






INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2020/1051
Address	15-27 McKell Street BIRCHGROVE NSW 2041
Proposal	Alterations and additions to existing townhouses at Nos. 15-27 Mckell Street
Date of Lodgement	22 December 2020
Applicant	Mrs Melissa R Hobbs
Owner	The Owners of Strata Plan No 62555
Number of Submissions	Nil
Value of works	\$505,750.00
Reason for determination at Planning Panel	Site Coverage variation greater than 10% within Strata Scheme
Main Issues	Site Coverage development standard variation Heritage / Streetscape impacts
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards
Attachment D	Statement of Heritage Significance



LOCALITY MAP

Subject Site		Objectors		 N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to existing townhouses at Nos. 15, 17, 19, 21, 23, 25 & 27 McKell Street, Birchgrove with a Strata Scheme at 1-43 McKell Street, Birchgrove.

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

The main issues that have arisen from the application include:

- Site Coverage variation greater than 10% within a Strata Scheme
- Heritage and Streetscape issues.

As discussed later in this report, subject to a design change condition as recommended to address outstanding streetscape and heritage concerns, the proposal is considered acceptable as it complies with the aims and objectives of the *Leichhardt Local Environmental Plan 2013* and a Clause 4.6 exception was submitted to Council to vary each development standard which are satisfactory and supportable. On this basis, approval of the application is recommended subject to conditions.

2. Proposal

The proposal involves the following alterations and additions to the existing townhouses at Nos. 15, 17, 19, 21, 23, 25 & 27 McKell Street, Birchgrove:

Ground floor level

- Widening of the existing driveway entrance to No. 21 McKell Street by removing portions of the existing brick on either sides of the wall.

First floor level

- Removal of existing awnings on the southern elevation and replace with new steel pergola,
- Increasing the overall size of the existing first floor deck fronting McKell Street and to be above the existing driveways for Nos. 15, 17, 19, 21, 23, 25 & 27 McKell Street,
- New privacy screens to the eastern and western ends of the proposed timber deck area for all the townhouses (Nos 15, 17, 19, 21, 23, 25 & 27 McKell Street),
- Replace existing windows and door and remove wall nibs to Nos. 15, 17, 19, 21, 23, 25 & 27 McKell Street with new windows and doors.
- Remove portions of the existing brick wall on the Street (South Western) elevation and insert metal balustrades to Nos. 15-27 McKell Street.
- Demolition of the perforated brick wall above the driveway of No. 21 McKell Street.

Second floor level

- Existing Perspex awnings to be removed and replaced with new awnings to Nos. 15-27 McKell Street on the Street (south western) Elevation.
- Remove and replace the existing windows on the Street (South Western) elevation with larger windows.

3. Site Description

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

The specific strata-titled lot (Lot 4 SP 62555) within the overall site that is the subject of this application is 815sqm in area and has a frontage of approximately 31 metres to McKell Street. It currently accommodates a three-storey terraced house, with similar terraced houses located in the row.

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

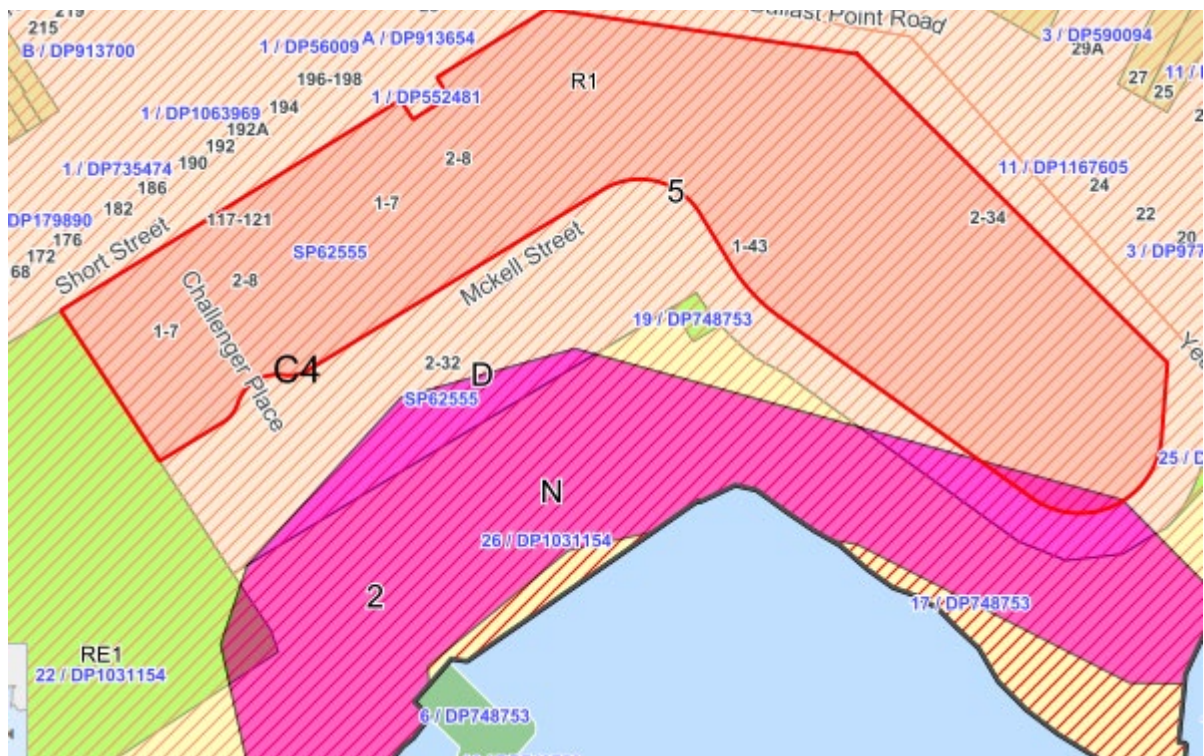


Figure 2: R1 – General Residential Zone – Heritage Conservation Area

4. Background

4(a) Site history

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

Subject Site (17-25 McKell Street)

Application	Proposal	Decision & Date
D/2019/423	Alterations and Additions to two existing terraces, combining them into one residence. Construction of new interior spaces, lift and roof top terrace at No.23-25 McKell Street.	Approved 04/07/2020
D/2020/4	Alterations and additions to an existing including a second-floor addition and associated works at 21 McKell Street.	Approved 13/10/2020
D/2012/487	Alterations and additions to existing dwelling at ground, first and second floor at No. 27 McKell Street.	Approved 04/12/2012
M/2013/40	Section 96 modification of D/2012/487 which approved alterations and additions to the existing dwelling. Modification consists of an extension to the front of the dwelling at No. 27 McKell Street.	Approved 02/05/2013

Recent Surrounding Property History

Application	Proposal	Decision & Date
DA/2020/0797	Alterations and additions to existing attached dwelling and associated works, including plunge pool and tree removal at 8 Yeend Street Birchgrove.	Approved 23/02/2020
D/2015/414	Alterations and additions to the existing townhouse, including changes to the internal layout, fenestration and extension at second-floor level. Variation to the Floor Space Ratio development standard at No. 5 McKell Street.	Approved 13/10/2015
D/2017/292	Alterations and additions to dwelling including additional floor at No. 14 McKell Street.	Approved 14/11/2017
M/2018/199	Modification of D/2017/292 seeking internal layout modifications to the ground, first and second floors. No external changes are proposed at No. 14 McKell Street.	Approved 06/12/2018

4(b) Application history

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

Date	Discussion / Letter / Additional Information
23/02/2021	Council request for additional/ amended information to address heritage issues.
25/02/2021	Applicant's representative email response requesting a meeting.
01/03/2021	Council respond to the Applicant's representative advising that the original heritage referral comments will be reviewed. Applicant's representative provides additional comments and an urban analysis of the streetscape to be reviewed as part of the heritage review.
16/03/2021	Applicant's representative provides an email from the original architect, Ken Maher, advising that they agree with the proposed design subject to two minor amendments to the window alterations on the second level and the amount of brick parapet removal.
18/03/2021	Council response to the Applicant's representative, advising that the proposal is acceptable on streetscape and heritage grounds subject to changes which could be conditioned. An updated Clause 4.6 request for Site Coverage was also sought.

22/03/2021	Applicant's representative seeks clarification regarding the brick parapet façade design change requirements.
23/03/2021	Council receives updated Clause 4.6 request to Site Coverage breach and responds to enquiry regarding Site Coverage standard.
24/03/2021	Applicant's representative responds to Council's heritage review questioning the requirements regarding windows.

5. Assessment

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

5(a) Environmental Planning Instruments

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

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

The following provides further discussion of the relevant issues:

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

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

The site has been used in the past for activities which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with *SEPP 55* as no earth works are being proposed.

5(a)(ii) *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*

BASIX Certificates for Nos. 15, 17, 19, 21, 23, 25 & 27 McKell Street were submitted with the application and will be referenced in any consent granted.

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

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

5(a)(iv) 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
- Clause 4.3A - Landscaped areas for residential accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.4A - Exception to maximum floor space ratio for active street frontages
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 5.10 - Heritage Conservation
- Clause 6.3 - Flood Planning
- Clause 6.4 - Stormwater management

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

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

The development is permitted with consent within the zone. The development is consistent with the objectives of the R1 - General Residential zone, subject to appropriate conditions.

(ii) Clause 2.7 – Demolition

Clause 2.7 of the *LLEP 2013* states that the demolition of a building or work may be carried out only with development consent. The application seeks consent for demolition works. Council’s standard conditions relating to demolition are included in the recommendation.

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

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

Note: The calculations below are for all the townhouses (Nos. 15, 17, 19, 21, 23, 25 & 27) at Block G within Strata Plan SP62555 with a combined site area of 815sqm. This, however, does not include the overall allotment of 1-43 McKell Street which is very large at approximately 17,230 sqm.

No. 15 McKell	Existing	Proposal	Non-compliance	Complies
Site Coverage Maximum permissible: 60% or 627.2sqm	61.29% or 68.64sqm	66.79% or 74.8sqm	11.31% or 7.6sqm	No
No. 17 McKell	Existing	Proposal	Non-compliance	Complies
Site Coverage Maximum permissible: 60% or 70.2sqm	56.92% or 66.6sqm	66.32% or 77.6sqm	10.54% or 7.4sqm	No
No. 19 McKell	Existing	Proposal	Non-compliance	Complies

Site Coverage Maximum permissible: 60% or 72sqm	58.67% or 70.4sqm	67.92% or 81.5sqm	13.19% or 9.5sqm	No
No. 21 McKell	Existing	Proposal	Non-compliance	Complies
Site Coverage Maximum permissible: 60% or 78.012sqm	58.31% or 75.81sqm (Approved under D/2020/4)	62.38% or 81.11sqm	3.97% or 3.098sqm	No
Nos. 23-25 McKell	Existing	Proposal	Non-compliance	Complies
Site Coverage Maximum permissible: 60% or 145.2sqm	59.34% or 143.6sqm (Approved under D/2019/423)	67.90% or 164.32sqm	13.17% or 19.12sqm	No
No. 27 McKell	Existing	Proposal	Non-compliance	Complies
Site Coverage Maximum permissible: 60% or 65.4sqm	69.72% or 76sqm	74.68% or 81.4sqm	13.46% or 16sqm	No

Entire Strata Scheme 1-43 McKell Street

Standard	Proposal	Non-compliance	Complies
Floor Space Ratio Maximum permissible: 0.7:1 or 10338sqm	No change to existing	Un-able to confirm	No
Landscape Area Minimum permissible: 20% or 3446sqm	No change to existing	Un-able to confirm	No

The following provides further discussion of the relevant issues:

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

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

Although the true extent of exceedance of the development standards is not known, given its multi-unit nature and fragmented ownership, Council and the proponent agree that the development will require a Clause 4.6 request to contravene the applicable development standards of the LEP, even though the proposal does not alter the existing FSR and Landscaped Area development standards.

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

- (iv) Clause 4.6 Exceptions to Development Standards

As stated above, whilst the proposal (calculated for the individual strata lot) does not amend the existing non-compliance with the landscaped areas and floor space ratio and will further breach the existing site coverage development standards. As the subject property is part of a strata subdivision for an existing housing estate, there are no records of the existing overall landscaped areas, site coverage and floor space ratio for the Strata lot as a whole, and as a consequence, it is assumed that the proposal results in a breach of the following development standards when applied to the entirety of the Strata lot:

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

Written requests have been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the Leichhardt Local Environmental Plan 2013, justifying the proposed contraventions, which is summarised as follows:

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

- Strict Compliance with the Site Coverage control would require demolition of existing structures that are included within the definition of Site Coverage. It would also mean that the subject sites could not be developed in line with approvals for similar structures in the immediate vicinity of the site. Given that the existing Site Coverage on the site is the product of the original approval for the overall complex and recent approvals for alterations and additions to individual lots, such action seems unreasonable- the non-compliance has been approved by the council.
- Dwellings that have had approvals resulting in an increase in site cover include:
 - 7,9,11 & 13 McKell St.
 - 27 McKell St
 - 2 McKell St
 - 4 McKell St
 - 6,8,10 & 12 McKell St
 - 14 McKell St
 - 30 & 32 McKell St
 - 2 & 4 Lizzie Webber Place
 - 5 Challenger Place
 - 6 Challenger Place
 - 7 Challenger Place
- Since the gazettal of Leichhardt Council LEP 2013, Inner West Council have continued to approve increases in site coverage to dwellings within the strata- these approvals include those for 2 & 14 McKell St & 6 Challenger Place. All of these approvals suggest Council have abandoned strict adherence to the Site Coverage control in their assessment of the suitability of proposals within this strata. This includes approved alterations & additions to 27 McKell St which is included in this application.
- Existing open space on 4 of the 7 townhouse sites has previously been assessed as suitable by council via approvals for alterations & additions to 21, 23, 25 & 27 McKell St, & that the decks contributing to an increase in site cover are located above a space already partially enclosed along the front façade by a solid wall, and are located above an existing concrete hardstand.
- Strict compliance with the Site Coverage control would make no material difference to the locality, as the proposed works are located above an existing hardstand & located partially behind an existing brick wall. As evidenced elsewhere within this report council have not raised any issues with the existing open space of the site in previous

applications & used other applicable planning controls in their assessment of proposals within SP62555. This proposal is the same.

