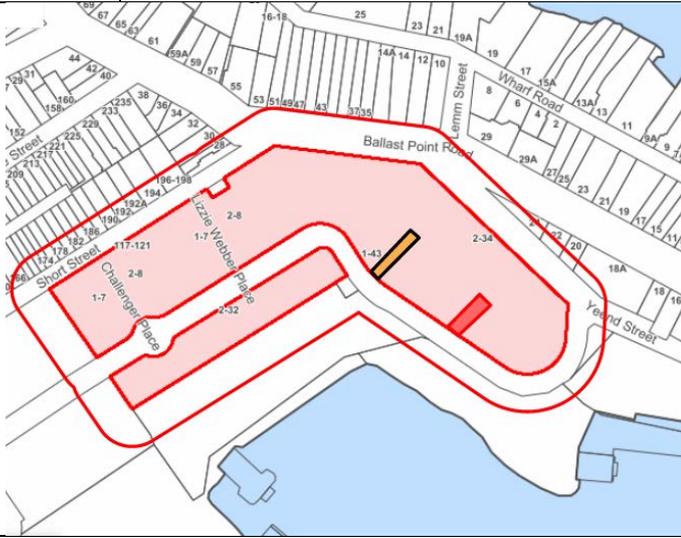


| <br>DEVELOPMENT ASSESSMENT REPORT |   |
|---|---|
| <b>Application No.</b>  | D/2020/4  |
| <b>Address</b>  | 21 Mckell Street BIRCHGROVE NSW 2041  |
| <b>Proposal</b>   | Alterations and additions to an existing townhouse including a second floor addition and associated works.  |
| <b>Date of Lodgement</b>  | 07 January 2020   |
| <b>Applicant</b>  | Shayne Fegent   |
| <b>Owner</b>  | Mrs Shayne M Fegent   |
| <b>Number of Submissions</b>  | One (1) objection   |
| <b>Value of works</b>   | \$421,875.00  |
| <b>Reason for determination at Planning Panel</b>   | Clause 4.6 variation exceeds officer delegation   |
| <b>Main Issues</b>  | FSR Breach<br>Site Coverage Breach<br>Landscaped Area Breach<br>Owners' / Strata consent  |
| <b>Recommendation</b>   | Refusal based on lack of owner's consent  |
| <b>Attachment A</b>   | Recommended conditions of consent (if consent is granted)   |
| <b>Attachment B</b>   | Plans of proposed development   |
| <b>Attachment C</b>   | Clause 4.6 Exception to Development Standards   |
| <b>Attachment D</b>   | Owners' / Strata Consent  |
|                                 |   |
| <b>LOCALITY MAP</b>   |   |
| Subject Site  |     |
| Notified Area   |     |
|   | Objectors   |
|   | Supporters  |

## 1. Executive Summary

This report is an assessment of the application submitted to Council for Alterations and additions to an existing townhouse, including a second floor addition and associated works at 21 Mckell Street Birchgrove NSW 2041.

The application was notified to surrounding properties and one (1) submissions was received.

The main issue that have arisen from the application include:

- Clause 4.6 variation of applicable development standards exceed officer delegation.
- Inadequate owners' / strata consent

The non-compliances are acceptable given that the proposal generally complies with the aims and objectives of the *Leichhardt Local Environmental Plan 2013* and the *Leichhardt Development Control Plan 2013*. A Clause 4.6 exception was submitted to Council to vary the maximum floor space ratio, site coverage and landscaped area development standards, which is considered acceptable and, therefore, the would ordinarily be recommended for approval.

However, having regard to Clause 49(1) of the *Environmental Planning and Assessment Regulation 2000* a development application can be made by the owner of the land to which the development application relates, or by any other person, with the consent of the owner of that land. Whilst an owners' (strata) consent has been submitted as part of the application, this consent refers to a specific set of plans that differ from the ones submitted with the application. Approval by the Strata Committee for the plans which were lodged with the application lodged has not been provided. Therefore, the owner's consent submitted is invalid.

The application cannot be recommended for approval given the lack of owner's consent. The applicant has been alerted to this matter and a previous undertaking by the applicant to secure owner's consent from the Strata Committee has not been fruitful. The applicant suggests that this is due to COVID restrictions on meetings which prevented a scheduled strata AGM, and informs Council that a meeting of the Strata Committee will be held before the Local Planning Panel meets to consider this DA. Notwithstanding the lack of owners'/ strata consent and consequential recommendation for refusal, a merit assessment of the application is undertaken below.

## 2. Proposal

The application proposed additions within the existing courtyard / lightwell to provide additional kitchen area and a W.C. on the ground floor, study and additional bathroom area on the first floor and an en-suite on the second level. The proposed rear addition to the second level is located to the south, partially into the lightwell, which reduces the extent of roof form required to be demolished to the north and, therefore, retains some of the roof form over the first floor to the north.

## 3. Site Description

The overall site is a multi-dwelling, residential redevelopment of former shipping terminal land undertaken by the NSW Department of Housing and Public Works. The whole site was privatised and sold off under the Strata Scheme, 1-43 McKell Street, Birchgrove. The site has an area of 17,230sqm. It occupies the area bound by McKell Street, Yeend Street, Ballast Point Road and Short Street and includes Challenger Place and Lizzie Webber Place.

The specific strata-titled lot (Lot 51 SP 62555) within the overall site that is the subject of this application is 130.02sqm in area and has a frontage of approximately 4.36 metres to McKell

Street. It currently accommodates a three-storey townhouse, with similar townhouses located in the row.

The overall site is not a heritage item however it is located within a conservation area. The site is identified as a flood control lot and is zoned R1 General Residential under the *Leichhardt Local Environmental Plan 2013*.

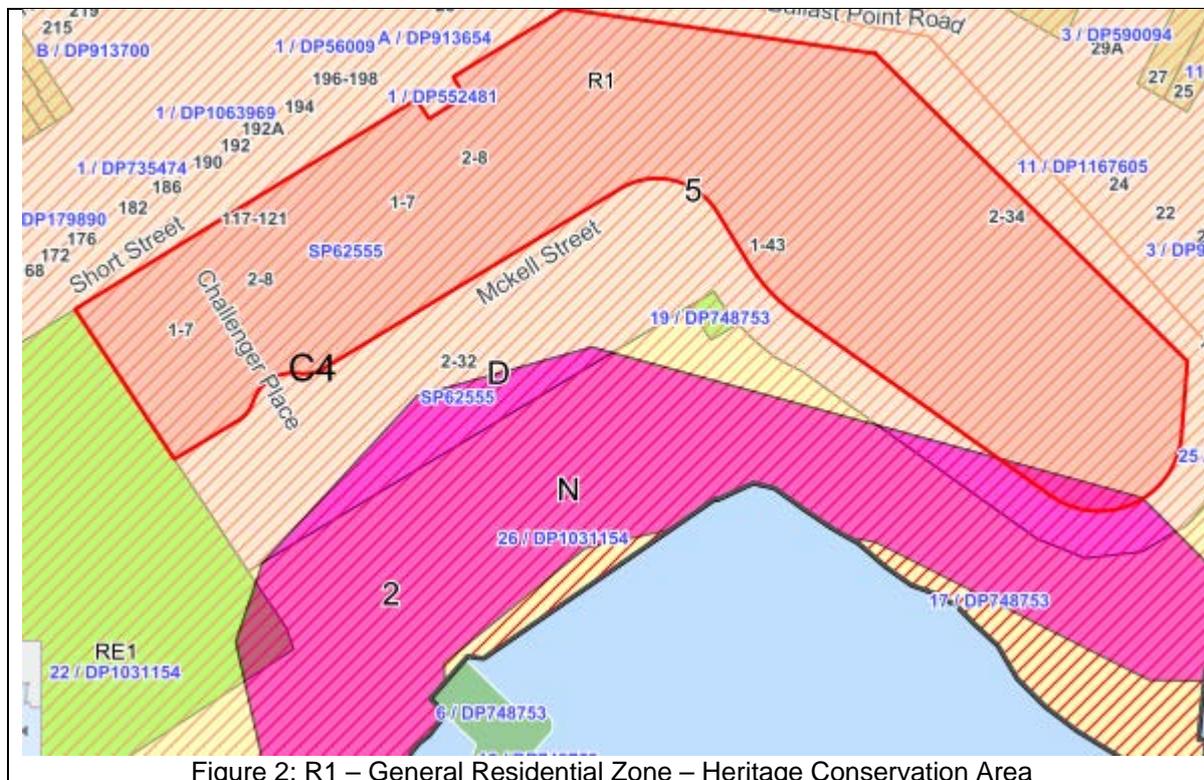


Figure 2: R1 – General Residential Zone – Heritage Conservation Area

## 4. Background

### 4(a) Site history

The following application outlines the relevant development history of the subject site and any relevant applications on surrounding properties.

#### Subject Site

| Application   | Proposal  | Decision & Date                 |
|---------------|---|---------------------------------|
| PREDA/2019/97 | Alterations and additions to a row of attached terraces. Two terraces are to be amalgamated as one dwelling and the third terrace to be renovated as single dwelling. | Advice Letter issued 30/06/2019 |

#### Surrounding properties

| Application | Proposal   | Decision & Date     |
|-------------|--|---------------------|
| D/2019/423  | Alterations and Additions to two existing terraces, combining them into one residence. Construction of new interior spaces, lift and roof top terrace at No.23-25 McKell Street. | Approved 04/07/2020 |

|            |  |                     |
|------------|--|---------------------|
| D/2012/487 | Alterations and additions to existing dwelling at ground, first and second floor at No. 27 McKell Street.  | Approved 04/12/2012 |
| M/2013/40  | Section 96 modification of D/2012/487 which approved alterations and additions to the existing dwelling. Modification consists of an extension to the front of the dwelling at No. 27 McKell Street.                             | Approved 02/05/2013 |
| D/2015/414 | Alterations and additions to the existing townhouse, including changes to the internal layout, fenestration and extension at second-floor level. Variation to the Floor Space Ratio development standard at No. 5 McKell Street. | Approved 13/10/2015 |
| D/2017/292 | Alterations and additions to dwelling including additional floor at No. 14 McKell Street.  | Approved 14/11/2017 |
| M/2018/199 | Modification of D/2017/292 seeking internal layout modifications to the ground, first and second floors. No external changes are proposed at No. 14 McKell Street.   | Approved 06/12/2018 |

4(b) Application history

The following table outlines the relevant history of the subject application.

| Date       |   |
|------------|---|
|            | Application Lodged  |
| 24/02/2020 | <p>Council forwarded a letter to the applicant raising the following concerns with respect to the submitted proposal:</p> <ul style="list-style-type: none"> <li>• Concern regarding detrimental impacts by the proposed excavation with regard to potential contamination, unknown archaeological impacts; potential impacts on the water table and potential impacts on trees on adjoining sites;</li> <li>• Unsympathetic and incompatible design of the second storey addition, including roof form, and visibility of it form the public domain;</li> <li>• Inadequate stormwater plan;</li> </ul> <p>As a result, Council requested the following:</p> <ul style="list-style-type: none"> <li>• Deletion of the proposed basement level. Or, if pursued, the following reports:                             <ul style="list-style-type: none"> <li>○ Archaeological assessment;</li> <li>○ Preliminary Site Contamination Investigation, and, if required, a Detailed Site Contamination Investigation and Remediation Action Plan; and</li> <li>○ Arboricultural Impact Assessment, including a site-specific tree protection plan.</li> </ul> </li> <li>• Retention of the existing roof form;</li> <li>• Consider reconfiguring the existing space;</li> <li>• Amended stormwater concept plan;</li> <li>• Construction methodology if basement is pursued.</li> </ul> |

|            |  |
|------------|--|
| 05/03/2020 | Council and applicant met to discuss the issues outlined above.  |
| 21/04/2020 | Applicant submitted amended plans that, <i>inter alia</i> , entailed relocation and redesign of the second storey addition, including internal reconfiguration and additional floor area above the internal courtyard. Further, the applicant informed Council that a decision will be made the following day whether the basement is pursued. |
| 23/04/2020 | Applicant advised that the basement will no longer be pursued and submitted amended plans indicating this change.  |
| 03/07/2020 | Council contacted the applicant requesting an updated / adequate owners' / strata consent. The submitted strata consent included and referred to (only) a different set of plans.  |
| 23/07/2020 | Applicant informed Council that an updated strata consent will be submitted after the Strata's annual general meeting (AGM), which will be held on 24/08/2020.   |
| 26/08/2020 | Applicant informed Council via email that the Strata's AGM has been rescheduled to the end of September and, therefore, no updated strata consent could be provided at this stage.   |
| 02/09/2020 | Council called the applicant, informing that the application would need to be put on the IWLPP Agenda in October for determination and that the application would need to be recommended given the lack of owners' / strata consent.   |

## 5. Assessment

The following is a summary of the merit assessment of the application undertaken in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

### 5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy No. 55—Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Leichhardt Local Environmental Plan 2013*

The following provides further discussion of the relevant issues:

#### 5(a)(i) *State Environmental Planning Policy No 55—Remediation of Land*

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. The LDCP 2013 provides controls and guidelines for remediation works. SEPP 55 requires the consent authority to be satisfied that "the site is, or can be made, suitable for the proposed use" prior to the granting of consent.

Concerns were raised regarding the initially proposed basement and the required excavation given the history of the site. However, the amended proposal does not include substantial excavation as the basement has been removed. As a result, it is considered that the site will not require remediation in accordance with *SEPP 55*.

**5(a)(ii) 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.

Notwithstanding the above, given the lack of owners' / strata consent, it is recommended that the application be refused.

**5(a)(iii) State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 concerns the protection of trees identified under the Leichhardt Development Control Plan 2013.

Initially, there were concerns regarding the impacts of the proposed excavation for the basement on trees on adjoining sites. Given that the amended plans submitted removed the basement, and no consent for the removal of any trees is sought, it is considered that the proposal is compliant with the requirements of the Vegetation SEPP.

It is noted that a condition is included in Appendix A, requiring that prescribed trees that are protected by Council's Management Controls on the subject property and any vegetation on surrounding properties must not be damaged or removed during works unless specific approval has been provided.

**5(a)(iv) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

An assessment has been made of the matters set out in Clause 20 of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. It is considered that the carrying out of the proposed development is generally consistent with the objectives of the Plan and would not have an adverse effect on environmental heritage, the visual environmental, the natural environment and open space and recreation facilities.

