

**SUPPLEMENTARY REPORT**

<b>Application No.</b>	D/2020/4
<b>Address</b>	21 Mckell Street BIRCHGROVE NSW 2041
<b>Proposal</b>	Alterations and additions to an existing townhouse including a second floor addition and associated works.
<b>Date of Lodgement</b>	07 January 2020
<b>Applicant</b>	Shayne Fegent
<b>Owner</b>	Shayne M Fegent
<b>Number of Submissions</b>	One (1) objection
<b>Value of works</b>	\$421,875.00
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation exceeds officer delegation
<b>Main Issues</b>	FSR Breach Site Coverage Breach Landscaped Area Breach Owners' / Strata consent
<b>Recommendation (amended)</b>	Approval
<b>Attachment A</b>	Updated Owners' / Strata Consent

**SUMMARY**

This report concerns the updated owners' / Strata Consent, submitted to the Inner West Council on 30 September 2020, in relation to the development application for alterations and additions to an existing townhouse, including a second-floor addition and associated works, at 21 Mckell Street, Birchgrove.

This consent has been provided in an attempt to address and resolve the following reason for refusal, as recommended by Council officers within the initial assessment report:

- Lack of adequate owners' / Strata consent.

**1. Background**

Pursuant to Section 4.12(1) of the *Environmental Planning and Assessment Act 1979 No 203*, a person may, subject to the regulations, apply to a consent authority for consent to carry out development. Pursuant to Clause 49(1) of the *Environmental Planning and Assessment Regulation 2000*, a development application can be made by the owner of the land to which the development application relates, or by any other person, with the consent of the owner of that land.

Whilst an owners' / strata consent had been submitted as part of the application, this consent referred to specific plans that differ from the ones submitted with the application and, therefore, the consent submitted was inadequate as approval by the Strata Executive Committee for the plans lodged had not been provided. Based on lack of adequate owners' consent, previous undertakings to provide consent have past, and given age of application, the application had to be reported to this Panel meeting (it is noted that the latest timeframe provided by the applicant to provide an updated owners' / strata consent was past reporting deadlines for the October IWLPP). Notwithstanding the lack of owners' / strata consent and recommendation for refusal, a merit assessment of the application was undertaken.

As outlined above, the applicant provided an updated consent from Strata. This consent refers to the (amended) plans that were submitted to Council on 23/04/2020 that have been assessed in the initial report submitted to the IWLPP

## **2. Conclusion and Recommendation**

Given that the provided owners' / Strata Consent refers to the amended plans submitted to Council on 23/04/2020, the applicant, pursuant to Clause 49(1) of the *Environmental Planning and Assessment Regulation 2000*, has provided adequate consent of the owner of that land for this application.

Therefore, as outlined in Section 9(C) - Recommendation - of the initial assessment Report, given that the applicant has secured lawful Owner's Consent for the proposal in the intervening time between the completion of the initial assessment and the date of the Panel meeting, it is recommended that the Panel use the draft set of conditions for approval, attached at Appendix A of the initial assessment report, to approve Development Application D/2020/4 at 21 Mckell Street, Birchgrove as it demonstrates sufficient planning merit as set out in the initial assessment report.

## Attachment A – Updated Owners' / Strata Consent



Conti & Co Pty Ltd  
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ABN 38 667 939 064

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30<sup>th</sup> September 2020

Shayne Fegent  
426/19 Hickson Road  
DAWES POINT NSW 2000

Dear Shayne,

**RE: STRATA PLAN 62555 - 21 MCKELL STREET, BIRCHGROVE  
LOT 51 MAJOR RENOVATION WORKS APPROVAL**

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As the managing agent of the above strata scheme, we are pleased to advise that the Owners Corporation has resolved pursuant to special by-law 60 to grant its approval for you to carry out major renovations within lot 51, as per your application dated 21<sup>st</sup> July 2020.

