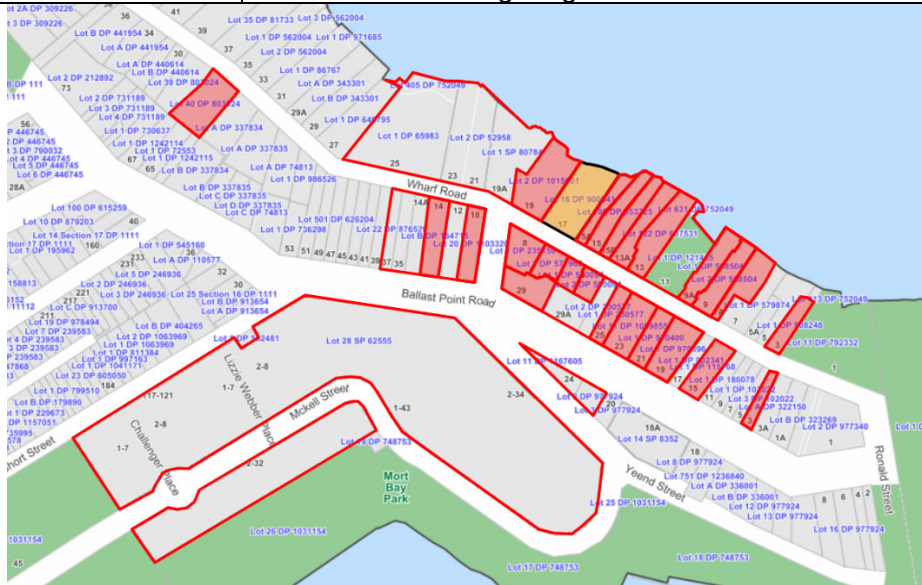





				
DEVELOPMENT ASSESSMENT REPORT				
Application No.	DA/2020/0461			
Address	17 Wharf Road BIRCHGROVE NSW 2041			
Proposal	Demolition of an existing single dwelling house, subdivision of the land into two lots and construction of a new dwelling house and pool on each new lot, with remediation of both lots.			
Date of Lodgement	27 July 2020			
Applicant	ESNH Design Pty Ltd			
Owner	Mr Egidio J Gobbo Mrs Jillian T Gobbo			
Number of Submissions	Initial: 27 After Renotification: 25			
Value of works	\$1,914,000.00			
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10% Number of submissions			
Main Issues	Heritage Streetscape Character Bulk and Scale Amenity & View Impacts Overdevelopment			
Recommendation	Approval with Conditions			
Attachment A	View Assessment			
Attachment B	Recommended conditions of consent			
Attachment C	Plans of proposed development			
Attachment D	Clause 4.6 Exception to Development Standards			
Attachment E	Statement of Heritage Significance			
				
LOCALITY MAP				
Subject Site		Objectors		 N
Notified Area		Supporters		
Note: Due to scale of map, not all objectors could be shown.				

1. Executive Summary

This report is an assessment of the application submitted to Council for Demolition of an existing single dwelling house, subdivision of the land into two lots and construction of a new dwelling house and pool on each new lot, with remediation of both lots at 17 Wharf Road, Birchgrove.

The application was notified to surrounding properties and 25 submissions were received in response to the initial notification. 31 submissions were received in response to renotification of the application after amendments were received.

The main issues that have arisen from the application include:

- Heritage Streetscape Character
- Bulk and Scale
- Appearance from foreshore
- View Impacts
- Privacy impacts
- Overdevelopment

The amended plans the subject of this report include a reduction in height of the proposed dwellings and provision of 1.5m wide side setbacks to the eastern side of each dwelling thereby facilitating greater opportunities for viewing through the site. The form of the proposed development is considered to be compatible with the streetscape and neighbourhood. Therefore, the application is recommended for approval.

2. Proposal

The proposed development involves the demolition of an existing single dwelling house on the site. It is proposed to remediate the land, subdivide the site into two lots and erect a new single dwelling house and swimming pool on each new lot with a rear deck and access steps at the rear boundary of the site. An existing garage building fronting the street boundary is proposed to be retained and incorporated into one of the dwellings. The existing jetty and two retaining walls at the rear of the site are to be removed. Each of the proposed single dwelling houses is to be five storeys including a 'Roof Terrace' level.

The amended proposal the subject of this report involves changes to the originally submitted design including a reduction in height of the dwellings, a reduction in the size of the 'basement' level and excavation, and provision of wider side setbacks to the eastern side of each dwelling.

The proposed new lot areas are as follows: Lot 1 - 414.96m² & Lot 2 - 352.64m².

Each of the dwellings is proposed to have two off-street parking spaces contained within garages. Lot 1 is proposed to have a new vehicle crossing with Lot 2 utilising an existing vehicular crossing.

3. Site Description

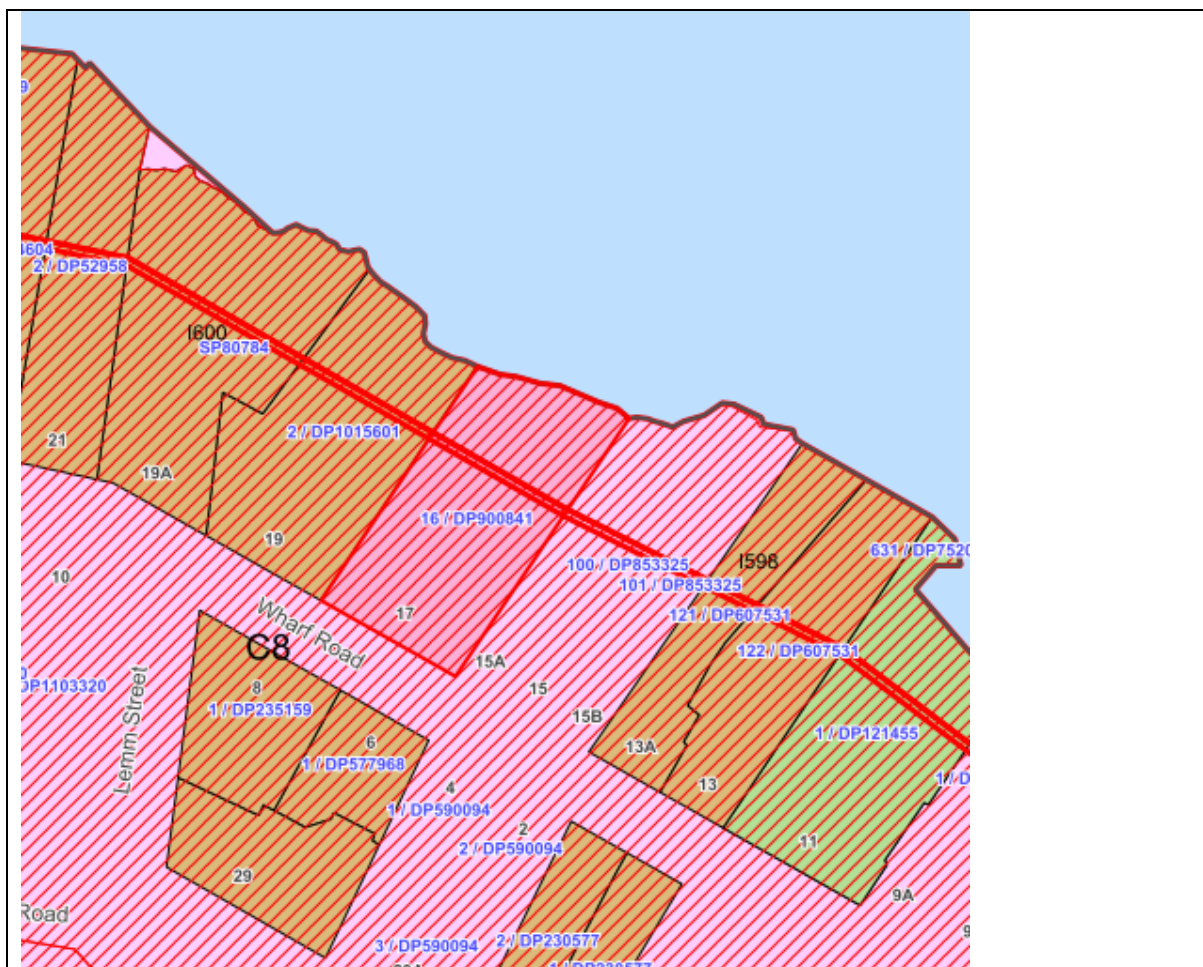
The subject site is located on the northern side of Wharf Road, between Lemm Street and Ronald Street. The site consists of one allotment and is generally rectangular with a total area of 767.6m² and is legally described as Lot 16 in DP900841.

The site has a frontage to Wharf Road of 20.115 metres and a frontage to the waterway of Snails Bay of approximately 21.2 metres. The site is affected by an easement for support to the side wall of 15A Wharf Road.

The site supports a three level detached dwelling with garage. The rear yard comprises two terraced levels down to the waterway. Stairs and a jetty extend from the rear of the site into Snails Bay.

The adjoining properties support dwellings. No.15A Wharf Road comprises an attached dwelling of four-storeys including attic, to the east of the site. No.19 Wharf Road comprises a part two/ part three-storey detached dwelling house to the west of the site which is a Heritage Item.

No.6 Wharf Road is a single storey dwelling, also a Heritage Item. No.8 Wharf Road contains a single storey dwelling with attic and is also a Heritage Item. The subject site is located within a Conservation Area. The property is identified as a foreshore inundation lot.



4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision & Date
DA/176/1994	New 3 storey dwelling	Approved on appeal 30/9/1994
D/1998/258	Erection of Carport	Refused 9/02/1999
T/2000/277	Removal of 1 x large Gum and 1 x	Approved 25/09/2000

	Jacaranda at rear of property.	
BC/2008/146	Unauthorised works consisting of construction of masonry brick piers and new timber deck fronting Parramatta river.	Approved 1/04/2009
PREDA/2019/42	Demolish existing dwelling and subdivision	Issued 11/04/2019

Surrounding properties

Application	Proposal	Decision & Date
15 Wharf Road		
DA/427/1994	Demolition of dwelling / erection of 3 storey dwelling	Approved 30/06/1995
15A Wharf Road		
D/2018/609	Alterations and additions to an existing residential dwelling including new pool with associated landscape works.	Approved 12/04/2019
19 Wharf Road		
D/2007/132	Alterations and additions to dwelling house and waterfront sheds, new swimming pool, retaining walls, terraces, landscaping and removal of 1 tree. Please note: Amended plans have been submitted.	Approved 8/04/2008
D/2007/276	Remediation of contaminated land in rear garden and removal of tree.	Approved 27/12/2007
M/2008/288	Modification to D/2007/132 including the following: addition of opening to ensuite bathroom to lower ground floor, reduction in extent of balustrade to north balcony and changes to the north east and west elevations.	Approved 6/03/2009
6 Wharf Road		
D/2008/278	Alterations and additions to existing dwelling	Approved 29/07/2008
8 Wharf Road		
D/2013/583	Alterations and additions to existing heritage listed dwelling and associated studio, and associated works including deck and ramp and removal of tree	Approved 25/07/2014

4(b) Application history

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

Date	Discussion / Letter / Additional Information
10 & 22/9/2020	Request for information
25/9/2020	Applicant request additional time to respond
15/10/2020	Additional information received
19/11/2020	Request for information
14/12/2020	Additional information received
16/12/2020	Additional information received

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 (Infrastructure) 2007*
- *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. LDCP 2013 provides controls and guidelines for remediation works. *SEPP 55* requires the consent authority to be satisfied that “the site is, or can be made, suitable for the proposed use” prior to the granting of consent.

The site has not been used in the past for activities which could have potentially contaminated the site. However, on information submitted with application it is considered that the site will require remediation in accordance with *SEPP 55*.

A Detailed Site Investigation (DSI) and Remedial Action Plan (RAP) have been provided to address the management of contaminated groundwater onsite and the treatment and disposal of any contaminated soils and contamination issues prior to determination. The contamination documents have been reviewed and found that the site can be made suitable for the proposed use after the completion of the RAP. To ensure that these works are undertaken, suitable conditions should be included in any consent in accordance with Clause 7 of *SEPP 55*.

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

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

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

An assessment has been made of the matters set out in Division 2 Matters for Consideration of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. It is considered that the carrying out of the proposed development is generally consistent with the relevant matters for consideration of the Plan and would not have an adverse effect on environmental heritage, the visual environment, the natural environment or any open space and recreation facilities.

The waterway adjoining the site is zoned *W6 Scenic Waters: Active Use*. The proposed works are positioned above mean high water mark (MHWM) and therefore do not involve any works within a designated zoned area of SREP 2005.

The proposed works fall within the definition of *land-based development* (i.e. swimming pools and waterfront access stairs) and are to be carried out above MHW. Pursuant to Clause 5(1) SREP 2005, Council is the consent authority for these works.

The proposal has been assessed under the SREP2005. The following comments are provided pursuant to the relevant clauses of the Plan:

Clause 2 – Aims of the Plan

Comment: The proposal is considered to be consistent with the aims of this Plan as the proposal will not adversely impact onto the waterway and achieves an acceptable urban design outcome that positively contributes to the existing heritage conservation area when viewed from the harbour and foreshore.

Clause 21 - Biodiversity, ecology and environment protection

Comment: the proposal is consistent with this clause as it will not impact on terrestrial or aquatic species, adequate sediment controls and drainage systems can be implemented.

Clause 22 - Public access to, and use of foreshores and waterways

Comment: The subject site is in private ownership and no public access is currently or proposed via this site to the foreshore or waterways. Hence, the proposal will not impact on any public access to or along the foreshores in this locality.

Clause 23 - Maintenance of a working harbour

Comment: The subject site is zoned and used for residential purposes. The proposal will not impact on the preservation of the working harbour as the site or adjoining lands are not presently used for any maritime activities.

Clause 24 - Interrelationship of waterway and foreshore uses

Comment: The proposal seeks land based development which will not adversely impact on existing waterway or foreshore uses.

Clause 25 - Foreshore and waterways scenic quality

Comment: The scale, form, design and siting of the proposed dwellings has been considered from the waterway in terms of the relationship to adjoining sites and the future character of this locality. The proposed dwellings are highly visible from the water due to the sloping site and elevated topography. Dwellings along this section of Snails Bay comprise a variety of architectural styles, scale, bulk and height and it is considered that the proposed contemporary development where it addresses the waterway is in keeping with these existing developments. Condition is recommended which requires the proposed deck to the waterfront to be deleted and the existing rear access stairs to the jetty to be retained unaltered. The other structures within the foreshore building line (FBL) such as the pools and associated landscaping works have also been considered and found to be of an appropriate design so as to be visually compatible within this foreshore setting from adjoining waterways. It is noted that the existing retaining walls within the site are proposed to be retained as part of the development.

Clause 26 – Maintenance, protection and enhancement of views

Comment: Detailed assessment of view impact is contained elsewhere in this report.

Clause 53 – It is considered that the proposed development has been assessed as satisfying the relevant provisions of this clause.

Clause 57 & 58 - Protection of places of potential heritage significance

Comment: Consideration has been given to the impact of the development on the Conservation Area and neighbouring Heritage Items and is considered satisfactory.

Clause 59 - Development in vicinity of heritage items

Comment: Consideration has been given to the impact of the development on the Conservation Area and neighbouring Heritage Items and is considered satisfactory.

In summary, it is considered that the subject proposal satisfies the objectives of the SREP, whereby, subject to conditions, the development will not detract from the scenic quality of the foreshore and will not have a negative impact on the future character of the locality as visible from the water.

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

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

Clause 1.2 - Aims of the Plan
 Clause 2.3 - Zone objectives and Land Use Table
 Clause 2.6 – Subdivision
 Clause 2.7 - Demolition
 Clause 4.1 - Minimum subdivision lot size
 Clause 4.3A - Landscaped areas for residential accommodation in Zone R1
 Clause 4.4 – Floor Space Ratio
 Clause 4.5 - Calculation of floor space ratio and site area
 Clause 4.6 - Exceptions to development standards
 Clause 5.10 - Heritage Conservation
 Clause 6.1 - Acid Sulfate Soils
 Clause 6.2 - Earthworks
 Clause 6.3 - Flood Planning
 Clause 6.4 - Stormwater management
 Clause 6.5 - Limited development on foreshore area
 Clause 6.6 - Development on foreshore must ensure access
 Clause 6.14 - Development control plans for certain development

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

The site is zoned R1 under the *LLEP 2011*. The *LLEP 2013* defines the development as:

Dwelling House, means a building containing only one dwelling.

The development is permitted with consent within the land use table. The development is consistent with the objectives of the R1 zone.

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

Standard	Proposal	non compliance	Complies
Minimum subdivision lot size Minimum permissible: 200 m ²	Lot 1 - 414.96m ² Lot 2 - 352.64m ²	-	Yes Yes
Floor Space Ratio Maximum permissible: 0.8:1 or Lot 1 - 331.97m ² Lot 2 - 282.11m ²	Lot 1 – 0.96:1 or 399.3m ² Lot 2 - 0.95:1 or 333.9m ²	67.33m ² or 20.28% 51.78m ² or 18.36%	No No
Landscape Area Minimum permissible: 20% or Lot 1 - 82.99m ² Lot 2 - 70.52m ²	Lot 1 – 24.9% or 103.4m ² Lot 2 – 22.9% or 80.7m ²	-	Yes Yes
Site Coverage	Lot 1 – 39.6% or 164.1m ²	-	Yes

Maximum permissible: 60% or Lot 1 - 248.97m ² Lot 2 - 211.58m ²	Lot 2 – 44.5% or 156.8m ²		Yes
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NOTE: If the basement 'Drying Court' is excluded from calculation of Gross Floor Area, the FSR is as follows: Lot 1 - 0.91:1 [breach of 46.03m² or 13.87%] and Lot 2 - 0.9:1 [breach of 36.39m² or 12.9%]

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of the Leichhardt LEP by 20.28% (or 67.33sqm) to Lot 1, and by 18.36% (or 51.78sqm) to Lot 2.

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 plan below.

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

The contravention of the FSR development standard and compliance with the requirements of *Clause 4.4 Floor Space Ratio* is unnecessary in the circumstances of this case for the following reasons:

- The proposal will have minimal environmental impacts including on the surrounding heritage significant buildings.
- The proposal will be in keeping with the diverse character of the area in relation to building bulk, form and scale and provide an overall positive visual impact.
- The variation will result in two residential dwellings that are of a scale that is compatible with the surrounding dwellings.
- There are no unreasonable environmental or amenity impacts on any nearby properties or the locality as a result of the FSR breach.
- The proposed development whilst non-compliant with the Council's numerical maximum FSR control, achieves compliance with the objectives of Clause 4.4.
- The proposal has minimal impacts on the visual privacy, acoustic privacy, solar access and views on any neighbouring properties or the surrounding properties in the area.
- The proposal complies with the minimum provision of landscaped area and is within the maximum permitted site coverage under LEP 2013. The proposal is not an overdevelopment of the site in this regard.
- The proposal will not result in any significant adverse impacts to surrounding developments
- The development is consistent with the envisaged built form of the locality within a harbour frontage site in Birchgrove

Subject to the conditions contained in this report, the applicant's written rationale would adequately demonstrate compliance with the development standard is unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

Subject to the conditions contained in this report, it is considered the development is in the public interest because it is consistent with the objectives of the LR1, in accordance with Clause 4.6(4)(a)(ii) of the Leichhardt LEP as set out below:

The relevant objectives of the R1 zone are:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To improve opportunities to work from home.
- To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- To provide landscaped areas for the use and enjoyment of existing and future residents.
- To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.
- To protect and enhance the amenity of existing and future residents and the neighbourhood.

The proposal is considered to be consistent with the zone objectives as it:

- Provides a density of residential development which is commensurate with the character of the area.
- The proposed lot sizes are well in excess of the minimum lot size and are compatible with the orientation and sizes of lots in the area.
- Is compatible with the character and style of surrounding buildings and the mixed architectural styles and varied built form of dwellings in the streetscape and area.
- Is compatible with the orientation and pattern of surrounding buildings and results in a development that will provide visual continuity and consistency with the adjoining semi-detached dwelling at No.15A Birchgrove Road.
- Provides Landscaped Areas that are compliant with the development standard and which would be accessible for future residents of the site.
- Provides for building footprints complying with Site Cover development standard.
- The proposed subdivision and new dwellings each lot will provide new additional public view lines from Wharf Road to Snails Bay through new side setbacks.
- The proposal will achieve consistency with the above objectives by providing residential development of an appropriate bulk and scale, compatible with the existing and desired future character of the area in relation to building bulk, form and scale.
- Minimises amenity impacts to adjoining properties.

It is considered the development is in the public interest because it is consistent with the objectives of the Floor Space Ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the Leichhardt LEP as set out below:

The relevant objectives of the development standard are:

- 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,

The proposal is consistent with the development standard objectives as it:

- Presents as 2 x two-storey detached dwelling houses from the Wharf Road frontage generally consistent with applicable 6m Building Envelope Control for the neighbourhood specified in the Leichhardt DCP2013.

- Provides for a form of development which is compatible in relation to scale, form, materials and siting with existing development in the area.
- Complies with the Landscaped Area and Site Coverage development standards.
- Retains similar site levels to that existing at the rear of the site and maintains the openness of the rear landscaped area of the site as viewed from the waterway.
- A significant portion of the assessed gross floor area is located either below street level or within the part excavated 'basement' level thereby not contributing to the apparent bulk of the building.
- Will not adversely impact the heritage qualities of the Birchgrove and Ballast Point Heritage Conservation Area or nearby Heritage Items.

The concurrence of the Planning Secretary may be assumed for matters dealt with by the Local Planning Panel.

Subject to the conditions contained in this report, the proposal would 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, there are sufficient planning grounds to justify the departure from Floor Space Ratio development standard and it is recommended the Clause 4.6 exception be granted.

Clause 2.6 – Subdivision & Clause 4.1 - Minimum subdivision lot size

Consent is required for the proposed subdivision of the existing site into two Torrens lots. The proposed development provides lots of a size and orientation which comply with requirements of these clauses.

Clause 2.7 - Demolition

No objection is raised to the demolition of the existing dwelling on the site, with exception of the original front garage structure which is proposed to be retained and incorporated into the proposal.

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

The amended plans the subject of this report provide Landscaped Areas that comply with the requirements of this clause.

Clause 5.10 - Heritage Conservation

The proposal is generally acceptable from a heritage perspective as it will not detract from the significance of the Birchgrove and Ballast Point Road Heritage Conservation Area or result in impacts on neighbouring heritage Items, subject to conditions to ensure the development is in accordance with this clause and the objectives and controls of Leichhardt DCP2013. Specific comments in this regard are contained elsewhere in this report.

Clause 6.2 – Earthworks

The location of the proposed development, as presented in the amended plans the subject of this report, is such that the proposed dwellings are to be located in a similar position/depth to that of the existing dwelling on the site such that the extent of excavation to accommodate the new dwellings is limited. However, a condition is recommended to ensure that only excavation required to erect the new dwellings is undertaken and to reduce over-excavation of the site.

Clause 6.3 - Flood Planning

The site is identified as a Foreshore Flood Control Lot under Leichardt DCP2013. A Foreshore Risk Management Report has been submitted with application. The report concludes that with the exception of the proposed low lying structures such as the foreshore deck and new steps, the majority of the proposed works including the dwellings will be located above the Estuarine Planning Level for a 100 year ARI event. The direct flood risks to the proposed development will therefore be minimal. The application is considered generally satisfactory in this regard.

Clause 6.4 - Stormwater management

The proposal is considered satisfactory in this regard with stormwater to be directed under gravity to the waterway. Suitable conditions are to be placed on any consent.

Clause 6.5 - Limited Development on Foreshore Area & Clause 6.6 - Development on Foreshore must ensure access

It is noted that the existing site does not provide public access to the foreshore, nor does the subject development propose to alter this situation.

The proposed foreshore deck located within the site is located partly over the waterway. However, inadequate information has been provided as to how this deck is to be constructed. Any such deck structure in this location would obscure the existing length of exposed rock face to view from the waterway which is considered contrary to the provisions of this clause. Further, the proposed deck appears to rely on a reconfiguration of the existing access stairs in the rock shelf. These steps currently provide access to an existing jetty located in the waterway. Inadequate information has been provided as to how these steps are to be altered and the location of the existing steps treated. The proposal specifies retention of the existing retaining walls in the rear yard and above the exposed rock face at the rear of the site. However, insufficient information has been submitted as to the method of retention of these structures given the existence of a current rear timber deck over a gap at the western end of the foreshore rock shelf.

As a consequence of the above, it is considered that any consent should be conditioned to delete the proposed works to the waterside of the rearmost retaining wall above the rock shelf, including the waterside rear deck, access stair from Lot 2 (17A), any infill of the existing gap under the timber deck at the western side of the exposed waterside rock face; and the retention of the existing access steps to the jetty located in the eastern side of the exposed waterside rock face; and that the current appearance of the rock shelf from the waterway is required to be retained.

Clause 6.14 - Development control plans for certain development

Council's Strategic Planning section has advised that given the limited scale of the proposed development, in accordance with this clause it is considered unreasonable to require a site-specific development control plan to be prepared for the proposed two dwelling development.

5(b) Draft Environmental Planning Instruments

The application has been assessed against the relevant Draft Environmental Planning Instruments listed below and is considered to be consistent with the draft policies:

- *Draft State Environmental Planning Policy (Environment)*

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 particularly 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

5(d)(i) Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005

Sydney Harbour Foreshores & Waterways Area DCP applies to the Foreshores and Waterways Area as identified in the Sydney Harbour Foreshores & Waterways Area REP. The DCP includes design guidelines for development, particularly visual impact assessments and criteria for natural resource protection. The subject site is designated within a *Landscape Type 7* area and this part of Snails Bay has been identified as comprising '*urban development with scattered trees*.' These areas are identified in the DCP as: '*having a high level of development with a mixture of waterside industrial, residential and maritime uses. Development is suitable provided the character of the area is retained and the performance criteria are met*.'

This plan is intended to reinforce existing controls with the specific purpose of ensuring that development is sympathetic to the natural and cultural qualities of the area covered by SREP (Sydney Harbour Catchment) 2005. The proposed development is classified as *land-based development*.

Considered under the DCP with particular reference to Parts 3 and 5 of the DCP, the proposal satisfies the aims and performance criteria for this landscape and development type including the following considerations:

- The residential land use of the site is maintained along this section of Snails Bay;
- The proposal may result in vistas to the water from the public domain in Wharf Road being gained through proposed side setbacks;
- With the exception of permissible ancillary structures such as the swimming pools and landscaping structures, no works are proposed within the foreshore building line which would otherwise be prohibited;
- The proposed pools adopt a similar level to the current rear yard level;
- The existing site does not provide public foreshore access and the proposal does not alter this situation;
- The development proposal involves erection of two new dwellings being of a style, form and spacing compatible with existing residential development along this part of Snails Bay;
- Appropriate and compatible landscaping is proposed to enhance both the natural and built environment of the site; and
- The proposal involves erection of dwelling houses and therefore associated noise and amenity impacts will be commensurate to surrounding residential development.

5(d)(ii) Leichhardt Development Control Plan 2013

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

LDCP2013	Compliance
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	Not Applicable
B3.1 Social Impact Assessment	Not Applicable
B3.2 Events and Activities in the Public Domain (Special Events)	Not Applicable
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	Not Applicable
C1.4 Heritage Conservation Areas and Heritage Items	Yes – see discussion
C1.5 Corner Sites	Not Applicable
C1.6 Subdivision	Yes – see discussion
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes – Suitable conditions relating to the remediation of the site should be placed on any consent
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	Yes – see discussion
C1.12 Landscaping	Yes – see discussion
C1.13 Open Space Design Within the Public Domain	Not Applicable
C1.14 Tree Management	Yes – see discussion
C1.15 Signs and Outdoor Advertising	Not Applicable
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	Not Applicable
C1.17 Minor Architectural Details	Not Applicable
C1.18 Laneways	Not Applicable
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	Yes – see discussion
C1.20 Foreshore Land	Yes – see discussion
C1.21 Green Roofs and Green Living Walls	Not Applicable
Part C: Place – Section 2 Urban Character	
C2.2.2.6 - Birchgrove Distinctive Neighbourhood	Yes – see discussion
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes – see discussion
C3.3 Elevation and Materials	Yes – see discussion
C3.4 Dormer Windows	Not Applicable
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes – see discussion
C3.10 Views	Yes – see discussion
C3.11 Visual Privacy	Yes – see discussion
C3.12 Acoustic Privacy	Yes – see discussion
C3.13 Conversion of Existing Non-Residential Buildings	Not Applicable

C3.14 Adaptable Housing	Not Applicable
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	Not Applicable
D2.5 Mixed Use Development	Not Applicable
Part E: Water	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	Not Applicable
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	Not Applicable
E1.1.5 Foreshore Risk Management Report	Yes
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Not Applicable
E1.2.4 Stormwater Treatment	Not Applicable
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	Not Applicable
E1.2.7 Wastewater Management	Not Applicable
E1.3 Hazard Management	Not Applicable
E1.3.1 Flood Risk Management	Not Applicable
E1.3.2 Foreshore Risk Management	Yes

The following provides discussion of the relevant issues:

C1.4 Heritage Conservation Areas and Heritage Items

Control C2 of Part C1.6 of the DCP states that new allotments shall be consistent with the prevailing subdivision pattern in the neighbourhood. The Statement of Heritage Impact states the existing subdivision pattern of Wharf Road is irregular and that the proposed lot size will be consistent with the subdivision pattern within the immediate vicinity, which is agreed with.

There are no concerns with the proposed demolition of the existing dwelling, c. 1994, as it is not a contributory building. Control C1 c. iv. of Part C1.2 of the DCP states that council will not approve a development application for the demolition of a building within a Heritage Conservation Area unless the quality of the proposed replacement buildings will be compatible with the HCA or streetscape in terms of scale, materials, details, design style and impact on streetscape.

An AHIMS search undertaken by council confirms there are no Aboriginal sites or places on, or within 50m, of the subject site.

Consideration of the heritage design of the amended plans, the subject of this report, has been undertaken with respect to cl.5.10 of the LEP and is as follows:

The subject property at 17 Wharf Road, Birchgrove, is a neutral building located within the Birchgrove and Ballast Point Road Heritage Conservation Area (C8 in Schedule 5 of the Leichhardt LEP 2013). It is within the vicinity of numerous heritage items, the closest which are listed below:

Timber house, including interiors at 6 Wharf Road, Birchgrove (I592);
House, including interiors at 8 Wharf Road, Birchgrove (I595);
House, including interiors at 13 Wharf Road, Birchgrove (I597);
House, including interiors at 13A Wharf Road, Birchgrove (I598);
House and remnants of former Stannard's Marina, including interiors at 19 Wharf Road, Birchgrove (I599);
Remnants of former Stannard's Marina, including interiors at 19A Wharf Road, Birchgrove (I600); and
Semi-detached houses, including interiors at 25 and 27 Ballast Point Road, Birchgrove (I502 and I503).

The applicant has provided revised drawings in response to Council advice on the earlier submitted design.

The basement levels have been redesigned and the extent of the terraces reduced. The north-eastern (rear) façade of the basement has been amended to align with the rear façade of the ground and first floors above, which is acceptable.

The amended plans retain the double garage for dwelling No.17 (Lot 1). The landscape plan has been amended to include Michelia 'Scented Pearl' trees on either side of the driveway to shield the garage from view from the street. The application states that no more than 3 metres of the proposed garage door (the equivalent of a large single door) will be visible from the street at any time, whether viewed straight on or on the oblique. Also, that the placement of the garage entrance at 550mm below the street level further minimises its visibility from the street. The double garage is considered satisfactory on the basis of the amendments made to the landscape plan which will help shield it in view from the streetscape.

The proposal is generally acceptable from a heritage perspective as it will not detract from the heritage significance of the HCA or cause impacts on neighbouring heritage Items, subject to the conditions recommended below, to ensure the development is in accordance with the LEP heritage objectives and the objectives and controls in the DCP.

- The windows in the south-east elevation of the dwelling at No.17 (Lot 1) adjacent to the stairs shall be redesigned so as to be of the same dimensions and proportions as the windows in the south-west elevation of bedroom 2 on the first floor of dwelling No. 17A (Lot 2).
- The remaining extent of the existing (original) garage on the site shall be retained.
- Glazing proposed for balustrades shall be replaced with vertical timber or metal balustrades.
- The existing iron palisade fence with sandstone base shall be retained in its current configuration and location and the sandstone base to the palisade fence must not be painted.
- If unexpected archaeological deposits or Aboriginal objects are found during the works covered by this approval, work must cease in the affected area(s) and the Office of Environment & Heritage must be notified. Additional assessment and approval pursuant to the National Parks and Wildlife Act 1974 may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

C1.6 Subdivision

The two new lots arising from the proposed subdivision will be well in excess of the minimum required area of 200m² and be of an orientation which is compatible with the subdivision pattern of the area. The lots are generally consistent with a varied subdivision pattern in the neighbourhood. Subject to conditions contained in the recommendation, the subdivision will retain the exposed rock face at the rear boundary of the site.

C1.11 Parking

The amended drawings propose the retention of the existing front garage structure and its incorporation in the new dwelling on Lot 2. This garage formed part of a previous dwelling on the site which was demolished in the 1990's. Its retention is also supported on heritage grounds. The existing dwelling includes a garage providing two internal tandem parking spaces in the building.

