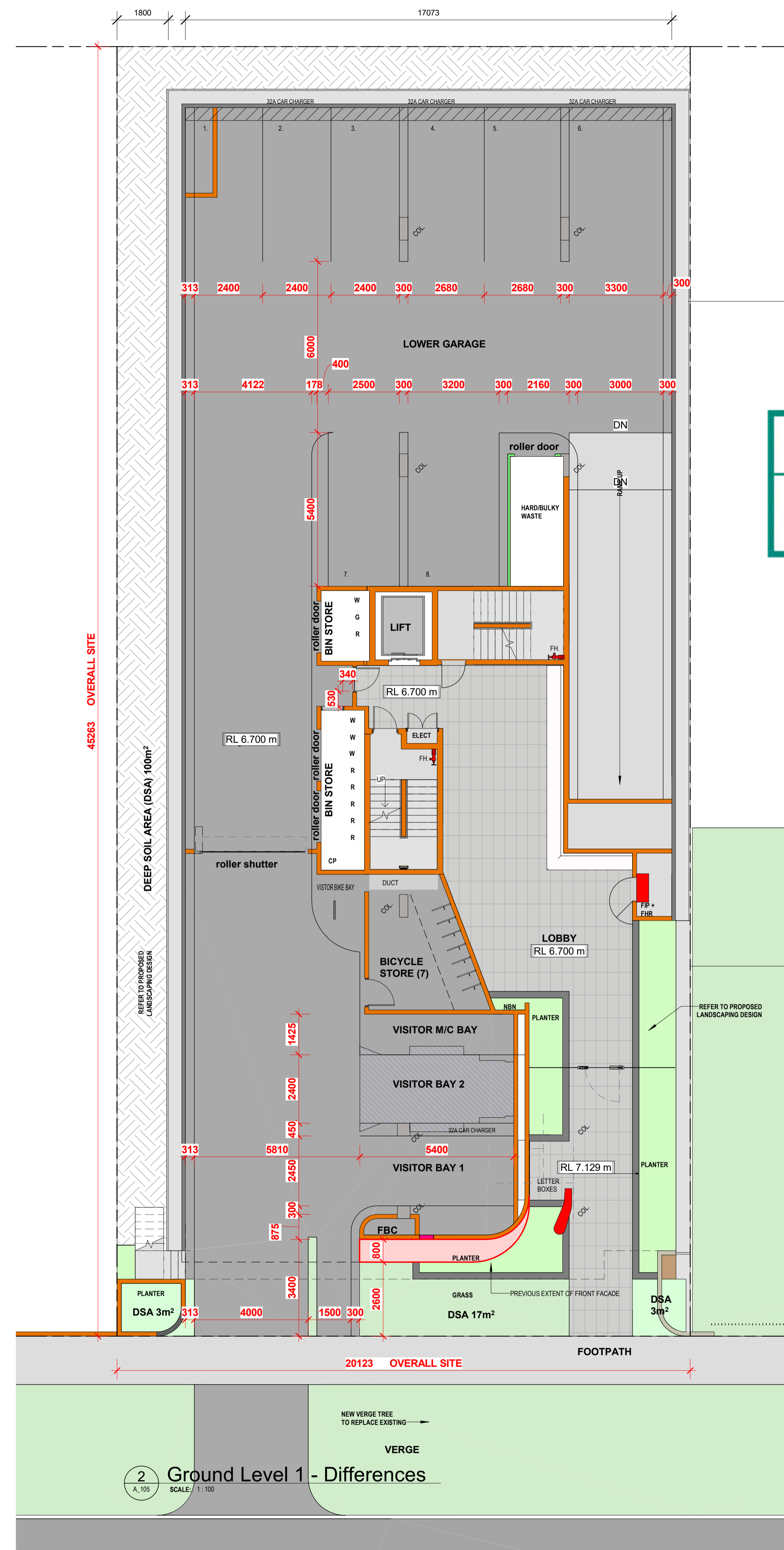


**DEVELOPMENT  
ASSESSMENT PANEL**

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**1** Basement - Differences  
SCALE: 1:100