In addition to the scheme's by-laws, the conditions of approval require that you are responsible:

1. To read and understand the provisions of the scheme's by-laws, particularly any by-laws specifically relating to renovations.
2. To read and understand all instructions/conditions for approval provided by the Strata Committee/Owners Corporation which will be detailed in the minutes or this letter of approval.
3. Where necessary, to obtain consent from any government or other authority for the renovations
4. To instruct your contractors to protect the common areas, particularly lifts, hallways and stairs for the duration of the work including the placement of drop sheets, mats and the like.
5. To instruct your contractors to clean all common areas daily.
6. To instruct your contractors to cooperate with approved working times. Where not specified in the by-laws, approved working times are typically:
  - Monday to Friday 7.00am to 5.00pm
  - Saturday 8.00am to 4.00pm (no demolition/noisy work on Saturdays)
  - Sunday & public holidays No work permitted
7. To circulate notices to neighbours informing them of the arrangements you have made with your contractor with a copy on any noticeboards:
  - The work commencement and anticipated completion
  - The days that noisy work will occur (eg, demolition)
  - Daily work times
  - Rubbish, delivery & parking arrangements
  - Contact number for issues
8. To inform our office in writing once the works have been completed.

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

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

Yours faithfully,  
**CONTI STRATA**



**TARA WELCH**  
**ASSISTANT STRATA MANAGER**

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**Special By-law 66: Lot 51 Renovation Works****Operation of by-law**

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

**Definitions**

4. In this by-law, unless the context otherwise requires:
  - (a) **Act** means the *Strata Schemes Management Act, 2015*.
  - (b) **Authority** means any government, semi government, statutory, public or other authority having any jurisdiction over the Lot or the Building including the Council.
  - (c) **Building** means the building situated at 21 Mckell Street, Birchgrove
  - (d) **Council** means Inner West Council.
  - (e) **Insurance** means:
    - (i) contractors all risk insurance (including public liability insurance) in the sum of \$10,000,000;
    - (ii) workers compensation insurance; and
    - (iii) insurance required under the *Home Building Act, 1989* (if any).
  - (f) **Lot** means lot 51 in strata scheme 62555.
  - (g) **Owner** means the owner or owners of the Lot.
  - (h) **Owners Corporation** means The Owners – Strata Plan No. 62555.
  - (i) **Plans** means the following plans, documents, drawings and images for the works which are attached to this by-law and/or the minutes of the meeting at which this by-law is considered:
    - i. Plans titled DA8,10,11,12,13,14 & 15, a copy of which were tabled at the meeting at which this by-law was passed and which may be attached to this by-law.; and
    - ii. document titled "Finishes schedule" by Those Architects, dated 3 July 2019.
  - (j) **Works** means the Owner's renovation works to the Lot and the common property to be carried out for and in connection with:
    - i. the upgrading of the existing courtyard located at the rear part of the Lot as set out in the Plans;
    - ii. Reduced area of second level addition and curved roof;
    - iii. the removal of existing walls and construction of new walls throughout the Lot as set out in the Plans;
    - iv. the removal of existing laundry fittings and fixtures and replacement with new laundry fittings and fixtures;
    - v. the removal of existing laundry wall tiles and floor tiles and replacement with new laundry wall tiles and floor tiles including the installation of a new waterproofing membrane;
    - vi. the reconfiguration of the existing kitchen and living room parts of the Lot as set out in the Plans including the installation of new fittings and fixtures and hatch to allow access to the new wine cellar;
    - vii. the removal of existing floor coverings in the kitchen and living room parts of the Lot and replacement with new floor coverings including the installation of soundproofing acoustic underlay;
    - viii. the installation of new windows in bedroom 1, 2 and 3 parts of the Lot;
    - ix. the construction of a new study nook on the first floor part of the Lot including the installation of a new window;
    - x. the construction of an attic within the common property roof space immediately above bedroom 1 part of the Lot;
    - xii. the construction of a new bedroom and bathroom within the existing common property roof space including the installation of new bathroom new fittings and features, bathroom wall tiles and floor tiles and a new waterproofing membrane;
    - xiii. the installation of new windows to the common property wall adjoining the courtyard part of the Lot; and
    - xiv. the removal of existing first floor bathroom wall tiles and floor tiles, fixtures and fittings, and replacement with new bathroom wall tiles and floor tiles, fixtures and fittings (including the installation of a new waterproofing membrane) in the new bathroom location as set out in the Plans,  
as set out in the Plans together with:
      - (A) ancillary works to facilitate the works referred to above; and

