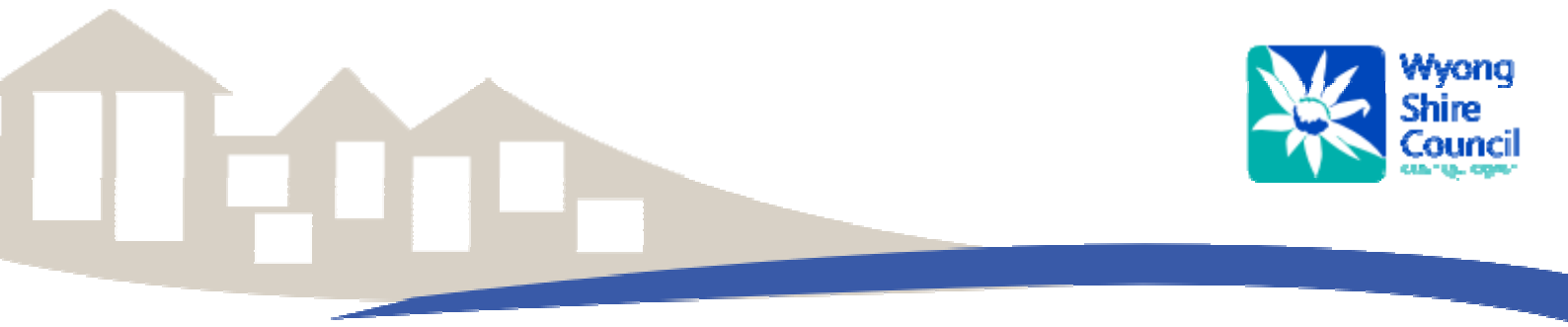


Wyong Shire Council

## ORDINARY COUNCIL MEETING

### ENCLOSURES

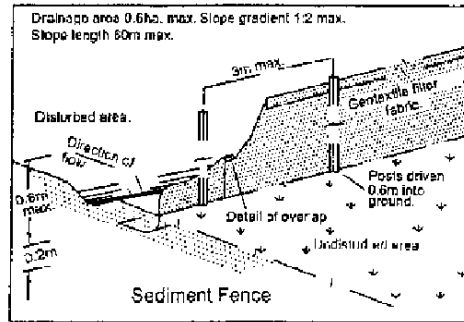
Wednesday, 8 August, 2012



**WYONG SHIRE COUNCIL**  
ENCLOSURES TO THE  
**ORDINARY COUNCIL MEETING**  
TO BE HELD IN THE COUNCIL CHAMBER,  
WYONG CIVIC CENTRE, HELY STREET, WYONG  
ON WEDNESDAY, 8 AUGUST 2012 ,  
COMMENCING AT 5:00 PM

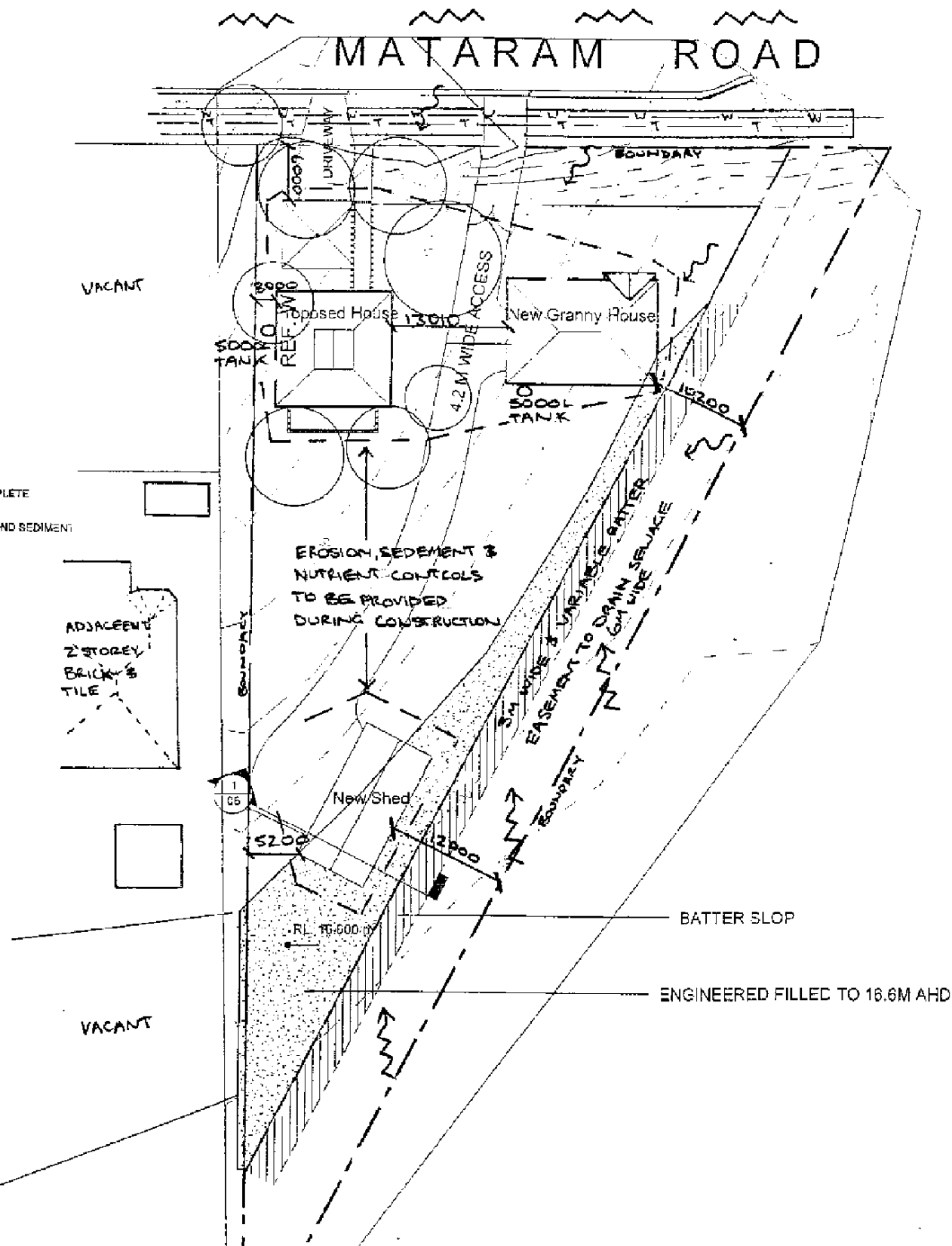
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**EROSION AND SEDIMENT CONTROL NOTTS**

1. DISTURBED AREAS TO BE KEPT TO A MINIMUM.
2. CONTROL CLEAN WATER FROM ABOVE THE SITE, THROUGH THE SITE OR AROUND THE SITE.
3. KEEP CLEAN WATER SEPERATE FROM DIRTY WATER.
4. CONSERVE ALL TOPSOIL, STOCKPILE AND PROTECT FOR REUSE ON SITE.
5. PROTECT ALL DISTURBED AREAS FROM EROSION.
6. MINIMISE SEDIMENTATION.
7. MAINTAIN ALL EROSION AND SEDIMENT CONTROL MEASURES UNTIL COMPLETE REHABILITATION IS ACHIEVED.
8. EROSION/SEDIMENT CONTROL MEASURES TO CONFORM WITH EROSION AND SEDIMENT CONTROL PLAN FOR SUBDIVISION WORKS.

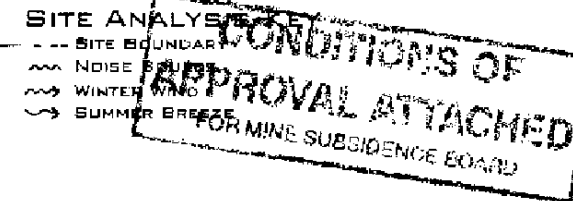


**SITE PRECIS**

SITE AREA	3895.75QM
DWELLING FLOOR AREA	200.06QM
SECONDARY DWELLING FLOOR AREA	56.06QM
TOTAL FLOOR AREA	256.06QM
FSR	0.065:1
SITE COVERAGE	395.9 / 3895.7 10.16%

**GENERAL NOTES.**

TREES TO BE REMOVED SHOWN.  
ALL LEVELS TO A.H.D.  
ALL STORMWATER TO COUNCILS SYSTEM VIA DETENTION TANKS & NUTRIENT CONTROL AREAS.  
NO WATERWAYS OR WATERCOURSES.  
TEMPORARY SILTATION CONTROL MEASURES TO BE PROVIDED DURING CONSTRUCTION.  
PHYSICAL TERMITE BARRIERS TO BE PROVIDED.  
ALL DIMENSIONS TO BE CONFIRMED ON SITE.  
DO NOT SCALE.  
CUT & FILL AS SHOWN.



**BASIX NOTES.**

ALL FIXTURES TO BE AS PER BASIX CERTIFICATE REQUIREMENTS.  
LOW WATER USE SPECIES LANDSCAPING TO BE USED AS PER BASIX CERTIFICATE REQUIREMENTS.  
A WATER TANK IS TO BE INSTALLED TO COLLECT ROOF WATER AS PER BASIX CERTIFICATE REQUIREMENTS.  
FLOORS, WALLS & CEILING IS TO BE CONSTRUCTED AS OUTLINE IN THE BASIX CERTIFICATE.  
ALL WINDOWS & GLAZED DOORS ARE TO BE SHADED AS & HAVE R-VALUES AS OUTLINE IN THE BASIX CERTIFICATE.  
THE HOT WATER HEATER IS TO HAVE A ENERGY EFFICIENCY RATING NOT LESS THAN SPECIFIED IN THE BASIX CERTIFICATE.  
THE HEATING & COOLING SYSTEM IS TO HAVE A ENERGY EFFICIENCY RATING NOT LESS THAN SPECIFIED IN THE BASIX CERTIFICATE.  
ALL EXHAUST FANS TO KITCHEN & BATHROOMS TO BE AS PER THE BASIX CERTIFICATE REQUIREMENTS.  
ALL LIGHT FIXTURES TO BE PRIMARILY LED LIGHTING.  
THE COOK TOP & ELECTRIC OVEN IS TO BE AS PER BASIX CERTIFICATE REQUIREMENTS.  
THE REFRIGERATOR SPACE IS TO BE WELL VENTILATED.  
CLOTHES DRYING DEVICES TO BE AS PER BASIX REQUIREMENTS.

1 Site  
1:500

Legge Architects remain the author of this plan, SJH Planning & Design have been given direct instruction by the client Allen Western to complete necessary documentation to facilitate odgment with council.

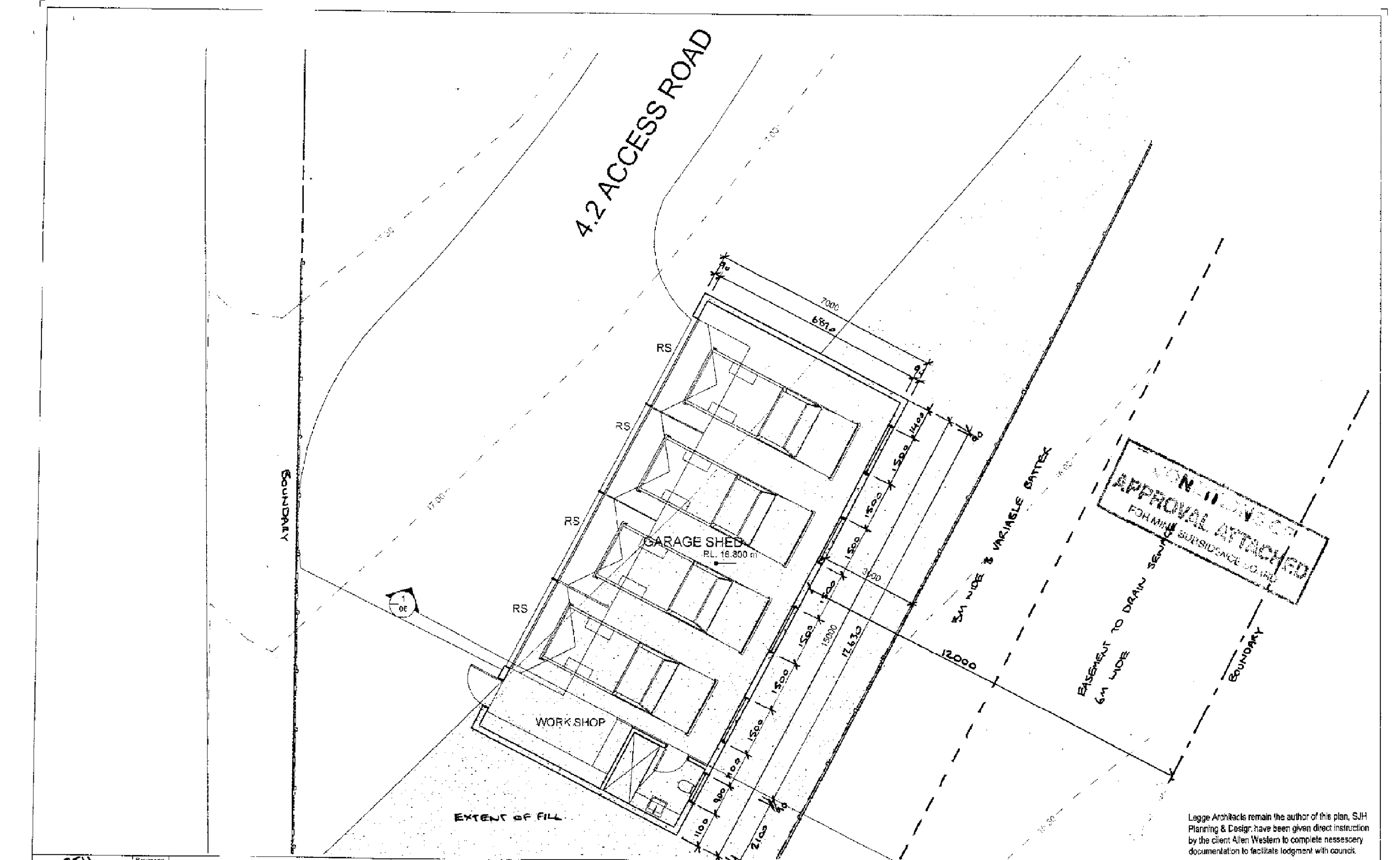


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PROJECT AND ADDRESS  
Lot264 DP 1036768  
MATARAM ROAD,  
WOONGARRAH, NSW  
DRAWING  
SITE PLAN

LEGGE ARCHITECTS		PROJECT NO	DWG NO
SUITE 712, 275 ALFRED STREET	NORTH SYDNEY NSW, 2060	1021	00
PH 8800-5330	FX 9460-4025	DATE	REVISION
05/05/11	SS	1:500	CONCEPT A



