





 DEVELOPMENT ASSESSMENT REPORT	
<b>Application No.</b>	DA/2020/0518
<b>Address</b>	39 Hubert Street LEICHHARDT NSW 2040
<b>Proposal</b>	Demolition, construction of two dwellings, and subdivision.
<b>Date of Lodgement</b>	07 July 2020
<b>Applicant</b>	James O'Neill c-/ Dalgliesh ward & Associates Pty Ltd
<b>Owner</b>	James M O'Neill Mrs Georgina O'Neill
<b>Number of Submissions</b>	Three (3)
<b>Value of works</b>	\$897,500.00
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation exceeds 10%
<b>Main Issues</b>	Minimum Subdivision Lot Size
<b>Recommendation</b>	Approved with Conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Clause 4.6 Exception to Development Standards



**LOCALITY MAP**

Subject Site		Objectors		↑ N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the application submitted to Council for demolition, construction of two dwellings, and subdivision at 39 Hubert Street Leichhardt .

The application was notified to surrounding properties and three (3) submissions were received.

The main issues that have arisen from the application include:

- Minimum Subdivision Lot Size variation exceeds 10%

The non-compliances are acceptable given the proposed new dwellings on each newly created lot will have no significant adverse amenity impacts to the adjoining properties or impacts on the public domain, and therefore the, application is recommended for approval.

## 2. Proposal

The proposal involves the removal of two trees, demolition of the existing single storey dwelling and carport, Torrens title subdivision of the site into two allotments and the construction of 2 two storey, semi-detached dwellings. The extent of proposed works includes:

### Ground Floor

- New ground floor including living/dining room, kitchen, bathroom, guest bedroom/lounge room, laundry and rear patio area (for each dwelling)
- New party wall;
- New bin storage (for each dwelling); and,
- New front garden and entrance.

### First Floor

- New first floor including 2 bedrooms with ensuites and built in robes (for each dwelling);
- Skylights and solar panels.

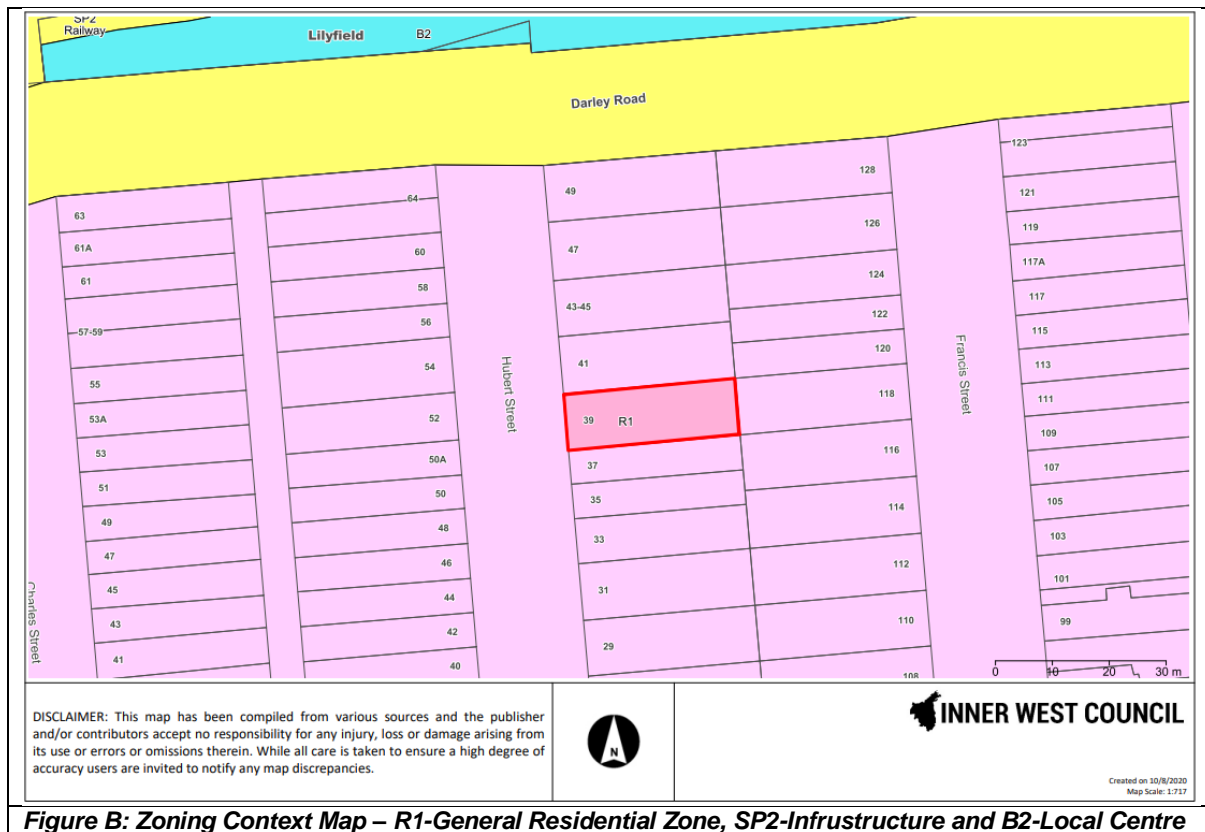
## 3. Site Description

The subject site is located on the eastern side of Hubert Street, between Darley Road and William Street. The site consists of one allotment and is generally rectangular shaped with a total area of 303.5sqm and is legally described as Lot 62 Sec 5 DP 1162 .

The site has a frontage to Hubert Street of 10.06 metres.

The site supports an existing single storey clad cottage with a tiled roof. The adjoining properties support single storey brick cottages.

The subject site is not listed as a heritage item or located within a conservation area. The property is identified as a flood prone 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
PDA/2020/0046	Demolition of existing building and construction of two x two-storey dwellings	Advice Issued

#### Surrounding properties

Not applicable

### 4(b) Application history

Not applicable

## 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 Environmental Plan 2013*
- *Draft Inner West LEP 2020*

The following provides further discussion of the relevant issues:

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

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. LDCP 2013 provides controls and guidelines for remediation works. *SEPP 55* requires the consent authority to be satisfied that “the site is, or can be made, suitable for the proposed use” prior to the granting of consent.

The site has not been used in the past for activities which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with *SEPP 55*.

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

A BASIX Certificate was submitted with the application and will be referenced in any consent granted.

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

An assessment has been made of the matters set out in Division 2 Matters for Consideration of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. It is considered that the carrying out of the proposed development is not contrary to the aims of this plan.

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

*Vegetation SEPP* concerns the protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council's DCP.

The application seeks the removal of vegetation from within the site. Tree removal is supported for trees 4, 5, 6, 7, 8 and 10 as they are not protected under Council's *Tree Management Controls*.

The submitted *Landscape Plan*, prepared by *Stylish Gardens*, project No. 20C11, revision A, dated 26/06/2020, must be amended to show 2x *Cupaniopsis anarcardioides* (Tuckeroo) trees to be positioned a minimum distance of 1.5m from boundary and structures.

Overall, the proposal is considered acceptable with regard to the *Vegetation SEPP* and the LDCP2013, subject to conditions which have been included in the recommendation of this report.

**5(a)(v) 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 2.6 - 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 6.1 - Acid Sulfate Soils
- Clause 6.2 - Earthworks
- Clause 6.3 - Flood Planning
- Clause 6.4 - Stormwater management
- Clause 6.8 - Development in areas subject to aircraft noise

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

The site is zoned R1 – General Residential under the *LLEP 2013*. The *LLEP 2013* defines the development as semi-detached dwellings and the development is permitted with consent within the land use table. 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 for each lot:

**Lot A**

Standard	Proposal	Non compliance -	Complies
<b>Minimum subdivision lot size</b> Minimum permissible: 200sqm	151.75sqm	48.25sqm / 24.13%	No
<b>Floor Space Ratio</b> Maximum permissible: 0.7:1 / 106.23sqm	0.7:1 / 106.2 sqm	N/A	Yes
<b>Landscape Area</b> Minimum permissible: 15% / 22.76sqm	28.77% / 43.66sqm	N/A	Yes
<b>Site Coverage</b> Maximum permissible: 60% / 91.1sqm	52.36% / 79.45sqm	N/A	Yes

**Lot B**

Standard	Proposal	Non compliance	Complies
<b>Minimum subdivision lot size</b> Minimum permissible: 200sqm	151.75sqm	48.25sqm / 24.13%	No
<b>Floor Space Ratio</b> Maximum permissible: 0.7:1 / 106.23sqm	0.7:1 / 106.2 sqm	N/A	Yes
<b>Landscape Area</b> Minimum permissible: 15% / 22.76sqm	28.77% / 43.66sqm	N/A	Yes
<b>Site Coverage</b> Maximum permissible: 60% / 91.1sqm	52.36% / 79.45sqm	N/A	Yes

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.1 - Minimum Subdivision Lot Size

The applicant seeks a variation to the Minimum Subdivision Lot Size development standard under Clause 4.1 of the Leichhardt Local Environmental Plan by 24.13% (48.25sqm) for each respective lot.

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 applicable local environmental plan below.

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

- The general form of the building has minimal impact upon the streetscape in terms of architectural design, bulk and scale- noting that the overall form of the development is compatible in terms of overall height and design to other dwellings;
- The building height, site coverage, and landscaped area provided to both is comparable with adjoining and nearby dwellings and other buildings and the landscaped area is fully compliant with the DCP controls and landscaped area is contained at the front and rear of the site to contribute to the landscape setting with the retention of existing street trees;
- The proposal is fully compliant with the maximum site coverage control;
- The proposed building is compatible with the desired future character of the locality. The overall bulk, form, and scale is comparable to adjoining and nearby development;
- The proposal is compliant with the minimum soft landscaped area control which provides a balance between landscape and built form;
- The amenity impacts arising from the proposal are minimal, with the proposal focusing windows to the front and rear boundaries to mitigate privacy impacts;

- The development has a proposed FSR of 0.7:1 which is consistent with the FSR control for the site;
- The site is modest and the outcome on the site is a two x modest 2 bedroom dwellings, noting strict compliance significantly limits the size and functionality of the dwellings; and,
- The relevant objectives of the zone would be thwarted should the development be refused as the proposal provides housing choice within a low density context, which is the first named objective of the R1 General Residential zone.

