

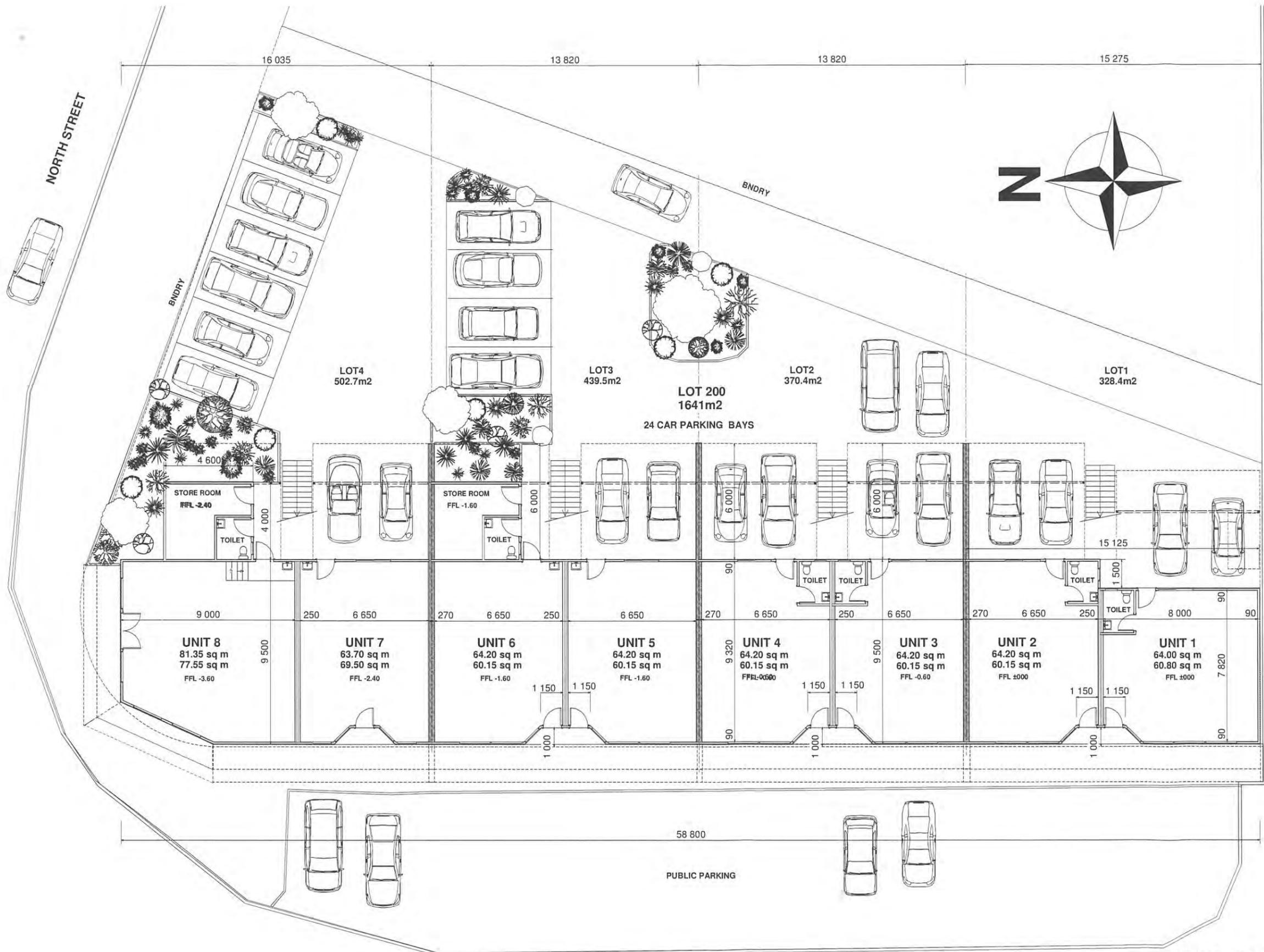
**SITE PLAN 1:200
WITH CONTOURS**

ALL DIMENSION ARE TO BE CHECKED ON SITE PRIOR TO COMMENCEMENT OF CONSTRUCTION OR FABRICATION ALL WORK TO BE CARRIED OUT IN ACCORDANCE WITH THE LATEST AUSTRALIAN STANDARDS INCLUDING AMENDMENTS

PROPOSED MIXED-USE DEVELOPMENT LOT 200
CNR. STRICKLAND AND NORTH STREET SHIRE OF DENMARK
GRAEME ROBERTSON PO BOX 140 CLAREMONT 6910

HERMANN FEHR DESIGN DENMARK WA 23/10/2015 REV. 9/11/2015
PLAN SIZE A3 DRAWING NUMBER 1

19 January 2016 - Attachment 8.1.2a



GROUND FLOOR PLAN 1:200

ALL DIMENSION ARE TO BE CHECKED ON SITE PRIOR TO COMMENCEMENT OF CONSTRUCTION OR FABRICATION
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 PLAN SIZE A3 DRAWING NUMBER 2

STRICKLAND STREET

R.O.W
 6 090
 8 000

58 800

PUBLIC PARKING

STORE ROOM
 FFL -2.40

STORE ROOM
 FFL -1.60

UNIT 8
 81.35 sq m
 77.55 sq m
 FFL -3.60

UNIT 7
 63.70 sq m
 69.50 sq m
 FFL -2.40

UNIT 6
 64.20 sq m
 60.15 sq m
 FFL -1.60

UNIT 5
 64.20 sq m
 60.15 sq m
 FFL -1.60

UNIT 4
 64.20 sq m
 60.15 sq m
 FFL -0.60

UNIT 3
 64.20 sq m
 60.15 sq m
 FFL -0.60

UNIT 2
 64.20 sq m
 60.15 sq m
 FFL +0.00

UNIT 1
 64.00 sq m
 60.80 sq m
 FFL +0.00

TOILET

TOILET

TOILET TOILET

TOILET

TOILET

4 600

6 000

6 000

6 000

15 125

9 000

250

6 650

270

6 650

250

6 650

270

6 650

250

8 000

90

9 500

1 150

1 150

1 000

90

1 150

1 150

1 000

1 150

1 150

7 820

90

16 035

13 820

13 820

15 275

NORTH STREET

BNDRY

BNDRY

LOT4
 502.7m²

LOT3
 439.5m²

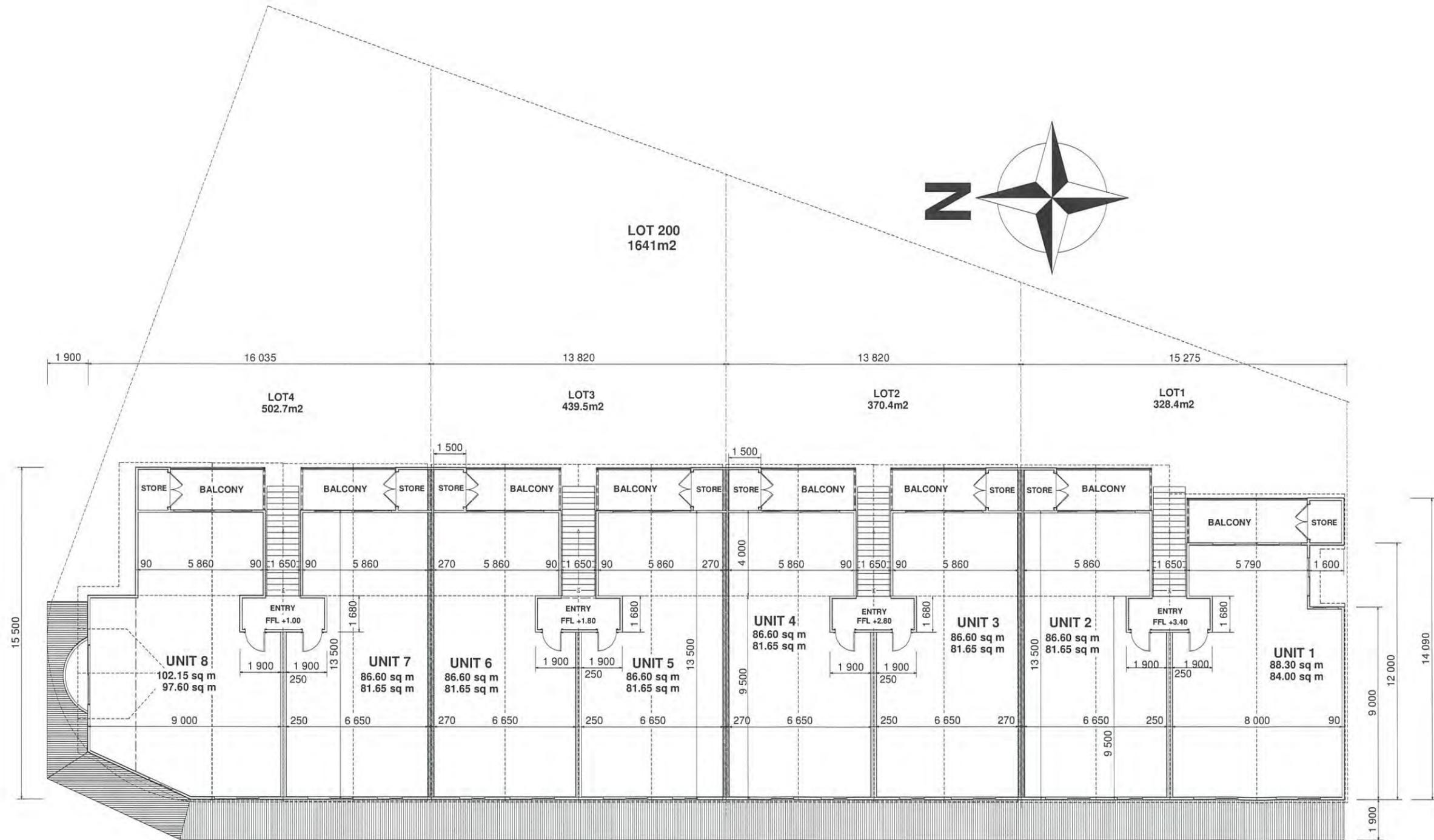
LOT 200
 1641m²

24 CAR PARKING BAYS

LOT2
 370.4m²

LOT1
 328.4m²

R.O.W

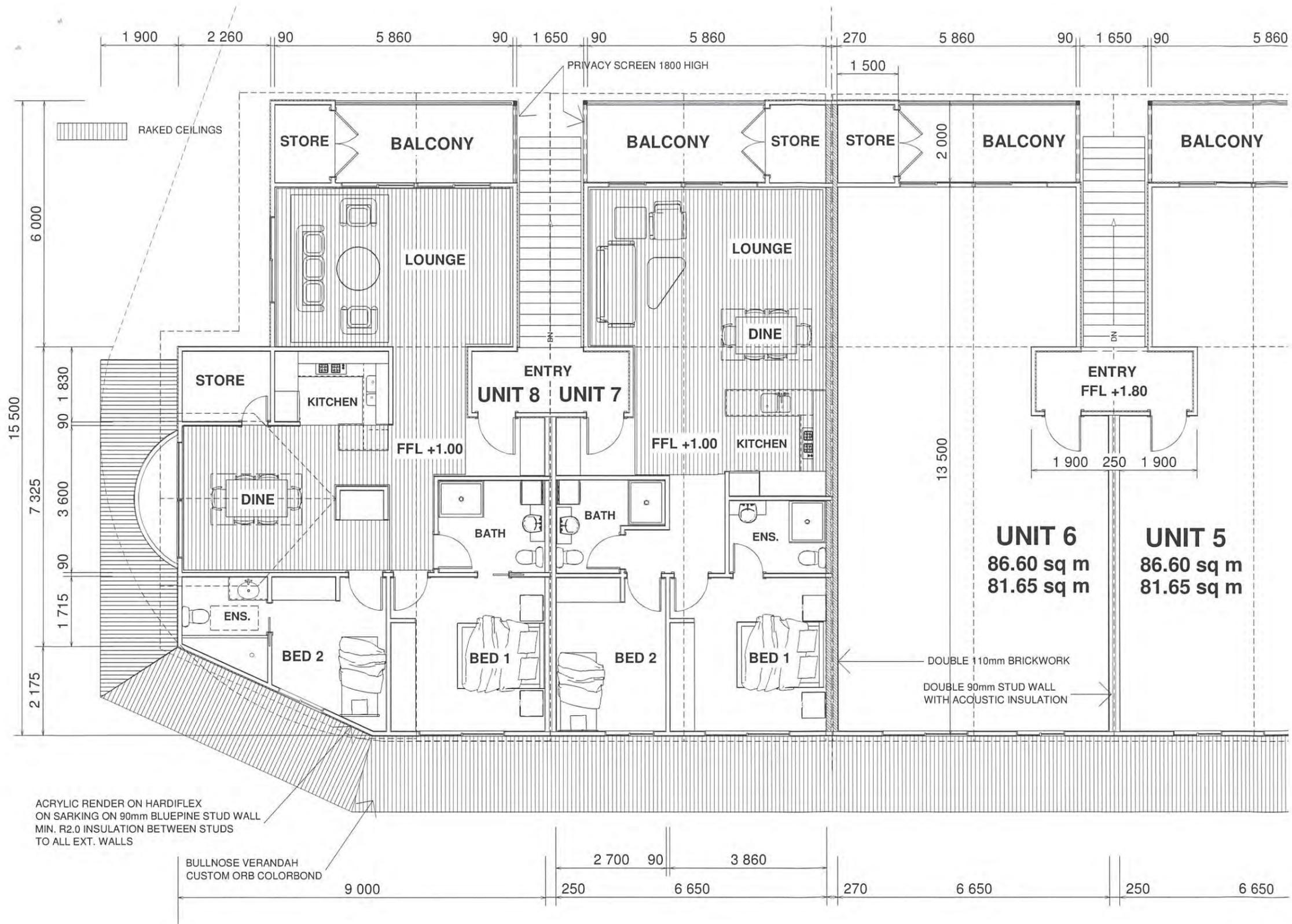


UPPER LEVEL FLOOR PLAN 1:200

ALL DIMENSION ARE TO BE CHECKED ON SITE PRIOR TO COMMENCEMENT OF CONSTRUCTION OR FABRICATION
ALL WORK TO BE CARRIED OUT IN ACCORDANCE WITH THE LATEST AUSTRALIAN STANDARDS INCLUDING AMENDMENTS

