





# INNER WEST

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	DA/2022/0794
<b>Address</b>	12 Mckell Street BIRCHGROVE
<b>Proposal</b>	Alterations and additions to existing three storey attached dwelling
<b>Date of Lodgement</b>	23 September 2022
<b>Applicant</b>	Sam Tadros
<b>Owner</b>	Linda J Vas Donald J Vas
<b>Number of Submissions</b>	Initial: 0
<b>Value of works</b>	\$360,000.00
<b>Reason for determination at Planning Panel</b>	Section 4.6 variation exceeds 10%
<b>Main Issues</b>	FSR Breach Site Coverage Breach Landscaped Area Breach
<b>Recommendation</b>	Approved with Conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Section 4.6 Exception to Development Standards



### 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 an existing three storey attached dwelling at 12 Mckell Street Birchgrove.

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

The main issues that have arisen from the application include:

- variation to prescribed development standards

A Clause 4.6 exception was submitted to Council to vary the floor space ratio, site coverage and landscaped area development standards. The non-compliances are acceptable given that the proposal generally complies with the aims and objectives of the Inner West Local Environmental Plan 2022 and the Leichhardt Development Control Plan 2013. The proposal is considered acceptable and recommended for approval.

## 2. Proposal

The proposal seeks to carry out alterations and additions to the dwelling as follows;

- Ground – Addition of a laundry and powder room, extension to living area and lift.
- First Floor– Addition of a study, extension of master bedroom, including balcony and lift
- Second Floor – Addition and reconfiguration of the existing 4<sup>th</sup> bedroom to incorporate a new bedroom, bathroom, and extension of lift.

The additions align in depth and height to the adjoining dwelling to the north east. The alterations and additions also make modifications to fenestration and implement new roofing, skylights and photovoltaic solar cells.

## 3. Site Description

The site contains a multi-dwelling residential redevelopment. 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 115 in SP 62555) that is the subject of this application is approximately 127sqm in area and has a frontage of approximately 6.21 metres to McKell Street. It currently accommodates a three-storey townhouse, with similar townhouses located in the row.

The site is not a heritage item under IWLEP 2022 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 *Inner West Local Environmental Plan 2022*.



**Surrounding properties – 14 McKell Street Birchgrove**

Application	Proposal	Decision & Date
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
09/11/2022	Council requested copy of body corporate consent and Clause 4.6 exceptions to development standard variations.
09/12/2022	Sufficient information was received, strata consent and variations.

**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 (EPA Act 1979)*.

**5(a) Environmental Planning Instruments**

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

- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

The following provides further discussion of the relevant issues:

5(a)(i) *State Environmental Planning Policy (Resilience and Hazards) 2021*

Chapter 4 Remediation of land

Section 4.16 (1) of the SEPP requires the consent authority not consent to the carrying out of any development on land unless:

*“(a) it has considered whether the land is contaminated, and  
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and  
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”*

In considering the above, there is no evidence of contamination on the site.

There is also no indication of uses listed in Table 1 of the contaminated land planning guidelines within Council’s records. The land will be suitable for the proposed use as there is no indication of contamination.

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 (Biodiversity and Conservation) 2021*

Chapter 10 Sydney Harbour Catchment

The site is not located within the foreshores and waterways area, a Strategic Foreshore site or listed as an item of environmental heritage under the SEPP and as such only the aims of the plan are applicable. The proposal is consistent with these aims.

5(a)(iv) *Inner West Local Environmental Plan 2022 (IWLEP 2022)*

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022*:

- Section 1.2 - Aims of Plan
- Section 2.3 - Land Use Table and Zone Objectives
- Section 2.7 – Demolition requires development consent
- Section 4.3C – Landscaped areas for residential accommodation in Zone R1
- Section 4.4 – Floor space ratio
- Section 4.5 – Calculation of floor space ratio and site area

- Section 4.6 – Exceptions to development standards
- Section 5.10 – Heritage conservation
- Section 5.21 – Flood planning
- Section 6.1 – Acid sulfate soils
- Section 6.2 – Earthworks
- Section 6.3 – Stormwater management

Section 2.3 Land Use Table and Zone Objectives

The site is zoned General Residential - R1 under the *IWLEP 2022*.

The development which is defined as multi dwelling housing is permitted with consent within the land use table. The development is consistent with the objectives of the R1 zone.

Section 4 Principal Development Standards

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

Note: The calculations below are relative to the development site, which is 127sqm. This is the individual strata lot upon which the affected townhouse is located, but does not include the overall allotment, which is approximately 17,230sqm.

Standard	Proposal	Non compliance	Complies
<b>Floor Space Ratio</b> Maximum permissible: 1:1 or 127 sqm	1.2:1 or 152 sqm	25sqm or 19.69%	No
<b>Landscape Area</b> Minimum permissible: 15% or 19 sqm	30.2% or 38.3sqm	nil	Yes
<b>Site Coverage</b> Maximum permissible: 60% or 79.2 sqm	57.9% or 73.5sqm	nil	Yes

As outlined in the table above, the proposal complies with the applicable site coverage development standard if calculated for the individual strata lot upon which it is situated. However, the *IWLEP 2022* 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 applications and work have increased this floor space ratio to a point where it exceeds the LEP development standard.

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

A written request has been submitted by the applicant in accordance with Clause 4.6(3) seeking to justify the contravention of the standards in the context of the strata lot and is as discussed below.

### Section 4.6 Exceptions to Development Standards

As outlined in table above, the proposal results in a breach of the following development standards:

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

### Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the Floor Space Ratio development standard under Section Clause 4.4 of the *IWLEP 2022* by 19.69% (25sqm).

Section 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Section 4.6 of the *IWLEP 2022* below.

A written request has been submitted to Council in accordance with Section 4.6(4)(a)(i) of the *IWLEP 2022* justifying the proposed contravention of the development standard which is summarised as follows:

- *“The proposed development has been designed so that the bulk, form and scale is compatible with the adjoining townhouses to the east. The alterations and additions also maintain the existing gable roof line to the McKell Street elevation. Window openings are designed to remain consistent in style with the existing streetscape.*
- *The proposed development provides for only a minimal change to the previously approved site coverage for the site. The balance between landscaped areas and the built form is compatible with other developments in the locality and will not detrimentally impact on the character of the locality or the amenity of residents*
- *Assessment of the proposal has shown the amenity of adjoining and nearby residents will not be detrimentally impacted by the proposed development. Minor variations to the landscaped area are not of a magnitude that will detrimentally impact on the enjoyment and use of the townhouse by its occupants”*

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

It is considered the development is in the public interest because it is consistent with the objectives of the R1- General Residential Zone, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- The proposal provides for the housing needs of the community.
- The proposal contributes to providing for a variety of housing types and densities.
- The proposal provides additional floor area so as to improve opportunities to work from home.

- The proposal is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- The proposal protects the amenity of existing and future residents and the neighbourhood.