The applicant's written rational adequately demonstrates compliance with the development standard is unreasonable 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 General Residential zone, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

The relevant objectives of the R1 – General Residential zone are outlined below:

- *To provide for the housing needs of the community.*
- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *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*

Having regard to these objectives, the following is noted:

- The proposed dwellings provide residential accommodation which is compatible with the character, pattern of development and streetscape of the neighbourhood.
- The proposed lots are regular in shape and compatible with the prevailing pattern of subdivision / orientation of lots in the surrounding area.
- The proposed new dwellings enhance the amenity of the subject site without adversely impacting neighbouring amenity.

It is considered the development is in the public interest because it is consistent with the objectives 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:

The objectives of the Minimum Subdivision Lot Size development standard are as follows:

- *to ensure that lot sizes are able to accommodate development that is consistent with relevant development controls,*
- *to ensure that lot sizes are capable of supporting a range of development types.*

Having regard to these objectives, the following is noted:

- The proposed dwellings provide residential accommodation which is compatible with the character, pattern of development and streetscape of the neighbourhood.
- The proposed lots are regular in shape and compatible with the prevailing pattern of subdivision / orientation of lots in the surrounding area.
- The proposed new dwellings enhance the amenity of the subject site without adversely impacting neighbouring amenity.

The contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning. Council may assume the concurrence of the Director-General under the Planning Circular PS 18-003 issued in February 2018 in accordance with Clause 4.6(4)(b) of the applicable local environmental plan.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the applicable local environmental plan. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Minimum Subdivision Lot Size development standard and it is recommended the Clause 4.6 exception be granted.

#### Clause 6.3 - Flood Planning

The subject site is identified as a flood control lot in accordance with Section E1.1.4 of LDCP 2013. A Flood Risk Management Report has been submitted to Council and is referenced in the recommended consent conditions. In addition, conditions have been recommended by Council's Engineer addressing the flood affectation of the site and the proposed works and, will be included as part of the development consent. Overall, the proposal is considered acceptable subject to conditions and satisfies the objectives and controls of this Clause.

#### Clause 6.8 - Development in areas subject to aircraft noise

An Acoustic Report has been submitted to Council and is referenced in the recommended consent conditions.

#### 5(c) Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979*.

The amended provisions contained in the Draft IWLEP 2020 are not relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

#### 5(d) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Leichhardt Development Control Plan 2013

<b>LDCP2013</b>	<b>Compliance</b>
<b>Part A: Introductions</b>	
Section 3 – Notification of Applications	Yes
<b>Part B: Connections</b>	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	N/A
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
<b>Part C</b>	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	N/A



C1.4 Heritage Conservation Areas and Heritage Items	N/A
C1.5 Corner Sites	N/A
C1.6 Subdivision	Yes – see discussion
C1.7 Site Facilities	Yes
C1.8 Contamination	N/A
C1.9 Safety by Design	N/A
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	N/A
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	N/A
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	N/A
<b>Part C: Place – Section 2 Urban Character</b>	
C2.2.3.4 Helsarmel Distinctive Neighbourhood	Yes – see discussion
<b>Part C: Place – Section 3 – Residential Provisions</b>	
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	N/A
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.10 Views	Yes
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	
<b>Part D: Energy</b>	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	Yes
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	N/A
D2.5 Mixed Use Development	N/A
<b>Part E: Water</b>	
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	N/A
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	N/A
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Yes
E1.2.4 Stormwater Treatment	N/A
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	N/A
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	N/A
<b>Part F: Food</b>	N/A
<b>Part G: Site Specific Controls</b>	N/A

The following provides discussion of the relevant issues:

### **C1.6 Subdivision**

As discussed in previous sections, the proposed subdivision of the site results in two lots with site areas of 151.75sqm, which does not comply with the minimum lot size requirements of 200sqm.

The proposed subdivision is considered acceptable in this instance for the following reasons:

- Each lot is of a sufficient size and dimension to accommodate residential development;
- The proposed new lots are consistent with the surrounding prevailing subdivision pattern and pattern of development;
- Each lot will be conditioned to incorporate adequate tree planting; and,
- The proposal complies with Landscaped Area, Site Coverage and Floor Space Ratio Development Standards.

As such, the proposal achieves compliance with the objectives of this Clause.

### **C2.2.3.4 Helsarmel Distinctive Neighbourhood**

The streetscape and neighbourhood controls prescribed in this part of the LDGP2013 seek to ensure development:

- Maintain and enhance the predominant low scale 'cottage' character of the residential streets;
- Is complementary in architectural style, form and materials;
- Preserve the consistency of the subdivision pattern;
- Encourage and enhance landscaping in the front building setback; and,
- Adopt a maximum building wall height of 3.6m.

The proposal will not breach the envelope controls prescribed under this Clause.

While two storey buildings along Hubert Street are not usual, dwellings have a predominantly single storey presentation to the street. The proposal will not be out of character with the pattern of development in the street for the following reasons:

- The proposal will comprise of roof forms, proportions to openings and finishes and materials that will complement, and that will not detract from, the existing and adjoining buildings;
- The first floor elements are setback, behind the front verandah of each dwelling which reduce the visual dominance of the upper level and maintain a single storey appearance from Hubert Street; and,
- The siting of the dwellings ensure that potential amenity on adjoining properties, including in terms of visual bulk and scale impacts, particularly when viewed from rear private open areas, are minimised.

In light of the above considerations, the proposed new dwellings are considered acceptable.

### **C3.2 Site Layout and Building Design**

#### **Siting and Building Envelope**

See assessment above under Clause C2.2.3.4 of the LDCP2013 – for reasons discussed above, the proposed new dwellings are considered acceptable.

#### **Building Location Zone (BLZ)**

The proposed ground floors are appropriately sited within the context of the neighbouring properties at No. 37 and No. 41 Hubert Street however, the first floors would establish a new building location zone and result in a variation under this Clause.

The test prescribed under this Clause is satisfied and the BLZ variation acceptable in this instance, for the following reasons:

- The height of the first floor 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;
- The proposal complies with the solar access controls the LDCP2013 and has been designed to minimise any potential amenity impacts on adjoining properties in terms of privacy;
- The proposed development is a sympathetic addition to the existing streetscape, and is compatible with the desired future character and scale of surrounding development; and,
- The proposal provides sufficient private open space areas and landscaping for each dwelling.

As a result, it is considered that the proposal is satisfactory having regard to the BLZ controls.

#### **Side Setbacks**

The proposed wall height of each dwelling (5300mm-6000mm) requires setbacks greater than 500mm, as proposed, and will therefore result in a breach to the side setback controls along the northern and southern boundaries.

The test prescribed under this Clause is satisfied and the side setbacks acceptable in this instance, for the following reasons:

- The height of the first floor has been kept to a minimum, employing minimal floor to ceiling heights, to minimise visual bulk and scale, as viewed from adjoining properties, in particular when viewed from the private open space of adjoining properties;

- The proposal complies with the solar access controls the LDCP2013 and has been designed to minimise any potential amenity impacts on adjoining properties in terms of privacy;
- The proposed development is a sympathetic addition to the existing streetscape, and is compatible with the desired future character and scale of surrounding development; and,
- Reasonable access is provided to each side boundary for maintenance.

As a result, it is considered that the proposal is satisfactory having regard to the Side Setback controls.

**C3.9 Solar Access**

The proposal will result in some additional overshadowing of neighbouring private open space at No. 37 Hubert Street between 2pm and 3pm in mid-winter. This neighbouring property will still however, retain solar access at these times and will retain all existing solar access between 9am and 2pm in mid-winter and as such, will achieve compliance with control C18 which calls for the retention of two and a half hours of solar access to 50% of the total private open space area.

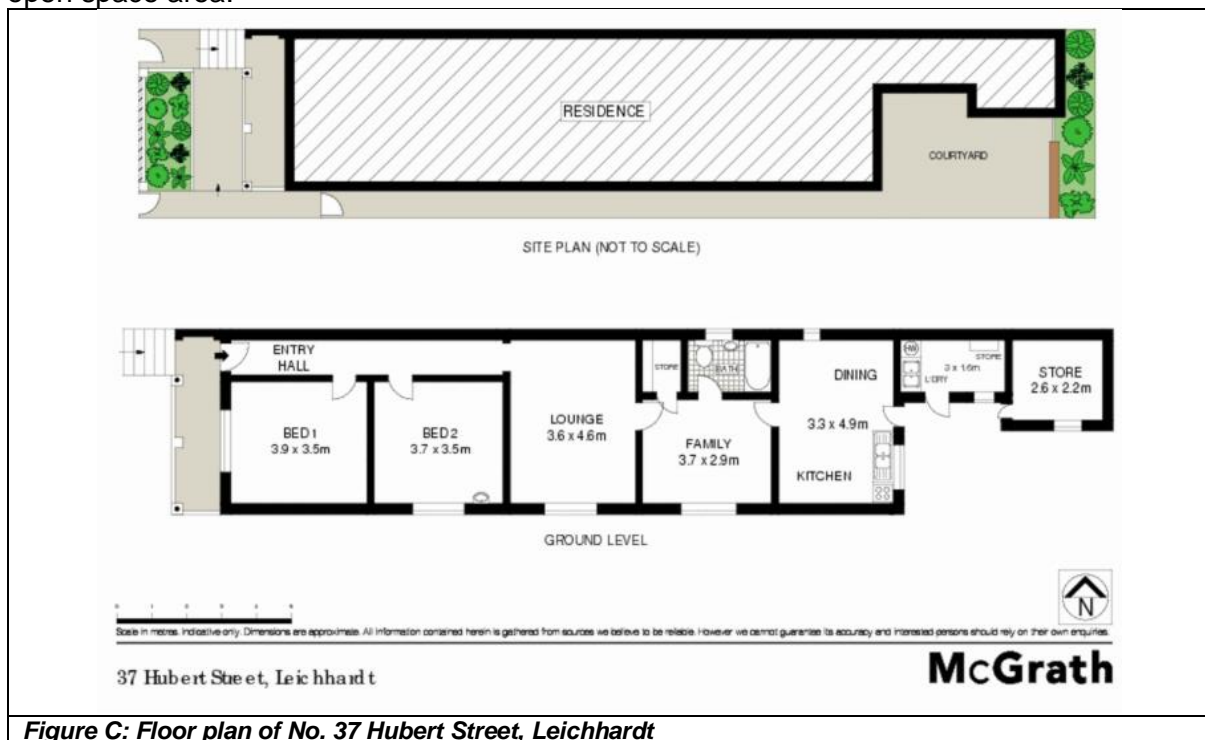


Figure C: Floor plan of No. 37 Hubert Street, Leichhardt

It is noted that a submission was received raising concern that two windows which service and a bathroom and kitchen at No. 37 Hubert Street will be impacted. The proposal will overshadow these windows almost entirely between 9am and 3pm in mid-winter. It is noted that these two windows are frosted and located with a nil setback to the northern boundary which is shared with the subject site and as such, their location makes them vulnerable to potential shadows cast by the development (to the north). It is also noted that the adjoining kitchen / dining room of this adjoining property benefits from a second east facing window which is located where solar access amenity can be reasonably achieved.

