

BEFORE THE ENVIRONMENT COURT

Decision No. [2016] NZEnvC 34

IN THE MATTER of an appeal under Section 120 of the
Resource Management Act 1991 (**the
Act**)

BETWEEN REAL LIVING (PROPERTIES)
LIMITED
(ENV-2015-AKL-000079)

Appellant

AND AUCKLAND COUNCIL

Respondent

Hearing at: Auckland on 7-11 December 2015, plus site visit

Court: Environment Judge JA Smith
Environment Commissioner SK Prime
Environment Commissioner ACE Leijnen

Appearances: MJ Savage for Real Living (Properties) Limited (**Real Living**)
SF Quinn & EL Manoghan for **Auckland Council**
BC Parkinson for M Todd and M Thomas (s 274 parties)
JL Beresford for Richard Farrell Avenue Residents Group, J & M
Trainer, M & K Teck, D & J Subritzky and M Salazar de Roux
(**the Residents Group**)
M Martin for herself

Date of Decision: 25 February 2016

DECISION OF THE ENVIRONMENT COURT

- A. **Consent for redevelopment of the existing retirement village known as Remuera Gardens Retirement Village as currently proposed is refused. The Council decision is confirmed.**
- B. **Costs are reserved. Any application for costs are to be filed within 20 working days; any reply 10 working days after that and any final reply, if any, 5 working days thereafter.**

REASONS FOR DECISION

Introduction

[1] **Real Living** sought consent from Auckland Council to re-develop parts of the existing retirement village known as Remuera Gardens Retirement Village (**the Village**) at 57-68 Richard Farrell Avenue, Remuera.

[2] Consent was declined by a Hearing Panel made up of Commissioners appointed for the purpose by the Council (**the Hearing Panel**). **Real Living** has sought to have that decision reversed.

The appeal

[3] Several residents of Richard Farrell Avenue (M De Roux, D & J Subritzky, K & M Geck and J & V Trainor) have coordinated their response with the Richard Farrell Avenue Residents Group (**the Residents Group**) as s274 parties supporting the Council's decision. In addition, two adjoining residents (Ms M Todd and Mrs M Thomas) with properties accessed from Maungarie Road which adjoin the eastern boundary of the site also support the Council's decision as s274 parties. Mrs M Martin, a resident of the Village, also supported the Council decision as an s274 party.

[4] While some amendments were made to the design to try and address the concerns of the Council and the s274 parties from the lodgement of the appeal to the



Court hearing, these have been unable to resolve concerns. The Court hearing proceeded on the basis of the plans as varied through the hearing and presented in closing.

The site and environs

[5] We attach a plan (Annexure A) showing the general layout of this area. The Village occupies a site of some 2.8403ha on Richard Farrell Avenue, having recently been added to by the acquisition of the house at 68 Richard Farrell Avenue. This is a rear site containing a single dwelling accessed from the end of Richard Farrell Avenue. It immediately adjoins 66, 64, 62 and 62B which lie immediately to the west of the Village. The driveways to these properties run parallel with the western side of the Village and there are some reciprocal easement rights with 68 Richard Farrell Road.

[6] The detail of the access arrangements is unnecessary as it is not intended to rely on them for the redevelopment of the Village but boundary arrangements will be relevant to the application of the height in relation to boundary rule of the Operative District Plan (**the District Plan**). While the owners/occupiers of number 66 were not a party to these proceedings, the persons owning and occupying the other three dwellings were represented through the cooperative arrangement and as members of the Residents Group.

[7] Richard Farrell Avenue is a residential cul-de-sac of some 600m length accessed from Ladies Mile (District Arterial Road). The Village access is at the head of the cul-de-sac. We were told that most of the land was originally swamp which has been drained and remediated, and the site is located at the lowest contour in relation to the surrounding ridges at Ladies Mile, Remuera Road and Koraha Street.¹

[8] The housing in this neighbourhood is made up of an eclectic mix of single and two storey dwellings. A number of the sites have been cross leased or subdivided, with 2 to 4 houses accessed from a single right of way. There are a number of duplex developments including some adjoining the western edge of the Village. This area is characterised by mature trees and has a generally quiet residential ambience. The contour of the street runs at grade with the Village but the

¹ MD Brown EIC Page 16 [3]

residential properties to the north-west sit on higher ground consistent with the north-west to south-east slope across the site.

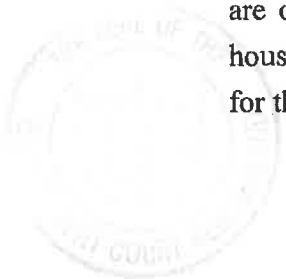
[9] The College Rifle sports grounds adjoin the northern boundary of the Village and are at a higher contour than Richard Farrell Avenue. This is a privately owned sports facility including substantial club sports buildings and facilities such as parking areas and hard surface and turf sports courts/fields. College Rifles has given consent to the proposal as an affected party. It was generally agreed between the parties that this edge of the site was less sensitive to redevelopment due to:

- (a) the site's relationship with the College Rifles character of development and use; and
- (b) the high contours of the College Rifle site.

[10] Immediately to the south of the Retirement Village lies a public recreation reserve known as Koraha Reserve. It is currently used as a passive recreation reserve although we understand that some sports practices may be held there. A significant stand of trees along the northern edge of the reserve adjoins the Retirement Village's southern boundary. These trees comprise mostly Karaka trees intermixed with some exotics. While substantially mature we were told the Karaka will reach a mature height of 9m. We were told that the depth of this planting is some 15-18m, although Mr Cuthbert-Ashmore (representing Auckland Council Parks for the Council) could not confirm this. We find this to be a reasonable estimate based on our site observation in terms of the overall depth of the canopy of the trees.

[11] We were also told that the Council will need to maintain this area through some removal and replacement as trees mature but there were no current plans to remove the trees. South of the trees the reserve is grassed and adjoins a drainage reserve to the east although these open space areas appear and function as one.

[12] Immediately to the east of the Village is the residential neighbourhood served by Maungarie Road. This road is also a cul-de-sac and is developed to a higher intensity close to the boundary adjacent to the Village. A walkway runs between the houses and the Village varying from around 1.5m in width. These houses are often in duplex format, and range in height from single to two storeys. These houses face a small common with trees and a footpath. There is also footpath access for this reserve along the eastern boundary of the Village to Koraha Reserve.



[13] The Village site is well planted with a range of mature trees and decorative gardens providing a distinctive character expressed in the Village Gardens name.

The Existing Village

[14] Mr Thresher (Urban Design specialist for the Appellant) described the site opportunities and constraints in his evidence in chief in the following way which sets the scene for the proposal and evidence supporting its design²:

...the site has a number of constraints relating to the existing design of the retirement village as well as the requirement to minimise disruption through its redevelopment. The existing village is characterised by informal arrangement of buildings and gardens connected by meandering paths. The Lodge and communal facilities are centrally located close to the entry off Richard Farrell Avenue. Buildings 1 and 2 – two storeys in height and the site is generously planted including a substantial number of trees.

The new development is arranged around the central core, maintaining the organisational and spatial framework, while creating a new more intensive edge to the site. Proposed gardens and planting will integrate the buildings into the site while also providing visual relief from outside the site. The existing village is almost 30 years old and is located within a natural basin that is surrounded by dwellings of various designs and ages.....

[15] An aspect of the existing development that is rather unusual, which we record at this point, is the two storey retirement unit buildings in the south-eastern corner of the site which are connected at the upper level by open aerial walkways. These have enclosed railings and present a rather unusual appearance both within and towards the neighbours' external to the site in this location, although much of the view of them is obscured by planting. We note that similar direct walkways have been employed with the retirement unit development at the north-eastern corner.

Proposal

[16] The Village was acquired by the current owners and applicant in 2011. The Village is one of several owned by the Murphy and Kasper families who have considerable experience in the retirement village business, having worked together as developers and operators of retirement villages since 1985. The current resident

² Thresher EIC page 25 [16]-[17]

population across their villages is approximately 600 persons and they employ some 124 staff.

[17] The Remuera Gardens Village currently contains 106 Independent Living (ILU) and Serviced Apartments (SA) and a 32 room care facility. The current care facility is dated and the proposal is to replace it with a larger 80 room facility which will include both rest home and hospital level care. This will introduce larger and better appointed rooms and the possibility of a dementia care unit.

[18] Real Living intends to remove existing residential units and construct around 200 modern apartments. These will vary in size and have up to 3 bedrooms, with deck/s and multiple bathrooms in some cases. Witnesses told us this met current demand and enabled residents to remain in the Village as their needs change, prevent couples having to separate due to different care needs, and reduce costs incurred by residents because they need to leave the Village for care needs.

[19] Communal facilities were being added, including an indoor pool, spa, theatre, gym, and outdoor bowls facilities. The outdoor bowls facility is to occupy the roof of part of the basement level of new Building 1 adjoining the western boundary north of Richard Farrell Avenue. We attach as Annexure **B-I** copies of the general outlines of the building plans proposed.

[20] In addition to the accommodation and facilities improvements, there is currently ground level garaging for 84 vehicles. We were told only 50% of these are used to house cars, the remainder being used for storage and workshops. The proposal will see these removed and that part of the site occupied by a new building.

[21] The proposal also seeks to address operational costs of running the Village, which is shared across the residents and owners. In Mr Murphy's³ words, the proposal will provide for an economy of scale to the advantage of both the owners and the residents.

³ Mr C L Murphy provided evidence for the Appellant and amongst other roles is the Director of Real Living (Properties) Ltd.

[22] Mr Brown, the project architect, provided a detailed description of the proposal which essentially provides a Master Plan for the development over the next 10 years. We summarise this and the proposed development layout as follows:⁴

- Stage 1: Building 1 comprising approx. 70 apartments up to five Levels to a maximum height of 16.5m (@ RL 45.990) (above average ground level RL 29.480 around the perimeter of the building (AGL)) and 95 basement car parks. (Nominally this building has a length of 80m on the western elevation.⁵)

Location: north-western corner of site (north of Richard Farrell Avenue), requiring the removal of 5 apartment buildings and houses and the house at number 68 and 44 garages as well as several trees.

- Stage 2: Building 2 comprising a two level care unit for 80 people, 43 basement car parks and 15 apartments above level 2 with a maximum height of 13.57m (@ RL 40.900) (above RL 27.330 AGL). Nominally this building has a length of 60m on its southern wing and 50m along its eastern wing.⁶)

Location: south-eastern corner (an "L" shape running parallel to the western boundary approximate to 93 and 97 Maungarie Street and running parallel to the southern boundary), requiring the removal of 22 one bed two storey apartment blocks and related external aerial walkways.

- Stage 3: Building 3 comprising two blocks (3A and 3B) joined by a central access core with approx. 54 apartments and 63 basement car parks with a maximum height of 16.8m (@ RL 44.600) (above RL 27.800 AGL).

Location: south-western corner running parallel with the remainder of the southern boundary (Koraha Reserve) and a portion of the western boundary approximate to the 53 and 55 Richard Farrell Avenue, requiring the

⁴ We note there was some discrepancy in actual final numbers but not to such a degree as to have an impact on the building design being promoted and we have not sought to dwell on those differences as they are not particularly relevant to our consideration.

⁵ Transcript, Thresher, page 78

⁶ Transcript, Thresher, page 79

removal of the existing Kensington House care unit and the removal of 33 garages.

- Stage 4: Development of upgraded community facilities the staging of which may occur early on in the project to minimise disruption to village residents.
- The final development comparison is (approximately):

Description	Existing	Proposed
Units (ILU and SA)	106	220
Care units	32	80

The parties positions

[23] As we have said Real Living seeks consent to the proposal as presented to us and provided a set of conditions which it considers should be attached to the consent.

[24] The Auckland Council supports its decision to decline consent, with the s274 parties aligned with that position. It says the development is overly dominant in the local and wider context and is inconsistent with the objectives and policies of the operative and proposed planning framework, particularly those concerning protection of the medium density environment currently enjoyed in the area. It also says the proposal will result in unacceptable environmental effects related to amenity matters associated with the proposed height, bulk and location of the proposed buildings.

[25] More specifically, the key issues summarised by Ms Parkinson for Ms Todd and Mrs Thomas are:

- Whether the proposal will result in unacceptable environmental effects in the Residential 6A context. The matters in dispute including the extent and significance of adverse effects of building bulk and dominance, shading and overlooking.
- Is the proposed redevelopment consistent with the objectives and policies of the Plan?



- (c) If the court is minded to grant consent, do the draft conditions of consent adequately provide for the mitigation of the effects of dewatering and settlement, and noise effects?

[26] Ms Todd and Mrs Thomas called evidence specific to their concerns from a planning witness Mr Wren, and urban design Mr Brewer. The specific amenity issues for them related to over shadowing, privacy and dominance, particularly of the eastern boundary of the Village.

[27] Ms Beresford for the Residents Group submitted that, while the Village site is capable of accommodating a more intense form of development, it is the way in which this development has been focussed on the periphery of the site that is the key issue. The Residents Group focus is on the western edge of the site, with Building 1 and Building 3A. The Residents Group's position is that the less developed edges of the site have a function by assisting in the internalisation of effects and thereby afford the neighbours a considerable degree of amenity. This function becomes more valuable as development of the site is intensified.

[28] The Residents Groups preference is that any medium rise and/or lengthy building should be located in the centre of the site. The appellant's approach resulted in these buildings, in the context of the existing environment, being simply too big, and as a consequence of their bulk and scale they will have adverse effects on the adjoining residential amenity.

[29] The residents submit that the key effects relative to bulk and scale (being their length and height) mean that they will be an overly dominant aspect of the environment that will dominate the adjoining residential properties and homes. The existing outlook towards the open sky and trees will be replaced (entirely) by a large building, and this will significantly detract from the level of amenity currently enjoyed by these western neighbours. In addition, there is a potential loss of privacy associated with the height and number of windows giving future residents of the Village the ability to look down into neighbouring properties.

[30] Mrs Martin says the redevelopment will destroy the garden ambience currently enjoyed by residents. She is also very concerned about noise and disruption during the long construction period (5-10 years).