It is considered the development is in the public interest because it is consistent with the objectives of the Floor Space Ratio development standard, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- The density of the proposal reflects its adjoining context and locality
- The proposal is an appropriate transition between development of different densities
- The proposal minimises adverse impacts on the locality

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

As stated above, whilst the proposal (calculated for the individual strata lot) achieves compliance with the site coverage development standard of 60%, and 15% landscape area, the subject property forms part of a larger housing estate, and as there are no records of the existing overall site coverage for the site as a whole, to err on the side of caution, it is assumed that there is a breach with this development standard.

Section 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Section 4.6 of the *IWLEP 2022* below.

A written request has been submitted to Council in accordance with Section 4.6(4)(a)(i) of the *IWLEP 2022* justifying the proposed contravention of the development standard which is summarised as follows:

- *“The proposed alterations and additions will not remove any existing tree planting and will continue to maintain the existing level of amenity in the streetscape.*
- *The proposed alterations and additions will not remove any existing tree planting and will continue to maintain the existing level of amenity enjoyed by the residents. The townhouse has a rear courtyard and has direct access from the primary living spaces in the townhouse. The site also enjoys access to the immediately adjoining public open space area to the south, adjacent to Mort Bay.*
- *The proposed alterations and additions are designed to be in keeping with the desired future character of the neighbourhood. The reduction in landscaped area is minor and will not detrimentally impact the desired future character of the neighbourhood or the ecological sustainability of the development. The proposed development provides for only a very minor change to the previously approved building footprint.”*

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



It is considered the development is in the public interest because it is consistent with the objectives of the R1- General Residential Zone, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- The proposal provides for the housing needs of the community.
- The proposal contributes to providing for a variety of housing types and densities.
- The proposal provides additional floor area so as to improve opportunities to work from home.
- The proposal is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- The landscape area provides for adequate amenity for residents of the site and is comparable with adjoining development within the complex
- The proposal protects the amenity of existing and future residents and the neighbourhood.

It is considered the development is in the public interest because it is consistent with the objectives of the Landscaped Area and Site Coverage development standard, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- The site would continue to provide a landscape area for the use and enjoyment of residents of the subject strata lot
- The proposal maintains a landscape corridor between adjoining properties
- The proposal maintains the character of the neighbourhood and is consistent with adjoining development
- The proposal maintains a reasonable level of private open space for occupants of the development

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 Section 4.6(1)(b) and requirements of Section 4.6(3)(b) of the *IWLEP 2022*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Floor Space Ratio, Landscaped Area and Site Coverage development standards and it is recommended the Section 4.6 exception be granted.

#### Section 5.10 – Heritage conservation

The application was referred to Councils Heritage Officer who concluded that the proposed development would have no adverse impact as the contemporary infill development mostly affects fabric with no significance to the Conservation Area to the front façade and added that there would be limited impact of the proposal to the rear, facing Mort Bay, as the same architectural language and detailing matches the surrounding existing buildings. As such the proposal has no adverse impact on the HCA having regard to the provisions of CI 5.10 of *IWLEP 2022*.

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

N/A

5(c) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Leichhardt Development Control Plan 2013.

LDCP2013	Compliance
<b>Part A: Introductions</b>	
Section 3 – Notification of Applications	Yes
<b>Part B: Connections</b>	
B1.1 Connections – Objectives	Yes
<b>Part C</b>	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	Yes
C1.4 Heritage Conservation Areas and Heritage Items	Yes
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.11 Parking	Yes
C1.12 Landscaping	Yes
C1.14 Tree Management	Yes
<b>Part C: Place – Section 2 Urban Character</b>	
C2.2.2.6 Birchgrove Distinctive Neighbourhood	Yes
<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes
C3.3 Elevation and Materials	Yes
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	<b>N/A</b>
<b>Part D: Energy</b>	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
<b>Part E: Water</b>	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes

E1.1.1 Water Management Statement	Yes
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	Yes
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.7 Wastewater Management	Yes
E1.3.1 Flood Risk Management	Yes, subject to recommended conditions
<b>Part F: Food</b>	<b>N/A</b>
<b>Part G: Site Specific Controls</b>	<b>N/A</b>

The following provides discussion of the relevant issues:

C3.2 Site Layout and Building Design

The proposal will infill development between No. 10 and 14 McKell Street. The proposed alignment corresponds to development existing at No. 10 McKell Street approved in 2017. The form and scale is consistent with adjoining development and is considered acceptable, and it is considered that proposed works result in minimal impacts and the objectives of the clause have been met.

C3.3 Elevation and Materials

It is considered that the proposed building elevations and materials used are consistent with the objectives and controls outlined under Clause 3.3 of the Leichhardt Development Control Plan 2013. In addition to feedback from Councils Heritage Officer, the same architectural language and detailing matches the surrounding existing buildings and results in a uniform architectural expression.

5(d) 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(e) 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(f) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties. No submissions were received in response to the initial notification.

### 5(g) 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

### 6(a) Internal

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

- Development Engineer - acceptable subject to the imposition of conditions
- Heritage

### 6(b) External

N/A

## 7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$3600.00 would be required for the development under 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 *Inner West Local Environmental Plan 2022* and *Leichhardt Development Control Plan 2013*.

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

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

## 9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the floor space ratio, site coverage and landscaped area development standards is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variations. The proposed development will be in the public interest because the exceedances are 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 to Development Application No. DA/2022/0794 for alterations and additions to existing three storey attached dwelling at 12 Mckell Street, Birchgrove 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
DA - 100	Site Plan	09/09/2022	Manor House Design
DA - 201	Ground & First Floor Plan	09/09/2022	Manor House Design
DA - 202	Second Floor & Roof Plan	09/09/2022	Manor House Design
DA - 301	Elevations (North East & Mort Bay reserve)	09/09/2022	Manor House Design
DA - 302	Elevations (South West & McKell Street)	09/09/2022	Manor House Design
DA - 401	Section A A	09/09/2022	Manor House Design
DA-601	External Finishes	09/09/2022	Manor House Design
-	Waste Management Plan	September 2022	-
A472419	BASIX Certificate	01/09/2022	Energi Thermal Assessors P/L

As amended by the conditions of consent.

**FEES**

**2. Security Deposit - Custom**

Prior to the commencement of demolition works or prior to the issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

<b>Security Deposit:</b>	\$5,600.00
<b>Inspection Fee:</b>	\$350.00

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.

**3. 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 *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\*:

\$3600.00

\*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.**

#### 4. 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 0.25% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$250,000 or more.



**GENERAL CONDITIONS****5. 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.

**6. Stormwater Drainage System – Simple**

Stormwater runoff from proposed new or altered roof areas may be discharged to the existing site drainage system.

Any existing component of the stormwater system that is to be retained, 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.

**7. 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.

**8. 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.

**9. 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.

**10. Works Outside the Property Boundary**

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

**PRIOR TO ANY DEMOLITION****11. 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.

**12. 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 all the adjoining properties, 10 & 14 McKell Street Birchgrove 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.

**13. Advising Neighbours 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.

**14. 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****15. 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.