PROPOSED MIXED-USE DEVELOPMENT LOT 200
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GRAEME ROBERTSON PO BOX 140 CLAREMONT 6910

HERMANN FEHR DESIGN DENMARK WA 23/10/2015 REV. 9/11/2015
PLAN SIZE A3 DRAWING NUMBER 3

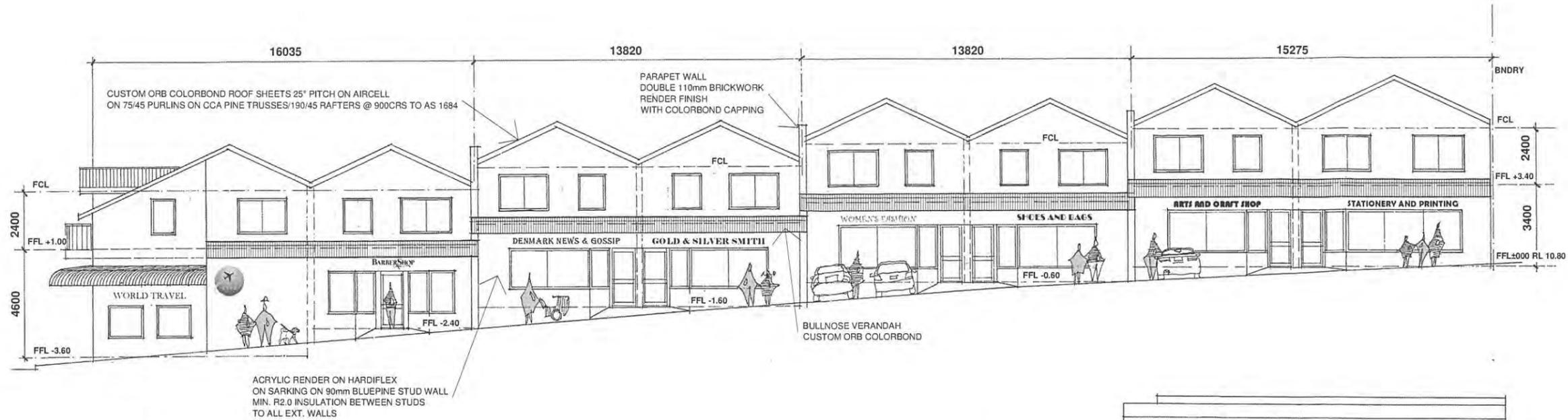


UPPER LEVEL FLOOR PLAN 1:100 UNIT 7 AND 8

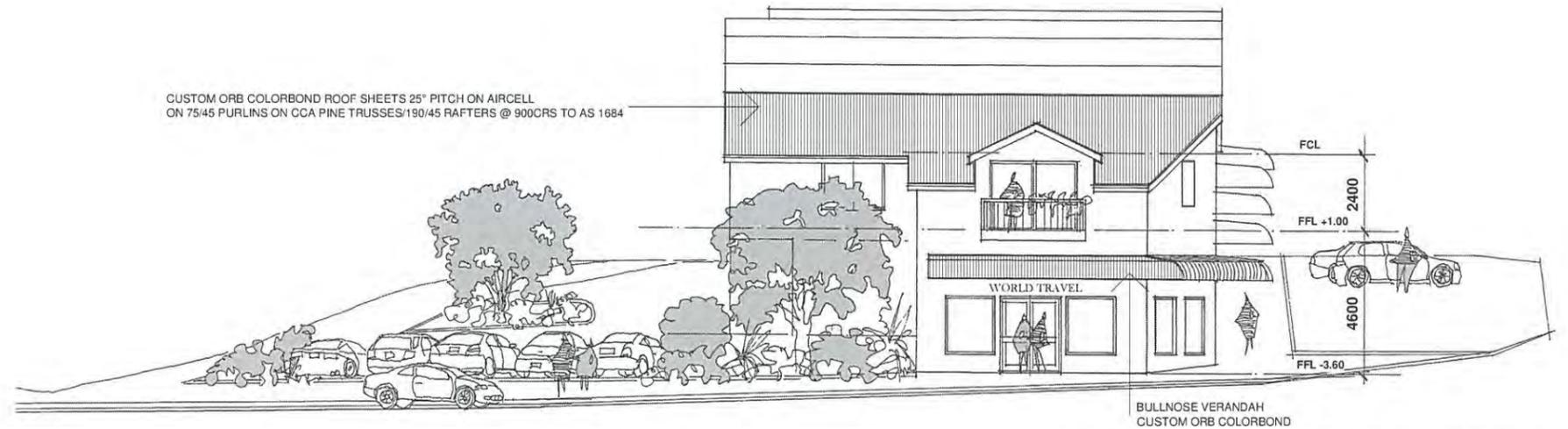
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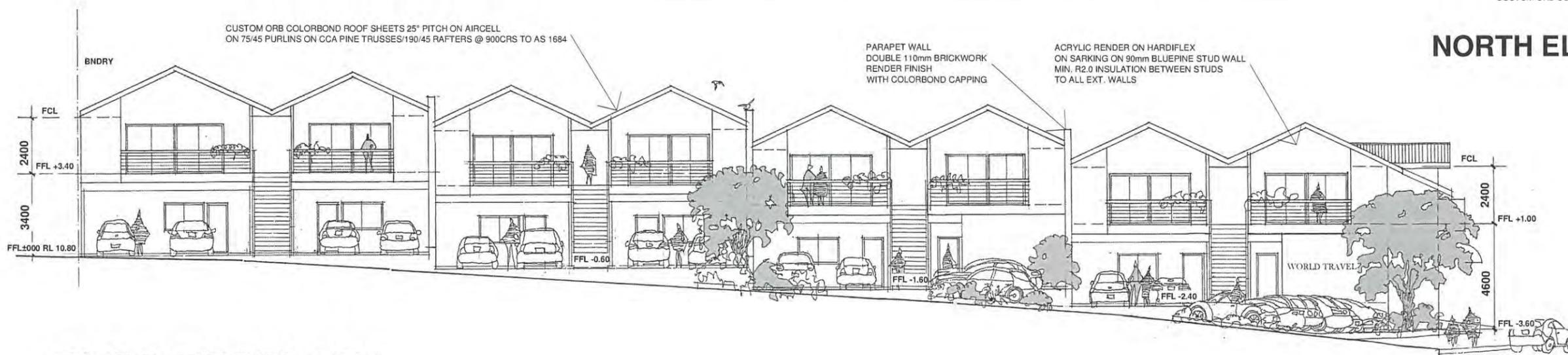
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PLAN SIZE A3 DRAWING NUMBER 5



WEST ELEVATION 1:200



NORTH ELEVATION 1:200



EAST ELEVATION 1:200

ALL DIMENSION ARE TO BE CHECKED ON SITE PRIOR TO COMMENCEMENT OF CONSTRUCTION OR FABRICATION ALL WORK TO BE CARRIED OUT IN ACCORDANCE WITH THE LATEST AUSTRALIAN STANDARDS INCLUDING AMENDMENTS

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HERMANN FEHR DESIGN DENMARK WA 23/10/2015 REV. 9/11/2015
 PLAN SIZE A3 DRAWING NUMBER 6

Development Application Report Proposed Two Storey Mixed Use Development

Lot 200 (3) Strickland Street,
Denmark



Prepared for
Southpride Pty Ltd

November 2015

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Direct all inquiries to:

PLANNING SOLUTIONS
296 Fitzgerald Street
PERTH WA 6000

ALL CORRESPONDENCE TO:
PO Box 8701
PERTH BUSINESS CENTRE WA 6849

Phone: 08 9227 7970
Fax: 08 9227 7971
E-mail: admin@planningsolutions.com.au
Web: www.planningsolutions.com.au

Project details

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Prepared by	Planning Solutions	
Consultant Team	Designer Town planner	Hermann Fehr Design Planning Solutions

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1 Preliminary

1.1 Introduction

Planning Solutions acts on behalf of Southpride Pty Ltd the proponent of the proposed development at Lot 200 (3) Strickland Street, Denmark (**subject site**). Planning Solutions has prepared the following report in support of an Application for Approval to Commence Development for a mixed use development on the subject site comprising eight shops and eight multiple dwellings.

This report will discuss various elements pertinent to the proposal, including:

- Site details.
- Proposed development.
- Statutory planning framework.

1.2 Background

1.2.1 2014 Development Application and State Administrative Tribunal Proceedings

Lot 200 Strickland Street was the subject of a matter considered by to the State Administrative Tribunal (SAT) in May 2014 (Nostrebor Holdings Pty Ltd and Shire of Denmark [2014] WASAT 64).

The SAT considered the preliminary issue of whether the Shire of Denmark (**the Shire**) had the power to vary the density code for the subject site in accordance with the Shire of Denmark's Town Planning Scheme No. 3 (**TPS 3**).

In summary, the SAT determine that the Shire **does** have the power to vary the density code for the subject site in accordance with Clause 5.3.3 of TPS3.

A development application for a mixed use development comprising a restaurant/café, four commercial tenancies and seven multiple dwellings was considered by Council at its meeting on 29 July 2014. Council determined the subject site was to be allocated a density code of R30 and subsequently approved the development application subject to conditions. The development approval dated 29 July 2014 has not been enacted.

A comprehensive review of the TPS3 standards, including allocation of an appropriate density code is provided in Section 5.1.3 of this report.

2 Site details

2.1 Legal description

Table 1 provides a description of the land subject to the proposed development.

Table 1 – Lot details

Lot	Plan/Diagram	Volume	Folio	Area (m ²)
200	DP145581	1372	27	1,641

Refer **Appendix 1** for a copy of the Certificate of Title.

2.2 Regional Context

The subject site is located within the municipality of the Shire of Denmark (Shire), in the Central Business District (CBD) of Denmark.

Strickland Street forms the 'main street' of Denmark providing a number of shops, offices and food and beverage facilities. Strickland Street intersects with South Coast Highway approximately 70m to the south of the subject site. South Coast highway is the main regional road along the south coast of Western Australia, providing access into Albany.

The Denmark River and Norm Thornton Park are situated approximately 120m to the east of the subject site, providing occupants with access to open space and recreation facilities.

2.3 Local Context

The subject site is situated at the corner of North Street and Strickland Street, the latter forming one of the main streets of Denmark. As it fronts Strickland Street, the subject site is located directly opposite a supermarket, with offices, cafes and restaurants located to the south.

There is on-street public parking situated along the western boundary of the site with additional public parking on the opposite side of North Street, to the north of the subject site.

The subject site abuts a right of way to the south and a commercial zoned property containing a single house to the east.

Refer to **Figure 1** (aerial photograph) and **Photographs 1 and 2**.

2.4 Land use and topography

The subject site slopes downward from south to north approximately 5m. The site is currently vacant and does not contain native vegetation.



LEGEND

--- Subject Site





Photograph 1: Subject site viewed from North Street



Photograph 2: Subject site viewed from Strickland Street

3 Proposed development

The proponent seeks to develop a two storey mixed used development comprising eight offices/shops on the ground floor and eight multiple dwellings on the upper floor.

The development is to be constructed of rendered brickwork with scyon axon cladding and a Colorbond roof.

Vehicular access will be provided via a single crossover to North Street across the rear of the lot. This access way will also link the right of way which provides access from the subject site to Strickland Street.

The development seeks to further activate Strickland Street with the commercial uses on the ground floor. The multiple dwellings provide the means for diverse and affordable housing options within Denmark.

Refer **Appendix 2**, development plans.

3.1 Subdivision

Approval for a four lot freehold subdivision of the subject site was granted by the WAPC on 26 February 2013.

Whilst this subdivision has not yet been executed, it is intended that the proposed development would be subdivided onto four lots, each comprising two commercial tenancies and two dwellings.

This development application proposes minor variances to lot boundaries on the approved plan of subdivision. This has been the result of realignment of the lots such that they are perpendicular to Strickland Street, providing opportunities an improved built form outcome. The modifications will result in changes to the lot areas which is expected to be addressed during the subdivision clearance process.

3.2 Design Response

The design seeks to maintain and improve the main street nature of Strickland Street. The ground level commercial tenancies seek to activate the street, whilst the dwellings on the upper floor provide surveillance of the locality. Awnings are provided over the Strickland Street footpath. The design is contemporary whilst complementing the existing streetscape with elements such as bullnose verandahs. The result is a development which contributes to the safety and vibrancy of the area.

