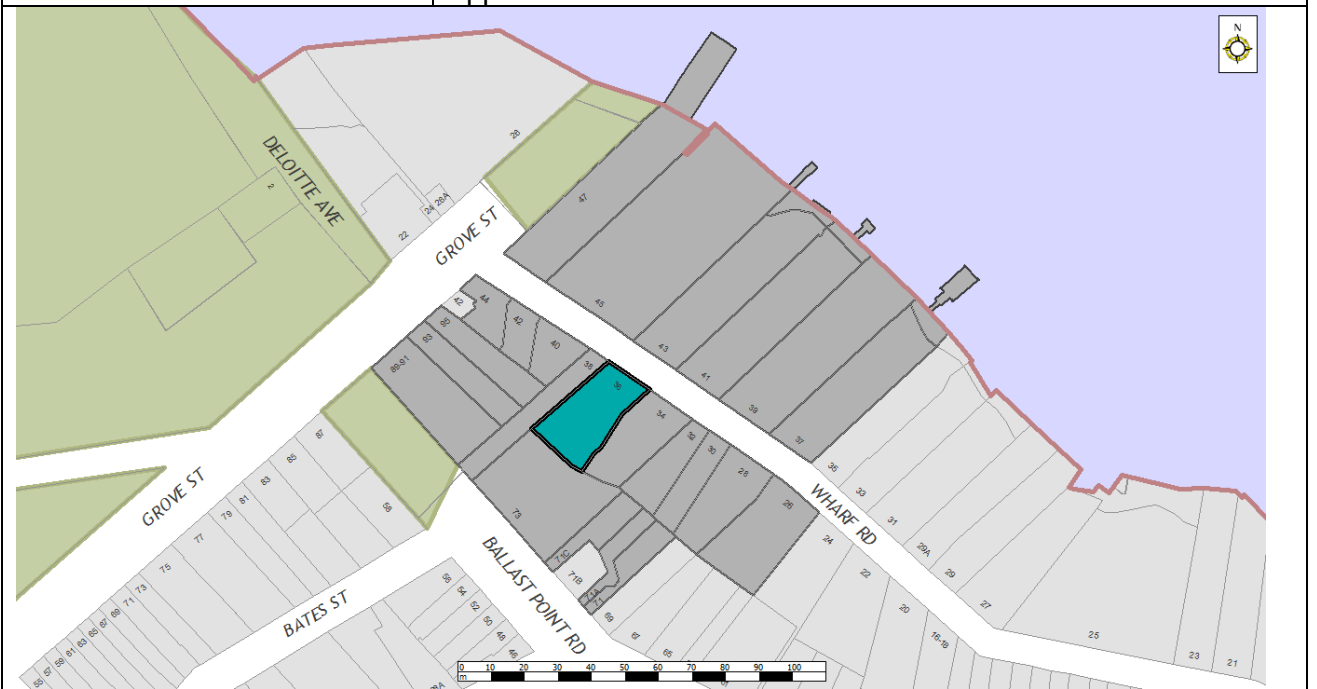




# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	D/2018/323
<b>Address</b>	36 Wharf Road, BIRCHGROVE NSW 2041
<b>Proposal</b>	Removal of 2 X Ficus trees and 4 X Acacia trees at heritage listed site.
<b>Date of Lodgement</b>	21 June 2018
<b>Applicant</b>	Mrs J E Hill
<b>Owner</b>	Mrs J E Hill [allows panel members to identify Council applications &/or conflicts]
<b>Number of Submissions</b>	Nil
<b>Value of works</b>	\$3,000.00
<b>Reason for determination at Planning Panel</b>	Partial demolition of heritage item (tree removal only)
<b>Main Issues</b>	Heritage; Tree Removal
<b>Recommendation</b>	Approval



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the application submitted to Council for tree removal within a heritage listed site at 36 Wharf Road, Birchgrove. The application was notified to surrounding properties and no submissions were received.

The main issues that have arisen from the application include:

- Heritage
- Tree Removal

The proposal will not result in any adverse heritage or landscape amenity impacts and therefore the application is recommended for approval.

## 2. Proposal

The proposal involves the removal of the following trees:

- 5 x *Acacia melanoxylon* (Black wood) were identified to be growing along the side boundary of the site. The estimated height of these trees was 6-7m. The stem diameter readings measured 85mm, 30mm, 157mm, 70mm and 192mm measured at 1.4m from ground level. All five specimens were noted to be growing in close proximity to adjoining boundary wall. Trunks of all specimens were measured to be less than 30mm from boundary wall.
- 2 x *Pittosporum tenuifolium* (James Stirling Pittosporum) were identified to be growing along the side boundary of the site. The estimated height of these trees was 4-5m. The stem diameter readings were recorded at 100mm and 54mm measured at 1.4m from ground level. These specimens were noted to be growing on a phototropic lean competing for sunlight and were not considered to be good examples of the species.
- 2 x *Ficus benjamina* (Weeping fig) were also observed on site that appeared to have been escaped pot plants. These trees were estimated to be between 7-8m in height and comprised of several stems. Although these trees were noted to have poor form and structure, they could be clearly seen from the road frontage and positively contributed to the local amenity and street character.
- 2 x clumps of *Dyopsis lutescens* (Golden cane palm) have also been proposed for removal. The clumps comprised of several main stems with an overall estimated height of 3.5. These trees should not be considered a constraint for the development, but are easily transplanted and should be considered for repurposing elsewhere in the landscape.