**16. Flood Affected Site**

The subject site is identified as a flood control lot. Under PART E: WATER of Council's DCP 2013. All applications submitted for a flood control lot must be accompanied by a Flood Risk Management report supported by a flood study prepared by a relevantly qualified civil engineer. The report must establish the Hazard Category of the site. Flood Risk Management Report and Plans certified by a suitably qualified Civil Engineer must be provided indicating that the design comply with the following specific requirements.

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably qualified Civil Engineer that the works comply with the following specific requirements:

- a. All habitable floor levels must be set at Flood Planning Level (flood level plus 500mm freeboard). All structures below Flood Planning Level must be constructed from flood compatible materials;
- b. All electrical equipment and wiring must be waterproofed or installed at or above the Flood Planning Level;
- c. A structural engineer's certificate must be submitted stating that the proposed building has been designed to withstand the forces of flood water, debris and buoyancy up to the 1 in 100-year flood level;
- d. The existing ground levels throughout the site must be maintained so as not to alter the existing overland flow path. Details of all obstructions or changes in level within the overland flow paths must be detailed on the plan; and
- e. All fencing within the overland flow path must be of an open type so as to allow for the free flow of water throughout the site so as to maintain existing flows.

**17. Flood Risk Management Plan**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Flood Risk Management Plan prepared and certified by a suitably qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng). The Plan must be prepared/amended to make provision for the following:

- a. Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development. Such recommendations must be consistent with the approved development. The flood impacts on the site must be assessed for the 100-year ARI and Probable Maximum Flood (PMF) storm events. The precautions must include but not be limited to the following:
  - i. Types of materials to be used to ensure the structural integrity of the building to immersion and impact of velocity and debris;
  - ii. Waterproofing methods, including electrical equipment, wiring, fuel lines or any other service pipes or connections;
  - iii. Flood warning signs/depth indicators for areas that may be inundated;
  - iv. A flood evacuation strategy; and
  - v. On-site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level.
- b. All works must be designed to comply with the Standard for Construction of Buildings in Flood Hazard Areas in accordance with Section 3.10.3 of the Building Code of Australia. Note that some terms defined in this standard have equivalent meaning to terms used in Council's Development Control Plan as listed below:
  - i. Building Code of Australia;
  - ii. Defined flood level (DFL) 100-year Average Recurrence Interval flood level;
  - iii. Defined flood event (DFE) 100-year Average Recurrence Interval flood; and
  - iv. Flood hazard level (FHL) Flood Planning Level (FPL).

#### **18. 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.

#### **19. 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.

**20. 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****21. 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.

**22. 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****23. 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.

**24. Protect Sandstone Kerb**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any stone kerb, damaged as a consequence of the work that is the subject of this development consent, has been replaced.

**ADVISORY NOTES****Permits**

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

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

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

**Insurances**

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

**Prescribed Conditions**

This consent is subject to the prescribed conditions of consent within Sections 69-86 of the *Environmental Planning and Assessment Regulations 2021*.

**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.

**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.

#### 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*.

#### Amenity Impacts General

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

#### Dial before you dig

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

**Useful Contacts**

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm <a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>
Department of Fair Trading	13 32 20 <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 <a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Payments Corporation	131441 <a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority	1300 552 406 <a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>
NSW Government	<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diysafe.nsw.gov.au">www.diysafe.nsw.gov.au</a> Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 <a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>
Sydney Water	13 20 92 <a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>

Waste Service - SITA 1300 651 116  
Environmental Solutions [www.wasteservice.nsw.gov.au](http://www.wasteservice.nsw.gov.au)

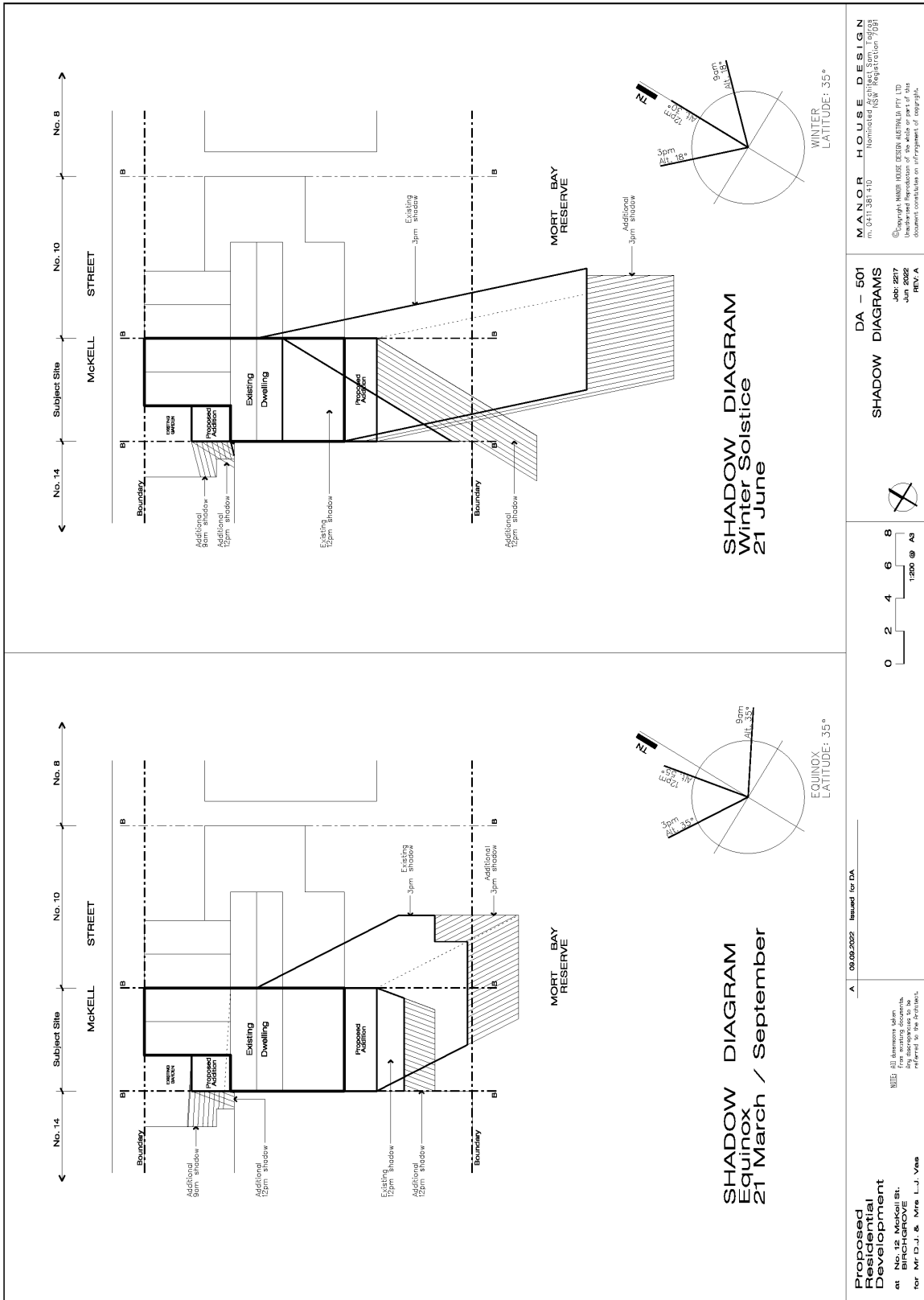
Water Efficiency Labelling and Standards (WELS) [www.waterrating.gov.au](http://www.waterrating.gov.au)

WorkCover Authority of NSW 13 10 50  
[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)  
Enquiries relating to work safety and asbestos removal and disposal.

