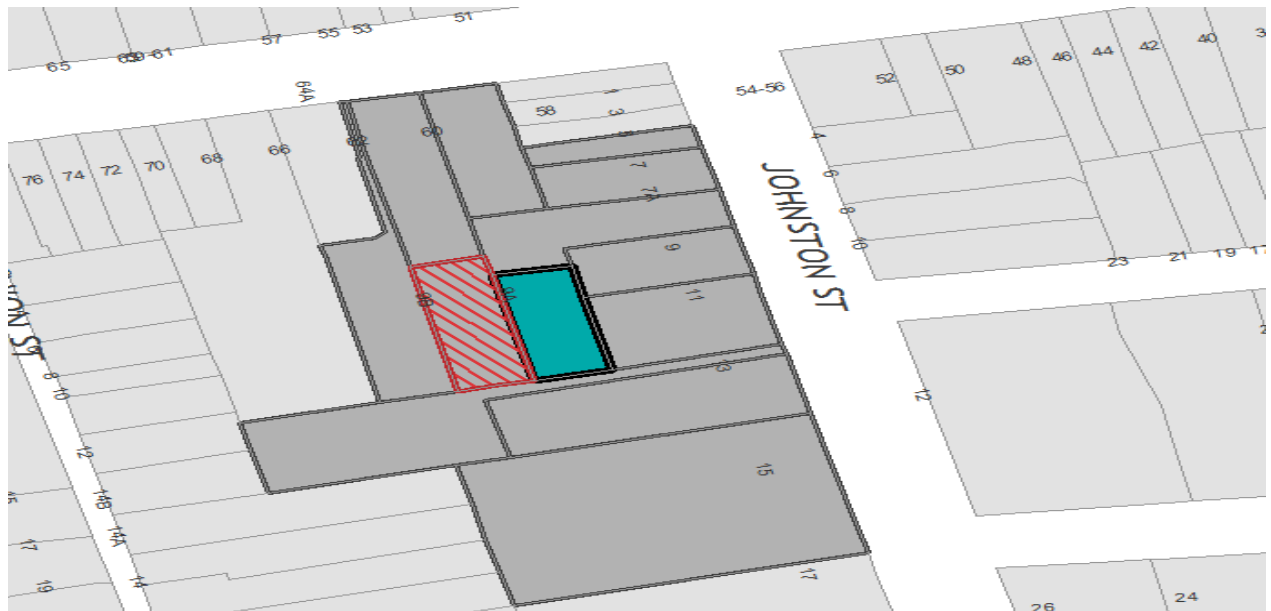




INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	D/2018/386
Address	9A Johnston Street, Balmain East
Proposal	Alterations and additions to existing dwelling-house, including new external balcony and roof top terrace with stair access.
Date of Lodgement	23 July 2018
Applicant	Oikos Architects
Owner	Mr P Donahue
Number of Submissions	One
Value of works	\$198,000.00
Reason for determination at Planning Panel	Floor Space Ratio variation exceeds officer delegations
Main Issues	Floor Space Ratio exceeds permissible Potential Privacy Impacts
Recommendation	Approval
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards
Attachment D	Statement of Significance - East Balmain Conservation Area
Attachment E	Statement of Significance Heritage Item I445, 11 Johnston Street, Balmain East (adjoining site)
Attachment F	Statement of Significance Heritage Item I446, 13 Johnston Street, Balmain East (adjoining site)



LOCALITY MAP

Subject Site		Objectors			N
Notified Area		Supporters			

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to existing dwelling-house, including new external balcony and roof top terrace with stair access at 9A Johnston Street, Balmain East. The application was notified to surrounding properties and one submission was received.

Please note that the proposal has been amended since lodgement to delete a ground floor addition and alter the layout of the roof terrace and staircase to the roof terrace. The amended plans were re-notified.

The main issues that have arisen from the application include:

- Non-compliance with permissible floor space ratio
- Potential privacy issues

The non-compliance is acceptable given the minor additional gross floor area proposed and with regard to potential amenity impacts and therefore the application is recommended for approval.

2. Proposal

The application seeks approval for a new balcony on the eastern elevation of bedroom 1 on the second floor. The balcony has a depth of 1.19m and a width of 4.02m.

At second floor level new stairs are proposed up to a new roof level terrace which includes demolition of an existing clerestory roof window. The stairs are enclosed and project up to 2.52m above the existing roof parapet. The proposed roof terrace has dimensions of 2.7m in width and 5.5m in length with an area of 14.85m². A low height storage cupboard is proposed to the south of the terrace and a planter box to the eastern side. Rooftop photovoltaic panels are proposed at the northern end of the roof.

The originally lodged development application included a ground floor rear extension to the study room however this addition has now been deleted from the proposal.

Additional soft landscaping is also proposed by widening the existing garden beds and slightly changing the layout of the garden beds.

3. Site Description

The subject site is a battle-axe style land locked property located to the rear of 9 and 11 Johnston Street which are on the western side of Johnston Street between Paul and Darling Streets. The site consists of one allotment and is generally rectangular shaped with a total area of 233m² and is legally described as Lot 101 DP 613380.

The site does not have a direct frontage to Johnston Street and is affected by two rights of carriageway and an easement for services at the front of the property which provides access to the adjacent landlocked property 9B Johnston Street.

The site currently supports a contemporary 3 storey dwelling which has views of Sydney Harbour including the Harbour Bridge at 1st and 2nd floor levels. The adjoining dwelling to the west (9B Johnston) is a 3 storey contemporary dwelling with a rooftop terrace (the roof terrace appears to have never formally been granted consent). The adjoining building to the east, No.9 is 2 storeys with additional attic level that comprises 2 strata dwellings. No.11

also to the east of the site is a heritage item which is a single storey with attic level dwelling house.

The property is located within a conservation area and is not identified as a flood prone lot. The site is adjoined by a number of heritage items at 11 and 13 Johnston Street and is in close proximity to heritage items at 62 and 68 Darling Street.



Figure 1: Front of dwelling as viewed from ROW driveway



Figure 2: view of Sydney Harbour when standing on existing rooftop

4. Background

4(a) Site history

The following application outlines the relevant development history of the subject site and any relevant applications on surrounding properties.

Subject Site

Application	Proposal	Decision & Date
D/2000/931	Ground, first and second floor alterations and additions to the existing dwelling including an increased garage area with terrace above and an amended roof form.	Approved 17.5.2001
DAREV/2001/20	Review of Determination including proposed new carport structure to replace previous garage and seeking east balcony off breakfast area at first floor level and east balcony off second bedroom at the third level.	Approved 14.8.2001
T/2002/116	Removal of 1 x Pinus Radiata at the side of the property.	Approved 2.4.2002
T/2003/253	Remove 1 tree	Approved 31.7.2003
T/2011/239	Removal of 1 x Jacaranda mimosifolia from the rear courtyard	Approved 12.9.2011
PRED/2012/28	Alterations and additions to existing residence, including second floor terrace and roof top terrace	Advice issued 20.3.2012
D/2017/265	Alterations and additions to existing dwelling including addition to southern side, roof top terrace, photovoltaic panels, first floor balcony and change to glazing.	Refused 17.8.2017

Surrounding properties

9 Johnston Street

Application	Proposal	Decision & Date
T/2004/4	Removal of Eucalyptus sp.	Approved 20.1.2004.

9B Johnston Street

Application	Proposal	Decision & Date
BC/90/2006	<p>Building Certificate for sale of property.</p> <p>On 6 September 2006 the building certificate was deferred and a request for further information was sent to the applicant which included the following</p> <p>2. <i>It should be noted, and advised to any prospective purchases, as part of the responsibilities of disclosure, that the roof area is not suitable for trafficable purposes and access to the area is to be for maintenance purposes only. There is no formal approval granted for this area to be used as a roof top terrace without the</i></p>	6 September 2006

	<i>written consent of Council. Access via the ladder to the roof area is to be limited for maintenance purposes only.</i>	
BC/90/2006	Building Certificate issued for whole of building for sale of property.	27 October 2006

11 Johnston Street

Application	Proposal	Decision & Date
T/2009/255	Removal of 1 Casuarina tree on the South boundary.	Approved 21.10.2009

4(b) Application history

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

Date	Discussion / Letter/ Additional Information
14.1.2019	Meeting held with Council officers and architect (applicant) and owner to discuss application. Applicant advised that additional floor space at ground floor level could not be supported and rooftop terrace was problematic in relation to privacy issues and that the trafficable area should be set back further from the eastern boundary and the stairwell to the rooftop should be reduced in extent.
11.2.2019	Applicant submitted amended plans with the following changes: <ul style="list-style-type: none"> • Deletion of ground floor addition; • Changes to rooftop stairs to reduce their overall bulk by making the stairwell longer and narrower; • Increasing setback of terrace from eastern edge of roof • Providing a planter box on eastern edge of roof • Providing low level storage cupboards on roof terrace.
18.3.2019	Council requested that the applicant provide amended ground and first floor plans; an amended Clause 4.6 Exception request and an amended Basix certificate.
21.3.2019	Council requested that the applicant provide amended shadow diagrams.
26.3.2019	Applicant provided additional information as requested on 18 & 21 March.

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
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The following provides further discussion of the relevant issues:

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.

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

A BASIX Certificate was submitted with the application demonstrating commitment to building sustainability and will be referenced as part of any consent issued.

5(a)(xi) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

An assessment has been made of the matters set out in Clause 20 of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. It is considered that the carrying out of the proposed development is generally consistent with the Aims of Plan and would not have an adverse effect on environmental heritage, the visual environment, the natural environment and open space and recreation facilities for the following reasons:

- The site is located on a battleaxe allotment and the additions would not be overly visible from the public domain and are unlikely to be visible from Sydney Harbour.

Leichhardt Local Environment Plan 2013 (LLEP 2013)

The site is zoned R1 General Residential. The proposal, being alterations and additions to an existing dwelling consisting of a balcony and roof top terrace, is permissible in the zone with development consent.

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 requires development consent
 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 6.4 Stormwater management

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

Standard (maximum)	Proposal	% of non compliance	Compliances
Floor Space Ratio Permitted: 0.9:1 =200m ²	1.03:1 230.58m ²	15.29% 30.57m ²	No

Landscape Area 15% required	16.77% 37.27m ²	N/A	Yes
Site Coverage 60% permissible	53.69% 119.31m ²	N/A	Yes

The following provides further discussion of the relevant issues:

Clause 2.3 Zone Objectives and Land Use Table

The site is zoned R1 General Residential zone. The proposed alterations and additions to an existing dwelling house is permitted with consent in the zone. The proposal is considered to satisfy, subject to conditions, the relevant objectives of the zone being:

- To provide for the housing needs of the community.
- 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 protect and enhance the amenity of existing and future residents and the neighbourhood.

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.4 – Floor Space Ratio

Clause 4.6(2) specifies that Development consent may be granted for development even though the development would contravene a development standard.

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 be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.*

The proposal seeks to exceed the permissible FSR as shown in the table above. The existing dwelling already exceeds the permissible FSR, and the only additional gross floor area results from the staircase to the rooftop terrace. It is considered appropriate in this instance to provide a degree of flexibility as the staircase will provide access to additional private open space which will receive significantly more solar access than the ground level private open space, and due to the acceptable impacts on the conservation area and amenity of adjoining sites.

3. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant has provided the following justification:

- *The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
- *Bulk, form and scale compatible with desired future character: The proposal represents a minor increase in the floor area of a building that is hardly visible from the public domain and is well modulated to reduce apparent bulk. The proposed roof terrace and the access to it will have a gross floor area of less than 4m² and, to the extent that it will be visible at all, will be read as a minor rooftop element. The proposed additions are designed in contemporary style consistent with the existing house and will be similarly compatible in scale and form with the character of surrounding buildings in accordance with Council's desired future character provisions.*
- *Balance between landscaped area and built form: The proposal will provide new landscaped area so that it meets the control requirement.*
- *Impact of bulk and scale: The proposed minor additions are well modulated to reduce apparent bulk and are compatible in scale with the existing and surrounding buildings.*

The following environmental planning grounds are relevant:

- *In the context (a variety of housing ranging in age from early Victorian to contemporary and one to three storeys in height), the proposal will provide a built outcome compatible in terms of bulk and visual impact.*
 - *The proposal will enhance the standard of accommodation for the occupants of the subject site.*
 - *The proposal complies with most other applicable planning controls; that is, landscaped area, site coverage, private open space, solar access and car parking.*
 - *The proposal enhances solar access to the subject site and will not unreasonably increase mid-winter shading to adjoining properties.*
 - *The proposal will reasonably maintain existing levels of privacy.*
 - *The proposal represents a reasonable sharing of views.*
 - *The proposal will not generate adverse traffic or parking impacts*
 - *The proposed built form is satisfactory in heritage and streetscape terms.*
- (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.*

Comment: The applicant has satisfactorily addressed the matters required under Clause 4.6(3), and the request is considered to be well founded in this instance. The proposal will not result in a detrimental impact on the public interest and can satisfy the objectives of the development standard and General Residential zoning as demonstrated below:

- The proposal is compatible with the desired future character of the area in relation to building bulk, form and scale as the stairwell will not be overly visible;
- The proposal complies with the Landscaped Area and Site Coverage standards, providing a suitable balance between landscaped areas and the built form;
- The proposal minimises the impact of the bulk and scale of the stairwell by minimising its size;
- The proposal does not result in any significant adverse amenity impacts to surrounding properties.

The Secretary has provided concurrence.

5(b) Draft Environmental Planning Instruments

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

- Draft Environment State Environmental Planning Policy

The following provides further discussion of the relevant issues:

The NSW government has been working towards developing a new State Environmental Planning Policy (SEPP) for the protection and management of the natural environment. The Explanation of Intended Effect (EIE) for the Environment SEPP was on exhibition from 31 October 2017 until 31 January 2018.

This consolidated SEPP proposes to provide a single set of planning provisions for catchments, waterways, bushland and protected areas. Changes proposed include consolidating seven existing SEPPs including Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

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.

