

# INNER WEST

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	DA/2020/0375
<b>Address</b>	115 Short Street BIRCHGROVE NSW 2041
<b>Proposal</b>	Demolition of existing dwelling and construction of a new multi level dwelling with parking at rear and associated works
<b>Date of Lodgement</b>	21 May 2020
<b>Applicant</b>	Whiting Architects
<b>Owner</b>	Ms Belinda J Ainsworth
<b>Number of Submissions</b>	Seven (7) submissions with six (6) being unique
<b>Value of works</b>	\$1,300,000.00
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variations exceed 10%
<b>Main Issues</b>	<ul style="list-style-type: none"> <li>• Adverse streetscape / heritage impacts</li> <li>• Unsatisfactory response to desired future character controls</li> <li>• Unsatisfactory on-site amenity outcomes</li> <li>• Adverse amenity impacts on adjoining properties;</li> <li>• Inadequate tree planting;</li> <li>• Variation to FSR, Site Coverage and Landscaping;</li> <li>• Site suitability</li> </ul>
<b>Recommendation</b>	Refusal
<b>Attachment A</b>	Plans of proposed development
<b>Attachment B</b>	Without Prejudice Conditions of Consent (if approved)
<b>Attachment C</b>	Clause 4.6 Exception to Development Standards
<b>Attachment D</b>	Statement of Heritage Significance



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 of existing dwelling and construction of a new multi level dwelling with parking at rear and associated works at 115 Short Street Birchgrove.

The application was notified to surrounding properties and seven (7) submissions were received in response, with six (6) being considered unique.

The main issues that have arisen from the assessment include:

- Adverse impact on Heritage Conservation Area and unsatisfactory response to desired future character controls;
- Adverse amenity impacts – bulk and scale, overshadowing and visual privacy;
- Unsatisfactory on-site amenity outcomes, including private open space controls;
- Unsatisfactory tree replenishment planting; and
- Significant breaches of applicable site coverage and floor space ratio development standards.

Given the substantive issues with respect to the proposal, Council requested that the application be withdrawn. The application has not been withdrawn as requested, and the assessment of the proposal has proceeded. Refusal is recommended.

## 2. Proposal

The application seeks consent for the demolition of existing dwelling and construction of a new multi-level dwelling with garage parking at the rear accessed via Bay Street. The dwelling comprises the following:

### Ground floor

- Double garage
- 2 bedrooms
- Rumpus
- Bathroom

### First Floor

- Kitchen
- Living
- Kitchen garden
- Balcony

### Second Floor

- Bedroom
- Ensuite
- Bathroom
- Study

The development is situated on a prominent corner overlooking Mort Bay and represents a unique opportunity for an appropriate infill development within the Town of Waterview Heritage Conservation Area.

### 3. Site Description

The subject site is located on the south eastern side of Short Street, between the Phillip and Bay Street intersection and Cameron Street. The area of the site is approximately 228.6sqm and is legally described as Lot 1 of DP 543492. The site is irregular in shape, with a frontage of 10.3m to Short Street and a splayed secondary frontage of 9.805m to Phillip Street.



Zoning of the subject site and the adjoining properties.



Aerial view of the subject site at 115 Short Street.

The site supports a 1 and 2-storey dwelling addressing Short Street as single-storey with a 2 storey form to the rear of the dwelling following the topography of the land. Adjoining the site to the south west is a 2 and 3 storey semi-detached dwelling at 113 Short Street. Adjoining the site to north east is a vacant lot zoned for public recreation located on the corner of Short and Phillip Streets.

The property is located within a Heritage Conservation Area. The subject site is not listed as a heritage item. The closest heritage item in the vicinity is Heritage Item I523 at 31 Cameron Street (on the corner of Short and Cameron Streets). The property is not identified as a flood prone lot.

The following prescribed trees are located on the site and within the vicinity.

- One (1) Large *Cedrus deodara* (*Deodar Cedar*) located in the front setback along Short St; and
- One (1) *Ficus benjamina* (*Weeping Fig*) located in the rear of the site

## 4. Background

### 4(a) Site history

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

#### Subject Site

Application	Proposal	Decision & Date
PREDA/2012/49	Alterations and additions to existing dwelling including addition of second storey	Advice issued 25/05/2012
PREDA/2019/181	Demolition and construction of a new three level dwelling-house, and associated works, including associated parking and tree removal	Advice Issued 05/12/2019

Note: The proposal is not considered to have satisfactorily addressed the issues raised at Pre-DA stage, including relating to:

- Streetscape, Heritage & Design;
- Distinctive Neighbourhood Character;
- Site Layout, Building Location and Bulk and Scale;
- Amenity impacts – solar access, privacy and view impacts;
- Solar Access and Privacy; and
- Stormwater Management.

#### Surrounding Properties

None Relevant

### 4(b) Application history

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

Date	Discussion / Letter / Additional Information
22 May 2020	Application Lodged
25 August 2020	Withdrawal letter sent to applicant
18 September 2020	Applicant informed council in writing stating that they intended on lodging amended plans
24 September 2020	Pursuant to Clause 55 of the EP&A Regulation 2000, Council advised that amended plans would not be accepted, based on the extent of non-compliances required to be addressed (and raised at Pre-DA) and the major redesign required, and that Council's assessment would be based on the originally submitted plans.

## 5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

### 5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy No. 55—Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Coastal Management) 2018*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Leichhardt Local Environmental Plan 2013*

The following provides further discussion of the relevant issues:

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

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. *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.

Council's records indicate that the site has not been used in the past for activities which could have potentially contaminated the land. 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 satisfying the requirements of SEPP BASIX 2004.

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

The subject site is not within the Foreshores and Waterways Area.

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 and on Council land. The application was referred to Council's Tree Management Officer who does not support the proposal as submitted due to inadequate replacement tree planting and insufficient information provided demonstrating that the on-site landscaped areas can support such replacement planting. Inadequate justification has been provided for removing the Council-owned vegetation.

For these and other reasons, the proposal is recommended for refusal.

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 2.7 - Demolition
- Clause 4.3A(3)(a) - Landscaped areas for residential accommodation in Zone R1
- Clause 4.3A(3)(b) - Site Coverage for residential accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.4A - Exception to maximum floor space ratio for active street frontages
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 5.10 - Heritage Conservation
- Clause 6.1 - Acid Sulfate Soils
- Clause 6.2 - Earthworks
- Clause 6.4 - Stormwater Management

The proposal does not comply with a number of the controls prescribed above as detailed below:

Clause 1.2 – Aims of Plan

Due to the concerns raised later in this report with respect to development standard breaches, adverse streetscape and heritage impacts and incompatibility with the existing pattern of development, unsatisfactory on-site and off-site amenity outcomes, lack of scope for planting of future vegetation or replenishment planting that can be protected under Council's Tree Management Controls, and stormwater management, the proposal does not comply or has not demonstrated compliance with the following provisions of Clause 1.2 of the LEP:

- (c) *to identify, protect, conserve and enhance the environmental and cultural heritage of Leichhardt,*
- (d) *to promote a high standard of urban design in the public and private domains,*
- (e) *to protect and enhance the amenity, vitality and viability of Leichhardt for existing and future residents, and people who work in and visit Leichhardt,*
- (f) *to maintain and enhance Leichhardt's urban environment,*

- (k) *to protect and enhance—*
- (i) *views and vistas of Sydney Harbour, Parramatta River, Callan Park and Leichhardt and Balmain civic precincts from roads and public vantage points, and*
  - (ii) *views and view sharing from and between private dwellings*
- (l) *to ensure that development is compatible with the character, style, orientation and pattern of surrounding buildings, streetscape, works and landscaping and the desired future character of the area,*
- (n) *to protect, conserve and enhance the character and identity of the suburbs, places and landscapes of Leichhardt, including the natural, scientific and cultural attributes of the Sydney Harbour foreshore and its creeks and waterways, and of surface rock, remnant bushland, ridgelines and skylines,*
- (o) *to prevent undesirable incremental change, including demolition, that reduces the heritage significance of places, conservation areas and heritage items,*
- (t) *to ensure that development responds to, conserves, protects and enhances the natural environment, including terrestrial, aquatic and riparian habitats, bushland, biodiversity, wildlife habitat corridors and ecologically sensitive land,*
- (v) *to ensure that existing landforms and natural drainage systems are protected*

#### Clause 2.3 - Land Use Table and Zone Objectives

The site is zoned R1 – General Residential and dwelling houses are permissible within this zone. The Objectives of the 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.*

As set out in greater detail in the assessment below, the proposal is considered to be incompatible with the streetscape, Heritage Conservation Area and pattern of development in the area. The proposal also results in poor amenity outcomes on the site, proposes an inadequate landscape design, and adverse bulk and scale and overshadowing and privacy impacts on adjoining properties. In light of the above, the proposal does not achieve compliance with the following objectives of the zone.

- *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 protect and enhance the amenity of existing and future residents and the neighbourhood.*

Clause 4.3A, and 4.4 – Development Standards

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

Standard	Proposal	non compliance	Complies
<b>4.3A(3)(a) Landscape Area</b> Minimum permissible: 15% or 34.29sqm	11.47% or 26.23sqm	<b>23.51%</b>	No
<b>4.3A(3)(b) Site Coverage</b> Maximum permissible: 60% or 137.16sqm	82.10% or 187.68sqm	<b>36.83%</b>	No
<b>4.4 Floor Space Ratio</b> Maximum permissible: 0.9:1 or 205.74sqm	1.32 or 302.24sqm	<b>46.90%</b>	No

Council’s calculations of the development standards differ significantly from those provided by the applicant in the submitted SEE and form the basis for the submitted Clause 4.6 exceptions provided for Site Coverage and FSR.

The following provides further discussion of the relevant issues:

Clause 4.3A(3)(a) – Landscaped Area

A minimum landscaped area of 15% or 34.29sqm applies to the site as prescribed in Clause 4.3A(3)(a) of the LLEP 2013.

In accordance with Clause 4.3A of the LLEP 2013 landscaped area calculations are subject to the following:

- (b) any area that—
  - (i) has a length or a width of less than 1 metre, or
  - (ii) is greater than 500mm above ground level (existing),
 is not to be included in calculating the proportion of landscaped area

As such, significant portions of the triangular (planter box) landscaped areas cannot be included in landscaped area calculations where they have a dimension of less than 1m and/or are raised above 500mm from ground level (existing).

No Clause 4.6 Exception to Development Standard had been provided in relation to landscaped area breach. On this basis alone, the application is unsupportable.

Clause 4.3A(3)(b) – Site Coverage

A maximum site coverage of 60% of the total site area or 187.68sqm applies to the site as prescribed in Clause 4.3A(3)(b) of the LLEP 2013. Based on Council’s calculations, the proposal will result in a Site Coverage of 82.10% or 187.68sqm which equates to a 36.83% breach of the Site Coverage standard.

A Clause 4.6 Exception to Development Standard has been provided in relation to Site Coverage and is addressed below.



### Clause 4.4 – Floor Space Ratio

As noted above, an FSR of 0.9:1 applies to the site as prescribed in Clause 4.4 of the LLEP2013.

The applicant's Statement of Environmental Effects (SEE) states that the proposed FSR will be 1.09:1. A dimensioned set of plans that included calculations for FSR were not provided by the applicant verifying the above calculation.

Based on Council's calculations, which are digitally scaled from the applicant's architectural plans, the proposal will result in a FSR of approximately 1.32:1 (302.24m<sup>2</sup>), which equates to a 46.9% breach of the FSR development standard prescribed in Clause 4.4 of the LEP.

A Clause 4.6 Exception to Development Standard has been provided in relation to FSR and is addressed below.

### Clause 4.6 Exceptions to Development Standards

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

- Clause 4.3A(3)(a) – Landscaped area for residential accommodation in Zone R1
- Clause 4.3A(3)(b) - Site Coverage for residential accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio

#### *Landscaped Area*

As noted above, the applicant has not provided a Clause 4.6 request for the breach to the landscaped area development standard. On this basis alone, the application is unsupportable.

#### *Site Coverage*

The applicant seeks a variation to the site coverage development standard under Clause 4.3A(3)(b) of the Leichhardt LEP by 36.73% or 50.52sqm).

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 or 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 Leichhardt LEP below.

A written request has been submitted to Council in accordance with Clause 4.6(3) of the applicable local environmental plan justifying the proposed contravention of the development standard which is summarised as follows:

- *Notwithstanding site coverage non-compliance, a landscaped area of 42.78m<sup>2</sup> (18.7%) has been provided and complies with the 15% required by cl4.3A(3) of the LLEP 2013. Areas of soft landscaping and planting are provided to the Short Street and Bay Street frontages of the site as well as the north east elevation of the dwelling which is oriented towards the reserve. The landscape concept is considered to complement built form and will facilitate a desirable level amenity to residents.*

- *Context of the site is noted in that allotments are generally narrow in width with built form built close if not to the side boundary alignment which limits the provision of meaningful landscape. Whilst the proposed development does seek to pursue a similar form, the design has allowed for planting adjacent to side boundaries forward of built form with a recessed courtyard adjacent to the north east side boundary of the site and adjoining reserve providing a desirable interface*
- *Proposed development is consistent with desired future character. Specifically, with respect to site coverage, building location zone is consistent with adjoining built form and a landscaped interface provided to the three (3) external boundaries of the site that are visible from the public domain.*
- *The proposed development promotes absorption of surface drainage water through increasing permeable surface / landscaped area from 34.5m<sup>2</sup> (15.1%) as existing to 42.78m<sup>2</sup> (18.7%). A detailed stormwater drainage design prepared by a consultant engineer also accompanies the submission.*
- *The proposed development does not seek to increase density of the site and relates only to the demolition of the existing single dwelling and construction of a new single dwelling.*
- *As previously outlined, the proposed development provides a landscaped area of 18.7% which exceeds the 15% required. With respect to private open space, several areas are incorporated and observe compliance with C3.8 of the Leichhardt Development Control Plan 2013 as demonstrated within the SEE*

The applicant's written rationale has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, or that there are insufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is not in the public interest because it is not 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 proposal does not provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- The proposal does not provide adequate landscaped areas for the use and enjoyment of existing and future residents.
- The proposal does not protect and enhance the amenity of existing and future residents and the neighbourhood.

It is considered the development is not in the public interest because it is inconsistent with the following objectives of the Site Coverage development standard, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan:

- a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,*
- b) to maintain and encourage a landscaped corridor between adjoining properties,*
- c) to ensure that development promotes the desired future character of the neighbourhood,*
- d) to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,*

- e) to control site density,
- f) to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.

The proposal thereby does not accord 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, the Clause 4.6 exception request is not supported.

#### *Floor Space Ratio*

The applicant seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of the applicable local environmental plan by 49.9% or 96.5sqm.

In order to demonstrate whether strict numeric compliance is unreasonable or 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 Leichhardt LEP below.

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

- *The proposed development remains compatible with the desired future character of the area, representing a sympathetic contemporary infill within the Town of Waterview Heritage Conservation Area.*
- *Proposed bulk is subservient to the neighbouring Victorian terrace pair with overall height approximately 750mm below and building location zone largely mirrored though noting that a greater setback is provided to Short Street with the massing of the upper level reduced in an attempt to provide view sharing.*
- *The building is considered to effectively respond to the site topography, adopting a stepped form.*
- *Specifically, with respect to design, key elements provided to primary facades being arched openings were viewed as responding appropriately to the local context and character by the heritage consultant. The low-pitched skillion roof form concealed behind a parapet feature also viewed as compatible.*
- *Proposed materials which consist of face brick and render rely on their natural colours and character and respond appropriately to the traditional working-class character of the conservation area, where selection and employment of materials was traditionally very limited. Glass balustrades are not employed.*
- *The proposed development provides the desired balance between landscaped area and built form. Notwithstanding FSR non-compliance, proposed landscaped area of 42.78m<sup>2</sup> (18.7%) complies with the 15% required by cl 4.3A(3) of the LLEP 2013. Areas of soft landscaping and planting are provided to the Short Street and Bay Street frontages of the site and also adjacent to the reserve to the north east.*
- *Building location zone is consistent with surrounding development and considered to minimise any adverse impact from bulk and scale. The context of the site is also noted with street frontage and a reserve provided to three (3) elevations with adjoining built form adjacent to the south west elevation built close to the boundary with little interface (provided with only one window opening). As previously outlined, the upper level floor plan of the building has been minimised and directly reduces both the perceived bulk and scale of the dwelling through providing articulation and promotes view sharing.*

The applicant's written rationale has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, or

that there are insufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is not in the public interest because it is not 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 proposal does not provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- The proposal does not provide adequate landscaped areas for the use and enjoyment of existing and future residents.
- The proposal does not protect and enhance the amenity of existing and future residents and the neighbourhood.

It is considered the development is not in the public interest because it is inconsistent with the following objectives of the Floor Space Ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan:

a) *to ensure that residential accommodation—*

- i) *is compatible with the desired future character of the area in relation to building bulk, form and scale, and*
- ii) *provides a suitable balance between landscaped areas and the built form, and*
- iii) *minimises the impact of the bulk and scale of buildings,*
- iv) *to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale.*

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, the Clause 4.6 exception request is not supported.

#### Clause 5.10 – Heritage Conservation

The subject property at 115 Short Street, Birchgrove, is located within the Town of Waterview Heritage Conservation Area (C4 in Schedule 5 of the Leichhardt LEP 2013).

The Statement of Significance for the Town of Waterview Heritage Conservation Area is included at Attachment D.

An assessment of the proposal against the heritage provisions of the Leichhardt LEP2013 has been carried out in Section 5(c) of this report. In summary, the design, building alignments, roof form, elevational treatment and materials and finishes are inconsistent with the established pattern and character of development along Short Street and adjacent streets, and as such, will result in a development that is detrimental to the Heritage Conservation Area and contrary to the provisions and objectives of Clause 5.10 Objectives 1(a) and (b) in the Leichhardt LEP 2013 which seek to conserve the heritage significance of Heritage Conservation Areas, including settings and views.

#### Clause 6.4 – Stormwater Management

The application was referred to Council's Engineer who requested additional information relating to Stormwater in accordance with the following:

*“A stormwater drainage design plans incorporating on-site Stormwater Detention storage and/or On-site Stormwater Retention/ re-use facilities (OSD/OSR), prepared by a suitably qualified Civil Engineer shall be submitted. The Stormwater Drainage Concept Plan on drawing No. 19234/C1 prepared by BRADLEY MORAN Consulting Engineers and dated 23 April 2020 must be amended to comply with the following specific requirements:*

- a) All stormwater drainage being designed in accordance with the provisions of the Australian Rainfall and Runoff (ARR), Australian Standard AS3500.3-2018 ‘Stormwater Drainage’ and Council’s DCP;*
- b) Stormwater runoff from pervious and impervious areas of the proposed dwelling must be collected and discharged via OSD/OSR to Bay Street.*
- c) Charged or pump-out stormwater drainage systems are not used including for roof drainage. Downpipe connection shown on the Stormwater Drainage Plan is not permitted;*
- d) 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);*
- e) The volume of the OSD can be reduced where on-site retention (OSR) facilities for rainwater reuse and/or stormwater reuse are proposed to service all toilets, laundries and outdoor usage. Where OSR is proposed in lieu of OSD, the offset shall be calculated at a rate of 1m<sup>3</sup> from the OSD storage volume, for every 2.5m<sup>3</sup> of OSR storage provided (up to a maximum OSD offset of 10m<sup>3</sup>). Offsets for larger OSD storage must be supported by detailed calculations demonstrating compliance with the objectives of Leichhardt Council’s DCP.*
- f) Details and dimensions of the OSD/OSR tank, the invert and top water level in the OSD/OSR and volume of storage must be indicated on the drainage plans;*
- g) Where a combined OSD/OSR is proposed, only roof water is permitted to be connected to the OSD/OSR. The overflow from the storage tank must be connected under gravity to Bay Street;*
- h) The width of the overland flow path shall be shown on the drainage plan;*
- i) Drainage pipes must be laid at a minimum grade of 1%. All pipes’ diameter and invert level and pits surface and invert level must be shown on the amended drainage plans. Drainage pipes must be located within the development site;*
- j) A 150mm step up shall be provided between the finished surface level of the external areas and the finished floor level of the internal room;*
- k) An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;*
- l) Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site; and*
- m) Dimensions of the bin storage area must comply with the requirements of Council’s Environmental Officer and shall be shown on the plans.”*

Given the extent of deficiency in the submitted plans, the resulting uncertainty and outstanding information regarding stormwater, it is considered that the proposal as originally submitted has not satisfactorily demonstrated compliance with Clause 6.4 of the LDCP2013.