Attachment B – Plans of proposed development

**EXTERNAL FINISHES**  
 Image above shows similar completed works at No. 8 McKell St.

<p>Major road, No. 8 McKell Street</p> <p>Existing metal roof to match</p> <p>Existing brick walls to match</p> <p>Proposed brick walls to match existing</p> <p>Existing metal roof to match</p> <p>Existing walls to match existing</p> <p>Existing metal roof to match</p> <p>Existing walls to match existing</p> <p>Existing metal roof to match</p> <p>Existing walls to match existing</p>	<p>Existing metal roof to be replaced with new metal roof</p> <p>Existing walls to match existing</p> <p>Mesh frames in porch ceiling</p> <p>Existing walls to match existing</p> <p>Existing metal roof to match</p>	<p>Proposed brick walls to match existing</p> <p>Existing brick walls to match</p> <p>Existing metal roof to match</p> <p>Existing walls to match existing</p> <p>Existing metal roof to match</p> <p>Existing walls to match existing</p> <p>Existing metal roof to match</p> <p>Existing walls to match existing</p>	<p>Major road, No. 8 McKell Street</p> <p>Existing metal roof to match</p> <p>Existing brick walls to match</p> <p>Proposed brick walls to match existing</p> <p>Existing metal roof to match</p> <p>Existing walls to match existing</p> <p>Existing metal roof to match</p> <p>Existing walls to match existing</p> <p>Existing metal roof to match</p> <p>Existing walls to match existing</p>	<p>Proposed Residential Development at No. 12 McKell St. for Mr D.J. &amp; Mrs L.J. Vase</p> <p>Document: S418-2022-00000007</p> <p>Version: 1, Version Date: 21/06/2022</p>	<p>06/06/2022 Issued for DA</p>	<p>DA - 601 EXTERNAL FINISHES</p> <p>Job: 2217</p> <p>Jun 2022</p> <p>REV. A</p>	<p>MANJOR HOUSE DESIGN</p> <p>m. 2411 387 410</p> <p>Nominated Architect, SPP, 16033</p> <p>© Copyright: 1989-2022 DESIGN ARCHITECTURE PTY LTD</p> <p>Unauthorized reproduction of the whole or part of this document constitutes an infringement of copyright.</p>	<p>MANJOR HOUSE DESIGN</p> <p>m. 2411 387 410</p> <p>Nominated Architect, SPP, 16033</p> <p>© Copyright: 1989-2022 DESIGN ARCHITECTURE PTY LTD</p> <p>Unauthorized reproduction of the whole or part of this document constitutes an infringement of copyright.</p>	<p>MANJOR HOUSE DESIGN</p> <p>m. 2411 387 410</p> <p>Nominated Architect, SPP, 16033</p> <p>© Copyright: 1989-2022 DESIGN ARCHITECTURE PTY LTD</p> <p>Unauthorized reproduction of the whole or part of this document constitutes an infringement of copyright.</p>
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SHADOW DIAGRAM  
Winter Solstice  
21 June

SHADOW DIAGRAM  
Equinox  
21 March / September

MANOR HOUSE DESIGN  
m. 0411 381 410  
Nominated Architect, 50m, 14/03/08  
NSW Registration 7081

DA - 501  
SHADOW DIAGRAMS  
JOB: 2217  
JUN 2022  
REV. A

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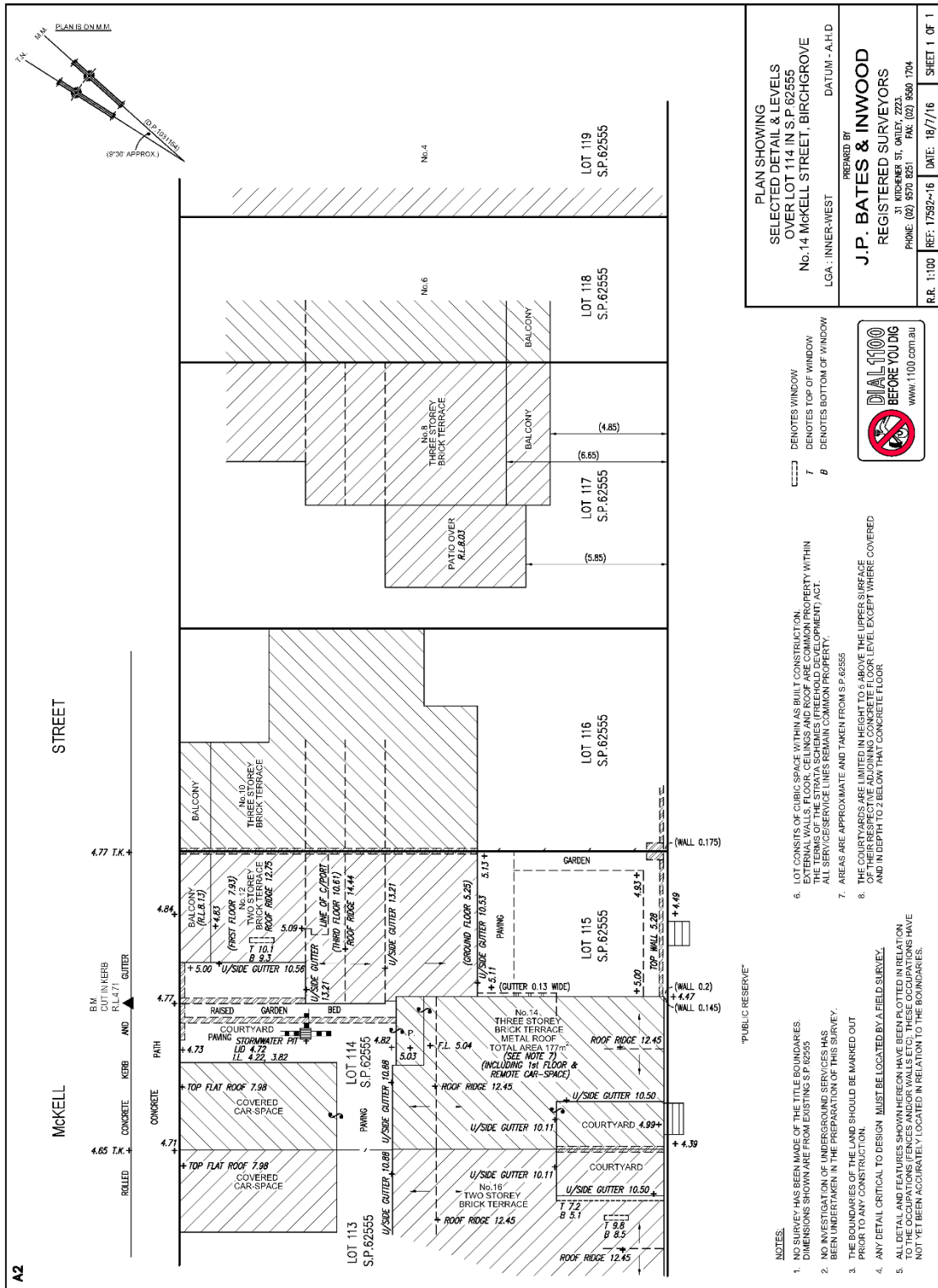
A 09.09.2022 Issued for DA

Proposed Residential Development  
at No. 12 McKell St.  
for Mr D.J. & Mrs L.J. Vee

NOTES: All dimensions shown are approximate and may be subject to change. Refer to the architect for more information.