Part	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	Not applicable
B3.2 Events and Activities in the Public Domain (Special Events)	Not applicable
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Not applicable
C1.3 Alterations and additions	Yes
C1.4 Heritage Conservation Areas and Heritage Items	Yes
C1.5 Corner Sites	Not applicable
C1.6 Subdivision	Not applicable
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Not applicable
C1.11 Parking	Not applicable
C1.12 Landscaping	Not applicable
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	
C2.2.2.2 East Balmain Distinctive Neighbourhood and South of Darling Street sub area (C2.2.2.2(c))	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	No
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	Not applicable
C3.5 Front Gardens and Dwelling Entries	Not applicable
C3.6 Fences	No applicable
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.10 Views	Acceptable, see below
C3.11 Visual Privacy	Acceptable, see below
C3.12 Acoustic Privacy	Acceptable, see below
C3.13 Conversion of Existing Non-Residential Buildings	Not applicable
C3.14 Adaptable Housing	Not 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	Yes
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	Yes
E1.1 Approvals Process and Reports Required With Development Applications	
E1.1.1 Water Management Statement	Yes
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	
E1.2.1 Water Conservation	Not applicable
E1.2.2 Managing Stormwater within the Site	Not applicable
E1.2.3 On-Site Detention of Stormwater	Not applicable
E1.2.4 Stormwater Treatment	Not applicable

E1.2.5 Water Disposal	Yes
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:

C1.4 - Heritage Conservation Areas and Heritage Items

The site is located within the Balmain East Heritage Conservation Area and adjoins two heritage items. The adjoining heritage items are I445: House including interiors, 11 Johnston Street, Balmain East and I446 House, "Captain Tinley", including interiors, 13 Johnston Street, Balmain East. There are also a number of other heritage items in the vicinity including I387: Commercial building, including interiors, 62 Darling Street, Balmain East and I391: Housing including interiors, 68 Darling Street, Balmain East. The application was referred to Council's Heritage Officer for comment who advised that the revised design has further reduced the bulk and size of the structure over the landing and stairs on the rooftop, which is a positive outcome. As the works will not be visible from the public domain, the proposal will not have an impact on the heritage significance of the Balmain East heritage conservation area or the heritage items in the vicinity. A condition is recommended requiring the roof cladding to be "Windspray" or "Wallaby" in colour.

C3.2 – Site Layout and Building Design

The proposed stairwell to the rooftop terrace does not comply with the side boundary setback control graph as set out in Control C7. The proposed stairwell has a nil side setback to the western boundary. The side setback requirement would be approximately 4.7m. Given that the 3 floors below the stairwell are built to the western side boundary, building the stairwell to the boundary is considered an appropriate location. The stairwell provides a separation of the roof terrace with the adjoining roof terrace at No.9B to the west. Control C8 allows non-compliant side setbacks where the pattern of development in the streetscape is not compromised; where the bulk and scale of development is minimised by reduced floor to ceiling heights; potential amenity impacts are minimised and reasonable access is retained for maintenance of adjoining properties. The proposal is considered to satisfy the requirements of control C8 with the stairwell not impacting on the streetscape; having a minimal height; not resulting in any significant amenity impacts, and allowing access for maintenance. Overall, the proposal is considered acceptable with regard to the objectives and controls of C3.2.

C3.10 - Views

The only property that is considered to be impacted with regard to views of the harbour including the harbour bridge is the roof top terrace of the adjoining property to the west No.9B. The proposed stairwell is setback further to the south than the existing clerestory roof window and a solar hot water heater is proposed to be removed. Accordingly, views from the roof terrace of 9B should be improved as their roof terrace is set further forward to the north than the proposed roof terrace for 9A (as shown hi-lighted in yellow below in figure 3). It is considered that sufficient view sharing is provided and the proposed works to the roof, particularly the stairwell do not reduce existing views obtained from the roof terrace of 9B.

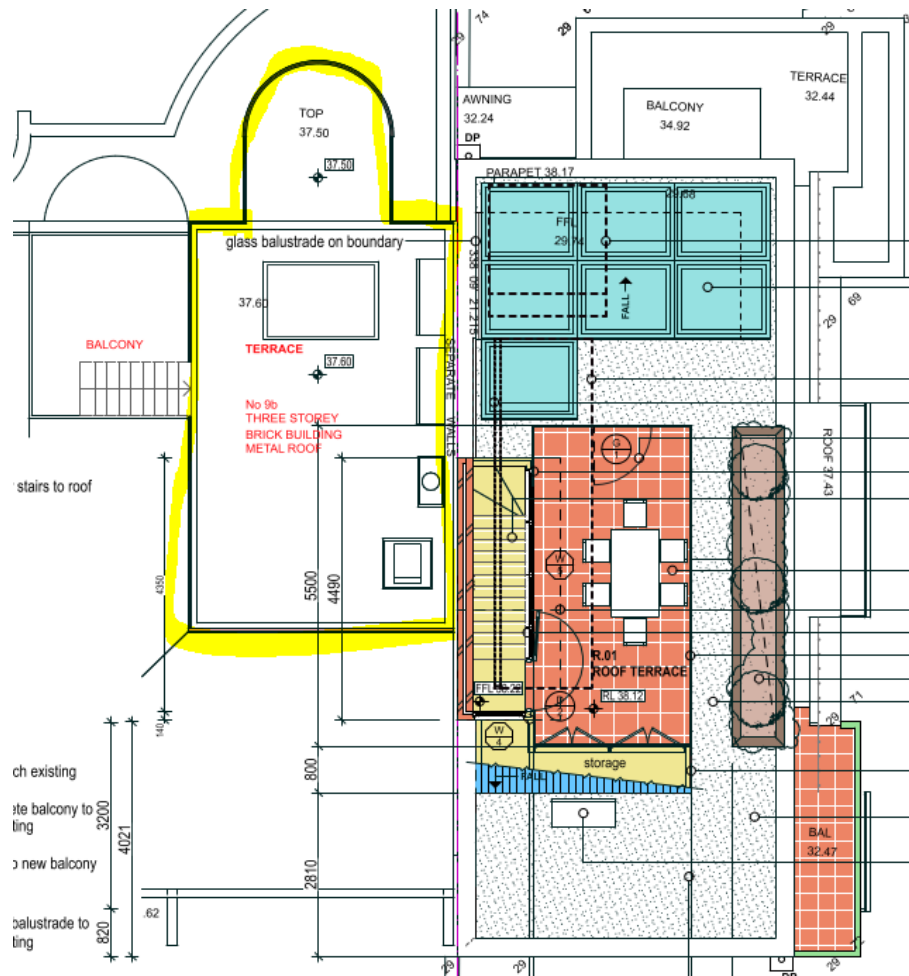


Figure 3: Roof terrace of 9B shown hi-lighted in yellow set further forward than proposed terrace of 9A.

C3.11 – Visual Privacy

There is potential for overlooking from the proposed balcony from bedroom 1 on the second floor and the rooftop terrace. Potentially impacted properties are Nos. 9 and 11 Johnston Street to the east and No.13 Johnston Street to the south.

The roof terrace has been setback further from the eastern boundary than originally proposed and provides a planter box on the eastern side of the roof. The extent of roof around the edge of the terrace and the planter box restricts sight lines. Accordingly, sight lines are such that a horizontal distance of at least 9m would be achieved before the sight line would reach a window or the private open space of Nos.9, 11 and 13 which complies with control C1 of the visual privacy controls. The proposed roof terrace is considered acceptable with regard to privacy impacts.

The proposed bedroom 1 balcony will essentially match the bedroom 2 balcony also on the second floor. The proposed bedroom 1 balcony will result in overlooking of number 11 Johnston Street, however it is noted that there is currently extensive glazing to the eastern elevation of bedroom 1, and the 2012 PreDA agreed to a level 2 balcony with a depth no greater than 1.2m. A privacy screen is proposed to the southern elevation of the bedroom 1 balcony to restrict outlook towards No.13 Johnston Street. Given the existing number of balconies on the eastern elevation to living areas at level 1 and bedrooms at level 2, it is not considered that the additional balcony will have any significant additional privacy impacts. The balcony is only accessible from a bedroom and has a depth of 1.19m and therefore is not overly usable. Additionally, the base 700mm of the balustrade is solid which will assist in restricting views.

It is noted that views from the dwelling from the proposed bedroom 1 balcony, the proposed roof terrace and existing first and second floor balconies would be drawn toward the harbour rather than to surrounding properties. The proposed balcony and roof terrace are considered to satisfy the objective and controls of C3.11 – Visual Privacy.



Figure 4: Existing rooftop clerestory window in approximate location of proposed stairwell with rooftop terrace of adjoining dwelling at No.9B Johnston Street to the left in the photo.



Figure 5: View towards rear yard of adjacent property to the east of the site at 11 Johnston Street

C3.12 – Acoustic Privacy

Given the location of the rooftop terrace it is unable to satisfy objective O1 which requires development to create a high level of residential comfort by containing noise within each dwelling and minimising the transmission of external noise. The rooftop terrace is able to

transmit noise however there are other areas of private open space on site being the ground level private courtyard space and the three balconies accessed from the first floor living areas. It is not considered that the rooftop terrace will be utilised all the time being on the fourth floor and given that there are no weather protection structures. The proposed terrace is setback 1.2m from the western boundary with the roof and roof terrace of No.9B; 6m from the eastern boundary; 7.7m from the southern boundary and 10.8m to the northern boundary. The proposed terrace has an area of 14.85m² therefore it is limited in the number of people that could use the space at one time.

In the circumstances it is not considered that the roof terrace would significantly impact surrounding properties in relation to noise given its height above the majority of surrounding dwellings and it is on balance acceptable in this instance.

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

The site is zoned R1 General Residential. 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 the Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties from 31 July to 14 August 2018 and the amended plans were re-notified from 26 February to 12 March 2019. A total of one submission was received.

The submission raised the following concerns which are discussed under the respective headings below:

Issue: Concerns that increasing building height to enable an internal stairwell creates an increase to the existing height and adds a fourth storey to the house. This doesn't align with surrounding houses and could set a precedent for increasing building heights in the area.

Comment: The subject site and neighbouring site 9B Johnston Street are unusual in their layout, being battle-axe lots. It is not considered that the stairwell would set a precedent as heights are controlled by the building envelope control and other measures including site coverage and floor space ratio. Individual applications are assessed on their merits with respect to site suitability and potential impacts to surrounding nearby development.

Issue: The proposal would reduce the potential for the rooftop of 9B for its photovoltaic solar potential as well as potential for views.

Comment: Views are addressed above under section 5(c) of this report. It is considered adequate view sharing is provided and existing views from the roof terrace of 9B will be increased in comparison to the existing situation. It is considered that there is opportunity for solar panels to be installed in the future and receive sufficient solar access.

Issue: Potential privacy impact on the rear backyard of 9B Johnston Street

Comment: The rooftop terrace is setback sufficiently from the boundaries with 9B such that given the height of the roof terrace, it would not be possible to view the rear yard of 9B.

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.

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

The application was referred to the following internal sections/officers and issues raised in the heritage referral have been discussed in section 5 above.

- Heritage Officer – No objections subject to recommended conditions of consent.
- Development Engineer – No objections subject to recommended conditions of consent.

6(b) External

The application was not required to be referred to any external bodies.

7. Section 7.11 Contributions

Section 7.11 contributions 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 adjoining premises and the streetscape. The application is considered to be in the public interest and suitable for approval subject to the imposition of appropriate conditions.

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of the Leichhardt Local Environmental Plan 2013 and Leichhardt Development Control Plan 2013 in support of the contravention of the development standard for Clause 4.4 Floor Space Ratio. 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, 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 s4.16 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application D/2018/386 for alterations and additions to existing dwelling-house, including new external balcony and roof top terrace with stair access subject to conditions.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

1. Development must be carried out in accordance with Development Application No. D/2018/386 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Dwg No.2016/20/DA20_E Site Plan	Oikos Architects	6/02/2019
Dwg No.2016/20/DA21_E Ground & 1 st floor plan	Oikos Architects	19/03/19
Dwg No.2016/20/DA22_E Second floor & roof deck	Oikos Architects	6/02/19
Dwg No.2016/20/DA23_E Section A	Oikos Architects	6/02/19
Dwg No.2016/20/DA23.1_E Section B	Oikos Architects	6/02/19
Dwg No.2016/20/DA24.1_E Section D	Oikos Architects	6/02/19
Dwg No.2016/20/DA25_E North Elevation	Oikos Architects	6/02/19
Dwg No.2016/20/DA25.1_E East Elevation	Oikos Architects	6/02/19
Dwg No.2016/20/DA26_E South Elevation	Oikos Architects	6/02/19
Dwg No.2016/20/DA26.1_E West Elevation	Oikos Architects	6/02/19
Document Title	Prepared By	Dated
BASIX Certificate A283478_03	Oikos Architects	22 March 2019

In the event of any inconsistency between the approved plans and the conditions, the conditions will prevail.

Where there is an inconsistency between approved elevations and floor plan, the elevation shall prevail.

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

The existing elements (walls, floors etc) shown to be retained on the approved plans shall not be removed, altered or rebuilt without prior consent of the consent authority.

Note: Carrying out of works contrary to the above plans and/ or conditions may invalidate this consent; result in orders, on the spot fines or legal proceedings.

2. Consent is granted for the demolition works as shown on the approved plans subject to strict compliance with the following conditions:
 - a) The adjoining residents must be notified seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence, site contact details/person, elements to be demolished and be placed in the letterbox of every premises (including every

residential flat or unit, if any) either side, immediately at the rear of and directly opposite the demolition site.

- b) Written notice is to be given to the Principal Certifying Authority for inspection prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours and contact telephone number and licence number of the demolisher. The following building inspections must be undertaken by the Principal Certifying Authority:
 - i) A *pre commencement* inspection when all the site works are installed on the site and prior to demolition commencing.
 - ii) A *final* inspection when the demolition works have been completed.

NOTE: If Council is nominated as your Principal Certifying Authority 24 - 48 hours notice to carry out inspections is required. Arrangement for inspections can be made by phoning 9367 9222.

- c) Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, licence number, contact phone number and site address.
- d) Prior to demolition, the applicant must erect a 2.4m high temporary fence, hoarding between the work site and any public property (footpaths, roads, reserves etc). Access to the site must be restricted to authorised persons only and the site must be secured against unauthorised entry when work is not in progress or the site is otherwise unoccupied.
- e) The demolition plans must be submitted to the appropriate Sydney Water Quick Check agent for a building plan approval.
- f) Demolition is to be carried out in accordance with the relevant provisions of Australian Standard 2601:2001: *Demolition of structures*.
- g) The hours of demolition work are limited to between 7:00am and 6:00pm on weekdays. No demolition work is to be carried out on Saturdays, Sundays and public holidays.
- h) Hazardous or intractable wastes arising from the demolition process must be removed and disposed of in accordance with the requirements of WorkCover New South Wales and the Environmental Protection Authority.
- i) Demolition procedures must maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.
- j) During demolition, public property (footpaths, roads, reserves etc) must be clear at all times and must not be obstructed by any demolished material or vehicles. The footpaths and roads must be swept (not hosed) clean of any material, including clay, soil and sand. On the spot fines may be levied by Council against the demolisher and/or owner for failure to comply with this condition.
- k) All vehicles leaving the site with demolition materials must have their loads covered and vehicles must not track soil and other materials onto public property (footpaths, roads, reserves etc) and the footpaths must be suitably protected against damage when plant and vehicles access the site.

