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## Bayside Planning Panel

**26/09/2017**

Item No	5.4
Application Type	Development Application – Commercial Development
Application Number	DA-2016/173
Lodgement Date	29 September 2016
Property	21 Bay Street, Botany NSW
	Lot 1 DP 201192
Owner	Mr Michael A Nehme Malex Developments Pty Ltd
Applicant	Shed Architects Ptd Ltd
Proposal	Integrated Development for the construction of a four storey commercial development with ground level parking and associated landscaping works
No. of Submissions	<ul style="list-style-type: none"><li>• Seven submissions (first round: 25 October 2016 to 25 November 2016)</li><li>• Five submissions (re-notification to original objectors, 11 August 2017 to 18 August 2017 )</li></ul>
Cost of Development	\$445,000.00
Report by	Katerina Lianos, Development Assessment Planner

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## Officer Recommendation

- 1 That Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of *Botany Bay Local Environmental Plan 2013* and that the proposed development is in the public interest as it is consistent with the objective of the Height Standard and the objectives for the B7 – Business Park Zone.
  - 2 That Development Application No. 2017/0012 for the construction of a four storey commercial development with ground level parking and associated landscaping works at 21 Bay Street, Botany 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.
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## Attachments

- 1 Planning Assessment Report
- 2 Clause 4.6 variation to height
- 3 Site & Site Analysis Plan
- 4 Upper Level Floor Typical Plan
- 5 Roof Plan

- ## Location Plan



# BAYSIDE COUNCIL

## Planning Assessment Report

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### Application Details

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<b>Application Number:</b>	2016/173
<b>Date of Receipt:</b>	29 September 2016
<b>Property:</b>	21 Bay Street, Botany NSW
<b>Owners:</b>	Mr Michael A Nehme Malex Developments Pty Ltd
<b>Applicant:</b>	Shed Architects Ptd Ltd
<b>Proposal:</b>	Integrated Development for the construction of a four storey commercial development with ground level parking and associated landscaping works
<b>Recommendation:</b>	Approval, subject to conditions.
<b>Value:</b>	\$445,000.00
<b>No. of submissions:</b>	<ul style="list-style-type: none"><li>• Seven submissions (first round: 25 October 2016 to 25 November 2016)</li><li>• Five submissions (re-notification: 11 August 2017 to 18 August 2017 )</li></ul>
<b>Author:</b>	Katerina Lianos, Development Assessment Planner
<b>Date of Report:</b>	11 September 2017

### Key Issues

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Bayside Council received Development Application No. 16/173 on 29 September 2016 seeking consent the construction of a four storey commercial development with ground level parking and associated landscaping works at 21 Bay Street, Botany.

The development application is Integrated Development in accordance with the Water Management Act 2000, as application proposes minor excavation for the lift overrun and car stackers, which may intersect the water table. In a letter dated 6 December 2016, Water NSW has advised that it has no objection to the proposed development, subject to conditions.

The application was placed on public exhibition for a 30 day period from 25 October 2016 to 25 November 2016, seven objections were received.

On 27 May 2017 Council requested additional information from the applicant to address the issues raised in the submissions (this includes solar and visual privacy amenity impacts, car parking generation from the proposal, visual impact on the existing streetscape), unacceptable rear and side setbacks, heritage, height exceedance, site isolation and consolidation. This information was provided to Council on 3 July 2017 and 2 August 2017. The amended plans were re-notified for a seven day period for further comment, five submissions were received.

Key issues in the assessment of the development application predominately relate to the suitability of a commercial development in a predominately residential section of Bay Street. The subject site has been vacant since 2005, and as such does not benefit from any existing use rights. The subject site is zoned B7 – Business Park which aims to provide a range of office and light industries, employment opportunities, providing facilities that meet the day to day needs of the workforce population in the area and encourage uses in the arts, technology, production and design sectors.

Although the design may not satisfy the prevailing streetscape pattern, when considering the strategic direction and anticipated future development for the area the proposal is satisfactory as it has adequately addressed the key issues, namely solar and visual privacy impacts to the adjoining residential properties. The proposal provides compliant car parking facilities and adequately justifies the deviations to the side setback requirements and maximum allowable height controls. A clause 4.6 variation for the height exceedance by 520mm (parapet) and 620mm (lift overrun) has been submitted and is well founded. The proposal is a contemporary and innovative ‘port-building style’ aesthetic which utilises materials and finishes that are sympathetic to the types of uses within the Port Botany locality – this being shipping containers. The proposal will encourage more innovative building designs within the local area, to compliment the existing traditional built form found in Botany, particularly in the nearby Heritage Conservation Area.

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979 (EPA Act)* and is recommended for approval, subject to conditions of consent.

## Recommendation

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1. That Council is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of Botany Bay Local Environmental Plan 2013 and that the proposed development is in the public interest as it is consistent with the objective of the Height Standard and the objectives for the B7 – Business Park Zone.
2. That Development Application No. 2017/0012 for the construction of a four storey commercial development with ground level parking and associated landscaping works at 21 Bay Street, Botany 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 objectors be advised of the Bayside Planning Panel’s decision.

## Background

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### Site History

On 1 June 2005 Council approved DA-2005/397 for the demolition of the existing single dwelling.

On 22 September 2005 DA-06/102 was withdrawn on 22 September 2015 for the construction of a new single storey dwelling.



On 21 November 2005 Council refused DA-2006/188 for a new industrial development including freight warehouse and associated offices.

On 28 June 2007 a deemed refused DA-07/393 which was for the construction of a new two storey building to be used for warehousing with associated office, on site parking and landscaping. A Class 1 appeal was subsequently lodged with the Land and Environment Court for a two storey industrial building to be used as an “air freight forwarder” and was refused on 15 March 2010.

## **History of the application**

On 25 May 2017, Council sent an additional information request addressing concerns regarding to unacceptable overshadowing impacts to the adjoining residential properties, unacceptable and side and rear setbacks, deviation in car parking spaces, design impacts to the neighbouring heritage item, unacceptable privacy impacts, height exceedance, site isolation and consolidation matters.

Council received additional information including amended plans illustrating an increased setback from the side eastern boundary to accommodate a new landscaping buffer, reduction in GFA by 20m<sup>2</sup>, incorporation of translucent glass at the side elevations of the building, removal of fixed louvre screens at the rear of the building and incorporation of translucent glass up to 1.5m above the finished floor level (FFL), and replacement of glass balustrades at the front elevation with metal balustrades. Hourly elevation shadow diagrams were provided to demonstrate the level of overshadowing impacts to the adjoining residential properties living room windows and private open space areas, namely to 10, 12 and 14 Erith Street (to the south) and 23 Bay Street (to the east).

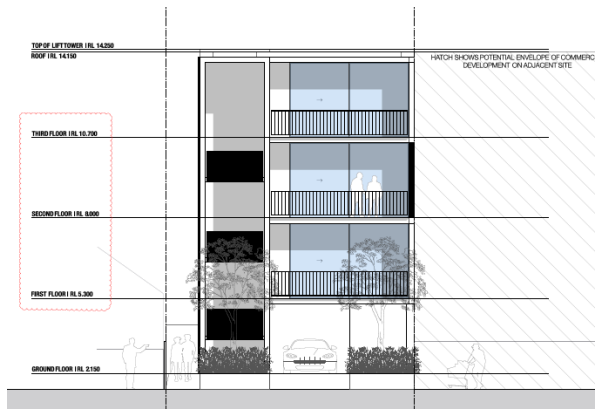
Council received further revised plans on 2 August 2017 incorporating car stackers at the rear of the ground floor level increasing the total number of car parking spaces from three to seven spaces. The overall height of the lift overrun was reduced by 1.6m to 12.62m.

The amended plans including the detailed shadow diagrams were re-notified to the objectors for seven days for comment – five responses were received.

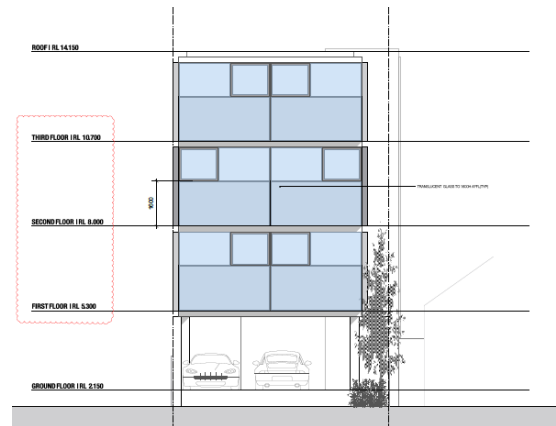
## **Proposal**

The development application, in its amended form, seeks consent for the construction of a four storey commercial development with ground level parking and associated landscaping works at 21 Bay Street, Botany. The proposal details are as follows:

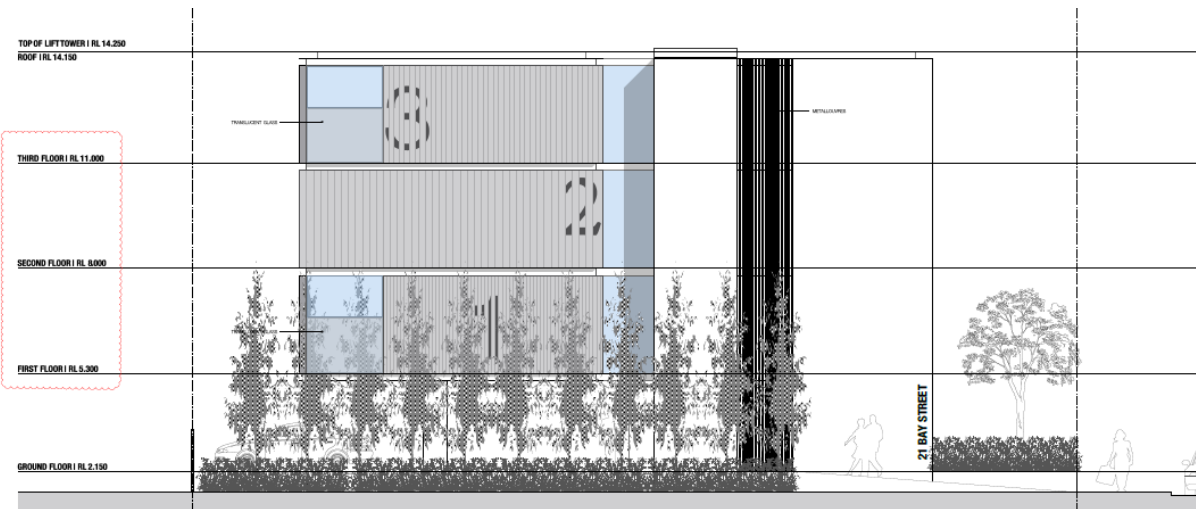
- 3 x commercial floor levels (92.3m<sup>2</sup>), each level contains a north facing balcony with an accessible toilet and lift access;
- Undercroft car parking for seven car spaces, including 3 x 2 car stackers, one disabled space and a turntable; and
- Materials and finishes include metal cladding for external walls, metal balustrading, glass balustrades and transparent glazing at the front and rear elevations; and
- Embossed building identification signs at the western side elevation.



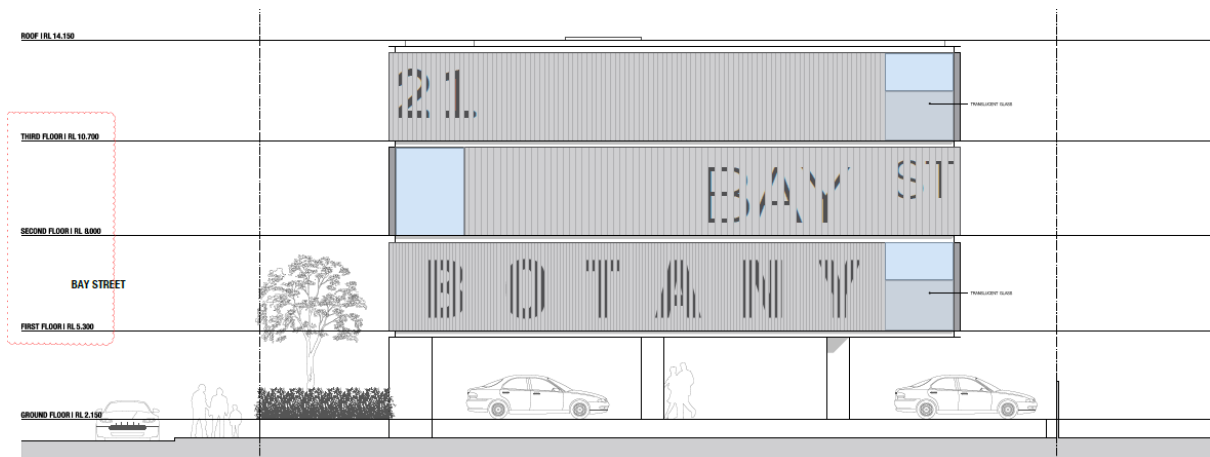
**Figure 1: Front (northern) elevation**



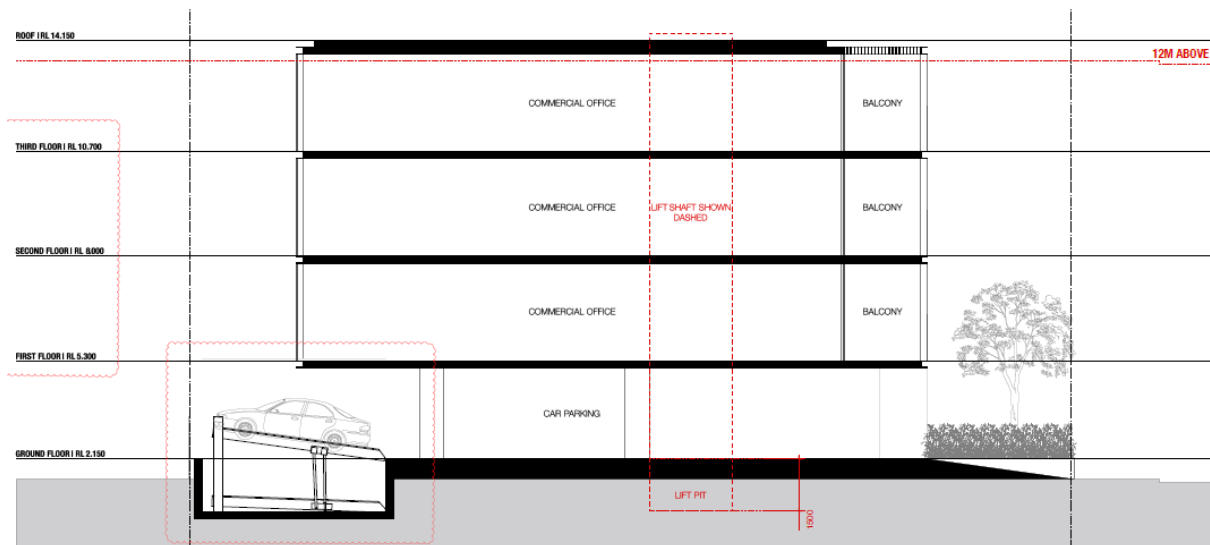
**Figure 2: Rear (southern) elevation**



**Figure 3: Side (eastern) eastern**



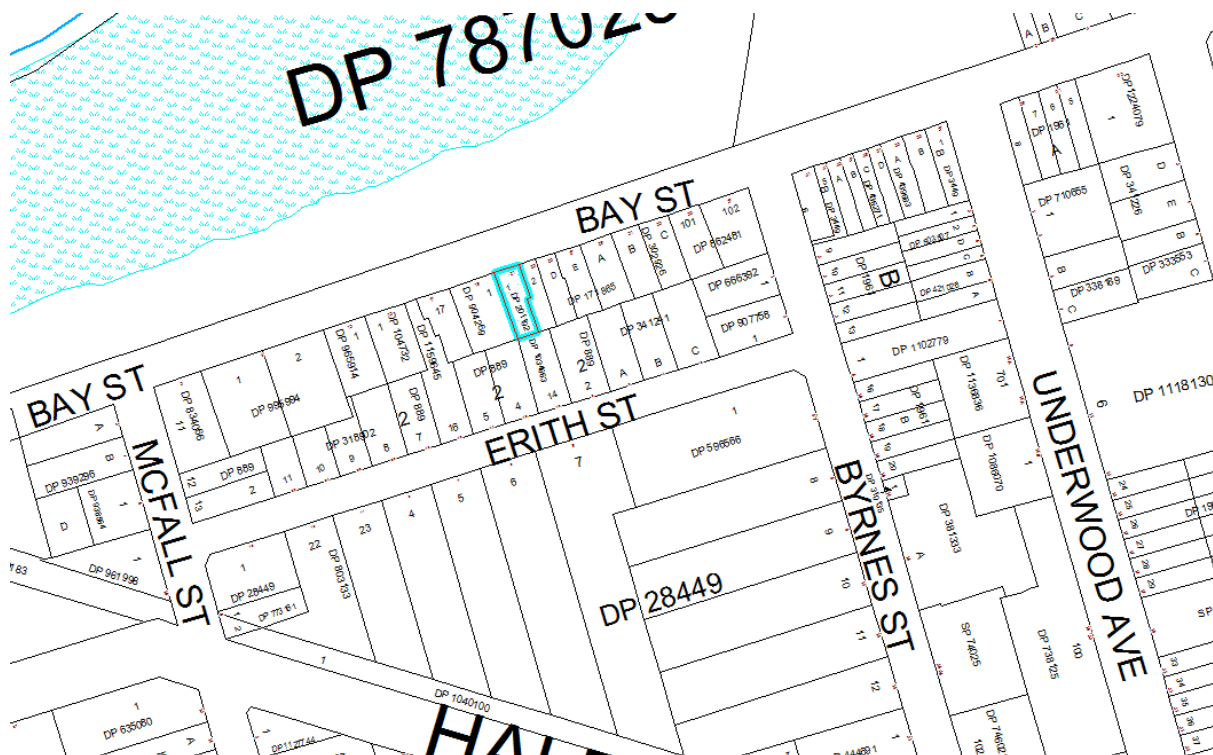
**Figure 4: Side (western) elevation**



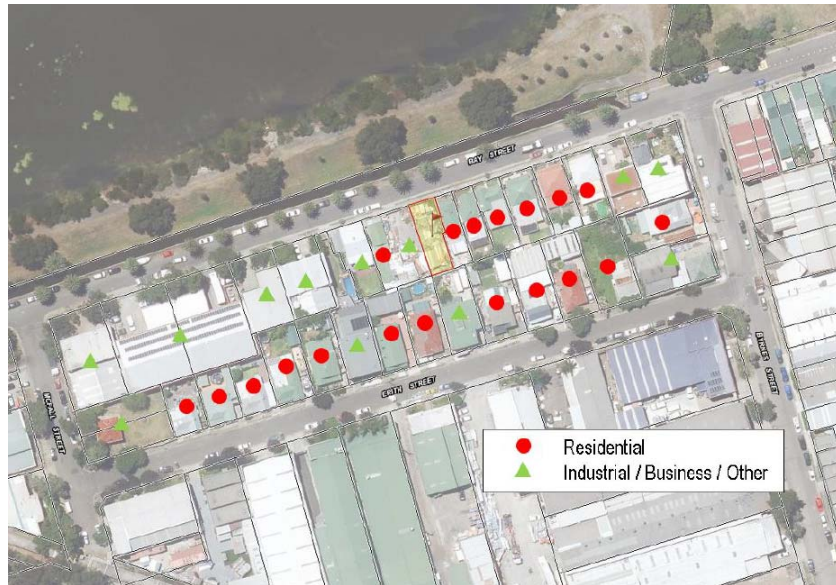
**Figure 5: Section diagram (illustrating the car stacker at the rear)**

## Site Description

The subject site is located on the southern side of Bay Street between McFall Street to the west and Byrnes Street to the east. The site comprises a single irregularly shaped allotment known as 21 Bay Street, Botany and its legal description is Lot 1 DP 201192. The site has a 9.29m frontage to Bay Street, a 7.6m rear boundary length, is approximately 25.4m deep and has an area of 214.5m<sup>2</sup>. The site is currently vacant with no significant trees or vegetation and has a gentle fall from the rear to the street. The site has a north to south orientation, with the north with the front of the site (Bay Street) and the south being the rear of the site.



**Figure 6: Locality Plan (subject site outlined in blue)**



**Figure 7: Land use composition aerial map**



**Figure 8: Looking north-east along Bay Street, from the subject site**



**Figure 9: Looking south-west along Bay Street, from the subject site**



**Figure 10: Multi-storey industrial development on Bay Street**



**Figure 11: Subject site looking north-east from Bay Street**





**Figure 12: Subject site looking south from Bay Street (within fence line)**

Development surrounding the subject site predominately consists of single storey residential dwellings to the east and industrial buildings to the west along Bay Street. Properties to the rear along Erith Street consist of single storey residential dwellings and converted industrial premises to residences.

## **Referrals**

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### Internal

The development application was referred to Council's Environmental Scientist, Development Engineer, Heritage Officer and Environmental Health Officer. Appropriate comments have been provided relating to the stormwater management, noise impacts, and construction details.

### External

The development application was referred to Sydney Water, Water NSW, Sydney Airport for comments. The geotechnical report has stated that the development will not intercept the groundwater therefore the application is not integrated with Water NSW and it was not necessary to receive approval.

## **Statutory Considerations**

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

### **S.79C(1) - Matters for Consideration – General**

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

The following Environmental Planning Instruments are relevant to this application:

**Environmental Planning and Assessment Act 1979 – Part 4, Division 5 – Special Procedures for Integrated Development and Environmental Planning and Assessment Regulations 2000 – Part 6, Division 3 – Integrated Development**

The relevant requirements under Division 5 of the EP&A Act and Part 6, Division 3 of the EP&A Regulations have been considered in the assessment of the development applications.

The development application is Integrated Development in accordance with the Water Management Act 2000, as application proposes minor excavation for the lift overrun and car stacks which may intersect the water table which is known to fluctuate and be shallow in this locality. In a letter dated 6 December 2016, Water NSW has advised that it has no objection to the proposed development, subject to conditions.

**State Environmental Planning Policy No. 55 – Remediation of Land**

The provisions of SEPP No. 55 have been considered in the assessment of the development application, as the proposed development involves excavation for a the lift overrun and car stackers. Clause 7 of State Environmental Planning Policy 55 requires Council to be satisfied that the site is or can be made suitable for its intended use at the time of determination of an application.

The applicant provided a Preliminary Investigation Report to Council which was prepared by Martens Consulting Engineers. The report stated *that the site was used for residential purposes between at least 1943 and 2009 and has since been used as storage by the adjacent commercial development. The Report notes a number of potential contamination sources including fill material and leaks and spills from equipment and stockpiles stored on site.*

A Detailed Site Investigation Report was provided with the application and was referred to Council's Environmental Scientist and advised that the report concludes that the site is suitable for the proposed use. On this basis, the site is considered suitable in its present state for the proposed commercial development. No further investigations of contamination are considered necessary. Necessary conditions as required above have been recommended as conditions of consent in the attached Schedule. Therefore, SEPP 55 has been considered in the assessment of the proposal and is acceptable.

**State Environmental Planning Policy (SEPP) No. 64 – Advertising and Signage**

In accordance with SEPP 64:

*Building identification sign means a sign that identifies or names a building, and that may include the name of a business or building, the street number of a building, the nature of the business and a logo or other symbol that identifies the business, but that does not include general advertising of products, goods or services.*

The proposal seeks to have "21 Bay Street" etched into the corrugated metal cladding along the western elevation provide visual interest and contribute to the contemporary aesthetic. Council does not support the level numbers on the eastern elevation and as such a Condition has been recommended requesting that these floor level numbering is removed from the design.

The proposed signage has been assessed against Clauses 8 and 13 of SEPP 64 which requires Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the SEPP and to assess the proposed signage against the assessment criteria of Schedule 1.

The application is considered to satisfy the objectives of the policy by ensuring that the proposed building identification signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regard to both design and finishes.

The assessment criteria contained in Schedule 1 are addressed in detail below:

Matters for Consideration	Comment	Complies
<b>1. Character of the area</b> Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposed signage is compatible with the existing and desired future character of the locality within the industrial area and is consistent with the type of signage associated with the identification of industrial units.	Yes
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposed signage will be located entirely within the boundaries of the site and whilst the sign is not considered to be a form of outdoor advertising, the proposed sign is constructed of materials and presents a colour scheme which does not detract from the existing quality of the streetscape.	Yes
<b>2. Special areas</b> Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposed signage is not located in close proximity to a heritage item, Councils Heritage officer raised no objection to the contemporary signage design. The scale, materials of construction and colour scheme of the proposed sign does not detract from the existing quality of the streetscape.	Yes
<b>3. Views and vistas</b> Does the proposal obscure or compromise important views?	The proposed signage will be etched into the side elevation of the building and as such will not obscure or compromise any views.	Yes
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage is of an appropriate scale and location which will not dominate the skyline and integrated into the building envelope.	Yes
Does the proposal respect the viewing rights of other advertisers?	The proposed signage will not obscure any future signage and will respect the viewing rights of other advertisers.	Yes
<b>4. Streetscape, setting or landscape</b> Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale, proportion and form of the proposed signage is appropriate given the context of the site and modern design of the proposal. The sign does not adversely impact upon the existing landscaping.	Yes
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signage is of a high quality design and finish that will positively contribute to the streetscape amenity of the locality.	Yes



Matters for Consideration	Comment	Complies
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed signage provided visual interest to avoid long blank walls at the western elevation.	Yes
Does the proposal screen unsightliness?	The sign is integrated within the wall structure and compliments the contemporary design of the proposal.	Yes
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signage does not protrude above the building or the awning of the building.	Yes
<b>5. Site and building</b> Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The scale, proportion and form of the proposed signage is appropriate for identification of a commercial office building. The proposed sign is not required but provides visual interest to the side elevation of the building. The sign is identified with each line of the address being located on each level to reduce the clutter of the design,	Yes
Does the proposal respect important features of the site or building, or both?	The proposed signage has been designed to be consistent with the built form and to that of surrounding development.	Yes
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The sign is made from contemporary materials and the colours and finishes to the sign are of high quality.	Yes
<b>6. Associated devices and logos with advertisements and advertising structures</b> Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The proposal is for building identification signage, not an advertising structure.	Yes
<b>7. Illumination</b> Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	No illumination is proposed.	N/A
Can the intensity of the illumination be adjusted, if necessary?	N/A	N/A
Is the illumination subject to a curfew?	N/A	N/A
<b>8. Safety</b> Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The proposed signage is not considered to have any adverse impact upon the safety for any public road, pedestrians or bicyclists	Yes
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The location of proposed signage will not disrupt sightlines from public areas.	Yes

## Botany Bay Local Environmental Plan 2013

Botany Bay Local Environmental Plan 2013 has been considered in the assessment of the Development Application and the following information is provided:

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Land use Zone	Yes	The site is zoned B7 Business Park Zone under the Botany Bay Local Environmental Plan 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed use as commercial office premises is permissible with Council's consent under the Botany Bay Local Environmental Plan 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	<p>The proposed development is consistent with the following objectives of the B7 Business Park Zone:</p> <ul style="list-style-type: none"> <li>• To provide a range of office and light industrial uses.</li> <li>• To encourage employment opportunities.</li> <li>• To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.</li> <li>• To encourage uses in the arts, technology, production and design sectors.</li> </ul>
Does Schedule 1 – Additional Permitted Uses apply to the site? If so what additional uses are permitted on the site?	N/A	Schedule 1 does not apply to the site.
What is the height of the building? Does the height of the building comply with the maximum building height?	<b>No, refer to Note 1</b>	<p>A maximum height of 12m applies to the subject site.</p> <p>Lift overrun: 12.62m (RL 14.25)</p> <p>Parapet: 12.52m (RL 14.15)</p> <p>The maximum height of the development does not comply with Council's requirements under the Botany Bay Local Environmental Plan 2013. A <b>Clause 4.6 variation</b> was provided with the application and is discussed at <b>Note 1</b>.</p>
What is the proposed Floor Space Ratio?  Does the Floor Space Ratio of the building comply with the maximum Floor Space Ratio	-  Yes	<p>The maximum Floor Space Ratio requirement is 1.5:1.</p> <p>Site area: 214.5m<sup>2</sup></p> <p>GFA: 277m<sup>2</sup></p> <p>FSR: 1.29:1</p> <p>The Floor Space Ratio of the development complies with Council's requirements under the Botany Bay Local Environmental Plan 2013.</p>
Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m <sup>2</sup> min and maximum height of 22 metres and maximum Floor Space Ratio of 1.5:1?	N/A	The site is not located within the R3 Medium Density Residential or R4 High Density Residential zone.

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Is the site within land marked "Area 3" on the Floor Space Ratio Map? If so, does it comply with the sliding scale for Floor Space Ratio in Clause 4.4A?	N/A	The site is not located in an Area 3 zone.
Is the land affected by road widening?	N/A	The subject site is not affected by road widening.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	Adjacent to heritage item at 19 Bay Street Botany (weatherboard cottage), and heritage listed street planting of Canary Island date palms in Bay Street, both listed as items of local significance in the BBLEP 2013. The application was referred to Council Heritage Officer for comment that raised no objection to the proposal, however requested amended plans refining the recessed balconies at the front elevation. The applicant has since provided amended plans incorporating vertical metal balustrading instead of the initially proposed translucent balustrading so that the proposal is more sympathetic to the streetscape.
<p>The following provisions in Part 6 of Botany Bay Local Environmental Plan apply:</p> <ul style="list-style-type: none"> <li>6.1 – Acid Sulfate Soils</li> </ul>	N/A	<p>The site is located within the Class 2 Acid Sulfate Soil zone. As the proposal will result in works that are below the natural ground surface or whereby the waterable is likely to be lowered an Acid Sulfate Soils Management Plan has been prepared by Martens Consulting Engineers and is submitted with the development application.</p> <p>The ASS Assessment involved soil sampling and laboratory testing which indicated that three of five tested site soils were potential ASS, however none triggered the action criteria prescribed in ASSMAC (1998).</p> <p>The ASS Assessment therefore concluded that soils have a naturally buffering capacity and that an acid sulfate soils management plan will not be required for the project in accordance with ASSMAC (1998).</p> <p>The application was referred to Councils Environmental Scientist who raised no objection to the proposal given that the acid sulphate soils will not be disturbed.</p>
<ul style="list-style-type: none"> <li>6.2 – Earthworks</li> </ul>	Yes	The proposal includes minor excavation works that are required to accommodate the lift overrun and the car stackers. The minor excavation works will not encounter the groundwater table.

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
<ul style="list-style-type: none"> <li>6.3 – Stormwater Management</li> </ul>	Yes	The subject site is affected by sea level rise and flooding as such a Concept Stormwater and Flood Study has been prepared by Martens Consulting Engineers and is submitted with the development application. The concept plan indicates that roof and surface water will be directed to a combined OSD and rainwater tank situated underground, at the northern end of the car park, before being discharged to the Bay Street kerb. The proposal has been reviewed by Council's Development Engineer who has no objection subject to conditions in the consent.
<ul style="list-style-type: none"> <li>6.8 Airspace operations</li> </ul>	Yes	The proposal will not penetrate the Obstacle Limitation Surface for the Sydney Kingsford Smith Airport which is 51m AHD in the case of the subject site. The application was referred to the Civil Aviation Safety Authority for comment, no objection was raised in regards to the proposal.
<ul style="list-style-type: none"> <li>6.9 – Development in areas subject to aircraft noise</li> </ul>	N/A	The site falls within the 30-35 ANEF Contours. An Acoustic Assessment Report has been prepared by Acoustic Dynamics and submitted with the development application. The application was referred to Council Environmental Health Officer for comment who raised no object to the proposal subject to recommended conditions.

#### **Note 1 – Clause 4.6 variation relating to height variance**

The applicant has provided a Clause 4.6 variation to the maximum permissible building height of 12 metres pursuant under Clause 4.3 of the BBLEP 2013. The proposal has a maximum building height of 12.52m (parapet) and 12.62m (lift overrun).

Clause 4.3 of BBLEP 2013 specifies that the height of a building may not exceed the maximum height specified on the relevant Height of Buildings Map. The site is subject to a variable height limit of 12m. The proposed development exceeds the maximum height allowance when measured in accordance with the BBLEP definition of building height.

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure. Clause 4.6 states the following:

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

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the*

applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The Applicant has provided a Clause 4.6 variation to justify contravening the height standard. Their justification is provided below:

*“The development standards in clause 4.3 are not “expressly excluded” from the operation of clause 4.6.*

*Objective 1(a) of clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This request addresses the requirements of subclauses 4.6(3) and 4.6(4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of “an appropriate degree of flexibility” in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in subclause 4.6(6).*

*Objective 1(b) of clause 4.6 is addressed later in this request.*

*The objectives and relevant provisions of clause 4.3 for building height control are as follows, inter alia:*

- (a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,*
- (b) to ensure that taller buildings are appropriately located,*
- (c) to ensure that building height is consistent with the desired future character of an area,*
- (d) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- (e) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities.”*

*As previously noted, the Height of Buildings Map nominates a maximum building height of 12m on the site. It is hereby requested that an exception to this development standard be granted pursuant to clause 4.6 so as to permit a building height of 12.52m when measured to the top of the roof and 12.62m when measured to the top of the lift overrun, as described in Section 2 above.*

*In order to address the requirements of subclause 4.6(4)(a)(ii), the objectives of clause 4.3 are addressed in turn below.*

***Objective (a): “to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner”***

*The Height of Buildings Map indicates that the 12m height limit that applies to the subject site also applies to all land in the immediate vicinity within Zone B7. Zone B7 extends eastward to the Botany Local Centre where building height transitions up to 14m. At present, the built form within the block is characterised by a combination of older housing stock and more recent commercial and industrial development and as such building heights are varied and few take up the maximum building height of 12m.*

As mentioned, the maximum height of the proposal is 12.52m when measured to the top of the roof and 12.62m when measured to the top of the lift overrun. The lift overrun is set 5.6m behind the street elevation and therefore presents as a recessive element that is not readily apparent from street level. The breach in roof height is a product of the flood affectation of the site, and the locality more generally. That is, the 520mm breach (measured to top of roof) is equivalent to the degree by which the ground floor level has had to be raised to account for flooding. It is therefore conceivable that the redevelopment of neighbouring properties which are also flood affected will result in a built form that is similarly non-compliant with building height.

