
JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

STREAM : DEVELOPMENT & RESOURCES

ACT : PLANNING AND DEVELOPMENT ACT 2005 (WA)

CITATION : NOSTREBOR HOLDINGS PTY LTD and SHIRE OF DENMARK [2014] WASAT 64

MEMBER : JUDGE D R PARRY (DEPUTY PRESIDENT)

HEARD : 14 MAY 2014

DELIVERED : 14 MAY 2014

PUBLISHED : 10 JUNE 2014

FILE NO/S : DR 76 of 2014

BETWEEN : NOSTREBOR HOLDINGS PTY LTD
FRENESI PTY LTD
SVEN JAMES ROBERTSON
Applicants

AND

SHIRE OF DENMARK
Respondent

Catchwords:

Town planning - Mixed use commercial and residential development - Preliminary issue - Interpretation of planning scheme - Whether there is power to vary density code designated or Scheme Map under provision of local planning scheme stating that '[w]here Residential development is proposed in conjunction with other development in the Commercial zone, Council shall determine the appropriate density code to apply for development requirement purposes'

Legislation:

Interpretation Act 1984 (WA), s 5, s 56(2)

Shire of Denmark Town Planning Scheme No 3, cl 3.1.3, cl 3.2.1, cl 5.2.1, cl 5.2.3, cl 5.3.1, cl 5.3.2, cl 5.3.3

State Planning Policy 3.1 - Residential Design Codes

Result:

Respondent has power to vary the density code in relation to the development application

Summary of Tribunal's decision:

The Tribunal was called upon to determine whether the Shire of Denmark has power to vary the density code designated on the Scheme Map under the *Shire of Denmark Town Planning Scheme No 3* (TPS 3) in relation to a development application proposing mixed use development on land zoned Commercial under TPS 3.

Clause 5.3.3 of TPS 3 states:

Where Residential development is proposed in conjunction with other development in the Commercial Zone, Council shall determine the appropriate density code to apply for development requirement purposes.

The Tribunal determined that, on its proper interpretation, cl 5.3.3 of TPS 3 authorises and requires the Shire of Denmark to determine the appropriate density code to apply for a mixed use, including residential development when a development application is made for such development in the Commercial zone, even if the Scheme Map designates a particular density coding for the land.

Category: B

Representation:

Counsel:

Applicants : Ms B Moharich
Respondent : Mr DW McLeod

Solicitors:

Applicants : Flint Moharich
Respondent : McLeods Barristers & Solicitors

Case(s) referred to in decision(s):

AB v State of Western Australia & Anor [2011] HCA 42; (2011) 244 CLR 390;
(2011) 85 ALJR 1233
LandCorp and City of Stirling [2011] WASAT 202

REASONS FOR DECISION OF THE TRIBUNAL:

Preliminary issue

1 The following preliminary issue arises for determination in a proceeding for review of the refusal by the Shire of Denmark (Shire or Council) of a development application for mixed use, including residential development, at No 3 Strickland Street, Denmark (site):

Whether there is power to vary the density code in relation to the development application under clause 5.3.3 of the *Shire of Denmark Town Planning Scheme No 3* (TPS 3 or Scheme).

2 The proposed development comprises a café and four tenancies at ground floor for commercial or residential use and seven units for residential use at the first floor. The site is zoned 'Commercial' under TPS 3. A residential density coding of R25 applies to the site, as designated on the Scheme Map. As the site has an area of 1,641 m², the R25 coding would allow four dwellings on the site.

3 The preliminary issue turns on the proper interpretation of cl 5.3.3 of TPS 3, which states as follows:

Where Residential development is proposed in conjunction with other development in the Commercial Zone, Council shall determine the appropriate density code to apply for development requirement purposes.

4 Also relevant, in terms of statutory context, is cl 5.3.1 and cl 5.2.3 of TPS 3. These provisions are as follows:

5.3.1. Where Residential development is permitted in areas not allocated a density code on the Scheme Map, such development shall in all respects be in accordance with the requirements of the R2 Code of the Residential Planning Codes.

5.2.3 Unless otherwise provided for in the Scheme the development of land for any of the residential purposes dealt with by the Residential Planning Codes shall conform to the provisions of those Codes.

5 The expression 'Residential Planning Codes' in cl 5.3.1 and cl 5.2.3 of TPS 3 is now to be taken as a reference to the *State Planning Policy 3.1 - Residential Design Codes* (Codes).

6 TPS 3 does not contain a provision which is typically found in local planning schemes modelled on cl 5.2.3 of the *Model Scheme Text*

(Appendix B of the *Town Planning Regulations 1967 (WA)*), to the effect that the Residential Planning Code density applicable to land in the Scheme area is to be determined by reference to the code density number superimposed on the Scheme Map. However, it is common ground, and plainly contemplated by TPS 3, that the Scheme Map can allocate a density code to land. This is implicit in cl 5.2.3, because conformity to important provisions of the Codes can only be determined if land is allocated a particular residential density code referred to in Table 1 of the Codes. It is also explicitly recognised in cl 5.3.1 of TPS 3, which refers to land 'not allocated a density code on the Scheme Map'.

7 The applicants contend that, on its proper interpretation, cl 5.3.3 of TPS 3 confers power on the Council to vary the density code in relation to the development application, and determine that another density code should be applied for development requirement purposes in the context of the proposed development. Counsel for the applicants recognises that, on the applicants' proposed interpretation, the Council may determine that a lesser density code is appropriate, or that a higher density code is appropriate, in the context of the determination of the appropriate density code to apply for development requirement purposes.

8 In contrast, the Shire contends that cl 5.3.3 of TPS 3 does not confer power on it to vary the density code in relation to the development application, essentially because it has already determined the appropriate density code by allocating a residential density code of R25 to the site by designation on the Scheme Map.

9 For reasons I will address, I accept the applicants' proposed interpretation of cl 5.3.3 of the Scheme.

Is there power to vary the density code in relation to the development application?

10 As the High Court of Australia observed in *AB v State of Western Australia & Anor* [2011] HCA 42; (2011) 244 CLR 390; (2011) 85 ALJR 1233 at [10]:

What is contemplated by [a legislative provision] falls to be determined by construing its terms in the context of the [legislation] as a whole and by reference to its evident purposes.

(Citations omitted)

11 It is also to be borne in mind that the legislative provision in question is a provision of a town planning scheme which, as the Tribunal recognised in *LandCorp and City of Stirling* [2011] WASAT 202 at [26],

is the product of town planners, not Parliamentary Counsel, and is to be read as a whole and in a practical and commonsense, and not in an overly technical way, and in a fashion which will best achieve its evident planning purpose.

12 In my view, read in this way, there are textual, contextual and purposive indications to the effect that, on its proper interpretation, cl 5.3.3 of TPS 3 confers power to vary the density code in relation to the development application.

13 By its terms, cl 5.3.3 applies when a development application for mixed use, including Residential development, is made to the Council in relation to land in the Commercial zone. The clause operates:

[w]here Residential development is proposed in conjunction with other development in the Commercial Zone

14 Furthermore, in circumstances where cl 5.3.3 applies, it imposes a mandatory obligation on the Council to determine the appropriate density code to apply, as it states that where a mixed use, including Residential development is proposed in the Commercial zone:

... Council shall determine the appropriate density code to apply for development requirement purposes.

15 Section 56(2) of the *Interpretation Act 1984* (WA) (Interpretation Act) states:

Where in a written law the word 'shall' is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed.

16 The term 'written law' is defined in s 5 of the Interpretation Act as including 'all subsidiary legislation' and the term 'subsidiary legislation' is defined in s 5 of the Interpretation Act as including a local planning scheme, such as TPS 3.

17 Thus, on a literal interpretation of cl 5.3.3 of TPS 3, where a development application for mixed use, including Residential development is made to the Council in relation to land in the Commercial zone, the Council must determine the appropriate density code to apply for development requirement purposes. This is a mandatory obligation whether or not there is an existing residential density code applicable to the land, and irrespective of what that density code is.

18 As noted earlier, under cl 5.3.1 of TPS 3, where there is no residential density code assigned to land, and where residential development is permitted on the land, the R2 Code applies essentially as a default provision. However, as also noted earlier, it is implicit in cl 5.2.3 of TPS 3 and explicitly recognised in cl 5.3.1 that the Scheme Map can designate an alternative residential density coding for land in the Scheme area. In this case, there is an alternative residential density coding to cl 5.3.1 allocated on the Scheme Map for the site, namely, a coding of R25.

19 However, irrespective of whether there is an allocated density code for land in the Commercial zone on the Scheme Map, the text of cl 5.3.3, in my view, requires the Council to determine the appropriate density code in relation to a development application for mixed use, including Residential development, when such a development application is made to it in relation to land in the Commercial zone.

20 Of course, the Council could determine, under cl 5.3.3 of TPS 3, that the appropriate density code to apply for development requirement purposes is the density code that has been allocated to the land under or, more correctly, on the Scheme Map. No doubt the Council would give very careful consideration, in the context of a particular mixed use development, as to whether that development warrants any variation to the residential density coding.

21 It is also possible, as counsel for the applicants recognised, that the Council may determine, in the context of a particular proposed mixed use development, that the appropriate density code to apply for development requirement purposes is less than the density code on the Scheme Map that would otherwise apply to residential development.

22 However, on the proper interpretation of cl 5.3.3 of TPS 3, the Council, in my view, is bound to consider whether the code should be varied, whether the applicable code is the default code of R2 or another code allocated to the land in question. On the proper interpretation of cl 5.3.3 of TPS 3, the fact that land in the Commercial zone has previously been allocated a density code on the Scheme Map cannot satisfy the requirement of cl 5.3.3, because the Council is obligated, by cl 5.3.3, to determine an appropriate density code when mixed use development is proposed; that is, when a development application for mixed use development is made to it.

23 Furthermore, on the proper interpretation of cl 5.3.3, the fact that land in the Commercial zone has previously been allocated a density code on the Scheme Map cannot satisfy the requirement of cl 5.3.3, because the density code allocated on the Scheme Map applies to all residential development on the land, including residential development that is not proposed in conjunction with other development on the land. In contrast, cl 5.3.3 specifically requires designation of an appropriate density code by Council when mixed use development, and not purely residential development, is proposed.