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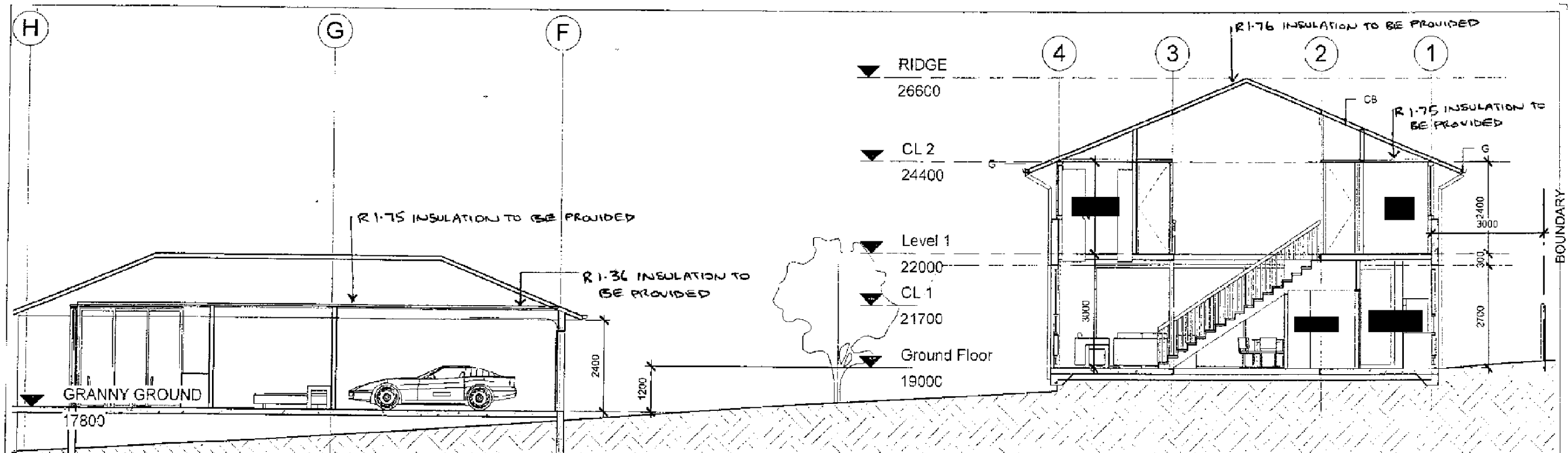
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PROJECT AND ADDRESS  
 Lot264 DP 1036768  
 MATARAM ROAD,  
 WOONGARRAH, NSW  
 DRAWING  
 Proposed Shed

**LEGGE ARCHITECTS**  
 SUITE 712, 275 ALFRED STREET  
 NORTH SYDNEY NSW, 2050  
 PH 9900-5330 FX 9450-4025

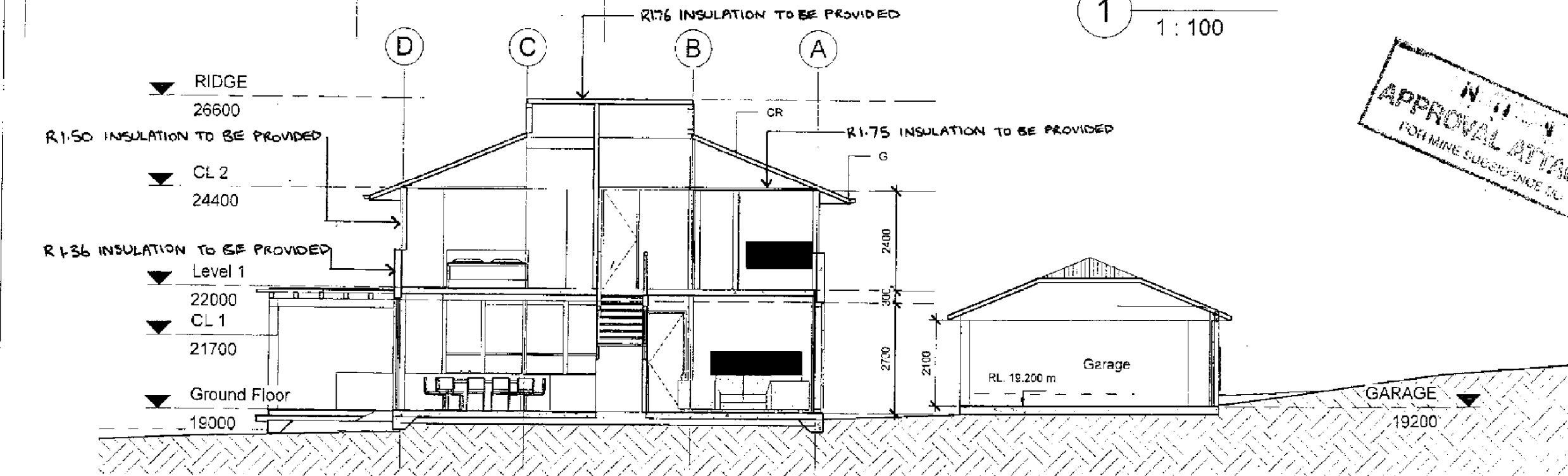
PROJECT NO.	DWG NO.
1021	04
DATE	REVISION
11/09/13	Author 1: 100
DRAWN	STATUS
Author	CONCEPT

Designer



1 Section 1  
1:100

APPROVAL ATTACHED  
 FOR MINE LICENSING TO GO



2 Section 2  
1:100

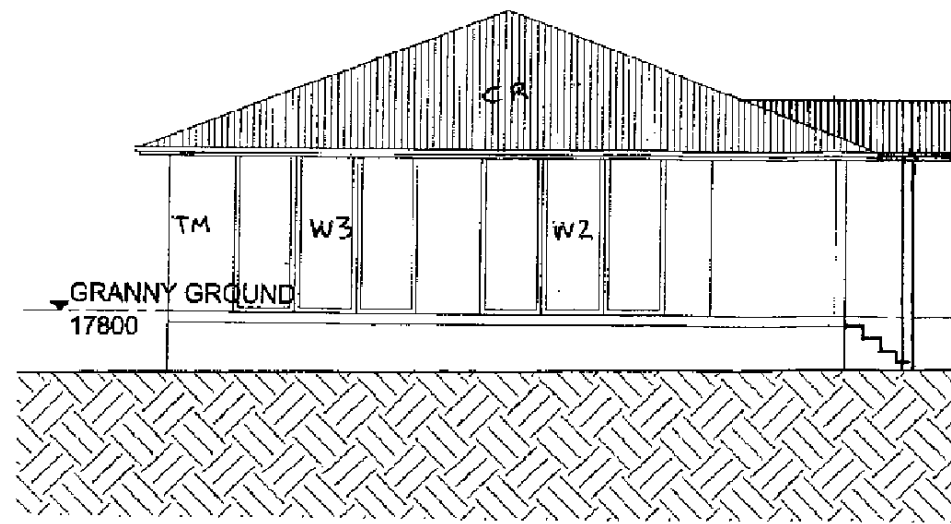
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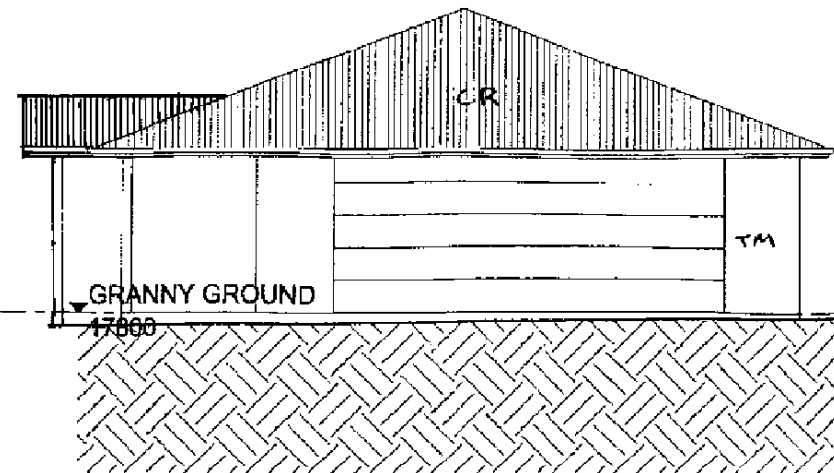
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PROJECT AND ADDRESS  
 Lot264 DP 1036768  
 MATARAM ROAD,  
 WOONGARRAH, NSW  
 DRAWING  
 Sections

**LEGGO ARCHITECTS**  
 SUITE 712, 275 ALFRED STREET  
 NORTH SYDNEY NSW, 2060  
 PH 9900-5330 FX 9460-4025  
 DATE DRAWN SCALE STATUS REVISION  
 05/05/11 SS 1:100 CONCEPT 05 A

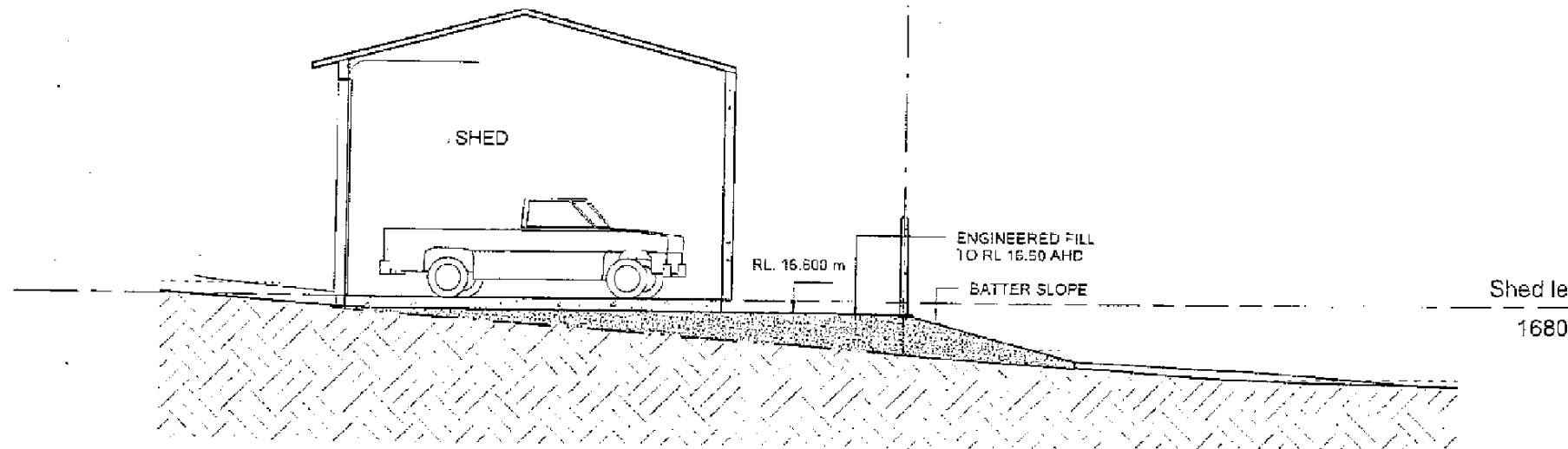


1 East Elevation  
1 : 100



2 West Elevation  
1 : 100

Legend	
T	T&G Timber Flooring
CT	Ceramic Tile
FG	Fixed Glazing
CR	Colorbond Roof
CG	Colorbond Gutter
TM	Texture coated FC
SL	Solid Louvers



1 Section 3  
1 : 100

**CONDITIONS OF APPROVAL ATTACHED FOR MINE SUPERVISOR BOARD**

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Revisions	Drawn	Checked	Date

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PROJECT AND ADDRESS  
Lot264 DP 1036768  
MATARAM ROAD,  
WOONGARRAH, NSW

DRAWING  
SECTION THROUGH SHED

LOGGO ARCHITECTS

SUITE 712, 275 ALFRED STREET  
NORTH SYDNEY NSW, 2059  
PH 9930-5330 FX 5460-4025

DATE 11/1/11 DRAWN SS SCALE 1:100 STATUS CONCEPT

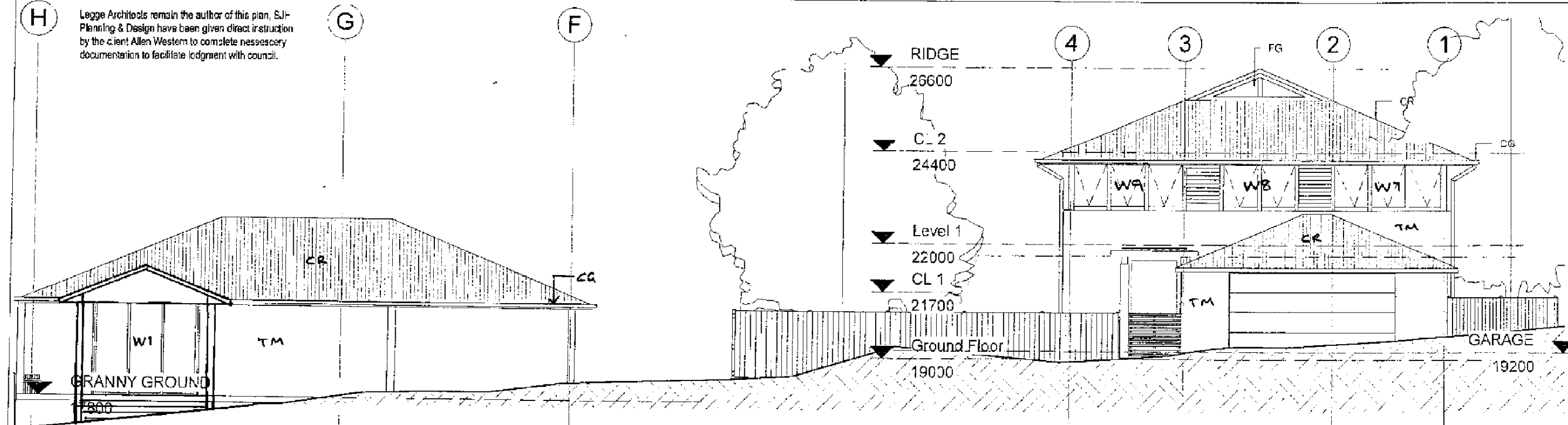
PROJECT NO.  
1021

DWG NO.

