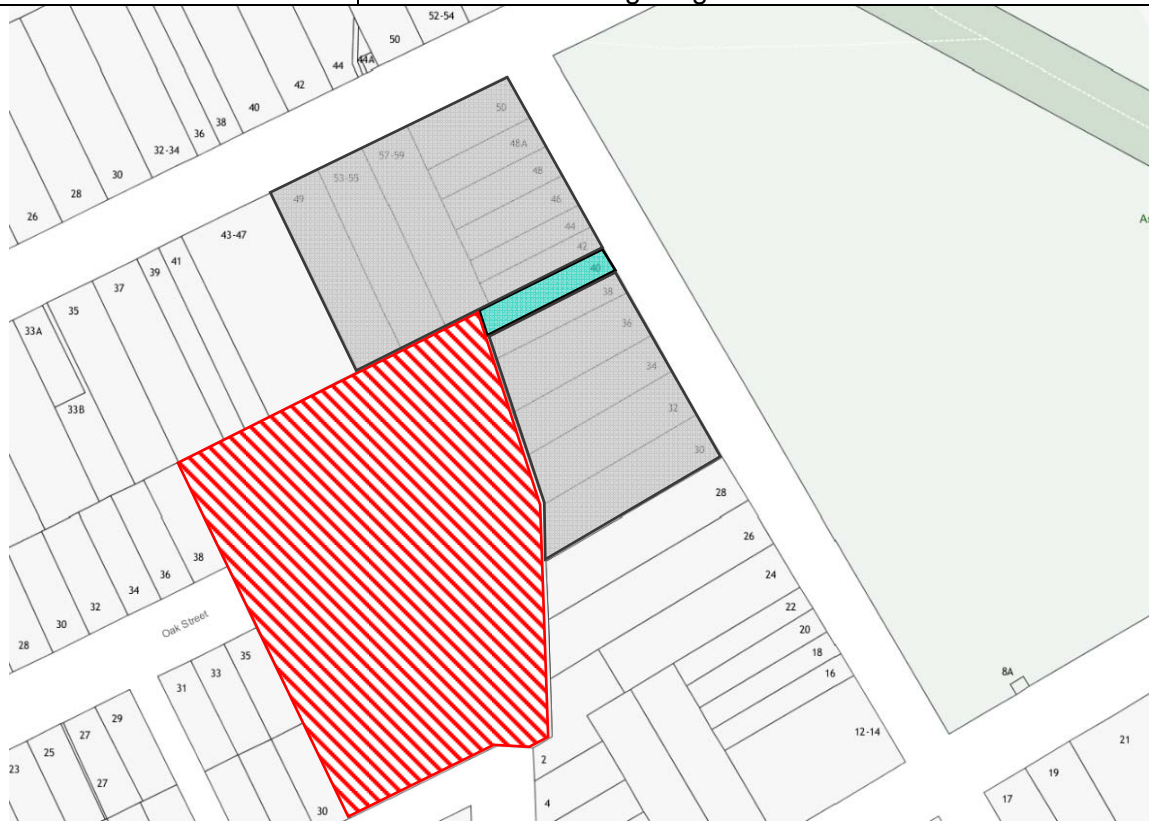








# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	10.2018.188.1
<b>Address</b>	40 Pembroke Street, Ashfield
<b>Proposal</b>	Removal of a tree in the rear yard
<b>Date of Lodgement</b>	7 November 2018
<b>Applicant</b>	Conti Strata
<b>Owner</b>	Ms J A Leary
<b>Number of Submissions</b>	One
<b>Value of works</b>	\$1,100.00
<b>Reason for determination at Planning Panel</b>	Heritage Item
<b>Main Issues</b>	Tree Management
<b>Recommendation</b>	Approval
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Statement of Heritage Significance



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of an application submitted to Council for removal of a tree in the rear yard at 40 Pembroke Street, Ashfield. The application was notified to surrounding properties and one (1) submission was received. The main issues that have arisen from the application include Tree Management and Heritage.

## 2. Proposal

Approval is sought to remove an *Agonis flexuosa* (Willow Myrtle) tree located on the north western corner of the site. An Arborist Report in support of the application has been submitted which provides the following reasons for the removal of the tree:

- The structural condition of the tree is poor;
- The Useful Life Expectancy (ULE) of the tree is relatively short; and
- The tree is located approximately 1 metre from a 1.8 metre high brick retaining wall on the boundary of 37 Oak Street. A diagonal crack has developed in the wall and it appears as though the tree has contributed to the wall damage. To facilitate wall repairs, root pruning is likely which may compromise the stability of the tree.



*Image 1: Subject Tree*

## 3. Site Description

The subject site is located on the western side of Pembroke Street, between Orpington Street and Ormond Street, Ashfield. The site is legally described as Lot 1 DP 570887. The site supports a single storey dwelling house. The adjoining properties support single storey dwelling houses.

The subject site is listed as a heritage item, namely Item No. 275, a group of semi-detached houses.

