

Wollongong Local Planning Panel Assessment Report | 7 November 2018

WLPP No.	Item No. 1
DA No.	RD-2010/230/A
Proposal	Review of determination of DA-2010/230/B: Demolition of existing structures and construction of residential apartments comprising of 2 x 1 bedroom study, 9 x 2 bedroom, 4 x 3 bedroom and 1 x 3 bedroom penthouse over basement parking. Modification B - modify roof top area, introduction and replacement of load bearing walls, install window to southern elevation, addition of louvre screens to obscure air conditioning units and creation of roof top solar space and bee garden
Property	19-21 Kembla Street Wollongong, Lot 1 DP 1234918
Applicant	Braicon Pty Ltd
Responsible Team	Development Assessment and Certification - City Centre Team (AS)

ASSESSMENT REPORT AND RECOMMENDATION

Executive Summary

Reason for consideration by Wollongong Local Planning Panel - Advice

The proposal has been referred to Wollongong Local Planning Panel for advice pursuant to clause 2.19(1) (c) of the Environmental Planning and Assessment Act 1979. The application is of significant community interest as identified by Council's General Manager and Director of Planning in accordance with Council's draft submissions policy.

Proposal

The proposal is a section 8.2 review of Council's refusal of a modification of DA-2010/230/B. The modification sought to legitimise unauthorised built works to a residential flat building approved under DA-2010/230/A. The original development application DA-2010/230 was granted consent on 17 September 2010. The modification was refused on 20 July 2018. An occupation certificate has not been issued.

Permissibility

The site is zoned R1 General Residential pursuant to Wollongong Local Environmental Plan 2009. The proposal is categorised as a residential flat building and is permissible in the zone with development consent.

Consultation

The proposal was notified in accordance with Council's Notification Policy and received five submissions which are discussed at section 1.3 of the assessment report.

Main Issues

The main issues are impacts associated with the unauthorised building work:

- Streetscape impacts
- Building height exceeds 24 maximum permitted height
- Solar access to private open space and living rooms
- Proposed habitable use of non-habitable and non-trafficable space

RECOMMENDATION

It is recommended that the application is refused for the reasons detailed in Attachment 4.

1 APPLICATION OVERVIEW

1.1 PLANNING CONTROLS

The following planning controls apply to the proposal:

State Environmental Planning Policies:

- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Coastal Management) 2018

Local Environmental Planning Policies:

- Wollongong Local Environmental Plan (WLEP) 2009

Development Control Plans:

- Wollongong Development Control Plan 2009

Other policies

- Wollongong Development Contributions Plan 2018
- Apartment Design Guide (ADG)

1.2 BACKGROUND

The original development application DA-2010/230 was approved under delegation on 17 September 2010. Modification A *‘Modify basement ventilation, delete 6 windows from southern elevation and amend cladding system on northern and southern elevations’* was approved on 27 September 2017. Modification B was refused by Council on 20 July 2018.

Modification B was described as *‘Modification B - modify roof top area, introduction and replacement of load bearing walls, install window to southern elevation, addition of louvre screens to obscure air conditioning units and creation of roof top solar space and bee garden’*.

The reasons for refusal were:

- 1 *In accordance with Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the development is not acceptable when evaluated having regard to the design quality principles outlined in Schedule 1 of State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development (SEPP 65).*
- 2 *In accordance with Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979 and Clause 115 of the Environmental Planning & Assessment Regulation 2000, the modification application was not supported by amended BASIX certificates demonstrating satisfaction of the thermal comfort and energy efficiency targets of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.*
- 3 *In accordance with Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development does not comply with Clause 4.3 of Wollongong Local Environmental Plan 2009, with the proposed modifications resulting in the building now exceeding the maximum permitted height limit. The applicant has not provided a written request adequately addressing the matters required to be demonstrated by Clause 4.6(3), and consent cannot be granted. In addition, Council is not satisfied that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.*

- 4 *In accordance with Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development does not comply with Clause 4.4 of Wollongong Local Environmental Plan 2009, with the proposed modifications resulting in the floor space ratio of the development now exceeding 1.5:1. The applicant has not provided a written request adequately addressing the matters required to be demonstrated by Clause 4.6(3), and consent cannot be granted. In addition, Council is not satisfied that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.*
- 5 *In accordance with Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, in the opinion of Council, the proposed development does not exhibit design excellence and therefore consent cannot be granted pursuant to Clause 7.18 of Wollongong Local Environmental Plan 2009.*
- 6 *In accordance with Section 4.15(1)(a)(iii) of the Environmental Planning & Assessment Act 1979, the proposed development does not comply with the provisions of Wollongong Development Control Plan 2009 in a number of areas:*
 - 6.1 *Chapter B1 Residential Development*
 - 6.1.1 *Clause 6.5 Built Form – in that the design quality of the building will be reduced through the modifications proposed;*
 - 6.1.2 *Clause 6.18 Solar Access – in that the louvre screens proposed may affect solar access to the units and their appurtenant private open space areas;*
 - 6.2 *Chapter D13 Wollongong City Centre*
 - 6.2.1 *Clause 6.10 Solar Access - in that the louvre screens proposed may affect solar access to the units and their appurtenant private open space areas. Insufficient information has been provided to ensure that solar access to these spaces will remain compliant with relevant controls.*
- 7 *In accordance with Section 4.15(1)(b) of the Environmental Planning & Assessment Act 1979, the proposed modifications will potentially give rise to additional amenity impacts on neighbouring and nearby properties, specifically by way of additional overshadowing and view impacts.*
- 8 *Pursuant to Section 4.15(1)(b) and (e) of the Environmental Planning & Assessment Act 1979, approval of the proposed development would not be in the public interest having regard to the above reasons.*

A construction certificate was issued by a private certifier on 9 March 2017. An occupation certificate has not been issued.

Consolidation of nos. 19 and 21 was required as a condition of consent. The land was consolidated to form Lot 12 DP 1234918 on 14 September 2017.

Strata subdivision has not been approved.

No pre-lodgement meeting was held for the review application.

There is an active customer service request arising from the unauthorised works that have been carried out and which are the subject of this review application. Investigations have been undertaken by Council's Regulation & Enforcement Officers and these have been suspended pending the outcome of this application.

1.3 SITE DESCRIPTION

The site is located at 19 Kembla Street Wollongong and the title reference is Lot 12 DP 1234918. The land is located approximately 90 metres north of the intersection of Kembla and Campbell Streets.

The applicant has advised that the original site area of 1198m² has been increased by 3m² to 1201m², as a result of the redefinition associated with consolidation.

The approved residential flat building is nearing completion. Landscaping has been established on site. There are significant Brush Box street trees located at the front of the site.

Nearby development largely comprise dwelling houses and residential flat buildings. The property to the north (17 Kembla Street) is a residential flat building and to the immediate south is a dwelling house.

Property constraints

- Class 5 acid sulfate soils;
- Site location within the Coastal zone.

There are no restrictions on the title.

1.4 DETAILED DESCRIPTION OF PROPOSAL

This review application provides further detail of the application. The unauthorised building works which depart from the plans approved under DA-2010/230/A are:

1. Increase in building height as a result of changed slope of roof and increasing soffit

- Building height was approved at maximum 23.75m. The unauthorised roof changes take the building to:
 - 24.07m north eastern corner (increase from 23.08m)
 - 24.57m south eastern corner (increase from 23.75m)
 - 23.965m north western corner (increase from 23.72m)
 - 24.09m south western corner (increase from 23.27m)
- The applicant partly explains the increase in building height as due to incorrect natural ground levels being shown on the architectural plans approved in the original application. The actual additional height gained by increasing the soffit is approximately 800mm.
- The applicant also states that the additional height is an attempt to comply with the Building Code of Australia habitable room heights.
- One submission refers to the additional height and flattened roof plane as resulting in ocean view loss.



2. Internal fitout of covered terrace area on roof level (accessed by apartment 16)

- Air conditioning, wiring, electrical wall sockets, exhaust openings, and bi fold door frames have been installed in what was shown on the approved plans as a terrace. The approved store room adjoining the terrace has not been constructed and instead replaced with a solid wall. The applicant has confirmed that bi-fold doors had been recently installed at the western edge of the covered terrace, aligning with the roof above. The doors have been removed but the frame remains. Upon inspection it appears attempts have been made to create a habitable room in this covered terrace area, which has not been authorised. Enclosure of this space would increase gross floor area above the current permitted maximum.







3. Use of non-trafficable area on roof level (accessed by apartment 16)

- a) Installation of incomplete balustrade on southern side on building edge. This area was shown as a non-trafficable roof on the approved plans. The applicant has advised that they intend to remove the balustrade currently erected and visible from Kembla Street, and replace with a 1.5m high powder coated screen approximately 550mm in from the edge of the building. This in response to visual concerns raised by Council in assessment of DA-2010/230/B. The erected unauthorised balustrade is shown in the photographs below.
- b) Use of the southern non-trafficable roof for rooftop solar panel and separate bee garden. No details of dimensions of solar panels or bee garden have been provided. It is noted that the solar panels and bee garden would be accessed from the stairs within Unit 16. It is highly unlikely these would be available as communal facilities under any future strata plan as access to them is via apartment 16. Wiring was observed and is shown in the photographs below.







4. Installation of additional two windows in north-eastern corner of roof level void, inserted into additional unauthorised wall height

- These windows are located opposite the residential flat building to the north, and occur over the void space.



5. Installation of four windows in south-eastern corner of roof level void, inserted into additional unauthorised height.

- These windows occur over the void space, and the adjoining single storey dwelling house is not visible out of these additional windows.





6. Enclosure of an opening in northern elevation of roof level

- This area appears as a balustrade with opening above on the approved Modification A plans; however a full height wall has been constructed. It is likely this action has been taken to support use of the covered terrace as a habitable room.
- The applicant states the full wall was necessary to support the roof for structural reasons.



7. Installation of thirteen aluminium louvres (full height atop balustrade) on northern balconies on floors 2-6.

- Thirteen apartments are affected. Ten of the screens are located in balconies forming sole primary open space and three occur on bedroom balconies.
- The louvres are fixed and angled down as shown in photographs below.
- The applicant has said the screens are a necessary counterfoil to the potential climb hazard presented by air conditioning units placed on the balconies.
- Condition 38 of the existing consent states:

Air conditioning Units

Air conditioning systems are not to be located where they are visible from Kembla Street. In addition, air conditioning systems are not to be located where they could generate amenity impacts for neighbouring residents. Plans submitted to the Principal Certifying Authority prior to issue of the Construction Certificate are to identify external components of an air conditioning system that meets the requirements of this condition.



Impacts

The proposed modifications and their likely impacts are discussed below.

1. Increase in building height as a result of changed slope of roof and increasing soffit

- In assessment of the modification application, Council noted that the increased height would take the building over the maximum 24m currently permitted by WLEP 2009 and that no supporting clause 4.6 statement had been provided. The applicant has now supplied a clause 4.6 statement. The arguments put forward by the applicant include:
 - 17 Kembla Street is broader and taller (at around 28m) and therefore Council has accepted that a building exceeding 24m in the vicinity is suitable.
 - The additional height does not result in view loss
 - The additional height creates negligible overshadowing.
 - Compliance with the BCA necessitated the changes.

Whilst all these arguments are not supported, the impact of the additional height is considered acceptable for reasons explained later in this report.

- Council was also of the view that the increased height may contribute to view loss. The applicant has now provided a height massing plan showing the area of unauthorised works exceeding 24m. Views are not expected to be adversely impacted.

2. Internal fitout of covered terrace area on roof level (accessed by penthouse Unit 16)

- Use of this area as a full height habitable space is contradictory to the original approval.
- Use of this area as habitable space would be considered gross floor area if enclosed, and would exceed the 1.5:1 FSR permitted on the land. The approved development is already at 1.5:1 FSR. This matter is considered unacceptable for reasons explained later in this report.

3. Use of non-trafficable area on roof level (accessed by penthouse Unit 16)

- Use of this area as effectively private open space is contradictory to the original approval. It is unclear if the proposed powder coated screen is necessary for the solar panel activities.
- In assessment of Modification B Council queried that placement of the solar panels on the south side of the building would be effective. Whilst the applicant has not adequately verified the anticipated performance of the panels (nor provided dimensions or details of their placement) it is considered that maximising electricity generation is not a matter for Council under section 4.15 of the Act. The applicant has chosen to place solar panels in an underperforming location where placement of the panels requires associated infrastructure such as balustrading in a sensitive location. As noted, the applicant has not verified whether balustrading is required for the panels. The applicant has also not explained why alternative panel locations have not been considered, such as the western non-trafficable roof areas which are entirely without shadow at all times and accessible.
- Similarly, the applicant has not demonstrated why other parts of roof area could not be used for the bee hive. The outdoor terrace is surplus to open space requirements of the ADG and could likely support a bee hive.
- Use of the approved non-trafficable area on the southern side of the roof level would create a habitable area 4.57m from the side boundary, which would not comply with the visual privacy requirements of the ADG.

This matter is considered unacceptable for reasons explained later in this report.

4. Installation of additional two windows in north-eastern corner of roof level void, inserted into additional unauthorised wall height

- These windows are located opposite the residential flat building to the north, and occur over the void space. It is unlikely that significant additional privacy impacts would result from these unauthorised windows.
- The ADG requires greater setbacks over 25m which is achieved and therefore the windows would not result in a requirement for increased side setbacks in this location.

This matter is considered acceptable

5. Installation of four windows in south-eastern corner of roof level void, inserted into additional unauthorised height.

- These windows occur over the void space, and the adjoining single storey dwelling house is not visible from these additional windows. It is unlikely that significant privacy impacts would result from these unauthorised windows.
- The ADG requires greater setbacks over 25m which is achieved and therefore the windows would not result in a requirement for increased side setbacks in this location.

This matter is considered acceptable

6. Enclosure of an opening in northern elevation of roof level

- Construction of a full height wall has occurred where a balustrade had been approved under Modification A. The builder's explanation is that the bridging beam and load bearing wall are necessary for structural reasons and that they have been given legitimacy as they were shown on structural (i.e. Construction Certificate) drawings. The supporting structural engineer documentation submitted with refused Modification B advises that the design of the floor has incorporated a slab fold in conjunction with the 200mm thick wall above the roof level. The engineer is of the opinion that the structural deep beam action associated with the wall in conjunction with the slab fold is an integral structural component to maintain the structural integrity of the slab for both the roof level and upper roof slabs. This solution ensures that height clearances exist from Level 7 to the underside of the roof level without the need for deeper transfer beams to span across the 7.48m distance. The engineer's report does not discuss why the approved Modification A plans could not be built.
- There does not appear to be any significant privacy concern from having the opening as approved under Modification A. The side setback in this location is approximately 9m, which would comply with the ADG.
- Enclosure of the covered terrace on the northern side contributes to the use of this space as a habitable room, which is suggested by the unauthorised fit out.

This matter is considered unacceptable for reasons explained later in this report.

7. Installation of thirteen aluminium louvres (full height atop balustrade) on northern balconies on floors 2-6.

- In assessment of the modification application, Council expressed concern that the partial enclosure of the balconies by these screens would diminish solar access on these balconies, ten of which were the primary open space for their respective apartments.

- The applicant has provided a 'shadow diagram certification' and 'solar access summary' of the impact on solar access as a result of installation of the louvres. The summary acknowledges that balconies of Units 2, 3, 5, 6, 8, 9, 11, 12, 13, 14 and 15 would experience 70% loss of sunlight. The report did not assess how much loss would occur in hourly or m² terms, nor identify whether the louvres were fixed or openable. The report did not assess compliance with the ADG.
- Reduced solar access to bedroom balconies is not a significant concern, and the louvres could reasonably be retained on the bedroom balconies. However it is appropriate to ensure occupants continue to achieve minimum solar access as required by the ADG. This has not been demonstrated.

This matter is considered unacceptable for reasons explained later in this report.

Changes to conditions of consent

If the proposed modification was considered by the Panel to be acceptable, the following conditions of consent would need to be amended:

- Condition 1 – amend to reflect revised plans

Section 8.2 review applications

The section 8.2 requirements of the Environmental Planning and Assessment Act are satisfied, namely:

- The review application was lodged no later than 28 days after Council's refusal of modification DA-2010/230/B
- The review has been conducted by a delegate of Council not subordinate to the delegate who made the determination
- The review application, including additional information, is substantially the same as DA-2010/230/B

Section 4.55 Modification of consents-generally

The proposal is considered to be a Section 4.55(1A) modification as outlined below:-

(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,

Modification application DA-2010/230/B the subject of this review is considered to be a Section 4.55(1A) modification application as the scope of changes to the approved building includes the roof level and some balcony treatments only. No change to the building footprint or use is proposed. The works will have environmental impacts as described above and the works will detract from the design quality of the building. The modification would result in:

- No change in traffic generation or on-site car parking arrangements.
- Increase in building height
- Negligible additional overshadowing impact

(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),

The modification is considered to be substantially the same development. However, the height of the modified roof now exceeds the maximum permitted height limit of 24m.

(c) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, or

(ii) a 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,

The application was notified in accordance with WDCP 2009 Appendix 1: Public Notification and Advertising Procedures.

(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.

Five submissions have been received which are discussed below at Section 1.5.

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

1.5 SUBMISSIONS

The review application was notified in accordance with WDCP 2009 Appendix 1: Public Notification and Advertising between 31 August 2018-19 September 2018. This included a notice in The Advertiser. Five submissions have been received (two of support and three objections) and the issues identified are discussed below. Submissions of support have been received from the flat building to the north, and objections originate from a flat building up the hill on the opposite side of Kembla Street (19-21 Gipps Street)

Table 1: Submissions

Objection	Comment
Building was modified during building process, when it was not approved. Builders should be held accountable as this is unlawful.	It is understood the private certifier for the development refused to issue an occupation certificate unless the unauthorised works had been the subject of a modified consent.
Builder knew of the issues from day one but refused to submit any adjustments or amendments to Council.	The unauthorised works are the subject of modification B (refused) and this section 8.2 review application.
Builder and certifier made change after change and now want Council to pass changes.	The floor space ratio would increase if the roof level covered terrace was enclosed.
Certifier has responsibility to make sure the build proceeds to the approved plans.	On inspection, the bi fold doors had been removed however the frame remains.
Builder doesn't mention changes made to roof top area making it a habitable space which has changed from a walk through area only. This has increased the floor space ratio.	
Builder has increased the height of the	

Objection	Comment
<p>roof to allow another window to be added on the north and south side. Originally 2 windows on north and nil on south side.</p> <p>Builder has blamed a conversion factor in his calculations and adjusted numbers for FSR.</p> <p>Builder has removed bi-fold doors installed on the top roof area and hidden them waiting to put them up again.</p> <p>Roof area western wall was solid with a man door on the north side.</p> <p>Builder must be made to rectify all issues and revert building back to the original approved plans.</p>	
<p>Level 8 has been converted into living space by increasing the height of the building</p> <p>Increase in height and bulk affects 19-21 Gipps Street opposite by limiting views to the ocean.</p> <p>Bulk and height increase will affect public domain.</p> <p>Council's report dated 19 July 2018 confirms that a living space on level 8 will result in the FSR exceeding FSR for the site.</p> <p>Comparing FSR to 17 Kembla Street is not a reasonable comparison because the building is constructed on a larger site.</p> <p>Changes to the building may not be greatly apparent from the street but from the level of our apartment and the five other apartments affected, it is significant.</p> <p>All new buildings in the area should not exceed the 24m height limit otherwise overtime with more construction and builders not adhering to this regulation the area will become more congested.</p> <p>The original DA did not include living space on Level 8. The community and Council at the time should have had the right to make comment on this living</p>	<p>The internal fitout of the roof level covered terrace suggests intended use as habitable space.</p> <p>The applicant has provided a photomontage which compares the as built and approved development, albeit with some questionable elements such as the northern open area handrail not being shown on the approved development image. Views to the horizon remain similar – the building height increase occurs above the horizon line and therefore ocean views do not seem compromised by the proposed building height changes. Deletion of the balustrading to the southern side non-trafficable area would remove potential intrusions into the horizon.</p> <p>The bifold doors have been removed, and therefore no increase in GFA is proposed. However, the retention of the bifold frame does is contrary to the applicant's contention that this is not a habitable space.</p> <p>From 19-21 Gipps Street, the roof level changes and northern elevation louvres (at higher levels) would be noticeable.</p> <p>Whilst the WLEP 2009 height limit is 24m for the site, planning policy does allow increases in certain circumstances.</p> <p>Clause 3.8.2 of the BCA requires corridors and passageways to have a height clearance of minimum 2.1m, and 2.4m for habitable rooms. The approved plans provide for 2.25m to the stairs and terrace area, which satisfies the BCA. Notwithstanding, the ADG requires non-habitable rooms to have minimum finished ceiling level of 2.4m, and 2.7m for habitable</p>

Objection	Comment
space before the building was approved.	rooms.
Bi fold doors have been installed to the southern end of the building. These have been removed.	
Three-tier windows have been fitted where two-tier are on original plans. The builder/developer will use this space as a living area.	
They have increased the height of the northern edge of the rooftop by. 0.024m and the southern edge by 0.75m	
The slope of the roof has been flattened out considerably.	
The original plans show a passageway inside the rooftop construction of 2.25m which satisfies the BCA. Raising the roof is not necessary	
The building will be 8 storey instead of 7 storey and higher.	