4 Strategic planning framework

The following documents outline the strategic planning framework applicable to the subject site. The proposed development is considered appropriate in the context of the strategic planning framework.

4.1 Draft Lower Great Southern Strategy

In September 2015, the WAPC released the draft Lower Great Southern Strategy (**LGSS**), which is intended to replace the existing June 2007 strategy.

The LGSS identifies Denmark as a sub-regional centre. A sub-regional centre contains services and facilities which reflect the needs of the local community and that of the agricultural population in its hinterland. The LGSS aims to consolidate settlements by focussing new development within existing established settlements in order to make regional communities more sustainable in the long term.

The proposed development is consistent with the LGSS, specifically contributing to desired sustainability outcomes by incorporating housing into an existing centre with nearby access to local services.

4.2 Shire of Denmark Local Planning Strategy

The Shire of Denmark Local Planning Strategy (**the Strategy**) was adopted by Council in 2011 and provides a vision to guide the future growth of the Shire until 2031.

One of the five guiding principles of the Strategy is:

To provide for a range of compatible housing lifestyle choice and associated development in harmony with the existing character and community spirit enjoyed in Denmark.

In response to this guiding principle, the proposed development will increase the range of housing within Denmark whilst contributing to the local character of the CBD.

Moreover, the proposed development is considered to be consistent with all applicable objectives of the Strategy, making an important contribution to the vibrancy of the town centre.

5 Statutory planning framework

5.1 Local planning scheme

5.1.1 Zoning

The subject site is zoned Commercial under the provisions of the Shire's Town Planning Scheme No. 3 (TPS3).

Refer **Figure 2**, TPS3 zoning.

The stated purpose and intent of the Commercial zone is *'for the major service, retail, office and entertainment uses in the townsite'*.

5.1.2 Land use and permissibility

Shop and Office

The proposal seeks to allocate the ground floor tenancies flexibly as shops or offices. The land use of both shop and office are permitted ('P') within the Commercial zone of TPS3. A permitted use is deemed to be consistent with the intent of the relevant zone. Shop and office uses are subject to the same development standards, including car parking.

In accordance with Clause 61 of the 'Deemed Provisions' under the *Planning and Development (Local Planning Scheme) Regulations 2015* (which prevails over TPS3) a planning application would not be required to change the land use between shop and office, providing there are no external works.

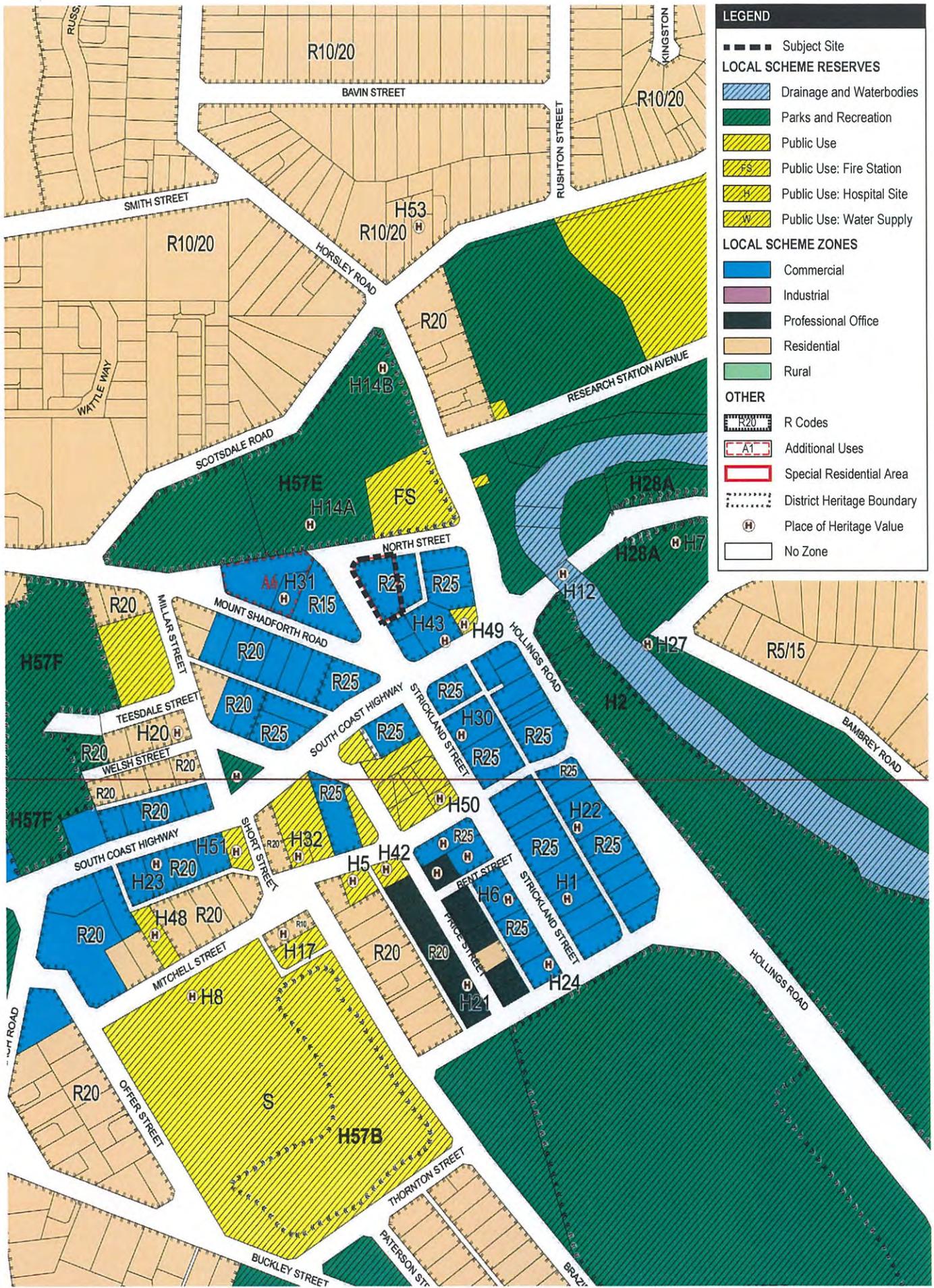
Multiple Dwellings

The dwellings on the upper floor of the proposed development are classified as 'multiple dwellings' in accordance with the provisions of the Residential Design Codes of Western Australia (**R-Codes**). Multiple dwellings are not listed under the Zoning Table of TPS3. Multiple dwellings are also not defined under TPS3.

Clause 3.2.5 of TPS3 states the following:

If the use of land for a particular purpose is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the interpretation of one of the use categories the Council may:

- a. determine that the use is not consistent with the purpose and intent of the particular zone and is therefore not permitted; or*
- b. 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.*



It is considered the proposed apartments could not be reasonably determined as falling within the interpretation of one of the listed uses. Therefore, this application seeks approval for a 'use not listed' in accordance with Clause 3.2.5(b) of TPS3.

Justification

The use of multiple dwellings is considered highly appropriate within a town centre context. Primarily, the placement of a dwelling above a commercial tenancy contributes to the vitality of the town centre by providing surveillance (actual and perceived) outside of business hours.

Importantly, the proposed multiple dwellings reflects the objectives of the Shire's Commercial Strategy which seeks to encourage mixed use development, specifically the inclusion of residential uses, within Denmark's CBD.

With regard to the Shire's Local Planning Strategy, it is noted one of the 'Future Retail' objectives is 'To ensure that the Denmark town centre continues to be the focus for all forms of commercial activity that support a vibrant town centre and to ensure that future development enhances its village character'. The inclusion of multiple dwellings in conjunction with a retail use further complements the vibrancy of the town centre. More broadly, the use of multiple dwellings is consistent with the LGSS which seeks to incorporate new housing within existing centres in close proximity to services.

The subject site has exemplary access to local services, including a supermarket directly opposite and local shops and offices on Strickland Street within walking distance. There is also expansive public open space within a 200m walk of the subject site. The multiple dwellings will also provide diversity in housing options within Denmark by providing opportunities for those who do not wish to reside on a larger lot.

Owing to the above, the use of multiple dwellings is considered highly appropriate and warrants approval accordingly.

5.1.3 Allocation of Density Code

The Scheme Map allocates a density of R25 to the subject site. Notwithstanding, Clause 5.3.3 of TPS3 states the following:

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.

As outlined in Section 1.2.1 of this report, the interpretation of this Clause was considered by the SAT in the matter of *Nostrebor Holdings Pty Ltd and Shire of Denmark [2014] WASAT 64* where the SAT determined the Shire has the power to vary the density code within the Commercial zone.

The subject development application is a similar application to that considered by the Shire in July 2014. However, since this time, three amendments have been made to TPS3, none of which affect Clause 5.3.3 (either directly or indirectly). Accordingly, it is considered the same interpretation should be made and the Shire is requested to vary the density code in conjunction with this development application.

At its Ordinary Meeting on 29 July 2014, the Shire allocated a density code of R30 to the subject site. Since this time, there have been modifications to the multiple dwelling provisions of the R-Codes which now render the R30 density code inappropriate for the development of multiple dwellings. Whilst multiple dwellings may still be approved under the R30 code, the minimum number of dwellings is now determined in relation to lot area, rather than plot ratio. Using the lot area standards, a maximum of five multiple dwellings could be developed on the subject site (1 per 300m² site area). The proposal seeks to develop eight multiple dwellings.

Accordingly, the applicant seeks a density code of R40 to be applied to the subject site.

Justification

- Multiple dwellings in a town centre context are highly appropriate as they help to achieve a vibrant and active town centre.
- R40 provides a modest development outcome for a town centre. The applicable building heights are generally equivalent to two storey development. The immediate surroundings of the subject site include two storey development, meaning the R40 density code would not result in a development which is inconsistent with the existing scale and built form.
- Allocation of a lower density code would decrease the housing options provided within the town centre without significantly affecting the built form of the development. For example, four multiple dwellings could be approved under the R25 code. There are no plot ratio restrictions on multiple dwellings under the R25 code meaning four larger dwellings could be constructed within the same building footprint as the eight dwellings which are proposed.
- The justification under Section 5.1.2 of this report should also be considered, noting that R40 is now the lowest R-Code in which multiple dwellings can be assessed using plot ratio rather than lot area standards.

Owing to the above, an R40 is considered a modest, but reasonable outcome for the subject site, noting that individual components may be assessed under the design principles of the R-Codes.

5.1.4 Development Standards

Development standards for the Commercial zone are provided under Table 2 of TPS3. These include setbacks, plot ratio, site coverage and landscaping. An assessment of the TPS3 requirements is made in Section 6.1 of this report.

5.2 Residential Design Codes

State Planning Policy No. 3.1 Residential Design Codes (**R-Codes**) provides the basis for control of residential development through Western Australia.

The R-Codes includes deemed-to-comply requirements. Clause 2.5.4 of the R-Codes states:

The decision-maker shall not refuse to grant approval to an application where the application satisfies the deemed-to-comply provisions of the R-Codes and the relevant provisions of the scheme and any relevant local planning policy.

A design principle relates to each deemed-to-comply requirement. Clause 2.4 of the R-Codes states:

Where a proposal does not meet the deemed-to-comply provision(s) of the R-Codes and addresses design principle(s), the decision-maker is required to exercise judgement to determine the proposal.

Judgement of merit is exercised only for specific element(s) of a proposal which do not satisfy the relevant deemed-to-comply provision(s).

An assessment against the R-Codes is made in Section 6.2 of this report. Any elements which are not in accordance with the prescribed standard are assessed on a performance basis under Section 6.3 of this report.

6 Development assessment

Development standards for the Commercial zone are provided under Table 2 of TPS3. These include setbacks, plot ratio, site coverage and landscaping.

As the proposed development includes a residential component, assessment is also made against the Residential Design Codes (R-Codes). In accordance with Clause 5.2.3 of TPS3, the standards in Table 2 prevail over the equivalent standards of the R-Codes.

6.1 Local Planning Scheme

An assessment of the development standards under Table 2 of TPS3 is made under **Table 2** below.

In accordance with Clause 6.2 of TPS3, the development standards may be varied if the decision maker is satisfied:

- a) *approval of the proposed development would be consistent with the orderly and proper planning of the locality and the preservation of the amenity of the locality;*
- b) *the non-compliance will not have any adverse effect upon the occupiers or users of the development or the inhabitants of the locality or upon the likely future development of the locality; and*
- c) *the spirit and purpose of the requirement or standard will not be unreasonably departed from thereby.*

Table 2: Assessment against Commercial zone development standards of TPS3.

Development Standards		Required	Proposed	Complies?
Setbacks	Front	Nil	Nil	✓
	Side	Nil	Nil	✓
	Rear	6m	4.4m – 21.0m	Variation
Maximum Plot Ratio		1.0	0.756 (1,240m ²)	✓
Maximum Site Coverage		At the discretion of Council	52.64% (864m ² covered)	✓
Landscaping		10%	6.3% (104m ²)	Variation

6.1.1 Rear Setback

The application seeks a 4.4m rear setback (at its closest point) in lieu of the 6m standard under Table 2 of TPS3. The 4.4m setback is considered appropriate for the following reasons:

- The incursion of the development into the setback area relates only to the storeroom and a small portion of the balcony for unit 1.
- This minor incursion has a negligible impact on the property to the east as it is located at the rear of the site. The dwelling on the adjoining property is situated toward the front of the site. The portion of the subject development within the 6m setback area can only be seen from the backyard of the adjoining property.
- The rear setback expands to 21m at North Street (as a result of the angle of the eastern boundary). The increased setback to the north of the site compensates for the minor incursion into the setback area at the south end of the site.

