

DECISION OF 3712th COUNCIL MEETING HELD ON MONDAY 10 DECEMBER 2018

474. **CiS03: Crows Nest Over Station Development**

Report of Geoff Mossemeneer, Executive Planner

A concept State Significant Development (SSD) Application for Over Station Development (OSD) comprising development of 3 sites integrated with the future Crows Nest Station has been lodged with the Department of Planning for determination with the Minister being the consent authority.

The application is on public exhibition until 13 December 2018 for comment. In accordance with Council's resolution an extension of the exhibition period was sought. The Department has not responded at the time of writing this report.

There are several references in the application that make clear that as far as Metro is concerned, their contention is that they will not pay their share of the Special Infrastructure Contribution (SIC) for key infrastructure, nor S7.11 (formerly S94) contributions on the basis of the wider benefit of the Metro. A voluntary planning agreement (VPA) needs to be negotiated with Council prior to any development application being submitted.

Council's practice is to insist on a planning proposal where there is a significant variation of controls to allow a proper and thorough process with regard to Community Consultation similar to the process that was involved when the control was adopted by Council. It is noted that there are two zoning plans on exhibition that are yet to be assessed against Community and Council feedback so the proposed controls are not certain or imminent.

There is a real concern that the proposal will enable buildings that are out of scale with the fine grain nature and village atmosphere of Crows Nest, overshadows Ernest Place and Willoughby Road and brings limited employment and public benefits to the area. Greater collaboration with local government and the community is needed to refine the 2036 Plan, the state levy (SIC) and Metro rezoning proposal to ensure growth is well managed and supported by the timely delivery of upgraded open space, recreation and social infrastructure.

After these plans are resolved after thorough assessment of community and Council feedback, controls with regard to height, FSR and overshadowing can be established, then a Development Application can be considered and determined.

The purpose of this report is to describe the proposal and identify concerns or issues that need to be addressed in the final SSD applications for the OSD. This report provides the basis of Council's submission, subject to Council's endorsement.

Sydney Metro does not intend contribute to state and local infrastructure contributions (the Special Infrastructure Contribution and Council's Section 7.11 Contribution respectively) arising from the additional dwellings and commercial floorspace proposed. As such there will be significant funding shortfalls in meeting the additional demand placed on community facilities. The contributions total over \$12.5m in forgone infrastructure funding, as follows:

- The estimated SIC contribution is worth \$5,285,000 (based on \$15,100 per dwelling for 350 dwellings); and
- The estimated Section 7.11 contribution (formerly known as Section 94) payable to Council is worth \$7,245,000 (based on 350 dwellings and 17,900m² of commercial space).

Recommending:

1. THAT Council make a submission to the concept State Significant Development Application for the Crows Nest Metro Over Station Development.

2. THAT the discussion and assessment contained in this report, be the basis of Council's submission to the Department of Planning and Environment.

Mr I Grey addressed Council.

The Recommendation was moved by Councillor Baker and seconded by Councillor Beregi.

The Motion was put and **carried**.

Voting was as follows:

For/Against 7/3

Councillor	Yes	No	Councillor	Yes	No
Gibson		N	Barbour	Y	
Beregi	Y		Drummond		N
Keen	Y		Gunning		N
Brodie	Y		Mutton	Y	
Carr	Y		Baker	Y	

RESOLVED:

- 1. THAT** Council make a submission to the concept State Significant Development Application for the Crows Nest Metro Over Station Development.
- 2. THAT** the discussion and assessment contained in this report, be the basis of Council's submission to the Department of Planning and Environment.



Report to General Manager

Attachments:

1. Plans
2. Clause 4.6 requests

SUBJECT: Crows Nest Over Station Development

AUTHOR: Geoff Mossemeneer, Executive Planner

ENDORSED BY: Joseph Hill, Director City Strategy

EXECUTIVE SUMMARY:

A concept State Significant Development (SSD) Application for Over Station Development (OSD) comprising development of 3 sites integrated with the future Crows Nest Station has been lodged with the Department of Planning for determination with the Minister being the consent authority.

The application is on public exhibition until 13 December 2018 for comment. In accordance with Council's resolution an extension of the exhibition period was sought. The Department has not responded at the time of writing this report.

There are several references in the application that make clear that as far as Metro is concerned, their contention is that they will not pay their share of the Special Infrastructure Contribution (SIC) for key infrastructure, nor S7.11 (formerly S94) contributions on the basis of the wider benefit of the Metro. A voluntary planning agreement (VPA) needs to be negotiated with Council prior to any development application being submitted.

Council's practice is to insist on a planning proposal where there is a significant variation of controls to allow a proper and thorough process with regard to Community Consultation similar to the process that was involved when the control was adopted by Council. It is noted that there are two zoning plans on exhibition that are yet to be assessed against Community and Council feedback so the proposed controls are not certain or imminent.

There is a real concern that the proposal will enable buildings that are out of scale with the fine grain nature and village atmosphere of Crows Nest, overshadows Ernest Place and Willoughby Road and brings limited employment and public benefits to the area.

Greater collaboration with local government and the community is needed to refine the 2036 Plan, the state levy (SIC) and Metro rezoning proposal to ensure growth is well managed and supported by the timely delivery of upgraded open space, recreation and social infrastructure.

After these plans are resolved after thorough assessment of community and Council feedback, controls with regard to height, FSR and overshadowing can be established, then a Development Application can be considered and determined.

The purpose of this report is to describe the proposal and identify concerns or issues that need to be addressed in the final SSD applications for the OSD. This report provides the basis of Council's submission, subject to Council's endorsement.

FINANCIAL IMPLICATIONS:

Sydney Metro does not intend contribute to state and local infrastructure contributions (the Special Infrastructure Contribution and Council's Section 7.11 Contribution respectively) arising from the additional dwellings and commercial floorspace proposed. As such there will be significant funding shortfalls in meeting the additional demand placed on community facilities. The contributions total over \$12.5m in forgone infrastructure funding, as follows:

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- The estimated Section 7.11 contribution (formerly known as Section 94) payable to Council is worth \$7,245,000 (based on 350 dwellings and 17,900m² of commercial space).

RECOMMENDATION:

1.THAT Council make a submission to the concept State Significant Development Application for the Crows Nest Metro Over Station Development.

2.THAT the discussion and assessment contained in this report, be the basis of Council's submission to the Department of Planning and Environment.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

Direction: 1. Our Living Environment

Outcome: 1.5 Public open space, recreation facilities and services that meet community needs

Direction: 2. Our Built Environment

Outcome: 2.1 Infrastructure, assets and facilities that meet community needs
2.2 Improved mix of land use and quality development through design excellence
2.3 Vibrant, connected and well maintained streetscapes and villages that build a sense of community
2.5 Sustainable transport is encouraged

Direction: 3. Our Economic Vitality

Outcome: 3.1 Diverse, strong, sustainable and vibrant local economy
3.2 North Sydney CBD is one of Australia's largest commercial centres

BACKGROUND

In January 2017, the construction of the initial portion of Sydney Metro Stage 2 (Chatswood to Sydenham) was approved by the Minister for Planning under Part 5.1 (now Division 5.2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as a Critical State Significant Infrastructure project (SSI 15_7400). The project designated as Critical State Significant Infrastructure (hereafter referred to as the CSSI Approval) includes the delivery of seven new Metro stations, including a new station at Crows Nest.

While the Crows Nest Station and Over Station Development (OSD) will form a single Integrated Station Development, the planning pathways defined under the EP&A Act require separate assessment for each individual component of the development. In this regard, the approved station works (CSSI Approval) are subject to the provisions of Part 5.1 of the EP&A Act (now referred to as Division 5.2) and the OSD component is subject to the provisions of Part 4 of the EP&A Act as a concept DA under Division 4.4 of the Act.

A concept State Significant Development (SSD) Application for Over Station Development (OSD) comprising 3 sites integrated with the future Crows Nest Station has been lodged with the Department of Planning for determination with the Minister being the consent authority. The current provisions of the EP&A Act regarding SSD's result following the deletion of Part 3A Major Infrastructure and other projects provisions from the Act.

The application is on public exhibition until 13 December 2018 for comment.

The purpose of this report is to describe the proposal and identify any concerns or issues that need to be addressed in the final SSD applications for the OSD.

CONSULTATION REQUIREMENTS

Community engagement is required to be undertaken by the Department of Planning as the Consent Authority. The notification area was established by the Department with names and addresses of owners and occupiers provided by Council, resulting in approximately 1466 notifications.

SUSTAINABILITY STATEMENT

This report deals with (draft) State Government Legislation/Policy which may have a substantial effect on sustainability. This report is for information purposes only; a sustainability assessment was not undertaken.

DETAIL

1. Overview

The following details are provided from the OSD application EIS. The Crows Nest Station precinct has been divided into three separate sites described below:

- **Site A:** The block bound by the Pacific Highway, Hume Street, Oxley Street, and Clarke Lane (497-521 Pacific Highway, Crows Nest). Site A has a consolidated site area of 3,877m².
- **Site B:** The block on the southern corner of Hume Street and the Pacific Highway (477-495 Pacific Highway, Crows Nest). Site B has a consolidated site area of 1,871m².
- **Site C:** One lot on the north-western corner of Hume Street and Clarke Street (14 Clarke Street, Crows Nest). Site C has a site area of 608m².

Sites A, B and C have a combined site area of 6,356m². The consolidated site has frontages of approximately 180 metres to the Pacific Highway, 25 metres to Hume Street and 25 metres to Clarke Street.



Source: OSD application EIS

1.1 Legal Description of sites

Address	Lot and DP	Lot size
Site A		
497 Pacific Highway, Crows Nest	Lot 2 DP575046	322m ²
501 Pacific Highway, Crows Nest	Lot 1 DP575046	308m ²
503 Pacific Highway, Crows Nest	Lot 3 DP655677	319m ²
507 Pacific Highway, Crows Nest	Lot 4 DP1096359	321m ²
511 Pacific Highway, Crows Nest	SP71539	940m ²
521 Pacific Highway, Crows Nest	Lot B DP374468	1,007m ²
521 Pacific Highway, Crows Nest	Lot A DP374468	660m ²
Total Area Site A		3,877m ²
Site B		
477 Pacific Highway, Crows Nest	Lot 100 DP 747672	517m ²
479 Pacific Highway, Crows Nest	Lot 101 DP 747672	704m ²
491-495 Pacific Highway, Crows Nest	Lot A DP442804	650m ²
Total Area Site B		1,871m ²
Site C		
14 Clarke Street, Crows Nest	Lot 1 DP1223850	608m ²
TOTAL AREA SITES A, B AND C		6,356m²

Source: OSD application EIS

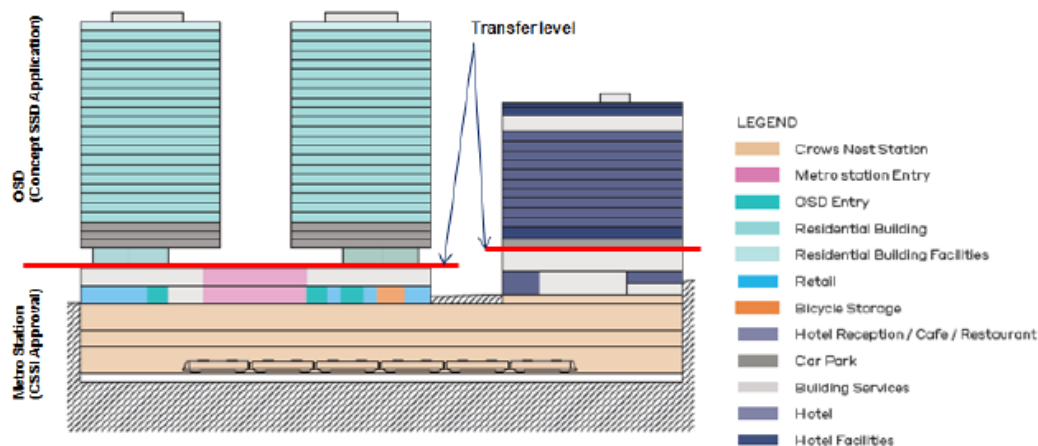
1.2 Planning relationship between Crows Nest Station and Crows Nest OSD

While the Crows Nest Station and OSD will form a single integrated station development, the planning pathways defined under the EP&A Act require separate assessment for each component of the development. In this regard, the approved station works (CSSI Approval) are subject to the provisions of Part 5.1 of the EP&A Act (now referred to as Division 5.2) and the OSD component is subject to the provisions of Part 4 of the EP&A Act.

The station works under the CSSI Approval include the construction of below and above ground structures necessary for delivering the station and also enabling construction of the integrated OSD. This includes but is not limited to:

- demolition of the existing development
- excavation
- station structure including concourse and platforms
- lobbies
- retail spaces within the station
- public domain improvements
- pedestrian through-site link
- access arrangements including vertical transport such as escalators and lifts
- structural and service elements and relevant space provisioning necessary for constructing OSD, such as columns and beams, space for lift cores, plant rooms, access, parking and building services.

The vertical extent of the approved station works is defined by the 'transfer slab' level (which for Crows Nest is defined by RL 100.40 on Site A, RL 106.5 on Site B and RL 98.5 on Site C), above which would sit the OSD.



Source: OSD application EIS

The void required to service the station is similar in size and scope to that which can be viewed on the Airport line. This restricts the amount of development associated with the OSD that can be placed underground.

1.3 The concept SSD Application

The concept SSD Application seeks concept approval in accordance with section 4.22 of the EP&A Act for the OSD above the approved Crows Nest Station. This application establishes the planning framework and strategies to inform the detailed design of the future OSD and specifically seeks planning approval for:

Maximum building envelopes for Sites A, B and C, including street wall heights and setbacks as illustrated in the plans prepared by Foster + Partners for Sydney Metro. Indicative plans are attached for Council's information.

Maximum building heights:

- **Site A:** RL 183m or equivalent of 27 storeys (includes two station levels and conceptual OSD space in the podium approved under the CSSI Approval)
- **Site B:** RL 155m or equivalent of 17 storeys (includes two station levels and conceptual OSD space approved under the CSSI Approval)
- **Site C:** RL 127m or 8 storeys (includes two station levels and conceptual OSD space approved under the CSSI Approval)

The maximum building heights defined above are measured to the top of the roof slab and exclude building parapets which will be resolved as part of future detailed SSD Application(s) Maximum height for a building services zone on top of each building to accommodate lift overruns, rooftop plant and services:

- **Site A:** RL 188 or 5m
- **Site B:** RL 158 or 3m
- **Site C:** RL 132 or 5m

The use of the space within the building services zone is restricted to non-habitable floor space.

For the purposes of the concept SSD Application, the maximum height of the building envelope does not make provision for the following items, which will be resolved as part of the future detailed SSD Application(s):

- *communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like, which are excluded from the calculation of building height pursuant to the standard definition in NSLEP 2013*
- *architectural roof features, which are subject to compliance with the provisions in Clause 5.6 of NSLEP 2013, and may exceed the maximum building height, subject to development consent.*

Maximum gross floor area (GFA) of 55,400m² for the OSD comprising the following based on the proposed land uses:

- **Site A:** Residential accommodation- maximum 37,500m² (approximately 350 apartments)
- **Site B:** Hotel / tourist accommodation and associated conference facilities or commercial office premises GFA- maximum of 15,200m² (approximately 250 hotel rooms)
- **Site C:** Commercial office premises GFA- maximum of 2,700m²
- **Site A or C:** social infrastructure GFA inclusive of the GFA figures nominated above for each site, with provision optional as follows:
 - Site A:** podium rooftop (approximately 2,700m²)
 - Site C:** three floors and rooftop (approximately 1,400m²)

Note: GFA figures exclude GFA attributed to the station and station retail space approved under the CSSI Approval

Minimum non-residential floor space ratio (FSR) for the OSD across combined Sites A, B and C of 2.81:1 or the equivalent of 17,900m²

The use of approximate conceptual areas associated with the OSD which have been provisioned for in the Crows Nest station box (CSSI Approval) including areas above ground level (i.e. OSD lobbies and associated spaces)

A maximum of 150 car parking spaces on Sites A and B associated with the proposed commercial, hotel and residential uses

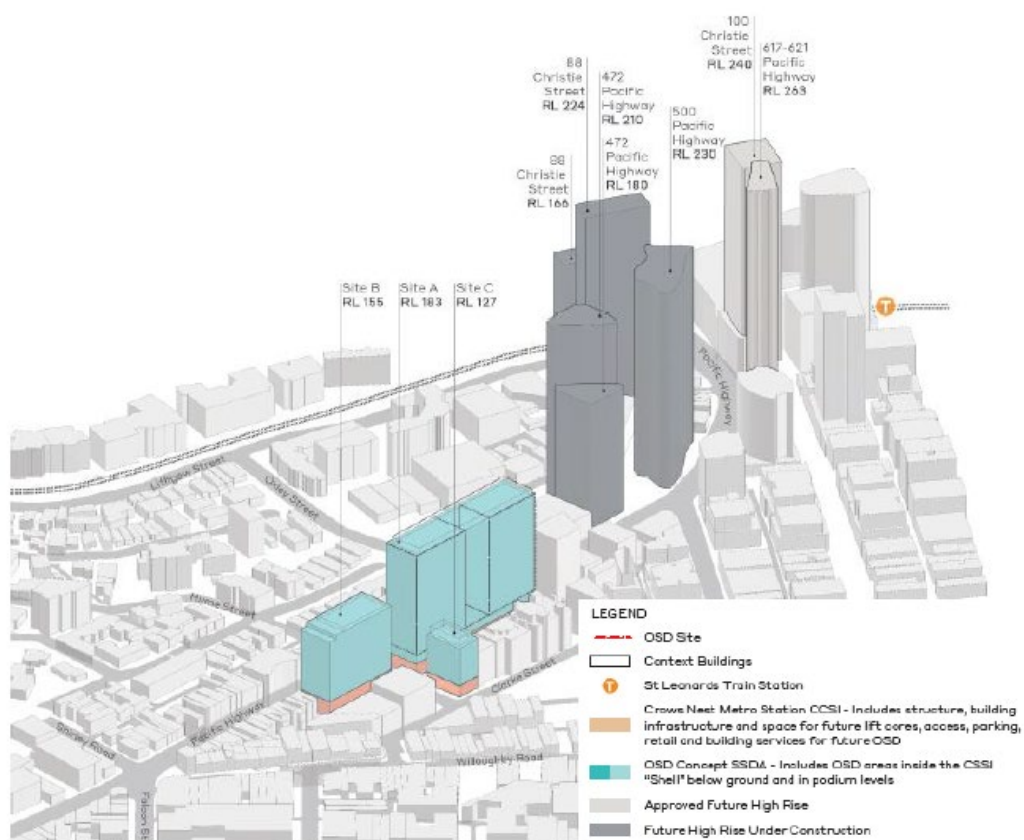
As this concept SSD Application is a staged development pursuant to section 4.22 of the EP&A Act, future approval would be sought for detailed design and construction of the OSD. A concept indicative design, showing a potential building form outcome at the site, has been provided as part of this concept SSD Application.

As indicated above, the concept SSD Application exceeds the relevant built form controls of the NSLEP 2013, which were gazetted prior to the announcement of the Sydney Metro project. However, it aligns with the **Rezoning Proposal for the Metro site released by DPE in October 2018**. Accordingly, the concept SSD Application includes a **variation request under Clause 4.6 of the NSLEP 2013 in relation to the existing building height and non-residential floor space ratio controls as an interim measure**. The Clause 4.6 requests are attached for Council's information.

As this is the first stage in the assessment process, consent is not sought for any construction or other physical work. If this concept SSD Application is approved, a detailed development application or applications will be submitted for construction of the development.



Source: OSD application EIS – view to the north west across Hume Street Park



Source: OSD application EIS – view to the north west across Hume Street Park
It is noted that 100 Christie Street is incorrect with regard to height and location

2. Site Context – St Leonards and Crows Nest Planned Precinct

North Sydney Council prepared the *Crows Nest Planning Study* in 2010 to direct future development and infrastructure provision in Crows Nest. This study recognised the need for updated planning controls to support future development in Crows Nest.

Council commenced further studies in 2016 which focused on identifying localities or streets important to the community and identifying land use, built form and public domain priorities, which included the preparation of the *Sydney Metro Planning Study (2017)* and the *Crows Nest Placemaking and Principles Study (2016)*.

In July 2016, DPE announced it would also be undertaking strategic planning investigations into revitalising the surrounds of St Leonards railway station and the metro station at Crows Nest. This process resulted in the announcement of a St Leonards and Crows Nest Priority Precinct in June 2017. In August 2017, DPE released the *St Leonards and Crows Nest Station Precinct Interim Statement (Interim Statement)*. These strategic investigations identify redevelopment sites within the precinct and provide the strategic planning framework to guide future development and infrastructure delivery. It is noted that the Crows Nest station precinct is identified in the Interim Statement as being located in the ‘St Leonards and Crows Nest Station’ character area which is described as a high density centre with new development providing opportunities for a mix of commercial, retail, community and/or childcare and public domain uses that complement St Leonards and Crows Nest.

In October 2018, DPE released a *draft Rezoning Proposal for the Crows Nest Sydney Metro* site. This Rezoning Proposal increases the relevant planning controls commensurate with the built form proposed in this concept SSD Application. There is a **3rd December** deadline for community feedback. In accordance with Council’s resolution an extension of the exhibition period was sought. The Department has not responded at the time of writing this report.

The release of the Rezoning Proposal was simultaneous to the release of other draft strategic planning documents including the *St Leonards and Crows Nest 2036 Draft Plan*. The 2036 Draft Plan recommends significant changes to the planning controls for the immediate area surrounding the Crows Nest OSD site subject to consideration of community feedback to its exhibition. The 3rd December deadline for feedback has been revised to **8 February 2019**.

The *proposed Special Infrastructure Contribution (SIC) for St Leonards and Crows Nest* is also currently on exhibition. All submissions will be considered and a report provided to the Minister for Planning before the Determination is made. Once the SIC for St Leonards and Crows Nest is in place, the Department will consult with other State Government agencies and Lane Cove Council, North Sydney Council and Willoughby Council to determine the timing of project delivery, considering current and forecast development rates and infrastructure capacity.

The deadline for feedback to the proposed SIC is also **8 February 2019**.

A Special Infrastructure Contribution (SIC) is paid by developers within Special Contribution Areas (SCAs) to ensure funding for key infrastructure required to support growing communities. Special Infrastructure Contributions allow priority infrastructure to be funded and delivered at the same time development is occurring, ensuring new and growing communities have access to the infrastructure and services they need in a timely manner. By identifying priority infrastructure items to be funded by SIC before rezoning and collecting contributions from developers at the time of development application, the Department can coordinate the

delivery of roads, schools, health facilities, open space, emergency services, transport, and pedestrian and cycling connections before existing infrastructure can no longer keep up.

A Special Infrastructure Contribution (SIC) is proposed for St Leonards and Crows Nest to provide over \$113.6 million in funding for key infrastructure to support the plan, including: Open space Education Pedestrian and cycling improvements Roads Planning and delivery.

The OSD proposal includes provision for a 50-place (long day care) child care centre, indoor and outdoor community facilities and landscaped public open space on the podium roof above the station. A station forecourt and retail space will also be provided as part of the station delivery”.

Metro are proposing to enter into a voluntary planning agreement (VPA) with Council so these items will need to be more fully defined and negotiated. There are several references in the volumes of material that make clear that as far as Metro is concerned, their contention is that they will not pay their share of the SIC, nor S7.11 contributions on the basis of the wider benefit of the Metro.

Appendix JJ (p31):

“If a Special Infrastructure Contributions scheme ultimately is made for the St Leonards-Crows Nest area, the OSD may be required to pay contributions at the detailed SSD application stage. However, on the basis that the Sydney Metro project is a significant piece of State infrastructure, which will drive future development in the St Leonards and Crows Nest area and the associated value uplift which will be subject to the SIC, it is considered there is a sound basis for the OSD to be exempted from the SIC. Further, the concept OSD proposes a significant contribution to the local community and is intended to offset the combined value of the s.94 contribution and the SIC. This will be addressed in a future VPA”.

The EIS document (p243):

“this concept SSD Application commits to providing social infrastructure as a key component of the development mix. It is anticipated that a voluntary planning agreement would be negotiated with Council prior to the lodgement of the Stage 2 SSD Application. As a general principle, it is anticipated that the cost of the provision of the social infrastructure proposed in this concept SSD Application would offset Council’s developer contributions”.

The suggested SIC contribution is \$15,100 per dwelling so for 350 dwellings the contribution would be \$5,285,000. There is considerable uplift on this site and as Council is well aware, this area is extremely deficient in open space. There are no new sites available for new parks. Hume Street Park is adjacent to the site and the residents of the 350 new apartments and visitors in the 250 Hotel rooms will have the benefit of the Park. The OSD should be contributing significantly towards the Park by contributions in addition to any Section 7.11 contribution. The Metro is infrastructure to serve the existing population because it is needed. Any development that is uplifted because of the Metro still places additional demands on community facilities such as open space, libraries, and child care. Where there is considerable uplift involved there should be public benefit provided (not just the station). A VPA needs to be negotiated with Council prior to a DA being submitted. **The estimated Section 7.11 (Section 94) contribution payable to Council based on 350 dwellings and 17,90m² would be \$7,245,000**

This application is premature in that proper community consultation and assessment of

feedback has not been finalised with regard to the *St Leonards and Crows Nest 2036 Draft Plan; draft Rezoning Proposal for the Crows Nest Sydney Metro* and the *proposed Special Infrastructure Contribution (SIC) for St Leonards and Crows Nest*.

3. Strategic Plans

3.1 North District Plan

The *North District Plan* sets out a 20-year plan and 40-year vision for the North District, which includes North Sydney, Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Northern Beaches, Mosman, Ryde and Willoughby local government areas.

The District Plan identifies housing and employment targets, as well as a series of priorities and actions for the growth and development of the district. The *North District Plan* also identifies a growth plan for 92,000 new dwellings by 2036. This includes a target of 3,000 additional dwellings in the North Sydney LGA in the five years to 2021. The concept proposal will assist in meeting these dwelling targets. Under Section 34 of the District Plan, specific actions are identified to strengthen the St Leonards Strategic Centre.

3.2 St Leonards and Crows Nest Station Precinct Interim Statement

Investigations have been undertaken by the DPE into the St Leonards and Crows Nest Station Precinct for renewal and activation via a Planned Precinct designation. An Interim Statement was publicly exhibited in August 2017.

The Interim Statement includes a draft vision for the Precinct, as follows:

'The St Leonards and Crows Nest Station Precinct has a strategic role within the Sydney metropolitan area. It provides a unique opportunity to strengthen and develop many of the existing qualities which attract people to live, work and relax here. Future development will be responsive to place with a clear identity and purpose, which is inspiring, enjoyable and rewarding.'

The new metro station, seen as a catalyst for renewal in the area, will provide additional opportunities for development that will help achieve employment targets set out in the *North District Plan*. Recommendations are made within the Interim Statement and supporting documents regarding which areas are suitable for certain types of development. The Statement also identifies the need to preserve the form and function of Willoughby Road and heritage conservation areas. The area between St Leonards Station and Crows Nest metro station is identified as being the most suitable for development.

3.3 Sydney Metro Planning Study 2016

In response to the State Government's 2015 Metro announcement, Council prepared the *Sydney Metro Planning Study* to inform and guide the planning and design of the two metro sites in the North Sydney local government area at Victoria Cross and Crows Nest. The study was adopted by Council on 16 May 2016.

The study considers in detail a range of development opportunities for the site and identifies principles to guide its future development. The concept proposal's consistency with key relevant principles is outlined in Table 26 below. Many of the principles identified in the study relate to ground level treatments, which, are being delivered under the CSSI Approval for the station.

Table 26 – Consistency with the Sydney Metro Planning Study 2016

Principles	Consistency
Public Domain and Transport	
Ground level setbacks are to be incorporated as per St Leonards / Crows Nest Planning Study (Precinct 1) – 6m to Oxley Street and 3m to Pacific Highway and Hume Street	Ground level setbacks are a relevant consideration for the CSSI Approval. Notwithstanding this, the Oxley Street setbacks are consistent with the recommendations of the Study. Whilst a 3m setback to the Pacific Highway is provided in Site A, Site B does not comply with this recommendation, with justification of built form podium provided at Section 8.2.2.
Maximise opportunities to integrate Metro movement and activity with Hume Street Park	Whilst ground level pedestrian movement and activity are primarily a consideration for the CSSI Approval, pedestrian movement through Hume Street Park is maximised through a station portal directing movement directly onto the park. This is further encouraged by the acquisition of buildings on Hume Street to provide a more direct connection through to Willoughby Road.
Ensure taxi and kiss and ride zones do not interfere with the efficient operation of bus services and movement of pedestrians	A taxi zone accommodating three spaces is proposed as part of the Integrated Access Plan on Hume Street between Clarke Street and Clarke Lane. This zone will also be able to provide a pick-up point for OSD residents, workers and hotel guests. This will have no impact on the operation of bus services along the Pacific Highway and minimal impact on the movement of pedestrians, who will
Land Use	
	have prioritisation of movement.
The Oxley Street access portal will facilitate movement to the St Leonards Strategic Centre. The station access should be located and oriented to be visible from both the Pacific Highway and Oxley Street	No access portal is proposed to be located on Oxley Street. The portal is currently located on the Pacific Highway between Oxley Street and Hume Street, as the result of ongoing design development. Appropriate wayfinding will be incorporated at a future stage to ensure visibility for pedestrians moving to and from the St Leonards Strategic Centre.
Upgrade surrounding intersections with pedestrian-priority signalling and appropriate kerb treatments	Not relevant to the concept SSD Application.
Prioritise pedestrians via the use of shared zones or road closures	Not relevant to the concept SSD Application.
Design of adjoining laneways will improve pedestrian safety and accessibility	Clarke Lane is proposed to be used primarily for servicing requirements. Pedestrians are encouraged to access the station from the Clarke Street portal connecting through to the station.
Provide new cycling infrastructure to encourage active transport	Under the indicative scheme, 175 bicycle parking spaces are proposed to be provided on Site A and an additional 65 spaces are proposed to be provided on Site B to encourage active transport.
Land Use	
Maximise opportunities to incorporate retail and other non-residential floor space, particularly at ground level	The provision of retail floorspace is not relevant to this concept SSD Application. Notwithstanding this, retail floorspace is provided at ground level in accordance with the CSSI Approval and is illustrated in the indicative OSD design. Furthermore, 17,900 or 20,600 square metres (optional as explained in Section 4.5) of non-residential floor space is proposed as part of this concept SSD Application.
Explore opportunities for laneway activation	Opportunities for laneway activation have been explored as part of the design development for this project. However, given the requirement for Clarke Lane to be used for servicing requirements (i.e. for other existing development and the integrated station development) there is limited opportunity for this to be realised and activation of the station is achieved through other means.

