



# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	D/2018/29
<b>Address</b>	2 McKell Street, BIRCHGROVE NSW 2041
<b>Proposal</b>	Ground, first and second floor alterations and additions to existing townhouse and associated works.
<b>Date of Lodgement</b>	19 January 2018
<b>Applicant</b>	ADA
<b>Owner</b>	Mr L M J McGregor and Mr D A Rule
<b>Number of Submissions</b>	Nil
<b>Value of works</b>	\$412,000
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation - breach exceeds officer delegation.
<b>Main Issues</b>	Bulk and scale; FSR; Landscaped area; and Private Open Space
<b>Recommendation</b>	Consent subject to conditions



### LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

Note: The subject site was also notified.

## 1. Executive Summary

This report is an assessment of the application submitted to Council for ground, first and second floor alterations and additions to an existing townhouse and associated works at 2 McKell Street, Birchgrove. The application was notified to surrounding properties and no submissions were received.

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

- Bulk & Scale
- Floor Space Ratio
- Landscaped Area
- Private Open Space

Notwithstanding the above non-compliances, the proposal is acceptable given the existing pattern of surrounding development and its acceptable amenity impacts, and therefore, the application is recommended for approval.

## 2. Proposal

The proposal involves relocation of the front entry door to the north-eastern façade facing McKell Street, a new rear ground floor and second floor extension and alterations to accommodate a new ground floor kitchen/dining area, laundry closet, living area, bar wet area and guest toilet; relocated bathroom on the first floor; and a new ensuite and additional bedroom on the second floor. An existing ground floor bathroom window from 2A McKell Street on the common wall adjacent to the proposed ground floor rear extension is proposed to be repositioned with a minimum 2.1m sill height for improved privacy.

The existing internal courtyard is proposed to be altered to allow for improved useability of the internal courtyard and direct connection to the kitchen and dining area. The existing harbour courtyard is proposed to have new sliding door access to both the kitchen and living area, providing a view through to the internal courtyard as well as improved natural cross ventilation and outlook towards Mort Bay.

The proposed front entry door will necessitate the adjustment of existing landscaped hedge planting within common property along the north-eastern façade. Whilst not shown on the site plans, conditions will be imposed requiring the retention of the two Port Wine Magnolia trees located within the internal courtyard (given these trees make good landscape contributions and will not be affected by the rear extension) and permitting the removal of the two trees (African Olive and Kentia Palm) located within the harbourside courtyard, subject to replacement with one advanced canopy tree, given these trees appear to conflict with the proposed sliding doors and either do not contribute to, or are not suitable species for, the surrounding landscape.

The ground floor and second floor additions are wholly contained within the overall footprint of the subject strata lot. The proposal is also accompanied with the Strata Body Corporate's consent in relation to works affecting common property airspace (above the existing strata lot footprint), landscaping and external walls/roofs. However, a condition will be imposed noting that this consent does not approve any revision to the existing strata plan and a separate application will be required for a revised strata plan, if applicable.

While the proposal involves an increase in site coverage and FSR, no change is proposed to existing impervious or landscaped area.

Extracts of the proposed plans are shown in the figures below.

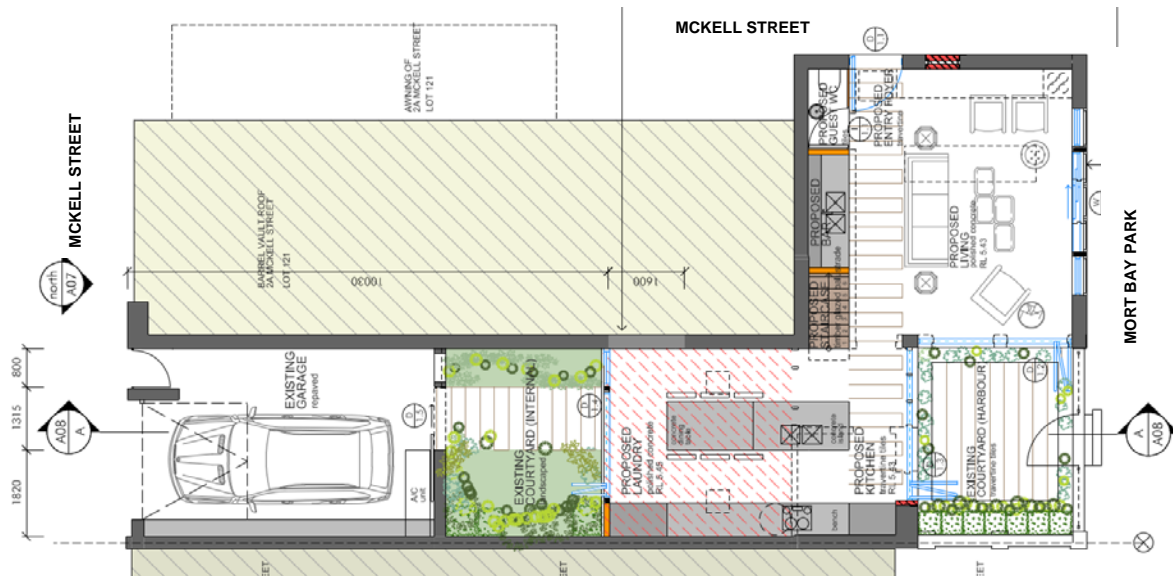


Figure 1: Proposed ground floor extension and new kitchen, dining and living areas at 2 McKell Street.

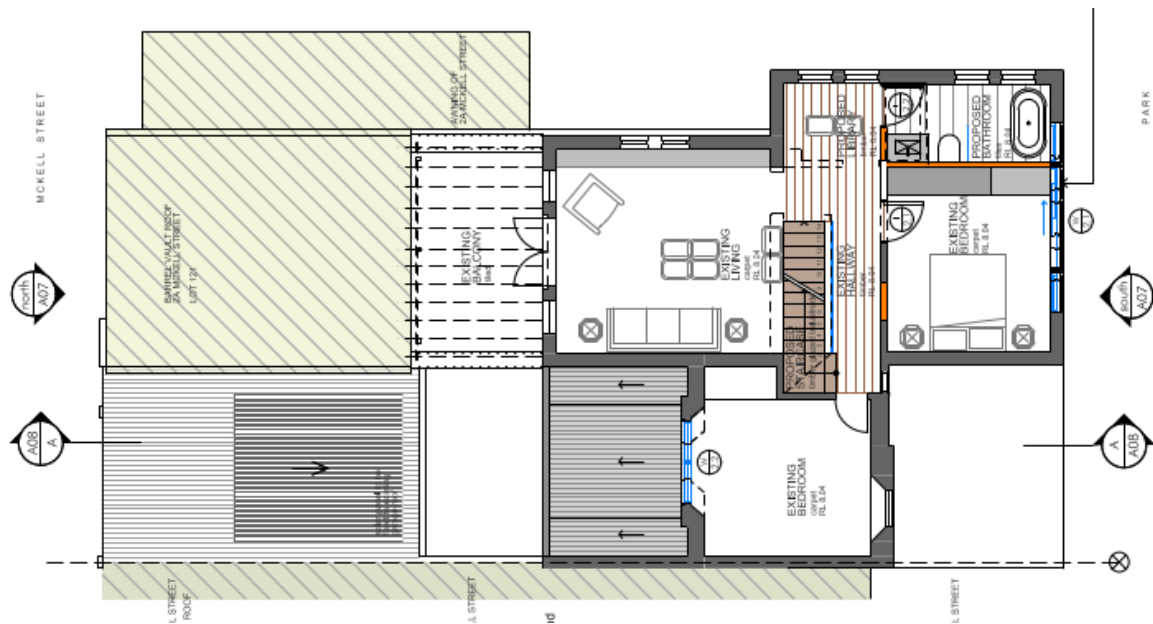
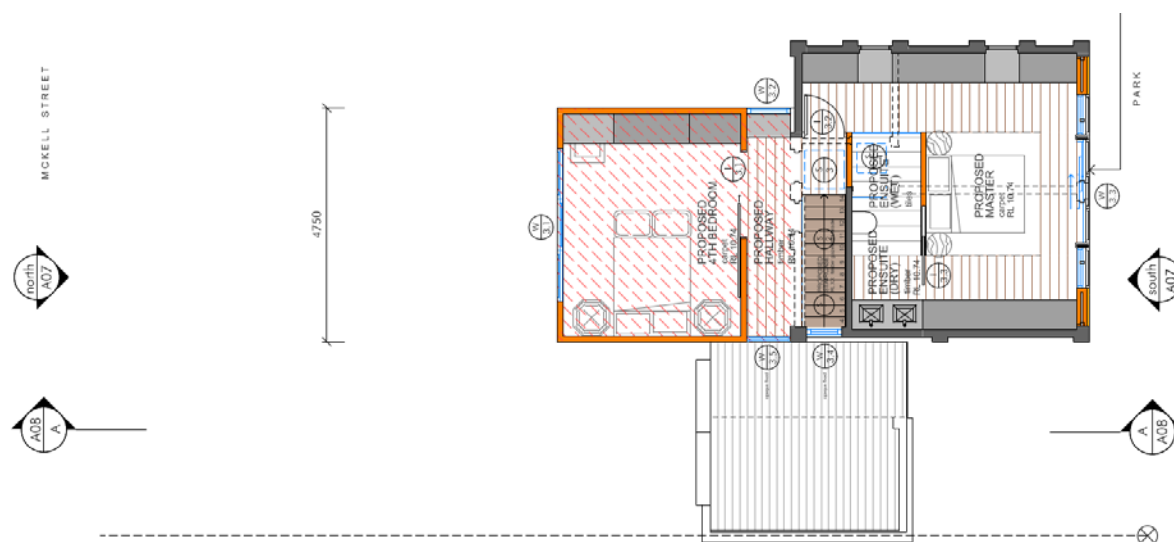


Figure 2: Proposed first floor with internal relocation of bathroom at 2 McKell Street.



**Figure 3:** Proposed second floor with additional bedroom and new ensuite at 2 McKell Street.

### 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 (SP 62555 registered 27/11/2001), 1-43 McKell Street, Birchgrove. The site has a total area of 17,230sqm. It occupies the area bound by Mort Bay Park, McKell Street, Yeend Street, Ballast Point Road and Short Street and includes Challenger Place and Lizzie Webber Place.

The subject strata lot within the overall site is legally described as Lot 120 in SP 62555 and has an overall footprint of 115sqm, with street frontages of approximately 3.9m and 6.1m to McKell Street, and a park frontage of approximately 10.23m to Mort Bay Park. It currently accommodates a three storey townhouse, with similar two to three storey townhouses located in the vicinity.

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.

The subject site contains existing garden planting, including:

- 2 x Port Wine Magnolias within the internal courtyard visible from the street (to be conditioned for retention); and
- 1 x African Olive (an invasive species) and 1 x Kentia Palm within the harbourside courtyard (to be conditioned for removal and replacement with one advanced canopy tree).

### 4. Background

#### 4(a) Site history

The site was previously used in association with shipping before being converted to residential use. Strata subdivision of the residential estate occurred in 2001 and many alterations and additions to the individual dwellings of the estate have occurred in the intervening period. In this regard, a cumulative record of increases to the overall floor space ratio and changes to landscaped areas and site coverage has not been maintained.

Thus, exact floor space ratio, site coverage and landscaped area calculations cannot be determined for the overall site.

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

### Subject Site

Application	Proposal	Decision & Date
PREDA/2017/143	<p>Alterations and additions to existing townhouse. Concerns were raised in relation to a roof deck, reduction of central courtyard and works within common property.</p> <p>The current proposal does not include a roof deck and is accompanied by strata body corporate owner's consent for works to common property. While the central courtyard has been reduced to allow a ground floor rear extension, it is considered that the proposal results in an improved onsite amenity outcome given it promotes greater useability and direct connections to both the central and harbour courtyards from the new ground floor open plan living, kitchen and dining area with improved natural cross ventilation and enhanced internal outlook and views.</p>	Advice letter issued – 18/8/2017

### Surrounding Properties

#### 2A McKell Street

No relevant site history.

#### 4 McKell Street

Application	Proposal	Decision & Date
DAREV/2007/10	Section 82A review of determination of development consent D/2007/210 which approved alterations and additions to an existing townhouse including extension of ground floor and first floor, new windows and skylights.	Approved – 26/10/2007

#### 4(b) Application history

Not applicable

## 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 (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- State Environmental Planning Policy (Coastal Management) 2018
- 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 (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was submitted with the application.

#### 5(a)(ii) State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The subject site contains 4 existing trees, being 1 x *Olea europaea* subsp. *cuspidata* (African Olive), 1 x *Howea forsteriana* (Kentia Palm), and 2 x *Michelia figo* (Port Wine Magnolia). Based on a site inspection undertaken on 18 April 2018, Council's Landscape Officer recommends the retention of two Port Wine Magnolia trees located within the internal courtyard given these trees make good contributions to the surrounding landscape and internal amenity and will not be affected by the rear extension. However, the removal of the two trees (African Olive and Kentia Palm) located within the harbourside courtyard is recommended, subject to replacement planting with one advanced canopy tree, given these trees appear to conflict with the proposed sliding doors and either do not contribute to, or are not suitable species for, the surrounding landscape.

#### 5(a)(iii) State Environmental Planning Policy (Coastal Management) 2018

The subject site is located within the 'coastal zone', being within the 'coastal environment area' and 'coastal use area' pursuant to Clauses 13 and 14 of the SEPP as identified on the maps to the SEPP. However, these specific provisions do not apply to land located within the Foreshores and Waterways Area Boundary under *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. In general terms, it is considered that the carrying out of the proposed development, being fully contained within the existing Strata Scheme, is generally consistent with the objectives of the Plan and would not be likely to cause increased risk of coastal hazards on the land or other land.

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

The subject site is located within the Foreshores and Waterways Area Boundary under *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. An assessment has been made under the matters set out in Clause 20 of the Plan. It is considered that the carrying out of the proposed development, being fully contained within the existing Strata Scheme, is generally consistent with the objectives of the Plan and would not have an adverse effect on environmental heritage, the visual environmental, the natural environment and open space and recreation facilities.

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

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

- Clause 1.2 – Aims of the Plan
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.7 – Demolition Requires Development Consent
- Clause 4.3A(3)(a) – Landscaped Area for residential development in Zone R1
- Clause 4.3A(3)(b) – Site Coverage for residential development in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
- Clause 5.10 – Heritage Conservation
- Clause 6.1 – Acid Sulphate Soils
- Clause 6.2 – Earthworks
- Clause 6.3 – Flood Planning
- Clause 6.4 – Stormwater management

The site is zoned R1 General Residential under the Leichhardt Local Environmental Plan 2013 and the proposal is permissible in the zone and is consistent with the planning objectives for the area in the Leichhardt Local Environmental Plan.

Based upon a survey (undertaken by Garvin Morgan and Co) of the strata subdivision in 2001, the floor space ratio was identified as 0.696:1 (being 11,936sqm of GFA). Since this survey was undertaken, numerous development consents for alterations and additions to the individual townhouses within this Strata Scheme have been issued and a cumulative record of increases to the overall floor space ratio and changes to landscaped areas has not been maintained. Thus, exact floor space ratio and landscaped area calculations cannot be determined for the overall site.

As has been the case with previous applications for alterations and additions within the estate, a breach of the maximum floor space ratio development standard of 0.7:1 has been assumed and accordingly, the applicant has provided a written request for an exception to the standard, in accordance with Clause 4.6. This request is considered below.