- The average rear setback is 12.8m, providing a greater separation compared to what would be achieved with a compliant setback of 6m for the entire length of the boundary.
- The reduced setback has no impact on overshadowing to the property to the east and allows for sufficient light and ventilation to both the adjoining and subject sites.

6.1.2 Site Coverage

A site coverage percentage is not provided under Table 2 of TPS3, instead requiring site cover to be at the discretion of Council. The proposed site cover of 52.64% is considered highly appropriate within a town centre context. A visual assessment of aerial photography indicates this level of coverage is consistent with (or less than) surrounding development.

By comparison, a development assessed against the R40 requirement of the R-Codes would be required to maintain 45% open space, which the proposed mixed use development achieves.

6.1.3 Landscaping

The application seeks to provide 6.3% (104m²) landscaping in lieu of the TPS3 standard of 10% (164m²). The proposed landscaping is appropriate for the following reasons:

- The proposed landscaping is situated in appropriate areas, being adjacent to North Street and within the car parking areas.
- No more than six consecutive uncovered parking bays are provided without landscaping in between, addressing the scheme and R-Codes requirements.
- The applicant proposes to provide high quality landscaping including shade trees, which result in a better developmental and environmental outcome than what could legitimately be achieved with 10% ground cover landscaping.
- The proposed development incorporates a nil setback to the primary street which reduces the opportunity to provide landscaping within the development site.

6.1.4 Car Parking

Minimum parking standards for non-residential uses are provided under Appendix 11 of TPS3. The R-Codes provides additional standards for the residential component of the development. An assessment of the parking standards is provided in **Table 3** below.

Table 3: Car Parking Assessment

Land Use	Parking Standards	Proposed	Surplus / Shortfall
Commercial (Shop / Office)	1 bay per 40m ² GLA (509m ²) Total required = 12.7	12 bays	1 bay shortfall
Residential bays	1.25 bays per dwelling (75m ² - 110 m ²) Total required = 10	10 bays	Nil
Residential visitor bays	0.25 per dwelling Total required = 2	2 bays	Nil
Total	25 bays	24 bays	1 bay shortfall

The proposal seeks a one bay parking shortfall. However, the actual shortfall is 0.7 bays, rounded up to one bay.

The one bay shortfall is considered appropriate for the following reasons:

- Public parking is provided immediately adjacent to the proposed entries to the commercial tenancies on Strickland Street.
- Public parking is also provided on North Street, directly opposite commercial tenancy 8 of the proposed development.
- The residential visitor bays and the commercial bays may be used reciprocally. Typically, the proposed shops and offices can expect to experience peak parking demand during business hours, whereas residential visitor parking generally experiences peak demand during evenings or on weekends.

More broadly, the occupants of the multiple dwellings can access local services (including the proposed ground floor shops and offices) without using a vehicle. This contributes to a town centre which is less reliant on car parking.

6.2 Residential Design Codes

In accordance with Section 5.1.3 of this report, the following assessment in **Table 4** has been modelled on an R40 coding.

Table 4 – R-Code design elements applicable to entire proposal

R-Code clause	Design element and	Deemed-to-comply requirement		Deemed-to-comply
6.1 Context				
6.1.1 Building size		Required	Provided	
Plot ratio (at R40)	0.6 (984.6m ²)	Residential component = 0.433 (530m ²)		✓
<i>Note: Plot ratio is primarily assessed against the standard under Table 2 of TPS3.</i>				
6.1.2 Building height		Required	Provided	
Height (at R40)	Top of wall (pitched roof) – 9 metres	7.5m (not including minor projections)		✓
	Height to pitch of roof – 12 metres	9m		✓
6.1.3 Street setback		Required	Provided	
Minimum street setbacks	<i>As per TPS3 (refer Table 2)</i>			
Balconies	Located entirely within the property boundary.	Located entirely within the property boundary.		✓
6.1.4 Lot boundary setback		Required	Provided	
Lot boundary setback requirements	<i>As per TPS3 (refer Table 2)</i>			

R-Code	Design element and clause	Deemed-to-comply requirement		Deemed-to-comply
	Separate multiple dwellings facing each other	Multiple Dwellings facing one another to be setback from one another as though there were a boundary between them.	N/A - dwellings do not face one another.	✓
6.1.5	Open space	Required	Provided	
	Minimum open space (at R40)	45%	47.36%	✓
6.2 Streetscape				
6.2.1	Street surveillance	Required	Provided	
	Street elevation	Façade parallel with the street, entry point visible / accessible from street.	Façade parallel with Strickland Street. Entry to dwellings visible from North Street.	✓
	Major opening to habitable room	The building has habitable room windows or balconies that face the street.	The development has eight dwellings with major openings fronting the street.	✓
	Basement parking structures	Basement parking structures between a street frontage and the main front elevation are no more than 1m above natural ground level.	N/A – no basement parking proposed.	✓
6.2.2	Street walls and fences	Required	Provided	
	Front fences	Front fences within the primary street setback area that are visually permeable to 1.2m above natural ground level	No front fencing proposed.	✓
6.2.3	Sight lines	Required	Provided	
	Sight lines	Walls to be no higher than 0.75m within 1.5m of where walls, fences, other structures adjoin vehicle access points.	No fencing/walls proposed.	✓
6.2.4	Building appearance	Required	Provided	
	Building compliance with local planning policy framework	Building to comply with the provision of a special control area, local planning policy framework.	Yes – refer section 7 of this report, which demonstrates proposal's compliance with relevant local planning framework.	✓
6.3 Site Planning and design				
6.3.1	Outdoor living areas	Required	Provided	
	Balconies	Each dwelling to have a balcony or equivalent accessed from a habitable room with a minimum area of 10m ² and a minimum dimension of 2.4m.	Unit 1 – 11.6m ² with a minimum dimension of 2m. Units 2 – 8 – 8.8m ² with a minimum dimension of 2m.	Design principles assessment
6.3.2	Landscaping	Required	Provided	
	Street setback areas	Development without car parking, except for visitors' bays, and with a maximum of 50% hard surface.	Nil setback proposed to the street. Landscaping standards designated under TPS3.	✓

R-Code Design element and clause	Deemed-to-comply requirement		Deemed-to-comply
Pedestrian path	Separate pedestrian paths providing wheelchair accessibility connecting all entries to buildings with the public footpath and car parking areas.	Pedestrian access is provided via a public footpath along North Street and Strickland Street. Wheelchair access is available between the car park and the public footpath.	✓
Landscaping between car parking	Landscaping between each six consecutive external car parking spaces to include shade trees.	Shade trees to be included within landscaping areas adjoining the car park.	✓
Lighting	Lighting provided to pathways, and communal open space and car parking areas	Lighting to be provided to car parking area.	✓
Clear sight lines	Clear sight lines at pedestrian and vehicle crossings	Yes	✓
6.3.3 Parking	Required	Provided	
Car parking bays	1.25 bays per dwelling (75m ² - 110 m ²) Total required = 10	10 bays	✓
Visitor car parking bays	0.25 for each dwelling Total required = 2	2 bays	✓
Bicycle parking	1 space for each 3 dwellings for residents (3 spaces) 1 space for each 10 dwellings for visitors (1 space) Total = 4 spaces	Bicycle spaces to be provided as a condition of approval.	✓
6.3.4 Design of car parking spaces	Required	Provided	
Design of parking	In accordance with AS2890.1	Car parking bays are 5.4m deep and 2.4m – 2.7m wide in accordance with AS2890.1. Each of the bays are provided with sufficient manoeuvring area to exit the site in a forward gear.	✓
Visitor bay design	Marked and accessible outside any security barrier	No security gate proposed. Signage and line-marking will be provided for to clearly indicate bays for visitor use.	✓
Concealed from street view	Car parking spaces fully concealed from the street or public space.	Car parking not visible from the street.	✓
6.3.5 Vehicular access	Required	Provided	
Crossover	One crossover per 20m	One single crossover proposed for the entire site.	✓

R-Code Design element and clause	Deemed-to-comply requirement		Deemed-to-comply
Access	Access provided from primary street frontage where no secondary street or right of way exists.	Access provided from ROW and secondary street (refer comments below re one way access).	✓
Driveways	Driveway designed to service two way access to allow vehicles to exit the street in a forward gear.	One-way access proposed. Vehicles to enter from North Street and exit via the right of way.	Design principles assessment
Driveway materials	Driveway to be adequately paved and drained.	Yes	✓
6.3.6 Site Works	Required	Provided	
Excavation or filling	Excavation or filling between the street and building shall not exceed 0.5m except where necessary to provide for pedestrian or vehicle access, drainage works or natural light for a dwelling.	The car park is intended to be developed such that it is generally consistent with the natural ground levels. However, there may be minor fill/retaining required along the boundary to North Street. This is not expected to exceed 0.5m. Finished levels for the car parking area can be confirmed in more detailed at the building permit stage.	✓
Excavation or filling	Filling should not be 0.5m above the natural ground level, within 1m of lot boundary	Maximum 0.3m retaining abutting south boundary.	✓
6.3.8 Stormwater management	Required	Provided	
Stormwater management	All water draining from roofs, driveways, communal streets shall be directed towards gardens, sumps or rainwater tanks within the development site.	All stormwater will be contained on the subject site.	✓
6.4 Building design			
6.4.1 Visual privacy	Required	Provided	
Overlooking	Major openings and active habitable spaces setback: <ul style="list-style-type: none"> • 4.5m for bedroom/studies; • 6m for other habitable rooms; • 7.5m for unenclosed outdoor active habitable spaces; or provided with permanent screening to restrict views.	Unit 1 and Unit 2 balconies (east boundary) – 5.0m All other major openings are setback the appropriate distances from lot boundaries.	Design principles assessment
6.4.2 Solar access for adjoining sites	Required	Provided	
Maximum percentage of overshadowing to lot to south	Should not exceed 25% of adjoining properties site area.	Overshadowing affects right of way and commercial site only.	✓
6.4.3 Dwelling Size	Required	Provided	
Minimum dwelling size	No dwellings smaller than 40m ² plot ratio area.	Minimum 82m ²	✓

R-Code Design element and clause	Deemed-to-comply requirement		Deemed-to-comply
6.4.6 Utilities and facilities	Required	Provided	
Store room	Minimum 4.0m ² with 1.5m width	3m ² with 1.5m dimension.	Design principles assessment
Rubbish collection	Conveniently located	Ground floor storage areas to accommodate rubbish bins.	✓
	Accessible to residents		
	Adequate area to store all rubbish bins		
	Fully screened from view of the primary street.		
Clothes drying areas	Screened from view of the street.	Internal clothes drying facilities.	✓

To summarise, the proposed development is generally compliant with the deemed-to-comply standards, but requires a design principle assessment against the following elements, as provided in Section 6.3 of this report.

- Building height
- Outdoor living areas
- Vehicular access
- Visual privacy
- Store room areas

6.3 Merit Assessment

This section provides an assessment of various design elements against the relevant design principle(s) or the R-Codes. In making a determination on the suitability of a proposal, regard was also had to the following:

- any relevant purpose, objectives and provisions of TPS3;
- any relevant objectives and provisions of the R-Codes;
- provisions of local planning policies adopted by the Shire; and
- orderly and proper planning.

6.3.1 Building Height

In relation to multiple dwellings in an R40 coding, the deemed-to-comply requirements of the R-Codes permit a height of 6m to the top of the external wall (measured from natural ground level to the highest part of the wall/roof). The proposed development incorporates a maximum wall height of up to 7.5m at the northern end of the development, resulting in a variation of 1.5m to the deemed-to-comply requirements.

The proposal is consistent with the overall height requirements of the R-Codes, measured to the pitch of the roof (9m).

As the wall height does not meet the deemed-to-comply requirement, it is to be assessed against the relevant design principle of the R-Codes states the following:

Building height that creates no adverse impact on the amenity of adjoining properties or the streetscape, including road reserves and public open space reserves; and where appropriate maintains:

- *Adequate access to direct sun into buildings and appurtenant open spaces;*
- *Adequate daylight to major openings into habitable rooms;*
- *Access to views of significance;*
- *Buildings present a human scale for pedestrians;*
- *Building facades designed to reduce the perception of height through design measures; and*
- *Podium development is provided where appropriate.*

Discussion

Before responding to the specific criteria listed within the design principles, it is important to understand the reasons for the proposed building height.

The proposed development is intended to be constructed over four slab levels, consistent with the proposed four lots to be created from subdivision. The building height exceeds the deemed-to-comply height of 6m at the north side of each of the proposed lots 1, 2, 3 and 4. The height on the south side of each lot is generally at (or close to) 6m. The increased height on the north side of the lots is a result of the topography of the subject site, which slopes approximately 5m from south to north.

The proposed development has been designed such that the entries to the commercial tenancies along Strickland Street provide at-grade access from the footpath. Furthermore, a 3.4m ceiling height is proposed in order to provide commercial tenancies which have a high degree of internal amenity and respect the existing character of the town centre.

Notwithstanding the above, a development at a reduced height could be achieved by either decreasing the finished floor levels or reducing the height of the commercial tenancies, both of which would result in the loss of amenity to the commercial units and hence a poorer development outcome.