It is anticipated that zoning changes and more generous building height and density controls implemented by BBLEP 2013 will be a catalyst for redevelopment of land in the locality. Redevelopment will typically accord with the new controls (or be marginally non-compliant as described in the previous paragraph) and therefore building heights will become more coordinated and cohesive over time. It is submitted that the proposal, although greater in height than its neighbours, is compatible with the height of development envisaged by the LEP and, over time, will form part of a coordinated and cohesive streetscape in terms of building height.

**Objective (b): “to ensure that taller buildings are appropriately located”**

The function of the Height of Building Map is, as suggested by objective (b), to identify appropriate locations for taller buildings. The Height of Buildings Map indicates that the maximum building height for the site is 12m and is therefore identified as a location where ‘taller’ buildings are appropriate. The proposal does not strictly comply with this requirement (hence the request to vary the development standard), however is not substantially taller than the height of buildings anticipated in this location. It is submitted that the proposal, which may be considered a ‘taller’ building, is appropriately located.

**Objective (c): “to ensure that building height is consistent with the desired future character of an area”**

Much of the discussion provided against objective (a) is also relevant to this objective. In brief, the desired future character of an area is, to some degree, determined by the building envelope provisions that apply to the site. In this case, it is conceivable that future development in the locality will have a building height of 12m. It is also conceivable that many sites with similar flood affectation will seek to vary building height to account for the degree by which ground floor levels will need to be raised. It is considered that the proposal, although marginally non-compliant with building height, is consistent with the desired future character of the area, noting that the term ‘consistent’ does not necessarily mean ‘the same as’.

**Objective (d): “to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development”**

Despite non-compliance, the proposal is designed and located to minimise visual impact, disruption of views, loss of privacy and loss of solar access to neighbouring development as described below:

- The lift overrun is set 5.6m behind the street elevation and therefore presents as a recessive element that is not readily apparent from street level. That part of the building that is non-compliant with building height i.e. the upper 520mm of the building, does not contribute significantly to the visual bulk of the development. It is submitted that the difference between the proposal and a development that complies with building height will be negligible when viewed from the streetscape.
- It is understood that there are no significant views obtained from or through the site that will be obscured by the non-compliant aspect of the building. The heritage item to the west is situated a sufficient distance from the subject site so as not to impinge on its

setting and to allow for reasonable views to and from the item. More detail in relation to views to and from the heritage item is provided within the Heritage Impact Statement submitted with the development application.

- The proposal incorporates balconies which are oriented to the street, translucent glazing on side elevations and external metal louvres on the rear elevation. These features preclude cross viewing or overlooking of neighbouring properties therefore ensuring visual privacy.
- Solar access diagrams have been prepared and are submitted with the development application. The diagrams demonstrate that, although the building is marginally non-compliant in terms of building height, solar access to neighbouring properties is not unreasonably reduced. It is pertinent to note that the building to the south that will be most affected by overshadowing is used for a commercial / industrial purpose.

As described above, although non-compliant with building height, the proposal is designed and located to minimise visual impacts, disruption of views, loss of privacy and overshadowing and therefore achieves the objective.

**Objective (e): “to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities”**

It is anticipated that the locality will undergo a period of transition as properties are redeveloped to take advantage of the zoning changes and generous height and density controls introduced through the new LEP. As previously discussed, the height of the proposal is considered to be compatible with the anticipated future character of the locality and in this regard makes a positive contribution to the desired streetscape. Until such time as neighbouring and adjoining sites are also developed, the proposal will be a prominent element in the immediate streetscape however will not be evident in the skyline in the same way as a residential tower is visible from a distance.

Clause 4.6(4) also requires consideration of the relevant zone objectives. The objectives of Zone B7 Business Part are as follows:

- “To provide a range of office and light industrial uses.
- To encourage employment opportunities.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To encourage uses in the arts, technology, production and design sectors.”

The proposed development is considered to be consistent with the relevant zone objectives as described below:

- The proposal provides for 277m<sup>2</sup> of commercial floor space that is configured so as to be suitable for a range of office and business uses. The floor space is also suitable for studio spaces and the like and in this regard will encourage creative businesses and industries as is the focus of Zone B7 and in particular, the Botany West Industrial Precinct.
- The proposed development represents a suitably compact and aesthetically pleasing multistorey commercial building that will replace what is presently a vacant and underutilised allotment. In its present state, the site is contrary to the objective of encouraging employment generating opportunities and therefore the proposal, which is likely to generate several jobs, is highly desirable from an employment generation perspective.
- For these reasons the development proposal meets the relevant objectives for development in Zone B7.



#### **4. Sufficient environmental planning grounds**

*Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, as discussed above it is considered that, despite marginal non-compliance with the maximum building height standard, there will be no impact on the character of the locality or on the amenity of neighbouring and adjoining properties.*

*On “planning grounds” and in order to satisfy that the proposal meets objective 1(b) of clause 4.6 in that allowing flexibility in the particular circumstances of this development will achieve “a better outcome for and from development”, it is considered that:*

- The discussions provided in this variation request have demonstrated that the marginal height breach will have no adverse impact on the character of the locality, the amenity of neighbouring properties and is to some degree necessitated by the flood affectation of the site. In the absence of any adverse impact, it is considered that to require strict compliance with the development standard would, in this instance, be unreasonable and unnecessary;*
- To achieve compliance with the building height standard when measured to the top of the roof, the building would need to be reduced by a relatively insignificant margin of 600mm. The visual bulk associated with the non-compliant 520mm is negligible when compared to the visual bulk of a compliant scheme. The reduction in height would however have significant implications for the proposal as it would effectively preclude a fourth storey and ultimately reduce the yield of commercial floor space by one third. This is contrary to the objectives of Zone B7 which, as previously discussed, expressly encourage floor space of this nature and the subsequent employment opportunities it brings;*
- The building height development standard allows a 12m building height on the subject site and the street block in which the subject site is situated. It is commonly accepted that a 12m building height will comfortably permit a four storey structure without any significant height breach. It follows that BBLEP 2013 anticipates a four storey building form on the subject site and its surrounds. As noted, the ground floor level has been lifted to account for flood affectation of the site and this has subsequently led to a building height breach. It is submitted that to require strict compliance with the building height development standard in this instance would effectively preclude a fourth level and therefore the development would fail to realize the desired built form anticipated by BBLEP 2013.*

*For the reasons listed above, it is considered that there are sufficient environmental planning grounds to support a variation to the maximum building height standard, particularly when one considers that the breach is the direct result of the flooding affectation of the site, and strict compliance would preclude a fourth level and therefore reduce the employment and economic benefits of a four storey commercial development.*

#### **5. Insistence on compliance is unreasonable and unnecessary**

*In regards to Clause 4.6(3)(a), in *Wehbe v Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:*

*“An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the*

*objectives of the development standard are achieved notwithstanding non-compliance with the standard.”*

*The judgement goes on to state that:*

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

*Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):*

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 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;*
- 5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

*Having regard to all of the above, it is our opinion that compliance with the maximum building height development standard is unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. Furthermore the non-compliance is a consequence of a site characteristic (i.e. flood affectation) and the degree of non-compliance is such that the visual bulk associated with the additional height is not substantively different than that of a compliant scheme.*

*Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of clause 4.6(3) are satisfied.”*

#### Officers Comment:

The Clause 4.6 variation to the building height development standard has been assessed in accordance with the BBLEP 2013. The development as originally proposed sought a roof height of 12.6m with a lift overrun of 13.6m above the natural ground level (NGL). The proposal as amended has incorporated a different lift system which has substantially reduced the lift overrun and subsequently overshadowing and streetscape impacts.

The majority of the height departure is a result of the subject site being affected by sea level rise. Although the proposal may appear to dominate the streetscape, given that it is the first development of its kind on the street, it remains compliant with the planning controls and objectives for the area and does not adversely affect the solar amenity of the neighbouring residential dwellings.

The proposal is consistent with the objectives of the standard and the applicant has satisfactorily established that the proposed variation is appropriate in maintaining and enforcing the development standard in these cases would be unreasonable and unnecessary and would not allow the orderly and economic development of this site.

The Clause 4.6 request is considered to be well-founded and the departure to the development standards is not contrary to the public interest. On this basis, it is recommended that the development standard relating to the building height for the site be varied in the circumstances as discussed above.

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

There are no draft EPIs applicable to the proposal.

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

#### **Botany Bay Development Control Plan 2013**

The development proposal has been assessed against the controls contained in the Botany Bay Development Control Plan 2013 as follows:

#### *Part 3A –Parking and Access*

<b>Part</b>	<b>Control</b>	<b>Proposed</b>	<b>Complies</b>
<b>3A.2.</b> Parking Provisions of Specific Uses	<ul style="list-style-type: none"> <li>Business Premises: 1 space per 40m<sup>2</sup></li> <li>Office Premises: 1 space per 40m<sup>2</sup></li> </ul>	<p>The proposal has a GFA of 277m<sup>2</sup>, and as such requires 7 car spaces are required.</p> <p>The proposal includes three double car stackers at the rear of the subject site and a disabled car space at ground level. A turntable has been provided to aid traffic movement within the at grade car park. The application was referred to Councils traffic engineer for comment who raised no objection to the proposal.</p>	Yes
<b>3A.3.1 – Car Park Design</b>	<b>C2</b> Vehicle access points, loading/unloading area and the internal circulation of an off-street parking facility shall be designed in a manner that entry to and exit from the site is made in a forward direction (except for dwelling houses).	A turntable is proposed to aid vehicular movement within the premises.	Yes
	<b>C10</b> Off-street parking facilities are not permitted within the front setbacks.	No car parking is proposed within the front setback and is adequately landscaped to mitigate visual impacts associated with the undercroft car parking area.	Yes

Part	Control	Proposed	Complies
	<b>C13</b> Pedestrian entrances and exits shall be separated from vehicular access paths.	The plans demonstrate that there is separate entry and exits within the car park level for vehicles and pedestrians. Pedestrians can access the basement from the primary lift or staircase at the eastern side of the building.	Yes
	<b>C14</b> A maximum of one vehicle access point is permitted per property. Council may consider additional vehicle access points for large scale developments.	A single driveway crossing is proposed within the frontage – approximately 3m in width.	Yes
	<b>C40</b> The waste collection point shall be designed to:  (i) Allow waste loading operations to occur on a level surface away from parking areas, turning areas, aisles, internal roadways and ramps; and  (ii) Provide sufficient side and vertical clearance to allow the lifting arc for automated bin lifters to remain clear of any walls or ceilings and all service ducts, pipes and the like.	Waste collection and garbage holding rooms are located within the ground floor of the development concealed from public viewing.	Yes

### *Part 3C – Access and Mobility*

The development application is accompanied by An Accessibility Design Report prepared by ABE Consulting dated 24 June 2016 and an Accessibility DA Statement dated 1 August 2017 was also submitted with the development application. The Report and Statement confirms that the DA stage documentation is readily capable of complying with the Disability (Access to Premises – Buildings) Standards 2010 and the applicable accessibility related provisions of the Building Code of Australia 2016 (BCA). The accessible parking space is provided within the car parking area and will have dimensions and markings to comply with Australian Standards.

### *3H Sustainable Design*

A Section J Report prepared by Outsource Ideas Pty Ltd was provided with the subject application demonstrating that the proposal has been designed with considered to sustainable materials and floor configuration. Each floor of the proposed development has been designed to maximise accessibility natural light and cross ventilation via operable windows at the northern and southern elevations of the proposal.

### *Part 3G – Stormwater Management*

The development application was accompanied by Stormwater Management Plans and a Flood Risk Management Plan that were prepared by Martens Consulting Engineers. The plans

demonstrate that an on-site detention system will be installed in the ground car parking level. The application was referred to Council's Development Engineer for comment who had no objection to the proposal subject to the recommendation of conditions within the consent.

### *Part 3K – Contamination*

Refer to the discussion above in State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land section of the report addressing contamination.

### *Part 3L – Landscaping*

Deep soil areas including a canopy tree have been provided within the front setback on either side of the central driveway to soften the contemporary 'port-building style' aesthetic. A landscaping buffer has been provided within the eastern side setback to soften the bulk and scale of the undercroft car parking area to the dwelling to the east, this being 23 Bay Street.

### *Part 3N – Waste Minimisation and Management*

The under-croft parking area also accommodates a waste storage room concealed from the Bay Street streetscape. The waste storage room is sufficient to accommodate the necessary number of waste receptacles which can be conveniently and safely moved to the kerb from this location.

### *Part 6 – Employment Zones*

Control	Proposed	Complies
<b>6.2.7 Botany (West) Industrial Precinct</b>		
<b>C1</b> The design and function of development shall assist in protecting the heritage significance of the precinct and the integrity and significance of heritage items within the Precinct and of the adjacent Botany Township Heritage Conservation Area (refer to Part 3B - Heritage).	Adjacent to heritage item at 19 Bay Street Botany (weatherboard cottage), and heritage listed street planting of Canary Island date palms in Bay Street, both listed as items of local significance in the BBLEP 2013. The application was referred to Council Heritage Officer for comment that raised no objection to the proposal, however requested amended plans refining the recessed balconies at the front elevation. The applicant has since provided amended plans incorporating vertical metal balustrading instead of the initially proposed translucent balustrading so that the proposal is more sympathetic to the streetscape.	Yes
<b>C2</b> Development is not to adversely impact on the surrounding residential areas.	The development has been sited with consideration of the neighbouring residential dwellings and compliance with the objectives of the B7 Business Park zone. The contemporary design has been setback from the rear and incorporated opaque glazing at the rear and side elevations to ensure that the visual privacy of the neighbouring properties is maintained. Furthermore detailed elevation shadow diagrams provided by the applicant demonstrate that the proposed development does not unreasonably overshadow the living areas or private open space areas of the properties namely to the rear (given the north to south orientation).	Yes

Control	Proposed	Complies
<b>C3</b> Developments are to be designed so that they do not have an adverse impact on any existing or proposed drainage facilities.	The application was referred to Councils Development Engineer who raised no objection to the proposal subject to conditions.	Yes
<b>C4</b> The maximum size of any vehicle accessing sites in the Precinct shall not exceed a Medium Rigid Vehicle (MRV) as defined by AS2890.2	Due to the proposed commercial office use only private vehicles can be accommodated within the site – MRV are not expected.	Yes
<b>C5</b> Developments within the precinct shall submit a detailed Flood Study/Assessment for 1 in 100 year average recurrence interval (ARI) design storm events and probable maximum flood (PMF).	A detailed Flood Risk Management Plan prepared by Martens Consulting Engineering has been submitted with the development application. The proposal has increase the FFL of the proposed development to comply with the recommendations of the Report, Councils Development Engineer raises no objection to the proposal subject to conditions.	Yes
<b>C6</b> Development shall: (i) Have finished floor levels of a minimum 500mm above the 1 in 100 year flood level for habitable areas and 300mm for industrial areas and garages; and (ii) Not impede the passage of floodwater to cause a rise (afflux) in the flood level upstream and/or increase the downstream velocities of flow.	Given that the ground floor of the development will not be used as a habitable space, Councils Development Engineer has deemed a 300mm freeboard appropriate for the proposal.	Yes
<b>C7</b> Development within the precinct shall require submission of a Risk Management Plan to address potential risks related to coastal sea levels (projected to increase above Australian Height Datum by 40cm by 2050 and by 90cm by 2100).	A detailed Flood Risk Management Plan prepared by Martens Consulting Engineering in relation to flooding was provided with the application. The Report addressed considerations associated with coastal sea level rise. Specifically, the Plan notes that flood information such as depths, velocities etc. have been adjusted to account for future flood level increase.	Yes
<b>C8</b> Development shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction).	The site falls within the 30-30 ANEF Contours. An Acoustic Assessment Report has been prepared by Acoustic Dynamics and submitted with the development application. The application was referred to Council Environmental Health Officer for comment who raised no object to the proposal subject to recommended conditions. A condition has been recommended requiring compliance with the recommendation of the Report.	Yes
<b>6.3.2 Building and Site Layout</b>		
<b>C2</b> Through careful site arrangements new building works must:  (i) Address the street and highlight any non-industrial aspects (ie office section) of the development;	The proposed development has incorporated a variety of materials and finishes at the side, front and rear elevations to address the street and provide visual interest. Obscured glass at the rear and side elevations avoid long blank walls which can be viewed from Bay Street and Erith Street at the rear. The metal balustrades and canopy trees at the front elevation encourage passive	Yes

Control	Proposed	Complies
<p>(ii) Avoid long blank walls of warehouse units facing the street and long continuous roof lines; and</p> <p>(iii) Provide regular modulation to the façade or division of massing.</p>	surveillance of Bay Street and soften the modern industrial design.	
<b>C3</b> Floor space is to be distributed on the site to ensure the scale of the building reinforces the role of the street and buildings are arranged and aligned to create a pleasant working environment.	Each level has the same floor plate and comprises of 92.3m <sup>2</sup> of open planned office area. The building has been setback 4.2m from the front boundary to remain consistent with the prevailing setback pattern and minimise the visual dominance of the commercial building in a predominately residential section of Bay Street. The scale of the proposal is in character with other industrial buildings located further to the west of the subject site. Whilst the shipping container design provides a modern and contemporary twist to the traditional brick industrial buildings within the Botany Area.	Yes
<b>C4</b> Setbacks are to be deep soil zones (refer to Part 3L - Landscaping for Definition). No part of the building or structure (including basement car parks, driveways, or OSD/infiltration system) are to encroach into the setbacks.	The required rear 3m setback cannot be achieved for the subject site due to its size. It is proposed to comprise of the undercroft car parking area as such no landscaping has been provided at the rear of the proposal. The front setback (4.2m) comprises of deep soil planning inclusive of two canopy trees (one on either side of the central driveway crossing).	Yes
<b>C6</b> Internal spaces are to be designed to satisfy the operational requirements of the particular land use whilst proving a safe and convenient work environment.	Each floor of the proposed development is open plan and provides bathroom facilities, lift and stair access – as such the proposal could permit a variety of office/commercial uses that are permissible and satisfy the objectives of the Zone.	Yes
<b>C8</b> New buildings and the creation of new industrial units within close proximity to residential areas are to be designed to minimise any adverse effects on the amenity of residential areas by way of overshadowing, overlooking, lighting, dust, noise or fumes.	<p>The proposed development has been designed with consideration of the zone objectives, desired future character of the area, site constraints (namely sea level rise/flooding) and amenity impacts to adjoining residential properties, specifically solar and visual privacy impacts. All glazing proposed is to be obscured so as to minimise potential overlooking into the private open space areas of the neighbouring residential dwellings. The glazing at the rear is to be opaque from 1.5m above the FFL.</p> <p>Given the north to south orientation of the subject site hourly elevation shadow diagrams were provided with the application. The shadow diagrams demonstrated that 2hrs of solar amenity will be maintained to the principal living areas and 50% of the private open space areas to the affected properties – these include 10, 12 and 14 Erith Street and 23 Bay Street.</p> <p>The configuration of the floor layout encourages commercial offices that are not likely to result in</p>	Yes



Control	Proposed	Complies
	unreasonable lighting, dust, noise or pollution impacts.	
<b>C9</b> Adequate waste removal handling and minimisation facilities are to be provided on site for all development to ensure these facilities are not utilising car parking areas.	Waste storage space is provided and concealed from view on the ground floor and is adequately sized to accommodate waste generation typical for an office development.	Yes
<b>C10</b> For new development (excluding multi-unit industrial development) all loading and unloading facilities and the majority of car parking required for the development is to be provided at the rear or at the side of any buildings. It is not to be provided at the front of buildings. Visitor car parking may be provided at the front of buildings behind the setback required in Part 6.3.5 - Setbacks.	Given the proposed office use it is not likely that loading facilities will be required and as such have not been provided. Any loading or unloading for future businesses can be undertaken via a private vehicle and accommodated within the under croft parking area.	Yes
<b>C12</b> For sites with a road frontage to residential areas (ie Stephen Road, Denison Street, Rhodes, Erith, etc) new construction is to locate offices fronting the residential areas, with restricted access points. The warehouse/factory functions as well as car parking, manoeuvring areas, loading and unloading facilities are to be located away from the residential areas.	A single vehicular access point is proposed within the centre of the development to accommodate permeable landscaping within the side setbacks. The turn table within the under croft area ensures that all vehicular movement are accommodated within the subject site and do not impede on the Bay Street traffic.	Yes
<b>C15</b> Building entrances are to be clearly defined and located so that visitors can readily distinguish the public entrance to each building. Access to each entrance is to be provided by a safe direct route, avoiding potential conflict with vehicles manoeuvring on site.	Entrance to building is only accessible via Bay Street frontage at the eastern side of the subject site.	Yes
<b>6.3.3 Floor space</b>		
C1 The maximum FSR is identified on the Floor Space Ratio Map within Botany Bay Local Environmental Plan 2013.	Floor Space Ratio Map indicates that the maximum FSR or the site is 1.5:1. The proposal complies with FSR standard contained in BBLEP 2013.	
<b>6.3.4 Building design and appearance</b>		
<b>C1</b> The maximum building height is indicated in the Building Height Map attached to the Botany Bay Local Environmental Plan 2013.	<p>A maximum height of 12m applies to the subject site.</p> <p>Lift overrun: 12.62m (RL 14.25)</p> <p>Parapet: 12.52m (RL 14.15)</p> <p>The maximum height of the development does not comply with Council's requirements under the Botany Bay Local Environmental Plan 2013. A</p>	Yes

Control	Proposed	Complies
	Clause 4.6 variation was provided with the application and is discussed at Note 1.	
<b>C4</b> The maximum height of a building must be consistent with the height of other buildings in the immediate vicinity. Where the heights of a proposed development are higher than surrounding development, a submission is to be lodged with the Development Application giving reasons for supporting the height discrepancy. Unless proper planning reasons are presented, heights over above that approved in the locality will not be supported by Council.	The adjoining properties consist of single storey dwellings which are significantly lower in height than the maximum allowable under the BBLEP 2013. Refer to the Clause 4.6 variation statement at Note 1.	Yes
<b>C5</b> Council may require a reduction in height shown for the land on the Height of Buildings Map where a building built to the height shown for the land on the Height of Buildings Map would have unacceptably adverse impacts in regards to: (i) The overshadowing of a dwelling, private open space or public open space; (ii) An inappropriate transition in built form and landuse intensity; (iii) The design excellence of a building; (iv) View loss; or (v) The Obstacle Limitation Surface (Please refer to the Precinct Controls).	The proposal does not breach OLS, or result in the loss of any significant views from adjoining properties. The elevation shadow diagrams provided with the application confirm that the proposed development will not unreasonably overshadow the adjoining residential properties. The shadow diagrams demonstrate that two hour of solar amenity is provided the principal living areas and 50% of the private open space areas to the adjoining residential properties that would be most impacted by the proposal, this includes 10, 12 and 14 Erith Street and 23 Bay Street.	Yes
<b>C6</b> All rooftop or exposed structures including lift motor rooms, plant rooms, etc., together with air conditioning, ventilation and exhaust systems, are to be suitably screened and integrated with the building in order to ensure a properly integrated overall appearance. If your site adjoins a residential premise the facilities are to be located away from the residential boundary.	The amended proposal has significantly reduced the lift overrun exceedance from the height controls from 1.6m to 620mm. The lift overrun is setback 5.6m from the street elevation and has been incorporated into the roof parapet so it isn't dominant when viewed from the street or neighbouring residential properties.	Yes
<b>C9</b> Where blank walls on street frontages are unavoidable in new construction they must be screened by landscaping or treated as sculptural elements incorporating murals reflecting modern architectural design. They must be finished to a high standard and	A mix of metal cladding and obscured glazing has been proposed at the side and rear elevation to prevent the appearance of blank walls. The metal balustrades and permeable landscaped areas within the front setback provide visual interest and soften the 'port-building style' aesthetic.  The address "21 Bay Street" etched into the corrugated metal cladding along the western	Yes

Control	Proposed	Complies
minimise the potential for graffiti or other vandalism.	elevation provide visual interest and contribute to the contemporary aesthetic. Council does not support the level numbers on the eastern elevation and as such a Condition has been recommended requesting that these floor level numbering is removed from the design.	
<b>C11</b> All elevations of a building fronting a public place, or visible from a rail line, public place or proposed road, must be constructed of face brickwork or other decorative facade treatment to Council's satisfaction. Consideration must be given to installing windows or false windows in the facade to enable surveillance of the adjoining area or to engender a feeling that it is being overlooked.	Balconies are proposed at the front elevation of the subject site to promote passive surveillance along Bay Street. The side and rear elevations of the proposal include metal cladding and obscured glazing. The combination of these materials ensure adequate natural light and ventilation is provided to each level of the office space whilst maintaining visual privacy to the neighbouring residences.	Yes
<b>C12</b> Buildings should be of a contemporary and innovative design. All public frontages should be specially articulated with the use of brick, stone, concrete, glass (non-reflective), and like materials, but not concrete render.	The 'port-building style' aesthetic utilises materials and finishes that are sympathetic to the types of uses within the Port Botany locality – this being shipping containers. The north facing balconies and use of obscured glazing and soft landscaping breaks up the side, front and rear elevation of the proposal. The proposal could encourage other innovative building designs within the local area rather than the older and traditionally styled brick building with limited articulation to the streetscape or adjoining uses.	Yes
<b>6.3.5 Setbacks</b>		
<b>C1</b> Setbacks are to be in accordance with the following Table 1.  Side: 3m (landscaping and building setback)  Rear: Nil to 3m (landscaping and building setback)	<u>Rear:</u> A building setback of 3m is provided to the rear boundary for the upper levels. Given the lack of on street parking along Bay Street Council requested strict compliance with the car parking controls, as such the rear setback at ground level has been utilised for the undercroft car parking area – specifically 3 pairs of car stackers.  <u>Side:</u> Given the existing site constraints a 3m side setback on either side would be unfeasible given that the width of the subject site is 7.6m – 9.2m. To ameliorate the physical bulk of the development for the adjoining residence at 23 Bay Street (eastern elevation) a landscape buffer has been proposed. With consideration to the local area constraints, this predominately being sea level and aircraft noise in addition to the strategic direction of the zone, it is anticipated that the adjoining vacant property would be redeveloped for commercial or warehouse uses. As such a nil side setback at the western elevation is acceptable.	<b>No - acceptable</b>
<b>C4</b> Setbacks are to be deep soil zones (refer to Part 3L - Landscaping for a definition of "deep soil zone"). No part of the building or	Deep soil areas provided in front setback and a landscape buffer is provided along the eastern boundary. The OSD system will not impede in the	Yes

Control	Proposed	Complies
structure (including basement car parks, driveways or OSD/infiltration) system are to encroach into the setbacks	deep soil areas. No car parking is provided within the front setback.	
<b>6.3.6 Parking and vehicular access</b>		
<b>C1</b> All vehicles (including deliveries) are to enter and leave the site in a forward direction with no vehicles permitted to reverse from or onto public road. A Swept Path Analysis may be required for the largest vehicle accessing the site.	Turntable enables vehicles to exist the premises in a forward direction.	Yes
<b>C2</b> A Traffic and Parking Impact Assessment Report shall be prepared. The Traffic and Parking Impact Assessment Report is required to be prepared by a suitably qualified and experienced civil engineer and in accordance with the current version of AUSROADS "Guide to Traffic Management, Part 12: Traffic Impacts of Development" and RMS "Guide to Traffic Generating Development".	A Traffic and Parking Impact Assessment Report has been prepared by Varga Traffic Planning, a passenger vehicle maneuvering statement prepared by Stanbury Traffic Planning and a product summary of the proposed car stacker by Spacepark was submitted with the development application. The Reports and Statements provided demonstrates that adequate parking is proposed on site and the local road network is capable to accommodating additional vehicular movements anticipated as a result of the development.	Yes
<b>C4</b> Parking provision should be in accordance with the Part 3A - Car Parking. <b>1 space per 40m2</b>	The proposal has a GFA of 277m <sup>2</sup> , and as such requires 7 car spaces are required. Under croft car parking for seven car spaces, including 3 x 2 car stackers, one disabled space and a turntable.	Yes
<b>C13</b> The following information is required: (i) Details of all traffic generation and possible impacts; (ii) The largest vehicle expected to access the site (including delivery); (iii) The frequency of deliveries to the site; and (iv) The maximum number of staff expected to be on-site at any one time.	Due to the proposed commercial office use only private vehicles can be accommodated within the site – MRV are not expected. As such the traffic implications from the proposed development shall be minimal.	Yes
<b>6.3.9 Landscape</b>		
<b>C1</b> Landscaping is to be designed to ameliorate the bulk and scale of industrial and business park buildings, to shade and ameliorate large expanses of pavement and surfacing, to create a comfortably scaled environment for pedestrians in the public domain or from within the site and to screen utility areas and the like. Emphasis is to be	Landscaping provided in the front building setback will serve to reduce the apparent bulk of the development when viewed from the street.	Yes

Control	Proposed	Complies
placed on leafy internal spaces and landscaped setbacks designed for screening and visual amenity. In designing landscaping on a site, the requirements of Part 3L - Landscaping are to be complied with.		
<b>C9</b> Not less than 10% of the development site shall be landscaped. On sites over 2000m <sup>2</sup> the front landscaped setbacks are additional to the 10% requirement. The majority of landscaping shall front the street/s to which the development has frontage and include side and rear landscaped areas.	Approximately 15% (32m <sup>2</sup> ) of the site is proposed to be landscaped.	Yes
<b>C17</b> A continuous landscaped planter bed shall also be provided between driveways and site boundaries of minimum dimensions 1 metre, 2 metres is preferred to screen driveways and buffer vehicular noise.	Landscaping including a canopy tree is provided on either side of driveway.	Yes
<b>6.3.13 Waste</b>		
<b>C1</b> Development must comply with Part 3N - Waste Management and Minimisation.	The subject site is currently cleared as such no demolition works are proposed. A waste storage area has been provided within the undercroft car parking area and is concealed from view.	Yes
<b>C5</b> The area is easily accessible from each unit and from the collection point and clear access for collection vehicles is provided.	The waste storage area is located within the undercroft car parking area will not disrupt the functions of the car park area and is concealed from the streetscape.	Yes
<b>C6</b> The waste collection area shall be covered, drained to sewer through a Sydney Water Trade Waste Agreement and may need bunding depending on the material to be stored within the area.	The waste storage area is proposed within the undercroft parking area at ground level. Kerbside collection is proposed.	Yes
<b>6.3.21 Business Premises &amp; Office Premises in the B5 Business Development &amp; B7 Business Park Zones</b>		
<b>C1</b> Building expression through façade modulation, roof silhouette and the use of a variety of contemporary materials and finishes is required to achieve buildings that are of architectural merit, innovation, variety and attractiveness. There is to be a balance between the solid walls and openings and between horizontal and vertical planes. A Schedule of	The 'port-building style' aesthetic utilises materials and finishes that sympathetic to the semi-industrial nature within the Port Botany locality – this being shipping containers. The north facing balconies and use of obscured glass and soft landscaping breaks up the side, front and rear elevation of the proposal. The proposal will could encourage other innovative building designs within the local area rather than the older and traditionally styled brick building with limited articulation to the streetscape or adjoining uses.	Yes

Control	Proposed	Complies
Finishes is required for new buildings.		
<b>C2</b> Buildings are to have a clearly delineated entranceway to address its main frontage. Buildings on corner allotments shall include an accentuated form on the corner. Minor modulation in the height of buildings is required to reduce visual bulk and scale.	The pedestrian and vehicular access from Bay Street is clearly defined with soft and hard landscaping. The minor height exceedance is acceptable and has been discussed at Note 1.	Yes
<b>C4</b> Vehicle manoeuvring, circulation, access and parking shall be arranged on site to maximise the area available for landscaping. Excess hardstand areas should be minimised whilst designing manoeuvring, circulation, access and parking in accordance with Australian and Council standards.	The front setback is permeable landscaped area with the excluding of the pedestrian and vehicular entrance to the building. A turntable has been provided within the undercroft area to ensure that vehicle safely exist the building in a forward motion.	Yes
<b>C7</b> There should be a balance between building footprint, parking/circulation and landscaping/open space. The majority of landscaping shall front the street/s to which the development has frontage and returning along the side boundaries of the setback.	The proposal is compliant in terms of car parking and landscaped areas.	Yes

## Note 2 – Site isolation and consolidation

Due to the existing site constraints, Council requested that the applicant address the issue of site isolation and consolidation. It was suggested that the site could be consolidated with the adjoining properties, being 23 Bay Street to the east (residence) or 19 Bay Street to the west (vacant). Given the size of the site, by consolidating with the neighbouring vacant site to the west (this being 19 Bay Street) the amount of constraints and adverse impacts presented in the proposal could be addressed and resolved. It was advised that when considering the planning principles of the Court, Moore J has explained, in *193 Liverpool Road Pty Ltd v Inner West Council* [2017] NSWLEC 13, that the planning principle in *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 concerning redevelopment of sites and potential impacts on neighbouring sites was confirmed and that the planning principles in *Cornerstone Property Group Pty Ltd v Warringah Council* [2004] NSWLEC 189 and *Melissa Grech v Auburn Council* [2004] NSWLEC 40 had been subsumed by *Karavellas* and were no longer required to be referred to in the future.