Document ID: 2217-001-001

Version: 1, Version Date: 21/09/2022



PLAN SHOWING  
SELECTED DETAIL & LEVELS  
OVER LOT 114 IN S.P. 62555  
No. 14 MCKELL STREET, BIRCHGROVE  
LGA: INNER-WEST DATUM: A.H.D.

PREPARED BY  
**J.P. BATES & INWOOD**  
REGISTERED SURVEYORS  
13 WICKHAM ST. GYDE  
PHONE (02) 9570 8855 FAX (02) 9680 1704  
REF: 17592-16 DATE: 18/7/16 SHEET 1 OF 1

DENOTES WINDOW  
 DENOTES TOP OF WINDOW  
 DENOTES BOTTOM OF WINDOW  
 WWW.1100.COM.AU

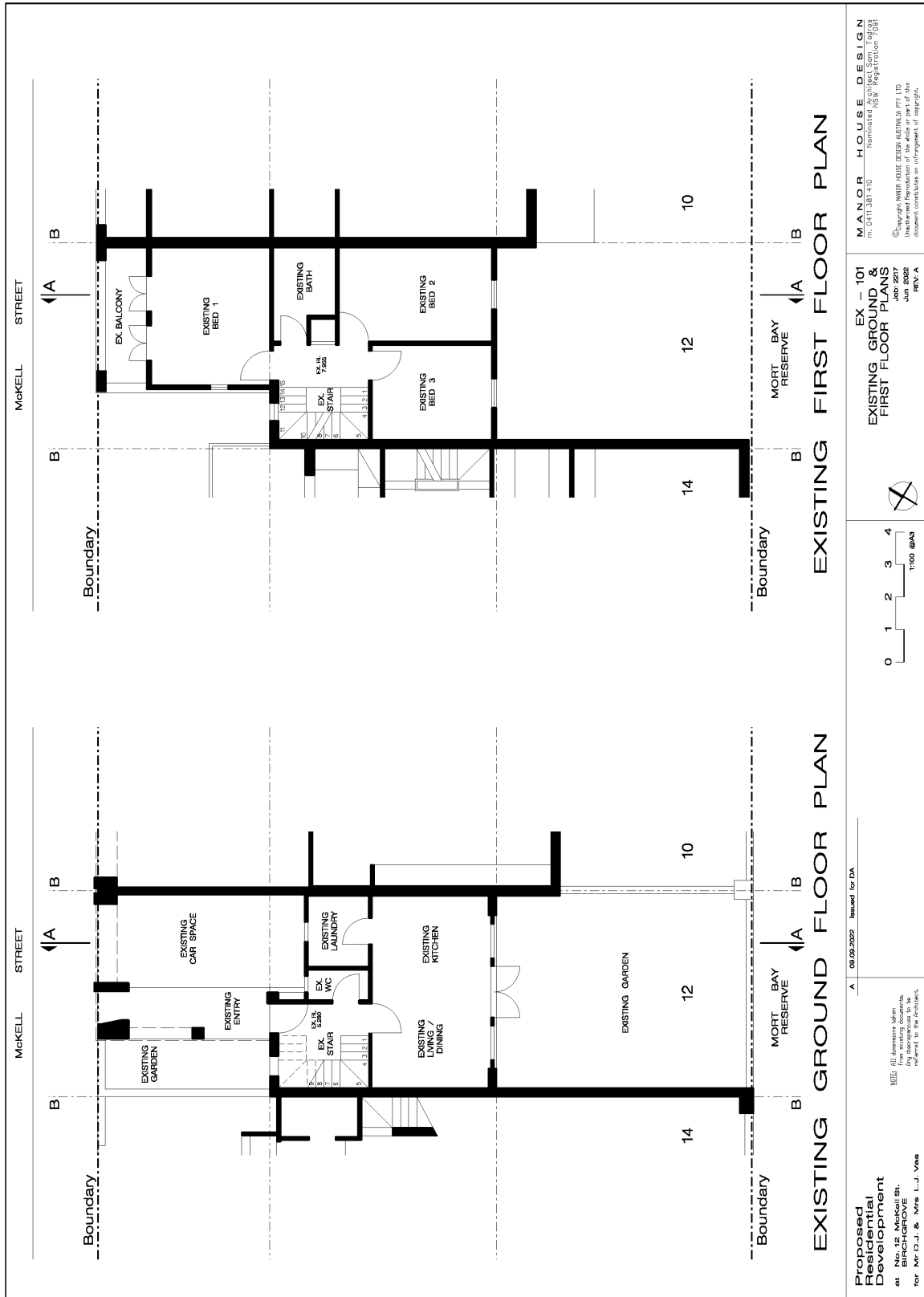
- NOTES:
- NO SURVEY HAS BEEN MADE OF THE TITLE BOUNDARIES. DIMENSIONS SHOWN ARE FROM EXISTING S.P. 62555
  - NO INVESTIGATION OF UNDERGROUND SERVICES HAS BEEN UNDERTAKEN IN THE PREPARATION OF THIS SURVEY.
  - THE BOUNDARIES OF THE LAND SHOULD BE MARKED OUT PRIOR TO ANY CONSTRUCTION.
  - ANY DETAIL CRITICAL TO DESIGN MUST BE LOCATED BY A FIELD SURVEY.
  - ALL DETAIL AND FEATURES SHOWN HEREON HAVE BEEN PLACED IN RELATION TO THE OCCUPATIONS (FENCES AND/OR WALLS ETC.) THESE OCCUPATIONS HAVE NOT YET BEEN ACCURATELY LOCATED IN RELATION TO THE BOUNDARIES.
  - LOT CONSISTS OF CUBIC SPACE WITHIN AS BUILT CONSTRUCTION. EXTERNAL WALLS, FLOOR, CEILINGS AND ROOF ARE COMMON PROPERTY WITHIN ALL SERVITUDES (SERVICE LINES REMAIN COMMON PROPERTY).
  - AREAS ARE APPROXIMATE AND TAKEN FROM S.P. 62555
  - THE COURTYARDS ARE LIMITED IN HEIGHT TO 2 ABOVE THE UPPER SURFACE AND IN DEPTH TO 2 BELOW THAT CONCRETE FLOOR.

