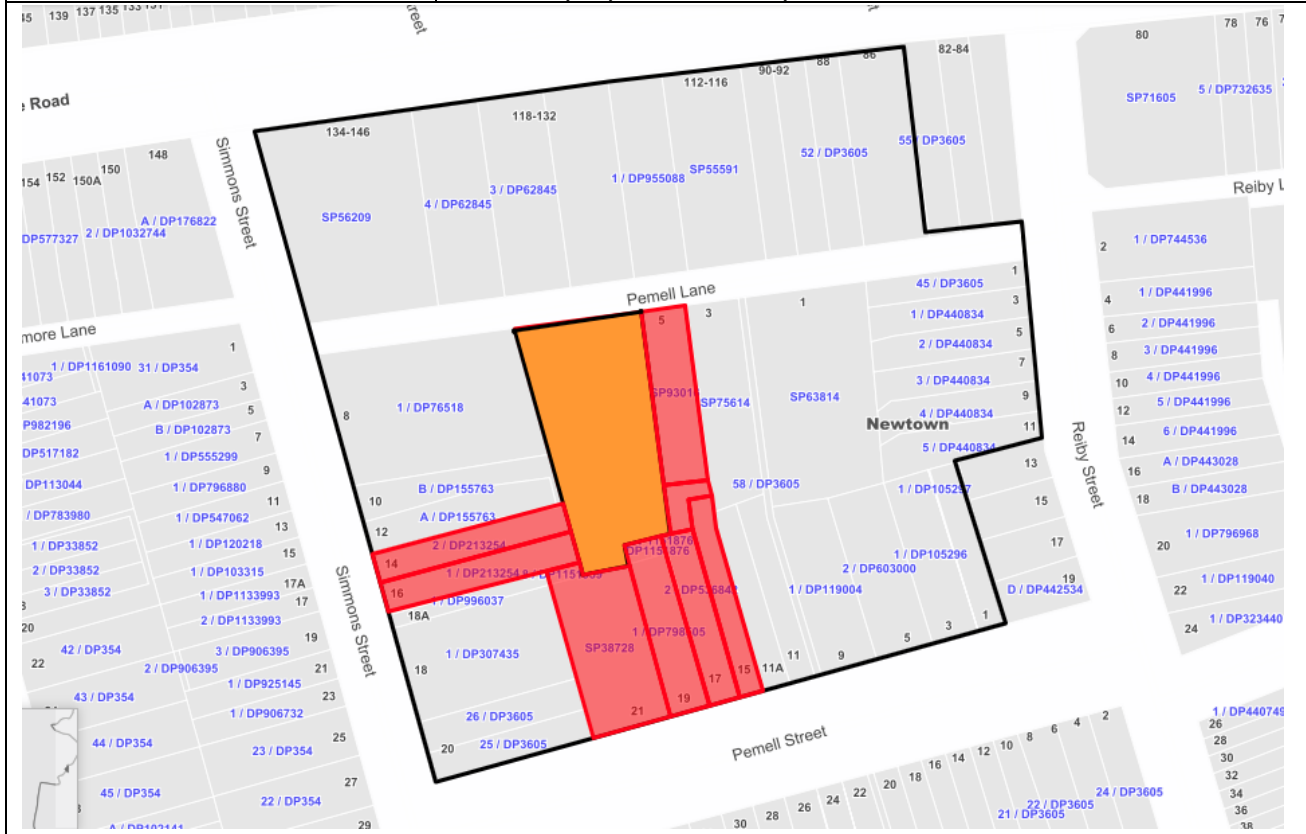






INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA201900342
Address	7-9 Pemell Lane NEWTOWN NSW 2042
Proposal	To demolish part of the premises and construct an additional storey above the existing townhouses
Date of Lodgement	16 October 2019
Applicant	Peter O'Shea Projects
Owner	Registered Proprietors Of Sp 45436
Number of Submissions	10
Value of works	\$916,000.00
Reason for determination at Planning Panel	Number of submissions
Main Issues	Overshadowing
Recommendation	Approval with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for to demolish part of the premises and construct an additional storey to each dwelling above the existing townhouses at 7-9 Pemell Lane, Newtown.

The development satisfies the definition of existing use under Part 4.65 of the Environmental Planning & Assessment Act 1979. As the development benefits from existing use rights, the development standards contained within Marrickville Local Environmental Plan 2011 (MLEP 2011) and the planning controls contained in Marrickville Development Control Plan 2011 (MDCP 2011) do not strictly apply to the proposal.

The development generally complies with the objectives of Council's controls and is in keeping with the character of the surrounding area, as well as being consistent with the Planning Principle for Existing Use Rights. Therefore, the application is recommended for approval.

2. Proposal

The proposal includes alterations and additions to an existing multi dwelling housing development to add an additional storey to each dwelling. Minimal changes are proposed to the existing structure with the exception of internal reconfigurations to accommodate stairs. The works include the following:

- Ground floor works including new front boundary fencing;
- First floor works including internal alterations to all dwellings to accommodate new stairs. Dwellings 3 and 4 include complete enclosure of the first floor balconies and dwellings 1, 2, 5 and 6 include partial enclosure of the balconies; and
- Addition of a second floor level to all dwellings to accommodate additional bedrooms and bathrooms.

3. Site Description

The subject site is located on the southern side of Pemell Lane, between Reiby Street and Simmons Street, Newtown. The site is legally described as Strata Plan 45436 and the development includes all 6 lots in the Plan. The site has a 23.1 metre frontage to Pemell lane, a depth of approximately 47.4 metres and is 884sqm in area.

The site contains a two storey multi dwelling housing development containing 6 dwellings and vehicular access is provided from Pemell Lane to the north.

Surrounding land uses to the west, south and east are predominantly single and 2 storey dwelling houses with some residential flat buildings. Land uses to the north contain 2 and 3 storey mixed use developments fronting the Enmore Road commercial strip.

The property is located within a Heritage Conservation Area under MLEP 2011 (Enmore-Newtown Heritage Conservation Area - HCA 12).

(i) Environmental Planning and Assessment Act 1979

Division 4.11 (Part 4.65 – 4.68) of the Environmental Planning and Assessment Act 1979 contains provisions that provide a framework for the definition of an ‘existing use’ and provides further limitations and regulation for the continuation and development of existing uses.

Firstly, Part 4.65 of the Act provides a definition of an existing use. In plain terms an existing use is defined in the following manner:

- It is a use that was lawfully commenced
- It is a use that is currently prohibited
- It is a use that has not been abandoned since the time that it became a prohibited use

The applicant has supported the application with discussion and documentation to demonstrate the site benefits from existing use rights and that the use has not been abandoned. The main points are summarised below:

- Multi-dwelling housing development containing 6 two-bedroom townhouses was approved on the site as part of Determination No. 12766, dated 12 December 1989 and therefore the use of the site for multi-dwelling housing is a lawfully approved use;
- The use became a prohibited use with the gazettal of MLEP 2011 on 12 December 2011.
- The site is currently being used for multi-dwelling housing and has not been abandoned since the gazettal of MLEP 2011.

As a result, it is considered the prohibited use on the site meets the definition of an “**existing use**” under Clause (Cl.) 4.65 of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979).

It is noted that Part 4.67(3) of the Act specifies that:

“An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force”.

As such, the provisions contained in MLEP 2011 that seek to derogate do not apply to the development. Rather, Division 4.11 of the Act services to enable the continuation of an existing use and refers to the relevant regulations (*Environmental Planning and Assessment Regulation 2000*) with respect to the premises being enlarged, expanded or intensified; or being altered or extended for the existing use

(ii) Environmental Planning and Assessment Regulation 2000

Clauses 41-43 of the EP&A Regulations 2000 are relevant to the development as they set out the matters for consideration for enlargement, expansion or intensification of existing uses and the consent requirements for alterations and additions to an existing use.

The proposal involves alterations to an existing multi dwelling housing development which is permitted by Clause 41(1) of the EP&A Regulations 2000.

The development includes alterations and additions to the dwelling to provide an expanded first floor level and additional second floor level, being an enlargement of the existing use. This enlargement, expansion or intensification relates to the existing use being carried out only on the land to which the use applies and Clause 42 is therefore satisfied.

The proposed works would be related to the existing use, thereby satisfying Clause 43(2) of the EP&A Regulations 2000.

(iii) Land and Environment Court Planning Principles – Existing Use Assessments

In Land and Environment Court proceedings *Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71 at 17*, Senior Commissioner Roseth established a planning principle for the assessment of existing use rights. The 'Redevelopment – existing use rights and merit assessment' Planning Principle developed as a result of that judgement is used hereunder to assess the merits of the development, specifically paragraph 17 which is reproduced below:

"17 Four questions usually arise in the assessment of existing use rights developments, namely:"

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

The surrounding sites to the north, west, south and east are mixed in nature and scale, and include shop top housing developments to the north fronting Enmore Road, low density residential accommodation to the west fronting Simmons Street, generally low density residential to the south fronting Pemell Street with the exception of the site immediately south which contains a residential flat building, and a number of high density residential developments to the east fronting Pemell Lane of a similar scale and nature.

A maximum building height of 14 metres applies to the land under Clause 4.3 of MLEP 2011. The sites to the north fronting King Street, the site directly to the south, and the site directly to the east all share a 14 metre HOB limit and this reflects the stepping down of building scale from Enmore Road to the low density nature of the area to the south. The majority of the block surrounding the subject site to the east, south and west has a 9.5m HOB standard.

The development has a maximum building height of 9.7 metres which is consistent with what could be expected on neighbouring sites and is significantly below the 14 metre height limit applying to the subject site.

The site is afforded an FSR of 0.6:1 in accordance with Clause 4.4 in MLEP 2011. The proposed FSR is 0.86:1 (764sqm) on the 884sqm site.