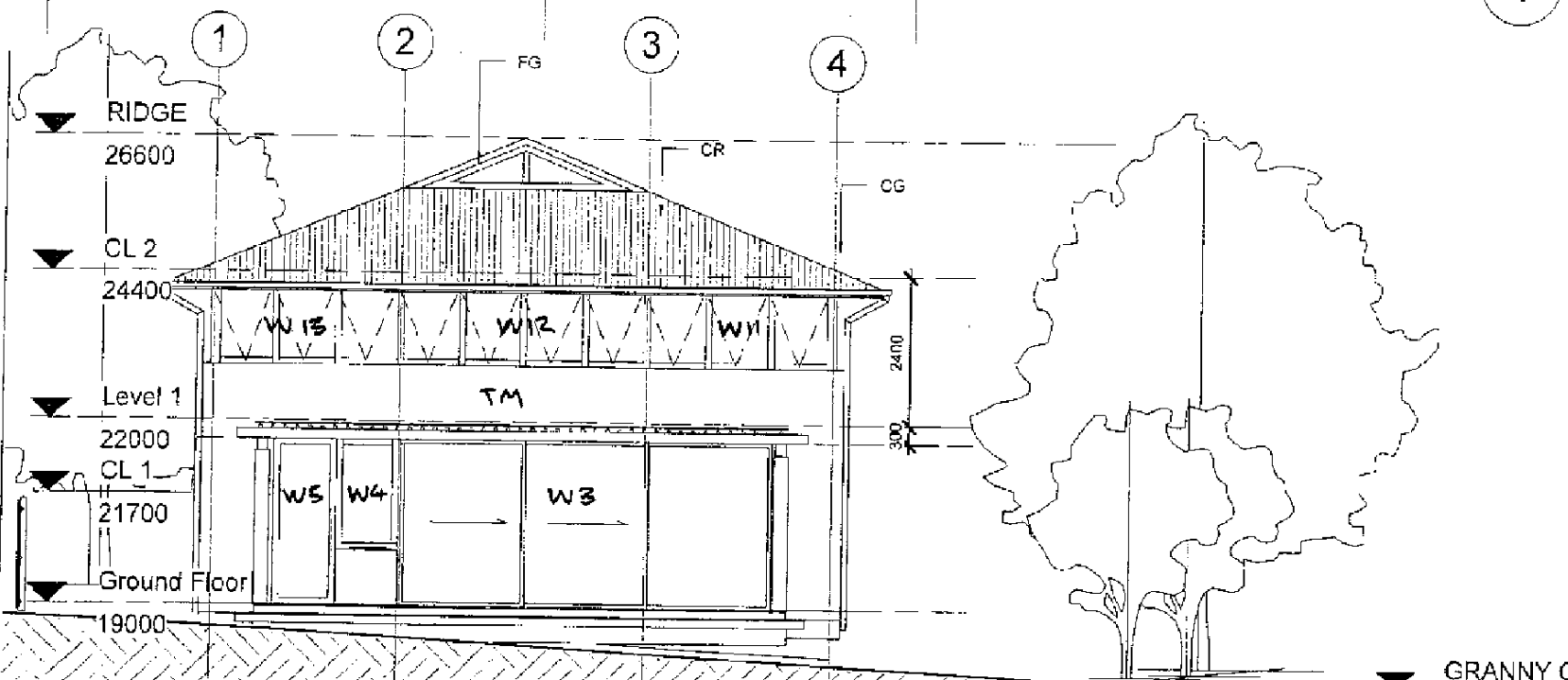
REVISION: 06

Designer

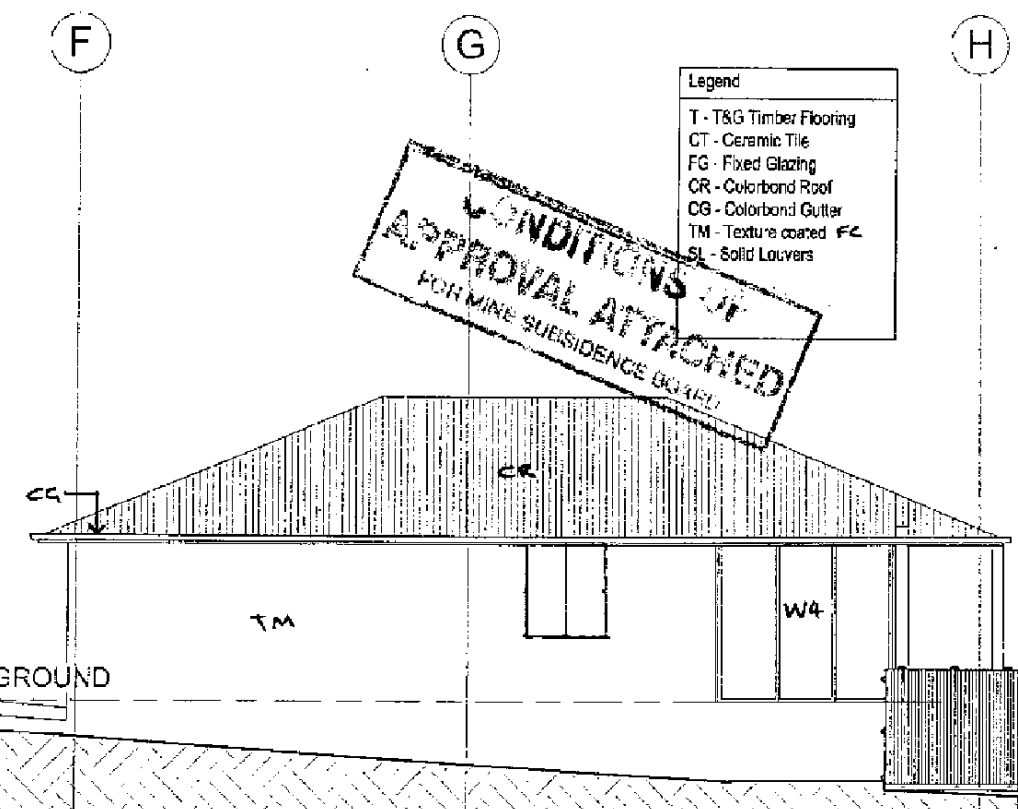
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1 North Elevation  
1 : 100



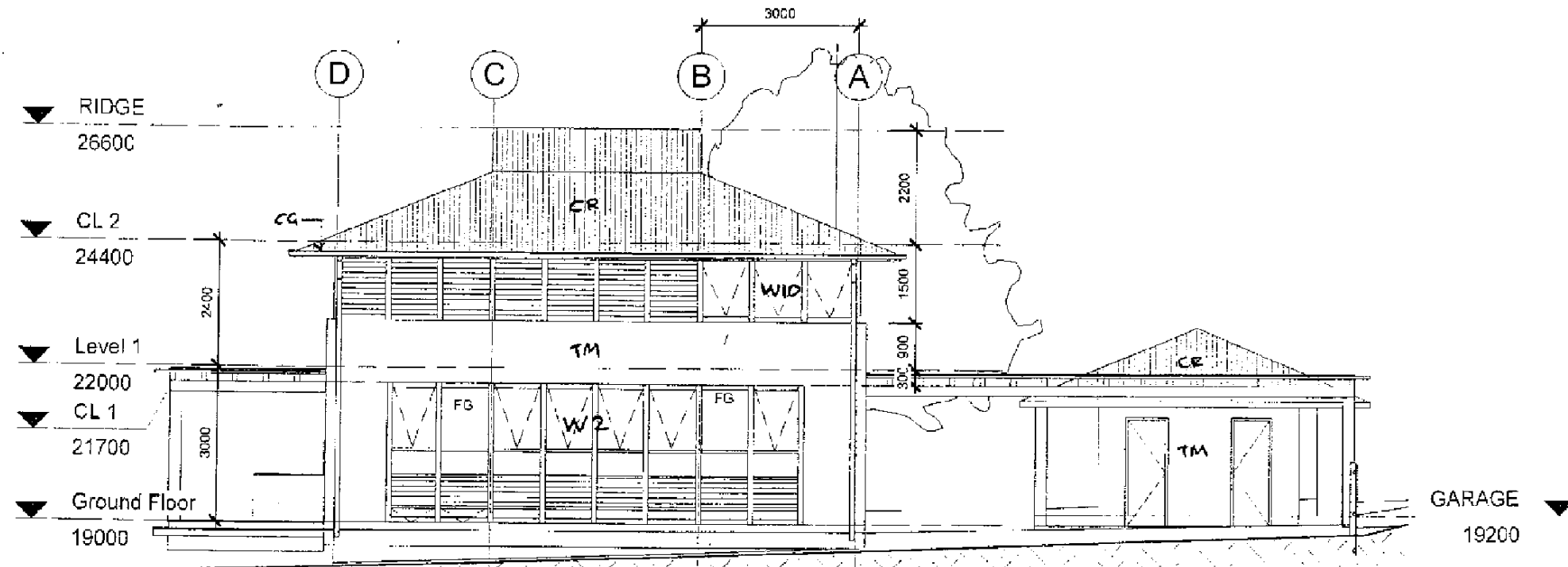
South Elevation  
1 : 100



Legend  
 T - T&G Timber Flooring  
 CT - Ceramic Tile  
 FG - Fixed Glazing  
 CR - Colorbond Roof  
 CG - Colorbond Gutter  
 TM - Texture coated FC  
 SL - Solid Louvers

CONDITIONS OF APPROVAL ATTACHED FOR MINE SUBSIDENCE BOARD

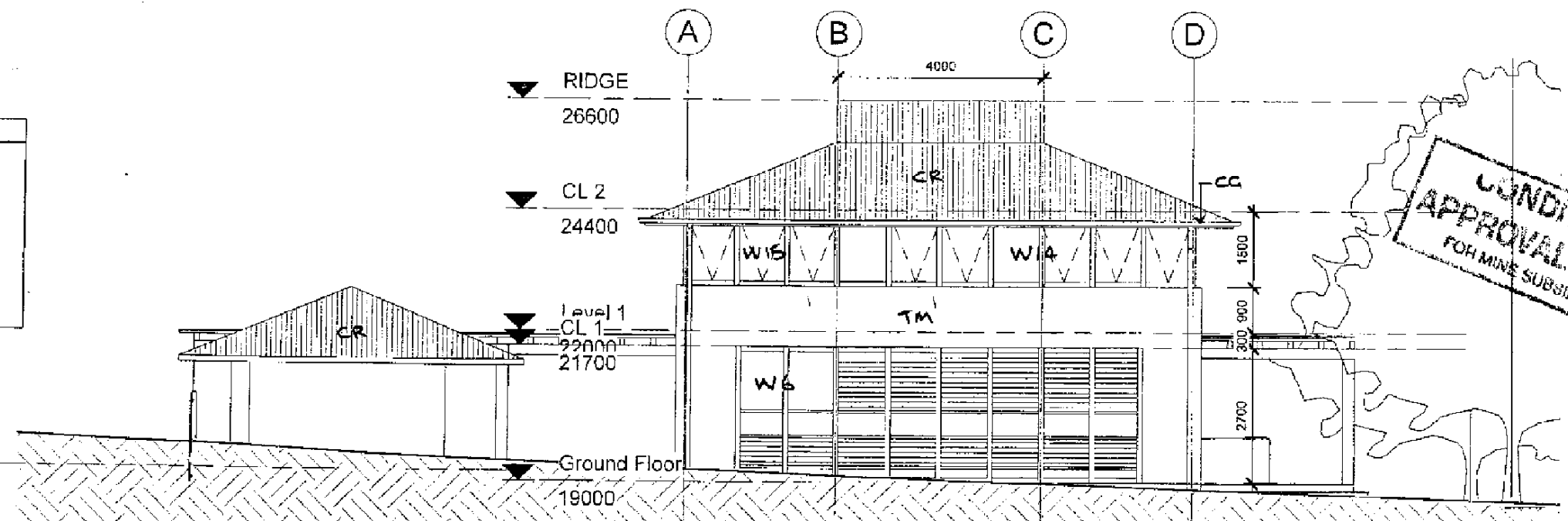
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						DWG NO. 07 REVISION A



1 East Elevation  
1 : 100

Legend

- T - T&G Timber Flooring
- CT - Ceramic Tile
- FG - Fixed Glazing
- CR - Colorbond Roof
- CG - Colorbond Gutter
- TM - Texture coated FC
- SL - Solid Louvers



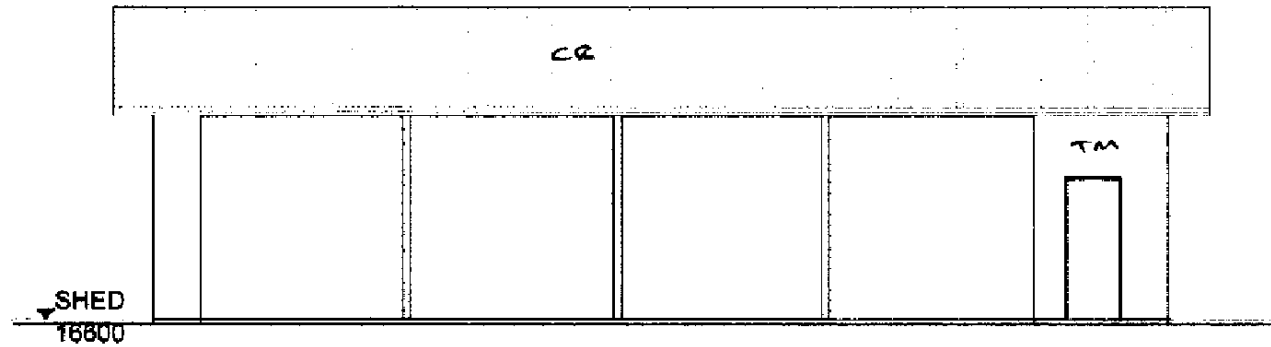
2 West Elevation  
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CONDITIONS OF APPROVAL ATTACHED FOR MINE SUBSIDENCE BOARD

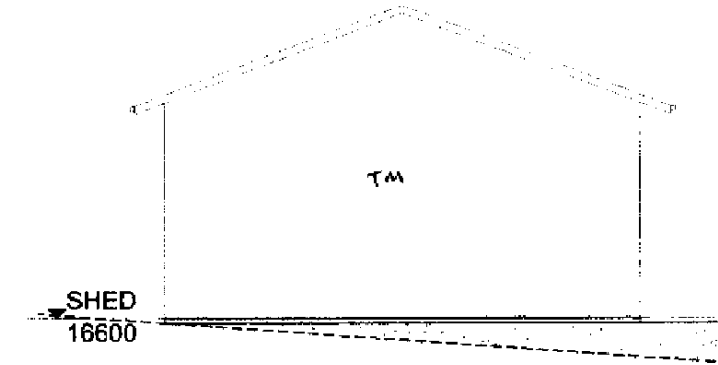
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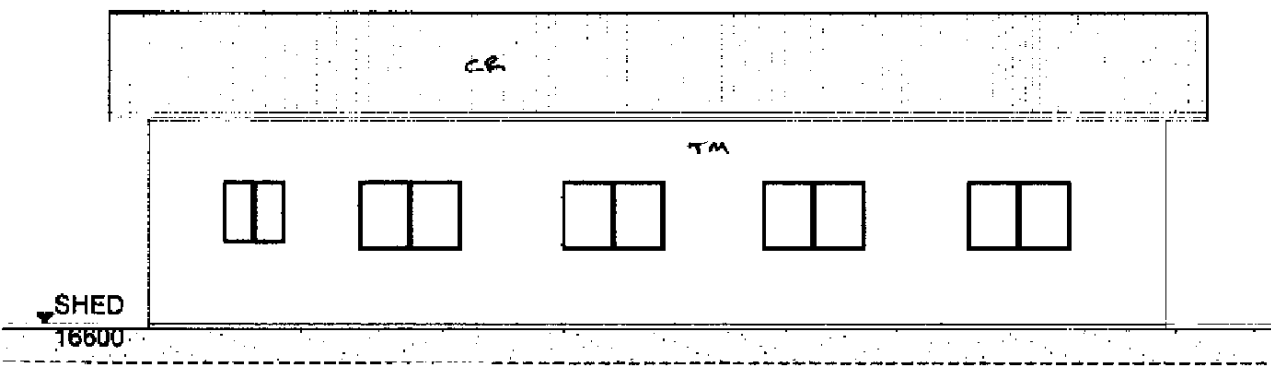