Activity status/reasons for the application

[31] The proposal requires consent under the Operative Auckland District Plan – Isthmus Section (Operative Plan), the Auckland Proposed Unitary Plan (PAUP) and the Auckland Regional Air Land and Water Plan (ALWP). Under the Operative Plan Retirement Villages are listed fully Discretionary Activities. The application also seeks an extension to the lapse period of 10 years rather than the usual five.

[32] Curiously the parties had concluded that Discretionary consent was also required for a number of infringements of the Operative Plan development controls that pertain to Permitted Activities. After some discussion we were told this may not be so. As the proposal is fully discretionary in any case, the bundling of consents would lead to the same outcome so we have not turned our mind to this issue.

[33] Additional consents are required under the ALWP for the diversion and discharge of stormwater and the diversion of ground water. These bundled under that plan result in a Restricted Discretionary status.

[34] The effective controls of the PAUP relate to earthworks, the relationship of the earthworks to a flood plain, diversion of ground water and management of stormwater quality associated with uncovered parking. These are Restricted Discretionary Activities. The parties agreed that overall bundling results in a Discretionary Activity status.

[35] We will need to consider s104 matters which, subject to Part 2 of the RMA, in summary are:

- Any actual or potential effects on the environment of allowing the activity
- The relevant provisions of the applicable planning instruments
- Other matters

[36] We set out the statutory framework for consideration of the appeal fully after our consideration of environmental effects.



Consideration of environmental effects

[37] As we have set out earlier, the potential adverse effects at issue had been refined between the parties so that we only need consider residential amenity effects and in that regard the potential adverse effects had been refined to dominance (and shading to the east), scale and privacy. We first set out the positive effects which were presented in support of the proposal.

Positive effects

[38] There was no particular dispute between the parties that provision of retirement and care for elderly represents a benefit in terms of the Auckland community. There remains demand for modern apartments as has been demonstrated by the number of applications granted by the Council for new or extended retirement villages over the last several years. Edmund Hillary Village is a modern retirement village situated near to this site on Abbotts Way, with in excess of 500 units. Other recent examples include the upgrading of the Meadowbank retirement village on Meadowbank Road and the recent granting to Ryman Healthcare of consent to convert a former hotel for a retirement village in the Campbell Road Greenlane area.

[39] We recognise also not only the benefit to the owner in being able to intensify this site, but the prospect of a wider range of accommodation opportunities for potential residents. At the same time we recognise that a construction of this scale represents a significant employment opportunity within Auckland which has flow on effects in economic terms. It will also provide ongoing employment for nursing staff and other workers in the retirement industry.

Adverse impacts upon residential amenity

[40] We have addressed the likely environmental effects of the proposal on a site edge basis first and then we have looked at the overall cumulative effect. Each of the variables are of course interconnected and we have attempted to pull this together in our conclusions.

[41] Dominance and scale are interrelated and driven by the intensity of development. In this case the proposal is to locate significant sized buildings around the edge of the site. The parties agreed that there was no permitted baseline for

development of this site as its size was such that it could be developed in a number of ways with differing results. For instance, subdivision under the Operative Plan to allow for individual lot development, or a comprehensive housing arrangement under the one title.

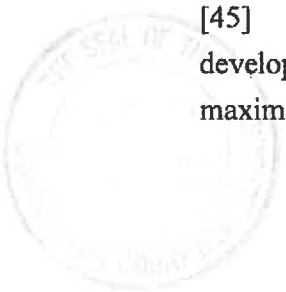
[42] We were provided with figures scoping the intensity of development which might result from subdivision, which suggested something in the order of 50 lots providing for, say, some 148 residents. On the basis of a straight mathematical application of the intensity rule for the proposed use, calculation of some 631 residents is achieved. Of course this would be subject to resource consent and it is of limited assistance in such a context. Similarly, the development is currently at around 1 residential unit per 250m². The proposal would result in intensity in excess of 1 per 150m². Given the difficulty of involving the care facilities in such calculations, this makes direct comparison difficult. We acknowledge that these are not identical to residential units used for density calculations due to:

- (a) lower numbers of residents (closer to 1.2 per unit compared to 2.3-2.7 generally);
- (b) lower vehicle and transport demand; and
- (c) less activity impact.

[43] Since it was agreed there is no clear baseline, these figures only serve to illustrate that the size of the site does lend itself to a reasonable level of intensity of residential development. The scope of that is, however, dependent on the interaction of a number of variables not simply related to the size of the piece of land.

[44] The site is already well developed as a 6A site, and has coverage close to or above that generally accepted as appropriate in the 6A zone. However, all parties acknowledged the site had further capacity for intensification. We have reached the same conclusion. The issue is how that can be achieved while maintaining external amenity levels anticipated in this area.

[45] The current development is illustrative of something that complies with the development controls for the zone, meeting the building coverage, overall height (8m maximum) and height in relation to boundary controls.



Assessment materials

[46] Against this background Real Living provided a substantial drawing portfolio amounting to some 164 pages. Key features of these plans relative to these proceedings set out:

- Plans to provide comparison of the existing footprint of buildings to that proposed
- A plan indicating overall building levels (measured in storeys)
- Development staging
- Development perspectives
- Site plans (including contours and trees), Floor plans (dimensioned to boundary) and roof plans (including reduced levels referenced to average ground level at the perimeter of the relevant building).
- Cross sections relative to boundaries for height in relation to boundary analysis. We note that the efficacy of some of these were questioned in evidence for two reasons: (i) The measurement between the boundary and the building was not taken at right angles to the boundary as required by the district plan rule in relation to two measurements concerning Building 1. (ii) The elevation interpretation and boundary interpretation for the application of the height in relation to boundary control in relation to Building 2 on the eastern boundary (Brewer evidence).
- Building elevations (including floor and roof levels referenced to average ground level at the perimeter of the relevant building). We note that these were rendered elevations and in some cases difficult to read due to the rendering technique when understanding the relative distance of building features from the boundary.
- Building perspectives for each proposed building indicating adjoining buildings and showing the maximum height plane through the development both in terms of overall maximum permitted height referenced to average ground level at the perimeter of the relevant building and the height in relation to boundary control.



- Two photo montage views: (i) Building 1 from Haast Street at the College Riffles site and (ii) from Richard Farrell Avenue.
- Shadow diagram studies (amounting to some 94 drawings) detailing “proposed shadows”, complying shadows”, and “existing shadows”. The diagrams covered 20th of March, April, May, June, July, August, September and December variously at 9am, 10am, 12pm, 3pm, 4pm and 5pm. With the more detailed studies referenced to Building 2 and the eastern edge of the site.
- Cross sections of Building 2 relative to 97 Maungarei Road and Building 1 relative to 55 and 62 Richard Farrell Avenue.
- A portfolio of Visual Impact Simulations (prepared by One to One Hundred – 13 October 2015) and a Landscape Concept Package (prepared by Natural Habitats – 8 October 2013).

[47] Unfortunately the efficacy of the visual impact simulations was not supported by evidence of their production. Mr David Hillier the Director of One to One Hundred, who we were told was responsible for their production, was not called as a witness. Mr Hook provided additional evidence on how these visual simulations were prepared. But he did not prepare them and could not therefore be cross examined on them.

[48] However, Mr Hook did provide the brief for their preparation and settled upon a 35mm lens for the purpose of their production. He confirmed he had referred to the NZILA Best Practice Guide for Visual Simulations (V.10.2 dated 2.11.10) and that Mr David Hillier was in possession of that document. When Mr Hook was asked questions by the court as to the choice of the 35mm over the more commonly used 50mm lens and the difference that might make to the efficacy of the images to assist the court he was not particularly certain. He did say that a 50mm lens would not have been suitable in his and Mr Hillier’s view because it would have produced a very limited field of view. In questioning of Mr Wren the court was able to confirm based on its own knowledge and experience with this type of evidence that the 50mm is closer to what the eye sees and would in fact bring the object closer (hence limiting the field in any one photo) and as such the object would be larger. The court accepts that this kind of evidence cannot replicate actual experience, and is there to provide some conceptual assistance. A site visit and examination of the plans must be carried

out to obtain a realistic understanding. We are concerned, though, that by producing an image with the wider field of view the scale of the building can seem smaller. This does not assist the court or submitters. Therefore we have not placed much weight on this information other than it provides some useful description of the buildings in context.

[49] We also note at this stage that the shadow analysis described as “complying shadows” was generally agreed by witnesses to be unhelpful largely due to the fact that there is no baseline as agreed by the planners. We have therefore concentrated on the existing and proposed studies as these were the focus of the hearing.

[50] Without wishing to appear critical there is a point where the amount of information provided to the Court goes too far, and we think that threshold is relevant here. We have set out the quantum of drawings and images we were provided with. We have to say there is no substitute for true dimensioned architectural plans and we found rendered perspectives and the like unhelpful. Further, key shadow periods for instance, which *cut to the chase* of the issues before the Court, are more helpful than being provided with many pages of staged analysis. That said, we welcome visual evidence but it is important that this is focused and relevant.

Key potential adverse effects

[51] There were four critical areas of the development identified in evidence in terms of adverse dominance and scale effects. We summarise these as:

- (a) Building 1: the western residential interface (Caisley, Trainor, Subritzky and Geck properties) and streetscape
- (b) Building 2: the eastern residential interface (The Thomas and Todd properties)
- (c) Building 3A western residential interface (Salazar de Roux property)
- (d) Buildings 3A and B and Building 2 southern interface (Koraha Reserve)

We address each in turn.



Building 1: the western residential interface and streetscape

[52] The length of this building runs the entire length of the combined adjoining residential developments (3 lots). While stepped down at the northern and southern ends from four to 2 levels, there is a consistent height through the length of the building at the roofline(s) of level 4. This level rises well over the permissible 8m height limit. The northern most corner climbs to five levels but this of itself did not seem to concern witnesses. The large central portion of the building (being 4 storeys through its length) is to be stepped back some 17m from the boundary with a lawn bowls facility to occupy that courtyard. The adjoining dwellings at 62 and 62B (Caisleys) are orientated to the driveway which separates the application site. They have a direct outlook and exposure to Building 1. This outlook presents an open sky to the ridge beyond. That access to a sky view would be significantly compromised by the proposed building as a dominant relatively regular mass. The proposed mitigation planting would not assist in addressing this issue. Further it was considered the occupants of Building 1 would have sightlines into these neighbouring properties which would have an adverse impact on privacy. We accept that the potential adverse impact directly upon the Trainors house would be less than that experienced at 62 and 62B. However, the residential amenity, or the character of this neighbourhood, and access to the Trainor residence, is of concern.

[53] Mr Brewer indicated in his evidence in chief (para 5.25) that

The north/south length at approximately 75m in combination with the four level height is in my view, incompatible in scale to the neighbourhood context which the top two floors are above the 8 meter height limit. More importantly it is bulk of the building which creates adverse urban design effects"

[54] He went on to indicate that *the setbacks are subsumed visually by the fourth floor running continuously along the entire length of this building*. Mr Brewer opined that *there will be some relief looking diagonally across the north and south projecting wings but for the Trainors and Caisleys looking into the centre of Building 1 this will be of little benefit*.

[55] The court discussed at some length the character of the massing of this building and how it might better integrate with the topography and shape of



development.⁷ We agree with the evidence presented for the adjoining residents that face the proposal that the design of the building will:

- be dominant and eliminate access to sky views; and
- reduce privacy in a manner which will be more than minor;

and these features are not successfully mitigated by the proposal.

[56] Mr Brewer also addressed the streetscape which is an assessment issue in the district plan. In paragraph 6.2 of his evidence in chief he described the situation as:

The view of Building One from Richard Farrell Avenue has two levels of carpark entry and a fully glazed lobby which appears more commercial in character..... There are windows, terraces and architectural articulation to the above apartments but for a height equal to the zone height limit there is an inactive street frontage which is out of character with the existing streetscape.

[57] We accept that when one is standing at the end of Richard Farrell you will in the real world (as opined by Mr Brewer) look down and see the undercroft leading to that door below the undercroft and that this view plus the overall impression of Building 1 from the street will be commercial and dominant. We acknowledge that this impact might be reduced by careful massing and building detail but that has not been achieved here. We prefer Mr Brewer's evidence over that of the Appellants witnesses.

Building 2: the eastern residential interface (The Thomas and Todd properties)

[58] We understand that there has been some modification of Building 2 since the Council hearing. We do note the agreement reached with Mr Brewer during questions of him by Mr Savage, that the third level windows are unlikely to be visible from Ms Todd's courtyard and ground floor level and that the design measures employed by Mr Brown since the Council hearing have been successful in reducing the height and dominance from Ms Todd's garden. Mr Brewer qualified his

⁷ Transcript pages 358-363

comments though in respect of the narrow view explored in the views presented in the appellant's evidence.

[59] We took some time on our site visit to consider all the evidence in relation to the impact from the proposal compared to the existing environment. We found the evidence and discussion during the hearing on the privacy and dominance of this building was helpful but in the end the actual site visit explained the experiential situation rather better. We have no doubt that the privacy and enjoyment of the courtyards of both these residents will be compromised by the proposal as dwellings at a uniformly higher level are introduced with Building 2.

[60] The difficulty too is that the obvious mitigation through planting creates a potential adverse effect through shading. We observed the existing modifications residents had made to provide screening to secure privacy in their courtyard. We found the evidence to be uncertain in its delivery of potential adverse effects and we agree (with Mr Brewer) that cross-sectional analysis often provides a clearer analysis of the relationship of development than an attempt at photomontages and three dimensional images and selected views. On balance and confirmed by our own site observations, we agree that this building does not adequately mitigate issues of privacy.

[61] We also note that there will be adverse impact of the additional height of this building and its solid length on shadows cast particularly at times when sunlight is important to the amenity of these adjoining residents in the late afternoon. An extra hour of shade would impact upon their enjoyment. Mr Wren commented on the character of the change in referring to the areas of shade and sunlight being currently interspersed due to opportunities between building features. We accept that this would be the case with the traditional scale of residential buildings in the zone and this neighbourhood and that there is the potential for adverse effects from shading due to the scale of the proposed building.