Further, the following table assesses the compliance of the proposal in regards to relevant development standards as applied to the individual strata lot to which the application relates only:

**NB – The site is 115sqm by calculation.**

Standard (maximum)	Proposal	% of non compliance	Compliances
<b>Floor Space Ratio:</b> 1:1 or 115sqm	1.67:1 or 192.5sqm	<b>67.44%</b>	No
<b>Landscape Area: 15%</b>	5.45% or 6.27sqm	<b>63.65%</b>	No
<b>Site Coverage: 60%</b>	78.2% or 90sqm	<b>30.43%</b>	No

**Note: The proposal does not involve any reduction to existing landscaped area. While the proposed 15sqm ground floor and 22sqm second floor additions result in an increase to site coverage and FSR, there is no change to existing impervious area.**

The following provides further discussion of the relevant issues:

### Clause 4.6 Exceptions to Development Standards

As outlined in the table above, the proposal results in a breach of the following development standard/s:

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

Clause 4.6(2) specifies that Development consent may be granted for development even though the development would contravene a development standard.

1. *The objectives of this clause are as follows:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
2. *Development consent may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.*

Comment: As discussed below in subclauses (3) and (4), it is considered that the contravention to the development standard is acceptable in this instance.

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.*

Comment: The 'key' reasons submitted by the applicant as justification to the contravention of the standards are:

### Clause 4.3A(3)(a) and (b) – Landscaped Area for residential development in Zone R1

As the subject property is part of a strata subdivision for an existing housing estate, there are no records of the existing overall landscaped area and site coverage as amended over time by subsequent alterations and additions to individual townhouses.

While there is no record of current site coverage for the overall estate, it can be assumed that additional ground floor area will result in an overall non-compliance with this clause. The applicant therefore relies upon Clause 4.6 of LLEP 2013 for a variation to this standard as the landscaped area is unchanged, and the site coverage is minimally increased.

The subject strata lot has an area of less than 235sqm and the proposed development maintains the existing landscaped area of 5.45% (or 6.27sqm), equating to a variation of



63.65% or 10.98sqm. Notwithstanding numerical non-compliance, the applicant contends that the proposed building satisfies the stated objectives given that:

- *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 2 courtyards and both areas have 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 and adjacent to Mort Bay.*
- *The proposed development promotes the desired future character of the neighbourhood.*
- *The proposed alterations and additions are designed to be in keeping with the desired future character of the neighbourhood, and will not detrimentally impact on the desired future character of the neighbourhood or the ecological sustainability of the development.*
- *Proposed development provides for only a very minor change to the previously approved building footprint.*
- *Landscape is to control bulk type development. The proposed development is compatible with the neighbouring development and future character. The development meets the criteria*
- *The objectives of the applicable development standards are achieved notwithstanding the proposed non-compliances... given the compatibility of the proposal with surrounding development together with the absence of any impacts either generally or directly attributable to this aspect of the development.*
- *There is no public benefit in maintaining the development standard in this instance given the absence of any unreasonable detrimental impacts and the public benefit that arises from the significant improvement of the site. It is therefore my opinion based upon the content of this submission that a variation of the minimum landscaped areas and maximum site coverage as required by Clause 4.3A of the Leichardt Local Environmental Plan 2013 is appropriate in this instance.*

Clause 4.3A(3)(b) – Site Coverage for residential development in Zone R1

As the subject property is part of a strata subdivision for an existing housing estate, there are no records of the existing overall landscaped area and site coverage as amended over time by subsequent alterations and additions to individual townhouses.

While there is no record of current site coverage for the overall estate, it can be assumed that additional ground floor area will result in an overall non-compliance with this clause. The applicant therefore relies upon Clause 4.6 of LLEP 2013 for a variation to this standard as the landscaped area is unchanged, and the site coverage is minimally increased.

The subject strata lot has an area of less than 235sqm and the proposed development seeks to provide a site coverage of 78.26% (or a dwelling and garage of 90sqm), equating to a variation of 30.43%% or 21sqm. Notwithstanding numerical non-compliance, the applicant contends that the proposed building satisfies the stated objectives given that:

- *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 2 courtyards and both areas have 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 and adjacent to Mort Bay.*
- *The proposed development promotes the desired future character of the neighbourhood.*
- *The proposed alterations and additions are designed to be in keeping with the desired future character of the neighbourhood, and will not detrimentally impact on the desired future character of the neighbourhood or the ecological sustainability of the development.*
- *Proposed development provides for only a very minor change to the previously approved building footprint.*
- *Landscape is to control bulk type development. The proposed development is compatible with the neighbouring development and future character. The development meets the criteria*
- *The objectives of the applicable development standards are achieved notwithstanding the proposed non-compliances... given the compatibility of the proposal with surrounding development together with the absence of any impacts either generally or directly attributable to this aspect of the development.*
- *There is no public benefit in maintaining the development standard in this instance given the absence of any unreasonable detrimental impacts and the public benefit that arises from the significant improvement of the site. It is therefore my opinion based upon the content of this submission that a variation of the minimum landscaped areas and maximum site coverage as required by Clause 4.3A of the Leichardt Local Environmental Plan 2013 is appropriate in this instance.*

#### Clause 4.4 – Floor Space Ratio

As the subject property is part of a strata subdivision for an existing housing estate, there are no records of the existing overall FSR as amended over time by subsequent alterations and additions to individual townhouses.

While there is no record of current site coverage for the overall estate, it can be assumed that additional ground floor area will result in an overall non-compliance with this clause. The applicant therefore relies upon Clause 4.6 of LLEP 2013 for a variation to this standard as the FSR is increased.

The subject strata lot has an area of less than 235sqm and the proposed development seeks to provide a total FSR of 1.67:1 (or a dwelling and garage of 192.55sqm), equating to a variation of 67.44% or 77.55sqm. Notwithstanding numerical non-compliance, the applicant contends that the proposed building satisfies the stated objectives given that:

- *Council records suggest the FSR for the overall site (SP 62555) when first constructed was 0.696:1. Since construction there have been additions to individual lots though there has been no record kept of the additional floor space and therefore the impact on the FSR.*
  - *Proposed development is compatible with the desired future character of the area in relation to building bulk, form and scale.*
  - *The proposed development is of a high quality architectural design which complements the surroundings and which will make a positive contribution to the character of the locality.*
  - *The proposed buildings will not result in any amenity impacts upon adjoining or nearby properties particularly privacy.*
  - *The architectural details remain consistent with the existing style.*
  - *The proposed development has little to no impact to the neighbouring townhouses.*
  - *FSR is to control bulk type development. The proposed development is compatible with the neighbouring development and future character.*
  - *There is no public benefit in maintaining the development standard in this instance given the absence of any unreasonable detrimental impacts and the public benefit that arises from the significant improvement of the site. It is therefore my opinion based upon the content of this submission that a variation of the maximum FSR as required by Clause 4.4 of the Leichardt Local Environmental Plan 2013 is appropriate in this instance.*
- (4) *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*
  - (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, and*
- (b) *the concurrence of the Secretary has been obtained.*

Comment: The applicant has addressed the matters required under Clause 4.6 Exceptions to development standards, and it is considered to be well founded in this instance. The proposal will not result in a detrimental impact on the public interest and can satisfy the objectives of the development standard/s and General Residential zoning as demonstrated below:

- The proposal is compatible with the existing medium density character of the area in relation to building bulk, form and scale.
- The proposal results in a greater internal amenity outcome for the occupants of the dwelling, complies with the applicable building envelope controls, and the siting of the additions is consistent with the established building location zones and where it can be reasonably assumed additions can be constructed (wholly contained within existing impervious area and the existing footprint of the dwelling), providing an acceptable balance between landscaped areas and the built form.
- The proposal does not result in any undue adverse amenity impacts to the surrounding properties.
- Despite the variations, the proposal results in superior on-site amenity outcomes.
- The FSR, site coverage and landscaped area proposed will be compatible with the FSR, site coverage and landscaped areas characteristic of the overall Strata Scheme development as shown in the aerial photo below.



Figure 3: Aerial photo indicating existing pattern of development within Strata Scheme at 1-43 McKell Street



Figure 4: View of existing north-western (front) streetscape (left photo) and north-eastern streetscape (right photo) at McKell Street

### 5(b) Draft Environmental Planning Instruments

There are no applicable draft Environmental Planning Instruments.

## 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.

<b>Part</b>	<b>Compliance</b>
<b>Part A: Introductions</b>	
Section 3 – Notification of Applications	Yes
<b>Part B: Connections</b>	
B1.1 Connections – Objectives	Yes
<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
C1.9 Safety by Design	Yes
C1.11 Parking	Yes
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	Yes
C1.20 Foreshore Land	Yes
<b>Part C: Place – Section 2 Urban Character</b>	
Suburb Profile	
C2.1.2.Mort Bay (Lower slopes) Balmain	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	No
C3.9 Solar Access	Yes
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
<b>Part D: Energy</b>	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	Yes
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
<b>Part E: Water</b>	
Section 1 – Sustainable Water and Risk Management	Yes
E1.1 Approvals Process and Reports Required With Development Applications	Yes

E1.1.1 Water Management Statement	Yes
E1.1.3 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 Hazard Management	Yes
E1.3.1 Flood Risk Management	Yes
E1.3.2 Foreshore Risk Management	Yes

The following provides discussion of the relevant issues:

### C3.2 Site Layout and Building Design

The proposed site layout and building design results in an acceptable development outcome for the site, having regard to the existing extent of development within the Strata Scheme, excellent amenity afforded to the site from Mort Bay Park in the immediate vicinity, and no adverse streetscape or amenity impacts to adjoining properties.

### C3.8 Private Open Space

The existing building contains an internal courtyard of 21.39sqm with indirect access to the internal living area via the front door and a harbourside courtyard with an area of 12.65sqm.

The proposal seeks to reduce the internal courtyard to 13.1sqm. No change is proposed to the area of the harbourside courtyard. Each area has dimensions of at least 3m and the quantum of private open space complies with the minimum 16sqm.

As noted previously, while the internal central courtyard has been reduced to allow the ground floor rear extension, it is considered that the proposal results in a better design outcome with improved onsite amenity given it facilitates greater useability of the internal courtyard as private open space (as opposed to an underutilised area between the garage and front door). Sliding doors are now proposed to both the central and harbour courtyards from the new ground floor open plan living, kitchen and dining area, which results in improved natural cross ventilation and enhanced internal outlook and views towards the park assisting with casual surveillance.

### C3.9 Solar Access

While private open space areas within the subject site and adjoining properties receive minimal solar access at midwinter, the proposal does not result in any additional overshadowing to living areas or private open space.

### E1.3.1 Flood Risk Management

Refer to Engineers comments. While the site is identified as a Flood Control Lot under Part E of Leichhardt DCP 2013, a Flood Risk Management Report is not required as the proposed work is above the Flood Planning Level. Therefore, the proposal is considered satisfactory subject to standard conditions.

## 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

The site is zoned R1 General Residential. 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 Council's Policy for a period of 14 days to surrounding properties. No submissions were received.

### 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.

- Heritage Officer
- Landscape Officer
- Development Engineer

These Officers raised no objections to the proposal proceeding subject to conditions relating to stormwater management, landscaping, and ensuring / reinforcing that appropriate external colours and finishes are used that are sympathetic to the Heritage Conservation Area, which are recommended to be imposed on any consent granted.

### 6(b) External

The application was not required to be referred externally.

## 7. Section 7.11 Contributions

Section 7.11 contributions are not payable for the proposal.

## 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in Leichhardt Local Environmental Plan 2013 and Leichhardt Development Control Plan 2013. The development will not result in any significant impacts on the amenity of adjoining premises and the streetscape. The application is considered suitable for approval subject to the imposition of appropriate conditions.

## 9. Recommendation

- A. The variation to Clause 4.3A(3)(a) Landscape Area, 4.3A(3)(b) Site Coverage and 4.4 Floor Space Ratio of Leichhardt Local Environmental Plan 2013 be supported under the provisions of Clause 4.6 exceptions to development standards.
- B. That Council, as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No: D/2018/29 for Ground, first and second floor alterations and additions to existing townhouse and associated works at 2 McKell Street, BIRCHGROVE NSW 2041 subject to the conditions listed in Attachment A below.



## Attachment A – Recommended conditions of consent

### CONDITIONS OF CONSENT

1. Development must be carried out in accordance with Development Application No. 2018/29 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Dwg. No. A05, Ground & First Floor Plan	ada	1.12.2017
Dwg. No. A06, Second Floor & Roof Plan	ada	1.12.2017
Dwg. No. A07, South & North Elevations	ada	1.12.2017
Dwg. No. A08, West & East Elevations	ada	1.12.2017
Dwg. No. A09, Sections BB & CC	ada	1.12.2017
Dwg. No. A05, Ground & First Floor Plan	ada	1.12.2017
Dwg. No. M01, Existing Floor Plans	ada	8.12.2016
Dwg. No. M02, Existing West Elevation	ada	8.12.2016
Dwg. No. M03, Existing North & East Elevations	ada	8.12.2016
Document Title	Prepared By	Dated
BASIX Certificate No. A302480	Angus Donald	11.12.2017
Materials and Finishes Schedule	ada	1.12.2017
Waste Management Plan	Angus Donald	November 2017

In the event of any inconsistency between the approved plans and the conditions, the conditions will prevail.

Where there is an inconsistency between approved elevations and floor plan, the elevation shall prevail.

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

The existing elements (walls, floors etc) shown to be retained on the approved plans shall not be removed, altered or rebuilt without prior consent of the consent authority.

Note: Carrying out of works contrary to the above plans and/ or conditions may invalidate this consent; result in orders, on the spot fines or legal proceedings.

2. This consent does not approve any revision to the existing strata plan and a separate application will be required for a revised strata plan, if applicable.
3. The demolition works approved by this consent shall strictly comply with the following conditions:
  - a) The adjoining residents must be notified seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence, site contact details/person, elements to

be demolished and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of and directly opposite the demolition site.

- b) Written notice is to be given to the Principal Certifying Authority for inspection prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours and contact telephone number and licence number of the demolisher. The following building inspections must be undertaken by the Principal Certifying Authority:
- i) A pre commencement inspection when all the site works are installed on the site and prior to demolition commencing.
  - ii) A final inspection when the demolition works have been completed.

NOTE: If Council is nominated as your Principal Certifying Authority 24 - 48 hours notice to carry out inspections is required. Arrangement for inspections can be made by phoning 9367 9222.

- c) Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, licence number, contact phone number and site address.
- d) Prior to demolition, the applicant must erect a 2.4m high temporary fence, hoarding between the work site and any public property (footpaths, roads, reserves etc). Access to the site must be restricted to authorised persons only and the site must be secured against unauthorised entry when work is not in progress or the site is otherwise unoccupied.
- e) The demolition plans must be submitted to the appropriate Sydney Water Quick Check agent for a building plan approval.
- f) Demolition is to be carried out in accordance with the relevant provisions of Australian Standard 2601:2001: Demolition of structures.
- g) The hours of demolition work are limited to between 7:00am and 6:00pm on weekdays. No demolition work is to be carried out on Saturdays, Sundays and public holidays.
- h) Hazardous or intractable wastes arising from the demolition process must be removed and disposed of in accordance with the requirements of WorkCover New South Wales and the Environmental Protection Authority.
- i) Demolition procedures must maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.
- j) During demolition, public property (footpaths, roads, reserves etc) must be clear at all times and must not be obstructed by any demolished material or vehicles. The footpaths and roads must be swept (not hosed) clean of any material, including clay, soil and sand. On the spot fines may be levied by Council against the demolisher and/or owner for failure to comply with this

condition.