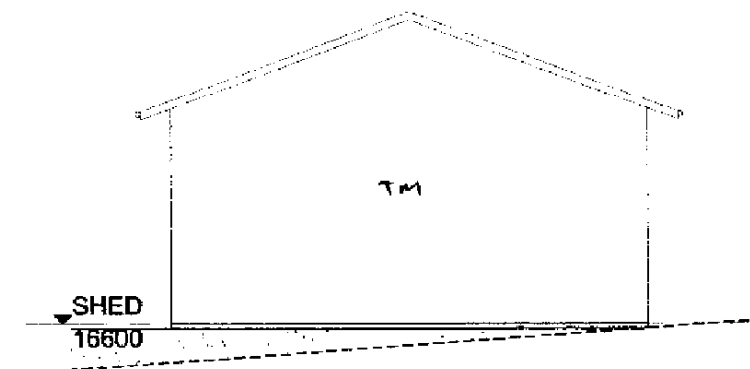
1 North Elevation  
1 : 100



2 West Elevation  
1 : 100



3 South Elevation  
1 : 100



4 East Elevation  
1 : 100

Legend	
T - T&G Timber Flooring	
CT - Ceramic Tile	
FG - Fixed Glazing	
CR - Colorbond Roof	
CG - Colorbond Gutter	
TM - Texture coated	
SL - Solid Louvers	

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PROJECT AND ADDRESS  
 Lot264 DP 1036768  
 MATARAM ROAD  
 WOONGARRAH, NSW  
 DRAWING

SUITE 712, 275 ALFRED STREET  
 NORTH SYDNEY NSW, 2060  
 PH 9500-5330 FX 9460-4025  
 DATE 05/05/11 DRAWN SS SCALE 1:100

PROJECT NO. 1021  
 STATUS CONCEPT

DWG NO. 09  
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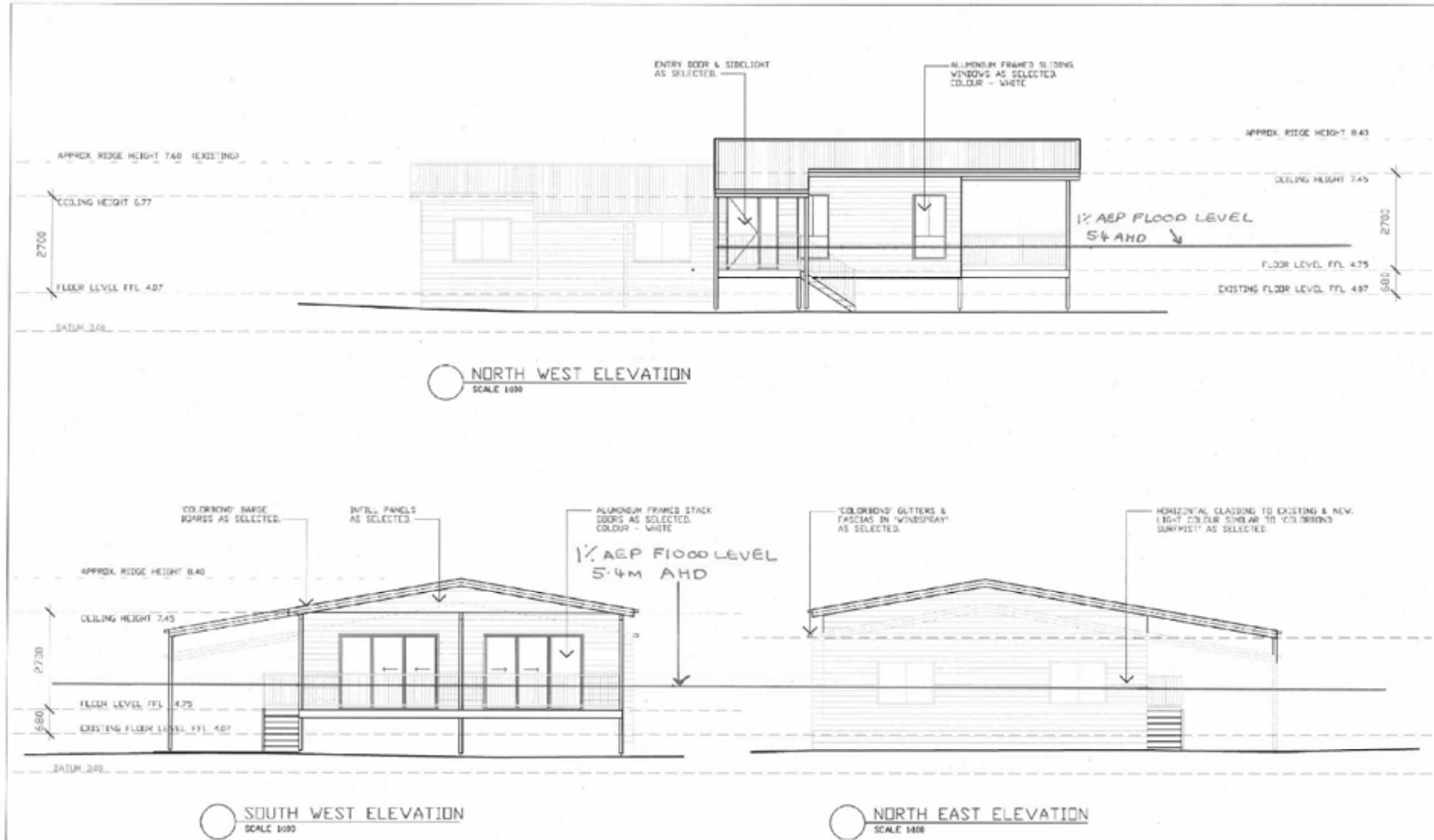


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Revisions	Date	Created	Size	PROJECT AND ADDRESS	PROJECT NO.	DWG NO.
				Lot 264 DP 1036758 MATARAM ROAD, WOONGARRAH, NSW	1021	10
				DRIVING View	STATUS CONCEPT	REVISION A

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SUITE 712, 278 ALFRED STREET  
 NORTH SYDNEY NSW 2060  
 PH 9900-0330 FX 9460-1025  
 DATE: 05/05/11 DRAWN: SS SCALE: 1:100



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- ALL DIMENSIONS MUST BE CHECKED BY THE OWNER & CONTRACTOR PRIOR TO THE SETTING OUT OF WORKS ON THE SITE & PRIOR TO THE ORDERING OF MATERIALS.
- ALL NEW WORK MUST BE SET-OUT BY A REGISTERED SURVEYOR & SETBACKS TO BOUNDARIES MUST COMPLY WITH THE RELEVANT AUTHORITIES
- FIGURED DIMENSIONS TO BE SHOWN IN PREFERENCE TO SCALED READINGS.
- ALL EXISTING & FINISHED GRADING LINES & LEVELS ARE INDICATIVE ONLY & MUST BE CHECKED ON SITE PRIOR TO COMMENCEMENT OF WORKS.

- ALL TRUSS ROOF SPANS & BRACING SHALL CONFORM WITH THE REQUIREMENTS OF AS 1684 OR WHERE APPLICABLE PART 3.4.3 OF THE HOUSING PROVISIONS OF THE B.C.A. VOL 2
- GLASS INSTALLATION MUST COMPLY WITH AS 1947
- SMOKE ALARMS MUST BE INSTALLED & MUST COMPLY WITH AS 3786 & PART 3.7.2.3 & 3.7.2.4 OF THE HOUSING PROVISIONS OF THE B.C.A. VOL 2
- BALUSTRADE CONSTRUCTION MUST COMPLY WITH PART 3.8.3 OF THE HOUSING PROVISIONS OF THE B.C.A. VOL 2
- ALL CONCRETE & STRUCTURAL STEEL WORK IS TO BE DESIGNED BY A STRUCTURAL ENGINEER.
- THE BUILDING CODE OF AUSTRALIA & ALL RELEVANT LOCAL GOVERNMENT & AUSTRALIAN STANDARDS CODES TAKE PRECEDENCE OVER THESE DRAWINGS

**CLIENT:**  
**EMMA BLAKE**

**PROJECT:** PROPOSED ADDITIONS & ALTERATIONS

**LOCATION:**  
LOT 4 Sec.1 DP 3368  
65 McPherson Rd,  
TUGGERAH, 2259

new homes  
alterations and additions  
building and development applications

**KEN JONES**  
BUILDING DESIGNER

p.o. box 6192, kincumber 2251  
ph: (02) 4369 7277  
mobile: 0411434269  
kjdesign1@bigpond.com

**FLOOR AREAS:**  
65.43m<sup>2</sup>

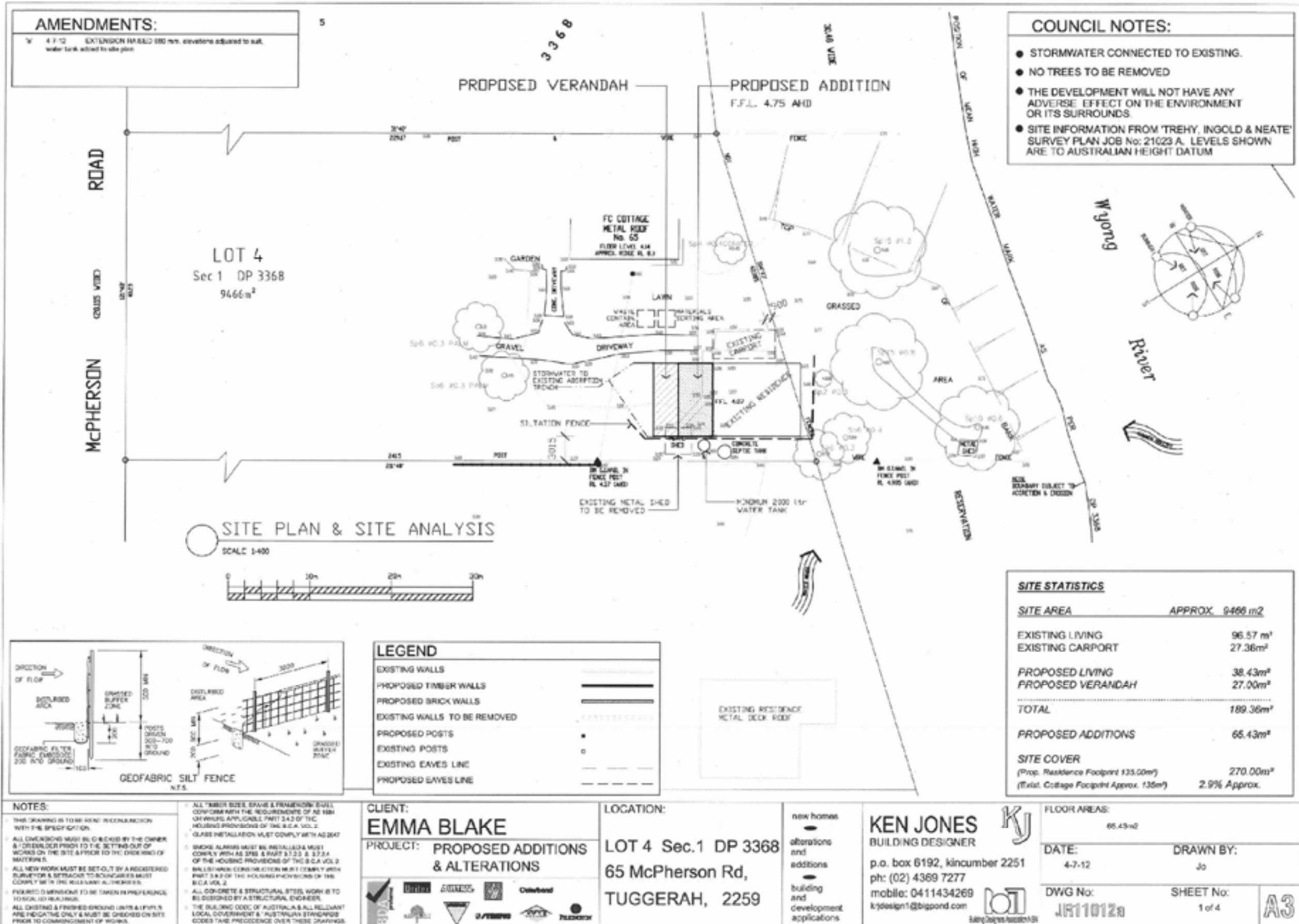
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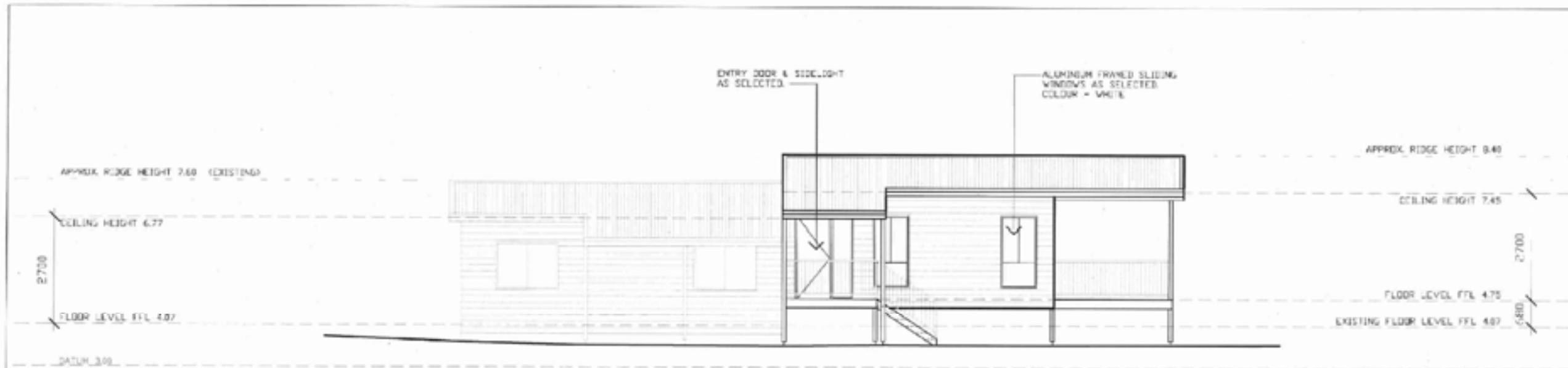
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**DWG No:** JR11012a

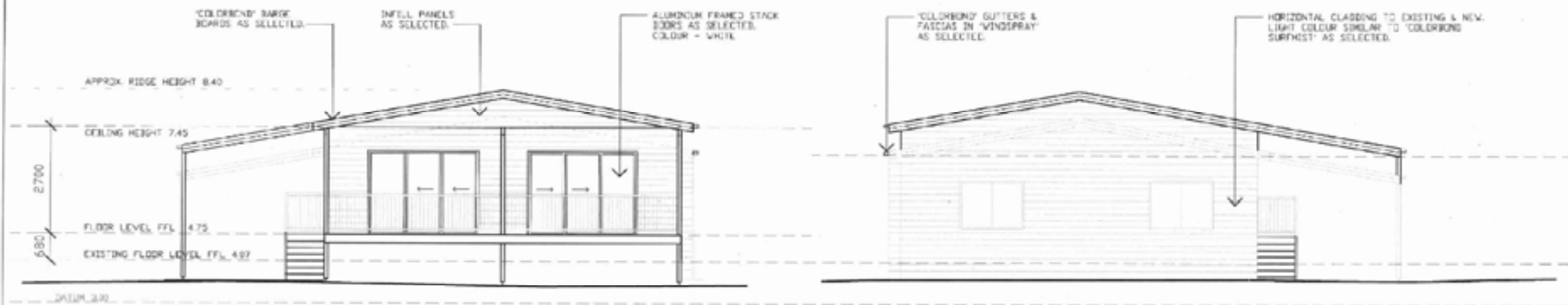
**SHEET No:** 3 of 4

**A3**





**NORTH WEST ELEVATION**  
SCALE 1:100



**SOUTH WEST ELEVATION**  
SCALE 1:100

**NORTH EAST ELEVATION**  
SCALE 1:100

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- ALL DIMENSIONS MUST BE CHECKED BY THE OWNER &/OR BUILDER PRIOR TO THE SETTING OUT OF WORK ON THE SITE & PRIOR TO THE ORDERING OF MATERIALS.
- ALL NEW WORK MUST BE SET OUT BY A REGISTERED SURVEYOR & SETBACKS TO NEIGHBOURS MUST COMPLY WITH THE RELEVANT AUTHORITIES.
- FIGURED DIMENSIONS TO BE TAKEN IN PREPARANCE TO SCAFFOLD READINGS.
- ALL EXISTING & PROPOSED BOUNDING LINES & LEVELS ARE INDICATIVE ONLY & MUST BE CHECKED ON-SITE PRIOR TO COMMENCEMENT OF WORKS.

