



INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	D/2019/33
Address	9 Gladstone Street, Balmain
Proposal	Demolish existing dilapidated single storey residence and construct a two storey residence and tree removal from rear
Date of Lodgement	30 January 2019
Applicant	Aaron Stevens Architects
Owner	Selby Projects Pty Ltd
Number of Submissions	First Round – 10 Second Round – 3
Value of works	\$430,730.00
Reason for determination at Planning Panel	Number of submissions exceeds delegation
Main Issues	<ul style="list-style-type: none"> - Demolition of a contributory item within a HCA; - Visual bulk and scale
Recommendation	Approval subject to Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

Note: Due to scale of map, not all objectors could be shown.

1. Executive Summary

This report is an assessment of the application submitted to Council for the demolition of an existing dilapidated single storey residence and the construction of a new two storey dwelling including the removal of a tree at the rear at 9 Gladstone Street, Balmain. The application was notified to the surrounding properties and 10 submissions were received. The application was amended as part of the assessment process and was subsequently renotified to the surrounding properties and those who made a submission as part of the first round, three submissions were received during the second notification round.

The main issues that have arisen from the application include:

- Demolition of a contributory item within a heritage conservation area;
- Visual bulk and scale; and
- Visual privacy impacts to adjoining properties

The non-compliances are acceptable given that the amended proposal seeks to retain some elements of the original building fabric including the chimney and reinstate the front veranda and awning. The proposal as amended has reduced the visual bulk and scale impacts of the dwelling so as not to detract from the Gladstone Street streetscape and impede on the internal and external living amenity of the adjoining properties. The proposal has been designed with consideration to the vacant lot to the west (11 Gladstone Street) to ensure that infill development will not be unreasonably hindered by the current proposal.

2. Proposal

The proposed development seeks consent for the following works:

- Demolition of all existing structures on the subject site (and partially the adjoining lot) excluding the central chimney, front wall (including windows and door openings) which are to be retained/replaced/reinstated as structurally required;
- Removal of three trees within the rear setback, this being two *Howea Forsteriana* trees (Kentia Palm) and one *Dracaena Marginata* tree (Red Edged Dracena); and
- Construction of a two-storey dwelling. The ground floor will have an entry/lobby three bedrooms and three bathrooms with the rear yard accessible via the master bedroom. The first floor will have an open living/dining and kitchen area with an outdoor patio to the rear including barbeque area.

3. Site Description

The subject site is located on the northern side of Gladstone Street, between Ann Street to east and Fawcett Street to the west. The subject site is a single allotment generally rectangular in size with a total area measuring 135.1m² and is legally described as Lot 1 in DP 1039336. The site has a frontage to Gladstone Street measuring 7.4m, rear boundary measuring 7.2m and lot depth measuring approximately 18.2m.

The site supports a dilapidated single storey dwelling with an enclosed front porch and open verandah to the rear. A small portion (approximately 4m²) of the existing dwelling encroaches into the vacant adjoining lot at its eastern boundary. The encroachment is limited to a window awning, the rear portion of the existing dwelling and rear verandah.

Gladstone Street falls from the west to the east (towards Ann Street). Despite this the site has a fall of approximately 1m from the front to the rear of the site. The existing dwelling is raised approximately 530mm and 1.2m above the natural footpath levels at the western and eastern elevations respectively, and approximately 2.5m - 3m above the rear private open space areas of the adjoining properties at 1 and 3 Ann Street.

The surrounding properties to the east (side) include two storey dwellings with frontages to Ann Street. Adjoining the property to the north (rear) are dwellings and shop top housing with frontages to Darling Street and to the west (side) includes single and two storey dwellings with a residential flat building immediately adjacent to the site.

The existing dwelling is a contributory building within the Balmain East Heritage Conservation Area.

4. Background

4(a) Site history

There are no recent planning determinations for the subject site.

Surrounding properties

There are no recent planning determinations at 1 or 3 Ann Street, Balmain, 11 or 20 Gladstone Street.

216 Darling Street, Balmain

Application	Proposal	Decision & Date
D/2004/553	Use of part of existing building for home based business, involving a picture framing studio and signage.	Approved 22/12/2004

218 Darling Street, Balmain

Application	Proposal	Decision & Date
D/2008/397	Change of use to oriental health massage.	Approved 26/09/2008

4(b) Application history

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

Date	Discussion / Letter / Additional Information
22/05/2019	Request for additional information including: <ul style="list-style-type: none"> - A revised structural adequacy report, with a full analysis of the heritage fabric of the building. - A revised proposal demonstrating compliance with the site coverage Development Standard; - A revised proposal to minimise visual privacy impacts; - A revised proposal to minimise and address visual bulk and scale concerns when viewed from the adjoining properties and Gladstone Street. and - A revised proposal to be compatible in scale, form and materials of the streetscape including roof forms in satisfaction with the HCA objectives and requirements.
6/06/2019	Structural adequacy report provided to Council
5/07/2019	Revised structural adequacy report and amended plans provided to Council.
11/07/2019 25/07/2019	- Amended plans and associated documents re-notified

Date	Discussion / Letter / Additional Information
27/08/2019	Revised Clause 4.6, revised set of plans illustrating the FFLs in addition to shadow diagrams as requested by Council provided by the applicant.

5. Assessment

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

5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy No. 55—Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*

The following provides further discussion of the relevant issues:

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

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

The site has not been used in the past for activities which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with *SEPP 55*.

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

A revised BASIX Certificate was submitted with the application and will be referenced in any consent granted.

5(a)(iii) *State Environmental Planning Policy (Vegetation in Non-Rural Areas) (Vegetation SEPP)*

Vegetation SEPP concerns the protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council’s DCP.

The proposal seeks to remove three trees within the rear setback, this being two *Howea Forsteriana* trees (Kentia Palm) and one *Dracaena Marginate* tree (Red Edged Dracena). The application was referred to Council’s Tree Management Officer, and no objection was raised to the tree removal. However due to the manageable size and species tolerance to root disturbance, the applicant is encouraged to transplant the Kentia Palms and incorporate them into the landscaping works proposed for the rear of the site.

Overall, the proposal is considered acceptable with regard to the *Vegetation SEPP* subject to the imposition of conditions, which have been included in the recommendation of this report.

5(a)(iv) *Leichhardt Local Environment Plan 2013 (LLEP 2013)*

The application was assessed against the following relevant clauses of *the Leichhardt Local Environmental Plan 2013*:

- Clause 1.2 - Aims of the Plan
- Clause 2.3 - Zone objectives and Land Use Table
- Clause 2.7 - Demolition
- Clause 4.3A - Landscaped areas for residential accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 5.10 - Heritage Conservation
- Clause 6.1 - Acid Sulfate Soils
- Clause 6.2 - Earthworks
- Clause 6.4 - Stormwater management

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

The site is zoned R1 – General Residential under the *LLEP 2013*. The *LLEP 2013* defines the development as:

“**Dwelling house** means a building containing only one dwelling.”

The development is permitted with consent within the zone. The development is consistent with the objectives of the R1 – General Residential Zone.

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

Standard	Proposal	Non compliance	Complies
Floor Space Ratio Maximum permissible: 1:1 or 135.1m ²	0.86:1 or 116.4m ²	Nil	Yes
Landscape Area Minimum permissible: 15% or 20.3m ²	25% or 33.4m ²	Nil	Yes
Site Coverage Maximum permissible: 60% or 81m ²	69.5% or 93.8m ²	15.8% or 12.8m ²	No

Clause 4.6 Exceptions to Development Standards

As outlined in table above, the proposal results in a breach of the following development standard:

- Clause 4.3A(3)(b) – Site Coverage for residential development in Zone R1

The applicant seeks a variation to the site coverage development standard under Clause 4.3A(3)(b) of the applicable local environmental plan by 15.8% (12.8m²).

Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the *LLEP 2013*.

A written request has been submitted to Council in accordance with Clause 4.6(3) of the *LLEP 2013* justifying the proposed contravention of the development standard which is summarised as follows:

- *The proposal is compliant with the building envelope controls and provides side setbacks and a building location zone which are compatible with the surrounding locality;*

- *The proposal satisfies the objectives of the side setbacks control and therefore it would be anticipated that additional site coverage would be appropriate for the site than would otherwise be provided. Compliant side setbacks would result in a compliant site coverage, but would be inconsistent with the neighbourhood character;*
- *The proposed massing of the building envelope on the site reinforces the character of the locality and provides a positive contribution to the character of the streetscape and the surrounding conservation area;*
- *The proposal substantially improves the internal amenity of the dwelling and provides private open space with solar access in the form of a balcony deck on the first floor, ensuring that the development well provided with adequate private open space, despite the non-compliance;*
- *The proposal will provide an overall improved landscape outcome to the site;*
- *The proposed development will improve housing supply in the location as it will facilitate the provision of a new dwelling at No.11 Gladstone Street, without impact on other nearby existing properties*

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

It is considered the development is in the public interest because it is consistent with the objectives of the R1 – General Residential Zone, in accordance with Clause 4.6(4)(a)(ii) of the applicable Local Environmental Plan. The objectives of the R1 – General Residential Zone are as follows:

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

The proposal as amended is consistent with the objectives of the zone for the following reasons:

- The proposal is compatible with the desired future character of the area in relation to building bulk, form and scale;
- The proposal has been designed to take into consideration future low scale residential development on the adjoining vacant lot (being 11 Gladstone Street) in terms of streetscape presentation, visual bulk and massing;

- The proposal has been designed to ensure that any infill development on the vacant lot to the west will not be unreasonably hindered by the current proposal;
- The proposal complies with the floor space ratio and landscaped area Development Standards, providing a suitable balance between landscaped areas and the built form;
- The siting of the building is within the building location zones when it can be reasonably assumed development can occur; and
- The proposal does not result in any adverse amenity impacts to the surrounding properties.

It is considered the development is in the public interest because it is consistent with the objectives of the site coverage Development Standard, in accordance with Clause 4.6(4)(a)(ii) of the LLEP 2013, which are:

- *(a) To provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,*
- *(b) To maintain and encourage a landscaped corridor between adjoining properties,*
- *(c) To ensure that development promotes the desired future character of the neighbourhood,*
- *(d) To encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,*
- *(e) To control site density,*
- *(f) To limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.*

The proposal as amended is consistent with the objectives of the Development Standard for the following reasons:

- The proposal seeks to increase the amount of permeable landscaped area on the subject site and as such improving the balance between the built form and landscaped areas for residential accommodation;
- The proposal has been designed to conform to the provisions of the HCA, namely that it seeks to retain some elements of the original building fabric and conform to the general built form predominate within the area;
- The proposed infill dwelling is compatible with the existing residential character of the area in relation to building siting, bulk, form and scale;
- The proposal as amended does not result in any undue adverse amenity impacts to the surrounding properties;
- Despite the variations, the proposal results in superior on-site amenity outcomes; and
- It is considered that the site coverage proposed will not be out of character with the site coverage characteristic of the general pattern of development in the vicinity.

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

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the applicable local environmental plan. For the reasons outlined above, there are sufficient planning grounds to justify the departure from site coverage Development Standard and it is recommended the Clause 4.6 exception be granted.

Clause 5.10 - Heritage Conservation

The proposal seeks to demolish an existing contributory dwelling within the Balmain East Heritage Conservation Area. At the request of Council, destructive openings were undertaken to access the timber floor and the roof space to assess the building’s structural adequacy. The revised structural adequacy report provided by the applicant states that the *“the sub-floor sandstone walls, the sandstone fireplace, the front rooms subfloor joists and front wall of the cottage are considered structurally sound with regard to heritage significance and are suitable for re-use. The remainder of the cottage has little to no structural adequacy with regard to heritage significance”*.

Based on the advice provided in the structural adequacy report the proposal as amended seeks to retain some elements of the original building fabric including the chimney and reinstate the front veranda and awning. Council’s Heritage Advisor and Building Manager have outlined no objection to the demolition of the existing dwelling house given its substantially dilapidated nature. Council’s Heritage Advisor has recommended on any consent issued appropriate conditions requiring a detailed report explaining how the identified building elements are to be retained, supported and conserved as well as how existing building materials can be salvaged on site. Furthermore, it is also recommended that a full archival record of the building and landscape elements be documented for Council’s records.

Council’s Heritage Advisor raises no objection to the proposal as amended subject to design changes requiring the first floor to be setback beyond the consistent apex line of the existing streetscape. This would require the first floor to setback approximately an additional 2.3m to incorporate the recommended design change. This proposed design change is onerous and not supported on planning grounds, as it will result in adverse visual bulk impacts to the adjoining properties to the rear. The reinstatement of the front verandah and complaint-building envelope ensures that the infill dwelling does not detract from the streetscape and satisfies the objectives of the HCA.

5(b) Draft Environmental Planning Instruments

There are no relevant Draft Environmental Planning Instruments.

5(c) Development Control Plans

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

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	Yes
B3.1 Social Impact Assessment	Yes
B3.2 Events and Activities in the Public Domain (Special Events)	Yes

Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes – see discussion
C1.3 Alterations and additions	Yes
C1.4 Heritage Conservation Areas and Heritage Items	Yes – see discussion above
C1.5 Corner Sites	Not applicable
C1.6 Subdivision	Not applicable
C1.7 Site Facilities	Not applicable
C1.8 Contamination	Not applicable
C1.9 Safety by Design	Not applicable
C1.10 Equity of Access and Mobility	Not applicable
C1.11 Parking	Not applicable
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	Not applicable
C1.14 Tree Management	Not applicable
C1.15 Signs and Outdoor Advertising	Not applicable
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	Not applicable
C1.17 Minor Architectural Details	Not applicable
C1.18 Laneways	Not applicable
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	Not applicable
C1.20 Foreshore Land	Not applicable
C1.21 Green Roofs and Green Living Walls	Not applicable
Part C: Place – Section 2 Urban Character	
C2.2.2.1 Darling Street Distinctive Neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes – refer to discussion
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	Not applicable
C3.5 Front Gardens and Dwelling Entries	Yes – refer to discussion
C3.6 Fences	Yes – refer to discussion
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes – refer to discussion
C3.9 Solar Access	Yes – refer to discussion
C3.10 Views	Yes – refer to discussion
C3.11 Visual Privacy	Yes – refer to discussion
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	Not applicable
C3.14 Adaptable Housing	No applicable
Part C: Place – Section 4 – Non-Residential Provisions	Not applicable
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	Not applicable
D2.5 Mixed Use Development	Not applicable

Part E: Water	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	
E1.1.1 Water Management Statement	Not applicable
E1.1.2 Integrated Water Cycle Plan	Not applicable
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	Not applicable
E1.1.5 Foreshore Risk Management Report	Not applicable
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Not applicable
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Not applicable
E1.2.4 Stormwater Treatment	Not applicable
E1.2.5 Water Disposal	Not applicable
E1.2.6 Building in the vicinity of a Public Drainage System	Not applicable
E1.2.7 Wastewater Management	Not applicable
E1.3 Hazard Management	Not applicable
E1.3.1 Flood Risk Management	Not applicable
E1.3.2 Foreshore Risk Management	Not applicable
Part F: Food	Not applicable
Part G: Site Specific Controls	Not applicable

The following provides discussion of the relevant issues:

C1.2 Demolition

As previously discussed, the proposal seeks to demolish an existing contributory dwelling within the Balmain East Heritage Conservation Area. Due to the undulating topography of the subject site the replacement dwelling has been designed to minimise visual bulk along the Gladstone Street streetscape and from the rear adjoining properties. The reinstatement of the front verandah and front setback of the first floor ensures that the infill dwelling suitably articulated so that it positively contributes to the desired future character of the area.

The applicant has demonstrated that the existing dwelling is structurally unsafe and cannot be reasonable repaired and as such the demolition is supported subject to recommended conditions on any consent issued.

