
Bayside Planning Panel

26/09/2017

Item No	5.2
Application Type	Development Application
Application Number	DA-2017/276
Lodgement Date	27 February 2017
Property	3 Jones Avenue, Monterey
Owner	Mr M Yousef and Mrs S Yousef
Applicant	Mr A Milou
Proposal	Construction of a new two storey dwelling including basement level carpark, roof top terrace, front fence, reflection pool and rear inground swimming pool and demolition of existing structures
No. of Submissions	Three (3) submissions and one (1) petition
Cost of Development	\$ 650,000.00
Report by	Adam Iskander – Development Assessment Planner

Officer Recommendation

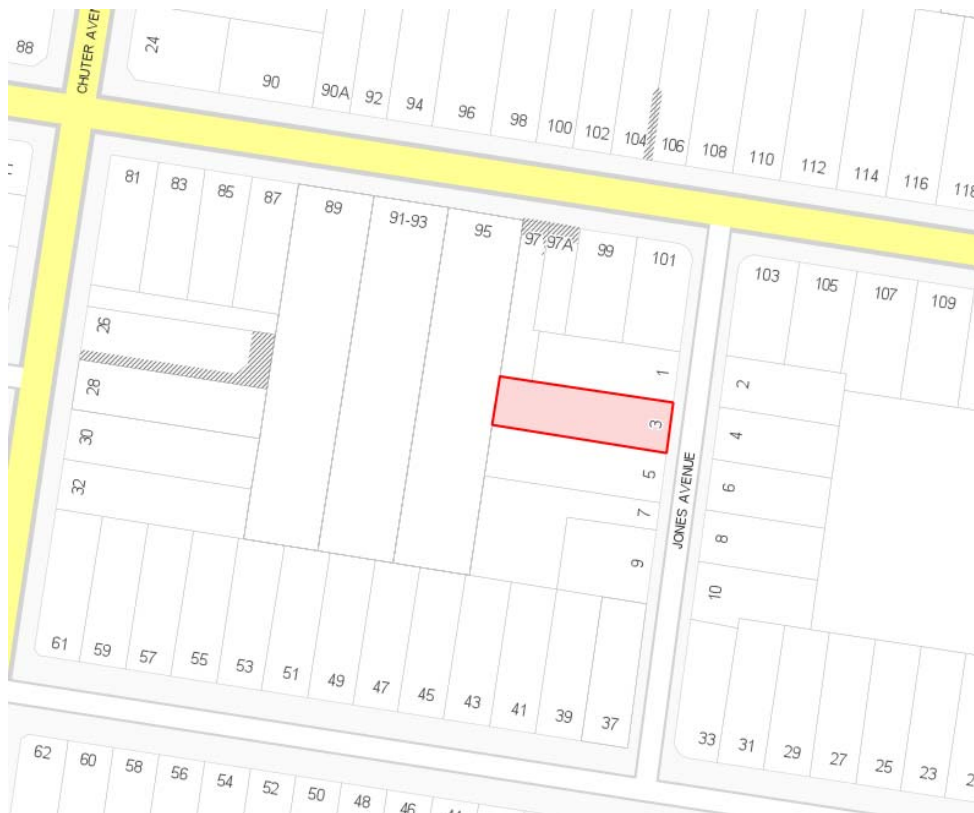
1. That the Bayside Planning Panel supports the variation to the Height development standard, as contained in Clause 4.3 - Height of Buildings within Rockdale LEP 2011, in accordance with the request under Clause 4.6 of RLEP 2011 submitted by the applicant.
 2. That this Development Application be **APPROVED** pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
 3. That the objectors be advised of the Bayside Planning Panel's decision.
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Attachments

- 1 Planning Assessment Report
- 2 Clause 4.6 Objection
- 3 Site Survey
- 4 Site plan
- 5 Garage and services floor plan
- 6 Roof top terrace floor plan
- 7 North elevation
- 8 East elevation
- 9 South elevation

- 10 West elevation
- 11 Shadow Diagrams - June - 9am
- 12 Shadow Diagrams - June - 12pm
- 13 Shadow Diagrams - June - 3pm
- 14 Shadow Diagrams - Neighbour North Elevation

Location Plan



BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2017/276
Date of Receipt:	27 February 2017
Property:	3 Jones Avenue, MONTEREY (Lot 12 DP 21440)
Owner(s):	Mr Magdy Yousef Mrs Soheir Yousef
Applicant:	Mr Anthony Milou
Proposal:	Construction of a new two storey dwelling including basement level carpark, roof top terrace, front fence, reflection pool and rear inground swimming pool and demolition of existing structures
Recommendation:	Approved
No. of submissions:	First Notification: Three (3) submissions and one (1) petition. Second Notification: Two (2) submissions and one (1) petition.
Author:	Adam Iskander
Date of Report:	4 September 2017

Key Issues

The following key issues are identified in the assessment of the application (as revised):

- **Height of building exceedance** - The proposal exceeds the maximum building height provisions of 8.5 metres. A written request pursuant to Clause 4.6 to vary the height has been submitted to Council and is considered within this Report.
- **Notification of DA-2017/276 of amended plans under the RDCP 2011 and Regulations 2000** - Revised architectural plans were re-notified from 14 to 29 August 2017 these amended plans form the basis of this report.
- **Submissions received from notification period** - the first notification of the application resulted in three (3) submissions and one (1) petition. The notification of the amended plans resulted in two (2) submissions and one (1) petition. An on-site meeting was held with Council's Director - City Futures, Coordinator - Development Assessment and Council's Development Assessment Planner and several neighbours relating to the concerns raised in the submissions. Matters of concern which have been identified in the submissions are considered within this Report.

Recommendation

That this Development Application be **APPROVED** pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.  

Background

History

There are no historical applications which relate to the subject site.  

The subject Development Application No. DA-2017/276 was submitted to Council for consideration on 27 February 2017 and was notified for a period of 14 days commencing on 8 March 2017 and concluded 23 March 2013.

In response to the first DA notification period, three (3) submissions were received with one (1) petition. An assessment was undertaken and a request for revised architectural plans and associated documentation was finalised on 29 May 2017, raising the following key issues:

- Floor space ratio exceedance;
- The design of the roof-top terrace,
- Privacy impacts to adjoining residential dwellings,
- Proposed basement level design; and
- Engineering/stormwater matters.

Amended plans were submitted by the applicant and these amended plans were notified and Council received two (2) submissions and one (1) petition.

A site visit was conducted on the 7 July 2017 attended by the Director - City Futures, Coordinator, Development Services, Council's Development Assessment Officer and several neighbours. Concerns were raised by the neighbours at the onsite meeting relating to the abovementioned items. These issues have since been addressed through submission of revised architectural plans which form part of the assessment report below.

Proposal

Council is in receipt of DA-2017/276 at 3 Jones Street, Monterey, which seeks consent for the demolition of existing structures and construction of a new two storey dwelling including basement level carpark, roof top terrace, front fence, reflection pool and rear inground swimming pool. Revised plans received and registered with Council on 14 August 2017 show the proposal is comprised of the following:  

Basement - FL 2.29

- Two parking spaces
- Two rainwater tanks located below ground; and
- Staircase to ground floor level.

Ground floor - FL 4.85 and CL 7.50

- Open plan kitchen with pantry, meals room and living room;
- Cinema room, bedroom/study, office and lounge room;
- Bathroom and laundry;

- Rear covered alfresco with BBQ area accessed via large bi-fold doors;
- Swimming pool 3.5m x 9.6m and 2m deep with attached covered patio;
- Open construction front fence measuring 1.8m in height; and
- Associated landscaping.

First floor - FL 7.90 and CL 10.60

- Master bedroom with large W.I.R and ensuite with three balconies overlooking the primary setback;
- Bedrooms 2 and 3 with attached W.I.R, ensuites and access to rear covered veranda (1.8m high privacy screens provided with soft hedging/planter boxes); and
- Separate retreat and study room.

Roof top terrace - FL 11.00 and top of stair canopy RL 13.16

- Reduced roof top terrace located with stair case access on the northern side with planter boxes along entire perimeter.

Removal of Trees

The proposal seeks to removal of a number of significant site trees which are located within the proposed building footprint.

Excavation

The proposal involves excavation to facilitate the proposed basement level and rear, inground swimming pools to a maximum depth of 2.5 metres and 2.2 metres respectively.

A streetscape plan, as submitted by the applicant, is reproduced for the benefit of the rear below.



Site location and context

The subject site, formally identified as Lot 12 DP 21440, is a slightly irregular shaped allotment with a primary frontage of 14.415 metres addressing Jones Avenue; northern allotment boundary depth of 46.63 metres and southern allotment boundary depth of 46.92 metres and total site area of 627.3sqm (by Survey).

[illegible]

Statutory Considerations

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

S.79C(1)(a)(i) - Provisions of Environmental Planning Instruments

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

4 of 32

the revised architectural plans. The revised BASIX Certificate demonstrates the proposed development satisfies the relevant thermal; water and energy commitments as required by SEPP (BASIX). A condition has been imposed on the consent to ensure that these requirements are adhered to.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R3 Medium Density Residential 	Yes	Yes - see discussion 
2.7 Demolition requires consent 	Yes	Yes - see discussion 
4.3 Height of buildings 	Yes	No - see discussion 
4.4 Floor space ratio - Residential zones 	Yes	Yes - see discussion 
4.6 Exceptions to development standards 	Yes	Yes - see discussion 
5.9 Preservation of trees or vegetation 	Yes	Yes - see discussion 
6.1 Acid Sulfate Soil - Class 4 	Yes	Yes - see discussion 
6.2 Earthworks 		
6.4 Airspace operations 	Yes	Yes - see discussion 
6.7 Stormwater 	Yes	Yes - see discussion 
6.12 Essential services 	Yes	Yes - see discussion 

2.3 Zone R3 Medium Density Residential

The subject site is zoned R3 - Medium Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as a residential dwelling which constitutes a permissible development only with development consent. The objectives of this zone are:  

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.*

The revised proposal is consistent with the objectives of the zone as it provides for the housing needs of the community in a manner which minimises impacts on the character and amenity of the area.

2.7 Demolition requires consent

The proposal seeks consent for the demolition of the existing structures identified on the accompanying Survey Plan, prepared by J.P. Bates and Inwood and dated 25 June 2017. Council has no objections to the proposed development, subject to compliance with AS2601 and hence is considers the proposal acceptable with regards to the provisions of this Clause.  

4.3 Height of buildings

Clause 4.3 of the RLEP 2011 permits a maximum building height of 8.5 metres, as measured from natural ground level (existing).



Revised architectural plans demonstrate the proposal provides for a height of 9.63 metres (RL 13.16 - RL 3.53) which fails to satisfy the numerical provisions of this Clause. Accordingly, the proposal is in contravention of this development standard and is accompanied by a written Clause 4.6 submission seeking to justify the contravention for Council's consideration. An assessment of the Clause 4.6 submission is undertaken below.

4.4 Floor space ratio - Residential zones

Clause 4.4 permits a maximum FSR of 0.60:1.



The GFA of the revised architectural plans has been calculated as 376sqm over a site area of 627.3sqm. The resultant FSR is 0.599:1 which complies with the numerical provisions of this Clause. Additionally, the revised architectural plans and resultant, reduced FSR, means the proposed density is in accordance with the desired future character of Monterey; will have minimal adverse environmental effects on the use or enjoyment of the adjoining properties and maintains an appropriate visual relationship between new development and existing.

Accordingly, the proposal is acceptable with regards to this Clause.

4.6 Exceptions to development standards

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:



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

(3)(b) that there are sufficient environmental planning grounds to justify the variation.

In considering the applicant's submission, the consent authority must be satisfied that:

(i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, 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 of the relevant zone.

5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and

5(b) the public benefit of maintaining the development standard.

Development standard to be varied

The applicant seeks variation to *Clause 4.3 (2) Height of Buildings*, which states:

(2) 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.

The maximum height shown for the land on the Height of Buildings Map is 8.5m, however the development proposes a maximum height of up to 9.63m and will therefore exceed the maximum allowable by 1.13m (or 13.29%).

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

- (a) to establish the maximum limit within which buildings can be designed and floor space can be achieved,*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,*
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.*

Justification for the variation

The applicant has submitted a revised written Clause 4.6 submission justifying the proposed variation to the development standard. Contained within the submission, it is stated that strict compliance with the development standard is unreasonable and unnecessary in this particular case for the following reasons:

- 1. The proposed increase is only for the highest point of the sloping small awning cover over the roof top terrace stairwell access. The support structure of this awning is minimal and the awning itself is not surrounded by walls but by glazing right around, therefore in terms of bulk and scale only the awning itself is solid. If deemed necessary by Council, even the awning material itself can be of clear glazing and thus the impact of this awning is minimal in the context of its materiality, the overall size of the site and consequently, any possible adverse impact on neighbours.*
- 2. The proposed stair awning is critically necessary to facilitate reasonable amenity for stair access to the proposed roof top terrace. Given that there are no alternative solutions to providing some type of awning cover for the staircase, the most minimal design that affords amenity but does not impact neighbours adversely is a reasonable allowance for exceeding the maximum height allowance.*
- 3. The proposed awning is significantly stepped back from both the side, front and rear boundaries and therefore is minimally visible both from the streetscape and from the neighbours. More importantly the setback of the stair awning relative to the dwelling, when combined with the clear glazing nature of the side walls and possibly even the awning itself.*

Within the former Rockdale Council area which the property is situated this is very much the case that the development standard has been virtually abandoned by Council's own actions and an important consideration especially in this case where we are only considering a portion of an awning being above the 8.5m maximum height requirement. There are many recent and historic examples within the Council area which have been approved and built with a roof top terrace awning above the 8.5m height restriction. Precedents such as these are an accepted part of new home design in the area given that the non compliance typically does not impact neighbour amenity.

Assessment comments

The applicant's submission is supported in the context of clause 4.6 based on the reasons provided by the applicant above. As stated in the submission received from the applicant, Council has previously varied the Height of Buildings development standard to facilitate provision of a roof top terrace with entry over the stairs. Strict compliance with this development standard is considered unreasonable and unnecessary in this instance, with the proposed variation not contributing to the bulk or scale of the building, not unreasonably impacting the overshadowing on adjoining properties and not likely to set an undesirable precedent within the locality. Further, the proposal is consistent with the objectives of Zone

R3 Medium Density Residential and the Height of Buildings development standard (Clause 4.3) as per RLEP 2011. Accordingly, the proposal is not considered to be contrary to the public interest.

5.9 Preservation of trees or vegetation

The site contains trees that are subject to approval by Council under clause 5.9 of RLEP 2011 conferred by:



- (a) development consent, or
- (b) a permit granted by Council.

Council's Tree Management Officer has recommended appropriate conditions that have been imposed in the draft Notice of Determination, requesting the imposition of the following condition on any consent granted by Council:

A 45 litre Zanthostemon chrysanthus (Golden Panda) or similar small feature tree is to be planted in a suitable location within the front setback of the property on completion of the building works and prior to the final inspection and issue of the Final Occupation Certificate".