- k) All vehicles leaving the site with demolition materials must have their loads covered and vehicles must not track soil and other materials onto public property (footpaths, roads, reserves etc) and the footpaths must be suitably protected against damage when plant and vehicles access the site.
- l) The burning of any demolished material on site is not permitted and offenders will be prosecuted.
- m) Care must be taken during demolition to ensure that existing services on the site (ie, sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services must be repaired by the relevant authority at the applicant's expense. Dial before you dig www.1100.com.au should be contacted prior to works commencing.
- n) Suitable erosion and sediment control measures in accordance with the Soil and Water Management Plan must be erected prior to the commencement of demolition works and must be maintained at all times.
- o) Prior to demolition, a Work Plan must be prepared and submitted to the Principal Certifying Authority in accordance with the relevant provisions of Australian Standard 2601:2001 Demolition of structures by a person with suitable expertise and experience. The Work Plan must identify hazardous materials including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
- p) If the property was built prior to 1987 an asbestos survey prepared by a qualified occupational hygienist is to be undertaken. If asbestos is present then:
  - i) A WorkCover licensed contractor must undertake removal of all asbestos.
  - ii) During the asbestos removal a sign "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400 mm x 300 mm is to be erected in a visible position on the site to the satisfaction of Council.
  - iii) Waste disposal receipts must be provided to Council / Principal Certifying Authority as proof of correct disposal of asbestos laden waste.
  - iv) All removal of asbestos must comply with the requirements of WorkCover and Leichhardt Council.
  - v) An asbestos clearance certificate prepared by a qualified occupation hygienist must be provided at the completion of the demolition works.

4. Approval is given for the following works to be undertaken to trees on the site:

Tree/location	Approved works
<i>Olea europaea</i> subsp. <i>cuspidata</i> (African Olive) located at the rear of the site.	Removal
<i>Howea forsteriana</i> (Kentia Palm) located at the rear of the site.	Removal

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved.

5. The trees identified below are to be retained:

Tree/location
2x <i>Michelia figo</i> (Port Wine Magnolia) located within the central courtyard.

Details of the trees to be retained must be included on the Construction Certificate plans

### **PRIOR TO THE RELEASE OF A CONSTRUCTION CERTIFICATE**

6. In accordance with the provisions of Section 81A of the *Environmental Planning and Assessment Act 1979* construction works approved by this consent must not commence until:
- a) A Construction Certificate has been issued by Council or an Accredited Certifier. Either Council or an Accredited Certifier can act as the "Principal Certifying Authority."
  - b) A Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment.
  - c) At least two days notice, in writing has been given to Council of the intention to commence work.

The documentation required under this condition must show that the proposal complies with all Development Consent conditions and is not inconsistent with the approved plans, the Building Code of Australia and the relevant Australian Standards.

7. Prior to the issue of the Construction Certificate the Principal Certifying Authority is to ensure that the plans state that no high front gutters will be installed.
8. The following requirements are to be incorporated into the development detailed on the Construction Certificate plans and provided prior to the issue of a Construction Certificate:
- a) No rainforest timbers or timbers cut from old growth forests are to be used in the construction of the development. Timbers to be used are to be limited to any plantation, regrowth or recycled timbers, or timbers grown on Australian Farms or State Forest Plantations.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

9. In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy 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. The Long Service Levy is payable prior to the issue of a Construction Certificate.

Details demonstrating compliance are to be shown on the plans submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

10. The following replacement trees must be planted:

A minimum of 1 x 100 litre size additional tree, which will attain a minimum mature height of 6 metres, shall be planted in a more suitable location within the property. The tree is to conform to AS2303—*Tree stock for landscape use*.

Details of the species and planting locations of the replacement plants must be included on the landscape plan and site plan prior to the issue of a Construction Certificate.

If the replacement trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Council's Tree Management Controls, they must be replaced with the same species.

11. Any new roofing material should comprise of either heritage barrel rolled traditional corrugated galvanised steel or pre-coloured traditional corrugated galvanised steel in a colour equivalent to Colorbond's "Windspray" or "Wallaby."

Details of finished external surface materials, including colours and texture must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority.

12. A stormwater drainage design prepared by a Licensed Plumber or qualified practicing Civil Engineer must be provided prior to the issue of a Construction Certificate. The design must be prepared/ amended to make provision for the following:

- a) The design must be generally in accordance with the stormwater drainage concept plan on Drawing No. A18 prepared by Angus Donald & Associates and dated 1.12.17
- b) Charged or pump-out stormwater drainage systems are not permitted.
- c) Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank(s) by gravity to the kerb and gutter of a public road or directly into Council's piped drainage system.
- d) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. The design must include the collection of such waters and discharge to the Council drainage system.

- e) An overland flowpath must be provided along the north eastern boundary between the rear of the dwelling and McKell Street frontage. The Existing Courtyard located between the dwelling and Garage must be graded so that bypass flows from the site drainage system are directed to the overland flowpath.

A minimum 150mm step up must be provided between all external finished surfaces and adjacent internal floor areas, except where a reduced step is permitted under Section 3.1.2.3 (b) of the Building Code of Australia for Class 1 buildings

- f) All plumbing within the site must be carried out in accordance with Australian Standard *AS/NZS 3500.3-2015 Plumbing and Drainage – Stormwater Drainage*
- g) Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required.
- h) An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.
- i) All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.
- j) New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a section height of 100mm.
- k) Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site.

The design must be certified as compliant with the terms of this condition by a suitably qualified Civil Engineer.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

13. If any excavation extends below the level of the base of the footings of a building on an adjoining property, the person causing the excavation:
- a) Must preserve and protect the adjoining building from damage
- b) Must, at least seven (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.
- c) The owner of the adjoining allotment of land is not liable for any part of the

cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this condition, the allotment of land includes public property.

14. The following fire upgrading is required pursuant to Clause 94 of the *Environmental Planning and Assessment Regulation 2000*:
- The building is to be provided with smoke alarm system that complies with *AS3786-1993: Smoke Alarms* and the smoke alarms must be connected to the consumer mains electrical power supply and interconnected where there is more than one alarm with a stand-by (battery back-up) power supply. The smoke alarm system must be installed in suitable locations on or near the ceiling in accordance with Part 3.7.2 of the Building Code of Australia.

Amended plans and specifications demonstrating compliance with this condition must be submitted to the satisfaction of the Principal Certifying Authority with the application prior to the issuing of a for a Construction Certificate.

Note: Where an existing system complying with the above requirements is already installed in the building, evidence of this should be submitted with the application for a Construction Certificate.

15. A Certificate prepared by an appropriately qualified and 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 must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority. The certificate shall 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.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

16. The approved plans must be submitted to a Sydney Water Quick Check agent 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. For Quick Check agent details please refer to the web site <http://www.sydneywater.com.au/SW/plumbing-building-developing/building/quick-check-agents/index.html>

The Principal Certifying Authority must ensure the Quick Check agent/Sydney Water has appropriately stamped the plans prior to the issue of a Construction Certificate.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

17. Before the issue of a Construction Certificate, the Principal Certifying Authority shall be satisfied that no proposed underground services (i.e. water, sewerage, drainage, gas or other service) unless previously approved by conditions of consent, are located beneath the canopy of any tree protected under State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, located on the subject allotment and adjoining allotments.

A plan detailing the routes of these services and trees protected under the State Environmental Planning Policy shall be prepared. Details demonstrating compliance are to be shown on the plans submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

18. Prior to the issue of a Construction Certificate, the applicant must prepare a Construction Management and Traffic Management Plan. The following matters should be addressed in the plan (where applicable):
- a) A plan view of the entire site and frontage roadways indicating:
    - i) Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways.
    - ii) The locations of work zones (where it is not possible for loading/unloading to occur on the site) in the frontage roadways accompanied by supporting documentation that such work zones have been approved by the Local Traffic Committee and Council.
    - iii) Location of any proposed crane and concrete pump and truck standing areas on and off the site.
    - iv) A dedicated unloading and loading point within the site for construction vehicles, plant and deliveries.
    - v) The proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period.
  - b) Noise and vibration  
During excavation, demolition and construction phases, noise & vibration generated from the site must be controlled. Refer to other conditions of this consent. If during excavation, rock is encountered, measures must be taken to minimise vibration, dust generation and impacts on surrounding properties. Refer to Environmental Noise Management Assessing Vibration: a technical Guideline (Department of Environment and Conservation, 2006) [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au) for guidance and further information.
  - c) Occupational Health and Safety  
All site works must comply with the occupational health and safety requirements of the New South Wales Work Cover Authority.
  - d) Toilet Facilities  
During excavation, demolition and construction phases, toilet facilities are to be provided on the site, at the rate of one toilet for every twenty (20) persons or part of twenty (20) persons employed at the site. Details must be shown on the plan.



- e) Traffic control plan(s) for the site  
All traffic control plans must be in accordance with the Roads and Maritime Services publication “Traffic Control Worksite Manual”

Approval is to be obtained from Council for any temporary road closures or crane use from public property. Applications to Council shall be made a minimum of 4 weeks prior to the activity proposed being undertaken.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

- 19. A Waste Management Plan (WMP) is to be provided in accordance with **Part D – Waste – Development Control Plan 2013**. The Plan must address all issues identified in the DCP including but not limited to:

- a) Estimated volume (m3) or weight (t) of materials that are reused, recycled or removed from site.
- b) On site material storage areas during construction.
- c) Material and methods used during construction to minimise waste.
- d) Nomination of end location of all waste and recycling generated from a facility authorised to accept the material type for processing or disposal and retention of waste dockets to be made available to Council Officer on request
- e) A clear statement within the Waste Management Plan of responsibility for the transferral of waste and recycling bins within the property and between floors where applicable to the collection point in accordance with DCP 2013.

All requirements of the approved Waste Management Plan must be implemented during the demolition, excavation and construction of the development.

**PRIOR TO WORKS COMMENCING OR ISSUE OF A CONSTRUCTION CERTIFICATE (WHICHEVER OCCURS FIRST)**

- 20. Prior to the commencement of demolition works or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit and inspection fee must be 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 (FOOT)	\$3,550.00
Inspection fee (FOOTI)	\$225.00

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 Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

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

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

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

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

21. Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent shall 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

- 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.

Applications for such Permits shall be submitted and approved by Council prior to the commencement of the works associated with such activity or issue of the Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

- 22. A dilapidation report including a photographic survey of the following adjoining properties must be provided to Principal Certifying Authority prior to any demolition or works commencing on the site or the issue of a Construction Certificate (whichever comes first). The dilapidation report must detail the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property	Structures / Area
2A McKell Street Birchgrove	Within 1m of the common wall
4 McKell Street Birchgrove	Within 1m of the common wall

If excavation works are proposed the dilapidation report must report on the visible and structural condition of neighbouring structures within the zone of influence of the excavations. This zone is defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

The dilapidation report is to be prepared by a practising Structural Engineer. All costs incurred in achieving compliance with this condition shall be borne by the applicant. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written correspondence from the owners of the affected properties or other evidence must be obtained and submitted to the Principal Certifying Authority in such circumstances that demonstrates such documentation has been received. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be

submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

23. The person acting on this consent shall submit to the Principal Certifying Authority a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site before the issue of a Construction Certificate.
24. Alignment levels for the site at all pedestrian and vehicular access locations shall match the existing back of footpath levels at the boundary.

### **PRIOR TO THE COMMENCEMENT OF WORKS**

25. The proposed structure(s) to be erected must stand wholly within the boundaries of the subject site. No portion of the proposed structure, including gates and doors during opening and closing operations, shall encroach onto adjoining properties or upon public property.

To ensure that the location of the building satisfies the provision of the approval, the footings and walls within one (1) metre of the property boundaries must be set out by or the location certified by a registered surveyor in accordance with the approved plans, prior to the commencement of works.

To ensure that the location of the building satisfies the provision of the approval, a check survey certificate shall be submitted to the Principal Certifying Authority either prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, indicating the:

- a) location of the building with respect to the boundaries of the site.

26. The site must be 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 property 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. Additionally an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property, where necessary.

Separate approval is required under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property. Approvals for hoardings, scaffolding on public land must be obtained and clearly displayed on site for the duration of the works.

Any hoarding, fence or awning is to be removed when the work is completed and must be maintained clear of any advertising.

27. The *Home Building Act 1989* requires that insurance must be obtained from an insurance company approved by the Department of Fair Trading prior to the commencement of works approved by this Development Consent.

A copy of the certificate of insurance must be submitted to the Certifying

Authority prior to the works commencing.

If the work is to be undertaken by an owner-builder, written notice of their name and owner-builder permit number must be submitted to the Certifying Authority.

In all other cases, written notice must be given to the Certifying Authority of:

- a) the name and licence number of the principal contractor; and
- b) reasons why a certificate of insurance is not required.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

28. Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands shall 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.
29. Prior to the commencement of works, the Principal Certifying Authority shall be notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
30. At least forty-eight (48) hours prior to the commencement of works, a notice of commencement form (available on Council's web page) and details of the appointed Principal Certifying Authority shall be submitted to Council.
31. Prior to the commencement of works, a sign must be erected in a prominent position on the site (for members of the public to view) on which the proposal is being carried out. The sign must state:
  - a) Unauthorised entry to the work site is prohibited.
  - b) The name of the principal contractor (or person in charge of the site) and a telephone number at which that person may be contacted at any time for business purposes and outside working hours.
  - c) The name, address and telephone number of the Principal Certifying Authority for the work.

Any such sign must be maintained while the work is being carried out, but must be removed when the work has been completed.

Photographic evidence demonstrating compliance with the requirements of this condition is to be submitted to the satisfaction of the Principal Certifying Authority and Council for records purposes prior to the commencement of any onsite work.

**DURING WORKS**

32. Building materials and machinery are to be located wholly on site unless separate consent (Standing Plant Permit) is obtained from Council/ the roads authority. Building work is not to be carried out on the footpath.

Construction materials and vehicles shall not block or impede public use of the footpath or roadway.

33. All excavations and backfilling associated with the development must be executed safely, properly guarded and protected to prevent them from being dangerous to life or property and in accordance with the design of a suitably qualified structural engineer.

If excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must:

- a) Preserve and protect the building from damage.
- b) If necessary, underpin and support the building in an approved manner.
- c) Give at least seven (7) days notice to the adjoining owner before excavating, of the intention to excavate within the proximity of the respective boundary.

Any proposed method of support to any excavation adjacent to adjoining properties or any underpinning is to be designed by a Chartered Civil Engineer, with National Professional Engineering Registration (NPER) in the construction of civil/structural works. Copies of the design plans must be provided to the relevant adjoining property owner/s prior to commencement of such works. Prior to backfilling, any method of support constructed must be inspected by the designing Engineer with certification provided to all relevant parties.

34. The site must be appropriately secured and fenced at all times during works.
35. Excavation, demolition, construction or subdivision work shall only be permitted during the following hours:
- a) 7:00 am to 6.00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
  - b) 8:00 am to 1:00 pm on Saturdays with no demolition works occurring during this time; and
  - c) at no time on Sundays or public holidays.

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

In the case that a standing plant or special permit is obtained from Council for works in association with this development, the works which are the subject of the

permit may be carried out outside these hours.

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

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

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

The Proponent shall not undertake such activities for more than three continuous hours and shall provide a minimum of one 2 hour respite period between any two periods of such works.

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

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.

