



INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

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|---|--|
| Application No. | D/2018/638 |
| Address | 9 Allen Street, Leichhardt |
| Proposal | Torrens title subdivision of the site into four (4) lots and construction of four dwellings, one on each lot, and associated works, including landscaping and fence works. |
| Date of Lodgement | 07-Dec-2018 |
| Applicant | Petria Pty Ltd |
| Owner | Petria Pty Ltd |
| Number of Submissions | Nil |
| Value of works | \$1,607,181 |
| Reason for determination at Planning Panel | Variation exceeds officer delegation (Minimum Subdivision lot size development standard) |
| Main Issues | Variation to Minimum Subdivision lot size development standard, solar access, Stormwater Management |
| Recommendation | Deferred Commencement Approval |
| Attachment A | Recommended conditions of consent |
| Attachment B | Plans of proposed development |
| Attachment C | Clause 4.6 Exception to Development Standards |



LOCALITY MAP

| | | | | |
|---------------|--|------------|--|-----|
| Subject Site | | Objectors | | ↑ N |
| Notified Area | | Supporters | | |

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

1. Executive Summary

This report is an assessment of the application submitted to Council for Torrens title subdivision of the site into four (4) lots and construction of four dwellings, one on each lot, and associated works, including landscaping and fencing. The application was notified to surrounding properties and no objections were received.

The main issues that have arisen from the application include:

- Variation to Minimum Subdivision lot size development standard,
- Solar access to proposed dwellings.
- Stormwater Management

Subject to recommended conditions to address Stormwater Management and visual privacy impacts, the proposal is considered to result in acceptable impacts on the locality and satisfactory on-site amenity outcomes, and therefore, the application is recommended for Deferred Commencement Approval.

2. Proposal

The proposal before Council seeks for a Torrens title subdivision of the subject site creating four (4) allotments, and construction of a dwelling-house (two with on-site parking) on each resulting allotment including associated landscaping and site works.

3. Site Description

The subject site is commonly known as No.9 Allen Street, Leichhardt and is legally defined as Lot B in Deposited Plan 404394. The site is located on the northern side of Allen Street between Norton Street to the west and Derbyshire Road to the east. The site adjoins the Pioneer Memorial Park to the north.



View from Allen Street



View from Pioneer Memorial Park

The site is rectangular in its shape with a frontage of 42.21m to Allen Street, with a depth of approximately 14.65m. The site is therefore considerably wider than it is deep. Overall, the site provides for a total area of 623.63 sqm.

The proposed site is not located in a heritage conservation area. The site is identified in a flood control lot.

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 |
|----------------|---|----------------------|
| CDCP/2018/86 | Stage 1 - Demolition of existing sing storey house and associated paving | Approved 19-Jul-2018 |
| PREDA/2018/175 | Proposed multi dwelling (4 dwellings) development with associated car parking. Torrens title subdivision into 4 lots. | Issued 27-Aug-2018 |

The amended proposal is generally consistent with the Pre-DA advice issued in PREDA/2018/175.

4(b) Application history

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

| Date | Discussion / Letter / Additional Information |
|---------------|--|
| 13 March 2019 | Meeting with applicant and applicant's consultants in relation to solar access concerns and potential design amendments. |
| 20 May 2019 | Amended design submitted. |
| 6 June 2019 | The amended application was notified for 14 days between 6th June and 20th June 2019 |
| 13 June 2019 | E-mail to Applicant's in regards to Landscape Assessment Officer's comments |
| 26 June 2019 | Applicant's response in regards to Landscape Assessment Officer's comments include the submission of an amended Landscaped Plan and amended Arborist report. |

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 (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Leichhardt Local Environment Plan 2013*

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

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

Clause 1.2 - Aims of the Plan

Clause 2.3 - Zone objectives and Land Use Table

Clause 2.5 - Additional permitted uses for land

Clause 2.6 - Subdivision

Clause 2.7 - Demolition

Clause 4.1 - Minimum subdivision lot size

Clause 4.3A - Landscaped areas for residential accommodation in Zone R1

Clause 4.4 – Floor Space Ratio

Clause 4.5 - Calculation of floor space ratio and site area

Clause 4.6 - Exceptions to development standards

Clause 5.3 – Development near zone boundaries

Clause 5.10 - Heritage Conservation

Clause 6.1 - Acid Sulfate Soils

Clause 6.2 - Earthworks

Clause 6.3 - Flood Planning

Clause 6.4 - Stormwater management

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

The site is zoned R1 General Residential under the *LLEP 2011*. The *LLEP 2013* defines the development as Dwelling Houses and the development is permitted with consent within the zone. The development is consistent with the objectives of the R1 General Residential zone.

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

Dwelling 1

| Standard | Proposal | non compliance | Complies |
|---|---------------------|----------------|----------|
| Minimum subdivision lot size Minimum permissible: 200 sqm | 160.48 | 19.8% | No |
| Floor Space Ratio Maximum permissible: 0.7:1 or 112.3 sqm | 0.70:1 or 112.2 sqm | N/A | Yes |
| Landscape Area Minimum permissible: 15% or 24sqm | 18.5% or 29.7 sqm | N/A | Yes |
| Site Coverage Maximum permissible: 60% or 96.3 sqm | 59.2% or 95sqm | N/A | Yes |

Dwelling 2

| Standard | Proposal | non compliance | Complies |
|---|---------------------|----------------|----------|
| Minimum subdivision lot size Minimum permissible: 200 sqm | 150.25 | 24.9% | No |
| Floor Space Ratio Maximum permissible: 0.7:1 or 105.2 sqm | 0.70:1 or 105.1 sqm | N/A | Yes |
| Landscape Area Minimum permissible: 15% or 22.5 sqm | 26% or 39 sqm | N/A | Yes |
| Site Coverage Maximum permissible: 60% or 90.2sqm | 46.6% or 70sqm | N/A | Yes |

Dwelling 3

| Standard | Proposal | non compliance | Complies |
|---|---------------------|----------------|----------|
| Minimum subdivision lot size Minimum permissible: 200 sqm | 151.1 | 24.5% | No |
| Floor Space Ratio Maximum permissible: 0.7:1 or 105.8 sqm | 0.70:1 or 105.7 sqm | N/A | Yes |
| Landscape Area Minimum permissible: 15% or 22.7 sqm | 25.8% or 39 sqm | N/A | Yes |

| | | | |
|---|----------------|-----|-----|
| Site Coverage Maximum permissible: 60% or 90.7sqm | 46.3% or 70sqm | N/A | Yes |
|---|----------------|-----|-----|

Dwelling 4

| Standard | Proposal | non compliance | Complies |
|---|----------------------|----------------|----------|
| Minimum subdivision lot size Minimum permissible: 200 sqm | 160.48 sqm | 19.8% | No |
| Floor Space Ratio Maximum permissible: 0.7:1 or 113.3 sqm | 0.70:1 or 113.25 sqm | N/A | Yes |
| Landscape Area Minimum permissible: 15% or 24.3 sqm | 19% or 30.7 sqm | N/A | Yes |
| Site Coverage Maximum permissible: 60% or 90.7sqm | 58.1% or 94 sqm | N/A | Yes |

Clause 4.1 – Minimum subdivision lot size

The minimum required lot size for Torrens subdivision is 200m². The proposal is for a four lot Torrens subdivision into lot sizes of 150.25m² to 160.48 m². A review of the surrounding prevailing subdivision pattern has confirmed that there is not a consistent subdivision pattern in Allen and Arthur Street with a number of lot sizes below 200 m² as evidenced in table below.

Allen Street and Arthur Street properties

| Address | Site Area |
|------------------|----------------------------------|
| 7 Allen Street | 157 m ² approximately |
| 17 Allen Street | 213 m ² approximately |
| 19 Allen Street | 342 m ² approximately |
| 23 Allen Street | 218 m ² approximately |
| 45 Arthur Street | 165 m ² approximately |
| 47 Arthur Street | 178 m ² approximately |
| 49 Arthur Street | 166 m ² approximately |
| 50 Arthur Street | 179 m ² approximately |
| 52 Arthur Street | 163 m ² approximately |
| 54 Arthur Street | 177 m ² approximately |

The proposed subdivision and dwellings currently under construction on each lot will not be out of character with the diverse pattern of development in the immediate area including in terms of lots sizes, lot widths and shapes. The resultant lots following subdivision will be adequate to accommodate an appropriate built form with each dwelling complying with floor space ratio, site coverage and landscaped area requirements and having sufficient private open space. The proposed subdivision is not considered to have any adverse impacts on the adjoining properties or in the immediate surrounding area and will be acceptable within the Allen Streetscape.

The proposed Torrens title subdivision is considered acceptable in this instance as it meets the objectives of clause 4.1 being lot sizes that are able to accommodate development that is consistent with relevant development controls and lot sizes that are capable of supporting a range of development types.

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.1 - Minimum subdivision lot size

The applicant seeks a variation to Minimum subdivision lot size development standard under Clause 4.1 of the applicable local environmental plan by between 19.8% and 24.9%.

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

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

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the Local Environmental Plan justifying the proposed contravention of the development standard which is summarised as follows:

- *In response to the Objectives of Clause 4.1, although numerically non-compliant, the current application clearly demonstrates that the built forms as proposed can be accommodated on the resultant lot sizes. The proposed dwellings are reasonable in their size and are complemented by landscaped areas, generous private open spaces and car parking. The site is also benefited by a favourable north/south orientation maximising opportunity for solar access to the proposed living rooms and private open spaces.*
- *The proposal is also notably compliant with both landscaped area and site coverage controls demonstrating that the proposal is not an over development of the site. Notably, the proposal has achieved compliance with Council's floor space ratio standards applicable to the site. A balance between natural and urban elements at the subject site is therefore achieved.*
- *The development along the northern side of Allen Street which consists in only a handful of properties that all differ in width, depth and overall site area. The proposal will therefore not disrupt an established street pattern. Furthermore, there are several examples of lots along Arthur Street where dwellings are sited upon lots which are less than 200m² in area generally ranging between approximately 140-200m².*
- *The proposed non-compliance in minimum subdivision size of lots resulting from the proposed Torrens title subdivision will not result in negative impacts to the development site itself or the adjoining properties, as discussed in the Statement of Environmental Effects and shown on the submitted architectural plans.*
- *The proposal optimises the development potential of the site and provides for new dwellings hence, contributing to the housing stock within the locality facilitating the housing needs of the community. The proposal contributes to the mix of single and two-storey attached and detached dwellings in the area. The proposal continues the historic residential use on the site remaining consistent with nearby development.*

- *It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the Leichhardt LEP 2013 in that:*
 - *Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;*
 - *There are sufficient environmental planning grounds to justify the departure from the standards;*
 - *The development meets the objectives of the standard to be varied (minimum subdivision lot size) and objectives of the R1 General Residential zoning of the land;*
 - *The proposed development is in the public interest and there is no public benefit in maintaining the standard;*
 - *The breach does not raise any matter of State or Regional Significance; and*
 - *The development submitted aligns with the predominantly residential nature of the neighbourhood.*

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

It is considered the development is in the public interest because it is consistent with the objectives of the R1 Residential in accordance with Clause 4.6(4)(a)(ii) of Leichhardt Local Environmental Plan 2013 for the following reasons:

Objectives of R1 Residential zone:

- *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.*
- Despite the size of the proposed lots, the proposal will result in suitably sized dwellings which are compatible in size to the other dwellings in the locality.
 - Despite the size of the proposed lots, the proposed dwellings will have adequate sized landscaping areas that complies with the Landscaped Area development standard that can be used for recreational purposes.
 - The proposed built forms is compatible with the existing street on the northern side of Allen Street and is setback sufficiently from the northern boundary so that the proposed dwellings does not distract the character of Pioneer Memorial Park.

It is considered the development is in the public interest because it is consistent with the objective of the Minimum subdivision lot size development standard, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

4.1 Minimum subdivision lot size

(1) *The objectives of this clause are as follows:*

(a) *to ensure that lot sizes are able to accommodate development that is consistent with relevant development controls,*

(b) *to ensure that lot sizes are capable of supporting a range of development types.*

(2) *This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*

(3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*

(4) *This clause does not apply in relation to the subdivision of any land:*

(a) *by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or*

(b) *by any kind of subdivision under the Community Land Development Act 1989*

- Despite large variations to the Minimal lot size development standard, the application is able to proposed dwellings which achieve compliance with Floor Space Ratio, Site Coverage and Landscaped Area development standards.
- The proposed dwellings and landscaped areas are adequate sized to be used for residential purposes and contribute to the environmental performance of the site.
- The proposed lots allow for housing that is compatible with the orientation and pattern of surrounding buildings.
- The proposal does not result in any adverse amenity impacts to the surrounding properties.
- The proposed built forms are compatible with the existing streetscape on the northern side of Allen Street and is setback sufficiently from the northern boundary so that the proposed dwellings does not detract from the character of Pioneer Memorial Park.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the Leichhardt Local Environmental Plan 2013. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the minimum lot size development standard and it is recommended the Clause 4.6 exception be granted.

