

ATTACHMENTS

Special Council Meeting

19 July 2016

ATTACHMENTS TO AGENDA ITEMS

Special Council Meeting - 19 July 2016

Contents

7.3.1 PROPOSED AMENDMENT (VALIDITY OF APPROVAL) TO APPROVED OFFICE DEVELOPMENT (9 STOREYS). LOT 1001 NO. 12 CHARLES STREET, SOUTH PERTH

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Government of Western Australia
 Development Assessment Panels

Form 2 - Responsible Authority Report (Regulation 17)

Property Location:	Lot 1001 (No. 12) Charles Street, South Perth [previously Lots 151-153 Nos. 12-16]
Application Details:	Proposed Amendment (Validity of Approval) to Approved Non-Residential Development Comprising 'Office' and 'Café/Restaurant' in a Nine Storey Building
DAP Name:	Metro Central JDAP
Applicant:	PTS Town Planning Pty Ltd
Owner:	Broadway Pty Ltd
LG Reference:	11.2013.251.3
Responsible Authority:	City of South Perth
Authorising Officer:	Cameron Howell, Acting Manager Development Services
Department of Planning File No:	DAP/13/00447
Report Date:	19 May 2016
Application Receipt Date:	12 July 2016
Application Process Days:	60 Days
Attachment(s):	1. Determination Notices and Approved Plans (15 August 2013 & 25 May 2015) 2. Applicant's Supporting Letter 3. Public Consultation

Officer Recommendation:

That the Metro Central JDAP resolves to:

- Approve** that the DAP Application reference DAP/13/00447 as detailed on the DAP Form 2 dated 16 March 2015 is appropriate for consideration in accordance with regulation 17 of the *Planning and Development (Development Assessment Panels) Regulations 2011*;
- Approve** the DAP Application reference DAP/13/00447 as detailed on the DAP Form 2 dated 31 March 2016 and the plans previously approved by the Metro Central JDAP in accordance with the provisions of the clause 7.9 of the City of South Perth Town Planning Scheme No. 6 and Schedule 2 Part 9 of the Planning and Development (Local Planning Schemes) Regulations 2015, for the proposed amendment (validity of approval) to approved non-residential development comprising 'office' and 'café/restaurant' in a nine storey building at Lot 1001 (No. 12) Charles Street, South Perth [previously Lots 151-153 Nos. 12-16], subject to:

Amended Conditions

- The validity of this approval shall cease if construction is not substantially commenced within 42 months of the date of planning approval. The date of planning approval is 15 August 2013.

All other conditions and requirements detailed on the previous approval dated 15 August 2013 shall remain unless altered by this application.

Alternate Recommendation:

The City has no alternative recommendation.

Background:

Insert Property Address:	Lot 1001 (No. 12) Charles Street, South Perth [previously Lots 151-153 Nos. 12-16]
Insert Zoning	MRS: Urban
	TPS: Special Control Area 1 – South Perth Station Precinct
Insert Use Class:	Café/Restaurant - Preferred Office - Preferred
Insert Strategy Policy:	Not Applicable
Insert Development Scheme:	City of South Perth Town Planning Scheme No. 6
Insert Lot Size:	1784m ²
Insert Existing Land Use:	Vacant land (previously Office)
Value of Development:	\$19 million

The Metro Central JDAP conditionally approved this development on 15 August 2013. A 12 month extension to the original approval was granted on 25 May 2015. The validity of this planning approval will cease on 15 August 2016, unless construction substantially commences by this date or the approval's validity is extended. The previous planning approval documents are contained in Attachment 1.

The previous developments on the subject site have since been demolished. The original three lots that form the subject site have been amalgamated into one lot.

Details: outline of development application

The applicant has requested an amendment to Condition 18 of the Metro Central JDAP's planning approval dated 15 August 2013, to extend the validity of the approval for an additional 60 months, from 15 August 2016 until 15 August 2021.

Condition 18 of the Metro Central JDAP's planning approval dated 15 August 2013 as amended on 25 May 2015 is as follows:

18. *The validity of this approval shall cease if construction is not substantially commenced within 36 months of the date of planning approval. The date of planning approval is 15 August 2013.*

No changes to the development plans or the other planning conditions or advice notes are proposed. The applicant's letter is contained in Attachment 2.

Legislation & policy:

Legislation

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015, specifically Schedule 2 [Regulations]

City of South Perth Town Planning Scheme No. 6, specifically Schedule 9 and proposed Schedule 9A[^].

[^] *Proposed Schedule 9A (Amendment 46) was considered by Council on 26 April 2016 and is pending final approval by the WAPC and Minister.*

State Government Policies

Nil

Local Policies

There are no local planning policies applicable to the proposed amendment.

Consultation:

Public Consultation

Public consultation has been undertaken for this proposal to the extent and in the manner required by City Policy P301 'Consultation for Planning Proposals'. Under the "Area 2" consultation method, individual property owners and occupiers were invited to inspect the plans and to submit comments, during a minimum 21-day period.

A total of 139 consultation notices were sent, with 12 submissions received, 6 supporting the proposal and 6 objecting to the proposal. Further details of the advertising and submissions received are contained in Attachment 3.

Consultation with other Agencies or Consultants

No consultation with other agencies or City departments was necessary for the proposed amendment.

Planning assessment:

As the proposed amendment does not propose alterations to the approved development, no further assessment of the development plans is necessary. The Supreme Court ruling by Justice Chaney delivered on 25 February 2016 ([2016] WASC 56) does not affect this development.

Validity of Approval

The first request for extension was considered and approved by DAP on 25 May 2015 in line with TPS6 clause 7.9, which restricted extensions to the period of validity to a maximum of 12 months. With the gazettal of the Regulations in October 2015, the current (second) request for an extension is required to be considered in accordance with Schedule 2 clause 77. The Regulations do not restrict the timeframe that can be granted.

Gazetted Scheme Provisions

The approved development is observed not to conflict with subsequent gazetted Scheme Amendments since DAP last considered this application.

Proposed Amendment No. 46 / Schedule 9A

The new Schedule 9A in proposed Amendment 46, would replace the existing Schedule 9 provisions applicable to comprehensive new developments in the South Perth Station Precinct. The approved development is observed to conflict with some elements of proposed Amendment No. 46, which may weigh against granting an extension.

TPS6 Schedule 9 was gazetted on 18 January 2013, applicable to any comprehensive new developments within Special Control Area 1, including the development site. Schedule 2 clause 67(b) of the Regulations requires the local government and DAP to have due regard to any proposed local planning scheme or amendment that has been advertised under the Regulations or any other proposed planning instrument that the local government is seriously considering adopting or approving.

Amendment No. 46 to TPS6 proposed to rectify anomalies and ambiguities in Schedule 9 by replacing the current provisions with proposed Schedule 9A. Amendment No. 46 was first endorsed by Council for public advertising on 28 October 2014, with advertising undertaken in early 2015. In response to submissions and recent planning approvals, Council sought to further modify proposed Schedule 9A. The modified Amendment No. 46 included major changes and so was endorsed by Council for further public advertising on 27 October 2015, with the amendment advertised and the public submission period commencing on 4 November 2015 and concluding on 5 February 2016. The Council considered these submissions and made its final recommendation to the WAPC and the Minister for Planning on 26 April 2016.

The City has recently obtained legal advice in relation to having due regard to proposed Amendment No. 46. In summary, this advice provided the following guidance to City officers:

- (i) The officers must consider the extent to which the application is consistent with the planning objective or planning approach embodied or reflected in Amendment No. 46. In particular, it is necessary to consider whether the approval of the application is likely to impair the effective achievement of the planning objective or planning approach embodied or reflected in Amendment No. 46 or is likely to render more difficult the ultimate decision as to whether Amendment No. 46 should be made or its ultimate form.
- (ii) The officers must consider the weight to be accorded to the consistency or otherwise between the application and Amendment No. 46.
- (iii) The officers must weigh their conclusions in relation to the foregoing matters in the balance along with all other relevant considerations relating to the application, and determine whether, in light of all relevant considerations, it is appropriate to recommend that approval to the application be granted or refused.

In considering whether the application is consistent with the planning objective or approach of Amendment No. 46, the officers will have regard to the following:

- (a) Where there is inconsistency between a development application and one or more aspects of Amendment No. 46 the officers will consider how significant the inconsistencies are in relation to the Amendment No. 46 provisions. If the inconsistencies are significant, they will be "likely to impair the effective achievement of the planning objective or planning approach embodied or reflected in Amendment 46 and will be likely to render more difficult the ultimate decision as to whether the Amendment should be made or its ultimate form". If

inconsistencies have this result, they are unlikely to be supported by officers, and may be recommended as a ground for refusal.

- (b) If the inconsistencies are thought to be minor and approval can be granted under the current Scheme without impairing the achievement of the planning objectives or approach of Amendment No. 46 the development is more likely to be supported notwithstanding the minor inconsistencies with Amendment No. 46.

In addition to the above, variations to the existing gazetted Schedule 9 provisions can only be considered where discretion is currently available in Schedule 9.

While the officers express their professional opinion on these matters it is ultimately a matter for the relevant decision maker (Council, DAP or SAT) to consider and reach a view about these matters in determining each development application.

The approved development is potentially inconsistent with the following proposed Schedule 9A provisions:

- Street Setback (Table A clauses 7.4 and 7.6.1)
 - 2.0 metres minimum podium street setback required, subject to either:
 - Some prospect of imminent development of the affected adjoining property; or
 - No adverse amenity impact upon adjoining property.
 - Up to 4.0 metres minimum podium street setback required, where adverse amenity impact upon adjoining property and no prospect of imminent development of the affected adjoining property.
- Side and Rear Setbacks (Table A clause 8.1)
 - 0.0 metres minimum podium side and rear setback required, unless a variation consistent with the Guidance Statements is granted, subject to:
 - Some prospect of imminent development of the affected adjoining property; or
 - No adverse amenity impact upon adjoining property.
 - 2.0 or 3.0 metres minimum podium street setback required, where adverse amenity impact upon adjoining property and no prospect of imminent development of the affected adjoining property.

In determining whether the adjoining property has a prospect of imminent redevelopment, the Amendment refers to the decision-maker considering as to whether the existing building on the adjoining property is of contemporary nature and whether or not it possesses as high monetary value in relation to the current land value.

In relation to potential imminent redevelopment opportunities of the side adjoining properties, it is observed that both side adjoining properties (10 and 18 Charles Street) are single-storey non-residential developments in single ownership. As there is some prospect of imminent redevelopment of these sites, due to the non-contemporary nature of the existing developments and the single ownership, the City is of the opinion that the lesser minimum 2 metres street setback and nil podium would be applicable.

In relation to potential imminent redevelopment opportunities of the rear adjoining properties, it is observed that one property (13 Richardson Street) is a single-storey non-residential development in single ownership, while the other two properties (9-11 and 17 Richardson Street) are less likely to be redeveloped due to the existing

development and multiple owners. For all of these properties, it is observed that the development site abuts car parking areas, reducing the amenity impact upon the adjoining developments, hence the City is of the opinion that the lesser nil podium rear setbacks would be applicable.

As a result, if proposed Schedule 9A was to be approved by the Planning Minister in its current form, the existing adjoining developments are unlikely to trigger the greater minimum street, side and rear setback requirements for the development site. Hence, proposed Schedule 9A would be seen to require:

- Street Setback (Table A clauses 7.4(b))
 - 2.0 metres minimum podium street setback required (gazetted Schedule 9 requires a nil podium street setback for at least 60% of the frontage, unless a variation, which is consistent with the intent of the Guidance Statements, is granted).
- Side and Rear Setbacks (Table A clause 8.1(a))
 - 0.0 metres minimum podium side and rear setback required (the same as the gazetted Schedule 9).

In relation to the supplied guidance in having regard to the proposed Scheme Amendment, the following comments regarding the generally nil approved podium street setback and the proposed 2.0 metre minimum podium street setback are provided:

- In addition to the existing approval on the development site, two other comprehensive new developments have been approved within Charles Street (26-28A: nil and 4m podium setback; and 30-34: nil podium setback). The remaining properties within Charles Street contain pre-Schedule 9 developments. Some of these properties are not expected to be capable of redevelopment in a short-medium term timeframe.
- Should the approved building be constructed, whether a minimum nil or 2 metre podium setback ultimately applies to Charles Street, the building's inconsistency with a potential 'greater than nil' requirement is not anticipated to result in the building being substantially out of character with the new streetscape character envisioned within Special Control Area 1, once that character is established.
- It is noted that there is uncertainty regarding the final form of Amendment No. 46, particularly this Element of the Amendment, noting the significant changes to street setback requirements for Charles Street in various versions of the Amendment Document and that the WAPC or Minister have not yet provided comment on Council's final recommendation.

Assessment

The approved development remains consistent with the existing planning framework, which would weigh towards granting an extension. However, having regard to the current version of Amendment No. 46, the development is inconsistent with its proposed podium setback requirements, which would weight against granting an extension. Additionally, the City is not certain of whether the WAPC and Minister are intending to support the Council's final recommendation of Amendment No. 46, particularly in relation to the podium setback provisions, which would reduce the weight given to opposing an extension.

In this instance, while it seen that the granting of an extension can be supported, largely as a result of the development being consistent with the existing planning provisions and uncertainty with the proposed future changes, due to the potential

upcoming changes to the statutory provisions applicable to this site, it is seen to be inappropriate to grant a long-term timeframe for development to substantially commence. Considering that certainty from the Minister, as to the final form of Amendment No. 46, is expected to be being known within the coming months, the City has recommended an amended Condition 18, which would extend the validity of approval for an additional 6 months until 15 February 2017.

In the event that the development is unable to commence substantial construction by this time, any future extension request is likely to take place after the Amendment No. 46 process is finalised. At this time, DAP would be more certain of the future development outcomes anticipated in this precinct. It is seen to be more appropriate to consider granting a long-term extension once the development requirements are more certain.

Council Recommendation:

The Council of the City of South Perth had not provided comments on this application at the time this Responsible Authority Report was lodged.

Conclusion:

The applicant's request to extend the validity of the existing planning approval for an additional 60 months is not considered to be appropriate, due to potential upcoming changes to planning provisions. Accordingly, a 6 month extension to the current 36 month validity has been recommended.