**5(a)(v) Leichhardt Local Environment Plan 2013 (LLEP 2013)**

The application was assessed against the following relevant clauses of *the Leichhardt Local Environment Plan 2013*:

Clause 1.2 - Aims of the Plan  
Clause 2.3 - Zone objectives and Land Use Table  
Clause 2.7 - Demolition  
Clause 4.3A - Landscaped areas for residential accommodation in Zone R1  
Clause 4.4 – Floor Space Ratio  
Clause 4.5 - Calculation of floor space ratio and site area  
Clause 4.6 - Exceptions to development standards  
Clause 5.10 - Heritage Conservation  
Clause 6.1 - Acid Sulfate Soils  
Clause 6.3 - Flood Planning  
Clause 6.4 - Stormwater management

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

The site is zoned R1 - General Residential under the *LLEP 2013*.

The development is permitted with consent within the zone. The development is consistent with the objectives of the R1 - General Residential zone.

(iii) Clause 2.7 – Demolition

Clause 2.7 of the *LLEP 2013* 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 are included in the recommendation.

(iv) Clause 4.3A and 4.4 – Landscaped areas for residential accommodation in Zone R1 and Floor Space Ratio

The following table provides an assessment of the application against the relevant development standards:

Note: The calculations below are relative to the development site, which is 130.02sqm. This is the individual strata lot upon which the affected townhouse is located, but does not include the overall allotment, which is very large at approximately 17,230sqm.

| Standard  | Proposal               | Non-compliance         | Complies |
|---|------------------------|------------------------|----------|
| <b>Floor Space Ratio</b><br>Maximum permissible: 1:1 or 130.02sqm | 1.28:1 or<br>166.48sqm | 28.04% or<br>36.46 sqm | No       |
| <b>Landscape Area</b><br>Minimum permissible: 15% or 19.5sqm      | 14.73% or<br>19.15sqm  | 1.81% or<br>0.35sqm    | No       |
| <b>Site Coverage</b><br>Maximum permissible: 60% or 78.01sqm      | 58.31% or<br>75.81sqm  | X                      | Yes      |

The following provides further discussion of the relevant issues:

As outlined in the table above, the proposal complies with the applicable site coverage development standard if calculated for the individual strata lot upon which it is situated. However, the *LLEP 2013* does not distinguish strata lots as development allotments for this purpose.

Council’s records indicate that the overall “parent” parcel had a compliant floor space ratio of approximately 0.696:1 when it was originally approved. However, over time, many DA and CDC (and potentially even unauthorised or exempt developments) have increased this floor space ratio to a point where it exceeds the LEP development standard.

Although it is not known by exactly how much the overall strata development exceeds the standards by, given its multi-unit nature and fragmented ownership, Council and the proponent agree that the development will require a Clause 4.6 request to contravene the applicable development standards of the LEP.

A written request has been submitted by the applicant in accordance with Clause 4.6(3) seeking to justify the contravention of the standard, as discussed below.

(v) Clause 4.6 – Exceptions to Development Standards

As outlined above, it is assumed that the proposal results in a breach of the following development standards:

- Clause 4.3A(3)(a) – Landscaped Area for residential development in Zone R1
- Clause 4.3A(3)(b) – Site Coverage for residential development in Zone R1
- Clause 4.4 – Floor Space Ratio

Clause 4.3A(3)(a) – Landscaped areas for residential accommodation in Zone R1 and Clause 4.3A(3)(b) – Site Coverage for residential accommodation in Zone R1

The applicant seeks a variation to the landscaped area development standard under Clause 4.6 of the *LLEP 2013*. The proposal (calculated for the individual strata lot) will result in a non-compliance of 1.81% or 0.35sqm with the landscaped area development standard of 15% that is applicable.

As stated above, whilst the proposal (calculated for the individual strata lot) achieves compliance with the site coverage development standard of 60%, as the subject property is part of a strata subdivision for an existing housing estate, there are no records of the existing overall site coverage for the Strata lot as a whole and, as a consequence, it is assumed that there is a breach with this development standard as well when applied to the entirety of the Strata lot.

A written request has been submitted to Council in accordance with Clause 4.6(3) of the *LLEP 2013*, justifying the proposed contravention of the landscaped area and site coverage development standards, which is summarised as follows:

- The proposed development will include a mix of native shrubs suitable with the climate. The proposed landscaping will be located in the rear courtyard, internal courtyard and within a planter on the second floor creating a suitable contrast with the built form.
- The site sits within an established form of development. The proposed alterations and additions are designed to be in keeping with the desired future character of the neighbourhood. The proposed development does not make any changes to the building footprint providing suitable space for landscaping to soften the existing dwelling.
- The proposed development will sit within the existing building envelope. The proposed development provides suitable landscaping to the rear which will retain and absorb surface drainage water.
- The proposed development will not increase the site cover. The proposed development provides for suitable landscaping within the rear.
- The proposed development is retaining the existing footprint of the townhouse unit.
- Despite the technical departure from the relevant Landscaping standard the proposed development remains consistent with the objectives of Clause 4.3A of the *LLEP 2013* and therefore it is demonstrated that strict compliance with the landscaping standard in this instance is unreasonable and unnecessary.
- Consideration (2) 'the underlying objective of the purpose of the standard is not relevant to the development and therefore compliance is unnecessary' is relevant to this application. The underlying objective of the standard are to control development to ensure that the propose built form is compatible with the desired future character and provides for the amenity to residents. The proposed development will provide suitable landscaping within the immediate vicinity. Furthermore, no changes are made to the existing site cover.
- The development standard for landscaping and site coverage has virtually been abandoned within the immediate multi dwelling development.
- The proposed landscaping and site coverage exceedance is in accordance with the original approval.

- The proposed alterations and addition will continue to provide for housing needs for the community.
- The proposed development will retain the multi dwelling housing type and will soften the built form through landscaping.
- The proposed development will provide for landscaping that will provide an improved amenity where residents work from home.
- The proposed development will reinstate materials that are consistent with the adjoining townhouses, ensuring that that the proposed alteration and additions are compatible with the existing locality.
- The proposed development will provide suitable landscaping at the rear of the development to ensure it will provide an appropriate balance between built form and landscaping. The proposed development provides for over 15% of the lot entitlement as landscaping.
- The proposed development will continue to provide for suitable housing within a residential area.

#### Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the floor space ratio development standard under Clause 4.6 of the *LLEP 2013*. The proposal (calculated for the individual strata lot) will result in a non-compliance of 28.04% or 36.46sqm with the floor space ratio standard of 1:1 that is applicable to this development.

A written request has been submitted to Council in accordance with Clause 4.6(3) of the *LLEP 2013* justifying the proposed contravention of the development standards, which is summarised as follows:

- The proposal will not result in any adverse amenity impacts upon the neighbouring residential properties and will not detract from the economic welfare of the community or the quality of the environment.
- Overall, the proposed development will enhance the use of the existing dwelling whilst substantially maintaining the existing building envelope and frontage to McKell Street.
- The works will be located behind the 3-storey part of the building fronting McKell Street and will not adversely impact the streetscape or the locality.
- The proposed additions are modest and restrained and add little to the visual volume of the property when viewed from adjoining properties.
- The proposed addition is complementary and compatible with the style, orientation and pattern of surrounding buildings along McKell Street, ensuring that the development is consistent with the relevant objectives pertaining to Density.
- The proposed alterations and addition will continue to provide for housing needs for the community.
- The proposed development seeks to adapt the existing development to more modern living through the inclusion of additional room.
- The proposed development will provide for additional living area that will allow for more opportunities to work.
- The proposed development will reinstate materials that are consistent with the adjoining townhouses, ensuring that that the proposed alteration and additions are compatible with the existing locality.
- The proposed development will provide suitable landscaping at the rear of the development to ensure it will provide an appropriate balance between built form and landscaping. The proposed landscaping complied with the prescribed LEP requirement for landscaping in R1 zone.

- The proposed development will continue to provide for suitable housing within a residential area.
- The proposed development will maintain the existing building envelope, not resulting in a built form that will impeded on existing setbacks or result in an increase in height;
- The proposed increase in FSR is consistent with surrounding development in the multi dwelling development, that have sought for alterations to the built form to provide for additional living area;
- The proposal complies with the Site Coverage standards, providing a suitable balance between landscaped areas and the built form;
- The siting of the building is within the building location zones when it can be reasonably assumed development can occur;
- The proposal does not result in any adverse amenity impacts to the surrounding properties; and
- The increase in floor area from the current is reasonable and still maintains the spirit of the 4.6 control by effectively controlling and making best use of the proposed floor area increase.

The applicant's written rationale adequately demonstrates compliance with the development standards is unnecessary in the circumstances of this case, and that there are sufficient environmental planning grounds to justify contravening the development standards.

It is considered that the development is in the public interest because it is consistent with the objectives of the R1 – General Residential zone in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

- The development provides for the housing needs of the community;
- The development provides housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas; and
- The development provides landscaped areas for the use and enjoyment of existing and future residents.

It is considered that the development is in the public interest because it is consistent with the objectives of the landscaped area development standard in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

- The proposal provides landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents;
- The proposal is compatible with the desired future character of the area in relation to building bulk, form and scale;
- The proposal complies with the Site Coverage development standard, providing a suitable balance between landscaped areas and the built form;
- The proposal is considered to provide adequate landscaped area for retention and absorption of surface drainage water on site; and
- The proposal ensures that adequate provision is made for landscaped areas and private open space.

It is considered that the development is in the public interest because it is consistent with the objectives of the floor space ratio standard in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

- The development is compatible with the desired future character of the area in relation to building bulk, form and scale;
- The development provides a suitable balance between landscaped areas and the built form; and
- The development minimises the impact of the bulk and scale of the building.

Further, it is considered that the development is consistent with the amended objectives of the floor space ratio standard under the Draft IWLPP 2020 in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

- The development will not result in adverse environmental and amenity impacts on adjoining properties, the public domain nor the heritage conservation area;
- The development is compatible with the desired future character of the area; and
- The development provides a suitable balance between landscaped areas and the built form.

The concurrence of the Planning Secretary may be assumed for matters dealt with by the Local Planning Panel.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the applicable local environmental plan. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the floor space ratio and site coverage development standards, and it is recommended that the Clause 4.6 exception be granted.

(vi) Clause 5.10 - Heritage Conservation

The subject property is a contributory building located within the Town of Waterview Heritage Conservation Area (C4 in Schedule 5 of the *LLEP 2013*).

The Statement of Significance for the Town of Waterview Heritage Conservation Area is in the Leichhardt DCP 2013, which is available via the link below:

<https://www.innerwest.nsw.gov.au/develop/planning-controls/heritage-and-conservation/heritage-conservation-areas>

There were several concerns regarding this Clause and relevant heritage provisions with the initially submitted plans. A meeting was held with the applicant to discuss the following matters:

- The existing development is constructed on a slipway. The proposed basement is not supported as there are potential unknown impacts including archaeological and impacts on the water table. The proposed basement must be deleted from the proposal.
- The proposed second floor addition is inconsistent with several objectives and controls of the LDCP 2013 as it will not complement the scale and form and is not sympathetic to the existing building.
- The proposal is not compatible with the setting or relationship of the building with the HCA in terms of scale, form, roof form architectural detail, fenestration and siting to the HCA.

- The proposal will not maintain the unity of the group of townhouses and the integrity of the streetscape. As the addition will be visible from the public domain the original roof form must be retained.

The amended plans submitted, largely addressed the issues that were raised in relation to satisfying this Clause and relevant heritage provisions. In particular, the following is noted:

- The revised proposal includes additions within the existing courtyard / lightwell. This provides additional kitchen area and a W.C. on the ground floor, study and additional bathroom area on the first floor and en-suite on the second level.
- The rear addition to the second level has been moved to the south, partially into the lightwell, which reduces the extent of roof form required to be demolished to the north. This is considered to be a better outcome as it retains more of the roof form over the first floor to the north.
- It is important that views to the main gable roof form are retained from the public domain. The proposed second floor addition will be concealed behind the existing roof form, which will help screening it from the public domain.
- The proposed height of the addition has been reduced from RL 13.66 to RL 13.52, which will ensure that more of the main gable roof form behind the addition will remain visible.
- The roof form over the second-floor addition has been redesigned to a curved roof form. This is more sympathetic to the other roof forms that are located to the north of the second-floor roof form, which are also curved.

The proposal is acceptable from a heritage perspective as it will not detract from the heritage significance of Town of Waterview Heritage Conservation Area and will ensure that the development is in accordance with the objectives 1(a) and 1(b) of Clause 5.10 of the *LLEP 2013* and the relevant objectives and controls of the LDCP 2013, contingent of confirming that colours and materials will match the existing building; a condition of consent is included in Appendix A.

(vii) Clause 6.1 – Acid Sulfate Soils

The lot is identified as class 5 acid sulphate soils; however, the proposed modifications are not considered to lower the watertable below 1 metre AHD.

(viii) Clause 6.2 – Earthworks

Any excavation works are minor and will be adequately controlled by conditions of consent.

(ix) Clause 6.3 - Flood Planning

The Strata lot is a flood control lot; however, the subject property at 21 McKell Street is located some distance from the areas of flooding. On this basis, flood planning requirements of the LDCP2013 are met. Therefore, Council' Development Engineer has advised that no flood risk management report was required.

(i) Clause 6.4 – Stormwater management

The proposal generally, complies with this clause. Council's Development Engineer has assessed the proposal and raised no concerns regarding the amended proposal, subject to conditions, which are included in Appendix A.

Conclusion

Notwithstanding the above, generally favourable assessment against the provisions of the LEP, given the invalidity of the supplied owners' consent, it is recommended that the application be refused.

**5(b) Draft Environmental Planning Instruments**

The NSW government has been working towards developing a new State Environmental Planning Policy (SEPP) for the protection and management of the natural environment. The Explanation of Intended Effect (EIE) for the Environment SEPP was on exhibition from 31 October 2017 until 31 January 2018. This consolidated SEPP proposes to provide a single set of planning provisions for catchments, waterways, bushland and protected areas. Changes proposed include consolidating seven existing SEPPs including Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. The proposal is consistent with the provisions of the draft Environment SEPP.