- (B) restoration of lot and common property (including the Lot) damaged by the works referred to above,  
and to be conducted strictly in accordance with the Plans and the provisions of this by-law.
5. In this by-law, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
  - (b) any gender includes the other gender;
  - (c) any terms in the by-law will have the same meaning as those defined in the Act;
  - (d) references to legislation include references to amending and replacing legislation;
  - (e) references to the Owner in this by-law include any of the Owner's executors, administrators, successors, permitted assigns or transferees;
  - (f) references to any Works under this by-law include any ancillary equipment and fittings whatsoever and any obligation under this by-law applies to all such ancillary equipment and fittings.

**Conditions**

6. Before the Works commence, the Owner must:
- (a) obtain all necessary approvals from any Authority and provide a copy to the Owners Corporation;
  - (b) provide the Owners Corporation's nominated representative(s) access to inspect the Lot within forty-eight hours of any request from the Owners Corporation;
  - (c) provide the Owners Corporation with a certification from a suitably qualified engineer as to the wall removal aspects of the Works;
  - (d) effect and maintain Insurance and provide a copy to the Owners Corporation (if requested by the Owners Corporation); and
  - (e) pay the Owners Corporation's reasonable costs in preparing, making and registering this by-law (including legal and strata management costs).
7. To be compliant under this by-law, the Works (if approved) must:
- (a) be in keeping with the appearance and amenity of the Building in the reasonably held opinion of the Owners Corporation;
  - (b) be manufactured and designed to specifications for domestic use;
  - (c) comply with the provisions of the Building Code of Australia and Australian Standards (where relevant);
  - (d) comply with the *Home Building Act, 1989* (where relevant); and
  - (e) comprise materials that are new and suitable for the purpose for which they are used.
8. To be compliant under this by-law, the floor coverings (if approved) must:
- (a) not disturb the peaceful enjoyment of owners and occupiers of other lots lawfully using others lots and the common property; and
  - (b) achieve an acoustical star rating of 5 stars or better, according to the Guideline for Apartment and Townhouse Acoustic Rating published by the Australian Association of Acoustical Consultants.
9. While the Works are in progress the Owner of the Lot must:
- (a) use duly licensed employees, contractors or agents to conduct the Works;
  - (b) ensure the Works are conducted in a proper and workmanlike manner and comply with the relevant building codes and standards;
  - (c) ensure that the Works are carried out expeditiously and with a minimum of disruption;
  - (d) only carry out the Works at times reasonably approved by the Owners Corporation;
  - (e) perform the Works within three (3) months of their commencement or such other period as reasonably approved by the Owners Corporation;
  - (f) transport all construction materials, equipment and debris in the manner described in this by-law and as otherwise reasonably directed by the Owners Corporation;
  - (g) protect all affected areas of the Building outside the Lot from damage relating to the Works;
  - (h) ensure that the Works do not interfere with or damage the common property or the property of any other lot owner other than as approved in this by-law and if this occurs the Owner must rectify that interference or damage within a reasonable period of time;
  - (i) provide the Owners Corporation's nominated representative(s) access to inspect the Lot within forty-eight (48) hours of any request from the Owners Corporation; and
  - (j) not vary or increase the scope of Works approved under this by-law without first obtaining the consent in writing from the Owners Corporation.
10. After the Works have been completed, the Owner must:
- (a) notify the Owners Corporation that the Works have been completed;
  - (b) notify the Owners Corporation that all damage, if any, to lot and common property caused by the Works and not permitted by this by-law has been rectified;
  - (c) provide the Owners Corporation's nominated representative(s) access to inspect the Lot within forty-eight (48) hours of any request from the Owners Corporation to assess compliance with this by-law or any consents provided under this by-law from time to time;