The applicant provided the following comments:

*“In pre-development application advice dated 5 July 2016, Council recommended that the site be consolidated with the neighbouring site to the east at 23 Bay Street. The reason behind the request, as explained in the Council advice letter, is that a larger lot may resolve non-compliances associated with the proposal that are symptomatic of the narrow lot width. The Council has requested that the Planning Principle relating to site consolidation be considered.*

*The LEC Planning Principle relating to site isolation, namely Melissa Grech v Auburn Council [2004] NSWLEC and Warringah Council [2004] NSWLEC 189, has therefore been considered and the steps prescribed by the Principle have been, or are intended to be, undertaken.*

*It is pertinent to note that the LEC Planning Principles relating to site isolation were born out of scenarios where a proposed development was likely to result in the isolation of, or unduly compromise the redevelopment of, adjacent sites. In the case of the subject development, the neighbouring sites will not be isolated by the proposed development and therefore the planning principle is not entirely applicable to this scenario.*

*Notwithstanding the above, the applicant has approached the owner of 23 Bay Street with a view to commencing negotiations. Provided the owner of 23 Bay Street is open to the notion of selling their property (and at this stage the owner has not indicated that they are), negotiations will commence in accordance with the steps prescribed in the Planning Principle. Specifically, a reasonable monetary offer will be made based on an independent valuation of the site. Documentary evidence of negotiations will be provided as it is obtained.*

*Until there is an outcome in regard to the abovementioned negotiations, the applicant wishes to progress the development application on the basis that 23 Bay Street will not be acquired."*

The applicant also provided the following comment to Council with the amended plans received on 3 July 2017:

*"The matter of site amalgamation was discussed briefly at the meeting with council staff, who suggested that concerns relating to visual bulk and overshadowing could be addressed if the site were developed in tandem with the vacant land immediately to the west. It was recommended that the applicant investigate acquisition of the site to the west, however we note that the concerns do not relate to site isolation.*

*In our opinion, adjustments made to the proposal such as increased side boundary setback and landscape treatment will mitigate visual bulk issues while additional shadow information demonstrates that overshadowing impact is not as severe as initially envisaged, and that dwellings to the south will continue to receive the requisite degree of direct sunlight to living room windows and private open space areas."*

#### Officers Comment:

It is noted that attempts were made by the owners of the subject site to acquire 23 Bay Street however these attempts have been rejected. The amended proposal provided to Council addressed the height and car parking deviations, streetscape presentation, overshadowing and visual privacy impacts to adjoining neighbouring residences resulting in a generally compliant design that satisfied the strategic direction of the area and zone. In addition, the applicant demonstrated that the adjoining vacant site is adequately sized to accommodate a development similar to that being proposed and could be compliant with Councils controls. Therefore, the planning principle for site isolation established within *Karavellas v Sutherland Shire Council [2004] NSWLEC 251* has been considered in the application.

### **S.79C(1)(a)(iv) - Provisions of regulations**

The proposed development is not inconsistent with the relevant provisions of the *Environmental Planning and Assessment Regulation 2000*.

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



As outlined in the assessment above, the proposed development will have no significant adverse environmental, social or economic impacts in the locality.

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

The site is not known to be affected by any site constraints or other natural hazards likely to have a significant adverse impact on the proposed development. The issue of likely site contamination and sea level rise and flooding has been considered. However, given the nature of the development, and the long-standing use of the land for residential purposes, onsite investigation is not warranted.

The proposed development is permissible in the zone and satisfies the objectives of the zone. The traffic impacts are not considered to be significant given the relatively small scale of the development and no significant planning issues are raised that would warrant the refusal of the proposed development.

It should also be noted that given the subject site has been vacant since 2005 and is located within the 30-35 ANEF contours, a residential development on the subject site is not permissible.

### **S.79C(1)(d) - Public Submissions**

In accordance with Part 2 of the Botany Bay DCP 2013 – Notification and Advertising the development application was notified to surrounding property owners for a 30 day period from 25 October 2016 to 25 November 2016, seven objections were received.

Amended plans that were provided to Council on 3 July 2017 and 2 August 2017. The amended plans were re-notified to the original objectors for a seven day period for comment, five submissions were received.

The issues raised in the submissions are summarised as follows:

- ***Negative impacts during the construction process for example damage to dwelling from vibration, damage to Bay Street from the construction vehicles***  
Comment: A condition will be imposed ensuring safe vibration levels during the construction process. The types of vehicles used during construction of the proposed development do not fall within the scope of the application. Any vehicles used during the construction of the proposed development are to abide by the applicable road tonnage limits. As such the proposal is acceptable.
- ***Loss of solar amenity to adjoining residential dwellings, increased setbacks should be proposed to impact the level of solar amenity retained:***  
Comment: The shadow diagrams demonstrated that 2hrs of solar amenity will be maintained to the principal living areas and 50% of the private open space areas to the affected properties – these include 10, 12 and 14 Erith Street and 23 Bay Street. As such the proposal is acceptable.
- ***Loss of visual privacy to adjoining residential dwellings***  
Comment: All glazing proposed is to be obscured so as to minimise potential overlooking into the private open space areas of the neighbouring residential dwellings. The amended proposal has removed the fixed louvre screening at the rear and replaced it with glazing, this glazing will be opaque from 1.5m above the FFL to mitigate and overlooking into the adjoining residential properties. As such the proposal is acceptable.

- ***The proposal is not in context with the neighbouring heritage item or historical contact of the locality:***  
Comment: The application was referred to Council Heritage Officer for comment that raised no objection to the proposal, however requested amended plans refining the recessed balconies at the front elevation. The applicant has since provided amended plans incorporating vertical metal balustrading instead of the initially proposed translucent balustrading so that the proposal is more sympathetic to the streetscape
- ***The proposal is an overdevelopment of the subject site and not sympathetic to the existing Bay Street streetscape***  
Comment: The proposed development is compliant with the maximum allowable FSR permitted on the subject site and satisfies the B7 – Business Park Zone objectives. Although the proposal does not conform to the maximum allowable height requirements the Clause 4.6 variation discussed at Note 1 identifies that this breach is minor in nature and does not unreasonably impact on the solar or visual amenity of the neighbouring dwellings. In addition the proposal incorporates innovative materials and finishes which are apparent in the Port Botany locality. As such the proposal is acceptable.
- ***The proposal will place increase pressure on the already limited car parking within Bay Street***  
Comment: The amended proposal is compliant with the car parking requirements of the BBDCP 2013, as such the proposal is acceptable.
- ***Guarantee of the completion of the project to avoid another unsightly unfinished construction project***  
Comment: The duration of the construction process for the proposal is outside the scope of the application and is not a matter for consideration.
- ***The landscaping on either side of the driveway entrance may block view thereby not allowing vehicles to safely exit the premises***  
Comment: The turntable within the undercroft car parking area allows vehicles to safely exit the premises. The application was referred to Councils Development Engineer for comment and raised no objection to the landscaped area or location of the vehicular entry/exit of the premises.
- ***The fixed louvre screening at the rear of the proposal provides inadequate visual privacy mitigation measure:***  
Comment: The amended proposal as removed the fixed louvre screening at the rear and has been replaced with opaque glass to a minimum sill height of 1.5m above the FFL. As such the amended proposal is acceptable.
- ***The application is smaller in nature to the previously refused applications 07/393 (07/08/847)***  
Comment: The previously refused applications on the subject site are outside the scope of the application and is not a matter for consideration.
- ***Building height proposed does not suit the character of the existing building heights in Bay Street not is it compliant with the provisions of the BBLEP 2013***  
Comment: The Clause 4.6 variation to the building height development standard has been assessed in accordance with the BBLEP 2013. Although the amended proposal may appear to dominate the streetscape, given that it is the first development of its kind on the street, it remains generally compliant with the planning controls and objectives for the

area and does not adversely affect the solar amenity of the neighbouring residential dwellings. Refer to comments at Note 1, as such the proposal is acceptable.

- ***Below ground parking will penetrate the water table***

Comment: No basement car parking is proposed, the application was referred to Water NSW and Councils Environmental Scientist for comment and raised no objection to the proposal, subject to recommended conditions.

- ***No loading bay have been indicated on the architectural plans***

Comment: Given the proposed office use, it is not likely that loading facilities will be required and as such have not been provided. Any loading or unloading for future businesses can be undertaken via a private vehicle and accommodated within the undercroft parking area. As such the proposal is acceptable.

- ***Will block the outlook views from the properties at the rear, this being 10 and 12 Erith Street:***

Comment: Due to the subject site being cleared of all structures since 2005 the properties at 10 and 12 Erith Street have been able to take advantage of an outlook to Mill Pond and associated grass verge across the subject site. The subject site is zoned B7-Business Park which encourages a range of office and light industrial uses. Although residential accommodation is a prohibited form of development within the zone, dwelling houses maybe permitted with consent where an existing building was constructed as a dwelling. As yet as the subject site has been vacant for an extended period of time, the construction of a dwelling house is not permitted on the site. In addition, as the subject site is located within the 30-35 ANEF contours new residential development is not permitted. As such the type of development that would be encouraged on the subject site is similar to that now proposed.

The level of reasonableness in retaining the existing outlook benefited from 10 and 12 Erith Street is unrealistic given that strategic direction for the zone and the maximum allowable FSR and height controls permitted on the subject site. As such the proposal is acceptable.

- ***Lack of deep soil areas at the rear of the development and overlooking concerns at the ground floor.***

Comment: No landscaping is proposed at the rear of the development to ensure that the development provided compliant car parking facilities in accordance with the BBDCP 2013 controls. No habitable areas are proposed on the ground floor – as such the potential for overlooking into the neighbouring residential properties is unlikely. A landscape buffer is proposed at the eastern elevation to soften the undercroft car parking area to the dwelling house at 23 Bay Street. As such the proposal is acceptable.

- ***Amended plans – although the proposal complies with car parking they are not likely to be utilised:***

Comment: The proposal has provided car parking facilities in accordance with the BBDCP 2013 requirements, the utilisation of the car parking facilities does not fall within the scope of the assessment. As such the proposal is acceptable.

- ***Amended plans – the proposal will result in additional ‘cramming’ of medium to heavy vehicles within the street and additional traffic congestion***

Comment: Due to the proposed commercial office use only private vehicles can be accommodated within the site – MRV are not expected. As such the traffic implications from the proposed development shall be minimal. As such the proposal is acceptable.

- ***Amended plans – unacceptable noise generated from the new car stackers***

Comment: The proposed car stackers are not situated immediately adjacent to the dwelling house windows, in addition the system operates with a hydraulic pump which is quiet and not likely to generate significant unreasonable noise impacts. As such the proposal is acceptable.

- ***Amended plans – overshadowing impacts after 4pm have not been considered to 23 Bay Street:***

Comment: Overshadowing impacts are not assessed after 4pm, refer to previous comments addressing the level of solar amenity retained. As such the proposal is acceptable.

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

It is considered that granting approval to the proposed development will have no significant adverse impact on the public interest.

## **Section 94 Contributions**

As the proposal lies outside of the Mascot Station Precinct, no contributions are payable for commercial development under the *City of Botany Bay Section 94 Development Contributions Plan 2016*. Contributions for commercial development in this location would be calculated under the *Section 94A Development Contributions Plan 2016* plan. In accordance with the Table 1.2 development with a proposed cost greater than \$200,000.00 the maximum percentage of the S94A levy will be at 1%. Therefore, in accordance with the S94A plan the following payment is required prior to the issue of the Construction Certificate.

- $\$445,000.00 \times 0.01 = \$4,450.00$

## **Conclusion**

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Bayside Council received Development Application No. 16/173 on 29 September 2016 seeking consent the construction of a four storey commercial development with ground level parking and associated landscaping works at 21 Bay Street, Botany.

The development application is Integrated Development in accordance with the Water Management Act 2000, as application proposes minor excavation for the lift overrun and car stacks which may intersect the water table. In a letter dated 6 December 2016, Water NSW has advised that it has no objection to the proposed development, subject to conditions.

The development departs from the height requirement (12m). The applicant has provided a Clause 4.6 variation to address this issue and it is considered that the variation is well founded.

Other key issues relating to height exceedance, streetscape presentation, overshadowing impacts, visual privacy impacts, car parking compliance and side setback compliance have been addressed in the report above and have been found to be acceptable when considering the aspects of the site. As the proposal is the first new commercial development along Bay Street the proposal has been designed with consideration of the adjoining residential dwellings in terms of scale, visual privacy and solar amenity. Given the site orientation that site has been design to ensure that 2hrs of solar amenity is retained to the principal living areas and 50% of the private open space areas of the neighbouring dwellings, namely to 10, 12 and 14 Erith Street (to the south) and 23 Bay Street (to the east).

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## Attachment

### Schedule 1 – Conditions of Consent

Premises: 21 Bay Street Botany

DA No: 2016/173

### SCHEDULE OF CONSENT CONDITIONS

#### GENERAL CONDITIONS

1. The development is to be carried in accordance with the following plans listed below and endorsed with Council's stamp, except where amended by other conditions of this consent.

Drawing No.	Author	Date Received
Site & Site Analysis Plan, Drawing No. 1605-DA-002, Revision B	Shed Architects	Dated 29 June 2017, received by Council 3 July 2017
Upper Level Floor Typical Plan, Drawing No. 1605-DA-110, Revision B	Shed Architects	Dated 29 June 2017, received by Council 3 July 2017
Roof Plan, Drawing No. 1605-DA-140, Revision B	Shed Architects	Dated 29 June 2017, received by Council 3 July 2017
Ground Floor Plan, Drawing No. 1605-DA-100, Revision C	Shed Architects	Dated 1 August 2017, Received by Council 2 August 2017
North Elevation Plan, Drawing No. 1605-DA-200, Revision C	Shed Architects	Dated 1 August 2017, Received by Council 2 August 2017
South Elevation Plan, Drawing No. 1605-DA-210, Revision C	Shed Architects	Dated 1 August 2017, Received by Council 2 August 2017
East Elevation Plan, Drawing No. 1605-DA-220, Revision C	Shed Architects	Dated 1 August 2017, Received by Council 2 August 2017
West Elevation Plan, Drawing No. 1605-DA-230, Revision C	Shed Architects	Dated 1 August 2017, Received by Council 2 August 2017
Section Plan, Drawing No. 1605-DA-300, Revision C	Shed Architects	Dated 1 August 2017, Received by Council 2 August 2017

<b>Reference Document(s)</b>	<b>Author</b>	<b>Date Received</b>
Accessibility Design Report, report version ADR_6223_v1.1	Abe Consulting	Dated 24 June 2016, Received by Council 29 September 2016
Acoustic Noise intrusion Assessment	Acoustic Dynamics	Dated 27 June 2016, Received by Council 29 September 2016
Detailed Site investigation	Martens Consulting Engineers	Dated 12 September 2016, received by Council 29 September 2016
Flood Risk Management Plan	Martens Consulting Engineers	Dated 27 July 2016, received by Council 29 September 2016
Preliminary Geotechnical Assessment	Martens Consulting Engineers	Dated 27 July 2016, received by Council 29 September 2016
Heritage Impact Statement	NBRS & Partners	Dated June 2016, received by Council 29 September 2016
Preliminary Site Investigation	Martens Consulting Engineers	Dated 27 July 2016, received by Council 29 September 2016
Section J Report	Outsource Ideas Pty Ltd	Dated 24 June 2016, received by Council 29 September 2016
Statement of Environmental Effects	Planning Ingenuity	Dated 7 July 2016, received by Council 29 September 2016
Revised Traffic and Parking Assessment Report	Varga Traffic planning Pty Ltd	Dated 7 July 2016, Received by Council 29 September 2016
Erosion and Sediment Control Plan, Drawing no. PS03-B300, Revision A	Martens Consulting Engineers	Dated 5 August 2016, received by Council 29 September 2016
Erosion and Sediment Control Plan, Drawing no. PS03-B310, Revision A	Martens Consulting Engineers	Dated 5 August 2016, received by Council 29 September 2016
Landscape Plan, Drawing No.99	IScape landscape Architecture	Dated August 2016, Received by Council 29 September 2016
Detail & Level Survey, Drawing No. 16-0014, Revision A	Peter Bolan and Associated Pty Ltd	Dated 30 March 2016, Received by Council 29 September 2016
Low headroom lift solution Schedule	Raise Lift group	No Date, Received by Council 3 July 2017

Reference Document(s)	Author	Date Received
Plan showing detail and levels over adjoining lots, Drawing No. 8457	H Ramsay & Co	Dated 14 June 2017, received by Council 3 July 2017
Elevator Model Lift Statement	Pitfield & Associates Pty Ltd	Dated 4 April 2017, received by Council 3 July 2017
GFA Plan, Drawing No. 1605-DA-150, Revision B	Shed Architects	Dated 29 June 2017, received by Council 3 July 2017
Materials Sample Board, Drawing No. 1605-DA-600, Revision B	Shed Architects	Dated 29 June 2017, received by Council 3 July 2017
Letter to Council addressing additional information	Planning Ingenuity	Dated 30 June 2017, Received by Council 3 July 2017
Accessibility DA Statement, version ADR_6223_v1.1	Abe Consulting	Dated 1 August 2017, Received by Council 2 August 2017
Car Stacker CS-3 Product Summary	Spacepark	No date, Received by Council 2 August 2017
Passenger manoeuvring assessment	Stanbury Traffic Planning	Dated 1 August 2017, received by Council 2 August 2017

2. This Consent relates to land in Lot 1 DP 201192, and as such, building works must not encroach on to adjoining lands or other public places, except as otherwise permitted by this consent.
3. Separate development applications must be lodged with Council for the use of the individual office tenancy and associated signage.
4. No further signage, other than signage permitted as exempt or complying development, shall be installed or displayed at the premises without a development application being lodged with Council and consent thereto being given by Council in accordance with Council's guidelines and SEPP 64.
5. The following shall be complied with:
  - a) All building work must be carried out in accordance with the provisions of the Building Code of Australia;
  - b) All plumbing stacks, vent pipes and the like shall be kept within the building and suitably concealed from view. This Condition does not apply to the venting to atmosphere of the stack above roof level;
  - c) All air conditioning units shall be appropriately treated to ensure that they are concealed from view and compliant with Australian Standard AS1668.2;
  - d) The provision of disabled access throughout the development is required and shall be in compliance with the Building Code of Australia Part D3 "Access for People with Disabilities" and Australian Standard AS1428.1 (2001) – Design for Access and Mobility – Part 1 General Requirements for Access – Buildings. This requirement shall be reflected on the Construction Certificate plans; and

6. The consent given does not imply that works can commence until such time that:
  - a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:-
    - i) The consent authority; or,
    - ii) An accredited certifier; and
  - b) The person having the benefit of the development consent:-
    - i) Has appointed a Certifying Authority; and
    - ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and
7. The person having the benefit of the development consent has given at least 2 days notice to the council of the persons intention to commence the erection of the building.
8. All costs associated with these development conditions shall be borne by the applicant. If, when actioning these conditions Council's solicitor is required to act on behalf of Council, then Council's solicitor's fees and charges shall also be borne by the Applicant.

#### **CONDITIONS IMPOSED BY EXTERNAL AUTHORITIES**

9. The following conditions imposed by **Water NSW** are as follows:
  - a) Should the proposed development be varied in any way that results in more substantial excavation, or if greater than expected groundwater inflows are encountered, DPI Water is to be notified so that the project can be reassessed having consideration of the changed circumstances.
10. The following conditions imposed by **Sydney Airport** are as follows:
  - a) Should the height of any temporary structure and/or equipment be greater than 15.24 metres AEGH, a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.
11. The following conditions imposed by **Sydney Water** are as follows:
  - a) The approved plans must be submitted to the 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.
  - b) *The Sydney Water [Tap in™](#) online self-service replaces our Quick Check Agents as of 30 November 2015.*
  - c) The [Tap in™](#) service provides 24/7 access to a range of services, including:
    - i) building plan approvals
    - ii) connection and disconnection approvals
    - iii) diagrams
    - iv) trade waste approvals
    - v) pressure information
    - vi) water meter installations
    - vii) pressure boosting and pump approvals
    - viii) changes to an existing service or asset, e.g. relocating or moving an asset.
  - d) A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water. It is recommended that applicants apply early for the



certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design. Application must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

### **PRIOR TO COMMENCEMENT OF WORKS OR ANY DEVELOPMENT OR WORK**

12. Should the construction process require a building waste container(s) (builders' skip), then such container must not be placed or left upon the public road, footpath, reserve or the like without the prior approval of the Council. The use of any part of Council's road reserve must also have prior approval of Council.
13. Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter and obtained the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993:  
-

(It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.)

- a) Permit to erect hoarding on or over a public place, including Council's property/road reserve,
  - b) Permit to construction works, place and/or storage building materials on footpaths, nature strips,
  - c) Permit to install temporary ground anchors in public land,
  - d) Permit to discharge ground water to Council's stormwater drainage system,
  - e) Permit for roads and footways occupancy (long term/ short term),
  - f) Permit to construct vehicular crossings, footpaths, kerbs and gutters over road reserve,
  - g) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation / re-adjustments of utility services,
  - h) Permit to place skip/waste bin on footpath and/or nature strip, and
  - i) Permit to use any part of Council's road reserve or other Council lands.
14. An Erosion and Sediment Control Plan (ESCP) shall be prepared in accordance with the Landcom *Managing Urban Stormwater – Soils and Construction* 4<sup>th</sup> Edition (2004). All management measures recommended and contained within the Erosion and Sediment Control Plan (ESCP) shall be implemented in accordance with the *Landcom Managing Urban Stormwater – Soils and Construction* 4<sup>th</sup> Edition (2004). This plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times. A copy of the ESCP shall be kept on-site at all times and made available to Council Officers on request
  15. Erosion and sediment control devices shall be installed and functioning prior to the commencement of any demolition, excavation or construction works upon the site in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland and neighbouring properties. In this regard, all

stormwater discharge from the site shall meet the legislative requirements and guidelines including the *Protection of the Environment Operations Act 1997*.

These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.

#### **CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

16. The required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however this is a State Government Fee and can change without notice.
17. The applicant must prior to the release of the Construction Certificate, pay the following fees:
  - a) Development Control Fee \$875.00
  - b) Builder's Security Deposit \$27,870.00 (see below)
  - c) Section 94A Contributions \$4,450.00 (see below)
18. Bayside Council being satisfied that the proposed development will increase the demand for public amenities within the area, and in accordance with the *City of Botany Bay Section 94A Contributions Plan 2016*, a contribution of **\$4,450.00** is to be paid to Council prior to the issue of the first Construction Certificate.

Note: The Section 94 Contribution fees are subject to annual review and the current rates are applicable for the financial year in which your consent is granted. If you pay the contribution in a later financial year you will be required to pay the fee applicable at the time.

19. Prior to the issue of any Construction Certificate, the applicant shall lodge a Builder's Damage Deposit and Performance Bond in the sum of **\$27,870.00** (GST Exempt) by way of cash deposit or unconditional bank guarantee to Council against possible damage to Council's asset during the course of the building works. The deposit will be refunded subject to inspection by Council 12 months after the completion of all works relating to the proposed development and Final Occupational Certificate has been issued.
20. Prior to the issue of the Construction certificate amended plans are to be provided to the Principal Certifying Authority illustrating :
  - a) The deletion of the embossed floor levels on the external wall at the eastern elevation of the building
21. Prior to the issue of any Construction Certificate, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's infrastructure shall be submitted to Council and Principal Certifying Authority.

The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 20m from the development. Failure to do so may result in the applicant/developer being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.
22. The measures required in the approved acoustic report shall be implemented in accordance with the provisions of AS 2021 – 2015: Acoustics - Aircraft Noise Intrusion

- Building Siting and Construction to establish components of construction to achieve indoor design sound levels in accordance with Table 3.3 of AS2021 – 2015. The required measures shall be incorporated into the plans submitted with the Construction Certificate.

The work detailed in the report includes:

- a) Appropriate acoustic glazing to stated windows and doors,
- b) Detailed roof and ceiling construction,
- c) Wall and ceiling corner details and,
- d) External door specification,
- e) Acoustically treated mechanical ventilation.

**Note:** In many cases the applicant chooses to install air conditioning to meet mechanical ventilation requirements above. If they do it will require consideration of the noise from the air conditioner (advice concerning noise from air conditioners is attached below).

23. A Construction Management Program shall be submitted to, and approved in writing by the Private Certifying Authority prior to the issue of a Construction Certificate. The program shall detail:

- a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed,
- b) The proposed phases of construction works on the site and the expected duration of each construction phase,
- c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken,
- d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process,
- e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site,
- f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period,
- g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site,
- h) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent,
  - i) Proposed protection for Council and adjoining properties, and
  - ii) The location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation.

The location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.

24. A detailed Traffic Management Plan for the pedestrian and traffic management of the site and Bay Street during construction shall be prepared and submitted to Council as the relevant road authority for approval. The plan shall:
- a) Be prepared by a RMS accredited consultant,
  - b) Nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police, and
  - c) If required, implement a public information campaign to inform any road changes well in advance of each change. The campaign may be required to be approved by the Traffic Committee.

*Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.*

25. Prior to the release of the Construction Certificate, the following required section(s) are to be submitted to and approved by the Private Certifying Authority:
- a) All driveways/access ramps/vehicular crossings shall conform to Australian Standards AS 2890.1 and Council requirements
  - b) All vehicles shall enter the property front in front out, and
  - c) A minimum of one (1) disabled car parking spaces shall be provided and clearly marked as per Australian Standards AS 2890.6 and Council requirements, and
  - d) All off street disabled parking shall have access to all relevant areas and the adjacent road(s) as per Australian Standards AS 2890.6 and Council requirements.
26. Prior to the release of the Construction Certificate, a plan (written and/or diagrammatic) shall be submitted and approved by Council's Traffic Engineer, showing the method of access of building materials and plant to the property, and storage location on the property during construction and shall include all existing structures.
27. Prior to the issue of any Construction Certificate, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction. Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.
28. Prior to the issue of any Construction Certificate, all driveways/access ramps/vehicular crossings shall be designed to conform to the current Australian Standards AS 2890.1 and Council's Infrastructure Specifications. These include but are not limited to E-01, E-04, E-07 and E-16. The design shall be submitted to the Private Certifying Authority for approval.
- The design should be submitted to the PCA for approval. The approved design form part of the future road opening permit application.
29. To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:

- a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services.
- b) Negotiate with the utility authorities (eg AusGrid, Sydney Water, Telecommunications Carriers and Council in connection with:
  - i) The additional load on the system; and
  - ii) The relocation and/or adjustment of the services affected by the construction.

Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities, beneficiaries and Council are to be the responsibility of the developer

30. Prior to the issue of any Construction Certificate, detail design and construction plans in relation to stormwater management and disposal system for the development shall be submitted to the Principal Certifying Authority for approval.

*(The detail drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and to be in accordance with Council's Development Control Plan 'Stormwater Management Technical Guidelines', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA. All drawings shall correspond with the approved architectural plans.)*

- a) Provision of a rainwater tank collection system for internal reuse in accordance with Section 4 of Botany Bay's SMTG,
- b) Incorporate a Stormwater Quality Improvement system to ensure compliance with Section 16 of Botany Bay's SMTG,
- c) The water quality improvement system and WSUD strategy proposal shall be designed to capture and treat at least 85% flows generated from the site.
- d) A WSUD Strategy and MUSIC model must be prepared and submitted to Council for the development. The MUSIC model must be prepared in line with the Draft NSW MUSIC Modelling Guidelines (Sydney Metro CMA). Sydney's Water's requirements are that the water quality improvement should meet or exceed the target as described in the "Botany Bay & Catchment Water Quality Improvement Plan" which was prepared by the Sydney Metropolitan Catchment Management Authority in April 2011, and
- e) The submission of detailed calculations including computer modelling where required supporting the proposal.

31. Details on the mechanical plant and equipment to be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate. The report must:

- a) identify each item of plant and equipment;
- b) the following additional criteria adopted by City of Botany Bay Council:
  - i) The operation of all plant and equipment shall not give rise to an equivalent continuous ( $L_{Aeq}$ ) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background  $L_{A90}$  level (in the absence of the noise under consideration).
  - ii) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds  $L_{Aeq}$  50dB(A) day time and  $L_{Aeq}$  40 dB(A) night time.

- iii) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds  $L_{Aeq}$  65dB(A) day time/night time.
- iv) For assessment purposes, the above  $L_{Aeq}$  sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

**Note** “sensitive” positions should be selected to reflect the typical use of a property (i.e. any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.

- 32. Evidence of a Sydney Water permit or consent for discharge of wastewater to the sewer shall be submitted to the Principal Certifying Authority prior to the issue of the Construction certificate. Where a permit or consent may not be required from Sydney Water certification shall be provided verifying that any discharges to the sewer will meet specific standards imposed by Sydney Water.
- 33. Plans and specifications for the storage room for waste and recyclable materials shall be submitted to the Principal Certification Authority with the application for the Construction Certificate. The garbage and recycling storage area shall be adequately ventilated, roofed and screened from public view. The floor shall be made of an impervious surface, drained to sewer and include a dry arrestor pit with a removable basket. Washing facilities shall be provided within close proximity to the garbage and recycling storage area.
- 34. The fire hydrant and booster assembly are required to be housed within an external façade/wall of the building or elsewhere within the building structure and shall be enclosed/screened with doors to Council or PCA approval.
- 35. Erosion and sediment control devices shall be installed and in function prior to the commencement of any demolition, excavation or construction works upon the site in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines. These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.

### **CONDITIONS TO BE SATISFIED DURING WORKS**

- 36. If the work involved in the construction of a building:
  - a) likely to cause pedestrians or vehicular traffic in a public place to be obstructed or rendered inconvenient; or,
  - b) involves the enclosure of a public place:
    - i) a hoarding or fence must be erected between the work site and the public place.
    - ii) If necessary an awning is to be erected sufficient to prevent any substance from or in connection with the work falling into the public place.
    - iii) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to person(s) in the public place.
    - iv) Any such hoarding, fence or awning is to be removed when the work has been completed.

- c) Suitable consent shall be obtained from Council prior to the erection of any hoarding at the property.
37. The land to which this Consent relates must be fenced and enclosed to protect the entry or access to the land and site by lawful persons. The fencing must be in place before demolition works commence.
  38. Throughout the construction period, Council's warning sign for soil and water management shall be displayed on the most prominent point of the building site, visible to both the street and site workers. A copy of the sign is available from Council's Customer Service Counter.
  39. During construction works, the applicant/builder is required to ensure the protection and preservation of all boundary fencing or boundary walls between the subject site and adjoining properties. Any damage caused as a result of such works will be at the full cost of the applicant/builder.
  40. All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
  41. As the development involves an excavation that extends below the level of the base of the footings of a building or road on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
    - i) Protect and support the adjoining premises from possible damage from the excavation, and
    - ii) Where necessary, underpin the adjoining premises to prevent any such damage.
    - iii) Must at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of his intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished.
  42. If the land to which the application relates is served by a common sewerage system that is also used by others, then measures must be placed in effect and prior to the commencement of work to ensure the operation of the sewerage system is without disruption to other joint users.
  43. Any new information that comes to light during construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately.
  44. To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill shall be appropriately certified material and shall be validated in accordance with the:
    - a) Office of Environment and Heritage (OEH) approved guidelines; and
    - b) Protection of the Environment Operations Act 1997; and
    - c) Protection of the Environment Operations (Waste) Regulation 2014.

All imported fill shall be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.
  45. Vibration levels induced by the demolition activities shall not exceed 3mm/sec peak particle velocity (ppv) when measured at the footing of any occupied building.
  46. Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Interim Construction Noise Guideline and the *Protection of the Environment Operations Act 1997*.

**a) Level Restrictions**

Construction period of 4 weeks and under:

the L<sub>10</sub> sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 20 dB(A).

Construction period greater than 4 weeks and not exceeding 26 weeks:

the L<sub>10</sub> sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).

**b) Time Restrictions**

Construction/demolition work shall be limited to the following hours:

Monday to Friday: 07:00 am to 05:00 pm

Saturday: 08:00 am to 01:00 pm

No Construction to take place on Sundays or Public Holidays.

**c) Silencing**

All possible steps should be taken to silence construction site equipment.

47. Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:

a) demolition and construction of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;

b) Each toilet provided:

i) must be standard flushing toilet; and,

ii) must be connected:

1 to a public sewer; or

2 if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,

3 if connection to a public sewer or an accredited sewerage management facility is not practicable to some other sewerage management facility approved by the Council.

c) The provisions of toilet facilities in accordance with this condition must be in place before work commences.

48. The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:

a) The Soil and Water Management Plan if required under this consent;

b) "Managing Urban Stormwater - Soils and Construction" (2004) ('The Blue Book'); and

c) Protection of the Environment Operations Act 1997.

49. The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.

50. All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.



51.

- a) The applicant shall conduct all construction works and any related deliveries/activities wholly within the site. If any use of Council's road reserve is required, approval and permits shall be obtained from Council.
- b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on park/road reserve or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
- c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
- d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.

52. During demolition, excavation and construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of construction. The area fronting the site and in the vicinity of the development shall also be made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.

53. If an excavation associated with the proposal extends below the level of the base of the footings of a building on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:

- a) Must preserve and protect the building/ fence from damage; and,
- b) If necessary, underpin and support such building in an approved manner;
- c) Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;

Any retained existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piercing, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.

If the soil conditions required it:

- a) Retaining walls associated with the erection of a building or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided, and
- b) Adequate provision must be made for drainage.

54. During demolition, excavation, construction and deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any vehicles (including deliveries) tracking soil materials onto street

drainage system/watercourse, Council's lands, public roads and road-related areas. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's land.