The internal floor to ceiling heights of the rear section of the ground floor could be reduced to improve solar access to these windows, however, it is anticipated that a substantial reduction will be required to achieve any solar access gain and this will likely affect the amenity of the subject dwellings and BCA compliance.

Overall, the solar access controls prescribed in this part of the LDCP2013 seek to protect main windows which service living rooms. As such, any additional overshadowing to neighbouring properties is not considered to be unreasonable and the proposal complies with the objectives and controls of this Clause.

### **C3.11 Visual Privacy**

The visual privacy controls prescribed in this part of the LDCP2013 seek to protect sightlines and overlooking between living areas and private open space.

It is noted that two submissions were received raising concern about privacy and overlooking from the east facing first floor windows of the dwellings to neighbouring private open space at No. 118 Francis Street and No. 37 Hubert Street. The windows to the upper level of the development are considered acceptable for the following reasons:

- Control C1 of this Clause protects sight lines within 9m and 45 degrees between living rooms and private open space areas;
- The proposed first floor windows are located approximately 15m away from the rear boundary of the subject site;
- Bedrooms are not considered high trafficable areas capable of generating adverse overlooking opportunities;
- The windows are 1.5m above the finished floor level of the first floor and setback 1.3m from each side boundary; and
- The dwellings are orientated in accordance with the prevailing pattern of development and subdivision pattern to allow for areas of private open space to be adjacent to one another.

As such, the proposal would achieve compliance with the controls and objectives of these Clauses and it is considered that an adequate level of visual separation is achieved between the subject dwellings and adjacent properties.

In light of the above considerations, the proposal is considered acceptable.

### **5(e) The Likely Impacts**

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

### **5(f) 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(g) Any submissions**

The application was notified in accordance with Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties. A total of (3) submissions were received in response to the notification.

The following issues raised in submissions have been discussed in this report:

- Flooding – see Section 5 (a)(iv)
- Subdivision – see Section 5 (a)(iv) and Section 5 (d)
- Visual privacy implications – 118 Francis Street – see Section 5(d)
- Visual privacy implications – 37 Hubert Street – see Section 5(d)
- Solar Access and Overshadowing Implications – 37 Hubert Street – see Section 5(d)

In addition to the above issues, the submissions raised the following concerns which are discussed under the respective headings below:

Issue: No off-street space for garbage bins

Comment: The proposal makes provision for a bins store at the front of the site for each dwelling. Sufficient space and adequate bin storage facilities are included as part of the proposal.

Issue: No off-street parking provided

Comment: The parking requirement for residential development under the Leichhardt DCP 2013 is nil. As such the proposed new dwellings are not required to provide off-street parking.

Issue: Restrictions on construction times / noise generated by construction

Comment: A standard condition of consent will be imposed on the development restricting any excavation, demolition, construction or subdivision work to between the hours of 7:00am to 5.00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

Issue: Soil backed up against bathroom and kitchen walls of 37 Hubert Street

Comment: Unfortunately, this is not a planning issue which can be considered as part of the assessment of this application.

Issue: Boundary fence – damp issued and access to outside wall of 37 Hubert Street.

Comment: Unfortunately, this is not a planning issue which can be considered as part of the assessment of this application. The construction of any boundary fence will need to be negotiated and consented to in accordance with the *Dividing Fences Act 1991*.

#### 5(h) The Public Interest

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

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.

- Development Engineer.
- Landscape/Urban Forests

### 6(b) External

The application was not required to be referred externally.

## 7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contribution levies are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$37,455.95 would be required for the development under Leichhardt Section 94A Contributions Plan 2014 as follows:

<b>Contribution Plan</b>	<b>Contribution</b>
Open space and recreation	\$32,339.00
Community facilities and services	\$4,943.00
Local area traffic management	\$157.37
Bicycle	\$16.58
<b>TOTAL</b>	<b>\$37,455.95</b>

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 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 of the *Leichhardt Local Environmental Plan 2013* to vary 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. DA/2020/0518 for demolition, construction of two dwellings, and subdivision at 39 Hubert Street LEICHHARDT NSW 2040 subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

### CONDITIONS OF CONSENT

#### DOCUMENTS RELATED TO THE CONSENT

##### 1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DA01 Rev A	Proposed Torrens Title Subdivision Plan	09/10/2020	Dalgliesh Ward Architects Pty Ltd
DA02 Rev A	Proposed Ground Floor Plan	09/10/2020	Dalgliesh Ward Architects Pty Ltd
DA03 Rev A	Proposed First Floor Plan	09/10/2020	Dalgliesh Ward Architects Pty Ltd
DA04 Rev A	Proposed Roof Plan	09/10/2020	Dalgliesh Ward Architects Pty Ltd
DA05 Rev A	Proposed Long Section	09/10/2020	Dalgliesh Ward Architects Pty Ltd
DA06 Rev A	Proposed Front and Rear Elevations	09/10/2020	Dalgliesh Ward Architects Pty Ltd
DA07 Rev A	Proposed Side Elevations	09/10/2020	Dalgliesh Ward Architects Pty Ltd
DA11 Rev A	Proposed Materials and Finishes	09/10/2020	Dalgliesh Ward Architects Pty Ltd
-	Arboricultural Impact Assessment and Tree Management Plan	06/06/2020	Horticultural Management Services
BASIX Certificate No. 1106082M	BASIX Certificate	02/06/2020	Eco Certificates Pty Ltd
Project ID: 20200486.1	Aircraft Noise Intrusion Assessment	25/05/2020	Acoustic Logic
200006_Flood Risk(REV B)	Flood Risk Management Report	29/06/2020	Quantum Engineers
D1 - D7	STORMWATER MANAGEMENT PLANS	25/06/2020	Quantum Engineers

As amended by the conditions of consent.

#### FEES

##### 2. Security Deposit - Custom

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



Security Deposit:	2,152.50
Inspection Fee:	\$230.65

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

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

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

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

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

**3. Section 7.11 (Former Section 94) Contribution**

Prior to the issue of a Construction Certificate works written evidence must be provided to the Certifying Authority that a monetary contribution of \$37,455.95 in accordance with Developer Contributions Plan No.1 – Open Space and Recreation; 'Developer Contributions Plan No.2 – Community Facilities and Services (2005); and Leichhardt Developer Contributions Plan – Transport and Access ("CP") has been paid to the Council.

The above contribution is the contribution applicable as at 7 October 2020.

The contribution payable has been calculated in accordance with the CP and relates to the following public amenities and/or services and in the following amounts:

Local Infrastructure Type:	Contribution \$
Open Space and Recreation	\$32,339.00
Community Facilities and Services	\$4,943.00
Local Area Traffic Management	\$157.37
Bicycle Works	\$16.58
<b>TOTAL</b>	<b>\$37,455.95</b>

A copy of the CP can be inspected at any of the Inner West Council Services Centres or viewed online at:

<https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

The contribution must be paid either in cash, by unendorsed bank cheque (from an Australian Bank only), via EFTPOS (Debit only) or credit card\*. Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a

minimum of 2 business days for the invoice to be issued before payment can be accepted.

\*NB A 0.75% credit card transaction fee applies to all credit card transactions.

**4. Long Service Levy**

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid 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.

**GENERAL CONDITIONS**

**5. Boundary Alignment Levels**

Alignment levels for the site at all pedestrian and vehicular access locations must match the existing back of footpath levels at the boundary.

**6. Tree Protection**

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.

Any public tree within five (5) metres of the development must be protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

No activities, storage or disposal of materials taking place beneath the canopy of any tree (including trees on neighbouring sites) protected under Council's Tree Management Controls at any time.

The trees identified below are to be retained and protected in accordance with the conditions of consent or approved Tree Protection Plan throughout the development (note: tree numbers correspond with approved *Arboricultural Impact Assessment and Tree Management Plan*, prepared by *Horticultural Management Services*, dated 6/06/2020) :

Tree No.	Botanical/Common Name	Location
T3	<i>Callistemon viminalis</i> (Weeping Bottlebrush)	Road reserve.

Details of the trees must be included on all Construction Certificate plans and shall be annotated in the following way:

- a. Green for trees to be retained;
- b. Red for trees to be removed;
- c. Blue for trees to be pruned; and
- d. Yellow for trees to be transplanted.

**7. Project Arborist**

Prior to the commencement of any demolition or construction works within close proximity to protected trees a Project Arborist must be engaged for the duration of the site preparation,

demolition, construction and landscaping to supervise works. Details of the Project Arborist must be submitted to the Certifying Authority before work commences.

**8. Works to Trees**

Approval is given for the following works to be undertaken to trees on the site after the issuing of a Construction Certificate:

Tree/location	Approved works
Trees 4, 5, 6, 7, 8 and 10 as numbered and depicted in the submitted <i>Arboricultural Impact Assessment</i> , prepared by <i>Horticultural Management Services</i> , dated 6/06/2020.	Remove.

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and shall be retained and protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

**9. Waste Management Plan**

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

**10. Erosion and Sediment Control**

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

**11. Standard Street Tree Protection**

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

**12. Verification of Levels and Location**

Prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, the Principal Certifier must be provided with a survey levels certificate prepared by a Registered Surveyor indicating the level of the slab and the location of the building with respect to the boundaries of the site to AHD.

**13. Works Outside the Property Boundary**

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

**PRIOR TO ANY DEMOLITION**

**14. Hoardings**

The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered

inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.

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

#### **15. Dilapidation Report**

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

#### **16. Advising Neighbors Prior to Excavation**

At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

#### **17. Construction Fencing**

Prior to the commencement of any works (including demolition), the site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property.