### 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	Yes
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	No – see discussion
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	No
C1.3 Alterations and additions	N/A
C1.4 Heritage Conservation Areas and Heritage Items	No – see discussion
C1.5 Corner Sites	No – see discussion
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	N/A
C1.9 Safety by Design	N/A
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	No – see discussion
C1.12 Landscaping	No – see discussion
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	No – see discussion
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	No – see discussion
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	No – see discussion
<b>Part C: Place – Section 2 Urban Character</b>	

<i>C.2.2.2.5: Mort Bay Distinctive Neighbourhood and C.2.2.2.5(c) Upper Slopes Sub Area</i>	No – see discussion
<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	No – see discussion
C3.2 Site Layout and Building Design	No – see discussion
C3.3 Elevation and Materials	No – see discussion
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	No – see discussion
C3.6 Fences	No – see discussion
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	No – see discussion
C3.9 Solar Access	No – see discussion
C3.10 Views	No – see discussion
C3.11 Visual Privacy	No – see discussion
C3.12 Acoustic Privacy	No – see discussion
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>N/A</b>
<b>Part D: Energy</b>	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	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	Yes
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	Yes
E1.2.2 Managing Stormwater within the Site	No
E1.2.3 On-Site Detention of Stormwater	No
E1.2.4 Stormwater Treatment	Yes
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	Yes
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	N/A

The following provides discussion of the relevant issues:

Clause C1.0 – General Provisions

As discussed elsewhere in this report, the proposal is considered to be incompatible with the streetscape and heritage conservation area. The proposal will result in on and off-site amenity impacts with regard to private open space, solar access, tree management and overshadowing. Therefore, it is considered to be inconsistent with the following objectives under this part:

- *O3 Adaptable: places and spaces support the intended use by being safe, comfortable, aesthetically appealing, economically viable and environmentally sustainable and have the capacity to accommodate altered needs over time.*
- *O4 Amenable: places and spaces provide and support reasonable amenity, including solar access, privacy in areas of private open space, visual and acoustic privacy, access to views and clean air.*
- *O6 Compatible: places and spaces contain or respond to the essential elements that make up the character of the surrounding area and the desired future character. Building heights, setbacks, landscaping and architectural style respond to the desired future character. Development within Heritage Conservation Areas or to Heritage Items must be responsive to the heritage significance of the item and locality.*

C1.2: Demolition, C1.3: Alterations and additions, C1.4: Heritage conservation areas and heritage items, C1.19: Rock faces, rocky outcrops, cliff faces, steep slopes and rock walls, C.2.2.2.5: Mort Bay Distinctive Neighbourhood and C2.2.2.5(c) Upper Slopes Sub Area, C3.3: Elevations and Materials

As previously noted, the subject property is located within the Town of Waterview Heritage Conservation Area (C4 in Schedule 5 of the Leichhardt LEP 2013) and is not listed as a heritage item.

The application was referred to Council's Heritage Officer who provided the following comments:

*"The subject property at 115 Short Street, Birchgrove, is located within the Town of Waterview Heritage Conservation Area (C4 in Schedule 5 of the Leichhardt LEP 2013).*

*The drawings prepared by Whiting Architects, dated 5 May 2020, and the Heritage Impact Statement prepared by Zoltan Kovacs Architect, dated April 2020, were reviewed as part of this assessment.*

*The proposal includes demolition of the existing dwelling and construction of a new multi level dwelling with parking at rear and associated works.*

*Pre-DA advice was sought for the proposed demolition of existing dwelling and construction of a 3 level dwelling and associated works including parking and tree removal at 115 Short Street, Birchgrove (PREDA/2019/181). The application was referred to Council's heritage specialist whose assessment concluded the proposal was not acceptable and provided the following comments. Additional commentary is provided in respect to the proposal submitted with this DA.*



1. *The proposed infill dwelling must be redesigned in accordance with the following:*

a. *The built form must be simple in style and in materials;*

**Comment:** *The proposed style and materials for the infill dwelling are not compatible with the HCA and streetscape in respect to scale, design, details and materials (C1 c. iv. of Section C1.2 and C8 and C9 of Section C1.4 of the DCP).*

b. *Floor to ceiling heights should complement those established within the street, particularly the adjoining terrace at 113 Short Street;*

**Comment:** *The height of the structure over the entry has been increased marginally to RL26.705 (an increase of 5mm), yet the height of the main building form has been lowered 295mm from that previously proposed. This is generally acceptable as it provides a transition from the height of the neighbouring terrace to the undeveloped land to the north east.*

c. *The width must respect the established widths of existing dwellings in Short Street;*

**Comment:** *The width of the west (streetscape) elevation will present to the street with horizontal detailing, rather than vertical. The width and the detail of the front façade must be amended to respect the characteristic width of dwellings and terraces in the Short Street streetscape.*

d. *The dwelling must step down with the topography of the site and minimise excavation of the sandstone outcrop;*

**Comment:** *The section drawing illustrates a large amount of excavation of sandstone is proposed to enable bedroom 3, approximately one third of the area of the rumpus room, the bathroom and basement storage on the ground level. Bedroom 3, the basement storage and one third of the northern section of the floor area of the rumpus room must be deleted from the ground floor level to retain the sandstone, to ensure the proposal is consistent with C1 a. and b. of Section C1.19 of the DCP.*

e. *The roof form must be either hipped or gable, or a combination, or a skillion roof form concealed behind a parapet wall;*

**Comment:** *No change. The above must still be redesigned to ensure the roof of the infill dwelling complies with C7 and C17 of Section C2.2.2.5 of the DCP.*

f. *The sunken courtyard proposed to the front must be deleted;*

**Comment:** *Deleted.*

g. *The proposal must include a front verandah to Short Street under a separate skillion roof at a complimentary depth and roof pitch to other front verandahs within the streetscape;*

**Comment:** *No change.*

- h. Openings in the front façade must complement the established pattern within the streetscape;*

**Comment:** *No change.*

- i. Arched openings may be considered. Circular patterns and perforated brickwork must be deleted from the proposal.*

**Comment:** *The arched opening over the entry structure is acceptable. Circular patterns and perforated brickwork must be deleted from the proposal.*

- j. Large expanses of glass are not to be used in areas visible from the public domain. Openings must be vertically proportioned, employing traditional design (timber sash or French doors) and materials (timber frame). Dominancy must be given to masonry/solid elements rather than glazed areas; and*

**Comment:** *Large expanses of glass are proposed in the north, east and west elevations. The above comment still stands.*

- k. The roof deck must be deleted from the proposal.*

**Comment:** *Deleted.*

- 2. A revised colours and materials schedule will need to be submitted for consideration with the following amendments:*

- a. The Materials, finishes, textures and colours must be appropriate to the historic context and of the original contributory buildings within the streetscape; and*

**Comment:** *Concrete screed in modern grey is proposed for the exterior finishes, which is not acceptable as it is not a complementary material or finish to the Town of Waterview HCA. Concrete wall with brick pattern in off white and open brick in off white are also not acceptable as they are not characteristic of the character of the HCA.*

*Materials, finishes, textures and colours must be with the colour schemes of contributory dwellings within the streetscape. Whites, greys and blacks are not acceptable and must be avoided. Light, warm, earthy, tones are to be used. A revised finishes schedule will need to be submitted with the above amendments for consideration.*

- b. A pre-coloured traditional corrugated steel shall be used for the roofing, finished in a colour equivalent to Colorbond colours “Windspray” or “Wallaby”.*

**Comment:** *Not provided.*

*The following information must be provided with the future application:*

- 3. A full set of architectural drawings including demolition plans of the existing dwelling and plans and elevations showing the proposed dwelling in context with at least the adjoining dwelling at 113 Short Street; and*

**Comment:** The “existing floor plan” provided shows the footprint of the existing dwelling. This is generally acceptable from a heritage perspective as the existing dwelling is a contemporary dwelling that has no heritage significance. The west elevation shows the proposed dwelling in the context of the adjoining terraces at 111 and 113 Short Street.

4. A Heritage Impact Statement, including a statement of significance for the existing dwelling.

**Comment:** Provided.”

The concerns raised by Council's Heritage Advisor propose that the following elements of the design are unsatisfactory:

- The proposed bulk, scale and design of the infill dwelling is not compatible with the HCA and streetscape;
- The characteristics of the front façade, including width and detailing and horizontal detailing are not consistent with the HCA and streetscape;
- The extent of excavation of the sandstone is inconsistent with the objectives and controls of Clause C1.19;
- The proposed flat roof form;
- Elevational treatment, including the proposed large expanses of glass and non-traditional design, do not complement the established pattern within the streetscape

Further to the above, due to the narrowness and confined landscaped areas, there is limited scope to provide any future substantial planting on the site for a tree that is able to be protected under Council's Tree Management controls due to the proposal's excessive FSR and site coverage.

Given the above, it is considered that the bulk, scale, form, materials, landscaping and general design and appearance of the proposed infill development will result in a development that is detrimental to the Town of Waterview Heritage Conservation Area and contrary to the provisions and objectives of the heritage-specific Clauses of the LDCP2013.

#### C1.5 Corner Sites

Due to the streetscape, heritage and amenity concerns raised in this report, the proposal is considered to be contrary to the following objectives and controls of C1.5:

- O1 Development on corner sites:*
- a. *respects the visually prominent role of corner sites; and*
  - b. *is compatible with the adjoining buildings;*

*C4 Building elements including wall height, roof form and front setback and architectural features including balconies, awnings, verandahs, parapets and dormers are to be compatible in scale with the streetscape.*

*C5 The development does not have an adverse impact on surrounding properties, the streetscape or public domain by way of:*

- a. *amenity;*
- b. *solar access;*
- c. *views;*
- d. *privacy;*
- e. *urban design;*

- f. *being inconsistent with desired future character; and*
- g. *shall be constructed of high quality materials and finishes.*

For this and other reasons, the proposal is recommended for refusal.

#### C1.11 Parking

The application was referred to Council's Engineer who requested additional information relating to parking in accordance with the following:

*"Plans and design of the vehicular access and off-street parking facilities prepared by a suitably qualified Civil Engineer comply shall be submitted to demonstrate compliance with Australian Standard AS/NZS2890.1-2004 Parking Facilities – Off-Street Car Parking and the following specific requirements:*

- a) *The garage slab or driveway must rise within the property to be 170mm above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004;*
- b) *A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors;*
- c) *Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided at a natural scale of 1:25, demonstrating compliance with the above requirements;*
- d) *The garage/parking space must have minimum clear internal dimensions of 6000mm x 5400 mm (length x width). The dimensions must be exclusive of obstructions such as walls, doors, columns, and stairs except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004. The width of the existing and proposed vehicular crossing at the entry to the garage and at the kerb line must be shown on the plan. The width of the crossing at the kerb line shall not be greater than the existing width. Dimensions must be shown on plans to an appropriate scale;*
- e) *A plan of the proposed access and adjacent road, drawn at a 1:200 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with swept paths from AS/NZS 2890.1:2004. The plan must include any existing on-street parking spaces;*
- f) *The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004; and*
- g) *Doors to bin store must open inwards, opening of pedestrian doors to the garage is not permitted."*

Of particular note is that the garage is undersized and does not comply with the minimum requirements of AS2890.1-2004. The proposal therefore does not comply and has not demonstrated compliance with Clause C1.11 of the LDGP2013.

#### C1.12: Landscaping and C1.14 Tree Management

*Proposed / Future Landscaping*

Pursuant to Clause C1.14 of the LDCP2013, approval will be granted for the removal of any tree located within two (2) metres of a dwelling house or garage located within the same lot as the tree, unless the tree is protected under section 4 of this part. The distance is measured horizontally from the closest point of the trunk at one (1) metre from ground level to the closest point of the vertical alignment of the building wall. The issued permit will identify the type of any replacement tree required with a preference for advanced species. As a condition of the permit, verification of the planting of any replacement tree is also required.

Concern is raised that there will be no scope for any substantial planting to be provided on the site to contribute to the streetscape and enhance the visual setting of the development and that will allow future protection under Clause C1.14 of the LDCP2013 due to the proposal's excessive FSR and site coverage and lack of adequate landscaped area (also see comments below under Sub-heading *Existing Trees*). Given the above, the proposal is considered to be contrary to the following objectives and controls of the Clause C1.12 of the LDCP2013:

#### *Residential Development*

*O1 Development includes on-site landscaped open space that:*

- a. enhances the visual setting of buildings;*
- b. contributes to the distinct landscape character within the neighbourhoods and preserves, retains and encourages vegetation and wildlife that is indigenous to the municipality and Sydney;*
- d. conserves water resources by reducing the need for irrigation;*
- e. maximises vegetation to regulate and increase rainwater infiltration, thereby increasing nutrient recycling and reducing surface runoff;*
- g. contributes to the amenity of the residents and visitors;*
- j. is designed to encourage the retention and enhancement of green corridors.*

#### *Existing Trees*

There are two (2) significant trees on the site. The proposal seeks the removal of all trees on the site.

The application was referred to Council's Tree Management Officer who provided the following comments:

*"A review of the submitted Landscape Concept Plan, prepared by Whiting Architects, dated 5/05/2020, page No. A105 has found that there is insufficient planting space provided for a 400L replenishment tree in accordance with PREDA referral comments. The landscape concept is not supported in its current format.*

*The removal of a large Cedrus deodara (Deodar Cedar) located in the front setback along Short St and a Ficus benjamina (Weeping Fig) located in the rear of the site nearing Bay St is supported subject to adequate replenishment planting.*

*From satellite imaging it has been calculated that the existing Deodar is providing 52m<sup>2</sup> of canopy cover. The proposed Pyrus calleryana (Ornamental pear) 50cm pot size is considered unsatisfactory in this instance as it does little to offset the proposed loss of vegetation from site.*

*Council's Tree Management Controls and Urban Forest Policy have a focus on protecting and maintaining trees. Furthermore, where trees are removed, adequate*

*and appropriate compensatory planting is required. In addition, the planting of larger trees (greater than 10m) is supported by the State Government's Greater Sydney Commission (Objective 30) which sets out a minimum of 40% tree canopy cover in suburban areas.*

*It is requested that the landscape plans are amended to provide sufficient above and below ground space for an advanced stock 400L replenishment tree. It must be demonstrated that there is sufficient soil volume provided to sustain the specimen in the landscape upon maturity."*

In summary, Councils Tree Officer does not support the proposal as submitted due to inadequate replacement tree planting and insufficient information provided demonstrating that the on-site landscaped areas can support such replacement planting.

For these and other reasons, the proposal is recommended for refusal.

### C1.21 Green Roofs and Green Living Walls

The proposal includes a "kitchen garden" with vegetable gardens on the roof of the rear garage which is not consistent with, or has not demonstrated compliance with, the following objectives and controls:

*O3 To ensure green roofs are not de-facto private open spaces, entertainment or recreation spaces, rooms or meeting places.*

*O5 To ensure high standards of finish and design, that is visually appealing for adjoining properties, without adversely impacting amenity.*

*O6 To ensure high standards of design so that the space is inviting for various species of flora and fauna.*

*O7 To protect the heritage significance of Heritage Items and Heritage Conservation Areas where proposed.*

Additionally, a maintenance report was not submitted in accordance with Control C2:

*C2 A maintenance report will be submitted, prepared by a suitably qualified person, outlining the care and maintenance strategy for the first two (2) years of the green roof and will include (at a minimum) the following detail:*

- a. strategy for any leaks or weaknesses in the membrane;*
- b. watering in dry periods (if an irrigation system has not been connected to a water supply);*
- c. removal of weeds;*
- d. light fertilization with slow release complete fertilizers; and*
- e. the replacement of dead plants.*

For this and other reasons, the proposal is recommended for refusal.

### C3.1 Residential General Provisions

As discussed in earlier and later sections of the report, the proposal is considered to be incompatible with the heritage conservation area in which it forms a part and will result in adverse amenity impacts on adjoining properties, and therefore, is considered to be inconsistent with the following objectives under this part:

- *O3 To ensure that alterations, additions to residential buildings and new residential development are compatible with the established setting and character of the suburb*

*and neighbourhood and compatible with the desired future character and heritage significance of the place and its setting.*

- O4 To ensure that all residential development is compatible with the scale, form, siting and materials of existing adjacent buildings.
- O5 To ensure that all residential development is consistent with the density of the local area as established by the *Leichhardt Local Environmental Plan 2013*.
- O7 To ensure that the amenity, including solar access and visual privacy, of the development and adjacent properties is not adversely impacted

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

*Side Setbacks*

The proposed dwelling will breach the side setback control graph as prescribed in this Clause as outlined in the following table:

Elevation		Proposed Maximum Wall Height (m)	Required setback (m)	Proposed setback (m)	Compliance
North-east Dwelling	–	7.3m – 9.6m	2.6m-3.9m	Nil-2.1m	No
South-west Dwelling	–	6.8m-9.9m	2.3m – 4m	Nil-2.5m	Partial compliance
South-west Kitchen Garden	–	2.4m	Nil	Nil	Yes

Control C8 under this part states that Council may allow walls higher than that required by the side boundary setback controls where:

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

It is considered that the proposal is not acceptable in relation to the impacts to the Heritage Conservation Area, and consequently, the pattern of development within the streetscape would be compromised. Further, as discussed later in this report, the proposed development will result in adverse and / or unacceptable amenity impacts, including in regard to privacy and solar access, bulk and scale

*Building Location Zone*

The Building Location Zone (BLZ) is determined by having regard to only the main building on the adjacent properties. Image 1 below illustrates the established ground and first floor BLZ (yellow), and second floor BLZ (orange) of the adjoining property at No. 113 Short Street. The proposed ground floor BLZ (red), proposed first floor BLZ (purple) and proposed second floor BLZ (maroon) shown.



Image 1: Building Location Zone along Short Street

Approximate breaches of the established BLZ is provided in the table below:

BLZ	Approx. Breach (mm)
Ground Floor	400mm (not including garage)
First Floor	No breach
First Floor (w. Balcony)*	400mm
Second Floor	200mm

\*Note: The first floor balcony is partially open to the sky however is enclosed by more the 2 walls (mesh screening).