Land uses will reflect and compliment the local economy and be designed to accommodate key industry types and clusters	The land uses proposed in Chapter 4 of this report have been determined to reflect and complement the local economy. In particular, the proposed tourist and visitor accommodation is anticipated to support the nearby health and education cluster.
Provide a range of quality residential housing choices, and include a significant affordable housing component	Floorspace for 350 apartments of various sizes are proposed to be accommodated as part of the concept SSD Application. The proportion of these dwellings which will incorporate affordable housing options will be subject to the detailed Stage Two Development Application.
Incorporate community uses into above station development	Social infrastructure have been incorporated into the podium of the OSD, as detailed in Chapter 4 of this report.

3.4 Crows Nest Place making and Principles Study

This Study was prepared by Council to appropriately manage the urban renewal resulting from the announcement of the Crows Nest Metro station, whilst simultaneously matching community expectation for the area which was informed by extensive community consultation.

The key message of the consultation was to protect Willoughby Road, which is valued for its village atmosphere, its independent retailers and its sense of community. The consultation also suggested that if taller development is to occur, that it should be focussed along the Pacific Highway, on and around the new Metro station and in St Leonards.

As a result of the spatial analysis and community consultation undertaken, a set of principles were drafted to direct the future growth of this precinct. These principles, and the consistency of this concept SSD Application in relation to these principles, is assessed in Table 27 below.

Table 27 – Consistency with principles of the Crows Nest Placemaking and Principles Study

Principles	Consistency
Metro as a catalyst for renewal <ul style="list-style-type: none"> The Metro station is a catalyst for urban renewal projects that reinforce Crows Nest as a liveable and sustainable centre. 	<p>This concept SSD Application is consistent with this principle as:</p> <ul style="list-style-type: none"> it delivers additional density in an area identified as being suitable for such development it is an example of catalytic development identified as being required to renew the wider area.
Enhance employment and activity <ul style="list-style-type: none"> A diverse, strong, sustainable and vibrant local economy St Leonards continues to develop as one of the major employment centres of the Sydney metropolitan area Crows Nest consolidates its role as retail and hospitality destination and enhances its commercial sector Employment capacity and diversity meets the job needs of future generations 	<p>This concept SSD Application is consistent with this principle as:</p> <ul style="list-style-type: none"> during construction, it is expected that approximately 280 jobs would be generated per annum, in addition to 550-930 ongoing jobs directly and a further 180-300 people indirectly created during the operation of the development depending on the final land use mix. it will provide a mix of land uses which will ultimately support other existing and proposed developments nearby from agglomeration economies
Protect precinct character <ul style="list-style-type: none"> The village atmosphere of Crows Nest will be maintained and enhanced New development will reinforce the desired precinct character and amenity of public spaces A sustainable mix of housing options will meet the housing needs of current and future generations 	<p>This concept SSD Application is consistent with this principle as:</p> <ul style="list-style-type: none"> it will not result in any significant additional overshadowing of Willoughby Road visual impacts associated with buildings within the proposed envelopes have been assessed and reduced wherever possible, for example, through the siting of smaller development on Site C in the foreground of larger developments on Site A to appropriately transition from high density development at St Leonards to the lower scale development at Crows Nest it will provide for residential apartments in a highly accessible location to meet the housing needs of

	current and future generations
<p>A sense of community</p> <ul style="list-style-type: none"> The social, intellectual, recreational, cultural and economic needs of the current and future community are met The built form must support the health and wellbeing of the community including housing affordability and social connection Public and private projects must reinforce the sense of community within St Leonards / Crows Nest 	<p>This concept SSD Application is consistent with this principle as:</p> <ul style="list-style-type: none"> it will deliver a quantum of floorspace to social infrastructure which are to be used, for example, via future public child care operators it will provide for (under the CSSI Approval) significant public domain improvements encouraging the public to meet and gather
<p>Respect heritage and design</p> <ul style="list-style-type: none"> Protect the character and significance of heritage items and conservation areas that contribute to a sense of place New buildings are to achieve a high standard of design excellence and respond positively to the local context Heritage conservation and design excellence considerations must be addressed early in the planning process 	<p>This concept SSD Application is consistent with this principle as:</p> <ul style="list-style-type: none"> detailed SSD Application will be the result of a design excellence process (refer to the Design Excellence Strategy at Appendix CC) the future development on the site will be informed by detailed design quality guidelines (refer to Appendix O) impacts on the adjoining heritage item (i.e. the St Leonards Centre) are considered and assessed in Section 8.6
<p>Prioritise public space</p> <ul style="list-style-type: none"> Increase the amount of public open space to better meet the current and future community needs of St Leonards / Crows Nest Provide a variety of safe and attractive streets, parks, plazas and other recreation settings that can be enjoyed by all throughout the year Undertake public domain upgrades that improve St Leonards / Crows Nest's appeal as a day and night time destination 	<p>Whilst public domain projects are not the subject of this concept SSD Application, concurrent works related to this proposal due to close proximity include:</p> <ul style="list-style-type: none"> public domain works associated with the CSSI approval an expanded Hume Street Park improved pedestrian access to Willoughby Road through Council acquisition of properties on Hume Street
<p>Equitable access</p> <ul style="list-style-type: none"> Walking is given the highest priority of all mode types in the study area Cycling will be a safe, enjoyable and convenient 'everyday' transport option for residents, workers and visitors of all ages and abilities to St Leonards / Crows Nest Access to transport, everyday services, parks and other community facilities will be safe and convenient The impact of regional traffic on local communities will be minimised 	<p>Refer to further assessment in Chapter 8.7 of this report, the Transport, Traffic and Parking Assessment Report at Appendix AA and the Accessibility Report at Appendix Z.</p> <p>Walking and cycling improvements in the precinct are primarily delivered under separate planning approval and include:</p> <ul style="list-style-type: none"> improved pedestrian access to Willoughby Road through Council acquisition of properties on Hume Street bicycle parking facilities and access addressing local pedestrian congestion points through design
<p>Delivering infrastructure</p> <ul style="list-style-type: none"> Infrastructure to support additional density must be delivered before development of the land Infrastructure must be funded equitably through agreed development contribution mechanisms 	<p>The ongoing delivery of infrastructure is subject to ongoing negotiation between public authorities. Public infrastructure associated with this concept SSD Application include the metro station itself, in addition to social infrastructure incorporated into the podium, as detailed in Chapter 4 of this report. Refer to further discussion in section 8.17 of this report.</p>

3.5 North Sydney Transport Strategy

The *North Sydney Transport Strategy* is Council's guiding document for the delivery of its transport planning and management functions. Whilst acknowledging the transformative impact that the Crows Nest Metro station will have on the local area, the Strategy outlines which transport modes require priority over others. This places walking as priority 1, followed by cycling, public transport, local deliveries/freight and then private vehicles.

3.6 St Leonards / Crows Nest Planning Study

In 2012, Council released the *St Leonards/Crows Nest Planning Study* in order to increase housing and employment capacity in the area whilst delivering high quality public domain and services to support the current and future community's needs. Whilst pre-dating the announcement of the Metro station, it identified general principles for development in the area that continue to be promoted in more recent strategic planning studies undertaken by Council, including the *Crows Nest Placemaking and Principles Study* and the *Sydney Metro Planning Study*. This includes the general principle that the Pacific Highway corridor is a suitable location for higher density development to protect the amenity of Willoughby Road. It also promoted the general principle of 'stepping down' in height from St Leonards to the Crows Nest village. The Study recommended changes to the statutory planning controls for the Crows Nest OSD site. These proposed controls relative to the current location of sites identified in this report are identified in Table 28 below.

Table 28 – Recommended planning control changes under the St Leonards / Crows Nest Planning Study

	Site A North	Site A South	Site B	Site C
FSR	5:1 (5.4:1 with bonus)	3.75:1	No change	No change
Height	40m	28m	No change	No change
Ground level setbacks	3m on Pacific Highway frontage, 6m on Oxley Street frontage	3m on Pacific Highway and Hume Street frontages	No change	No change
Podium height	3 storeys	3 storeys	No change	No change

Given the announcement of the Metro station and the ongoing work of DPE within the precinct, the recommended changes to the built form controls as a result of the Study were not enacted.

4. Compliance with Statutory Provisions

4.1 Environmental Planning and Assessment Act 1979 - Objects (section 1.3)

The proposal relates to the objects of the EP&A Act, as demonstrated at Table 29 below.

Table 29 – Consistency with objects of EP&A Act

Object	Consistency
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	The concept proposal comprises a building form which would promote the social and economic welfare of the community and a better environment, through the provision of a vibrant mixed-use development which has been designed to be compatible with the surrounding environment. As discussed in Chapter 9.2, the
	concept proposal would deliver substantial economic benefits whilst also ensuring that any environmental impacts would be suitably mitigated or minimised.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The concept proposal commits to a high standard of ESD, and has addressed the relevant economic, environmental and social considerations. This is further discussed at Chapter 8.9 and the ESD Report at Appendix X.
(c) to promote the orderly and economic use and development of land,	The concept proposal comprises the orderly and economic use of land and has been subject to a robust alternatives analysis (Section 1.6, in addition to a Strategic Market Assessment Report at Appendix R) which has resulted in the progression of the proposed mixed-use development. The staged planning process would enable for the identification and resolution of key planning issues at an early stage, allowing the detailed design for the future OSD to be coordinated to deliver an integrated station development which responds to the scale and complexity of the project.
(d) to promote the delivery and maintenance of affordable housing,	The concept proposal would provide for the delivery of housing opportunities and a variety of residential apartment typologies in a highly accessible location.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	Appropriate management of the heritage interface between the site and its surroundings, including with the St Leonards Centre has been considered as part of this assessment. Refer to the Statement of Heritage Impact at Appendix Y.
(g) to promote good design and amenity of the built environment,	A pathway to the achievement of design excellence has been included as part of this concept proposal, ensuring that the final building design would achieve a high standard of architecture and urban design. Design Quality Guidelines (Appendix A) for the Crows Nest OSD and a Design Excellence Strategy (Appendix CC) have been prepared to ensure future development contributes to a well-designed built environment.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposal is a concept only and proposes no physical works. Nonetheless, a Preliminary Construction Management Statement has been prepared (Appendix BB) to outline the methods for ensuring future construction impacts are managed and mitigated. Matters in relation to the future maintenance of the building and the protection of the health and safety of the occupants would be addressed through <i>Building Code of Australia</i> (BCA) compliance at the detailed SSD Application(s) stage and in the preparation of a Building Management Statement.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different	The proposal comprises a single concept SSD Application, which has been developed by Sydney Metro in consultation with the

4.2 North Sydney Local Environmental Plan 2013 – Clause 4.6 variations

4.2.1 Clause 1.2 Aims of the Plan

The concept proposal is generally consistent with the aims set out in clause 1.2 of the NSLEP 2013 in that it:

- proposes residential, tourist/visitor accommodation and commercial mixed-use development above the Crows Nest Metro Station which is appropriate in the context of the emerging St Leonards/Crows Nest Strategic Centre. The proposal also provides density above a major piece of transport infrastructure in accordance with the principles of transit oriented development.
- provides for an increase in dwelling stock in an appropriate location where there will be limited impact on residential amenity in terms of visual and acoustic privacy, solar access and view sharing.
- proposes a diversity of uses which will enable a range of employment, social, cultural and services activities, without significantly adversely impacting the amenity of residential properties or public places.
- seeks to protect the built heritage of North Sydney by ensuring that the proposed development will not adversely affect surrounding heritage items (Note: a thorough heritage assessment has not been carried out within the limited time given for comment)
- provides for growth in the permanent resident population, with the indicative OSD design proposing a diversity of housing types to suit a range of occupants.

4.2.2 Clause 2.3 Zone Objectives and Land Use Table

The site is zoned *B4 Mixed Use* and the proposed commercial, residential, social infrastructure and visitor/tourist accommodation are permissible with consent in the zone.

The Crows Nest OSD is consistent with the objectives of the B4 Mixed Use zone as it:

- seeks to provide a mix of commercial, residential and tourist and visitor accommodation uses as well as retail, social infrastructure uses, in a highly accessible location which will maximise public transport use and encourage active transport.
- will contribute to the creation of a mixed-use precinct in the St Leonards/Crows Nest Strategic Centre, and an active urban environment.
- facilitates the provision of additional non-residential and commercial floor space.

4.2.3 Clause 4.3 Height of Buildings - 4.6 Exceptions to Development Standards

Under the current controls of the NSLEP 2013, the height of building controls applicable for the site include:

- Site A: 20m (Pacific Highway sites between Oxley and Hume Streets)
- Site B: 10m (Pacific Highway site south of Hume Street)
- Site C: 20m (Hume Street/Clarke Street site opposite Hume Street Park)

The proposed height of the building envelopes under this concept SSD Application include:

- Site A North: RL 188m (72m variation)
 - Site A South: RL 188m (72m variation)
-

- Site B: RL 158m (42m variation)
- Site C: RL 132m (24.5m variation)

The building envelopes sought also incorporate a services zone of 5 metres above the RLs nominated above for Sites A and C, whilst Site C includes a services zone of 3 metres. The quantum of the clause 4.6 objections is without precedent in the planning history of North Sydney.

The site slopes from a height of RL 87 at Oxley Street, to RL 90 at Hume Street. The southernmost point of Site B is at RL95.

Given the above, the proposed development exceeds the current height control by a significant margin.

In October 2018, DPE released a Rezoning Report recommending changes to the built form controls commensurate to those proposed under this concept SSD Application. In the interim, a clause 4.6 Variation Request has been prepared on the applicant's behalf by Ethos Urban to justify the variation (Attached for Council's information).

4.2.4 Clause 4.6 Discussion

The aim of Clause 4.6 to provide an appropriate degree of flexibility to achieve better outcomes for and from development. Council's long standing practice is to allow only minor variations due to the topography of the site and where there is minimal additional density or gross floor area created. Lift overruns, plant and communal roof space are allowed but only where there are no adverse impacts through overshadowing or loss of views.

Council's practice is to insist on a planning proposal where there is a significant variation to allow a proper and thorough process with regard to Community Consultation similar to the process that was involved when the control was adopted by Council. It is noted that there are two zoning plans on exhibition that are yet to be assessed against Community and Council feedback so the proposed controls are not certain or imminent.

The relevant heights of the proposed buildings over the current development standard are as follows:

- Site A – increased from 20m to RL 183m (approximately 72m);
- Site B – increased from 10m to RL 155m (approximately 52m); and
- Site C – increased from 20m to RL 127m (approximately 24.5m).

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole.

The objectives of the height of buildings development standard are prescribed at clause 4.3(1) of the NSLEP 2013 are as follows:

-
- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
 - (b) to promote the retention and, if appropriate, sharing of existing views,*
 - (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
 - (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
 - (e) to ensure compatibility between development, particularly at zone boundaries,*
 - (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*

The applicant states that the proposed building envelope achieves each of these objectives notwithstanding the departure from the numerical control identified on the height of buildings map.

It is considered that the proposal does not meet objectives (b), (c), (e) or (f)

In October 2018, DPE released a draft Rezoning Proposal for the Crows Nest Sydney Metro site. This Rezoning Proposal increases the relevant planning controls commensurate with the built form proposed in this concept SSD Application. The release of the Rezoning Proposal was simultaneous to the release of other draft strategic planning documents including the *St Leonards and Crows Nest 2036 Draft Plan*. The 2036 Draft Plan recommends significant changes to the planning controls for the immediate area surrounding the Crows Nest OSD site subject to consideration of community feedback to its exhibition. Detailed consideration of the Rezoning Proposal and the 2036 Draft Plan have not been carried out as the plans are still on exhibition. The former is the subject of a separate report presented to the Council meeting of 10 December 2018.

The applicant also states that the case law references matters regarding Council's decisions and the abandonment of the standard. In this instance, the relevant Government decisions which render the applicability of the controls redundant, are the announcement of the transformative public transport infrastructure project that is Sydney Metro. In addition to decision to grant consent to the CSSI station development which already partially exceeds or is close to the controls in NSLEP 2013 is another key Government decision which renders the standard unreasonable or unnecessary. The controls in NSLEP 2013 predate both Government decisions. These planning studies, culminating in the 2036 Draft Plan and the Rezoning Proposal identify the need to supersede the development standards of the NSLEP 2013 as they apply to the site.

Council has not abandoned its controls through the misuse of Clause 4.6 variation requests. In fact, Council insists on Planning Proposals to be lodged, determined and gazetted where substantial policy changes or control changes are proposed by any applicant.

Clause 4.6(3)(b) of the NSLEP 2013 requires the applicant's written request to vary a development standard to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. The following environmental planning grounds are claimed by the applicant:

- Delivery of a transit-oriented development neighbourhood;
 - Protection of solar access to key public open spaces; and
-

- Consistency with the strategic planning framework, establishing the future desired character for the St Leonards/Crows Nest precinct under the 2036 Draft Plan.

The above grounds all relate to objectives of the 2036 Draft Plan where updated controls can be detailed to establish the desired future character of the area rather than environmental planning grounds. The draft plan is neither certain or imminent and in any case cannot be relied upon for the purposes of making a proper and lawful clause 4.6 argument.

The Clause 4.6 request is not considered to be well founded and thus the application should fail.

4.2.5 Clause 4.4A Non-Residential Floor Space Ratios - 4.6 Exceptions to Development Standards

Under the current controls of the NSLEP 2013, the minimum non-residential FSR controls applicable for the site include:

- Site A: 1.5:1
- Site B: 0.5:1
- Site C: 0.5:1

The proposed non-residential FSR under this concept SSD Application includes:

- Site A: 0.7:1 (note: where social infrastructure is provided on Site A (and not Site C) the OSD non-residential FSR increases to 3.24:1)
- Site B: 8.12:1
- Site C: 4.44:1 (note: where social infrastructure is provided on Site C (and not Site A) the OSD non-residential FSR reduces to 2.81:1)

A Clause 4.6 Variation Request has been prepared to justify any perceived variation from current controls until the Rezoning Proposal is gazetted (Attached for Council's information).

4.2.6 Clause 4.6 Discussion

This development standard to be varied as part of this application is 'Clause 4.4A Non-Residential Floor Space Ratios' relating to minimum non-residential floor space requirements. Clause 4.4A(2) provides that the non-residential floor space ratio for all buildings within a site on any land must not be less than the ratio shown for the land on the Non-Residential Floor Space Ratio Map.

The required non-residential GFA for each site under clause 4.4A is set out at Table 1.

Table 1 – Minimum non-residential FSR/GFA

Site	Site Area	Minimum Non-residential FSR	Minimum Non-residential GFA
Site A	3,877m ²	1.5:1	5,815.5m ²
Site B	1,871m ²	0.5:1	935.6m ²
Site C	608m ²	0.5:1	304m ²
Total	6,356m ²		7,055m ²

The proposed development seeks concept approval for three building envelopes, one located on each of Site A, Site B, and Site C. The OSD component is to include a total of between 17,900-20,600m² of non-residential floor space, distributed across the three development sites as follows:

- 2,700m² of social infrastructure floor space (on Site A or Site C);
- 15,200m² of hotel / visitor or commercial floor space (on Site B); and
- 2,700m² of commercial floor space (on Site C – subject to replacement by social infrastructure floor space as described below).

The final location of the social infrastructure floor space will be influenced by ongoing negotiations with relevant stakeholders to occupy all available floor space on Site C, or alternatively, to be located on the podium rooftop of Site A. If the social infrastructure space is located on Site C, this will be in place of proposed commercial office space. Location of the social infrastructure space within Site C would result in no non-residential floor space in Site A as part of the OSD.

However, clause 4.4A relates to the minimum non-residential FSR of all development on a site. It is noted that the GFA attributed to the station and station retail (i.e. entirely non-residential floor space) that has been conceptually approved under the CSSI Approval in the integrated station design has a combined GFA total of 4,280m². Given that the final design for the station is subject to further refinement, an extra 15% has been added to the GFA for this component of the development to allow for design tolerance and refinement of the station design, totalling 5,000m². The exact distribution of the GFA attributed to the station remains uncertain at this time.

Although Site A departs from the development standard, the overall quantity of non-residential floor space of the OSD component exceeds the minimum requirement. The non-compliance with clause 4.4A of the NSLEP 2013 is due to the redistribution of land uses within the site and the final distribution and mix will be the subject of a competitive design process and further SSD Application(s) for the detailed design of the buildings. When considered in addition to the total non-residential GFA of the approved CSSI, the total development is well in excess of the minimum non-residential requirement under both the existing and proposed controls.

The use of Clause 4.6 is considered reasonable where the DA relates to a number of sites and the total FSR will exceed the minimum. If all of these sites are developed in concert and the circumstances are not changed the Cl. 4.6 argument might be accepted. However, Council is uncertain on how the sites may be split up and subsequently sold. Each site may then become an individual development site and subject to its own detailed application. Council's concerns relate to the type of non-residential floor space with regard to the total quantum of office space and community facilities. It is considered that the current concept DA does not offer the certainty required for a planning authority to have the confidence of outcome required to uphold a Clause 4.6 in regard to the minimum non-residential floor space ratio control and subsequently the objection and in train the application must fail.

It should be noted that if the application relies on some future height limit that is yet to be gazetted, it cannot rely on an existing non-residential FSR that may be the subject of future discussion, particularly in the context of the precinct's ambitious job targets.

4.2.7 Clause 5.10 Heritage conservation

This clause states that the consent authority may require a heritage report to be prepared for an application for works that would affect heritage items on the site or within the vicinity of the site. The site is surrounded by a number of local heritage items as detailed in the EIS. Accordingly, a Statement of Heritage Impact has been prepared to accompany this concept proposal. Thorough heritage assessment has not been carried out within the limited time given for submission but it is clear that the proposed buildings on Sites A and B will clearly over sail the Heritage Item at 20 Clarke Street and may fail to appropriately address the issue.

4.2.8 Clause 6.12A Residential Flat Buildings in Zone B4 Mixed Use

Clause 6.12A of NSLEP 2013 seeks to ensure that development for residential flat buildings on land in Zone B4 Mixed Use forms part of mixed-use development and does not impact on the activation of street frontages. The proposed residential development on Site A forms part of a mixed-use precinct with retail, commercial, tourist and visitor accommodation and social infrastructure. No residential uses are proposed at street level, with a 2-storey podium comprising lobby, services and community uses.

4.2.9 Conclusion

The current built form controls in the NSLEP 2013, particularly with regard to building height and the quantum of non-residential GFA, do not reflect the uplift associated with the proposed rezoning of the metro station site in the precinct.

In October 2018, the DPE released for public exhibition a Rezoning Proposal Report to support a proposal to amend the NSLEP 2013. The Rezoning Proposal applies to the Crows Nest Sydney Metro site only. As a proposed instrument, this Rezoning Proposal is a matter for consideration under Section 4.15(1)(a)(ii) of the EP&A Act.

Notwithstanding the above, two clause 4.6 variation statements are submitted with this concept SSD Application to provide strategic justification for non-compliance with the height of buildings (cl. 4.3) and non-residential FSR (cl 4.4A) provisions in NSLEP 2013 prior to this statutory amendment being made. The proposed changes under the draft planning proposal have not been finalised or gazzeted and are neither certain or imminent. Both Clause 4.6 requests are not considered to be well founded and the application should fail.

5. Impacts and other issues

5.1 Overshadowing

Council policy (under Crows Nest Placemaking and Principles Study) is for no overshadowing of Ernest Place; no overshadowing of Willoughby Road before 4pm year round and no overshadowing of Hume Street Park between 10am and 2pm.

The EIS states:

The proposed development does not overshadow the Hume Street Park between 9am and 2pm. Some additional shadow is created between 2pm and 3pm on the Summer Solstice (December 21). This impacts 220m² of accessible green roof, 72m² of the existing childcare centre and 60m² of Hume Street Park.

With regard to impact on Willoughby Road, in March or September (equinox) some additional shading of the lower end of Clarke Street and the intersection of Willoughby Road occurs after 3.30pm. In June, some additional shading of the southern end of Willoughby Road occurs after

3pm. In December, some additional shading affects the southern end of Clarke Street, but the additional shading does not reach Willoughby Road until after 4pm.

There is no overshadowing of Ernest Place, the Crows Nest Community Centre or the Holtermann Street car park at any time of the year prior to 4.00pm as a result of the proposed building envelopes.

All properties surrounding the site receive the minimum solar access of at least 2 hours with the exception of 400 Pacific Highway and some properties on Nicholson Street. However, this analysis is based on the proposed building envelopes and the impact is able to be reduced during further design refinement in a future detailed SSD Application.

The overshadowing of Ernest Place and Willoughby Road is unacceptable. The parts of the buildings causing the overshadowing needs to be identified and modified.

5.2 Built form

The applicant claims that the proposed building envelopes have been designed to provide an appropriate response to the surrounding and emerging context, while also enabling the delivery of a development at the site.

A Design Excellence Strategy has been provided which outlines a process for achieving design excellence in the future detailed design and delivery of the development. Design Quality Guidelines have also been provided, which would guide the detailed design of the OSD through the future stages of the development.

The Crows Nest benchmarks have been selected to showcase the minimum quality expected in relation to:

- 1. Integrated design outcomes.*
- 2. Built form above the podium that showcases high quality design and contributes positively to the skyline.*
- 3. Architecture that responds to existing and future built context, and improves the existing public domain, streetscape character and scale.*
- 4. A design that provides high quality public spaces and is integrated, active, safe and comfortable for customers and pedestrians.*
- 5. A design that fulfils the needs of a civic station entry and high quality OSD entries with well integrated associated servicing.*
- 6. Materials and finishes that are high quality and appropriate to the context.*
- 7. Integration of high quality public art and public domain elements that contribute to a positive experience of the place for users and the general public.*
- 8. Well considered built form, planning, façade design and services integration that contribute towards best practice sustainable outcomes.*

While some or indeed all of these comments may be correct at some reasonable foreseeable time in the future, that future has yet to be established by the underlying planning controls.

5.3 Visual and view impacts

The visual impact of the development, in the context of the surrounding skyline, has been assessed by the applicant from a number of key vantage points around the North Shore and Central Sydney. In this assessment, the envelope of the building has been superimposed within the existing and forthcoming building form context of the site, in order to confirm the cumulative impact of the development on the skyline of St Leonards and Crows Nest.

The applicant's assessment found that the proposal would have a low visual impact when viewed from the south or north given the physical absorption capacity in the context of existing and proposed developments of a greater scale in the St Leonards CBD. Areas which will have the highest visual impact will be the areas to the direct east and south east of the site, including Hume Street Park. The montages provided in the application appear to be misleading as it includes some buildings that are yet to be approved, other buildings that are incorrectly located and with incorrect proposed building forms, further they are not the future scale of buildings proposed in the, yet to be finalised, 2036 plan.

5.4 Heritage

Heritage impacts have been assessed as part of this proposal, given the site context which comprises an adjacent heritage item, as well as other nearby heritage items interspersed with newer development. This includes specific analysis of the impacts of the proposal on The St Leonards Centre, a building directly adjacent to the site. A number of other heritage items have also been assessed, with the specific impacts of the proposal assessed and mitigation measures recommended where required.

The Statement of Heritage Impact provided as part of this concept SSD Application provides a series of key recommendations, which particularly relate to the treatment of the proposal against the adjacent St Leonards Centre.

5.5 Transport

An analysis has been provided of the existing and proposed traffic and transport arrangements at the site. As part of this assessment, it has been determined that the OSD proposal will have a negligible impact on the surrounding road network, noting a reduction in on-site car parking provisions compared to the previous site uses. The site also benefits from excellent public transport accessibility, which will continue to improve in the coming years.

Overall, it is considered that, through the implementation of careful vehicle management and controls, the proposed on-site parking and loading arrangements can operate efficiently in a manner which accommodates the travel demands of all users, to the level that needs to be demonstrated in a concept SSD Application.

The provision of parking needs to be questioned where the development is directly above the station. Due to the station being underground, basement parking is not possible so the parking is located at higher levels over a number of levels with access from car lifts. There are no queuing areas provided for cars waiting for the car lifts. The additional parking levels add to the height of the building and if the parking was removed, the scale could be reduced or the floor space could be better used for community facilities. Parking provided above ground at the Metro location is neither a good transport planning or architectural outcome.