The sites directly to the north of the site fronting King Street are afforded an FSR of 1.5:1. Surrounding sites to the west, south and east also have a maximum permissible FSR of 0.6:1. Given that they all generally appear to accommodate dwelling houses or semi-detached dwellings, the FSR bonuses under Clause 4.4(2A) would be applicable and the relevant FSR would range between 0.5:1 and 1.1:1 depending on the size of the allotment. It is also noted that a residential flat development on the subject site would benefit from the FSR bonus under Clause 4.4(2B) and would therefore enjoy an FSR of up to 0.85:1.

Considering the provisions of Clause 4.4, as well as 4.4(2A) and 4.4(2B) of MLEP 2011, it is considered that the development provides an FSR that would be consistent with a permissible form of development on the site, being any form of residential accommodation given the R4 zoning. The bulk and scale of the development when considered in respect of the height and FSR standards for the site is consistent with what would be permissible on neighbouring sites and provides an appropriate transition in scale from Enmore Road to the north to the low

density residential to the south, west and east.

The development provides side setbacks which would comply with Council's controls for multi dwelling housing and residential flat building as contained within Part 4.2.4.2 of MDCP 2011. The development provides a western side boundary setback that ranges from 4.5 metres at the narrow end in the south western corner to 6.3 metres in the north western corner and the development provides a minimum 6.1 metre setback along the length of the eastern side boundary. The proposed side boundary setbacks on the upper level would exceed those required for the surrounding low density residential accommodation.

In conclusion, the development provides a bulk and scale (as expressed by height, floor space ratio and setbacks) that is comparable to what would be permissible on surrounding sites and is acceptable in this regard.

2. What is the relevance of the building in which the existing use takes place?

The existing building on site is a multi dwelling housing development (townhouses). The existing building on site is already used for the proposed use and the development seeks to continue that use.

3. What are the impacts of the development on adjoining land?

The development has minimal impact on adjoining land. An assessment of the proposal in accordance with the controls contained in MDCP 2011 identifies that the proposal is generally acceptable in relation to protecting the amenity of the adjoining development in relation to solar access and overshadowing, visual privacy, and bulk and scale. The matters of solar access and visual privacy are discussed later in this report under the provisions of Parts 2.6 and 2.7 of MDCP 2011 respectively.

4. What is the internal amenity?

The development incorporates suitably sized internal spaces and facilities which result in acceptable internal amenity for this use.

Concluding remarks

The proposal has been assessed against the planning principles established by the NSW Land and Environment Court in relation to existing use rights. The proposal is unlikely to have any unreasonable impacts upon adjoining properties or the streetscape.

5(a) Environmental Planning Instruments

The application has been assessed against the relevant Environmental Planning Instruments listed below:

- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Marrickville Local Environment Plan 2011 (MLEP 2011)*

The following provides further discussion of the relevant issues:

5(a)(i) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was submitted with the application and will be referenced in any consent granted.

5(a)(ii) Marrickville Local Environment Plan 2011 (MLEP 2011)

The application was assessed against the following relevant clauses of the *Marrickville Local Environmental Plan 2011*:

- Clause 1.2 - Aims of the Plan
- Clause 2.3 - Zone objectives and Land Use Table
- Clause 2.7 - Demolition
- Clause 4.3 - Height of buildings
- Clause 4.4 - Floor space ratio
- Clause 5.10 - Heritage Conservation
- Clause 6.5 - Development in areas subject to aircraft noise

The following table provides an assessment of the application against the development standards, notwithstanding that the site benefits from existing use rights:

Standard	Proposal	Variation	Complies
Height of Building Maximum permissible: 14m	9.7 m	N/A	Yes
Floor Space Ratio Maximum permissible: 0.6:1	0.86:1	44%	No

(i) Clause 2.3 - Land Use Table and Zone Objectives

The site is zoned R4 High Density Residential under the *MLEP 2011*. The *MLEP 2011* defines the development as multi-dwelling housing. The development is prohibited in the zone, by virtue of it being a form of *residential accommodation* not specifically permitted with consent within the land use table.

Notwithstanding, based on Council's records, a multi-dwelling housing development containing 6 two-bedroom townhouses was approved on the site as part of Determination No. 12766, dated 12 December 1989. The use of the site for multi-dwelling housing was a lawfully approved use and has not been abandoned in the time since it became a prohibited use with the gazettal of MLEP 2011 on 12 December 2011. As a result, it is considered the prohibited use on the site meets the definition of an "**existing use**" under Clause (Cl.) 4.65 of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979). The matter of existing use rights has been discussed in more detail earlier in this report.

The proposal is consistent with the relevant objectives of the zone, as it will assist to provide for the housing needs of the community within a high density residential environment.

(ii) Clause 2.7 – Demolition

Clause 2.7 of MLEP 2011 states that the demolition of a building or work may be carried out only with development consent. The application seeks consent for demolition works. Council's standard conditions relating to demolition works are included in the recommendation.

(iii) Clause 4.3 - Height of buildings

The site is located in an area where the maximum height of buildings is 14 metres as indicated on the Height of Buildings Map that accompanies MLEP 2011. The development has a height of approximately 9.7 metres, which complies with the height development standard.

(iv) Clause 4.4 - Floor space ratio

The site is located in an area where the maximum floor space ratio is 0.6:1 as indicated on the Floor Space Ratio Map that accompanies MLEP 2011.

The property has a site area of 884sqm. The development has a GFA of 764sqm and an FSR of 0.86:1 which does not comply with the FSR development standard. Notwithstanding, the development enjoys existing use rights as been discussed in more detail earlier in this report.

(v) Clause 5.10 - Heritage Conservation

The property is located within a Heritage Conservation Area under MLEP 2011 (Enmore-Newtown Heritage Conservation Area - HCA 12).

The site is also located adjacent to a number of heritage items identified under MLEP 2011, namely:

- Item I186 - *Italianate style villa "Butleigh", including interiors* located directly to the west of the site at No. 8 Simmons Street;
- Item I151 – *Enmore Theatre, including interiors* located directly to the north of the site at No 118 Enmore Road;
- Item I150 - *Stanmore House (at rear), including interiors* located to the north east of the site at No. 90 Enmore Road; and
- Item I169 - *Victorian Italianate style villa "Yarrowa", including interiors* located directly to the south west of the site at No. 18 Simmons Street;

The application was referred to Council's Heritage Advisor who raised no concern with the development. The existing building on the site is not considered to be contributory to the HCA and the works will not have a detrimental impact to the heritage significance of the HCA or the nearby heritage items. The development is acceptable having regard to Clause 5.10 of MLEP 2011 and the relevant provisions of Part 8 of MDCP 2011.

(vi) Clause 6.5 - Development in areas subject to Aircraft Noise

The property is located within the 20-25 Australian Noise Exposure Forecast (2033) Contour and therefore the development is likely to be affected by aircraft noise.

The development would need to be noise attenuated in accordance with AS2021:2015. An Acoustic Report did not accompany the application. The development could be noise attenuated from aircraft noise to meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS2021:2015. Conditions are included in the recommendation to ensure that the development is appropriately noise attenuated.

5(b) Draft Environmental Planning Instruments

The application has been assessed against the relevant Draft Environmental Planning Instruments listed below:

5(b)(i) Draft Marrickville Local Environmental Plan 2011 (Amendment 4)

Draft Marrickville Local Environmental Plan 2011 (Amendment 4) (the Draft LEP Amendment) was placed on public exhibition commencing on 3 April 2018 and accordingly is a matter for consideration in the assessment of the application under *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979*.

The amended provisions contained in the Draft LEP Amendment are not relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft LEP Amendment.

5(b)(ii) Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979*.

The amended provisions contained in the Draft IWLEP 2020 are not relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

5(d) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Marrickville Development Control Plan 2011.

The following provides discussion of the relevant issues:

MDCP 2011 Part of MDCP 2011	Compliance
Part 2.1 – Urban Design	Yes
Part 2.3 – Site and Context Analysis	Yes
Part 2.6 – Acoustic and Visual Privacy	Yes – see discussion
Part 2.7 – Solar Access and Overshadowing	Yes – see discussion
Part 2.9 – Community Safety	Yes
Part 2.10 – Parking	Yes
Part 2.11 – Fencing	Yes
Part 2.16 – Energy Efficiency	Yes
Part 2.18 – Landscaping and Open Space	Yes
Part 2.20 – Tree Management	Yes
Part 2.21 – Site Facilities and Waste Management	Yes
Part 2.25 – Stormwater Management	Yes
Part 4.2 – Multi Dwelling Housing and Residential Flat Buildings	Yes
Part 8 – Heritage	Yes
Part 9 – Strategic Context	Yes

The following provides discussion of the relevant issues:

- (i) Part 2.6 – Acoustic and Visual Privacy

The layout and design of the development maintains adequate levels of acoustic and visual privacy for the surrounding residential properties and ensures an adequate level of acoustic and visual privacy for future occupants of the development.

The works to the first floor level include a number of new bedroom windows and the enclosure of a number of first floor balconies. The enclosure of the existing first floor balconies and replacement with windows in these locations is considered to be an improved outcome in

regard to visual and acoustic privacy. All first floor windows include external blinds to mitigate privacy concerns.

All new windows on the second floor level service low activity rooms, being bedrooms, wardrobes, stairs, bathrooms or study areas, and therefore no concern is raised in relation to visual privacy.

Given the above the development is reasonable having regard to the objectives and controls relating to visual and acoustic privacy as contained in MDCP 2011.

(ii) Part 2.7 – Solar Access and Overshadowing

The applicant submitted shadow diagrams with the application. The shadow diagrams illustrate that the solar access to adjoining properties will not be significantly adversely impacted upon by the carrying out of the development. The shadow diagrams show the impact of the development on the dwellings to the west fronting Simmons Street, the south fronting Pemell Street and the development at No. 5 Pemell Lane.

Additional shadow analysis and amended plans were submitted to Council on 26 April 2020. The amended plans made the following modifications to the design:

- Increased western side boundary setback from 3.81 metres to minimum 4.51 metres;
- Reduced maximum ridge height from RL 38.5 to RL 37.6, a reduction of 900mm;
- Reduced western wall height of second floor from 2.35m to 2.16m; and
- Reduced eastern wall height of second floor from 2.5m to 2.27m.