As shown above, the proposed rear building lines will breach the ground floor and second floor BLZ established by No. 113 Short Street. The proposed first floor balcony will extend approximately 400mm beyond No. 113.

Additionally, while the garage and kitchen garden over is not relevant in determining the BLZ, it is noted that this element extends approximately 6400m forward of the ground floor rear building line of No. 113 Short Street.

Pursuant to Clause C3.2 of the LDCP2013, where a proposal seeks to encroach outside or establish a new Building Location Zone, various tests need to be met. The proposal is considered to meet these tests as detailed below:

- Amenity to adjacent properties (i.e. sunlight, privacy, views) is protected and compliance with the solar access controls of this Development Control Plan is achieved



- Comment: The proposed development does not comply with the solar access controls in that further overshadowing unreasonably occurs to the POS of a dwelling (No.113 Short Street) which currently receives less than the required amount of solar access to their private open space between 9.00am and 3.00pm during the winter solstice.
- The proposed development will be compatible with the existing streetscape, desired future character and scale of surrounding development;

Comment: As shown above, the proposal will extend beyond the consistent and established rear building alignments presented along Short Street and for reasons discussed earlier and later in this report, the proposal is considered to be incompatible with the existing streetscape and desired future character of the Mort Bay Neighbourhood and wider *Town of Waterview HCA*.

- The proposal is compatible in terms of size, dimensions privacy and solar access of private open space, outdoor recreation and landscaping;

Comment: The development results in significant breaches to the FSR, Site Coverage and Landscaped Area development standards. Additionally, the proposal does not comply with the minimum private open space requirements under Clause C3.8 of the LDCP2013 nor provides scope for future landscaping that can be protected under Council's Tree Management Controls due to the proposal's excessive FSR and site coverage and inadequate landscaped area provision.

- Retention of existing significant vegetation and opportunities for new significant vegetation is maximised; and

Comment: All significant vegetation will be removed from the subject site. Council's Tree Officer does not support the proposal as submitted due to inadequate replacement tree planting and insufficient information provided demonstrating that the on-site landscaped areas can support such replacement planting.

- The height of the development has been kept to a minimum to minimise visual bulk and scale, as viewed from adjoining properties, in particular when viewed from the private open space of adjoining properties.

Comment: The proposal consists of floor-to-ceiling heights ranging from 2.7m – 3.04m in height and have not been minimised. Further, the proposal extends beyond established building lines at the ground, first and second floors at adjoining sites and these non-compliances in addition to the significant FSR and Site Coverage and landscaped area breaches demonstrate that the rear building line locations are not acceptable and demonstrates that the bulk and scale when viewed from neighbouring rear yards has not been minimised and the visual impacts, particularly when viewed from No. 113 will be intrusive and unacceptable.

Additionally, it is noted that the proposal involves providing both a large balcony at first floor level which is well in excess of the dimension requirements stipulated in Clause C3.3 of the LDCP2013 and a green roof / kitchen garden, both extending beyond established building lines on Short Street and the latter being erected partly to the

south-western boundary with a wall height exceeding 2.5m inclusive of a translucent privacy screen, this screen while reducing potential privacy impacts from the kitchen garden area only increases the intrusive visual bulk impacts, particularly on No. 113 Short Street.

The proposal does not satisfy the above tests and as such is inconsistent with the following objectives having regard to C3.2 Site Layout and Building Design:

*O1 To ensure adequate separation between buildings for visual and acoustic privacy, solar access and air circulation;*

*O2 To ensure the character of the existing dwelling and/or desired future character and established pattern of development is maintained.*

*O3 To ensure that buildings are constructed within an appropriate Building Location Zone (BLZ) from the front and rear boundary to protect neighbourhood features such as streetscape, private open space, solar access and views.*

*O4 To ensure that development:*

- a. reinforces the desired future character and distinct sense of place of the streetscape, neighbourhood and Leichhardt;*
- b. emphasises the street and public domain as a vibrant, safe and attractive place for activity and community interaction;*
- c. complements the siting, scale and form of adjoining development; and*
- d. creates a high level of residential amenity for the site and protects existing or enhances residential amenity of adjoining sites in terms of visual and acoustic privacy, air circulation, solar access, daylight, outlook and views.*

For this and other reasons, the proposal is recommended for refusal.

### C3.5 Front Gardens and Dwelling Entries

The proposed front garden and dwelling entry consists of a concrete brick wall with a large “hit and miss” brickwork arch screening element to the glazing serving the kitchen/dining room behind. The entry is large vertically proportioned archway of concrete construction and a steel rod fence (1m – 1.6m high) is proposed. The overall design of the front entry is considered to be contrary to the following objectives and controls to Clause C3.5 of the LDCP2013:

#### **Objective O1**

- a. provide a sensitive transition between the public and private domain and enables dwellings to achieve a high level of functional and visual engagement with the public realm;*
- b. make a positive contribution to streetscape quality and softens the visual impact of the built form;*

**Control C5** *Dwelling entries are clearly visible and easily identifiable from the street.*

**Control C6** *Dwelling entries include shelter where consistent with the prevailing streetscape character, architectural style of the building or where multi-unit residential development is proposed.*

### C3.6 Fences

The proposed steel rod fence (1m – 1.6m high) is considered to be incompatible with the character of the streetscape and the following objectives of this part of the LDCP2013:

#### **Objective O1 Fences:**

- a. *are compatible with the character of the building and streetscape;*
- b. *enable a high level of visual engagement between the public and private realms and enable a clear view of the dwelling from the street; and*
- c. *do not result in the front gardens of residential development being disconnected from the public realm.*

### C3.8 Private Open Space

**Control C1** of C3.8 Private Open Space (POS) states that for dwelling houses, POS should be:

- a) *located at ground level consistent with the location of private open space on the surrounding properties and the siting controls within this Development Control Plan;*
- b) *has a minimum area of 16sqm and minimum dimension of 3m;*
- c) *is connected directly to the principal indoor living areas; and*
- d) *where ground level is not accessible due to the existing constraints of the site and/or existing development, above ground private open space will be considered.*

*Note: the front setback will not be accepted as private open space.*

Given the site constraints, namely the topography of the land, Council could consider above ground private open space areas, however given that the proposal is for a complete demolition and infill development where the site will be unconstrained following demolition works, it is considered that a compliant private open space area could be provided at ground level. An appropriate POS area has not been provided under the current scheme due to the proposal's excessive density.

The proposal does not provide sufficient POS in accordance with the above and as such the proposal is recommended for refusal.

### C3.9 Solar Access

The subject site and the surrounding lots have a north-south orientation. The following solar access controls under Clause C3.9 apply to the proposal in relation to impacts to glazing on the surrounding sites.

- **C13** – *Where the surrounding allotments are orientated north/south and the dwelling has north facing glazing serving the main living room, ensure a minimum of three hours solar access is maintained between 9.00am and 3.00pm during the winter solstice.*
- **C15** – *Where surrounding dwellings currently receive less than the required amount of solar access to the main living room between 9.00am and 3.00pm during the winter solstice, no further reduction of solar access is permitted.*

In addition, C3.9 also requires protection of solar access to private open spaces of adjoining properties. The subject site has north-south orientation, and therefore, the following solar

access controls apply to the proposal in relation to solar access to private open spaces of affected properties:

- **C16** – *Where surrounding dwellings have south facing private open space ensure solar access is retained for two hours between 9.00am and 3.00pm to 50% of the total area during the winter solstice.*
- **C19** – *Where surrounding dwellings currently receive less than the required amount of solar access to their private open space between 9.00am and 3.00pm during the winter solstice, no further reduction of solar access is permitted.*

The shadow diagrams provided are generally accurate in the depiction of the proposed impacts at the winter solstice. The provided shadow diagrams illustrate that solar access to No. 113 Short Street receives less than the requisite amount of solar access to their Private Open Space between 9.00am and 3.00pm during the winter solstice. In accordance with Control C19, no further reduction of solar access is permitted.

***Assessing the impact of development on the solar access of neighbours:***

*In assessing the reasonableness of solar access impact to adjoining properties, and in particular, in any situation where controls are sought to be varied, Council will also have regard to the ease or difficulty in achieving the nominated controls having regard to:*

- a. the reasonableness of the development overall, in terms of compliance with other standards and controls concerned with the control of building bulk and having regard to the general form of surrounding development;*
- b. site orientation;*
- c. the relative levels at which the dwellings are constructed;*
- d. the degree of skill employed in the design to minimise impact; and*
- e. whether reasonably available alternative design solutions would produce a superior result.*

For reasons discussed previously and later in this report, it is considered that the proposal has failed to satisfy any of the above tests.

Given the non-compliances with Controls C19 above, and due to the compounding issues discussed previously and later in this report, the proposal is recommended for refusal.

**C3.10 - Views**

Given the location of the dwelling, being situated on a prominent corner overlooking Mort Bay, concerns have been raised regarding view loss.

The following images demonstrate some of the views of the city skyline currently available to surrounding properties, with the existing dwelling is outlined in red:



Image 2: View from centre of ground floor front verandah at No. 122 Short Street

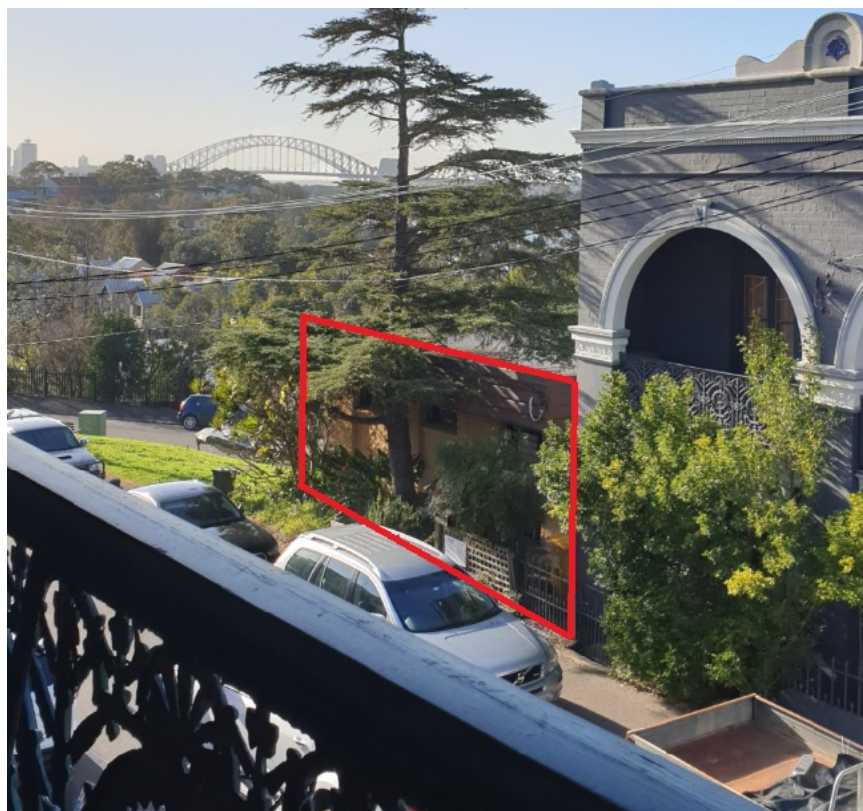


Image 3: View from centre of first floor front Balcony at No. 118 Short Street



Image 4: View from centre of ground floor front verandah at No. 118 Short Street



Image 5: Views from across side boundary and in the centre of second floor rear balcony at No. 113 Short Street



Image 6: Views from across side boundary and in the centre of second floor rear balcony at No. 111 Short Street

Objections have been received from Nos. 109, 111, 113, 116, 118, 122 Short Street regarding potential view loss impacts from their properties.

Council considers the *Tenacity* steps in the assessment of reasonable view sharing:

- a) What views will be affected? In this Plan, a reference to views is a reference to water views and views of significant landmarks (e.g. Sydney Harbour, Sydney Harbour Bridge, ANZAC Bridge and the City skyline including features such as Sydney Tower). Such views are more highly valued than district views or views without significant landmarks.
- b) How are the views obtained and assessed? Views from private dwellings considered in development assessment are those available horizontally to an observer standing 1m from a window or balcony edge (less if the balcony is 1m or less in depth).
- c) Where is the view enjoyed from? Views enjoyed from the main living room and entertainment areas are highly valued. Generally it is difficult to protect views from across side boundaries. It is also generally difficult to protect views from other areas within a residential building particularly if views are also available from the main living room and entertainment areas in the building concerned. Public views are highly valued and will be assessed with the observer standing at an appropriate point in a public place.
- d) Is the proposal reasonable? A proposal that complies with all development standards (e.g. building height, floor space ratio) and planning controls (e.g. building setbacks, roof pitch etc) is more reasonable than one that breaches them.

The anticipated view impacts from the properties who submitted objections are detailed below:

*109 Short Street*

Minimal/no impact from proposed development. Any potential views are obtained across multiple side boundaries and therefore are difficult to protect.

*111 Short Street*

Loss of view to city skyline to the east. Views to the city skyline to the east are obtained from the rear first floor balcony across a side boundary as shown in Image 6 above. Views to the Harbour Bridge and city skyline to the south will still be available from the second-floor rear balcony. It is noted that views to the southern skyline are partially obscured by existing vegetation to the rear of 111 Short Street.

*113 Short Street*

Loss of view to city skyline to the east. Views to the city skyline to the east are obtained from the rear first floor balcony across a side boundary as shown in Image 5 above. Views to the Harbour Bridge and city skyline to the south will still be available from the second-floor rear balcony. It is noted that views to the northern city skyline are partially obscured by existing vegetation at the rear of 113 Short Street.

*116 Short Street*

Loss of views to the Harbour Bridge. Views are obtained from ground floor verandah and first floor balcony located at the front of the property looking over the front boundary in a similar location to that of 118 Short Street shown in images 3 & 4. It is noted that 116 Short Street is located to the west of 118 Short Street, and therefore, current views and view loss will be exacerbated due to distance from the subject site.

*118 Short Street*

Partial loss of views to the Harbour Bridge. Views are obtained from ground floor verandah and first floor balcony located at the front of the property looking over the front boundary shown in images 3 & 4 above.

*122 Short Street*

Partial loss of views to city skyline to the south. Views are obtained from ground floor verandah located at the front of the property looking over the front boundary. Partial views to the city skyline to the south and Harbour Bridge will still be shared shown in Image 2.

PREDa advice provided to the applicant requested that all reasonable attempts be made to identify possible view loss impacts arising from the development. The applicant submitted a limited view loss analysis within the provided SEE touching on the proposed view loss implications from the development to Nos. 122A, 120 and 113 Short Street in accordance with the planning principles established in the *Tenacity Consulting Pty Ltd v Warringah Council (2004)* NSWLEC 140.

It is considered in this report that the proposal has not demonstrated compliance with the above view sharing tests, principally with regard to point (d) in that the proposal is not



reasonable considering the significant non-compliances with the FSR, site coverage and landscaped area development standards and does not comply with an array of planning controls discussed earlier and later in this report.

#### C3.11 – Visual Privacy & C3.12 Acoustic Privacy

The following objectives and controls are applicable to the development:

**Control C4** *Roof terraces will be considered where they do not result in adverse privacy impacts to surrounding properties. This will largely depend on the:*

- a. *design of the terrace;*
- b. *the existing privacy of the surrounding residential properties;*
- c. *pre-existing pattern of development in the vicinity; and*
- d. *the overlooking opportunities from the roof terrace.*

**Control C9** *of Part C3.11 Visual Privacy states that balconies at first floor or above at the rear of residential dwellings will have a maximum depth of 1.2m and length of 2m unless it can be demonstrated that due to the location of the balcony there will be no adverse privacy*

**Control C10** *Living areas are to be provided at ground floor level to minimise opportunities for overlooking of surrounding residential properties.*

#### *Kitchen Garden*

The elevated “kitchen garden” is located above the proposed garage to the rear and can be accessed from the proposed balcony. The kitchen garden is approximately 29.8sqm extending completely to the rear boundary. A privacy screen is proposed to the kitchen gardens western/southern side adjoining No. 113 Short Street. Whilst the privacy screen has been proposed to reduce the potential privacy impacts between the subject site and No. 113 it raises concerns regarding adverse visual bulk impacts particularly when viewed from the POS area of No. 113 Short Street.

Due to the design, elevation, orientation and size of the proposed kitchen garden, it is considered that the proposal will also result in unreasonable impacts to No. 113 Short Street by way of acoustic impacts due to the size of this area which encourages greater use of the area including becoming de-facto private open space area for the subject site. As such, the accessible kitchen garden is not supported.

#### *First Floor Balcony*

The proposed balcony associated with proposed living room at first-floor is 4.19m x 6.15m and due to the bulk and scale impacts discussed in this report, the balcony is not supported.

The proposal is considered unacceptable and contrary to the objectives of Clause C3.11 and C3.12 of the LDCP2013 which requires development to be designed with a high level of consideration to protecting visual privacy and acoustics within the dwelling, in particular the main living room, and private open space of both the subject site and nearby residential uses.

Given the above, the proposal is recommended for refusal.

#### 5(e) The Likely Impacts

The assessment of the Development Application demonstrates that the proposal will have an adverse impact on the locality in the following way:

- Adverse impact on Heritage Conservation Area and unsatisfactory response to desired future character controls;
- Adverse amenity impacts – bulk and scale, POS, overshadowing and visual privacy;
- Unsatisfactory on-site amenity outcomes, including private open space controls;
- Unsatisfactory tree replenishment planting; and
- Significant breaches of applicable site coverage and floor space ratio development standards;

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

It is considered that the proposal will have an adverse impact on the adjoining properties and therefore it is considered that the site is unsuitable to accommodate the proposed development.

#### 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.

Six (6) unique submissions were received in response to the initial notification.

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

- Suitability of site – see Section 5 (a)(iv) - Clause 4.4 and Section 5(d)
- Bulk and Scale of Development – See Section 5(d) - C1.2; C1.3; C1.4; C3.2
- FSR non-compliance – See Section 5 (a)(iv) - Clause 4.4
- View loss – see Section 5(d) – C3.10 Views
- Tree Health – see Section 5(d) – C1.14
- Impact on Heritage Conservation Area – see Section 5(c) C1.3 and C1.4
- Building Location Zone – see Section 5(c) - C3.2
- Loss of Privacy – see Section 5(d) - C3.11
- Materials and finishes – see section 5(d) - C1.3; C1.4
- Rear Building Location Zone – see Section 5(d) – C3.2

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

#### Issue - Foreshore Area

“The development is within a protection area as noted and hence consideration should be given to the impact on views of the city, foreshore and harbour bridge (as that relates to residents, Bay St park users etc”

#### Comment

The subject site is not located in a foreshore area. Notwithstanding, the application is recommended for refusal.

Issue – Geotechnical Report

*“Has Council obtained a geotechnical report? Has Council required any investigation into the drainage and soil stabilisation systems? This three-storey structure will require deep foundations and excavations. The documents on the website do not seem to address drainage, soil stability or retaining works.”*

Comment

A Geotech report was not submitted with the application and is required when it is proposed to excavate to a depth of two metres or more below the existing ground level. Notwithstanding, the extent of excavation is not supported by Council as it is not in accordance with the objectives and controls having regard to C1.4 – Heritage and C1.19 - Rock faces, rocky outcrops, cliff faces, steep slopes and rock walls. The application is recommended for refusal.