Building 3: western residential interface

[62] As Mr Thresher confirmed in questions from Ms Beresford. Building 3 is a medium rise building containing 5 levels. We have described its configuration earlier. Building 3A is of concern to the residents group and in particular Mr Salazar De Roux the adjoining neighbour. The outlook from his residence is either easterly or south

(illustrated in Visual Impact Simulation View Point 6). It is again the dominating scale of the building and potential loss of privacy that are of concern. Mr Salazar De Roux's concern is he will end up with what is currently sky behind the trees replaced by a building behind the trees and that will obscure the perceived feeling of natural light.

[63] Mr Salazar De Roux expressed his understanding of the need for the retirement village to intensify but it is the scale and intensity which concerns him. In response to questions from the court he accepted the prospect of some reconfiguration to a majority 3 level building with treatment of apartments to avoid overlooking, and the stepping back of the top floor so the intervening trees would assist with mitigation.

[64] We accept that his house is well separated from the proposed building and we note the public walkway along this edge of the development site. Upon our site visit it was difficult to appreciate that this was in fact a public walkway as the existing development of the site is integrated with it and the boundaries are obscured.

[65] We accept that the scale of the proposed building here will be dominant and significant, largely due to its tower shape. This will impact on these residences to the west and the character of the public walkway. This is an amenity and experiential impact which it is accepted is difficult to quantify in terms of adverse environmental effects. However, the character of the neighbourhood into which this proposal is to be placed provides the indication for assessment and we have not been convinced that an apartment tower in the nature of Building 3A fits the residential character here. The two towers that make up Building 3 could be dominant in their shape and form. That is not to say the design might be improved upon as we discuss in our conclusions, to mitigate these effects but we cannot assess that in the context of these proceedings.

Koraha Reserve

[66] It is the combination of dominance and scale of both Building 3 (A and B) and Building 2 which face up to this reserve which we understood to be of concern. The intervening trees provide some visual mitigation but the visual simulations indicate these buildings form a solid mass of building right along this boundary and they would likely appear above the trees.



[67] The buildings will cast a shadow to the south as depicted in the shadow studies. A solid mass of such scale must have an impact upon access to light and openness perceived at this boundary. While we did not find Mr Cuthbert-Ashmore's evidence particularly helpful we can understand the Council's concern for the sustainable use of the recreational reserve as this part of the City grows. Overbearing development would impact upon the public enjoyment of the reserve.

[68] We have observed a design pretext that this boundary can accommodate greater massing of development. That pretext needs to be balanced against the public use and enjoyment of the reserve now and into the future. We are not convinced that the solid line of four storey built form (albeit in 3 groupings but closely spaced) will achieve this. Penetration of light and feeling of spaciousness are features of the reserve which will be adversely compromised. We have a similar concern with the public access to the reserve.

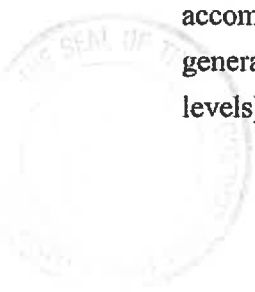
Internal site amenity

[69] Mrs Martin asked a number of questions of Mr Murphy concerning the internal amenity of the site especially with regard to the 10 year construction program and managing the effects of that on the residents. In the end we do not have to consider those matters due to our overall conclusions.

[70] However, we would expect this matter to be set out in a carefully crafted construction management plan which would manage the residents' expectations given the role the retirement village plays in the enjoyment of their twilight years. We accept that the amenity standards expected of modern retirement villages and the level of service and length of stay are matters which the applicant is seeking to address through this proposal. It is likely that Mrs Murphy's concerns can be managed and her expectations appropriately realised in a general sense with agreement between the residents and the village occupants with this kind of management regime.

Analysis on effects

[71] There are two positions from which the mass of the buildings can be accommodated relatively readily. From College Rifles we are satisfied that the general mass proposed along that boundary, at a fairly consistent level (around 5 levels), can be sustained. The reasons for this conclusion is that from this position



people are looking generally down towards the site and are seeing these buildings in the context of those behind it and those on the higher ground to the east and to the west. The buildings are likely to add a distinct edge to the playing fields, but the height of them will not be particularly noticeable given that the parking area for College Rifles seems to be something in the vicinity of 8-10m higher than the boundary. Again, we do not see the height of the buildings as being problematic in terms of the playing fields themselves and this has been confirmed by the consent of the College Rifles. In light of that consent, we must properly disregard any affect upon College Rifles under s 104.

[72] There is also some capacity to accommodate extra height along the southern boundary. We have concluded that this is a more limited opportunity than on the northern boundary, given there will be some shading and loss of light penetration, and also given the impacts upon the amenity of the residents both to the west and the east. This area is an example of the strong ridge and valley formations. There are many places in proximity to this site where strong ridge formations mean that houses appear prominent from particular positions. Although this site is low-lying, it nevertheless has the capacity to carry some form of ridge feature as long as mass is centralised. Given that the southern boundary gives a linear form to those viewing it from both Abbotts Way and the Reserve, we have concluded that there is some potential to carry extra height in the centre of the southern bounds in the vicinity of Building 3B and possibly part of Building 2. However, within 50m or so of the western and eastern boundaries this needs to fall away to meet a height similar to adjoining buildings to the east and west. This means that light will still come around the central part of the building and give the appearance that the mass is centralised within the site.

[73] Given that there are public access ways on both the eastern and western boundary we also consider it is important for public access that these are not over-dominated by buildings and that the appearance of being able to walk around the buildings is very real to people in the Reserve areas. We had originally been concerned about setting the building on the western boundary further back. However on reflection and site view, we acknowledge that the trees do form a buffer. With appropriate signage to show that this is a pedestrian way pedestrians will not feel prevented from using this access. This is only with a lower height on the adjacent building of no more than 2 storeys. We are satisfied that people would be able to make their way along the well marked pathway to Richard Farrell Avenue and vice versa. It would be important to maintain sight lines along the length of the path so

that people were able to see their way through. We are satisfied that this could be done with some minor re-design of the pathway.

[74] As far as the eastern pathway is concerned we have concluded that again height above two storeys is likely to give an oversight and dominance not only to the walking area but to the nearby residents. Although we acknowledge that some considerable work has been done by the designers to step the building back from the boundary we are still not satisfied that the Applicant has gone far enough in reducing the impact on the eastern boundary. There was some suggestion that some form of light shaft or separation of the building mass along the north-south length of the eastern edge of the building would provide a break. Our inspection indicated that with the current building design this is going to be extremely difficult if not impossible. The other choice is to ensure that the building is sufficiently stepped back from the boundary to create the appropriate sense of openness necessary both for the walkway and for the nearby residents. In that regard some further articulation of the building is probably all that would be necessary, provided that the building was not higher than 2 storeys. As we have indicated the central tower, Building 3B, is one that does not create the same difficulties for the Court.

[75] Moving to Building 1, the aspect that remains of this building is its north-south length along the western boundary. We have had extensive discussions and reviews of the maps and have concluded that the bulk of this building as seen from the west, particularly the residences nearby, is simply too great. It effectively creates a plateau for viewing. Although some articulation of the building has been attempted towards its southern extent, it is still simply too great a mass. If the 50m of the building at the bottom were reduced to 2 storeys above ground level, and the building was stepped up towards its high point at the northern end, these issues might be properly addressed.

[76] However there was some significant difference between us as to what the effect of these changes would be and it would depend on whether the building was stepped both away from the western boundary and to the north or just one or the other. The high continual spine of the current design presents a significant visual dominance for most of its 80m length. We looked at the design and concluded that changes required might lead to the need for major rearrangement of the design to accommodate infrastructure and issues such as lifts.

Conclusion on effects

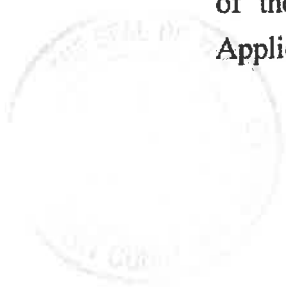
[77] Our unanimous conclusion was that overall the dominance and bulk of these buildings, particularly the southern part of Building 3, the western part of Building 1 and the eastern part of Building 2 was such that the impact was simply too great.

[78] We have concluded, as did the Commissioners in their primary decision, that the scale, intensity, dominance of these buildings is just too great for the site. In simple terms it represents an over-development that has unacceptable amenity impacts.

[79] Although we were strongly of the view that a development that could accommodate the general objectives of the Applicant could be achieved, it will involve reductions in the sizes and height of the buildings. This has a concomitant impact upon the level of development and potentially the feasibility of the project. We discussed at length whether it was possible for us to accept modifications to the existing designs to something that would be acceptable, and we have concluded that this should not be done for the following reasons:

- (a) we are not fully aware of the infrastructural requirements for the building and whether or not other features such as lifts, parking etc could still be provided;
- (b) there needs to be a consideration of the mix of apartments and care facilities on the site and a reduction in the scale of the activity will lead to decisions being made as to the mix to be achieved;
- (c) there may be other or better alternatives, including for example using the northern central part of the site, which might achieve a better overall outcome and still allow intensity closer to the level sought; and finally,
- (d) given that the PAUP is likely to be determined within the next 6-12 months the Applicant may wish to reconsider their position in light of the new Plan.

[80] Accordingly we have concluded, as did the Commissioners, that the effects of the activity were significant and would not be adequately mitigated by the Applicant.



Statutory Framework

[81] The joint statement prepared by the three planning witnesses relied on the Operative Plan, the ALWP and the relevant residential objectives and policies and limited rules which apply essentially to similar matters as the ALWP of the PAUP. There was some general comment regarding the need for additional intensity in residential development but the issues here were confined to the immediate area and no reliance was suggested on Regional Policy Statement matters.

Operative Plan

[82] Given the limited progression of the relevant sections of the PAUP, the parties agreed that the most relevant planning document in this case is the Operative Plan and that Mr Hook had referenced the relevant sections appropriately in his evidence in chief.⁸

[83] The site and surrounds are zoned Residential 6a (Medium Intensity) with the College Rifles site zoned Open Space 3 (Organised Recreation) and Koraha Reserve Open Space 2 (Informal Recreation).

[84] The Residential 6 zone is the most significant residential zone on the Auckland Isthmus because it covers the largest area. In the zone strategy (7.6.6.2) it is explained that:

.....The zone's controls compliment and build upon the characteristics of the areas zoned for medium intensity. This zone allows for further development while retaining and sustaining a reasonable level of amenity with more generous density limits permitted in the residential 6 zone than in the Residential 5 zone. The zone is divided into two sub-zones; Residential 6a and 6b zones that vary in density and height. The Residential 6a zone has a density of one residential unit for every 375m² of site area. The Residential 6b zone has a density of one dwelling for every 300 m² of site area.

The zone has two height limits, which are designed to reflect existing amenity values. The lower of these two height limits, 8 metres, is applied in the Residential 6a zone, to those locations which are predominantly characterised by one or two storey developments. This height limit is intended to compliment the amenity values currently found in these locations.

⁸ Hook EIC [28]-[32], [47], [70]-[76] and [82]-[90]

And

Provision is made for a range of activities to operate within this zone. In general the activities provided for will be expected to include a residential component or to be of benefit to the community. Activities which attract significantly more people to a site than would be anticipated from the density permitted in the zone will be discouraged. These can cause increased traffic generation, noise and other adverse environmental impacts. Conditions may be imposed on activities seeking resource consent to ensure that:

- generated effects do not extend beyond the boundaries of a site; and
- measures are undertaken to mitigate any adverse impact on personal privacy and on the visual amenity of the vicinity.

[85] The expected outcomes for the zone are that the zone:

will enable residential development to occur that is distinctly different to the higher densities able to be achieved in the Residential 7 zones and the low intensity character that the Residential 5 zone will maintain".

[86] Mr Hook described the Operative Plan as having three tiers of objectives and policies relevant to the proposal. The highest level is to be found at Part 2 of the Plan and the planning witnesses agreed that four of the nine objectives under 2.3.3 Community were particularly relevant. We set them out here:

- To achieve a healthy and safe living environment for the citizens of the district.
- To allow for the development of a range of residential neighbourhoods and environments.
- To protect and enhance residential amenities.
- To allow maximum flexibility for individual site development without adversely impacting on neighbouring activities.

(Mr Hook's emphasis)

[87] The next tier is those specific to residential activity and the third tier those specific to the Residential 6a zone. We have already referred to the expected outcome which these objectives and policies are designed to achieve. The planners agreed that the following are most relevant and we have arranged them with the general first then the specific. Those general to residential activity agreed:

Objective 7.3.2

To identify, maintain and enhance the recognised character and amenity of residential environments.

Policies

By ensuring that the type and intensity of residential activity in each area occurs at a level capable of being sustained by the local environment.

By adopting measures aimed at maintaining and enhancing the legacy elements, characteristics and qualities of certain residential areas.

Objective 7.3.3

To provide for a broad and flexible range of residential development while offering reasonable protection to the amenities of neighbouring properties and the local environment.

Policies

By providing for a wide variety of households as may be appropriate to the site and local environment characteristics to satisfy the diverse needs of present and future residents.

By adopting planning controls which are sufficiently liberal to allow the creation of a wide range of housing types.

By ensuring that planning controls and bylaws are only imposed to achieve specific objectives and/or to remedy a particular problem.

By primarily applying development controls which maintain the amenities of neighbouring sites.

By applying minimum control to maintain on-site amenities and to maintain flexibility for future occupants.

(Mr Hook's emphasis)

[88] We have set out the policies relating to both the objectives identified by Mr Hook, whereas he tended to concentrate his evidence on the second objective above. We note the particular relevance in this case of the first when we come to consider the existing and anticipated environment into which the proposal is to fit.

[89] Those objectives and policies specific to the Residential 6a zone as agreed:

7.6.6.1 OBJECTIVE AND POLICIES

Objective

To provide for medium intensity residential neighbourhoods in appropriate locations.

Policies

- By directing these zones to areas where the environment is able to sustain residential development at medium intensity.
- By imposing controls on developments which protect the external environment of the site, while achieving a reasonable level of amenity for medium intensity developments.



- By permitting a wider range of activities in these locations than is permitted in the lower intensity zone, while maintaining the appreciated amenity.
- By promoting quality and innovative design solutions for developments of 4 or more residential units by requiring the application of urban design criteria.

