



# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	D/2018/577
<b>Address</b>	159 Allen Street, Leichhardt
<b>Proposal</b>	Demolition of existing buildings on-site. Bulk excavation. Construction of a residential flat building development including: 1 basement level for 46 car parking bays with storage and loading areas; 46 residential units within 2 residential components: Building A comprising 3-4 storeys and Building B comprising 4-5 storeys with communal roof terrace. Associated works, including landscaping and communal open space provision.
<b>Date of Lodgement</b>	31 October 2018 with amended plans submitted 30 April 2019«Lodgement_Date»
<b>Applicant</b>	Desane Properties Pty Ltd
<b>Owner</b>	Arquilla Bulk Trading Co Pty Ltd
<b>Number of Submissions</b>	12
<b>Value of works</b>	\$18,260,000
<b>Reason for determination at Planning Panel</b>	Cost of Works, Number of submissions, Variation to a development standard exceeding 10%, SEPP 65 Affected Development
<b>Main Issues</b>	<ul style="list-style-type: none"> <li>• Height non-compliance with development standard</li> <li>• Visual and acoustic privacy</li> <li>• Waste management</li> </ul>
<b>Recommendation</b>	Deferred Commencement Approval
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Clause 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site		Objectors		
Notified Area		Supporters		

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

## 1. Executive Summary

This report is an assessment of the application submitted to Council for Demolition of existing structures and construction of a residential flat building at 159 Allen Street, Leichhardt. The application was originally notified to the surrounding properties and three submissions were received. The application was subsequently renotified after Council officers became aware that an adjoining property was not notified of the application and an additional nine submissions were received.

The main issues that have arisen from the application include:

- Height of the proposal exceeding the Clause 6.17(4)(b) of the *LLEP 2013*
- Visual and acoustic privacy
- Waste Collection

The non-compliances are acceptable given the height non-compliance is as a result of the building sharing a basement and is a technical breach and therefore the application is recommended for approval.

## 2. Proposal

The proposed development includes demolition of the existing structures, excavation and construction of:

- A split four and six storey residential flat building containing 46 residential units including:
  - 14 one bedroom units
  - 26 two bedroom units
  - 6 three bedroom units
- Basement containing 41 resident car parking spaces, 5 visitor spaces and services.
- Communal roof terrace

After feedback from the Council the proposal has been amended to:

- Remove all habitable space from the communal roof terrace reducing the number of storeys from six to five for Building B
- Update the 4.6 variation request and SEE to reflect the change

## 3. Site Description

The subject site is located on the northern side of Allen Street, between Flood Street and Darley Road. The site was the subject of a planning proposal together with 141 Allen Street. The site has an area of 2793m<sup>2</sup> and is legally described as Lot X in DP 341373.

The site has a frontage to Allen Street of 43.435 metres. The site does not contain any known easements but does contain a Sydney Water asset that runs across the middle of the site.

The site currently contains an existing warehouse that covers almost the whole site but does have a car parking and loading area located in the south eastern corner of the site (Allen Street Frontage). The adjoining site to the north and east (141 Allen Street) has approvals for five four storey residential flat buildings and a single six storey residential flat building but currently contains a warehouse. The adjoining properties to the west and north west contains three storey multi dwelling housing.

The street trees on Allen Street are listed as an item of environmental heritage under the LLEP 2013. No street trees are impacted by the proposed development.



**Figure 1:** The frontage of the existing development on the site

## 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
PP_2013_LEICH_004_00	Planning Proposal to rezone land to R1 General Residential	Approved in 2015

#### Surrounding properties

Application	Proposal	Decision & Date
BA 1994 2013	Erection of 22 town houses at 161-163 Allen Street	
DA 1995 339	Strata subdivision into 22 Lots 165-169 Allen Street	
D/2015/641	Staged development application comprising: - Concept plan across both lots to	Approved by the LEC 24 October 2016 and amended 10 April 2017.

	provide for eight (8) residential flat buildings with basement parking; - Stage 1 for 141 Allen Street: demolition of existing buildings and removal of all trees, excavation for basement level and construction of six (6) residential flat buildings between four (4) and six (6) storeys above basement level comprising 140 units and associated works including basement parking for 132 vehicles.
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#### 4(b) Application history

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

Date	Discussion / Letter/ Additional Information
22 August 2018	Pre DA meeting
7 February 2019	Applicant advised of re notification and discussion with planning consultant as to why the application required re-notification.
4-15 March 2019	Discussions with Planning Consultant about the 4.6 variation and the need to consider amendments to remove the sixth floor to comply with FSR and height development standards.
30 April 2019	Applicant Submitted amended plans removing the sixth floor GFA and amending the application pursuant to Clause 4.6 of the <i>LLEP</i> .

### 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 No 65—Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *Leichhardt Local Environment Plan 2013*

The following provides further discussion of the relevant issues:

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

Pursuant to Clause 7 Council must consider if the site can be suitably remediated for the proposed use. The Application includes an Environmental Site Assessment and Review of Existing Environmental Data.

The REED states:

*“the site is probably suitable for proposed high-density residential land use with deep accessible soils in the northeast corner of the site.”*

As a result, the application provides the necessary certainty that the application can be suitably remediated for the proposed use subject to Council’s standard conditions of consent.

### ***5(a)(ii) State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development***

The development is subject to the requirements of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* (SEPP 65). SEPP 65 prescribes nine design quality principles to guide the design of residential apartment development and to assist in assessing such developments. The principles relate to key design issues including context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction and aesthetics.

A statement from a qualified Architect was submitted with the application verifying that they designed, or directed the design of, the development. The statement also provides an explanation that verifies how the design quality principles are achieved within the development and demonstrates, in terms of the Apartment Design Guide (ADG), how the objectives in Parts 3 and 4 of the guide have been achieved.

The development is acceptable having regard to the nine design quality principles.

#### *Apartment Design Guide*

The Apartment Design Guide (ADG) contains objectives, design criteria and design guidelines for residential apartment development. In accordance with Clause 6A of the SEPP, certain requirements contained within LDCP 2013 do not apply. In this regard the objectives, design criteria and design guidelines set out in Parts 3 and 4 of the ADG prevail.

The following provides further discussion of the relevant issues:

#### *Communal and Open Space*

The ADG prescribes the following requirements for communal and open space:

- Communal open space has a minimum area equal to 25% of the site.
- Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).

The proposal is required to provide 698.25m<sup>2</sup> of communal open space. The proposal provides 700 m<sup>2</sup> and relies on 216m<sup>2</sup> of communal open space on the roof terrace.

The proposal is required to provide 351m<sup>2</sup> of the communal open space which achieves the requirement for 2 hours of solar access. Approximately 163m<sup>2</sup> of the ground floor open space complies with the requirement. The application relies on the roof terraces of 216m<sup>2</sup> in area to obtain the remaining required solar access to communal spaces.

It is noted that the ADG states:

“Where rooftop communal open space is desired, ensure adequate maximum height is provided and consider secondary height controls for lift/stair access and shade structures”

The communal open space on the roof terrace is considered acceptable noting the deletion of areas that constitute a habitable storey from this level and the use of landscaping to protect the visual privacy of the surrounding dwellings.

Deep Soil Zones

The ADG prescribes the following minimum requirements for deep soil zones:

Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)
Less than 650m <sup>2</sup>	-	7%
650m <sup>2</sup> - 1,500m <sup>2</sup>	3m	
Greater than 1,500m <sup>2</sup>	6m	
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	

The development is required to provide 7% of site area or 195.51m<sup>2</sup> of Deep Soil Zones. The proposals provide for 299m<sup>2</sup> Deep Soil Zones which represents 10.7% of the site and exceeds the requirement.

Visual Privacy/Building Separation

The ADG prescribes the following minimum required separation distances from buildings to the side and rear boundaries:

Building Height	Habitable rooms and balconies	Non-habitable rooms
Up to 12 metres (4 storeys)	6 metres	3 metres
Up to 25 metres (5-8 storeys)	9 metres	4.5 metres
Over 25 metres (9+ storeys)	12 metres	6 metres

The ADG prescribes the following minimum required separation distances from buildings within the same site:

Up to four storeys/12 metres

Room Types	Minimum Separation
Habitable Rooms/Balconies to Habitable Rooms/Balconies	12 metres
Habitable Rooms to Non-Habitable Rooms	9 metres
Non-Habitable Rooms to Non-Habitable Rooms	6 metres

Five to eight storeys/up to 25 metres

Room Types	Minimum Separation
Habitable Rooms/Balconies to Habitable Rooms/Balconies	18 metres
Habitable Rooms to Non-Habitable Rooms	12 metres
Non-Habitable Rooms to Non-Habitable Rooms	9 metres

In this instance, the buildings are technically a single building within the site, however the proposal provides the 6m building separation and is compliant with the requirement.

Solar and Daylight Access

The ADG prescribes the following requirements for solar and daylight access:

- Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9.00am and 3.00pm at mid-winter.
- A maximum of 15% of apartments in a building receive no direct sunlight between 9.00am and 3.00pm at mid-winter.

The development provides adequate solar access for 33 units which represents 71.7% of the units and therefore complies with the numeric standard for solar access to living rooms and private open space.

No solar access is provided for 12 units (or 26%) between 9.00am and 3.00pm at mid-winter which represents a non-compliance of the numeric standard within the 4A-1 design criteria 3. The documents submitted by the applicant fail to address this non-compliance. In considering the non-compliance, the relevant objectives to consider are:

*To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space*

It considering the above it is noted that:

- The majority of units have the required solar access.
- The orientation of the site makes providing solar access to the south facing units at the front (southern side) of the site difficult.
- Numeric compliance with the control could be achieved by re-orientating the balconies for the south facing corner units to the sides of the site, but this would result in increased privacy impacts to adjoining properties and have a negative impact on the symmetry articulating corner elements of the building.
- The proposal provides substantial communal open space that provides suitable solar access.
- By providing the southern orientation for the living areas and Private Open Space of these units the development is providing an outlook to the heritage listed street trees which provide other amenity benefits.
- Achieving compliance with the control is difficult given the constraints of the site specific controls and development standards that stipulate building outlines and restrictive setbacks for the development.

Given the above, it is considered that the proposal is consistent with the objective 4A-1, and is therefore acceptable on merit.

Natural Ventilation

The ADG prescribes the following requirements for natural ventilation:

- At least 60% of apartments are naturally cross ventilated in the first 9 storeys of the building. Apartments at 10 storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.
- Overall depth of a cross-over or cross-through apartment does not exceed 18 metres, measured glass line to glass line.

The proposed development provides for cross ventilation for 29 units, which equates to 63% of the apartments. The cross ventilated apartment's do not exceed the 18m glass line to glass line design criteria. The proposal complies with the numeric standards for natural cross ventilation.

Ceiling Heights

The ADG prescribes the following minimum ceiling heights:

<b>Minimum Ceiling Height</b>	
Habitable Rooms	2.7 metres
Non-Habitable	2.4 metres
For 2 storey apartments	2.7 metres for main living area floor 2.4 metres for second floor, where its area does not exceed 50% of the apartment area
Attic Spaces	1.8 metres edge of room with a 30 degree minimum ceiling slope
If located in mixed used area	3.3 for ground and first floor to promote future flexibility of use

The rooms in the development achieve the 2.7m ceiling height requirement with the exception of the no-habitable rooms on the roof terrace level which achieve the required 2.4m height for non-habitable rooms.

Apartment Size

The ADG prescribes the following minimum apartment sizes:

<b>Apartment Type</b>	<b>Minimum Internal Area</b>
Studio apartments	35m <sup>2</sup>
1 Bedroom apartments	50m <sup>2</sup>
2 Bedroom apartments	70m <sup>2</sup>
3 Bedroom apartments	90m <sup>2</sup>

Note: The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.

The proposed development complies with the minimum area numeric standards for all apartments.

Apartment Layout

The ADG prescribes the following requirements for apartment layout requirements:

- Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.
- Habitable room depths are limited to a maximum of 2.5 x the ceiling height.
- In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8 metres from a window.
- Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space).
- Bedrooms have a minimum dimension of 3 metres (excluding wardrobe space).
- Living rooms or combined living/dining rooms have a minimum width of:
  - 3.6 metres for studio and 1 bedroom apartments.
  - 4 metres for 2 and 3 bedroom apartments.
- The width of cross-over or cross-through apartments are at least 4 metres internally to avoid deep narrow apartment layouts.

Open plan living rooms depths are compliant with the 8m control excluding kitchen work spaces. Bedroom spaces comply with the minimum size and dimension requirements. The living rooms of the proposal comply with the minimum width requirements. The development does not include cross through apartment layouts.

Private Open Space and Balconies

The ADG prescribes the following sizes for primary balconies of apartments:

Dwelling Type	Minimum Area	Minimum Depth
Studio apartments	4m <sup>2</sup>	-
1 Bedroom apartments	8m <sup>2</sup>	2 metres
2 Bedroom apartments	10m <sup>2</sup>	2 metres
3+ Bedroom apartments	12m <sup>2</sup>	2.4 metres

Note: The minimum balcony depth to be counted as contributing to the balcony area is 1 metres.

The ADG also prescribes for apartments at ground level or on a podium or similar structure; private open space is required instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3 metres.

The proposed development complies with the minimum area requirements for primary balconies on all apartments. The development largely complies with the balcony depth with the exception of the apartment B303 and B302 which provide a depth of 2m whereas 2.4 is required. A condition of consent is recommended to bring the proposal into compliance with this requirement.

Common Circulation and Spaces

The ADG prescribes the following requirements for common circulation and spaces:

- The maximum number of apartments off a circulation core on a single level is 8.
- For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.

The proposed development provides for no more than six apartments off a common circulation space. The building is below 10 storeys.

### Storage

The ADG prescribes the following storage requirements in addition to storage in kitchen, bathrooms and bedrooms:

Apartment Type	Minimum Internal Area
Studio apartments	4m <sup>3</sup>
1 Bedroom apartments	6m <sup>3</sup>
2 Bedroom apartments	8m <sup>3</sup>
3+ Bedroom apartments	10m <sup>3</sup>

Note: At least 50% of the required storage is to be located within the apartment.

The proposal includes storage areas in excess of the required minimum amounts.

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

A BASIX Certificate was submitted with the application together with BASIX stamped plans consistent with the regulations.

### **5(a)(iv) State Environmental Planning Policy (Infrastructure) 2007**

The application is not traffic generating development. Clause 42 requires referral to Austgrid due to the inclusion of a new electric substation. Conditions of consent have been provided by Austgrid.

### **5(a)(v) Leichhardt Local Environment Plan 2013 (LLEP 2013)**

The application was assessed against the following relevant clauses of the LLEP2013:

#### Clause 1.2 Aims of the Plan

The proposed development is consistent with the relevant objectives contained within clause 1.2 of the *LLEP 2013*.

#### Clause 2.3 Zone objectives and Land Use Table

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

***“residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.”***

The development is permitted with consent within the Zone. The development is consistent with the objectives of the R1 General Residential zone (addressed within 4.6 variation).

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

Standard (maximum)	Proposal	% of non compliance	Compliances
<b>Floor Space Ratio</b> Required: [1.5:1] [4189.5m <sup>2</sup> ]	1.5:1 4188m <sup>2</sup>	N/A	Yes
<b>Landscape Area</b> Required: 20% landscaped Site coverage less than 60%	<b>Landscaped area</b> 21% landscaped Site coverage 46%	N/A	Yes
<b>Height of Building</b> site specific controls in clause 6.17(4)(b) 3 to 4 storeys stepped (with 5 storeys for the rear	3 to 5 storeys	20%	No

The following provides further discussion of the relevant issues:

#### 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 6.17(4)(b) – Development of land at 141 and 159 Allen Street, Leichhardt

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 proposed development seeks to contravene 6.17 (4) in that the height of the proposal of Building B. The proposal has a height of five storeys for Building B which is a breach of the development standard as it shares a basement with Building A and as a result is one building under the BCA therefore having a street frontage to Allen Street.

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 submitted a written request pursuant to Clause 4.6 of the *LLEP 2013*. The written request argues that strict compliance would be unreasonable in the circumstances as the non-compliance is a result of the building sharing a basement and therefore being a single building. In the absence of the shared basement, the proposal would comply with the development standard. The proposal complies with the built form envisaged specifically for the site and therefore compliance with the development standard is unreasonable in the circumstances of the case as:

- The objectives of the development standard are achieved notwithstanding the non-compliance with the development standard.
- The underlying objective or purpose of the standard is not relevant to the development.
- The underlying object or purpose would be thwarted if compliance was required.

*“(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.”*

The applicant has addressed the matters required under Clause 4.6 Exceptions to development standards and the applicant’s justification is considered to be well founded in this instance.

In considering if the proposal is consistent with the objectives of the R1 General Residential Zone it is considered that:

- The proposal provides for housing and provides for varied apartment sizes.
- The development includes facilities to suit the needs of the residents.
- The proposal is compatible with the character of the style and orientation of the surrounding development as well as the pattern of the surrounding building and landscaping.
- The landscape areas of the site are acceptable to provide for the needs of future residents.
- The proposal protects and enhances the amenity of the existing and future residents of the neighbourhood due to acceptable amenity impacts and improved landscaping on and around the site.

In considering if the proposal is consistent with the objectives of Clause 6.17 (4), development standard it is considered that:

- The proposal facilitates development on the land.
- The proposal has a height and setback that is consistent with what is envisaged within the development controls.
- The proposal has impacts consistent with those envisaged within the planning proposal on the streetscape, character, amenity and overshadowing of surrounding properties.

The proposed development is considered to be in the public interest as it achieves the objectives for the development standard and the objectives of the zone.

The Secretary has provided concurrence.

(5) *In deciding whether to grant concurrence, the Secretary must consider:*

(a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

The granting of concurrence to the proposed variation of the development standard will not raise any issues of state or regional planning significance.

(b) *the public benefit of maintaining the development standard, and*

There is no material public benefit to the enforcing of the development standards.

(c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

No other matters are required to be considered before granting concurrence.

### 5(b) Draft Environmental Planning Instruments

There are no relevant draft environmental planning instruments that effect the development on the site.