- l) The burning of any demolished material on site is not permitted and offenders will be prosecuted.
- m) Care must be taken during demolition to ensure that existing services on the site (ie, sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services must be repaired by the relevant authority at the applicant's expense. Dial before you dig www.1100.com.au should be contacted prior to works commencing.
- n) Suitable erosion and sediment control measures in accordance with the Soil and Water Management Plan must be erected prior to the commencement of demolition works and must be maintained at all times.
- o) Prior to demolition, a Work Plan must be prepared and submitted to the Principal Certifying Authority in accordance with the relevant provisions of Australian Standard 2601:2001 *Demolition of structures* by a person with suitable expertise and experience. The Work Plan must identify hazardous materials including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
- p) If the property was built prior to 1987 an asbestos survey prepared by a qualified occupational hygienist is to be undertaken. If asbestos is present then:
 - i) A WorkCover licensed contractor must undertake removal of all asbestos.
 - ii) During the asbestos removal a sign "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400 mm x 300 mm is to be erected in a visible position on the site to the satisfaction of Council.
 - iii) Waste disposal receipts must be provided to Council / Principal Certifying Authority as proof of correct disposal of asbestos laden waste.
 - iv) All removal of asbestos must comply with the requirements of WorkCover and Leichhardt Council.
 - v) An asbestos clearance certificate prepared by a qualified occupation hygienist must be provided at the completion of the demolition works.

PRIOR TO THE RELEASE OF A CONSTRUCTION CERTIFICATE

- 3. In accordance with the provisions of the *Environmental Planning and Assessment Act 1979* construction works approved by this consent must not commence until:
 - a) A Construction Certificate has been issued by Council or an Accredited Certifier. Either Council or an Accredited Certifier can act as the "Principal Certifying Authority."
 - b) A Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment.

- c) At least two days notice, in writing has been given to Council of the intention to commence work.

The documentation required under this condition must show that the proposal complies with all Development Consent conditions and is not inconsistent with the approved plans, the Building Code of Australia and the relevant Australian Standards.

- 4. Amended plans are to be submitted incorporating the following amendments:
 - a) The additional landscaping as shown on the ground floor plan DA plans shall be clearly shown in colour as new works on the construction certificate plans.

Details demonstrating compliance with the requirements of this condition are to be marked on the plans and be submitted to the Principal Certifying Authority's satisfaction prior to the issue of any Construction Certificate.

- 5. Any air conditioning unit on the site must be installed and operated at all times so as not to cause "Offensive Noise" as defined by the Protection of the Environment (Operations) Act 1997.

The system/s shall be operated as follows:

- a) Domestic air conditioners must not be audible in nearby dwellings between:
 - i) 10:00pm to 7:00am on Monday to Saturday; and
 - ii) 10:00pm to 8:00am on Sundays and Public Holidays.
- b) At any other time the systems and associated equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background $L_{A90, 15min}$ noise level, measured in the absence of the noise source/s under consideration by 5dB(A).

The source noise level shall be assessed as an $L_{Aeq, 15min}$ and adjusted in accordance with the NSW Environment Protection Authority's Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance).

Air conditioning units must be installed in accordance with plans referenced in condition 1 or to satisfy provisions of the State Environmental Planning Policy (Exempt & Complying Codes) 2008.

Details demonstrating compliance with the requirements of this condition and the acoustic measures to be employed to achieve compliance with this condition are to be submitted for approval to the Principal Certifying Authority prior to the issue of any Construction Certificate.

- 6. Prior to the issue of the Construction Certificate the Principal Certifying Authority is to ensure that the plans state that no high front gutters will be installed.
- 7. The following requirements are to be incorporated into the development detailed on the Construction Certificate plans and provided prior to the issue of a Construction Certificate:

- a) No rainforest timbers or timbers cut from old growth forests are to be used in the construction of the development. Timbers to be used are to be limited to any plantation, regrowth or recycled timbers, or timbers grown on Australian Farms or State Forest Plantations.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

8. In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy 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. The Long Service Levy is payable prior to the issue of a Construction Certificate.

Details demonstrating compliance are to be shown on the plans submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

9. Materials and finishes must be complementary to the predominant character of the area, and any existing buildings and the period of construction of the buildings. New materials that are not depicted on the approved plans must not be used. Highly reflective wall or roofing materials and glazing must not be used. In this regard, the roofing of the stairwell shall comprise of either heritage barrel rolled traditional corrugated galvanised steel or pre-coloured traditional corrugated galvanised steel in a colour equivalent to Colorbond colour "Windspray" or "Wallaby" which are suitable modern equivalents of traditional roofing in the Leichhardt Municipality. Materials must be designed so as to not result in glare (maximum normal specular reflectivity of visible light 20%) or that causes any discomfort to pedestrians or neighbouring properties. Details of finished external surface materials, including colours and texture must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority.

10. The following fire upgrading is required pursuant to Clause 94 of the *Environmental Planning and Assessment Regulation 2000*:

- The building is to be provided with smoke alarm system that complies with *AS3786-1993: Smoke Alarms* and the smoke alarms must be connected to the consumer mains electrical power supply and interconnected where there is more than one alarm with a stand-by (battery back-up) power supply. The smoke alarm system must be installed in suitable locations on or near the ceiling in accordance with Part 3.7.2 of the Building Code of Australia.

Amended plans and specifications demonstrating compliance with this condition must be submitted to the satisfaction of the Principal Certifying Authority with the application prior to the issuing of a for a Construction Certificate.

Note: Where an existing system complying with the above requirements is already installed in the building, evidence of this should be submitted with the application for a Construction Certificate.

11. A Certificate prepared by an appropriately qualified and 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 must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal

Certifying Authority. The certificate shall 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.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

12. A Soil and Water Management Plan must be provided prior to the issue of a Construction Certificate. The Soil and Water Management plan must be designed to be compatible with the document Planning for Erosion and Sediment Control on Single Residential Allotments or Managing Urban Stormwater–Soils & Construction Volume 1 (2004) available at www.environment.nsw.gov.au and the Construction Management and Traffic Management Plan referred to in condition/s of this Development Consent and must address, but is not limited to the following issues:
 - a) Minimise the area of soils exposed at any one time.
 - b) Conservation of top soil.
 - c) Identify and protect proposed stockpile locations.
 - d) Preserve existing vegetation. Identify revegetation technique and materials.
 - e) Prevent soil, sand, sediments leaving the site in an uncontrolled manner.
 - f) Control surface water flows through the site in a manner that:
 - i) Diverts clean run-off around disturbed areas;
 - ii) Minimises slope gradient and flow distance within disturbed areas;
 - iii) Ensures surface run-off occurs at non erodable velocities;
 - iv) Ensures disturbed areas are promptly rehabilitated.
 - g) Sediment and erosion control measures in place before work commences.
 - h) Materials are not tracked onto the road by vehicles entering or leaving the site.
 - i) Details of drainage to protect and drain the site during works.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

13. The approved plans must be checked online with Sydney Water Tap In 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. A copy of this approval must be supplied with the Construction Certificate application. Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 132092.

The Certifying Authority must ensure that the appropriate approval has been provided prior to the issue of a Construction Certificate.

14. Prior to the issue of a Construction Certificate, the applicant must prepare a Construction Management and Traffic Management Plan. The following matters should be addressed in the plan (where applicable):

- a) A plan view of the entire site and frontage roadways indicating:
 - i) Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways.
 - ii) The locations of work zones (where it is not possible for loading/unloading to occur on the site) in the frontage roadways accompanied by supporting documentation that such work zones have been approved by the Local Traffic Committee and Council.
 - iii) Location of any proposed crane and concrete pump and truck standing areas on and off the site.
 - iv) A dedicated unloading and loading point within the site for construction vehicles, plant and deliveries.
 - v) The proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period.
- b) Noise and vibration
During excavation, demolition and construction phases, noise & vibration generated from the site must be controlled. Refer to other conditions of this consent. If during excavation, rock is encountered, measures must be taken to minimise vibration, dust generation and impacts on surrounding properties. Refer to Environmental Noise Management Assessing Vibration: a technical Guideline (Department of Environment and Conservation, 2006) www.epa.nsw.gov.au for guidance and further information.
- c) Occupational Health and Safety
All site works must comply with the occupational health and safety requirements of the New South Wales Work Cover Authority.
- d) Toilet Facilities
During excavation, demolition and construction phases, toilet facilities are to be provided on the site, at the rate of one toilet for every twenty (20) persons or part of twenty (20) persons employed at the site. Details must be shown on the plan.
- e) Traffic control plan(s) for the site
All traffic control plans must be in accordance with the Roads and Maritime Services publication "Traffic Control Worksite Manual"

Approval is to be obtained from Council for any temporary road closures or crane use from public property. Applications to Council shall be made a minimum of 4 weeks prior to the activity proposed being undertaken.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

15. A Waste Management Plan (WMP) is to be provided in accordance with **Part D – Waste – Development Control Plan 2013**. The Plan must address all issues identified in the DCP including but not limited to:

- a) Estimated volume (m3) or weight (t) of materials that are reused, recycled or removed from site.
- b) On site material storage areas during construction.
- c) Material and methods used during construction to minimise waste.
- d) Nomination of end location of all waste and recycling generated from a facility authorised to accept the material type for processing or disposal and retention of waste dockets to be made available to Council Officer on request
- e) A clear statement within the Waste Management Plan of responsibility for the transferral of waste and recycling bins within the property and between floors where applicable to the collection point in accordance with DCP 2013.

All requirements of the approved Waste Management Plan must be implemented during the demolition, excavation and construction of the development.

PRIOR TO WORKS COMMENCING OR ISSUE OF A CONSTRUCTION CERTIFICATE (WHICHEVER OCCURS FIRST)

16. Prior to the commencement of demolition works or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit and inspection fee must be 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 (FOOT)	\$2,152.50
Inspection fee (FOOTI)	\$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 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.

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

17. A dilapidation report including a photographic survey of the following adjoining properties must be provided to Principal Certifying Authority prior to any demolition or works commencing on the site or the issue of a Construction Certificate (whichever comes first). The dilapidation report must detail the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property	Structures / Area
9B Johnston Street, Balmain East	Dwelling house

If excavation works are proposed the dilapidation report must report on the visible and structural condition of neighbouring structures within the zone of influence of the excavations. This zone is defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

The dilapidation report is to be prepared by a practising Structural Engineer. All costs incurred in achieving compliance with this condition shall be borne by the applicant. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written correspondence from the owners of the affected properties or other evidence must be obtained and submitted to the Principal Certifying Authority in such circumstances that demonstrates such documentation has been received. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the

satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

18. Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent shall 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.

Applications for such Permits shall be submitted and approved by Council prior to the commencement of the works associated with such activity.

PRIOR TO THE COMMENCEMENT OF WORKS

19. The proposed structure(s) to be erected must stand wholly within the boundaries of the subject site. No portion of the proposed structure, including gates and doors during opening and closing operations, shall encroach onto adjoining properties or upon public property.

To ensure that the location of the building satisfies the provision of the approval, the footings and walls within one (1) metre of the property boundaries must be set out by or the location certified by a registered surveyor in accordance with the approved plans, prior to the commencement of works.

20. The site must be secured with temporary fencing prior to any works commencing.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public property to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. Additionally an awning

is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property, where necessary.

Separate approval is required under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property. Approvals for hoardings, scaffolding on public land must be obtained and clearly displayed on site for the duration of the works.

Any hoarding, fence or awning is to be removed when the work is completed and must be maintained clear of any advertising.

21. The *Home Building Act 1989* requires that insurance must be obtained from an insurance company approved by the Department of Fair Trading prior to the commencement of works approved by this Development Consent.

A copy of the certificate of insurance must be submitted to the Certifying Authority prior to the works commencing.

If the work is to be undertaken by an owner-builder, written notice of their name and owner-builder permit number must be submitted to the Certifying Authority.

In all other cases, written notice must be given to the Certifying Authority of:

- a) the name and licence number of the principal contractor; and
- b) reasons why a certificate of insurance is not required.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

22. Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands shall take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.
23. Prior to the commencement of works, the Principal Certifying Authority shall be notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
24. At least forty-eight (48) hours prior to the commencement of works, a notice of commencement form (available on Council's web page) and details of the appointed Principal Certifying Authority shall be submitted to Council.
25. Prior to the commencement of works, a sign must be erected in a prominent position on the site (for members of the public to view) on which the proposal is being carried out. The sign must state:
- a) Unauthorised entry to the work site is prohibited.
 - b) The name of the principal contractor (or person in charge of the site) and a

telephone number at which that person may be contacted at any time for business purposes and outside working hours.

- c) The name, address and telephone number of the Principal Certifying Authority for the work.

Any such sign must be maintained while the work is being carried out, but must be removed when the work has been completed.

Photographic evidence demonstrating compliance with the requirements of this condition is to be submitted to the satisfaction of the Principal Certifying Authority and Council for records purposes prior to the commencement of any onsite work.

DURING WORKS

- 26. Building materials and machinery are to be located wholly on site unless separate consent (Standing Plant Permit) is obtained from Council/ the roads authority. Building work is not to be carried out on the footpath.

Construction materials and vehicles shall not block or impede public use of the footpath or roadway.

- 27. The site must be appropriately secured and fenced at all times during works.
- 28. Unless otherwise approved by Council, excavation, demolition, construction or subdivision work shall only be permitted during the following hours:
 - a) 7:00 am to 6:00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
 - b) 8:00 am to 1:00 pm on Saturdays with no demolition works occurring during this time; and
 - c) at no time on Sundays or public holidays.

Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.

In the case that a standing plant or special permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.

This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving shall be limited to:

8:00 am to 12:00 pm, Monday to Saturday; and
2:00 pm to 5:00 pm Monday to Friday.

The Proponent shall not undertake such activities for more than three continuous hours and shall provide a minimum of one 2 hour respite period between any two periods of such works.

“Continuous” means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.

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.

29. In addition to meeting the specific performance criteria established under this consent, the Applicant shall implement all reasonable and feasible measures to prevent and/or minimise any harm to the environment that may result from the demolition, construction or operation/use of the development.
30. Any new information revealed during development works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.
31. The development must be inspected at the following stages by the Principal Certifying Authority during construction:
 - a) after excavation for, and prior to the placement of, any footings, and
 - b) prior to pouring any in-situ reinforced concrete building element, and
 - c) prior to covering of the framework for any floor, wall, roof or other building element, and
 - d) prior to covering waterproofing in any wet areas, and
 - e) prior to covering any stormwater drainage connections, and
 - f) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
32. A copy of the approved plans and this consent must be kept on site for the duration of site works and in the case of any commercial or industrial premise for the duration of the use/trading. Copies shall be made available to Council Officer's upon request.
33. Stormwater runoff from the proposed development shall be collected and discharged to the existing house drainage system via 100mm UPVC pipe. No charged lines or pump out system is permitted. The existing house drainage system shall be tested by a qualified plumber to ensure it functions satisfactorily in discharging stormwater runoff. If it doesn't, the system shall be repaired /replaced to operate satisfactorily.
34. Sedimentation controls, tree protection measures and safety fencing (where relevant) shall be maintained during works to ensure they provide adequate protection during the course of demolition, excavation and construction works. Materials must be stored in a location and manner to avoid material being washed to drains or adjoining properties.