Issue - Privacy screen bulk

*“The applicant should delete screens from the rear terrace garden level to harmonise with the overall street aesthetics. Because of the harbour and park views, privacy screens should not be solid screens”*

Comment

The kitchen garden terrace and ancillary structures are not support in due to bulk and scale and amenity impacts having regard to solar access, visual and acoustic privacy. Notwithstanding the proposal is recommended for refusal.

Issue - Tree location

*“There should not be a tree in the rear planter as this may cause an obstruction of views in the longer term.”*

Comment

Council Urban Forests Officer does not support the proposal as lodged due to inadequate replacement tree planting and insufficient information provided demonstrating that the on-site landscaped areas can support such replacement planting. As such, the application is recommended for refusal.

Issue - A/C unit and external lights - Location/Noise

*“The location of air conditioning units and external lights should be placed to minimise light and noise nuisance.”*

Comment

An A/C unit nor external lighting is depicted on the provided architectural plans and as such fall outside the scope of this assessment. If the application were to be approved, appropriate conditions would be imposed requiring the proposal to comply with appropriate NCC requirements and further conditions imposed relating to external lighting. The determination of this application does not remove the need to obtain or comply with any other applicable planning instruments. Notwithstanding the application is recommended for refusal.

Issue - Construction noise and vibration impacts

*“Should the proposal be approved, the subsequent development will create significant noise and vibration impacts throughout the construction period.”*

Comment

If the application were approved, appropriate conditions will be imposed relating to the different stages of the development. Notwithstanding, the application is recommended for refusal.

### 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 contrary to the public interest as it will result in adverse amenity impacts to surrounding properties and is incompatible with the heritage conservation area.

## 6 Referrals

### 6(a) Internal

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

- Heritage – Issues raised have not been adequately resolved.
- Engineer – Requested additional information
- Landscape – Issue raised have not been adequately resolved.

### 6(b) External

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

#### Ausgrid

The application was referred to Ausgrid under Clause 45 of the State Environmental Planning Policy (Infrastructure) 2007. Ausgrid provided formal response stating there were no objections to the proposal. The following comments were provided:

The applicant/developer should note the following comments below regarding any proposal within the proximity of existing electrical network assets. Underground Cables Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Safework Australia – Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables. Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable

## 7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions are not payable for the proposal.

## 8. Conclusion

The proposal does not comply with the aims, objectives and design parameters contained in Leichhardt Local Environmental Plan 2013 and Leichhardt Development Control Plan 2013. The approval of the application would not be in the public interest and in view of the circumstances, refusal of the application is recommended.

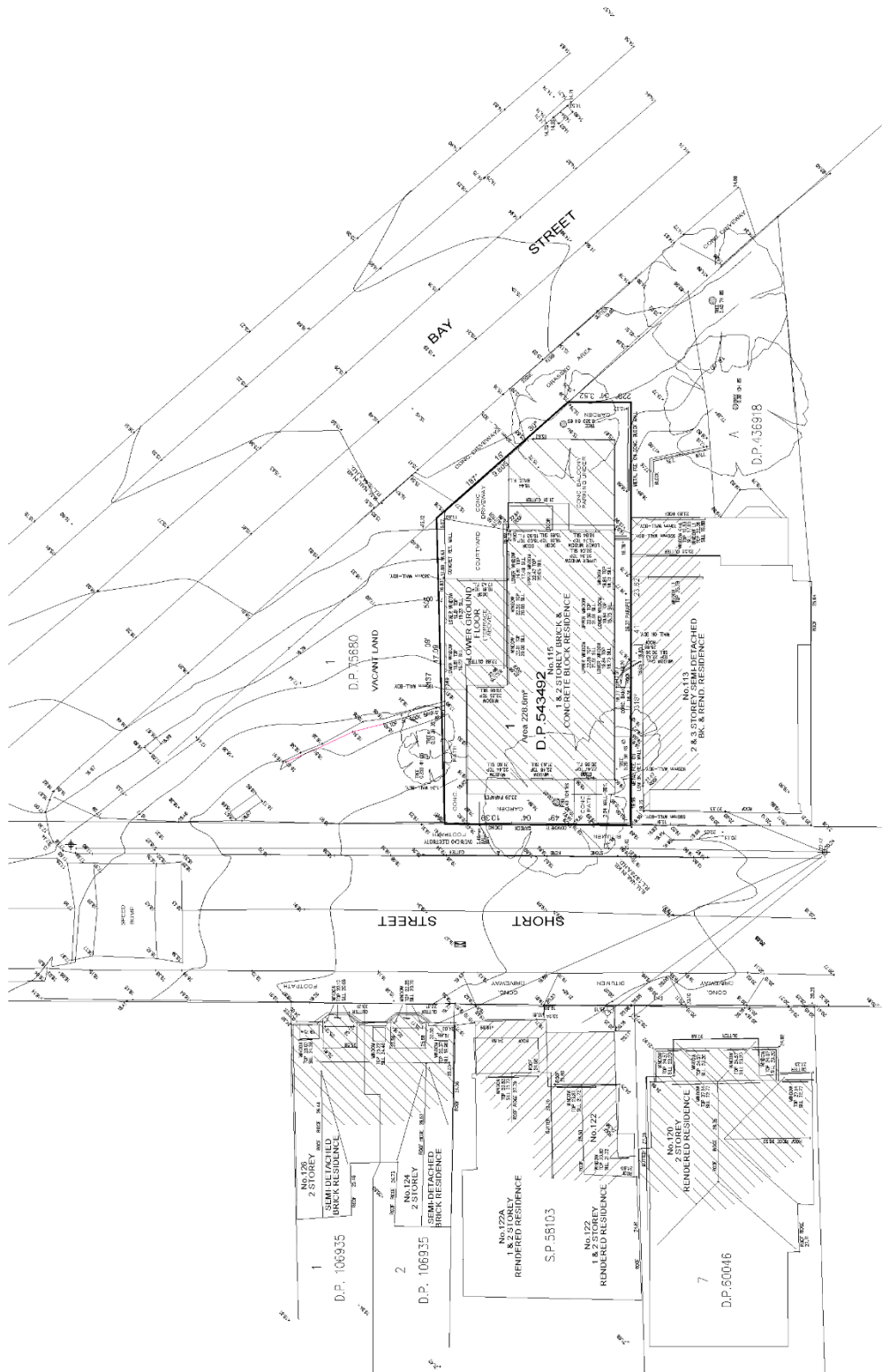
## 9. Recommendation

That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, refuse Development Application No. DA/2020/0375 for the demolition of existing dwelling and construction of a new multi level dwelling with parking at rear and associated works at 115 Short Street BIRCHGROVE NSW 2041 for the following reasons.

1. The proposed development is inconsistent and / or has not demonstrated compliance with the Leichhardt Local Environmental Plan 2013, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:
  - a) Clause 1.2 – Aims of Plan
  - b) Clause 2.3 – Zone objectives and Land Use Table
  - c) Clause 4.3A(3)(a) – Landscaped Area for residential accommodation in Zone R1
  - d) Clause 4.3A(3)(b) - Site Coverage for residential accommodation in Zone R1
  - e) Clause 4.4 – Floor Space Ratio
  - f) Clause 4.6 – Exceptions to Development Standards
  - g) Clause 5.10 – Heritage Conservation
  - h) Clause 6.4 – Stormwater Management
- e) A Clause 4.6 request to vary the development standard for Landscaped Area is required but has not accompanied the application and, as such, there is a lack of jurisdiction to approve the application.
- f) The Clause 4.6 requests to vary the development standards for Site Coverage and Floor Space Ratio do not demonstrate sufficient environmental planning grounds to vary either standard.
- g) The proposed development is inconsistent and has not demonstrated compliance with the following provisions of Leichhardt Development Control Plan 2013, pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979:
  - a) Clause C1.0 - General Provisions
  - b) Clause C1.4 – Heritage Conservation Areas and Heritage Items
  - c) Clause C1.5 - Corner Sites
  - d) Clause C1.11 Parking
  - e) Clause C1.12 – Landscaping
  - f) Clause C1.14 – Tree Management
  - g) Clause C1.19 – Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls
  - h) Clause C1.21 – Green Roofs and Green Living Walls
  - i) Clause C.2.2.2.5: Mort Bay Distinctive Neighbourhood
  - j) Clause C3.1 - Residential General Provisions

- k) Clause C3.2 - Site Layout and Building Design
  - l) Clause C3.3 - Elevation and Materials
  - m) Clause C3.5 - Front Gardens and Dwelling Entries
  - n) Clause C3.6 - Fences
  - o) Clause C3.8 - Private Open Space
  - p) Clause C3.9 - Solar Access
  - q) Clause C3.10 - Views
  - r) Clause C3.11 - Visual Privacy
  - s) Clause C3.12 - Acoustic Privacy
  - t) Clause E1.2.2 - Managing Stormwater within the Site
  - u) Clause E1.2.3 - On-Site Detention of Stormwater
- h) The proposal would result in adverse environmental impacts on the built environment in the locality pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.
- i) The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979.
- j) The approval of this application is considered contrary to the public interest, pursuant to Section 4.15 (1)(d) and (e) of the Environmental Planning and Assessment Act 1979.

Attachment A – Plans of Proposal



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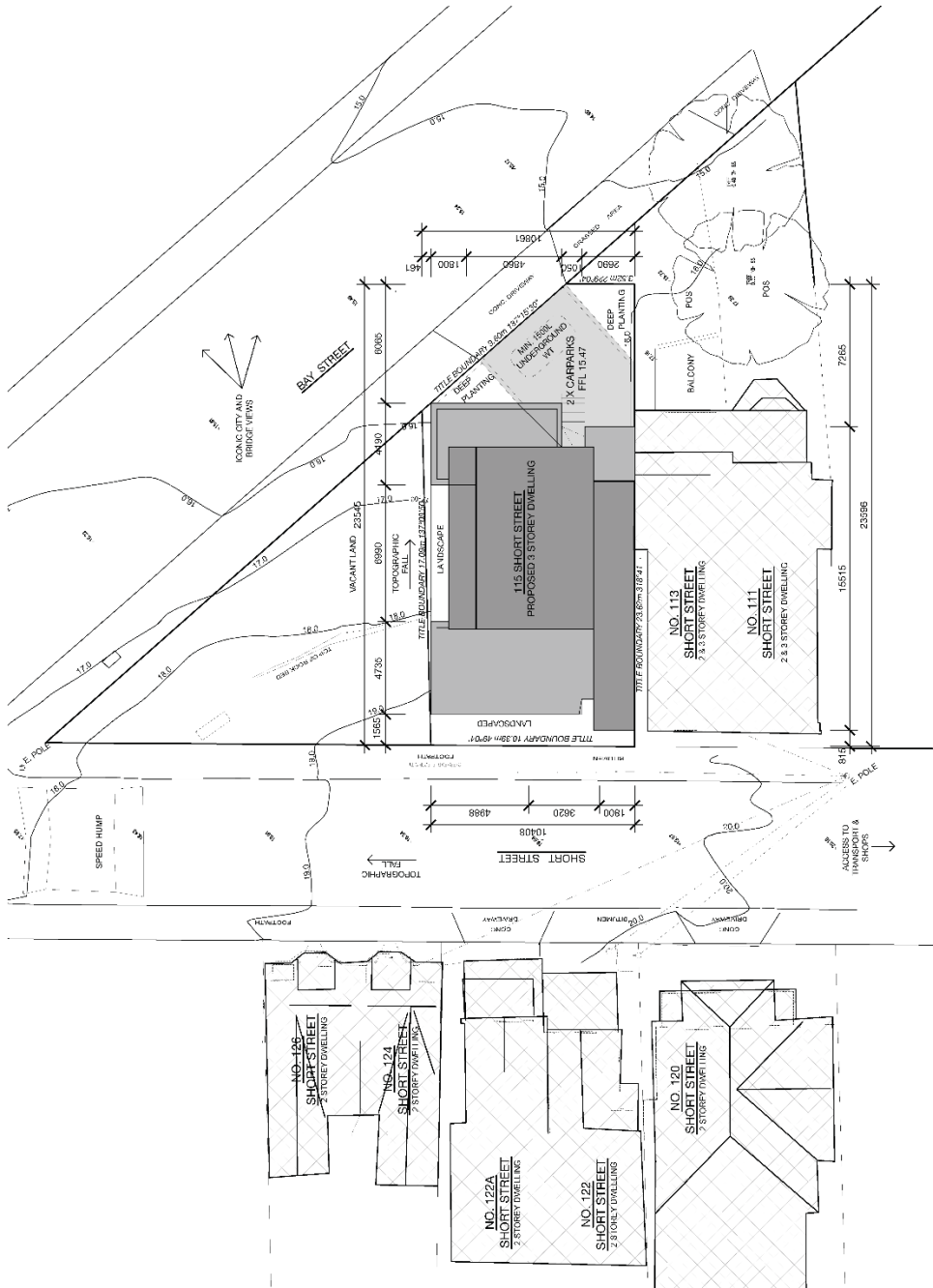
DRAWING	EXISTING SITE PLAN	CLIENT	LINDY ANSWORTH
SCALE	1:200 @ A3	ADDRESS	115 SHORT STREET BIRCHGROVE NEW 2041
DRAWN	JS	PROJECT	DA APPLICATION
CHECKED	SW	PROJECT	BIRCHGROVE
DATE	06/08/2020	PAGE NO.	REV
		A001	-

We warrant that the information on this plan is true and correct to the best of our knowledge and belief. We warrant that the information on this plan is true and correct to the best of our knowledge and belief. We warrant that the information on this plan is true and correct to the best of our knowledge and belief.

**1** EXISTING SITE PLAN  
A001 SCALE 1:200 @ A3

AREA ANALYSIS

TOTAL SITE AREA	226.50m <sup>2</sup>
EXISTING	
EX GROUND FLOOR	14.80m <sup>2</sup>
EX FIRST FLOOR	108.29m <sup>2</sup>
EX SECOND FLOOR	66.52m <sup>2</sup>
PROPOSED GROSS FLOOR AREA	203.65m <sup>2</sup>
EXISTING BALCONIES	46.67m <sup>2</sup>
EXISTING CARPORT	28.37m <sup>2</sup>
EXISTING SITE COVERAGE	15% 12m <sup>2</sup> (97%)
EX HARD SURFACES	41.96m <sup>2</sup>
EX IMPERVIOUS AREA	194.08m <sup>2</sup> (86%)
EXISTING LANDSCAPED AREA	34.50m <sup>2</sup> (15%)
EXISTING FLOOR SPACE RATIO	0.92:1 (68.8m <sup>2</sup> )
PROPOSED	
PROPOSED GROUND FLOOR	88.30m <sup>2</sup>
PROPOSED FIRST FLOOR	102.78m <sup>2</sup>
PROPOSED SECOND FLOOR	61.88m <sup>2</sup>
PROPOSED GROSS FLOOR AREA	253.00m <sup>2</sup>
PROPOSED BALCONY	65.08m <sup>2</sup>
PROPOSED VERANDAH	2.80m <sup>2</sup>
PROPOSED CARPORT	40.10m <sup>2</sup>
PROPOSED SITE COVERAGE	141.58m <sup>2</sup> (62%)
PROPOSED HARD SURFACES	00.00m <sup>2</sup>
PROPOSED IMPERVIOUS AREA	166.30m <sup>2</sup> (65%)
PROPOSED LANDSCAPED AREA	42.78m <sup>2</sup> (19%)
PROPOSED FLOOR SPACE RATIO	1.09:1 (250.20m <sup>2</sup> )



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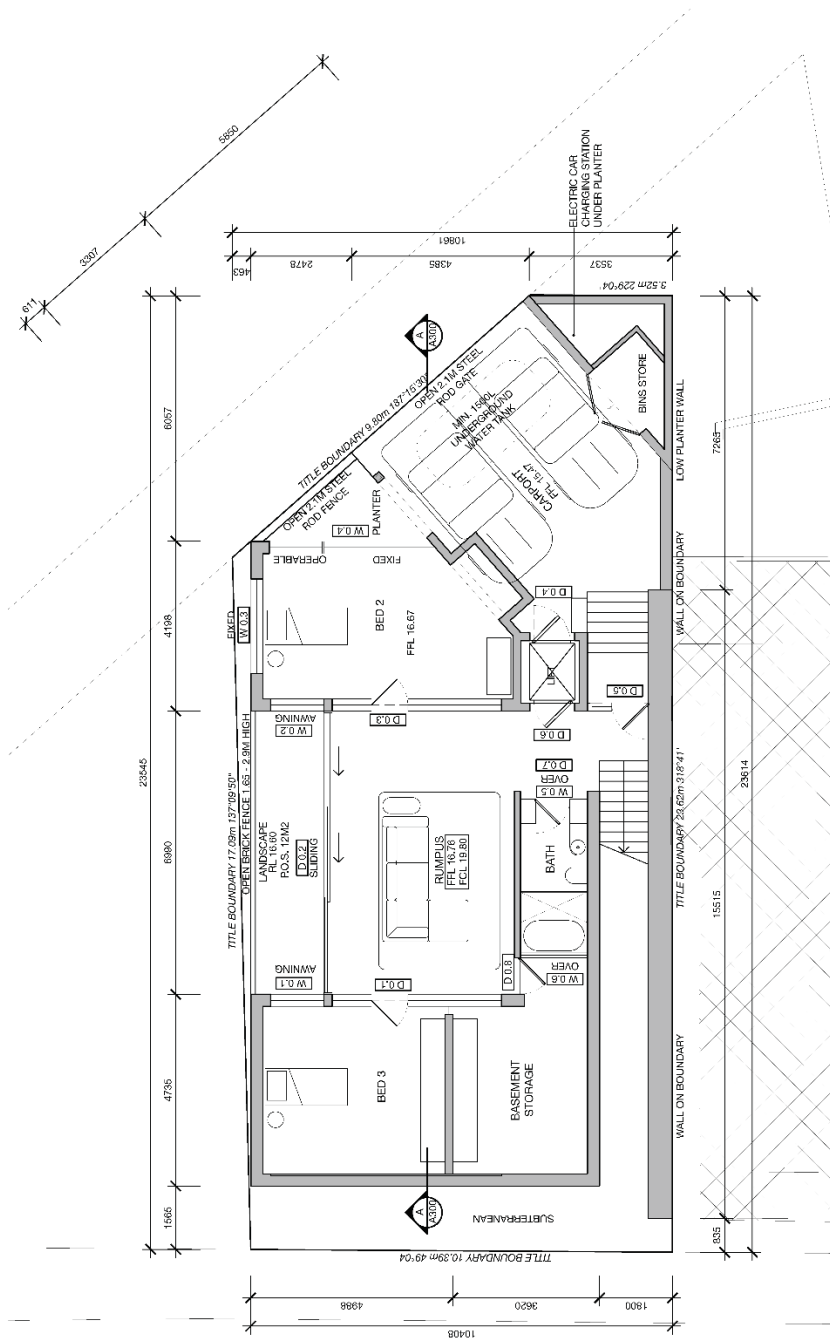
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ADDRESS	115 SHORT STREET		BIRCHGROVE, NSW 2041
SCALE	1:200 @ A3	DA APPLICATION	
DRAWN	JS	TRACED BY	BIRCHGROVE
CHECKED	SW	PROJ. NO.	A100
DATE	05.06.2020	REV	-