36. In addition to meeting the specific performance criteria established under this consent, the Applicant shall implement all reasonable and feasible measures to prevent and/or minimise any harm to the environment that may result from the demolition, construction or operation/use of the development.
37. Any new information revealed during development works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.
38. The development must be inspected at the following stages by the Principal Certifying Authority during construction:
  - a) after excavation for, and prior to the placement of, any footings, and
  - b) prior to pouring any in-situ reinforced concrete building element, and
  - c) prior to covering of the framework for any floor, wall, roof or other building element, and
  - d) prior to covering waterproofing in any wet areas, and
  - e) prior to covering any stormwater drainage connections, and
  - f) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
39. A copy of the approved plans and this consent must be kept on site for the duration of site works and in the case of any commercial or industrial premise for the

duration of the use/trading. Copies shall be made available to Council Officer’s upon request.

- 40. Sedimentation controls, tree protection measures and safety fencing (where relevant) shall be maintained during works to ensure they provide adequate protection during the course of demolition, excavation and construction works. Materials must be stored in a location and manner to avoid material being washed to drains or adjoining properties.

Material from the site is not to be tracked onto the road by vehicles entering or leaving the site. At the end of each working day any dust/dirt or other sediment shall be swept off the road and contained on the site and not washed down any stormwater pit or gutter.

The sediment and erosion control measures are to be inspected daily and defects or system failures are to be repaired as soon as they are detected.

- 41. The trees to be retained shall be inspected, monitored and treated by the Project Arborist during and after completion of development works to ensure their long term survival. Regular inspections and documentation from the Project Arborist to the Principal Certifying Authority are required at the following times or phases of work:

<b>Schedule</b>	
<b>Tree/location</b>	<b>Time of Inspection</b>
All trees on adjoining properties.	Prior to commencement of works and completion of works

Recommendations to ensure the tree/s long term survival must be carried out immediately upon receipt of the report.

Project Arborist - for the purpose of this condition a suitably qualified professional shall have as a minimum, Level 5 (Diploma) certification in Arboriculture under the Australian Qualification Framework (AQF).

Details demonstrating compliance with the requirements of this condition are to be submitted by the Project Arborist undertaking the works to the satisfaction of the Principal Certifying Authority.

- 42. No activities, storage or disposal of materials taking place beneath the canopy of any tree protected under Council's Tree Management Controls at any time.
- 43. 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 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.



**PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

44. An Occupation Certificate must be obtained prior to any use or occupation of the development or part thereof. The Principal Certifying Authority must ensure that all works are completed in accordance with this consent including all conditions.
45. A second Dilapidation Report including photos of any damage evident at the time of inspection must be submitted after the completion of works. A copy of this Dilapidation Report must be given to the property owners referred to in this Development Consent. The report must:
- Compare the post construction report with the pre-construction report required by these conditions,
  - Clearly identify any recent damage and whether or not it is likely to be associated with the development works including suggested remediation methods.

A copy must be lodged with Council and the Principal Certifying Authority prior to the issue of an Occupation Certificate. Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issuing of any Occupation Certificate

46. You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. 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 shall be at no cost to Council and undertaken before the issue of an Occupation Certificate.
47. Prior to the issue of an Occupation Certificate, the Principle Certifying Authority must ensure that the stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards.

A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a Licensed Plumber or qualified practicing Civil Engineer that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards, must be provided to the Principle Certifying Authority prior to the issue of an Occupation Certificate.

48. Prior to the issue of the Occupation Certificate the Principal Certifying Authority is to confirm that no high front gutters have been installed.
49. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that all works have been completed in accordance with the approved Waste Management Plan referred to in this development consent.

Proof of actual destination of demolition and construction waste shall be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

50. Prior to the issue of any Occupation Certificate, the Principal Certifying Authority is to be satisfied that all landscape works, including the removal of all noxious weed species and planting of canopy trees, have been undertaken in accordance

with the approved landscape plan and/or conditions of Development Consent.

51. Prior to the release of an Occupation Certificate, the Principal Certifying Authority must be satisfied that the development complies with:
- the approved plans;
  - BASIX certificate (where relevant),
  - approved documentation (as referenced in this consent); and
  - conditions of this consent.

### **ONGOING CONDITIONS OF CONSENT**

52. The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within seventy-two (72) hours of its application.
53. The canopy replenishment trees required by this consent are to be maintained in a healthy and vigorous condition until they attain a height of 6 metres whereby they will be protected by Council's Tree Management Controls. Any of the trees found faulty, damaged, dying or dead shall be replaced with the same species within 2 months.
54. Any lighting of the premises shall be installed and maintained in accordance with Australian Standard AS 4282-1997: *Control of the Obtrusive Effects of Outdoor Lighting* so as to avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads. The intensity, colour or hours of illumination of the lights shall be varied at Council's discretion if in the opinion of an Authorised Council Officer it is considered there to be have adverse effects on the amenity of the area.
55. The premises shall not be used for any purpose other than that stated in the Development Application, i.e. dwelling house without the prior consent of the Council unless the change to another use is permitted as exempt or complying development under *Leichhardt Local Environment Plan 2013* or *State Environmental Planning policy (Exempt and Complying Codes) 2008*.

The use of the premises as a dwelling house, is defined under the *Leichhardt Local Environmental Plan 2013*.

### **PRESCRIBED CONDITIONS**

#### **A. BASIX Commitments**

Under clause 97A of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the development are fulfilled. The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

In this condition:

- a) Relevant BASIX Certificate means:

- i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 4.55 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
  - ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and
- b) BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.

## **B. Building Code of Australia**

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

## **C. Home Building Act**

- 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given Leichhardt Council written notice of the following:
  - 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, or
  - 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.
- 2) If arrangements for doing residential building work are changed while the work is in progress so that the information submitted to Council is out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

## **D. Site Sign**

- 1) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
  - a) stating that unauthorised entry to the work site is prohibited;
  - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and

- c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while to building work or demolition work is being carried out, but must be removed when the work has been completed.

**E. Condition relating to shoring and adequacy of adjoining property**

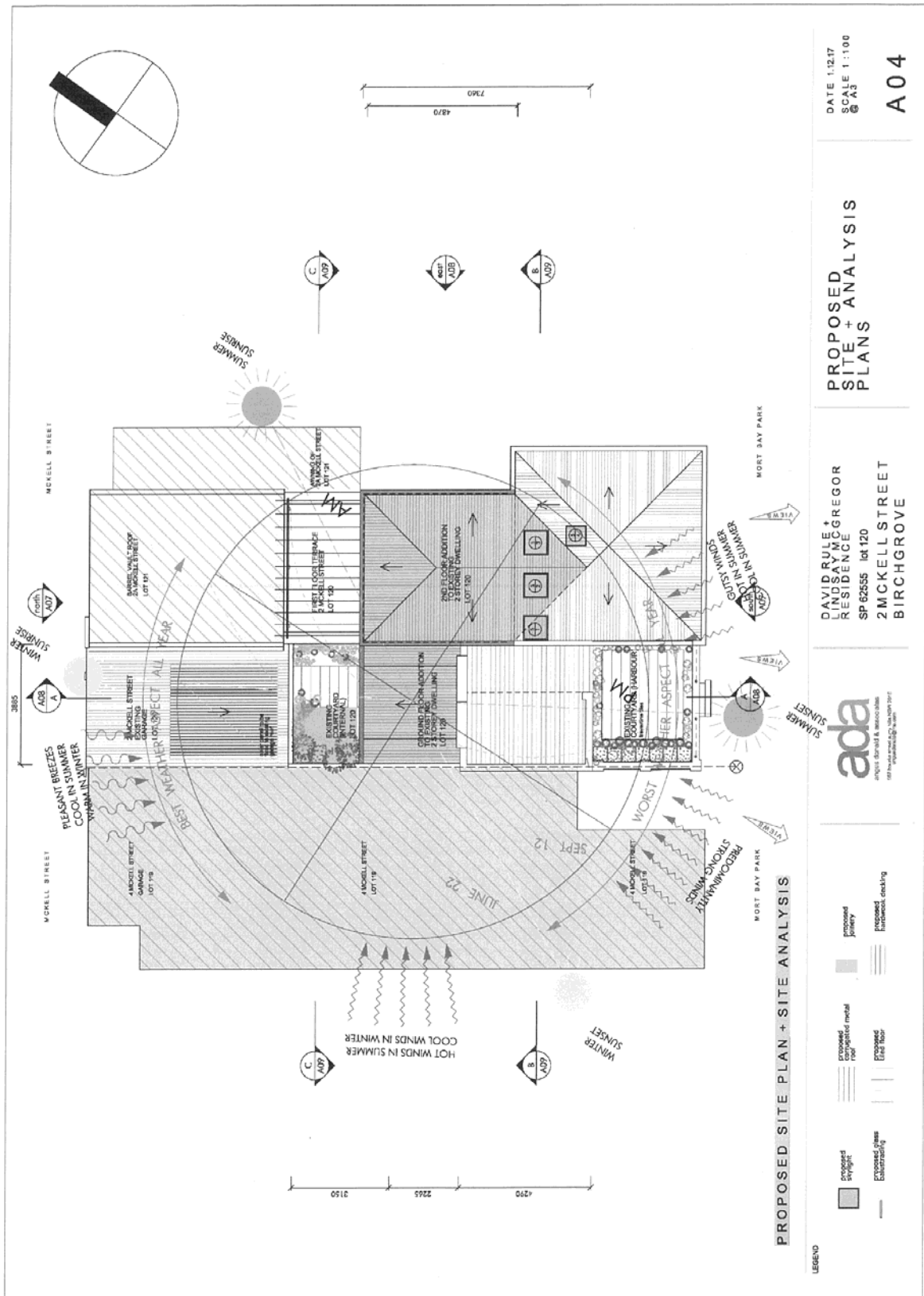
- 1) For the purposes of section 4.17(11) of the Act, it is a prescribed condition of development consent that if the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - a) protect and support the adjoining premises from possible damage from the excavation, and
  - b) where necessary, underpin the adjoining premises to prevent any such damage.
- 2) The condition referred to in subclause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

