

INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2020/0797
Address	8 Yeend Street BIRCHGROVE NSW 2041
Proposal	Alterations and additions to existing attached dwelling and associated works, including plunge pool and tree removal.
Date of Lodgement	07 October 2020
Applicant	Haven Advocates P/L
Owner	Mr Darren C McSorley Mrs Kathleen L McSorley
Number of Submissions	Initial: Nil
Value of works	\$125,878.00
Reason for determination at Planning Panel	Clause 4.6 variations exceed officer delegation
Main Issues	FSR Breach Site Coverage Breach Landscaped Area Breach
Recommendation	Approval Subject to Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards
Attachment D	Statement of Significance for the Town of Waterview Heritage Conservation Area



FIGURE 1: LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for Alterations and additions to existing attached dwelling and associated works, including plunge pool at 8 Yeend Street, Birchgrove.

The application was notified to surrounding properties and no submissions were received in response to the notification.

The main issues that have arisen from the assessment of the application include:

- Clause 4.6 variation of applicable development standards exceed officer delegation.

The assessment issues 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, and an adequate Clause 4.6 exception was submitted to Council to vary each development standard, and therefore, the application is recommended for approval.

2. Proposal

The proposal involves:

- Alterations and additions to the existing attached dwelling, generally comprising additions to the upper level entry hallway at the front and additions at the rear and alterations to the floor plans of the lower and middle levels;
- A new plunge pool located between the front of the dwelling and the garage fronting Yeend Street; and
- Removal of Cocos palm to facilitate construction of the plunge pool.

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 4 SP 62555) within the overall site that is the subject of this application is 223sqm in area and has a frontage of approximately 6.05 metres to Yeend Street. It currently accommodates a three-storey terraced house, with similar terraced houses 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*.

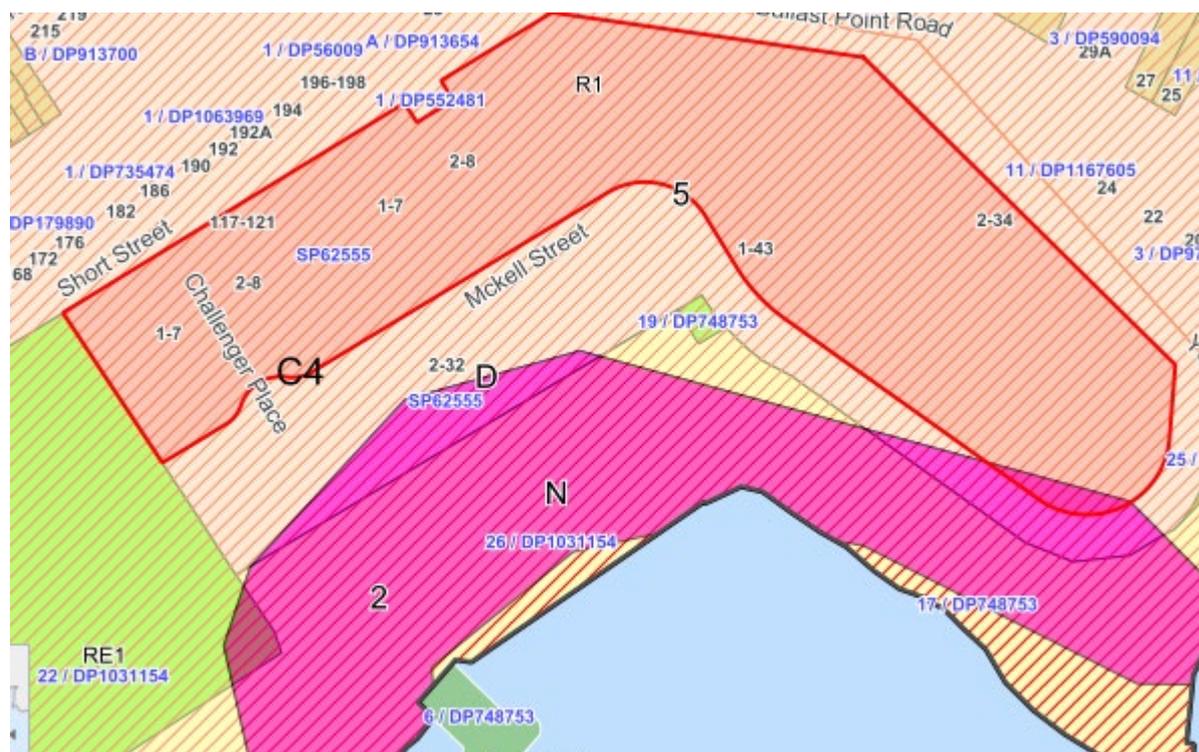


Figure 2: R1 – General Residential Zone – Heritage Conservation Area

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 (8 Yeend Street Birchgrove)

Nil

Surrounding properties

Application	Proposal	Decision & Date
D/2020/4	Alterations and additions to an existing including a second-floor addition and associated works.	Approved 13/10/2020
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	Approved 13/10/2015

	and extension at second-floor level. Variation to the Floor Space Ratio development standard at No. 5 McKell Street.	
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	Discussion / Letter / Additional Information
07/10/2020	Application lodged
04/12/2020	Council wrote to the applicant, requesting the following additional information: <ul style="list-style-type: none"> - Updated shadow diagrams, depicting all additional shadows cast and areas affected by the proposed additions; and - A Preliminary Site Contamination Investigation be undertaken and submitted to Council.
05/01/2021	The applicant submitted a geotechnical report depicting a slab being located under the proposed plunge pool.
18/01/2021	The applicant submitted updated shadow diagrams and an amended site and landscape plan depicting that the existing slab under the planter box is retained and that no excavation is required or proposed to construct the plunge pool.

5. Assessment

The following is a summary of the assessment of the application 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.

Initially, given the history of the site, concerns were raised regarding the proposed plunge pool at the front and required excavation. However, the applicant submitted a Geotechnical Assessment Report that outlined that the garden bed in which the pool is to be located is underlain by a concrete slab. As such, the proposal does not include substantial excavation and it is considered that the site will not require remediation in accordance with *SEPP 55*.

However, it is noted that, to ensure compliance with SEPP 55, Council’s Environmental Health Officer has recommended conditions to be imposed with any consent granted requiring, *inter alia*, the following:

- **Hazardous Materials Survey**

Prior to any demolition or the issue of a Construction Certificate (whichever occurs first), the Certifying Authority must provide a hazardous materials survey to Council. The survey shall be prepared by a suitably qualified Occupational Hygienist and is to incorporate appropriate hazardous material removal and disposal methods in accordance with the requirements of SafeWork NSW.

A copy of any SafeWork NSW approval documents is to be included as part of the documentation.

- **Contamination – Retention of Ground Slab**

This consent only permits the fit-out and use of the premises with the retention of the existing ground slab. Intrusive ground excavations or works that may compromise the integrity of the existing ground slab covering the site are not approved, and existing ground slabs and hardstand areas must be retained and maintained in their original form.

Should any ground slab or hardstand area be damaged or disturbed, an appropriately qualified Environmental Consultant must inspect the site immediately and determine whether any potential contaminants have been disturbed. If preventative works need to be undertaken, a written statement prepared by a qualified Environmental Consultant must be provided to Council detailing the outcome of this investigation and associated works.

- **Contamination – New Evidence**

Any new information revealed during demolition, remediation or construction works that have the potential to alter previous conclusions about site contamination must be immediately notified to the Council and the Certifying Authority.

- **Contamination – Disposal of Soil**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a validation report confirming that all off-site disposal of soil has

been classified, removed and disposed of in accordance with the NSW DECC Waste Classification Guidelines, Part 1: Classifying Waste (EPA 2014), Protection of the Environment Operations (Waste) Regulation 2014 and the *Protection of the Environmental Operations Act 1997*.

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.

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.

It is proposed to remove a *Syagrus romanzoffiana* (Cocos Palm) to facilitate the construction of the proposed plunge pool. This species is not protected under Council's Tree Management Controls and, therefore, the specimen is not considered to be a constraint for the application. As such, it is considered that the proposal is compliant with the requirements of the Vegetation SEPP.

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 environment, the natural environment or 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 6.2 - Earthworks
- Clause 6.3 - Flood Planning
- Clause 6.4 - Stormwater Management

(i) 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 land use table. The development is consistent with the objectives of the R1 - General Residential zone.

(ii) 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.

(iii) 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 223sqm. This is the individual strata lot upon which the affected terrace house is located, but does not include the overall allotment, which is very large at approximately 17,230sqm.

Standard	Proposal	Non-compliance	Complies
Floor Space Ratio Maximum permissible: 0.9:1 or 200.7sqm	0.55:1 or 122.3sqm	X	Yes
Landscape Area Minimum permissible: 15% or 33.45sqm	15.01% or 33.47sqm	X	Yes
Site Coverage Maximum permissible: 60% or 133.8sqm	36.68% or 122.3sqm	X	Yes

The following provides further discussion of the relevant issues:

As outlined in the table above, the proposal complies with the applicable development standards 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’s and CDC’s (and potentially even unauthorised or exempt developments) have increased this floor space ratio to a point where it exceeds the LEP development standards.

Although the true extent of exceedance of the development standards is not known, 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.

(iv) Clause 4.6 Exceptions to Development Standards

As stated above, whilst the proposal (calculated for the individual strata lot) achieves compliance with the landscaped areas, site coverage and floor space ratio development standards, as the subject property is part of a strata subdivision for an existing housing estate, there are no records of the existing overall landscaped areas, site coverage and floor space ratio for the Strata lot as a whole, and as a consequence, it is assumed that the proposal results in a breach of the following development standards when applied to the entirety of the Strata lot:

- 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

Written requests have been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the Leichhardt Local Environmental Plan, justifying the proposed contraventions, which is summarised as follows:

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

- To offset the lack of soft landscaping, a substantial amount of private open space is proposed;
- The proposed variation does not create any adverse impacts on the adjoining properties, the streetscape or the character of the locality generally;
- Landscaped corridor between adjoining properties is maintained;
- A minor increase to the existing building footprint;
- No reduction in the amount of deep soil landscaped area is proposed. Only the above ground planter box will be replaced with a small pool;
- The subject dwelling is part of a larger development, which may or may not comply with the landscaping and site coverage controls;
- If the subject dwelling was treated as its own allotment, the proposal would comply;
- The proposal complies with the height controls and FSR contained with the DCP if the subject dwelling was treated as its own allotment;
- Side setbacks are the same as existing;
- The requirement to comply with the minimum landscaping control is unnecessary in this circumstance as the proposal is contextually compatible with the surrounding developments and does not result in unreasonable amenity impacts to neighbouring properties;
- The proposed development is compatible with the equivalent existing dwellings along Yeend Street;
- The proposed ground floor element that results in a variation that will not be visible will not impact the character of development in the locality;

- The proposal is compatible in terms of size, dimensions privacy and solar access of private open space, outdoor recreation and landscaping with adjoining dwellings;
- The variation to landscape area will not compromise the character of the area and was approved by council before for similar sites within the complex;
- The density of the development is sustainable within the existing area in consideration of the context, proximity to public transport, services, and infrastructure, social and environmental qualities of the site; and
- While the standard has not been virtually abandoned or destroyed, there are numerous examples of developments in the LGA, which have been approved with non-compliances with the minimum landscape development standard.

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 Leichhardt 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 maintains the landscaped areas at the rear and, therefore, maintains the landscaped corridor at the rear;
- The proposal will be compatible with the desired future character;
- The proposal provides adequate retention and absorption of surface drainage water on the site;
- The proposal, when calculated for the individual strata lot, achieves compliance with the landscaped areas, site coverage and floor space ratio development standards; and
- The proposal provides adequate areas 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 site coverage development standard in accordance with Clause 4.6(4)(a)(ii) of the Leichhardt 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 maintains the landscaped areas at the rear and, therefore, maintains the landscaped corridor at the rear;
- The proposal is compatible with the desired future character;
- The proposal provides adequate retention and absorption of surface drainage water on the site;
- The proposal, when calculated for the individual strata lot, achieves compliance with the landscaped areas, site coverage and floor space ratio development standards; and
- The proposal provides adequate areas 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 R1 – General Residential zone in accordance with Clause 4.6(4)(a)(ii) of the Leichhardt Local Environmental Plan for the following reasons:

- The development provides for the housing needs of the community;
- The development as proposed and as conditioned 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.

Clause 4.4 – Floor Space Ratio

- The subject dwelling is part of a larger development which may or may not comply with the FSR control. If the subject dwelling was treated as its own allotment, the FSR control would be 0.9:1 and the proposal would comply;
- The design of the development provides a desirable urban form that maintains the existing site as a single residence, retains the original principle building form;
- The proposed dwelling has been sympathetically designed to consider the amenity and character of the surrounding neighbourhood through its retention of the original principle building and modest alterations;
- The FSR development standard departure does not itself create any adverse impact by way of privacy or bulk and scale that could be viewed by neighbours or those passing the site within the public domain;
- No additional amenity impacts arise as a result of the proposal. Amenity to adjacent properties (i.e. sunlight, privacy, views) is protected and compliance with the solar access controls is achieved;
- The development achieves the aims and objectives of LLEP 2013; and
- The proposal satisfies the zone objectives.

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 floor space ratio standard in accordance with Clause 4.6(4)(a)(ii) of the Leichhardt Local Environmental Plan for the following reasons:

- The development, as proposed and as conditioned, 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 is acceptable with regard to the bulk and scale of the building.

As above, the development is also considered to be consistent with the relevant objectives of the R1 zone.

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 Leichhardt 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 exceptions be granted.

(v) Clause 5.10 - Heritage Conservation

The subject property is a contributory dwelling 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 attached at Appendix D to this report.

The design of the proposal will ensure the additions will have minimal visibility from the public domain. The flat roof form will ensure that the existing gable roof form still remains the dominant feature, which is characteristic within the development. Therefore, they will not have an impact on the significance of the Town of Waterview HCA.

There are no concerns with the proposed timber doors to the north east elevation of the lounge room, the timber pergola or the pool, as these will not be visible from the public domain, nor are there any concerns with the internal changes.

The new foyer has a proposed 700mm high parapet. This will sit adjacent to the existing gable roof form and will be visible from the public domain because of its height. The parapet is inconsistent with control C7 of Part C2.2.2.5 of the LDCP 2013 as it will not conserve the established rhythm of the gable roofs in the north eastern elevation of the site with its skillion roof form. The addition will also not preserve the consistency in the built form, which is contrary to control C10 of Part C2.2.2.5 of the LDCP 2013. The section drawings show minimal floor to ceiling heights to the addition of just over 2.4 metres, and therefore, there is no scope to reduce the floor to ceiling heights. As such, to reduce the impact, it is recommended that the height of the parapet to the foyer be lowered by half, i.e. 350mm, to reduce the visual impact the proposed rectangular shape will have on the rhythm of the adjacent gable roof forms.