Lastly, it is noted that R40 is the coding proposed by the applicant in order to achieve a meaningful multiple dwelling development on the subject site. R40 is considered a modest density code in the context of a main street / town centre. It is noted that the next highest code of R50 would allow 9m wall height should the Council be prepared to exercise its discretion under Clause 5.3.3 of the Scheme by assigning a higher density code.

With the above factors considered, an assessment against the specific design principles is made as follows:

Impact on Streetscape

At its street frontage, the development presents as a two storey building. This is consistent with the surrounding area and is consistent with the commercial zoning and town centre context of the site.

For comparison, the supermarket on the opposite side of Strickland Street presents as a 'large' two storey development with a substantial concrete extension above the second storey. It is also set on a higher ground level compared with the subject site. Accordingly, it is expected the subject development will seamlessly blend in with the Strickland Street streetscape.

The proposed would also have a negligible impact on North Street. There is no discernible streetscape on North Street, particularly as there is no development on the opposite side of the street.

Sunlight and Ventilation

To the east, the subject site abuts an existing single dwelling fronting North Street. With the development presenting to Strickland Street, the increased height is not considered to have any undue impact on the adjoining dwelling to the east. In particular, the proposed development provides a 21m boundary setback from the highest area of wall height. Furthermore, a 12.8m average setback along this property boundary; more than double the minimum rear setback requirement under TPS3. Moreover, this property is not affected by overshadowing and the outdoor living areas and major openings will maintain the same amount of sunlight they currently receive.

To the south, exists an office/commercial development. Whilst the midday June 21 shadow falls to the south, it is expected to primarily affect the right of way which separates the two sites by approximately 6m. Furthermore, as an office/commercial site, it is not 'protected' by the overshadowing provisions of the R-Codes. Notwithstanding, the wall abutting the south boundary is compliant with the deemed-to-comply height requirements of the R-Codes.

Owing to the above, the development will maintain adequate separation between the proposed development and the surrounding buildings such that light and ventilation are not unduly affected.

Views

The proposed development does not affect views of significance to any adjoining property.

Scale

The two storeys at the street frontage presents a human scale for pedestrians, consistent with other two storey development that fronts Strickland Street, within close proximity to the subject site.

Design

The building façade comprises a series of architectural elements to provide a positive built form outcome. For instance, the façade is 'broken up' into individual gable-end elements that provide visual separation between each of the apartments. These elements provide articulation and interest in the building as it fronts the street. The awnings at ground level facilitates a pedestrian environment which ensures the development presents with a human scale to the street (in a similar manner with the remainder of the town centre).

Podium Development

It is considered that a podium style development would not be appropriate for the subject development, given it is limited to two storeys at the street frontage.

In summary, the increased height of 1.5m above the deemed-to-comply standards of the R-Codes is deemed to be consistent with the design principles of the R-Codes. The variation is in part a result of the topography of the site and the design suitably manages any impact on adjoining and surrounding properties.

6.3.2 Outdoor Living Areas

The deemed-to-comply requirements of the R-Codes stipulate a minimum outdoor living area size of 10m² with a minimum dimension of 2.4m. The plans indicate Units 2-8 provide balconies of 8.8m² in area with a minimum dimension of 2m. Unit 1, whilst compliant with minimum area also proposes a dimension of 2m. Assessment is therefore made against the relevant design principle which states:

Balconies or equivalent outdoor living areas capable of use in conjunction with a habitable room of each dwelling, and if possible, open to winter sun.

The design of the dwellings provides an outdoor living area which can be used as a seamless extension of the respective lounge rooms. They provide an important function by providing an outlet which allows for sunlight and ventilation into the apartment and provide an opportunity for outlook from the apartment.

Specifically, these units have the opportunity to take advantage of the unique location of the subject site with outdoor dining areas, provided by the restaurants and cafes located within the town centre. Additionally, residents will benefit from the Norm Thornton Park foreshore and the Denmark Bowling Club, located to the east. These facilities are less than 200m from the subject site, providing near instantaneous access. The easy access increases useability while decreasing the need for a substantial private outdoor living area.

In summary, whilst the outdoor living areas are less than those under the deemed-to-comply requirements of the R-Codes, the subject site has excellent access to public open space which provides a high quality of living for residents.

6.3.3 Visual privacy

The proposed balconies for Units 1 and 2 provide a setback of 5m (at the closest point) to the adjoining property to the east. This setback does not meet the deemed-to-comply standard of 7.5m and assessment is required under the design principles, which state:

Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through:

- *Building layout, location;*
- *Design of major openings;*
- *Landscape screening of outdoor active habitable spaces; and/or*
- *Location of screening devices...*

The 'area of overlooking' is restricted to the rear corner of an expansive backyard of the adjoining property. It does not contain habitable or sensitive areas which would be affected by a reduced visual privacy setback. Furthermore, the adjoining site is zoned Commercial under the Shire's TPS3 meaning future development could include non-residential components which are not affect by overlooking.

Accordingly, the reduced setback is considered to be consistent with the design principles.

6.3.4 Vehicle access

The deemed-to-comply standards of the R-Codes require two-way access for parking areas which serve five or more dwellings. The proposed development provides one way access and therefore requires assessment against the design principles of the R-Codes, which state:

Vehicular access provided so as to minimise the number of crossovers, to be safe in use and not detract from the streetscape.

Ingress is proposed to be provided via North Street, with egress via the right of way. This mode of access is considered to be the most efficient to service the dwellings and commercial tenancies on site. Appropriate signage will be installed ensuring safe and legible movement through the parking area.

Parking areas are screened from the primary street (Strickland Street) and are appropriately accessed via the secondary street.

It is considered the proposed access is safe, efficient and legible and meets the relevant design principle.

6.3.5 Utilities and facilities (Storerooms)

The deemed-to-comply provisions of the R-Codes require a minimum storage facility of 4m² with a minimum dimension of 1.5m. Each dwelling is provided with a 3m² storage facility. Accordingly, assessment is made against the relevant design principles which state:

External location of storeroom, rubbish collection/bin areas, and clothes drying areas where these are:

- *convenient for residents;*
- *rubbish collection areas which can be accessed by service vehicles;*
- *screened from view; and*
- *able to be secured and managed.*

It is considered the proposed storage areas are suitable to meet the needs of the residents. The storage rooms are located on the balconies, easily accessible from outside the dwelling. The store rooms are designed seamlessly to blend in with the development.

The reduction in area of 1m² from the deemed-to-comply standard is considered minor. To compensate, the doors have been designed to open outwards onto the balconies. This increases useable area within the storeroom as it allows items to be packed up to the line of the door (which would not be the case if the doors swung inward).

Accordingly, the proposed store rooms are considered to meet the design principles of the R-Codes.

6.3.6 Design principles summary

Based on the above, the proposal satisfies the design principles of the R-Codes, and is considered appropriate to its context and consistent with the planning framework applicable. The proposal therefore warrants support and approval.

7 Local Planning Context

7.1 Local Planning Policy 15 – Townscape Policy

The Shire's Townscape Policy (LPP15) aims to identify aspirations for Denmark's future townscape, providing broad guidelines for developments within townscape environments. It contains 12 policy provisions, which are responded to in Table 5 below.

Table 5: LPP15 Assessment

Policy Statement	Applicant Response
<i>APPROACHES & TOWN ENTRIES: Council will maintain and enhance approaches to town by discouraging bill posting or hoardings, by formalising placement of appropriate signs, by the retention of existing indigenous vegetation and promoting tree planting on verges.</i>	Whilst this proposal does not seek approval for specific signage, it is indicatively shown on elevations below awnings in areas which will be inconspicuous and complementary to the street.
<i>ENVIRONMENT: Council will support development that preserves or enhances our natural and created environment and provides for green belts, spot parks, seating areas and covered pedestrian access.</i>	Awnings are proposed along Strickland Street to provide weather protection for pedestrians. Landscaping is provided in appropriate locations, adjacent to North Street and throughout the car park.
<i>BUILDING GUIDELINES;</i> i) <i>Council will support development proposals that harmonise with the landscape and existing buildings.</i> ii) <i>Development that is of a domestic scale will be actively encouraged. This includes historic methods of construction, materials, posted verandahs, the use of heritage colours and the enhancement of pedestrian amenities.</i> iii) <i>Council will support low-impact commercial development proposals that enhance pedestrian movement and access and create a domestic scale in their design.</i>	<ul style="list-style-type: none"> • The proposed development will harmonise with existing buildings by providing a proposal which is of a scale consistent with surrounding buildings/ • The design complements the historic nature of the town centre through the use of elements such as bull nose verandahs/awnings. • The development provides small scale commercial tenancies on the ground level which enhance pedestrian movement and provide interest in the streetscape.
<i>COLOUR: Council will support heritage colours and will require applicants to submit colour schemes prior to approval for developments.</i>	A colour schedule can be provided prior to lodgement of a building permit.
<i>FRANCHISE OUTLETS: Will not be supported by Council unless they conform to Council's Townscape Guidelines and their logos and emblems harmonise with the environment.</i>	Given the early stage of the proposed development, the occupants of the commercial tenancies have not been determined. Accordingly, franchise outlets have not been considered as part of this development application.
<i>BRIGHT LIGHTS: Council will not support the use of bright, flashing or undirected lights. Subdued lighting will be preferred.</i>	Bright lights are not proposed as part of this development application.
<i>TRAFFIC CALMING: Council will support traffic calming, not by "signs and obstacles", but by the attractive appearance of the streets.</i>	The nil setback and active street frontage will provide an attractive appearance to the street.
<i>CAR PARKS: Council will support off-street parking with a low visual impact. Landscaping and shade trees are encouraged.</i>	Car park is accessed from the right of way and secondary street, screened from the primary street. Landscaping is proposed within the car parking area.
<i>HERITAGE VALUES: Council will encourage the retention of places of recognised heritage value.</i>	The subject site is not heritage listed.
<i>Development proposals which provide pedestrian and visual links between the town centre, the river and adjacent parks are preferred.</i>	The development provides a high quality pedestrian environment, which strengthens the link to the river.
<i>PUBLIC OPEN SPACE: Council will consider walk and dual-purpose trails throughout the town and its environs, linking parks, reserves, river and inlet.</i>	N/A
<i>LANDSCAPING: Council will support the implementation of cohesive planting plans for public areas.</i>	Landscaping is proposed on site so as to complement the frontage to North Street.

7.2 Local Planning Policy 31 – Commercial Strategy

The Shire's Commercial Strategy (**LPP31**) provides a series of objectives and broad development standards which seek to guide commercial growth and development within Denmark. From review of LPP31, it can be established that the Shire seeks to focus commercial growth within the existing Central Business District.

Comments are provided on specific components of the commercial strategy below and how the development application responds to the content of the strategy.

Car Parking

LPP31 seeks to ensure the Denmark CBD is provided with a sufficient level of parking (both in the private and public realm) whilst providing safe and efficient access.

As outlined above, the proposed development seeks a minor parking dispensation of 0.7 car bays which is justified given the reciprocal nature of uses and the immediate access to public parking bays. Access to the car parking area is provided via a right of way and secondary street (North Street) which ensures the parking does not unduly affect the amenity of the main street.

Pedestrians and Cyclists

LPP31 seeks to accommodate safe and continuous pedestrian access through the Denmark CBD. The proposed development facilitates this objective by providing continuous awnings across Strickland Street and to the entries of each of the commercial tenancies.

The pedestrian environment is further complemented by the multiple dwellings on the upper floor. These provide surveillance of the street (both actual and perceived) which in turn provides for safer pedestrian environments. Furthermore, the development of multiple dwellings within the town centre helps provide opportunities for the residents to access local services without needing to drive a car, contributing to a more sustainable town centre.

Built Form

LPP31 seeks to encourage buildings with responsive designs which contribute to the character of the area in a positive manner. The following features of the proposed development achieve the objectives of LPP31:

- Glazing and active frontages provided along Strickland Street;
- Fine grained design with the development presenting a series of individual architectural elements, rather than a monolithic structure;
- Two storey scale consistent with the existing scale in the town centre and orientated so as not to affect existing single residential development;
- Weather protection for pedestrians provided by verandahs;
- Verandahs stepped to match the topography of the land;
- Verandahs proposed in a bull nose style to complement existing / historic design within the town centre;
- Inset doorways to the commercial tenancies providing a design element which complements the streetscape.

Redevelopment of Existing Commercial Zoned Land

LPP31 provide guidance for redevelopment of existing commercial zoned properties. The desired outcomes include a combination of commercial uses and the inclusion of residential uses within the CBD. The proposed development directly responds to these desired outcomes by providing a mix of office, retail and multiple dwellings.

7.3 Local Planning Policy 42 – Public Art

The Shire's Local Planning Policy 42 designates a 0.5% contribution for development exceeding \$500,000 in value. It is expected public art will be incorporated into the development with further details to be provided to the Shire following planning approval.

8 Conclusion

As detailed in this report, the proposed development seeks to provide a high quality mixed use development on the subject site. The proposal is consistent with the strategic and statutory planning framework provided for the subject site. In particular, we consider that the proposal warrants approval for the following reasons:

- The design provides a positive design outcome which includes active street frontages at ground level and passive surveillance from dwellings on the upper floors, contributing to a safer and more vibrant town centre.
- Variations to the development standards of TPS3 are minor and are generally considered to provide a superior outcome compared with what could be achieved with a 'compliant' development.
- The proposed development is consistent with the design principles of the R-Codes where the deemed-to-comply standards are not met. Importantly, the proposed building height is in response to the topography and site conditions and does not unduly impact the street or adjoining properties.
- The proposed development is consistent with regional strategic planning objectives by providing alternate housing options within an existing centre, contributing to a more compact, sustainable town.