### 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
<b>Part A: Introductions</b>	
Section 3 – Notification of Applications	Yes
<b>Part B: Connections</b>	
B1.1 Connections – Objectives	Yes
<b>Part C</b>	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.7 Site Facilities	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	Yes except were superseded by G8.9
C1.12 Landscaping	Yes
C1.14 Tree Management	Yes
<b>Part C: Place – Section 2 Urban Character</b>	
C2.2.3.2 West Leichhardt Distinctive Neighbourhood	Yes
C2.2.3.2(a) Industrial/Business Sub Areas	See below comments

<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Superseded by G8.6.3
C3.3 Elevation and Materials	Superseded by G8.6.4
C3.5 Front Gardens and Dwelling Entries	Superseded by G8.6.7
C3.6 Fences	Superseded by G8.6.4
C3.7 Environmental Performance	Superseded by G8.8
C3.8 Private Open Space	Superseded by ADG
C3.9 Solar Access	Superseded by G8.7.1
C3.10 Views	Yes
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
<b>Part D: Energy</b>	
Section 1 – Energy Management	
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	See below comments
<b>Part E: Water</b>	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	
E1.1.1 Water Management Statement	Yes
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Yes
E1.2.4 Stormwater Treatment	Yes
E1.2.5 Water Disposal	Yes
E1.2.7 Wastewater Management	Yes
<b>Part G: Site Specific Controls</b>	
Section 8 – No.141 and 159 Allan Street, Leichhardt	
G8.3 Objectives	Yes
G8.4 Desired Future Character	Yes
G8.5 Public Domain	Yes
G8.6 Built Form and Design	
G8.6.1 Building height and bulk	See below comments
G8.6.2 Building setbacks and articulation	See below comments
G8.6.3 Building Separation	Yes
G8.6.4 Building materials and finishes	Yes
G8.6.5 Design of building elements	Yes
G8.6.6 Disability access	Yes
G8.6.7 Activation of street frontages	Yes
G8.7 Residential Amenity	

G8.7.1 Solar access	See below comments
G8.7.2 Cross ventilation	Yes
G8.7.3 Open space	See below comments
G8.7.4 Visual privacy	Yes
G8.7.5 Deep soil and podium planting landscaped areas	See below comments
G8.8 Environmental Performance	Yes
G8.9 Parking and Access	Yes
G8.10 Waste Recycling materials storage and disposal	Yes

The following provides discussion of the relevant issues:

D2.3 Resource Recovery and Waste Management - Residential Development

The proposed permanent Waste collection method via the use of the easement to 141 Allen Street for the collection of waste on site is appropriate in the context of the developments and is supported. The interim waste collection method is not supported as the scale of the development is such that onsite waste collection is the appropriate method of waste collection. The circumstances of the site are not such that onsite waste collection cannot occur. The adjoining properties 141 and 159 Allen Street were envisaged being developed together and were subject to the same planning proposal.

In the event that 159 Allen Street is developed in isolation it is appropriate that an application is made to Council to amend the proposal to provide onsite collection.

In order to allow the development to occur concurrently it is recommended that a condition of consent be imposed requiring the easement to for waste collection to be in place prior to the issue of any Occupation Certificate. In the unlikely event that the development at 141 Allen Street does not proceed, an application to Council to modify the development consent can be considered with an alternative proposal for on site collection.

G8.6.1 Building Height and Bulk

The proposed development while generally consistent with the intent of the development controls by providing for a development that is consistent with the heights envisaged within Figure G40 but relocates the building footprint and maximum height of the proposal as is indicated on the below plan.

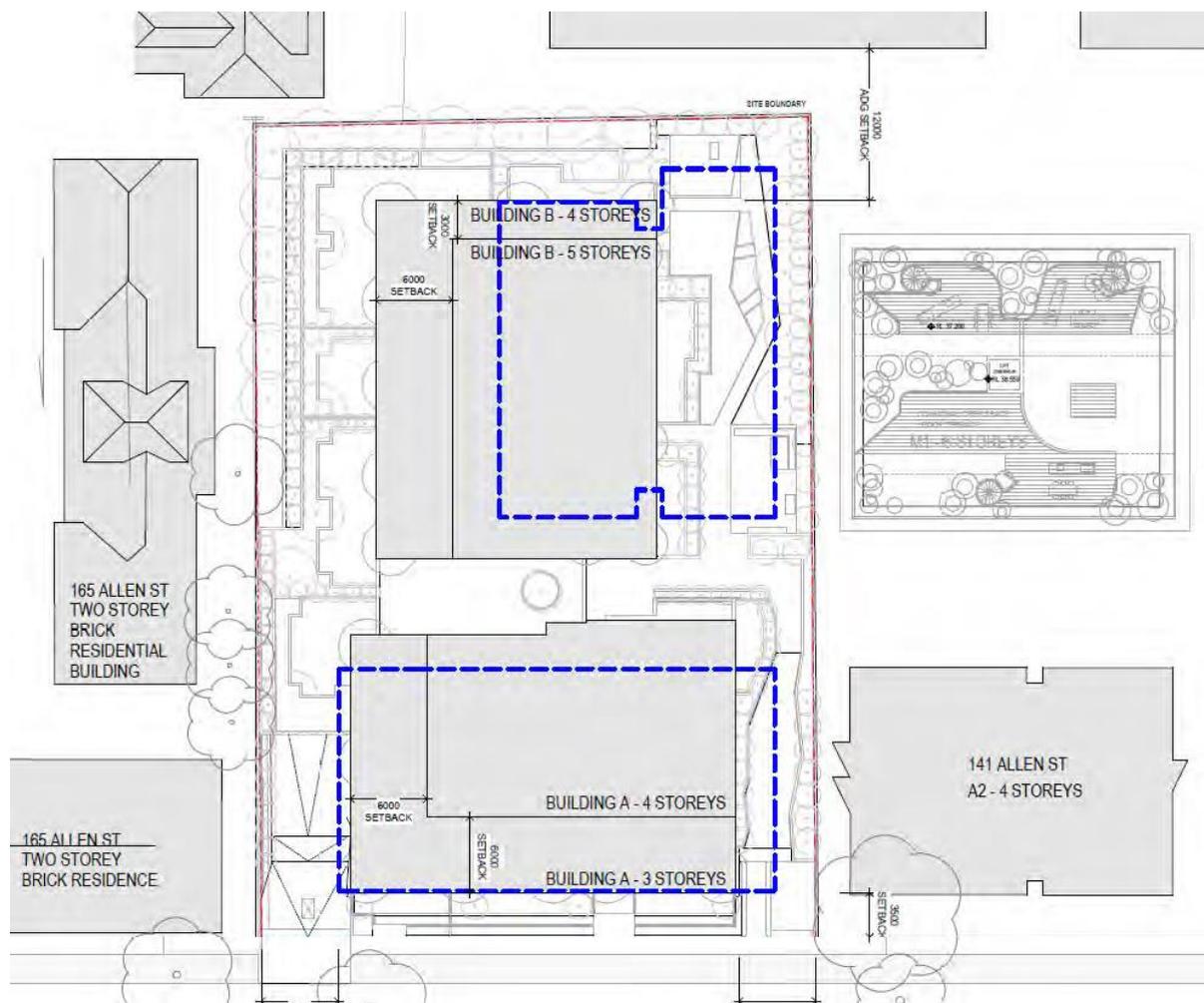


Figure 2: Site Plan

The setbacks envisaged within G8.6.1 the LDCP 2013 are inconsistent with the Apartment Design Guide which requires a 6m setback to the boundary.

In considering the G8.6.1 control it is important to consider that the *LLEP 2013* contains height and setback controls within clause 6.17(4). To the extent of any inconsistency, the height control contained within the *LLEP 2013* overrides the height control expressed within G8.6.1 of the Leichardt DCP 2013, having regard to Section 3.43(5)(a) of the *Environmental Planning and Assessment Act 1979*. Consideration of the LEP height control is addressed elsewhere in this report. For the avoidance of any doubt, the proposal is consistent with the objectives O1 - O5 within G8.6.1 and acceptable on merit.

G8.6.2 Building setbacks and articulation

Clause 6.17(4)(a) of the *LLEP 2013* includes setbacks for development on the site from the western boundary. The proposal is consistent with this requirement which overrides the LDCP 2013 setback requirement contained within G8.6.2. The remaining setbacks are generally consistent with the requirements of G8.6.2 and are consistent with the objectives O1-O4 contained within G8.6.2 and acceptable on merit.

G8.7.1 Solar access

The solar impacts of the proposed development result in an impact to Allen Street beyond what was envisaged within the master plan. The impact is between the hours of 9am to

10am in midwinter and is as a result of the proposal being relocated to the west. In considering the impacts of the development it is relevant to consider the planning principle contained within *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082. It is noted that:

- The adjoining development contains private open space to the east and west of the attached dwellings.
- The density of development in this locality is relatively high and as a result the expectation to maintain solar access is less and the claim to retain is not as strong.
- The overshadowing impacts are not as a result of bad design but rather as a result of the orientation of the adjoining multi-dwelling housing which is vulnerable to overshadowing due to its orientation.
- The impacts in terms of overshadowing are consistent with the general overshadowing controls contained within C3.9 of the LDCP 2013.

As a result of the above considerations, the impact on solar access is considered to be consistent with the Objective O1 contained within G8.7.1 and acceptable on merit.

#### G8.7.3 Open space

The landscaped area of the site is inconsistent with Figure G42, due to the different footprint location. The landscaped area is approximately 609m<sup>2</sup> which is below the 40% requirement of G8.7.3 of the Leichhardt DCP 2013.

Landscaped area is defined within the *LLEP 2013* as:

***Landscaped area*** means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area.

Given the development is subject to a landscaped area control within the *Leichhardt LEP 2013* that requires 20% of the site area to be landscaped area within Clause 4.3A(3), the control within G8.7.3 is overridden by the LEP control having regard to Section 3.46(5) of the *EPA Act 1979*.

The size of balconies and terraces is largely consistent with the requirements of the Apartment Design Guide and is largely consistent with the requirements of C3. The provision of open space is consistent with the Objectives O1-O3 contained within 8.7.3 and acceptable on merit.

#### G8.7.5 Deep soil and podium planting landscaped areas

The proposed development is not consistent with the controls contained within G8.7.5 due to being located outside the master plan footprint. The proposals do however, comply with the Apartment Design Guide requirements for deep soil planting and are consistent with the Objective O1 contained within G8.7.5.

### 5(d) Planning Agreement

The site is the subject of a Planning Agreement. The terms of the planning agreement have been considered. A copy of the planning agreement is annexed to the recommended conditions of consent.

### 5(e) 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.

#### Streetscape

The proposed development will have an acceptable impact on the streetscape noting the desired future character of the locality. The development utilises acceptable articulating elements to break up the form of the building and this assists in integrating the development into the streetscape.

#### Visual Bulk

The apparent visual bulk of the proposed development is consistent with what was envisaged within the site specific development controls for the site. The development is therefore consistent with the desired future character for the locality and has acceptable apparent visual bulk when considered from the street and surrounding properties.

#### Visual Privacy

The proposed development maintains visual separation via distance and screening mechanisms such as planter boxes and privacy screens. The impacts of the development are acceptable noting the planning principle contained within *Meriton v Sydney City Council* [2004] NSWLEC 313.

#### Acoustic Privacy

The impacts of the proposed development in terms of acoustic impacts are consistent with normal residential use. The use of communal roof terraces is considered acceptable noting the relative levels, the separation from the surrounding development and the use of planter boxes and the recommended conditions of consent limiting its use.

#### Solar Impacts

The solar impacts of the proposed development are acceptable noting the orientation of the adjoining dwellings, the location of their private open space and the considerations within the Planning Principle for access to sunlight *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082.

### 5(f) The suitability of the site for the development

The site is suitable for the proposed development noting the Voluntary Planning Agreement and the Planning Proposal for the site.

### 5(g) Any submissions

The application was notified in accordance with the Leichhardt DCP 2013 for a period of 14 days to surrounding properties. Post notification, it was identified that an adjoining property was not notified to an adjoining property. As a result, the application was renotified for a period of 14 days from 12 February to 26 February 2019. A total of twelve submissions were received.

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

Issue: Height of the proposal / Out of scale / Character

Comment: The development controls for the site envisage a development of this scale, height and character. The site was the subject of a planning proposal and now has site

specific controls that envisage development of this scale. The discrepancy in scale between the existing surrounding development and the proposal are a matter that was appropriately considered at the planning proposal stage.

Issue: Outdoor roof-top communal area and acoustic impact

Comment: Given the surrounding development approved on 141 Allen Street and its overshadowing impact, it is necessary to provide an area of roof top open space in order to meet the requirements for solar access to communal open space within the Apartment Design Guideline. This provides for only part of the communal open space on the site and the ground level provides for 484m<sup>2</sup> of communal open space. The outdoor roof-top communal area is surrounded by significant planter beds and is located to largely face the side of the site containing the adjoining development. The use of these areas is likely to be no more than normal residential use and will be regulated in terms of its acoustic impacts via the normal requirements for offensive noise under the *Protection of the Environment Operations Act 1997*. A condition of consent is recommended, however, that limits the use of this space between the hours of 10pm to 6am Monday to Sunday excluding New Years Eve to prevent impacts that would be an unreasonable impact on surrounding residents and contain the space to normal residential use.

Issue: Impacts on visual privacy

Comment: The proposed development provides for adequate separation from the living spaces and private open spaces of the adjoining properties through separation via distance, the use of planter boxes and screening having regard to the planning principle for visual privacy contained within *Meriton v Sydney City Council* [2004] NSWLEC 313.

Issue: Impact of excavation on adjoining premises

Comment: The normal conditions of consent in relation to dilapidation reports and the requirements of the *Protection of the Environment Operations Act 1997* address this concern.

Issue: Insufficient off street car parking

Comment: The proposal provides a compliant level of car parking as per Council's DCP requirements.

Issue: Traffic impacts and on-street parking impacts of the proposal

Comment: The proposal has been considered by Council's Engineers and is recommended for approval. The application is supported by Traffic and Parking Impacts report assessment that has been reviewed by Councils Traffic engineers. The impacts on local traffic and infrastructure were considered at the strategic planning stage and contributions towards community infrastructure have been made a condition of consent.

Issue: On-street parking impacts during construction

Comment: The impacts of construction workers parking on street are a temporary issue. On Street car spaces are available to any member of the public subject to applicable road rules and construction workers have as much entitlement to use such spaces as residents.

Issue: Insufficient ground level common recreational space for residents including children.

Comment: The proposed development complies with the requirements for communal open space contained within the Apartment Design Guide.

Issue: Impact on local schools and other community infrastructure

Comment: The capacity of local schools to provide for increased capacity is a matter for consideration at the strategic planning stage. The impacts on the provision of local community infrastructure are offset through the development contributions that form part of the planning agreement.

Issue: Solar impacts

Comment: The solar impacts of the proposed development are considered to be acceptable noting the location of the adjoining properties private open spaces and the orientation of the development.

### 5(h) 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. This is considered to have occurred in this instance.

## 6 Referrals

### 6(a) Internal

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

- Development Engineer
- Community Development
- Landscape
- Environmental Health
- Building Surveyor
- Waste

### 6(b) External

The application was referred to Ausgrid who provided conditions of consent

## 7. Section 7.11 Contributions

Section 7.11 contributions are payable for the proposal.

Contribution Plan	Contribution	Adjusted Contribution*
<b>Community Facilities</b>	\$135,029.00	\$120,942.82
<b>Open Space</b>	\$883,500.00	\$791,333.56
<b>Local Area Traffic Management</b>	\$7,676.35	\$6,875.56
<b>Bicycle</b>	\$946.84	\$848.07
<b>Total</b>	<b>\$1,027,152.19</b>	<b>\$920,000.00</b>

\*As per the 20,000 cap imposed by the Minister.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. The payment of development contributions is the subject of the VPA as monetary contributions are provided excluding Ministerial Direction under Section 94E of the *Environmental Planning and Assessment Act 1979*.

## 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 in amenity to the adjoining premises and the streetscape that

are acceptable in the context of the zoning for the site. The application is considered suitable for approval subject to the imposition of appropriate conditions.

## 9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of the *Leichhardt Local Environmental Plan 2013* in support of the contravention of the development standard for Clause 6.17(4) Development of land at 141 and 159 Allen Street, Leichhardt. After considering the request, and assuming the concurrence of the Secretary, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental planning 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 Section 4.16 of the *Environmental Planning and Assessment Act 1979* grant consent to Development Application No. D/2018/577 for Demolition of existing buildings on-site. Bulk excavation. Construction of a residential flat building development including: 1 basement level for 46 car parking bays with storage and loading areas; 46 residential units within 2 residential components: Building A comprising 3-4 storeys and Building B comprising 4-5 storeys with communal roof terrace. Associated works, including landscaping and communal open space provision at 159 Allen Street, Leichhardt.

## Attachment A – Recommended conditions of consent

### Deferred Commencement

The following is a Deferred Commencement condition imposed pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*. This Consent will not operate and may not be acted upon until the Council is satisfied as to the following matter(s):

- A. The site drainage shall be designed such that the site drains under gravity to the Council's drainage system. An easement for drainage over downstream properties will be required to be created to drain areas at the rear of the property that are unable to drain to the Allen Street frontage of the site. Satisfactory written documentation of the creation of an easement or of a legal agreement to create an easement shall be submitted to Council.
- B. Amended plans are to be submitted addressing the following issues:
  - i. Stormwater runoff from the site shall be collected in a system of gutters, pits and pipelines and be discharged via gravity to Council's piped drainage system at the intersection of Allen Street and Darley Road or to Council's drainage system via an easement for drainage over downstream properties. The drainage plans must fully detail how all areas of the site are to be drained to Council's drainage system including areas at the rear of the site that are below the level of Allen Street.
  - ii. The on-site detention tank must incorporate an overflow surcharge pit that is designed such that all overflows drain to the gutter of Allen Street. The basement access ramp must be amended as necessary to slope towards Allen Street to meet this requirement. Overflows from the OSD tank are not permitted to drain to the basement. Long sections along both sides of the proposed vehicular crossing and driveway from at minimum the centreline of the adjacent road to the basement and showing the OSD tank access covers must be provided.
  - iii. The basement Pump out system must to the stormwater treatment device component of the OSD tank system such that all water entering the site stormwater drainage system including basement pump out is filtered by the stormwater quality treatment device(s).
  - iv. The non-return valve between the Water Treatment and Detention components of the OSD tank must be deleted.
  - v. It must be demonstrated that a high flow bypass is not required and address the potential for captured pollutants to be resuspended, including when the water level in the OSD tank exceeds the height of the StormwaterFilter Wall.
  - vi. Full calculations and supporting documentation including DRAINS modelling data and results must be submitted in support of the flow rates and storage volumes proposed in accordance with Section E1.2.3 (C2 and C3) of Council's DCP2013.
  - vii. Full calculations and supporting documentation including MUSIC modelling data and results must be submitted in support the proposed stormwater quality improvement devices and to demonstrate that stormwater flows leaving the site meet the environmental targets in accordance with Section E1.2.4 (C5) of Council's DCP2013.
  - viii. Water quality filtration basket(s) with screening bag or similar primary treatment device(s) must be installed on the site stormwater drainage system in landscaped areas at the rear of the property.