The requirements of the Soil and Water Management Plan must be maintained at all times during the works and shall not be removed until the site has been stabilised to the Principal Certifying Authority's satisfaction.

Material from the site is not to be tracked onto the road by vehicles entering or leaving the site. At the end of each working day any dust/dirt or other sediment shall be swept off the road and contained on the site and not washed down any stormwater pit or gutter.

The sediment and erosion control measures are to be inspected daily and defects or system failures are to be repaired as soon as they are detected.

35. No trees on public property (footpaths, roads, reserves etc) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.

Prescribed trees protected by Council's 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 THE ISSUE OF AN OCCUPATION CERTIFICATE

36. An Occupation Certificate must be obtained prior to any use or occupation of the development or part thereof. The Principal Certifying Authority must ensure that all works are completed in accordance with this consent including all conditions.

37. A second Dilapidation Report including photos of any damage evident at the time of inspection must be submitted after the completion of works. A copy of this Dilapidation Report must be given to the property owners referred to in this Development Consent. The report must:

- Compare the post construction report with the pre-construction report required by these conditions,
- Clearly identify any recent damage and whether or not it is likely to be associated with the development works including suggested remediation methods.

A copy must be lodged with Council and the Principal Certifying Authority prior to the issue of an Occupation Certificate. Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

38. You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. It is responsibility of applicant's contractor to verify location of the utility services with the relevant service authority. 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 shall be at no cost to Council and undertaken before the issue of an Occupation Certificate.
39. Prior to the issue of the Occupation Certificate the Principal Certifying Authority is to confirm that no high front gutters have been installed.
40. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must

ensure that all works have been completed in accordance with the approved Waste Management Plan referred to in this development consent.

Proof of actual destination of demolition and construction waste shall be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

41. Prior to the release of an Occupation Certificate, the Principal Certifying Authority must be satisfied that the development complies with:
- the approved plans;
 - BASIX certificate (where relevant),
 - approved documentation (as referenced in this consent); and
 - conditions of this consent.

ONGOING CONDITIONS OF CONSENT

42. The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within seventy-two (72) hours of its application.
43. Any lighting of the premises shall be installed and maintained in accordance with Australian Standard AS 4282-1997: *Control of the Obtrusive Effects of Outdoor Lighting* so as to avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads. The intensity, colour or hours of illumination of the lights shall be varied at Council's discretion if in the opinion of an Authorised Council Officer it is considered there to be have adverse effects on the amenity of the area.
44. The premises shall not be used for any purpose other than that stated in the Development Application, i.e. dwelling house without the prior consent of the Council unless the change to another use is permitted as exempt or complying development under *Leichhardt Local Environment Plan 2013* or *State Environmental Planning policy (Exempt and Complying Codes) 2008*.

The use of the premises as a dwelling house, is defined under the *Leichhardt Local Environmental Plan 2013*.

PRESCRIBED CONDITIONS

A. BASIX Commitments

Under clause 97A of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the development are fulfilled. The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

In this condition:

- a) Relevant BASIX Certificate means:
- i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under Section 4.55 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
 - ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and

- b) BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.

B. Building Code of Australia

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

C. Home Building Act

- 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given Leichhardt Council written notice of the following:
 - 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, or
 - 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.
- 2) If arrangements for doing residential building work are changed while the work is in progress so that the information submitted to Council is out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

D. Site Sign

- 1) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - a) stating that unauthorised entry to the work site is prohibited;
 - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
 - c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while building work or demolition work is being carried out, but must be removed when the work has been completed.

E. Condition relating to shoring and adequacy of adjoining property

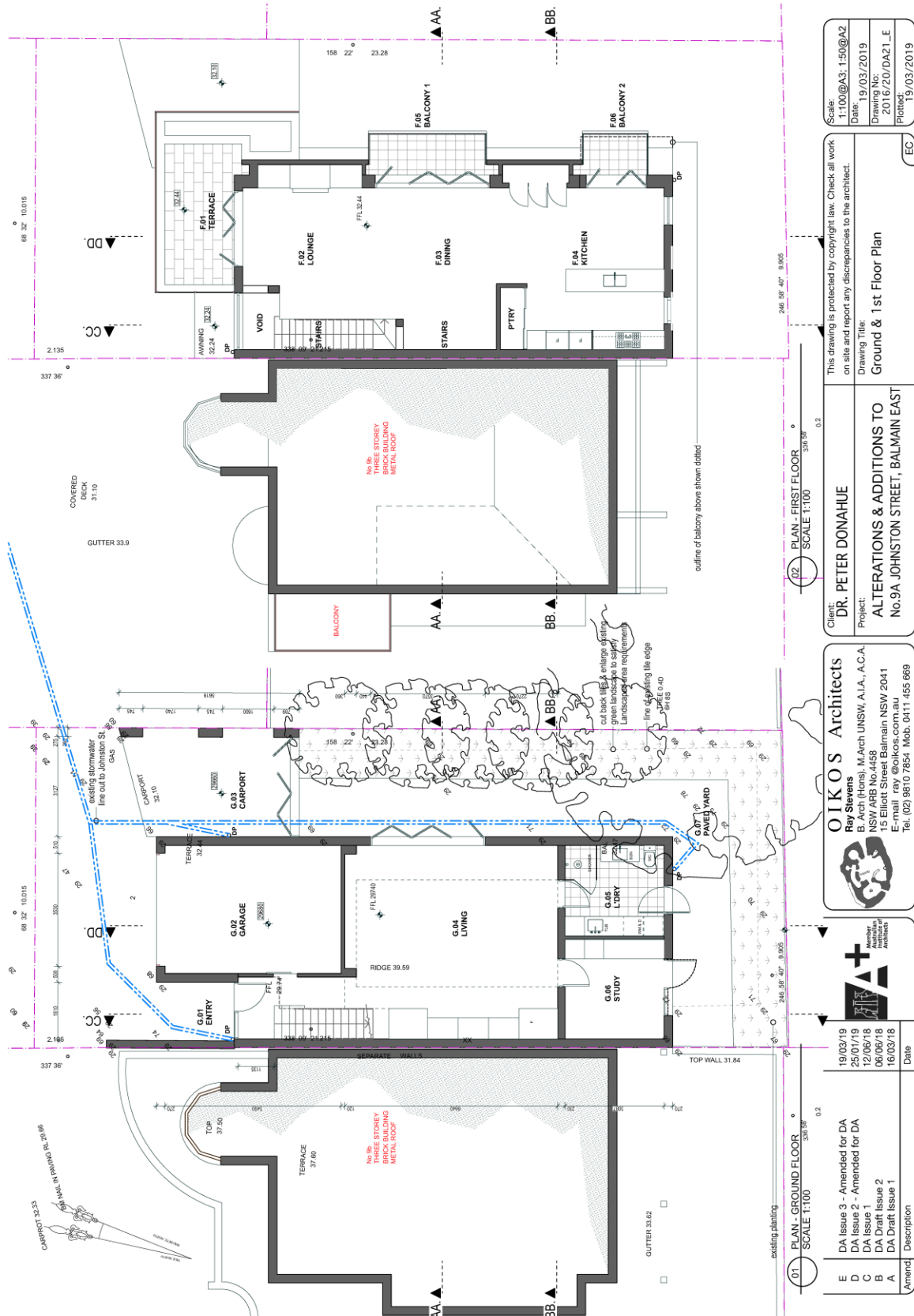
- 1) For the purposes of section 4.17(11) of the Act, it is a prescribed condition of development consent that if the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - a) protect and support the adjoining premises from possible damage from the excavation, and
 - b) where necessary, underpin the adjoining premises to prevent any such damage.
- 2) The condition referred to in subclause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

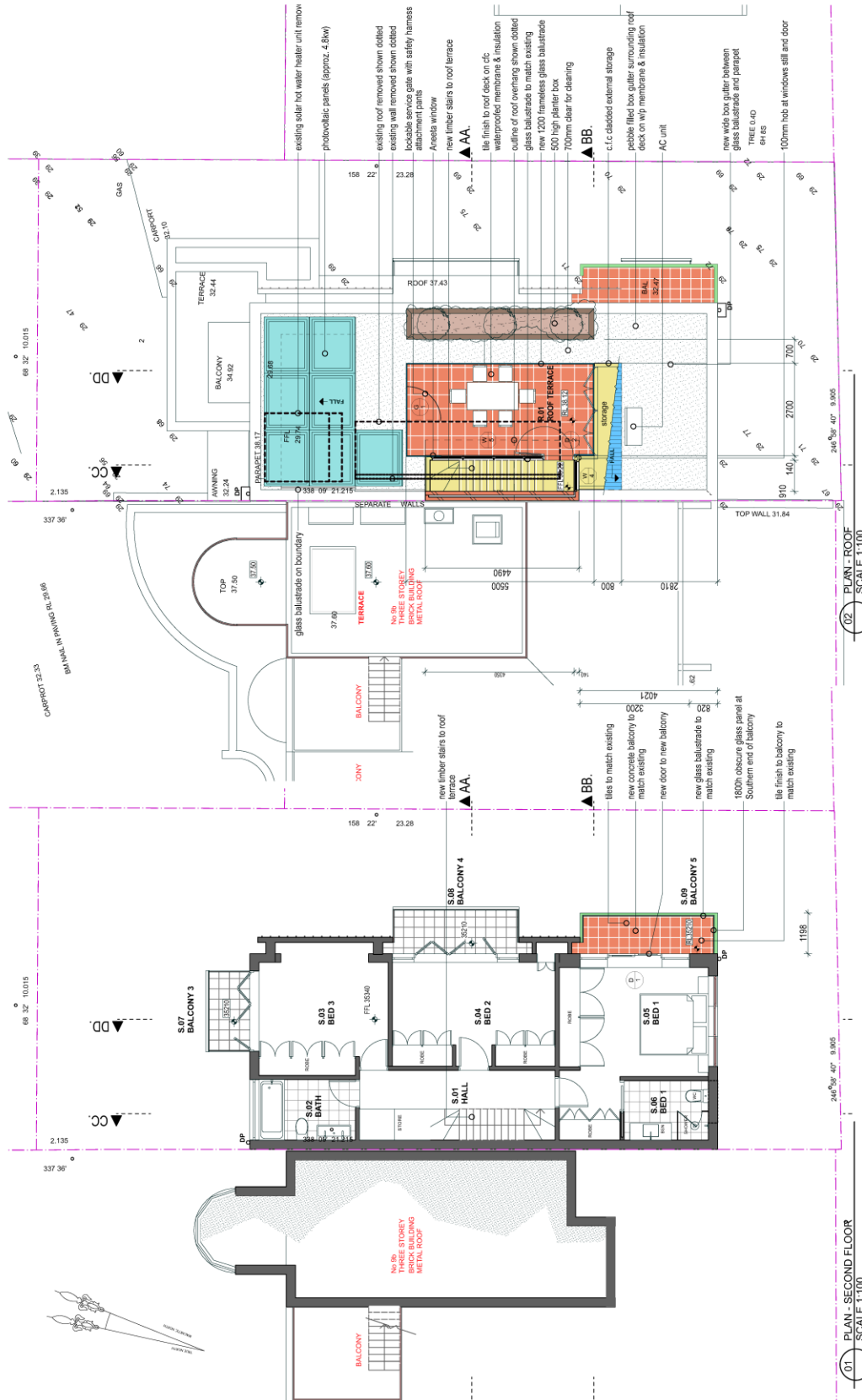
NOTES

1. This Determination Notice operates or becomes effective from the endorsed date of consent.
2. Section 8.2 of the *Environmental Planning and Assessment Act 1979* provides for an applicant to request Council to review its determination. This does not apply to applications made on behalf of the Crown, designated development or a complying development certificate. The request for review must be made within six (6) months of the date of determination or prior to an appeal being heard by the Land and Environment Court. Furthermore, Council has no power to determine a review after the expiration of these periods. A decision on a review may not be further reviewed under Section 8.2.
3. If you are unsatisfied with this determination, Section 8.7 of the *Environmental Planning and Assessment Act 1979* gives you the right of appeal to the Land and Environment Court within six (6) months of the determination date.
4. 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.
5. 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*.
6. This decision does not ensure compliance with the *Disability Discrimination Act 1992*. Applicants should investigate their potential for liability under that Act.
7. 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.
 - h) An application under the Roads Act 1993 for any footpath / public road occupation. A lease fee is payable for all occupations.
8. Prior to the issue of the Construction Certificate, the applicant must make contact with all relevant utility providers (such as Sydney Water, Energy Australia etc) whose services will be impacted upon by the development. A written copy of the requirements of each provider, as determined necessary by the Certifying Authority, must be obtained.