With regard to the proposed materials, the brick wall to the proposed addition to accommodate the new kitchen is proposed to match the existing. Windows and weatherboards are proposed to be timber and coloured to match the existing colour scheme, which is acceptable.

As a result, the proposal is, generally, acceptable from a heritage perspective as it will not detract from the heritage significance of the Town of Waterview Heritage Conservation Area providing the design change, recommend by Council's heritage officer and reproduced below, is implemented. This would ensure that the development is in accordance with Clause 5.10 Objectives 1(a) and (b) of the *LLEP 2013* and the relevant objectives and controls of the LDCP 2013.

Recommended Design change condition:

The height of the parapet to the foyer is to be lowered by 350mm to reduce the visual impact on the rhythm of the adjacent gable roof forms.

(vi) Clause 6.1 – Acid Sulfate Soils

The lot is identified as class 5 acid sulphate soils; however, the proposed modifications are not likely to affect the water table as set out in the Clause.

(vii) Clause 6.2 – Earthworks

No excavation below ground level proposed. As outlined in Section 5(a)(i) above, the application merely proposes removal of the soil within an existing planter box to accommodate the proposed plunge pool, which will be constructed above an existing slab.

(viii) Clause 6.3 - Flood Planning

The proposal generally complies with this clause. Council's Development Engineer has assessed the proposal and raised no concerns regarding the proposal.

It is noted that, whilst the Strata lot is a flood control lot, the subject property at 8 Yeend Street is located some distance from the areas of flooding.

On this basis, flood planning requirements of the LDCP 2013 are met.

(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 proposal, subject to conditions, which are included in Appendix A.

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 current LEP, 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.

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
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
Part C	
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	N/A
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
Part C: Place – Section 2 Urban Character	

C2.2.2.6 Birchgrove Distinctive Neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
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	N/A
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 – Refer to discussion below.
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
Part C: Place – Section 4 – Non-Residential Provisions	N/A
Part D: Energy	
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
Part E: Water	
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
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The following provides discussion of the relevant issues:

Part C3.2 Site Layout and Building Design

Building Location Zone (BLZ):

The proposed additions to the front and rear on the upper level are located along the north-western boundary and adjacent to the existing building. As such, the proposal does not result in changes to the existing front and rear setback, and therefore, does not result in a change to the existing BLZ.

Side Boundary Setbacks:

The proposed additions to the front and rear on the upper level along the north-western boundary will have a nil side setback to this boundary. With regard to the addition at the front, the proposed wall height is approximately 3.3 metres, and as such, pursuant to control C7 of this part the LDCP 2013, a side setback of 290mm is prescribed. The wall height of the addition to the rear is approximately 8 metres, and as such, a side setback of 3 metres 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 LDCP2013 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 LDCP 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 existing 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 2.27 metres, which is consistent with the existing floor to ceiling heights along this boundary.

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

Comment: As outlined below, the proposed additions will have no adverse amenity impacts onto adjoining sites with regard to visual and acoustic privacy and views. Further, it is noted that the additional shadows cast by the addition to the rear are acceptable. As such, it is considered that the proposed variation with the prescribed side boundary setback is acceptable with regard to this requirement.

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

Comment: Access for maintenance purposes for adjoining properties is not affected by the proposed additions.

Part C3.9 Solar Access

The following solar access controls apply with regard to solar access of adjoining properties:

- C14 - Where the surrounding allotments side boundary is 45 degrees from true north and therefore the allotment is not orientated north/south or east/west, glazing serving main living room shall retain a minimum of two hours of solar access between 9am and 3pm at the winter solstice.
- C15 - Where surrounding dwellings currently receive less than the required amount of solar access to the main living room between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.
- C18 - Where surrounding dwellings have east/west facing private open space, ensure solar access is retained for two and a half hours between 9am and 3pm to 50% of the total area (adjacent to living room) during the winter solstice.
- C19 - Where surrounding dwellings currently receive less than the required amount of solar access to their private open space between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.

The submitted shadow diagrams depict that there will be additional shadows cast onto the glazing serving main living rooms at No. 19 McKell Street at 11am and No. 21 McKell at 10am. However, given that not the entire glazed area is overshadowed during those times, the proposal is not contrary to control C14 and acceptable with regard to this requirement.

The shadow diagrams also depict that the proposed addition to the rear will result in additional shadows cast onto the POS adjacent to the living area at No. 21 McKell Street of approximately 3.7sqm at 10am during the winter solstice. However, it is noted that Council recently approved a DA (D/2020/4) at No. 21 McKell Street and shadow diagrams that were submitted as part of this application depicted that, with the exception of the area under the awning, the area is already overshadowed (Figure 1). As such, the proposal will only result in an additional overshadowing of approximately 1.6sqm.

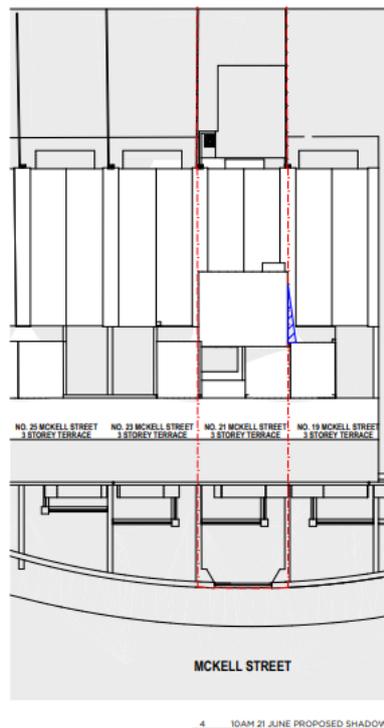


Figure 3: Shadow diagram at 10am during winter solstice at 21 McKell Street. Submitted by applicant as part of D/2020/4.

Further, the addition to the rear also results in additional shadows cast to the POS at No. 10 Yeend Street of approximately 1.9sqm at 1pm and approximately 0.5sqm at 2pm during the winter solstice.

Given that both sites, No. 10 Yeend Street and No. 21 McKell Street, currently, do not receive the required solar access to the POS, and the proposal results in a further reduction, the proposal does not comply with control C19. As such, the proposal has been assessed against the relevant parts of the Planning Principle regarding sunlight established in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082, which is outlined below:

- The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight.

Comment: The subject site is located within an area of medium density. However, it is noted that the proposal will retain the majority of existing solar access of adjoining sites.

- The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.

Comment: Given that the POS at No. 10 Yeend Street, currently, only receives sunlight to about 2.3sqm at 1pm and 8.8sqm at 2pm, the proposal, when

calculated as a percentage, whilst only retaining 17% of solar access at 1pm, 94.3% is retained at 2pm. Overall, 77% of the existing solar access is retained. With regard to the additional shadows cast to the POS at No. 21 McKell Street, the area overshadowed at 10am is relatively small and, at other times, no additional shadows are cast onto the POS of this property.

- Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.

Comment: As outlined in other sections of this report, the design of the proposed additions is, in principle, acceptable. Further, the POS at the Yeend and McKell Street properties affected are significantly lower than the ground / upper levels at the Yeend Street frontage. As such, it is difficult to maintain the existing solar access.

- For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight.

Comment: The size of the POS at No. 21 McKell Street is approximately 36sqm. The size of the POS at No. 10 Yeend Street is approximately 43sqm. It is noted that the POS of both sites currently receive relatively little sunlight during the winter solstice. The additional areas overshadowed by the proposal, as outlined above, are marginal and acceptable.

Part C3.11 Visual Privacy

The proposal generally complies with this part. The proposed new window to the rear elevation services the kitchen, which is not a living room. As such, the following control applies of this part of the LDCP 2013 applies:

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..."

Whilst the proposed window is directly aligned with windows on adjoining properties to the rear at McKell Street, these windows are located approximately 15 metres away from the proposed window. As such, the proposal is not contrary to this control and acceptable regarding the intent and objectives of this part of the LDCP 2013.

Part C3.12 Acoustic Privacy

The proposal generally complies with this part. With regard to the proposed plunge pool at the front, to ensure that adjoining sites are not adversely affected, a condition is included in Appendix A, requiring that

"Noise levels associated with the operation of the pool/spa pumping units must not exceed the background noise level (L90) by more than 5dBA above the ambient background within habitable rooms of adjoining properties. Pool plant and equipment must be enclosed in a sound absorbing enclosure or installed

within a building so as not to create an offensive noise as defined under the Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Noise Control) Regulation 2008.

Domestic pool pumps and filters must not be audible in nearby dwellings between 8:00pm to 7:00am Monday to Saturday and 8:00pm to 8:00am Sundays and Public Holidays.”

5(e) The Likely Impacts

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

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

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

5(g) Any submissions

The application was notified in accordance with Council's policy for a period of 14 days to surrounding properties. No submissions were received in response to the notification.

5(h) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

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

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$629.39 would be required for the development under Schedule 2 of the 'Former Leichhardt Local Government Area Section 7.12 Development Contributions Plan 2020'. A condition requiring that contribution to be paid is included in the recommendation.

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

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

9. Recommendation

- A. The applicant has made written requests pursuant to Clause 4.6 of the *Leichhardt Local Environmental Plan 2013* to vary Clauses 4.3A and 4.4 of the Plan. After considering the request, and assuming the concurrence of the Secretary, the Panel is satisfied that compliance with the standards is unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to support the variations. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standards 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*, grant consent Development Application No. DA/2020/0797 for Alterations and additions to existing attached dwelling and associated works, including plunge pool at 8 Yeend Street BIRCHGROVE NSW 2041 subject to the conditions listed in Attachment A below.

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
A2.04 Issue A	Proposed South West Elevation	14/09/2020	cvma architects
A2.03 Issue A	Proposed South East & North West Elevation	14/09/2020	cvma architects
A2.02 Issue D	Section 1 & Section 2	14/09/2020	cvma architects
A2.01 Issue D	Proposed North East Elevation	14/09/2020	cvma architects
A1.07 Issue B	Colours and Finishes Schedule	14/09/2020	cvma architects
A.05 Issue B	Stormwater Drainage Concept Plan	14/09/2020	cvma architects
A01.04 Issue D	Proposed Floor Plans	14/09/2020	cvma architects
A1.03 Issue D	Demolition Plans	14/09/2020	cvma architects
A1.02 Issue D	Existing Floor Plans	14/09/2020	cvma architects
A1.01.2 Issue E	Proposed and Existing No 8 Site Plan	18/01/2021	cvma architects
A378170_03	BASIX Certificate	28/01/2021	cvma architects
not stated	Structural Certificate - Party Wall	22/07/2020	Fred Barros Engineering

As amended by the conditions of consent.

DESIGN CHANGE

2. Design Change

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating the following:

- a. The height of the parapet to the foyer is to be lowered by 350mm to reduce the visual impact on the rhythm of the adjacent gable roof forms.

FEES

3. 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.

Security Deposit:	\$2,209.00
Inspection Fee:	\$236.70

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 initial 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.

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

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that a monetary contribution to the Inner West Council has been paid, towards the provision of infrastructure, required to address increased demand for local services generated by additional development within the Local Government Area (LGA). This condition is imposed in accordance with Section 7.12 of the *Environmental Planning and Assessment Act 1979* and in accordance with the *Former Leichhardt Local Government Area Section 7.12 Development Contributions Plan 2020*.

Note:

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

Payment amount*:

\$629.39

*Indexing of the Section 7.12 contribution payment:

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

Payment methods:

The required contribution must be paid either **by BPAY (to a maximum of \$500,000); unendorsed bank cheque (from an Australian Bank only); EFTPOS (Debit only); credit card (Note: A 1% credit card transaction fee applies to all credit card transactions; cash (to a maximum of \$10,000))**. It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. **Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.**

5. 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

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 kerb and gutter of Yeend Street. Minor roof and paved areas at the rear of the property that cannot reasonably be drained by gravity to the street may be drained to an on-site dispersal system such as an absorption system or otherwise, subject to the roof areas being drained via a suitably sized rainwater tank, no nuisance or concentration of flows to other properties and the feasibility and design of the on-site dispersal system being certified by a suitably qualified and experienced practising Civil and/or Geotechnical Engineer.

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.

Stormwater drainage must be located such that any waters leaving the pool must drain to pervious areas prior to potentially draining to the site stormwater drainage system.

8. Tree Protection

No trees on public property (footpaths, roads, reserves etc.) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.

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.

Any public tree within five (5) metres of the development must be protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

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.

9. Works to Trees

Approval is given for the following works to be undertaken to trees on the site after the issuing of a Construction Certificate:

Tree/location	Approved works
Syagrus romanzoffiana (Cocos Palm) located in rear property.	Remove.

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and shall be retained and protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

10. Hazardous Materials Survey

Prior to any demolition or the issue of a Construction Certificate (whichever occurs first), the Certifying Authority must provide a hazardous materials survey to Council. The survey shall be prepared by a suitably qualified Occupational Hygienist and is to incorporate appropriate hazardous material removal and disposal methods in accordance with the requirements of SafeWork NSW.

A copy of any SafeWork NSW approval documents is to be included as part of the documentation.

11. Noise Levels and Enclosure of Pool/spa Pumping Units

Noise levels associated with the operation of the pool/spa pumping units must not exceed the background noise level (L90) by more than 5dBA above the ambient background within habitable rooms of adjoining properties. Pool plant and equipment must be enclosed in a sound absorbing enclosure or installed within a building so as not to create an offensive noise as defined under the *Protection of the Environment Operations Act 1997* and *Protection of the Environment Operations (Noise Control) Regulation 2008*.

Domestic pool pumps and filters must not be audible in nearby dwellings between 8:00pm to 7:00am Monday to Saturday and 8:00pm to 8:00am Sundays and Public Holidays.

12. 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.

13. 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.

14. 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.

15. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION**16. 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.

17. 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. 6 Yeend Street and No. 10 Yeend 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.

18. 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.

19. 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

20. 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.

21. 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.

22. 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.

23. 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**24. Contamination – Retention of Ground Slab**

This consent only permits the fit-out and use of the premises with the retention of the existing ground slab. Intrusive ground excavations and/or works that may compromise the integrity of the existing ground slab covering the site are not approved, and existing ground slabs and hardstand areas must be retained and maintained in their original form.

Should any ground slab or hardstand area be damaged or disturbed, an appropriately qualified Environmental Consultant must inspect the site immediately and determine whether any potential contaminants have been disturbed. If preventative works need to be undertaken, a written statement prepared by a qualified Environmental Consultant must be provided to Council detailing the outcome of this investigation and associated works.

25. Contamination – New Evidence

Any new information revealed during demolition, remediation or construction works that have the potential to alter previous conclusions about site contamination must be immediately notified to the Council and the Certifying Authority.

26. 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.