"PUBLIC RESERVE"

<p><b>DRAWING LIST</b></p> <p>DA 000 COVER SHEET</p> <p>DA 100 SITE PLAN</p> <p>EX 101 EXISTING GROUND &amp; FIRST FLOOR</p> <p>EX 102 EXISTING SECOND FLOOR &amp; ROOF</p> <p>DA 201 GROUND &amp; FIRST FLOOR PLAN</p> <p>DA 202 SECOND FLOOR &amp; ROOF PLAN</p> <p>DA 301 ELEVATIONS 1</p> <p>DA 302 ELEVATIONS 2</p> <p>DA 401 SECTION</p> <p>DA 501 SHADOW DIAGRAMS</p> <p>DA 601 EXTERNAL FINISHES</p>	<p>McKELL STREET</p> <p>MORT BAY RESERVE</p> <p>PREVIOUS DA APPROVAL DA Consent No. D / 2003 / 300 Expired 30 October 2008</p> <p>REVISUALLY APPROVED ADDITIONS (TPROA)</p>
<p><b>BASIX COMMITMENTS</b></p> <p><b>FIXTURES &amp; SYSTEMS:</b></p> <ul style="list-style-type: none"> <li>- Gas instantaneous hot water system</li> <li>- Min. 40% fluorescent, compact fluorescent or light emitting diode (LED) lighting</li> <li>- 3* rating or &lt; 4L/average flush for all toilets</li> <li>- 3* rating or &lt; 9L/min. for all taps</li> </ul> <p><b>INSULATION REQUIREMENTS:</b></p> <ul style="list-style-type: none"> <li>- External wall: Brick veneer R1.16 (or R1.70 including construction)</li> <li>- Flat roof: Framed</li> <li>- Floor/sarking</li> <li>- Flat ceiling: R1.00</li> <li>- Roof: R1.00, Medium (solar absorptance 0.475 - 0.7)</li> </ul>	<p>McKELL STREET</p> <p>MORT BAY RESERVE</p> <p>CONSTRUCTED ADDITIONS</p> <p>EXISTING SITE PLAN</p>
<p><b>MINIMUM GLAZING REQUIREMENTS:</b></p> <p><b>Windows:</b></p> <ul style="list-style-type: none"> <li>- Standard aluminum, single clear (or U-value: 7.63, SHGC: 0.75)</li> </ul> <p><b>Skylights:</b></p> <ul style="list-style-type: none"> <li>- Aluminum, moulded plastic, single clear (or U-value: 6.21, SHGC: 0.808)</li> </ul>	<p>McKELL STREET</p> <p>MORT BAY RESERVE</p> <p>PROPOSED ADDITIONS</p> <p>PROPOSED SITE PLAN</p>
<p><b>Proposed Residential Development</b> at No. 12 McKell St. for Mr D.J. &amp; Mrs L.J. Ves</p> <p>01/09/2022 Issued for DA</p> <p>DA - 000 COVER SHEET</p> <p>Job: 2017 June 2022 REV. A</p> <p>MANOR HOUSE DESIGN 11/11/2013 11/11/2013 MANOR HOUSE DESIGN 11/11/2013 11/11/2013 MANOR HOUSE DESIGN 11/11/2013 11/11/2013</p>	<p>MANOR HOUSE DESIGN 11/11/2013 11/11/2013 MANOR HOUSE DESIGN 11/11/2013 11/11/2013 MANOR HOUSE DESIGN 11/11/2013 11/11/2013</p>







**Proposed Residential Development**  
 at No. 12 McKell St.  
 for Mr D.J. & Mrs L.J. Veas

**EXISTING GROUND & FIRST FLOOR PLANS**  
 EX - 101  
 JOB: 2217  
 JUN 2022  
 REV. A

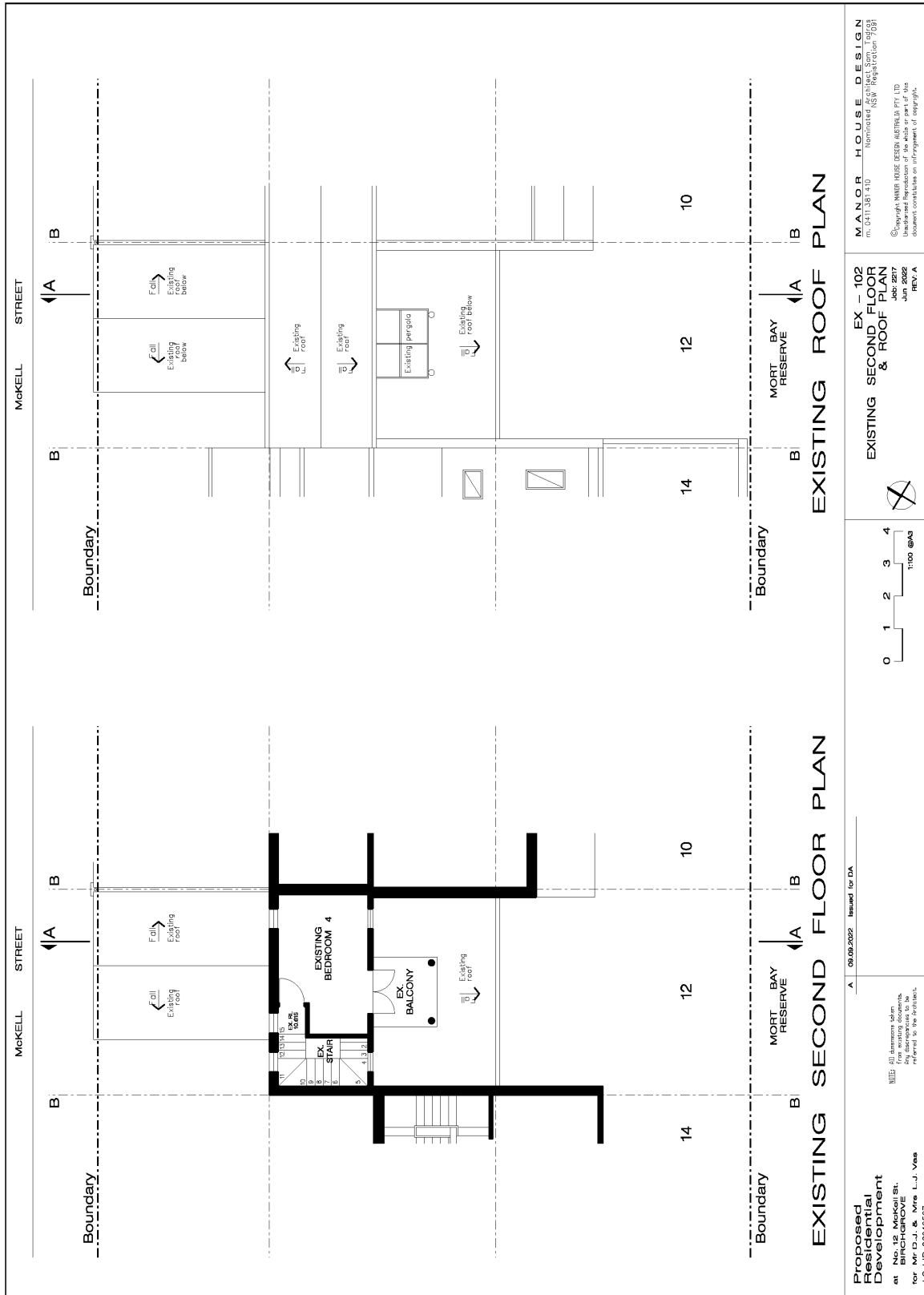
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A 09.09.2022 Issued for DA

Document ID: 22-06-00000000  
 Version: 1, Version Date: 21/09/2022



Proposed Residential Development  
 at No. 12 McKell St.  
 for Mr D.J. & Mrs L.J. Vee

EX - 102  
 EXISTING SECOND FLOOR  
 & ROOF PLAN  
 Job: 2217  
 Jun 2022  
 REV. A

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NOTES: All dimensions shown  
 are in millimetres unless  
 otherwise stated. All  
 dimensions are to be  
 referred to the architect.