5.6 Construction management

A Preliminary Construction Management Statement has been prepared by Sydney Metro to address how the development of the project would manage impacts to pedestrians, bus services, Sydney Metro users and taxis. The potential impacts associated with the three potential staging scenarios for construction of the integrated station development are considered, with the statement providing preliminary mitigation measures for managing the impacts for each stage. Detailed consideration of construction related impacts would occur as part of the future detailed SSD Application(s) when construction staging is confirmed.

5.7 *Noise and vibration*

Noise and vibration sources associated with the future OSD have been identified in this assessment, having regard to the context of the site, the proposed future land uses and the potential for impacts from station operations.

In regard to noise intrusion into the future OSD, impacts would be able to be sufficiently mitigated, and would be subject to further detailed design work. It is claimed that the proposal is capable of complying with the relevant acoustic criteria.

The isolation of noise and vibration from Sydney Metro will occur at the source, not within future OSD, and would adequately attenuate structure-borne rail-induced noise and vibration in the OSD to acceptable levels.

5.8 *Economic impacts*

The OSD would provide a range of different economic benefits, reflective of the different uses proposed. The provision of approximately 250 hotel rooms would increase the visitor accommodation capacity in a prime location of Sydney's North Shore, which would have flow on effects on the tourist economy in Sydney more broadly. The provision of the visitor accommodation will provide short term accommodation in proximity to the Royal North Shore Hospital campus and also in support of commercial suites in demand in the precinct. The residential development would assist in increasing the population of the St Leonards/Crows Nest strategic centre, providing for 'out of hours' activation at the site and contributing to the economic impact of the local residential population base.

Although the hotel would generate tourist economy, the number of ongoing jobs on site are minimal. Council's preference would be for considerably more office space that would add more to the local workforce to meet employment targets.

5.9 *Other issues*

A number of other issues have been assessed in this EIS including:

- utilities, infrastructure and services
- wind
- stormwater and flooding
- prescribed airspace for Sydney Airport
- accessibility
- crime prevention through environmental design
- waste management
- social impacts
- signage

6. *Conclusion*

6.1 *Application is premature*

There is a real concern that the Metro rezoning proposal will enable buildings that are out of scale with the fine grain nature and village atmosphere of Crows Nest, overshadows Ernest Place and Willoughby Road and brings limited employment and public benefits to the area.

Greater collaboration with local government and the community is needed to refine the 2036 Plan, the state levy (SIC) and Metro rezoning proposal to ensure growth is well managed and supported by the timely delivery of upgraded open space, recreation and social infrastructure.

After these plans are resolved after thorough assessment of community and Council feedback, controls with regard to height, FSR and overshadowing can be established, then a Development Application can be considered and determined without the need for any Clause 4.6 variations.

6.2 *Clause 4.6 request for significant variation to height is not well founded*

The aim of Clause 4.6 to provide an appropriate degree of flexibility to achieve better outcomes for and from development. Council's long standing practice is to allow only minor variations due to the topography of the site and where there is no additional density or gross floor area created. Lift overruns, plant and communal roof space are allowed but only where there are no adverse impacts through overshadowing or loss of views. Council's practice is to insist on a planning proposal where there is a significant variation to allow a proper and thorough process with regard to Community Consultation similar to the process that was involved when the control was adopted by Council. It is noted that there are two zoning plans on exhibition that are yet to be assessed against Community and Council feedback so the proposed controls are not certain or imminent.

The Clause 4.6 request with regard to the significant variation to height has been assessed and not considered to be well founded.

Any consent to the OSD application could be challenged if relying on a written Clause 4.6 that is not comprehensive or well founded.

6.3 *Inadequate commercial space*

Although the hotel would generate tourist economy, the number of ongoing jobs on site are minimal. Council's preference would be for considerably more office space that would add more to the local workforce to meet employment targets. The commercial floor space must occur appropriately across each individual site or the sites need to be tied together so that the total quantum of commercial floor space is delivered.

6.4 *Question the need for any parking on site*

The provision of parking needs to be questioned where the development is directly above the station. Due to the station being underground, basement parking is not possible so the parking is located at higher levels over a number of levels with access from car lifts. There are no queuing areas provided for cars waiting for the car lifts. The additional parking levels add to the height of the building and if the parking was removed, the scale could be reduced or the floor space could be better used for community facilities.

6.5 *No affordable housing provided*

The State Government has recommended 5-10% of new apartments (where there is an uplift on the site) should be Affordable Housing. It is also an object (1.3(d)) of the EP & A Act. No affordable housing is proposed. It needs to be clearly identified and included in a VPA negotiated with Council.

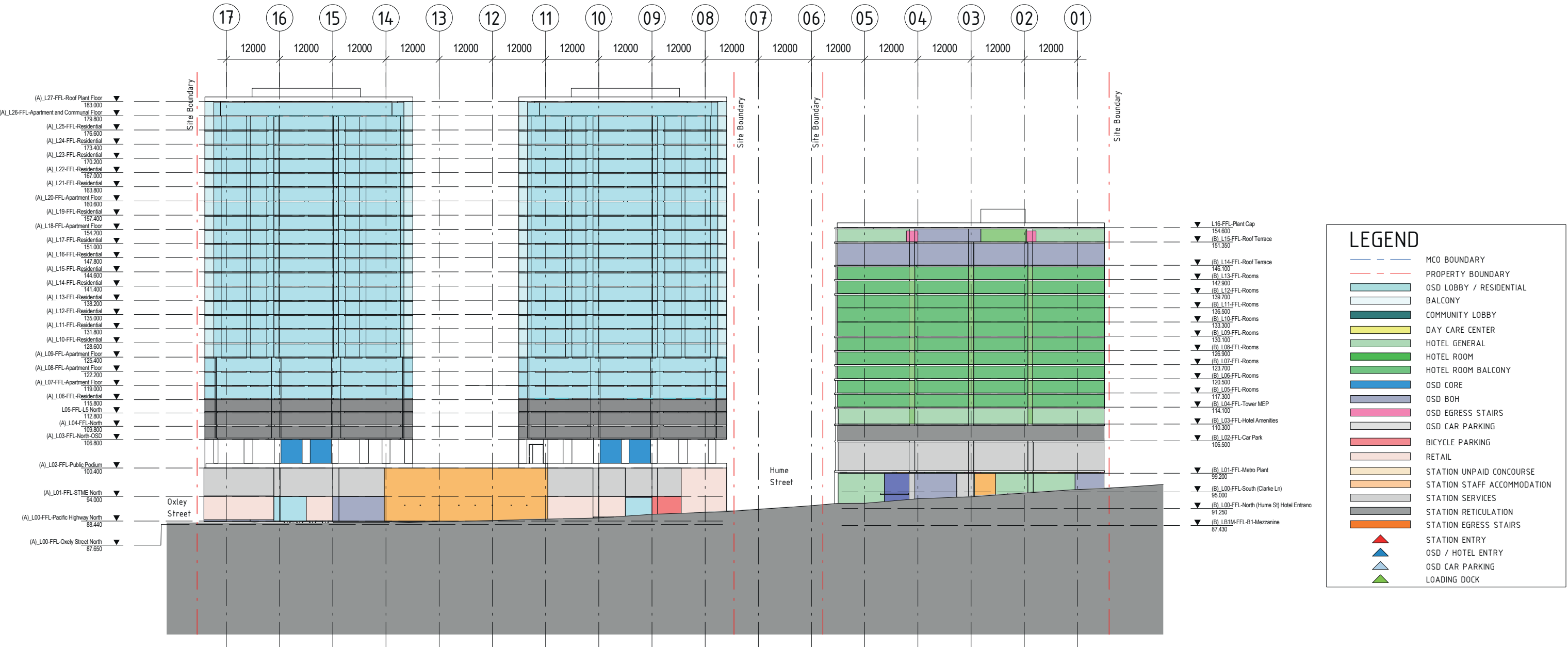
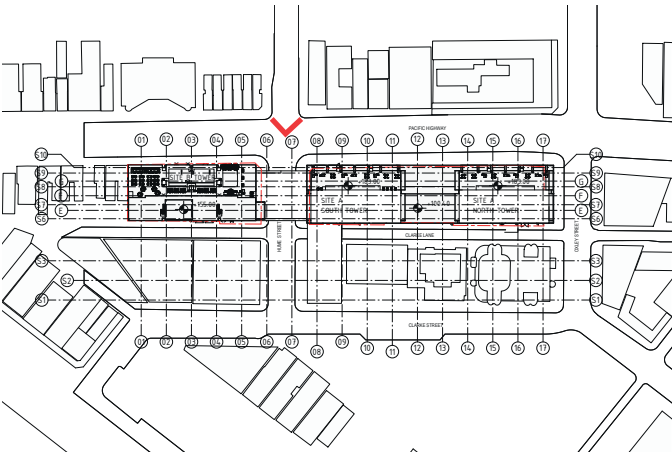
6.6 *Insufficient detail about community facilities to be provided on site.*

The location, type and quantum of community facilities need to be clearly identified and included in a VPA negotiated with Council.

A submission to the Department of Planning outlining the above concerns should be made in regard to this application which must be considered premature in the light of a yet to be finalised planning strategy for the Crows Nest area.

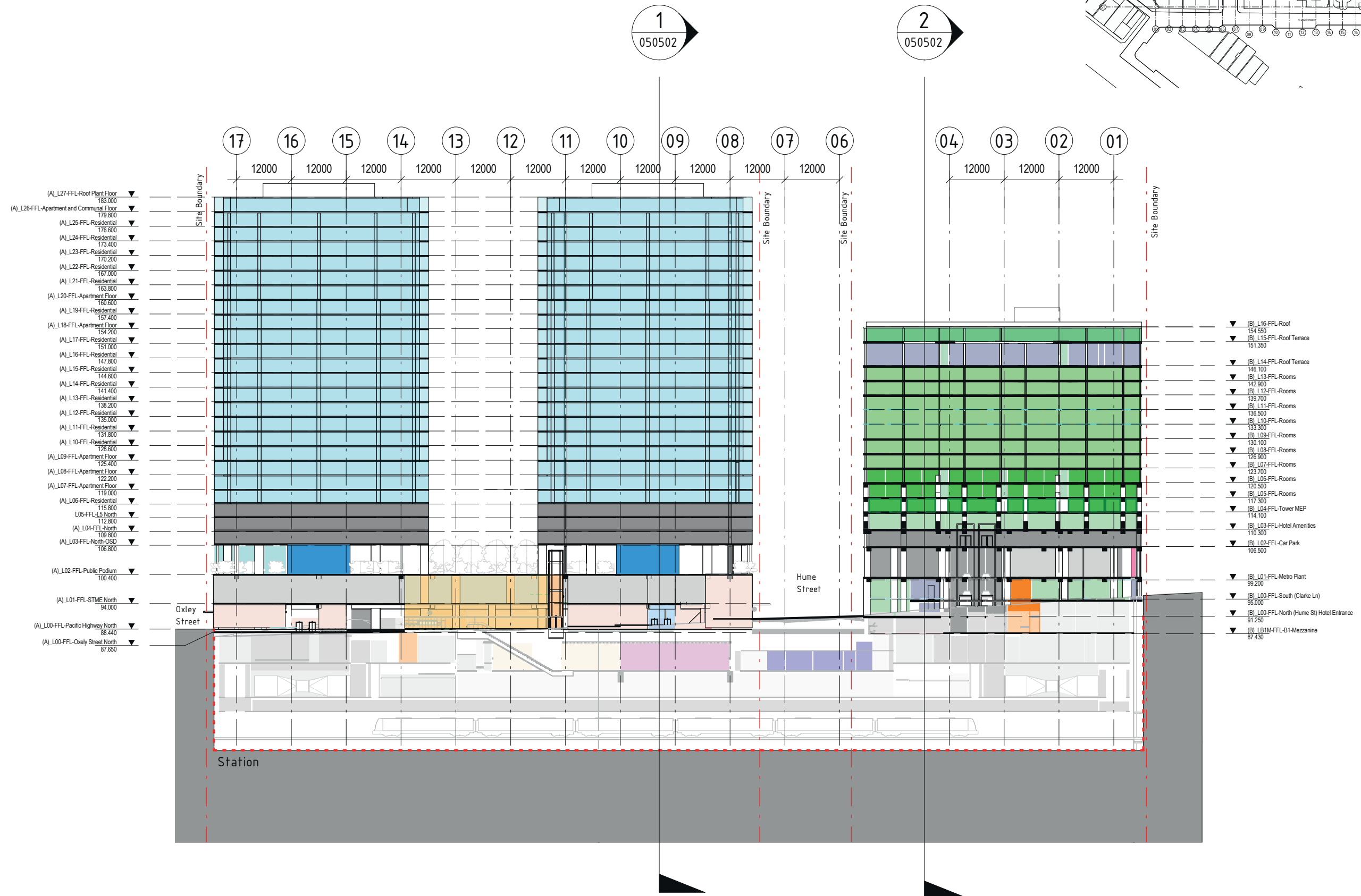
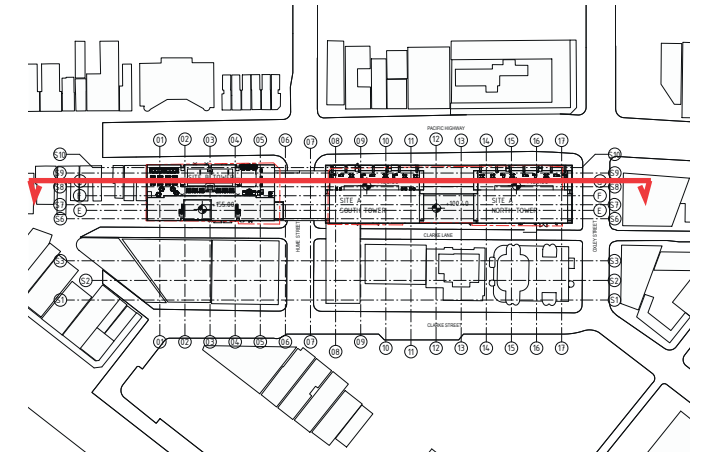
General Arrangement Sections and Elevations

2.3 General Arrangement Sections and Elevations
2.3.1 Massing Elevations



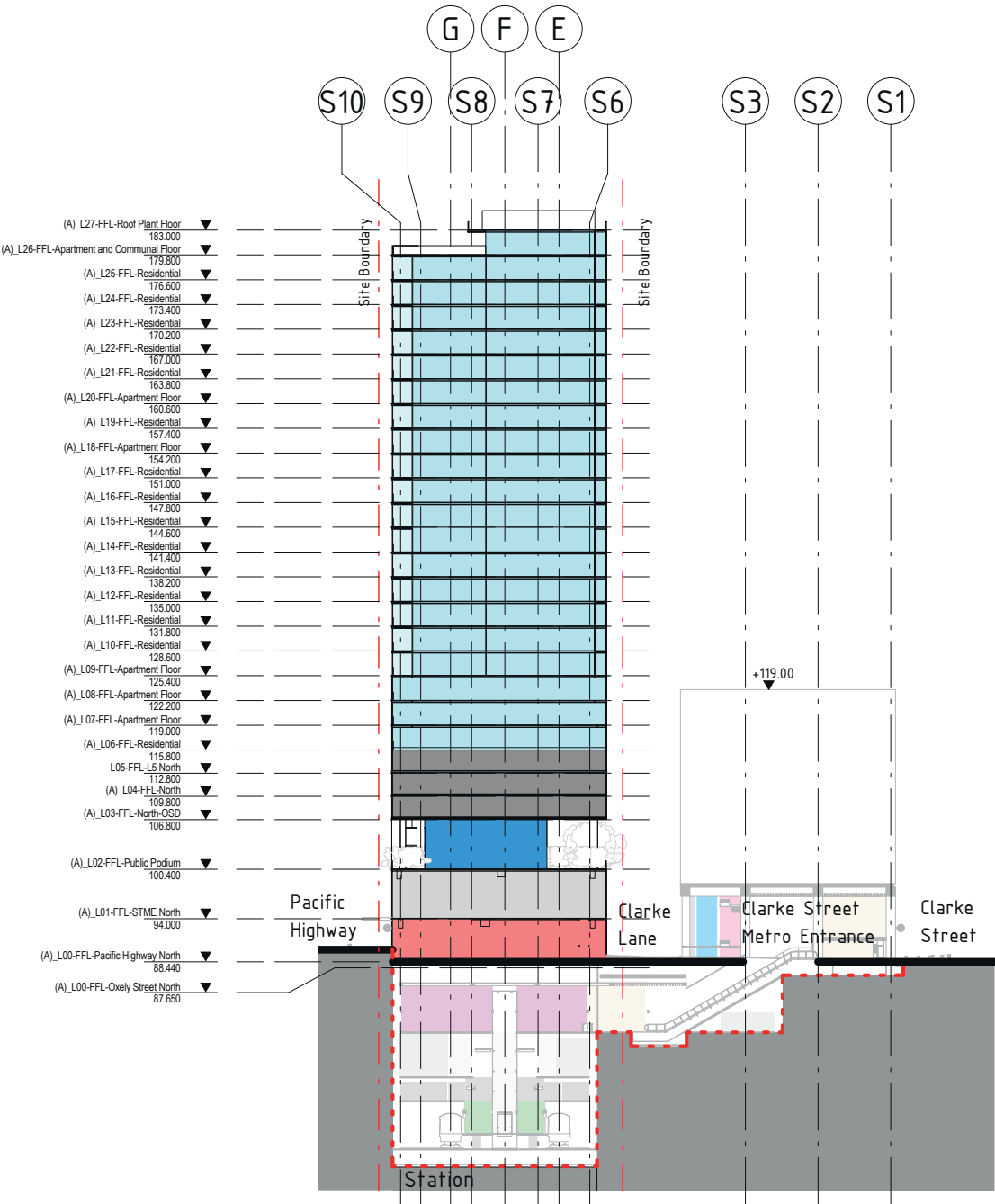
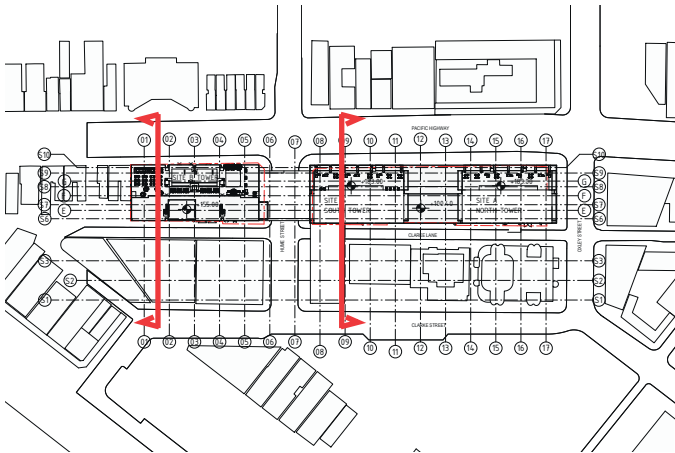
2.3 General Arrangement Sections and Elevations

2.3.2 Typical Sections - Longitudinal Section

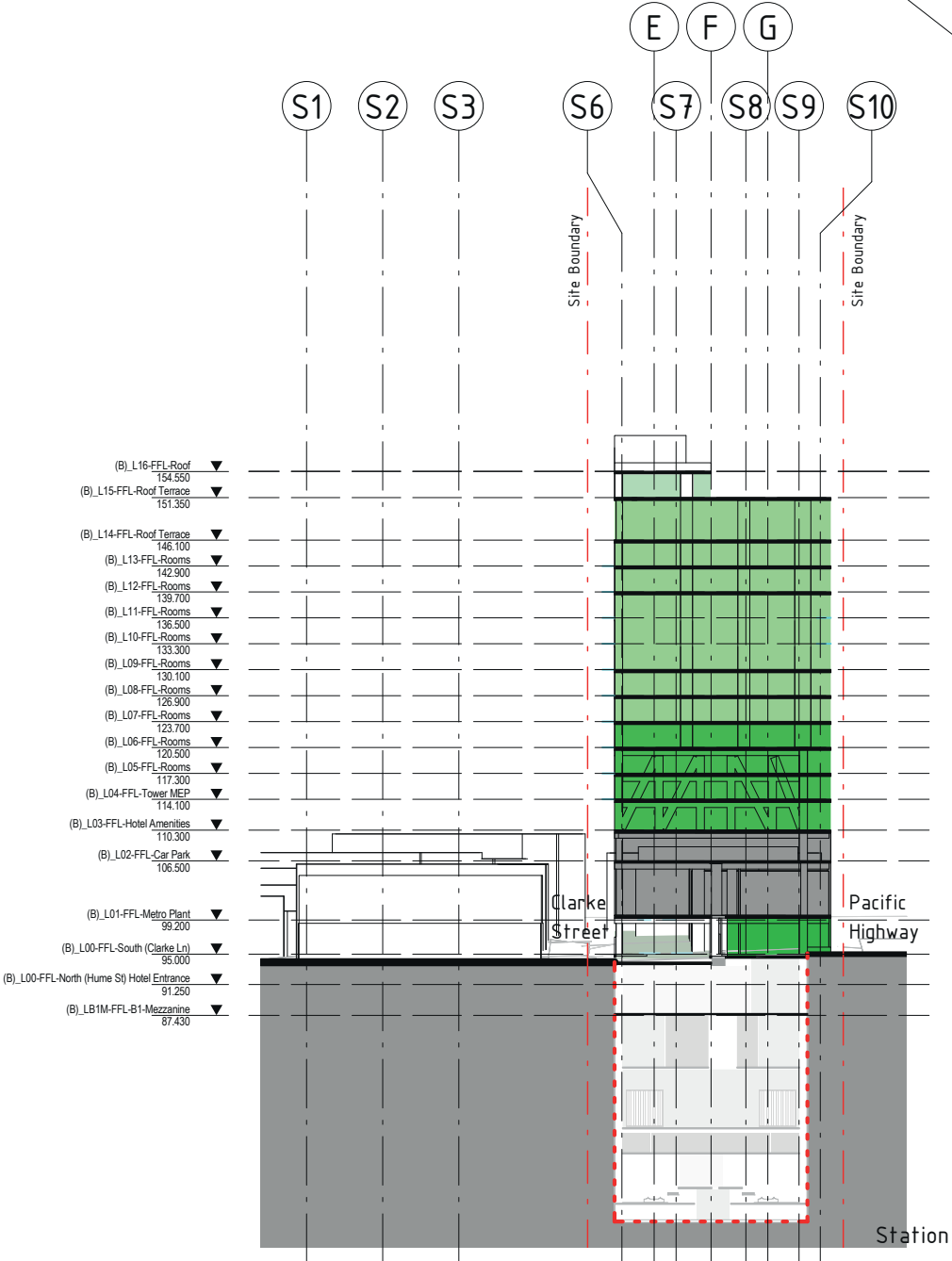


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2.3 General Arrangement Sections and Elevations
2.3.3 Typical Sections - Cross Sections



1 Cross Section Site A
1 : 1000



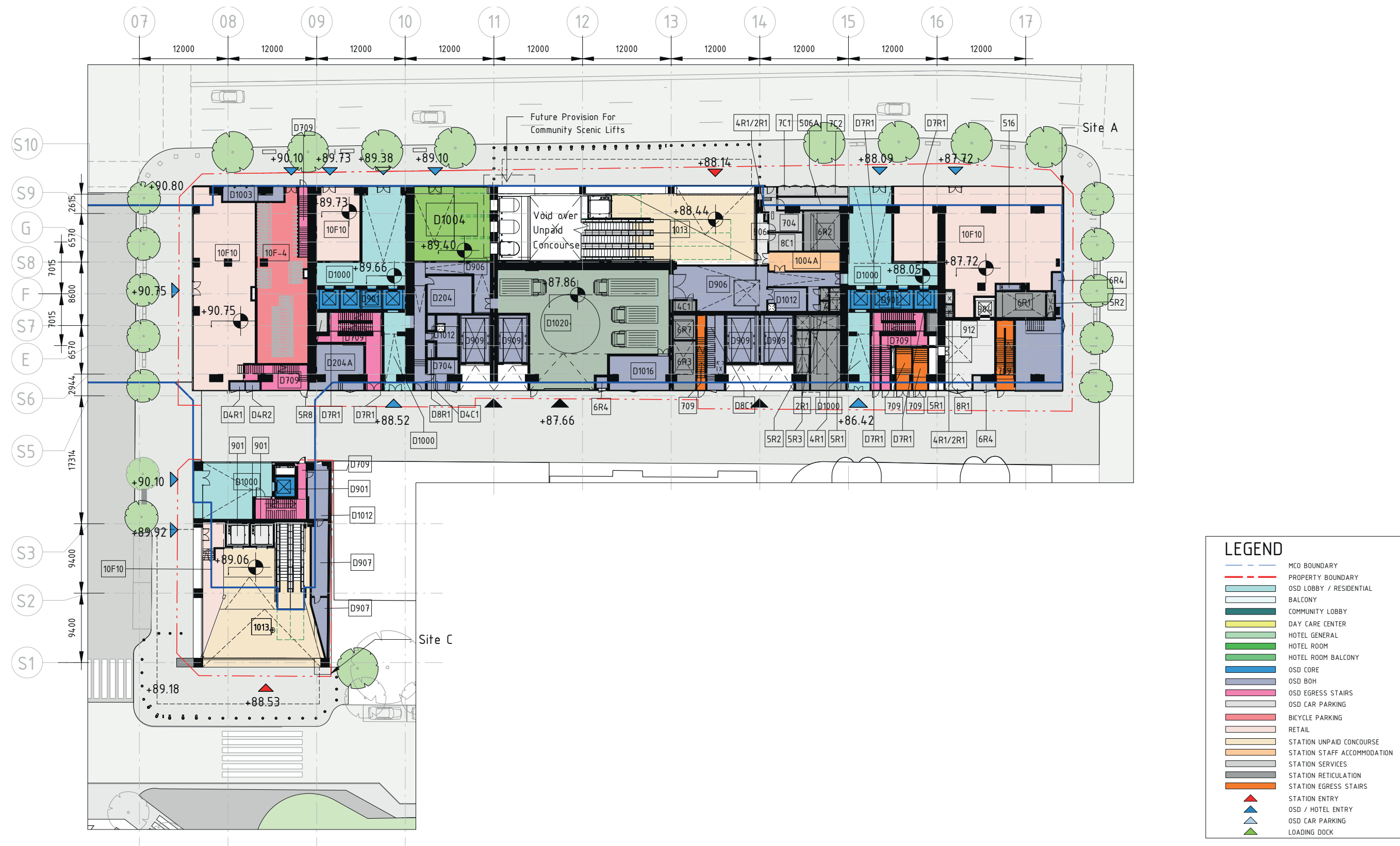
2 Cross Section Site B
1 : 1000

LEGEND	
	MCO BOUNDARY
	PROPERTY BOUNDARY
	OSD LOBBY / RESIDENTIAL
	BALCONY
	COMMUNITY LOBBY
	DAY CARE CENTER
	HOTEL GENERAL
	HOTEL ROOM
	HOTEL ROOM BALCONY
	OSD CORE
	OSD BOH
	OSD EGRESS STAIRS
	OSD CAR PARKING
	BICYCLE PARKING
	RETAIL
	STATION UNPAID CONCOURSE
	STATION STAFF ACCOMMODATION
	STATION SERVICES
	STATION RETICULATION
	STATION EGRESS STAIRS
	STATION ENTRY
	OSD / HOTEL ENTRY
	OSD CAR PARKING
	LOADING DOCK

General Arrangement Plans - Site A

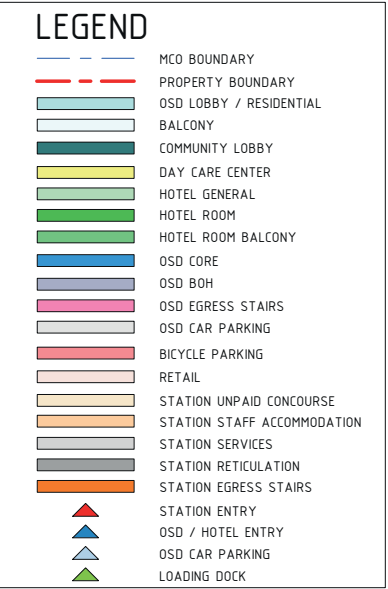
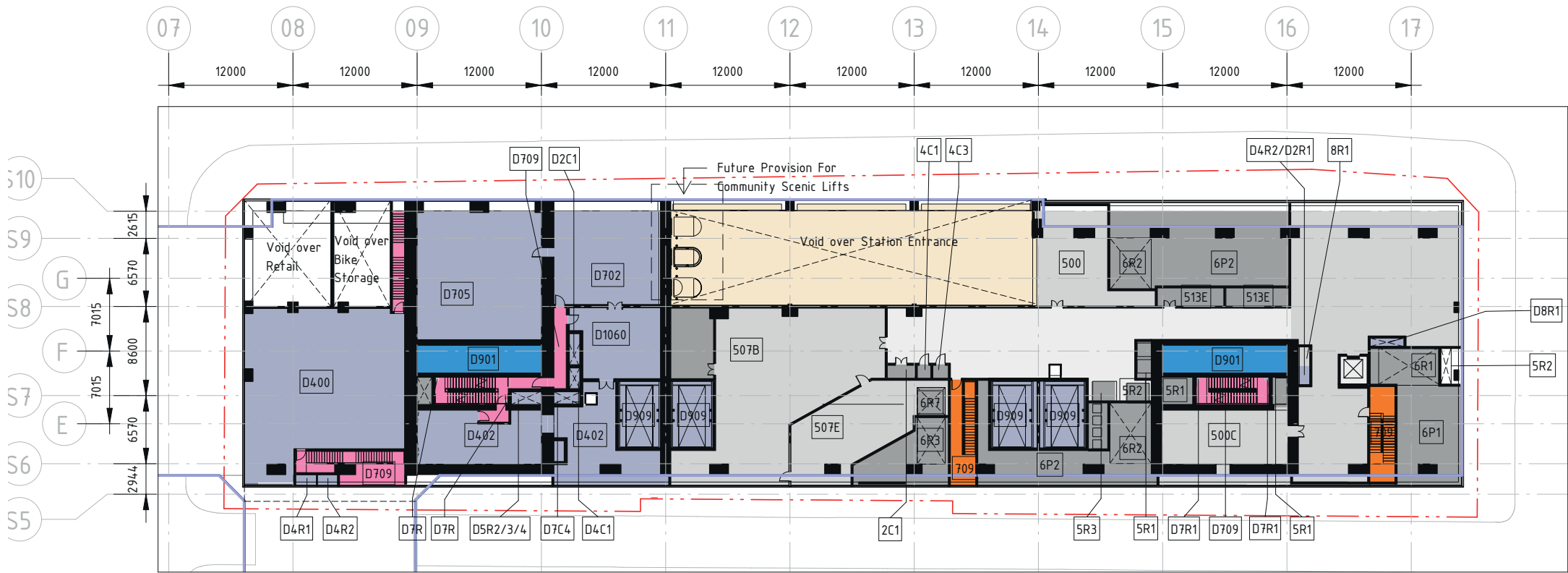
2.1 General Arrangement Plans - Site A