- There is no change proposed to the area or layout of the existing rear courtyards of each dwelling, including changes to existing landscaping. These private courtyards are directly accessible from the Ground Floor living rooms of each dwelling for private use. The area of private open space for each dwelling greatly exceeds the minimum 16sqm required by the DCP.
- The proposal meets the requirements of the DCP controls for the locality. It does not unduly overshadowing any neighbouring property. Views & privacy of neighbouring properties are also unaffected by the proposal.
- There is no increase in height, bulk or FSR,
- The proposal has no negative effect on the conservation zone & is consistent with the desired future character of the locality.

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

It is considered the development is in the public interest because it is consistent with the objectives of the R1 – General Residential zone, in accordance with Clause 4.6(4)(a)(ii) of the Leichhardt LEP for the following reasons:

- The proposal will provide additional housing for the community and contribute to the variety of housing types and densities of the area.
- The proposal is permissible development and compatible with surrounding land uses;
- The proposal will improve opportunities to work from home.
- The proposed development as condition will be compatible with the desired future character of the area in relation to building bulk, form and scale, and will have acceptable streetscape impacts.
- The proposal maintains a suitable balance between the existing landscaped areas and the built form and provides more than sufficient landscaped area and private open space on the site.
- The proposed additions and works are located adjacent to adjoining developments where it can be reasonably assumed that development can occur; and
- The proposal does not result in any adverse unacceptable amenity impacts to the surrounding properties.

It is considered that the development is in the public interest because it is consistent with the objectives of the Site Coverage development standard in accordance with Clause 4.6(4)(a)(ii) of the Leichhardt LEP for the following reasons:

- The proposal does not alter the existing Landscaped Areas that are suitable for substantial tree planting and for the use and enjoyment of residents;
- The proposal maintains the Landscaped Areas at the rear, and therefore, maintains the landscaped corridor at the rear of each townhouse;
- The development provides a suitable balance between landscaped areas and the built form; and
- The development, as proposed and as conditioned, is compatible with the desired future character of the area in relation to building bulk, form and scale.

Clause 4.3A(3)(a) – Landscaped Areas for residential accommodation in Zone R1

The applicant relies upon Clause 4.6 of LLEP 2013 for a variation to this standard as the Landscaped Area is currently in breach, however, is unchanged as part of the proposal.

- Strict Compliance with the Landscaped Area control would require demolition of existing structures that are included within the definition of Site Coverage, as well as existing hard paved areas, in order to reduce the site cover across the Strata Site & then landscape a portion of these areas. Given that the existing landscaped area across the site results from the initial building approval & more recent approvals by council for individual lots, such action is unreasonable & unnecessary.
- Contrary to this option, since the gazettal of Leichhardt Council LEP 2013, Council have continued to approve additional building footprint to dwellings within the strata, including 2 McKell St, 14 McKell St & 2 Lizzie Webber Place & 6 Challenger Place. Council have not conditioned reductions in the existing building footprints with any of these approvals. These approvals suggest Council have abandoned strict adherence to the control in their assessment of the suitability of proposals within this strata.
- In addition, the works proposed in this current application are for changes to the existing façade, & for additions to existing decks which are located above existing hard paved area. As such, these works are not strictly even related to an assessment on Landscape Area as no change to the existing open space ratio on the site is proposed.
- Strict compliance with the Landscaped Area control would make no material difference to the locality, as the proposed works do not change the existing Landscaped Area on any of the 7 sites forming this application. As evidenced elsewhere within this report Council have not raised any issues with the existing Landscaped Area of the site in previous applications & have used other applicable planning controls in their assessment of proposals within SP62555. This proposal is the same.
- All of the 7 dwellings maintain existing landscaping & mature trees within the existing rear courtyards, and all have private open space greatly exceeding the minimum requirements of the DCP.
- The proposal meets the requirements of the DCP controls for the locality. It does not unduly overshadowing any neighbouring property. Views & privacy of neighbouring properties not included in this application are unaffected by the proposal. There is no increase in height, bulk or FSR.
- The proposal is in keeping with previously approved alterations to the facades of adjacent dwellings with the strata, & utilizes existing materials & forms of these surrounding dwellings for the proposed façade amendments. As such, the proposal has no negative effect on the conservation zone & is consistent with the desired future character of the locality.
- Treated as individual lots, 6 of the 7 dwellings comply with the open space control if not the Landscaped area control. The non-compliance of No. 27 McKell St was previously approved by Council.
- The site of the 7 dwellings is located directly across the road from Mort Bay Park. The existing extensive trees in the vicinity of the subject site result in the buildings being viewed in a landscape setting despite the relatively high density of the locality.

It is considered the development is in the public interest because it is consistent with the objectives of the zone, as set out above.

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

- The development, as proposed and as conditioned, is compatible with the desired future character of the area in relation to building bulk, form and scale;
- The development provides a suitable balance between landscaped areas and the built form to each townhouse on the site;
- The development is acceptable with regard to the bulk and scale of the building; and

- The proposal does not seek to alter the existing situation/non-compliance to the Landscaped Area on the site.

Clause 4.4 – Floor Space Ratio

- Strict Compliance with the FSR control would require demolition of existing structures that are included within the definition of Gross Floor Area in order to reduce the FSR across the site. Given that the existing FSR on the site is the product of the original approval for the entire complex + recent approvals for alterations and additions to individual lots, such action seems unreasonable - the non-compliance has been approved by the Council. Conversely, since the gazettal of Leichhardt Council LEP 2013, Inner West Council has continued to approve additional floor area to dwellings within the strata. These approvals suggest Council have abandoned strict adherence to the FSR control in their assessment of the suitability of proposals within this strata. This includes approved alterations & additions to 4 of the 7 dwellings which are the subject of this application - 21, 23, 25 & 27 McKell St.
- Strict compliance with the FSR control would make no material difference to the locality, as the proposed works do not change the existing floor space ratio. As evidenced elsewhere within this report council have not raised any issues with the existing FSR of any of the dwellings within the strata site.
- The proposed works are external and to the facades, and therefore, are not technically even included with the definition of Gross Floor Area. As such, it can be argued that discussion about FSR is in fact irrelevant to this proposal, and that other planning controls are applicable to an assessment of the proposal.
- The proposal meets the requirements of the DCP controls for the locality. It does not unduly overshadowing any neighbouring property. Views and privacy of neighbouring properties are also unaffected by the proposal. The proposal has no negative effect on the conservation zone, and the changes to the facades are in keeping with both the existing design language of the complex as well as approved alterations to facades of adjacent dwellings within the same complex. The proposal is consistent with the desired future character of the locality.

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

It is considered the development is in the public interest because it is consistent with the objectives of the zone, as set out above.

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

- The development, as proposed and as conditioned, is compatible with the desired future character of the area in relation to building bulk, form and scale;
- The development provides a suitable balance between landscaped areas and the built form; and
- The development is acceptable with regard to the bulk and scale of the building.
- The proposal does not seek to alter the existing situation/non-compliance to the FSR.

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

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the Leichhardt Local Environmental Plan. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the floor space ratio, landscaped area and site coverage development standards, and it is recommended that the Clause 4.6 exceptions be granted.

(v) Clause 5.10 - Heritage Conservation

The subject property at 1 to 43 McKell Street, Birchgrove, are part of a contributory building located within the Town of Waterview Heritage Conservation Area Significance Heritage Conservation Area (C4 in Schedule 5 of the Leichhardt LEP 2013).

The Statement of Significance for the Town of Waterview Heritage Conservation Area attached at Appendix D to this report.

The proposal includes alterations and additions to the street (south west) elevation of 15 to 27 McKell Street. The site is part of the complex designed by architect Ken Maher. The integrity of the buildings is highly intact. The subject building contains specific architectural detailing and characteristics which contribute to the architectural composition of the site.

The following has been considered as part of the streetscape/ heritage review of the proposal by Council Heritage staff below:

- *Clause 5.10: Heritage Conservation* from the Leichhardt LEP 2013 and *Sections C1.3: Alterations and additions, C1.4: Heritage conservation areas and heritage items, C.2.2.2.5: Mort Bay Distinctive Neighbourhood* and *C2.2.2.5(a) Lower Slopes Sub Area* from the Leichhardt DCP 2013.
- A review of the proposal by the architect of the strata scheme, Ken Maher dated 14 March 2021 (also see Section 4(b) above in this regard) which is as follows:

"I am generally in support of your proposals, however it would be my preference that the windows to the second floor be retained. Some alteration to these windows may be appropriate – for example adding a third window of similar proportion to make triple window compositions to replace the doubles. I do support replacement of the perspex awnings as you propose. I also suggest for the removal of the brick parapet to accommodate the metal balustrades the sill be raised by 150mm or so to increase the dimension above the head of the openings below. And maintain the reading of the brickwork mass."

The proposal includes the demolition of the first floor decks and metal balustrades to the McKell Street (south west) façade and construction of lightweight timber decks out to the curved parapet wall for the apartments 15 to 27. It is proposed to demolish the solid curved parapet above each ground floor opening and replace with a metal balustrade on the McKell Street façade to enable views to Mort Bay Park opposite and Mort Bay from Level 1 of the apartments and the new decks.

Regarding the demolition of the curved parapet wall and replacement with metal balustrading, Council's Heritage staff have confirmed that the curved masonry parapet wall is an important part of the architectural composition, and that a greater extent of this masonry parapet should be retained, or at least more of it should be retained. As a result, Council Heritage staff have recommended that a minimum of height of 800mm of the original brick parapet be conditioned to be retained above the head of the opening below.

The construction of lightweight timber decks out to the curved parapet is generally acceptable, as this will not significantly alter the existing presentation of the development to the streetscape and its contribution to the Town of Waterview HCA. The decks will result in ancillary structures, including privacy screens, balustrades and planter boxes.

It is proposed to remove the existing Perspex and metal awnings over the windows and doors of the first and second level floors on the McKell Street facade. This is supported as per Ken Maher’s comments provided to the applicant. As such, the removal of the Perspex and metal awnings minimal impacts to the streetscape and the Town of Waterview HCA.

The proposal includes the increase in the width of the existing glazing on the first floor McKell Street facade leading to the proposed decks, replacing the existing French doors and windows with bifold doors and glass louvres. The new doors and windows are proposed to be metal framed to match the existing colour scheme. The curved parapet wall partially screen the first floor fenestration to the McKell Street façade. On this basis, the proposed changes to the door and window fenestrations are acceptable as they will have a minor impact on the aesthetics of the McKell Street façade and its contribution to the streetscape and the Town of Waterview HCA.

As noted previously in Section 4(b) of this report, during the assessment of the application, the applicant provided amended street elevation, being Drawing DA06 Option D, prepared by Evans and Green and dated March 2021 (see image below), in response Council heritage advice and the advice of Ken Maher to alter the existing windows on the second floor of McKell Street façade with a third window of similar proportion to make a triple window composition which is supported from a heritage perspective.



The proposal includes partial demolition of the existing opening to the garage at No. 21 and the demolition of the perforated brick wall above. The proposed partial demolition of the sides of the opening and the perforated brick wall above is supported but will be conditioned to be

made good with matching brick repair rather than render, so it continues to read as a brick element.

Given the above, the proposal, subject to recommended conditions to address the above, is considered acceptable from a heritage perspective as it will not detract from the heritage significance of the Heritage Conservation Area. The design changes are recommended (see Attachment A) in response to design advice from Council Heritage staff to ensure the development is in accordance with Clause 5.10 Objectives 1(a) and (b) in the Leichhardt LEP 2013 and the relevant objectives and controls in the Leichhardt DCP 2013.

(vi) Clause 6.3 - Flood Planning

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

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

(i) Clause 6.4 – Stormwater Management

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

5(b) Draft Environmental Planning Instruments

Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979*.

The amended provisions contained in the Draft IWLEP 2020, with the exception of the amended objectives of the floor space ratio development standards under Clause 4.4 of the Draft IWLEP 2020, are not relevant to the assessment of the application.