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.

| LDCP2013 | Compliance |
|---|-------------------------|
| Part A: Introductions | |
| Section 3 – Notification of Applications | Yes |
| Part B: Connections | |
| B1.1 Connections – Objectives | Yes |
| B2.1 Planning for Active Living | Yes |
| B3.1 Social Impact Assessment | Not Applicable |
| B3.2 Events and Activities in the Public Domain (Special Events) | Not Applicable |
| Part C | |
| C1.0 General Provisions | Yes |
| C1.1 Site and Context Analysis | Yes |
| C1.2 Demolition | Not applicable |
| C1.3 Alterations and additions | Yes |
| C1.4 Heritage Conservation Areas and Heritage Items | Not applicable |
| C1.5 Corner Sites | Not applicable |
| C1.6 Subdivision | No, refer to discussion |
| C1.7 Site Facilities | Yes |
| C1.8 Contamination | Yes |
| C1.9 Safety by Design | Yes |
| C1.10 Equity of Access and Mobility | Yes |
| C1.11 Parking | Yes |
| C1.12 Landscaping | Yes |
| C1.13 Open Space Design Within the Public Domain | Not Applicable |
| C1.14 Tree Management | Yes – see discussion |
| C1.15 Signs and Outdoor Advertising | Not Applicable |
| C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings | Not Applicable |
| C1.17 Minor Architectural Details | Yes |
| C1.18 Laneways | Not Applicable |
| C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls | Not Applicable |
| C1.20 Foreshore Land | Not Applicable |
| C1.21 Green Roofs and Green Living Walls | Not Applicable |
| Part C: Place – Section 2 Urban Character | |
| C2.2.3.4 Helsarmel Distinctive Neighbourhood Pioneer Memorial Park Sub Area – Section C2.2.3.4(a) | Yes – see discussion |
| Part C: Place – Section 3 – Residential Provisions | |
| C3.1 Residential General Provisions | Yes |
| C3.2 Site Layout and Building Design | Yes – see discussion |
| C3.3 Elevation and Materials | Yes |
| C3.4 Dormer Windows | Not applicable |
| C3.5 Front Gardens and Dwelling Entries | Not applicable |
| C3.6 Fences | Not applicable |
| C3.7 Environmental Performance | Yes |
| C3.8 Private Open Space | Yes |

| | |
|---|----------------------------|
| C3.9 Solar Access | Yes – see discussion |
| C3.10 Views | Yes |
| C3.11 Visual Privacy | Yes, subject to conditions |
| C3.12 Acoustic Privacy | Yes |
| C3.13 Conversion of Existing Non-Residential Buildings | Yes |
| C3.14 Adaptable Housing | Not applicable |
| Part C: Place – Section 4 – Non-Residential Provisions | Not Applicable |
| Part D: Energy | |
| Section 1 – Energy Management | Yes |
| Section 2 – Resource Recovery and Waste Management | |
| D2.1 General Requirements | Yes |
| D2.2 Demolition and Construction of All Development | Yes |
| D2.3 Residential Development | Yes |
| D2.4 Non-Residential Development | Not Applicable |
| D2.5 Mixed Use Development | Not Applicable |
| Part E: Water | |
| Section 1 – Sustainable Water and Risk Management | |
| E1.1 Approvals Process and Reports Required With Development Applications | Yes |
| E1.1.1 Water Management Statement | Yes |
| E1.1.2 Integrated Water Cycle Plan | Not Applicable |
| E1.1.3 Stormwater Drainage Concept Plan | Yes |
| E1.1.4 Flood Risk Management Report | Not Applicable |
| E1.1.5 Foreshore Risk Management Report | Not Applicable |
| E1.2 Water Management | Yes |
| E1.2.1 Water Conservation | Yes |
| E1.2.2 Managing Stormwater within the Site | Yes, subject to conditions |
| E1.2.3 On-Site Detention of Stormwater | Yes, subject to conditions |
| E1.2.4 Stormwater Treatment | Yes |
| E1.2.5 Water Disposal | Yes, subject to conditions |
| E1.2.6 Building in the vicinity of a Public Drainage System | Not Applicable |
| E1.2.7 Wastewater Management | Yes |
| E1.3 Hazard Management | Not Applicable |
| E1.3.1 Flood Risk Management | Not Applicable |
| E1.3.2 Foreshore Risk Management | Not Applicable |
| Part F: Food | Not Applicable |
| Part G: Site Specific Controls | Not Applicable |

The following provides discussion of the relevant issues:

C1.6 Subdivision

As discussed in detail in an earlier section of the report, the proposed lot sizes are considered to be acceptable despite being less than 200 sqm. The proposed lots will be similar in sizes and shapes characteristic of the area, including the adjoining site at No.7 Allen Street and the proposed lots are considered to be compatible with the subdivision pattern of other residential properties with a primary street frontage to this section of Allen Street (i.e. east of Norton Street).

C1.11 Parking**Number of Parking Spaces**

The following parking rates are applicable to the proposed development:

| Parking Rates | | | | |
|-----------------------|-------------------------|-----------------------------|--------------------------|---------------------------|
| Land Use | Residents | | Visitors | |
| | Minimum | Maximum | Minimum | Maximum |
| Residential | | | | |
| Single dwelling house | Nil | 2 spaces per dwelling house | Nil | Nil |
| Bed-sit / Studio | Nil | 0.5 space per dwelling | 1 space per 11 dwellings | 0.125 spaces per dwelling |
| 1 bedroom unit | 1 space per 3 dwellings | 0.5 space per dwelling | 1 space per 11 dwellings | 0.125 spaces per dwelling |
| 2 bedroom unit | 1 space per 2 dwellings | 1 space per dwelling | 1 space per 11 dwellings | 0.125 spaces per dwelling |
| 3+ bedrooms unit | 1 space per dwelling | 1.2 spaces per dwelling | 1 space per 11 dwellings | 0.125 spaces dwelling |

The proposed developments will result in 4 dwellings on 4 separate lots, therefore there is minimum requirement for off-street car parking spaces of nil and a maximum requirement of 8 on-street parking spaces (2 per lot). The application proposes a total of two off-street car parking spaces to Dwelling 1 and Dwelling 4 and complies with the minimum required off-street car parking requirements as mentioned above.

There are already two existing driveways on the southwest and southeast parts of the site and therefore, the proposal will not result in the loss of any on-street car parking spaces.

C1.14 Tree Management

A review of the revised *Ground Floor Drainage Plan*, prepared by *Nastasi and Associates*, dated 16/05/2019 has shown that the absorption trenches and associated piping has been deleted within the rear of the site. This alleviates a previous concern regarding impact upon tree roots. Should the existing boundary fencing and elevations remain unchanged within the rear of the site, it is anticipated that the application can be supported subject to a *AQF level 5 Project Arborist* being appointed to oversee all excavation within the TPZ of trees to be retained. The Project Arborist must oversee all excavation required for installation of piers required for proposed decking at the rear of the site. All excavation is to be undertaken by hand. The pier and footings design must allow for flexibility so that piers can be relocated away from all roots 40mm in diameter or greater that are encountered on site.

The planting of replenishment trees and installation of below ground services must be undertaken under the supervision of the Project Arborist and in general accordance with Appendix 6 of the *submitted Arboricultural Impact Appraisal and Method Statement (Revision A)*, prepared by *Naturally Trees*, dated 25/10/2018.

The proposal is satisfactory in this regard subject to recommendation of relevant conditions.

C2.2.3.4 Helsarmel Distinctive Neighbourhood - Pioneer Memorial Park Sub Area – Section C2.2.3.4(a)

While it is noted that the desired future character of the Pioneer Memorial Park sub area requires any new buildings to be setback a minimum of 10 metres to any common boundary shared with Pioneer Memorial Park. However, given the constraints of the site, where the length of the site is only approximately 14.65 metres, imposing such a setback would be unreasonable given that all the other properties that has a frontage to Allen Street that adjoins Pioneer Park does not have a 10 metre setback (some existing properties has nil setbacks). It is considered that the proposed rear setbacks of 4.8 metres - 6.6 metres at ground floor level and 6 metres – 6.7 metres at first floor level will result in a development that will not detract from the character of Pioneer Memorial Park and is acceptable.

The proposal also does not comply with the 3.6 metre wall height control. This is considered to be acceptable given that there are already two storey forms that front onto this section of Allen Street and this two storey form is a result of maximising the setback of the first floor to the rear boundary which is more important in the context of this site.

It is considered that given the context of the site, the proposed form of the development is compatible with the existing and desired future character of the area.

C3.2 Site Layout and Building Design

Building Location Zone

The proposed site adjoins the council park land to the west and No. 7 Allen Street to East. The lots on the northern side of the section of Allen Street east of Norton Street does not have a consistent subdivision pattern. The proposed front alignment, however, extends beyond the existing front alignment of No. 7 Allen Street and the proposal will establish a new building location zone on the first floor level. Pursuant to the provisions of this Clause, the variation of the building location zone can be considered where the proposed development addresses the issues in C5 of this part:

- a. *amenity to adjacent properties (i.e. sunlight, privacy, views) is protected and compliance with the solar access controls of this Development Control Plan is achieved;*
- b. *the proposed development will be compatible with the existing streetscape, desired future character and scale of surrounding development;*
- c. *the proposal is compatible in terms of size, dimensions, privacy and solar access of private open space, outdoor recreation and landscaping;*
- d. *retention of existing significant vegetation and opportunities for new significant vegetation is maximised; and*
- e. *the height of the development has been kept to a minimum to minimise visual bulk and scale, as viewed from adjoining properties, in particular when viewed from the private open space of adjoining properties.*

It is considered that the variations of the building location zone for the ground and first floor level can be supported for the following reasons:

- The proposed works will, subject to conditions, comply with the visual privacy controls and have no impacts in regards to loss of significant views. The proposal will comply with solar access controls in relation to impacts to adjoining properties.
- The proposed first floor is considered to be of a form that does not result in adverse impacts in relation of bulk and scale, when viewed from the private open space of adjoining properties.
- No significant vegetation is proposed to be removed under this application.
- The amended proposal is considered to be acceptable in regards to compatibility with the existing streetscape and availability of solar access to the proposed dwellings.

Side Setback

A technical non-compliance with the side setback control is noted along the eastern and western sides of the proposed additions as outlined in the following table:

| Elevation | Proposed Maximum Wall Height (m) | Required setback (m) | Proposed setback (m) | Difference (m) |
|-----------|----------------------------------|----------------------|----------------------|----------------|
| Eastern | 6.4 | 2.1 | 1 | 1.1 |
| Western | 6.8 | 2.3 | 1.1 | 1.2 |

Control C7 under this part states that Council may allow walls higher than that required by the side boundary setback controls where:

- a. *The development is consistent with relevant Building Typology Statements as outlined within Appendix B – Building Typologies of this Development Control Plan;*
- b. *The pattern of development within the streetscape is not compromised;*
- c. *The bulk and scale of development is minimised by reduced floor to ceiling heights;*
- d. *The potential impacts on amenity of adjoining properties, in terms of sunlight and privacy and bulk and scale, are minimised; and*
- e. *Reasonable access is retained for necessary maintenance of adjoining properties.*

It is considered that this variation can be supported on merit for the following reasons:

- It is considered the proposal will have acceptable streetscape impacts and consequently the pattern of development within the streetscape is not compromised.
- The proposed development is considered to be reasonable with regard to solar access, the proposal will, subject to conditions, comply with the visual privacy controls and there are no issues raised in regards to the obstruction of significant views.
- The development is consistent with the relevant Building Typology.
- The impacts of the bulk and scale of the development are appropriately minimised.

Building Height and the Building Envelope

The proposal also does not comply with the 3.6 metre building envelope. Currently on this section of Allen Street, there are examples of two storey forms and wall heights of existing dwellings that are similar to the proposed building envelope. (See images below).



Therefore it is considered that despite the proposed wall height will not be result in a development that is incompatible with the existing streetscape and character of the area and is satisfactory in this circumstance.

C3.9 Solar Access

Solar Access to proposed dwellings

The following controls are applicable in relation to solar access to the proposed dwellings:

C2 Where site orientation permits, new dwellings must be designed to maximise direct Sunlight to the main living room and private open space.

C3 Windows and openings shall be appropriately located, sized and shaded to reduce summer heat load and to maximise entry of sun in winter.

C4 Private open space is to receive a minimum three hours of direct Sunlight over 50% of the required private open space between 9am and 3pm at the winter solstice.

C9 New residential dwellings are to obtain a minimum of three (3) hours of direct Sunlight to the main living room between 9am and 3pm during the winter solstice.

In this regard, the amended proposal will achieve compliance with C9 in relation to the amount of solar access to the main living rooms. Due to the orientation of the site its relatively short length, it is not possible to achieve the required solar access to the private open space at the winter solstice. The amended proposal, which locates the proposed dwellings further towards the southern portions of the site, is considered to be a design that maximises the size of the private open spaces and the opportunity for these private open spaces to receive solar access. As the solar access diagrams also indicate that the private open spaces will receive a good amount of solar access at 21 March (Autumn Equinox), it is considered that despite the non-compliance with C4, the amended is proposal satisfactory in this regard.

Solar Access to Neighbouring Properties

The dwelling on the west adjoining property at No. 7 Allen Street is located in a way where there are no areas on that site that can be considered private open space. The proposed development will not result in any additional solar access impacts to north facing glazing on No. 7 Allen Street.

The proposed site adjoins Pioneer Memorial Park to the east and the north. The majority of the shadows cast by the proposed development will fall on the roadway.