Subject to planting of replacement trees, the proposal is satisfactory in relation to Clause 5.9 of the Rockdale LEP2011 and Clause 4.1.7 of the Rockdale DCP2011

6.1 Acid Sulfate Soil - Class 4

The subject site is identified as (potentially) containing Class 4 Acid Sulfate Soils (ASS).



For any works which are 2 metres or more below the natural ground surface or works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface shall be accompanied by an Acid Sulfate Soils Management Plan prepared in accordance with the Acid Sulfate Soils Manual. Accordingly, the application is accompanied by an Acid Sulfate Soils Preliminary Assessment which concludes the proposed works are unlikely to have an impact on the lowering of the watertable for the following reasons:

1. *The proposed works are only 2.5 metres below natural ground level for most of the works on site. As the ground at this depth does not retain significant water content, the water table level is likely to rise rather than fall by a negligible volume due to the displacement by the additions.*
2. *No existing ground water is to be removed from the site in any way, either during construction of the dwelling, as a result of the dwelling stormwater desk or during occupation of the dwelling. Specifically, no existing sub ground level water will be pumped to the street level Council drainage system. All sub ground water will remain on site or flow through naturally as is currently the case.*

In this regard, the provisions of Clause 6.1 do not need to be considered any further.

6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 51 metres to Australian Height Datum (AHD). The proposed building height is at 13.16 metres to AHD and in this regard, it is considered that the proposed development will have minimal adverse impact on the OLS and hence is acceptable with regards to this Clause.



6.7 Stormwater

The revised architectural plans and accompanying stormwater detail was referred to Council's Development Engineer for review and response. Standard conditions are to be included in the draft



Notice of Determination that the discharge of stormwater will be required to comply with Rockdale Technical Specification for Stormwater Management with appropriate certification and checklist completed and received prior to release of the Construction Certificate. Subject to conditions, the proposal is acceptable with regards to this Clause.

6.12 Essential services

Services will generally be available on the site. Additional conditions have been incorporated in the draft Notice of Determination requiring consultation with relevant utility providers in regards to any specific requirements for the provision of services on the site.

S.79C(1)(a)(ii) - Provisions of any Draft EPI's

At the time of lodgement of the subject development application, the Rockdale Local Environmental Plan, 2011 (RLEP 2011) was in force while a draft housekeeping amendment to the RLEP 2011 has been publically exhibited. Pursuant to the matters for consideration contained within Section 79C(1) of the Environmental Planning and Assessment Act, 1979 (the Act), the provisions contained within each of the applicable EPIs are to be considered in the assessment of the subject development application.

The savings and transitional provisions contained within Clause 1.8A of the RLEP 2011 has the effect of limiting consideration of the provisions contained within the RLEP 2011 to only those applications lodged on or after this date. As such, the application has been considered against the provisions contained within the exhibited draft, although it has little determinative weight. The proposed development, namely a residential dwelling, remains consistent with the aims and objectives of the instrument. Approval of the proposed development would not be inconsistent with the intent and purpose of the instrument and is acceptable in this regard.

S79C(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

Rockdale Development Control Plan 2011

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below:

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.1 Views and Vista	Yes	Yes - see discussion
4.1.3 Water Management	Yes	Yes - see discussion
4.1.3 Groundwater Protection	Yes	Yes - see discussion
4.1.4 Soil Management	Yes	Yes - see discussion
4.1.7 Tree Preservation	Yes	Yes - see discussion
4.2 Streetscape and Site Context - General	Yes	Yes - see discussion
4.3.1 Open Space & Landscape Design - Low & medium density residential	Yes	Yes - see discussion
4.4.2 Solar Access - Low and medium density residential	Yes	No - see discussion
4.4.3 Natural Lighting and Ventilation - Residential	Yes	Yes - see discussion
4.4.5 Visual privacy	Yes	Yes - see discussion
4.4.5 Acoustic privacy	Yes	Yes - see discussion

Relevant clauses	Compliance with objectives	Compliance with standard/provision
5.1 Storey Height and Setbacks - Dwelling house and Attached Dwellings 	Yes	Yes - see discussion 

4.1.1 Views and Vista

The siting of the proposed building will ensure that there is minimal adverse impact on the surrounding views presently enjoyed by adjacent residents.  

4.1.3 Water Management

As discussed in the above body of this Report, the revised architectural plans and accompanying stormwater plans were reviewed by Council's Development Engineer who recommends the imposition of standard conditions of consent. These include the requirement to obtain a geotechnical report prior to the issue of a construction certificate. Subject to the imposition of conditions on any consent granted by Council, the provisions of this Clause are satisfied.  

4.1.3 Groundwater Protection

The site is affected by the Groundwater Protection Zone 3 and there are built structures, including public assets, which may be in the zone of influence of the proposed works and excavation on site. Council's Development Engineer requires that a qualified practising geotechnical engineer must prepare a Construction Methodology Report demonstrating that the proposed construction method, including any excavation and the configuration of the built structures will have no adverse impact on any surrounding property and infrastructure. This report must be submitted with the application for a Construction Certificate.  

Subject to compliance with the conditions imposed on any consent granted by Council, the provisions of this Clause are satisfied.

4.1.4 Soil Management

A standard condition is imposed on the draft Notice of Determination requiring that general erosion and sediment control strategies are implemented to ensure that the potential for impact on adjoining land and surrounding waterways is minimised. Temporary fencing is to be erected along the boundaries of the site in addition to a builders all weather access through the construction period. Subject to compliance with conditions, the proposal satisfies the provisions of this Clause.  

4.1.7 Tree Preservation

As discussed in the above body of this Report, the application was referred to Council's Tree Management Officer for review and comment. Subject to conditions, including the replacement planting of a 45 litre pot size tree within the primary setback, the provisions of this Clause are satisfied.  

4.2 Streetscape and Site Context - General

The proposal is located in an R3 - Medium Density Residential Zone with the immediate context as relatively low scale, consisting of residential dwellings and dual occupancy developments. The proposed residential dwelling is determined as consistent with the desired and future character of the area in terms of height, bulk and scale, and is generally appropriate in this context.  

The proposed front setback is consistent with the variable setbacks of surrounding two storey buildings and in this regard the residential streetscape will be retained and complemented.

The proposed built form on site complies with the required FSR requirements. Notwithstanding the height technical non-compliance, the proposal is designed with appropriate use of articulation & modulation to the facades via the incorporation of upper level balconies, pedestrian entries at ground level and a range materials which adds visual interest to the facades.

The proposed development will have a front door addressing the street, with the building's frontage and entry points being readily apparent from the Jones Avenue. Further, the proposed fences, landscaping, and other features are sited so as to maintain clearly defined public, semi public and private spaces.

4.3.1 Open Space & Landscape Design - Low & medium density residential

The proposal provides 25% of adequate landscaping which equates to approximately 157sqm,   with the capability to contain storm water runoff. Private open spaces are usable, accessible, clearly defined and will meet occupants requirements of privacy, solar access, outdoor activities and landscaping.

4.4.2 Solar Access - Low and medium density residential

The adjoining dwelling to the south is situated on a property that has an east-west orientation.   The applicant has submitted revised architectural and shadow diagrams for 9 a.m., 12 p.m. and 3 p.m. on June 21 which show the adjoining windows to the southern adjoining residential allotment will not receive the prescribed amount of sunlight to internal habitable floor areas, however the allotment will receive no less than three hours to more than 50% of its private open space on 21 June.

Revised architectural plans demonstrate the proposal has sought to minimise adverse impacts to the southern adjoining allotment through the following:

- Compliance with minimum side setback requirements;
- Articulated building walls and roof design;
- Reduced floor to ceiling heights to the upper floor level.

The majority of the dwelling has a building height of 7.52m which is located below the maximum building height of 8.5m. As part of the revised architectural plans submitted to Council on 14 August 2017 and renotified for a period of 14 days, the position of the roof top terrace has been relocated to the northern side of the roof top to further reduce impacts of over-shadowing onto the southern neighbour.

It should be noted that the residential subdivision pattern in the street is such that each of the allotments exhibit a predominantly east-west orientation and in this regard the provision of solar access to adjoining residential buildings directly to the south of each allotment is difficult to achieve, as the shadows projected by two storey buildings are consistent with allotments of this orientation and size.

Therefore, the development, which seeks to vary from the minimum standards of RDCP 2011, has demonstrated that the site constraints and orientation prohibit the achievement of these standards and has provided efforts to reduce the impacts of the development onto the adjoining neighbour to south. The application satisfies the Objectives of Part 4.4.2 of RDCP 2011.

4.4.3 Natural Lighting and Ventilation - Residential

Revised architectural plans received by Council on 14 August 2017 and renotified for a period of   14 days demonstrate the ceiling heights of 2.65 metres and 2.7 metres for the ground and upper floor levels respectively. The proposal generally complies with the provisions of this Clause in addition to the requirements of the BCA and is acceptable in this regard.

4.4.5 Visual privacy

The proposed residential dwelling has been designed and sited to minimise the overlooking of adjoining properties, incorporating:



- privacy screens to both sides of the rear first floor balconies;
- windows with sill height of 1.7m;
- landscape hedging/ tree screening located along boundary fences;
- windows are offset to preclude views into windows of adjacent buildings
- fixed obscure glazing to windows.

Having regard to the above, the proposed development provides a reasonable level of visual privacy between the adjoining properties. The windows on the ground floor on both side elevations will be constructed with either minimum sill heights of 1.7m from FFL or constructed with fixed obscure glazing. Furthermore, over-looking from these ground floor windows will be limited with the 1.8m high side boundary fence. An appropriate condition is to be included in the draft notice of determination regarding the inclusion of privacy screens to rear, upper floor level balconies.

The windows along the side elevations on the first floor level will service bedrooms and ensuites. These are determined as acceptable due to the frequency and nature of the use, resulting in minimal potential for overlooking to adjoining residential dwellings. The fixed window on the southern elevation of the upper floor level which services the proposed retreat will be conditioned to have a minimum sill height measuring 1.7m from FFL.

The upper floor level, rear veranda is excessive (4m x 10.410m) and can potentially be used as an entertaining area which may cause impacts of over-looking and noise. To reduce these impacts, a condition will be placed in the draft notice of consent requiring the depth of the veranda to be reduced to a maximum of 1.5m in depth i.e. 1.5m x 10.410m.

Subject to conditions of consent, the proposed dwelling will satisfy the Objectives of Part 4.4.5 of RDCP 2011.

4.4.5 Acoustic privacy

The amended plans received on 28 July 2017 show that the roof top terrace will be reduced in size, set back further from the building edge and that all structures on the terrace such as bar area and seating areas have been deleted. The result of this will limit the use of the terrace which will ultimately reduce the impacts of noise. However, it is not anticipated that the use of the terrace will generate excessive noise to warrant its deletion from the proposal. The use of a roof top terrace will have a lesser impact onto the adjoining neighbours when compared to a swimming pool or alfresco dining area located on the ground floor. As such, it is assessed that there will be minimal adverse impact on the acoustic privacy of adjoining and surrounding properties as consideration has been given to the location and design of the building and landscaping in relation to private recreation areas to minimise noise intrusion on the amenity of adjoining properties.



5.1 Storey Height and Setbacks - Dwelling house and Attached Dwellings

The proposed setback are as follows:



DCP2011	PROPOSED	COMPLIES?
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Ground floor side setback 900mm	900mm	Yes
First floor side setback – 1.5m	North – 1.5 South –1.5	Yes
Rear setback ground – 3m Rear setback first floor – 6m	Ground – 7.87m First floor – 11.870	Yes

Further, the proposal has a staggered building design with side setbacks meeting the minimum requirement to most parts. The proposal is not considered to unreasonably impact upon the adjoining dwelling by way of overshadowing and overlooking, and will not unreasonably reduce the solar access, light and air received by the adjoining dwelling. Therefore, the proposed setbacks are consistent with the objectives of this control.

S.79C(1)(b) - Likely Impacts of Development

All potential impacts related to the proposal have been considered in response to SEPPs, LEP   and DCP controls and determined to be acceptable, subject to conditions imposed on any consent granted by Council. The impacts that have not already been addressed are as follows:

Construction

The residential dwelling and ancillary development is considered acceptable subject to site and safety measures in accordance with the conditions imposed on the draft Consent and relevant WorkCover Authority guidelines/requirements. Council has imposed additional conditions relating to vibration monitoring with respect to excavation and earthworks in addition to the requirement to obtain a Construction Management Plan (CMP) to be prepared in accordance with the requirements of all relevant regulatory approval bodies.

Swimming Pool and Spa Code

The proposed swimming pool has been assessed against the relevant code and found to comply. Appropriate conditions of consent are included in the consent.

S.79C(1)(c) - Suitability of the site

The relevant matters pertaining to the suitability of the site for the proposed development have   been considered in the assessment of the proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

S.79C(1)(d) - Public submissions

DA-2017/276 was notified for a period of 14 days in accordance with the provisions of the   RDCP 2011 and the Regulations, 2000. Three (3) submissions and one (1) petition was received during this period and raised the following matters for Council consideration:

- Non-compliance with the maximum permissible building height under Clause 4.3 of the RLEP 2011;
- Potential noise generation resulting from the use of the external and roof top terrace areas;
- Resultant shadow impacts;
- Potential privacy impacts to adjoining residential allotments; and

- Over-development of the site.

Council requested revised architectural plans which were received on 28 July 2017. The revised architectural plans and accompanying documentation was then re-notified for a period of 14 days commencing on 14 August to 29 August 2017. Two (2) submissions and one (1) petition was received during this period, raising the following matters for Council consideration:

- Overshadowing to the southern adjoining residential allotment, including depth of building; elevation and non-compliant canopy height (rooftop terrace);
- Potential privacy impacts to adjoining residential allotments;
- Potential noise generation resulting from the use of the external and roof top terrace areas;
- Overall 'mass and area of structure in proportion to land size';
- Non-compliance with balustrading; and
- Streetscape.

Issue 1: Non-compliance with height, including height of balustrading and rooftop terrace

Comment: The proposal includes a non-compliant point encroachment of 9.63m which exceeds the maximum 8.5m height permitted in Clause 4.3 (Height of buildings) of RLEP 2011. Accordingly, the application is accompanied by a written Clause 4.6 justification reviewed in detail in the above body of this report. As stated within this document, Council has previously varied the Height of Buildings development standard to facilitate provision of a roof top terrace with entry over the stairs. The proposal has demonstrated compliance with the objectives of Zone R3 Medium Density Residential zone in addition to those of Clause 4.3 - Height of Buildings and is supported in this instance.

It is noted that the height of the balustrading for the roof top terrace is wholly contained under the 8.5 metre building height provisions.

Issue 2: Noise created from the use of the roof top terrace.