Given that the proposal seeks to contravene the FSR development standard, the written request in accordance with Clause 4.6(4)(a)(i) of the current LEP, the proposed contravention of the floor space ratio development standard has been assessed against the amended objectives as outlined in Section 5(a)(v) above and the development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

5(d) Development Control Plans

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

LDCP2013	Compliance
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	Yes
B3.1 Social Impact Assessment	Yes
B3.2 Events and Activities in the Public Domain (Special Events)	Yes

Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	Acceptable subject to conditions – Refer to Section 5(a)(iv) above.
C1.4 Heritage Conservation Areas and Heritage Items	Acceptable subject to conditions – Refer to Section 5(a)(iv) above.
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	N/A
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	N/A
C1.12 Landscaping	N/A
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	N/A
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	N/A
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	N/A
Part C: Place – Section 2 Urban Character	
C2.2.2.6 Birchgrove Distinctive Neighbourhood	Satisfactory, subject to conditions.
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	N/A
C3.3 Elevation and Materials	Yes, subject to conditions – Refer to Section 5(a)(iv)(v) above.
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	N/A
C3.6 Fences	N/A
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.10 Views	N/A
C3.11 Visual Privacy	Refer to discussion below.
C3.12 Acoustic Privacy	N/A
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A

Part C: Place – Section 4 – Non-Residential Provisions	
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	Yes
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	N/A
D2.5 Mixed Use Development	N/A
Part E: Water	
Section 1 – Sustainable Water and Risk Management	Yes
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	N/A
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	N/A
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	N/A
E1.2.4 Stormwater Treatment	Yes
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	Yes

The following provides discussion of the relevant issues:

C3.11 Visual Privacy

The proposal generally complies with this part. The proposal involves the extension and increase in overall size of the existing first floor front deck areas at Nos. 15, 17, 19, 21, 23, 25 & 27 McKell Street. Privacy screening is proposed to the eastern and western (side) ends of the portion of the decks adjacent to the pergolas. The existing doors and windows on the first and second floor level on the Street (South Western) elevation will be replaced with larger doors and window openings. As such, the following control applies of this part of the LDCP 2013 applies:

- C1 Sight lines available within 9m and 45 degrees between the living room or private open space of a dwelling and the living room window or private open space of an adjoining dwelling are screened or obscured unless direct views are restricted or separated by a street or laneway. Measures for screening or obscuring will include one or more of the following:
 - a) offsetting of opposing windows so that they do not directly face one another;
 - b) offset windows from directly facing adjoining balconies and private open space of adjoining dwellings;
 - c) screening of opposing windows, balconies and private open space with fixed louvered screens, window hoods, shutters;
 - d) reduced window areas, subject to compliance with the Building Code of Australia;
 - e) window sills at or above 1.6m above the finished floor level;

- f) use of fixed, obscure glass, subject to adequate ventilation complying with the Building Code of Australia;
- g) consistent orientation of buildings;
- h) using floor level in design to minimise direct views; and
- i) erection of screens and fencing to limit sightlines including dividing fences, privacy screens, projecting blade screens.

The privacy screening (subject to having an appropriate obscurity) to the decks will provide appropriate and acceptable privacy mitigation between deck areas and dwellings (and noting the current situation, where the existing decks of each property overlook each other), and the new windows on the second level will be servicing bedrooms and a bathroom and do not require privacy mitigation measures in accordance with Control C1. As such, the proposal is not contrary to this control and acceptable regarding the intent and objectives of this part of the LDCP 2013, subject to standard privacy screening conditions being imposed as recommended in Attachment A.

5(e) The Likely Impacts

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

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

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

5(g) Any submissions

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

5(h) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

- Development Engineer
- Heritage Officer

7. Section 7.11 Contributions/7.12 Levy

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$5,057.50 would be required for the development under Schedule 2 of the 'Former Leichhardt Local Government Area Section 7.12 Development Contributions Plan 2020'. A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

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

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

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

9. Recommendation

- A. The applicant has made written requests pursuant to Clause 4.6 of the Leichhardt Local Environmental Plan 2013 to vary Clauses 4.3A and 4.4 of the Plan. After considering the request, and assuming the concurrence of the Secretary, the Panel is satisfied that compliance with the standards is unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to support the variations. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standards and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2020/1051 for Alterations and additions to existing townhouses at Nos. 15-27 McKell Street at 1-43 McKell Street BIRCHGROVE NSW 2041 subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

The development must be carried out in accordance with plans and documents listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DA03 Rev A	Proposed Ground Floor Plan	November 2020	Evans & Green
DA04 Rev A	Proposed First Floor Plan	November 2020	Evans & Green
DA05 Rev A	Proposed Second Floor Plan	November 2020	Evans & Green
DA06 Option D	Proposed Street Elevation	March 2021	Evans & Green
DA07 Rev A	Proposed West Elevation	November 2020	Evans & Green
DA08 Rev A	Proposed East Elevation	November 2020	Evans & Green
DA09 Rev A	Proposed Section AA	November 2020	Evans & Green
DA10 Rev A	Schedule of Finishes	November 2020	Evans & Green
A399273	BASIX Certificate	25 November 2020	Evans & Green
A399272	BASIX Certificate	25 November 2020	Evans & Green
A399271	BASIX Certificate	25 November 2020	Evans & Green
A399270	BASIX Certificate	25 November 2020	Evans & Green
A399269	BASIX Certificate	25 November 2020	Evans & Green
A399197	BASIX Certificate	25 November 2020	Evans & Green
A382635	BASIX Certificate	25 November 2020	Evans & Green

As amended by the conditions of consent.

DESIGN CHANGE

2. Design Change

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans (floor plans, elevations and sections) demonstrating the following:

- a. A minimum of height of 800mm of the original curved brick parapet is to be retained above the head of the opening below
- b. The proposed partial demolition of the existing opening to the garage at No. 21 and the demolition of the perforated brick wall above is to be made good with matching brick repair rather than render so it continues to read as a brick element; and
- c. The new second floor level windows to the front façade shall comprise three separate vertically proportioned windows in accordance with Drawing DA06 Option D, prepared by Evans and Green and dated March 2021.

FEES

3. Security Deposit - Custom

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

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

Payment will be accepted in the form of cash, bank cheque, EFTPOS/credit card (to a maximum of \$10,000) or bank guarantee. Bank Guarantees must not have an expiry date.

The inspection fee is required for the Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

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

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

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

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

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

Note:

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

Payment amount*:

\$5,057.50

*Indexing of the Section 7.12 contribution payment:

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

Payment methods:

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

5. Long Service Levy

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more.

GENERAL CONDITIONS

6. Boundary Alignment Levels

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

7. Stormwater Drainage System – Simple

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

Any existing component of the stormwater system that is to be retained, including any absorption trench or rubble pit drainage system, must be checked and certified by a Licensed Plumber or qualified practising Civil Engineer to be in good condition and operating satisfactorily.

If any component of the existing system is not in good condition and /or not operating satisfactorily and/or impacted by the works and/or legal rights for drainage do not exist, the drainage system must be upgraded to discharge legally by gravity to the kerb and gutter of a public road.

8. Privacy

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans indicating metal louvred privacy screens being erected to the eastern and western sides of the first floor front deck areas adjacent to the pergolas that have a minimum block out density of 75%.

9. Waste Management Plan

Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan.

10. Erosion and Sediment Control

Prior to the issue of a commencement of any works (including any demolition works), the Certifying Authority must be provided with an erosion and sediment control plan and specification. Sediment control devices must be installed and maintained in proper working order to prevent sediment discharge from the construction site.

11. Standard Street Tree Protection

Prior to the commencement of any work, the Certifying Authority must be provided with details of the methods of protection of all street trees adjacent to the site during demolition and construction.

12. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION**13. Hoardings**

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

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must

be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.

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

14. Dilapidation Report

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining properties to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

15. Advising Neighbors Prior to Excavation

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

16. Construction Fencing

Prior to the commencement of any works (including demolition), the site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property.

PRIOR TO CONSTRUCTION CERTIFICATE

17. Dilapidation Report – Pre-Development – Minor

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

18. Flood Affected Site

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

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

19. Flood Risk Management Plan

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

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

- iv. Flood hazard level (FHL) Flood Planning Level (FPL).

20. Structural Certificate for retained elements of the building

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a Structural Certificate prepared by a practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction. The certificate must also include all details of the methodology to be employed in construction phases to achieve the above requirements without result in demolition of elements marked on the approved plans for retention.

21. Sydney Water – Tap In

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 13 20 92

DURING DEMOLITION AND CONSTRUCTION

22. Opening above garage at No. 21

During construction work, the proposed partial demolition of the existing opening to the garage at No. 21 and the demolition of the perforated brick wall above is to be made good with matching brick repair rather than render so it continues to read as a brick element.

23. Construction Hours – Class 1 and 10

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

PRIOR TO OCCUPATION CERTIFICATE**24. No Encroachments**

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

25. Protect Sandstone Kerb

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

26. Flood Risk Management Plan - Certification

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a qualified practising Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that all aspects of the flood risk management plan have been implemented in accordance with the approved design, conditions of this consent and relevant Australian Standards.

ON-GOING**27. Flood Risk Management Plan**

The Flood Risk Management Plan approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

ADVISORY NOTES**Permits**

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

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

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

Insurances

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

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within clause 98-98E of the *Environmental Planning and Assessment Regulations 2000*.

Notification of commencement of works

At least 7 days before any demolition work commences:

- a. the Council must be notified of the following particulars:
 - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
 - ii. the date the work is due to commence and the expected completion date; and
- b. a written notice must be placed in the letter box of each directly adjoining property identified advising of the date the work is due to commence.

Storage of Materials on public property

The placing of any materials on Council's footpath or roadway is prohibited, without the prior consent of Council.

Toilet Facilities

The following facilities must be provided on the site:

- a. Toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees; and
- b. A garbage receptacle for food scraps and papers, with a tight fitting lid.

Facilities must be located so that they will not cause a nuisance.

Infrastructure

The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones respectively to the property. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be undertaken before occupation of the site.

Other Approvals may be needed

Approvals under other acts and regulations may be required to carry out the development. It is the responsibility of property owners to ensure that they comply with all relevant legislation. Council takes no responsibility for informing applicants of any separate approvals required.

Failure to comply with conditions

Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.

Other works

Works or activities other than those approved by this Development Consent will require the submission of a new Development Application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Obtaining Relevant Certification

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):

- a. Application for any activity under that Act, including any erection of a hoarding;
- b. Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*;
- c. Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*;
- d. Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed;
- e. Application for Strata Title Subdivision if strata title subdivision of the development is proposed;
- f. Development Application for demolition if demolition is not approved by this consent;
or
- g. Development Application for subdivision if consent for subdivision is not granted by this consent.

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the PCA (not being the council) has given the Council written notice of the following information:

- a. In the case of work for which a principal contractor is required to be appointed:
 - i. The name and licence number of the principal contractor; and
 - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
- b. In the case of work to be done by an owner-builder:
 - i. The name of the owner-builder; and
 - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

Dividing Fences Act

The person acting on this consent must comply with the requirements of the *Dividing Fences Act 1991* in respect to the alterations and additions to the boundary fences.

Permits from Council under Other Acts

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

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

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

Noise

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

Amenity Impacts General

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

Lead-based Paint

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

Dial before you dig

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

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441 www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406 www.foodnotify.nsw.gov.au

NSW Government	www.nsw.gov.au/fibro www.diySAFE.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 www.environment.nsw.gov.au
Sydney Water	13 20 92 www.sydneywater.com.au
Waste Service - SITA Environmental Solutions	1300 651 116 www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)	www.waterrating.gov.au
WorkCover Authority of NSW	13 10 50 www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.
Street Numbering	
If any new street numbers or change to street numbers (this includes unit and shop numbers) are required, a separate application must be lodged with and approved by Council's GIS Team before being displayed.	