**2** Ground Level 1 - Differences  
SCALE: 1:100

**BASEMENT PLAN & GROUND FLOOR PLAN - DIFFERENCES- SK07**

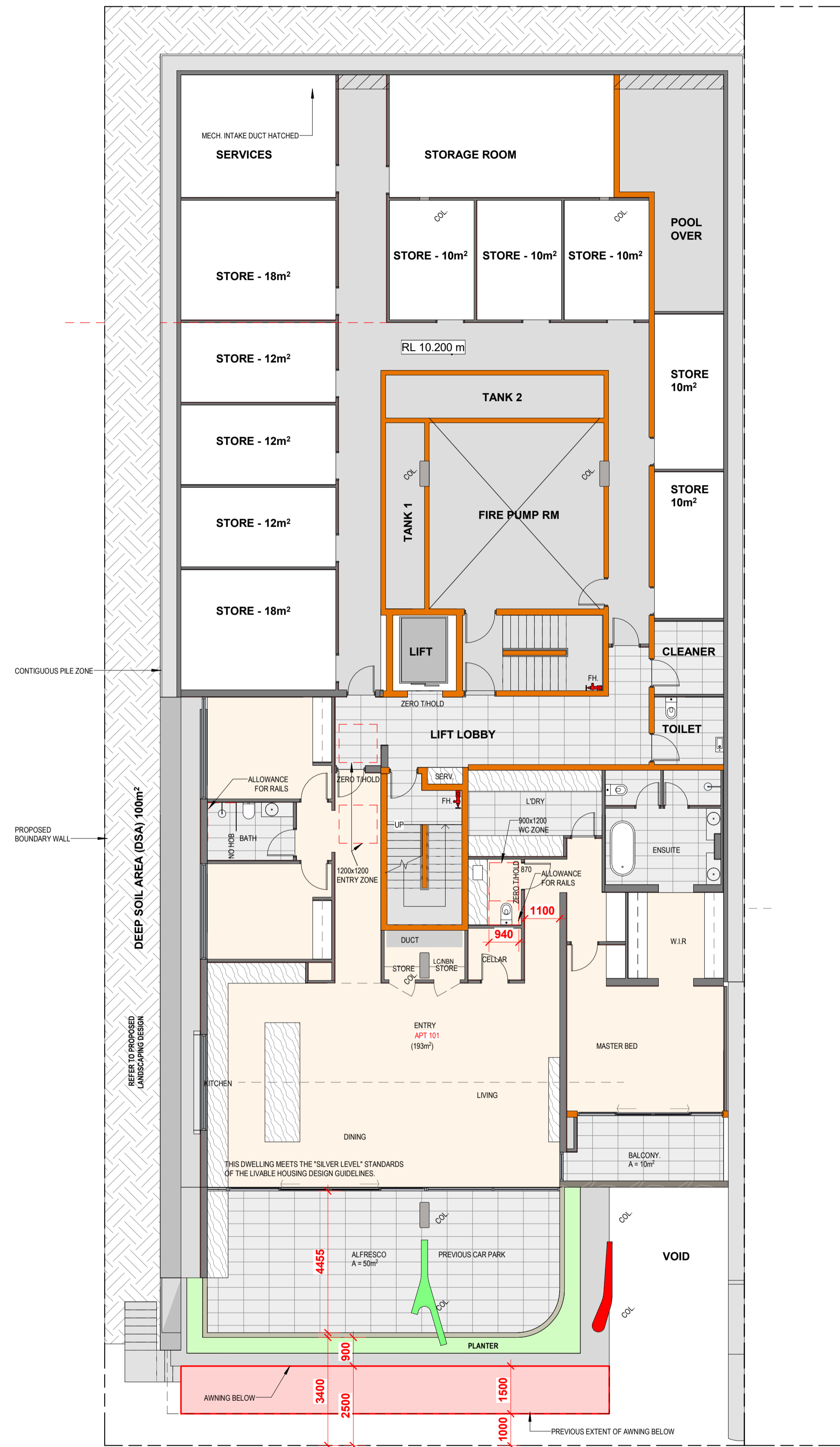
Rev 3 - Modified Design



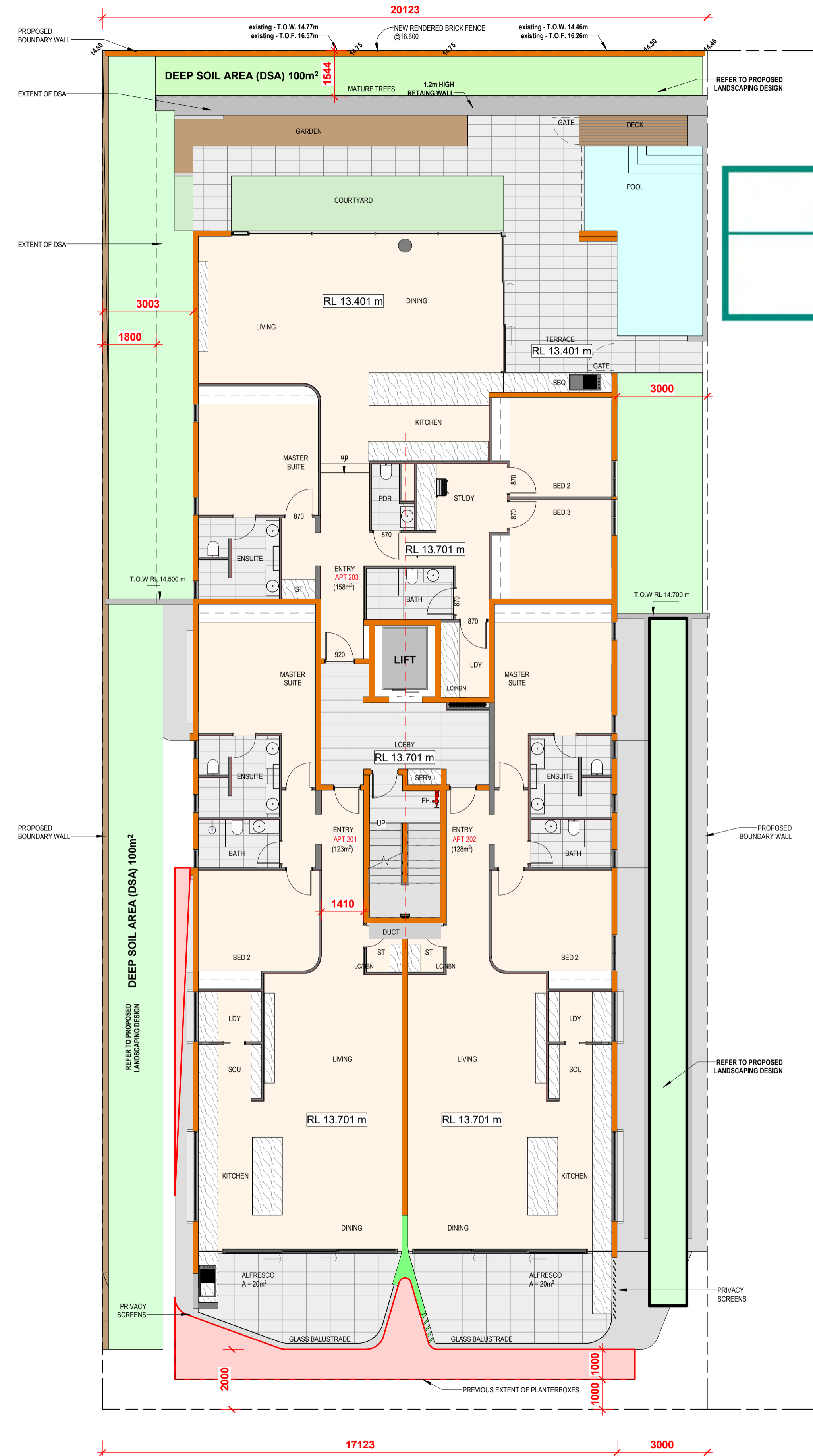
City of Nedlands  
Received  
7 August 2020

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29-Sep-2020



1 Level 2 - Differences  
A.105 SCALE: 1:100



2 Level 3 - Differences  
A.105 SCALE: 1:100

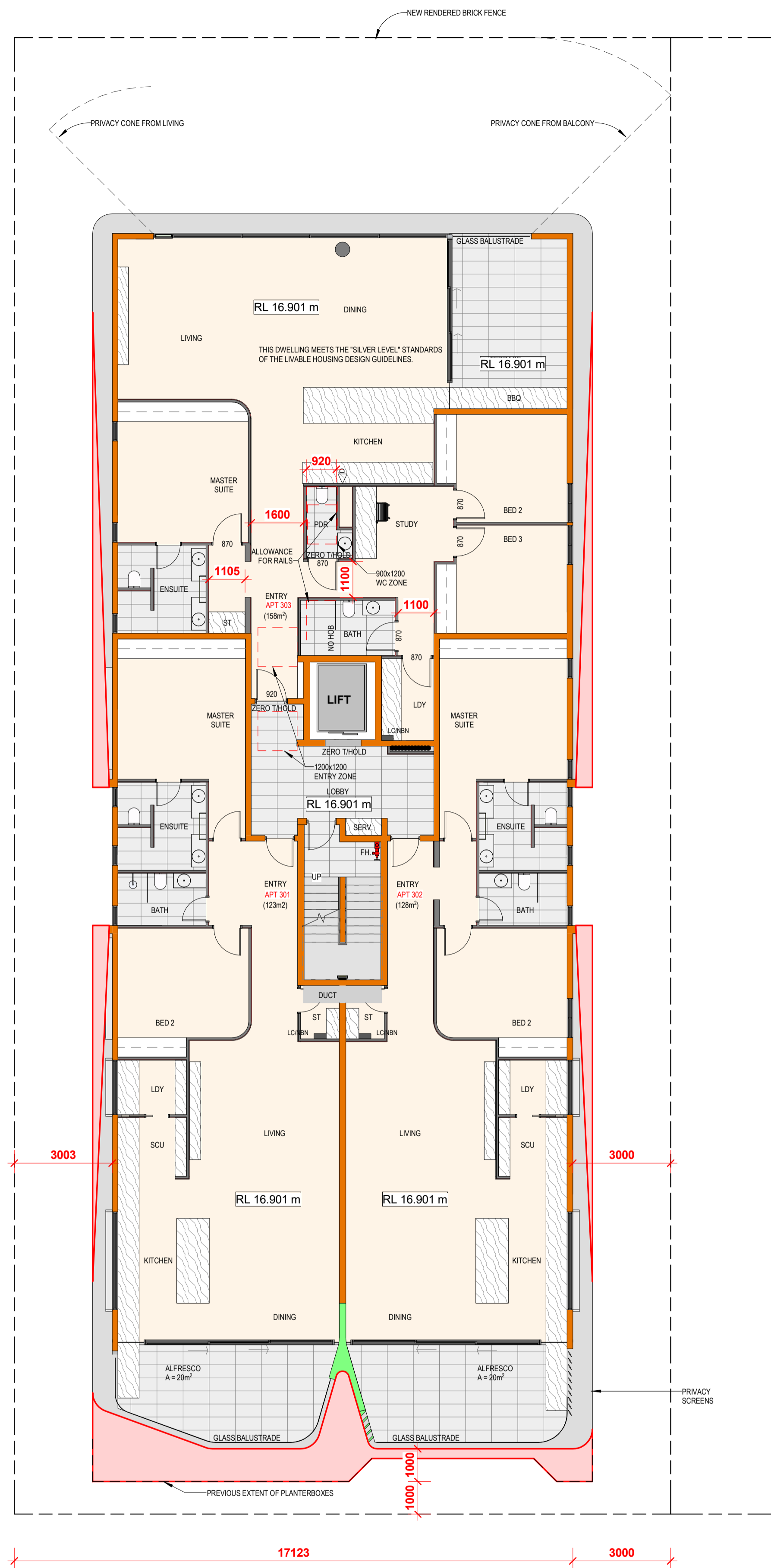
LEVEL 2 & 3 FLOOR PLAN - DIFFERENCES - SK07