24 A final textual indication, in my view, is the use of the word 'determine' in cl 5.3.3. The determination by the Council of the appropriate density code to apply does not require an allocation of a density code on the Scheme Map. It simply requires a resolution of the Council. Indeed, an allocation of a density code on the Scheme Map involves more than merely a determination by the Council, as it requires the translation of that determination into the Scheme Map itself.

25 There is also a related contextual indication in TPS 3 which leads to the same interpretation. The use of the word 'determine' in cl 5.3.3 is to be contrasted with the use of the words 'not allocated a density code on the Scheme Map' in cl 5.3.1. The contrast in language indicates that the clauses contemplate different processes. In particular, the requirement for determination of the appropriate density code under cl 5.3.3 is not satisfied by the allocation of a density code on the Scheme Map.

26 A purposive interpretation, in my view, arrives at the same result. The evident purpose of this provision is to confer flexibility and discretion on the Council in a very specific context, so as to encourage appropriate mixed use, including Residential development, in the Commercial zone.

27 The Council is authorised to respond to specific development proposals which involve mixed use development when such development is proposed, by considering, in the context of that development, what is the appropriate density code to apply. This enables the Council to encourage and approve appropriate mixed use development in the Commercial zone, even if such development proposes greater density than is contemplated by the default, that is, R2, or relevantly in this case, underlying R25 coding in the Scheme Map. This is consistent with cl 1.6(c) of the Objectives of TPS 3:

[T]o zone land for various purposes in order to promote orderly and proper development of the shire[,]

as was submitted for the applicants.

28 It is also consistent with cl 1.6(j) of the Objectives of TPS 3:

[T]o provide for the subdivision and development of land in a manner suited to the economic activity of the region.

29 Counsel for the Shire presented very detailed submissions in support of a contrary interpretation. He observed that the Shire has, in the past, consistently applied cl 5.3.3 of TPS 3 in accordance with the interpretation contended by counsel for the Shire in this case; that is to say, the Council has always applied the underlying specific residential density coding on the Scheme Map when assessing a mixed use development for Commercial zoned land in its local government area.

30 I will address what I understand to be the Shire's key submissions as expressed in its written submissions, and as developed in the oral submissions today.

31 Firstly, the Shire submits that cl 5.3.3 should be interpreted so as to treat the code density allocated on the Scheme Map as the relevant determination by the Council of the appropriate coding to apply to the residential component of proposed mixed use development. For reasons that I have already given, in my view, the submission is incorrect. Clause 5.3.3 only operates and requires a determination by the Council where residential development is proposed in conjunction with other development in the Commercial zone. The density coding allocated on the Scheme Map cannot be treated as the relevant determination as the allocation of residential density coding on the Scheme Map occurred before, and is unrelated to the proposal for residential development in conjunction with other development in the Commercial zone contemplated by cl 5.3.3. Of course, as I have said, the Council may well take the view that the underlying residential density coding of R25 is appropriate when assessing the appropriate density code to apply for development requirement purposes in the context of a particular mixed use development proposal, or it may take the view that the characteristics of the mixed use development proposal and its particular qualities when assessed in the context of the particular characteristics of the development site, warrant a higher density code to apply for development requirement purposes.

32 The second principal submission made for the Shire is that if the Council was dealing with an application under cl 5.3.1 of TPS 3, without there having been an allocation of a specific residential code on the Scheme Map, then cl 5.3.1 would require the R2 Code to be applied, and:

It follows ... that cl 5.3.3, interpreted in the manner that the Respondent proposes, has significant work to do as a modification of the provisions of cl 5.3.1, in the case of a mixed use development on Commercial zoned land, where no R Code density is assigned to the land on the Scheme Map.

33 These submissions are, of course, correct. However, it is recognised in the Shire's submissions that a density coding may be assigned for land in the Commercial zone on the Scheme Map. The fact that this can be done, as I have said, is necessarily implicit in cl 5.2.3 and expressly recognised in cl 5.3.1 of TPS 3. The fact that clause 5.3.1 would have work to do when there is no density code assigned to land on the Scheme Map does not mean that the clause has no work to do where there is a density code assigned to land on the Scheme Map.

34 Purely residential development is capable of approval on the site. The R25 coding would apply and could not be varied by the Council if wholly residential development were proposed on the site. However, cl 5.3.3 of the Scheme enables the Council to vary that underlying residential density coding where mixed use development is proposed, having regard to the particular circumstances of the proposed development and the site.

35 The third submission put for the Shire draws in aid the context of cl 5.3.3 in terms of cl 5.3.1 and cl 5.3.2. Clause 5.3.2 applies to the Rural zone specifically and states that no more than two single houses shall be permitted on any lot in the Rural zone unless written approval of the Council is granted.

36 The Shire emphasises, and it is common ground, that although most lots in the Commercial zone have a residential density code applied to them on the Scheme Map, there are approximately six to the south-west of the central part of Denmark which do not, and there is another lot at Ocean Beach which is zoned Commercial, but does not have a residential density code assigned to it on the Scheme Map.

37 Counsel for the Shire submits, having regard to the context of cl 5.3.1 and cl 5.3.2, and the fact that there are approximately six lots in the Commercial zone in the central part of Denmark and a further lot at

Ocean Beach which do not have a residential density code applied to them on the Scheme Map, that:

It is not unreasonable in the circumstances to interpret cl 5.3.3 in a way which follows on from cl 5.3.1, which clearly deals with land where no R coding is assigned to it on the Scheme Map. [Clause] 5.3.3 can in those circumstances be seen as a variation of the broad proposition contained in cl 5.3.1, the variation being intended to deal with the specific case of residential development as part of a mixed use development on Commercial zoned land, where no R Code density is assigned to the land on the Scheme Map. In the absence of cl 5.3.3, the R2 density code would apply to the residential development component of mixed use proposal. The effect of cl 5.3.3 is to allow the Council to determine the R coding which would apply, instead of the R2 coding which would otherwise apply under cl 5.3.1.

38 In my view, certainly cl 5.3.1 and cl 5.3.2 form part of the context in which cl 5.3.3 is to be interpreted. However, all of these clauses are to be interpreted in the wider context, which does allow the Scheme Map to allocate a code for residential development. The Map has done so in the case of most, but not all, Commercial zoned lots. However, cl 5.3.3 does not say, nor does the context, in my view, require an interpretation that it only operates in the case of land where there is no underlying residential density coding allocated on the Scheme Map, and, therefore, the default coding applies.

39 Furthermore, and in any case, there is considerable conjecture as to why a number of lots in the Commercial zone have not been allocated a residential density code. It may well be that they were not allocated a residential density code because they have not been assessed for residential development, or because residential development is considered to be inappropriate. In my view, an interpretation of the Scheme, and in particular cl 5.3.3, cannot be based on the fact that there are lots which do not have a residential density coding imposed on the Scheme Map, as to do so would involve considerable conjecture as to the reason for those lots being uncoded.

40 Fourthly, counsel for the Shire emphasises the nature of the Commercial zone under the Scheme, and describes it as a special zoning, in that:

... it could reasonably be contemplated that commercial non-residential development would be proposed on Commercial zoned land.

41 He submits that, consequently, the assignment of a coding to Commercial zoned land on the Scheme Map is:

... a clear indication of the intent to apply the R25 coding to residential development, including residential development as an accompaniment to commercial non-residential development.

42 There is certainly force in counsel's submission. Regard must be had to the nature and character of the Commercial zone as disclosed in the provisions of the Scheme. However, as counsel for the applicants pointed out, residential development, including wholly residential development, is capable of approval in the Commercial zone. In particular, under the Zoning Table in cl 3.2.1 of TPS 3, a single house and a grouped dwelling are both 'AA' uses, meaning that the Council may, at its discretion, permit the use in the zone.

43 That being the case, it cannot be taken as a clear indication of the intent of the Scheme to apply the R25 coding to all residential development including mixed use development. There may well be locations within the Commercial zoned part of the Shire where a purely residential development would be proposed, and certainly such development is permissible, with consent, in that zone.

44 The R25 coding that applies to the land under the Scheme Map is certainly an indication that, in relation to purely residential development, the density should accord with R25 coding. It does not, however, indicate that where there is a mixed use development proposed that the residential component of such development should necessarily be no higher than a density of R25.

45 Fifthly, and related to this point, the Shire draws particular attention to the purpose and intent of the Commercial zone in the Scheme. Clause 3.1.3(c) states that the purpose and intent of the 'Commercial Zone' is 'for the major service, retail, office and entertainment uses in the town site'. It is submitted for the Shire that there is 'nothing in that statement of intent that refers in any way to the encouragement of residential uses'.

46 However, as counsel for the applicants submits, while the objectives of the zone are relevant and material in construing cl 5.3.3, they must be read together with other provisions and, in particular, the Zoning Table and the terms of cl 5.3.3 itself. As noted, the Zoning Table contemplates purely residential development on land in the Commercial zone, and cl 5.3.3 itself contemplates and, in my view, where appropriate, encourages mixed use development in the Commercial zone.

47 Sixthly, it is submitted for the Shire that the interpretation proposed
on behalf of the applicants would, in effect, require a redrafting of cl 5.3.3
and, in particular, the reading into that clause of certain words.

48 Counsel for the applicants disagrees, and submits, in effect, that
cl 5.3.3 means what it says; that is, that it applies where residential
development is proposed in conjunction with other development in the
Commercial zone.

49 For reasons that I have already given, I respectfully agree with that
submission. Indeed, in my view, the Shire's proposed interpretation of
cl 5.3.3 would require, in effect, words to be read into that provision that
would make its operation subject to there being no residential density
code on the Scheme Map which would apply to residential development
on the site and would, in effect, restrict the operation of cl 5.3.3 to a small
number of lots.

50 The Council also submits that if the applicants' proposed
interpretation of the clause is correct, then a residential development could
be contemplated, ranging anywhere from R1 to R200 coding. Although
this is theoretically correct, the planning context of Denmark would no
doubt be taken into account when the Council is called upon to address
what is the appropriate density code to apply in the context of a particular
mixed use development and site. It is highly unlikely that the Council
would accept a high density development in that planning context.

51 Furthermore, as I have said, the Council would no doubt take into
account the underlying coding of R25 that has been determined for
residential development, and then consider the particular circumstances of
the development application and the context of the site, as to whether a
variation is indeed appropriate in the context or not.

52 A related submission from counsel for the Shire is that the Codes
have been amended to enable flexibility in relation to multiple dwellings
on land coded R30 and above. However, in my view, the Scheme
provision cannot be interpreted by reference to subsequent amendments of
the Codes.