The proposal appropriately responds to the relevant aspects of the applicable development standards, and will provide for high quality mixed use development within an existing town centre.

Accordingly, it is considered the proposed development warrants approval.

Appendix 1
Certificate of Title

WESTERN



AUSTRALIA

REGISTER NUMBER 200/DP145581	
DUPLICATE EDITION N/A	DATE DUPLICATE ISSUED N/A

RECORD OF CERTIFICATE OF TITLE
UNDER THE TRANSFER OF LAND ACT 1893

VOLUME **1372** FOLIO **27**

The person described in the first schedule is the registered proprietor of an estate in fee simple in the land described below subject to the reservations, conditions and depth limit contained in the original grant (if a grant issued) and to the limitations, interests, encumbrances and notifications shown in the second schedule.



REGISTRAR OF TITLES

LAND DESCRIPTION:

LOT 200 ON DEPOSITED PLAN 145581

REGISTERED PROPRIETOR:
(FIRST SCHEDULE)

NOSTREBOR HOLDINGS PTY LTD
IN 1/3 SHARE
FRENESI PTY LTD
IN 1/3 SHARE
SVEN JAMES ROBERTSON
IN 1/3 SHARE
ALL OF POST OFFICE BOX 140, CLAREMONT
AS TENANTS IN COMMON

(T K363561) REGISTERED 3 OCTOBER 2007

LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS:
(SECOND SCHEDULE)

- *K363562 MORTGAGE TO BANK OF WESTERN AUSTRALIA LTD REGISTERED 3.10.2007.

Warning: A current search of the sketch of the land should be obtained where detail of position, dimensions or area of the lot is required.
* Any entries preceded by an asterisk may not appear on the current edition of the duplicate certificate of title.
Lot as described in the land description may be a lot or location.

-----END OF CERTIFICATE OF TITLE-----

STATEMENTS:

The statements set out below are not intended to be nor should they be relied on as substitutes for inspection of the land and the relevant documents or for local government, legal, surveying or other professional advice.

SKETCH OF LAND: 1372-27 (200/DP145581).
PREVIOUS TITLE: 791-142.
PROPERTY STREET ADDRESS: 3 STRICKLAND ST, DENMARK.
LOCAL GOVERNMENT AREA: SHIRE OF DENMARK.

NOTE 1: A000001A LAND PARCEL IDENTIFIER OF DENMARK TOWN LOT/LOT 200 (OR THE PART THEREOF) ON SUPERSEDED PAPER CERTIFICATE OF TITLE CHANGED TO LOT 200 ON DEPOSITED PLAN 145581 ON 18-JUN-02 TO ENABLE ISSUE OF A DIGITAL

END OF PAGE 1 - CONTINUED OVER

RECORD OF CERTIFICATE OF TITLE

REGISTER NUMBER: 200/DP145581

VOLUME/FOLIO: 1372-27

PAGE 2

NOTE 2: CERTIFICATE OF TITLE.
THE ABOVE NOTE MAY NOT BE SHOWN ON THE SUPERSEDED PAPER CERTIFICATE
OF TITLE OR ON THE CURRENT EDITION OF DUPLICATE CERTIFICATE OF TITLE.

NOTE 3: DUPLICATE CERTIFICATE OF TITLE NOT ISSUED AS REQUESTED BY DEALING
K363562

Appendix 2 Development plans

Documents are located at the front of this
Attachment

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

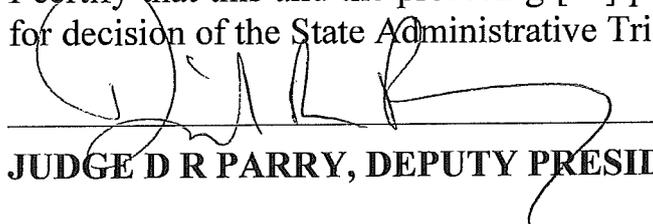
56 The Tribunal makes the following orders:

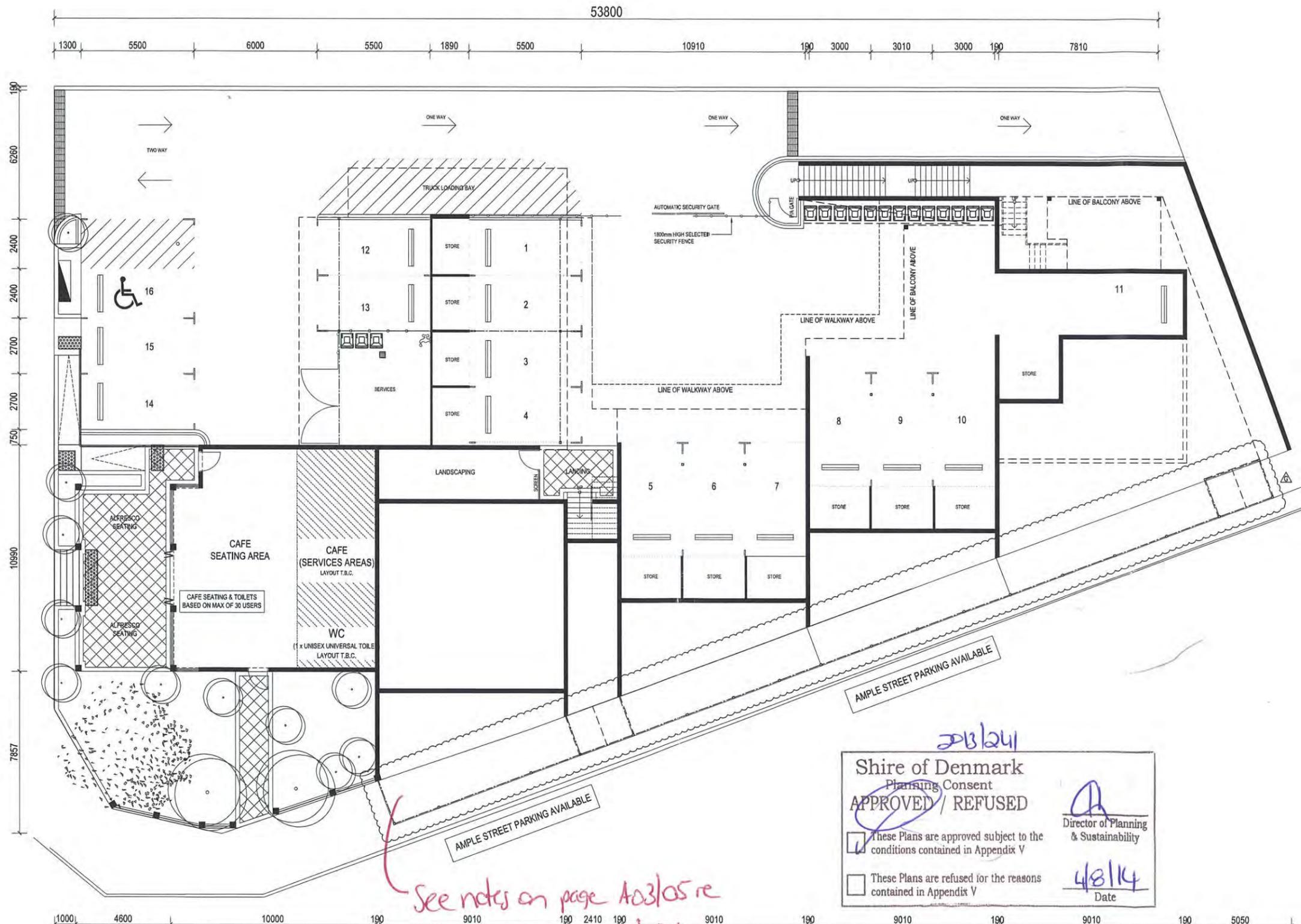
1. The preliminary issue is answered as follows:

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



FLOOR AREAS	
CAFE SEATING	65.47 m2
CAFE KITCHEN/ABLUTIONS	43.85 m2
CAFE ALFRESCO	44.96 m2
CAFE TOTAL	154.28 m2
UNIT 1 STORE	4.88 m2
UNIT 1 CARPORT	14.85 m2
UNIT 2 STORE	4.89 m2
UNIT 2 CARPORT	14.85 m2
UNIT 3 STORE	4.89 m2
UNIT 3 CARPORT	14.85 m2
UNIT 4 STORE	5.04 m2
UNIT 4 CARPORT	14.85 m2
UNIT 5 STORE	6.00 m2
UNIT 5 CARPORT	16.50 m2
UNIT 6 STORE	6.21 m2
UNIT 6 CARPORT	16.50 m2
UNIT 7 STORE	6.00 m2
UNIT 7 CARPORT	16.50 m2
UNIT 8 STORE	6.00 m2
UNIT 8 CARPORT	16.50 m2
UNIT 9 STORE	6.21 m2
UNIT 9 CARPORT	16.50 m2
UNIT 10 STORE	6.00 m2
UNIT 10 CARPORT	16.50 m2
UNIT 11 STORE	6.00 m2
UNIT 11 CARPORT	16.50 m2

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: 0.60
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.

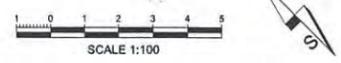
NOTE 5.
MAX HEIGHT (TOP OF WALL): 9.0m
ACTUAL HEIGHT (TOP OF WALL): 6.4m
MAX HEIGHT (TOP OF ROOF): 12.0m
ACTUAL HEIGHT (TOP OF ROOF): 9.7m

20/12/14
Shire of Denmark
Planning Consent
APPROVED / REFUSED
 These Plans are approved subject to the conditions contained in Appendix V
 These Plans are refused for the reasons contained in Appendix V
Director of Planning & Sustainability
4/8/14
Date

*See notes on page A03/05 re
reundah amensons/walk.*

RECEIVED
09 JUN 2014

SITE LAYOUT | UNDERCROFT LAYOUT
SCALE 1:100



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ISSUE FOR PLANNING APPROVAL

REV	DESCRIPTION	CHK. BY	DRN. BY	DATE
G	COVERED WALKWAY PROPOSAL	A.L.	H.N.	27.05.2014
F	AMENDMENTS TO LAYOUT	A.L.	H.N.	30.10.2013

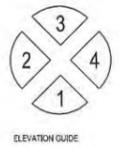
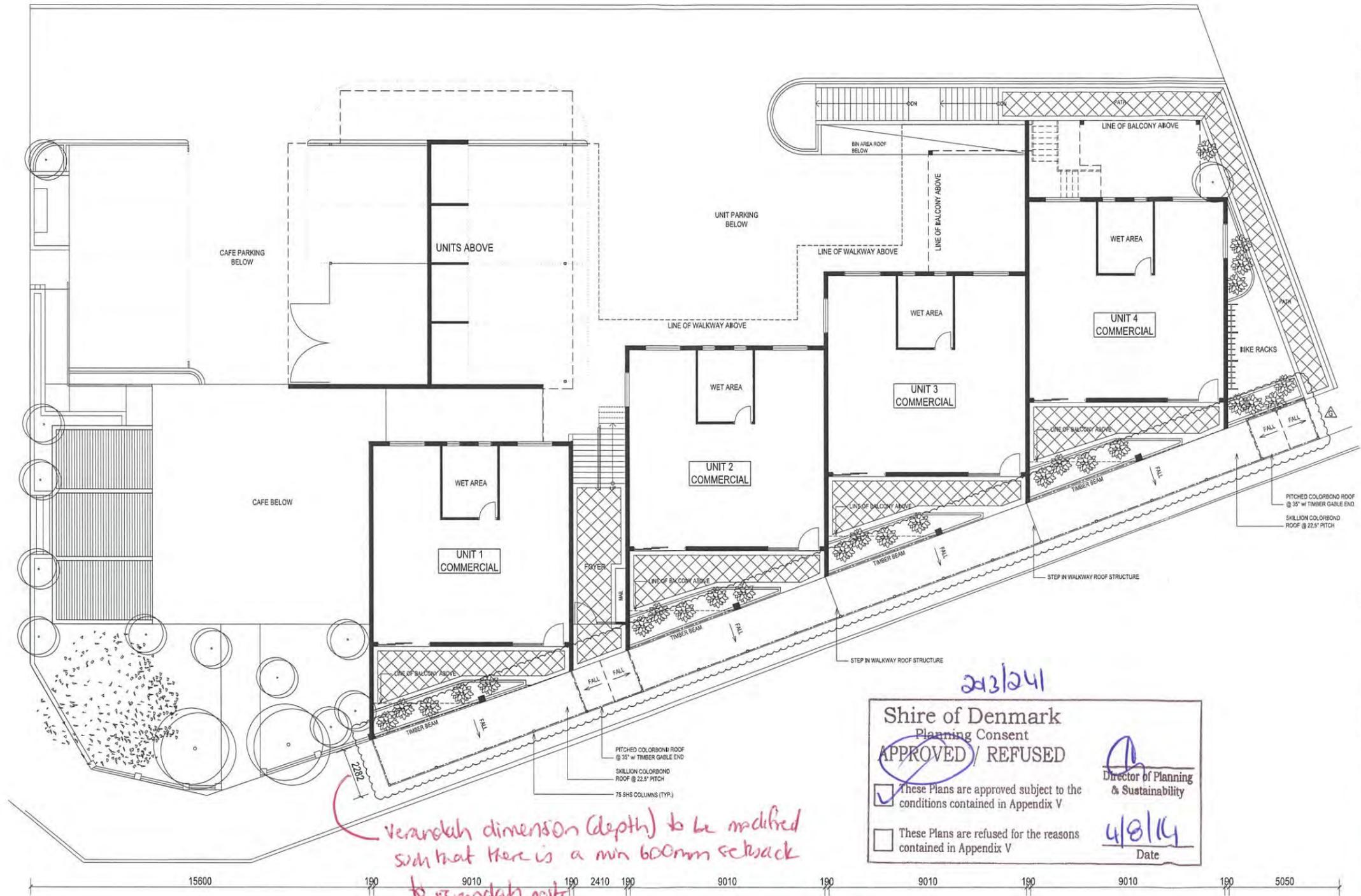
REV	DESCRIPTION	CHK. BY	DRN. BY	DATE
E	ISSUE FOR PLANNING APPROVAL	A.L.	H.N.	27.09.2013
D	ISSUE FOR DISCUSSION	A.L.	H.N.	11.09.2013
C	ISSUE FOR APPROVAL	P.M.	A.L.	15.08.2013
B	AMENDMENTS TO LAYOUT	A.L.	H.N.	07.08.2013
A	PRELIMINARY ISSUE FOR DISCUSSION	P.M.	A.L.	24.05.2013