- ix. The drainage system in the basement must be designed to prevent pollutants from vehicles entering the drainage system. All pits, excluding the basement ramp grate, must have solid covers.
- x. The documentation must detail how Hydrocarbons and Toxicant environmental targets of the DCP2013 are achieved.
- xi. The width of the vehicular crossing and driveway must be reduced to increase the clearance between vehicles exiting the site and the adjacent existing street tree in Allen Street. The crossing must not be wider than necessary. Plans must be submitted showing vehicle swept path, actual tree location and trunk diameter, extent of bitumen around the trunk, vehicular crossing dimensions including wings and location of the security door and security access door controls.

Evidence of the above matter(s) must be submitted to Council within 2 years otherwise the Consent will not operate.

### **Fees**

#### **1. Security Deposit**

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

Security Deposit: \$220,260

Inspection Fee: \$230.65

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

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

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

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

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

**General Conditions****2. Documents related to the consent**

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

<b>Plan, Revision and Issue No.</b>	<b>Plan Name</b>	<b>Date Issued</b>	<b>Prepared by</b>
DA 1100 Issue B	Site Plan	25 October 2018	Group GSA
DA 2000 Issue H	Basement Plan	25 October 2018	Group GSA
DA 2001 Issue I	Ground Floor Plan	25 October 2018	Group GSA
DA 2002 Issue J	Level 1 Floor Plan	25 October 2018	Group GSA
DA 2003 Issue C	Level 2 Floor Plan	25 October 2018	Group GSA
DA 2004 Issue I	Level 3 Floor Plan	25 October 2018	Group GSA
DA 2005 Issue I	Level 4 Floor Plan	25 October 2018	Group GSA
DA 2006 Issue G	Roof Plan	26 March 2019	Group GSA
DA 3000 Issue E	Northern Elevation	26 March 2019	Group GSA
DA 3001 Issue E	East Elevation	25 October 2018	Group GSA
DA 3002 Issue E	South Elevation	25 October 2018	Group GSA
DA 3003 Issue H	West Elevation	26 March 2019	Group GSA
DA 3004 Issue C	Northern Elevation – Building A	25 October 2018	Group GSA
DA 3005 Issue C	South Elevation – Building B	25 October 2018	Group GSA
DA 3100 Issue D	Section A	25 October 2018	Group GSA
DA 3101 Issue C	Section B	25 October 2018	Group GSA
DA 3102 Issue B	Section C	25 October 2018	Group GSA
DA 9140 Issue C	Adaptable Apartments - GF	25 October 2018	Group GSA
DA 9141 Issue C	Adaptable Apartments - GF	25 October 2018	Group GSA
DA 9142 Issue C	Adaptable Apartments – L1-L3	25 October 2018	Group GSA
DA 9143 Issue B	Liveable Apartments	25 October 2018	Group GSA
DA 9160 Issue A	BASIX Commitment 1	25 October 2018	Group GSA
DA 9161 Issue A	BASIX Commitment 2	25 October 2018	Group GSA
DA 9170 Issue C	Materials & Finishes	25 October 2018	Group GSA
DA 9200 Issue C	Waste Collection Details	25 October 2018	Group GSA
18249-LDA01 Issue H	Landscape Plan 1A (Ground Floor North )	23 October 2018	NBRS
18249-LDA02 Issue H	Landscape Plan 1B (Ground Floor South )	23 October 2018	NBRS
18249-LDA03 Issue H	Landscape Plan 02 (Third Floor)	23 October 2018	NBRS
18249-LDA04 Issue H	Landscape Plan 03 (Fourth Floor)	23 October 2018	NBRS
18249-LDA05 Issue B	Landscape Plan 04 (Rooftop)	23 October 2018	NBRS
18249-LDA06 Issue B	South Front Elevations	23 October 2018	NBRS
18249-LDA07 Issue B	Site Sections / Elevations	23 October 2018	NBRS
18249-LDA08 Issue B	Plant Palette	23 October 2018	NBRS
18/10/25/159ASLR2	Arboricultural Impact Assessment Report	25 October 2018	Jack Wolliams
E23882.G21 Rev 1	Geotechnical Assessment Report	24 October 2018	Nauman Jahangir

80818464 v1	Integrated Structural and Geotechnical Report	24 October 2018	Cosmo Farinila
E1930 AB_Rev 2	Environmental Site Assessment (Revision 2)	12 October 2015	Sari Eru
2127472 Revision 0	Acoustic Report	24 October 2018	C Gordon

As amended by the conditions of consent.

### 3. Design Change

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

- a) Increasing the Balcony depth of units B302 and B303 to be increased to 2.4m by reducing the gross floor area of unit and mainlining the proposed setbacks.
- b) Section C is to be amended to reflect the amendments to the plans submitted on 26 March 2019 removing the building B lift lobby to achieve consistency with the other plans.
- c) Landscape Plan 04 (Rooftop) is to be amended to reflect the amendments to the plans submitted on 26 March 2019 removing the building B lift lobby to achieve consistency with the other plans.

### 4. Car Parking

The development must provide and maintain within the site:

- a) 36 car parking spaces must be paved and line marked.
- b) 5 car parking spaces, for persons with a disability must be provided and marked as disabled car parking spaces.
- c) 5 visitor car parking spaces (including one for persons with a disability) must be provided and marked as visitor car parking spaces. A sign legible from the street must be permanently displayed to indicate that visitor parking is available on site.
- d) 4 off-street motorcycle parking spaces must be provided, paved, line marked and maintained at all times.
- e) 6 Bicycle storage capacity.
- f) 1 Carwash bays.
- g) 1 Loading bay.

### 5. Waste Management Plan

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

### 6. Sediment Control

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

### 7. Site Sign

Prior to the commencement of any works, a rigid and durable sign must be erected in a prominent position on the site. The sign is to be maintained at all times until all work has been completed. The sign must include:

- a) The name, address and telephone number of the Certifying Authority;

- b) A telephone number on which the Principal Contractor (if any) can be contacted outside working hours; and
- c) A statement advising: 'Unauthorised Entry to The Work Site Is Prohibited'.

#### **8. Standard Street Tree Protection**

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

#### **9. Verification of Levels and Location**

Prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, the Principal Certifying Authority must be provided with a check survey certificate indicating the level of the slab and the location of the building with respect to the boundaries of the site.

#### **10. Dry-weather Flows**

Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system. Alternatively, the basement or any below ground structure must be designed to be “tanked” preventing the ingress of seepage or groundwater.

#### **11. Works Outside the Property Boundary**

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

#### **12. Rock Anchors**

This consent does not grant consent for any rock anchors on the road reserve or Council land.

#### **13. Bin Storage Area - Residential**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a report detailing the ongoing waste generation requirements of the development and demonstrate that the bin storage area is to be provided within the site that will fully accommodate the number of bins required for all waste generated by a development of this type and scale. The number of bins required must be calculated based on a weekly collection of garbage, and a fortnightly collection of recycling.

The area must also include 50% allowance for manoeuvring of bins. The bin storage area is to be located away from habitable rooms, windows, doors and private useable open space, and to minimise potential impacts on neighbours in terms of aesthetics, noise and odour.

The bin storage area is to meet the design requirements detailed in the [Leichhardt DCP 2013](#), and must include doorways/entrance points of 1200mm.

#### **14. Bulky Waste Storage Area – Residential**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating that the bulky waste storage area must meet the floor area requirements as per the [Leichhardt DCP 2013](#) and have minimum doorways of 1200mm wide to accommodate large items.

#### **15. Transfer route**

The path of travel between the bin storage area/bulky waste storage area and the designated waste/recycling collection point is to have a minimum 1200mm wall-to-wall clearance, be slip-proof, of a hard surface, be free of obstructions and at no point have a

gradient exceeding 1:12. The use of a lift is permitted, but consideration should be given to the inclusion of a service lift in this instance.

#### **16. Contamination – Remedial Action Plan (No Site Auditor Engaged)**

The site is to be remediated and validated in accordance with the recommendations set out in the Remedial Action Plan, prepared by Environmental Investigations Australia Pty Ltd, reference E1930 AC\_Rev 2, dated 13 October 2015, the Contaminated Land Management Act 1997 and the State Environmental Planning Policy No 55.

#### **17. Asbestos Survey**

Prior to any demolition or the issue of a Construction Certificate (whichever occurs first), the Certifying Authority must provide an asbestos survey to Council. The survey shall be prepared by a suitably qualified Occupational Hygienist and is to incorporate appropriate asbestos removal and disposal methods in accordance with the requirements of SafeWork NSW.

A copy of any SafeWork NSW approval documents is to be included as part of the documentation.

#### **Prior to any Demolition**

#### **18. Dilapidation Report**

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

#### **19. Protection of Adjoining and Public Land**

If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land (including a public road or other public place), the person causing the excavation to be made:

- (a) must preserve and protect the adjoining building from damage, and
- (b) if necessary, must underpin and support the adjoining building in accordance with relevant Australian Standards, and
- (c) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

#### **20. Hoardings**

The person acting on this consent must ensure the site is 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 roads or Council controlled lands 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. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.

Separate approval is required from the Council under the Roads Act 1993 to erect a hoarding or temporary fence or awning on public property.

#### **21. Construction Traffic Management Plan**

Prior to Any Demolition, the Certifying Authority, must be provided with a detailed Traffic Management Plan (TMP) to cater for construction prepared by a person with RMS accreditation to prepare a work zone traffic management plan. Details must include haulage routes, estimated number of vehicle movements, truck parking areas, work zones, crane usage, etc., related to demolition/construction activities. A work zone approval must be obtained.

#### **22. Dilapidation Report – Pre-Development**

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

#### **23. Resource Recovery and Waste Management Plan - Demolition and Construction**

Prior to any demolition works, the Certifying Authority must be provided with a Resource Recovery and Waste Management Plan - Demolition and Construction that includes details of materials that will be excavated and their proposed destination or reuse.

#### **Prior to Construction Certificate**

#### **24. Compliance with Planning Agreement**

Prior to the issue of the Construction Certificate, the Certifying Authority must be provided written evidence from Council that all matters in the executed Voluntary Planning Agreement must be complied with. The Voluntary Planning Agreement is attached as “Annexure 1” to this Determination Notice.

#### **25. Enclosure of Fire Hydrant**

Prior to the issue of any Construction Certificate, the Certifying Authority is to be provided with plans indicating that all fire hydrant and sprinkler booster valves and the like are enclosed.

#### **26. Sydney Water – Tap In**

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

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

#### **27. Concealment of Plumbing and Ductwork**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans detailing the method of concealment of all plumbing and ductwork including stormwater downpipes within the outer walls of the building so they are not visible.

#### **28. Stormwater Drainage System – Major Developments**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention facilities (OSD) and Stormwater Quality Improvement Devices (SQIDS), certified by a qualified Chartered/Registered Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a) The design must be generally in accordance with the stormwater drainage concept plan submitted in satisfaction of the deferred commencement conditions.
- b) Comply with Council’s Stormwater Drainage Code.
- c) Charged stormwater drainage systems are not permitted
- d) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. The design must include the collection of such waters and discharge to the Council drainage system.
- e) All areas that do not have an overland flow path to the Allen Street frontage must be drained by a sag pit and piped drainage system that meets the following criteria:
  - i) Capture and convey the 100 year Average Recurrence Interval flow from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe.
  - ii) The maximum water level over the sag pit shall not be less than 150mm below the floor level or damp course of the building
  - iii) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands/roof areas.
- f) All drainage systems that convey flows to the on-site detention system, including gutters and downpipes, must be designed to convey the 100 year storm event flows.
- g) A pump-out system for drainage of sub-surface flows and the driveway ramp is permitted for the basement area only and must be designed in accordance with the following criteria:
  - i) An overflow, flashing light and audible alarm is to be provided to warn of pump failure.
  - ii) A maintenance regime for the pump system must be provided, including provision for regular maintenance and servicing at least every 6 months.
  - iii) The proposed pump system must consist of two (2) pumps, connected in parallel, with each pump being capable of emptying the holding tank at a rate equal to the rate of inflow for the one-hour duration, 100-year Average Recurrence Interval (ARI) storm event. The holding tank must be capable of holding one hour’s runoff from one-hour duration 20-year ARI storm event.
  - iv) The pump system must be discharged to OSD storage tank via the water quality treatment devices.
- h) All plumbing within the site must be carried out in accordance with Australian Standard AS/NZS3500.3.2018 Plumbing and Drainage – Stormwater Drainage.
- i) The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system.
- j) All redundant stormwater pipelines within the footpath area must be removed and the footpath and kerb reinstated.
- k) All pipes within the road reserve that connect to Council’s piped drainage system must be class 4 steel Reinforced Concrete Pipe.
- l) Water quality filtration basket(s) with screening bag or similar primary treatment device(s) must be installed on the site stormwater drainage system.
- m) Stormwater quality improvement devices shall be installed such that stormwater flows leaving the site meet the following environmental targets:

Pollutant	Baseline Annual Pollution Load (kg/ha/yr)	Retention Criteria
Gross Pollutants, including trash, litter and vegetation matter greater than 5mm	500	90% reduction of average annual load
Total Suspended solids, including sediment and other fine material less	900	85% reduction of average annual load

than 5mm		
Total Phosphorous	2	65% reduction of average annual load
Total Nitrogen	15	45% reduction of average annual load
Hydrocarbons (Oil and Grease)		90% reduction of average annual load – no visible discharge
Toxicants		100% containment of toxicants

### 29. Parking Facilities – Major (including basement)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a qualified Chartered/Registered Civil Engineer that the design of the vehicular access, off-street parking facilities including bicycle parking and associated vehicle standing areas comply with Australian Standard AS/NZS 2890.1-2004 Parking Facilities: Off-street car parking, AS/NZS 2890.3-2015 Parking facilities: Bicycle Parking, AS/NZS 2890.6-2009 Parking facilities: Off-street parking for people with disabilities and the following specific requirements:

- a) The floor/finished levels within the property must be adjusted to ensure that the levels at the boundary comply with the Alignment Levels issued with this consent.
- b) The garage slab or driveway must rise within the property to be 170mm above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004 for a B99 vehicle.
- c) Minimum headroom of 2500mm must be provided throughout the access to and from the Loading Bay.
- d) Minimum headroom of 2500mm must be provided above any dedicated accessible parking space(s) and adjacent Shared Area(s).
- e) Minimum headroom of 2200mm must be provided throughout the remainder of the residential parking facilities. Minimum headroom of 2500mm must be provided above any dedicated accessible parking space(s) and adjacent Shared Area(s).
- f) Note that the headroom must be measured to the lowest projection from the ceiling, such as lighting fixtures, sprinklers, services, ducts, etc. The headroom at any door opening must be measured to the lowest point of the open door.
- g) Headroom at a 'sag' type grade change must be measured in accordance with Figure 5.3 of AS/NZS 2890.1-2004.
- h) The maximum grade at the property boundary must not exceed 1 in 20 (5%) within 6m of the property boundary;
- i) Longitudinal sections must be provided along each outer edge of all ramps within the parking facilities demonstrating compliance with the above requirements. The longitudinal sections at the entry/exit access ramp(s) must extend to the centreline of the connecting road carriageway.
- j) The vehicle egress must be designed such that there are clear sight lines (triangles) to pedestrians in the footpath in accordance with the requirements of Clause 3.2.4(b) of AS/NZS 2890.1-2004;
- k) The circulation within the basement car park must be amended to be one-way clockwise direction to provide improved circulation within the basement and avoid overlap of vehicular movements at the intersection at bottom of the basement ramp.
- l) Bicycle parking facilities must be provided in accordance with the numerical and dimension requirements of Sections C1.11 Parking and C1.11.3 & C1.11.6 tables within DCP 2013.

- m) Accessible parking spaces B201 & B301 are to be located as close as possible to the access/entry to the building.
- n) Motorbike parking spaces MB04 and MB01 are to be relocated such that they are not vulnerable to being struck by a manoeuvring car.
- o) The car parking facilities must be appropriately line marked and signposted in accordance with the requirements of Section 4 of AS/NZS2890.1-2004.
- p) Recommendations of the road safety audit of the placement, design and operation of the vehicular access must be incorporated.
- q) The external form & height of the approved structures must not be altered from that depicted on the approved plans.

### **30. Road Safety Audit**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a road safety audit which considers the effects of the placement, design and operation of the vehicular access to the site with respect to the proximity to the intersection of Allen Street and Burfitt Street. The report must:

- a) Be prepared in accordance with the RMS Guidelines for Road Safety Audit Practices.
- b) Consider both pedestrian and vehicle safety.
- c) Be prepared by an independent RMS accredited road safety auditor.

### **31. Structural and Geotechnical Report**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an integrated structural and geotechnical report and structural plans that address the design of the proposed basement, prepared certified as compliant with the terms of this condition by a qualified Chartered/Registered Structural and Geotechnical Engineer. The report and plans must be prepared/ amended to make provision for the following:

- a) All components of any retaining walls, including subsoil drainage and footings, must be located entirely within the property boundary.
  - b) Any existing or proposed retaining walls that provide support to the road reserve must be adequate to withstand the loadings that could be reasonably expected from within the constructed road and footpath area, including normal traffic and heavy construction and earth moving equipment, based on a design life of not less than 50 years.
  - c) Retaining walls must be entirely self-supporting in the event that excavation is undertaken within the road reserve adjacent to the property boundary to the depth of the proposed structure.
  - d) No adverse impact on surrounding properties including Council's footpath and road.
  - e) The existing subsurface flow regime in the vicinity of the development must not be significantly altered as a result of the development.
  - f) Recommendations regarding the method of excavation and construction, vibration emissions and identifying risks to existing structures or those on adjoining or nearby property.
32. g) Provide relevant geotechnical/ subsurface conditions of the site, as determined by a full geotechnical investigation.