[illegible]





Scale:	1:100@A3; 1:50@A2
Date:	6/02/2019
Drawing No:	2016/20/DA22.E
Project:	6/02/2019

Client:	DR. PETER DONAHUE
Project:	ALTERATIONS & ADDITIONS TO No.9A JOHNSTON STREET, BALMAIN EAST

Client:	DR. PETER DONAHUE
Project:	ALTERATIONS & ADDITIONS TO No.9A JOHNSTON STREET, BALMAIN EAST

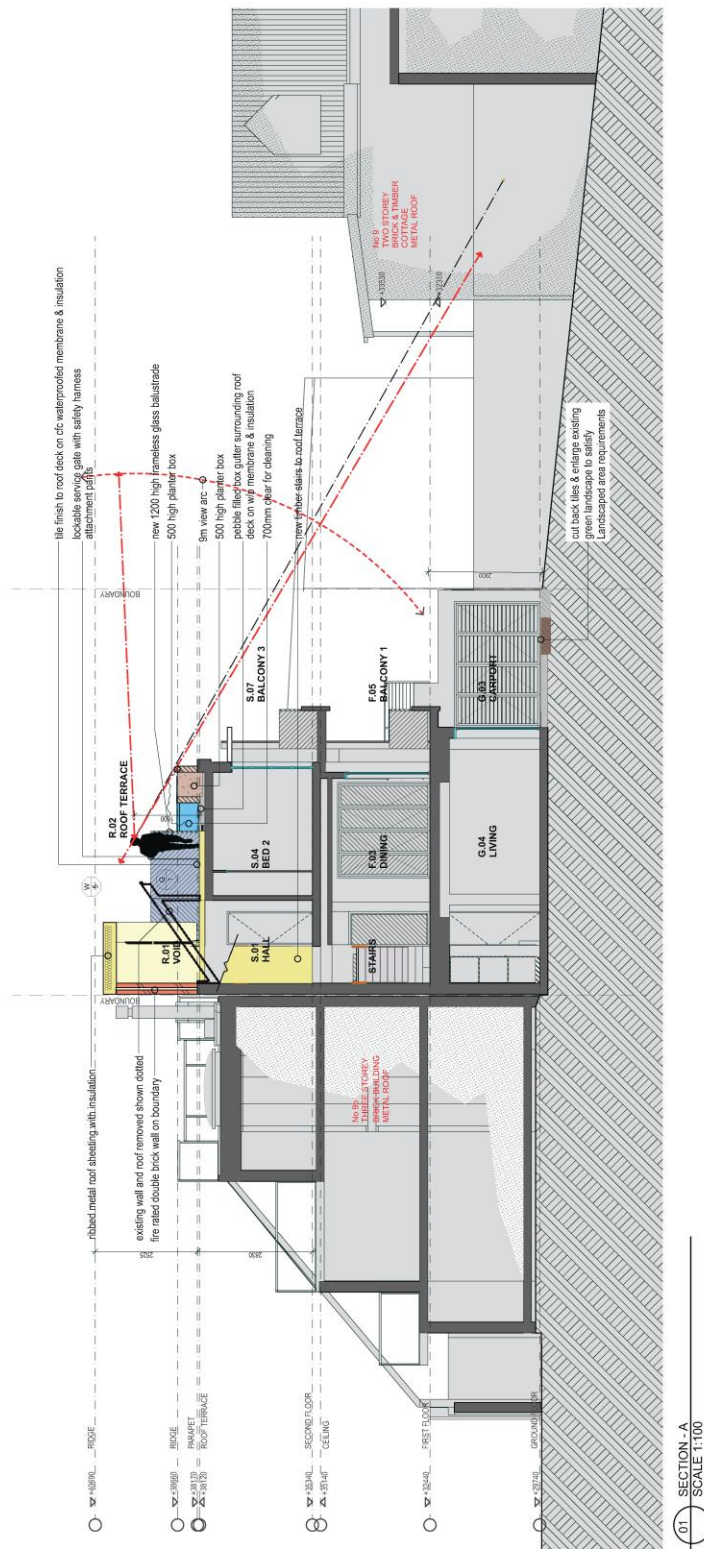
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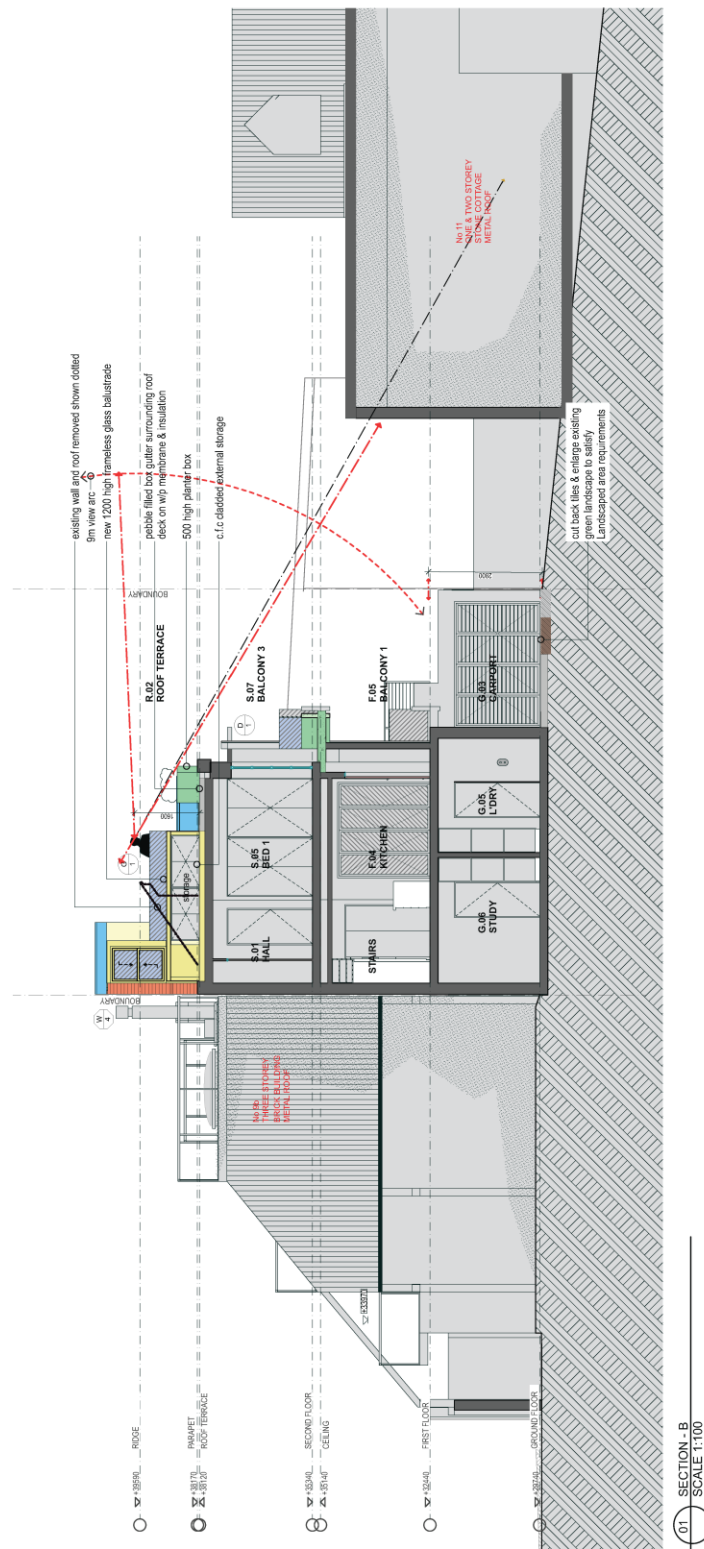
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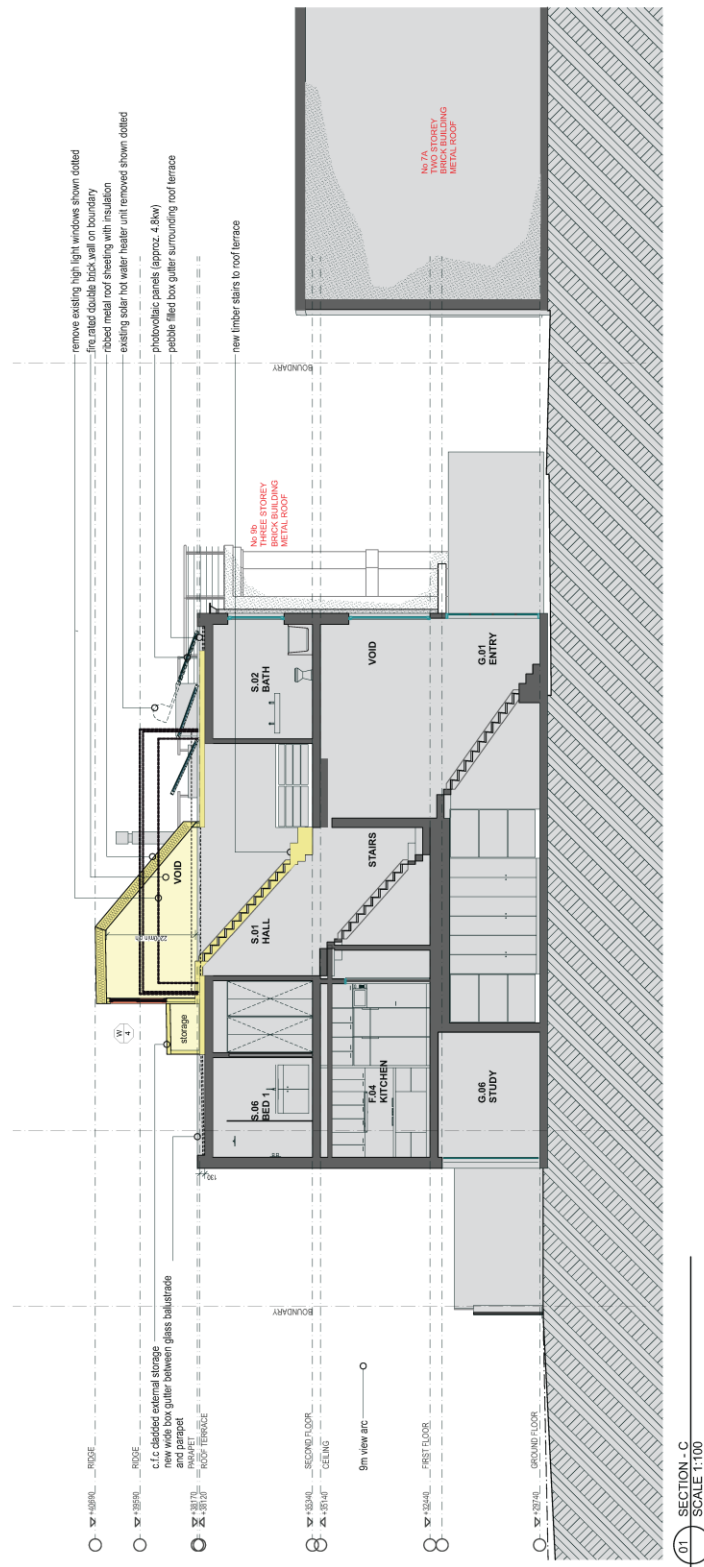
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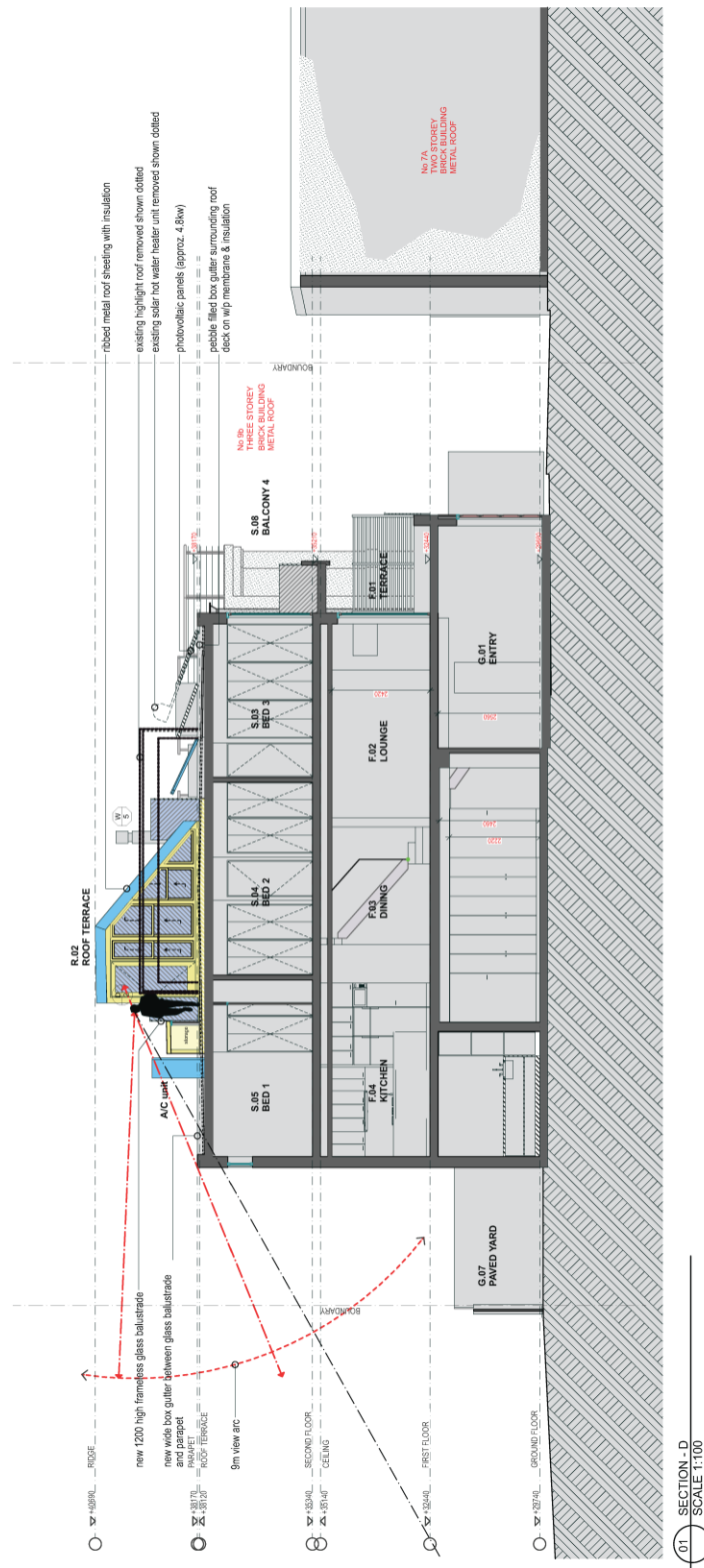
E	DA Issue 3 - Amended for DA	06/02/19	 <p>AIKOS Architects Ray Stevens Ray Stevens Pty Ltd NSW A/B No. 4458 15 Elliott Street Balmain NSW 2041 E-mail: ray@aikos.com.au Tel. (02) 9810 7854 Mob. 0411 455 669</p>	Client: DR. PETER DONAHUE	This drawing is protected by copyright law. Check all work on site and report any discrepancies to the architect.	Scale: 1:100@A3; 1:50@A2
D	DA Issue 2 - Amended for DA	25/01/19		Project: Section A		Date: 6/02/2019
C	DA Issue 1	12/06/18		Drawing Title: ALTERATIONS & ADDITIONS TO		Drawing: 2019/20/DA23.E
B	DA Draft Issue 2	06/06/18		No.9A JOHNSTON STREET, BALMAIN EAST		Plot: 2019/20/DA23.E
A	DA Draft Issue 1	16/03/18				Plot: 6/02/2019
Description		Date	EC			



E	DA Issue 3 - Amended for DA	06/02/19	<div><p>AIKOS Architects Ray Stevens B. Arch (Hons), M.Arch UNSW, A.I.A., A.C.A. NSW A.B.N. No. 4458 15 Elliott Street Balmain NSW 2041 E-mail: ray@aikos.com.au Tel. (02) 9810 7854 Mob. 0411 455 669</p></div> <div></div>	Client: DR. PETER DONAHUE	This drawing is protected by copyright law. Check all work on site and report any discrepancies to the architect.	Scale: 1:100@A3; 1:50@A2	
D	DA Issue 2 - Amended for DA	25/01/19		Project: ALTERATIONS & ADDITIONS TO No.9A JOHNSTON STREET, BALMAIN EAST		Drawing Title: Section B	Date: 6/02/2019
C	DA Issue 1	12/06/18					Drawing: 2019/02/DA23_1_E
B	DA Draft Issue 2	06/06/18					Plotting: 6/02/2019
A	DA Draft Issue 1	16/03/18					EC
	Description	Date					