27. 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**28. 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.

29. Protect Sandstone Kerb

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any damaged stone kerb has been replaced.

30. Contamination – Disposal of Soil

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a validation report confirming that all off site disposal of soil has been classified, removed and disposed of in accordance with the NSW DECC Waste Classification Guidelines, Part 1: Classifying Waste (EPA 2014), Protection of the Environment Operations (Waste) Regulation 2014 and the *Protection of the Environmental Operations Act 1997*.

31. Noise – Acoustic Report

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an acoustic report prepared by suitably qualified acoustic consultant which demonstrates and certifies that noise and vibration emissions from the development comply with the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority's Noise Policy for Industry and Noise Control Manual and conditions of Council's approval, including any recommendations of the acoustic report referenced in the conditions of the approval. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.

ON-GOING**32. Noise General**

The proposed use of the premises and the operation of all plant and equipment must not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations, NSW EPA Noise Policy for Industry and NSW EPA Noise Guide for Local Government.

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.

Arborists standards

All tree work must be undertaken by a practicing Arborist. The work must be undertaken in accordance with AS4373—*Pruning of amenity trees* and the Safe Work Australia Code of Practice—*Guide to Managing Risks of Tree Trimming and Removal Work*. Any works in the vicinity of the Low Voltage Overhead Network (including service lines—pole to house connections) must be undertaken by an approved Network Service Provider contractor for the management of vegetation conflicting with such services. Contact the relevant Network Service Provider for further advice in this regard.

Asbestos Removal

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

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

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

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

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.

Swimming Pools

Applicants are advised of the following requirements under the *Swimming Pools Act 1992*:

- a. The owner of the premises is required to register the swimming pool on the NSW State Government's Swimming Pool Register. Evidence of registration should be provided to the Certifying Authority.
- b. Access to the pool/spa is restricted by a child resistant barrier in accordance with the regulations prescribed in the. The pool must not be filled with water or be allowed to collect stormwater until the child resistant barrier is installed. The barrier is to conform to the requirements of Australian Standard AS 1926:2012.
- c. A high level overflow pipe has been provided from the back of the skimmer box to the filter backwash line discharging to the sewer. This line must not directly vent the receiving Sydney Water sewer. Evidence from the installer, indicating compliance with this condition must be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

- d. Permanently fixed water depth markers are to be clearly and prominently displayed on the internal surface above the water line at the deep and shallow ends on in-ground pools / spas and on the outside of aboveground pools / spas.
- e. A durable cardiopulmonary resuscitation information poster sign authorised by the Life Saving Association is to be displayed in the pool / spa area in accordance with Clause 10 of the *Swimming Pool Regulation 2008*.
- f. Access to the swimming pool/spa must be restricted by fencing or other measures as required by the *Swimming Pools Act 1992* at all times.

All drainage, including any overland waters associated with the pool/spa, must be pipe-drained via the filter to the nearest sewer system in accordance with the requirements of Council & Sydney Water. No drainage, including overflow from the pool or spa must enter Council's stormwater system.

Permits from Council under Other Acts

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

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

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

Noise

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

Amenity Impacts General

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

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.

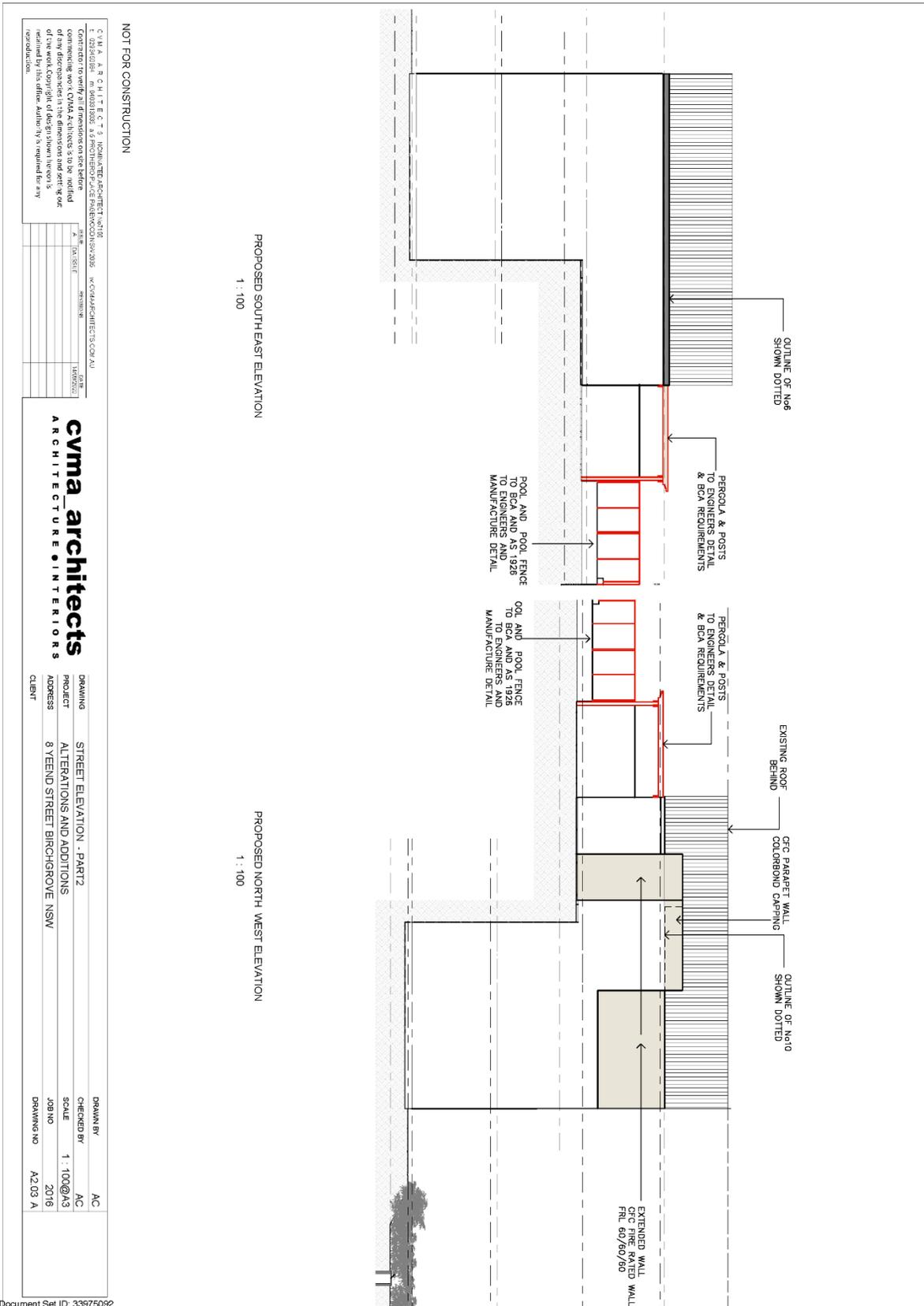
Dial before you dig

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 www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660

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



NOT FOR CONSTRUCTION

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 CONTRACTOR TO VERIFY ALL DIMENSIONS ON SITE BEFORE COMMENCING WORK. CVMA ARCHITECTS TO BE NOTIFIED OF ANY DISCREPANCY IN THE DIMENSIONS AND ACT IN ACCORDANCE WITH THE RELEVANT REGULATIONS AND ACTS. ANY CHANGES TO THE DRAWING MUST BE APPROVED BY THE OFFICE. AUTHOR'S SIGNATURE IS REQUIRED FOR ANY REPRODUCTION.

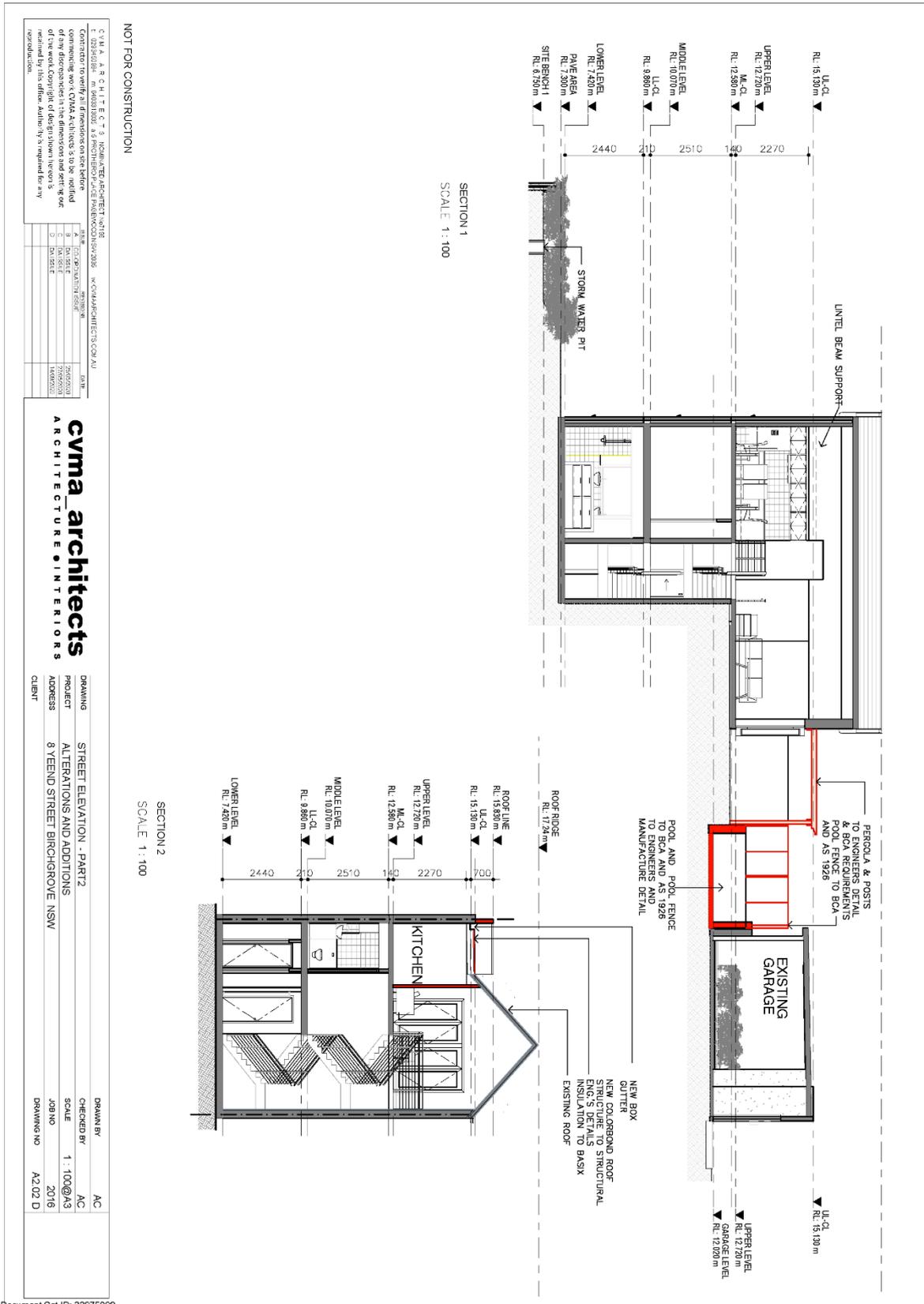
DATE	BY	DESCRIPTION
16/01/2025	AC	ISSUED FOR PERMITS

cvma architects
 ARCHITECTURE • INTERIORS

DRAWING: STREET ELEVATION - PART 2
 PROJECT: ALTERATIONS AND ADDITIONS
 ADDRESS: 8 YEEND STREET BIRCHGROVE NSW
 CLIENT:

DRAWN BY	AC
CHECKED BY	AC
SCALE	1 : 100 @ A3
JOB NO.	2016
DRAWING NO.	A2103_A

Document Set ID: 33675092
 Version: 1, Version Date: 23/09/2020



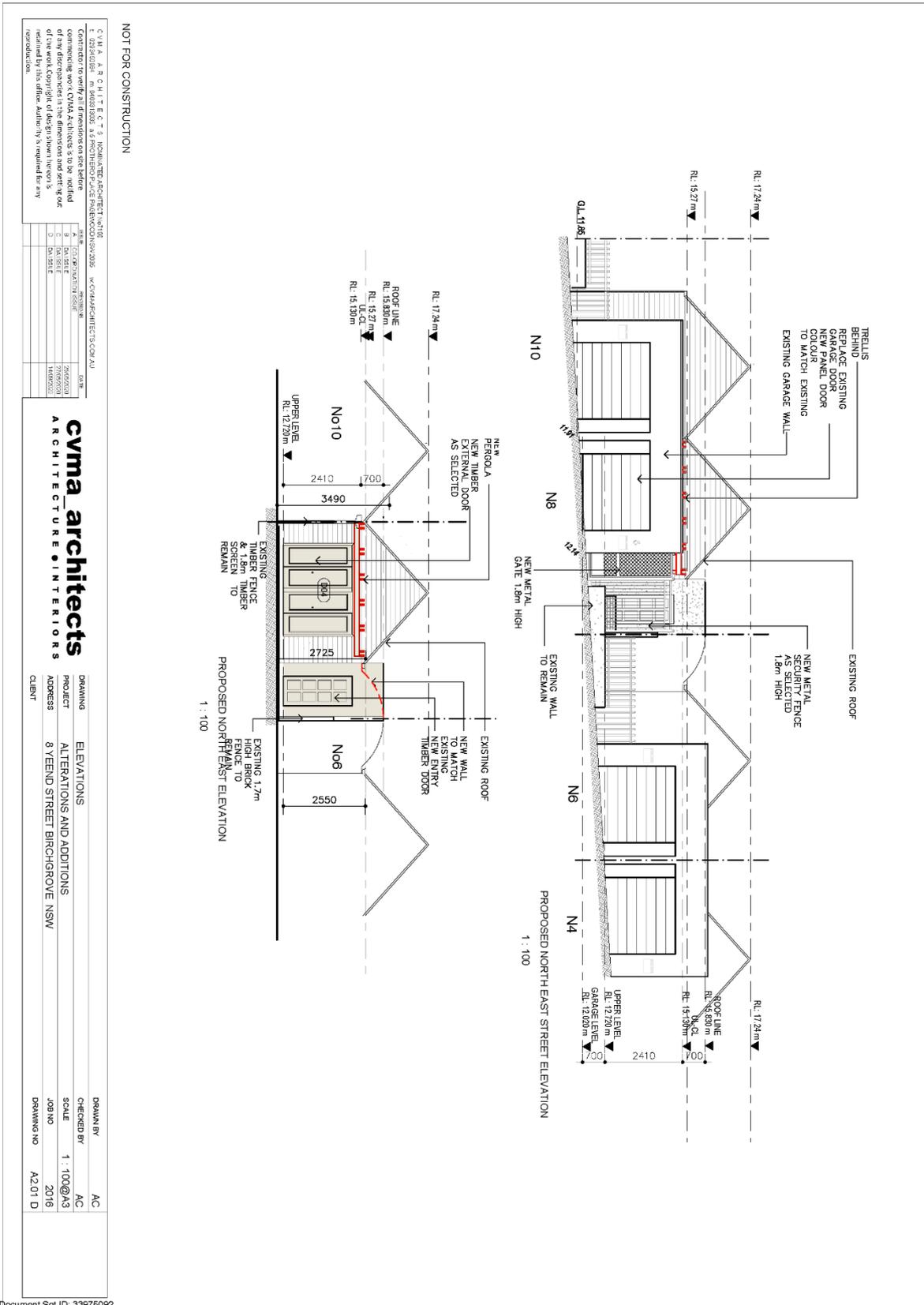
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cvma architects
 ARCHITECTURE • INTERIORS

CLIENT	STREET ELEVATION - PART 2	DRAWN BY	AC
PROJECT	ALTERATIONS AND ADDITIONS	CHECKED BY	AC
ADDRESS	8 YEEND STREET BIRCHGROVE NSW	SCALE	1:100@A3
		JOB NO	2016
		DRAWING NO	A202.D

Document Set ID: 33675052
 Version: 1, Version Date: 23/09/2020



NOT FOR CONSTRUCTION

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 Contract to verify all dimensions on site before commencing work. CMAA Architects to be notified of any discrepancy in the dimensions and set out for the site. All dimensions are to be set out and confirmed by the client. All dimensions are to be confirmed by the client. All dimensions are to be confirmed by the client. All dimensions are to be confirmed by the client.