Therefore the proposal achieves compliance with the solar access controls in relation to impacts to adjoining properties.

C3.11 Visual Privacy

To ensure there are no overlooking from the proposed rear decks, the dividing fences/walls adjacent to the proposed rear decks are to have a height no lower than 1.8 metres when measured from the finished floor level of the decks.

E1.2.2 Managing Stormwater within the Site

An assessment of the development application has been carried out based on amended Stormwater Drainage Concept Plans (SDCP) submitted to Council. Council's engineer has recommended the following conditions to be applied:

The following deferred commencement conditions must be complied with to the satisfaction of Council, prior to the issue of an operational Development Consent.

Stormwater Drainage Concept Plan (SDCP) on drawing No.17594/C2 revision (B) prepared by NASTAI ASSOCIATES and dated 16 May 2019 must be amended to address the following:

- a) *Separate drainage systems must be provided for each lot. Common outlet to the street gutter is not permitted.*

- b) *Stormwater runoff from pervious and impervious surfaces of the development must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank(s) by gravity to the kerb and gutter in Allen Street via On-site Stormwater Detention storage (OSD).*
- c) *Design of the On-site Stormwater Detention storage (OSD) should be supported by calculations demonstrating that the post development flows for the 100 year Average Recurrence Interval (ARI) storm event from the site are restricted to the pre development flows for the 5 year ARI storm event.*
- d) *The volume of the OSD can be reduced where On-site Stormwater Retention facilities ((OSR) for rainwater reuse and/or stormwater reuse are proposed to service all toilets, laundries and outdoor usage. Where OSR is proposed in lieu of OSD, the offset shall be calculated at a rate of 1m³ from the OSD storage volume, for every 2.5m³ of OSR storage provided (up to a maximum OSD offset of 10m³). Offsets for larger OSD storage must be supported by detailed calculations demonstrating compliance with the objectives of Leichhardt Council's DCP.*
- e) *Connection of roof water to the above ground OSD tank using charged pipe system is not permitted. The applicant's consultant must investigate the option for an underground combined OSD and OSR. Council raises no objection to minor raising of the existing surface ground levels at the rear of the sites subject to retaining of the existing overland flow path through the development site.*
- f) *A 150mm step down must be provided between the finished floor level of the internal rooms and the finished surface level of the external areas.*
- g) *Inspection eyes/pits must be provided on the upstream and downstream ends of the pipes, where drainage pipes are laid under the floor slab and access is not available. Drainage pipes must be laid at a minimum grade of 1%*
- h) *Junction pit must be provided where drainage pipes change direction at 90 degrees.*

The proposal is satisfactory subject to the above Deferred Commencement condition and standard council conditions.

5(d) The Likely Impacts

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

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

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

5(f) Any submissions

The application was notified in accordance Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties originally between 13 December 2018 to 24 January 2019. The amended application was notified for 14 days between 6th June and 20th June 2019. 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.

- Engineers – Satisfactory subject to conditions.
- Landscape Assessment – Satisfactory subject to conditions.

All issues raised can be addressed via conditions in attachment A below.

6(b) External

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

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions are payable for the proposal. Pursuant to the Ministerial Direction on Local Infrastructure Contributions dated 3 March 2011:

- (2) *A council (or planning panel) must not grant development consent (other than for development on land identified in Schedule 2) subject to a condition under section 94 (1) or (3) of the Environmental Planning and Assessment Act 1979 requiring the payment of a monetary contribution that:*
- (a) *in the case of a development consent that authorises one or more dwellings, exceeds \$20000 for each dwelling authorised by the consent, or*
 - (b) *in the case of a development consent that authorises subdivision into residential lots, exceeds \$20 000 for each residential lot authorised to be created by the development consent.*

In this instance the consent authorises the erection of four dwellings and hence Council may not impose a condition that requires payment in excess of \$80,000. As the proposed condition requires payment above \$80,000, the break down of the fees will be adjusted so that the section 7.11 contributions will be no higher than \$80,000.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$80000 would be required for the development under Leichhardt Section 94 Contributions Plan 2014. A condition requiring that contribution to be paid is included in the recommendation.

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 proposal includes a variation to the minimum lot size development standard set out in Leichhardt LEP 2013. Given the design of the buildings, which is in keeping with those in the neighbourhood, and the fact that the lots are generally consistent with the pattern of development in the locality, the proposed variation is considered acceptable in the circumstances of the case.

The development will not result in any significant impacts on the amenity of the adjoining premises/properties and the streetscape and is considered to be in the public interest.

The application is considered suitable for approval subject to the imposition of appropriate conditions.

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 to Clause 4.1 - Minimum subdivision lot size of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. D/2018/638 for Torrens title subdivision of the site into four (4) lots and construction of four dwellings, one on each lot, and associated works, including landscaping and fence works at 9 Allen Street, Leichhardt subject to the conditions listed in Attachment A below for the following reasons.

Attachment A – Recommended conditions of consent

DEFERRED COMMENCEMENT APPROVAL

The following deferred commencement conditions must be complied with to the satisfaction of Council, prior to the issue of an operational Development Consent.

1. Stormwater Drainage Concept Plan (SDCP) on drawing No.17594/C2 revision (B) prepared by NASTAI ASSOCIATES and dated 16 May 2019 must be amended to address the following:
 - a) Separate drainage systems must be provided for each lot. Common outlet to the street gutter is not permitted.
 - b) Stormwater runoff from pervious and impervious surfaces of the development must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank(s) by gravity to the kerb and gutter in Allen Street via On-site Stormwater Detention storage (OSD).
 - c) Design of the On-site Stormwater Detention storage (OSD) should be supported by calculations demonstrating that the post development flows for the 100 year Average Recurrence Interval (ARI) storm event from the site are restricted to the pre development flows for the 5 year ARI storm event.
 - d) The volume of the OSD can be reduced where On-site Stormwater Retention facilities ((OSR) for rainwater reuse and/or stormwater reuse are proposed to service all toilets, laundries and outdoor usage. Where OSR is proposed in lieu of OSD, the offset shall be calculated at a rate of 1m³ from the OSD storage volume, for every 2.5m³ of OSR storage provided (up to a maximum OSD offset of 10m³). Offsets for larger OSD storage must be supported by detailed calculations demonstrating compliance with the objectives of Leichhardt Council's DCP.
 - e) Connection of roof water to the above ground OSD tank using charged pipe system is not permitted. The applicant's consultant must investigate the option for an underground combined OSD and OSR. Council raises no objection to minor raising of the existing surface ground levels at the rear of the sites subject to retaining of the existing overland flow path through the development site.
 - f) A 150mm step down must be provided between the finished floor level of the internal rooms and the finished surface level of the external areas.
 - g) Inspection eyes/pits must be provided on the upstream and downstream ends of the pipes, where drainage pipes are laid under the floor slab and access is not available. Drainage pipes must be laid at a minimum grade of 1%
 - h) Junction pit must be provided where drainage pipes change direction at 90 degrees.

The operational Development Consent will be issued by Council (in writing) after the applicant provides sufficient information to satisfy Council in relation to the conditions of the deferred commencement consent.

If the applicant fails to satisfy Council as to the above matters within 5 years from the date of determination this consent will lapse.

CONDITIONS OF CONSENT

2. Development must be carried out in accordance with Development Application No. D/2018/638 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

| Plan Reference | Drawn By | Dated |
|--|----------------------------|----------|
| Drawing No. DA02, Rev. J – Torrens Title Subdivision Plan | F&F Design & Build Pty Ltd | 16.05.19 |
| Drawing No. DA02, Rev. J – Site Plan | F&F Design & Build Pty Ltd | 16.05.19 |
| Drawing No. DA08, Rev. J – Ground Floor Plan | F&F Design & Build Pty Ltd | 16.05.19 |
| Drawing No. DA09 – First Floor Plan | F&F Design & Build Pty Ltd | 14.05.19 |
| Drawing No. DA12, Rev. H – Roof Plan | F&F Design & Build Pty Ltd | 14.05.19 |
| Drawing No. DA12A, Rev. I – Ground Floor Plan, First Floor Plan, Roof Plan/9A | F&F Design & Build Pty Ltd | 15.05.19 |
| Drawing No. DA12B, Rev. I – Ground Floor Plan, First Floor Plan, Roof Plan/9B | F&F Design & Build Pty Ltd | 15.05.19 |
| Drawing No. DA12C, Rev. I – Ground Floor Plan, First Floor Plan, Roof Plan/9C | F&F Design & Build Pty Ltd | 15.05.19 |
| Drawing No. DA12D, Rev. I – Ground Floor Plan, First Floor Plan, Roof Plan/9D | F&F Design & Build Pty Ltd | 16.05.19 |
| Drawing No. DA13, Rev. I – Section AA, Section BB, Section CC, Section DD | F&F Design & Build Pty Ltd | 15.05.19 |
| Drawing No. DA14, Rev. I – Section EE, Section FF, Section GG, Section HH | F&F Design & Build Pty Ltd | 15.05.19 |
| Drawing No. DA15, Rev. J – Section II, Side Elevations | F&F Design & Build Pty Ltd | 16.05.19 |
| Drawing No. DA16, Rev. I – Front Elevation, Rear Elevation | F&F Design & Build Pty Ltd | 15.05.19 |
| Drawing No. DA21, Rev. I – Front Elevation, Rear Elevation | F&F Design & Build Pty Ltd | 15.05.19 |
| Drawing No. DA21A, Rev. I – Side Elevations | F&F Design & Build Pty Ltd | 15.05.19 |
| Drawing No. DA24, Rev. H – Colour & Finishes Schedule 1 | F&F Design & Build Pty Ltd | 14.05.19 |
| Drawing No. DA25, Rev. H – Colour & Finishes | F&F Design & Build Pty Ltd | 14.05.19 |

| | | |
|--|-------------------------------------|---------------------|
| Schedule 2 | | |
| Drawing No. DA26, Rev. H – Colour & Finishes Schedule 3 | F&F Design & Build Pty Ltd | 14.05.19 |
| Drawing No. DA27, Rev. J – Existing Driveway 1 Dwelling No.9A, Section AA, Section BB | F&F Design & Build Pty Ltd | 16.05.19 |
| Drawing No. DA28, Rev. J – Existing Driveway 2 Dwelling No.9D, Section GG, Section HH | F&F Design & Build Pty Ltd | 16.05.19 |
| Document Title | Prepared By | Dated |
| BASIX Certificate No. 974878M | Outsource Ideas P/l | 20 November 2018 |
| Arboricultural Impact Appraisal and Method Statement (Revision A) | Naturally Trees | 25/10/2018 |
| Report No BA181128 Version A - Aircraft Noise Assessment | Blackett Acoustics | November 2018 |
| Landscape Planting Plan | Michael Siu Landscape Architects | 17 June 2019 |
| Stormwater Plans | Prepared By | Dated |
| Drawing No.17594/C2 Revision (B) - Stormwater Drainage Concept Plan | Nastai Associates | 16 May 2019 |

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

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

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

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

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

- Consent is granted for the demolition of the following currently existing on the property, subject to strict compliance with the following conditions:

| Elements | Location |
|--|---------------------------------------|
| Structures associated with the existing site | As indicated on the approved drawings |

Excluding the following elements which must be retained:

| Elements to be retained | Location |
|-----------------------------|--------------------------|
| The northern boundary fence | On the northern boundary |

- a) The adjoining residents must be notified seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence, site contact details/person, elements to be demolished and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of and directly opposite the demolition site.
- b) Written notice is to be given to the Principal Certifying Authority for inspection prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours and contact telephone number and licence number of the demolisher. The following building inspections must be undertaken by the Principal Certifying Authority:
 - i) A *pre commencement* inspection when all the site works are installed on the site and prior to demolition commencing.
 - ii) A *final* inspection when the demolition works have been completed.

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

- c) Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, licence number, contact phone number and site address.
- d) Prior to demolition, the applicant must erect a 2.4m high temporary fence, hoarding between the work site and any public property (footpaths, roads, reserves etc). Access to the site must be restricted to authorised persons only and the site must be secured against unauthorised entry when work is not in progress or the site is otherwise unoccupied.
- e) The demolition plans must be submitted to the appropriate Sydney Water Quick Check agent for a building plan approval.
- f) Demolition is to be carried out in accordance with the relevant provisions of Australian Standard 2601:2001: *Demolition of structures*.
- g) The hours of demolition work are limited to between 7:00am and 6:00pm on weekdays. No demolition work is to be carried out on Saturdays, Sundays and public holidays.
- h) Hazardous or intractable wastes arising from the demolition process must be removed and disposed of in accordance with the requirements of WorkCover New South Wales and the Environmental Protection Authority.
- i) Demolition procedures must maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.
- j) During demolition, public property (footpaths, roads, reserves etc) must be

clear at all times and must not be obstructed by any demolished material or vehicles. The footpaths and roads must be swept (not hosed) clean of any material, including clay, soil and sand. On the spot fines may be levied by Council against the demolisher and/or owner for failure to comply with this condition.

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

PRIOR TO THE RELEASE OF A CONSTRUCTION CERTIFICATE

4. In accordance with the provisions of the *Environmental Planning and Assessment Act 1979* construction works approved by this consent must not commence until:

- a) A Construction Certificate has been issued by Council or an Accredited Certifier. Either Council or an Accredited Certifier can act as the "Principal Certifying Authority."
- b) A Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment.
- c) At least two days notice, in writing has been given to Council of the intention to commence work.