**5(c) 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, with the exception of the amended objectives of the floor space ratio development standards under Clause 4.4 of the Draft IWLEP 2020, are not relevant to the assessment of the application. Given that the proposal seeks to contravene the FSR development standard, the written request in accordance with Clause 4.6(4)(a)(i) of the applicable local environmental plan, justifying the proposed contravention of the floor space ratio development standard, has been assessed against the amended objectives as outlined in Section 5(a)(v) above and 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 the Leichhardt Development Control Plan 2013.

| <b>LDCP2013</b>  | <b>Compliance</b>                        |
|--|--|
| <b>Part A: Introductions</b>                                     |  |
| Section 3 – Notification of Applications                         | Yes                                      |
|  |  |
| <b>Part B: Connections</b>                                       |  |
| B1.1 Connections – Objectives                                    | Yes                                      |
| B2.1 Planning for Active Living                                  | Yes                                      |
| B3.1 Social Impact Assessment                                    | Yes                                      |
| B3.2 Events and Activities in the Public Domain (Special Events) | Yes                                      |
|  |  |
| <b>Part C</b>  |  |
| C1.0 General Provisions  | Yes                                      |
| C1.1 Site and Context Analysis                                   | Yes                                      |
| C1.2 Demolition  | Yes                                      |
| C1.3 Alterations and additions                                   | Yes – Refer to Section 5(a)(v)(v) above. |
| C1.4 Heritage Conservation Areas and Heritage Items              | Yes – Refer to Section 5(a)(v)(v) above. |
| C1.5 Corner Sites  | N/A                                      |
| C1.6 Subdivision   | N/A                                      |
| C1.7 Site Facilities   | Yes                                      |

|   |  |
|---|--|
| C1.8 Contamination  | Yes                                      |
| C1.9 Safety by Design   | N/A                                      |
| C1.10 Equity of Access and Mobility   | N/A                                      |
| C1.11 Parking   | Yes                                      |
| C1.12 Landscaping   | Yes                                      |
| C1.13 Open Space Design Within the Public Domain                                | N/A                                      |
| C1.14 Tree Management   | Yes                                      |
| C1.15 Signs and Outdoor Advertising   | N/A                                      |
| C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings | N/A                                      |
| C1.17 Minor Architectural Details   | N/A                                      |
| C1.18 Laneways  | N/A                                      |
| C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls      | N/A                                      |
| C1.20 Foreshore Land  | N/A                                      |
| C1.21 Green Roofs and Green Living Walls  | N/A                                      |
| <b>Part C: Place – Section 2 Urban Character</b>                                |  |
| C2.2.2.6 Birchgrove Distinctive Neighbourhood                                   | Yes                                      |
| <b>Part C: Place – Section 3 – Residential Provisions</b>                       |  |
| C3.1 Residential General Provisions   | Yes                                      |
| C3.2 Site Layout and Building Design  | Yes – Refer to discussion below.         |
| C3.3 Elevation and Materials  | Yes – Refer to Section 5(a)(v)(v) above. |
| C3.4 Dormer Windows   | Yes                                      |
| C3.5 Front Gardens and Dwelling Entries   | Yes                                      |
| C3.6 Fences   | N/A                                      |
| C3.7 Environmental Performance  | Yes                                      |
| C3.8 Private Open Space   | Yes                                      |
| C3.9 Solar Access   | Yes – Refer to discussion below.         |
| C3.10 Views   | N/A                                      |
| C3.11 Visual Privacy  | Yes – Refer to discussion below.         |
| C3.12 Acoustic Privacy  | Yes                                      |
| C3.13 Conversion of Existing Non-Residential Buildings                          | N/A                                      |
| C3.14 Adaptable Housing   | N/A                                      |
| <b>Part C: Place – Section 4 – Non-Residential Provisions</b>                   | <b>N/A</b>                               |
| <b>Part D: Energy</b>   |  |
| Section 1 – Energy Management   | Yes                                      |
| Section 2 – Resource Recovery and Waste Management                              | Yes                                      |
| D2.1 General Requirements   | Yes                                      |
| D2.2 Demolition and Construction of All Development                             | Yes                                      |
| D2.3 Residential Development  | Yes                                      |
| D2.4 Non-Residential Development  | N/A                                      |
| D2.5 Mixed Use Development  | N/A                                      |
|   |  |
| <b>Part E: Water</b>  |  |
| Section 1 – Sustainable Water and Risk Management                               | Yes                                      |
| E1.1 Approvals Process and Reports Required with Development Applications       | Yes                                      |
| E1.1.1 Water Management Statement   | Yes                                      |
| E1.1.2 Integrated Water Cycle Plan  | N/A                                      |
| E1.1.3 Stormwater Drainage Concept Plan   | Yes                                      |
| E1.1.4 Flood Risk Management Report   | N/A                                      |

|   |            |
|---|------------|
| E1.1.5 Foreshore Risk Management Report                     | N/A        |
| E1.2 Water Management                                       | Yes        |
| E1.2.1 Water Conservation                                   | N/A        |
| E1.2.2 Managing Stormwater within the Site                  | Yes        |
| E1.2.3 On-Site Detention of Stormwater                      | N/A        |
| E1.2.4 Stormwater Treatment                                 | Yes        |
| E1.2.5 Water Disposal                                       | Yes        |
| E1.2.6 Building in the vicinity of a Public Drainage System | N/A        |
| E1.2.7 Wastewater Management                                | Yes        |
| E1.3 Hazard Management                                      | N/A        |
| E1.3.1 Flood Risk Management                                | N/A        |
| E1.3.2 Foreshore Risk Management                            | N/A        |
| <b>Part F: Food</b>   | <b>N/A</b> |
| <b>Part G: Site Specific Controls</b>                       | <b>N/A</b> |

The following provides discussion of the relevant issues:

**Part C3.2 Site Layout and Building Design**

Building Location Zone (BLZ):

There are no other second storey additions within the row of townhouses currently. Therefore, the proposal is not within the prescribed BLZ of the second floor and seeks to establish a new second storey BLZ. Pursuant to control C6 of this part, in the event of any proposed variation to the BLZ, in order to gain support, various requirements need to be met. These are assessed below:

- a) Amenity to adjacent properties (i.e. sunlight, privacy, views) is protected and compliance with the solar access controls of this Development Control Plan is achieved.

Comment: As discussed in further detail below, the proposal is satisfactory in regard to the objectives and controls that are concerned with solar access and privacy. Further, the proposal will have no view loss implications.

- b) The proposed development will be compatible with the existing streetscape, desired future character and scale of surrounding development.

Comment: As outlined above, the proposed second storey addition, as amended, will be concealed behind the existing roof form and not be visible from the front. Whilst it will be marginally visible from the rear when viewed from Ballast Point Road, the additions will be partially concealed by existing trees. Further, given the relatively small size of the additions and minimised and acceptable floor-to-ceiling heights of approximately 2.06 – 2.47 metres, it is considered that the additions will not detract from the existing streetscape, are compatible with the desired future character and scale of surrounding development.

- c) The proposal is compatible in terms of size, dimensions privacy and solar access of private open space, outdoor recreation and landscaping.

Comment: Whilst the proposal does not achieve compliance with the *LLEP 2013* landscaped area development standard, the site provides adequate and compatible areas in terms of size, privacy and solar access of open space, outdoor recreation and landscaping with adjoining other developments within close proximity.

- d) Retention of existing significant vegetation and opportunities for new significant vegetation is maximised.

Comment: Currently, there is no significant vegetation on the site. The proposed landscaped areas are considered to provide opportunities for new significant vegetation.

- e) The height of the development has been kept to a minimum to minimise visual bulk and scale, as viewed from adjoining properties, in particular when viewed from the private open space of adjoining properties.

Comment: The height of the development, as amended, is considered acceptable and has been minimised by reduced floor-to-ceiling heights of approximately 2.06 – 2.47 metres. Further, the second floor is set back by approximately 5.2 metres from the rear building alignment of the first floor. Given these considerations, the bulk and scale when viewed from adjoining properties, in particular when viewed from the private open space of these properties, will be acceptable.

Side Boundary Setbacks:

The application proposes a nil side setback to both, the west and east, elevations. Given the proposed wall height of approximately 8.2 metres to the west and 7.8 metres to the east, pursuant to control C7 of this part, a setback of 3.1 and 2.9 metres respectively is prescribed. Pursuant to control C8 of this part, where a proposal seeks a variation of the side setback control graph, various requirements need to be met. These are assessed below:

- a) The development is consistent with relevant Building Typology Statements as outlined within Appendix B – Building Typologies of the LDGP2013 and complies with streetscape and desired future character controls.

Comment: The alterations and additions raise no issues that will be contrary to the Building Typologies Statements prescribed in the LDGP 2013. The proposal also complies with the objectives and controls set out in the distinctive neighbourhood character controls.

- b) The pattern of development is not adversely compromised.

Comment: The proposed works will not compromise the pattern of development within the area.

- c) The bulk and scale of the development has been minimised and is acceptable.

Comment: The bulk and scale is acceptable and is minimised by floor-to-ceiling heights of approximately 2.06 – 2.47 metres.

- d) The proposal is acceptable with respect to applicable amenity controls, e.g. solar access, privacy and access to views.

Comment: As discussed in detail further below, the proposal is satisfactory in regard to the objectives and controls that are concerned with amenity controls, including solar access and privacy. It is noted that the proposal will have no view loss implications.

- e) The proposal does not unduly obstruct adjoining properties for maintenance purposes.

Comment: Access for maintenance purposes for adjoining properties is maintained and, therefore, acceptable.

### **Part C3.11 Visual Privacy**

*Inter alia*, the following controls apply to the proposal:

- *C2 Sill heights and screening devices should be provided to a minimum of 1.6m above finished floor level. Screening devices should have reasonable density (i.e. 75%) and*

*have no individual opening more than 30mm wide and have a total area of all openings that is less than 30 per cent of the surface area of the screen and be made of durable materials.*

- *C6 Screening is not required to ground floor windows where any sight lines are obscured by a 1.8m dividing fence. Such sightlines shall be measured from a height of 1.6m above the finished floor level.*
- *C7 New windows should be located so they are offset from any window (within a distance of 9m and 45 degrees) in surrounding development, so that an adequate level of privacy is obtained/retained where such windows would not be protected by the above controls (i.e. bathrooms, bedrooms).*

No new windows / doors are proposed to the front and side elevations. The following is noted regarding the proposed new windows to the rear elevation:

- Window W-003 and Door D-004 servicing the ground floor living area are adequately screened by boundary fences; and
- Windows W-104 and W-204 servicing bedroom 1 and bedroom 3 on the first floor and second floor do not require screening as these are not aligned with windows on neighbouring properties within 9 metres and 45 degrees.

As a result, the proposal is acceptable regarding the intent and objectives of this part.

### **Part C3.9 Solar Access**

The proposal does not result in additional overshadowing of neighbouring north-facing glazing to living areas nor private open space.

#### **5(e) The Likely Impacts**

The assessment of the Development Application demonstrates that, subject to the recommended conditions, the proposal will have minimal adverse environmental, social or economic impacts 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.

Notwithstanding this, given the lack of proper owners' consent, it is recommended that the application be refused.

#### **5(g) Any submissions**

The application was notified in accordance with the Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties.

One (1) submissions was received in response, which raised the following issues:

Issue 1: The proposed basement level is "...very close to the actual Sea Level" and there are potential issues with the "...Sea Level seeping up as result of this construction".

Comment: The proposal, as amended does not include a basement.

Issue 2: The subject site is "...part of 5 townhouse...". The submission raised concerns regarding "the protection to the neighbouring properties" and potential damage caused by demolition and construction works, in particular by excavation for the proposed basement.

Comment: As stated above, the proposal, as amended does not include a basement. Regarding potential damage to neighbouring properties, it is noted that Council's standard condition regarding dilapidation reports of neighbouring properties is included in Appendix A (recommended conditions of consent).

Issue 3: The application "...did not obtain the approval by the Strata Executive Committee. The application that went to the Executive Committee was not the same as the version of the application to the Council".

Comment: As outlined in other sections above, Council has requested an amended owners' / strata consent, which, to the date the assessment report was written, has not been provided. As a result, it is recommended that the application be refused.

### 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.

On a balanced assessment of its planning merit, the proposal is not considered to be contrary to the public interest. However, in light of the lack of an owners' consent which relates to the plans submitted with the application, it is recommended that the application be refused.

## 6 Referrals

### 6(a) Internal

The application was referred to the following internal sections / officers and issues raised in those referrals have been discussed in section 5 above.

- Development Engineer
- Heritage Officer
- Arborist
- Environmental Health Officer

## 7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions/7.12 levies are not payable for the proposal.

## 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in the *Leichhardt Local Environmental Plan 2013 and Leichhardt Development Control Plan 2013*.

The proposed 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.

However, based on invalidity relating to a lack of adequate owners' consent associated with the plans lodged with the application, the application is recommended for refusal.

## 9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. 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*, refuses Development Application No. D/2020/4 for Alterations and additions to an existing townhouse, including a second floor addition and associated works at 21 McKell Street, Birchgrove.
- C. In the event that the applicant is able to secure lawful Owner's Consent for the proposal in the intervening time between the completion of this assessment and the date of the Panel meeting, the Panel use the draft set of conditions for approval attached at Appendix A to approve the Development Application as it demonstrates sufficient planning merit as set out in the above assessment report.

## Attachment A – Recommended conditions of consent

### CONDITIONS OF CONSENT

#### DOCUMENTS RELATED TO THE CONSENT

##### 1. 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              |
|------------------------------|---|----------------|--------------------------|
| DA.03 Revision I             | Demolition Plan - Ground Floor          | 23/04/2020     | Those Architects         |
| DA.04 Revision I             | Demolition Plan - First Floor           | 23/04/2020     | Those Architects         |
| DA.05 Revision I             | Demolition Plan - Second Floor          | 23/04/2020     | Those Architects         |
| DA.06 Revision I             | Demolition Plan - Roof Plan             | 23/04/2020     | Those Architects         |
| DA.08 Revision I             | Ground Floor                            | 23/04/2020     | Those Architects         |
| DA.09 Revision I             | First Floor                             | 23/04/2020     | Those Architects         |
| DA.10 Revision I             | Second Floor                            | 23/04/2020     | Those Architects         |
| DA.11 Revision I             | Roof Plan                               | 23/04/2020     | Those Architects         |
| DA.12 Revision I             | Section AA                              | 23/04/2020     | Those Architects         |
| DA.13 Revision I             | Section BB                              | 23/04/2020     | Those Architects         |
| DA.14 Revision I             | Southern Elevation & Northern Elevation | 23/04/2020     | Those Architects         |
| DA.15 Revision I             | Eastern Elevation                       | 23/04/2020     | Those Architects         |
| DA.16 Revision I             | Western Elevation                       | 23/04/2020     | Those Architects         |
| LP.01 Revision I             | Landscape Plan - Ground Floor           | 23/04/2020     | Those Architects         |
| SC101 Revision A             | Finishes Schedule                       | September 2019 | Those Architects         |
| A357122_02                   | BASIX Certificate                       | 07/01/2020     | Efficient Living Pty Ltd |

As amended by the conditions of consent.

#### FEES

##### 2. Security Deposit - Custom

Prior to the commencement of demolition works or prior to the 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.

|                          |            |
|--------------------------|------------|
| <b>Security Deposit:</b> | \$2,152.50 |
| <b>Inspection Fee:</b>   | \$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.

**3. 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.

**GENERAL CONDITIONS**

**4. Tree Protection**

Prescribed trees protected by Council's Management Controls on the subject property and/or any vegetation on surrounding properties must not be damaged or removed during works unless specific approval has been provided under this consent.