- ALL TIMBER EDGE, SPINE & FRAMEWORK SHALL CONFORM WITH S.E.C. REQUIREMENTS OF AS 1684 OR IN THE APPLICABLE PART 3.3.3 OF THE HOUSING PROVISIONS OF THE S.C.A. VOL. 2.
- GLAZE INSTALLATION MUST COMPLY WITH AS 1747.
- SMOKE ALARMS MUST BE INSTALLED & MUST COMPLY WITH AS 3786 & PART 3.7.2.3 & 3.7.2.4 OF THE HOUSING PROVISIONS OF THE S.C.A. VOL. 2.
- BAULDER CONSTRUCTION MUST COMPLY WITH PART 3.3.3 OF THE HOUSING PROVISIONS OF THE S.C.A. VOL. 2.
- ALL CONCRETE & STRUCTURAL STEEL WORK IS TO BE DESIGNED BY A STRUCTURAL ENGINEER.
- T.H.E. BUILDING CODE OF AUSTRALIA & ALL RELEVANT LOCAL GOVERNMENT & AUSTRALIAN STANDARDS CODES TAKE PRECEDENCE OVER THESE CHANGES.

**CLIENT:**  
**EMMA BLAKE**

**PROJECT:** PROPOSED ADDITIONS & ALTERATIONS



**LOCATION:**  
LOT 4 Sec.1 DP 3368  
65 McPherson Rd,  
TUGGERAH, 2259

new homes  
alterations and additions  
building and development applications

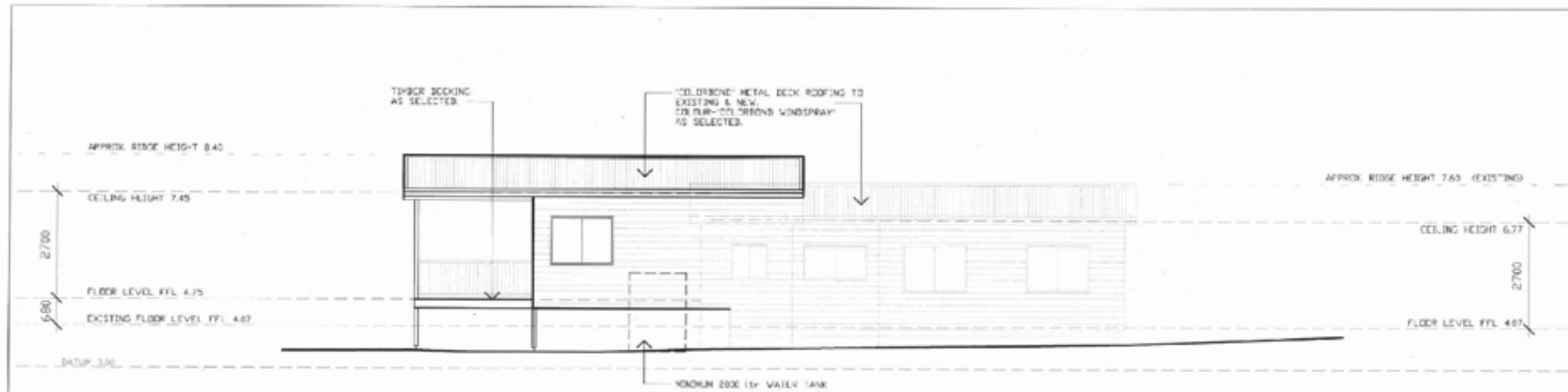
**KEN JONES**  
BUILDING DESIGNER  
p.o. box 6192, KINCUMBER 2251  
ph: (02) 4369 7277  
mobile: 0411434269  
kjdesign1@bigpond.com

**FLOOR AREAS:**  
65.43m<sup>2</sup>

**DATE:** 4-7-12  
**DRAWN BY:** Jo

**DWG No:** JR11012a  
**SHEET No:** 3 of 4

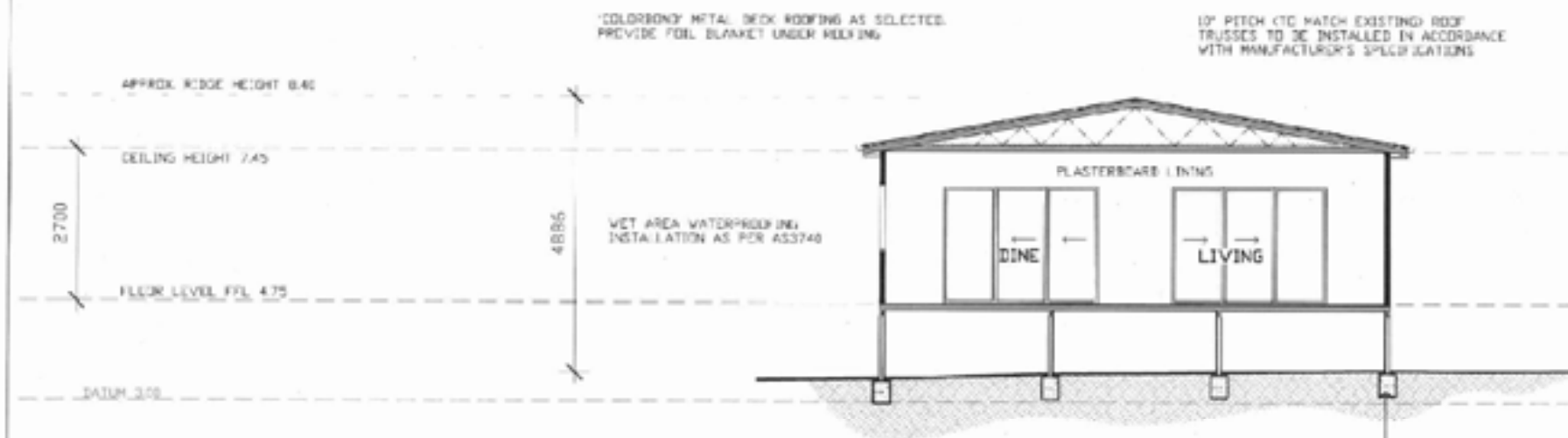
**A3**



**SOUTH EAST ELEVATION**  
SCALE 1/100

METAL DECK ROOFING, FASCIAS AND GUTTERS IN 'COLORBOND WINDSPRAY' AS SELECTED.  
EXTERNAL WALLS TO BE PAINTED IN COLOUR EQUIVALENT TO 'COLORBOND SURFCOAT' OR SIMILAR.

CONNECT G/PIPS TO RAINWATER TANKS AS PER COUNCIL DCP



**SECTION A-A**  
SCALE 1/100

HORIZONTAL CLADDING AS SELECTED. DOUBLE SIDED FOIL BEHIND

LEVELS SHOWN ARE TO AUSTRALIAN HEIGHT DATUM AND HAVE BEEN TAKEN FROM SURVEY BY 'TRISKY, INGOLD & NEATE' SURVEY. PROJECT No: 21024 EVC No: SAC1

TERMITE PROTECTION TO STRUCTURE AS REQUIRED

**NOTES:**  
1. THIS DRAWING IS TO BE READ IN CONJUNCTION WITH THE SPECIFICATION.  
2. ALL DIMENSIONS MUST BE CHECKED BY THE OWNER & / OR BUILDER PRIOR TO THE SETTING OUT OF WORKS ON THE SITE & PRIOR TO THE ORDERING OF MATERIALS.  
3. ALL NEW WORK MUST BE CHECKED BY A REGISTERED SURVEYOR & SETBACKS TO BOUNDARIES MUST COMPLY WITH THE RELEVANT AUTHORITIES.  
4. DIMENSIONS TO BE TAKEN IN REFERENCE TO SOLID FINISHES.  
5. ALL POSITIVE & FINISHED DIMENSIONS & LEVELS ARE INDICATIVE ONLY & MUST BE CHECKED ON SITE PRIOR TO COMMENCEMENT OF WORKS.

ALL TIMBER GIRDERS, SPANS & FRAMEWORK SHALL COMPLY WITH THE REQUIREMENTS OF AS 1684 OR WHERE APPLICABLE PART 3.4.3 OF THE HOUSING PROVISIONS OF THE S.C.A. VOL. 2.  
GLAZE INSTALLATION MUST COMPLY WITH AS 2547.  
SMOKE ALARMS MUST BE INSTALLED & MUST COMPLY WITH AS 3786. SURF 2.7.2.3 & 3.2.2.4 OF THE HOUSING PROVISIONS OF THE S.C.A. VOL. 2.  
BALUSTRADE CONSTRUCTION MUST COMPLY WITH PART 3.8.2 OF THE HOUSING PROVISIONS OF THE S.C.A. VOL. 2.  
ALL CONCRETE & STRUCTURAL STEEL WORKS TO BE DESIGNED BY A STRUCTURAL ENGINEER.  
THE BUILDING CODE OF AUSTRALIA & ALL RELEVANT LOCAL, GOVERNMENT & AUSTRALIAN STANDARD CODES TAKE PRECEDENCE OVER THESE DRAWINGS.

**CLIENT:**  
**EMMA BLAKE**

**PROJECT:** PROPOSED ADDITIONS & ALTERATIONS

**LOCATION:**  
LOT 4 Sec.1 DP 3368  
65 McPherson Rd,  
TUGGERAH, 2259

new homes  
alterations and additions  
building and development applications

**KEN JONES**   
BUILDING DESIGNER  
p.o. box 6192, kincumber 2251  
ph: (02) 4369 7277  
mobile: 0411434269  
kjdesign1@bigpond.com

**FLOOR AREAS:**  
65.43m<sup>2</sup>

**DATE:** 4-7-12  
**DRAWN BY:** Jo

**DWG No:** JR11012a  
**SHEET No:** 4 of 4

**A3**

25 July 2012

Director's Report

To the Ordinary Meeting

Environment and Planning Services  
Department

## 2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance

TRIM REFERENCE: - D03066307

MANAGER: Peter Fryar, Manager Development Assessment

AUTHOR: Emily Goodworth; Team Coordinator, Applications

### SUMMARY

An application has been received under Section 96(1A) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* for the modification of Conditions 10 and 54 of development consent DA/607/2006/D relating to the provision of unrestricted public access to the roof terrace observation deck of the Azzurro Blue Wharf development, and the requirement for the observation deck to be open to the public when the restaurants are trading. The development consent, the subject of this application, granted approval for the construction of the Fishermans Wharf Development. The proposed modification also seeks approval for the erection and use of a security door on the stairway accessing the observation deck. The application has been examined having regard to the matters for consideration detailed in Sections 96(1A) and 79C of the EP&A Act and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

<b>Applicant</b>	Sydney Civil Developments Pty Ltd
<b>Owner</b>	Wyong Shire Council
<b>Application No</b>	DA/607/2006/D
<b>Description of Land</b>	Lot 1 DP 1012476 & Lot 101 DP 1046474 (12) The Entrance Road, The Entrance
<b>Proposed Development</b>	Section 96(1A) for the modification of conditions relating to public access to the roof terrace observation deck and installation and use of a security door
<b>Site Area</b>	1,177.2m <sup>2</sup>
<b>Zoning</b>	6(a) Open Space and Recreation
<b>Existing Use</b>	Restaurants and Function Centre
<b>Estimated Value</b>	\$2,500

### RECOMMENDATIONS

- 1 ***That Council modify the consent having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act 1979 and other relevant issues.***
- 2 ***That Council advise those who made written submissions of its decision.***

**PRECIS**

- The development on the subject site is known as Azzurro Blu Wharf, comprising restaurants (ground floor), a function centre (first floor) and a roof terrace observation deck that is available for use by the public.
- The site is zoned 6(a) Open Space and Recreation under Wyong Local Environmental Plan 1991 (WLEP) with the development being a permissible use in the zone.
- Development Consent (DA/607/2006/C), the subject of this application, granted approval for the construction of a *Fisherman's Wharf Waterfront tourist and commercial development incorporating restaurants, retail tenancies, public facilities and boardwalk*.
- The proposal is for a Section 96(1A) modification to development consent 607/2006/C involving the modification of conditions 10 and 54 which required unrestricted public access to be provided to the roof terrace observation deck. The general public (non-customers) would be provided unrestricted access to the roof terrace observation deck between the hours of 8.00am - 5.00pm Australian Eastern Standard Time (AEST) seven (7) days a week, and 8.00am - 7.00pm Australian Eastern Daylight Time (AEDT) seven (7) days a week. The modification will allow for exclusive use of the area for tenant(s) and patrons of all premises within the development, between 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT), seven (7) days a week and will prohibit use of the roof terrace observation deck by any person between 10.00pm – 8.00am (seven (7) days a week).
- The application also seeks approval for the erection and use of a security door that will provide the appropriate impediment for access control to the area.
- By virtue of the proposed modifications, which subsequently change the nature of the use of the roof terrace observation deck to a public/private arrangement, amendments to other conditions of development consent and the addition of new conditions of development consent (conditions 10A, 10B, 10C, 64 and 65) have been recommended as part of the Section 96 (1A) assessment.
- The proposal was placed on public notification concurrently with the proposed modifications for DA/1457/2010/D (subject of a separate Section 96(1A) application), for a period of 14 days in accordance with Development Control Plan 2005 (DCP 2005) Chapter 70 - Notification of Development Proposals. Fourteen (14) submissions were received during the exhibition period. These submissions are addressed further in the report.
- The modifications proposed by the applicant, subject to the changes and inclusion of the additional conditions and amendments detailed further in the report, are recommended for approval. It is considered appropriate to limit the modified access arrangement to a trial period of twelve (12) months. This will enable Council to gauge the suitability of the limited use of the roof terrace observation deck to the general public between limited hours in the evening.



## INTRODUCTION

### The Site

The site is located on the northern side of The Entrance Road, east of the Wilfred Barrett Drive Bridge, adjacent to the foreshore. The site was previously used as a foreshore reserve and recreation area and contains the development known as Azzurro Blu Wharf, comprising a three level waterfront tourist development with a boardwalk extending alongside The Entrance channel. The building currently contains ground floor restaurants and a first floor function centre. The roof top is currently used as a roof terrace observation deck which is required to be open to the public during the operating hours of the development.