Rev 3 - Modified Design

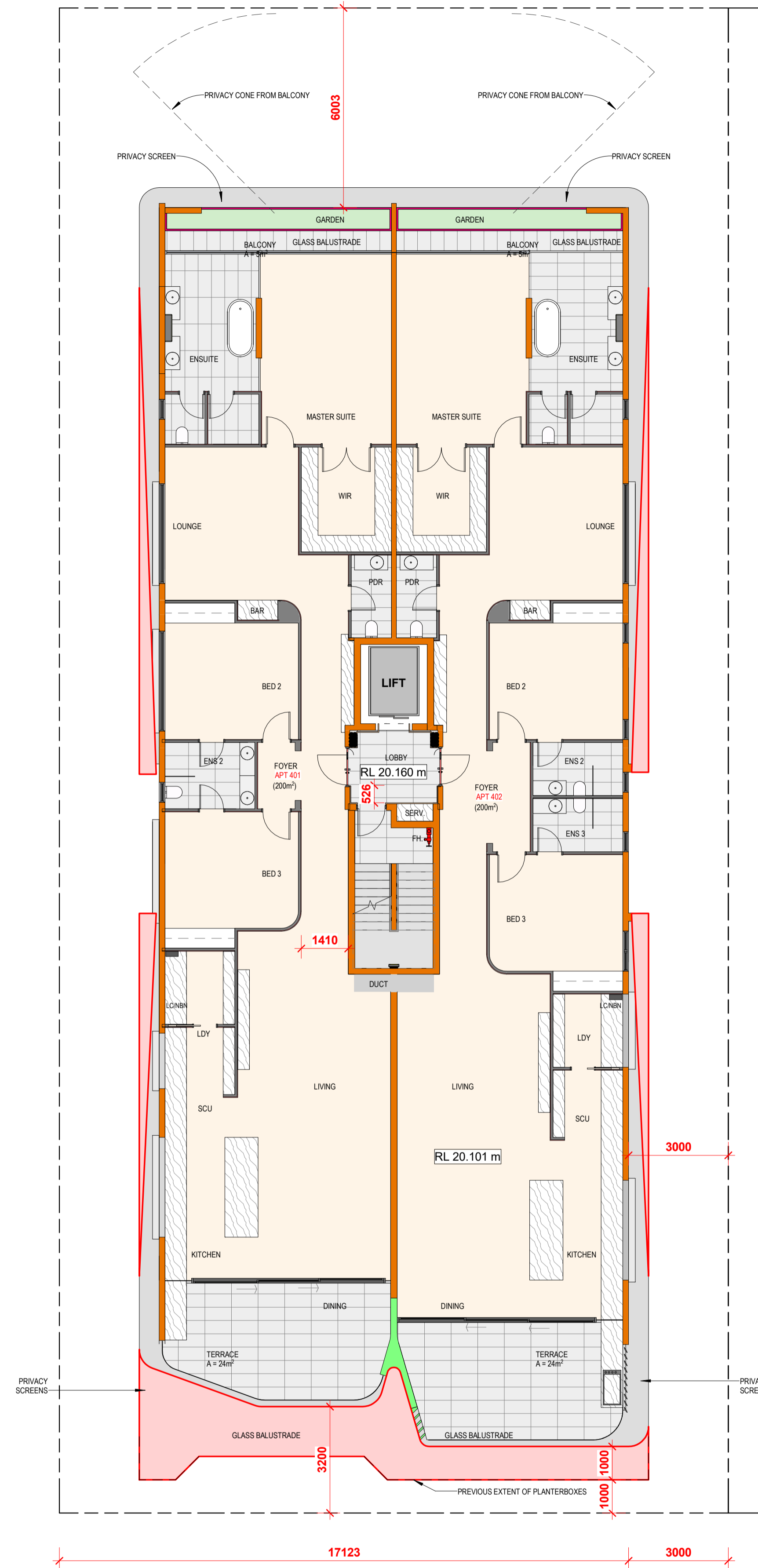


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ASSESSMENT PANEL

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29-Sep-2020



1 Level 4 - Differences  
SCALE: 1:100