### **PRIOR TO CONSTRUCTION CERTIFICATE**

#### **18. Dilapidation Report – Pre-Development – Minor**

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

#### **19. Stormwater Drainage System – Minor Developments (OSD is required)**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention and/or on site retention/ re-use facilities (OSR/OSD), certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. The Stormwater Drainage Concept Plan on Drawing No. 200006/D2 prepared by QUANTUM ENGINEERS and dated 25 June 2020 must be amended to comply with the requirements indicated below;
- b. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank(s), by gravity to the kerb and gutter of Hubert Street via the OSD/OSR tanks as necessary;
- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage;

- e. The plans, including supporting calculations, must demonstrate that the post development flows for the 100 year ARI storm are restricted to the pre development flows for the 5 year ARI storm event in accordance with Section E1.2.3 (C2 and C3) of Council's DCP2013 and the maximum allowable discharge to Council's street gutter limited to 15 litres/second (100year ARI);
- f. OSD may be reduced or replaced by on site retention (OSR) for rainwater reuse in accordance with the relevant DCP that applies to the land. Where this is pursued, the proposed on-site retention (OSR) tanks must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use;
- g. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment to the OSD/OSR tanks;
- h. Details of the 100-year ARI overflow route in case of failure/blockage of the drainage system must be provided;
- i. A minimum 500 mm wide overland flowpath must be provided within the setback to the northern and southern side boundaries of the block between the rear of the dwelling and the Hubert Street frontage. The rear courtyard must be graded so that bypass flows from the site drainage system are directed to the overland flowpath;
- j. A minimum 150mm step up shall be provided between the finished surfaces of the rear terrace and adjacent internal floor areas;
- k. The top of the proposed retaining wall at the front and along the side of the terrace must be a minimum of 100 mm above the rear yard
- l. Drainage pipes must be laid at a minimum grade of 1%. Access must be available to all drainage pipes, pipes under the floor must be laid straight with junction pits on the upstream and down stream ends outside the building envelope;
- m. The invert level of downpipe connections and proposed finished surface ground level shall be shown on the drainage plan;
- n. Down pipes between the buildings shown on the Drainage Concept Plan is not permitted, unless sufficient access is provided for installation and maintenance;
- o. The invert of drainage pipes connecting to the OSD/OSR must be above the top water level in the OSD/OSR, submerged and charged drainage pipes are not permitted;
- p. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands;
- q. No nuisance or concentration of flows to other properties;
- r. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- s. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- t. 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 maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm;
- u. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings.

#### **20. Changes to Levels**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans incorporating the following amendments:

- a. A 150mm step down must be provided between the finished floor level of the internal room and the finished surface level of the rear terrace.

**21. Flood Affected Site**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably qualified Civil Engineer that the works comply with the following specific requirements:

- a. All habitable floor levels must be set no lower than RL 5.45 m AHD (flood level plus 500mm freeboard). All structures below RL 5.45 m AHD must be constructed from flood compatible materials;
- b. All electrical equipment and wiring must be waterproofed or installed at or above RL 5.45 m AHD;
- c. A structural engineer's certificate must be submitted stating that the proposed building has been designed to withstand the forces of flood water, debris and buoyancy up to the 1 in 100-year flood level;
- d. The existing ground levels throughout the site must be maintained so as not to alter the existing overland flow path. Details of all obstructions or changes in level within the overland flow paths must be detailed on the plan; and
- e. All fencing within the overland flow path must be of an open type so as to allow for the free flow of water throughout the site so as to maintain existing flows.

**22. Structural Certificate for retained elements of the building**

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a Structural Certificate prepared by a practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction. The certificate must also include all details of the methodology to be employed in construction phases to achieve the above requirements without result in demolition of elements marked on the approved plans for retention.

**23. Sydney Water – Tap In**

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

*Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 13 20 92*

**24. Acoustic Report – Aircraft Noise**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans detailing the recommendations of an acoustic report prepared by a suitably qualified Acoustic Engineer demonstrating compliance of the development with the relevant provisions of Australian Standard AS 2021:2015 Acoustics – Aircraft noise intrusion – Building siting and construction.

**25. Fibre-ready Facilities**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with evidence that arrangements have been made for:

- a. The installation of fibre-ready facilities to all individual lots and/or premises the development so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose.
- b. The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises the development demonstrated through an agreement with a carrier.

**26. Concealment of Plumbing and Ductwork**

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

**DURING DEMOLITION AND CONSTRUCTION**

**27. Tree Protection**

To protect the following trees, tree protection measures must be implemented in accordance with section 14.0 and 14.1 of the submitted *Arboricultural Impact Assessment and Tree Management Plan*, prepared by *Horticultural Management Services*, dated 6/06/2020) and with Council's *Development Fact Sheet—Trees on Development Sites*:

Tree No.	Botanical/Common Name/Location
T1	<i>Agonis flexuosa</i> (Willow Myrtle) located on adjoining property.
T3	<i>Callistemon viminalis</i> (Weeping Bottlebrush) located in road reserve.
T9	<i>Eucalyptus punctata</i> (Grey Gum) located in road reserve.

**28. Inspections by Project Arborist**

The below trees must be inspected, monitored and treated by the 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 Certifying Authority are required at the following times or phases of work:

Tree No./ Botanical/ Common Name/ Location	Time of Inspection	Key stage/ Hold point
T1 <i>Agonis flexuosa</i> (Willow Myrtle) located on adjoining property. T3 <i>Callistemon viminalis</i> (Weeping Bottlebrush) located in road reserve. T9 <i>Eucalyptus punctata</i> (Grey Gum) located to the rear of the subject site on adjoining property.	Prior to commencement of works	<ul style="list-style-type: none"> <li>• Inspection and sign off installation of tree protection measures.</li> </ul>
	During Works	<ul style="list-style-type: none"> <li>• Supervise all site preparation and demolition works within the TPZ;</li> <li>• Supervise all works inside</li> </ul>

		<p>or above the TPZ;</p> <ul style="list-style-type: none"> <li>• Supervise all excavation, installation of stormwater services, trenching works, landscaping works and tree/planting replenishment within the TPZ;</li> <li>• Supervise all tree work including stump/root removal to ensure nearby trees to be retained are not impacted.</li> </ul>
		<ul style="list-style-type: none"> <li>• In accordance with section 15.0 of the submitted <i>Arboricultural Impact Assessment and Tree Management Plan</i>, prepared by <i>Horticultural Management Services</i>, dated 6/06/2020 and section 4 of AS4970—<i>Protection of trees on development sites</i>.</li> </ul>

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

**29. Limited Root Pruning**

No tree roots of 40mm or greater in diameter located within the specified radius of the trunks of the following trees must be severed or injured in the process of any works during the construction period:

Tree No.	Botanical/Common Name	Radius in metres
T1	<i>Agonis flexuosa</i> (Willow Myrtle)	6m
T3	<i>Callistemon viminalis</i> (Weeping Bottlebrush)	5m
T9	<i>Eucalyptus punctata</i> (Grey Gum)	7.5m

All excavation within the specified radius of the trunks of the following trees must be dug by hand or by using either pneumatic or hydraulic tools only (e.g. Airspade® or hydro excavation) to a depth of one (1) metre under direct supervision of the Project Arborist and



then by mechanical means as agreed by the Project Arborist. If tree roots less than 40mm diameter are required to be severed for the purposes of constructing the approved works, they must be cut cleanly using a sharp and *fit for purpose tool*. The pruning must be undertaken by a practicing Arborist.

#### **30. Construction Hours – Class 1 and 10**

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5:00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

#### **31. Survey Prior to Footings**

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

### **PRIOR TO OCCUPATION CERTIFICATE**

#### **32. No Encroachments**

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

#### **33. Protect Sandstone Kerb**

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

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

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a suitably qualified Civil Engineer [who holds current Chartered Engineer qualifications with the Institution of Engineers Australia \(CPEng\) or current Registered Professional Engineer qualifications with Professionals Australia \(RPEng\)](#) that:

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

#### **35. Operation and Management Plan**

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

- a. The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners; and

- b. The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

#### **36. Flood Risk Management Plan - Certification**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a qualified practising Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that all aspects of the flood risk management plan have been implemented in accordance with the approved design, conditions of this consent and relevant Australian Standards.

#### **37. No Weep Holes**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence that any weep holes to Council road or footpath resulting from the building works have been removed.

#### **38. Certification of Tree Planting**

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with evidence certified by a person holding a minimum qualification of AQF3 Certificate of Horticulture or Arboriculture that:

A minimum of 2 x 45 (L) litre size *Cupaniopsis anarcardioides* (Tuckeroo) must be planted in a more suitable location within the rear of the property at a minimum of 1.5 metres from any boundary or structure and 2m from any dwelling or garage allowing for future tree growth. The tree is to conform to AS2303—*Tree stock for landscape use*.

If the replacement trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species (up to 3 occurrences). If the trees are found dead before they reach a height where they are protected by Council's Tree Management Controls, they must be replaced with the same species.

#### **39. Project Arborist Certification**

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with certification from the project arborist the requirements of the conditions of consent related to the landscape plan and the role of the project arborist have been complied with.

#### **40. Aircraft Noise –Alterations and Additions**

Prior to the issue of an Occupation Certificate (whether an interim or final Occupation Certificate), the Principal Certifier must be provided with a report from a suitably qualified person demonstrating that each of the commitments listed in Aircraft Noise Assessment Report required by this consent has been satisfied.

Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a further certificate being prepared and submitted to the Principal Certifier in accordance with this condition.

#### **41. Section 73 Certificate**

< Refer to [Types of development that need a Section 73 Compliance Certificate](#). >

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a Section 73 Certificate under the *Sydney Water Act 1994*.

**PRIOR TO SUBDIVISION CERTIFICATE****42. Separate Drainage Systems**

Prior to the issue of a Subdivision Certificate, the Principal Certifier must be provided with a plan detailing that separate drainage systems must be provided to drain each proposed lot.

**43. Section 73 Certificate**

Prior to the issue of a Subdivision Certificate, the Certifying Authority must be provided with the Section 73 Certificate. A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation.

**44. Separate Stormwater**

Prior to the issue of a Subdivision Certificate, the Certifying Authority must be provided with details, endorsed by a practising stormwater engineer demonstrating separate drainage systems to drain each proposed lot.

**ADVISORY NOTES****Permits**

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

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

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

**Insurances**

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to 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.