Government of Western Australia
Development Assessment Panels

LG Ref: 11.2013.251
DoP Ref: DP/13/00447
Enquiries: Development Assessment Panels
Telephone: (08) 6551 9919

Mr Edwin Bollig
Bollig Design Group Pty Ltd
8 Cook Street
WEST PERTH WA 6005

Dear Mr Bollig

Metro Central JDAP – City of South Perth – DAP Application 11.2013.251
Lot 151-153 (12-16) Charles Street, South Perth
Proposed Office Development

COPY

City of South Perth

Folder No. CH2/12

28 AUG 2013

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<input type="checkbox"/> FS	<input type="checkbox"/> EI	<input type="checkbox"/> HR	<input type="checkbox"/> RAN	<input type="checkbox"/>

Thank you for your application and plans submitted to the City of South Perth on 22 May 2013 for the above development at the above mentioned site.

This application was considered by the Metro Central JDAP at its meeting held on Thursday, 15 August 2013, where in accordance with the provisions of the City of South Perth Town Planning Scheme No. 6, it was resolved to approve the application as per the attached notice of determination.

Should the applicant not be satisfied by this decision, a DAP Form 2 application may be made to amend or cancel this planning approval in accordance with Regulation 17 of the Development Assessment Panel Regulations 2011.

Also be advised that there is a right of review by the State Administrative Tribunal in accordance with Part 14 of the *Planning and Development Act 2005*. An application must be made within 28 days of the determination in accordance with the *State Administrative Tribunal Act 2004*.

Should you have any enquiries in respect to the conditions of approval please contact Mr Mark Scarfone at the City of South Perth on 9474 0732.

Yours sincerely

DAP Secretariat

23/8/2013

Encl. DAP Determination Notice
Approved plans

Cc: Mr Mark Scarfone
City of South Perth
Civic Centre, Corner Sandgate Street and South Terrace
SOUTH PERTH WA 6151



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Government of Western Australia
Development Assessment Panels

Planning and Development Act 2005

City of South Perth Town Planning Scheme No. 6

Metro Central Joint Development Assessment Panel

Determination on Development Assessment Panel Application for Planning Approval

Location: Lot 151-153 (12-16) Charles Street, South Perth

Description of proposed Development: Proposed Office Development

In accordance with Regulation 8 of the *Development Assessment Panels Regulations 2011*, the above application for planning approval was **granted** on Thursday, 15 August 2013, subject to the following:

That the Metro Central Joint Development Assessment Panel resolves to:

Approve DAP Application reference 11.2013.251.1 and accompanying plans SK00 – SK21 (received 23 July 2013) in accordance with Clause 7.9 of the City of South Perth Town Planning Scheme No. 6, subject to the following conditions and important notes:

- (1) **Revised drawings** shall be submitted to the satisfaction of the City *as part of a Building Licence application*, and such drawings shall incorporate the following:
 - (i) The dimensions of the car parking bays and access-ways shall comply with appropriate Australian Standards.
 - (ii) The rear setback, above the podium height, of the proposed development be increased to a minimum of 3.0 metres as required by Schedule 9 – Table 1 Element 7.3(a) of TPS6.
- (2) Lots 151, 152 and 153 shall be amalgamated on a compiled Diagram of Survey and application for a new Certificate of Title shall be lodged with the Land Titles Office. A building permit will not be issued until the new Certificate of Title is issued (Refer to Important Note No. 3).
- (3) The surface of the boundary wall(s) on the, eastern, western and southern side of the lot, shall be finished to match the external walls of the building on the development site. Details in this respect are to be included on the plans *submitted with a building permit application*.
- (4) The applicant/developer and the owners are to comply with the requirements set out in Council Policy P352 "Final Clearance Requirements for Completed Buildings". Policy P352 requires the applicant to engage a licensed land surveyor, drawn from the City's panel, to undertake survey measurements on a floor-by-floor basis. The surveyor is to submit progressive reports to the City regarding compliance with the approved building permit documents. The City will not issue final clearance certificates until satisfied that the completed



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Development Assessment Panels

building is consistent with the building licence documents and the requirements of other relevant statutes.

- (5) Details of the proposed colours of the external materials shall be submitted for approval by the City, prior to the issuing of a building permit.
- (6) The property shall not be used for the use hereby granted until an inspection has been carried out by a Council Officer and the City is satisfied that the conditions of planning approval have been complied with.
- (7) This planning approval does not permit the display of any signage on the building or on the site. A new application for planning approval will be required if signage is proposed to be displayed.
- (8) No City infrastructure inclusive of street trees, and crossovers shall be removed, or disturbed in any way without the prior consent of the City's Infrastructure Services.
- (9) The designated visitor parking bays shall be clearly identified on site by means of a sign bearing the words "**Visitors' Parking Only**" in accordance with the requirements of clause 6.3 (11) of *Town Planning Scheme No. 6*.
- (10) In accordance with the requirements of Clause 6.4 (5) of *Town Planning Scheme No. 6*, end of trip facilities for cyclists shall be provided for the use of staff. The design and location of those facilities shall be to the satisfaction of the City and the facilities shall be provided at the following ratios:
 - (i) Number of secure clothes lockers- 1 per bay (total of 58) and
 - (ii) Number of showers- 1 male and 1 female shower in separate change rooms per 10 bays (total 6 male showers and 6 female showers).
- (11) The car parking bays shall be marked on site as indicated on the approved site plan, in order to comply with the requirements of clause 6.3(10)(c) of *Town Planning Scheme No. 6* and such marking shall be subsequently maintained so that the delineation of parking bays remains clearly visible at all times.
- (12) Hard standing areas approved for the purpose of car parking or vehicle access shall be maintained in good condition at all times, free of potholes and dust and shall be adequately drained in accordance with the requirements of Clause 6.3 (10) of *Town Planning Scheme No. 6*.
- (13) Any required filling or excavation of the site shall be retained by embankments or walls, details of which are to be incorporated in the working drawings submitted in support of a building permit application.
- (14) Any required retaining walls along lot boundaries shall be constructed immediately after excavation or filling has been carried out.
- (15) The height of any letterbox, electricity installation, bin enclosure, or other structure, fence, wall or hedge within 1.5 metres of any vehicle driveway where it meets a street alignment shall not exceed the 0.75 metre limit to



Government of Western Australia
Development Assessment Panels

demonstrate compliance with the intent of clause 6.2.6 (A6) of the Residential Design Codes.

- (16) All plumbing fittings on external walls shall be concealed from external view as required by Clause 7.5(k) of Town Planning Scheme No. 6.
- (17) In accordance with the provisions of Clause 6.8(2) of *Town Planning Scheme No. 6*, all subsoil water and stormwater from the property shall be discharged into soak wells or sumps located on the site unless special arrangements can be made to the satisfaction of the City Infrastructure Services for discharge into the street drainage system.

Condition 18: Refer to Determination

dated 25 May 2015

- (18) The validity of this approval shall cease if construction is not substantially commenced within 24 months of the date of planning approval.

ADVICE NOTES:

- (1) This planning approval is **not** an authorisation to commence construction. A **building permit must be obtained** from Council's Building Services Department prior to commencing any work of a structural nature.
- (2) The applicant is advised of the need to comply with the relevant requirements of the City's Environmental Health Services and Engineering Infrastructure Services (list of requirements attached).
- (3) The amalgamation procedure leading to the issuing of new certificates of title extends over approximately **3-months**, and a building licence may not be issued until the new titles have been issued.

Therefore, to avoid delay in obtaining a building licence, it is important for the Applicant to commence the amalgamation procedure without delay. A licensed building surveyor is typically engaged for this purpose.

- (4) In accordance with Council Policy P101 "Public Art", the City encourages the owner / private developer of the subject site to contribute towards public art commissions within the vicinity of the development. As a guide, the City's Policy requires a contribution of 2% of the total cost of capital projects to be made towards public art in new above ground urban design, public open space and community building constructions and redevelopment projects.

The applicant is advised to discuss this matter further with Manager-Community, Culture and Recreation.

- (5) If any boundary fencing is required, the applicant is advised, to liaise with the City of South Perth to determine if any further approvals are required.

Where an approval has so lapsed, no development shall be carried out without further approval having first been sought and obtained, unless the applicant has applied and obtained Development Assessment Panel approval to extend the approval term under regulation 17(1)(a) of the *Development Assessment Panel Regulations 2011*.



Government of **Western Australia**
Development Assessment Panels

LG Ref: 11.2013.251.1
DoP Ref: DAP/13/00447
Enquiries: Development Assessment Panels
Telephone: (08) 6551 9919

Mr Peter Simpson
PTS Town Planning Pty Ltd
PO Box 538
Inglewood WA 6932

Dear Mr Simpson

**Metro Central JDAP – City of South Perth – DAP Application 11.2013.251.1
Lot 1001 (12) Charles Street, South Perth [previously Lots 151-153 Nos. 12-16]
Proposed Amendment (Validity of Approval) to Approved Non-Residential
Development Comprising ‘Office’ and ‘Café/Restaurant’ in a Nine Storey
Building**

Thank you for your application and plans submitted to the City of South Perth on 19 March 2015 for the above development at the above mentioned site.

This application was considered by the Metro Central Joint Development Assessment Panel at its meeting held on 25 May 2015, where in accordance with the provisions of the City of South Perth Town Planning Scheme No.6, it was resolved to approve the application as per the attached notice of determination.

Should the applicant not be satisfied by this decision, a DAP Form 2 application may be made to amend or cancel this planning approval in accordance with Regulation 17 of the Development Assessment Panel Regulations 2011.

Also be advised that there is a right of review by the State Administrative Tribunal in accordance with Part 14 of the *Planning and Development Act 2005*. An application must be made within 28 days of the determination in accordance with the *State Administrative Tribunal Act 2004*.

Should you have any enquiries in respect to the conditions of approval please contact Mr Cameron Howell at the City of South Perth on (08) 9474 0785.

Yours sincerely

Zoe Hendry

DAP Secretariat

3/06/2015

Encl. DAP Determination Notice
Approved plans

Cc: Mr Cameron Howell
City of South Perth



wa.gov.au

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Tel: (08) 6551 9919 Fax: (08) 6551 9961 TTY: 6551 9007 Infoline: 1800 626 477
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ABN 35 482 341 493



Government of Western Australia
Development Assessment Panels

Planning and Development Act 2005

City of South Perth Town Planning Scheme No.6

Metro Central Joint Development Assessment Panel

Determination on Development Assessment Panel Application for Planning Approval

Location: Lot 1001 (12) Charles Street, South Perth [previously Lots 151-153 Nos. 12-16]

Description of proposed Development: Proposed Amendment (Validity of Approval) to Approved Non-Residential Development Comprising 'Office' and 'Café/Restaurant' in a Nine Storey Building

In accordance with Regulation 8 of the *Development Assessment Panels Regulations 2011*, the above application for planning approval was **granted** on 25 May 2015, subject to the following:

1. **Approve** that the DAP Application reference DAP/13/00447 as detailed on the DAP Form 2 dated 16 March 2015 is appropriate for consideration in accordance with regulation 17 of the *Planning and Development (Development Assessment Panels) Regulations 2011*;
2. **Approve** the DAP Application reference DAP/13/00447 as detailed on the DAP Form 2 dated 16 March 2015 and the plans previously approved by the Metro Central JDAP in accordance with the provisions of the clause 7.9 of the City of South Perth Town Planning Scheme No. 6, for the proposed amendment (validity of approval) to approved non-residential development comprising 'office' and 'café/restaurant' in a nine storey building at Lot 1001 (No. 12) Charles Street, South Perth [previously Lots 151-153 Nos. 12-16], subject to:

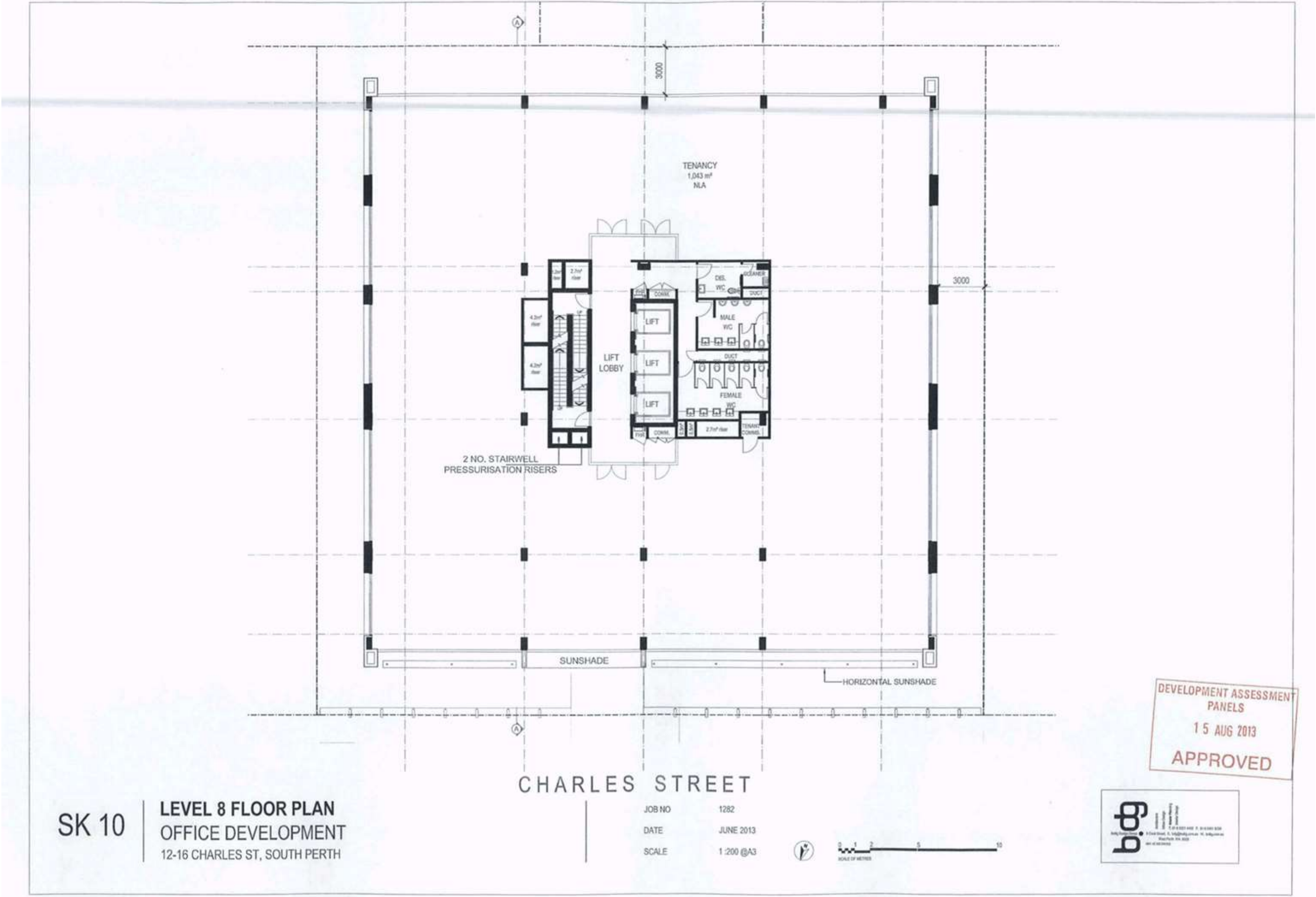
Amended Conditions

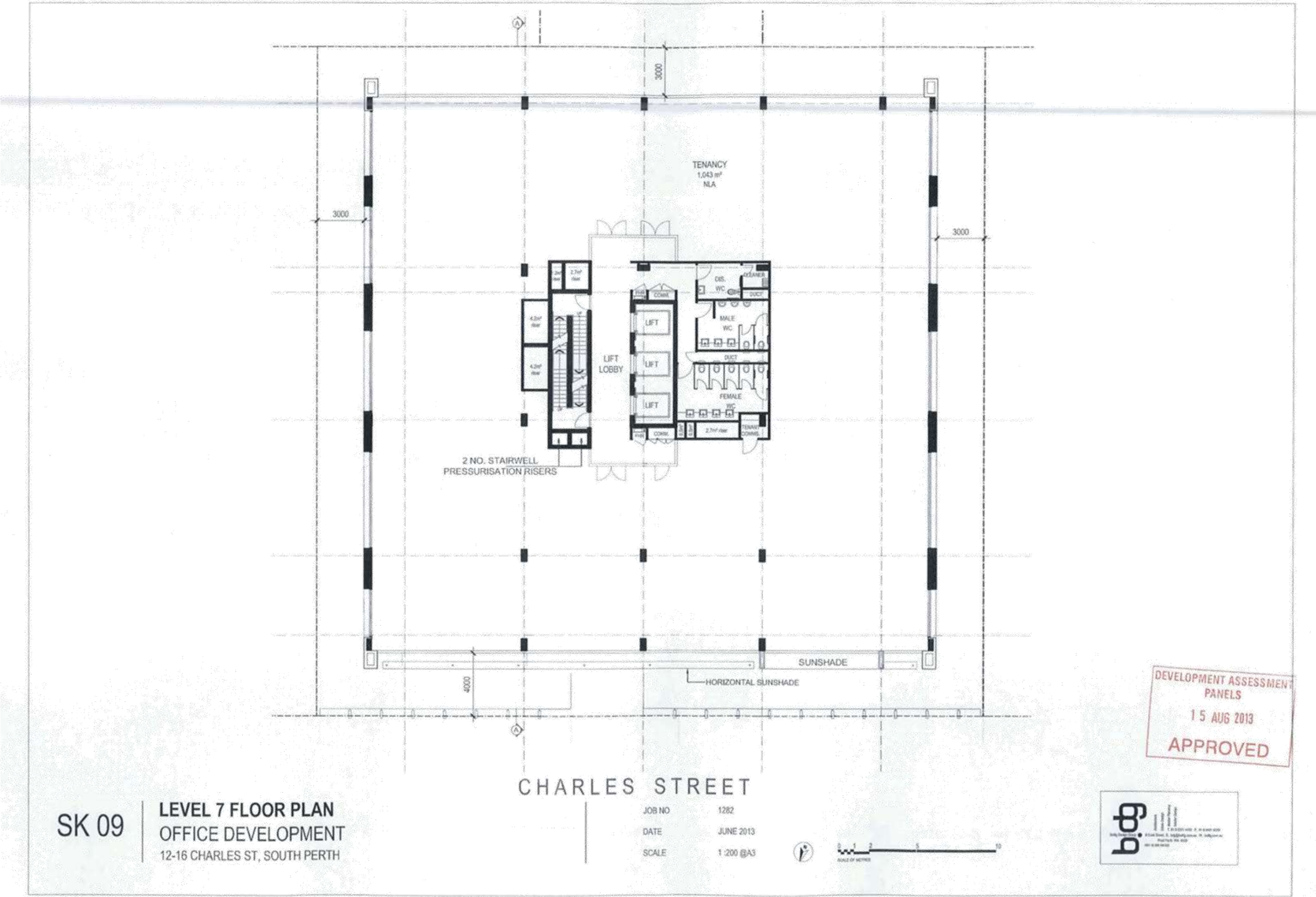
18. The validity of this approval shall cease if construction is not substantially commenced within 36 months of the date of planning approval. The date of planning approval is 15 August 2013.

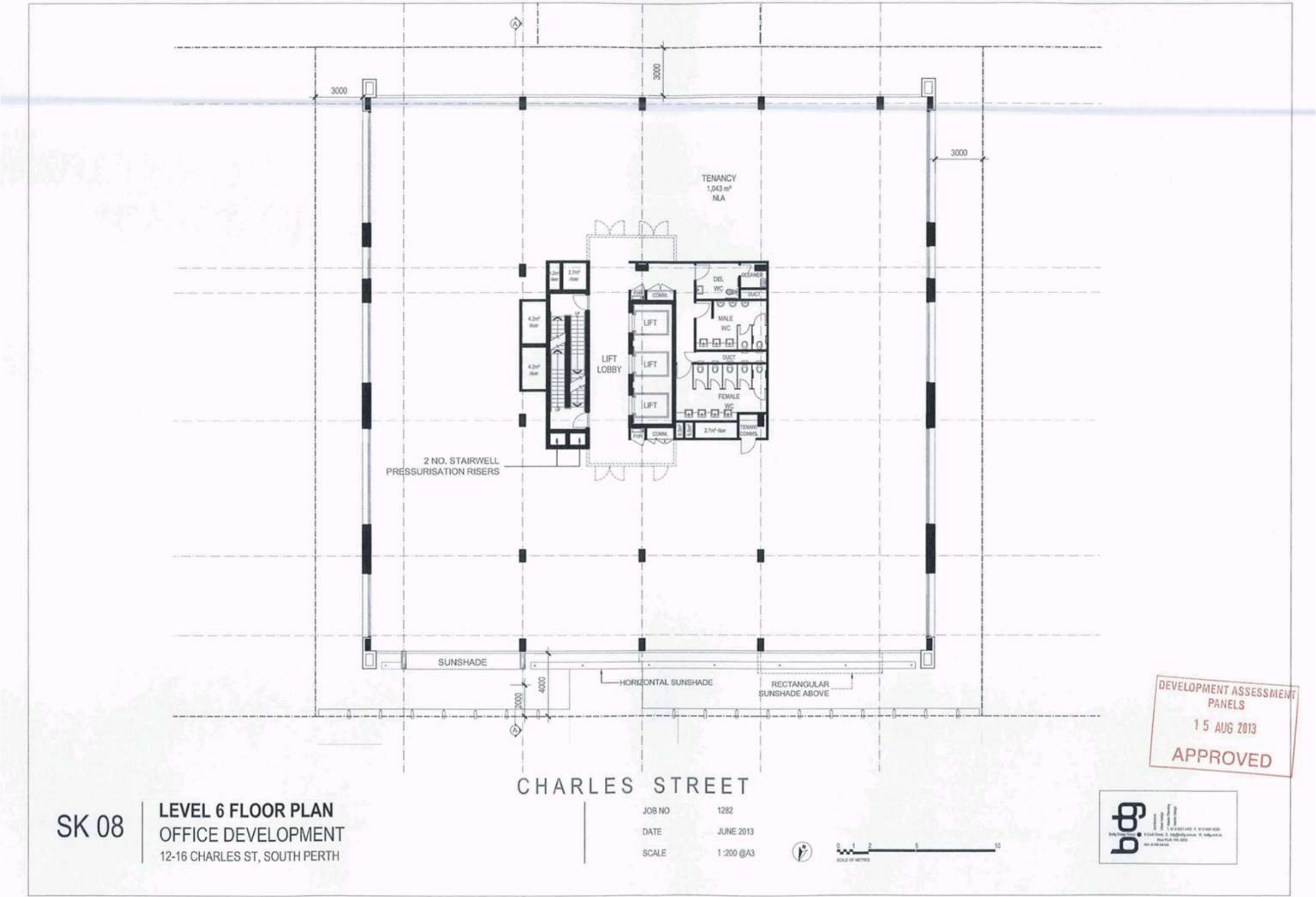
All other conditions and requirements detailed on the previous approval dated 15 August 2013 shall remain unless altered by this application.

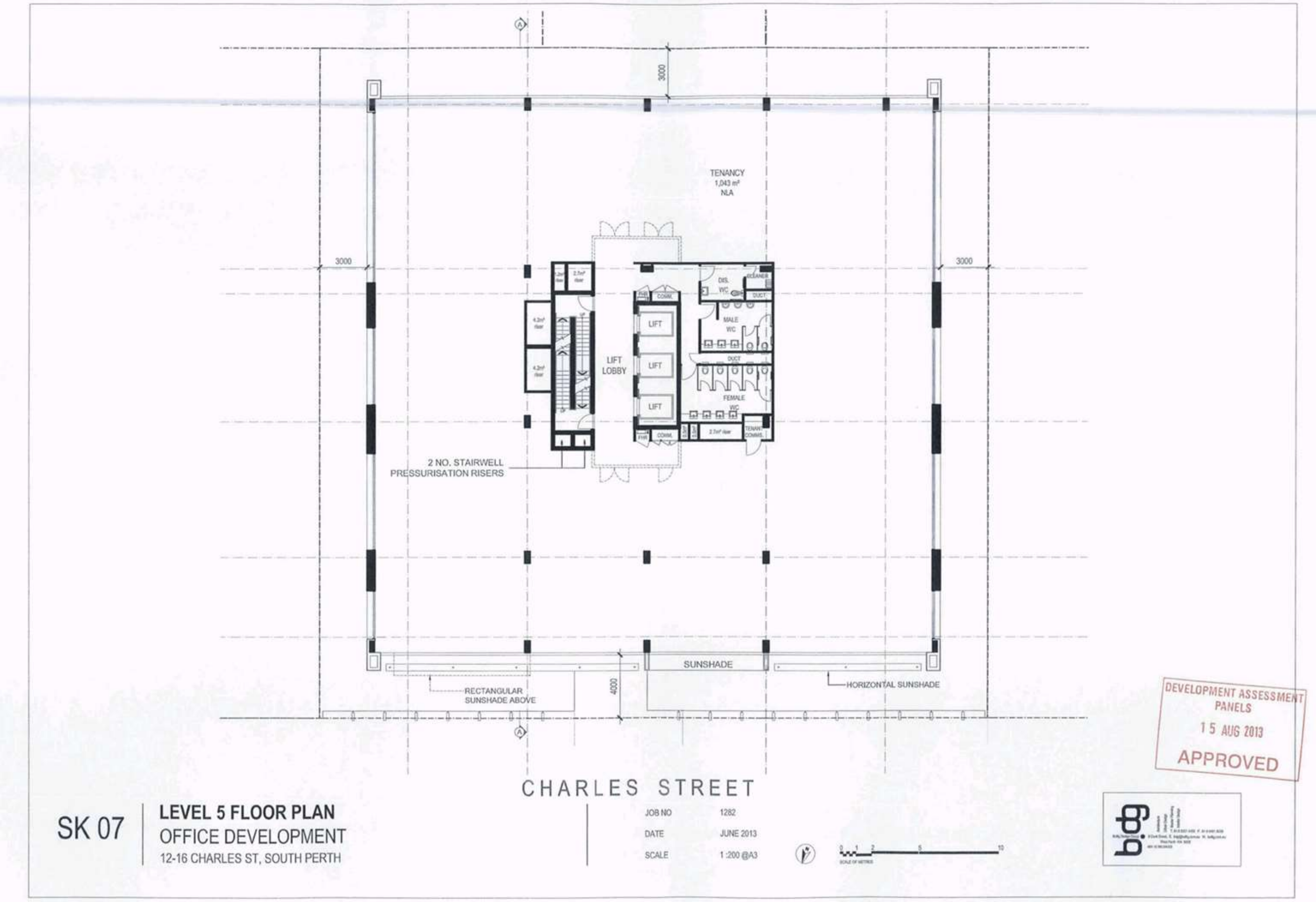
Where an approval has so lapsed, no development shall be carried out without further approval having first been sought and obtained, unless the applicant has applied and obtained Development Assessment Panel approval to extend the approval term under regulation 17(1)(a) of the *Development Assessment Panel Regulations 2011*.