E D C B A	DA Issue 3 - Amended for DA	06/02/19			OIKOS Architects Ray Stevens B. Arch (Hons), M. Arch (UNSW, A.I.A., A.C.A.) 15 Ellice Street Balmain NSW 2041 E-mail: ray@oikos.com.au Tel: (02) 9810 7854 Mob: 0411 455 669	Client: DR. PETER DONAHUE Project: ALTERATIONS & ADDITIONS TO No. 9A JOHNSTON STREET, BALMAIN EAST	This drawing is protected by copyright law. Check all work on site and report any discrepancies to the architect. Drawing Title: Section C	Scale: 1:100@A3; 1:50@A2 Date: 6/02/2019 Drawing No: 2016/20/DA24_E Pictet: 6/02/2019
	DA Issue 2 - Amended for DA	25/01/19						
	DA Issue 1	12/06/18						
	DA Draft Issue 2	06/06/18						
	DA Draft Issue 1	16/03/18						
Amend	Description	Date						

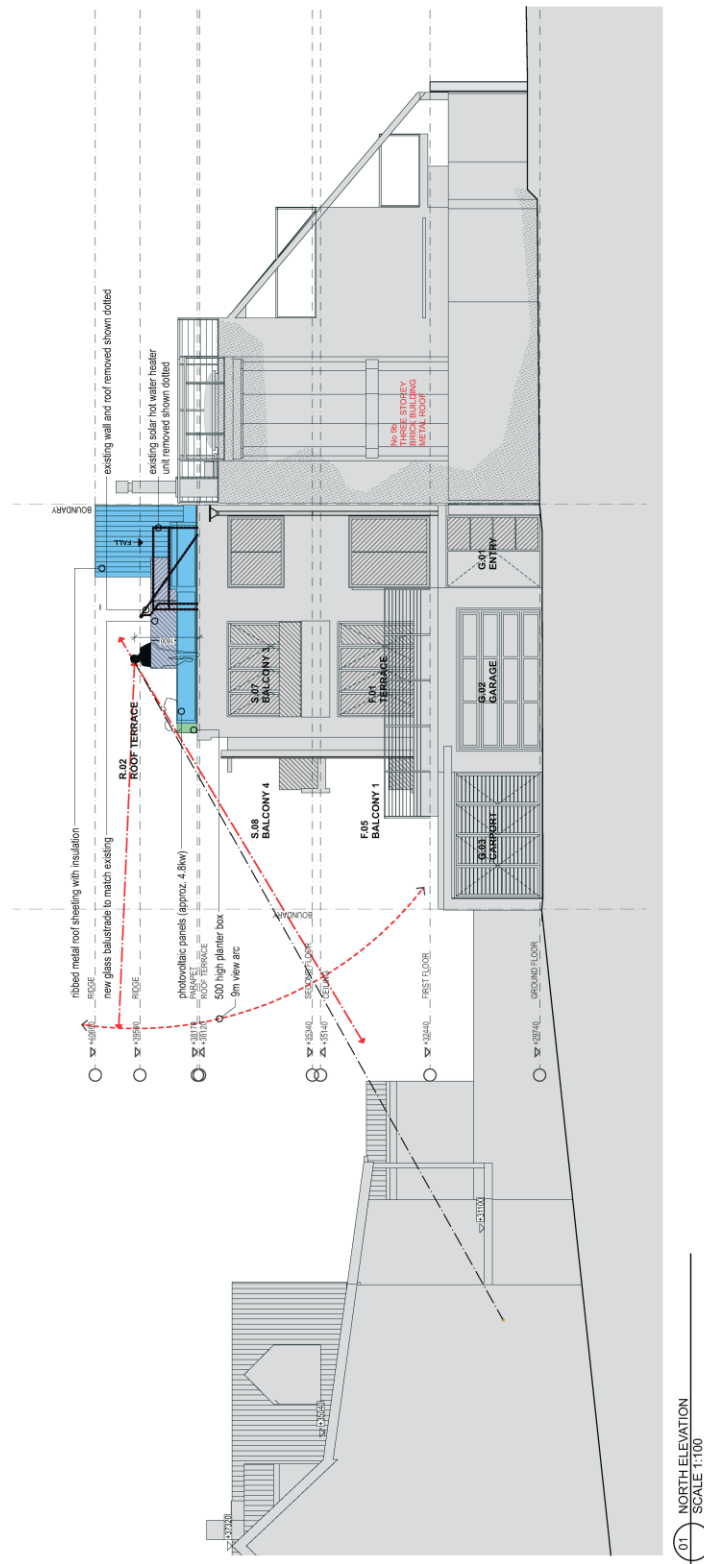


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Date:	6/02/2019
Drawing No:	2016/20/DA24.1_E
Plotted:	6/02/2019

Client:	DR. PETER DONAHUE
Project:	ALTERATIONS & ADDITIONS TO No. 9A JOHNSTON STREET, BALMAIN EAST
Drawing Title:	Section D
EC	

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Amend	Description	Date
E	DA Issue 3 - Amended for DA	06/02/19
D	DA Issue 2 - Amended for DA	25/01/19
C	DA Issue 1	12/06/18
B	DA Draft Issue 2	06/06/18
A	DA Draft Issue 1	16/03/18



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B	DA Draft Issue 2	06/06/18
A	DA Draft Issue 1	16/03/18
	Description	Date



A+
Architect
Number 1
Member of the
Australian Institute of Architects



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Client: DR. PETER DONAHUE

Project: ALTERATIONS & ADDITIONS TO NORTH ELEVATION No.9A JOHNSTON STREET, BALMAIN EAST

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Drawing Title: North Elevation

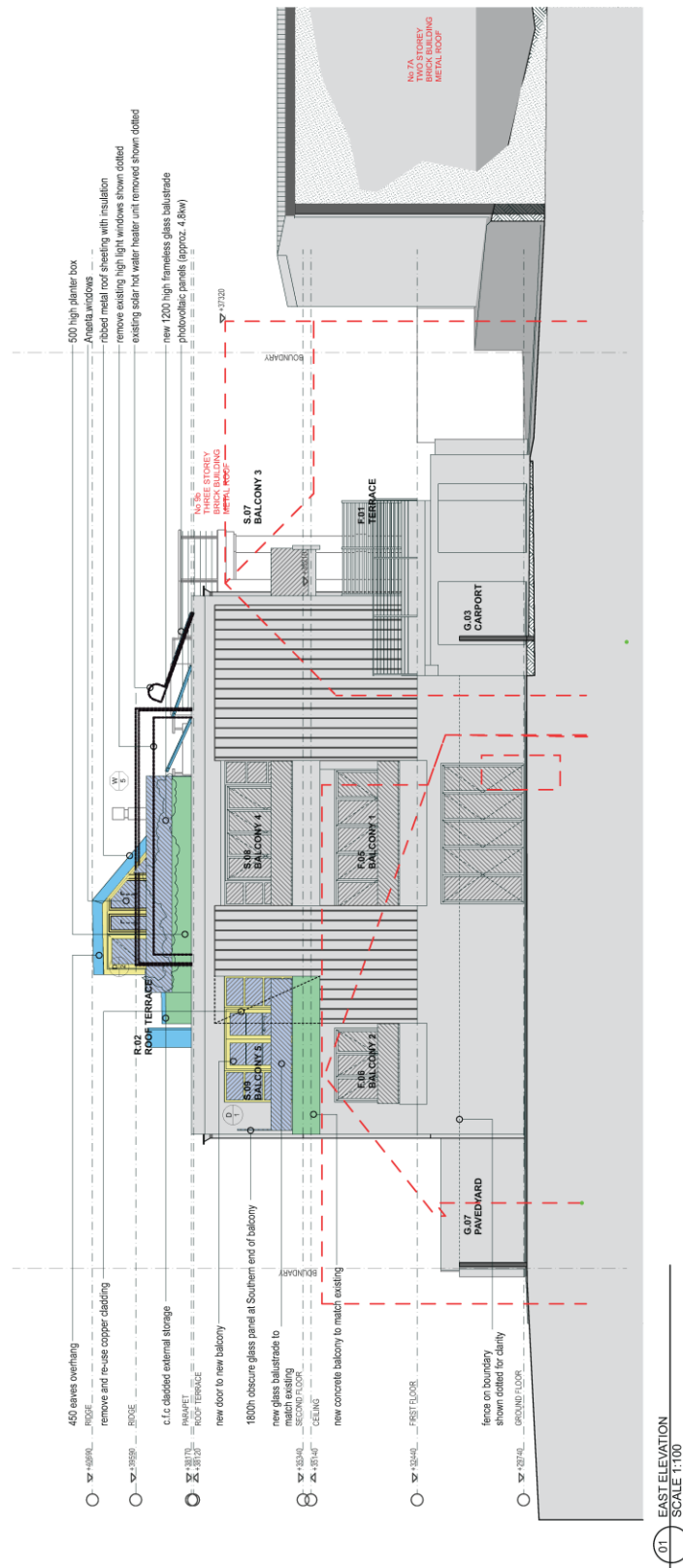
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Drawing No: 2016/20/DA25.E

Potted: 6/02/2019

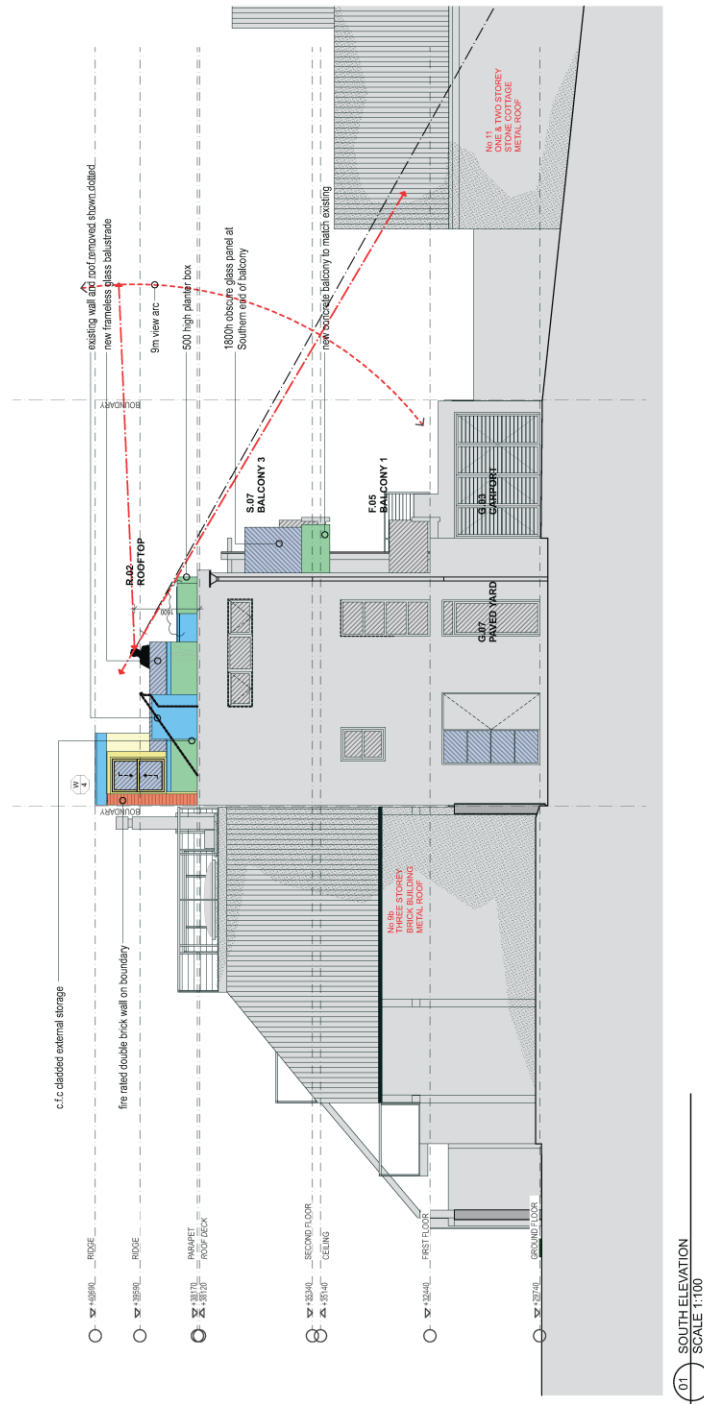
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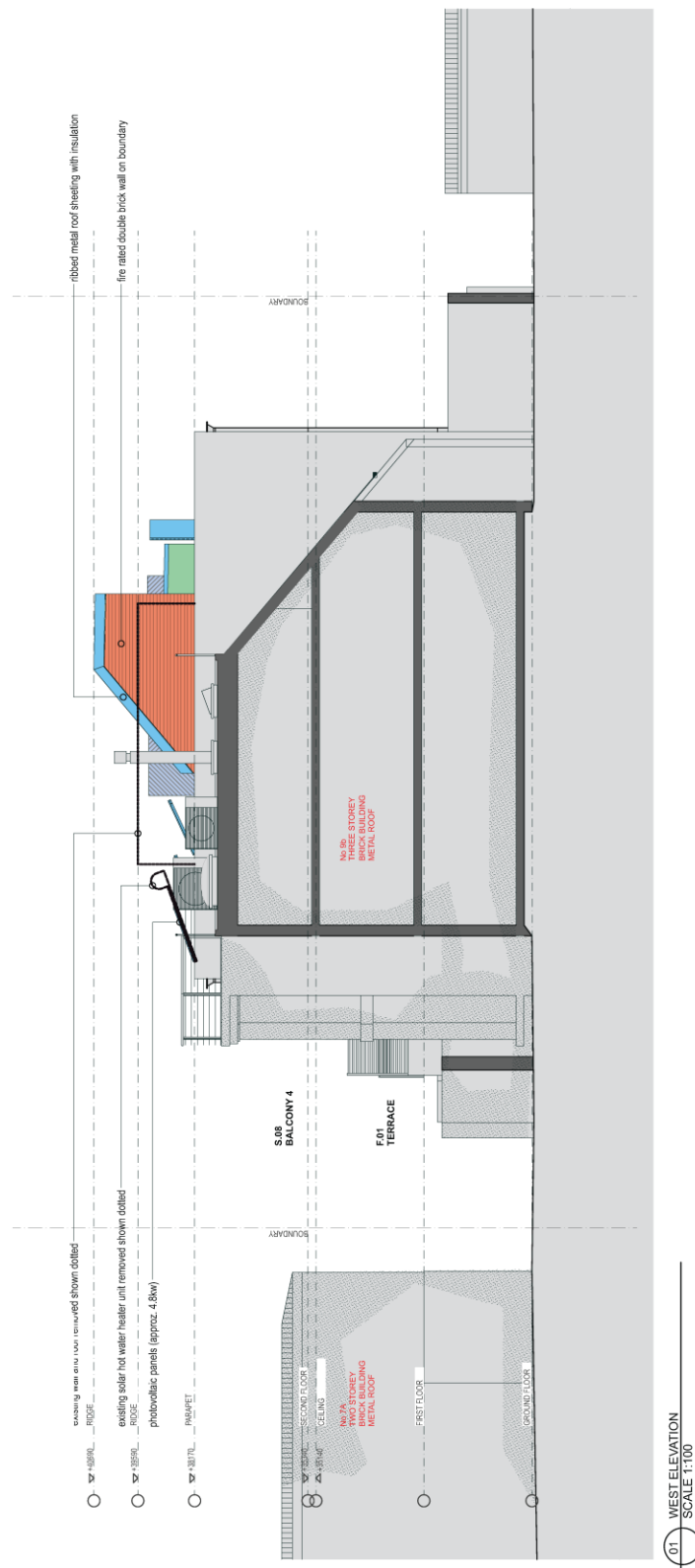
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C	DA Issue 1	12/06/18			
B	DA Draft Issue 2	06/06/18			
A	DA Draft Issue 1	16/03/18			
Amend	DA Description	Date		EC	