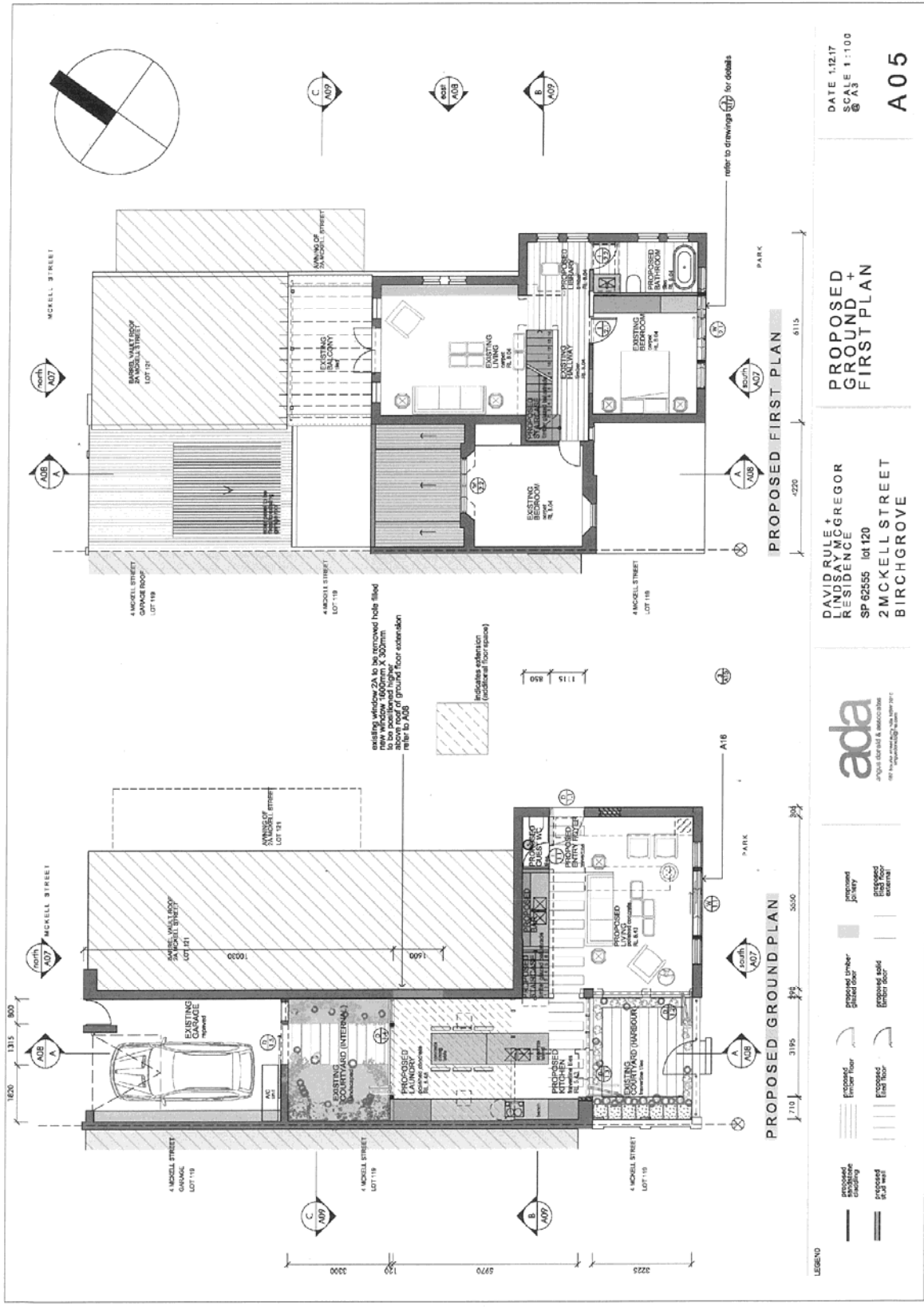
**NOTES**

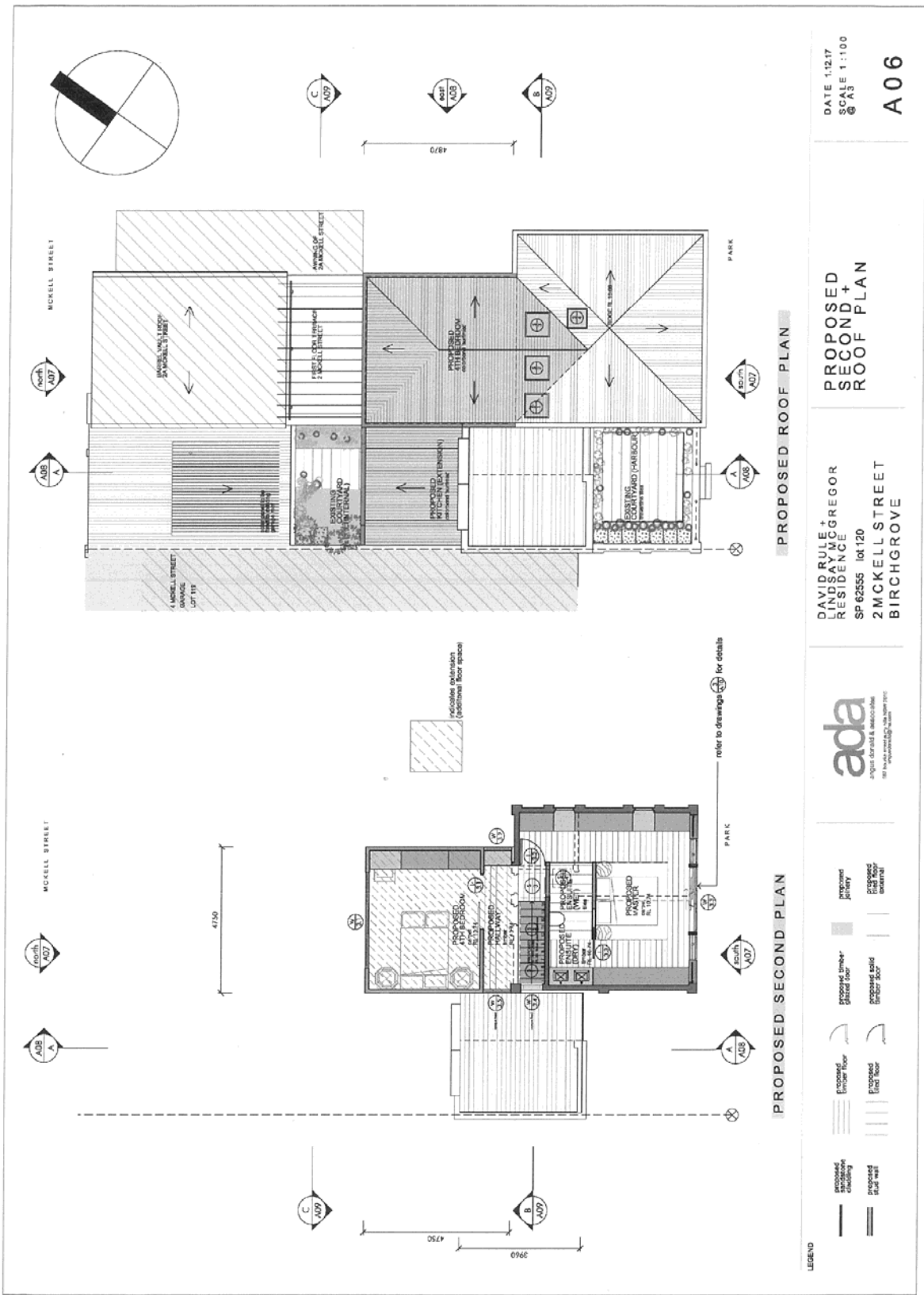
- 1. This Determination Notice operates or becomes effective from the endorsed date of consent.
- 2. Section 8.2 of the *Environmental Planning and Assessment Act 1979* provides for an applicant to request Council to review its determination. This does not apply to applications made on behalf of the Crown, designated development or a complying development certificate. The request for review must be made within six (6) months of the date of determination or prior to an appeal being heard by the Land and Environment Court. Furthermore, Council has no power to determine a review after the expiration of these periods. A decision on a review may not be further reviewed under Section 8.2.
- 3. If you are unsatisfied with this determination, Section 8.7 of the *Environmental Planning and Assessment Act 1979* gives you the right of appeal to the Land and Environment Court within six (6) months of the determination date.
- 4. 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.
- 5. 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*.
- 6. This decision does not ensure compliance with the *Disability Discrimination Act 1992*. Applicants should investigate their potential for liability under that Act.
- 7. 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.
  - g) Development Application for subdivision if consent for subdivision is not granted by this consent.
  - h) An application under the Roads Act 1993 for any footpath / public road occupation. A lease fee is payable for all occupations.
8. Prior to the issue of the Construction Certificate, the applicant must make contact with all relevant utility providers (such as Sydney Water, Energy Australia etc) whose services will be impacted upon by the development. A written copy of the requirements of each provider, as determined necessary by the Certifying Authority, must be obtained.
9. You may need a permit before filling a new or renovated swimming pool which holds more than 10,000 litres of water. You are advised to contact Sydney Water on 132092 to obtain this permit.

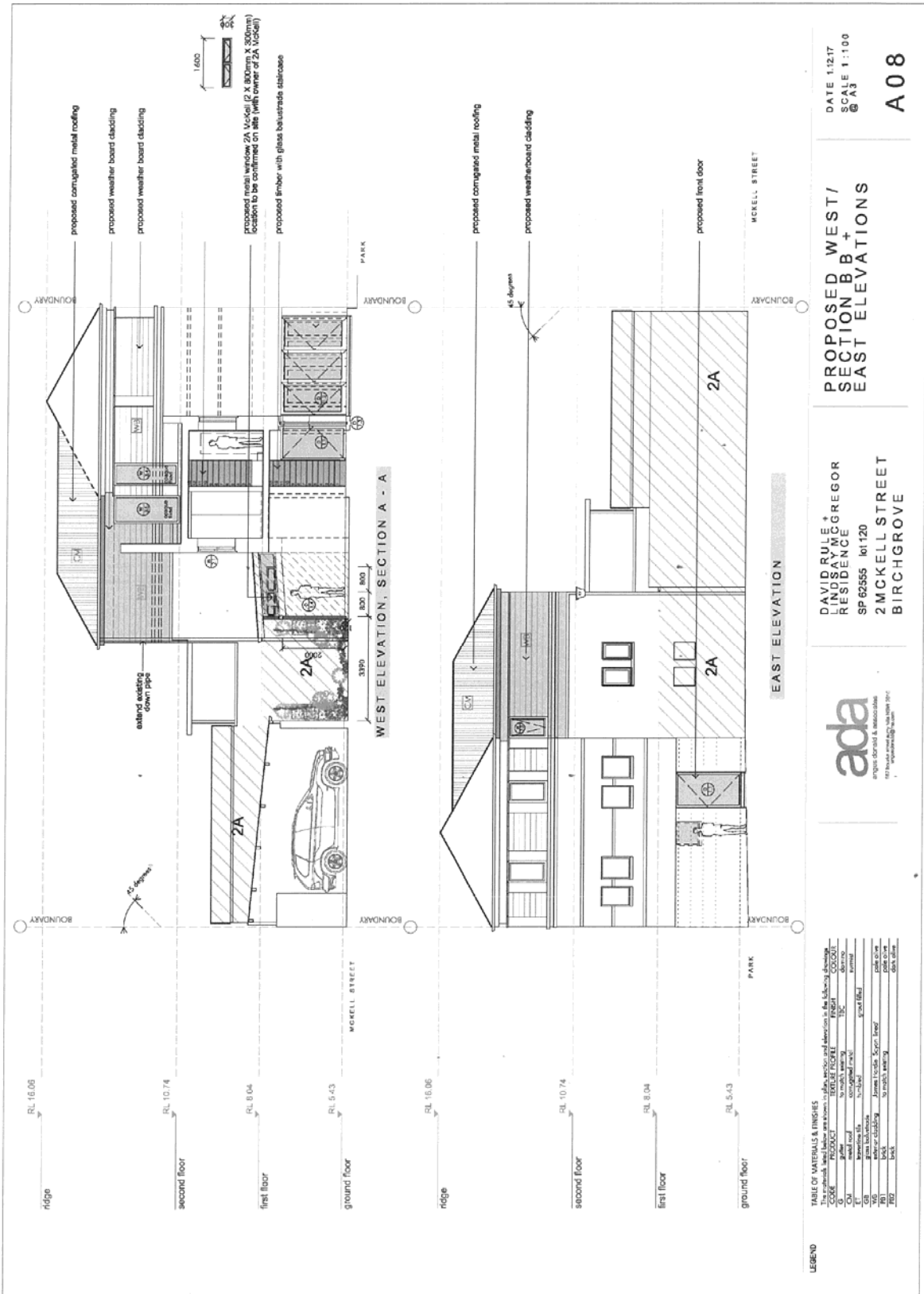
Attachment B – Plans of proposed development











**SOUTH ELEVATION**

**NORTH ELEVATION - FRONT**

**TABLE OF MATERIALS & FINISHES**

ITEM	DESCRIPTION	FINISH
CO-01	CORRUGATED METAL ROOFING	PROPOSED CORRUGATED METAL ROOFING
CL-01	CLADDING	PROPOSED WEATHERBOARD CLADDING PAINTED LIGHT OLIVE
GL-01	GLASS	PROPOSED METAL WINDOWS - REFER TO A16
LO-01	LOUVERS	PROPOSED METAL LOUVERS - REFER TO A16
DR-01	DOORS	PROPOSED METAL DOORS - REFER TO A16
FR-01	FLOORING	PROPOSED METAL FLOORING - REFER TO A16
SK-01	SKYLIGHTS	PROPOSED METAL SKYLIGHTS - REFER TO A16
ST-01	STAIRS	PROPOSED METAL STAIRS - REFER TO A16
TR-01	TRIMS	PROPOSED METAL TRIMS - REFER TO A16
W-01	WINDOWS	PROPOSED METAL WINDOWS - REFER TO A16
PA-01	PAINTS	PROPOSED METAL PAINTS - REFER TO A16

**LEGEND**

**DATE:** 1.12.17  
**SCALE:** 1:100  
**BY:** A3

**PROPOSED SOUTH + NORTH ELEVATIONS**

**CONCEPT NOT FOR CONSTRUCTION**

**A07**

**DAVID RUIE + GREGOR**  
 LINDSAY GREGOR  
 RESIDENCE  
 SP 62565 lot 120  
 2 MCKELL STREET  
 BIRCHGROVE

**ada**  
 architects & interior designers  
 101 WOODVILLE ROAD  
 WOODVILLE VIC 3009

**PROPOSED SOUTH ELEVATION (WITH EXTERNAL METAL LOUVRES)**

DAVID RULE + LINDSAY MCGREGOR RESIDENCE  
SP 62565 lot 120  
2 MCKELL STREET BIRCHGROVE

DATE 1-12-17  
SCALE 1:50  
A3

**A 16**

**SOUTH ELEVATION (LOUVRES) 1:50**

**LEGEND**

CODE	PRODUCT	TEXTURE	PROFILE	FINISH	COLOUR
G1	galfer	to match existing	TBC		domino
GM	galfer	concrete metal			turnip
ET	westline	to match existing	vertical	gloss filled	
GR	glass balustrade				
WB	awn-for cladding	James Hardie Saxon Lineo			poke olive
PR1	brick	to match existing			poke olive
PR2	brick				dark olive

The materials listed below are shown in plan, section and elevation in the following drawings:

**PAINT COLOURS (colours shown are indicative only)**

dark olive  
M(SH) 325  
M(SH) 14.5  
EE(SH) 36.5

poke olive  
M(SH) 325  
M(SH) 14.5  
EE(SH) 72

**TABLE OF MATERIALS & FINISHES**

CODE	PRODUCT	TEXTURE	PROFILE	FINISH	COLOUR
G1	galfer	to match existing	TBC		domino
GM	galfer	concrete metal			turnip
ET	westline	to match existing	vertical	gloss filled	
GR	glass balustrade				
WB	awn-for cladding	James Hardie Saxon Lineo			poke olive
PR1	brick	to match existing			poke olive
PR2	brick				dark olive

**PARK SIDE (TOWER) WINDOWS + LOUVRES + EXPRESSED METAL DETAIL (1:50)**

external louvre contained within brick / brick cavity

fixed

sliding stacker window

fixed

external louvre

external louvre

expressed metal detail

external louvre

**PAINT COLOURS (colours shown are indicative only)**

dark olive  
M(SH) 325  
M(SH) 14.5  
EE(SH) 72

**COLORBOND ROOF COLOUR + WEATHERBOARD CLADDING (example)**

dark olive  
M(SH) 325  
M(SH) 14.5  
EE(SH) 72

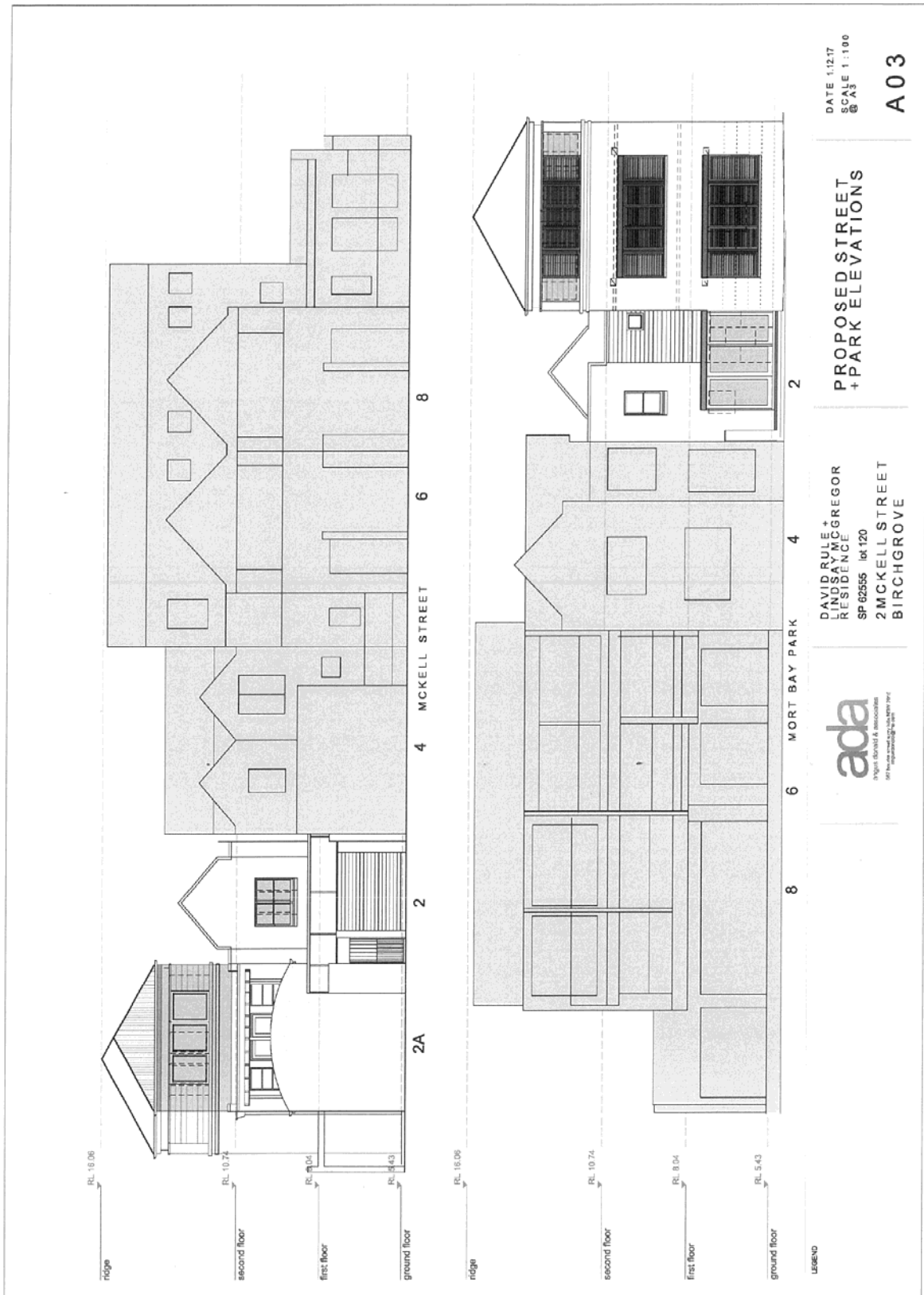
**square hollow section hot dipped galvanised painted micaceous grey metal powder coated adjustable louvres electronically operated**