The DCP requires no minimum provision, and a maximum provision of two off-street parking spaces for each new dwelling house. The proposal provides two on-site parking spaces for each lot and complies.

The vehicular access and on-street parking assessment report by Terraffic Pty Ltd dated 8 October 2020 demonstrates no loss of on-street parking and suitable vehicular entry and exit from each new dwelling. In this regard, it is noted that the long sections along the vehicular crossing to the eastern lot (Lot 1) as shown on stormwater drainage plan C-3522-01 issue 4 dated 15/12/20 prepared by Kozarovski and Partners does not comply with the ground clearance requirements of AS2890.1. It is considered appropriate that this may be resolved through condition of any consent prior to the issue of any construction certificate.

C1.12 Landscaping & C1.14 Tree Management

A review of the submitted Landscape Plan, prepared by ESNH Design, DWG No. 1902 DA14B has found the proposed planting of *Olea europaea* 'Tolley's Upright Olive' to be unacceptable and is not supported, as fruit trees grown for the purpose of fruit production, excluding naturally grown native fruiting species are exempt from Council's *Tree Management Controls* and can be removed at any time without Council consent.

Conditions are recommended requiring the planting of 4 trees on the site comprising a minimum of 2 x 75 litre size trees (per lot), which will attain a minimum mature height of seven (7) metres. The trees are not to be palms, fruit trees and species recognised to have a short life span.

C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls

The amended plans indicate that the development would involve some excavation to accommodate the southern portions of the 'Basement' and Lower Ground Levels. It is noted that the majority of the building level identified on submitted drawings as 'Basement Level' do not constitute a basement as defined. This level of the dwellings is at the approximate level of the existing dwelling on the site with areas closer to the Wharf Road frontage only being subject to deeper excavation. Given the siting of the existing dwelling on the site, it is considered that on completion of the proposed development such excavation would be imperceptible from either Wharf Road or the waterway.

The proposal includes retention of the two retaining walls in the rear yard of the site, thereby generally retaining the existing levels of the two rear terraces which step down to a significant area of exposed rock face which drops steeply to the northern waterfront edge of the site.

The submitted drawings indicate the provision of a deck (walkway) along the rear edge of the site adjacent to the waterway which would link to the existing jetty to the rear of both proposed Lots. This waterfront deck would be accessed from the rear of Lot 2 via a new stair in the vicinity of an existing suspended deck in the north-western corner of the site. The existing retaining wall closest to the waterway would need to be extended across the area of the existing timber deck which extends above a gap in the foreshore rock face in the north-western corner of the site. The area below the existing timber deck in the vicinity of the new access stair would presumably be filled. The application is lacking in detail as to how these works, particularly the rear waterfront deck, are to be constructed and supported.

However, as noted elsewhere in this report, the rear boundary of the site, as indicated on the submitted survey, follows the Mean High Water Mark (MHW) at the rear of the site.

Further, the level of the deck is also shown on drawings at a consistent height of RL2.15 despite the rock face varying in slope from a height of RL2.85 from which it slopes down steeply to the water. The submitted drawings do not indicate any excavation into the rock face at the waterfront. However, the proposed deck would necessitate excavation of this rockface for its full frontage to the waterfront. The submitted SEE states that '*access to rear boat jetty to be provided to proposed Lot 1 only*'. Consequently, the proposed rear deck (walkway) and access stairs from lot 2 as shown on submitted drawings are in conflict with this statement of intent.

As a consequence of the lack of specific design information, the inconsistency of the submitted drawings, and the impact of the deck and associated access steps on the exposed foreshore rock face, including necessary excavation of the rock face to accommodate the proposed deck alignment and steps, the proposed deck (walkway) and steps are considered to be contrary to controls C1 & C2 of this clause of the DCP.

It is considered appropriate to delete the proposed deck to the waterfront so as to maintain the existing exposed rock face as viewed from the waterway. To prevent further excavation of the exposed waterfront rock face, the existing rear access stairs to the jetty should be retained unaltered. A condition to this effect is contained in the recommendation to this report.

C1.20 Foreshore Land

The proposal has been considered to be generally consistent with Clauses 6.5 and 6.6 of the Leichhardt LEP 2013. In this regard, the Foreshore Building Line (FBL) is located 26m from the front boundary of the site. The proposed dwellings are located clear of the FBL. The pools, landscaping and associated works on each proposed lot are permissible below the foreshore building line and with the exception of the proposed rear access steps to Lot 2 and rear boundary deck/walkway (addressed elsewhere in this report), will not result in any adverse impacts in terms of access to the foreshore or coastal processes. There is currently no public access to the foreshore and the development does not propose to alter this situation.

The amended plans the subject of this report have reduced the extent of excavation into the southern portion of the site (toward the street) and provide for elevated terraces to the rear of the dwellings rather than the originally proposed strongly cantilevered form of the dwellings over an open basement level. Subject to conditions the presentation of the dwellings to the waterfront is considered satisfactory.

The proposal has been considered under the provisions of the SREP (Sydney Harbour Catchment) 2005 and Sydney Harbour Foreshores and Waterways Area DCP (2005). In this regard, the subject site is identified as Urban Development with Scattered Trees under this DCP. The proposed works, with the exception of the new rear access steps to Lot 2 and

deck (walkway) at the rear boundary of the site (addressed elsewhere in this report), will not result in unsatisfactory impacts in terms of access to the foreshore or coastal processes.

The proposal satisfies the performance criteria for land with a Landscape Character *Type 7*.

The proposed works are defined as *Land-based development*. The proposal satisfies the guidelines for land-based development under Section 5.

With regard to the appearance of the dwellings from the waterway a condition is recommended requiring the proposed glazing for balustrades to be replaced with vertical timber or metal balustrades.

C2.2.2.6 - Birchgrove Distinctive Neighbourhood

As noted elsewhere in this report, the form and character of the amended design is considered to be satisfactory subject to conditions. Control C15 specifies a building envelope of 6m which allows for a two-storey form to the street. In this regard, the *Existing Character* provisions of this Part of the DCP include the following statement:

Many waterfront residential developments follow the slope of the land down to the water. This results in a number of residences with a single or double storey street frontage, having 4 or 5 levels visible from the water. The architecture facing the water is a mix of contemporary open plan, glass walled styles, Victorian houses with distinctive 'widows walks', and a few remaining iron and timber workers cottages mainly overlooking Iron Cove.

It is noted that the form of the proposal is such that opportunities for public views through the site are increased due to the removal of the existing dwelling and screening vegetation, and includes provision of two 1.5m setbacks on the eastern side of each dwelling which will allow views out to the north across the waterway which do not currently exist.

C3.2 Site Layout and Building Design

Building Envelope – The site is subject to a 6m building envelope control. This building envelope allows for a two-storey façade. However, the amended plans demonstrate that the proposed dwelling at 17A (Lot 2) will have a front wall height of 6.5m, a breach of 0.5m. The proposed dwelling at 17 (Lot 1) will have a front wall height at the façade containing the garage door of 6.3m, a breach of 0.3m.

It is considered that these breaches result in additional bulk which can be reduced by a condition of any consent requiring the lowering of the front main roof section of the proposed dwelling at 17 (Lot 1) by 0.3m, and the proposed dwelling at 17A (Lot 2) by 0.5m, so as to reduce the front wall height presentation of each dwelling to comply with the 6m envelope control. It is noted that this condition would result in a reduction in overall building bulk and an increase in the step down of the development from the higher Heritage Item at 19 Wharf Road to the dwelling at 15A Wharf Road.

Building Location Zone – The proposed dwelling on Lot 2 (No.17A) will result in a breach of the rear Building Location zone by 1m at the 1st floor level; 4.4m at Upper Ground & Lower Ground levels; and by 5.5m at Basement level.

The proposed dwelling on Lot 1 (No.17) will result in a breach of the rear Building Location zone by 1m at the Basement level.

It is noted that the existing dwelling on the site exceeds the BLZ at both the proposed Basement and Lower Ground Floor levels. Further, the Upper Ground Floor level of the proposed dwelling on Lot 2 (No.17A) will have a rear setback 1m less than the existing dwelling on the site. The First Floor of this dwelling will have a rear setback 1.5m greater

than the rear ridgeline of the existing dwelling, with the proposed balcony at that level extending to the position of the ridgeline of the existing dwelling. Consequently, the amended plans provide a rearward form and location which would have limited impact on existing views across the rear of the property.

The rearward location of the dwellings is within the Foreshore Building Line (FBL) under the Leichhardt LEP2013; and also both the FBL and Building Line nominated under Part G5.3 of the Leichhardt DCP2013.

Side Setbacks – It is proposed that each new dwelling be located, in part, including the façade, to the western side boundary of each new lot, with a 1.5m setback provided to the eastern boundary of each new lot.

The proposed dwellings shown on the amended plans the subject of this report will result in breaches of the side setback controls to both existing side boundaries of the site as follows:

The proposed dwelling on Lot 1 (No.17) will result in a breach of between 0.5m and 2.8m to the eastern side boundary. The proposed dwelling on Lot 2 (No.17A) will result in a breach of between 2.1m and 4.5m to the western side boundary.

In this regard, it is noted that the site steps down significantly from street level. It is considered that the provision of 4.5m side setbacks would result in development uncharacteristic of that predominant in the vicinity which includes dwellings with no side setbacks. A 1.5m side setback is provided on the eastern side of each dwelling consistent with Part G5.7 of the DCP. The setbacks proposed are considered satisfactory subject to conditions, given the topography and orientation of the site, the position of neighbouring dwellings, and the limited assessed amenity impacts of the proposed breach in terms of bulk, overshadowing, privacy and maintenance of significant public and private views.

C3.3 Elevation and Materials

The design of each dwelling includes the provision of a bathroom on the first floor level above the entry foyer on the upper ground level immediately below. The provision of non-habitable rooms in the façade facing the street is contrary to control C8. Consequently, it is recommended that the consent should be conditioned to delete these bathrooms and those rooms changed to a different use such as a bedroom, study or similar.

As noted elsewhere in this report the proposed use of glazed balustrades is not supported. These are to be altered to have more traditional materials so as to satisfy control C11.

C3.9 Solar Access

The site has a north-south orientation (33° east of north). The proposal has been assessed as satisfying the solar access requirements, which includes the following specific amenity controls:

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

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

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 9am and 3pm during the winter solstice.

C17 Where surrounding dwellings have north facing private open space, ensure solar access is retained for three hours between 9am and 3pm to 50% of the total area during the winter solstice.

In this regard, the proposal does not result in significant shadow impacts to Nos.6, 8, 15A or 19 Wharf Road. It is noted that the impact to 6 & 8 Wharf Road is limited to shadows to front windows at 9am mid-winter, with no impact by 10am.

Shadow impact to 19 Wharf Road is limited to shadows to the eastern side setback of that premises and lower garage/dwelling wall at 9am mid-winter, with the impact removed by 9:40am. Solar access to rear private open space and main living room windows satisfies the controls or is unaffected during the assessment times.

Shadow impact to 15A Wharf Road is limited to the rear elevation of that dwelling after 12noon. It is noted that the side boundary wall of that premises does not contain windows. Solar access to rear private open space and main living room windows satisfies the controls or is unaffected during the assessment times.

C3.10 Views

The impact of the amended development design on existing views is assessed in detail within an Appendix to this report.

It is noted that the amended plans involve a lowering of the main ridge height of the dwelling on Lot 1 (No.17) from that originally proposed by 1.26m. The amended plans the subject of this report involve a lowering of the main ridge height of the dwelling on Lot 2 (No.17A) from that originally proposed by 0.8m. A 1.5m setback has been provided on the northern side boundary of each proposed dwelling.

While it is acknowledged that certain properties will be affected by view loss impact, it is considered that the proposal is reasonable and that a development of the subject site fully compliant with the FSR control and applicable 6m building envelope control would likely result in similar view loss impacts. The proposal is therefore considered to be acceptable with regard to view impacts under Part C3.10.

C3.11 Visual Privacy & C3.12 Acoustic Privacy

It is noted that the balconies at the rear of the existing dwelling and those on neighbouring sites including 15A and 19 Wharf Road result in significant existing cross-overlooking of rear yard areas and dwellings on these properties. It is considered that in the circumstances, the amended plans for the proposed dwellings would not result in an increase in overlooking between neighbouring properties to an extent that is considered unacceptable in context.

As noted above, existing development in the immediate vicinity includes elevated rear terraces and balconies. Consequently, these elements already result in overlooking between these properties, compromising the privacy of rear yards in the vicinity of the site.

However, the proposal includes two large elevated rear terraces and an 'attic' level balcony/terrace to each new dwelling. The two main large terraces located at the Lower and Upper Ground floor levels of each dwelling house measure 3.7m x 5.9m. Each has an area of 21.83m². As these terraces extend rearward from lounge and dining rooms, they would likely be used as outdoor entertainment areas, with consequent implications for both visual and acoustic disturbance.

Further, the dwelling No.17 (Lot1) includes a larger terrace at the attic level with dimensions of 3.6m x 4.8m, having an area of 17.28m². This elevated roof terrace serves a study and

given its elevated position would be likely also be used as an outdoor entertaining area, resulting in potential acoustic disturbance to neighbouring properties.

Therefore, it is considered appropriate in the circumstances that to minimise both visual and acoustic privacy impacts, particularly to adjoining properties, that both the Upper Ground Level rear terraces to each dwelling be reduced so as to have a maximum depth of 1.5m. The Lower Ground Level rear terraces may be provided with a flat/skillion roof form of minimal thickness. Further, the 'attic' level roof terrace to dwelling No.17 (Lot 1) be reduced to have a maximum depth of 1.5m.

The proposed side windows W10 & W19 located in the western side wall of dwelling 17A (lot 2) are floor-to-ceiling and approximately 1.6 & 1.8m wide. These windows are located on the Upper Ground Level and First Floor and would result in potential overlooking and privacy impacts to the heritage item at 19 Wharf Road. A condition requiring these windows to be fitted with obscure glazing is recommended to be imposed.

Subject to the recommended amendments, it is considered that the proposed dwellings would not result in significant unsatisfactory visual or acoustic privacy impacts to neighbouring properties.

E1.2.2 Managing Stormwater within the Site

The stormwater disposal design is considered satisfactory subject to conditions.

G5.11 Wharf Road Birchgrove

The proposal has been assessed against this Part and is considered to comply with its provisions. The following additional comments are provided in relation to the particular specific controls below:

- G5.7- Subdivision
C1 – Any further subdivision in Wharf Road must ensure:
 - a. that the alignment of any new building must not encroach on the existing setbacks of existing buildings;*
 - b. that the principal aspect from the street be a dwelling façade and not garaging;*
 - c. that there will be a side setback on one side a minimum of 1.5m preferably related to an existing setback, to retain and enhance views to the water;*
 - d. gardens on the waterfront are not further subdivided with the introduction of fences and variations in garden treatment to existing garden settings; and*
 - e. that if a building is to be subdivided there must be consistency in the treatment of the subdivided sections of the property in such matters as facade treatments, colour, roof materials and overall built form. How this is to be achieved must be indicated with the subdivision application.*

As noted elsewhere in this report, the proposal is considered to satisfy the above controls. A condition is recommended to retain the existing front boundary fence, allowing for the insertion of the new vehicular and pedestrian gates.

- G5.9 - Views
 - C1 Existing side setbacks shall be preserved and reinstated to retain view corridors through to and from the water.*
 - C2 Open railed fencing, gates and structures shall be erected to preserve, reinstate or create views.*
 - C3 Garaging or car ports which obstruct views will not be permitted.*
 - C4 Prevailing building heights and ridgelines shall be retained if substantial view lines are enjoyed.*

As noted elsewhere in this report, the proposed form of the proposal and impact on streetscape and assessment of views is addressed elsewhere in this report.

- G5.10 – Access, Traffic management and Parking
C2 On-site parking is to be limited to a single vehicular crossing per site and that a single garage only be provided.
C7 Garage openings should have a predominantly vertical rather than horizontal emphasis.

Vehicular access to the site has been addressed elsewhere in this report. The proposed double width garage to dwelling 17 (Lot 1) is served by a single width crossing thereby minimising its visual impact on the streetscape while maintaining on-street parking. The proposed form of the proposal has been addressed elsewhere in this report and is considered satisfactory with regard to heritage design and streetscape. A condition is recommended requiring that the appearance of the proposed wider garage door opening to dwelling 17 (Lot 1) is addressed through the introduction of materials and finishes that will have the effect of increasing the appearance of verticality of the door in this facade.

5(e) The Likely Impacts

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

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

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

5(g) Any submissions

The original plans and the amended plans for the application were notified in accordance with Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties. In response, 27 submissions were received in response to the initial notification. 25 submissions were received in response to renotification of the application.

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

- Public View Loss over the site
- View loss from neighbouring properties
- Privacy impacts from raised rear terraces/decks and front dormer windows
- Overshadowing to neighbouring properties
- Form of development out of character with area
- Impact on heritage in vicinity, including No.19 Wharf Road
- Inadequate Parking provision
- Proposal is contrary to Wharf Road provisions (Part G5) of DCP/Prohibition
- Loss of on-street parking
- Overdevelopment and FSR breach
- Height and Bulk
- Side setbacks
- Building Location Zone
- Appearance from waterway
- Exceedance of site cover
- Development contrary to Sydney Harbour Foreshores & Waterways DCP 2005
- Inappropriate Subdivision

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

- Issue: The decision of the Court in *Tosich v. Leichhardt Council* of 22/12/1994 [10329], determines the bulk, form, height of any future development on the site.

Comment: The application has been assessed in accordance with Section 4.15 of the Act and on its individual merits against the suite of planning controls applicable to the subject site. The decision of the Court with respect to a previous development application for the site in the early 1990's was focussed on the merits of a particular design and the applicable planning controls at that time.

Issue: Any proposed power poles to be undergrounded

Comment: Any consent would be appropriately conditioned.

Issue: Disturbance to neighbouring properties during construction

Comment: Any consent would be appropriately conditioned.

Issue: Precedent for overdevelopment

Comment: The application has been assessed on its individual merits. Any future application for development in the area would be assessed in a likewise manner.

Issue: Vibration during excavation

Comment: On the basis of information submitted with application, the current amended plans have reduced the projection of the lower levels of the building toward the street thereby reducing the required excavation. Any consent would be appropriately conditioned.

5(h) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

- Heritage
- Engineering
- Urban Forest
- Health

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A total contribution of \$40,000 would be required for the development under the Leichhardt Section 94 Contributions Plans. The calculation of this contribution amount incorporates both a credit for the existing dwelling on the site and a limitation by Ministerial Direction. A condition requiring this contribution to be paid is included in the recommendation.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Leichhardt Local Environmental Plan 2013* and Leichhardt Development Control Plan 2013.

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

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

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 46 to vary Clause 4.4 of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental planning grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2020/0461 for Demolition of an existing single dwelling house, subdivision of the land into two lots and construction of a new dwelling house and pool on each new lot, with remediation of both lots at 17 Wharf Road BIRCHGROVE NSW 2041 subject to the conditions listed in Attachment A below.

Attachment A – View Assessment

C3.10 - VIEW ASSESSMENTS

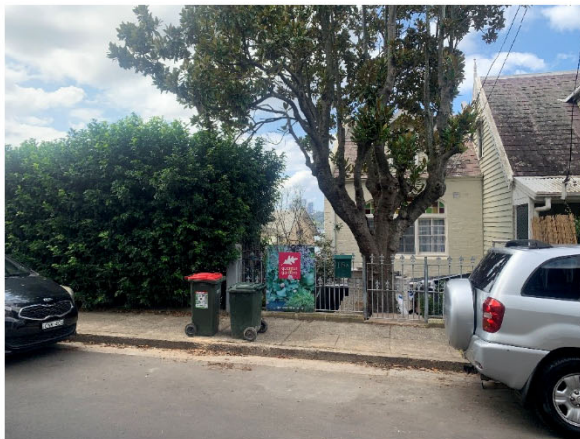
The impact of the amended development design on existing views is assessed in detail below. The amended plans involve a lowering of the main ridge height of the dwelling on Lot 1 (No.17) from that originally proposed by 1.26m. The amended plans the subject of this report involve a lowering of the main ridge height of the dwelling on Lot 2 (No.17A) from that originally proposed by 0.8m. A 1.5m setback has been provided on the northern side boundary of each proposed dwelling.

Public Views from Wharf Road

The impact of the amended proposal is to increase the opportunity for public views through the site to the waterway from the street. This results from the removal of the existing dwelling and hedge from the front boundary. There are currently no direct public views through the site to the waterway. The below photos demonstrate the limited oblique views available over the rear of the site through the adjoining properties 15A & 19 Wharf Road.



Picture 1 – Existing view of Site from Wharf Road.



Picture 2 – Existing limited oblique view through 15A Wharf Rd over rear of subject site.



Pictures 3 & 4 – Existing limited oblique view through 19 Wharf Rd over rear of subject site.

The current amended plans provide for the rearward projection of the proposed dwelling on Lot 1 (No.17) to be reduced from the originally submitted plans by approximately:

- 0.7m at Terrace Level
- 0.5m at First Floor, and
- 0.1m at Upper Ground Floor.

The rearward projection of the proposed dwelling on Lot 2 (No.17A) has been reduced in the current amended plans by approximately:

- 0.7m at Terrace Level
- 1.0m at Upper Ground Floor
- 1.0m at Lower Ground Floor, and
- 0.6m at Basement Level.

Both proposed dwellings are located a minimum of 0.9m-1.0m clear of the Foreshore Building Line. The rear alignment of each dwelling is stepped back from Lot 1 to lot 2. The rear alignments of the dwellings are positioned between that of 15A and 19 Wharf Road and are considered generally consistent with that of both adjoining properties.

The rear wall alignment of the proposed dwelling at No.17A would have a rearward projection approximately 0.8m less than the existing dwelling on the site. The rear wall alignment of the proposed dwelling at No.17 adopts the same rear alignment as the existing dwelling on the site.

Both proposed dwellings would include open balconies extending beyond the rear wall alignment at both the lower and upper ground levels. The proposed rear balconies to the dwelling at No.17A would extend approximately 0.3m less than the rear balcony of the existing dwelling on the site. The proposed rear balconies to the dwelling at No.17 would extend approximately 0.6m further rearward than the rear balcony of the existing dwelling on the site.

The lower ground level balconies would be generally within the curtilage of the existing dwelling on the site. The upper ground level balconies of both No.17A and No.17 would be located in a position approximately 2.4 and 3.5m respectively, rearward of the existing dwelling wall.

15A Wharf Road

It is noted that the rearward alignment of 15A Wharf Road, including recently approved rear additions to that property, is such that the proposed development would not result in any significant view loss from the rear of that property.

Objections have been received regarding specific view loss from the following properties: 19 Wharf Road; 10 Wharf Road; 8 Wharf Road; 6 Wharf Road; 4 Wharf Road; 2 Wharf Road; and 29 Ballast Point Road.

19 Wharf Road

An assessment of view impact of the proposal in accordance with the planning principle established in *Tenacity Consulting v Warringah (2004) NSWLEC 140* is below:

Step 1 - The first step is the assessment of views to be affected

(Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.)

The existing views over the subject site from 19 Wharf Road also include land/ water interface views from the Louisa Road Peninsula to the west, to Goat island and Sydney Harbour Bridge in the east. The pictures below identify existing views from No.19 Wharf Road over the subject site.



Picture 5 - View obtained from the upper level bedroom eastern side window of No.19 in over subject site.



Picture 6 - View obtained from the upper level bathroom eastern side window of No.19 in over subject site.



Picture 7 - View obtained from the upper level rear balcony of No.19 in easterly direction over side boundary and the subject site.



Pictures 8 - View obtained from ground level rear sunroom/study of No.19 in easterly direction over side boundary and subject site.



Pictures 9 - View obtained from ground level rear sunroom/study of No.19 in easterly direction over side boundary and subject site.



Picture 10 - View obtained from western side of lower ground level rear terrace of No.19 looking east toward Harbour Bridge over the side boundary of subject site.



Picture 11 - View obtained from eastern side of lower ground level rear terrace of No.19 looking east toward Harbour Bridge over the side boundary of subject site.

It is noted that the above views from 19 Wharf Road include full distant views of the Sydney Harbour Bridge from the upper level of the building, to mostly obscured views of the bridge from the ground (mid-level) and lower ground levels.

Step 2 - The second step is to consider from what part of the property the views are obtained. *(For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic).*

Views from different positions in 19 Wharf Road are obtained to Goat Island/ Sydney Harbour Bridge over the side boundaries of both 17, 15A, 15, 15B, 13A and 13 Wharf Road.

The more significant views are obtained from the upper level rear deck and upper level side windows serving a bedroom and bathroom (standing) of 19 Wharf Road.

Views (standing) are also available from the rear study/ sunroom in the street (mid-level) of 19 Wharf Road.

Views (standing) are also available from the rear lower level outdoor terrace area of 19 Wharf Road.

Virtually uninterrupted views to the harbour Bridge are available from the rear yard pool level and lower yard level of No.19 looking east toward the Harbour Bridge over the side boundary of subject site. These views would not be impacted by the proposed development.



Picture 12 - View obtained from rear yard pool level of No.19 looking east toward Harbour Bridge over the side boundary of subject site.

Step 3 - The third step is to assess the extent of the impact.

(This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas, though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating).

It is noted that existing land/ water interface views obtained directly over the rear boundary of 19 Wharf Road are unaffected by the proposal. Also, existing water views from the rear lower pool deck area of 19 Wharf Road over the side boundary of the subject site would remain unaffected by the proposal.

On the basis of information submitted with the amended drawings, the proposed roof levels and stepped rear setback of the western dwelling on Lot 2 (17A) would allow views currently available from the upper rear balcony of 19 Wharf Road over the subject site to the harbour bridge to be retained. However, the partial views to the southern motorway deck of the bridge would be obscured.

The Harbour Bridge views will be lost from the pair of upper level side windows in 19 Wharf Road. In regard to this latter affectation, it is observed that any two-storey dwelling [from street level] on the subject site that complies with the 6m Building Envelope control under Leichhardt DCP2013 would result in a similar impact.

Existing partial and filtered harbour bridge views gained from the rear sunroom/study on the ground (mid-level) of 19 Wharf Road over the side boundary would be largely lost. Although some remaining glimpses may be retained above the roof of the rearmost 2m-2.5m of the upper ground level of Lot 2 (No.17A).

Some existing partial harbour bridge and water views currently available from eastern side of the rear lower level terrace of 19 Wharf Road over the side boundary would also be lost. These views from the western side of this terrace area would remain largely unaffected.

The water views from this lower level terrace area include some view gained partly through the existing rear balcony of the existing dwelling on the subject site (which has a privacy screen over half its depth). This loss of view occurs due to the proposed rearward extent of the Lower Ground Floor of Lot 2 (No.17A) occupying a similar rearward extent to the existing dwelling on the subject site but being located 2.2m closer to the side boundary. This impact extends through an arc of approximately 5°.

It is noted that as the lower and upper ground floor level rear terraces of the proposal are open, this may result in the retention of some views through this arc. Views to the north of this arc would remain unaffected.

The extensive harbour views currently available from the rear of 19 Wharf Road to the west, north and east, including views over the side boundary of the subject site to the Harbour Bridge are largely retained. The exception being the loss of a harbour bridge view from the upper level side windows and a limited partial view of the harbour bridge from the ground floor (mid-level) rear-most side window of No.19. Consequently, the view loss impact of the proposal on 19 Wharf Road is considered overall to be minor.

Step 4 - The fourth step is to assess the reasonableness of the proposal that is causing the impact.

(A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.)

The proposal has been amended since initial lodgement involving a reduction in height, width and rearward extent. It is noted that the submitted plans do not include provision of privacy screens to any of the rear terraces/balconies. Consequently, the absence of such privacy screens reduces the bulk of the development and improves visibility over and through the site. To reduce potential for such screens to impact views, any consent should be conditioned that no such screening devices, whether temporary or permanent are to be fitted to these terraces/ balconies at any time.

The proposal is generally compliant with the Leichhardt Local Environmental Plan 2013 and Development Control Plan 2013. However, the proposal results in a breach of the FSR standard to each proposed lot. Despite this FSR breach, it is considered that any two-storey dwelling form erected on the subject site at street level, in accordance with the applicable 6m Building Envelope control under Leichhardt DCP2013 and compliant with the FSR standard, would result in a building bulk resulting in a similar view impact.

It is considered that strict compliance with the required side boundary setbacks and rear building line provisions would not significantly retain or reduce view loss impacts to 19 Wharf Road. 19 Wharf Road will maintain a significant majority of existing land-water interface and iconic views, including those currently obtained over the rear side boundary with the subject site. It is considered unreasonable to seek complete retention of those existing views obtained, not only across the side boundary with subject site, but across multiple neighbouring side boundaries to the east of the subject site.

While it is acknowledged that there will be a view loss impact to 19 Wharf Road, it is considered that the proposal is reasonable and that the existing view angles over the subject site are such

that a development of the subject site fully compliant with FSR control and building envelope control would likely result in similar view loss impacts. 19 Wharf Road is expected to maintain a significant proportion of the existing views enjoyed across the subject site in addition to the wide arc of land/water interface views from east to west of 19 Wharf Road. On balance, given the extensive land/water interface views available to the waterway from 19 Wharf Road, it is considered that the proposal would not be inconsistent with the view sharing principles.

10 Wharf Road

Step 1 - The first step is the assessment of views to be affected

The existing views over the subject site from 10 Wharf Road comprise of land water interface views extending from the Louisa Road Peninsula to the west, to Balls Head Reserve, Balls Head Bay and then Goat island to the east including the Sydney Harbour Bridge. The pictures below identify views from No.19 Wharf Road over the subject site.



Picture 13 - View obtained from front verandah of No.10 looking east over the intersection of Wharf Road & Lemm Street, the garage of 19 Wharf Road, then the subject site (central in photo).



Picture 14 - Existing unaffected views obtained from the front ground floor verandah and windows of No.10 looking north over Wharf Road, 19A Wharf Road and the rear of 19 Wharf Road.



Picture 15 - View obtained from the front bedroom/study of No.10 in easterly direction over the intersection of Wharf Road & Lemm Street, the garage of 19 Wharf Road, and the subject site. A glimpse of the top of the harbour bridge arch is visible above the roof of the garage to 19 Wharf Road through the overhanging tree.



Picture 16 - View obtained from the lounge room of No.10 in easterly direction over the intersection of Wharf Road & Lemm Street, the garage of 19 Wharf Road, and the subject site.



Pictures 17 - View obtained from ground level rear terrace of No.10 in north-easterly direction over Lemm Street, 8 Wharf Road, Wharf Road, and the subject site. A distant glimpse of the ridge on the northern side of the waterway is available over the subject site (Note pitched roof of existing garage in photo centre).



Picture 18 – Existing unaffected views obtained from upper level bedroom of No.10 looking north over 19A & 21 Wharf Road.

The above views from 10 Wharf Road include extensive northern views to the waterway from the ground and upper level front rooms of the dwelling.

Views are also gained from the side windows of the ground floor to the east over the subject site. These views are at a distance of approximately 30m to the subject site. These views are over the garage at 19 Wharf Road and include a distant partial view of the top of the harbour bridge arch. This view is also partially obscured by an intervening overhanging tree.

A distant partial view is available from the rear yard terrace of 10 Wharf Road over the site. This view is at a distance of approximately 40m+ to the subject site. This view comprises a glimpse of the ridge located on the northern shore of the waterway over the side yard of 8 Wharf Road to the subject site.

Step 2 - The second step is to consider from what part of the property the views are obtained.

The views over the subject site from 10 Wharf Road are gained from windows in the side boundary wall with Lemm Street serving the front bedroom/study, and side sitting/living rooms. The views are gained from both standing and sitting positions.

The views obtained from the rear yard terrace area are gained from standing and sitting positions.

The existing and unaffected significant and extensive views to the waterway from the front ground verandah and bedroom/ study windows and the upper level bedroom windows are from both standing and sitting positions.

Step 3 - The third step is to assess the extent of the impact.

It is noted that existing views obtained over Wharf Road and 19, 19A and 21 Wharf Road to the waterway are unaffected by the proposal.

The amended drawings demonstrate that the limited views from the front verandah and side windows of 10 Wharf Road over the subject site of the top of the harbour bridge arch would be

lost as a result of the development. Similarly, the limited views from the rear yard terrace over the subject site to the ridge on the northern shore of the waterway would also be lost.

Consequently, the view loss impact of the proposal on 10 Wharf Road is considered overall to be minor.

Step 4 - The fourth step is to assess the reasonableness of the proposal that is causing the impact.

The proposal is generally compliant with the Leichhardt Local Environmental Plan 2013 and Development Control Plan 2013. However, the proposal results in a breach of the FSR standard to each proposed lot. Despite this FSR breach, it is considered that any two-storey dwelling form erected on the subject site at street level, in accordance with the applicable 6m Building Envelope control under Leichhardt DCP2013 and compliant with the FSR standard, would result in a building bulk resulting in a similar view impact.

It is considered unreasonable to seek retention of the existing view obtained over the subject site across multiple intervening property boundaries, and also multiple property boundaries beyond the subject site.

While it is acknowledged that there will be a view loss impact to 10 Wharf Road, it is considered that the proposal is reasonable and that the existing view angles over the subject site are such that a development of the subject site fully compliant with FSR control and building envelope control would likely result in similar view loss impacts. The existing significant views available from the front verandah and windows of 10 Wharf Road remain unaffected. Given this, it is considered that the proposal would not be inconsistent with the view sharing principles.