53 Finally, in terms of the principal submissions made by the Shire, it is
submitted that cl 5.3.3 can be seen as an encouragement for mixed use
development, but only on those uncoded lots; that is to say, lots which do
not have a density code assigned for residential development on the
Scheme Map by giving the opportunity to the Council to assign a density

code to the residential component higher than R2 that would apply to a residential development alone.

54 Counsel submits that that would seem very appropriate for encouragement of mixed use development on lots on the outskirts of town, or at Ocean Beach, where commercial and residential development might not otherwise be contemplated. He submits that that would be consistent with the purpose and intent of the Commercial zone as set out in cl 3.1.3. However, as counsel correctly and fairly conceded, there is a great deal of conjecture in the submissions. There is simply no evidence before the Tribunal as to why six lots in the south-western portion of the central commercial precinct of Denmark have not been coded, and why a lot at Ocean Beach has not been coded on the Scheme Map. In my view, cl 5.3.3 cannot be properly interpreted having regard to those other lots, given the level of conjecture and uncertainty involved.

55 In all of the circumstances, I am of the view that the applicants' proposed interpretation of cl 5.3.3 of the Scheme is correct, and that the Council of the Shire is required, by cl 5.3.3, to consider and determine the appropriate density code to apply for development requirement purposes in the context of the particular proposal in the development application.

Orders

56 The Tribunal makes the following orders:

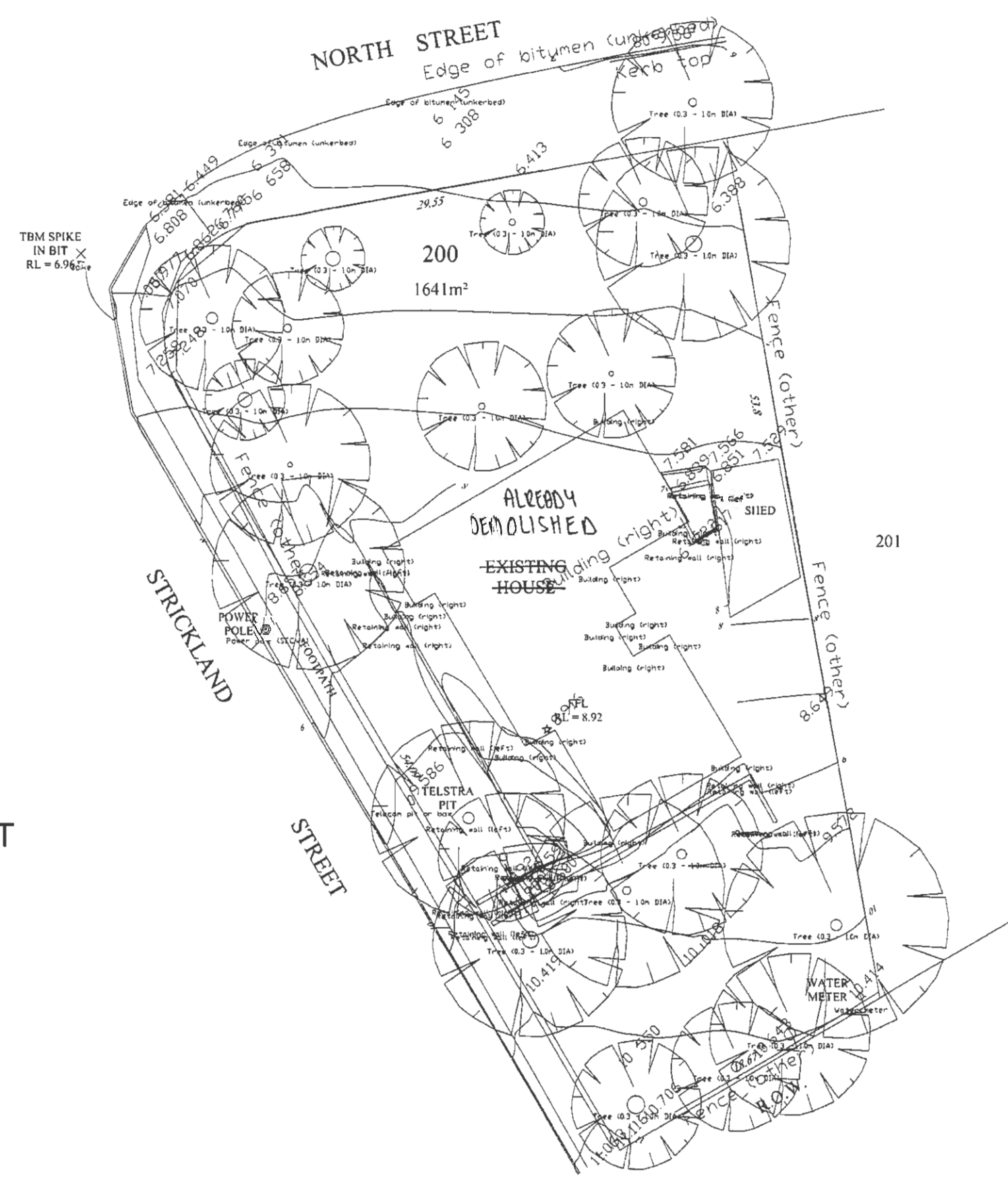
1. The preliminary issue is answered as follows:

The respondent has power to vary the density code in relation to the development application under cl 5.3.3 of the *Shire of Denmark Town Planning Scheme No 3*.

2. The matter is referred to mediation at the respondent's office on a date to be set.
3. By 16 May 2014 the applicant is to advise the Tribunal of mutually available dates for a one day mediation.

I certify that this and the preceding [56] paragraphs comprise the reasons for decision of the State Administrative Tribunal.


JUDGE D R PARRY, DEPUTY PRESIDENT



PROPOSED MIXED-USE DEVELOPMENT

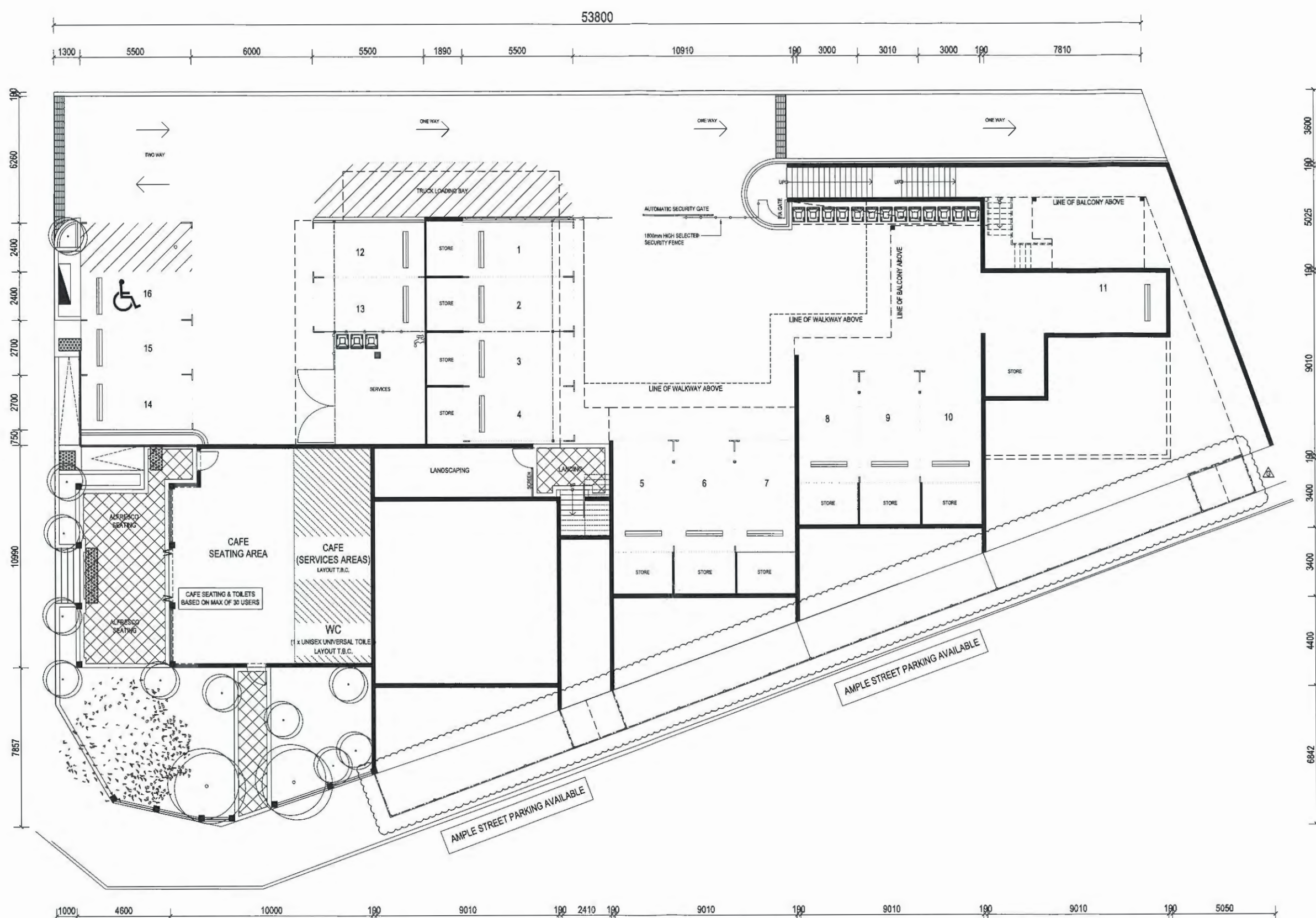
for
GRAEME J. ROBERTSON
 at
**LOT 200 STRICKLAND STREET
 DENMARK | WESTERN AUSTRALIA**

DRAWING INDEX

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A02	SITE LAYOUT
A03	GROUND FLOOR LAYOUT
A04	FIRST FLOOR LAYOUT
A05	ELEVATIONS