The amended plans resulted in improved outcomes regarding overshadowing and visual bulk and therefore were not required to be renotified in accordance with Council's Policy.

The shadow diagrams indicate that the development complies with Council's controls in that all private open space areas and rear facing glazing to the dwellings at Nos. 8-20 Simmons Street and Nos. 11A-21 Pemell Street will continue to receive a minimal 2 hours of direct solar access in mid-winter and will not be significantly impacted on by the carrying out of the development.

The development will cast some additional shadow over the private open space areas of the adjoining development to the west at No. 5 Pemell Lane at 3:00pm in mid-winter.

Notwithstanding the above, Control C2 of Part 2.7.3 of MDCP 2011 prescribes the following additional merit-based controls in relation to overshadowing:

C2ii. ... however, if the development proposal results in a further decrease in sunlight available on 21 June, Council will consider:

- a. The development potential of the site;
- b. The particular circumstances of the neighbouring site(s), for example, the proximity of any residential accommodation to the boundary, the resultant proximity of windows to the boundary, and whether this makes compliance difficult;
- c. Any exceptional circumstances of the subject site such as heritage, built form or topography; and
- d. Whether the sunlight available in March to September is significantly reduced, such that it impacts upon the functioning of principal living areas and the principal areas of open space. To ensure compliance with this

control, separate shadow diagrams for the March/September period must be submitted in accordance with the requirements of C1;

Having regard to Control C2(ii)a, when considering the overshadowing impact of the development, it is prudent to consider the development potential of the site. The development has a maximum height of 9.7 metres which is well below the 14 metre height development standard prescribed by Clause 4.3 of MLEP 2011 and the side and rear boundary setbacks exceed the controls prescribed by Part 4.2 of MDCP 2011. The overshadowing impacts as a result of the development are not considered to be significant and are consistent with impacts that could reasonably be expected when considering the development potential of the site.

Given the above, the development is acceptable having regard to Part 2.7 of MDCP 2011.

It is considered the application complies with the parts as indicated and ultimately achieves the aims and objectives of the Marrickville Development Control Plan 2011.

It is considered that the proposal will have no significant detrimental effect relating to the environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

5(e) The Likely Impacts

The assessment of the Development Application demonstrates that, subject to the recommended conditions, the proposal will have minimal impact in the locality.

5(f) The suitability of the site for the development

Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

5(g) Any submissions

The application was notified in accordance with Marrickville Development Control Plan 2011 for a period of 14 days to surrounding properties and 9 submissions were received.

The following issues raised in submissions have been discussed in this report:

- The increase in bulk and scale from the development
- Excessive building height/overdevelopment
- Increased overshadowing
- Heritage conservation

In addition to the above issues, the submissions raised the following concerns which are discussed under the respective headings below:

Issue: Impact on availability of parking

Comment: The existing development provides for 2 car parking spaces per dwelling and notwithstanding the additional bedroom being provided to each dwelling, the proposal will maintain compliance with Council's car parking controls contained in Part 2.10 of MDCP 2011.

All relevant matters raised in the submissions able to be considered under the provisions of Section 4.15 of the Environmental Planning and Assessment Act have been discussed in the report.

5(h) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

The proposal is not considered to be contrary to the public interest.

6 Referrals

6(a) Internal

The application was referred to the following internal referral bodies:

Referral body	Comments
Urban Design & Heritage	No objections raised.

7. Section 7.12 Levy

A Section 7.12 Levy of \$9,160.00 would be required for the development under Marrickville Section 94A Contributions Plan 2014. A condition requiring that levy to be paid is included in the recommendation.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained within the relevant environmental planning instruments and development controls plans.

The development will not result in any significant impacts on the amenity of the adjoining properties and the streetscape and is considered to be in the public interest.

The application is considered suitable for approval subject to the imposition of appropriate conditions.

9. Recommendation

- A That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. 201900342 for to demolish part of the premises and construct an additional storey above the existing townhouses at 7-9 Pemell Lane, Newtown subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

FEES

1. Section 7.12 (formerly section 94A) Development Contribution Payments

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that a monetary contribution to the Inner West Council has been paid, towards the provision of infrastructure, required to address increased demand for local services generated by additional development within the Local Government Area (LGA). This condition is imposed in accordance with Section 7.12 of the *Environmental Planning and Assessment Act 1979* and in accordance with *Marrickville Section 94/94A Contributions Plan 2014*.

Note:

Copies of these contribution plans can be inspected at any of the Inner West Council Service Centres or viewed online at <https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

Payment amount*:
\$9,160.00

*Indexing of the Section 7.12 contribution payment:

Former Ashfield LGA & Former Marrickville LGA:

The contribution amount to be paid to the Council is to be adjusted at the time of the actual payment in accordance with the provisions of the relevant contributions plan. In this regard, you are recommended to make contact with Inner West Council *prior to arranging your payment method* to confirm the correct current payment amount (at the expected time of payment).

Payment methods:

The required contribution must be paid either in cash; by unendorsed bank cheque (from an Australian Bank only); via EFTPOS (Debit only); or credit card (to a maximum of \$10,000 - Note: A 1% credit card transaction fee applies to all credit card transactions). It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. **The contribution must be paid either in cash, by unendorsed bank cheque (from an Australian Bank only), via EFTPOS (Debit only) or credit card*. Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.**

2. Long Service Levy

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more.

3. Security Deposit - Standard

Prior to the commencement of demolition works or issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused

to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit:	\$2,152.50
Inspection Fee:	\$230.65

Payment will be accepted in the form of cash, bank cheque, EFTPOS/credit card (to a maximum of \$10,000) or bank guarantee. Bank Guarantees must not have an expiry date.

The inspection fee is required for the Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

Should any of Council's property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council's assets or the environment at risk, or if any road, footpath or drainage works required by this consent are not completed satisfactorily, Council may carry out any works necessary to repair the damage, remove the risk or complete the works. Council may utilise part or all of the security deposit to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.

A request for release of the security may be made to the Council after all construction work has been completed and a final Occupation Certificate issued.

The amount nominated is only current for the financial year in which the consent was issued and is revised each financial year. The amount payable must be consistent with Council's Fees and Charges in force at the date of payment.

GENERAL CONDITIONS

4. Documents related to the consent

The development must be carried out in accordance with plans and documents listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DWG1 Rev. D	Site Plan	20 February 2020	Peter O'Shea
DWG2 Rev. D	Lower Ground Floor Plan	20 February 2020	Peter O'Shea
DWG3 Rev. D	Ground Floor Plan	20 February 2020	Peter O'Shea
DWG4 Rev. D	First Floor Plan	20 February 2020	Peter O'Shea
DWG5 Rev. D	Second Floor Plan	20 February 2020	Peter O'Shea
DWG6 Rev. D	Roof Plan	20 February 2020	Peter O'Shea
DWG7 Rev. D	W/E Elevations	20 February 2020	Peter O'Shea
DWG8 Rev. D	N/S Elevations	20 February 2020	Peter O'Shea
DWG9 Rev. D	Sections	20 February 2020	Peter O'Shea

A338440	BASIX Certificate Lot 1	3 September 2019	Peter O'Shea
A352661	BASIX Certificate Lot 2	3 September 2019	Peter O'Shea
A352675	BASIX Certificate Lot 3	3 September 2019	Peter O'Shea
A352678	BASIX Certificate Lot 4	3 September 2019	Peter O'Shea
A352681	BASIX Certificate Lot 5	3 September 2019	Peter O'Shea
A352683	BASIX Certificate Lot 6	3 September 2019	Peter O'Shea
Rev. D	Schedule of Finishes N/S Elevations	20 February 2020	Peter O'Shea
Rev. D	Schedule of Finishes W/E Elevations	20 February 2020	Peter O'Shea

As amended by the conditions of consent.

5. Waste Management Plan

Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan.

6. Erosion and Sediment Control

Prior to the issue of a commencement of any works (including any demolition works), the Certifying Authority must be provided with an erosion and sediment control plan and specification. Sediment control devices must be installed and maintained in proper working order to prevent sediment discharge from the construction site.

7. Standard Street Tree Protection

Prior to the commencement of any work, the Certifying Authority must be provided with details of the methods of protection of all street trees adjacent to the site during demolition and construction.

8. Works Outside the Property Boundary

This development consent does not authorise works outside the property boundaries on adjoining lands.

PRIOR TO ANY DEMOLITION

9. Construction Fencing

Prior to the commencement of any works (including demolition), the site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property.

PRIOR TO CONSTRUCTION CERTIFICATE

10. Structural Certificate for retained elements of the building

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a Structural Certificate prepared by a practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction. The certificate must also include all

details of the methodology to be employed in construction phases to achieve the above requirements without result in demolition of elements marked on the approved plans for retention.

11. Sydney Water – Tap In

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 13 20 92

12. Acoustic Report – Aircraft Noise

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans detailing the recommendations of an acoustic report prepared by a suitably qualified Acoustic Engineer demonstrating compliance of the development with the relevant provisions of Australian Standard AS 2021:2015 Acoustics – Aircraft noise intrusion – Building siting and construction.

DURING DEMOLITION AND CONSTRUCTION

13. Construction Hours – Class 2-9

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:

- a. 7:00am to 6:00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b. 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and
- c. at no time on Sundays or public holidays.

Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc. and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.

In the case that a standing plant or special out of hours permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.

This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving must be limited to:

- a. 8:00am to 12:00pm, Monday to Saturday; and
- b. 2:00pm to 5:00pm Monday to Friday.

The person acting on this consent must not undertake such activities for more than three continuous hours and must provide a minimum of one 2 hour respite period between any two periods of such works.

“Continuous” means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.

14. Stormwater Drainage System

Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines discharged by gravity to the kerb and gutter of a public road

Any existing component of the stormwater system that is to be retained, including any absorption trench or rubble pit drainage system, must be checked and certified by a Licensed Plumber or qualified practising Civil Engineer to be in good condition and operating satisfactorily.