- (d) provide the Owners Corporation with a certification from a suitably qualified structural engineer as to the structural integrity of the Works and that the Works have been performed in accordance with the Plans; and
  - (e) provide the Owners Corporation with a copy of any certificate or certification required by an Authority to approve the Works.
11. The Owners Corporation's right to access the Lot arising under this by-law expires as soon as it is reasonably satisfied that the provisions of Clauses 9 and 10 above have been complied with.
12. The Owner:
- (a) must not carry out any alterations or additions or do any works (other than Works expressly approved under this by-law);
  - (b) must properly maintain and upkeep the Works;
  - (c) must ensure that the Works and their use do not contravene any statutory requirements of any Authority;
  - (d) must maintain and upkeep those parts of the common property in immediate contact with the Works;
  - (e) must ensure that the Works (where applicable) do not cause water escape or water penetration to lot or common property;
  - (f) must comply with all directions, orders and requirements of any Authority relating to the Works and their use;
  - (g) remains liable for any damage to lot or common property (including the Lot) arising out of the Works;
  - (h) must comply with all directions, orders and requirements of any Authority and the reasonable directions of the Owners Corporation relating to Works; and
  - (i) indemnifies and shall keep indemnified the Owners Corporation against any costs or losses arising out of or in connection with the Works including their use and including but not limited to any loss of soundproofing caused by the performance of the Works.
13. If the Owner fails to comply with any obligation under this by-law, then the Owners Corporation may:
- (a) carry out all work necessary to perform that obligation;
  - (b) enter upon any part of the Lot to carry out that work; and
  - (c) recover the costs of carrying out that work from the Owner as a debt (and include reference of that debt on levy notices and any other levy reports or information) and the Owner acknowledges that any debt for which the Owner is liable under this by-law, is due and payable on written demand or at the direction of the Owners Corporation and, if not paid at the end of 1 month from the date on which it is due, will bear until paid, simple interest at an annual rate of 10 per cent or, if the regulations provide for another rate, that other rate and the interest will form part of that debt.
14. The Works will always remain the property of the Owner
15. In the event that the Owner desires to remove the Works, the provisions of Clauses 9-12 will apply.

## Part 1 – Application

### Owner Details:

Strata Plan: 62555	Unit number & Address: 21 MCKELL STREET, BIRCHGROVE
Name: SHAYNE FEGENT	Phone:
Email:	

### Renovation Details:

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

AMENDMENT TO AN APPROVED APPLICATION ON 19TH AUGUST 2019.  
A REDUCTION IN SCOPE TO THE ALREADY APPROVED STRATA PLANS.  
SUMMARY OF REDUCTIONS:  
- REMOVAL OF STORAGE BASEMENT.  
- REDUCED AREA OF SECOND LEVEL ADDITION.  
- A CURVED ROOF TO SECOND LEVEL ADDITION INSTEAD OF A FLAT ROOF.  
REFER DRAWING SET FOR FULL DETAILS.

Proposed commencement date (approximate): 2021	Expected duration of works 9 MONTHS
Proposed method of removing trade waste & debris: VIA MCKELL STREET	
Proposed method of delivering materials: VIA MCKELL STREET	
Proposed method of contractor parking: EXISTING DRIVEWAY	

### Checklist:

I have attached:

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

I understand that it is my responsibility to:

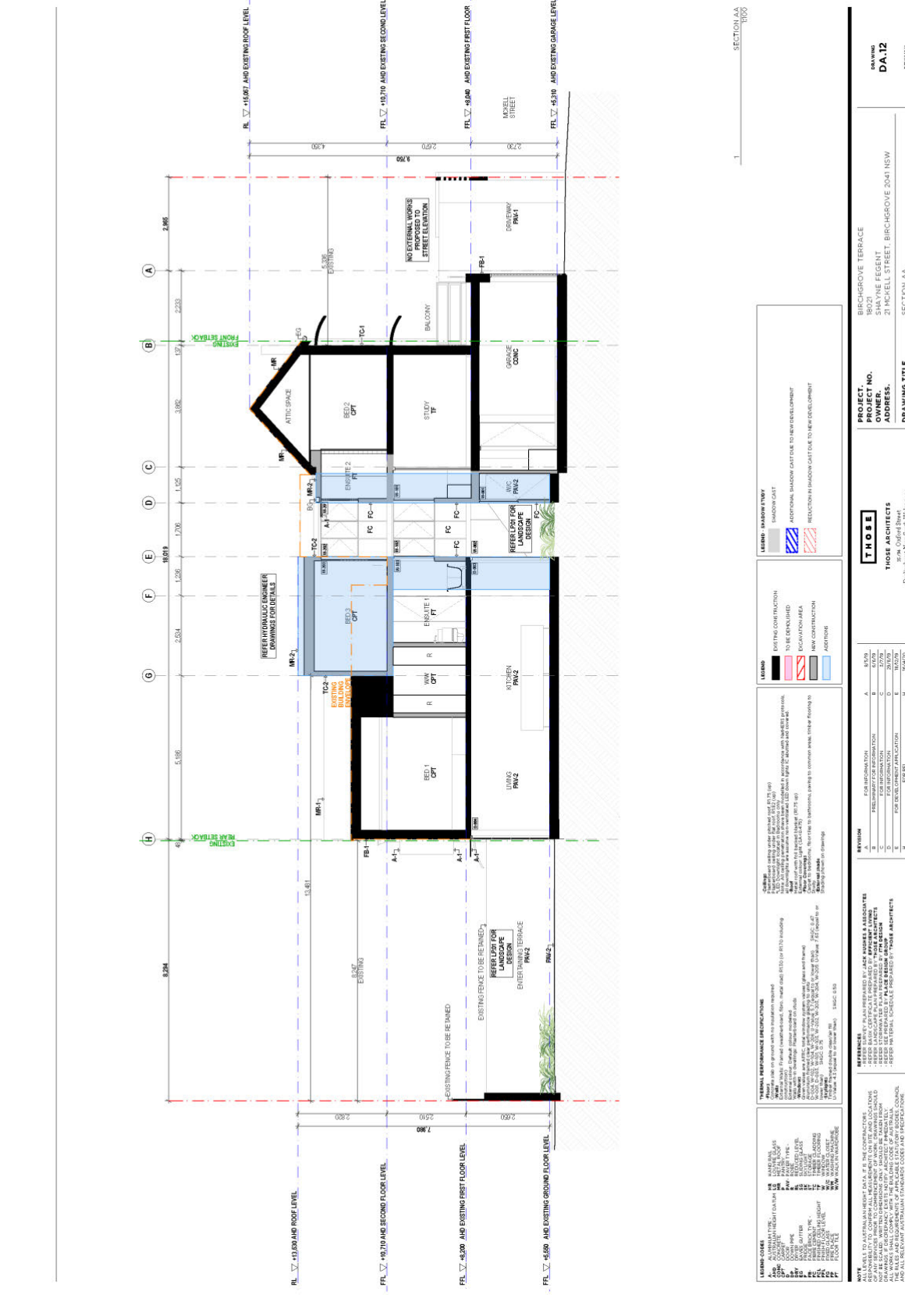
- Engage suitably qualified, licensed and insured contractors
- Notify the Strata Committee of any changes to the proposed contractor and work times
- Circulate notices to my neighbours informing them of the work times, rubbish, delivery & parking arrangements
- Ensure the contractor protects the common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

### This form was completed by:

Name: SHAYNE FEGENT	Signature: 	Date: 1/7/20
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**LEGEND - CORE**

- US: UNITS TO BE CONSTRUCTED
- AS: AS SHOWN
- RE: REFERENCE TO REFERENCE DRAWING
- CB: CHECKED BY
- CO: CHECKED ON
- CP: CHECKED DATE
- PR: PREPARED BY
- ST: DRAWING TITLE
- FR: DRAWING NUMBER
- FL: DRAWING SCALE
- SW: DRAWING SHEET