(Mr Hook's emphasis)

[90] Further, the objectives and policies for Open Space land are also relevant. We have read these as they pertain to Open Space (OS) zoned land and specifically those for the OS2 and OS3.

[91] The introduction to Part 9 - Open Space and Recreation Activity sets out the importance that open space areas add to the quality of city life. Resource Management issues are identified at 9.2 and include:

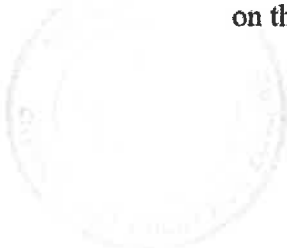
the need to ensure the protection, development and use of the Isthmus' open space and recreation resources, in order to attend to the foreseeable needs of a growing and diverse population and to the prospect of diminishing private open space. Such action must recognise the limited opportunities available within the district to acquire additional open space and recreation land.

[92] The general objectives and policies pertaining to OS land (clause 9.3) seek to recognise, maintain and enhance open space resources and include policies to apply zoning which reflects the inherent qualities and nature of the land, protecting and conserving native trees and bush significant landforms and the natural character of open space recreational land and encouraging development of a walkway system linking areas of open space, schools, commercial, community and public transport facilities. A wide range of leisure pursuits is to be facilitated to meet the present and future needs.

[93] In addition specifically OS3 provides for:

organised sports and recreation activities which are compatible with the physical characteristics of the land and which do not impact adversely on the amenity and quality of the surrounding environment.

[94] Amongst the policies supporting this objective we note the imposition of controls on *the scale and design of buildings and structures so as to retain open space* on the site and avoid, reduce and mitigate adverse effects from their use or operation.



[95] Additionally, the OS2 has the single objective set out below:

To protect appropriate areas of open space for the enhancement of the environment and the enjoyment of informal recreation.

[96] We also set out the more relevant policies which follow:

Policies

- By applying a zone which maintains the open space character and visual amenity of these areas.
- By limiting activities to those suitable to the informal recreation use of the zone.
-
- By restricting earthworks and the removal of native trees and bush.

Discussion

[97] Overall we have concluded that the operative Plan recognises the need to intensify activity within the District while at the same time maintaining, and where possible enhancing, the amenities of the local area. In the case of Residential 6A development, there is specific recognition of the need to maintain the amenity of neighbours and the impact upon the area in which the activity occurs becomes of some significance. We acknowledge that that amenity is not immutable; it does change over time, and the question of reasonableness always arises.

[98] We do not think that these residents have a view that the amenity of this area must remain unchanged for all time. All of them appeared to us to acknowledge that intensification on this site was reasonable. What they did say, with some passion, was that the impacts in this case were just too great. That is a matter that is recognised in terms of the objectives and policies of the Plan.

PAUP

[99] We are required to give consideration to relevant objectives and policies of the PAUP and effective rules which relevant here, relate to earthworks, diversion of ground water and management of stormwater quality. The matters addressed in these rules are also generally covered by operative rules under the Regional Plan as outlined earlier. The joint planning statement records that if consent were to be granted to the proposal these rule matters are likely to be able to be addressed through appropriate

conditions. We note that Mr Wren (Planner appearing for Ms Todd and Mrs Thomas) included possible noise effects in a similar category.

[100] We thus are left with the PAUP objectives and policies relating to this site, which as for the Operative Plan include the more general type objectives and policies and those specific to the Single House zone that has been applied to the subject land. In regard to these matters it seems that retirement villages have been treated differently in the PAUP, with the inclusion of a special zone for them. However, we understood that the subject site has not been so zoned and the owners have a submission on the PAUP to seek changes that would allow for the Village and its expansion.

[101] The Planners' joint statement speculated that the outcome might be that the site retains a residential type of zoning and that retirement villages would require consent as a discretionary activity. This can only be a speculative observation so we agree with the Planners' overall conclusion that we place no weight on the PAUP as no decisions have been made on the provisions that might assist us.

[102] We have therefore concentrated our consideration (as did the planning witnesses) on the Operative Plan. We have also not dwelled on the ALWP (and effective PAUP) consents as we need only go that far if we determine that land use consent is appropriate under the Operative Plan. Also, for completeness we record there is no relevant National Environmental Standard or National Policy Statement directly relevant that we need consider.

Balancing development and amenity under the Plan

[103] As we have said we concentrate on the Operative Plan for guidance. This includes a definition for a Retirement Village and specific assessment criteria to be employed for consideration as well as more general criteria. Further, we must consider that overall assessment in terms of the objectives and policies we have noted earlier.

[104] Retirement Village is defined as follows:

Retirement Village

Means a comprehensive residential development providing housing, recreation, welfare and medical facilities which is intended for the care and accommodation of disabled, infirm, elderly or retired persons. It will include a combination of rest home/care/hospital beds, serviced apartments/units and residential units, which are held either under one title or unit titles under the Unit Titles Act which is encumbered by an appropriate legal instrument which ensures that the use of the unit is confined to such persons.

For the purposes of Clause 4B.4 Residential Development Financial Contribution, financial contributions will be required for those parts of the development that operate as fully self-contained separate units/apartments.

[105] We start from the agreed position that there is no permitted baseline. However, it is useful to note that the permitted height in this zone is 8m and there are height in relation to boundary controls which control the height of a building as it approaches the boundaries of a site. The proposal exceeds the overall height limit by some large degree, with buildings proposed more than double that height at various points. In addition, height in relation to boundary control is exceeded in respect of all relevant boundaries, with some question as to compliance on the western boundary in respect of Building 1.

[106] Mr Hook (Planner for the Appellant) concluded that the Operative Plan takes a consistent approach through the tiered objectives and policies:

by placing an emphasis on maintaining a reasonable level of protection to amenity standards, by defining and applying different residential zones (which differentiates between different areas of the City) and by setting development controls at different levels within those zones.

We agree with this statement.

[107] He went on to opine that the:

development controls for each zone have been set at a level that ensures only low levels of effect are generated by a complying development, and to establish a suitable threshold beyond which a Discretionary application is required.⁹

⁹ Mr Hook, evidence-in-chief, at [71]

[108] In this regard, Mr Hook's explanation related to applications for infringements to the development controls which as we have said apply to permitted activity. In that case the context is a permitted activity where an infringement is sought of a development control (e.g. the height limit, building coverage or more than one of these types of rules). However, what we have here is a listed Discretionary Activity so it technically is not reliant or bound by the development controls, rather the full effects of the activity are to be examined. Depending on those potential adverse effects, a situation could arise where for instance a more restrictive regime is employed to address an environmental effect than might operate for a permitted activity.

[109] As we have said, the Operative Plan identifies issues which might arise with a fully discretionary activity and in particular a Retirement Village, setting out some specific criteria to be considered. However, this does not confine the assessment as the activity is fully discretionary. The relevant assessment criteria are contained in two locations within the Residential zone provisions: the General Criteria at clause 7.7.4.2 and more specific further criteria at clause 7.7.4.3L.

[110] The general criteria include matters such as traffic generation, parking and access which were not at issue by the time the parties came before us. Neither was noise, the natural environment, infrastructural constraints, provision for outdoor activities, unless we get as far as considering consent is appropriate and these would be the topic of mitigation and conditions. The matters we noted under the general criteria as being most relevant before us are:

4. Buildings

In general buildings or structures should be of a similar or complimentary scale and appearance to that of other residential buildings within the surrounding area. Where this is not practicable, buildings should not overshadow or become overly dominant. Methods to mitigate any adverse effect may include the use of separation distances between the proposal and adjacent sites and the provision of screening.

6. Development Controls

In general, activities will be required to comply with the development controls for the zone. A modification to one or more of the development control rules may be considered concurrently under Clause 4.3.1.2B as a separate discretionary activity.

With respect to activities that are designed to attract or accommodate people, the Council will use the intensity level set for permitted or controlled activities for the zone as a guide. This means that activities such as places of assembly and educational facilities are not expected to comply with the intensity level for the zone. The rule will however be used to help assess the

potential effect of the activity and determining where necessary, any conditions of consent.

10. Cumulative Effect

In assessing the appropriateness of allowing an activity to be located in an area consideration will be given to the presence of activities already located in the area and on the site, and their effect on the surrounding residential environment. Of particular concern is the cumulative effect of locating an activity on a site adjacent to or already accommodating an activity that may currently generate traffic, noise, etc, not in keeping with the residential area. The ability of a site to internalise effects if more than one activity is seeking to operate from it will be considered.

[111] The additional assessment criteria more relevant to these proceedings and identified as being specific to a Retirement Village are set out below:

L. Retirement Village

The proposal must be consistent with the objectives and policies of the zone. Applications will also be considered against the following additional criteria:

a) Site amenity, streetscape character and pedestrian amenity

- New development shall be designed to complement and enhance both streetscape character and pedestrian amenity;
- Buildings shall front roads. Large-scale developments that address significant lengths of road frontage shall be broken up into smaller sections of different character or mitigated to ensure sympathetic bulk. Blank walls along a road frontage shall be avoided;
-
-
- Landscaping of developments shall be provided in a manner that will enhance the visual appearance of the development, including around parking areas, service areas, and at the site boundaries. On-site landscaping adjoining the road shall enhance the character of the streetscape;
- Landscaping shall be used to soften large facades, where relevant, and visually integrate the development with surrounding residential or open space zoned sites so as to not detract from the amenities of such sites;
- Wherever possible, and appropriate, any existing trees and mature landscaping shall be retained;
- Any land not covered by buildings, carparking, pedestrian or vehicular access shall be landscaped and maintained to create and preserve a good standard of visual amenity and privacy for both the residents of the retirement village and for surrounding properties. The development shall include suitable areas of open space available for the use and enjoyment of the users of the site that will also assist with this;
-

b) Building scale, form and layout

- New developments shall be compatible in scale with other buildings in the immediate streetscape and adjoining buildings on neighbouring



properties. Particular attention shall be paid to the interface of the buildings at the perimeter of the site with adjacent sites. Where larger buildings are inserted in areas with smaller buildings, the publicly visible facades of the new buildings shall be detailed to mitigate the possible perception of unsympathetic bulk;

- The scale of the development shall be consistent with the development controls for the zone;
- Where buildings abut public open space, they shall not dominate such spaces but address them;
-

c) Visual privacy and aural amenity

- The development shall be designed to maintain, as far as practical, the visual privacy and aural amenity of adjacent sites, in particular, the privacy of habitable rooms and their associated outdoor living spaces and deck areas. This could be through such means as the location of balconies and windows, separation distances, and/or the nature and design of screening/landscaping. Particular attention shall be paid to outdoor areas such as decks, swimming pools, bowling greens, and car parking areas;

d) Site facilities

-

e) Car Parking

- The location and layout of parking and vehicle circulation areas shall ensure that the effects of the proposal are internalised on the site and do not impact on adjoining residential zoned sites. Large groups of aboveground parking spaces shall be avoided due to their impact on visual and aural amenities, unless these effects can be adequately mitigated by separation distances and/or screening/landscaping;
-

f) Location and design of vehicular and pedestrian access

-

g) Intensity and Scale

- The intensity and scale of the proposal, in particular the number of people involved in the activity, traffic generation, size of buildings and associated parking, signs, and noise generation shall be compatible with the character and amenities of the surrounding area having regard to the objectives and policies of the zone;
- Developments shall be located in close proximity to public transport routes;
- Developments shall be located close to community facilities and retail opportunities;

(Our emphasis)



Analysis of planning matters

[112] We have considered the environmental effects of the proposal in detail earlier and reached the conclusion that there are likely adverse effects which are not mitigated by the proposal. We agree in part with the observation that this situation is driven by the design solution chosen to concentrate the development around the edges of the site.

[113] We have acknowledged the potential for the northern part of the site to accommodate a greater scale of building due to the ability of the adjoining College Rifles land to absorb the potential effects of that kind of development. However, the other edges of the site are more sensitive.

[114] We agree with Mr Hook regarding the way in which the range of residential zoning operates by defining and applying different zones differentiating between the areas of the City. Each zone contains development controls considered appropriate to its characteristics. For instance, in the Residential 6 zone the permitted height ranges from 8m (6a) to 10m (6b) and in the Residential 7 zone 10m (7a), 12.5m (7b) and 20m (7c).

[115] In reply to questions from the Court, Mr Hook commented on the next zone up in terms of density and development intensity from the Residential 6 zone, being the Residential 7 zone. There are pockets of this zone located on the Remuera ridge which accommodates taller buildings at 12.5m and 20m between Victoria Avenue and Entrican Avenue on the northern edge of Remuera Road, and 10m between Koraha Street and Meadowbank Road mostly on the southern side of Remuera Road.)¹⁰

[116] The Residential 7 zone also adopts a different regime of height control between sites to address *bulk* in relation to boundary rather than *height* in relation to boundary. This is in anticipation of the higher height limits resulting in greater building bulk. As the explanation for that control indicates: ¹¹

....Protection of sites within this zone has been balanced with the need to allow permitted zonal height limits to be achieved. As a compromise a more

¹⁰ City of Auckland - District Plan – Isthmus Section, Planning Maps E11 and E12.

¹¹ City of Auckland - District Plan – Isthmus Section, Part 7 page C10, 7.8.1.3

Explanation



generous building envelope control is applied within the Residential 7 zone. Where a Residential 7 zoned site abuts another residential zone the more restrictive control is applied.

[117] Mr Hook's explanation of the two controls is set out below beginning his statement in reference to the *bulk* in relation to boundary rule in response to questions from the court:¹²

...the provision's effectively requiring a quantum of daylight rather than a quantum of direct sunlight per se and what they do is they either require light to come around a building or over a building. So most commonly when applied and where development is seeking to utilise the full height provisions of a zone, we get either a diamond shape or a cigar-shaped building, so an ellipsoidal shape building, where light falling to any of the boundaries around that structure is meeting the minimum requirements for daylight around. And that applies in those residential 7 zones and also the residential parts of the central area.

Q. And so you get sort of, would it be fair to say you get gaps between buildings but taller buildings?

A. Correct.

[118] In addition, at the edge of all residential zones where land adjoins open space zoned land the *height* in relation to boundary rule is employed. This rule employs a recession plane measured from a height 2m above the common boundary. The recession plane is set at 45 degrees relative to horizontal for the western and eastern quadrants and 55 degrees and 35 degrees respectively for the northern and southern quadrants. Therefore in the case of the Village the rule is 2m above ground level along the northern boundary with College Rifles and a 55 degree recession plane across the site. At the Village boundary with Koraha Reserve (the southern quadrant) 2m and 35 degrees applies.