If any component of the existing system is not in good condition and /or not operating satisfactorily and/or impacted by the works and/or legal rights for drainage do not exist, the drainage system must be upgraded to discharge legally by gravity to the kerb and gutter of a public road. Minor roof or paved areas that cannot reasonably be drained by gravity to a public road may be disposed on site subject to ensure no concentration of flows or nuisance to other properties.

15. Survey Prior to Footings

Upon excavation of the footings and before the pouring of the concrete, the Certifying Authority must be provided with a certificate of survey from a registered land surveyor to verify that the structure will not encroach over the allotment boundaries.

PRIOR TO OCCUPATION CERTIFICATE

16. Aircraft Noise –Alterations and Additions

Prior to the issue of any Occupation Certificate, the Principal Certifier must be provided with a report prepared and submitted by an accredited Acoustics Consultant certifying that the final construction meets AS2021-2015 with regard to the noise attenuation measures referred to in the “Before the Issue of a Construction Certificate” Section of this Determination. Such report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development.

Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a further certificate being prepared and submitted to the Principal Certifier in accordance with this condition.

17. Smoke Alarms - Certification of upgrade to NCC requirements

Prior to the issue of any Occupation Certificate, the Principal Certifier is required to be satisfied the existing building has been upgraded to comply with the provisions of the National Construction Code (Building Code of Australia) in relation to smoke alarm systems.

ADVISORY NOTES

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within clause 98-98E of the *Environmental Planning and Assessment Regulations 2000*.

Notification of commencement of works

At least 7 days before any demolition work commences:

- a. the Council must be notified of the following particulars:
 - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
 - ii. the date the work is due to commence and the expected completion date; and
- b. a written notice must be placed in the letter box of each directly adjoining property identified advising of the date the work is due to commence.

Storage of Materials on public property

The placing of any materials on Council's footpath or roadway is prohibited, without the prior consent of Council.

Toilet Facilities

The following facilities must be provided on the site:

- a. Toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees; and
 - b. A garbage receptacle for food scraps and papers, with a tight fitting lid.
- Facilities must be located so that they will not cause a nuisance.

Infrastructure

The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones respectively to the property. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be undertaken before occupation of the site.

Other Approvals may be needed

Approvals under other acts and regulations may be required to carry out the development. It is the responsibility of property owners to ensure that they comply with all relevant legislation. Council takes no responsibility for informing applicants of any separate approvals required.

Failure to comply with conditions

Failure to comply with the relevant provisions of *the Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.

Other works

Works or activities other than those approved by this Development Consent will require the submission of a new Development Application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Obtaining Relevant Certification

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):

- a. Application for any activity under that Act, including any erection of a hoarding;
- b. Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*;
- c. Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*;
- d. Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed;

- e. Application for Strata Title Subdivision if strata title subdivision of the development is proposed;
- f. Development Application for demolition if demolition is not approved by this consent;
- or
- g. Development Application for subdivision if consent for subdivision is not granted by this consent.

Disability Discrimination Access to Premises Code

The *Disability Discrimination Act 1992* (Commonwealth) and the *Anti-Discrimination Act 1977* (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.

Notification of commencement of works

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the PCA (not being the council) has given the Council written notice of the following information:

- a. In the case of work for which a principal contractor is required to be appointed:
 - i. The name and licence number of the principal contractor; and
 - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
- b. In the case of work to be done by an owner-builder:
 - i. The name of the owner-builder; and
 - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

Dividing Fences Act

The person acting on this consent must comply with the requirements of the *Dividing Fences Act 1991* in respect to the alterations and additions to the boundary fences.

Permits from Council under Other Acts

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the *Local Government Act 1993* and/or Section 138 of the *Roads Act 1993*. Permits are required for the following activities:

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;
- c. Mobile crane or any standing plant;
- d. Skip bins;
- e. Scaffolding/Hoardings (fencing on public land);
- f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;
- g. Awning or street verandah over footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. A lease fee is payable for all occupations.

Noise

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

Amenity Impacts General

The use of the premises must not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment must not give rise to the transmission of a vibration nuisance or damage other premises.

Dial before you dig

Contact "Dial Prior to You Dig" prior to commencing any building activity on the site.

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Payments Corporation	131441 www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406 www.foodnotify.nsw.gov.au
NSW Government	www.nsw.gov.au/fibro www.diysafe.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 www.environment.nsw.gov.au
Sydney Water	13 20 92 www.sydneywater.com.au
Waste Service - SITA Environmental Solutions	1300 651 116 www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)	www.waterrating.gov.au
WorkCover Authority of NSW	13 10 50 www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

Asbestos Removal

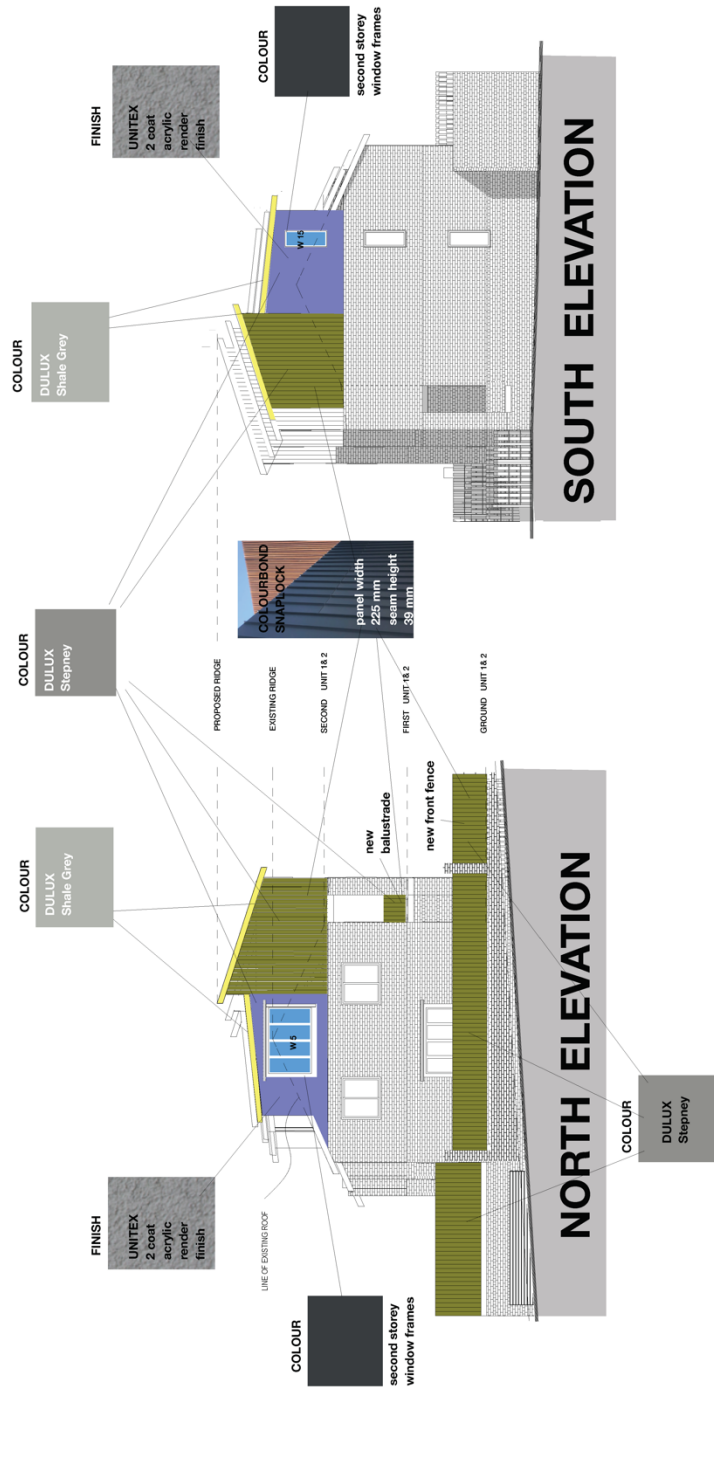
A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m² of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

Removal of friable asbestos material must only be undertaken by a contractor that holds a current Class A Friable Asbestos Removal Licence.