No activities, storage or disposal of materials taking place beneath the canopy of any tree (including trees on neighbouring sites) protected under Council's Tree Management Controls at any time.

All tree protection for the site must be undertaken in accordance with Council's *Development Fact Sheet—Trees on Development Sites* and *AS4970—Protection of trees on development sites*.

**5. Materials and Finishes**

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a Materials and Finishes Schedule confirming that colours and materials will match the existing building.

**6. Boundary Alignment Levels**

Alignment levels for the site at all pedestrian and vehicular access locations must match the existing back of footpath levels at the boundary.

**7. Stormwater Drainage System – Simple**

Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, down pipe, pits and pipelines discharged by gravity to the existing site drainage system.

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.

As there is no overland flow/flood path available from the rear and central courtyards to the street gutter, the design of the sag pit and piped drainage system is to meet the following criteria:

- a. Capture and convey the 100 year Average Recurrence Interval flow from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe
- b. The maximum water level over the sag pit shall not be less than 150mm/300mm below the floor level or damp course of the building
- c. The design shall make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
- d. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas.

**8. 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.

**9. 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.

**10. 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.

**11. Works Outside the Property Boundary**

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

**PRIOR TO ANY DEMOLITION****12. Hoardings**

The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.

Separate approval is required from the Council under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property.

**13. Dilapidation Report**

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of the adjoining properties at No. 19 and No. 23 McKell Street to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

**14. Advising Neighbors Prior to Excavation**

At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

**15. 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****16. Dilapidation Report – Pre-Development – Minor**

Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site.

**17. Party Walls**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with Architectural Plans accompanied by a Structural Certificate which verifies that the architectural plans do not rely on the Party Wall for lateral or vertical support and that additions are independently supported. A copy of the Certificate & plans must be provided to all owners of the party wall/s.

**18. 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.

**19. 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*

**DURING DEMOLITION AND CONSTRUCTION****20. Construction Hours – Class 1 and 10**

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5:00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

**21. 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****22. No Encroachments**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any encroachments on to Council road or footpath resulting from the building works have been removed, including opening doors, gates and garage doors with the exception of any awnings or balconies approved by Council.

**ADVISORY NOTES****Permits**

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 veranda over the footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

If required contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. Applications for such Permits must be submitted and approved by Council prior to the commencement of the works associated with such activity.

#### **Insurances**

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

#### **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.

**National Construction Code (Building Code of Australia)**

A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out. All building works approved by this consent must be carried out in accordance with the requirements of the National Construction Code.

**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.

**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.

**Lead-based Paint**

Buildings built or painted prior to the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned prior to occupation of the room or building.

**Dial before you dig**

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

**Useful Contacts**

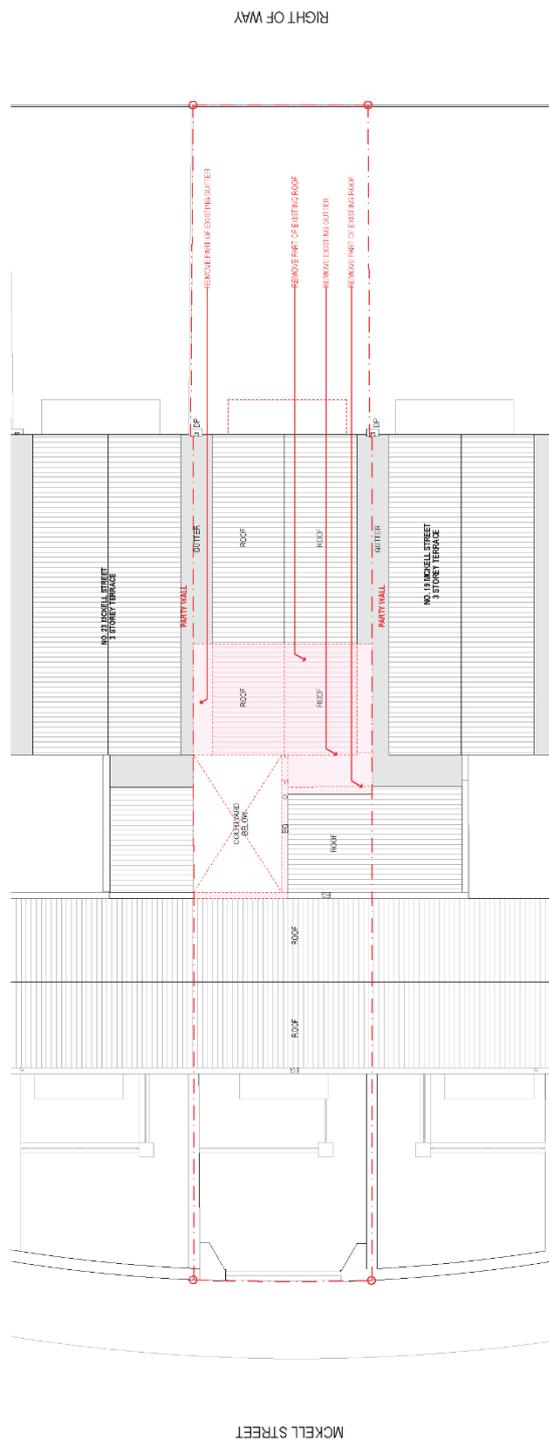
|                            |  |
|----------------------------|--|
| BASIX Information          | 1300 650 908 weekdays 2:00pm - 5:00pm<br><a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>  |
| Department of Fair Trading | 13 32 20<br><a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a><br>Enquiries relating to Owner Builder Permits and Home Warranty Insurance. |
| Dial Prior to You Dig      | 1100   |

|   |  |
|---|--|
| Landcom   | <a href="http://www.dialprior.toyoudig.com.au">www.dialprior.toyoudig.com.au</a><br>9841 8660<br>To purchase copies of Volume One of "Soils and Construction"                            |
| Long Service Payments Corporation               | 131441<br><a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>   |
| NSW Food Authority                              | 1300 552 406<br><a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>   |
| NSW Government                                  | <a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a><br><a href="http://www.diySAFE.nsw.gov.au">www.diySAFE.nsw.gov.au</a><br>Information on asbestos and safe work practices. |
| NSW Office of Environment and Heritage          | 131 555<br><a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>  |
| Sydney Water                                    | 13 20 92<br><a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>   |
| Waste Service - SITA Environmental Solutions    | 1300 651 116<br><a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>   |
| Water Efficiency Labelling and Standards (WELS) | <a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>   |
| WorkCover Authority of NSW                      | 13 10 50<br><a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a><br>Enquiries relating to work safety and asbestos removal and disposal.                               |









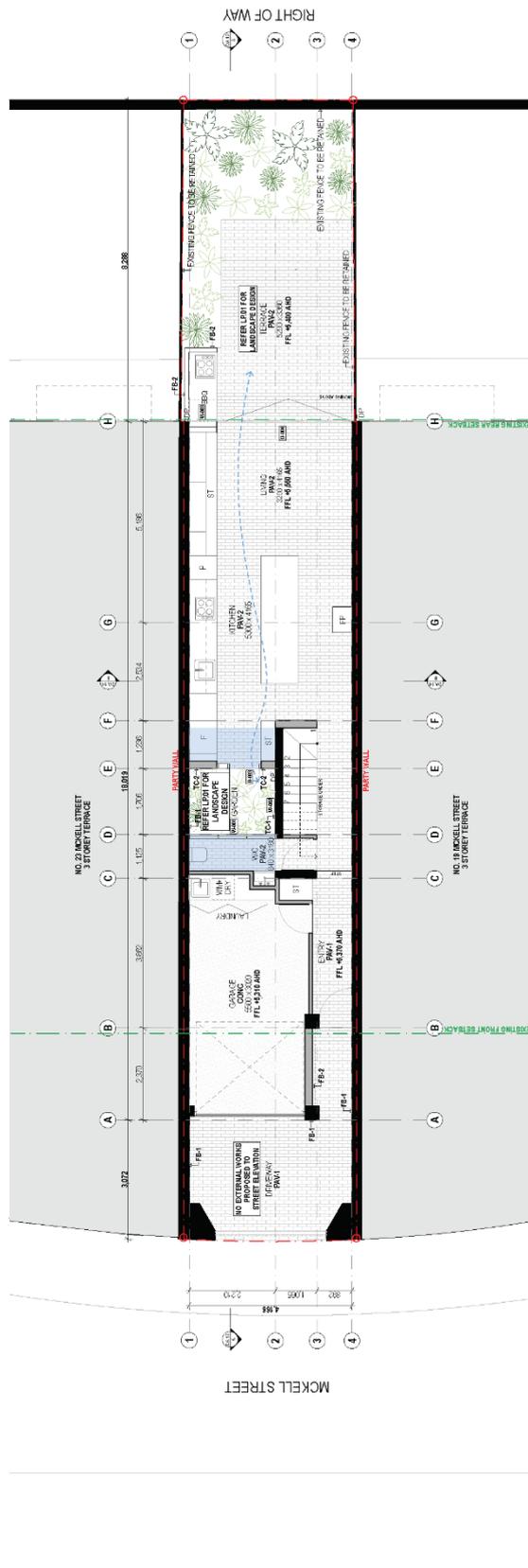
RIGHT OF WAY

MCKELL STREET

180/21 BIRCHGROVE TERRACE

|  |  |  |  |
|--|--|--|--|
| <p><b>LEGEND</b></p> <p>EXISTING ROOF<br/>ROOF</p> <p>ADDITIONAL SHOWN CASTLETON DEVELOPMENT<br/>ROOF</p> <p>REMOVAL OF EXISTING ROOF<br/>ROOF</p> <p>REMOVAL OF EXISTING ROOF<br/>ROOF</p> <p>REMOVAL OF EXISTING ROOF<br/>ROOF</p> <p>REMOVAL OF EXISTING ROOF<br/>ROOF</p>  | <p><b>LEGEND</b></p> <p>EXISTING FOUNDATION<br/>TO BE REMOVED</p> <p>TO BE REMOVED</p> <p>EXCAVATION AREA</p> <p>NEW CONSTRUCTION</p> <p>ACTUAL</p>  | <p><b>LEGEND</b></p> <p>EXISTING FOUNDATION<br/>TO BE REMOVED</p> <p>TO BE REMOVED</p> <p>EXCAVATION AREA</p> <p>NEW CONSTRUCTION</p> <p>ACTUAL</p>  | <p><b>LEGEND</b></p> <p>EXISTING ROOF<br/>ROOF</p> <p>ADDITIONAL SHOWN CASTLETON DEVELOPMENT<br/>ROOF</p> <p>REMOVAL OF EXISTING ROOF<br/>ROOF</p> <p>REMOVAL OF EXISTING ROOF<br/>ROOF</p> <p>REMOVAL OF EXISTING ROOF<br/>ROOF</p>   |
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|   |   |
|---|---|
| <p><b>PROJECT NO.</b><br/>180/21 BIRCHGROVE TERRACE</p> <p><b>OWNER.</b><br/>SHAYNE EGERT<br/>21 RICKELL STREET, BIRCHGROVE 2041 NSW</p> <p><b>DRAWING TITLE.</b><br/>BERKELTON PLAN - ROOF PLAN</p> <p><b>DRAWN / CHECKED.</b><br/>THOMAS ARCHITECTS<br/>FOR RHI</p> | <p><b>PROJECT NO.</b><br/>180/21 BIRCHGROVE TERRACE</p> <p><b>OWNER.</b><br/>SHAYNE EGERT<br/>21 RICKELL STREET, BIRCHGROVE 2041 NSW</p> <p><b>DRAWING TITLE.</b><br/>BERKELTON PLAN - ROOF PLAN</p> <p><b>DRAWN / CHECKED.</b><br/>THOMAS ARCHITECTS<br/>FOR RHI</p> |
|---|---|



