

Report to the Future Melbourne (Planning) Committee

Agenda item 6.5

**Application for Planning Permit: TP-2013-960
9-11 Exploration Lane, Melbourne**

6 May 2014

Presenter: Karen Snyders, Planning Coordinator

Purpose and background

1. This report is presented to the Future Melbourne Committee at the request of Councillor Foster. The purpose of the report is to advise the Committee of an application to construct a tower for residential use at 9-11 Exploration Lane, Melbourne originally approved under Planning Permit TP-2009-531/A (refer Attachment 2 – Locality Plan and Attachment 3 – Proposed Plans).
2. The applicant is Contour Consultants Australia Pty Ltd on behalf of Balfour Development Group. The owner is Exploration Lane Developments Pty Ltd and the architect is Rothe Lowman.
3. The subject site is located with the Capital City Zone Schedule 1 and Parking Overlay Schedule 1.
4. Planning application TP-2009-531 for a 32-storey building was made on 20 July 2009. It was refused by Council and the applicant appealed to the Victorian Civil and Administrative Tribunal (VCAT). Following mediation before VCAT, a permit was issued on the 20 May 2010, approving a 25-storey building. A slightly amended version was approved by VCAT and issued as TP-2009-531/A on 17 June 2011.
5. On 23 August 2011 an application was made to VCAT to increase the height of the building to 33 storeys. The increase was opposed by Council, but VCAT granted a permit on 31 January 2012 for the taller building, with no setbacks to any boundaries.
6. TP-2013-960 has been applied for as TP-2009-531/A expired on the 20 May 2012 and the application to extend the life of the permit was made outside the time that such an application could be considered by the City of Melbourne.
7. The plans submitted with the new application mirror the plans endorsed for TP-2009-531/A.

Key issues

8. The key issues in this application are the planning merits of the proposal in relation to current planning controls, the significance of the VCAT decision to grant a permit for the same design, consideration of the relevant permit conditions of the previous approval and matters raised by objectors.
9. Since the issue of TP-2009-531/A two new local planning policies have been introduced into the planning scheme: Clause 22.19 Energy, Water and Waste Efficiency and Clause 22.23 Stormwater Management. The introduction of these two policies does not provide any reasonable justification to reconsider the entire proposal irrespective of the recent VCAT decision. However it is considered that other recent VCAT decisions warrant the imposition of additional new conditions in order to improve the internal amenity of apartments. An updated waste management plan is also required to ensure the development is compliant with 2014 standards.
10. The majority of the concerns raised by the objectors mirror the concerns raised with the original development, TP-2009-531. A notable addition is the impact that the development may have on a tree to the south which is on the exceptional tree register. However the development is located outside the tree protection zone and therefore there are no new planning permit controls applicable in relation to this.

Recommendation from management

11. That the Future Melbourne Committee resolves to issue a Planning Permit generally consistent with the previous development approved under TP-2009-531/A subject to the conditions included in the delegate's report (refer Attachment 4 – Delegate's Report).

Attachments:

1. Supporting Attachment
2. Locality Plan
3. Proposed Plans
4. Delegate Report

Supporting Attachment

Legal

1. Division 1 of Part 4 of the *Planning and Environment Act 1987* sets out the requirements in relation to applications for permits pursuant to the relevant planning scheme.

Finance

2. There are no direct financial issues arising from the recommendation contained in this report

Conflict of interest

3. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

Stakeholder consultation

4. Six (6) objections have been received. Since the senior officer delegate meeting a further two (2) objections have been received, bringing the total to eight (8). The development application is exempt from the notice requirements and review rights of the *Planning and Environment Act 1987*.

Relation to Council policy

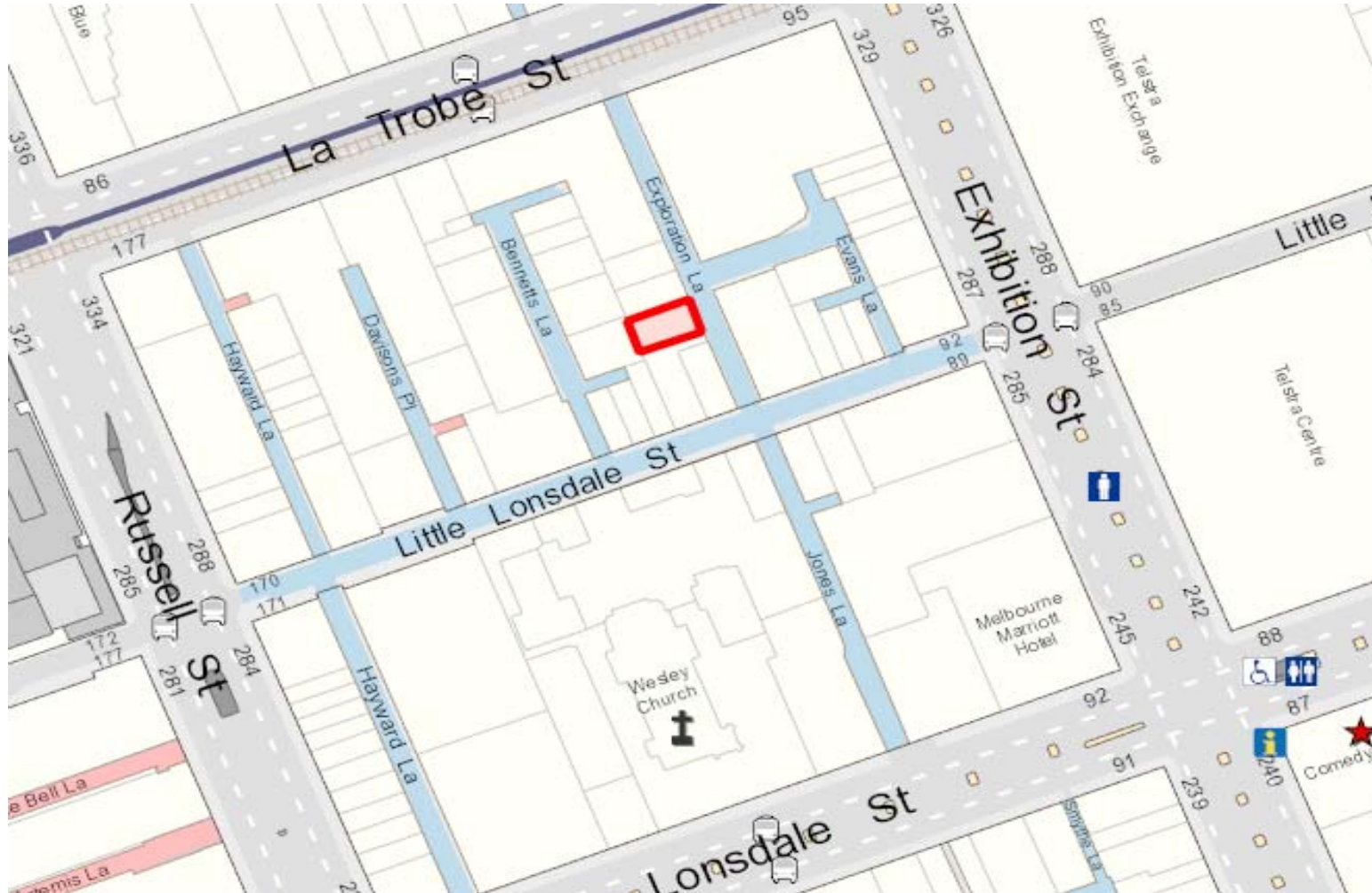
5. Relevant Council policies are discussed in the attached officer report (refer Attachment 4).