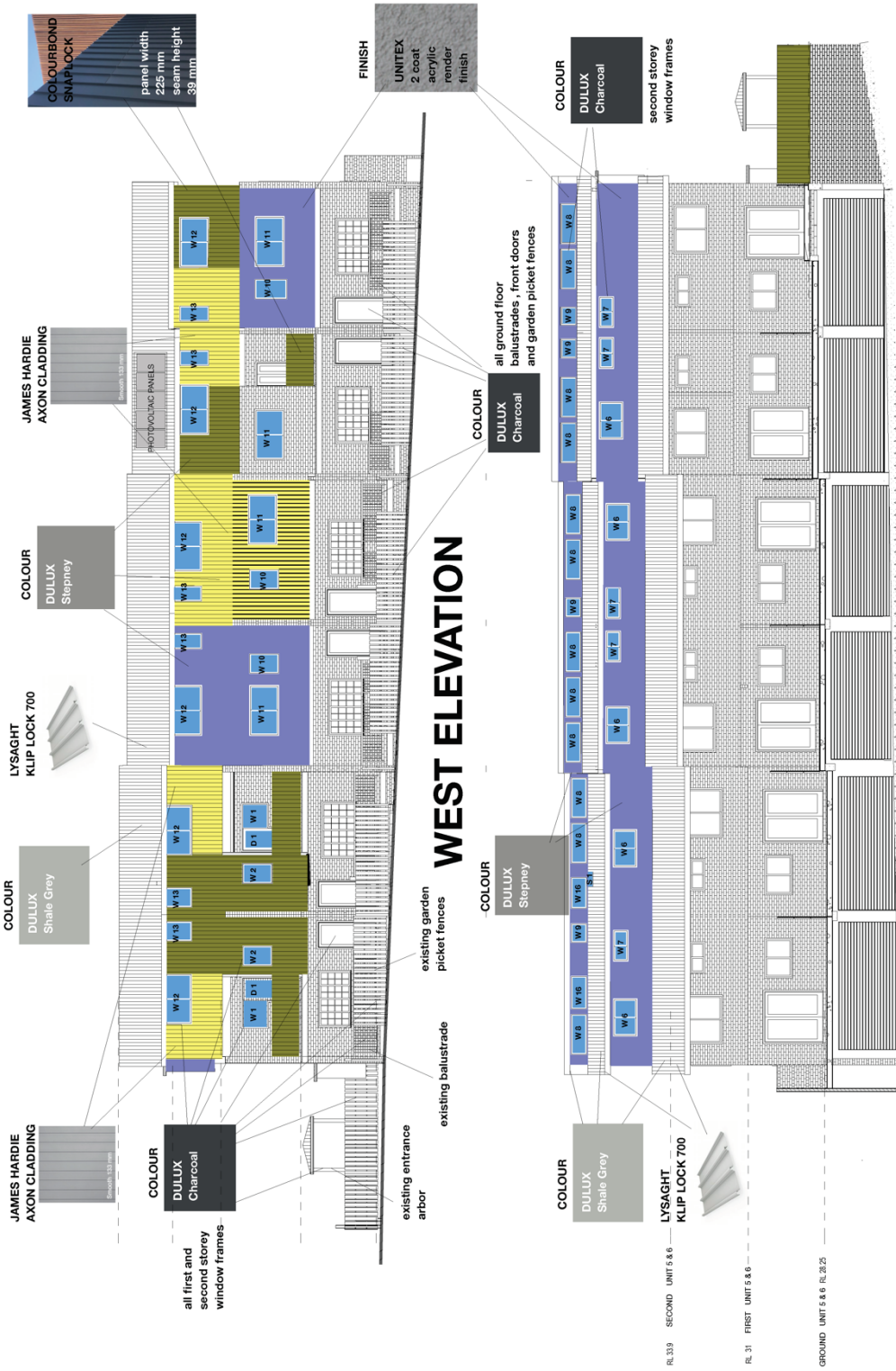
Demolition sites that involve the removal of asbestos must display a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.

All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2014. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

Attachment B – Plans of proposed development



<p>SCALE 1 : 100</p> <p>PETER O'SHEA PROJECTS <small>peter@osheaprojects.com.au mob: 0429 623279</small></p> <p>REV D 30.12.20 <small>FINISHES COORDINATION</small> <small>ITEM 1 PLAN 1&2</small></p>	<p>DA 7-9 PEMELL LN. NEWTOWN</p> <p>SCHEDULE OF FINISHES NORTH / SOUTH ELEVATIONS</p>
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WEST ELEVATION

EAST ELEVATION

NOTES :

- TIMBER FRAME CONSTRUCTION - WALL - CLAD IN METAL
- TIMBER FRAME CONSTRUCTION - RENDEROED MONOWALL PANELS
- TIMBER FRAME CONSTRUCTION - ROOF - CLAD IN METAL
- WINDOWS - GLASS TO BASIC
- WINDOWS - GLASS TO BASIX
- TIMBER FRAME CONSTRUCTION - VERTICAL WEATHERBOARD CLADDING

SCALE 1 : 100

DA 7-9 PEMELL LN . NEWTOWN

SCHEDULE OF FINISHES

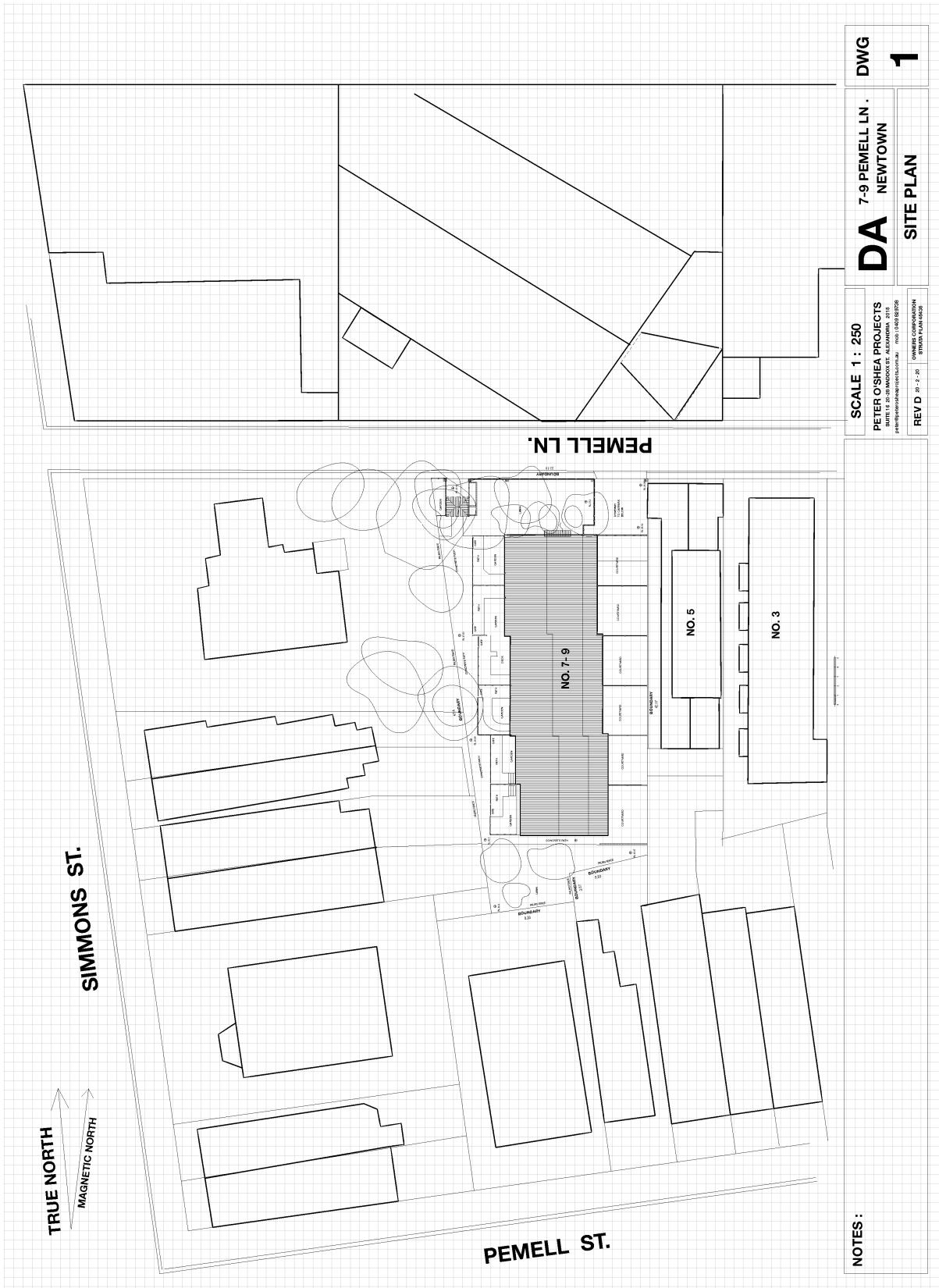
WEST / EAST ELEVATIONS

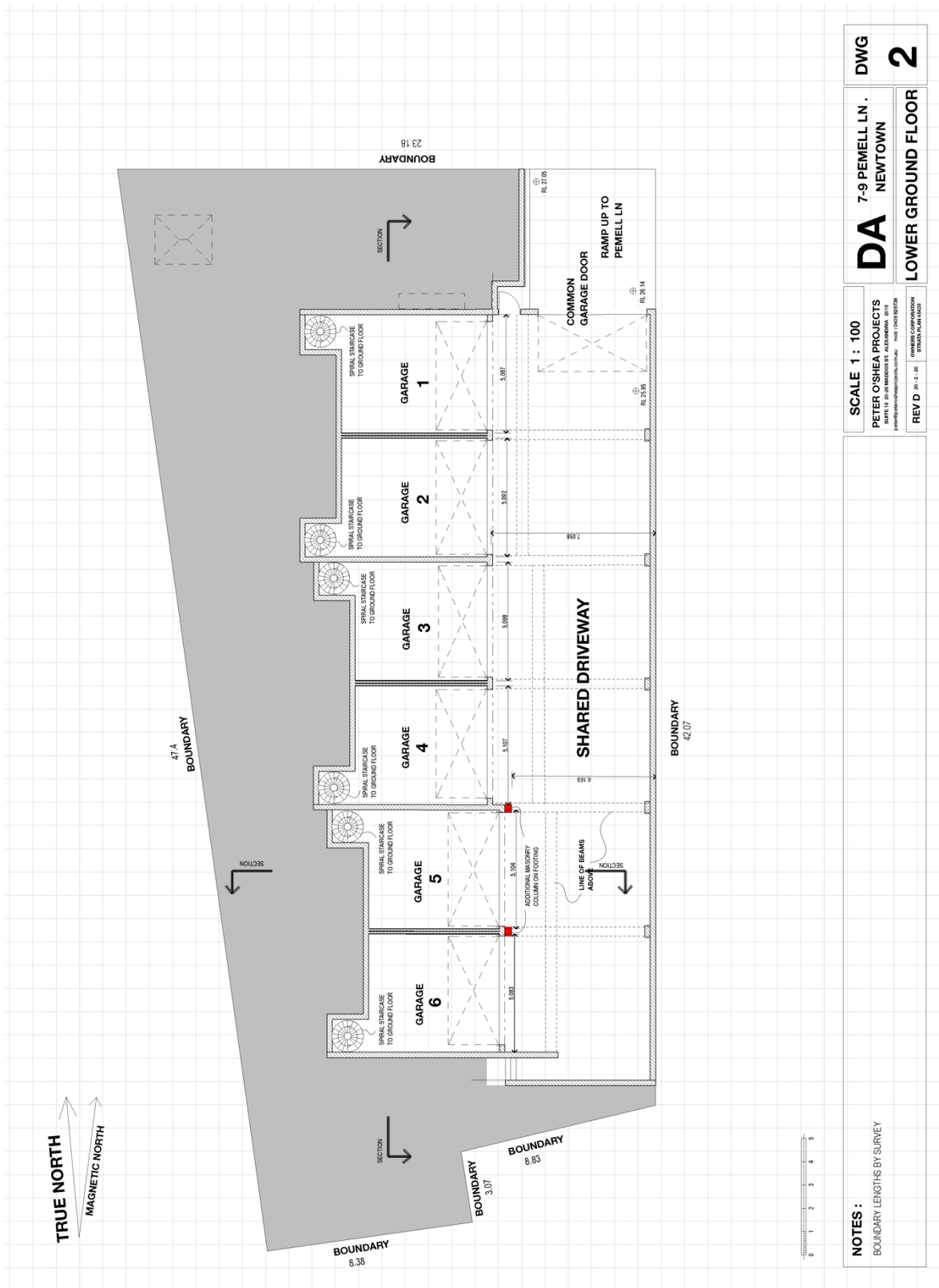
REV D 20.12.20

OWNER'S REPRESENTATION

STRATA PLAN 4004

PETER O'SHEA PROJECTS
 SUITE 10 20-28 MARSDEN ST. ALEXANDRIA NSW 1505
 peter@osheaprojects.com.au mob: 0800 687076