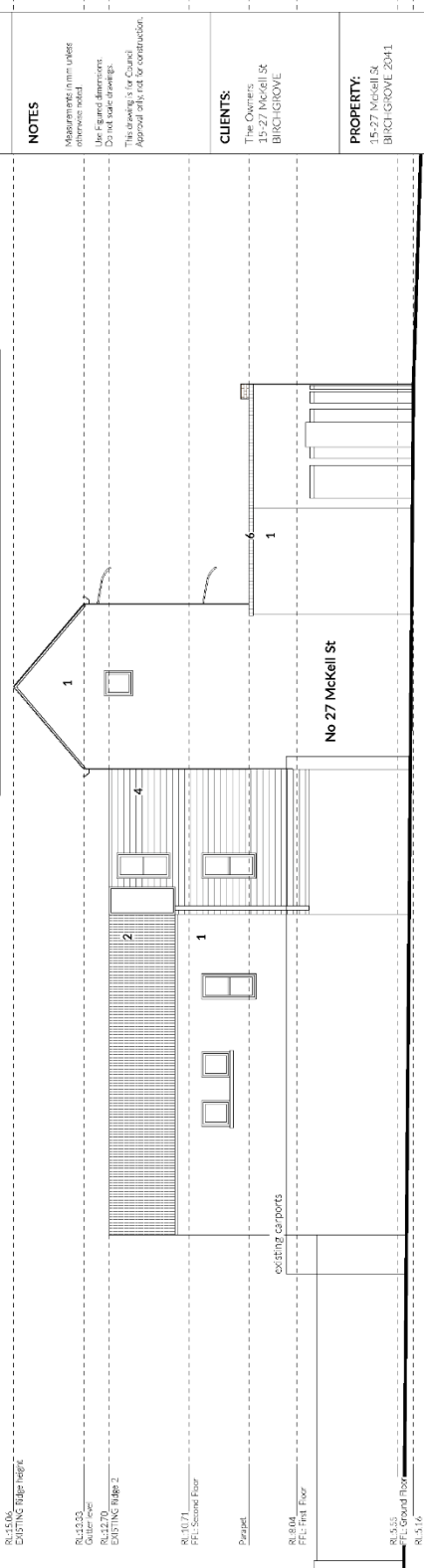
Attachment B – Plans of proposed development



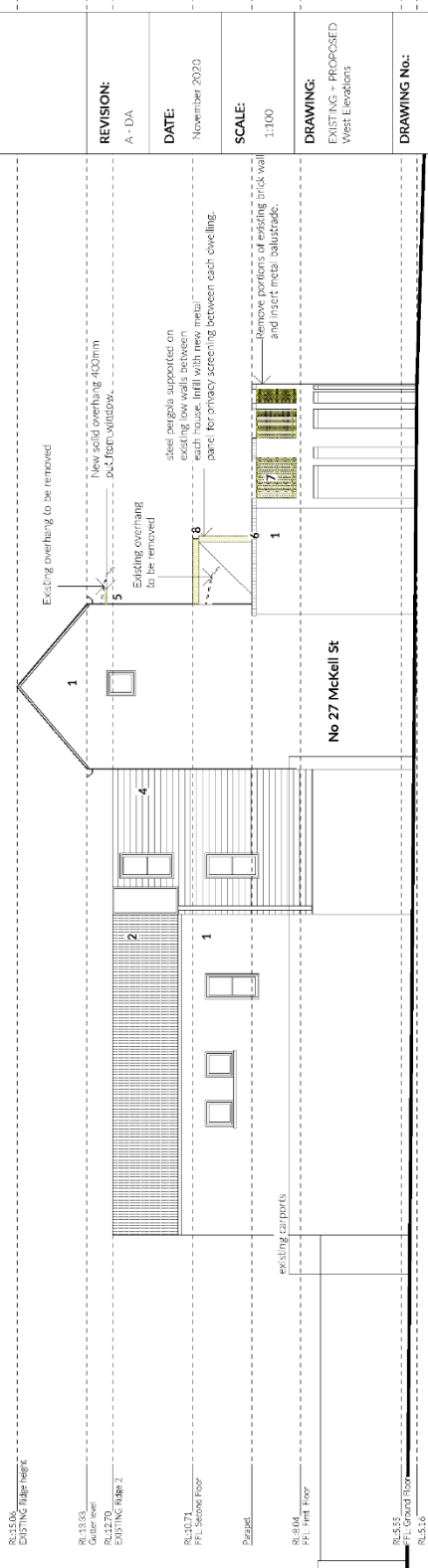
EVANS AND GREEN 43 Mckell St BIRCHGROVE ph: 0425 249 804	NOTES Measurements in mm unless otherwise noted. Use correct dimensions. Do not scale drawings. This drawing is for Council Approval only, not for construction.	CLIENTS: The Owners 15-27 Mckell St BIRCHGROVE	PROPERTY: 15-27 Mckell St BIRCHGROVE 2041	REVISION: A - DA	DATE: November 2020	SCALE: 1:100	DRAWING: EXISTING + PROPOSED West Elevations	DRAWING No.: DA07
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DA STAGE BASIS COMMITMENTS	Certificate number A399273, A399272, A399271, A399270, A399269, A399197, A382635
Glazing - windows	Windows 1-2 All single clear Standard Aluminium Framed U-Value 7.63 SHGC 0.75

MATERIALS KEY:	5. Metal sunshade to match existing colour scheme.
1. Existing painted brick wall	6. Face brick soldier course
2. Metal roofing	7. Metal balustrade to match existing colour scheme.
3. Aluminium framed window to match existing colour scheme	8. Metal pergola to match existing colour scheme.
4. Existing painted FC weatherboards	



EXISTING WEST ELEVATION



PROPOSED WEST ELEVATION

MATERIALS KEY:

- Existing painted brick wall
- Metal roofing
- Aluminium framed window to match existing colour scheme
- Existing painted FC weatherboards
- Metal sunshade to match existing colour scheme.
- Face brick soldier course
- Metal balustrade to match existing colour scheme.
- Metal pergola to match existing colour scheme.

DA STAGE BASIS COMMITMENTS	Certificate number A399273, A399272, A399271, A399270, A399269, A399268, A399197, A382635 15-27 McKell St Birchgrove 2041
Glazing - windows	Windows 1-2 All single clear Standard Aluminium Framed U-Value 7.63 SHGC 0.75

EVANS AND GREEN
43 McKell St
BIRCHGROVE
ph: 0425 249 804

NOTES
Measurements in mm unless otherwise noted
Use correct dimensions
Do not scale drawings
This drawing is for Council Approval only, not for construction.