The following tree is located on the site:

- *Agonis flexuosa* (Willow Myrtle) located on the north western corner of the site



*Image 2: Site Aerial Photo*

## 4. Background

### 4(a) Site history

There is no relevant development history for the subject site.

### 4(b) Application history

There is no relevant history for the subject application.

## 5. Assessment

The following is a summary of the assessment of the application in accordance with Section 1.15 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 (State and Regional Development) 2011
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

- Ashfield Local Environmental Plan 2013

The following provides further discussion of the relevant issues:

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

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. CIWDCP 2016 provides controls and guidelines for remediation works. SEPP 55 requires the consent authority to be satisfied that the site is or can be made suitable for the proposed use.

The site has not been used in the past for activities which could have potentially contaminated the site and will not require remediation in accordance with SEPP 55. The site is therefore considered suitable for the proposed use.

#### **5(a)(ii) 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 inconsistent with the objectives of the Plan and would not have an adverse effect on environmental heritage, the visual environment, the natural environment and open space and recreation facilities.

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 concerns the protection of trees identified under Comprehensive Inner West Development Control Plan 2016.

The application seeks consent for the removal of a tree from the site that is protected under CIWDCP 2011. The issue of tree management is discussed later in this report under the provisions of Section 2, Chapter C of CIWDCP 2011.

#### **5(a)(iv) Ashfield Local Environment Plan 2013 (ALEP 2013)**

The application was assessed against the following relevant clauses of the Ashfield Local Environmental Plan 2011:

##### Land Use Table and Zone Objectives:

The property is zoned R3 – Medium Density Residential under the provisions of ALEP 2013.

The development is considered acceptable having regard to the objectives of the R3 – Medium Density Residential zone.

##### Heritage:

The subject site is identified as being part of a heritage item under the provisions of ALEP 2013, namely Item No.275 known as ‘Semi-detached houses’.

The tree is located in the rear yard and its removal will only alter the existing damaged retaining wall at 37 Oak Street. The tree does not contribute to the heritage significance of the item given its poor structural condition. As such, it is considered that the removal of the

tree will not impact upon the heritage significance of the existing site or the adjoining properties.

Given the above the application is considered reasonable having regard to Clause 5.10(4) of the ALEP 2013.

### 5(b) Draft Environmental Planning Instruments

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

#### **Draft Environment SEPP**

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 the 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 the 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 against the following relevant provisions of the Comprehensive Inner West Development Control Plan 2016:

#### Section 2, Chapter C – Sustainability

The removal of the tree is consistent with the *Ashfield Tree Preservation Policy*. The application was referred to Council's Tree Management Officer who raised no objection to the removal of the tree, subject to the replacement planting of a tree to offset the lost canopy cover.

Given the above, it is considered that the application ultimately achieves the aims and objectives of the Comprehensive Inner West Development Control Plan 2016.

### 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 R3 – Medium Density Residential. Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

### 5(f) Any submissions

The application was notified in accordance with the Comprehensive Inner West Development Control Plan 2016 for a period of 14 days to surrounding properties. One (1) submission was received which raised concern regarding the loss of a native tree and shading provided by the tree. An appropriate condition of consent has been imposed which requires a native replacement tree be planted which provides offsets the lost canopy cover and therefore provides sufficient shading.

### 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 considered to be contrary to the public interest.

## 6 Referrals

### 6(a) Internal

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

- **Tree Management** – The application was referred to Council’s Tree Management Officer who raised no objection to the removal of the tree, subject to the replacement planting of a tree which offsets the lost canopy cover. Appropriate conditions of consent have been imposed regarding the removal of the tree and replacement planting.

## 7. Section 7.12 Contributions

The cost of works is under \$100,000.00 and therefore no contribution applies.

## 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in Ashfield Local Environmental Plan 2013 and Comprehensive Inner West Development Control Plan 2016. 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

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.10.2018.188.1 for removal of a tree in the rear yard at 40 Pembroke Street, Ashfield NSW subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

### CONDITIONS

DA 2018.188.1  
40 Pembroke Street ASHFIELD 2131

Description of Work as it is to appear on the determination:

Removal of a tree in the rear yard.

#### A General Conditions

##### (1) Approved Works

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

Tree/location	Approved works
<i>Agonis flexuosa</i> (Willow Myrtle) Rear	Remove tree

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

##### (2) Replacement Planting

The following trees must be planted:

A minimum of 1 x 75 litre size additional tree, which will attain a minimum mature height of 8 metres, shall be planted in a suitable location within the property at a minimum of 1.5 m. from any boundary or structure. The tree is to conform to AS2303—*Tree stock for landscape use*.

Tree species endemic to the Sydney Basin that could be considered are *Banksia integrifolia* (Coastal banksia), *Banksia serrata* (Old man Banksia) or *Corymbia eximia* 'Nana' (Dwarf Yellow Bloodwood).