**Consent of Adjoining property owners**

This consent does not authorise the applicant, or the contractor engaged to do the tree works to enter a neighbouring property. Where access to adjacent land is required to carry out

approved tree works, Council advises that the owner's consent must be sought. Notification is the responsibility of the person acting on the consent. Should the tree owner/s refuse access to their land, the person acting on the consent must meet the requirements of the *Access To Neighbouring Lands Act 2000* to seek access.

**Arborists standards**

All tree work must be undertaken by a practicing Arborist. The work must be undertaken in accordance with AS4373—*Pruning of amenity trees* and the Safe Work Australia Code of Practice—*Guide to Managing Risks of Tree Trimming and Removal Work*. Any works in the vicinity of the Low Voltage Overhead Network (including service lines—pole to house connections) must be undertaken by an approved Network Service Provider contractor for the management of vegetation conflicting with such services. Contact the relevant Network Service Provider for further advice in this regard.

**Tree Protection Works**

All tree protection for the site must be undertaken in accordance with Council's *Development Fact Sheet—Trees on Development Sites* and AS4970—*Protection of trees on development sites*.

**Prescribed Conditions**

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

**Notification of commencement of works**

At least 7 days before any demolition work commences:

- a. the Council must be notified of the following particulars:
  - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
  - ii. the date the work is due to commence and the expected completion date; and
- b. a written notice must be placed in the letter box of each directly adjoining property identified advising of the date the work is due to commence.

**Storage of Materials on public property**

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

**Toilet Facilities**

The following facilities must be provided on the site:

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

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

**Other Approvals may be needed**

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

**Failure to comply with conditions**

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

**Other works**

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

**Obtaining Relevant Certification**

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

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

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

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

**Notification of commencement of works**

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

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

**Dividing Fences Act**

The person acting on this consent must comply with the requirements of the *Dividing Fences Act 1991* in respect to the alterations and additions to the boundary fences.

**Permits from Council under Other Acts**

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

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

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

**Noise**

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

**Amenity Impacts General**

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

**Fire Safety Certificate**

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

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

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

**Construction of Vehicular Crossing**

The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for *Construction of a Vehicular*

*Crossing & Civil Works* form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, prior to commencement of works.

#### Lead-based Paint

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

#### Dial before you dig

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

#### Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm <a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>
Department of Fair Trading	13 32 20 <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 <a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441 <a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority	1300 552 406 <a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>
NSW Government	<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diysafe.nsw.gov.au">www.diysafe.nsw.gov.au</a> Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 <a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>
Sydney Water	13 20 92 <a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>
Waste Service - Environmental Solutions	SITA 1300 651 116 <a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>
Water Efficiency Labelling and Standards (WELS)	<a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>
WorkCover Authority of NSW	13 10 50 <a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a> Enquiries relating to work safety and asbestos removal and disposal.

**Asbestos Removal**

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m<sup>2</sup> of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

Removal of friable asbestos material must only be undertaken by a contractor that holds a current Class A Friable Asbestos Removal Licence.

Demolition sites that involve the removal of asbestos must display a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.

All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2014. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

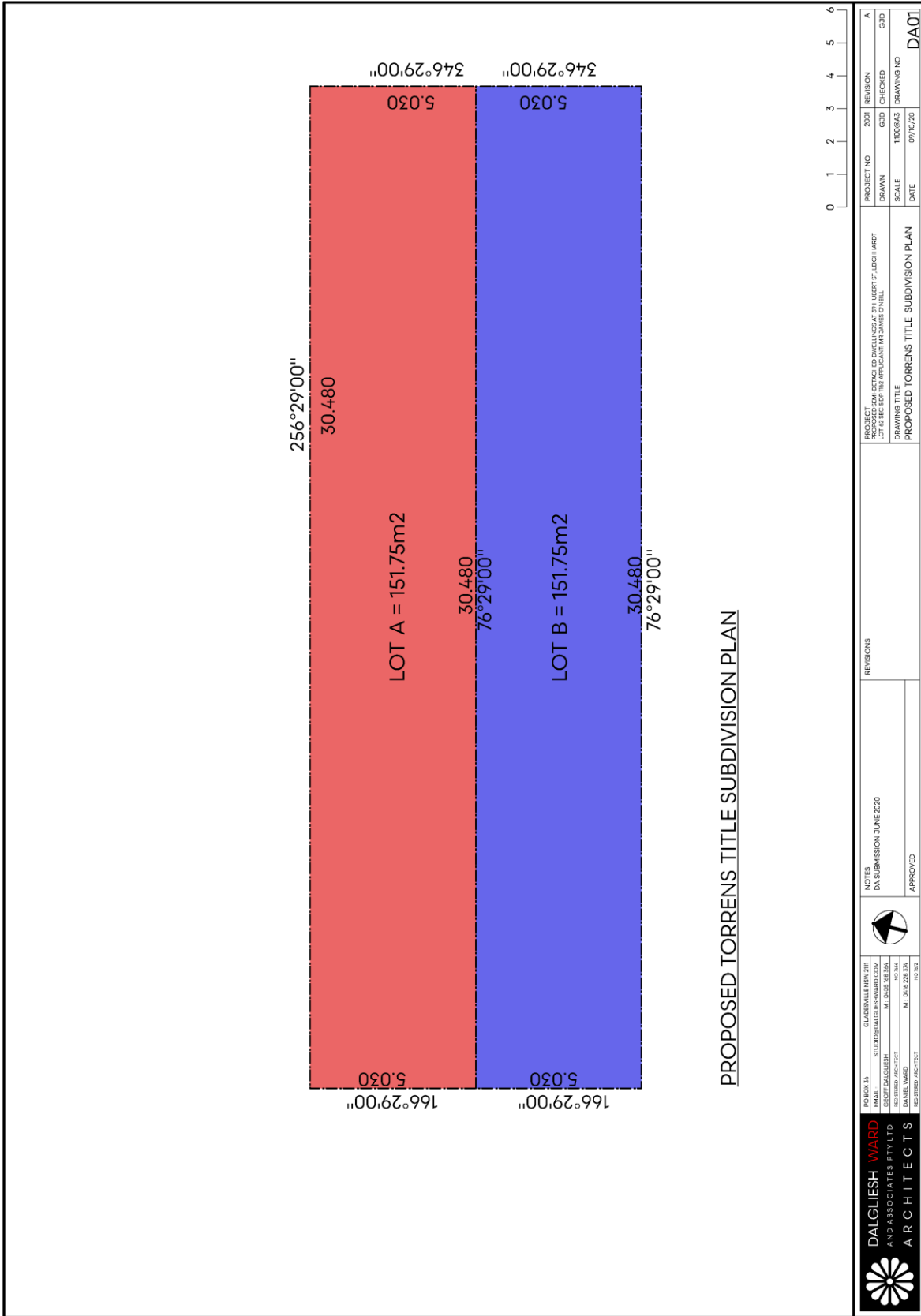
**Street Numbering**

If any new street numbers or change to street numbers (this includes unit and shop numbers) are required, a separate application must be lodged with and approved by Council's GIS Team before being displayed.