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1 PROPOSED SITE PLAN/SITE ANALYSIS  
A100 SCALE 1:200 @ A3



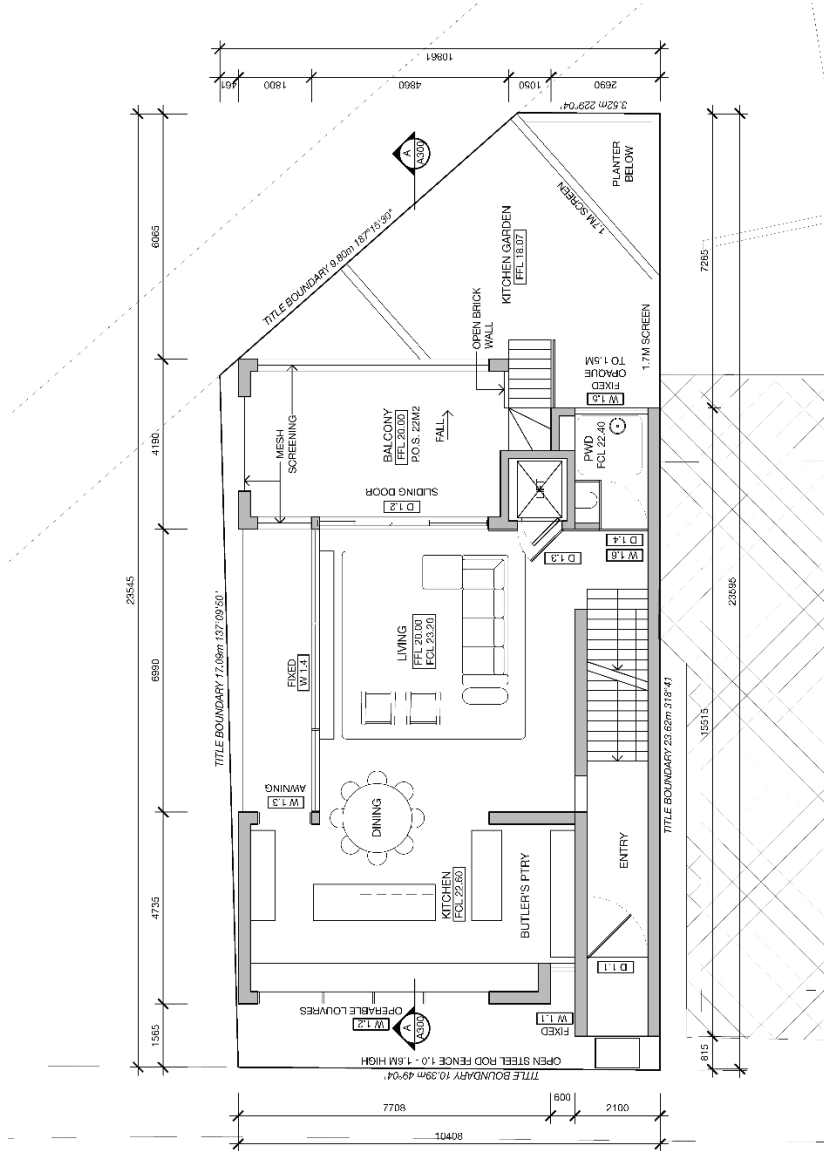


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DRAWING	PROPOSED GROUND FLOOR PLAN	CLIENT	LINDY ANSNORTH
SCALE	1:100 @ A3	ADDRESS	118 SHORT STREET BIRCHGROVE, NSW 2041
DRAWN	JS	DA APPLICATION	
CHECKED	SW	PROJECT	BIRCHGROVE
DATE	05/06/2020	PROJ. NO.	A101
		REV	-

All dimensions are accurate to 10mm unless otherwise indicated. The client is responsible for the accuracy of the information provided. The architect is not responsible for the accuracy of the information provided. The architect is not responsible for the accuracy of the information provided. The architect is not responsible for the accuracy of the information provided.

1 PROPOSED GROUND FLOOR PLAN  
A101 SCALE 1:100 @ A3

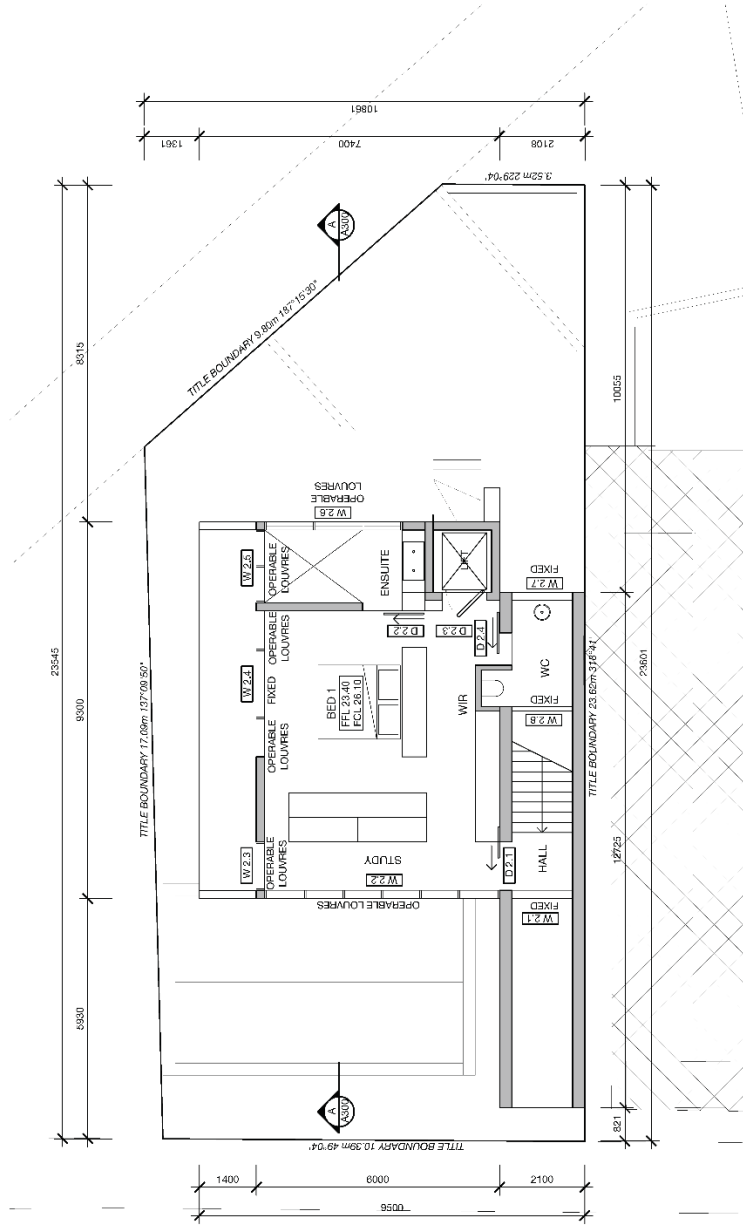


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DRAWING	PROPOSED FIRST FLOOR PLAN	CLIENT	LINDY ANSNORTH
SCALE	1:100 @ A3	ADDRESS	118 SHORT STREET BIRCHGROVE, NSW 2041
DRAWN	JS	DA APPLICATION	
CHECKED	SW	PROJECT	BIRCHGROVE
DATE	05/06/2020	NO. NO.	A102
		REV	-

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1 PROPOSED FIRST FLOOR PLAN  
A102 SCALE 1:100 @ A3



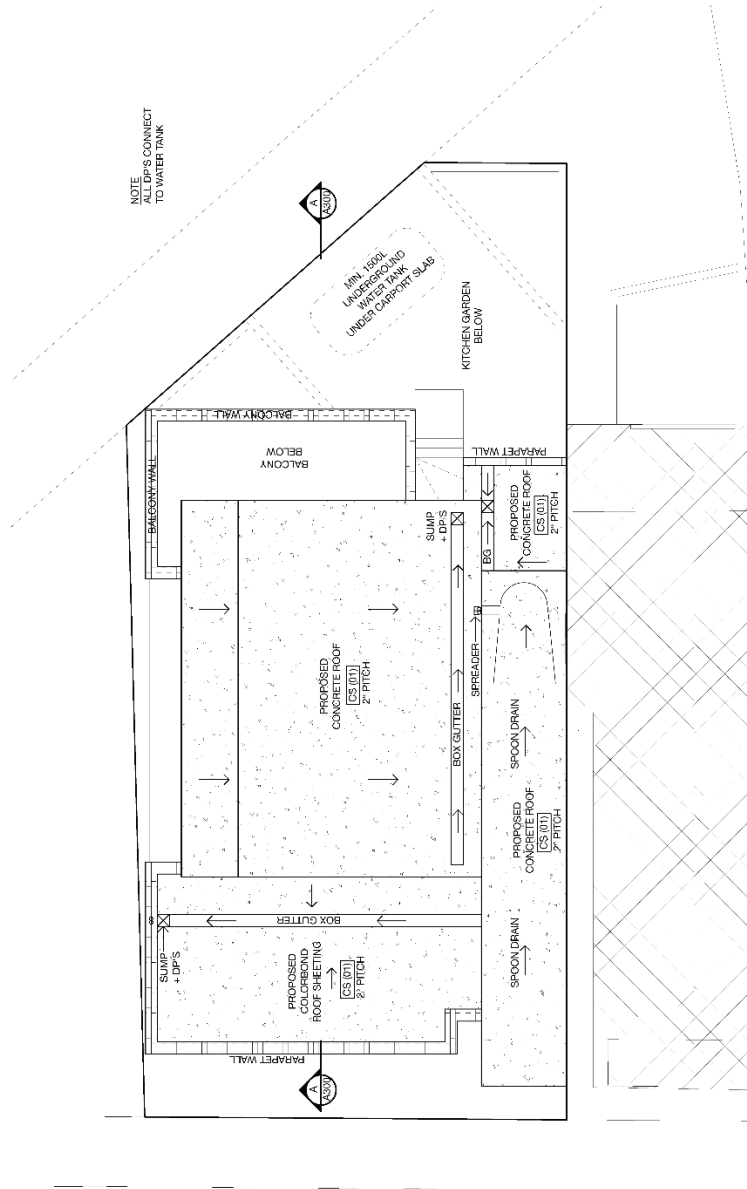
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DRAWING	PROPOSED SECOND FLOOR PLAN	CLIENT	LINDY ANSNORTH
SCALE	1:100 @ A3	ADDRESS	118 SHORT STREET BIRCHGROVE, NSW 2041
DRAWN	JS	DA APPLICATION	
CHECKED	SW	PROJECT	BIRCHGROVE
DATE	05.06.2020	PROJ. NO.	A103
		REV	-

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1 PROPOSED SECOND FLOOR PLAN  
A103 / SCALE 1:100 @ A3

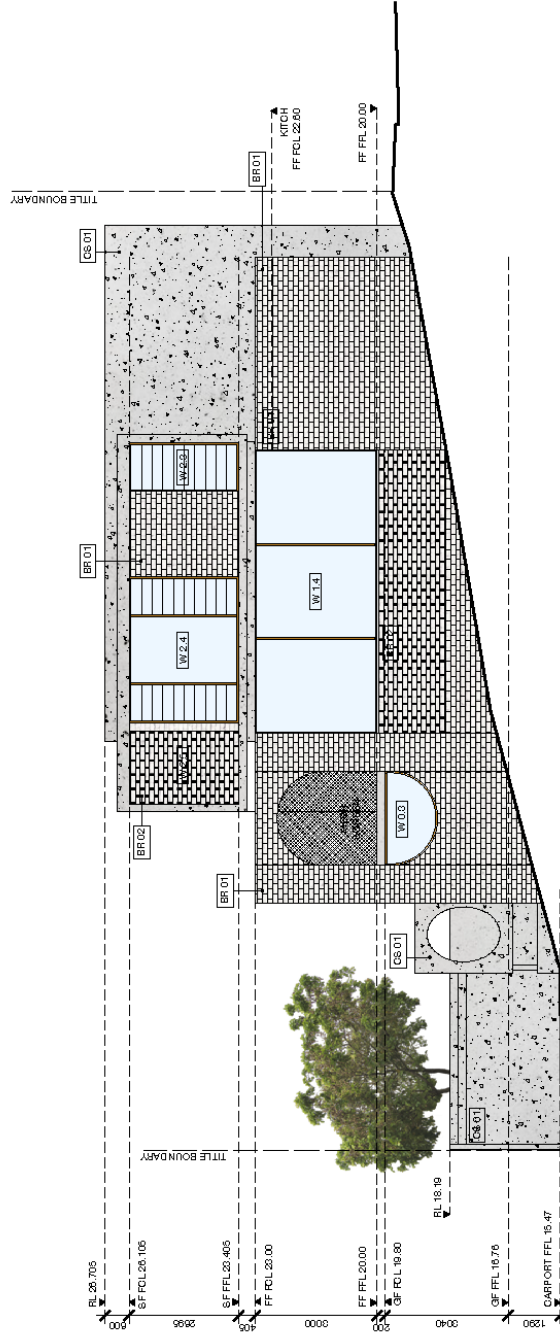
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DRAWING	PROPOSED ROOF PLAN	CLIENT	LINDY ANSNORTH
SCALE	1:100 @ A3	ADDRESS	118 SHORT STREET BIRCHGROVE, NSW 2041
DRAWN	JS	DA APPLICATION	
CHECKED	SW	PROJECT	BIRCHGROVE
DATE	05.06.2020	NO. IN SET	A104
		REV	-

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1 PROPOSED ROOF PLAN  
A104 / SCALE 1:100 @ A3

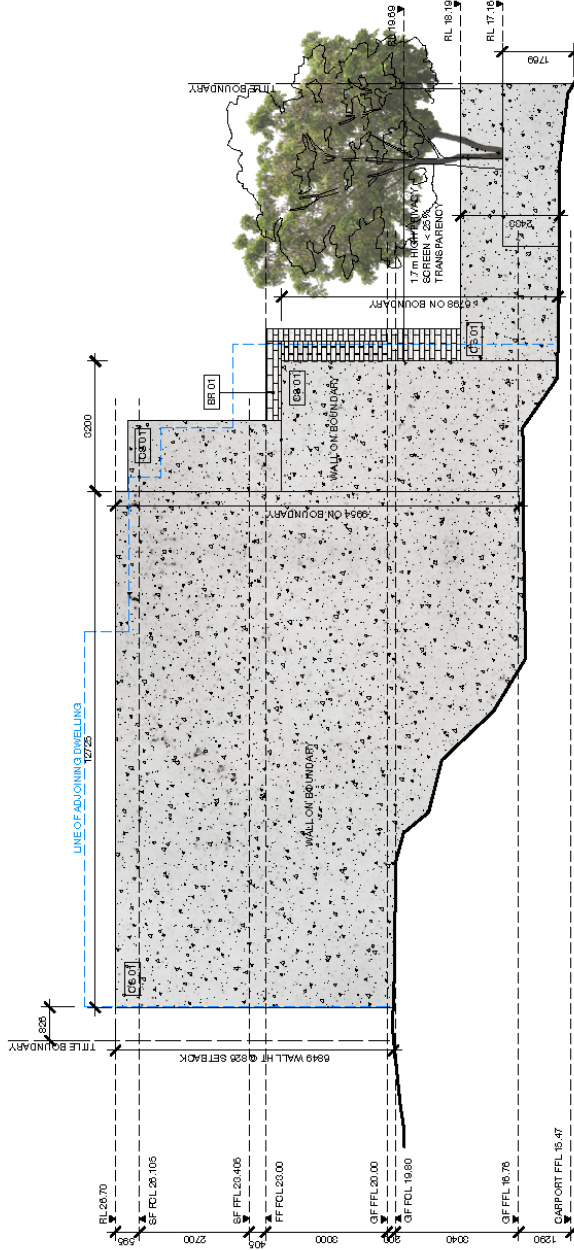


DRAWING	PROPOSED NORTH ELEVATION	CLIENT	LINDY AINSWORTH
		ADDRESS	115 SHOOT STREET BIRCHGROVE NSW 2041
		DA APPLICATION	
		PROJECT	BIRCHGROVE
		PAGE NO.	A200
		REV	-

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1 PROPOSED NORTH ELEVATION  
A200 SCALE 1:100 @ A3

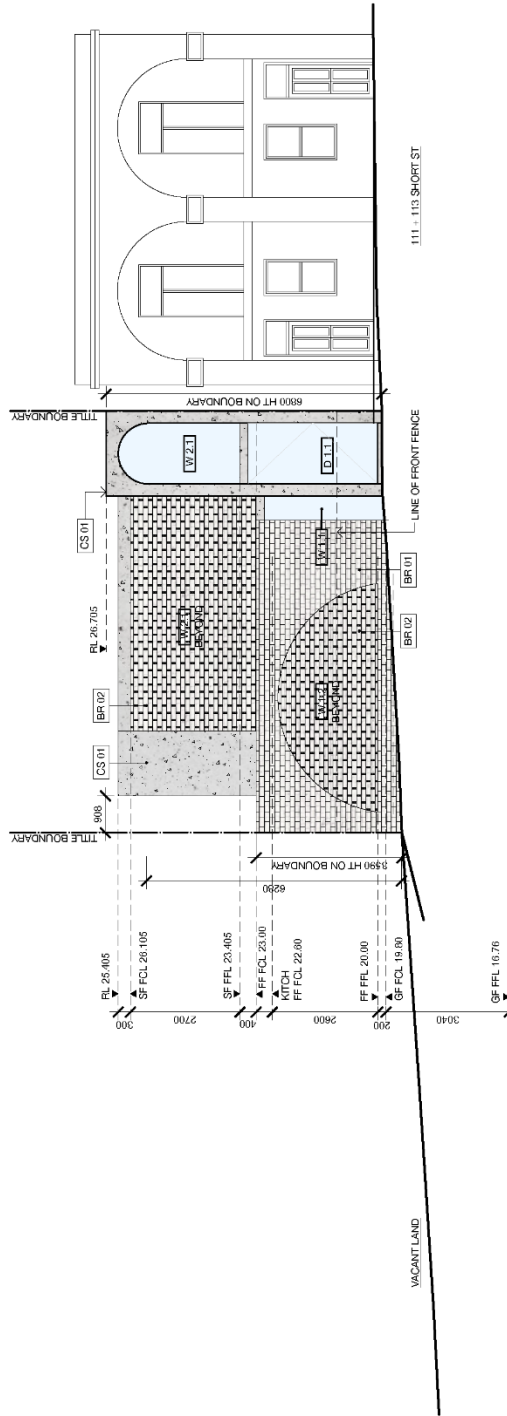


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DRAWING	PROPOSED SOUTH ELEVATION	CLIENT	LINDY ANSWORTH
SCALE	1:100 @ A3	ADDRESS	115 SHOT STREET BIRCHGROVE NSW 2041
DRAWN	JS	DA APPLICATION	
CHECKED	SW	PROJECT	BIRCHGROVE
DATE	09.09.2020	PAGE NO.	A201
		REV	-