GROUND FLOOR 3000

| <p><b>LENDING CODES</b></p> <p>1.00: EXISTING CONSTRUCTION</p> <p>2.00: NEW CONSTRUCTION</p> <p>3.00: EXISTING CONSTRUCTION TO BE DEMOLISHED</p> <p>4.00: EXISTING CONSTRUCTION TO BE REFINISHED</p> <p>5.00: EXISTING CONSTRUCTION TO BE REFINISHED WITH NEW FINISHES</p> <p>6.00: EXISTING CONSTRUCTION TO BE REFINISHED WITH NEW FINISHES AND STRUCTURAL CHANGES</p> <p>7.00: EXISTING CONSTRUCTION TO BE REFINISHED WITH NEW FINISHES AND STRUCTURAL CHANGES AND NEW SERVICES</p> <p>8.00: EXISTING CONSTRUCTION TO BE REFINISHED WITH NEW FINISHES AND STRUCTURAL CHANGES AND NEW SERVICES AND LANDSCAPE</p> <p>9.00: EXISTING CONSTRUCTION TO BE REFINISHED WITH NEW FINISHES AND STRUCTURAL CHANGES AND NEW SERVICES AND LANDSCAPE AND EXISTING SERVICES</p> <p>10.00: EXISTING CONSTRUCTION TO BE REFINISHED WITH NEW FINISHES AND STRUCTURAL CHANGES AND NEW SERVICES AND LANDSCAPE AND EXISTING SERVICES AND EXISTING SERVICES TO BE REFINISHED</p> | <p><b>LENDING CODES</b></p> <p>1.00: EXISTING CONSTRUCTION</p> <p>2.00: NEW CONSTRUCTION</p> <p>3.00: EXISTING CONSTRUCTION TO BE DEMOLISHED</p> <p>4.00: EXISTING CONSTRUCTION TO BE REFINISHED</p> <p>5.00: EXISTING CONSTRUCTION TO BE REFINISHED WITH NEW FINISHES</p> <p>6.00: EXISTING CONSTRUCTION TO BE REFINISHED WITH NEW FINISHES AND STRUCTURAL CHANGES</p> <p>7.00: EXISTING CONSTRUCTION TO BE REFINISHED WITH NEW FINISHES AND STRUCTURAL CHANGES AND NEW SERVICES</p> <p>8.00: EXISTING CONSTRUCTION TO BE REFINISHED WITH NEW FINISHES AND STRUCTURAL CHANGES AND NEW SERVICES AND LANDSCAPE</p> <p>9.00: EXISTING CONSTRUCTION TO BE REFINISHED WITH NEW FINISHES AND STRUCTURAL CHANGES AND NEW SERVICES AND LANDSCAPE AND EXISTING SERVICES</p> <p>10.00: EXISTING CONSTRUCTION TO BE REFINISHED WITH NEW FINISHES AND STRUCTURAL CHANGES AND NEW SERVICES AND LANDSCAPE AND EXISTING SERVICES AND EXISTING SERVICES TO BE REFINISHED</p> | <p><b>LENDING CODES</b></p> <p>1.00: EXISTING CONSTRUCTION</p> <p>2.00: NEW CONSTRUCTION</p> <p>3.00: EXISTING CONSTRUCTION TO BE DEMOLISHED</p> <p>4.00: EXISTING CONSTRUCTION TO BE REFINISHED</p> <p>5.00: EXISTING CONSTRUCTION TO BE REFINISHED WITH NEW FINISHES</p> <p>6.00: EXISTING CONSTRUCTION TO BE REFINISHED WITH NEW FINISHES AND STRUCTURAL CHANGES</p> <p>7.00: EXISTING CONSTRUCTION TO BE REFINISHED WITH NEW FINISHES AND STRUCTURAL CHANGES AND NEW SERVICES</p> <p>8.00: EXISTING CONSTRUCTION TO BE REFINISHED WITH NEW FINISHES AND STRUCTURAL CHANGES AND NEW SERVICES AND LANDSCAPE</p> <p>9.00: EXISTING CONSTRUCTION TO BE REFINISHED WITH NEW FINISHES AND STRUCTURAL CHANGES AND NEW SERVICES AND LANDSCAPE AND EXISTING SERVICES</p> <p>10.00: EXISTING CONSTRUCTION TO BE REFINISHED WITH NEW FINISHES AND STRUCTURAL CHANGES AND NEW SERVICES AND LANDSCAPE AND EXISTING SERVICES AND EXISTING SERVICES TO BE REFINISHED</p> | <p><b>REVISION</b></p> <table border="1"> <tr> <th>NO.</th> <th>DESCRIPTION</th> <th>DATE</th> </tr> <tr> <td>1</td> <td>FOR INFORMATION</td> <td>15/07/20</td> </tr> <tr> <td>2</td> <td>FOR INFORMATION</td> <td>15/07/20</td> </tr> <tr> <td>3</td> <td>FOR INFORMATION</td> <td>15/07/20</td> </tr> <tr> <td>4</td> <td>FOR INFORMATION</td> <td>15/07/20</td> </tr> <tr> <td>5</td> <td>FOR INFORMATION</td> <td>15/07/20</td> </tr> <tr> <td>6</td> <td>FOR INFORMATION</td> <td>15/07/20</td> </tr> <tr> <td>7</td> <td>FOR INFORMATION</td> <td>15/07/20</td> </tr> <tr> <td>8</td> <td>FOR INFORMATION</td> <td>15/07/20</td> </tr> <tr> <td>9</td> <td>FOR INFORMATION</td> <td>15/07/20</td> </tr> <tr> <td>10</td> <td>FOR INFORMATION</td> <td>15/07/20</td> </tr> </table> | NO. | DESCRIPTION | DATE | 1 | FOR INFORMATION | 15/07/20 | 2 | FOR INFORMATION | 15/07/20 | 3 | FOR INFORMATION | 15/07/20 | 4 | FOR INFORMATION | 15/07/20 | 5 | FOR INFORMATION | 15/07/20 | 6 | FOR INFORMATION | 15/07/20 | 7 | FOR INFORMATION | 15/07/20 | 8 | FOR INFORMATION | 15/07/20 | 9 | FOR INFORMATION | 15/07/20 | 10 | FOR INFORMATION | 15/07/20 | <p><b>PROJECT INFORMATION</b></p> <p><b>PROJECT:</b> BIRCHGROVE TERRACE</p> <p><b>OWNER:</b> SHANE FEENEY</p> <p><b>ADDRESS:</b> 21 MCHELL STREET, BIRCHGROVE NSW</p> <p><b>DRAWING TITLE:</b> PROPOSED GROUND FLOOR</p> <p><b>SCALE:</b> 1:100 AT A3</p> <p><b>DRAWN / CHECKED:</b> LH / BM</p> <p><b>ISSUED:</b> FOR RFI</p> |
|---|---|---|--|-----|-------------|------|---|-----------------|----------|---|-----------------|----------|---|-----------------|----------|---|-----------------|----------|---|-----------------|----------|---|-----------------|----------|---|-----------------|----------|---|-----------------|----------|---|-----------------|----------|----|-----------------|----------|--|
| NO.   | DESCRIPTION   | DATE  |  |     |             |      |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |    |                 |          |  |
| 1   | FOR INFORMATION   | 15/07/20  |  |     |             |      |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |    |                 |          |  |
| 2   | FOR INFORMATION   | 15/07/20  |  |     |             |      |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |    |                 |          |  |
| 3   | FOR INFORMATION   | 15/07/20  |  |     |             |      |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |    |                 |          |  |
| 4   | FOR INFORMATION   | 15/07/20  |  |     |             |      |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |    |                 |          |  |
| 5   | FOR INFORMATION   | 15/07/20  |  |     |             |      |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |    |                 |          |  |
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| 10  | FOR INFORMATION   | 15/07/20  |  |     |             |      |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |   |                 |          |    |                 |          |  |



FIRST FLOOR  
1000

**LENDING CODES**

AS - ASBESTOS  
CC - CONCRETE  
GL - GLASS  
GR - GRANITE  
IR - IRON  
M - MARBLE  
P - PLYWOOD  
S - STONE  
T - TILE  
W - WOOD  
Z - ZEBRANO

**TERMINAL PERFORMANCE SPECIFICATIONS**

Water: ...  
Sound: ...  
Fire: ...

**LENDING**

EXISTING CONSTRUCTION TO BE DEMOLISHED  
EXISTING CONSTRUCTION TO BE REFINISHED  
NEW CONSTRUCTION  
ADJUSTIVE

**LENDING - IN-SITU STUDY**

SHADOW CAST  
ADDITIONAL SHADOW CAST DUE TO DEVELOPMENT  
RESEARCH AND DEVELOPMENT FOR NEW DEVELOPMENT

**REVISION**

| NO. | DESCRIPTION     | DATE     |
|-----|-----------------|----------|
| A   | FOR INFORMATION | 10/03/20 |
| B   | FOR INFORMATION | 10/03/20 |
| C   | FOR INFORMATION | 10/03/20 |
| D   | FOR INFORMATION | 10/03/20 |
| E   | FOR INFORMATION | 10/03/20 |
| F   | FOR INFORMATION | 10/03/20 |
| G   | FOR INFORMATION | 10/03/20 |
| H   | FOR INFORMATION | 10/03/20 |
| I   | FOR INFORMATION | 10/03/20 |

**THOSE ARCHITECTS**

THOSE ARCHITECTS  
17/14 Oxford Street  
Sydney NSW 2000  
Email: [info@thosearchitects.com.au](mailto:info@thosearchitects.com.au)  
Telephone: +61 61 627 446 515 64  
www.thosearchitects.com.au

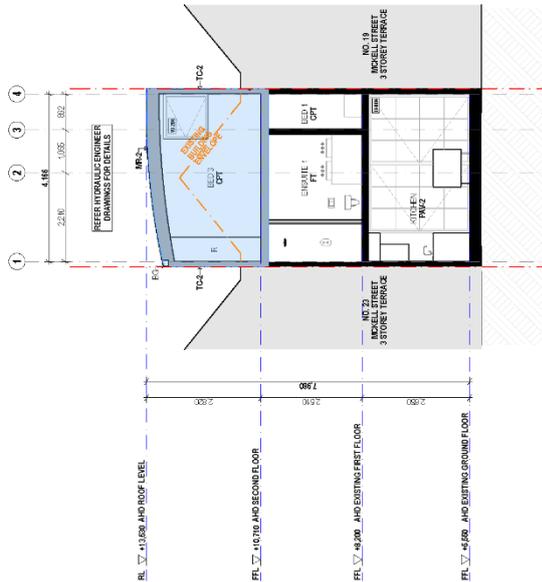
**PROJECT, PROJECT NO., OWNER, ADDRESS, DRAWING TITLE, SCALE, DRAWN / CHECKED, ISSUED, REVISION**

PROJECT: BIRCHGROVE TERRACE  
PROJECT NO.: 2109  
OWNER: SHAYNE FEGENT  
ADDRESS: 21 MCKELL STREET, BIRCHGROVE 2041 NSW  
DRAWING TITLE: PROPOSED FIRST FLOOR  
SCALE: 1000 A 1 A3  
DRAWN / CHECKED: JH / BH  
ISSUED: FOR SH1









SECTION 803  
1:1000

**LEGEND**

**EXISTING CONTRIBUTION TO BE DEMOLISHED**

**NEW CONTRIBUTION**

**ADDITION**

**LEASO - SHADOW STORY**

**SHADOW FOOT**

**ADDITIONAL SHADOW GATE FOR NEW DEVELOPMENT**

**SECTION HIGHLIGHTS DUE TO DEVELOPMENT**

**NOTES**

1. ALL WORKS TO BE COMPLETED IN ACCORDANCE WITH THE LOCAL GOVERNMENT'S DEVELOPMENT CONTROL BY-LAWS AND THE LOCAL GOVERNMENT'S DEVELOPMENT CONTROL BY-LAWS (AS AMENDED).

2. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE LOCAL GOVERNMENT AND ANY OTHER RELEVANT AUTHORITIES.

3. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE LOCAL GOVERNMENT AND ANY OTHER RELEVANT AUTHORITIES.

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**THOSE ARCHITECTS**

THOSE ARCHITECTS  
10/100 STURGEON STREET, SYDNEY NSW 2008  
Tel: 02 9550 1234  
Fax: 02 9550 1234  
www.thosearchitects.com.au

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www.thosearchitects.com.au

**PROJECT INFORMATION**

**PROJECT NO.** 1000/2014/0001

**OWNER.** SHIANHE EAGENT

**ADDRESS.** 21 MICHELL STREET, BIRCHROVE NSW

**DRAWING TITLE.** SECTION BB

**SCALE.** 1:100 AT A3

**ISSUED / CHECKED.** 10/10/2014 / TOS/BEI

**REVISIONS**

**NO.** 1

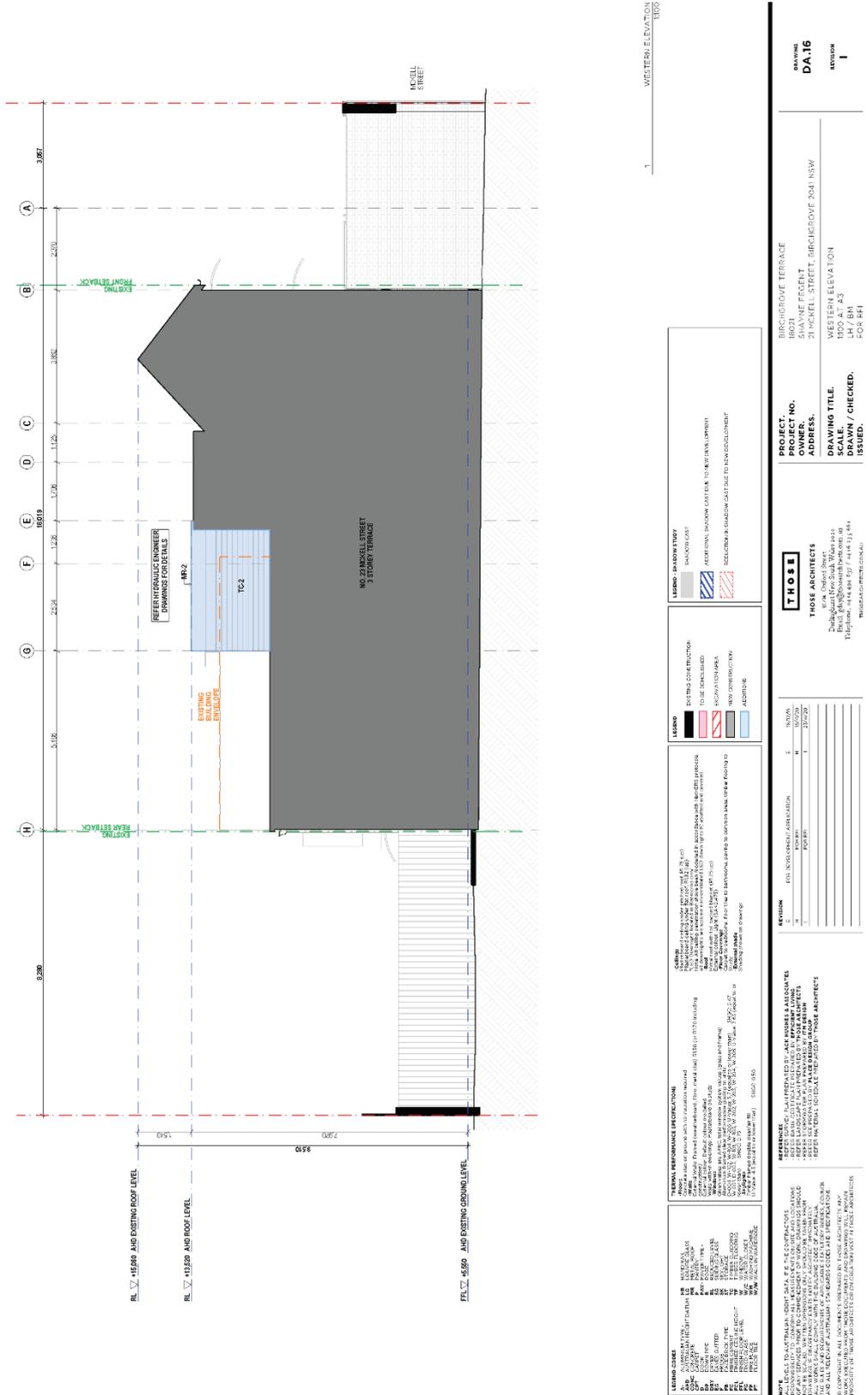
**DATE.** 10/10/2014

**BY.** TOS/BEI

**DESCRIPTION.** ISSUED FOR PERMIT











Attachment C- Clause 4.6 Exception to Development Standards

place  
design  
group.

Place Design Group Pty Ltd  
ACN 82370063  
3B/330-332 Elizabeth Street  
Waterloo, NSW 2017 Australia

Phone +61 2 9290 3300  
sydney@placedesigngroup.com  
placedesigngroup.com

21 Mckell Street,  
Birchgrove NSW 2041

Variation to Clause 4.3A  
Landscaping

Prepared for Shayne Fegent

## 1 Introduction

This Clause 4.6 variation request has been prepared by Place Design Group on behalf of Shayne Fegent in relation to the development application at 21 Mckell Street, Birchgrove (**the site**). This request is made pursuant to the provisions of Clause 4.6 Leichardt Local Environmental Plan 2013 (LLEP 2013) to vary Clause 4.3A, which states:

*(3) Development consent must not be granted to development to which this clause applies unless—*

*(a) the development includes landscaped area that comprises at least—*

*(i) where the lot size is equal to or less than 235 square metres—15% of the site area, or*

*(ii) where the lot size is greater than 235 square metres—20% of the site area, and*

*(b) the site coverage does not exceed 60% of the site area.*

As the site is part of a strata subdivision for an existing housing estate there are no records of the existing overall landscaped area and site coverage. While there is no record of a current landscaped areas and site covered for the estate it can be assumed that that there is a non-compliance with this Clause.