1.6 CONSULTATION

1.6.1 INTERNAL CONSULTATION

None required

1.6.2 EXTERNAL CONSULTATION

None required

2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 – 4.15 EVALUATION

2.1 SECTION 4.15(1)(A)(1) ANY ENVIRONMENTAL PLANNING INSTRUMENT

2.1.1 STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND

A desktop audit of previous land uses does not indicate any historic use that would contribute to the contamination of the site. There are no earthworks proposed in the modification and the proposal does not comprise a change of use. No concerns are raised in regard to contamination as relates to the intended use of the land and the requirements of clause 7.

2.1.2 STATE ENVIRONMENTAL PLANNING POLICY NO 65—DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

The approved building meets the definition of a ‘residential flat building’ because it is more than 3 storeys and comprises more than 4 dwellings. The provisions of SEPP 65 apply to the modification.

The refused modification application was made pursuant to Section 4.55(1A), and therefore did not require a design verification statement or review by a design review panel. The proposed changes have been considered with regard to the design quality principles in Schedule 1 of the SEPP as required by clause 30(2)(a) of the SEPP. These are discussed below:-

Principle 1: Context and neighbourhood character

The proposal use is consistent with the desired future character of the area however the modifications increase the building height so that it now exceeds the maximum permitted. It is noted that the building to the north exceeds 24m.

Principle 2: Built form and scale

The modifications increase the bulk and scale of the development and as a result it now exceeds the permissible height control for the area. The modifications to the built form will reduce the design quality of the building from that originally approved.

Principle 3: Density

The use of the roof top covered terrace as a habitable space would be additional gross floor area if enclosed. The frame for the bifold door remains in place, although the doors have been removed.

Principle 4: Sustainability

A BASIX certificate was issued with the original development application. Correspondence from Greenview Consulting asserts that the unauthorised works would not affect the original BASIX results. A revised BASIX certificate has not been provided.

Principle 5: Landscape

No change to landscaped areas is proposed.

Principle 6: Amenity

It is unclear whether the unauthorised works would meet the solar access requirements of the Apartment Design Guide.

Principle 7: Safety

The proposal is satisfactory with regard to safety and security.

Principle 8: Housing diversity and social interaction

The proposal provides a mix of unit sizes and layouts appropriate to the locality.

Principle 9: Aesthetics

The additional rooftop structures and position of the air conditioning units are considered to diminish the aesthetic quality of the development.

2.1.3 STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

The modification is BASIX affected development to which this policy applies. In accordance with clause 115 of the Environmental Planning and Assessment Regulation 2000, an s.4.55 (1A) modification application must be accompanied by an appropriate BASIX certificate. An appropriate BASIX certificate is either the original or a revised BASIX certificate.

The applicant has elected to not supply a revised BASIX certificate, instead providing a letter from Greenview Consulting dated 15 August 2018 which advises that the list of unauthorised works '*will not affect the results that were achieved in 2010*'.

2.1.1 STATE ENVIRONMENTAL PLANNING POLICY (COASTAL MANAGEMENT) 2018

The land is identified as within the coastal zone and subject to the Coastal SEPP. The land is shown on the SEPP maps as being within a coastal use area. The proposed modification is satisfactory with regard to clause 14.

1.1.5 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned **R1 General Residential**.

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

- *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 provides facilities or services to meet the day to day needs of residents.*

The proposal is satisfactory with regard to the above objectives. The proposal will increase the range of housing types available within the locality.

The proposal remains categorised as a **residential flat building** and is permissible in the R1 zone.

Part 4 Principal development standards

Clause 4.3 Height of buildings

The proposed building height of maximum 24.57m exceeds the 24m permitted for the site. A clause 4.6 statement has been provided.

Clause 4.4 Floor space ratio

No increase in floor space ratio is proposed. Balconies remain open on at least one side and the roof level covered terrace area has had the unauthorised bi fold doors removed.

The approved floor space ratio is 1.5:1, based on gross floor area of 1797m².

Clause 4.6 Exceptions to development standards

As a modification application, clause 4.6 cannot be utilised, since it is available to development consents only, and a modification to a consent is taken not to be the granting of development consent (sec 4.55(4) of the EP&A Act)). The question then is whether a modification which contravenes a development standard can be approved without the dispensation available under clause 4.6.

In *Gann v Sutherland Shire Council* [2008] NSWLEC 157, the Court was prepared to distinguish an earlier line of authority, and hold that, since s.96 was a “free-standing” provision, it could be utilised to modify a consent even where (in that case) no SEPP 1 Objection could be lodged.

This does not mean that development standards count for nothing. Section 96(3) still requires the consent authority to take into consideration the matters referred to in s 79C, which in turn include the provision of any environmental planning instrument. That is, any development standard in an environmental planning instrument must be taken into consideration by the consent authority, but the absolute prohibition against the carrying out of development otherwise than in accordance with the instrument in s 76A(1) does not apply.

The equivalent section under the amended Act (4.55(3)) still requires the consent authority to take into consideration the matters referred to in Section 4.15(1).

By application of that case here, Council can consider (and approve) a modification that still results in a breach of the height control, without reference to clause 4.6, relying instead on the “free-standing” power of section 4.55. Council does not need to formally vary those standards in order to grant any modification. On such an approach, Council in that instance would be acting lawfully so long as it considers the development standard in making its determination of the modification.

In taking into consideration the matters under Section 4.15(1) the clause requires the consent authority among other things to take into consideration any environmental planning instrument. In this regard WLEP 2009 prescribes standards that the application must be measured against and the matters for consideration under clause 4.6 provides Council with a framework for doing if a written request from the applicant justifies contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard.

The application is accompanied by such a request. The provisions of clause 4.6 of WLEP 2009 are addressed below:

(1) The objectives of this clause are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment: the applicant has provided a request dated 16 August 2018 which seeks to justify the height increase (clause 4.3 building height). The statement addresses the circumstances of the case and relevant environmental planning grounds.

(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

Comment: the applicant’s statement includes commentary on matters in subclause 3. It is considered that strict application of the 24m height limit is unnecessary due to the minor exceedance, and no apparent adverse implications for neighbouring development. Redevelopment of the southern adjoining allotment would not be compromised by the additional height, and overshadowing is minimal. There are sufficient environmental planning grounds to justify the height increase.

(ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

Comment: The increase in building height is consistent with the objectives of clause 4.3.

- (a) *to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
- (b) *to permit building heights that encourage high quality urban form,*
- (c) *to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.*

The height increase (maximum 24.57m in the south eastern corner, 24.09m in the south western corner and 24.07m in the north eastern corner) does not significantly contribute to overshadowing or block views. The additional height would result in minor additional shadow as shown on shadow diagrams submitted with the review application. The building height is appropriate in the immediate locality where 7-8 storey developments have been established.

(b) *the concurrence of the Secretary has been obtained.*

Comment: Council has been granted delegation to assume the Secretary's concurrence.

Part 5 Miscellaneous provisions

Clause 5.10 Heritage conservation

There are heritage items within the vicinity of the site, however it is not expected that the proposal will have an impact on these items. The closest item is a house located to the north on the south-eastern corner of the intersection of Kembla and Gipps Streets. There is also a row of Canary date palms located within the Gipps Street road reserve which are of local significance. The proposal is unlikely to have any impact on the heritage significance of the listed items.

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

The development is already serviced by electricity, water and sewage services.

Clause 7.5 Acid Sulfate Soils

The proposal is identified as being affected by class 5 acid sulfate soils. The unauthorised works do not involve excavation and therefore no impact on soil or water quality is anticipated.

Clause 7.14 Minimum site width

No change - exceeds 24m width.

Clause 7.18 Design excellence in Wollongong city centre and at key sites

Development consent must not be granted to development to which this clause applies unless, in the opinion of the consent authority, the proposed development exhibits design excellence. In considering whether development to which this clause applies exhibits design excellence, the consent authority must have regard to the following matters:-

- (a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*

Comment:- the building as approved exhibited a high standard of architectural design, materials and detailing. Some of the modifications for which consent is sought in this application are considered to detract from the standard of design and finish of the development. These are the placement of the

louvres, installation of roof level balustrading and filling in the northern elevation open handrail area on the roof.

(b) *whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,*

Comment:- The changes sought to be made in this modification will have no direct relationship with the public domain. The modifications will not however contribute positively to the streetscape, in particular regarding the roof level balustrade and infilling of the northern roof level opening.

(c) *whether the proposed development detrimentally impacts on view corridors,*

Comment:- the proposed modifications will introduce some additional built elements and increase the height of the roof. Photo montage submitted with the application shows views to the horizon would be retained from premises further up Kembla Street.

(d) *whether the proposed development detrimentally overshadows an area shown distinctively coloured and numbered on the Sun Plane Protection Map,*

Comment:- the proposal will not overshadow an area identified on the Sun Place Protection Map.

(e) *how the proposed development addresses the following matters:*

(i) *the suitability of the land for development,*

Comment:- the land is appropriately zoned for the proposed development and there are no site constraints which will impede the development.

(ii) *existing and proposed uses and use mix,*

Comment:- the proposed residential use within the development is consistent with the R1 zone objectives.

(iii) *heritage issues and streetscape constraints,*

Comment:- the development will not have an adverse impact on the heritage significance of any nearby heritage items.

(iv) *the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*

Comment:- the approved building complies with the applicable building separation and setback controls. Use of the roof level southern side non-trafficable area would not comply with current ADG setback controls and potentially unreasonably constrains redevelopment of neighbouring southern land.

(v) *bulk, massing and modulation of buildings,*

Comment:- the bulk and mass of the building as approved complied with the applicable height and FSR controls, building separation and setback controls contained within the LEP, DCP and ADG. The unauthorised building works result in the building exceeding 24m, and a heavier treatment of the roof level resulting from the northern elevation infill and new balustrading.

(vi) *street frontage heights,*

Comment:- N/A.

(vii) *environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*

Comment:- the development is appropriate with regard to sustainable design, wind impacts, reflectivity (subject to compliance with consent conditions regarding material reflectivity), and as approved had overshadowing impacts which were not considered to be unreasonable having regard

to allowable building heights and densities within the locality. The proposed units achieved compliance with BASIX targets and responded to the solar access and cross ventilation requirements of the ADG.

The modification application will result in minor additional overshadowing. Installation of the louvre screens are shown by the applicant to reduce solar access to balconies and living areas and compliance with ADG solar access requirements has not been demonstrated.

(viii) the achievement of the principles of ecologically sustainable development,

Comment:- the proposal is generally satisfactory with regard to ESD principles. The applicant submitted a letter from Greenview Consulting stating that the modifications would not conflict with the original BASIX certificate.

(ix) pedestrian, cycle, vehicular and service access, circulation and requirements,

Comment:- the proposal is satisfactory with regard to these matters.

(x) impact on, and any proposed improvements to, the public domain.

Comment:- the landscape plan provided with the original development application makes provision for public domain improvements including street tree planting.

Some of the proposed modifications will reduce the design quality of the approved building and it is considered that it will no longer exhibit design excellence as required by Clause 7.18.

Part 8 Local provisions—Wollongong city centre

Clause 8.1 Objectives for development in Wollongong city centre

The proposed modifications are inconsistent with the objectives, with the exception of objective (e)

(e) to facilitate the development of building design excellence appropriate to a regional city,

2.2 SECTION 4.15(1)(A)(II) ANY PROPOSED INSTRUMENT

Nil

2.3 SECTION 4.15(1)(A)(III) ANY DEVELOPMENT CONTROL PLAN

2.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

Chapter A1 – Introduction

The development has been assessed against the relevant chapters of WDCP2009. A full compliance table can be found at Attachment 6 to this report; only the variations are discussed below:

8. Variations to development controls in the DCP

The applicant has not submitted adequate justification in relation to the following:

Chapter B1 Residential Development

Clause 6.5 Built Form

The design quality of the building will be reduced through the modifications proposed;

Clause 6.18 Solar Access

The louvre screens proposed will affect solar access to the private open space and living rooms of some apartments;

Chapter D13 Wollongong City Centre

Clause 6.10 Solar Access.

The louvre screens proposed will affect solar access to the private open space and living rooms of some apartments. Insufficient information has been provided to ensure that solar access to these spaces will remain compliant with relevant controls.

2.3.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN 2018

Condition 55 of the existing consent requires payment of a development contribution prior to issue of the construction certificate.

2.4 SECTION 4.15(1)(A)(IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 7.4

There are no planning agreements entered into or any draft agreement offered to enter into under S7.4 which affects the development.

2.5 SECTION 4.15(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)

92 What additional matters must a consent authority take into consideration in determining a development application?

The provisions of section 8.2 of the Act have been considered.

The Government Coastal Policy only applies to the offshore component of the coastal zone, extending three nautical miles seaward from the open coast high water mark.

93 Fire safety and other considerations

Not applicable

94 Consent authority may require buildings to be upgraded

Not applicable

115 What are the requirements for an application for modification of development consent?

The proposed modifications are consistent with the requirements of this clause.

2.6 SECTION 4.15(1)(B) THE LIKELY IMPACTS OF DEVELOPMENT

Some aspects of the modification are not considered acceptable. These are:

- Infill of northern opening on roof level
- Fitout of covered terrace as a habitable space
- Use of non-trafficable area southern side and associated balustrading
- Installation of louvres without evidence that solar access would comply with the ADG

Retention of these elements is not supported. Infill of the northern roof opening contributes to use of the covered terrace area as habitable space, and results in a heavier visual impact than the approved lightweight open area. Use of the southern side non-trafficable area would result in visible balustrading from the street below and neighbouring towers. The proposed bee keeping and solar panel activities could be located elsewhere on the roof level. Whilst the louvres are not considered to have an adverse visual effect, the applicant has not demonstrated that adequate solar access to primary open space and living rooms would eventuate.

It is considered that the building height increase is acceptable and would not significantly affect views or overshadowing.

There is not expected to be any adverse social, environmental or economic impacts in the locality.

2.7 SECTION 4.15(1)(C) THE SUITABILITY OF THE SITE FOR DEVELOPMENT

Does the proposal fit in the locality?

The locality contains a mix of densities, and the approved residential flat building appears suitable for the site context.

Are the site attributes conducive to development?

The site attributes are compatible with residential flat building development generally.

2.8 SECTION 4.15(1)(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS

Submissions are discussed in section 1.5.

2.9 SECTION 4.15(1)(E) THE PUBLIC INTEREST

Approval of the application in its current form is not considered consistent with the public interest. The modification application the subject of this review application seeks to legitimise unauthorised building works which include:

- Increasing roof height of Unit 16 upper level, thereby exceeding the WLEP 2009 height limit;
- Internal fitout of the roof level covered terrace consistent with a habitable room;
- Change a non-trafficable roof area to a trafficable area including installation of a 1.5m high balustrade
- Insertion of roof level windows into unauthorised additional height
- Installation of powder coated louvre screens on primary open space and bedroom balconies on northern elevation, which are visible from the public domain.

The additional windows and increased building height are the only aspect of the development that is supported.

Use of the rooftop terrace as a habitable space including enclosure of a northern opening and installation of a frame for bifold doors was not contemplated in the original application. Further, if this covered terrace is enclosed it would be calculated as gross floor area and would exceed the maximum permitted for the site. Use of the approved non-trafficable area on the southern side of the roof level would create a habitable area 4.57m from the side boundary, which would not comply with the visual privacy requirements of the ADG. The louvres have an adverse impact on solar access and compliance with the ADG has not been demonstrated.

3 CONCLUSION

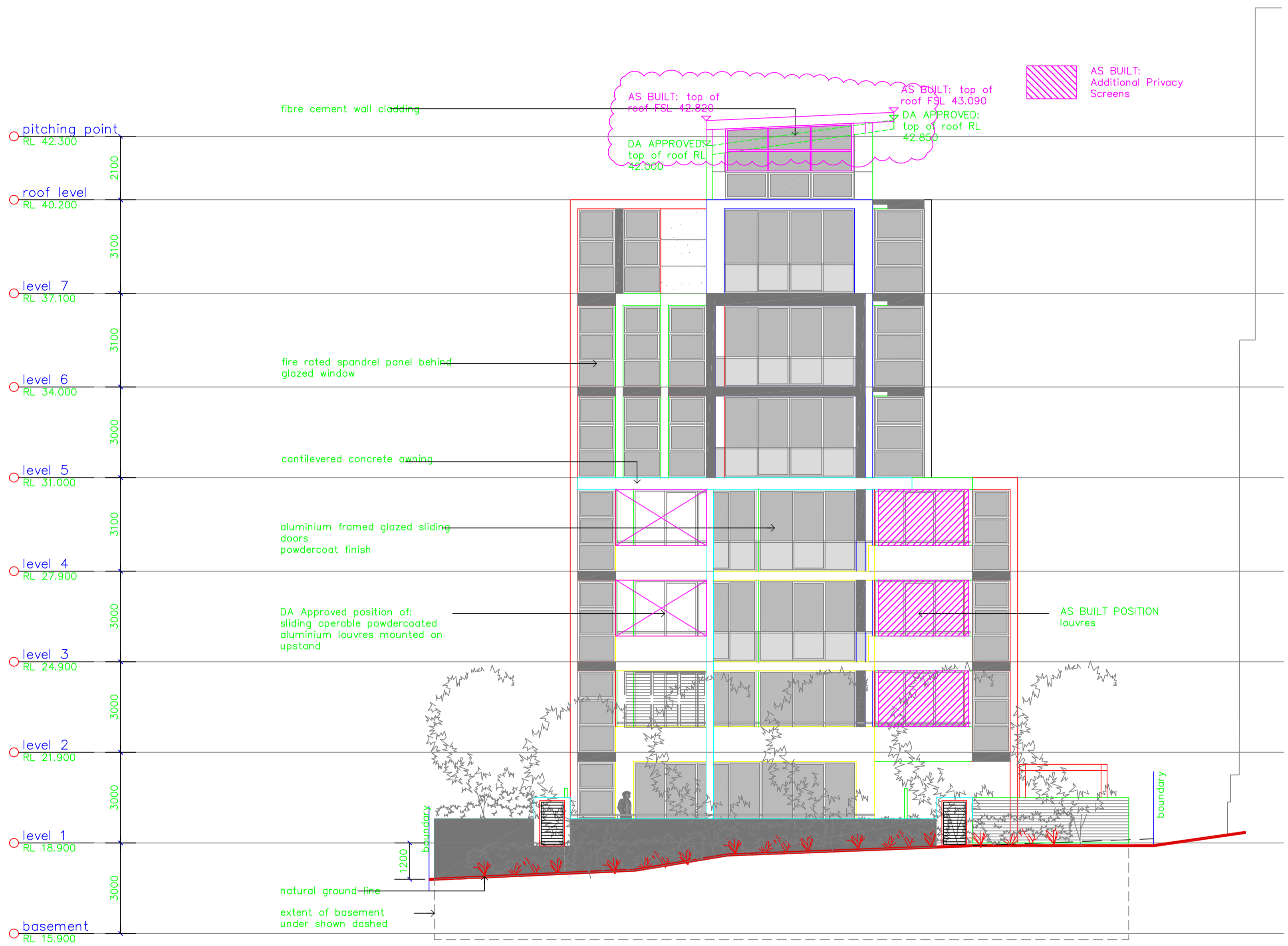
This application has been assessed as unsatisfactory having regard to Section S4.15 (1) of the Environmental Planning and Assessment Act 1979. The proposed development is permissible with consent and has regard to the objectives of the zone but is generally inconsistent with the applicable provisions of the relevant planning instruments as discussed in this report. Submissions have been considered in the assessment. Whilst elements of the proposal are supported, it is considered that the proposed development in its entirety will result in adverse impacts on the character or amenity of the surrounding area.