Comment: The revised architectural received and re-notified show a significantly reduced roof top terrace footprint with increased setbacks from both the roof edge and allotment boundaries. Ancillary forms of development including the bar and seating areas have been deleted from the plans with the inclusion of planter boxes offering further separation from adjoining residential allotments. The resultant form of development is acceptable with regards to its intended use for the R3 - Medium Density Residential zone and determined as acceptable with regards to residential noise generation. Refer to section 4.4.5 of this report.

Issue 3: Overshadowing impacts

Comment: The development has sought to minimise the adverse impact on the adjoining property, where overshadowing of the property is inevitable due to its east-west orientation, by observing the minimum side setbacks, a staggered roof design through the provision of an alfresco and balconies and minimum ceiling heights on the first floor. The majority of the dwelling has a building height of 7.52m which is located below the maximum building height of 8.5m. As part of the amended plans submitted on 28 July 2017, the position of the roof top terrace has been relocated to the northern side of the roof top to further reduce impacts of over-shadowing onto the southern neighbour. The applicant has demonstrated that the site constraints and orientation prohibit the full achievement of these standards and has provided efforts to reduce the impacts of the development onto the adjoining neighbour, specifically to the south. Refer to Part 4.4.2 of this report.

Issue 4: Privacy impacts generated from roof top terrace and windows

Comment: The revised architectural plans have demonstrated consideration with respect to minimising the potential for overlooking to adjoining residential allotments. The roof top terrace has been further setback from the building edge with planter boxes around the perimeter of the balustrade. All windows on the side elevations that service main living areas and areas of entertainment have been amended to be constructed with fixed obscure glazing. Refer to section 4.4.5 of this report.

Issue 5: Over development of the site and streetscape

Comment: Statutory provisions as contained within the RLEP 2011 including maximum permissible FSR establish the maximum development density and intensity of land use; to minimise adverse environmental effects on the use or enjoyment of adjoining properties and maintain an appropriate visual relationship between new and existing development. The proposed dwelling complies with the numerical provisions of Clause 4.4 relating to FSR and the objectives which support them. Additionally, Council's DCP 2011 contains a number of design provisions relating to setbacks; private open space and landscaping requirements to which the proposal complies. Taking this into consideration, the proposed dwelling is not considered to be an over-development and meets the objectives of the R3 Medium Density Residential Zone.

S.79C(1)(e) - Public interest

Having regard to the report above and pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979, the objectives and requirements of Rockdale Local Environmental Plan 2011 and Development Control Plan 2011, the proposed development is considered to be acceptable with regards to the public interest.  

S94A Fixed development consent levies

Section 94A of the Environmental Planning and assessment Act 1979 (as amended) applies to the proposal. In this regard, a standard condition of development consent has been imposed in respect to a levy applied under this section.  

Civil Aviation Act, 1988

The site is within an area that is subject to the Civil Aviation (Building Controls) Regulations 1988 made under the *Civil Aviation Act, 1988*.

Civil Aviation (Building Control) Regulations 1988

The Regulations require a separate approval from the Civil Aviation Safety Authority if a building or structure exceeds a prescribed height limit.

Section 5 Prohibition of the construction of buildings of more than 50 feet in height in specified areas

The proposed development is affected by the 15.24m Building Height Civil Aviation Regulations, however revised architectural plans demonstrate an overall building height of 9.63 metres which will have minimal impact upon the height requirement in the regulations. The proposal is therefore acceptable with regards to this Clause.  

Schedule 1 - Draft Conditions of consent

General Conditions

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

1. The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time. 
2. The development must be implemented substantially in accordance with the plans  listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Plan/Dwg No.	Drawn by	Dated	Received and Notified by Council
DA02, Proposed Ground Floor Plan, Revision 1	Milou & Associates	25 June 2017	14 August 2017
DA03, Proposed First Floor Plan, Revision 1	Milou & Associates	25 June 2017	14 August 2017
DA04, Proposed Roof Top Terrace Floor Plan, Revision 1	Milou & Associates	25 June 2017	14 August 2017
DA05, Proposed Garage and Services Floor Plan, Revision 1	Milou & Associates	25 June 2017	14 August 2017
DA06, Proposed North Elevation, Revision 1	Milou & Associates	25 June 2017	14 August 2017
DA07, Proposed South Elevation, Revision 1	Milou & Associates	25 June 2017	14 August 2017
DA08, Proposed East Elevation, Revision 1	Milou & Associates	25 June 2017	14 August 2017
DA09, Proposed East Elevation (with Front Fence), Revision 1	Milou & Associates	25 June 2017	14 August 2017
DA010, Proposed West Elevation, Revision 1	Milou & Associates	25 June 2017	14 August 2017
DA11, Sectional Drawing, Revision 1	Milou & Associates	25 June 2017	14 August 2017
DA12 Site Plan, Revision 1	Milou & Associates	25 June 2017	14 August 2017

3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA). 
4. A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing. 
5. The development must be implemented and all BASIX commitments thereafter maintained in accordance with revised BASIX Certificate Number 799645S and dated Thursday 31 August 2017 other than superseded by any further amended consent and BASIX certificate. 

Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -

 - (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.

Note: Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Note: For further information please see <http://www.basix.nsw.gov.au>.
6. The dwelling shall be used as a single occupancy only. 
7. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act. 
8. The materials and façade details approved under condition 2 and any other relevant condition of this consent shall not be altered or amended at the construction certificate stage without a prior S96 application and approval under the EP&A Act. 
9. Should the proposal be identified as Integrated Development and the extraction of groundwater be identified, concurrence from the NSW Office of Water shall be obtained, prior to the issue of a Construction Certificate and any excavation works being undertaken for the approved development. 

Development specific conditions

The following conditions are specific to the Development Application proposal.

10. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the retention system. The registered proprietor will: 
 - (i) permit stormwater to be retained by the system;
 - (ii) keep the system clean and free of silt, rubbish and debris;
 - (iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner, and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
 - (iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
 - (v) not make any alterations to the system or elements thereof without prior consent in writing of the Council;

- (vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirements of this clause;
 - (vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
11. The rainwater tank shall be routinely de-sludged and all contents from the de-sludging process disposed – solids to the waste disposal and de-sludged liquid to the sewer. 
 12. Residential air conditioners shall not cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997 or contravene provisions of the Protection of the Environment (Noise Control) Regulation 2008 where emitted noise from a residential air conditioner can be heard within a habitable room in any other residential premises at night. 
 13. Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1 and AS2890.6. 
 14. A 1.8 metre high privacy screen shall be installed to the rear first floor balcony on both side elevations. 
 15. Retaining walls over 600mm in height shall be designed and specified by a suitably qualified structural engineer. 
 16. The pool is for the private use of the dwelling residents only and not for public use. 
 17. The pool/spa pump hours of operation shall be restricted to between 7am to 8pm weekdays and 8am to 8pm weekends. 
 18. The pool area shall be enclosed by a 1200mm high pool safety fence and all associated gates shall be fitted with a self-latching device in accordance with AS1926. 

Note: A dividing fence will be accepted as part of the pool safety fence provided the fence complies with the requirements of AS1926.

19. The bond beam or concrete pool surround shall be provided with a dish drain graded away from the adjoining premises. Alternatively, the outer edge of the bond beam or concrete surround shall be provided with a 100mm hob and all waste water shall be drained away from the adjoining premises. 
20. Suitable depth markers shall be provided at each end of the swimming pool. 
21. Where the spacing between vertical members of the pool fence is greater than 10mm and horizontal surfaces that could be used as holds for climbing are permanently located near the inside of the fence, such surfaces shall be separated from the fence by a distance of not less than 300mm. 
22. Waste water from the pool or spa is to be discharged into a Sydney Water gully riser, in accordance with the typical connection shown in Council's Swimming Pool and Spa Code. 
23. The motor, filter, pump and all sound producing equipment or fittings associated with or forming part of the pool filtering system shall be sound insulated and/or isolated so as not to create an offensive noise to the neighbours. 
24. A warning notice must be erected near swimming pools/spas. There shall be at all times maintained, in a prominent position in the immediate vicinity of the swimming pool, a sign erected and bearing the notice: "Young Children should be Supervised when using this Swimming Pool", together with details of resuscitation techniques (for adults, children and infants) in accordance with the document entitled "Cardio Pulmonary Resuscitation" published by the Australia Resuscitation Council. The 

warning notice may be purchased from Bayside Council or the Royal Life Saving Society.

25. The fixed window on the southern elevation of the upper floor level which services the proposed retreat shall have a minimum sill height measuring 1.7m from FFL. 
26. The upper floor level rear veranda shall be reduced to a maximum of 1.5m in depth. 

Prior to issue of the construction certificate

The following conditions must be completed prior to the issue of the Construction Certificate.

27. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges. 
 - i. A Footpath Reserve Restoration Deposit of \$2,508.00 . This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
 - ii. An environmental enforcement fee of 0.25% of the cost of the works.
 - iii. A Soil and Water Management Sign of \$18.00.
28. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441. 
29. An application for Driveway Works (Public Domain Construction – Vehicle Entrance/Driveway Application) / Frontage Works (Public Domain Frontage Works Construction Application) shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary frontage works, egress paths, driveways and fences shall comply with the approval. A fee is payable to Council. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges. 
30. a. Pursuant to section 94A of the Environmental Planning and Assessment Act 1979 and Rockdale Section 94A Development Contributions Plan 2008, a report is to be submitted to Council, prior to approval of the first Part 4A certificate required for the development, identifying the proposed cost of carrying out the development, as follows: 
 - i. Where the proposed cost of carrying out the development is less than \$1,000,000, a cost summary report prepared and certified by a building industry professional, or
 - ii. Where the proposed cost of carrying out the development is \$1,000,000 or more, a detailed cost report prepared and certified by a quantity surveyor registered with the Australian Institute of Quantity Surveyors or a person who can demonstrate equivalent qualifications. This report is to be prepared in the form specified in Rockdale Section 94A Development Contributions Plan 2008 and the costs must be determined in accordance

with clause 25J of the Environmental Planning and Assessment Regulation 2000.

Note:

1. Council may review the costs contained in the report and may seek the services of an independent person to verify them. In such a case, all costs associated with obtaining this advice will be at the expense of the applicant and no Part 4A certificate is to be issued until such time as these costs have been paid.

2. The proposed cost of carrying out the development excludes any part of the proposed development that is exempt from the section 94A levy by reason of a Ministerial direction or an exemption specified in Rockdale Section 94A Development Contributions Plan 2008. Where the applicant considers that the proposed development, or any part of it, is or should be exempt from the levy they may submit to Council, prior to approval of the required certificate, an application for exemption giving reasons and providing any necessary evidence for the exemption.

b. Where the proposed cost of carrying out the development, as specified in the cost summary report, the registered surveyor's detailed cost report or the independent review of costs obtained by Council (as the case may be), is more than \$100,000 a section 94A levy is to be paid to Council for the following amount:

- i. Where the proposed cost of carrying out the development is greater than \$100,000 but not more than \$200,000 – 0.5% of that cost, or
- ii. Where the proposed cost of carrying out the development is greater than \$200,000 – 1% of that cost.

This levy is to be paid prior to the issue of the first Part 4A certificate required for the development.

If the levy is not paid within the same financial year as the date on which Council accepted the cost summary report, the registered surveyor's detailed cost report or the independent review of costs (as the case may be), the amount of the levy is to be adjusted at the time of actual payment to reflect changes in construction costs, in accordance with the provisions of Rockdale Section 94A Development Contributions Plan 2008.

Note: This requirement to pay the section 94A levy does not apply if the proposed cost of carrying out the development is \$100,000 or less or Council has confirmed in writing that the proposed development is exempt from the levy.

31. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance or owner builder's permit in force in accordance with Part 6 of that Act, that such a contract or permit is in place. 

32. Prior to the issue of the Construction Certificate, the approved plans must be submitted to Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met. 

Sydney Water's Tap in™ online service is available at:

<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

33. Prior to issue of the Construction Certificate, a longitudinal driveway profile shall be submitted to Principal Certifying Authority for assessment and approval. The 

profile shall start in the centre of the road and be along the critical edge (worst case) of the driveway. Gradients and transitions shall be in accordance with Council's Code. The profile shall be drawn to a scale of 1 to 25 and shall include all relevant levels, grades (%) and lengths.

34. Any sub-surface structure within the highest known groundwater table / rock + 0.5m shall be designed with a waterproof retention system (waterproofing) with adequate provision for future fluctuation of the water table. The subsurface structure is required to be designed with consideration of uplift due to water pressure and "flotation" (buoyancy) effects. Subsoil drainage around the subsurface structure must allow free movement of groundwater around the structure, but must not be connected to the internal drainage system. The design of subsurface structure, tanking and waterproofing, and subsoil drainage shall be undertaken by a suitably experienced Chartered Professional Engineer(s). Design details and construction specifications shall be included in the documentation accompanying the Construction Certificate for the relevant stage of works. 
35. There are built structures, (including public assets) which may be in the zone of influence of the proposed works and excavations on this site. A qualified practicing geotechnical engineer must prepare a Construction Methodology report demonstrating that the proposed construction method including any excavation and the configuration of the built structures will have no adverse impact on any surrounding property and infrastructure. The report must be submitted with the application for a Construction Certificate. 

The report must include an investigation to determine the design parameters appropriate to the specific development and site. This would typically include but not limited to:

- Location & level of nearby foundations/footings (site and neighbouring);
- Proposed method of excavation;
- Permanent and temporary support measures for excavation;
- Potential settlements affecting footings/foundations;
- Ground-water levels (if any);
- Batter slopes;
- Potential vibration caused by method of excavation;
- Tanking and waterproofing the basement structures including the absorption pit; and
- De-watering including seepage and off site disposal rate (if any).

Note: A failure by contractors to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings. Such contractors are likely to be held responsible for any damages arising from the removal of any support to supported land as defined by section 177 of the Conveyancing Act 1919.

36. The low level driveway must be designed to prevent inflow of water from the road reserve. The assessment of flows and design of prevention measures shall be in accordance with the requirements of Rockdale Technical Specification Stormwater Management. Details shall be included in the documentation presented with the Construction Certificate application. 
37. Any part of the proposed building within 3m of the proposed detention tank or absorption trench shall be constructed on a pier and beam foundation with piers extending no less than 300mm below the bottom of the tank or trench base. This requirement shall be reflected on the Construction Certificate plans and supporting documentation. 