Document ID: 22-000000-000000  
 Version: 1, Version Date: 21/09/2022

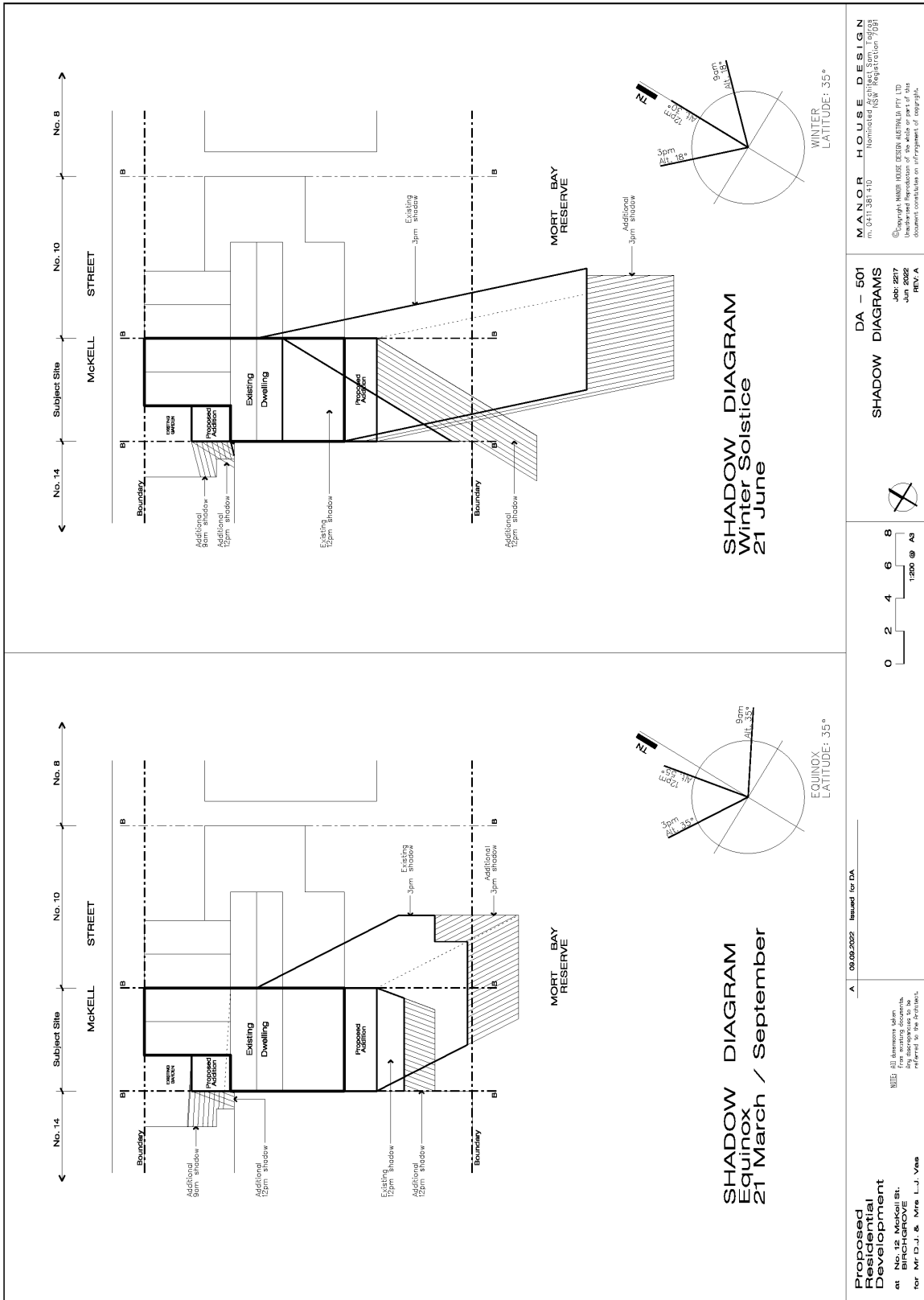












**MANOR HOUSE DESIGN**  
 m. 0411 381 410  
 Nominated Architect, 50m, 14/03/08  
 NSW Registration 7081

**DA - 501**  
**SHADOW DIAGRAMS**  
 JOB: 2217  
 JUN 2022  
 REV. A

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**Proposed Residential Development**  
 at No. 12 McKell St.  
 for Mr D.J. & Mrs L.J. Vee

Version: 1, Version Date: 21/09/2022



**EXTERNAL FINISHES**

Image above shows similar completed works at No. 8 Mckell St.

<p>Proposed Residential Development at No. 12 Mckell St. BIRCH GROVE for Mr D.J. &amp; Mrs L.J. Vase</p> <p>Document: 44B-3849597 Version 1, Version Date: 21/09/2022</p>	<p>A 09/09/2022 Issued for DA</p> <p>3/21: All dimensions refer to external works to be referred to the "contract"</p>	<p>DA - 601 EXTERNAL FINISHES</p> <p>Job# 2917 June 2022 REV. A</p>	<p><b>MAJOR HOUSE DESIGN</b> No. 2411 387 410 No. 2411 387 410 NSW Registrator 7091</p> <p>© Copyright 2022 (C/O: BIRCH GROVE PTY LTD) Unauthorized reproduction of the whole or part of the document constitutes an infringement of copyright.</p>
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**Attachment C- Section 4.6 Exception to Development Standards**

**EXCEPTION TO A DEVELOPMENT STANDARD:**

***CLAUSE 4.4 – FLOOR SPACE RATIO***

**for Alterations & Additions to an Existing Dwelling**

**at No. 12 McKell Street BIRCHGROVE**

**17 November 2022**

Prepared by:  
**Manor House Design Australia Pty Ltd**  
ACN 103 643 385  
5 Nelson Parade  
HUNTERS HILL NSW 2110  
Mob: 0411 381 410  
Email: [manor01@optusnet.com.au](mailto:manor01@optusnet.com.au)

## 1. Introduction

This request is made pursuant to the provisions of Clause 4.6 Leichhardt Local Environmental Plan 2013 (LLEP 2013) to vary the 'Floor Space Ratio' development standard in relation to a development application for alterations and additions to an existing townhouse at 12 McKell Street, Birchgrove.