PROJECT DESIGNER:
PAUL MESCHIATI AND ASSOCIATES Pty Ltd
BUILDING DESIGNERS AND PLANNERS
Suite 30, 18 Stirling Way
Melbourne, Victoria 3003
Phone: (03) 9398 0700
Fax: (03) 9398 0708
Email: paul.meschiati@paad.com.au

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

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

FLOOR AREAS	
UNIT 1 OFFICE SPACE	81.18 m ²
UNIT 1 OUTDOOR	22.39 m ²
UNIT 1 TOTAL	103.14 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

23/24

Shire of Denmark
Planning Consent
APPROVED / REFUSED

These Plans are approved subject to the conditions contained in Appendix V

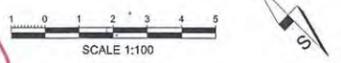
These Plans are refused for the reasons contained in Appendix V

Director of Planning & Sustainability
[Signature]
4/8/14
Date

Verandah dimension (depth) to be modified such that there is a min 600mm setback to kerbside paths from the face of the kerb - noting Strickland Street footpath is only 2.28 metres from boundary line to face of kerb (not 3 metres as drawn here).

RECEIVED

09 JUN 2014



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ISSUE FOR
PLANNING
APPROVAL

REV	DESCRIPTION	CHK. BY	DRN. BY	DATE	REV	DESCRIPTION	CHK. BY	DRN. BY	DATE
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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					
G	COVERED WALKWAY PROPOSAL	A.L.	H.N.	27.05.2014					
F	AMENDMENTS TO LAYOUT	A.L.	H.N.	30.10.2013					

PROJECT DESIGNER:
PAUL MESCHIATI AND ASSOCIATES Pty Ltd
BUILDING DESIGNERS AND PLANNERS
Suite 20, 15 Selkirk Way
Melbourne, Victoria 3000
Phone: (03) 8333 8700
Fax: (03) 8333 8701
Email: p.meschiati@pma.com.au

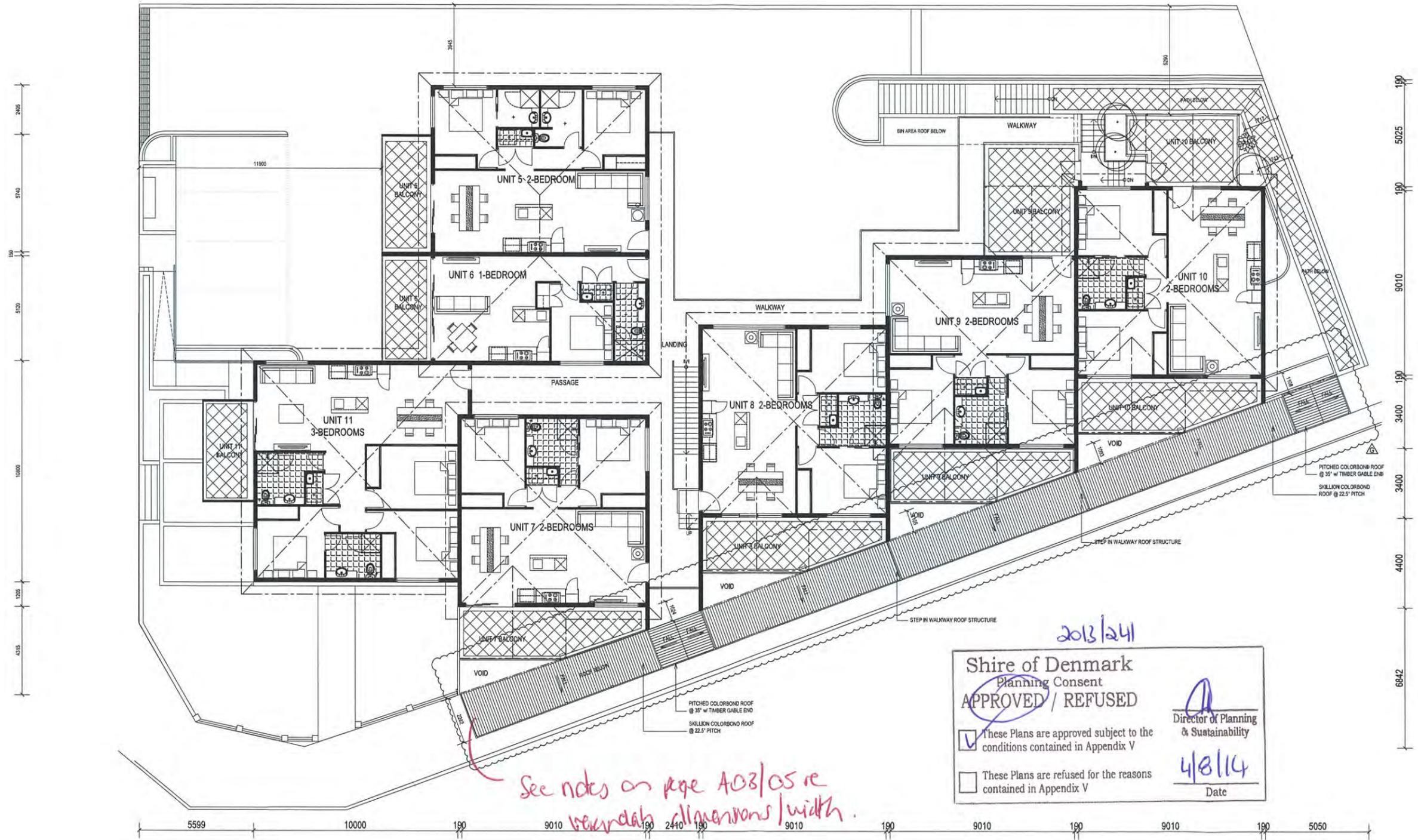
PROPOSED MIXED-USE DEVELOPMENT

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

DRAWN: A.L.
PROJECT NO: 342-013
REVISION: G
DATE: 27.05.2014
SHEET NO: A03 / 05

Note of on Planning Approval notice.

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	16.14 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	100.24 m ²
UNIT 11 BALCONY	12.50 m ²
UNIT 11 TOTAL	112.74 m ²



*See notes on page A03/05 re
structural dimensions / width.*

2013/24

Shire of Denmark
Planning Consent
APPROVED / REFUSED

These Plans are approved subject to the conditions contained in Appendix V

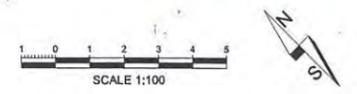
These Plans are refused for the reasons contained in Appendix V

Director of Planning & Sustainability
[Signature]
Date: **4/8/14**

RECEIVED

09 JUN 2014

FIRST FLOOR LAYOUT
SCALE 1:100



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ISSUE FOR
PLANNING
APPROVAL

REV	DESCRIPTION	CHK. BY	DRN. BY	DATE	REV	DESCRIPTION	CHK. BY	DRN. BY	DATE
E	ISSUE FOR PLANNING APPROVAL				A.L.	H.N.			27.09.2013
D	ISSUE FOR DISCUSSION				A.L.	H.N.			11.09.2013
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					

PROJECT DESIGNER:
PAUL MESCHIATI AND ASSOCIATES Pty Ltd
BUILDING DESIGNERS AND PLANNERS

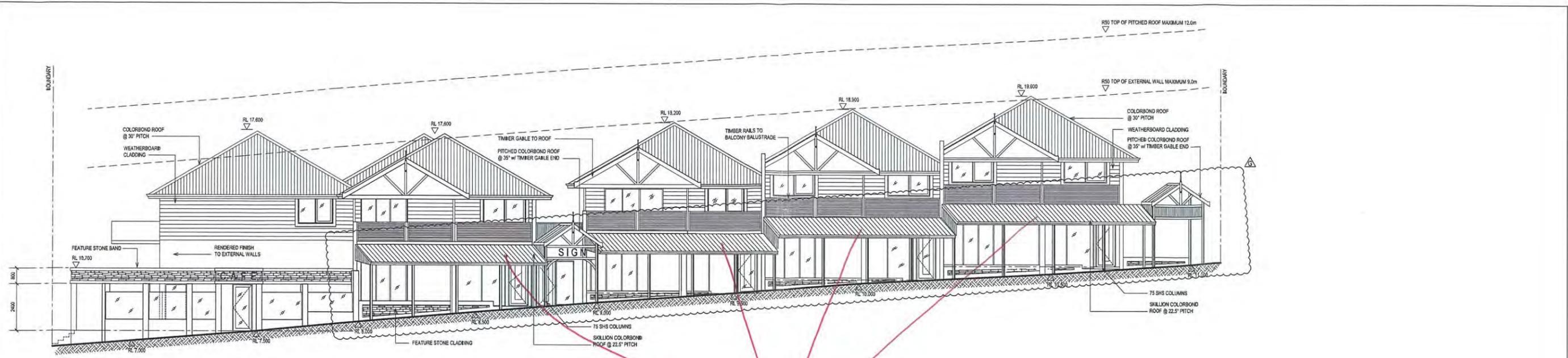
Scale: 1:100 (as per)
Address: 1000 Adelaide Street
Phone: 08 9388 0708
Email: paul@meschiati.com.au