2.1.1 A-L00 Street Level

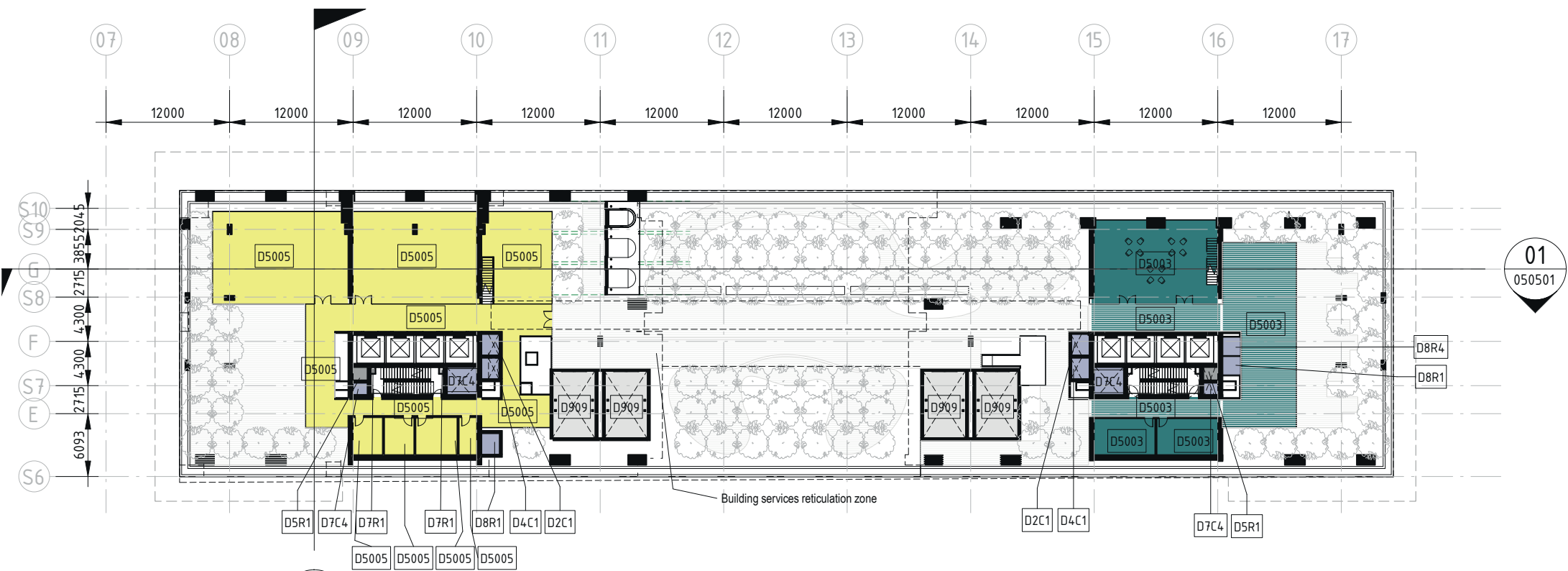


GA plans to be read in conjunction

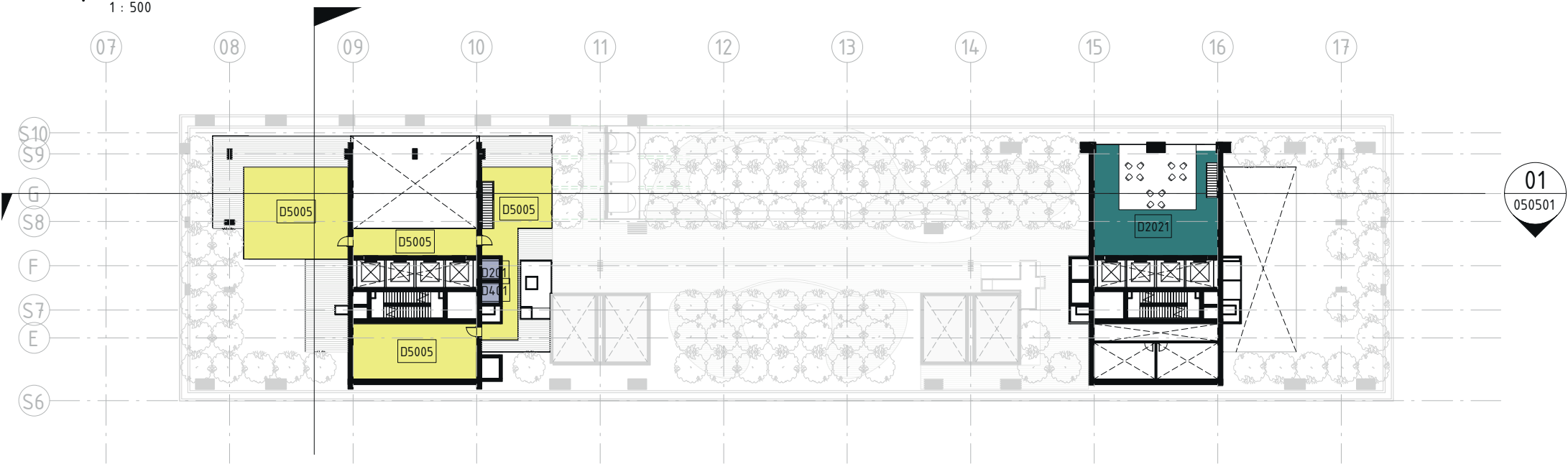
2.1 General Arrangement Plans - Site A
2.1.2 A-L01 Station and OSD Plant Level



2.1 General Arrangement Plans - Site A
2.1.3 A-L02 Podium Community Roof



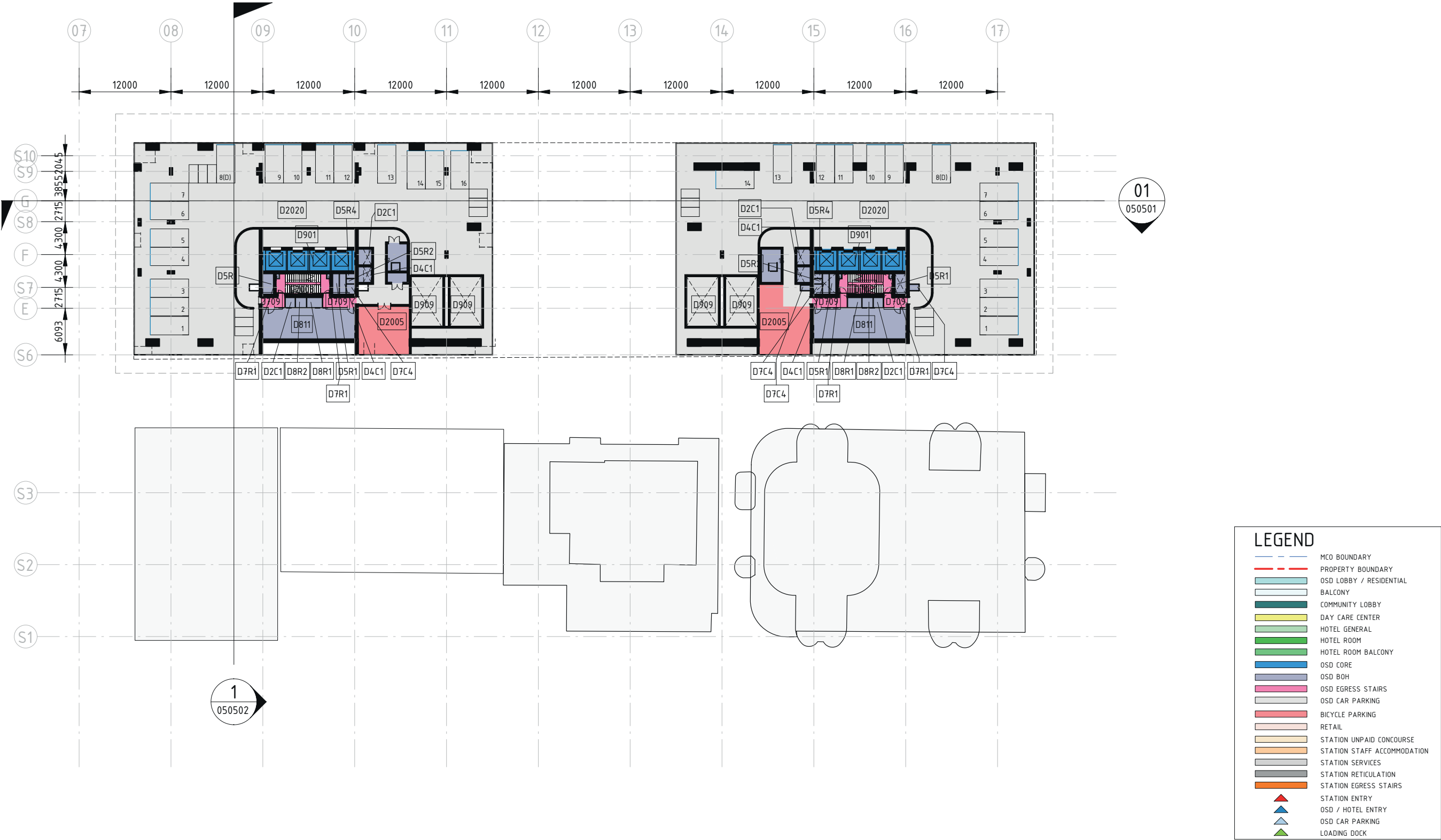
1 A_L02-FFL-Podium
1 : 500



2 A_L02-FFL-Podium Mezzanine
1 : 500

LEGEND	
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	HOTEL ROOM BALCONY
	OSD CORE
	OSD BOH
	OSD EGRESS STAIRS
	OSD CAR PARKING
	BICYCLE PARKING
	RETAIL
	STATION UNPAID CONCOURSE
	STATION STAFF ACCOMMODATION
	STATION SERVICES
	STATION RETICULATION
	STATION EGRESS STAIRS
	STATION ENTRY
	OSD / HOTEL ENTRY
	OSD CAR PARKING
	LOADING DOCK

2.1 General Arrangement Plans - Site A
2.1.4 A-L03 Tower Car Park and Plant



2.1.5 A-L04 Tower Car Park and Plant



2.1.6 A-L05 Tower Car Park and Plant



2.1 General Arrangement Plans - Site A
2.1.7 A-L06 Tower Transfer and Residential Floor

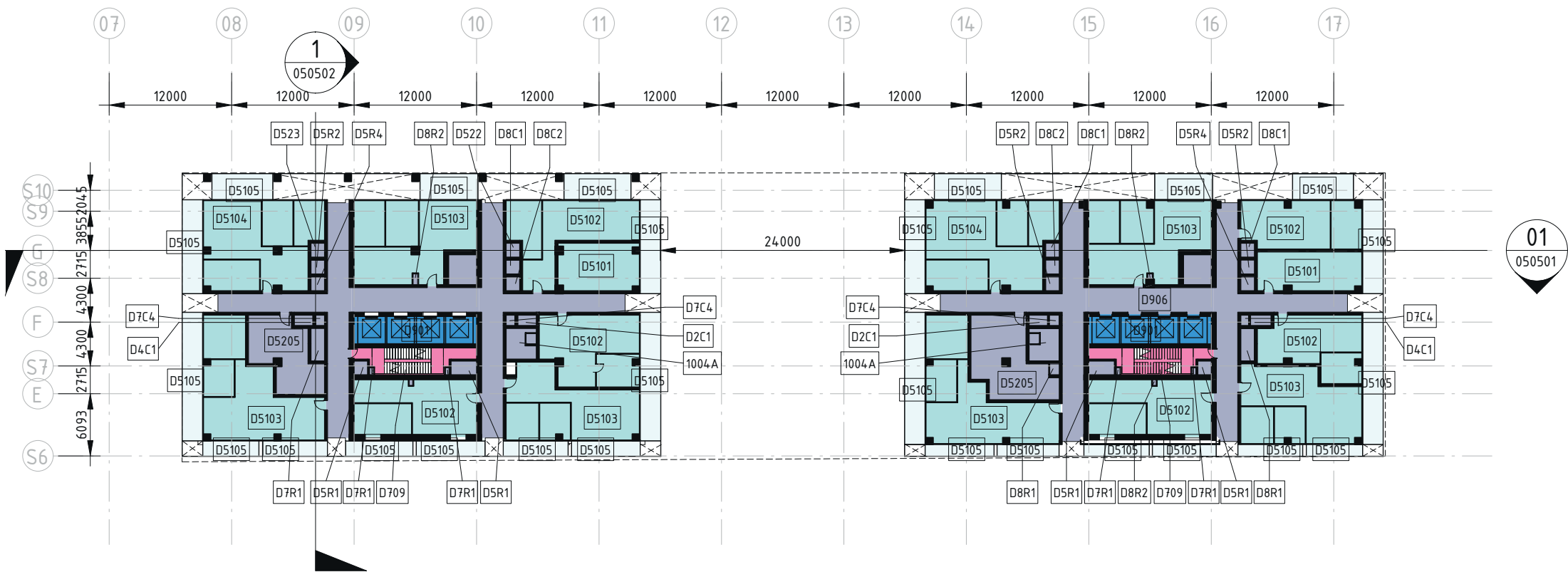


2.1.8 A-L07/08 Tower Transfer and Residential Floor

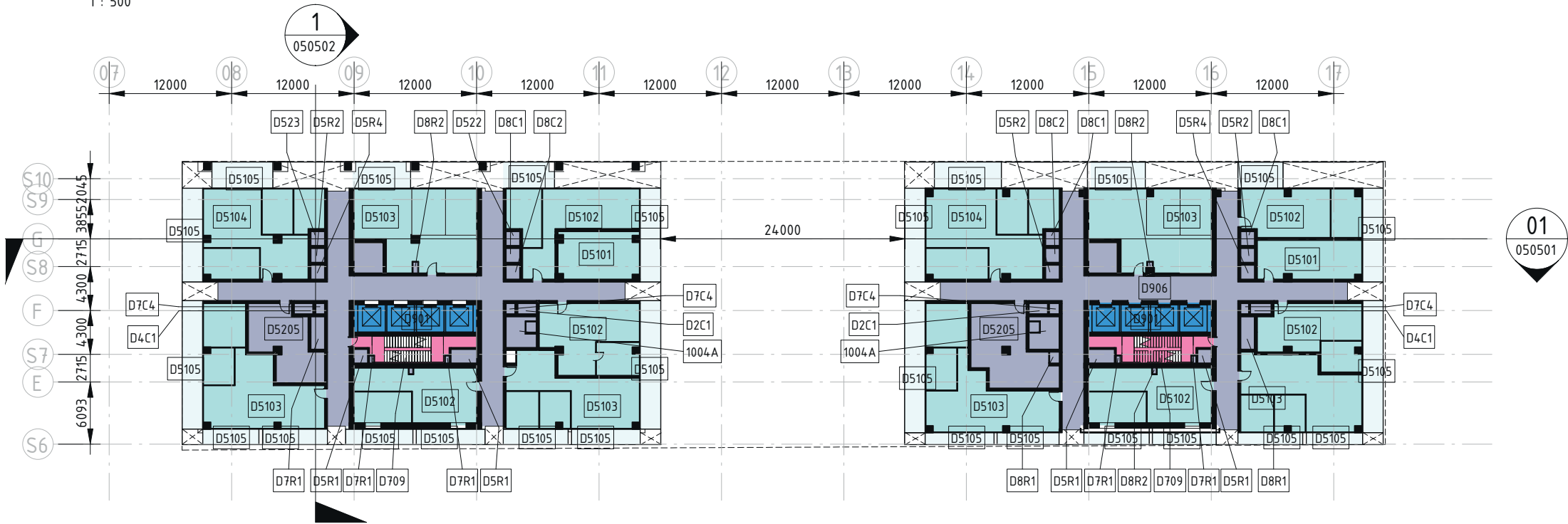


2.1 General Arrangement Plans - Site A

2.1.9 A-L09-25 Tower Residential



1 (A)_L09-Odd Number-FFL-Apartment Floor
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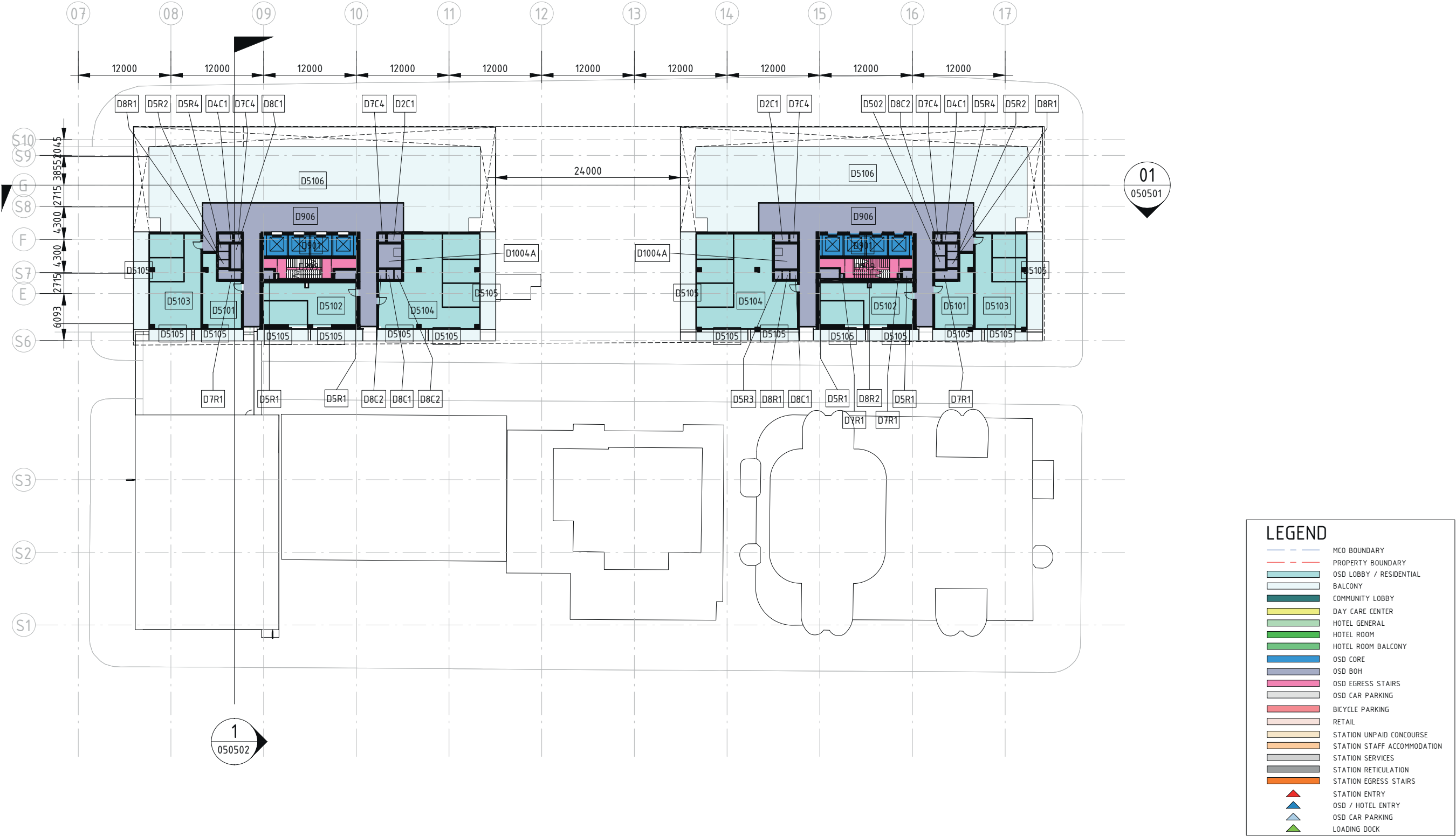


2 (A)_L10-Even Number-FFL-Apartment Floor
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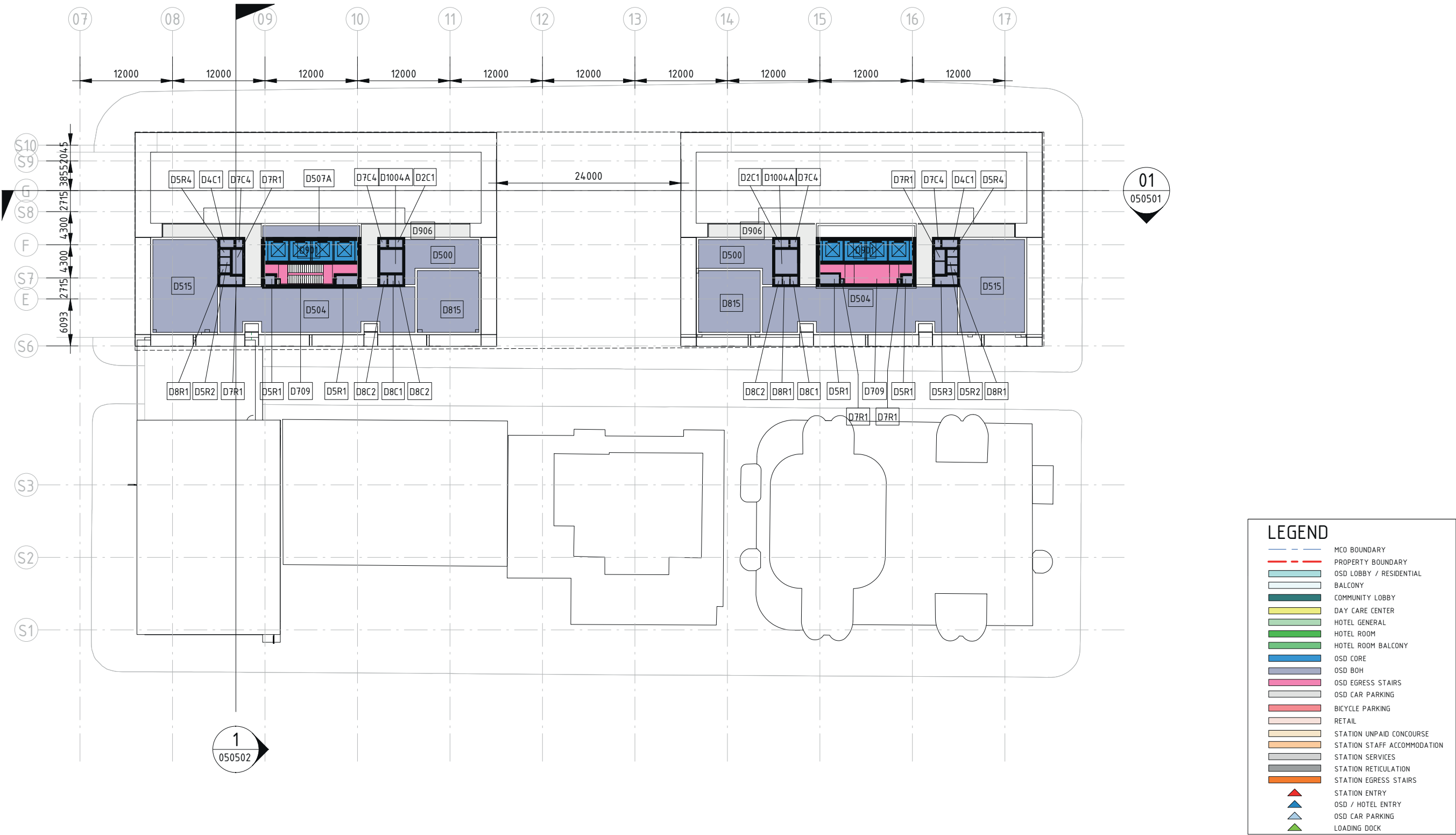
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	BALCONY
	COMMUNITY LOBBY
	DAY CARE CENTER
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	HOTEL ROOM
	HOTEL ROOM BALCONY
	OSD CORE
	OSD BOH
	OSD EGRESS STAIRS
	OSD CAR PARKING
	BICYCLE PARKING
	RETAIL
	STATION UNPAID CONCOURSE
	STATION STAFF ACCOMMODATION
	STATION SERVICES
	STATION RETICULATION
	STATION EGRESS STAIRS
	STATION ENTRY
	OSD / HOTEL ENTRY
	OSD CAR PARKING
	LOADING DOCK

2.1 General Arrangement Plans - Site A

2.1.10 A-L26 Tower Apartment and Communal Floor



2.1 General Arrangement Plans - Site A
2.1.11 A-L27 Tower Roof Plant Floor



General Arrangement Plans - Site B

2.2 General Arrangement Plans - Site B

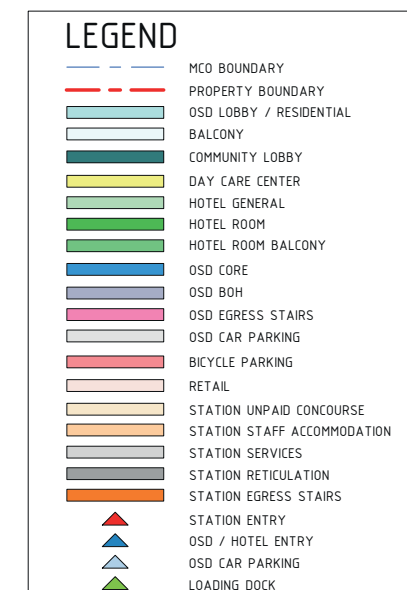
2.2.1 B-LB1M B1 Mezzanine and Street level +91.00