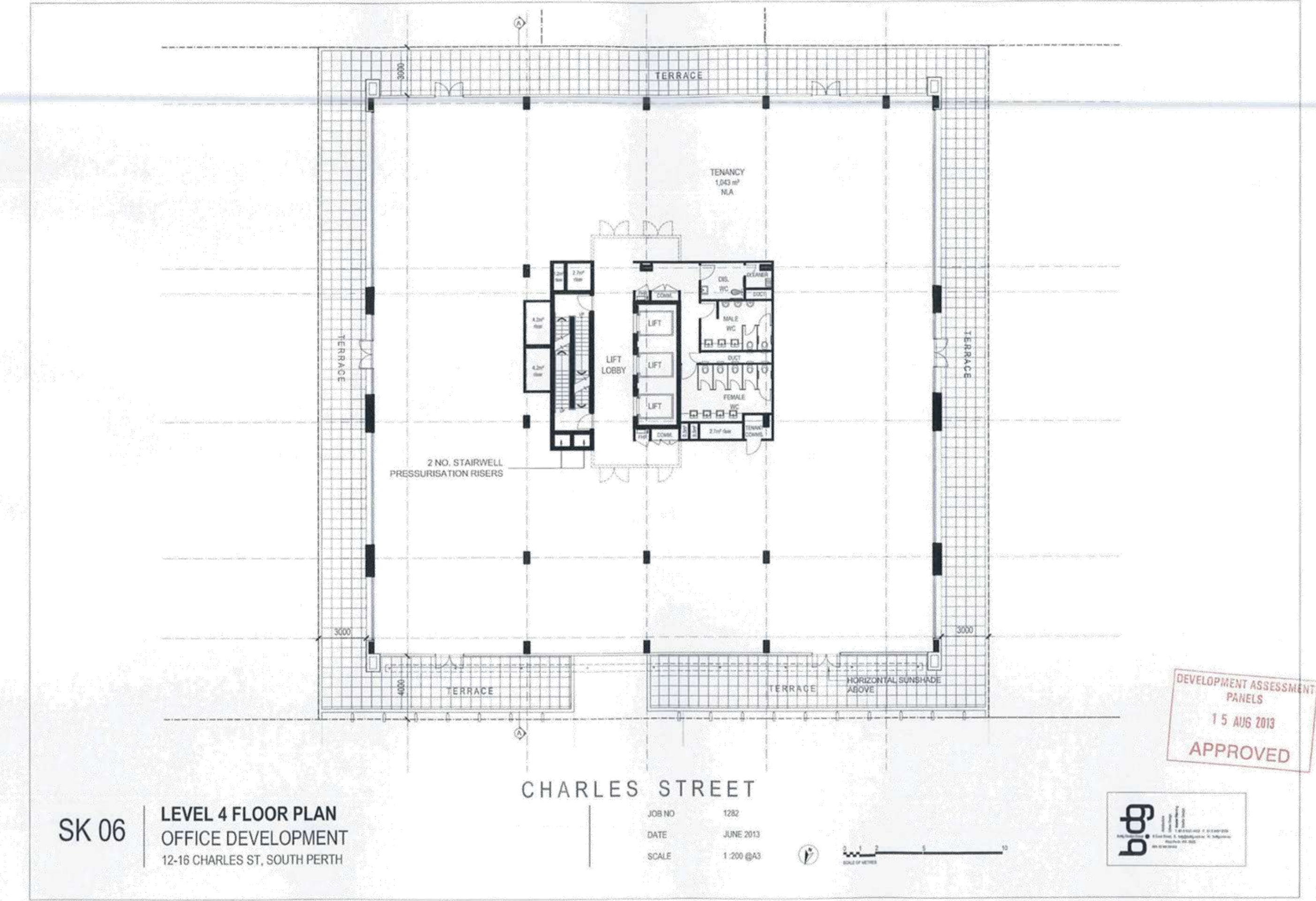


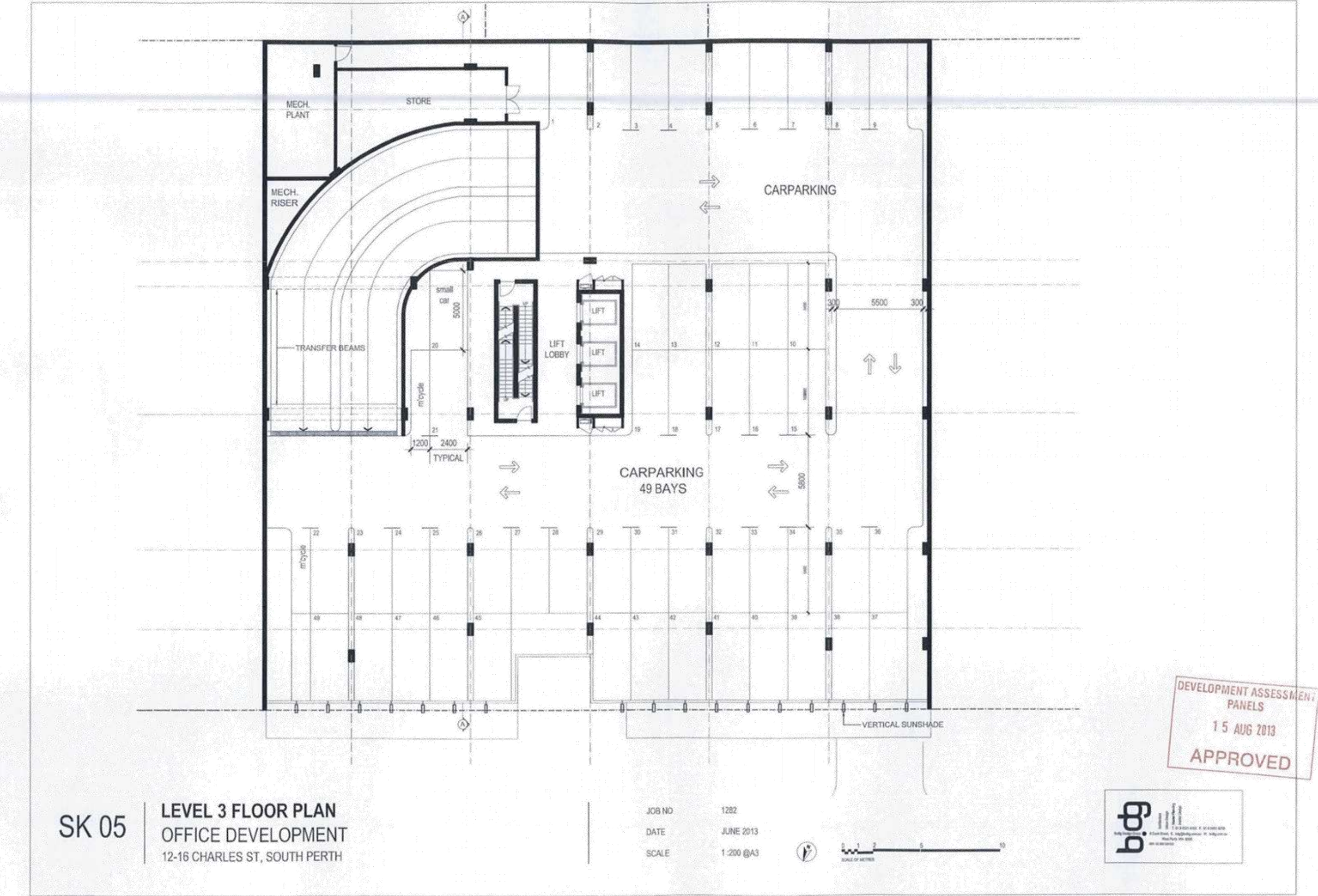


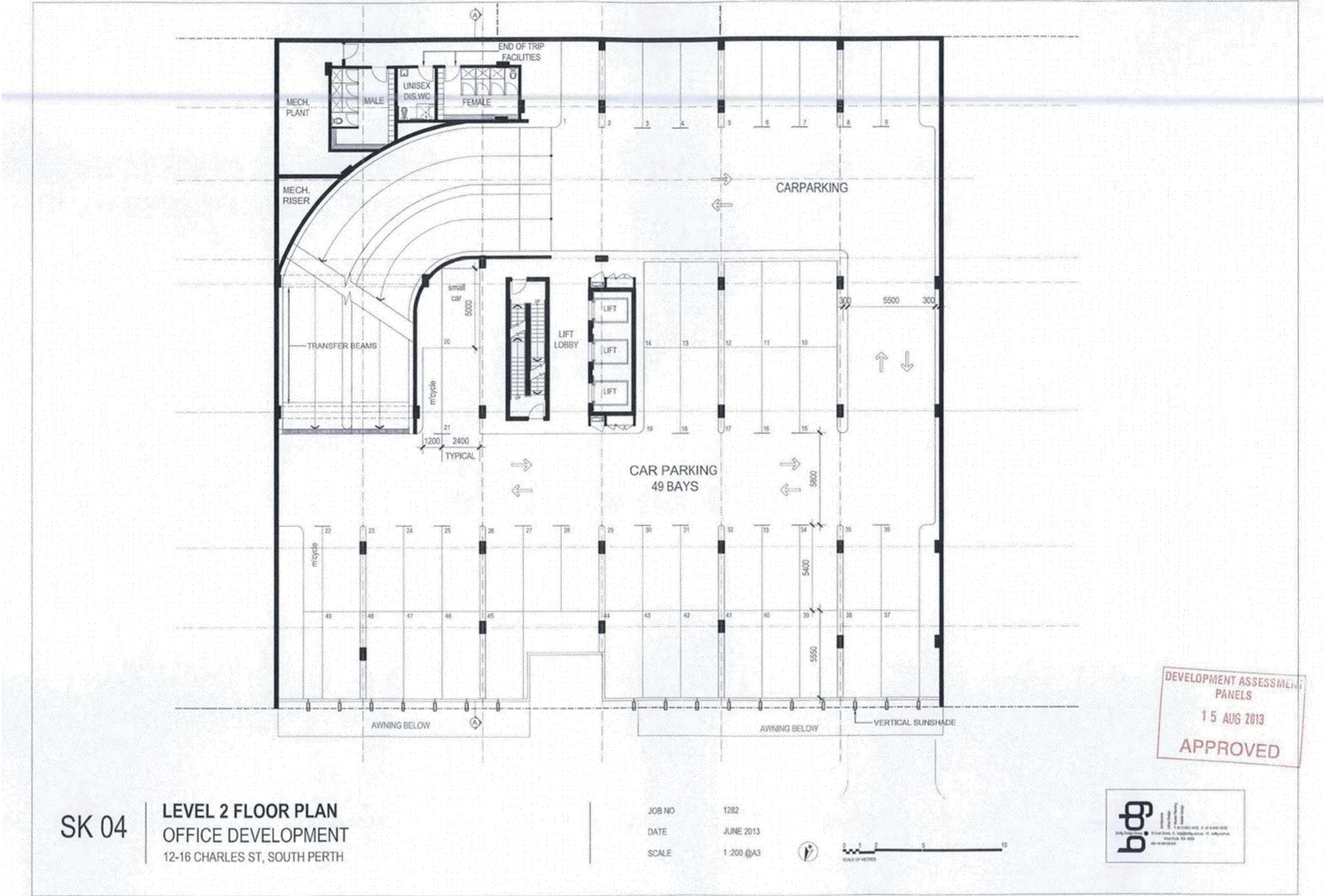


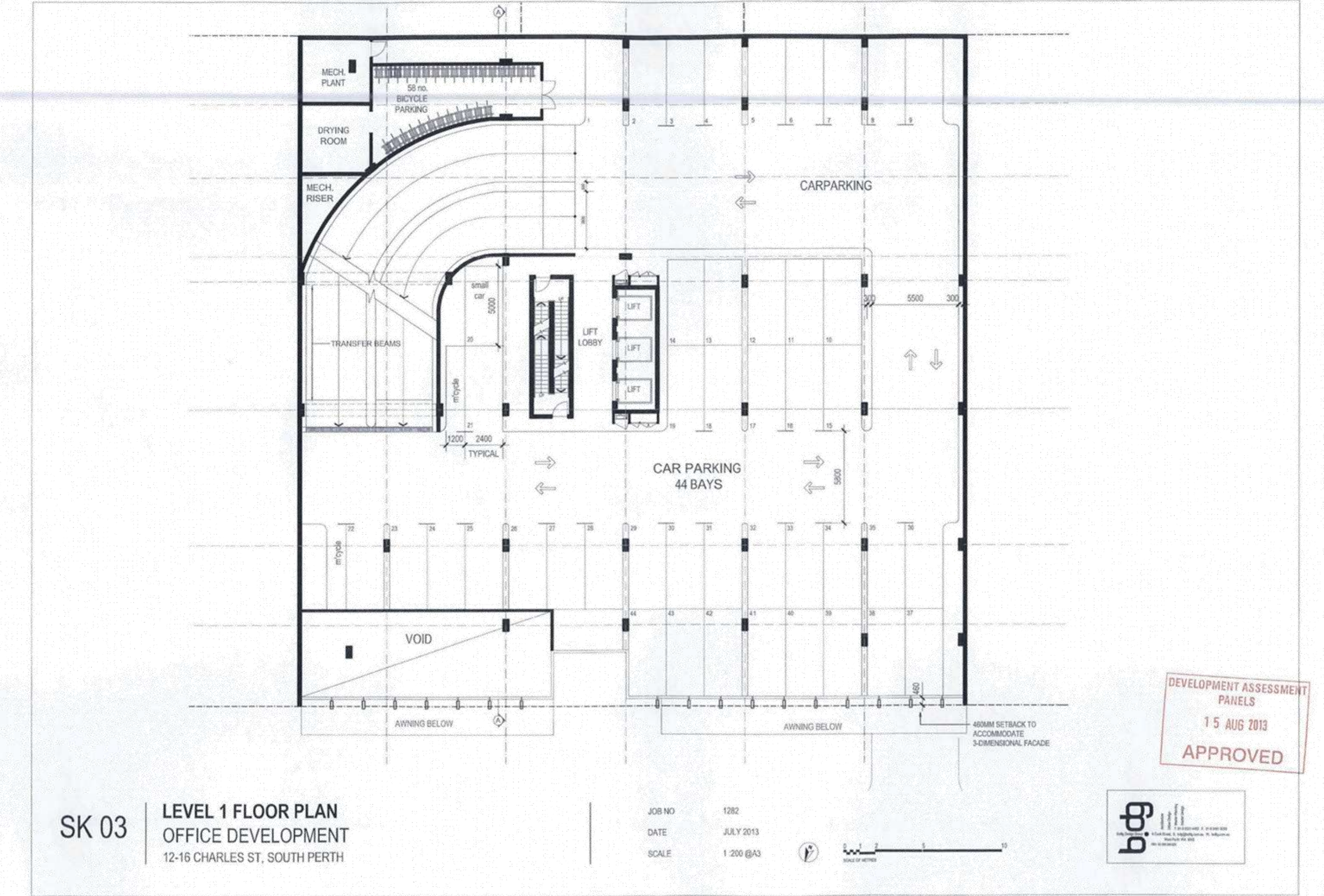




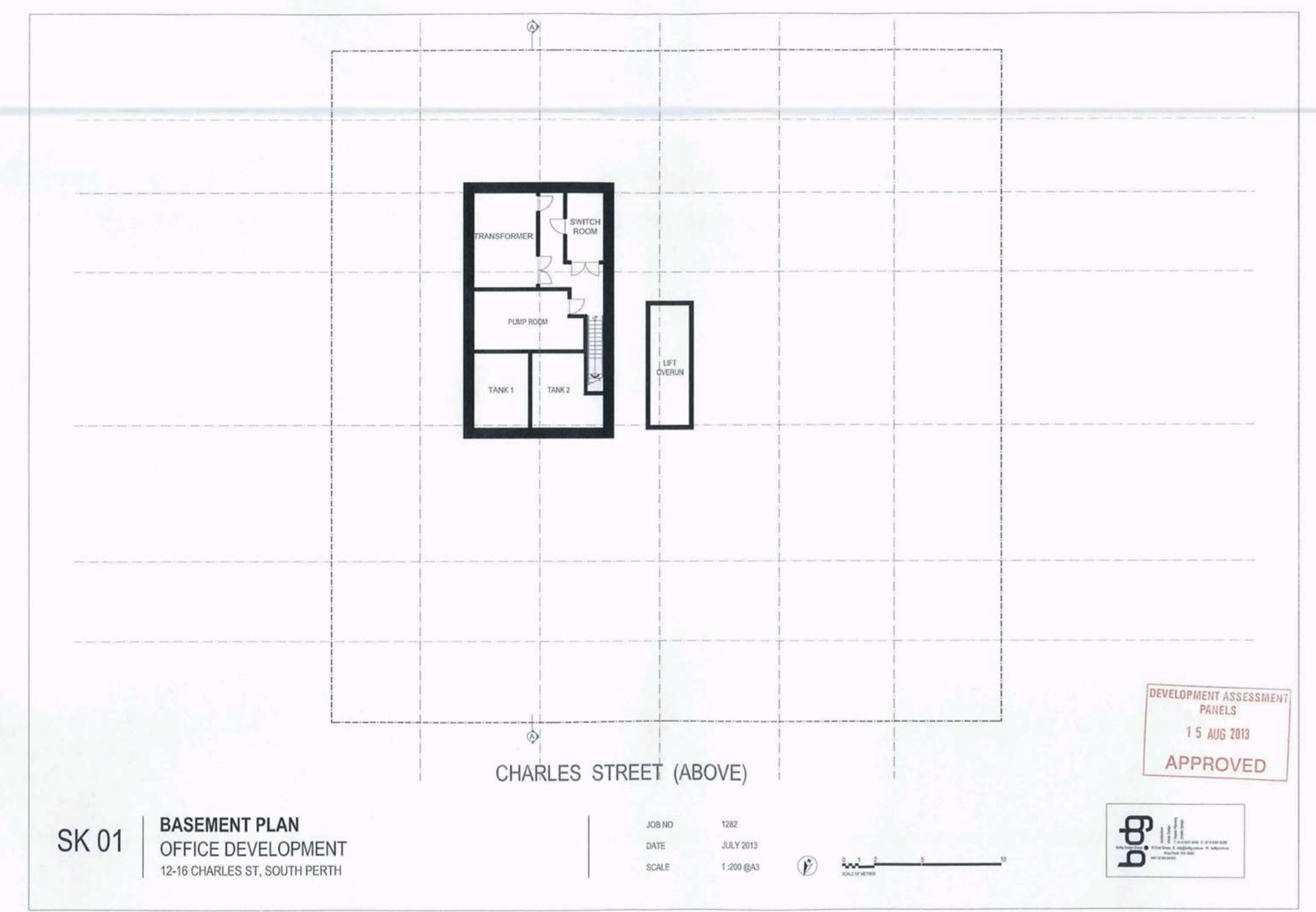


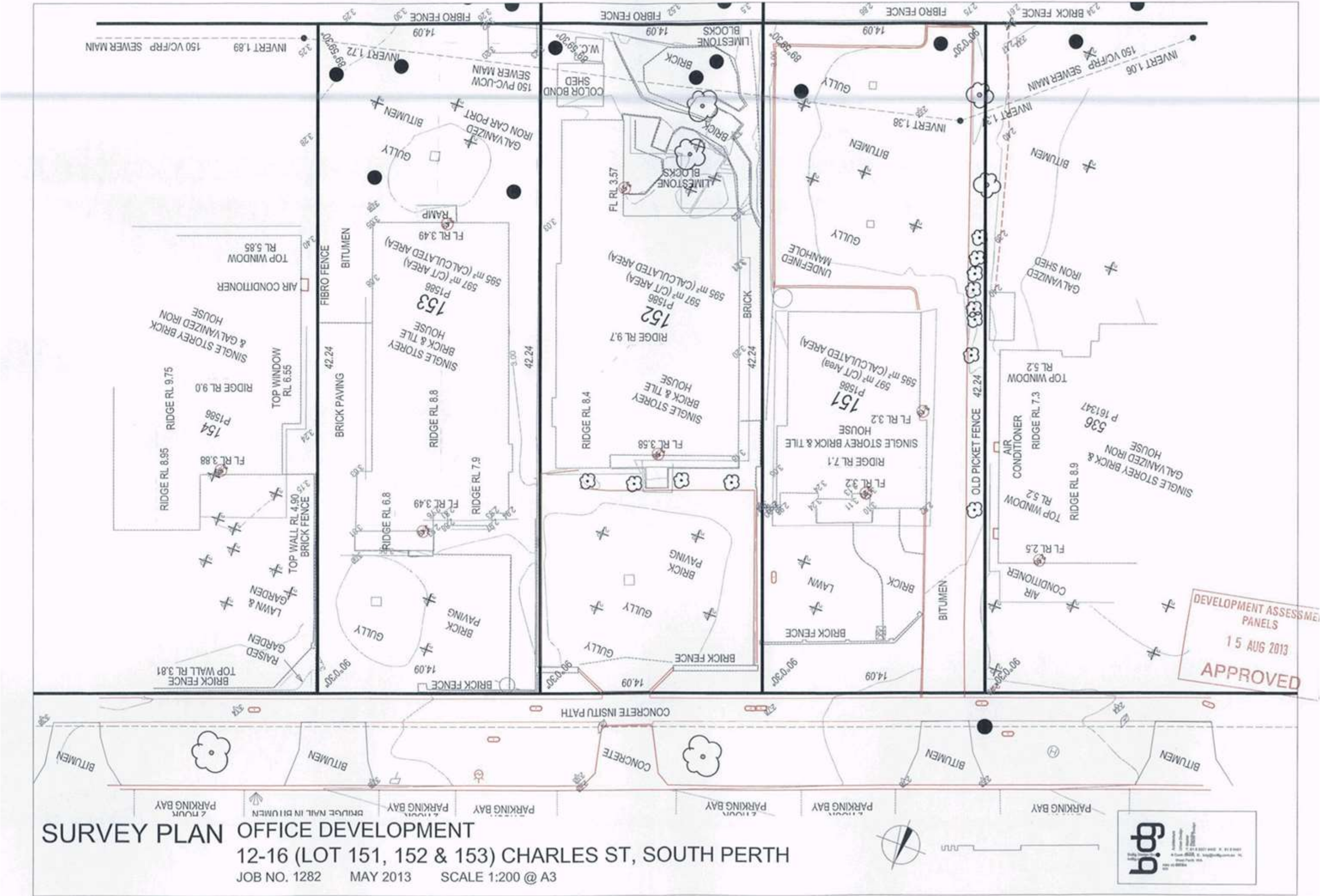


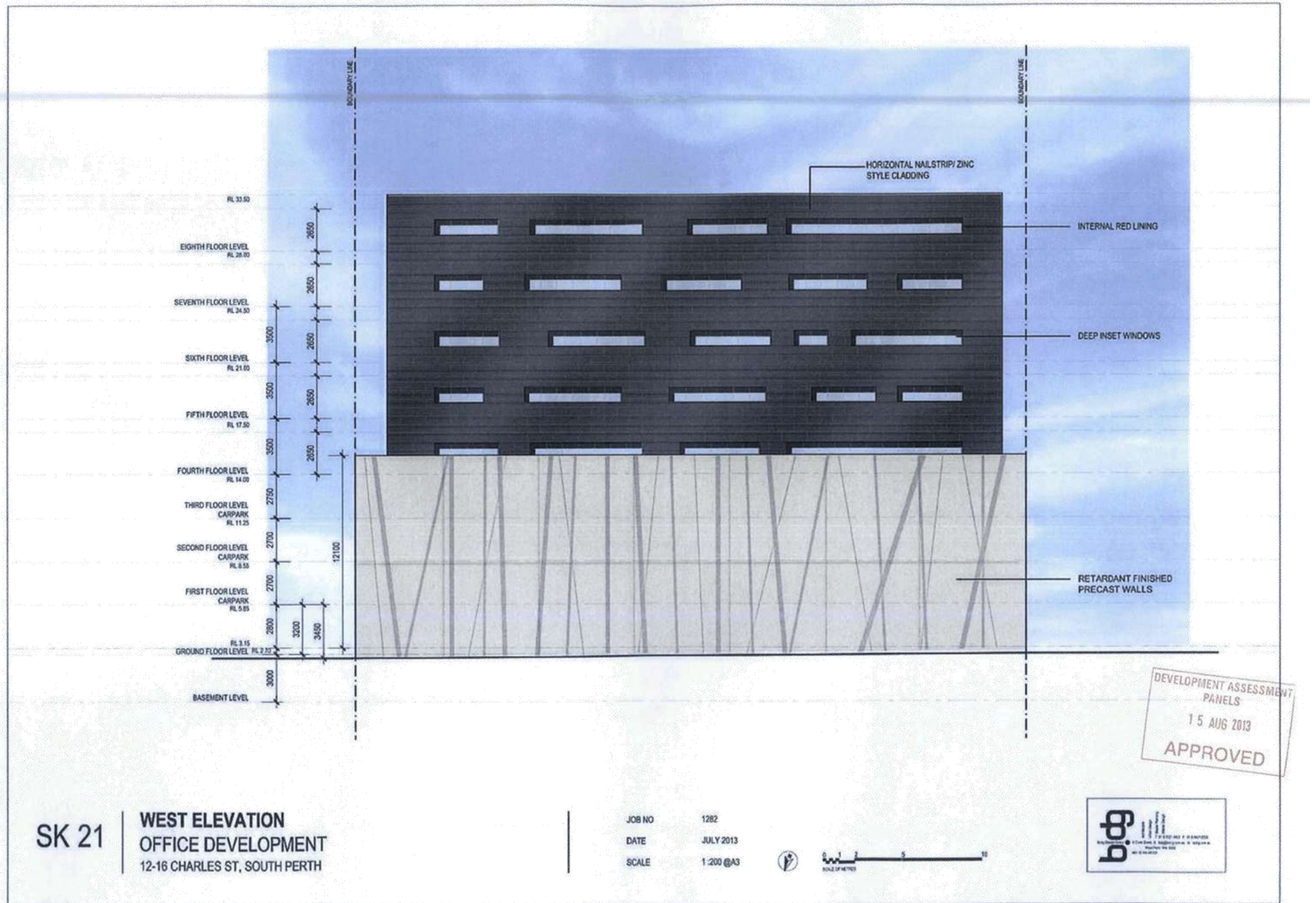


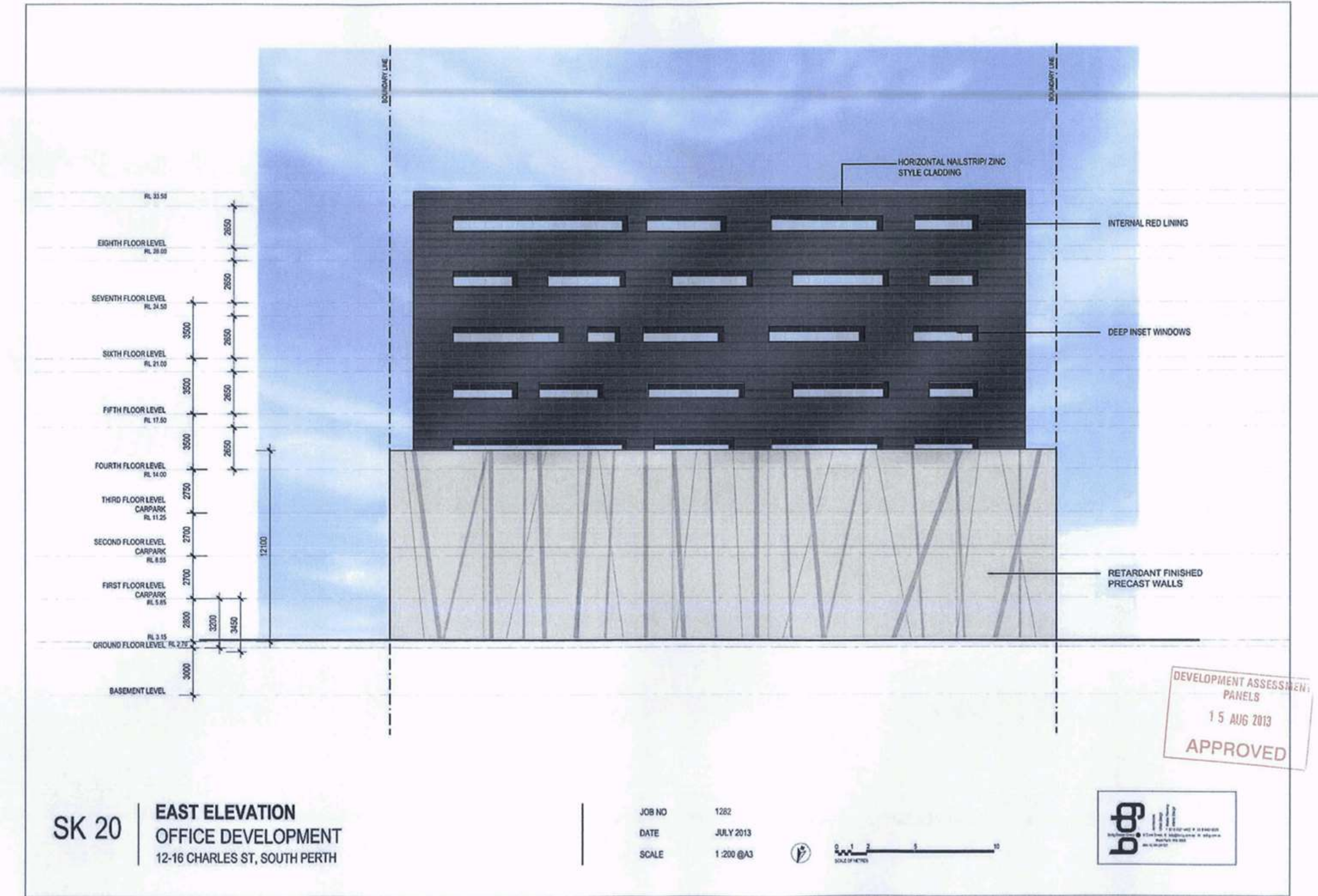


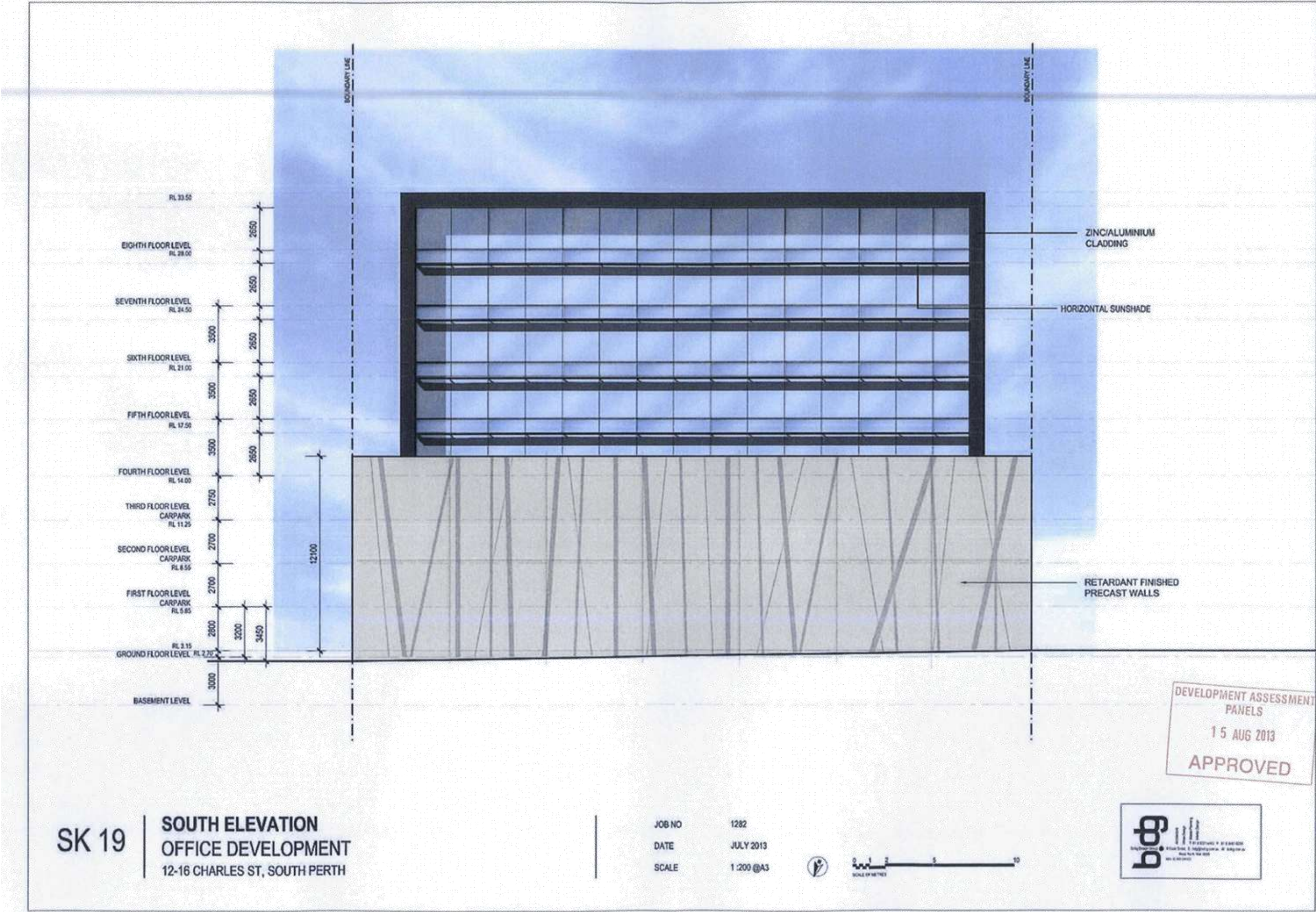


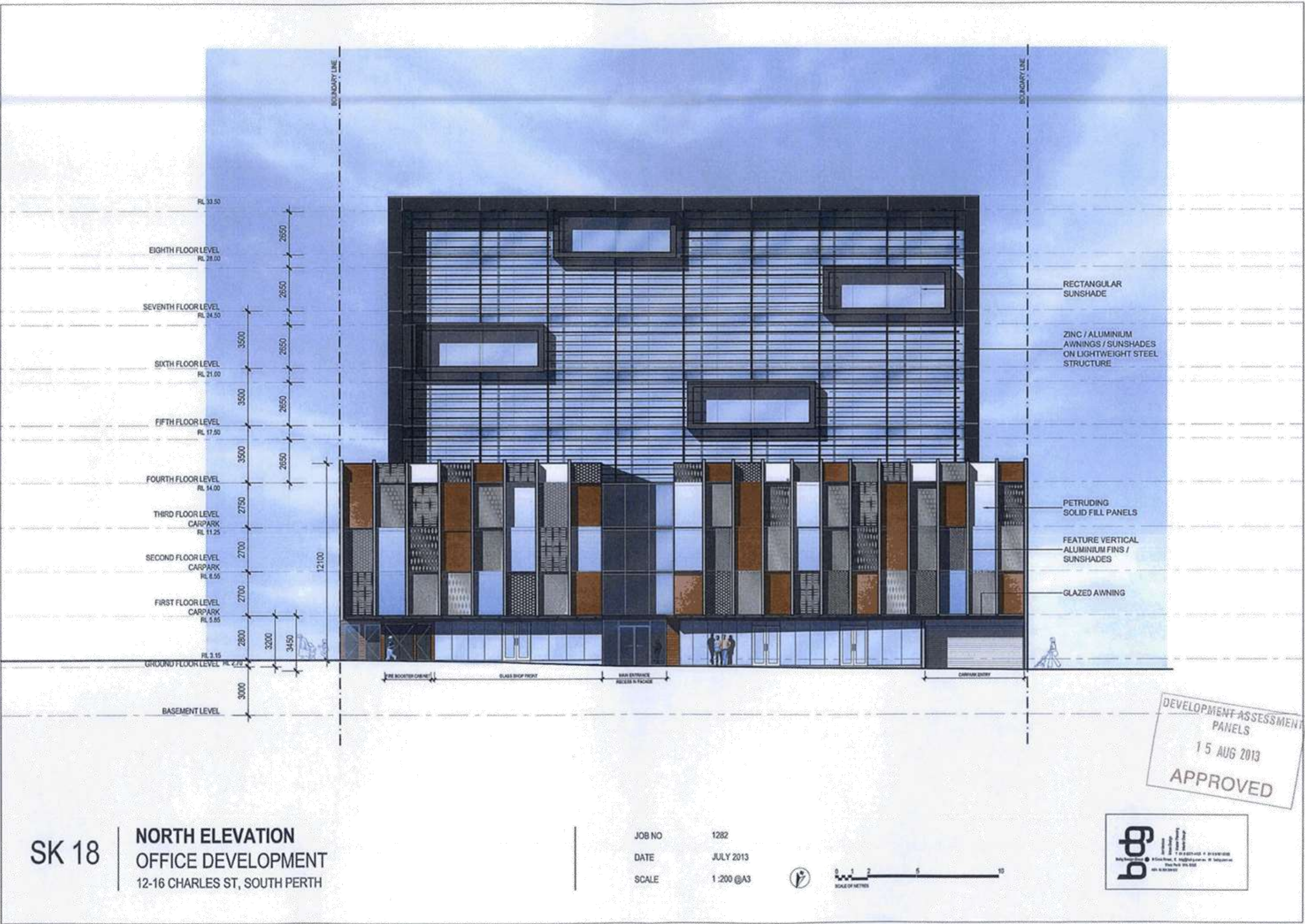


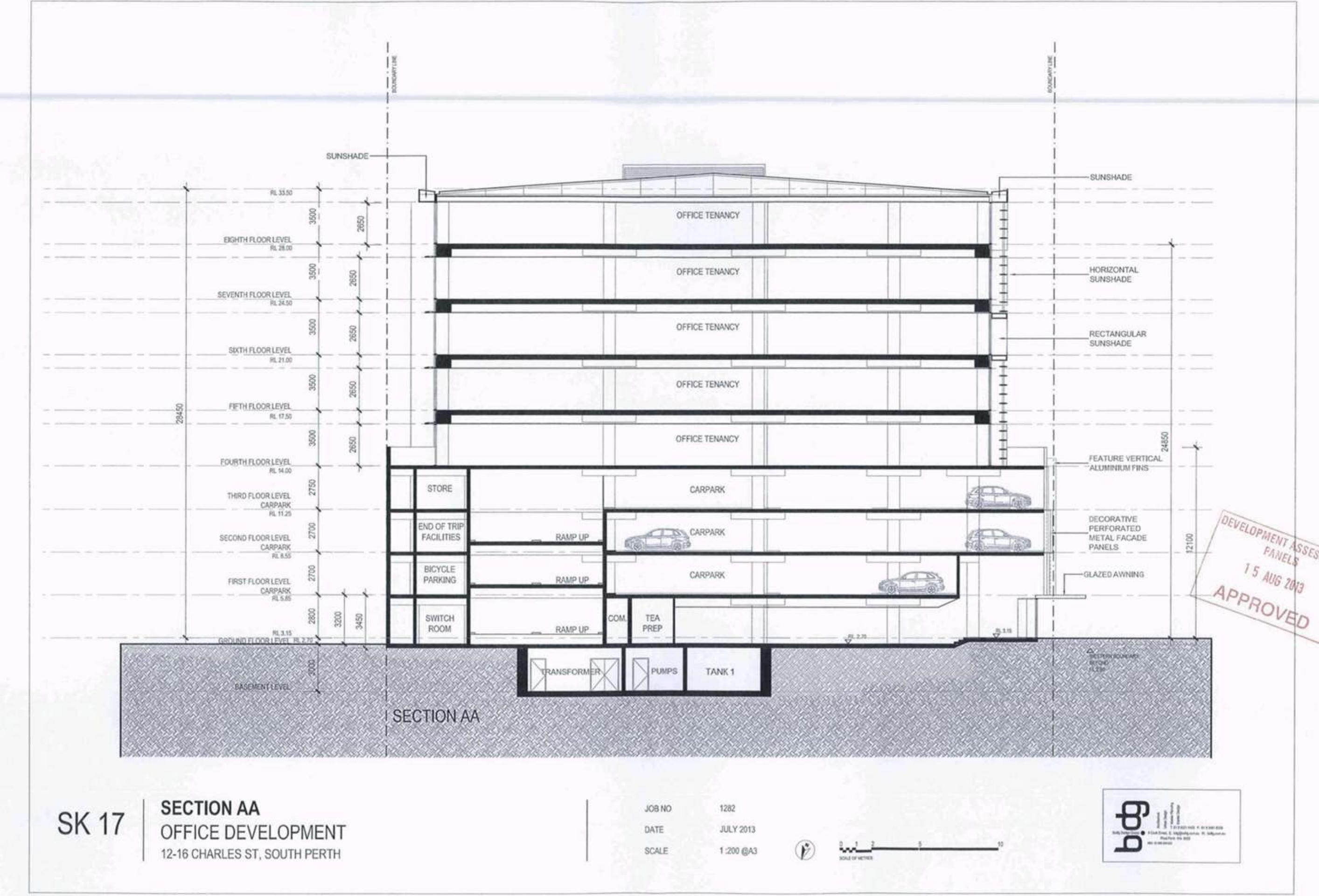




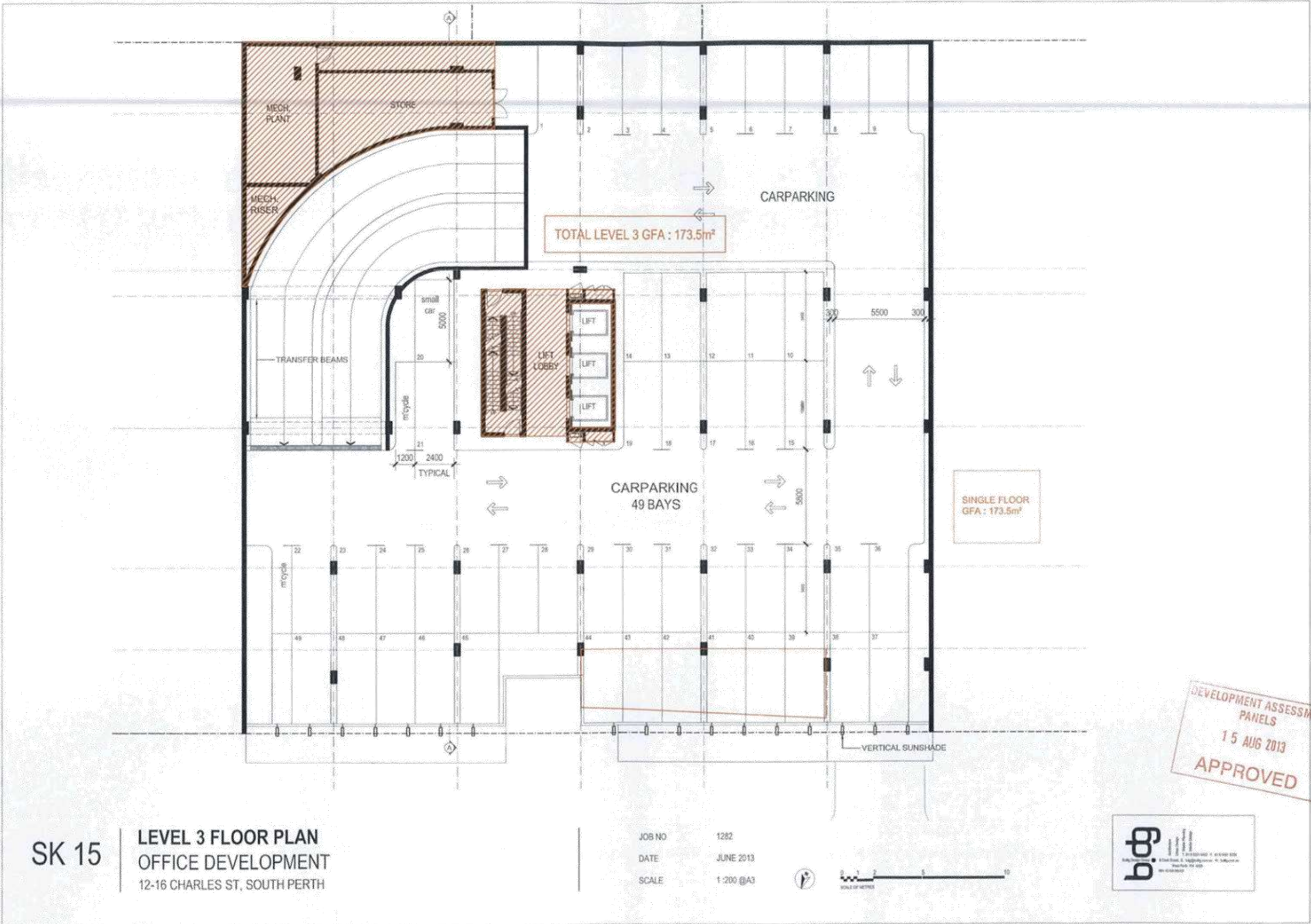


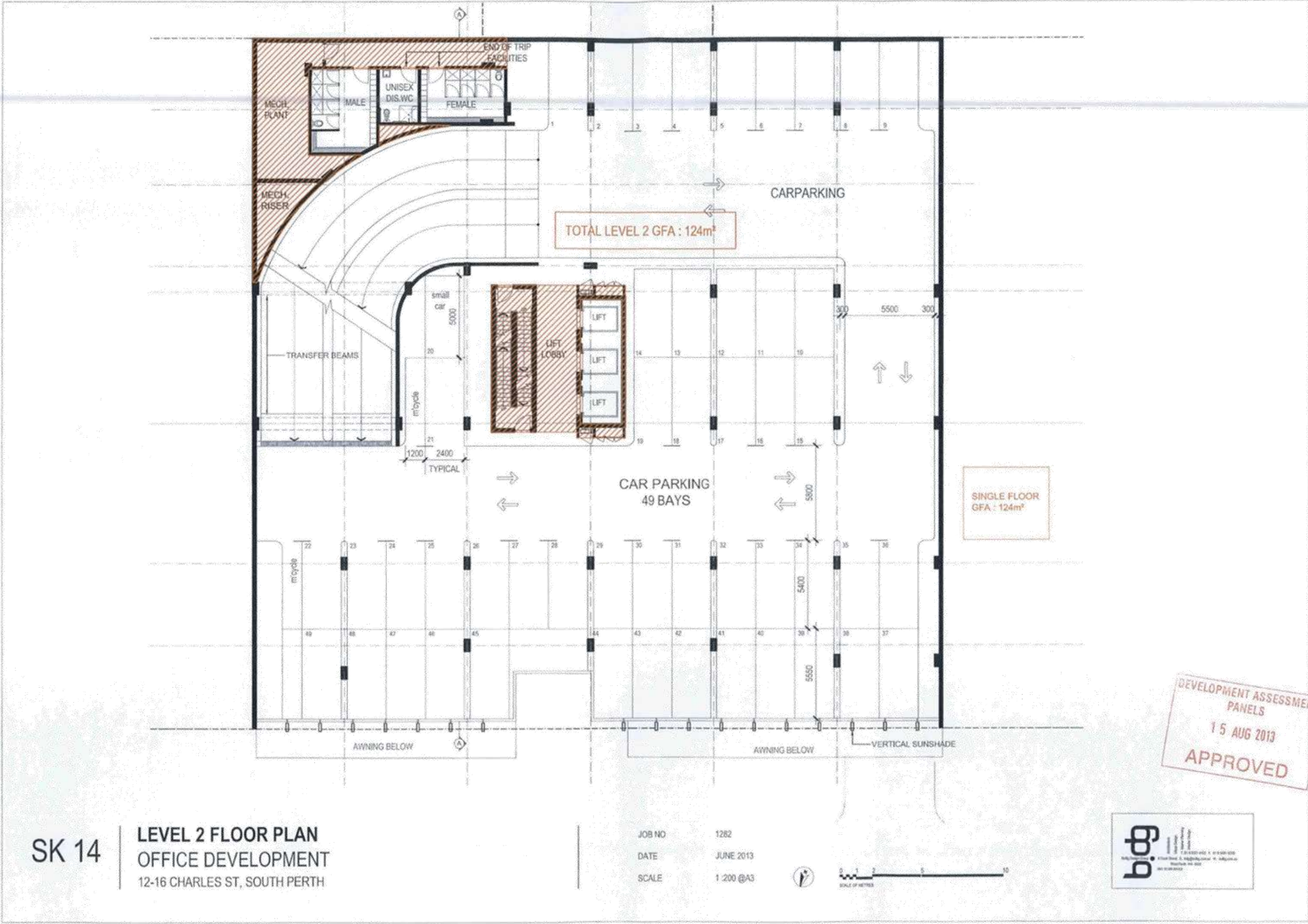




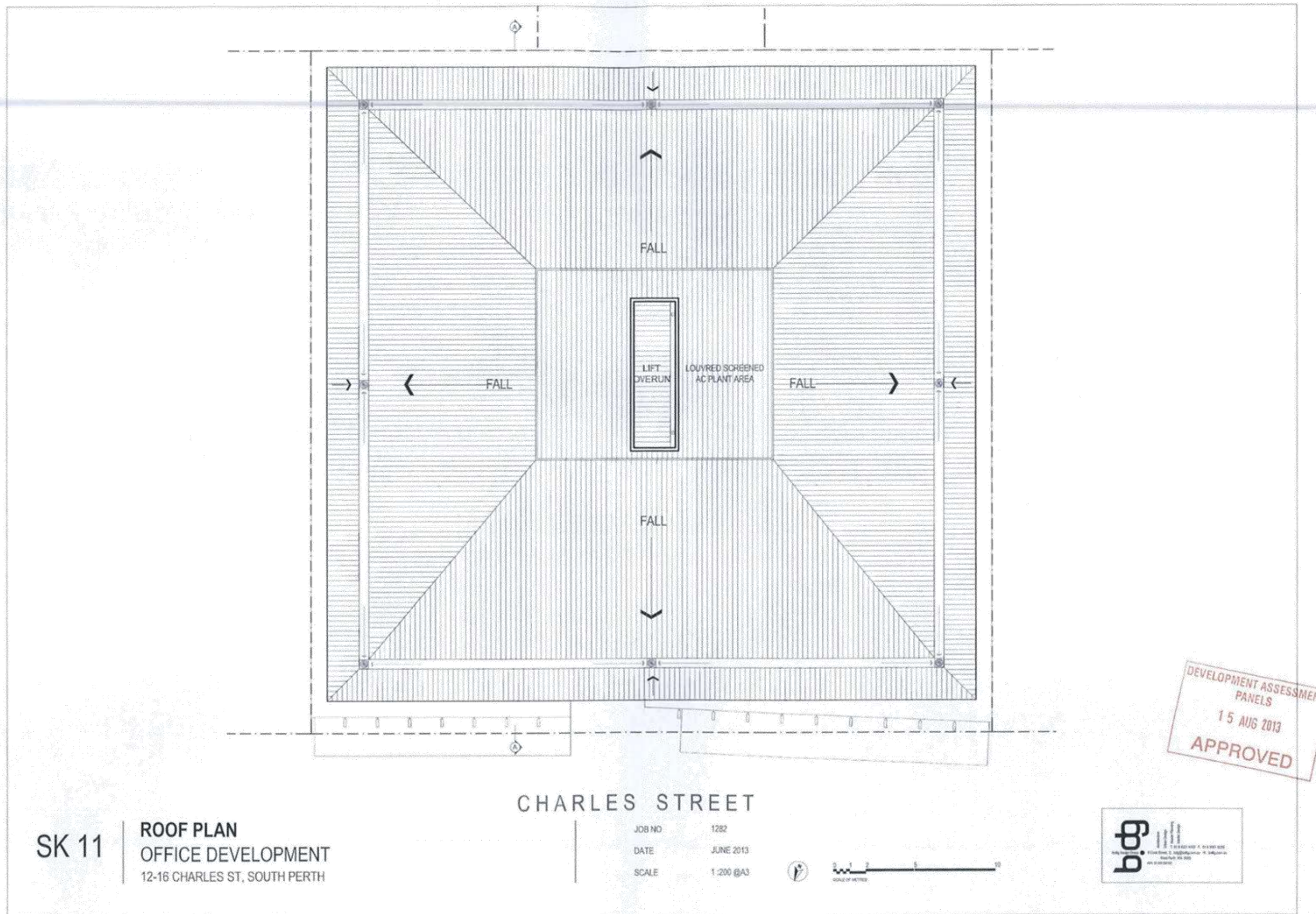














DEVELOPMENT ASSESSMENT
PANELS
15 AUG 2013
APPROVED

> IMAGE

01

> ARTISTS IMPRESSION

PROJECT > OFFICE DEVELOPMENT, CHARLES ST, SOUTH PERTH
JOB NO. > 1282
DATE > JULY 2013

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Urban Design
Landscape Architecture
Interior Design
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LOTS 151-153 (NO. 12-16) CHARLES STREET, SOUTH PERTH
DEVELOPMENT APPLICATION
PROPOSED OFFICE DEVELOPMENT

May 2013



tpg

TOWN PLANNING
URBAN DESIGN AND HERITAGE

DEVELOPMENT ASSESSMENT
PANELS
15 AUG 2013
APPROVED

Our Ref: J000006
DAP Ref: DP/13/00447
LG Ref: CH2/12 - 11.2013.251



31 March 2016