### **33. Public Domain Works**

Prior to the issue of an Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a qualified Chartered/Registered Civil Engineer and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the Roads Act 1993 incorporating the following requirements:

- a) Council's piped stormwater drainage system at the intersection of Allen Street and Darley Street must be extended by an appropriately sized pipeline (minimum 375mm diameter) to the frontage of the site, where a kerb inlet pit must be installed. Additional

pits must be provided at suitable intervals to collect stormwater and provide access for maintenance. The system must be designed to have the capacity to convey flows that would be collected at that section of street as generated by a 20 year Average Recurrence Interval storm event. Pipes must be Class 4 Steel Reinforced Concrete Pipe or approved equivalent and Pits must be cast in-situ.

- b) The design must be accompanied by detailed engineering drawings including relevant long and cross sections, hydraulic grade line analysis and location of utility services.
- c) The construction of heavy duty vehicular crossings to all vehicular access locations
- d) Reconstruction of the concrete kerb and gutter, concrete footpath and grass verge (with buffalo grass) for the full length of the Allen Street frontage of the site, including closure of the redundant vehicle crossings
- e) The plans must show all measures proposed to protect the existing streets trees and all necessary supporting documentation.
- f) The existing Post Box adjacent the proposed vehicle crossing must be relocated. Documentation demonstrating approval from Australia Post must be provided.
- g) Cross sections are to be provided at the boundary at a minimum distance of every 5m and at all pedestrian and vehicular access locations. Note, the cross fall of the footpath must be set at 2%.
- h) Long sections along both sides of the proposed vehicular crossing and ramp drawn at a 1:20 natural scale designed to satisfy the ground clearance template (Figure C1) from AS/NZS 2890.1-2004 for a B99 vehicle. The long section must begin from the centreline of the adjacent road to a minimum of 6 metres into the property. The long sections shall show both existing surface levels and proposed surface levels.

The sections approved by Council shall define the Alignment Levels at the property boundary.

### **During Demolition and Construction**

#### **34. Construction Hours**

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:

- a) 7:00am to 6.00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b) 8:00am to 1:00pm 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 must be limited to:

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

The person acting on this consent must not undertake such activities for more than three continuous hours and must 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.

### **35. Survey**

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

### **Prior to Occupation Certificate**

#### **36. Right of Way for Waste Collection**

Prior to the issue of any Occupation Certificate, the Principal Certifying Authority is to be provided with written evidence that the easement under Section 88B of the *Conveyancing Act 1919* is on the title of 141 Allen Street as subservient tenement and 159 Allen Street as the dominant tenement providing for a the use of the waste pick up bay and transit of the waste from the waste storage room from 159 Allen Street to the waste pick up bay within 141 Allen Street.

#### **37. Works as Executed – Site Stormwater Drainage System**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with Certification by a qualified Chartered/Registered Civil Engineer that:

- a) The stormwater drainage system including On-Site Detention system, stormwater quality improvement device(s) and basement pump-out system have been constructed in accordance with the approved design and relevant Australian Standards.
- b) Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, On-Site Detention system commissioned and stormwater quality improvement device(s) and any pump(s) installed in accordance with the approved design and relevant Australian Standards have been submitted to Council. .The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifying Authority stamped Construction Certificate plans.

#### **38. Operation and Management Plan**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with an Operation and Management Plan has been prepared and implemented for the on-site detention and/or on-site retention/re-use facilities and stormwater quality improvement device(s) and pump(s). The Plan must set out the following at a minimum:

- a) The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners.
- b) The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

#### **39. Parking Signoff – Major Development**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with certification from a qualified Chartered/Registered Civil Engineer that the vehicle access and off street parking facilities have been constructed in accordance with the

development consent and relevant Australian Standards and the following has been implemented within the property:

- a) The car park has been completed, line marked and all signage relating to car parking erected.
- b) Sign(s) have been erected that clearly indicate to the drivers of vehicles both on and off the property the location and means of access to the car parking area(s).
- c) There are clear sight lines (triangles) to pedestrians in Allen Street in accordance with the requirements of Clause 3.2.4(b) of AS/NZS 2890.1-2004.
- d) Recommendations of the Road Safety Audit of the vehicular access.

#### **40. Public Domain - Major Developments**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with the works-as-executed plan(s), certified by a Registered Surveyor, that show the as built details in comparison to those shown on the plans approved with the public domain and Roadwork's Permit with all relevant levels and details indicated must be marked in red on a copy of the Council stamped plans.

#### **41. Works as Executed - Road Works and Public Stormwater Drainage**

Prior to the issue of an Occupation Certificate, the Council must be provided with Certification by a qualified Chartered/Registered Civil Engineer that:

- a) All works required to be undertaken on public roads have been constructed in accordance with Council's Approved Plans.
- b) Video inspection (CCTV) in accordance with WSA 05-2013 Conduit Inspection Reporting Code of Australia has been carried out of completed stormwater drainage works that are to revert to Council undertaken by an accredited operator.
- c) Full works-as-executed plans in PDF and CAD format (.dwg or .dxf files), prepared and signed by a Registered Surveyor have been submitted to Council.

#### **42. Public Domain – Satisfactory completion letter from Council**

Prior to issue of the Occupation Certificate the person acting on this consent shall obtain from Council a letter of satisfactory completion of the public domain works approved under section 138 of the Roads Act stating that all Road, Footpath and Public Domain Works on Council property required to be undertaken as a result of this development have been completed satisfactorily and in accordance with Council approved plans and specifications.

#### **43. No Encroachments**

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

#### **44. Easements, Restrictions on the Use of Land and Positive Covenants**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with evidence that Easements, Restrictions on the Use of Land and Positive Covenants under Section 88B or 88E, whichever is relevant to the subject development, of the *Conveyancing Act 1919*, has been created on the title of the property detailing the following :

- a) Easement for drainage of water;
- b) Easement for repairs;
- c) Restrictions on the Use of Land to prevent the erection of any structures;
- d) Restrictions on the Use of Land related to on Site Stormwater Detention System;

- e) Positive Covenant related to on-site stormwater detention and/or retention system;  
and
- f) Positive Covenant related to stormwater quality improvement devices.

The wording in the Instrument must be in accordance with Councils Standard wording.

#### **45. Protect Sandstone Kerb**

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

#### **46. Noise From Road, Rail & Aircraft – Compliance**

Prior to the issue of an Occupation Certificate, the Certifying Authority must be provided with an acoustic report prepared by suitably qualified acoustic consultant, confirming that the development complies with the requirements of the:

- a) State Environmental Planning Policy (Infrastructure) 2007
- b) NSW Planning, Development near Rail Corridors and Busy Roads – Interim Guideline
- c) Australian Standard 2021-2000: Acoustics - Aircraft noise intrusion - Building siting and construction
- d) conditions of development consent; and
- e) Recommendations of the acoustic report prepared by GHD, Repot No. 127472, dated October 2018.

#### **47. Contamination – Disposal Of Soil**

Prior to the issue of an Occupation Certificate, the Certifying Authority must be provided with a validation report confirming that all off site disposal of soil has been classified, removed and disposed of in accordance with the NSW DECC Waste Classification Guidelines, Part 1: Classifying Waste (July 2009) and the Protection of the Environmental Operations Act 1997.

#### **48. Contamination – Validation (No Site Audit Statement Required)**

Prior to the issue of an Occupation Certificate, the Certifying Authority and Council must be provided with a Site Validation Report prepared by a suitably qualified environmental consultant with experience in land contamination.

The Validation report must be prepared in accordance with relevant NSW Environment Protection Authority guidelines, including the guidelines 'Consultants Reporting on Contaminated Sites' and must confirm that the site has been remediated in accordance with the Remedial Action Plan and clearly state that the site is suitable for the proposed use.

### **On-going**

#### **49. Use of the Communal Roof Terrace**

The Communal roof terrace is not to be used between the hours of 10pm to 6am Monday to Sunday excluding New Year's Eve.

#### **50. Operation and Management Plan**

The Operation and Management Plan for the onsite detention and stormwater quality improvement devices and Pump facilities, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

#### **51. Vehicles Leaving the Site**

All vehicles must enter and exit the site in a forward direction.

#### **52. Noise General**

The proposed use of the premises and the operation of all plant and equipment must not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations, NSW EPA Noise Policy for Industry and NSW EPA Noise Guide for Local Government.

### **Ausgrid requirements**

#### **53. Underground Cables**

There are existing underground electricity network assets in Allen St.

Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.

Safework Australia–Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables.

#### **54. Substation**

There are existing electricity substation assets in Allen St.

The substation ventilation openings, including substation duct openings and louvered panels, must be separated from building air intake and exhaust openings, natural ventilation openings and boundaries of adjacent allotments, by separation distances which meet the requirements of all relevant authorities, building regulations, BCA and Australian Standards including AS1668.2: The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings. In addition to above, Ausgrid requires the substation ventilation openings, including duct openings and louvered panels, to be separated from building ventilation system air intake and exhaust openings, including those on buildings on adjacent allotments, by not less than 6 metres. Any portion of a building other than a BCA class 10a structure constructed from non-combustible materials, which is not sheltered by a non-ignitable blast-resisting barrier and is within 3 metres in any direction from the housing of a kiosk substation, is required to have a Fire Resistance Level (FRL) of not less than 120/120/120. Openable or fixed windows or glass block work or similar, irrespective of their fire rating, are not permitted within 3 metres in any direction from the housing of a kiosk substation, unless they are sheltered by a non-ignitable blast resisting barrier.

The development must comply with both the Reference Levels and the precautionary requirements of the ICNIRP Guidelines for Limiting Exposure to Time-varying Electric and Magnetic Fields (1HZ–100kHz) (ICNIRP 2010). For further details on fire segregation requirements refer to Ausgrid's Network Standard 141. Existing Ausgrid easements, leases and / or right of ways must be maintained at all times to ensure 24 hour access. No temporary or permanent alterations to this property tenure can occur without written approval from Ausgrid. For further details refer to Ausgrid's Network Standard 143.

### **Advisory notes**

#### **Prescribed Conditions**

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

#### **Notification of commencement of works**

At least 7 days before any demolition work commences:

- (a) the Council must be notified of the following particulars:
  - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
  - ii. the date the work is due to commence and the expected completion date; and

- (b) a written notice must be placed in the letter box of each directly adjoining property identified advising of the date the work is due to commence.

**Storage of Materials on public property**

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

**Toilet Facilities**

The following facilities must be provided on the site:

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

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

**Infrastructure**

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

**Other Approvals may be needed**

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

**Failure to comply with conditions**

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

**Other works**

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

**Obtaining Relevant Certification**

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

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

- g) Development Application for subdivision if consent for subdivision is not granted by this consent.

### **Disability Discrimination**

The *Disability Discrimination Act 1992* (Commonwealth) and the *Anti-Discrimination Act 1977* (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.

### **National Construction Code (Building Code of Australia)**

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

### **Notification of commencement of works**

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

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

### **Dividing Fences Act**

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

### **Permits from Council under Other Acts**

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

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

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

### **Noise**

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

### **Amenity Impacts General**

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

### **Fire Safety Certificate**

The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:

- a) Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
- b) Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).

Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Certificate for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Certificate must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

### **Electrical Substation**

Should the proposed development require the provision of an electrical substation, such associated infrastructure must be incorporated wholly within the development site and may be the subject of an application for modification of consent.

### **Permits**

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

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

If required, contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. Applications for such Permits must be submitted and approved by Council prior to the commencement of the works associated with such activity.

### **Rock Anchors**

If you are seeking to use temporary anchors, you must make a request for approval for a Permit under Section 138 of the Roads Act 1993. The submission would need to be

supported by an engineering report prepared by a suitably qualified Chartered/Registered Structural Engineer, with supporting details addressing the following issues:

- a) Demonstrate that any structures within the road reserve are of adequate depth to ensure no adverse impact on existing or potential future service utilities in the road reserve. All existing services must be shown on a plan and included on cross-sectional details where appropriate.
- b) Demonstrate how the temporary anchors will be removed or immobilised and replaced by full support from structures within the subject site by completion of the works.
- c) The report must be supported by suitable geotechnical investigations to the efficacy of all design assumptions.

### **Public Domain Works**

The vehicular crossing and/or footpath works are required to be constructed by your contractor. You or your contractor must complete an application for 'Design of Vehicle Crossing and Public Domain Works – Step 1' form and 'Construction of Vehicle Crossing and Public Domain Works – Step 2' form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, before commencement of works.

You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be at no cost to Council. Any damage caused during construction to Council assets on the road reserve or on Council or Crown land must be repaired at no cost to Council.

Any driveway crossovers or other works within the road reserve must be provided at no cost to Council.

No consent is given or implied for any Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, eaves, awnings, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever, including when open.

### **Easement and Covenant Process**

The following documents must be submitted to Council as part of the Easement and Covenant process and requirements, for the site on-site detention/on-site retention/reuse facilities (OSD/OSR) and stormwater quality improvement devices (SQIDS):

- a) Work-As-Executed Plans

A "Work-as-Executed" plan prepared and signed by a Registered Surveyor must be submitted to the Council's Development Assessment Engineer at the completion of the works showing the location of the detention basin and SQIDS with finished surface levels, contours at 0.2-metre intervals and volume of storage available. Also, the outlet pipe from the detention basin to its connection to the Council's drainage system must be shown together with the following information: location; pipe diameter; invert levels; gradient; pipe material, i.e. PVC or RCP etc.; pits sizes; orifice size; trash screen at orifice; emergency overflow dimensions and RL; all buildings (including floor levels) and finished ground and pavement surface levels and full details of SQIDS.

- b) Engineer's Certificate

A qualified practising Civil Engineer must certify on the completion of drainage works in respect of:

- i) the soundness of the storage structure;
- ii) the capacity of the detention storage;
- iii) the emergency overflow system being in place;

- iv) the works being constructed in accordance with the Development Application Consent and Council's Stormwater Management DCP/Code;
- v) the freeboard from maximum water surface level to the finished floor and garage levels are at or above the minimum required in Council's Stormwater Management DCP/Code;
- vi) basement car park pumps are class one zone two;
- vii) OSR pumps and SQIDS have been installed and commissioned.

c) **Restriction-As-To-User**

A "Restriction-as-to-User" must be placed on the title of the subject property to indicate the location and dimensions of the detention area and stormwater quality improvement device(s) (SQIDS). This is to ensure that works, which could affect the function of the stormwater detention system and SQIDS, must not be carried out without the prior consent in writing of the Council.

Such restrictions must not be released, varied or modified without the consent of the Council.

A typical document is available from Council's Development Assessment Engineer.

d) **A Maintenance Schedule.**

A typical document is available from Council's Development Assessment Engineer

**Chartered/Registered Engineer**

An engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng).

**Notice to Council to deliver Residential Bins**

Council should be notified of bin requirements three months prior to the occupation of the building to ensure timely delivery.

Council will place an order for the required bins. Delivery will occur once the applicant has completed a Request for New Service.

**Recycling/garbage/organics service information and education**

The building manager/strata title manager or body corporate is responsible for ensuring all tenants are kept informed regarding Council's services, and best practice waste and recycling source separation

**Sydney Water**

The approved plans must be submitted to the Customer Centre of any office of Sydney Water prior to the commencement of any work to ensure that the proposed work meets the requirements of Sydney Water. Failure to submit those plans prior to commencing work may result in the demolition of the structure if found not to comply with the requirements of Sydney Water.

**Construction of Vehicular Crossing**

The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for 'Construction of a Vehicular Crossing & Civil Works' form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, prior to commencement of works.

**Contamination – New Evidence**

Any new information revealed during demolition, remediation or construction works that have the potential to alter previous conclusions about site contamination must be immediately notified to the Council and the Certifying Authority.

### **Mechanical Ventilation System Certification**

The mechanical ventilation systems are to be designed, constructed and operated in accordance with the:

- a) Building Code of Australia,
- b) Australian Standard AS 1668 Part 1 – 1998,
- c) Australian Standard AS 1668 Part 2 – 2012,
- d) Australian Standard 3666.1 – 2011,
- e) Australian Standard 3666.2 – 2011; and
- f) Australian Standard 3666.3 - 2011.

The system must be located in accordance with the approved plans and/or within the building envelope, design and form of the approved building. Any modifications to the approved plans required to house the system must be the subject of further approval from Council.

### **Lead-based Paint**

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

### **Dial before you dig**

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

### **Useful Contacts**

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm <a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>
Department of Fair Trading	13 32 20 <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 <a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>
Landcom	9841 8660 To purchase copies of Volume One of “Soils and Construction”
Long Service Payments Corporation	131441 <a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority	1300 552 406 <a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>

NSW Government	<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diysafe.nsw.gov.au">www.diysafe.nsw.gov.au</a> Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 <a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>
Sydney Water	13 20 92 <a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>
Waste Service - SITA Environmental Solutions	1300 651 116 <a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>
Water Efficiency Labelling and Standards (WELS)	<a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>
WorkCover Authority of NSW	13 10 50 <a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a> Enquiries relating to work safety and asbestos removal and disposal.

Annexure 1 – Executed planning agreement

**141-159 Allen Street, Leichhardt**  
**Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

**Leichhardt Municipal Council**

**Leichhardt 141 Pty Limited**

**Arquilla Bulk Trading Co Pty Limited**

**Leichhardt Council**  
**7-15 Wetherill Street**  
**LEICHHARDT NSW 2040**

**141-159 Allen Street, Leichhardt  
Planning Agreement**

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Leichhardt Municipal Council  
Leichhardt 141 Pty Limited and Arquilla Bulk Trading Co Pty Limited

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## 141-159 Allen Street, Leichhardt Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

### Parties

**Leichhardt Municipal Council** ABN 92 379 942 845 of 7-15 Wetherill Street  
Leichhardt NSW 2040 (**Council**)

**Leichhardt 141 Pty Limited** ACN 117 479 437 of Suite 1304, 370 Pitt Street,  
Sydney NSW 2000 (**Developer 1**)

and

**Arquilla Bulk Trading Co Pty Ltd** ABN 84 001 512 358 of 159 Allen Street,  
Leichhardt NSW 2040 (**Developer 2**) (together **Developers**)

### Background

- A The Developers are the owners of the Land.
- B The Council is a council constituted under the *Local Government Act 1993*.
- C The Developers have requested that the Council submit the Planning Proposal to the Minister for the making of the LEP.
- D The Developers wish to carry out the Development if the Planning Proposal is effected and amends the LEP.
- E The Developers have agreed to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.