### The Proposed Development

Development Consent DA/607/2006 was granted on 18 December 2006 for a *Fisherman's Wharf Waterfront tourist and commercial development incorporating restaurants, retail tenancies, public facilities and boardwalk*. In response to submissions raised during the public exhibition period, conditions of consent were imposed by Council requiring the roof top observation deck to be available for use by the public during the operating hours of the development. It was considered that the availability of the roof terrace area to the public for use as an observation deck would compensate for the loss of public open space that would occur upon construction of the development.

The development consent imposed two conditions, conditions 10 and 54, which required unrestricted public access to the roof terrace observation deck during operating hours of the development/whilst the restaurants were trading. It is these conditions which the applicant is seeking to amend under this Section 96(1A) application.

Condition 10 reads as follows:

- 10 *The public are to have unrestricted access to the observation deck during the operating hours of the development.*

Condition 54 reads as follows:

- 54 *The approved advertisement/s must be maintained in a presentable and satisfactory state of repair. Once completed the observation deck must be open to the public whilst the restaurants are trading.*

The purpose of this Section 96(1A) application is to modify the conditions of consent (detailed above) to restrict public access to the roof terrace observation deck so that public access is available only between the hours of 8.00am and 5.00pm daily. The restriction for public use after 5.00pm is considered reasonable during Australian Eastern Standard Time (AEST). However, during daylight saving months it is considered that access should be extended until 7.00pm Australian Eastern Daylight Time (AEDT). The availability of the roof terrace observation deck for an additional two hours during daylight saving is considered appropriate and will ensure that the public continue to gain adequate access to the roof terrace observation deck during daylight hours.

It is recommended that the modified access arrangements be permitted for a twelve (12) month trial period to gauge the management of the revised operations.

The application involves an amendment to Condition 10 to remove the requirement for “unrestricted access” during the “operating hours of the development”. Accordingly, the condition would be amended to impose hours where the roof terrace observation deck was to remain available to the public. The modification to Condition 54 would remove the wording “open to the public whilst the restaurants are trading”.

It should be noted that the current consent entitles the public, tenant(s) and their patrons to have unrestricted access to the roof terrace observation deck. Moreover, the roof terrace observation deck area is the subject of the current lease. It is considered reasonable to impose a restriction on public access to the roof terrace observation deck while still maintaining public access generally between daylight hours i.e. 8.00am – 5.00pm (AEST) and 8.00am - 7.00pm (AEDT) daily.

If approval is granted to the modifications under this Section 96(1A) application, and there is no requirement for public access to the roof terrace observation deck after 5.00pm (AEST) and 7.00pm (AEDT), then the tenant(s) and patrons will be able to use this area to the exclusion of the general public between the hours of 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT).

The proposed modifications to conditions 10 and 54 should include the addition of conditions 10A, 10B, 10C, 13, 64, 65, and 66 in the modified consent. These additional conditions have been proposed for inclusion in the development consent as they relate to the modifications proposed by the applicant and the change of use in the nature of the roof terrace observation deck to a more distinct public/private arrangement. The additional modifications proposed have been recommended for a planning purpose and comply with the relevant requirements of Section 80A of the EP& A Act and result in substantially the same development as that which was originally approved under DA/607/2006.

The application also seeks approval for the erection and use of a security door which will provide the appropriate impediment for access control to the roof terrace observation deck. As such, this Section 96(1A) application will also involve an amendment to Condition 1 relating to the approved plans, including the addition of the plan submitted with the Section 96(1A) application, **plan reference A-202, Issue F, dated 21 May 2012 prepared by CKDS Architecture**. This plan details the proposed location of the security door. The current location of the door (refer figure 1) does not comply with the requirements of the Building Code of Australia (BCA), as such, an amended plan was received which now proposes the door in a location which satisfies the requirements of Section D2.15 of the BCA.



**Figure 1:** Location of the existing security door installed to the roof terrace observation deck and area that sign is to be erected advising of public availability to the roof terrace observation deck, free of charge.

### Applicant's Submission

*Development Consent No 607/2006/C and Development Consent No 1457/2010/A include conditions requiring the provision of unrestricted public access to the roof-top observation deck "during the operating hours of the development":*

- *Consent No 607/2006/C:*
  - "10. The public are to have unrestricted access to the observation deck during the operating hours of the development."*
- *Consent No 1457/2010/A:*
  - "27. The proprietors of the venue are to ensure to the satisfaction of Council that the public are to have unrestricted, safe and convenient access to the observation deck during the operating hours of the development. In this regard no alcohol is to be served to the observation deck."*

*Currently, the general public are able to access the roof-top observation deck via an external stairway from the foreshore promenade at any time of the day or night. It is becoming increasingly evident that this arrangement is resulting in a number of significant public safety and building security issues, which need to be addressed, including:*

- *'after hours' drunkenness and anti-social behaviour within an area (i.e. the roof-top observation deck) which is not easily subject to visual surveillance by the public and is not patrolled by the police. The local Superintendent of Police has indicated that the police were unaware that the roof-top observation deck was a public space and was consequently not being patrolled. The Police have recommended that public access to the observation deck should be prevented after hours by the installation of locked gates;*
- *Throwing of rubbish and bottles from the observation deck to the function centre terrace and the public promenade below; and*
- *Unauthorised access via the observation deck level lift entry to emergency exits within the building provides hiding places and the potential for building security breaches after 'lock up' and 'gate crashing' of private functions. There have been several break in attempts reported to local authorities.*

*Whilst, both development consents require the public to be able to have unrestricted access to the observation deck "during the operating hours of the development", the development comprises a number of tenancies which have variable operating hours. Hence the existing terms of the consents do not provide the necessary clarity required to reasonably determine the 'after hours' time band within which public access to the observation deck is to be restricted.*

*In order to ensure that the conditions of the development consent in relation to the provision of unrestricted public access to the observation deck are consistent with the lessee's property rights under the property lease granted by the Council and to provide for an appropriate level of public safety and building security, it is proposed to modify Consent No 607/2006/C and Consent No 1457/2010/A to enable the provision of a security door to prevent after hours public access to the roof-top observation deck and to clarify that the public are to have unrestricted access to the observation deck between 8.00am and 5.00pm daily.*

*This application is therefore made pursuant to Section 96 (1A) of the Environmental Planning and Assessment Act 1979 to modify Development Consent No 607/2006/C... in the following manner:*

- *Consent No 607/2006/C: Modify condition 10 to read:*
  - "10. The public are to have unrestricted access to the observation deck between the hours of 8.00am and 5.00pm daily and building tenants and their patrons are permitted to have access to the observation deck between 5.00pm and 10.00pm daily."*

### **Modification of conditions**

The proposed modifications to the approved development are as follows:

- The modification of Condition 1.

Amend Condition 1 to read (refer to bold):

1. *The development taking place in accordance with the:*

- *Approved development plans numbered 3103-DA-01(B), 02(F), 03(E), 04(E), 05(F), 06(D), 07(F), 08(F), 09(D), 011(B), 012(C), 13(C), 14(C), 15(D), 21(A), 22(A) Statement of Environmental Effects dated 13 April 2006 prepared by Nettleton Tribe Partnership Pty Ltd (as amended by letter dated 29 November 2006).*
- *Arboriculturalist's Report dated 13 April 2006 prepared by Advanced Treescape Consulting and Addendum dated 2 June 2006.*
- *Hydraulic Services – Stormwater Drainage Report dated 13 April 2006 prepared by VOS Hydraulics Limited*
- *Approved plan number VOS ESK-01, MSK-01, MSK-02, MSK-03,MSK-04*
- *BCA Report dated 13 April 2006 prepared by BCA Logic Pty Ltd.*
- *Landscape Report dated 12 April 2006 prepared by Design Ideas Gardens*
- *Statement of Heritage Impact dated 15 July 2006 (Unsigned)*
- *Final Report Security Consulting Services dated June 2006 prepared by Harris Crime Prevention Services*
- *Waste Management Plan dated 10 July 2006 (Unsigned)*
- *Sample of proposed balustrade*
- *The Entrance – Retail Impact Study dated October 2006 by Savills Pty Ltd*

*Except as modified (under DA/607/2006/B) by amended architectural plans prepared by Nettleton Tribe numbered:*

- *3103\_101 issue E dated 17.08.07*
- *3103\_111 issue L dated 17.08.07*
- *3103\_112 issue K dated 17.08.07*
- *3103\_113 issue I dated 17.08.07*
- *3103\_114 issue F dated 17.08.07*
- *3103\_201 issue E dated 17.08.07*
- *3103\_202 issue D dated 17.08.07*
- *3103\_203 issue B dated 17.08.07*
- *3103\_301 issue G dated 17.08.07*
- *3103\_302 issue E dated 17.08.07*

*Except as modified (under DA/607/2006/D) by amended architectural plan:*

- ***plan reference A-202, Issue F, dated 21 May 2012, prepared by CKDS Architecture***

*Except as modified by any conditions of consent and amendments in red as follows:*

- ***Removal of the existing security door***

#### Comment

The modification of Condition 1 involves the reference to an additional plan which identifies a security door restricting access to the roof terrace observation deck as shown on plan A-202, Issue F, dated 21 May 2012 prepared by CKDS Architecture.

- The modification of Condition 10.

Amend Condition 10 to read (refer to bold):

- 10 ***For a period of twelve (12) months from the date of this modified consent:***
- (a) ***The public are to have unrestricted, safe and convenient access to the roof terrace observation deck during the hours of 8.00am - 5.00pm (AEST), seven (7) days a week and 8.00am - 7.00pm (AEDT), seven (7) days a week; and***
  - (b) ***The tenants and patrons of the development are to have exclusive access to the roof terrace observation deck between the hours of 5.00pm - 10.00pm (AEST), seven (7) days a week and 7.00pm - 10.00pm (AEDT), seven (7) days a week; and***
  - (c) ***No person shall have access to the roof terrace observation deck between the hours of 10.00pm - 8.00am, seven (7) days a week.***

***Following expiration of the twelve (12) month period, the public are to have unrestricted, safe and convenient access to the observation deck during the operating hours of the development.***

***Note: Any extension of the use approved in (a), (b) and (c) above, beyond twelve (12) months, will require the prior submission and approval of an application under Section 96 of the Environmental Planning and Assessment Act, 1979.***

#### Comment

The above amendments enable the roof terrace observation deck to be used by the public during daylight hours. Restricting the availability of the roof terrace observation deck is considered reasonable as it allows for better security to the building and enables the tenants to control the use of the roof terrace observation deck at night when the applicant claims anti-social behaviour is more prevalent. It will also allow for better control of the roof terrace observation deck and ensure the area is used in an appropriate manner. The control and responsibility of the use of the roof terrace observation deck will fall upon the business operators within the development during the hours specified above, that is, 5.00pm - 10.00pm (AEST), seven (7) days a week and 7.00pm - 10.00pm (AEDT), seven (7) days a week.

The imposition of a twelve (12) month trial period will enable Council to monitor the amenity and social impacts arising from the modified use of the roof terrace observation deck.

The amended condition provides clarity to the community, tenant(s) and patrons as to when the roof terrace observation deck is available for use by the public. The inclusion of the wording "roof terrace" has been inserted into the condition to align with the description on the stamped approved development plans for DA/607/2006.

- Addition of new Condition 10A to read:

**10A For a period of twelve (12) months from the date of this modified consent, the door identified in plan reference A-202, Issue F, dated 21 May 2012 prepared by CKDS Architecture, must be kept secured in an open position between the hours of 8.00am - 5.00pm (AEST), seven (7) days a week and 8.00am - 7.00pm (AEDT), seven (7) days a week. For the sake of clarity “open” means not closed and not locked. At no time shall the door be impeded.**

#### Comment

The additional plan referred to in conditions 1 and 10A identifies the location of the proposed security door. The purpose of this condition is to clearly state when the door is to be open, therefore providing unrestricted, safe and convenient access to the roof terrace observation deck. It is considered that the wording should avoid any ambiguity for anyone referring to the conditions of consent.

- Addition of new Condition 10B to read:

**10B Prior to the use of the security door to the roof terrace observation deck, pursuant to condition 10A, a sign shall be erected at the ground floor level of the stairs on the eastern elevation of the building. The sign shall have the following characteristics:**

- (a) is to be a minimum A1 size and clearly legible in a typed font; and**
- (b) shall be worded as follows: “Full, unrestricted access to the roof terrace observation deck is available to the public between the hours of 8.00am - 5.00pm (Australian Eastern Standard Time), seven (7) days a week and 8.00am - 7.00pm (Australian Eastern Daylight Time), seven (7) days a week”.**

**The sign must be constructed and maintained in a presentable and satisfactory state of repair for the life of the development.**

#### Comment

The erection of the sign will provide clarity to the public when the roof terrace observation deck is available for use. This condition clearly states where the sign is to be erected so that it is in a prominent position and is able to be easily viewed by the community and visitors to the area.

- Addition of new Condition 10C to read:

**10C No charge is to be imposed on members of the public exercising access to the roof terrace observation deck under this Development Consent.**

Comment

This clearly states that no person, including the tenant(s), is able to charge members of the public for access to the roof terrace observation deck which has been nominated as a form of public open space within the development.

- Amend Condition 13 to read (refer to bold):

13 *A Construction Certificate is to be issued by the Certifying Authority prior to the commencement of any works. The application for this Certificate is to satisfy all the requirements of the Environmental Planning and Assessment Regulation 2000. **For the sake of clarity this condition applies to building works that are permitted by the granting of the modification application DA/607/2006/D.***

Comment

The above modification to original condition 13 will ensure that it is clear that a Construction Certificate is required for the proposed erection of the security door and associated security enclosure. It will also ensure that those building works comply with all relevant standards including, but not limited to, the fire safety standards set out in the Building Code of Australia (BCA).

- The modification of Condition 54.

Amend Condition 54 to read (refer to bold and strike through):

54 *The approved advertisement/s must be maintained in a presentable and satisfactory state of repair. ~~Once completed the observation deck must be open to the public whilst the restaurants are trading.~~*

Comment

The deletion of the above portion of the condition is considered necessary as these requirements are now stated in amended condition 10.

- The addition of new condition 64.

**64 Nothing in this development consent permits the roof terrace observation deck to be used for any purpose, or at any time, for anything other than a roof terrace observation deck. To this end, and for the purposes of clarity, the following conditions apply to the use of the roof terrace observation deck:**

- (i) Amplified music is not permitted on the roof terrace observation deck.**
- (ii) No additional lighting shall be installed or used on the roof terrace observation deck. Separate development consent is required for any additional lighting.**



- (iii) **Nothing in this development consent permits the roof terrace observation deck to be used for the purpose of holding events, functions, receptions, parties or the sale of food and alcohol.**

Comment

The imposition of condition 64 will enable the amenity of the surrounding area to be maintained whilst ensuring that the roof terrace observation deck is used for the purposes in which Council intended and for which development consent was granted, that is, primarily for viewing purposes.

Lighting is currently provided on the roof terrace observation deck and it is considered that there is no need for additional lighting; this includes any portable lighting such as strobe lighting. This will ensure visual amenity of the surrounding development is maintained.