Environmental sustainability

6. Environmental sustainability is discussed in the attached officer report (refer Attachment 4).

Locality Plan

9-11 Exploration Lane, Melbourne



9 - 11 Exploration Lane, Melbourne

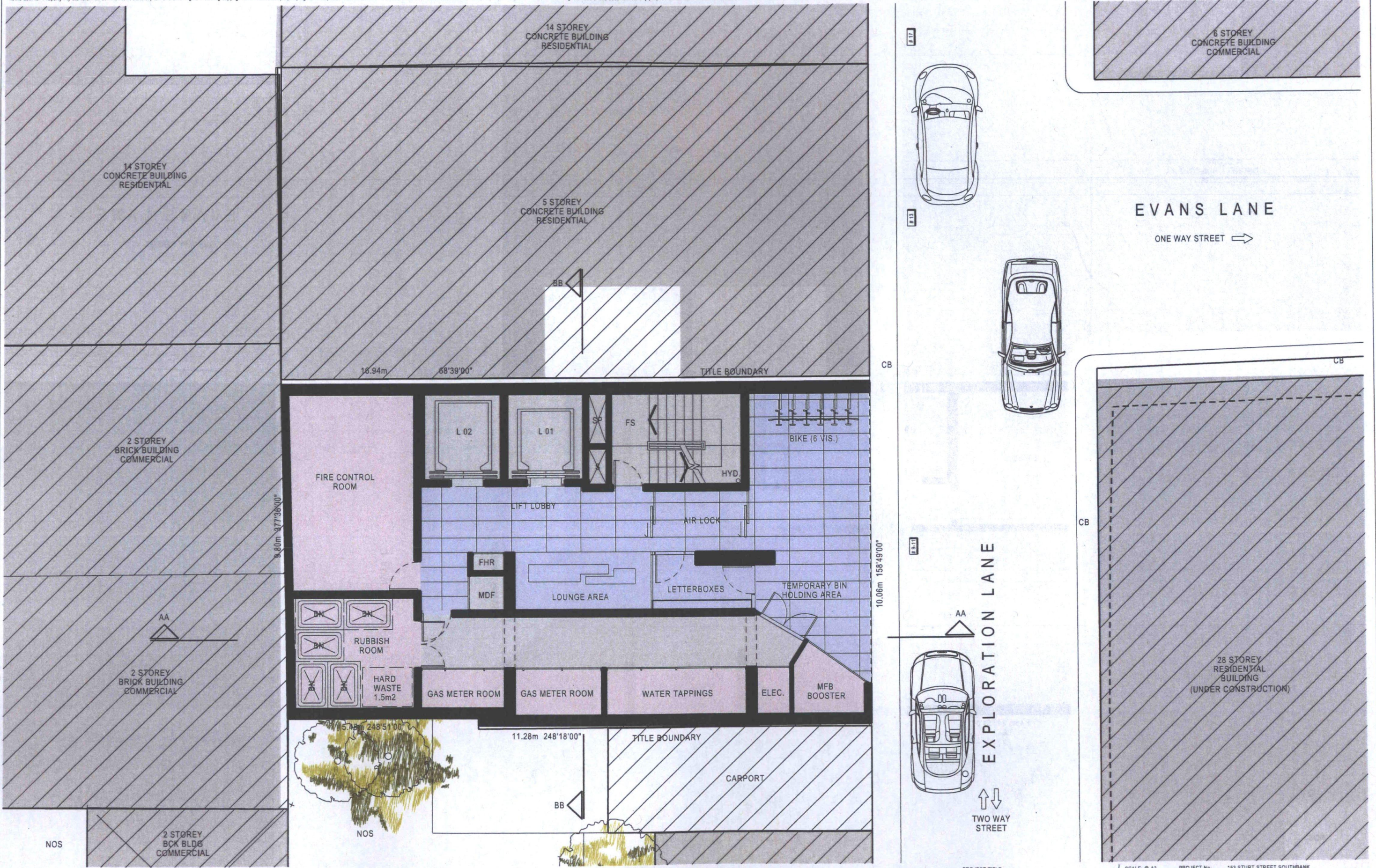
4.0 Design Response

4.6 Development Perspective



Development Perspective - Jones Lane View Looking North Down Exploration Lane

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LEGEND									
Key	Description	Key	Description	Key	Description	Key	Description	Key	Description
ROW	Right Of Way	W	Car Stacker	FS	Fire Stair	SM	Smoke Man.	C1	Paint Fin. - Charc.
POS	Private Open Space	V	Void Area	AHD	Aust. Height Datum	LP	Lobby Press. Duct	C2	Paint Fin. - Off White
#00	Street Number	T	Terrace	WM	Water Meters	S1	Screen Element	C3	Paint Fin. - Lt Grey
BN	Bin	L	Lifts	GR	Gas Riser	B1	Stone Finish	C4	Paint Fin. - Feat. Col.
S	Services Core	SP	Stair Press. Duct	TC	Telecommunications	T1	Timber Finish	L1	Glazed Louvre
								M1	Metal Fin. - Nat. Anod.
								M2	Metal Fin. - Lt Grey
								M3	Metal Fin. - Mid Grey
								M4	Metal Fin. - Feat. Col.
								M5	Metal Fin. - Black
								G1	Glazing - Feat. Col.
								G2	Glazing - Clear
								G3	Glazing - Translucent
								LD	Laundry
								B1/2	Bedrooms
								ST	Study
								BR	Bathroom
								L	Lounge
								M	Meals Area
								K	Kitchen

REVISIONS			
No	Date	Description	By
-	14.06.10	Town Planning Submission	SC
A	07.07.11	Amendments	SC
B	07.11.11	Revised Issue	SC
C	25.05.12	Revised Waste Areas	SC

PROJECT TITLE
RESIDENTIAL DEVELOPMENT
 9-11 EXPLORATION LANE
 MELBOURNE 3000

DRAWING TITLE
GROUND FLOOR

SCALE @ A3
 1:100

PROJECT No.
 29127

DATE
 DECEMBER 2010

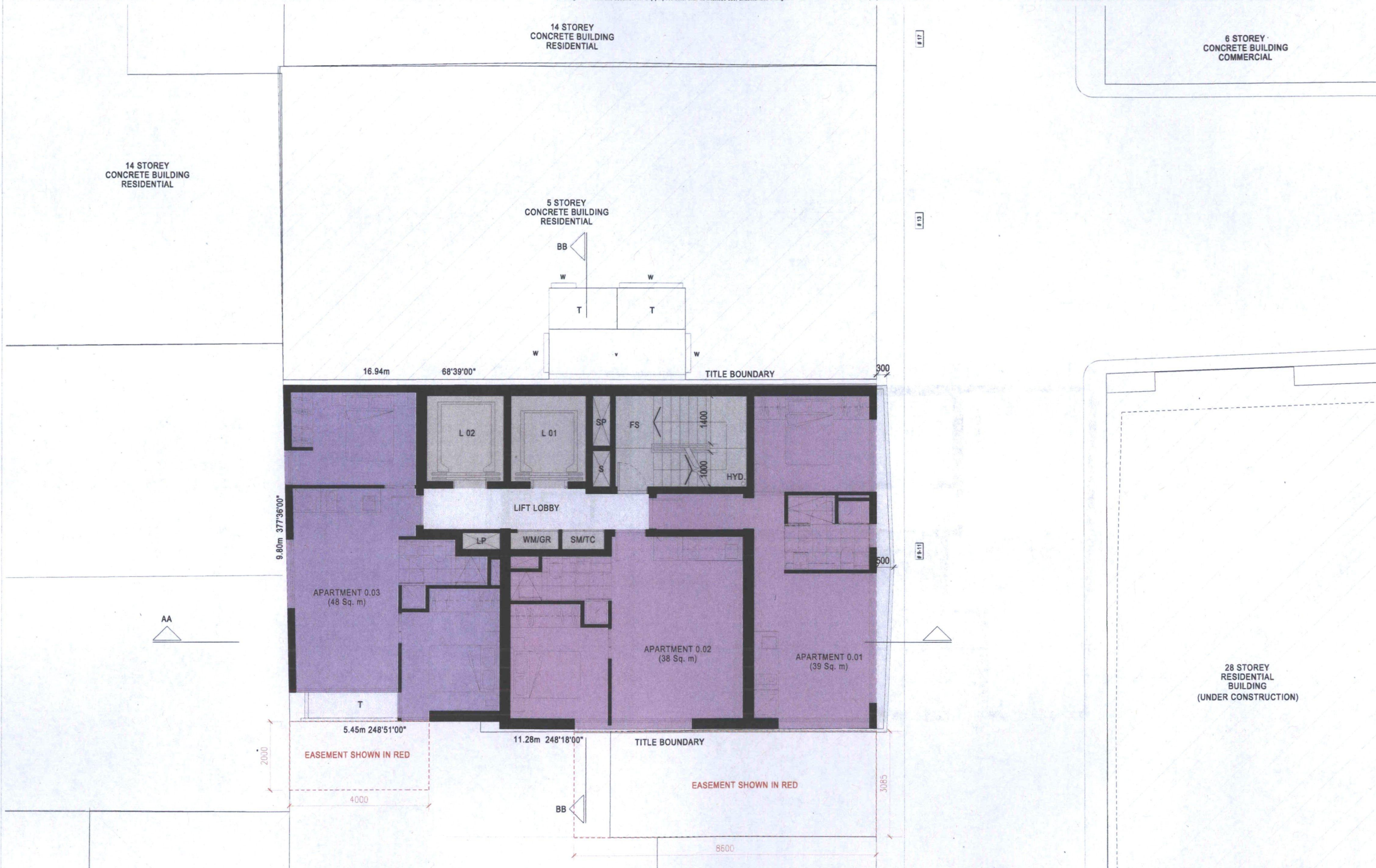
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LEGEND	
Key Description	Key Description
ROW Right Of Way	W Car Stackers
POS Private Open Space	V Void Area
#00 Street Number	T Terrace
BN Bin	L Lifts
S Services Core	SP Stair Press. Duct
FS Fire Stair	AHD Aust. Height Datum
SM Smoke Man.	LP Lobby Press. Duct
C1 Paint Fin. - Charc.	C2 Paint Fin. - Off White
M1 Metal Fin. - Nat. Anod.	M2 Metal Fin. - Lt Grey
G1 Glazing - Feat. Col.	G2 Glazing - Clear
ST Study	BR Bathroom
L Lounge	M Meals Area
LD Laundry	K Kitchen
B1/2 Bedrooms	
C3 Paint Fin. - Lt Grey	M3 Metal Fin. - Mid Grey
G3 Glazing - Translucent	
C4 Paint Fin. - Feat. Col.	M4 Metal Fin. - Feat. Col.
L1 Glazed Louvre	M5 Metal Fin. - Black
TC Telecommunications	T1 Timber Finish

REVISIONS		
No	Date	Description
-	14.06.10	Town Planning Submission
A	07.07.11	Amendments
B	01.06.11	Amendments
C	07.11.11	Revised Issue