**LEGEND - PERFORMANCE SPECIFICATIONS**

Reference to R-Value in insulation required

Reference to U-Value in window and door required

Reference to Solar Heat Gain Coefficient (SHGC) in window and door required

Reference to Visible Light Transmittance (VLT) in window and door required

Reference to Acoustic Insulation Class (AIC) in wall and ceiling required

Reference to Sound Absorption Coefficient (SAC) in room required

Reference to Sound Absorption Product (SAP) in room required

Reference to Sound Absorption Index (SAI) in room required

Reference to Sound Absorption Coefficient (SAC) in room required

Reference to Sound Absorption Product (SAP) in room required

Reference to Sound Absorption Index (SAI) in room required

**LEGEND - SHADOW CAST**

- SHADOW CAST: TO BE DETAILED
- ADDITIONAL WINDOW CATEGORY TO NEW DEVELOPMENT
- REDUCTION IN WINDOW CATEGORY TO NEW DEVELOPMENT

**LEGEND**

- EXISTING CONTRACTION
- TO BE DEMOLISHED
- EDUCATION AREA
- NEW CONTRACTION
- ADDITONS

**REVISION**

NO.	REVISION	DATE
A	REVISED	
B	PREPARED FOR INFORMATION	
C	FOR INFORMATION	
D	FOR INFORMATION	
E	FOR INFORMATION	
F	FOR INFORMATION	
G	FOR INFORMATION	
H	FOR INFORMATION	
I	FOR INFORMATION	

**REFERENCES:**

- AS/NZS 1530.1:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.2:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.3:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.4:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.5:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.6:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.7:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.8:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.9:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.10:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.11:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.12:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.13:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.14:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.15:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.16:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.17:2016 FIRE RATING OF BUILDINGS
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- AS/NZS 1530.20:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.21:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.22:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.23:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.24:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.25:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.26:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.27:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.28:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.29:2016 FIRE RATING OF BUILDINGS
- AS/NZS 1530.30:2016 FIRE RATING OF BUILDINGS

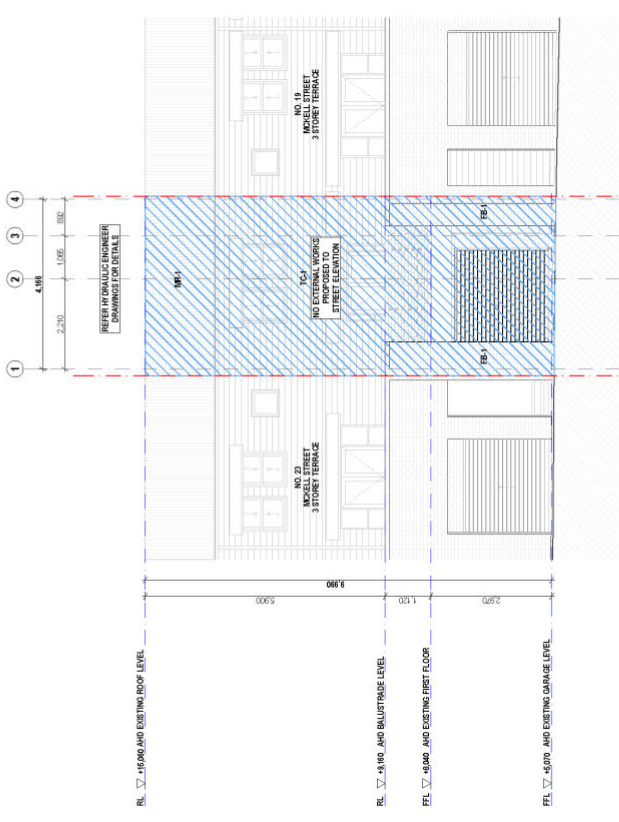
**LEGEND - THOSE**

**THOSE ARCHITECTS**

Dr. A. O'Connell Architects  
 21 MCKELL STREET, BIRCHHOVE 2041 NSW  
 Email: info@thosearchitects.com.au  
 Telephone: +61 2 945 331 461