4 RECOMMENDATION

It is recommended that the development application RD-2010/203/B be refused for the reasons detailed in Attachment 4.

5 ATTACHMENTS

- 1 Plans
- 2 Aerial Photograph and Zoning Map
- 3 Applicant's WLEP 2009 clause 4.6 Request
- 4 Draft Reasons for Refusal
- 5 ADG compliance table
- 6 WDCP compliance table



EAST ELEVATION

TITLE	AS BUILT MODIFICATIONS
DATE	AUGUST 2018
BY	TIER ONE CONSTRUCTIONS

B 15.06.10 Amendments to Development Application
C 19.08.10 Amendments to Development Application

D 13.08.18 AS BUILT VARIATION OF TOP ROOF HEIGHTS – as per SURVEY Ref W17059-4 by Masters Surveying

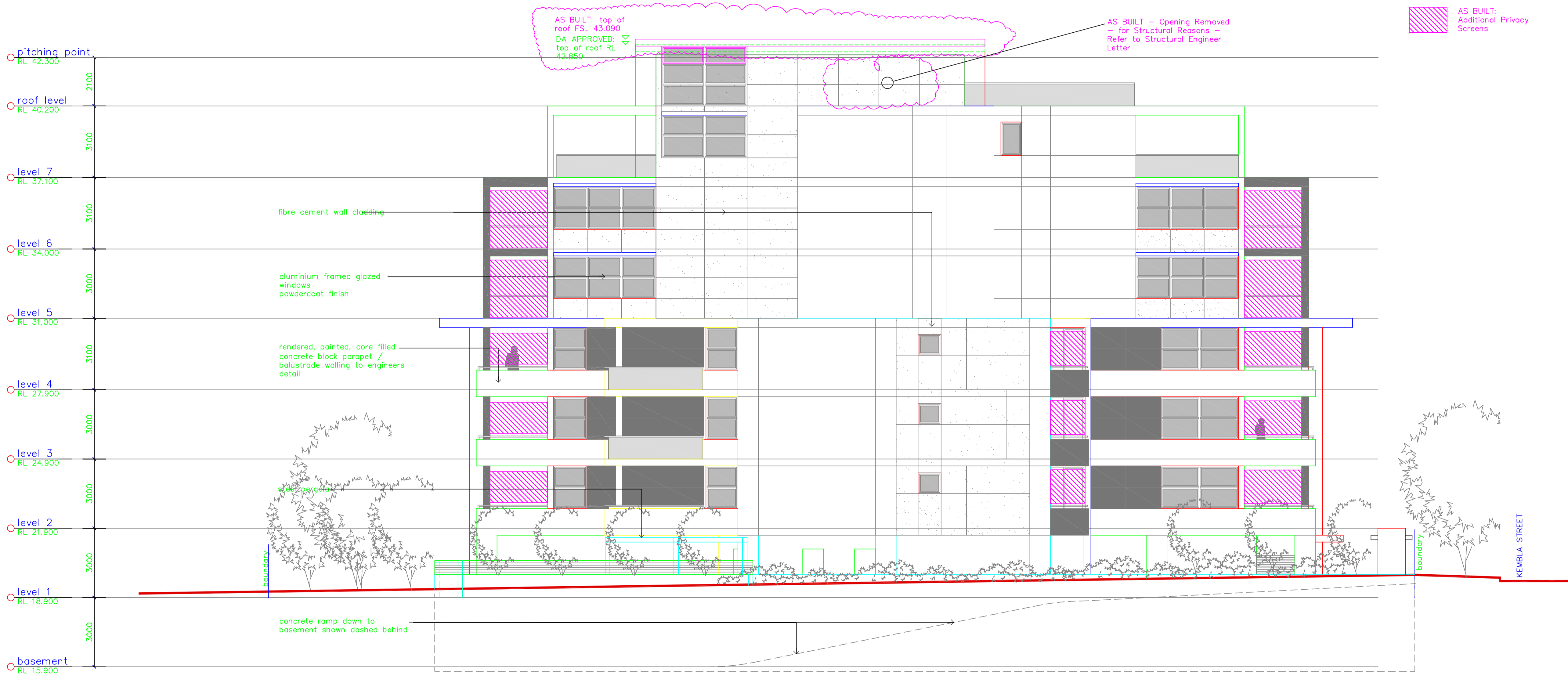


WEST ELEVATION
(view from Kembla Street)

TITLE AS BUILT MODIFICATIONS

DATE AUGUST 2018

BY TIER ONE CONSTRUCTIONS

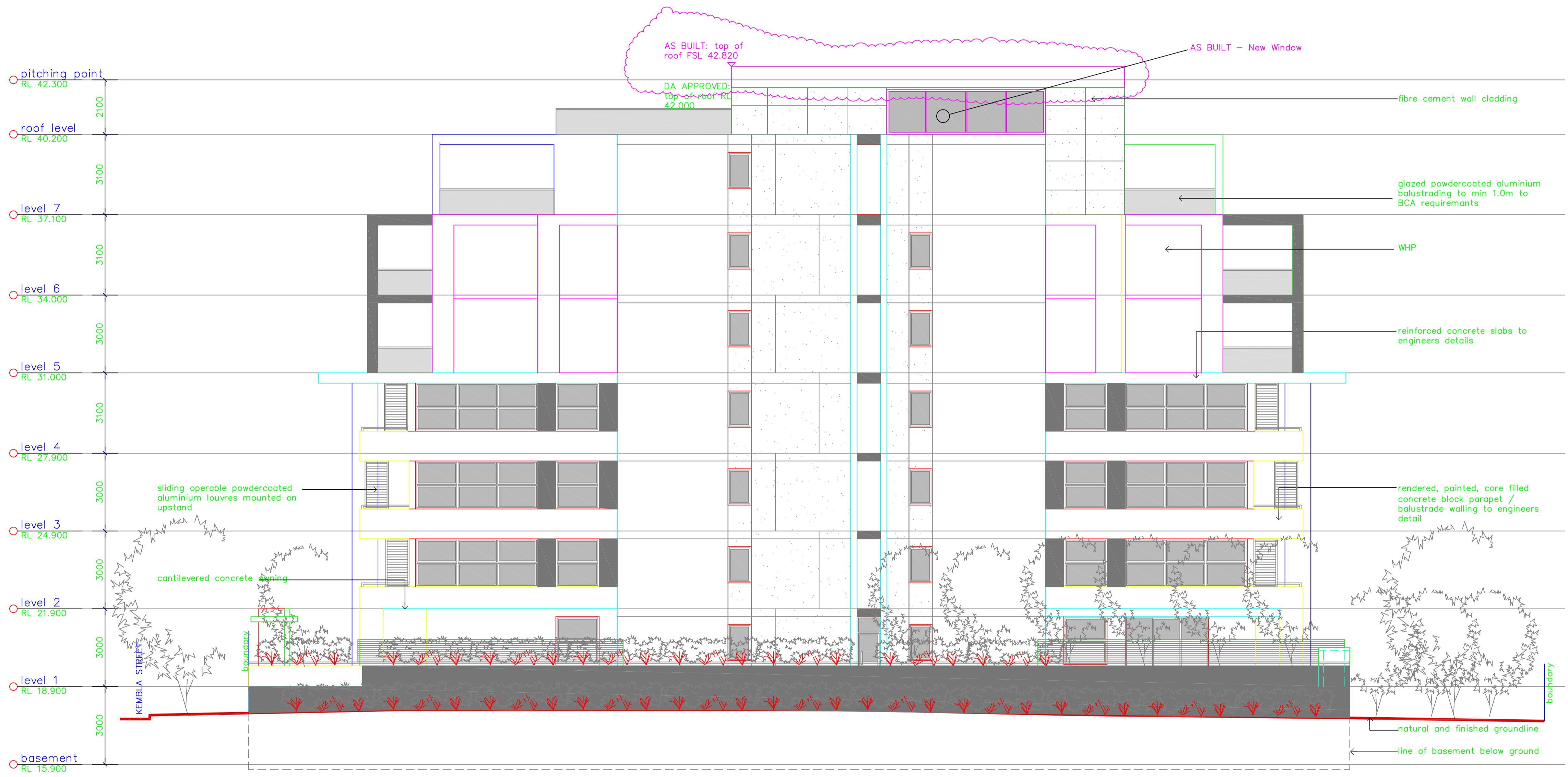


NORTH ELEVATION

TITLE AS BUILT MODIFICATIONS

DATE AUGUST 2018

BY TIER ONE CONSTRUCTIONS



SOUTH ELEVATION

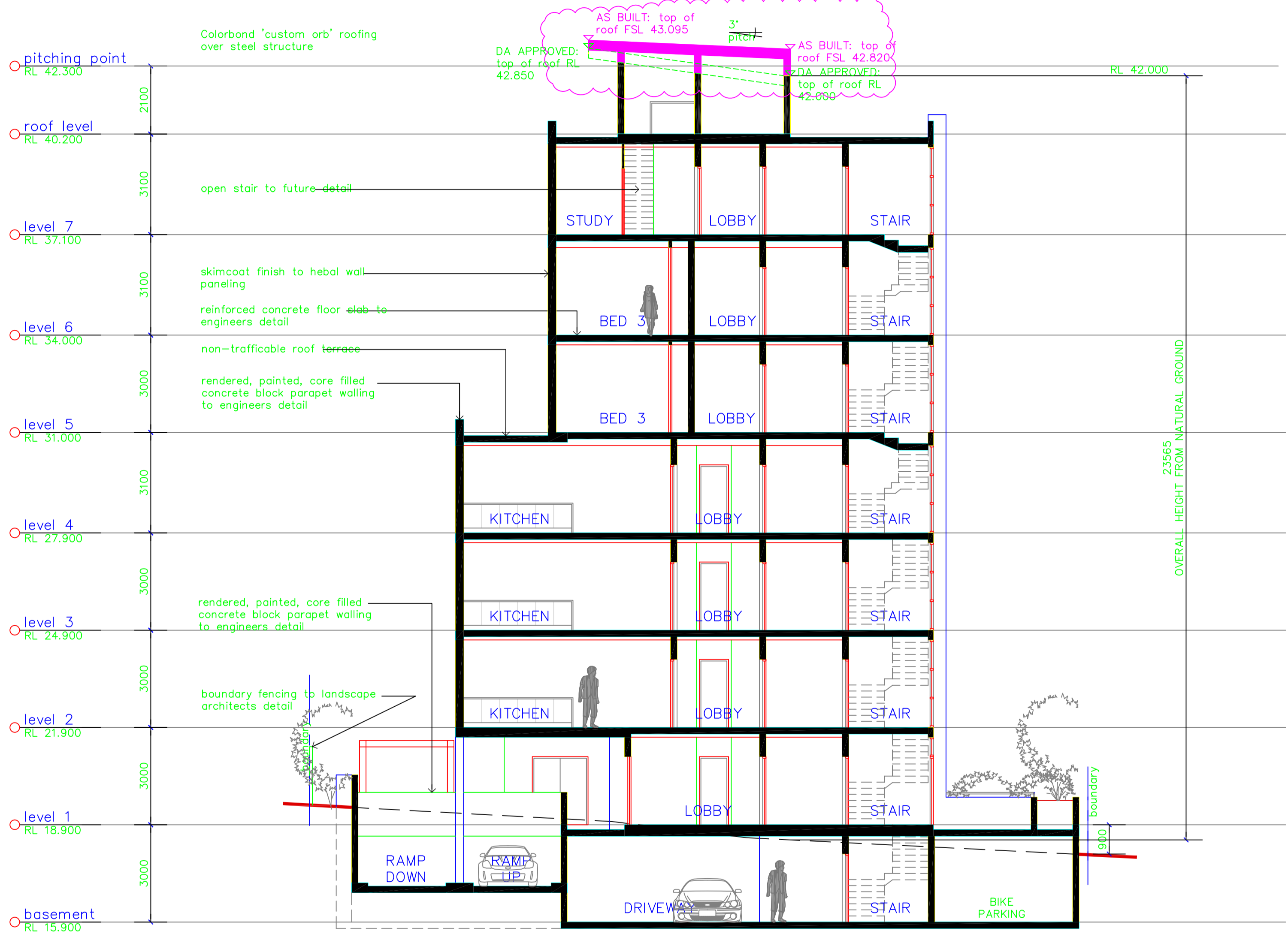
TITLE AS BUILT MODIFICATIONS

DATE AUGUST 2018

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SECTION A-A

TITLE AS BUILT MODIFICATIONS

DATE AUGUST 2018

BY TIER ONE CONSTRUCTIONS



P03 3D
PHOTOMATCH PROOF



P03 ARTISTIC
PROOF OF VIEW
TECHNIQUE PROOF ONLY -
NOT ACTUAL VIEW

CERTIFIED PHOTOMONTAGE
No : PMC157201 - Refer to attached Certificate.

Certifier: Cameron McFadzean B Arch BA (Arch) IES ABSA AAAI

NOTE:
Photomontage perspective based on camera data,
position and photomatch. Refer to Certificate workflow
and notes for further details.

Camera position using DRONE outside front of target
window (approx 5m in front of Window / Balustrade)

Camera Data: Daylight: 08/08/18 11:45am (35mm efl)

5m in front of BEDROOM WINDOW No
P 01 24mm lens, Level Target, Approx 1100mm above Floor Level

P02 - NOT USED

5m in front of BALCONY No
P 03 24mm lens, Level Target, Approx 1100mm above Floor Level

Shot Horizon -0.5 ° (RHS Down)
35mm efl : LENS 24mm
actual 8.8mm

5464 x 3640

8/8/18 11:48 am

DJI FC6310

P03 “BALCONY VIEW” - PROOF

(5meters in front at 1100mm above floor)

TITLE
PHOTOMONTAGE / VIEW ANALYSIS
“ALTAIR APARTMENTS”

PROJECT
19 - 21 KEMBLA STREET
WOLLONGONG

DATA SOURCE (In order of precedence)

- Registered Survey - DA Site Survey (embedded into original Architectural Set), Supported by Masters Surveying, REF W170594 and AUG 2018 supplementary plans.
- Architectural Plans - Architects REF: DA APPROVED DESIGN: ADM Architects, Ref 17.09.10. AS BUILT DESIGN: AUG 2018 issue: as per drawings by Teir One Construcitons and supported by Survey , Masters Surveying, Ref W17059-4

PAGE No : P05
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VERSION : 01
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P03 AS BUILT



P03 DA APPROVED

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P01 AS BUILT



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(5meters in front at 1100mm above floor level)

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35mm efl : LENS 24mm
actual 8.8mm

5464 x 3640

8/8/18 11:48 am

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(5meters in front at 1100mm above floor)

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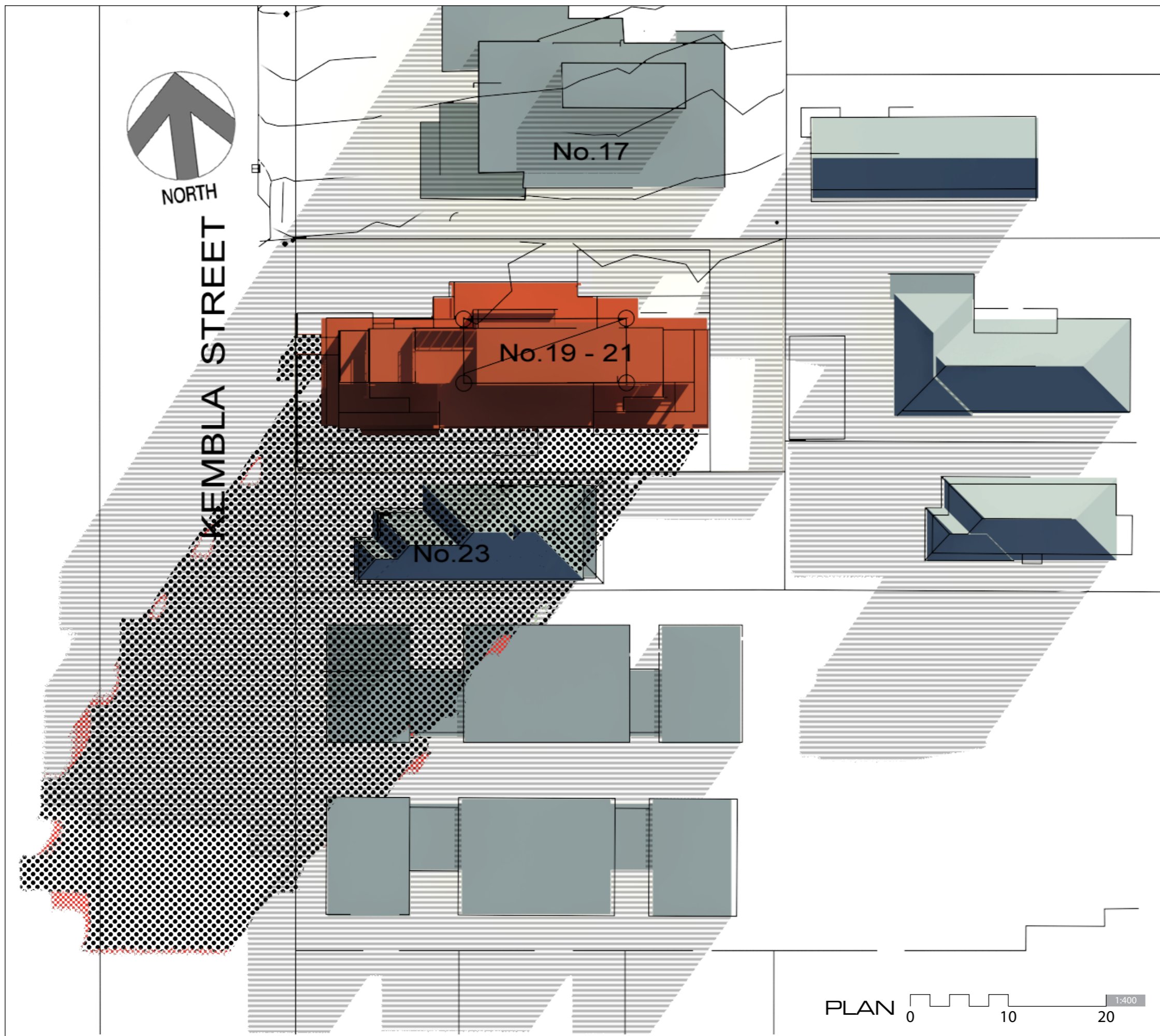
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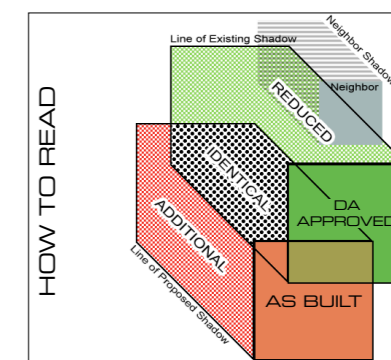


CERTIFIED SHADOW DIAGRAM
No : SDC157201 - Refer to attached Certificate.