PROJECT TITLE
RESIDENTIAL DEVELOPMENT
 9-11 EXPLORATION LANE
 MELBOURNE 3000

DRAWING TITLE
LEVEL 3 - 5

SCALE: @ A3
 1:100

PROJECT No:
 29127

DATE:
 DECEMBER 2010

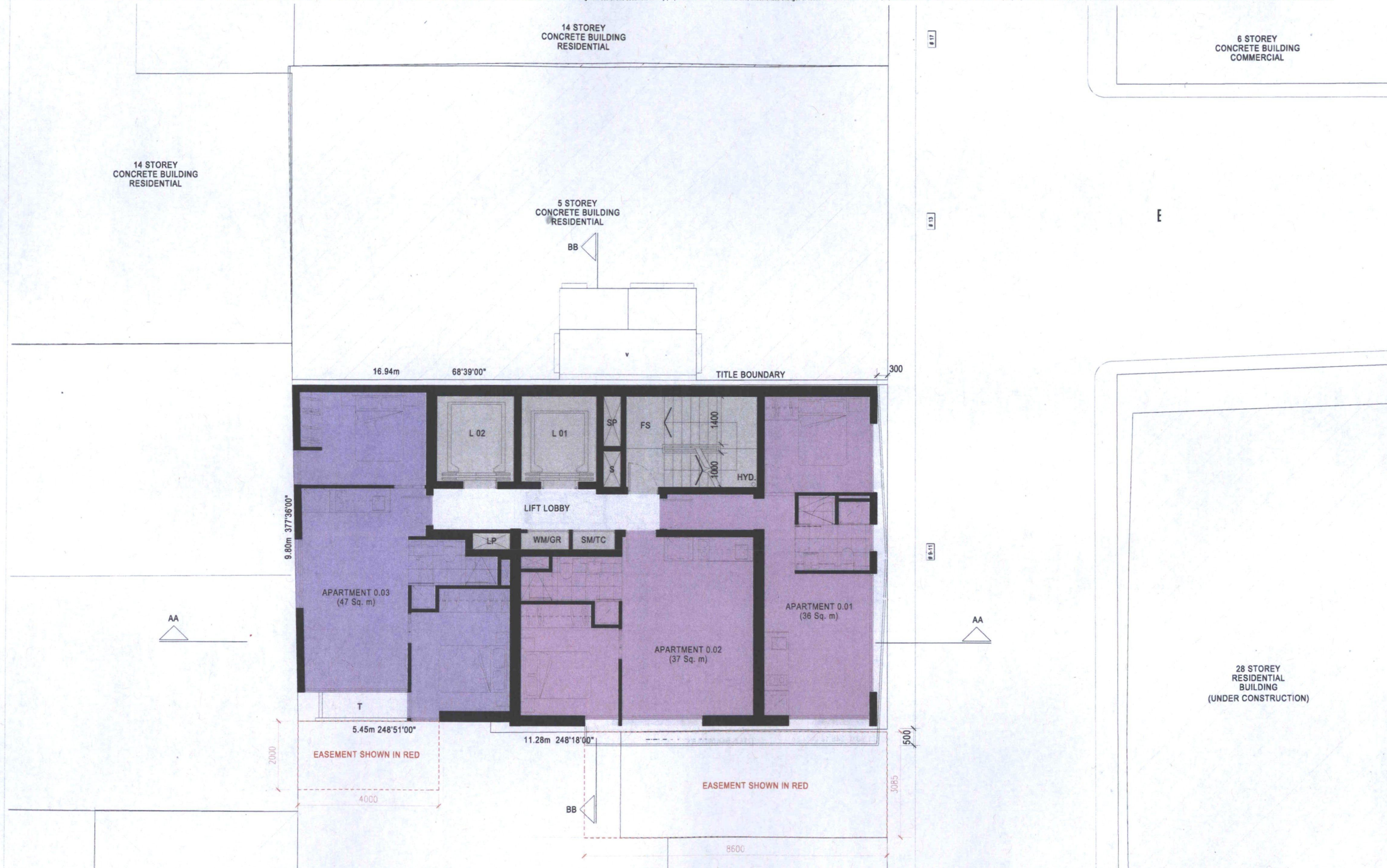
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Key	Description	Key	Description	Key	Description	Key	Description	Key	Description	Key	Description
ROW	Right Of Way	W	Car Stackers	FS	Fire Stair	SM	Smoke Man.	C1	Paint Fin. - Charc.	M1	Metal Fin. - Nat. Anod.
POS	Private Open Space	V	Void Area	AHD	Aust. Height Datum	LP	Lobby Press. Duct	C2	Paint Fin. - Off White	M2	Metal Fin. - Lt Grey
#00	Street Number	T	Terrace	WM	Water Meters	S1	Screen Element	C3	Paint Fin. - Lt Grey	M3	Metal Fin. - Mid Grey
BN	Bin	L	Lifts	GR	Gas Riser	B1	Stone Finish	C4	Paint Fin. - Feat. Col.	M4	Metal Fin. - Feat. Col.
S	Services Core	SP	Stair Press. Duct	TC	Telecommunications	T1	Timber Finish	L1	Glazed Louvre	M5	Metal Fin. - Black
								B1/2	Bedrooms	K	Kitchen

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No	Date	Description	
-	14.06.10	Town Planning Submission	SC
A	19.09.11	Revised Plan	SC
B	21.09.11	Revised Plan	SC
C	07.11.11	Revised Issue	SC

PROJECT TITLE
RESIDENTIAL DEVELOPMENT
 9-11 EXPLORATION LANE
 MELBOURNE 3000

DRAWING TITLE
LEVEL 6 - 24 (ODD)

SCALE: A3
 1:100

PROJECT No:
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DATE:
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ROW	Right Of Way	W	Car Stacker	FS	Fire Stair	SM	Smoke Man.	C1	Paint Fin. - Charc.	M1	Metal Fin. - Nat. Anod.	G1	Glazing - Feat. Col.	ST	Study
POS	Private Open Space	V	Void Area	AHD	Aust. Height Datum	LP	Lobby Press. Duct	C2	Paint Fin. - Off White	M2	Metal Fin. - Lt Grey	G2	Glazing - Clear	BR	Bathroom
#00	Street Number	T	Terrace	WM	Water Meters	S1	Screen Element	C3	Paint Fin. - Lt Gray	M3	Metal Fin. - Mid Grey	G3	Glazing - Translucent	L	Lounge
BN	Bin	L	Lifts	GR	Gas Riser	B1	Stone Finish	C4	Paint Fin. - Feat. Col.	M4	Metal Fin. - Feat. Col.	LD	Laundry	M	Meals Area
S	Services Core	SP	Stair Press. Duct	TC	Telecommunications	T1	Timber Finish	L1	Glazed Louvre	M5	Metal Fin. - Black	B1/2	Bedrooms	K	Kitchen

REVISIONS			
No	Date	Description	By
-	14.06.10	Town Planning Submission	SC
A	07.11.11	Revised Issue	SC

PROJECT TITLE
RESIDENTIAL DEVELOPMENT
 9-11 EXPLORATION LANE
 MELBOURNE 3000

DRAWING TITLE
**TYPICAL FLOOR PLAN
 LEVELS 25 - 31**

SCALE: @ A3
 1:100

PROJECT No:
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DATE:
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14 STOREY
CONCRETE BUILDING
RESIDENTIAL

16.94m 68'39"00"

TITLE BOUNDARY

9.80m 377'36"00"

FIRE TANKS
(40KL)

ACCESS AREA

MOVIE SCREEN

LIFT OVER RUN

LIFT OVER RUN

LIFT LOBBY/LOBBY

RECREATIONAL ROOF AREA

FEMALE

MALE

DINING AREA

2000

EASEMENT SHOWN IN RED

4000

11.28m 248'18"00"

TITLE BOUNDARY

EASEMENT SHOWN IN RED

200

8600

LEGEND

Key	Description	Key	Description	Key	Description	Key	Description	Key	Description	Key	Description	Key	Description	Key	Description	Key	Description	Key	Description
ROW	Right Of Way	W	Car Stack	FS	Fire Stair	SM	Smoke Man.	C1	Paint Fin. - Charc.	M1	Metal Fin. - Nat. Anod.	G1	Glazing - Feat. Col.	ST	Study				
POS	Private Open Space	V	Void Area	AHD	Aust. Height Datum	LP	Lobby Press. Duct	C2	Paint Fin. - Off White	M2	Metal Fin. - Lt Grey	G2	Glazing - Clear	BR	Bathroom				
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BN	Bin	L	Lifts	GR	Gas Riser	B1	Stone Finish	C4	Paint Fin. - Feat. Col.	M4	Metal Fin. - Feat. Col.	LD	Laundry	M	Meals Area				
S	Services Core	SP	Stair Press. Duct	TC	Telecommunications	T1	Timber Finish	L1	Glazed Louvre	M5	Metal Fin. - Black	B1/2	Bedrooms	K	Kitchen				

REVISIONS

No	Date	Description	By
-	14.06.10	Town Planning Submission	SC
A	07.11.11	Revised Issue	SC



PROJECT TITLE
RESIDENTIAL DEVELOPMENT
9-11 EXPLORATION LANE
MELBOURNE 3000

DRAWING TITLE
**LEVEL 32
(RECREATIONAL PLAN)**

SCALE: @ A3
1:100

PROJECT No:
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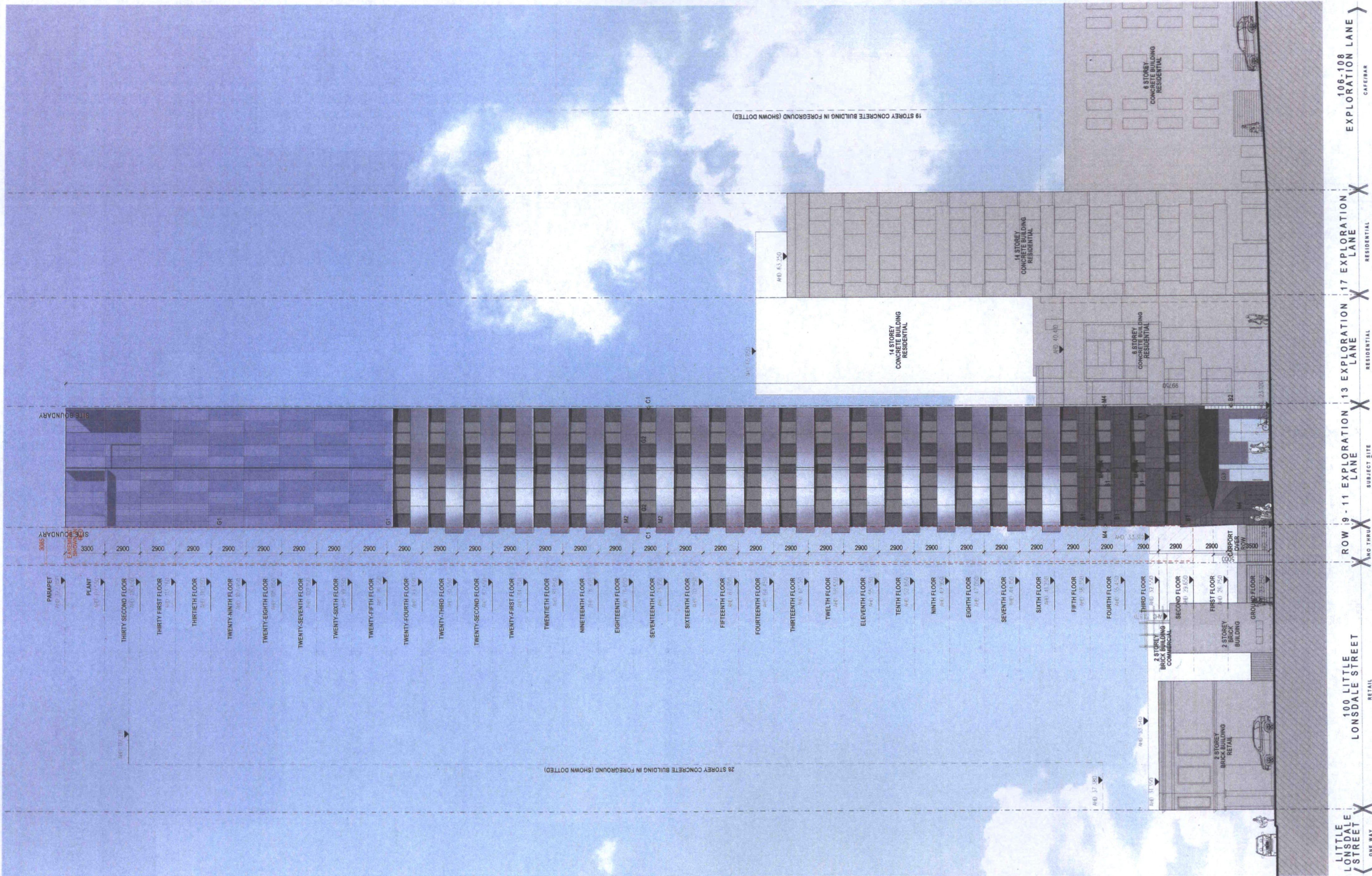
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28 STOREY
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BUILDING
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ROW	Right Of Way	W	Car Stack	FS	Fire Stair	SM	Smoke Man.	C1	Paint Fin. - Charc.	M1	Metal Fin. - Nat. Anod.	G1	Glazing - Feat. Col.	ST	Study
POS	Private Open Space	V	Void Area	AHD	Aust. Height Datum	LP	Lobby Press. Duct	C2	Paint Fin. - Off White	M2	Metal Fin. - Lt Grey	G2	Glazing - Clear	BR	Bathroom
#00	Street Number	T	Terrace	WM	Water Meters	S1	Screen Element	C3	Paint Fin. - Lt Grey	M3	Metal Fin. - Mid Grey	G3	Glazing - Translucent	L	Lounge
BN	Bin	L	Lifts	GR	Gas Riser	B1	Stone Finish	C4	Paint Fin. - Feat. Col.	M4	Metal Fin. - Feat. Col.	LD/HW	Laundry/Hot Water Unit	M	Meals Area
S	Services Core	SP	Stair Press. Duct	TC	Telecommunications	T1	Timber Finish	L1	Glazed Louvre	M5	Metal Fin. - Black	B1/2	Bedrooms	K	Kitchen