Note: Any replacement tree species must not be a palm or tree species listed as an exempt species under Part 4 Ashfield Tree Preservation and Management.

Details of the species, pot size and planting location must be submitted to Council for approval.

If the replacement tree is found to be faulty, damaged, dying or dead within twelve (12) months of planting it must be replaced with the same species.

##### (3) Canopy Replenishment

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.

##### (4) Compliance with BCA

All works are to comply with the Building Code of Australia and relevant Australian Standard requirements.

**(5) Hours of Work**

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

- a) 7:00 am to 6:00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b) 8:00 am to 1:00 pm on Saturdays with no demolition works occurring during this time; and
- c) at no time on Sundays or public holidays.

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

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

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

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

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

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

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

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

**(6) Occupational Health and Safety**

All site works must comply with the occupational health and safety requirements of the SafeWork NSW.

**(7) Tree Preservation**


Where tree removal or work has not been approved by this Development Consent, the developer is notified that a general Tree Preservation Order applies to all trees (with the exception of certain species) in the Municipality of Ashfield with a height greater than five (5) metres. This order prohibits the ringbarking, cutting down, topping, lopping\*, pruning, transplanting, injuring or wilful destruction of such trees except with the prior approval of the Council. Written consent from Council for such tree works must be in the form of a "Tree Preservation Order Permit for Pruning or Removal of Protected Trees" to be obtained from Council.

- \* Lopping may be carried out without consent only to maintain a minimum clearance of 500mm from power lines, pruning to remove dead wood/branches and minor pruning of branches overhanging buildings to a height of 2 metres only with the agreement of the owner of the tree. Contact Council's One Stop Shop - telephone 9716 1800, for details of the Tree Preservation Order.



## Attachment B – Statement of Heritage Significance

### Ashfield Heritage Study Review of Areas Zoned 2b & 2c

<b>Name of Item</b> Semi-detached cottages <b>Other Names</b>		<b>Reference No</b> <b>32</b>																									
<b>Address</b> 38-40 Pembroke Street <b>Locality</b> Ashfield <b>Postcode</b> 2131		<b>Land Title</b>																									
<b>Item Type</b> Group <b>Group Name</b> Pembroke Street Group		<b>Zoning</b> 2b																									
<table border="1"> <thead> <tr> <th>Evaluation of Significance</th> <th>Rare</th> <th>Associative</th> <th>Representative</th> </tr> </thead> <tbody> <tr> <td>Historic</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Aesthetic</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Social</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Scientific</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Other</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </tbody> </table>		Evaluation of Significance	Rare	Associative	Representative	Historic	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Aesthetic	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Social	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Scientific	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Owner</b> Private	
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Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																								
<b>Statement of Significance</b> These dwellings are part of a notable group situated on the south side of Ashfield Park. They make a contribution to the streetscape. The garden provides a link across the street to the Park opposite. Despite some modifications, they retain a high degree of integrity. The alterations do not detract from the overall feeling of completeness.		<b>Condition</b> <input type="checkbox"/> Intact <input checked="" type="checkbox"/> Minor alteration <input type="checkbox"/> Sympathetic alteration <input type="checkbox"/> Unsympathetic alteration																									
<b>Photograph</b> 																											
<b>Photo roll</b> 1999- 1	<b>Negative</b> 32	<b>Survey Date</b> 12/23/1999	<b>Surveyed by:</b> TK																								

Current Use

Reference No

Ashfield Heritage Study Review of Areas Zoned 2b & 2c

Residential	<b>32</b>
<b>Heritage Listing</b>	
<b>Themes: Local</b> Subdivision & consolidation  <b>Sub themes: local</b>	<b>Themes: State</b> Housing
<p style="text-align: center;"><b>History of the Item</b></p> <p>This land was transferred to William Bennett, a plumber of Kogarah and Hector Fraser, a farmer of Albion Park, late in 1915. These semi-detached cottages were built about that time. They first appeared in the Sands Directory for 1916. They were known as “Weerona” (No 38) and “Belmont” (No 40). The roof was originally of slate.</p>	
<p style="text-align: center;"><b>Physical Description</b></p> <p>Semi-detached pair of dwellings with face brick walls with some Queen Anne detail. Hipped roof with central gablet atop front verandahs. The hipped roof reaches down to cover the front verandahs. Roof has been reclad with new Marseilles terra cotta tiles. The central gablet has a special moulded plaster covering. A chimney decorated with rough cast render and brick courses topped by terra cotta pots survives on No 38. Decorative timber brackets and valances on verandah posts. Exposed purlins. Windows are obscured but appear to be in triple sets, possibly casements. Both dwellings have front fences of square topped pickets. No 38 also has a wire mesh gate.</p>	
<p style="text-align: center;"><b>Information Sources</b></p> <p>C T 2640 f 162; Sands, Directories, 1914-18</p>	

<b>Additional Images</b>	Reference No <b>32</b>
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Ashfield Heritage Study Review of Areas Zoned 2b & 2c