CLIENTS:
The Owners
15-27 McKell St
BIRCHGROVE

PROPERTY:
15-27 McKell St
BIRCHGROVE 2041

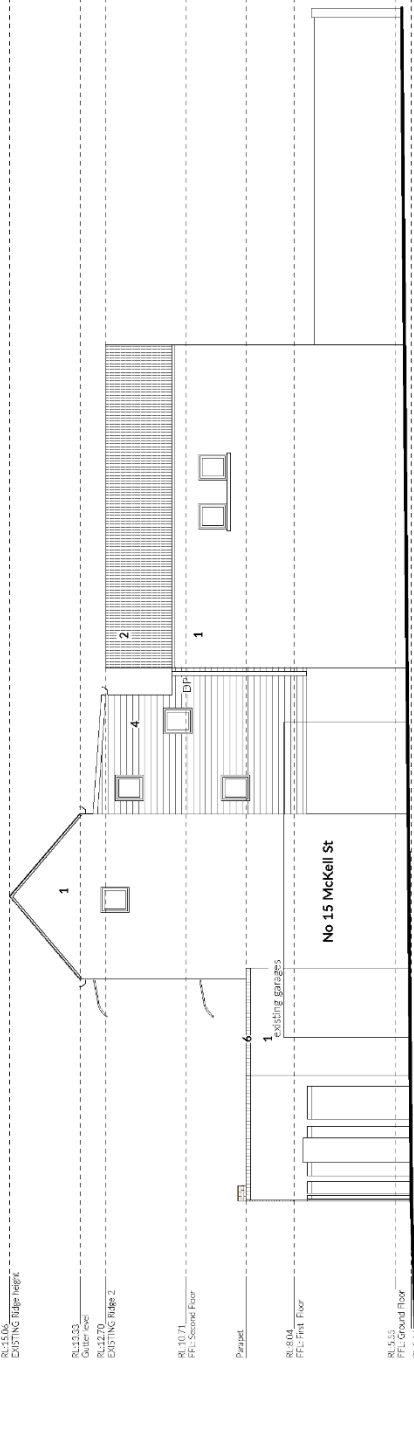
REVISION:
A - DA

DATE:
November 2020

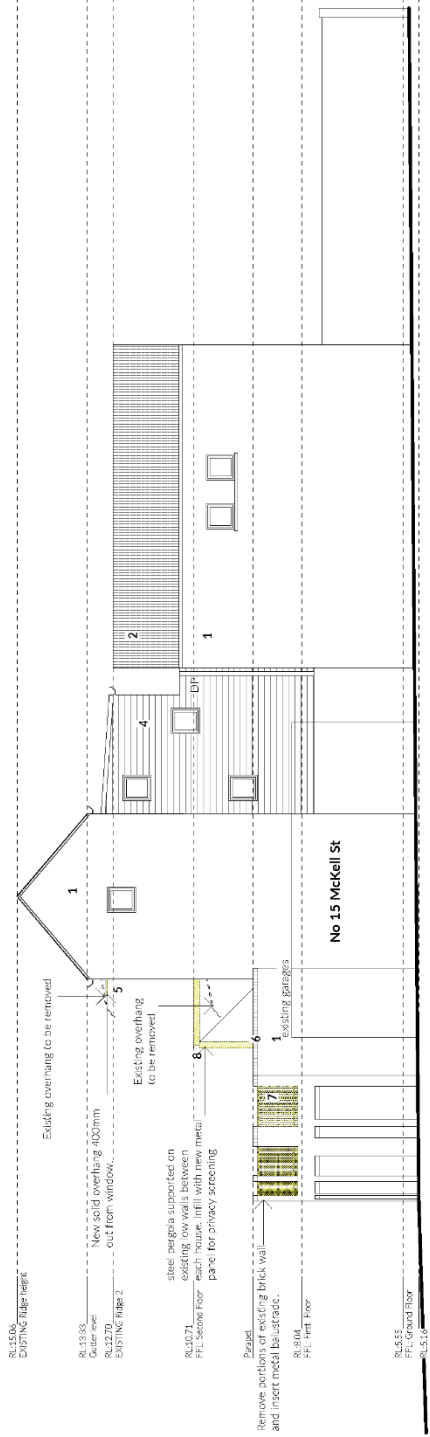
SCALE:
1:100

DRAWING:
EXISTING + PROPOSED East Elevations


DRAWING No.:
DA08

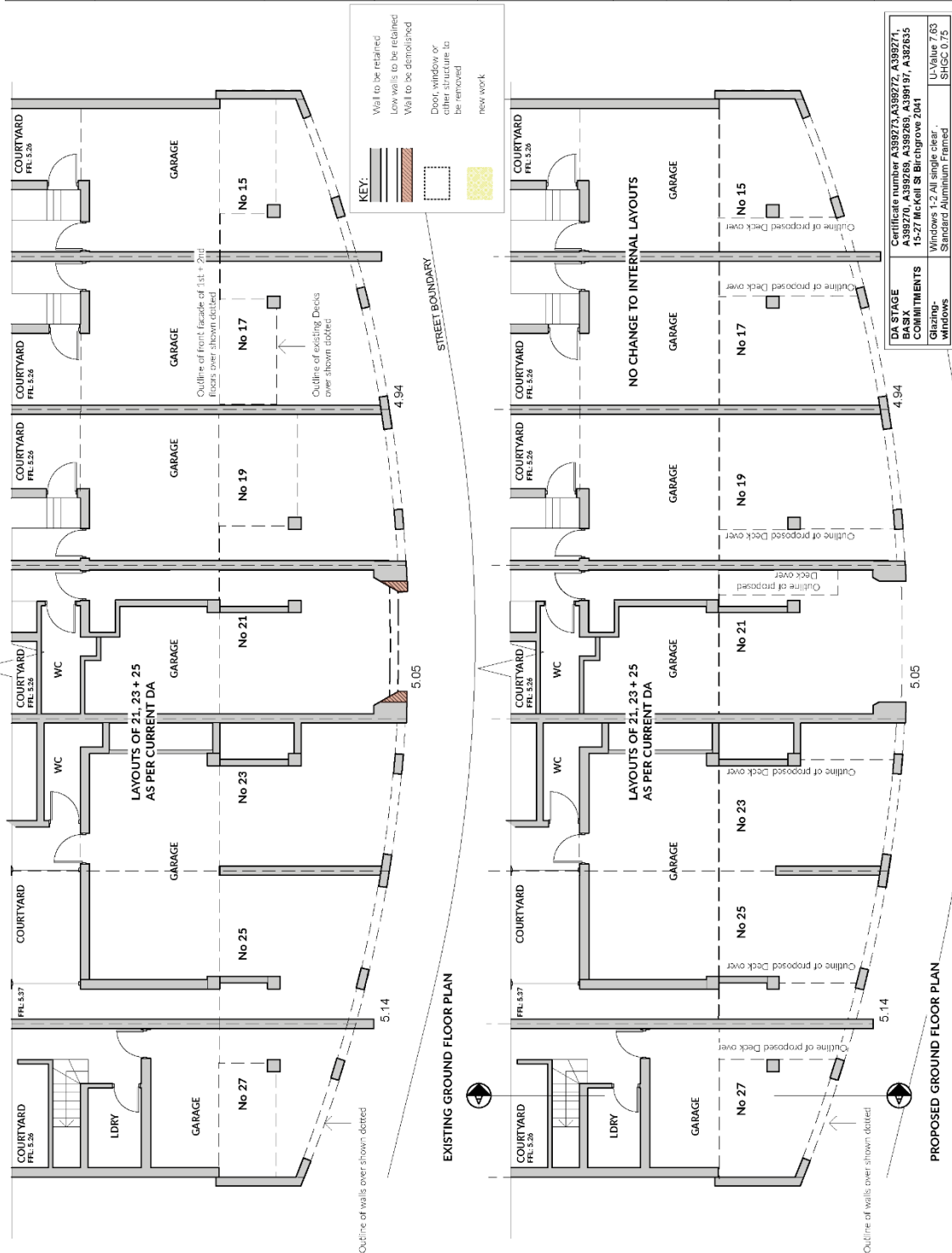


EXISTING EAST ELEVATION

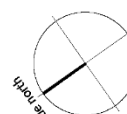


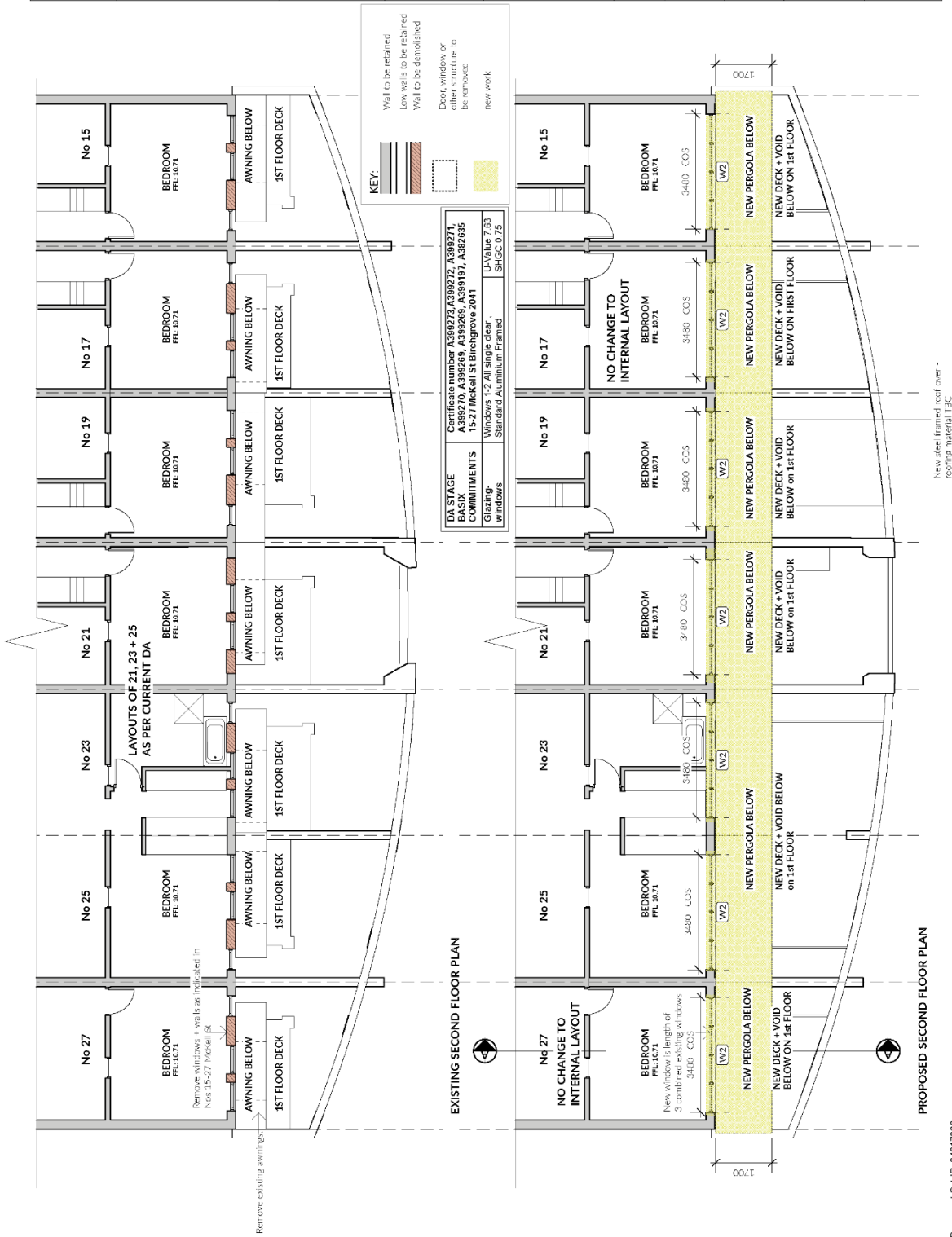
PROPOSED EAST ELEVATION

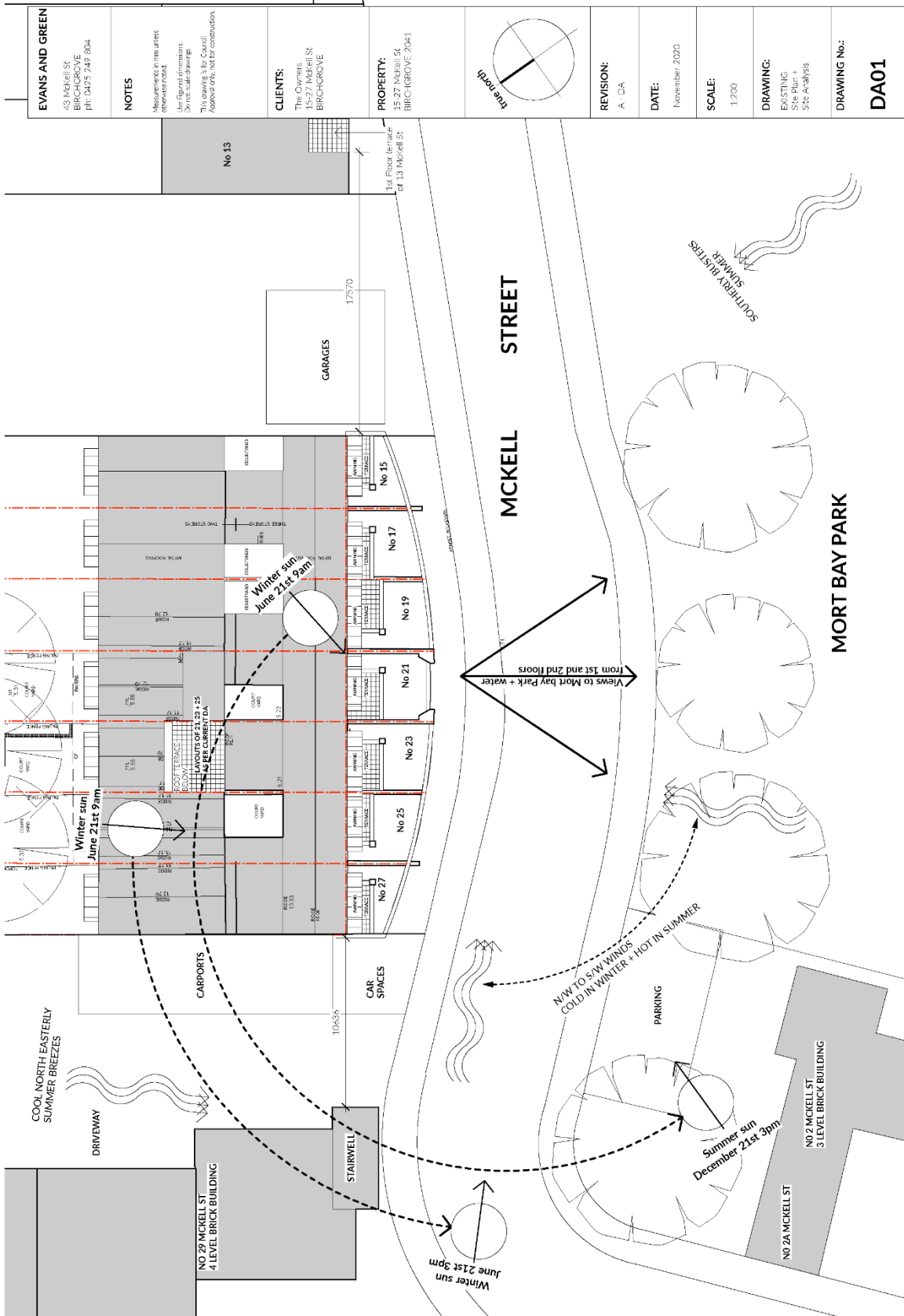
EVANS AND GREEN 43 McCall St BIRCHGROVE ph: 0425 249 804	NOTES Measurements in mm unless otherwise stated. Use British dimensions. Do not scale drawings. This drawing is for Council Approval only, not for construction.	CLIENTS: The Owners: 15-27 McCall St BIRCHGROVE	PROPERTY: 15-27 McCall St BIRCHGROVE 2041		REVISION: A - DA	DATE: November 2020	SCALE: 1:100	DRAWING: EXISTING + PROPOSED Ground Floor Plans	DRAWING No.: DA03
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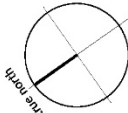
Document Set ID: 3437366
 Version: 1, Version Date: 04/12/2020

EVANS AND GREEN 43 McCall St BIRCHGROVE ph: 0425 249 804	NOTES Measurements in mm unless otherwise stated. Use Imperial dimensions. Do not scale drawings. This drawing is for Council Approval only, not for construction.	CLIENTS: The Owners: 15-27 Model St BIRCHGROVE	PROPERTY: 15-27 Model St BIRCHGROVE 2041		REVISION: A - DA	DATE: November 2020	SCALE: 1:100	DRAWING: EXISTING + PROPOSED Second Floor Plans	DRAWING No.: DA05
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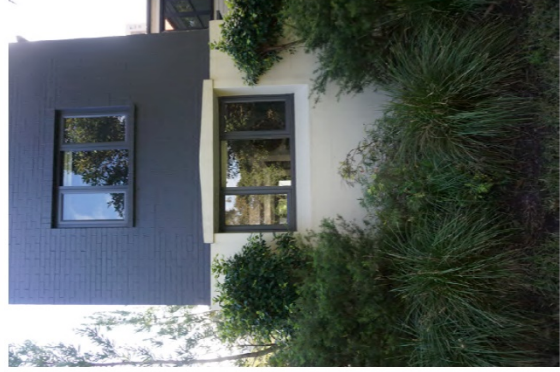


EVANS AND GREEN 43 MCKELL ST. BIRCHGROVE PH: 0425 249 604	NOTES Measurements from office on previous road. Use fixed dimensions. Do not scale drawings. This drawing is for Council Approval only, not for construction.	CLIENTS: The Owners 15-27 MCKELL ST BIRCHGROVE	PROPERTY: 15-27 Mckell St BIRCHGROVE 2041		REVISION: A - DA	DATE: November 2020	SCALE: 1:200	DRAWING: EXISTING Site Plan + Site Analysis	DRAWING No.: DA01
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<p>EVANS AND GREEN 413 McEill St BIRCHGROVE ph: 0425 749 004</p>	<p>NOTES Measurements in mm unless otherwise noted. Use Finished dimensions, do not scale drawings. This drawing is for Council Approval only, not for construction.</p>	<p>CLIENTS: The Owners 15-27 McEill St BIRCHGROVE</p>	<p>PROPERTY: 15-27 McEill St BIRCHGROVE 7041</p>		<p>REVISION: A - DA</p>	<p>DATE: November 2020</p>	<p>DRAWING: FINISHES SCHEDULE</p>	<p>DRAWING No.: DA10</p>
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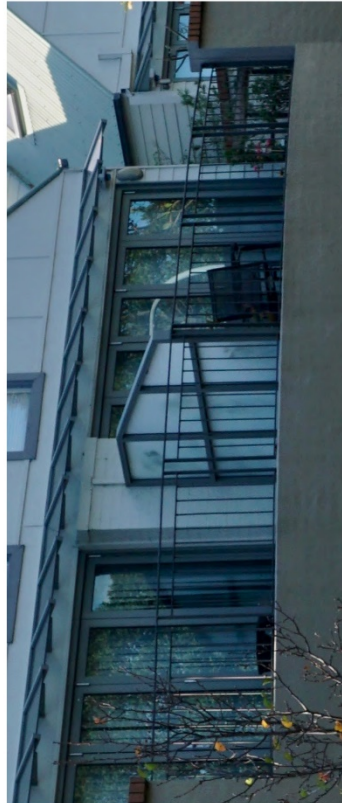
Existing painted brick and face brick capping to be retained on curved wall.



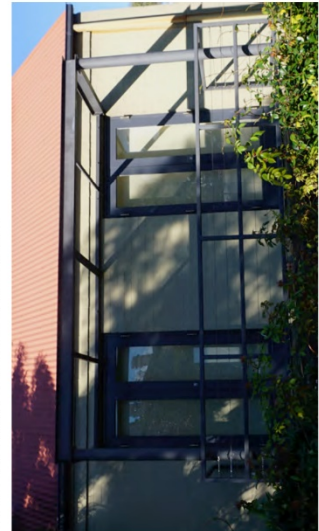
New metal framed doors and windows to match existing colour scheme.



Existing painted brick, FC weatherboard walls and colourbond metal rooves to be retained.



New painted metal balustrades to match existing colour scheme.



Document No: IP-34587419 to match existing colour scheme.
Version: 1, Version Date: 04/11/2020

Attachment C- Clause 4.6 Exception to Development Standards

EXCEPTION TO A DEVELOPMENT STANDARD CLAUSE 4.6 VARIATION- SITE COVER

Alterations & Additions to 15-27 McKell St Birchgrove

SP62555: 1-43 McKell St Birchgrove

Rev B: March 2021



Fig 1: View of 15-27 McKell St Birchgrove

Prepared by Anthony Green

evans & green

0425 249 804

anthony@tarandi.net

1. Introduction

This revised written request to vary the development standard for Site Cover is in support of the proposed alterations & additions to 15-27 McKell St Birchgrove. The request is in accordance with Clause 4.6 of the Leichhardt LEP 2013, with the Site Cover control being clause 4.3A of the Leichhardt LEP 2013.