### Operative provisions

#### Part 1 - Preliminary

##### 1 Definitions & Interpretation

- 1.1 In this Agreement the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**Affordable Housing** means affordable housing for Key Workers.

**Agreement** means this Agreement and includes any schedules, annexures and appendices to this Agreement.

**Building** means one or more mixed use or residential flat buildings to be constructed on the Land.

**Compliance Certificate** has the same meaning as in the Act.

**Construction Certificate** has the same meaning as in the Act.

**Contributions Plan** means:

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- (a) *Developer Contributions Plan No 2 - Community Facilities and Services (2005)*, effective as of 23 August 2005;
- (b) *Developer Contributions Plan No 1 - Open Space and Recreation*, effective as of 18 January 2005; and
- (c) *Environmental Planning and Assessment Act 1979 – Leichhardt Developer Contributions Plan – Transport and Access* - made 26 October 1999, operational on 3 November 1999.

**Council area** means the Leichhardt local government area.

**Developers** means:

- (a) Developer 1 in respect of Lot 1;
- (b) Developer 2 in respect of Lot X;
- (c) Developers 1 and 2 in respect of both Lot 1 and Lot X.

**Development** means:

- (a) any development of the Land that is only permissible by reason of the LEP and includes demolition of the existing structures on the Land for the development, the remediation of the Land for the development and the preparation of the Land for the development; and
- (b) in addition to (a) means:
  - (i) Lot 1 and Lot X being developed together as one development or;
  - (ii) Lot 1 being developed as a separate development and Lot X being developed as a separate development.

**Development Application** has the same meaning as in the Act and includes any other process or procedure for the obtaining of development consent or approval for the carrying out of development.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means a monetary contribution, the carrying out of work, or the provision of any other material public benefit, or any combination of them required to be made under this Agreement, to be used for, or applied towards, the provision of public amenities or services or another public purpose including Affordable Housing as required by this Agreement.

**Development Contribution Amount** means the amount of the Development Contribution to be made by the Developers under this Agreement, calculated in accordance with Schedule 1.

**Final Lot** means a lot created by a strata subdivision of a Building for separate occupation and disposition as a dwelling which may also include a car parking component.

**Floor space ratio** has the same meaning as in *Leichhardt Local Environmental 2013* as it was on the date of this Agreement.

**Gross floor area** has the same meaning as in *Leichhardt Local Environmental 2013* as it was on the date of this Agreement.

**GST** has the same meaning as in the GST Law.

**GST Law** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

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**Key Workers** means workers comprising emergency services (police, firefighters, ambulance workers), nurses, teachers and retail and hospitality services.

**Land** means Lot 1 and Lot X .

**LEP** means an amendment of *Leichhardt Local Environmental Plan 2013* which makes development including residential development of the Land having a floor space ratio of not less than 1.5:1 (as defined in *Leichhardt Local Environmental Plan 2000*) permissible with consent.

**Lot 1** means Lot 1 in DP 632522 known as 141 Allen Street, Leichhardt.

**Lot X** means Lot X in DP 381373 known as 159 Allen Street, Leichhardt.

**Modification Application** means an application under s96 or s96AA of the Act or any other process or procedure for obtaining a modification of a Development Consent.

**Occupation Certificate** has the same meaning as in the Act.

**Party** means a party to this agreement, including their successors and assigns.

**Planning Proposal** means the document entitled *Planning Proposal, Draft amendment to Leichhardt Local Environmental Plan 2013 141 (Lot 1 in DP 632522) 159 Allen Street (Lot X in DP 381373), Leichhardt* and dated May 2014.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*.

**Stage** means a stage of the Development as approved in a Development Consent for the Development.

**Strata Plan** means a strata plan or strata plan of subdivision with the meaning of the Strata Schemes Act.

**Strata Schemes Act** means the Strata Schemes (Freehold Development) Act 1974 (NSW).

**Stratum Plan** means any plan of subdivision of the stratum of the Land.

**Subdivision Certificate** has the same meaning as in the Act.

1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- 1.2.2 A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.5 A reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.

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- 1.2.6 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.14 A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- 1.2.15 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.

## **2 Application of this Agreement**

- 2.1 This Agreement applies to the Land and to the Development.
- 2.2 This Agreement constitutes a planning agreement within the meaning of section 93F of the Act.

## **3 Commencement of this Agreement**

- 3.1 This Agreement commences when it has been executed by all of the Parties.
- 3.2 The Party who executes this Agreement last is to notify the other Parties once it has done so and promptly provide them with a copy of the fully executed version of this Agreement.
- 3.3 This agreement may be executed in counterparts and if so the counterparts together constitute the Agreement.

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#### **4 Commencement of Development Contributions obligations**

- 4.1 The Developers are under no obligation to make the Development Contributions to the Council in accordance with this Agreement unless the Planning Proposal takes effect.

#### **5 Further Agreements Relating to this Agreement**

- 5.1 The Parties may, at any time, enter into such other agreements or arrangements relating to the subject-matter of this Agreement that they consider are necessary or desirable in order to give effect to this Agreement.
- 5.2 An agreement or arrangement referred to in clause 5.1 is not to be inconsistent with this Agreement.

#### **6 Surrender of right of appeal, etc.**

- 6.1 The Developers are not to commence or maintain, or cause to be commenced or maintained, any proceedings in a court involving an appeal against, or questioning the validity of, a Development Consent relating to the Development or an approval of a Modification Application in relation to a Development Consent for the Development to the extent that it relates to the validity of this Agreement or a condition of the Development Consent that requires this Agreement to be entered into and/or performed according to the terms of this Agreement.

#### **7 Application of s94, s94A and s94EF of the Act to the Development**

- 7.1 This Agreement excludes the application of s94 and s.94A of the Act to the Development the subject of Development Applications lodged by the Developers.
- 7.2 This Agreement does not exclude the application of s94 and s94A to development applications once the Developers have complied with their obligations to make the Development Contributions in Schedule 1.
- 7.3 The benefits of this Agreement are not to be taken into account in determining development contributions under s.94 or s.94A of the Act for development applications made after the obligations to make the Development Contributions in Schedule 1 have been complied with.
- 7.4 This Agreement does not exclude the application of s94EF of the Act to the Development.

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## **Part 2 –Development Contributions**

### **8 Provision of Development Contributions**

- 8.1 The Developers are to make the Development Contributions for the Development Contribution Amount by monetary contributions in accordance with Schedule 1 of, and the others terms of, this Agreement, and otherwise to the satisfaction of the Council,
- 8.2 The Developers and the Council may agree in writing to vary the Developers' obligations to make Development Contributions under this Agreement if the Council considers that the public interest would be better served by making the variation having regard to town planning conditions prevailing at the time of the variation.
- 8.3 The Council is to accept and apply each Development Contribution made by the Developers under this Agreement towards the public purpose for which it is made and otherwise in accordance with this Agreement.

## **Part 3 – Provisions relating to Development Contributions**

### **9 Procedures relating to payment of monetary Development Contributions**

- 9.1 A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement by a cleared unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 9.2 The Developers are to give the Council written notice of any application made for a Construction Certificate. The time for payment of the Development Contribution is provided for in Schedule 1 of this Agreement.
- 9.3 The Developers are not required to pay a monetary Development Contribution under this Agreement unless the Council, after having received the Developers' notice under clause 9.2, has given to the Developers a Tax Invoice for the amount of the Development Contribution.
- 9.4 The Developers are not in breach of this Agreement if it fails to pay a monetary Development Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developers a tax invoice in relation to the amount proposed to be paid by it.

### **10 Enforcement in a court of competent jurisdiction**

- 10.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 10.2 For the avoidance of doubt, nothing in this Agreement prevents:

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- 8.2 The Developers and the Council may agree in writing to vary the Developers' obligations to make Development Contributions under this Agreement if the Council considers that the public interest would be better served by making the variation having regard to town planning conditions prevailing at the time of the variation.
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- 10.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates,
- 10.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

## 11 Dispute Resolution - mediation

- 11.1 This clause applies to any dispute under this Agreement. Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 11.2 If a notice is given under clause 11.1, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 11.3 If the dispute is not resolved within a further 14 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 11.4 If the dispute is not resolved by mediation within a further 14 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

## 12 Registration of this Agreement

- 12.1 The Parties agree to register this Agreement on the titles to the Land. The Developers must use their best endeavours to obtain the consent of the persons specified in s93H(1) of the Act (including any mortgagees) to the registration of this Agreement on the Land and to cause this Agreement to be registered on the titles to the Land or so much of the Land as is possible having regard to its obligation under this clause.
- 12.2 For the purpose of clause 12.1:
  - 12.2.1 the Council:
    - (a) acknowledges that prior to this Agreement commencing, it was provided with evidence satisfactory to it evidencing the consent of the persons specified in s93H(1) of the Act to registration of this Agreement; and
    - (b) is to do such things as are reasonably necessary to enable registration to occur;
  - 12.2.2 prior to registration being effected, the Developers are not to cause, permit or allow the creation of any new mortgage interest in the Land unless the Council has first been provided with evidence satisfactory to it evidencing the consent of the mortgagee to the registration of this Agreement.
- 12.3 Subject to this clause, prior to the Planning Proposal taking effect or such later date as is agreed, the Developers are to provide the Council with the following documents to enable registration of this Agreement:

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- 12.3.1 an instrument requesting registration of this Agreement on the titles to the Land in registrable form duly executed by the Developers, and
- 12.3.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 12.4 Provided that the Developers are not in breach of this Agreement at the time, the Council is to do such things as are reasonably necessary as requested by the Developers to facilitate:
- 12.4.1 the lodgement and registration of any Strata Plan or Stratum Plan for a Stage, including the removal of any caveat over the Land relating to that Stage; and
- 12.4.2 lodgement of a request for the registration of this Agreement to be removed from the title to that part of the Land for a Stage prior to the registration of the Strata Plan or Stratum Plan for that Stage.
- 12.5 The Council is to promptly agree to a request by the Developers for the lodging of a request for the registration of this Agreement to be removed from the title of any part of the Land for a particular Stage once the Developers have made all of the Development Contributions required of them under this Agreement for that Stage.
- 12.6 The Parties are to agree to the lodging of a request for the registration of this Agreement to be removed from any part of the Land if this Agreement is terminated.
- 12.7 Subject to clause 12.4.1, the Developers are not to object to the Council lodging and maintaining a caveat over the Land until such time as this Agreement is registered in accordance with this clause. Any caveat lodged must be immediately removed by the Council if this Agreement is terminated.

### 13 Assignment, Sale of Land, etc

- 13.1 Unless the matters specified in clause 13.2 are satisfied, the Developers are not to do any of the following:
- 13.1.1 sell or transfer any part of the Land (other than a Final Lot) to any person, or
- 13.1.2 assign the Developers' rights or obligations under this Agreement, or novate this Agreement, to any person.
- 13.2 The matters required to be satisfied for the purposes of clause 13.1 are as follows:
- 13.2.1 the Developers must, at no cost to the Council, first procure, to the reasonable satisfaction of the Council, the execution by the person of an agreement in favour of the Council under which the person assumes the Developer's obligations under this Agreement, and
- 13.2.2 the Developers are not in breach of this Agreement, entitling the Council to terminate this Agreement.
- 13.3 This clause ceases to apply once the Developers have complied with its obligations to make the Development Contributions.

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#### **14 Review of this Agreement**

- 14.1 The Parties are to review this Agreement if the Developers notify the Council or the Council notifies the Developers that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement, or the Council notifies the Developers that it considers that circumstances exist that justify the review.
- 14.2 For the purposes of clause 14.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 14.3 For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 14.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 14.4 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.
- 14.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 14.1 is not a dispute for the purposes of clause 11 and is not a breach of this Agreement.

#### **15 Notices**

- 15.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and delivered by hand or posted by registered post to that Party at its address set out in Schedule 2.
- 15.2 If a Party gives the other Party 3 business days notice of a change of its address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered or posted to the latest address.
- 15.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
  - 15.3.1 delivered, when it is left at the relevant address,
  - 15.3.2 sent by post, 2 business days after it is posted.
- 15.4 If any notice, consent, information, application or request is delivered or the period referred to in clause 15.3 expires, on a day that is not a business day or after 5pm on a business day, it is to be treated as having been given or made at 9am on the next business day.

#### **16 Approvals and Consent**

- 16.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party.

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- 16.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## **17 Costs**

- 17.1 The Developers are to pay to the Council the Council's reasonable legal and other costs incurred relating to this Agreement not exceeding \$20,000.00 within 7 days of written demand by the Council identifying the expenditures.

## **18 Entire Agreement**

- 18.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 18.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

## **19 Further Acts**

- 19.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all action and transactions incidental to it.

## **20 Governing Law and Jurisdiction**

- 20.1 This Agreement is governed by the law of New South Wales.
- 20.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 20.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

## **21 No Fetter**

- 21.1 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.
- 21.2 If, contrary to the operation of this clause, any provision of this planning agreement is held by a Court of competent jurisdiction to constitute an unlawful fetter on any discretion, power or duty, the parties agree:-
- 21.2.1 they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied; and
- 21.2.2 to endeavour to satisfy the common objectives of the parties in relation to the provision of this Agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.

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## 22 Representations and Warranties

- 22.1 The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

## 23 Severability

- 23.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 23.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

## 24 Modification

- 24.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

## 25 Waiver

- 25.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 25.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.
- 25.3 It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

## 26 GST

- 26.1 In this Agreement:
- Adjustment Note, Consideration, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
- Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

141-159 Allen Street, Leichhardt Panning Agreement  
Leichhardt Municipal Council  
Leichhardt 141 Pty Limited and Arquilla Bulk Trading Co Pty Limited

---

- 26.2 If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 26.3 Clause 26.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 26.4 No payment of any amount pursuant to this clause 26, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 26.5 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 26.6 This clause continues to apply after expiration or termination of this Agreement.

**27 Developer 1 and Developer 2**

- 27.1 The obligations and rights of Developer 1 and Developer 2 are:
  - 27.1.1 several so far as they relate to Lot 1 and Lot X respectively individually;
  - 27.1.2 joint so far as they relate to both Lot 1 and Lot X collectively.

141-159 Allen Street, Leichhardt Planning Agreement  
 Leichhardt Municipal Council  
 Leichhardt 141 Pty Limited and Arquilla Bulk Trading Co Pty Limited

**Schedule 1**

(Clause 8.1)

**Development Contributions**

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent	Timing

**Monetary Contributions**

1. Monetary contributions for the development of Lot 1 and Lot X together as one development	<p>A: For amounts equivalent to amounts calculated up to the current legislative capping as at the date of this Agreement.</p> <p>Towards public purposes in Council's area including but not limited to those purposes described in the Contributions Plan.</p> <p>B: For amounts greater than amounts in A:-                      Affordable housing in the Council's area.</p>	<p>In amounts calculated in accordance with the amounts that would be payable if the Contributions Plan applied to a Stage (estimated to be approximately \$3,714,845.00 (for the Development as a whole), on the Planning Proposal) but disregarding any Ministerial direction under s94E of the Act capping the amount of any such contribution and disregarding any future change to legislation, Ministerial directions or anything else that may reduce the contributions otherwise payable under that plan in respect of a Stage and subject to indexation only of any contributions that have not been paid within two (2) years from the date that the LEP is made in accordance with the CPI (Sydney All Groups) on and from that date until the date of payment.</p>	<p>The amount for each Stage for a Building of the Development is to be paid prior to the issuing of the first Construction Certificate for that Stage.</p>
--	---	--	---

141-159 Allen Street, Leichhardt Planning Agreement  
 Leichhardt Municipal Council  
 Leichhardt 141 Pty Limited and Arquilla Bulk Trading Co Pty Limited

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent	Timing
Additional Floor Space	Towards public purposes in the Council's area at the discretion of the Council.	<p>\$3,000.00 per square metre for any extra square metre of Gross floor area of the Development above a Floor space ratio of 1.5:1.</p> <p>The amount to be paid for each Stage is calculated by determining the proportion of the number of dwellings in each stage compared to the total number of dwellings for the whole of the Development and applying that proportion to the amount payable above.</p>	The amount for each Stage of the built form is to be paid prior to the issuing of the first Construction Certificate for that Stage.
Affordable Housing Fund	Affordable housing in the Council's area	<p>\$187,049.00</p> <p>The amount to be paid for each Stage is calculated by determining the proportion of the Gross floor area in a stage compared to the total Gross floor area for the whole of the Development and applying that proportion to the amount payable above.</p> <p>Gross floor area for the purposes of this Agreement will be determined by reference to the Developer's architect's calculation in a Stage's Construction Certificate plans.</p>	The amount for each Stage of the built form is to be paid prior to the issuing of the first Construction Certificate for that Stage.