NO.	DESCRIPTION	DATE	BY
1	ISSUED FOR PERMIT	22/09/2020	AC
2	ISSUED FOR PERMIT	22/09/2020	AC
3	ISSUED FOR PERMIT	22/09/2020	AC
4	ISSUED FOR PERMIT	22/09/2020	AC
5	ISSUED FOR PERMIT	22/09/2020	AC
6	ISSUED FOR PERMIT	22/09/2020	AC
7	ISSUED FOR PERMIT	22/09/2020	AC
8	ISSUED FOR PERMIT	22/09/2020	AC
9	ISSUED FOR PERMIT	22/09/2020	AC
10	ISSUED FOR PERMIT	22/09/2020	AC

cyma architects
 ARCHITECTURE • INTERIORS

DRAWING: ELEVATIONS
 PROJECT: ALTERATIONS AND ADDITIONS
 ADDRESS: 8 YEND STREET BIRCHGROVE NSW

DRAWN BY: AC
 CHECKED BY: AC
 SCALE: 1:100 @ A3
 JOB NO: 2016
 DRAWING NO: A2.01 D

PROPOSED NORTH EAST STREET ELEVATION
SCALE 1 : 100

PROPOSED SOUTH WEST ELEVATION
SCALE 1 : 100

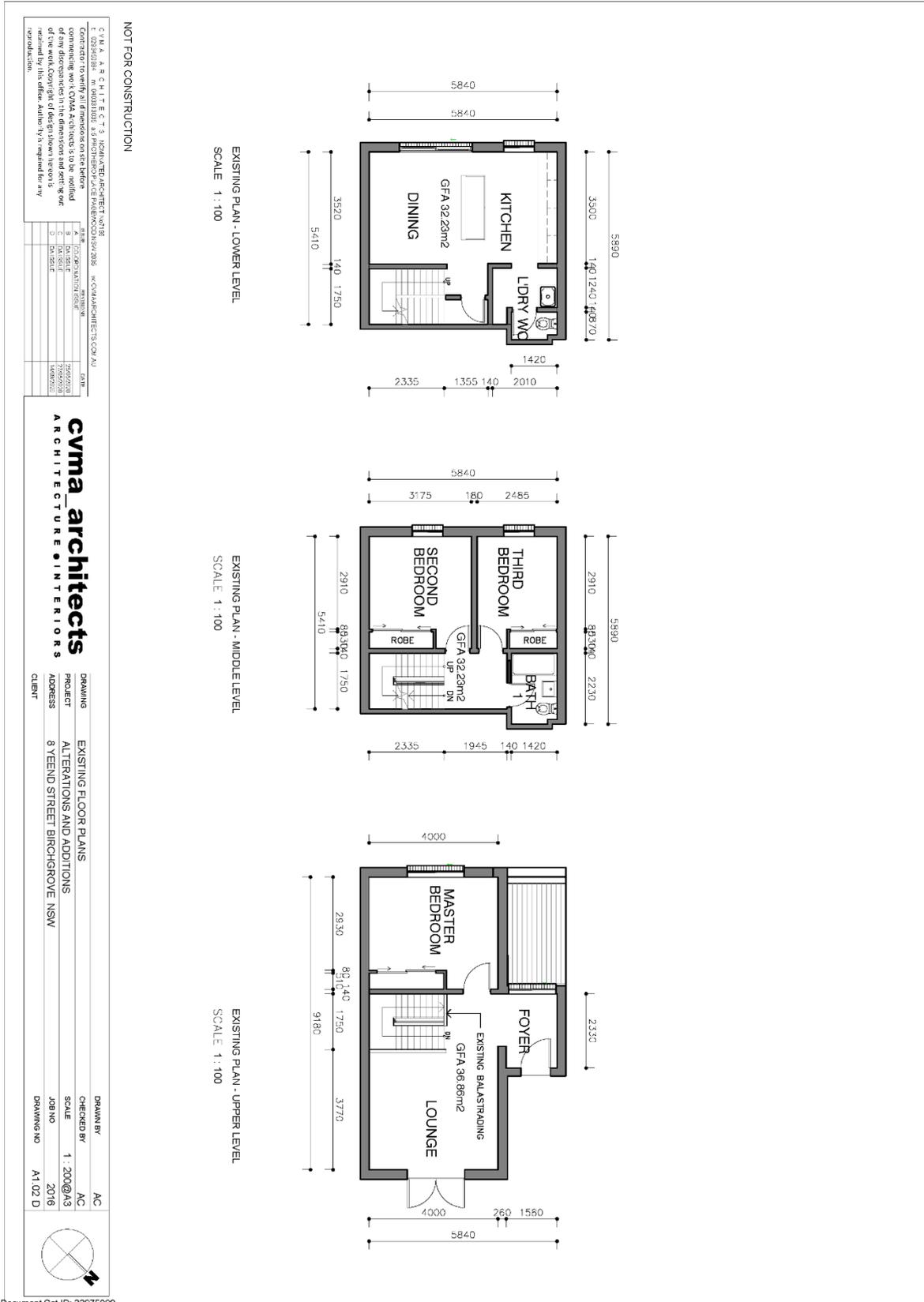
1-1- NEW BRICK WORK TO MATCH EXISTING
2- NEW TIMBER WINDOWS COLOUR TO MATCH EXISTING
3- NEW RENDERED BRICK VENEER WALL TO MATCH EXISTING WEATHERBOARD WALLS COLOUR
4- NEW COLORBOND DOWNPIPES AND GUTTERS TO MATCH EXISTING DOWNPIPES
5- NEW METAL BALUSTRADE AND GATE - POWDERCOATED BLACK FINISH

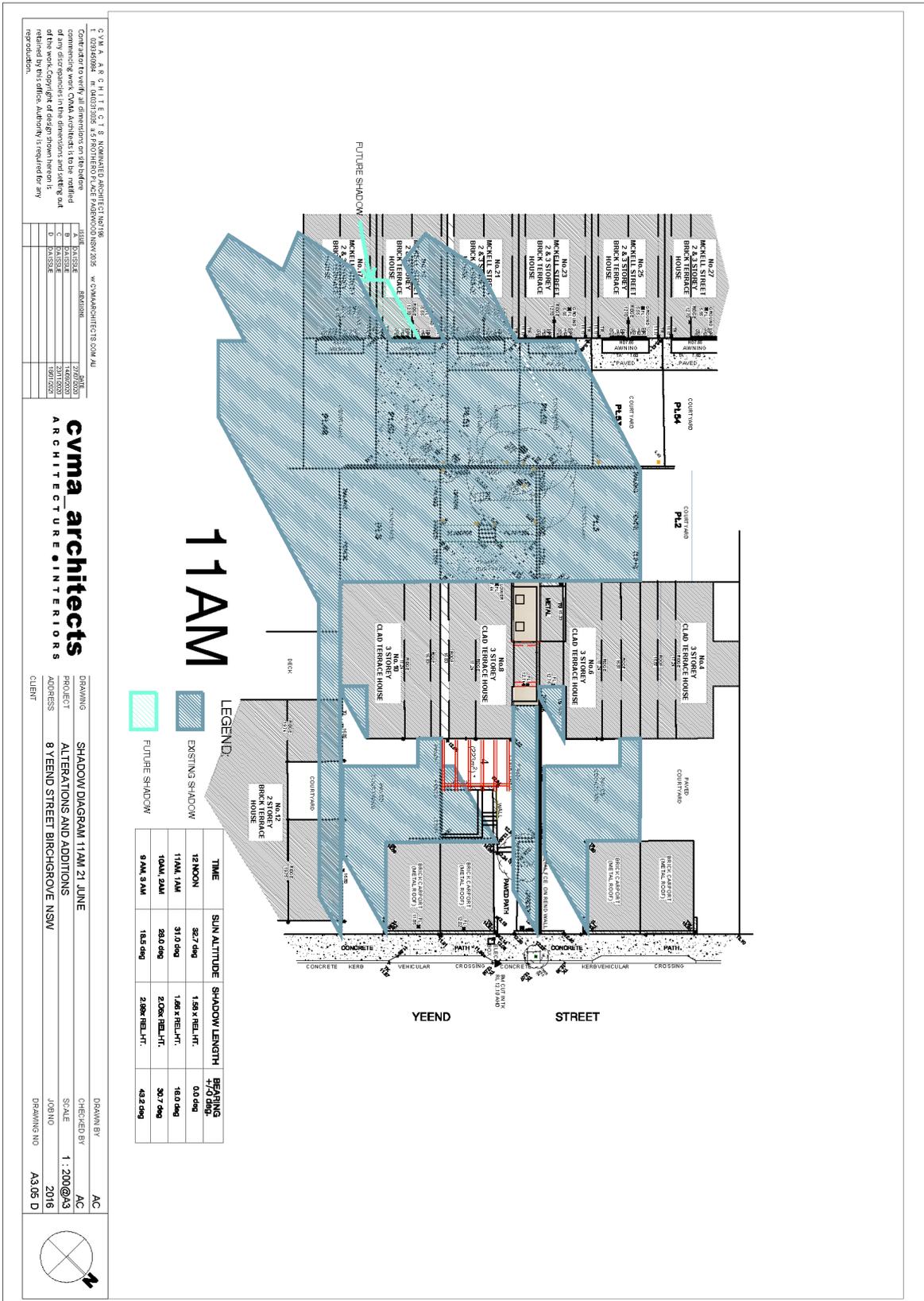
NOT FOR CONSTRUCTION

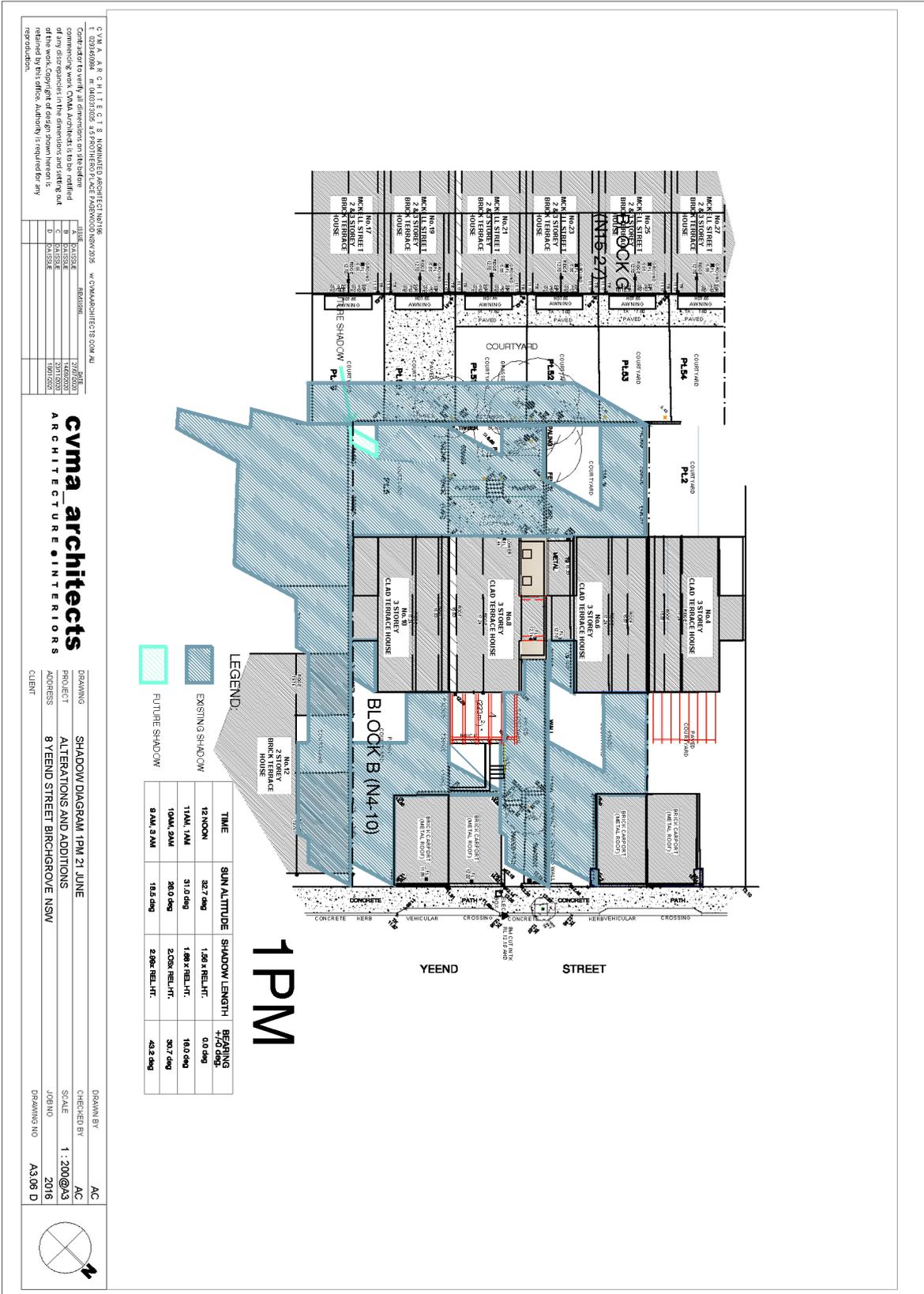
cvma architects
ARCHITECTURE • INTERIORS