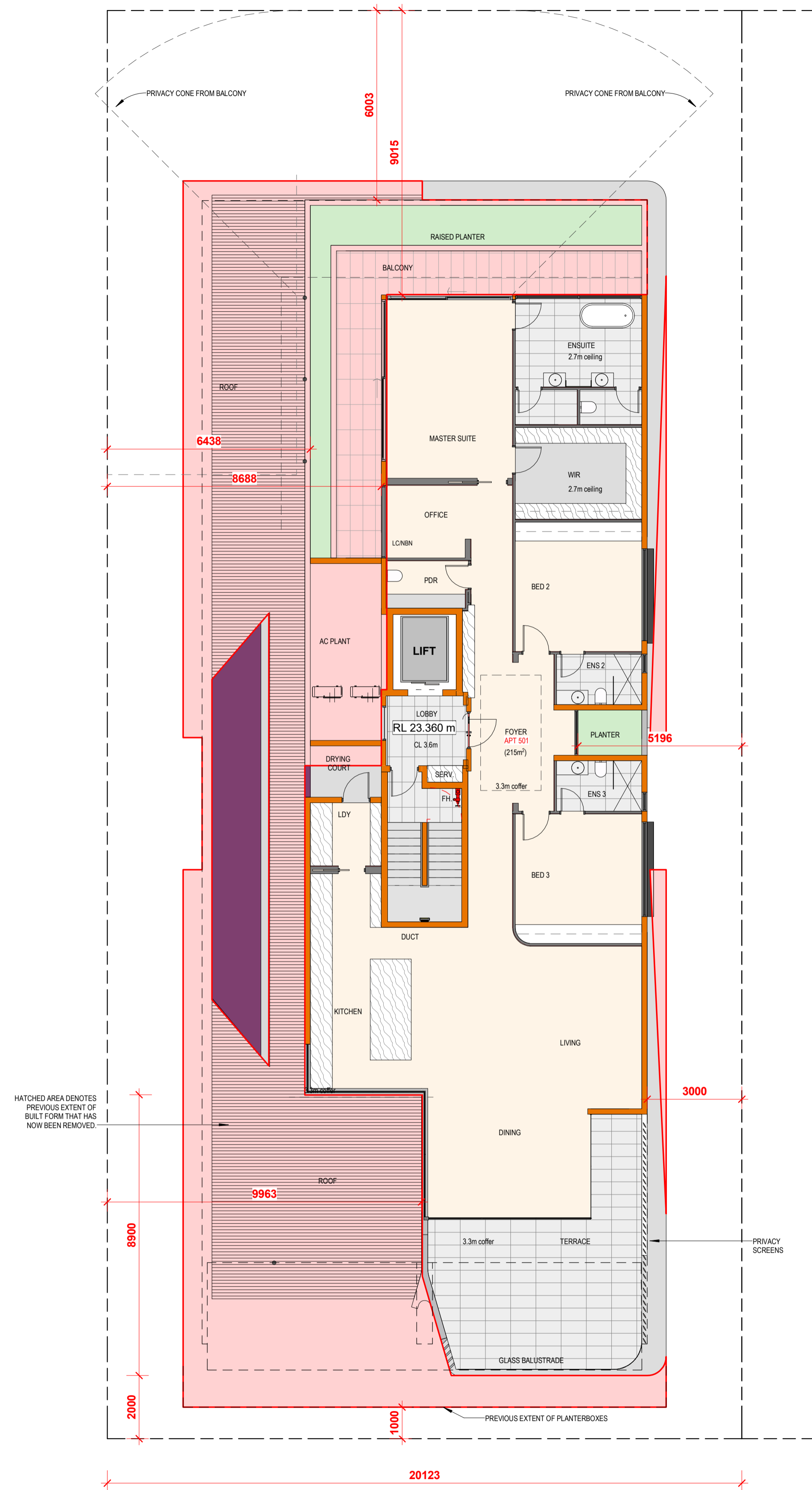
2 Level 5 - Differences  
SCALE: 1:100



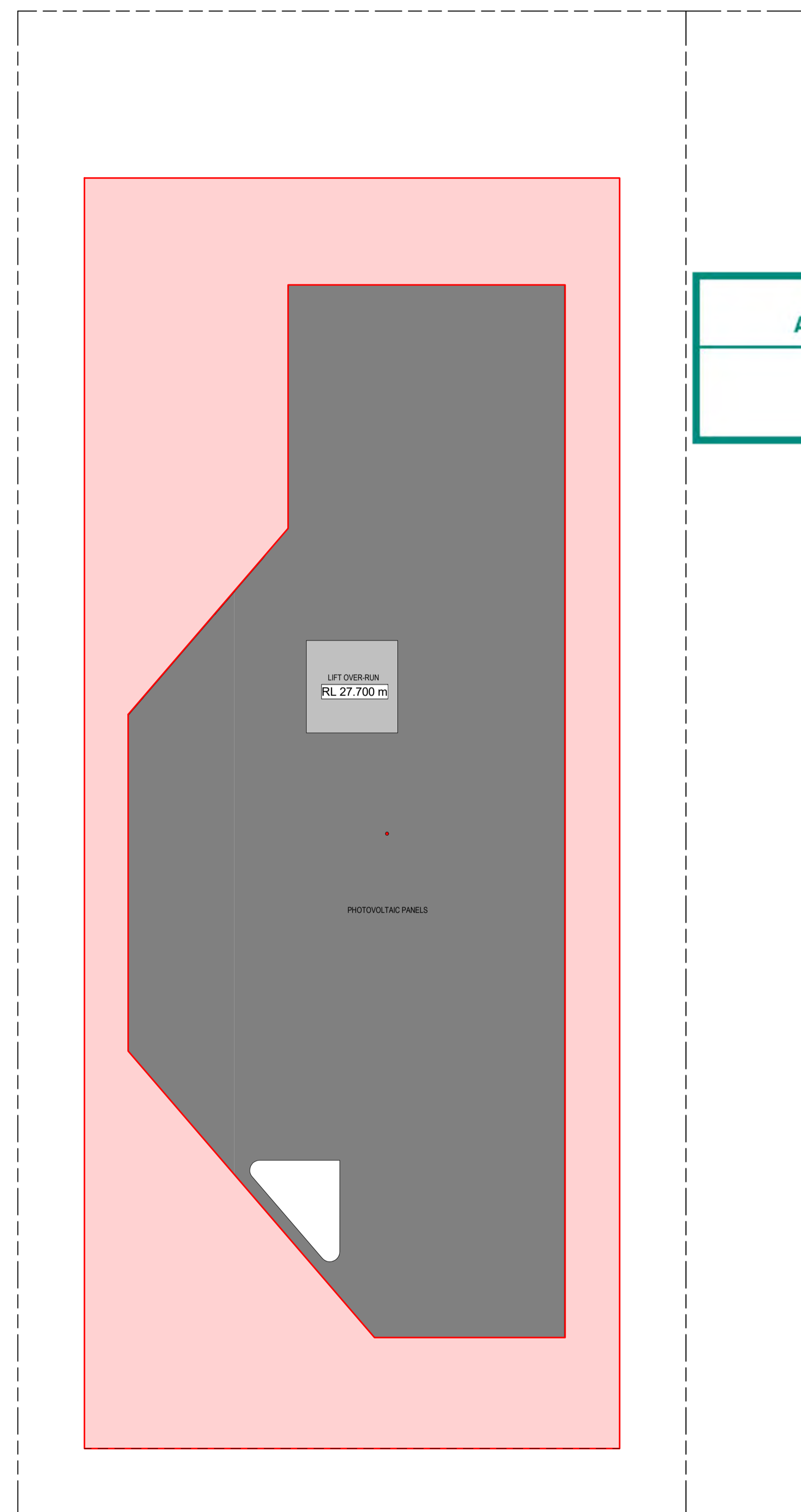
**DEVELOPMENT  
ASSESSMENT PANEL**

**APPROVED**

**29-Sep-2020**



1 Level 6 - Differences  
SCALE: 1:100



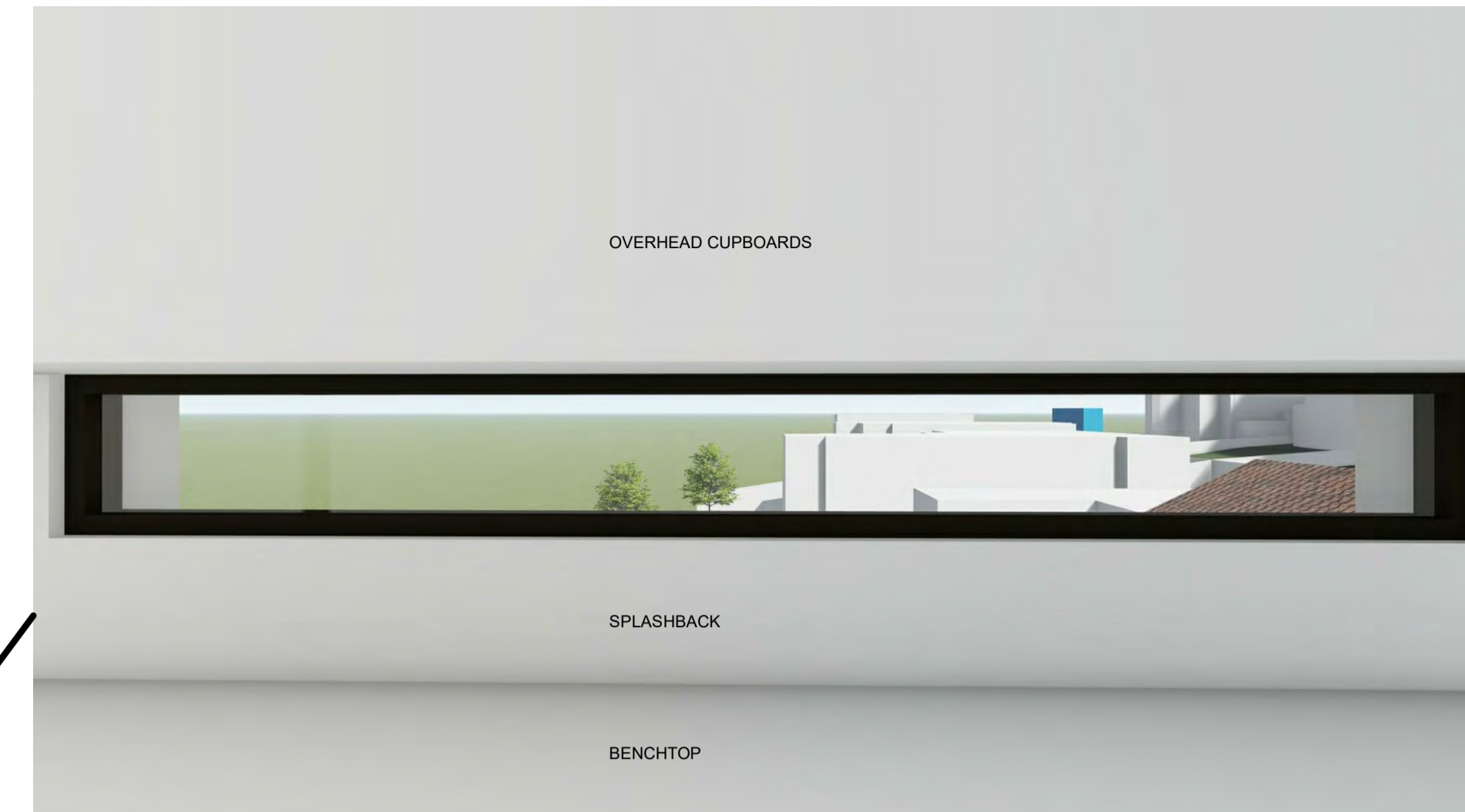