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

- 5. Amended plans are to be submitted incorporating the following amendments:
 - a) The dividing walls/fences separating the proposed dwellings to have a minimum height of at least 1.8 metres measured from the finished floor level of the property that has the higher finished floor level.

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

- 6. A contribution pursuant to the provisions of Section 7.11 of the Environmental Planning and Assessment Act, 1979 for the services detailed in column A and for the amount detailed in column B shall be made to Council prior to the issue of a Construction Certificate:

| COLUMN A | COLUMN B |
|-----------------------------------|-------------|
| Open space and recreation | \$68923.27 |
| Community facilities and services | \$10,534.36 |
| Local Area Traffic Management | \$482.49 |
| Bicycle works | \$59.89 |

The total contribution is: \$80,000

Payment will only be accepted in the form of cash, bank cheque or EFTPOS / Credit Card (to a maximum of \$10,000). It should be noted that personal cheques or bank guarantees cannot be accepted for Section 7.11 Contributions.

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

- 7. Subdivision Linen Plans and accompanying 88B instrument shall be submitted to and accepted by Council before the issue of a Construction Certificate or before the issue of the Subdivision Certificate, whichever occurs first.
- 8. Following satisfactory resolution of Condition 1(1) relating to disposal of stormwater runoff, the following conditions must be complied with:

- a) All redundant stormwater pipelines within the footpath area must be removed and the footpath and kerb reinstated.
- b) New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a section height of 100mm.
- c) Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site.
- d) New kerb outlets in stone kerb shall be carefully cored through the existing kerb stone such that the kerb outlet is perpendicular (a 90° angle) with the gutter. The pipe under the footpath shall end 30mm within the kerb stone with mass concrete around the pipe connection to the kerb stone.
- e) Purpose made pipe fittings and bends or welded joints shall be used where necessary to align the discharge pipe with the kerb outlet.
- f) The design must be certified as compliant with the terms of this condition by a suitably qualified Civil Engineer.
- g) All pipes diameter and invert level, pits surface and invert level, finished surface ground and finished floor levels must be shown on the drainage plans.
- h) An inspection opening or stormwater pit must be installed inside the property adjacent to the boundary for all stormwater outlets.
- i) All redundant stormwater pipelines within the footpath area must be removed and the footpath and kerb reinstated.
- j) Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site per dwelling.
- k) All plumbing within the site must be carried out in accordance with Australian Standard *AS/NZS3500.3.2015 Plumbing and Drainage – Stormwater Drainage*.

The design must be certified as compliant with the terms of this condition by a suitably qualified Civil Engineer.

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

9. The trees identified below are to be retained:

| Tree/location |
|---|
| 2x <i>Ficus macrocarpa</i> var. <i>hillii</i> (Hill's Weeping Fig) located in Pioneer Memorial Park to the north of the subject site. |
| 3x <i>Lophostemon confertus</i> (Brush Box) located in Pioneer Memorial Park to the north of the subject site. |

Details of the trees to be retained must be included on the Construction Certificate plans

10. Before the issue of a Construction Certificate, the Principal Certifying Authority shall be satisfied that no proposed underground services (i.e. water, sewerage, drainage, gas or other service) unless previously approved by conditions of consent, are located beneath the canopy of any tree protected under State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, located on the subject allotment and adjoining allotments.

A plan detailing the routes of these services and trees protected under the State Environmental Planning Policy shall be prepared. Details demonstrating compliance are to be shown on the plans submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

11. The footings of the proposed rear decking will be isolated pier or pier and beam construction or similar within the specified radius of the trunk(s) of the following tree(s) and designed in conjunction with input from a consultant Arborist holding a minimum qualification of AQF5 Diploma Arboriculture.

| Schedule | |
|---|------------------|
| Tree/location | Radius in metres |
| 2x <i>Ficus macrocarpa</i> var. <i>hillii</i> (Hill's Weeping Fig) located in Pioneer Memorial Park to the north of the subject site. | 12m |
| 3x <i>Lophostemon confertus</i> (Brush Box) located in Pioneer Memorial Park to the north of the subject site. | 8.5m |

The piers shall be located such that no roots of a diameter greater than 30mm will be severed or injured during the construction period. The beam(s) shall be of reinforced concrete or galvanised steel sections and placed in positions with the base of the beam being a minimum of 50mm above existing soil levels.

Structural details of the pier or pier and beam construction shall be submitted to the Principal Certifying Authority satisfying the above requirements prior to the release of a Construction Certificate.

12. The design of the vehicular access and off street parking facilities shall comply with Australian Standard AS/NZS2890.1-2004 *Parking Facilities – Off-Street Car Parking*. Details and dimensions demonstrating compliance are to be provided prior to the issue of a Construction Certificate. The following specific issues shall be addressed in the design:
 - a) The garage slab or driveway must rise within the property to be 170mm above the adjacent road gutter level. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004.

- b) A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors.
 - c) Longitudinal sections along both sides of the access and parking shall be provided, demonstrating compliance with the above requirements. The long section shall begin from the centreline of the adjacent road to a minimum of 3 metres into the property and is to be prepared at a scale of 1:25.
 - d) The car space shall have minimum clear internal dimensions of 6000mm x 3000mm (length x width). The dimensions shall be exclusive of obstructions such as walls, doors and columns, except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004.
 - e) A plan of the proposed access and adjacent road, drawn at a 1:200 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with the AS/NZS 2890.1:2004. The plan must include existing on street parking spaces on the laneway.
13. The person acting on this consent shall submit to the Principal Certifying Authority a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site before the issue of a Construction Certificate.
14. Any air conditioning unit on the site must be installed and operated at all times so as not to cause "Offensive Noise" as defined by the Protection of the Environment (Operations) Act 1997.

The system/s shall be operated as follows:

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

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

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

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

15. Prior to the issue of the Construction Certificate the Principal Certifying Authority is to ensure that the plans state that no high front gutters will be installed.
16. The following requirements are to be incorporated into the development detailed on the Construction Certificate plans and provided prior to the issue of a Construction Certificate:
 - a) No rainforest timbers or timbers cut from old growth forests are to be used in the construction of the development. Timbers to be used are to be limited to any plantation, regrowth or recycled timbers, or timbers grown on Australian Farms or State Forest Plantations.

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

17. In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy at the prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more. The Long Service Levy is payable prior to the issue of a Construction Certificate.

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

18. The existing unpainted brick surfaces are not to be painted, bagged or rendered but to remain as original brick work. The Construction Certificate plans must clearly depict all original brickwork with a notation that they are to remain unpainted to the satisfaction of the Principal Certifying Authority.
19. If any excavation extends below the level of the base of the footings of a building on an adjoining property, the person causing the excavation:
 - a) Must preserve and protect the adjoining building from damage
 - b) Must, at least seven (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.
 - c) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this condition, the allotment of land includes public property.

20. The following fire upgrading is required pursuant to Clause 94 of the *Environmental Planning and Assessment Regulation 2000*:
 - The building is to be provided with smoke alarm system that complies with *AS3786-1993: Smoke Alarms* and the smoke alarms must be connected to

the consumer mains electrical power supply and interconnected where there is more than one alarm with a stand-by (battery back-up) power supply. The smoke alarm system must be installed in suitable locations on or near the ceiling in accordance with Part 3.7.2 of the Building Code of Australia.

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

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

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

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

22. The approved plans must be submitted to a Sydney Water Quick Check agent 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. For Quick Check agent details please refer to the web site

<http://www.sydneywater.com.au/SW/plumbing-building-developing/building/quick-check-agents/index.html>

The Principal Certifying Authority must ensure the Quick Check agent/Sydney Water has appropriately stamped the plans prior to the issue of a Construction Certificate.

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

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

Services publication "Traffic Control Worksite Manual"

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

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

24. A Waste Management Plan (WMP) is to be provided in accordance with **Part D – Waste – Development Control Plan 2013**. The Plan must address all issues identified in the DCP including but not limited to:
- a) Estimated volume (m3) or weight (t) of materials that are reused, recycled or removed from site.
 - b) On site material storage areas during construction.
 - c) Material and methods used during construction to minimise waste.
 - d) Nomination of end location of all waste and recycling generated from a facility authorised to accept the material type for processing or disposal and retention of waste dockets to be made available to Council Officer on request
 - e) A clear statement within the Waste Management Plan of responsibility for the transferral of waste and recycling bins within the property and between floors where applicable to the collection point in accordance with DCP 2013.

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

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

25. Prior to the commencement of demolition works or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit and inspection fee must be paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

| | |
|-------------------------|-------------|
| Security Deposit (FOOT) | \$25,000.00 |
| Inspection fee (FOOTI) | \$230.65 |

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

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

carried out.

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

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

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

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

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

| Property | Structures / Area |
|--------------------|-------------------|
| No. 7 Allen Street | Dwelling House |

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

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

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

condition have been met prior to commencement of any works.

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

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

27. Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent shall obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the Local Government Act 1993 and/or Section 138 of the Roads Act 1993. Permits are required for the following activities:
- a) Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application.
 - b) A concrete pump across the roadway/footpath
 - c) Mobile crane or any standing plant
 - d) Skip bins
 - e) Scaffolding/Hoardings (fencing on public land)
 - f) Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
 - g) Awning or street verandah over footpath
 - h) Partial or full road closure
 - i) Installation or replacement of private stormwater drain, utility service or water supply

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities.

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

28. The following works shall be constructed:
- a) Light duty concrete vehicle crossings at the vehicular access location.
 - b) The redundant vehicular crossing to the site shall be removed and replaced by kerb and gutter and footpath. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's

Engineer) the replacement kerb shall also be in stone.

- c) The existing concrete footpath across the frontage of the site shall be reconstructed.
- d) The existing School Zone sign and sign post in conflict with the proposed vehicular crossing must be relocated to satisfaction of Council's Road Access Manager at the applicant's cost.
- d) The existing damaged or otherwise defective kerb and gutter, footpath and/or road pavement adjacent to the site shall be restored.

All works shall be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications" before the issue of the Occupation Certificate and at no cost to Council.

Full detailed construction plans and specifications shall be submitted to Council for approval under Section 138 of the Roads Act 1993 before the issue of a Construction Certificate with all works completed before to the issue of an Occupation Certificate.

29. Upon installation of the required tree protection measures, an inspection of the site by the Project Arborist is required to verify that tree protection measures comply with all relevant conditions.

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

30. Prior to works commencing or release of a Construction Certificate (whichever occurs first), tree protection signage is to be attached to each tree protection zone, displayed in a prominent position and the sign repeated at 10 metre intervals or closer where the fence changes direction. Each sign shall contain in a clearly legible form (lettering should comply with AS 1319-*Safety signs for the occupational environment*), the following information:

- a) Tree protection zone;
- b) This fence has been installed to prevent damage to the trees and their growing environment both above and below ground and access is restricted;
- c) Any encroachment not previously approved within the tree protection zone shall be the subject to advice from the Project Arborist in report form and must include the following:
 - Proof shall be provided that no other alternative is available;
 - On completion, the Project Arborist's report shall be submitted to the Principal Certifying Authority for further consultation with Council;

- d) The name, address and telephone number of the builder and Project Arborist.

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

PRIOR TO THE COMMENCEMENT OF WORKS

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

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

To ensure that the location of the building satisfies the provision of the approval, a check survey certificate shall be submitted to the Principal Certifying Authority either prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, indicating the:

- a) Location of the building with respect to the boundaries of the site;

32. A detailed Traffic Management Plan to cater for construction traffic shall be submitted to and approved by Council before commencement of works. Details shall include haulage routes, estimated number of vehicle movements, truck parking areas, work zones, crane usage, etc., related to demolition/construction activities.
33. The person acting on this consent shall apply for a Work Zone along the site frontage for construction vehicles. A minimum of 2 months should be allowed for the processing of the application.
34. The site must be secured with temporary fencing prior to any works commencing.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public property to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. Additionally an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property, where necessary.

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

Any hoarding, fence or awning is to be removed when the work is completed and

must be maintained clear of any advertising.

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

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

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

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

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

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

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

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

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

DURING WORKS

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

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

- 41. If tree roots are required to be severed for the purposes of constructing the approved works, they shall be cut cleanly using a sharp and *fit for purpose tool*. The pruning shall be undertaken by a minimum Level 3 (AQF 3) qualified Arborist.

Details demonstrating compliance with the requirements of this condition are to be submitted by the Project Arborist undertaking the works to the satisfaction of the Principal Certifying Authority

- 42. The trees to be retained shall be inspected, monitored and treated by Project Arborist during and after completion of development works to ensure their long term survival. Regular inspections and documentation from the Project Arborist to the Principal Certifying Authority are required at the following times or phases of work:

| Schedule | |
|---|--|
| Tree/location | Time of Inspection |
| 2x <i>Ficus macrocarpa</i> var. <i>hillii</i> (Hill's Weeping Fig) located in Pioneer Memorial Park to the north of the subject site. | <ul style="list-style-type: none"> • Directly following installation of protective fencing, • Monthly inspections during construction period, |
| 3x <i>Lophostemon confertus</i> (Brush Box) located in Pioneer Memorial Park to the north of the subject site. | <ul style="list-style-type: none"> • During excavation within the <i>Tree Protection Zone</i>, • At any time fencing is required to be altered, • At project completion to verify that protection measures have been undertaken. <p>Tree protection measures must be in accordance with Appendix 6 of the <i>submitted Arboricultural Impact Appraisal and Method Statement (Revision A)</i>, prepared by <i>Naturally Trees</i>, dated 25/10/2018 and section 4 of AS4970—<i>Protection of trees on development sites</i>.</p> |

Recommendations to ensure the tree/s long term survival must be carried out immediately upon receipt of the report.