The proposal involves the planting of one replacement canopy tree.

No other works are proposed as a part of this application.

The location of the subject trees to be removed is indicated in the aerial photo below.



*Figure 1: Proposed tree removal adjacent to north-western boundary at 36 Wharf Road*

### 3. Site Description

The subject site is located on the south-eastern side of Wharf Road, between Grove Street and Lemm Street. The site consists of one allotment and is irregular in shape with a total area of 512.2sqm and is legally described as Lot B, DP 441954.

The site has a frontage to Wharf Road of 15.07 metres.

The site supports a semi-detached dwelling. The adjoining properties support one and two storey dwellings.

The subject site is located within a conservation area and is listed as a heritage item (I610).

As noted above, a number of trees are located on the site and within the vicinity.

### 4. Background

#### 4(a) Site history

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

**Subject Site**

Application	Proposal	Decision & Date
D/2006/534	Alterations and additions to existing dwelling.	Approved 31/10/2006
D/2009/483	Alterations and additions to existing dwelling including a new first floor	Approved 16/12/2010

**Surrounding properties**34 Wharf Road

Application	Proposal	Decision & Date
D/2005/345	Alterations and additions to an existing dwelling to include a new two storey addition at rear.	Approved 14/7/2006
D/2015/132	Removal of 9 palms trees from the rear of the subject site.	Approved in part 13/5/2015

38 Wharf Road

Application	Proposal	Decision & Date
D/2001/220	Amended plans: Remediation and alterations and additions to the existing dwelling including a new first floor and front and rear decks.	Approved 10/12/2002
D/2007/134	Demolition works to the existing rear garage and shed structure to allow for its replacement with an enlarged garage and shed structure.	Approved 27/8/2007

73 Ballast Point Road

Application	Proposal	Decision & Date
D/2017/647	Removal of 10 x Cupressus torulosa (Bhutan Cypress) trees located adjacent to the south-eastern boundary.	Approved 12/4/2018

**4(b) Application history**

Not applicable

**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 (Vegetation in Non-Rural Areas) 2017
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Leichhardt Local Environmental Plan 2013

The following provides further discussion of the relevant issues:

#### **5(a)(i) State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

A permit under Part 3 of the Policy cannot be issued for the clearing of vegetation that is or forms part of a heritage item or that is within a heritage conservation area. An appropriate application for development consent relating to the subject tree removal has been made.

#### **5(a)(ii) State Environmental Planning Policy (Coastal Management) 2018**

The subject site is not located within the coastal zone and as such, these provisions are not applicable.

#### **5(a)(iii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

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

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

The application was assessed against the following relevant clauses of the Leichhardt Local Environment Plan 2013.

- Clause 1.2 – Aims of the Plan
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 5.10 – Heritage Conservation

The following provides further discussion of the relevant issues:

#### Clause 5.10 – Heritage Conservation

The subject site is listed as an item of local heritage significance (I610). The listing relates to a semi-detached dwelling forming part of a pair with 34 Wharf Road, known as the “Exeter Villas”. The building is elevated above street level and is enhanced by a garden setting.

The Acacia and Pittosporum trees are growing close to the side boundary of the property. The two Ficus trees have escaped from their pot plants.

While the Ficus trees are visible from the street and make some contribution to the streetscape, the trees do not form part of the original plantings to the site and do not make a substantial contribution to the heritage significance of the site. The remaining landscaping within the front garden will be retained.

Therefore, it is considered that the proposal will not result in any adverse heritage impacts.

#### **5(b) Draft Environmental Planning Instruments**

##### **Draft State Environmental Planning Policy (Environment) 2018**

The NSW government has been working towards developing a new State Environmental Planning Policy (SEPP) for the protection and management of our natural environment. The

Explanation of Intended Effect (EIE) for the Environment SEPP was on exhibition from 31 October 2017 until 31 January 2018. The EIE outlines changes to occur, implementation details, and the intended outcome. It considers the existing SEPPs proposed to be repealed and explains why certain provisions will be transferred directly to the new SEPP, amended and transferred, or repealed due to overlaps with other areas of the NSW planning system.