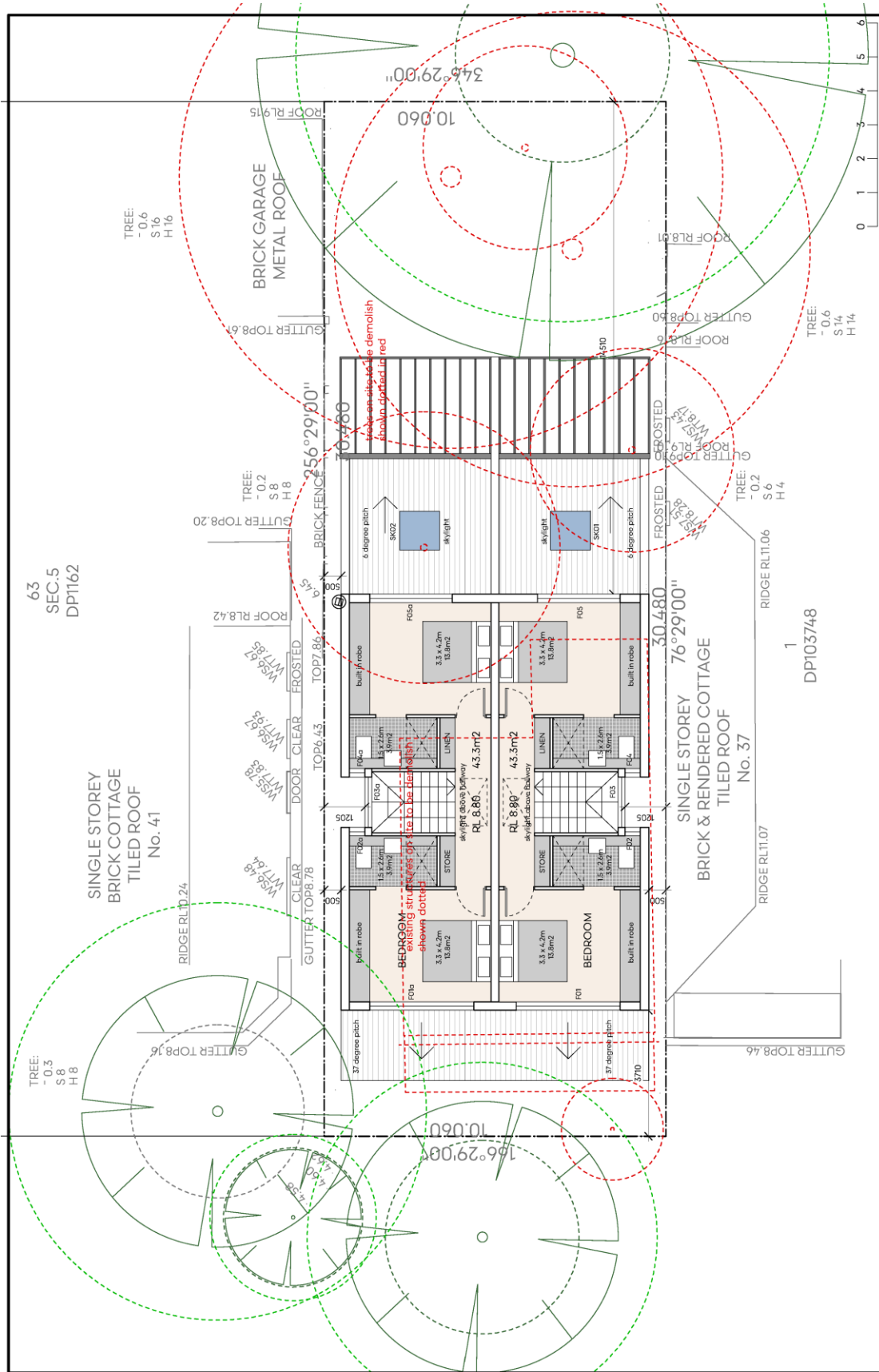












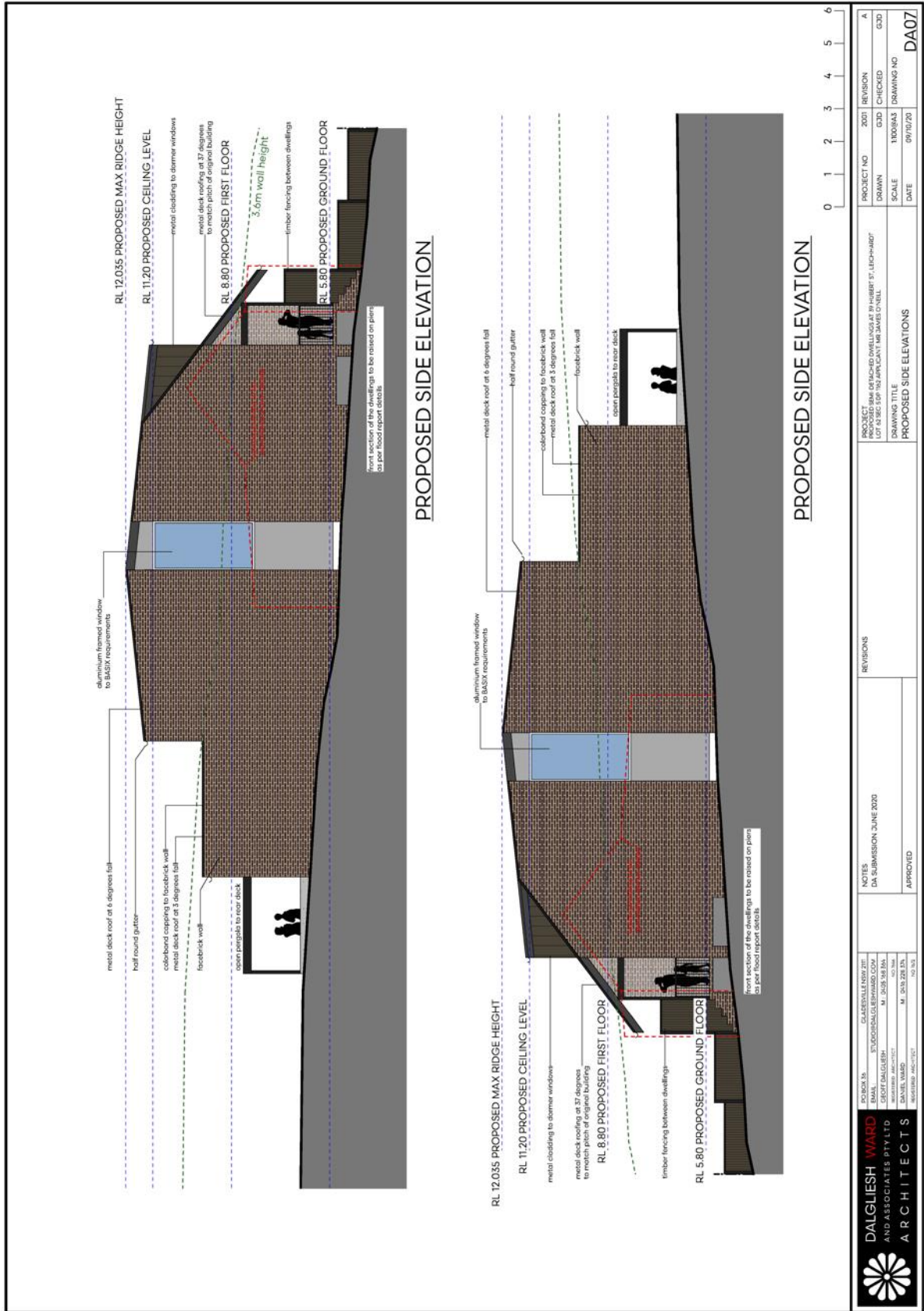
<p><b>DALGLIESH WARD</b> AND ASSOCIATES PTY LTD ARCHITECTS</p>	<p>PO BOX 56 CLAREVILLE NSW 2171 EMAIL: <a href="mailto:STUDIOS@DALGLIESHWARD.COM">STUDIOS@DALGLIESHWARD.COM</a> OFFICE: 02 9638 3838 MOBILE: 0412 228 576 DANIEL WARD REGISTERED ARCHITECT</p>	<p>NOTES DA SUBMISSION JUNE 2020 APPROVED</p>	<p>REVISIONS</p>	<p>PROJECT NO: 2001 DRAWN: GJD SCALE: 1:100 @ A3 DATE: 09/07/20</p>	<p>REVISION 2001 GJD CHECKED GJD DRAWING NO: DA03</p>
	<p>PROPOSED FIRST FLOOR PLAN</p>	<p>PROJECT TITLE LOT 14 SEC 5 DP1162 LOT 14 SEC 5 DP1162</p>	<p>APPROVED</p>	<p>DATE: 09/07/20</p>	<p>DRAWING NO: DA03</p>