55. During construction, the applicant shall ensure that all works and measures have been implemented in accordance with approved Traffic Management Plan and Construction Management Plan at all times.
56. Inspections must be conducted by Council's Engineer at the following occasions:
  - a) Formwork inspection of driveway layback and adjacent kerb and gutter prior to laying of concrete,
  - b) Formwork inspection of Council's kerb and gutter prior to laying of concrete,
  - c) Formwork inspection of Council's footpath prior to laying of concrete,
  - d) Final inspection of driveway layback and adjacent kerb and gutter,
  - e) Final inspection of Council's kerb and gutter,
  - f) Final inspection of Council's footpath.
57. All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Environment Protection Authority (EPA) Waste Classification Guidelines (2014) prior to being disposed of to a NSW approved landfill or to a recipient site.

#### **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

58. Any damage not shown in the photographic survey submitted to Council before site works have commenced will be assumed to have been caused by the site works (unless evidence to prove otherwise). All damages as a result from site works shall be rectified at the applicant's expense to Council's satisfaction, prior to occupancy of the development and release of damage deposit.
59. Prior to the issue of any Occupation Certificate(s), documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and all relevant standards.
60. Prior to the issue of the Interim Occupation Certificate, a restriction on Use of Land and Positive Covenant(s) shall be imposed on the development. The following covenants shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:
  - a) Restriction on Use of Land for Stormwater Quality Improvement Device. Refer to Appendix E of the SMTG for suggested wording  
*The terms of the 88 E instruments are to be submitted to Council for review and approval and Proof of registration at the Lands and Property Information Office shall be submitted to the Principal Certifying Authority and Council prior to occupation.*
61. Prior to the issue of any Occupation Certificate(s), inspection reports (formwork and final) for the works on the road reserve shall be obtained from Council's engineer and submitted to the Principal Certifying Authority attesting that this condition has been appropriately satisfied.
62. Prior to the issue of any Occupation Certificate(s), the applicant shall carry out the following works:

- a) On Bay Street, adjacent to development, reconstruct existing kerb and gutter for the full length of the property in accordance with Council's Infrastructure Specifications,
  - b) On Bay Street, adjacent to development, reconstruct existing concrete footpath for the full length of the property in accordance with Council's Infrastructure Specifications.
63. A report prepared by a qualified air quality/mechanical engineer certifying that the mechanical ventilation/exhaust system as installed complies in all respects with the design and operation standards of AS 1668 – Mechanical Ventilation and Air Conditioning Codes, and the relevant provisions of the Protection of the Environment Operations Act 1997 shall be submitted to Council within 21 days of the installation of the system and prior to the occupation of the premises.
  64. Street numbers shall be clearly displayed with such numbers being of contrasting colour and adequate size and location for viewing from the footway and roadway. Details of street numbering shall be submitted to Council for approval.
  65. The 7 car parking spaces shall be made available to tenants and occupiers of the development at all times, with such spaces being clearly marked and signposted prior to issue of any Occupation Certificate.
  66. Prior to release of the Occupation Certificate the developer must submit to the Principal Certification Authority an acoustic report to verify that the measures stated in the acoustic report have been carried out and certify that the construction meets the above requirements. The report must be prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants).
  67. Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109M of the Environmental Planning and Assessment Act 1979.

#### **CONDITIONS WHICH MUST BE SATISFIED DURING THE ONGOING USE OF THE DEVELOPMENT**

68. The stormwater drainage system (including all pits, pipes, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines.
69. The car stackers are to be maintained in functioning order at all times.
70. Council's footway (area between property boundary and street kerb) is to be kept clean, tidy, washed and maintained at the applicant's expense.
71. The operation of the premises shall be conducted in such a manner as not to interfere with or materially affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil, or otherwise.
72. All intruder alarms shall be fitted with a timing device in accordance with the requirements of *Regulation 12A of the Noise Control Act, 1975*, and *AS2201, Parts 1 and 2 - 1978 Intruder alarm systems*.
73. A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any

other residential premises (regardless of whether any door or window to that room is open):

- a) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
- b) Before 7 am or after 10 pm on any other day.

74. The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).

The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.

The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.

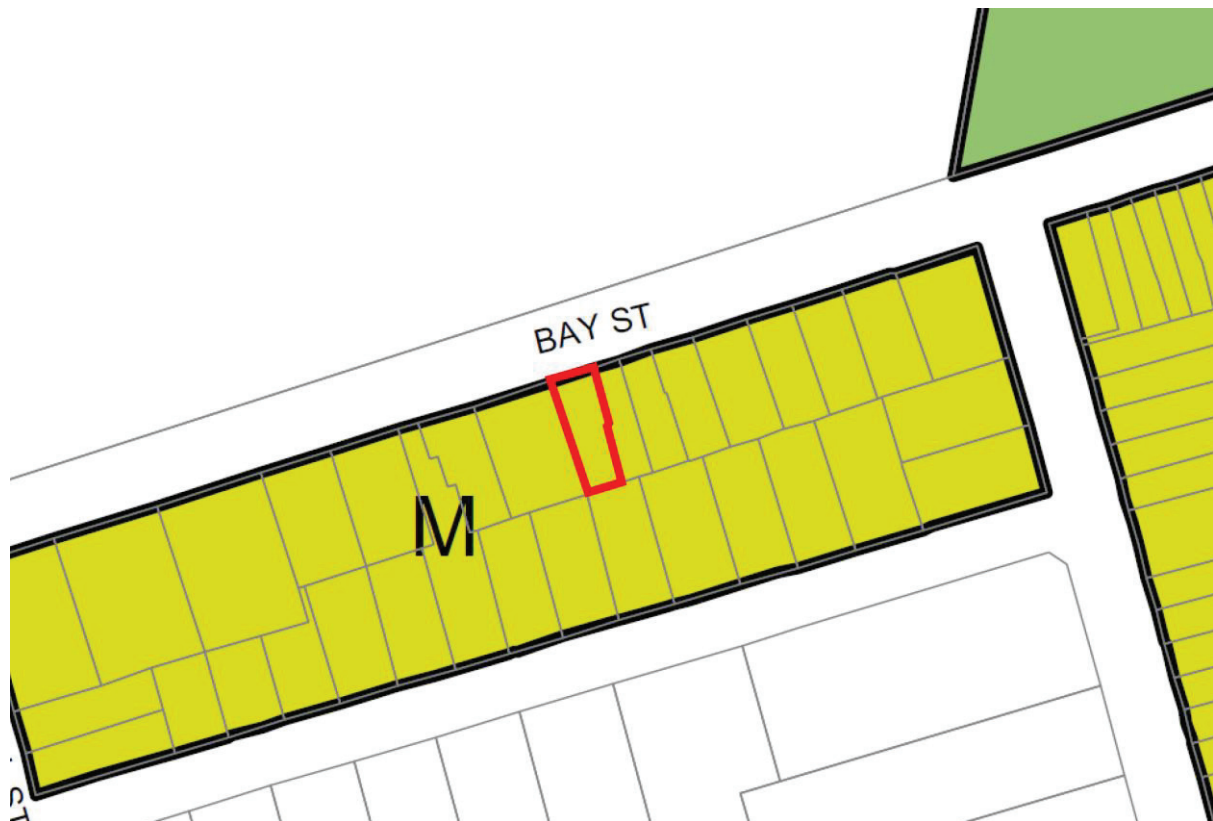
For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

75. The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council's records as Development Application No. 2016/173 dated as 29 September 2016 and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.

**Clause 4.6 Variation Request**  
**No. 21 Bay Street, Botany**  
**Clause 4.3 – Height of Buildings**

**1. Building height control**

Clause 4.3 (2) of BBLEP 2013 relates to the maximum building height requirements and refers to the *Height of Buildings Map*. The *Height of Buildings Map* identifies the building height controls that apply to the site as shown in the extract of the map provided at Figure 1 (with the subject site outlined in red). A maximum building height of 12m applies to the site.



**Figure 1: Extract from Height of Buildings Map to BBLEP 2013 (M = 12m)**

Building height is defined in BBLEP 2013 as:

***“building height (or height of building) means:***

*(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*

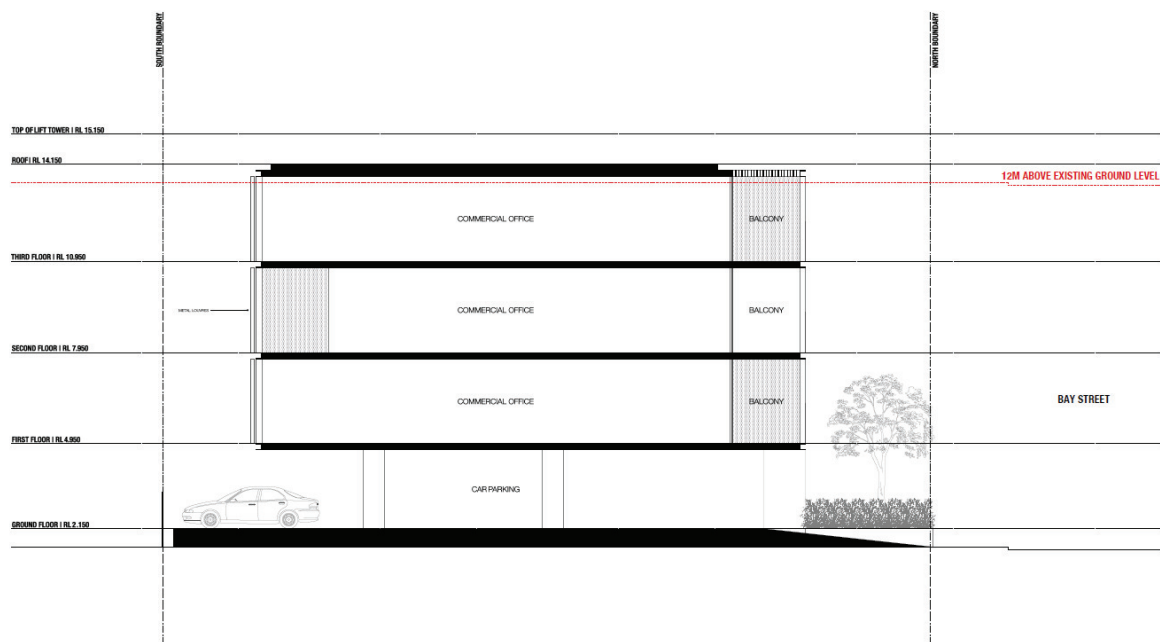
*(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”*

The maximum building height control is a “development standard” to which exceptions can be granted pursuant to clause 4.6 of the LEP.

## 2. Proposed variation to maximum building height

The roof height of the proposed building is a maximum of 12.6m above ground level, as indicated in the section provided at Figure 2. The lift overrun is a further 1m above the roof height and 13.6 above ground level. The roof height and height of the lift overrun exceed the maximum building height by 0.6m and 1.6m, respectively. Expressed as a percentage variation, the roof height and height of the lift overrun exceed maximum building height by 5% and 13%, respectively.



**Figure 2: Section demonstrating extent of non-compliance**

## 3. Clause 4.6 to BBLEP 2013

The objectives and provisions of clause 4.6 to BBLEP 2013 are as follows:

### **“4.6 Exceptions to development standards**

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

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

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

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

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
  - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) *a development standard for complying development,*
  - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
  - (c) *clause 5.4,*
  - (ca) *clause 6.16(3)(b)."*

The development standards in clause 4.3 are not "expressly excluded" from the operation of clause 4.6.

Objective 1(a) of clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This request addresses the requirements of subclauses 4.6(3) and 4.6(4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in subclause 4.6(6).

Objective 1(b) of clause 4.6 is addressed later in this request.

The objectives and relevant provisions of clause 4.3 for building height control are as follows, inter alia:

- "(a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,*

- (b) *to ensure that taller buildings are appropriately located,*
- (c) *to ensure that building height is consistent with the desired future character of an area,*
- (d) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- (e) *to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities."*

As previously noted, the *Height of Buildings Map* nominates a maximum building height of 12m on the site. It is hereby requested that an exception to this development standard be granted pursuant to clause 4.6 so as to permit a building height of 12.6m when measured to the top of the roof and 13.6m when measured to the top of the lift overrun, as described in Section 2 above.

In order to address the requirements of subclause 4.6(4)(a)(ii), the objectives of clause 4.3 are addressed in turn below.

***Objective (a): "to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner"***

The *Height of Buildings Map* indicates that the 12m height limit that applies to the subject site also applies to all land in the immediate vicinity within Zone B7. Zone B7 extends eastward to the Botany Local Centre where building height transitions up to 14m. At present, the built form within the block is characterised by a combination of older housing stock and more recent commercial and industrial development and as such building heights are varied and few take up the maximum building height of 12m.

As mentioned, the maximum height of the proposal is 12.6m when measured to the top of the roof and 13.6m when measured to the top of the lift overrun. The lift overrun is set 5.6m behind the street elevation and therefore presents as a recessive element that is not readily apparent from street level. The breach in roof height is a product of the flood affectation of the site, and the locality more generally. That is, the 600mm breach (measured to top of roof) is equivalent to the degree by which the ground floor level has had to be raised to account for flooding. It is therefore conceivable that the redevelopment of neighbouring properties which are also flood affected will result in a built form that is similarly non-compliant with building height.

It is anticipated that zoning changes and more generous building height and density controls implemented by BBLEP 2013 will be a catalyst for redevelopment of land in the locality. Redevelopment will typically accord with the new controls (or be marginally non-compliant as described in the previous paragraph) and therefore building heights will become more coordinated and cohesive over time. It is submitted that the proposal, although greater in height than its neighbours, is compatible with the height of development envisaged by the LEP and, over time, will form part of a coordinated and cohesive streetscape in terms of building height.

***Objective (b): "to ensure that taller buildings are appropriately located"***

The function of the *Height of Building Map* is, as suggested by objective (b), to identify appropriate locations for taller buildings. The *Height of Buildings Map* indicates that the maximum building height for the site is 12m and is therefore identified as a location where 'taller' buildings are appropriate. The proposal does not strictly comply with this requirement (hence the request to vary the development standard), however is not substantially taller than the height of buildings anticipated in this location. It is submitted that the proposal, which may be considered a 'taller' building, is appropriately located.



***Objective (c): “to ensure that building height is consistent with the desired future character of an area”***

Much of the discussion provided against objective (a) is also relevant to this objective. In brief, the desired future character of an area is, to some degree, determined by the building envelope provisions that apply to the site. In this case, it is conceivable that future development in the locality will have a building height of 12m. It is also conceivable that many sites with similar flood affectation will seek to vary building height to account for the degree by which ground floor levels will need to be raised. It is considered that the proposal, although marginally non-compliant with building height, is consistent with the desired future character of the area, noting that the term ‘consistent’ does not necessarily mean ‘the same as’.

***Objective (d): “to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development”***

Despite non-compliance, the proposal is designed and located to minimise visual impact, disruption of views, loss of privacy and loss of solar access to neighbouring development as described below:

- The lift overrun is set 5.6m behind the street elevation and therefore presents as a recessive element that is not readily apparent from street level. That part of the building that is non-compliant with building height i.e. the upper 600mm of the building, does not contribute significantly to the visual bulk of the development. It is submitted that the difference between the proposal and a development that complies with building height will be negligible when viewed from the streetscape.
- It is understood that there are no significant views obtained from or through the site that will be obscured by the non-compliant aspect of the building. The heritage item to the west is situated a sufficient distance from the subject site so as not to impinge on its setting and to allow for reasonable views to and from the item. More detail in relation to views to and from the heritage item is provided within the Heritage Impact Statement submitted with the development application.
- The proposal incorporates balconies which are oriented to the street, translucent glazing on side elevations and external metal louvres on the rear elevation. These features preclude cross viewing or overlooking of neighbouring properties therefore ensuring visual privacy.
- Solar access diagrams have been prepared and are submitted with the development application. The diagrams demonstrate that, although the building is marginally non-compliant in terms of building height, solar access to neighbouring properties is not unreasonably reduced. It is pertinent to note that the building to the south that will be most affected by overshadowing is used for a commercial / industrial purpose.

As described above, although non-compliant with building height, the proposal is designed and located to minimise visual impacts, disruption of views, loss of privacy and overshadowing and therefore achieves the objective.

***Objective (e): “to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities”***

It is anticipated that the locality will undergo a period of transition as properties are redeveloped to take advantage of the zoning changes and generous height and density controls introduced through the new LEP. As previously discussed, the height of the proposal is considered to be compatible with the

anticipated future character of the locality and in this regard makes a positive contribution to the desired streetscape. Until such time as neighbouring and adjoining sites are also developed, the proposal will be a prominent element in the immediate streetscape however will not be evident in the skyline in the same way as a residential tower is visible from a distance.

Clause 4.6(4) also requires consideration of the relevant zone objectives. The objectives of Zone B7 Business Part are as follows:

- *"To provide a range of office and light industrial uses.*
- *To encourage employment opportunities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To encourage uses in the arts, technology, production and design sectors."*

The proposed development is considered to be consistent with the relevant zone objectives as described below:

- The proposal provides for 296m<sup>2</sup> of commercial floor space that is configured so as to be suitable for a range of office and business uses. The floor space is also suitable for studio spaces and the like and in this regard will encourage creative businesses and industries as is the focus of Zone B7 and in particular, the Botany West Industrial Precinct.
- The proposed development represents a suitably compact and aesthetically pleasing multistorey commercial building that will replace what is presently a vacant and underutilised allotment. In its present state, the site is contrary to the objective of encouraging employment generating opportunities and therefore the proposal, which is likely to generate several jobs, is highly desirable from an employment generation perspective.

For these reasons the development proposal meets the relevant objectives for development in Zone B7.

#### **4. Sufficient environmental planning grounds**

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, as discussed above it is considered that, despite marginal non-compliance with the maximum building height standard, there will be no impact on the character of the locality or on the amenity of neighbouring and adjoining properties.

On "planning grounds" and in order to satisfy that the proposal meets objective 1(b) of clause 4.6 in that allowing flexibility in the particular circumstances of this development will achieve "*a better outcome for and from development*", it is considered that:

- the discussions provided in this variation request have demonstrated that the marginal height breach will have no adverse impact on the character of the locality, the amenity of neighbouring properties and is to some degree necessitated by the flood affectation of the site. In the absence of any adverse impact, it is considered that to require strict compliance with the development standard would, in this instance, be unreasonable and unnecessary;
- to achieve compliance with the building height standard when measured to the top of the roof, the building would need to be reduced by a relatively insignificant margin of 600mm. The visual bulk associated with the non-compliant 600mm is negligible when compared to the visual bulk of a compliant scheme. The reduction in height would however have significant implications for the

proposal as it would effectively preclude a fourth storey and ultimately reduce the yield of commercial floor space by one third. This is contrary to the objectives of Zone B7 which, as previously discussed, expressly encourage floor space of this nature and the subsequent employment opportunities it brings;

- the building height development standard allows a 12m building height on the subject site and the street block in which the subject site is situated. It is commonly accepted that a 12m building height will comfortably permit a four storey structure without any significant height breach. It follows that BBLEP 2013 anticipates a four storey building form on the subject site and its surrounds. As noted, the ground floor level has been lifted to account for flood affectation of the site and this has subsequently lead to a building height breach. It is submitted that to require strict compliance with the building height development standard in this instance would effectively preclude a fourth level and therefore the development would fail to realize the desired built form anticipated by BBLEP 2013.

For the reasons listed above, it is considered that there are sufficient environmental planning grounds to support a variation to the maximum building height standard, particularly when one considers that the breach is the direct result of the flooding affectation of the site, and strict compliance would preclude a fourth level and therefore reduce the employment and economic benefits of a four storey commercial development.

## **5. Insistence on compliance is unreasonable and unnecessary**

In regards to Clause 4.6(3)(a), in *Wehbe V Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

*“ An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”*

The judgement goes on to state that:

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

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
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;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and

*compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Having regard to all of the above, it is our opinion that compliance with the maximum building height development standard is unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. Furthermore the non-compliance is a consequence of a site characteristic (i.e. flood affectation) and the degree of non-compliance is such that the visual bulk associated with the additional height is not substantively different than that of a compliant scheme.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of clause 4.6(3) are satisfied.





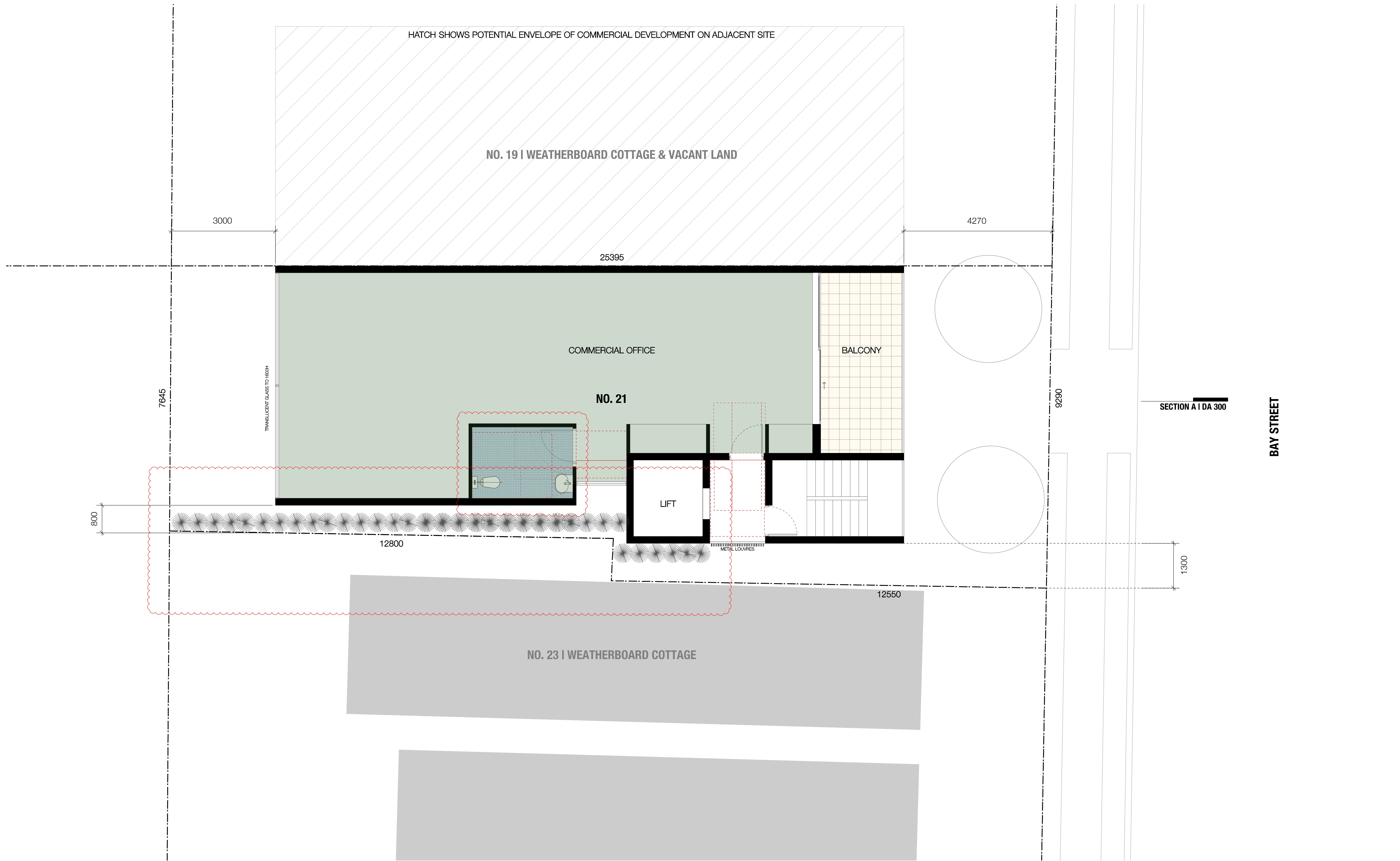
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B	170829	DA	

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

DRAWING NO.	1605-DA 002 B
DRAWING TITLE	SITE & SITE ANALYSIS PLAN

SCALE	1:200 @ A1
MAGNETIC NORTH	TRUE NORTH

T: 612 9300 7570	SHED
ABN 75 651 175 16	

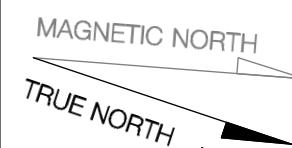


ISSUE	DATE	DESCRIPTION
A	160803	DA
B	170629	DA

REVISION
1. SET-BACK AT SE CORNER INCREASED 2. SCREEN PLANTING ADDED 3. ACCESSIBLE BATHROOM AMENDED

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
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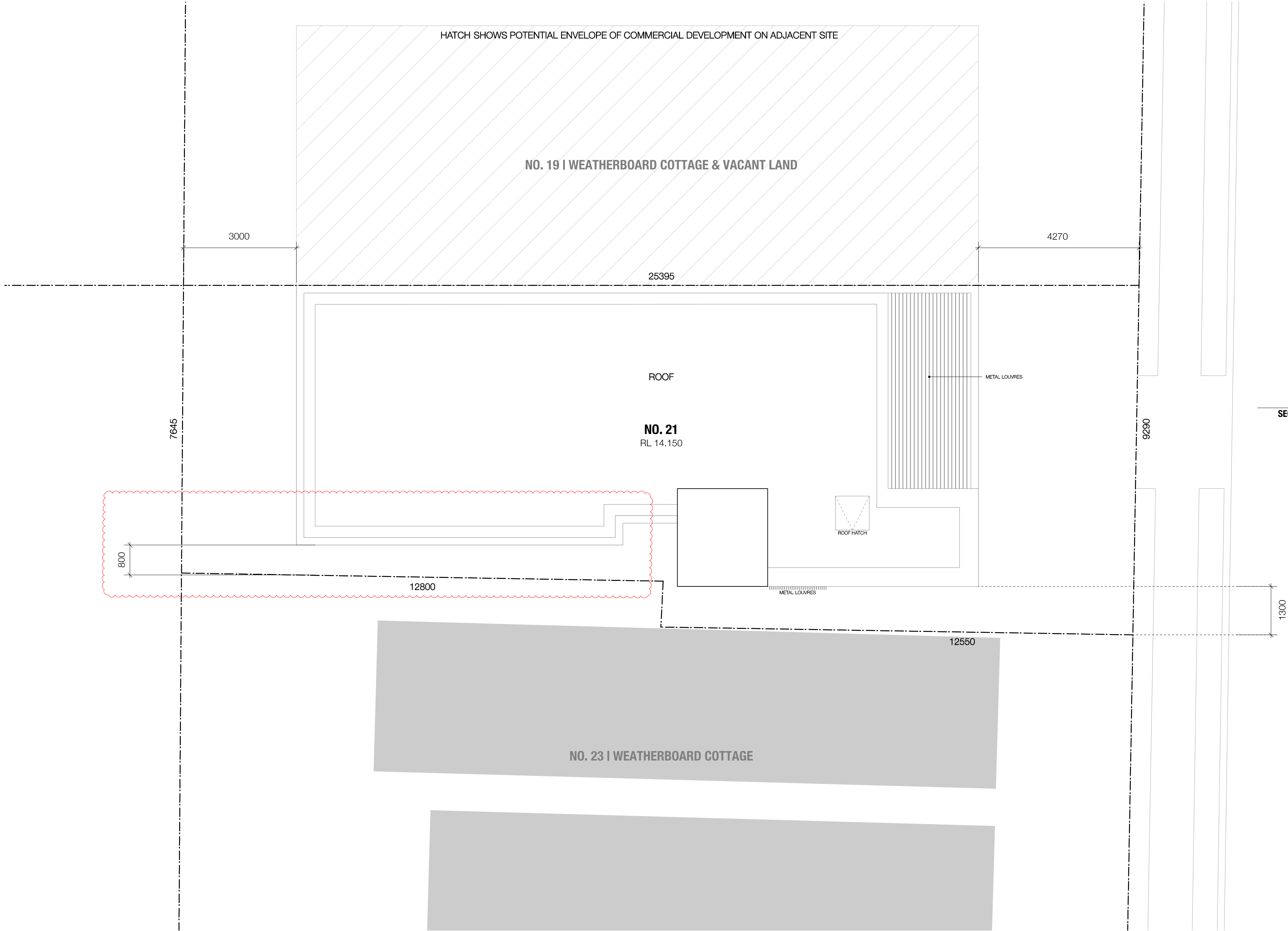
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FLOOR PLAN | TYPICAL**

DRAWING NO.  
**1605-DA 110 B**

T +612 9360 7570  
ABN 75155117516





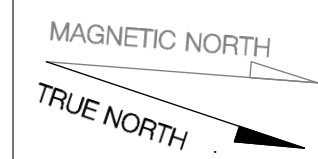


ISSUE	DATE	DESCRIPTION
A	160803	DA
B	170629	DA

REVISION
1. SET-BACK AT SE CORNER INCREASED

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

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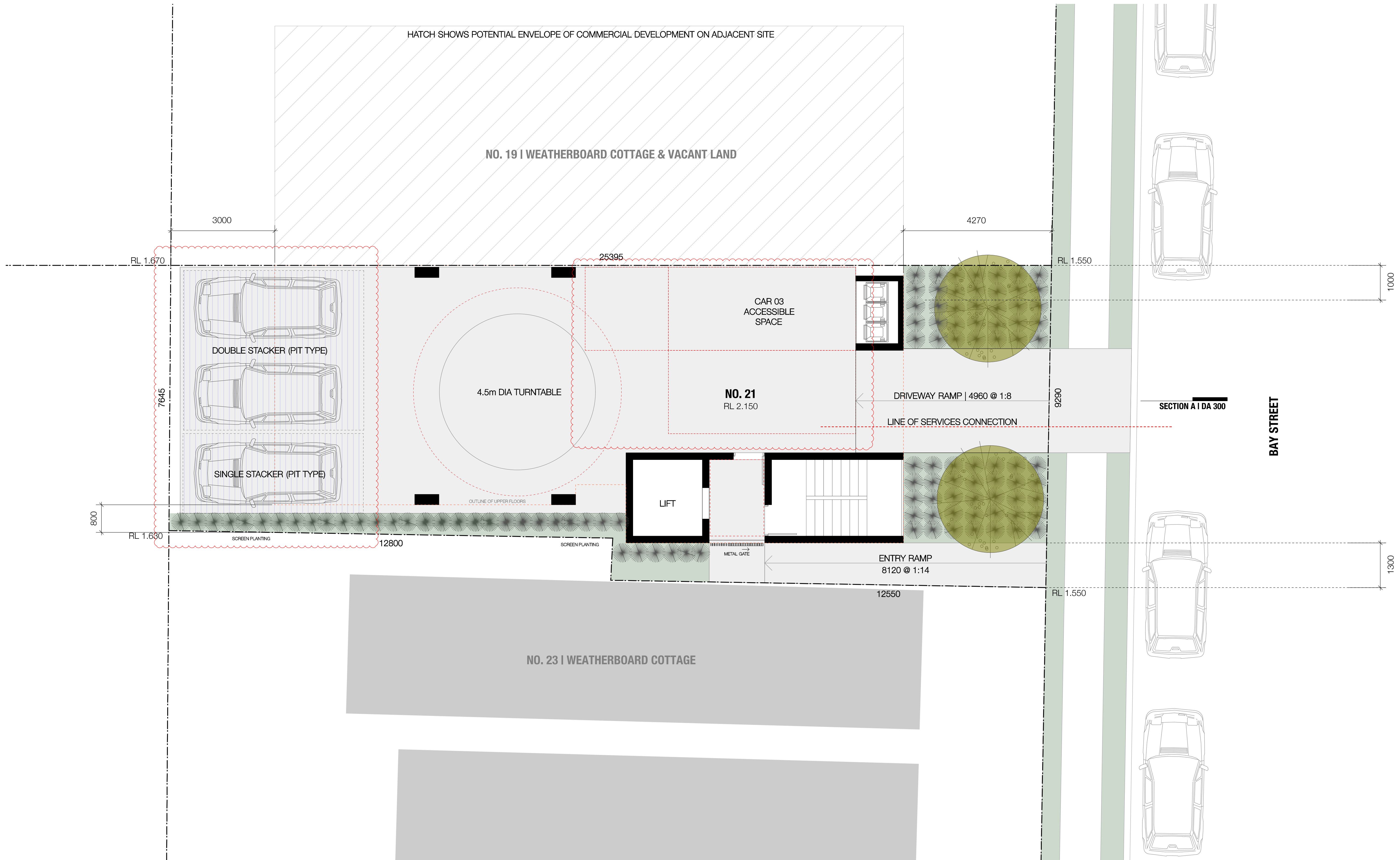


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DRAWING NO.  
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ABN 75155117516





ISSUE	DATE	DESCRIPTION
A	160803	DA
B	170629	DA
C	170801	DA

REVISION
1. SET-BACK AT SE CORNER INCREASED 2. SCREEN PLANTING ADDED 3. ACCESSIBLE SPACE AMENDED
1. CAR STACKERS ADDED 2. ACCESSIBLE SPACE RELOCATED