PROPOSED MIXED-USE DEVELOPMENT

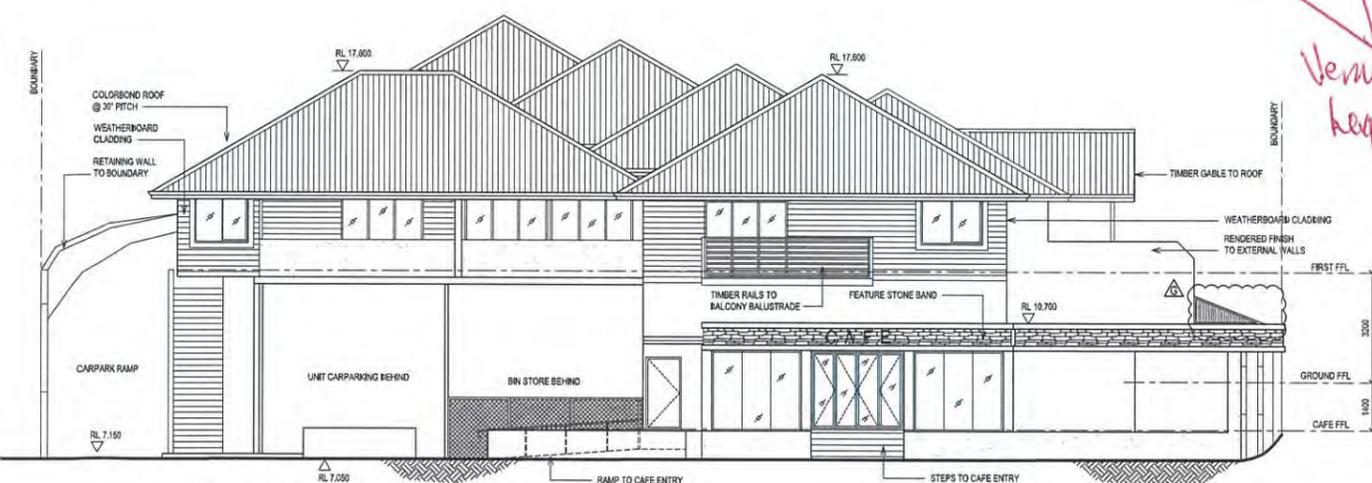
PROJECT CLIENT:
GRAEME J. ROBERTSON

LOT 200 STRICKLAND STREET
DENMARK | WESTERN AUSTRALIA

DATE:	REVISED:
A.L.	G
PROJECT NO:	27.05.2014
342-013	
SHEET NO:	
	A04 / 05

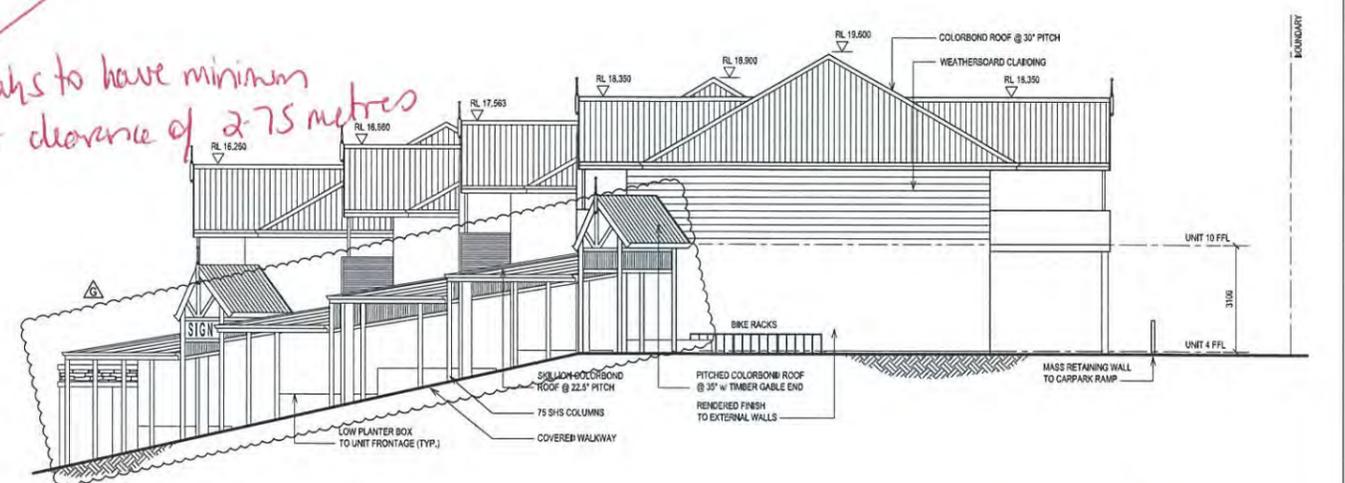


ELEVATION No. 1 - STRICKLAND STREET
SCALE 1:100

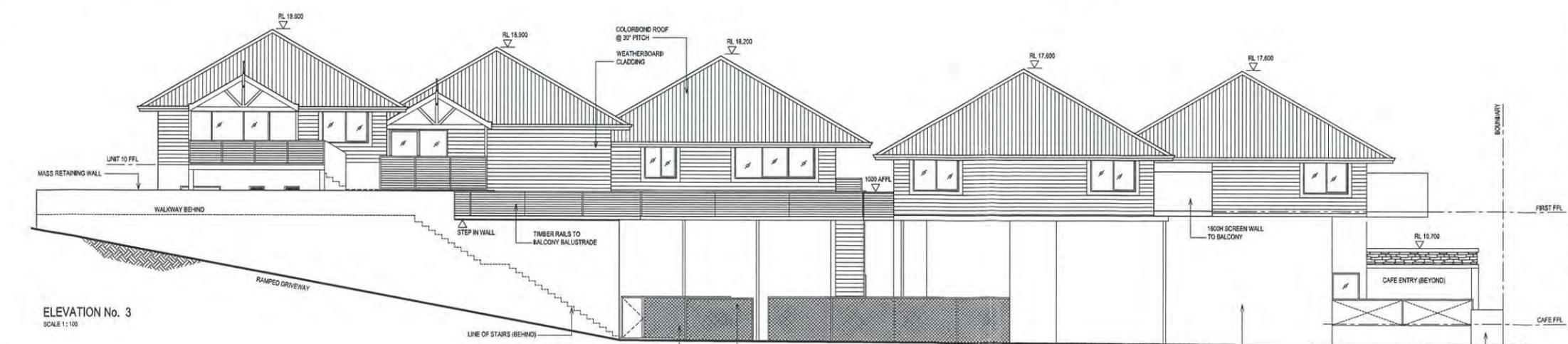


ELEVATION No. 2 - NORTH STREET
SCALE 1:100

Venue has to have minimum height clearance of 2.75 metres



ELEVATION No. 4
SCALE 1:100



ELEVATION No. 3
SCALE 1:100

2014 2013/24

Shire of Denmark
Planning Consent
APPROVED / REFUSED

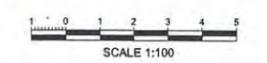
These Plans are approved subject to the conditions contained in Appendix V

These Plans are refused for the reasons contained in Appendix V

[Signature]
Director of Planning & Sustainability
4/8/14
Date

RECEIVED

09 JUN 2014



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

PROJECT DESIGNER:
PAUL MESCHIATI AND ASSOCIATES Pty Ltd
BUILDING DESIGNERS AND PLANNERS
Suite 30, 1818 King Street
Perth, Western Australia 6000
Phone: (08) 9439 0700
Fax: (08) 9439 0710
Email: p.meschiati@pma.com.au

PROPOSED MIXED-USE DEVELOPMENT

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

DATE: 27.05.2014
REVISION: G
SHEET NO.: A05/05

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 R40 or greater, within mixed use development and/or activity centres

1 R-Code	2 Maximum plot ratio	3 Minimum open space (% of site)	4 Minimum primary street boundary setback (m)	5 Secondary street setback (m)	6 Maximum height ^a (m)			7 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
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**.

**SCHEDULE OF SUBMISSIONS: MIXED USE DEVELOPMENT WITH "R40" DENSITY CODING
NO. 3 (LOT 200) STRICKLAND STREET, DENMARK (A1483; 2015/216)**

Submission Number	Name & Address	Verbatim Submission	Planning Services Comment
S1	<p>Details omitted as per Council Policy.</p> <p>Submitter is an adjoining landowner.</p>	<p>Please find below some viewpoints regarding the proposed Mixed Used Development on 3 Strickland Street:</p> <ul style="list-style-type: none"> • Lot 200 Development Project is too densely planned to the detriment of neighbouring lot 201 where the existing house is just inches from the boundary. From a density of R25 allocated in the Scheme map, later upgraded to R30. Now the developer of the Project proposed R40 allocating them to build 8 dwellings instead of 5. • The setback required at the rear is 6 m but the proposal has it at 4.4 m. Again this is not meeting the requirement and is detrimental to tranquility as the noise of such a densely dwellings and office/cafe will be extensive. The incursion is a balcony where typically people will assemble and partying. Balcony may also be used as clothing drying area despite internal clothes drying facilities in the proposal. • There is insufficient car parking provided in accordance to the standard in the proposal. As a result cars will be parked constantly on the street and likely in front of Lot 201. In particular offices will typically need more car park than the allocated car bays in the proposal. • Visual privacy will certainly be an issue particularly if the requirement of external wall height exceed that of the R40 coding by 1.5 m. • The proposal mention potential offices or cafe/restaurants. Restaurant/cafes normally have high rubbish storage requirement. Without the rubbish facility adequately designed it is likely that rubbish will spill out outside the contained rubbish bin. Smell is likely to distort the air in the surroundings. <p>In a nutshell the proposal does not take into account that there is an existing dwelling rather close to the boundary. There is also no mentioning how and if the boundary is going to be fenced up.</p>	<ul style="list-style-type: none"> • Refer comments in officer report regarding density coding. • Refer comments in officer report regarding rear setback. • Refer comments in officer report regarding car parking shortfall. • Refer comments in officer report regarding visual privacy setback. • The current proposal does not entail a restaurant/café – if proposed this would need to be the subject of a separate development application to the Shire and matters such as rubbish storage facilities associated with such use (given different to that of an office development) would be assessed at that time. • Boundary fencing is not a planning consideration with this proposal and generally is not a planning matter unless required as a condition of development approval – this is governed by the Dividing Fences Act and the Shire's Local Laws Relating to Fencing.

Response to advertising on Lot 200 Strickland Street, Denmark'

Lot 201 North Street Denmark is owned by a KL resident Mr Edward Demisima who is holding the property as a rental while waiting for a development opportunity. I had arranged with him, through his agent John Ricketts, that if the market was strong enough I would include his land in the development by the exchange of two finished units in consideration for his land content while I took the responsibility for the development of both sites.

There is a right of way separating the two properties and the chance of noise effecting his tenants from the owner occupiers on our development is remote. So far as the clothes drying is concerned it is understandable from a KL resident where this is the norm which is not the case in Denmark and is against the zoning bylaws.

There is abundant parking in the vicinity and the chance of car parking in North Street effecting his rental tenants would be minimal. The effect on his visual amenity from the development on Lot 200 could not be compared with the visibility across his rear boundary from the public carpark behind the liquor store which is 2 metres higher than the yard on Lot 201.

The eight owners of the new development will be acutely aware of any overflow rubbish problems (and have them remedied) long before it would affect Mr Demasimas tenants in Lot 201.

In a nutshell, this seems to be sour grapes because the development on Lot 200 is preceding without including Lot 201 in the overall planning. However, I would be in favour of a two metre high wall along the boundary if it will resolve my neighbours concerns.

Tables

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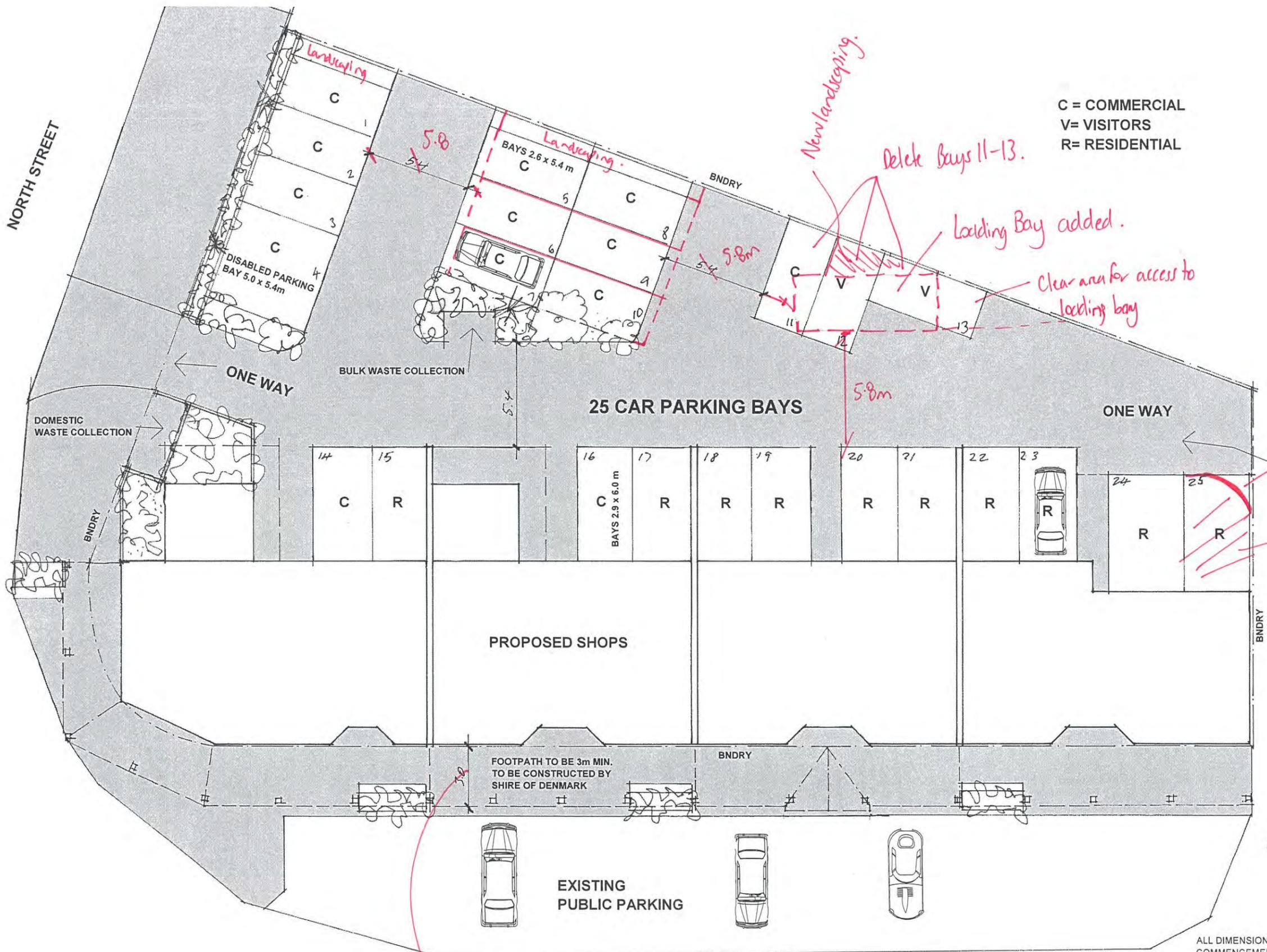
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12 April 2016 - Attachment 8.1.3e



C = COMMERCIAL
 V = VISITORS
 R = RESIDENTIAL

SITE PLAN 1:200
PARKING LAYOUT

ALL DIMENSION ARE TO BE CHECKED ON SITE PRIOR TO COMMENCEMENT OF CONSTRUCTION OR FABRICATION
 ALL WORK TO BE CARRIED OUT IN ACCORDANCE WITH THE LATEST AUSTRALIAN STANDARDS INCLUDING AMENDMENTS

PROPOSED MIXED-USE DEVELOPMENT LOT 200
 CNR. STRICKLAND AND NORTH STREET SHIRE OF DENMARK
 GRAEME ROBERTSON PO BOX 140 CLAREMONT 6910
 HERMANN FEHR DESIGN 15/03/2016 REV.24/03/20
 37 STRICKLAND STREET DENMARK WA 6333
 PRINT SIZE A3

Footpath modifications and verandahs shown on this plan to be the subject of separate consideration by Council.

Received 24/3/2016