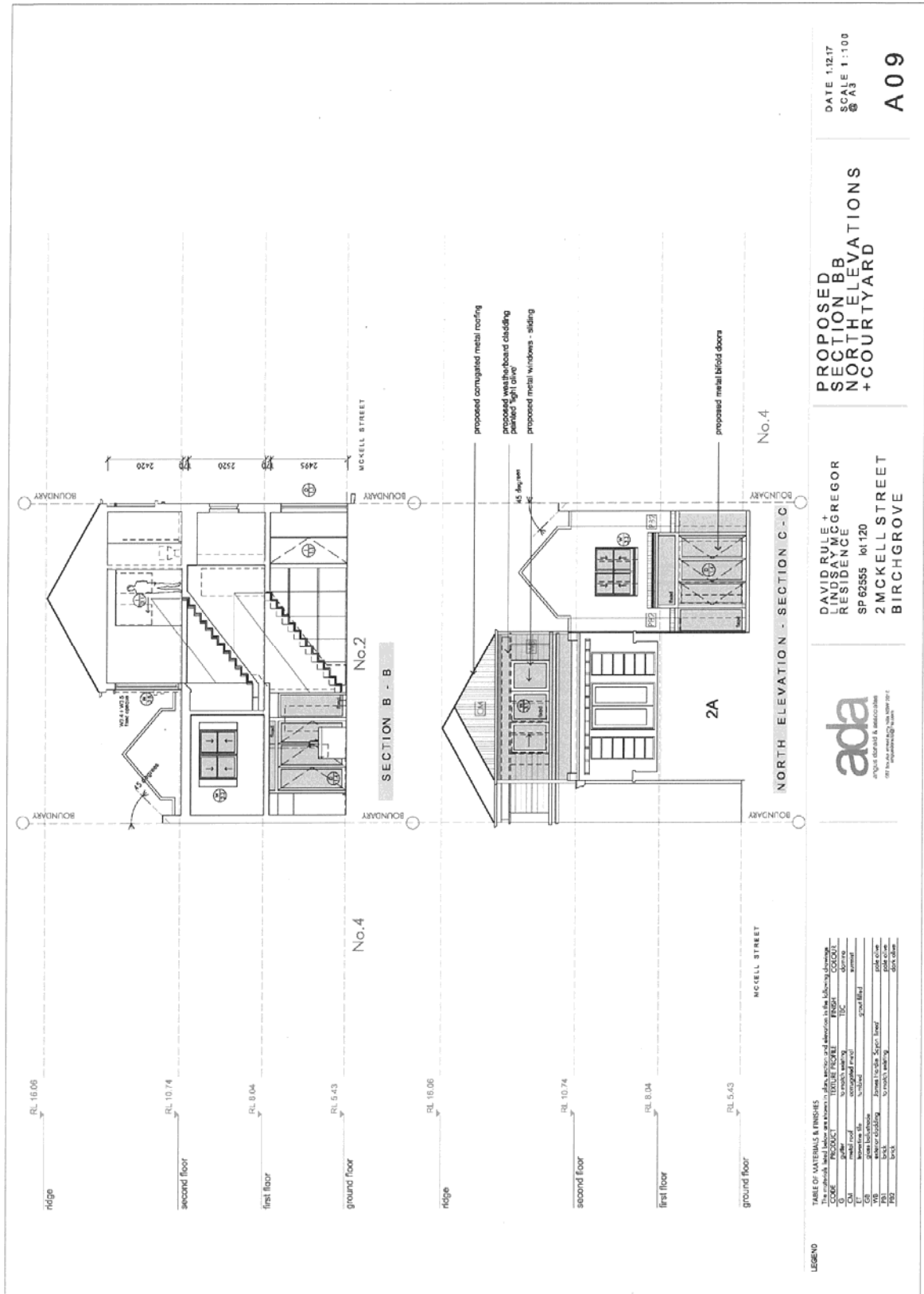
**parallel flange channel (hot dipped galvanised) painted micaceous grey**

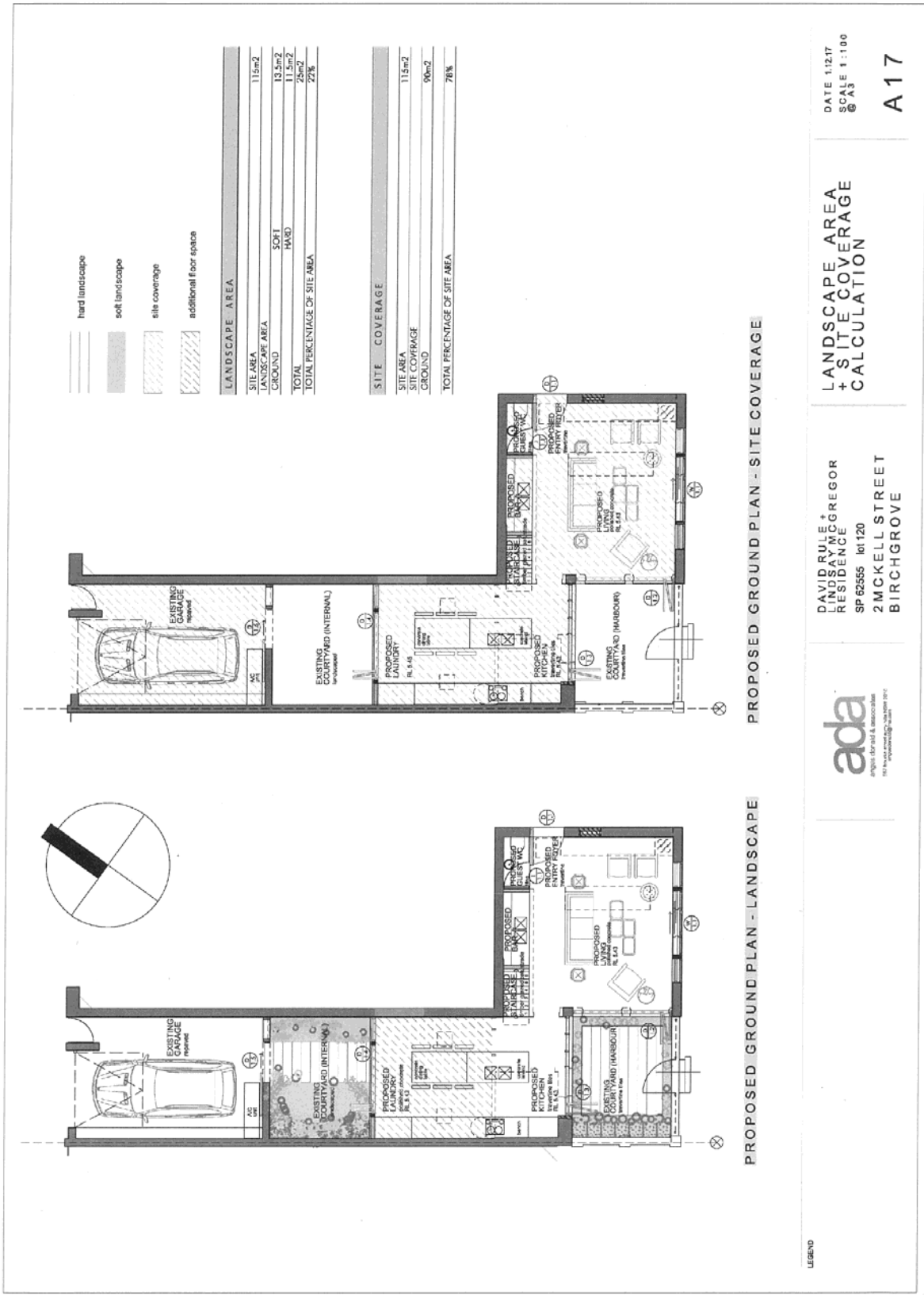
**square hollow section hot dipped galvanised painted micaceous grey metal powder coated adjustable louvres electronically operated**

**parallel flange channel (hot dipped galvanised) painted micaceous grey**

**square hollow section hot dipped galvanised painted micaceous grey metal powder coated adjustable louvres electronically operated**