The 7 separate townhouses 15,17,19,21,23,25 & 27 McKell St are located with a strata scheme - SP62555-comprising a mix of townhouses & apartments of varying sizes. Originally constructed as Public Housing by the NSW Government, numerous alterations & additions have been approved by Inner West Council & its predecessor Leichhardt Council since the complex was sold to the private market. This means there is no record of the Site Cover of the entire complex, however it is assumed by Inner West Council that taken as a whole, the entire complex exceeds the control.

The current application is for external alterations to the existing façades of each dwelling & enlargement of the existing decks of each dwelling. These works result in a change to the existing Site Cover of each dwelling owing to the way Site Cover is defined in the LEP, as advised by Inner West Council. There is in fact no change proposed to the usable open space available on each site at ground level, or any increase in non-permeable surfaces on any of the 7 sites.

2. Objectives of a clause 4.6 Variation- IWC LEP 2013

(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.

(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.

(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

These objectives will be analysed below.

3. Identify the Development Standard being varied

The development standard for Site Cover/open Space is set out in Clause 4.3a of Leichhardt LEP 2013. The maximum site coverage is 60% of the site, or 40% minimum open space. In particular clause 4.3 A (c) states:

(c) any deck or balcony or the like (whether enclosed or unenclosed) is not to be included in calculating the site coverage if—

(i) it is 2.4 metres or more above ground level (existing), as measured from the underside of the structure and the area below the structure is able to be landscaped or used for recreational purposes, or

(ii) the finished floor level is 500mm or less above ground level (existing).

In this case, the existing decks at first floor level of each dwelling are proposed to be extended out to the curved brick wall along the front boundary of each of the 7 dwellings. Whilst these decks are more than 2.4m above the existing ground level below, the space below each of the decks is a driveway. Council insist that a driveway cannot be defined as a space used for recreational purposes, therefore the additions to the existing decks technically add to the site coverage of the site. As previously stated however, the space beneath the decks is still readily usable as outdoor space located at ground level, it merely does not comply with councils definition of "recreational space". Therefore whilst there is an increase in site coverage with the proposal, curiously there is no change in usable open space located at ground level. Residents of each dwelling are free to play ball games, ride scooters etc on their technically non-recreational space beneath the enlarged decks.

The existing Site Cover/open space across the entire strata SP62555 is unknown. It is assumed by council that it does not comply with the control.

The existing & proposed Site Cover/Open space for each of the 7 individual lots included in this current application is as follows:

ADDRESS & SITE AREA	EXISTING SITE COVER	PROPOSED SITE COVER IF INCLUDE NEW DECKS AT FIRST FLOOR LEVEL	EXISTING & PROPOSED PRIVATE OPEN SPACE AT GROUND LEVEL ACCESSIBLE FROM LIVING ROOM
15 McKell St- 112sqm	62sqm or 55% of site area. COMPLIES	66sqm or 59% of site area COMPLIES	36sqm COMPLIES
17 McKell St-117sqm	63sqm or 54% of site area. COMPLIES	71.5sqm or 61% of site area NOT COMPLY	35sqm COMPLIES
19 McKell St -120sqm	65sqm or 54% of site area. COMPLIES	73.5sqm or 61% of site area NOT COMPLY	35sqm COMPLIES
21 McKell St -120sqm	64sqm or 53% of site area. COMPLIES	74sqm or 62% of site area NOT COMPLY	35sqm COMPLIES
23 McKell St -120sqm	126sqm or 53% of site area of 23 & 25 Combined COMPLIES	143sqm or 60% of site area COMPLIES	72qm COMPLIES
25 McKell St -117sqm	Included in 23 McKell St		
27 McKell St-109sqm	69sqm or 63% of site area NON COMPLANCE APPROVED BY COUNCIL	74sqm or 68% of site area NOT COMPLY	33sqm COMPLIES

If assessed as separate properties the results are:

3 of the 7 subject properties comply with the site cover control of 60%.

3 of the 7 subject properties exceed the control by only 1% for 61% site cover.

1 of the 7 subject properties exceeds the control by 8% for 68% site cover. The non-complying open space of 27 McKell St results from alterations & additions approved by council in D/2012/487 which approved an increase in building footprint

4

7 of the 7 subject properties exceed the minimum required private open space at ground floor level.

Overall this results in a negligible technical increase in Site Cover across the entire Strata.

4. Objectives of the standard for Site Cover/open space

- 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.*

It is considered that the proposal meets all of these objectives.

5. Establish how each of the objectives of Clause 4.3a for Site Cover/Open Space are met if the standard is to be varied.

a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,

The technical non-compliance of 4 of the 7 dwellings in this proposal, & the presumed non-compliance of the entire strata SP62555, in no way alters the existing hard open space of the site or limits the opportunities for tree planting. The extensions to the existing decks are located over the top of an existing concrete hardstand which has no trees or vegetation.

(b) to maintain and encourage a landscaped corridor between adjoining properties,

There is no change proposed to the area or layout of the existing rear courtyards of each dwelling, including changes to existing landscaping. These private courtyards are directly accessible from the Ground Floor living rooms of each dwelling for private use. The area of private open space for each dwelling greatly exceeds the minimum 16sqm required by the DCP.

The 7 courtyards are contiguous, & together with the rear gardens of the dwellings to the north located in Yeend St they form a continuous green corridor running between the dwellings which is substantially planted with mature trees. This also creates privacy between dwellings. No change is proposed to these trees with this application.

(c) to ensure that development promotes the desired future character of the neighbourhood,

The proposed additions to the existing first floor decks are in keeping with the existing first floor decks of the 6 properties to the east of the subject properties - these being No.s 3 to 13 McKell St. The decks of 3 & 5 McKell St are additions approved by council. The decks of 7-13 McKell St are original fabric.

The proposed openings in the solid wall front façade in front of the deck additions are in keeping with council approved removal of parts of the solid wall of 7-13 McKell St. They are also in keeping with the aims & objectives of the DCP.

The proposed first floor decks on the street façade maintain the existing front building setbacks at ground floor level along the street- the decks are located behind the retained portions of the existing brick parapet along the street façade, & above the existing concrete paved front area. This results in no change to the perception of site cover for either pedestrians or users of Mort Bay Park opposite the

4

site. In addition the space beneath each deck remains as a freely accessible portion of open space at ground level- no change is proposed to this area at all.

The existing character of the street is essentially a wall of garages & car parking at street level. It is unlikely that this is the desired future character of the neighbourhood. Council should be encouraging every effort to open the façades of the houses & to activate the street front & thus reverse the obvious design errors of the complex as originally constructed.

(d) to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site

There is no change to the existing movement of water across the site or to the area of impermeable surfaces at ground level. The deck extensions at first floor level are proposed as open decks, & the area beneath each deck is already an impermeable concrete surface. No change is proposed to the landscaping of the existing rear gardens of any of the dwellings which already allow for soft landscape areas & contain substantial tree planting.

(e) to control site density,

No change is proposed to the existing site density in any way-, FSR, bulk, scale, dwelling type, number of bedrooms, & internal plan configuration all remain as existing. Internal plan configurations have previously been approved to 21,23, 25 & 27 McKell St, & additional floor space has previously been approved by council to these same dwellings.

(f) to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.

In absolute terms there is no increase in building footprint with the proposal, as the deck additions are located above open space at ground level which will continue to be readily accessible by the occupants of each dwelling. However as defined by council, this ground floor open space cannot be defined as recreational space as it is a driveway.

Therefore the proposed decks at first floor level will INCREASE recreational space on the site as they are proposed to be built over spaces that cannot be defined as recreational space- even if the non-complying spaces are regularly used by the occupants as recreational space.

No change is proposed to the private open space located at ground level in the rear gardens of each of the 7 dwellings. The area of each of these exceeds the DCP requirements for each dwelling

No change is proposed to the existing landscaped open space on each of the 7 dwellings.

Council have previously approved additions at ground floor level to at least 19 dwellings within SP6255, resulting in an increase in site cover for these individual lots & hence the entire strata site. These include but are not limited to:

7,9,11 & 13 McKell St.
27 McKell St
2 McKell St
4 McKell St
6,8,10 & 12 McKell St
14 McKell St
30 & 32 McKell St
2 & 4 Lizzie Webber Place
6 Challenger Place
5 Challenger Place
7 Challenger Place

These ongoing approvals suggest that council have acknowledged & assessed the existing non-compliance with the Open Space control within SP6255 as being compatible with the existing & desired future character of the locality. It also suggests that council have abandoned the relevance of the Open Space control in relation to this particular strata.

6. Compliance with the Objectives of the R1 Zone:

The objectives of the R1 Zone are

To provide for the housing needs of the community.

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

The proposed works comply with all of these objectives. There is no change to the existing housing type or density or to the existing land use, which has previously been approved by council firstly in the original approval for the entire complex & then in subsequent approvals for alterations to individual lots.

There is no change to the internal layout of any of the dwellings which continue to provide work from home opportunities- 4 of the 7 subject dwellings have had internal alterations approved by council.

There is no change to the existing building form or height or bulk of the 7 dwellings, which essentially remains as originally constructed, or as approved in more recent applications. The 7 dwellings will continue to be read as one "building" with a common roof line & shared parapet wall along the front façade. The proposed additions are in keeping with the conservation zone & seek to reverse some of the poor design outcomes resulting from the buildings as constructed.

No change is proposed to the existing subdivision pattern, or to the existing landscaped area of the site. Existing private open space exceeding the DCP requirement is already provided at the rear of the each dwelling. No change is proposed that affects the amenity of existing & future residents.

The proposed alterations & additions to the existing facades are in keeping with approvals granted by council to adjacent dwelling No's 7-13 McKell St & 2 McKell St. The enlarged first floor decks are keeping with the location & size of the existing decks of 7-13 McKell St which remain as originally constructed & approved by council.

The proposed alterations to the façade glazing of 15-27 McKell St are in keeping with approved changes to the façade of 2, 3, 5, 7,9,11,13,6,8,10 & 12 McKell St.

7. Establish how non-compliance with the standard is still consistent with the objectives of the *Environmental Planning and Assessment Act 1979*, Sections 5a(i) and (ii)

The objects of the Act are detailed under section 5 which states:

"5. The objects of this Act are-

(a) to encourage-

(i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and village for the purpose of promoting the social and economic welfare of the community and a better environment;

(ii) The promotion and co-ordination of the orderly and economic use and development of the land;"

7

Compliance with the standard in this case would unduly limit the development of the land in question. The non-compliance with the Site Cover control across the strata as a whole is an existing condition, & the proposed non-compliance of 4 of the 7 subject properties is extremely minor- only 1 of the 7 properties exceeds the control (if assessed as a single dwelling) by more than 1%. The proposal complies with the controls of the DCP & exceeds the controls for private open space.

Council has also acknowledged, via previous approvals for 27 McKell St as well as for surrounding dwellings within SP62555, that the Site Cover control does not reflect the reality of the existing built form of this locality. The site is ideally located, close to shops, schools & parks, ideal for a family. The proposed works in no way alter the existing accommodation within the dwellings. To create a better environment the ideal outcome is to allow the continued non-compliance with the Site Cover, an outcome which would be hindered by strict compliance with the standard & the EPA act.

Other matters which should be taken into consideration in deciding whether concurrence should be granted are as follows:

"(a) whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning; and

(b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument."

The breach of the Site Cover control does not raise any matter of significance for State or regional planning. The proposed non-compliance is consistent with the existing built form of the locality as evidenced by councils continued approval of additions to other dwellings within the strata that reduce the open space available on both individual lots & therefore by extension across the entire strata. There are no negative impacts on the conservation zone. Nor is there is any net adverse impact to the public interest if Council supported the application.

8. Demonstrate why compliance with the standard is unreasonable or unnecessary, in the circumstance.

Strict Compliance with the Site Cover control would require demolition of existing structures that are included within the definition of Site Coverage in order to reduce the Site cover across the site. It would also mean that the subject sites could not be developed in line with approvals for similar structures in the immediate vicinity of the site. Given that the existing Site Cover on the site is the product of the original approval for the entire complex + recent approvals for alts & ads to individual lots, such action seems unreasonable- the non-compliance has been approved by the council. Dwellings that have had approvals resulting in an increase in site cover include:

7,9,11 & 13 McKell St.
27 McKell St
2 McKell St
4 McKell St
6,8,10 & 12 McKell St
14 McKell St
30 & 32 McKell St
2 & 4 Lizzie Webber Place
5 Challenger Place
6 Challenger Place
7 Challenger Place

Since the gazettal of Leichhardt Council LEP 2013, Inner West Council have continued to approve increases in site coverage to dwellings within the strata- these approvals include those for 2 & 14 McKell St & 6 Challenger Place. All of these approvals suggest council have abandoned strict adherence to the Site Cover control in their assessment of the suitability of proposals within this

7

strata. This includes approved alterations & additions to 27 McKell St which is included in this application.