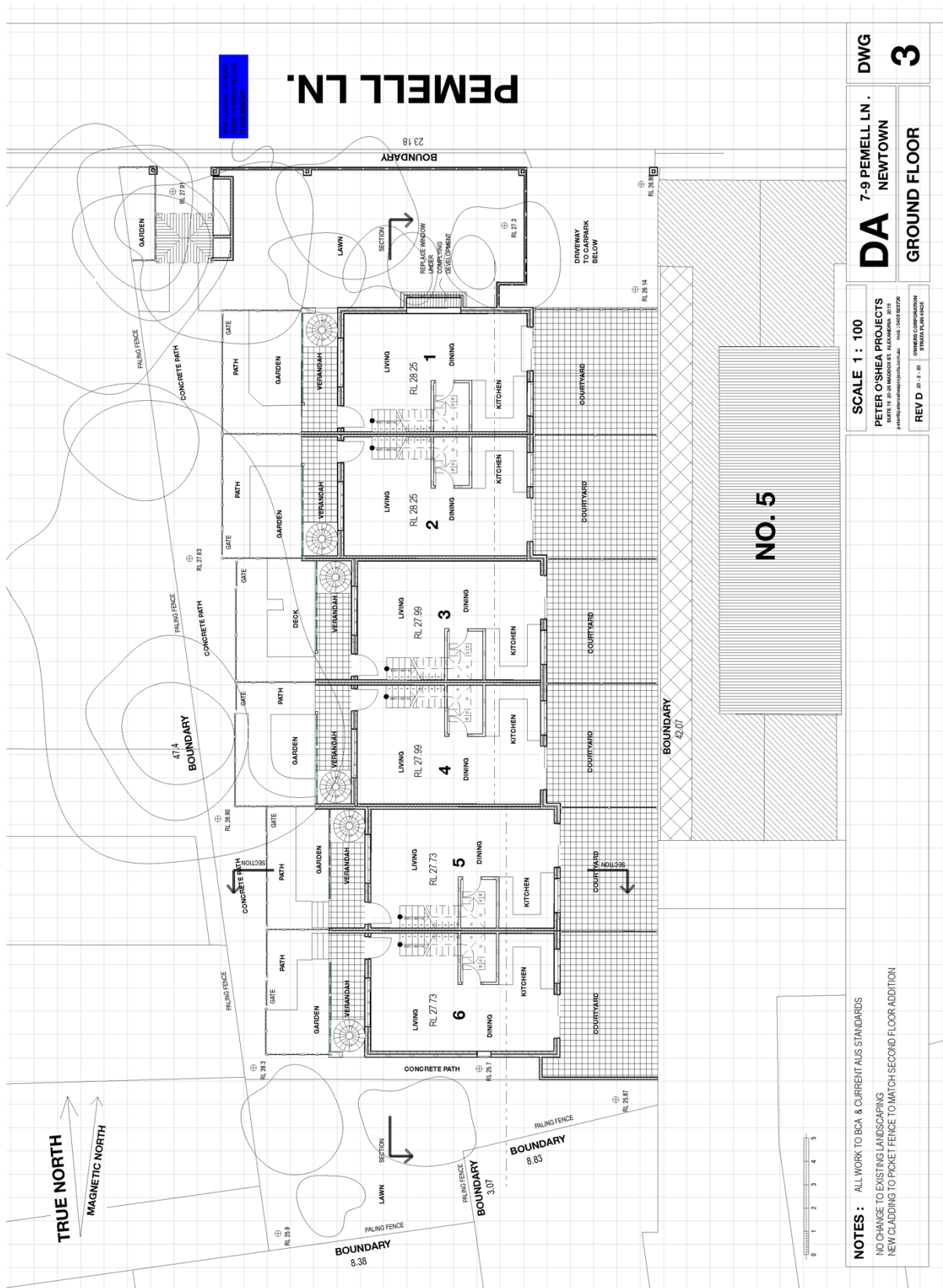
SCALE 1 : 100
 PETER O'SHEA PROJECTS
 STATE 16 30 08 MIDDORSET ALPARKINA 2011
 peterosheaprojects.com.au 08 1204 822728

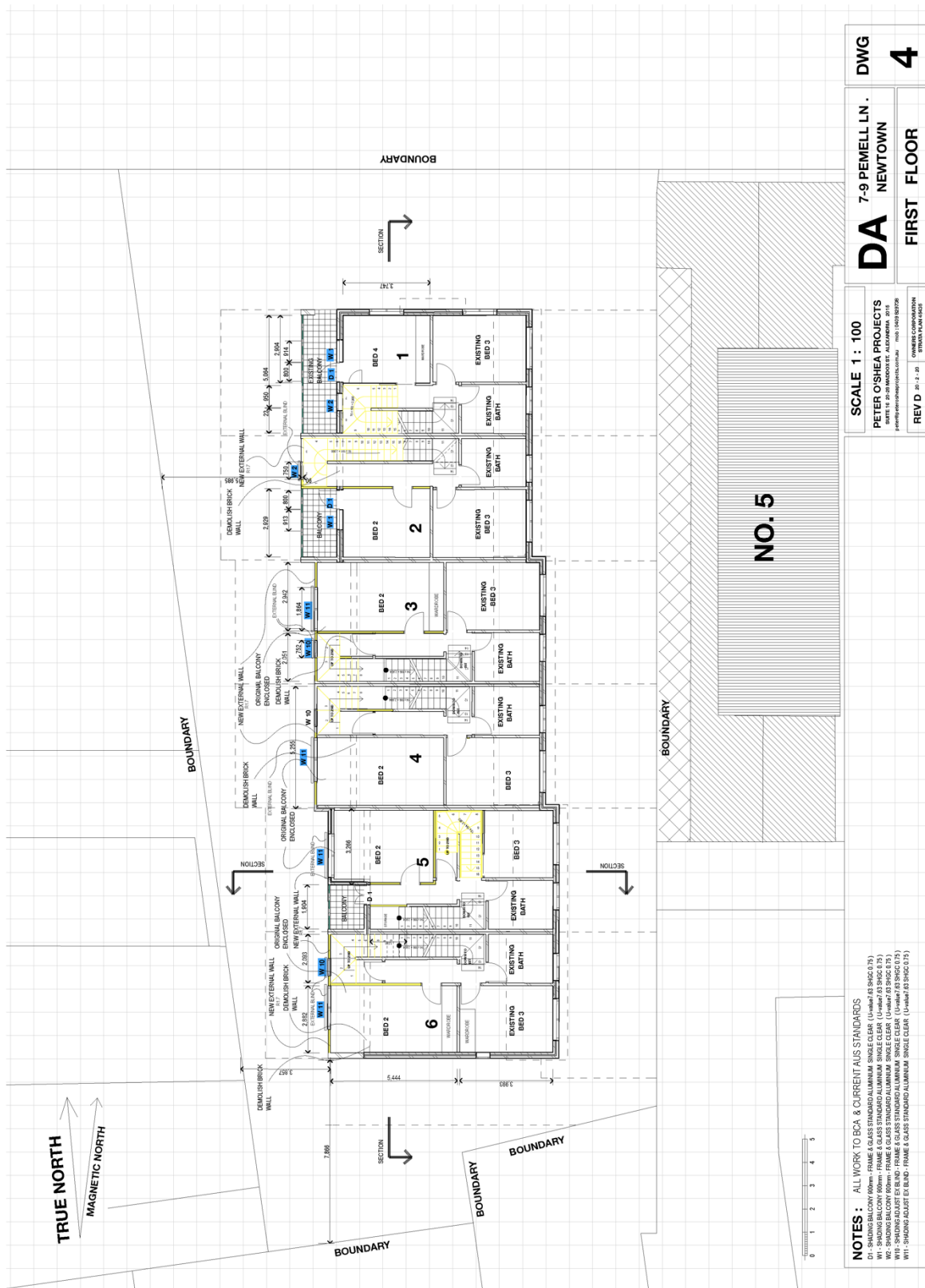
OWNER'S REPRESENTATIVE
 REV D 20 12 20 07000000000000000000