B1 Mezzanine



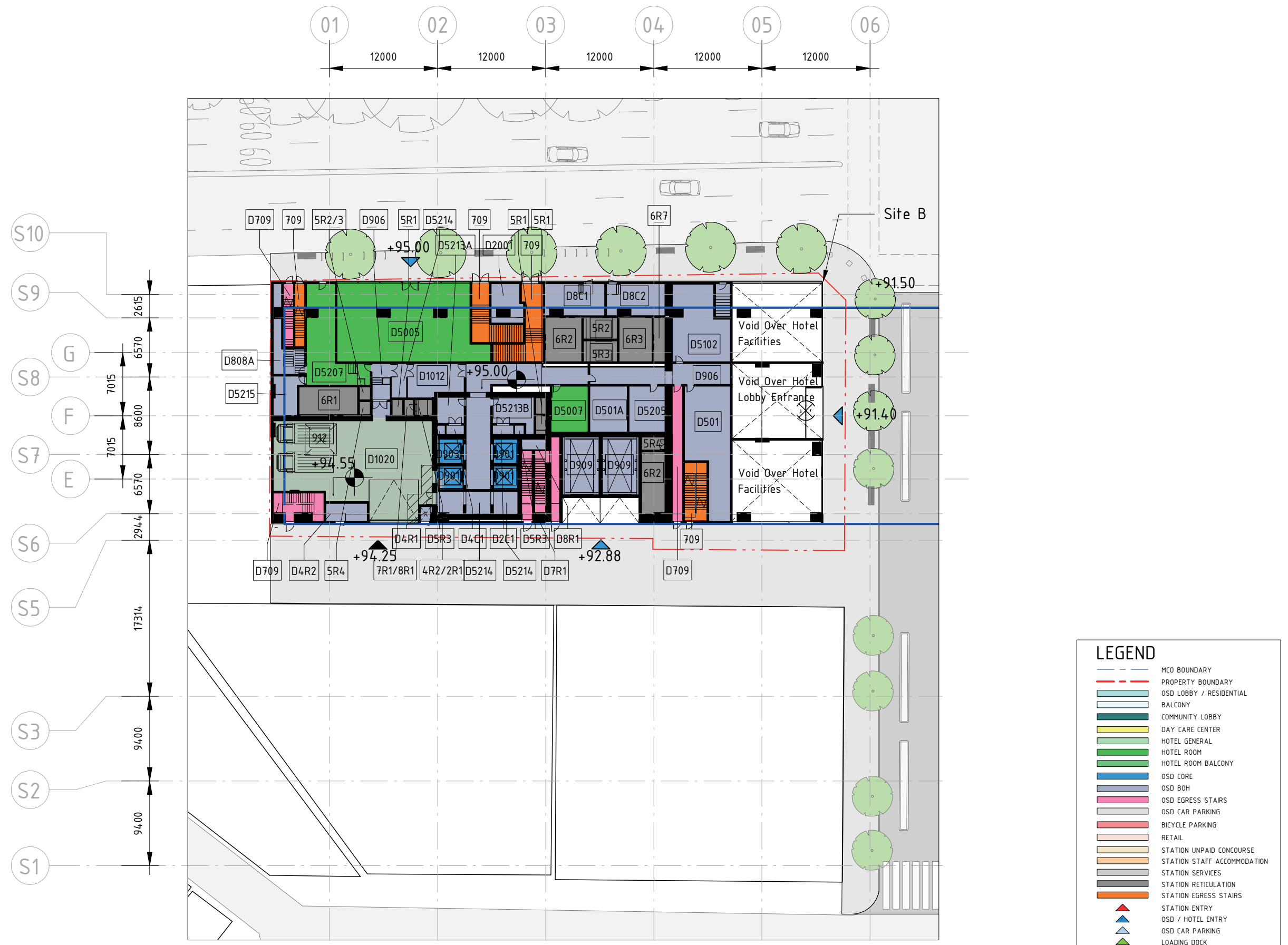
Street lower level +91.00



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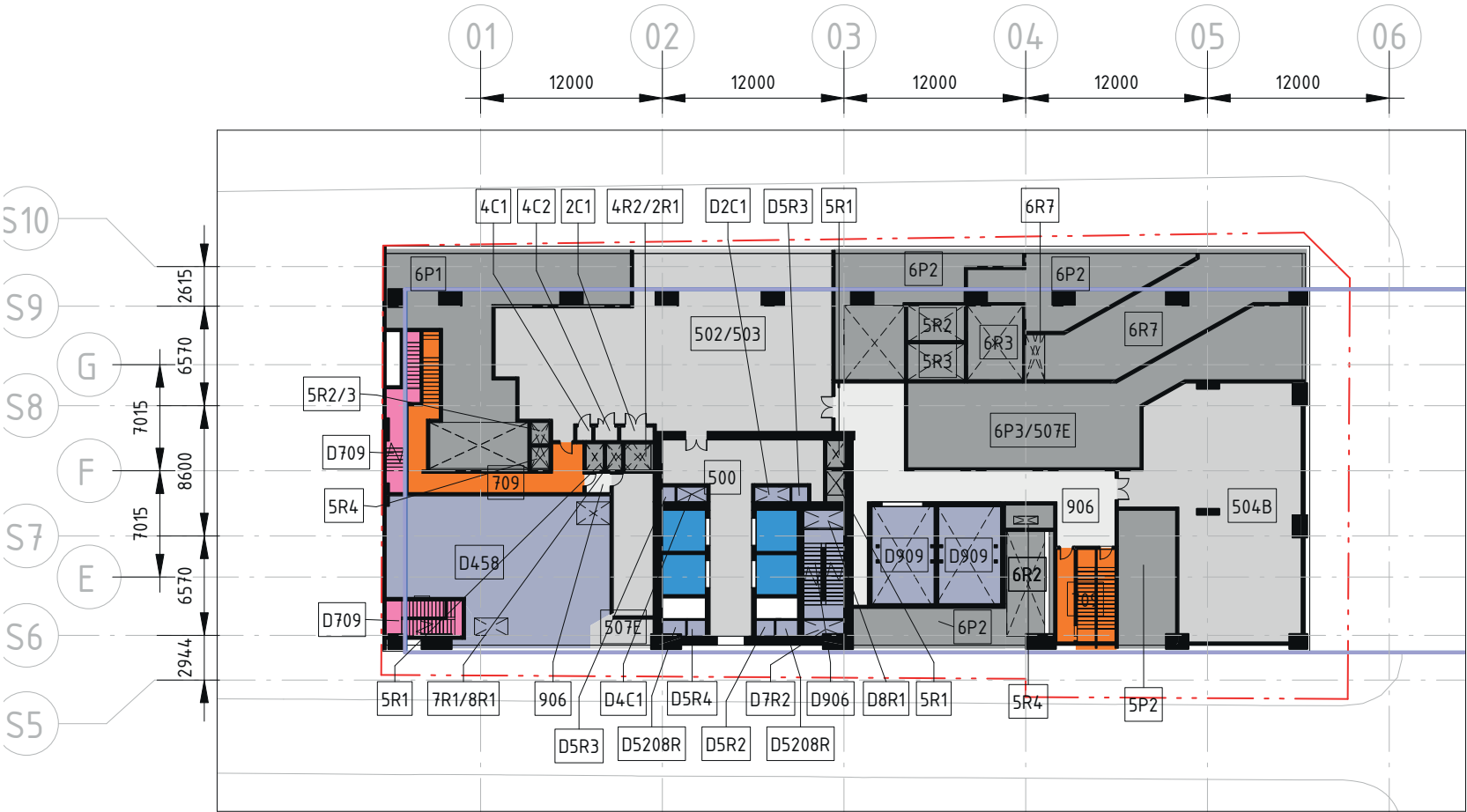
2.2 General Arrangement Plans - Site B

2.2.2 B-L00 Hotel Entrance +95.00



Street higher level +95.00

2.2 General Arrangement Plans - Site B
2.2.3 B-L01 Station and OSD Plant



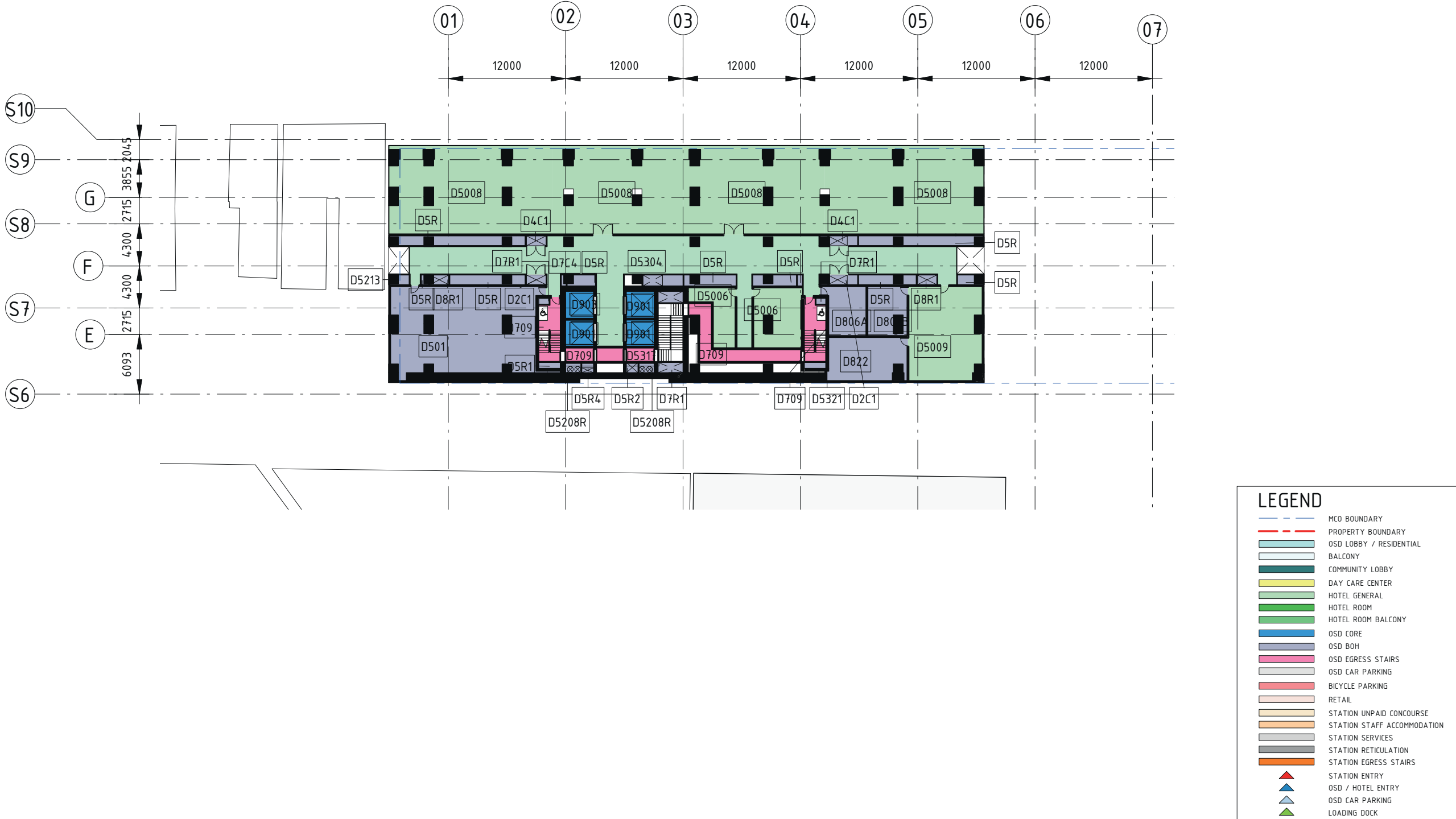
LEGEND

- MCO BOUNDARY
- PROPERTY BOUNDARY
- OSD LOBBY / RESIDENTIAL
- BALCONY
- COMMUNITY LOBBY
- DAY CARE CENTER
- HOTEL GENERAL
- HOTEL ROOM
- HOTEL ROOM BALCONY
- OSD CORE
- OSD BOH
- OSD EGRESS STAIRS
- OSD CAR PARKING
- BICYCLE PARKING
- RETAIL
- STATION UNPAID CONCOURSE
- STATION STAFF ACCOMMODATION
- STATION SERVICES
- STATION RETICULATION
- STATION EGRESS STAIRS
- STATION ENTRY
- OSD / HOTEL ENTRY
- OSD CAR PARKING
- LOADING DOCK

2.2.4 B-L02 Hotel Car Park



2.2 General Arrangement Plans - Site B
2.2.5 B-L03 Hotel Amenities



2.2.6 B-L04/05 Hotel Transfer and Guest Rooms

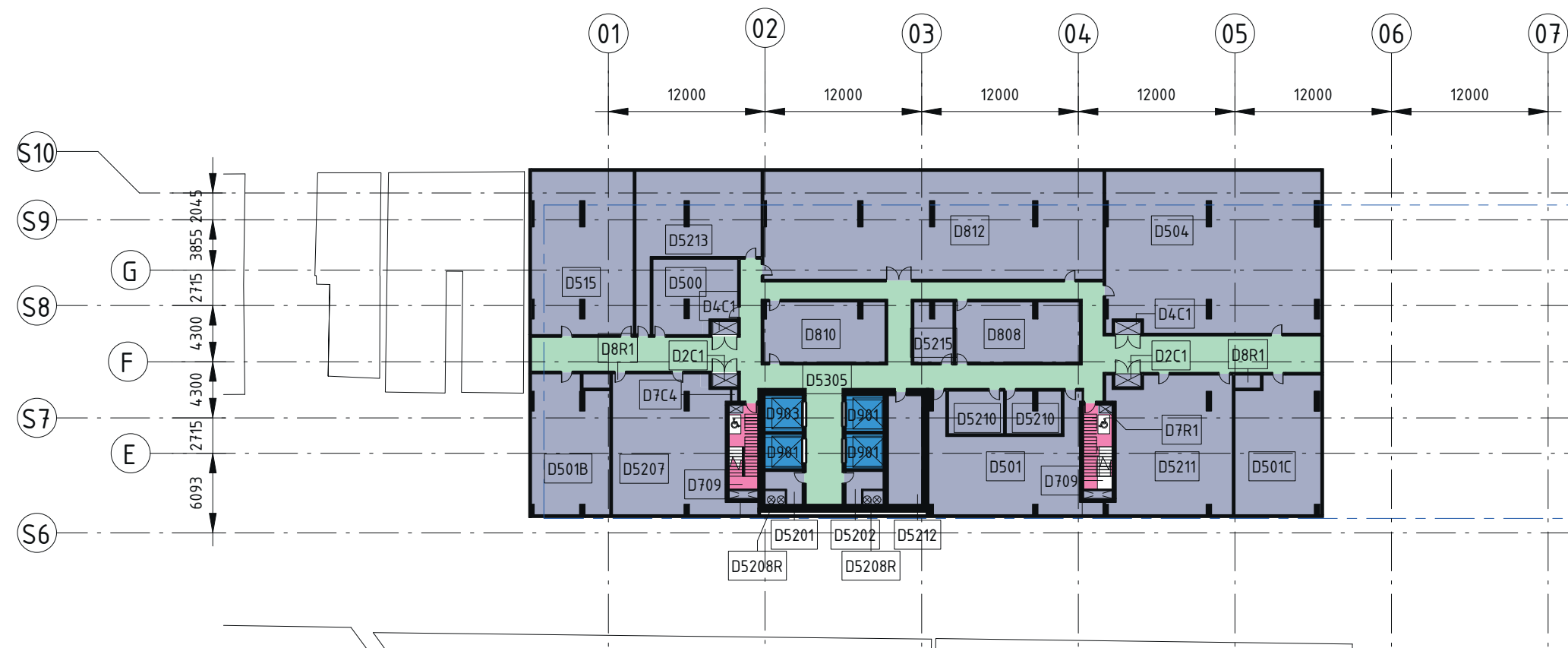


2.2 General Arrangement Plans - Site B
2.2.7 B-L7 - L13 Hotel Guest Room Typical Floor



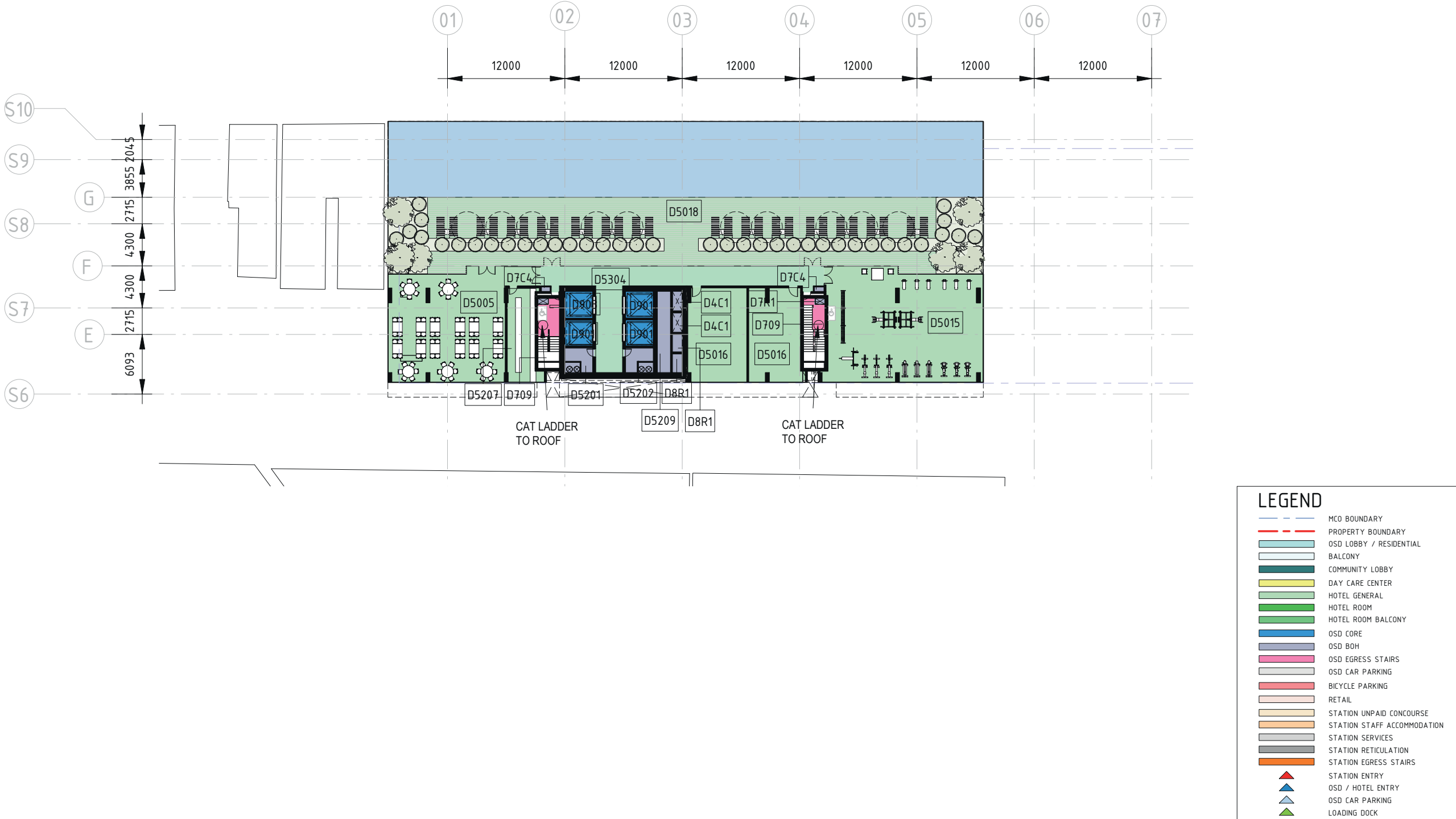
2.2 General Arrangement Plans - Site B

2.2.8 B-L14 Hotel Roof Amenities

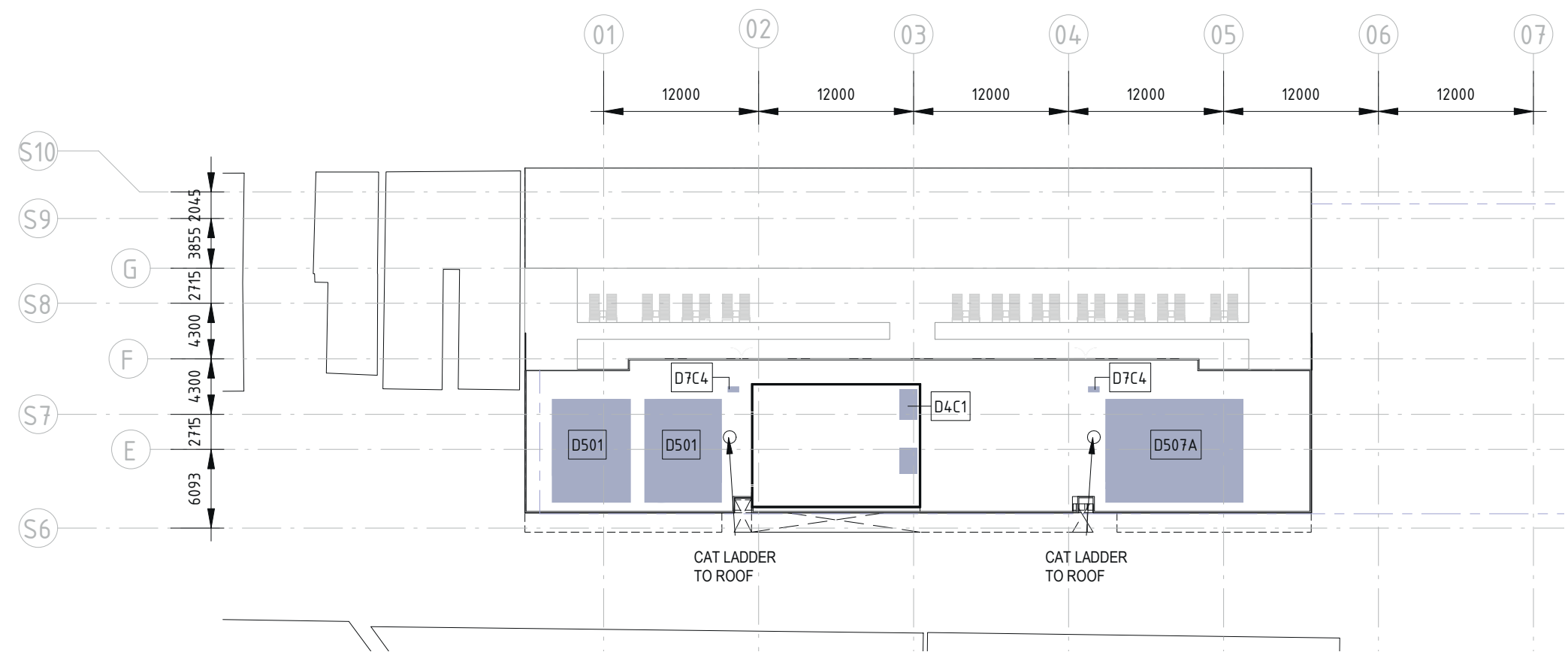


LEGEND	
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	PROPERTY BOUNDARY
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	BALCONY
	COMMUNITY LOBBY
	DAY CARE CENTER
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	STATION SERVICES
	STATION RETICULATION
	STATION EGRESS STAIRS
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	OSD CAR PARKING
	LOADING DOCK

2.2 General Arrangement Plans - Site B
2.2.9 B-L15 Hotel Roof Terrace

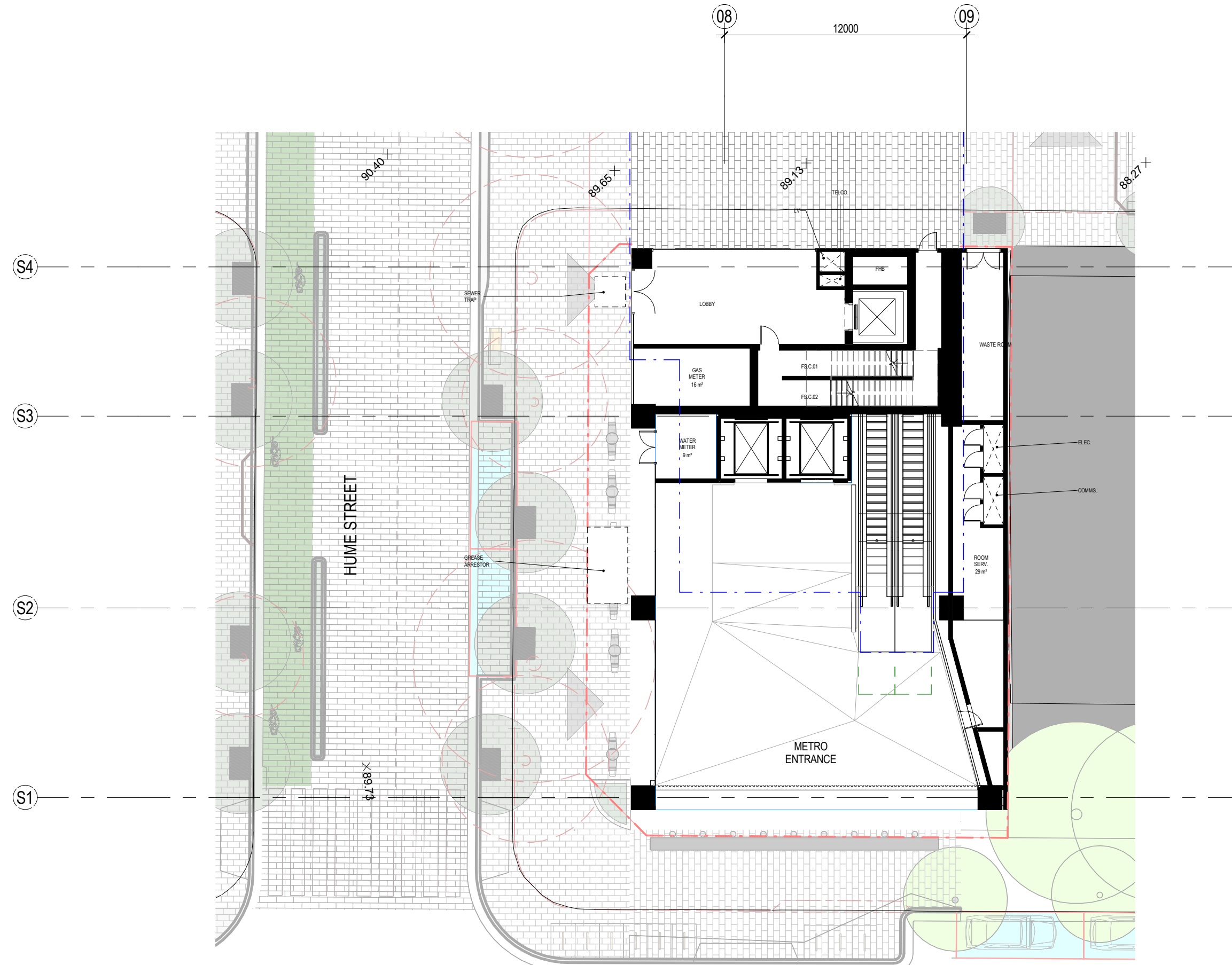


2.2 General Arrangement Plans - Site B
2.2.10 B-L16 Roof



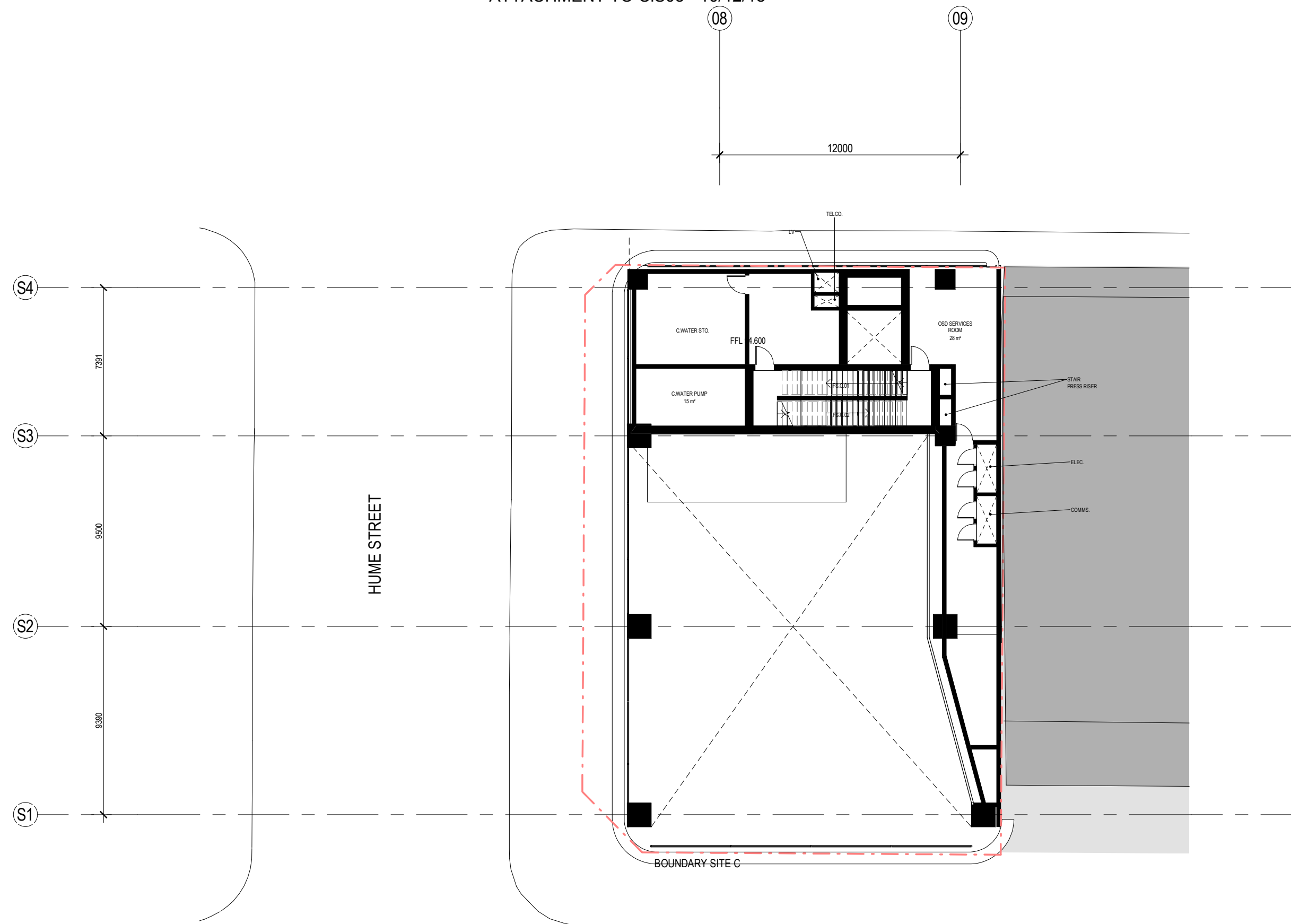
LEGEND	
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	PROPERTY BOUNDARY
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	BALCONY
	COMMUNITY LOBBY
	DAY CARE CENTER
	HOTEL GENERAL
	HOTEL ROOM
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	OSD CORE
	OSD BOH
	OSD EGRESS STAIRS
	OSD CAR PARKING
	BICYCLE PARKING
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	STATION STAFF ACCOMMODATION
	STATION SERVICES
	STATION RETICULATION
	STATION EGRESS STAIRS
	STATION ENTRY
	OSD / HOTEL ENTRY
	OSD CAR PARKING
	LOADING DOCK