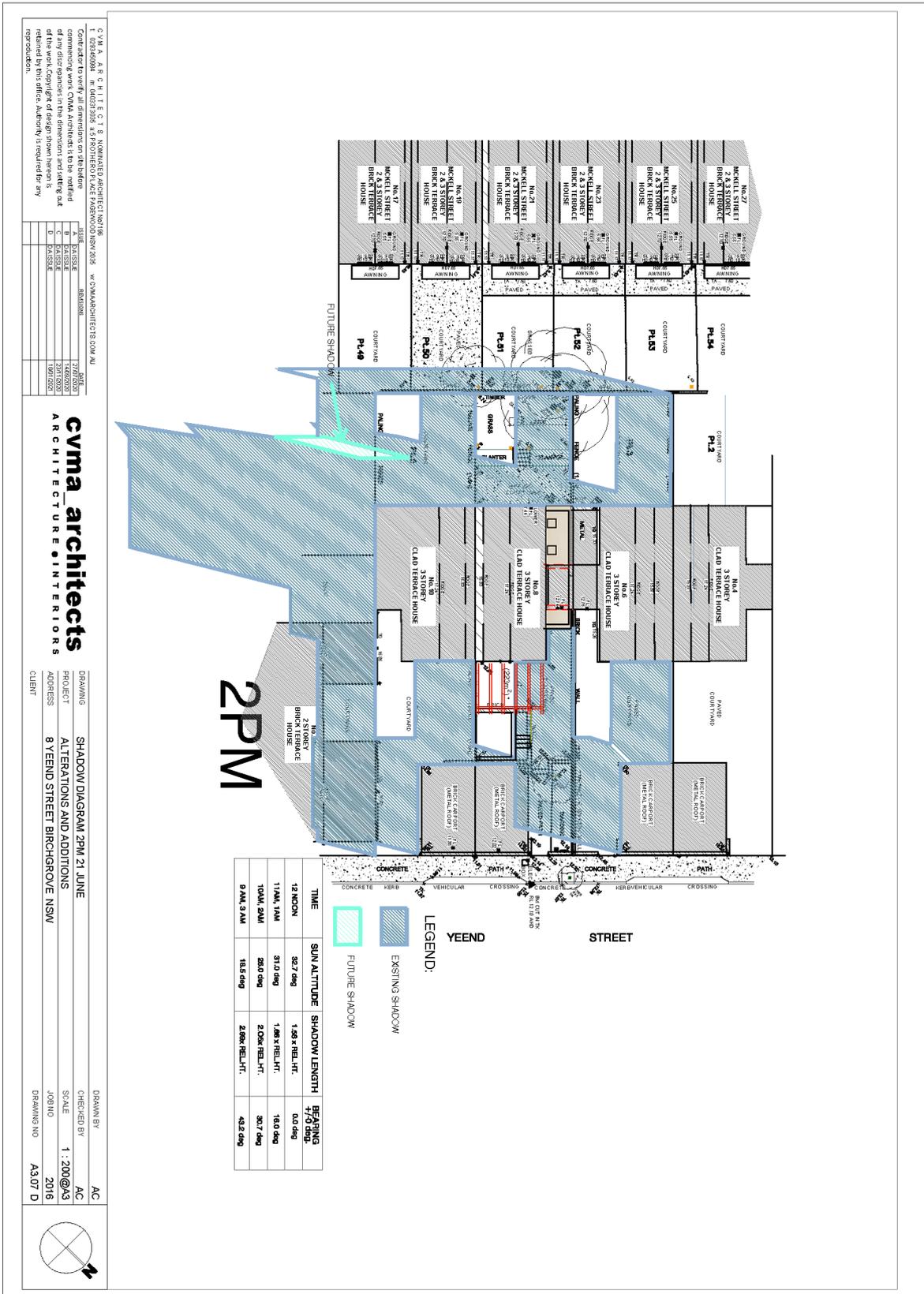
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ADDRESS: 8 YEEND STREET BIRCHGROVE NSW	DRAWING NO: A107 B	
CLIENT:		

Document Set ID: 33975092
Version: 1, Version Date: 23/09/2020









C.V.M.A. ARCHITECTS
 1. 1028/48884 m. 400/81305 4/3 PROTHERO PLACE WILMINGTON NSW 2060
 CONTACT TO VERIFY ALL DIMENSIONS ON THE DRAWING
 COMMENCING WORK C.V.M.A. ARCHITECTS IS TO BE ADVISED
 OF ANY DISCREPANCIES IN THE DIMENSIONS AND LAYOUT SET
 OUT BY THE CLIENT. ANY DISCREPANCIES MUST BE
 DEFINED BY THE CLIENT. ANY DISCREPANCIES MUST BE
 REPRODUCED.

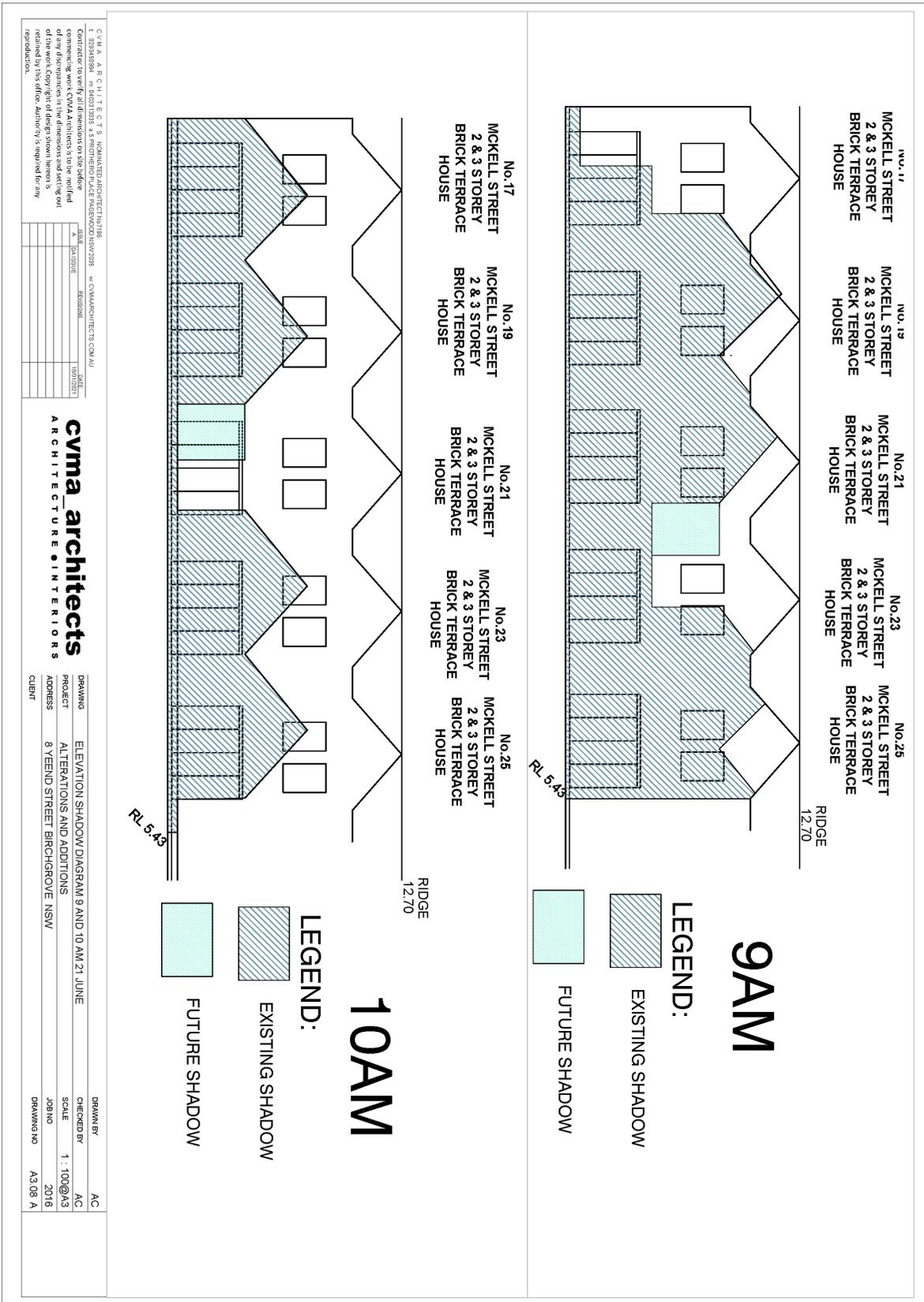
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20/06/2016	2	AC
20/06/2016	3	AC
20/06/2016	4	AC

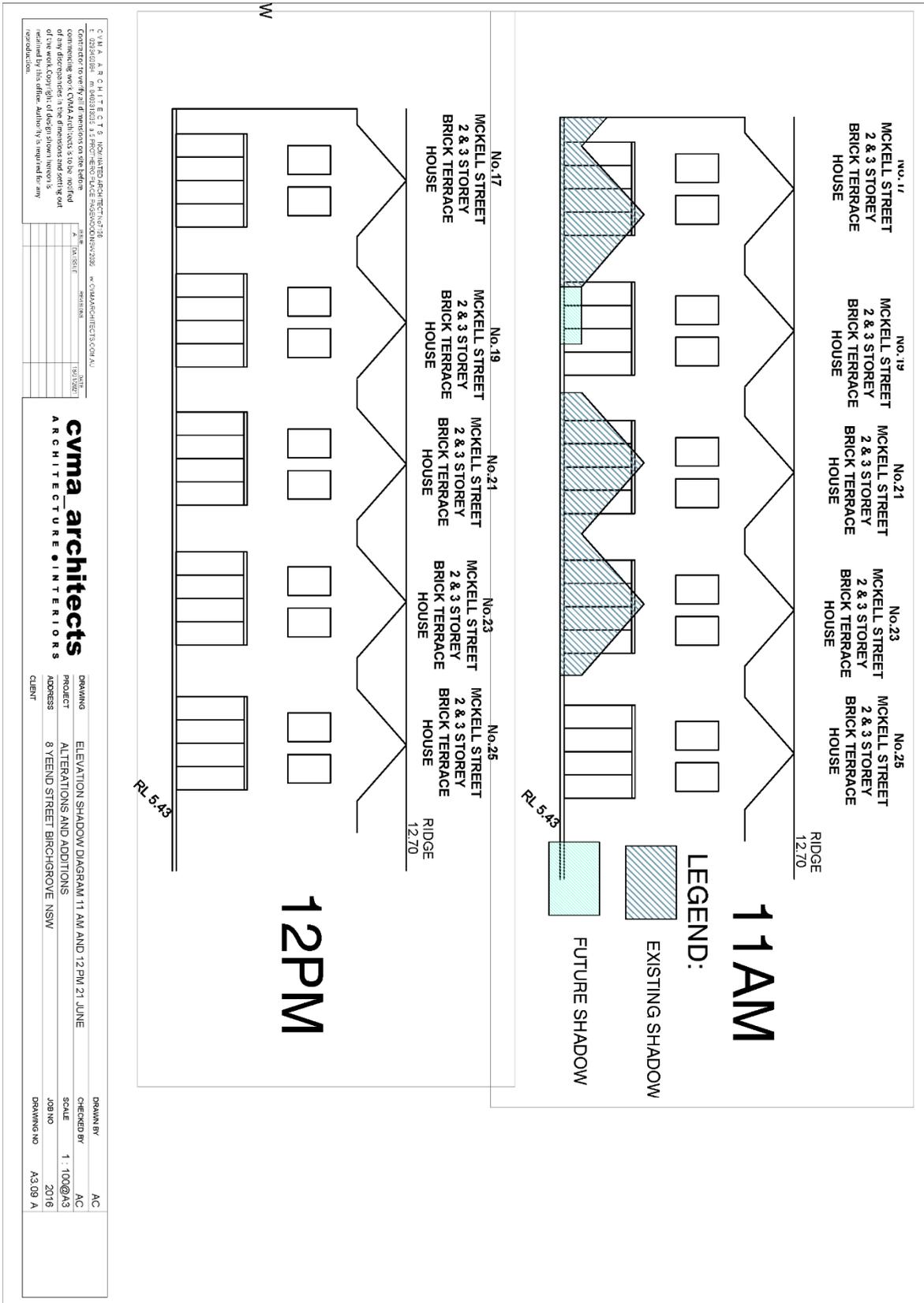
c.v.m.a. architects
 ARCHITECTURE • INTERIORS

DRAWING: SHADOW DIAGRAM 2PM 21 JUNE
 PROJECT: ALTERATIONS AND ADDITIONS
 ADDRESS: 8 YEEND STREET BIRCHROVE NSW
 CLIENT:

DRAWN BY: AC
 CHECKED BY: AC
 SCALE: 1 : 200 @ A3
 JOB NO: 2016
 DRAWING NO: A3.07 D







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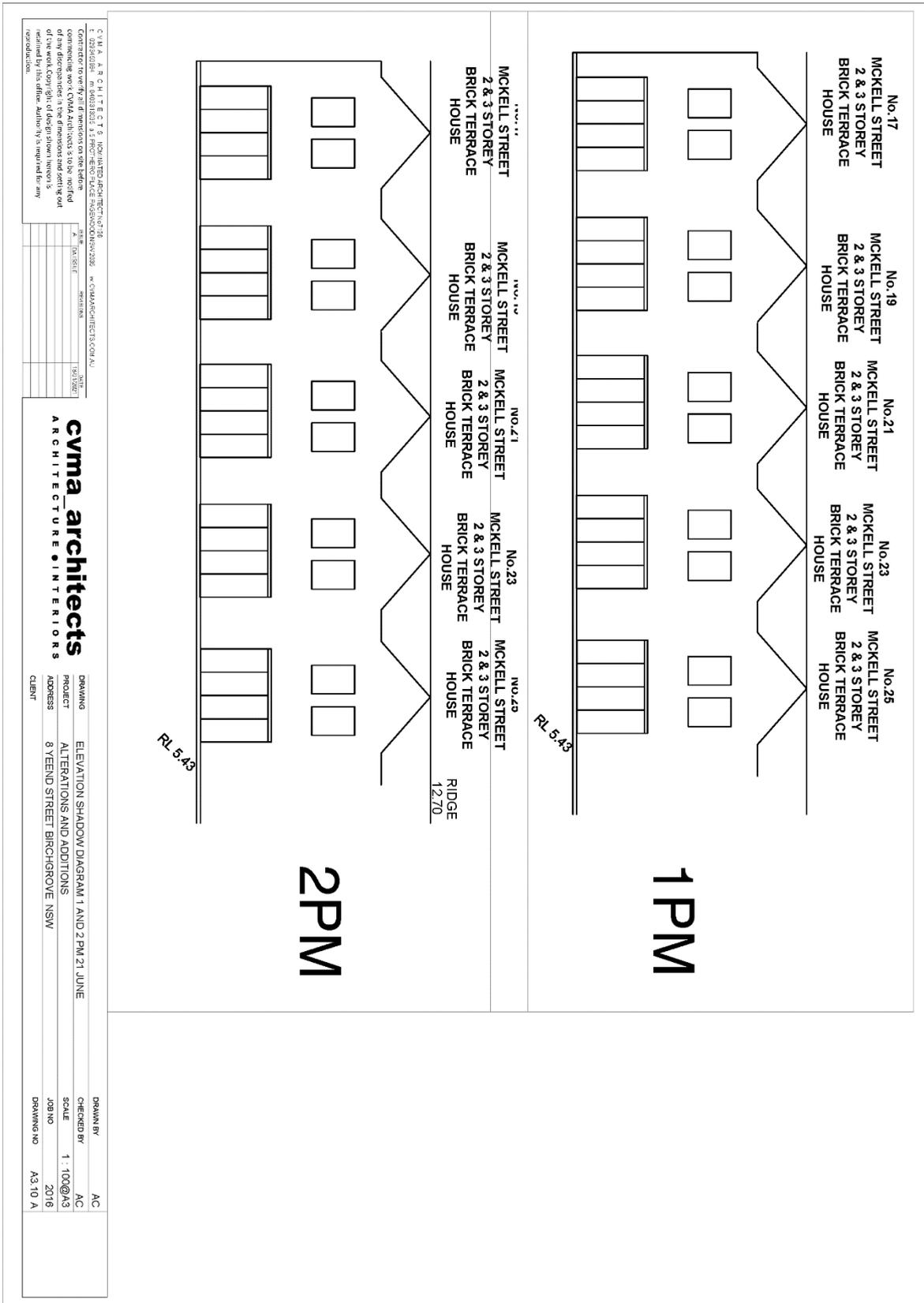
Contractor to verify all dimensions on site before commencing work. CMAA Architects is not liable for any discrepancies in the dimensions and setting out of the site. The Client is responsible for any errors or omissions in the drawings and is not bound by the drawings unless they are reproduced.