REVISIONS			
No	Date	Description	By
-	14.06.11	Town Planning Submission	SC
A	07.07.11	Amendments	SC
B	07.11.11	Revised Issue	SC

PROJECT TITLE
RESIDENTIAL DEVELOPMENT
 9-11 EXPLORATION LANE
 MELBOURNE 3000

DRAWING TITLE
EAST ELEVATION

SCALE: @ A3
 1:300

PROJECT No:
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DATE:
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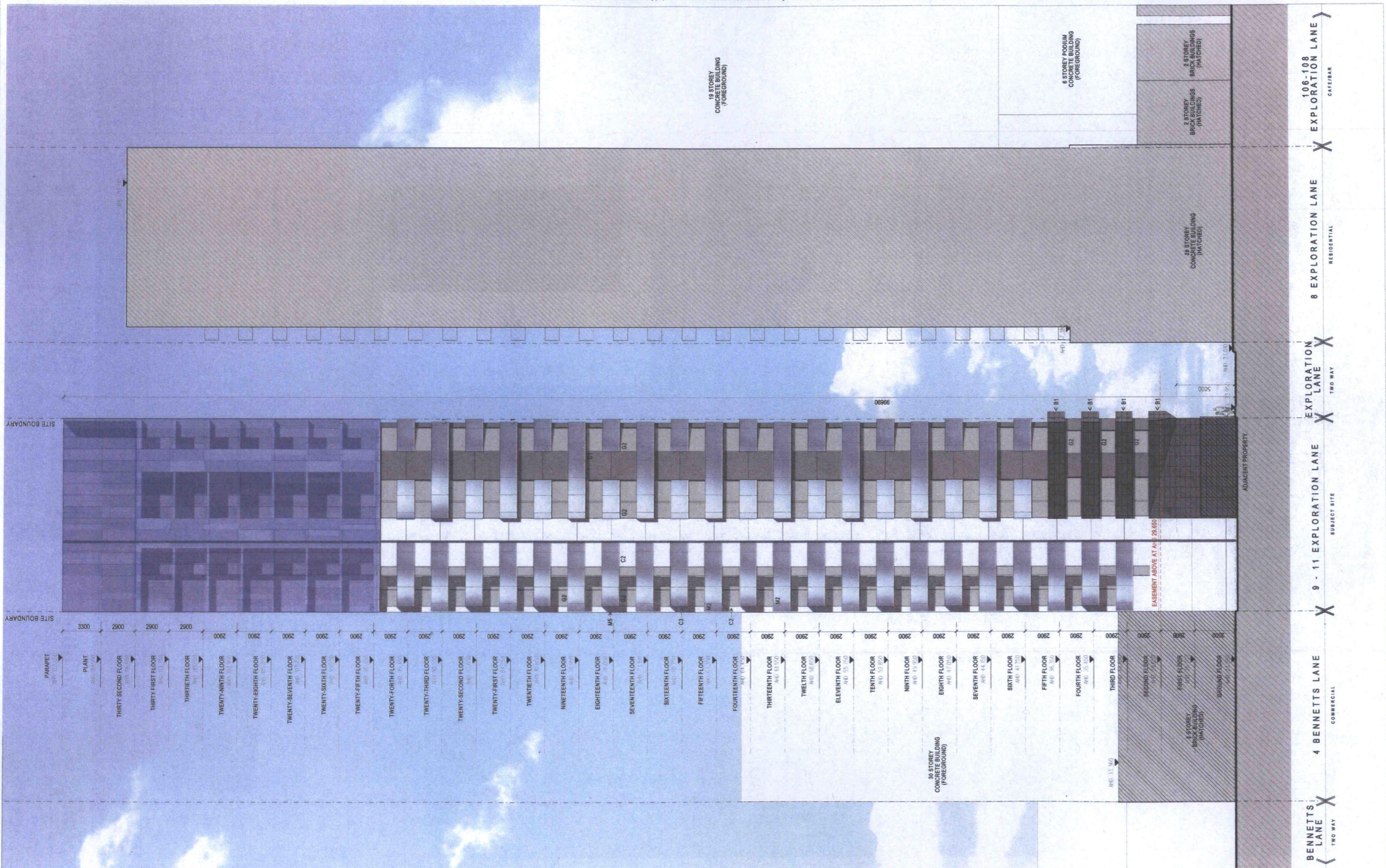
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LITTLE LONSDALE STREET ONE WAY
 100 LONSDALE STREET RETAIL
 ROW 9 - 11 EXPLORATION LANE X AND THRU X SUBJECT SITE
 13 EXPLORATION LANE X RESIDENTIAL
 17 EXPLORATION LANE X RESIDENTIAL
 106-108 EXPLORATION LANE X CAFE/BAR

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LEGEND

Key	Description	Key	Description	Key	Description	Key	Description	Key	Description	Key	Description	Key	Description	Key	Description
ROW	Right Of Way	W	Car Stack	FS	Fire Stair	SM	Smoke Man.	C1	Paint Fin. - Charc.	M1	Metal Fin. - Nat. Anod.	G1	Glazing - Feat. Col.	ST	Study
POS	Private Open Space	V	Void Area	AHD	Aust. Height Datum	LP	Lobby Press. Duct	C2	Paint Fin. - Off White	M2	Metal Fin. - Lt Grey	G2	Glazing - Clear	BR	Bathroom
#00	Street Number	T	Terrace	WM	Water Meters	S1	Screen Element	C3	Paint Fin. - Lt Grey	M3	Metal Fin. - Mid Grey	G3	Glazing - Translucent	L	Lounge
BN	Bin	L	Lifts	GR	Gas Riser	B1	Stone Finish	C4	Paint Fin. - Feat. Col.	M4	Metal Fin. - Feat. Col.	LDHW	Laundry/Hot Water Unit	M	Meals Area
S	Services Core	SP	Stair Press. Duct	TC	Telecommunications	T1	Timber Finish	L1	Glazed Louvre	M5	Metal Fin. - Black	B1/2	Bedrooms	K	Kitchen

REVISIONS

No	Date	Description	By
-	14.06.11	Town Planning Submission	SC
A	07.07.11	MCC REQUESTED AMENDMENTS	SC
B	07.11.11	Revised Issue	SC

PROJECT TITLE
RESIDENTIAL DEVELOPMENT
 9-11 EXPLORATION LANE
 MELBOURNE 3000

DRAWING TITLE
SOUTH ELEVATION

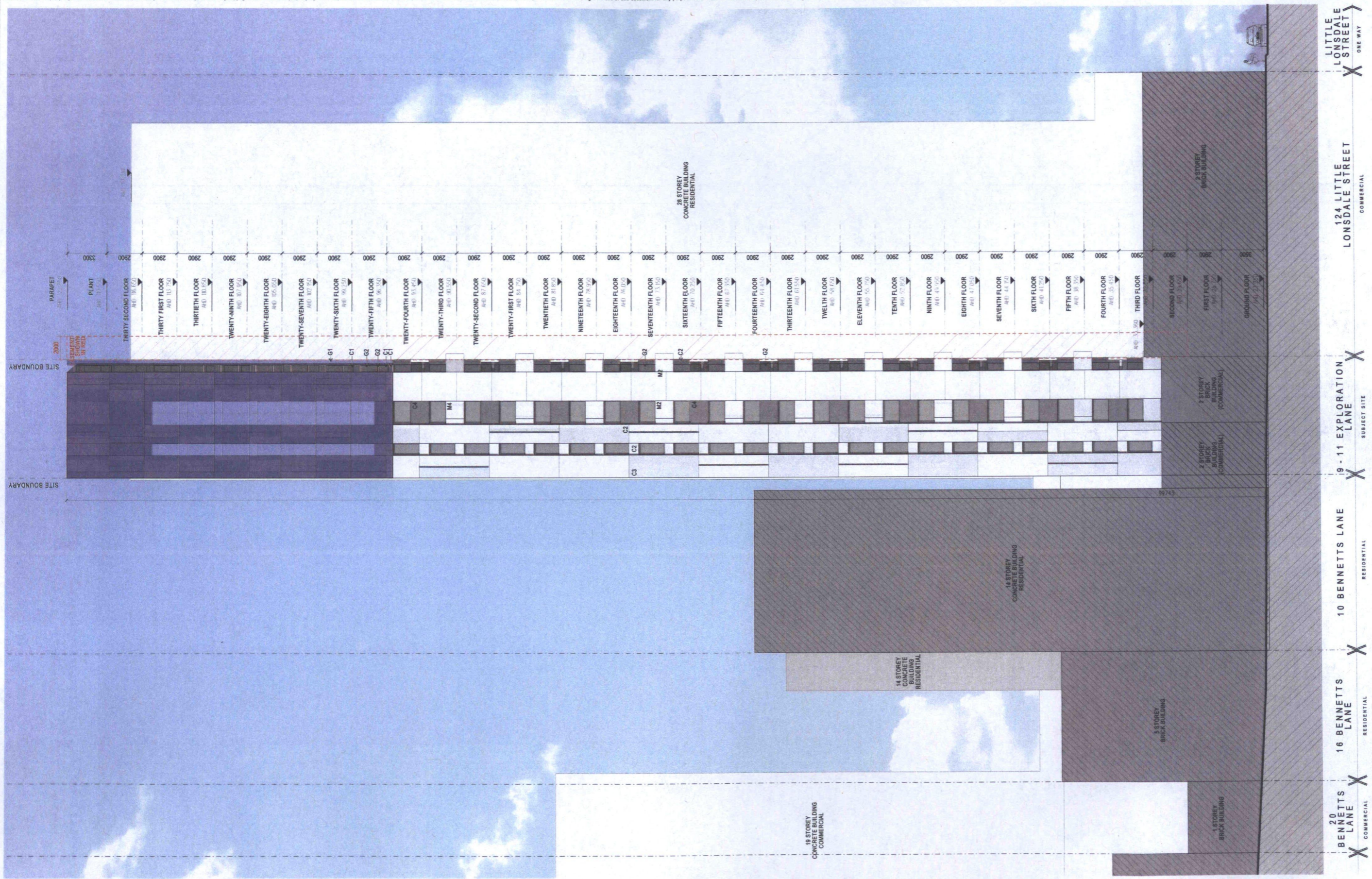
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PROJECT No: 29127
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 REV: SC