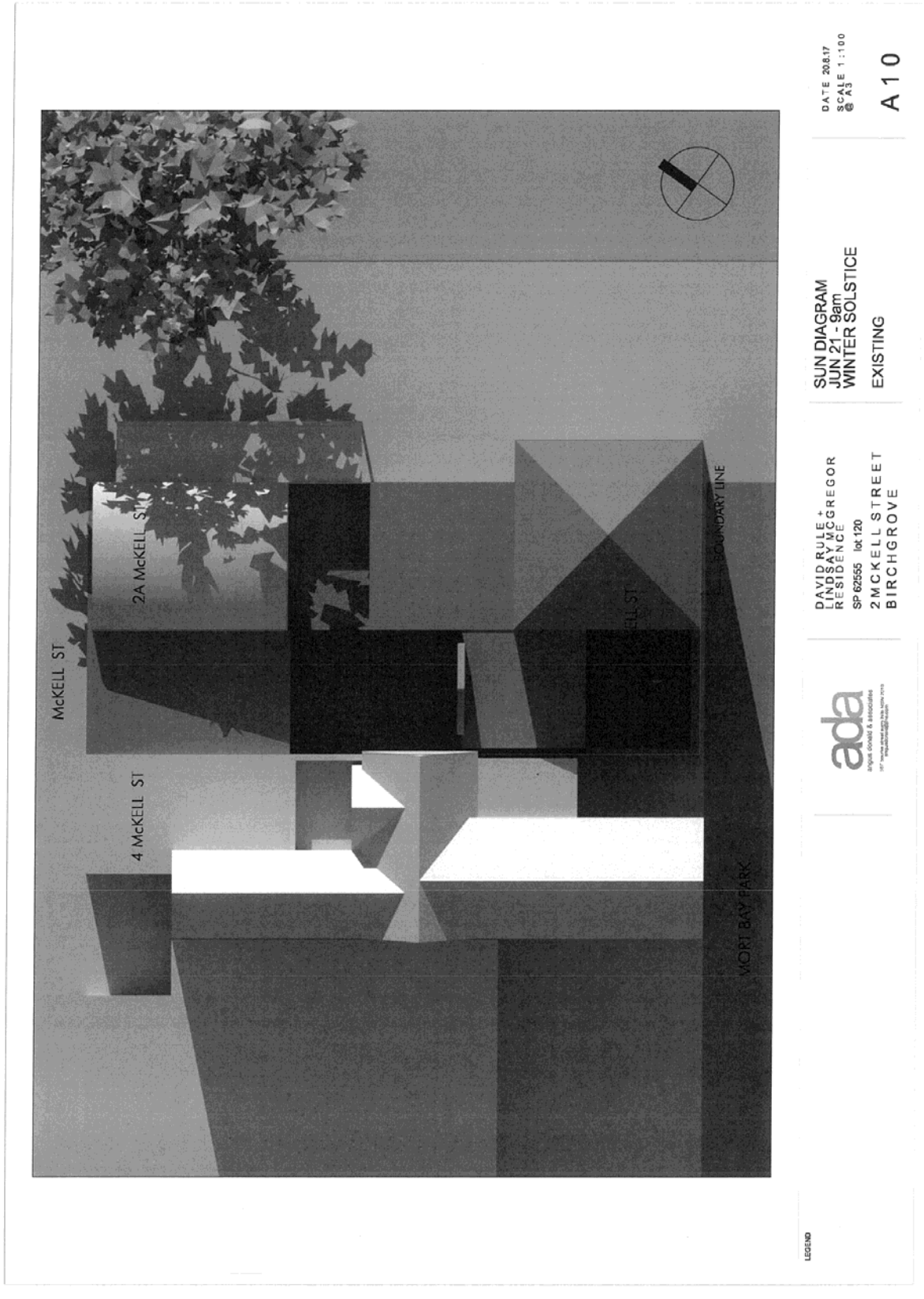


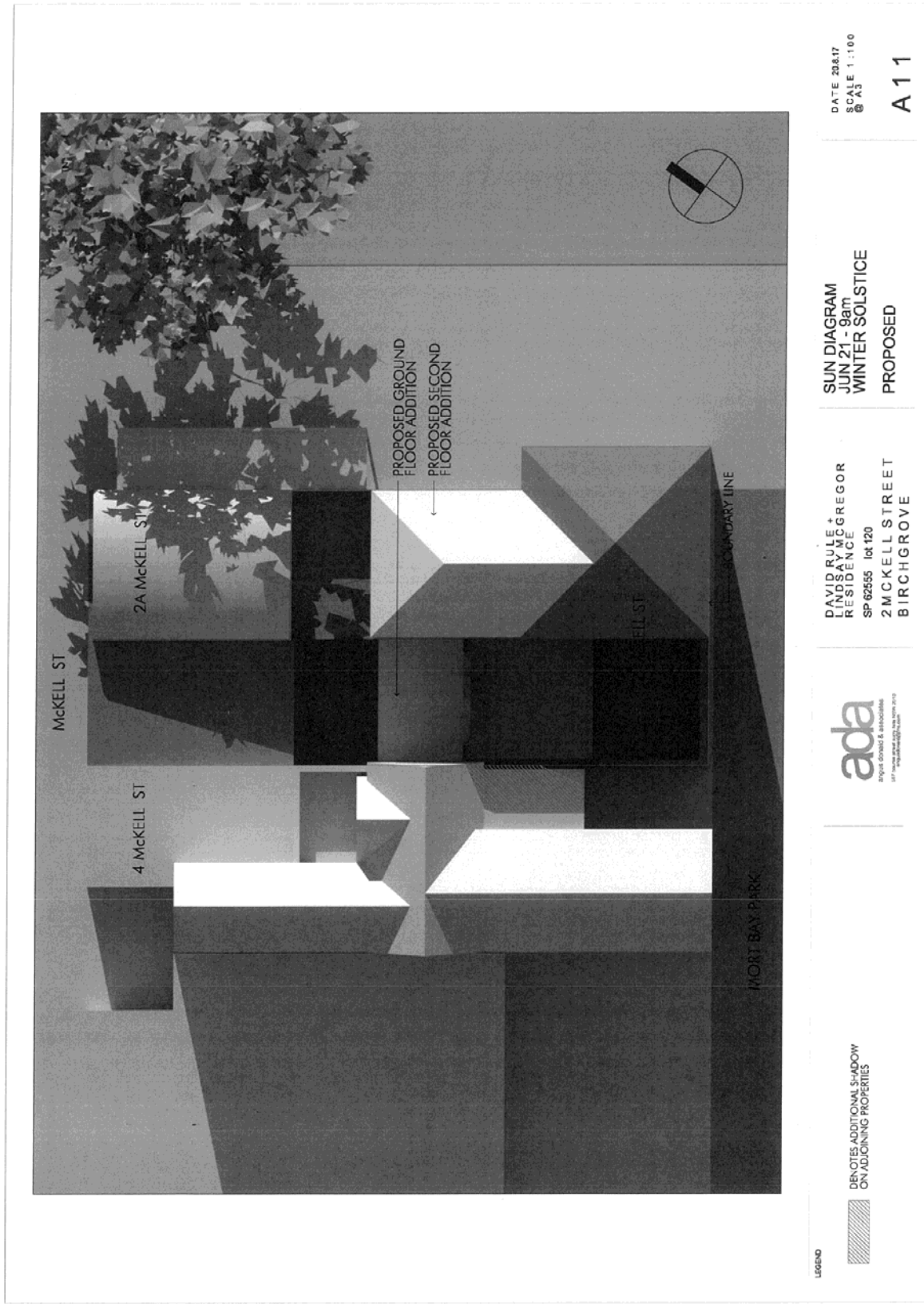
DATE 11/2/17  
SCALE 1:100  
A17

**LANDSCAPE AREA + SITE COVERAGE CALCULATION**

DAVID RULE  
LINDSAY MCGREGOR  
RESIDENCE  
SP 62555 lot 120  
2 MCKELL STREET  
BIRCHGROVE







DATE 20&17  
SCALE 1:100  
@ A3

SUN DIAGRAM  
JUN 21 - 9&11  
WINTER SOLSTICE  
PROPOSED

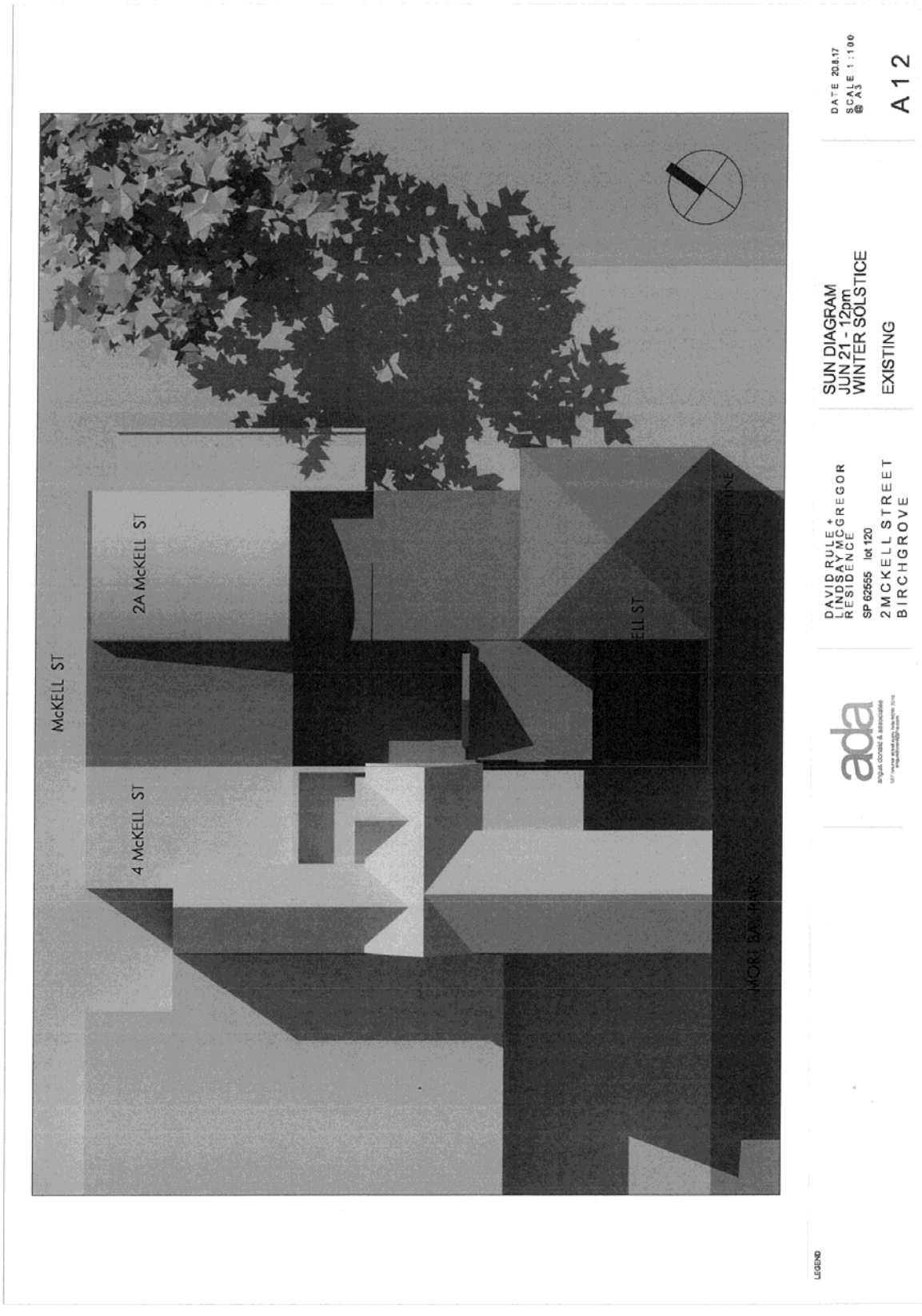
DAVID RULE +  
LINDSAY MCGREGOR  
RESIDENCE  
SP-62555 lot 120  
2 MCKELL STREET  
BIRCHGROVE

ada  
ARCHITECTS & BUILDERS  
107 Macquarie Street, Sydney NSW 2000  
02 9251 2222

LEGEND  
DENOTES ADDITIONAL SHADOW ON ADJOINING PROPERTIES

A 1 1





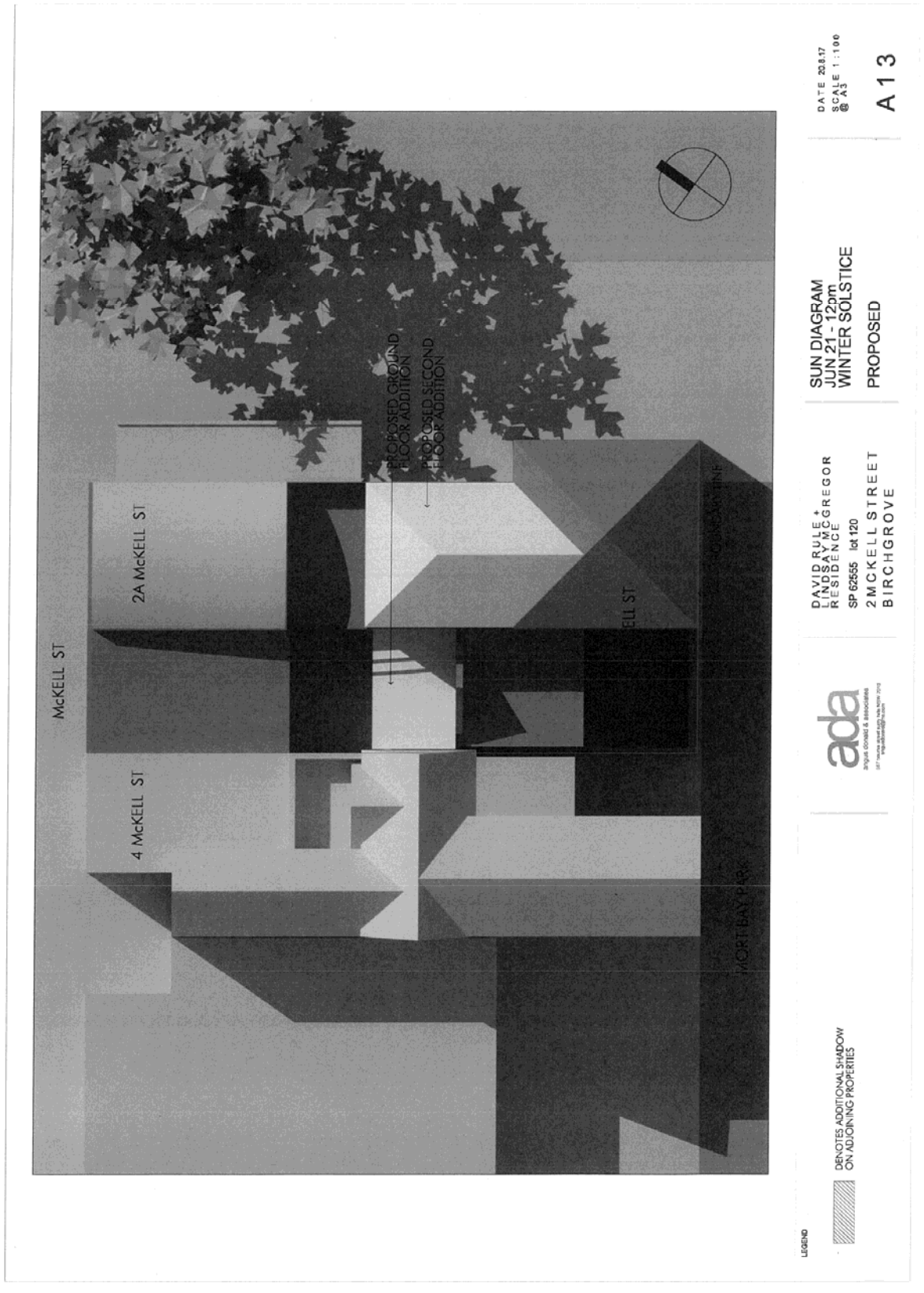
DATE 20.8.17  
SCALE 1:100  
A 12

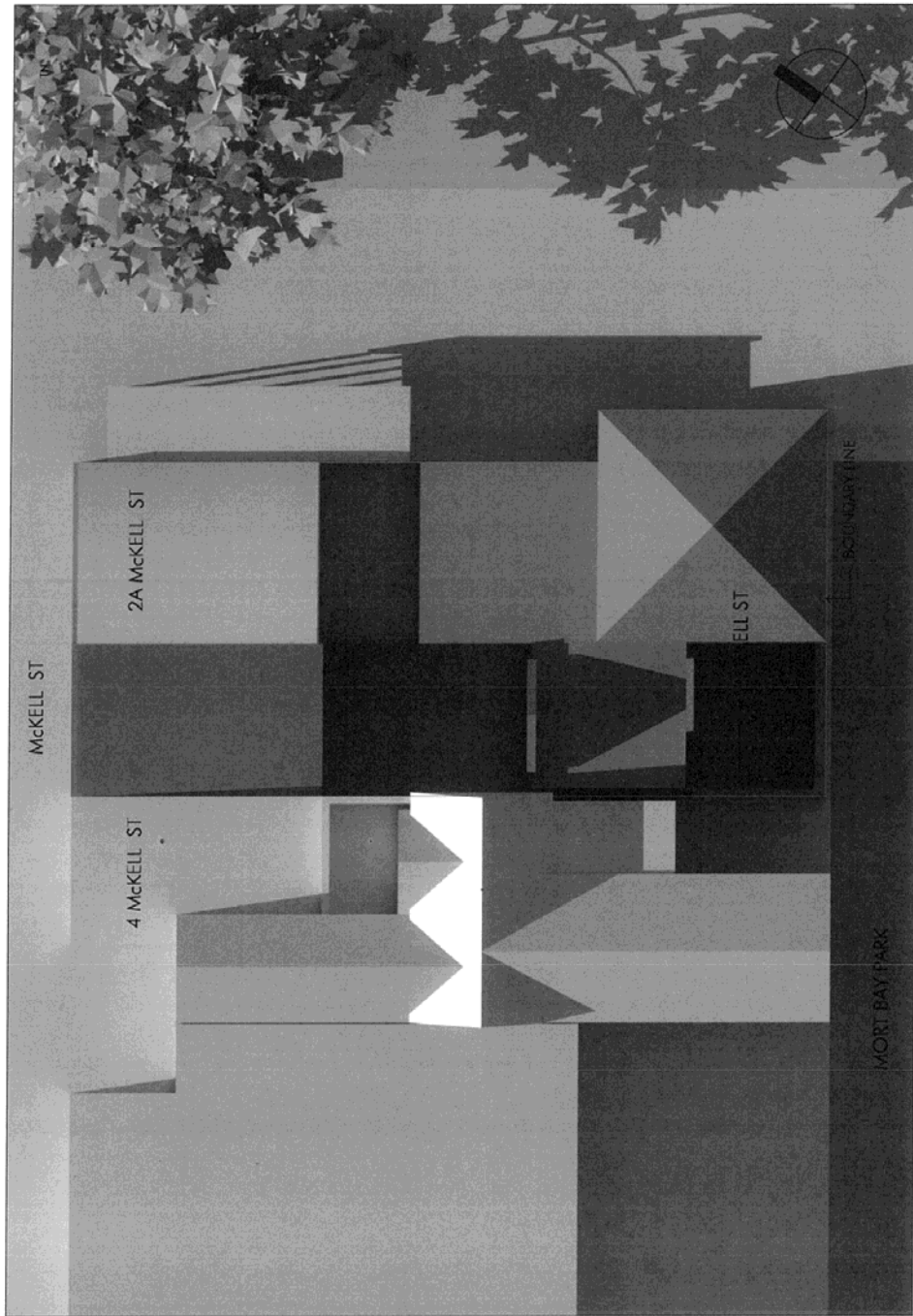
SUN DIAGRAM  
JUN 21 - 12pm  
WINTER SOLSTICE  
EXISTING

DAVID RULE  
LINDSAY MCGREGOR  
RESIDENCE  
SP 62555 lot 120  
2 MCKELL STREET  
BIRCHGROVE

ada  
ARCHITECTURE & INTERIORS  
100/102 BIRCHGROVE ROAD  
BIRCHGROVE VIC 3083

LEGEND





LEGEND

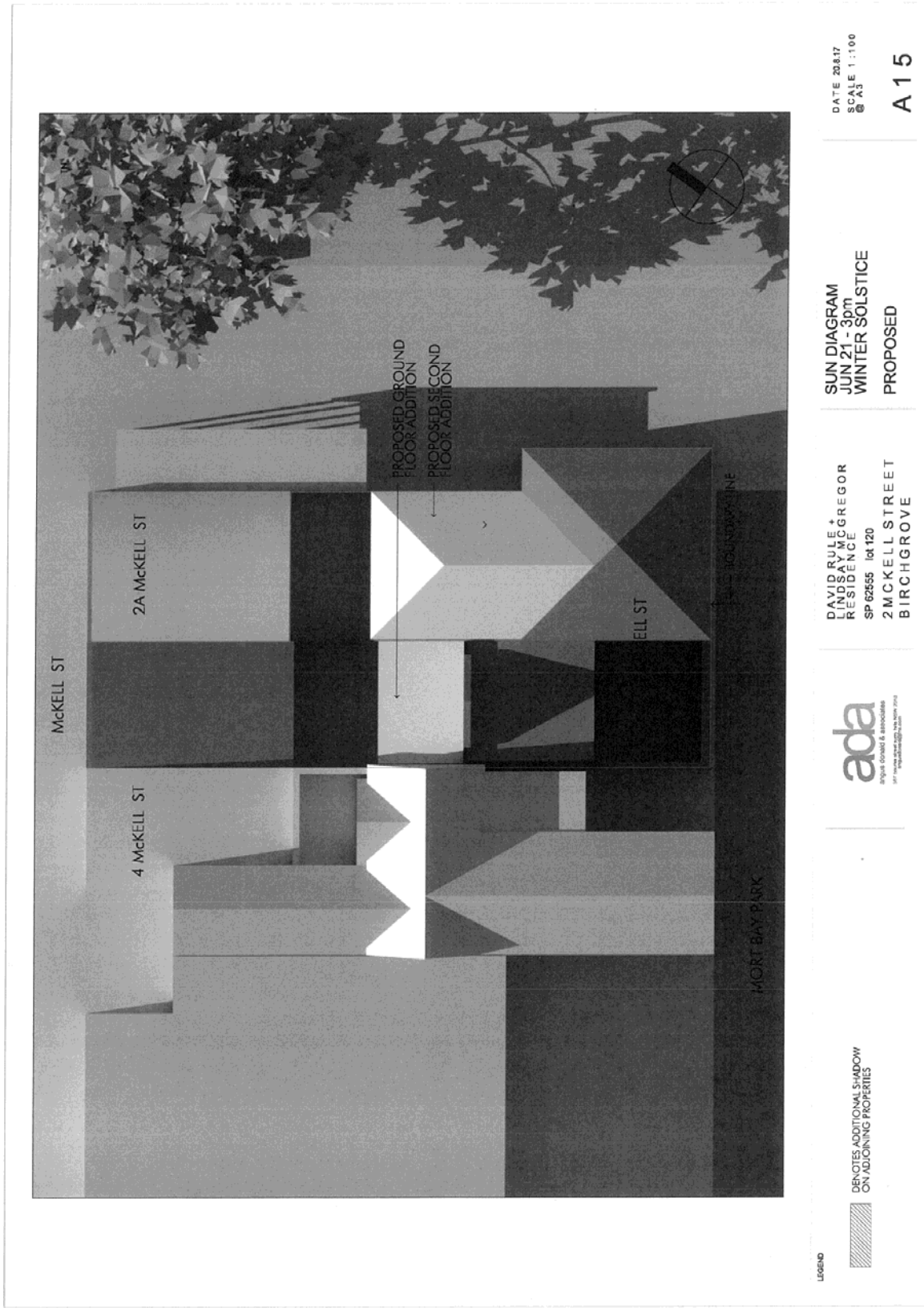
DAVID RULE +  
ANDREW GREGOR  
RESIDENCE  
SP 62655 lot 120  
2 MCKELL STREET  
BIRCHGROVE