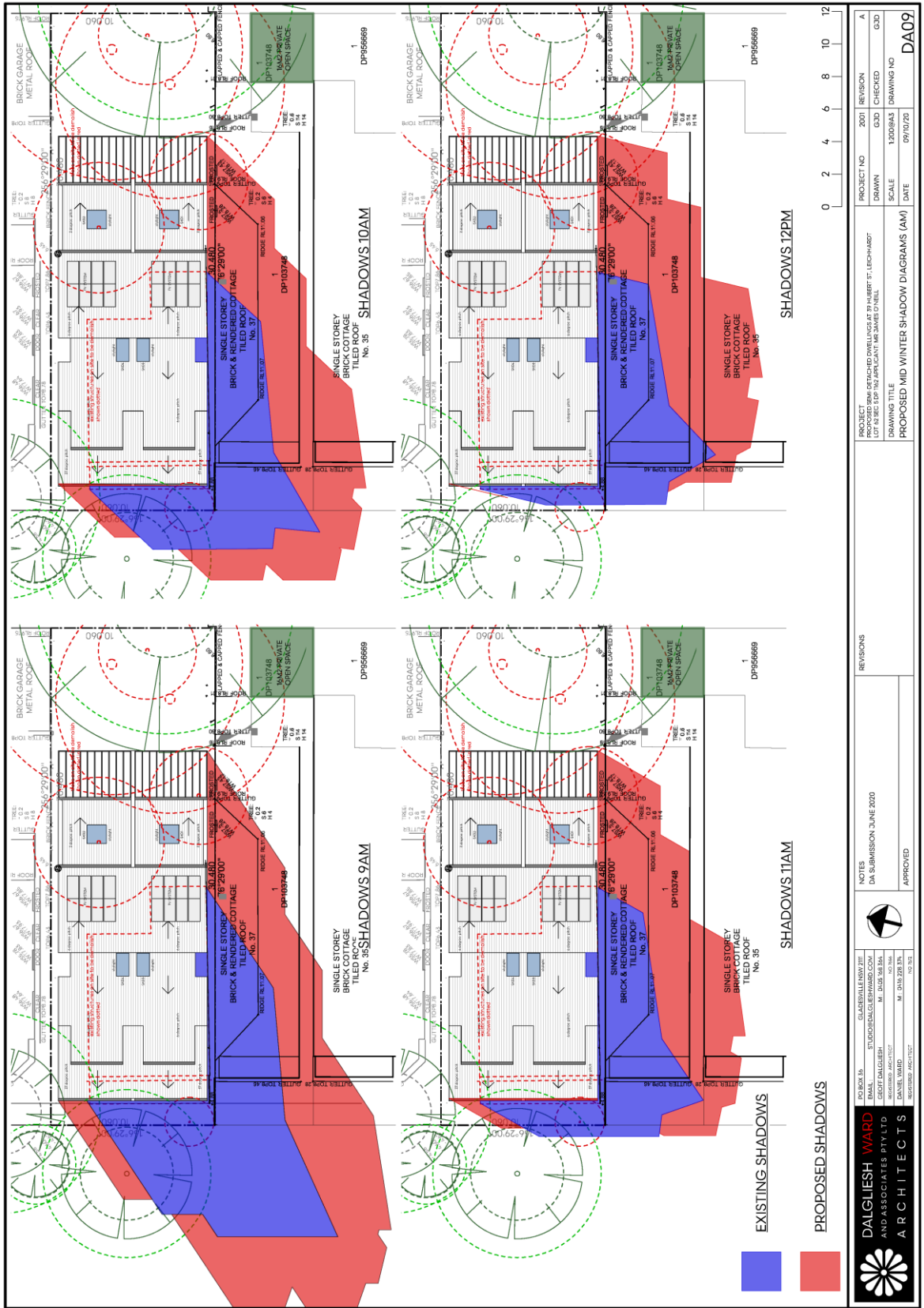




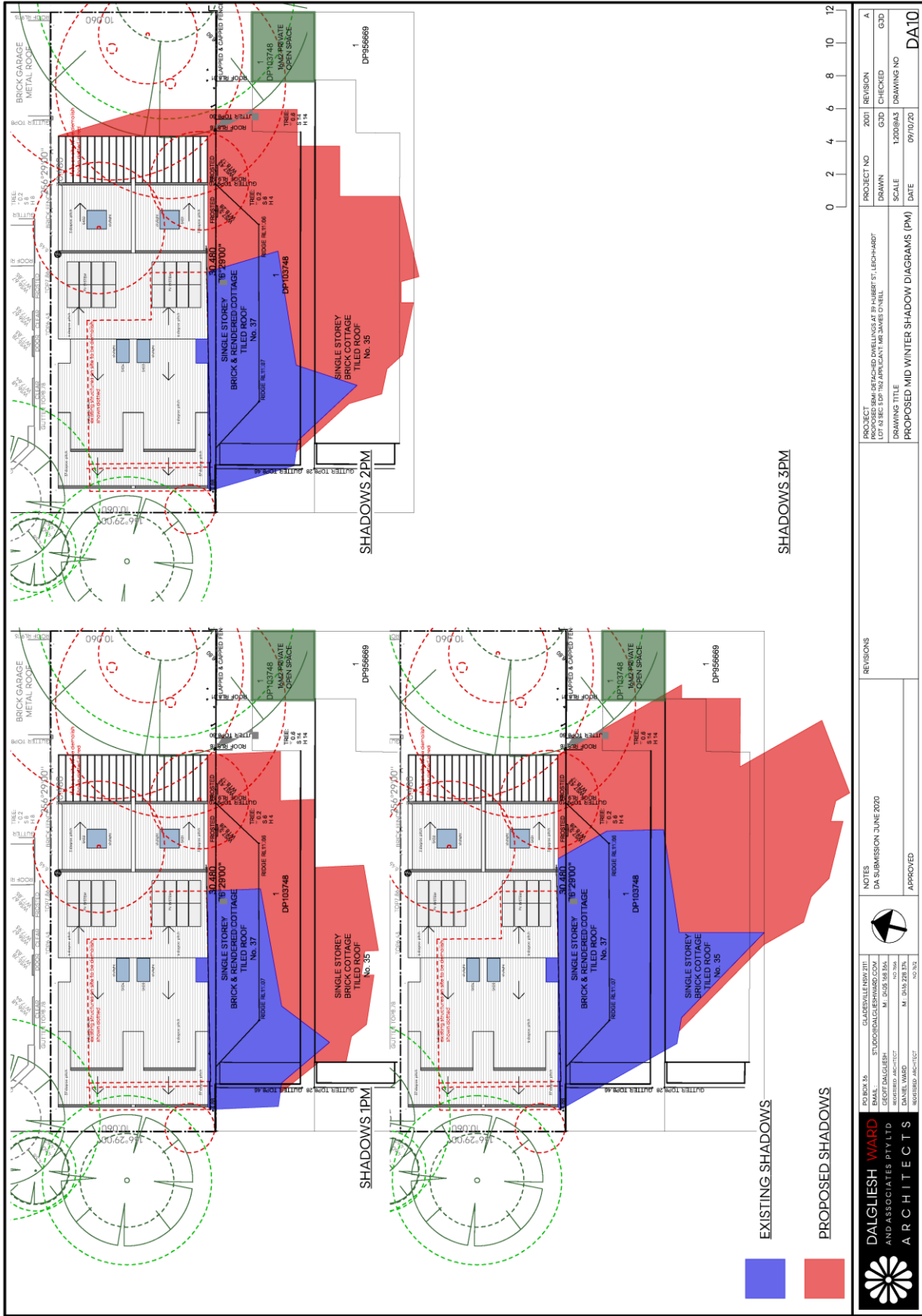




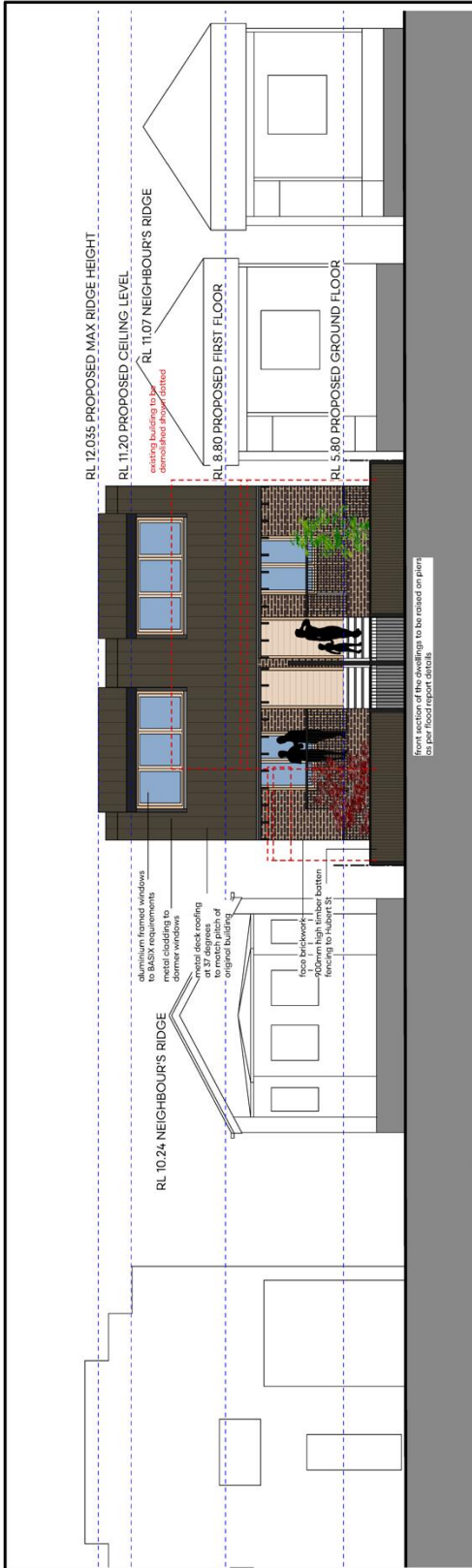
		PROJECT NO 2001   REVISION A DRAWN G3D   CHECKED G3D SCALE 1:1000AS   DRAWING NO DA07 DATE 09/10/20	
NOTES DA SUBMISSION JUNE 2020		REVISIONS PROJECT INFORMATION: 10/10/19   SHEET 5' - LEIGH-HARDY LOT 14 SEC 509 IN PARCEL CANTIMAR DAMS DRAIN DRAWING TITLE PROPOSED SIDE ELEVATIONS	
APPROVED		APPROVED	



<p><b>DALGIESH WARD</b> AND ASSOCIATES PTY LTD ARCHITECTS</p>	<p>PO BOX 15 CLAREVILLE NSW 2111 EMAIL: STUDIO@DALGIESHWARD.COM STUDIO@DALGIESHWARD.COM M: 02 958 28 500 DANIEL WARD REGISTERED ARCHITECT</p>	<p>NOTES DA SUBMISSION JUNE 2020 APPROVED</p>	<p>REVISIONS</p>
	<p>PROJECT NO 2001 DRAWN GJD SCALE 1:2000AS DATE 09/10/20</p>	<p>REVISION 2001 CHECKED GJD 1:2000AS DRAWING NO DA09</p>	



	PO BOX 16 CHAFFERVILLE NSW 2111 PH: (02) 9618 1000 FAX: (02) 9618 1000 M: 0438 228 276 WWW: DALGLES.COM.AU	CHAFFERVILLE NSW 2111 STUDIO: 02 9618 1000 M: 0438 228 276 WWW: DALGLES.COM.AU	NOTES DA SUBMISSION JUNE 2020	REVISIONS
	APPROVED	APPROVED	PROJECT NO 2001 REVISION A DRAWN GJD CHECKED GJD SCALE 1:200 DATE 09/10/20	DRAWING TITLE PROPOSED MID WINTER SHADOW DIAGRAMS (PM)



PROPOSED CONCEPT STREET ELEVATION



900mm high timber batton fence painted dulux Domino



Door and window frames  
Colourbond monument colour



Solid timber front door



Austral bricks Urban range - Pepper Colour



Metal Deck roofing -  
Colourbond woodland grey colour

<p><b>DALGLES WARD</b> AND ASSOCIATES PTY LTD ARCHITECTS</p>	<p>CLARENCEVILLE 2017 NO. 1000 M. DASH 98 564 GEOFF DALGLES REGISTERED ARCHITECT DANIEL WARD REGISTERED ARCHITECT</p>	<p>NOTES DA SUBMISSION JUNE 2020 APPROVED</p>	<p>REVISIONS</p>	<p>PROJECT NO. 2001 DRAWN GJD SCALE 1:1000 DATE 09/10/20</p>	<p>PROJECT DA11 LOT 18 285 539 192 APPLICANT MR JAMES O'NEILL DRAWING TITLE PROPOSED EXTERNAL FINISHES SCHEDULE</p>	<p>PROJECT NO. 2001 DRAWN GJD SCALE 1:1000 DATE 09/10/20</p>	<p>REVISION GJD CHECKED DRAWING NO DA11</p>
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## Attachment C- Clause 4.6 Exception to Development Standards



### APPENDIX A CLAUSE 4.6 DEPARTURE ALLOTMENT SIZE

#### INTRODUCTION AND BACKGROUND

##### Background

This Clause 4.6 variation has been prepared in support of development application for subdivision and the construction of 2 x semi-detached construction of a dual occupancy development at 39 Hubert Street, Leichhardt.

The subject site is identified on the Allotment size map as having a minimum allotment size of 200m<sup>2</sup>.

The proposed allotments have an area of:

**Proposed lot 1:** Street frontage of 5.03m, a depth of 30.48m and a total site area of 151.75m<sup>2</sup>.

**Proposed lot 2:** Street frontage of 5.03m, a depth of 30.48m and a total site area of 151.75m<sup>2</sup>.

Accordingly both proposed allotments are less than the required 200m<sup>2</sup>.

Therefore, a Clause 4.6 variation request has been prepared, noting that the request addresses Land and Environment Court cases including *Four 2 Five v Ashfield* and *Micaul Holdings Pty Ltd v Randwick City Council* and *Moskovich v Waverley Council*.

The key tests or requirements arising from the above judgements are that:

- The consent authority be personally satisfied the proposed development will be in the public interest because it is "consistent with" the objectives of the development standard and zone is not a requirement to "achieve" those objectives. It is a requirement that the development be 'compatible' with them or 'capable of existing together in harmony'. It means "something less onerous than 'achievement'".
- Establishing that 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' does not always require the applicant to show that the relevant objectives of the standard are achieved by the proposal (Wehbe "test" 1). Other methods are available, for example that the relevant objectives of the standard would not be achieved or would be thwarted by a complying development (Wehbe "test" 3); and
- The proposal is required to be in 'the public interest'.

In relation to the current proposal the keys are:

- Demonstrating that the development remains consistent with the objectives of the lot size standard.
- Demonstrating consistency with the R1 zoning; and

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- Satisfying the relevant provisions of Clause 4.6.

These matters are addressed below, noting that the proposal is a preferable outcome to a compliant scheme as it results in a better urban design outcome as it enables suitable amenity for future residents and is consistent with the bulk and scale of properties in the immediate vicinity of the site as one larger dwelling would be inconsistent with the rhythm and spacing of dwellings

#### PROVISIONS OF CLAUSE 4.6

Clause 4.6 of the Leichardt Local Environmental Plan 2013 provides that development consent may be granted for development even though the development would contravene a development standard.<sup>1</sup> That clause is in the following terms:

- (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 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 Planning Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*

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<sup>1</sup> Clause 4.6(2)



(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 Planning Secretary 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 any of these zones.