8 Wharf Road

Step 1 - The first step is the assessment of views to be affected

Significant views to the waterway and northern shore and skyline are gained from both upper level bedroom dormer windows over the subject site. The western and eastern dormer windows have a view arc of approximately 55°, the majority of which is gained over the subject site. The exception being an arc of approximately 5°, gained from the western dormer, between the building on 19 Wharf Road and the corner of the existing garage on the subject site. This minor arc also includes waterway views to the north shore and skyline.

More limited views over the subject site from 8 Wharf Road are also gained from the ground floor front study windows, side courtyard and front balcony.

In this regard, the view from the ground floor front windows is directly across Wharf Road and is largely obscured by the existing front hedge and existing dwelling on the site. This view comprises limited glimpses of the tops of buildings on the north shore skyline. (see photos below)

A limited view of the waterway is available from the front western ground floor window and verandah through a gap between the garage on the subject site and the side of the building on 19 Wharf Road. This view is unaffected by the proposal.

A limited view over the site to buildings on the north shore /North Sydney CBD skyline are also available from the side courtyard across Wharf Road and the subject site. (see photo below)

A more extensive view is also available from the side courtyard of No.8 over Wharf Road and 19A Wharf Road to the waterway and out to the Louisa Road peninsula beyond. This view is unaffected by the proposal.



Photo 19 - Internal viewing position through eastern dormer window of 8 Wharf Road over subject site.



Picture 20 - View obtained from the upper level eastern dormer window of 8 Wharf Road looking north-east over subject site.



Picture 21 - View obtained from the upper level western dormer window of 8 Wharf Road looking north-east over subject site.



Picture 22 - View (standing) from the ground floor front western window of No.8 Wharf Road in north-easterly direction toward the subject site. Note waterway glimpses through setback between garage on subject site and building on 19 Wharf Road.



Picture 23 – View (standing) from the ground floor front eastern window of No.8 Wharf Road looking in a north-easterly direction toward the subject site. Note glimpses of distant building tops on north shore.



Picture 24 - Views (standing) obtained from side courtyard of 8 Wharf Road looking across Wharf Road over 19A Wharf Road toward the Louisa Road peninsula. This view is unaffected by the proposal.



Picture 25 - Views obtained from side courtyard of No.8 over Wharf Road and subject site with glimpses of the North Sydney CBD skyline.



Picture 26 – Another views angle from side courtyard of No.8 over Wharf Road and subject site with minor glimpses of the North Sydney CBD skyline.



Picture 27 - Views obtained from the front ground level western window/ verandah through gap between existing garage on the subject site and the building on 19 Wharf Road.

Step 2 - The second step is to consider from what part of the property the views are obtained.

The views from the ground floor of 8 Wharf Road are gained from standing and sitting positions through the study and bedroom windows and front verandah, directly across Wharf Road and the subject site.

The views from the side courtyard of 8 Wharf Road are gained from standing and sitting positions in a north-easterly direction across Wharf Road and the subject site.

The views from the upper level of 8 Wharf Road are gained from a standing position through the bedroom dormer windows directly across Wharf Road and the subject site.

Step 3 - The third step is to assess the extent of the impact.

The existing skyline views obtained directly over the subject site from the ground level and courtyard would be lost as a result of the development.

The existing views obtained directly over the subject site from the upper level dormer windows to the waterway and north shore would be lost as a result of the development. However, the eastern dormer window may retain some view through the 1.5m wide setback between the two proposed dwellings.

Consequently, as a result of the loss of the water view from the upper level bedroom dormer windows through the subject site, the impact of the proposal on 8 Wharf Road is considered overall to be severe.

Step 4 - The fourth step is to assess the reasonableness of the proposal that is causing the impact.

The proposal is generally compliant with the Leichhardt Local Environmental Plan 2013 and Development Control Plan 2013. However, the proposal results in a breach of the FSR standard to each proposed lot. Despite this FSR breach, it is considered that any two-storey dwelling form erected on the subject site at street level, in accordance with the applicable

6m Building Envelope control under Leichhardt DCP2013 and compliant with the FSR standard, would result in a building bulk resulting in a similar view impact.

It is noted that although 8 Wharf Road is a heritage Item, the upper level dormer windows are a recent addition, erected in 2017. Consequently, the existing views from the dormers are not related to the heritage significance of the building.

Given the above, it is considered unreasonable to seek retention of the existing view obtained over the subject site.

While it is acknowledged that there will be a severe view loss impact to 8 Wharf Road, it is considered that the proposal is reasonable and that the existing view angles over the subject site are such that a development of the subject site fully compliant with FSR control and building envelope control would likely result in similar view loss impacts. It is noted that 8 Wharf Road retains other significant views that remain unaffected. In light of this, it is considered that the proposal would not be inconsistent with the view sharing principles.

6 Wharf Road

Step 1 - The first step is the assessment of views to be affected

As evidenced by the below photos, there are no land or waterway views obtained over the subject site from 6 Wharf Road. This is due to the height of the roof ridge of the existing dwelling on the site being higher than the window headers of the front windows in 6 Wharf Road. Further, the hedge at the front boundary of the site, which has been in situ with varying height since at least 2007, further limits viewing over or past the subject site. The original front verandah has been enclosed with glazing above 'balustrade' height. Two windows serving bedrooms open onto this enclosed verandah space.

On the eastern side of the front verandah glazing there is a limited glimpse of the tops of buildings on the North Shore of the harbour. There are no such glimpses from the western side of the front verandah glazing, however, due to a rise in floor level, the bedroom window behind the verandah has a limited glimpse of the tops of buildings on the North Shore of the harbour over the site. The front western lounge room window also has a glimpse to the tops of buildings on the North Shore.

Step 2 - The second step is to consider from what part of the property the views are obtained.

The limited view from 6 Wharf Road is gained from standing height at the western front window; the central bedroom window through the enclosed front verandah; and the eastern side of the enclosed front verandah over Wharf Road and the subject site. It is noted that at a standing eye height of 1.5m, the observed glimpses from the enclosed front verandah and central bedroom window are essentially eliminated, with only minor glimpses of the top of buildings on the north shore remaining from the western lounge room window.

Step 3 - The third step is to assess the extent of the impact.

The glimpses of the top of buildings in the north shore skyline demonstrated in the below photos are gained from a standing position at the western front window in the living bedroom. The glimpses are of such a limited nature that any future development on the subject site higher than the existing roof ridge would likely remove these glimpses. Consequently, these view glimpses would be removed by the proposed development.



Pictures 28 & 29 – Limited glimpses of building tops on north shore from front western loungeroom window of No.6 Wharf Road over subject site up to the roof gable-end of 15B Wharf Road.



Picture 30 – Outlook from the front central bedroom windows through the enclosed verandah of No.6 Wharf Road looking toward subject site.



Picture 31 – Outlook from glazing on eastern side of enclosed verandah of No.6 Wharf Road looking toward subject site.



Picture 32 – Outlook from glazing on western side of enclosed verandah of No.6 Wharf Road looking toward subject site.

Step 4 - The fourth step is to assess the reasonableness of the proposal that is causing the impact.

It is considered that any future development of the subject site at street level comprising a built form anticipated by the suite of applicable planning controls, in particular, conforming with the applicable 6m building envelope control, would result in the loss of the exiting limited distant glimpses of the top of buildings on the north shore from 6 Wharf Road.

Given the above, it is considered unreasonable to seek retention of the existing view glimpses obtained over the subject site.

4 Wharf Road

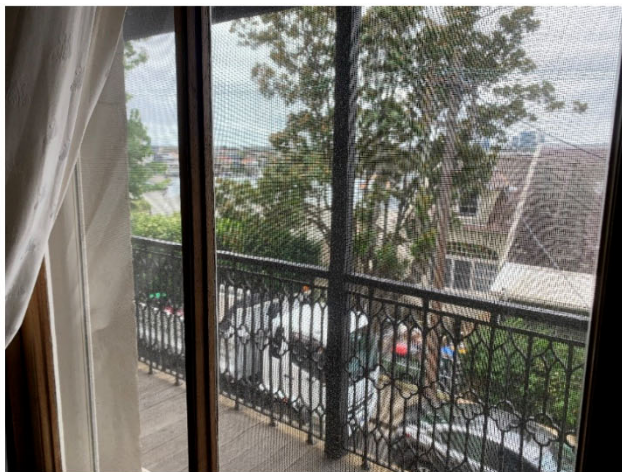
Step 1 - The first step is the assessment of views to be affected

The existing views over the subject site from 4 Wharf Road are gained from the upper level living area and balcony. The views comprise an arc of approximately 35° to the north over the site toward the waterway and the Louisa Road peninsula. The two pictures below identify views from No.4 Wharf Road over the subject site.



Picture 33 - View obtained from the upper level balcony (and window) of No.4 Wharf Road looking left, to the north over the subject site.

As seen in the below photos, the property has an outlook from the front ground floor windows toward the site. The outlook from the western ground floor front window includes a partial glimpse of taller buildings on the distant north shore skyline gained through a narrow gap between the façade of 15A Wharf Road and the wall and roof of the existing building on the subject site. The eastern ground floor window does not possess any significant view over the subject site being obstructed buildings and intervening vegetation.



Picture 34 - View obtained from the upper level living area and balcony of No.4 Wharf Road looking left, to the north, over the subject site.



Picture 35 - Outlook (standing) from the ground floor front western study window of No.4 Wharf Road looking left, in northerly direction toward the subject site.



Picture 36 - Outlook (standing) from the ground floor front eastern window of No.4 Wharf Road looking left, in northerly direction toward the subject site.



Picture 37 - Views obtained from upper level front balcony and windows of No.4 Wharf Road looking directly across Wharf Road over 15A, 15 & 15B Wharf Road toward the north shore and North Sydney CBD skyline.



Picture 38 - Views obtained from upper level front balcony and windows of No.4 Wharf Road, looking to the right, over 15B and 13A and 13 Wharf Road toward the North Sydney CBD skyline. (The latter two properties being Heritage Items).

Step 2 - The second step is to consider from what part of the property the views are obtained.

The views from 4 Wharf Road are gained from the upper level balcony and windows through an arc of approximately 110° from east to west across Wharf Road over 13, 13A, 15B, 15, 15A and 17 Wharf Road. This view arc being terminated in the east by the trees in Brownlee Reserve and in the west by the building at 19 Wharf Road.

Views over the subject site are gained by looking to the west from the balcony directly either standing or sitting, or the living area windows/door from a standing position.

Views are available from the balcony and living area directly across Wharf Road over 15A, 15 & 15B Wharf Road toward the north shore and North Sydney CBD skyline. These views can also be gained from a sitting position in the living area. These views would not be impacted by the proposed development.

Views are also available by looking to the east from the balcony and living area windows across Wharf Road over 15B, 13A and 13 Wharf Road toward the North Sydney CBD skyline. The latter two properties are Heritage Items, with the likelihood of upper level additions to same being considered unlikely, thereby more likely to result in preserving this outlook remaining. Part of these views can also be gained from a sitting position in the living area. These views would not be impacted by the proposed development.

Step 3 - The third step is to assess the extent of the impact.

The existing views obtained directly over the subject site to the waterway and Louisa Road peninsula would be lost as a result of the development. The remaining 75° arc of view (approximately) to the east of the ridge of 15A Wharf Road containing north shore skyline and North Sydney CBD views is unaffected by the proposal.

Consequently, as a result of the loss of the 35° arc of existing water view through the subject site, the impact of the proposal on 4 Wharf Road is considered overall to be moderate.

Step 4 - The fourth step is to assess the reasonableness of the proposal that is causing the impact.

The proposal is generally compliant with the Leichhardt Local Environmental Plan 2013 and Development Control Plan 2013. However, the proposal results in a breach of the FSR standard to each proposed lot. Despite this FSR breach, it is considered that any two-storey dwelling form erected on the subject site at street level, in accordance with the applicable 6m Building Envelope control under Leichhardt DCP2013 and compliant with the FSR standard, would result in a building bulk resulting in a similar view impact.

Given the above, it is considered unreasonable to seek retention of the existing view obtained over the subject site.

While it is acknowledged that there will be a view loss impact to 4 Wharf Road, it is considered that the proposal is reasonable and that the existing view angles over the subject site are such that a development of the subject site fully compliant with FSR control and building envelope control would likely result in similar view loss impacts. It is noted that a significant proportion of the existing significant views available from the upper level front verandah and windows of 4 Wharf Road remain unaffected. Given this, it is considered that the proposal would not be inconsistent with the view sharing principles.

2 Wharf Road

Step 1 - The first step is the assessment of views to be affected

The existing limited and partly obscured views over the subject site from 2 Wharf Road are gained from the upper level living area windows and balcony. The views comprise an arc of approximately 20° to the north-west over the site toward the waterway and the Louisa Road peninsula. The view arc is mostly gained through the canopy of a large tree located in the front setback of 15A Louisa Road which significantly obscures and limits the view. Despite same, both the waterway and Louisa Road peninsula are perceptible in this arc of view. The two pictures below identify views from No.2 Wharf Road over the subject site.



Picture 39 - View from upper level balcony of No.2 Wharf Road looking left, to the northwest over the subject site.



Picture 40 - View obtained from the upper living level window of No.2 Wharf Road looking left to the northwest over the subject site (far left edge of photo).

As seen in the below photos, the property has an outlook from the front ground floor windows toward the site. The outlook from the ground floor front window includes a partial glimpse of vegetation on the Louisa Road peninsula in the distance gained through a narrow gap between the façade of 15A Wharf Road and the wall and roof of the existing building on the subject site.

When looking directly across Wharf Road from the ground floor window a water glimpse and view to the north shore is available in the setback between 15 & 15B Wharf Road.



Picture 41 - Outlook (standing) from the ground floor front window of No.2 Wharf Road looking left, in north-westerly direction toward the subject site (Left side of photo).



Picture 42 - Outlook (standing) from the ground floor front window of No.4 Wharf Road looking directly across Wharf Road. A water glimpse is available in the setback between 15 and 15B Wharf Road.



Picture 43 - Views obtained from upper level front balcony and windows of No.2 Wharf Road looking directly across Wharf Road over 15, 15B and 13A Wharf Road toward the north shore skyline including the North Sydney CBD skyline.



Picture 44 - Views obtained from upper level front balcony and window of No.2 Wharf Road, looking to the right, over 15B and 13A and 13 Wharf Road toward the North Sydney CBD skyline. (The latter two properties are Heritage Items).

Step 2 - The second step is to consider from what part of the property the views are obtained.

The views from 2 Wharf Road are gained from the upper level balcony and window through an arc of approximately 105° from east to west across Wharf Road over 13, 13A, 15B, 15, 15A, 17 and rear of 19 Wharf Road. This view arc being is terminated in the east by the trees in Brownlee Reserve and in the west by the building at 19 Wharf Road.

Views over the subject site are gained by looking to the west from the balcony directly either standing or sitting, or the living area windows/door from a standing position.

The views available from the balcony and living area directly across Wharf Road over 13, 13A, 15B, 15, 15A Wharf Road toward the north shore and North Sydney CBD skyline can also be gained from a standing or sitting position on the balcony, the living area and standing views from windows. Nos.13 and 13A Wharf Road are Heritage Items, therefore the likelihood of future upper level additions to same being considered unlikely with this outlook remaining. These views would not be impacted by the proposed development.

Step 3 - The third step is to assess the extent of the impact.

The existing views obtained by looking to the west over the subject site to the waterway and Louisa Road peninsula would be lost as a result of the development. The remaining 80° arc of view (approximately) to the east of the ridge of 15A Wharf Road containing north shore skyline and North Sydney CBD views is unaffected by the proposal.

Consequently, as a result of the loss of the 25° arc of existing water view over the subject site, the impact of the proposal on 4 Wharf Road is considered overall to be moderate.

Step 4 - The fourth step is to assess the reasonableness of the proposal that is causing the impact.

The proposal is generally compliant with the Leichhardt Local Environmental Plan 2013 and Development Control Plan 2013. However, the proposal results in a breach of the FSR standard to each proposed lot. Despite this FSR breach, it is considered that any two-storey dwelling form erected on the subject site at street level, in accordance with the applicable 6m Building Envelope control under Leichhardt DCP2013 and compliant with the FSR standard, would result in a building bulk resulting in a similar view impact.

Given the above, it is considered unreasonable to seek retention of the existing view obtained over the subject site.

While it is acknowledged that there will be a view loss impact to 2 Wharf Road, it is considered that the proposal is reasonable and that the existing view angles over the subject site are such that a development of the subject site which is fully compliant with the FSR control and building envelope control would likely result in similar view loss impacts. It is noted that a significant proportion of the existing significant views available from the upper level front verandah and windows, and lower level eastern window of 2 Wharf Road remain unaffected. Given this, it is considered that the proposal would not be inconsistent with the view sharing principles.

29 Ballast Point Road

Step 1 - The first step is the assessment of views to be affected

As evidenced by the below photos, there is a limited glimpse to the waterway and north shore obtained from the upper rear level western window of 29 Ballast Point Road over and between the roofs of 6 & 8 Wharf Road to the subject site. This view is gained over the rear yard and boundary with 6 Wharf Road.

There is a limited outlook to the waterway obtained from an upper rear level eastern window of 29 Ballast Point Road in a narrow gap between the roof/walls of 4 & 6 Wharf Road toward the subject site. However, this outlook is largely obstructed by existing vegetation. This view is gained over the rear yard and boundary with 6 Wharf Road.

As can be seen from the below photos, the limited views from the upper rear level of 29 Ballast Point Road, a Heritage Item, are constrained by existing vegetation within that site and to the north.

Step 2 - The second step is to consider from what part of the property the views are obtained.

The limited view from the western upper level window is gained (standing) from the upper rear bedroom of 29 Ballast Point Road, directly toward the subject site.

The outlook from the eastern upper level window of 29 Ballast Point Road are gained from standing position directly toward the subject site.

Step 3 - The third step is to assess the extent of the impact.

The existing limited waterway/skyline view obtained directly over the subject site from the upper level western window would be lost as a result of the development.

The existing largely obscured outlook obtained from the upper level eastern window over the roof of 6 Wharf Road and through a gap between 4 & 6 Wharf Road would be lost as a result of the development.



Picture 45 - Views obtained from upper rear western window of 29 Ballast Point Road looking north-east across the rear and roofs of 6 & 8 Wharf Road toward the waterway and north shore skyline.



Picture 46 - Outlook from upper rear eastern window of 29 Ballast Point Road looking north-east between walls and roof of 4 & 6 Wharf Road. This outlook is largely obscured by vegetation.

Step 4 - The fourth step is to assess the reasonableness of the proposal that is causing the impact.

The proposal is generally compliant with the Leichhardt Local Environmental Plan 2013 and Development Control Plan 2013. However, the proposal results in a breach of the FSR standard to each proposed lot. Despite this FSR breach, it is considered that any two-storey dwelling form erected on the subject site at street level, in accordance with the applicable 6m Building Envelope control under Leichhardt DCP2013 and compliant with the FSR standard, would result in a building bulk resulting in a similar view impact.

Given the above, it is considered unreasonable to seek retention of the existing view obtained over the subject site.

While it is acknowledged that there will be a view loss impact to 8 Wharf Road, it is considered that the proposal is reasonable and that the existing limited view over the subject site is such that a development of the subject site fully compliant with FSR control and building envelope control would likely result in similar view loss impacts.

The proposal is therefore considered to be acceptable with regard to view impacts under Part C3.10.

Attachment B – Recommended conditions of consent

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
1902 DA01B	Site & Site Analysis Plan	March 2021	ESNH Design
1902 DA02A	Demolition Plan	October 2020	ESNH Design
1902 DA03B	Subdivision plan	March 2021	ESNH Design
1902 DA04C	Basement Plan	March 2021	ESNH Design
1902 DA05B	Lower Ground Floor Plan	March 2021	ESNH Design
1902 DA06C	Upper Ground Floor Plan	March 2021	ESNH Design
1902 DA07B	First Floor Plan	March 2021	ESNH Design
1902 DA08B	Roof Terrace Plan	March 2021	ESNH Design
1902 DA09B	Roof Plan	March 2021	ESNH Design
1902 DA10C	Elevations sheet 1 of 2	March 2021	ESNH Design
1902 DA11C	Elevations sheet 2 of 2	March 2021	ESNH Design
1902 DA12C	Sections sheet 1 of 2	March 2021	ESNH Design
1902 DA13A	Sections sheet 2 of 2	October 2020	ESNH Design
1902 DA14C	Landscape Plan	March 2021	ESNH Design

1902 DA15	Finishes Schedule	April 2020	ESNH Design
1094914S	BASIX Certificate - 17 Wharf Rd (Lot 1)	23/4/2020	ECOMODE Design
1095402S	BASIX Certificate - 17A Wharf Rd (Lot 2)	23/4/2020	ECOMODE Design
C-3522-01 Rev.4	Stormwater Drainage Plan & Driveway Cross-sections	15/12/2020	Kozarovski & Partners
C-3522-02 Rev.4	Stormwater Drainage Plan - Lower Ground, First & Roof Terrace Levels	15/12/2020	Kozarovski & Partners
-	Construction Methodology Report	21/4/2020	Design Engineering Management Interiors
GS7839-1A	Foreshore Risk Management Report	18/2/2020	Aargus
P1907572JR02V01	Geotechnical Report	28/4/2020	Martens Engineers
P1907572JR04V01	Remedial Action Plan	2/6/2020	Martens Engineers
C-3522-01	Sediment & Erosion Control Plan	30/4/2020	Kozarovski & Partners
-	Site Waste Minimisation & Management Plan	April 2020	ESNH Design
8701-2	Statement of Heritage Impact	24/4/2020	Heritage 21

As amended by the conditions of consent.

DESIGN CHANGE

2. Design Change

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

- a. That the windows in the south east elevation of the dwelling at No. 17 adjacent to the stairs shall be redesigned so they are the same dimensions and proportions as the windows in the south west elevation of bedroom 2 on the first floor of dwelling No.17A.
- b. That the remaining extent of the existing garage shall be retained.
- c. That the glazing proposed for balustrades shall be replaced with vertical timber or metal balustrades.
- d. That the front wall height of each of the dwellings shall be reduced by lowering the front wall height and main roof of the dwelling at 17 (Lot 1) by 0.3m, and the dwelling at 17A (Lot 2) by 0.5m.
- e. That all proposed works below the existing rearmost retaining wall above the rock shelf shall be deleted, including the proposed rear waterfront deck and new access stairs from Lot 2 (17A); and any infill of the existing gap located under the existing timber deck at the western side of the exposed waterside rock face.
- f. That the existing access steps to the jetty located in the eastern side of the exposed waterside rock face shall be retained unaltered.
- g. That the appearance of the existing exposed rock shelf from the waterway shall be retained unaltered.
- h. That the front wall and main roof section of the proposed dwelling at 17 (Lot 1) shall be lowered by 0.3m, and the proposed dwelling at 17A (Lot 2) by 0.5m, so as to reduce the front wall height presentation of each dwelling to comply with the 6m envelope control. The pitch of the main roof section shall not be increased.
- i. That the appearance of the garage door opening to dwelling 17 (Lot 1) shall be treated by way of materials/finishes to increase its verticality in this facade.
- j. That the provision of electricity mains supply from Wharf Road to each of the proposed lots shall be effected without the use of power poles located within the lot/s. Electricity supply should be by way of underground cables.
- k. That the use of the rooms at First Floor Level located immediately above the front entrance foyer of each dwelling shall be changed from bathroom to a use such as bedroom, study or similar.
- l. That the Upper Ground Level rear terraces to each dwelling shall be reduced in area so as to have a maximum depth of 1.5m measured from the face of the rear access doors to those terraces. The Lower Ground Level rear terraces may be provided with a flat/skillion roof form of minimal thickness.
- m. That the 'Attic' level roof terrace to dwelling No.17 (Lot 1) shall be reduced so as to have a maximum depth of 1.5m measured from the face of the rear access door to that terrace.
- n. That privacy screens or devices, whether temporary or permanent, shall not be erected on the rear terraces/balconies at any time.
- o. That only excavation required for placement of the dwelling within the site shall be undertaken. Excavation beyond the immediate location of approved footings and walls shall not be undertaken and the extent of excavation shall be specified on drawings prior to issue of any construction certificate.

- p. That the proposed second kitchen (kitchenette) on the upper ground floor level of each dwelling house shall be deleted.
- q. That windows W10 & W19 located in dwelling 17A (lot 2) shall be fitted with obscure glazing.

FEES

3. Security Deposit - Custom

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

Security Deposit:	\$15,000
Inspection Fee:	\$230.65

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

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

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

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

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

4. Section 7.11 (Former Section 94) Contribution

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

The above contribution is the contribution applicable as at the date of consent.

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

Local Infrastructure Type:	Contribution \$
Open Space and Recreation	\$34,065.65
Community Facilities and Services	\$5,206.45
Access to Balmain Peninsula	\$698.81
Bicycle Works	\$29.09
TOTAL	\$40,000.00

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

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

Payment methods:

The required contribution must be paid either **by BPAY (to a maximum of \$500,000); unendorsed bank cheque (from an Australian Bank only); EFTPOS (Debit only); credit card (Note: A 1% credit card transaction fee applies to all credit card transactions; cash (to a maximum of \$10,000)).** It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. **Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.**

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

5. Long Service Levy

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

rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more.

GENERAL CONDITIONS

6. Contamination – Remedial Action Plan (No Site Auditor Engaged)

The site is to be remediated and validated in accordance with the recommendations set out in the Remedial Action Plan, prepared by Martens Consulting Engineers reference P1907572JR04V01 dated June 2020 the *Contaminated Land Management Act 1997* and the *State Environmental Planning Policy No 55*.

7. Hazardous Materials Survey

Prior to any demolition or the issue of a Construction Certificate (whichever occurs first), the Certifying Authority must provide a hazardous materials survey to Council. The survey shall be prepared by a suitably qualified Occupational Hygienist and is to incorporate appropriate hazardous material removal and disposal methods in accordance with the requirements of SafeWork NSW.

A copy of any SafeWork NSW approval documents is to be included as part of the documentation.

8. Tree Protection

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

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

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

9. Works Outside the Property Boundary

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

10. Rock Anchors

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

11. Tree Planting Plan

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a detailed tree planting plan, drawn to scale, by an AQF5 consultant Arborist or Landscape Designer. The plan must include:

1. Location of existing and proposed structures on the site including, but not limited to: existing and proposed trees, paved areas and planted areas;
2. Details of any earthworks, changes to existing grade and soil depths including mounding and retaining walls;
3. Location, numbers, type and supply of trees, with reference to AS2303:2018—*Tree stock for landscape use*
4. A minimum of four (4) new trees (two per lot) must be included in the design. The trees species must attain a minimum mature height of seven (7) metres. Trees listed as exempt species from Council's Tree Management Controls, Palms, fruit trees and species recognised to have a short life span are not acceptable in satisfaction of this condition;
5. New trees must be planted in natural ground. It must be demonstrated that there is sufficient soil volume to allow maturity to be achieved (refer to Council's *Development Fact Sheet—Trees on Development Sites* for further information).
6. New trees must be appropriately located away from buildings and structures to allow maturity to be achieved without restriction. Trees must be located at a minimum setback of 1.5 metres from any boundary or structure and 2.2 metres from any dwelling or garage.
7. Structures such as OSD's and below ground services are not to be located within areas of deep soil or under the canopy of any existing trees.
8. Details of planting specification and maintenance programme.

12. Noise Levels and Enclosure of Pool/spa Pumping Units

Noise levels associated with the operation of the pool/spa pumping units must not exceed the background noise level (L90) by more than 5dBA above the ambient background within habitable rooms of adjoining properties. Pool plant and equipment must be enclosed in a

sound absorbing enclosure or installed within a building so as not to create an offensive noise as defined under the *Protection of the Environment Operations Act 1997* and *Protection of the Environment Operations (Noise Control) Regulation 2008*.

Domestic pool pumps and filters must not be audible in nearby dwellings between 8:00pm to 7:00am Monday to Saturday and 8:00pm to 8:00am Sundays and Public Holidays.

13. 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.

14. 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.

15. 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.

16. 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.

PRIOR TO ANY DEMOLITION

17. Hoardings

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

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

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

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

18. Construction Traffic Management Plan

Prior to any demolition, the Certifying Authority, must be provided with a detailed Construction Traffic Management Plan (CTMP) to cater for construction prepared by a person with RMS accreditation to prepare a work zone traffic management plan. Details must include haulage routes, estimated number of vehicle movements, truck parking areas, work zones, crane usage, etc., related to demolition/construction activities. A work zone approval must be obtained.

19. 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 properties 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.

20. 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.

21. 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

22. Light Spill

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with details demonstrating that any lighting of the premises complies with Australian Standard AS4282:1992: Control of Obtrusive Effects of Outdoor Lighting.

23. Dilapidation Report – Pre-Development – Minor

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

24. Stormwater Drainage System

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. The design must generally be in accordance with the Stormwater Drainage Concept plan on Drawing No. C-3522-01 Rev 4 dated 15/12/20 prepared by Kozarovski and Partners.
- b. Stormwater runoff from all 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) by gravity to Snails Bay.
- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's Leichhardt DCP2013.
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage.
- e. 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. An overland flowpath must be provided within the setback to the eastern side boundary between the rear of the dwelling and the Snails Bay frontage. The rear courtyard must be graded so that bypass flows from the site drainage system are directed to the overland flowpath.
- g. Where there is no overland flow/flood path available to the Snails Bay 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.

- h. 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.
- i. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
- j. No nuisance or concentration of flows to other properties.
- k. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system.
- l. 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.
- m. A baffled pit or trapped gully stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets with a silt arrestor pit or similar must be installed on the site stormwater drainage system prior to discharging to Snails Bay.
- n. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.

25. 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 to all vehicular access locations and removal of all redundant vehicular crossings to the site;
- b. Repair of any failed or damaged footpath and kerb and gutter along the frontage of the site.
- c. A long section, along both sides of the proposed vehicular crossing and ramp, drawn at a 1:20 or 1:25 natural scale demonstrating compliance with ground clearance requirements of AS2890.1. The long section shall begin from the centreline of the adjacent road to a minimum of 5 metres into the property. The long section shall show both existing surface levels and proposed surface levels. The long section approved by Council shall define the Alignment Levels at the property boundary.
- d. Demonstrate no loss of on-street parking.

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

26. Foreshore Flood Risk Management Plan

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Foreshore Flood Risk Management Plan prepared and certified by a suitably qualified Civil Engineer. The Plan must be prepared/amended to make provision for the following:

- a. The plan must be generally in accordance with the recommendations of the Foreshore Risk Management Report for 17 Wharf Road Birchgrove document number GS7389-1A prepared by Aargus and dated 19/02/2020.

- b. Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development. Such recommendations must be consistent with the approved development. The flood impacts on the site must be assessed for the 100-year ARI and Probable Maximum Flood (PMF) storm events. The precautions must include but not be limited to the following:
 - i. Types of materials to be used to ensure the structural integrity of the building to immersion and impact of velocity and debris.
 - ii. Waterproofing methods, including electrical equipment, wiring, fuel lines or any other service pipes or connections.
 - iii. Flood warning signs/depth indicators for areas that may be inundated
 - iv. A flood evacuation strategy.
 - v. On-site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level.
- c. All works must be designed to comply with the Standard for Construction of Buildings in Flood Hazard Areas in accordance with Section 3.10.3 of the Building Code of Australia. Note that some terms defined in this standard have equivalent meaning to terms used in Council's Development Control Plan as listed below.
 - i. Building Code of Australia
 - ii. Defined flood level (DFL) 100-year Average Recurrence Interval flood level
 - iii. Defined flood event (DFE) 100-year Average Recurrence Interval flood
 - iv. Flood hazard level (FHL) Flood Planning Level (FPL)

27. Amended Architectural Plans to Reflect Foreshore Flood Risk Management Plan

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended architectural plans that incorporate the recommendations of the Foreshore Flood Risk Management Plan. The design must be prepared to make provision for the following:

- a. Specification of materials; and
- b. Waterproofing works, where applicable.

No changes to the external form or appearance of the development contrary to the approved plans must occur except as identified by this condition. Any changes to such must be subject to separate approval.

28. Engineering Design - Structural Engineer Plans and Certification

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans prepared and certified by a suitably qualified Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that incorporate the recommendations of the Foreshore Flood Risk Management Plan.

The design must be prepared to make provision for the following:

- a. Structural integrity of all structures from immersion and/or impact of velocity and debris; and
- b. Waterproofing works, where applicable.

29. 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 into internal areas;
- 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.

30. 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:

- a. 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.
- b. 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.

- c. 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.
- d. 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.
- e. The external form and height of the approved structures must not be altered from the approved plans.

31. Structural Certificate for retained elements of the building

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

32. 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

33. Fibre-ready Facilities

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

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

34. Concealment of Plumbing and Ductwork

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

DURING DEMOLITION AND CONSTRUCTION**35. Contamination – New Evidence**

Any new information revealed during demolition, remediation or construction works that have the potential to alter previous conclusions about site contamination must be immediately notified to the Council and the Certifying Authority.

36. Imported Fill Materials

All imported fill on the site shall be validated as Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM), in accordance with NSW Environment Protection Authority guidelines, 'Consultants Reporting on Contaminated Sites' (August 2011) to ensure the imported fill is suitable for the proposed land use.