Certifier: C McFadzean B Arch BA (Arch) IES ABSA AAAI
Member of IES (The Illuminating Engineers Society of Australia)

SHADOW KEY

- ADDITIONAL SHADOW AREA**
• PROPOSED LESS EXISTING
• AS CAST FROM PROJECT SITE ONLY
- REDUCED SHADOW AREA**
• EXISTING LESS PROPOSED
• AS CAST FROM PROJECT SITE ONLY
- IDENTICAL SHADOW AREA**
• EXISTING + PROPOSED ARE THE SAME
• AS CAST FROM PROJECT SITE ONLY
- NEIGHBOURING**
• SHOWN AS NEIGHBOURING SHADOWS WHICH
OVERLAP PROJECT SITE SHADOWS



- NOTES:**
1. DA PROPOSED - as per original DA Submission
 2. AS BUILT - as per as built survey and drawings - SHOWN AS RED ADDITIONAL SHADE
 3. Trees, landscape omitted from calculations
 4. True north used as solar north.
 5. Limited survey information available on adjoining sites.
 6. Winter solstice - 21 June
 7. Side Fence shown as Neighbour shadow type.
 8. No.17 as per August 2018 "Masters Survey".
 9. Time Zone - AEST unless noted (Aust. Eastern Standard Time - AEST)

0900

TITLE
SHADOW DIAGRAMS - PLAN
WINTER SOLSTICE
21 JUNE

PROJECT
19 - 21 KEMBLA STREET
WOLLONGONG

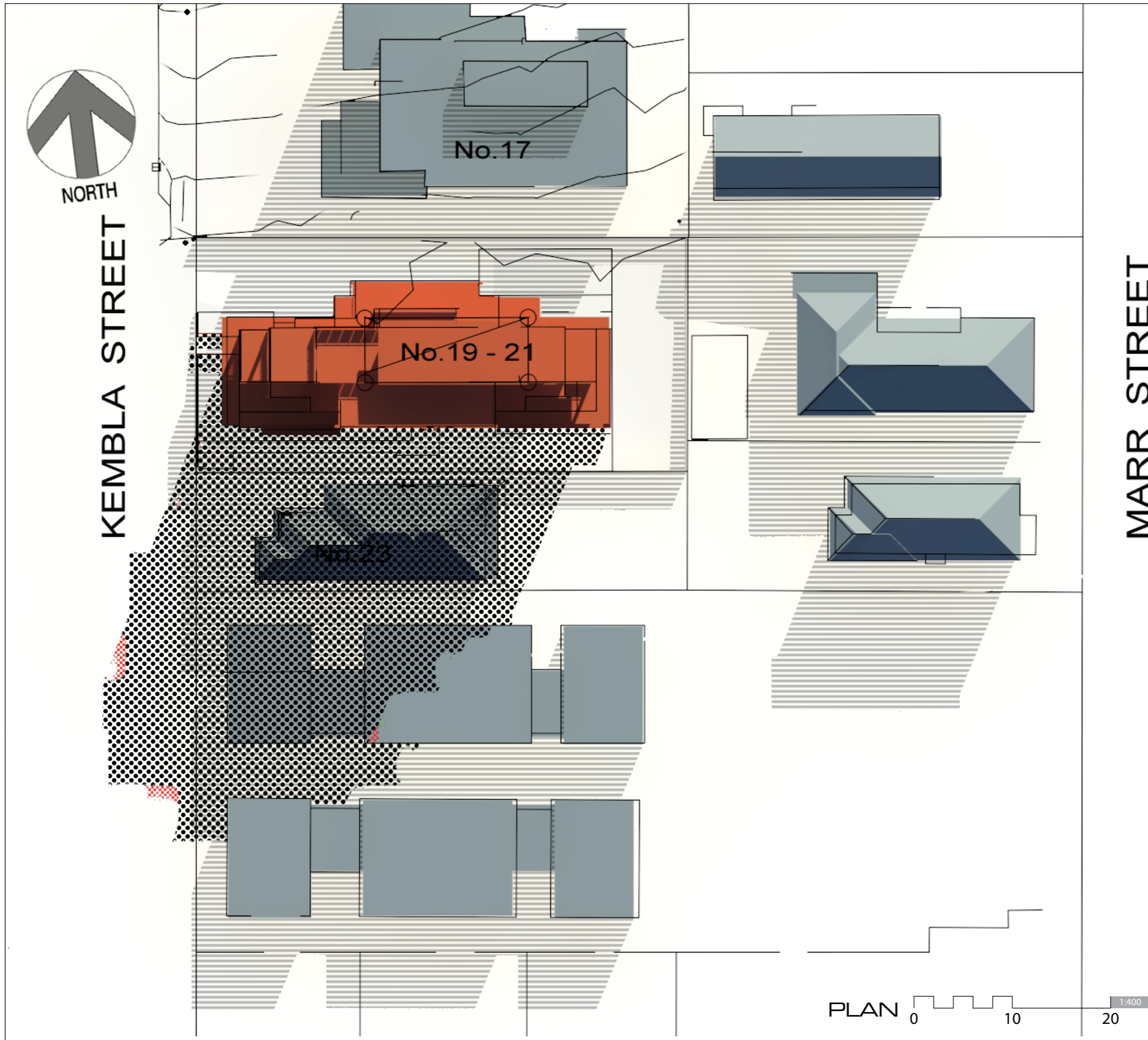
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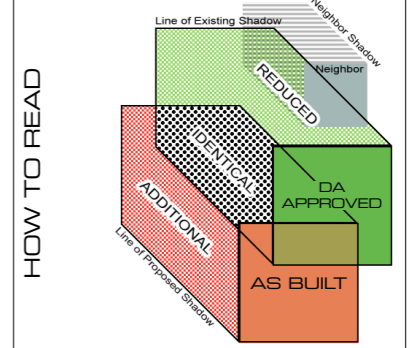


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 - AS CAST FROM PROJECT SITE ONLY
-  **REDUCED SHADOW AREA**
 - EXISTING LESS PROPOSED
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 - SHOWN AS NEIGHBOURING SHADOWS WHICH OVERLAP PROJECT SITE SHADOWS

HOW TO READ

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1000

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SHADOW DIAGRAMS - PLAN

WINTER SOLSTICE
21 JUNE


PROJECT

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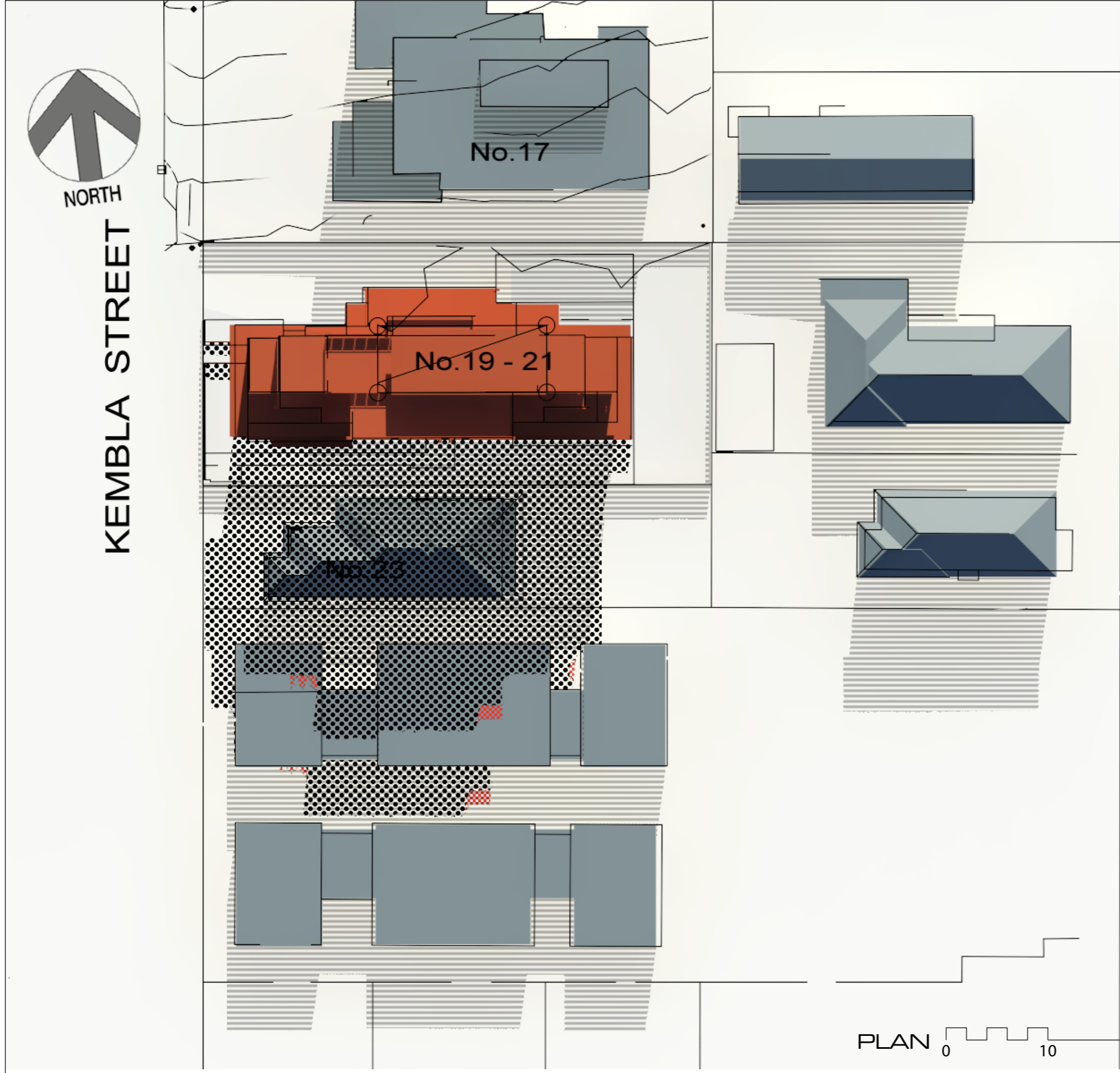
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- Registered Survey - DA Site Survey (embedded into original Architectural Set), Supported by Masters Surveying, REF W170594 and AUG 2018 supplementary plans.
- Architectural Plans - Architects REF: DA APPROVED DESIGN: ADM Architects, Ref 17.09.10. AS BUILT DESIGN: AUG 2018 issue: as per drawings by Teir One Constructions and supported by Survey , Masters Surveying, Ref W17059-4





PAGE No : SD 02
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VERSION : 01
REF : 1572



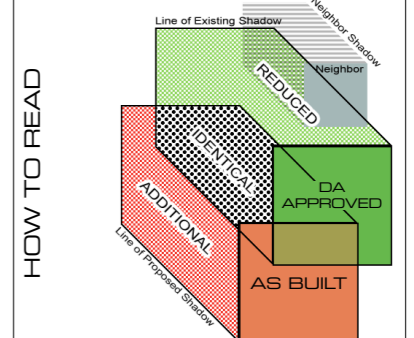
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SHADOW KEY

-  **ADDITIONAL SHADOW AREA**
• PROPOSED LESS EXISTING
• AS CAST FROM PROJECT SITE ONLY
-  **REDUCED SHADOW AREA**
• EXISTING LESS PROPOSED
• AS CAST FROM PROJECT SITE ONLY
-  **IDENTICAL SHADOW AREA**
• EXISTING + PROPOSED ARE THE SAME
• AS CAST FROM PROJECT SITE ONLY
-  **NEIGHBOURING**
• SHOWN AS NEIGHBOURING SHADOWS WHICH
• OVERLAP PROJECT SITE SHADOWS

HOW TO READ



- NOTES:**
1. DA PROPOSED - as per original DA Submission
 2. AS BUILT - as per as built survey and drawings - SHOWN AS RED ADDITIONAL SHADE
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 9. Time Zone - AEST unless noted (Aust. Eastern Standard Time - AEST)

1100

TITLE
SHADOW DIAGRAMS - PLAN
WINTER SOLSTICE
21 JUNE

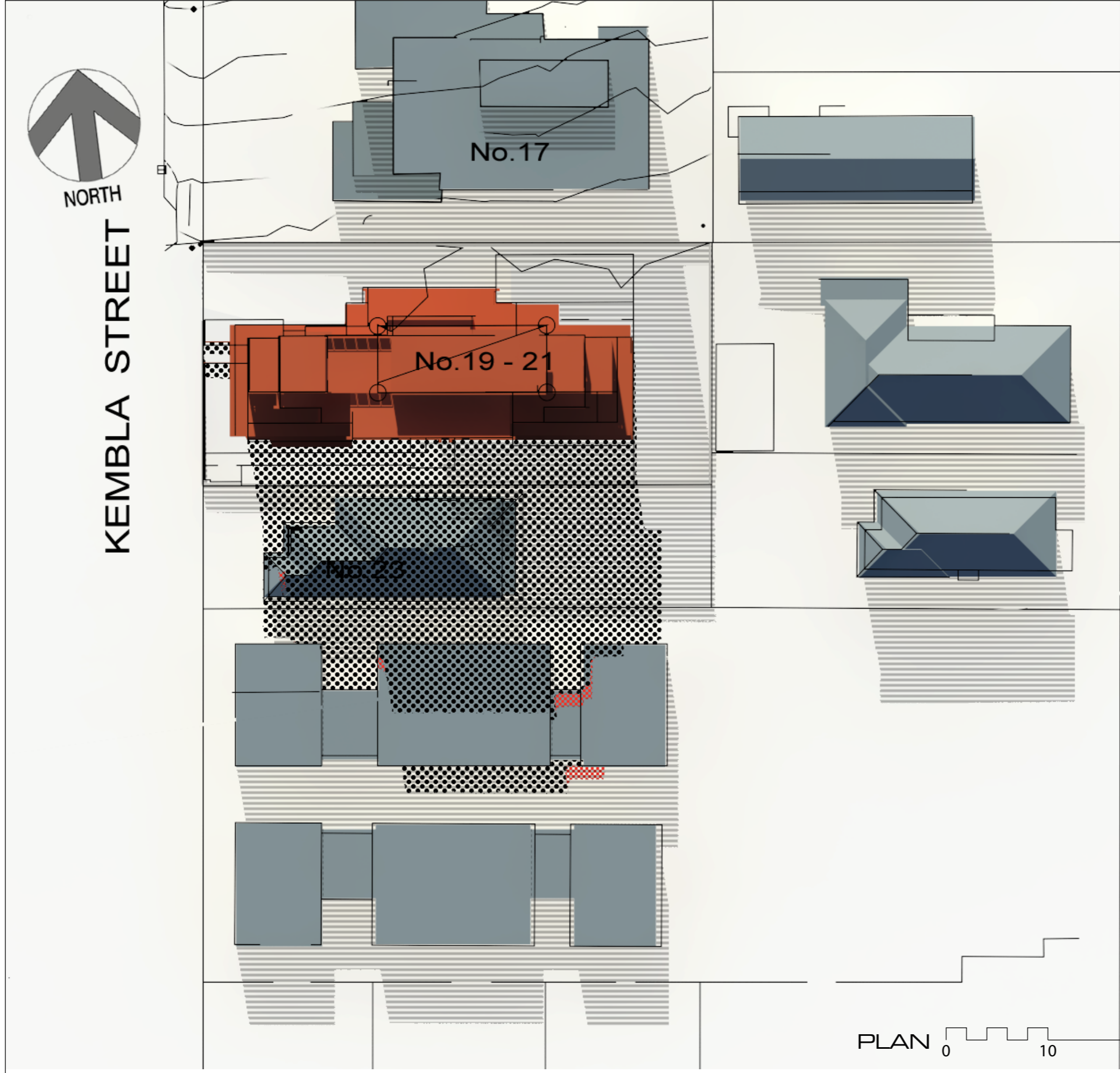
PROJECT
19 - 21 KEMBLA STREET
WOLLONGONG

DATA SOURCE (In order of precedence)





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SCALE : 1:400 (A3)
DATE : 14.08.18
VERSION : 01
REF : 1572

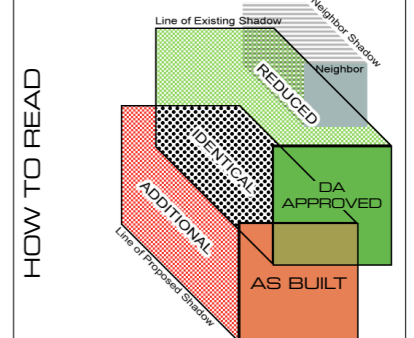
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HOW TO READ



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1200

TITLE
SHADOW DIAGRAMS - PLAN
WINTER SOLSTICE
21 JUNE

PROJECT
19 - 21 KEMBLA STREET
WOLLONGONG

DATA SOURCE (In order of precedence)

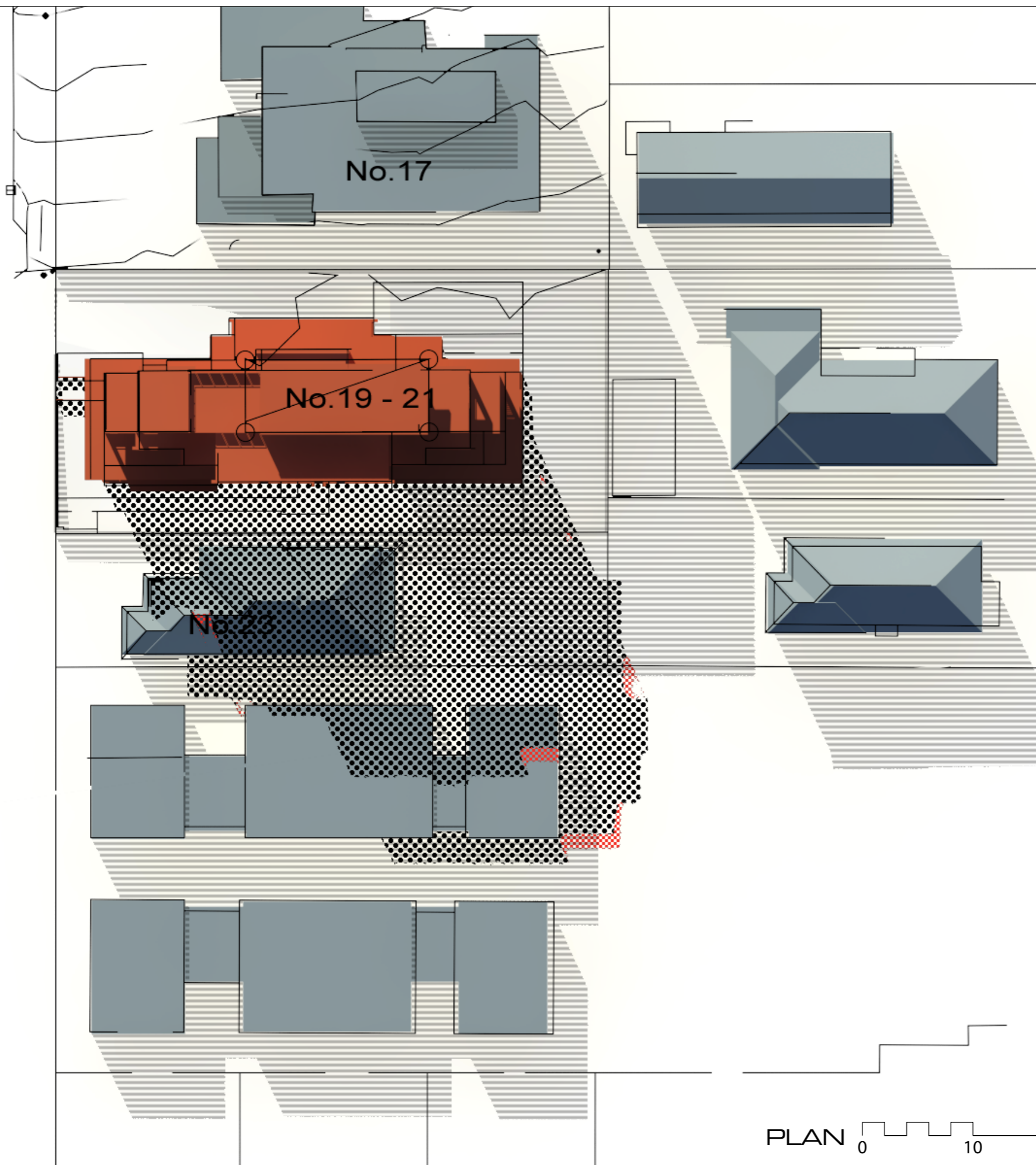
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KEMBLA STREET



PLAN 0 10 20 1:400

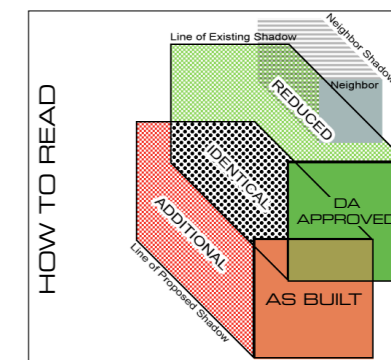


CERTIFIED SHADOW DIAGRAM
No : SDC157201 - Refer to attached Certificate.