Consequently, by this request, the applicant seeks to justify the contravention of the Standard by demonstrating (as clause 4.6(3) requires):

*"(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."*

Further, the Consent authority must be satisfied (as clause 4.6(4) requires) that:

*"(i) (this request) has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Secretary has been obtained."*

Notably, as the subject land is not in any of the zones referenced in clause 4.6(6), that sub-clause has no application.



#### RELEVANT MATTERS TO BE DEMONSTRATED IN CLAUSE 4.6

As Clause 4.6 provides, to enable development consent to be granted, the applicant must satisfy the consent authority that:

- *this request has adequately addressed the matters required to be demonstrated by subclause (3),<sup>2</sup> namely that:*
- *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,<sup>3</sup> and*
- *there are sufficient environmental planning grounds to justify contravening the development standard<sup>4</sup>;*
- *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- *the concurrence of the Secretary has been obtained.<sup>5</sup>*

The request deals with each relevant aspect of clause 4.6 on the following pages.

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<sup>2</sup> Clause 4.6(4)(a)(i)

<sup>3</sup> Clause 4.6(3)(a)

<sup>4</sup> Clause 4.6(3)(b)

<sup>5</sup> Clause 4.6(4)(b)





### COMPLIANCE UNREASONABLE OR UNNECESSARY

In accordance with the provisions of this clause it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the underlying objectives of the control are achieved. The objectives of the minimum lot size development standard are stated as:

*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.*

The current development proposal is consistent with the underlying intent of the control based on the following:

- The general form of the building has minimal impact upon the streetscape in terms of architectural design, bulk and scale- noting that the overall form of the development is compatible in terms of overall height and design to other dwellings;
- The building height, site coverage, and landscaped area provided to both is comparable with adjoining and nearby dwellings and other buildings and the landscaped area is fully compliant with the DCP controls and landscaped area is contained at the front and rear of the site to contribute to the landscape setting with the retention of existing street trees.
- The proposal is fully compliant with the maximum site coverage control
- The proposed building is compatible with the desired future character of the locality. The overall bulk, form, and scale is comparable to adjoining and nearby development.
- The proposal is compliant with the minimum soft landscaped area control which provides a balance between landscape and built form;
- The amenity impacts arising from the proposal are minimal, with the proposal focusing windows to the front and rear boundaries to mitigate privacy impacts.
- The development site is located in a precinct where numerous allotments are less than the 200m<sup>2</sup> as required by the LEP including:
  - 37 Hubert Street – Approximately 185m<sup>2</sup>
  - 35 Hubert Street -Approximately 187m<sup>2</sup>
  - 25 Hubert Street – Approximately 166m<sup>2</sup>
  - 23 Hubert Street, Approximately 132m<sup>2</sup>
  - 60 Hubert Street, Approximately 191m<sup>2</sup>
  - 58 Hubert Street, Approximately 194m<sup>2</sup>
  - 56 Hubert Street, Approximately 186m<sup>2</sup>

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- 52 Hubert Street, Approximately 185m<sup>2</sup>
- 48 Hubert Street, Approximately 190m<sup>2</sup>
- 46 Hubert Street, Approximately 188m<sup>2</sup>
- 44 Hubert Street, Approximately 188m<sup>2</sup>
- 42 Hubert Street, Approximately 189m<sup>2</sup>
- 40 Hubert Street, Approximately 186m<sup>2</sup>
- 38 Hubert Street, Approximately 182m<sup>2</sup>
- 36 Hubert Street, Approximately 190m<sup>2</sup>
- 34 Hubert Street, Approximately 184m<sup>2</sup>
- 32 Hubert Street, Approximately 189m<sup>2</sup>
- 30 Hubert Street, Approximately 186m<sup>2</sup>
- 28 Hubert Street, Approximately 187m<sup>2</sup>
- 122 Francis Street, Approximately 183m<sup>2</sup>
- 120 Francis Street, Approximately 189m<sup>2</sup>
- 123 Francis Street, Approximately 188m<sup>2</sup>
- 121 Francis Street, Approximately 190m<sup>2</sup>
- 119 Francis Street, Approximately 182m<sup>2</sup>
- 117 Francis Street, Approximately 185m<sup>2</sup>
- 115 Francis Street, Approximately 186m<sup>2</sup>
- 113 Francis Street, Approximately 186m<sup>2</sup>
- 111 Francis Street, Approximately 179m<sup>2</sup>
- 109 Francis Street, Approximately 186m<sup>2</sup>
- 107 Francis Street, Approximately 184m<sup>2</sup>

This demonstrates that the approval of further lots that deviate from this standard will not set a precedent given the number of non-compliant existing lots.

- The development has a proposed FSR of 0.7:1 which is consistent with the FSR control for the site.
- The site is modest and the outcome on the site is a two x modest 2 bedroom dwellings, noting strict compliance significantly limits the size and functionality of the dwellings; and
- The relevant objectives of the zone would be thwarted should the development be refused as the proposal provides housing choice within a low density context, which is the first named objective of the R1 General Residential zone.

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances. The above discussion demonstrates that there are sufficient environmental planning grounds to justify the departure from the control.



### ENVIRONMENTAL PLANNING GROUNDS

The following factors demonstrate that sufficient environmental planning grounds exist to justify contravening the lot size development standard.<sup>6</sup> For that purpose, the critical matter that is required to be addressed is the departure from the development standard itself, not the whole development.<sup>7</sup>

- The departure from the lot size standard facilitates the delivery of 2 dwellings on the allotment that has ample area to accommodate the dwellings and the shortfall in numerical area has no impact on the ability to provide 2 dwellings on the site - other than in creating a numerical non-compliance with the standard.
- The ability for the development to have been designed to still meet the requirements of all other relevant requirements of both the LEP and DCP demonstrates the site is suitable for two dwellings despite the departure to the lot size control. This demonstrates that residential amenity is maintained and achieved as all other planning controls are achieved.
- The reduced area has no impact on that subdivision pattern, and is therefore entirely consistent with that established subdivision pattern;
- The zoning permits dual occupancy development. If the allotment was compliant with the minimum size, there would be no difference in terms of the building footprint location, presentation to the street, building bulk, or impact on the character of the locality or pattern of subdivisions in the locality. It does not follow that because the allotment is less than the standard that the that difference itself creates a proposal is of a size and scale that is incompatible with the current and desired future character of the locality. To the contrary, the nature of that departure and the numerous non-compliance with the lot size control in the precinct means there is no appreciable difference between the size and scale of the proposal as submitted, and a development that complied with the lot size standard. The proposal has limited impact on the surrounding subdivision pattern, and is therefore consistent with that established pattern

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<sup>6</sup> As clause 4(3)(b) requires

<sup>7</sup> As confirmed in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at 46, per Preston CJ



- The proposal ensures that the low density nature of the zone is retained and there is no significant change to the character of the locality given that any single dwelling could be designed with the exact same building envelope.
- The development presents a 2 storey form with a compliant building height, setbacks, and landscaped areas meaning that the footprint and form of the building is suitable for the size of the allotment on which the development is proposed;
- The form and presentation of the development maintains an appropriate visual relationship to adjoining properties and does not present a bulk and scale from the street or adjoining properties that is detrimental to the desired future character of the area.
- The proposed buildings on the allotments are compatible with the desired future character of the area in terms of the building presentation to the street, the materials, and the relationship to surrounding properties. and
- The development proposal remains compliant with all other provisions of the LEP (, FSR, Site coverage), and the DCP (setbacks, landscaped area, deep soil, parking, open space etc.) which indicates the form of development is entirely appropriate for the allotment notwithstanding the departure from the numerical control pertaining to lot size. Therefore, the area and dimensions of the lots are able to accommodate dwellings consistent with the key planning controls notwithstanding the minor departure from the lot size control. The design and scale of the development is therefore site responsive and respects the reduced lot size to deliver an appropriate form of development on the site, which is again, consistent with the relevant objectives.

The above analysis demonstrates that there are sufficient environmental planning grounds to justify the departure from the control.

**CONSISTENCY WITH OBJECTIVES OF THE STANDARD AND THE ZONE & THE PUBLIC INTEREST**

As clause 4.6(4)(a)(i) requires, the Consent Authority must also be satisfied that proposed development will be in the public interest because it is consistent with:

1. the objectives of the particular standard and

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2. the objectives for development within the zone in which the development is proposed to be carried out.

This clause 4.6 has already addressed the objectives of the development standard in the context of cl 4.3 in demonstrating that compliance is unnecessary or unreasonable.

The objectives of the R1 General Residential Zone are as follows:

- 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.*

The development satisfies these objectives as:

- The development proposal provides 2 dwellings in the place of 1 dwelling in a locality that is well serviced by public transport;
- The incorporation of a study on the first floor as well the possibility of using the guest bedroom as a study improves opportunities to work from home;
- The proposed dwellings are compatible with the character, style and pattern of dwellings in the precinct;
- The development incorporates landscaping to the street front as well as in its rear yard and the proposed landscaping will ensure that the dwellings present as dwellings in a landscaped setting;
- The proposed lots are regular in shape and are compatible with the orientation and patterns of the surrounding area; and
- The proposed allotment sizes and the proposed built form via the same application ensures that the lots will enhance the amenity of the area and provide suitable amenity for future residents.

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The departure from the control is acceptable in the circumstances given the underlying objectives of the control are achieved and it will not set an undesirable precedent for future development within the locality as any future development on another site would require consideration of the relevant merits and circumstances of the individual application.

For the reasons outlined above the applicant says the consent authority would be satisfied the development is in the public interest.

#### CONCURRENCE OF THE SECRETARY

The Secretary (of Department of Planning and Environment) can be assumed to have concurred to the variation. This is because of Department of Planning Circular PS 18-003 'Variations to development standards', dated 21 February 2018. This circular is a notice under 64(1) of the Environmental Planning and Assessment Regulation 2000.

A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

#### CONCLUSION

Strict compliance with the prescriptive allotment size control is unreasonable and unnecessary in the context of the proposal and its particular circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The proposal will not have any adverse effect on the surrounding locality and is consistent with the existing subdivision pattern within the subject precinct. The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council's Local Planning Panel is requested to invoke its powers under Clause 4.6 to permit the variation proposed.

The objection is well founded and taking into account the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.