C2.2.2.1 Darling Street Distinctive Neighbourhood

The proposal as amended has been designed to conform to a 3.6m building envelope control (as measured from the FFL of the dwelling) to lessen the visual dominance of the dwelling from the Gladstone Street elevation. The proposed contemporary infill development incorporates heritage elements distinctive complementary to the neighbourhood, this being the chimney and front verandah, so as not to detract from the objectives of the HCA or desired future character.

C3.2 Site Layout and Building Design

Side Setbacks

To minimise the visual bulk and massing impacts to the adjoining properties, namely those dwellings fronting Ann Street, the ground floor of the proposed development has a stepped setback at the eastern (side) boundary, measuring from a nil setback up to 1.8m towards the rear of the dwelling. Whilst the first floor is to be setback 1.8m-2m from the eastern (side) boundary due to the irregular lot size. The dwelling is to have a nil setback at the western

(side) boundary on the ground and first floor. The proposal has a wall height of approximately 6m and as such requires a minimum side setback of 1.8m in accordance with the provisions of this Part of the LDCP 2013.

Pursuant to Clause C3.2 C7 of the LDCP2013, where a proposal seeks a variation of the side setback control graph, various tests need to be met. These tests are assessed below:

- ***The development is consistent with relevant Building Typology Statements as outlined within Appendix B – Building Typologies of the LDCP2013 and complies with streetscape and desired future character controls.***

Comment: Acceptable. The subject site is generally rectangular measuring 7.4m and 7.2m wide at the front and rear boundary respectively and 18.2m in depth. The existing single storey dwelling to be demolished has a nil setback at the eastern boundary and nil-800mm setback at the western boundary. The form and scale, architectural style, materials and finishes of the proposed dwelling will be complementary and consistent with the existing surrounding development and as such will not detract from the character of the area. The proposal as amended has been articulated to incorporate a building envelope control on 3.6m (as measured from the FFL of the dwelling) to lessen the visual dominance of the dwelling from the Gladstone Street elevation.

- ***The pattern of development is not adversely compromised.***

Comment: Acceptable. The subdivision pattern for lots located on the northern side of Gladstone Street is inconsistent in terms of lot depth and width, because of this inconsistency there is no clearly defined rear BLZ established for the proposal to employ. Despite this, the ground and first floor is to be setback 3m from the rear to improve the pervious landscaping retained on the subject site, minimise the visual bulk, scale and overshadowing impacts to the adjoining dwellings. In addition, the proposal seeks to reinstate the front verandah and incorporate a 3.6m building envelope control, which is generally consistent and keeping in character with the dwellings on the northern side of Gladstone Street. Furthermore, the proposal has been designed with consideration to the vacant lot to the west to ensure that any infill development will not be unreasonably hindered by the current proposal. The proposed nil setback at the western boundary facilitates any future development at 11 Gladstone Street to have a nil side setback at their respective eastern boundary.

- ***The bulk and scale of the development has been minimised and is acceptable.***

Comment: Acceptable. The proposal has been designed with consideration to the objectives of the Darling Street Distinctive Neighbourhood in addition to compliance with the development standards of the *LLEP 2013*, namely heritage considerations. The overall bulk of the development is modest in scale and has been minimised so as not to result in unreasonable overshadowing impacts, visual bulk or visual privacy impacts to the adjoining dwellings to the side (Ann Street) and rear (Darling Street) of the subject site respectively.

- ***The proposal is acceptable with respect to applicable amenity controls e.g. solar access, privacy and access to views.***

Comment: Acceptable. As the first floor is setback 1.8m (rear of dwelling) to 2m (front of dwelling) at the eastern elevation, it is not likely that the first floor living/kitchen windows will adversely impede on the visual privacy of the adjoining POS areas or first floor principal living areas at 1 and 3 Ann Street. However, to mitigate any potential overlooking, it is recommended that the first floor windows at the eastern elevation have a minimum sill height of 1.6m above the FFL on any consent issued.

The proposal has been designed to maximise solar amenity and views to the harbour, and as such the principal living areas are limited to the first floor of the dwelling, this includes a POS patio area to the rear of the dwelling measuring approximately 19.5m². The POS area is suitably setback from the side and rear boundaries and incorporates

planter screening to minimise direct overlooking to the adjoining properties. It is recommended that the size of the POS area (which includes the barbeque bench) is reduced to a maximum of 16m² – this being the minimum area of POS to be provided in accordance with the LDCP 2013 provisions.

- ***The proposal does not unduly obstruct adjoining properties for maintenance purposes.***

Comment: Acceptable. Maintenance of the adjoining properties at the Ann Street and Darling Street frontage will not be hindered by the proposal. The proposed nil setback at the western boundary facilitates any future development at 11 Gladstone Street to have a nil side setback at their respective eastern boundary. The provision of a minimum 900mm setback at the western boundary is unreasonable as an increased setback is likely to result in a design that will detract from the objectives if the *LLEP 2013* and LDCP 2013.

C3.5 Front Gardens and Dwelling Entries & C3.6 Fences

Due to the natural fall of Gladstone Street the FFL of the front verandah will be approximately 530mm and 1.2m above the street level at the western and eastern boundaries respectively, the dwelling has not been stepped down to follow the fall of the street. No new front fence is included as part of the proposal. The repair and reinstatement of the existing front verandah ensures that the entrance of the infill dwelling proposed is clearly defined and sympathetic to dwellings within the immediate context of the subject site.

C3.8 Private Open Space

The proposal has been designed to maximise solar amenity and views to the harbour, and as such the principal living areas are limited to the first floor of the dwelling, this includes a POS patio area to the rear of the dwelling measuring approximately 19.5m². The POS area is suitably setback from the side and rear boundaries and incorporates planter screening to minimise direct overlooking into the adjoining properties. It is recommended that the size of the POS area (which includes the barbeque bench) is reduced to a maximum of 16m² – this being the minimum area of POS to be provided in accordance with the LDCP 2013 provisions.

C3.9 Solar Access

The subject site has a north-south orientation with the front of the site being the southern elevation. Whilst the adjoining sites to the east of subject site are oriented to Ann Street and have an east-west orientation – with the western elevation being the rear POS areas and main living room windows of the dwellings. The elevation, plan and isometric shadow diagrams provided with the application illustrate that the proposal will cause additional overshadowing impacts to 11 and 20 Gladstone Street – immediately to the west and south of the subject site as well as 1 and 3 Ann Street to the east of the subject site.

Given that, the lots at 1 and 3 Ann Street are perpendicular to the subject site any additional impacts are to occur from 12pm onwards. The shadow diagrams illustrate that the first floor living/kitchen windows at both 1 and 3 and Street will receive at least 2hrs of solar amenity between 12pm and 3pm in compliance with the requirements. At 2pm the bathroom window on the first floor at 3 Ann Street will be reduced, this reduction is acceptable as it does not form part of the principal living areas of the affected dwelling. Furthermore, the shadow diagrams illustrate that two hours solar amenity will be maintained to at least 50% of the POS areas at 1 and 3 Ann Street in compliance with the requirements.

The shadow diagrams provided with the application illustrate that additional overshadowing is to occur to the POS areas of the ground floor units at 20 Gladstone Street. Two hours of solar amenity will be maintained to these north facing apartments between 9am and 3pm.

As previously discussed the proposed development has been articulated to consider any potential impacts to future development on the vacant site to the west at 11 Gladstone

Street. The bulk of the development is concentrated towards the western boundary of the subject site to minimise bulk and scale impacts to the streetscape and adjoining properties. By shifting the bulk of the development towards the front of the dwelling at the western boundary ensures that any future development can maintain reasonable solar amenity from the north.

C3.10 Views

1 Fawcett Street is located at the south-western corner of Fawcett Street and Gladstone Street and is approximately 30m uphill from the front boundary of the subject site. Views of the Sydney Harbour Bridge including the northern pylons are visible from the front porch, the front lounge room (with the front door open) and front lounge room window of the dwelling at 1 Fawcett Street. Given that the views are across side boundaries these views are difficult to protect. As view loss has been raised as a concern from this site a detailed view loss assessment made against the provisions relating to access to views contained within this Clause and the relevant planning principle established by the New South Wales Land and Environment Court are provided below.

The planning principle established by the decision made in the New South Wales Land and Environment Court in *Tenacity Consulting v Warringah [2004] NSWLEC 140* establishes several tests to determine whether view loss impacts are acceptable or not. The following assessment has been undertaken in regards to view loss as it relates to the subject proposal:

“The Land and Environment Court accepts that the attribution to the values to views is subjective and has published planning principles to help established a more structure approach in assessing the impact of development in terms of view loss.

The first step requires the assessment of views that the proposal will affect, and establishes a value system for assessing different kinds of views. It suggests that:

- *Water views are valued more highly than land views;*
- *Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons; and*
- *Whole views are valued more highly than partial views (eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured).”*

Comment: The property that is subject to this assessment is 1 Fawcett Street. The views that may be impacted include Sydney Harbour Bridge including the northern pylons are visible from the front porch, front lounge room (with the front door open) and front lounge room window (standing only) of the dwelling (the subject property for the purposes of this assessment).

“The second step is to consider how reasonable it is to expect to retain the views. It acknowledges that the following:

- *Protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries; and*
- *Views enjoyed from a standing or sitting position is also relevant as many people who have a view from sitting position consider that they have lost the view if they have to stand up to see it.”*

Comment: As Fawett Street is perpendicular to Gladstone Street the views enjoyed by the residents of the subject property are across the front boundary of the site and across the side boundary of properties along Gladstone Street. The view of the Sydney Harbour Bridge and the northern pylons are visible from a standing and sitting position from the front porch,

standing and sitting position from the living room (with the front door open) and the front lounge room window (standing only). Refer to figures below.



View from the front porch towards the northern side sitting



View from the front porch towards the southern side sitting



View from the front lounge room sitting



View from the front lounge room sitting



View from the front lounge room window standing

“The third step is to assess the extent of the impact, and should consider that the impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). Whilst the impact may be assessed quantitatively it is more useful to assess the view loss qualitatively as

- *Negligible;*
- *Minor;*
- *Moderate;*
- *Severe; and*

- *Devastating.*

Comment: The particular views that would be impacted are from the front porch and the front living room (through the front door) and the front living room window (standing). It is considered the proposed development will affect the views of the northern pylons and approximately the northern half of the Sydney Harbour Bridge. The views from within the lounge room are only visible when the front door is open, if the front door were closed these viewed would be obscured. The front porch is not a principal living area within the dwelling and as such protecting the view/outlook this is not as highly valued. Despite this, approximately the southern half of the Sydney Harbour Bridge outlook is likely to be maintained from the front porch – although this may be obscured further with any future development at the adjoining vacant site at 11 Gladstone Street. As such, the degree of view loss can be assessed qualitatively as being moderate in scope given the location of where this views/outlook are from within the context of the dwelling.

“The fourth and final step is to assess the reasonableness of the proposal that is causing the impact and the following factors should be considered:

- *A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable; and*
- *With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”*

Comment: It is considered that the location and form of the proposed first floor addition is reasonable. It complies with the Landscaped Area and FSR Development Standards contained within the *LLEP 2013* and generally complies with the design guideline controls in the *LDCP 2013*, as discussed elsewhere in this report. In this case the situation is not one where a more skilful design would result in the same development potential and amenity with reduced view impacts given the constraints of the site.

Consideration of the above planning principal steps contained within Tenacity Consulting v Warringah [2004] NSWLEC 140 concludes that the proposal and is acceptable with regard to view loss and view sharing considerations

Given the location of the affected dwelling and the subject site views across front/side boundaries, these views are difficult to protect. The proposal is reasonable in scale and has is designed and articulated to remain consistent with the objectives of the HCA, not detract from the Gladstone Street streetscape and minimise visual bulk, scale and overshadowing impacts to the immediately adjoining properties – as such view sharing is considered to have been achieved by the proposal.

C3.11 Visual Privacy

The proposal includes four windows on the ground floor, with three at the eastern (side) and northern (rear) elevation, as well as three windows on the first floor at the eastern (side) elevation and one at the southern (front) elevation. It is not likely the ground floor windows will impede on the visual privacy amenity of the adjoining dwellings as the windows are suitably setback from the side and rear boundaries respectively. In addition, the new side and rear boundary fence is likely to prevent direct overlooking from the ground floor bedrooms and bathrooms into the adjoining properties. The new first floor kitchen/living room windows shall have a minimum sill height of 1m above the FFL. Due to the 1.8m-2m setback of the first floor at the eastern elevation in addition to the location of the kitchen benches it is likely that any sightlines will fall onto the roof forms of the properties fronting Ann Street and

not into the living room windows. The applicant has provided a section view analysis illustrating this. Withstanding this, it is recommended that on any consent issued that all windows at the eastern elevation on the first floor are to have a minimum sill height of 1.6m above the FFL to mitigate any potential sightlines in compliance with the requirements of the LDCP 2013.

The proposal has been designed to maximise solar amenity and views to the harbour, and as such the principal living areas are limited to the first floor of the dwelling, this includes a POS patio area to the rear of the dwelling measuring approximately 19.5m². The POS area is suitably setback 3m and 1.8m from the rear and side boundary respectively. Planter screening is proposed at the eastern (side) and northern (rear) elevation with a 600mm privacy screen on top of the western (side) elevation parapet to prevent overlooking into the any future dwelling at 11 Gladstone Street. It is recommended that the size of the POS area (which includes the barbeque bench) is reduced to a maximum of 16m² – this being the minimum area of POS to be provided in accordance with the LDCP 2013 provisions.

5(d) The Likely Impacts

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

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

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

5(f) Any submissions

The application was notified in accordance with Leichhardt Development Control Plan for a period of 14 days to surrounding properties, a total of 10 submissions were received. The application as amended was subsequently renotified to the surrounding properties and those who made a submission as part of the first round, three submissions were received during the second notification round. The issues raised as part of both rounds of notification are as follows:

- **Issue: Loss of vegetation on the subject site**
Comment: The proposed seeks to increase the existing permeable landscaping on the subject site and include replacement planting within the rear setback.
- **Issue: Visual privacy impacts to the west facing windows and POS area of 1 and 3 Ann Street and POS area of 216 Darling Street from the first floor living room windows and patio**
Comment: Refer to visual privacy assessment under Section 5(c) of this assessment report.
- **Issue: Visual privacy impacts from the first floor south facing window into the apartments at 20 Gladstone Street**
- Comment: The first floor south facing window is to the living room immediately adjacent to the internal stairs. The window is setback 2.8m from the front boundary and approximately 5m to the front property boundary of 20 Gladstone Street. It is not likely that the proposal will result in adverse visual privacy impacts due to the location of the window and distance between window and the adjoining property boundary. The proposed impacts are acceptable.

- ***Issue: Impacts of the proposed pool including insufficient setbacks from the side boundaries, impacts to adjoining properties during the excavation process and noise impacts***
Comment: The pool has been deleted as part of the amended proposal.
- ***Issue: The deletion of off street parking will create an increased demand for on street parking which is already at a premium.***
Comment: No car parking is currently available on site, as such the proposed nil car parking will not change the existing condition.
- ***Issue: The proposal does not comply with the site coverage requirements of the LLEP 2013***
Comment: The applicant has provided a Clause 4.6 variation request to the Development Standard. Refer to discussion under Section 5(a)(iii) of this assessment report.
- ***Issue: The proposal does not comply with the side setback provisions in accordance with the LDCP 2013 provisions, given this non-compliance the proposal is not in keeping in character with the immediate area and HCA***
Comment: The proposed side setbacks are supported, refer to side setback assessment under Section 5(c) of this assessment report.
- ***Issue: The existing dwelling should be retained in its entirety to ensure that the infill development is sympathetic to the HCA.***
Comment: The proposal as amended seeks to retain heritage elements that are structurally sound, refer to heritage assessment under Section 5(a)(iv) of this assessment report.
- ***Issue: Overshadowing impacts to the POS and windows at 20 Gladstone Street, 1 and 3 Ann Street as well as 13 Gladstone Street.***
Comment: The shadow diagrams provided with the application illustrate that the proposal does not cause adverse overshadowing impact to 13 Gladstone Street (two lots to the west of the subject site). Refer to overshadowing assessment under Section 5(c) of this assessment report.
- ***Issue: Noise impacts from first floor POS area***
Comment: The proposed POS is suitably setback from the side and rear boundaries and incorporates plant screening which is likely to mitigate any noise impacts from the use of the area. The proposed impacts are acceptable.
- ***Issues: Concerns during the demolition and construction process including asbestos management, pest management, damage to adjoining properties and the storage of materials off site***
Comment: Suitable conditions and advisory notes are recommended on any consent issued to ensure that works to accommodate the proposal are completed in accordance with the relevant code, policies and permits.
- ***Issue: The proposal is excessive in size and results in adverse visual bulk impacts and not in character with the HCA***
Comment: The proposal as amended is articulated so not to detract from the Gladstone Street streetscape, minimise visual bulk at the rear and remain consistent with the objectives of the HCA and desired future character of the area. Refer to assessment under Section 5(c) of this assessment report.