38. Prior to the issue of the Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to Principal Certifying Authority for assessment and approval. Design certification, in the form specified in Rockdale Technical Specification Stormwater Management, and drainage design calculations are to be submitted with the plans. Council's Rockdale Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the development site, including the final discharge/end connection point, must comply with Rockdale Technical Specification Stormwater Management. 
39. Prior to the issue of a Construction Certificate for the approved development, revised architectural plans shall be submitted to the Certifying Authority demonstrating compliance with the following: 
- a. The fixed, obscure window to the Retreat on the upper level southern elevation shall have a minimum sill height measuring 1.7m from the approved finished floor level;
 - b. The depth of the upper level rear verandah shall be reduced to a maximum of 1.5m. In this regard the veranda will have maximum dimensions of 1.5m x 10.410m;
 - c. Privacy screens shall be installed to the upper level rear verandah with a 400mm return and minimum height of 1.7 metres as measured from approved finished floor level;
 - d. A 0.9x0.9m triangle shall be provided at the front boundary with no obstruction greater than 1.0m above the boundary level to provide adequate sight lines for the vehicles existing the basement car park. No landscaping higher than 1.0 m shall be provided at the entry area to the basement. Details of the above and gates to be included in the documentation accompanying the Construction Certificate.

Prior to commencement of works

The following conditions must be completed prior to the commencement of works.

40. A dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) or Council prior to Commencement of Works. The insurance cover shall be a minimum of \$10 million. 
41. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request. 

Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during construction.

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

42. A Construction Management Plan (CMP) shall be prepared in accordance with the requirements of all relevant regulatory approval bodies. Prior to the commencement of works the Certifying Authority shall be satisfied that the CMP has obtained all relevant regulatory approvals. The CMP shall be implemented during demolition, excavation and construction.

Prior to the issue of the relevant Construction Certificate, a Construction Traffic Management Plan (TMP) prepared by a suitably qualified person shall be submitted to and approved by the Certifying Authority. The Plan shall address, but not be limited to, the following matters:

- (a) ingress and egress of vehicles to the site;
- (b) loading and unloading, including construction zones;
- (c) predicted traffic volumes, types and routes; and
- (d) pedestrian and traffic management methods.

Copies of the CMP and TMP shall be submitted to Council.

43. Vibration monitoring equipment must be installed and maintained, under the supervision of a professional engineer with expertise and experience in geotechnical engineering, between any potential source of vibration and any building identified by the professional engineer as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the principal contractor and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately. Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.

Where the event requires, in the opinion of the professional engineer, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the professional engineer to the principal contractor and any sub-contractor clearly setting out required work practice.

The principal contractor and any sub-contractor must comply with all work directions, verbal or written, given by the professional engineer.

A copy of any written direction required by this condition must be provided to the Principal Certifying Authority within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining building or such that there is any removal of support to supported land the professional engineer, principal contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that supported land and take immediate action under the direction of the professional engineer to

prevent any further damage and restore support to the supported land.

Note: Professional engineer has the same mean as in Clause A1.1 of the BCA.

Note: Building has the same meaning as in section 4 of the Act i.e. "building includes part of a building and any structure or part of a structure".

Note: Supported land has the same meaning as in section 88K of the Conveyancing Act 1919.

44. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed. 
45. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out: 
- i. stating that unauthorised entry to the work site is prohibited, and
 - ii. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours. Any such sign is to be removed when the work has been completed. This condition does not apply to:
 - iii. building work carried out inside an existing building or
 - iv. building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
46. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points. 
47. (a) A hoarding or fence shall be erected between the work site and the public place when the work involved in the erection or demolition of a building: 
- (i) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
 - (ii) building involves the enclosure of a public place,
- (b) Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless, the least horizontal distance between the common boundary and the nearest part of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.
- (c) Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure, type B Hoarding, and the facing facade protected by heavy duty scaffolding unless either:
- (i) the vertical height above footpath level of the structure being demolished is less than 4m; or
 - (ii) the least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must -

- (i) extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;
- (ii) have a clear height above the footpath of not less than 2.1m;
- (iii) terminate not less than 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand

projecting not less than 0.5m above the platform surface; and

(iv) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa The 'B' Class hoarding is to be lit by fluorescent lamps with anti-vandalism protection grids. Any such hoarding, fence or awning is to be removed when the work has been completed.

(d) The principal contractor or owner builder must pay all fees and rent associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

48. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

During demolition / excavation / construction

The following conditions must be complied with during demolition, excavation and or construction.

49. A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.
50. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
51. For Class 1 and 10 structures, the building works are to be inspected during construction, by the principal certifying authority (or other suitably qualified person on behalf of the principal certifying authority) to monitor compliance with Council's approval and the relevant standards of construction encompassing the following stages:
- i. after excavation for, and prior to the placement of, any footings, and
 - ii. prior to pouring any in-situ reinforced concrete building element, and
 - iii. prior to covering the framework for any floor, wall, roof or other building element, and
 - iv. prior to covering waterproofing in any wet areas, and
 - v. prior to covering any stormwater drainage connections, and
 - vi. after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Documentary evidence of compliance with Council's approval and relevant standards of construction is to be obtained prior to proceeding to the subsequent stages of construction and copies of the documentary evidence are to be maintained by the principal certifying authority and be made available to Council officers upon request.

52. Ground water shall only be pumped or drained to Council's stormwater system if the water is clean and unpolluted. The standard used to determine the acceptability of the quality of the water is the 'Australian and New Zealand Environment and Conservation Council - Australian Water Quality Guidelines for Fresh and Marine Waters 1992'.

Note: Prior treatment and/or filtration of the water may be necessary to achieve acceptable quality, including a non-filterable residue not exceeding 50 milligrams/litre or small quantities may be removed by the services of a Licenced Liquid Waste Transporter. It is an offence under the provisions of the Protection of the Environment

Operations Act 1997 to pollute the stormwater system.

53. Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the stormwater drainage system. 
54. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan. 
55. A Registered Surveyor's check survey certificate or compliance certificate shall be forwarded to the certifying authority detailing compliance with Council's approval at the following stage/s of construction: 
- i. After excavation work for the footings, but prior to pouring of concrete, showing the area of the land, building and boundary setbacks.
 - ii. Prior to construction of each floor level showing the area of the land, building and boundary setbacks and verifying that the building is being constructed at the approved level.
 - iii. Prior to fixing of roof cladding verifying the eave, gutter setback is not less than that approved and that the building has been constructed at the approved levels.
 - iv. On completion of the building showing the area of the land, the position of the building and boundary setbacks and verifying that the building has been constructed at the approved levels.
 - v. On completion of the drainage works (comprising the drainage pipeline, pits, overland flow paths, on-site detention or retention system, and other relevant works) verifying that the drainage has been constructed to the approved levels, accompanied by a plan showing sizes and reduced levels of the elements that comprise the works.
56. All excavation and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards and guarded and protected to prevent them from being dangerous to life or property. 

When excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building or an adjoining allotment of land, you shall:

- i. preserve and protect the building from damage and
- ii. underpin and support the building in an approved manner, if necessary and
- iii. give notice of intention to excavate below the level of the base of the footings of a building on an adjoining allotment of land to the owner at least 7 days prior to excavation and furnish particulars of the excavation to the owner of the building being erected or demolished.

Note: The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this conditions allotment of land includes a public road and any other public place.

Works shall not encroach onto or over adjoining properties, including retaining walls, fill material or other similar works. Soil shall not be lost from adjoining sites due to construction techniques employed on the subject site.

57. When soil conditions require it: 

- i. retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and
 - ii. adequate provision shall be made for drainage.
58. All contractors shall comply with the following during all stages of demolition and construction: 
 - A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
 - A current Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.
59. If groundwater is encountered during construction of the pool the pumped discharge from temporary dewatering shall be reinjected by either of the following methods: 
 - Discharge to the approved absorption system for the development site, or
 - Discharge to a temporary absorption system designed and certified by a qualified Engineer. The absorption system must comply with Rockdale Technical Specification Stormwater Management and be designed for rainfall over the excavated area and the expected pump rate for the dewatering operation.
60. All demolition work shall be carried out in accordance with AS2601 – 2001: The Demolition of Structures and with the requirements of the WorkCover Authority of NSW. 
61. The following conditions are necessary to ensure minimal impacts during construction: 
 - i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways,

footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.

- ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
- iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
- iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
- vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
 - a) spraying water in dry windy weather
 - b) cover stockpiles
 - c) fabric fences
- vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.

62. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction. A copy of the sign is available from Council. 

63. All existing trees located within the site may be removed. 

Prior to issue of occupation certificate or commencement of use

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

64. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building. 
65. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate. 
66. All excess excavated material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection. 
Note: Burning on site is prohibited.
67. Damage to brick kerb and/or gutter and any other damage in the road reserve shall be repaired using brick kerb and gutter of a similar type and equal dimensions. All works shall be to Council's satisfaction at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate. 
68. A 45 litre Zanthostemon chrysanthus (Golden Panda) or similar small feature tree is to be planted in a suitable location within the front setback of the property on completion of the building works and prior to the final inspection and issue of the Final Occupation Certificate". 
69. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council. 
70. Vehicles shall enter and exit the site in a forward direction at all times. A plaque with minimum dimensions 300mm x 200mm shall be permanently fixed to the inside skin of the front fence, or where there is no front fence a prominent place approved by the Principal Certifying Authority, stating the following: "Vehicle shall enter and exit the site in a forward direction at all times". 
71. Prior to completion of the building works, a full width vehicular entry is to be constructed to service the property. Any obsolete vehicular entries are to be removed and reconstructed with kerb and gutter. This work may be done using either a Council quote or a private contractor. There are specific requirements for approval of private contractors. 
72. The width of the single driveway shall be a minimum of 2.5 metres and a maximum of 3.0 metres. 
73. Prior to occupation, a registered surveyor shall certify that the driveway(s) over the footpath and within the property have been constructed in accordance with the approved driveway profile(s). The certification shall be based on a survey of the completed works. A copy of the certificate and a works-as-executed driveway profile shall be provided to Council if Council is not the Principal Certifying Authority. 
74. Prior to occupation, a chartered professional engineer shall certify that the tanking and waterproofing has been constructed in accordance with the approved design and specification. A copy shall be provided to Council if council is not the Principal Certifying Authority. 
75. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification 

Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.

76. All absorption trenches must be inspected prior to back filling and proceeding to subsequent stages of construction to the satisfaction of principal Certifying Authority. Supporting evidence shall be issued by a professional Civil Engineer experienced in stormwater system design and construction. 

Copies of documentary evidence are to be maintained by the Principal Certifying Authority and be made available to Council officers upon request.

77. The maximesh screens and removable geotextile are to be installed in the absorption system prior to connection of the downpipes to ensure the effective performance of the system during construction and the long term viability of the system. 

78. The owner of the premises is required to comply with the following requirements when installing a rainwater tank: 

- Inform Sydney Water that a Rainwater tank has been installed in accordance with applicable requirements of Sydney Water.
- The overflow from the rainwater tank shall be directed to the storm water system.
- All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties.
- A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.

79. Prior to occupation a Chartered Professional Engineer competent in geotechnics shall certify that the construction works has been constructed in accordance with the approved geotechnical report and include an evaluation of the completed works. 

Prior to occupation, a chartered professional engineer shall certify that the waterproofing of subsurface structure within the highest known groundwater table/rock + 0.5m has been constructed in accordance with the approved design and specification. A copy shall be provided to Council if council is not the Principal Certifying Authority.

A copy of the certificate shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.

Roads Act

80. Where applicable, the following works will be required to be undertaken in the road reserve at the applicant's expense: 

i) construction of a concrete footpath along the frontage of the development site;

- ii) construction of a new fully constructed concrete vehicular entrance/s;
- iii) removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
- iv) reconstruction of selected areas of the existing concrete Footpath/vehicular entrances and/or kerb and gutter;
- v) construction of paving between the boundary and the kerb;
- vi) removal of redundant paving;
- vii) construction of kerb and gutter.

Development consent advice

- a. All asbestos fibre demolition material and asbestos dust shall be handled, stored and removed in accordance with the relevant legislation and guidelines including: 

- Work Health and Safety Act 2011
- Work Health and Safety Regulation 2011
- Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (2005)]
- Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)]
- Protection of the Environment Operations (Waste) Regulation 2005

All work procedures shall be devised to minimise the release of dust and fibres. A checklist of safety precautions when working with asbestos is available in Health & Safety Guidelines prepared by the WorkCover Authority of NSW. Collection, storage and transportation is subject to the Protection of the Environment Operations (Waste) Regulation 2005.

- b. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including: 

- Work Health and Safety Act 2011
- Work Health and Safety Regulation 2011
- Protection of the Environment Operations (Waste) Regulation 2005.

- c. Demolition and construction shall minimise the emission of excessive noise and prevent “offensive noise” as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies: 

- choosing quiet equipment
- choosing alternatives to noisy activities
- relocating noise sources away from affected neighbours
- educating staff and contractors about quiet work practices
- informing neighbours of potentially noise activities in advance
- equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the

nearest residential boundary at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.

- d. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail. 

Clause 4.6 RLEP 2011
Objection to a Development Standard

3 Jones Avenue Monterey
09/08/17

Clause 4.6 RSLEP 2011

Objection to a Development Standard

Clarification is outlined below on how the Maximum Height development standard for 3 Jones Avenue Monterey may be varied slightly as strict compliance is shown to be unnecessary for the attainment of the objects specified in the Rockdale Local Environmental Plan 2011 (RLEP).

It is understood that RLEP is an administrative rather than a policy-making tool; therefore an amendment of the planning instrument is not requested. Flexibility is however sought in the application of planning controls in regards to the new residential dwellings at 3 Jones Avenue to be approved with a small portion of the home at a little more than the 8.5m maximum height requirement as stated in the Rockdale Local Environmental Plan 2011.

As per the NSW Planning & Infrastructure guidelines (i.e. Varying development standards: A guide 2011) the following clarification and arguments are made in favour of the proposed variation:

1. What is the name of the environmental planning instrument that applies to the land?

Rockdale Local Environmental Plan (RLEP) 2011

2. What is the zoning of the land?

R3 Medium Density Residential

3. What are the objectives of the zone?

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To protect and enhance existing vegetation and other natural features and encourage appropriate bushland restoration particularly along ridgelines and in areas of high visual significance.
- To allow the subdivision of land only if the size of the resulting lots retains natural features and allows a sufficient area for development.
- To ensure the single dwelling character, landscaped character, neighbourhood character and streetscapes of the zone are maintained over time and not diminished by the cumulative impact of multi dwelling housing or seniors housing.

4. What is the development standard being varied? e.g. FSR, height, lot size

The standard being varied is the Maximum Height requirement of 8.5m in relation to the sloping awning over the stairwell access for the proposed roof top terrace.

5. Under what clause is the development standard listed in the environmental planning instrument?

The development standard is listed under Clause 4.3 Height of Buildings, with reference to the Height of Buildings Map which indicates a maximum height of 8.5m for the site in question.

6. What are the objectives of the development standard?

The objectives of this clause are as follows:

- (a) to establish the maximum limit within which buildings can be designed and floor space can be achieved,*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,*
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.*

7. What is the numeric value of the development standard in the environmental planning instrument?

The numeric value for Height of Buildings is 8.5m (as per the Height of Buildings Map)

8. What is proposed numeric value of the development standard in your development application?

The proposed numeric value is 9.63m (i.e. an additional 1.13m) for the highest point of the sloping awning of the roof top terrace stairwell access.