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											K	Kitchen

REVISIONS			
No	Date	Description	By
-	14.06.11	Town Planning Submission	SC
A	07.11.11	Revised Issue	SC

PROJECT TITLE
RESIDENTIAL DEVELOPMENT
 9-11 EXPLORATION LANE
 MELBOURNE 3000

DRAWING TITLE
WEST ELEVATION

SCALE: @ A3
 1:300

PROJECT No:
 29127

DATE:
 DECEMBER 2010

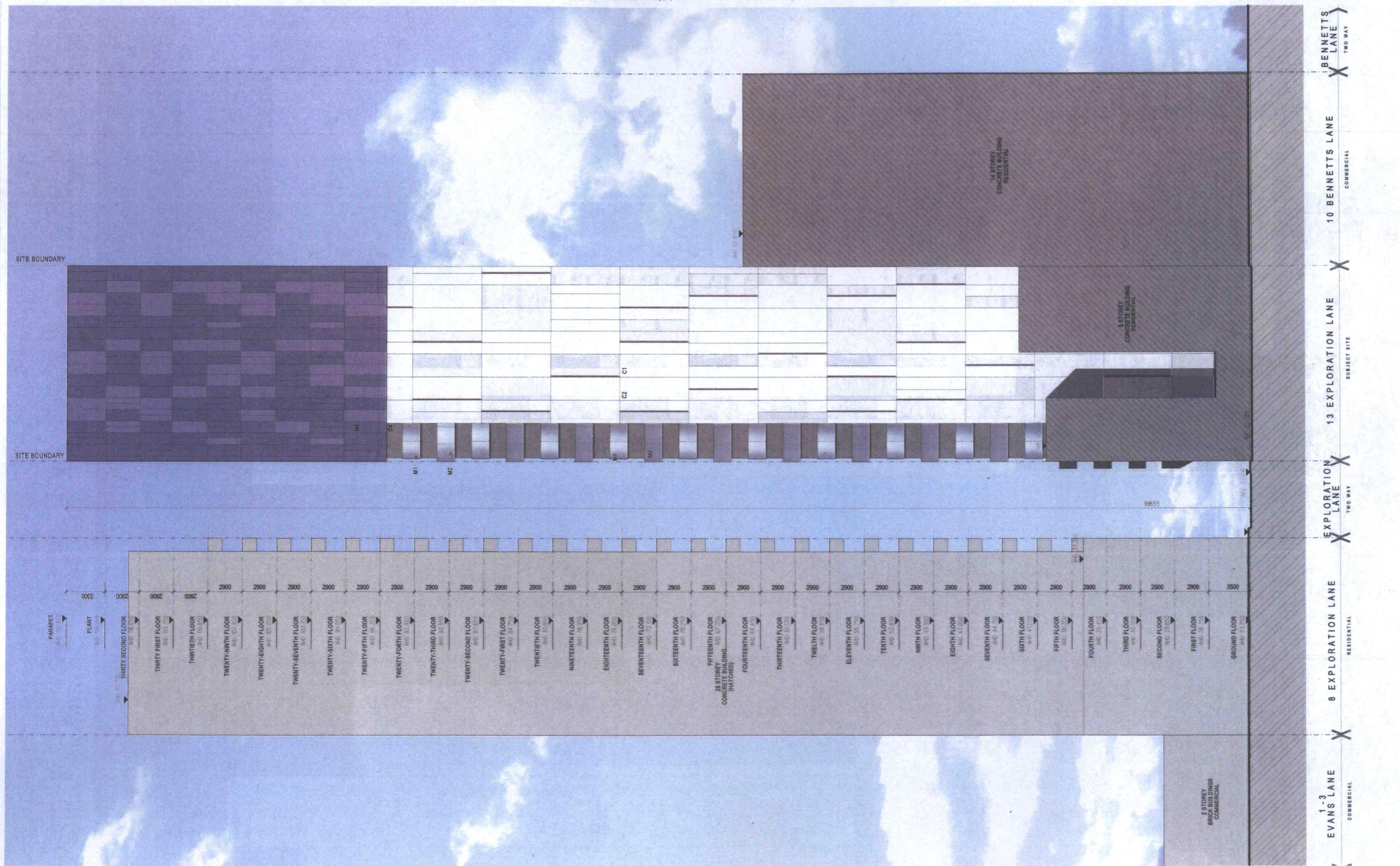
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3TP2.04/A

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LEGEND

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S	Services Core	SP	Stair Press. Duct	TC	Telecommunications	T1	Timber Finish	L1	Glazed Louvre	M5	Metal Fin. - Black	B1/2	Bedrooms	K	Kitchen

REVISIONS

No	Date	Description	By
-	14.06.11	Town Planning Submission	SC
A	01.08.11	AMENDMENTS	SC
B	07.11.11	Revised Issue	SC

PROJECT TITLE
RESIDENTIAL DEVELOPMENT
 9-11 EXPLORATION LANE
 MELBOURNE 3000

DRAWING TITLE
NORTH ELEVATION

SCALE: @ A3
 1:300

PROJECT No:
 29127

DATE:
 DECEMBER 2010

DRAWN BY:
 SC

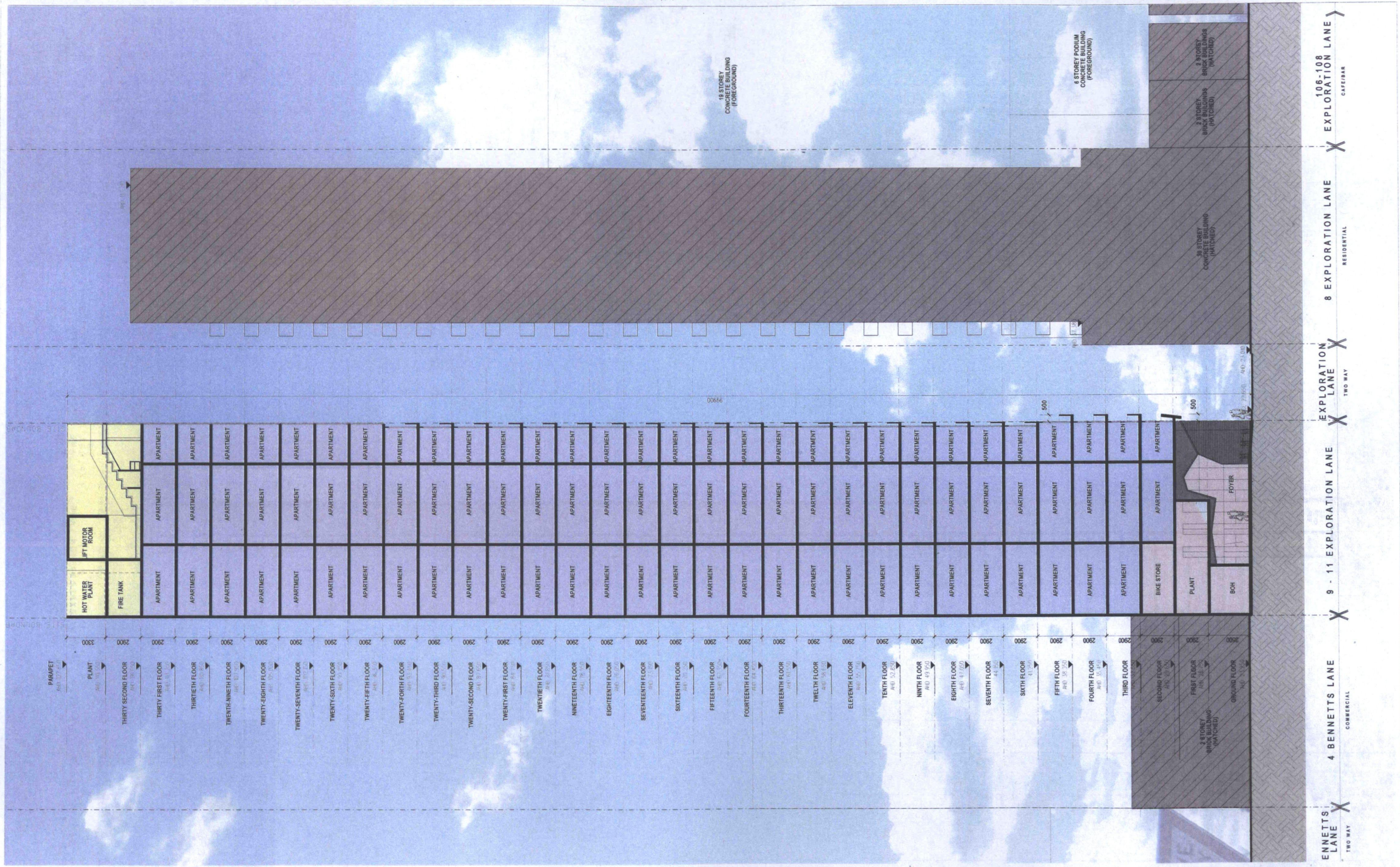
DWG No:
3TP2.05/B

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LEGEND	
Key	Description
ROW	Right Of Way
POS	Private Open Space
#00	Street Number
BN	Bin
S	Services Core
W	Car Stackers
V	Void Area
T	Terrace
L	Lifts
SP	Stair Press. Duct
FS	Fire Stair
AHD	Aust. Height Datum
WM	Water Meters
GR	Gas Riser
LP	Lobby Press. Duct
S1	Screen Element
B1	Stone Finish
TC	Telecommunications
SM	Smoke Man.
LP	Lobby Press. Duct
S1	Screen Element
B1	Stone Finish
T1	Timber Finish
C1	Paint Fin. - Charc.
C2	Paint Fin. - Off White
C3	Paint Fin. - Lt Grey
C4	Paint Fin. - Feat. Col.
L1	Glazed Louvre
M1	Metal Fin. - Nat. Anod.
M2	Metal Fin. - Lt Grey
M3	Metal Fin. - Mid Grey
M4	Metal Fin. - Feat. Col.
M5	Metal Fin. - Black
G1	Glazing - Feat. Col.
G2	Glazing - Clear
G3	Glazing - Translucent
LDHW	Laundry/Hot Water Unit
B1/2	Bedrooms
ST	Study
BR	Bathroom
L	Lounge
M	Meals Area
K	Kitchen