[119] The application of the height in relation to boundary rule is also complicated in this case by the existence of the public walkway along the eastern boundary of the Village. There was debate as to which recession plane should be applied here. We note the provision at clause 7.8.1.3(d)(ii) allows the rule to apply at the far edge of adjoining access strips and access lots. However, if the walkway were to be regarded as a road, the recession plane applied would be steeper but applied from the site boundary. Rather than getting into the legal argument about what might apply here,

¹² Transcript page 251-

the concept of allowance for some additional height seems reasonable in terms of a clear additional separation between the adjoining residential properties offered by the walkway.

[120] We have noted the imprecise application of the relevant height in relation to boundary rule on the western edges where the measurements were not taken at right angles to the boundary. However, in the scheme of things the actual effects are what interest us and we have come to the conclusion that in respect of the western boundary that both Building 1 and 3 are likely to adversely impact on the amenity of neighbouring residential properties.

[121] It must be said that the development controls run hand in hand with the objectives and policies of each zone. They are one of the tools available to achieve the objectives of a zone. This issue was explored by the court with M Hook and the following is an extract of the exchange ¹³ :

Q:... So you don't see that there's a – there seems to be a minimum standard, if you like, that there's some sort of objective to these rules?

A. I think there's an acknowledgement that in the higher intensity, greater height zones, that the relationship between buildings and adjoining land, including open space, will be somewhat reduced as in the building will be closer to the boundary and maybe at a greater height closer to the boundary, that comes with the intensification within those zones.

Q. And I also notice that when you get to that more intensive residential use and there's an expectation on higher buildings, that the whole building shape is controlled in a different way through a GFA type arrangement as opposed to the old building coverage that applies in the lower intensive zones.

A. To some degree, yes. I mean this plan doesn't distinguish between 5, 6 and 7 in terms of building coverage, it's 35% in each zone. So I think there is a general relaxation of permitted activity development controls as you go up the zone 7, 8 and in expectation and provision for a greater intensity, greater height and bulk of development, yes. Whether the form of development changes, as I said at the start of the answer to these questions, you end up with two options in terms of compliance with those daylight around building bulk rules. You either go for a long, low form or you get an indicator which is very close to the conventional height to boundary indicator of 2:45 except it doesn't apply strictly perpendicular, it can be a little bit rotated, so you get a little bit more building bulk. Or, alternatively, you go for a taller, slender 30 cylindrical or diamond-shaped building to achieve that light around.

¹³ Transcript page 254

Those provisions pre-suppose that you're not trying to prevent buildings shading each other or adjacent sites but that there are gaps between the buildings to allow sufficient daylight into those areas to maintain an amenity, a more general amenity from daylight.

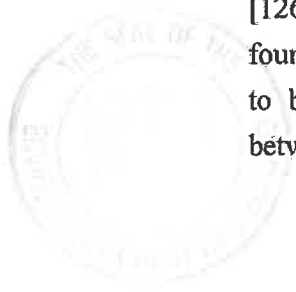
[122] We can't help but note then that in the areas where high intensity and scale of development is considered appropriate and we have drawn on the Residential 7 zone nearby, the overall height of such buildings is at least in the 7a and b zones far less than is being promoted in this proposal. This proposal approaches the 7c zone. That of itself must ring alarm bells in terms of the design approach adopted to achieve the objectives and policies of the zone.

[123] The assessment criteria look for consistency with the development controls for the zone and mitigation through separation and screening. There is a limitation to the effectiveness of screening and this has been clearly encountered on the eastern edge of the Village where planting to provide screening results in loss of sunlight such that the mitigation can lead to an adverse effect in its own right.

[124] We were told of design techniques which could be employed for the buildings themselves to reduce bulk and dominance such as layering of the height from the boundary back into the depth of the site, and breaks in facades. While layering has been employed to some degree, the lack of a break in the length of building has maintained a dominant overall height, and we have found the effect to be overly dominant and not compatible in scale with buildings in the immediate streetscape, and adjoining buildings on neighbouring properties.

[125] Insufficient attention has been paid to the interface of the buildings at the perimeter of the site with adjacent sites. The insertion of such large buildings into an area with smaller buildings characteristic of the Residential 6a zone requires attention to visible facades of the new buildings and these are to be designed to mitigate the possible perception of unsympathetic bulk. We agree with the witnesses that the loss of sky view in return for solid length of fourth floor roof line from residences adjoining at 62 through 64 Richard Farrell Avenue is not consistent with the outcomes sought by the Plan.

[126] Similarly in respect of the interface at the southern western edge we have found the impact on the amenity of the neighbours at 53 to 55 Richard Farrell Avenue to be unacceptable. While employing greater separation than that which exists between the existing single storey development in the Village at this edge, the



proposed scale (5 storeys) is not characteristic or compatible with the adjacent residential area. The extra height will be boldly visible and mitigation through building design has not been achieved. We have noted the public walkway which follows this edge of the site and the potential effect of dominance and overbearing Building 3 will have on the enjoyment and character of this feature of the local neighbourhood.

[127] We have come to the conclusion that there will be an adverse environmental effect on the amenity enjoyed at the Todd and Thomas properties associated with privacy and loss of sunlight. These effects might not occur if the development controls for the zone had been adhered to and therefore the result is a lower standard of amenity than would otherwise be expected for these homes.

[128] We have also considered the impacts on the Koraha Reserve and note that the expectation is that buildings shall not dominate such spaces but address them. While we have acknowledged the tree buffer planting in the reserve, this cannot be relied upon to mask the scale and dominance of the proposed buildings.

[129] In this aspect Building 3 is unrelieved in its height and scale. The use of setback and internal planting in the site is not employed in the proposed design. Further, given the building faces due south we anticipate access to light will be important to the enjoyment of residents within it. The trees within the reserve may well become a burden on the enjoyment of the residents of this building and this may lead to requests for the removal of the trees in the reserve. We understand the Plan policies are to retain native trees in this reserve. We have noted already the management which appears to have taken place, with pruning and removal of trees on the Village edge from our own site observation.

[130] We also note (as acknowledged by Mr Thresher¹⁴), that as the population increases this will lead to greater use and value of reserve land.

[131] The building design does not employ layering here but stacks the height proximate to the reserve boundary. The objective of the Plan for the reserve is one of protection. We are not satisfied that the Building 3 (A and B) achieves this. As we

¹⁴ Transcript Thresher page 86

have noted, a rise to Building 3B from the east and west might be acceptable on a redesign.

[132] All parties agreed that further intensification is warranted for the development of the Village on this site. No party indicated that the proposed intensification (in terms of numbers) was necessarily too intense if designed appropriately. We are somewhat sceptical of that conclusion as we anticipate the intensity proposed is driven by a modification in the offer of accommodation to meet market demand and that this has driven up the size of the residential units. So, while intensity in terms of numbers is not necessarily the issue, the nature of the accommodation is, and this in itself leads to a larger building format.

[133] Larger building format is not consistent with the character of the Residential 6a zone so the devices to be employed to mitigate that tension need to be carefully constructed. We do not consider this is a case of simply cutting out a few units; it requires careful and thoughtful design to address, in particular, the perimeter of the site.

[134] In addition, we must consider the neighbourhood as a whole and the cumulative effects of the proposal. We have considered the position of the site in its topographical setting and accept the advice of Mr Thresher that from a wider view point it is capable of accommodating taller and larger format buildings because it is nestled in a depression.

[135] Consideration must also be given to the presence of activities already located on the site and the fact that the Village is an established part of the community and neighbourhood. It represents an investment which supports the elderly in the community and its current aesthetic is befitting of its name. The proposal includes retention and enhancement of the garden and treed setting which will assist in mitigating intensification of development. However, as currently designed the proposal does not internalise adverse effects to a degree acceptable such that it is compatible with the residential area. It is thus not supported by relevant the objectives, policies or assessment criteria.

Council Decision (Section 290A)

[136] While we understand that we received a slightly modified proposal to that which the Council Commissioners had before them, we ultimately come to a very similar conclusion. The Council Commissioners concluded that the large site could:

accommodate a greater level of development than currently exists and both reserves to the north and south, (one public and one private) are of sufficient scale to cope with bulky buildings in relatively close proximity.

[137] However, in locating the new development close to the site boundaries, and thus avoiding many potential adverse effects on those parts of the retirement village being retained, this is achieved:

at the expense of neighbouring properties, with all the bulk of the redevelopment pushed very close to boundaries.

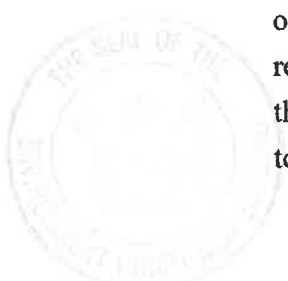
[138] As a whole, the Council Commissioners concluded the development would have unacceptable adverse effects arising from the change in character and the bulk and form of buildings, their relationship to their neighbours and dominance of the wider environment. This then lead to the conclusion that:

the proposal is accordingly inconsistent with the objectives and policies of the Operative District Plan and the specific provisions relating to retirement villages designed to avoid dominance, privacy, shading and amenity issues on adjacent land."

[139] They found that, while the proposal would promote the social, cultural and economic well being of the community at large by providing additional retirement housing, this comes at a cost in terms of adverse dominance, privacy and shading effects on adjacent residences which are unacceptable. They were not satisfied that enough has been done to achieve a design solution that maintains an appropriate balance between competing interests. This is essentially where we find ourselves too.

Part 2

[140] When examined from the position of effects, from the position of the objectives and policies of the Plan, and in light of the specific provisions of the Plan relating to retirement villages, and standards to be applied, we have concluded that this development is not appropriate. It enables the developer but at considerable cost to the amenity of the area and the detail methods and standards of the Plan. It is



higher, bulkier and more intense than envisaged by the plan or appropriate under the Act.

Outcome

[141] Given our conclusion that any reduction in scale carries unknown impacts on the design and viability of the project we have concluded that consent should be declined and the Council decision confirmed.

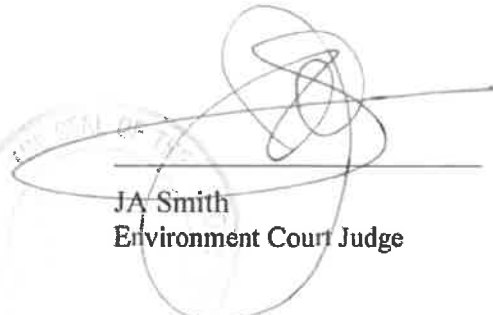
[142] We reiterate that further intensification of this site is generally appropriate. However, the consequences of this design go considerably too far and are not resolved by an interim decision. The sustainable management purpose of the Act and the objectives and policies of the Plan demonstrate this is a significant overdevelopment of the site. We have reached a similar conclusion to the Council Commissioners and confirm the Council declining of consent.

Costs

[143] Any application for costs are to be filed within 20 working days; any reply 10 working days after that and any final reply, if any, 5 working days thereafter.

SIGNED at AUCKLAND this 25th day of February 2016 .

For the Court:



JA Smith
Environment Court Judge

Annexure:

- A. Plan showing general layout of area
- B – I. General outlines of building plans proposed





Annexure A

Project No.	2RC00-02
Client	RC
Scale	1:1000
Date	1/1/2020
Drawn by	RC
Checked by	RC
Approved by	RC
Project Manager	RC
Project Engineer	RC
Project Surveyor	RC
Project Architect	RC
Project Planner	RC
Project Designer	RC
Project Draftsman	RC
Project Photographer	RC
Project Printer	RC
Project Binder	RC
Project Folder	RC
Project Bag	RC
Project Box	RC
Project Cart	RC
Project Van	RC
Project Truck	RC
Project Ship	RC
Project Plane	RC
Project Boat	RC
Project Helicopter	RC
Project Jet	RC
Project Rocket	RC
Project Satellite	RC
Project Telescope	RC
Project Microscope	RC
Project Camera	RC
Project Projector	RC
Project Speaker	RC
Project Headset	RC
Project Keyboard	RC
Project Mouse	RC
Project Joystick	RC
Project Gamepad	RC
Project Controller	RC
Project Console	RC
Project PC	RC
Project Laptop	RC
Project Tablet	RC
Project Smartphone	RC
Project Smartwatch	RC
Project Smart Glasses	RC
Project Smart Home	RC
Project Smart Car	RC
Project Smart City	RC
Project Smart Nation	RC
Project Smart World	RC
Project Smart Future	RC
Project Smart Everything	RC

NEIGHBOURHOOD
PLANNING ZONES

REMUEA GARDENS
RC CONSENT REISSUE
REMUEA

REMUEA GARDENS
RC CONSENT REISSUE
REMUEA

REMUEA GARDENS
RC CONSENT REISSUE
REMUEA



BROWN DAY GROUP
SOMERFORD KATHESON
ARCHITECTS





BUILDING HEIGHTS

- Single Level
- Two Levels
- Three Levels
- Four Levels
- Five Levels

Annexure B



BROWN DAY GROUP
SOMERFORD MATTHESON
ARCHITECTS



REMUERA GARDENS
RC CONSENT REISSUE

RICHARD FARRELL AVE.
REMUERA

BUILDING HEIGHT PLAN

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Scale	1:1000
Author	REMUERA GARDENS
Check	REMUERA GARDENS
Drawn	REMUERA GARDENS
Project No.	2014/1000
Client	REMUERA GARDENS
Scale	1:1000
Author	REMUERA GARDENS
Check	REMUERA GARDENS
Drawn	REMUERA GARDENS
Project No.	2014/1000
Client	REMUERA GARDENS
Scale	1:1000
Author	REMUERA GARDENS
Check	REMUERA GARDENS
Drawn	REMUERA GARDENS