Issue: Impacts of the proposed fill at the rear of the subject site to the rear fence at 216 Darling Street

Comment: Approximately 500mm of fill is proposed to ensure that the rear yard is the same level. All works are to be wholly contained within the boundaries of the subject site, any damage to adjoining properties during the works becomes a civil matter.

- ***Issue: View loss and outlook from 13 and 19 Gladstone Street***

Comment: 13 Gladstone Street is located two blocks and 19 Gladstone is located five blocks to the west of the subject site. The views and outlook currently from this site are predominately due to the underdeveloped and vacant site at 11 Gladstone Street. As such any future development to occur at 11 Gladstone Street that is suitably located where development is expected to occur would restrict any outlook or views. As such the proposal is acceptable.

- ***Issue: View loss of Sydney Harbour Bridge because of the proposal from 1 to 5 Fawcett Street and 13 to 23 Gladstone Street.***

Comment: the impacts on the development of views from the surrounding properties has been considered in the assessment. Based on the available information view sharing has been achieved in this instance.

5(g) The Public Interest

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

6 Referrals

6(a) Internal

The application was referred to the Heritage, Landscape, Building and Engineering officers and issues raised in those referrals have been discussed in Section 5 above.

6(b) External

Not applicable.

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions/7.12 levies are not payable for the proposal.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Leichhardt Local Environmental Plan 2013* and *Leichhardt Development Control Plan 2013*. The development will not result in any significant impacts on the amenity of the adjoining properties and the streetscape and is considered to be in the public interest. The application is considered suitable for approval subject to the imposition of appropriate conditions.

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.3A(3)(b) of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that

compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.

- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. D/2019/33 to demolish an existing single storey residence and construct a new two storey residence and tree removal at the rear at 9 Gladstone Street, Balmain subject to the conditions listed in Attachment A below/for the following reasons.

Attachment A – Recommended conditions of consent

Conditions of Consent

Fees

1. Long Service Levy

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

2. Security Deposit - Standard

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

Security Deposit:	\$2,152.50
Inspection Fee:	\$230.65

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

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

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

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

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

General Conditions

3. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DA-04 D	Demolition & Sediment Erosion Control Plan	22/08/2019	Aaron Stevens Architects
DA-05 D	Site Plan & Site Analysis	22/08/2019	Aaron Stevens Architects
DA-06 D	Landscaped Area	22/08/2019	Aaron Stevens Architects
DA-09 D	Proposed Ground Floor	22/08/2019	Aaron Stevens Architects
DA-10 D	Proposed First Floor Plan	22/08/2019	Aaron Stevens Architects
DA-11 D	Proposed Roof Plan	22/08/2019	Aaron Stevens Architects
DA-12 D	Proposed Southern Elevation (Streetscape)	22/08/2019	Aaron Stevens Architects
DA-13 D	Proposed Eastern Elevation	22/08/2019	Aaron Stevens Architects
DA-14 D	Proposed Northern Elevation	22/08/2019	Aaron Stevens Architects
DA-15 D	Proposed Western Elevation	22/08/2019	Aaron Stevens Architects
DA-16 D	Proposed Section 1&2	22/08/2019	Aaron Stevens Architects
Not applicable	Structural Adequacy Report	22/06/2019	PCB

As amended by the conditions of consent.

4. Design Change

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating the following:

- a) The first floor patio is to be setback 4.3m from the rear boundary so that the patio is a maximum 16m² (including barbeque bench area).
- b) A revised schedule of colours and finishes illustrating existing unpainted stone surfaces are not to be painted, bagged or rendered but to remain as original stone work. Light or earthy colours are preferable over dark or grey colours.
- c) Revised plans indicating that new roofing material must comprise of either heritage barrel rolled traditional corrugated galvanised steel or pre-coloured traditional corrugated steel similar to Custom Orb in a colour equivalent to Colorbond's "Windspray" or "Wallaby".
- d) All construction within 900mm of the boundary will need to demonstrate 60/60/60 fire rating and the choice of external cladding will need to be fire rated and also replicate weatherboards.

5. Privacy

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans indicating all first floor windows at the eastern elevation to have a minimum sill height of 1.6m above the finished first floor

6. Waste Management Plan

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

7. Erosion and Sediment Control

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

8. Standard Street Tree Protection

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

9. Works Outside the Property Boundary

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

10. Tree Removal

Approval is given for the following works to be undertaken to trees on the site:

Tree/location	Approved works
2x <i>Howea forsteriana</i> (Kentia Palm) and 1x <i>Dracena marginata</i> (Red Edged Dracena) located in rear property.	Remove with the option to transplant and repurpose onsite.

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved.

The approved works shall not be carried out unless this letter, or copy of it, is kept on the site. It shall be shown to any authorised Council Officer upon request.

All tree work shall be undertaken by an experienced Arborist with a minimum qualification of Level 3 under the Australian Qualification Framework (AQF). The work shall be undertaken in accordance with AS4373 – 2007 'Pruning of amenity trees' and in compliance with the Safe Work Australia Code of Practice 'Guide to Managing Risks of Tree Trimming and Removal Work'.

Prior to any Demolition**11. Dilapidation Report**

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

12. Advising Neighbors Prior to Excavation

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

13. Construction Fencing

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

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14. Salvaged Building Material

Stone, joinery, timber weatherboards and floors, to be demolished, which include windows and doors, chimney pieces, timber flooring, joinery, fireplaces must be catalogued, labelled, salvaged and where practical reused on the project or transferred to an established second building material dealer for recycling. Documentation of the salvage methodology must be submitted to the satisfaction of the Certifying Authority prior to the commencement of demolition.

Prior to Construction Certificate**15. Structural Certificate for retained elements of the building**

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

16. Sydney Water – Tap In

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

Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 132092.

17. Dilapidation Report – Pre-Development – Minor

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

18. Stormwater Drainage Design

A stormwater drainage design, incorporating On-site Stormwater Detention storage and/or On-site Stormwater Retention/ re-use facilities (OSD/OSR), prepared by a qualified practicing Civil Engineer must be provided prior to the issue of a Construction Certificate.

The design must be in accordance with the requirements of Part E: (Water) of Council's DCP 2013 and make provision to address the following issues:

- a) Stormwater runoff from pervious and impervious surfaces of the development must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank(s) by gravity to the kerb and gutter of Galstone Street via OSD.
- b) The OSD tanks should be designed by an appropriately qualified civil engineer and be supported by calculations demonstrating that the post development flows for the 100 year Average Recurrence Interval (ARI) storm event from the site are restricted to the pre development flows for the 5 year ARI storm event.
- c) The volume of the OSD can be reduced where on-site retention (OSR) facilities for rainwater reuse and/or stormwater reuse are proposed to service all toilets, laundries and outdoor usage. Where OSR is proposed in lieu of OSD, the offset shall be calculated at a rate of 1m³ from the OSD storage volume, for every 2.5m³ of OSR storage provided (up to a maximum OSD offset of 10m³). Offsets for larger OSD storage must be supported by detailed calculations demonstrating compliance with the objectives of Leichhardt Council's DCP.
- d) Charged or pump-out stormwater drainage systems are not permitted.
- e) Details and dimensions of the OSD tank and OSR tank, the invert and top water level in the OSD and OSR and details of the discharge control device including calculation of rates of discharge and volume of storage must be indicated on the drainage plans.
- f) All pipes diameter and invert level, pits surface and invert level, finished surface ground and finished floor levels must be shown on the drainage plans.
- g) A minimum 150mm step up must be provided between the finished surfaces of all external courtyards and the adjacent internal floor levels.
- h) Minor paved areas around the swimming pool and landscaped area at the rear of the property that cannot reasonably be drained by gravity to the street may be directed to an absorption system which causes no concentration of flows or nuisance to downstream properties, subject to the roof areas being drained via a gravity pipe system to the street gutter.
- i) The feasibility of the absorption system must be certified by a qualified practicing Geotechnical Engineer including calculations justifying the size of the absorption system.
- j) The absorption trench must be located a minimum of 3m from the site boundaries or any building.
- k) As there is no overland flow/flood path from landscaped area at the eastern boundary to the Gladstone Street frontage, the design of the sag pit and piped drainage system is to meet the following criteria:

- i) Capture and convey the 100 year Average Recurrence Interval flow from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe.
- ii) The maximum water level over the sag pit shall not be less than 150mm below the floor level or damp course of the building
- iii) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
- l) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties and the existing overland flow path through the site must be retained.
- m) Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required.
- n) All redundant stormwater pipelines within the footpath area must be removed and the footpath and kerb reinstated.
- o) Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site.
- p) New kerb outlets in stone kerb shall be carefully cored through the existing kerb stone such that the kerb outlet is perpendicular (a 90° angle) with the gutter. The pipe under the footpath shall end 30mm within the kerb stone with mass concrete around the pipe connection to the kerb stone.
- q) Purpose made pipe fittings and bends or welded joints shall be used where necessary to align the discharge pipe with the kerb outlet.
- r) The design must be certified as compliant with the terms of this condition by a suitably qualified Civil Engineer.
- s) Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.
- t) All plumbing within the site must be carried out in accordance with Australian Standard AS/NZS3500.3.2015 Plumbing and Drainage – Stormwater Drainage.
- u) The proposed pedestrian access door from the street to the site must open inwards.

19. Replacement Planting

The following trees must be planted:

A minimum of 1 x 100 litre size additional tree, which will attain a minimum mature height of 6 metres, shall be planted in a more suitable location within the property at a minimum of 1.5m from any boundary or structure. The tree is to conform to AS2303—Tree stock for landscape use.

Details of the species and planting locations of the replacement plants must be included on the landscape plan and site plan prior to the issue of a Construction Certificate. Note: any replacement tree species must not be a palm tree species or tree species listed as an exempt species under Council's Tree Management Controls.

If the replacement trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Council's Tree Management Controls, they must be replaced with the same species.

20. Photographic Archival Recording

Prior to any demolition on the site or the issue of a Construction Certificate, the Certifying Authority must be provided with evidence that Council has been received a full archival record of the building and landscape elements to be altered.

The archival record is to be completed by a heritage consultant listed on the Consultants Directory by the NSW Office of Environment & Heritage (Heritage Branch) or by a suitably qualified consultant who must demonstrate a working knowledge of archival principles.

Photographic archival records must be taken of the building, landscape or item in accordance with the guidelines 'Heritage Information Series, Photographic Recording of Heritage Items Using Film or Digital Capture 2006' published by the former NSW Department of Planning Heritage Branch and available [online at
http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/infophotographicrecording2006.pdf](http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/infophotographicrecording2006.pdf)

The photographic archival recording is to be submitted in a digital format only and is to include the following:

- a) Development Application number and the Condition of Consent number must be noted
- b) Site plan at a scale of 1:200 (or 1:500 if appropriate) of all structures and major landscape elements including their relationship to the street and adjoining properties and directional details of photographs taken.
- c) Floorplans of the internal layout and directional details of photographs taken.
- d) Coloured photographs of:
- e) each elevation,
- f) each structure and landscape feature;
- g) internal images of each room and significant architectural detailing;

- h) views to the subject property from each street and laneway or public space.

The report must include written confirmation, issued with the authority of both the applicant and the photographer that the Inner West Council is granted a perpetual non-exclusive licence to make use of the copyright in all images supplied, including the right to make copies available to third parties as though they were Council images. The signatures of both the applicant and the photographer must be included.

The electronic images are to be taken with a minimum 8 megapixel camera, saved as JPEG TIFF or PDF files with a size of approximately 4-6MB, and cross referenced to the digital catalogue sheets and base plans. Choose only images that are necessary to document the process, and avoid duplicate images. The report can be submitted on a USB, CD or DVD, in PDF/A format (created directly from the digital original), with a digital catalogue of images with the following data for each: title, image subject/description and date photograph taken.

21. Structural Integrity of Retained Building Elements

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a certificate from a professional engineer (Structural Engineer). The report must explain how the retained building elements, such as building facades, fireplace and hearth are to be retained and supported. Documentation shall include certification that adequate internally sited supporting structures shall be incorporated into conserving significant fabric.

22. Structural Integrity of Sandstone Walls

A Structural Engineers certification of the adequacy of the existing sandstone wall to the front and the side elevation of the property should be investigated and detailed scope of works provided as part of the Construction Certificate documentation

During Demolition and Construction

23. Construction Hours – Class 1 and 10

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

24. Survey Prior to Footings

Upon excavation of the footings and before the pouring of the concrete, the Certifying Authority must be provided with a certificate of survey from a registered land surveyor to verify that the structure will not encroach over the allotment boundaries.

25. Tree protection

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Prescribed trees protected by Council's Management Controls on the subject property and/or any vegetation on surrounding properties must not be damaged or removed during works unless specific approval has been provided under this consent

Prior to Occupation Certificate

26. Works as Executed – Stormwater Drainage Plan

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that the stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards.

a) Works-as-executed plans of the stormwater drainage system, certified by a Registered Surveyor, together with certification by a qualified practicing Civil Engineer to verify that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards, shall be submitted and accepted by Council prior to the issue of an Occupation Certificate.

b) The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifying Authority stamped Construction Certificate plans.

27. Protect Sandstone Kerb

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

28. No Encroachments

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

29. Tree Removal and Maintenance.

Prior to the issue of any Occupation Certificate, the Principal Certifying Authority is to be satisfied that all landscape works, including the removal of all noxious weed species and planting of canopy trees, have been undertaken in accordance with the approved landscape plan and/or conditions of Development Consent.

On-going

Ongoing Tree Management

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The canopy replenishment trees required by this consent are to be maintained in a healthy and vigorous condition until they attain a height of 6 metres whereby they will be protected by Council's Tree Management Controls. Any of the trees found faulty, damaged, dying or dead shall be replaced with the same species within 2 months.

Advisory notes

Prescribed Conditions

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

Notification of commencement of works

At least 7 days before any demolition work commences:

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

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

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

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

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

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

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

- a) in the case of work for which a principal contractor is required to be appointed:

- i. the name and licence number of the principal contractor, and
 - ii. the name of the insurer by which the work is insured under Part 6 of that Act,
- b) in the case of work to be done by an owner-builder:
 - i. the name of the owner-builder, and
 - ii. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

Dividing Fences Act

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

Permits from Council under Other Acts

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

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

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

Noise

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

15 of 18

Amenity Impacts General

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

Lead-based Paint

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

Dial before you dig

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

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660

To purchase copies of Volume One of "Soils and Construction"

Long Service Payments 131441

Corporation

www.lspc.nsw.gov.au

NSW Food Authority 1300 552 406

www.foodnotify.nsw.gov.au

NSW Government

www.nsw.gov.au/fibro

www.diysafe.nsw.gov.au

Information on asbestos and safe work practices.