- The addition of new condition 65.

**65 The security door the subject of conditions 10A and 10B of this modified development consent, must be removed from the premises on or before the expiration of twelve (12) months from the date of this modified consent.**

**Note: Any extension of the approved use beyond twelve (12) months will require the prior submission and approval of an application under Section 96 of the Environmental Planning and Assessment Act, 1979.**

Comment

The inclusion of this condition enables Council to review the impact (if any) the use of the security door and associated use of the roof terrace observation deck will have on social impact and amenity.

- The addition of new condition 66.

**66 The developer is to submit to Council a bond to the amount of \$10,000 to ensure the removal of the door in accordance with Condition 65.**

Comment

The proposed imposition of this condition is to ensure that the premises is returned to its original state, as approved under Development Consent 607/2006, at the expiration of the twelve (12) month trial period.

## Imposition of additional conditions

As discussed previously, if approval is granted to the proposed modifications sought under this Section 96(1A) application, the tenant(s) and their patrons will be able to use this area to the exclusion of the public between 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT), seven (7) days a week. The nature of the use of the roof terrace observation deck will therefore change to encompass a public/private arrangement which is different to the current use which is presently shared public/private use during the operating hours of the development. As such, certain modifications need to be made to the current development consent so that the private use of the area between the hours of 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT) is well-controlled and does not impact on the amenity of surrounding development.

The additional conditions recommended to be imposed are for a planning purpose and it is considered they will;

- minimise any adverse impact use of this area would have on surrounding development;
- overcome any anomalies regarding use of the roof terrace observation deck which currently arise under the development consent and;
- allow for adequate enforcement of the development consent if required.

The modification of the development consent to allow for the proposed additional conditions and the amending of existing conditions will provide greater clarity for use of the roof terrace observation deck for Council, the tenant(s) and the community, whilst providing the applicant with certainty and clear parameters within the development consent.

These modifications will also entitle the tenant to act on the development consent in a way in which they are currently unable to do and will enable them to have greater control over the use of the roof terrace observation deck than what is afforded if the area is used by the public and patrons concurrently. This control should also improve existing safety and amenity issues.

By restricting public access between the hours of 8.00am – 5.00pm (AEST) and 8.00am - 7.00pm (AEDT) and providing more clarity in relation to the development consent, via the imposition of additional conditions and the modification of existing conditions, control of the use of the roof terrace observation deck will be more clearly defined.

Council may impose additional conditions of consent or amend existing conditions of consent as part of the Section 96(1A) application; however, Council must be satisfied that those conditions meet the “Newbury” test or principles to test the validity of a planning condition (*Newbury District Council v Secretary of State for the Environment* [1981] AC 578 at 607G).

In order to be valid, a condition must satisfy three tests:

1. It must have a planning purpose,
2. It must relate (fairly and reasonably) to the permitted development, and
3. It must be reasonable (*Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948]) –that is, the decision was so unreasonable that no reasonable authority would ever consider imposing it.

In addition to the above, the *EP& A Act* authorises a consent authority to impose conditions of development consent in accordance with Section 80A '*Imposition of Conditions*'. The matters referred to in Section 80A of relevance to this Section 96(1A) application include:

- 80A (a) *it relates to any matter referred to in section 79C (1) of relevance to the development the subject of the consent, or*
- (f) *it requires the carrying out of works (whether or not being works on land to which the application relates) relating to any matter referred to in section 79C (1) applicable to the development the subject of the consent, or*
- (g) *it modifies details of the development the subject of the development application,*

In reference to the above, each of the additional conditions recommended for inclusion in the development consent are for a planning purpose and relate to matters referred to in Section 79C (1) particularly "*the likely impacts of the development*"(79C (1)(b)), "*the suitability of the site for the development*" (79C(1)(c)), and "*the public interest*" (79C(1)(e)). It is considered that each of the proposed additional and modified conditions is for a planning purpose and can be imposed as part of Council's exercise of its statutory discretion.

The imposition of the additional conditions and the modification of existing conditions of development consent result in substantially the same development to that which was originally approved by Council. It is considered that the modifications recommended by Council are consistent with the modifications sought on the application form, in the Statement of Environmental Effects accompanying the Section 96(1A) application, and the subsequent letter from the applicant dated 7 June 2012, albeit Council has provided greater clarity surrounding the use of the roof terrace observation deck due to the change in the use of the area from that which was previously approved.

## **VARIATIONS TO POLICIES**

There are no variations proposed to any relevant policies.

## **HISTORY**

There have been numerous development consents granted for the subject site. A history of the approvals is provided as an attachment.

## **PERMISSIBILITY**

The subject site is zoned 6(a) Open Space and Recreation under the WLEP1991. The approved development for the *Fisherman's Wharf Waterfront Tourist and commercial development incorporating restaurants, retail tenancies, public facilities and boardwalk* are all uses permissible with consent and are considered to be consistent with the objectives of the zone. The modifications, as proposed, do not affect the permissibility of the existing development.

Clause 10(3) of WLEP 1991 requires the Council to ensure that the proposed development is compatible with the objectives of the zone within which the development is proposed to be carried out. The proposed modifications do not affect the compatibility of the development with the objectives of the zone. The objectives of the 6(a) zone are outlined below.

*(a) to provide for the open space and recreation needs of the local community and visitors, and*

Comment

The installation and use of the security door will still enable the public to gain access to this public open space between 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT), seven (7) days a week, therefore it is considered that the provision and use of the door for the purposes of restricting public access is not contrary to this objective. Additionally, members of the community and visitors who are patrons of the tenancies will have exclusive access the roof terrace observation deck between 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT) daily.

*(b) to allow for other leisure and recreation-orientated development, or any other use that is authorised by a plan of management adopted under section 40 of the Local Government Act 1993, which:*

*(i) promotes worthwhile community benefits, and*

Comment

The use of the door will provide access control, a key principle of Crime Prevention through Environmental Design (CPTED), to restrict public access after daylight hours, ensuring adequate security to the roof terrace observation deck when the businesses are not operating. Access control increases the effort required to commit a crime and subsequently reduces the potential for crime to occur. The door will assist in minimising the potential for vandalism or anti social behaviour occurring when there are less people around.

*(ii) would not reduce the amount and distribution of public open space areas below acceptable levels and standards which meet the needs of the community, and*

Comment

Restricting access to the roof terrace observation deck for the public between 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT) will not reduce the amount or distribution of public open space area to that which currently exists within the development.

*(iii) would not have an unacceptable impact on the amenity of adjacent areas, and*

Comment

The use of the door for the purposes of access control, and the restriction on the hours of availability of the roof terrace observation deck, will not result in an unacceptable impact on the amenity of adjacent areas. To the contrary, limiting the use of the roof terrace observation deck may improve any existing noise issues and anti social behaviour which has been generated from the area.

*(iv) would not have an adverse effect on water catchments, water quality, land surface conditions and important ecosystems such as Tuggerah Lakes, Lake Macquarie, streams, estuaries and wetlands.*

### Comment

Given the Section 96 (1A) application is only seeking to modify an existing approved development there is unlikely to be any adverse effect on water catchments, water quality or the like. This matter would have been considered in the original assessment and determination of the development.

### **RELEVANT STATE/COUNCIL POLICIES AND PLANS**

The Council has assessed the proposal against the relevant provisions of the following environmental planning instruments, plans and policies:

- State Environmental Planning Policy 71 (SEPP 71)
- Wyong Local Environmental Plan 1991 (WLEP)
- Development Control Plan 2005, Chapter 60 – The Entrance (Chapter 60)
- Development Control Plan 2005, Chapter 70 – Notification of Development Proposals (Chapter 70)
- The Entrance Peninsula Planning Strategy 2009
- The Entrance Masterplan

### **ECOLOGICALLY SUSTAINABLE PRINCIPLES**

The original proposal was assessed having regard to ecologically sustainable development principles and is considered to be consistent with those principles.

The modified development continues to incorporate satisfactory stormwater, drainage and erosion control and the retention of vegetation where possible and is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations. The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments.

### **Climate Change**

The potential impacts of climate change on the proposed development have been considered by Council as part of its assessment of the application. This assessment has included consideration of such matters as potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may cope / combat / withstand these potential impacts. These considerations and any related conditions remain relevant under the modified development.

## ASSESSMENT

Having regard for the matters for consideration detailed in Section 79C of the EP&A Act 1979 and other statutory requirements, Council's policies and Section 149 Certificate details, the assessment has identified the following key issues, which are elaborated upon for Council's information. Any tables relating to plans or policies are provided as an attachment.

### **THE PROVISIONS OF RELEVANT INSTRUMENTS/PLANS/ POLICIES (s79C(1)(a)(i-iv): Section 96 of the Environmental Planning and Assessment Act 1979**

The applicant is seeking amendments to DA/607/2006/C under Section 96 (1A) of EP&A Act 1979. Having regard to the provisions of Section 96 (1A) of the EP&A Act 1979, it is considered that the amended proposal is substantially the same development approved by Council.

Section 96(1A) states:

*“(1A) Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
  - (i) the regulations, if the regulations so require, or*
  - (ii) development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.”*

The proposed amendments are considered to have minimal environmental impact and the development is considered to be substantially the same development to that which was previously approved on the site. The application was placed on public exhibition with the submissions received during the notification period considered during the assessment process and are addressed further in the report. The application is considered to be consistent with the requirements of Section 96(1A) and the modifications are therefore recommended for approval.

**THE LIKELY IMPACTS OF THE DEVELOPMENT (s79C(1)(b) ):*****The relationship to the regional and local context and setting***

The subject site is located in an area comprising public open space, restaurants, commercial, retail and residential development. Given the surrounding uses within the area and the existing uses on the site, the proposed development is considered to be in keeping with the local context of the area. The proposed modifications to this development consent will not impact on the compatibility of the development within the regional and local context.

***The access, transport and traffic management measures***

There are no matters relating to access, transport and traffic management measures that require further consideration or discussion as a result of the proposed modifications.

***The impact on the public domain (recreation, public open space, pedestrian links)***

The proposed security door will allow public access to the roof terrace observation deck during the hours of 8.00am - 5.00pm (AEST), seven (7) days a week and 8.00am - 7.00pm (AEDT), seven (7) days a week. The original approval for the site required public access to be available during the operating hours of the development which varied considerably and it was unclear to the public as to when the roof terrace observation deck was accessible. The proposed modifications should provide clarity to all users of the area.

***The impact on utilities supply.***

There will be no increase in the demand on utilities supply in terms of utility needs or the availability and capacity of utilities as a result of the proposed modifications.

***The effect on heritage significance.***

The existing building is not a heritage item however, there are three (3) known heritage items within the vicinity of the existing development. These are:

- The Entrance Hotel - Regional Level (No. 47 under LEP)
- World War 1 Monument Memorial Park - Local (No. 44 under LEP)
- Shop / Residence at Corner Oakland Ave & The Entrance Road - Local (No. 46 under LEP)

The proposed modifications will not impact on the items of heritage within the vicinity of the approved development.

***Any effect on other land resources.***

There are no matters relating to the conservation and use of valuable land resources which require further consideration or discussion.

***Any impact on the conservation of water.***

There are no matters relating to the conservation of water resources and the water cycle that require further consideration or discussion.

***Any effect on the conservation of soils or acid sulphate soils.***

The Section 96(1A) application has no effect on the conservation of soils or acid sulphate soils.

***Any effect on quality of air and microclimate conditions.***

The proposed modifications will have no impact on air quality and microclimatic conditions.

***Any effect on the flora and fauna.***

There are no matters relating to flora and fauna that require consideration under the Section 96(1A) application.

***The provision of waste facilities.***

There will be no change in the current provision of waste facilities as a result of the Section 96(1A) application.

***Whether the development will be energy efficient.***

There are no matters relating to energy efficiency that require further consideration under this Section 96 (1A) application.

***Whether the development will cause noise and vibration.***

It is considered that restricting use of the roof terrace observation deck to any person after 10.00pm will minimise the generation of offensive noise pollution and should assist in acceptable ambient noise levels in the locality after dark.

***Any risks from natural hazards (flooding, tidal inundation, bushfire, subsidence, slip etc).***

Any risks from natural hazards would have been considered in the assessment of the original application which approved the development in this location. This Section 96 (1A) application, which seeks approval for the installation and use of the security door and the restriction of public access to the roof terrace observation deck, does not require further consideration of risk from natural hazards.

***Any risks from technological hazards.***

There are no risks to people, property and the biophysical environment from industrial and technological hazards, land contamination or remediation, as such there is no further consideration or discussion on the matter.

***Whether the development provides safety, security and crime prevention.***

The applicant has stated that the site has been subject to a number of public safety and security risks as a result of the public access to the roof terrace observation deck. In the absence of adequate passive surveillance within and surrounding the facility after dark, the restriction of access to any person (from 10.00pm - 8.00am), when the area is at its most vulnerable, is considered reasonable. The use of the door for access control should reduce existing security and safety issues associated with crime and anti social behaviour.



***Any social impact in the locality.***

The use of the security door and restriction of access to the roof terrace observation deck will ensure that there is clarity regarding use of the area and should minimise any anti social behaviour/crime after daylight hours.

***Any economic impact in the locality.***

There are no further matters for consideration relating to the economic benefits and costs of the proposed development.

***Any impact of site design and internal design.***

The proposed modifications will not impact on the site design of the development. The installation and use of the security door will result in a minor change to the external design of the development, however this is considered reasonable and of negligible impact to the overall design of the development.

***Any impacts of construction activities (construction site management, protection measures).***

There are no further matters for consideration or discussion given the proposal is a Section 96 (1A) application for a modification that involves minimal construction work.

***Any cumulative impacts.***

There are no further matters for consideration or discussion having regard for cumulative impacts associated with the proposed modifications.

**THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT (s79C(1)(c)):**

***Whether the proposal fits in the locality.***

As the proposed modifications are of a minor nature and do not change the overall look or use of the existing building, there are no further matters for consideration or discussion having regard for whether the proposal fits in the locality.

***Whether the site attributes are conducive to development.***

The site attributes were previously considered under the original consent as being conducive to development. The proposed modifications will not change this.

**ANY SUBMISSION MADE IN ACCORDANCE WITH THIS ACT OR REGULATIONS (s79C(1)(d)):**

***Any submission from the public.***

The application was advertised in accordance with DCP 2005 Chapter 70-Notification of Development Proposals with fourteen (14) submissions being received. The issues raised in the submissions have been addressed in the assessment of the application pursuant to the heads of consideration contained within Section 79C of the EP&A Act 1979. A summary of the submissions is detailed in the table below.