Certifier: C McFadzean B Arch BA (Arch) IES ABSA AAAI
Member of IES (The Illuminating Engineers Society of Australia)

SHADOW KEY

- SHADOWS CAST FROM PROJECT SITE
- ADDITIONAL SHADOW AREA**
 - PROPOSED LESS EXISTING AS CAST FROM PROJECT SITE ONLY
 - REDUCED SHADOW AREA**
 - EXISTING LESS PROPOSED AS CAST FROM PROJECT SITE ONLY
 - IDENTICAL SHADOW AREA**
 - EXISTING + PROPOSED ARE THE SAME AS CAST FROM PROJECT SITE ONLY
 - NEIGHBOURING**
 - SHOWN AS NEIGHBOURING SHADOWS WHICH OVERLAP PROJECT SITE SHADOWS



NOTES:

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1300

TITLE
SHADOW DIAGRAMS - PLAN
WINTER SOLSTICE
21 JUNE

PROJECT
19 - 21 KEMBLA STREET
WOLLONGONG

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REF : 1572

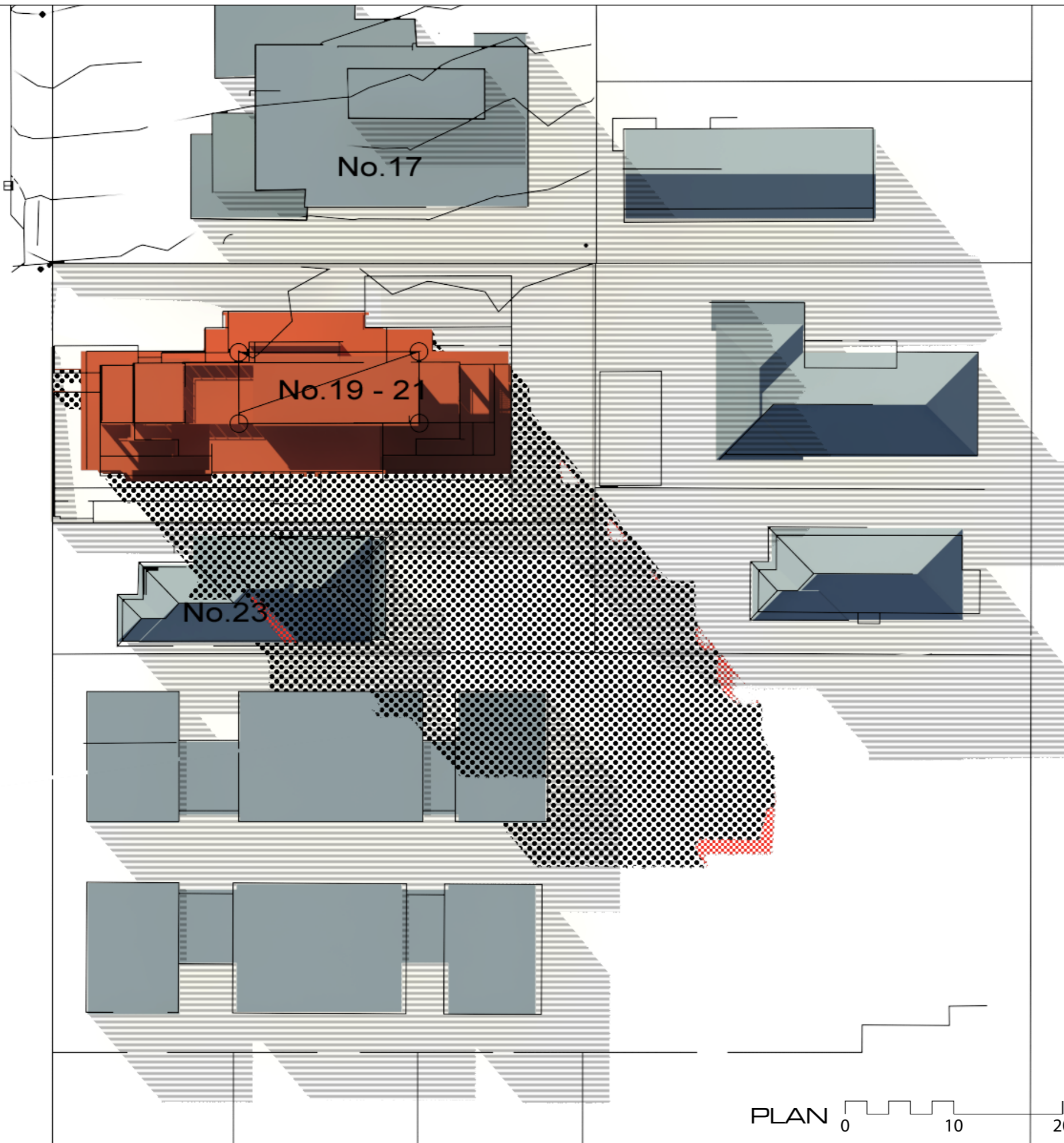


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KEMBLA STREET

MARR STREET



PLAN 0 10 20 1:400

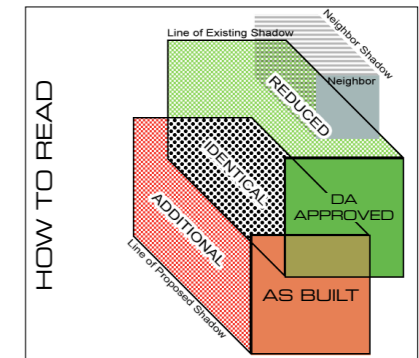


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SHADOW KEY

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• EXISTING LESS PROPOSED
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1400

TITLE
SHADOW DIAGRAMS - PLAN
WINTER SOLSTICE
21 JUNE

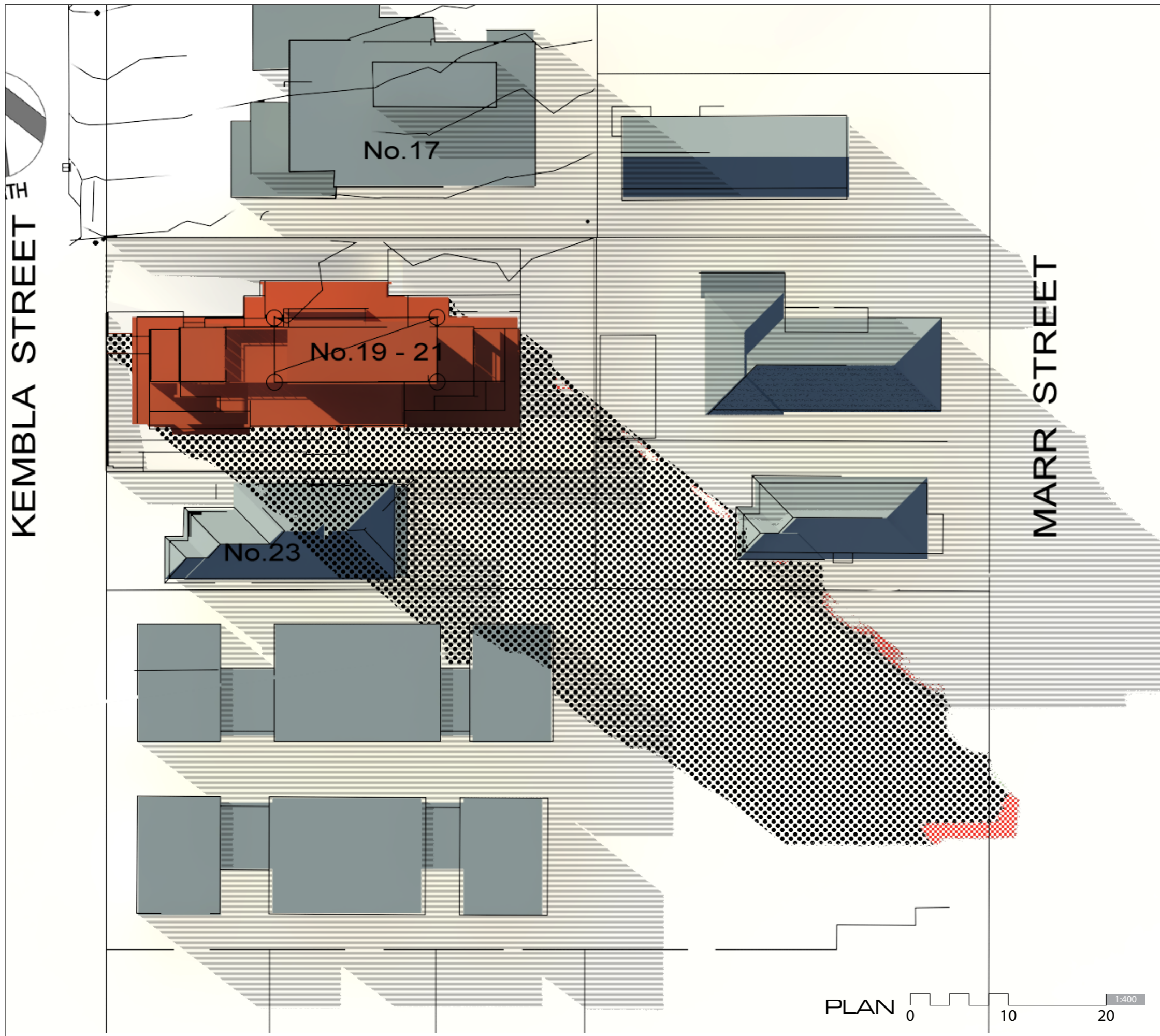
PROJECT
19 - 21 KEMBLA STREET
WOLLONGONG


DATA SOURCE (In order of precedence)

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SHADOW KEY

SHADOWS CAST FROM PROJECT SITE

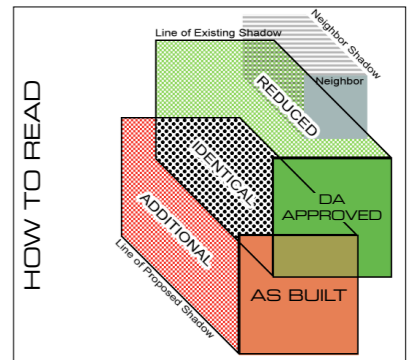
ADDITIONAL SHADOW AREA
• PROPOSED LESS EXISTING
• AS CAST FROM PROJECT SITE ONLY

REDUCED SHADOW AREA
• EXISTING LESS PROPOSED
• AS CAST FROM PROJECT SITE ONLY

IDENTICAL SHADOW AREA
• EXISTING + PROPOSED ARE THE SAME
• AS CAST FROM PROJECT SITE ONLY

NEIGHBOURING
• SHOWN AS NEIGHBOURING SHADOWS WHICH
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HOW TO READ



NOTES:

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1500

TITLE

SHADOW DIAGRAMS - PLAN

WINTER SOLSTICE
21 JUNE

PROJECT

19 - 21 KEMBLA STREET
WOLLONGONG

DATA SOURCE (In order of precedence)

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VERSION : 01

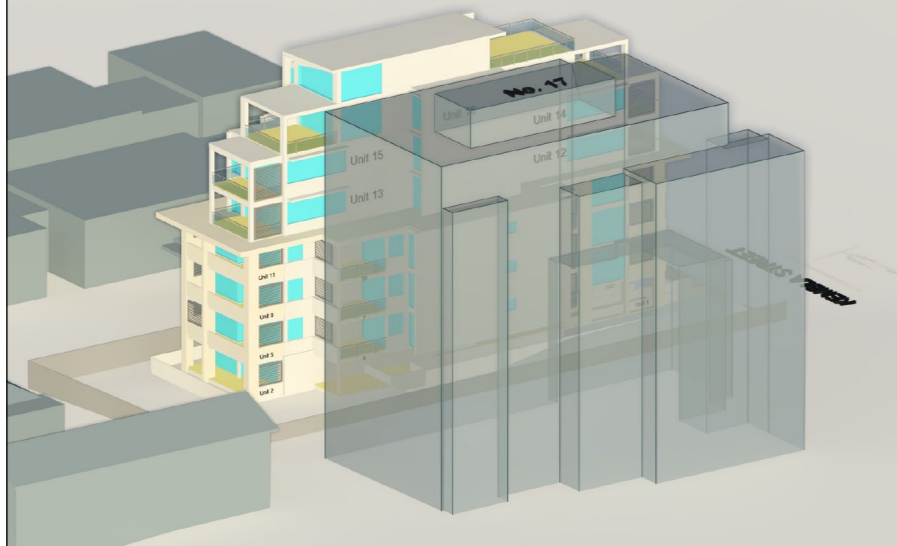
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AS BUILT

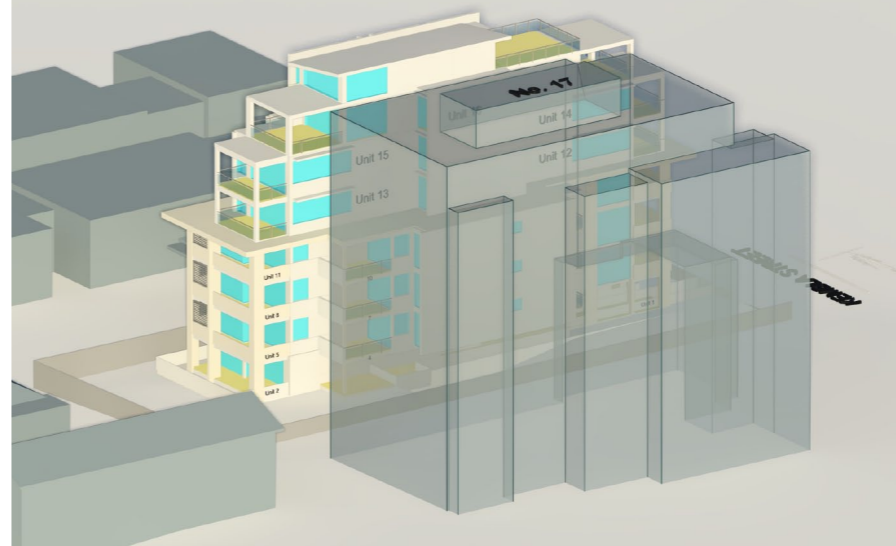


0900

COMPARISON NOTES:

1. Units 2,5,8,11. Side Louvres reducing solar access by approx 70% availability of sunlight to the East facing Window adjoining Balcony.
2. Units 2,5,8,11. NO IMPACT to LIVING as North facing Windows NO CHANGE
3. Units 2,5,8,11. NO IMPACT to BALCONY

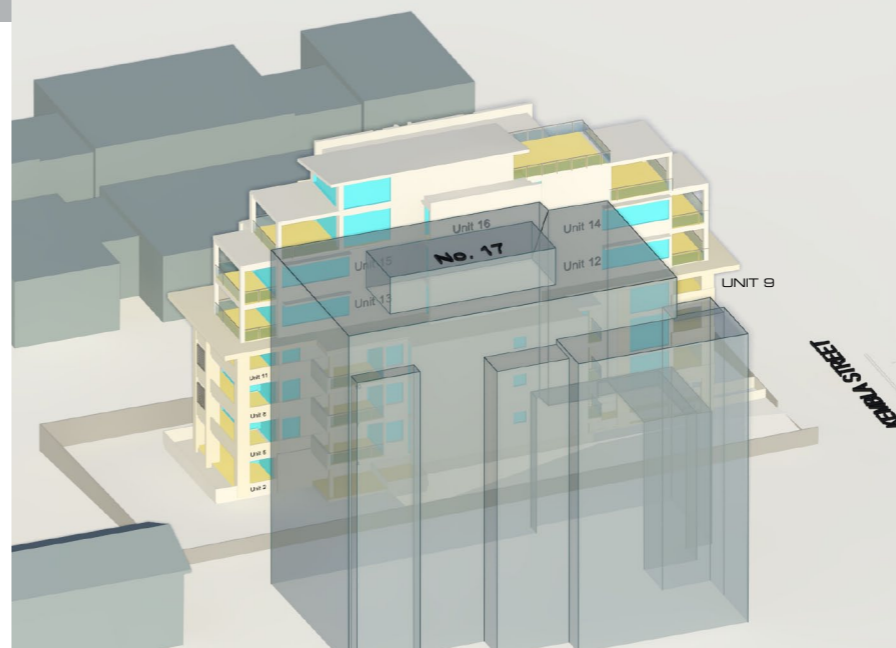
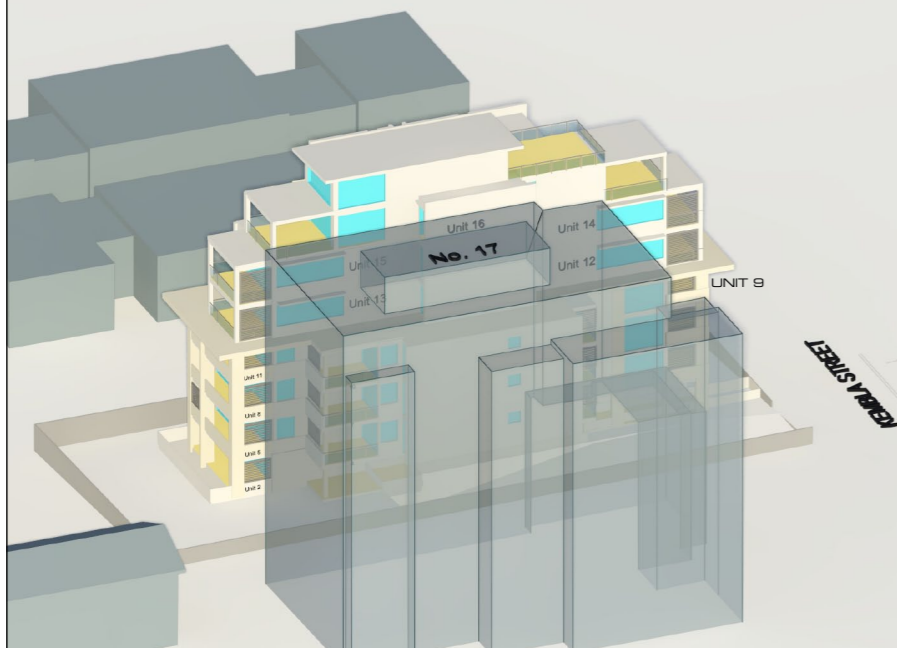
DA APPROVED



1000

COMPARISON NOTES:

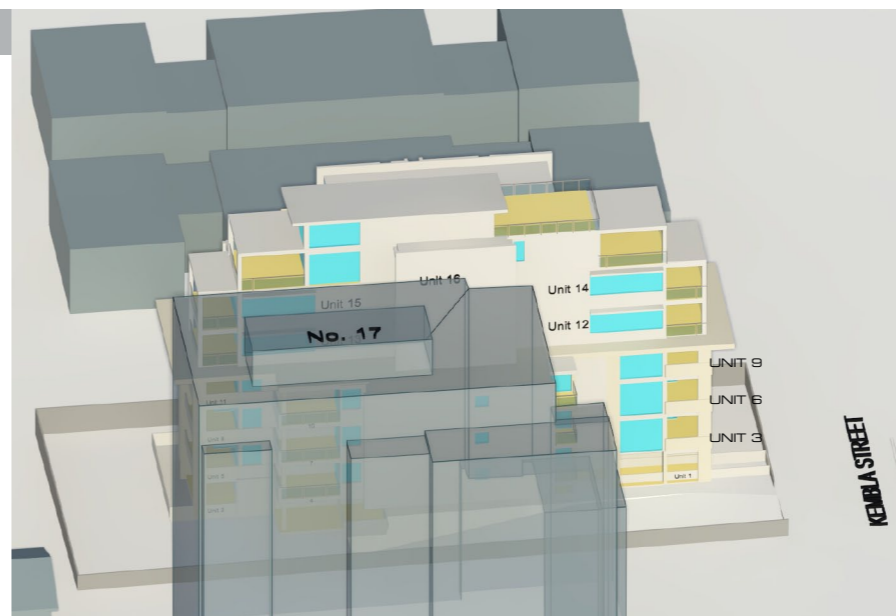
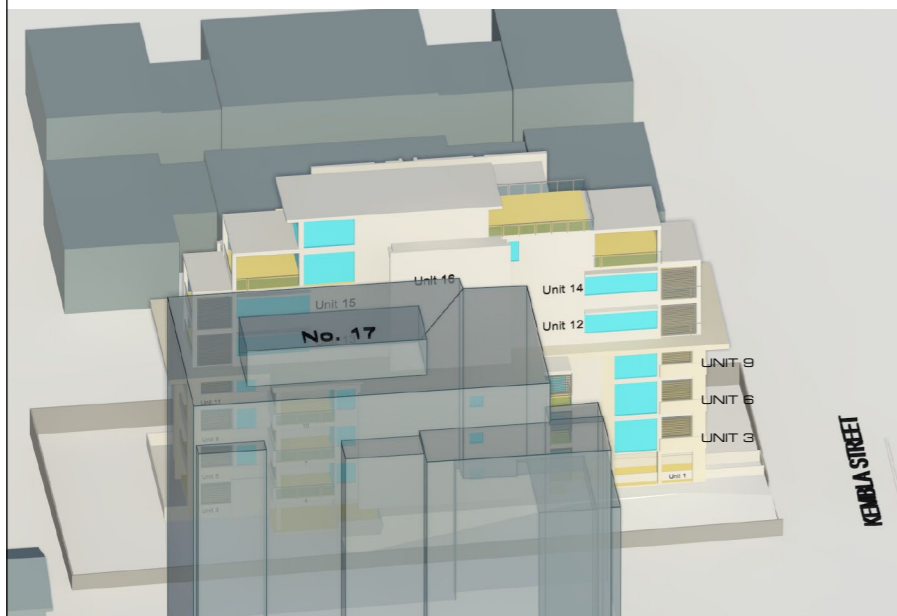
1. Units 2,5,8,11. Side Louvres reducing solar access by approx 70% availability of sunlight to the Balcony and to East facing Window adjoining Balcony.
2. Units 13 , 15. Side Louvres reducing solar access by approx 70% availability of sunlight to the Balcony and to East facing Window adjoining Balcony.
3. Units 12 , 14. Side Louvres reducing solar access by approx 70% availability of sunlight to the Balcony .
4. Units 9. Side Louvres reducing solar access by approx 70% availability of sunlight to the Balcony .



1100

COMPARISON NOTES:



1. Units 12 , 14. Side Louvres reducing solar access by approx 70% availability of sunlight to the Balcony .
2. Units 3, 6, 9. Side Louvres reducing solar access by approx 70% availability of sunlight to the Balcony .



CERTIFIED SHADOW DIAGRAM
No : SDC157201 - Refer to attached Certificate.

Certifier: C McFadzean B Arch BA (Arch) IES ABSA AAAI
Member of IES (The Illuminating Engineers Society of Australia)

KEY:

-  Private Open Space - Balcony Areas
-  Windows

COMPARISON NOTES:

1. ONLY CHANGES ARE NOTED

NOTES:

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7. Winter solstice - 21 June
8. VFS - VIEW FROM SUN 3D Views showing all areas that are in direct sunlight, areas not visible are in shade. Orthographic 3D Projection - NO SCALE
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VIEW FROM SUN

TITLE

SOLAR ACCESS - View From Sun
WINTER SOLSTICE
21 JUNE

PROJECT

19 - 21 KEMBLA STREET
WOLLONGONG

DATA SOURCE (In order of precedence)

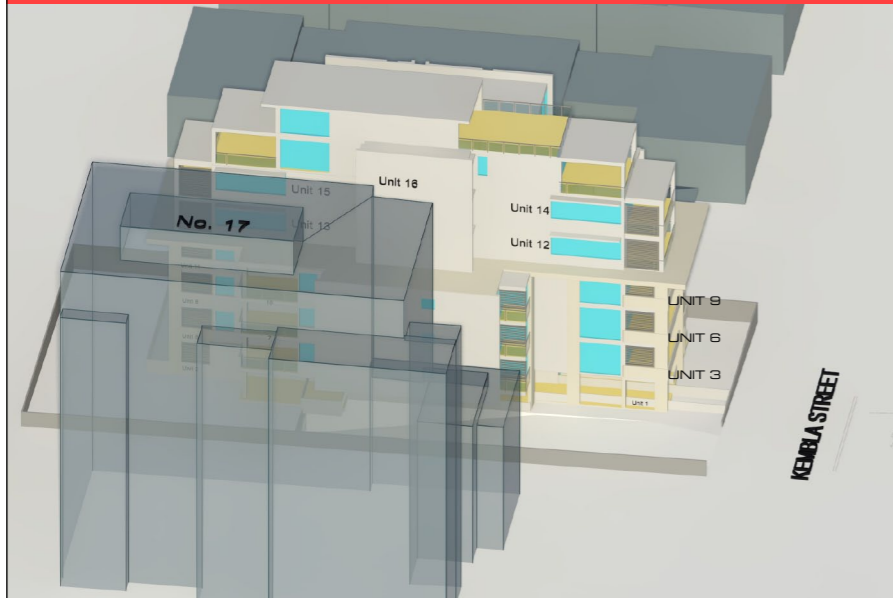
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AS BUILT

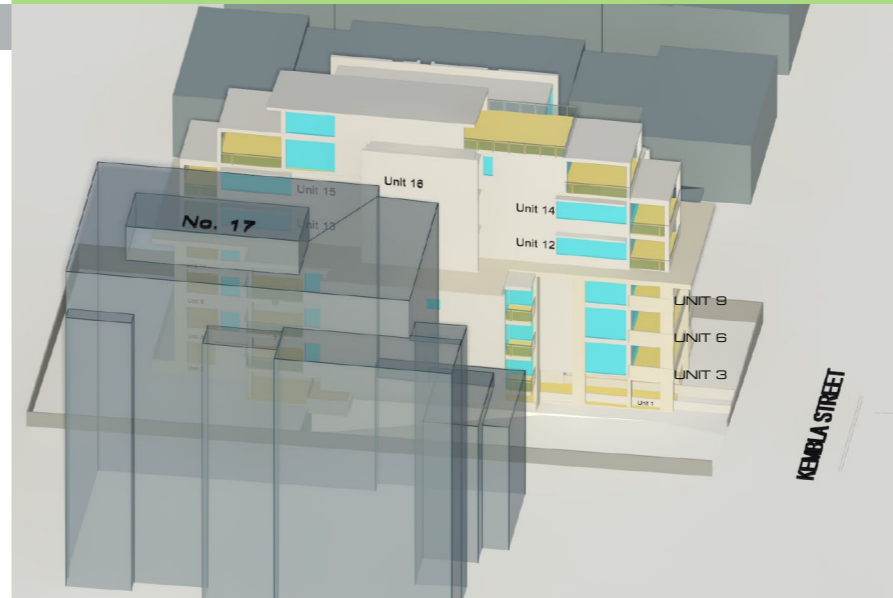


1200

COMPARISON NOTES:

- Units 3,6,9, 12, 14. Side Louvres reducing solar access by approx 70% availability of sunlight to the Balcony.

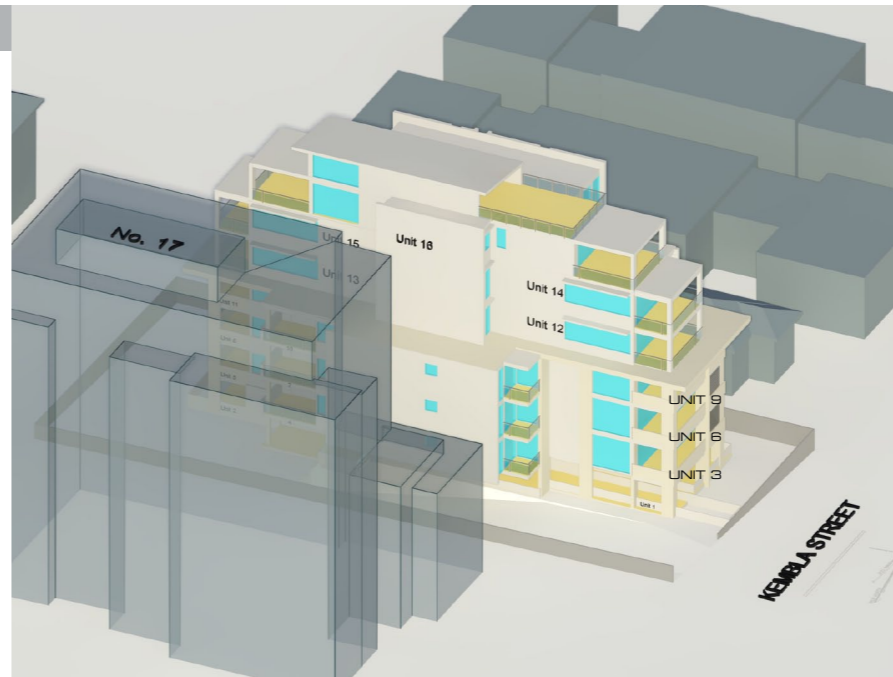
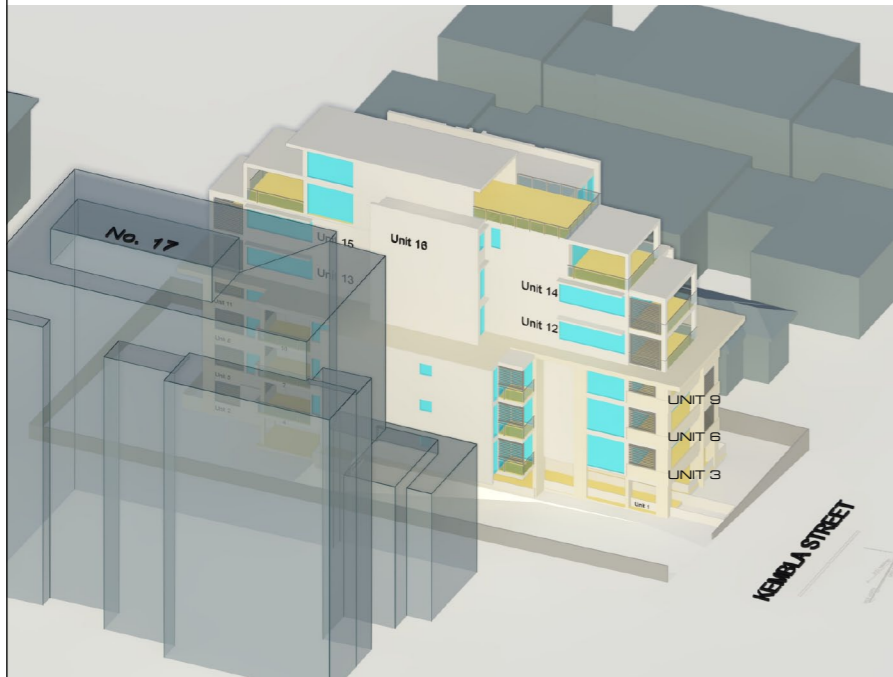
DA APPROVED



1300

COMPARISON NOTES:

- Units 3,6,9, 12, 14. Side Louvres reducing solar access by approx 70% availability of sunlight to the West facing Window adjoining Balcony.



1400

COMPARISON NOTES:

- Units 3,6,9, 12, 14. Side Louvres reducing solar access by approx 70% availability of sunlight to the West facing Window adjoining Balcony.



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KEY:

- Private Open Space - Balcony Areas
- Windows

COMPARISON NOTES:

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NOTES:

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VIEW FROM SUN

TITLE

SOLAR ACCESS - View From Sun
WINTER SOLSTICE
21 JUNE

PROJECT

19 - 21 KEMBLA STREET
WOLLONGONG

DATA SOURCE (In order of precedence)

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AS BUILT



1500

COMPARISON NOTES:

- Units 3,6,9, 12, 14. Side Louvres reducing solar access by approx 40% availability of sunlight to the Balcony.

DA APPROVED



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KEY:

- Private Open Space - Balcony Areas
- Windows

COMPARISON NOTES:

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VIEW FROM SUN

TITLE

SOLAR ACCESS - View From Sun
WINTER SOLSTICE
21 JUNE

PROJECT

19 - 21 KEMBLA STREET
WOLLONGONG

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KEY:

Private Open Space - Balcony Areas

Windows

COMPARISON NOTES:

1. ONLY CHANGES ARE NOTED

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SOLAR SUMMARY

TITLE

SOLAR ACCESS - View From Sun
WINTER SOLSTICE
21 JUNE

PROJECT

19 - 21 KEMBLA STREET
WOLLONGONG

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	UNITS	1		2		3		4		5		6		7		8		9		10		11		12		13		14		15		16															
	AREA	POS	Living	POS	Living	POS	Living	POS	Living	POS	Living	POS	Living	POS	Living	POS	Living	POS	Living	POS	Living	POS	Living	POS	Living	POS	Living	POS	Living	POS	Living	POS	Living														
SULIGHT AVAILABLE MID WINTER	9			yes	yes					yes	yes					yes	yes					yes	yes			yes	yes			yes	yes	yes	yes														
	10			yes	yes *2					yes	yes *2					yes	yes *2					yes *2		yes	yes *2	yes *2	yes			yes *2	yes	yes *2	yes	yes *2	yes	yes	yes	yes									
	11	yes	yes			yes *2	yes			yes *2	yes			yes *2	yes			yes *2	yes			yes *2	yes			yes *2	yes			yes	yes	yes	yes														
	12	yes	yes			yes *2	yes			yes *2	yes			yes *2	yes			yes *2	yes			yes *2	yes			yes *2	yes			yes *2	yes	yes *2	yes	yes *2	yes	yes *2	yes	yes *2	yes	yes *2	yes	yes *2	yes	yes *2	yes	yes *2	
	13	yes	yes			yes	yes			yes	yes			yes	yes			yes	yes			yes	yes			yes	yes			yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
	14	yes	yes			yes	yes			yes	yes			yes	yes			yes	yes			yes	yes			yes	yes			yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
	15	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes												
	MIN 2HRS COMPLIANCE	yes		yes		yes		no		yes		yes		no		yes		yes		no		yes		yes		yes		yes		yes		yes															
	yes *2 Indicates the AS BUILT condition has impacted on Solar access but retains sunlight.																																														

NO IMPACT ON COMPLIANCE LEVELS
COMPARING DA APPROVED WITH AS BUILT

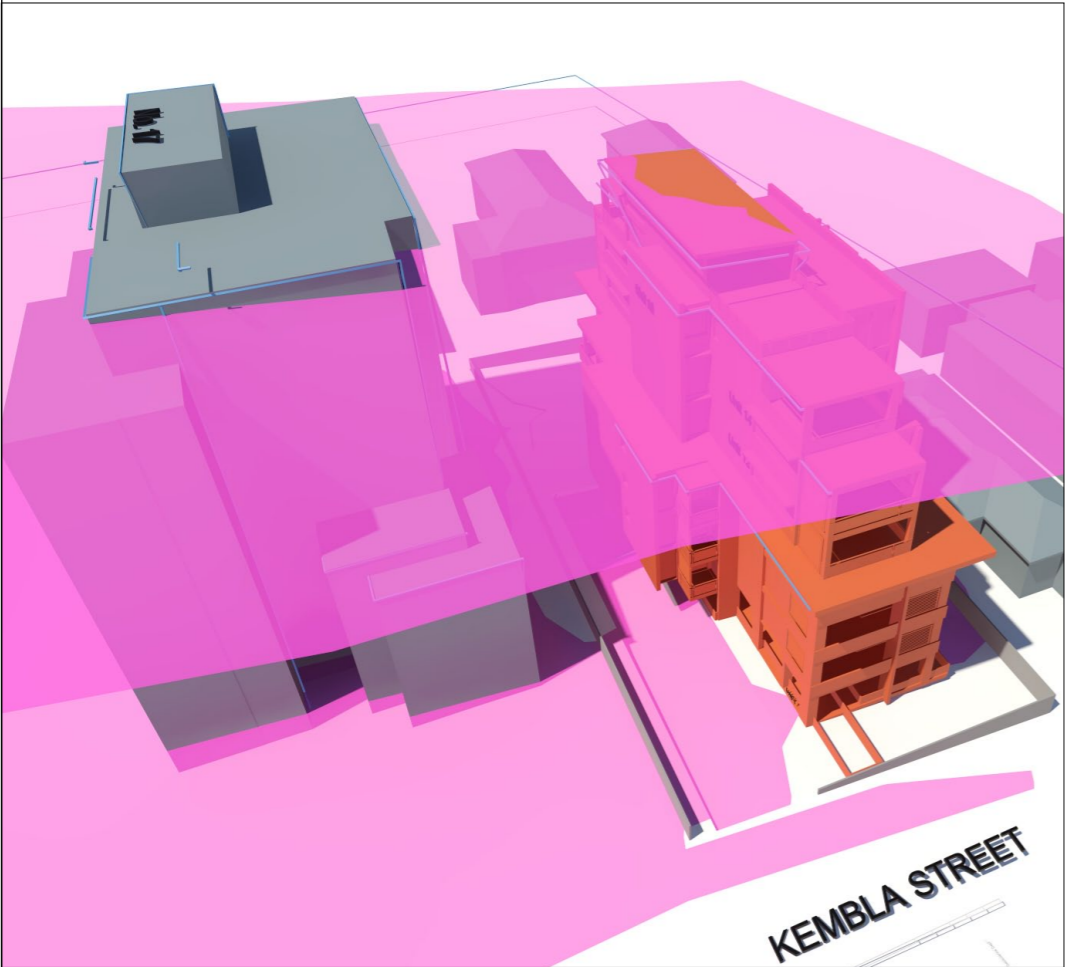
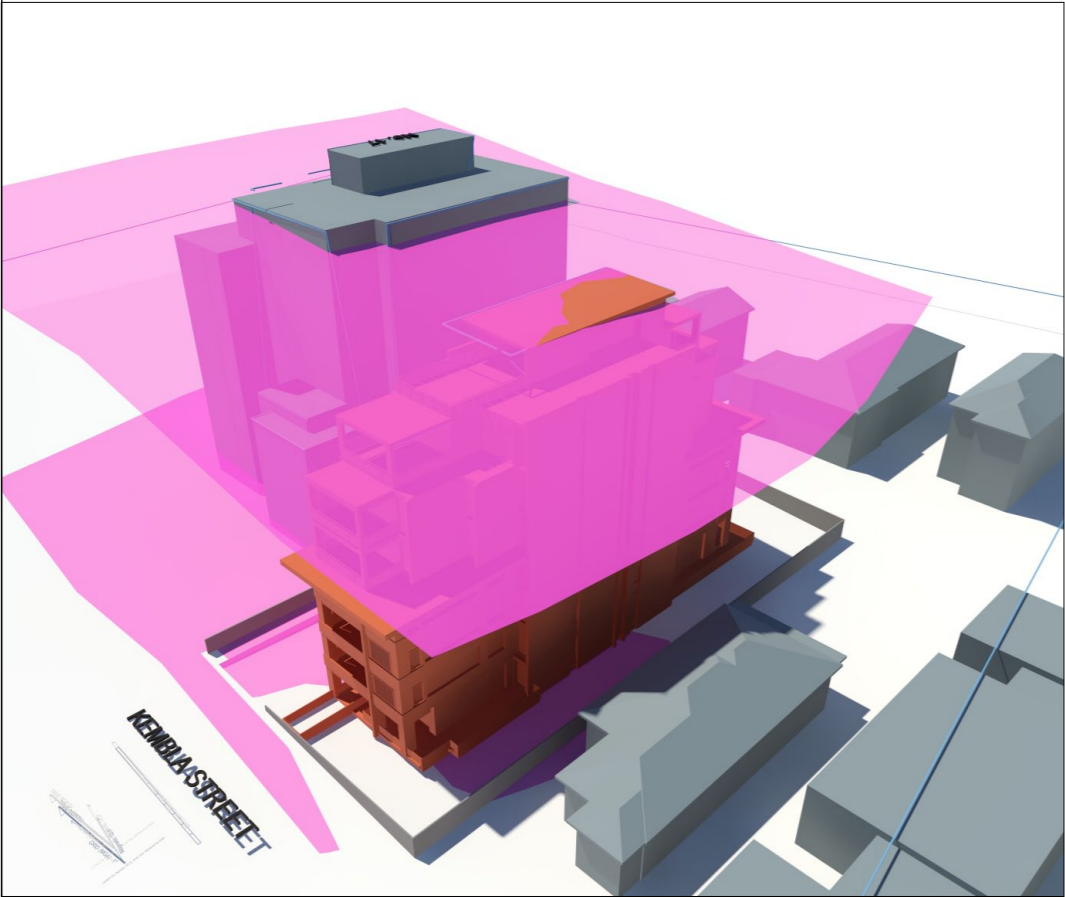
- DEFINITIONS used in TABLE:
1. POS = Outdoor BALCONY AREA