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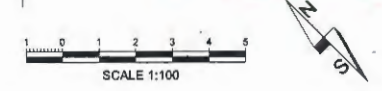
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FLOOR AREAS	
CAFE SEATING	65.47 m ²
CAFE KITCHEN/ABLUTIONS	43.85 m ²
CAFE ALFRESCO	44.06 m ²
CAFE TOTAL	153.38 m²
UNIT 1 STORE	4.88 m ²
UNIT 1 CARPORT	14.85 m ²
UNIT 2 STORE	4.89 m ²
UNIT 2 CARPORT	14.85 m ²
UNIT 3 STORE	4.89 m ²
UNIT 3 CARPORT	14.85 m ²
UNIT 4 STORE	5.04 m ²
UNIT 4 CARPORT	14.85 m ²
UNIT 5 STORE	6.00 m ²
UNIT 5 CARPORT	16.50 m ²
UNIT 6 STORE	6.21 m ²
UNIT 6 CARPORT	16.50 m ²
UNIT 7 STORE	6.00 m ²
UNIT 7 CARPORT	16.50 m ²
UNIT 8 STORE	6.00 m ²
UNIT 8 CARPORT	16.50 m ²
UNIT 9 STORE	6.21 m ²
UNIT 9 CARPORT	16.50 m ²
UNIT 10 STORE	6.00 m ²
UNIT 10 CARPORT	16.50 m ²
UNIT 11 STORE	6.00 m ²
UNIT 11 CARPORT	16.50 m ²

- GENERAL NOTES**
- NOTE 1.
R-CODE: R25
SUBJECT TO CLAUSE 5.3.3 OF TPS No. 3, IT IS PROPOSED THAT THIS SITE BE CLASSIFIED AS R50.
- NOTE 2.
MAXIMUM PLOT RATIO: 0.50
ACTUAL PLOT RATIO: 0.54
BASED ON TOTAL SITE AREA=1641m² & GROSS PLOT AREA OF BLDGS=897.04m²
- NOTE 3.
MINIMUM OPEN SPACE: 45%
ACTUAL OPEN SPACE: 57%
- NOTE 4.
MIN. PRIMARY STREET SETBACK: 2m
ACTUAL PRIMARY STREET SETBACK: 1m
PLEASE NOTE, THE BUILDING ALONG STRICKLAND STREET HAVE A NIL SETBACK, AND THIS PROPOSAL IS IN KEEPING WITH THE CURRENT STREETSCAPE.
- NOTE 5.
MAX HEIGHT (TOP OF WALL): 6.0m
ACTUAL HEIGHT (TOP OF WALL): 6.4m
MAX HEIGHT (TOP OF ROOF): 12.0m
ACTUAL HEIGHT (TOP OF ROOF): 9.7m

SITE LAYOUT | UNDERCROFT LAYOUT
SCALE 1:100



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C	ISSUE FOR APPROVAL	P.M.	A.L.	15.08.2013
B	AMENDMENTS TO LAYOUT	A.L.	H.N.	07.08.2013
A	PRELIMINARY ISSUE FOR DISCUSSION	P.M.	A.L.	24.05.2013
G	COVERED WALKWAY PROPOSAL	A.L.	H.N.	27.05.2014
F	AMENDMENTS TO LAYOUT	A.L.	H.N.	30.10.2013

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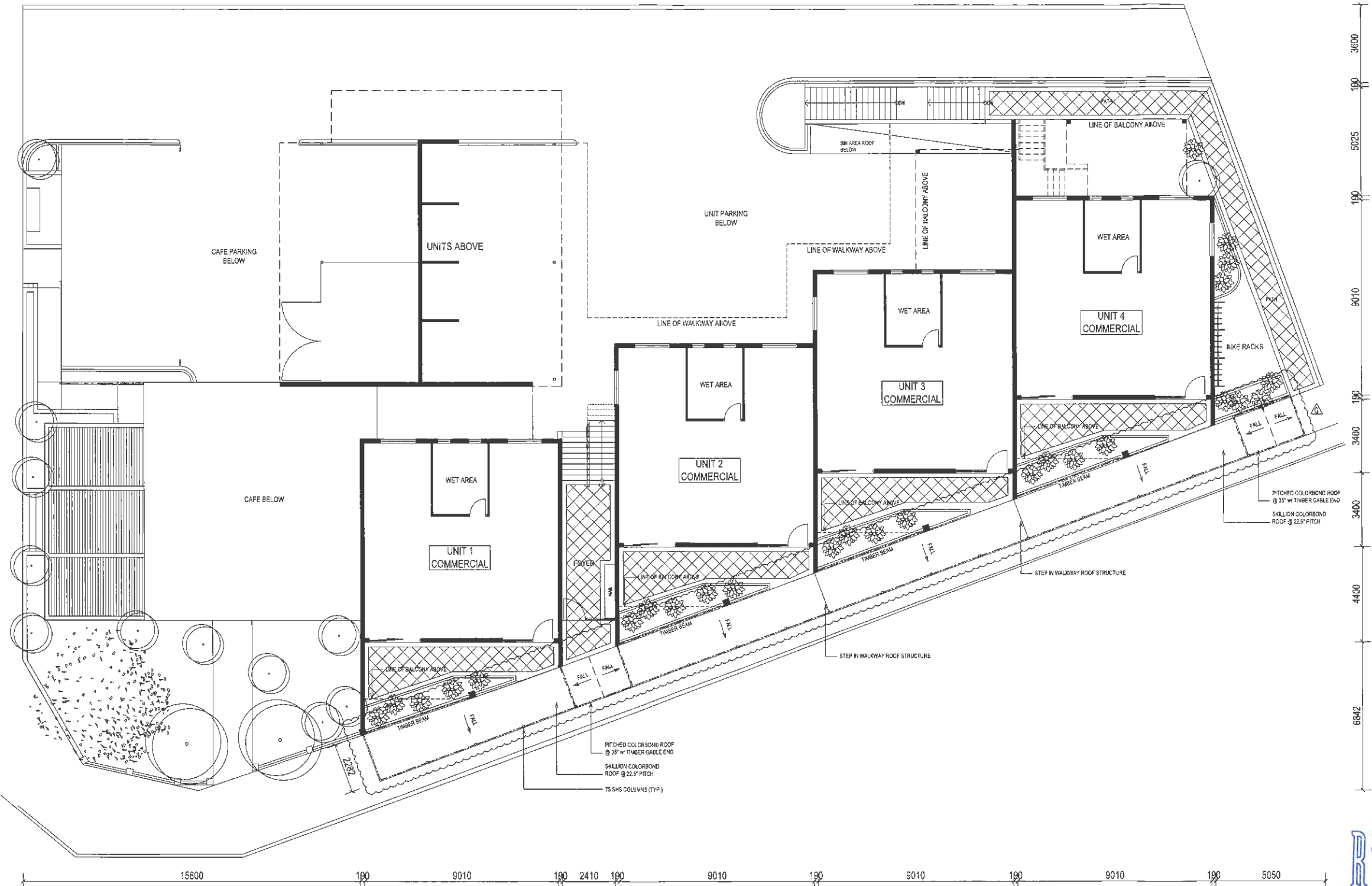
PROPOSED MIXED-USE DEVELOPMENT

PROJECT CLIENT:
GRAEME J. ROBERTSON

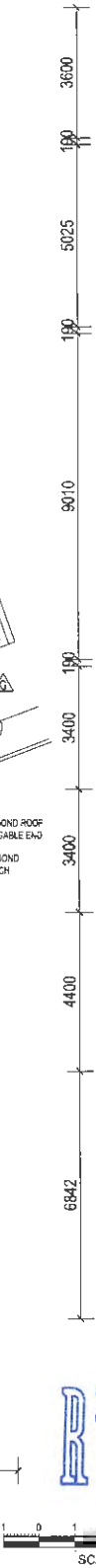
LOT 200 STRICKLAND STREET
DENMARK | WESTERN AUSTRALIA

DATE: 27.05.2014
PROJECT NO: 342-013
SHEET NO: **A02/05**

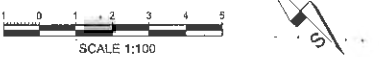
FLOOR AREAS	
UNIT 1 OFFICE SPACE	81.18 m ²
UNIT 1 OUTDOOR	22.99 m ²
UNIT 1 TOTAL	102.14 m²
UNIT 2 OFFICE SPACE	81.18 m ²
UNIT 2 OUTDOOR	22.48 m ²
UNIT 2 TOTAL	103.66 m²
UNIT 3 OFFICE SPACE	81.18 m ²
UNIT 3 OUTDOOR	22.60 m ²
UNIT 3 TOTAL	103.78 m²
UNIT 4 OFFICE SPACE	81.18 m ²
UNIT 4 OUTDOOR	22.63 m ²
UNIT 4 TOTAL	103.81 m²



GROUND FLOOR LAYOUT
SCALE 1:100



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B	AMENDMENTS TO LAYOUT	A.L.	H.N.	07.08.2013
A	PRELIMINARY ISSUE FOR DISCUSSION	P.M.	A.L.	24.05.2013