Project Arborist - for the purpose of this condition a suitably qualified professional shall have as a minimum, Level 5 (Diploma) certification in Arboriculture under the Australian Qualification Framework (AQF).

Details demonstrating compliance with the requirements of this condition are to be submitted by the Project Arborist undertaking the works to the satisfaction of the Principal Certifying Authority.

- 43. Canopy and/or root pruning of the following tree(s) which is necessary to accommodate the approved building works shall be undertaken by, or directly supervised by, the project Arborist – for the purpose of this condition a suitably qualified professional shall have as a minimum, Level 5 (Diploma) certification in Arboriculture under the Australian Qualification Framework (AQF).

| Schedule | |
|---|---|
| Tree/location | Approved works |
| 2x <i>Ficus macrocarpa</i> var. <i>hillii</i> (Hill's Weeping Fig) located in Pioneer Memorial Park to the north of the subject site. | Pruning of minor branches less than 40mm in diameter. |
| 3x <i>Lophostemon confertus</i> (Brush Box) located in Pioneer Memorial Park to the north of the subject site. | |

The person acting on this consent has approval under Council's Tree Management Controls to; prune the branches to achieve a clearance of the structure. Pruning is limited to those branches that will come into direct contact the built structure and where branch diameter (at its point of attachment) does not exceed 40 mm. All pruning shall be carried out to sections 5, 6 and 7.3.3 of the Australian Standard AS4373—*Pruning of amenity trees*.

Details demonstrating compliance with the requirements of this condition are to be submitted by the Project Arborist undertaking the works to the satisfaction of the Principal Certifying Authority.

- 44. No tree roots of 40mm or greater in diameter located within the specified radius of the trunk(s) of the following, tree(s) shall be severed or injured in the process of any works during the construction period.

| Schedule | |
|--|------------------|
| Tree/location | Radius in metres |
| 2x <i>Ficus macrocarpa</i> var. <i>hillii</i> (Hill's Weeping Fig) located in Pioneer Memorial | 12m |

| | |
|--|------|
| Park to the north of the subject site. | |
| 3x <i>Lophostemon confertus</i> (Brush Box) located in Pioneer Memorial Park to the north of the subject site. | 8.5m |

Details demonstrating compliance with the requirements of this condition are to be submitted by the Project Arborist undertaking the works to the satisfaction of the Principal Certifying Authority.

45. All excavation within the specified radius of the trunk(s) of the following tree(s) being hand dug to a depth of 1 metre under supervision of the project arborist and then by mechanical means as agreed by the Project Arborist:

| Schedule | |
|---|------------------|
| Tree/location | Radius in metres |
| 2x <i>Ficus macrocarpa</i> var. <i>hillii</i> (Hill's Weeping Fig) located in Pioneer Memorial Park to the north of the subject site. | 12m |
| 3x <i>Lophostemon confertus</i> (Brush Box) located in Pioneer Memorial Park to the north of the subject site. | 8.5m |

Details demonstrating compliance with the requirements of this condition are to be submitted by the Project Arborist undertaking the works to the satisfaction of the Principal Certifying Authority.

46. 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.

47. All excavations and backfilling associated with the development must be executed safely, properly guarded and protected to prevent them from being dangerous to life or property and in accordance with the design of a suitably qualified structural engineer.

If excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must:

- a) Preserve and protect the building from damage.
- b) If necessary, underpin and support the building in an approved manner.
- c) Give at least seven (7) days notice to the adjoining owner before excavating,

of the intention to excavate within the proximity of the respective boundary.

Any proposed method of support to any excavation adjacent to adjoining properties or any underpinning is to be designed by a Chartered Civil Engineer, with National Professional Engineering Registration (NPER) in the construction of civil/structural works. Copies of the design plans must be provided to the relevant adjoining property owner/s prior to commencement of such works. Prior to backfilling, any method of support constructed must be inspected by the designing Engineer with certification provided to all relevant parties.

48. The site must be appropriately secured and fenced at all times during works.
49. All fill used with the proposal shall be virgin excavated material (such as clay, gravel, sand, soil and rock) that is not mixed with any other type of waste and which has been excavated from areas of land that are not contaminated with human made chemicals as a result of industrial, commercial, mining or agricultural activities and which do not contain sulphate ores or soils.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority.

50. 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.

51. In addition to meeting the specific performance criteria established under this consent, the Applicant shall implement all reasonable and feasible measures to prevent and/or minimise any harm to the environment that may result from the demolition, construction or operation/use of the development.
52. Any new information revealed during development works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.
53. The development must be inspected at the following stages by the Principal Certifying Authority during construction:
 - a) after excavation for, and prior to the placement of, any footings, and
 - b) prior to pouring any in-situ reinforced concrete building element, and
 - c) prior to covering of the framework for any floor, wall, roof or other building element, and
 - d) prior to covering waterproofing in any wet areas, and
 - e) prior to covering any stormwater drainage connections, and
 - f) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
54. A copy of the approved plans and this consent must be kept on site for the duration of site works and in the case of any commercial or industrial premise for the duration of the use/trading. Copies shall be made available to Council Officer's upon request.
55. Sedimentation controls, tree protection measures and safety fencing (where relevant) shall be maintained during works to ensure they provide adequate protection during the course of demolition, excavation and construction works. Materials must be stored in a location and manner to avoid material being washed to drains or adjoining properties.

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

Material from the site is not to be tracked onto the road by vehicles entering or leaving the site. At the end of each working day any dust/dirt or other sediment

shall be swept off the road and contained on the site and not washed down any stormwater pit or gutter.

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

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

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

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

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

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

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

59. A Positive Covenant under Section 88B or 88E, whichever is relevant to the subject development, of the Conveyancing Act, shall be created on the title of the property detailing the following (at the Applicant's full cost):

- a) surface flow path;
- b) finished pavement and ground levels;
- c) prevent the erection of any structures or fencing;
- d) on-site stormwater detention and/or retention system;

The wording in the Instrument shall be submitted to and approved by the Inner West Council prior to lodgement at the Land Titles Office and prior to the release of the Occupation Certificate (a typical document is available from Council's Development Assessment Engineer). The Instrument shall be registered prior to

the completion of development.

The following documents shall be submitted to Council as part of the Positive 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 shall be submitted to the Inner West 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 Council's drainage system, shall be shown together with the following information:

- i) location;
- ii) pipe diameter;
- iii) gradient;
- iv) pipe material i.e. PVC or EW etc;
- v) orifice size;
- vi) trash screen at orifice;
- vii) emergency overflow dimensions and RL;
- viii) all buildings (including floor levels) and finished ground and pavement surface levels;
- ix) Full details of SQIDS.

b) Engineer's Certificate

A qualified practising Civil Engineer shall 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) OSR pumps and SQIDS have been installed and commissioned.

60. The existing stone kerb adjacent to the site is of local heritage value and is to be preserved at no cost to Council. Any damage to the stone kerb will require the replacement of the damaged individual stone units before the issue of the Occupation Certificate.

61. Prior to issue of the Occupation Certificate the person acting on this consent shall obtain from Council a compliance Certificate(s) stating that all Road, Footpath, Vehicle Crossing 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.

62. You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. It is responsibility of applicant's contractor to verify location of the utility services with the relevant service authority. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development shall be at no cost to Council and undertaken before the issue of an Occupation Certificate.
63. Alignment levels for the site at all pedestrian and vehicular access locations shall match the existing back of footpath levels at the boundary. For vehicular access off rear laneways the level at the boundary shall match the invert level of the adjacent gutter plus 110mm/150mm at both sides of the vehicle entry.
64. Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever shall not be permitted. Any encroachments on to Council road or footpath resulting from the building works will be required to be removed before the issue of the Occupation Certificate.
65. Prior to the issue of the Occupation Certificate the Principal Certifying Authority is to confirm that no high front gutters have been installed.
66. An Occupation Certificate must be obtained prior to any use or occupation of the development or part thereof. The Principal Certifying Authority must ensure that all works are completed in accordance with this consent including all conditions.
67. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that all works have been completed in accordance with the approved Waste Management Plan referred to in this development consent.

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

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

PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

69. A Registered Surveyor shall provide certification that all services (eg drainage, stormwater, water supply, gas, electricity, telephone) as constructed are contained within each lot or within appropriate easements to accommodate such services. The certification is to be provided prior to the issue of a Subdivision Certificate.
70. Prior to the issue of a Subdivision Certificate, the applicant shall submit an original plan of subdivision plus three (3) copies for Council's endorsement and administration sheet. The following details shall also be submitted:

- a) Evidence that all relevant conditions of Development Consent D/2017/507 have been satisfied.
- b) Evidence of payment of all relevant fees and contributions.
- c) The 88B instrument plus six (6) copies.
- d) A copy of the final Occupation Certificate issued for the development.
- e) All surveyor's or engineer's certification required by the Development Consent.
- f) A copy of the Section 73 Compliance Certificate issued by Sydney Water.

ONGOING CONDITIONS OF CONSENT

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

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

PRESCRIBED CONDITIONS

A. BASIX Commitments

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

In this condition:

- a) Relevant BASIX Certificate means:
 - i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under Section 4.55 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
 - ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and
- b) BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.

B. Building Code of Australia

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

C. Home Building Act

- 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given Leichhardt Council written notice of the following:
 - a) in the case of work for which a principal contractor is required to be appointed:
 - i) the name and licence number of the principal contractor, and
 - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or
 - b) in the case of work to be done by an owner-builder:
 - i) the name of the owner-builder, and
 - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 2) If arrangements for doing residential building work are changed while the work is in progress so that the information submitted to Council is out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

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

D. Site Sign

- 1) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - a) stating that unauthorised entry to the work site is prohibited;
 - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and

- c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while to building work or demolition work is being carried out, but must be removed when the work has been completed.

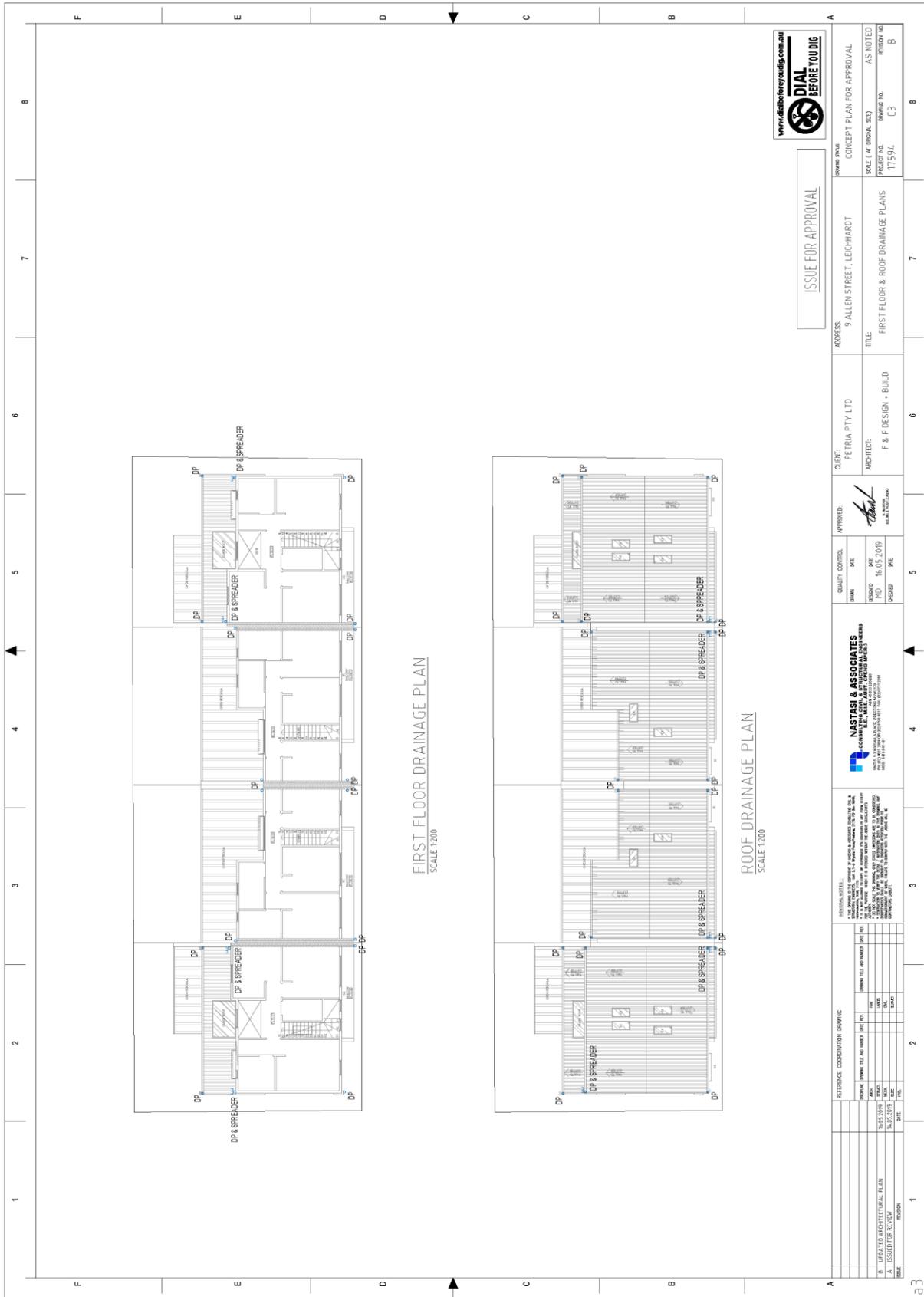
E. Condition relating to shoring and adequacy of adjoining property

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

NOTES

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

- c) Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*.
 - d) Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed.
 - e) Application for Strata Title Subdivision if strata title subdivision of the development is proposed.
 - f) Development Application for demolition if demolition is not approved by this consent.
 - g) Development Application for subdivision if consent for subdivision is not granted by this consent.
 - h) An application under the Roads Act 1993 for any footpath / public road occupation. A lease fee is payable for all occupations.
8. Prior to the issue of the Construction Certificate, the applicant must make contact with all relevant utility providers (such as Sydney Water, Energy Australia etc) whose services will be impacted upon by the development. A written copy of the requirements of each provider, as determined necessary by the Certifying Authority, must be obtained.
9. 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 Application for 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.