141-159 Allen Street, Leichhardt Planning Agreement  
 Leichhardt Municipal Council  
 Leichhardt 141 Pty Limited and Arquilla Bulk Trading Co Pty Limited

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent	Timing

**Monetary Contributions**

<p>2. Monetary contributions for the development of Lot 1 as a separate development</p>	<p>A: For amounts equivalent to amounts calculated up to the current legislative capping as at the date of this Agreement.</p> <p>Towards public purposes in Council's area including but not limited to those purposes described in the Contributions Plan.</p> <p>B: For amounts greater than amounts in A:-                      Affordable housing in the Council's area.</p>	<p>In amounts calculated in accordance with the amounts that would be payable if the Contributions Plan applied to a Stage (estimated to be approximately \$2,843,919.00 (for the Development as a whole), on the Planning Proposal) but disregarding any Ministerial direction under s94E of the Act capping the amount of any such contribution and disregarding any future change to legislation, Ministerial directions or anything else that may reduce the contributions otherwise payable under that plan in respect of a Stage and subject to indexation only of any contributions that have not been paid within two (2) years from the date that the LEP is made in accordance with the CPI (Sydney All Groups) on and from that date until the date of payment.</p>	<p>The amount for each Stage for a Building of the Development is to be paid prior to the issuing of the first Construction Certificate for that Stage.</p>
---	---	--	---

141-159 Allen Street, Leichhardt Panning Agreement  
 Leichhardt Municipal Council  
 Leichhardt 141 Pty Limited and Arquilla Bulk Trading Co Pty Limited

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent	Timing
Additional Floor Space	Towards public purposes in the Council's area at the discretion of the Council.	<p>\$3,000.00 per square metre for any extra square metre of Gross floor area of the Development above a Floor space ratio of 1.5:1.</p> <p>The amount to be paid for each Stage is calculated by determining the proportion of the number of dwellings in each stage compared to the total number of dwellings for the whole of the Development and applying that proportion to the amount payable above.</p>	The amount for each Stage of the built form is to be paid prior to the issuing of the first Construction Certificate for that Stage.
Affordable Housing Fund	Affordable housing in the Council's area	<p>\$142,023.00</p> <p>The amount to be paid for each Stage is calculated by determining the proportion of the Gross floor area in a stage compared to the total Gross floor area for the whole of the Development and applying that proportion to the amount payable above.</p> <p>Gross floor area for the purposes of this Agreement will be determined by reference to the Developer's architect's calculation in a Stage's Construction Certificate plans.</p>	The amount for each Stage of the built form is to be paid prior to the issuing of the first Construction Certificate for that Stage.

141-159 Allen Street, Leichhardt Planning Agreement  
 Leichhardt Municipal Council  
 Leichhardt 141 Pty Limited and Arquilla Bulk Trading Co Pty Limited

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent	Timing

**Monetary Contributions**

<p>3. Monetary contributions for the development of Lot X together as one development</p>	<p>A: For amounts equivalent to amounts calculated up to the current legislative capping as at the date of this Agreement.</p> <p>Towards public purposes in Council's area including but not limited to those purposes described in the Contributions Plan.</p> <p>B: For amounts greater than amounts in A:–</p> <p>Affordable housing in the Council's area.</p>	<p>In amounts calculated in accordance with the amounts that would be payable if the Contributions Plan applied to a Stage (estimated to be approximately \$870,926.00 (for the Development as a whole), on the Planning Proposal) but disregarding any Ministerial direction under s94E of the Act capping the amount of any such contribution and disregarding any future change to legislation, Ministerial directions or anything else that may reduce the contributions otherwise payable under that plan in respect of a Stage and subject to indexation only of any contributions that have not been paid within two (2) years from the date that the LEP is made in accordance with the CPI (Sydney All Groups) on and from that date until the date of payment.</p>	<p>The amount for each Stage for a Building of the Development is to be paid prior to the issuing of the first Construction Certificate for that Stage.</p>
---	---	--	---

141-159 Allen Street, Leichhardt Planning Agreement  
 Leichhardt Municipal Council  
 Leichhardt 141 Pty Limited and Arquilla Bulk Trading Co Pty Limited

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent	Timing
Additional Floor Space	Towards public purposes in the Council's area at the discretion of the Council.	<p>\$3,000.00 per square metre for any extra square metre of Gross floor area of the Development above a Floor space ratio of 1.5:1</p> <p>The amount to be paid for each Stage is calculated by determining the proportion of the number of dwellings in each stage compared to the total number of dwellings for the whole of the Development and applying that proportion to the amount payable above.</p>	The amount for each Stage of the built form is to be paid prior to the issuing of the first Construction Certificate for that Stage.
Affordable Housing Fund	Affordable housing in the Council's area	<p>\$45,026.00</p> <p>The amount to be paid for each Stage is calculated by determining the proportion of the Gross floor area in a stage compared to the total Gross floor area for the whole of the Development and applying that proportion to the amount payable above.</p> <p>Gross floor area for the purposes of this Agreement will be determined by reference to the Developer's architect's calculation in a Stage's Construction Certificate plans.</p>	The amount for each Stage of the built form is to be paid prior to the issuing of the first Construction Certificate for that Stage.



141-159 Allen Street, Leichhardt Panning Agreement  
Leichhardt Municipal Council  
Leichhardt 141 Pty Limited and Arquilla Bulk Trading Co Pty Limited

**Schedule 2**

(Clause 15)

**Council**

Contact General Manager  
Address: Leichhardt Municipal Council  
7-15 Wetherill Street  
LEICHHARDT NSW 2040

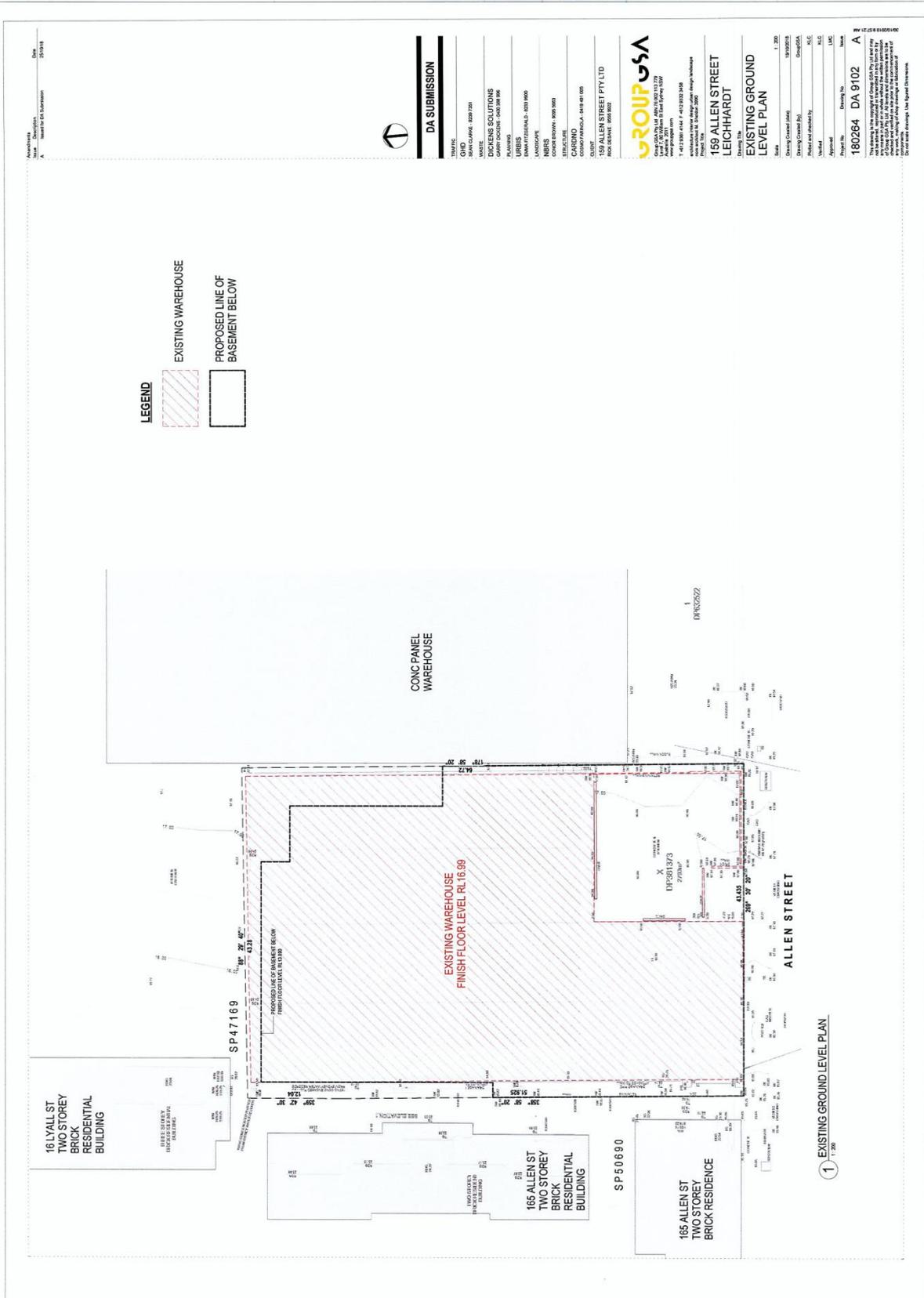
**Developer 1**

Contact Tony Royal  
Address: Leichhardt 141 Pty Limited  
Suite 1304, 370 Pitt Street  
SYDNEY NSW 2000

**Developer 2**

Contact: Arquilla Bulk Trading Co Pty Ltd  
Address: 159 Allen Street  
LEICHHARDT NSW 2040





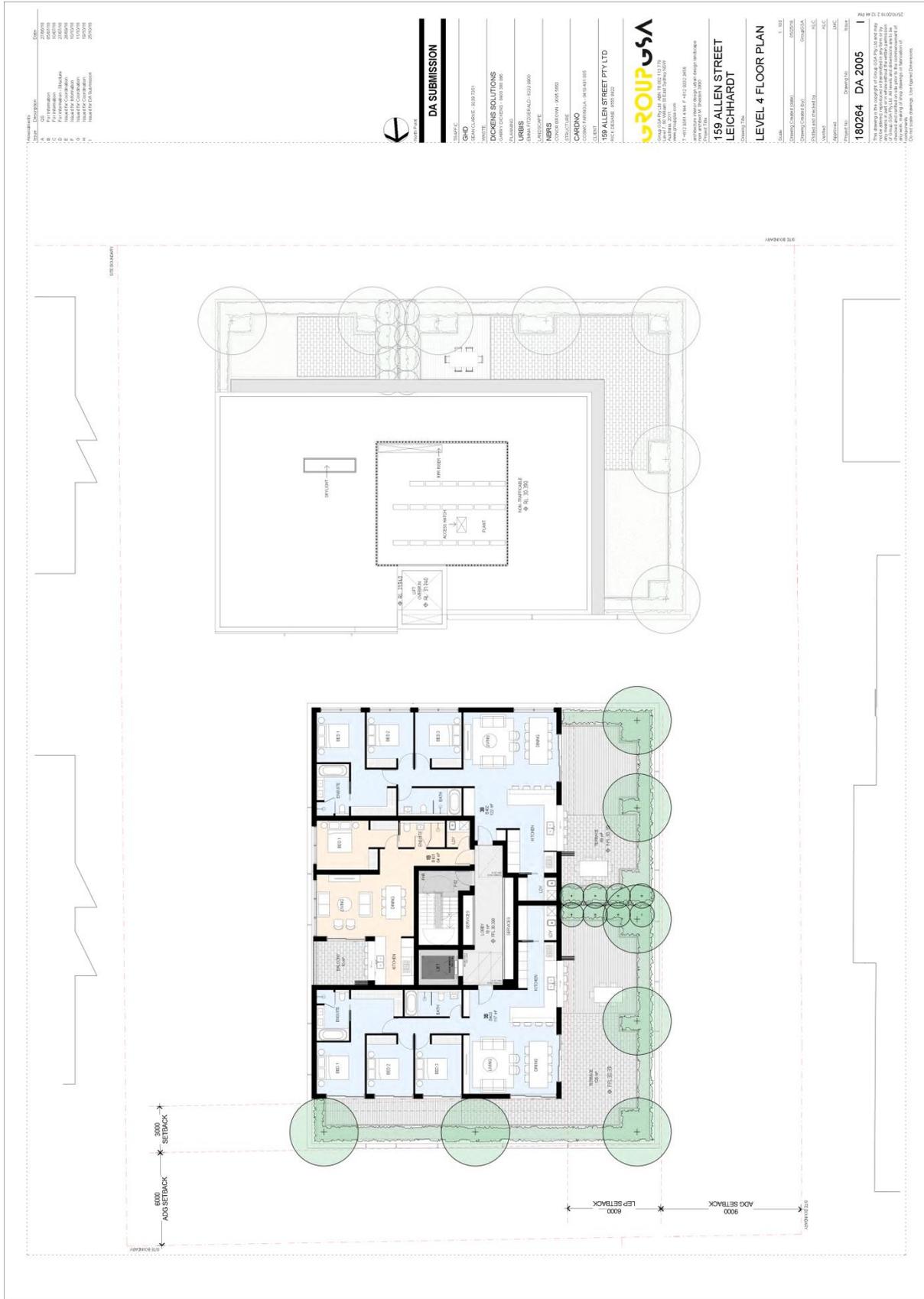


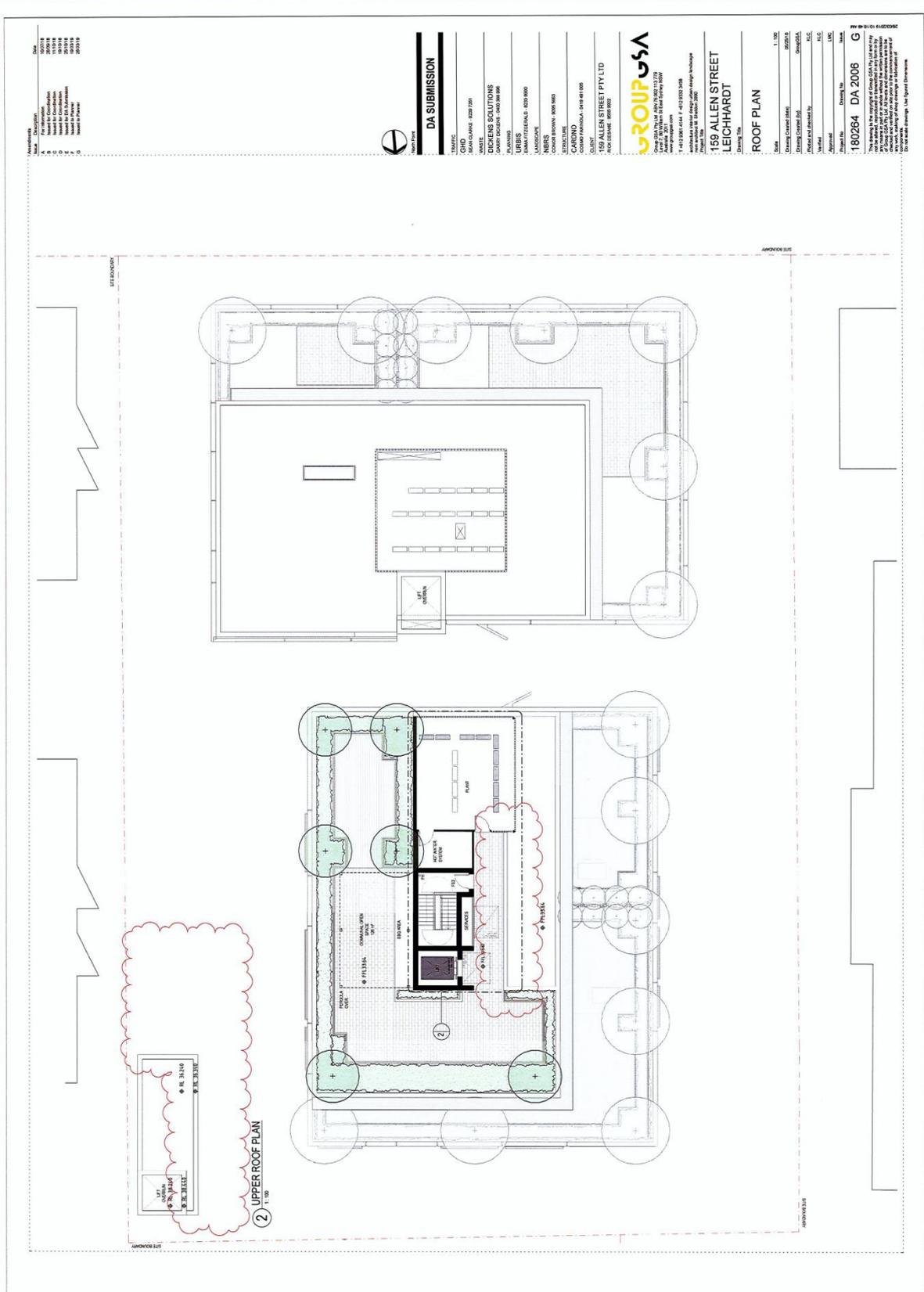












**ASSESSMENT**

Item	Description	Yes	No
1	Complies with the Development Control Plan		
2	Complies with the Local Environmental Plan		
3	Complies with the State Environmental Planning Policy		
4	Complies with the State Environmental Planning Policy		
5	Complies with the State Environmental Planning Policy		
6	Complies with the State Environmental Planning Policy		
7	Complies with the State Environmental Planning Policy		
8	Complies with the State Environmental Planning Policy		
9	Complies with the State Environmental Planning Policy		
10	Complies with the State Environmental Planning Policy		