2 Level 7 - Differences  
SCALE: 1:100



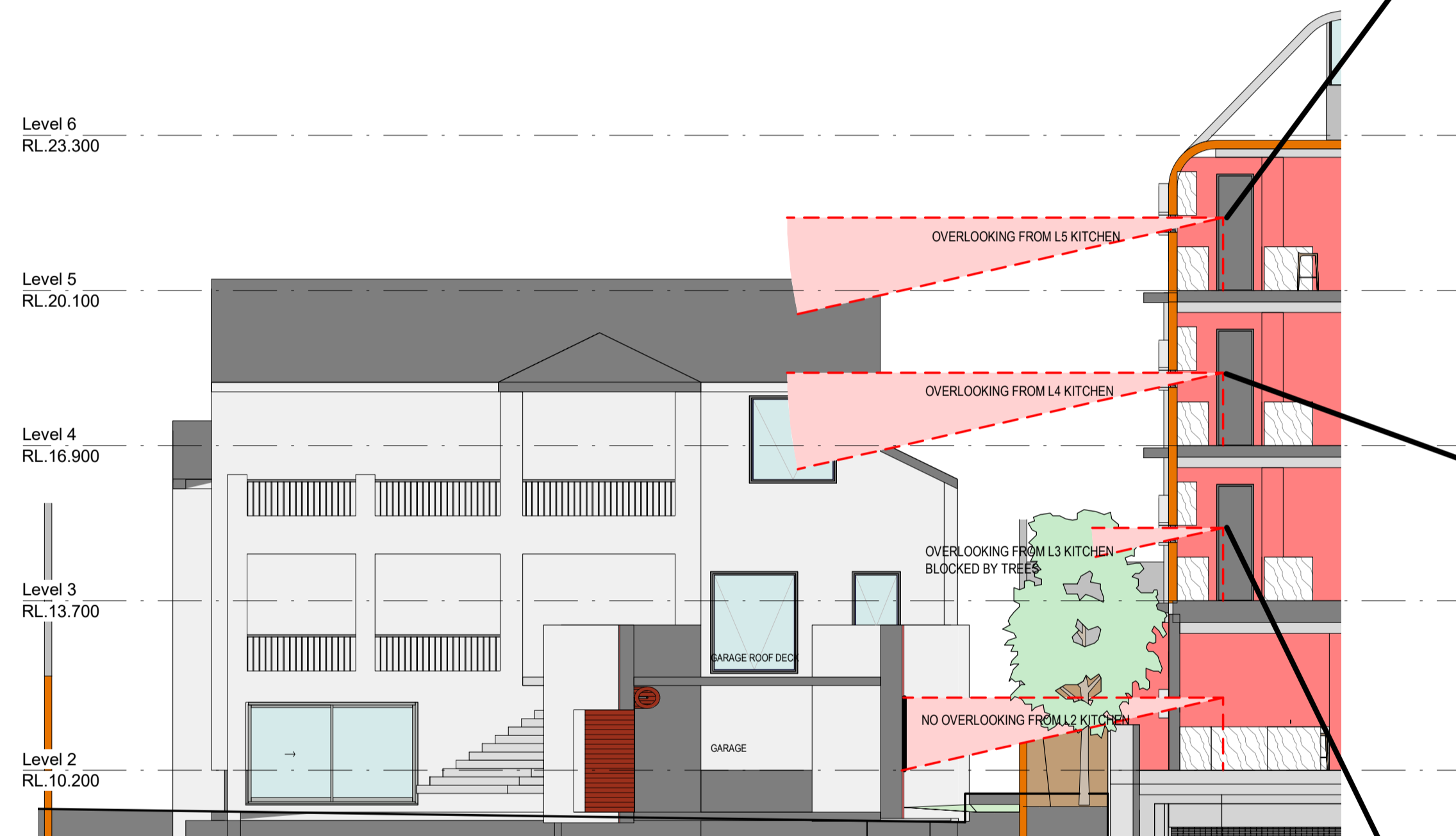


VIEW FROM #7 HILLWAY FRONT TERRACE LOOKING BACK

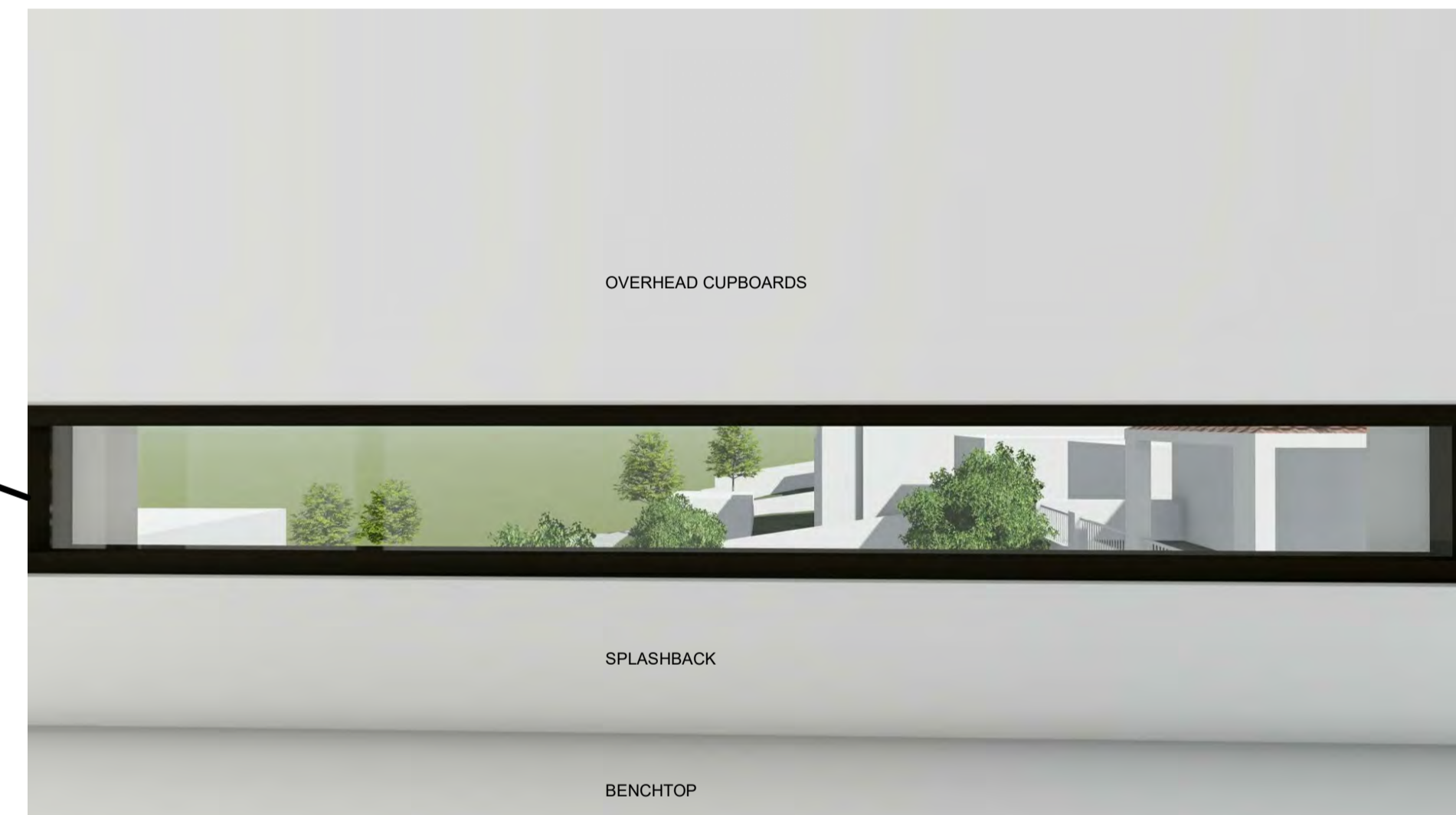
DEVELOPMENT  
ASSESSMENT PANEL  
**APPROVED**  
29-Sep-2020