NSW Office of Environment and Heritage 131 555

Heritage

www.environment.nsw.gov.au

Sydney Water 13 20 92

www.sydneywater.com.au

Waste Service - SITA 1300 651 116

Environmental Solutions

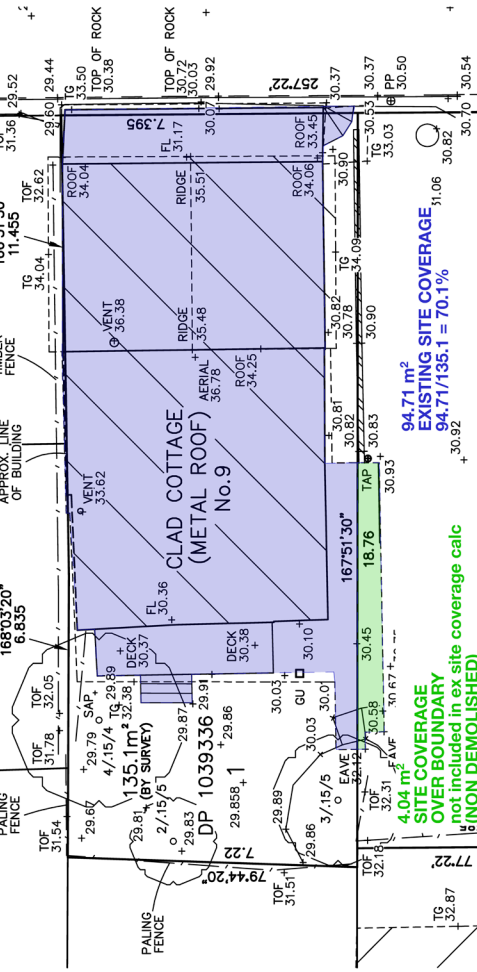
www.wasteservice.nsw.gov.au

Water Efficiency Labelling and Standards (WELS) www.waterrating.gov.au

WorkCover Authority of NSW 13 10 50

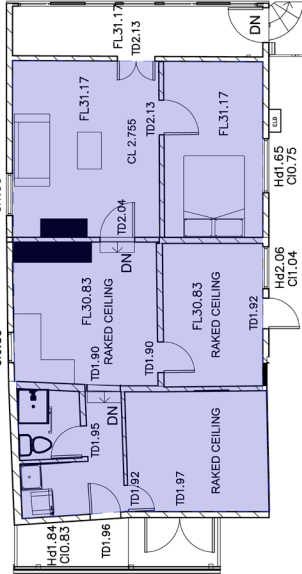
www.workcover.nsw.gov.au

Enquiries relating to work safety and asbestos
removal and disposal.



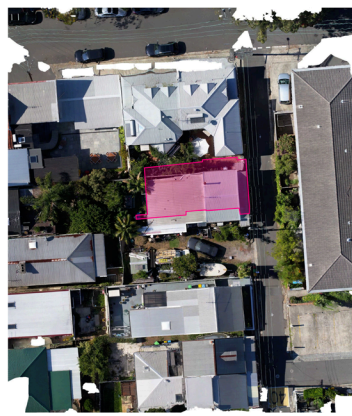
94.71 m²
EXISTING SITE COVERAGE
94.71/135.1 = 70.1%

4.04 m²
SITE COVERAGE
OVER BOUNDARY
not included in ex site coverage calc
(NON DEMOLISHED)

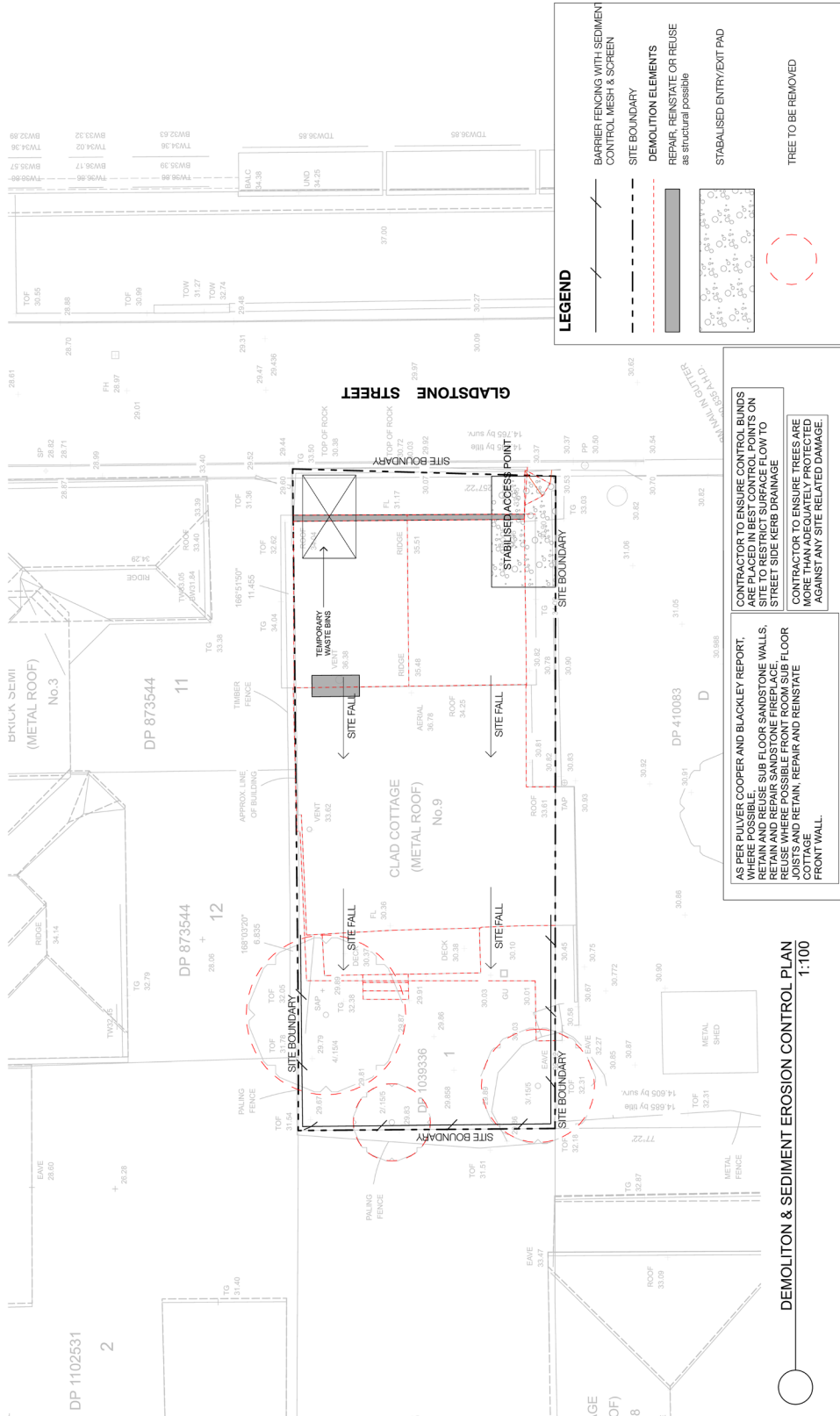


68.30 m²
EXISTING FLOOR AREA
NOT INCLUDING BALCONY
MEASURED INTERNAL FACE

NEW DA CALCULATION 26/08/19	
AREA STATEMENT	
SITE AREA	135.1 m ²
EXISTING FLOOR AREA	68.3m ²
EXISTING FSR	0.548:1
EXISTING SITE COVERAGE	94.71m ²
PROPOSED SITE COVERAGE (measured wall outside face, portico/balcony included)	93.88m ²
PROPOSED FLOOR AREA (measured wall inside face)	
PROPOSED GROUND FLOOR	78.74m ²
PROPOSED FIRST FLOOR AREA (Excluding balcony)	35m ²
TOTAL PROPOSED FLOOR AREA	113.74m ²
FSR	
PERMISSIBLE FSR	1:1
PROPOSED FSR (113.74/135.1)	0.84:1
LANDSCAPING	
PRIVATE OPEN SPACE REQUIRED (first floor)	16:12m ²
DEEP SOIL LANDSCAPE AREA	22.63m ²
TOTAL LANDSCAPED AREA	34.31m ²
LANDSCAPED PERCENTAGE	25.39%



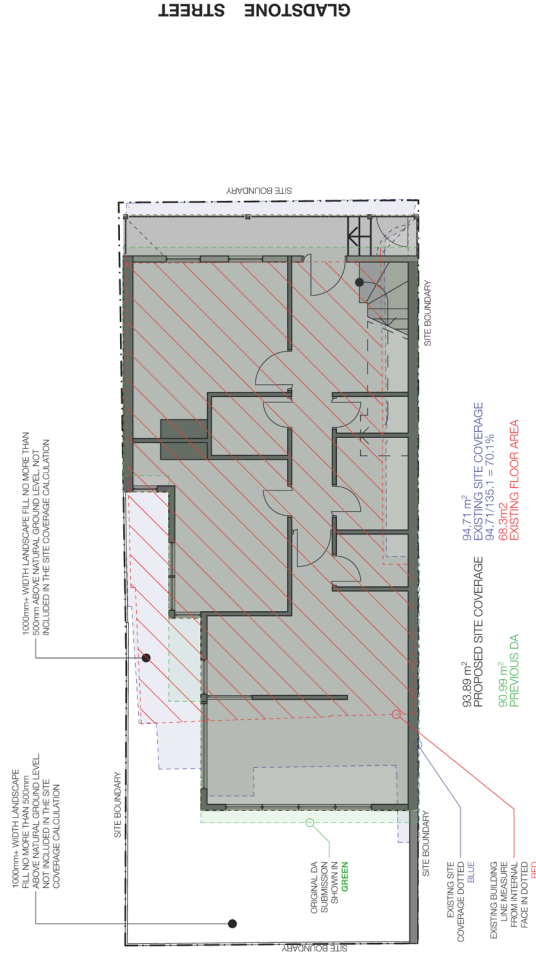
AARON STEVENS ARCHITECTS		PROJECT		AMENDMENTS		DATE	
515 BRASS STREET CAMPBERRON PRACTICE NUMBER 8601 ARCHITECT # 15027 PDA.A - Member		PROPOSED NEW 2 STOREY DWELLING No.9 GLADSTONE STREET, BALMAIN NSW 2041		Issue ID		Date	
CLIENT		CLIENT		A DEVELOPMENT APPLICATION		ASA 03/27/18	
SELBY		SELBY		B FOR INFORMATION		ASA 05/07/19	
				C FOR INFORMATION		ASA 05/07/19	
				D FOR INFORMATION		ASA 22/08/19	
				Issue		26/08/19	
				Layout ID		DA-03 D	
				Checked By		Drawn By : ABE	
				Issue Name		Checked By: AS	
				Drawing Scale		Issue	



DEMOLITION & SEDIMENT EROSION CONTROL PLAN
1:100

PROJECT PROPOSED NEW 2 STOREY DWELLING No.9 GLADSTONE STREET, BALMAIN NSW 2041	DRAWING NAME DEMOLITION & SEDIMENT EROSION CONTROL PLAN		Issue ID A DEVELOPMENT APPLICATION B FOR INFORMATION C FOR INFORMATION D FOR INFORMATION	Check by ASA ASA ASA ASA	Date 03/12/18 02/07/19 05/07/19 22/08/19	Date of Issue 28/8/19
	CLIENT SELBY	General Notes: check all dimensions and levels on site prior to construction to verify any anomalies. Drawings shall not be used for construction. Do not state drawings are for information and contractors accept full liability.		Layout ID DA-04 D	Drawn By ABE	Checked By AS
	AARON STEVENS ARCHITECTS 2/5 BRASS STREET CAMPBERRON PRACTICE NUMBER 8001 ARCHITECT # 15027 PDA/CA Member	AS PER RULVER COOPER AND BLACKLEY REPORT, WHERE POSSIBLE, RETAIN AND REUSE SUB FLOOR SANDSTONE WALLS, REPAIR AND REPAIR SANDSTONE FIREPLACE, REUSE WHERE POSSIBLE FRONT ROOM SUB FLOOR JOISTS AND RETAIN, REPAIR AND REINSTATE FRONT WALL.		Issue D	Drawn By ABE	Checked By AS
	CONTRACTORS TO ENSURE CONTROL BUNDS ARE IN PLACE AND OPERATIONAL PRIOR TO COMMENCEMENT OF DEMOLITION WORKS. CONTRACTORS TO ENSURE TREE REMOVAL IS COMPLETED PRIOR TO COMMENCEMENT OF DEMOLITION WORKS. CONTRACTORS TO ENSURE TRACES ARE MAINTAINED TO PREVENT DAMAGE AGAINST ANY SITE RELATED DAMAGE.	CONSTRUCTION TO RESTRICT SURFACE FLOW TO STREET SIDE KERB DRAINAGE		Issue D	Drawn By ABE	Checked By AS

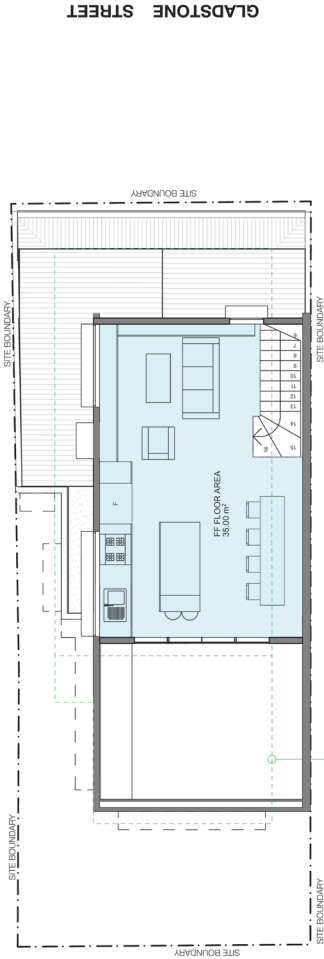
NEW DA CALCULATION 26/08/19	
AREA STATEMENT	
SITE AREA	135.1 m ²
EXISTING FLOOR AREA	68.3m ²
EXISTING FSR	0.548:1
EXISTING SITE COVERAGE	94.71m ²
PROPOSED SITE COVERAGE	93.89m ²
(measured wall outside face, portico/balcony included)	
PROPOSED FLOOR AREA (measured wall inside face)	
PROPOSED GROUND FLOOR	78.74m ²
PROPOSED FIRST FLOOR AREA (Excluding balcony)	35m ²
TOTAL PROPOSED FLOOR AREA	113.74m ²
FSR	1:1
PERMISSIBLE FSR	0.84:1
PROPOSED FSR (113.74/135.1)	
LANDSCAPING	
PRIVATE OPEN SPACE REQUIRED	16m ²
PROPOSED PRIVATE OPEN SPACE (first floor)	16.12m ²
DEEP SOIL LANDSCAPE AREA	22.63m ²
TOTAL LANDSCAPED AREA	34.31m ²
LANDSCAPED PERCENTAGE	25.39%



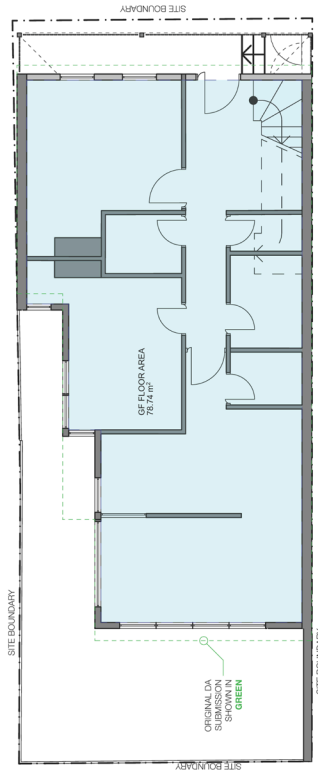
SITE COVERAGE 1:100

AARON STEVENS ARCHITECTS 5/15 BRASSA STREET, CAMPBERROWN PRACTICE NUMBER 86071 ARCHITECT # 15027 PDA/AA Member		PROJECT PROPOSED NEW 2 STOREY DWELLING No.9 GLADSTONE STREET, BALMAIN NSW 2041		CLIENT SELBY	
DRAWING NAME SITE COVERAGE		General Notes: Check all dimensions and levels on site prior to construction to verify any anomalies. Drawings shall not be used for construction. Do not state drawings are for construction and construction subject to survey.		Date of Issue 26/08/19	
Amendments		Issue ID A DEVELOPMENT APPLICATION B FOR INFORMATION C FOR INFORMATION D FOR INFORMATION		Date 03/12/18 05/07/19 05/07/19 22/08/19	
Checked By ASA ASA ASA		Drawing Scale Drawn By : ABE Checked By: AS		Layout ID DA07 D	
Issue Name DEVELOPMENT APPLICATION FOR INFORMATION FOR INFORMATION		Issue A B C D		Drawn By : ABE Checked By: AS Issue D	