All fill imported onto the site shall be validated by either one or both of the following methods:

- a. Imported fill be accompanied by documentation from the supplier which certifies that the material is not contaminated based upon analyses of the material for the known past history of the site where the material is obtained; and/or
- b. Sampling and analysis of the fill material be conducted in accordance with NSW Environment Protection Authority's Sampling Design Guidelines (September 1995).

37. Aboriginal Heritage – Unexpected Findings

During excavation, demolition and construction work, If unexpected archaeological deposits or Aboriginal objects are found during the works covered by this approval, work must cease in the affected area(s) and the Office of Environment & Heritage must be notified. Additional assessment and approval pursuant to the National Parks and Wildlife Act 1974 may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

38. Front Iron Palisade Fence

During excavation, demolition and construction work, the existing iron palisade fence with sandstone base is to be retained in its current configuration and location, alterations required for proposed crossings are excepted, and the sandstone base to the palisade fence must not be painted.

39. 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.

40. 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**41. Contamination – Disposal of Soil**

Prior to the issue of an Occupation Certificate, the Certifying Authority must be provided with a validation report confirming that all off site disposal of soil has been classified, removed and disposed of in accordance with the NSW DECC Waste Classification Guidelines, Part 1: Classifying Waste (EPA 2014), Protection of the Environment Operations (Waste) Regulation 2014 and the *Protection of the Environment Operations Act 1997*.

42. Contamination – Validation (Site Audit Statement Required)

Prior to the issue of an Occupation Certificate, the Certifying Authority and Council must be provided with a Section A Site Audit Statement prepared by a NSW Environment Protection Authority accredited Site Auditor.

The Site Audit Statement must confirm that the site has been remediated in accordance with the Remedial Action Plan and clearly state that the site is suitable for the proposed use.

43. Certification of Tree Planting

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

A minimum of 2 x seventy five (75) litre size trees, which will attain a minimum mature height of seven (7) metres, must be planted in a suitable location within each lot at a minimum of 1.5 metres from any boundary and 2.2 metres from any dwelling or garage and allowing for future tree growth. The trees are to conform to AS2303—*Tree stock for landscape use*. Trees listed as exempt species from Council's Tree Management Controls, palms, fruit trees and species recognised to have a short life span will not be accepted as suitable replacements.

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

44. Arborist Certification

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with certification from an AQF Level 5 Arborist the requirements of the conditions of consent related to the landscape plan and tree planting have been complied with.

45. Public Domain Works

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority 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(s).
- b. The existing power pole must be shown on the plans with suitable clearances demonstrated or power pole relocated.
- 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".

46. 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.

47. 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.

48. Flood Risk Management Plan - Certification

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a qualified practising Civil Engineer that all aspects of the foreshore flood risk management plan have been implemented in accordance with the approved design, conditions of this consent and relevant Australian Standards.

49. 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.

50. 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 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.

PRIOR TO SUBDIVISION CERTIFICATE**51. Section 73 Certificate**

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

52. Separate Stormwater

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

53. Release of Subdivision Certificate

Prior to the release of a Subdivision Certificate, the Certifying Authority must be provided with a copy of the Final Occupation Certificate.

ON-GOING**54. Noise General**

The proposed use of the premises and the operation of all plant and equipment must not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations, NSW EPA Noise Policy for Industry and NSW EPA Noise Guide for Local Government.

55. Tree Establishment

The trees planted as part of this consent are to be maintained in a healthy and vigorous condition until they have reached a height whereby they are protected under Council's Tree Management Controls. If any of the trees are found faulty, damaged, dying or dead they must be replaced with the same species within one (1) month (up to 3 occurrences).

56. Foreshore Flood Risk Management Plan

The Foreshore Flood Risk Management Plan approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

ADVISORY NOTES**Asbestos Removal**

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m² of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

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

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

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

Arborists standards

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

Tree Protection Works

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

Permits

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

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;
- c. Mobile crane or any standing plant;
- d. Skip Bins;
- e. Scaffolding/Hoardings (fencing on public land);

- f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;
- g. Awning or street veranda over the footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

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

Insurances

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

Public Domain and Vehicular Crossings

The vehicular crossing and/or footpath works are required to be constructed by your contractor. You or your contractor must complete an application for *Design of Vehicle Crossing and Public Domain Works – Step 1* form and *Construction of Vehicle Crossing and Public Domain Works – Step 2* form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, before commencement of works.

You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. 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 at no cost to Council

Any damage caused during construction to Council assets on the road reserve or on Council or Crown land must be repaired at no cost to Council.

Any driveway crossovers or other works within the road reserve must be provided at no cost to Council.

No consent is given or implied for any Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, eaves, awnings, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever, including when open.

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.

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.

Disability Discrimination Access to Premises Code

The *Disability Discrimination Act 1992* (Commonwealth) and the *Anti-Discrimination Act 1977* (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.

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.

Swimming Pools

Applicants are advised of the following requirements under the *Swimming Pools Act 1992*:

- a. The owner of the premises is required to register the swimming pool on the NSW State Government's Swimming Pool Register. Evidence of registration should be provided to the Certifying Authority.
- b. Access to the pool/spa is restricted by a child resistant barrier in accordance with the regulations prescribed in the. The pool must not be filled with water or be allowed to collect stormwater until the child resistant barrier is installed. The barrier is to conform to the requirements of Australian Standard AS 1926:2012.
- c. A high level overflow pipe has been provided from the back of the skimmer box to the filter backwash line discharging to the sewer. This line must not directly vent the receiving Sydney Water sewer. Evidence from the installer, indicating compliance with this condition must be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.
- d. Permanently fixed water depth markers are to be clearly and prominently displayed on the internal surface above the water line at the deep and shallow ends on in-ground pools / spas and on the outside of aboveground pools / spas.
- e. A durable cardiopulmonary resuscitation information poster sign authorised by the Life Saving Association is to be displayed in the pool / spa area in accordance with Clause 10 of the *Swimming Pool Regulation 2008*.
- f. Access to the swimming pool/spa must be restricted by fencing or other measures as required by the *Swimming Pools Act 1992* at all times.

All drainage, including any overland waters associated with the pool/spa, must be pipe-drained via the filter to the nearest sewer system in accordance with the requirements of Council & Sydney Water. No drainage, including overflow from the pool or spa must enter Council's stormwater system.

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.

Lead-based Paint

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

Dial before you dig

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

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 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
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441 www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406 www.foodnotify.nsw.gov.au
NSW Government	www.nsw.gov.au/fibro 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
Sydney Water	13 20 92 www.sydneywater.com.au

Waste Service - SITA 1300 651 116
Environmental Solutions

www.wasteservice.nsw.gov.au

Water Efficiency Labelling and Standards (WELS) www.waterrating.gov.au

WorkCover Authority of NSW 13 10 50

www.workcover.nsw.gov.au

Enquiries relating to work safety and asbestos removal and disposal.

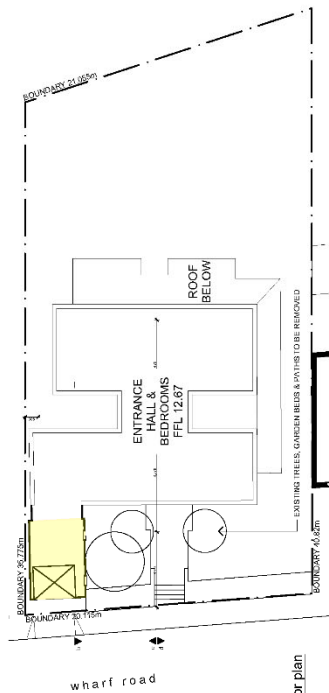
Street Numbering

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.

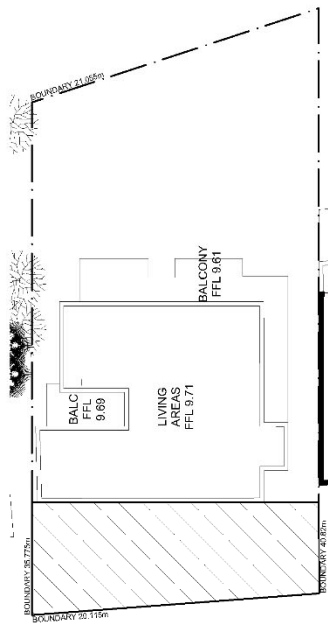
REASONS FOR REFUSAL

Attachment C- Plans of proposed development

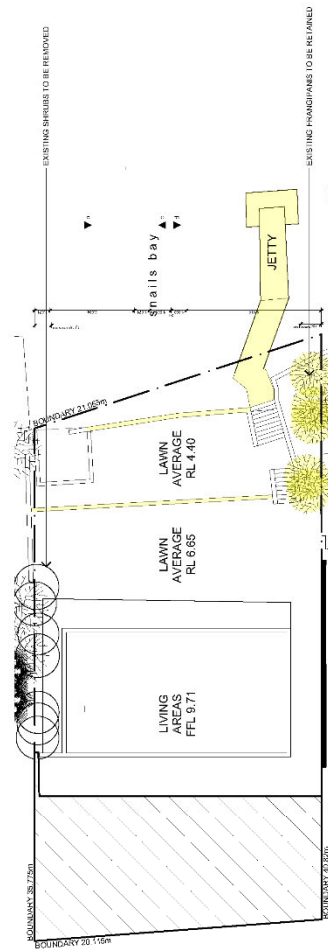
NOTE: EXISTING STRUCTURES TO BE RETAINED ARE SHADED YELLOW



upper ground floor plan



lower ground floor plan



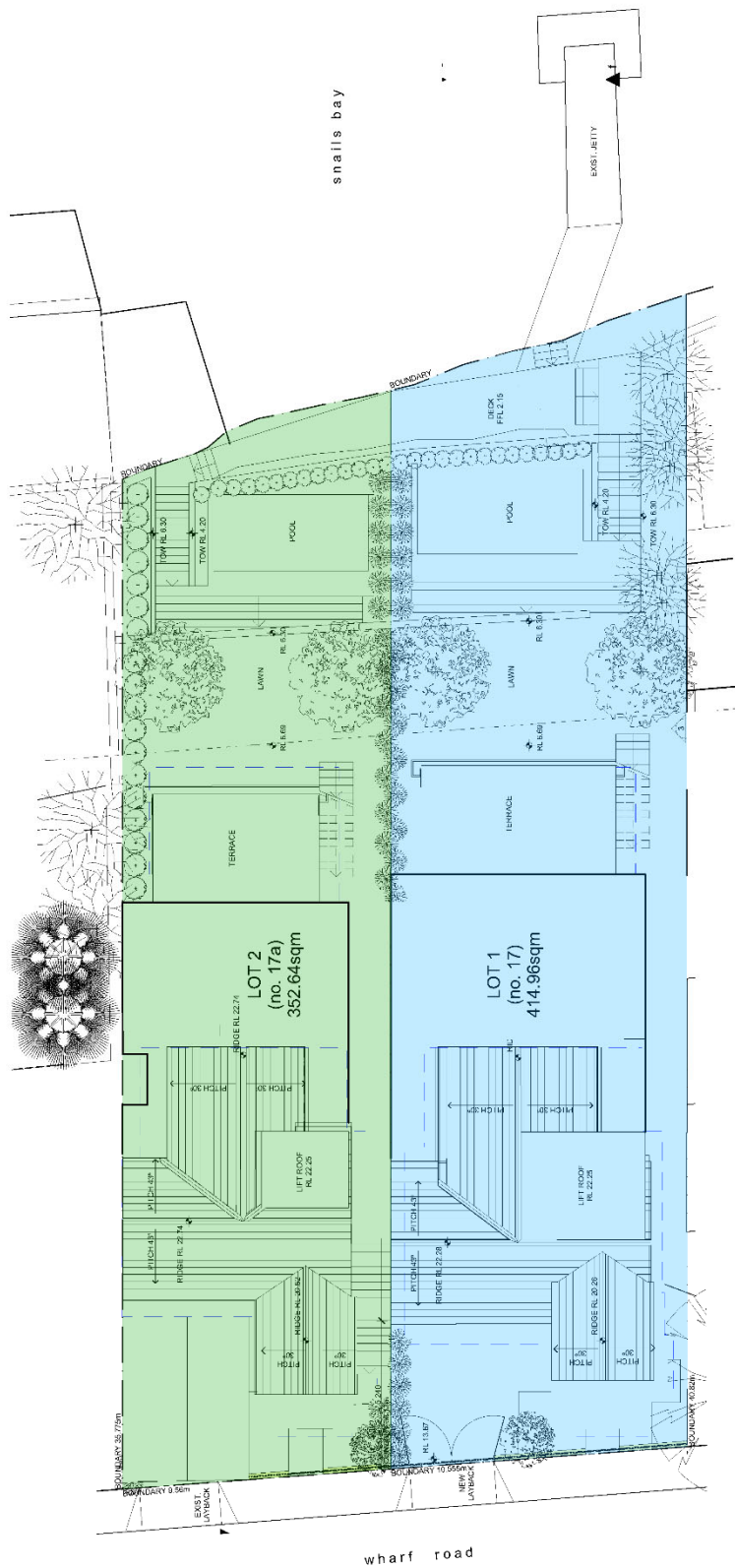
basement plan

new dwelling houses
for mr & ms gobbob
17 wharf road
birchgrove

ESNH
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1002 DA02A
1:100
October 2014
amended DA

DWG NO.
SCALE
DATE
ISSUE

demolition plans

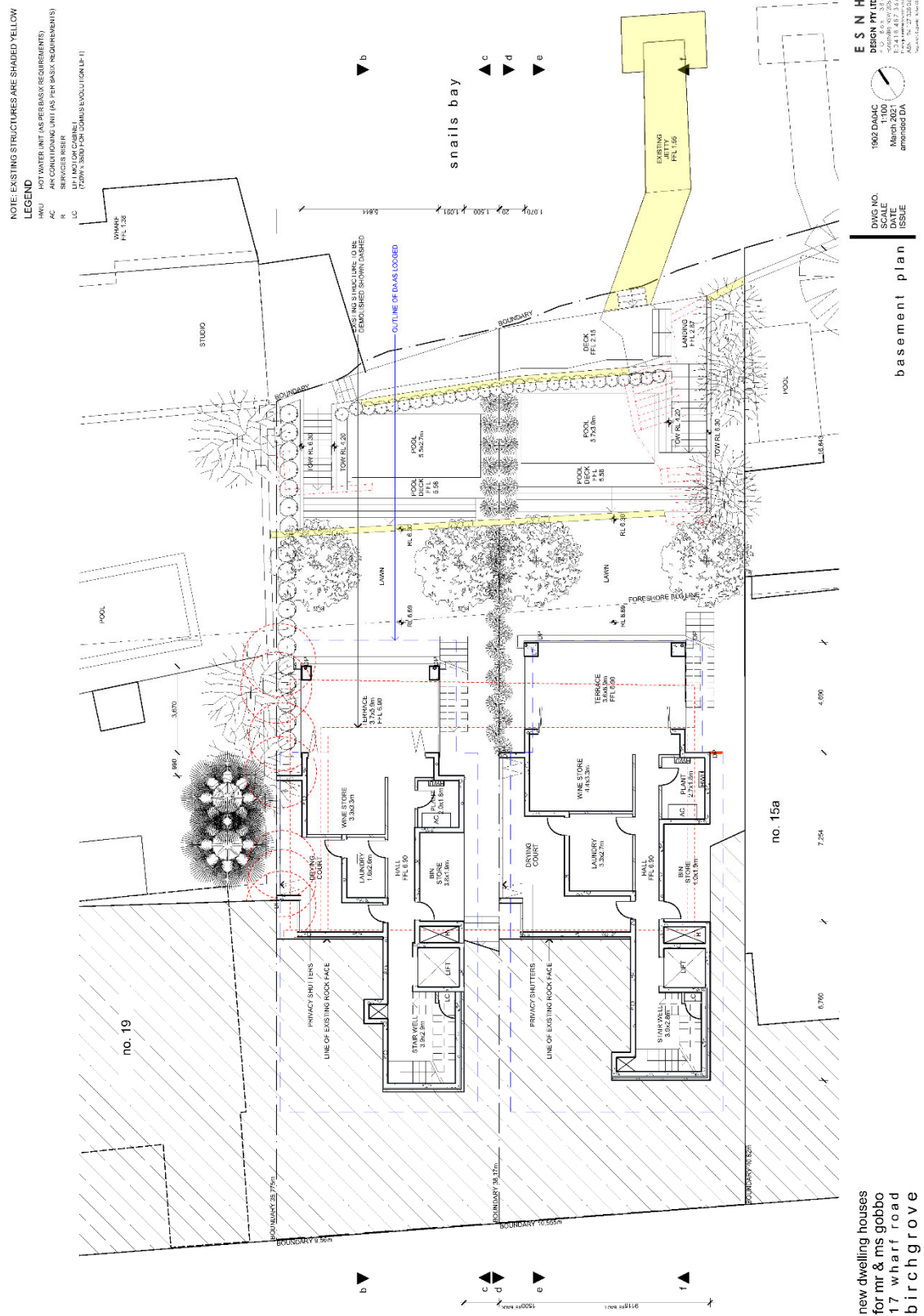


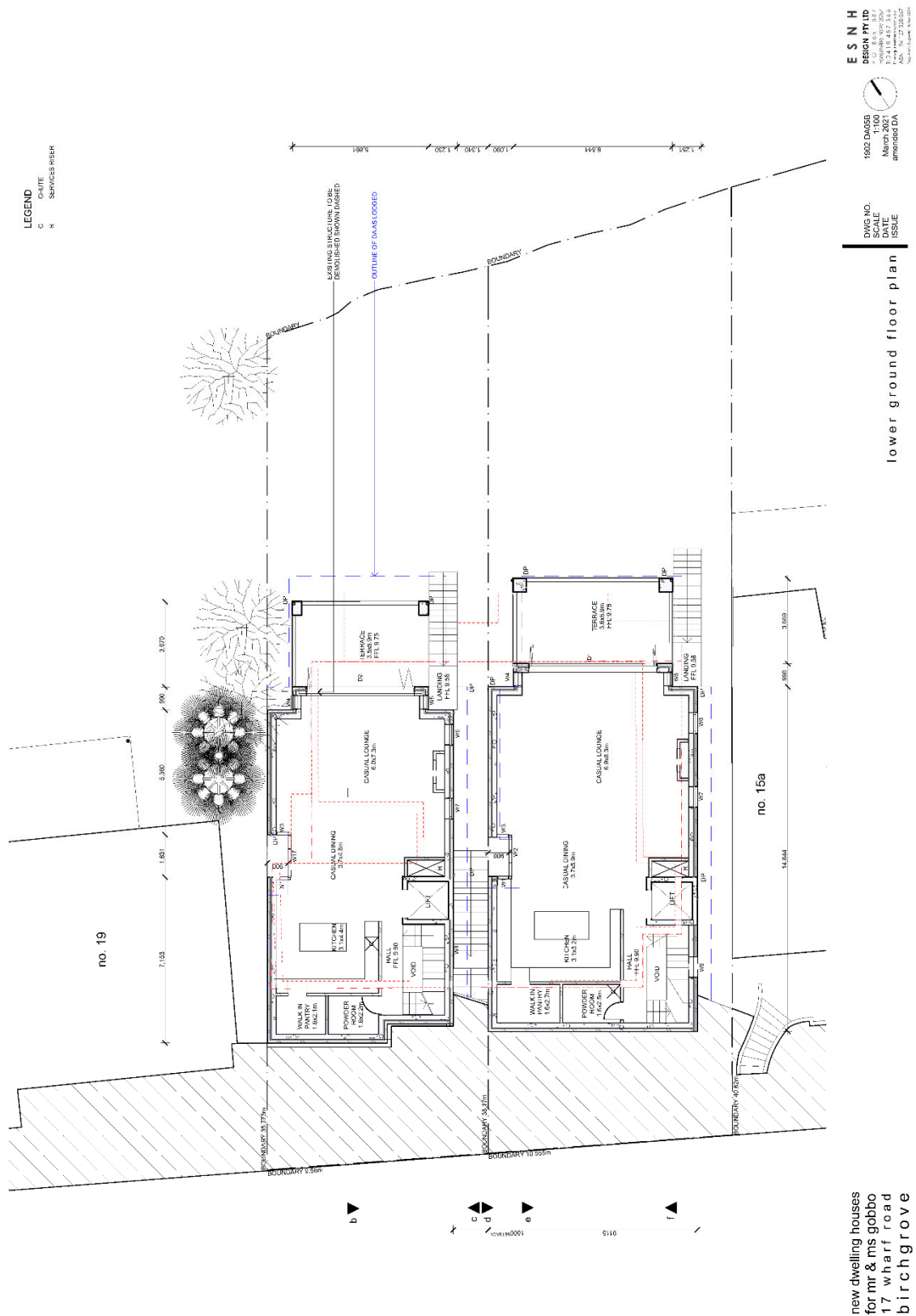
ESNH
DESIGN Pty Ltd
1602 DAC38
1000
March 2018
amended DA

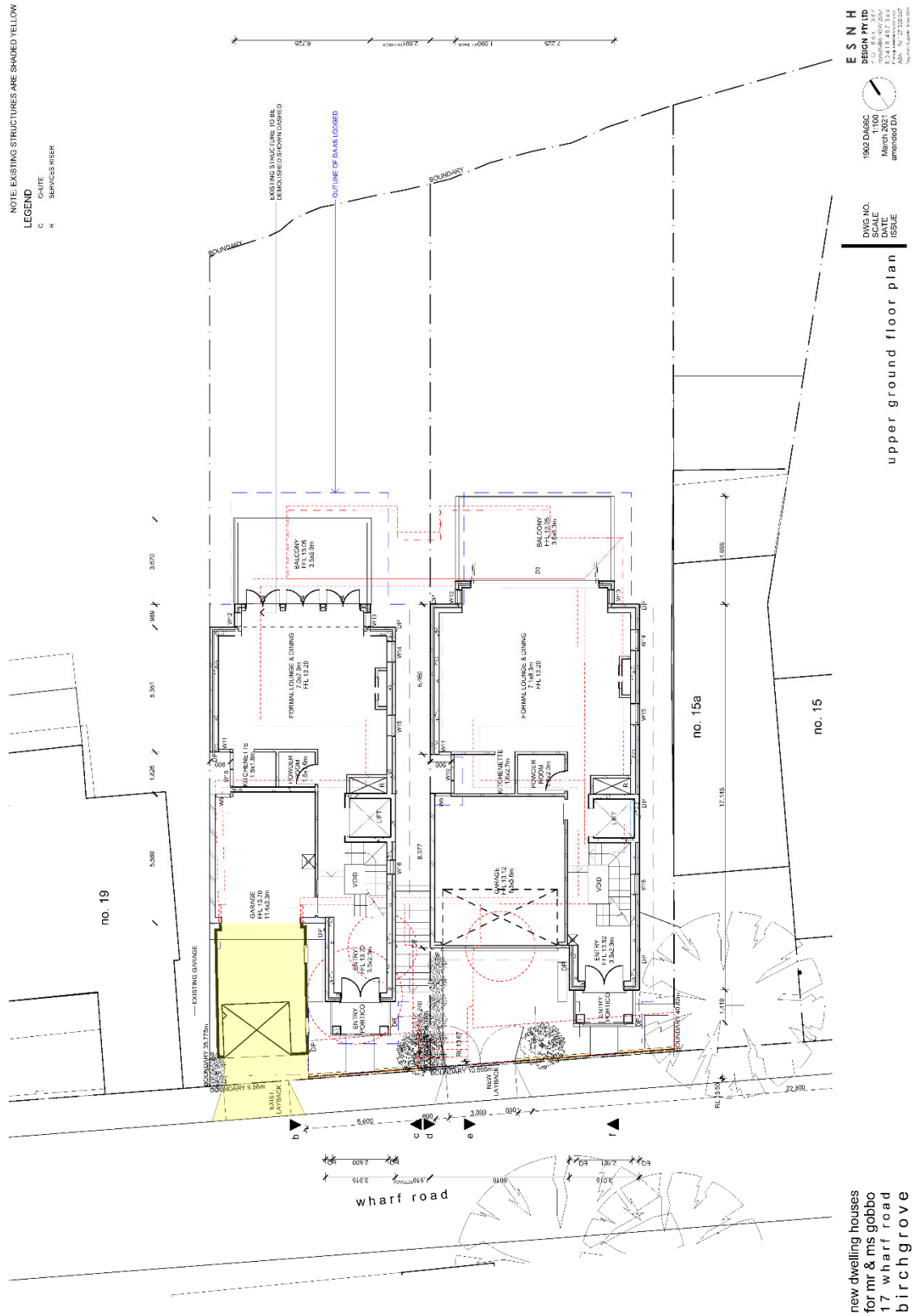
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SCALE
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subdivision plan

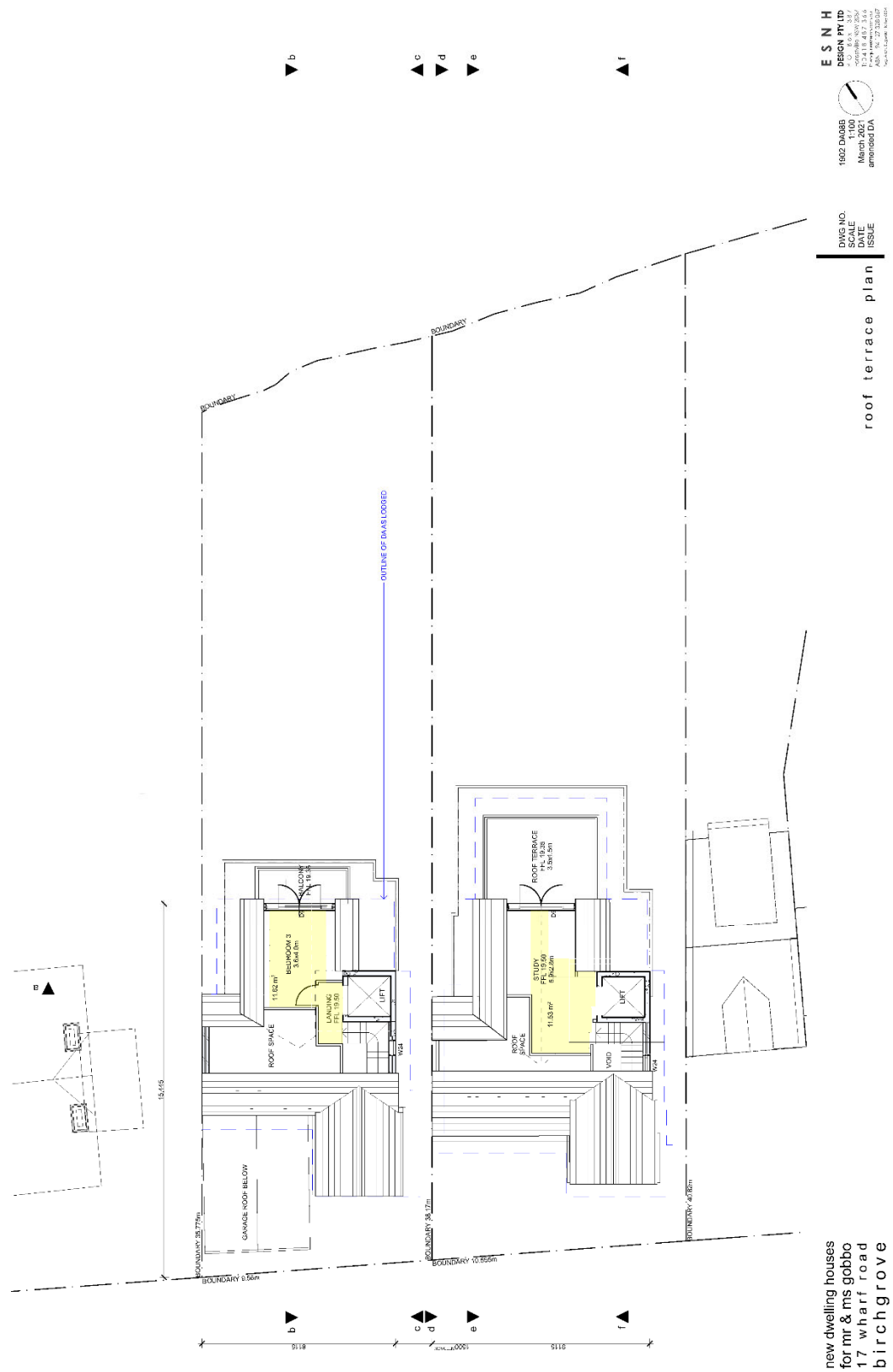
new dwelling houses
for mr & ms gobbo
17 wharf road
birchgrove

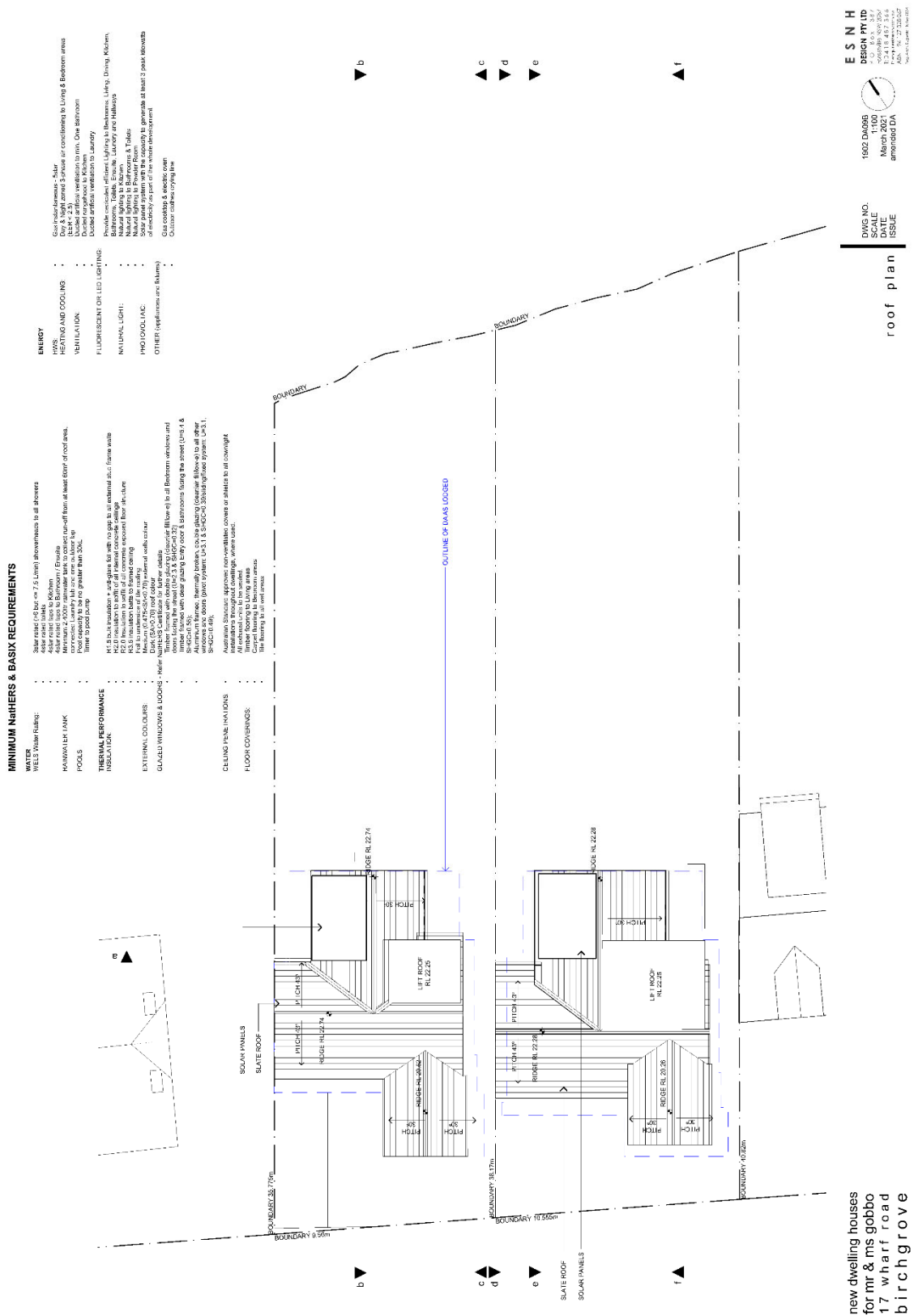




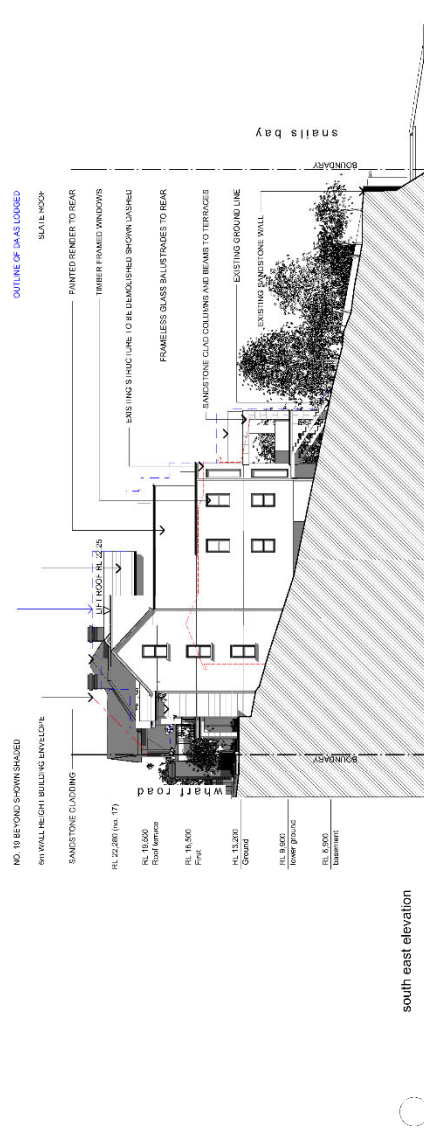








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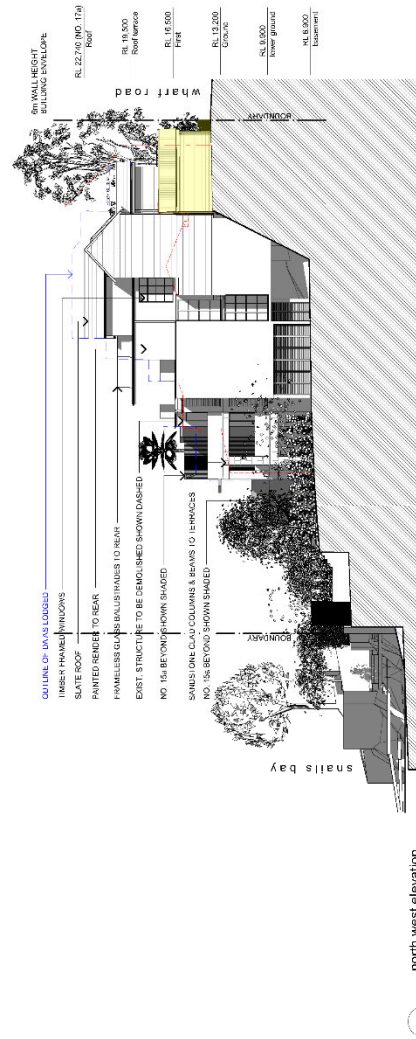
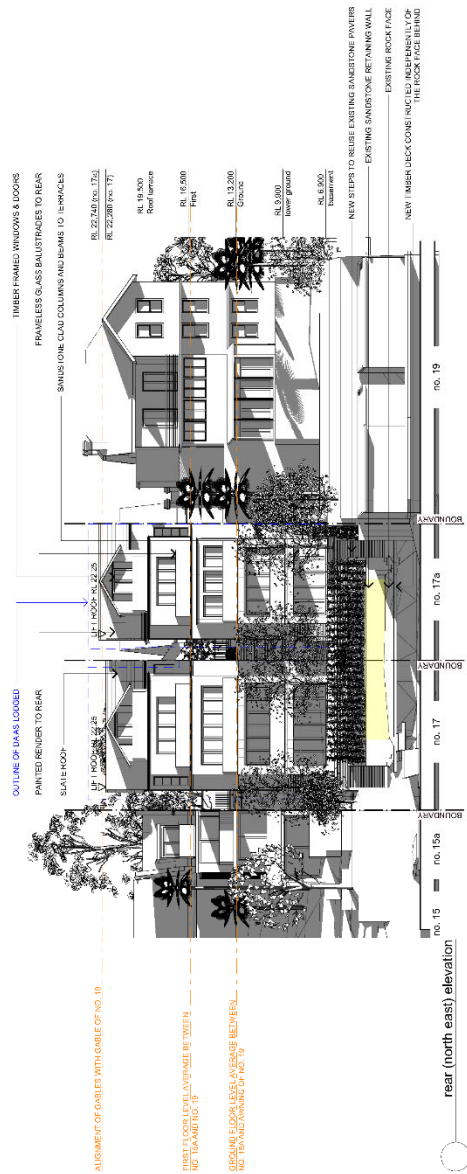
new dwelling houses
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17 wharf road
birchgrove