2RC00-03



EASTERN BOUNDARY

WESTERN BOUNDARY

RICHARD FARRELL

**BROWN DAY GROUP
SOMERFORD MATHESON
ARCHITECTS**



REMUERA GARDENS

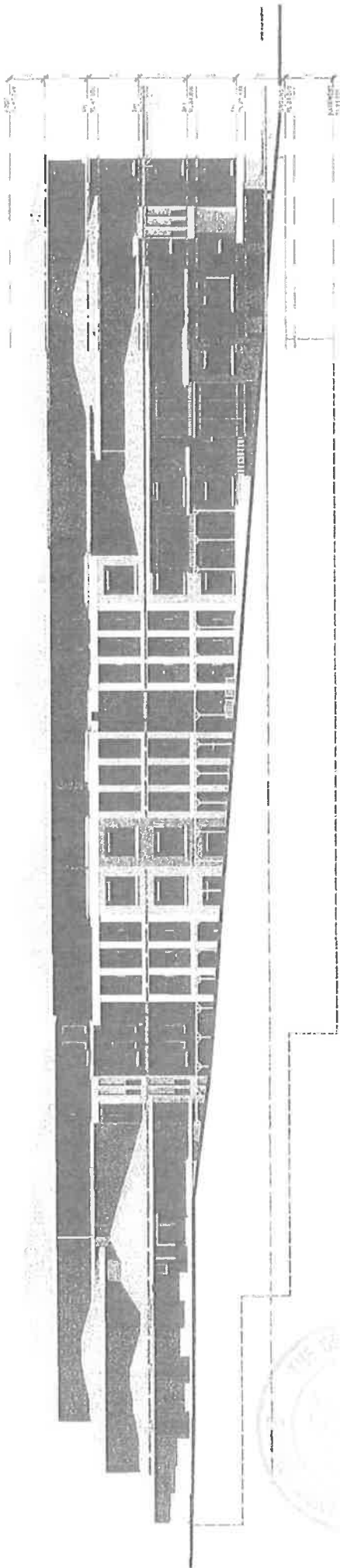
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PROPOSED SITE
PERSPECTIVE

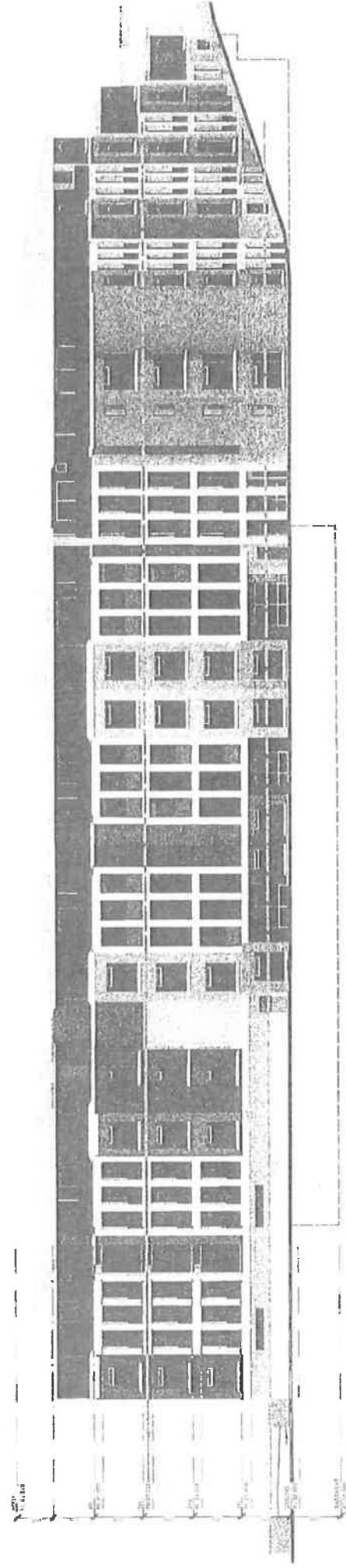
RICHARD FARRELL AVE.,
REMUEA

2RC10-10 E

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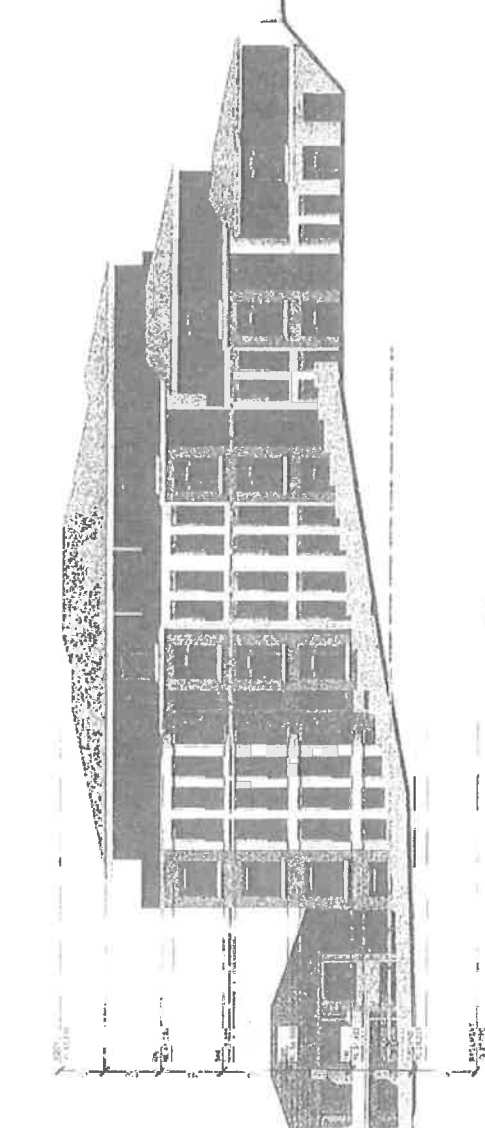
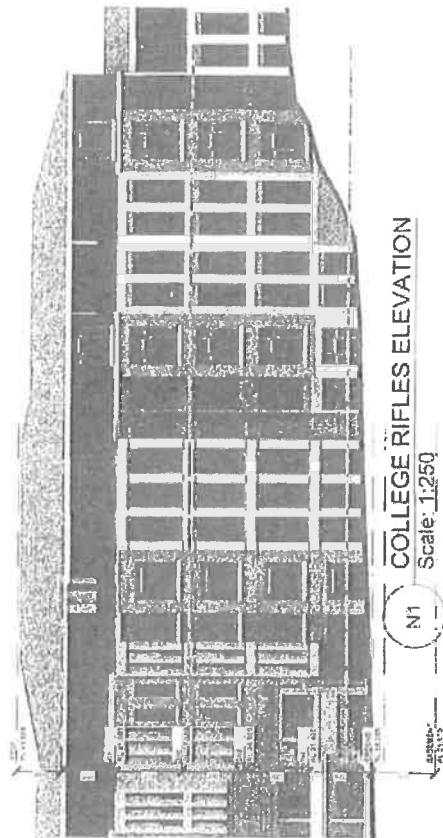
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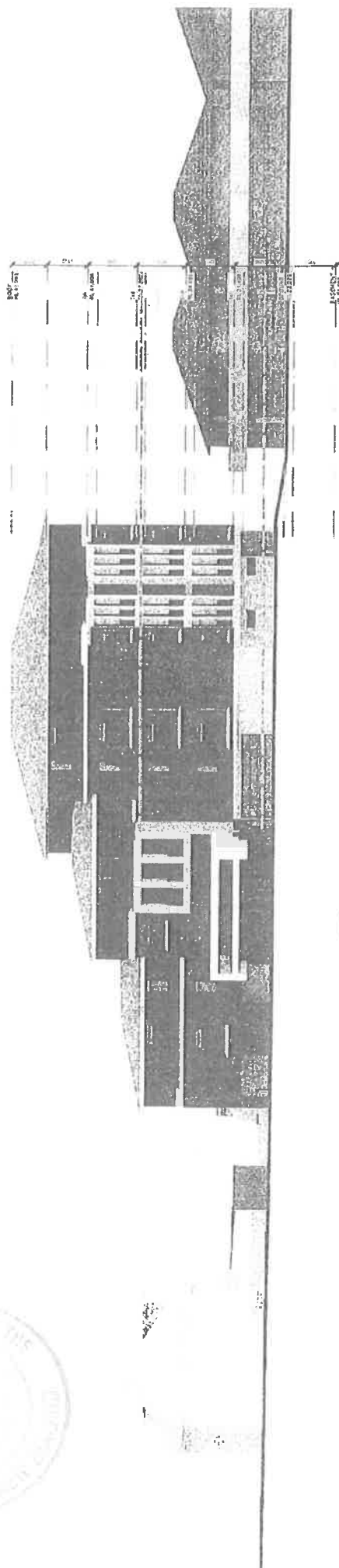
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Annexure D

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				2RC31-01


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5

Annexure E

[illegible]

BUILDING 1 - ELEVATIONS

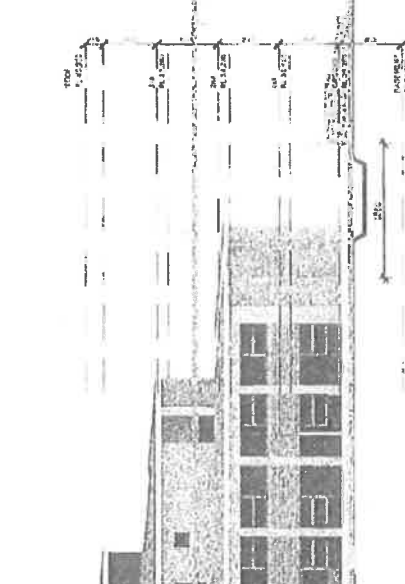
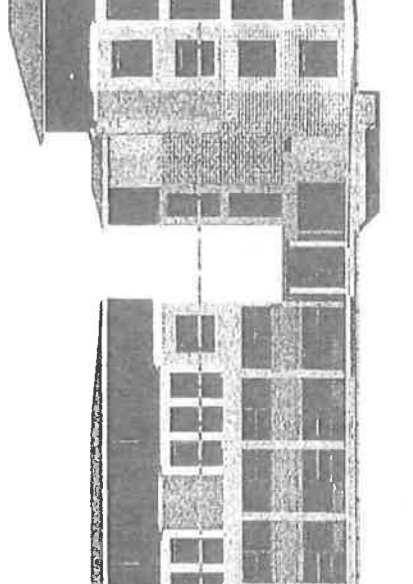
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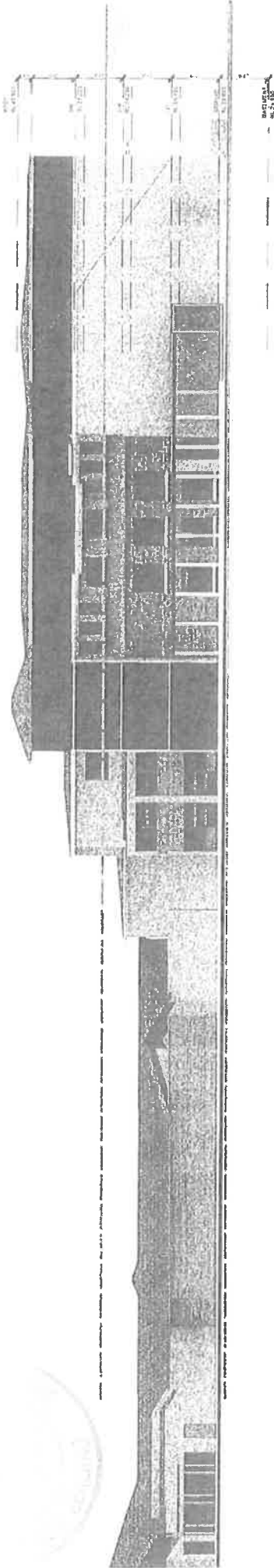
RC CONSENT REISSUE

RICHARD FARRELL AVE,
REMUEA

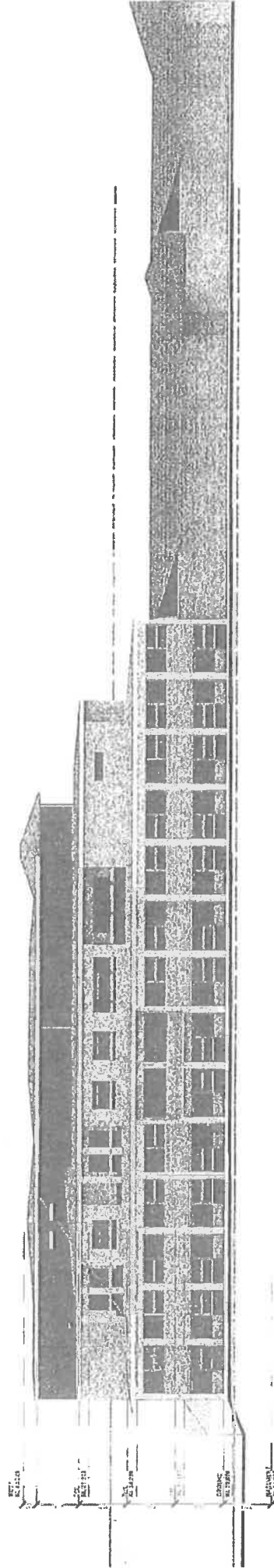


**BROWN DAY GROUP
SOMERFORD MATHESON
ARCHITECTS**





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EASTERN ELEVATION
Scale: 1:250

Annexure G

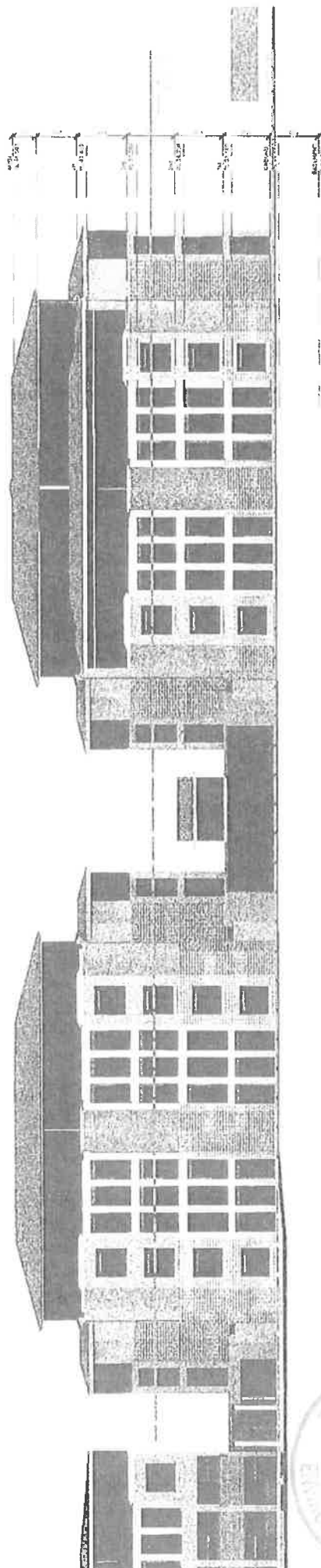
BROWN DAY GROUP
SONBERG MATHESON
ARCHITECTS