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<div> <div>DA Issue 3 - Amended for DA</div> <div>DA Issue 2 - Amended for DA</div> <div>DA Issue 1</div> <div>DA Draft Issue 2</div> <div>DA Draft Issue 1</div> </div>	06/02/19	<div> <div>Member of the Institute of Architects</div> <div>RAY STEVENS</div> <div>RAY STEVENS ARCHITECTS</div> </div>	<div> <div>Client:</div> <div>DR. PETER DONAHUE</div> </div>	<div> <div>This drawing is protected by copyright law. Check all work on site and report any discrepancies to the architect.</div> <div>Drawing Title:</div> <div>SOUTH ELEVATION</div> </div>	<div> <div>Scale:</div> <div>1:100@A3; 1:50@A2</div> </div>
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Drawing No:	2016/20/DA26.1.E
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Drawing Title: West Elevation	Project: ALTERATIONS & ADDITIONS TO No.9A JOHNSTON STREET, BALMAIN EAST

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C	DA Issue 1	12/06/18
B	DA Draft Issue 2	06/06/18
A	DA Draft Issue 1	16/03/18

Attachment C- Clause 4.6 Exception to Development Standards

AMENDED CLAUSE 4.6 SUBMISSION

for
Proposed alterations and additions to dwelling house
(amended plans)

at
9A Johnston Street, Balmain East

for
Peter Donahue

prepared by
John Pagan

Burrell Threlfo Pagan Pty Ltd
48 Victoria Road, Rozelle 2039

phone: 9818 8333
email: john@btpplan.com.au

March 2019

9A Johnston Street, Balmain East : Amended Clause 4.6 Submission

1. INTRODUCTION

On 26 July 2018, Oikos Architects lodged a development application for alterations and additions to the existing house at 9A Johnston Street, Balmain East. Council registered the application as D/2018/386. Because the building (as existing and as proposed to be extended) exceeded the development standard for floor space ratio (FSR), the Statement of Environmental Effects (SEE) submitted with the application included a submission under clause 4.6 of *Leichhardt Local Environmental Plan 2013* (the LEP) seeking an exception to the standard.

In response to matters raised by Council, amended drawings were submitted on 12 February 2019 that reduced the additional floor area proposed. Council staff have now advised that because of the change in floor area proposed and because of a change in the way gross floor area is assessed, an updated submission under clause 4.6 is required.

2. LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

2.1 Floor space ratio

The site is shown edged red on the Floor Space Ratio Map, by reference to which clause 4.4(2B)(b) provides that a lot with an area between 150 and 300m² is subject to a maximum floor space ratio (FSR) of 0.9:1. On the site area of 233.0m², this allows a maximum gross floor area of 209.7m². The Architect has calculated that the proposal will increase the gross floor area of the house by 3.9m² to 228.2m², resulting in an FSR of 0.98:1, which exceeds the FSR control.

Because the proposal does not comply with the development standard for floor space ratio, an exception to the standard is sought under clause 4.6 of the LEP.

2.2 Exception to Development Standard (Floor space ratio)

Clause 4.6 allows consent to be granted for development that would contravene a development standard if

- the applicant has made a written request seeking to justify the contravention and
- the consent authority is satisfied that the written request has adequately addressed the matters required to be addressed by subclause (3); that is
 - (3)(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 and*
- the consent authority is satisfied that
 - (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, and*
- the concurrence of the Director-General has been obtained

9A Johnston Street, Balmain East : Amended Clause 4.6 Submission

The clause 4.4 FSR control is a development standard that is not subject to any of the specified exclusions from the operation of clause 4.6.

In accordance with the guidelines provided by decisions of the Land and Environment Court, this submission addresses the requirements of clause 4.6 in turn.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The judgment in *Wehbe v Pittwater Council* [2007] NSWLEC 827 identified five ways of establishing under *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1) that compliance is unreasonable or unnecessary. Subsequent cases have confirmed that these ways are equally applicable under the clause 4.6 regime.

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.* As set out below, the proposed development will achieve objective (a) of the standard notwithstanding numerical non-compliance.

The objectives of the floor space ratio standard are set out in clause 4.4:

- (a) *to ensure that residential accommodation:*
 - (i) *is compatible with the desired future character of the area in relation to building bulk, form and scale, and*
 - (ii) *provides a suitable balance between landscaped areas and the built form, and*
 - (iii) *minimises the impact of the bulk and scale of buildings*
- (b) *to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale*

Bulk, form and scale compatible with desired future character: The proposal represents a minor increase in the floor area of a building that is hardly visible from the public domain and is well modulated to reduce apparent bulk. The proposed roof terrace and the access to it will have a gross floor area of less than 4m² and, to the extent that it will be visible at all, will be read as a minor rooftop element. The proposed additions are designed in contemporary style consistent with the existing house and will be similarly compatible in scale and form with the character of surrounding buildings in accordance with Council's desired future character provisions.

Balance between landscaped area and built form: The proposal will provide new landscaped area so that it meets the control requirement.

Impact of bulk and scale: The proposed minor additions are well modulated to reduce apparent bulk and are compatible in scale with the existing and surrounding buildings.

2. *The objective is not relevant to the development.* Objective (b) of the development standard, relating to non-residential development, is not relevant to the proposal.
3. *The objective would be defeated or thwarted if compliance was required.* This contention is not applicable to the proposal.
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard.* This contention is not applicable to the proposal.

9A Johnston Street, Balmain East : Amended Clause 4.6 Submission

5. *The zoning of the land is unreasonable or inappropriate.* This contention is not applicable to the proposal.

The arguments set out above under 1. and 2. show that in the circumstances compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are either not relevant or will be achieved by the proposed development.

Are there sufficient environmental planning grounds to justify contravening the development standard?

The following environmental planning grounds are relevant:

- In the context (a variety of housing ranging in age from early Victorian to contemporary and one to three storeys in height), the proposal will provide a built outcome compatible in terms of bulk and visual impact.
- The proposal will enhance the standard of accommodation for the occupants of the subject site.
- The proposal complies with most other applicable planning controls; that is, landscaped area, site coverage, private open space, solar access and car parking.
- The proposal enhances solar access to the subject site and will not unreasonably increase mid-winter shading to adjoining properties.
- The proposal will reasonably maintain existing levels of privacy.
- The proposal represents a reasonable sharing of views.
- The proposal will not generate adverse traffic or parking impacts.
- The proposed built form is satisfactory in heritage and streetscape terms.

A development that complied with the FSR standard would require partial demolition of the building. For this reason and those set out above, the proposal will achieve a better planning outcome than a compliant development of the site.

Will the proposed development be in the public interest because it is consistent with the objectives of the development standard?

In relation to the objectives of the FSR standard:

- (a)(i) *to ensure that residential accommodation is compatible with the desired future character of the area in relation to building bulk, form and scale*

The proposal represents a minor increase in the floor area of a building that is hardly visible from the public domain and is well modulated to reduce apparent bulk. The proposed roof terrace and the access to it will have a gross floor area of less than 4m² and, to the extent that it will be visible at all, will be read as a minor rooftop element. The proposed additions are designed in contemporary style consistent with the existing house and will be similarly compatible in scale and form with the character of surrounding buildings in accordance with Council's desired future character provisions.

9A Johnston Street, Balmain East : Amended Clause 4.6 Submission

(a)(ii) to ensure that residential accommodation provides a suitable balance between landscaped areas and the built form

The proposal will provide new landscaped area so that it meets the control requirement.

(a)(iii) to ensure that residential accommodation minimises the impact of the bulk and scale of buildings

The proposed minor additions are well modulated to reduce apparent bulk and are compatible in scale with the existing and surrounding buildings.

(b) to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale

This objective is not relevant, as the proposal is not for non-residential development.

Will the proposed development be in the public interest because it is consistent with the objectives of the zone?

In relation to the objectives of the R1 zone:

- *to provide for the housing needs of the community*

The proposed enhanced standard of accommodation will contribute towards meeting the demand for housing in the locality.

- *to provide for a variety of housing types and densities*

The proposed alterations and additions will contribute towards the variety of available housing types and densities.

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

This objective is not relevant, as the proposal is not for non-residential use.

- *to improve opportunities to work from home*

The amended plans have deleted the proposed addition to the study; nevertheless the proposed new roof terrace and balcony will not be inconsistent with this objective.

- *to provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas*

The proposed additions are designed in contemporary style to be compatible in pattern, orientation and character with the existing and surrounding buildings.

- *to provide landscaped areas for the use and enjoyment of existing and future residents*

The proposal will provide new landscaped area so that it meets the control requirement.

- *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*

This objective is not relevant, as the proposal does not involve subdivision.

9A Johnston Street, Balmain East : Amended Clause 4.6 Submission

- *to protect and enhance the amenity of existing and future residents and the neighbourhood*

The proposal will enhance the standard of housing for the occupants of the subject site without unreasonable adverse impacts on neighbouring properties.

Concurrence of the Director-General

The concurrence of the Director-General may be assumed by Council. The implications of a house not complying with a floor space ratio development standard of the Leichhardt LEP are local in scope and raise no matters of significance for State or regional environmental planning.

The circumstances of the case should be balanced against the usual presumption of public benefit in maintaining a development standard. The FSR of the proposed development is justified as set out above. The variation sought will enhance the utility of the property without unreasonable impacts on neighbouring amenity or the public domain.

Conclusion

This submission shows that, in the circumstances of the case, compliance with the development standard is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify contravening the development standard and that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and with those of the R1 General Residential zone.

John Pagan BTP RPIA
Town Planner
26 March 2019

Attachment D – East Balmain Conservation Area

Godden Mackay Logan

Area 17 East Balmain Conservation Area

Landform

This area is noted for its dramatic rugged sandstone headland facing east into the harbour and towards the city, with sheer sandstone cliffs to a deep and steep waterfront.



Figure 17.1 East Balmain Conservation Area Map.

History

This area comprises the earliest land to be subdivided and developed in Balmain. Surgeon Balmain was granted 550 acres in 1800. He transferred it to fellow surgeon John Gilchrist in 1801. In 1836 Surveyor Armstrong subdivided the most eastern part of Gilchrist's land, the area closest by ferry to Sydney Town, into twenty-two 2-4-acre lots. They were put up for public auction in 1836 by Sydney merchant and land agent, Frank Parbury on behalf of the absentee landowner. Subdivision of the remainder of Gilchrist's land was suspended from 1841-1852 through disputes over his estate. For its first ten years, therefore, East Balmain was an isolated maritime suburb, accessed generally only by water.

The 1836 subdivision laid out three streets – Darling, along the top of the sandstone ridge, Johnson and Nicholson, setting the framework for Balmain today. Each lot had access to one of these streets and to the waterfront. They were advertised as waterside, dock and shipping properties in 'the Deptford of Sydney'.

Purchasers were merchants, boatbuilders, master mariners who needed the deep water frontages for their shipping activities; middle class professionals and civil servants who purchased the land for investment, for later resubdivision or to build their own villa; speculative builders such as Robert Blake who saw the peninsula as a marine retreat for gentlemen and proceeded to build villas in spacious grounds for that market. The early elegant villas, eg Hampton Villa, built of stone hewn from the allotment itself, or from land nearby,

Godden Mackay Logan

stood on the higher ground, and enjoyed fresh breezes and views of Sydney Town. Close to the waterfront and the shipbuilding activities were the houses of ship captains and merchants, often of timber or stone cut from their own land.

Subdivision of these allotments, either immediately, or after the 1840s slump, required new streets for access. Unaffected by the regulations of Sydney Town, they were made only as wide as was absolutely necessary, leaving as much land as possible for sale. In the 1860s small streets were cut through the sandstone to give access to an increasing number of industries along the waterfront. Associated industry followed – timber yards that served the wooden shipbuilding yards, tanneries that used the harbour for their effluent. Subdivision of the villa estates occurred through the 1840s and 1850s, often to pay off creditors. It led to the acceleration of small suburban allotments and suburban growth to serve the growing demand for both housing and industry, the latter having been pushed from the city by rising land values. Shops, pubs and a school grew at or near the intersection of the major streets, serving a growing population. There were pockets of infill development from 1910-1930s and by the 1940s East Balmain was fully built-up. After the 1960s, as the waterfront industries closed down through changing technology, waterfront sites were taken over by the Maritime Services Board for port activities or storage. From the 1970s these under-used parcels of land were turned into public waterfront parks.

Sources

Solling, M and Reynolds, P 1997, 'Leichhardt: on the margins of the city', *Leichhardt Historical Journal*, Vol. 22, Allen and Unwin.

Significant Characteristics

- Dramatic sandstone topography.
- Views down streets, between buildings and across the headland to harbour, harbour bridge and city. Main streets all end with dramatic city/harbour/industry views.
- Main streets all terminate at water or at cliff top.
- Many very narrow, steep minor streets and rights of way follow boundaries of the first twenty-two allotments.
- Sandstone steps cut into the bedrock transfer pedestrians between levels.
- Some dense stands of trees.
- Intermix of buildings – sandstone villas, sandstone, weatherboard and brick cottages and terraces, school, maritime industrial buildings, corner stores (former), shops and pub.
- Rare early buildings, mainly in timber and stone.
- Neighbourhood shops and pubs grouped around the Darling Street/Johnston and Nicholson Streets intersection.
- Low fences – some early iron palisade fences remain.

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- Sandstone kerbs and gutters.