ISSUE FOR APPROVAL

| REFERENCE COORDINATION DRAWING | | QUALITY CONTROL | | APPROVED | | CLIENT | | ADDRESS | | DRAWING STATUS | |
|--------------------------------|------------|-----------------|---------|------------|------------|-------------|----------------------|---------|-------------------------|----------------|----------|
| DRAWING NO. | DATE | DRAWN | CHECKED | DATE | DATE | NAME | COMPANY | NO. | STREET | SCALE | DATE |
| 1 | 16.05.2019 | NO | NO | 16.05.2019 | 16.05.2019 | [Signature] | PETRIA PTY LTD | 9 | ALLEN STREET, LECHHARDT | AS NOTED | AS NOTED |
| 2 | 16.05.2019 | NO | NO | 16.05.2019 | 16.05.2019 | [Signature] | F & F DESIGN + BUILD | 17594 | ALLEN STREET, LECHHARDT | C3 | B |

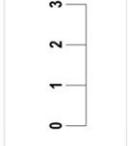
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DATE: 16.05.2019
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PROJECT **9 ALLEN STREET, LEICHHARDT**
 CLIENT **PETRA PTY LTD**

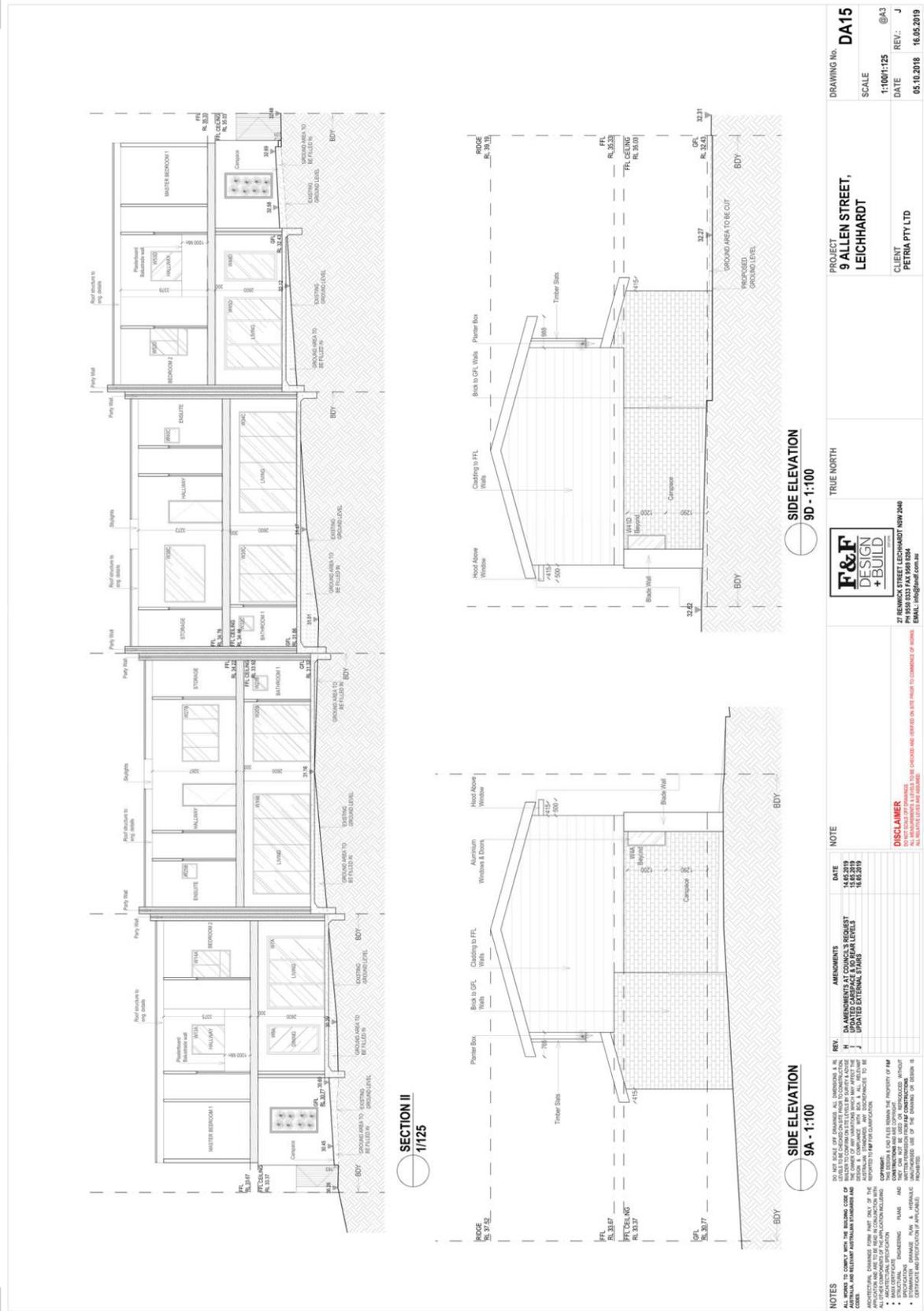


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| F | ADDITION OF A DOOR AND STORAGE UNDER THE | 15.11.2018 | |
| H | DA AMENDMENTS AT COUNCIL'S REQUEST | 14.05.2019 | |
| H | UPDATED CARPARK & R/O REAR LEVELS | 15.05.2019 | |

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 DATE 05.12.2018
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 CLIENT **PEIRA PTY LTD**



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NOTE
 DATE 16.05.2019
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PROJECT
**9 ALLEN STREET,
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 PETRA PTY LTD

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SIDE FENCE ELEVATION
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9 ALLEN STREET,
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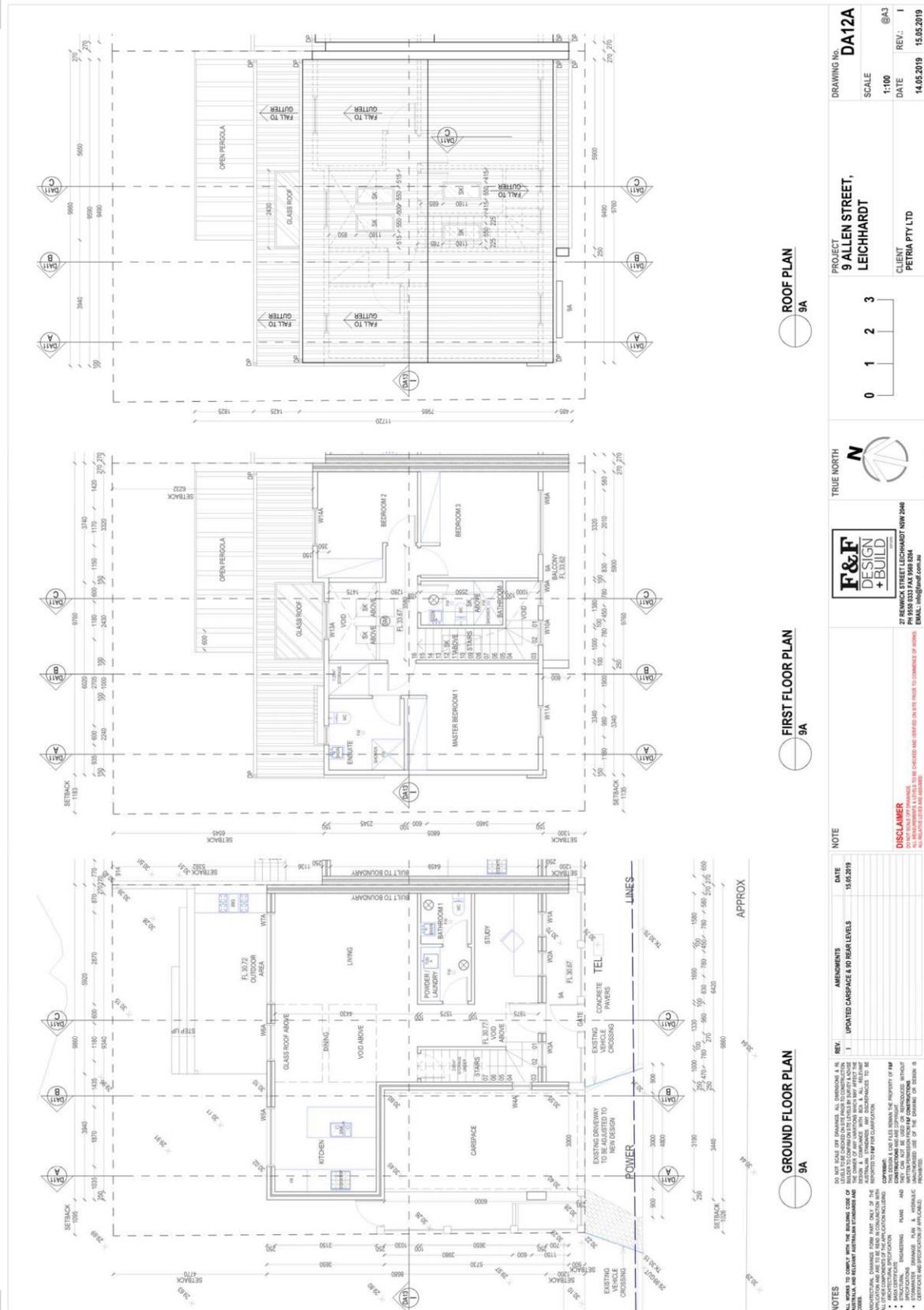
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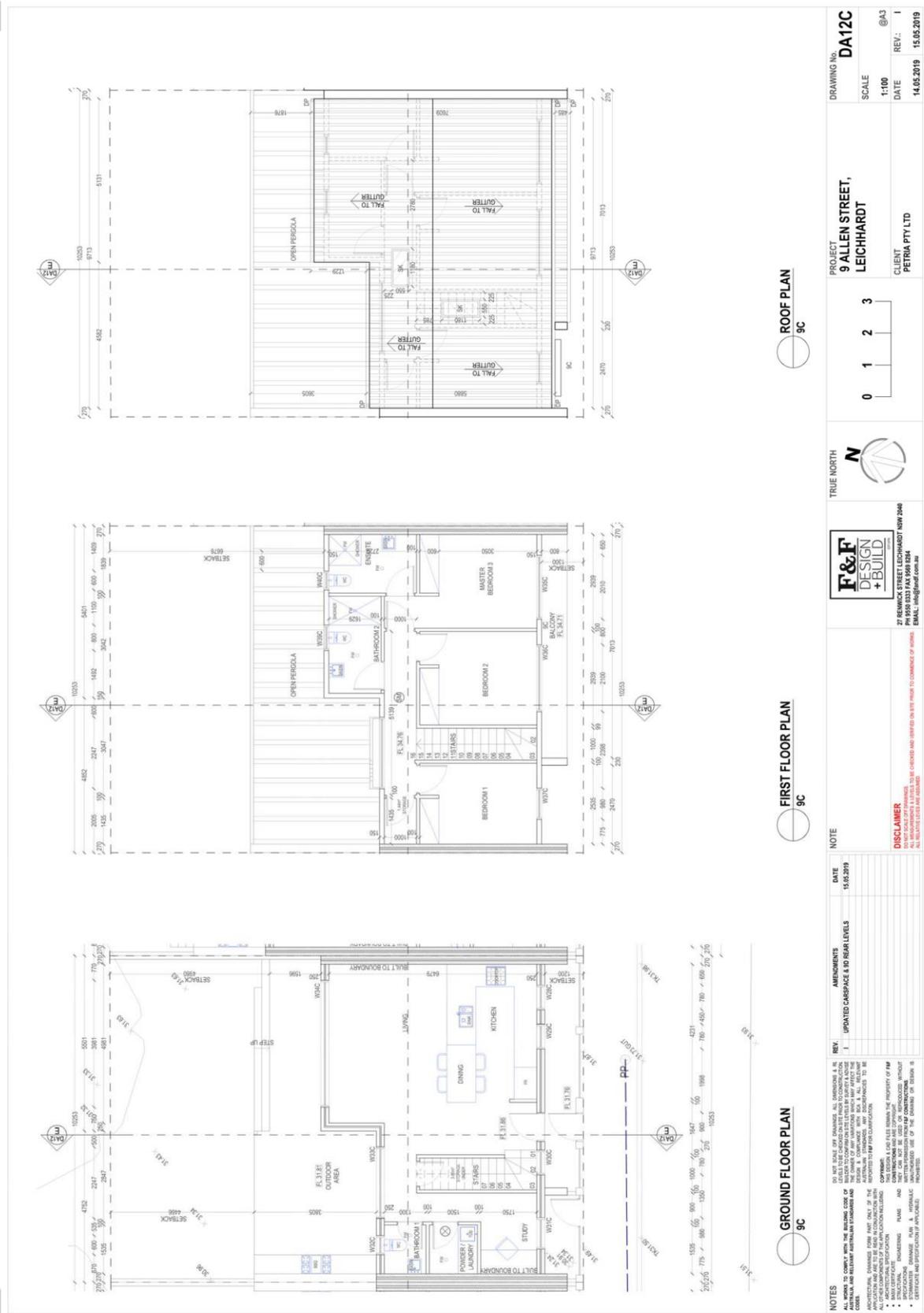
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DRAWING No. **DA12B**
 SCALE 1:100
 DATE 14.05.2019
 REV. 1
 15.05.2019