By comparison, whilst this present application proposes changes to site cover on the sites of the 7 townhouses. 3 of 7 still comply with the site cover control, & another 3 exceed the control by only 1%. Note that the existing open space on 4 of the 7 townhouse sites has previously been assessed as suitable by council via approvals for alterations & additions to 21, 23, 25 & 27 McKell St, & that the decks contributing to an increase in site cover are located above a space already partially enclosed along the front façade by a solid wall, & are located above an existing concrete hardstand.

Strict compliance with the Site Cover control would make no material difference to the locality, as the proposed works are located above an existing hardstand & located partially behind an existing brick wall. As evidenced elsewhere within this report council have not raised any issues with the existing open space of the site in previous applications & used other applicable planning controls in their assessment of proposals within SP62555. This proposal is the same.

There is no change proposed to the area or layout of the existing rear courtyards of each dwelling, including changes to existing landscaping. These private courtyards are directly accessible from the Ground Floor living rooms of each dwelling for private use. The area of private open space for each dwelling greatly exceeds the minimum 16sqm required by the DCP.

The proposal meets the requirements of the DCP controls for the locality. It does not unduly overshadowing any neighbouring property. Views & privacy of neighbouring properties are also unaffected by the proposal. There is no increase in height, bulk or FSR, The proposal has no negative effect on the conservation zone & is consistent with the desired future character of the locality.

As noted in section 3 of this report, it should also be noted that treated as individual lots, 3 of the 7 dwellings comply with the site cover control, & another 3 exceed the control by only 1%. The non-compliance of No.27 McKell St was previously approved by council.

9. Demonstrate sufficient environmental planning grounds to justify the non-compliance.

As demonstrated above, the proposed non-compliance with the Site Cover control is entirely justifiable when assessed against all of the relevant planning controls for the site.

- The proposal complies with the aims & objectives of Clause 1.2 of the Leichhardt LEP 2013, the overall vision for Leichhardt.
- The proposal complies with the aims & objectives of Clause 4.3a of the Leichhardt LEP 2013 in relation to the Site Cover control.
- The proposal complies with aims & objectives of the R1 Zone.
- The proposal complies with the DCP controls for the site including bulk, scale, building typologies, BLZ, overshadowing of neighbours, privacy to neighbours & works with a conservation zone.
- The proposal is consistent with or exceeds the amount of private open space available on similar town house lots within SP6255.
- This assessment has addressed the requirements for a variation to a standard under Clause 4.6 of Leichhardt LEP 2013.

There is no reason why this request to vary the Open Space Standard should not be approved.

END OF REPORT

Anthony Green
March 2021

**EXCEPTION TO A DEVELOPMENT STANDARD
CLAUSE 4.6 VARIATION- FLOOR SPACE RATIO**

Alterations & Additions to 15-27 McKell St Birchgrove

SP6255: 1-43 McKell St

December 2020



Fig 1: View of 15-27 McKell St Birchgrove

Prepared by Anthony Green

evans & green

0425 249 804

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Introduction

This request to vary a development standard is in support of the proposed alterations & additions to 15-27 McKell St Birchgrove. In accordance with Clause 4.6 of the Leichhardt LEP 2013, a written request is made to vary the Floor Space Ratio control, which is clause 4.4 of the Leichhardt LEP 2013.

The 7 separate townhouses 15, 17, 19, 21, 23, 25 & 27 McKell St are located within a strata scheme - SP62555-comprising a mix of townhouses & apartments of varying sizes. Originally constructed as Public Housing by the NSW Government, numerous alterations & additions have been approved by Inner West Council & its predecessor Leichhardt Council since the complex was sold to the private market. This means there is no record of the Floor Space Ratio of the entire complex, however it is assumed that taken as a whole, the entire complex exceeds the control.

The current application is for external alterations to the existing façades of each of the 7 dwellings & enlargement of the existing decks of each dwelling. These works result in no change to the Gross Floor Area of each house, resulting in no change to the existing assumed non-compliance of FSR on the site of the entire strata.

1. Objectives of a clause 4.6 Variation- IWC LEP 2013

(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.

(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.

(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

These objectives will be analysed below.

2. Identify the development standard being varied

The development standard for maximum Floor Space Ratio (FSR) is set out in Clause 4.4 of Leichhardt LEP 2013.

For the entire Strata Lot SP62555, the maximum floor space ratio is 0.7:1 for a site greater than 450sqm in area.

For individual lot entitlements within the strata, the allowable FSR for each of the 7 lots is 1:1 for sites less than 150sqm in area. Site areas for each lot are as follows:

15 McKell St-lot 48, SP62555- site area 112sqm from Strata survey
17 McKell St-lot 49, SP62555- site area 117sqm from Strata survey
19 McKell St-lot 50, SP62555- site area 120sqm from Strata survey
21 McKell St-lot 51, SP62555- site area 120sqm from Strata survey
23 McKell St-lot 52, SP62555- site area 120sqm from Strata survey
25 McKell St-lot 53, SP62555- site area 117sqm from Strata survey
27 McKell St-lot 54, SP62555- site area 109sqm from Strata survey

Within SP6255, Council have assessed FSR calculations on an individual lot basis for previous proposals for alterations & additions to townhouses. This includes approvals for 21, 23, 25, & 27 McKell St. Non-compliance with the FSR control for both 21 & 27 McKell St has previously been approved based on the individual lot size. As noted, no change is proposed to the FSR of any of the 7 dwellings included in this application. Nor is any change proposed to any portion of the existing dwellings which contributes to the calculation of gross floor area.

Objectives of the standard for Floor Space Ratio.

The objectives of clause 4.4- Floor Space Ratio 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.

Establish how each of the objectives of Clause 4.4, FSR, are met if the standard is to be varied.

The proposed alterations to 15-27 McKell St do not alter the existing FSR of the site, as the proposed works do not include any portion of the existing dwellings that is included in the definition of Gross Floor Area as defined in IWC LEP 2013. Therefore assessment of the proposal against the FSR control is based on the existing condition- there is no further variation sought.

There is no change to the existing building bulk, form, height or scale of any of the existing houses. New external awnings replace existing structures in the same location, & these structures as proposed are excluded from the definition of Gross Floor Area.

There is no change to existing landscaped open space or site coverage on the site. Existing Landscaped private open space is provided at the rear of the ground floor of each dwelling & no change is proposed to these. These spaces are directly accessible from the living areas of each dwelling & provide extensive tree coverage. Together the courtyards form a green corridor along the rear the existing dwellings separating them from properties at the rear.

The proposed changes to the site are essentially cosmetic changes to the existing facades. These changes are in keeping with approvals granted by council to surrounding properties also located with SP62555, & also in keeping with the design language & form of the complex as originally constructed.

The existing buildings will remain compatible with both the existing & desired future character of the area as there is no change to the existing bulk, form, height & scale. The existing building bulk & form

visible from McKell St will essentially remain unchanged from that which was originally constructed- which it is presumed was approved by council.

Four of the seven 7 dwellings included within this current application, (No. 21, 23, 25 & 27) have had alterations & additions approved by Council since construction of the original complex. No further change is proposed to these already altered FSRs, therefore council have already confirmed that the FSR of these dwellings meets the objectives of the clause by the granting of these approvals.

In addition, Alterations & Additions to at least another 17 other dwellings within SP6255 have also been approved, all adding additional floor space. These include No's 3,5,7,9,11,13,2,4,6,8,10,12,14,24,26,30 & 32 McKell St. These approvals suggest that council have acknowledged & assessed the existing non-compliance with the FSR control within SP62555 as being compatible with the existing & desired future character of the locality. It also suggests that council have abandoned the relevance of the FSR control in relation to this particular strata.

Compliance with the Objectives of the R1 Zone:

The objectives of the R1 Zone are

To provide for the housing needs of the community.

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

The proposed alterations comply with all of these objectives. There is no change to the existing housing type or density or to the existing land use, which has previously been approved by council when the complex was originally constructed, & then again multiple times for the approvals of more than 20 alterations & additions to properties within SP62555.

There is no change to the internal layout of any of the dwellings which continue to provide work from home opportunities- 4 of the 7 subject dwellings have had internal alterations approved by council.

There is no change to the existing building form or height or bulk which essentially remains as originally constructed, or as approved in previous applications

No change is proposed to the existing subdivision pattern, or to the existing landscaped area of the site or open space. No change is proposed that affects the amenity of existing & future residents.

The proposed alterations & additions to the existing facades are in keeping with approvals granted by council to adjacent dwelling No's 7-13 McKell St & 2 McKell St. The enlarged first floor decks are keeping with the location & size of the existing decks of 7-13 McKell St which remain as originally constructed & approved by council.

The 7 attached dwellings 15-27 McKell St will continue to read as one "building" - the symmetry of the existing façade design is maintained. The proposed works are in keeping with the original design language of the Mort Bay Housing Complex. No change is proposed to the existing façade materials except for steel balustrades & pergolas, & the detail & materials of these elements are the same as existing similar elements already present on houses within the complex.

Establish how non-compliance with the standard is still consistent with the objectives of the Environmental Planning and Assessment Act 1979, Sections 5a(i) and (ii)

The objects of the Act are detailed under section 5 which states:

"5. The objects of this Act are-

(a) to encourage-

(i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and village for the purpose of promoting the social and economic welfare of the community and a better environment;

(ii) The promotion and co-ordination of the orderly and economic use and development of the land;"

Compliance with the standard in this case would unduly limit the development of the land in question. The non-compliance with the Floor Space Ratio Control is an existing condition, & the proposed works do not include any portion of the site that is included in the definition of Gross Floor Area. The proposal complies with the controls of the DCP.

Council has also acknowledged, via previous approvals for 4 of the subject dwellings as well as for surrounding dwellings within SP62555, that the current FSR control does not reflect the reality of the existing built form of this locality.

The site is ideally located, close to shops, schools & parks, ideal for a family. The proposed works in no way alter the existing accommodation within the dwellings. To create a better environment the ideal outcome is to allow the continued non-compliance with the FSR, an outcome which would be hindered by strict compliance with the standard & the EPA act.

Other matters which should be taken into consideration in deciding whether concurrence should be granted are as follows:

"(a) whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning; and

(b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument."

The breach of the floor space control does not raise any matter of significance for State or regional planning. The proposed non-compliance is consistent with the existing built form of the locality as evidenced by councils continued approval of additions to other dwellings within the strata. There are no negative impacts on the conservation zone. Nor is there is any net adverse impact to the public interest if Council supported the application.

Demonstrate why compliance with the standard is unreasonable or unnecessary, in the circumstance.

Strict Compliance with the FSR control would require demolition of existing structures that are included within the definition of Gross Floor Area in order to reduce the FSR across the site. Given that the existing FSR on the site is the product of the original approval for the entire complex + recent approvals for alts & ads to individual lots, such action seems unreasonable- the non-compliance has been approved by the council. Conversely, since the gazettal of Leichhardt Council LEP 2013, Inner West Council has continued to approve additional floor area to dwellings within the strata. These

approvals suggest council have abandoned strict adherence to the FSR control in their assessment of the suitability of proposals within this strata. This includes approved alterations & additions to 4 of the 7 dwellings which are the subject of this application- 21, 23, 25 & 27 McKell St.

Strict compliance with the FSR control would make no material difference to the locality, as the proposed works do not change the existing floor space ratio. As evidenced elsewhere within this report council have not raised any issues with the existing FSR of any of the dwellings within the strata site.

The proposed works are external & to the facades & therefore are not technically even included with the definition of Gross Floor Area. As such, it can be argued that discussion about FSR is in fact irrelevant to this proposal, & that other planning controls are applicable to an assessment of the proposal.

The proposal meets the requirements of the DCP controls for the locality. It does not unduly overshadowing any neighbouring property. Views & privacy of neighbouring properties are also unaffected by the proposal. The proposal has no negative effect on the conservation zone, & changes the facades are in keeping with both the existing design language of the complex as well as approved alterations to facades of adjacent dwellings within the same complex. The proposal is consistent with the desired future character of the locality.

1. Demonstrate sufficient environmental planning grounds to justify the non-compliance.

As demonstrated above, the proposed non-compliance with the FSR control is entirely justifiable when assessed against all of the relevant planning controls for the site.

- The proposal complies with the aims & objectives of Clause 1.2 of the Leichhardt LEP 2013, the overall vision for Leichhardt.
- The proposal complies with the aims & objectives of Clause 4.4 of the Leichhardt LEP 2013 in relation to the FSR control.
- The proposal complies with aims & objectives of the R1 Zone.
- This assessment has addressed the requirements for a variation to a standard under Clause 4.6 of Leichhardt LEP 2013.
- The proposal complies with the DCP controls for the site including bulk, scale, building typologies, BLZ, overshadowing of neighbours, privacy to neighbours & works with a conservation zone.

There is no reason why this request to vary the Floor Space Ratio Standard should not be approved.

END OF REPORT

Anthony Green
December 2020

**EXCEPTION TO A DEVELOPMENT STANDARD
CLAUSE 4.6 VARIATION- LANDSCAPED AREA**

Alterations & Additions to 15-27 McKell St Birchgrove

SP62555-1-43 McKell St.

December 2020



Fig 1: View of 15-27 McKell St Birchgrove

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1. Introduction

This request to vary a development standard is in support of the proposed alterations & additions to 7 existing town houses located at 15-27 McKell St Birchgrove . In accordance with Clause 4.6 of the Leichhardt LEP 2013, a written request is made to vary the Landscaped Area control which is clause 4.3A of the Leichhardt LEP 2013.