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http://www.esnh.com.au

DWG NO. 1902 DA10C
SCALE 1:100 (A0); 1:200 (A2)
DATE March 2021
ISSUE amended DA

elevations sheet 1 of 2

NOTE: EXISTING STRUCTURES ARE SHADED YELLOW

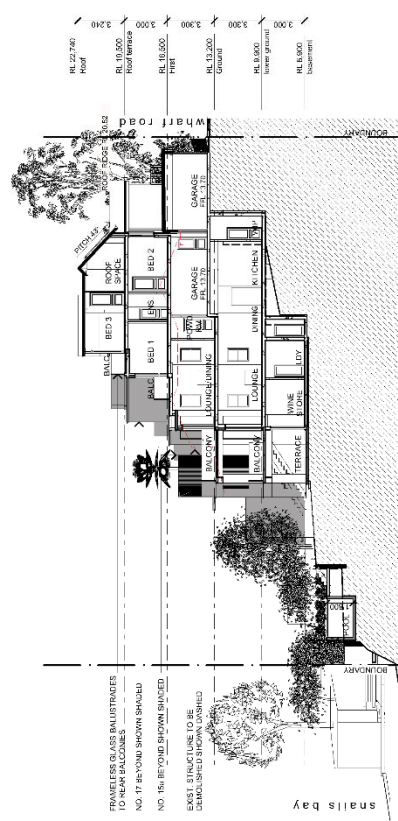
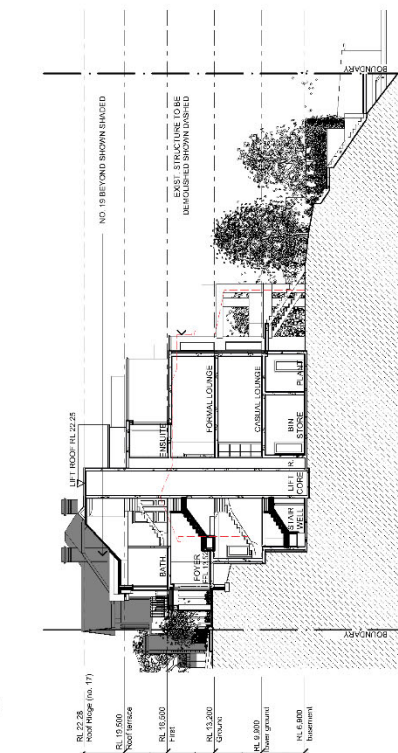
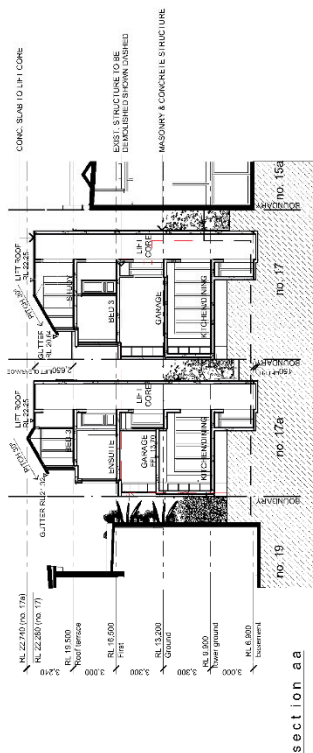
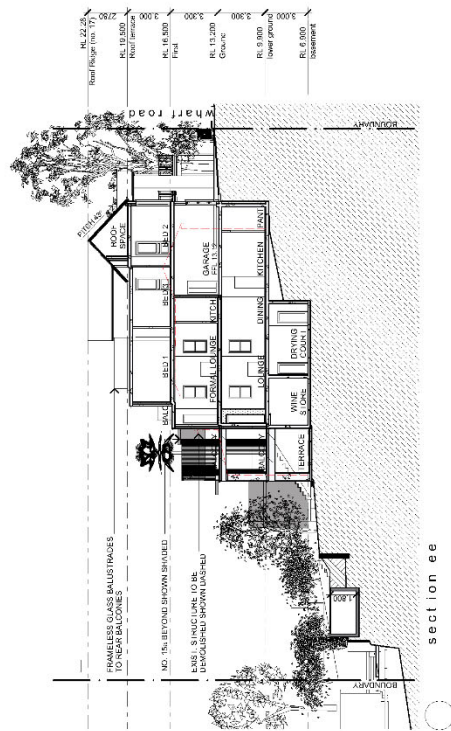


new dwelling houses
for mr & ms gobbo
17 wharf road
birchgrove

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DWG NO. 1902 DA11C
SCALE 1:100 (A0); 1:200 (A2)
DATE March 2021
ISSUE amended DA

elevations sheet 2 of 2

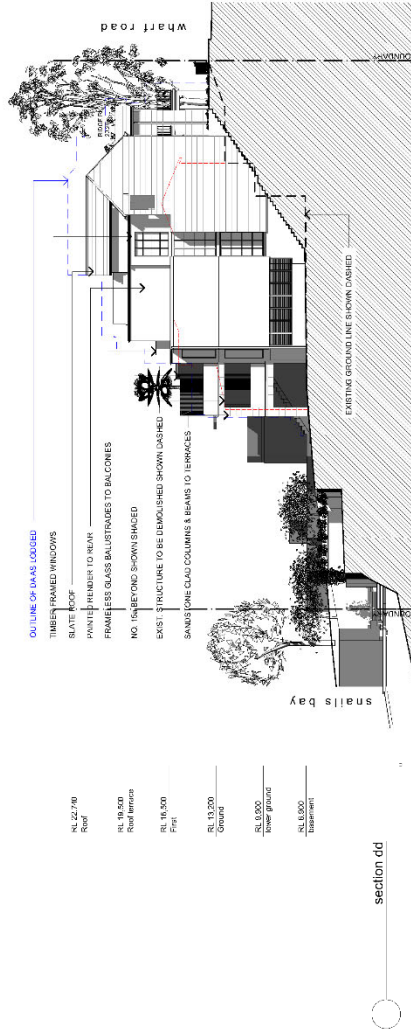
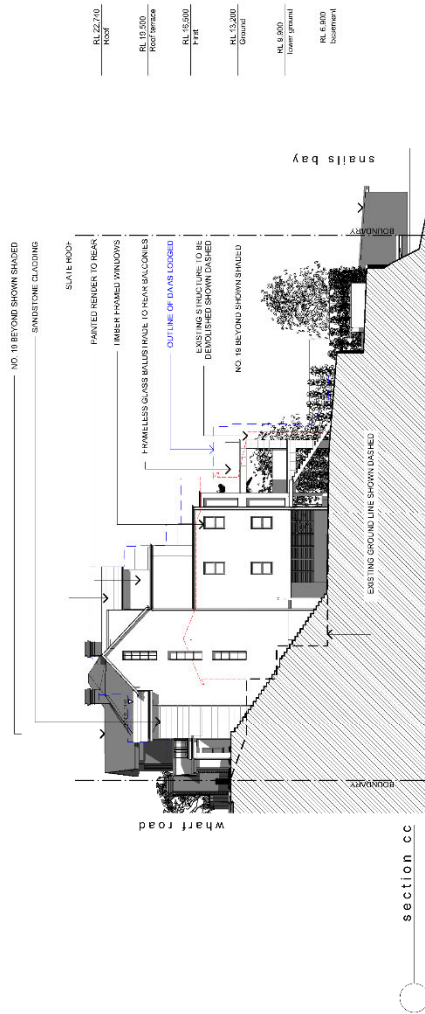


ESNH
DESIGN Pty Ltd
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DWG NO. 1902 DA 2C
SCALE 1:100 (A0), 1:200 (A2)
ISSUE amended DA

sections sheet 1 of 2

new dwelling houses
for mr & ms gobbo
17 wharf road
birchgrove

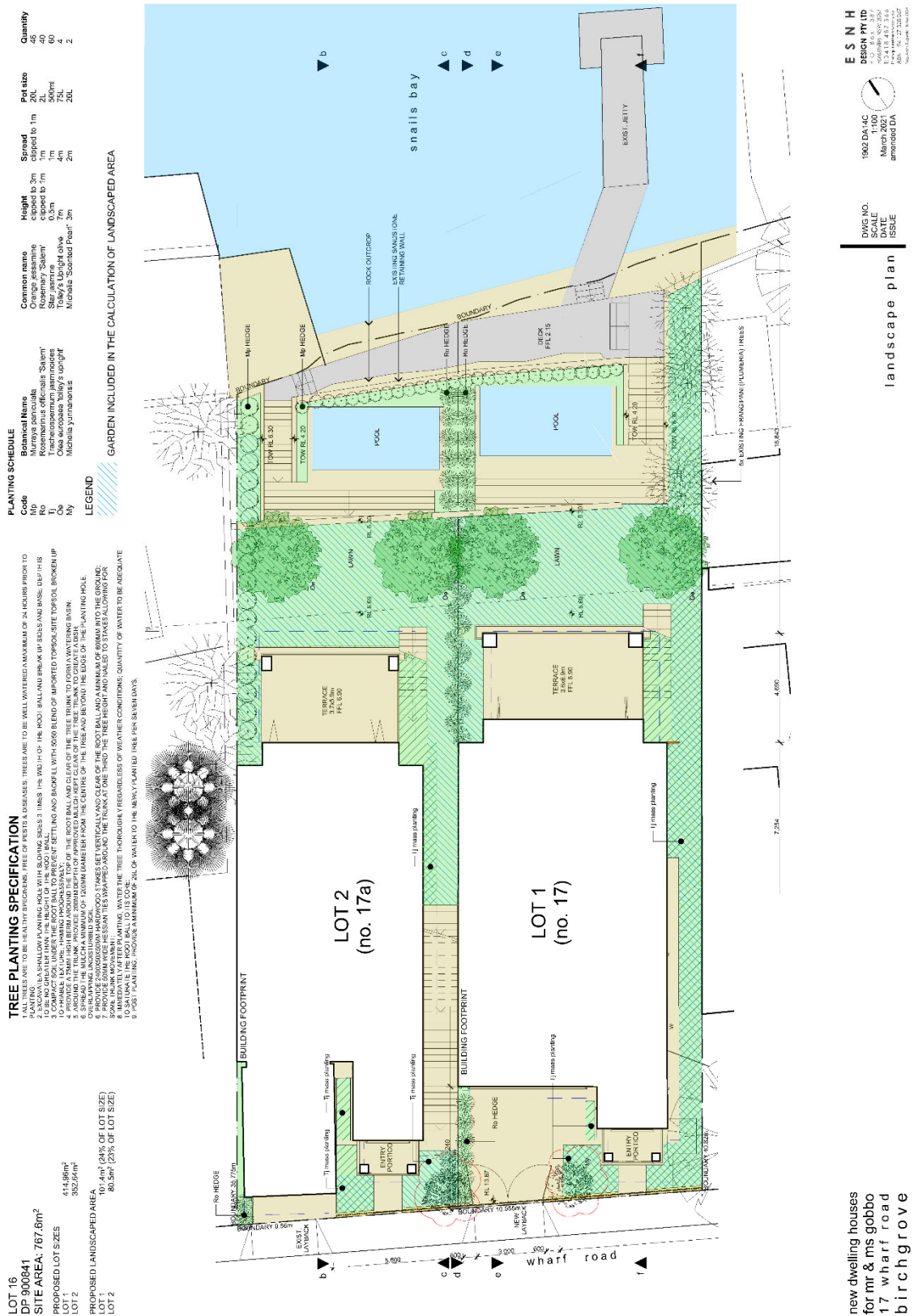


new dwelling houses
for mr & ms gabbo
17 wharf road
birchgrove

ESNH
DESIGN Pty Ltd
17/18 Birchgrove Road
Newcastle NSW 2304
Tel: 08 1588 1234
Fax: 08 1588 1235
Email: info@esnhd.com.au
Website: www.esnh.com.au

DWG NO. 1602 DA 13A
SCALE 1:100 (A0): 1:200 (A2)
DATE 10/10/2017
ISSUE amended DA

sections sheet 2 of 2



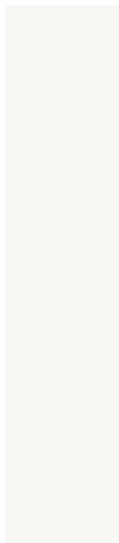
draft



roof: slate



rendered & weatherboard clad walls: Dulux®White Birch'



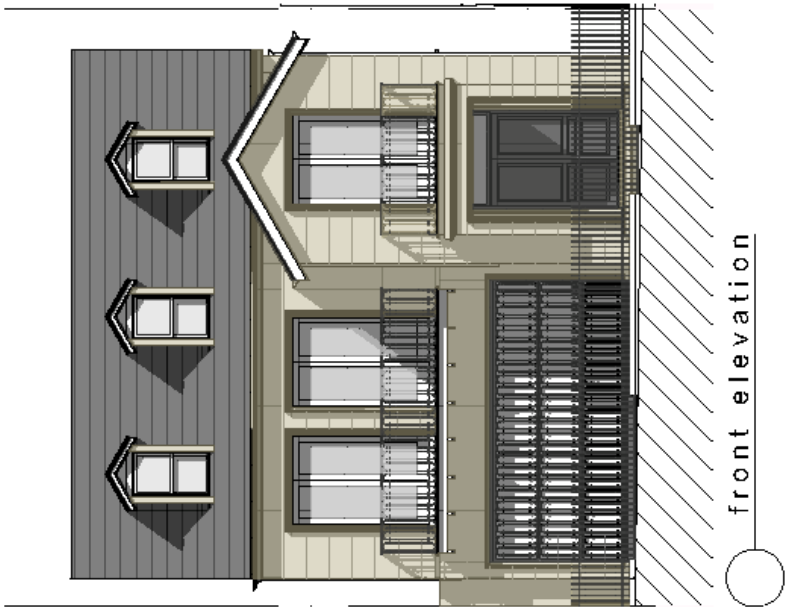
timber framed doors, windows & trims: Dulux 'Vivid White'



front face cladding, palisade fence base, entry steps: honed sandstone



cast iron balustrade & palisade fence: to match Colorbond 'Monument'



front elevation

new dwelling houses
for mr & ms gobbo
17 wharf road
birchgrove

finishes schedule

DWG NO.
SCALE
DATE
ISSUE

1902 DA16
1:100
April 2020
DA

E S N H

DESIGN PTY LTD

P O B o x 3 8 7

Foresty' e NSW 2087

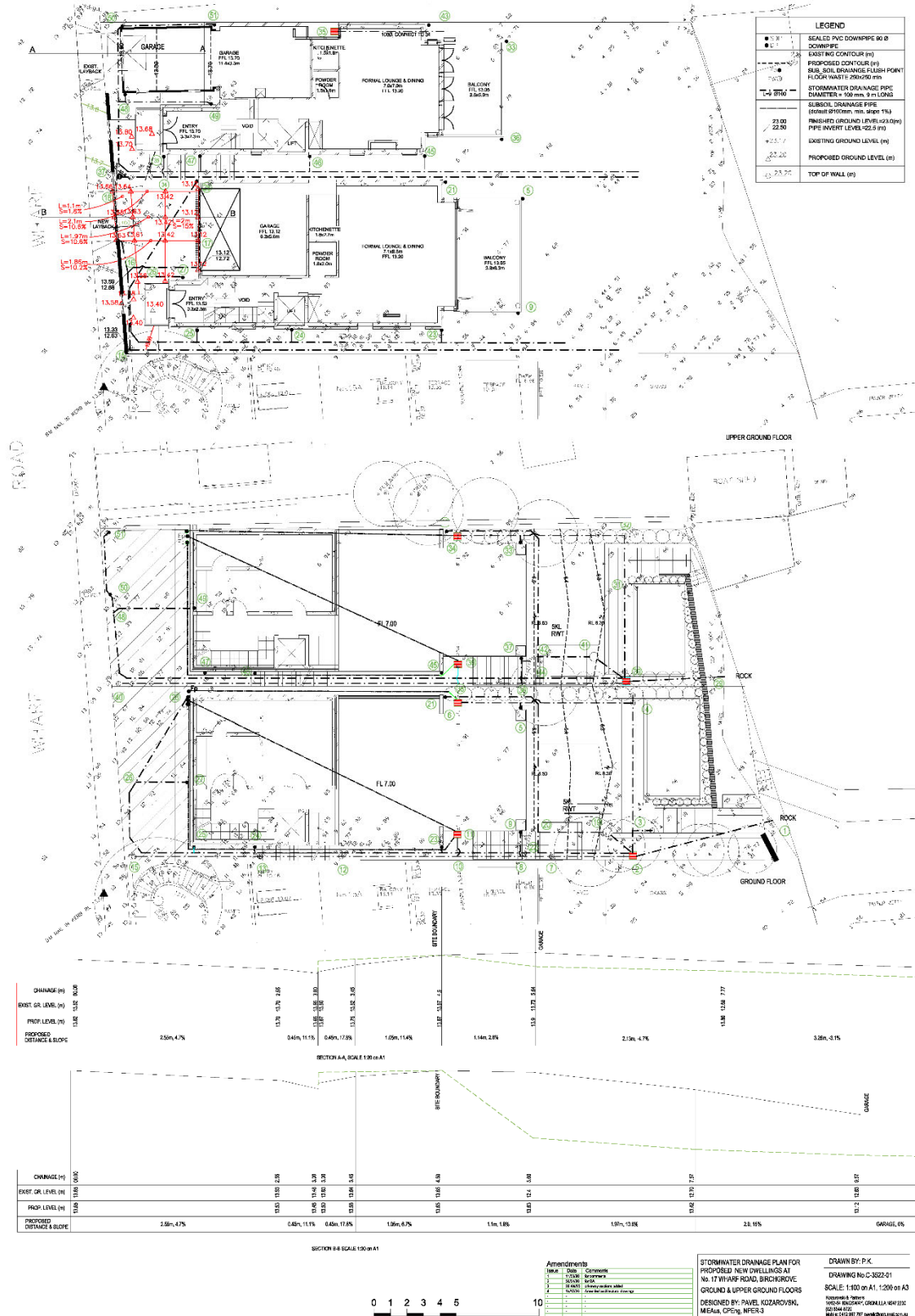
T:0418 487 366

E:esnh@esnh.com.au

ABN 54 127 328 067

Reg Arch Engineer 4334

PAGE 134





Attachment D – Clause 4.6 Exception to Development Standards



CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARD (CLAUSE 4.4) MAXIMUM FLOOR SPACE RATIO – LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

DEVELOPMENT APPLICATION FOR THE PROPOSED TORRENS TITLE SUBDIVISION, PARTIAL DEMOLITION AND CONSTRUCTION OF A NEW DWELLING ON EACH LOT

17 WHARF ROAD, BIRCHGROVE NSW 2041 (LOT 16 DP 900841)

March 2021

1. Introduction

This Clause 4.6 Exception to Development Standard Request supports a revised Development Application (DA) package to the Inner West Council (Council) relevant to DA No. DA/2020/0461. The proposal seeks consent for Torrens Title Subdivision, partial demolition and construction of a new dwelling on each lot and should be read in conjunction with the revised Architectural Plans prepared by ESNH Design Pty Ltd dated December 2020. This Clause 4.6 Exception to Development Standard Variation Request relates to Clause 4.4 Floor Space ratio (FSR) within the Leichhardt Local Environmental Plan 2013. (LEP 2013).

The subject site (the site) is located at 17 Wharf Road, Birchgrove and comprises of one lot legally described as Lot 16 DP 900841. The site is located on the northern side of Wharf Road and is generally rectangular in shape. The site has a frontage of approximately 20m to Wharf Road and is bound by the foreshore at Snails Bay to the north and residential developments to the west and the east. The subject site is 767.6m² (by Survey) in area and steeply sloped to the rear with site elevation ranging from 12m AHD at southwest side to 2m AHD towards the waterfront on the northeast side. Erected on the land is a two storey brick rendered and metal roofed dwelling combined with a timber framed garage.

This Development Standard Variation Request has been prepared in accordance with the NSW Department of Planning, Industry and Environment's "*Varying development standards: A Guide*" (August 2011) and relevant decisions in the New South Wales Land and Environment Court (Court). The following two recent Court judgements provide a clear outline of the matters required to be addressed under the Clause 4.6 including the structure of such requests:

- *Brigham v Canterbury-Bankstown Council* [2018] NSWLEC 1406; and
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

The Court has established principles that are to be addressed in relation to whether a development standard variation should be approved by a consent authority. The relevant tests to be considered are set out in the judgement of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79. The relevant tests were revisited by Chief Justice Preston in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (Wehbe). Although the Winten Property Group and Wehbe refer to variations to development standards submitted under *State Environmental Planning Policy 1 – Development Standards* (SEPP 1) the principles and tests contained therein remain applicable to Clause 4.6 of the Standard Instruments as confirmed by the Court in the following judgements:

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (Four2Five);
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386;
- *Moskovich v Waverley Council* [2016] NSWLEC 1015; and
- *SARM Architects Pty Ltd v Wollongong City Council* [2015] NSWLEC 1101

It has been established in case law that the quantum of the numerical variation does not form part of the tests required to be conducted under Clause 4.6. For instance, the Court's decision with regards to *Moskovich v Waverley Council* (65% exceedance of FSR) and *Micaul Holdings Pty Limited v Randwick City Council* (55% exceedance of height and 20% exceedance of FSR) attest to this.

2. Details of Current and Proposed Floor Space Ratio

A maximum Floor Space Ratio of 0.8:1 applies to each of the new lots under Clause 4.4(2) of LEP 2013 as each proposed site is less than 450m².

Clause 4.4(2)(2B) of the LEP states,

*"(b) on land shown edged red or green on the Floor Space Ratio Map is not to exceed –
(iii) in the case of development on a lot with an area of 100 square metres or more but less than 450 square metres – 0.8:1"*

The proposed Torrens Title Subdivision will result in Lot 1 being 414.96m² and Lot 2 being 352.64m².

The resulting FSR for each proposed lot is summarised in the table below.

	Proposed Lot Size	Permissible FSR (0.8:1)	Proposed FSR	Non-compliance
Lot 1 (No.17)	414.96m ²	331.97m ²	398.36m ² (0.96:1)	66.39m ² (20.28%)
Lot 2 (No.17A)	352.64m ²	282.11m ²	335m ² (0.95:1)	52.89m ² (18.36%)

In response to the proposed non-compliances, the following Clause 4.6 Variation Request is provided. This Variation is well founded and is worthy of support by Council Officers.

3. What are the Objectives of Clause 4.6 and Is the proposal consistent with them?

The objectives of Clause 4.6 of LEP 2013 are:

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

As outlined in the assessment below, that the proposed variation is consistent with the objectives of Clause 4.6 of LEP 2013. The variation allows flexibility in the application of the maximum FSR development standard by improved amenity and achievement of better planning outcomes.

4. Are the standards to be varied Development Standards to which Clause 4.6 applies?

Clause 4.4 are in Part 4 "Principal Development Standards" of LEP 2013. The wording of Clause 4.4 is consistent with previous decisions of the Court in relation to matters which constitute development standards. It is noted that Clause 4.6 does not contain a provision which specifically excludes Clause 4.4 from being able to be varied. On this basis Clause 4.4 is a development standard for which Clause 4.6 applies.

5. Is compliance with the Development Standards unreasonable or unnecessary in the circumstances of this case?

The Court's decision in the *Wehbe* case provides guidance by nominating the five separate methods in which compliance to a development standard can be demonstrated as being unreasonable and unnecessary subject to a variation request. The five methods specified in the *Wehbe* case include the following:

- Method No. 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard.
- Method No. 2: The underlying objective or purpose of the standard is not relevant to the development with the consequence that compliance is unnecessary.
- Method No. 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
- Method No. 4: 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.
- Method No. 5: *"The zoning of the particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning is also unreasonable and unnecessary as it applied to that land"* and hence compliance with the standard would be unreasonable or unnecessary (i.e. the subject allotment should not have been included in the zone it is located in).

This Development Standard Variation Request will rely upon Method No.1 as set out in the *Wehbe* case. Method Nos. 2, 3, 4 and 5 are not considered relevant to the current proposal and therefore this Development Standard Variation Request relies upon Method No. 1 in *Wehbe*, only. This approach is consistent with the findings of Dixon SC in *Brigham v Canterbury - Bankstown Council* [2018] NSWLEC 1406 who notes 'you do not need to list all five tests from *Wehbe* if the first test is relied upon and said to be satisfied'.

On the basis of the above, it is adequately demonstrated that there are sufficient environmental planning grounds to justify contravention of the FSR development standard and that compliance with the requirements of Clause 4.4 Floor Space Ratio is both unreasonable and unnecessary in the circumstances of this case for the following reasons:

- The proposal will have minimal environmental impacts including on the surrounding heritage significant buildings.
- The proposal will be in keeping with the diverse character of the area in relation to building bulk, form and scale and provide an overall positive visual impact.
- Although the underlying objectives for the FSR development standard are valid and relevant matter for consideration, the variation will result in two residential dwellings that are of a scale that is compatible with the surrounding dwellings.

There are no unreasonable environmental or amenity impacts on any nearby properties or the locality which will arise as a result of the maximum FSR being increased in this case.

6. Are there sufficient environmental planning grounds to justify contravening the Development Standard?

The decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 indicates that merely showing that the development achieves the objectives of the development standard will be insufficient to justify that a development is unreasonable or unnecessary in the circumstances of the case for the purposes of an objection under Clause 4.6.

The case also demonstrates that the requirement in Clause 4.6(3)(b) of LEP 2013 to justify that there are sufficient environmental planning grounds for the variation, requires identification of grounds particular to the circumstances of the proposed development and not simply grounds that apply to any similar development on the site or in the vicinity. In the *Four2Five* case, the Court found that the environmental planning grounds presented by the applicant in a Clause 4.6 Variation Request must be specific to the circumstances of the proposed development on that site.

In this instance, there are sufficient environmental planning and design grounds to justify the contravention of the maximum FSR development standard as it relates to the proposed development in context to the existing building including:

- The proposed development whilst non-compliant with the Council's numerical maximum FSR control, achieves compliance with the objectives of Clause 4.4.
- There are no significant adverse amenity impacts on the neighbouring properties as a result of these non-compliances.
- The proposal has minimal impacts on the visual privacy, acoustic privacy, solar access and views on any neighbouring properties or the surrounding properties in the area.
- The proposal complies with the minimum provision of landscaped area and is within the maximum permitted site coverage under LEP 2013. The proposal is not an overdevelopment of the site in this regard.

Given the proposal will not result in any significant adverse impacts to surrounding developments, it is consistent with the envisaged built form of the locality within a harbour frontage site in Birchgrove, the proposed development is considered to have sufficient planning grounds to justify a variation to the maximum FSR development standard.

7. Is the proposed development 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?

The proposal is consistent with the objectives of the development standard in LEP 2013 and for development in the R1 General Residential Zone under LEP 2013. The proposed development is in the public interest as it is compliant with the zone objectives and the objectives of the particular standard (Clause 4.3A in LEP 2013).

7.1 R1 General Residential Zone Objectives

The objectives for development in the R1 General Residential Zone are:

- *"To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To improve opportunities to work from home.*
- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To provide landscaped areas for the use and enjoyment of existing and future residents.*
- *To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood."*

The proposal will meet the objectives for development in the R1 General Residential Zone for the following reasons:

- Provides new housing within an existing urban environment that is an acceptable utilisation of a large residential lot for a site in the inner city context.
- Provides additional renovated homes that will meet the needs of the community.
- Is compatible with the character and style of surrounding buildings and the mixed architectural styles and varied built form of dwellings on the streetscape.
- Is compatible with the orientation and pattern of surrounding buildings and results in a development that will provide visual continuity and consistency with the adjoining semi-detached dwelling at No. 15A Birchgrove Road.
- Provides landscaped areas designed to maximise accessibility and usability for the future residents.
- The proposed subdivision and the construction of new dwellings on each lot will allow new additional view lines from Wharf Road to the Snails Bay from either side of the proposed dwellings.

The proposal will achieve consistency with the above objectives by providing residential development that are of an appropriate bulk and scale, compatible with the existing and desired future character of the area in relation to building bulk, form and scale.

7.2 Clause 4.4 FSR objectives

Clause 4.4(1)(a) of the LEP 2013 outlines the following relevant objectives for the Floor Space Ratio for residential accommodation:

The objectives of this clause are as follows:

- "(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,"*

The objective in G5.3 of the Leichhardt Development Control Plan 2013 (DCP 2013) outlines the following objective regarding built form and urban design in Wharf Road:

"The built form of Wharf Road, as a series of detached individual buildings, their scale, architecture style and siting in relation to the escarpment, should be retained and complemented when development occurs."

The proposal directly supports the objectives ensuring the detached individual building element including the scale, architectural and siting. The proposal also retains majority of the existing landscape escarpment

and complements the existing landscape surroundings. The proposed development will be presented as 2 x two storey dwellings from Wharf Road and will not adversely impact the heritage qualities of the Birchgrove and Ballast Point Heritage Conservation Area.

8. Secretary's Concurrence

Under Clause 4.6(5) of LEP 2013, the Secretary's concurrence is required prior to any variation being granted, however it is noted under Planning Circular PS 18-003 "Variations to development standards" dated 21 February 2018 that the Secretary's concurrence is assumed by a delegate of Council if:

- The development contravenes a numerical standard by less than 10%, and
- The variation is a numerical standard.

Pursuant to the Minister's Direction under Section 9.1 of the Environmental Planning and Assessment Act 1979 dated 23 February 2018, the relevant Local Planning Panel is to determine development,

"that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards."