REMUERA GARDENS
RC CONSENT REISSUE

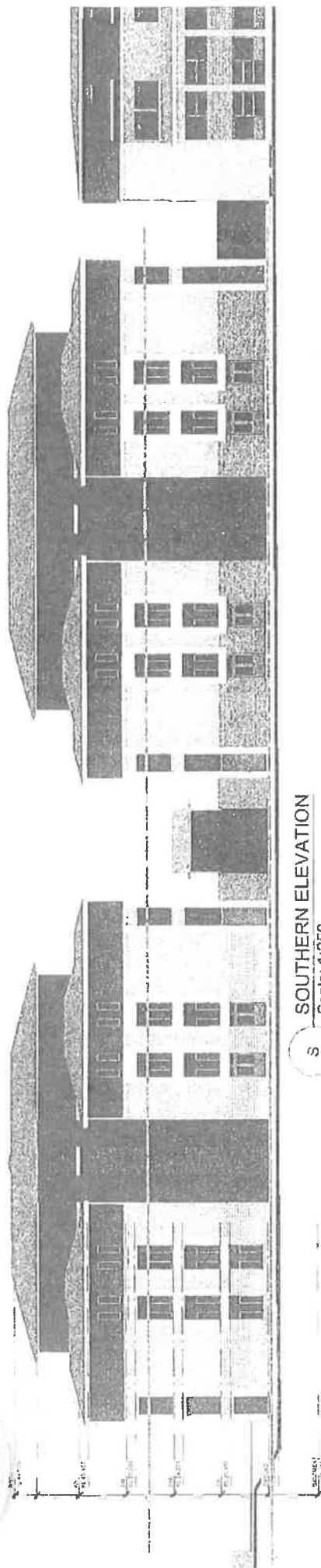
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BUILDING 2 - ELEVATIONS

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Scale: 1:250



S
SOUTHERN ELEVATION
Scale: 1:250

**BROWN DAY GROUP
SOMERFORD MATHESON
ARCHITECTS**

REMUELA GARDENS
RC CONSENT REISSUE

**RICHARD FARRELL AVE,
REMUELA**

BUILDING 3 - ELEVATIONS

2RC33-01

Annexure H

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Check	2023	Rev	2023
Date	2023	Project	2023
Author	2023	Project	2023
Project	2023	Project	2023



BUILDING HEIGHTS				
Single Level	Two Levels	Three Levels	Four Levels	Five Levels

Annexure B

Client:	2000	Drawn:	1954	Check:	1954	Scale:	1:500	Date:	07/01/15	File Name:	2RC00-03	Rev:	E
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BUILDING HEIGHT PLAN

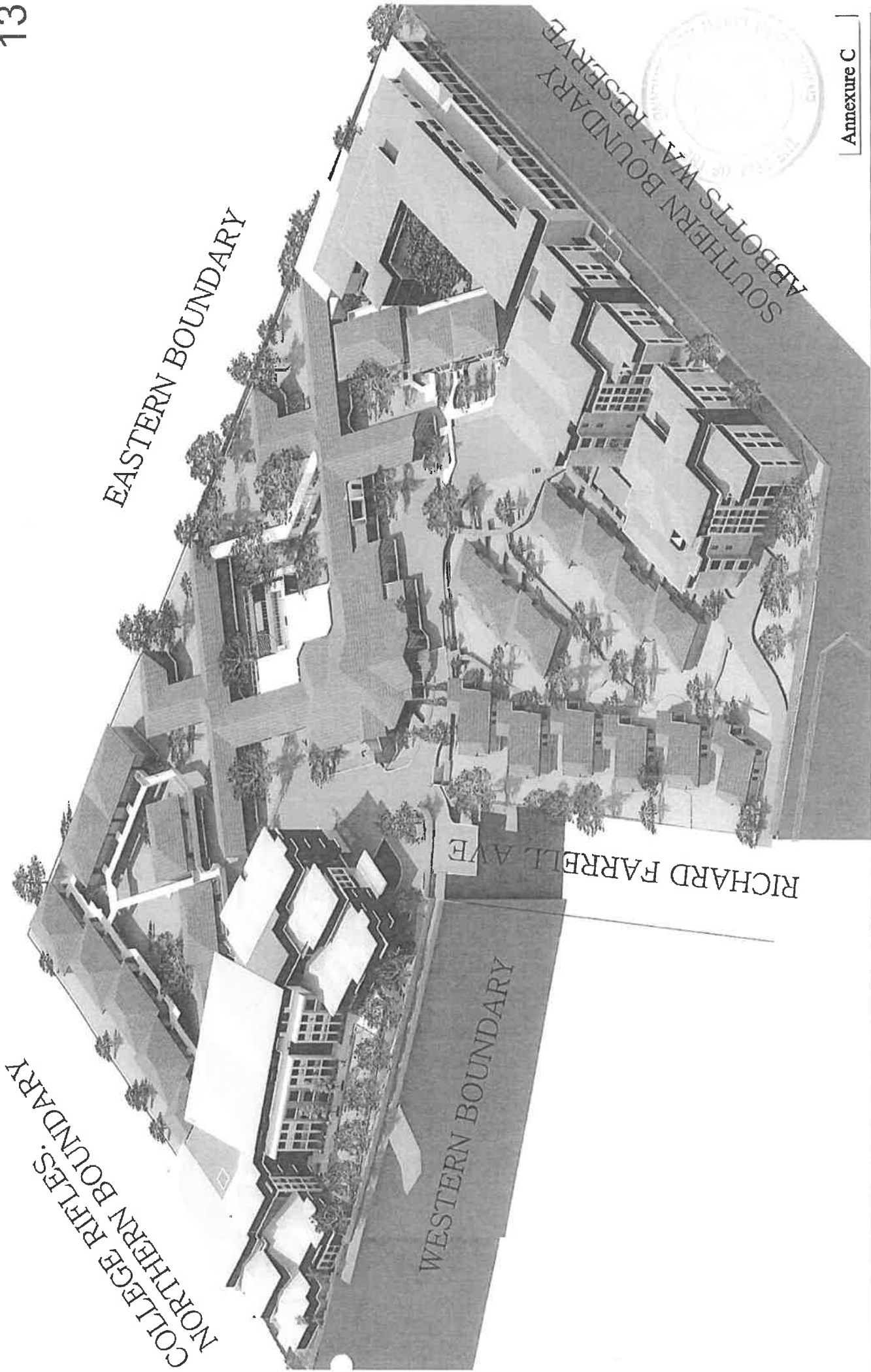
Richard Farrell Ave,
Remuera

REMUERA GARDENS
RC CONSENT REISSUE

1/1

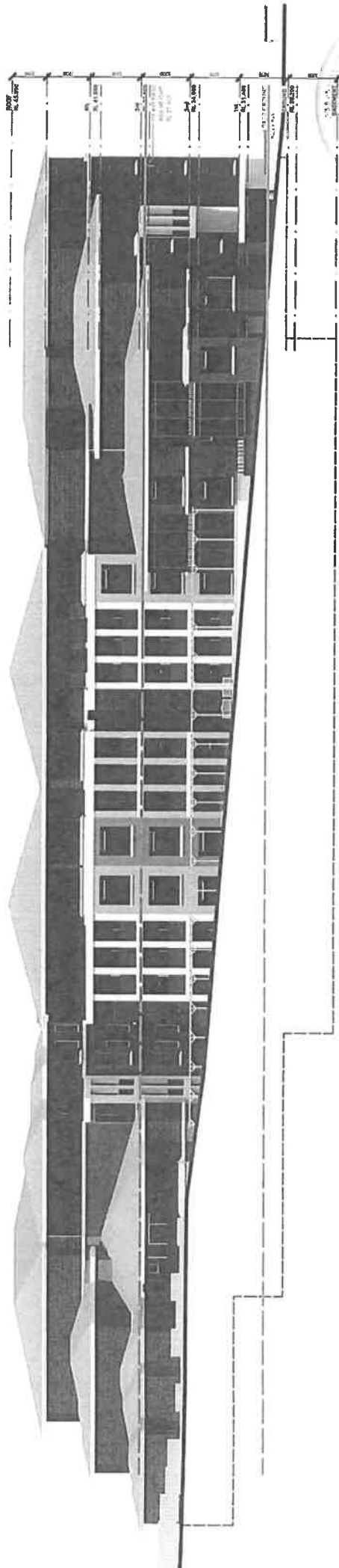


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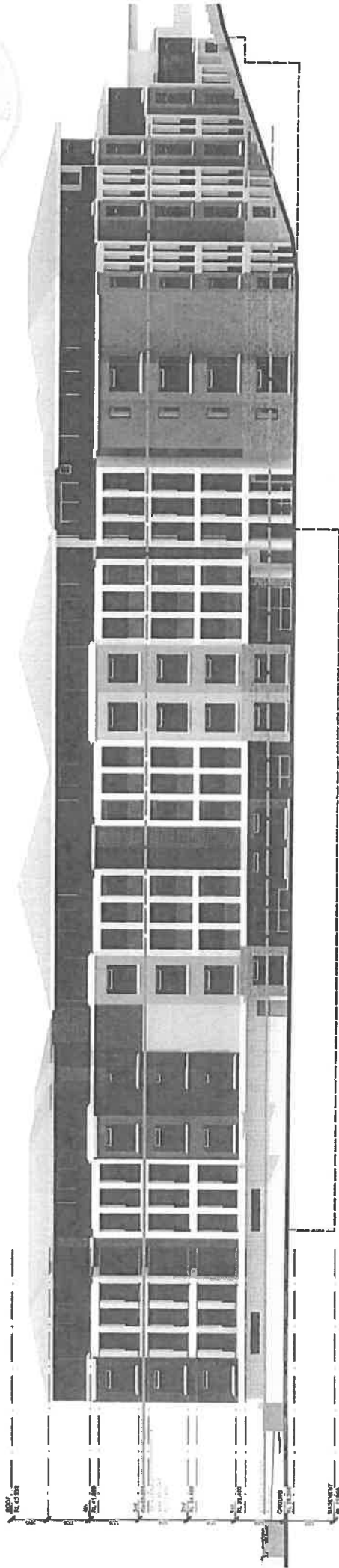


Annexure C

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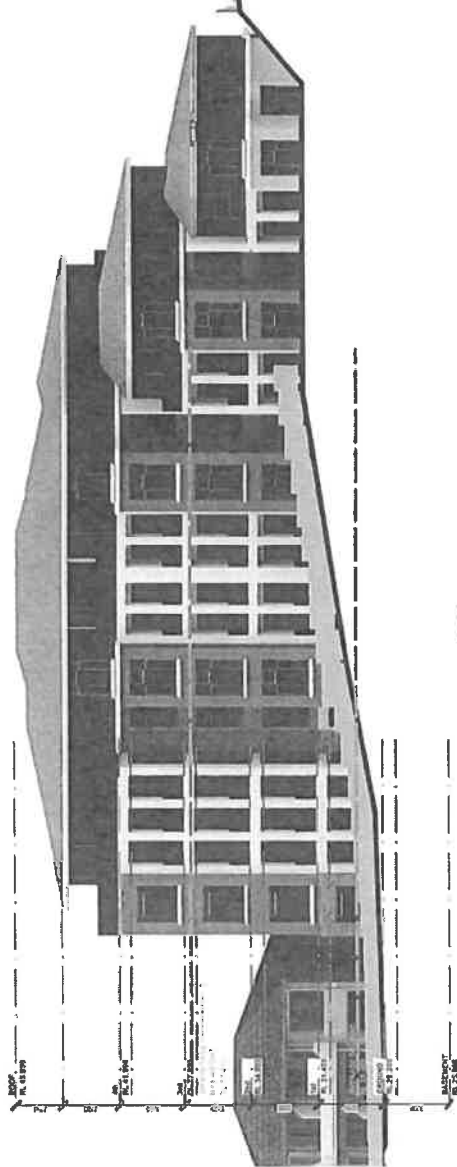