ROOF PLAN
 9B

FIRST FLOOR PLAN
 9B

GROUND FLOOR PLAN
 9B



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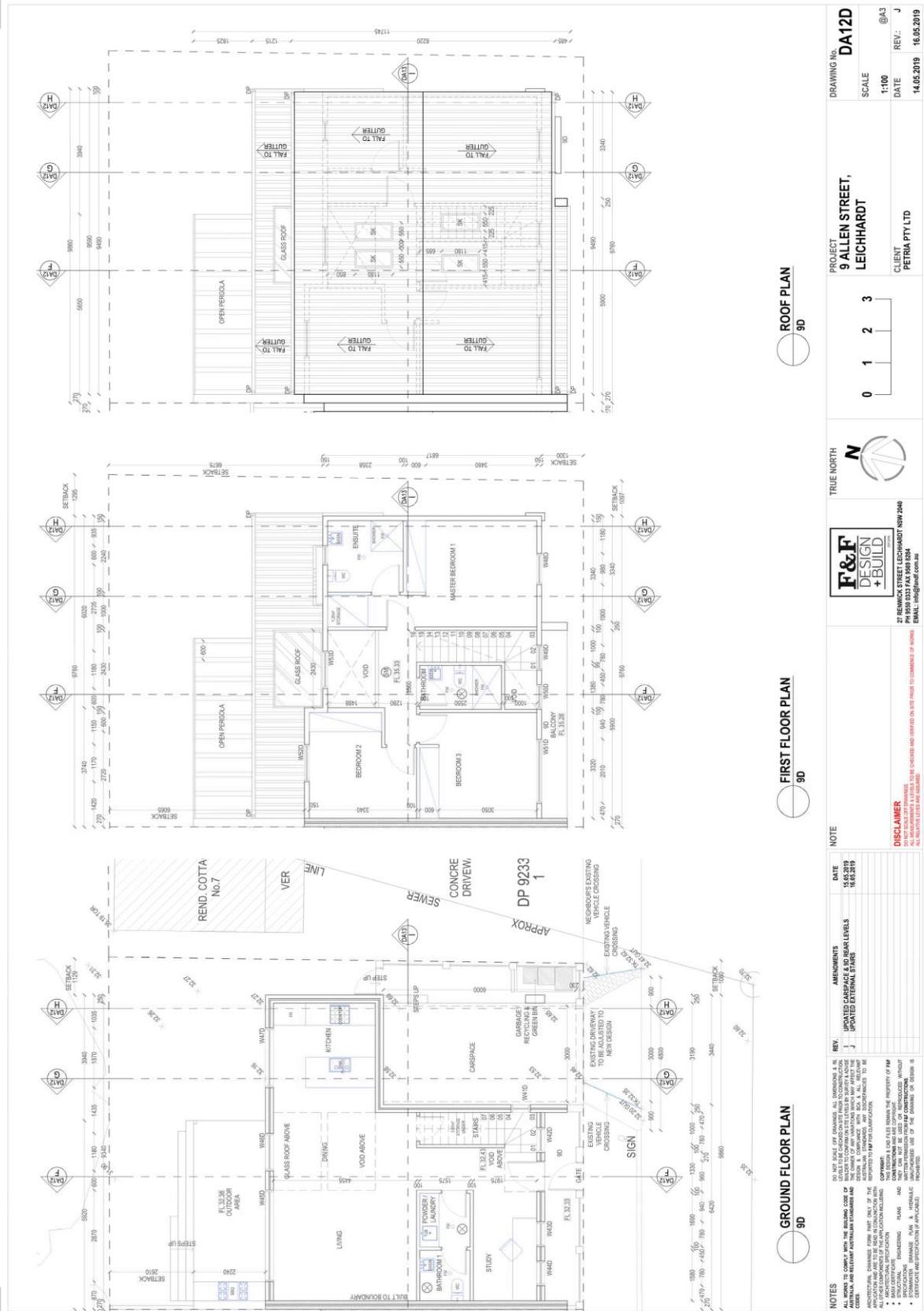
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GROUND FLOOR PLAN
9D

FIRST FLOOR PLAN
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ROOF PLAN
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| 0 | ISSUED FOR PERMIT APPLICATION | 16.05.2019 |
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| 2 | ISSUED FOR PERMIT APPLICATION | 16.05.2019 |
| 3 | ISSUED FOR PERMIT APPLICATION | 16.05.2019 |

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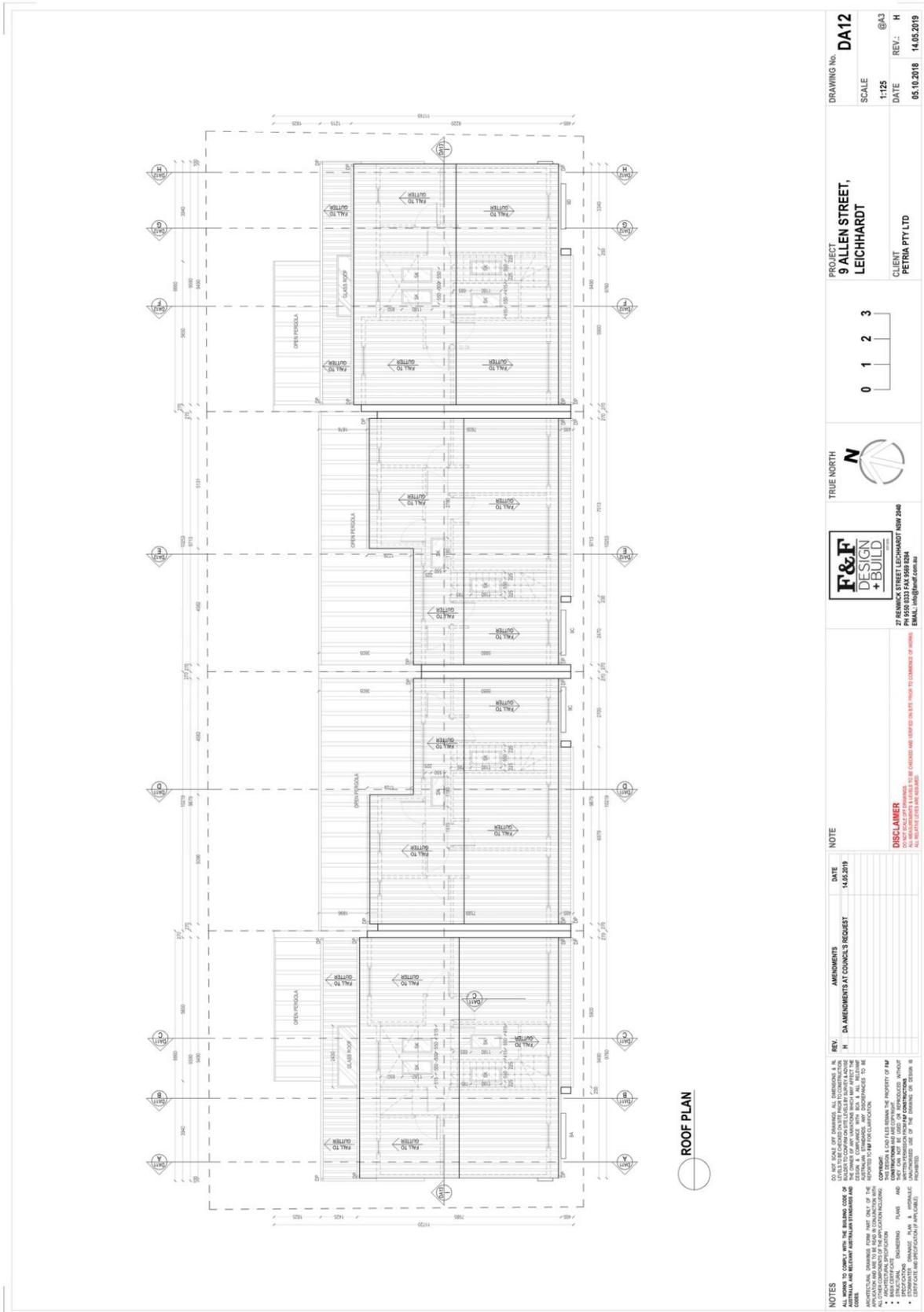
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| <p>NOTES</p> <p>1. ALL WORK SHALL BE IN ACCORDANCE WITH THE BUILDING ACT 1994 AND ALL APPLICABLE REGULATIONS AND STANDARDS.</p> <p>2. THE CLIENT ACCEPTS RESPONSIBILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED TO THE ARCHITECT AND FOR THE INFORMATION PROVIDED TO THE ARCHITECT BY OTHER PROFESSIONALS.</p> <p>3. THE ARCHITECT HAS NOT CONDUCTED ANY VISUAL IMPACT ASSESSMENT OR ENVIRONMENTAL IMPACT ASSESSMENT.</p> <p>4. THE ARCHITECT HAS NOT CONDUCTED ANY VISUAL IMPACT ASSESSMENT OR ENVIRONMENTAL IMPACT ASSESSMENT.</p> <p>5. THE ARCHITECT HAS NOT CONDUCTED ANY VISUAL IMPACT ASSESSMENT OR ENVIRONMENTAL IMPACT ASSESSMENT.</p> <p>6. THE ARCHITECT HAS NOT CONDUCTED ANY VISUAL IMPACT ASSESSMENT OR ENVIRONMENTAL IMPACT ASSESSMENT.</p> <p>7. THE ARCHITECT HAS NOT CONDUCTED ANY VISUAL IMPACT ASSESSMENT OR ENVIRONMENTAL IMPACT ASSESSMENT.</p> <p>8. THE ARCHITECT HAS NOT CONDUCTED ANY VISUAL IMPACT ASSESSMENT OR ENVIRONMENTAL IMPACT ASSESSMENT.</p> <p>9. THE ARCHITECT HAS NOT CONDUCTED ANY VISUAL IMPACT ASSESSMENT OR ENVIRONMENTAL IMPACT ASSESSMENT.</p> <p>10. THE ARCHITECT HAS NOT CONDUCTED ANY VISUAL IMPACT ASSESSMENT OR ENVIRONMENTAL IMPACT ASSESSMENT.</p> | |
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| <p>NOTE</p> <p>DISCLAIMER</p> <p>ALL DIMENSIONS & LEVELS TO BE CHECKED AND CORRECTED ON SITE PRIOR TO COMMENCEMENT OF WORK. THE CLIENT ACCEPTS RESPONSIBILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED TO THE ARCHITECT AND FOR THE INFORMATION PROVIDED TO THE ARCHITECT BY OTHER PROFESSIONALS.</p> | |
| <p>PROJECT</p> <p>9 ALLEN STREET, LEICHHARDT</p> | |
| <p>CLIENT</p> <p>PETRA PTY LTD</p> | |
| <p>DRAWING No.</p> <p>DA12</p> | |
| <p>SCALE</p> <p>1:125</p> | |
| <p>DATE</p> <p>05.10.2018</p> | |
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| <p>DATE</p> <p>14.05.2019</p> | |

Attachment C- Clause 4.6 Exception to Development Standards

Appendix C Clause 4.6 Minimum Subdivision Lot Size

**CLAUSE 4.6 VARIATION TO CLAUSE 4.1 – MINIMUM SUBDIVISION LOT SIZE
OF THE LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013
9 ALLEN STREET, LEICHHARDT, NSW 2040**

1. Introduction

This submission seeks a variation to Clause 4.1 of the Leichhardt Local Environmental Plan 2013, which relates to minimum subdivision lot size.

This submission has been prepared with regards to a development application seeking a Torrens title subdivision of the subject site creating four (4) allotments and development of a dwelling house on each resulting allotment including associated landscaping and site works.

As detailed in this written request for a variation to minimum subdivision lot size being a development standard under the Leichhardt Local Environmental Plan 2013, the development meets the requirements prescribed under Clause 4.6 of the Leichhardt Local Environmental Plan (LEP) 2013.