In light of above criteria, the Inner West Local Planning Panel is able to determine the DA with the proposed FSR as outlined in this Clause 4.6 submission. Notwithstanding the above, the following section provides a response to those matters set out in Clause 4.6(5) of the LEP 2013 which must be considered by the Secretary, and by extension, the delegate of Council.

8.1 Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The proposed variation will not be inconsistent with any objectives within State or Regional Planning policies. The proposal is consistent with the current metropolitan plan for Sydney including the Greater Sydney Region Plan: A Metropolis of Three Cities and the Eastern District Plan in that it:

- Contributes to the development of a more accessible and walkable city through urban consolidation in the inner city context;
- Supports the economic sectors that contribute to investment and construction;
- Contributes to the strengthening and competitiveness of the Inner West as a place supporting high quality residential accommodation; and
- Promotes walkable neighbourhoods.

8.2 The public benefit of maintaining the development standard

It is considered that there would be no public benefit in strictly applying the FSR development standard to the proposed development. Variation of the maximum FSR standard will allow for urban consolidation and orderly development of the land which is in close proximity to infrastructure.

Council's refusal to permit the proposed variation to the maximum FSR in this instance would not be in the public interest given the absence of any significant detrimental environmental impacts attributable to the proposed non-compliance and the fact that the proposal is significantly below the maximum permissible site coverage applicable to the site area, being 60% of the site area. The proposed Lot 1 will result in a site coverage of 146.3m², being 35% of the site area and the proposed Lot 2 will result in a site coverage of 141.3m², being 40% of the site area.

9. Conclusion

This Clause 4.6 Request to vary the FSR development standard has adequately addressed the matters required to be demonstrated under Clause 4.6(3) and Clause 4.6(4) of LEP 2013 in order for Council Officers and the Panel to be satisfied that there are sufficient environmental planning grounds to justify contravention of the FSR development standard, and to warrant the granting of development consent.

Based upon the preceding assessment contained in this submission, a variation of the maximum FSR control to provide two new dwellings with a proposed FSR of 0.96:1 for Lot 1 and 0.95:1 for Lot 2 as required by Clause

4.4 of the Leichhardt LEP 2013 is acceptable and strict adherence to a maximum FSR for 0.8:1 is unreasonable and unnecessary in the circumstances of the case.

The variation sought will allow for the orderly and economic use and development of the land in an appropriate manner and allows for a better outcome for the subject site on planning merit.

MILESTONE (AUST) PTY LIMITED

Attachment E - Statement of Heritage Significance

STATEMENT OF HERITAGE IMPACT

Proposed Development at
17 Wharf Road,
Birchgrove



Job No. 8701
April 2020

Heritage21
CULTURAL BUILT HERITAGE IN THE 21ST CENTURY

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Statement of Heritage Impact - 17 Wharf Road, Birchgrove

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Acknowledgement of Country

Heritage 21 wishes to acknowledge the Traditional Owners of country throughout Australia and recognise their continuing connection to land, waters and community. We pay our respects to them and their cultures; and to elders both past and present.

Cover page: Subject site at 17 Wharf Road, Birchgrove, from Snails Bay looking to the rear façade (Source: Heritage 21, 10.02.20)

The following Table forms part of the quality management control undertaken by Heritage 21 regarding the monitoring of its intellectual property as issued.

Issue	Description	Date	Written by	Reviewed by	Issued by
1	Draft report (D1) issued for comment.	22.04.2020	SDA & EZ	NF	SDA
2	Report issued (RI).	24.04.2020	SDA	-	SDA

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Job No. 8701 – RI

Statement of Heritage Impact - 17 Wharf Road, Birchgrove

1.0 INTRODUCTION

1.1 Background

This Statement of Heritage Impact ('SOHI' or 'report') has been prepared on behalf of ESNH Design Pty Ltd who have been engaged by the owner of the site to submit a development application for subdivision and a new development at the site.

1.2 Site Identification

The subject site is located 17 Wharf Road, Birchgrove, which falls within the boundaries of the Inner West Local Government Area (LGA) and it comprises Lot 16, Deposit Plan (DP), 900841. As depicted in Figure 1 below, the site is located on the northern side of Wharf Road and borders the Paramatta River to the North. The site consists of a three-storey dwelling constructed in 1995. The setting and topography of the site will be more fully described in Section 3.0 below.

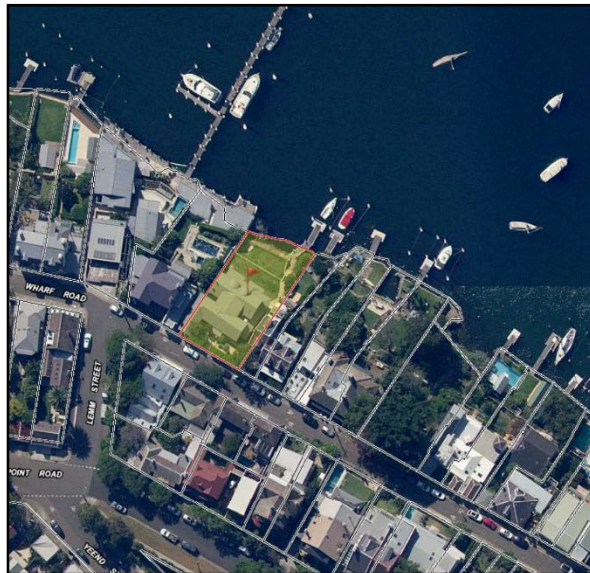


Figure 1. Contemporary aerial view of the site highlighted yellow, and surrounding urban environment (Source: NSW Land and Property Information, 'SIX Maps', n.d., <http://maps.six.nsw.gov.au/>).

1.3 Heritage Context

1.3.1 Heritage Listings

The subject site is **not** listed as an item of environmental heritage under Schedule 5 of the Leichhardt Local Environmental Plan 2013 ('LLEP'). It **also is not** listed on the NSW State Heritage

Statement of Heritage Impact - 17 Wharf Road, Birchgrove

Register, the National Heritage List, the Commonwealth Heritage List, the National Trust Register (NSW), or the former Register of the National Estate.¹

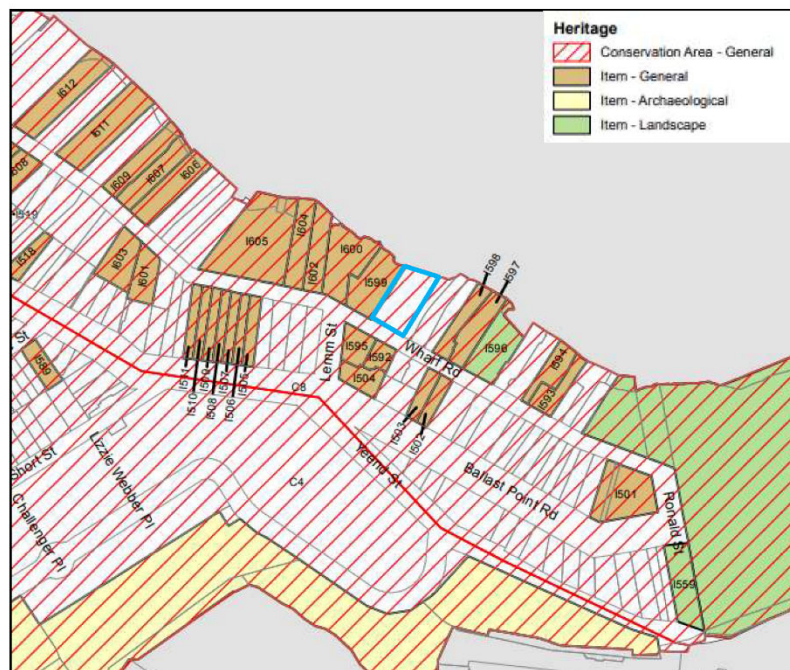


Figure 2. Detail from Heritage Map HER_010; the subject site is indicated by the blue outline and heritage items, some of which are within the vicinity of the site, are marked brown. The Birchgrove and Ballast Point Road HCA is cross hatched red (Source: NSW Legislation Online, https://www.legislation.nsw.gov.au/maps/667fa485-c3ad-4059-b0ed-c0c4b619b547/4800_COM_HER_010_005_20150427.pdf, annotated by Heritage 21).

The subject site is also located within the Sydney Harbour-Foreshores and Waterways area and the Sydney Harbour Catchment as shown in Figure 3 below.

¹ The Register of the National Estate ceased as a statutory heritage list in 2007; however it continues to exist as an inventory of Australian heritage places.

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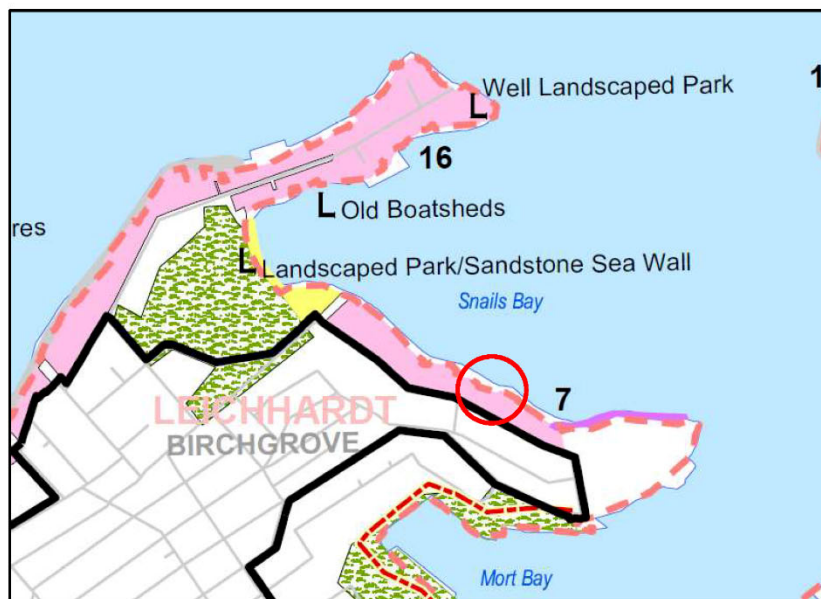


Figure 3. Detail from Sydney Harbour Foreshores and Waterways Area Map, the approximate location of the subject site is circled in red (Source: NSW Department of Planning, <https://www.planning.nsw.gov.au/~media/Files/DPE/Plans-and-policies/sydney-harbour-foreshores-and-waterways-area-development-control-plan-2005.ashx>, annotated by Heritage 21)

1.3.2 Heritage Conservation Areas

As depicted in Figure 2 above, the subject site is located within the boundaries of the Birchgrove and Ballast Point Heritage Conservation Area ('HCA'), listed under Schedule 5 of the Leichhardt LEP 2013.

As the current building on the site was constructed in 1995, it is our opinion that the subject building is **not** a contributory item within the HCA.

Statement of Heritage Impact - 17 Wharf Road, Birchgrove

1.3.3 Heritage Items in the Vicinity

As depicted in Figure 2 above, the subject site is situated within the general vicinity of the following heritage items and HCA's listed under Schedule 5 of the Leichhardt LEP 2013. The details of the listings follow:

Item/HCA Name	Address	Significance	Item Number
House and remnants of former Stannard's Marina, including interiors	19 Wharf Road	Local	I599
Remnants of former Stannard's Marina, including interiors	19A Wharf Road	Local	I600
Semi-detached House, "Normanton", including interiors	21 Wharf Road	Local	I602
Semi-detached flats "Maybank", including interiors	23 Wharf Road	Local	I604
House, including interiors	8 Wharf Road	Local	I595
Timber house, including interior	6 Wharf Road	Local	I592
Semi-detached house, including interiors	27 Ballast Point Road	Local	I503
Semi-detached house, including interiors	25 Ballast Point Road	Local	I502
House, including interiors	13A Wharf Road	Local	I598
House, including interiors	13 Wharf Road	Local	I597

Statement of Heritage Impact - 17 Wharf Road, Birchgrove

Brownlee Reserve	11 Wharf Road	Local	I596
Town of Waterview Heritage Conservation Area	-	-	C4

Among the above heritage items in the vicinity listed above, the subject site is adjacent to or within the visual catchment of items I595, I592, I503, I502, I599 and I600. Accordingly, the impact of the proposal on these items is discussed in Section 6.0 of this report below.

1.4 Purpose

The subject site is located within the Birchgrove and Ballast Point Heritage Conservation Area and is located in the vicinity of a number of heritage items: I595, I592, I503, I502, I599 and I600, all of which are listed under Schedule 5 of the Leichhardt LEP. Sections 5.10(4) and 5.10(5) of the Leichhardt LEP require the Inner West Council to assess the potential heritage impact of non-exempt development, such as the proposed works (refer to Section 5.0), on the heritage significance of the abovementioned heritage items and heritage conservation areas and, also, to assess the extent (whether negative, neutral or positive) to which the proposal would impact the heritage significance of those heritage items and heritage conservation areas. This assessment is carried out in Section 6.0 below.

Accordingly, this SOHI provides the necessary information for Council to make an assessment of the proposal on heritage grounds.

1.5 Methodology

The methodology used in this SOHI is consistent with *Statements of Heritage Impact* (1996) and *Assessing Heritage Significance* (2001) published by the Heritage Division of the NSW Office of Environment and Heritage and has been prepared in accordance with the principles contained in the most recent edition of *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance 2013 ('Burra Charter')*.

1.6 Authors

This Statement of Heritage Impact ('SOHI' or 'report') has been prepared by Siena Di-Giovanni-Arundell and overseen by Paul Rappoport, of Heritage 21, Heritage Consultants.

1.7 Limitations

- This SOHI is based upon an assessment of the heritage issues only and does not purport to have reviewed or in any way endorsed decisions or proposals of a planning or compliance nature. It is assumed that compliance with non-heritage aspects of Council's planning

Statement of Heritage Impact - 17 Wharf Road, Birchgrove

instruments, the BCA and any issues related to services, contamination, structural integrity, legal matters or any other non-heritage matter is assessed by others.

- This SOHI essentially relies on secondary sources. Primary research has not necessarily been included in this report, other than the general assessment of the physical evidence on site.
- It is beyond the scope of this report to address Indigenous associations with the subject site.
- It is beyond the scope of this report to locate or assess potential or known archaeological sub-surface deposits on the subject site or elsewhere.
- It is beyond the scope of this report to assess items of movable heritage.
- Heritage 21 has only assessed aspects of the subject site that were visually apparent and not blocked or closed or to which access was not given or was barred, obstructed or unsafe on the day of the arranged inspection.

1.8 Copyright

Heritage 21 holds copyright for this report. Any reference to or copying of the report or information contained in it must be referenced and acknowledged, stating the full name and date of the report as well as Heritage 21's authorship.

Statement of Heritage Impact - 17 Wharf Road, Birchgrove

2.0 HISTORICAL CONTEXT

2.1 Local History

2.1.1 Aboriginal History

The Traditional owners of the Birchgrove Area are the Wangul clan of the Dharug people who named Birchgrove Point, Yur(r)ulbin (swift running waters). The name originates from the change in water movement around the point. This is mostly owed to the location of the bay to west, which is protected from the open waters of the harbour to the east.²

2.1.2 European History

The following is an extract from Area 14 Birchgrove and Ballast Point Road by Godden Mackay Logan Heritage Consultants:³

The Birchgrove and Ballast Point Conservation Area covers the area of the George Whitfield's 30-acre grant of 1796 (Birchgrove) and sections of John Gilchrist's Balmain Estate (Ballast Point). Birch acquired Whitfield's grant in 1810 and built Birch Grove house (at 67 Louisa Road, demolished 1967).

Along Ballast Point to the east of Birchgrove Park, land was released for subdivision and sale in 1852. It was part of John Gilchrist's 550-acre Balmain Estate, and subdivisional activities across the whole estate had been suspended in 1841 because of disputes about his will. Once resolved, Surveyor Charles Langley was responsible for subdividing the remaining acres into 46/47 sections, using existing contour-aligned routes such as Darling Street, Birchgrove Road and Ballast Point Road to delineate the parcels. The sections were purchased over the next thirty years by wealthy investors, local speculators and builders. Speculators Joshua Josephson, Charles Smith, William Cover and George Thorne bought up the land on both sides of Ballast Point Road in 1853. This marine location, with most allotments possessing water frontages, attracted some keen bidding.

*In 1860 the estate was purchased by Didier Joubert of Hunters Hill and the Parramatta Ferry Service. He commissioned Surveyor Brownrigg to subdivide the land into villa allotments, and despite later small resubdivisions, **Brownrigg's layout provides the backbone for Birchgrove today...**The estate was eventually mortgaged to the Bank of New South Wales. By 1878, only twenty-three lots had been sold.*

...The estate was again put up for sale in 1878. Sydney's boom period of the 1880s saw many more allotments taken up and villas in stone or rendered brick were built. This

² NSW Office of Environment and Heritage,

'Wyoming,' <https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5045304> [accessed 17 February 2020].

³ Godden Mackay Logan, *Area 14 Birchgrove and Ballast Point Road*, Leichhardt Municipal Council, 2004, file:///C:/Users/Research/Downloads/Birchgrove%20and%20Ballast%20Point%20Road%20C8.pdf.

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dramatic tongue of sandstone at the western end of the harbour also attracted industries dependent on water (shipbuilding and repair) or on water for the transport of its raw materials (timber yards, a cooperage, a coalyard, an oil refinery)....By 1941 when Storey and Keers shipwrights were established ... all land in Birchgrove had been taken up.

By 1891 the whole process of building up Ballast Point Road, Wharf Road, Yeend, Ronald and Lemm Streets was largely complete. There were marine villas on generous parcels of land along Wharf Road. They were sited well up from the waterfront for a stylish setting and for views, with their backs to the road. Large terraces and villas occupied the high ground along Ballast Point Road. Cooper, who had already received twenty-three acres in Morts Bay (later part of Mort's Town of Waterview) also owned Ballast Point itself. The Point was purchased and used by Caltex Oil Co for oil storage purposes until the 1980s.

In the 1970s change in industrial operations and the nature of maritime industry left the former small industrial sites of Birchgrove available for new residential development.

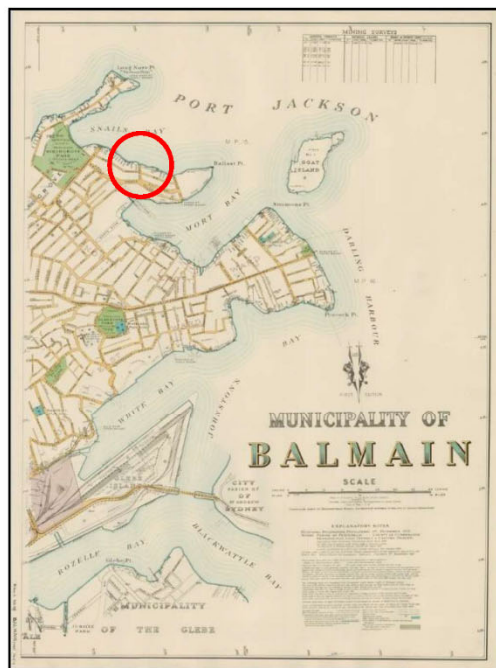


Figure 4. Map of Balmain 1917, the approximate location of the subject site is circled in red (Source: State Library of NSW, https://search.slnsw.gov.au/primo-explore/fulldisplay?docid=SLNSW_ALMA21127523780002626&context=L&vid=SLNSW&lang=en_US&tab=default_tab)

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2.2 Site Specific History

In 1872, Layman Martin Harrison purchased lots 14, 16 (the subject site) and 18 of the Birch Grove Estate. Certificates of title indicate that throughout the late 1800s, the lot was bought and sold several times. It is likely that during this period the original dwelling (now demolished) was built. In 1910, it was purchased by Marmaduke Levitt Deloitte, the youngest of the Deloitte family – who were a prominent family within the local community.⁴ Later that year, the lot was sold to Lucy Jane Bignell and the house was listed under the name “Llanabar”. Newspaper records indicate that the Bignell family occupied the house during the first half of the twentieth century.

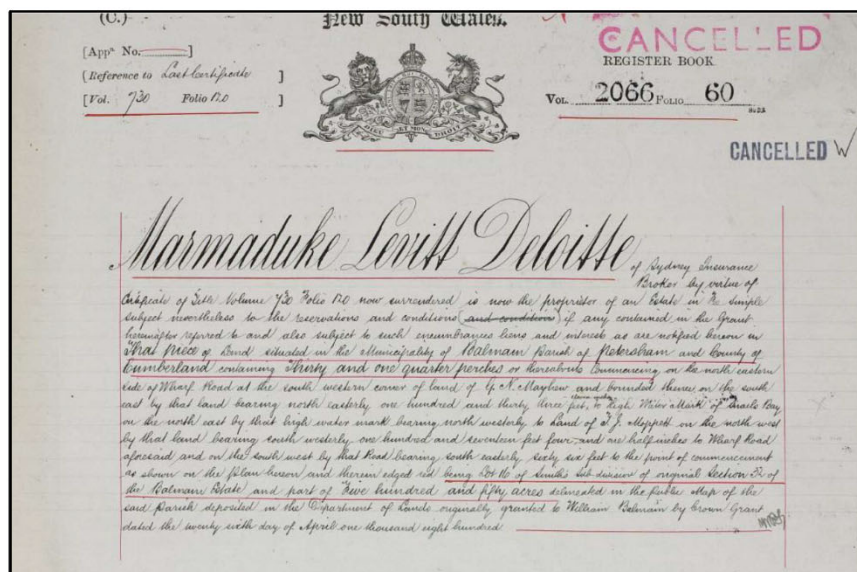


Figure 5. Certificate of title, Marmaduke Levitt Deloitte, Volume 2066 Folio 60 (Source: Historic Land Records Viewer, hlr.v.nswlrs.com.au)

⁴ Wyoming, State Heritage Inventory, Office of Environment and Heritage, <https://www.environment.nsw.gov.au/heritageapp/ViewHeritageltemDetails.aspx?ID=5045304>.

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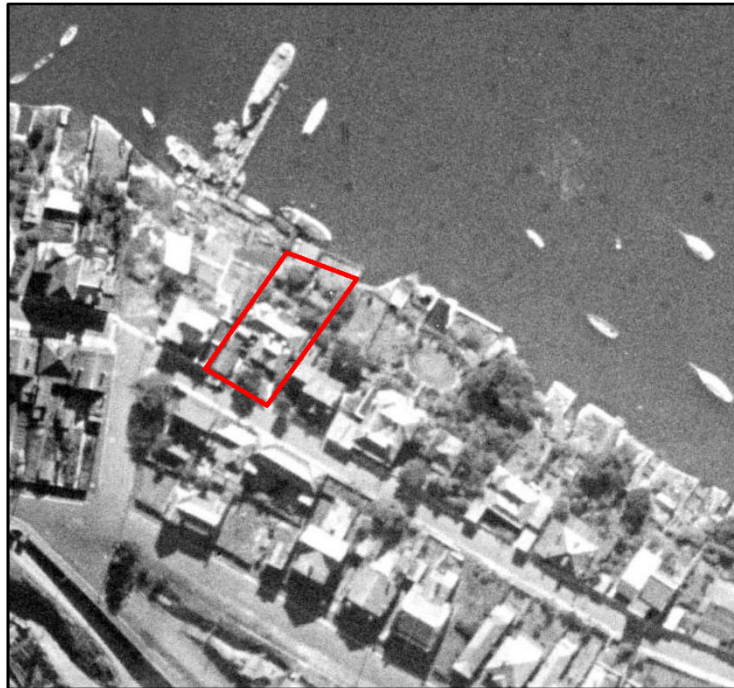


Figure 6. 1943 Aerial Survey, the subject site is outlined in red (Source: SIX Maps, maps.six.nsw.gov.au, annotated by Heritage 21)

The 1943 aerial survey shows the original building on the subject site and the transformation of the area from a port to primarily residential.

In 1964, the land was leased to the Nicholson Brothers Transport Company, a maritime business that operated out of Snails Bay.⁵ The Stannard family, who also ran a series of maritime operations across Sydney, purchased the property during the second half of the twentieth century. Throughout the 1980s and 1990s, the maritime industry in Balmain became redundant and the Stannard family sold off their property in the area.⁶

⁵ *Sailing Sabots at Snails Bay, Balmain Library Exhibition*, Asa Wahlquist, <http://asawahlquist.com/?p=290>.

⁶ *Ibid.*

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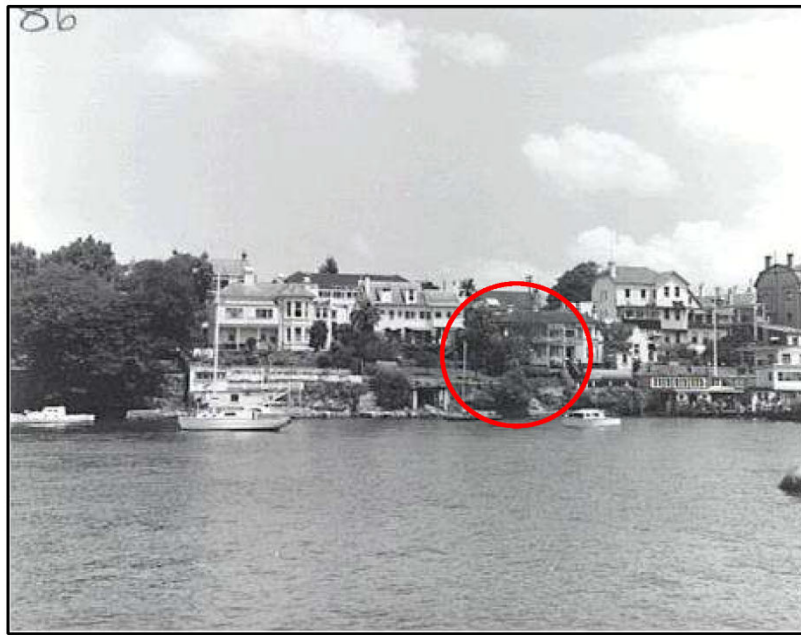


Figure 7. Foreshore, Birchgrove 1976, the subject site featuring the original dwelling before its demolition in 1995 (circled in red) (Source: Inner West Libraries, <https://innerwest.spydus.com/cgi-bin/spydus.exe/FULL/WPAC/BIBENQ/50534201/998393,49?FMT=IMG>, annotated by Heritage 21)

In 1994, the subject site was purchased from the Stannard family by construction operators Thomas and Susan Tosich. In 1995, the original house “Llanabar”, was controversially demolished after facing community criticism and a court proceeding. The current dwelling occupying the lot was constructed in its place in 1995.

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Figure 8. The original house 'Llanabar' at 17 Wharf Road, prior to its demolition, 1995 (Source: Inner West Libraries, <https://innerwest.spydus.com/cgi-bin/spydus.exe/FULL/WPAC/BIBENQ/50488817/994650,3?FMT=IMG>)

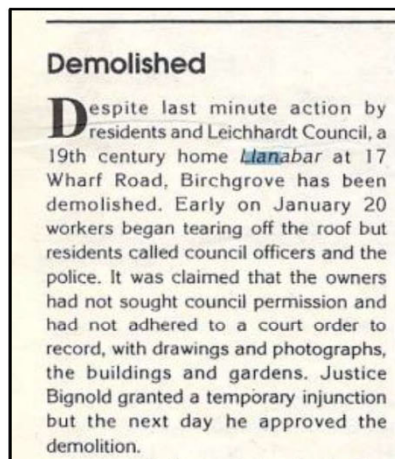


Figure 9. The Peninsular Observer, 1994 (Source: Balmain Association, <https://balmainassociation.org.au/newsletters/contents/233%20199403.pdf>)

3.0 PHYSICAL EVIDENCE

3.1 The Setting

The site is located at 17 Wharf Road. The suburb of Birchgrove is located 5 kilometres west of the Sydney Central Business District. The subject site is located on the northern side of Wharf Road and the rear of the property is bordered by Snails Bay. Wharf Road runs from Ballast Point Park to the east of the subject site, and to Grove Street to the west. Wharf Road is characterised by a series of single-storey and double-storey Victorian and Federation cottages which front Snails Bay and increase in scale to the rear.

3.2 Physical Description

The subject site slopes downwards towards Snails Bay to the north. It features a three-storey rendered dwelling. The building is set back from Wharf Road and is concealed from view by a hedge. The subject site itself is separated from Wharf Road by an original iron palisade fence with a sandstone base which is obscured by the hedge. On the south-western corner of the property is an early and original timber garage featuring a decorative bargeboard and trimming. The interior of the garage is likely not original and features cement flooring. The garage and the iron palisade fence with a sandstone base are of heritage significance. The front yard features soft landscaping and to the south of the primary façade is a series of plantings.

To the rear of the site is a terraced backyard featuring a sandstone retaining wall. A sandstone set of stairs leads to a jetty on the north-eastern corner of the subject site. The backyard is partially covered in a timber deck to the north-western corner. In the north-eastern corner of the site are a series of plantings abutting the eastern boundary line.

The current dwelling was built in 1995. The house features a corrugated iron gabled roof. The interiors of the house feature four bedrooms and the floor is lined with timber and tiles. The first floor features a balcony to the rear of the site overlooking Snails Bay. Additionally, there are two dormers to the second storey of the southern elevation, looking towards Snails Bay. The 1995 dwelling does not possess any features of heritage significance.

3.3 Condition and Integrity

The subject site has few remnants of the original dwelling. The current building, while in a good condition overall, does not possess significant fabric and the construction of the dwelling has impacted the integrity of the site. The garage and iron palisade fence with sandstone footing are the only fabric on the site connected with the original dwelling (which has been demolished). The interior of the garage has been significantly altered and as such, the façade contains the majority of the original fabric.

3.4 Views

The subject site is a readily visible item within the context of the Birchgrove and Ballast Point HCA. As depicted in Figure 2 above, the primary view lines to the primary elevation of the site are made

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from items I595, I592, I503, I502, and the Wharf Road streetscape, all within the HCA. The proposed works would be visible from this perspective and would alter views from the site to those places.

The secondary view lines into the rear and side elevations of the site are made from items I599 and I600, within the HCA. These secondary view lines would also be affected by the proposal.

Accordingly, the impact of the proposal on these items is discussed in the Assessment of Heritage Impact in Section 6.0 below.

The proposed works would not be observable from items I602, I604, I598, I597, I596 or C4, and nor would the proposal impact view lines from the site to those places. Accordingly, the impact of the proposal on these places is not discussed in the Assessment of Heritage Impact in Section 6.0 below.

3.5 Images

The following photographs have been taken by Heritage 21 at the site inspection undertaken on 10 February 2020, unless stated otherwise.



Figure 10. The primary façade of the subject site as viewed facing north from Wharf Road.



Figure 11. The subject site as viewed facing west along Wharf Road.



Figure 12. The entrance to the subject site viewed facing north from Wharf Road.



Figure 13. Sandstone base and iron palisade fence on Wharf Road boundary of subject site.

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Figure 14. View to rear facade of dwelling facing west from eastern boundary of subject site.



Figure 15. View to Snails Bay facing north from subject site.

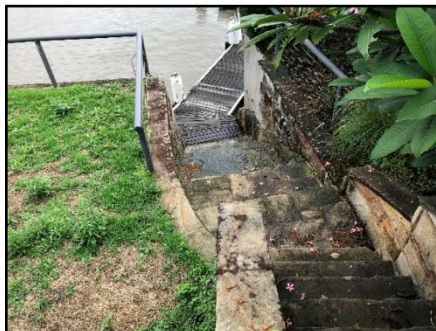


Figure 16. Sandstone stairs leading to jetty to rear of subject site.

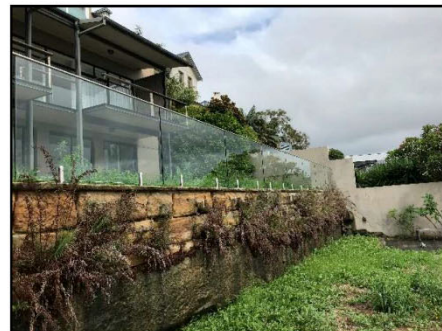


Figure 17. Sandstone wall to rear of subject site as viewed facing west.



Figure 18. Rear elevation of subject site as viewed facing south from rear boundary.

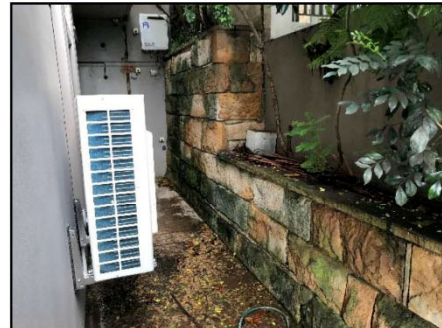


Figure 19. Western building line and boundary wall.

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Figure 20. View east from rear veranda towards Sydney Harbour Bridge



Figure 21. Internal staircase leading to entrance door to Wharf Road.

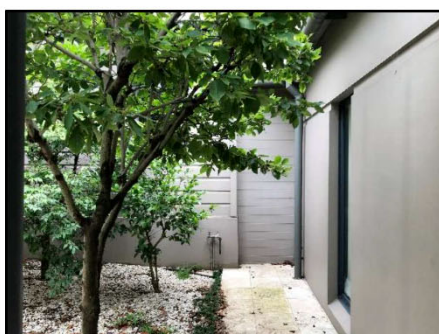


Figure 22. Facing west from entrance door towards garage.



Figure 23. Timber window on eastern elevation of garage.



Figure 24. Interior of garage.