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

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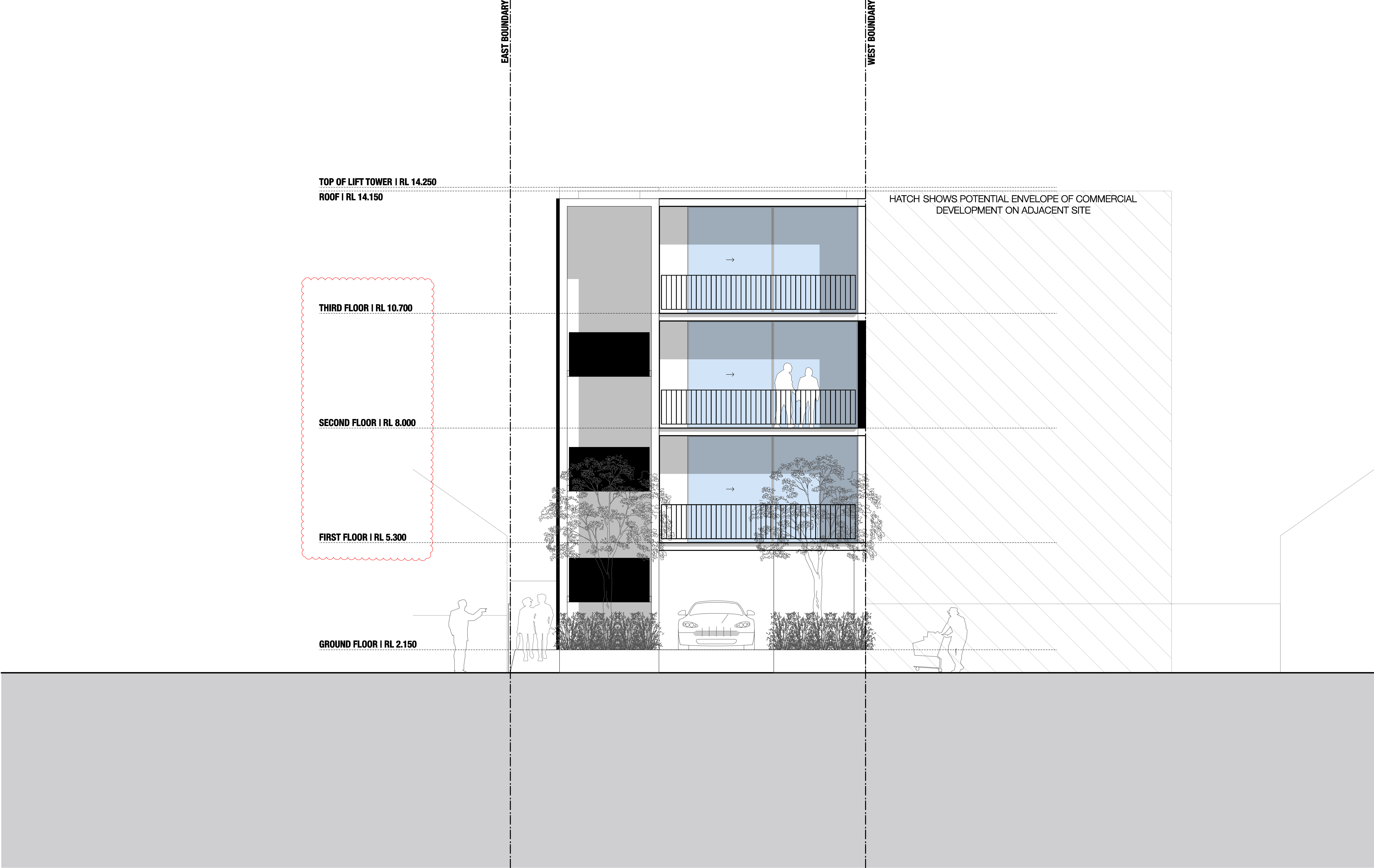
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ABN 75155117516







ISSUE	DATE	DESCRIPTION
A	160803	DA
B	170629	DA
C	170801	DA

REVISION
1. BALUSTRADES AMENDED TO METAL 2. LIFT OVERUN REDUCED
1. RL'S AMENDED

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

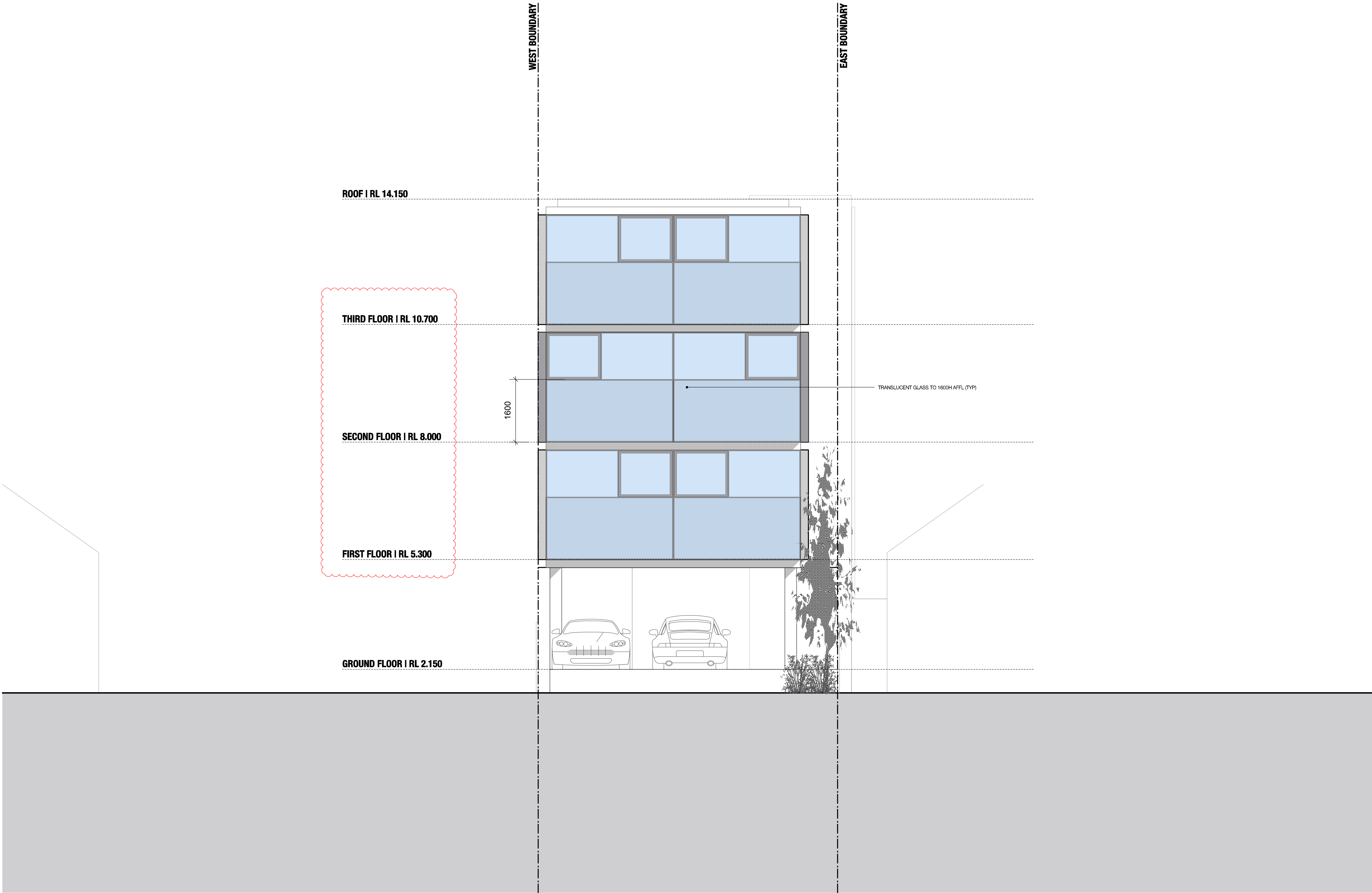
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DRAWING NO.  
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T +612 9360 7570  
ABN 75155117516





ISSUE	DATE	DESCRIPTION
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B	170629	DA
C	170801	DA

REVISION
1. CLEAR GLASS BELOW 1600AFFL REPLACED WITH TRANSL. GLAZING 2. AWNING WINDOWS ADDED 3. LOUVRES DELETED
1. RL'S AMENDED

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

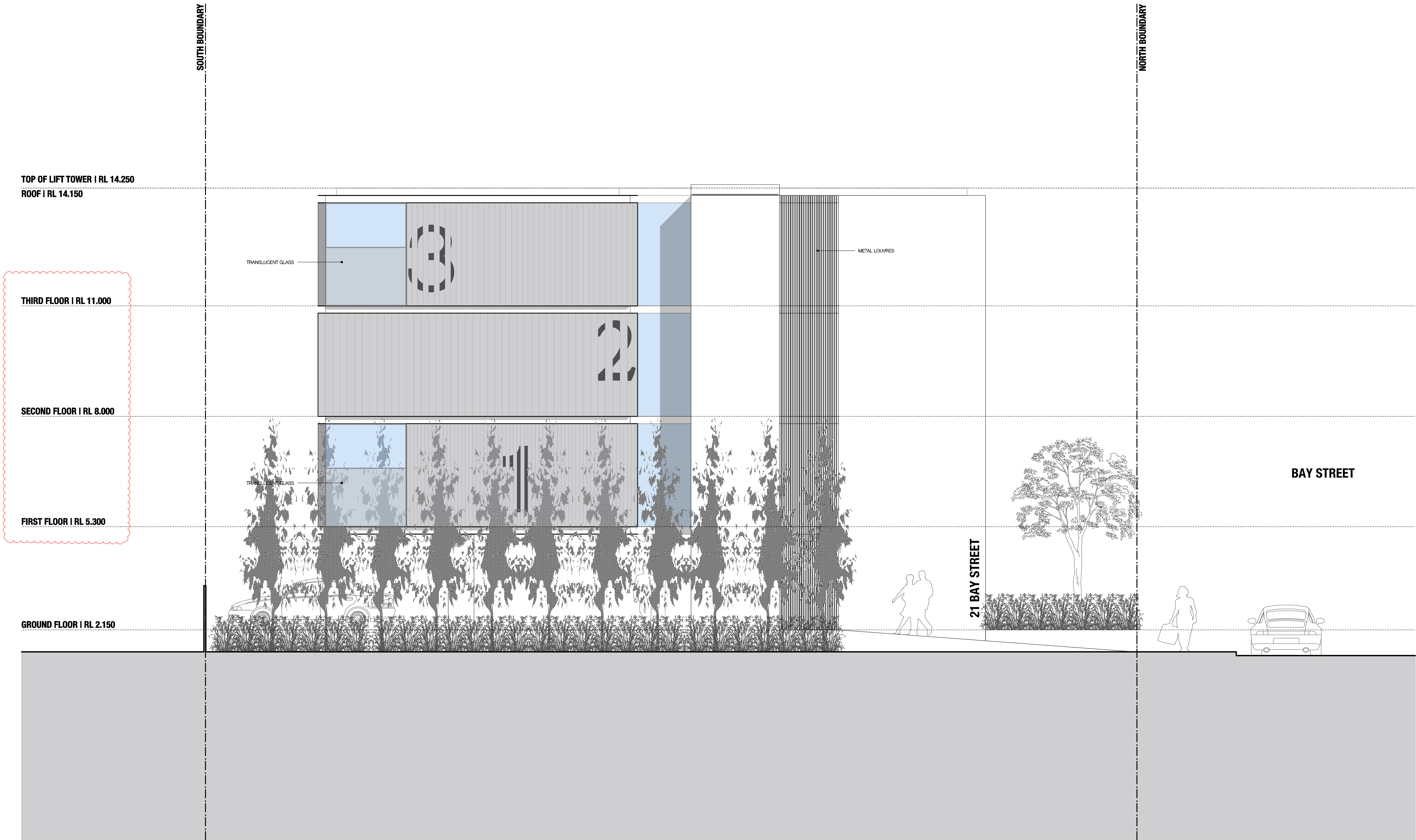
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DRAWING NO.  
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T +612 9360 7570  
ABN 75155117516





ISSUE	DATE	DESCRIPTION
A	160803	DA
B	170629	DA
C	170801	DA

REVISION
1. SCREEN PLANTING ADDED 2. LIFT OVERUN REDUCED 3. TRANSLUCENT GLAZING ADDED
1. RL'S AMENDED

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

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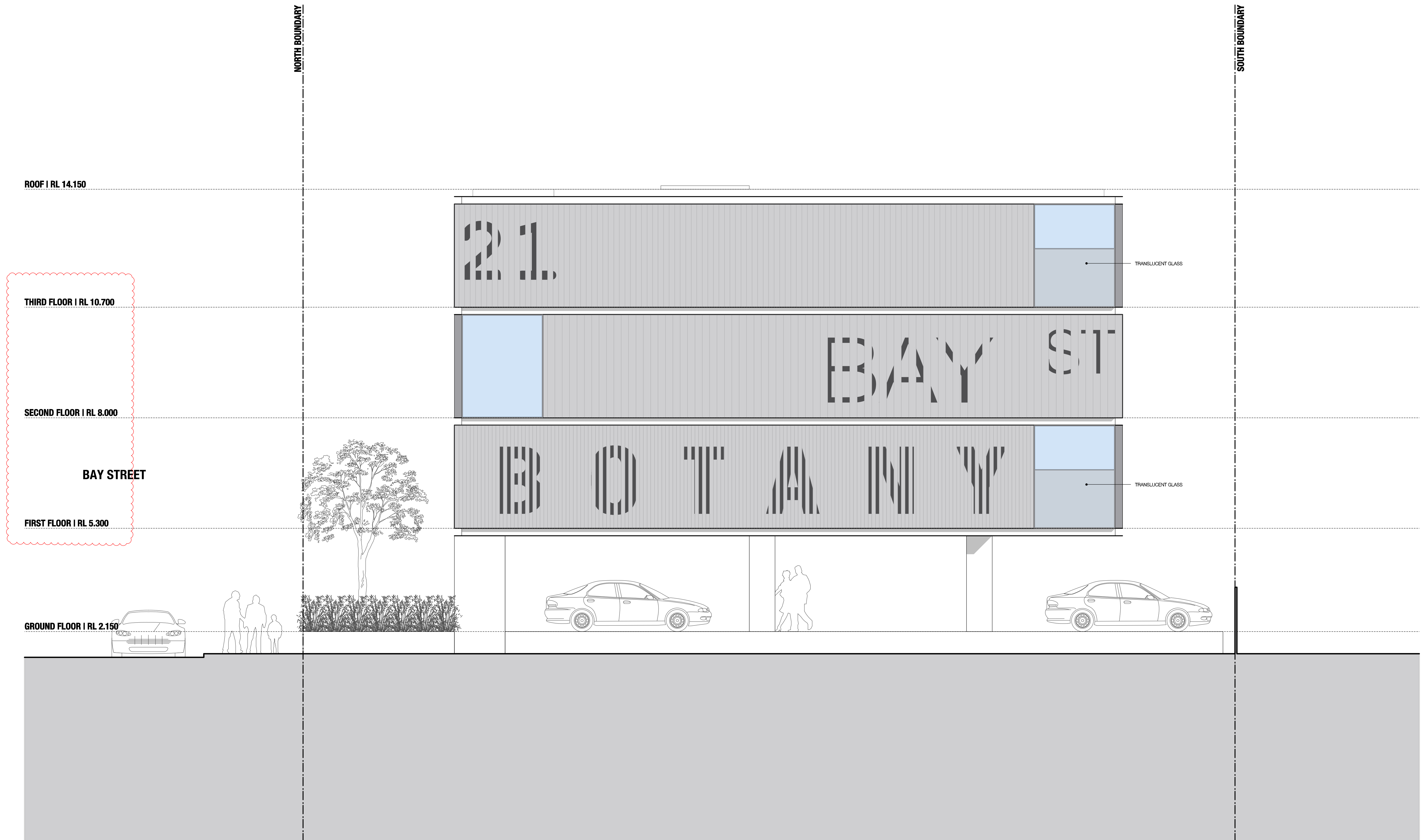
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DRAWING NO.  
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ABN 75155117516







ISSUE	DATE	DESCRIPTION	REVISION
A	160803	DA	1. LIFT OVERUN REDUCED 2. TRANSLUCENT GLAZING ADDED
B	170629	DA	1. RL'S AMENDED
C	170801	DA	

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

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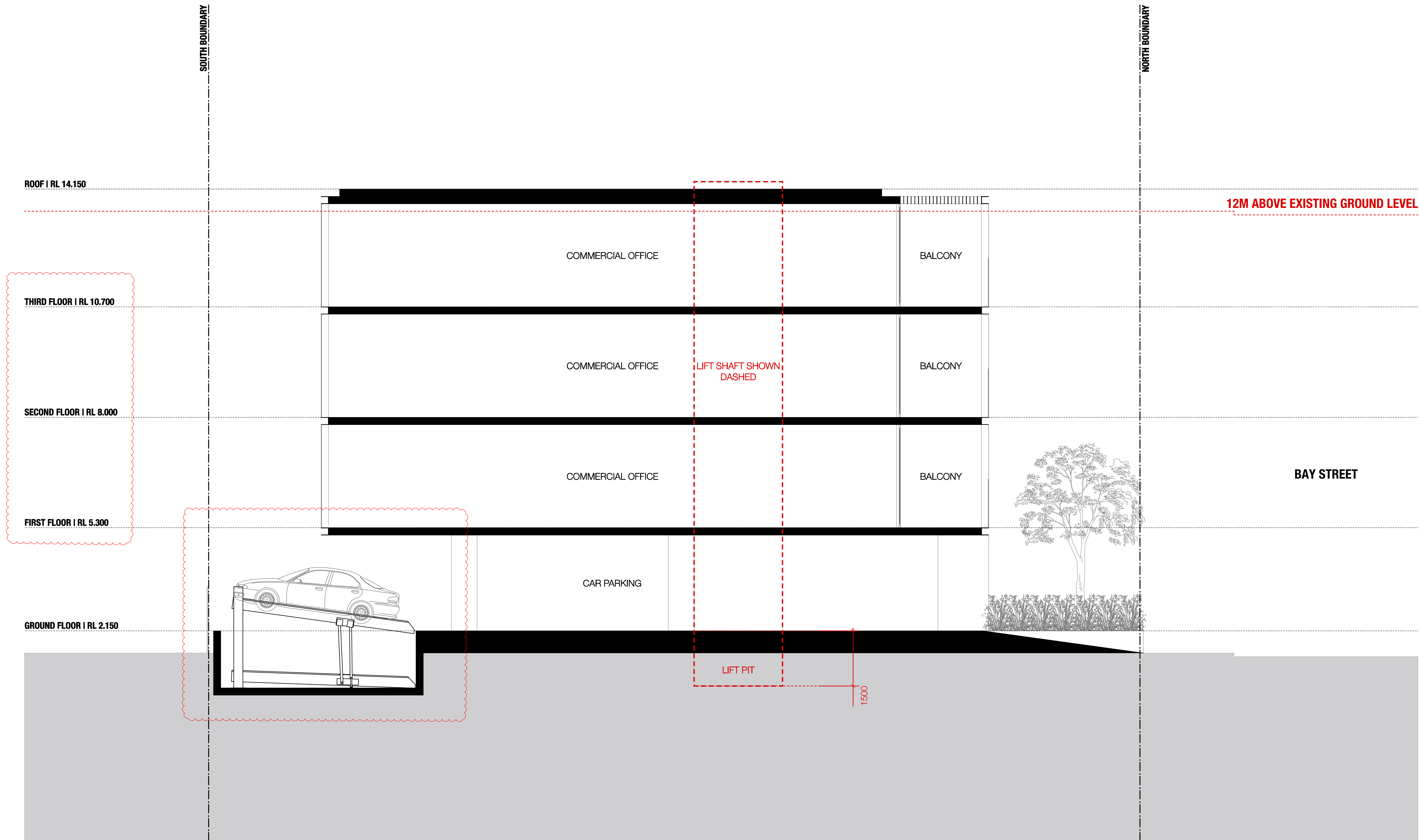
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DRAWING NO.

**1605-DA 230 C**

The logo for the She D Project, featuring the letters S, H, E, and D in white, each inside a separate black vertical rectangle.

EXISTING GROUND



ISSUE	DATE	DESCRIPTION
A	160803	DA
B	170629	DA
C	170801	DA

REVISION
1. LIFT OVERUN REDUCED
1. CAR STACKERS ADDED 2. RL'S AMENDED

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

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**SECTION**

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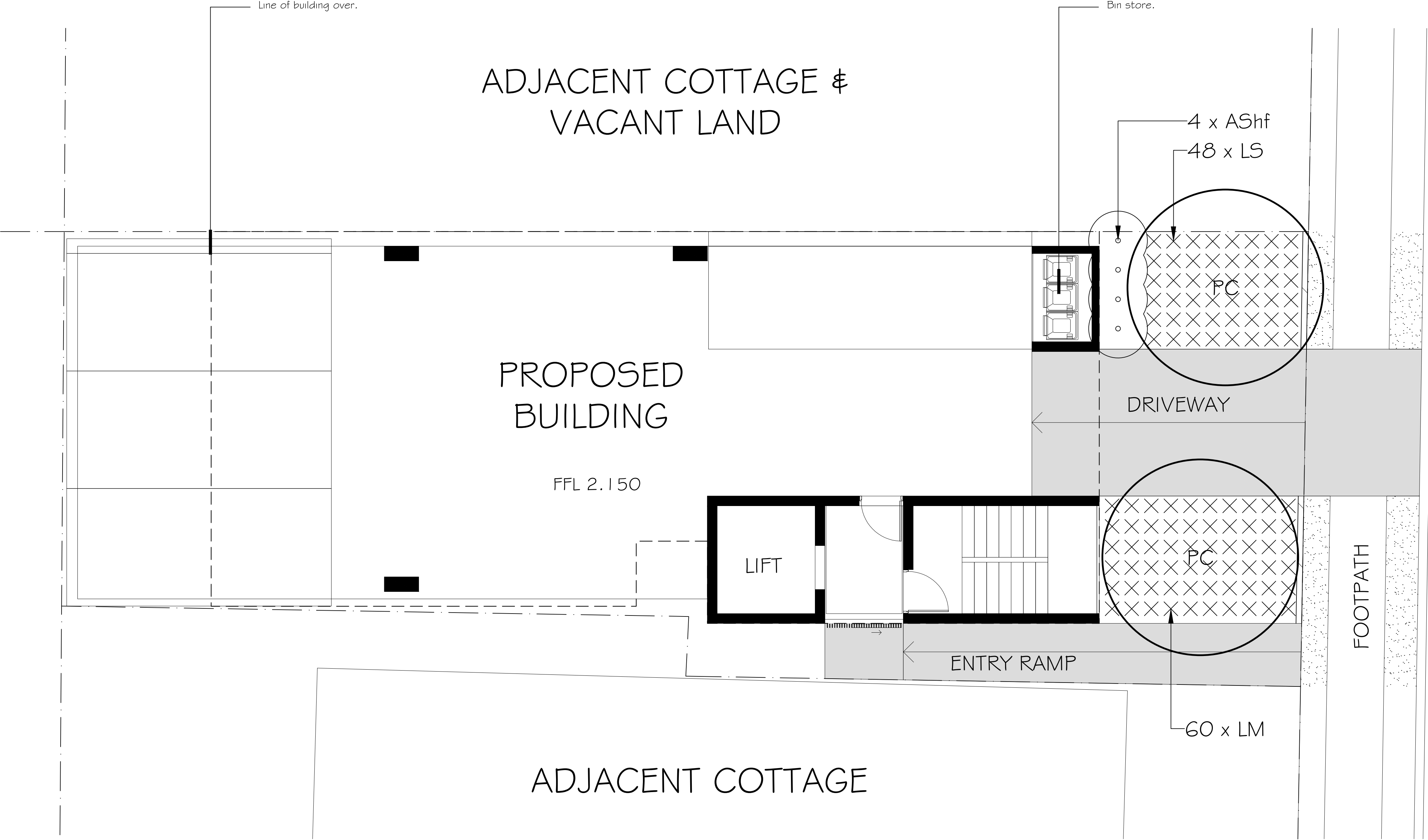
T +612 9360 7570  
ABN 75155117516





LEGEND

- NATURESTRIP TURF. TO MATCH EXISTING.
- PAVING. REFER TO DETAILS BY OTHERS.
- BRICK GARDEN EDGING



SCHEDULE OF PLANT MATERIAL

CODE	BOTANICAL NAME	COMMON NAME	QUANTITY	MATURE HEIGHT	CONTAINER SIZE	STAKES
AShf	<i>Acmena smithii</i> 'Hot Flush'	Dwarf Lilli Pilli	4	1.5m	200mm	-
LM	<i>Liriope muscari</i> 'Just Right'	Turf Lily	60	0.4m	140mm	-
LS	<i>Lomandra</i> 'Seascape'	Seascape Lomandra	48	0.5m	140mm	-
PC	<i>Pyrus calleryana</i> 'Chanticleer'	Pear	2	10m	75 litre	2



*Acmena smithii* 'Hot Flush'



*Liriope muscari* 'Just Right'



*Lomandra* 'Seascape'



*Pyrus calleryana* 'Chanticleer'

Verify all dimensions on site before commencing construction or ordering materials. Verify the dimensions of all manufactured products before installation. Use figured dimensions in preference to scaled dimensions. Report any discrepancies to the Landscape Architect for a decision before work commences.

NOTES

This plan is to be read in conjunction with all documentation prepared by SHED.



office. 16/303 pacific highway  
lindfield nsw 2070  
postal. 25 bent street  
lindfield nsw 2070  
ph 9416 4290 fax 9416 4735  
A.C.N 097 328 580  
email ijla@netspace.net.au

project  
Proposed Development  
21 Bay Street, Botany

drawing  
Landscape Plan

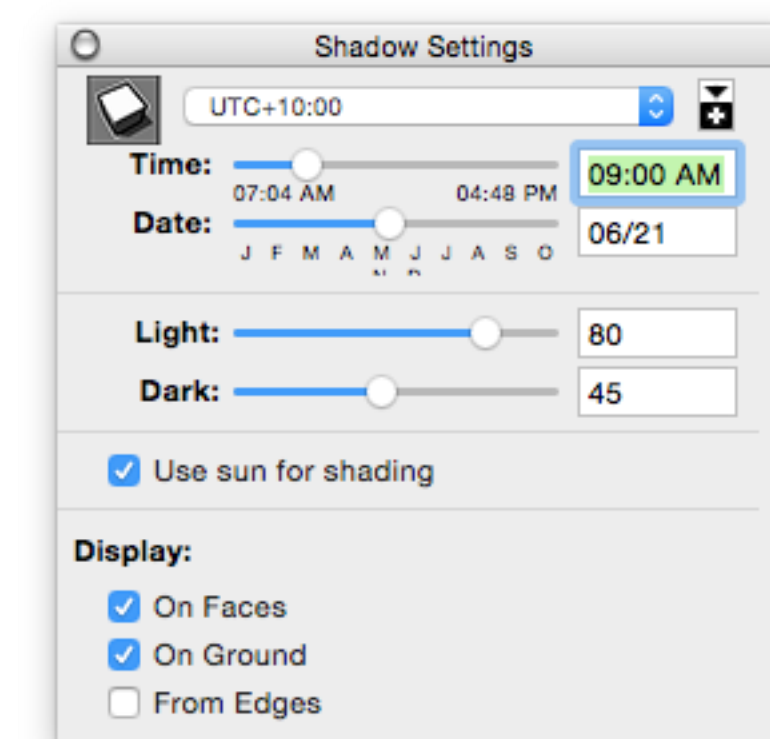
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Malex Developments  
date  
August 2016  
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drawn by  
AM



ERITH STREET



BAY STREET

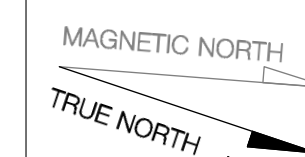


ISSUE	DATE	DESCRIPTION
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B	160810	DA
C	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
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DRAWING TITLE

**SHADOW DIAGRAM | PLAN  
JUNE 21 | EXISTING | 9AM**

DRAWING NO.

1605-DA 500 C

T +612 9360 7570  
ABN 75155117516



ERITH STREET



BAY STREET

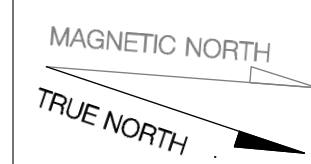
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B	160810	DA
C	170629	DA

REVISION

JECT BUILDING AMENDED

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
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DRAWING TITLE

**SHADOW DIAGRAM I PLAN  
JUNE 21 I NEW I 9AM**

DRAWING NO.

1605-DA 501 C

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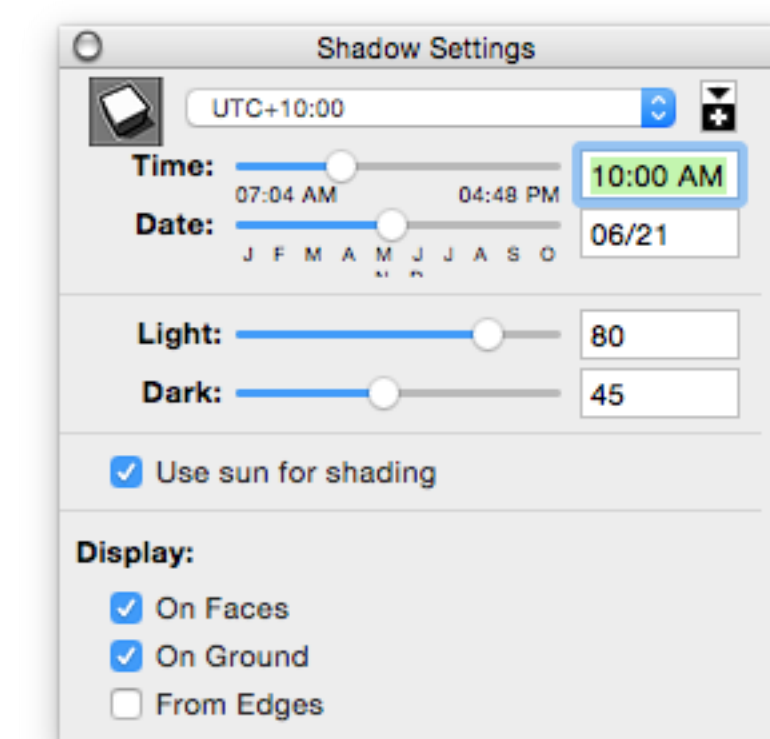




ERITH STREET



BAY STREET



ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
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DRAWING TITLE

**SHADOW DIAGRAM | PLAN  
JUNE 21 | EXISTING | 10AM**

DRAWING NO.

1605-DA 501 A

T +612 9360 7570  
ABN 75155117516



ERITH STREET



ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
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DRAWING TITLE

**SHADOW DIAGRAM I PLAN**  
**JUNE 21 | NEW | 10AM**

DRAWING NO.

1605-DA 501-3 A

T +612 9360 7570  
ABN 75155117516

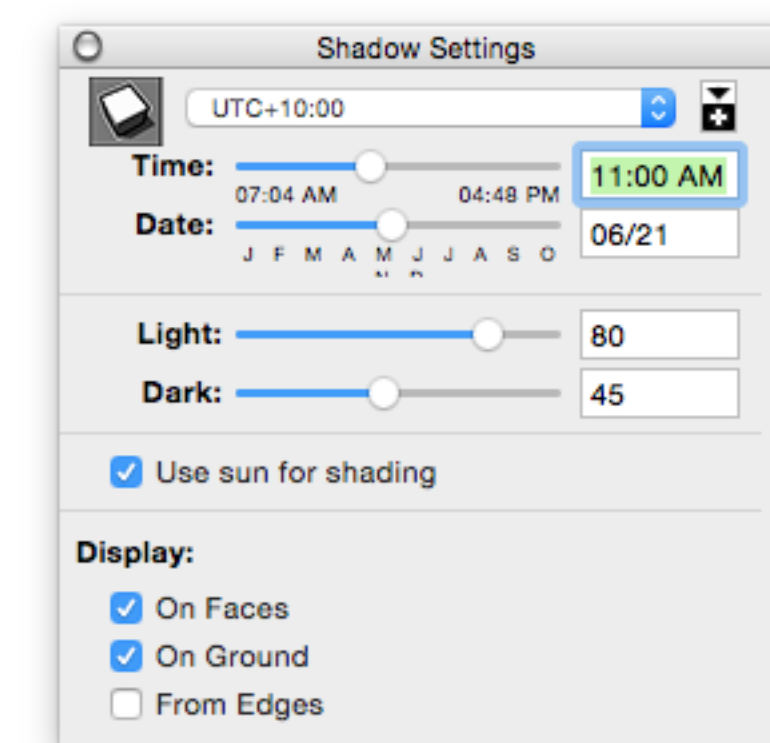


ERITH STREET



21 BAY STREET

BAY STREET



ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
1:200 @ A1



DRAWING TITLE

**SHADOW DIAGRAM | PLAN  
JUNE 21 | EXISTING | 11AM**

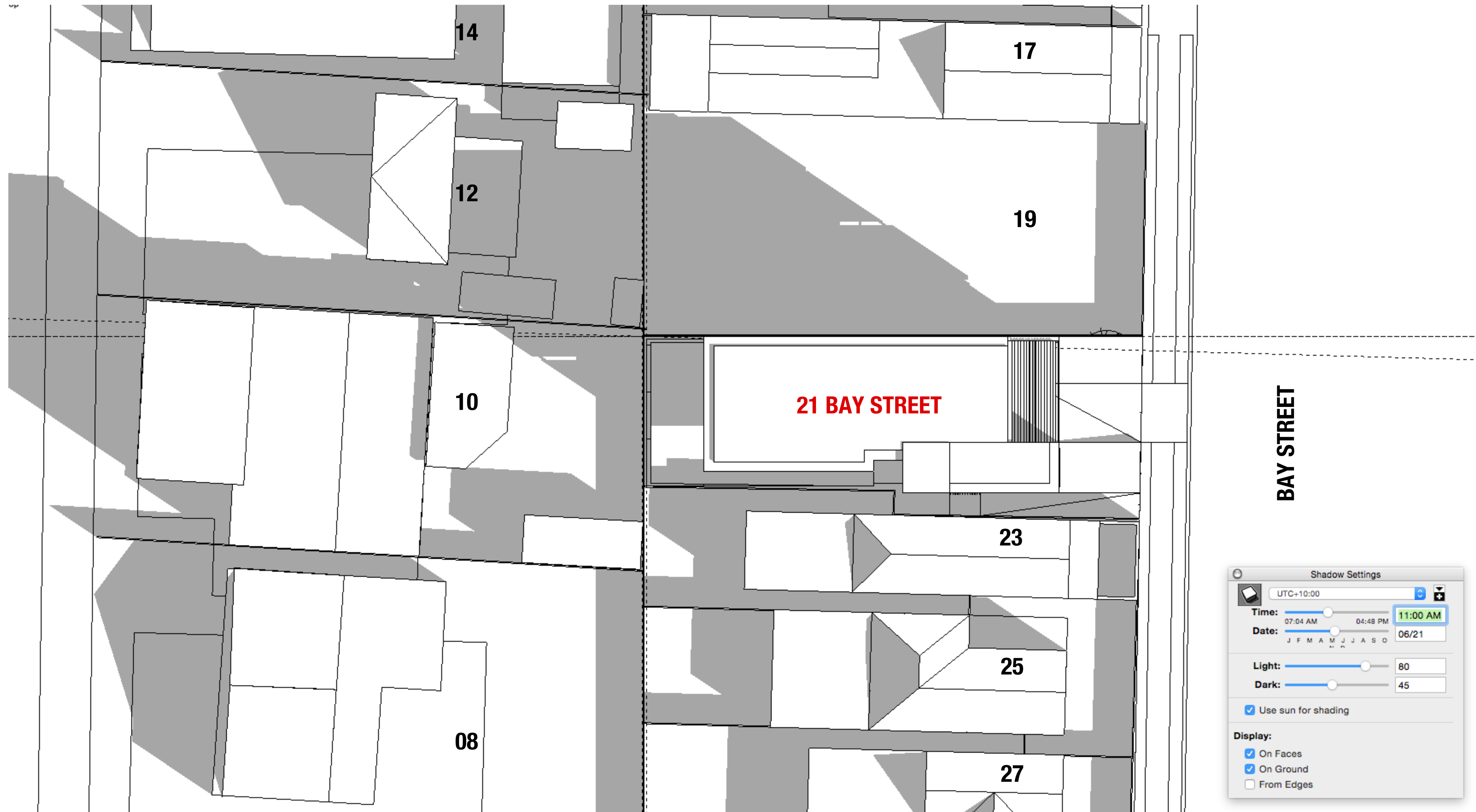
DRAWING NO.