NEW DA CALCULATION 26/08/19	
AREA STATEMENT	SITE AREA
135.1 m ²	EXISTING FLOOR AREA
68.3m ²	EXISTING FSR
0.548:1	EXISTING SITE COVERAGE
94.71m ²	PROPOSED SITE COVERAGE
93.89m ²	(measured wall outside face, portico/balcony included)
PROPOSED FLOOR AREA (measured wall inside face)	PROPOSED GROUND FLOOR
78.74m ²	PROPOSED FIRST FLOOR AREA
35m ²	(Excluding balcony)
113.74m ²	TOTAL PROPOSED FLOOR AREA
FSR	PERMISSIBLE FSR
1:1	PROPOSED FSR (113.74/135.1)
LANDSCAPING	PRIVATE OPEN SPACE REQUIRED
16m ²	PROPOSED PRIVATE OPEN SPACE
16.12m ²	(first floor)
22.63m ²	DEEP SOIL LANDSCAPE AREA
34.31m ²	TOTAL LANDSCAPED AREA
25.39%	LANDSCAPED PERCENTAGE

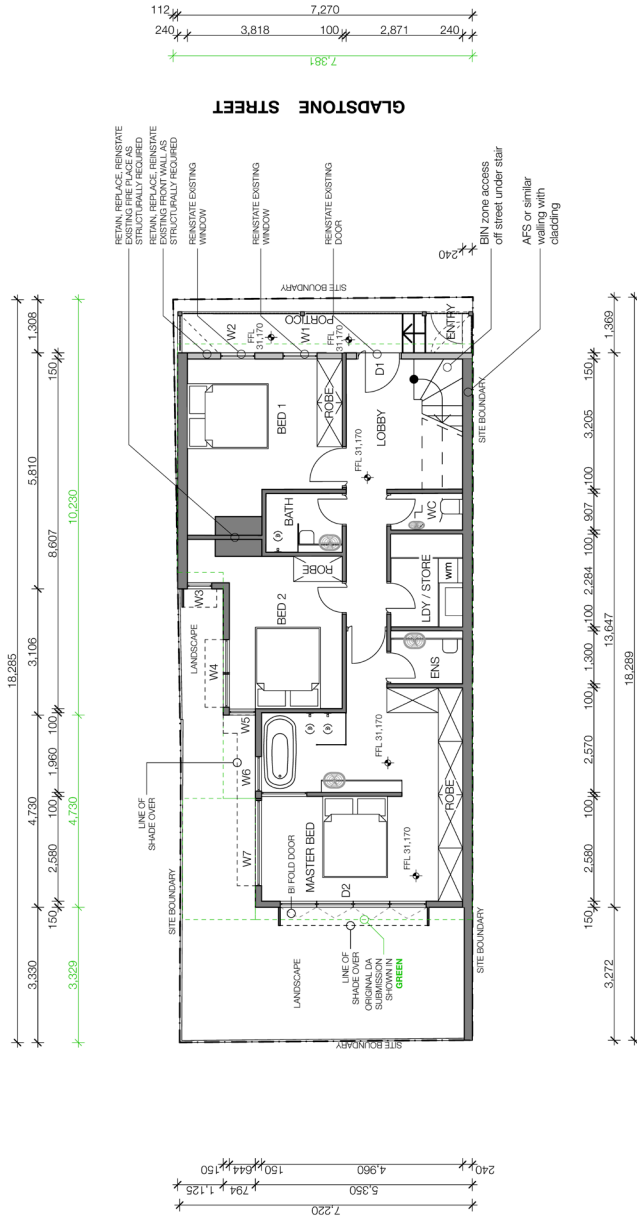


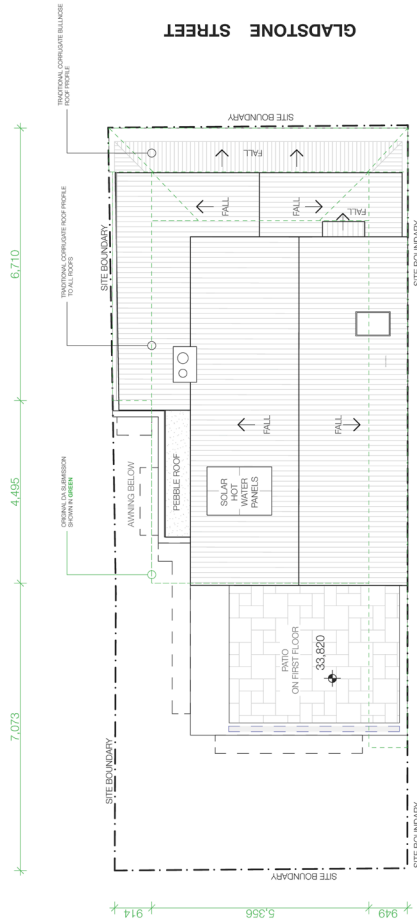
FF FLOOR SPACE AREA
1:100



GF FLOOR SPACE AREA
1:100

AARON STEVENS ARCHITECTS 5/5 BRASSA STREET, CAMPBERROWN PRACTICE NUMBER 8001 ARCHITECT # 15027 PDA/CA Member	PROJECT PROPOSED NEW 2 STOREY DWELLING No.9 GLADSTONE STREET, BALMAIN NSW 2041	DRAWING NAME FLOOR SPACE AREA	Amendments Issue ID Issue Name A DEVELOPMENT APPLICATION B FOR INFORMATION C FOR INFORMATION D FOR INFORMATION	Checked By ASA ASA ASA	Date 03/12/18 02/07/19 02/07/19	Date of Issue 26/08/19
	CLIENT SELBY	General Notes: check all dimensions and levels on site prior to construction to verify any variances. Drawings shall not be used for construction. Do not state drawings are for information and construction subject to survey.	Drawing Scale Issue	Drawn By : ABE Checked By: AS	Layout ID DA08 D	Issue D
	NORTH 					

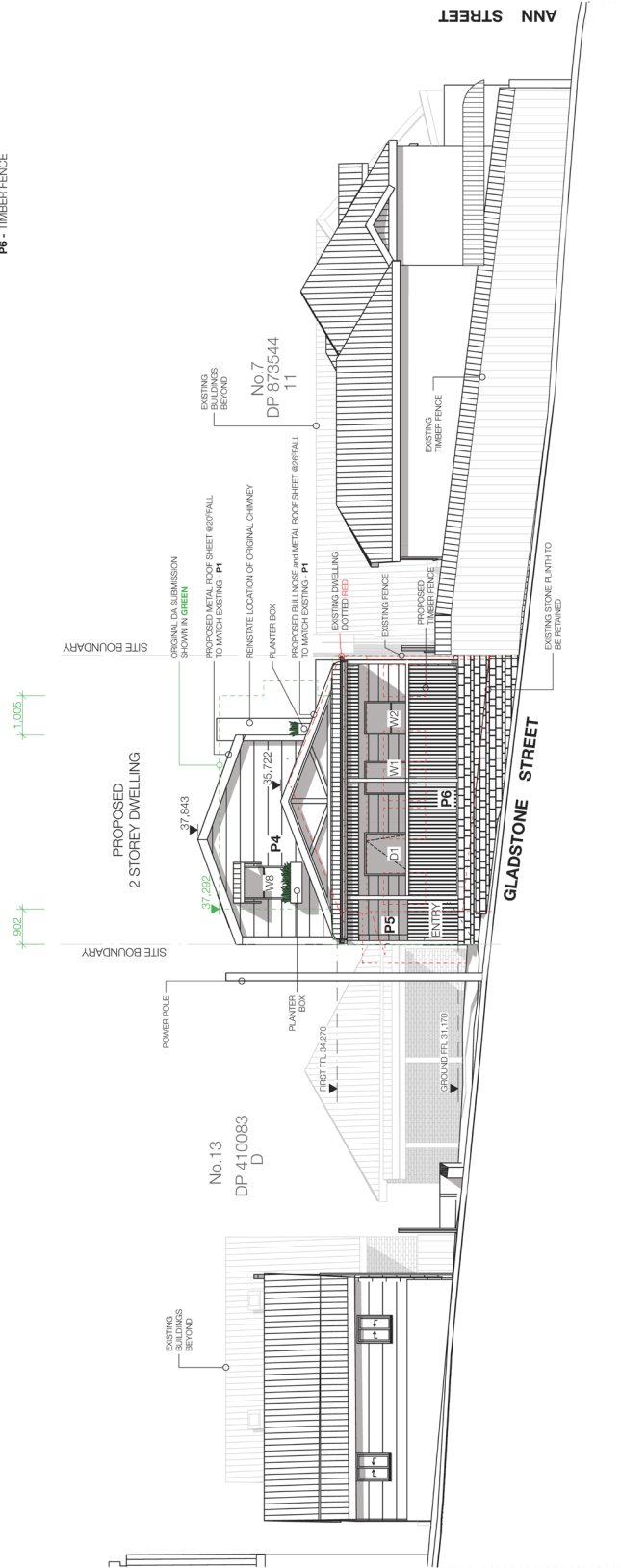




ROOF PLAN
1:100

<p>AARON STEVENS ARCHITECTS 515 BRASSA STREET CAMPBERRON PRACTICE NUMBER 8001 ARCHITECT # 16271 PRACTICE # 16271 PRACTICE # 16271 PRACTICE # 16271</p>	<p>PROJECT PROPOSED NEW 2 STOREY DWELLING No.9 GLADSTONE STREET, BALMAIN NSW 2041</p>	<p>DRAWING NAME PROPOSED ROOF PLAN</p>	<p>Amendments</p> <table border="1"> <thead> <tr> <th>Issue ID</th> <th>Issue Name</th> <th>Checked By</th> <th>Date</th> <th>Date of Issue</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>DEVELOPMENT APPLICATION</td> <td>ASA</td> <td>03/12/18</td> <td>03/12/18</td> </tr> <tr> <td>B</td> <td>FOR INFORMATION</td> <td>ASA</td> <td>02/07/19</td> <td>02/07/19</td> </tr> <tr> <td>C</td> <td>FOR INFORMATION</td> <td>ASA</td> <td>05/07/19</td> <td>05/07/19</td> </tr> <tr> <td>D</td> <td>FOR INFORMATION</td> <td>ASA</td> <td>22/08/19</td> <td>22/08/19</td> </tr> </tbody> </table>	Issue ID	Issue Name	Checked By	Date	Date of Issue	A	DEVELOPMENT APPLICATION	ASA	03/12/18	03/12/18	B	FOR INFORMATION	ASA	02/07/19	02/07/19	C	FOR INFORMATION	ASA	05/07/19	05/07/19	D	FOR INFORMATION	ASA	22/08/19	22/08/19
	Issue ID	Issue Name	Checked By	Date	Date of Issue																							
	A	DEVELOPMENT APPLICATION	ASA	03/12/18	03/12/18																							
	B	FOR INFORMATION	ASA	02/07/19	02/07/19																							
C	FOR INFORMATION	ASA	05/07/19	05/07/19																								
D	FOR INFORMATION	ASA	22/08/19	22/08/19																								
<p>CLIENT SELBY</p>	<p>General Notes Check all dimensions and levels on site prior to construction to verify any variances. Drawings shall not be used for construction. Do not state drawings are for construction and construction subject to survey.</p>	<p>Scale 1:100</p>	<p>Drawn By ABE</p>																									
<p>DATE 28/8/19</p>	<p>Checked By ASA</p>	<p>Layout ID DA11 D</p>	<p>Checked By AS</p>																									
<p>Issue Issue</p>	<p>Issue ID DA11 D</p>	<p>Issue Issue</p>	<p>Issue Issue</p>																									

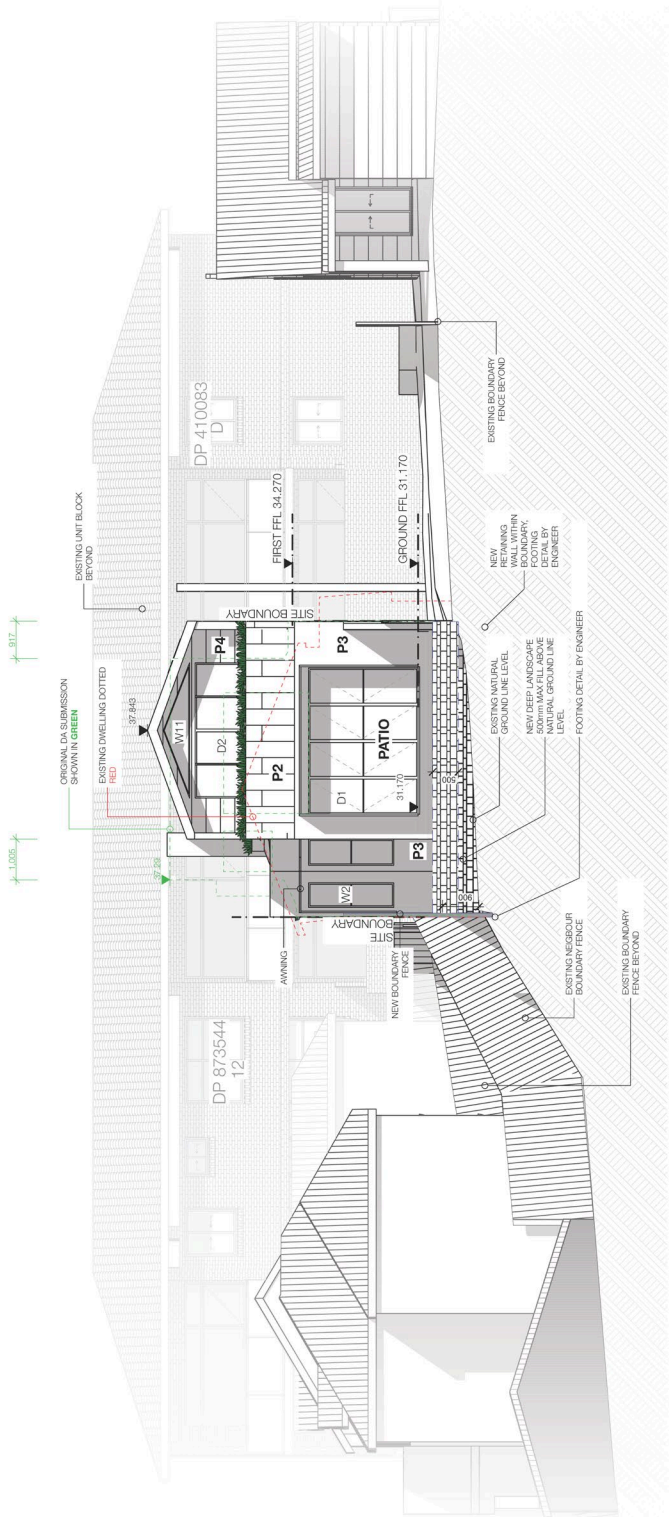
- LEGEND**
- P1 - METAL ROOF SHEET
 - P2 - LIGHT WEIGHT VERTICAL FC BOARD OFFSET PATTERN
 - P3 - PAINT RENDER FINISH
 - P4 - LIGHT WEIGHT HORIZONTAL FC BOARD S27ON.365
 - P5 - LIGHT WEIGHT HORIZONTAL FC BOARD S27ON.285
 - P6 - TIMBER FENCE