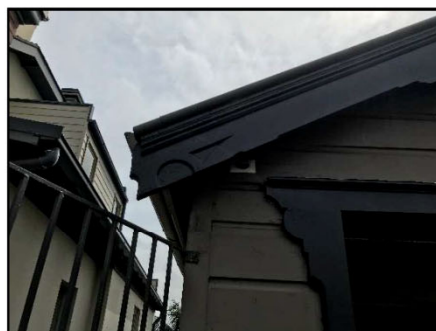


Figure 25. Decorative bargeboard to Wharf Road elevation of garage.

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Figure 26. Iron palisade fence and sandstone base to Wharf Road boundary of subject site.



Figure 27. Iron Palisade fencing detail.

4.0 HERITAGE SIGNIFICANCE

In order to assess the impact of the proposed works on the heritage significance of the subject site, the Birchgrove and Ballast Point HCA (in which the subject site is located), and heritage items in the vicinity of the site, it is necessary to first ascertain the heritage significance of these places. Accordingly, Statements of Significance for the subject site (refer to Section 4.2), and the established significance (refer to Section 4.1) of the Birchgrove and Ballast Point HCA, and items I595, I592, I503, I502, I599, and I600 are provided below. The significance of these places, will form part of our considerations in the assessment of heritage impact, undertaken in Section 6.0 below.

4.1 Established Significance

4.1.1 The Birchgrove and Ballast Point HCA

The following Statement of Significance is available for the heritage conservation area on Council's website:⁷

- *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 retains evidence (though somewhat diminished in the last twenty years) of the growth of Birchgrove and Ballast Point as marine suburbs and as a maritime industrial area from the 1870s–1920s, and other industry developed prior to 1941.*
- *Demonstrates the close relationship between landform, the layout of the roads and the siting of the early villas and industries to take advantage of the marine position.*
- *Demonstrates the close physical relationship between industry and housing (both middle class and workers housing) in nineteenth century cities.*
- *Demonstrates the development of brick making in Sydney through its building materials with the use of plastered brick walls and dry-pressed face bricks (unplastered, unpainted) walls.*
- *Demonstrates one of a number of late nineteenth century bay reclamation projects which characterise Sydney Harbour.*

⁷ Area 14, Birchgrove and Ballast Point Road, Inner West Council, <https://www.innerwest.nsw.gov.au/develop/planning-controls/heritage-and-conservation/heritage-conservation-areas>.

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4.1.2 House, including interior (I595)

The following Statement of Significance is available on the State Heritage Inventory listing for the property located in the vicinity of the subject site at 8 Wharf Road:⁸

No. 8 Wharf Road is of local historic and aesthetic significance as a good representative example of a Victorian single storey plus attic stone dwelling constructed sometime between the 1860s and 1880s. The building significantly retains its overall scale, form, character and details as presents to the street including the stone facades, roof form and chimney, open front verandah and associated details and simple pattern of openings. The building also retains a garden setting including a number of mature trees and stone outbuilding and overall makes a positive contribution to the Wharf Road and Lemm Street streetscapes.

4.1.3 Timber house, including interior (I592)

The following Statement of Significance is available on the State Heritage Inventory listing for the property located in the vicinity of the subject site at 6 Wharf Road:⁹

No. 6 Wharf Road is of local historic and aesthetic significance as an early Victorian timber weatherboard dwelling constructed sometime between the 1860s and 1880s. Despite infill of the front verandah, the building significantly retains its overall scale, form, character and details as presents to the street including the timber weatherboard facades, roof form and chimneys, projecting gable roofed wing and timber decorative details, front verandah form and simple pattern of openings. The building is associated with the neighbouring buildings and makes a positive contribution to the Wharf Road streetscape.

4.1.4 Semi-detached housing, including interiors (I503)

The following Statement of Significance is available on the State Heritage Inventory listing for the property located in the vicinity of the subject site at 27 Ballast Point Road:¹⁰

No. 27 Ballast Point Road is of local historic and aesthetic significance as a representative example of a Victorian semi detached dwelling constructed in c. 1886. Despite alterations and additions to the rear, the building significantly retains its overall scale, form, character and details as it presents to the street including the rendered facades and associated decorative details and mouldings,

⁸ House, Office of Environment and Heritage,
<https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=1940616>.

⁹ Timber House, Office of Environment and Heritage,
<https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=1940613>.

¹⁰ "Tyne Villas", semi-detached house, Office of Environment and Heritage,
<https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=1940525>.

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roof form and chimneys, large street facing gable and decorative timber elements, two storey faceted bay, open verandah and pattern of openings. The building is part of a distinctive pair of semis (Nos. 25 and 27) that occupy an elevated site and make a positive contribution to the Ballast Point Road streetscape.

4.1.5 Semi-detached house, including interiors (I502)

The following Statement of Significance is available on the State Heritage Inventory listing for the property located in the vicinity of the subject site at 25 Ballast Point Road:¹¹

No. 25 Ballast Point Road is of local historic and aesthetic significance as a representative example of a Victorian semi detached dwelling constructed in c. 1886. Despite alterations and additions to the roof and rear, the building significantly retains its overall scale, form, character and details as it presents to the street including the rendered facades and associated decorative details and mouldings, roof form and chimneys, large street facing gable and decorative timber elements, two storey faceted bay, open verandah and pattern of openings. The building is part of a distinctive pair of semis (Nos. 25 and 27) that occupy an elevated site and make a positive contribution to the Ballast Point Road streetscape.

4.1.6 House and remnants of former Stannard's Marina, including interiors (I599)

The following Statement of Significance is available on the State Heritage Inventory listing for the property located in the vicinity of the subject site at 19 Wharf Road:¹²

No. 19 Wharf Road is of local historic and aesthetic significance as a good representative example of a two storey house originally constructed in 1872 but later modified. The building retains its overall scale, form, character and details as presents to the street including the rendered facades, roof form and chimney, open front verandah and associated details and simple pattern of openings.

The building is associated with the maritime industry as well as for residential use for the Nicholson family. The site contains various other buildings with group value associated with the maritime industry, the primary phase being 1913-1970s. The site has historical associations with prominent Sydney maritime companies; Nicholson Bros. who commenced maritime uses at No. 19 from 1913, gradually increasing landholding and maritime activity along the waterfront (Nos. 17-25) throughout the century, and Stannard Bros. (Dreadnought Trading Pty Ltd).

¹¹ "Tyne Villas", semi-detached house, Office of Environment and Heritage, <https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=1940524>.

¹² House and former Stannard's marina, Office of Environment and Heritage, <https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=1940620>.

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The collection of maritime/industrial buildings are a remnant of the former extent of industrial activities which developed along the Balmain waterfront. The significance of the structures and associated fabric is generally low/moderate.

4.1.7 Remnants of former Stannard's Marina, including interiors (1600)

The following Statement of Significance is available on the State Heritage Inventory listing for the property located in the vicinity of the subject site at 19a Wharf Road:¹³

The site has historical associations with prominent Sydney maritime companies; Nicholson Bros. who commenced maritime uses at No. 19 from 1913, gradually increasing landholding and maritime activity along the waterfront (Nos. 17-25) throughout the century, and Stannard Bros. (Dreadnought Trading Pty Ltd).

The collection of maritime/industrial buildings are a remnant of the former extent of industrial activities which developed along the Balmain waterfront. The significance of the former structures and associated fabric was generally low/moderate. The jetty has heritage significance.

The three separate strata buildings built in 2009 have no heritage value.

4.2 The Subject Site

4.2.1 Assessment of Significance

In order to make an assessment of whether or not the proposed development of the subject site would have either a negative, neutral or positive impact upon the significance of the subject place, it is necessary first to ascertain the significance of the subject site. The assessment is based upon criteria specified by the NSW Office of Environment and Heritage.¹⁴

Criterion	Assessment
A. Historical Significance <i>An item is important in the course, or pattern, of NSW's (or the local area's) cultural or natural history.</i>	<p>The dwelling on the subject site, constructed in 1995, does not meet the criteria for historical significance. However, the subject site's allotment depicts the subdivision and subsequent development of the Birchgrove area during the 19th century.</p> <p>Furthermore, the remnants of the original dwelling consisting of the timber garage and palisade fence further demonstrate the historical development of the site and the Birchgrove area. As such the subject site does display historical significance at a local level.</p>

¹³ **Former Stannard's jetty**, Office of Environment and Heritage, <https://www.environment.nsw.gov.au/heritageapp/ViewHeritageltemDetails.aspx?ID=1940621>.

¹⁴ **NSW Office of Environment and Heritage, 'Statements of Heritage Impact' (Heritage Office and Department of Urban Affairs & Planning, 1996)**, NSW Heritage Manual, <http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/hmstatementsofhi.pdf>.

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Criterion	Assessment
<p>B. Associative Significance</p> <p><i>An item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's (or the local area's) cultural or natural history.</i></p>	<p>The original dwelling on the subject site was first associated with the prominent local Deloitte family, and later the maritime industry through the Nicholson and Stannard families. However, there is no evidence that the current dwelling is related to any significant human occupation or any event, person, or group of importance. As such, the subject site as a whole does not meet the criteria for associative significance.</p>
<p>C. Aesthetic Significance</p> <p><i>An item is important in demonstrating aesthetic characteristics and/or high degree of creative or technical achievement in NSW (or the local area).</i></p>	<p>Heritage 21 does not believe that the dwelling on the subject site demonstrates aesthetic characteristics associated with contemporary architecture, nor does it demonstrate a high degree of creative or technical achievement in NSW or the local Birchgrove area.</p> <p>Otherwise, the remnants of the original dwelling including the timber garage and the iron palisade fence display characteristics of Victorian architecture. However, alterations to the interior of the garage have diminished its significance and furthermore the demolition of the original dwelling has impacted the relationship between the garage, the fence, and the site.</p> <p>As such, notwithstanding the aesthetic significance conveyed in the timber garage and the iron palisade fence, the subject site as a whole does not meet the criterion for aesthetic significance.</p>
<p>D. Social Significance</p> <p><i>An item has a strong or special association with a particular community or cultural group in NSW (or the local area) for social, cultural or spiritual reasons.</i></p>	<p>To our knowledge, the subject site has no known association with an identifiable group in the area nor was it used by a particular community for social, cultural or spiritual purposes. Thus, it does not meet the criterion for social significance.</p>
<p>E. Technical/Research Significance</p> <p><i>An item has potential to yield information that will contribute to an understanding of NSW's (or the local area's) cultural or natural history.</i></p>	<p>There is no evidence to suggest that the building demonstrates construction techniques other than those commonly employed at the time. The subject site therefore does not meet the requirements of this criterion.</p>
<p>F. Rarity</p> <p><i>An item possesses uncommon, rare or endangered aspects of NSW's (or the local area's) cultural or natural history.</i></p>	<p>Dwellings built in the style of the subject dwelling are not currently rare in Sydney and there are numerous examples in the Birchgrove and Inner West area. Accordingly, the subject item does not attain the requisite standard of significance under this criterion.</p>

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Criterion	Assessment
G. Representativeness <i>An item is important in demonstrating the principal characteristics of a class of NSW's (or the local area's) cultural or natural places or cultural or natural environments.</i>	<p>There is no evidence that the subject building exhibits principal characteristics of 1990s architecture, nor is it considered a fine example of its type.</p> <p>However, the original garage and palisade fence convey characteristics of Victorian architecture. Despite alterations to the interior of the garage, the façade exhibiting the decorative bargeboard demonstrates features of the 19th century. Furthermore, the iron palisade fence represents fence types common to the period.</p> <p>Despite the original fabric on the site including the timber garage and the iron palisade fence, the primary dwelling on the subject site is not representative of principal characteristics of a period of architecture. As such, the subject site as a whole does not meet the criteria for representative significance.</p>

4.2.2 Statement of Cultural Significance

The subject site's allotment demonstrates the historical advancement of the Birchgrove Estate from subdivision to development during the 19th century. Furthermore, the site depicts the changing environment of Birchgrove from a maritime industrial area to primarily residential. However, the demolition of the original dwelling has altered the significance of the site. Remnants of the original dwelling, consisting of the original timber garage and the iron palisade fence, provide a depiction of the lost fabric of the site. As such, the subject site meets historical significance at a local level, and while the site as a whole does not exhibit aesthetic or representative significance, the original fabric on the site interprets the built history of the site. As a result, the original fabric individually demonstrate aesthetic and representative significance. Additionally, as it was the previous dwelling that had ties to the maritime industry through the Stannard and Nicholson families, the current building does not possess associative significance. The subject building does not demonstrate technical significance nor are buildings of its type rare in Birchgrove or greater Sydney. Finally, there is no evidence to suggest that the site is associated with a particular group and as such does not display social significance.

5.0 WORKS PROPOSED

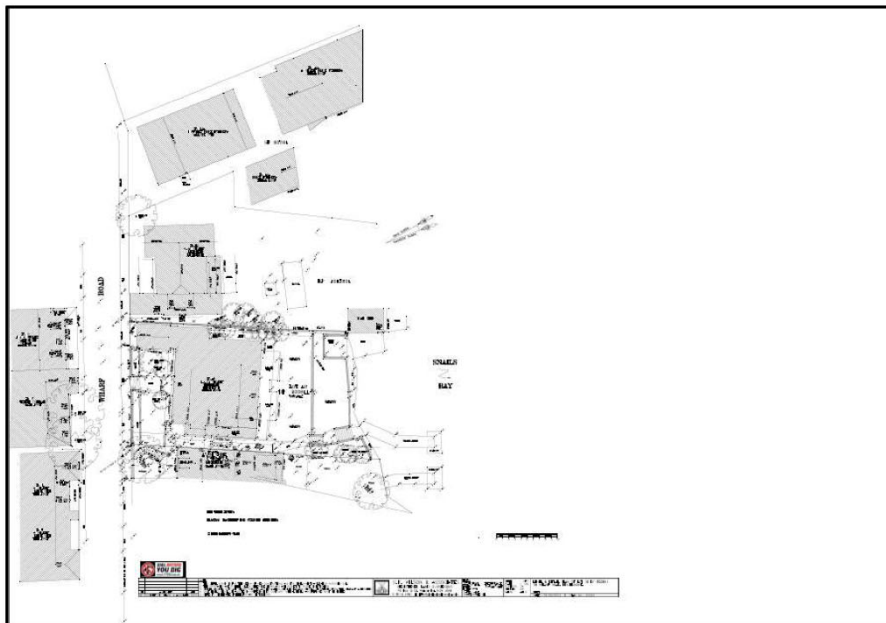
5.1 Proposal Description

The proposed works would include the demolition of the existing building, the subdivision of the site and the construction of two new dwellings. More specifically, the proposed development would include:

- Demolition of the existing 1995 dwelling;
- Subdivision of the site into two lots;
- The construction of two five-storey, four-bedroom dwellings fronting Wharf Road. The new dwellings would include two swimming pools to the rear of the properties and a double garage to the eastern lot;
- The relocation of the original 1870s garage closer to the western boundary of the site;
- The restoration and relocation of the original iron palisade fence with sandstone base to make way for new entry points; and
- The construction of a deck to the northern boundary of the site.

5.2 Drawings

Our assessment of the proposal is based on the following drawings by ESNH dated April 2020 and received by Heritage 21 on 20 April 2020. These are reproduced below for reference only; the full set of drawings accompanying the development application should be referred to for any details.



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Figure 28. Site survey.



Figure 29. Proposed site plan.

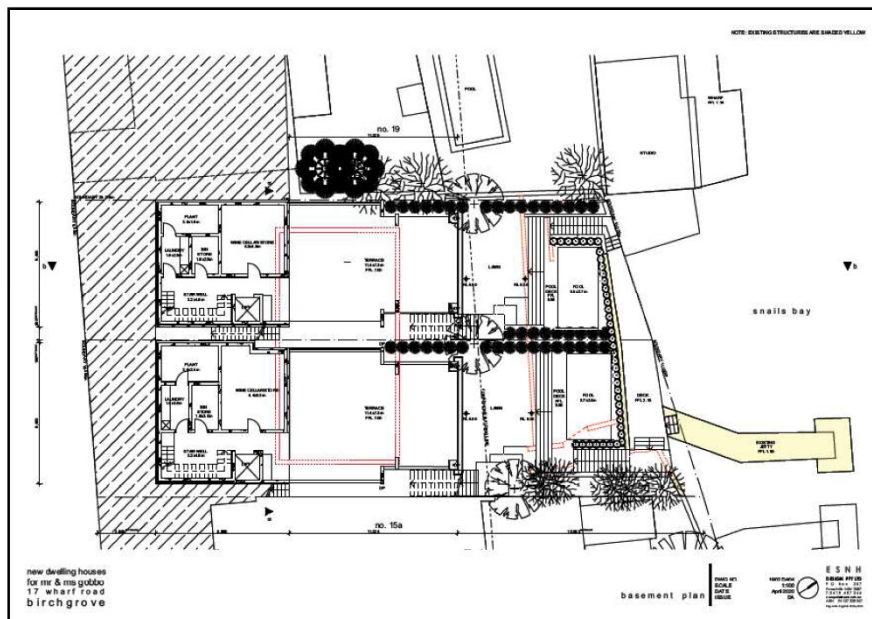


Figure 30. Proposed basement plan.

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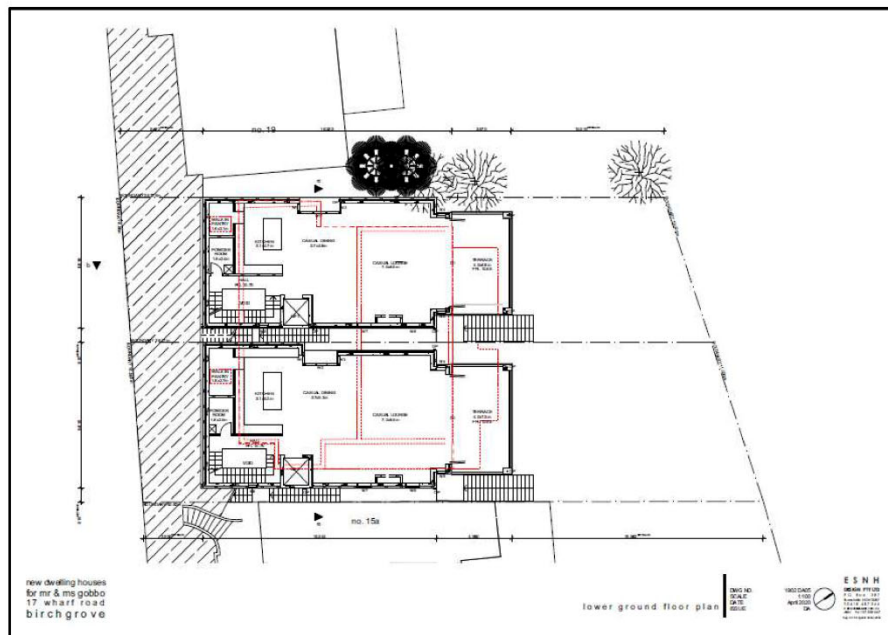


Figure 31. Proposed lower ground floor plan.

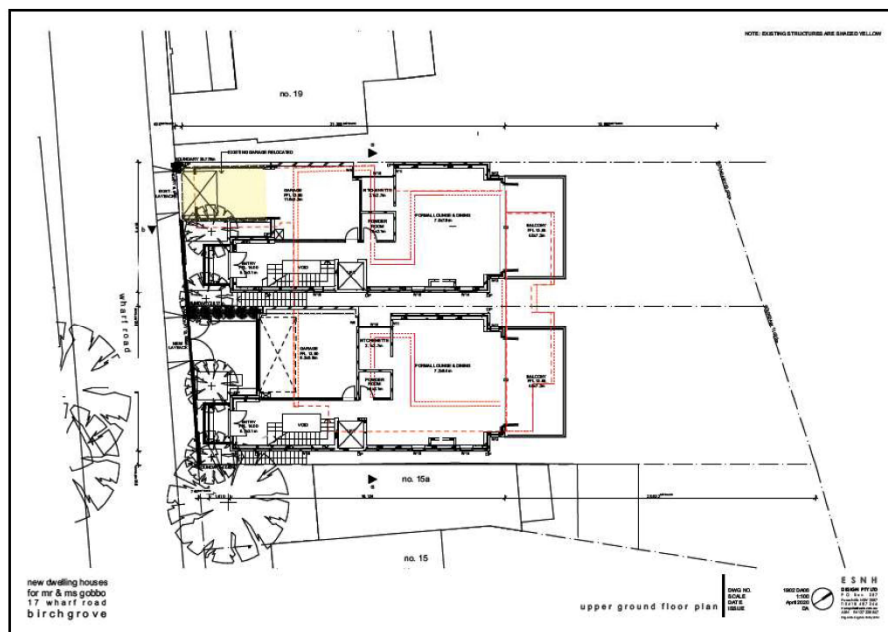


Figure 32. Proposed upper ground floor plan.

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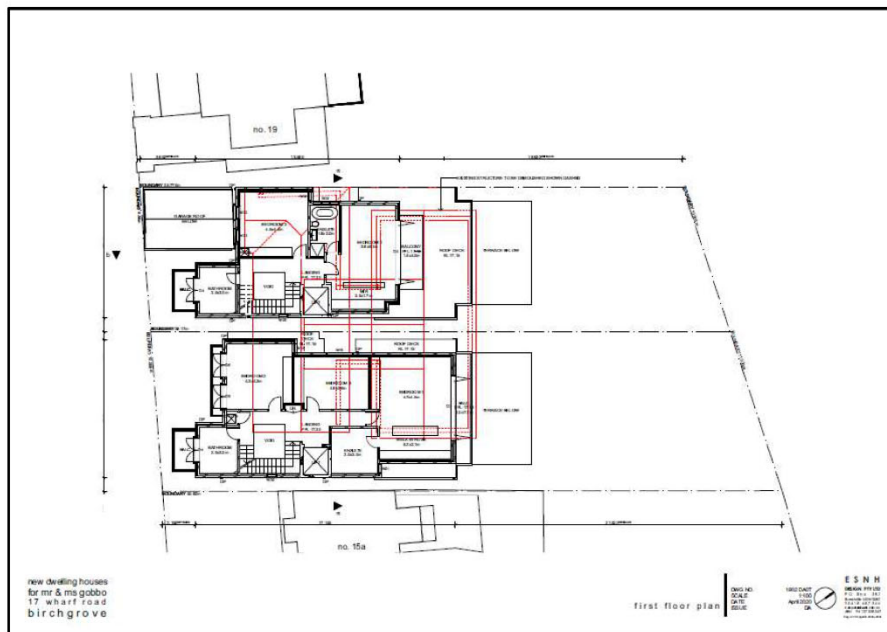


Figure 33. Proposed first floor plan.

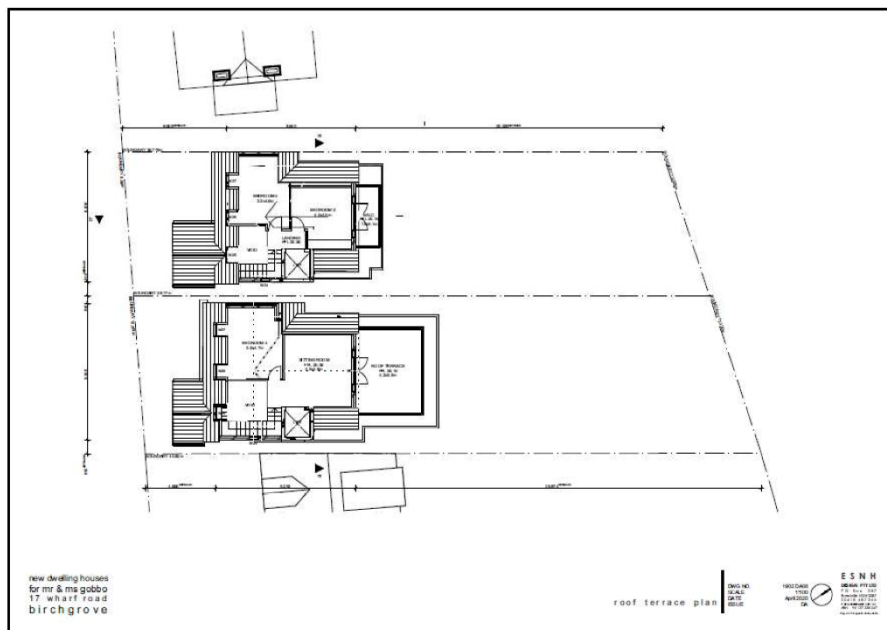


Figure 34. Proposed roof terrace plan.

new dwelling for mr & ms gibbo
17 wharf road
birchgrove

roof plan

DIMENSIONS		NOTES
1. 10.00m	1. 10.00m	1. 10.00m
2. 10.00m	2. 10.00m	2. 10.00m
3. 10.00m	3. 10.00m	3. 10.00m
4. 10.00m	4. 10.00m	4. 10.00m
5. 10.00m	5. 10.00m	5. 10.00m
6. 10.00m	6. 10.00m	6. 10.00m
7. 10.00m	7. 10.00m	7. 10.00m
8. 10.00m	8. 10.00m	8. 10.00m
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Figure 37. Proposed schedule of finishes.

6.0 ASSESSMENT OF HERITAGE IMPACT

6.1 Heritage Management Framework

Below we outline the heritage-related statutory and non-statutory constraints applicable to the subject site including the objectives, controls and considerations which are relevant to the proposed development as described in Section 5.0 above. These constraints and requirements form the basis of this Heritage Impact Assessment.

6.1.1 Leichhardt Local Environmental Plan 2013

The statutory heritage conservation requirements contained in Section 5.10 of the Leichhardt LEP (LLEP) 2013 are pertinent to any heritage impact assessment for future development on the subject site. The relevant clauses for the site and proposal are outlined below:

- (1) Objectives
- (2) Requirement for consent
- (4) Effect of proposed development on heritage significance
- (5) Heritage assessment

6.1.2 Leichhardt Development Control Plan 2013

Our assessment of heritage impact also considers the heritage-related sections of the Leichhardt Development Control Plan (LDCP) 2013 that are pertinent to the subject site and proposed development. These include:

Part C – Place

Sections 1 – General Provisions

C1.2 Demolition

C1.4 Heritage Conservation Areas and Heritage Items

C1.6 Subdivision

C1.19 Rock Faces, rocky outcrops, cliff faces, steep slopes and rock walls

C1.20 Foreshore Land

Section 2 – Urban Character

C2.2 Distinctive Neighbourhoods

Section 3 – Residential Provisions

C3.1 Residential General Provisions

C3.2 Site Layout and Building Design

C3.3 Elevation and Materials

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C3.4 Dormer Windows

C3.6 Fences

C3.10 Views

Part G – Site Specific Controls**Sections 5 – Wharf Road, Birchgrove****6.1.3 Sydney Harbour Foreshores & Waterways Area Development Control Plan 2005****5. Design Guidelines for Land-Based Development**

5.3 Siting of Buildings and Structures

5.4 Built Form

5.6 Planting

5.13 Swimming Pools

6.1.4 NSW Office of Environment & Heritage guidelines

In its guidelines for the preparation of Statements of Heritage Impact, the NSW Office of Environment & Heritage provides a list of considerations in the form of questions aiming at directing and triggering heritage impact assessments.¹⁵ These are divided in sections to match the different types of proposal that may occur on a heritage item, item in a heritage conservation area or in the vicinity of heritage. Below are listed the considerations which are most relevant to the proposed development as outlined in Section 5.0 of this report.

Demolition of a building or structure

- *Have all options for retention and adaptive re-use been explored?*
- *Can all of the significant elements of the heritage item be kept and any new development be located elsewhere on the site?*
- *Is demolition essential at this time or can it be postponed in case future circumstances make its retention and conservation more feasible?*
- *Has the advice of a heritage consultant been sought? Have the consultant's recommendations been implemented? If not, why not?*

¹⁵ Ibid.

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New development adjacent to a heritage item (including additional buildings and dual occupancies)

- How is the impact of the new development on the heritage significance of the item or area to be minimised?
- Why is the new development required to be adjacent to a heritage item?
- How does the curtilage allowed around the heritage item contribute to the retention of its heritage significance?
- How does the new development affect views to, and from, the heritage item? What has been done to minimise negative effects?
- Is the development sited on any known, or potentially significant archaeological deposits? If so, have alternative sites been considered? Why were they rejected?
- Is the new development sympathetic to the heritage item? In what way (e.g. form, siting, proportions, design)?
- Will the additions visually dominate the heritage item? How has this been minimised?
- Will the public, and users of the item, still be able to view and appreciate its significance?

Subdivision

- How is the proposed curtilage allowed around the heritage item appropriate?
- Could future development that results from this subdivision compromise the significance of the heritage item? How has this been minimised?
- Could future development that results from this subdivision affect views to, and from, the heritage item? How are negative impacts to be minimised?

New landscape works and features (including carparks and fences)

- How has the impact of the new work on the heritage significance of the existing landscape been minimised?
- Has evidence (archival and physical) of previous landscape work been investigated? Are previous works being reinstated?
- Has the advice of a consultant skilled in the conservation of heritage landscapes been sought? If so, have their recommendations been implemented?
- Are any known or potential archaeological deposits affected by the landscape works? If so, what alternatives have been considered?
- How does the work impact on views to, and from, adjacent heritage items?

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6.2 Heritage Impact Assessment

Below we assess the impact that the proposed development would have upon the subject site, the Birchgrove and Ballast Point heritage conservation area in which it is located, and the heritage items in the vicinity. This assessment is based upon the Historical Context (refer to Section 2.0), the Physical Evidence (refer to Section 3.0), Heritage Significance (refer to Section 4.0) the Proposal (refer to Section 5.0), a review of the Heritage Management Framework (refer to Section 6.1) and the impact of the proposal on the relevant heritage items situated in the vicinity of the site (refer to Sections 1.3 and 3.4).

6.2.1 Summary

The proposed works include the demolition of the existing 1995 dwelling, the subdivision of the site and construction of two free standing dwellings. It is our opinion that the proposed development would complement the historic Wharf Road streetscape, the HCA and heritage items in the vicinity. This would be achieved through exhibiting a traditional design in a contemporary context and employing a combination of traditional and modern materials and finishes in order to complement the heritage significance of the area while being readily identifiable as new. The proposed works would retain significant fabric of the site including the timber garage and the iron palisade fence, and would reinstate the sites historic relationship with the streetscape by removing the hedge to the Wharf Road elevation. The proposed subdivision of the site would reflect the historic subdivision pattern of the surrounding area. Furthermore, the proposed demolition of the existing building, and development of the site would reinstate view lines between Wharf Road and Snails Bay that were lost during the construction of the existing building in 1995. The proposed development would not alter view lines from the public domain to heritage items in the vicinity of the site, and would more sympathetically respond to the streetscape than the existing dwelling.

6.2.2 Impact Assessment against the LLEP 2013

The statutory heritage conservation requirements contained in Section 5.10 of the Leichhardt LEP 2013 are pertinent to any heritage impact assessment for future development on the subject site. We assess the proposal against the relevant clauses below.

CLAUSE	ASSESSMENT
(1) Objectives	The proposal contains the development of a site located within a heritage conservation area listed under Schedule 5 of the Leichhardt LEP 2013. It is our general assessment that the subdivision of the subject site and the proposed height, scale, massing and materials proposed (as detailed in Section 5.0 above) would not engender a negative impact on the subject site, the HCA in which the site is located and heritage items located in the vicinity of the site, including their contributory fabric and general setting.
(2) Requirement for consent	This Development Application is lodged to Council to gain consent for the works proposed within a heritage conservation area and in the vicinity of heritage items listed under Schedule 5 of the Leichhardt LEP 2013.

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(4) Effect of proposed development on heritage significance	This Statement of Heritage Impact accompanies the Development Application in order to enable the Inner West Council, as the consent authority, to ascertain the extent to which the proposal would affect the heritage
(5) Heritage assessment	significance of the HCA and heritage items located in the vicinity of the site.