The proposed development is for alterations and extensions to an existing dwelling and will make no changes to the existing site cover or landscaping requirements, thereby maintaining the current non-compliant. The request is considered to have no detrimental impacts arising as a result of the proposed

Clause 4.6 and the relevant Development Standard. The following sections of the report provide an assessment of the request to vary the Development Standard relating to "Landscaped Area for residential accommodation in R1 Zone" in accordance with Clause 4.6 of LLEP 2013. Consideration has been given to the following matters within this assessment:

- Varying Development Standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011; and
- Relevant planning principles and judgements issued by the Land and Environment Court.

## 2 Exception to Development Standard

Clause 4.6 of the LLEP 2013 includes provisions that allow for exceptions to Development Standards in certain circumstances. The objectives of Clause 4.6 are listed within the LEP as:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the Consent Authority to approve a development application that does not comply with certain Development Standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for the development.

In determining whether to grant consent for development that contravenes a Development Standard, Clause 4.6(3) requires that the Consent Authority consider a written request from the applicant, which demonstrates that:

*Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*There are sufficient environmental planning grounds to justify contravening the development standard.*

Furthermore, the Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone, and the concurrence of the Secretary has been obtained. The proposed non-compliance in landscaping has been assessed against the objectives of the zone and Development Standard in **Section 3**.

The assessment of the proposed variation has been undertaken in accordance with the requirements of the LLEP 2013, Clause 4.6(3) Exceptions to Development Standards in the assessment below:

### 3 Compliance with the Development Standard is unreasonable or unnecessary in the circumstances of the case

In the Wehbe judgement Preston CJ set out five ways in which a variation to a development standard can be supported as follows:

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

Consideration (1) requires a demonstration that the objectives of the development standard are achieved notwithstanding noncompliance in the standard. The compliance of the proposed development with the objectives of the development standard in Clause 4.3A of the LLEP 2013 is demonstrated in Table 2 below.

| Objectives  |   |
|---|---|
| To provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,   | The proposed development will include a mix of native shrubs suitable with the climate. The proposed landscaping will be located in the rear courtyard, internal courtyard and within a planter on the second floor creating a suitable contrast with the built form.   |
| To maintain and encourage a landscaped corridor between adjoining properties,   | The proposed development is retaining the existing footprint of the townhouse unit  |
| to ensure that development promotes the desired future character of the neighbourhood                                     | The site sits within an established form of development. The proposed alterations and additions are designed to be in keeping with the desired future character of the neighborhood. The proposed development does not make any changes to the building footprint providing suitable space for landscaping to soften the existing dwelling. |
| to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on | The proposed development will sit within the existing building envelope. The proposed development provides suitable landscaping to the rear which will retain and   |



| Table 2 Objectives of Clause 4.3A   |  |
|---|--|
| Objectives  |  |
| site and by minimising obstruction to the underground flow of water,  | absorb surface drainage water.   |
| To control site density,  | The site is part of an established townhouse development. The proposed development will therefore not seek to increase the density.    |
| To limit building footprints to ensure that adequate provision is made for landscaped areas and private open space. | The proposed development will not increase the site cover. The proposed development provides for suitable landscaping within the rear. |

Despite the technical departure from the relevant Landscaping standard the proposed development remains consistent with the objectives of Clause 4.3A of the LLEP 2013 and therefore it is demonstrated that strict compliance with the landscaping standard in this instance is unreasonable and unnecessary.

Consideration (2) *'the underlying objective of the purpose of the standard is not relevant to the development and therefore compliance is unnecessary'* is relevant to this application. The underlying objective of the standard are to control development to ensure that the propose built form is compatible with the desired future character and provides for the amenity to residents. The proposed development will provide suitable landscaping within the immediate vicinity. Furthermore, no changes are made to the existing site cover.

Consideration (4), in which a variation can be sought is *'The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable'*

The development standard for landscaping and site coverage has virtually been abandoned within the immediate multi dwelling development.

The proposed landscaping and site coverage exceedance is in accordance with the original approval.

## 4 Consistent with the Objectives of the Zone

Clause 4.6(4)(a)(ii) requires that such a request must establish that the proposed contravention is consistent with the objectives of the Development Standard and the objectives of the Zone. An assessment of the proposed development against the relevant objectives has been provided below:

Further, it is considered that the proposal will remain consistent with the objectives of the R1 zone as summarised in Table 3 below

| Objectives   | Compliance with Objective  |
|--|--|
| To provide for the housing needs of the community.   | The proposed alterations and addition will continue to provide for housing needs for the community.  |
| To provide for a variety of housing types and densities.   | The proposed development will retain the multi dwelling housing type and will soften the built form through landscaping.   |
| To enable other land uses that provide facilities or services to meet the day to day needs of residents  | N/A  |
| To improve opportunities to work from home   | The proposed development will provide for landscaping that will provide an improved amenity where residents work from home.  |
| To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.                     | The proposed development will reinstate materials that are consistent with the adjoining townhouses, ensuring that that the proposed alteration and additions are compatible with the existing locality.   |
| To provide landscaped areas for the use and enjoyment of existing and future residents.  | The proposed development will provide suitable landscaping at the rear of the development to ensure it will provide an appropriate balance between built form and landscaping. The proposed development provides for over 15% of the lot entitlement as landscaping. |
| To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area. | N/A  |
| To protect and enhance the amenity of existing and future residents and the neighbourhood.   | The proposed development will continue to provide for suitable housing within a residential area.  |

## 5 Sufficient Environmental Planning Ground to justify contravening the Development Standard

The proposed variation to the Development Standard Clause 4.3A under the LLEP 2013 is considered well founded on the basis that:

- Have no detrimental impacts on both the natural and built environments;
- Have no detrimental social or economic impacts
- Be suitable for the site; and
- Be in the public interest

## 6 Grounds for Consideration

In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

1. Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
2. The public benefit of maintaining the development standard, and
3. Any other matters required to be taken into consideration by the Secretary before granting concurrence.

The proposal has been assessed against the relative criteria below:

Would non-compliance raise any matter of significance for State or regional planning?

The proposed non-compliance with the development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

Is there a public benefit of maintaining the development standard?

In this instance, there is not a public benefit in maintaining the development standard. The proposed development is not increasing the existing site cover. The proposed development seeks to provide a diversity in housing stock within the locality that will benefit residents.

Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

There are no additional matters that need to be considered within the assessment of the Clause 4.6 Request.

## 7 Conclusion

It is requested that Council supports the proposed variation to Clause 4.3A for the following reasons:

- The proposed development does not alter the existing building envelope. The site cover is existing;
- There are sufficient environmental planning ground to justify contravening the Development Standard; and
- There is no public benefit in maintaining the strict compliance with the Development Standard.

Overall, it is considered that the proposed variation is considered appropriate and can be supported under the provisions of Clause 4.6 of LLEP 2013.

The logo for Place Design Group, featuring the words "place", "design", and "group." stacked vertically in a white, lowercase, sans-serif font. The background of the entire page is a vibrant red with abstract geometric shapes and a pattern of fine white lines in the upper left corner.

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21 Mckell Street,  
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Clause 4.6 Variation to FSR

Prepared for Shayne Fegent

# 1 Introduction

This Clause 4.6 variation request has been prepared by Place Design Group on behalf of Shayne Fegent in relation to the development application at 21 Mckell Street, Birchgrove. This request seeks to vary the maximum Floor Space Ratio (FSR) prescribed for the subject site under Clause 4.4 of the Leichhardt LEP 2013.

The proposed development is seeking to include an additional bedroom to the second floor, which in doing so will exceed the maximum permitted FSR. It is highlighted, that whilst the proposed development is exceeding the allowable FSR provision the proposal will not result in any changes to the existing site cover.

This Clause 4.6 Variation has been submitted to assess the non-compliance of the proposed development with *Clause 4.4 Floor Space Ratio Leichhardt Local Environment Plan 2013 (LLEP 2013)* and has been prepared in accordance with the requirements of Clause 4.6 of the LLEP 2013.

Table 1 describes the proposed variation in detail.

| Table 1. Development Standard      |                                |                                     |                         |
|------------------------------------|--------------------------------|-------------------------------------|-------------------------|
| LLEP Clause                        | LLEP 2013 Development Standard | Proposed Development Non-Compliance | Percentage of Variation |
| Clause 4.4 Floor Space Ratio (FSR) | 1.0:1 or 130.02m <sup>2</sup>  | 1.08:1 or 140.26m <sup>2</sup>      | 7.87%                   |

This request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant Development Standard. The following sections of the report provide an assessment of the request to vary the Development Standard relating to the maximum FSR in accordance with Clause 4.6 of LLEP 2013. Consideration has been given to the following matters within this assessment:

- Varying Development Standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011; and
- Relevant planning principles and judgements issued by the Land and Environment Court.

The proposed variation is limited to the inclusion of the additional bedroom which is located at the rear of the building and therefore will not be seen from the Mckell streetscape. The proposed addition is extremely marginal in nature and will not result in any undue amenity impacts to the surrounding properties.



## 2 Exception to Development Standard

Clause 4.6 of LLEP 2013 includes provisions that allow for exceptions to Development Standards in certain circumstances. The objectives of Clause 4.6 are listed within the LEP as:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the Consent Authority to approve a development application that does not comply with certain Development Standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for the development.

In determining whether to grant consent for development that contravenes a Development Standard, Clause 4.6(3) requires that the Consent Authority consider a written request from the applicant, which demonstrates that:

*Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*There are sufficient environmental planning grounds to justify contravening the development standard.*

Furthermore, the Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone, and the concurrence of the Secretary has been obtained. The proposed non-compliance in FSR has been assessed against the objectives of the zone and Development Standard in **Section 3**.

The assessment of the proposed variation has been undertaken in accordance with the requirements of the LLEP 2013, Clause 4.6(3) Exceptions to Development Standards in the assessment below:

### 3 Compliance with the Development Standard is unreasonable or unnecessary in the circumstances of the case

In the Wehbe judgement Preston CJ set out five ways in which a variation to a development standard can be supported as follows:

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

Consideration (1) which requires a demonstration that the objectives of the FSR standard can be achieved notwithstanding noncompliance is relevant in this case. The compliance of the proposed development with the objectives of the FSR standard in Clause 4.4 of the LLEP2014 is demonstrated in Table 2 below.

| Objectives  | Compliance with Objective   |
|---|---|
| To ensure that residential accommodation:   |   |
| (i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and | The proposal involves alterations and additions to the existing residential dwelling. The proposal will not result in any adverse amenity impacts upon the neighbouring residential properties and will not detract from the economic welfare of the community or the quality of the environment. Overall, the proposed development will enhance the use of the existing dwelling whilst substantially maintaining the existing building envelope and frontage to McKell Street. The works will be located behind the 3-storey part of the building fronting McKell Street and will not adversely impact the streetscape or the locality. |
| (ii) provides a suitable balance between landscaped areas and the built form, and                                 |   |
| (iii) minimises the impact of the bulk and scale of buildings,  | The proposed addition are modest and restrained and add little to the visual volume of the property when viewed from adjoining properties.<br><br>The proposed addition is complementary and compatible with the style, orientation and pattern of surrounding buildings along McKell Street, ensuring that the development is consistent with the relevant objectives pertaining to Density.   |
| To ensure that non-residential development  | The proposed development is identified as residential   |

| Table 2. Objectives of Clause 4.4 FSR   |   |
|---|---|
| Objectives  | Compliance with Objective   |
| is compatible with the desired future character of the area in relation to building bulk, form and scale. | development. Therefore, this element of criteria is not applicable. |

Despite the technical departure from the relevant FSR standard the proposed development remains consistent with the objectives of Clause 4.4 of the LLEP2013 and therefore it is demonstrated that strict compliance with the FSR standard in this instance is unreasonable and unnecessary. Pursuant to Clause 4.6 of the LLEP 2013, exception is sought from the prescribed FSR standard of 1.0:1 Clause 4.6(4)(a)(ii) requires that such a request must establish that the proposed contravention is consistent with the objectives of the Development Standard and the objectives of the Zone. An assessment of the proposed development against the relevant objectives has been provided below:

Further, it is considered that the proposal will remain consistent with the objectives of the R1 zone as summarised in Table 3 below

| Table 3. Objectives of R1-General Residential  |  |
|--|--|
| Objectives   | Compliance with Objective  |
| To provide for the housing needs of the community.   | The proposed alterations and addition will continue to provide for housing needs for the community.  |
| To provide for a variety of housing types and densities.   | The proposed development seeks to adapt the existing development to more modern living through the inclusion of additional room.   |
| To enable other land uses that provide facilities or services to meet the day to day needs of residents  | Not Applicable.  |
| To improve opportunities to work from home   | The proposed development will provide for additional living area that will allow for more opportunities to work  |
| To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.                     | The proposed development will reinstate materials that are consistent with the adjoining townhouses, ensuring that that the proposed alteration and additions are compatible with the existing locality.   |
| To provide landscaped areas for the use and enjoyment of existing and future residents.  | The proposed development will provide suitable landscaping at the rear of the development to ensure it will provide an appropriate balance between built form and landscaping. The proposed landscaping complied with the prescribed LEP requirement for landscaping in R1 zone. |
| To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area. | The proposed development is not for subdivision. Therefore, this element of criteria is not applicable.  |
| To protect and enhance the amenity of existing and future residents and the  | The proposed development will continue to provide for  |



| Table 3. Objectives of R1-General Residential |   |
|---|---|
| Objectives                                    | Compliance with Objective                   |
| neighbourhood.                                | suitable housing within a residential area. |

Sufficient Environmental Planning Ground to justify contravening the Development Standard

The proposed variation to the Development Standard for the FSR (Clause 4.4) under the LLEP 2013 is considered well founded on the basis that:

- The proposed development will maintain the existing building envelope, not resulting in a built form that will impeded on existing setbacks or result in an increase in height;
- The proposed increase in FSR is consistent with surrounding development in the multi dwelling development, that have sought for alterations to the built form to provide for additional living area;
- The proposal complies with the Site Coverage standards, providing a suitable balance between landscaped areas and the built form;
- The siting of the building is within the building location zones when it can be reasonably assumed development can occur;
- The proposal does not result in any adverse amenity impacts to the surrounding properties; and
- The increase in floor area from the current is reasonable and still maintains the spirit of the 4.6 control by effectively controlling and making best use of the proposed floor area increase.