SOUTH ELEVATION
1:100

PROJECT PROPOSED NEW 2 STOREY DWELLING No.9 GLADSTONE STREET, BALMAIN NSW 2041		AMENDMENTS		Date of Issue: 28/8/19 Drawn By: ABE Checked By: AS	
CLIENT SELBY		Issue ID: A Issue Name: DEVELOPMENT APPLICATION Checked By: ASA Date: 03/7/18		Drawing Scale: 1:100 Layout ID: DA12 D	
DRAWING NAME PROPOSED ELEVATION (STREETSCAPE)		Issue ID: B Issue Name: FOR INFORMATION Checked By: ASA Date: 02/7/18		Issue ID: C Issue Name: FOR INFORMATION Checked By: ASA Date: 02/7/18	
General Notes check all dimensions and levels on site prior to construction to verify any anomalies. Drawings shall not be used for construction. Do not state drawings are for information and construction subject to survey.		Issue ID: D Issue Name: FOR INFORMATION Checked By: ASA Date: 22/8/19		Issue ID: DA12 D Issue Name: Issue Checked By: AS	

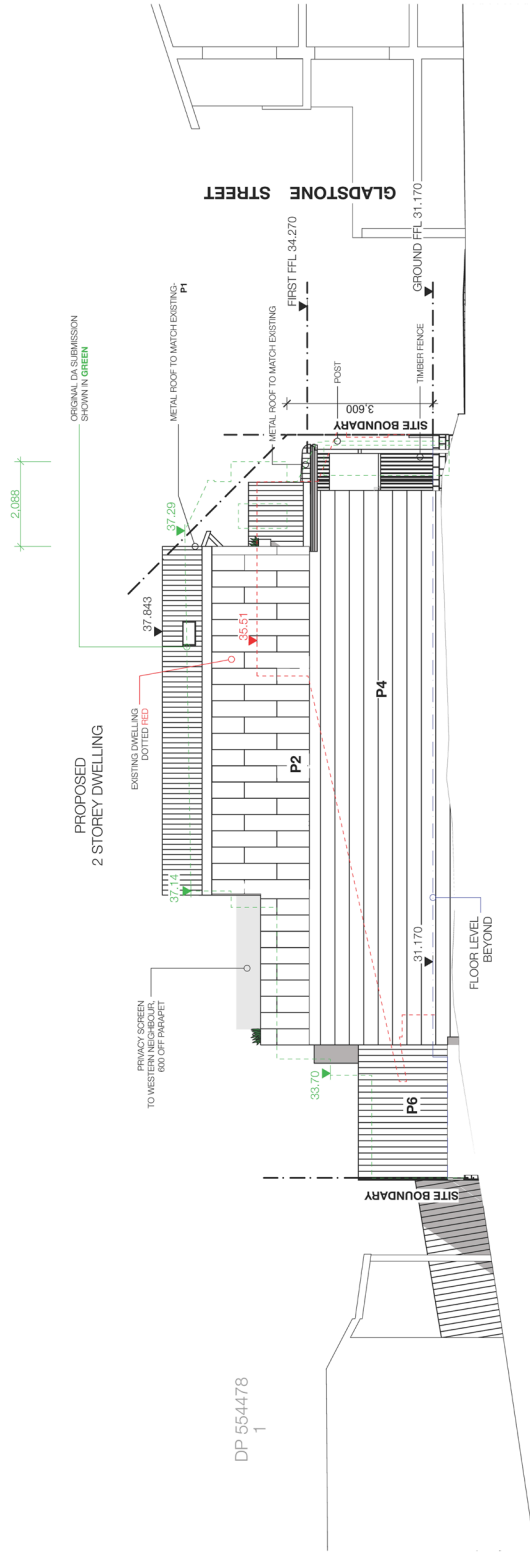
- LEGEND**
- P1 - METAL ROOF SHEET
 - P2 - LIGHT WEIGHT VERTICAL FC BOARD OFFSET PATTERN
 - P3 - PAINT RENDER FINISH
 - P4 - LIGHT WEIGHT HORIZONTAL FC BOARD SECTION 285
 - P5 - LIGHT WEIGHT HORIZONTAL FC BOARD SECTION 285
 - P6 - TIMBER FENCE



NORTH ELEVATION
1:100

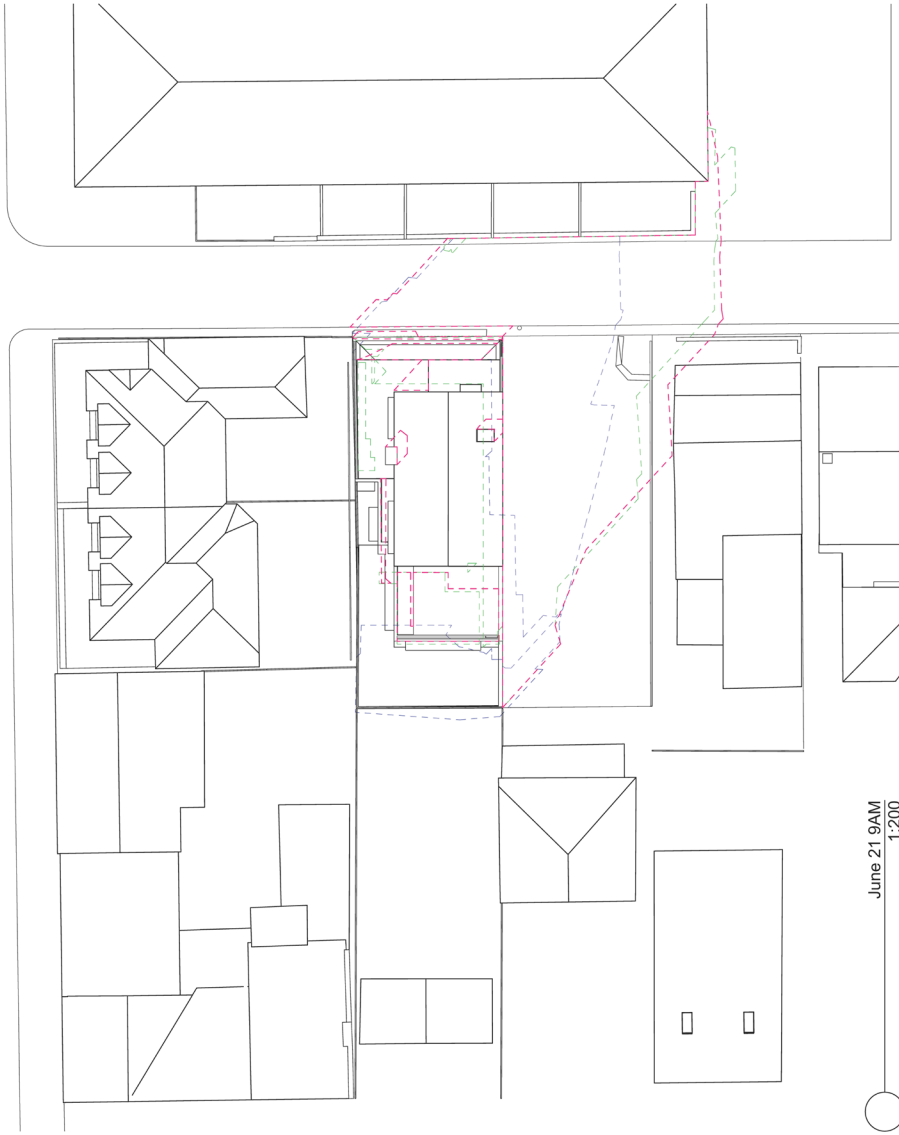
<p>PROJECT PROPOSED NEW 2 STOREY DWELLING No.9 GLADSTONE STREET, BALMAIN NSW 2041</p> <p>CLIENT SELBY</p>	<p>DRAWING NAME PROPOSED ELEVATION</p> <p><small>General Notes: check all dimensions and levels on site prior to construction to verify any anomalies. Drawings shall not be used for construction. Do not state drawings are for information and construction subject to survey.</small></p>	<p>Issue ID: A</p> <p>Issue Name: DEVELOPMENT APPLICATION</p> <p>Checked By: ASA</p> <p>Date: 03/12/18</p>	<p>Date of Issue: 29/8/19</p> <p>Drawn By: ABE</p>
		<p>Issue ID: B</p> <p>Issue Name: FOR INFORMATION</p> <p>Checked By: ASA</p> <p>Date: 02/07/19</p>	<p>Drawing Scale: 1:100</p> <p>Checked By: AS</p>
		<p>Issue ID: C</p> <p>Issue Name: FOR INFORMATION</p> <p>Checked By: ASA</p> <p>Date: 05/07/19</p>	<p>Layout ID: DA14 D</p>
		<p>Issue ID: D</p> <p>Issue Name: FOR INFORMATION</p> <p>Checked By: ASA</p> <p>Date: 22/08/19</p>	<p>Issue: D</p>

- LEGEND**
- P1 - METAL ROOF SHEET
 - P2 - LIGHT WEIGHT VERTICAL FC BOARD OFFSET PATTERN
 - P3 - PAINT RENDER FINISH
 - P4 - LIGHT WEIGHT HORIZONTAL FC BOARD S27ON.255
 - P5 - LIGHT WEIGHT HORIZONTAL FC BOARD S27ON.255
 - P6 - TIMBER FENCE



WEST ELEVATION
1:100

<p>PROJECT PROPOSED NEW 2 STOREY DWELLING No.9 GLADSTONE STREET, BALMAIN NSW 2041</p> <p>CLIENT SELBY</p>	<p>DRAWING NAME PROPOSED ELEVATION</p> <p>General Notes: check all dimensions and levels on site prior to construction to verify any anomalies. Drawings shall not be used for construction. Do not state drawings are for information and construction subject to survey.</p>	<p>Issue ID</p> <p>A DEVELOPMENT APPLICATION</p> <p>B FOR INFORMATION</p> <p>C FOR INFORMATION</p> <p>D FOR INFORMATION</p>	<p>Issue Name</p> <p>ASA</p> <p>ASA</p> <p>ASA</p> <p>ASA</p>	<p>Checked By</p> <p>ASA</p> <p>ASA</p> <p>ASA</p> <p>ASA</p>	<p>Date</p> <p>03/12/18</p> <p>02/07/19</p> <p>02/07/19</p> <p>22/08/19</p>	<p>Date of Issue</p> <p>29/8/19</p>
		<p>Drawing Scale</p> <p>1:100</p>	<p>Drawn By</p> <p>ABE</p>	<p>Checked By</p> <p>AS</p>	<p>Issue</p>	<p>Layout ID</p> <p>DA15 D</p>
		<p>DA15 D</p>	<p>DA15 D</p>	<p>DA15 D</p>	<p>DA15 D</p>	<p>DA15 D</p>
		<p>DA15 D</p>	<p>DA15 D</p>	<p>DA15 D</p>	<p>DA15 D</p>	<p>DA15 D</p>