6.2.3 Impact Assessment Against the LDCP 2013

Part C - Place	
Section 1 – General Provisions	
C1.2 Demolition	
Controls	Assessment
<p><i>C1 Council will not approve a development application for the demolition of:</i></p> <p><i>a. a Heritage Item; or</i></p> <p><i>b. a building in a Heritage Conservation Area that contributes positively to the conservation area; or</i></p> <p><i>c. a building that makes a positive contribution to the desired future character of the area</i></p>	<p>As the existing dwelling on the subject site was constructed in 1995, it is not a contributory item within the Birchgrove and Ballast Point HCA. The proposal does not contain works to a heritage item, nor would it alter a building that contributes positively to the HCA. The proposed works would retain and restore significant fabric associated with the original dwelling – which has since been demolished – such as the late nineteenth century timber garage and the iron palisade fence with a sandstone base.</p>
C1.4 Heritage Conservation Areas and Heritage Items	
<p><i>C1 Development maintains the characteristics and is consistent with the objectives and controls for the relevant building type contained in Appendix B – Building Typologies of this Development Control Plan.</i></p> <p><i>C2 The fabric of an existing building is to be the subject of appropriate conservation practices including:</i></p> <p><i>a. retention of original detail and finishes such as:</i></p> <p><i>i. original face brick which should not be painted over or rendered;</i></p> <p><i>ii. original decorative joinery and iron work which is not to be removed;</i></p> <p><i>b. conservation of original elements;</i></p> <p><i>c. reconstruction or restoration of original elements where deemed appropriate;</i></p>	<p>C1) The subject building was constructed in the 1990s and as such does not contribute to the characteristics of the local area. However, the proposed development would more appropriately align with the existing design types expressed in Birchgrove and would interpret traditional features within a modern development.</p> <p>C2) The main dwelling on the subject was constructed in the 1990s and as such does not hold any significant fabric. However, the garage presenting to Wharf Road and the iron palisade fence are both original and served the original building on the site which was constructed in the late nineteenth century and has since been demolished. The proposed development would retain these features and incorporate them into the proposed design. The hedge that is currently obscuring the iron palisade fence would be removed in the proposal in order to ensure that the original fence would be visible from the streetscape. The fence would be altered to suit the new openings for the proposed dwellings. However, the proposal</p>

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<p><i>d. retention of the original cladding material of original roofs where viable;</i></p> <p><i>e. consideration of suitable replacement materials should be based on original material, and where a property is part of a group or row, replacement materials should have regard to the integrity of the group.</i></p> <p><i>C3 Development of dwellings within Heritage Conservation Areas must:</i></p> <p><i>a. not include the demolition of the internal walls and roof form, including any existing chimneys, of the front two rooms of the dwelling;</i></p> <p><i>b. retain the major form, scale and materials of the existing structure as described in (a);</i></p> <p><i>c. be for a rear addition which does not dominate the existing building or substantially change the relationship of the building to the street when viewed from the street; and</i></p> <p><i>d. retain significant, established gardens and plantings including early fences.</i></p> <p><i>C4 Demolition of dwellings in Heritage Conservation Areas or Heritage Items is subject to the provisions of Part C Section 1.2 – Demolition within this Development Control Plan.</i></p> <p><i>Roof forms and materials</i></p> <p><i>C5 Consideration of roofing materials for additions should have regard for compatibility with the original roof, as well as for the context of the setting (such as if a dwelling is part of a group of similar dwellings).</i></p> <p><i>New buildings</i></p> <p><i>C8 New development need not seek to replicate period details of original buildings in proximity to the site, but rather, demonstrate respect for the form, scale and setting of the immediate area.</i></p>	<p>would ensure that the fence is restored and reinstated. Furthermore, the original timber garage would be incorporated into the proposed development and would be carefully relocated closer to the western boundary to ensure that the significant fabric is retained.</p> <p>C3) As the subject building was constructed in 1995, it is not a contributory item with the HCA. As such, it's demolition would not negatively impact the heritage significance of the site or HCA. Further, the proposed new development would respond more sympathetically than the current dwelling to the characteristics of the local area through form, scale and materiality. The proposed development would retain and reinstate significant features outlined in Section 3.0 above including the original timber garage and the iron palisade fence.</p> <p>C4) As discussed above, the proposed works would not include the demolition of a heritage item or a contributory building in a HCA. The proposed works would retain contributory fabric and would involve the demolition of the non-contributing 1995 dwelling on the site.</p> <p>C5) The original dwelling on the site was demolished in the 1990s and replaced with a contemporary building. There is no evidence to suggest the exact materiality of the original dwelling. However, the proposed development would employ traditional materials, including timber, to respond to the heritage conservation area. The proposed development would employ a slate roof which would complement the character of the Wharf Road streetscape.</p> <p>C8) The proposed development would employ a modern design while incorporating traditional features and materials such as timber and sandstone in order to respond to the rhythm and character of the heritage conservation area and heritage items in the vicinity. The proposed design does not seek to replicate period details, but rather the proposed development would interpret broader features of the HCA within a modern design. The</p>
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	proposed scale of the new dwellings would respond to the scale of houses in the vicinity. Furthermore, the proposed bulk and form would be more sympathetic to that of the surrounding area than the existing dwelling.
C1.6 Subdivision	
<p><i>C2 New allotments shall be consistent with the prevailing subdivision pattern in the neighbourhood.</i></p> <p><i>C3 Development shall reinforce the visual prominence of natural landscape features such as ridgelines and rock outcrops.</i></p>	<p>C2) The existing subdivision pattern of Wharf Road is irregular due to the development of Birchgrove from a Port to a residential area. However, the proposed lot size and shape would be consistent with the subdivision pattern in the immediate vicinity of the site and as such would respect the history of the significant Wharf Road streetscape.</p> <p>C3) The proposed development would ensure the prominence of the significant topography in the area. The proposed development is designed as to respond to the sloping topography of the site and ensure the prominence of landscape features to the Snails Bay elevation.</p>
C1.19 Rock faces, rocky outcrops, cliff faces, steep slopes and rock walls	
<p><i>C1 Development in proximity to rock faces, rocky outcrops, escarpments, cliff faces or steep slopes is to be sympathetic to those landscape elements and the setting in terms of colour, texture, materials, form and character and is to:</i></p> <p><i>a. minimise on-site disturbance;</i></p> <p><i>b. locate buildings where the rock features are not located;</i></p> <p><i>c. utilise construction methods which limit impacts on rock features;</i></p> <p><i>d. use materials that complement the sites' (or adjacent) rock features;</i></p> <p><i>e. implement a Soil and Water Management Plan to limit impacts;</i></p> <p><i>f. avoid filling the site in any way that would obscure the rock features; and</i></p>	<p>C1) The proposed development would employ materials and finishes that respond to the surrounding landscape. The proposed development would incorporate a sandstone façade and sandstone features that would complement the sandstone characteristic of Birchgrove and Snails Bay. The sandstone retaining wall to the rear elevation would be retained and existing sandstone paving would be incorporated in the new steps within the backyard. The rocky outcrop to the rear of the site would be maintained in the proposal. Furthermore, the proposed form of the development would respond to the topography of the site by presenting as two-storeys to the north at the primary façade and growing in height to the rear as the site slopes downwards.</p>

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g. incorporate plant species that are endemic to the area to encourage fauna to utilise the rock features as habitat.	
C1.20 Foreshore Land	
<i>C4 Buildings or structures must respect the topographical features of the site. Buildings are not cantilevering, but follow the topography.</i>	C4) The proposed development would follow the sloping topography of the sit by presenting in lower scale to Wharf Road and increasing in height as the site slopes downwards.
Section 2 – Urban Character	
C2.2 Distinctive Neighbourhoods	
Controls	Assessment
<p><i>C2.2.6 Birchgrove Distinctive Neighbourhood</i></p> <p><i>C1 Development should follow the topography of the area and maintain the single storey scale on the mid slopes and mixed one and two storey scales at the top and bottom of the slopes.</i></p> <p><i>C2 Conserve and promote the consistent rhythm within the streetscape created by regular lot sizes, subdivision pattern and the predominance of detached and semi-detached houses with a prevalence of hipped, pitched and gable roof forms. Preserve the established setbacks for each street.</i></p> <p><i>C3 Preserve and where practicable, enhance public and private views over Snails Bay and Parramatta River. Buildings on the waterfront should follow the slope and help preserve view lines by stepping down with the contours.</i></p> <p><i>C4 Promote a balance of landscape to built form in the view of the neighbourhood when viewed from the water.</i></p> <p><i>C5 Conserve the single and double storey, freestanding form, style and materials characteristic to each street.</i></p> <p><i>C6 Where a consistent pattern of architectural style and form exists, preserve this consistency on each street.</i></p> <p><i>C8 Maintain the diverse character of the area by ensuring new development is complementary in</i></p>	<p>C1) The proposed developments would present as a double-storey building to the street and would present as five-storeys to the rear as the land slopes downwards. The scale of the proposed development would respond to the scale of the surrounding streetscape and the double-storey presentation to Wharf Road would be consistent with the surrounding area.</p> <p>C2) The proposed development would be consistent with the scale of the Wharf Road streetscape. The proposed subdivision of the existing lot into two lots would respond to the subdivision pattern of Birchgrove. The proposed lot sizes would be of regular dimensions. Furthermore, the proposed pitched roof, set back, and siting of the proposal would ensure the proposed development would reflect the rhythm of Wharf Road.</p> <p>C3) The existing dwelling does not promote view lines from Wharf Road to Snails Bay. However, the proposed development would enhance view lines between the streetscape and Snails Bay either side of the proposed dwellings. Furthermore, the proposed development would follow the topography of the site in order to further encourage view lines. The proposed dwellings would present as double-storey to Wharf Road and would increase in scale to the rear of the site.</p> <p>C4) The proposed development would respond to the rhythm of buildings in the vicinity when viewed from Snails Bay. The proposed development would be of a complementary bulk and scale to the</p>

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<p><i>terms of its architectural style, built form and materials.</i></p> <p><i>C10 Fences should be low open picket style with iron or timber pickets and with metal timber or stone posts.</i></p> <p><i>C12 Conserve and complement the established streetscape with regard to setbacks, street trees and general lack of driveway crossings.</i></p> <p><i>C13 Maintain sandstone outcrops and remnant stone wall footings.</i></p> <p><i>C18 New development shall maintain the use of hipped, pitched or gabled roof forms and designs shall be complementary to the existing unadorned built form. Flat roofs may be appropriate where the style of architecture is contemporary and view lines may be affected.</i></p> <p><i>C19 Building materials used shall be consistent with the existing character of the streetscape, including rendered and painted surfaces and roof materials such as corrugated iron as well as timber windows.</i></p> <p><i>C21 Development visible from the water is to be designed to preserve the conservation values of the area. When viewed from the water a balance between built form and landscape is to be achieved/maintained through side setbacks and landscaping. Additionally the rear elevation must be designed so it does not detract from the form, character and scale of the conservation area. The amount of glazing to solid ratio on the rear elevation must be sympathetic to the immediately surrounding development.</i></p>	<p>surrounding heritage conservation area and as such would promote balance when viewed from the water. Furthermore, the proposed ratio of built form to landscaping would be consistent with the surrounding area by employing a similar setback and incorporating soft and hard landscaping to the rear of the new dwellings.</p> <p>C5) The proposed development would respond in bulk, scale and materiality to the Wharf Road streetscape. The proposed development would present double-storey to Wharf Road as to promote consistency with the surrounding streetscape and would respond to the topography, increasing in scale to the rear. The use of a combination of modern and traditional materials would ensure that the proposed development provides a contemporary response to the heritage streetscape. The Wharf Road façade would feature sandstone cladding as to reflect the sandstone cottages in the vicinity. Furthermore, the balconies to the primary elevation would employ iron balustrades as to reflect traditional features of the surrounding area. Further, the slate roof would reflect traditional materials used in historic houses in the vicinity. The proposed development would retain and incorporate the significant 1800s garage into the design of the dwellings to encourage a sympathetic relationship with the Wharf Road streetscape. The bulk of the proposed development would be reflective of traditional design and would harmonise with the prominent character of the surrounding area.</p> <p>C6) Wharf Road primarily consists of late nineteenth century dwellings. The proposed development would employ characteristics of nineteenth century architecture and reinterpret them in a modern context. Through bulk, scale, and materiality, the proposed development would ensure the prominence of Victorian and Federation architectural features are retained in the Wharf Road streetscape. However, the proposed development would incorporate modern design in order to ensure that the proposed development is easily identifiable as new.</p>
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	<p>C8) The proposed development would respond to the architectural characteristics of the surrounding streetscape through reinterpreting them in a modern context. The proposed development would employ traditional materials such as slate, timber, and sandstone and incorporate modern finishes and materials to ensure that the subject dwellings responds to the surrounding streetscape while being readily identifiable as a contemporary addition.</p> <p>C10) The proposed development would retain and reinstate the existing original iron palisade fence. The proposal would remove the hedge which currently obscures the palisade fence from view to ensure that is interpreted within the streetscape. The proposed development would require that portions of the existing palisade fence are carefully removed and relocated. However, this would ensure that significant fabric is retained and restored and incorporated into the proposed development. Additionally, the existing boundary fences to the east and west of the site would be retained in the proposal.</p> <p>C12) The setback within the Wharf Road streetscape varies greatly. However, the proposed development would ensure that the setback responds to the setback of sites in the vicinity including the adjacent 15a Wharf Road to complement the overall streetscape and maintain the character of the Birchgrove and Ballast Point HCA.</p> <p>C13) The proposed works would retain the existing sandstone retaining wall to the rear of the site and incorporate it into the proposed development.</p> <p>C18) The proposed development would employ a pitched slate roof that would complement the architectural characteristics of the surrounding streetscape and the HCA.</p> <p>C19) The proposed development would employ a combination of traditional and modern materials and finishes to ensure that the development complements the heritage significance of the</p>
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	<p>surrounding area. The use of timber, slate, and sandstone would respect the materials prominent in the surrounding area. The primary façade would employ sandstone cladding that would reflect the prevalent façade textures in the HCA. The windows to the primary façade would feature a timber frame incorporating traditional materiality and design. The balcony balustrades to the primary elevation would complement the original iron fencing on Wharf Road by incorporating a sympathetic design. Additionally, the proposed development would employ a pitched slate roof reflective of the character of the Wharf Road streetscape.</p> <p>C21) The proposed development would respond to the topography of the site to ensure that the presentation to the water is sympathetic to the heritage of the site and the HCA. The proposed set back would be consistent with the adjacent dwellings. The rear of the lot would contain landscaping and a pool, similar to properties in the vicinity which would ensure that there is a balance between the landscape and built form of the site. Furthermore, the solid to void ratio to the rear of the site would be sympathetic to properties on the northern side of Wharf Road which share a boundary with Snails Bay.</p>
Section 3 – Residential Provisions	
C3.1 Residential General Provisions	
Controls	Assessment
<p><i>C1 Residential development is not to have an adverse effect on:</i></p> <p><i>a. the amenity, setting or cultural significance of the place, including the portion of the existing building to be retained; and</i></p> <p><i>b. the relationship of any Heritage Item or Heritage Conservation Area to its place, setting and cultural significance.</i></p>	<p>C1) The current dwelling is not sympathetic to the historic Wharf Road streetscape and the Birchgrove and Ballast Point HCA. The proposed works would ensure that the site more sympathetically reflects the architectural characteristics of the surrounding area and HCA. The proposed works would adapt and restore the original 1890s timber garage and iron palisade fence as to ensure the heritage significance of the site is retained.</p>
C3.2 Site Layout and Building Design	
<p><i>C2 Development siting and design shall respect and enhance the natural landscape attributes that contribute to the character and distinct sense of</i></p>	<p>The proposed development would respond to the topography of the site and the environmental features of the area. The proposed development</p>

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<p><i>place of the streetscape, neighbourhood and Leichhardt, including:</i></p> <p><i>a. prominence of ridgelines;</i></p> <p><i>b. landmarks;</i></p> <p><i>c. topography;</i></p> <p><i>d. views, vistas and outlooks;</i></p> <p><i>e. waterways; and</i></p> <p><i>f. vegetation.</i></p>	<p>would reinstate views between Wharf Road and Snails Bay that were lost due to the construction of the existing dwelling in the 1990s. The proposed development would employ sandstone, a feature common in the local area, to ensure that the development complements the landscape of the site and the surrounding area. Furthermore, the plantings located to the eastern boundary would be retained and incorporated in the proposed development. Furthermore, the proposed development would incorporate the addition of trees and soft landscaping to the rear and primary façade of the dwelling.</p>
C3.3 Elevation and Materials	
<p><i>C4 Residential development in a Heritage Conservation Area is compatible with the Building Typologies contained in Appendix B – Building Typologies of this Development Control Plan, and includes defining elements such as:</i></p> <p><i>a. roof pitch and form;</i></p> <p><i>b. roof ridgeline;</i></p> <p><i>c. gutter lines;</i></p> <p><i>d. verandah balustrades and floor under-beams;</i></p> <p><i>e. window patterns, proportions and details; and</i></p> <p><i>f. balconies.</i></p> <p><i>C9 Colour schemes are compatible with those prevailing in the street.</i></p> <p><i>C11 Materials and finishes are compatible with those prevailing in the streetscape and the period of construction of the dwelling.</i></p>	<p>C4) The proposed development would adapt characteristics ubiquitous in Victorian and Federation architecture in a contemporary design to ensure the new dwellings complement the heritage significance of the Wharf Road streetscape and the broader HCA. The proposed development would employ a pitched slate roof that is sympathetic to both the design and material prominent in the area. Furthermore, the proposed fenestration pattern would employ the golden section ratio to ensure the façade is consistent with the traditional presentation of the Wharf Road streetscape. The proposed balconies would incorporate an iron balustrade to complement the original iron palisade fence to the Wharf Road boundary.</p> <p>C9) The proposed finishes employ a muted, neutral colour scheme that would complement the Wharf Road streetscape and heritage conservation area while ensuring that heritage items and contributory buildings in the vicinity retain visual prominence.</p> <p>C11) The proposed development would employ a combination of traditional and contemporary materials and finishes to ensure that while the new dwellings would respond to the heritage significance of the area, they would be easily identifiable as new. Materials prominent in the surrounding are such as slate, timber and sandstone would be incorporated into the proposed development.</p>

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C3.4 Dormer Windows	
<i>C1 Dormer windows will not be supported where the height of the roof measured from the gutter to the ridge is less than 2.5m. Outside of Heritage Conservation Areas, consideration may be given to a flush skylight where it does not adversely impact the streetscape character of the existing dwelling or intactness of a group of dwellings.</i>	C1) The proposed development would employ three dormers to the roof form of the two proposed dwellings. The proposed dormers would feature timber framed windows and would be consistent with the common architectural features of the Wharf Road streetscape.
C3.6 Fences	
<i>C1 The architectural style, height and materials of front fencing are consistent with the style of the building and streetscape.</i>	C1) The proposed development would incorporate the existing, original iron palisade fence and sandstone base. The proposed development would employ characteristics of the original fabric on the site in the design to ensure that the new dwellings would complement the heritage significance of the site while ensuring that the contributory fabric retains visual prominence in the streetscape.
C3.10 Views	
<p><i>C3 Development shall be designed to promote view sharing via:</i></p> <ul style="list-style-type: none"> <i>a. appropriately addressing building height, bulk and massing;</i> <i>b. including building setbacks and gaps between buildings;</i> <i>c. minimise lengthy solid forms;</i> <i>d. minimise floor to ceiling heights and use raked ceilings in hipped / gabled roof forms where appropriate, especially in upper floors;</i> <i>e. splay corners; and</i> <i>f. use open materials for balustrades, balconies, decks, fences, car ports and the like.</i> 	C3) The proposed development would reinstate lost view lines between Wharf Road and Snails Bay as a result of the proposed new scale and massing. The proposal would include the demolition of the existing dwelling which prohibits view lines between the streetscape and the bay. Additionally, the proposed new dwellings would allow view lines from Wharf Road to the bay from either side of the proposed buildings.
Part G – Site Specific Controls	
Section 5 – Wharf Road, Birchgrove	
G5.1 Heritage	
Controls	Assessment
<i>C6 In addition to the Heritage Items mentioned above, the following buildings, structures and fences should be conserved as contributory elements of the</i>	C6) The proposed development would include the retention of the 1890s garage and iron palisade fence with a sandstone base. The proposal includes the relocation of the garage closer to the western

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<i>streetscape and waterscape on Wharf Road: 17 Wharf Road – Garage and street fence</i>	boundary. The garage would be carefully relocated as to ensure significant fabric is not damaged. Additionally, a portion of the iron palisade fence with sandstone base would be relocated to serve the new openings. However, the proposed works would allow for the restoration of the fence. Furthermore, as the original palisade fence is currently concealed from view by a hedge, the proposal would involve the removal of the hedge to ensure it is visible within the Wharf road streetscape.
G5.2 Landscaping	
<i>C3 Contributory trees which are to be retained are: d. no.17 - Fig and Eucalypt on waterfront side;</i>	C3) The contributory trees noted in the DCP are no longer present on the site. There is evidence to suggest that the trees were removed in the 1990s. As such, the trees would not be impacted by the proposed works.
G5.8 Front Fences/Walls	
<i>C1 New or replacement fences should: a. conserve significant elements of existing fences and walls where possible; b. reinstate original fences where possible, based on documentary evidence (refer to Burra Charter);</i>	C1) The proposed works would restore the existing iron palisade fence with a sandstone base. The proposed works would include the relocation of the fence. However, care would be taken to ensure that the contributory fabric associated with the fence is retained and restored. The reinstatement of the palisade fence would reinstate the historic presentation of the site to Wharf Road.
G5.9 Views	
<i>C1 Existing side setbacks shall be preserved and reinstated to retain view corridors through to and from the water.</i>	C1) The proposed works would ensure views from Wharf Road to Snails Bay are reinstated. Currently views through the site are limited and as such, the proposed development would encourage view lines either side of the proposed dwellings from Wharf Road.

6.2.4 Impact Assessment against the Sydney Harbour Foreshores & Waterways Area DCP 2005

The proposed development is designed as to respect the heritage significance and the character of the Snails Bay Area. The proposed development would follow the topography of the site in order to minimise the impact on view lines from Snails Bay. The proposed development would also complement both heritage items and modern development in the vicinity by combining traditional and contemporary materiality and incorporating design features present in the surrounding area. The existing jetty and sandstone walling would be incorporated in the new development and as such would encourage the retention of the existing relationship between the subject site and the bay. The proposed finishes would be muted in order to respect the heritage and landscape of the surrounding area. The proposal includes the addition of two pools to the rear, however, they would follow the

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topography of the land and would be sited as to minimise impacts on Snails Bay. Furthermore, the proposed development would incorporate existing plantings and new plantings to ensure the impact of the development on view lines from the water is minimised.

6.2.5 Impact Assessment Against the NSW Office of Environment & Heritage guidelines

As acknowledged in Section 6.1, the NSW Office of Environment & Heritage has identified a list of considerations in the form of questions aiming at directing and triggering heritage impact assessment. Below, we assess the proposal against the most pertinent of these questions.

Question	Assessment
Demolition of a building or structure	
<i>Have all options for retention and adaptive re-use been explored?</i>	The subject dwelling was constructed in the 1990s and is not understood to possess heritage significance. As such, Heritage 21 does not deem it necessary for the dwelling to be retained. The proposed works would however retain the significant fabric outlined in Section 3.0 including the original garage and iron palisade fence.
<i>Can all of the significant elements of the heritage item be kept and any new development be located elsewhere on the site?</i>	The proposal would retain significant fabric on site and incorporate it into the new dwelling. The proposal would include the retention of the original garage. The garage would be carefully located closer to the western boundary to ensure its retention in the proposed development. Furthermore, a portion of the original iron palisade fence would be relocated in the proposal to allow for new openings. However, this would allow for the fence to regain its prominence in the streetscape and would allow for its restoration.
<i>Is demolition essential at this time or can it be postponed in case future circumstances make its retention and conservation more feasible?</i>	The proposed works would not involve the demolition of a heritage item or original structure. The retention of the primary dwelling on the subject site is not deemed necessary to conserve the heritage significance of the area as it was constructed in the 1990s. The demolition would allow for the erection of new dwellings that would respond more sympathetically to the subject site, heritage items in the vicinity, and the HCA.
<i>Has the advice of a heritage consultant been sought? Have the consultant's recommendations been implemented? If not, why not?</i>	Heritage 21 has been engaged to provide advice. Heritage 21 has provided advice regarding the retention of significant fabric, the proposed materiality and the design to the primary façade. This advice has been incorporated in the final plans. We are of the opinion that the proposal is sympathetic to the heritage significance of the site and HCA in which it is located.

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New development adjacent to a heritage item (including additional buildings and dual occupancies)	
<i>How is the impact of the new development on the heritage significance of the item or area to be minimised?</i>	The impact of the new development on heritage items in the vicinity and the heritage conservation area has been minimised through the proposed bulk, scale and materiality of the new development. The proposed development would employ a combination of traditional and modern design features to ensure that the development would not detract from the heritage significance of the surrounding area. The proposed development would employ traditional materials such as timber, sandstone and slate in order to complement heritage items in the vicinity, and the broader HCA. Furthermore, the proposed presentation to Wharf Road would employ a sympathetic bulk and scale which is consistent with the rhythm of the surrounding area.
<i>Why is the new development required to be adjacent to a heritage item?</i>	The proposed development would be located adjacent to a heritage item listed under Schedule 5 of the LLEP 2013 as well as within a heritage conservation area. The existing building is not sympathetic to the heritage significance of the site, the heritage items in the vicinity, and the historic streetscape. As such, the proposed works would allow for the re-development of the site in order to complement the surrounding area. The proposed development would adapt the site in order to more sympathetically respond to the adjacent heritage item.
<i>How does the curtilage allowed around the heritage item contribute to the retention of its heritage significance?</i>	The adjacent heritage item is setback from the shared boundary between the two sites. As such, the impact of the proposed development on the heritage significance of the item would be minimal. Furthermore, the proposed development would employ a similar setback to the northern boundary as the existing dwelling. As such, the new structure would not greatly alter the existing curtilage of the heritage item.
<i>How does the new development affect views to, and from, the heritage item? What has been done to minimise negative effects?</i>	The proposed works would alter view lines between the subject site and the heritage item. However, the design of the proposed development has been carefully considered in order to minimise the impact on the adjacent heritage item and the heritage conservation area. View lines from the public domain to the adjacent heritage item would not be obscured by the proposed works, including view lines from Wharf Road and to the rear from Snails Bay. However, view lines from I595 and I592, located to the southern side of Wharf Road would be impacted by the proposal. The proposed development would be sited to ensure view corridors are re-established providing view lines either side of the proposed dwellings to Snails Bay. This would reinstate view lines lost when the site was developed in the 1990s.

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<i>Is the development sited on any known, or potentially significant archaeological deposits? If so, have alternative sites been considered? Why were they rejected?</i>	An archaeological assessment is beyond the scope of this report.
<i>Is the new development sympathetic to the heritage item? In what way (e.g. form, siting, proportions, design)?</i>	The proposed dwellings have been designed to complement heritage items in the vicinity and the Birchgrove and Ballast Point HCA. The proposed bulk of the dwellings would be sympathetic to the traditional design features throughout Wharf Road. Furthermore, the use of both traditional and contemporary materials would ensure that while the proposed development reflects the surrounding streetscape, it is readily identifiable as new. The use of traditional details in the modern design such as the iron balustrades to the balconies of the primary elevation and a simple decorative timber bargeboard would reflect the heritage significance of the site and the surrounding area and translate it within the new development.
<i>Will the additions visually dominate the heritage item? How has this been minimised?</i>	The site and scale of the proposed development would ensure that it would not dominate the heritage item. The use of traditional materials and muted finishes would minimise the visual impact on the heritage item and would ensure that the heritage items in the vicinity retain their visual prominence within the Wharf Road streetscape.
<i>Will the public, and users of the item, still be able to view and appreciate its significance?</i>	The proposed development would not impact view lines from the streetscape to heritage items in the vicinity. View lines from Snails Bay to heritage items in the vicinity would not be impacted by the proposed development. As such, the public would still be able to appreciate the significance of heritage items in the vicinity and the HCA.
Subdivision	
<i>How is the proposed curtilage allowed around the heritage item appropriate?</i>	The subject site is not a heritage item, however it is located in the vicinity of heritage items and within the Birchgrove and Ballast Point Heritage Conservation Area. The subdivision pattern of the surrounding area is irregular. As such, the proposed subdivision would seek to respect the significance of the surrounding streetscape through ensuring that the proposed lot sizes are sympathetic to the Wharf Road streetscape. The subdivision would be confined to the subject site and would not alter the lot boundaries of heritage items in the vicinity. As such, the curtilage

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	around heritage items in the vicinity of the site would be maintained in the proposed subdivision.
<i>Could future development that results from this subdivision compromise the significance of the heritage item? How has this been minimised?</i>	The proposed development has been designed as to respect the heritage significance of the Wharf Road streetscape, the HCA, and heritage items in the vicinity. The proposed materiality would employ a combination of traditional and contemporary materials in order to promote a contemporary response to the heritage significance of the surrounding area. Furthermore, the bulk and scale has been designed as to reflect the prominent features of the Wharf Road streetscape.
<i>Could future development that results from this subdivision affect views to, and from, the heritage item? How are negative impacts to be minimised?</i>	The proposed development would not alter views from the public domain to heritage items in the vicinity, from both Wharf Road and from Snails Bay. The proposed development would alter view lines within the HCA, however, the proposed development would reinstate view lines from the streetscape to Snails Bay that were lost in the development of the subject site in the 1990s. As such, the proposed development would re-establish views from heritage items on the southern side of Wharf Road to Snails Bay.
New landscape works and features (including carparks and fences)	
<i>How has the impact of the new work on the heritage significance of the existing landscape been minimised?</i>	The proposed landscape works would retain significant original features such as the original timber garage and the iron palisade fence to the primary elevation. The proposed new garage to the primary elevation would reflect the original garage in design and materiality, while being readily identifiable as a new addition. However, the majority of the landscape works would be located to the rear of the site, including the addition of two pools, decks, and new plantings. The proposed landscape works would retain the significant topography of the site. Such measures would ensure that the significance of the site would be retained.
<i>Has evidence (archival and physical) of previous landscape work been investigated? Are previous works being reinstated?</i>	The physical evidence on the site of the original dwelling is expressed through the original timber garage and the iron palisade fence with a sandstone base. These features would be retained through the proposed works. The palisade fence would be altered to serve the new openings for the proposed development, however the works would remove the hedge that obscures it from view and would undertake restoration works in order to ensure the significance of the site is retained. The original garage would be relocated closer to the western

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	boundary, however this would be undertaken with the regard to the significance of the garage and would allow the fabric to be incorporated into the new development.
<i>Has the advice of a consultant skilled in the conservation of heritage landscapes been sought? If so, have their recommendations been implemented?</i>	Heritage 21 has been engaged to provide advice regarding the proposed development. Heritage 21 provided advice pertaining to the retention and restoration of the significant fabric on the site including the palisade fence and the timber garage. This advice has been incorporated in the final plans.
<i>Are any known or potential archaeological deposits affected by the landscape works? If so, what alternatives have been considered?</i>	An archaeological assessment is beyond the scope of this report.
<i>How does the work impact on views to, and from, adjacent heritage items?</i>	The proposed landscape works would respond to the topography of the site and would ensure that view lines from adjacent heritage items are maintained. The majority of the landscape works would be located to the rear of the site, and as such would not impact views within the HCA, nor would it impact views to and from heritage items within the vicinity of the site. The proposed landscaping to the primary elevation would ensure that the relationship between the Birchgrove and Ballast Point HCA and the subject site is retained. The proposed development would retain the iron palisade fence and the original garage which are significant features of the Wharf Road streetscape.

7.0 CONCLUSION & RECOMMENDATIONS

7.1 Impact Summary

The NSW Office of Environment & Heritage's guidelines require the following aspects of the proposal to be summarised.¹⁶

7.1.1 Aspects of the proposal which respect or enhance heritage significance

In our view, the following aspects of the proposal would respect the heritage significance of the subject site, the Birchgrove and Ballast Point heritage conservation area and heritage items in the vicinity:

- The proposal would not involve the removal of any significant fabric;
- The proposed works would continue the historic residential use of the site;
- The proposal would reinstate significant view lines between Wharf Road and Snails Bay that were impacted by the construction of the current 1995 dwelling;
- The proposed development would incorporate traditional materials ubiquitous in the HCA such as timber, slate and sandstone;
- The proposed development would incorporate a bulk and scale that would provide a contemporary interpretation of traditional design features;
- The proposal would reinstate the original palisade iron fence to the Wharf Road boundary; and
- The proposed development would result in dwellings that would be more sympathetic to the heritage significance of the Wharf Road streetscape compared to the existing 1995 structure.

7.1.2 Aspects of the proposal which could have detrimental impact on heritage significance

In our view, there are no aspects of the proposal which could be detrimental to the significance of the subject site, the Ballast and Birchgrove heritage conservation area and heritage items in the vicinity. The positive impacts of the proposal have been addressed above in Section 7.1.1. Recommendations are provided in Section 7.2 below as further mitigation measures.

7.1.3 Sympathetic alternative solutions which have been considered

Heritage 21 provided heritage advice to the applicant which has been incorporated in the final proposal as described in Section 5.0 and which includes:

- The retention of the original garage;
- The retention and restoration of the original palisade fence; and
- The proposed materiality of the development in order to respond to the significance of the surrounding area.

¹⁶ NSW Office of Environment and Heritage, 'Statements of Heritage Impact' (Heritage Office and Department of Urban Affairs & Planning, 1996), <http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/hmstatementsofhi.pdf>.

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No solutions of greater sympathy with the significance of the subject site, heritage conservation area or heritage items in the vicinity have been discounted to our knowledge.

Mitigation measures are provided for consideration in Section 7.2 of this report which are based on our initial recommendations.

7.2 Recommendations

7.2.1 Temporary Protection Plan

A Temporary Protection Plan should be prepared by a qualified specialist for the garage and iron palisade fence with a sandstone base. Prior to the commencement of any work, consideration shall be given to the development of temporary protection measures that would identify potential risks and outline methodologies to negate any physical impact on significant fabric located in the vicinity of the area of works on the subject site. This is to be prepared by a suitably qualified contractor and implemented prior to the works to be monitored by the architect and followed by all tradespeople involved.

7.3 General Conclusion

The design, materiality, bulk, and scale of the proposed development would be sympathetic with heritage items in the vicinity, the Birchgrove and Ballast Point Heritage Conservation Area (in which it is located), and the historic Wharf Road streetscape. Heritage 21 is therefore confident that the proposed development complies with pertinent heritage controls and would engender a minimal impact on the heritage significance of the subject site, the Birchgrove and Ballast Point heritage conservation area and heritage items in the vicinity. We therefore recommend that Inner West Council view the application favourably on heritage grounds.

8.0 SOURCES

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