This request is made having regard to:

1. The provisions of Clause 4.6 of LLEP 2013; and
2. Varying development standards: A Guide (August 2011) prepared by the Department of Planning and Infrastructure.

The Guide "contains details of the information applicants are required to submit to the council to assist council to assess development applications and associated applications to vary a standard." The following addresses the information detailed in the Guide.

## 2. Background

The subject site is zoned R1 General Residential.

The objectives of the R1 zone are:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To improve opportunities to work from home.
- To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- To provide landscaped areas for the use and enjoyment of existing and future residents.
- To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.
- To protect and enhance the amenity of existing and future residents and the neighbourhood.

Clause 4.4 of LLEP 2013, in conjunction with the Floor Space Ratio Map, requires that the maximum Floor Space Ratio (FSR) of buildings for the subject site shall not exceed 0.7:1. The application proposes to increase the floor space associated with the subject property by 54.1 m<sup>2</sup>, from 97.8 m<sup>2</sup> to 151.9 m<sup>2</sup>. The permitted maximum in this area is 0.7:1. As the subject property is part of a strata subdivision for an existing housing estate, there are no records of the existing FSR associated with the overall site that has a site area of 17,140m<sup>2</sup>.

From Council records it appears the existing FSR for the estate when first constructed is 0.696:1 (11,936m<sup>2</sup> of GFA). There have been numerous modifications to the dwellings associated with the estate, and our understanding is that this has resulted in an increase in gross floor area.

While there is no record of a current FSR for the estate it can be assumed that an additional 54.1 m<sup>2</sup> will result in an overall FSR exceeding the maximum 0.7:1 FSR identified in this clause. The applicant therefore relies upon Clause 4.6 of LLEP 2013 for a variation to this standard.

The objectives of the floor space ratio development standard are:

- (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.

### 3. Justification for Clause 4.6 Request

Clause 4.6 of LLEP 2013 imposes four (4) preconditions on Council in exercising the power to vary a development standard and grant consent to the proposed development.

The first precondition requires Council to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with Council finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)).

The second requires Council to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with Council finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

The third precondition requires Council to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)).

The fourth requires Council to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)).

The following subsections address the preconditions for justification to vary a development standard as described in Clause 4.6 of LLEP 2013.

#### 3.1. Is the development standard unreasonable or unnecessary in the circumstances of the case?

Strict compliance with the FSR standard is considered unreasonable or unnecessary in the circumstances of this case.

Strict adherence to the standard will not result in a development that is any more consistent with the desired future character of the locality or have a more appropriate relationship to its surroundings.

Land and Environment Court cases dealing with applications to vary development standards resulted in the Court setting out a 'five part test' for consent authorities to consider when assessing an application to vary a standard and to determine whether the objection to the development standard is well founded and compliance is unreasonable or unnecessary. The table below provides an assessment of the matters in the 'five part test'.

Five Part Test	Comments
<p>1. The objectives of the standard are achieved notwithstanding noncompliance with the standard.</p>	<p>The proposed development achieves the objectives of the FSR standard notwithstanding noncompliance with the standard because:</p> <p><u>Proposed development is compatible with the desired future character of the area in relation to building bulk, form and scale.</u></p> <p>The proposed development has been designed so that the bulk, form and scale is compatible with the adjoining townhouses to the east. The alterations and additions also maintain the existing gable roof line to the McKell Street elevation. Window openings are designed to remain consistent in style with the existing streetscape.</p> <p><u>Proposed development provides a suitable balance between landscaped areas and the built form.</u></p> <p>The proposed development provides for only a minimal change to the previously approved site coverage for the site. The balance between landscaped areas and the built form is compatible with other developments in the locality and will not detrimentally impact on the character of the locality or the amenity of residents.</p> <p><u>Proposed development will not detrimentally impact on the amenity of the residents.</u></p> <p>Assessment of the proposal has shown the amenity of adjoining and nearby residents will not be detrimentally impact by the proposed development. Minor variations to the landscaped area are not of a magnitude that will detrimentally impact on the enjoyment and use of the townhouse by its occupants.</p>
<p>2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.</p>	<p>The underlying objects of the standard are to control development to ensure that the proposed built form is compatible with surrounding development, and consistent with the desired future character of the area. The development generally achieves this intent.</p>
<p>3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.</p>	<p>N/A</p>

<p>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</p>	<p>The former Leichhardt Council had virtually abandoned a policy of strict compliance with FSR controls. Its use of Clause 4.6 for FSR tended to be the rule, rather than the exception. Council's own Floor Space Ratio Review (2014) makes this clear. The Review was written in response to the Department of Planning and Environment's concern that Council was making excessive use of SEPP 1 (now Clause 4.6). Remarkably, the Review found that over 40% of DAs being approved do not comply with FSR standards. Strict compliance with the standard is considered unreasonable and unnecessary.</p>
<p>5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.</p>	<p>N/A</p>

**3.2. Are there sufficient environmental planning grounds to justify contravening the development standard?**

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

The development has been assessed in the Statement of Environmental Effects to:

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

**3.3. Is the proposed development consistent with zone objectives?**

In assessing a development's consistency with zone objectives, Commissioner Brown in *Antoniades Architects Pty Ltd v Canada Bay City Council* [2014] NSWLEC 1019, took the following approach:

*The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.*

With this in mind, the proposed development is considered to be consistent with the R1 zone objectives because:

- The development provides for the housing needs of the community by providing for additional amenity and living space for families;
- The development contributes to the variety of housing types and densities;

- The development is not antipathetic to enabling other land uses to meet the day-to-day needs of residents;
- The development is not antipathetic to improving opportunities to work from home;
- The development provides housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas. Many other homes in the area have FSRs well over 0.7:1. The proposed addition would not be out of place or character;
- The development is not antipathetic to the provision of landscaped areas for the use and enjoyment of existing and future residents;
- The development is not antipathetic to the creation of lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area; and
- The development is not antipathetic to the protection and enhancement of the amenity of existing and future residents and the neighbourhood.

#### 3.4. Is the proposed development consistent with the objectives of both standards?

The first matter in the Five Part Test (refer Section 3.1 of this request) details how the proposed development achieves the objective of the standard notwithstanding non-compliance with the standards.

#### Conclusion

Clause 4.6 of LLEP 2013 aims to provide an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes by allowing flexibility in particular circumstances. The proposed development warrants favourable consideration under this clause because it has been demonstrated that:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the subject case;
- There are sufficient environmental planning grounds to justify contravening the development standard; and
- The proposed development will be in the public interest because the objectives of the standard and the objectives of the zone are achieved despite non-compliance with the standard.

It is considered that the proposed variation to the Floor Space Ratio control is worthy of Council's support. Should you require any further information, please do not hesitate to contact the undersigned.

Yours faithfully  
Manor House Design



Sam Tadros  
Nominated Architect 7091