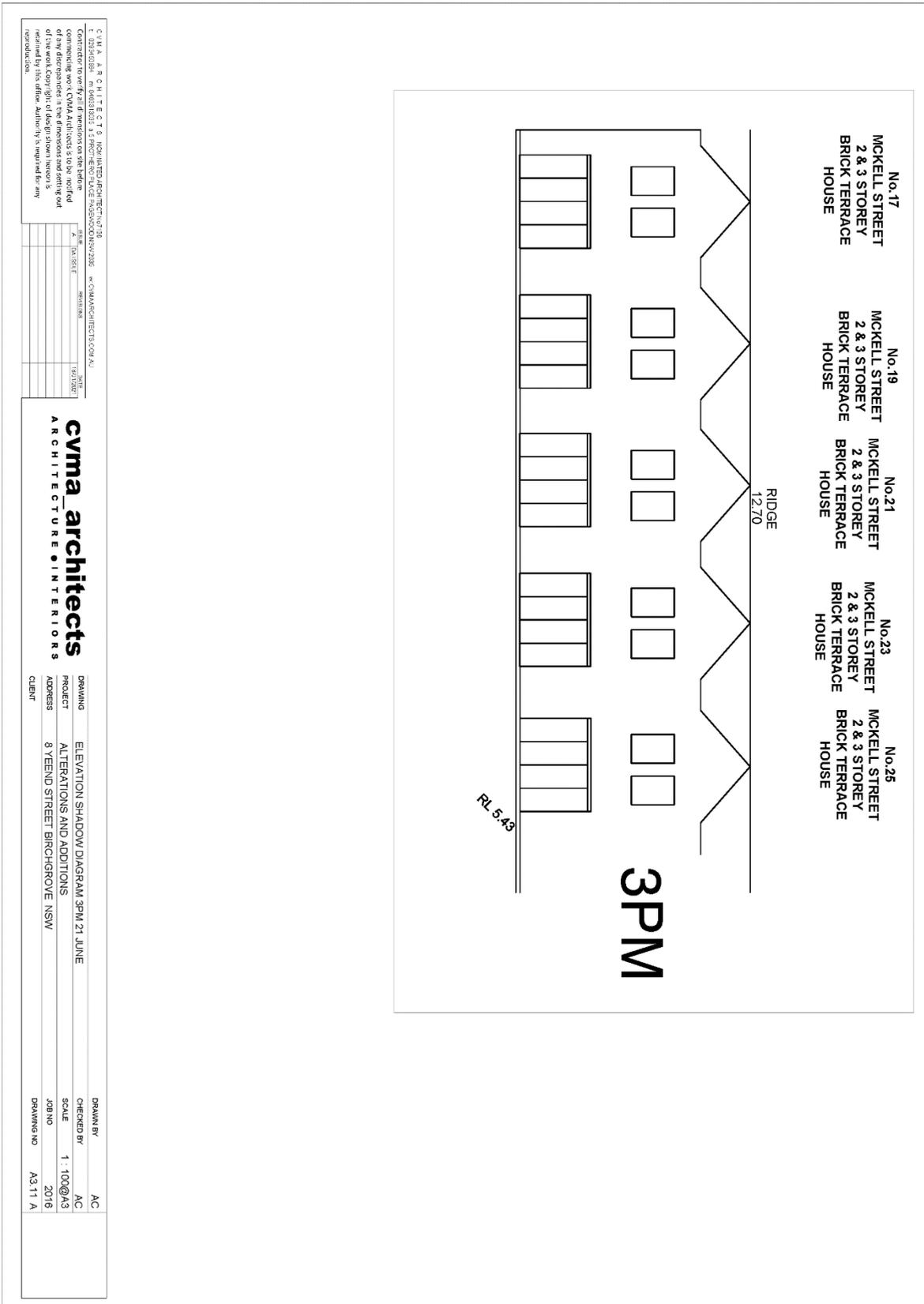
DATE	BY	REVISION
11/01/2025	AC	1 - INITIAL
11/01/2025	AC	2 - REVISED

cma architects
 ARCHITECTURE • INTERIORS

DRAWING: ELEVATION SHADOW DIAGRAM 11 AM AND 12 PM 21 JUNE
 PROJECT: ALTERATIONS AND ADDITIONS
 ADDRESS: 8 YEEND STREET BIRCHROVE NSW
 CLIENT:

DRAWN BY: AC
 CHECKED BY: AC
 SCALE: 1 : 100 @ A3
 JOB NO: 2016
 DRAWING NO: A3.09 A







**FRED BARROS
ENGINEERING**

ABN: 90 060 706 845
Consulting Civil/Structural Engineers
P.O. Box 558
Spit Junction NSW 2088
T: (02) 9369 5632
Email: info@fbuilding.com.au

22nd July 2020

Re: Alterations and Additions
8 Yeend Street,
Birchgrove

STRUCTURAL CERTIFICATE – PARTY WALL

A site inspection was carried out on the above property to review the Additions and Alterations to the full brick and concrete 3 level attached dwelling. All foundations bear on rock strata.

The majority of the structural works are on the Upper Level. It is proposed to extend the rear area to the side boundary so as to accommodate a Kitchen.

Our firm has prepared the Structural Engineering details for the works, Job No. FB2020-70.

The design has ensured that the works do not rely on the party wall for vertical or lateral support. All works constructed as per our details are considered to be structurally satisfactory.

Yours Faithfully

Fernando Barros B.E. Hons M.I.E. Aust, NER
CERTIFIED PRACTISING CIVIL/STRUCTURAL ENGINEER

Description of project

BASIX[®]Certificate
 Building Sustainability Index www.basix.nsw.gov.au
Alterations and Additions

Certificate number: A378170_03

This certificate confirms that the proposed development will meet the NSW government's requirements for sustainability, if it is built in accordance with the commitments set out below. Terms used in this certificate, or in the commitments, have the meaning given by the document entitled "BASIX Alterations and Additions Definitions" dated 06/10/2017 published by the Department. This document is available at www.basix.nsw.gov.au

This certificate is a revision of certificate number A378170_02 lodged with the consent authority or certifier on 07 Oct 2020 with application 2020/0797.

It is the responsibility of the applicant to verify with the consent authority that the original, or any revised certificate, complies with the requirements of Sch 1 Cl 2A, 4A or 6A of the Environmental Planning and Assessment Regulation 2000

Secretary

Date of issue: Thursday, 28, January 2021

To be valid, this certificate must be lodged within 3 months of the date of issue.



Project address	
Project name	Alterations & Additions at No8 Yeend_03
Street address	8 Yeend Street Birchgrove 2041
Local Government Area	Leichhardt Municipal Council
Plan type and number	Strata Plan 62555
Lot number	4
Section number	
Project type	
Dwelling type	Attached dwelling house
Type of alteration and addition	My renovation work is valued at \$50,000 or more, and includes a pool (and/or spa).

Certificate Prepared by (please complete before submitting to Council or PCA)
Name / Company Name: CVMA Architects
ABN (if applicable): 080668211

BASIX Certificate number: A378170_03

page 2 / 7

Pool and Spa	Show on DA Plans	Show on CC/ODC Plans & Specs	Certifier Check
<p>Outdoor swimming pool</p> <p>The swimming pool must be outdoors.</p> <p>The swimming pool must not have a capacity greater than 6.23 kilolitres.</p> <p>The swimming pool must have a pool cover.</p> <p>The applicant must install a pool pump timer for the swimming pool.</p> <p>The applicant must not incorporate any heating system for the swimming pool that is part of this development.</p>	<p>✓</p> <p>✓</p>	<p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p>	<p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p>

BASIX Certificate number: A378170_03

page 3 / 7

Fixtures and systems	Show on DA Plans	Show on CC/ODC Plans & Specs	Certifier Check
<p>Lighting</p> <p>The applicant must ensure a minimum of 40% of new or altered light fixtures are fitted with fluorescent, compact fluorescent, or light-emitting-diode (LED) lamps.</p>		✓	✓
<p>Fixtures</p> <p>The applicant must ensure new or altered showerheads have a flow rate no greater than 9 litres per minute or a 3 star water rating.</p> <p>The applicant must ensure new or altered toilets have a flow rate no greater than 4 litres per average flush or a minimum 3 star water rating.</p> <p>The applicant must ensure new or altered taps have a flow rate no greater than 9 litres per minute or minimum 3 star water rating.</p>		✓ ✓ ✓	✓ ✓

Construction	Show on DA Plans	Show on CC/ODC Plans & Specs	Certifier Check																		
<p>Insulation requirements</p> <p>The applicant must construct the new or altered construction (floor(s), walls, and ceilings/roofs) in accordance with the specifications listed in the table below except that a) additional insulation is not required where the area of new construction is less than 2m², b) insulation specified is not required for parts of altered construction where insulation already exists.</p> <table border="1"> <thead> <tr> <th data-bbox="544 595 603 1854">Construction</th> <th data-bbox="544 994 603 1420">Additional insulation required (R-value)</th> <th data-bbox="544 595 603 994">Other specifications</th> </tr> </thead> <tbody> <tr> <td data-bbox="603 595 639 1854">concrete slab on ground floor.</td> <td data-bbox="603 994 639 1420">nil</td> <td data-bbox="603 595 639 994"></td> </tr> <tr> <td data-bbox="639 595 676 1854">floor above existing dwelling or building.</td> <td data-bbox="639 994 676 1420">nil</td> <td data-bbox="639 595 676 994"></td> </tr> <tr> <td data-bbox="676 595 713 1854">external wall: brick veneer</td> <td data-bbox="676 994 713 1420">R1.16 (or R1.70 including construction)</td> <td data-bbox="676 595 713 994"></td> </tr> <tr> <td data-bbox="713 595 750 1854">external wall: framed (weatherboard, fibro, metal clad)</td> <td data-bbox="713 994 750 1420">R1.30 (or R1.70 including construction)</td> <td data-bbox="713 595 750 994"></td> </tr> <tr> <td data-bbox="750 595 786 1854">flat ceiling, flat roof: framed</td> <td data-bbox="750 994 786 1420">ceiling: R2.50 (up), roof: foil/sarking</td> <td data-bbox="750 595 786 994">medium (solar absorbance 0.475 - 0.70)</td> </tr> </tbody> </table>	Construction	Additional insulation required (R-value)	Other specifications	concrete slab on ground floor.	nil		floor above existing dwelling or building.	nil		external wall: brick veneer	R1.16 (or R1.70 including construction)		external wall: framed (weatherboard, fibro, metal clad)	R1.30 (or R1.70 including construction)		flat ceiling, flat roof: framed	ceiling: R2.50 (up), roof: foil/sarking	medium (solar absorbance 0.475 - 0.70)	✓	✓	✓
Construction	Additional insulation required (R-value)	Other specifications																			
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floor above existing dwelling or building.	nil																				
external wall: brick veneer	R1.16 (or R1.70 including construction)																				
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Glazing requirements		Show on DA Plans	Show on CC/CDC Plans & Specs	Certifier Check																																		
<p>Windows and glazed doors</p> <p>The applicant must install the windows, glazed doors and shading devices, in accordance with the specifications listed in the table below. Relevant overshadowing specifications must be satisfied for each window and glazed door.</p> <p>The following requirements must also be satisfied in relation to each window and glazed door:</p> <p>Each window or glazed door with standard aluminium or timber frames and single clear or toned glass may either match the description, or have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below. Total system U-values and SHGCs must be calculated in accordance with National Fenestration Rating Council (NFRC) conditions.</p> <p>For projections described in millimetres, the leading edge of each eave, pergola, verandah, balcony or awning must be no more than 500 mm above the head of the window or glazed door and no more than 2400 mm above the sill.</p> <p>Pergolas with polycarbonate roof or similar translucent material must have a shading coefficient of less than 0.35.</p> <p>Pergolas with fixed battens must have battens parallel to the window or glazed door above which they are situated, unless the pergola also shades a perpendicular window. The spacing between battens must not be more than 50 mm.</p>					✓	✓	✓	✓																														
<p>Windows and glazed doors glazing requirements</p> <table border="1"> <thead> <tr> <th rowspan="2">Window / door no.</th> <th rowspan="2">Orientation</th> <th rowspan="2">Area of glass inc. frame (m²)</th> <th colspan="2">Overshadowing</th> <th rowspan="2">Shading device</th> <th rowspan="2">Frame and glass type</th> </tr> <tr> <th>Height (m)</th> <th>Distance (m)</th> </tr> </thead> <tbody> <tr> <td>W1</td> <td>SW</td> <td>1.5</td> <td>0</td> <td>0</td> <td>none</td> <td>timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)</td> </tr> <tr> <td>D1</td> <td>SW</td> <td>3.8</td> <td>0</td> <td>0</td> <td>none</td> <td>timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)</td> </tr> <tr> <td>D4</td> <td>NE</td> <td>6.4</td> <td>0</td> <td>0</td> <td>eave/verandah/pergola/balcony >=900 mm</td> <td>timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)</td> </tr> </tbody> </table>					Window / door no.	Orientation	Area of glass inc. frame (m ²)	Overshadowing		Shading device	Frame and glass type	Height (m)	Distance (m)	W1	SW	1.5	0	0	none	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)	D1	SW	3.8	0	0	none	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)	D4	NE	6.4	0	0	eave/verandah/pergola/balcony >=900 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)	✓	✓	✓	✓
Window / door no.	Orientation	Area of glass inc. frame (m ²)	Overshadowing					Shading device	Frame and glass type																													
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<p>Skylights</p> <p>The applicant must install the skylights in accordance with the specifications listed in the table below.</p>					✓	✓	✓	✓																														