VIEW FROM L5 KITCHEN LOOKING OUT



1 Section 2  
SCALE: 1:100



VIEW FROM L4 KITCHEN LOOKING OUT



VIEW FROM L3 KITCHEN LOOKING OUT



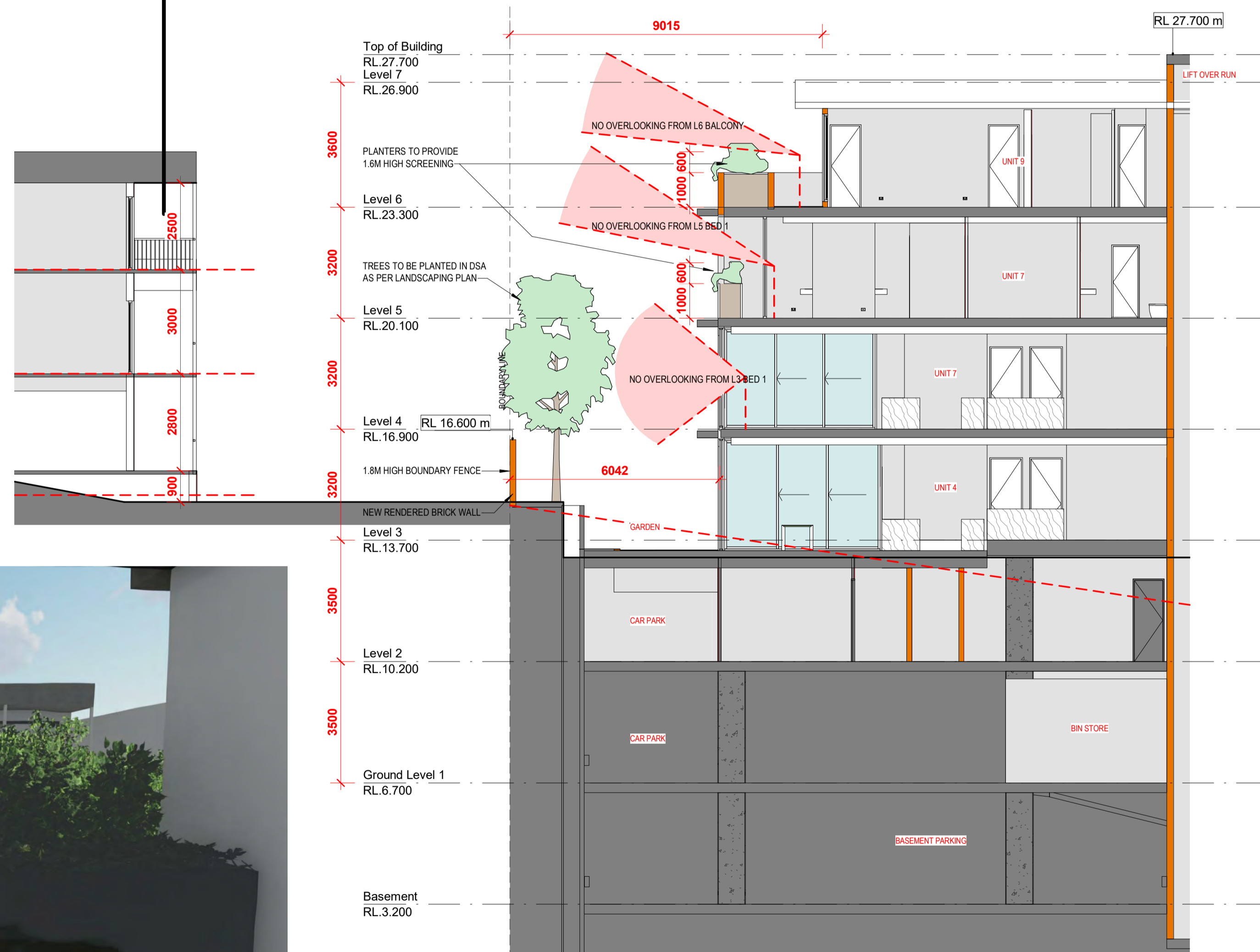


VIEW FROM #72 KINGSWAY LOOKING BACK

**DEVELOPMENT  
ASSESSMENT PANEL**  
  
**APPROVED**  
 29-Sep-2020



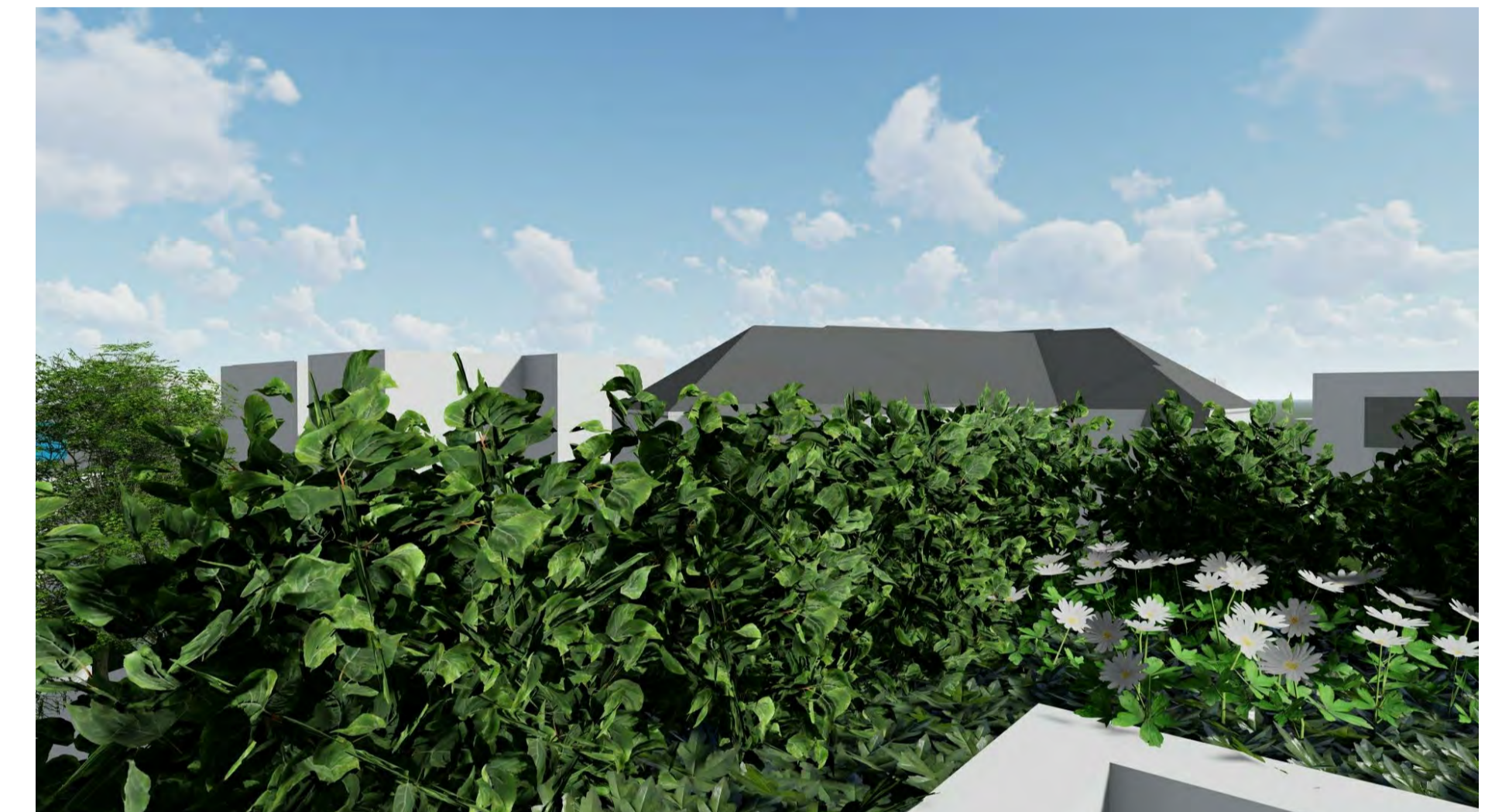
VIEW FROM L6 BED 1 LOOKING TOWARDS #72 KINGSWAY