Chief Executive Officer
City of South Perth
Civic Centre
Cnr Sandgate St and South Tce
South Perth WA 6151

PO Box 538, Inglewood
Western Australia 6932

0411 445 031
peter@ptsplanning.com.au
www.ptsplanning.com.au

ABN - 32 603 168 850

Dear Sir

DAP FORM 2 - NOS 12-16 (LOTS 151-153) CHARLES STREET, SOUTH PERTH - REQUEST FOR EXTENSION OF TIME

In accordance with Regulation 17(1)(a) of the *Planning and Development (Development Assessment Panels) Regulations 2011*, we respectfully request an extension of time in which the approved development has to achieve substantial commencement.

We request an extension of five years (60 months), which will require Condition 18 of the Approval to be amended so that the development is substantially commenced by 15 August 2021.

In accordance with the DAP requirements please find enclosed the completed DAP Form 2.

Background

The Metro Central JDAP at its meeting held on 15 August 2013 resolved unanimously to approve the application for a nine level office building with cafe/restaurant.

PTS Town Planning submitted a request on 16 March 2015 to extend the DAP approval for three years (36 months). The Metro Central JDAP at its meeting held on 25 May 2015 resolved to extend the development approval to 15 August 2016, which was a 12 month extension.

The landowner is still trying to attract a commercial tenant, however, as you can appreciate securing a commercial tenant in the current market is very challenging.

Proposed Extension

This Form 2 application seeks approval for an extension of the DAP Approval for an additional 5 years to 15 August 2021. This Form 2 application does not propose any changes to the design or any changes to the approved conditions.

The 16 March 2015 request for a three year extension was not supported by the DAP as Clause 7.9(7) of Town Planning Scheme No. 6 limited the extension to 12 months.

Chief Executive Officer
City of South Perth

DAP FORM 2 - NOS 12-16 (LOTS 151-153) CHARLES STREET, SOUTH PERTH - REQUEST FOR EXTENSION OF TIME

The gazettal of the *Planning and Development (Local Planning Schemes) Regulations 2015* included under Schedule 2, the Deemed Provisions for Local Planning Schemes. The Deemed Provisions automatically apply to all town planning schemes and supersede those provisions of Town Planning Schemes that are not consistent with the Deemed Provisions.

Clause 77 of the Deemed Provisions relating to amending or cancelling a development approval supersedes Clause 7.9(7) of Town Planning Scheme No. 6 as Clause 7.9(7) cannot be inconsistent with the Deemed Provisions.

Clause 77 of the Deemed Provisions states that:

- (1) *An owner of land in respect of which development approval has been granted by the local government may make an application to the local government requesting the local government to do any or all of the following —*
 - a) *to amend the approval so as to extend the period within which any development approved must be substantially commenced;*
 - b) *to amend or delete any condition to which the approval is subject;*
 - c) *to amend an aspect of the development approved which, if amended, would not substantially change the development approved;*
 - d) *to cancel the approval.*
- (2) *An application under subclause (1) —*
 - a) *is to be made in accordance with the requirements in Part 8 and dealt with under this Part as if it were an application for development approval; and*
 - b) *may be made during or after the period within which the development approved must be substantially commenced.*

Clause 77 of the Deemed Provisions has the same wording and intent as Regulation 17 of the *Planning and Development (Development Assessment Panels) Regulations 2011*, which provides the ability for the DAP to extend approvals.