Glazing requirements	Show on DA Plans	Show on CC/ODC Plans & specs	Certifier Check																
<p>The following requirements must also be satisfied in relation to each skylight: Each skylight may either match the description, or, have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below.</p> <p>Skylights glazing requirements</p> <table border="1"> <thead> <tr> <th>Skylight number</th> <th>Area of glazing inc. frame (m2)</th> <th>Shading device</th> <th>Frame and glass type</th> </tr> </thead> <tbody> <tr> <td>S1</td> <td>0.35</td> <td>no shading</td> <td>timber, double clear/air fill, (or U-value: 4.3, SHGC: 0.5)</td> </tr> <tr> <td>S2</td> <td>0.35</td> <td>no shading</td> <td>timber, double clear/air fill, (or U-value: 4.3, SHGC: 0.5)</td> </tr> <tr> <td>S3</td> <td>0.35</td> <td>no shading</td> <td>timber, double clear/air fill, (or U-value: 4.3, SHGC: 0.5)</td> </tr> </tbody> </table>	Skylight number	Area of glazing inc. frame (m2)	Shading device	Frame and glass type	S1	0.35	no shading	timber, double clear/air fill, (or U-value: 4.3, SHGC: 0.5)	S2	0.35	no shading	timber, double clear/air fill, (or U-value: 4.3, SHGC: 0.5)	S3	0.35	no shading	timber, double clear/air fill, (or U-value: 4.3, SHGC: 0.5)		<p>✓</p> <p>✓</p>	<p>✓</p> <p>✓</p>
Skylight number	Area of glazing inc. frame (m2)	Shading device	Frame and glass type																
S1	0.35	no shading	timber, double clear/air fill, (or U-value: 4.3, SHGC: 0.5)																
S2	0.35	no shading	timber, double clear/air fill, (or U-value: 4.3, SHGC: 0.5)																
S3	0.35	no shading	timber, double clear/air fill, (or U-value: 4.3, SHGC: 0.5)																

Legend
In these commitments, "applicant" means the person carrying out the development.
Commitments identified with a "✓" in the "Show on DA plans" column must be shown on the plans accompanying the development application for the proposed development (if a development application is to be lodged for the proposed development).
Commitments identified with a "✓" in the "Show on CC/CDC plans & specs" column must be shown in the plans and specifications accompanying the application for a construction certificate / complying development certificate for the proposed development.
Commitments identified with a "✓" in the "Certifier check" column must be certified by a certifying authority as having been fulfilled, before a final occupation certificate for the development may be issued.

Attachment C- Clause 4.6 Exception to Development Standards



**Clause 4.6 Application To Vary A
Development Standard**

ALTERATIONS & ADDITIONS

AT

8 YEEND STREET BIRCHGROVE

Revision 1

July 2020

CVMA ARCHITECTS

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Clause 4.6 Application

Clause 4.6 Application To Vary A Development Standard: Floor Space Ratio

This Variation Request accompanies a Development application for alteration and additions at No. 8 Yeend Street, Birchgrove. It should be read in conjunction with the Statement of Environmental Effects to which it is attached, and the proposed plans by CVMA Architects. The land is administered by Inner West Council. The proposal involves a small non-compliance with the maximum permitted Floor Space Ratio standard in Leichhardt Local Environmental Plan.

1.(i) Name of the applicable planning instrument which specifies the development standard:

Leichhardt Local Environmental Plan 2013

(ii) The land is zoned:

Zoned R1 General Residential

(iii) The number of the relevant clauses therein:

Clause 4.4 – Floor Space Ratio (FSR)

(1) The objectives of this clause are as follows:

(a) 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

(ii) provides a suitable balance between landscaped areas and the built form, and

(iii) minimises the impact of the bulk and scale of buildings,

(b) to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale.

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

(2A) Despite subclause (2), the floor space ratio for development for a purpose other than residential accommodation on land in Zone R1 General Residential is not to exceed 1:1.

(2B) Despite subclause (2), the floor space ratio for development for the purpose of residential accommodation:

(a) on land shown edged black or pink on the Floor Space Ratio Map is not to exceed:

(i) in the case of development on a lot with an area of less than 150 square metres—0.9:1, or

(ii) in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.8:1, or

Clause 4.6 Application

- (iii) in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.7:1, or
- (iv) in the case of development on a lot with an area of 450 square metres or more—0.6:1, or
- (b) on land shown edged red or green on the Floor Space Ratio Map is not to exceed:
 - (i) in the case of development on a lot with an area of less than 150 square metres—1.0:1, or
 - (ii) in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.9:1, or
 - (iii) in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.8:1, or
 - (iv) in the case of development on a lot with an area of 450 square metres or more—0.7:1, or
- (c) on land shown edged brown on the Floor Space Ratio Map is not to exceed:
 - (i) in the case of development on a lot with an area of less than 150 square metres—0.8:1, or
 - (ii) in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.7:1, or
 - (iii) in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.6:1, or
 - (iv) in the case of development on a lot with an area of 450 square metres or more—0.5:1, or
- (d) on land shown edged yellow on the Floor Space Ratio Map is not to exceed:
 - (i) in the case of development on a lot with an area of less than 150 square metres—0.9:1, or
 - (ii) in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.8:1, or
 - (iii) in the case of development on a lot with an area of 300 square metres or more—0.7:1.

2. Specify the nature of Development Standard sought to be varied and details of variation:

<p>LEP</p> <p>Floor Space Ratio (c) on land shown edged brown on the Floor Space Ratio Map is not to exceed: in the case of development on a lot with an area of less than 150 square metres—0.8:1, or in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.7:1, or</p>	<p>Strata Complex: 0.5:1</p> <p>The proposed FSR when calculated on the lot of the individual terrace is 0.9:1.</p>	<p>Approximately 0.6: 1 (estimate)</p> <p>0.49:1 (109.87m2) Existing GFA- 101.26m2 Proposed GFA -109.87 m2</p> <p>Just 8.6m2 new GFA added .</p>	<p>Due to the size and history of this Strata Plan it is not possible to accurately calculate compliance with the relevant development standards. It is most likely that the complex has existing variations to FSR development Standard.</p> <p>For this reason the SEE current compliance check focusses solely upon the subject site known as 8 Yeend Street, Birchgrove.</p> <p>Given that the environmental impacts resulting from this development are acceptable and have</p>
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Clause 4.6 Application

			<p>been minimised through good design, there is no environmental benefit in reducing the floor area to merely comply with the numerical standard.</p> <p>The proposed works are entirely within the existing building footprint and will not have any impact on existing soft open space and landscaping.</p> <p>The density of the development is sustainable within the existing area in consideration of the context, proximity to public transport, services, and infrastructure, social and environmental qualities of the site.</p> <p>The proposed building is considered to have an appropriate density for the site and the locality.</p>
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3. Consistency with Objectives of Clause 4.6

Clause 4.6 provides appropriate flexibility in applying development standards to achieve better planning outcomes for and from the development. The objectives outlined in Clause 4.6(1) and our planning responses are as follows:

Objective (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

Objective (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Flexibility in applying the maximum FSR development standard is appropriate in this case. The SEE demonstrates the proposal is unlikely to cause impacts to nearby residents. Rear extension is not visible from the public domain.

The proposal also complies with the key development standards determining an appropriate building envelope for a project of this type on this site.

4. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The clause is stated:

Clause 4.6 Application

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

These matters are considered in the following sections.

4.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary.

The Court's decision in *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 1009 required additional justification, beyond achieving compliance with the development standard and zone objectives. The Commissioner noted Preston CJ had identified "other ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary" [61].

In our opinion the proposal satisfies the relevant tests established in *Wehbe* and for that reason; the compliance with development standard is unreasonable and unnecessary. The tests are considered on the following pages.

Test 1 - The objectives of the development standard are achieved notwithstanding non-compliance with the standard;

The objectives outlined in Clause 4.4

4.4 Floor space ratio

- (1) The objectives of this clause are as follows:
 - (a) 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
 - (ii) provides a suitable balance between landscaped areas and the built form, and
 - (iii) minimises the impact of the bulk and scale of buildings,
 - (b) to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.
 - (2A) Despite subclause (2), the floor space ratio for development for a purpose other than residential accommodation on land in Zone R1 General Residential is not to exceed 1:1.
 - (2B) Despite subclause (2), the floor space ratio for development for the purpose of residential accommodation:

Clause 4.6 Application

As works are barely visible and well set back from the public domain, there is no potential for this development to have a jarring effect on the streetscape. No identified public views will be affected by the proposal.

The interface of the building and the streetscape are of a compliant envelope. Any impacts to the neighbouring properties are of a compliant built form.

The proposed variation does not create any adverse impacts on the adjoining properties, the streetscape or the character of the locality generally.

The additional floor space will not result in unreasonable overshadowing impacts to surrounding properties.

Test 2 - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

The development standard's underlying purpose is to control bulk, scale and residential density in the R1 zone. The proposal complies with the height controls contained with the DCP. Side setbacks are the same as existing. (attached dwellings with nil wall on boundary setbacks).

The proposal demonstrates this can be achieved despite non-compliance with the FSR development standard. Compliance with the standard would require a reduction in FSR which would not necessarily lead to a better outcome for the site.

The proposed works are entirely within the approved building footprint and will not have any impact on existing soft open space and landscaping. The proposal seeks to retain all existing trees and landscaping except front yard planterbox.

Accordingly in our opinion, the requirement to comply with the maximum FSR control is unnecessary in this circumstance as the proposal is contextually compatible with the surrounding developments and does not result in unreasonable amenity impacts to neighbouring properties.

Test 3 - The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

The underlying objective is to provide residential development of a bulk, scale and residential amenity which will be consistent with the character of the neighbourhood.

The proposed development is compatible with the equivalent existing dwellings along Yeend Street. The proposed ground floor element that results in a variation that will not be visible from the public domain and will not impact the character of development in the locality.

The variation to floor space will not compromise the character of the area. The built form proposed under this application is considered appropriate in the context of the surrounding development. Materials and finishes proposed will also assist in reducing the appearance and extent of the built form.

The proposal is not within the proximity of a heritage item.

The density of the development is sustainable within the existing area in consideration of the context, proximity to public transport, services, and infrastructure, social and environmental qualities of the site.

In our opinion, strict compliance with the maximum FSR requirement is unreasonable in the context of the site and will prevent the orderly and economic use and development of the subject land.

Clause 4.6 Application

Test 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;

While the standard has not been virtually abandoned or destroyed, there are numerous examples of developments in the LGA which have been approved with non-compliances with the maximum FSR development standard.

While each DA is assessed on its own merits and each site has different characteristics, Council has accepted variations to the maximum FSR standard in the past.

4.2. There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The proposal is permissible within the R1 Low Density Residential zone. It also satisfies four of the 'unreasonable and unnecessary' tests established by the Court in *Wehbe*.

Strict application of the 0.5:1 FSR development standard is considered unreasonable and unnecessary in the circumstances of the case for the following reasons:

1. The subject dwelling is part of a larger development which may or may not comply with the FSR control. If the subject dwelling was treated as its own allotment, the FSR control would be 0.9:1 and the proposal would comply.
2. The design of the development provides a desirable urban form that maintains the existing site as a single residence, retains the original principle building form.
3. The proposed dwelling has been sympathetically designed to consider the amenity and character of the surrounding neighbourhood through its retention of the original principle building and modest alterations.
4. The FSR development standard departure does not itself create any adverse impact by way of privacy or bulk and scale that could be viewed by neighbours or those passing the site within the public domain.
5. No additional amenity impacts arise as a result of the proposal. Amenity to adjacent properties (i.e. sunlight, privacy, views) is protected and compliance with the solar access controls is achieved.
6. The development achieves the aims and objectives of LLEP 2013.
7. The proposal satisfies the zone objectives.

As detailed, strict compliance with the development standard would not result in a better outcome for development. It would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and the objectives of the Environmental Planning and Assessment Act 1979.

5. Clause 4.6(4) Requirements

Clause 4.6(4) guides the consent authority's consideration of this clause 4.6 variation request. It provides that development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:

Clause 4.6 Application

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

The applicant submits that the consent authority can be satisfied of each of these requirements of clause 4.6(4), for all of the reasons set out in this request, and also having regard to the unique characteristics of this particular site, in this particular locality. In our opinion the proposal is in the public interest, as it is consistent with the objectives of the development standard and the Zone. This satisfies Tests 1 to 4 in Wehbe and Clause 4.6(4)(a)(ii) as the objectives are achieved, despite the non-compliance.

6. Clause 4.6(5) Requirements

The Council as the concurrence authority, is required to consider the following:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

The FSR non-compliance is considered to be in the public interest as it will enhance the amenity and functionality of the dwelling without significantly impacting neighbouring properties. The non-compliances are minor and contribute to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

For and on behalf of

CVMA Architects

Alexander Chougam R.A.I.A.

Principal Architect

Registration No7196

Clause 4.6 Application

Clause 4.6 Application To Vary A Development Standard:

4.3A Landscaped areas for residential accommodation in Zone R1

- **Clause 4.3A(3)(a) – Landscaped Area**
- **Clause 4.3A(3)(b) – Site Coverage**

This Variation Request accompanies a Development application for alteration and additions at No. 8 Yeend Street, Birchgrove.. It should be read in conjunction with the Statement of Environmental Effects to which it is attached, and the proposed plans by CVMA Architects.

The proposal involves a non-compliance with the minimum permitted landscape area standard in Leichhardt Local Environmental Plan 2013.

1.(i) Name of the applicable planning instrument which specifies the development standard: Leichhardt Local Environmental Plan 2013

(ii) The land is zoned:
Zoned R1 General Residential

(iii) The number of the relevant clauses therein:

4.3A Landscaped areas for residential accommodation in Zone R1

(1) The objectives of this clause are as follows:

- (a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,
- (b) to maintain and encourage a landscaped corridor between adjoining properties,
- (c) to ensure that development promotes the desired future character of the neighbourhood,
- (d) to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,
- (e) to control site density,
- (f) to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.