Furthermore, in the Wehbee judgement, one of the ways in which a variation can be sought was *'The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable'*

The development standard for FSR has virtually been abandoned within the immediate multi dwelling development. Examples of development that has been approved in the immediate area where FSR requirements have been exceeded include:

- 27 Mckell Street, Birchgrove (DA/2012/487): FSR of 1.43:1 (allowable 1.0:1)
- 1 Yeend Street, Birchgrove (DA/2012/2220: FSR of 0.98 (allowable of 0.9:1)
- 2 Lizzie Webber Place, Birchgrove (D/2019/43) FSR of 1.15:1 (allowable of 1.0:1)

The proposed FSR exceedance is in accordance with surrounding approvals. The proposed increase in FSR will not be seen from the streetscape and will be concealed behind the front façade.

## 4 Grounds for Consideration

In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

1. Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
2. The public benefit of maintaining the development standard, and
3. Any other matters required to be taken into consideration by the Secretary before granting concurrence.

The proposal has been assessed against the relative criteria below:

Would non-compliance raise any matter of significance for State or regional planning?

The proposed non-compliance with the maximum FSR development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

Is there a public benefit of maintaining the development standard?

In this instance, there is not a public benefit in maintaining the development standard. The proposed increase in FSR is not increasing the existing site cover. The proposed development seeks to provide a diversity in housing stock within the locality that will benefit residents.

Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

There are no additional matters that need to be considered within the assessment of the Clause 4.6 Request.

## 5 Conclusion

It is requested that Council supports the proposed variation to Clause 4.4 Height of Buildings of LLEP 2013 for the following reasons:

- The proposed increase in FSR is consistent and will adhere to the objectives of the Development Standard and Zone;
- Compliance with the Development Standard is unreasonable and unnecessary as the proposed increase in FSR will not be seen from the Mckell streetscape. In addition, the proposal will not result in an increase in site cover;
- There are sufficient environmental planning ground to justify contravening the Development Standard;
- The proposed FSR increase will not result in an unreasonable environmental impact; and
- There is no public benefit in maintaining the strict compliance with the Development Standard.

Overall, it is considered that the proposed variation is considered appropriate and can be supported under the provisions of Clause 4.6 of LLEP 2013.

## Attachment D- Owners' / Strata Consent



Conti &amp; Co Pty Ltd

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19<sup>th</sup> August 2019Shayne Fegent  
426/19 Hickson Road  
DAWES POINT NSW 2000

Dear Shayne,

**RE: STRATA PLAN 62555 - 21 MCKELL STREET, BIRCHGROVE  
RENOVATIONS APPROVAL**

As the managing agent of the above strata scheme, we are pleased to advise that the Owners Corporation has resolved pursuant to special by-law 66 to grant its approval for you to carry out renovations in accordance with your application within lot 51.

The conditions of approval require that you are responsible:

1. To know and understand the by-laws applicable to the strata scheme
2. To notify surrounding residents of your work schedule proper to commencement so they are aware of any possible disruptions such as power tools
3. That all rubbish and debris caused from the works are disposed of correctly and not dumped on common property.
4. To take such action as may be necessary to clean all areas of the lot or common property of dirt and rubbish caused by the works.

You should keep this letter as evidence of the consent of the Owners Corporation.

Should you require any further information, please do not hesitate to contact the undersigned on 9716 8686 or at [tara.w@contistrata.com.au](mailto:tara.w@contistrata.com.au).

Yours faithfully,  
CONTI STRATA  
TARA WELCH  
ASSISTANT STRATA MANAGER

ANNEXURE B

## SPECIAL BY-LAW 66

## LOT 51 RENOVATION WORKS

Operation of by-law

1. The Owner under this by-law is the owner or owners of lot 51.
2. In the event of an inconsistency between this by-law and any other by-law applicable to strata scheme 62555, the terms of this by-law shall prevail to the extent of that inconsistency.
3. The Owner has the special privilege to perform the Works and keep the Works on the common property pursuant to the terms set out in this by-law.

Definitions

4. In this by-law, unless the context otherwise requires:
  - (a) **Act** means the *Strata Schemes Management Act, 2015*.
  - (b) **Authority** means any government, semi government, statutory, public or other authority having any jurisdiction over the Lot or the Building including the Council.
  - (c) **Building** means the building situated at 21 Mckell Street, Birchgrove
  - (d) **Council** means Inner West Council.
  - (e) **Insurance** means:
    - (i) contractors all risk insurance (including public liability insurance) in the sum of \$10,000,000;
    - (ii) workers compensation insurance; and
    - (iii) insurance required under the *Home Building Act, 1989* (if any).
  - (f) **Lot** means lot 51 in strata scheme 62555.
  - (g) **Owner** means the owner or owners of the Lot.
  - (h) **Owners Corporation** means The Owners – Strata Plan No. 62555.
  - (i) **Plans** means the following plans, documents, drawings and images for the works which are attached to this by-law and/or the minutes of the meeting at which this by-law is considered:
    - i. plans titled "21 Mckell Street, Birchgrove (Drawing DA.01-DA.19 & LP.01-LP.02)" by Those Architects, dated 3 July 2019; and
    - ii. document titled "Finishes schedule" by Those Architects, dated 3 July 2019.
  - (j) **Works** means the Owner's renovation works to the Lot and the common property to be carried out for and in connection with:
    - i. the upgrading of the existing courtyard located at the rear part of the Lot as set out in the Plans;
    - ii. the construction of a wine cellar to be located beneath the kitchen part of the Lot including the excavation of soil as set out in the Plans,

- iii. the removal of existing walls and construction of new walls throughout the Lot as set out in the Plans;
- iv. the removal of existing laundry fittings and fixtures and replacement with new laundry fittings and fixtures;
- v. the removal of existing laundry wall tiles and floor tiles and replacement with new laundry wall tiles and floor tiles including the installation of a new waterproofing membrane;
- vi. the reconfiguration of the existing kitchen and living room parts of the Lot as set out in the Plans including the installation of new fittings and fixtures and hatch to allow access to the new wine cellar;
- vii. the removal of existing floor coverings in the kitchen and living room parts of the Lot and replacement with new floor coverings including the installation of soundproofing acoustic underlay;
- viii. the installation of new windows in bedroom 1, 2 and 3 parts of the Lot;
- ix. the construction of a new study nook on the first floor part of the Lot including the installation of a new window;
- x. the construction of an attic within the common property roof space immediately above bedroom 1 part of the Lot;
- xii. the construction of a new bedroom and bathroom within the existing common property roof space including the installation of new bathroom new fittings and features, bathroom wall tiles and floor tiles and a new waterproofing membrane;
- xiii. the installation of new windows to the common property wall adjoining the courtyard part of the Lot; and
- xiv. the removal of existing first floor bathroom wall tiles and floor tiles, fixtures and fittings, and replacement with new bathroom wall tiles and floor tiles, fixtures and fittings (including the installation of a new waterproofing membrane) in the new bathroom location as set out in the Plans,

as set out in the Plans together with:

- (C) ancillary works to facilitate the works referred to above; and
- (D) restoration of lot and common property (including the Lot) damaged by the works referred to above,

and to be conducted strictly in accordance with the Plans and the provisions of this by-law.

5. In this by-law, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
  - (b) any gender includes the other gender;
  - (c) any terms in the by-law will have the same meaning as those defined in the Act;
  - (d) references to legislation include references to amending and replacing legislation;
  - (e) references to the Owner in this by-law include any of the Owner's executors, administrators, successors, permitted assigns or transferees;

- (f) references to any Works under this by-law include any ancillary equipment and fittings whatsoever and any obligation under this by-law applies to all such ancillary equipment and fittings.

**Conditions**

6. Before the Works commence, the Owner must:
- (a) obtain all necessary approvals from any Authority and provide a copy to the Owners Corporation;
  - (b) provide the Owners Corporation's nominated representative(s) access to inspect the Lot within forty-eight hours of any request from the Owners Corporation;
  - (c) provide the Owners Corporation with a certification from a suitably qualified engineer as to the wall removal aspects of the Works;
  - (d) effect and maintain Insurance and provide a copy to the Owners Corporation (if requested by the Owners Corporation); and
  - (e) pay the Owners Corporation's reasonable costs in preparing, making and registering this by-law (including legal and strata management costs).
7. To be compliant under this by-law, the Works (if approved) must:
- (a) be in keeping with the appearance and amenity of the Building in the reasonably held opinion of the Owners Corporation;
  - (b) be manufactured and designed to specifications for domestic use;
  - (c) comply with the provisions of the Building Code of Australia and Australian Standards (where relevant);
  - (d) comply with the *Home Building Act, 1989* (where relevant); and
  - (e) comprise materials that are new and suitable for the purpose for which they are used.
8. To be compliant under this by-law, the floor coverings (if approved) must:
- (a) not disturb the peaceful enjoyment of owners and occupiers of other lots lawfully using others lots and the common property; and
  - (b) achieve an acoustical star rating of 5 stars or better, according to the Guideline for Apartment and Townhouse Acoustic Rating published by the Australian Association of Acoustical Consultants.
9. While the Works are in progress the Owner of the Lot must:
- (a) use duly licensed employees, contractors or agents to conduct the Works;
  - (b) ensure the Works are conducted in a proper and workmanlike manner and comply with the relevant building codes and standards;
  - (c) ensure that the Works are carried out expeditiously and with a minimum of disruption;
  - (d) only carry out the Works at times reasonably approved by the Owners Corporation;
  - (e) perform the Works within three (3) months of their commencement or such other period as reasonably approved by the Owners Corporation;

- (f) transport all construction materials, equipment and debris in the manner described in this by-law and as otherwise reasonably directed by the Owners Corporation;
  - (g) protect all affected areas of the Building outside the Lot from damage relating to the Works;
  - (h) ensure that the Works do not interfere with or damage the common property or the property of any other lot owner other than as approved in this by-law and if this occurs the Owner must rectify that interference or damage within a reasonable period of time;
  - (i) provide the Owners Corporation's nominated representative(s) access to inspect the Lot within forty-eight (48) hours of any request from the Owners Corporation; and
  - (j) not vary or increase the scope of Works approved under this by-law without first obtaining the consent in writing from the Owners Corporation.
10. After the Works have been completed, the Owner must:
- (a) notify the Owners Corporation that the Works have been completed;
  - (b) notify the Owners Corporation that all damage, if any, to lot and common property caused by the Works and not permitted by this by-law has been rectified;
  - (c) provide the Owners Corporation's nominated representative(s) access to inspect the Lot within forty-eight (48) hours of any request from the Owners Corporation to assess compliance with this by-law or any consents provided under this by-law from time to time;
  - (d) provide the Owners Corporation with a certification from a suitably qualified structural engineer as to the structural integrity of the Works and that the Works have been performed in accordance with the Plans; and
  - (e) provide the Owners Corporation with a copy of any certificate or certification required by an Authority to approve the Works.
11. The Owners Corporation's right to access the Lot arising under this by-law expires as soon as it is reasonably satisfied that the provisions of Clauses 9 and 10 above have been complied with.
12. The Owner:
- (a) must not carry out any alterations or additions or do any works (other than Works expressly approved under this by-law);
  - (b) must properly maintain and upkeep the Works;
  - (c) must ensure that the Works and their use do not contravene any statutory requirements of any Authority;
  - (d) must maintain and upkeep those parts of the common property in immediate contact with the Works;
  - (e) must ensure that the Works (where applicable) do not cause water escape or water penetration to lot or common property;
  - (f) must comply with all directions, orders and requirements of any Authority relating to the Works and their use;
  - (g) remains liable for any damage to lot or common property (including the Lot) arising out of the Works;
  - (h) must comply with all directions, orders and requirements of any Authority and the reasonable directions of the Owners Corporation relating to Works; and

- (i) indemnifies and shall keep indemnified the Owners Corporation against any costs or losses arising out of or in connection with the Works including their use and including but not limited to any loss of soundproofing caused by the performance of the Works.
13. If the Owner fails to comply with any obligation under this by-law, then the Owners Corporation may:
- (a) carry out all work necessary to perform that obligation;
  - (b) enter upon any part of the Lot to carry out that work; and
  - (c) recover the costs of carrying out that work from the Owner as a debt (and include reference of that debt on levy notices and any other levy reports or information) and the Owner acknowledges that any debt for which the Owner is liable under this by-law, is due and payable on written demand or at the direction of the Owners Corporation and, if not paid at the end of 1 month from the date on which it is due, will bear until paid, simple interest at an annual rate of 10 per cent or, if the regulations provide for another rate, that other rate and the interest will form part of that debt.
14. The Works will always remain the property of the Owner
15. In the event that the Owner desires to remove the Works, the provisions of Clauses 9-12 will apply.

**SP 62555 - Part 1 – Application**

**Owner Details:**

|                         |  |
|-------------------------|--|
| Strata Plan:<br>62555   | Unit number & Address:<br>21 MCKELL STREET, BIRCHGROVE |
| Name:<br>MICHAEL FEGENT | Phone:<br>   |
| Email:<br>              |  |

**Renovation Details:**

Detail of work proposed to be carried out in each room (provide annexure if more room is required):

PLEASE REFER ATTACHMENT.

|  |  |
|--|--|
| Proposed commencement date (approximate):<br>JAN 2020                  | Expected duration of works<br>9 MONTHS |
| Proposed method of removing trade waste & debris:<br>VIA MCKELL STREET |  |
| Proposed method of delivering materials:<br>VIA MCKELL STREET          |  |
| Proposed method of contractor parking:<br>EXISTING DRIVEWAY            |  |

**Checklist:**

I have attached:

- Sketches/diagrams depicting the layout prior to renovating
- Sketches/diagrams depicting the layout on completion of the renovation

I understand that it is my responsibility to:

- Engage suitably qualified, licensed and insured contractors
- Notify the Strata Committee of any changes to the proposed contractor and work times
- Circulate notices to my neighbours informing them of the work times, rubbish, delivery & parking arrangements
- Ensure the contractor protects the common areas, particularly hallways and lifts for the duration of the work
- Ensure the contractor cleans all common areas daily
- If requested, provide the Strata Committee with access to inspect before and after the renovations
- Where relevant, obtain consent from any government or other authority for the renovations

**This form was completed by:**

|                         |                                   |                   |
|-------------------------|-----------------------------------|-------------------|
| Name:<br>LUKE HALLAWAYS | Signature:<br><i>L. Hallaways</i> | Date:<br>04/07/19 |
|-------------------------|-----------------------------------|-------------------|

Contil Strata

Page 3 of 5

*M Fegent*

**21 MCKELL STREET, BIRCHGROVE**

Renovation Details

**EXTERNAL****FRONT**

- No proposed works to front.