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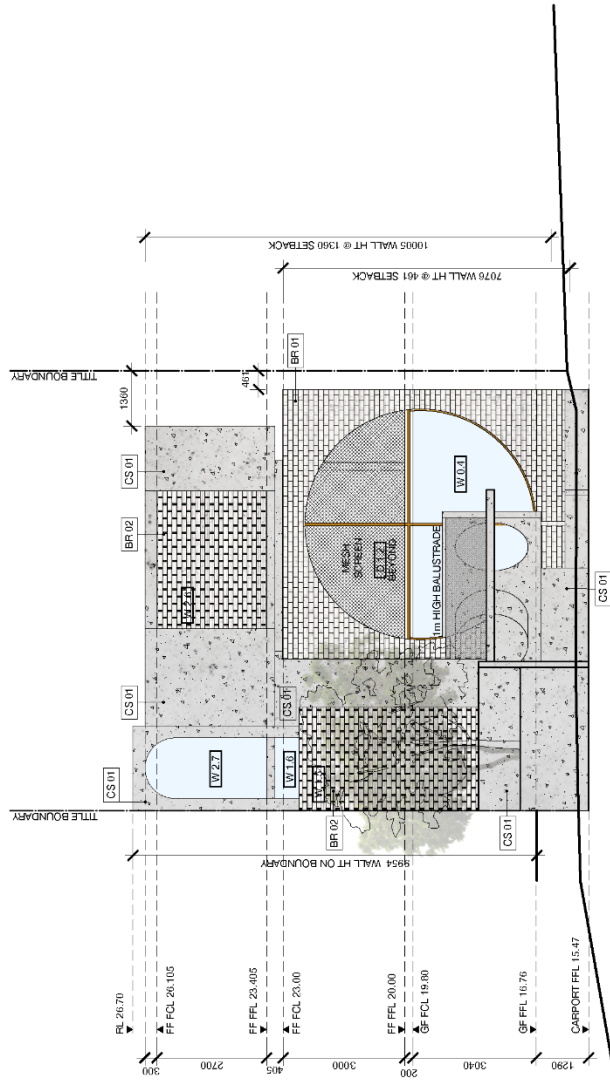


1 PROPOSED WEST/STREETSCAPE ELEVATION  
A202 SCALE 1:100 @ A3

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DRAWINGS	PROPOSED WEST/STREETSCAPE ELEVATION	CLIENT	UNDY/AMNSWORTH 114 SHORT STREET BIRCHGROVE NSW 2014
SCALE	1:100 @ A3	PROJECT	DA APPLICATION
DRAWN	JS	PROJECT	BIRCHGROVE
CHECKED	SM	DATE	05.02.2020
DATE	05.02.2020	PAGE NO.	A202
		REV	A

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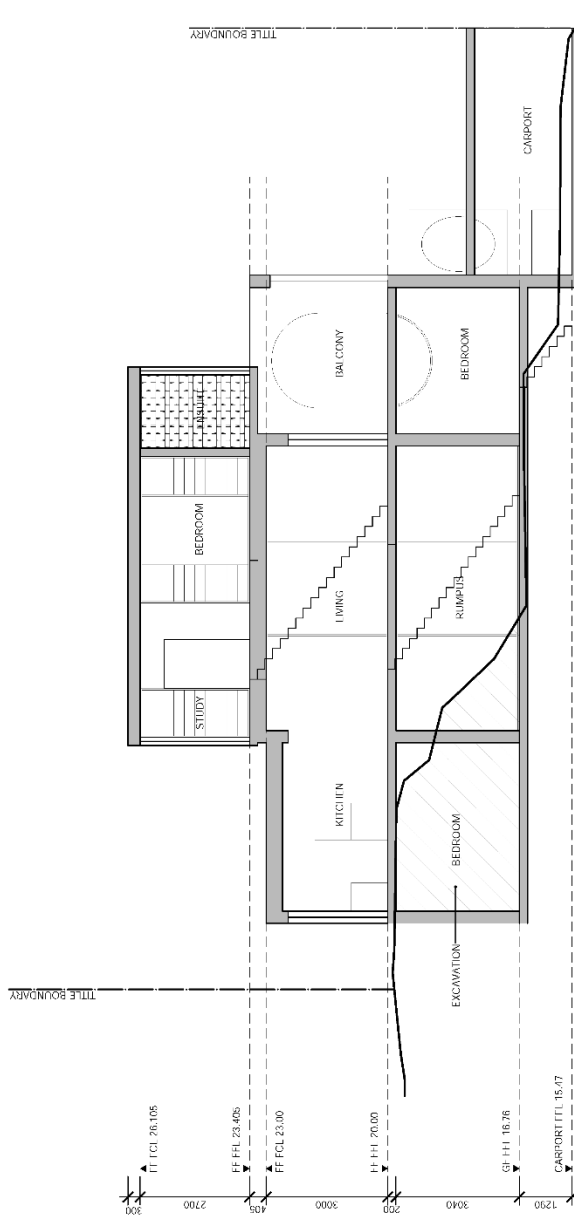
1 PROPOSED EAST ELEVATION  
A203 SCALE 1:100 @ A3

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DRAWING	PROPOSED EAST ELEVATION	CLIENT	UNDY/MSWOPH
SCALE	1:100 @ A3	ADDRESS	114 SLOTT STREET BIRCHGROVE NSW 2014
DRAWN	JS	PROJECT	DA APPLICATION
CHECKED	SM	PROJECT	BIRCHGROVE
DATE	05.02.2020	PAGE NO.	A203
		REV	-

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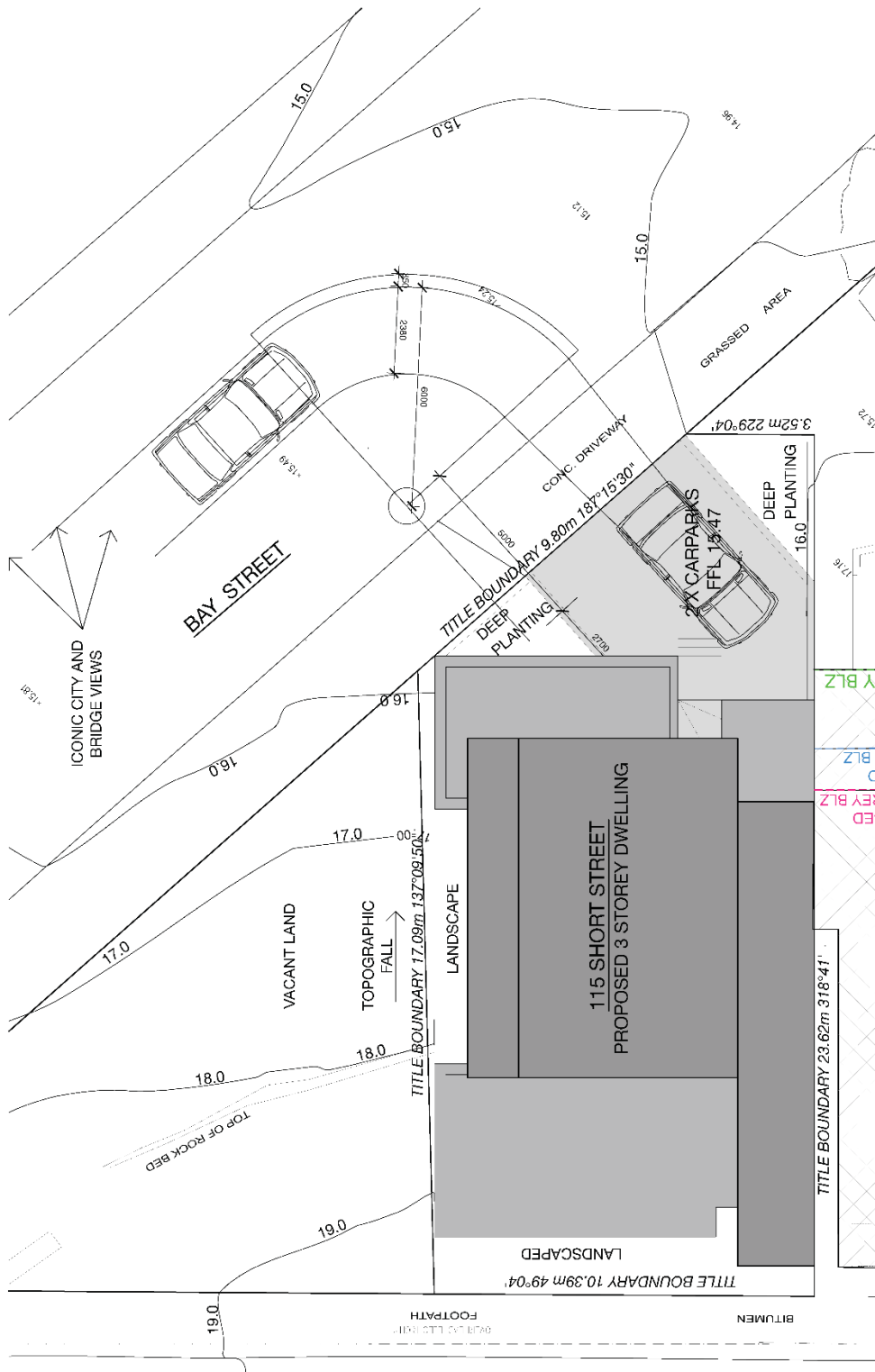


1 PRELIMINARY SECTION  
A300/ SCALE 1:100 @ A3

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613 9036 0380

DRAWING	PRELIMINARY SECTION	CLIENT	LINDY ANSKORTH
SCALE	1:100 @ A3	ADDRESS	118 SUDR STREET BIRCHGROVE NSW 2041
DRAWN	JS	DA APPLICATION	
CHECKED	SW	ISSUED	18/05/20
DATE	05/05/2020	PROJECT	BIRCHGROVE
		PLAN NO.	A300
		REV	-

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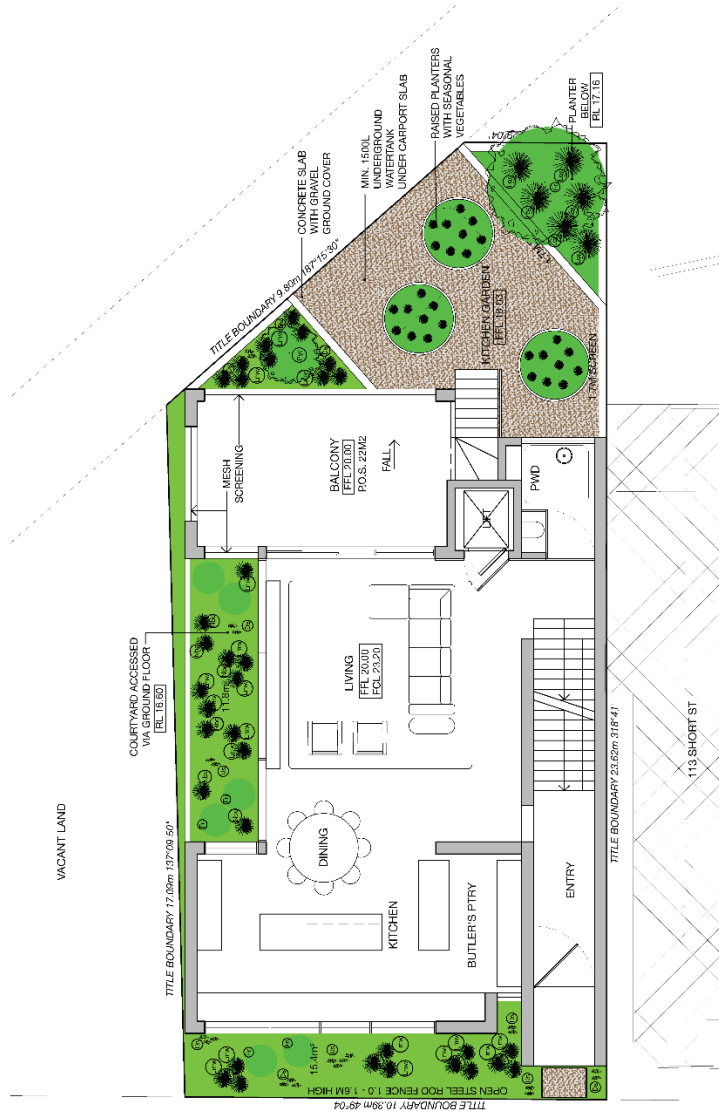
**WHITING**  
ARCHITECTS

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+613 8036 0360

DRAWING	SWEET PATH DIAGRAM	CLIENT	LINDY AINSWORTH
SCALE	1:100 @ A3	ADDRESS	115 SHORT STREET BIRCHGROVE, NSW 2041
DRAWN	JS	DA APPLICATION	
CHECKED	SW	PROJECT	BIRCHGROVE
DATE	05/06/2020	PROJ. NO.	A301
		REV	-

All dimensions are given to the centre of a wall unless otherwise stated. Dimensions of abutments are given to the face of the abutment.  
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1 SWEET PATH DIAGRAM  
A301 / SCALE 1:100 @ A3



ECOLOGICAL NAME	COMMON NAME	ABBREVIATION	WANTHE HEIGHT	QTY	FOOT SIZE	IMAGE
Pyralis Callistocha	ORNAMENTAL PIP	Py	1m	1	1000	
DECORATIVE FUCHSIA	Py	Py	1.000	1000		
1 pipe	Water	1.100	0.500	NA	1000	
Landscape	Landscape	Lsp	0.500	NA	1000	
Plants	Plants	Pl	1m	1	existing	
Herbaceous	Herbaceous	Herb	0.500	NA	1000	
Decorative	Decorative	Dec	1m	6	Decorative	

All information on this plan is to be used for the purpose of the work. Ownership or administration of the site is not guaranteed.

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1 PROPOSED LANDSCAPE PLAN  
A105 SCALE 1:100 @ A3

DRAWING PROPOSED LANDSCAPE PLAN CLIENT LINDY ANSWORTH  
ADDRESS 113 SHORT STREET BIRCHGROVE NSW 2041

SCALE 1:100 @ A3  
DRAWN JS  
CHECKED SW  
DATE 05.06.2020





DA APPLICATION  
PROJECT BIRCHGROVE  
PROJ. NO. A105  
REV -

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# WHITING ARCHITECTS

Finishes Schedule

Project Birchgrove  
 Address 115 Short Street  
 Birchgrove  
 Phase DA application  
 Revision -

Code	Image Reference	•Brand Name •Colour •Finish •Description	•Application •Size •Location •Substrate	Install	•Sealer •Maintenance	•Supplier •Supplied by •Installed by	Revision
CS01		Alternative Surfaces X-Bond Polished Bond  Modern Grey  X-Crete 400 Matt Sealer  Concrete screed	Site application  NA  External walls  Concrete Panels	Trowel on application - installation as per manufacturers spec's	Ref: manufacturers recommendation  Ref: manufacturers recommendation	Alternative Surfaces 37-39 Northern Road Heidelberg West VIC 3081 03 9427 1100  Supply - Builder  Install - Manufacturer	
BR01		Alternative Surfaces X-Bond Polished Bond  Off White - TBC  TBC  Concrete wall with brick pattern	Site application  NA  External Walls  Concrete Panels	TBC	Ref: manufacturers recommendation  Ref: manufacturers recommendation	TBC  Supply - Builder  Install - Manufacturer	
BR02		Brick  Off White - TBC  TBC  Open Brick	Site application  NA  External Walls  NA	TBC	Ref: manufacturers recommendation  Ref: manufacturers recommendation	TBC  Supply - Builder  Install - Manufacturer	
PF01		Aged Bronze  TBC  Aluminum Window/Door Frames	Factory  NA  All door and window frames  NA	TBC	Ref: manufacturers recommendation  Ref: manufacturers recommendation	TBC  Supply - Builder  Install - Manufacturer	

**Attachment B – Without Prejudice Conditions of Consent (if approved)**

**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
A100	Site Plan/Analysis Plan	05 May 2020	Whiting Architects
A101	Ground Floor Plan	05 May 2020	Whiting Architects
A102	First Floor Plan	05 May 2020	Whiting Architects
A103	Second Floor Plan	05 May 2020	Whiting Architects
A104	Roof Plan	05 May 2020	Whiting Architects
A105	Landscape Plan	05 May 2020	Whiting Architects
A200	Elevations South	05 May 2020	Whiting Architects
A201	Elevations North	05 May 2020	Whiting Architects
A202	Elevations West/Streetscape	05 May 2020	Whiting Architects
A203	Elevations East	05 May 2020	Whiting Architects
A300	Section	05 May 2020	Whiting Architects

A301	Swept Path Diagram	05 May 2020	Whiting Architects
1099971S	BASIX Certificate	07 May 2020	ECO Certificates Pty Ltd
-	Finishes Schedule	22 May 2020	Whiting Architects
-	Site Waste Minimisation Plan	15 May 2020	Sam Lettice
-	Water Management Statement	22 May 2020	Whiting Architects
C1 - 19234	Civil Plan	23 April 2020	Bradley Moran Consulting Engineers
C2 - 19234	Roof Plan and Civil Details	23 April 2020	Bradley Moran Consulting Engineers

As amended by the conditions of consent.

**FEES**

**2. 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.

**3. Security Deposit - Standard**

Prior to the commencement of demolition works or 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.

<b>Security Deposit:</b>	\$8,266.00
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<b>Inspection Fee:</b>	\$236.70
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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 initial consent was issued and is revised each financial year. The amount payable must be consistent with Council's Fees and Charges in force at the date of payment.

**GENERAL CONDITIONS**

**4. 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.

**5. 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.

**6. 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.

**7. Works Outside the Property Boundary**

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

**8. 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.

**9. Dry-weather Flows**

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

**10. Rock Anchors**

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

**PRIOR TO ANY DEMOLITION****11. 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 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.



**12. 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.

**13. 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****14. 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*

**15. Green Roofs, Walls and Facades Report**

Prior to the issue of Construction Certificate, the Certifying Authority is to be provided with a report prepared by a suitably qualified person demonstrating that the proposed landscape plan and details of any green roofs, wall and facades are consistent with [Inner West Councils Green Roof, Walls and Facades Technical Guidelines](#) including but not limited to using species selected from the suggested species list, water proofing and drainage.

**16. Parking Facilities - Domestic**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans and certification by a suitably qualified Civil Engineer demonstrating that the design of the vehicular access and off-street parking facilities comply with Australian Standard

AS/NZS2890.1-2004 Parking Facilities – Off-Street Car Parking and the following specific requirements:

- aa) The floor/finished levels within the property must be adjusted to ensure that the levels at the boundary comply with the Alignment Levels issued with this consent.
- a) The garage slab or driveway must rise within the property to be 170mm above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004.
- b) A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors.
- c) Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements.
- d) The parking space is approved as single parking space only. The parking space must have minimum clear internal dimensions of 6000mm x 3000 mm (length x width). The dimensions must be exclusive of obstructions such as walls, doors, columns, and stairs except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004.
- e) A plan of the proposed access and adjacent laneway, drawn at a 1:100 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with swept paths from AS/NZS 2890.1:2004. The plan must include the existing on-street parking spaces.
- f) The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004.
- g) The external form and height of the approved structures must not be altered from the approved plans.

#### **17. 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. Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together overflow pipelines from any rainwater tank(s) and OSD/OSR tanks by gravity to the kerb and gutter of a public road.