This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland and Willandra Lakes World Heritage Property. Changes proposed include consolidating seven existing SEPPs including Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. The proposed development would be consistent with the intended requirements within the Draft Environment SEPP.

### 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
C1.4 Heritage Conservation Areas and Heritage Items	Yes
C1.12 Landscaping	Yes
C1.14 Tree Management	Yes
<b>Part C: Place – Section 2 Urban Character</b>	
Suburb Profile	
C2.2.2.6 Birchgrove Distinctive Neighbourhood, Birchgrove	Yes
<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	Yes
<b>Part G: Site Specific Controls</b>	
Section 5 – Wharf Road, Birchgrove	
G5.1 Heritage	Yes
G5.2 Landscaping	Yes

The following provides discussion of the relevant issues:

#### C1.12 – Landscaping

The objectives of C1.12 *Residential Development* are:

- O1 *Development includes on-site landscaped open space that:*
- enhances the visual setting of buildings;*
  - contributes to the distinct landscape character within the neighbourhoods and preserves, retains and encourages vegetation and wildlife that is indigenous to the municipality and Sydney;*

- c. *preserves or retains natural features such as rock outcrops that contribute to the landscape of the area;*
- d. *conserves water resources by reducing the need for irrigation;*
- e. *maximises vegetation to regulate and increase rainwater infiltration, thereby increasing nutrient recycling and reducing surface runoff;*
- f. *is compatible with the heritage significance of the place;*
- g. *contributes to the amenity of the residents and visitors;*
- h. *where involving new plantings, benefit the building's energy efficiency;*
- i. *protects and retains existing trees on the subject and surrounding sites, including the street verge; and*
- j. *is designed to encourage the retention and enhancement of green corridors.*

Removal of trees is supported as it is considered that they are located where the prevailing environmental conditions are unsuitable.

Replacement planting with 1 advanced native trees capable of attaining a minimum height of 8m is proposed to offset the loss of canopy cover and landscape amenity. This replacement trees, combined with retention of the remaining garden plants, will create a positive contribution to the surrounding landscape and enhance the visual appeal of the neighbourhood.

#### C1.14 – Tree Management

The proposed tree removal is consistent with the *Tree Management Controls* under C1.14.7 which provides the criteria under which the removal of a prescribed tree is to be assessed:

- a. *the tree is located where the prevailing environmental conditions are unsuitable;*
- b. *the tree is in a state of irreversible decline or is dead;*
- c. *the tree poses a threat to human life or property;*
- d. *the tree is causing significant damage to public infrastructure which cannot be remediated by any other reasonable and practical means;*
- e. *the replacement of damaged or failed sewer pipes or storm water lines cannot reasonably be undertaken with the retention of the tree;*
- f. *the tree is not deemed to be a tree of landscape significance; and*
- g. *replacement planting can better achieve the objectives of this section of the Development Control Plan within a reasonable time.*

A site inspection was undertaken on 16/08/2018. The following observations were recorded and Arboricultural advice provided below.

- 5 x *Acacia melanoxylon* (Black wood) were identified to be growing along the side boundary of the site. The estimated height of these trees was 6-7m. The stem diameter readings measured 85mm, 30mm, 157mm, 70mm and 192mm measured at 1.4m from ground level. All five specimens were noted to be growing in close proximity to adjoining boundary wall. Trunks of all specimens were measured to be less than 30mm from boundary wall.
- 2 x *Pittosporum tenuifolium* (James Stirling Pittosporum) were identified to be growing along the side boundary of the site. The estimated height of these trees was 4-5m. The stem diameter readings were recorded at 100mm and 54mm measured at 1.4m from ground level. These specimens were noted to be growing on a phototropic lean competing for sunlight and were not considered to be good examples of the species.
- 2 x *Ficus benjamina* (Weeping fig) were also observed on site that appeared to have been escaped pot plants. These trees were estimated to be between 7-8m in height and comprised of several stems. Although these trees were noted to have poor form

and structure, they could be clearly seen from the road frontage and positively contributed to the local amenity and street character.

- 2 x clumps of *Dyopsis lutescens* (Golden cane palm) have also been proposed for removal. The clumps comprised of several main stems with an overall estimated height of 3.5. These trees should not be considered a constraint for the development however, they are easily transplanted and should be considered for repurposing elsewhere in the landscape.

The above trees are either considered to have low landscape value and do not meet the criteria of a prescribed tree in accordance with C1.14.3 of Councils Tree Management Controls or have been identified to have poor form and structure.

Given the above, tree removal is supported in this instance subject to replanting and the below conditions.

#### C2.2.2.6 Birchgrove Distinctive Neighbourhood, Birchgrove

Whilst the *Desired Future Character Controls* do not specifically refer to trees on private property, due to the reasons outlined under C1.14, removal is supported and will not result in any adverse landscape or heritage impacts.