PROJECT DESIGNER
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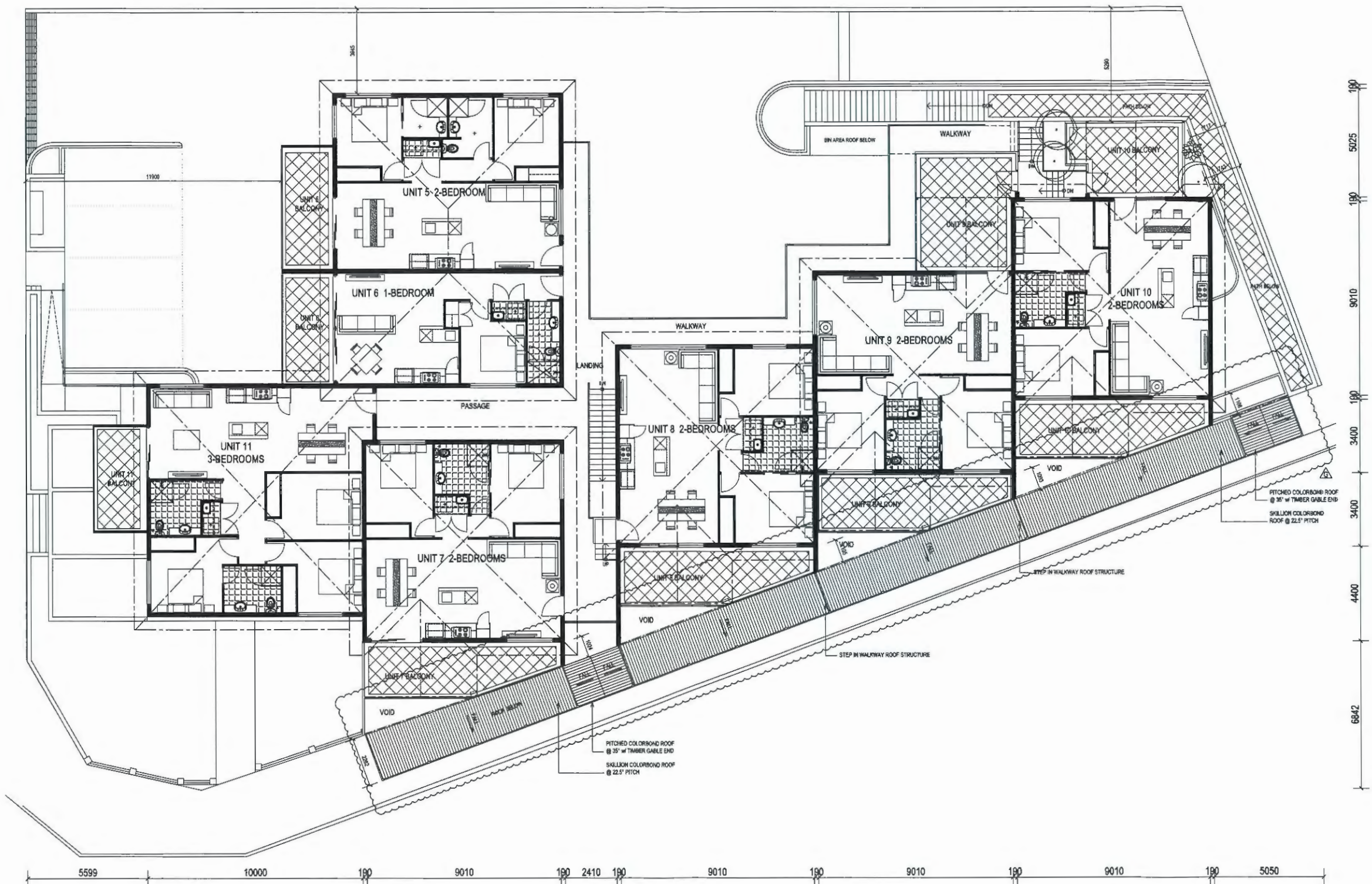
PROPOSED MIXED-USE DEVELOPMENT

PROJECT QUANT:
GRAEME J. ROBERTSON

LOT 200 STRICKLAND STREET
DENMARK | WESTERN AUSTRALIA

DATE: 27.05.2014
PROJECT NO: 342-013
SHEET NO: A03/05

FLOOR AREAS	
UNIT 5 LIVING	82.05 m ²
UNIT 5 BALCONY	14.00 m ²
UNIT 5 TOTAL	96.05 m ²
UNIT 6 LIVING	52.81 m ²
UNIT 6 BALCONY	12.97 m ²
UNIT 6 TOTAL	65.78 m ²
UNIT 7 LIVING	81.18 m ²
UNIT 7 BALCONY	15.14 m ²
UNIT 7 TOTAL	97.32 m ²
UNIT 8 LIVING	81.18 m ²
UNIT 8 BALCONY	21.56 m ²
UNIT 8 TOTAL	102.74 m ²
UNIT 9 LIVING	81.18 m ²
UNIT 9 BALCONY	46.65 m ²
UNIT 9 TOTAL	127.83 m ²
UNIT 10 LIVING	81.18 m ²
UNIT 10 BALCONY	39.79 m ²
UNIT 10 TOTAL	120.97 m ²
UNIT 11 LIVING	106.24 m ²
UNIT 11 BALCONY	12.90 m ²
UNIT 11 TOTAL	112.74 m ²



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FIRST FLOOR LAYOUT
SCALE 1:100



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A	PRELIMINARY ISSUE FOR DISCUSSION	P.M.	A.L.	24.05.2013

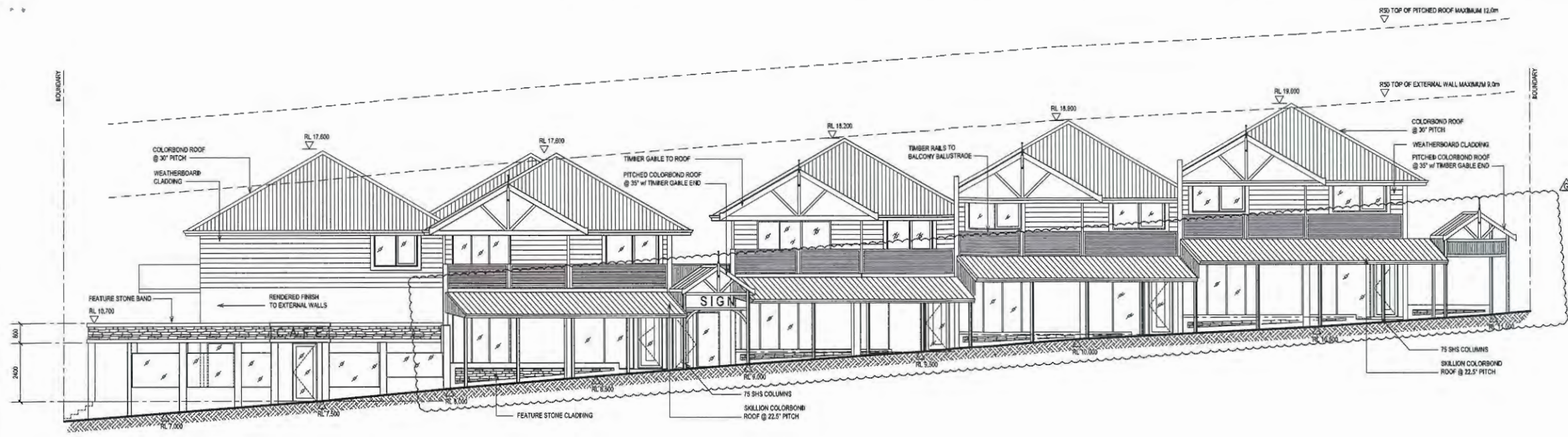
PROJECT DESIGNER
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PROPOSED MIXED-USE DEVELOPMENT

PROJECT CLIENT
GRAEME J. ROBERTSON
LOT 200 STRICKLAND STREET
DENMARK | WESTERN AUSTRALIA

DRAWN: A.L.
PROJECT NO: 342-013
SHEET NO: A04/05

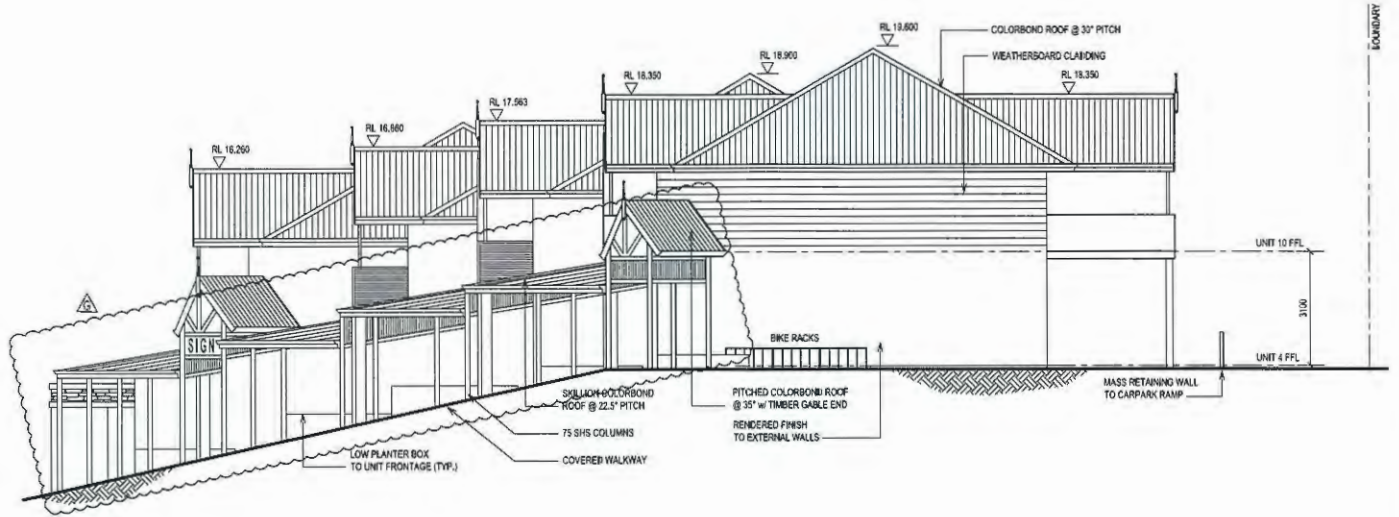
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DATE: 27.05.2014



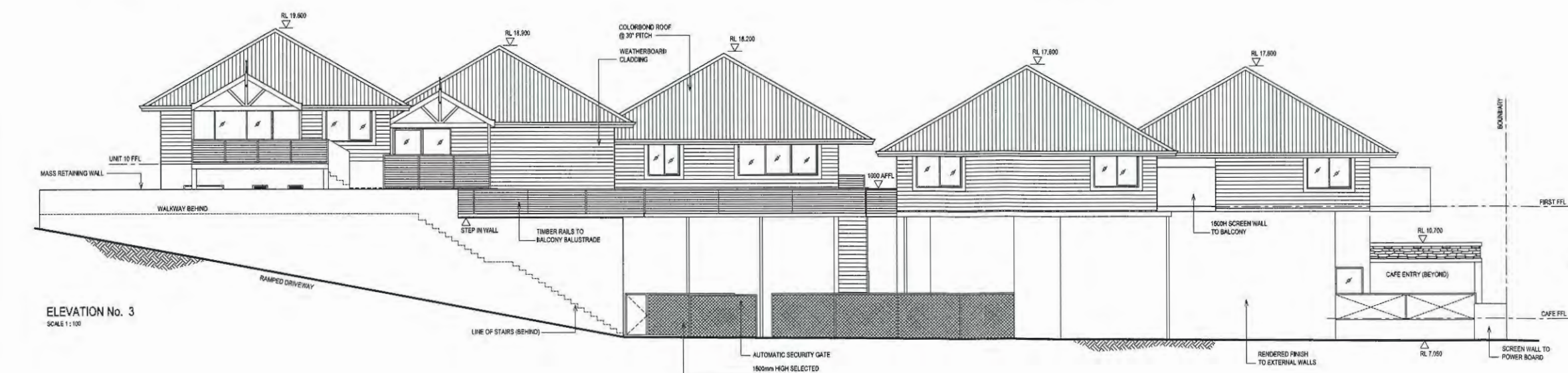
ELEVATION No. 1 - STRICKLAND STREET
SCALE 1:100



ELEVATION No. 2 - NORTH STREET
SCALE 1:100



ELEVATION No. 4
SCALE 1:100



ELEVATION No. 3
SCALE 1:100

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SCALE 1:100

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PROPOSED MIXED-USE DEVELOPMENT
PROJECT CLIENT:
GRAEME J. ROBERTSON
LOT 200 STRICKLAND STREET
DENMARK | WESTERN AUSTRALIA

DATE: 27.05.2014
PROJECT NO: 342-013
SHEET: A05/05

**PROPOSED MIXED USE DEVELOPMENT
LOT 200 STRICKLAND STREET
DENMARK**

PLANNING REPORT
June 2014

In association with Paul Meschiati & Associates Pty Ltd

AYTON BAESJOU
P L A N N I N G

ABN: 15 061 140 172

11 Duke Street
Albany WA 6330
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1. INTRODUCTION

The owners of Lot 200 Strickland Street propose to develop a mixed use development in accordance with the Residential Design Codes which have recently been amended to encourage such development.