**DA SUBMISSION**

**CLIENT**  
 GHD  
 159 ALLEN STREET  
 LEICHHARDT NSW 1585

**PROJECT**  
 DICKENS SOLUTIONS  
 159 ALLEN STREET  
 LEICHHARDT NSW 1585

**DESIGNER**  
 GROUP USA  
 159 ALLEN STREET  
 LEICHHARDT NSW 1585

**DATE**  
 15/08/2018

**SCALE**  
 1:100

**PROJECT**  
 159 ALLEN STREET  
 LEICHHARDT

**DATE**  
 15/08/2018

**SCALE**  
 1:100

**PROJECT**  
 159 ALLEN STREET  
 LEICHHARDT

**DATE**  
 15/08/2018

**SCALE**  
 1:100

**PROJECT**  
 159 ALLEN STREET  
 LEICHHARDT

**DATE**  
 15/08/2018

**SCALE**  
 1:100

**PROJECT**  
 159 ALLEN STREET  
 LEICHHARDT

**DATE**  
 15/08/2018

**SCALE**  
 1:100

**PROJECT**  
 159 ALLEN STREET  
 LEICHHARDT

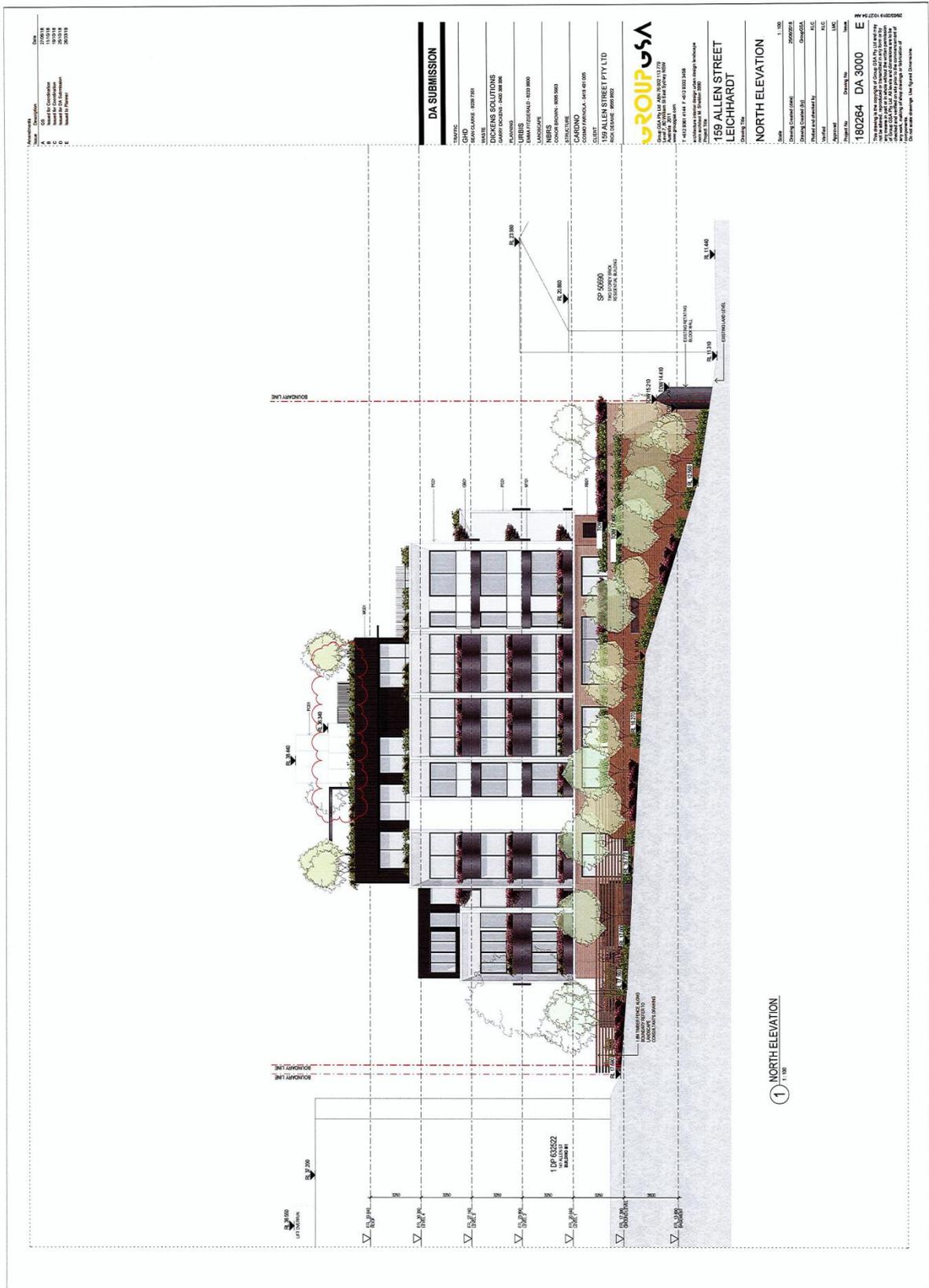
**DATE**  
 15/08/2018

**SCALE**  
 1:100

**PROJECT**  
 159 ALLEN STREET  
 LEICHHARDT

**DATE**  
 15/08/2018

**SCALE**  
 1:100



**DA SUBMISSION**

**GROUP USA**

**159 ALLEN STREET LEICHHARDT**

**NORTH ELEVATION**

Scale: 1:100  
 Drawing Created From: 20090724  
 Drawing Created By: GroupUSA  
 Project and Location: 159 Allen Street, Leichhardt, NSW  
 Client: GroupUSA  
 Date: 11/11/14

**180264 DA 3000 E**

180264 DA 3000 E  
 This drawing is intended for use in connection with the DA application for the proposed development. It is not to be used for any other purpose without the written consent of the architect. The architect is not responsible for any errors or omissions in this drawing, and the applicant is advised to check the drawing carefully before submission to the Council. The architect is not responsible for any errors or omissions in this drawing, and the applicant is advised to check the drawing carefully before submission to the Council.





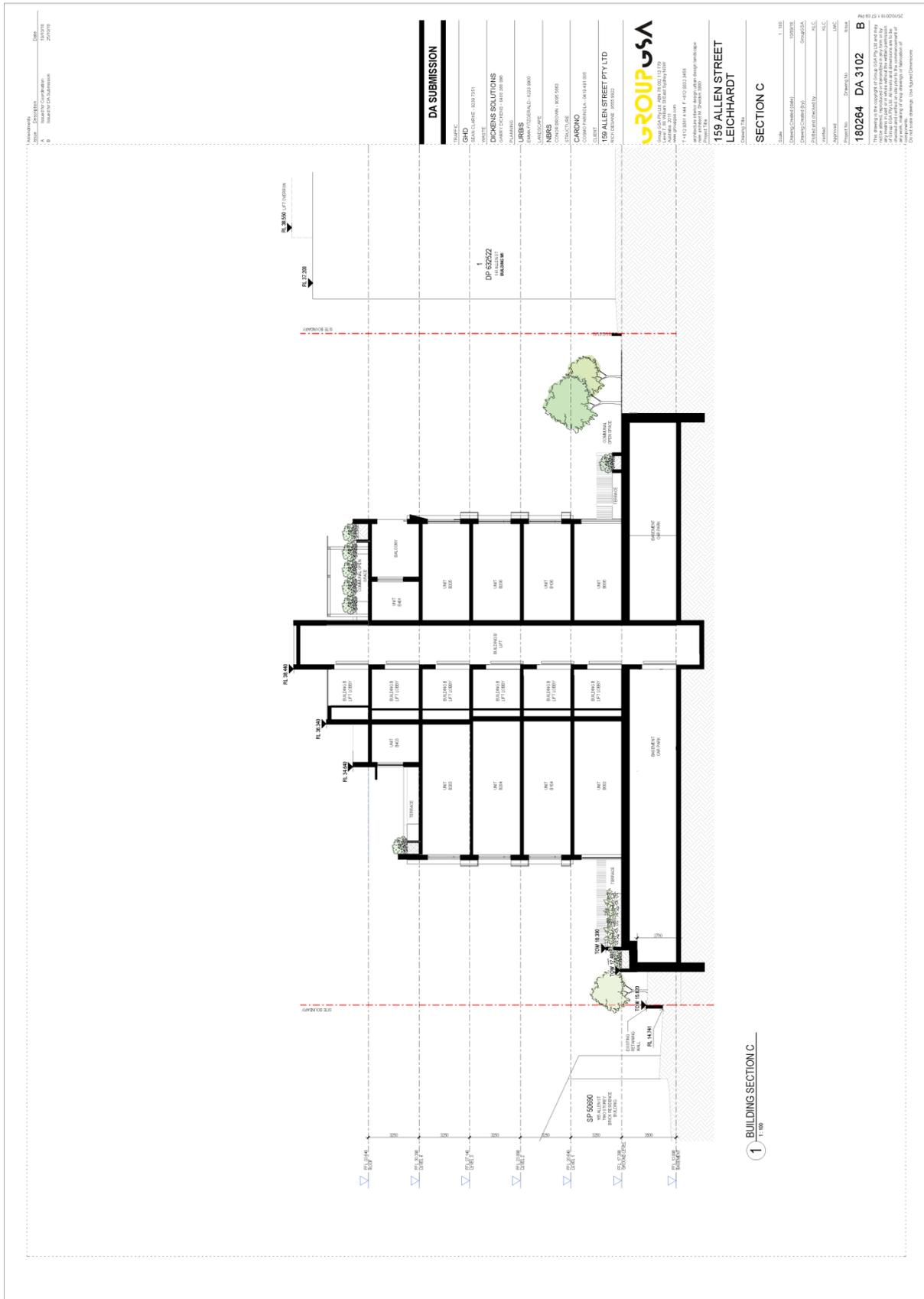










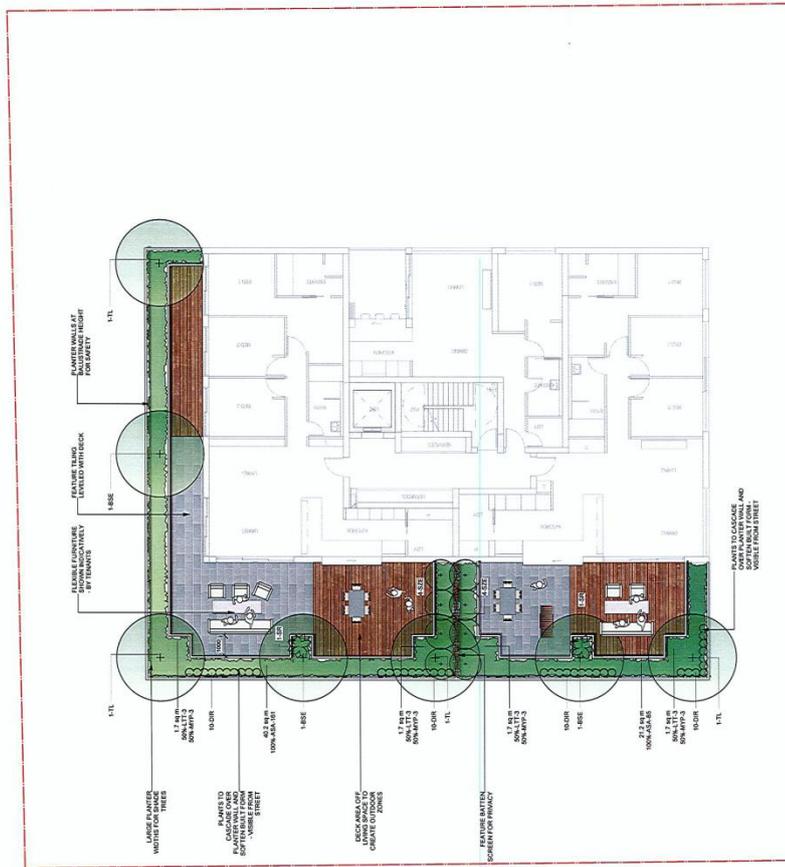




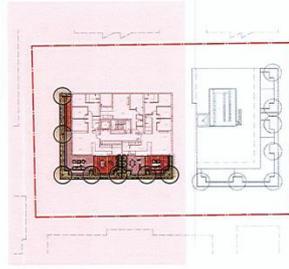








1 LANDSCAPE PLAN (FOURTH FLOOR)  
1:500 @ A1



2 FOURTH FLOOR MANAGEMENT PLAN  
1:500 @ A1

NOTE: REFER SHEET LD049 FOR PLANTING SCHEDULE

NBR ARCHITECTURE  
 LANDSCAPE  
 Level 3, 4 Old Street, Wilson Point, NSW 2001 Australia  
 T: 61 2 9557 2344 F: 61 2 9557 1208  
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 www.nbrarchitecture.com.au

Date: 23/10/2018  
 Scale: 100% (A1) or 200% (A3)  
 Drawing Reference: 18249-LD049  
 Revision: H

Project: 177 Allen Street, Leichardt  
 #1  
 177 Allen Street, Leichardt, NSW  
 155 Allen Street PTY LTD

Drawing Title:  
 Landscape Plan (3) (Fourth Floor)

FINISHES: METAL PLANTING  
 1.5M HIGH  
 PLANTER WALL  
 SEATING BENCH  
 CONCRETE TAMPERS  
 BATTEN FENCE

FINISHES: METAL PLANTING  
 1.5M HIGH  
 PLANTER WALL  
 SEATING BENCH  
 CONCRETE TAMPERS  
 BATTEN FENCE

Rev	Description
A	06/02/2018 REVIEW
B	13/02/2018 REVIEW
C	13/02/2018 REVIEW
D	13/02/2018 REVIEW
E	23/10/2018 FOR SUBMISSION
H	23/10/2018 FOR SUBMISSION









Attachment C- Clause 4.6 Exception to Development Standards

**UPDATED CLAUSE 4.6  
VARIATION REQUEST  
LEICHHARDT LOCAL  
ENVIRONMENTAL PLAN  
2013  
VARIATION OF CL. 6.17  
D2018/577 159 ALLEN  
STREET, LEICHHARDT**

30 APRIL 2019  
SA7390  
FINAL  
PREPARED FOR DESANE PROPERTIES PTY LTD

**URBIS**

URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

Director	Clare Brown
Consultant	Emma Fitzgerald
Project Code	SA7390
Report Number	Final

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ABN 50 105 256 228

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You must read the important disclaimer appearing within the body of this report.

[urbis.com.au](http://urbis.com.au)

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# 1. INTRODUCTION

## 1.1. PRELIMINARY

This clause 4.6 variation request has been prepared by Urbis Pty Ltd (**Urbis**) on behalf of Desane Properties Pty Ltd (**the applicant**) and accompanies the development application submitted to Inner West Council (**Council**) for a residential flat building development at 159 Allen Street, Leichhardt (**the site**). For abundant caution the request seeks to vary the maximum height in storeys standard prescribed for the site under clause 6.17 of the *Leichhardt Local Environmental Plan 2013* (**LLEP 2013**). The variation request is made under clause 4.6 of the LLEP 2013.

## 2. SITE AND LOCALITY

### 2.1. THE SITE

The site is known as 159 Allen Street, Leichhardt and is legally described as Lot X in DP 381373. It is a regular shaped allotment with an area of approximately 2,793sqm and frontage to Allen Street of approximately 43.3m. An aerial photograph of the site is included at **Figure 1**.

The site has a moderate slope falling approximately five metres from the south-eastern corner to the north-western corner.

Figure 1 – Aerial Photograph of the Site



Source: Nearmap, Urbis

The site is improved by a single-level warehouse, with a 2-storey office element fronting Allen Street. The existing structures cover the site, except for a portion which contains ground level car parking and loading dock access fronting Allen Street. This area contains parking for approximately eight vehicles and two roller doors to the warehouse.

Vehicle access is via a single crossover on Allen Street. Pedestrian access is directly from Allen Street and through the car parking area.

There are no heritage items within the site, nor is there any notable vegetation. There is a mature tree located at the site's frontage, within the Allen Street road reserve, which is part of the heritage item for the street trees on Allen Street between Flood Street and Foster Street (I619). **Figure 1** provides an aerial image of the site, with the aforementioned tree visible to the immediate south of the lot boundary.

## 2.2. SURROUNDING CONTEXT

The site is located in Leichhardt, approximately 5.5km west of the Sydney CBD. The site is in an established urban area that is predominantly residential in nature. **Figure 2** shows the regional location of the site, and **Figure 3** shows its immediate local context. A detailed description of the site's surrounding context is provided in the Statement of Environmental Effects (SEE) accompanying the Development Application (DA) submitted. 141 Allen Street is identified in green in **Figure 3**.

Figure 2 – Location Plan

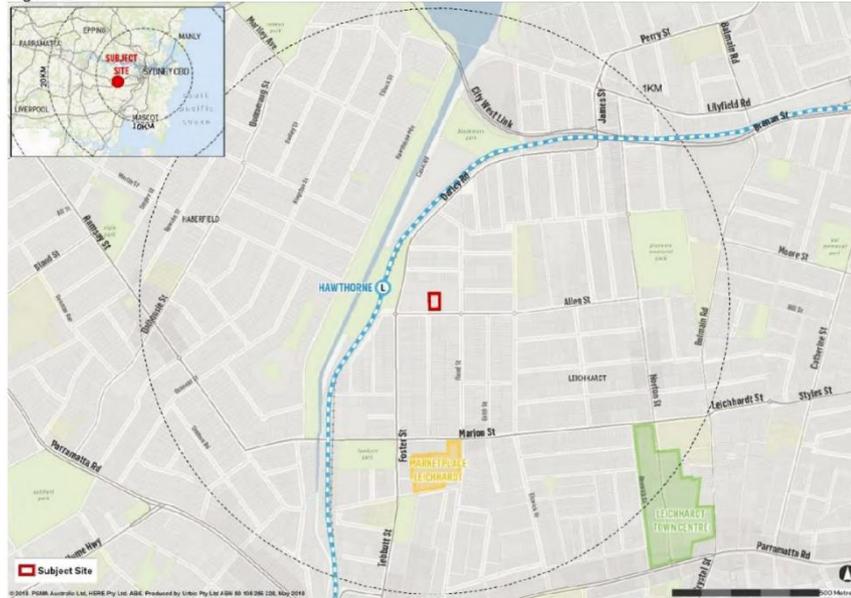


Figure 3 – Site Context



### 3. THE PROPOSED DEVELOPMENT

#### 3.1. OVERVIEW

This clause 4.6 variation request is for an exception to the *Development of Land at 141 and 159 Allen Street, Leichhardt* development standard as it relates to the maximum height in storeys prescribed for the site and is prepared in support of a DA submitted to Council for a new residential development. The proposed development is detailed in architectural plans prepared by Group GSA in **Appendix D** of the SEE and involves:

- Demolition of existing buildings on-site.
- Excavation to facilitate development.
- Construction of a residential flat building development comprising:
  - One basement level for car parking, storage, loading areas.
  - Two residential components: Building A – part-3 part-4 storeys and Building B – part-4 part-5 storeys.
  - A total of 46 residential units and 46 car parking bays.
  - Communal roof terrace (Building B).
  - Communal open space across the ground plane.
  - A basement connection to the adjacent property to the east (141 Allen Street – Lot 1 in DP632522) to allow the proposed development to transfer its waste for the purposes of storage and collection from that lot, in accordance with condition 75A on D/2015/641 that applies to 141 Allen Street.
- An FSR of 1.5:1.
- Associated landscaping including communal open space and deep soil planting.
- A single vehicle crossover to Allen Street.
- Ancillary drainage and infrastructure works.

## 4. RELEVANT ASSESSMENT FRAMEWORK

This section outlines the environmental planning instruments relevant to the proposed development, including the aims and objectives, *Development of Land at 141 and 159 Allen Street, Leichhardt* development standard as it relates to the maximum height in storeys and the assessment framework for seeking a variation to a development standard.

A summary of relevant planning principles and judgements issued by the Land and Environment Court regarding the assessment of developments seeking exceptions to development standards is also provided.