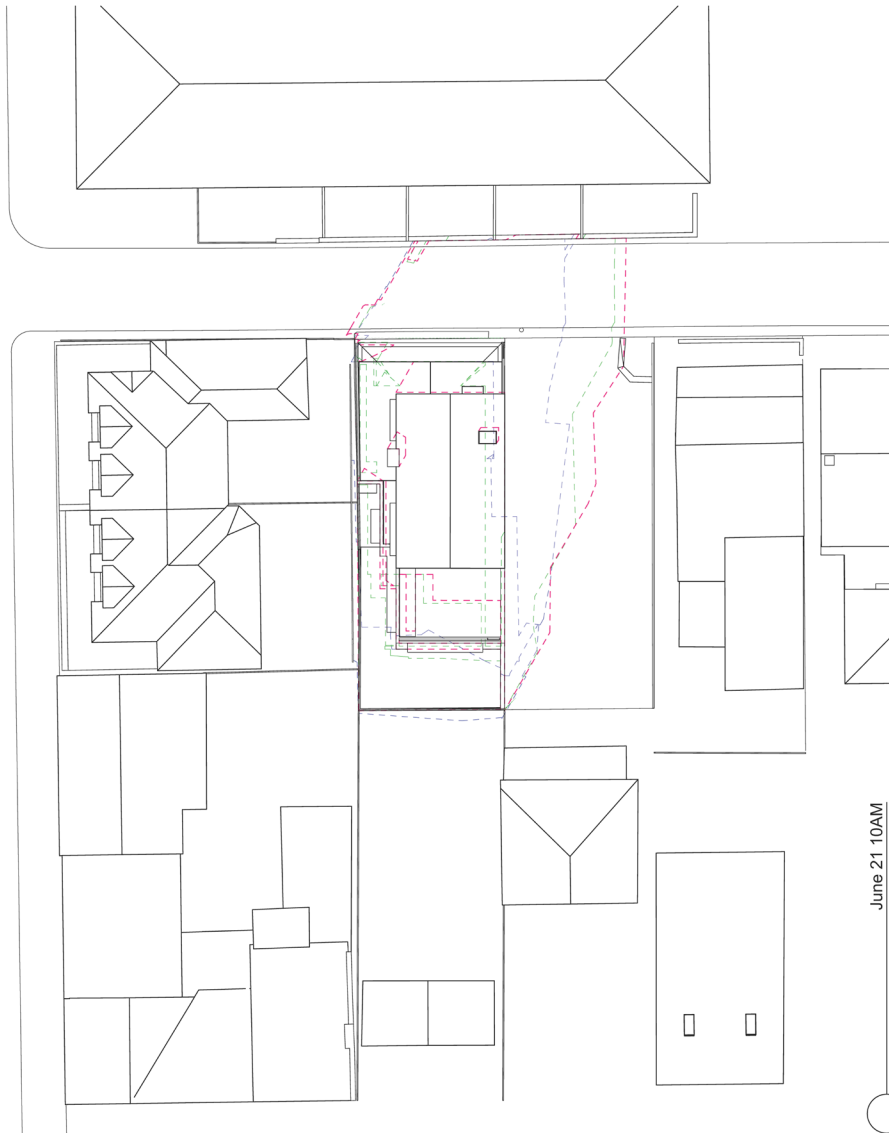


LEGEND

- EXISTING SHADOWS
- ORIGINAL DA SHADOWS
- NEW SHADOWS

June 21 9AM
1:200

<p>AARON STEVENS ARCHITECTS 515 BRUCE STREET CAMPBERRON PRACTICE NUMBER 18071 ARCHITECT # 15027 PRACTICE # 15027 PRACTICE # 15027 PRACTICE # 15027</p>		<p>PROJECT PROPOSED NEW 2 STOREY DWELLING No.9 GLADSTONE STREET, BALMAIN NSW 2041</p>	<p>DRAWING NAME SHADOW DIAGRAM 9am Winter Solstice</p>	<p>Client SELBY</p>	<p>Amendments</p> <table border="1"> <thead> <tr> <th>Issue ID</th> <th>Issue Name</th> <th>Checked By</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>DEVELOPMENT APPLICATION</td> <td>ASA</td> <td>03/7/18</td> </tr> <tr> <td>B</td> <td>FOR INFORMATION</td> <td>ASA</td> <td>02/7/19</td> </tr> <tr> <td>C</td> <td>FOR INFORMATION</td> <td>ASA</td> <td>05/7/19</td> </tr> <tr> <td>D</td> <td>FOR INFORMATION</td> <td>ASA</td> <td>22/8/19</td> </tr> </tbody> </table>	Issue ID	Issue Name	Checked By	Date	A	DEVELOPMENT APPLICATION	ASA	03/7/18	B	FOR INFORMATION	ASA	02/7/19	C	FOR INFORMATION	ASA	05/7/19	D	FOR INFORMATION	ASA	22/8/19	<p>Date of Issue 29/8/19</p> <p>Drawn By : ABE</p> <p>Checked By: AS</p> <p>Issue D</p>
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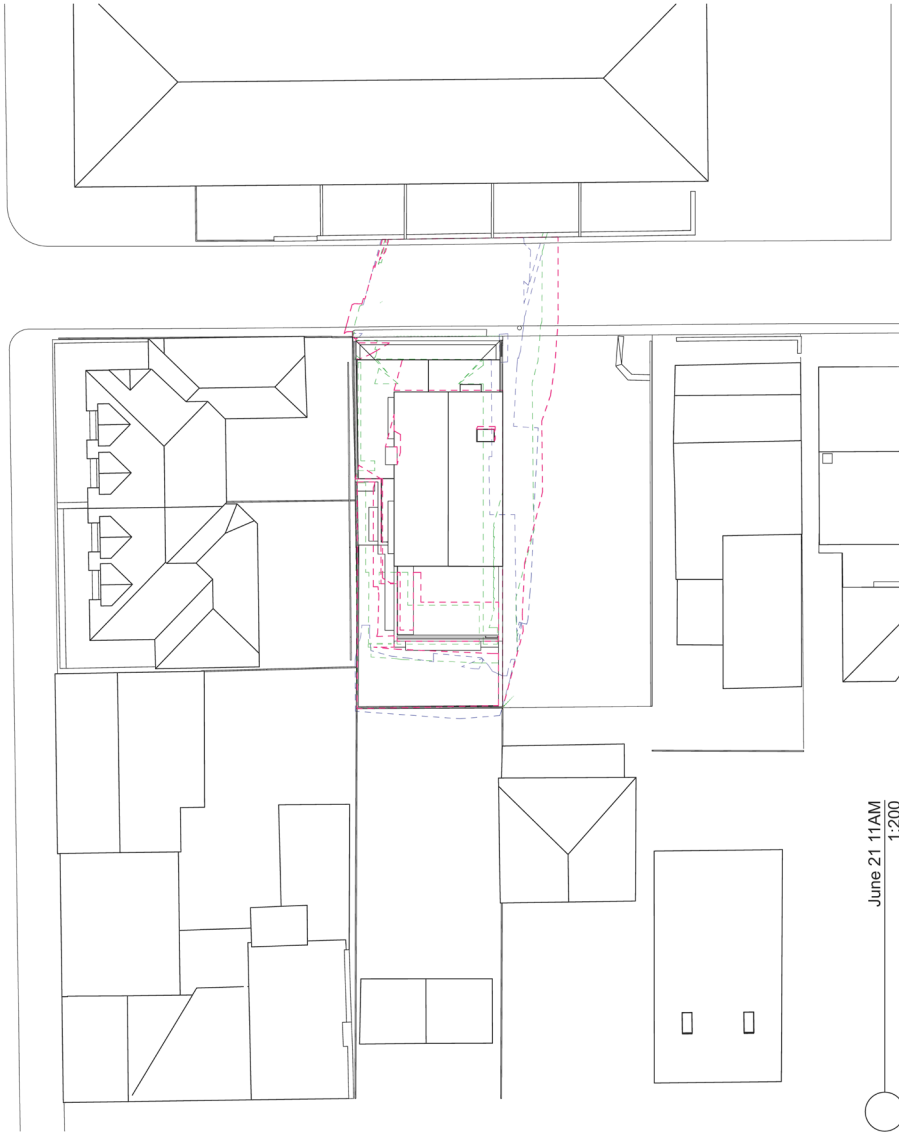


LEGEND

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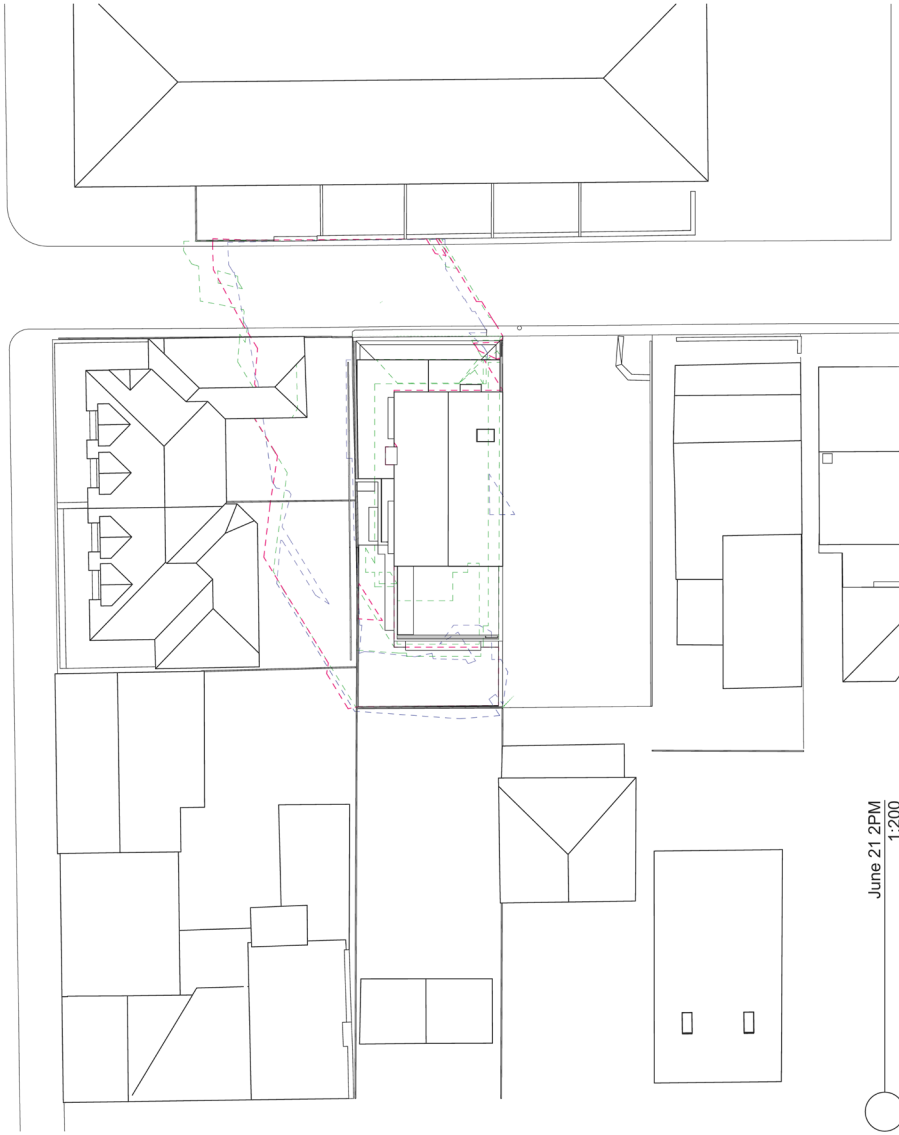


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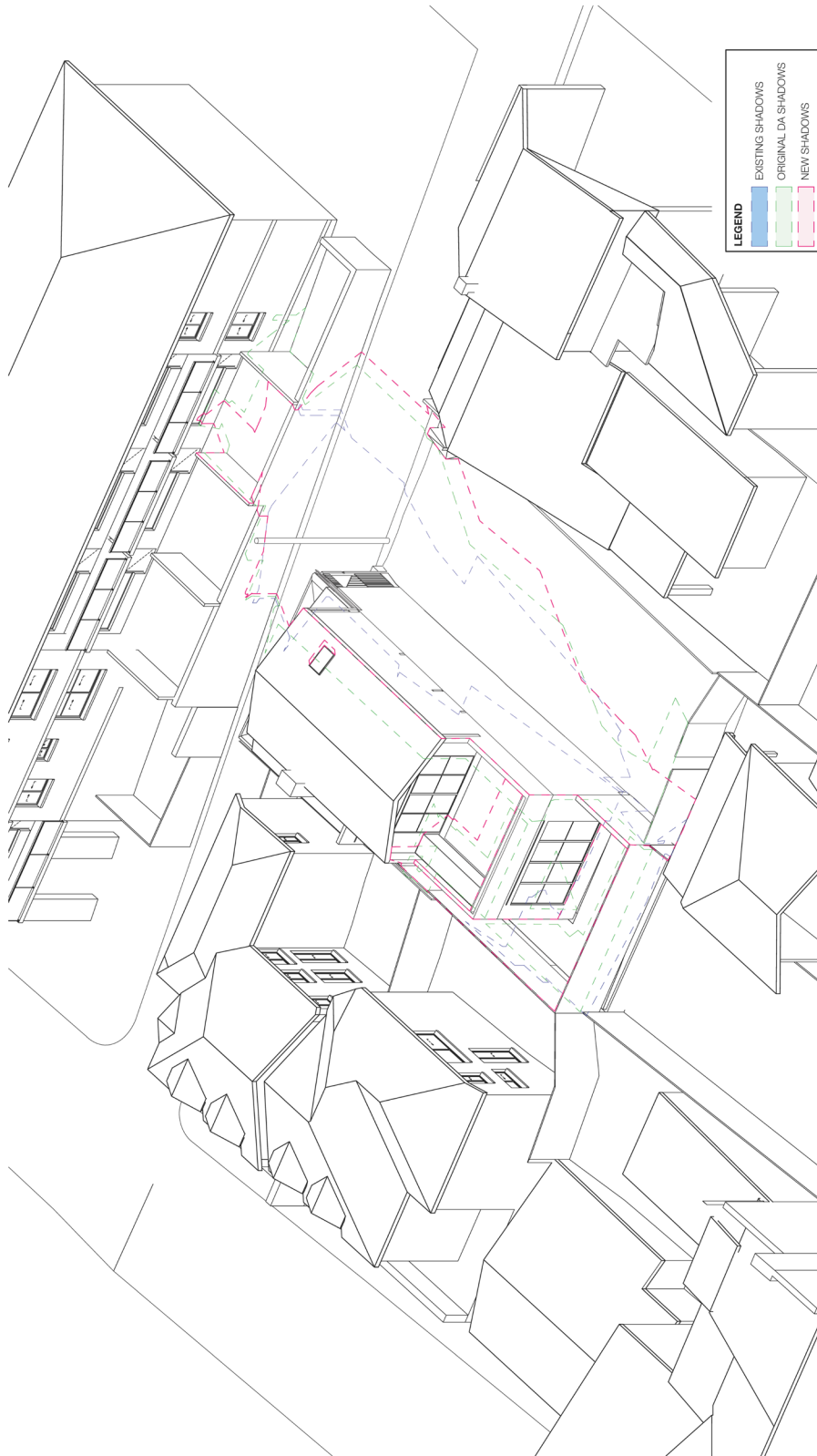


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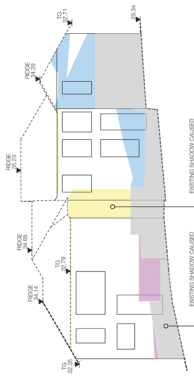


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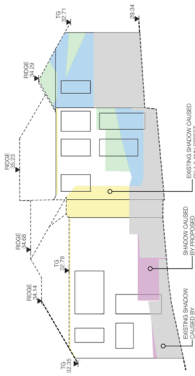
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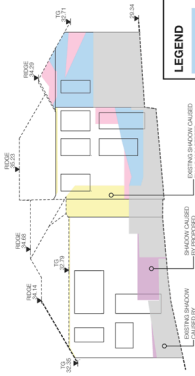
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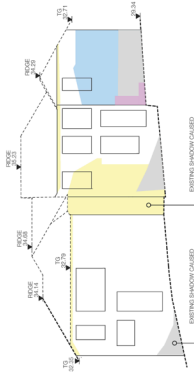
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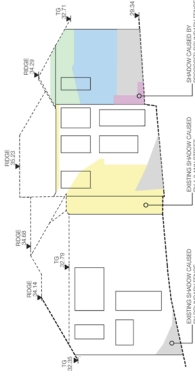
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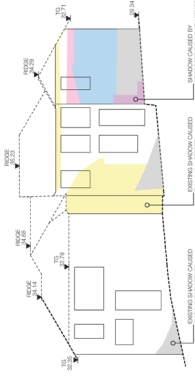
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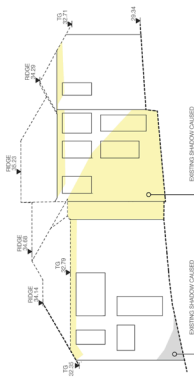
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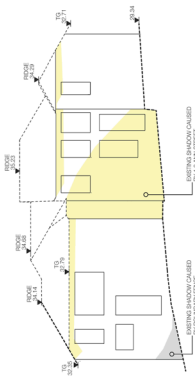


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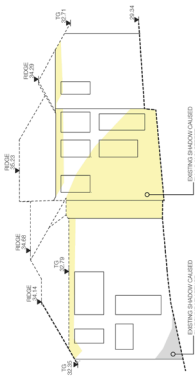
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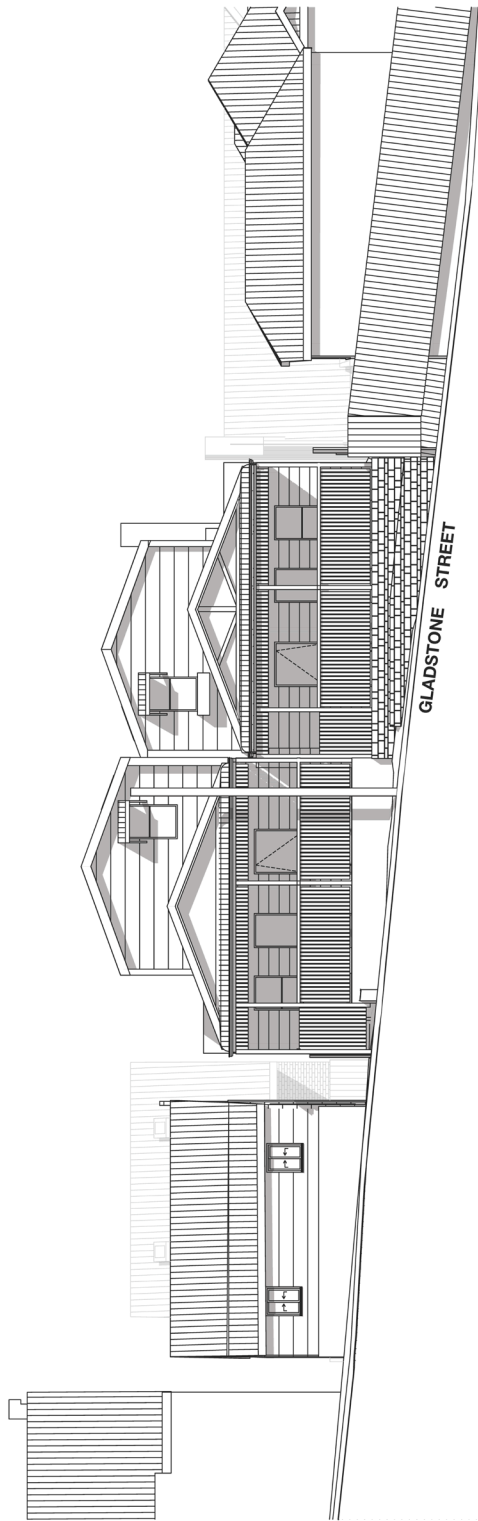
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○ FRONT STREET ELEVATION
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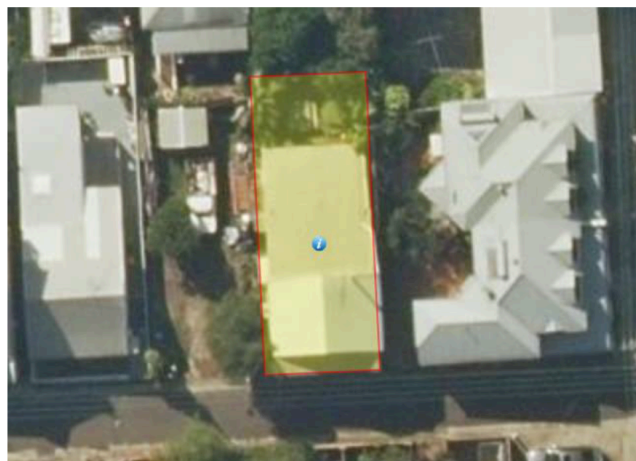
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 2/15 BRUCE STREET CAMPBERRON
 PRACTICE NUMBER 18071
 ARCHITECT # 15027
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 PRACTICE # 15027

Attachment C - Clause 4.6 Exception to Site Coverage Development Standard



Clause 4.6 Exceptions to development standards Written request – Site Coverage for Residential Accommodation in Zone R1

Demolition of Existing Dwelling House & Ancillary Structures and Construction of a New Two (2) Storey Residential Dwelling.