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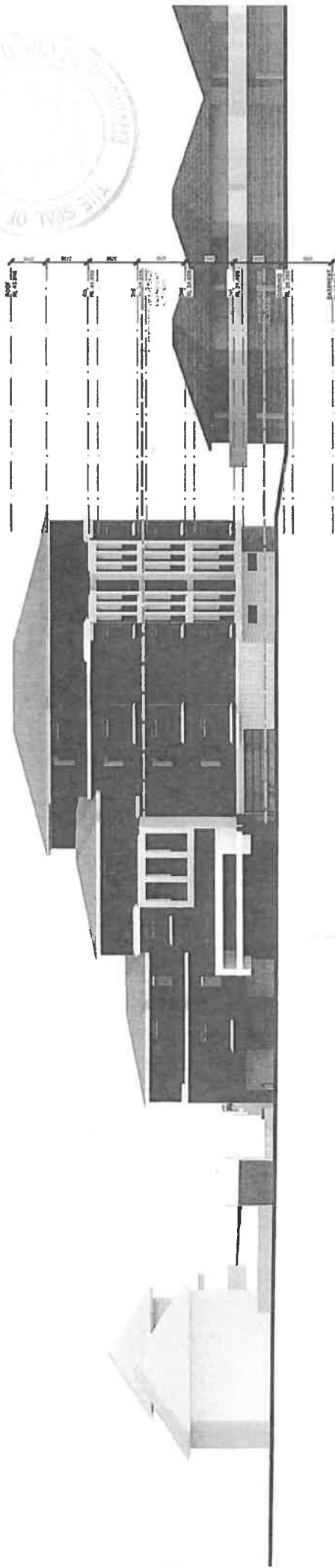
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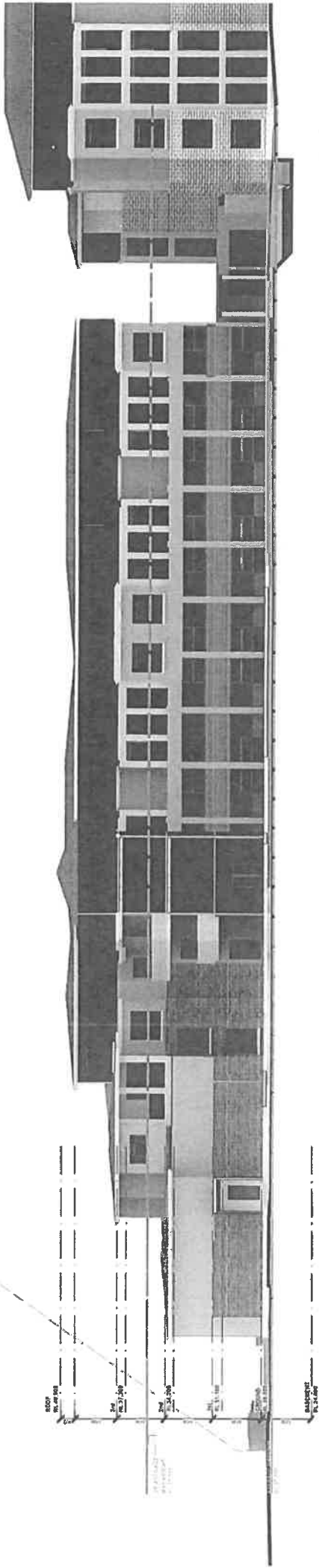


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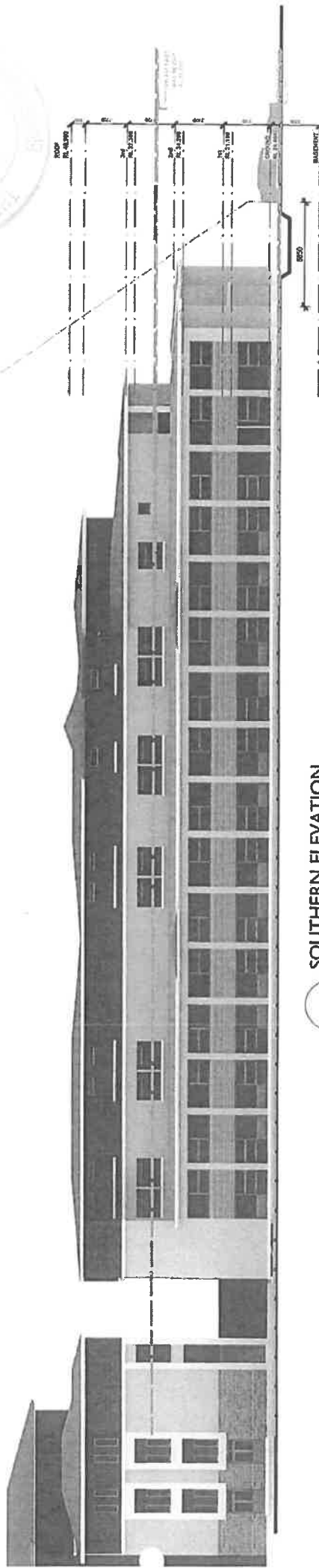


Annexure E

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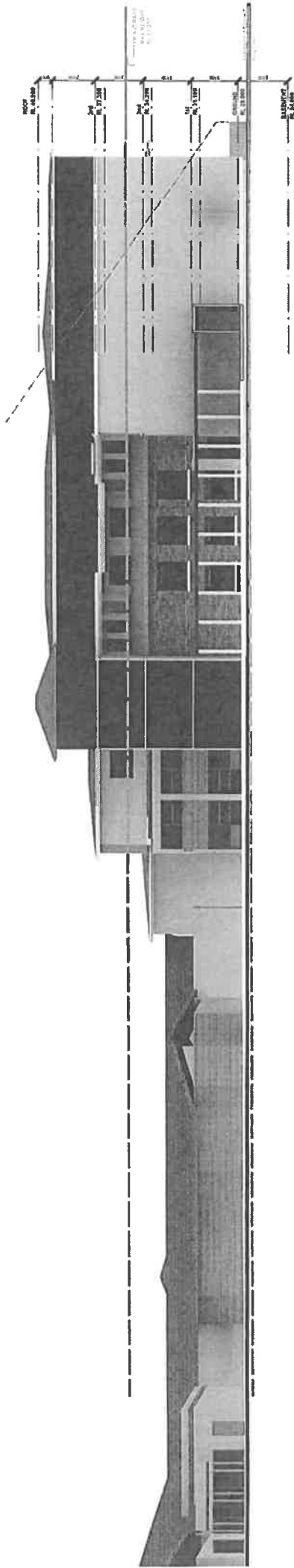
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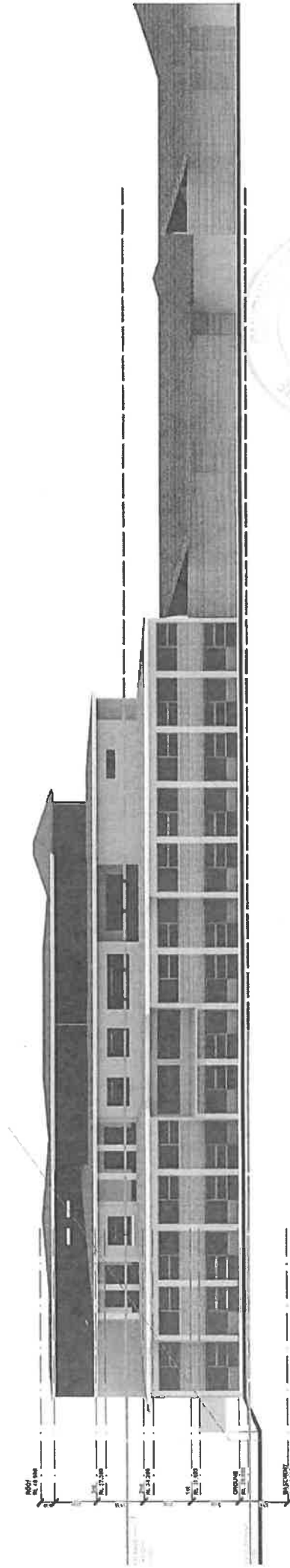
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Annexure F

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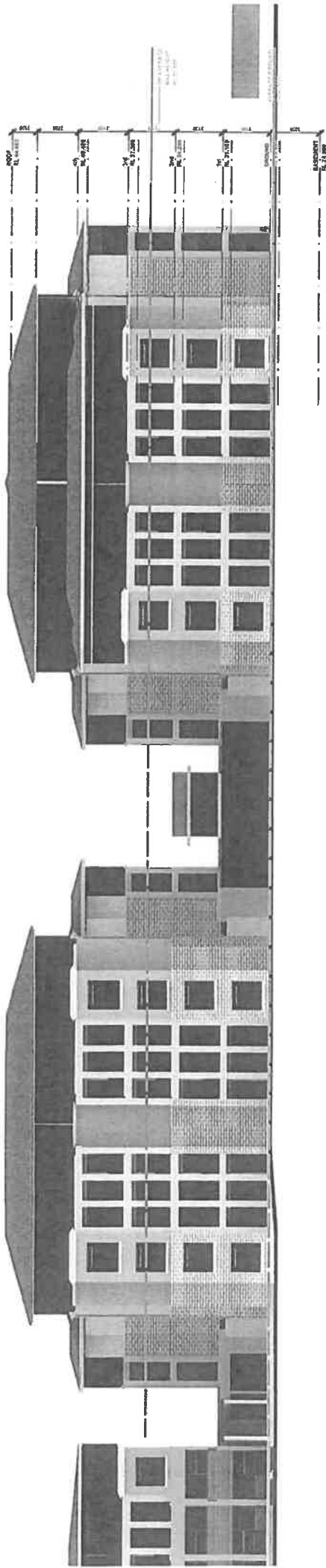


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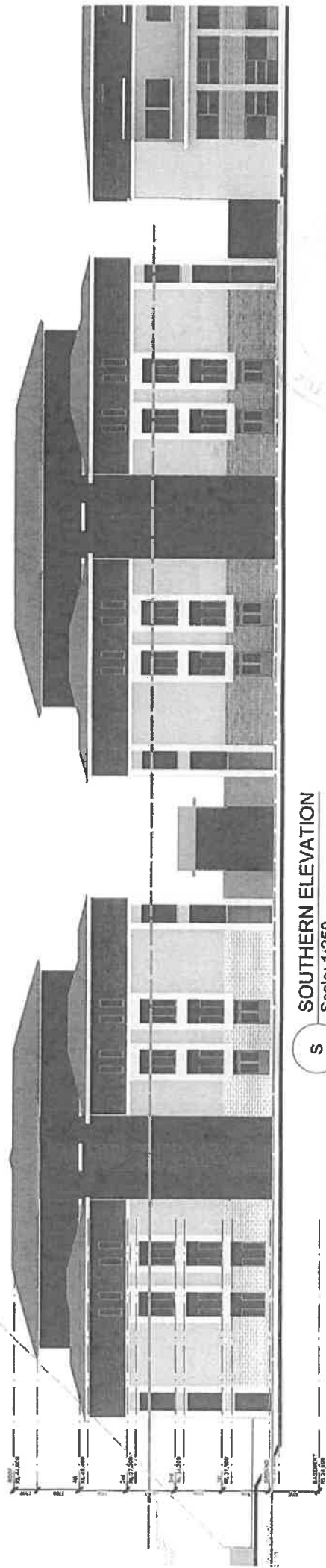


Annexure G

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				Design MB	Drawn 11/14	Check 11/14	Date 01/11/15	Scale 1:250	Drawing No. 2RC32-02	Rev 1
I, the undersigned, being a duly qualified Architect, do hereby certify that the above is a true and correct copy of the original drawing as submitted to the Council for its consideration.										
Signature of Architect Date 01/11/15										
I, the undersigned, being a duly qualified Architect, do hereby certify that the above is a true and correct copy of the original drawing as submitted to the Council for its consideration.										
Signature of Architect Date 01/11/15										



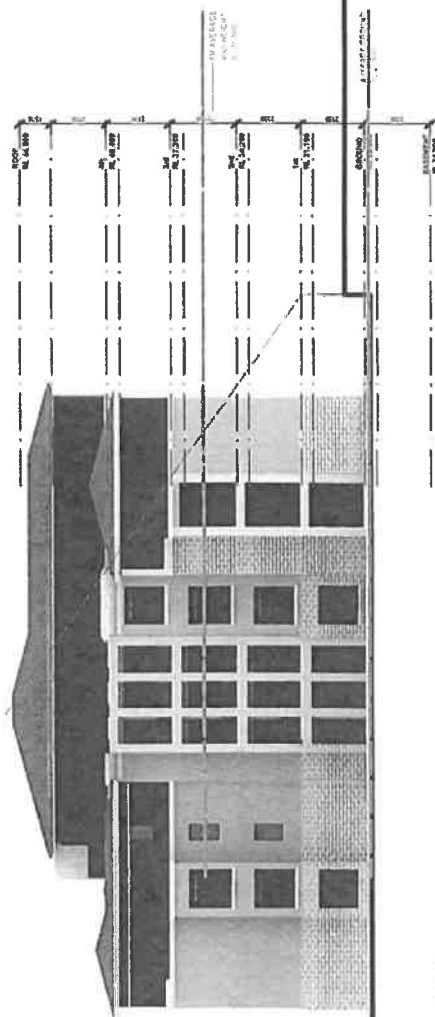
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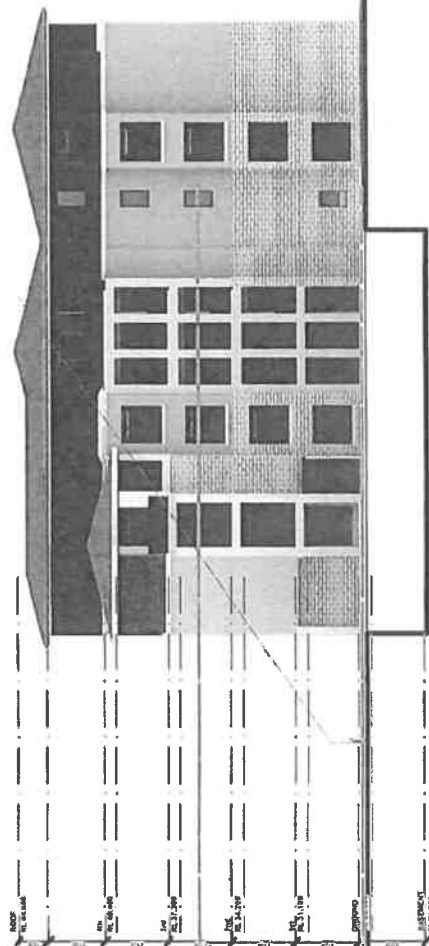
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Annexure H

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					Project No. 10/1/13 Project Name REMUERA GARDENS RC REISSUE Project Location 10/1/13 Remuera Gardens RC Reissue Rev. M. V. V.		



W WESTERN ELEVATION
Scale: 1:250



E EASTERN ELEVATION
Scale: 1:250

Annexure I

	BROWN DAY GROUP SOMERFORD MATHESON ARCHITECTS		DATE: 2015 BY: J. MATHESON FOR: REMUERA GARDENS PROJECT NO: 2015-001 SHEET NO: 1/1	REMUEIRA GARDENS RC CONSENT REISSUE	RICHARD FARRELL AVE, REMUEIRA	BUILDING 3 - ELEVATIONS	Drawn By: J. MATHESON Date: 2015 Scale: 1:250 Project No: 2015-001 Sheet No: 1/1 Project Name: REMUEIRA GARDENS Client: RICHARD FARRELL AVE, REMUEIRA Architect: BROWN DAY GROUP SOMERFORD MATHESON ARCHITECTS Project Location: 152 Remuera Gardens RC Reissue Rev. Low
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