Statement of Significance or Why the Area is Important

- One of a number of conservation areas which collectively illustrate the nature of Sydney's early suburbs and Leichhardt's suburban growth particularly between 1871 and 1891, with pockets of infill up to the end of the 1930s (ie prior to World War II). The earliest developments here predate Leichhardt's main suburban growth with marine villas and cottages from the 1840s to modest-scale housing from 1870s through to the 1930s, and industry. It is significant for its surviving development from these periods.
- Demonstrates through the siting of recent public parks, the location of former waterfront industries. Through these parks and its remaining waterfront activities East Balmain can interpret Sydney's port history from the early 1840s, and the role of Balmain's deep water frontages in that story.
- Demonstrates through the line of its narrow streets the earliest subdivision sections of the large 550-acre Balmain grant.
- Demonstrates through its steps and cuttings the way in which early roads and pedestrian routes were forged out of the sandstone bedrock.
- Demonstrates through its mixture of sandstone villas and timber and brick cottages the major themes that formed this suburb – marine villa development and investment, port and waterfront activities, and the continuing layering of these developments.
- Through its remaining timber buildings it continues to demonstrate the nature of that major construction material in the fabric of early Sydney suburbs, and the proximity of the timber yards around the Balmain waterfront.
- It is of aesthetic significance for its dramatic sandstone landscape, closely related to the harbour, and clearly revealed below the modest scale of its nineteenth century and early twentieth century buildings. It stands in contrast with the nearby city where twentieth-century technology has forged an equally dramatic but very different man-made landscape.

Management of Heritage Values

Generally

This is a conservation area. Little change can be expected other than modest additions and discrete alterations. Buildings which do not contribute to the heritage significance of the area may be replaced with sympathetically designed infill.

Retain

- All residential or commercial structures pre-1939 belonging to the period of the growth of East Balmain.

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- All weatherboard buildings – now rare but typical of early development.
- All sandstone structures and cuttings – cottages and villas, schools, wharves/slipways, curbs and gutters, walls, bases to fences, steps.
- Unpainted face brick walls.
- All original plaster finishes to external walls. Reconstruct where necessary.
- All original architectural detail, and encourage replacement of lost elements, but only where evidence is available.
- All sandstone outcrops.
- Views between buildings from public places, especially views to the harbour.
- Trees, especially large figs which form such an important role in the landscape of the area, and views to the area from the harbour.

Avoid

- Demolition of any pre-1939 building unless the building has been so compromised that it can no longer evidence its history.
- Alteration to the form (shape) of these buildings, especially wall height or alterations to the roof over the main part of the house. Second-storey additions.
- Removal of plaster to external walls, where part of the original wall finish.
- Painting or plastering of face brick walls.
- Additional architectural detail for which there is no evidence, especially the addition of verandahs, and post-supported verandahs.
- Loss of any trees.
- Inappropriate high front brick/stone fences or walls, or new iron palisades on high brick bases.
- Interruption to the remaining sandstone kerbs and gutter.
- Widening of the narrow roads.
- Development that detrimentally affects views from the harbour, Harbour Bridge and the city to East Balmain, or disrupts its skyline when viewed from those places.

Notes

Because this area is very visible from the city and from the harbour and harbour bridge, special care is needed in dealing with changes which might alter public views from these places – scale, roof form and material colours are particularly important.

Care is needed for applications for change to any building in these areas. There are a number of very early buildings here, overlaid with later works, and

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restoration to reveal the original building could be possible in many cases. Many of the early stone houses were built by stonemason Cavill, and evidence of his work should be sought.

Attachment E: Statement of Significance Heritage Item I445, 11 Johnston Street, Balmain East (adjoining site)

House

Item details

Name of item: House

Other name/s: Former commercial building

Type of item: Built

Group/Collection: Residential buildings (private)

Category: House

Primary address: 11 Johnston Street, Balmain East, NSW 2041

County: Cumberland

Local govt. area: Leichhardt

All addresses

Street Address	Suburb/town	LGA	Parish	County	Type
11 Johnston Street	Balmain East	Leichhardt		Cumberland	Primary Address

Statement of significance:

No. 11 Johnston Street is of local historic and aesthetic significance as a representative example of an original Victorian Georgian style store originally constructed between 1841-43. The building has been sympathetically extended and converted into a house with modern attic but retains its original single storey scale and simple character and makes a positive contribution to the Johnston Street streetscape.

Note: This inventory sheet is not intended to be a definitive study of the heritage item, therefore information may not be accurate and complete. The information should be regarded as a general guide. Further research is always recommended as part of the preparation of development proposals for heritage items.

Date significance updated: 22 Jul 10

Note: The State Heritage Inventory provides information about heritage items listed by local and State government agencies. The

State Heritage Inventory is continually being updated by local and State agencies as new information becomes available. Read the OEH [copyright and disclaimer](#).

Description

Builder/Maker: George Canness

Construction years: 1841-1843

Physical description: Single storey early Victorian Regency style stone house with attic built between 1841-43, with gable-ended corrugated roof with two small dormer windows and one rendered chimney on the northern side. The front facade consists of two sections with a clear join seen by the different stonework. The existing building is located on the south side with original stone walls and a small 4 paned double hung window and dormer window above. The extended section has new stone walls and one similar window and dormer above as well as two larger double hung windows. The entrance door is located on the northern side of the building with a fibreglass verandah roof supported on timber posts. This door is located behind a high decorative stone wall and metal palisade gate.
A single storey hipped corrugated iron roof extension is built at the rear.
The building is located on the front boundary with a metal palisade gate at the front northern side.

Physical condition and/or Archaeological potential: Very Good

Date condition updated: 22 Jul 10

Modifications and dates: 1994 - Alterations and Additions (94/94)

Further information: Not shown on 2003 LEP map.

History

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Historical notes: This area comprises the earliest land to be subdivided and developed in Balmain. Surgeon William Balmain was granted 550 acres and most of the area now encompassing Balmain in 1800. In 1801 the entire grant was transferred to fellow surgeon John Gilchrist. Gilchrist never actually lived in NSW and advertised the land for sale in 1823. However, the sale was not a success. He gave power of attorney to his Sydney-based agent and merchant, Frank Parbury, who commissioned Surveyor John Armstrong to subdivide part of the land. In 1836 22, 2-4 acres lots were auctioned for sale by Parbury on behalf of the absentee landowner, Gilchrist.

The site is part of Lot 16 purchased by John Hosking, entrepreneur in 1836 and comprises the area from the bay up to Johnston Street and between Johnston Street and Union Streets. The area contained 5 acres which was divided into lots and started selling in 1841. Hoskin Street was created by this subdivision. A sailmaker, George Canness, bought Lot 4 (No. 11 Johnston Street) and built a stone cottage (later altered) between June 1841 and March 1843. He sold the house to the Sydney grocer and general merchant, Sizar Elliott in 1843. The house was called the "Balmain Stores" and sold grocery and chandlery. In 1848 Elliot settled the Balmain Stores on his wife, Sarah.

The original store has since been converted to a home and has had extensive alterations and additions in 1994.

Historic themes

Australian theme (abbrev)	New South Wales theme	Local theme
4. Settlement-Building settlements, towns and cities	Accommodation-Activities associated with the provision of accommodation, and particular types of accommodation – does not include architectural styles – use the theme of Creative Endeavour for such activities.	(none)-

Assessment of significance


SHR Criteria a) [Historical significance]	The site and building are of local historical significance as part of one of the earliest subdivisions in the area. Johnston Street was one of Balmain East's first streets and No. 11 was built in the early 1840s.
SHR Criteria b) [Associative significance]	The site and building is associated with early developers of the local area.

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SHR Criteria c) The building is a good example of an original Victorian Georgian style store built of local stone. The building retains its original form and has been sympathetically extended in its original style and materials
[Aesthetic significance]

SHR Criteria g) The building is a representative example of an original Victorian [Representativeness] Georgian style store built in the early 1840s.

Integrity/Intactness: Medium to high

Assessment criteria: Items are assessed against the  **State Heritage Register (SHR) Criteria** to determine the level of significance. Refer to the Listings below for the level of statutory protection.

Recommended management:

It is recommended that: - the single storey scale and form of the building, stone walls and gabled roof be retained and conserved; - no new opening should be made in the front façade of the building; - any additions should be restricted to the rear.

Listings

Heritage Listing	Listing Title	Listing Number	Gazette Date	Gazette Number	Gazette Page
Local Environmental Plan		1445	23 Dec 13		

Study details

Title	Year	Number	Author	Inspected by	Guidelines used
Leichhardt Municipality Heritage Study	1990		McDonald McPhee Pty Ltd (Craig Burton, Wendy Thorp)		Yes

References, internet links & images

Type	Author	Year	Title	Internet Links
Written	Max Solling and Peter Reynolds	1997	Leichhardt: On the Margins of the City	
Written	Peter Reynolds	1985	From Johnston Street to Cameron's Cove	

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Attachment F: Statement of Significance Heritage Item I446, 13 Johnston Street, Balmain East (adjoining site)

"Captain Tinley's House"

Item details

Name of item: "Captain Tinley's House"

Other name/s: Dunsley House

Type of item: Built

Group/Collection: Residential buildings (private)

Category: House

Primary address: 13 Johnston Street, Balmain East, NSW 2041

County: Cumberland

Local govt. area: Leichhardt

All addresses

Street Address	Suburb/town	LGA	Parish	County	Type
13 Johnston Street	Balmain East	Leichhardt		Cumberland	Primary Address

Statement of significance:

No. 13 Johnston Street is of local historic and aesthetic significance as an early Victorian Georgian style weatherboard house with attic built in 1845. The building retains its original single storey scale and simple character and details including open verandah and timber posts and makes a positive contribution to the Johnston Street streetscape.

Note: This inventory sheet is not intended to be a definitive study of the heritage item, therefore information may not be accurate and complete. The information should be regarded as a general guide. Further research is always recommended as part of the preparation of development proposals for heritage items.

Date significance updated: 07 Sep 10

Note: The State Heritage Inventory provides information about heritage items listed by local and State government agencies. The State Heritage Inventory is continually being updated by local and

*State agencies as new information becomes available. Read the OEH **copyright and disclaimer**.*

Description

Physical description:	<p>Single storey early Victorian Georgian style weatherboard house with attic, gable-ended corrugated steel roof with four corrugated iron barrel shaped dormers and two rendered chimneys. The front facade consists of a central timber paned door with large multipaned double hung timber windows on either side. There is a multi-paned window in the gable end and a separate curved corrugated iron verandah supported on timber posts with a timber valance running across the front with glass paned end panels.</p> <p>A single storey hipped corrugated iron roof extension is built at the rear.</p> <p>The building is set back from the street with a medium sized front garden of large trees and shrubs. A paved driveway is located on the north side of the house.</p> <p>A stone wall with hedge is located on the front boundary.</p>
Physical condition and/or Archaeological potential:	<p>Excellent</p> <p>Date condition updated: 22 Jul 10</p>
Modifications and dates:	<p>1978 - Alterations and additions (16933)</p> <p>1981 - Amended Plan (20264)</p> <p>1986 - Erection of picket fence</p> <p>2003 - Alterations and additions (D/2003/103)</p> <p>2005 - Alterations and additions (CC/2005/96)</p>
Current use:	Residential
Former use:	Residential

History

Historical notes: This area comprises the earliest land to be subdivided and developed in Balmain. Surgeon William Balmain was granted 550 acres and most of the area now encompassing Balmain in 1800. In 1801 the entire

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grant was transferred to fellow surgeon John Gilchrist. Gilchrist never actually lived in NSW and advertised the land for sale in 1823. However, the sale was not a success. He gave power of attorney to his Sydney-based agent and merchant, Frank Parbury, who commissioned Surveyor John Armstrong to subdivide part of the land. In 1836 22, 2-4 acres lots were auctioned for sale by Parbury on behalf of the absentee landowner, Gilchrist.

The site is part of Lot 16 purchased by John Hosking, entrepreneur, in 1836 and comprises the area from the bay up to Johnston Street and between Johnston Street and Union Streets. The area contained 5 acres which was divided into lots and started selling in 1841. Hosking Street was created by this subdivision. A market gardener, John T Baptist, bought Lot 15 (No. 13 Johnston Street) in 1844. In 1845 Baptist sold the land to William Richardson, a plasterer, who immediately mortgaged it and built a weatherboard house there. Richard sold the property in 1854 to Captain Thomas Tinley, a Yorkshireman from The Rocks. Captain Tinley was a shipowner who owned the 'Mountain Maid', 'Ocean Queen' and the 'William Alfred' all of which travelled to New Zealand. He set sail to trade a cargo of goods in Wellington, New Zealand. After ten weeks away he did not return and was presumed to have been lost at sea. He had made out a will to his wife and son and probate was granted in 1861. His widow stayed at 'Dunsley Cottage' until her death in 1904 and her son sold the property in 1911. Since then it passed through several owners. A Sydney Water plan dating from the 1880s shows the building with a verandah along the Johnston Street frontage and a small rear wing with an L shaped verandah.

The house remained intact until 1978 when alterations and additions were carried out. The rare Huon Pine timber lining was totally destroyed by borers but the cedar joinery, staircase and marble fireplaces were saved. The bricks and nails are handmade and the foundations are of local stone. The original timber shingles are under the roof on the verandah.

In 2003 to 2005 further alterations and additions included a first floor attic addition.

Historic themes

Australian theme (abbrev)	New South Wales theme	Local theme
4. Settlement-Building settlements, towns and cities	Accommodation-Activities associated with the provision of accommodation, and particular types of accommodation – does not include architectural styles – use the theme of Creative Endeavour for such activities.	(none)-

Assessment of significance

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SHR Criteria a)
[Historical significance] The site and building are of local historical significance as part of one of the earliest subdivisions in the area. Johnston Street was one of Balmain East's first streets and No. 13 was built in the 1845.

SHR Criteria b)
[Associative significance] The site and building is associated with early developers of the local area.

SHR Criteria c)
[Aesthetic significance] The building is a good example of an original Victorian Georgian style weatherboard house. The building retains its original form and detailing, especially the front façade.

SHR Criteria g)
[Representativeness] The building is a representative example of an original Victorian Georgian style weatherboard house built in 1845.

Integrity/Intactness: Medium to high.

Assessment criteria: Items are assessed against the  **State Heritage Register (SHR) Criteria** to determine the level of significance. Refer to the Listings below for the level of statutory protection.

Recommended management:

It is recommended that: - the single storey scale and form of the building, weatherboard walls and gabled roof be retained and conserved; - no new openings should be made in the front façade of the building; - any additions should be restricted to the rear; - any future work should consider the replacement of the barrel roof dormers with a more sympathetic design to match the original house.

Listings

Heritage Listing	Listing Title	Listing Number	Gazette Date	Gazette Number	Gazette Page
Local Environmental Plan		1446	23 Dec 13		

Study details

Title	Year	Number	Author	Inspected by	Guidelines used
Leichhardt Municipality Heritage Study	1990		McDonald McPhee Pty Ltd (Craig Burton, Wendy Thorp)		Yes

References, internet links & images

Type	Author	Year	Title	Internet Links
Written		1981	Uncovering our Past	
Written	Max Solling and Peter Reynolds	1997	Leichhardt: On the Margins of the City	
Written	Peter Reynolds	1985	Peacock, Weston, Pearson and Paul	

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