9. What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation between the proposed and the environmental planning instrument is 13.29% for the highest point of the awning.

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

Strict compliance with the development standard is unreasonable and unnecessary in this particular case for the following reasons:

- 1) The proposed increase is only for the highest point of the sloping small awning cover over the roof top terrace stairwell access. The support structure of this awning is minimal and the awning itself is not surrounded by walls but by glazing right round therefore in terms of bulk and scale only the awning itself is solid. If deemed necessary by Council, even the awning material itself can be of clear glazing and thus the impact of this awning is minimal in the context of its materiality, the overall size of the site and consequently any possible adverse impact on neighbours.
- 2) The proposed stair awning is critically necessary to facilitate reasonable amenity for stair access to the proposed roof top terrace. Given that there are no alternative solutions to providing some type of awning cover for the staircase, the most minimal design that affords amenity but does not impact neighbours adversely is a reasonable allowance for exceeding the maximum height allowance.

- 3) The proposed awning is significantly stepped back from both the side, front and rear boundaries and therefore is minimally visible both from the streetscape and from the neighbours. More importantly the setback of the stair awning relative the dwelling, when combined with the clear glazing nature of the side walls and possibly even of the awning itself, ensure adverse impact, that the maximum building height is designed to curtail, is not an issue in this particular project case.

11. How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act.

Note: If more than one development standard is varied, an application will be needed for each variation (eg FSR and height).

The objectives of the act are as follows:

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

(ii) the promotion and co-ordination of the orderly and economic use and development of land, State environmental planning policy (or SEPP) see section 24 (2) of EP&A Act.

Maximum Building Height

With regards to the the maximum building height, as with the above stated, strict compliance with the building height requirement would hinder the attainment of the objectives related to development and conservation of resources to this particular parcel of land from the perspective of the Owners and intended occupiers of the proposed development. Specifically reasonable amenity would be very difficult to achieve in terms of a practical design outcome (i.e. access to the roof top terrace while ensuring cover from the elements) as well as the quality of the general architectural character of the proposed design. On the other hand strict compliance would be of no measurable specific benefit to neighbours or the wider community (i.e. the Public) as discussed above if clear glazing materials are used to allow for unimpeded solar access for all. There is no expected impact as a result of the variation on existing trees, neighbouring property overshadowing, view loss or solar access, no direct impact to roads or services.

12. Is the development standard a performance based control? Give details. Additional matters to address

As outlined in "Varying Development Standards: A Guide" there are other additional matters that applicants should address when applying to vary a development standard.

Maximum Building Height

The standard is a specific numerical control related to Maximum Building Height of the proposed development with specific objectives, and in this particular application creates an exceptional case warranting variation to the control given the very minor variation sought, little if any Public impact, yet a significant factor in terms of allowing the development to provide reasonable amenity and meet the needs of the Owners.

13. Would strict compliance with the standard, in your particular case, would be unreasonable or unnecessary? Why?

Note: It should be pointed out that question 13 of the Guide is similar in intent and structure to question 10.

Maximum Building Height

As discussed the proposed variation is minimal in terms of its scope and therefore impact with little to no adverse impact to neighbours in terms of visibility, solar access and overshadowing. In this way strict compliance is both unnecessary and unreasonable in achieving practical design outcomes.

14. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.

In terms of environmental planning grounds, especially from a Council perspective focused on Public outcomes, the cumulative effect of similar proposals to 3 Jones Avenue Monterey will not have a detrimental effect in the area as long as the core objectives specified in the RLEP 2011 are met. These include a substantial commitment being made to keep the proposed additional height as small as possible (as described) so that there is little discernible negative impact to the Public but significant approval outcomes for the Owners in allowing for this variation.

In the same way, every effort has been made to ensure the proposed increase in building height is limited both in terms of the scope of the contravention being sought and critically and most importantly in terms of the impact of this addition to adjoining owners and properties.

The Development Standard in relation to the “Five Part Test”

Written applications to vary development standards will not only address the above matters but may also address matters set out in the ‘five part test’ established by the NSW Land and Environment Court. Councils may choose to not only use the principles of Clause 4.6 and SEPP1 but also this five part test.

Court cases dealing with applications to vary development standards resulted in the Land and Environment Court setting out a five part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development standards is well founded:

1) the objectives of the standard are achieved notwithstanding noncompliance with the standard;

(a) to establish the maximum limit within which buildings can be designed and floor space can be achieved,

The overall building is more than 1m below the maximum height requirement of 8.5m where the natural ground is at its lowest point at the centre, with even greater clearance below the maximum height towards the front and rear of the building where the natural ground is higher. In this way the home is well constrained within the limits allowed in terms of overall bulk and scale.

It is only in relation the awning cover over the stairwell access to the roof top terrace where a portion of this awning is over the height requirement (i.e. only half of the awning cover is over the 8.5 maximum height requirement; that is the portion of the awning nearest to the centre of the site)

In this way whether this portion of the sloping awning is over the height requirement or not has no bearing on the intent for the “*maximum limit within which buildings can be designed and floor space can be achieved*” given that the overall dwelling is greatly below and therefore well constrained in terms of bulk in scale in relation to the maximum 8.5m height requirement.

- (b) *to permit building heights that encourage high quality urban form,*
In terms of architectural merit it would be difficult to argue that a roof top terrace awning would be visually detrimental as viewed from the street given that the awning is substantially set back both from the front boundary (i.e. 19.46m) and from the front façade of the building (i.e. 5.5m). In this way an individual standing several metres away from the front boundary would not be able to see the awning and anyone across the street would only be able to see a small section of the highest portion of the sloping awning which is above the 8.5m height restriction.

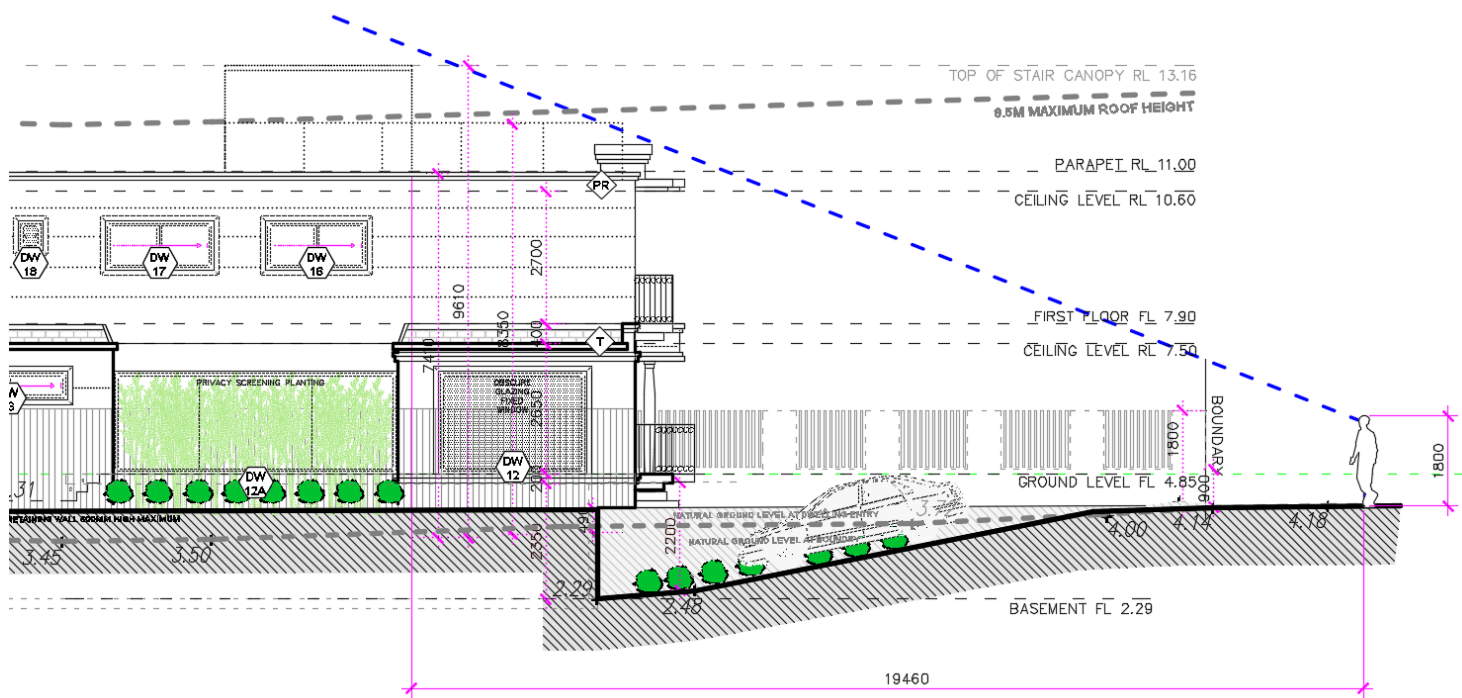


Image illustrating sight lines to the front façade as viewed from the streetscape

- (c) *to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,*

In terms of the surrounding buildings the awning is positioned 3m away from the Northern boundary neighbour at 1 Jones Avenue and 6m away from the Southern boundary neighbour at 5 Jones Avenue. In this way the Northern boundary neighbour is not affected as the portion of the awning closest to their Northern side boundary is well below the 8.5m maximum height requirement. In terms of the Southern boundary

neighbour at 5 Jones Avenue, the location of the awning 6m away from the side boundary means that the awning terminates at the centre of the site and in this way visibility of the awning would be very difficult as illustrated in the image below. The central location stepped back from the side boundary by 6m also ensures that no additional shadows are likely to be cast by the awning onto the Southern neighbour.

The location and shape of the awning therefore ensures that there are very limited views and no real expected adverse impacts.

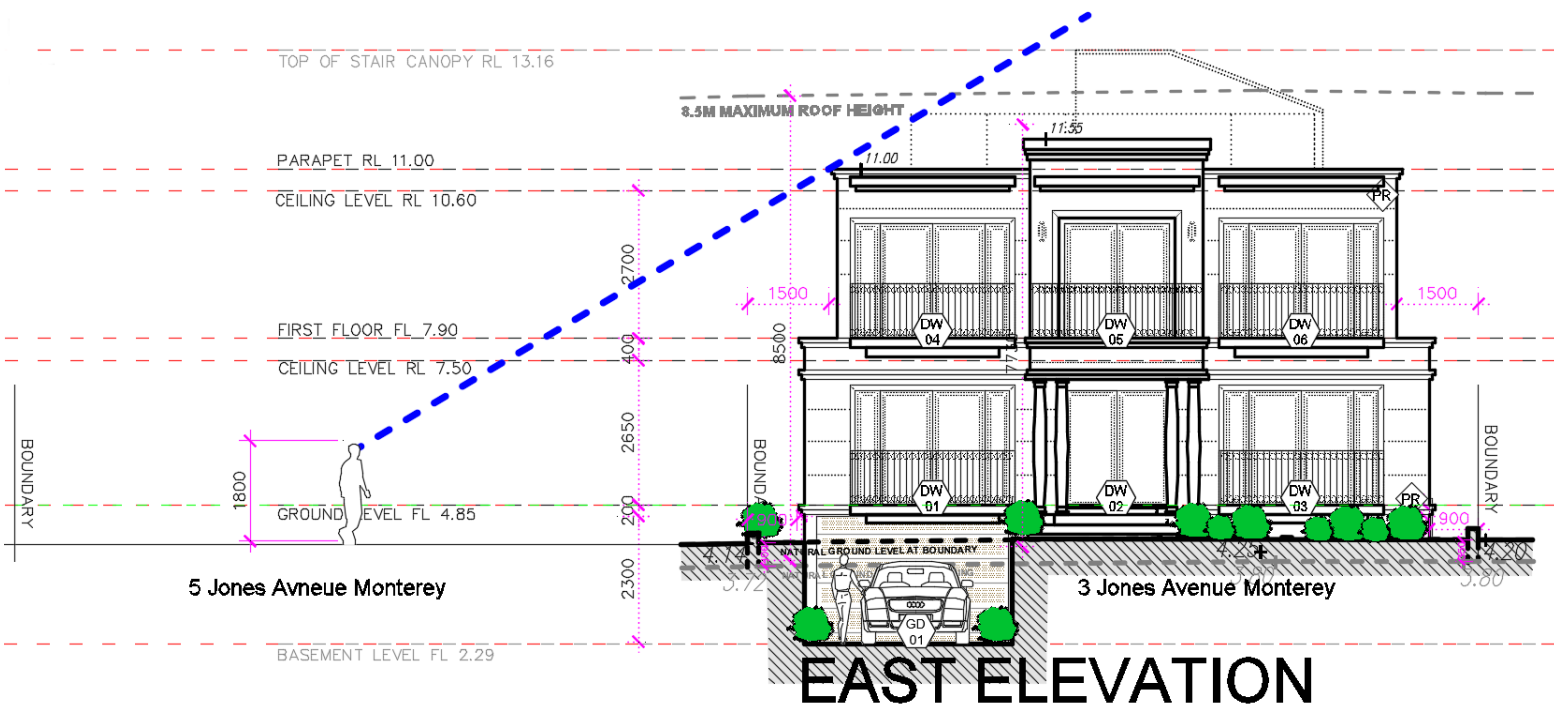


Image illustrating sight lines to the dwelling as viewed from within the neighbours property

(d) to nominate heights that will provide an appropriate transition in built form and land use intensity.

As per the above images and description of the overall setbacks, location and bulk of the awning relative to the rest of the home, there is appropriate transition with regards to the portion of the awning which is above the maximum 8.5m height requirement.

2) the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

Given that the purpose of the standard in this particular case is to avoid adverse impact on neighbours and to the public in general, compliance is unnecessary due to the centralised location, setbacks, bulk, limited scale and sloping form of the proposed awning relative to the street and to side boundary neighbours.

3) the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

Absolutely, given compliance would mean no clear reasonable and practical access to the roof top terrace (i.e. shelter and enclosure over the stairwell access would make access more difficult and impractical) with no clear benefit to neighbours and the public in return.

- 4) the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;**

Within the former Rockdale Council area which the property is situated this is very much the case that the development standard has been virtually abandoned by Council's own actions and an important consideration especially in this case where we are only considering a portion of an awning being above the 8.5m maximum height requirement. There are many recent and historic examples within the Council area which have been approved and built with a roof top terrace awning above the 8.5m height restriction. Precedents such as these are an accepted part of new home design in the area given that the non compliance typically does not impact neighbour amenity.

There are even recent builds in the area which do not provide any setback or reduced bulk and scale of their roof top terrace awnings relative to neighbours as pictured below.