1 Section B  
SCALE: 1:100



VIEW FROM L5 BED 1 LOOKING TOWARDS #72 KINGSWAY



VIEW FROM L6 BED 1 LOOKING TOWARDS #74 KINGSWAY



VIEW FROM L6 BED 1 LOOKING TOWARDS #7 HILLWAY



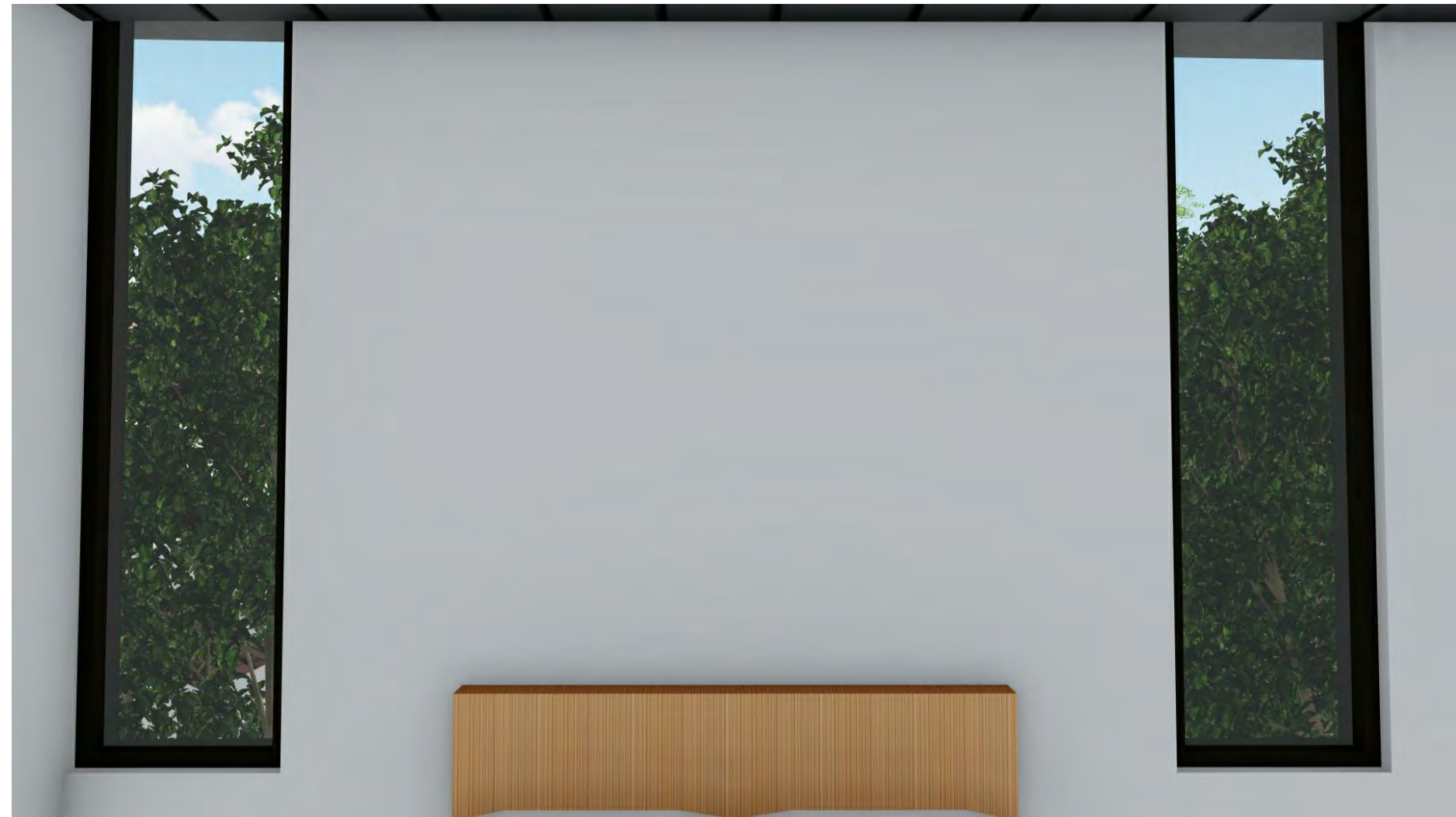


VIEW FROM #7 HILLWAY BACK YARD LOOKING AT #5 HILLWAY

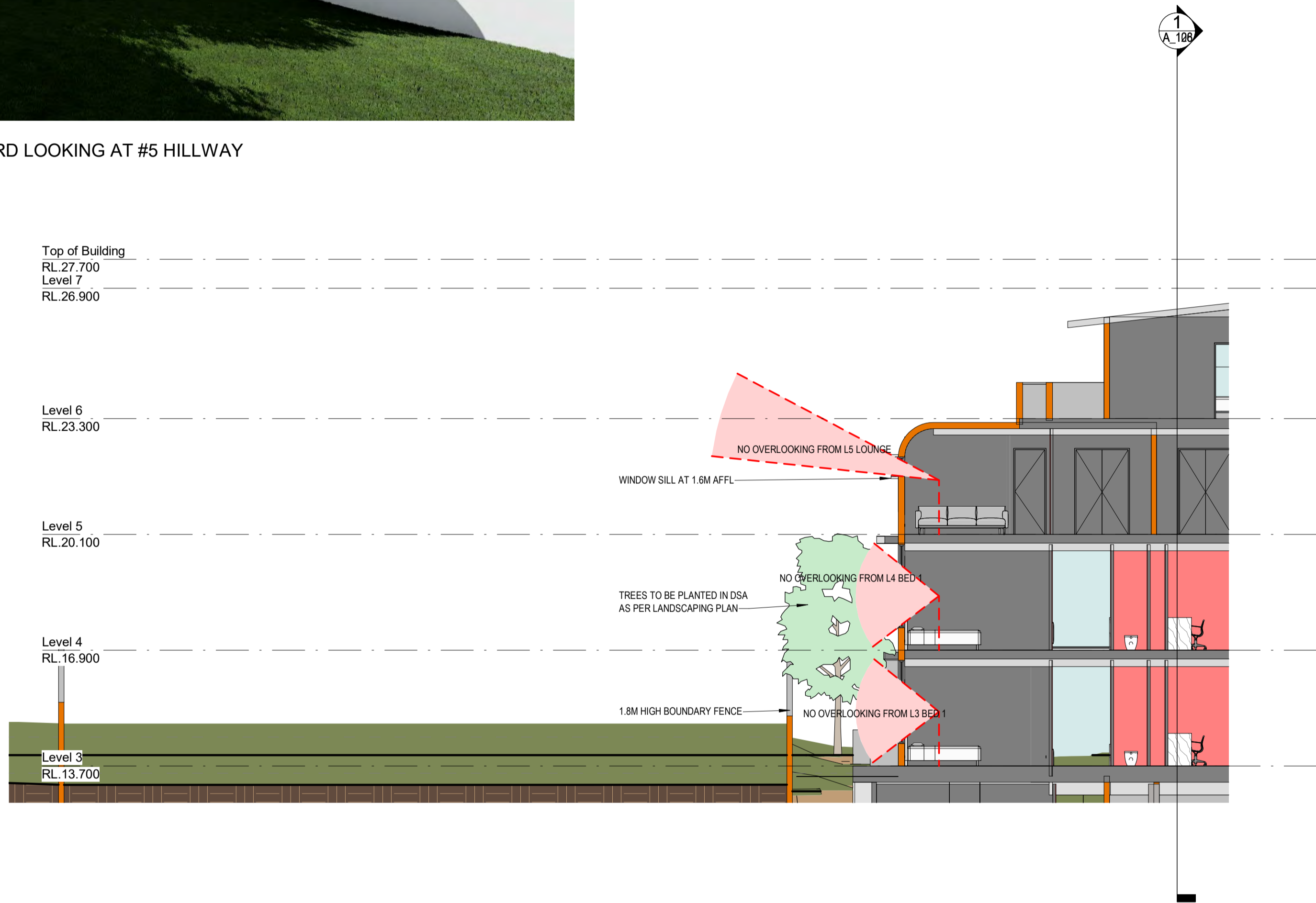
**DEVELOPMENT  
ASSESSMENT PANEL**

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**APPROVED**  
29-Sep-2020



VIEW FROM L4 BED 1 LOOKING TOWARDS #7 HILLWAY



**Section 3**  
SCALE: 1:100



VIEW FROM L3 BED 1 LOOKING TOWARDS #7 HILLWAY





Our ref: AMG:PMQ:1165732  
Contact: Alex McGlue  
Direct Line: (08) 9288 6890  
Email: alex.mcglue@lavan.com.au  
Partner: Paul McQueen  
Direct Line: (08) 9288 6943  
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Perth Western Australia 6000  
Tel +61 8 9288 6000  
Fax +61 8 9288 6001  
lavan.com.au

120

Representing  
Western Australians  
for more than 120 years

8 October 2020

DAP Secretariat  
140 William Street  
PERTH WA 6000

Dear Sir/Madam

## 5 Hillway, Nedlands – Form 2 amendment application

### Background

- 1 Lavan acts for the proponents of the proposed multiple dwellings development for the property at 5 Hillway, Nedlands.
- 2 The Metro Inner North Joint Development Assessment Panel (**JDAP**) granted development approval for this proposal at its meeting on 29 September 2020.
- 3 The reference number for the corresponding development application was DAP/20/01741.
- 4 My client has now submitted a Form 2 application to amend the development approval.