9 Gladstone Street, Balmain NSW 2041
Lot 1 DP 1039336

Prepared for: Aaron Stevens Architects
Project No: C927
Date: August 2019
Revision: C

Creative Planning Solutions Pty Limited | PO Box 1074 Broadway NSW 2007
+61 2 8039 7461 | info@cpsplanning.com.au | www.cpsplanning.com.au
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Creative Planning Solutions works to a stringent Quality Assurance Program.

If this document has not been signed for review and approval then it is deemed a preliminary draft.

Prepared by:



Brendon Clendenning - Principal Planner

Reviewed by:



Daniel Govers - Director

Authorised by:



Daniel Govers - Director

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Clause 4.6 Written Request to Vary a Development Standard

Leichhardt Local Environmental Plan 2013

Applicant's name	Aaron Stevens Architects
Site address	9 Gladstone Street, Balmain NSW 2041
Proposal	Demolition of existing dwelling house and ancillary structures and construction of a new two (2) storey residential dwelling.
Environmental Planning Instrument	<i>Leichhardt Local Environmental Plan 2013</i> (LLEP 2013)
Development standard to be varied	<p>Clause 4.3A(3)(b) – Landscaped areas for residential accommodation in Zone R1 (site coverage).</p> <p>The relevant subclause states:</p> <p><i>(3) Development consent must not be granted to development to which this clause applies unless:</i></p> <p>...</p> <p><i>(b) the site coverage does not exceed 60% of the site area.</i></p>

Below is the written request relating to the proposed variation to clause 4.3A(3)(b) of the LLEP 2013 in accordance with the provisions of clause 4.6 of the LLEP 2013.

1. **Details of development standard sought to be varied**

Clause 4.3A(3)(b) of the LLEP 2013 prescribes the maximum site coverage for land Zoned R1 – General Residential. The entirety of Clause 4.3A(3)(b) is reproduced below:

4.3A(3)(b) Landscaped areas for residential accommodation in Zone R1

(3) Development consent must not be granted to development to which this clause applies unless:

...

(b) the site coverage does not exceed 60% of the site area.

The subject site is located within Zone R1 General Residential zone and is therefore subject to Clause 4.3A. With a site area of 135.1m², the proposal would require no more than 81.06m² site coverage to achieve compliance with the control.

The proposal seeks a site coverage of 93.89m² (69.5%), being a 12.83m² (13.66%) variation to the development standard.

2. **Clause 4.6 Exceptions to Development Standards - Leichhardt Local Environmental Plan 2013**

Clause 4.6 of the LLEP 2013 is the mechanism by which a consent authority is able to grant consent to a development despite non-compliance with a prescribed development standard. Clause 4.6 is reproduced below:

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.**
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.**
- (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.
- Note. When this Plan was made it did not include any of these zones.
- (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.

3. The statutory obligations of the applicant and Council

The authority established within a recent judgement in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, provides that a 4.6 variation need not establish that a development containing a variation provides a better or even neutral outcome for a development site compared with that which would be provided by a compliant development. This judgement also outlines the necessary distinction between the obligations of the applicant, and the obligations of Council. The applicant must address the matters required by 4.6(3). Note however that for completeness and to assist Council in its assessment, this variation request has addressed 4.6(3) and 4.6(4).

The consent authority need only be satisfied of the matters required within 4.6(4)(a), namely that the applicant has adequately addressed 4.6(3), and that the development is consistent with the objectives of the standard and the objectives of the zone.

The *Initial Action* judgement states that “the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b)”.

The independent role for the consent authority is therefore to determine whether the proposed development will be consistent with the objectives of the standard and the objectives of the zone. It is clear that the development meets the objectives of the standard and of the zone as discussed throughout this written request.

The responsibilities of the applicant had earlier been clarified within *Four2Five Pty Ltd v Ashfield Council* (2015) NSWCA 248. In addressing clause 4.6(3), the applicant must establish reasons that the variation should be supported, aside from the consistency of the development with the objectives of the standard and the objectives of the zone.

In *Wehbe V Pittwater Council (2007) NSW LEC 827*, Preston CJ set out the following 5 different ways in which an objection (variation) may be well founded:

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 or 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.*

It is generally understood that Clause 4.6(3) can be satisfied if it is established that a development satisfies one or more of points 2-5 above. W

Note that although this request is structured to address 4.6(3) and 4.6(4)(a)(ii) individually, the report should be read in its entirety as fulfilling the applicant's obligations under 4.6(3).

4. **4.6(3) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and there are environmental planning grounds to justify the contravention of the standard**

Having regard for the authority within *Wehbe*, compliance with the maximum FSR development standard has been determined to be unreasonable and unnecessary in the circumstances of the case, and the following outlines the environmental planning grounds for the proposed variation:

- The proposal seeks the provision of a new dwelling at the site, which will be sited in a similar location to the existing dwelling. The site coverage increase is largely associated with a reduction in the rear setback. The subject allotment is small, even considered in the context of small allotment sizes in Balmain, and the existing dwelling currently encroaches on to No.11 Gladstone Street. The subject site has historically been provided

with an unusually large rear setback, uncharacteristic of the locality, particularly given the small size of the allotment. The proposal seeks to provide a re-balancing of the space to this allotment by utilising space within the rear.

The reduction in the rear setback overstates the increase in built upon area to some extent. The existing deck to the rear is setback only 4.3m from the rear boundary but it would not be included within the calculation of the existing site coverage.

The proposal will provide an overall improved landscape outcome to the site. The rear yard is currently provided with artificial turf and the existing low plantings are not suitable for yards with a small size. The proposal will provide a new turfed area and a 6m high tree that will improve site landscaping and add to the landscape canopy of the locality.

- Given the prevailing streetscape character and the width of the site, the proposal seeks nil side setbacks, which is not in strict accordance with the requirements of the LDCP 2013. However, given the small size of the allotment, and the prevailing setback character (including that on the subject site), it is necessary to utilise the entire width of the site to provide suitable residential accommodation, and to avoid requiring further reductions in the rear setback. The proposal satisfies the objectives of the side setbacks control and therefore it would be anticipated that additional site coverage would be appropriate for the site than would otherwise be provided. Compliant side setbacks would result in a compliant site coverage, but would be inconsistent with the neighbourhood character.
- The proposal provides an additional 12.83sqm of site coverage above the development standard. Given the points raised earlier, a reduction in site coverage of 12.83sqm is unlikely to provide any significant environmental planning benefit.
- The design of the proposal conforms with the building height plane contained within LDCP 2013. The building envelope control applies a 10 metre envelope for all development located within the Darling Street Distinctive Neighbourhood – Balmain Village Sub-Area. The proposal will maintain consistency with development that could be provided throughout Gladstone Street.
- The proposed massing of the building envelope on the site reinforces the character of the locality and provides a positive contribution to the character of the streetscape and the surrounding conservation area.
- The proposal substantially improves the internal amenity of the dwelling and provides private open space with solar access in the form of a balcony deck on the first floor, ensuring that the development well provided with adequate private open space, despite the non-compliance. The proposal is compliant with the landscaped area standard, and thereby provides adequate provision of landscaping.
- Council has in the past granted consent to development that does not comply with the standard and to a large extent the standard has been abandoned, particularly for variations of less than 15sqm. For instance, within the suburb of Balmain, examples of variation to the standard include:

- D/2017/510 – 74 Reynolds Street, Balmain.
- D/2017/604 – 5 Young Street, Balmain.
- D/2017/516 – 64 Glassop Street, Balmain.
- D/2017/616 – 113 Curtis Road, Balmain.
- D/2016/561 – 6 Ann Street, Balmain (less than 30m from the subject site and approved via Land and Environment Court appeal).

It is evident that Council's actions have enabled an exceptionally broad application of clause 4.6 to site coverage non-compliances throughout the local area. The minor addition of approximately 12.8sqm of unbuilt upon area to achieve compliance would not be consistent with the prevailing character of existing development, nor of Council's own application of the standard, and would therefore not be reasonable in these circumstances.

5. **Clause 4(a)(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.**

In the recent judgement within *Initial Action*, Preston CJ indicated that a consent authority only needs to be satisfied that an applicant has adequately addressed the matters within clause 4.6(3), and that, pursuant to 4.6(4)(a)(ii), the development is consistent with the objectives of the standard and consistent with the objectives of the zone. Although not strictly required, this variation has addressed the reasons that the development satisfies 4.6(4)(a)(ii).

The objectives of the R1 General Residential Zone are as follows:

(a) To provide for the housing needs of the community.

The proposed development will maintain the residential use of the subject site with only a minor variance to the maximum site coverage. The proposed development will improve housing supply in the location as it will facilitate the provision of a new dwelling at No.11 Gladstone Street, without impact on other nearby existing properties.

(b) To provide for a variety of housing types and densities.

This objective is primarily met through the range of permissible uses included within the zone and the through the floor space ratio development standard. The proposal is consistent with each of these requirements and the small site coverage non-compliance will not impede attainment of this objective.

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

The proposed new dwelling will have no undue negative impact upon the provision of facilities or services within the local area. Rather, the demolition of the existing dwelling

will enable a dwelling to be provided on each of 9 Gladstone Street and 11 Gladstone Street. This will have a positive impact on the viability of local services and facilities.

(d) To improve opportunities to work from home.

The proposed development will not impede with any opportunity to work from home.

(e) To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.

The proposal is demonstrated to be compatible with neighbouring development. The site coverage development standard is not a realistic application of prevailing development within the area. It is not particularly common for existing development to comply with the standard, and Council have enabled an exceptionally broad application of clause 4.6 to site coverage non-compliances throughout the local area. In this respect, the proposal will be compatible with the site layout measure outlined by this objective. Furthermore, the submitted Heritage Impact Assessment has demonstrated that there will be an acceptable impact on the heritage significance of the conservation area as the proposed design considers the existing character of the streetscape and its context within the conservation area.

(f) To provide landscaped areas for the use and enjoyment of existing and future residents.

The landscaped area currently provided to the site is of limited functionality to existing residents. The landscaped area includes artificial turf and overgrown low plantings. The proposal seeks to provide a new turfed area in the rear, with a small plunge pool. In addition, Council's landscape assessment officer recommends that a 6m canopy tree be provided within the rear yard, which will increase canopy cover within the locality, providing shade and environmental amenity for residents.

Furthermore, the proposal provides additional private open space at first floor ensuring that there is ample space for outdoor use. The provision of a first floor patio will provide a balance between hard stand outdoor space at first floor and deep soil outdoor space at ground floor.

(g) To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.

Subdivision is not proposed as part of this application. However, the proposal will allow for the utilisation of the mostly vacant site at No.11 Gladstone Street for the purposes of a new dwelling. The allotment at both No.9 and No.11 are compatible with the character, style, orientation and pattern of the surrounding area.

(h) *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

The development is designed with specific regard for the existing context, and desired future character of the locality. Building bulk is focused towards the front and the sides of the site, where there is likely to be less impact. The following comments are provided in relation to specific amenity issues:

- Given the as yet unrealised development potential associated with the mostly vacant property at No.11 Gladstone Street, it would be difficult to retain any views that have historically been available from No.13 Gladstone Street. It would be expected that view sharing further to the west is able to occur naturally as a consequence of the fall of Gladstone Street to the east.
- Given the first floor setback of the proposed dwelling and the significant fall to the neighbouring properties, it is not expected that there will be substantial opportunities for overlooking into the private open space of these properties. There are few windows on the elevations of neighbouring properties to the west and therefore there will be minimal overlooking concerns to the internal areas of these dwellings.
- The new dwelling will substantially improve the solar access that is provided to both principal living areas and to the private open space of the subject site.
- Having regard to the planning principle established by *The Benevolent Society v Waverley Council [2010]* NSWLEC 1082, the design option submitted to Council has been specifically selected in order to maximise solar access to neighbouring properties.

The objective of Clause 4.3A of LLEP 2013 are as follows:

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

The proposal will achieve a superior landscape outcome to what is provided to the majority of small allotments within Balmain. Within the locality, it is not uncommon for rear yards to be predominately paved (for example Nos. 13, 15, 17, 21 Gladstone Street). The proposal provides suitable paved outdoor spaces at first floor such that the ground floor may be used exclusively for deep soil area. The canopy planting recommended within the arborist report will improve the landscape setting of the rear yard and the locality in general.

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

There is a limited landscaped corridor surrounding the properties within the vicinity of the site. The siting and site coverage of the proposal is compatible with that provided to existing development, and the location and size of the proposed landscaped area would not hinder the attainment of this objective.

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

The proposal is compliant with the building envelope controls and provides side setbacks and a building location zone which are compatible with the surrounding locality. The proposed streetscape presentation is better able to maintain consistency with the desired future character of the area than the existing dwelling by providing a better coordination between the private and public domains. The proposed new dwelling will not be unsympathetic to Gladstone Street, ensuring the streetscape character of the locality is maintained and the proposed design and materials are of a high-quality that will improve the visual appearance of the dwelling.

- (d) *to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,*

The proposed building complies with the landscaped area requirement prescribed by clause 4.3A(3)(a)(i). Moreover, the development is sited similarly to the existing building and would not be expected to unduly impact on stormwater drainage, existing overland flow paths, or the underground movement of stormwater.

- (e) *to control site density,*

The density, built form, and land use intensity of the dwelling will be consistent with that of the surrounding area and locality. The proposal is fully compliant with the floor space ratio development standard, generally considered to be a better measurement of site density.

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

The proposal provides private open space above internal floor space, which enables the development to simultaneously limit the building footprint, whilst also increasing the size of the private open space. The proposal complies with the requirement for landscaped area, and the ground floor landscaped area that is provided is sufficient to enable tree planting to occur at the site.

6. Summary

Having regard to the judgement in *Wehbe*, the objectives of the zone, and the objectives of the standard, the reasons for the variation can be summarised as follows:

- At an exceedance of only 13.66% or 12.83m² to the development standard, the extent of the non-compliance is very minor in nature with no discernible impacts;
- The site coverage non-compliance is largely a consequence of side setback non-compliances and a reduced rear setback. The proposed side setbacks are consistent with those provided to the existing dwelling and the prevailing character throughout the locality. The reduced rear setback is a logical consequence associated with any development the site, given the surrounding subdivision character.

- The proposal will result in an improvement in the streetscape quality of the subject site when viewed from Gladstone Street.
- An antiquated dwelling configuration will be improved, ensuring the residence meets the requirements of modern living standards;
- The proposal is able to provide generous and compliant landscaped areas, and adequate planting, to soften any visual impact associated with the development and to improve the canopy cover within the locality.
- The proposal provides private open space above internal floor space, which enables the development to simultaneously limit the building footprint, whilst also increasing the size of the private open space
- The objectives of the zone are achieved notwithstanding non-compliance with the standard;
- The proposal is unlikely to create significant adverse environmental effects on the use or enjoyment of adjoining properties and the public domain; and,
- The proposal has ensured that good residential amenity is maintained.

The authority within the recent judgement in *Initial Action* has reaffirmed that the role for the consent authority is to determine whether the proposed development will be consistent with the objectives of the standard and the objectives of the zone. It is clear that the development meets the objectives of the standard and of the zone.

This written request has demonstrated that compliance with the standard in this instance would be unnecessary and unreasonable and that there are environmental planning grounds to justify the contravention of the development standard. Given the above, it is considered that the requirements of Clause 4.6 have been satisfied and that the variation to the site coverage development standard can be approved.