1605-DA 501-4 A

T +612 9360 7570  
ABN 75155117516



ERITH STREET



BAY STREET

Shadow Settings

UTC+10:00

Time: 07:04 AM 04:48 PM 11:00 AM

Date: J F M A M J J A S O 06/21

Light: 80

Dark: 45

☒ Use sun for shading

Display:

☒ On Faces

☒ On Ground

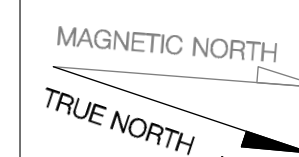
☐ From Edges

ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
1:200 @ A1



DRAWING TITLE

**SHADOW DIAGRAM I PLAN**  
**JUNE 21 | NEW | 11AM**

DRAWING NO.

1605-DA 501-5 A

T +612 9360 7570  
ABN 75155117516



ERITH STREET



BAY STREET

Shadow Settings

UTC+10:00

Time: 07:04 AM 04:48 PM 12:00 PM

Date: J F M A M J J A S O 06/21

Light: 80

Dark: 45

☒ Use sun for shading

Display:

☒ On Faces

☒ On Ground

☐ From Edges

ISSUE	DATE	DESCRIPTION
A	160803	DA
B	160810	DA
C	170629	DA

REVISION

PROJECT 21 BAY STREET | BOTANY

STAGE PRE-DA

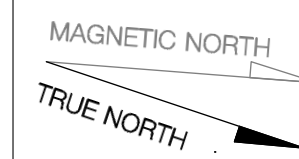
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DESIGNED BY SHED

DRAWN BY CH & TY

CHECKED BY CH

SCALE  
1:200 @ A1



DRAWING TITLE

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JUNE 21 | EXISTING | 12PM**

DRAWING NO.

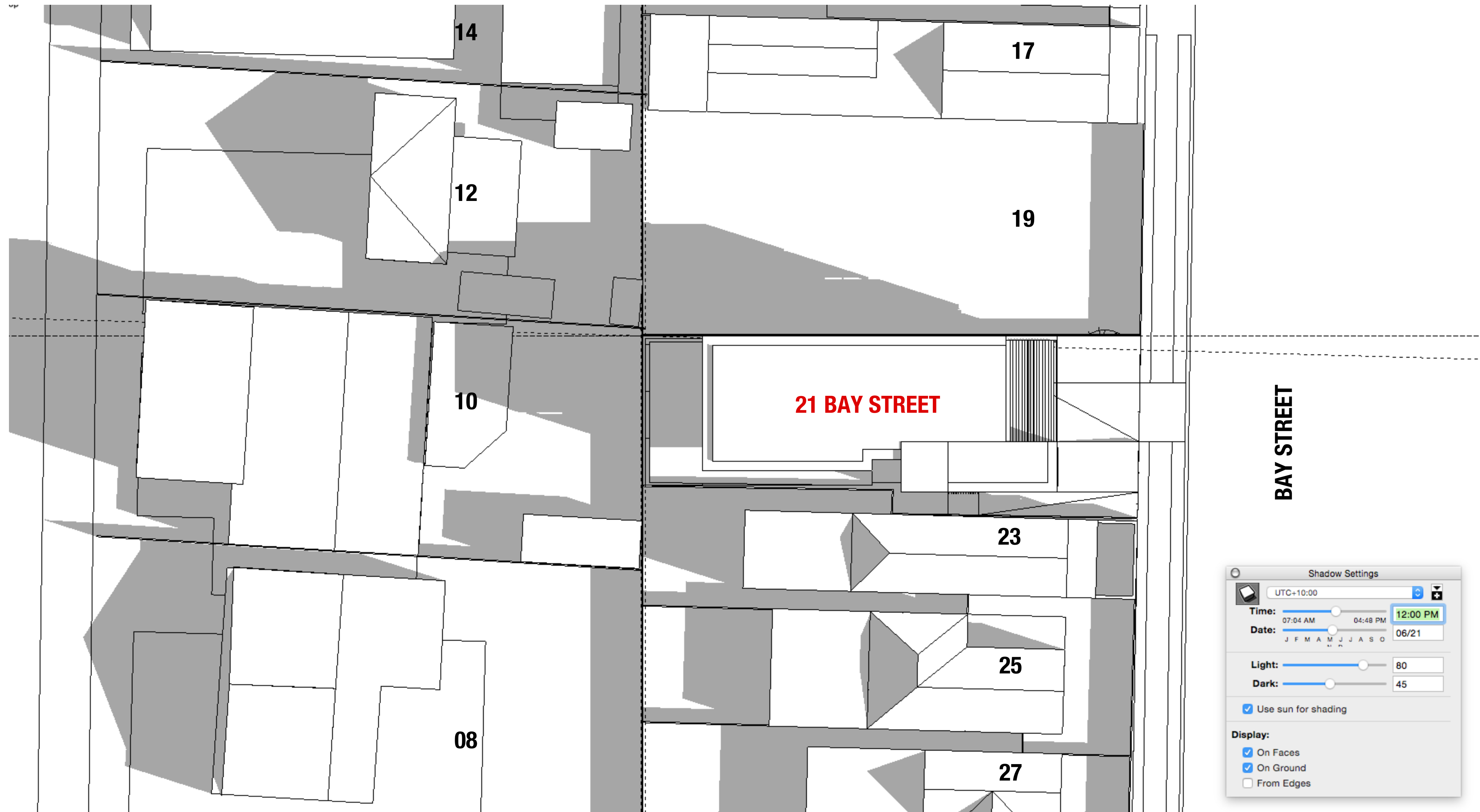
1605-DA 502 C

T +612 9360 7570  
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ERITH STREET



Shadow Settings

UTC+10:00

Time: 07:04 AM 04:48 PM 12:00 PM

Date: J F M A M J J A S O 06/21

Light: 80

Dark: 45

☒ Use sun for shading

Display:

☒ On Faces

☒ On Ground

☐ From Edges

ISSUE	DATE	DESCRIPTION
A	160803	DA
B	160810	DA
C	170629	DA

REVISION

PROJECT 21 BAY STREET | BOTANY

STAGE PRE-DA

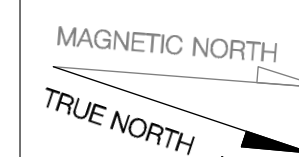
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DESIGNED BY SHED

DRAWN BY CH & TY

CHECKED BY CH

SCALE 1:200 @ A1



DRAWING TITLE

**SHADOW DIAGRAM | PLAN**  
**JUNE 21 | NEW | 12PM**

DRAWING NO.

1605-DA 503 C

T +612 9360 7570  
ABN 75155117516



ERITH STREET



BAY STREET

ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION
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PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
1:200 @ A1



DRAWING TITLE

**SHADOW DIAGRAM | PLAN  
JUNE 21 | EXISTING | 1PM**

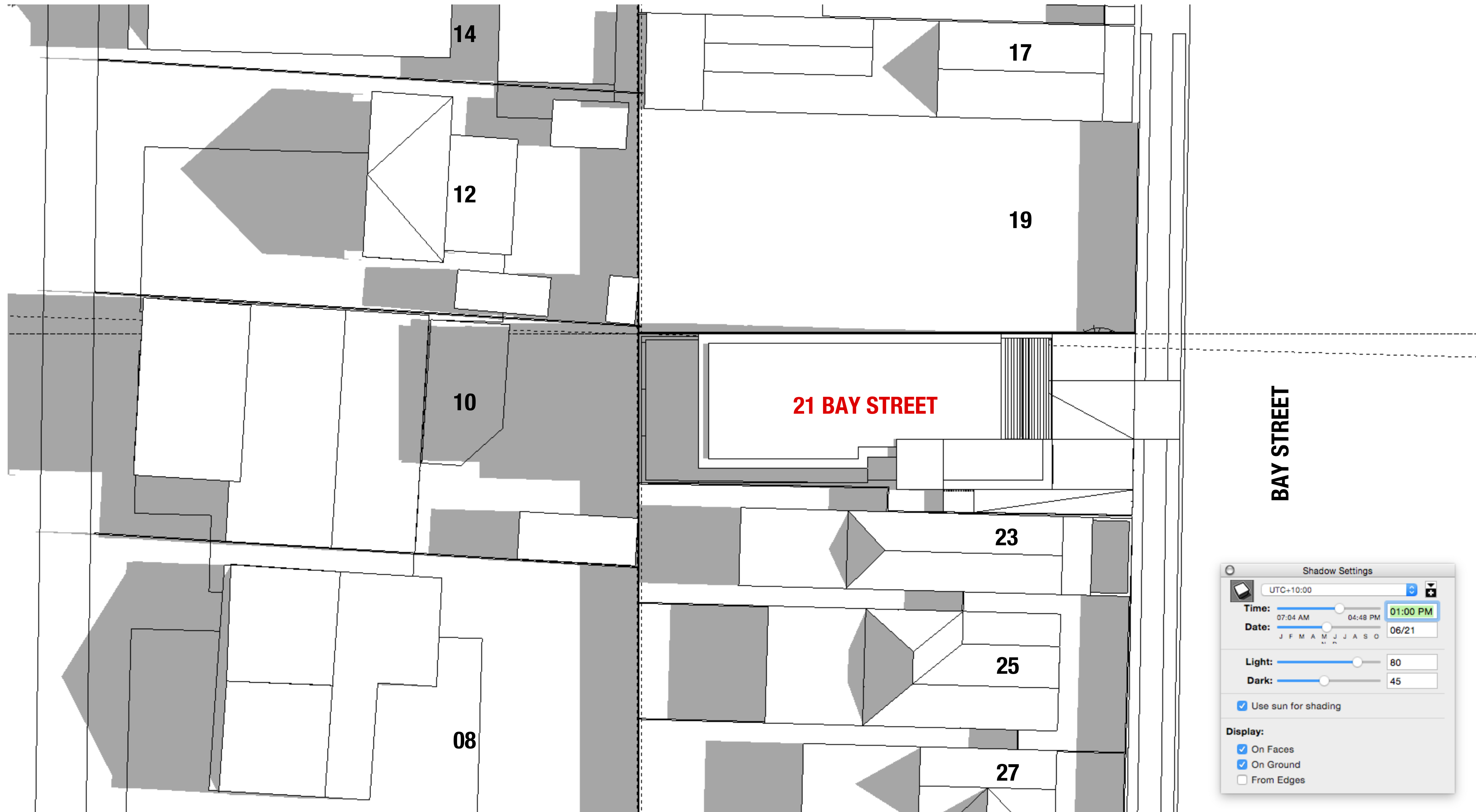
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1605-DA 503-2 A

T +612 9360 7570  
ABN 75155117516



ERITH STREET



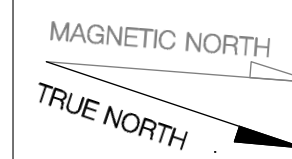
BAY STREET

ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
1:200 @ A1



DRAWING TITLE

**SHADOW DIAGRAM | PLAN**  
**JUNE 21 | NEW | 1PM**

DRAWING NO.

1605-DA 503-3 A

T +612 9360 7570  
ABN 75155117516

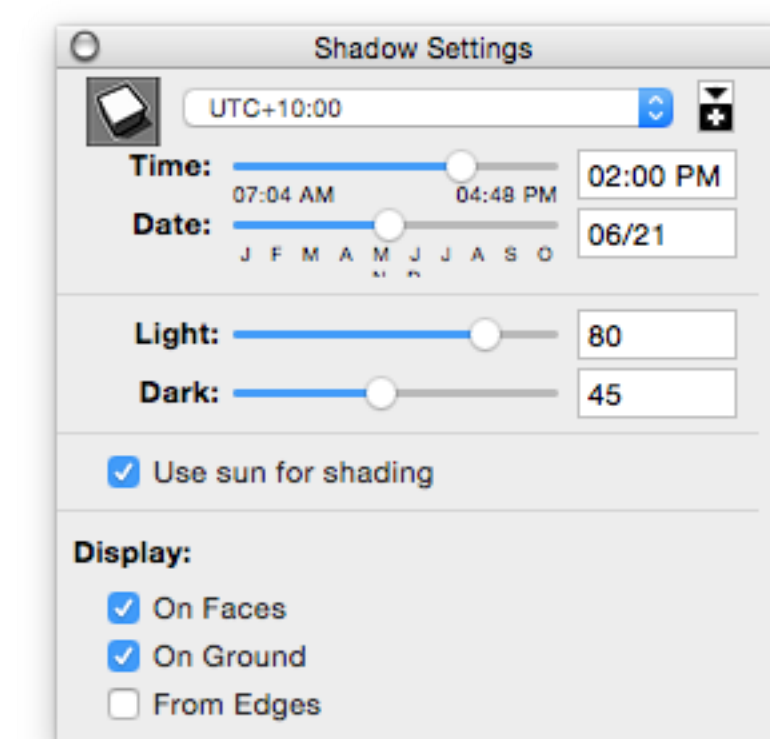




ERITH STREET



BAY STREET

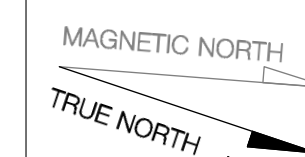


ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
1:200 @ A1



DRAWING TITLE

**SHADOW DIAGRAM | PLAN  
JUNE 21 | EXISTING | 2PM**

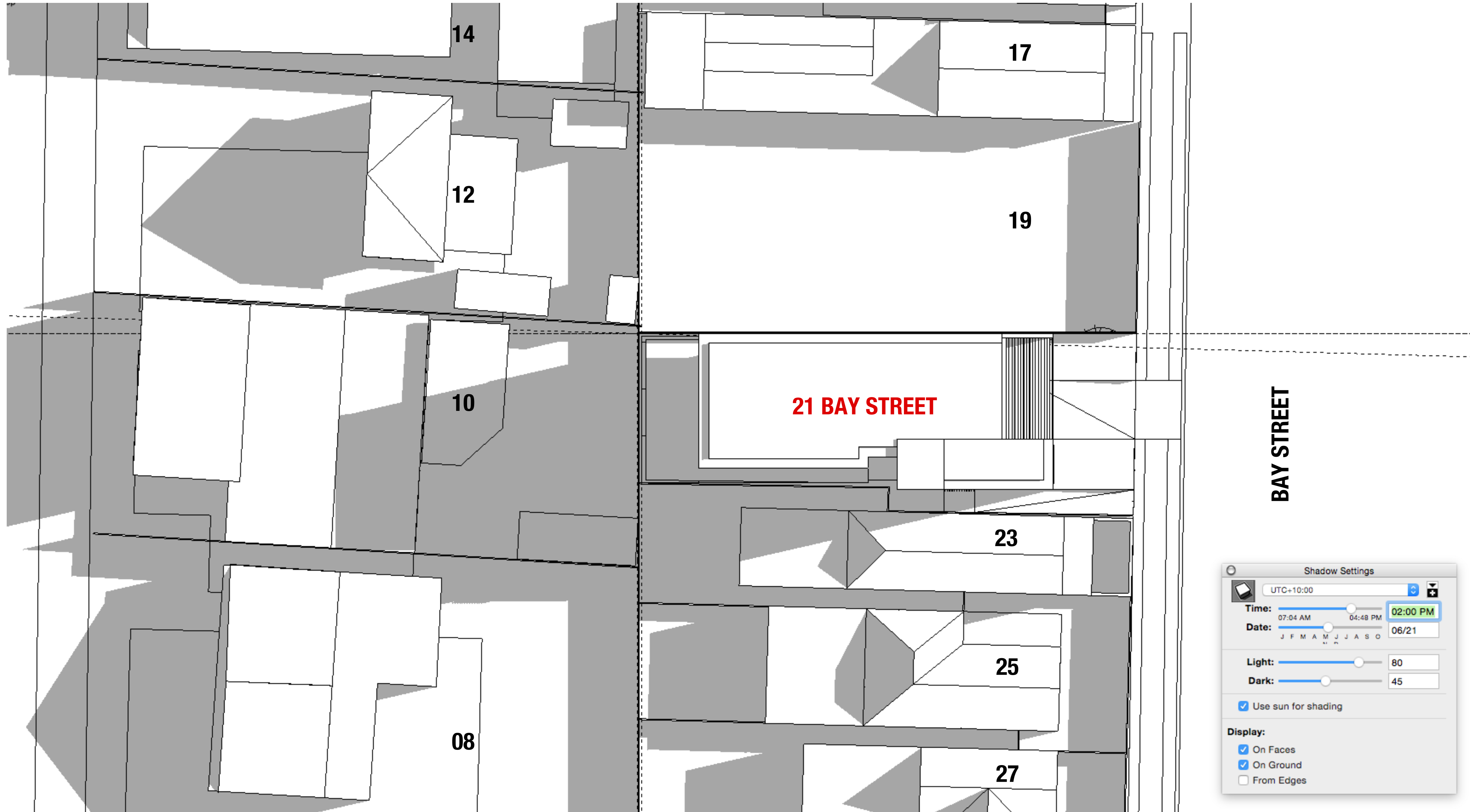
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1605-DA 503-4 A

T +612 9360 7570  
ABN 75155117516



ERITH STREET



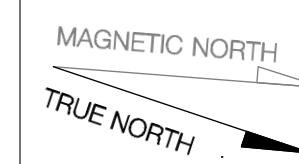
BAY STREET

ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
1:200 @ A1



DRAWING TITLE

**SHADOW DIAGRAM I PLAN  
JUNE 21 | NEW | 2PM**

DRAWING NO.

1605-DA 503-5 A

T +612 9360 7570  
ABN 75155117516



ERITH STREET



BAY STREET

Shadow Settings

UTC+10:00

Time: 07:04 AM 04:48 PM 03:00 PM

Date: J F M A M J J A S O 06/21

Light: 80

Dark: 45

☒ Use sun for shading

Display:

☒ On Faces

☒ On Ground

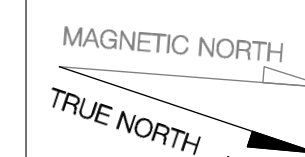
☐ From Edges

ISSUE	DATE	DESCRIPTION
A	160803	DA
B	160810	DA
C	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
1:200 @ A1



DRAWING TITLE

**SHADOW DIAGRAM | PLAN  
JUNE 21 | EXISTING | 3PM**

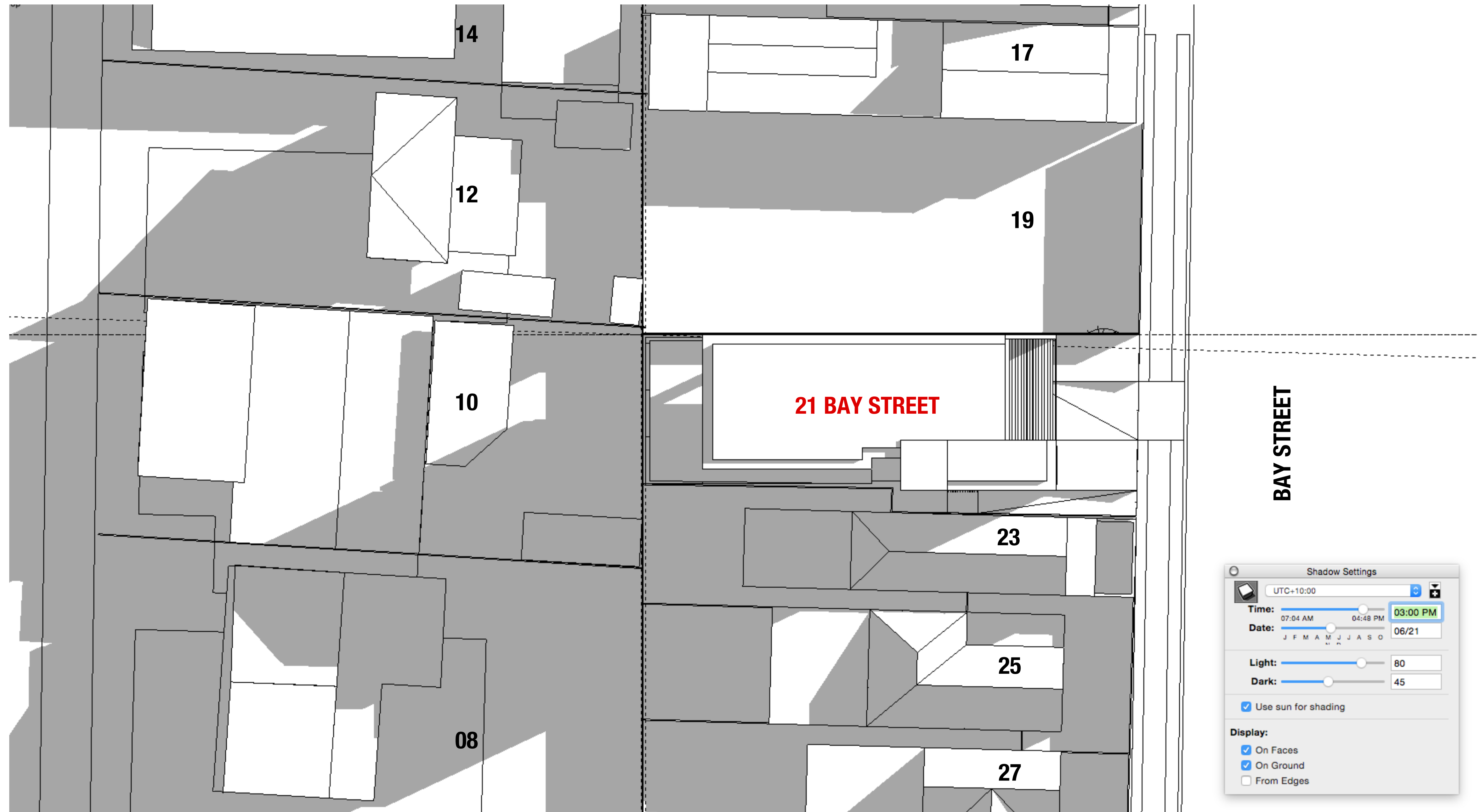
DRAWING NO.

1605-DA 504 C

T +612 9360 7570  
ABN 75155117516



ERITH STREET



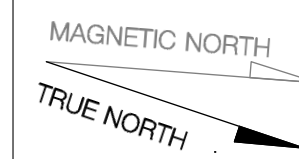
BAY STREET

ISSUE	DATE	DESCRIPTION
A	160803	DA
B	160810	DA
C	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
1:200 @ A1



DRAWING TITLE

**SHADOW DIAGRAM | PLAN**  
**JUNE 21 | NEW | 3PM**

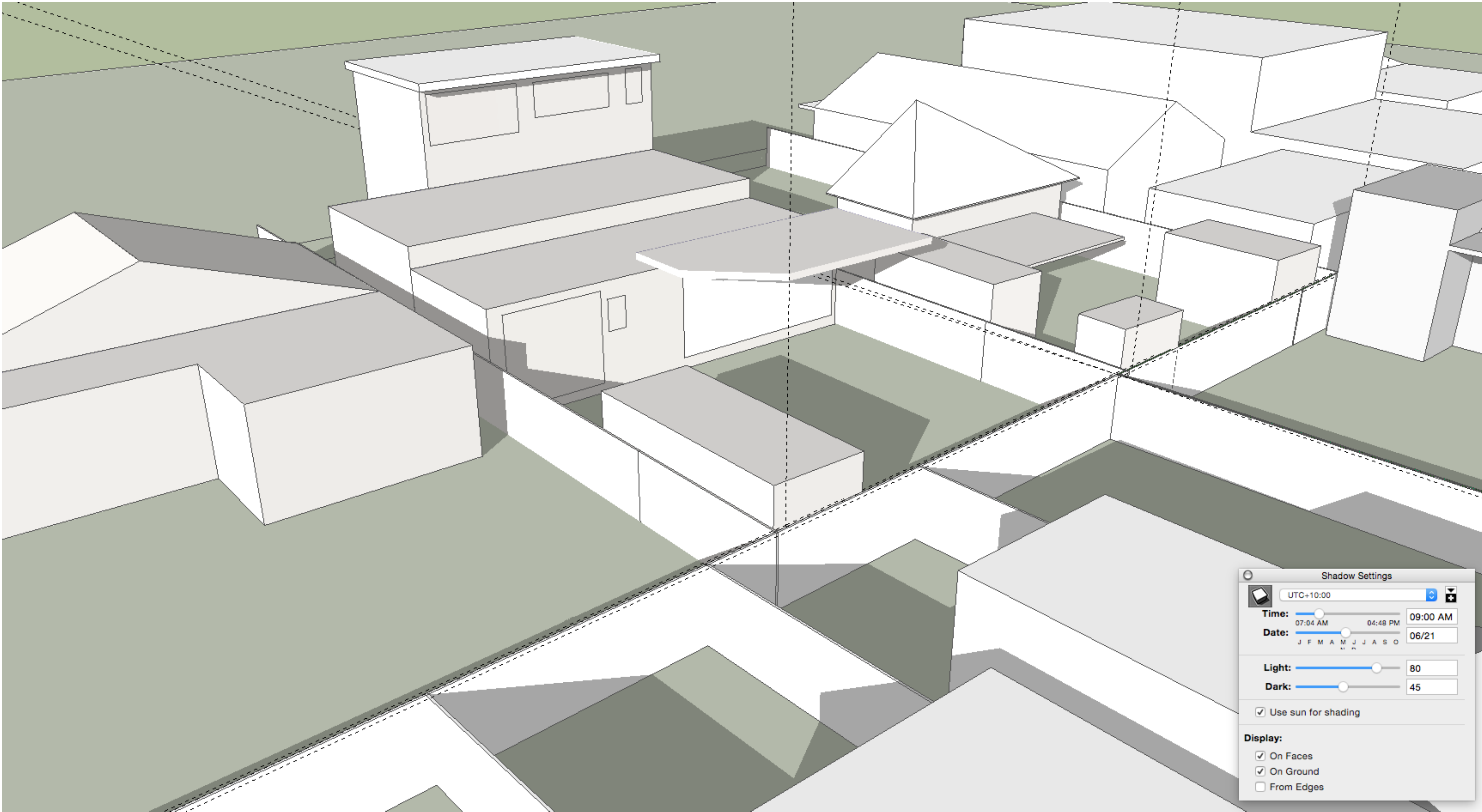
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1605-DA 505 C

T +612 9360 7570  
ABN 75155117516





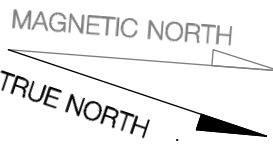


ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

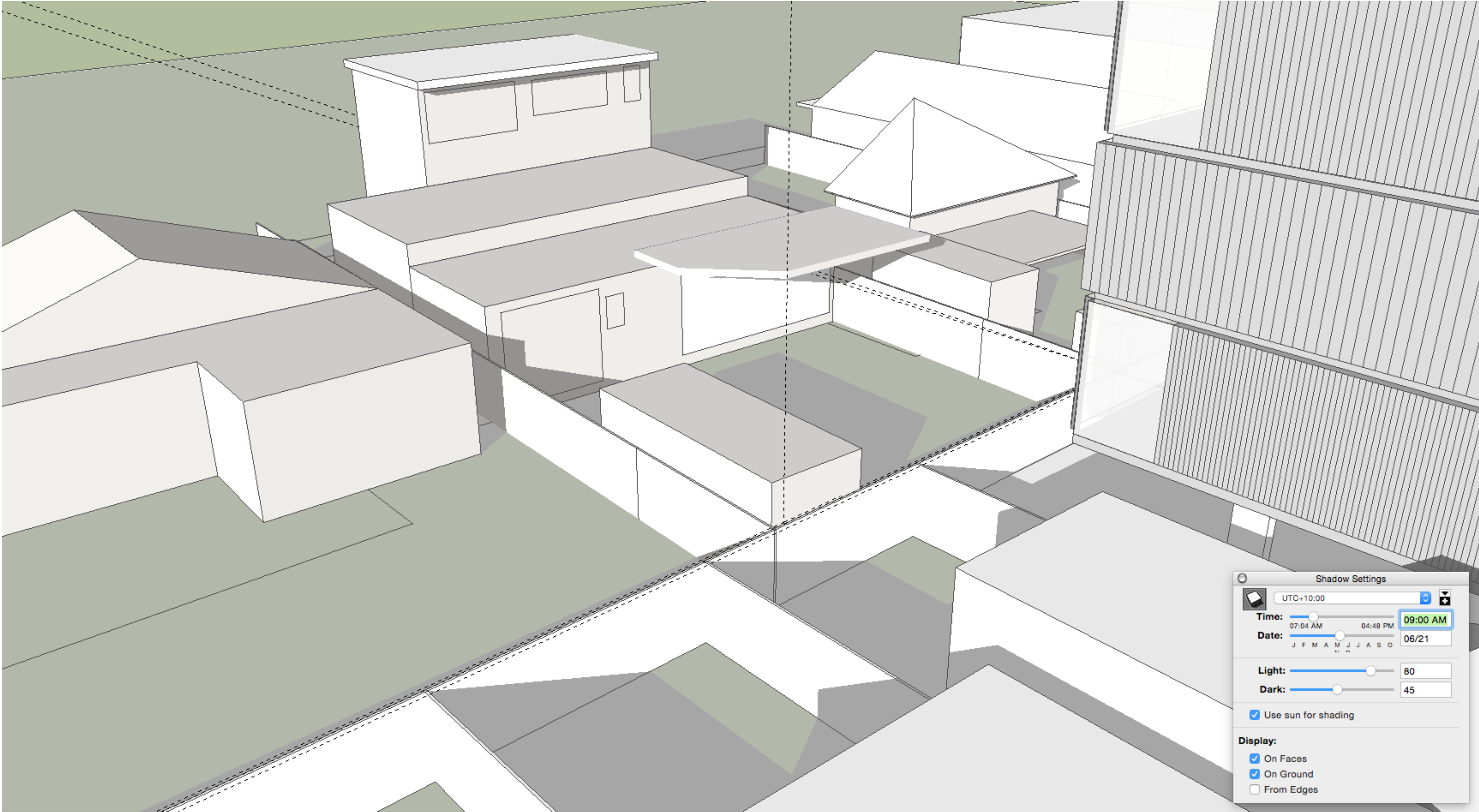
SCALE  
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DRAWING TITLE
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<b>JUNE 21   EXISTING   9AM</b>
DRAWING NO.
<b>1605-DA 510 A</b>