General Arrangement Plans - Site C



1 GROUND FLOOR PLAN SITE A & C

1:200



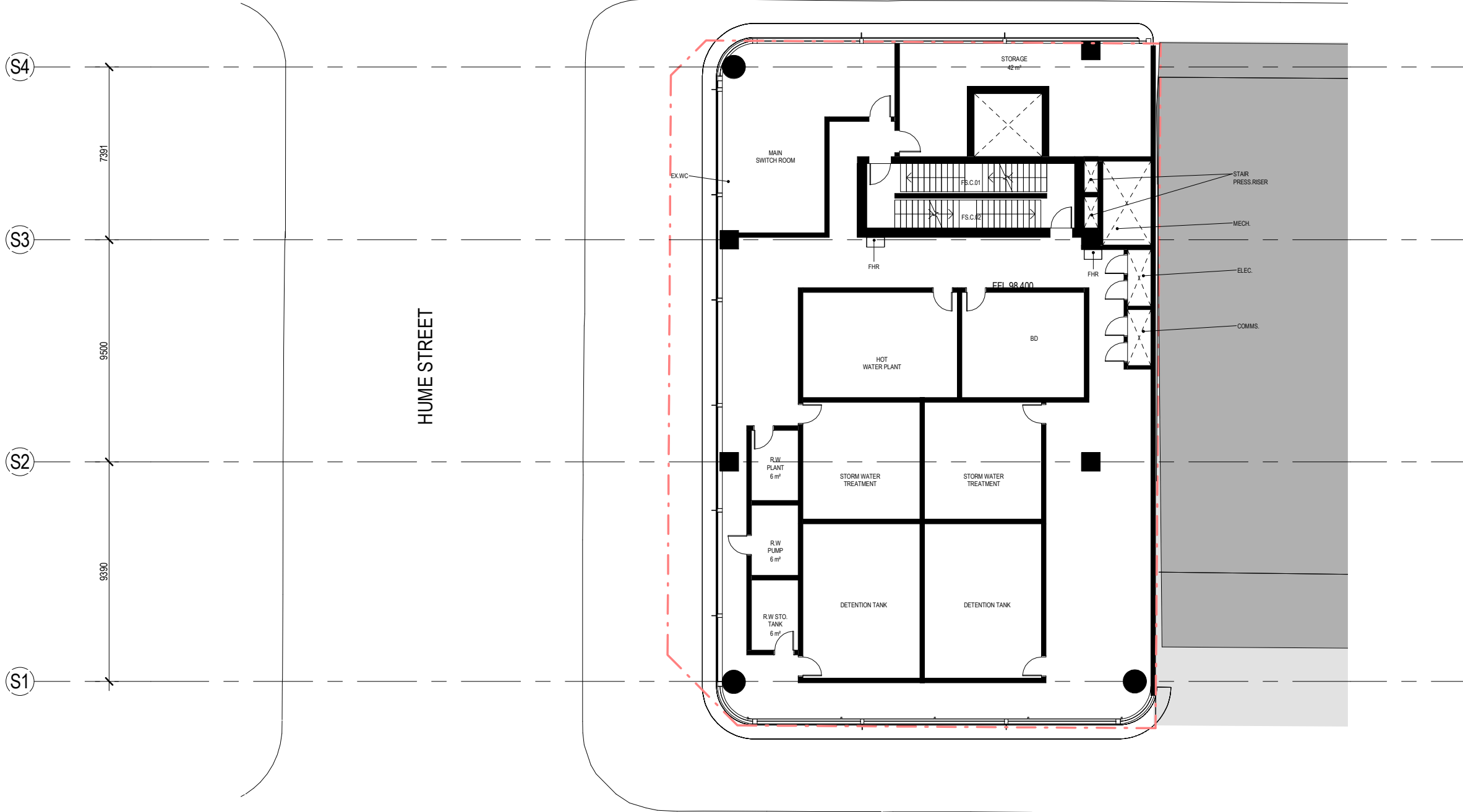
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LEVEL 01 - SITE A / LEVEL 01 - SITE C

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08

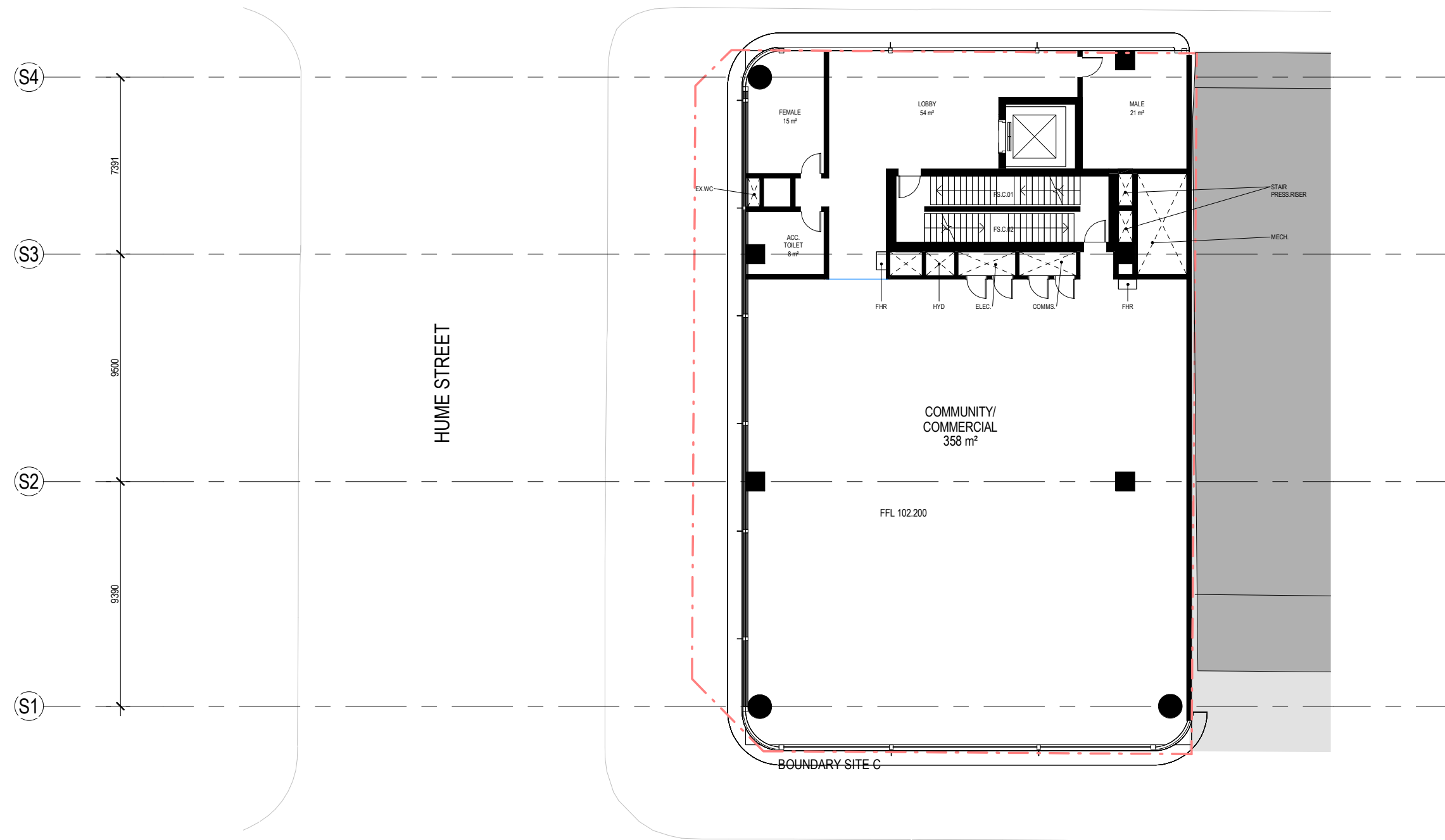
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1

LEVEL 02 - SITE C

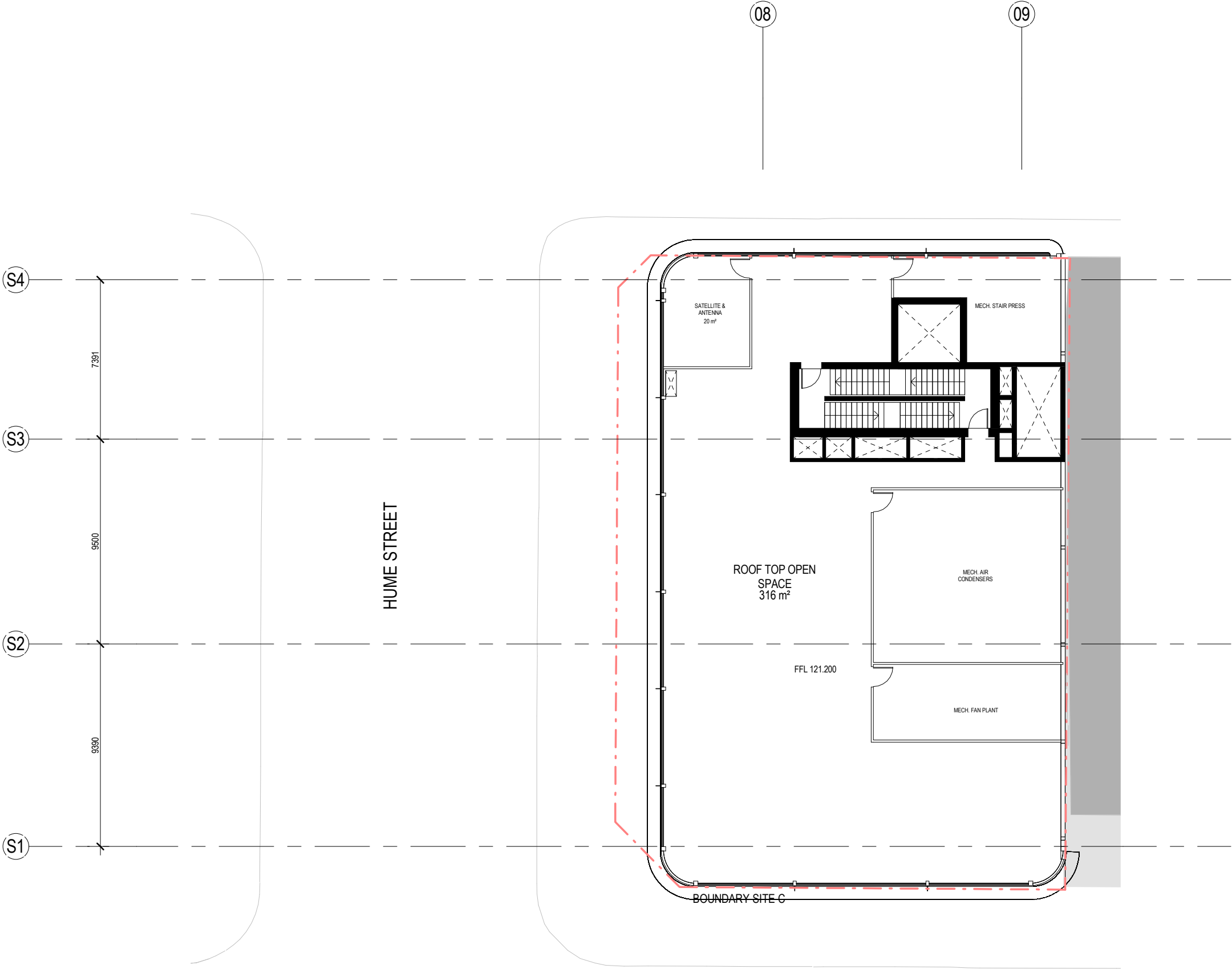
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1

L3 - L7 / SITE C

1:200



1 LEVEL 08 ROOF PLAN - SITE C
1 : 200



Sydney Metro City & South West: Crows Nest Over Station Development

Clause 4.6 Variation Request – Height of Buildings

Applicable to:	Sydney Metro City & Southwest
Author:	Ethos Urban
Owner	Sydney Metro Authority
Status:	Final
Version:	2
Date of issue:	08.11.2018
Review date:	
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1.0 Introduction

This request to vary a development standard has been prepared under Clause 4.6 of the North Sydney Local Environmental Plan 2013 (NSLEP 2013) and is submitted to the Department of Planning and Environment (DP&E) in support of a State Significant Development Application (SSDA 18_9579) for the over station development (OSD) above the new Crows Nest Metro Station. The proposed variation seeks to vary the development standard specified under Clause 4.3 Height of Building under the NSLEP 2013.

Clause 4.6 of the NSLEP 2013 allows consent for development to be granted even though the development contravenes a development standard imposed by the NSLEP 2013. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6 (3) and (4)(a)(ii) require that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard as detailed below:

- that the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority's satisfaction to those matters must be informed by the objective of providing flexibility in the application of the relevant control to achieve better outcomes for and from the development in question.

The Land and Environment Court provides assistance on the approach to justifying a contravention to a development standard under State Environmental Planning Policy 1 – Development Standards (SEPP 1) through the judgement of Justice Lloyd, in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (Webbe). These judgements are also of assistance to the assessment of variations under Clause 4.6 of an LEP.

Additional assistance can be found in the recent decision by Commissioner Pearson in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (Four2Five); *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386; *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511; and *Moskovich v Waverley Council* [2016] NSWLEC 1015 which was upheld by Pain J on appeal.



In accordance with the above requirements, this Clause 4.6 variation request:

- identifies the development standard to be varied (Section 2);
- identifies the variation sought (Section 3);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Section 4);
- demonstrates that there are sufficient environmental planning grounds to justify the contravention (Section 5); and
- demonstrates the contravention of the development standard is in the public interest (Section 6)
- provides an assessment of the matters the secretary is required to consider before providing concurrence (Section 7).

This Clause 4.6 variation request should be read in conjunction with the Environmental Impact Statement (EIS) dated 9 November 2018 in relation to the proposed development of the Crows Nest OSD.

2.0 Development Standard to be Varied

The development standard to be varied as part of this application is 'Clause 4.3 Height of Buildings' relating to the maximum height of building permitted for development. Under the NSLEP 2013, the site has a maximum height of 20m for Site A and Site C, and a maximum height of 10m for Site B, as shown below in Figure 1.



Figure 1 – Existing height of buildings development standard

The NSW State Government is in the process of amending the relevant Height of Buildings development standards within the NSLEP 2013 as shown below in Figure 2, which is extracted from the Crows Nest Sydney Metro Site Rezoning Proposal October 2018. This planning proposal will increase the relevant height of buildings development standard as follows:

- Site A – increased from 20m to RL 183m (approximately 72m);
- Site B – increased from 10m to RL 155m (approximately 52m); and
- Site C – increased from 20m to RL 127m (approximately 24.5m).



Figure 2 – Proposed amendments to the height of buildings development standards within the NSLEP 2013.

3.0 Nature of the Variation Sought

The proposed development seeks concept approval for three building envelopes, one located on each of Site A, Site B, and Site C. The proposed height of the roof slab of each building envelope corresponds to the 'proposed maximum building heights' contained within the Crows Nest Sydney Metro Site Rezoning Proposal October 2018, which will be reflected in the future development standards that will apply to the site.

The proposed development includes provision for a 5m top of building 'services zone'. The definition of Building Height, as provided by the NSLEP 2013 is as follows:

building height (or height of building) means:

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

As the above definition includes 'plant and lift overruns' the 5m building top services zone on Site A and Site C in addition to a 3m building services zone on Site B is included within the defined building height. The nature of the variation requested within this application is summarised below in Table 1.

Table 1 – Summary of variation sought

Block	Proposed Building height		Development Standard (and variation)	
	Roof slab height	Building height	Current	Future
Block A	RL 183 m	RL 188 m	RL 131 m (+ 57 m)	RL 183 m (+ 5 m)
	72 m	77 m	20 m (+ 57 m)	72 m (+5 m)
Block B	RL 155 m	RL 158 m	RL 113 m (+45 m)	RL 155 m (+3 m)
	52 m	57 m	10 m (+45 m)	52m (+3 m)
Block C	RL 127 m	RL 132 m	RL 122.5 m (+ 9.5 m)	RL 127 m (+ 5 m)
	24.5 m	29.5 m	20 m (+ 9.5 m)	24.5m (+5 m)

4.0 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In the recent judgment in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 the Chief Judge upheld the Commissioner's approval of large variations to height and FSR controls on appeal. He noted that under Clause 4.6, the consent authority (in that case, the Court) did not have to be directly satisfied that compliance with the development standard was unreasonable or unnecessary but that the applicant's written request adequately addresses (our emphasis) the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary. Accordingly, Section 4 sets out how, in the specifics of this development, strict compliance with Clause 4.3 of the NSLEP 2013 is unreasonable or unnecessary.

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the methods described were a closed class.

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the NSLEP 2013 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Method).
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method).



The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (Initial Action v Woollahra Municipal Council [24] and Turland v Wingecarribee Shire Council [42]).

In this instance the relevant matter for consideration is:

- For Site B it is the whole of the OSD development above the CSSI approval which is the relevant consideration, as the existing CSSI approval already exceeds the maximum height development standard and therefore any addition of height would require a further variation to that standard.
- For Site A, the existing CSSI approval is at approx. 14.5 metres and hence an additional 2 floors would fit within the maximum height limit of 20 metres. Hence, whether the additional to 27 storeys in total, is reasonable and justified as per the tests under Clause 4.6.

Section 4.1 of this clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height control pursuant to the First Method outlined in Wehbe.

Section 4.2 this clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary because the development standard has been virtually abandoned given the significant shift in the strategic planning context of the St Leonards / Crows Nest precinct and with the approval of the CSSI for the delivery of the metro infrastructure (i.e. Government made decisions have rendered the development standard unreasonable and unnecessary), consistent with the Fourth Method outlined in Wehbe.

4.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method)

The objectives of the height of buildings development standard are prescribed at clause 4.3(1) of the NSLEP 2013, providing:

The objectives of this clause are as follows:

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*



(e) to ensure compatibility between development, particularly at zone boundaries,

(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.

The proposed building envelope achieves each of these objectives notwithstanding the departure from the numerical control identified on the height of buildings map. Each objective is addressed below.

4.1.1 Objective (a): To promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient

The site is located on a sloping ridgeline from a high point at the intersection of Falcon Street and Pacific Highway to a low point at the intersection of Herbert Street and Pacific Highway. Land to the south west of the site slopes away from the Crows Nest town centre. The building heights proposed respond to this natural topography with the St Leonards / Crows Nest precinct capitalising on its ridgeline setting.

The proposed building height, although in exceedance of the existing development standard, responds to the natural high point of the area but also seeks to ensure that the OSD provides a landmark feature within the precinct to allow the public to easily identify the Crows Nest Metro Station located within. The concentration of activity in centres well served by public transport is integral to containing the expansion of urban areas – and instead achieving greater density in existing urban areas.

Placing a cluster of high-density mixed-use development between St Leonards and Crows Nest station, as demonstrated in Figure 3 responds to the natural topography and ridgelines of the area. A 'height peak' around the metro site is commensurate with the location of mass transit infrastructure and the built form proposed under this concept SSD Application an appropriate response to these factors (topography and infrastructure). This identifying feature does not compromise the ability of building height to follow the general natural land form and topography.

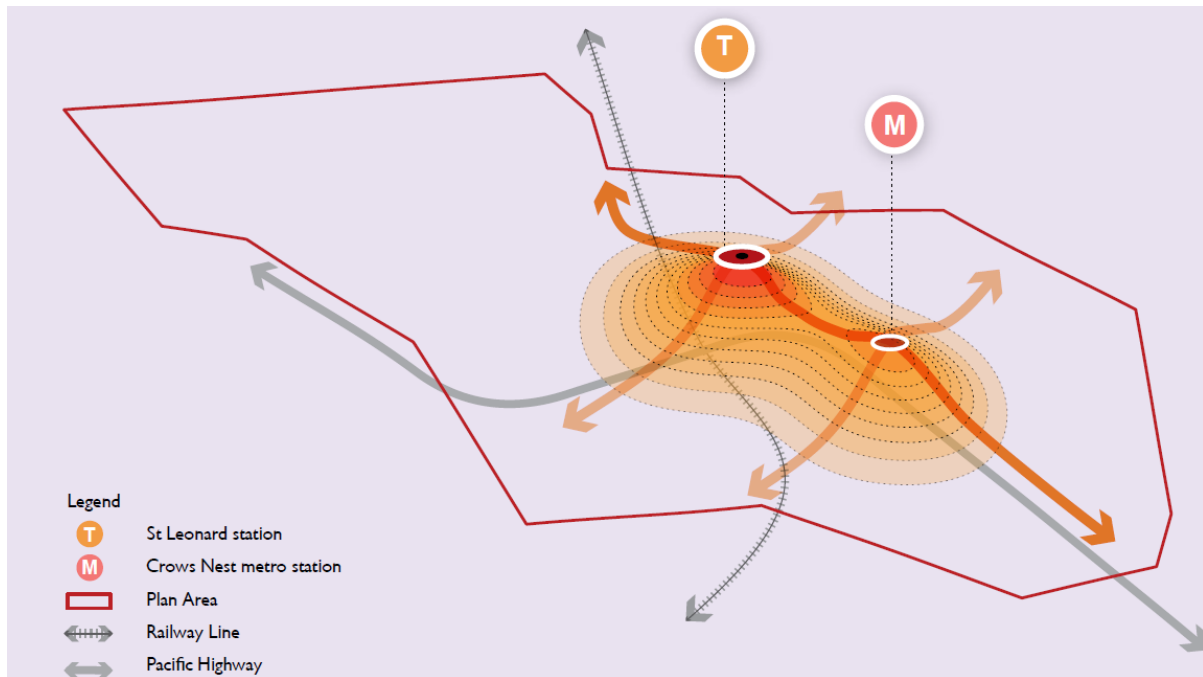


Figure 3 – Height Concept Map under the 2036 Draft Plan

4.1.2 Objective (b): To promote the retention and, if appropriate, sharing of existing views

Section 8.3 and Appendix N of the EIS provide a detailed assessment of the proposed building envelope on both district and immediate private views. This assessment demonstrates that the proposed building envelopes have been carefully designed to provide a balance between:

- optimising the economic opportunity associated with delivering floorspace above a new metro station
- providing an appropriate built form and response to locality by including a height cluster above the St Leonards Station and Crows Nest Metro Station
- where possible, not impeding long range views from private residences, with impacts isolated to only a small number of surrounding residential buildings
- enabling a suitable landmark building to identify the entry to the metro

Crows Nest is experiencing significant urban transition as a result of investment in transport infrastructure, in particular the proposed metro station at the subject site. Locating density on or near transport infrastructure is consistent with strategic planning outcomes of transit-oriented development, which discourage the use of private motor vehicles and maximise the efficiency of investment in public transport.

This change in urban density is reflected in the proposed height concepts under the 2036 Draft Plan, which identify that building height and density is most appropriate at the St Leonards heavy rail station and the Crows Nest metro station. Given this alignment with strategic policy,

this gives cause to an expectation of continued optimisation of land in the St Leonards / Crows Nest area for mixed use development of a significant nature.

Although the concept SSD Application will alter the nature of views from a number of surrounding premises, this is due to the low scale of the existing built form on the site, which can not be expected to be maintained due to the changing context of the St Leonards / Crows Nest area and the impacts are with impacts isolated to only a small number of surrounding residential buildings, which still retain sufficient sky exposure and outlook, as assessed in the detailed Visual Impact Assessment accompanying the EIS.

4.1.3 Objective (c): To maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development

Section 8.4.1 and Appendix K of the EIS provide a detailed assessment of solar access to key public spaces. In summary, the proposed building envelope ensures that solar access to public spaces are prioritised as follows:

- **Willoughby Road:** No areas of Willoughby Road will be affected by overshadowing caused by the OSD prior to 2.30pm at any time of the year in accordance with the provisions in the *2036 Draft Plan* and the Rezoning Proposal.
- **Hume Street Park:** No areas of Hume Street Park will be affected by overshadowing caused by the OSD prior to 3.00pm at any time of the year in accordance with the provisions in the *2036 Draft Plan*.
- **Ernest Place, Holtermann Street Car Park and the Crows Nest Community Centre:** No areas of Ernest Place, Holtermann Street Car Park or the Crows Nest Community Centre (referred to collectively below as the 'Ernest Place Precinct') will be affected by overshadowing caused by the OSD prior to 3.45pm in accordance with the provisions of the *2036 Draft Plan*.

Section 8.4.2 and Appendix I of the EIS provide a detailed assessment of solar access to surrounding private dwellings. There are some affected properties directly to the west of the site along the Pacific Highway and Nicholson Street which do not receive the prescribed amount of solar access in the relevant planning provisions, however, varying hours of sunlight remains to these properties in mid winter and the effect of shadowing is measured at the mid winter worst case scenario and the impact at other times of year will be reduced. Further, refinement of the envelope at the detailed design stage will also occur which may result in further reductions in shadowing. In consideration of this, the concept SSD Application has:

- selected heights and built forms which minimises impact on key areas of public space and established residential areas to the west and south of the site
- options that provide taller slender building forms have not been contemplated. These taller options have not been pursued to respond to community concerns associated with the building height, density and the minimisation of overshadowing impacts to a number of public areas (despite analysis demonstrating that these overshadowing impacts would also be minimal).
- established a Sun Access Plane for the site in order to protect the Willoughby Road precinct. The Solar Plane seeks to protect solar access to Willoughby Road in the

late afternoon on the Winter Solstice (21st June), to ensure minimal overshadowing of public spaces and residential areas. The Sun Access Plane sets a maximum RL for Site A at RL 183 (27 storeys) (with the exception of a building services zones) which is the maximum extent of the concept DA being sought.

It is therefore considered that the proposed building envelope has minimised the impacts on existing private dwellings where possible, whilst prioritising solar access to public open space.

4.1.4 Objective (d): To maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings

The proposed building envelope achieves building separation distances, consistent with those recommended by the design criteria of the Apartment Design Guides to achieve both visual and acoustic privacy. The development is adequately separated from all surrounding properties, which has been detailed further at Appendix G of the EIS. The following specific commentary is noted for buildings on the subject site in addition to each of the surrounding sites in regard to separation:

- The indicative design achieves a 24 metre separation between the facing facades of the balconies between buildings. All other windows do not look toward neighbouring units. The majority of the proposed balconies are at adequate distances from each other, and privacy screens will be installed where necessary to achieve privacy.
- The indicative design achieves a 24 metre separation between the two buildings on Site A.
- Along Clarke Lane, the lower floors of the residential building on Site A (below level 25) achieve a minimum separation of 10 metres from the adjacent buildings including 20 Clarke Street, 22-26 Clarke Street and the St Leonards Centre. Along all other facades, the buildings achieve a separation of more than 12 metres to adjacent buildings.

Therefore, the proposed exceedance of the maximum building height control does not impact on privacy to existing residential dwellings and ensures that new dwellings within the site will achieve a high level of amenity.

4.1.5 Objective (e): To ensure compatibility between development, particularly at zone boundaries

The concept SSD Application, notwithstanding the departure from the height of buildings standard, proposes a built form that considers the context of the site, including the existing development, the transitional nature of the local area and the proximity to public transport and in particular:

- The scale of the proposal will strengthen the streetscape and is in line with the desire to situate prominent buildings at major entrances or above train stations. Sound urban design principles point to the need for strong locational buildings as a marker to the station infrastructure contained within. Whilst it is acknowledged that the tallest

buildings in the precinct are located closer towards St Leonards, it remains appropriate to provide a locational marker to allow people to identify the location of the metro station.

- The proposal includes a diversity of heights which provides differentiation in built form and prevents the repetitive orientation of buildings which can result in a perception of greater density or a monolithic appearance of a wall of buildings. The diversity of heights, in conjunction with sufficient spatial separation between buildings, creates the perception of openness to the site which reduces the perception and appearance of density.
- The articulation of the proposed design either through podium, setbacks or materiality seeks to demarcate between the lower levels of the built form and the buildings above, thereby relating the concept SSD Application to the existing scale and the street character along the Pacific Highway.

4.1.6 Objective (f): To encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.

As stated above, the St Leonards / Crows Nest area is undergoing a significant change in character. The approval of the CSSI to deliver the Crows Nest Metro Station, is a catalyst for an emerging neighbourhood character for the precinct, based on the principles of transit-oriented development and locating additional density in close proximity to transport services. Although the concept SSD Application presents a scale and density that departs from the existing character of the area, this application is reflective of the desired future character of the precinct and will deliver homes, workplaces and community facilities in a planned and connected manner.

4.2 The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Method)

The Crows Nest OSD site is unique compared to other Sydney Metro City & Southwest sites in that it is currently located in an area that has a divergence of densities from the higher density at St Leonards to lower density at Crows Nest.

North Sydney Council prepared the *Crows Nest Planning Study* in 2010 to direct future development and infrastructure provision in Crows Nest. This study recognised the need for updated planning controls to support future development in Crows Nest. Council commenced further studies in 2016 which focused on identifying localities or streets important to the community and identifying land use, built form and public domain priorities, which included the preparation of the *Sydney Metro Planning Study (2017)* and the *Crows Nest Placemaking and Principles Study (2016)*.

In July 2016, DP&E announced it would also be undertaking strategic planning investigations into revitalising the surrounds of St Leonards railway station and the metro station at Crows Nest. This process resulted in the announcement of a St Leonards and Crows Nest Priority



Precinct in June 2017. In August 2017, DPE released the *St Leonards and Crows Nest Station Precinct Interim Statement (Interim Statement)*. These strategic investigations identify redevelopment sites within the precinct and provide the strategic planning framework to guide future development and infrastructure delivery. It is noted that the Crows Nest station precinct is identified in the Interim Statement as being located in the 'St Leonards and Crows Nest Station' character area which is described as a high density centre with new development providing opportunities for a mix of commercial, retail, community and/or childcare and public domain uses that complement St Leonards and Crows Nest.

In October 2018, DPE released a draft Rezoning Proposal for the Crows Nest Sydney Metro site. This Rezoning Proposal increases the relevant planning controls commensurate with the built form proposed in this concept SSD Application. The release of the Rezoning Proposal was simultaneous to the release of other draft strategic planning documents including the *St Leonards and Crows Nest 2036 Draft Plan*. The 2036 Draft Plan recommends significant changes to the planning controls for the immediate area surrounding the Crows Nest OSD site subject to consideration of community feedback to its exhibition. Detailed consideration of the Rezoning Proposal and the 2036 Draft Plan and associated reports is presented at Appendix MM.