SUN DIAGRAM  
JUN 21 - 3pm  
WINTER SOLSTICE  
EXISTING

DATE 20.8.17  
SCALE 1:100  
@ A3

A 1 4



**LEGEND**  
 DENOTES ADDITIONAL SHADOW ON ADJOINING PROPERTIES

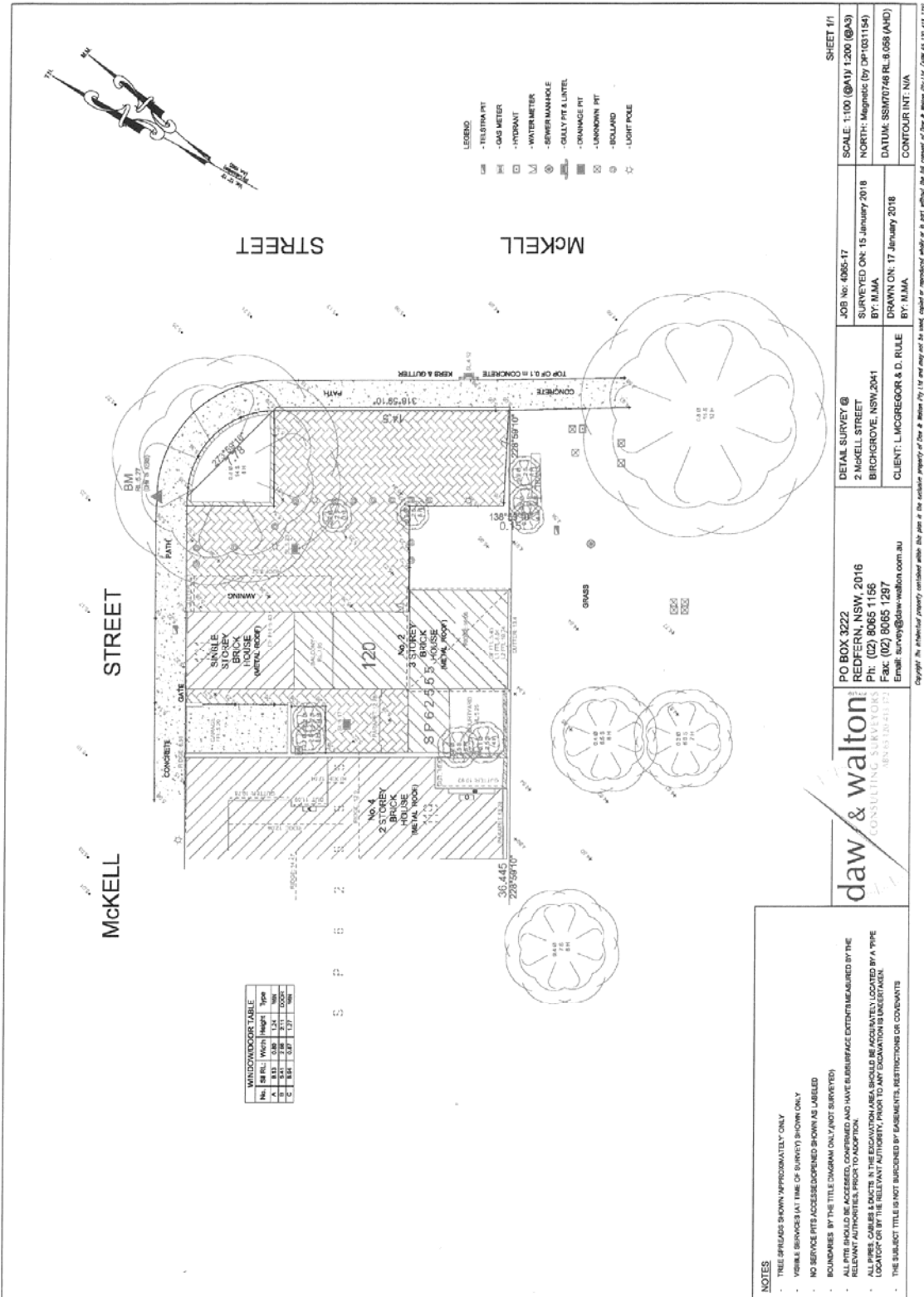
**ada**  
 design oriented & accessible  
 1800 666 666  
 www.ada.com.au

**DAVID RULE & LINDSAY MCGREGOR RESIDENCE**  
 SP 62555 lot 120  
 2 MCKELL STREET  
 BIRCH GROVE

**SUN DIAGRAM**  
 JUN 21 - 30<sup>TH</sup>  
 WINTER SOLSTICE  
 PROPOSED

**DATE 20.8.17**  
**SCALE 1:100**  
**@ A3**

**A 15**



Attachment C – 4.6 Variations

REQUEST FOR A VARIATION OF  
DEVELOPMENT STANDARD

4.4 FLOOR SPACE RATIO

2 MCKELL STREET BIRCHGROVE  
NOVEMBER 2017

ada

587 Bourke Street Surry Hills 2010

M 0419 600 364

E [angus.donald@me.com](mailto:angus.donald@me.com)

**Request a variation of development standard: 4.4 FSR  
Development Application – 2 McKell Street Birchgrove**

**INTRODUCTION**

This request is made pursuant to the provisions of Clause 4.6 Leichardt Local Environmental Plan 2013 (LLEP 2013) to vary the Floor Space Ratio development standard. The request is made in relation to a development application for alterations and additions to an existing townhouse at 2 McKell Street, Birchgrove.

The request is made in support of the non-compliance with respect to the permissible Floor Space Ratio (FSR) control as required by 4.4 of the Leichardt Local Environmental Plan 2013.

The request is considered to have no detrimental impacts arising as a result of the proposed additional FSR and that the proposed works (variation) result in development which satisfies the objectives of the relevant controls.

The application proposes to increase the floor space of 2 McKell Street from 99.5m<sup>2</sup> to 128.5m<sup>2</sup> = 29m<sup>2</sup>. The maximum FSR for the overall site is 0.7:1 and the overall site has an area of 17,140m<sup>2</sup>. The townhouse at 2 McKell Street forms part of the strata subdivision (SP 62555). Council records suggest the FSR for the overall site (SP 62555) when first constructed was 0.696:1. Since construction there have been additions to individual lots though there has been no record kept of the additional floor space and therefore the impact on the FSR. However, the small additional 29m<sup>2</sup> will not exceed the site's FSR of 0.7:1. The applicant therefore relies upon Clause 4.6 of LLEP 2013 for a variation to this standard.

It is submitted that the maximum FSR as identified by Clause 4.4 of the LEP (Leichardt Local Environmental Plan 2013) is a development standard, as defined, and that any variation requires the preparation of a submission pursuant to Clause 4.6 of the LEP. The following assessment of the proposed variation against the requirements of Clause 4.6 is therefore provided.

The objectives of the floor space ratio development standard are:

*(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.*

ada

2

**Request a variation of development standard: 4.4 FSR  
Development Application – 2 McKell Street Birchgrove**

**1. Justification for Clause 4.6 Request**

There are 4 preconditions on Council in exercising the power to vary a development standard and approve the proposed development. They are as follows:

1. A written request proving compliance with development standard is unreasonable in the circumstances.
2. A written request that proving there are sufficient environmental planning grounds to warrant contravening the development standard.
3. Council must be satisfied the proposed development remains consistent with the zone objectives
4. Council must be satisfied the proposed development remains consistent with the objectives of the standard

**2. Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case?**

Compliance with the requirements of Clause 4.4 is both unreasonable and unnecessary in the circumstances of this case.

Land and Environment Court cases dealing with applications to vary development standards resulted with 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
2.1	The objectives of the standard are achieved notwithstanding non-compliance with the standard.	<p>The proposed development achieves the objectives of the FSR standard notwithstanding non-compliance with the standard because:</p> <p>Proposed development is compatible with the desired future character of the area in relation to building bulk, form and scale.</p> <p>The proposed development is of a high quality architectural design which complements the surroundings and which will make a positive contribution to the character of the locality.</p> <p>The proposed buildings will not result in any amenity impacts upon adjoining or nearby properties particularly privacy.</p> <p>The architectural details remain consistent with the existing style.</p>

ada



**Request a variation of development standard: 4.4 FSR  
Development Application – 2 McKell Street Birchgrove**

		The proposed development has little to no impact to the neighbouring townhouses.
2.2	The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.	FSR is to control bulk type development. The proposed development is compatible with the neighbouring development and future character. The development meets the criteria
2.3	The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.	N/A
2.4	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	Leichardt Council reviews each application on the respective merit case by case.  Strict compliance with the standard is considered unreasonable and unnecessary.
2.5	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.	N/A

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

It is considered that a contravention of the development standard is justified given that:

- Compliance is unreasonable and unnecessary in the circumstances of this case.
- The non-compliance will not result in any unreasonable impacts upon adjoining properties.
- The non-compliance will not result in any unreasonable impacts upon the public domain.
- The proposal will not result in any adverse environmental impacts.
- The additional floor space 29m2 is very small request.

**4. Is the proposed development 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.**

Consistent with the findings of the Chief Justice of the Land & Environment Court in *Wehbe v Pittwater Council* [2007] NSW LEC 827, the above proposal is well founded on the basis that it satisfies one of the nominated tests in that:

ada

**Request a variation of development standard: 4.4 FSR  
Development Application – 2 McKell Street Birchgrove**

1. The objectives of the applicable development standards are achieved notwithstanding the proposed non-compliances. It is therefore considered that compliance with the requirements of Clause 4.4 would be unreasonable and unnecessary in the circumstances of this case particularly given the compatibility of the proposal with surrounding development together with the absence of any impacts either generally or directly attributable to this aspect of the development.

**8. Is the proposed development consistent with the objective of both standards.**

The proposed development achieves the objectives of the FSR standard notwithstanding non-compliance with the standard.

**9. Conclusion**

It is my opinion that there is no public benefit in maintaining the development standard in this instance given the absence of any unreasonable detrimental impacts and the public benefit that arises from the significant improvement of the site. It is therefore my opinion based upon the content of this submission that a variation of the maximum FSR as required by Clause 4.4 of the Leichardt Local Environmental Plan 2013 is appropriate in this instance.

ada

5

REQUEST FOR A VARIATION OF  
DEVELOPMENT STANDARD

4.3A LANDSCAPED AREAS

2 MCKELL STREET BIRCHGROVE  
NOVEMBER 2017

ada

587 Bourke Street Surry Hills 2010

M 0419 600 364

E [angus.donald@me.com](mailto:angus.donald@me.com)

**Request a variation of development standard: 4.3A Landscaped Areas  
Development Application – 2 McKell Street Birchgrove**

**INTRODUCTION**

This request is made pursuant to the provisions of Clause 4.6 Leichardt Local Environmental Plan 2013 (LLEP 2013) to vary 4.3A Landscaped areas for residential accommodation in Zone. The request is made in relation to a development application for alterations and additions to an existing townhouse at 2 McKell Street, Birchgrove.

The request is made in support of the non-compliance with respect to the permissible landscaped area and site coverage and that the proposed works (variation) result in development which satisfies the objectives of the relevant controls.

The request is considered to have no detrimental impacts arising as a result of the proposed (reduced) landscaped areas and site coverage and that the proposed works (variation) result in development which satisfies the objectives of the relevant controls.

The proposed development affords 22% of the site to landscaping (13.5m<sup>2</sup> soft landscaping + 11.5m<sup>2</sup> hard landscaping), which results with 78% site coverage. This exceeds the maximum 60% control.

It is submitted that the minimum landscaped area and maximum site coverage as identified by Clause 4.4 of the LEP (Leichardt Local Environmental Plan 2013) is a development standard, as defined, and that any variation of its requirements requires the preparation of a submission pursuant to Clause 4.6 of the LEP. The following assessment of the proposed variation against the requirements of Clause 4.6 is therefore provided.

The objectives of the landscape floor space ratio development standard are:

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

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**Request a variation of development standard: 4.3A Landscaped Areas Development Application – 2 McKell Street Birchgrove**

**1. Justification for Clause 4.6 Request**

There are 4 preconditions on Council in exercising the power to vary a development standard and approve the proposed development. They are as follows:

1. A written request proving compliance with development standard is unreasonable in the circumstances.
2. A written request that proving there are sufficient environmental planning grounds to warrant contravening the development standard.
3. Council must be satisfied the proposed development remains consistent with the zone objectives
4. Council must be satisfied the proposed development remains consistent with the objectives of the standard

**2. Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case?**

Compliance with the requirements of Clause 4.4 is both unreasonable and unnecessary in the circumstances of this case.

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
2.1	The objectives of the standard are achieved notwithstanding non-compliance with the standard.	<p>The proposed development achieves the objectives of the landscaped areas standard in relation to site coverage notwithstanding non-compliance with the standard because:</p> <p>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.</p> <p>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 2 courtyards and both areas have 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 and adjacent to Mort Bay.</p>

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**Request a variation of development standard: 4.3A Landscaped Areas  
Development Application – 2 McKell Street Birchgrove**

		<p>The proposed development promotes the desired future character of the neighbourhood.</p> <p>The proposed alterations and additions are designed to be in keeping with the desired future character of the neighbourhood. The reduction of 16m<sup>2</sup> in landscaped area is minor and will not detrimentally impact on the desired future character of the neighbourhood or the ecological sustainability of the development.</p> <p>Proposed development provides for only a very minor change to the previously approved building footprint.</p>
2.2	The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.	Landscape is to control bulk type development. The proposed development is compatible with the neighbouring development and future character. The development meets the criteria
2.3	The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.	N/A
2.4	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>Leichardt Council reviews each application on the respective merit case by case.</p> <p>Strict compliance with the standard is considered unreasonable and unnecessary.</p>
2.5	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.	N/A

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**Request a variation of development standard: 4.3A Landscaped Areas  
Development Application – 2 McKell Street Birchgrove**

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

It is considered that a contravention of the development standard is justified given that:

- Compliance is unreasonable and unnecessary in the circumstances of this case.
- The non-compliance will not result in any unreasonable impacts upon adjoining properties.
- The non-compliance will not result in any unreasonable impacts upon the public domain.
- The proposal will not result in any adverse environmental impacts.
- 

**4. Is the proposed development 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.**

Consistent with the findings of the Chief Justice of the Land & Environment Court in *Wehbe v Pittwater Council* [2007] NSW LEC 827, the above proposal is well founded on the basis that it satisfies one of the nominated tests in that:

1. The objectives of the applicable development standards are achieved notwithstanding the proposed non-compliances. It is therefore considered that compliance with the requirements of Clause 4.4 would be unreasonable and unnecessary in the circumstances of this case particularly given the compatibility of the proposal with surrounding development together with the absence of any impacts either generally or directly attributable to this aspect of the development.

**8. Is the proposed development consistent with the objective of both standards.**

The proposed development achieves the objectives of the landscape standard notwithstanding non-compliance with the standard.

**9. Conclusion**

It is my opinion that there is no public benefit in maintaining the development standard in this instance given the absence of any unreasonable detrimental impacts and the public benefit that arises from the significant improvement of the site. It is therefore my opinion based upon the content of this submission that a variation of the minimum landscaped areas and maximum site coverage as required by Clause 4.3A of the Leichardt Local Environmental Plan 2013 is appropriate in this instance.

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NOTES