Therefore the DAP can extend the approval of the application beyond the first extension approved on 25 May 2015 and can also approve an extension for a period of 5 years.

Justification

In support of the extension we provide the following justification.

- No changes are proposed to the design or the conditions (other than Condition 18 to reflect the extension of time).
- The original application was approved unanimously based on the Officer's recommendation for approval;
- The 2015 Form 2 application to extend the approval by 36 months was limited to 12 months by Clause 7.9(7) of TPS6. Clause 7.9(7) of TPS6 is no longer applicable as it has been superseded by Clause 77 of the Deemed Provisions.
- We note that the City has initiated Amendment 46 to the City of South Perth Town Planning Scheme No. 6, however, this amendment is still being considered and it is not known what the outcome will be in terms of the relevant provisions applicable to the site. The outcome will only be known following gazettal

Chief Executive Officer
City of South Perth

DAP FORM 2 - NOS 12-16 (LOTS 151-153) CHARLES STREET, SOUTH PERTH - REQUEST FOR EXTENSION OF TIME

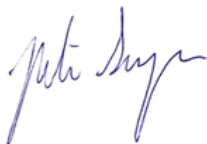
of the amendment and therefore any changes to the planning provisions should only be enforced at gazettal.

- The Deemed Provisions under Clause 67 identifies the matters to be considered by the determining authority when considering applications and includes consideration of amendments following advertising. This does not require compliance with the amendment but only consideration and it is our view that the current design is an appropriate design response to the site, which achieves the objectives of the Station Precinct. To require a redesign would be significantly onerous.
- The intent of the precinct is to attract commercial development to support the proposed train station. At present, the design of the development is attractive and consistent with the surrounding area. To alter the development and adjust any setbacks would alter the vision of the development and prove difficult to achieve a viable commercial development.
- The five year approval is requested as the current commercial office market is very challenging and it may take time to attract a commercial tenant. Construction cannot commence until a commercial tenant has committed to the site and without the extension, the current negotiations with tenants would be problematic.

The proposed extension will not undermine the planning process and will assist the landowner to attract a quality tenant.

We look forward to your favourable consideration of this DAP Form 2 application. Should you have any questions or require any additional information, please do not hesitate to contact the undersigned on 0411 445 031 or peter@ptsplanning.com.au.

Yours sincerely
PTS Town Planning Pty Ltd

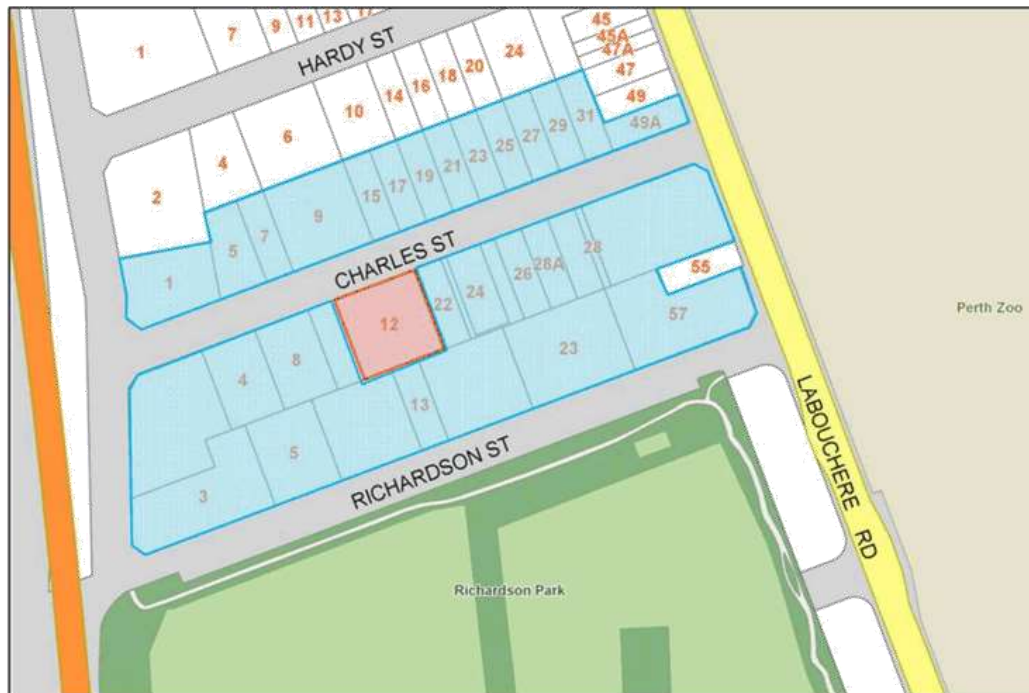


Peter Simpson
Director

Public Consultation

Public consultation has been undertaken for this proposal to the extent and in the manner required by City Policy P301 'Consultation for Planning Proposals'. Under the "Area 2" consultation method, individual property owners and occupiers were invited to inspect the plans and to submit comments, during a minimum 21-day period.

A total of 139 consultation notices were sent, with 12 submissions received, 6 supporting the proposal and 6 objecting to the proposal. The map below shows the distribution of the mailed consultation notices:



** Owner or occupier of an adjoining property*

Submission 1 (Occupier – Charles Street)*

In accordance with the councils' recommendations for Amendment No. 46 regarding a 2 metre setback the current plans for 12 Charles Street, South Perth have a nil setback. On the basis that the Amendment No. 46 proposals are enacted it would be necessary for 12 Charles Street to re-design the 'podium section' of the building to conform to a synergy of line-of-sight building setbacks with other Charles Street future developments and also have a 2 metre setback.

Given Amendment No. 46 is currently not enacted and final building requirements known it would seem that the current development approval should lapse until the final outcomes are known.

Submission 2 (Owner/occupier – Charles Street)

I am writing to you in regard to the request for an extension of the validity of the Planning approval for an additional 5 years to 15 August 2021 to the owners of the above mentioned property.

I object to the extension as this sets a dangerous precedent for developers to just come in and do as they please. Surely the original approval would have been granted with strict conditions applying to ensure the aesthetics of the immediate area are not adversely impacted.

We already have another stalled project at Richardson One that has now turned into an abandoned site and a target for vandalism and graffiti. Currently the fence has been destroyed and opened for easy access by children to a dangerous construction site.

I believe these projects were approved by the Metro Central Joint Development Assessment Panel and outside the original SPCC Town Planning scheme that ratepayers were asked to participate in. What a waste of time if then the ratepayers wishes are ignored and parts of our suburb are now turning into a wasteland.

This request should be denied and the original approval be overturned and any future plans for the site restricted to the guidelines of the SPCC Town Planning Scheme otherwise future development requests will turn into a free-for-all. In the meantime we are left with a weed strewn vacant block of land that could attract all sorts of undesirables including vermin.

Submissions 3-8 (Owner– Labouchere Road and Richardson Street)

Further to your recent correspondence concerning the above project, please be advised we have no objection to the above approval being given to commence development being extended by 5 years to the 15th August, 2021.

The current economic climate requires property owners/developers to extend their commencement date of projects.

This approval should be granted to ensure the South Perth area becomes a new and modern precinct accommodating both residents and the business community.

Submission 9 (Owner – Richardson Street)*

We, as owners of [unit and street number] Richardson Street, would like to advise of our objection to the extension of the current planning approval for development at 12 Charles Street.

As residential neighbours to the south side we feel a nine-storey block of units will adversely affect us in several ways, including diminished sunlight & increased shading & adverse visual impact, with potential for increased noise.

We hope you will take our views into consideration.

Submission 10 (Owner/occupier – Charles Street)

I recently received a notice from the CoSP, advising of a request to further extend the development approval for 12 - 16 Charles Street, South Perth by a period of 5 years. The following is my submission AGAINST this request.

As a matter of history, the Development Assessment Panel (DAP) has already granted a one-year extension to the original two-year development approval. In that three year period, the applicant has done nothing except bulldoze the three buildings that were on these properties.

During that three-year period, residents have had to put up with an unsightly wire fence, weeds, and anti-social behaviour. The anti-social behaviour includes graffiti, illegal dumping, and illegal parking on both the verge and vacant block. I have attached photographs showing a small sample of these activities.

In addition, the planning regulations have not stood still during this three-year period. The CoSP has responded to community concerns about certain aspects of Town Planning Scheme 6 (TPS6), and has unanimously approved Amendment 46 after an extensive consultation process. This amendment is currently with the Western Australian Planning Commission (WAPC), and it is anticipated that it will be gazetted shortly.

Amendment 46 contains changes that are directly relevant to this development application. Most notably, the requirement for a two-metre front-setback in Charles Street, and the provisions for additional front and side setbacks where the amenity of neighbouring residents are adversely affected.

The DAP has the power to refuse this extension request, under clause 77(4)(c) of Part 2 of the Planning and Development (Local Planning Schemes) Regulations 2015.

In addition, clause 77(2)(a) states that an amended development application should be dealt with "as if it were an application for development approval". Clause 67(b) of this document states that amendments to the TPS must be given due regard. As such, Amendment 46 must be given due regard in this case.



The applicant's request for a five-year extension is a cynical attempt to inoculate themselves against the gazettal of Amendment 46.

The fairest course of action is to await the outcome of the Amendment 46. Otherwise there is a significant risk that the building will conflict with the rest of the buildings in the street. The fact that the applicant is requesting a five-year extension is a reflection of the current state of the commercial property market. It is highly unlikely that they will secure a tenant in the next six-months, and the outcome of Amendment 46 should be known sooner than that. If Amendment 46 is not gazetted in its current form, there is nothing to stop the applicant from re-submitting their existing proposal at that time.

A title search on 14 Charles Street (the middle property in the proposed development) shows that the property was purchased in February 2008. This is almost five-years before the gazettal of Amendment 25. As such, the developer does not stand to lose money on this block. They have already had a significant windfall as a result of Amendment 25 being approved. The vast majority of the benefits to the developer are retained in Amendment 46. I've attached a copy of the title for 14 Charles Street, showing the purchase date.

The applicant does not deserve another extension to their development application. They have done nothing with their block since the last extension was granted. In the meantime, it is an eyesore and an attractor for anti-social behaviour.

I therefore ask that the Council recommend this extension request be REJECTED.

	<table border="1" style="margin: auto;"> <tr> <td colspan="2">REGISTER NUMBER 152/P1586</td> </tr> <tr> <td style="text-align: center;">DUPLICATE EDITION 1</td> <td style="text-align: center;">DATE DUPLICATE ISSUED 20/7/2005</td> </tr> </table>	REGISTER NUMBER 152/P1586		DUPLICATE EDITION 1	DATE DUPLICATE ISSUED 20/7/2005
REGISTER NUMBER 152/P1586					
DUPLICATE EDITION 1	DATE DUPLICATE ISSUED 20/7/2005				
WESTERN AUSTRALIA					
RECORD OF CERTIFICATE OF TITLE UNDER THE TRANSFER OF LAND ACT 1893					
VOLUME 2075 FOLIO 547					
<p>The person described in the first schedule is the registered proprietor of an estate in fee simple in the land described below subject to the reservations, conditions and depth limit contained in the original grant (if a grant issued) and to the limitations, interests, encumbrances and notifications shown in the second schedule.</p>					
 REGISTRAR OF TITLES					
LAND DESCRIPTION:					
LOT 152 ON PLAN 1586					
REGISTERED PROPRIETOR: (FIRST SCHEDULE)					
BROADWAY PTY LTD OF SUITE 2, 23 RICHARDSON STREET, SOUTH PERTH (T K521389) REGISTERED 28 FEBRUARY 2008					
LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS: (SECOND SCHEDULE)					
<p>Warning: A current search of the sketch of the land should be obtained where detail of position, dimensions or area of the lot is required. * Any entries preceded by an asterisk may not appear on the current edition of the duplicate certificate of title. Lot as described in the land description may be a lot or location.</p>					
-----END OF CERTIFICATE OF TITLE-----					
STATEMENTS:					
<p>The statements set out below are not intended to be nor should they be relied on as substitutes for inspection of the land and the relevant documents or for local government, legal, surveying or other professional advice.</p>					
SKETCH OF LAND:	2075-547 (152/P1586).				
PREVIOUS TITLE:	1290-641.				
PROPERTY STREET ADDRESS:	14 CHARLES ST, SOUTH PERTH.				
LOCAL GOVERNMENT AREA:	CITY OF SOUTH PERTH.				
NOTE 1:	DUPLICATE CERTIFICATE OF TITLE NOT ISSUED AS REQUESTED BY DEALING J906484.				
LANDGATE COPY OF ORIGINAL NOT TO SCALE Sat May 25 09:33:10 2013 JOB 41897110					



Submission 11 (Owner/occupier – Charles Street)

We are the owners of [unit and street number] Charles St South Perth and we have been given the opportunity to comment on the application for an extension of the approval for an additional 5 years of 12 Charles St South Perth. We would like to urge the City of South Perth to refuse this extension application.

The Applicant for the development proposed for 12 Charles St South Perth has already has an extension granted from their original approval in 2013. No significant work has commenced since then and we feel that an additional extension is unwarranted. As the South Perth Council has amended some of the rules relating to building regulation since this proposal was granted we feel that this development should have to meet the new requirements particularly if building is not going to proceed for a number of years.

Surely if the developer was genuinely planning to build on this site some type of work would have already begun as the plans were approved in 2013. If the developer of this site gets an approval extension until 2021 using the existing plans then he could possibly on sell this project to a new developer who would otherwise not be able to get the same conditions since the Council has amended their building regulations. Thus the current developer could profit from this without actually building on this site and the new developer would not have the benefit of not having to meet present regulations.

Submission 12 (Owner/occupier – Charles Street)

Reference is made to your letter, recently received, regarding the application to extend the validity of the planning approval for the above property.

We understand that this application is for an extension of an additional 5 years to 15 August 2021.

We wish to object in the strongest possible terms to this proposal. The property in question is an abandoned, derelict site that has already been granted a 12 months extension. This proposal is clearly being put forward to avoid the consequences of Amendment 46 which has been unanimously supported by the Council of South Perth. To grant the extension now requested would reflect adversely on the City and the DAP.

We sincerely request that this application be rejected.