Whilst not Council's actions per se, the case law references matters regarding Council's decisions and the abandonment of the standard. In this instance, the relevant Government decisions which render the applicability of the controls redundant, are the announcement of the transformative public transport infrastructure project that is Sydney Metro. In addition to decision to grant consent to the CSSI station development which already partially exceeds or is close to the controls in NSLEP 2013 is another key Government decision which renders the standard unreasonable or unnecessary. The controls in NSLEP 2013 predate both Government decisions. These planning studies, culminating in the 2036 Draft Plan and the Rezoning Proposal recognise the need to supersede the development standards of the NSLEP 2013 as they apply to the site. The above planning studies demonstrate that the existing planning controls are now not an appropriate fit nor have relevance within the strategic context of the St Leonards / Crows Nest area and therefore compliance with these controls is unreasonable and unnecessary.

The proposed OSD has been devised to integrate with the future development context in the immediate vicinity, while also having a close relationship to the evolving St Leonards Precinct. The future development on the site, will help to deliver and realise the opportunities afforded by the construction of the Sydney Metro including:

- **An employment hub** – the proposed development will protect and strengthen the area's commercial role with additional commercial and complementary uses to capitalise on renewed confidence in the commercial market as well as retail, creative, health and education sectors.
- **Transit-oriented development** - the proposed development will create future employment opportunities that leverage the increased transport capacity of the new Metro station.
- **Vibrant community** – the proposed development will encourage community uses on the Sydney Metro sites and improvements to the public domain to create a new community focal point in this accessible location.

- **Accessible place** – the proposed development will ensure the site is an attractive and easy place to visit, with improved pedestrian and cyclist connections.
- **A well-designed place** – the proposed development will provide new buildings to demonstrate the highest quality design that respects and enhances the diverse local character of the area.

As noted in Section 3.0, the proposed concept development includes a 'building top services zone' which will exceed the future development standards by up to 5m. The future development within the site (consistent with the currently proposed concept development) will be able to locate building plant within this area of the envelope provided that this element of the future built form does not detrimentally affect the ability of the development to achieve the principles for protecting solar access and local amenity, as outlined within the Rezoning Proposal. These are:

- No additional overshadowing of:
 - Residential areas within the draft 2036 Plan boundary for more than 3 hours between 9am and 3pm (winter solstice).
 - Residential areas outside of the draft 2036 Plan boundary between 9am and 3pm (winter solstice).
 - Willoughby Road between 11:30am and 2:30pm (winter solstice).
- Respect the village character of Crows Nest; and
- Minimise overshadowing on key public open spaces such as Hume Street Park and Ernest Place.

5.0 Clause 4.6(3)(b): There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the NSLEP 2013 requires the applicant's written request to vary a development standard to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. The following environmental planning grounds, in relation to the proposed development, are set out in Section 5:

- Delivery of a transit-oriented development neighbourhood;
- Protection of solar access to key public open spaces; and
- Consistency with the strategic planning framework, establishing the future desired character for the St Leonards/Crows Nest precinct under the 2036 Draft Plan.

5.1 Existing CSSI approval

The existing CSSI approval exceeds the development standard on Site B (the approval is greater than the 10m standard), and is close to the development standard on Site A (i.e.



would only allow 2 additional floors above the approved station infrastructure within the 20 metre height limit)

In Four2Five, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. In this regard, the proposed variation is particular to the circumstances of the proposed development on the site as the station infrastructure approved under the CSSI Approval already partially exceeds these height controls or has limited remaining development potential in order to comply with the development standard. Compliance with the standard would render any meaningful OSD density impossible without a variation to the building height development standard.

Overall, in light of the above, compliance with the development standard would result in the lost opportunity for a reasonable scaled transit-oriented development with housing, social infrastructure, tourist/visitor accommodation and commercial uses, as per the remaining points below.

5.2 Delivery of a transit-oriented development neighbourhood

The Crows Nest station presents an excellent opportunity to develop a transit-oriented development (TOD) neighbourhood. A TOD neighbourhood typically has a centre with a transit station or stop (train station, metro station, tram stop, or bus stop), surrounded by relatively high-density development with progressively lower density development spreading outward from the centre. TODs generally are located within a radius of 400m to 800m from a transit stop, as this is considered to be an appropriate walking distance for pedestrians.

Locating density above a metro corridor benefits the community by generating income for funding future infrastructure projects, facilitating sustainable urban renewal and development, encouraging use of public transport (hence, reducing car usage) and improving the connectivity of local communities. Development above the metro corridor further provides an opportunity to meet housing targets, in line with those outlined in the North District Plan.

Further to the above, the provision of a metro station within such proximity to an existing heavy rail station at St Leonards makes the site highly strategic. In terms of rail accessibility, the St Leonards / Crows Nest area will have the same level of accessibility and capacity as North Sydney / Victoria Cross. It provides quick, direct access to other key employment areas including Chatswood and the Sydney CBD. This is resulting in (and is predicted to continue to result in) strong demand for commercial and residential floorspace in the St Leonards / Crows Nest area which is contributing to the changing built form and density of the precinct.

Multiple strategic planning studies undertaken by North Sydney Council have identified that the most appropriate location for this density is on or nearby transport infrastructure along the Pacific Highway Corridor and away from areas such as Willoughby Road. This is further reinforced by the 2036 Draft Plan. This concept SSD Application is consistent with these studies, providing suitable justification for increased density on the site.

The concept SSD Application is directly consistent with the findings and ethos of multiple strategic planning documents in that it supports the provision of a mixed-use development



above the metro corridor as a way of increasing use of existing public transport, reducing car usage and encouraging connectivity within the area.

5.3 Protection of solar access to key public open spaces

As outlined in Section 4.1.3 above, the proposed building envelope has been developed to specifically respond to key public spaces. The building envelope has been designed to comply with the relevant overshadowing restrictions under current and draft controls. The concept SSD application ensures protection to Willoughby Road, Hume Street Park, and Ernest Place, Holtermann Street Car Park and the Crows Nest Community Centre. The project also establishes a Sun Access Plane for the site in order to protect the Willoughby Road precinct. The Solar Plane seeks to protect solar access to Willoughby Road in the late afternoon on the Winter Solstice (21st June), to ensure minimal overshadowing of public spaces and residential areas.

5.4 Consistency with the strategic planning framework

As set out above, multiple strategic planning studies undertaken by North Sydney Council have identified that the most appropriate location for this density is on or nearby transport infrastructure along the Pacific Highway Corridor and away from areas such as Willoughby Road. This is further reinforced by the 2036 Draft Plan. The proposed development is consistent with these studies, providing suitable justification for increased density on the site.

The concept SSD Application is directly consistent with the findings and ethos of multiple strategic planning documents in that it supports the provision of a mixed-use development above the metro corridor as a way of increasing use of existing public transport, reducing car usage and encouraging connectivity within the area.

The proposed concept development will breach the current development standards, but (as outlined above) these development standards when gazetted did not contemplate the delivery of the Sydney Metro station at Crows Nest and therefore to not reflect the future character of the area as it is now envisaged.

Further, the *Greater Sydney Region Plan 2018* sets out key concepts for the future growth of Sydney including the 'Metropolis of Three Cities' and the '30-minute city'. The Crows Nest OSD is a direct implementation of a number of relevant directions and objectives of the plan, including:

- **A city supported by infrastructure:**
 - **Infrastructure supports the three cities:** The Crows Nest OSD is located immediately above transport infrastructure, in a location which will encourage use of the Sydney Metro project by future building occupants.
 - **Infrastructure use is optimised:** The Crows Nest OSD would provide for dwellings and tourist / visitor accommodation in a location where use of the future Metro line can be optimised, as well as the broader Sydney public transport network as principal modes of transport.
- **A city for people:**
 - **Communities are healthy, resilient and socially connected:** The Crows Nest OSD would provide for residential and tourist and visitor accommodation development within close proximity to the Crows Nest station which will populate the area and add to the vibrancy of the area both during and outside

traditional business hours. It is also noted that the proposal has been designed such that the majority of residents will not have access to a private vehicle, thereby encouraging the use of public transport, walking and cycling when making journeys.

- **A collaborative city:**
 - ***Benefits of growth realised by collaboration of governments, community and business:*** The Crows Nest OSD comprises an initiative by Sydney Metro to ensure that the development of the site reflects the extensive collaboration undertaken through this project. A rapidly changing economy and society has meant that the gulf between people and communities has widened in recent years. Social and community infrastructure, such as a metro station or proposed community space, play an important role in bridging this gap through a variety of means, including through the establishment of networks and collaborative activity, decreasing isolation and promoting skills and education. The concept SSD Application can therefore contribute to these collaborative benefits through the provision of this infrastructure and community space (i.e. community facilities and child care centre).
- **Housing the city:**
 - ***Greater housing supply:*** The Crows Nest OSD proposes a substantial boost to housing supply in the St Leonards / Crows Nest Strategic Centre, delivering approximately 350 dwellings at the site.
 - ***Housing is more affordable and diverse:*** The Crows Nest OSD would contribute to the provision of an array of different dwelling typologies, making provision for studios, 1, 2 and 3 bedroom apartments. It would also deliver an increased housing supply in a highly accessible location.
- **A city of great places:**
 - ***Great places that bring people together:*** The Crows Nest OSD would play a key role in the creation of a high-quality Crows Nest Station precinct and will contribute to the creation of a great future place in the St Leonards / Crows Nest Strategic Centre.
 - ***Environmental heritage is identified, conserved and enhanced:*** The Crows Nest OSD has been designed to ensure that the development relates well to the surrounding heritage context. This is discussed further at Chapter 8.6 and specific provisions have been included in the Crows Nest Design Guidelines to ensure a sympathetic design response to neighbouring heritage items (including the adjacent St Leonards Centre) through the design development of the detailed SSD Application.
- **A well-connected city:**
 - ***A Metropolis of three cities – integrated land use and transport creates walkable and 30-minute cities:*** The Crows Nest OSD will contribute to the provision of a 30-minute Eastern City, co-locating housing and employment at a site which directly benefits from very strong access to services and employment, seven days a week. The concept proposal epitomises integrated land use and transport planning.
 - ***The Eastern, Greater Parramatta and the Olympic Peninsula and Western Economic Corridors are better connected and more competitive:*** The Crows Nest OSD would strengthen Sydney's Eastern

Economic Corridor by contributing to the continued growth of the St Leonards / Crows Nest Strategic Centre. The OSD would also harness the catalytic effects of the metro station by offering commuting advantages to residents, visitors and workers. Residents and workers in the OSD also would be better connected to Sydney CBD and other major centres, which will improve business linkages and access to employment opportunities.

- **Jobs and skills for the city:**
 - ***Investment and business activity in centres:*** The Crows Nest OSD would facilitate business investment in the St Leonards / Crows Nest Strategic Centre through the provision of commercial and visitor accommodation in a highly accessible and sought after location.
 - ***Economic sectors are targeted for success:*** The Crows Nest OSD would contribute to the provision of additional tourist / visitor accommodation capacity in the St Leonards / Crows Nest Strategic Centre, which would assist in the continued development and expansion of the target tourism sector within Sydney. The provision of a tourist and visitor accommodation within close proximity to the identified Health and Education Precinct will also support these precincts as well as commercial activity in the wider area.

5.5 Social and Economic Impacts

5.5.1 Social Impacts

The OSD would have a positive social impact on the St Leonards / Crows Nest Strategic Centre by creating an integrated station development that provides residential dwellings, tourist / visitor accommodation, community uses and office floor space above the Crows Nest Station. It will create a focal point for community activity and a vibrant place for the community to gather, work and reside. In conjunction with the public domain upgrades and retail activated street frontages to be delivered under the terms of the CSSI Approval, the OSD will add to the civic qualities of the precinct and encourage healthy sustainable modes of transport such as walking and cycling, in addition to the use of the Metro.

The provision of a mixed-use scheme accommodating residential apartments, tourist / visitor accommodation and commercial floor space responds to a wide range of community needs. Additional housing would create opportunities for people to live close to where they work, whether within the St Leonards / Crows Nest Strategic Centre or via the new Sydney Metro, aligning with the concept of the '30-minute city'. New tourist / visitor accommodation would provide increased capacity for Sydney to grow its national and international profile as a destination for travel and would complement the health precinct anchored around Royal North Shore Hospital. By supporting a wide range of land uses, the OSD would support a range of activities and occupancy throughout the day and evening. This would contribute towards a vibrant transport precinct that is safe, well-utilised and which acts as a focal point for the North Shore in regard to both transport and land use.

The concept SSD Application also includes opportunities for social infrastructure on Site A or Site C. Provision for this space has been made in response to work undertaken by North Sydney Council in the Sydney Metro Planning Study 2016, which identified the need for a



community use on site. This facility will be used by the community to encourage social interaction and community development in a highly accessible location. The employment generated by the development during the construction and operational phases (described in further detail in Section 9.2 below) has further social benefits associated with the ability for workers to provide for their families and spend money in the local community.

5.5.2 Economic Impacts

The delivery of the OSD above the Crows Nest Station is expected to make a significant and positive contribution to the St Leonards / Crows Nest Strategic Centre by providing for additional direct and indirect employment, supporting additional economic activity in the tourism and commercial office sectors, and contributing to additional housing supply. Specifically, the OSD is expected to result in 725 jobs (Full Time Equivalent or FTE) during the construction phase (subject to detailed design and planning approval) and provide for 730 - 1,230 ongoing jobs (FTE) on-site during the operational phase, depending on the final land use mix. This will significantly contribute to employment targets listed in the 2036 Draft Plan, which target 3,020 new jobs in Crows Nest by 2036.

Businesses in the completed building are estimated to generate industry value-add of \$51 million per annum, which increases to \$71 million when combined with the project's residential components. Resident, tourist / visitor and employee spending at local retail store and service centres is estimated to generate almost \$30 million annually in local expenditure.

6.0 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

6.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the height of buildings development standard, for the reasons discussed in section 4.1 of this report.

6.2 Consistency with the objectives of the land use zone

The proposed development is consistent with the objectives of the B4 Mixed Use Zone, as demonstrated below.

6.2.1.1 Objective: To provide a mixture of compatible land uses

The concept SSD Application, as provided at Section 4.5 of the EIS, seeks approval for the following land uses:

- residential accommodation;
- tourist and visitor accommodation;
- commercial premises; and
- social infrastructure including but not limited to opportunities for community facilities / child care centre / recreation areas / co-working space / library

These land uses respond to both the housing and employment targets identified in the North District Plan and will complement and support existing businesses in Crows Nest and St Leonards. The social infrastructure (i.e. community facilities / child care centre / recreation area / library / co-working space) provides floorspace to meet an identified need for such facilities in North Sydney Council's Sydney Metro Planning Study 2016 and the Draft St Leonards & Crows Nest 2036 Plan. The concept proposal seeks flexibility to locate this social infrastructure in either on Site A or Site C.

The proposed development, notwithstanding the exceedance of the height of buildings standard, facilitates a compatible mix of land uses on the site. Additionally, the height of the proposed building envelope does not give rise to any environmental impacts that would limit the attainment of this objective on surrounding properties.

6.2.1.2 Objective: to integrate suitable business, office, residential, retail and other development in accessible locations as to maximise public transport patronage and encourage walking and cycling.

As demonstrated at **Section 5.1** of this variation request, this project represents a unique opportunity to deliver a transit-oriented development. Located directly above the Crows Nest Metro Station, the range of land uses described above will have direct access to transport infrastructure. This connectivity and integration of development will actively facilitate a greater patronage of public transport. As discussed at **Section 5.2**, the proposed building height, although exceeding the maximum building height control, will act as a landmark to



clearly identify public transport infrastructure and thereby promoting public transport usage within the community surrounding the development.

The provision of community infrastructure within the development will provide not only to the residents and workers of the future buildings but will provide services within walking or cycling distance of existing residences and workplaces.

6.2.1.3 Objective: To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity

The proposed concept SSD application relates to a building envelope that will facilitate the delivery of an OSD design with an indicative land use mix comprising approximately 350 residential apartments on Site A, 250 hotel rooms on Site B and up to 2,700 square metres of commercial floor space on Site C. In addition, the indicative OSD design for Site A incorporates up to 2,700 square metres of social infrastructure GFA (child care centre, community centre and recreation area) equivalent to one level of the podium of the building.

The Crows Nest OSD Design Guidelines (Design Guidelines) have been prepared as part of this concept SSD Application and submitted at Appendix O of the EIS. These Design Guidelines establish key principles which the future detailed design of the project is required to respond to. Additionally, a competitive selection involving an open Expression of Interest (EOI) process and Request for Tender (RFT) process will be completed to select a detailed concept design for the project.

The Design Excellence Strategy (Appendix N of the EIS) will ensure that a high quality urban outcome is achieved for the development and that the attainment of this outcome is not compromised but enhanced by the variation to the building height development standard in this request.

Further, a SEPP 65 Analysis Report is submitted at Appendix G of the EIS demonstrating that the proposed building envelope is capable of delivering a design that achieves:

- At least 2 hours direct sunlight to living rooms and private open space of 75% of indicative apartments (exceeding the design criteria of 70%);
- Provides natural cross ventilation to 67% of indicative apartments within the first nine levels (exceeding the design criteria of 60%);
- Minimises the impact of shadowing to the private open space and living areas of existing residential dwellings in the vicinity of the site; and
- Achieves the minimum building separation distances, ensuring that visual and acoustic privacy is maximised.

6.2.1.4 Objective: To maintain existing commercial space and allow for residential development in mixed use buildings, within non-residential uses concentrated on the lower levels and residential uses predominately on the higher levels

The total GFA for the integrated station development, including the station GFA (i.e. station retail, station circulation and associated facilities) and the OSD GFA is 60,400 square metres. This is to include the following non-residential floor space:

- 2,700m² of social infrastructure floor space (on Site A or Site C)



- 15,200m² of hotel / visitor or commercial floor space (on Site B)
- 2,700m² of commercial floor space (on Site C – subject to replacement by social infrastructure floor space as described below)

The final location of social infrastructure space is to be influenced by ongoing negotiations with relevant stakeholders to occupy all available floorspace on Site C, or alternatively, to be located on the podium rooftop of Site A. However, across all three sites, non-residential components are located at lower levels with residential uses above.

6.3 Overall public interest

In addition to achieving the objectives of the height of buildings development standard and the objectives of the B4 Mixed Use land use zone, the Crows Nest OSD is considered to be in the public interest as:

- it would provide additional employment and residential capacity in the context of the St Leonards / Crows Nest Strategic Centre as targeted in the North District Plan, ensuring that jobs and dwellings are co-located in a manner which reduces commute times and improves the level of access to facilities, services, transport options and public open space
- it includes a substantial tourist / visitor accommodation component, providing additional capacity and continuing to grow Sydney's tourism economy which is currently experiencing a shortage of accommodation supply. This would have flow on positive economic impacts within the context Greater Sydney and NSW economies more broadly and meet the needs of the health and education precinct more locally.
- it provides sufficient spaces to accommodate social infrastructure including child care facilities to support the local population, which is in alignment with direction provided by North Sydney Council in the Sydney Metro Planning Study 2016 and 2036 Draft Plan.
- as part of the integrated station development, it would contribute to the delivery of major improvements to the public domain and activation of the streetscape, providing for a higher quality pedestrian environment around the site which would link the various civic, open space and entertainment precincts in proximity to the site
- a commercial component would be provided, enabling the provision of further employment generation at the site which is located in a context with excellent access to both the Sydney CBD as well as the Greater Sydney region. In this regard, the proposal would:
 - directly contribute to the provision of 280 additional jobs during the construction period
 - indirect contribution of 445 jobs during the construction period
 - accommodate approximately 730-1,230 jobs on an ongoing basis, generated by the visitor accommodation and commercial components of the development (variation due to flexibility in land use proposed on Site B)



- it would result in additional economic benefits to surrounding services and business following the completion of the development, which is estimated at a \$30 million per annum increase in local expenditure
- it would work alongside the Crows Nest Station development under the CSSI Approval in order to create an overall station precinct which is integrated, high quality, enjoyable and safe for future public transport users
- it would provide a variety of different uses above the station, which would work to activate the station precinct, both within traditional business hours as well as during the evening, late night and weekend periods
- it would enable the delivery of a future OSD form which is memorable, reinforcing the legacy of the Sydney Metro project and its mark on the broader Sydney skyline
- the assessment in this EIS has demonstrated that the building envelope is capable of achieving high amenity and a high quality future development that could achieve design excellence
- it provides a framework which would ensure that future development at the site exhibits design excellence, working alongside the future railway station to deliver a very high design quality building form outcome. The ESD strategy will ensure that recognised sustainability targets are achieved or exceeded in the future design of the development
- it includes provision for future public art, which would contribute to the vibrancy and interest generated by the surrounding built environment
- it is a premier example of a transit oriented development, which includes minimal car parking to reduce the impact on the local road network

7.0 Secretary's Concurrence

Under Clause 4.6(5) of NSLEP 2013, the Secretary's concurrence is required prior to any variation being granted. The following section provides a response to those matters set out in Clause 4.6(5) of the NSLEP 2013, which must be considered by the Secretary.

7.1 Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The CSSI Approval already partially exceeds these height controls or has limited remaining development potential in order to comply with the development standard, rendering any meaningful OSD density impossible without a variation to the building height development standard. The opportunity cost of not pursuing the OSD would be significant, given the multitude of benefits which would be foregone if no OSD is pursued, including:

- job creation, including 725 jobs during the construction phase and an additional 730 - 1,230 jobs during the ongoing operation of the site
- businesses in the completed building are estimated to generate industry value-add of \$51 million per annum, which increases to \$71 million when combined with the project's residential components
- residential, hotel guest and employee spending at local retail stores and service centres is proposed to generate almost \$30 million annually in local expenditure
- community facilities and / or child care space being delivered as part of the development
- significant improvements to design and sense of place as the result of design excellence process.

The proposed development responds more closely to the future maximum height of buildings development standard that is envisaged within the Crows Nest Planning Proposal. The variation from these future development standards is considered to be minor and will not raise any matter which could be deemed to have State or regional significance.

As set out in Section 5.3 above, the proposed development gives effect to The *Greater Sydney Region Plan 2018*.

7.2 The public benefit of maintaining the development standard

Strict compliance with the existing height of buildings development standard would severely impede the ability of the project to achieve the desired future character as established in the 2036 draft Plan and the Rezoning Proposal. In fact approval of the CSSI station infrastructure approved under the CSSI Approval already partially exceeds in some areas of the sites or is near these height controls in other areas of the site, rendering a meaningful OSD density impossible without a variation to the building height development standard.



The application of the existing building height control would result in a development that is unable to achieve the primary objectives for the project, in that the development would be unable to:

- support the NSW Government's planning strategies and objectives, including the *Greater Sydney Region Plan* (2018) and the *North District Plan* (2018)
- enable the development of mixed-use buildings at the site which cater to various uses and work to create a fully integrated station precinct within the heart of Sydney's North Shore
- enable building forms which responds to the emerging character of St Leonards while providing a mediating transition in built form between St Leonards and Crows Nest,
- minimise, to the fullest extent possible, overshadowing impacts on public open spaces including Hume Street Park, Ernest Place and the Willoughby Road restaurant precinct
- enhance the customer experience and urban amenity through the development of an integrated design concept that ensures delivery of a quality public domain experience with strong connections to the surrounding area
- create an urban environment that drives the high usage of the Sydney Metro network, responding directly to the principles of transit-oriented development
- provide the opportunity to deliver the OSD as early as possible with the aim of opening concurrently or shortly following completion of the Crows Nest Metro Station
- enable a design that responds sensitively to surrounding heritage items
- create a framework which works to achieve design excellence in the final integrated station development.

7.3 Any other matters required to be taken into consideration by the Secretary before granting concurrence

The concept SSD Application is a fundamental projected in delivering a number of significant objectives for the State of NSW. The project will achieve:

NSW State Priorities

- **Strong budget and economy:** The proposed development would contribute to the strengthening of the NSW economy by providing for additional jobs (both during the construction and operation phases of the development) and investment at a key site in the St Leonards / Crows Nest strategic centre. The integration of transport and land use in this manner would also improve the productivity benefits derived from the Sydney Metro project and provide an incentive for further development.
- **Encouraging business investment:** This application comprises a significant opportunity to encourage investment by the private sector to facilitate the delivery of a mixed-use precinct above the station. The use of this air space above the station is an innovative move by the NSW Government to facilitate private sector investment whilst leveraging government investment for improved urban outcomes.
- **Increasing housing supply:** Increased housing supply in suitable locations has been identified by the government as being a key solution to the issue of housing affordability. The government has set a target of more than 50,000 dwelling approvals each year in order to respond to housing demand. The Crows Nest OSD



would contribute to this priority through the delivery of approximately 350 dwellings in a highly accessible location. The concept application provides a range of dwelling sizes and layouts in order to address the diversity in housing demand and affordability.

- **Accelerating major project assessment:** Sydney Metro will work with the DPE to ensure an efficient, transparent and robust assessment of this concept proposal. This collaboration will assist the DPE in meeting its responsibilities under this priority.
- **Improving road travel reliability:** The OSD at Crows Nest would help meet journey time targets for road users by encouraging increased commuter use of public transport. The public transport accessibility of the St Leonards / Crows Nest area would increase as a result of the Crows Nest integrated station development, which would contribute to achieving this priority. The OSD would be physically integrated with the future Crows Nest Station, providing workers, residents and visitors within the development with a reliable and easily accessible mode of transport.
- **Ensure on-time running for public transport:** While Sydney Metro is not expected to be operational until 2024, the OSD at Crows Nest would contribute to the longer term improvement of Sydney's public transport system by forming an integral component of Sydney Metro which would significantly cut travel and waiting times.

NSW Premier's Priorities

- **Creating Jobs:** Sydney Metro has created thousands of jobs which will continue to increase as construction of Sydney Metro City & Southwest continues. The Crows Nest OSD will work to provide substantial additional employment during the construction phase of the development, with the proposed works resulting in the provision of an estimated 725 direct jobs over the construction phase of the development. Additionally, the various employment generating components of the Crows Nest OSD would provide capacity for an estimated 730 – 1,230 jobs on an ongoing basis. Finally, the Crows Nest OSD would increase residential capacity within the St Leonards / Crows Nest Strategic Centre, and Sydney more broadly, which will have a corresponding positive economic impact. An increase in the population of the St Leonards / Crows Nest Strategic Centre would increase activity in the surrounding area, meet demand for additional dwellings in the locality and contribute to creating activation in the area both day and night. In this regard, it is anticipated that the development will result in positive economic impacts to existing businesses in the area through increased population and visitations to the site, in addition to providing services to meet the needs of existing businesses.
- **Delivering Infrastructure:** Sydney Metro City & Southwest is Australia's biggest public transport project and the nation's biggest urban rail investment in history. The concept proposal supports the delivery of Sydney Metro and optimises the project's productivity benefits by facilitating employment and housing growth that is coordinated with the new Crows Nest station. The OSD component would capitalise on the NSW Government's investment in this infrastructure project, contributing to the growth of the St Leonards / Crows Nest Strategic Centre. Additionally, it is noted that the Crows Nest OSD has been designed to ensure that the OSD component of the site will not hinder the ability of Sydney Metro City and Southwest to commence operations on time in accordance with the NSW Government's timeframe.

8.0 Conclusion

Clause 4.3 of the NSLEP 2013 currently applies a maximum height of buildings development standard of 20m to Block A and Block C, and of 10m to Block B. The State Government has recently exhibited a Planning Proposal which, if adopted and gazetted as per the exhibited material, will increase the maximum height of buildings development standard to RL 183 m for Block A, RL 155 m for Block B, and RL 127 m for Block C. This amendment to the NSLEP 2013 will allow buildings with a maximum height of approximately 77 m to be delivered on Block A, 52 m on Block B, and 24.5 m on Block C.

The placement of height and density above a metro corridor has sound planning benefits. Locating benefits the community by generating income for funding future infrastructure projects, facilitating sustainable urban renewal and development, encouraging use of public transport (hence, reducing car usage) and improving the connectivity of local communities. It provides an opportunity to meet housing targets, in line with those outlined in the North District Plan.

Further to the above, the provision of a metro station within such proximity to an existing heavy rail station at St Leonards means the site is highly strategic. In terms of rail accessibility, the St Leonards / Crows Nest area will have the same level of accessibility and capacity as North Sydney / Victoria Cross. It provides quick, direct access to other key employment areas including Chatswood and the Sydney CBD. This is resulting in (and is predicted to continue to result in) strong demand for commercial and residential floorspace in the St Leonards / Crows Nest area which is contributing to the changing built form and density of the precinct.

Multiple strategic planning studies undertaken by North Sydney Council have identified that the most appropriate location for this density is on or nearby transport infrastructure along the Pacific Highway Corridor and away from areas such as Willoughby Road. This is further reinforced by the 2036 Draft Plan. This concept SSD Application is consistent with these studies, providing suitable justification for increased density on the site. Further, as set out in Section 5.3 above, the proposed development gives effect to *The Greater Sydney Region Plan 2018*.

The concept SSD Application is directly consistent with the findings and ethos of multiple strategic planning documents in that it supports the provision of a mixed-use development above the metro corridor as a way of increasing use of existing public transport, reducing car usage and encouraging connectivity within the area. For these reasons, compliance with the height control in NSLEP is unreasonable and unnecessary, a control which pre-dates even the announcement of this transformative public infrastructure project.

The concept development currently proposed is also largely consistent with these envisaged future development standards. The roof top slab of the concept proposal has been designed to correspond with the relevant future development standard for each block, however each concept envelope will allow a 5m 'building services zone' to exceed this level.