### Proposed amendments

- 5 My client proposes to amend its development plans to convert the proposal from a 10 multiple dwelling development to a 9 multiple dwelling development.
- 6 The planning and architectural merits of these proposed amendments will be explained by other consultants engaged by my client.
- 7 I am however writing in relation to a potential legal issue that may arise in the assessment of this amendment application.

#### A full service Western Australian firm:

Aged Care	Education	Intellectual Property	Planning & Environment	Commitment
Asian Investment	Employment & Safety	Liquor Licensing	Private Wealth	Integrity
Banking & Finance	Energy	Litigation & Dispute Resolution	Property & Leasing	
Construction & Infrastructure	Family Law	Media & Defamation	Wills & Estates	
Corporate, Commercial & Tax	Insolvency & Reconstruction	Mining & Resources		

#### Our values:

Lavan respectfully acknowledges the traditional owners of the land on which we live and work.

3449-9228-1873\_1165732, v.2



## Excluded development applications

8 The *Planning and Development (Development Assessment Panels) Regulations 2011 (DAP Regs)* contain a defined term of “excluded development application”, which is expressed to include a development application for the construction of:

*less than 10 multiple dwellings and any associated carport, patio, outbuilding and incidental development*

9 The Form 2 application submitted by my client would of course bring the proposed number of multiple dwellings below the threshold of 10, as identified in this definition.

10 Regulation 4A(3) of the DAP Regs, in effect, says that an “excluded development application” cannot be determined by the JDAP.

11 For the reasons that follow, it is my opinion that this concept of an “excluded development application” does not prevent the JDAP from considering and approving the Form 2 application, in accordance with the DAP Regs.

## Reasoning

12 The term “excluded development application” is only used in two provisions of the DAP Regs, being regulations 4A(3) and 19(1).

13 Regulation 19(1) of the DAP Regs involves the subject matter of local governments delegating certain development applications to the JDAP for determination, so this provision is irrelevant to the question of whether the JDAP has the power to determine this Form 2 application.

14 This means that the only provision to consider in relation to this Form 2 amendment application is regulation 4A(3) of the DAP Regs, which reads:

*Regulations 5 and 6 do not apply to an excluded development application.*

15 Regulations 5 and 6 of the DAP Regs respectively relate to mandatory JDAP development applications and optional JDAP development applications.

16 What regulation 4A(3) of the DAP Regs is effectively saying is that, even where the value thresholds for a mandatory or optional JDAP development application are met, a development application cannot be made to the JDAP if it is an “excluded development application” (which would include a proposal for less than 10 multiple dwellings).

17 In other words, it would not be possible to make a Form 1 development application to the JDAP for a proposed 9 multiple dwelling development.

18 The Form 1 development application made by my client was valid under the DAP Regs, as it proposed 10 multiple dwellings.

19 The power of the JDAP to amend an existing development approval is then covered by regulation 17 of the DAP Regs.

20 Relevantly, regulation 17(1)(c) of the DAP Regs provides that an application may be made to the JDAP:

*to amend an aspect of the development approved which, if amended, would not substantially change the development approved*

21 Importantly, nothing in regulation 17 of the DAP Regs makes any reference to an “excluded development application”.



- 22 It follows that a Form 2 application to amend will be valid, so long as:
- 22.1 the base development approval was validly granted by the JDAP; and
  - 22.2 the proposed amendments would not substantially change the development approved.
- 23 By this logic, there is no prohibition in the DAP Regs to a Form 2 amending application rendering a proposal as being something that would fit the description of an “excluded development application”, so long as:
- 23.1 the base development approval was validly granted by the JDAP; and
  - 23.2 the proposed amendments would not substantially change the development approved.
- 24 Regulation 17(3) of the DAP Regs provides, in effect, that the assessment and determination of a Form 2 application will be in accordance with the procedures set out in regulations 10 to 13 of the DAP Regs, but these provisions do not incorporate any reference to “excluded development applications”.
- 25 Put simply, the concept of an “excluded development application” applies only to Form 1 development applications and not to Form 2 amendment applications.
- 26 Given that the JDAP validly granted the base development approval and given that the proposed amendments would not substantially change what has already been approved by the JDAP, it is my opinion that the Form 2 application is valid and can be lawfully granted under the DAP Regs.

### **Court of Appeal decision**

- 27 Although the issues in question were different, my reasoning as outlined above draws some support from the Court of Appeal decision in *Australian Unity Property Limited v City of Busselton* [2018] WASCA 38.
- 28 In that case, an objector argued that a JDAP development application was invalid because the proposal did not (in substance) satisfy the relevant monetary value thresholds.
- 29 The Court of Appeal rejected this argument and made clear that validity of a JDAP development application is to be determined strictly by what the DAP Regs require as at the application stage.
- 30 At paragraph [27] of its decision, the Court of Appeal stated:
- The structure of the Regulations, in particular the requirement for action to be taken when an application is lodged, indicates that the character of a development application as a “DAP application” must be ascertainable at the point in time at which it is lodged.*
- 31 Applying this logic to my client’s proposal, the Form 1 development application was clearly valid under the DAP Regs at the point in time at which it was lodged, because it proposed 10 multiple dwellings.
- 32 In relation to the Form 2 amendment application, the only decision-making parameter for the JDAP is that it must not approve something that would substantially change the development approved, by reference to regulation 17 of the DAP Regs.



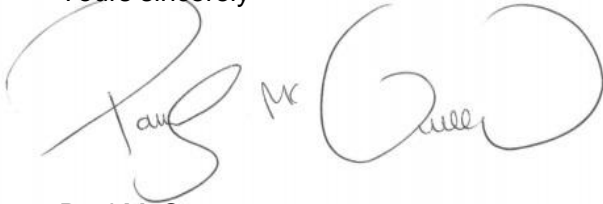
**No substantial change**

- 33 For completeness, I confirm that it is my opinion that the Form 2 amendment application does not propose a substantial change from what was already been approved by the JDAP.
- 34 Importantly, the proposed changes effectively relate to the internal layout of apartments on a single floor of the development and there are no proposed changes to the building footprint (that is, in relation to building height and setbacks).
- 35 I am aware of the JDAP having previously determined Form 2 amendment applications in circumstances where much greater extents of changes have been proposed, so I am confident that the extent of changes will not be an issue for the JDAP in this matter.
- 36 The changes are therefore capable of being approved under regulation 17 of the DAP Regs.

**Conclusion**

- 37 There is no legal impediment to the JDAP considering and approving the Form 2 amendment application as submitted by my client.
- 38 Although only 9 multiple dwellings are now proposed, the Form 2 amendment application does not substantially change the base development approval, which was lawfully granted under the DAP Regs.
- 39 Please contact me or Alex McGlue if you have any questions.

Yours sincerely

Handwritten signature of Paul McQueen in blue ink, consisting of a large stylized 'P' and 'M' followed by the name 'Paul McQueen'.

Paul McQueen  
General Counsel  
Partner

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