The project will include a café facing North Street, four commercial offices located at ground level along Strickland Street and seven residential units on the first floor above the café and offices.

The following report provides background information in support of the proposal.

2. LOCATION, AREA AND ZONING

Lot 200 is located on the south east corner of Strickland Street and North Street within the Denmark town centre. Refer Location Plan below.

The Lot is 1641m² in area and is zoned 'Commercial' under the provisions of the Shire of Denmark's Town Planning Scheme No. 3. A Residential Density Code of R25 applies to the property.



Location Plan

3. SITE DESCRIPTION & SURROUNDING DEVELOPMENT

Lot 200 was originally developed with a single dwelling which has recently been demolished. The land is now vacant and is bounded by Strickland Street on its western boundary and North Street on its northern boundary. A five metre wide ROW abuts the southern boundary. A single storey residential dwelling is located on the lot to the east. A feature survey of the site is attached.

The balance of the super lot, which also fronts South Coast Highway and Horsley Road, is used for a mix of commercial development including, café/restaurants, newsagent, liquor store, art gallery, real estate offices and shops. To the west, on the opposite side of Strickland Street, is the IGA supermarket. To the north lie Reserve 18587, which contains the old hospital, and Lot 257 which is currently reserved for a fire station.

A portion of the old hospital reserve has recently been developed for a public car park with 28 car bays. Streetscape works within Strickland Street have also significantly increased on-street car parking with right angle car parking provided adjacent to the subject land.

The site slopes relatively gently from the south western corner of the property, which is approximately 11 metres AHD, to the north eastern corner which is around 6.5 metres AHD.

The site is connected to all essential services such as scheme sewer, water, power and telecommunications.

The nature and character of nearby and surrounding development are illustrated in the photographs overleaf. There is a mix of single and two storey development which predominantly abuts the footpath. Roof pitches vary between 20° to 40° and colorbond rooves predominate. A wide range of materials are used including brick and rendered walls and timber cladding. The IGA building is an example of a modern larger scale building which nevertheless has been successfully integrated amongst the more traditional buildings.



Shops fronting South Coast Highway



War Memorial located on South West corner of South Coast Highway and Horsley Road



Shops fronting Horsley Road



Car Park Located within Reserve on northern side of North Street



Right angle car parking located adjacent to Lot 200



Single and two storey Commercial development on Strickland Street.



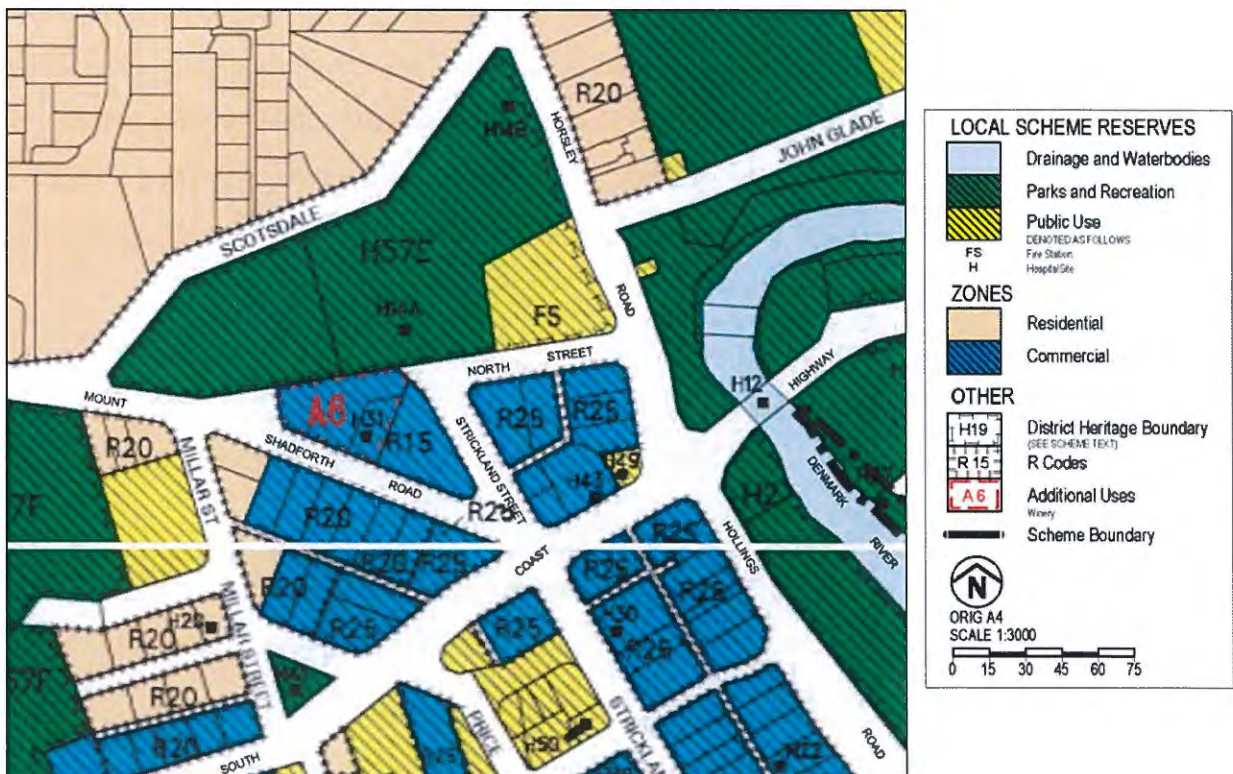
IGA supermarket located on Strickland Street opposite the subject land

4. PLANNING CONTEXT

The Shire of Denmark's Town Planning Scheme No 3 (TPS3), its Local Planning Strategy (LPS) and the Commercial Strategy, Local Planning Policies, Liveable Neighbourhoods and the Residential Design Codes, are the main planning documents which regulate and provide guidance in relation to potential development options for Lot 200.

4.1 Town Planning Scheme No. 3

As a commercially zoned site there are a wide range of uses that can be approved, including residential development and most forms of commercial development such as shops, restaurant, art gallery, holiday accommodation, medical centre, garden centre, hotel, tavern and winery. Residential development as a separate use is based on the R25 Density Code which designates a minimum lot size of 300m² and an average lot size of 350m². This would allow up to four dwellings to be constructed on the site.



Extract from TPS3 Zoning Map

Where residential development is proposed in conjunction with other development in the Commercial Zone, Clause 5.3.3 of the Scheme provides Council with the discretion to determine the appropriate density code to apply for development requirement purposes. The Scheme Report, Section 12.1 Development, confirms the intent of clause 5.3.3, stating: Provision is made for the Council to determine the appropriate density where residential development is combined with commercial development in the commercial zone.

While 'Grouped Dwelling' is an 'AA' use listed in the Zoning Table of the Scheme Text, a 'Multiple Dwelling' is not listed within the table. As the proposed development involves dwellings located above each other, they are defined as 'Multiple Dwellings'.

Similarly, 'Mixed Use Development' is not listed within the Zoning Table.

Where a use is not specifically mentioned in the Zoning Table, and cannot reasonably be determined as falling within the interpretation of one of the use categories, Clause 3.2.5 of the Scheme provides Council with the option to either determine that the use is not consistent with the purpose and intent of the particular zone and is therefore not permitted, or alternatively, to determine by absolute majority that the use may be consistent with the purpose and intent of the zone and thereafter follow the procedure set out in Clause 6.4 in considering an application for planning consent. Clause 6.4 provides for the proposal to be advertised for public comment prior to consideration by Council.

4.2 Local Planning Strategy

The Local Planning Strategy (LPS) provides additional guidance to the Town Planning Scheme with two of its guiding principles being:

1. "To provide a range of compatible housing lifestyle choice and associated development in harmony with the existing character and community spirit enjoyed by Denmark".
2. "To provide a (Denmark) town centre that continues to be a focus for all forms of commercial activity that supports a vibrant town centre and meets the diverse needs for the community and contributes towards a high level and range of employment opportunities for local residents".

Strategies to implement the future residential requirements of the Shire include:

‘Council support private and public development of aged accommodation in suitable locations having regard to issues including but not limited to close proximity to commercial and community facilities, good accessibility (both vehicular and pedestrian access) and topography of the site having regard to the nature of the occupant’.

While the proposed development is not an aged person’s complex, interest in the units is predominantly from people of retirement age.

More specific guidance is provided by the Commercial Strategy.

4.3 Commercial Strategy – Policy No. 31

The Commercial Strategy notes that “The form of development preferred for the core area will be a combination of retail, office, restaurants and some residential incorporated into new developments where appropriate.” Recommendations include:

- encourage redevelopment and infill of existing Commercial zoned land in the CBD.
- encourage mixed use development throughout the CBD.
- ensure new development complements and conforms with the existing character of the core of the CBD.

These recommendations are supported by Liveable Neighbourhoods which focuses on achieving higher densities of development to achieve more sustainable urban outcomes. The provision of a wide range of lot sizes and dwelling types resulting in a greater range of housing and lifestyle choices is supported. An appropriate range of higher density housing is particularly supported in and around town centres.