Given however in this case at 3 Jones Avenue the great lengths gone to in order to make sure the awning structure is designed to not impact neighbours (i.e. adequately stepped back away from neighbours, and therefore not easily visible) the proposed roof top terrace stairwell awning is one of the better designed in comparison to existing roof top terrace awning in the area.



Example of a poorly located and designed awning in comparison to our proposal, facing the side boundary neighbour at nearby 9 Robinson Street

Other than roof top terrace awnings approved by Council and built exceeding height requirements, there are also examples of dwellings on Jones Avenue itself where the homes are over the 8.5m height requirement, one example being 9 Jones Avenue as illustrated below.



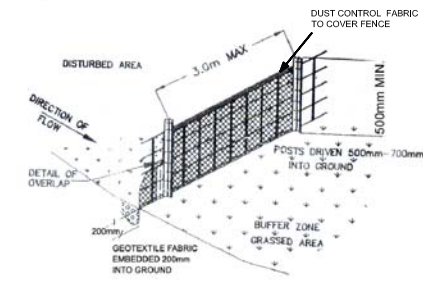
One example of a historic precedent at Jones Avenue specifically of a dwelling exceeding the 8.5m height requirement, in this case the overall roof form at 9 Jones Avenue

In comparison to the level of non compliance demonstrated by a variety of Council approved homes in the area both existing and under construction, how can it be argued that the relatively minor non compliance at 3 Jones Avenue is not appropriate?

- 5) the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.**

The zoning for this particular parcel of land at 5 Jones Avenue is Medium Density residential as per the local Environmental Plan and therefore the current home proposal is within the scope of that zoning with the only non compliance being in relation to a portion of the sloping awning being over the maximum 8.5m maximum height requirement, in which it has been demonstrated with all the above points raised that the objectives of the clause are met. In this way strictly adhering to the numeric value of the maximum height rather than the objectives of the clause would be both unreasonable and inappropriate in this case.

TYPICAL DETAIL - SILT BARRIER FENCE



MID-DAY
SUN
12:00PM

LOT 701
D.P.1052721

LOT 1
D.P.383832

WEATHERBOARD
GRANITE SLAT
7870

No.1
BRICK COTTAGE
TILED ROOF
ROOF RIDGE 8.95
T.6.18
B.5.18
T.6.18
B.5.38
T.6.18
B.4.98
U/S EAVE 6.68



POWER
POLE
B.M.
CUT IN KERB
R.L.4.22
4.23 T.K.

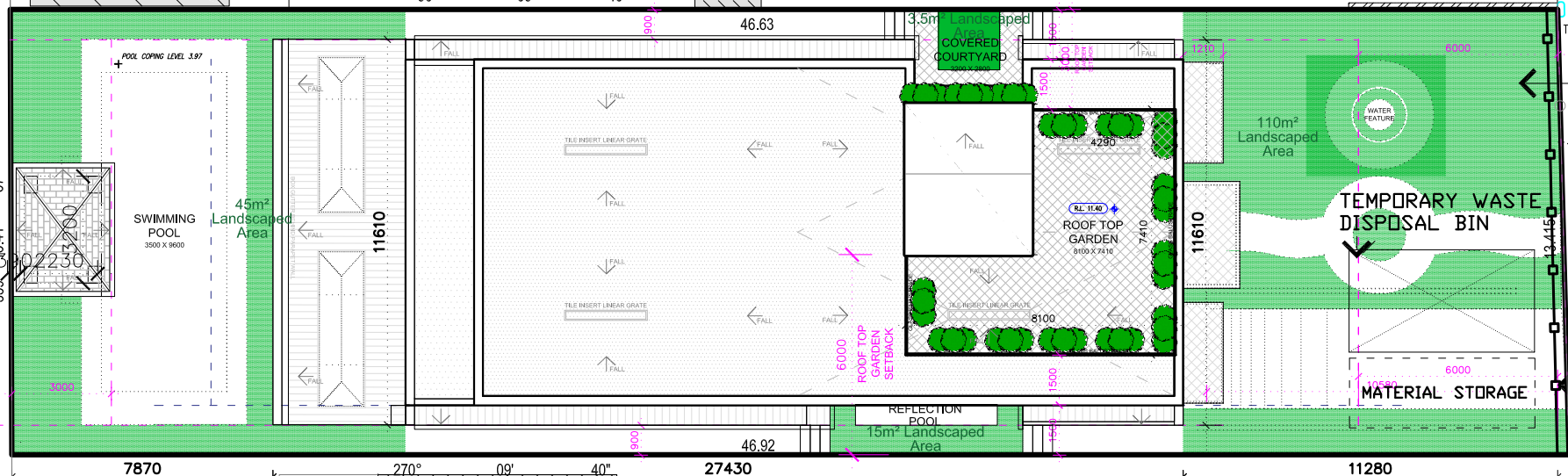
AVENUE
JONES
MATERIALS
DELIVERY
ACCESS POINT
DURING
CONSTRUCTION
STAGE

MORNING
SUN
9:00AM

SILT BARRIER
FENCE FOR
ACCESS AND
SEDIMENT
CONTROL

S.P.3069

AFTERNOON
SUN
3:00PM



Calculations

Total Site Area:	627.3m²
FSR:	0.6:1
Total Allowable Floor Area:	376.38m²
Total Proposed Floor Area:	380m²
Allowable Landscape Area:	25% (156.8m²)
Proposed Landscape Area:	157m²

LOT 13
D.P.21440

No.5
BRICK COTTAGE
TILED ROOF
ROOF RIDGE 8.79
T.6.12
B.4.92
T.6.12
B.4.92
T.6.12
B.4.92
T.6.12
B.4.92
U/S EAVE 6.62

CONTACT:
PLEASE CONTACT MILOU & ASSOCIATES
IF DEEMED NECESSARY IN REGARDS TO
THE DRAWINGS AND THE DEVELOPMENT
APPLICATION IN GENERAL. PH:9587 3572
PH:0411448482

DESIGNER:

CLIENT:
Sophie & Magdy Yousef

PROJECT:
PROPOSED NEW DWELLING
at
3 Jones Avenue Monterey NSW 2217
D.P. 21440, Lot 12

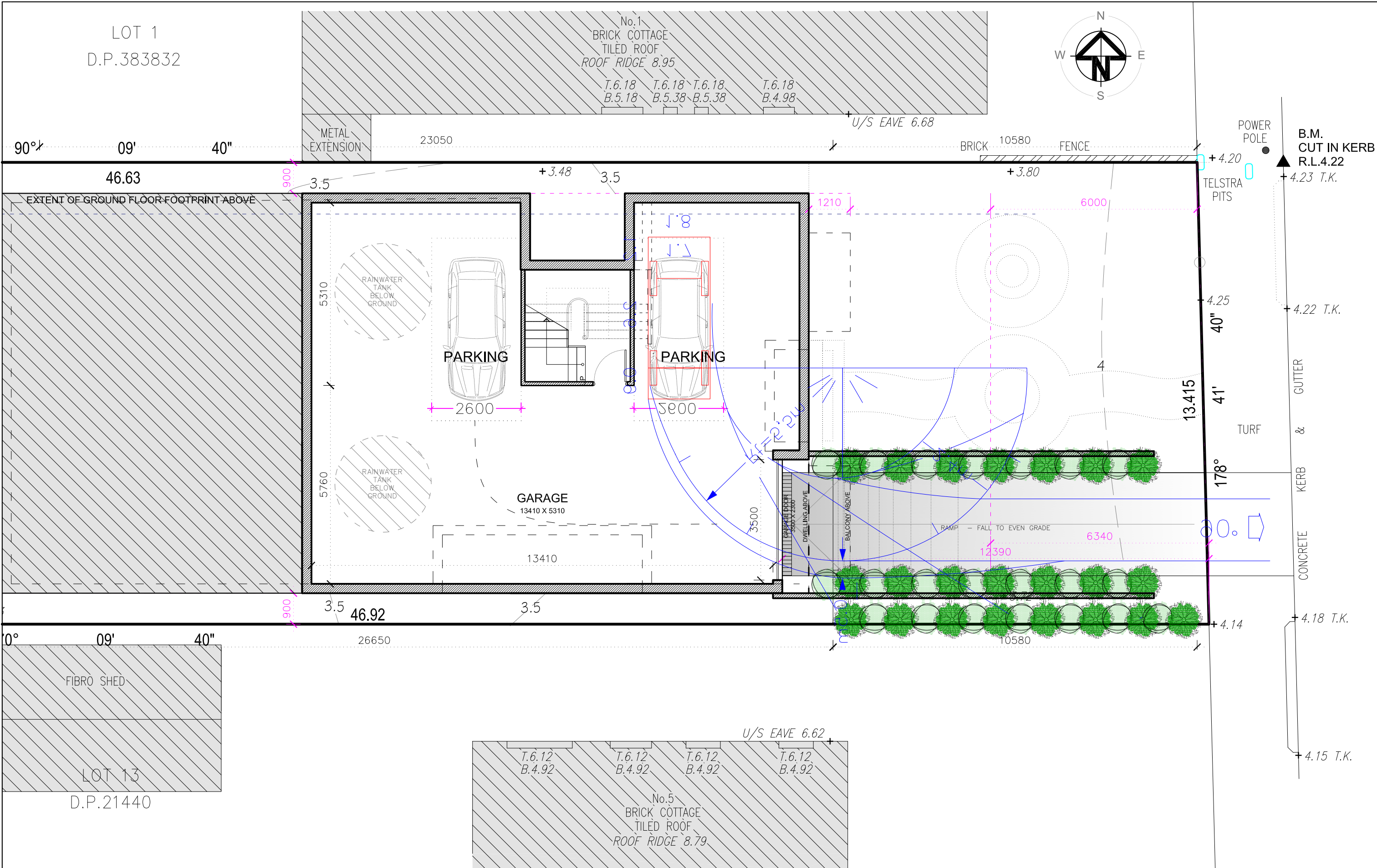
TITLE:
SITE PLAN

STATUS: DEVELOPMENT APPLICATION

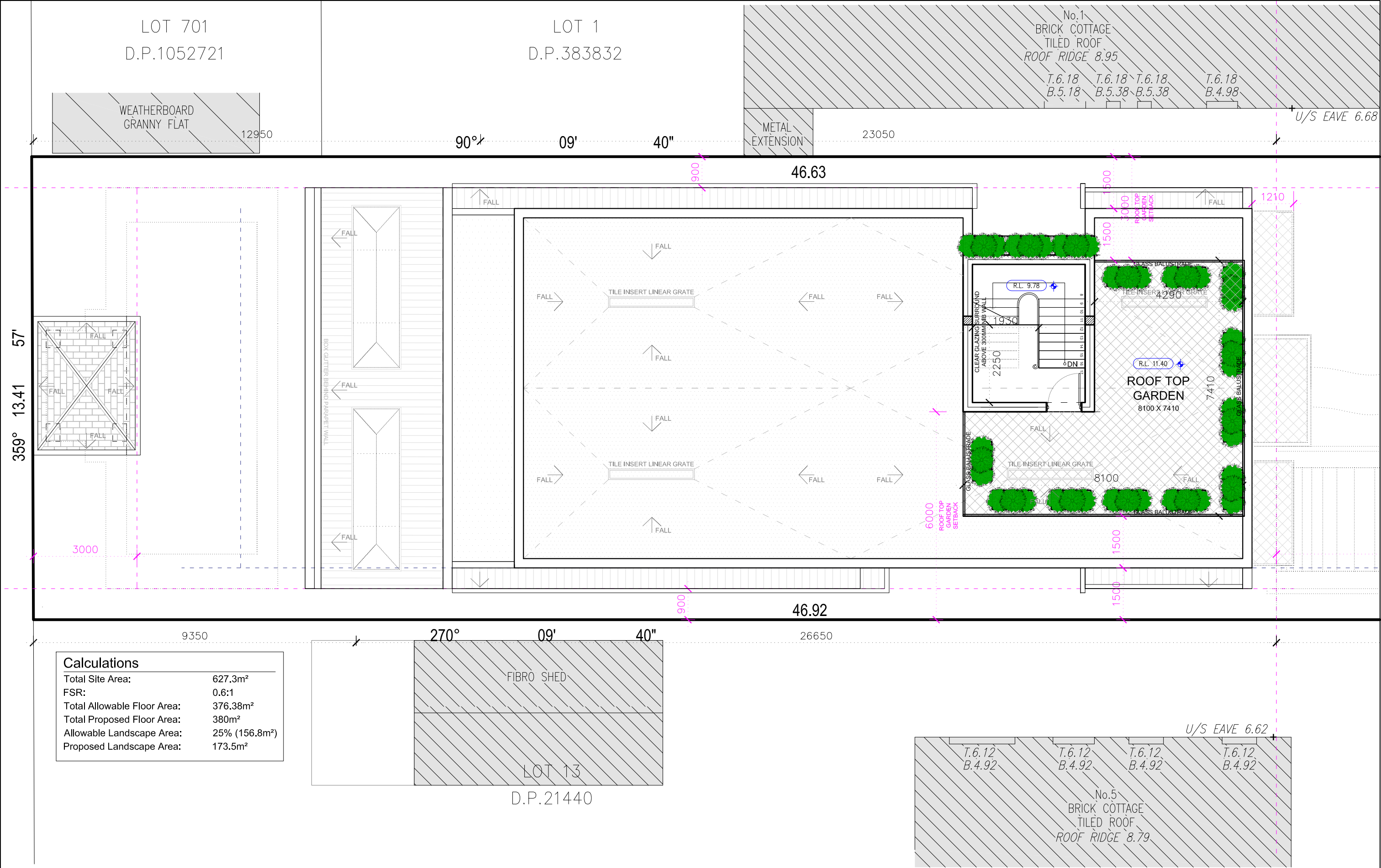
DATE: 25.06.17 SCALE: 1:200 PROJ: 32-2017

STAGE: DA DRAWN: A.M CHECKED: APPROVED:

TYPE: A3 SHEET: 12 REV: 1



CONTACT: PLEASE CONTACT MILOU & ASSOCIATES IF DEEMED NECESSARY IN REGARDS TO THE DRAWINGS AND THE DEVELOPMENT APPLICATION IN GENERAL. PH:9587 3572 PH:0411448482	DESIGNER:	CLIENT: Sophie & Magdy Yousef	PROJECT: PROPOSED NEW DWELLING at 3 Jones Avenue Monterey NSW 2217 D.P. 21440, Lot 12	TITLE: GARAGE & SERVICES FLOOR PLAN	STATUS: DEVELOPMENT APPLICATION			
					DATE: 25.06.17	SCALE: 1:100	PROJ: 	JOB: 32-2017
					STAGE: DA	DRAWN: A.M	CHECKED: 	APPROVED:
					FILE: 	PLOTTED: 	TYPE: A3	REV: 5 1



Calculations

Total Site Area:	627.3m ²
FSR:	0.6:1
Total Allowable Floor Area:	376.38m ²
Total Proposed Floor Area:	380m ²
Allowable Landscape Area:	25% (156.8m ²)
Proposed Landscape Area:	173.5m ²