The 7 separate townhouses 15,17,19,21,23 25 & 27 McKell St are located with a strata scheme - SP62555-comprising a mix of townhouses & apartments of varying sizes. Originally constructed as Public Housing by the NSW Government, numerous alterations & additions have been approved by Inner West Council & its predecessor Leichhardt Council since the complex was sold to the private market. This means there is no record of the Open Space or Landscaped Area of the entire complex, however it is assumed that taken as a whole, the entire complex exceeds the control.

The current application is for external alterations to the existing façades of each dwelling & enlargement of the existing decks of each dwelling. These works result in no change to the existing Landscaped Area of each dwelling, resulting in no change to the existing assumed non-compliance with Landscaped Area across the entire SP62555.

2. Objectives of a clause 4.6 Variation- Leichhardt LEP 2013

(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.

(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.

(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.

These objectives will be analysed below.

3. Identify the Development Standard being varied

The development standard for Landscaped Area is set out in Clause 4.3a of Leichhardt LEP 2013.

The minimum landscaped area for a site greater than 235sqm is 20% of the site area.

For sites less than 235sqm the required landscaped area is 15% of the site area.

The existing landscape area across the entire strata SP62555 is unknown. It is assumed by council that it does not comply with the control.
 The existing & proposed landscaped space for each of the 7 lots included in this current application is as follows:

ADDRESS & SITE AREA	EXISTING & PROPOSED LANDSCAPED SPACE	EXISTING & PROPOSED PRIVATE OPEN SPACE AT GROUND LEVEL ACCESSIBLE FROM LIVING ROOM	COMPLIES WITH LANDSCAPED AREA
15 McKell St- 112sqm	10sqm	36sqm	No to landscape area
17 McKell St-117sqm	10sqm	35sqm	No to landscape area
19 McKell St -120sqm	10sqm	35sqm	No to landscape area
21 McKell St -120sqm	19.15sqm- 14.73%	35sqm	No to landscape area
23 McKell St -120sqm	64.6 sqm or 47% of site area of 23 & 25 Combined	64.6sqm	Yes
25 McKell St -117sqm	Included in 23 McKell St	Included in 23 McKell St	Included in 23 McKell St
27 McKell St-109sqm	8.5sqm -	33sqm	No to open space yes to private open space

4.Objectives of the standard for Open Space

- 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.

5. Establish how each of the Objectives of Clause 4.3a for Landscaped Area are met if the standard is to be varied.

The proposed alterations to 15-27 McKell St are not seeking to further vary the landscape area of the subject sites 15-27 McKell St, or of the site of SP62555, beyond the variation with the standard which already exists. This existing variation results from the initial building approval when the complex was constructed, combined with subsequent approvals for changes to individual lots granted by council.

No change is proposed to the building footprint in either the front or rear of each dwelling. The proposed deck additions to each dwelling extend out above existing open space located in the front of each dwelling. The deck additions are greater than 2.4m above this existing open space at ground level, & therefore the deck additions are excluded from the site coverage calculation as defined in Leichhardt LEP 2013. Therefore assessment of the proposal against the Open Space & Landscaped area controls is based on the existing condition- there are no additional non compliances proposed with this application.

There is no change proposed to the area or layout of the existing rear courtyards of each dwelling, including changes to existing landscaping. These private courtyards are directly accessible from the Ground Floor living rooms of each dwelling for private use. The area of private open space for each dwelling greatly exceeds the minimum 16sqm required

The 7 courtyards are contiguous, & together with the rear gardens of the dwellings to the north located in Yeend St they form a continuous green corridor running between the dwellings which is substantially planted with mature trees. This also creates privacy between dwellings. No change is proposed to these trees with this application.

The proposed first floor decks on the street façade maintain the existing front building setbacks at ground floor level along the street- the decks are located behind the existing brick parapet along the street façade, & above the existing concrete paved front area. This results in no change to the perception of open space for either pedestrians or users of Mort Bay Park opposite the site.

There is no change to the existing movement of water across the site or to the area of impermeable surfaces at ground level. The deck extensions at first floor level are proposed as open decks, & the area beneath each deck is already an impermeable concrete surface.

No change is proposed to the existing site density in any way- either from building footprint, FSR, bulk, scale, dwelling type or internal plan configuration.

The existing landscaped area of 4 of the subject sites has previously been assessed in applications for 21,23,25 & 27 McKell Sts. All of these works have been approved. No change is proposed to the approved landscaped area of these sites.

In addition, increases in building footprint have been approved to other dwellings within SP6255. These include but are not limited to:

7,9,11 & 13 McKell St.
27 McKell St
2 McKell St
4 McKell St
6,8,10 & 12 McKell St
14 McKell St
30 & 32 McKell St
2 & 4 Lizzie Webber Place
6 Challenger Place
5 Challenger Place
7 Challenger Place

These approvals suggest that council have acknowledged & assessed the existing non-compliance with the Landscaped Area control within SP62555 as a whole as being compatible with the existing & desired future character of the locality. It also suggests that council have abandoned the relevance of the Open Space control in relation to this particular strata.

6.Compliance with the Objectives of the R1 Zone:

The objectives of the R1 Zone are:

To provide for the housing needs of the community.

- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

- To improve opportunities to work from home.
- To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- To provide landscaped areas for the use and enjoyment of existing and future residents.
- To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.
- To protect and enhance the amenity of existing and future residents and the neighbourhood.

The proposed works comply with all of these objectives. There is no change to the existing housing type or density or to the existing land use, which has previously been approved by council firstly in the original approval for the entire complex & then in subsequent approvals for alterations to individual lots.

There is no change to the internal layout of any of the dwellings which continue to provide work from home opportunities- 4 of the 7 subject dwellings have had internal alterations approved by council.

There is no change proposed to the existing building form or height or bulk, or to building form or bulk changes to 23, 25 & 27 McKell St under recent council approvals.

No change is proposed to the existing subdivision pattern or dwelling type. The dwellings remain as separate townhouses within a Strata Complex.

No change is proposed to the existing landscaped area of the site or open space. All 7 dwellings maintain the existing open space at ground floor level directly accessible from the living areas. The proposal has no effect on the open space of the Strata as a whole.

No change is proposed that detrimentally affects the amenity of existing & future residents of the strata or of the locality, including users of Mort Bay Park opposite the site.

The proposed alterations & additions to the existing brick parapet wall along McKell Sr are in keeping with approvals granted by council to adjacent dwelling No.s 7-13 McKell St. The enlarged first floor decks are keeping with the location & size of the existing decks of 7-13 McKell St which remain as originally constructed & approved by council.

The proposed alterations to the façade glazing of 15-27 McKell St are in keeping with approved changes to the façade of 2, 3, 5, 7, 9, 11, 13, 6, 8, 10 & 12 McKell St.

7. Establish how non-compliance with the standard is still consistent with the objectives of the *Environmental Planning and Assessment Act 1979*, Sections 5a(i) and (ii)

The objects of the Act are detailed under section 5 which states:

"5. The objects of this Act are-

(a) to encourage-

(i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and village for the purpose of promoting the social and economic welfare of the community and a better environment;

(ii) The promotion and co-ordination of the orderly and economic use and development of the land;"

Compliance with the standard in this case would unduly limit the development of the land in question. The non-compliance with the Landscaped Area control across the strata as a whole is an existing condition, as no change to the existing open space is proposed with this current application. The proposal complies with the controls of the DCP.

Council has also acknowledged, via previous approvals for 21 & 27 McKell St as well as for surrounding dwellings within SP62555, that the landscaped area control does not reflect the reality of the existing built form of this locality.

The site is ideally located, close to shops, schools & parks, ideal for a family. The proposed works in no way alter the existing accommodation within the dwellings. To create a better environment the ideal outcome is to allow the continued non-compliance with the FSR, an outcome which would be hindered by strict compliance with the standard & the EPA act.

Other matters which should be taken into consideration in deciding whether concurrence should be granted are as follows:

"(a) whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning; and

(b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument."

The breach of the Landscaped Area control does not raise any matter of significance for State or regional planning. The proposed non-compliance is consistent with the existing built form of the locality as evidenced by councils continued approval of additions to other dwellings within the strata that reduce the open space available on both individual lots & therefore by extension across the entire strata. There are no negative impacts on the conservation zone. Nor is there is any net adverse impact to the public interest if Council supported the application.

8. Demonstrate why compliance with the standard is unreasonable or unnecessary, in the circumstance.

Strict Compliance with the Landscaped Area control would require demolition of existing structures that are included within the definition of Site Coverage, as well as existing hard paved areas, in order to reduce the site cover across the Strata Site & then landscape a portion of these areas. Given that the existing landscaped area across the site results from the initial building approval & more recent approvals by council for individual lots, such action is unreasonable & unnecessary.

Contrary to this option, since the gazettal of Leichhardt Council LEP 2013, council have continued to approve additional building footprint to dwellings within the strata, including 2 McKell St, 14 McKell St & 2 Lizzie Webber Place & 6 Challenger Place. Council have not conditioned reductions in the existing building footprints with any of these approvals. These approvals suggest council have abandoned strict adherence to the control in their assessment of the suitability of proposals within this strata.

In addition, the works proposed in this current application are for changes to the existing façade, & for additions to existing decks which are located above existing hard paved area. As such, these works are not strictly even related to an assessment on Landscape Area as no change to the existing open space ratio on the site is proposed.

Strict compliance with the Landscaped Area control would make no material difference to the locality, as the proposed works do not change the existing Landscaped Area on any of the 7 sites forming this application. As evidenced elsewhere within this report council have not raised any issues with the existing landscaped area of the site in previous applications & have used other applicable planning controls in their assessment of proposals within SP62555. This proposal is the same.

All of the 7 dwellings maintain existing landscaping & mature trees within the existing rear courtyards, & all have private open space greatly exceeding the minimum requirements of the DCP.

The proposal meets the requirements of the DCP controls for the locality. It does not unduly overshadowing any neighbouring property. Views & privacy of neighbouring properties not included in this application are unaffected by the proposal. There is no increase in height, bulk or FSR. The proposal is in keeping with previously approved alterations to the facades of adjacent dwellings with the strata, & utilizes existing materials & forms of these surrounding dwellings for the proposed façade amendments. As such, the proposal has no negative effect on the conservation zone & is consistent with the desired future character of the locality.

Treated as individual lots, 6 of the 7 dwellings comply with the open space control if not the landscaped area control. The non-compliance of No. 27 McKell St was previously approved by council.

The site of the 7 dwellings is located directly across the road from Mort Bay Park. The existing extensive trees in the vicinity of the subject site result in the buildings being viewed in a landscape setting despite the relatively high density of the locality.

9. Demonstrate sufficient environmental planning grounds to justify the non-compliance.

As demonstrated above, the proposed non-compliance with the Open Space control is entirely justifiable when assessed against all of the relevant planning controls for the site.

- The proposal complies with the aims & objectives of Clause 1.2 of the Leichhardt LEP 2013, the overall vision for Leichhardt.
- The proposal complies with the aims & objectives of Clause 4.3a of the Leichhardt LEP 2013 in relation to the Landscaped Area control.
- The proposal complies with the aims & objectives of the R1 Zone.
- This assessment has addressed the requirements for a variation to a standard under Clause 4.6 of Leichhardt LEP 2013 to be considered by council, including addressing why compliance with the control is unreasonable or unnecessary
- The proposal complies with the DCP controls for the site including bulk, scale, building typologies, BLZ, overshadowing of neighbours, privacy to neighbours & works with a conservation zone.

In summary, the proposed variation to the Landscaped Area control should be approved.

END OF REPORT

Anthony Green
December 2020

Attachment D – Statement of Heritage Significance

Godden Mackay Logan

Area 15 Town of Waterview Conservation Area

Landform

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

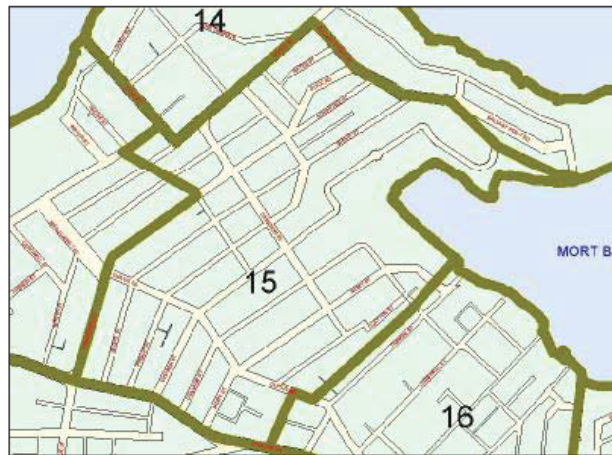


Figure 15.1 Town of Waterview Conservation Area Map.

History

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

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

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

Godden Mackay Logan

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

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

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

Sources

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

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

Further research by Max Solling.

Significant Characteristics

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

Godden Mackay Logan

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

Statement of Significance or Why the Area is Important

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

Management of Heritage Values

Generally

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

Retain

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

Godden Mackay Logan

- All remaining sandstone kerbs and gutter.

Avoid

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