4.4 Residential Design Codes

Clause 5.2.3 of TPS3 requires all residential development to comply with the requirements of the residential design Codes. The codes have recently been amended to facilitate mixed use development and improve the quality of multiple dwelling developments in line with contemporary planning needs. It is noted that the provisions in the R Codes for areas coded less

that R30 do not generally encourage housing density, affordability and flexibility. Part 6 of the Codes addresses these issues and aim to improve the quality of multiple dwellings development in line with contemporary planning needs. Specifically the provisions aim to:

- expand the permissible range of housing within individual residential codings to better meet the housing needs of the community;
- facilitate the development and redevelopment of existing housing sites;
- improve the standard of design for multi-unit housing and encourage the development of housing with design principles appropriate to form; and
- build the capacity of local government to interpret and apply new methods for assessment and promotion of multi-unit housing and mixed use development.

One of the main differences for areas coded R30 or greater, is that here is no minimum site area per dwelling for multiple units. Instead, plot ratio, setbacks and building height guide the form of the development and there is a greater emphasis on the use of design principles.

4.5 Townscape Policy – Policy No. 15

The townscape policy provides building guidelines which support:

- Development proposals that harmonise with the landscape and existing buildings.
- Development that is of a domestic scale, including historic methods of construction, materials, posted verandas, the use of heritage colours and the enhancement of pedestrian amenities.
- Low impact commercial development proposals that enhance pedestrian movement and access and create a domestic scale of design.

4.6 South Coast Highway Commercial Developments – Policy No. 26.1

While the subject land does not fall within the policy area, elements of the policy are relevant to the proposal. These include:

- an architectural style sympathetic to the current historic commercial core of the CBD.
- roof pitches in the range of 20° to 40°.
- location of car parking and delivery areas to the rear of the development.
- screening of rubbish containers.

5. PROPOSED DEVELOPMENT

The proposed mixed use development is illustrated on the attached site plan, elevations and cross sections.

The essential elements of the plan consist of:

- a café located on the north west corner of the site with an internal area and north facing alfresco area which is orientated to the north.
- four commercial offices located at ground level which directly front Strickland Street.
- seven residential units located on the first floor above a café and offices.
- car parking and storage located within an undercroft.

In terms of utilisation of land within the CBD, part 2 of the Local Planning Strategy, Background and Analysis, Section 6.5, Retail and Commerce, provides a retail floor space forecast to the year 2031. It is estimated that an additional 9012m² of commercial floor space will be required to be accommodated in the CBD by 2031.

A commercial floor space to site area ratio of 1:4 is used to determine the amount of land required to accommodate the additional floor space, this being 3.60ha of land.

The proposed development will provide a total area of commercial floor space of 478.1m² on the ground floor, which represents a site area ratio of almost 1:3, which is greater than the 1:4 ratio used to forecast future requirements.

While there are a number of vacant shops in the CBD (December 2013), application to build a supermarket on the corner of Hardy Street and South Coast Highway has recently been lodged. While this proposal has been refused, predominantly for design reasons, the applicant has been invited to resubmit with a revised design. The supermarket consists of 2,650m² with an additional 500m² of specialty retail. The combined floor space of 3,150m² represents 60% of the retail floor space required to 2031. As such, it will have a significant impact on the CBD and will

inevitably tend to draw commercial development to the western end of the CBD. It is understood the existing IGA building, opposite the subject land, may be used as a library.

Based on the above scenario, it is considered the proposed development is a logical use of land given the fact that shop retail floor space is likely to be well catered for the foreseeable future. The proposed mixed use development will help to retain the vitality of the traditional core of the CBD which may suffer further loss of retail floor space when the new supermarket is built.

Based on the general site requirements for multiple dwellings in areas coded R30 or greater within mixed use development, as set out in Table 4 of the Codes, an R Code of 50 is recommended for the proposed development.

Within this density code the following site requirements apply:

Maximum Plot ratio	Minimum Open space - % of site	Minimum Primary street setback (m)	Secondary Street setback (m)	Maximum Height (m)	
				Top of Wall	Top of Roof
0.6	45	2	2	9	12

The following section assesses the proposal against the design principles outlined in Part 6 of the Residential Design Codes.

5.1 Design Principles (Refer Part 6 of the Residential Design Codes)

Building Size 6.1.1

The bulk and scale of the proposal is in keeping with existing character of the Denmark town centre which is predominantly single and two storey development. Plot ratio is 0.54 which complies with the maximum plot ratio requirements (0.60) set out in Table 4.

Building Height 6.1.2

The maximum height (top of wall) is 6.4m compared to the maximum height of 9.0m. Maximum height to the top of the roof is 9.7m compared to the maximum permitted of 12.0m.

The development, in terms of its build and height has no detrimental impact on adjoining properties, streetscape and adjoining reserves.

Street Setback 6.1.3

Both the commercial units on the ground floor and residential units above have setbacks from Strickland Street of between 1 metre and 4.5 metres approximately. This averages out at 2.5 metres. Apart from providing an outdoor area for each unit, the staggered design maximises privacy for each unit. The minimum setback in the Commercial zone is a nil setback.

Balconies are located entirely within the property boundary and a verandah is proposed to provide shelter for pedestrians along the footpath.

Lot Boundary Setbacks 6.1.4

The development complies with the minimum lot boundary setback requirements set out in Tables 2a and 2b and the side boundary setbacks in accordance with the existing street context.

The café and office uses are confined to the ground floor and front North Street and Strickland Street where they have direct access from on street car parking.

The residential component of the mixed use development is effectively separated by being located on the first floor with access from the rear. This arrangement minimises potential conflicts between the commercial and residential uses.

Open Space 6.1.5

The development complies with minimum open space of 45% as set out in Table 4. Actual provision is 57%.

Street Surveillance 6.2.1

The development provides excellent surveillance of both Strickland Street and North Street. Entrances from the ground floor dwellings are clearly visible and windows and balconies from first floor units provide elevated views of the street. Fencing is designed to provide both private alfresco areas as well as porches which are open and visible from the street. Fencing consists of a mix of feature walls and low rendered walls with transparent timber slats on top.

Balconies and windows from habitable rooms provide good surveillance to the rear of the units, overlooking the footpaths, walkways, vehicular access and car parking areas.

Sight Lines 6.2.3

Unobstructed sight lines are provided at vehicle access/egress points off North Street and Strickland Street

Building Appearance 6.2.4

The design of the development with (30°) pitched colorbond rooves, a mix of rendered and texture stone walls, weatherboard cladding and timber slatted balustrading and fencing is in keeping with the local policy guidelines and character of the Denmark CBD.

The design and orientation of the café to North Street minimises any potential conflict with the residential units.

Site Planning & Design 6.3

Outdoor Living Areas 6.3.1

Each unit is provided with a balcony or alfresco area, accessed directly from a habitable room, and is in excess or equal to the minimum area of 10m² and with a minimum dimension of 2.4m.

Landscaping 6.3.2

Car parking does not intrude into the street setback areas and the location of the car parking within the site enables an attractive street façade to be developed which is not dominated by garage doors or car ports.

Landscaping is strategically focused on the corner of North Street and Strickland Street adjacent to the café. Wheelchair accessibility is provided to the cafe and associated car parking.

Parking 6.3.3

Car parking provision for the residential units is based on whether A) development is located within 800 metres of a train service or 250 metres of a high frequency bus service, or B) where it is not located within these distances.

In this case the development is located within the CBD and neither a train nor bus is needed to access all the facilities and amenities within the Denmark town centre. In this regard a lesser car parking provision is considered appropriate. Under A), a total of 6.75 car bays would be required and under B), 8.5 bays would be required.

For the commercial units, a further 8 car bays would be required based on a requirement of 1 bay per 40m² of gla (each commercial unit has 81.18m² of gla and requires 2 bays per unit).

Car parking for the café is based on one bay per four persons and with a maximum capacity of 30 persons, 7.5 car bays are required.

Under option A), a total of 22 car bays are required and under option B) a total of 24 car bays are required.

A total of 16 car bays can be provided on the site representing a shortfall of either 6 bays under option A) or 8 bays under option B).

Two visitor car bays are also required and Council is requested to agree that these can be accommodated within the extensive on street car parking provided within Strickland Street. It is anticipated that most visits to the units will occur outside normal working hours when car parking is not at a premium.

While additional car bays can be provided by way of cash-in-lieu, Council is requested to consider a relaxation given the availability of car parking in this locality. Design Element P3.3 of the Residential Design Codes notes that in activity centre locations (town centres), consideration may be given to a reduction in on-site car parking provided;

- available street car parking is controlled by local government; and
- the decision maker is of the opinion that a sufficient equivalent number of on-street spaces are available near the development.

The availability of right angle car parking on Strickland Street, the twenty eight car bays on the northern side of North Street, and proposed relocation of the IGA supermarket will also reduce the pressure for car parking in this peripheral part of the CBD.

Bicycle Spaces

Bicycle spaces can be provided within the storage facilities which are located adjacent to the car parking space provided for each unit, as suggested by the Residential Design Code guidelines. While only one visitor bicycle space is required, a bike rack has been provided in the south east corner of the development (refer Plan A03).

Design of Car Parking Spaces & Vehicular Access 6.3.4

Car parking spaces and vehicular access have been designed to meet the relevant deemed-to-comply requirements set out in the Codes.

Site Works 6.3.6

The development has been designed to fit the topography of the site with minimal excavation and fill required to achieve the undercroft parking and storage.

Building Design 6.4

The built form of the proposed development meets the design principles outlined in the Residential Design Codes with respect to:

- Visual Privacy
- Solar Access for adjoining sites; and
- Dwelling size

Further consideration at the detailed design stage will need to be given to ensure external features such as solar collectors, aerials antennae, satellite dishes and pipes are integrated into the design and are not visually obtrusive from the street or neighbouring properties.

Utilities & Facilities

Internal storage areas have been provided for each dwelling and storage areas provided for rubbish bins which are screened from the street.

6. CONCLUSION

The proposed mixed use development consisting of a mix of commercial and residential units is a high quality development which will blend in and enhance the streetscape of the CBD.

It is a maximum of two storeys which is not out of context with the scale and appearance of existing development in the CBD.