**REAR**

- New courtyard space and landscape.

**BASEMENT****WINE CELLAR**

- Excavation of a new wine cellar accessed via a hatch in the kitchen space.

**GROUND FLOOR****GARAGE**

- Construction of new walls and new laundry location.

**DINING, LIVING AND KITCHEN**

- New configuration of kitchen and living space. New door to courtyard and new floor.
- Construction of a hatch to new wine cellar in basement.

**LAUNDRY / WC**

- Removed and new spaces constructed.

**COURTYARD**

- Removal of paving and new landscaping

**FIRST FLOOR****BED 2**

- New windows to courtyard space and construction of study nook.

**BED 3**

- New location of bathroom. New windows to courtyard space.

**BATH**

- Remove existing bathrooms and construct a new bathroom.

**STUDY**

- New flooring, construction of new walls, construction of an ensuite off one study.
- New window to backyard.

**SECOND FLOOR****BED 1**

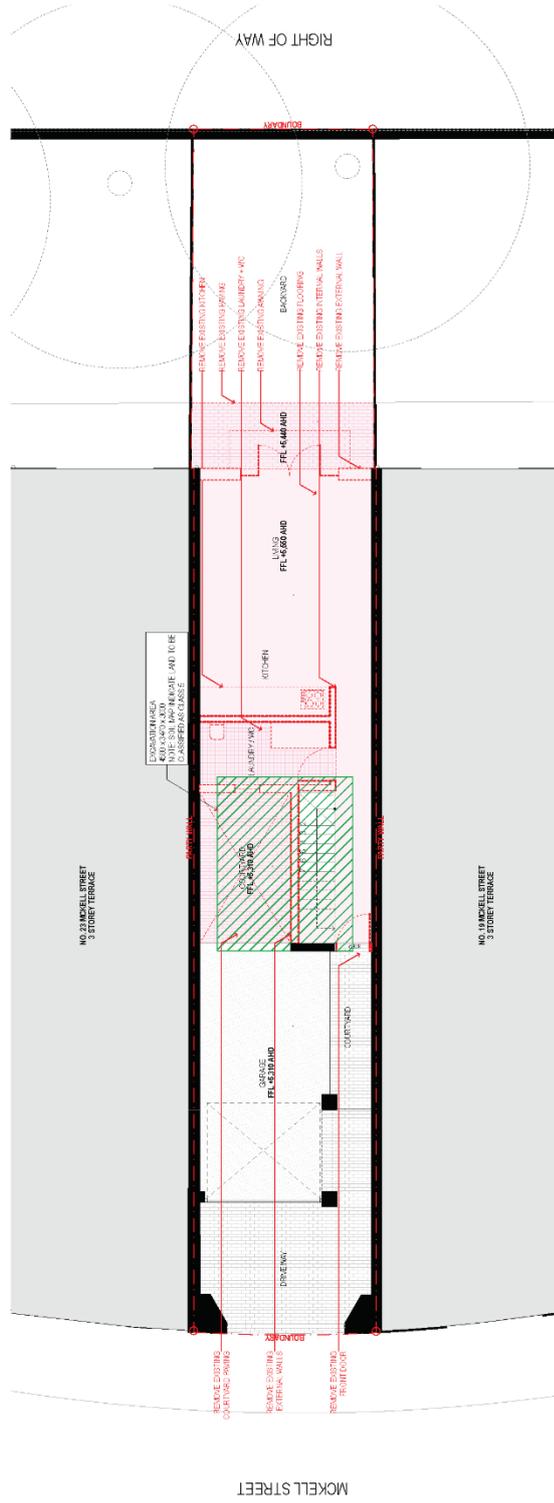
- New windows to courtyard and construction of new walls. Construction of hatch to attic.

**ADDITION**

- Removal of part existing roof, new construction of Bed 3 and bathroom







1 DEMOLITION PLAN - GROUND FLOOR

**LEGEND**

**EXISTING**

- EXISTING FLOOR FINISH
- EXISTING WALL
- EXISTING ROOF
- EXISTING EXTERNAL WALL
- EXISTING EXTERNAL WALL TO BE DEMOLISHED

**NEW**

- NEW FLOOR FINISH
- NEW WALL
- NEW ROOF
- NEW EXTERNAL WALL
- NEW EXTERNAL WALL TO BE DEMOLISHED

**LEGEND**

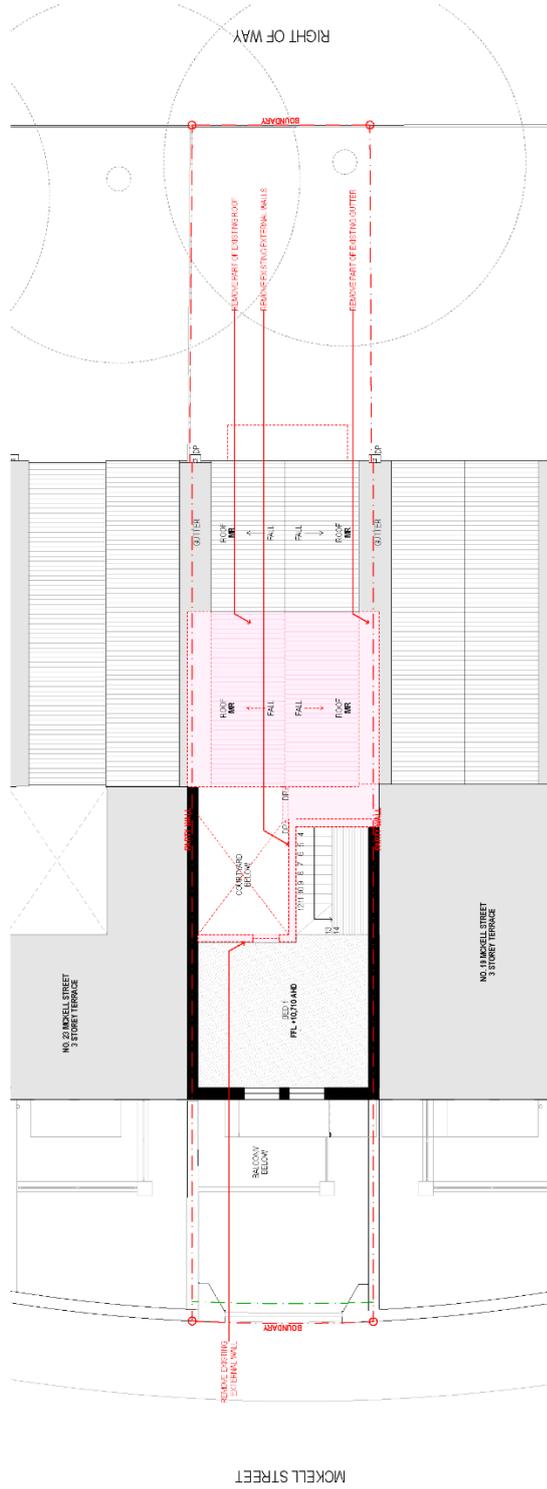
**DEMOLITION**

- DEMOLITION
- DEMOLITION
- DEMOLITION
- DEMOLITION
- DEMOLITION

**PROJECT NO.** 18021  
**PROJECT NAME** 21 MCKELL STREET, BIRCHGROVE NSW  
**ADDRESS** 21 MCKELL STREET, BIRCHGROVE NSW  
**DRAWING TITLE** DEMOLITION PLAN - GROUND FLOOR  
**DRAWN / CHECKED** L.H / E.H  
**ISSUED** FOR INFORMATION

**THOSE ARCHITECTS**  
 21/23 New South Wales Road  
 Tel: 02 9439 1234  
 Fax: 02 9439 1235  
 Email: info@thosearchitects.com.au  
 Website: www.thosearchitects.com.au





1. DEMOLITION PLAN - SECOND FLOOR 1:500

| <p><b>LEGEND</b></p> <p>EXISTING CONSTRUCTION TO BE DEMOLISHED</p> <p>EXISTING CONSTRUCTION TO BE RETAINED</p> <p>EXCAVATION AREA</p> <p>DEMOLITION</p> <p>ADDITION</p>  | <p><b>LEGEND</b></p> <p>REAR ENTRY</p> <p>FRONT ENTRY</p> <p>BOUNDARY</p> <p>RIGHT OF WAY</p>  | <p><b>REVISION</b></p> <table border="1"> <tr> <th>NO.</th> <th>DESCRIPTION</th> <th>DATE</th> </tr> <tr> <td>A</td> <td>ISSUED FOR PERMIT</td> <td>15/06/2020</td> </tr> <tr> <td>B</td> <td>ISSUED FOR PERMIT</td> <td>15/06/2020</td> </tr> <tr> <td>C</td> <td>ISSUED FOR PERMIT</td> <td>15/06/2020</td> </tr> </table>          | NO.  | DESCRIPTION | DATE        | A    | ISSUED FOR PERMIT | 15/06/2020        | B          | ISSUED FOR PERMIT | 15/06/2020        | C          | ISSUED FOR PERMIT | 15/06/2020        | <p><b>PROJECT NO.</b> BIRCHROVE TERRACE</p> <p><b>OWNER</b> MICHAEL HEENT</p> <p><b>ADDRESS</b> 21 MCKELL STREET, BIRCHROVE NSW</p> <p><b>DRAWING TITLE</b> DEMOLITION PLAN - SECOND FLOOR</p> <p><b>SCALE</b> 1:500 AT A3</p> <p><b>ISSUED / CHECKED</b> FOR INFORMATION</p> |
|--|--|---|--|-------------|-------------|------|-------------------|-------------------|------------|-------------------|-------------------|------------|-------------------|-------------------|---|
| NO.  | DESCRIPTION  | DATE  |  |             |             |      |                   |                   |            |                   |                   |            |                   |                   |   |
| A  | ISSUED FOR PERMIT  | 15/06/2020  |  |             |             |      |                   |                   |            |                   |                   |            |                   |                   |   |
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| <p><b>LEGAL NOTES</b></p> <p>THIS DRAWING IS THE PROPERTY OF THOSE ARCHITECTS AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THOSE ARCHITECTS.</p> | <p><b>THOSE ARCHITECTS</b></p> <p>Delightful Architecture Pty Ltd<br/>             Email: info@delightfularch.com.au<br/>             Telephone: 02 9439 1511<br/>             www.delightfularch.com.au</p> | <p><b>PERMIT INFORMATION</b></p> <p>THIS DRAWING IS THE PROPERTY OF THOSE ARCHITECTS AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THOSE ARCHITECTS.</p> | <p><b>REVISION</b></p> <table border="1"> <tr> <th>NO.</th> <th>DESCRIPTION</th> <th>DATE</th> </tr> <tr> <td>A</td> <td>ISSUED FOR PERMIT</td> <td>15/06/2020</td> </tr> <tr> <td>B</td> <td>ISSUED FOR PERMIT</td> <td>15/06/2020</td> </tr> <tr> <td>C</td> <td>ISSUED FOR PERMIT</td> <td>15/06/2020</td> </tr> </table> | NO.         | DESCRIPTION | DATE | A                 | ISSUED FOR PERMIT | 15/06/2020 | B                 | ISSUED FOR PERMIT | 15/06/2020 | C                 | ISSUED FOR PERMIT | 15/06/2020  |
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3 JULY 2019

**THOSE ARCHITECTS**  
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 Telephone. 0414 494 837 / 0416 235 661  
 THOSEARCHITECTS.COM.AU

**FINISHES SCHEDULE**  
**SC101**  
**REVISION A**  
**FOR INFORMATION**



|                    |                              |                     |           |
|--------------------|------------------------------|---------------------|-----------|
| <b>PROJECT.</b>    | 21 MCKELL STREET, BIRCHGROVE | <b>PROJECT NO.</b>  | 18021     |
| <b>OWNER.</b>      | MICHAEL FEGENT               | <b>DOCUMENT NO.</b> | SC101     |
| <b>CONTRACTOR.</b> | TBC                          | <b>DATE ISSUED.</b> | JULY 2019 |

| CODE            | ITEM  | LOCATION       | SPECIFICATION   | SUPPLIER | QUANTITY       | REV.     |
|-----------------|---|----------------|---|----------|----------------|----------|
| <b>EXTERIOR</b> |   |                |   |          |                |          |
| <b>FB</b>       |  | Refer Drawings | <b>Face Brick</b><br>Selection. Existing brickwork, new brickwork to match                  | N/A      | Refer Drawings | <b>A</b> |
| <b>TC</b>       |  | Refer Drawings | <b>Timber Cladding</b><br>Selection. Existing timber cladding, new timber cladding to match | N/A      | Refer Drawings | <b>A</b> |
| <b>CONC</b>     |  | Refer Drawings | <b>Concrete</b><br>Selection. Water Blasted Finished Concrete<br>Colour. Natural Grey       | N/A      | Refer Drawings | <b>A</b> |
| <b>PAV-1</b>    | N/A   | Refer Drawings | <b>Paving type 1</b><br>Selection. Existing paving  | N/A      | Refer Drawings | <b>A</b> |

THOSE ARCHITECTS

|       |   |                      |   |  |                |   |
|-------|---|----------------------|---|--|----------------|---|
| PAV-2 | N/A   | Refer Drawings       | Paving type 2<br>Selection. TBC   | N/A  | Refer Drawings | A |
| FT    | N/A   | Refer Drawings       | Floor Tile<br>Selection. TBC  | N/A  | Refer Drawings | A |
| MR    |    | Roof                 | Metal Roof<br>Selection. Existing metal roof, new metal roof to match   | N/A  | Refer Drawings | A |
| N/A   | N/A   | Refer Drawings       | All Roof Cappings<br>Finish. Colorbond Stainless Steel<br>Colour. Galvanised                                      | N/A  | Refer Drawings | A |
| FC    |  | Refer Drawings       | Fibre Cement Cladding<br>Finish. Dulux Weather Shield, Low Sheen<br>Colour. PF-1                                  | Dulux<br>Contact.<br>T. 13 25 25                   | Refer Drawings | A |
| PF-1  |  | Refer Drawings       | Paint Finish Type 1<br>Finish. Dulux Weather Shield, Low Sheen<br>Colour. Fair Bianca<br>Code. SW1F1              | Dulux<br>Contact.<br>T. 13 25 25                   | Refer Drawings | A |
| PS    |  | Door + Window Frames | Painted Steel<br>Micaceous Iron Oxide protective coating<br>Selection. Dulux Ferrodor 810<br>Colour. Natural Grey | N/A  | Refer Drawings | A |
| A-1   |  | Refer Drawings       | Aluminium Type 1<br>Finish. Satin Black   | Universal Anodisers<br>Contact.<br>T. 02 8788 2000 | Refer Drawings | A |

NOTES

Apply all finishes in strict accordance with manufacturers specifications.