This submission is made under Clause 4.6 of the Leichhardt LEP 2013 – Exceptions to development standards. Clause 4.6 states the following:

“4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.**
- (2) Development consent may, subject to this clause, be granted for a development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.**
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**
 - (b) the concurrence of the Director-General has been obtained.**
- (5) In deciding whether to grant concurrence, the Director-General must consider:*

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include all of these zones.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4."

The use of Clause 4.6 to enable an exception to this development control is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been fulfilled in terms of the merits of the proposed development and the content in this Clause 4.6 variation request report.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- 4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

- (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

The Environmental Planning Instrument to which these variations relate to is the Leichhardt LEP 2013.

The development standard to which this variation relates to is Clause 4.1 – Minimum subdivision Lot Size which reads as follows:

- 1) *The objectives of this clause are as follows:*
 - a) *to ensure that lot sizes are able to accommodate development that is consistent with relevant development controls,*
 - b) *to ensure that lot sizes are capable of supporting a range of development types.*
- 2) *This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*
- 3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*
- 4) *This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.*

Council's maps identify a minimum subdivision lot size on the site of 200m². Refer to Figure 2.

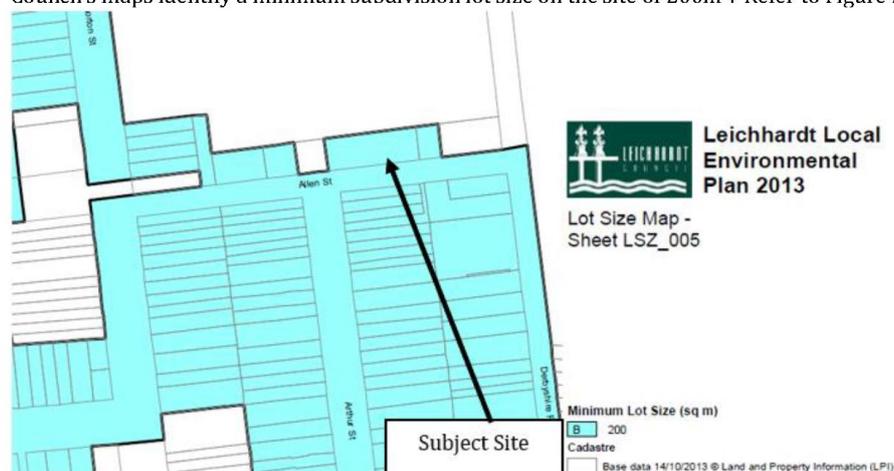


Figure 2: Minimum Lot Size Map

Source: NSW Legislation, LLEP13 map 005

Under the proposed Torrens title subdivision, the proposed lot sizes are as follows:

- Lot A: 160.43m²
- Lot B: 150.25m²
- Lot C: 151.10m²
- Lot D: 161.85m²

Thus, will fall short of the standard.

A written justification is therefore required for the proposed variation to the minimum subdivision lot size development standard, in accordance with Clause 4.6 of the Leichhardt Local Environmental Plan 2013.

2. Site Background

The subject site is commonly known as No. 9 Allen Street, Leichhardt and is legally defined as Lot B in Deposited Plan 404394. The site is located on the northern side of Allen Street and is bound by Norton Street to the west and Derbyshire Road to the east.

The site is rectangular in its shape with a frontage of 42.21m to Allen Street, with a maximum depth of 14.65m. The site is therefore considerably wider than it is deep. Overall, the site provides for a total area of 623.63m². Refer to Figure 1- Site Location Map.

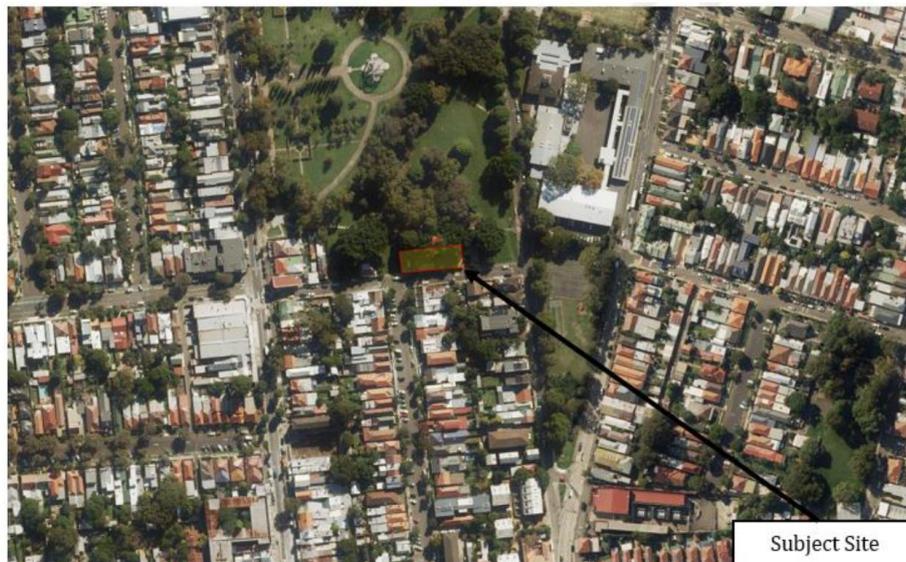


Figure 1: Site Location Map

Source: <https://maps.six.nsw.gov.au/>

The subject site is currently vacant. The Allen Street streetscape, as relevant to the subject site is unique in its nature. Immediately adjoining the subject site to the north and west is Pioneers Memorial Park. Further to the west of the site, there are only 3 other properties which provide a frontage to Allen Street before the street meets its juncture with Norton Street. To the east at No. 7 Allen Street, exists a single storey rendered cottage.

Development on the southern side of Allen Street provides for an indirect relationship to the subject site as they are sited in a manner so that only their side boundaries present to Allen Street. Refer to Figure 8.

The proposal before Council seeks for a Torrens title subdivision of the subject site creating four (4) allotments and development of a dwelling house on each resulting allotment including associated landscaping and site works.

3. Extent of Non-Compliance

As noted above, Clause 4.1 of the Leichhardt Local Environmental Plan 2013 states that the minimum subdivision lot size for the site is 200m².

The subject site has a total area of 623.63m². The proposed subdivision is a Torrens title subdivision of the subject site creating four (4) allotments, with a dwelling being proposed on each resulting lot.

Following the proposed Torrens title subdivision, the proposed lots will provide for the following areas:

- Lot A: 160.43m²
- Lot B: 150.25m²
- Lot C: 151.10m²
- Lot D: 161.85m²

Given a minimum lot size of 200m², proposed the following shortfalls will result:

- Lot A: 39.57m² or 19.7%
- Lot B: 49.75m² or 24.8%
- Lot C: 48.90m² or 24.4%
- Lot D: 38.15m² or 19.0%

Therefore, ranging between 38.15m² – 49.75m².

4. Is Compliance With the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827* are considered.

In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:

“...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1.”

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

| | |
|--------------|---|
| First | <p><i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i></p> <p><i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the</i></p> |
|--------------|---|

| | |
|---------------|--|
| | <i>proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. (applicable)</i> |
| Second | <i>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. (not applicable)</i> |
| Third | <i>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. (not applicable)</i> |
| Fourth | <i>A fourth way is to establish that 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. (not applicable)</i> |
| Fifth | <i>A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i> |

In respect of the minimum subdivision lot size standard, the first method is invoked.

The objectives supporting a minimum subdivision lot size control identified in Clause 4.1 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.1.

- 1) *The objectives of this clause are as follows:*
 - a) *to ensure that lot sizes are able to accommodate development that is consistent with relevant development controls,*
 - b) *to ensure that lot sizes are capable of supporting a range of development types.*

In response to the Objectives of Clause 4.1, although numerically non-compliant, the current application clearly demonstrates that the built forms as proposed can be accommodated on the resultant lot sizes. The proposed dwellings are reasonable in their size and are complemented by landscaped areas, generous private open spaces and car parking. The site is also benefited by a favourable north/south orientation maximising opportunity for solar access to the proposed living rooms and private open spaces.

The proposal is also notably compliant with both landscaped area and site coverage controls demonstrating that the proposal is not an over development of the site. Notably, the proposal has achieved compliance with Council's floor space ratio standards applicable to the site. A balance between natural and urban elements at the subject site is therefore achieved.

Development in the area is also varied in its form, as discussed in Part 2 of the Statement of Environmental Effects. Particular attention is drawn to the development along the northern side of Allen Street which consists in only a handful of properties that all differ in width, depth and overall site area. The proposal will therefore not disrupt an established street pattern. Furthermore, there are several examples of lots along Arthur Street where dwellings are sited upon lots which are less than 200m² in area generally ranging between approximately 140-200m². Refer to Figure 3 for an image which demonstrates the existing subdivision pattern of the locality.



Figure 3: Subdivision Pattern and Lot Sizes

Source: <https://maps.six.nsw.gov.au/>

Considering the above, the proposed development aligns with the objectives of Clause 4.1.

The development is generally consistent with the current planning controls as outlined in the submitted Statement of Environmental Effects.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard.

5. Are there Sufficient Environmental Planning Grounds?

The assessment above demonstrates that the resultant environmental impacts of the proposal will be satisfactory.

The proposed non-compliance in minimum subdivision size of lots resulting from the proposed Torrens title subdivision will not result in negative impacts to the development site itself or the adjoining properties, as discussed in the Statement of Environmental Effects and shown on the submitted architectural plans.

It should be noted that, although the proposed allotment sizes fall below the development standard, each proposed lot is capable of accommodating a dwelling. Importantly, the sites provide for appropriate areas of landscaping and private open space which comply with Council's LEP and DCP standards. Notably, compliance has been achieved with Council's site coverage standard and floor space ratio standard. Overall, the variation does not have a detrimental impact on the capacity of the lots to comply with Council's controls.

Although numerically non-compliant, the current application clearly demonstrates that the built form envelope as proposed can be accommodated on the resultant lot sizes. The proposed dwellings are reasonable in their size and are complemented by landscaped areas, generous private open spaces and car parking. The site is also benefited by a favourable north/south

orientation maximising opportunity for solar access to the proposed living rooms and private open spaces.

In this case, strict compliance with the development standard for minimum subdivision lot size in the Leichhardt Local Environmental Plan 2013 is unnecessary and unreasonable.

6. Is the Variation in the Public Interest?

Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless 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 to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 4.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.1.

The building contextually has regard to its surrounding properties and is considered to provide sufficient open space and landscaping for the amenity of future residents.

Furthermore, it is important to also consider the objectives of the R1 General Residential zone in relation to the development, which are as follows:

Zone R1 General Residential

Objectives of zone

- *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.*

In response to the above the following is provided:

The proposal optimises the development potential of the site and provides for new dwellings hence, contributing to the housing stock within the locality facilitating the housing needs of the community. The proposal contributes to the mix of single and two-storey attached and detached dwellings in the area. The proposal continues the historic residential use on the site remaining consistent with nearby development.

As detailed within this Statement of Environmental Effects the development is found to be conducive to Council's development controls and has been designed in a manner which responds

to the localities distinct character, dwelling styles and orientation expressed along Allen Street and the broader locality.

The resulting lot sizes are of a sufficient size to provide adequate landscaping and private open space for the benefit of future residents. The lots which result are of a regular size and remain consistent with lot sizes exhibited in the locality. The Statement of Environmental Effects has concluded that there is no adverse impact to the amenity of future and existing residents, rather this will be enhanced through the proposal.

The proposed development therefore meets the objectives of the zone.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard, noting the development will be in the public interest.

7. Public Benefit of Maintaining the Standard

It is considered that the public benefit will not be undermined by varying the standard. The variation to the minimum subdivision lot size is consistent with the approach to development and subdivision of developed land in the immediate area. No negative impacts to the development itself or its adjacent properties will occur due to the variation.

The proposal provides for the orderly and economic development of the site. Given the site's orientation, location and context it is considered that the site is well suited for the development.

The development is well articulated and designed.

The development is generally consistent with the current planning controls.

It is not considered that the variation sought raises any matter of significance for State or Regional environmental planning.

As per the above, it is considered that the public is not impacted in any way by maintaining the standard.

8. Is the Variation Well Founded?

It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the Leichhardt LEP 2013 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (minimum subdivision lot size) and objectives of the R1 General Residential zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance; and
- The development submitted aligns with the predominantly residential nature of the neighbourhood.

Based on the above, the variation is considered to be well founded.

9. General

Clause 4.6 also states that:

“(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

***Note.** When this plan was made it did not include all these zones.*

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant’s written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4,”*

This variation does not relate to the subdivision of land in the stated land use zones. The variation sought is not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

A BASIX certificate has been prepared in relation to the proposed development and is submitted under a separate cover.

Clauses 5.4 is not applicable in this instance.

10. Conclusion

The proposal does not strictly comply with the minimum subdivision lot size control as prescribed by Clause 4.1 of the Leichhardt Local Environmental Plan 2013. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Leichhardt Local Environmental Plan 2013 are satisfied as the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the Leichhardt Local Environmental Plan 2013 to vary this development control is appropriate.

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Based on the above, it is sensible to conclude that strict compliance with the minimum subdivision lot size is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Should you have any questions, please do not hesitate to contact me.

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