REVISIONS			
No	Date	Description	By
A	14.06.11	Town Planning Submission	SC
B	07.07.11	Amendments	SC
C	01.08.11	Amendments	SC
C	07.11.11	Revised Issue	SC

PROJECT TITLE
RESIDENTIAL DEVELOPMENT
 9-11 EXPLORATION LANE
 MELBOURNE 3000

DRAWING TITLE
SECTION A - A

SCALE: @ A3
 1:300

PROJECT No:
 29127

DATE:
 DECEMBER 2010

DRAWN BY:
 SC

DWG No:
3TP3.01/C

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ROTHE LOWMAN

DELEGATED PLANNING APPLICATION REPORT

Application number:	TP-2013-960
Applicant:	Balfour Development Group
Address:	9-11 Exploration Lane, MELBOURNE VIC 3000
Proposal:	Demolition of warehouse and construction of a multi-storey building for residential purposes
Date of application:	22 November 2013
Responsible officer:	Brendan Cousins

1 SUBJECT SITE AND SURROUNDS

The subject site is located on the west side of Exploration Lane, which runs from Little Lonsdale Street to LaTrobe Street. The site has a total area of 177m² and is currently developed with a two storey red brick building which is used as an office.

Aerial Photo / Locality Plan



Immediately north of the subject site at 15 Exploration Lane is a 6 storey grey concrete residential building with balconies that extend over Exploration Lane. This building has a light court on the boundary (southern) with the subject site. Further north is 17 Exploration Lane, a 14 storey residential building with a café at ground floor.

West of the subject site, at 4 Bennetts Lane, is a two storey brick building

North west of the subject site, at 10 Bennetts Lane, is a 14 storey residential building.

South of the subject site is Private Lane 5371 which is partly built over by a carport structure. This lane has a roller shutter door opening to Exploration Lane. South of the private lane are two, two storey dwellings.

To the east of the subject site on the opposite side of Exploration Lane is a 29 storey residential building. This site has frontages to Little Lonsdale Street, Exploration Lane and Evans Lane and is significantly larger than the subject site

The title to the land shows that the site is not affected by any easements or restrictive covenants. However the land has easement rights over part of the private lane to the south as well as part of the rear of 120 Little Lonsdale Street.

2 BACKGROUND AND HISTORY

2.1 Planning Application History

Planning Application TP-2009-531 was received on 10 July 2009 and sought approval for a 32 storey building.

On 19 November 2009, an amendment to the application was received, reducing the height of the building to 25 storeys. This application was refused on 8 January 2010. An application for review of the refusal was subsequently lodged with VCAT. Prior to the hearing a request for a Consent Order was lodged with VCAT as an agreement had been reached between Council and the permit applicant on amended plans. The VCAT hearing was settled by consent and at the Tribunal's direction a permit was issued on 20 May 2010, with the expiry date being two years after the date of issue.

A number of amendments to the application have been considered in association with TP-2009-531 including:

- On 13 May 2011, the permit applicant lodged a request with VCAT to amend the permit by adding a condition requiring that prior to the commencement of development the permit holder must provide evidence of having easement rights over land immediately south of the subject site. This was necessary to allow the proposed development to have balconies extending over the land to the south and windows on the boundary.

On 15 June 2011 the Tribunal directed the issue of an amended planning permit including this condition. The amended permit was issued by Council on 17 June 2011 and designated TP-2009-531/A.

- On 23 August 2011, a request for approval of amended plans under secondary consent was received. The amended plans include the following changes:
 - Building height increased by 400 mm.
 - Extension of east facing balconies so as to wrap around the south-east corner of the building and project out over easement to south.
 - Addition of windows along north and south title boundaries.
 - Deletion of a north facing light well.

On 15 September 2011 the amended plans were endorsed.

- On 23 August 2011 the applicant submitted to VCAT an amendment to the permit under Section 87A of the Planning and Environment Act 1987 for a 34

storey building approximately 100 metres in height, rather than the approved 25 storey building.

- Key differences between the approved development and the amended proposal are:
- At levels 19-22 in the approved scheme, the façade to Exploration Lane is set back up to approximately 500 mm. The plans showed originally levels 6-24 set back 600 mm with balconies within the setback area.
- In the approved scheme the top of the building (above level 18) had a different finish to the lower levels. The south and east facades were fully glazed while the north and west facades are predominantly finished in metal and a textured paint. In the amended scheme, this treatment begins at level 25.
- The number of apartments has increased from 62 to 89.

The City of Melbourne did not support the proposed amendments for the following reasons:

- The proposal by virtue of its height and minimal setbacks will have an overbearing impact upon the public realm contrary to relevant provisions of the Melbourne Planning Scheme including Clauses 22.01 and 22.20.
- The proposal by virtue of its height and minimal setbacks represents an overdevelopment of the site.

VCAT issued an order for an amended permit on the 31 January 2012.

Plans were endorsed by City of Melbourne on the 22 August 2012. It was later discovered that the permit had expired on 20 May 2012.

3 PROPOSAL

The plans which have been considered in this planning assessment are dated 20 November 2013.

The application has been lodged due to planning permit TP-2009-531/A expiring on the 20 May 2012, outside the time that an application for extension to the life of the permit could be lodged and approved by City of Melbourne. It is noted that recent changes to Planning and Environment Act 1987 do not allow the lapsed permit to be reviewed by VCAT:

S. 81(3) inserted by No. 3/2013 s. 61(1).

(3) Despite subsection (1) and clause 62 of Schedule 1 to the Victorian Civil and Administrative Tribunal Act 1998, an application cannot be made to the Tribunal for review of a decision referred to in subsection (1)(a) or (aa) or a failure referred to in subsection (1)(b) unless the request to the responsible authority for the extension of time was made within the time specified under section 69(1) or (1A) (as the case requires).

As such the development can only be restarted through the submission of a new planning application.

There are no changes to the development with the plans being consistent with the plans approved on 9 August 2012.

4 STATUTORY CONTROLS

The following clauses in the Melbourne Planning Scheme require a planning permit for this proposal:

Clause	Permit Trigger
Clause 37.04 Capital City Zone Schedule 1	Pursuant to Schedule 1 to the Capital City Zone, a permit is not required for 'accommodation' uses. Pursuant to this clause a permit is required to construct a building or construct or carry out works or to demolish a building or works.
Parking Overlay Schedule 1	A permit is required to provide car parking spaces which do not comply with Clause 1.0 of the schedule applicable to the CCZ 1. As no car parking is proposed as part of this development, no permit is required under Clause 52.06.
Clause 52.34 Bicycle facilities	Pursuant to Clause 52.34-2 a permit is required to reduce or waive the standard bicycle parking requirement. Standard bicycle parking requirements applicable to the development are: <ul style="list-style-type: none"> • Dwellings within buildings of 4 or more storeys – 1 space per 5 dwellings for residents and 1 space per 10 dwellings for visitors. Based on the above, a total of 18 spaces are required for residents and 9 spaces are required for visitors. The plans show 33 spaces at level 2 and 6 visitor spaces at ground floor level. The 3 additional visitor spaces could be accommodated within level 2. Based on this, the development provides adequate bicycle parking.

5 STRATEGIC FRAMEWORK

State Planning Policies	Clause 11 – Settlement Clause 16 – Housing Clause 17 – Economic Development
Municipal Strategic Statement	Clause 21.04 – Settlement Clause 21.06 – Built Environment and Heritage Clause 21.07 – Housing Clause 21.12 – Built Environment and Heritage Clause 21.06 – Hoddle Grid

Local Planning Policies	<p>Clause 22.01 – Urban Design within the Capital City Zone</p> <p>Clause 22.02 – Sunlight to Public Spaces</p> <p>Clause 22.07 – Advertising Signs</p> <p>Clause 22.19 – Energy, Water and Waste Efficiency</p> <p>Clause 22.23 – Stormwater Management (Water Sensitive Urban Design)</p>
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6 PARTICULAR PROVISIONS

The following particular provisions apply to the application:

- Clause 52.06, Car Parking
- Clause 52.34, Bicycle Facilities
- Clause 52.35, Urban Context Report and Design Response for Residential Development of Four or More Storeys
- Clause 52.36, Integrated Public Transport Planning

7 GENERAL PROVISIONS

The following general provision(s) apply to the application:

- Clause 65, Decision Guidelines, which includes the matters set out in Section 60 of the Planning and Environment Act 1987.
- Clause 66, Referral and Notice Provisions

8 PUBLIC NOTIFICATION

Pursuant to Capital City Zone 1 provisions, an application to construct a building or construct or carry out works for a use in Section 1 of Clause 37.04-1 is exempt from the notice requirements of Section 52 (1) (a), (b) and (d), the decision requirements of Section 64 (1), (2) and (3) and the review rights of Section 82 (1) of the Act. An application for demolition is also exempt from these requirements.

9 OBJECTIONS

The application has received 6 objections raising the following concerns (summarised):

- The proposal is an overdevelopment of the site with regard to height and setbacks;
- Goes against the laneways policy;
- No loading facilities are provided;
- Exceeds the plot ratio;
- Does not have a tower setback;
- Does not comply with the tower separation policy;
- Affects residential amenity of existing and future residents;
- The proposal is unlikely to be as sustainable as suggested by the applicant;
- Fire safety requirements have not been met;
- Waste facilities unlikely to be sufficient;

- Likely to cause adverse wind conditions;
- Overshadowing and overlooking of residential buildings to the south;
- The application proposes to build over private land to the south;
- Does not integrate with the neighbourhood character; and
- Likely to result in unacceptable traffic levels due to lack of parking.
- Impact upon existing tree of significance (on exceptional tree register).
- Overlooking to property to the south.
- Construction will impact laneway and adjoining properties
- Traffic impacts to laneway.