Summary of Issues	Response
<p>Original approval of the development designated the roof area for the public viewing. Residents will be denied access to the roof area for recreational purposes and special occasions, such as New Years.</p>	<p>The roof terrace observation deck will continue to be available to the public between 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT). It is considered reasonable, for the safety of users and the security of the building, and for the purpose of clarity for the public, patrons and tenant(s), to allow for access to the roof terrace observation deck to be restricted after 5.00pm (AEST) and 7.00pm (AEDT), available to the tenant(s) and their patrons for exclusive use between 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT) and not permitted to be used by any person between 10.00pm - 8.00am, seven (7) days a week.</p>
<p>The original approval required access to be available to the roof area and public toilets at all times. The removal of access would not be in the public interest.</p> <p>The current proposal is not consistent with the original approval in regards to access.</p> <p>The original approval promised access to the roof area, toilets and public boardwalk at all times.</p> <p>The proposal is an attempt by the owners to have complete control over the public land however the building is on public land and the public should have this access retained.</p>	<p>The original approval required access to the roof during the operating hours of the other businesses within the development. Access to the roof terrace observation deck was restricted once all the premises had closed for the day. Access will continue to be available to the public between 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT) and to tenant(s) and their patrons between 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT), seven (7) days a week. Access to the public toilets is not proposed to be restricted under this Section 96(1A) application.</p> <p>The proposed modification will provide certainty for the public as to when access to the roof terrace observation deck is available and will provide clear parameters for the tenant(s) and their patrons regarding public accessibility to the area.</p> <p>The proposed modification will still fulfil the intent of the original condition by making the area available, albeit public access is only available between the hours of 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT) seven (7) days a week.</p> <p>No change is proposed to the operation of the existing public toilets or public boardwalk under the current Section 96(1A) application. The approval of the use of the security door will not impede use of either of these facilities.</p> <p>The operation of the development is governed by the Development Consent and the lease agreement. The modifications proposed under this Section 96(1A) application maintain public access to the roof terrace observation deck, even though provision is not made for public access after 5.00pm (AEST) and 7.00pm (AEDT).</p>

Summary of Issues	Response
<p>The illegally installed security door has already caused problems in regards to access to the observation deck.</p> <p>The public toilets and pedestrian boardwalk have also raised problems along with the garbage area of the development.</p>	<p>Agreed. The Section 96(1A) for DA/607/2006/C seeks approval for the installation and use of the security door in a new location. It is anticipated that by imposing clear conditions on the development consent relating to the installation and use of the door and public access, then issues that have previously arisen regarding public access to the roof terrace observation deck should not occur.</p> <p>Agreed. Council has been dealing with these matters of non-compliance as a separate issue. The proposed modifications do not relate to the public toilets, pedestrian boardwalk or garbage area. Council has recently issued an approval for additions to the garbage area under DA/169/2012.</p>
<p>Issues relating to public safety, crime prevention and after hours building security should be addressed by other means.</p> <p>The owners appear to want to roof top area for private functions.</p> <p>The Entrance Masterplan suggests a link between The Entrance Bridge and the roof top area. The proposal is inconsistent with this plan.</p>	<p>The erection and use of the security door for the purposes of access control which will minimise opportunity for crime and anti social behaviour is considered reasonable and warranted in the circumstances of the case.</p> <p>The roof terrace observation deck is able to be used for private functions now under the current development consent; however any function held in this area is carried out with the understanding that the area is also shared with the public and is not available for the exclusive use of the tenant(s) and their patrons. If approval was granted to the proposed modifications, the tenants and patrons would be able to use this area to the exclusion of the public between the hours of 5.00pm - 10.00pm (AEST) and 7.00pm -10.00pm (AEDT).</p> <p>The provision of a walkway between The Entrance Bridge and subject site could still be undertaken at a later date. The use of the security door would not prohibit or hinder this type of future development.</p>
<p>Strong objection to placement of security door to observation deck.</p> <p>The original approval promised access to the public boardwalk at all times.</p>	<p>The roof terrace observation deck will continue to be available to the public between 8.00am - 5.00pm (AEST) ensuring the public continue to have adequate access and use of this public open space.</p> <p>No changes are sought under the current application for any changes to the use or functioning of the existing public walkway.</p>
<p>The public will suffer as a result of the proposed changes.</p>	<p>It is unclear why the writer believes that the public will "suffer as a result of the changes". The roof terrace observation deck will still be made available to the public between 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT), seven (7) days a week, ensuring the public continue to have unrestricted, safe and convenient access.</p>

Summary of Issues	Response
<p>The owner is already advertising the use of the roof top deck for private functions.</p>	<p>The roof terrace observation deck is able to be used for private functions now under the current development consent; however any function held in this area is carried out with the understanding that the area is also shared with the public and is not available for exclusive use by the tenant(s)/patrons. When there is no requirement for public access to the roof terrace observation deck after 5.00pm (AEST) or 7.00pm (AEDT), then the tenant(s) and patrons will be able to use this area to the exclusion of the public from 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT) which is considered reasonable.</p>
<p>The application does not provide sufficient justification for why the hours of access should be reduced.</p> <p>If adequate security were provided on site there should be no security issues with the observation deck.</p> <p>The public toilets are not available as required by the conditions of consent for the site.</p> <p>Inappropriate events have been held on the site which has not included security.</p> <p>The reduced access appears to only be for commercial purposes and not for social amenity reasons.</p> <p>There is no objection to the placement of the security door provided it is only for the normal operating hours.</p>	<p>It is considered that the proposed modification to the existing development consent is considered reasonable and warranted in the circumstances of the case.</p> <p>Disagree. Although security measures are required to be provided on the site as per the conditions of development consent, it is unreasonable to assume that security would be provided to the roof terrace observation deck at all times. The use of the proposed security door will assist in providing security to the roof terrace observation deck and other premises within the development.</p> <p>Council has been dealing with these matters of non-compliance as a separate issue.</p> <p>Council has been dealing with these matters of non-compliance as a separate issue.</p> <p>Disagree. There is merit in restricting use of the roof terrace observation deck to the public after 5.00pm (AEST) and 7.00pm (AEDT) and restricting use of the area after 10.00pm for any person, for safety and security reasons.</p> <p>Noted.</p>

***Any submission from public authorities.***

There are no submissions from public authorities.

**THE PUBLIC INTEREST (s79C(1)(e)):**

***Any Federal, State and Local Government interests and community interests.***

**The Entrance Peninsula Strategy 2009**

The Entrance Peninsula Planning Strategy 2009 reviews The Entrance Strategy 2000 (covering The Entrance and part of The Entrance North suburbs) and carries out comprehensive strategic planning for the Long Jetty and The Entrance North suburbs, which has not been previously undertaken.

The subject site is identified as being in Precinct 3 *The Entrance Channel Recreation and Residential* area. The proposed modification to the approved development will not be contrary to the objectives or strategies and recommendations relating to Precinct 3.

**The Entrance Masterplan**

The Entrance Peninsula Planning Strategy identified the opportunity to prepare a Masterplan for The Entrance Town Centre with the purpose of “providing a framework to improve the viability and vitality of the centre”. The Masterplan provides five (5) key urban design principles:

1. Create Public Spaces
2. Provide Connectivity
3. Adopt an Innovative Approach
4. Create a Strong Urban Framework which embraces the assets of the locality
5. Respect a Rich and Layered History

The modification to the existing development will not be contrary to the five (5) key urban design principles

The subject site is identified in the Masterplan for The Entrance. The Masterplan recommends consideration of opportunities to provide a link between The Entrance Bridge and the Fisherman’s Wharf roof terrace observation deck, now known as Azzurro Blu Wharf.

The use of the security door to restrict public access to the roof terrace observation deck after 5.00pm (AEST) and 7.00pm (AEDT) and patron/tenant use after 10.00pm would not hinder the ability for the provision of a link between the bridge and the site at a future date. If this link was to be provided, the door could be removed at a later date or an additional door could be provided for access control at the link if required.

**CONCLUSION**

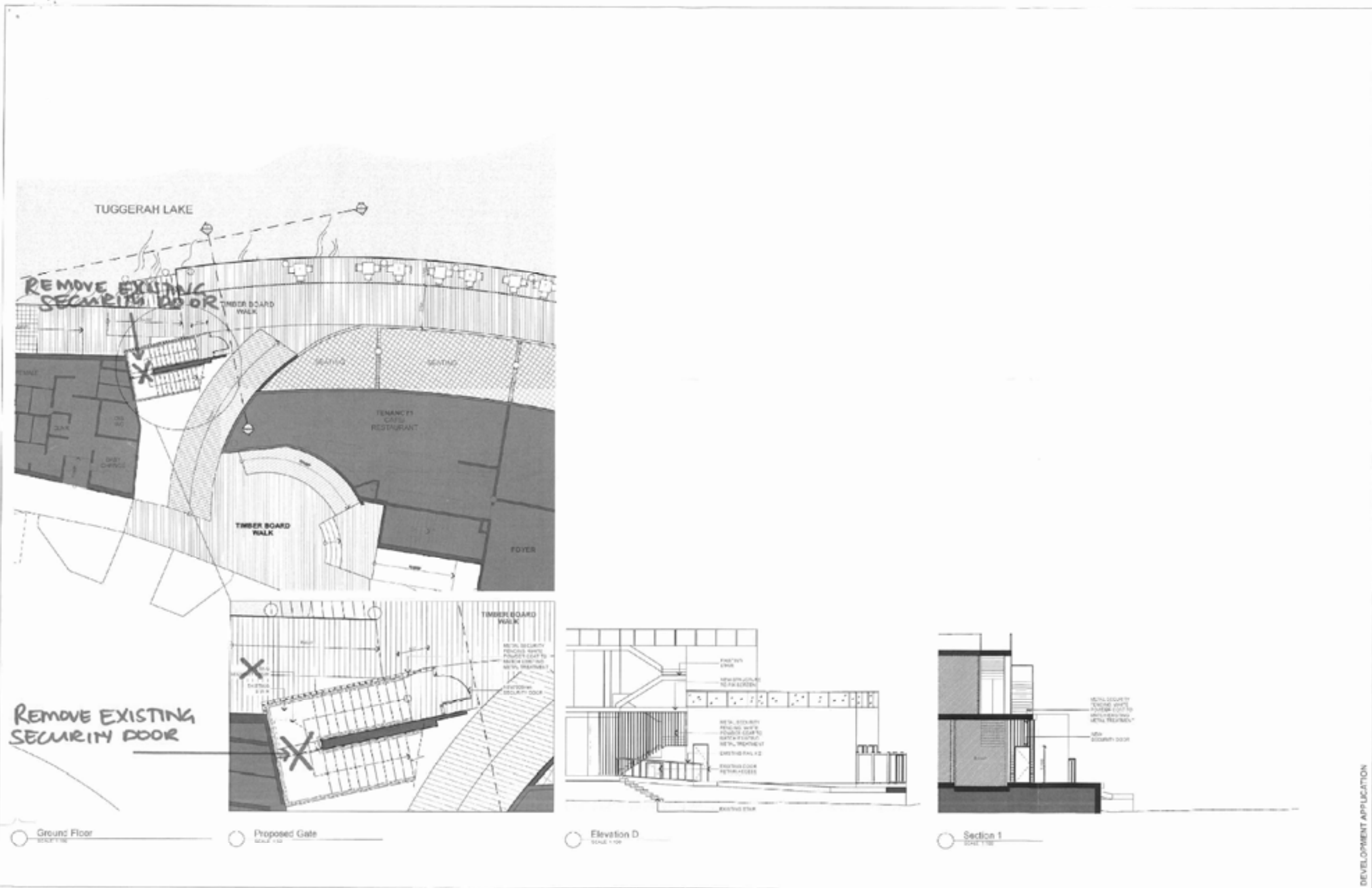
Having regard for the provisions of Sections 96(1A), 80A and 79C of the EP&A Act 1979, it is considered that the modification of conditions 1, 10, 13 and 54 and the addition of conditions 10A, 10B, 10C, 64, 65 and 66 are reasonable and warranted in the circumstances of the case. The modifications proposed to Development Consent 607/2006/C are all considered to have a planning purpose and provide clear parameters for use of the roof terrace observation deck, that is, public/private shared use between 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT) and exclusive private use from 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT).

It is considered appropriate to limit the modified access arrangement to a trial period of twelve (12) months. This will enable Council to gauge the suitability of the limited use of the roof terrace observation deck to the general public between limited hours in the evening.

The proposed modification to the approved development will result in substantially the same development to that which was originally approved by Council under Development Consent 607/2006 as such, the modifications are considered satisfactory by Council and are recommended for approval.

**ATTACHMENTS**

- |   |  |           |
|---|--|-----------|
| 1 | Draft Modified Conditions of Consent                             | D02930982 |
| 2 | History of Development Applications Relating to Fishermans Wharf | D03066321 |
| 3 | Development Plan (A3 Colour)                                     | D03071040 |



DEVELOPMENT APPLICATION

NO.	REVISION	DATE
1	ISSUED FOR PERMIT	21/06/12
2	ISSUED FOR PERMIT	21/06/12
3	ISSUED FOR PERMIT	21/06/12
4	ISSUED FOR PERMIT	21/06/12
5	ISSUED FOR PERMIT	21/06/12
6	ISSUED FOR PERMIT	21/06/12
7	ISSUED FOR PERMIT	21/06/12
8	ISSUED FOR PERMIT	21/06/12
9	ISSUED FOR PERMIT	21/06/12
10	ISSUED FOR PERMIT	21/06/12

NO.	REVISION	DATE
1	ISSUED FOR PERMIT	21/06/12
2	ISSUED FOR PERMIT	21/06/12
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10	ISSUED FOR PERMIT	21/06/12

Client:	Erro
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Author:	
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Date:	



Erro



Azzurro Bk Wharf  
Lot 1 The Esplanade West  
Northbridge  
NSW

Floor Plans  
Security Door

1:50	DP	21/06/12
1141	A-202	F

25 July 2012

Director's Report

To the Ordinary Meeting

Environment and Planning Services  
Department

## 2.2 DA/1457/2010/D - Section 96(1A) Application for the Modification of Condition 27 relating to Public Access to the Existing Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance

TRIM REFERENCE: - D02961168

MANAGER: Peter Fryar, Manager Development Assessment

AUTHOR: Emily Goodworth; Team Coordinator, Applications Team Coordinator, Applications

### SUMMARY

An application has been received under Section 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) for the modification of Condition 27 of development consent DA/1457/2010/D relating to access to the existing roof terrace observation deck above the Azzurro Blu Wharf development, The Entrance. Development Consent No DA/1457/2010/D granted approval for internal alterations to the existing four (4) ground floor food service tenancies, use of the first floor as a function room and fit-out of the premises, now known as Azzurro Blu Wharf. The application has been examined having regard to the matters for consideration detailed in Sections 79C and 96(1A) of the EP&A Act 1979 and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

<b>Applicant</b>	Sydney Civil Developments Pty Ltd
<b>Owner</b>	Wyong Shire Council
<b>Application No</b>	1457/2010/D
<b>Description of Land</b>	Lot 1 DP 1012476 & Lot 101 DP 1046474 (12) The Entrance Road, The Entrance
<b>Proposed Development</b>	Section 96(1A) for the modification of Condition 27 of development consent DA/1457/2010/D relating to access to the existing roof terrace observation deck above Azzurro Blu Wharf, The Entrance.
<b>Site Area</b>	1,177.2m <sup>2</sup>
<b>Zoning</b>	6(a) Open Space and Recreation
<b>Existing Use</b>	Restaurants and function centre
<b>Estimated Value</b>	Nil

### RECOMMENDATION

- 1 That Council **modify** the consent having regard to the matters for consideration detailed in Section 79C of the *Environmental Planning and Assessment Act 1979* and other relevant issues.
- 2 That Council **advise** those who made written submissions of its decision.