Although the site is located on the periphery of the CBD, it is shown as 'Core Commercial' in Council's Commercial Strategy. Consequently, the development provides for commercial development on the ground floor with a total area of 478.1m². This represents a site area ratio of almost 1:3 which is greater than the 1:4 ratio used in the LPS to assess future requirements for commercial development in the CBD.

Using the Residential Design Codes, which have recently been amended to encourage mixed use development and now form part of Council's Town Planning Scheme, seven residential units can be accommodated above the Commercial uses. This is entirely in keeping with best planning practice where the objective is to provide:

- a greater variety of housing types;
- increased density of housing within and around town centres;
- provision of housing within walking distance of shops and all CBD facilities;
- improved surveillance within the commercial area;
- a more vibrant town centre.

These initiatives together create a more sustainable urban environment while at the same time retaining and enhancing the character of the Denmark Town Centre.

Following preliminary consultations with Councillors on the July 30th 2013, the architects, Paul Meschiati and Associates, have revised the plans to provide wheel chair access to four of the units on the first floor, with three requiring steps for access.

As noted in the attached letter from the proponent, Mr Graeme Robertson, demand for this form of mixed use development has been demonstrated by the response to the proposal from local residents.

In order for the development to proceed, Council's discretion is required to utilise Clause 3.2.5 of the Town Planning Scheme which allows Council to consider the development (mixed use) as a use not listed in the zoning table, and "...determine by absolute majority that the proposed use may be consistent with the purpose and intent of the zone and thereafter follow the procedure set out in Clause 6.4 in considering an application for planning consent."

Clause 6.4 provides for the proposal to be advertised for public comment which provides Council with further opportunity to ensure the proposal is broadly canvassed prior to a decision being made.

The only issue that has been difficult to resolve, is the ability to accommodate all the car parking required on-site. A total of 16 car bays have been accommodated on site with a short fall of either 7 or 9 car bays depending on how the application is assessed. The Residential Design Codes recognise the difficulty of accommodating all the car parking for mixed use development on site in town centres and suggest a relaxation may be considered where Council is in control of car parking in the vicinity and where there is sufficient car parking in the area to cover the shortfall. It is considered that both these prerequisites apply in this instance.

In conclusion, it is considered the proposed development will contribute to the vitality and economy of the Denmark CBD in a manner which will meet an identified demand in this area. The quality of the development will also set a standard for potential further mixed use development incorporating higher residential densities.

With the prospect of a significant expansion of retail activity moving westwards along South Coast Highway, it is more than likely that the commercial focus of the town will also shift in that direction. Should this occur, it is considered the proposed mixed use development will help to shore up the vitality of the north eastern corner of the CBD.

Tables

Table 3: Maximum building heights

Maximum building heights (i)	Category		
	A	B	C
Tops of external wall (roof above) (ii)	3m	6m	9m
Top of external wall (concealed roof)	4m	7m	10m
Top of pitched roof (iii) (iv)	6m	9m	12m

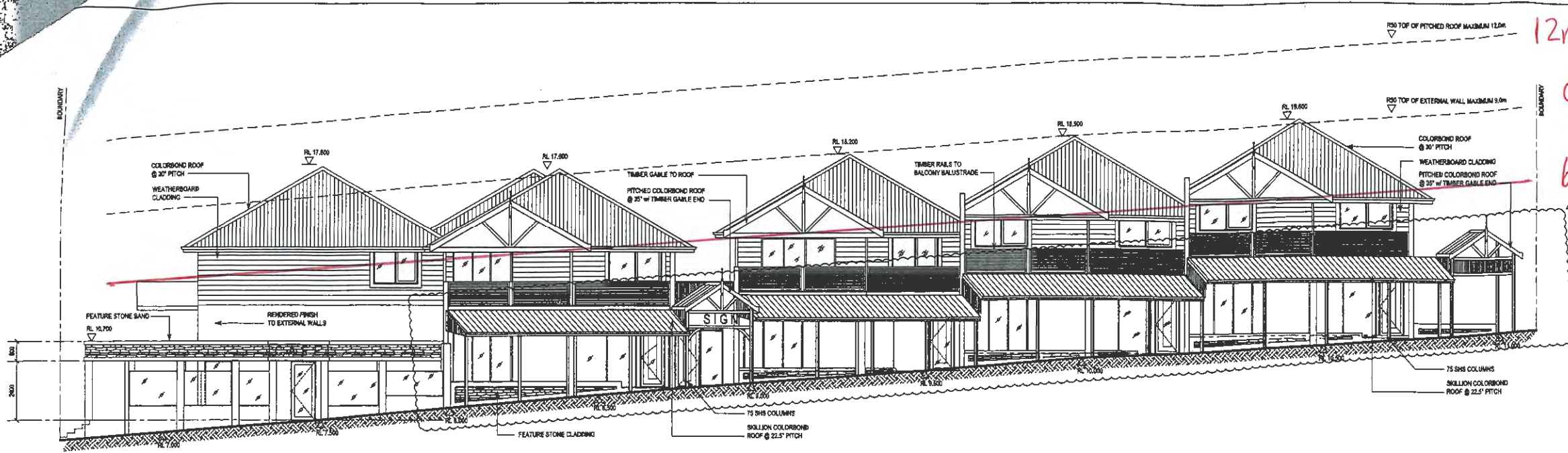
- i. Category B will apply unless a **scheme**, the relevant **local planning policy, local structure plan** or **local development plan** requires the application of category A (generally single level **development**) or category C (development on three levels) or an alternative standard.
- ii. Gable **walls** above eaves height:
- less than 9m long: exempted
 - greater than 9m long: add one third of the height of the gable, between the eaves and the apex of the gable wall, to the eaves height.
- iii. Applies to ridges greater than 6m long. Short ridges: add 0.5m height for each 2m reduction in length.
- iv. Applies to roof pitches up to 25 degrees. In some localities steeper pitches may be required and greater height permitted in accordance with the provisions of the **scheme**, the relevant **local planning policy, local structure plan** or **local development plan**.

Table 4: General site requirements for multiple dwellings in areas coded R30 or greater, within mixed use development and/or activity centres

R-Code	Maximum plot ratio	Minimum open space (% of site)	Minimum primary street boundary setback (m)	Secondary street setback (m)	Maximum height ^a (m)			Maximum height of walls built up to boundary (m)	
					Top of external wall	Top of external wall (concealed roof)	Top of pitched roof	Maximum height	Average
R30	0.5	45	4	1.5	6	7	9	3.5	3
R35	0.6	45	4	1.5	6	7	9	3.5	3
R40	0.6	45	4	1.5	6	7	9	3.5	3
R50	0.6	45	2	2	9	10	12	3.5	3
R60	0.7	45	2	2	9	10	12	3.5	3
R80	1.0	(b)	2	2	12	13	15	7	6
R100	1.25	(b)	2	2	12	13	15	7	6
R160	2.0	(b)	2	2	15	16	18	7	6
Multiple dwellings within mixed use development and activity centres									
R-AC0(b)	(b)	(b)	(b)	(b)	(b)	(b)	(b)	(b)	(b)
R-AC1	3.0(c)	(c)	2	2(c)	27(c)	28(c)	30(c)	14(c)	12(c)
R-AC2	2.5(c)	(c)	2	2(c)	20(c)	21(c)	23(c)	10.5(c)	9(c)
R-AC3(d)	2.0(c)	(c)	2	2(c)	18(c)	19(c)	21(c)	7(c)	6(c)

Notes:

- (a) Maximum height as defined in Table 4 does not supersede any height controls which are defined in **scheme**, the relevant **local planning policy, local structure plan** or **local development plan**.
- (b) Refer to local structure plan or local development plan which sets out **development** requirements.
- (c) Controls can be varied when R-AC is introduced into a scheme.
- (d) Residential elements of **mixed use development** within non R-Coded land is to be assessed against R-AC3 provisions.
- (e) **Residential development** in land zoned "R-IC" is to be assessed under the provisions of R-AC3.
- (f) **Plot ratio** defined within R-AC R-Codes are for the residential component within mixed use development and **activity centres**.



12m height line
 9m height line
 6m height line.

ELEVATION No. 1 - STRICKLAND STREET
 SCALE 1:100

Design principles

Development demonstrates compliance with the following **design principles** (P)

6.3.3 Parking

P3.1 Adequate car and bicycle parking provided on-site in accordance with projected need related to:

- the type, number and size of **dwellings**;
- the availability of on-street and other off-site parking; and
- the proximity of the proposed **development** in relation to public transport and other facilities.

P3.2 In **mixed use development**, in addition to the above:

- parking areas associated with the retail/commercial uses are clearly separated and delineated from residential parking.

P3.3 In **activity centre** locations there may be consideration given to a reduction in on-site car parking provided:

- available **street** parking in the vicinity is controlled by local government; and
- the **decision-maker** is of the opinion that a sufficient equivalent number of on-street spaces are available near the development.

P3.4 Some or all of the required car parking spaces located off-site, provided that these spaces will meet the following:

- i. the off-site car parking area is sufficiently close to the **development** and convenient for use by residents and/or visitors;
- ii. any increase in the number of **dwellings**, or possible **plot ratio**, being matched by a corresponding increase in the aggregate number of car parking spaces;
- iii. permanent legal right of access being established for all users and occupiers of dwellings for which the respective car parking space is to be provided; and
- iv. where off-site car parking is shared with other uses, the total aggregate parking requirement for all such uses, as required by the R-Codes and the **scheme** being provided. The number of required spaces may only be reduced by up to 15 per cent where the non-residential parking occurs substantially between 9 am and 4 pm on weekdays.

Deemed-to-comply

Development satisfies the following **deemed-to-comply** requirements (C)

C3.1 The following minimum number of on-site car parking spaces is provided per **dwelling**:

Type and plot ratio area of dwelling	Car parking spaces	
	Location A	Location B
Small (<75m ² or 1 bedroom)	0.75	1
Medium (75-110m ²)	1	1.25
Large (>110m ²)	1.25	1.5
Visitors car parking spaces (per dwelling)	0.25	0.25

A = within:

- 800m of a train station on a **high frequency rail route**, measured in a straight line from the pedestrian entry to the train station platform to any part of a **lot**; or
- 250m of a **high frequency bus route**, measured in a straight line from along any part of the route to any part of a lot.

B = not within the distances outlined in A above.

C3.2 In addition to the above, one bicycle space to each three **dwellings** for residents; and one bicycle space to each ten dwellings for visitors, designed in accordance with AS2890.3 (as amended).