DA 7-9 PEMELL LN. NEWTOWN
 LOWER GROUND FLOOR

DWG 2

NOTES:
 BOUNDARY LENGTHS BY SURVEY



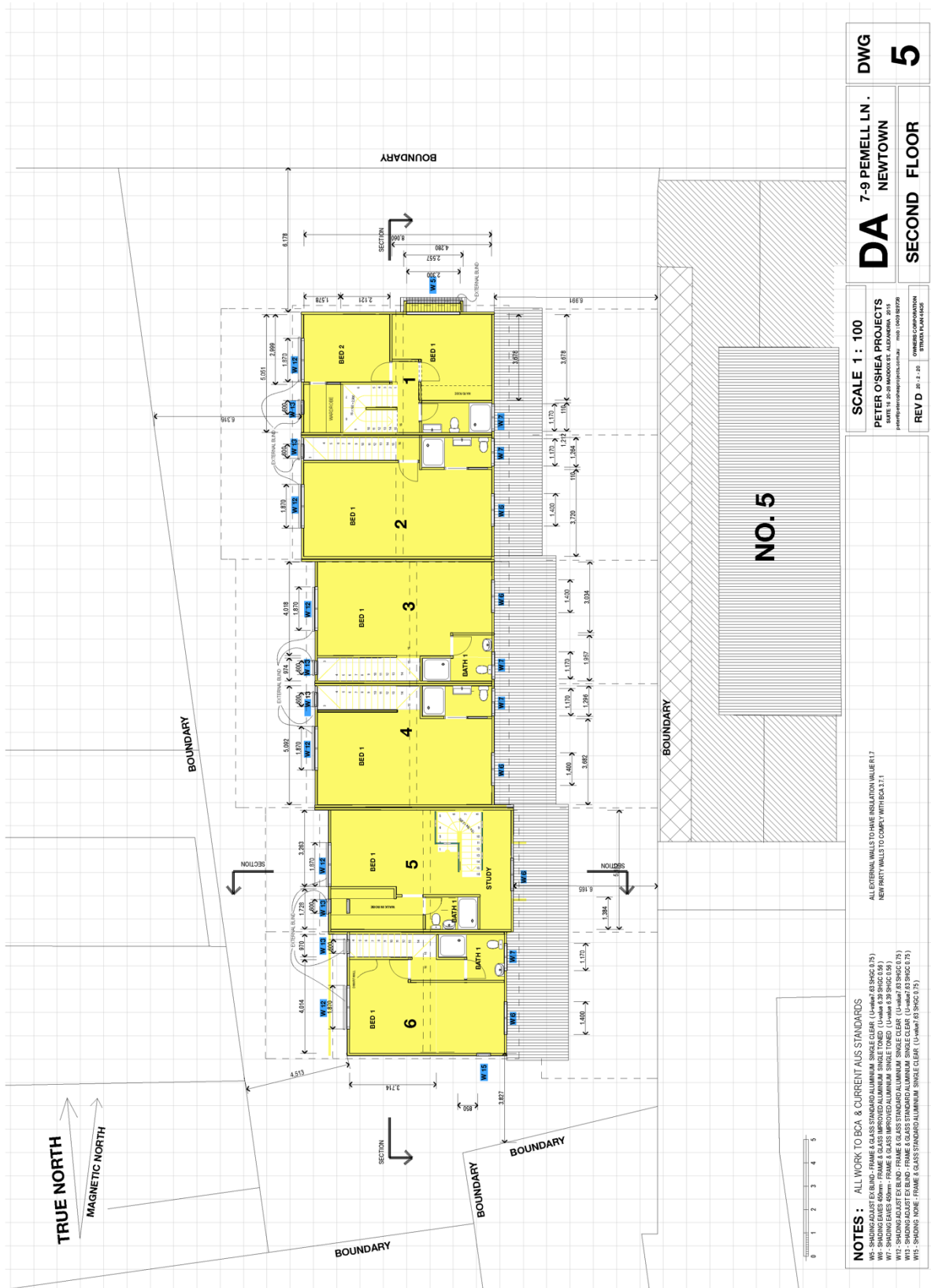


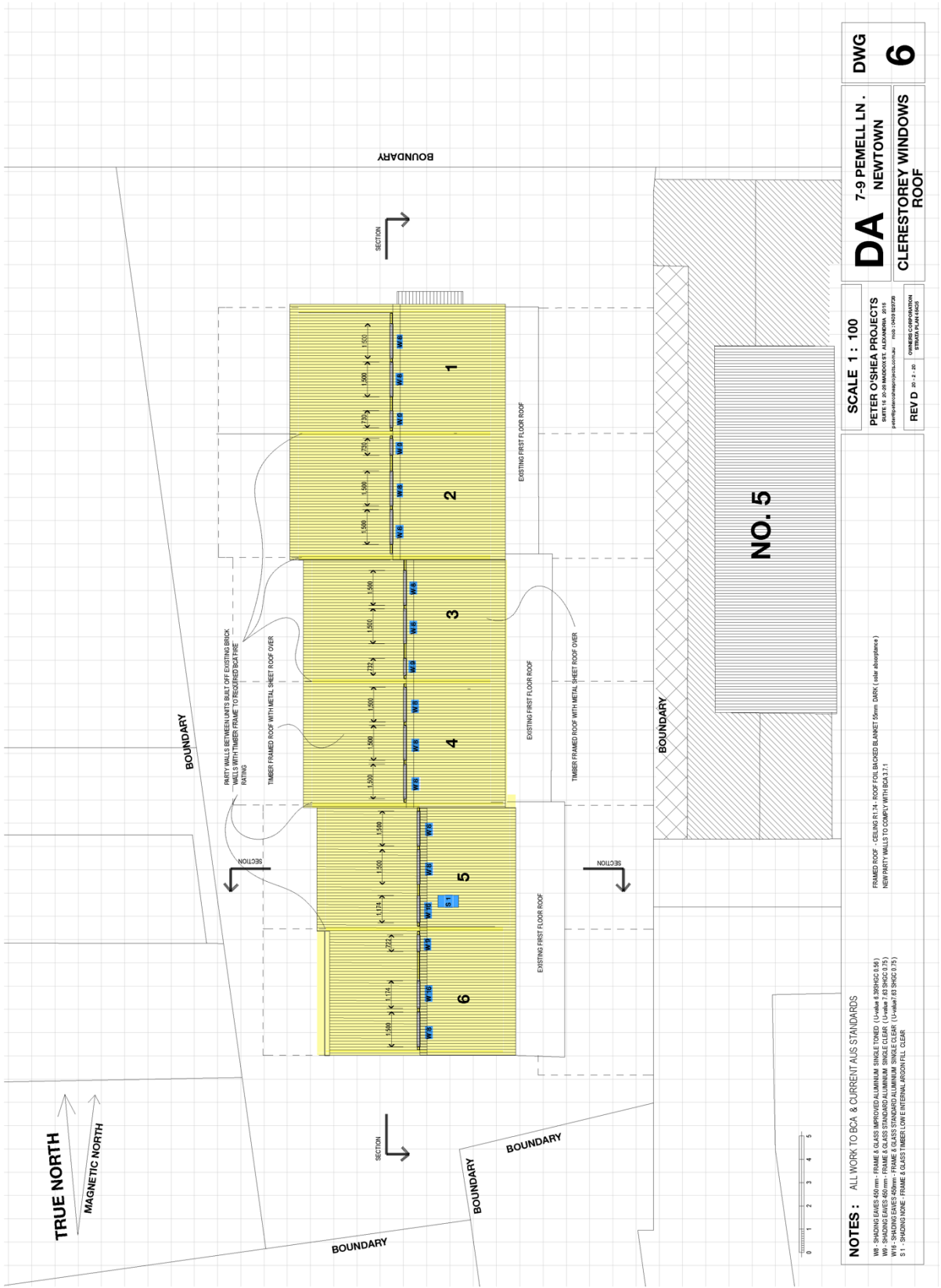
DA 7-9 PEMELL LN.
NEWTOWN
FIRST FLOOR

SCALE 1 : 100
PETER O'SHEA PROJECTS
PART 10 - 20 MARSDEN ST ALPHARETTA NSW
peter.oshea.projects@gmail.com 0800 803 803

REV'D 20.12.20
OWNER'S CORPORATION
STRATA PLAN 8032

NOTES : ALL WORK TO BCA & CURRENT AUS STANDARDS
D1 - SHADING BALCONY 600mm - FRAME & GLASS STANDARD ALUMINIUM SINGLE CLEAR (U-value# AS SPEC 0.75)
D2 - SHADING BALCONY 600mm - FRAME & GLASS STANDARD ALUMINIUM SINGLE CLEAR (U-value# AS SPEC 0.75)
W2 - SHADING BALCONY 600mm - FRAME & GLASS STANDARD ALUMINIUM SINGLE CLEAR (U-value# AS SPEC 0.75)
W1 - SHADING BALCONY 600mm - FRAME & GLASS STANDARD ALUMINIUM SINGLE CLEAR (U-value# AS SPEC 0.75)
W1 - SHADING BALCONY 600mm - FRAME & GLASS STANDARD ALUMINIUM SINGLE CLEAR (U-value# AS SPEC 0.75)