T +612 9360 7570  
ABN 75155117516



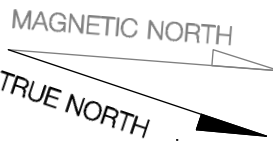


ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
1:200 @ A1



DRAWING TITLE

**SHADOW DIAGRAM | 3D  
JUNE 21 | NEW | 9AM**

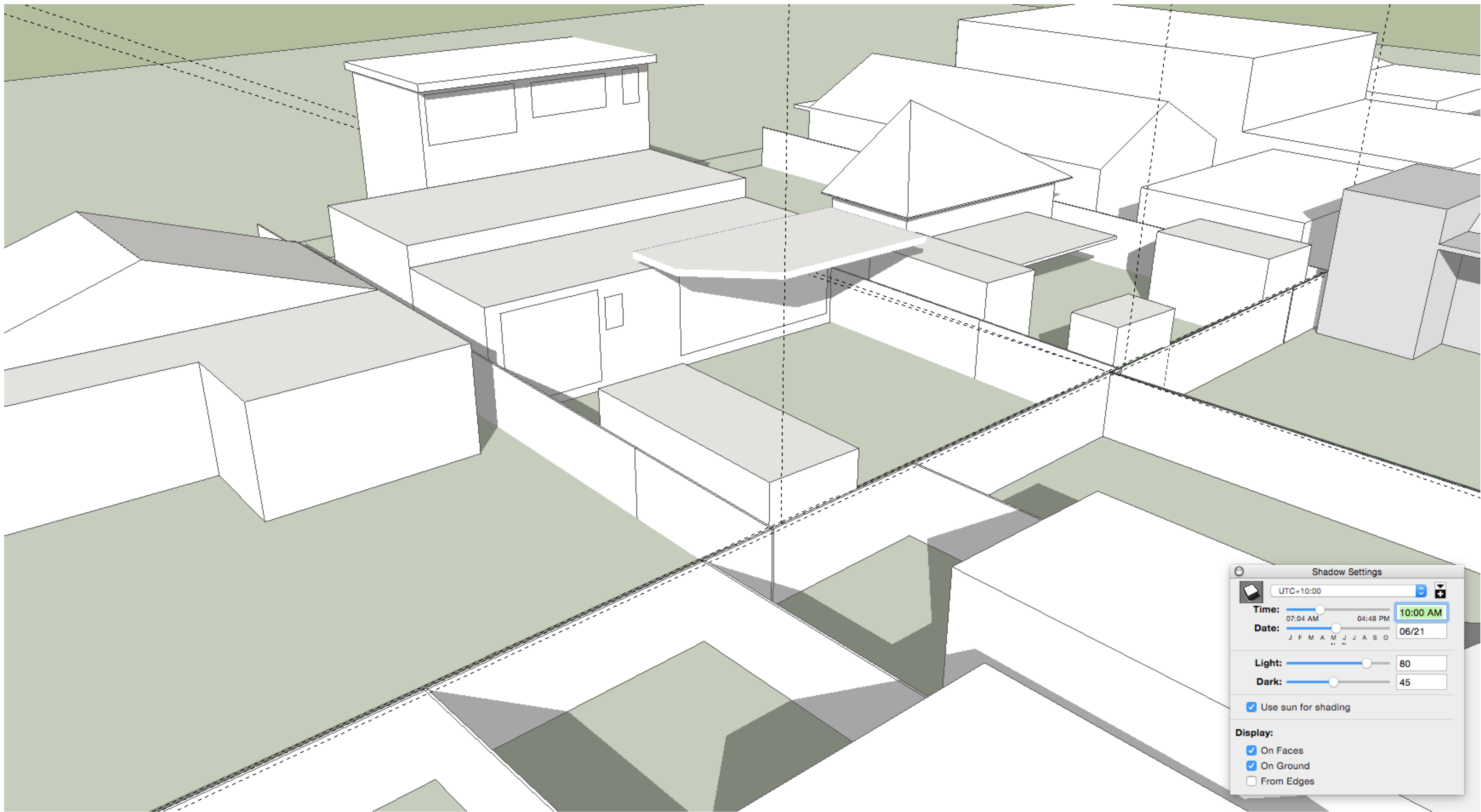
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1605-DA 511 A

T +612 9360 7570  
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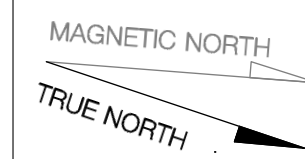


ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION
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PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
1:200 @ A1



DRAWING TITLE

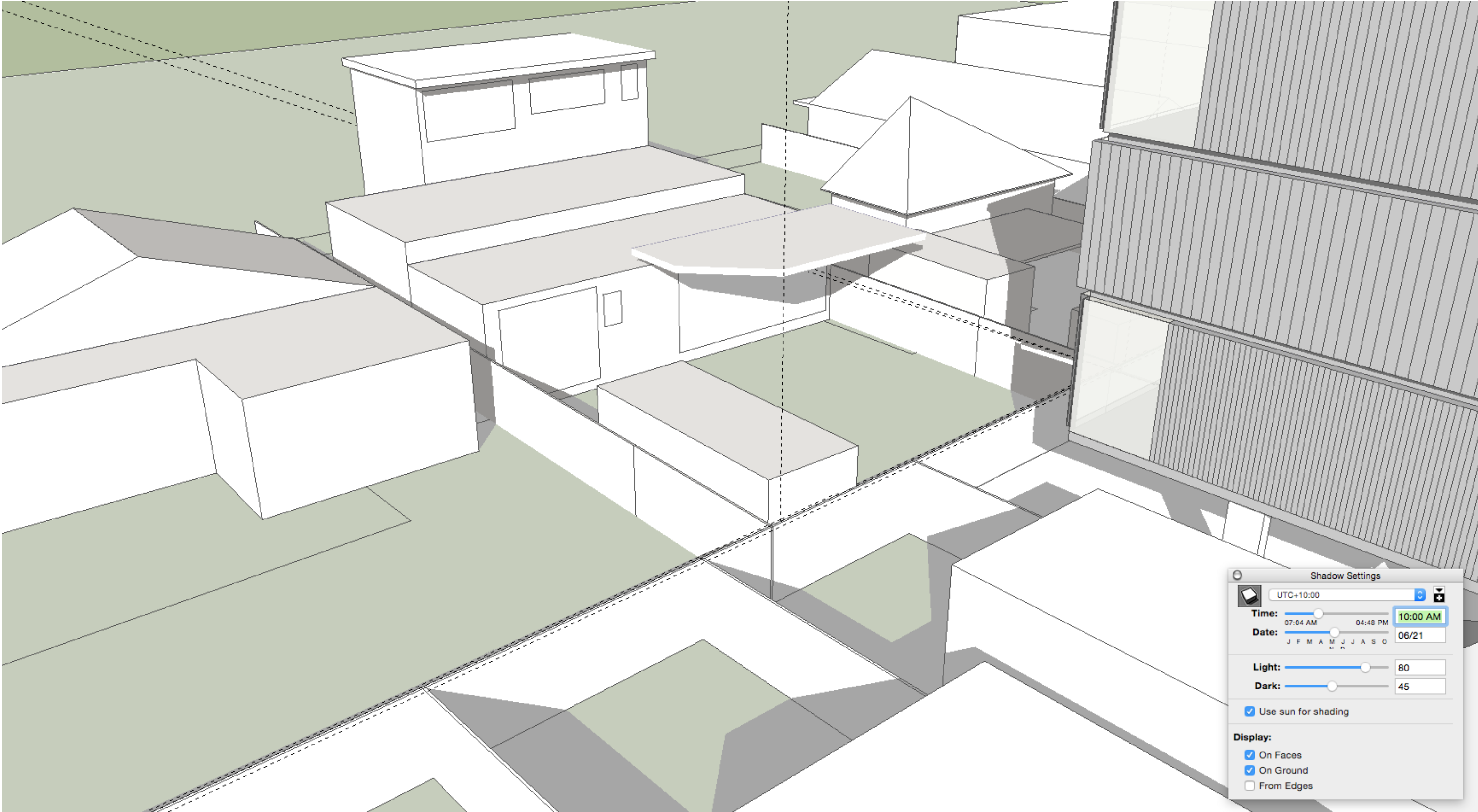
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JUNE 21 | EXISTING | 10AM**

DRAWING NO.

**1605-DA 512 A**

T +612 9360 7570  
ABN 75155117516



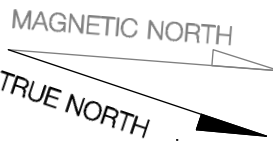


ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
1:200 @ A1



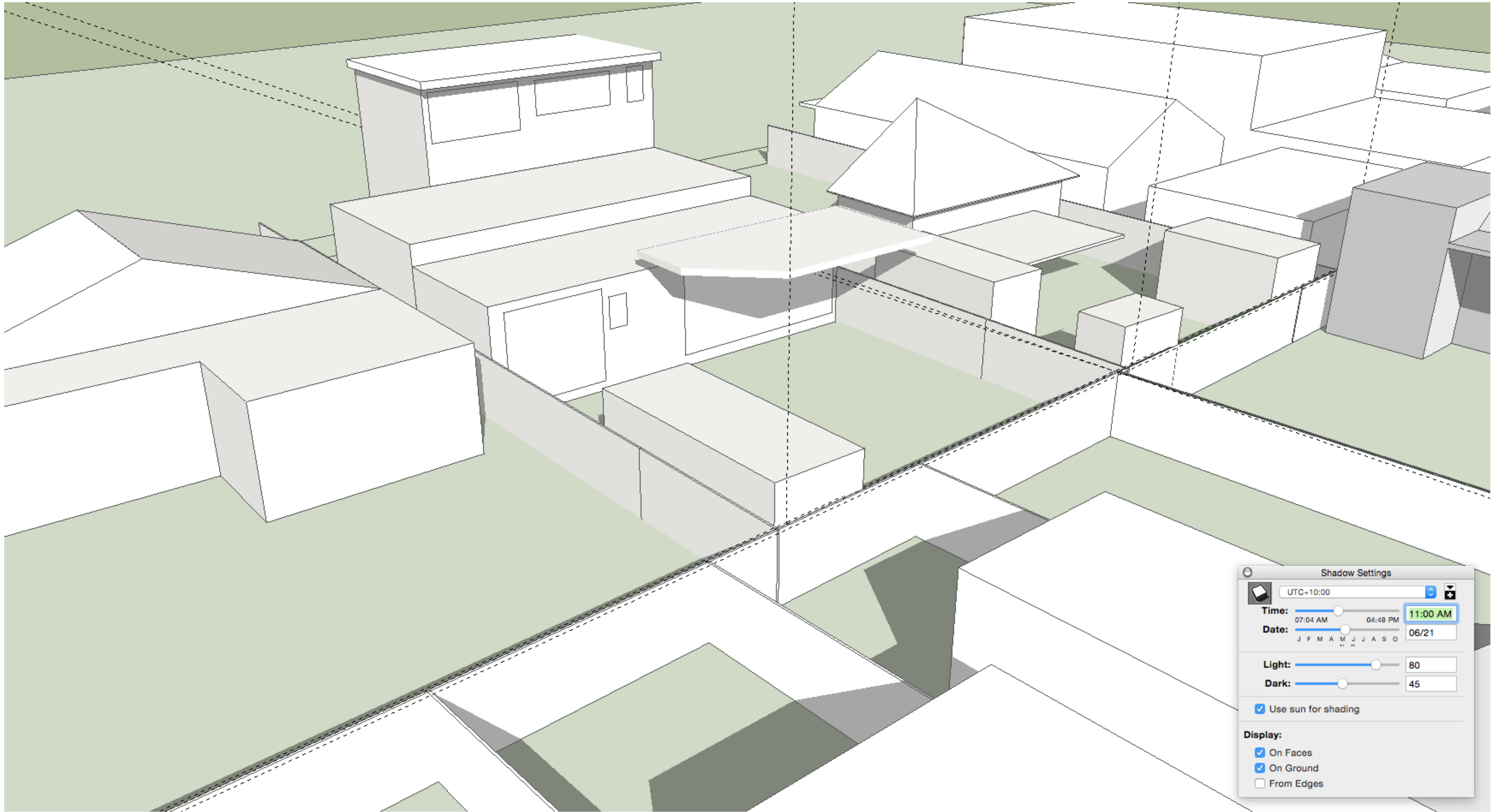
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**JUNE 21 | NEW | 10AM**

DRAWING NO.  
**1605-DA 513 A**

T +612 9360 7570  
ABN 75155117516





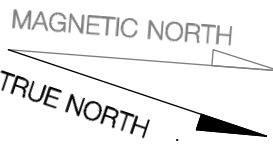


ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
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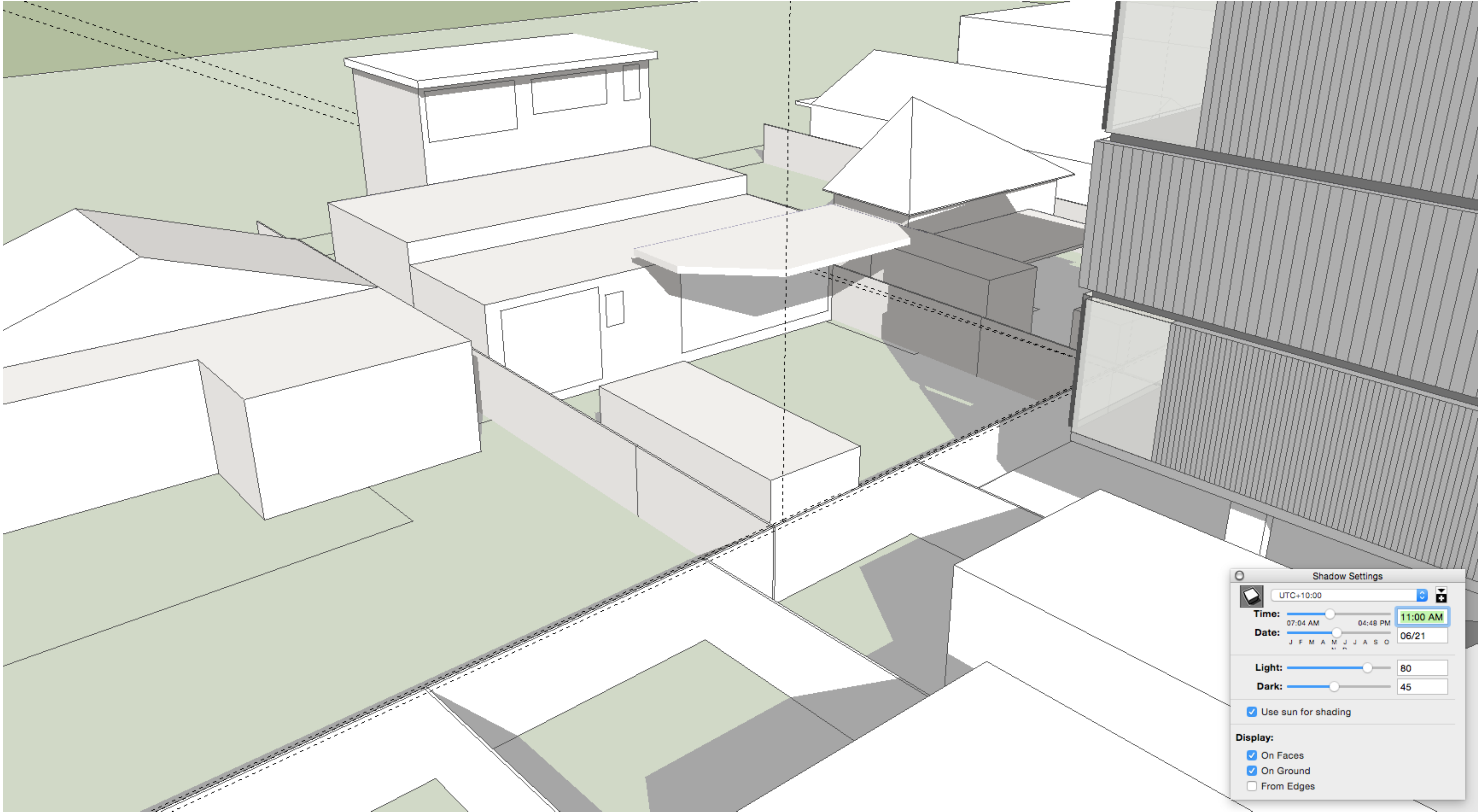
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DRAWING NO.
<b>1605-DA 514 A</b>

T +612 9360 7570  
ABN 75155117516



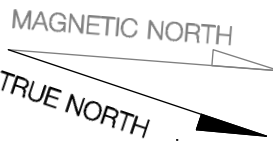


ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
1:200 @ A1

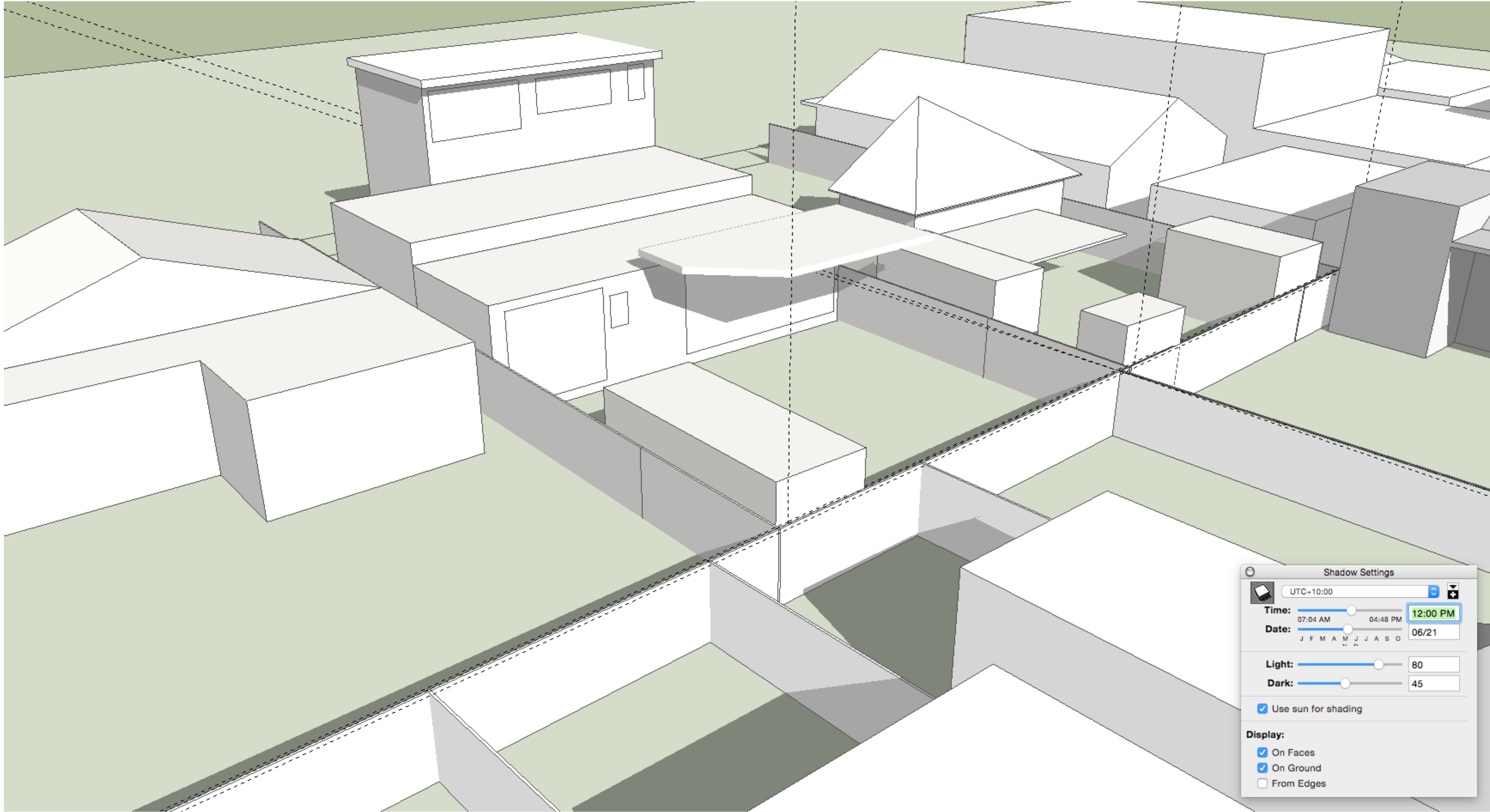


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DRAWING NO.	1605-DA 515 A

T +612 9360 7570  
ABN 75155117516





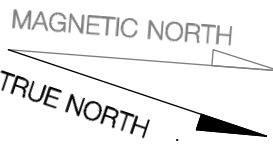


ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

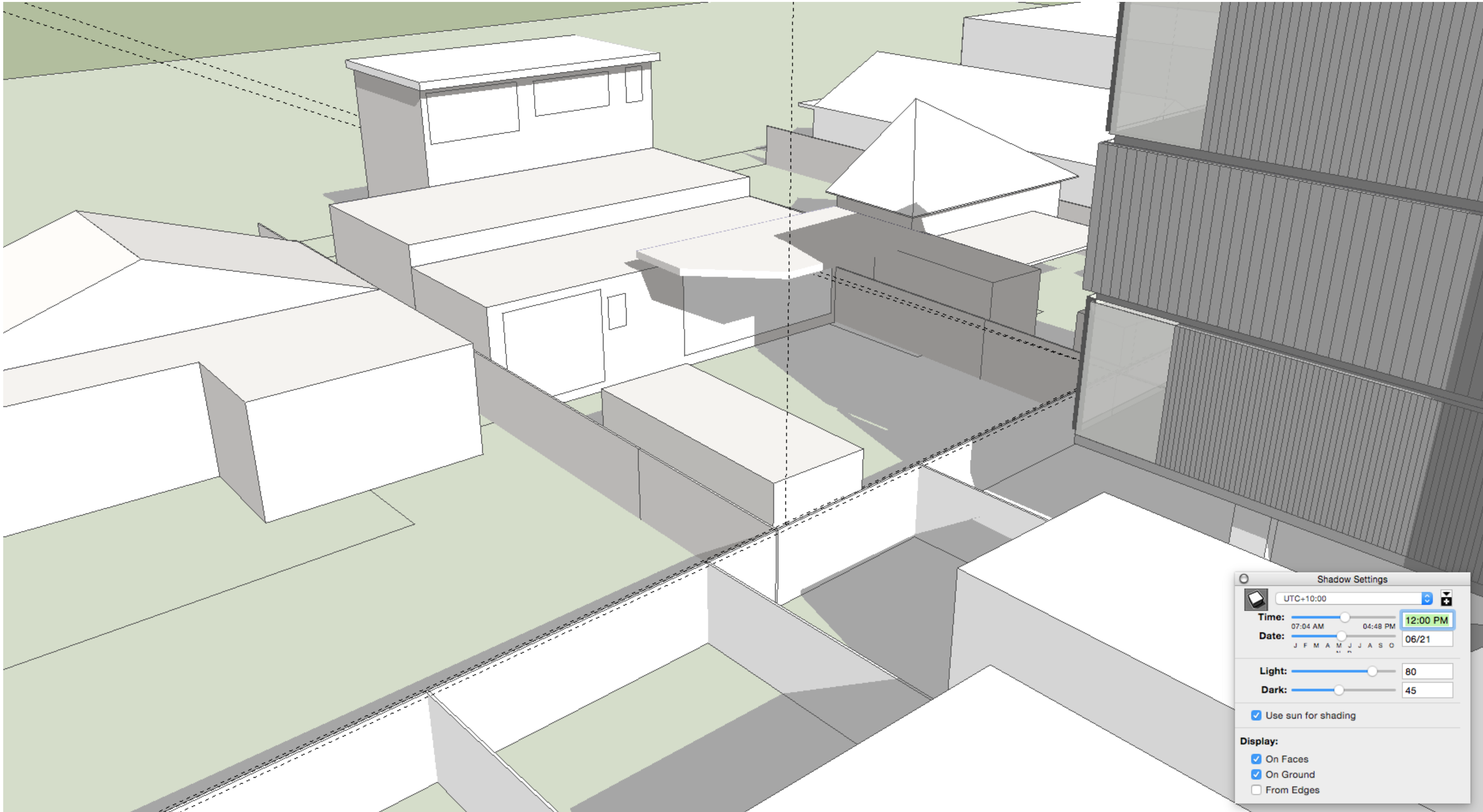
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T +612 9360 7570  
ABN 75155117516



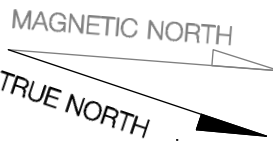


ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

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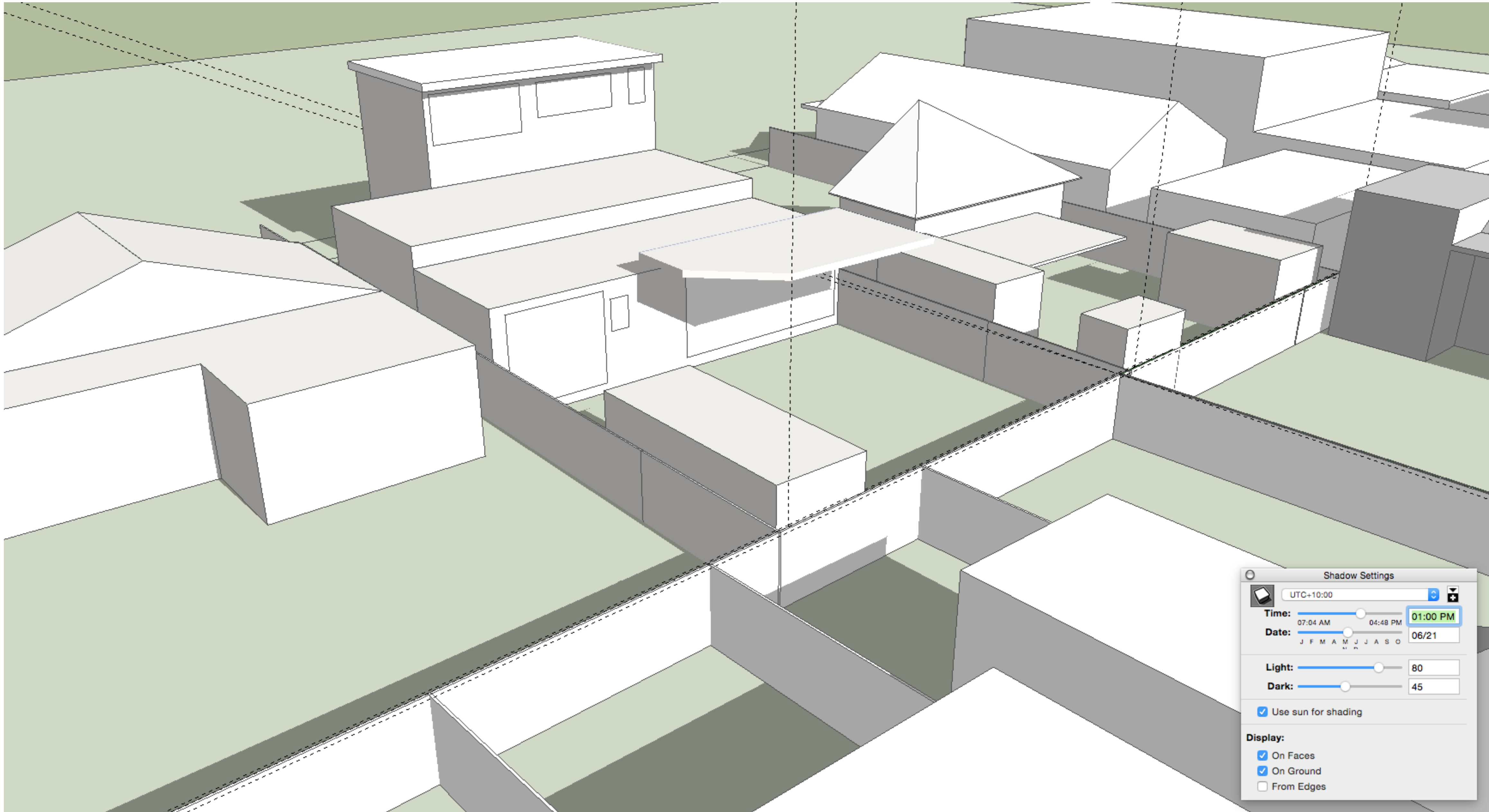


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DRAWING NO.  
**1605-DA 517 A**

T +612 9360 7570  
ABN 75155117516





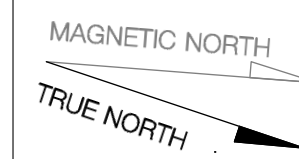


ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION
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PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
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DRAWING TITLE

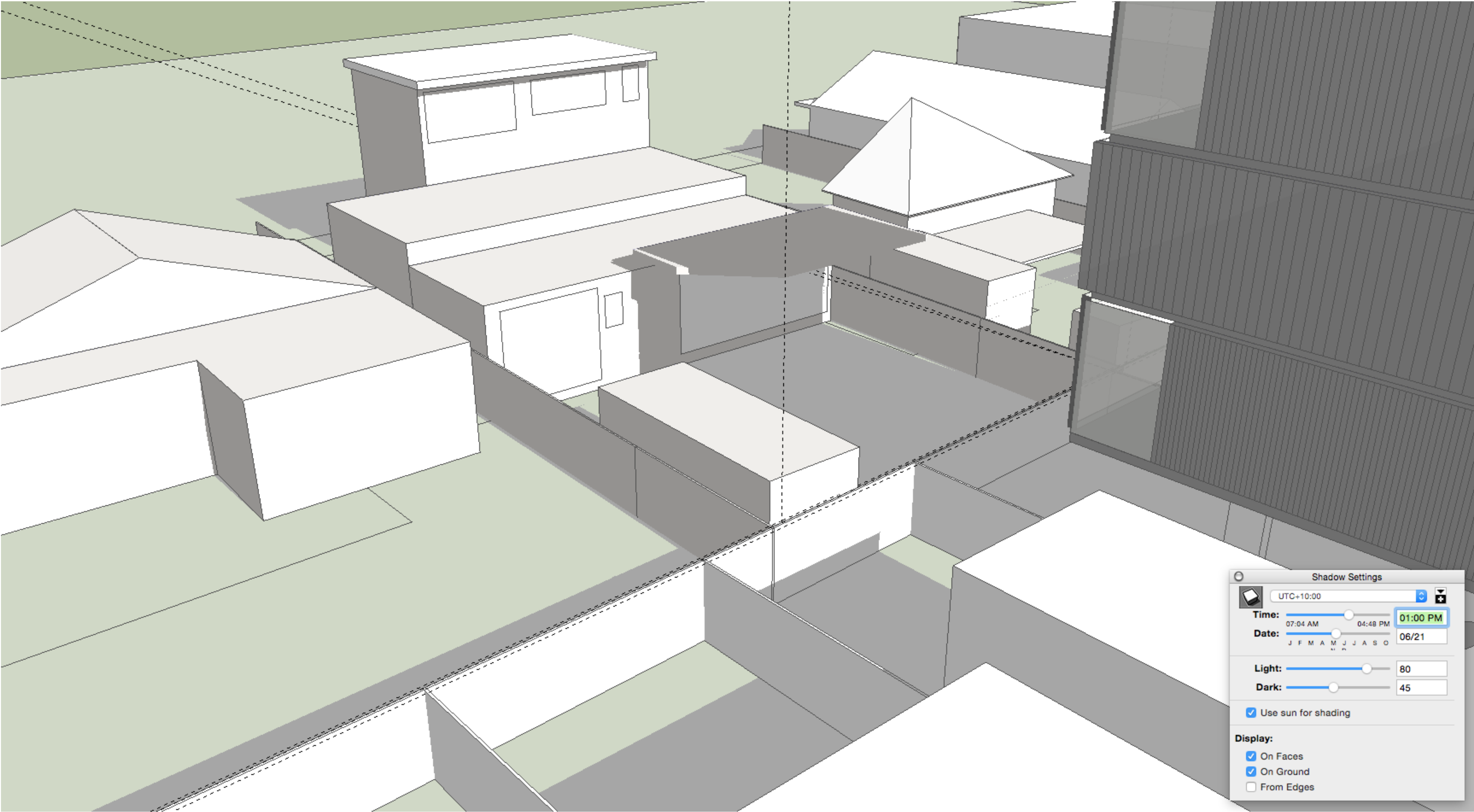
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JUNE 21 | EXISTING | 1PM**

DRAWING NO.