It is noted that the concerns by the objectors generally parallel the concerns raised with the initial proposal under planning permit TP-2009-531.

As previously stated, the development is exempt from the notice requirements and review rights of the Planning and Environment Act 1987.

Section 60 of the Planning and Environment Act 1987: What matters must a responsible authority consider states in part that:

- (1) Before deciding on an application, the responsible authority must consider-
 - (a) the relevant planning scheme; and
 - (b) the objectives of planning in Victoria; and
 - (c) all objections and other submissions which it has received and which have not been withdrawn; and...

However Section 60 further states:

(3) Despite subsection (1)(c), if no notice is required to be given under section 52(1) or 57B of the planning scheme of an application, the responsible authority is not required to consider any objection or submission received in respect of the application before deciding the application.

Note: Since the Senior Officer Delegate meeting a further two (2) objections have been received raising the following additional concerns:

- Overlooking to bedrooms and other habitable spaces of 8 Exploration Lane.
- Projecting balconies will further erode the privacy and physical safety of residents.
- Proposed building will erode the privacy of all neighbouring buildings.
- Proposed building's lack of any set back on Exploration Lane means a canyon effect is created and the bulk of the building will be highly intrusive to pedestrians in the lane.

10 CONSULTATION

No further formal consultation was arranged.

11 REFERRALS

11.1 Internal

Given that the built form and function of the development remains unchanged, no additional comments were sought from internal referrals. Previous referral comments in relation to TP-2009/531/A are still applicable.

11.2 External

As the development includes more than 60 dwellings, referral to the Public Transport Victoria (PTV) is required under Clause 52.36-1. PTV did not object to the proposal.

12 ASSESSMENT

The application seeks approval for the development of a tower for residential use originally approved under planning permit TP-2009-531/A. There have been no changes to the layout, built form or function of the proposal. The development is consistent with the plans endorsed on 9 August 2012.

As previously discussed, the reason for this application is that it was discovered that plans were endorsed after the permit had expired. Due to the recent changes to the Planning Environment Act in relation extension of time applications, there was no opportunity for VCAT to revisit the matter.

The primary matters to consider in the assessment of this application include:

- Planning merits of the proposal in relation to current planning controls and planning context
- Recent site permit history, specifically planning permit TP-2009-531/A
- Permit conditions of previous approval

12.1 Current planning controls and site context

The planning controls that affect the site, including zoning and overlays, have remained generally unchanged since the VCAT order that approved the previous development. It is considered that there has been limited change to the existing site context specifically in relation to built form since January 2012 (VCAT order date). This can be seen on the aerial photographs below:



17 June 2012



4 March 2014 (Nearmap)

However since the VCAT order two new local planning policies have been introduced into the planning scheme: Clause 22.19 Energy, Water and Waste Efficiency and Clause 22.23 Stormwater Management. Although the requirements and provisions of these policies are not mandatory, the application must be considered afresh against these two new policies.

12.1.1 Clause 22.19 Energy, Water and Waste Efficiency

The proposal is 4,874sqm in floor area so only waste and water efficiency measures need to be addressed, as energy efficiency for development below 5000sqm can be addressed by the Building Code of Australia.

The applicant has submitted an ESD report which indicates that the development will achieve the performance levels:

- 2 points for Wat 1 credit (Clause 22.19 requires 1 point)
- Compliance with BCA requirements of an average rating of 6 stars and individually of at least 5 stars.
- Waste management plan previously approved by Engineering Services Group (ESG).

Therefore it is considered that the proposal is generally compliant with the objectives and policy directions of Clause 22.19. However, although the previous WMP has been approved by ESG it is considered reasonable to ensure that the waste management plan is compliant with 2014 standards; therefore a condition of permit will require an amended WMP.

A new condition will be recommended in relation to the implementation of the ESD initiatives.

12.1.2 Clause 22.23 Stormwater Management.

Clause 22.23 was introduced into the Melbourne Planning Scheme on the 13 March 2014, after submission of the application. No assessment of any of the application requirements has therefore been submitted with the application. The ESD report submitted by the applicant indicates that the development has a STORM rating of 100 which achieves best practice in relation to Melbourne Water requirements. It is noted that a 3,000 litre tank will collect rainwater from the 100sqm roof. The harvested rainwater will be connected to toilets on levels 2, 3, and 4.

Given that Clause 22.23 has been introduced into scheme very recently and the applicant has demonstrated an intent to manage stormwater runoff, it is considered reasonable to address the requirements of Clause 22.23 via condition of permit.

12.2 Site history

Although the City of Melbourne was not agreeable to the proposed increase in height from 25 storeys to 34 storeys, VCAT order P2531/2011 dated 31 January 2012 disagreed and directed that a permit be issued.

VCAT expressly dealt with building height, the tower podium relationship and internal amenity.

At the hearing, the VCAT Member considered whether or not Council was constrained by the previous consent order for a 25 storey building. He concluded that 'I do not accept that the ambit of Council was not constrained only to address the additional height placed on top of the approved building, even though that was the proposal before the Tribunal', further stating that 'as I see it, while Council is constrained from debating the entirety of the proposal, it is not constrained from debating any aspect that is related to any increase in height'. The Member considered the additional 9 levels in the context of both a podium/tower typology as preferred by Council and a 34 storey building with no/limited setbacks to boundaries:

'The question of whether the additional height is only acceptable if associated with the adoption of some degree of podium/tower typology is a matter that I can consider on its merits.'

In relation to amenity impacts to adjoining properties, the Member concluded that 'the additional height, if approved, would introduce apartments to just above the highest level of apartments in No. 8-10 Exploration Lane. The relationship between these 9 extra levels of apartments and those opposite would largely replicate the relationship that Council has accepted for levels 2-25.'

It is noted that a secondary bedroom relies on access to light from a west facing boundary window. If the adjoining property was developed, this window (and any other boundary windows on the western facade) would be covered and direct access to daylight would be lost. A reconfiguration of the internal layout of the dwellings included the new west windows to a second bedroom was proposed as part of the amendment that was considered by VCAT.

The Member considered that 'regardless of the greater size of Nos. 4-10 Bennetts Lane, I conclude that it would be unacceptable to allow windows on the western (or northern) boundary of this site to potentially restrict the neighbouring sites' development opportunities.' However Member Read accepted 'Mr. Hutson's opinion that in the longer term secondary light and ventilation would be acceptable for the secondary bedroom of one-third of the dwellings in a central-city apartment block such as this, where such light and ventilation could be provided across the kitchen/living area, as in this case'.

Internal legal advice states that:

'The general principle, widely accepted, is that the Tribunal should not reconsider previous decisions. Accordingly in determining any subsequent appeal VCAT will take into account and give the earlier decision great weight; VCAT decisions have decided regularly that, generally speaking, the earlier decision should not be reversed unless there is a significant change in *circumstances* which warrants a different view (such decisions mainly being in relation to applicants lodging repeat applications but the principle is the same).'

There are four tests to determine the factors which might justify a departure from an earlier determination. These tests were established in *Rechert v City of Banyule* (1996) and later updated in *Batsis Nominees Pty Ltd v Hobsons Bay CC* (2009) VCAT 928. These test are:

1. Significant or material changes to the application itself which address the primary reason for the previous approval being refused.
2. Significant or material changes in the circumstances of the land or its surroundings
3. Significant or material changes in planning controls or policy
4. Significant or material changes in the interpretation of the facts of law relevant to the Tribunal's consideration.

If there were no previous site history it is very unlikely that the development as submitted would be supported, specifically in relation to built form and the provision of adequate internal amenity for future occupants. There have been no significant changes to the application itself or to the land or its surroundings; the planning controls and policies or the current context of the site and surrounds that would support refusal of the application. As such it is considered that the first three tests are satisfied.

However, it is considered that test 4 allows further consideration of the development specifically in relation to internal amenity. More recent VCAT decisions have

provided updated principles when considering the use of the borrowed light to secondary bedrooms. Such examples include:

Empire Property Group Pty Ltd v Kingston CC & Ors [2012] VCAT 1869 (6 December 2012) the Tribunal noted the following with respect to 'principles' of borrowed light:

81. Apartment G.02 and the two studio apartments would have bedrooms that rely on borrowed light. The Tribunal has consistently determined that this approach is acceptable if particular criteria are met. The dwelling should have only one bedroom, it should gain its light and ventilation through a living room that is reasonably wide, and the front wall of the bedroom should be within reasonable distance of the outer wall of the dwelling.

Caufield Residence Pty Ltd v Glen Eira CC & Ors [2013] VCAT 512 (15 April 2013) Senior Member Baird noted that:

The Tribunal has frequently considered the acceptability of rooms with borrowed light as noted by Ms Wilson. As I said at the Hearing, a distinction has been made between single bedroom units that rely on this format and two bedroom dwellings given sole occupancy versus potential privacy considerations with potential multiple person occupancy. In addition, relevant factors with respect to the acceptability of the layout include the distance to the light source, intervening structures/walls within the dwelling, and the nature of the light source (eg. north-facing window vs south-facing small light court).

Heidelberg Training and Resource Centre & Anor v Banyule CC & Anor [2013] VCAT 1213 (8 July 2013), the Tribunal noted:

27. All the two-bedroom apartments where one bedroom relies on borrowed light are problematic. The emerging principles on borrowed light include that it results in an acceptable level of amenity for single bedroom dwellings if they are well designed. Two-bedroom dwellings tend to provide an alternate light source, typically a light well, for the second bedroom. There is no reason why this should not apply here.

The secondary (northern) bedroom of the western apartments relies on daylight through a boundary window (west facing). If the adjoining property is developed, direct access to daylight will be lost and the bedroom will rely on borrowed light across the living room. It is noted that if the adjoining property is developed (120 Little Lonsdale Street), all western apartments will rely on an 8sqm light easement (2m x 4m). This is not a reasonable outcome and provides a poor level of internal amenity for future occupants. To avoid such a situation, a condition of permit is recommended that will modify or delete the second bedroom so that it does not rely on borrowed light if the adjoining property to the west is developed.

There has been no recent relevant VCAT decision to warrant a review of the development afforded by test 4 in relation to built form, setbacks and the podium/tower typology.

12.3 Permit conditions

As the submitted proposal is for the same development approved under planning permit TP-2009-531/A it is reasonable that essentially the same conditions are included if a planning permit is issued. However, since the issue of the permit a number of conditions are required to be added and similarly a number of conditions require modification.