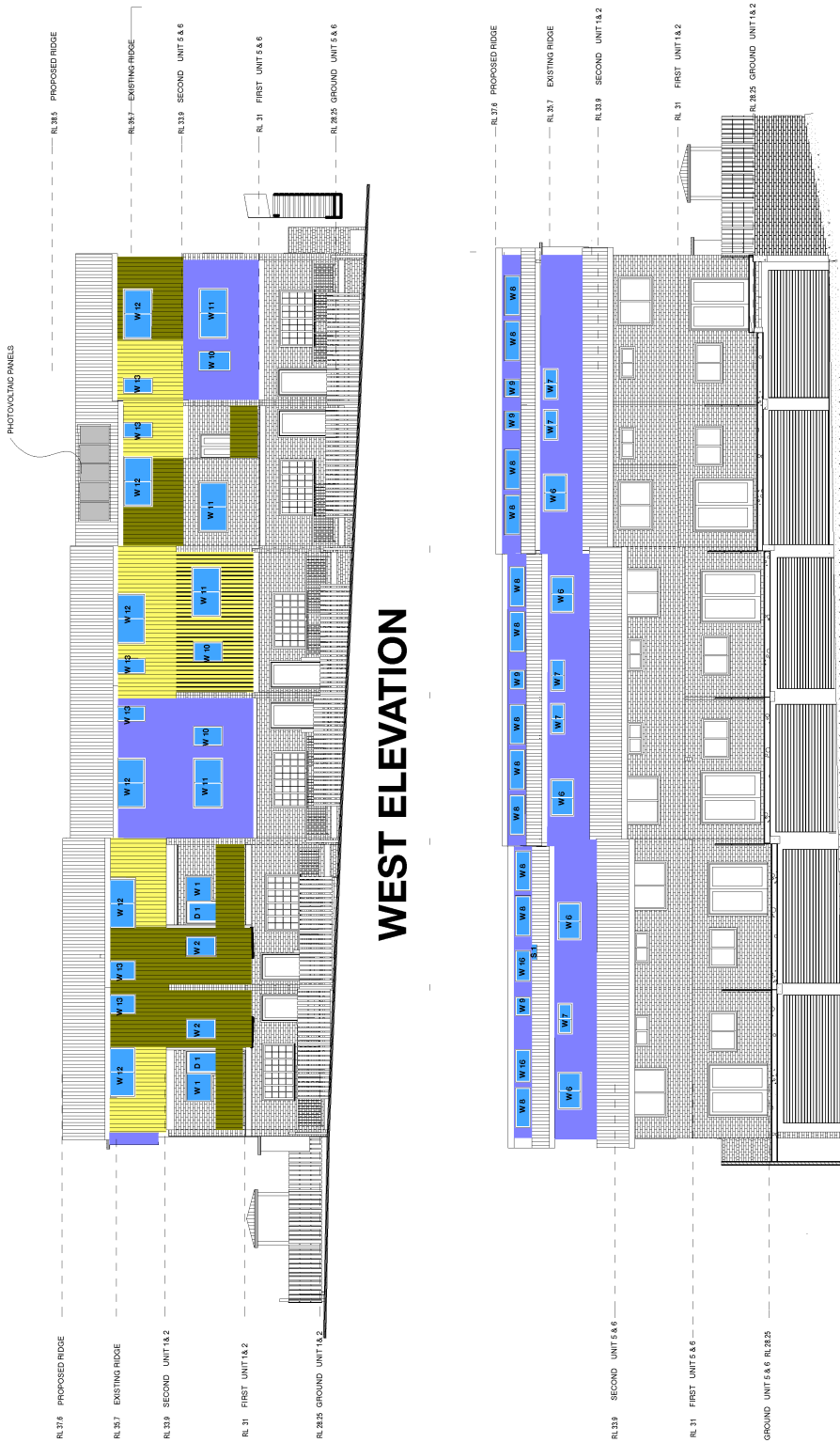
SCALE 1 : 100
DA 7-9 PEMELL LN.
 NEWTOWN
CLERESTOREY WINDOWS ROOF

PETER OSHEA PROJECTS
 ARCHITECT
 peter@peterosheaprojects.com.au mob: 0429 82 8728
 REV D 20.01.20 DRAWING NO: 1001000

DWG
6

NOTES: ALL WORK TO BCA & CURRENT AULS STANDARDS
 WB - SHINGLED EAVES 150mm FRAME & GLASS IMPROVED ALUMINIUM SINGLE TONED (U-value 0.380 WRC 0.96)
 WT - SHINGLED EAVES 45mm FRAME & GLASS STANDARD ALUMINIUM SINGLE CLEAR (U-value 0.380 WRC 0.96)
 S 1 - SHINGLED EAVES 45mm FRAME & GLASS STANDARD ALUMINIUM SINGLE CLEAR (U-value 0.380 WRC 0.96)

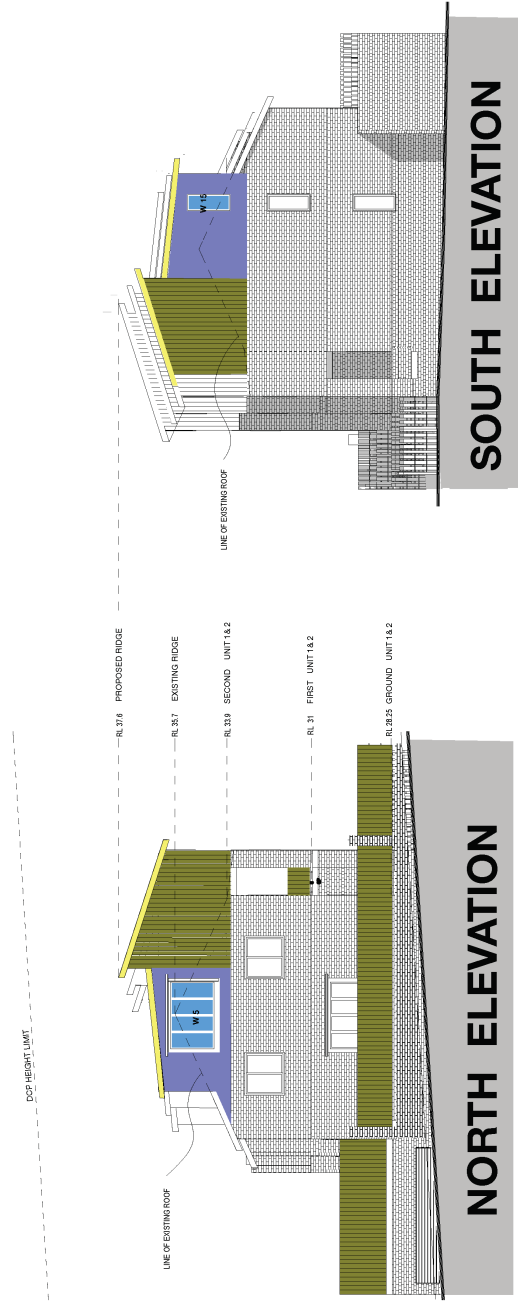
FRAMED ROOF - CEILING R1.14, ROOF FOLDED BACKED BLANKET 25mm, DARK (color absorbance)
 PARTY WALLS TO COMPLY WITH BCA 1.7.1



WEST ELEVATION

EAST ELEVATION

<p>SCALE 1 : 100</p> <p>PETER O'SHEA PROJECTS 10/11-13/15 MARSDEN ST. ALDERSBURG, SA 5173 peter@osheaprojects.com.au ph: 0800 802798</p>		<p>DA 7-9 PEMELL LN. NEWTOWN</p>	<p>DWG 7</p>
<p>NOTES :</p> <ul style="list-style-type: none"> TIMBER FRAME CONSTRUCTION - WALL - CLAD IN METAL TIMBER FRAME CONSTRUCTION - RENDERSD BROWALL PANELS TIMBER FRAME CONSTRUCTION - VERTICAL WEATHERBOARD CLADDING WINDOWS - GLASS TO BACK 		<p>REVD 20.12.20 OWNER'S REPRESENTATION STEVEN PEARSON</p>	
<p>TIMBER FRAME CONSTRUCTION - ROOF - CLAD IN METAL</p>			
<p>WEST / EAST ELEVATIONS</p>			



NOTES :

- TIMBER FRAME CONSTRUCTION - WALL - CLAD IN METAL
- WINDOWS - GLASS TO BRICK
- TIMBER FRAME CONSTRUCTION - RENDEROED MONOWALL PANELS
- TIMBER FRAME CONSTRUCTION - VERTICAL WEATHERBOARD CLADDING

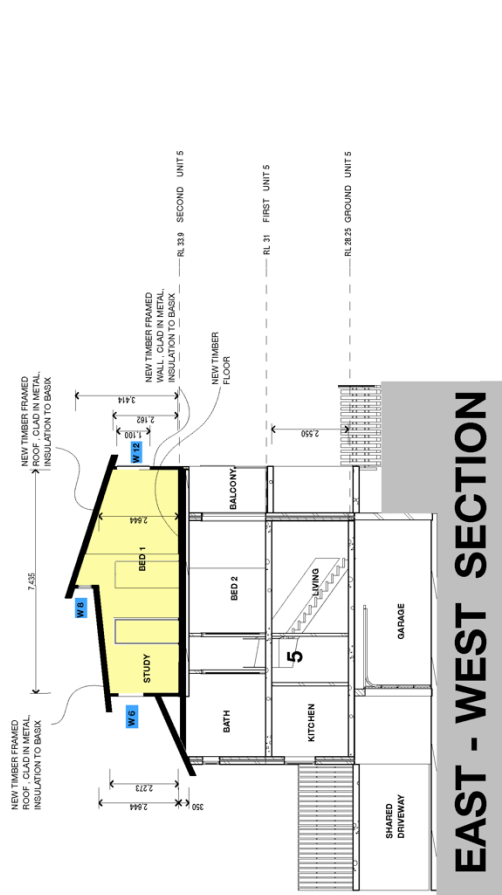
SCALE 1 : 100

PETER O'SHEA PROJECTS
 SUITE 10 20 BROADBENT ALLENDALE QLD
 PH: 07 5530 2000 FAX: 07 5530 2001
 WWW.OSHEAPROJECTS.COM

REV'D BY: J. 28
 DATE: 04/04/2018
 PROJECT: 7-9 PEMELL LN -
 NORTH / SOUTH ELEVATIONS

DA 7-9 PEMELL LN -
 NEWTOWN

DWG
8



EAST - WEST SECTION



NORTH - SOUTH SECTION

NOTES :

- TIMBER FRAME CONSTRUCTION - ROOF - CLAD IN METAL
- WINDOWS - GLASS TO BASIX
- TIMBER FRAME CONSTRUCTION - WALL AND ROOF - PLASTERBOARD INTERNAL

SCALE 1 : 100
 PETER OSHEA PROJECTS
 8/175 ST. JOHNS AVE. MOOREVILLE, ALBANY NSW 2117
 PH: 02 9435 4000 FAX: 02 9435 4001
 WWW.PETEROSHEA.COM.AU

DA 7-9 PEMELL LN .
 NEWTOWN
 EAST - WEST SECTIONS
 NORTH - SOUTH

DWG **9**