(2) This clause applies to development for the purpose of residential accommodation on land in Zone R1 General Residential.

(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

Clause 4.6 Application

- (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.
- (4) For the purposes of subclause (3):
 - (a) the site area is to be calculated under clause 4.5 (3), and
 - (b) any area that:
 - (i) has a length or a width of less than 1 metre, or
 - (ii) is greater than 500mm above ground level (existing),
 is not to be included in calculating the proportion of landscaped area, and
 - (c) any deck or balcony or the like (whether enclosed or unenclosed) is not to be included in calculating the site coverage if:
 - (i) it is 2.4 metres or more above ground level (existing), as measured from the underside of the structure and the area below the structure is able to be landscaped or used for recreational purposes, or
 - (ii) the finished floor level is 500mm or less above ground level (existing).

<p>LEP 4.3A Landscaped areas for residential accommodation in Zone R1</p>	<p>Subject site (N8 only): Minimum 15% - 33.45m²</p>	<p>Proposed soft landscaping area 33.47m² or 15% As such no reduction in the amount of landscaped area is proposed. Only the above ground planterbox will be replaced with a small pool.</p>	<p>Yes (N8 site only) The proposal will not impact upon the provision for deep soil landscaping on the site and will provide existing compliant private open space.</p>
	<p>Strata Complex: Minimum 20% Minimum 49.56m²</p>	<p>Due to the size and history of this Strata Plan it is not possible to accurately calculate compliance with the relevant development standards.</p>	<p>It is most likely that the complex has existing variations to Landscaped areas development Standard.</p>
<p>Site Coverage</p>	<p>Maximum 60%</p>	<p>Subject site (N8 only): Proposed site coverage 52.8% (130.3m²) Strata Complex:</p>	<p>Yes (N8 site only) It is most likely that the complex has existing variations to Site Coverage development Standard.</p>

d) retention of existing significant vegetation and opportunities for new significant vegetation is

Clause 4.6 Application

maximised; and

Comment: The proposal will not result in the removal of any significant trees or vegetation.

The proposal involves building a kitchen and entry hall above the existing roof of the existing dwelling with a minor increase to the existing building footprint. As such no reduction in the amount of deep soil landscaped area is proposed. Only the above ground planterbox will be replaced with a small pool.

The proposed works are entirely within the existing building footprint (except new 2.29 m² addition to the entry hall) and new swimming pool in the front backyard) and will not have any impact on existing soft open space and deep soil landscaping.

3. Consistency with Objectives of Clause 4.6

Clause 4.6 provides appropriate flexibility in applying development standards to achieve better planning outcomes for and from the development. The objectives outlined in Clause 4.6(1) and our planning responses are as follows:

Objective (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

Objective (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Flexibility in applying the minimum development standard is appropriate in this case. The SEE demonstrates the proposal is unlikely to cause impacts to nearby residents. The proposal also complies with the key development standards determining an appropriate building envelope for a project of this type on this site.

4. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The clause is stated:

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

These matters are considered in the following sections.

4.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary.

Clause 4.6 Application

The Court's decision in *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 1009 required additional justification, beyond achieving compliance with the development standard and zone objectives. The Commissioner noted Preston CJ had identified "other ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary" [61].

In our opinion the proposal satisfies the relevant tests established in *Wehbe* and for that reason; the compliance with development standard is unreasonable and unnecessary. The tests are considered on the following pages.

Test 1 - The objectives of the development standard are achieved notwithstanding non-compliance with the standard;

The objectives outlined in Clause 4.3a:

- (a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,*
- (b) to maintain and encourage a landscaped corridor between adjoining properties,*
- (c) to ensure that development promotes the desired future character of the neighbourhood,*
- (d) to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,*
- (e) to control site density,*
- (f) to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space*

Instead, to offset the lack of soft landscaping a substantial amount of private open space is proposed.

The proposed variation does not create any adverse impacts on the adjoining properties, the streetscape or the character of the locality generally.

Landscaped corridor between adjoining properties is maintained.

The proposal involves building a kitchen and entry hall above the existing roof of the existing dwelling with a minor increase to the existing building footprint. As such no reduction in the amount of deep soil landscaped area is proposed. Only the above ground planterbox will be replaced with a small pool.

The proposed works are entirely within the existing building footprint (except new 2.29 m² addition to the entry hall) and new swimming pool in the front backyard) and will not have any impact on existing soft open space and deep soil landscaping except the above ground planterbox removal.

The subject dwelling is part of a larger development which may or may not comply with the landscaping and site coverage controls. If the subject dwelling was treated as its own allotment, the Landscaping and coverage controls would be 15% and 60% and the proposal would comply.

Test 2 - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

The development standard's underlying purpose is to control bulk, scale and residential density in the R1 zone. The proposal complies with the height controls and FSR contained with the DCP (If the subject dwelling was treated as its own allotment). Side setbacks are the same as existing.

Compliance with the standard would require a increase in landscaped areas which would not necessarily lead to a better outcome for the site. Only the above ground planterbox will be replaced with a small pool. No reduction in the amount of deep soil landscaped area is proposed.

Clause 4.6 Application

Accordingly in our opinion, the requirement to comply with the minimum landscaping control is unnecessary in this circumstance as the proposal is contextually compatible with the surrounding developments and does not result in unreasonable amenity impacts to neighbouring properties.

Test 3 - The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

The underlying objective is to provide residential development of a bulk, scale and residential amenity which will be consistent with the character of the neighbourhood. The proposed development is compatible with the equivalent existing dwellings along Yeend Street. The proposed ground floor element that results in a variation that will not be visible will not impact the character of development in the locality.

The proposal is compatible in terms of size, dimensions privacy and solar access of private open space, outdoor recreation and landscaping with adjoining dwellings;

The variation to landscape area will not compromise the character of the area and was approved by council before for similar sites within the complex. The proposed landscape area under this application is considered appropriate in the context of the surrounding development.

The density of the development is sustainable within the existing area in consideration of the context, proximity to public transport, services, and infrastructure, social and environmental qualities of the site.

In our opinion, strict compliance with the minimum landscape area requirement is unreasonable in the context of the site and will prevent the orderly and economic use and development of the subject land.

Test 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;

While the standard has not been virtually abandoned or destroyed, there are numerous examples of developments in the LGA which have been approved with non-compliances with the minimum landscape development standard.

While each DA is assessed on its own merits and each site has different characteristics, Council has accepted variations to the minimum landscaping standard in the past.

There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard.

The proposal is permissible within the R1 zone. It also satisfies four of the 'unreasonable and unnecessary' tests established by the Court in *Wehbe*.

As detailed, strict compliance with the development standard would not result in a better outcome for development. It would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and the objectives of the Environmental Planning and Assessment Act 1979.

5. Clause 4.6(4) Requirements

Clause 4.6(4) guides the consent authority's consideration of this clause 4.6 variation request. It provides that development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

Clause 4.6 Application

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

The applicant submits that the consent authority can be satisfied of each of these requirements of clause 4.6(4), for all of the reasons set out in this request, and also having regard to the unique characteristics of this particular site, in this particular locality. In our opinion the proposal is in the public interest, as it is consistent with the objectives of the development standard and the Zone. This satisfies Tests 1 to 4 in Wehbe and Clause 4.6(4)(a)(ii) as the objectives are achieved, despite the non-compliance.

6. Clause 4.6(5) Requirements

The Council as the concurrence authority, is required to consider the following:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

The landscape area non-compliance is considered to be in the public interest as it will enhance the amenity and functionality of the dwelling without significantly impacting neighbouring properties. The potential non-compliances are minor, (comply with the site coverage control and landscape area for No 8 site only) contribute to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

For and on behalf of
CVMA Architects
Alexander Chougam R.A.I.A.
Principal Architect
Registration No7196

Attachment D - Statement of Significance for the Town of Waterview Heritage Conservation Area

Godden Mackay Logan

Area 15 Town of Waterview Conservation Area

Landform

The land in this conservation area is located around a small creek (known as Curtis Waterhole) that enters Waterview Bay (now Morts Bay) at its most western point. The area is generally sheltered and includes flat low-lying land near the bay (where Morts Dock was built) rising south to higher land along Darling Street and west to the prominent knoll of Dock Road and Bates Street.

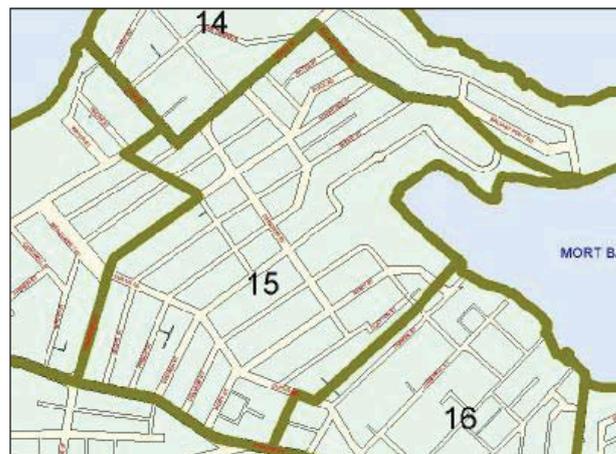


Figure 15.1 Town of Waterview Conservation Area Map.

History

The area that was later developed by Thomas Mort as the Town of Waterview included land originally purchased from Gilchrist's Balmain Estate in 1836 by Curtis and Lamb. In 1854 these two lots at the eastern end of the bay were purchased by Captain Rowntree and Thomas Holt for a slipway and dry dock. Thomas Mort was impressed with the sheltered bay and joined them in the enterprise.

Mort also accepted the transfer of most of the land around the dock area and commissioned Surveyor FH Reuss to lay out a township of 700 modest residential allotments. Initially Mort sought to provide rental accommodation near the dock to attract skilled labour and he indicated that a building society might be formed to assist purchasers, probably so that there would always be a pool of skilled workers living nearby. Allotments were 1/2 chain (33ft) wide with depths ranging from 84-109 feet, but subsequent resubdivision to allow two houses (terrace or semi) on one allotment occurred at the time of building and produced many smaller parcels. There were no back lanes for night soil disposal.

Small groups of similar houses suggest the area was constructed by small-scale building contractors, or by individual owner/builders.

Godden Mackay Logan

Mort purchased more land adjoining the original township and after his death in 1877 his trustees continued the dense subdivision and development of this area in response to the growth of Morts Dock Industries and the building boom of the 1880s.

It took forty years from 1857 for the town to be fully occupied. Just over half the allotments had been sold by 1878, but by 1896 the streets created within Mort's Town – Mort, Church, Phillip, Short, College, Rowntree, Curtis, Spring and Cameron Streets – were filled with an assortment of houses, 796 in all, 396 of brick, 348 of weatherboard, 51 of stone and one of iron. Small groups of corner shops and pubs served the community.

By 1861 the dock was leasing facilities to other maritime activities, and it developed its own associated engineering industries. Morts Dock and Engineering Co grew rapidly to become the largest private employer in Australia in a variety of maritime and engineering industries. During the 1940s it built corvettes, frigates and a floating dock. Economic fluctuations affecting the dock also affected its workers. The dock, the Town of Waterview and its pubs were the site of the beginnings of the urban labour movement. The dock closed in 1958; the site was levelled and used as a container terminal. More recently, the land was developed for residential purposes by the Department of Housing.

Sources

Solling, M and Reynolds, P 1997, 'Leichhardt: on the margins of the city', *Leichhardt Historical Journal*, Vol. 22, Allen and Unwin.

Reynolds, P 1985, 'The first 22 lots – an overview: Suburbanisation in Balmain', *Leichhardt Historical Journal*, Vol. 14.

Further research by Max Solling.

Significant Characteristics

- Regular street pattern made up of wider streets (about 50ft wide) marking the boundaries of the township (Rowntree, Mort, Curtis and Cameron Streets) or giving access to the dock (Church Street) with narrower streets filling the remainder.
- Lack of back lanes.
- A very regular streetscape resulting from:
 - regular width allotments of 33ft (or half 33ft) giving rise to uniform densely developed streets of single or double -fronted houses/terraces;
 - use of limited range of building materials – either rendered brick or painted weatherboard;
 - face brick houses of post c1890 and the fifty-odd stone buildings are noticeable for their different building materials; and
 - remarkably intact collection of single and two-storey attached and detached dwellings, many of them weatherboard.

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- Density of pubs.
- Corner stores and small groups of stores and pubs at some cross roads.

Statement of Significance or Why the Area is Important

- One of a number of conservation areas which collectively illustrate the nature of Sydney's early suburbs and Leichhardt's suburban growth particularly between 1871 and 1891, with pockets of infill up to the end of the 1930s (ie prior to World War II). This area, through the form and fabric of its houses, corner shops and pubs, its street layout and allotment shapes, demonstrates a remarkably intact area of early workers' housing from 1850s to 1890s with later infill development prior to World War II (ie pre-1939). It is significant for its surviving development prior to World War II.
- Demonstrates through the density of pubs (and former pubs) within the township area its close association with the growth of the urban labour movement. A number of these pubs are of national heritage significance for their historical and enduring social values as part of the history of unionism and of the Ships Painters and Dockers Union in particular.
- Demonstrates, through the nature of its housing, the important role played by Morts Dock as a magnet for workers and the location of their housing.
- Demonstrates, through its rendered and painted brickwork, the nature of construction in Sydney before the ready availability of hard pressed, face bricks.
- Demonstrates the work of Surveyor Reuss.
- Associated with prominent local entrepreneurs and land developers, some of whom were aldermen of Council.
- Demonstrates, with Bodalla Village on the New South Wales south coast, the role of Thomas Mort in providing 'appropriate' housing for his employees.

Management of Heritage Values

Generally

This is a conservation area. Little change can be expected other than modest additions and discrete alterations. Buildings which do not contribute to the heritage significance of the area may be replaced with sympathetically designed infill.

Retain

- All pubs, preferably as public houses, or in related activities (boarding houses etc) or as small-scale commercial uses.
- All pre-1939 buildings, especially timber buildings, and all their architectural details. Replacement of lost detail, based only on evidence, should be encouraged.
- Original finishes, particularly rendered brick houses.

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- All remaining sandstone kerbs and gutter.

Avoid

- Diagonally placed chicanes, and other works that diminish the straight line of the original road layout.
- Alterations that change the shape (form) of the pubs – particularly the removal of verandahs or the creation of new verandahs for which there is no historical evidence.
- Alterations that change the shape of the building or original roof forms on the main part of the buildings.
- Removal of original detail. (Encourage restoration from evidence.)
- Additions of details not part of the original fabric of the building.
- Interruption to the almost continuous kerb and gutters.