- b. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's Leichhardt DCP2013.
  - c. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage .
  - d. The Drainage Plan must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes.
  - f. 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;
  - g. OSD may be reduced or replaced by on site retention (OSR) for rainwater reuse in accordance with the Leichhardt DCP2013 that applies to the land by provision of OSR tank(s) of 5000L total volume . 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. .
  - h. 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.
  - i. Details of the 1 in 100-year ARI overflow route in case of failure\blockage of the drainage system must be provided.
- IIIIIIII. Where there is no overland flow/flood path available from the rear and central courtyards to the Bay Street frontage, the design of the sag pit and piped drainage system is to meet the following criteria:
- a. Capture and convey the 100 year Average Recurrence Interval flow from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe.
  - b. The maximum water level over the sag pit shall not be less than 150mm below the floor level or damp course of the building
  - c. The design shall make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.

- n. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas except where a reduced step is permitted under Section 3.1.2.3 (b) of the Building Code of Australia for Class 1 buildings.
- o. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
- p. No nuisance or concentration of flows to other properties.
- q. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system.
- r. Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required.
- s. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.
- t. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site.
- u. 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 .
- w. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings.
- x. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.

#### **18. Public Domain Works – Prior to Construction Certificate**

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

- a. The construction of light duty vehicular crossings at the vehicular access locations and removal of all redundant vehicular crossings to the site;

- b. Removal of the redundant crossing and replacement with footpath and kerb and gutter and grass along the frontage of the site. The kerb type must be stone consistent with the majority of kerb type at this location;
- c. A long section, along both sides of the proposed vehicular crossing and ramp, drawn at a 1:20 or 1:25 natural scale. The long section shall begin from the centreline of the adjacent road to a minimum of 3 metres into the property. The long section approved by Council shall define the Alignment Levels at the property boundary. The long section shall show both existing surface levels and proposed surface levels with chainages.
- d. A plan of the proposed access and adjacent laneway, drawn at a 1:100 scale, demonstrating no loss of the existing quantum of on-street parking as a result of the proposed works and that vehicle manoeuvrability for entry and exit to the parking space complies with swept paths from AS/NZS 2890.1:2004.

All works must be completed prior to the issue of an Occupation Certificate.

#### **19. Structural and Geotechnical Report**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an integrated structural and geotechnical report and structural plans that address the design of the proposed basement, prepared certified as compliant with the terms of this condition by a qualified practicing Structural and Geotechnical Engineer(s) who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng). The report and plans must be prepared/ amended to make provision for the following:

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

**DURING DEMOLITION AND CONSTRUCTION****20. 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.

**21. 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****22. Verification and Maintenance of Green Roofs, Walls and Facades Works**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority is to be provided with written evidence demonstrating that the works have been carried out in accordance with the Green Roofs, Walls and Facades Report that was submitted at Construction Certificate Stage and a maintenance plan that is consistent with the [Inner West Councils Green Roof, Walls and Facades Technical Guidelines](#).

**23. Public Domain Works**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with written evidence from Council that the following works on the Road Reserve have been completed in accordance with the requirements of the approval under Section 138 of the *Roads Act 1993* including:

- a. Light duty concrete vehicle crossing(s) at the vehicular access location;
- b. The redundant vehicular crossing to the site must be removed and replaced by kerb and gutter and footpath and grass verge. The replacement kerb must be in stone; and
- c. Other works subject to the *Roads Act 1993* approval.

All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications".

**24. 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 including all reuse 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.

**25. 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 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 including all reuse 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.

**26. Light Duty Vehicle Crossing**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that a light duty concrete vehicle crossing(s), in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2- "Roadworks Specifications" have been constructed at the vehicular access locations.

**27. Parking Signoff – Minor Developments**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from a qualified practising Civil Engineer that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.

**28. Protect Sandstone Kerb**

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

**29. 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.

**30. Redundant Vehicle Crossing**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that all redundant vehicular crossings to the site have been removed and replaced by kerb and gutter and footpath paving in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications". AS the kerb in the vicinity of the redundant crossing is predominantly stone the replacement kerb must also be in stone.

**PRIOR TO SUBDIVISION CERTIFICATE****31. Redundant Vehicle Crossing**

Prior to the issue of a Subdivision Certificate, the Principal Certifier must verify that all redundant vehicular crossings to the site must be removed and replaced by kerb and gutter and footpath paving in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications". Where the kerb in the vicinity of the redundant crossing is predominately stone, the replacement kerb must also be in stone.

**ON-GOING****32. Green Roofs, Walls and Facades Establishment**

The plantings within the Green Roofs, Walls and Facades as part of this consent are to be maintained in a healthy and vigorous condition for 12 Months from the issue of an Occupation Certificate. If any of the planting are found faulty, damaged, dying or dead within 12 months of the issue of an Occupation Certificate they must be replaced with the same species within one (1) month (up to 3 occurrences).



### 33. Operation and Management Plan

The stormwater management system including the on-site detention and/or on-site retention/re-use facilities including any reuse pump(s) must be maintained in an operational state at all times. The stormwater system Operation and Management Plan approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

### ADVISORY NOTES

#### 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.

**Infrastructure**

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

**Other Approvals may be needed**

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

**Failure to comply with conditions**

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

**Other works**

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

**Obtaining Relevant Certification**

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

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

#### **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.

#### **Dial before you dig**

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

#### **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.

**Useful Contacts**

BASIX Information 1300 650 908 weekdays 2:00pm - 5:00pm  
[www.basix.nsw.gov.au](http://www.basix.nsw.gov.au)

Department of Fair Trading 13 32 20  
[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

Enquiries relating to Owner Builder Permits and Home Warranty Insurance.

Dial Prior to You Dig 1100  
[www.dialprior toyoudig.com.au](http://www.dialprior toyoudig.com.au)

Landcom 9841 8660  
 To purchase copies of Volume One of "Soils and Construction"

Long Service Corporation Payments 131441  
[www.lspc.nsw.gov.au](http://www.lspc.nsw.gov.au)

NSW Food Authority 1300 552 406  
[www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au)

NSW Government [www.nsw.gov.au/fibro](http://www.nsw.gov.au/fibro)  
[www.diysafe.nsw.gov.au](http://www.diysafe.nsw.gov.au)

Information on asbestos and safe work practices.

NSW Office of Environment and Heritage 131 555  
[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

Sydney Water 13 20 92

[www.sydneywater.com.au](http://www.sydneywater.com.au)

Waste Service - SITA 1300 651 116  
Environmental Solutions

[www.wasteservice.nsw.gov.au](http://www.wasteservice.nsw.gov.au)

Water Efficiency Labelling and Standards (WELS) [www.waterrating.gov.au](http://www.waterrating.gov.au)

WorkCover Authority of NSW 13 10 50

[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

Enquiries relating to work safety and asbestos removal and 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.

**Rock Anchors**

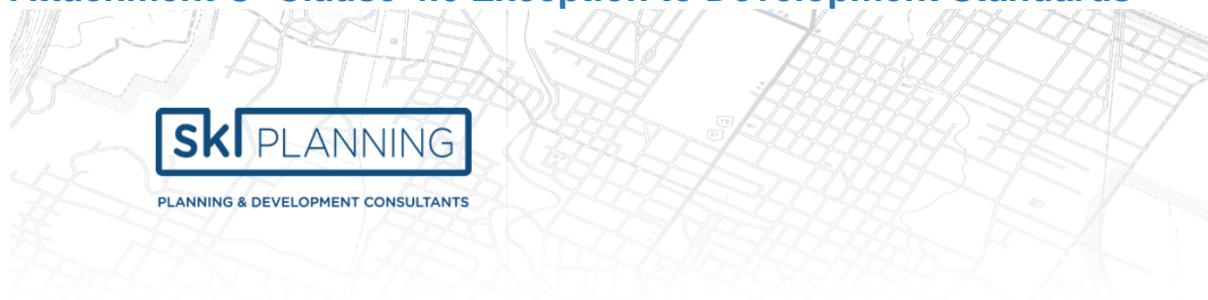
If you are seeking to use temporary anchors, you must make a request for approval for a Permit under Section 138 of the Roads Act 1993. The submission would need to be supported by an engineering report prepared by a suitably qualified Structural Engineer, with supporting details addressing the following issues:

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

**REASONS FOR REFUSAL**

1. The proposed development is inconsistent and / or has not demonstrated compliance with the Leichhardt Local Environmental Plan 2013, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:
  - Clause 1.2 – Aims of Plan
  - Clause 2.3 – Zone objectives and Land Use Table
  - Clause 4.3A(3)(a) – Landscaped Area for residential accommodation in Zone R1
  - Clause 4.3A(3)(b) - Site Coverage for residential accommodation in Zone R1
  - Clause 4.4 – Floor Space Ratio
  - Clause 4.6 – Exceptions to Development Standards
  - Clause 5.10 – Heritage Conservation
  - Clause 6.4 – Stormwater Management
2. A Clause 4.6 request to vary the development standard for Landscaped Area is required but has not accompanied the application and, as such, there is a lack of jurisdiction to approve the application.
3. The Clause 4.6 requests to vary the development standards for Site Coverage and Floor Space Ratio do not demonstrate sufficient environmental planning grounds to vary either standard.
4. The proposed development is inconsistent and has not demonstrated compliance with the following provisions of Leichhardt Development Control Plan 2013, pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979:
  - Clause C1.0 - General Provisions
  - Clause C1.4 – Heritage Conservation Areas and Heritage Items
  - Clause C1.5 - Corner Sites
  - Clause C1.11 Parking
  - Clause C1.12 – Landscaping
  - Clause C1.14 – Tree Management
  - Clause C1.19 – Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls
  - Clause C1.21 – Green Roofs and Green Living Walls
  - Clause C.2.2.2.5: Mort Bay Distinctive Neighbourhood
  - Clause C3.1 - Residential General Provisions
  - Clause C3.2 - Site Layout and Building Design
  - Clause C3.3 - Elevation and Materials
  - Clause C3.5 - Front Gardens and Dwelling Entries
  - Clause C3.6 - Fences
  - Clause C3.8 - Private Open Space
  - Clause C3.9 - Solar Access
  - Clause C3.10 - Views
  - Clause C3.11 - Visual Privacy
  - Clause C3.12 - Acoustic Privacy
  - Clause E1.2.2 - Managing Stormwater within the Site
  - Clause E1.2.3 - On-Site Detention of Stormwater
5. The proposal would result in adverse environmental impacts on the built environment in the locality pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.
6. The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979.
7. The approval of this application is considered contrary to the public interest, pursuant to Section 4.15 (1)(d) and (e) of the Environmental Planning and Assessment Act 1979.

## Attachment C- Clause 4.6 Exception to Development Standards



## APPENDIX B

Clause 4.6 Variation Request to Clause 4.4 - Floor Space Ratio of the Leichhardt Local Environmental Plan 2013

Demolition of existing dwelling and associated structures on site and construction of a new multi-level dwelling with carport to the rear accessed from Bay Street and associated landscaping

115 Short Street, Birchgrove  
(Lot 1 DP 54392)

8 May 2020





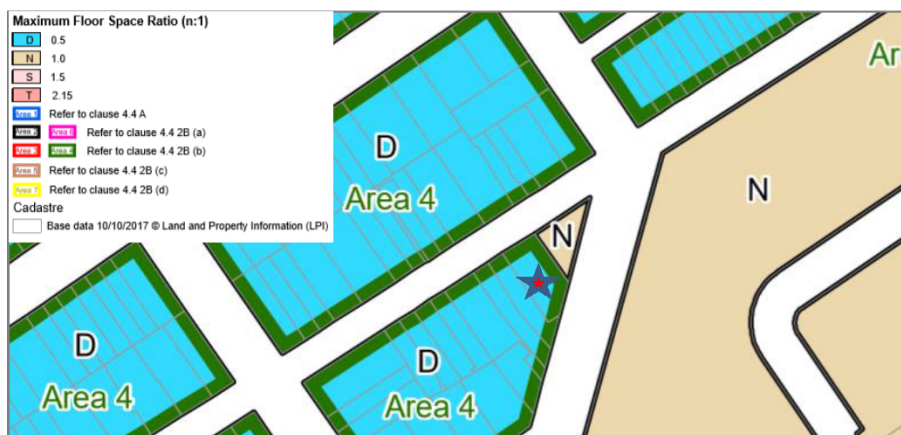
**1 INTRODUCTION**

This variation request has been prepared pursuant to Clause 4.6 of Leichhardt Local Environmental Plan 2013 (LLEP 2013) and considers several key New South Wales Land and Environment Court (NSW LEC) planning principles and judgements that have refined the manner in which variations to development standards are required to be approached. The development application in questions relates to demolition of an existing dwelling and associated structures on site and construction of a new multi-level dwelling with carport to the rear accessed from Bay Street and associated landscaping at 115 Short Street, Birchgrove.

**2 PROPOSED VARIATION**

Clause 4.4(2) of the LLEP 2013 refers to the Floor Space Ratio (FSR) Map with the subject site located within Area 4 'D' illustrated below with reference made to clause 4.4(2B) which provides the following.

*Despite subclause (2), the floor space ratio for development for the purpose of residential accommodation-*  
*(b) on land shown edged red or green on the FSR Map is not to exceed -*  
*(ii) in the case of development on a lot with an area of 150m<sup>2</sup> or more but less than 300m<sup>2</sup> - 0.9:1*



Clause 4.5(2) of LLEP 2013 defines FSR as ...*'The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area'*.

The dictionary of LLEP 2013 defines gross floor area as follows:

**gross floor area** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes -

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,



but excludes -

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement -
  - (i) storage, and
  - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

In application of the above definition Commissioner Moore's decision in *Chami v Lane Cove* [2015], NSW Land and Environment Court which provides guidance on calculation of GFA as it applies to the Standard Instrument is noted. From this decision stairwells within a dwelling are not considered 'common' and cannot be deducted from GFA calculations. Accordingly, the area of stairways has been calculated.

The proposed development provides a total gross floor area of 250.5m<sup>2</sup>, equating to an FSR of 1.097:1 (representing a non-compliance and variation of 21.8% to the 0.9:1 standard).

### 3 CLAUSE 4.6 ASSESSMENT

#### 3.1.1 Clause 4.6(1) - Objectives

Clause 4.6(1) outlines objectives that underly the clause as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Reference is made to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 in which Preston CJ ruled that there is no provision that requires compliance with the objectives of the clause and that cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). It was also noted that in particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development".

Given the above the remaining considerations of clause 4.6 form the basis for which the consent authority is to be satisfied that the request for variation of the development standard is acceptable.

#### 3.1.2 Clause 4.6(2) - Development Consent May be Granted

Clause 4.6(2) provides that ...'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’.*

FSR is a development standard as defined in Section 1.4 of the Environmental Planning & Assessment Act 1979 to which exceptions can be granted under cl 4.6. It is not expressly excluded from operation.

### **3.1.3 Clause 4.6(3) - Consent Authority to Consider Written Submission**

Clause 4.6(3) provides that *...’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’.*

This report and information within, constitute a written request for the purposes of cl 4.6(3) and the following subsections address the justifications required under that subclause.

### **3.1.4 Clause 4.6(4) - Consent Authority is to be Satisfied**

Clause 4.6(4) provides that *...’development consent must not be granted for development that contravenes a development standard unless -*

- (a) the consent authority is satisfied that:*
  - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained’.*

Each of the abovementioned matters has been addressed individually under the following subheadings.

#### **3.1.4.1 Clause 4.6(4)(a)(i) Written Request to Address Matters Required by 4.6(3)**

Clause 4.6(3) requires the applicant to justify contravention of 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’.*

With respect to clause 4.6(3)(a) the common ways in which an Applicant may demonstrate that compliance with a development standard is unreasonable or unnecessary are listed in the ‘five-part test’ outlined by Preston CJ in *Wehbe v Pittwater* [2007] NSWLEC 827. In this respect an applicant does not need to establish all of the tests or ‘ways’, rather it may be sufficient to establish only one, although if more are applicable,



an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way. The five possible ways are as set out below:

<b>First</b>	<i>The objectives of the standard are achieved notwithstanding non-compliance;</i>
<b>Second</b>	<i>The underlying objective or purpose of the standard not relevant to the development and therefore compliance is unnecessary;</i>
<b>Third</b>	<i>The underlying object of purpose be defeated or thwarted if compliance was required and therefore compliance is unreasonable;</i>
<b>Fourth</b>	<i>The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;</i>
<b>Fifth</b>	<i>The zoning of the particular land unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary.</i>

With respect to the subject application, the first way is utilised with objectives underlying the floor space ratio development standard contained within clause 4.4(1) of the LLEP 2013 addressed as follows:

(a) to ensure that residential accommodation -

(i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and

**Comment** - The proposed development remains compatible with the desired future character of the area, representing a sympathetic contemporary infill within the Town of Waterview Heritage Conservation Area.

Proposed bulk is subservient to the neighbouring Victorian terrace pair with overall height approximately 750mm below and building location zone largely mirrored though noting that a greater setback is provided to Short Street with the massing of the upper level reduced in an attempt to provide view sharing. The building is considered to effectively respond to the site topography, adopting a stepped form.

Specifically, with respect to design, key elements provided to primary facades being arched openings were viewed as responding appropriately to the local context and character by the heritage consultant. The low-pitched skillion roof form concealed behind a parapet feature also viewed as compatible.

Proposed materials which consist of face brick and render rely on their natural colours and character and respond appropriately to the traditional working-class character of the conservation area, where selection and employment of materials was traditionally very limited. Glass balustrades are not employed.

(ii) provides a suitable balance between landscaped areas and the built form, and

**Comment** - The proposed development provides the desired balance between landscaped area and built form. Notwithstanding FSR non-compliance, proposed landscaped area of 42.78m<sup>2</sup> (18.7%) complies with the 15% required by cl 4.3A(3) of the LLEP 2013. Areas of soft landscaping and planting are provided to the Short Street and Bay Street frontages of the site and also adjacent to the reserve to the north east.



(iii) *minimises the impact of the bulk and scale of buildings,*

**Comment** - Building location zone is consistent with surrounding development and considered to minimise any adverse impact from bulk and scale. The context of the site is also noted with street frontage and a reserve provided to three (3) elevations with adjoining built form adjacent to the south west elevation built close to the boundary with little interface (provided with only one window opening). As previously outlined the upper level floor plan of the building has been minimised and directly reduces both the perceived bulk and scale of the dwelling through providing articulation and promotes view sharing.

(b) *to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale.*

**Comment** - N/A noting that the proposed development relates only to residential accommodation.

With respect to clause 4.6(3)(b) the above demonstrates that the environmental impacts of the proposed development are acceptable notwithstanding non-compliance with the FSR development standard. The proposed development provides a bulk and scale and design that effectively responds to the site context, constraints, and existing built form. Impacts upon amenity i.e. privacy, solar access and view loss are also limited, noting also the detailed discussion provided within the SEE.

The non-compliance is also quantified such that whilst additional gross floor area equates to 44.76m<sup>2</sup>, the ground floor plan which is contained below Short Street and partially below the natural ground level of the adjoining reserve has a total area of 86.36m<sup>2</sup>. It is not considered to adversely add to bulk and scale which is considered to fit very well contextually noting the prominent bookend positioning of the site.

**3.1.4.2 Clause 4.6(4)(a)(ii) Written Request to Address Matters Required by 4.6(3)**

As discussed by Preston CJ in Initial Action, if the development is consistent with the objectives of the development standard and the objectives of the zone, the consent authority can be satisfied that the development will be in the public interest. Objectives of the FSR development standard have been previously addressed with objectives of the R1 General Residential Zone outlined and addressed below.