1605-DA 518 A

T +612 9360 7570  
ABN 75155117516



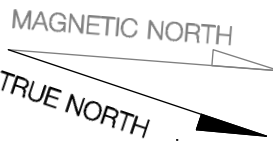


ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
1:200 @ A1

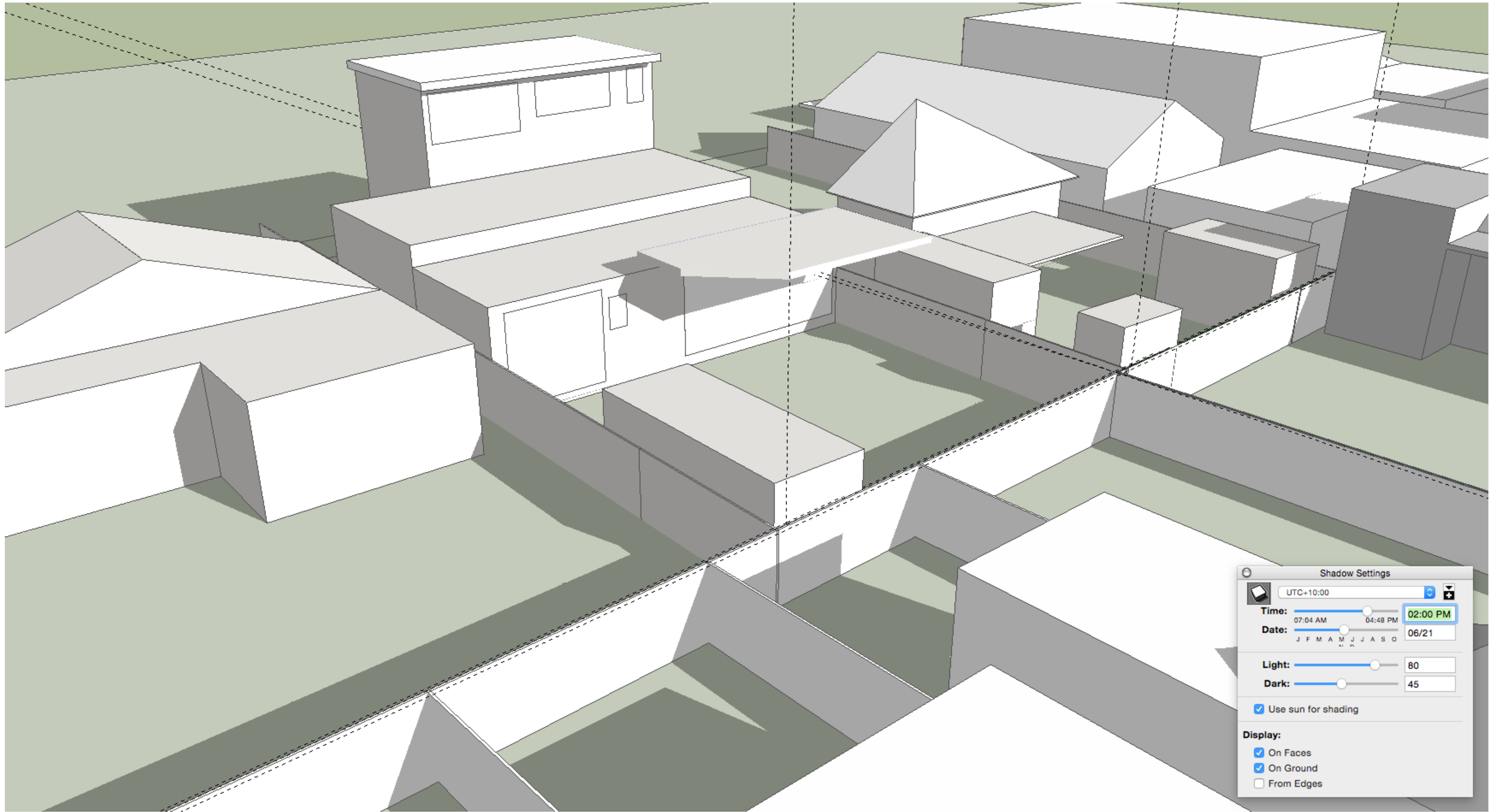


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**JUNE 21 | NEW | 1PM**  
DRAWING NO.  
**1605-DA 519 A**

T +612 9360 7570  
ABN 75155117516





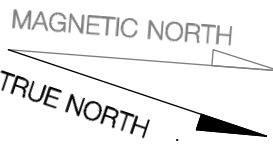


ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
1:200 @ A1

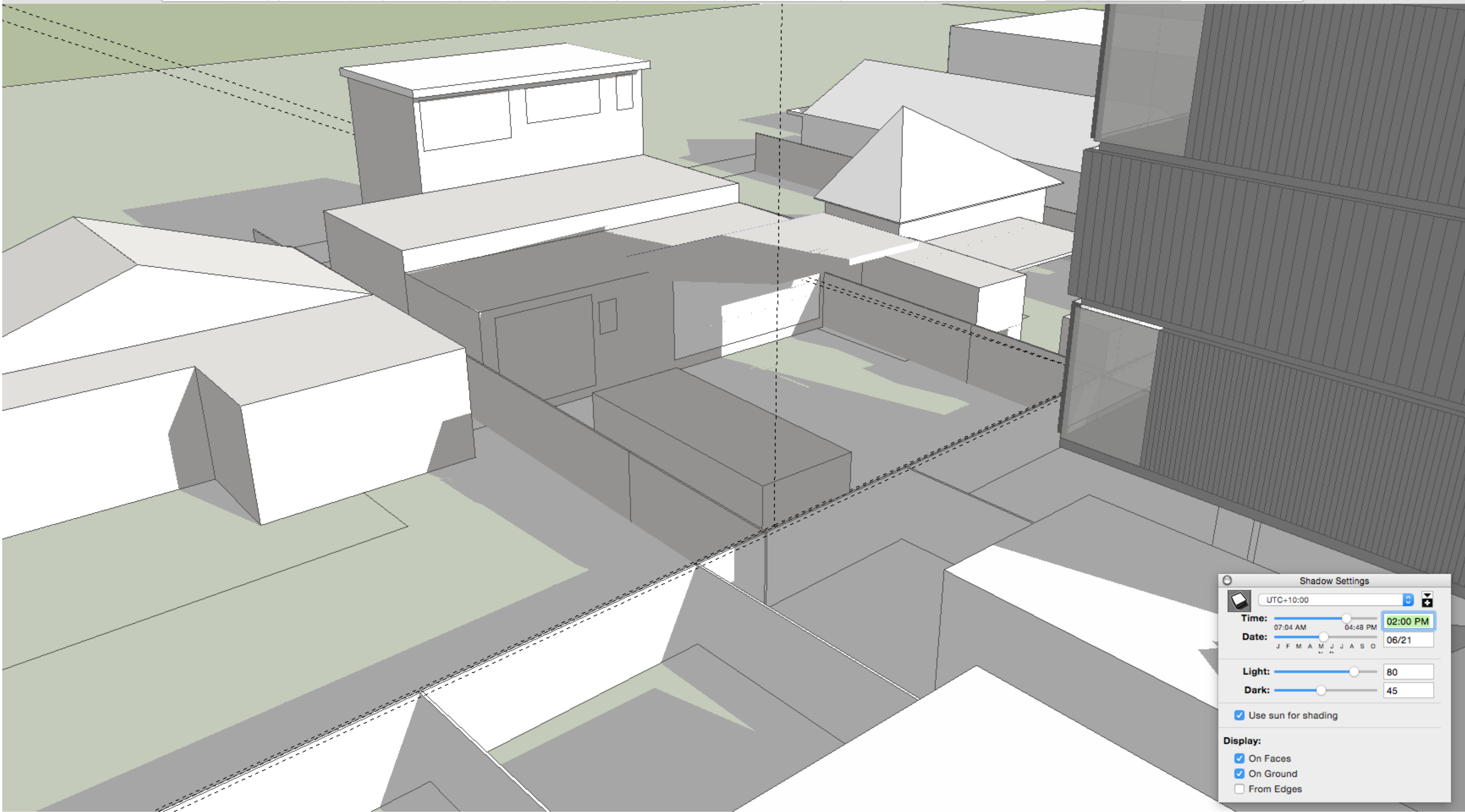


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JUNE 21 | EXISTING | 2PM**

DRAWING NO.  
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T +612 9360 7570  
ABN 75155117516



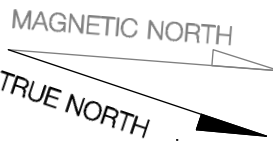


ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION
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PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
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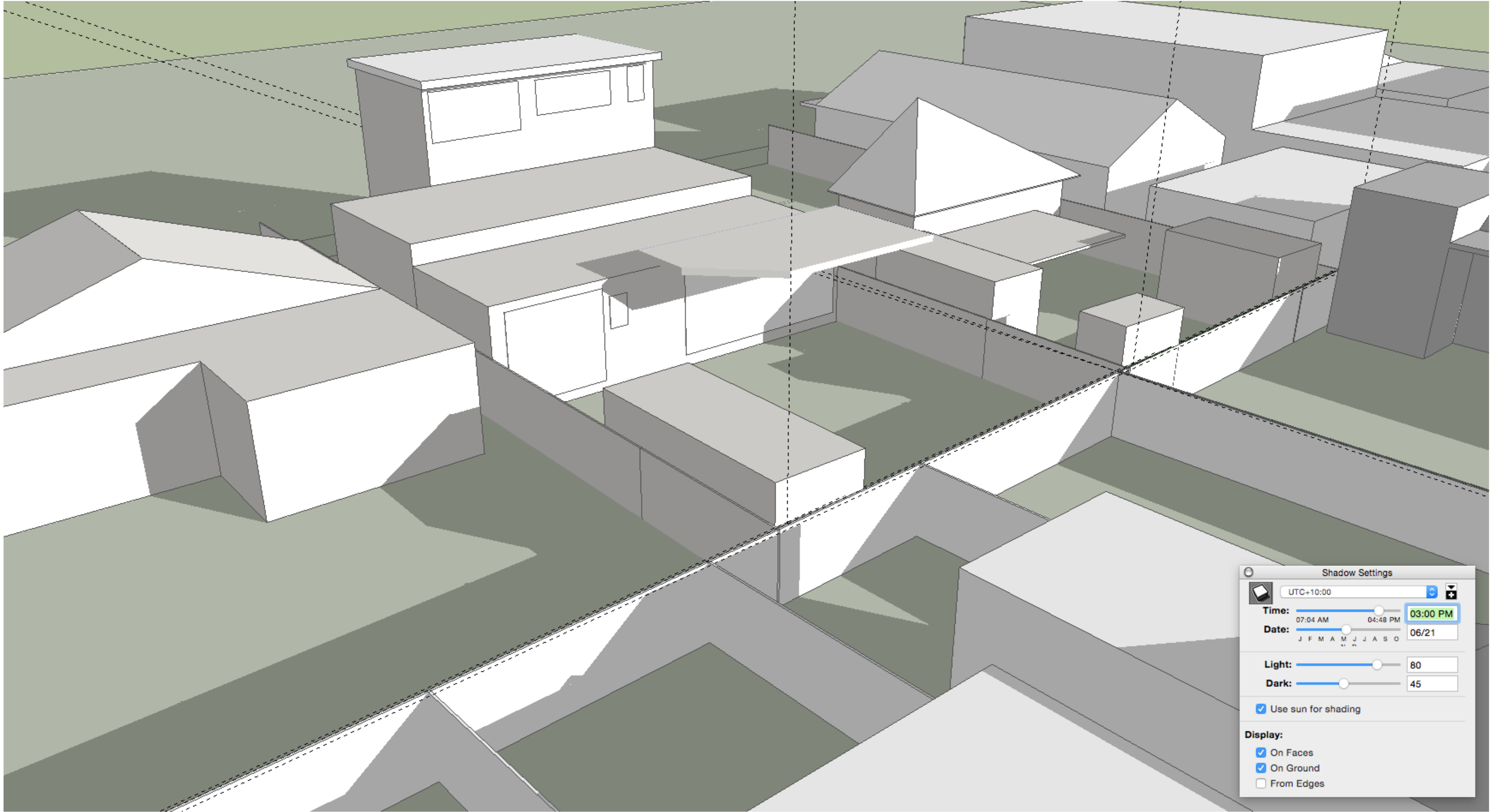
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**JUNE 21 | NEW | 2PM**

DRAWING NO.  
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ABN 75155117516







ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
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SCALE  
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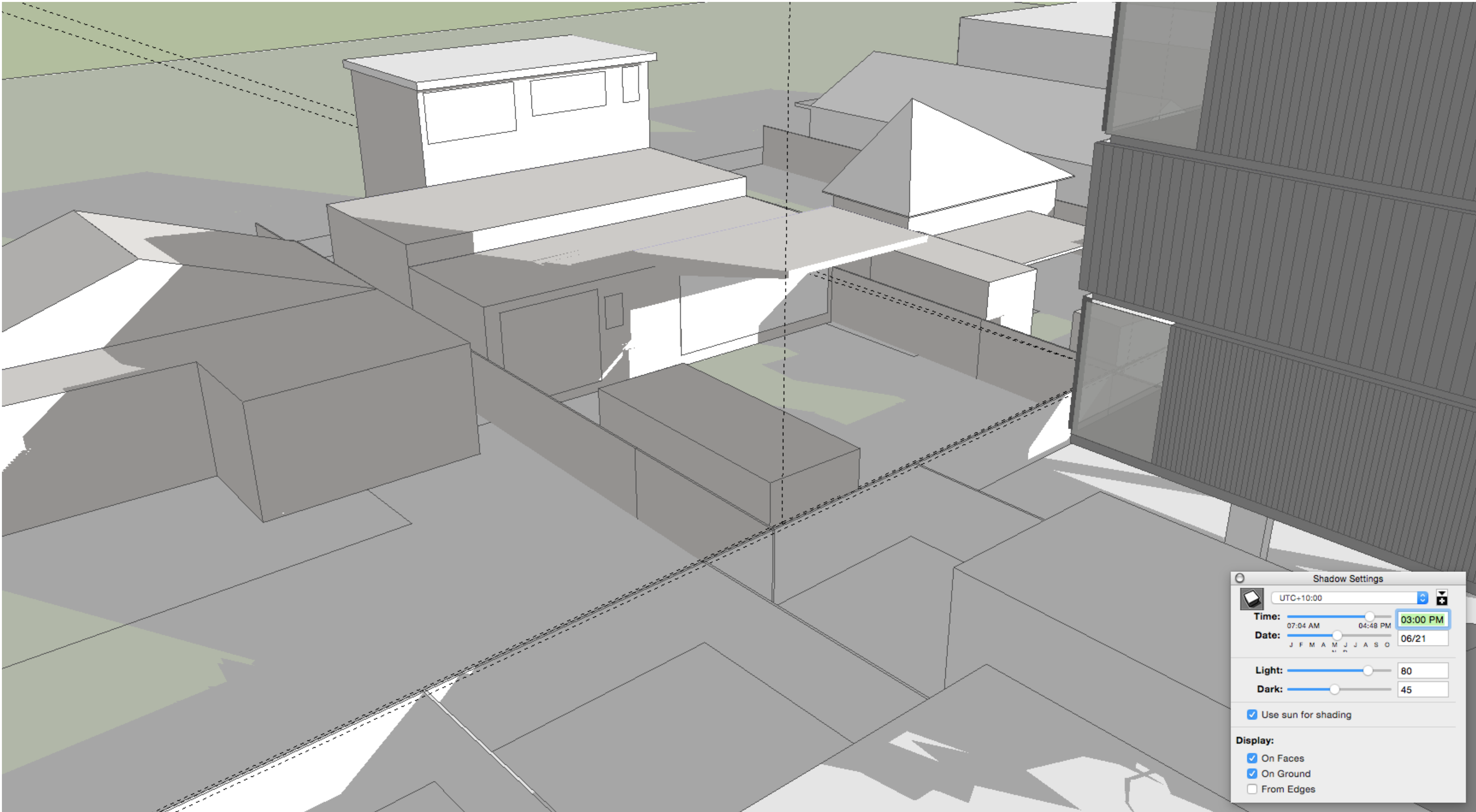


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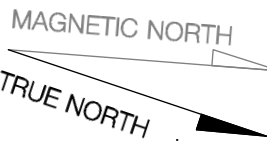


ISSUE	DATE	DESCRIPTION
A	170629	DA

REVISION

PROJECT	21 BAY STREET   BOTANY
STAGE	PRE-DA
CLIENT	MALEX DEVELOPMENTS PTY LTD
DESIGNED BY	SHED
DRAWN BY	CH & TY
CHECKED BY	CH

SCALE  
1:200 @ A1



DRAWING TITLE  
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**JUNE 21 | NEW | 3PM**  
DRAWING NO.  
**1605-DA 523 A**

T +612 9360 7570  
ABN 75155117516





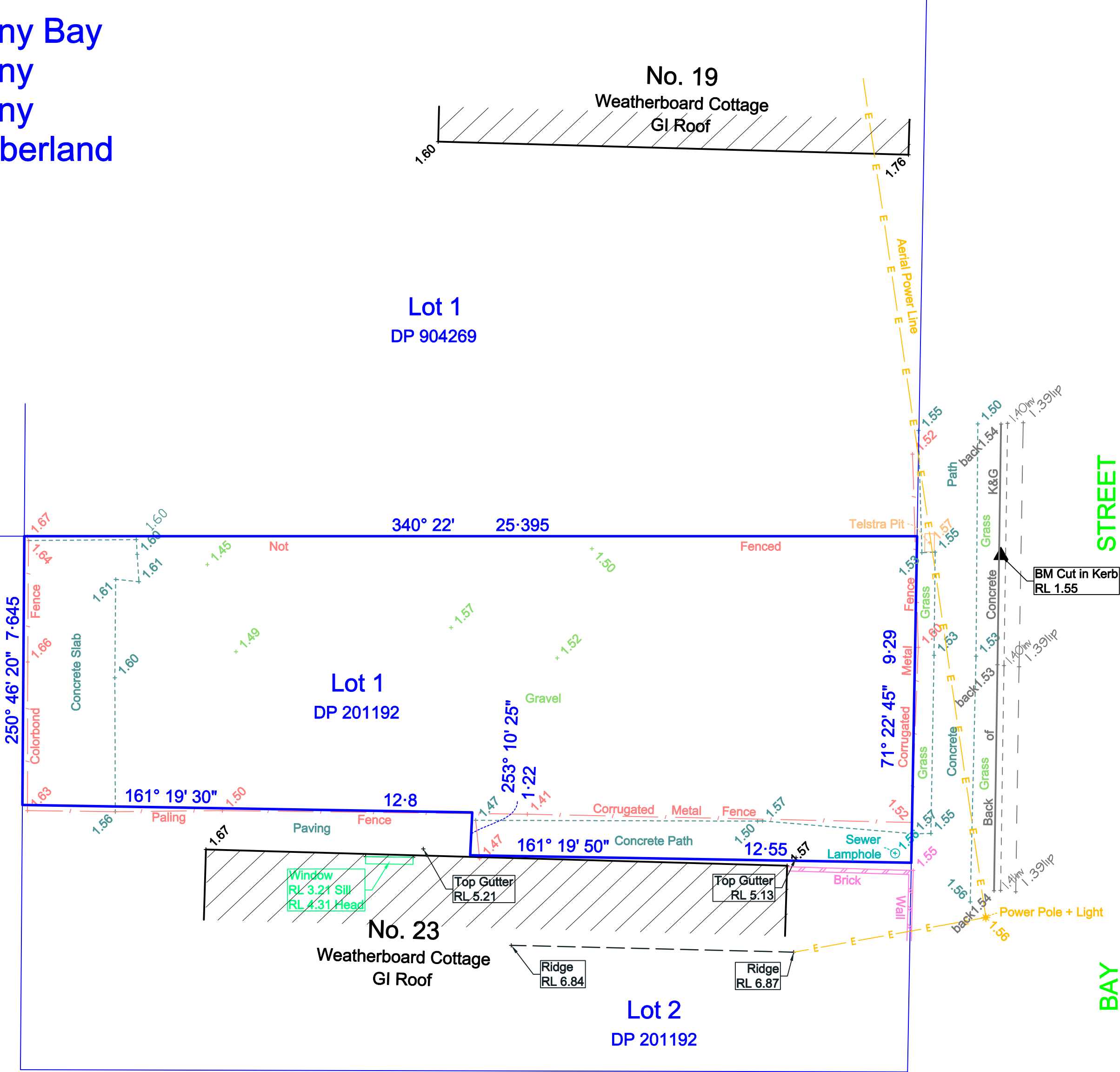
LGA : Botany Bay  
Locality : Botany  
Parish : Botany  
County : Cumberland

Lot 4  
SEC. 2  
DP 889

Lot 14  
DP 1034663

Lot 1  
DP 904269

Lot 1  
DP 201192



NOTE  
Level and detail information as shown on these plans has been established by Stadia methods and is within the generally accepted accuracy for such surveys, and was correct as at date of survey.

Underground services as shown on these plans have been located by surface investigation only of readily visible features, and may not be exhaustive. Prior to any demolition, excavation or construction on the site, the relevant authority should be contacted to establish detailed location and depth.

The existence and position of underground services has not been investigated. It is the responsibility of each contractor and / or consultant to contact Dial Before You Dig (Tel : 1100 Fax : 1300652 077) before commencing any excavation.

If position and / or depth of service is critical to design or construction the service must be exposed by "potholing" carried out by a person accredited by the relevant service provider.

Where detail, service information, dimensions or levels are critical to the design proposed they should be verified in the field prior to the commencement of construction.

Levels shown on kerbs are TOP of BACK of kerb, unless noted otherwise. All kerbs are generally 150mm high concrete.

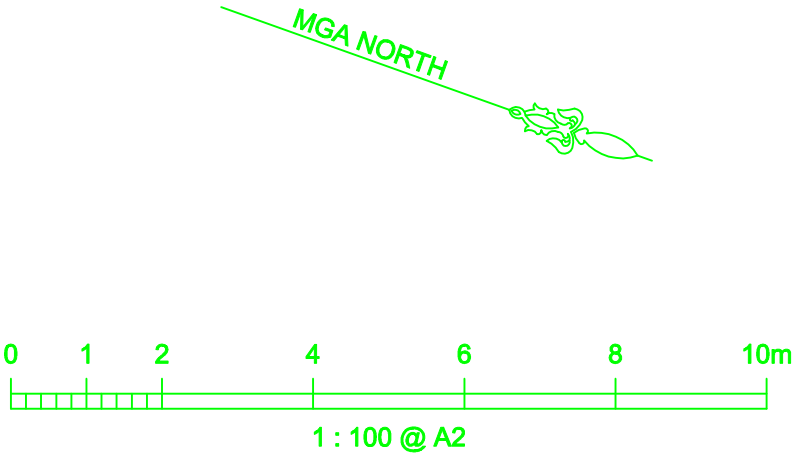
Widths of walls are indicative only. Levels shown on walls are base of wall unless noted otherwise.

Features noted as retaining walls on these plans indicate that there is a significant difference in the levels of the ground from one side of the wall to the other.

Boundaries shown on these plans have not been marked, and have been compiled from relevant plans obtained from the Land & Property Information Office. Further survey will be required to refix and/or mark the boundaries.

This plan was prepared at a scale of 1:100 at A2 for the purpose of showing topographical detail over the site for planning purposes, and may not be suitable for any other use. The accuracy of any enlargement or other reproduction may be less than that of the original

These notes form an integral and important part of these plans and must be reproduced in any use, duplication or amendment of the plan. If this is not done Peter Bolan and Associates Pty Ltd will not accept any responsibility and therefore Peter Bolan and Associates Pty Ltd expressly disclaims all liability for errors or omissions of any kind whatsoever, or from any loss, damage or other consequences that may arise from any person relying on the locations of utilities determined by this survey. Such responsibility is transferred to the client who gave instructions for the survey.



SITE AREA  
214.5m²

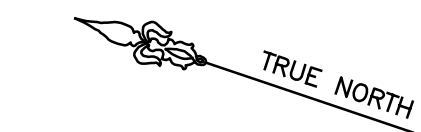
Rev.	Date	Description
A	30-03-16	Original drawing issued

SCALE :	1:100 @ A2
SHEET No.:	1 of 1
DATUM :	AHD
ORIGIN :	PM 29756 RL 2.821
CO-ORD SYSTEM :	MGA
ORIGIN :	DP 1159645

SURVEYOR :	D. Loomes
DATE :	24th March, 2016
DRAWN :	G. L. Bowtle
DATE :	28th March, 2016
REFERENCE :	16-0014
PLOT FILE :	20160324_DET-100-A

**Peter Bolan and Associates Pty Ltd**  
Consulting Surveyors A.B.N. 55 003 079 605  
Incorporating  
**Loomes Consulting Surveyors**  
Level 5, Suite 501, 447 Kent Street,  
SYDNEY N.S.W. 2000  
Telephone : (02) 9261-1244 Facsimile : (02) 9283-6633

Detail & Level Survey  
of  
Lot 1 DP 201192  
No. 21 Bay Street  
BOTANY



STREET

BAY

STREET

ERITH



NOTES:

DIAMETER, HEIGHT & SPREAD OF TREES ARE APPROXIMATE ONLY  
NO BOUNDARY SURVEY HAS BEEN CARRIED OUT.  
DETAIL ON THIS PLAN HAS BEEN LOCATED FOR PLOTTING PURPOSES ONLY.  
SERVICES ETC. UNLESS NOTED HAVE NOT BEEN LOCATED.

SERVICES SHOWN ARE INDICATIVE ONLY. OTHER SERVICES MAY EXIST WHICH ARE NOT SHOWN. THEREFORE, FIELD CONFIRMATION OF THE EXACT POSITION SHOULD BE MADE PRIOR TO COMMENCEMENT OF ANY EXCAVATION.

ANY POINT OR FEATURE CRITICAL TO THE PREPARATION OF PLANS AND/OR CONSTRUCTION SHOULD BE ACCURATELY LOCATED PRIOR TO COMPLETION OF THOSE PLANS AND/OR COMMENCEMENT OF CONSTRUCTION

DIMENSIONS AND BEARINGS FROM DP DP 201192  
AREA CALCULATED FROM THOSE BEARINGS AND DIMENSIONS.  
ORIGIN OF LEVELS: PM 29756 - RL 2.821 RL XXX (AHD) CLASS X ORDER X  
USE STATED DIMENSIONS. DO NOT SCALE.

NO COVENANTS AND/OR RESTRICTIONS HAVE BEEN INVESTIGATED BY RAMSAY SURVEYORS PTY LTD

AMENDMENTS

DATE	DESCRIPTION

L.G.A

BAYSIDE

LOCALITY:

BOTANY

INSTRUCTED BY:

MICHAEL ESBER

RE:

MALEX DEVELOPMENTS P/L

**H RAMSAY & CO.**  
SURVEYORS EST. 1962  
Ramsay Surveyors Pty Limited ACN 607 389 748  
"CARLINGFORD CENTRAL" SUITE 15, 241-245 PENNANT HILLS RD, CARLINGFORD NSW 2118  
P.O. BOX 9082 HARRIS PARK NSW 2150 PH: (02) 9635 5840 FAX: (02) 9806 0027  
EMAIL: surveyor@hramsay.com.au www.hramsay.com.au

PLAN SHOWING DETAIL AND LEVELS OVER  
LOT 1 IN DP 201192 AND ADJOINING LOTS  
No 21 BAY STREET, BOTANY

SCALE	1:100@A1
DATUM	AHD
SURVEY	AP KS
DRAWN	CSM
DATE	14/6/17
OUR REF	8457
SHEET 1 OF 1 SHEETS	

BM CUT TOP KERB  
RL 1.55

2  
D P 201192

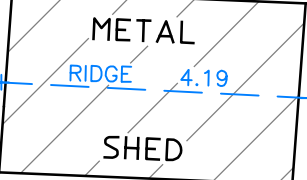
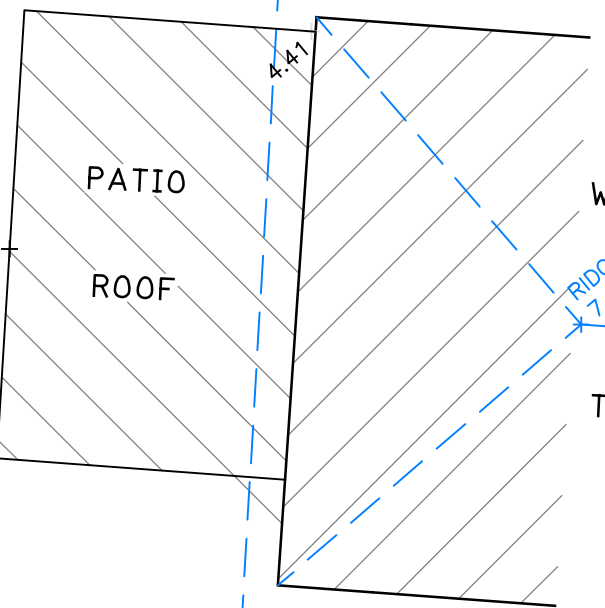
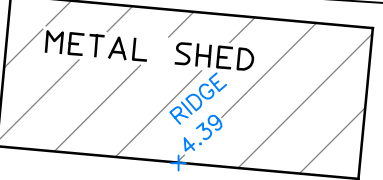
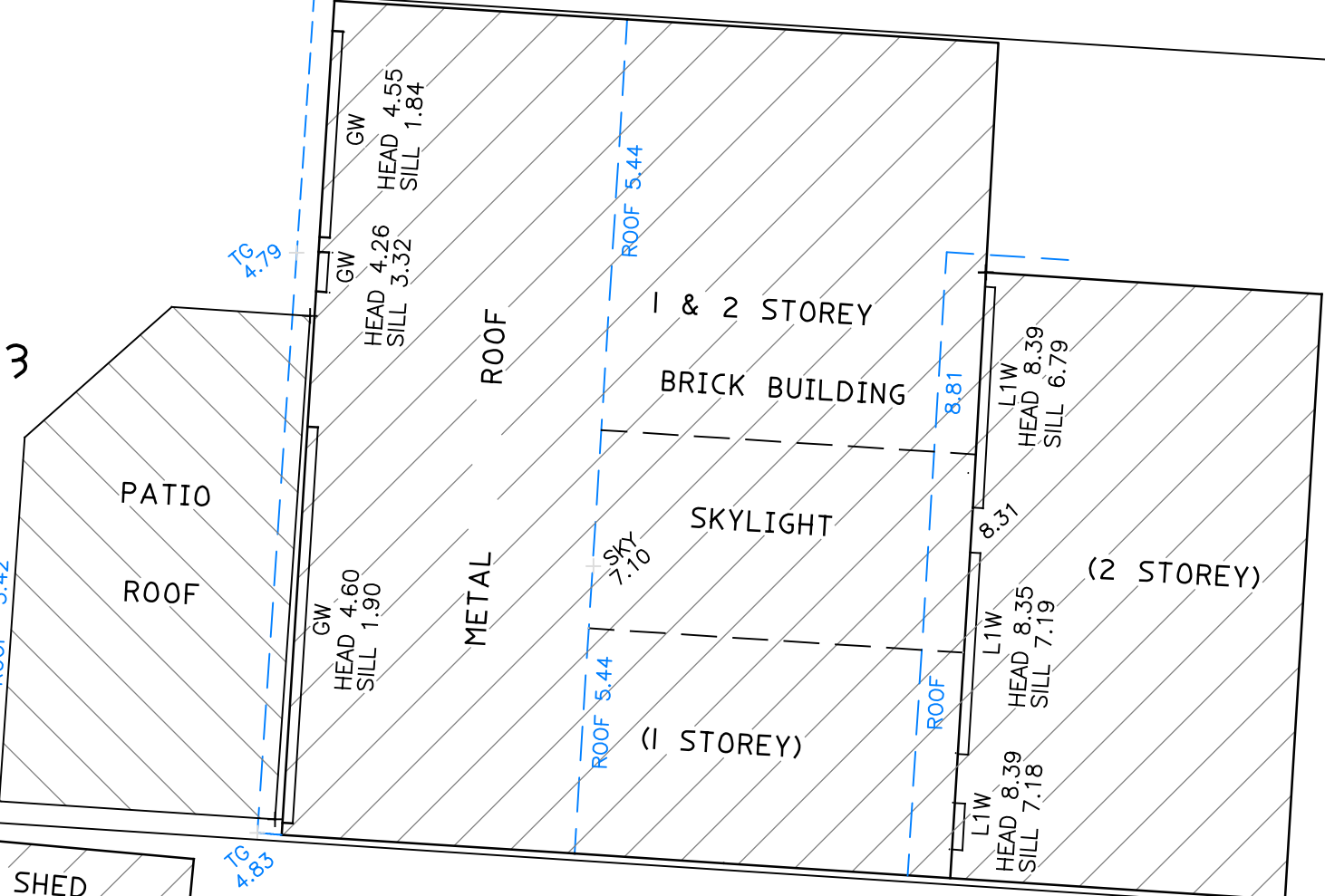
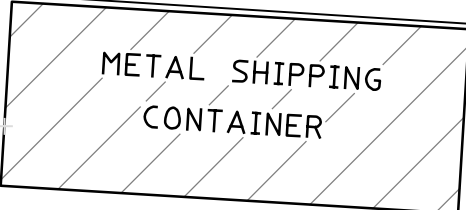
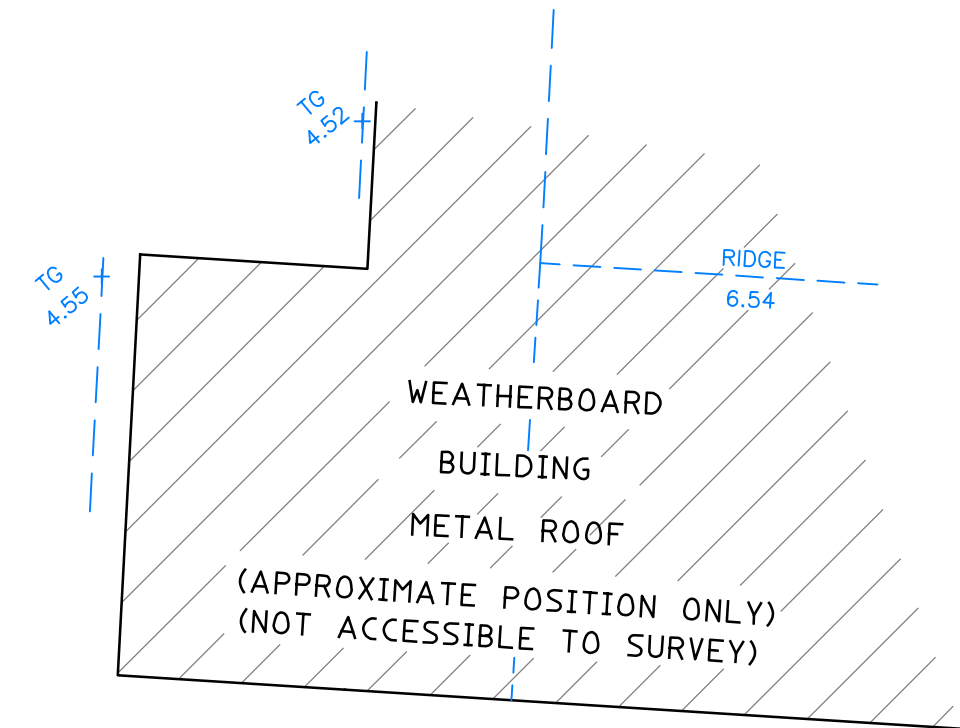
1  
D P 201192

1  
D P 904269

2  
SEC 2  
D P 889

14  
D P 1034663

4  
SEC 2  
D P 889



(A) EASEMENT FOR OVERHANG 0.305 WIDE (H7399992)

LEGEND

SKY TOP OF SKYLIGHT  
TG TOP OF GUTTER  
L1W LEVEL 1 WINDOW  
GW GROUND LEVEL WINDOW

THE SURVEY INFORMATION SHOWN COLOURED PINK HAS BEEN IMPORTED FROM PLAN BY PETER BOLAN & ASSOCIATES PTY LTD DATED 24 MARCH 2016 REF 16-0014