**PROJECT NO.** BIRCHHOVE TERRACE  
**OWNER:** SHAYNE FEGENT  
**ADDRESS:** 21 MCKELL STREET, BIRCHHOVE 2041 NSW  
**DRAWING TITLE:** SECTION AA  
**SCALE:** 1:100 AT A3  
**DRAWN / CHECKED:** LH / BH  
**ISSUED:** FOR RFI

**SECTION AA**  
**1000**



TERMINAL PERFORMANCE SPECIFICATION		LENO	
<b>GENERAL</b>	Consistent with the specification.	<b>EXISTING CONSTRUCTION</b>	
<b>PERFORMANCE</b>	Consistent with the specification.	<b>TO BE DEMOLISHED</b>	
<b>CONSTRUCTION</b>	Consistent with the specification.	<b>RENOVATION AREA</b>	
<b>MATERIALS</b>	Consistent with the specification.	<b>NEW CONSTRUCTION</b>	
<b>DETAILS</b>	Consistent with the specification.	<b>EXISTING</b>	



TERMINAL PERFORMANCE SPECIFICATION		LENO	
<b>GENERAL</b>	Consistent with the specification.	<b>EXISTING CONSTRUCTION</b>	
<b>PERFORMANCE</b>	Consistent with the specification.	<b>TO BE DEMOLISHED</b>	
<b>CONSTRUCTION</b>	Consistent with the specification.	<b>RENOVATION AREA</b>	
<b>MATERIALS</b>	Consistent with the specification.	<b>NEW CONSTRUCTION</b>	
<b>DETAILS</b>	Consistent with the specification.	<b>EXISTING</b>	

**NOTE:** THE ARCHITECT'S INTENT IS TO PROVIDE THE CLIENT WITH THE BEST POSSIBLE DESIGN AND CONSTRUCTION. THE CLIENT IS ADVISED THAT THE DESIGN AND CONSTRUCTION OF THE BUILDING IS SUBJECT TO THE APPROVAL OF THE LOCAL AUTHORITY AND THE CLIENT IS ADVISED THAT THE ARCHITECT'S INTENT IS TO PROVIDE THE BEST POSSIBLE DESIGN AND CONSTRUCTION. THE ARCHITECT'S INTENT IS TO PROVIDE THE BEST POSSIBLE DESIGN AND CONSTRUCTION.

**REFERENCES:** ARCHITECTURAL DESIGN AND CONSTRUCTION. ARCHITECTURAL DESIGN AND CONSTRUCTION. ARCHITECTURAL DESIGN AND CONSTRUCTION. ARCHITECTURAL DESIGN AND CONSTRUCTION.

REVISION	DESCRIPTION
A	FOR APPROVAL
B	FOR APPROVAL
C	FOR APPROVAL
D	FOR APPROVAL
E	FOR APPROVAL
F	FOR APPROVAL
G	FOR APPROVAL
H	FOR APPROVAL
I	FOR APPROVAL

**THORSE ARCHITECTS**  
 Duong Viet Thanh, Daniel Tran, Phuong Tran, Khanh Tran, Minh Tran, Thuy Tran, Viet Tran, Linh Tran, Hoa Tran, My Tran, Nhi Tran, Tam Tran, Thu Tran, Van Tran, Vy Tran, Vy Tran, Vy Tran.  
 Telephone: +61 (0)2 8412 2222 / +61 (0)2 8412 2222  
 www.thorsearchitects.com.au

**PROJECT:** BIRCHCROVE TERRACE  
**PROJECT NO.:** 18020  
**OWNER:** SHAYNE FEGERT  
**ADDRESS:** 21 MCCELL STREET, BIRCHCROVE NSW  
**DRAWING TITLE:** SOUTHERN + NORTHERN ELEVATIONS  
**DRAWN / CHECKED:** LH / BA  
**ISSUED:** FOR RFI

**DRAWING DA.14**  
**REVISION I**