The 5m building services zone on Site A and C, in addition to a 3m building services zone on Site B will be designed as part of the future detailed design for each building but will be



required to demonstrate that the building services zone does not detrimentally affect the ability of the building to demonstrate design excellence, or impact on the amenity of local residents of the public.

Meanwhile impacts of the additional height have been suitably assessed and managed as per the detailed environmental impact assessment in the main EIS. Therefore, the impacts of the height control breach are deemed acceptable.

Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility to achieve better outcomes for and from development, a departure from the Height of Building development standard is considered appropriate in these circumstances.



Sydney Metro City & South West: Crows Nest Over Station Development

Clause 4.6 Variation Request – Non-Residential FSR

Applicable to:	Sydney Metro City & Southwest
Author:	Ethos Urban
Owner	Sydney Metro Authority
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1.0 Introduction

This request to vary a development standard has been prepared under clause 4.6 of the *North Sydney Local Environmental Plan 2013* (NSLEP 2013) and is submitted to the Department of Planning and Environment (DP&E) in support of a concept State Significant Development Application (SSDA 18_9579) for the over station development (OSD) above the new Crows Nest Metro Station. This request seeks to vary the development standard specified under clause 4.4A of the NSLEP 2013 relating to non-residential floor space ratios (FSR).

Clause 4.6 of the NSLEP 2013 allows consent for development to be granted even though the development contravenes a development standard imposed by the NSLEP 2013. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6(3) and (4)(a)(ii) require that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard as detailed below:

- that the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority's satisfaction to those matters must be informed by the objective of providing flexibility in the application of the relevant control to achieve better outcomes for and from the development in question.

The Land and Environment Court provides assistance on the approach to justifying a contravention to a development standard under *State Environmental Planning Policy 1 – Development Standards* (SEPP 1) through the judgement of Justice Lloyd, in *Winter Property Group Ltd v North Sydney Council [2001] 130 LGERA 79 at 89*. The test was later rephrased by Chief Justice Preston in the decision of *Wehbe v Pittwater Council [2007] NSW LEC 827* (Webbe). These judgements are also of assistance to the assessment of variations under clause 4.6 of an LEP.

Additional assistance can be found in the recent decision by Commissioner Pearson in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* (Four2Five); *Micaul Holdings Pty Ltd v Randwick City Council [2015] NSWLEC 1386* and *Moskovich v Waverley Council [2016] NSWLEC 1015* which was upheld by Pain J on appeal.

In accordance with the above requirements, this clause 4.6 variation request:

- identifies the development standard to be varied (Section 2);
- identifies the variation sought (Section 3);



- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Section 4);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (Section 5);
- demonstrates that the development is in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone (Section 6); and
- provides an assessment of the matters the secretary is required to consider before providing concurrence (Section 7).

This clause 4.6 variation request should be read in conjunction with the Environmental Impact Statement (EIS) dated 9 November 2018 in relation to the proposed development of the Crows Nest OSD.

2.0 Development Standard to be Varied

2.1 Existing Development Standard

This development standard to be varied as part of this application is 'Clause 4.4A Non-Residential Floor Space Ratios' relating to minimum non-residential floor space requirements. Clause 4.4A(2) provides that the non-residential floor space ratio for all buildings within a site on any land must not be less than the ratio shown for the land on the Non-Residential Floor Space Ratio Map.

The relevant minimum non-residential FSR applying to each Site is shown at Figure 1. The required non-residential GFA for each site under clause 4.4A is set out at **Table 1**.

Table 1 – Minimum non-residential FSR/GFA

Site	Site Area	Minimum Non-residential FSR	Minimum Non-residential GFA
Site A	3,877m ²	1.5:1	5,815.5m ²
Site B	1,871m ²	0.5:1	935.6m ²
Site C	608m ²	0.5:1	304m ²
Total	6,356m ²		7,055m ²



Figure 1 – Existing non-residential floor space ratio development standard under NSLEP 2013

In October 2018, the NSW State Government released a Rezoning Proposal which seeks to increase the minimum non-residential FSR required on the site under NSLEP 2013. The site, and the proposed minimum non-residential FSR requirements, are shown at **Figure 2**. The required non-residential GFA for each site under the proposed development standards are set out at **Table 2**.

It is noted that the proposed controls allow for 'The proposed minimum non-residential FSR controls are indicative and may be redistributed between Sydney Metro sites as part of the design excellence process'. The Design Excellence Strategy submitted at Appendix N of the EIS establishes the framework for the design excellence process on the site. It is anticipated that this process will result in the redistribution of non-residential GFA across the site.

Table 2 – Proposed minimum non-residential FSR/GFA

Site	Site Area	Minimum Non-residential FSR	Minimum Non-residential GFA
Site A	3,877m ²	3:1	11,631m ² (3:1)
Site B	1,871m ²	2:1	3,742m ² (2:1)
Site C	608m ²	2:1	1,216m ² (2:1)
Total	6,356m ²		16,589m ²



Figure 2 – Proposed amendments to the non-residential floor space ratios development standards within the NSLEP 2013.

3.0 Nature of the Variation Sought

The proposed development seeks concept approval for three building envelopes, one located on each of Site A, Site B, and Site C. The OSD component is to include a total of between 17,900-20,600m² of non-residential floor space, distributed across the three development sites as follows:

- 2,700m² of social infrastructure floor space (on Site A or Site C);
- 15,200m² of hotel / visitor or commercial floor space (on Site B); and
- 2,700m² of commercial floor space (on Site C – subject to replacement by social infrastructure floor space as described below).

The final location of the social infrastructure floor space will be influenced by ongoing negotiations with relevant stakeholders to occupy all available floorspace on Site C, or alternatively, to be located on the podium rooftop of Site A. If the social infrastructure space is located on Site C, this will be in place of proposed commercial office space. Location of the social infrastructure space within Site C would result in no non-residential floor space in Site A as part of the OSD.

However, clause 4.4A relates to the minimum non-residential FSR of all development on a site. It is noted that the GFA attributed to the station and station retail (i.e. entirely non-residential floorspace) that has been conceptually approved under the CSSI Approval in the integrated station design has a combined GFA total of 4,280m². Given that the final design for the station is subject to further refinement, an extra 15% has been added to the GFA for this component of the development to allow for design tolerance and refinement of the station design, totalling 5,000m². The exact distribution of the GFA attributed to the station remains uncertain at this time.

A summary of the nature of the variation sought as part of the concept SSD Application for the Crows Nest OSD is presented in **Table 3**. This demonstrates that although Site A departs from the development standard, the overall quantity of non-residential floor space of the OSD component exceeds the minimum requirement. The non-compliance with clause 4.4A of the NSLEP 2013 is due to the redistribution of land uses within the site and the final distribution and mix will be the subject of a competitive design process and further SSD Application(s) for the detailed design of the buildings. When considered in addition to the total non-residential GFA of the approved CSSI, the total development is well in excess of the minimum non-residential requirement under both the existing and proposed controls.

Table 2 – Summary of variation sought

Site	Proposed non-residential	Minimum non-residential	Departure from existing	Minimum non-residential	Departure from proposed



	GFA (FSR)	GFA (FSR) required under existing controls	development standard	GFA (FSR) required under proposed controls	development standard
Site A	2,700m ² (0.7:1)	5,815.5m ² (1.5:1)	-3,115.5m ² (-0.8:1)	11,631m ² (3:1)	-8,931m ² (-2.3:1)
Site B	15,200m ² (8.12:1)	935.6m ² (0.5:1)	+14,264.4m ² (+7.26:1)	3,742m ² (2:1)	+11,458m ² (+6.12:1)
Site C	2,700m ² (4.44:1)	304m ² (0.5:1)	+2,392m ² (+3.94:1)	1,216m ² (2:1)	+1,484m ² (+2.44:1)
Total OSD	20,600m²	7,055.1m²	+13,554.9m²	16,589m²	+4,011m²
Approved CSSI	5,000m ²				
Total development	25,600m²		+18,554.9m²		+9,011m²

4.0 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In the recent judgment in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 the Chief Judge upheld the Commissioner's approval of large variations to height and FSR controls on appeal. He noted that under Clause 4.6, the consent authority (in that case, the Court) did not have to be directly satisfied that compliance with the development standard was unreasonable or unnecessary but that the applicant's written request adequately addresses (our emphasis) the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary. Accordingly, Section 4 sets out how, in the specifics of this development, strict compliance with Clause 4.3 of the NSLEP 2013 is unreasonable or unnecessary.

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the methods described were a closed class.

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the NSLEP 2013 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

Section 4.1 of this clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed

development because the objectives of the standard are achieved and accordingly justifies the variation to the non-residential floor space ratios control pursuant to the First Method outlined in Wehbe.

4.1 The objectives of the development standard are achieved notwithstanding the non-compliance with the standard (First Method)

The objectives of the non-residential floor space ratios development standard are prescribed at clause 4.4A(1) of the NSLEP 2013, providing:

The objectives of this clause are as follows:

- (a) to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure,*
- (b) to encourage an appropriate mix of residential and non-residential use,*
- (c) to provide a level of flexibility in the mix of land uses to cater for market demands,*
- (d) to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.*

The proposed building envelope achieves each of these objectives notwithstanding the departure from the numerical control identified on the Non-Residential Floor Space Ratio Map. Each objective is addressed below.

4.1.1 Objective (a): to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure

The CSSI Approval for station infrastructure includes all ground level works and land uses. These works do not form part of the concept SSD Application relating to the OSD. Nothing within this concept SSD Application, including the departure from clause 4.4A of NSLEP 2013, prevents the achievement of active street frontages on the site. The proposed minor departure from the non-residential FSR development standard of clause 4.4A is due to a redistribution of land uses and the final distribution, layout and land use mix will be subject of a separate future SSD Application(s) for the detailed design of the buildings.

4.1.2 Objective (b): to encourage an appropriate mix of residential and non-residential use

The proposed land use mix across all three development sites exceeds the total minimum non-residential floor space requirement by 18,554.9m² under the existing controls and 9,011m² under the proposed controls. This demonstrates that overall, the land use mix is considered appropriate in the site's context. In the case where no non-residential floor space is provided on Site A as part of the OSD, the building will still include non-residential floor

space associated with the station (forming part of the CSSI Approval). The redistribution of non-residential floor space within the OSD will be the subject of further engagement with stakeholders to determine the location of social infrastructure floor space within the site.

4.1.3 Objective (c): to provide a level of flexibility in the mix of land uses to cater for market demands

The proposed departure from the development standard of clause 4.4A of the NSLEP 2013 is in direct response to the need for flexibility in land use mix within the development to cater for the future requirements of social infrastructure on the site. The exact land use mix and distribution remains the subject of stakeholder engagement to determine the location and detailed requirements of the facilities. The departure from the non-residential floor space requirement on Site A is offset by increased provision elsewhere on the site, mainly Site B, which allows for the delivery of a hotel component commensurate to market demand for tourist and visitor accommodation within the area.

4.1.4 Objective (d): to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.

The proposed OSD is expected to result in 725 jobs (Full Time Equivalent or FTE) during the construction phase (subject to detailed design and planning approvals) and provide for 730 - 1,230 ongoing jobs (FTE) on-site during the operational phase, depending on the final land use mix. This will significantly contribute to employment targets listed in the 2036 Draft Plan, which target 3,020 new jobs in Crows Nest by 2036.

Businesses in the completed building are estimated to generate industry value-add of \$51 million per annum, which increases to \$71 million when combined with the project's residential components. Resident, tourist / visitor and employee spending at local retail store and service centres is estimated to generate almost \$30 million annually in local expenditure.

Cumulatively, the background population of the precinct is projected to reach 21,000 persons by 2024, when the Crows Nest station and its OSD become operational, and to grow to over 23,000 by 2034. This will have a significant positive impact on local expenditure which can, among other things, ensure the ongoing economic sustainability of areas such as Willoughby Road.

It is therefore considered that the land use mix proposed, notwithstanding the departure from clause 4.4A, will ensure that sufficient non-residential floor space is provided within the development to encourage employment opportunities within the precinct.

4.2 The existing development standards are no longer relevant and therefore compliance with these standards is unreasonable and unnecessary.

The development standards within the NSLEP 2013 were adopted prior to any commitment by the NSW Government to deliver the Sydney Metro project, including a new station at Crows Nest. Consequently, the existing controls do not reflect opportunities for transit oriented development at the Crows Nest Sydney Metro station.



In October 2018, DP&E released a draft Rezoning Proposal for the Crows Nest Sydney Metro site. This Rezoning Proposal increases the relevant planning controls commensurate with the built form proposed in this concept SSD Application following the culmination of a number of strategic planning studies for the precinct by both DP&E and North Sydney Council. The release of the Rezoning Proposal was simultaneous with the release of other draft strategic planning documents including the *St Leonards and Crows Nest 2036 Draft Plan*. The 2036 Draft Plan recommends significant changes to the planning controls for the immediate area surrounding the Crows Nest OSD site subject to consideration of community feedback following its exhibition.

The proposed concept development is largely consistent with the future development standards that will apply to the site, as described within the Rezoning Proposal. The flexibility for the distribution of non-residential floor space across the site, afforded in the proposed development standards, will help to deliver on the vision of the draft St Leonards and Crows Nest 2036 Plan as summarised below:

- **An employment hub** – the proposed development will protect and strengthen the area's commercial role with additional commercial and complementary uses to capitalise on renewed confidence in the commercial market as well as retail, creative, health and education sectors.
- **Transit-oriented development** - the proposed development will create future employment opportunities that leverage the increased transport capacity of the new Metro station.
- **Vibrant community** – the proposed development will encourage community uses on the Sydney Metro sites and improvements to the public domain to create a new community focal point in this accessible location.
- **Accessible place** – the proposed development will ensure the site is an attractive and easy place to visit, with improved pedestrian and cyclist connections.
- **A well-designed place** – the proposed development will provide new buildings to demonstrate the highest quality design that respects and enhances the diverse local character of the area.

5.0 Clause 4.6(3)(b) There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the NSLEP 2013 requires the departure from the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard.

5.1 Design excellence and redistribution of non-residential floor space

The Rezoning Proposal which seeks to increase the minimum non-residential floor space requirements also seeks to introduce flexibility as to the distribution of non-residential floor space within the Crows Nest Metro site through a competitive design process. Although these controls have not been implemented yet, they provide a sound environmental planning ground for the non-compliance with the minimum non-residential FSR on Site A.

A Design Excellence Strategy (the Strategy) (Appendix CC of the EIS) has been prepared to establish a consistent framework for how Sydney Metro will deliver design excellence to all its integrated station developments. The Strategy provides an objective and structured design process that will ensure high quality architectural, urban and landscape designs are achieved in SSD applications. The process is tailored to respond to the complexity of integrated station development projects and assures that design excellence expectations are upheld in each stage of the design process. The Strategy provides three phases to support high quality design of integrated station developments:

- Phase 1 – the establishment of design quality expectations
- Phase 2 – competitive selection involving an open Expression of Interest (EOI) process and Request for Tender (RFT) process
- Phase 3 – design integrity during the detailed SSD Application stage through to construction

Accordingly, the exact distribution and quantity of non-residential floor space on the site will be the subject of a competitive design process and future SSD Application(s). This approach, whilst representing a minor departure from the development standard of clause 4.4.A of the NSLEP 2013, is considered appropriate given the complexity of the design integration with station infrastructure and will also allow for additional stakeholder engagement on the optimum location and requirement for social infrastructure floor space within the site.

5.2 Provision of critical station infrastructure

The CSSI Approval contributes approximately 5,000m² of additional non-residential GFA above that contained within the proposed concept SSD Application for the OSD component (this application). Ongoing design development occurring for the CSSI components, as required through the CSSI process specified in the conditions of that approval, will seek to



deliver the best-possible outcome for the station and therefore the exact distribution of the total non-residential GFA on each development site cannot be determined at this time.

5.3 Delivery of transit-oriented development

The Crows Nest station presents an excellent opportunity to develop a transit-oriented development (TOD) neighbourhood. A TOD neighbourhood typically has a centre with a transit station or stop (train station, metro station, tram stop, or bus stop), surrounded by relatively high-density development with progressively lower density development spreading outward from the centre. TODs generally are located within a radius of 400m to 800m from a transit stop, as this is considered to be an appropriate walking distance for pedestrians.

Locating density above a metro corridor benefits the community by generating income for funding future infrastructure projects, facilitating sustainable urban renewal and development, encouraging use of public transport (hence, reducing car usage) and improving the connectivity of local communities. Development above the metro corridor further provides an opportunity to meet housing targets, in line with those outlined in the North District Plan and the 2036 Draft Plan.

Further to the above, the provision of a metro station within such close proximity of an existing heavy rail station at St Leonards makes the site highly strategic. In terms of rail accessibility, the St Leonards / Crows Nest area will have the same level of accessibility and capacity as North Sydney / Victoria Cross. It provides quick, direct access to other key employment areas including Chatswood and the Sydney CBD. This is resulting in (and is predicted to continue to result in) strong demand for commercial and residential floorspace in the St Leonards / Crows Nest area which is contributing to the changing built form and density of the precinct.

5.4 Social and economic benefits

As discussed in Section 4.1.4 above, the proposed development is expected to result in 725 jobs during the construction phase and provide for 730 - 1,230 ongoing jobs on-site during the operational phase, depending on the final land use mix. Businesses in the completed building are estimated to generate industry value-add of \$51 million per annum, which increases to \$71 million when combined with the project's residential components. Resident, tourist / visitor and employee spending at local retail store and service centres is estimated to generate almost \$30 million annually in local expenditure.

The OSD would have a positive social impact on the St Leonards / Crows Nest Strategic Centre by creating an integrated station development that provides residential dwellings, tourist / visitor accommodation, community uses and office floor space above the Crows Nest Station. It will create a focal point for community activity and a vibrant place for the community to gather, work and reside. In conjunction with the public domain upgrades and retail activated street frontages to be delivered under the terms of the CSSI Approval, the OSD will add to the civic qualities of the precinct and encourage healthy sustainable modes of transport such as walking and cycling, in addition to the use of the Metro.

The provision of a mixed-use scheme accommodating residential apartments, tourist / visitor accommodation and commercial floor space responds to a wide range of community needs. Additional housing would create opportunities for people to live close to where they work, whether within the St Leonards / Crows Nest Strategic Centre or via the new Sydney Metro,



aligning with the concept of the '30-minute city'. New tourist / visitor accommodation would provide increased capacity for Sydney to grow its national and international profile as a destination for travel and would complement the health precinct anchored around Royal North Shore Hospital. By supporting a wide range of land uses, the OSD would support a range of activities and occupancy throughout the day and evening. This would contribute towards a vibrant transport precinct that is safe, well-utilised and which acts as a focal point for the North Shore in regard to both transport and land use.

The concept SSD Application also includes opportunities for social infrastructure floor space on Site A or Site C. Provision for this space has been made in response to work undertaken by North Sydney Council in the Sydney Metro Planning Study 2016, which identified the need for a community use on site. This facility will be used by the community to encourage social interaction and community development in a highly accessible location.

The employment generated by the development during the construction and operational has further social benefits associated with the ability for workers to provide for their families and spend money in the local community.

6.0 Clause 4.6(4)(a)(ii) It is in the public interest because it is consistent with the objectives of the particular standard and zone

6.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the non-residential floor space ratios development standard, for the reasons discussed in section 4.1 of this report.

6.2 Consistency with the objectives of the land use zone

The proposed development is consistent with the objectives of the B4 Mixed Use Zone, as demonstrated below.

6.2.1.1 Objective: To provide a mixture of compatible land uses

The concept SSD Application, as provided at Section 4.5 of the EIS, seeks approval for the following land uses:

- residential accommodation;
- tourist and visitor accommodation;
- commercial premises; and
- social infrastructure including but not limited to opportunities for community facilities / child care centre / recreation areas / co-working space / library

These land uses respond to both the housing and employment targets identified in the North District Plan and will complement and support existing businesses in Crows Nest and St Leonards. The social infrastructure (i.e. community facilities / child care centre / recreation area / library / co-working space) provides floorspace to meet an identified need for such facilities in North Sydney Council's Sydney Metro Planning Study 2016 and the Draft St Leonards & Crows Nest 2036 Plan. Cumulatively, the concept proposal provides more non-residential floor space than required under NSLEP 2013, however it seeks flexibility to locate this social infrastructure either on Site A or Site C.

The proposed development, notwithstanding the departure from clause 4.4A of the NSLEP 2013, facilitates a compatible mix of land uses on the site. Additionally, the delivery of station infrastructure (subject to the CSSI Approval) warrants additional flexibility regarding the distribution of land uses within the site.

6.2.1.2 Objective: to integrate suitable business, office, residential, retail and other development in accessible locations as to maximise public transport patronage and encourage walking and cycling.

As demonstrated at **Section 5.2** of this variation request, this project represents a unique opportunity to deliver a transit-oriented development. Located directly above the Crows Nest Metro Station, the range of land uses described above will have direct access to transport infrastructure. This connectivity and integration of development will actively facilitate a greater patronage of public transport. The proposed building will act as a landmark to clearly

identify public transport infrastructure and thereby promoting public transport usage within the community surrounding the development.

The provision of community infrastructure within the development will provide not only to the residents and workers of the future buildings but will provide services within walking or cycling distance of existing residences and workplaces.

6.2.1.3 Objective: To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity

The proposed concept SSD Application relates to building envelopes that will facilitate the delivery of an OSD design with an indicative land use mix comprising approximately 350 residential apartments on Site A, 250 hotel rooms on Site B and up to 2,700 square metres of commercial floor space on Site C. In addition, the indicative OSD design for Site A incorporates up to 2,700 square metres of social infrastructure GFA (child care centre, community centre and recreation area) equivalent to one level of the podium of the building.

The exact quantity and distribution of land uses within the site will be determined through this competitive process. The Design Excellence Strategy (Appendix N of the EIS) will ensure that a high quality urban outcome is achieved for the development and ensure that an overall quantity of non-residential floor space is maintained across the site.

Further, a SEPP 65 Analysis Report is submitted at Appendix G of the EIS demonstrating that the proposed residential building envelope is capable of delivering a design that achieves:

- at least 2 hours direct sunlight to living rooms and private open space of 75% of indicative apartments (exceeding the design criteria of 70%);
- provides natural cross ventilation to 67% of indicative apartments within the first nine levels (exceeding the design criteria of 60%);
- minimises the impact of shadowing to the private open space and living areas of existing residential dwellings in the vicinity of the site; and
- achieves the minimum building separation distances, ensuring that visual and acoustic privacy is maximised.

6.2.1.4 Objective: To maintain existing commercial space and allow for residential development in mixed use buildings, within non-residential uses concentrated on the lower levels and residential uses predominately on the higher levels

The total GFA for the integrated station development, including the station GFA (i.e. station retail, station circulation and associated facilities) and the OSD GFA is 60,400 square metres. This is to include the following non-residential floor space:

- 2,700m² of social infrastructure floor space (on Site A or Site C);
- 15,200m² of hotel / visitor or commercial floor space (on Site B); and
- 2,700m² of commercial floor space (on Site C – subject to replacement by social infrastructure floor space).

The final location of social infrastructure floor space is to be influenced by ongoing negotiations with relevant stakeholders to occupy all available floorspace on Site C, or



alternatively, to be located on the podium rooftop of Site A. However, across all three sites, non-residential components are located at lower levels with residential uses above.

6.3 Overall public interest

In addition to achieving the objectives of clause 4.4A of the NSLEP 2013 and the objectives of the B4 Mixed Use land use zone, the Crows Nest OSD is considered to be in the public interest as:

- it would provide additional employment and residential capacity in the context of the St Leonards / Crows Nest Strategic Centre as targeted in the North District Plan, ensuring that jobs and dwellings are co-located in a manner which reduces commute times and improves the level of access to facilities, services, transport options and public open space.
- it includes a substantial tourist / visitor accommodation component, providing additional capacity and continuing to grow Sydney's tourism economy which is currently experiencing a shortage of accommodation supply. This would have flow on positive economic impacts within the context Greater Sydney and NSW economies more broadly and meet the needs of the health and education precinct more locally.
- it provides sufficient spaces to accommodate social infrastructure including child care facilities to support the local population, which is in alignment with direction provided by North Sydney Council in the Sydney Metro Planning Study 2016 and 2036 Draft Plan.
- as part of the integrated station development, it would contribute to the delivery of major improvements to the public domain and activation of the streetscape, providing for a higher quality pedestrian environment around the site which would link the various civic, open space and entertainment precincts in proximity to the site
- a commercial component would be provided, enabling the provision of further employment generation at the site which is located in a context with excellent access to both the Sydney CBD as well as the Greater Sydney region. In this regard, the proposal would:
 - directly contribute to the provision of 280 additional jobs during the construction period
 - indirect contribution of 445 jobs during the construction period
 - accommodate approximately 730-1,230 jobs on an ongoing basis, generated by the visitor accommodation and commercial components of the development (variation due to flexibility in land use proposed on Site B)
- it would result in additional economic benefits to surrounding services and business following the completion of the development, which is estimated at a \$30 million per annum increase in local expenditure
- it would work alongside the Crows Nest Station development under the CSSI Approval in order to create an overall station precinct which is integrated, high quality, enjoyable and safe for future public transport users



- it would provide a variety of different uses above the station, which would work to activate the station precinct, both within traditional business hours as well as during the evening, late night and weekend periods
- it would enable the delivery of a future OSD form which is memorable, reinforcing the legacy of the Sydney Metro project and its mark on the broader Sydney skyline
- the assessment in this EIS has demonstrated that the building envelope is capable of achieving high amenity and a high quality future development that could achieve design excellence
- it provides a framework which would ensure that future development at the site exhibits design excellence, working alongside the future railway station to deliver a very high design quality building form outcome. The ESD strategy will ensure that recognised sustainability targets are achieved or exceeded in the future design of the development
- it includes provision for future public art, which would contribute to the vibrancy and interest generated by the surrounding built environment
- it is a premier example of a transit oriented development, which includes minimal car parking to reduce the impact on the local road network.

7.0 Clause 4.6(5) Secretary's Concurrence

Under Clause 4.6(5) of NSLEP 2013, the Secretary's concurrence is required prior to any variation being granted. The following section provides a response to those matters set out in Clause 4.6(5) of the NSLEP 2013, which must be considered by the Secretary.

7.1 Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The proposed development results in a minor variation to the existing and proposed minimum non-residential floor space ratios development standard nominated by the NSLEP 2013, in respect of Site A. However, as noted above, the proposed development has redistributed non-residential GFA within the development and the development as a whole complies with the requirements of the development standard if it were to have applied to the entire site.

It is therefore considered that the variation to this development standard will not raise any matter which could be deemed to have State or regional significance.

7.2 The public benefit of maintaining the development standard

As demonstrated in Section 6 above, the proposed development is considered to be in the public interest. Additionally, the ability to redistribute non-residential floor space within the Crows Nest Metro Site as proposed in the Rezoning Proposal demonstrates that a better planning outcome can be facilitated through a competitive design process even if that results in a departure from clause 4.4A. It is therefore considered that there is no public benefit of strict compliance with the development standard of clause 4.4A in this case – this will also allow for future flexibility through the competitive design process and detailed SSD Application(s).

7.3 Any other matters required to be taken into consideration by the Secretary before granting concurrence

The proposed development will deliver the following objectives for both the North Sydney LGA and the State of NSW:

- support the NSW Government's planning strategies and objectives, including the Greater Sydney Region Plan (2018) and the North District Plan (2018)
- enable the development of mixed-use buildings at the site which cater to various uses and work to create a fully integrated station precinct within the heart of Sydney's North Shore
- enable building forms which responds to the emerging character of St Leonards while providing a mediating transition in built form between St Leonards and Crows Nest, and in doing so, aligns with the 2036 Draft Plan and the Rezoning Proposal



- minimise, to the fullest extent possible, overshadowing impacts on public open spaces including Hume Street Park, Ernest Place and the Willoughby Road restaurant precinct
- enhance the customer experience and urban amenity through the development of an integrated design concept that ensures delivery of a quality public domain experience with strong connections to the surrounding area
- create an urban environment that drives the high usage of the Sydney Metro network, responding directly to the principles of transit-oriented development
- provide the opportunity to deliver the OSD as early as possible with the aim of opening concurrently or shortly following completion of the Crows Nest Metro Station
- enable a design that responds sensitively to surrounding heritage items
- create a framework which works to achieve design excellence in the final integrated station development.

8.0 Conclusion

Clause 4.4A of the NSLEP 2013 currently applies a minimum ratio of non-residential floor space to sites in North Sydney to ensure that:

- continuous and active street frontages are provided;
- appropriate mix of residential and non-residential uses are encouraged;
- flexibility in the mix of land uses is provided to cater for market demands; and
- a suitable level of non-residential floor space is provided

The Crows Nest Rezoning Proposal will significantly increase the minimum non-residential floor space ratios that apply to the site, but also introduces the idea that non-residential floor space can be redistributed around the Crows Nest Station Over Station Development site.

This variation to the applicable development standard applies only to Site A, on which it is proposed to provide 0.7:1 of non-residential FSR. This does not comply with the 1.5:1 required by the current controls, nor the 3:1 envisaged within the Crows Nest Rezoning Proposal.

The proposed development seeks to redistribute the non-residential FSR from Site A to Site B and Site C. Although Site A does not comply with either the existing or the future development standards that apply to that part of the site, the site as a whole will deliver an appropriate quantity of non-residential FSR.

Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility to achieve better outcomes for and from development, a departure from the minimum non-residential floor space ratios development standard is considered appropriate in these circumstances.