CONTACT:
PLEASE CONTACT MILOU & ASSOCIATES
IF DEEMED NECESSARY IN REGARDS TO
THE DRAWINGS AND THE DEVELOPMENT
APPLICATION IN GENERAL. PH:9587 3572
PH:0411448482

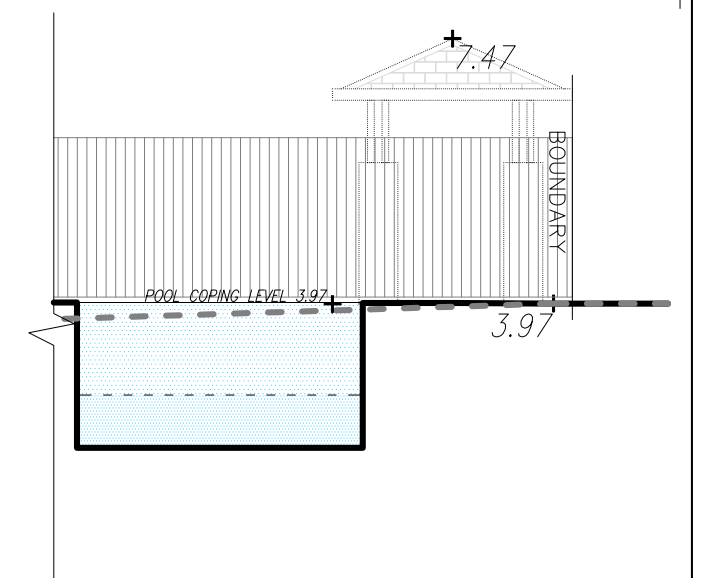
DESIGNER:

CLIENT:
Sophie & Magdy Yousef

PROJECT:
PROPOSED NEW DWELLING
at
3 Jones Avenue Monterey NSW 2217
D.P. 21440, Lot 12

TITLE:
ROOF TOP TERRACE FLOOR PLAN
FILE:
PLOTTED:

STATUS: DEVELOPMENT APPLICATION			
DATE: 25.06.17	SCALE: 1:100	PROJ:	JOB: 32-2017
STAGE: DA	DRAWN: A.M	CHECKED:	APPROVED:
TYPE: A3	SHEET: 4	REV: 1	



STATUS: DEVELOPMENT APPLICATION			
DATE: 25.06.17	SCALE: 1:100	PROJ:	JOB: 32-2017
STAGE: DA	DRAWN: A.M	CHECKED:	APPROVED:
TYPE: A3	SHEET: 6	REV: 1	



FINISHES LEGEND

T Tile Roof (Rear of Dwelling)

PR Paint & Render Finish to Full Brick Walls

DW 01 Doors & Windows

GD 01 New Garage Door or Re-coat Existing

DETAILS

Tile Roof (Rear of Dwelling)

"Shale Grey", or similar

Paint Finish

"Warm Neutral" or similar

Aluminium powder coated windows

Stegbar Anodized aluminium or grey powder coated aluminium windows or similar

Colorbond® powder coat guttering

"Shale Grey", or similar

CONTACT:
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THE DRAWINGS AND THE DEVELOPMENT
APPLICATION IN GENERAL. PH:9587 3572
PH:0411448482

DESIGNER:

CLIENT:

Sophie & Magdy Yousef

PROJECT:

PROPOSED NEW DWELLING

at
3 Jones Avenue Monterey NSW 2217
D.P. 21440, Lot 12

TITLE:

EAST ELEVATION (WITH FENCING)

FILE:

PLOTTED:

STATUS:

DEVELOPMENT APPLICATION

DATE:

25.06.17

SCALE:

1:100

PROJ:

JOB:

32-2017

STAGE:

DA

DRAWN:

A.M

CHECKED:

APPROVED:

TYPE:

A3

SHEET:

9

REV:

1

TOP OF STAIR CANOPY RL 13.16

PARAPET RL 11.00

CEILING LEVEL RL 10.60

FIRST FLOOR FL 7.90

CEILING LEVEL RL 7.50

GROUND LEVEL FL 4.31

8.5M MAXIMUM ROOF HEIGHT



WEST ELEVATION

1:100 SCALE

FINISHES LEGEND

T Tile Roof (Rear of Dwelling)

PR Paint & Render Finish to Full Brick Walls

DW 01 Doors & Windows

GD 01 New Garage Door or Re-coat Existing

DETAILS

Tile Roof (Rear of Dwelling)

"Shale Grey", or similar

Paint Finish

"Warm Neutral" or similar

Aluminum powder coated windows

Stegbar Anodized aluminium or grey powder coated aluminium windows or similar

Colorbond® powder coat guttering

"Shale Grey", or similar

CONTACT:
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APPLICATION IN GENERAL. PH:9587 3572
PH:0411448482

DESIGNER:

CLIENT:
Sophie & Magdy Yousef

PROJECT:
PROPOSED NEW DWELLING
at
3 Jones Avenue Monterey NSW 2217
D.P. 21440, Lot 12

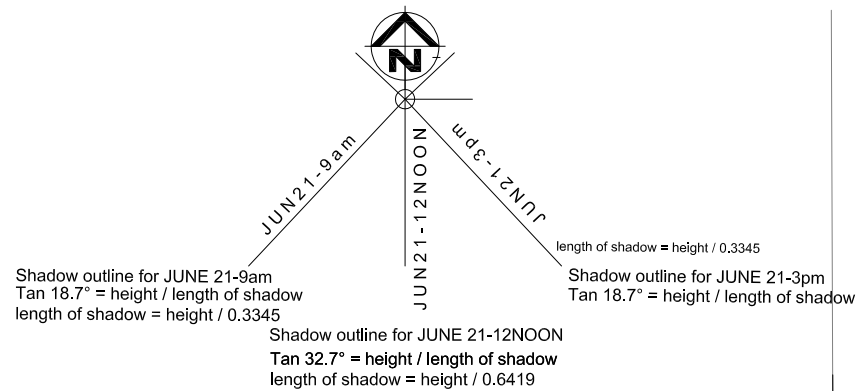
TITLE:
WEST ELEVATION

STATUS: **DEVELOPMENT APPLICATION**

DATE: 25.06.17 SCALE: 1:100 PROJ: 32-2017

STAGE: DA DRAWN: A.M CHECKED: APPROVED:

TYPE: A3 SHEET: 10 REV: 1

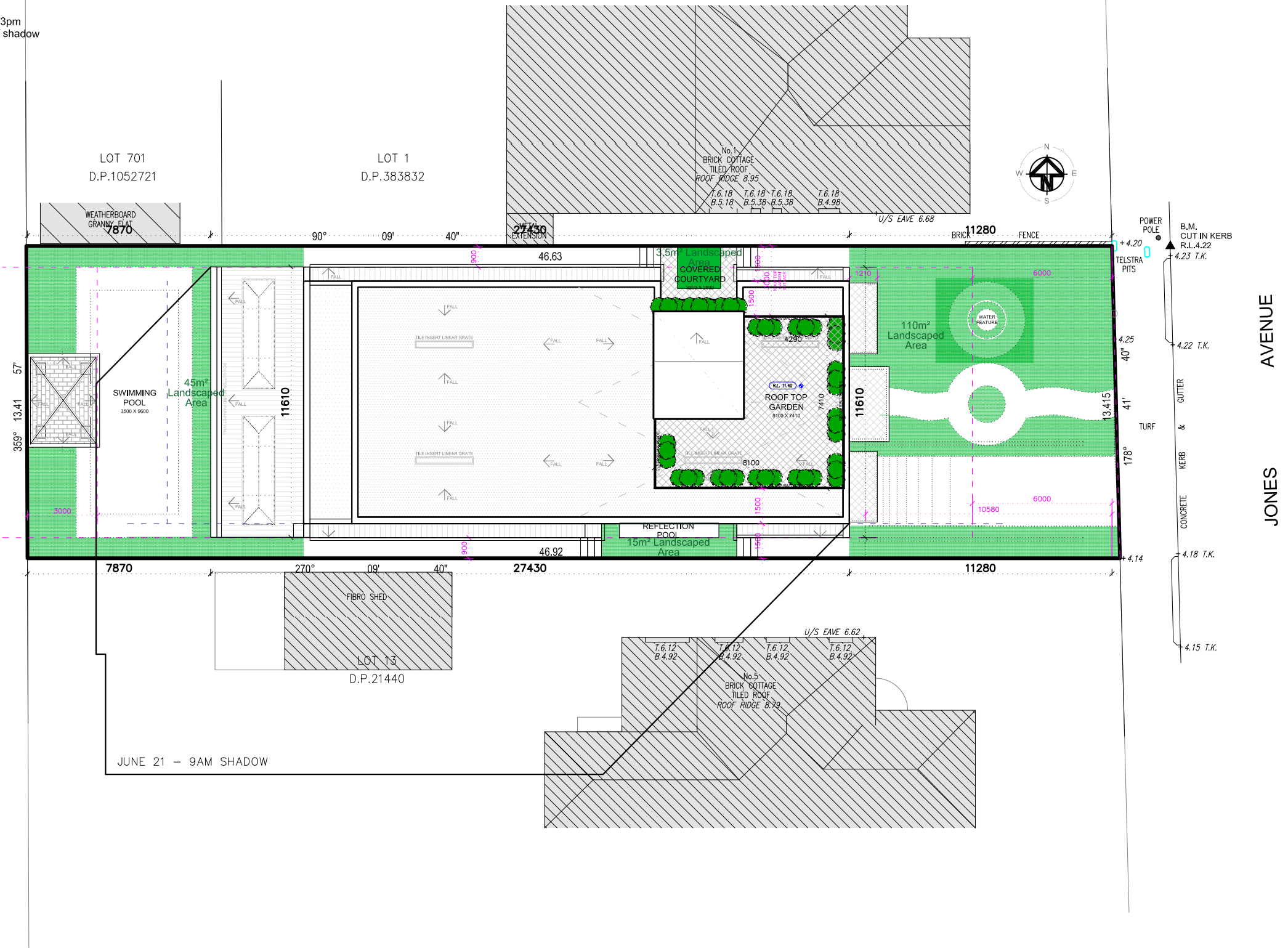


LEGEND

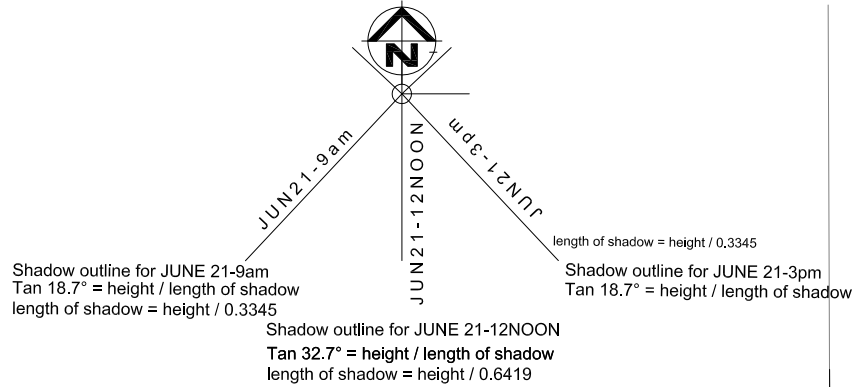


JUNE 21 - 9AM SHADOW

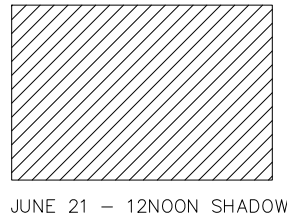
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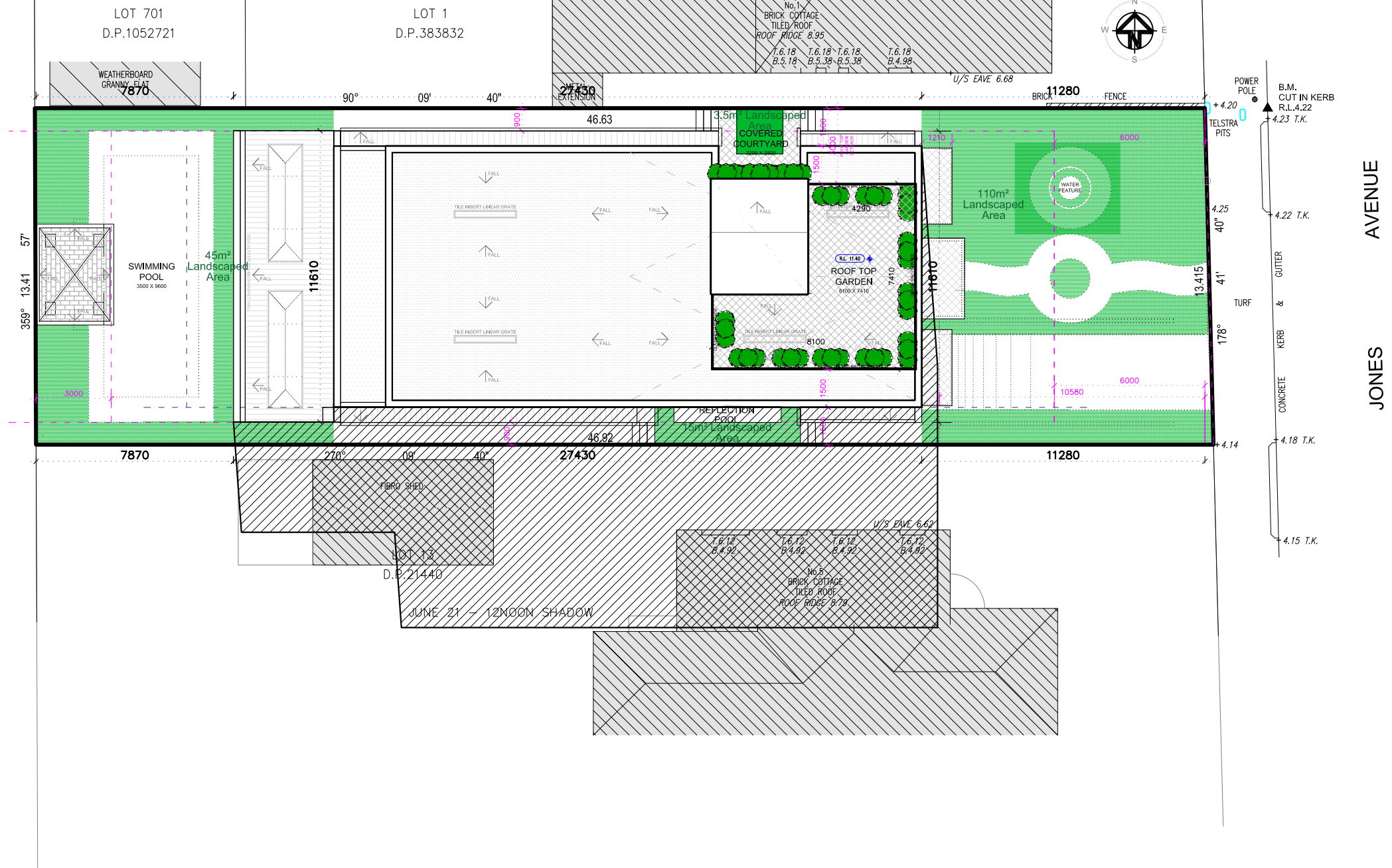
CONTACT: PLEASE CONTACT MILOU & ASSOCIATES IF DEEMED NECESSARY IN REGARDS TO THE DRAWINGS AND THE DEVELOPMENT APPLICATION IN GENERAL. PH:9587 3572 PH:0411448482	DESIGNER:	CLIENT: Sophie & Magdy Yousef	PROJECT: PROPOSED NEW DWELLING at 3 Jones Avenue Monterey NSW 2217 D.P. 21440, Lot 12	TITLE: SHADOW DIAGRAM - JUNE 9:00PM	STATUS: DEVELOPMENT APPLICATION			
					DATE: 25.06.17	SCALE: 1:200	PROJ:	JOB: 32-2017
					STAGE: DA	DRAWN: A.M	CHECKED:	APPROVED:
					FILE:	PLOTTED:	TYPE: A3	REV: 1