#### G5.2 Landscaping

The trees to be removed are not listed as contributory trees and the proposal will not result in any adverse landscape or heritage impacts.

### 5(d) The Likely Impacts

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

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

The site is zoned R1 General Residential. Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

### 5(f) Any submissions

The application was notified in accordance with Council's Policy for a period of 14 days to surrounding properties. No submissions were received.

### 5(g) The Public Interest

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

The proposal is not contrary to the public interest.



## 6 Referrals

### 6(a) Internal

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

- Heritage Officer: No objections to the proposed tree removal given the trees do not form part of the original plantings within the site and do not make a substantial contribution to the heritage significance of the site.
- Landscape: No objections to the proposed tree removal subject to standard conditions and replacement planting.

### 6(b) External

The Development Application was not required to be referred to any external body for comment.

## 7. Section 7.11 Contributions

Section 7.11 contributions are not payable for the proposal.

## 8. Conclusion

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

## 9. Recommendation

- A. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No: D/2018/323 for Removal of 2 X Ficus trees and 4 X Acacia trees at heritage listed site at 36 Wharf Road, BIRCHGROVE NSW 2041 subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

### CONDITIONS OF CONSENT

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

Tree/location	Approved works
5x <i>Acacia melanoxyton</i> (Black wood) located side boundary	Remove
2x <i>Pittosporum tenuifolium</i> (James Stirling Pittosporum) located side boundary	Remove
2x <i>Ficus benjamina</i> (Weeping fig)	Remove
2x clumps of <i>Dyopsis lutescens</i> (Golden cane palm) located side boundary	Remove. Should be considered for transplanting.

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

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

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

2. The following replacement trees must be planted:

Tree/species	Quantity	Location
Native specimen capable of attaining a minimum mature height of 8m	1	Suitable location on site

The minimum container size of the new tree shall be 75 litres at the time of planting, and shall comply with AS 2303—*Tree Stock for Landscape Use*.

Council is to be notified when the replacement tree has been planted and an inspection arranged with Council's Tree Assessment Officer. If the replacement is found to be faulty, damaged, dying or dead prior to being protected under the Tree Management Controls of the Leichhardt Development Control Plan 2013, the replacement tree shall be replaced with the same species, which will comply with the criteria above.

Council encourages the uses of replacement trees that are endemic to the Sydney Basin to increase biodiversity in the local environment and provide a natural food source for native birds and marsupials. Note: Any replacement tree species must not be a palm tree species or be a plant declared to be a noxious weed under the Noxious Weeds Act 1993 or tree species listed as an exempt species under Section C1.14 (Tree Management) of the Leichhardt Development Control Plan 2013.

3. No activities, storage or disposal of materials taking place beneath the canopy of any tree protected under Council's Tree Management Controls at any time.
4. No trees on public property (footpaths, roads, reserves etc) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.

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

5. Prior to completion of works, the Principal Certifying Authority is to be satisfied that all landscape works, including the removal of all noxious weed species and planting of canopy trees, have been undertaken in accordance with the approved landscape plan and/or conditions of Development Consent.
6. The canopy replenishment trees required by this consent are to be maintained in a healthy and vigorous condition until they attain a height of 6 metres whereby they will be protected by Council's Tree Management Controls. Any of the trees found faulty, damaged, dying or dead shall be replaced with the same species within 2 months.

#### NOTES

1. This Determination Notice operates or becomes effective from the endorsed date of consent.
2. Section 8.2 of the *Environmental Planning and Assessment Act 1979* provides for an applicant to request Council to review its determination. This does not apply to applications made on behalf of the Crown, designated development or a complying development certificate. The request for review must be made within six (6) months of the date of determination or prior to an appeal being heard by the Land and Environment Court. Furthermore, Council has no power to determine a review after the expiration of these periods. A decision on a review may not be further reviewed under Section 8.2.
3. If you are unsatisfied with this determination, Section 8.7 of the *Environmental Planning and Assessment Act 1979* gives you the right of appeal to the Land and Environment Court within six (6) months of the determination date.
4. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.
5. Works or activities other than those approved by this Development Consent will require the submission of a new development application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.
6. This decision does not ensure compliance with the *Disability Discrimination Act 1992*. Applicants should investigate their potential for liability under that Act.
7. This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act.

#### Have you made a political donation?

If you (or an associate) have made a political donation or given a gift to a Councillor, political party or candidate at the local government elections during the last two (2) years you may need to include with your application a full disclosure of this matter. For information go to Council's website at [www.leichhardt.nsw.gov.au/Political-Donations.html](http://www.leichhardt.nsw.gov.au/Political-Donations.html) If you have made a reportable donation, failure to provide a completed declaration with your application is an offence under the Environmental Planning and Assessment Act, 1979 for which you may be prosecuted.