### 4.1. LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

Clause 4.6 of LLEP 2013 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of LLEP 2013 are:

- (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.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the Consent Authority to approve a development application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6 requires that the Consent Authority consider a written request from the applicant, which demonstrates that:

- *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- *There are sufficient environmental planning grounds to justify contravening the development standard.*

The Consent Authority must be satisfied that the proposed development will be in the public interest, consistent with the objectives of the standard and the objectives for development within the zone, and the concurrence of the Secretary has been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

1. *Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
2. *The public benefit of maintaining the development standard, and*
3. *Any other matters required to be taken into consideration by the Secretary before granting concurrence.*

This clause 4.6 request demonstrates that compliance with the maximum height in storeys prescribed for the site in clause 6.17 of LLEP 2013 is unreasonable and unnecessary having regard to the objectives of the standard, the circumstances of the application and proposed development and demonstrates that there are sufficient environmental planning grounds to justify the requested variation.

### 4.2. NSW LAND AND ENVIRONMENT COURT: CASE LAW (TESTS)

The approach to preparing and dealing with a request under clause 4.6 is neatly summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118:

13. *The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.*
14. *The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see *Woolworths Ltd v Pallas**

*Newco Pty Ltd (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see Corporation of the City of Enfield v Development Assessment Commission (2000) 199 CLR 135; [2000] HCA 5 at [28]; Winten Property Group Limited v North Sydney Council (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].*

15. *The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.*
16. *As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.*
17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*
23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*

24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*
25. *The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in Randwick City Council v Micaul Holdings Pty Ltd at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant's written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see Wehbe v Pittwater Council at [38].*
26. *The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in cl 4.6(4)(a)(ii).*
27. *The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).*
28. *The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.*
29. *On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: Fast Buck\$ v Byron Shire Council (1999) 103 LGERA 94 at 100; Wehbe v Pittwater Council at [41].*

## 5. EXTENT OF CONTRAVENTION

### 5.1. DEVELOPMENT STANDARD

The development standard the subject of this clause 4.6 variation is the maximum height in storeys control for the site set under clause 6.17(4) of LLEP 2013 which states:

- (b) *the height in storeys of any proposed building will not exceed:*
- (i) *3 storeys, or*
  - (ii) *4 storeys—if the building has street frontage to Allen Street, the highest storey of the building is set back at least 6 metres from any building wall that faces Allen Street or the western site boundary and any such building wall does not exceed 3 storeys in height, or*
  - (iii) *4 storeys—if the building does not have street frontage to Allen Street, or*
  - (iv) *5 storeys—if the building does not have street frontage to Allen Street, the highest storey of the building is set back at least 6 metres from any building wall that does not exceed 4 storeys in height and any such building wall is on the western side of the building.*

**Note.** *For the purposes of this clause:*

- 3 storeys is approximately 9.3 metres.*
- 4 storeys is approximately 12.4 metres.*
- 5 storeys is approximately 15.5 metres.*
- 6 storeys is approximately 18.6 metres.*

The proposed development has heights as follows:

- Building A: Three storeys to the western boundary and to the Allen Street frontage, stepping up to four storeys.
- Building B: Four storeys to the western boundary, stepping up to five storeys.

### 5.2. VARIATION TO MAXIMUM HEIGHT IN STOREYS

The contravention of the development standard is a technical non-compliance because the proposed development, which consists of two residential buildings, is considered to be one building as classified under the BCA because the two buildings share a common basement. Because of the BCA's classification of the development as one building, there is an argument that the whole of the development fronts Allen Street. If this is the case (and Council does not accept the Applicant's primary position that the development complies with the height control because of the definition of "building" which includes a "part of a building" as set out in the Applicant's revised Statement of Environmental Effects), there is a technical non-compliance with the height in storey control by one storey for Building B.

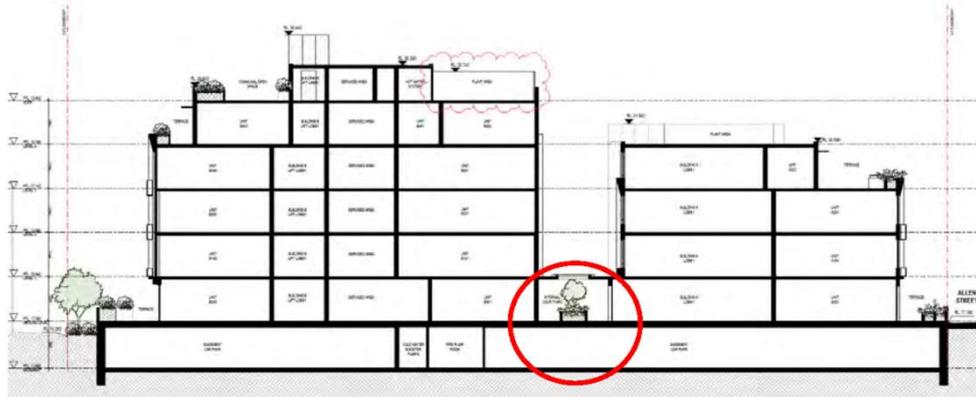
Building B presents as a five-storey built form which does not comply with clause 6.17(4)(b)(ii) as the top floor is not four storeys with the fourth storey set back six metres from the third floor building face below. This non-compliance would not exist if the buildings did not share a basement, central lobby, or if apartments A005 and B002 did not share a common wall, as circled in red in **Figure 4**.

The proposed development is compliant with the intent of the height in storey control of the LLEP 2013, as shown in **Figure 4**. The above ground appearance of the development is two separate built forms that look and function as two separate elements.

In order to maintain strict compliance with the LLEP 2013, if the proposal is considered one building, then Building B should be four storeys in height with the top floor set back at least six metres from any building wall that faces Allen Street or the western site boundary. If the two buildings are considered for the purposes of this clause as separate (as is their design intent and presentation) then the proposal is fully compliant with the height control.

The communal open space on the roof of Building B is not classified as a storey as defined under LLEP 2013.

Figure 4 – Proposed Height of Buildings



Source: Group GSA

### 5.3. EXTENT OF CONTRAVENTION

The proposed development will exceed the four storey height control for buildings fronting Allen Street by one storey. This contravention is the result of a technical building classification under the BCA where ‘the proposed development comprises two residential blocks (Block A & Block B) constructed over a common basement carpark. As such the two blocks in conjunction with the basement carpark level below constitute a single building’, and the classification of what counts as a storey under the LLEP 2013:

**storey** means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:

- (a) a space that contains only a lift shaft, stairway or meter room, or
- (b) a mezzanine, or
- (c) an attic.

If the two apartment blocks were assessed as two separate buildings, they would be fully compliant with the height in storey control within the LLEP 2013.

## 6. CLAUSE 6.17 - DEVELOPMENT OF LAND AT 141 AND 159 ALLEN STREET, LEICHHARDT

The following discussion presents an assessment of the request to vary the development standards relating to the *Development of land at 141 and 159 Allen Street, Leichhardt* as it relates to maximum height in storeys under clause 4.6 of LLEP 2013. Consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgments issued by the Land and Environment Court.

### Is the Planning Control a Development Standard?

The maximum height in storeys control established under clause 6.17 of LLEP 2013 is a development standard capable of being varied under clause 4.6 of LLEP 2013.

### Is the Development Standard Excluded from the Operation of Clause 4.6?

The proposed variation is not excluded from the operation of clause 4.6 as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of LLEP 2013.

### What is the Underlying Object or Purpose of the Standard?

The objectives of the maximum height in storeys control is as follows:

- (1) *The objective of this clause is to facilitate the development of the land to which this clause applies by specifying controls for different maximum heights and minimum setbacks for buildings on the land without adversely affecting the streetscape, character, amenity or solar access of surrounding land.*

The underlying object or purpose of the development standard is therefore to enable a built form that is compatible with the site, the scale and character of surrounding development and avoid detrimental impacts on surrounding land.

## 6.1. CONSIDERATION

### 6.1.1. Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

Strict compliance with the maximum height in storeys development standard would be unreasonable and unnecessary having regard to the circumstances of the proposed development.

The non-compliance is a technical one which arises from the BCA classification of the building as a single building, rather than a planning perspective which characterises the development as two buildings as shown in the architectural plans. The development is comprised of two separate above ground built forms that look and function as two separate residential apartment buildings. The built form is consistent with the intent of the controls, but for the fact that the proposal is technically one building and hence the rear portion (Building B) is a building that faces Allen Street and should be four storeys in height.

Overall, it is considered that strict compliance with the height in storeys development standard is unreasonable and unnecessary in the circumstances of the case. The proposed development delivers the built form envisaged by the controls and provides a more rational use of basement space and lobby entrances internal to the site and fronting Allen Street.

Strict compliance with the development standard would result in a sub-optimal outcome as the proposal would require separated basements and no weather-protected pedestrian path of travel from Allen Street to Building B. The variation will not result in any adverse environmental impacts on the site or the adjoining residential properties, and indeed the variation will facilitate positive amenity and streetscape outcomes.

Each of the matters listed within the 'five-part test' outlined in *Wehbe v Pittwater [2007] NSWLEC 827* and *Varying development standards: A Guide* are listed and responded to as follows:

- **The objectives of the standard are achieved notwithstanding non-compliance with the standard**

The objective of the height control in clause 6.17 of the LLEP 2013 is:

*"to facilitate the development of the land to which this clause applies by specifying controls for different maximum heights and minimum setbacks for buildings on the land without adversely affecting the streetscape, character, amenity or solar access of surrounding land."*

The objectives of the maximum height in storeys control will be achieved because the proposal will result in two buildings which do not adversely affect the streetscape, character, amenity or solar access of surrounding land, notwithstanding the technical non-compliance with the height control because of the classification of the two buildings as one building under the BCA. The non-compliance is purely the result of a technical building classification and will not be discernible or apparent from any vantage point. The proposal, comprising two buildings with a shared common basement, is a more rational use of the land facilitating an improved design outcome as opposed to two buildings with independent basements. There will be no impact on Building B's relationship with adjacent developments as a result of the technical non-compliance.

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

- **The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary**

The underlying objectives of the maximum height in storeys development standard remain relevant and have been achieved as the proposed development has been designed to be compatible with the scale and character of the locality and for the standard as it applies to the site and but for a technical building classification the proposal would be compliant.

- **The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable**

The objective of the height control is set out above.

The objectives of the R1 General Residential zone in LLEP 2013 are:

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

Strict compliance with the maximum height in storeys control, on the basis of the BCA classification rather than the above ground built form from a planning perspective, could defeat or thwart the achievement of underlying objectives of the zone and the height control storeys control by resulting in the loss of high amenity housing within the locality. The proposed development has been sensitively located and designed to optimise the compatibility of the development with the established residential character and streetscape, having regard to the objectives of the zone and the maximum height in storeys control.

The underlying objectives and purpose of the maximum height in storeys control will be achieved by the development. Compliance with the control in this instance is unreasonable because it will defeat or thwart the objectives of the height control and the zone. Strict compliance on the basis of a technicality only serves to reduce the residential development potential of the site and would result in a loss of amenity to the occupants of the development. If the development is considered as two separate buildings (as it presents and functions) then the proposal is compliant with the control.

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

The Land and Environment Court previously approved a development proposal for 141 Allen Street that departed from the same standard, for a not dis-similar reason. In that proposal the basement was regarded as a storey because it was above existing ground level.

As the development standard only applies across the two sites (141 and 159 Allen Street) it may be argued that the standard has been abandoned by the granting of a development consent departing from the standard for 141 Allen Street. Compliance with the standard is both unnecessary and unreasonable in this instance, especially because the intent of the standard is achieved.

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

The zoning of the land is appropriate for the site and facilitates the development as proposed.

### **6.1.2. Clause 4.6(3)(b) - Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?**

There are sufficient environmental planning grounds to justify contravention of the building height control for the following reasons:

- The contravention of the development standard arises only because of the BCA definition of 'a building' which results in the classification of the two buildings as a single building because the buildings have a common basement. The non-compliance does not adversely affect the streetscape, character, amenity or solar access of surrounding land. The development is compliant with the intent of the control. But for the technicality (the classification of the two buildings as one building under the BCA), the proposal would be fully compliant with the numeric requirements of the height control.
- If the two buildings had separate basements (which would result in the buildings being classified as two buildings under the BCA and would result in compliance with the height control), this would result in a sub-optimal outcome on planning grounds. Separate basements would:
  - Increase the built volume and mass of the development;
  - Significantly reduce the amenity of the occupants of the development as it would require the loss of communal open space at the ground plane and would jeopardise the ability of the development to achieve the ADG requirement for 2 hours of solar access to 50% of the communal open space at mid-winter;
  - The site has only one boundary with street access. Therefore, an additional ramp would be required to be added to the frontage along Allen Street to service the second basement resulting in a reduction of landscaping and amenity. This would also result in an increased disruption of the streetscape from an additional cross-over point along the public footpath, reducing the quality of space within the public realm and a degraded public realm;
  - Result in a reduction of deep soil and additional excavation as the basement would need to be separated into two separate volumes requiring a reconfiguration of the ground plane and would likely require two levels of basement parking for each building to accommodate the required parking as per the LDCP 2013; and
  - Jeopardise the establishment of the easement for a basement connection to the adjacent property to the east (141 Allen Street – Lot 1 in DP632522) to allow for the subject site to transfer its waste for the purposes of storage and collection from that lot, in accordance with condition 75A on D/2015/641 that applies to 141 Allen Street, as the location approved for the connection would be impacted by the second ramp.
- There will be no unacceptable environmental impacts arising from the contravention, including shadow, views, perceived bulk or scale, or visual impact on the streetscape or neighbouring properties.

Based on the above, it is considered that there are sufficient environmental planning grounds to justify contravention of the development standard.

**6.1.3. Clause 4.6(4)(a)(ii) - Will the Proposed Development be in the Public Interest Because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in Which the Development is Proposed to be Carried Out?**

The consistency of the development with the objectives of the development standard is demonstrated in Section 6.1.1 above.

The proposal is also consistent with the land use objectives that apply to the site under LLEP 2013. The site is located within R1 General Residential zone as outlined within Table 1.

Table 1 – Assessment of Compliance with Land Use Zone Objectives

Objectives - R1 General Residential zone	Assessment
<ul style="list-style-type: none"> <li>• <i>To provide for the housing needs of the community.</i></li> <li>• <i>To provide for a variety of housing types and densities.</i></li> <li>• <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></li> <li>• <i>To improve opportunities to work from home.</i></li> <li>• <i>To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.</i></li> <li>• <i>To provide landscaped areas for the use and enjoyment of existing and future residents.</i></li> <li>• <i>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.</i></li> <li>• <i>To protect and enhance the amenity of existing and future residents and the neighbourhood.</i></li> </ul>	<p>The proposed variation to maximum height in storeys is consistent with the objectives of the R1 zone.</p> <p>It will provide for the housing needs of the community through a variety of apartment types in a typology that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.</p> <p>The proposed variation will maintain and enhance the amenity of existing and future residents and the neighbourhood by providing a high quality built form outcome that is responsive to the needs of residents and neighbours alike.</p>

The proposal is considered to be in the public interest as the development is consistent with the objectives of the development standard, and the objectives of the zone.

**6.1.4. Clause 4.6(5)(a) - Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?**

The proposed non-compliance with the maximum height in storeys development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals. The development standard only applies to the site and the adjoining 141 Allen Street and has previously been varied for the adjoining site.

**6.1.5. Clause 4.6(5)(b) - Is There a Public Benefit of Maintaining the Planning Control Standard?**

The proposed development achieves the objectives of the maximum height in storeys development standard and the land use zone objectives despite the technical non-compliance.

It has been demonstrated that the non-compliance arises from the classification of the development as one building, rather than two buildings, under the BCA and not its physical presentation or function. The non-compliance will not result in an adverse environmental impact on the neighbourhood amenity and streetscape. Overall, it is considered that the provision of additional high amenity housing consistent with the intent of the LLEP 2013 is in the public benefit and will result in a superior outcome for the site and the surrounding land. As such, there would be no public benefit in maintaining the development standard in this case.

**6.1.6. Clause 4.6(5)(c) – Are There Any Other Matters Required to be Taken Into Consideration by the Secretary Before Granting Concurrence?**

Concurrence can be assumed. There are no additional matters that need to be considered within the assessment of this clause 4.6 request.

## 7. CONCLUSION

This request is made pursuant to clause 4.6 of LLEP 2013 and seeks to vary the maximum height in storeys development standard under clause 6.17 of LLEP 2013.

For the reasons set out in this submission, strict compliance with the numerical standard in this circumstance is both unreasonable and unnecessary, there are sufficient environmental planning grounds to justify the contravention and it is in the public interest to do so.

In summary:

- The proposal would be fully compliant with the maximum height in storeys control, but for the fact that the two buildings are classified as one building under the BCA, because they share a common basement. As a consequence, there is an argument that the whole of the development fronts Allen Street and, if the Council adopts this position (contrary the Applicant's primary position set out in its revised Statement of Environmental Effects), there is a technical non-compliance with the height in storey control by one storey for Building B.
- Notwithstanding this technical non-compliance, the intent of the height control is satisfied because the non-compliance does not adversely affect the streetscape, character, amenity or solar access of surrounding land.
- In fact, the proposal results in a better planning outcome than a complying development, being two buildings with separate basements, because it evenly distributes the building mass which has a positive impact on the streetscape, enables the quantum of deep soil provided to be retained and limits the level of required excavation thus reducing environmental impacts. It will result in better amenity for the occupants of the development because it: enables the development to provide sufficient communal open space that receives 2 hours of solar access at mid-winter; restricts the amount of cross-overs and ramps to preserve landscaping and amenity of the development; and will ensure the ongoing quality of the public realm by limiting the amount of required cross-overs along the public footpath to one thereby limiting the disruption to the streetscape.
- The proposed development achieves the objectives of the height in storeys development standard and the land use zoning objectives despite the technical non-compliance. Strict compliance with the development standard would defeat or thwart the achievement of underlying objectives of the control and the zone.
- Council supported a clause 4.6 variation on the adjacent site 141 Allen Street for a similar reason and the Land and Environment Court accepted the clause 4.6 variation. As the two sites are the only sites subject to this control, it is submitted that by virtue of the approval for the adjacent site which departed from the control, Council has not strictly applied this standard.

Overall, it is considered that the proposed variation to the height in storeys development standard is considered appropriate and well founded and can be supported under the provisions of clause 4.6 of LLEP 2013.

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