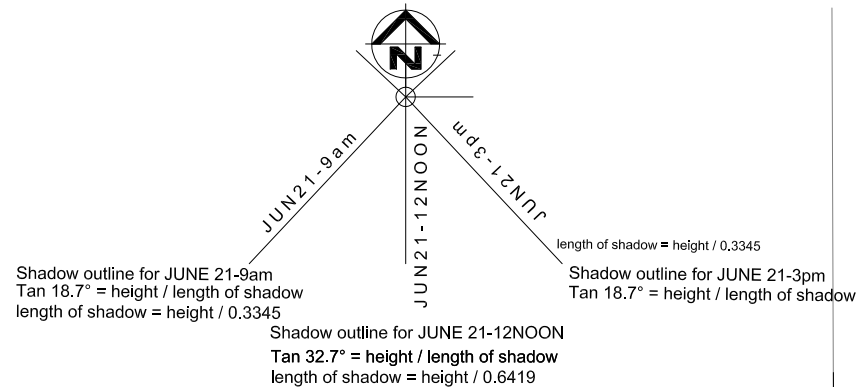
LEGEND



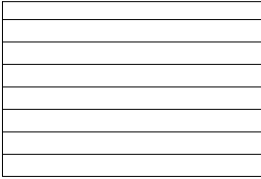
S.P.3069



CONTACT: PLEASE CONTACT MILOU & ASSOCIATES IF DEEMED NECESSARY IN REGARDS TO THE DRAWINGS AND THE DEVELOPMENT APPLICATION IN GENERAL. PH:9587 3572 PH:0411448482	DESIGNER:	CLIENT: Sophie & Magdy Yousef	PROJECT: PROPOSED NEW DWELLING at 3 Jones Avenue Monterey NSW 2217 D.P. 21440, Lot 12	TITLE: SHADOW DIAGRAM - JUNE 12:00PM	STATUS: DEVELOPMENT APPLICATION			
					DATE: 25.06.17	SCALE: 1:200	PROJ:	JOB: 32-2017
					STAGE: DA	DRAWN: A.M	CHECKED:	APPROVED:
					FILE:	PLOTTED:	TYPE: A3	REV: 1

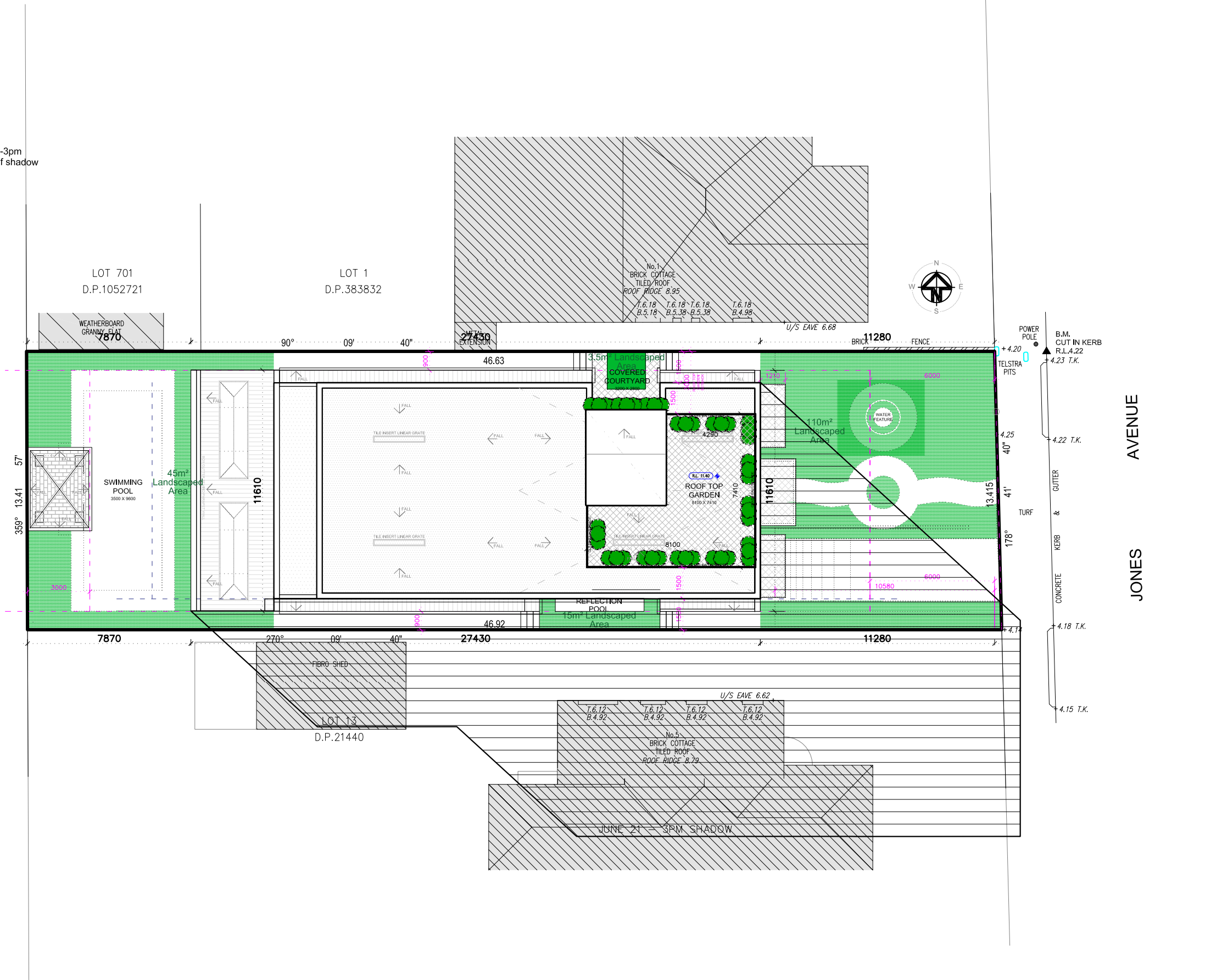


LEGEND

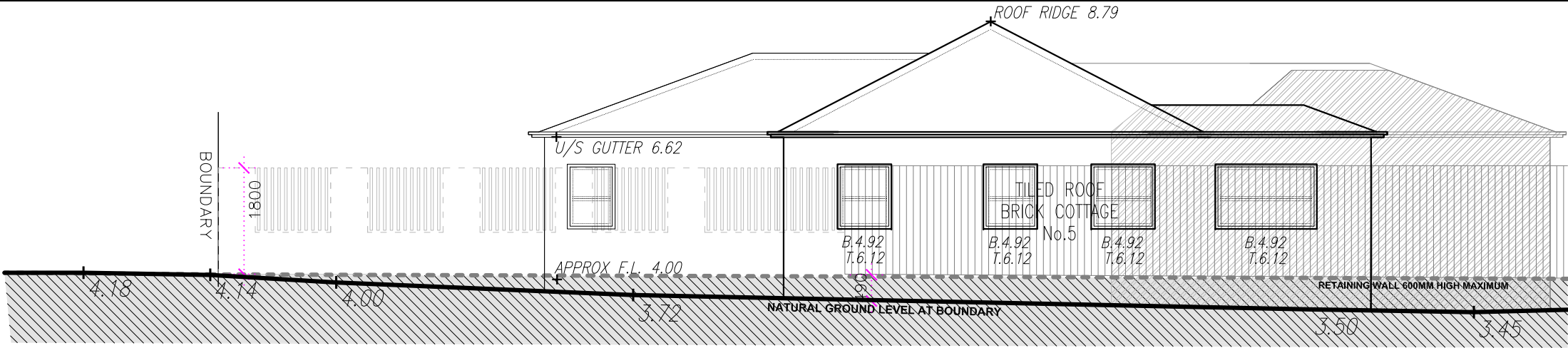


JUNE 21 - 3PM SHADOW

S.P.3069



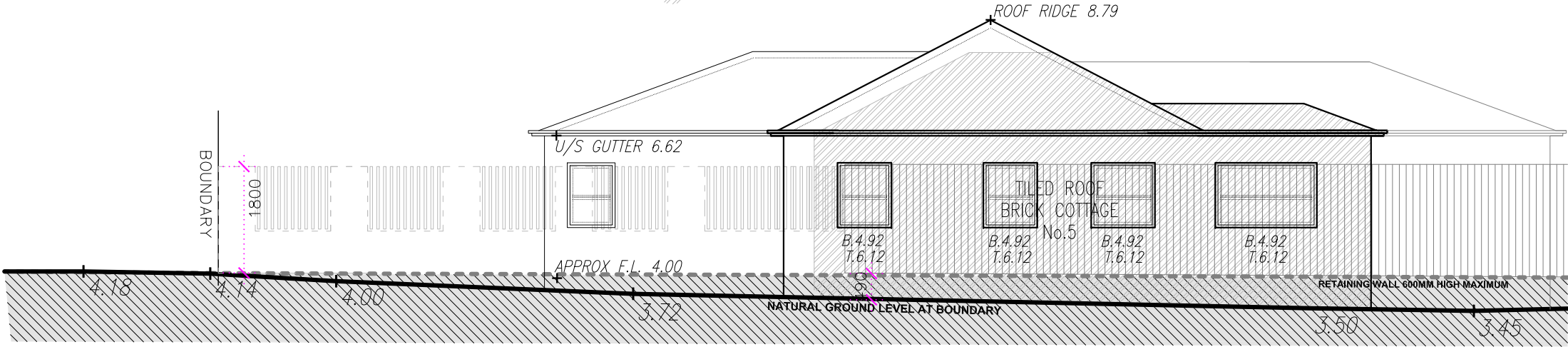
CONTACT: PLEASE CONTACT MILOU & ASSOCIATES IF DEEMED NECESSARY IN REGARDS TO THE DRAWINGS AND THE DEVELOPMENT APPLICATION IN GENERAL. PH:9587 3572 PH:0411448482	DESIGNER:	CLIENT: Sophie & Magdy Yousef	PROJECT: PROPOSED NEW DWELLING at 3 Jones Avenue Monterey NSW 2217 D.P. 21440, Lot 12	TITLE: SHADOW DIAGRAM - JUNE 3:00PM	STATUS: DEVELOPMENT APPLICATION			
					DATE: 25.06.17	SCALE: 1:200	PROJ:	JOB: 32-2017
					STAGE: DA	DRAWN: A.M	CHECKED:	APPROVED:
					FILE:	PLOTTED:	TYPE: A3	REV: 1



NORTH ELEVATION - 9AM JUNE 21 SHADOW

1:100 SCALE No.5 JONES AVENUE MONTEREY

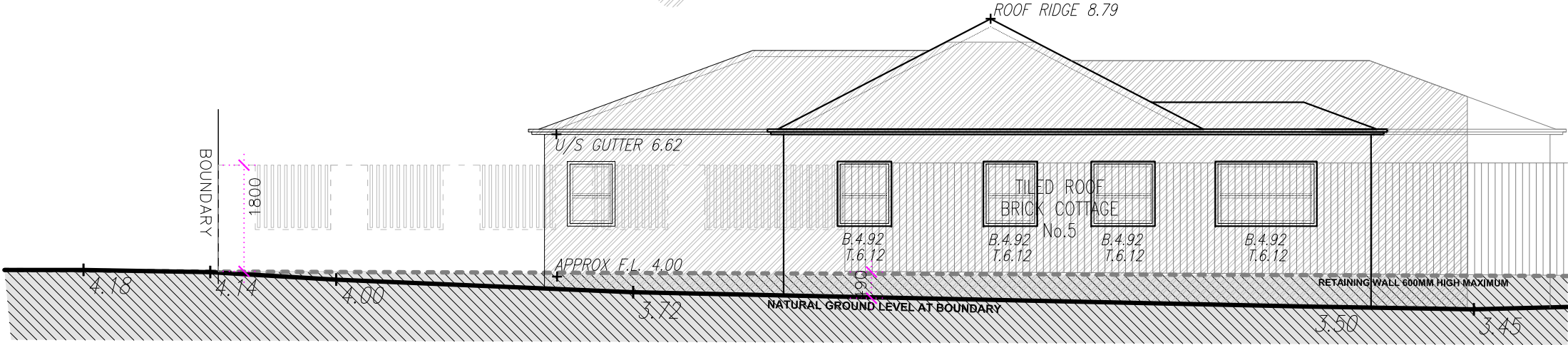
SHADOWS CAST:



NORTH ELEVATION - 12PM JUNE 21 SHADOW

1:100 SCALE No.5 JONES AVENUE MONTEREY

SHADOWS CAST:



NORTH ELEVATION - 3PM JUNE 21 SHADOW

1:100 SCALE No.5 JONES AVENUE MONTEREY

SHADOWS CAST:

CONTACT: PLEASE CONTACT MILOU & ASSOCIATES IF DEEMED NECESSARY IN REGARDS TO THE DRAWINGS AND THE DEVELOPMENT APPLICATION IN GENERAL. PH:9587 3572 PH:0411448482	DESIGNER:	CLIENT: Sophie & Magdy Yousef	PROJECT: PROPOSED NEW DWELLING at 3 Jones Avenue Monterey NSW 2217 D.P. 21440, Lot 12	TITLE: SHADOW DIAGRAMS - JUNE ELEVATIONS	STATUS: DEVELOPMENT APPLICATION			
					DATE: 25.06.17	SCALE: 1:200	PROJ: 	JOB: 32-2017
					STAGE: DA	DRAWN: A.M	CHECKED: 	APPROVED:
					FILE: 	PLOTTED: 	TYPE: A3	REV: 1