2. LIVING = as determined by sunlight upon significant window within Living Area

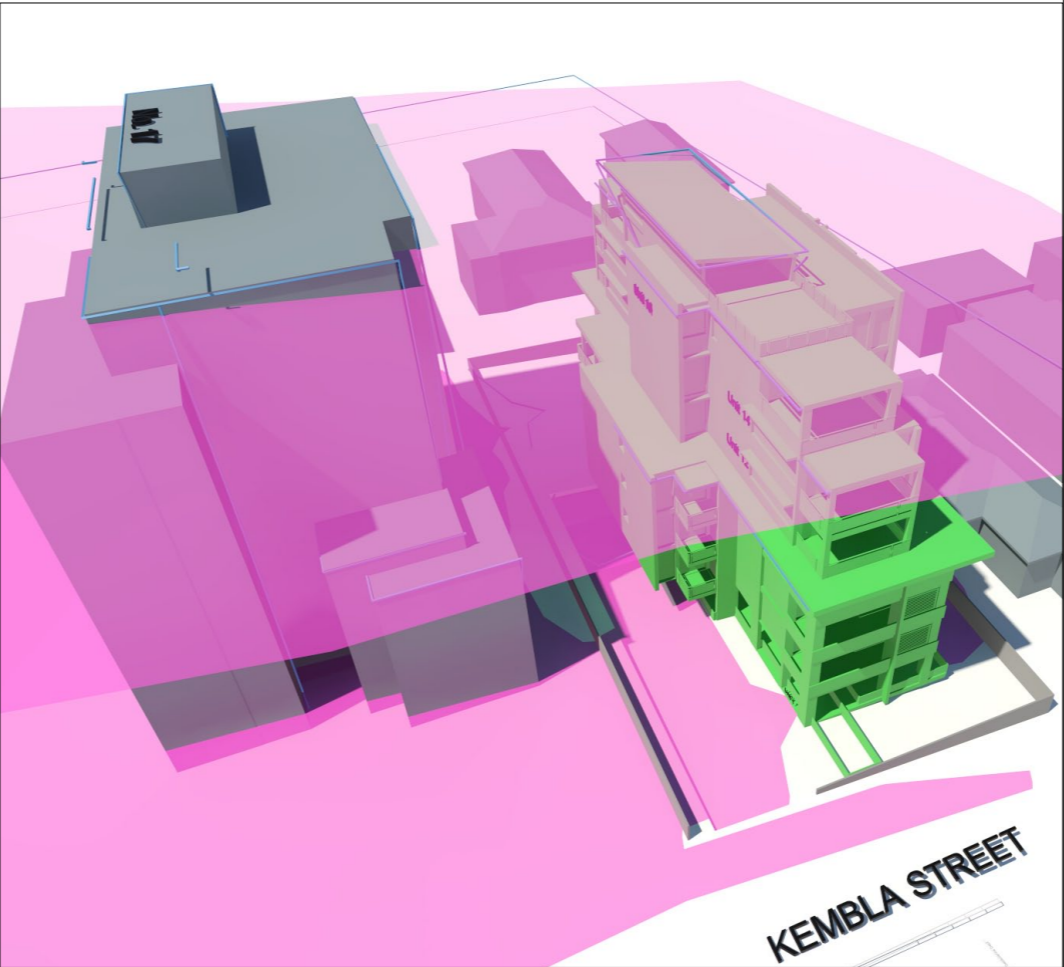
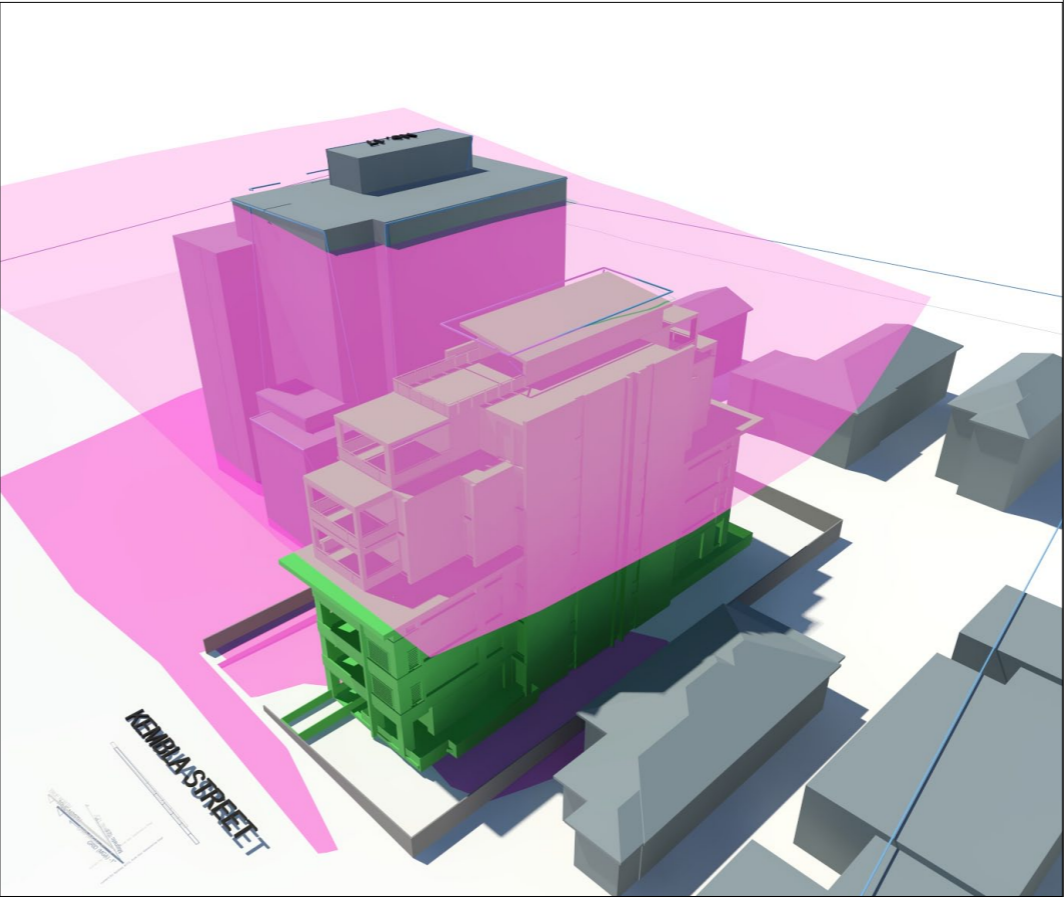
3. "yes" = receives sunlight. no comment indicates does not receive sunlight

4. "yes *2" = receives sunlight however the AS BUILT conditions have changed the amount of sunlight - refer to individual time comments for greater information.

AS BUILT



DA APPROVED



3D MODEL AND TERRAIN NOTE:

Data provided by MASTERS SURVEYING 14 August 2018, for further data integrity information.

3D MODEL:
No. 17
Main Roofline RL 46.0
Penthouse Parapet RL 49.05

TERRAIN:
Natural Ground Plane - established from Spot Levels (where available for existing ground) and contour lines.

HEIGHT PLANE:
24 m above Natural Ground Terrain

RELATIVE MASSING
No 17 and No 19-21

TITLE
HEIGHT PLANE MASSING

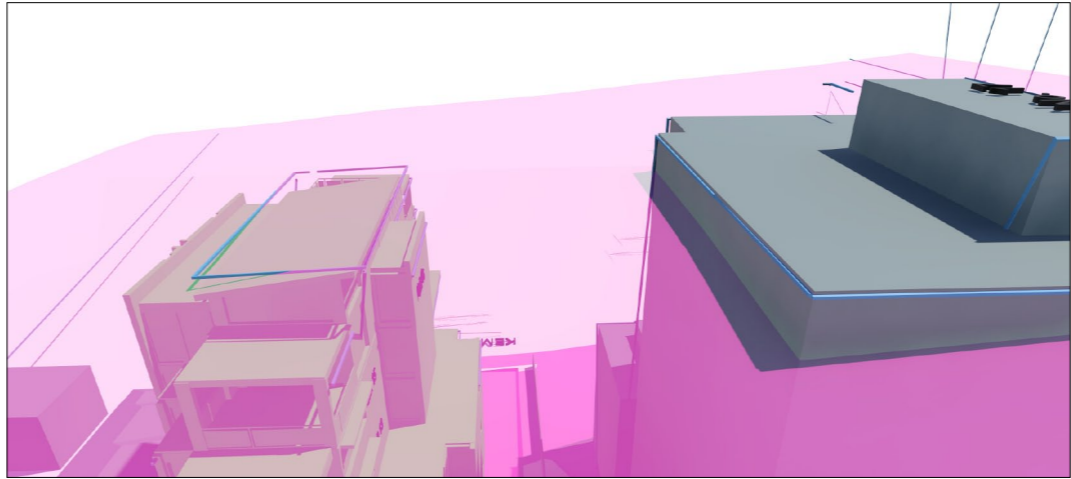
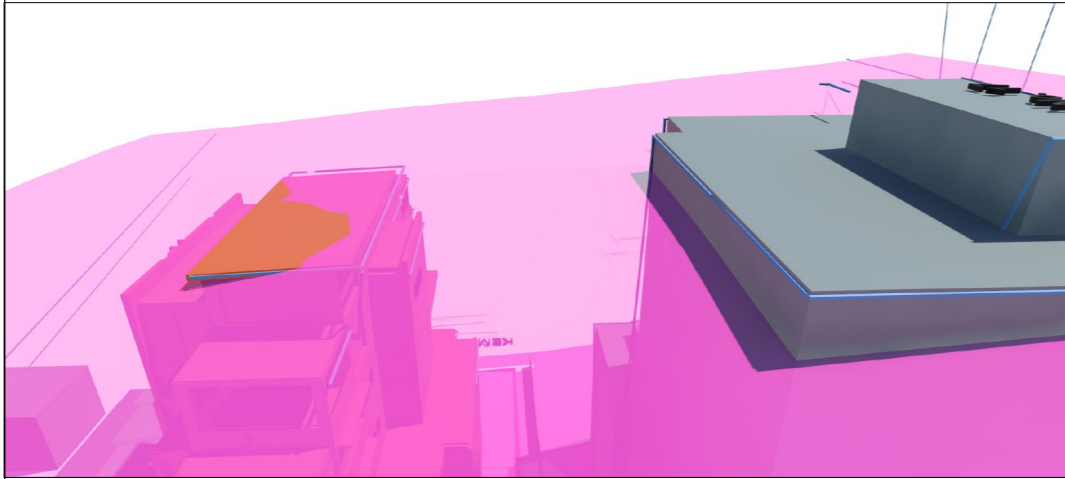
PROJECT
19 - 21 KEMBLA STREET
WOLLONGONG

DATA SOURCE (In order of precedence)

- Registered Survey - DA Site Survey (embedded into original Architectural Set), Supported by Masters Surveying, REF W170594 and AUG 2018 supplementary plans.
- Architectural Plans - Architects REF: DA APPROVED DESIGN: ADM Architects, Ref 17.09.10. AS BUILT DESIGN: AUG 2018 issue: as per drawings by Teir One Constructions and supported by Survey , Masters Surveying, Ref W170594

AS BUILT

DA APPROVED



No . 19-21 AS BUILT

1. AREA Exceeding 24m Height Plane
49.4 m2
2. Maximum Height Exceeded
Top Roof = 0.6m

No . 17

1. AREA Exceeding 24m Height Plane
365.0 m2 (Entire Tower)
2. Maximum Height Exceeded
Main Podium = 1.4m
Penthouse Parapet = 4.2m

No . 19-21
DA APPROVED

1. AREA Exceeding 24m Height Plane
NONE

2. Maximum Height Exceeded
NONE

Measurement Definitions

1. AREA Exceeding 24m Height Plane

The horizontal Area of all built elements that are above the height plane.

2. Maximum Height Exceeded

A vertical measurement from the Height Plane to the top of the building, and is a relative position.

eg. the highest point of the building may not necessarily have the greatest height exceeding measurement if terrain is high over that point

HEIGHT PLANE: 24 m above Natural Ground Terrain

 **denebdesign**
VISUALISATION / 3D
DENE B DESIGN
PO BOX 539 MONA VALE 1660
Ph 02 9997 7480 Fx 9940 0772
info@denebdesign.com.au
www.denebdesign.com.au



9 August 2018

Our Ref: W17059

The Manager
Tier One Constructions
4/6 Pleasant Avenue
North Wollongong NSW 2500

116 Corrimal St
Wollongong NSW 2500

PO Box 547
Wollongong NSW 2520

P 02 4228 9911

Dear Sir

Re: Lot 12 D.P 1234918, No. 19-21 Kembla Street, Wollongong

I refer to the above land and advise that the as constructed Floor Space Ratio has been surveyed and compared to design. Results are shown below. Furthermore, our findings in respect to FSR availability has also been provided below.

As Built**Design**

Site Area- 1,201 Square meters* (see comments on page 2)

Site Area- 1,198 Square meters

Maximum Building Floor Area- 1802* sq. m.

Maximum Building Floor Area- 1,797 sq. m.

Permissible FSR- 1.5:1

Permissible FSR- 1.5:1

LEVEL 1- 200 sq. m.

LEVEL 1- 200 sq. m.

LEVEL 2- 317 sq. m.

LEVEL 2- 317 sq. m.

LEVEL 3- 317 sq. m.

LEVEL 3- 317 sq. m.

LEVEL 4- 317 sq. m.

LEVEL 4- 317 sq. m.

LEVEL 5 -241 sq. m.

LEVEL 5 -241 sq. m.

LEVEL 6- 241 sq. m.

LEVEL 6- 241 sq. m.

LEVEL 7- 164 sq. m.

LEVEL 7- 164 sq. m.

TOTAL ASBUILT FLOOR AREA**TOTAL DESIGN FLOOR AREA****LEVELS 1-7 1,797sq. m.****LEVELS 1-7 1,797sq.m.****5 SQM under FSR BASED ON SITE AREA***

*The areas shown on the subject site registered deposited plan (DP33625) is 23 3/4 perches each for Lot 1 & Lot 2. This converts to 600.7 square metres for each lot or combined in this instance to 1201.4 square metres (1201 SQM Rounded). We assume that this is the area that Council uses when calculating FSR as it is the "legal" area of the lot on the title at the time prior to the Development Application.

The areas shown in imperial measurement on deposited plans are rounded to the nearest quarter of a perch (6.3 square metres).

Therefore, the area calculated from the metric dimensions may differ from the area shown in plan by up to 3.15 square metres per lot. In this case the calculated area on the development summary for the combined lot 1 & lot 2 is 1198 square metres. This area may only be used if a plan of re-definition of the boundaries is prepared and lodged for registration at NSW LRS. The plan of redefinition has now occurred, and new Deposited plan has been registered at NSW LRS on 14th September 2017, just under 7 years after the DA endorsement date which yielded a redefined area of 1197 Square meters on the subject site.

It is our opinion that the site area of 1,201 Square meters could be used for FSR calculation, resulting in maximum building floor area of 1,801.5 Square metres. (1802 Rounded). This allows a further 5 SQM of floor space available within the constructed building.

Yours Faithfully

MASTERS SURVEYING

PER



David A Jollie
Registered Surveyor

RD-2010/230/A 19-21 Kembla Street Wollongong

Attachment 2 Aerial photograph and WLEP 2009 zoning map



Figure 1 – 2018 Aerial Photo (Source: Council Dekho records)



Figure 2 – WLEP 2009 zoning map

Attachment 3 - Clause 4.6 Request



JP. GAICD, PIA.
Town Planner, Property Consultant
PH. 0417 241 827
E. terry@tcwconsulting.com.au
A/H: 02 4227 1746
A. 45 Eastern Av,
Mangerton, NSW 2500
ABN 57 055 186 126

Project# 1811

16 August 2018

LEP Variation Request – Height of Building - Clause 4.3 of Wollongong LEP 2009 **19 – 21 Kembla Street, Wollongong-DA-2010/230/B**

This request for a variation to a development application supports a submission made under Section 8.2 of the Environmental Planning & Assessment Act 1979 in relation to the determination by way of refusal of an application made under Section 4.55 (1A) of the Environmental Planning & Assessment on 27 July 2018 relating to DA - 2010/230/B.

This submission particularly relates to Item 3 of Council's reasons for refusal, which states:

*“In accordance with Section 4.15 (a) (a) (i) of the Environmental Planning & Assessment 1979, the proposed development does not comply with **Clause 4.3** of Wollongong Local Environmental Plan 2009 with the proposed modification resulting in a building now exceeding the maximum permitted height limit.”*

Details of the request follow:

a) Objection to Development Standard

Clause 4.6 of LEP 2009 provides states that the objectives of this clause are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development; and*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Sub clause (3) advises that *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) the compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and*
- (b) that there have been sufficient environmental planning grounds to justify contravening the development standard.*

This submission is to be regarded as the written request.

Sub clause (4) states that *development consent must not be granted for development that contravenes a development standard unless:*

- (a) the consent authority is satisfied that:*
 - (i) the applicants written request has adequately addressed the matters required to be demonstrated by sub clause (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;*
- (b) the concurrence of the Director-General has been obtained.*

Sub clause (5) requires that *in deciding whether to grant concurrence, the Director-General must consider:*

- (a) whether contravention of the development standard raises any matter of significance for State or regional planning; and*
- (b) the public benefit of maintaining the development standard; and*
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

The Development Standard

The development standard, the subject of this submission, is contained within **Clause 4.3** of WLEP 2009, which, at sub-clause 4.3(2), advises that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. Council's mapping indicates a maximum height of 24 metres.