For instance, the wind testing condition should be updated with a revised report required that includes testing in current conditions (not from 2010). It is considered that walking criteria within Exploration Lane is reasonable.

Conditions to be included relate to Clause 22.19 and Clause 22.23 as well as an updated waste management plan to ensure that the development will comply with 2014 standards.

12.4 Other matters

It is acknowledged that 5 objections have been received in relation to the proposal. However as previous stated Section 60 of the Planning and Environment Act 1987 states:

(3) Despite subsection (1)(c), if no notice is required to be given under section 52(1) or 57B or the planning scheme of an application, the responsible authority is not required to consider any objection or submission received in respect of the application before deciding the application.

It is noted that the majority of the concerns raised by the objectors are the same concerns raised with the original development TP-2009-531 with the exception of the impact of the development on adjoining tree that is on the exceptional tree register. The subject site is not covered by an Environmental Significance Overlay (ESO2) and does not impact upon the tree protection zone. As such from a planning perspective there is no planning permit trigger that would necessitate a consideration of the impact upon the tree under the ESO2. Although the tree may be in shadow by the development, it is not considered that the root or canopy structure will be detrimentally impacted by the development. Due to the location of surrounding buildings, particularly those to the north and east, the area is already in significant shadow, particularly during midday.

Considering the history of the site and previous position of the Council and VCAT in relation to the development approved under TP-2009-531 and TP-2009-531/A, no further weight can be given to the concerns as raised by the objectors (submissions). Specific issues such as title/encumbrance issues have previously been considered by VCAT and City of Melbourne and were incorporated into the approval of planning permit TP-2009-531/A (via condition of permit).

12.5 Conclusion

The proposal is the same development approved by VCAT for TP-2009-531/A. The recent introduction of Clause 22.19 and Clause 22.23 does not provide any reasoning to reconsider the proposal and come to different conclusion with regards to the development as a whole or even in part. Although the City of Melbourne did not agree with additional 9 stories (25 to 34), VCAT disagreed and directed a permit to issue. To disregard the VCAT decision with no material change to policy with regards to internal amenity, building height, setbacks etc. is not a matter that should be taken lightly. However, it is considered that there has been a number of recent VCAT decisions to warrant improvements to the internal amenity of the apartments.

The inclusion of updated conditions in relation to ESD and Stormwater Management represent an incremental improvement in the development overall.

13 RECOMMENDATION

That a Planning Permit be issued subject to the following conditions:

1. Prior to the commencement of the development on the land, two copies of plans, drawn to scale must be submitted to the Responsible Authority generally in accordance with the plans received on 26 November 2013 but amended to show:
 - a. Deletion or modification of the secondary bedroom (northern) of apartments 0.03 so they do not rely on access to borrowed daylight if the adjoining properties are further developed in a manner that would require the removal of the west facing boundary windows.
 - b. Any changes as required by the WSUDR Statement as required by the corresponding condition of this permit.
 - c. Any changes as required by the amended Waste Management Plan required by the corresponding condition of this permit.
 - d. Any changes as required by the revised Wind Report required by the corresponding condition of this permit.
 - e. A schedule and samples of all external materials, colours and finishes.

The amended plans must be to the satisfaction of the Responsible Authority and when approved will be the endorsed plans of this permit.

The development as shown on the endorsed plan(s) must not be altered or modified without the prior written consent of the Responsible Authority.

2. Prior to the commencement of construction of the approved development, the permit holder must provide evidence of the easement rights being legally registered over Lot A and the rear of 120 Little Lonsdale Street, being those properties abutting the development to the south, to the satisfaction of the Responsible Authority.
3. Prior to the commencement of the development, an amended Waste Management Plan (WMP) must be prepared and submitted to the City of Melbourne - Engineering Services. The WMP should detail waste storage and collection arrangements and be prepared with reference to the City of Melbourne Guidelines 2014 for Preparing a Waste Management Plan. Waste storage and collection arrangements must not be altered without prior consent of the City of Melbourne - Engineering Services.
4. All garbage and other waste material must be stored in an area set aside for such purpose to the satisfaction of the Responsible Authority.
5. Garbage bins and waste materials must not be deposited or stored outside the site and bins must be returned to the garbage storage area as soon as practicable after garbage collection, to the satisfaction of the Responsible Authority.

6. Prior to the commencement of development, the owner of the property must enter into a legal agreement under Section 173 of the Planning & Environment Act 1987 and pay a lump sum license premium (payable at the outset rather than an annual fee), concerning liability and maintenance of those parts of the development projecting into airspace or sub-soil of land under the care and management of Council and disclaiming any right or intention to make or cause to be made at any time any claim or application relating to adverse possession of the land. The owner of the property to be developed must pay all of council's reasonable legal costs and expenses of this agreement, including preparation, execution and registration on title.
7. Prior to the commencement of development, the owner of the property must enter into an agreement with the responsible authority pursuant to Section 173 of the Planning & Environment Act 1987. The agreement must provide for the following:
 - a. The removal of windows/openings on the boundaries when the adjoining properties are further developed in a manner that would affect these windows/openings.

The owner of the land subject of this permit must pay all of council's reasonable legal costs and expenses of this agreement, including preparation, execution and registration on title.

8. Before the development starts either:
 - a. A Certificate of Environmental Audit must be issued for the land in accordance with Section 53Y of the Environment Protection Act 1970; or
 - b. An environmental auditor appointed under the Environment Protection Act 1970 must make a Statement under Section 53Z of that Act that the environmental conditions of the land are suitable for residential use.

A copy of the Certificate of Environmental Audit or Statement of Environmental Audit must be submitted to the Responsible Authority before the development starts.

Where a Statement of Environmental Audit is provided, all the conditions of the Statement of Environmental Audit must be complied with to the satisfaction of the responsible authority, before the development is occupied. Written confirmation of compliance must be provided by a suitably qualified environmental professional or other suitable person acceptable to the Responsible Authority. In addition, sign off must be in accordance with any requirements in the Statement conditions regarding verification of works.

If there are conditions on a Statement of Environmental Audit that the Responsible Authority considers require significant ongoing maintenance and/or monitoring, the applicant must enter into a Section 173 Agreement under the *Planning and Environment Act 1987*. The Agreement must be executed and registered on title before the development is occupied. The owner must meet all costs associated with drafting and executing the Agreement, including those incurred by the Responsible Authority.

The following buildings and works may be undertaken before the requirements of this condition are satisfied:

- a. buildings and works (including demolition) that necessarily form part of the environmental audit process; and
- b. buildings and works (including demolition) that the environmental auditor engaged by the applicant advises must be carried out before a Certificate of Environmental Audit or a Statement of Environmental Audit can be issued.

These buildings and works may include the removal of contaminated soil, the capping of the site, and the laying of foundations and the installation of services required to facilitate the capping of the site.

9. Habitable rooms of new dwellings adjacent to high levels of external noise should be designed to limit internal noise levels to a maximum of 45 dB in accordance with relevant Australian Standards for acoustic control.
10. Before the development starts, wind tests by a suitably qualified consultant, must be carried out on a model of the approved building. A revised report detailing the outcome of the testing must be submitted to the satisfaction of the Responsible Authority and must recommend any modifications which must be made to the design of the building to reduce any adverse wind conditions in areas used by pedestrians, to the satisfaction of the Responsible Authority. Wind conditions within public realm, specifically along Exploration Lane should not exceed walking criteria. The recommendations of the report must be implemented at no cost to the Responsible Authority, to its satisfaction.
11. Glazing materials used on all external walls must be of a type that does not reflect more than 15% of visible light when measured at an angle of 90 degrees to the glass surface, to the satisfaction of the Responsible Authority.
12. The owner of the subject land must construct a drainage system, incorporating water sensitive urban design, within the development and make provision to connect this system to Council's stormwater drainage system in accordance with plans and specifications first approved by the Responsible Authority.
13. The existing footpath/road levels in Exploration Lane must not be altered for the purpose of constructing new pedestrian entrances without the prior written consent of the Responsible Authority
14. The footpaths in Exploration Lane must be upgraded and reconstructed in sawn bluestone together with associated works including the renewal and/or relocation of kerb and channel and the relocation of all service pits and covers as necessary at the cost of the Owner/Developer in accordance with plans and specifications first approved by the Responsible Authority.
15. Prior to the commencement of the development, including demolition (only include demolition if there is a permit trigger) or bulk excavation, a detailed construction and demolition management plan must be submitted to and be approved by the Responsible Authority – Construction Management Group . This construction management plan must be prepared in accordance with the City of Melbourne - Construction Management Plan Guidelines and is to consider the following:
 - a. public safety, amenity and site security.

- b. operating hours, noise and vibration controls.
 - c. air and dust management.
 - d. stormwater and sediment control.
 - e. waste and materials reuse.
 - f. traffic management.
 - g. storage of materials.
16. The performance outcomes specified in the Environmentally Sustainable Design (ESD) Statement prepared by Co-Perform Sustainable Building Consultancy and dated 3 February 2014 for the development must be implemented prior to occupancy at no cost to the City of Melbourne and be to the satisfaction of the Responsible Authority.

Any change during detailed design, which affects the approach of the endorsed ESD Statement, must be assessed by an accredited professional. The revised statement must be endorsed by the Responsible Authority prior to the commencement of construction.

17. Prior to the commencement of the development, a Water Sensitive Urban Design Response (WSUDR) Statement, prepared by a suitably qualified professional must be submitted to the satisfaction of the Responsible Authority. The WSUDR Statement must include all requirements of Clause 22.23-4 Stormwater Management (Water Sensitive Urban Design).
18. The recommendations and outcomes specified by the WSUDR statement must be implemented prior to occupancy at no cost to the City of Melbourne and be to the satisfaction of the Responsible Authority.
19. This permit will expire if one of the following circumstances applies:
- a. The development is not started within two years of the date of this permit.
 - b. The development is not completed within four years of the date of this permit.

The Responsible Authority may extend the permit if a request is made in writing before the permit expires, or within six months afterwards. The Responsible Authority may extend the time for completion of the development if a request is made in writing within 12 months after the permit expires and the development started lawfully before the permit expired.

NOTES:

All necessary approvals and permits are to be first obtained from Council and the works performed to the satisfaction of Manager – Engineering Services.

14 RECOMMEDATION

The Lord Mayor, Deputy Lord Mayor and Councillors were notified of the above recommendation on 3 April 2014.