<b>Zone Objective</b>	<b>Comment</b>
<ul style="list-style-type: none"> <li>To provide for the housing needs of the community.</li> </ul>	Redevelopment of the site promotes housing needs of the community.
<ul style="list-style-type: none"> <li>To provide for a variety of housing types and densities.</li> </ul>	Proposed development relates only to a single dwelling though redevelopment does provide a more versatile floor plan.
<ul style="list-style-type: none"> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> </ul>	N/A - Development relates only to the construction of a residential dwelling house
<ul style="list-style-type: none"> <li>To improve opportunities to work from home.</li> </ul>	Dwelling provides a larger floor plan and greater amenity for occupants that promotes opportunity to work from home.
<ul style="list-style-type: none"> <li>To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.</li> </ul>	Dwelling is compatible with the existing built form that surrounds, noting also its location



	within the Town of Waterview Heritage Conservation Area.
<ul style="list-style-type: none"> <li>To provide landscaped areas for the use and enjoyment of existing and future residents.</li> </ul>	Areas of landscape provided to the front and rear yard provide for a desirable level of amenity for future residents.
<ul style="list-style-type: none"> <li>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.</li> </ul>	N/A - Subdivision not proposed.
<ul style="list-style-type: none"> <li>To protect and enhance the amenity of existing and future residents and the neighbourhood.</li> </ul>	The proposed development does not result in any adverse or unreasonable impacts in terms of privacy, solar access or view loss.

As detailed the FSR variation does not contravene any of the zone objectives.

**3.1.4.3 Clause 4.6(b) Concurrence of the Secretary.**

Planning Circular (PS 18-003) dated 21 February 2018 provides that concurrence can be assumed when a Local Planning Panel (LPP) is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determinations are subject to.

Accordingly, concurrence of the Secretary can therefore be assumed in this case.

**3.1.5 Clause 4.6(5) - Concurrence Considerations**

Clause 4.6(5) provides that ...'In deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by Secretary before granting concurrence'.

N/A - As detailed above, concurrence of the secretary can be assumed in this instance.

**3.1.6 Clause 4.6(6) - Subdivision of Certain Land**

Clause 4.6(6) provides that ...'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'.



N/A - Development does not seek subdivision and is located in zone R1 General Residential.

### 3.1.7 Clause 4.6(7) - Keeping of Records

Clause 4.6(7) provides that ...'After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3)'.

Inner West Council does have a register of Clause 4.6 variations that is publicly available. Should this application be supported it would be added to the register along with specific factors as required.

### 3.1.8 Clause 4.6(8) - Exclusions from use of Clause 4.6

Clause 4.6(8) provides that ...'this clause does not allow development consent to be granted for development that would contravene any of the following -

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

N/A - The proposed development does not contravene any of the stated considerations.

## 4 CONCLUSION

The proposed development does not strictly comply with floor space ratio prescribed by Clause 4.4 of LLEP 2013. Having regard to the assessment provided above, it is our opinion that relevant considerations are appropriately addressed and no adverse environmental impacts created.

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



## APPENDIX A

Clause 4.6 Variation Request to Clause 4.3A - Landscaped areas for residential accommodation in Zone R1 of the Leichhardt Local Environmental Plan 2013

Demolition of existing dwelling and associated structures on site and construction of a new multi-level dwelling with carport to the rear accessed from Bay Street and associated landscaping

115 Short Street, Birchgrove  
(Lot 1 DP 54392)

8 May 2020





## 1 INTRODUCTION

This variation request has been prepared pursuant to Clause 4.6 of Leichhardt Local Environmental Plan 2013 (LLEP 2013) and considers several key New South Wales Land and Environment Court (NSW LEC) planning principles and judgements that have refined the manner in which variations to development standards are required to be approached. The development application in question relates to demolition of an existing dwelling and associated structures on site and construction of a new multi-level dwelling with carport to the rear accessed from Bay Street and associated landscaping at 115 Short Street, Birchgrove.

## 2 PROPOSED VARIATION

Clause 4.3(A) of the LLEP 2013 relates to landscaped areas for residential accommodation in Zone R1. The proposed development complies with landscaped area though subclause 3(b) introduces site coverage:

*(b) the site coverage does not exceed 60% of the site area.*

The proposed development provides a site coverage of 141.48m<sup>2</sup> (61.9%) which represents a small non-compliance and variation of 1.9% to the 60% development standard.

For reference site coverage as defined within the dictionary of the LLEP 2013 is as follows:

*site coverage means the proportion of a site area covered by buildings. However, the following are not included for the purpose of calculating site coverage -*

- (a) any basement,*
- (b) any part of an awning that is outside the outer walls of a building and that adjoins the street frontage or other site boundary,*
- (c) any eaves,*
- (d) unenclosed balconies, decks, pergolas and the like.*

Subclause 4.3(A)(4)(c) does provides a slight amendment in application of site coverage as follows:

- (c) any deck or balcony or the like (whether enclosed or unenclosed) is not to be included in calculating the site coverage if -*
  - (i) it is 2.4 metres or more above ground level (existing), as measured from the underside of the structure and the area below the structure is able to be landscaped or used for recreational purposes, or*
  - (ii) the finished floor level is 500mm or less above ground level (existing).*

## 3 CLAUSE 4.6 ASSESSMENT

### 3.1.1 Clause 4.6(1) - Objectives

Clause 4.6(1) outlines objectives that underly the clause as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*



- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Reference is made to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 in which Preston CJ ruled that there is no provision that requires compliance with the objectives of the clause and that cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). It was also noted that in particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”.

Given the above the remaining considerations of clause 4.6 form the basis for which the consent authority is to be satisfied that the request for variation of the development standard is acceptable.

### **3.1.2 Clause 4.6(2) - Development Consent May be Granted**

Clause 4.6(2) provides that *...’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’.*

Site coverage is a development standard as defined in Section 1.4 of the Environmental Planning and Assessment Act 1979 to which exceptions can be granted under cl 4.6. It is not expressly excluded.

### **3.1.3 Clause 4.6(3) - Consent Authority to Consider Written Submission**

Clause 4.6(3) provides that *...’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’.*

This report and information within, constitute a written request for the purposes of cl 4.6(3) and the following subsections address the justifications required under that subclause.

### **3.1.4 Clause 4.6(4) - Consent Authority is to be Satisfied**

Clause 4.6(4) provides that *...’development consent must not be granted for development that contravenes a development standard unless -*

- (a) *the consent authority is satisfied that:*
  - (i) *the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*



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

Each of the abovementioned matters has been addressed individually under the following subheadings.

**3.1.4.1 Clause 4.6(4)(a)(i) Written Request to Address Matters Required by 4.6(3)**

Clause 4.6(3) requires the applicant to justify contravention of 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’.*

With respect to clause 4.6(3)(a) the common ways in which an Applicant may demonstrate that compliance with a development standard is unreasonable or unnecessary are listed in the ‘five-part test’ outlined by Preston CJ in *Wehbe v Pittwater* [2007] NSWLEC 827. In this respect an applicant does not need to establish all of the tests or ‘ways’, rather it may be sufficient to establish only one, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way. The five possible ways are as set out below:

<b>First</b>	<i>The objectives of the standard are achieved notwithstanding non-compliance;</i>
<b>Second</b>	<i>The underlying objective or purpose of the standard not relevant to the development and therefore compliance is unnecessary;</i>
<b>Third</b>	<i>The underlying object of purpose be defeated or thwarted if compliance was required and therefore compliance is unreasonable;</i>
<b>Fourth</b>	<i>The development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;</i>
<b>Fifth</b>	<i>The zoning of the particular land unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary.</i>

With respect to the subject application, the first way is utilised with objectives underlying the site coverage development standard contained within clause 4.3A(1) of the LLEP 2013 addressed as follows:

- (a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,*

**Comment** - Notwithstanding site coverage non-compliance, a landscaped area of 42.78m<sup>2</sup> (18.7%) has been provided and complies with the 15% required by cl 4.3A(3) of the LLEP 2013. Areas of soft landscaping and planting are provided to the Short Street and Bay Street frontages of the site as well as the north east elevation of the dwelling which is oriented towards the reserve. The landscape concept is considered to complement built form and will facilitate a desirable level amenity to residents.

- (b) to maintain and encourage a landscaped corridor between adjoining properties,*



**Comment** - Context of the site is noted in that allotments are generally narrow in width with built form built close if not to the side boundary alignment which limits the provision of meaningful landscape. Whilst the proposed development does seek to pursue a similar form, the design has allowed for planting adjacent to side boundaries forward of built form with a recessed courtyard adjacent to the north east side boundary of the site and adjoining reserve providing a desirable interface.

*(c) to ensure that development promotes the desired future character of the neighbourhood,*

**Comment** - Proposed development is consistent with desired future character. Specifically, with respect to site coverage, building location zone is consistent with adjoining built form and a landscaped interface provided to the three (3) external boundaries of the site that are visible from the public domain.

*(d) to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,*

**Comment** - The proposed development promotes absorption of surface drainage water through increasing permeable surface / landscaped area from 34.5m<sup>2</sup> (15.1%) as existing to 42.78m<sup>2</sup> (18.7%). A detailed stormwater drainage design prepared by a consultant engineer also accompanies the submission.

*(e) to control site density,*

**Comment** - The proposed development does not seek to increase density of the site and relates only to the demolition of the existing single dwelling and construction of a new single dwelling.

*(f) to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.*

**Comment** - As previously outlined the proposed development provides a landscaped area of 18.7% which exceeds the 15% required. With respect to private open space, several areas are incorporated and observe compliance with C3.8 of the Leichhardt Development Control Plan 2013 as demonstrated within the SEE.

With respect to clause 4.6(3)(b) the above is considered to demonstrate that the resultant environmental impacts of the proposed development are acceptable. The proposed development provides an appropriate building footprint and one that is both consistent with existing built form and envisaged by the required building location zone. The proposed built form does not represent an overdevelopment of the site with landscaped area exceeding that required with suitable areas of private open space also facilitated.

The minor nature of the non-compliance which equates to an area of 4.32m<sup>2</sup> is also noted and does not result in any material impact upon the subject site or the amenity of those which adjoin.

#### **3.1.4.2 Clause 4.6(4)(a)(ii) Written Request to Address Matters Required by 4.6(3)**

As discussed by Preston CJ in Initial Action, if the development is consistent with the objectives of the development standard and the objectives of the zone, the consent authority can be satisfied that the development will be in the public interest. Objectives of the site coverage standard have been previously addressed with objectives of the R1 General Residential Zone outlined and addressed below.



<b>Zone Objective</b>	<b>Comment</b>
<ul style="list-style-type: none"> <li>To provide for the housing needs of the community.</li> </ul>	Redevelopment of the site promotes housing needs of the community.
<ul style="list-style-type: none"> <li>To provide for a variety of housing types and densities.</li> </ul>	Proposed development relates only to a single dwelling though redevelopment provides a more versatile floor plan.
<ul style="list-style-type: none"> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> </ul>	N/A - Development relates only to the construction of a residential dwelling house
<ul style="list-style-type: none"> <li>To improve opportunities to work from home.</li> </ul>	Dwelling provides a larger floor plan and greater amenity for occupants that promotes opportunity to work from home.
<ul style="list-style-type: none"> <li>To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.</li> </ul>	Dwelling is compatible with the existing built form that surrounds also noting its location within the Town of Waterview Heritage Conservation Area.
<ul style="list-style-type: none"> <li>To provide landscaped areas for the use and enjoyment of existing and future residents.</li> </ul>	Areas of landscape provided to the front and rear yard provide for a desired level of amenity for future residents.
<ul style="list-style-type: none"> <li>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.</li> </ul>	N/A - Subdivision not proposed.
<ul style="list-style-type: none"> <li>To protect and enhance the amenity of existing and future residents and the neighbourhood.</li> </ul>	The proposed development does not result in any adverse or unreasonable impacts in terms of privacy, solar access or view loss.

As detailed the site coverage variation does not contravene any of the zone objectives.

**3.1.4.3 Clause 4.6(b) Concurrence of the Secretary.**

Planning Circular (PS 18-003) dated 21 February 2018 provides that concurrence can be assumed by a delegate of Council where the variation does not exceed 10% or is to a non-numerical standard.

Accordingly, concurrence of the Secretary can therefore be assumed in this case.

**3.1.5 Clause 4.6(5) - Concurrence Considerations**

Clause 4.6(5) provides that ...'In deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by Secretary before granting concurrence'.

N/A - As detailed above, concurrence of the secretary can be assumed in this instance.



### 3.1.6 Clause 4.6(6) - Subdivision of Certain Land

Clause 4.6(6) provides that ...'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'.

N/A - Development does not seek subdivision and is located in zone R1 General Residential.

### 3.1.7 Clause 4.6(7) - Keeping of Records

Clause 4.6(7) provides that ...'After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3)'.

Inner West Council does have a register of Clause 4.6 variations that is publicly available. Should this application be supported it would be added to the register along with specific factors as required.

### 3.1.8 Clause 4.6(8) - Exclusions from use of Clause 4.6

Clause 4.6(8) provides that ...'this clause does not allow development consent to be granted for development that would contravene any of the following -

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

N/A - The proposed development does not contravene any of the stated considerations.

## 4 CONCLUSION

The proposed development does not strictly comply with site coverage prescribed by Clause 4.3A(3)(b) of LLEP 2013. Having regard to the assessment provided above, it is our opinion that relevant considerations are appropriately addressed and no adverse environmental impacts created.

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

## Attachment D – Statement of Heritage Significance

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### Area 15 Town of Waterview Conservation Area

#### Landform

The land in this conservation area is located around a small creek (known as Curtis Waterhole) that enters Waterview Bay (now Morts Bay) at its most western point. The area is generally sheltered and includes flat low-lying land near the bay (where Morts Dock was built) rising south to higher land along Darling Street and west to the prominent knoll of Dock Road and Bates Street.



Figure 15.1 Town of Waterview Conservation Area Map.

#### History

The area that was later developed by Thomas Mort as the Town of Waterview included land originally purchased from Gilchrist's Balmain Estate in 1836 by Curtis and Lamb. In 1854 these two lots at the eastern end of the bay were purchased by Captain Rowntree and Thomas Holt for a slipway and dry dock. Thomas Mort was impressed with the sheltered bay and joined them in the enterprise.

Mort also accepted the transfer of most of the land around the dock area and commissioned Surveyor FH Reuss to lay out a township of 700 modest residential allotments. Initially Mort sought to provide rental accommodation near the dock to attract skilled labour and he indicated that a building society might be formed to assist purchasers, probably so that there would always be a pool of skilled workers living nearby. Allotments were 1/2 chain (33ft) wide with depths ranging from 84-109 feet, but subsequent resubdivision to allow two houses (terrace or semi) on one allotment occurred at the time of building and produced many smaller parcels. There were no back lanes for night soil disposal.

Small groups of similar houses suggest the area was constructed by small-scale building contractors, or by individual owner/builders.

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Mort purchased more land adjoining the original township and after his death in 1877 his trustees continued the dense subdivision and development of this area in response to the growth of Morts Dock Industries and the building boom of the 1880s.

It took forty years from 1857 for the town to be fully occupied. Just over half the allotments had been sold by 1878, but by 1896 the streets created within Mort's Town - Mort, Church, Phillip, Short, College, Rowntree, Curtis, Spring and Cameron Streets - were filled with an assortment of houses, 796 in all, 396 of brick, 348 of weatherboard, 51 of stone and one of iron. Small groups of corner shops and pubs served the community.

By 1861 the dock was leasing facilities to other maritime activities, and it developed its own associated engineering industries. Morts Dock and Engineering Co grew rapidly to become the largest private employer in Australia in a variety of maritime and engineering industries. During the 1940s it built corvettes, frigates and a floating dock. Economic fluctuations affecting the dock also affected its workers. The dock, the Town of Waterview and its pubs were the site of the beginnings of the urban labour movement. The dock closed in 1958; the site was levelled and used as a container terminal. More recently, the land was developed for residential purposes by the Department of Housing.

#### Sources

Solling, M and Reynolds, P 1997, 'Leichhardt: on the margins of the city', *Leichhardt Historical Journal*, Vol. 22, Allen and Unwin.

Reynolds, P 1985, 'The first 22 lots - an overview: Suburbanisation in Balmain', *Leichhardt Historical Journal*, Vol. 14.

Further research by Max Solling.

#### Significant Characteristics

- Regular street pattern made up of wider streets (about 50ft wide) marking the boundaries of the township (Rowntree, Mort, Curtis and Cameron Streets) or giving access to the dock (Church Street) with narrower streets filling the remainder.
- Lack of back lanes.
- A very regular streetscape resulting from:
  - regular width allotments of 33ft (or half 33ft) giving rise to uniform densely developed streets of single or double -fronted houses/terraces;
  - use of limited range of building materials - either rendered brick or painted weatherboard;
  - face brick houses of post c1890 and the fifty-odd stone buildings are noticeable for their different building materials; and
  - remarkably intact collection of single and two-storey attached and detached dwellings, many of them weatherboard.



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- Density of pubs.
- Corner stores and small groups of stores and pubs at some cross roads.

#### Statement of Significance or Why the Area is Important

- One of a number of conservation areas which collectively illustrate the nature of Sydney's early suburbs and Leichhardt's suburban growth particularly between 1871 and 1891, with pockets of infill up to the end of the 1930s (ie prior to World War II). This area, through the form and fabric of its houses, corner shops and pubs, its street layout and allotment shapes, demonstrates a remarkably intact area of early workers' housing from 1850s to 1890s with later infill development prior to World War II (ie pre-1939). It is significant for its surviving development prior to World War II.
- Demonstrates through the density of pubs (and former pubs) within the township area its close association with the growth of the urban labour movement. A number of these pubs are of national heritage significance for their historical and enduring social values as part of the history of unionism and of the Ships Painters and Dockers Union in particular.
- Demonstrates, through the nature of its housing, the important role played by Morts Dock as a magnet for workers and the location of their housing.
- Demonstrates, through its rendered and painted brickwork, the nature of construction in Sydney before the ready availability of hard pressed, face bricks.
- Demonstrates the work of Surveyor Reuss.
- Associated with prominent local entrepreneurs and land developers, some of whom were aldermen of Council.
- Demonstrates, with Bodalla Village on the New South Wales south coast, the role of Thomas Mort in providing 'appropriate' housing for his employees.

#### Management of Heritage Values

##### Generally

This is a conservation area. Little change can be expected other than modest additions and discrete alterations. Buildings which do not contribute to the heritage significance of the area may be replaced with sympathetically designed infill.

##### Retain

- All pubs, preferably as public houses, or in related activities (boarding houses etc) or as small-scale commercial uses.
- All pre-1939 buildings, especially timber buildings, and all their architectural details. Replacement of lost detail, based only on evidence, should be encouraged.
- Original finishes, particularly rendered brick houses.

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- All remaining sandstone kerbs and gutter.

Avoid

- Diagonally placed chicanes, and other works that diminish the straight line of the original road layout.
- Alterations that change the shape (form) of the pubs – particularly the removal of verandahs or the creation of new verandahs for which there is no historical evidence.
- Alterations that change the shape of the building or original roof forms on the main part of the buildings.
- Removal of original detail. (Encourage restoration from evidence.)
- Additions of details not part of the original fabric of the building.
- Interruption to the almost continuous kerb and gutters.