The proposal requests a maximum height of 24.57 metres. However, it is of relevance to note that a significant area of the building achieves compliance with the 24-metre requirement.

The objectives of **Clause 4.3 of the LEP** are:

- (a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved;*

- (b) *to permit building heights that encourage high quality urban form;*
- (c) *to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.*

Objectives of the R1 – General Residential zone

The objectives of the zone are:

- (a) *to establish the maximum height limit in which buildings can be designed and floor space ratio can be achieved;*
- (b) *to permit building heights that encourage high quality urban form*
- (c) *to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.*

Structure of Clause 4.6

In *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 138b in considering the requirements of **Clause 4.6**, the following was recorded:

“58 This imposes a number of tests, the first that compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case, the second that there are sufficient environmental grounds to justify contravening the development standard, the third that the applicant’s written request as adequately addressed the matters to be demonstrated by subclause (3) and the fourth, that 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. In addition, satisfaction of those matters that must be considered by the Secretary in determining whether concurrence should be granted is required.

In *Four 2 Five Ltd v Ashfield Council* [2015] NSWLEC 90 Pearson C noted the following:

“16 Applicant must prepare a written request in which it ‘seeks’ to justify the contravention of the development standard. The meaning of the word ‘seek’ in this context is to ‘attempt to achieve something’. Clause 4.6 (3) does not require an applicant to in fact justify the contravention but merely to seek or attempt to justify the contravention. Development consent must not be granted for development that contravenes a development standard unless the consent authority considers a written request from the developer wherein that attempt to justify the contravention is made.

The attempt is made by demonstrating compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.”

and at

26 **Clause 4.6 (3)** requires a written report of an applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary.

The EPA Act and the LEP contain no definition of 'unreasonable' or 'unnecessary'. There are limiting words to some extent in subclause 3(a) in that what is 'unreasonable or unnecessary' must relate to 'the circumstances of the case.' The "circumstances of the case" are not defined in any relevant statutes suggesting a wide scope in the meaning of that phrase. Subclause (3) (b) requires a written report to demonstrate that sufficient environmental planning grounds support the contravention of a development standard.

The EPA Act or the LEP do not define "sufficient" or "environmental planning grounds".

As the Applicant submitted, these phrases are of wide generality enabling a variety of circumstances or grounds to justify contravention of the particular development standard. The "sufficient grounds" must be "environmental planning grounds" by their nature. The word "environment" is defined in the EPA Act to mean "includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings.

This submission responds to **Subclause (3), (4) and (5)** of **Clause 4.6** as follows:

- i) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ stated:

"42 The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard"

and at

"43 The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

Although *Wehbe* dealt with the regime under the repealed SEPP 1, the principles stated by Preston CJ are still applicable to the consideration of an application under **Clause 4.6**.

The issue with this submission is that it seeks a variation to the development standard relating to height for only a portion of the building. It will be shown that the exceedance has been brought about by the site levels and also the necessity to meet Building Code of Australia and Apartment Design Guidelines.

It is also considered that the modifications sought will not compromise the integrity of either the objectives of the development standard or the objectives of the zone.

With regard to the objectives of **Clause 4.3**, each is considered in respect of each objective as follows:

- (a) to establish the maximum height limit in which buildings can be designed and floor space ratio can be achieved

The maximum height for the site and precinct, as set by the Height of Buildings Maps, is 24 metres. However, of significance in addressing this objective is to recognise that the building constructed at 17 Kembla Street, the adjacent property to the north, has been built to a height of which exceeds that set by the LEP Planning Maps.

The building at No 17 has its main roofline at RL 46.00m. This roofline stands 26 metres above natural ground level at the northern end.

There is also a parapet feature above the penthouse of this development at the northern end above a rooftop terrace. This parapet is at RL 49.05m, which is over 28 metres above natural ground level.

The roofline survey, provided by Masters Surveying, indicates roof heights of the subject building at the four corners of the building. These are as follows:

North west	- 23.485 metres (complies)
South west	- 24.09 metres (non-complying)
North east	- 24.00 metres (complies)
South east	- 24.57metres (non-complying)

The height plan massing information, provided by Deneb Design, indicates the roof area that exceeds the 24-metre height limit equates to 49.4m² in area, which is considerably less than for No 17 Kembla Street.

The evidence establishes two facts. The first is that a building height, exceeding 24 metres, has already been accepted into the precinct. The second is, as shown in the construction at No 17, that roof heights do vary across the building particularly as a consequence of site levels.

With regards to FSR, advice from Masters Surveying is that the building complies and, in fact, a further 5m² of GFA is available.

It is, therefore, submitted that the exceedance in height is not significant and the integrity of the objective is maintained.

- (b) to provide for a variety of housing types and densities

Consent for the residential flat building for a mix of 1, 2 and 3 bedroom units has been granted and construction almost completed. This application is for a modification to the height of the building.

- (c) to enable other land uses that provide facilities or services to meet the day to day needs of residents

This is an application seeking modifications to a residential flat building.

- ii) that there are sufficient environmental grounds to justify contravention of the development standard
As stated in Four 2 Five P/L v Ashfield Council the “*sufficient grounds*” must be “*environmental planning grounds*” by their nature. The word “*environment*” is defined in the EPA Act to mean “*includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings*”.

It has been established that the proposed modifications do not set a precedence in relation to exceeding 24 metres within the precinct. The building, at No 17 to the adjacent property, has an excess in both height and mass when compared to the height of the subject site.

The survey information, provided by Masters Surveying, indicates that areas of the building do comply with the 24m height limit. The massing detail, provided by Deneb Design, indicate that the area of exceedance is moderate. Deneb Design have also undertaken a view analysis and have concluded that the modifications sought deliver no impact to adjoining properties with regards to the views to critical areas of foreshore and water.

Deneb Design have also provided shadow diagrams, both of the approved and as built design, and have shown that there is no negligible change in the extent of overshadowing between the two.

As is evident in the construction at No 17, variation to height in the construction of the building does occur as a consequence of site levels. In the instance of the subject building, compliance with BCA requirements also played a part.

With regards other environmental grounds, the building will retain the same purpose for which it was approved. The modifications do not involve radical transformation of the appearance of the building and the design excellence of the building will be retained.

Overall, the modifications will not introduce any adverse environmental impacts and will deliver an outcome substantially the same as was approved.

The proposal adequately addresses the objectives of **Clause 4.3** Height of building within WLEP 2009.

- iii) that the applicants written request has adequately addressed the matters required to be demonstrated by Subclause (3)

Submissions are made in relation to

- (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 which are provided for above.
- iv) That the development will be in the public interest because it is considered 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

Butterworths Concise Australian Legal Dictionary defines public interest as an interest common to the public at large or a significant portion of the public and which may or may not involve the personal or proprietary rights of individual people.

The objectives of the development standard relating to height have been considered within this submission.

It is submitted that the request for an increase in height will not have an adverse effect on neighbouring properties. Shadow diagrams suggest that overshadowing would be no greater than should compliance be met.

View analysis has been provided and there are no significant view losses to adjoining properties. There are two significant considerations in regard to this request.

The first is that the building at No 17 Kembla Street has been constructed, with approval, beyond the current 24 metre height limit and therefore a precedent has been set. The second is, that the modification, in relation to height on the subject site, has been constructed and its impacts can now be visually assessed.

The objectives of the development standard have been considered. Although this application seeks a modest increase in height of a section of the building the fact is that the height limit has been established in the precinct through the construction on No. 17 Kembla Street.

Importantly, the modifications being sought retain the high quality urban form already delivered by the building.

As previously stated the modifications will not be contrary to the objectives of the zone.

- v) whether contravention of the development standard raises any matter of significance for State or regional environmental planning

Given the amenity and design outcomes accept the ADG principles it is considered that contravention of the development standard will not adversely impact on the significance of State and regional environmental planning.

It is also considered that the proposal will satisfy SEPP 65 criteria.

vi) the public benefit of maintaining the development standard

It is considered that, in this instance, there is no clear public benefit arising from maintaining the development standard.

Summary

This application for a variation to the development standard relates to a height exceedance in a portion of the building. With regards amenity, bulk and scale the maximum height within the precinct has been set by the adjoining building.

It is considered that this written request substantiates that the modifications requested satisfy both objectives of the development standard and the objectives of the zone. Moreover, the information provided indicates that the modifications will not deliver any adverse environmental impacts.

Yours faithfully

T Wetherall

Director

TCW Consulting Pty Ltd

Attachment 4 Reasons for Refusal

- 1 In accordance with Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the development is not acceptable when evaluated having regard to the design quality principles outlined in Schedule 1 of State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development (SEPP 65) and solar access provisions of the Apartment Design Guide.
- 2 In accordance with Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, in the opinion of Council, the proposed development does not exhibit design excellence and therefore consent cannot be granted pursuant to Clause 7.18 of Wollongong Local Environmental Plan 2009.
- 6 In accordance with Section 4.15(1)(a)(iii) of the Environmental Planning & Assessment Act 1979, the proposed development does not comply with the provisions of Wollongong Development Control Plan 2009 in a number of areas:
 - 6.1 Chapter B1 Residential Development
 - 6.1.1 Clause 6.5 Built Form – in that the design quality of the building will be reduced through the modifications proposed;
 - 6.1.2 Clause 6.18 Solar Access – in that the louvre screens proposed will affect solar access to the private open space and living rooms of some apartments
 - 6.2 Chapter D13 Wollongong City Centre
 - 6.2.1 Clause 6.10 Solar Access - in that the louvre screens proposed will affect solar access to the private open space and living rooms of some apartments. Insufficient information has been provided to ensure that solar access to these spaces will remain compliant with relevant controls.
- 7 Pursuant to Section 4.15(1)(b) and (e) of the Environmental Planning & Assessment Act 1979, approval of the proposed development would not be in the public interest having regard to the above reasons.

ATTACHMENT 5

Relevant provisions of the Apartment Design Guide are addressed below:

Standards/controls	Comment	Complies
Part 4 – Designing the building - Amenity		
<u>4A Solar and daylight access</u>		
<u>Objective 4A-1</u>		
<i>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space</i>		
<u>Design Criteria</u>		
1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of two (2) hours direct sunlight between 9am and 3pm in mid-winter in Wollongong LGA.	70% of 16 apartments = minimum 12 apartments.	Not demonstrated
1. A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter	Installation of fixed louvres to primary open space and bedroom balconies has created additional shadowing to those areas.	
<u>Design Guidance</u>		
- The design maximises north aspect and the number of single aspect south facing apartments is minimised		
- To optimise the direct sunlight to habitable rooms and balconies, the following design features are used:		
Dual aspect,		
Shallow apartment layouts		
Bay windows		
- To maximise the benefit to residents, a minimum of 1m ² of direct sunlight measured at 1m above floor level, is achieved for at least 15 minutes.		'View from the sun' diagrams have been provided, however no overall analysis of compliance with the ADG has been submitted.
<u>Objective 4A-2</u>		The louvre screens are proposed on primary open space/adjacent to living area apartments 3, 5, 6, 8, 9, 11, 12, 13, 14, 15 (i.e. 10 apartments). Louvre screens are also proposed on bedroom balconies of apartments 4, 7 and 10.
<i>Daylight access is maximised where sunlight is limited</i>		It is unclear from the diagrams provided whether the living rooms adjacent or behind the louvre screens are compromised. The diagram notes that 'side louvres reducing solar access by approximately 70% availability of sunlight to balcony'. The solar access test in ADG is 1m ² of floor area at a height of 1m above the ground.
<u>Design Guidance</u>		N/a
- Courtyards, skylights and high level windows (sill heights of 1500mm or greater) are used only as secondary light sources in habitable rooms		
<u>Objective 4A-3</u>		
<i>Design incorporates shading and glare</i>		

<i>Standards/controls</i>	<i>Comment</i>	<i>Complies</i>
<p><i>control, particularly for warmer months</i></p> <p><u>Design Guidance</u></p> <p>Design features can include:</p> <ul style="list-style-type: none"> - Balconies - Shading devices or planting - Operable shading - High performance glass that minimises external glare 	<p>The applicant has advised the screens are to block views to air conditioning units on balconies and to prevent children climbing the units and falling from open balustrades</p>	
<p><u>4C Ceiling heights</u></p> <p><u>Objective 4C-1</u></p> <p><i>Ceiling height achieves sufficient natural ventilation and daylight access</i></p> <p><u>Design Criteria</u></p> <p>1. Minimum 2.7m for habitable rooms and 2.4m for non-habitable rooms</p> <p><u>Objective 4C-2</u></p> <p><i>Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms</i></p> <p><u>Objective 4C-3</u></p> <p><i>Ceiling height contribute to the flexibility of building use over the life of the building</i></p> <p><u>Design Guidance</u></p> <ul style="list-style-type: none"> - Ceiling heights of lower level apartments in centres should be greater than the minimum required by the design criteria allowing flexibility and conversion to non-residential uses. 	<p>Ceiling height of the covered terrace exceeds BCA and ADG requirements.</p>	Yes
<p><u>4E Private open space and balconies</u></p> <p><u>Objective 4E-1</u></p> <p><i>Apartments provide appropriately sized private open space and balconies to enhance residential amenity</i></p> <p>1. Minimum balcony depths are:</p>	<p>Apartment 16 has a living room on Level 7 adjoining a 23m² balcony. An additional 23m² balcony is located on the eastern side adjoining bedroom 1. A 62m² terrace is located on the roof level. Therefore, apartment 16 has been approved with a substantial amount of private open space, some of which could be used for installation of solar</p>	Yes

Standards/controls			Comment	Complies													
<table><tr><th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p> <p>2. Ground level apartment POS must have minimum area of 15m² and min. depth of 3m</p> <p><u>Objective 4E-2</u></p> <p><i>Primary private open space and balconies are appropriately located to enhance liveability for residents</i></p> <p><u>Design Guidance</u></p> <ul style="list-style-type: none">- Primary private open space and balconies should be located adjacent to the living room, dining room or kitchen to extend the living space.- POS & Balconies should be oriented with the longer side facing outwards to optimise daylight access into adjacent rooms. <p><u>Objective 4E-3</u></p> <p><i>Primary private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building</i></p> <p><u>Design Guidance</u></p> <ul style="list-style-type: none">- A combination of solid and transparent materials balances the need for privacy with surveillance of the public domain- Full width glass balustrades alone are not desirable- Operable screens etc. are used to control sunlight and wind, and provide increased privacy for occupancy while allowing for storage and external clothes drying. <p><u>Objective 4E-4</u></p> <p><i>Private open space and balcony design maximises safety</i></p>	Dwelling type	Minimum area	Minimum depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<p>panels or the proposed bee keeping.</p> <p>No change to balconies of other apartments.</p> <p>The proposed louvres are used in thirteen of the sixteen apartments and provide reasonable cohesion. However, the louvres are fixed and contribute to shadowing of balconies.</p>	<p>Not demonstrated</p>
Dwelling type	Minimum area	Minimum depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															

<i>Standards/controls</i>	<i>Comment</i>	<i>Complies</i>
<u>Design Guidance</u> <ul style="list-style-type: none"> - Changes in ground levels or landscaping are minimised. 		
<u>4N Roof design</u> <u>Objective 4N-1</u> <i>Roof treatments are integrated into the building design and positively respond to street</i> <u>Design guidance</u> <ul style="list-style-type: none"> - Roof design should use materials and a pitched form complementary to the building and adjacent buildings. <u>Objective 4N-2</u> <i>Opportunities to use roof space for residential accommodation and open space are maximised</i> <u>Design guidance</u> <ul style="list-style-type: none"> - Habitable roof space should be provided with good levels of amenity. - Open space is provided on roof tops subject to acceptable visual and acoustic privacy, comfort levels, safety and security considerations <u>Objective 4N-3</u> <i>Roof design incorporates sustainability features</i> <u>Design guidance</u> <ul style="list-style-type: none"> - Roof design maximises solar access to apartments during winter and provides shade during summer 	<p>The unauthorised as built roof pitch has been flattened and the soffit increased. Additional windows have been inserted</p> <p>Air conditioning units have been installed on the southern non-trafficable side of the roof. These appear to service the covered terrace area.</p>	Not demonstrated
<u>4U Energy efficiency</u> <u>Objective 4U-1</u> <i>Development incorporates passive environmental design</i> <u>Design guidance</u> <ul style="list-style-type: none"> - Adequate natural light is provided to habitable rooms (see 4A Solar and daylight access) 	<p>The applicant has provided a statement from Greenview Consulting which states that the unauthorised works would not change the targets of the approved BASIX certificate.</p> <p>It is unclear if the adequate natural light will be provided to all</p>	Not yet demonstrated

<i>Standards/controls</i>	<i>Comment</i>	<i>Complies</i>
<u>Objective 4U-2</u> <i>Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer</i> <u>Design Guidance</u> <ul style="list-style-type: none"> - Provision of consolidated heating and cooling infrastructure should be located in a centralised location <u>Objective 4U-3</u> <i>Adequate natural ventilation minimises the need for mechanical ventilation</i>	<p>habitable rooms and balconies.</p> <p>No change to natural ventilation. Air conditioners placed on balconies.</p>	

ATTACHMENT 6

Wollongong Local Planning Panel 7 November 2018

CHAPTER A2 – ECOLOGICALLY SUSTAINABLE DEVELOPMENT

Sustainable development measures are included in various chapters of WDCP 2009.

PRECINCT PLAN – Wollongong City Centre

The site is located within the Wollongong City Centre.

CHAPTER B1 – RESIDENTIAL DEVELOPMENT

Relevant provisions are addressed below.

6 Residential flat buildings

Controls/objectives	Comment	Compliance
<u>6.5 Built Form</u>	Design quality will be reduced as discussed elsewhere within this report	Not demonstrated
<u>6.6 Visual privacy</u>	No additional privacy impacts are envisaged	Yes
<u>6.7 Acoustic privacy</u>	No additional privacy impacts are envisaged	Yes
<u>6.18 Solar Access</u>	The introduction of the louvres on the front balconies may reduce solar access to these balconies and the associated internal living areas. It has not been demonstrated that solar access will remain compliant with the controls.	Not demonstrated

CHAPTER D13 – WOLLONGONG CITY CENTRE

5 Environmental management

No adverse impacts are expected to result from the proposed modifications. Additional overshadowing is minor as shown on the shadow diagram.

6 Residential development standards

Objectives/controls	Comment	Compliance
<u>6.9 Overshadowing</u>	Some additional overshadowing impact expected as a result of the increased roof height and the screens to be fixed to the edge of the upper roof area. Overshadowing impacts were previously assessed as being significant but not unreasonable in the context (slope, zoning, allowable height and density etc.)	Yes
<u>6.10 Solar access</u>	The introduction of privacy louvres on the edge of the balconies will reduce solar access to these balconies and internal living spaces. Insufficient detail provided to demonstrate that solar access will remain compliant with applicable controls	Not demonstrated
<u>6.12 Visual privacy</u>	Some additional visual privacy impacts may result from the additional window on the southern elevation however this is setback more than 9m from the southern boundary and would comply with ADG standards.	Yes

7 Planning controls for special areas

The site is not located within a special area.

8 Works in the public domain

No change to previously approved public domain works.

CHAPTER E3: CAR PARKING, ACCESS, SERVICING/LOADING FACILITIES AND TRAFFIC MANAGEMENT

The modification makes no change to approved car parking or manoeuvring arrangements.

CHAPTER E6: LANDSCAPING

No change to approved site landscaping.

CHAPTER E7: WASTE MANAGEMENT

No changes to approved waste management arrangements.

CHAPTER E14 STORMWATER MANAGEMENT

No changes to approved stormwater management arrangements.