

# INNER WEST






## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	DA/2021/0915
<b>Address</b>	88 Evans Street ROZELLE NSW 2039
<b>Proposal</b>	Ground and first floor alterations and additions to dwelling-house and associated works, including a parking space and associated access off Hanover Street
<b>Date of Lodgement</b>	06 October 2021
<b>Applicant</b>	Mr Jeffrey E Madden
<b>Owner</b>	Mr Martin R Cox
<b>Number of Submissions</b>	Initial: 1
<b>Value of works</b>	\$400,000.00
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation exceeds 10%
<b>Main Issues</b>	<ul style="list-style-type: none"> <li>• Floor Space Ratio, Site Coverage and Landscaped Area variations</li> <li>• Private Open Space</li> <li>• Acoustic and Visual Privacy</li> <li>• On-Site Car Parking</li> </ul>
<b>Recommendation</b>	Deferred Commencement
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Clause 4.6 Exception to Development Standards
<b>Attachment D</b>	Statement of Heritage Significance



Figure 3: Locality Map

### LOCALITY MAP

Subject Site		Objectors		 N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the application submitted to Council for Ground and first floor alterations and additions to dwelling-house and associated works, including a parking space and associated access off Hanover Street at 88 Evans Street ROZELLE NSW 2039.

The application was notified to surrounding properties and one (1) submission was received in response to the initial notification.

The main issues that have arisen from the application include:

- Variation of the Landscaped Area, Site Coverage and Floor Space Ratio development standards;
- Amenity impacts upon adjoining properties, including solar access, acoustic and visual privacy; and
- On-site amenity outcomes, including private open space controls.

The non-compliances are acceptable given that, subject to recommended conditions, no undue adverse impacts will arise. Therefore, subject to the adherence of the recommended conditions of consent, including a Deferred Commencement (DC) condition relating to demonstration of vehicular access to the site complying with the requirements of AS/NZS2890.1, containment of structures within the rear property boundary and the removal of first floor privacy screening, the proposal will comply with the aims, objectives and design parameters contained in the relevant State Environmental Planning Policies (SEPPs), Leichhardt Local Environmental Plan 2013 (LLEP 2013) and Leichhardt Development Control Plan 2013 (LDLCP 2013), respectively. As such, the application is recommended for Deferred Commencement approval, subject to conditions included in Attachment A.

## 2. Proposal

The application seeks consent for ground and first floor alterations and additions to the existing dwelling-house and associated works, including a parking space at the rear that is accessed via Hanover Street. The proposal comprises of the following:

### Lower Ground floor

- Open car space

### Ground Floor

- Dining room
- Water closet
- Kitchen
- Lounge room
- Elevated deck

### First Floor

- Bedroom/ensuite
- Balcony/deck
- Bathroom

### 3. Site Description

The subject site is located on the south-eastern side of Evans Street, between Hanover Street and Merton Street. The site area is approximately 113.5sqm and is legally described as Lot B of DP 4425. The site has a frontage to Evans Street of 4.635 metres and a secondary frontage of approximately 4.92 metres to Hanover Street.

The site presently accommodates a double storey masonry terrace in a pair. The adjoining properties consist of double storey attached and detached dwellings.

The subject site is not a heritage item, however is located within The Valley Heritage Conservation Area. The site is not identified as a flood control lot.

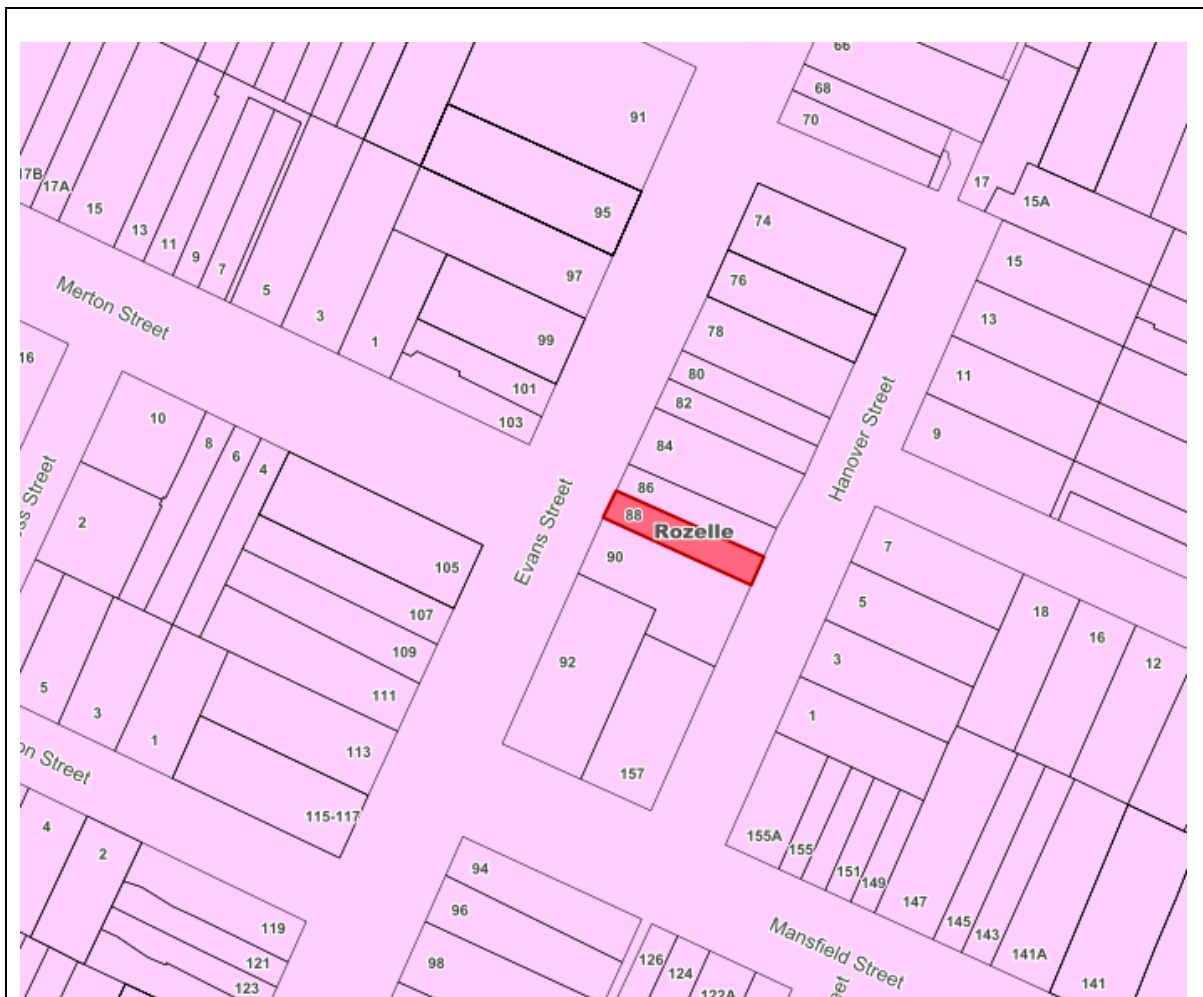


Figure 4: Zoning Map

## 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
D/2011/626	Replacement of the existing metal sheeting roof with new colorbond metal roof to match.	Approved 22/12/2011
CC/2012/1	Construction Certificate – D/2011/626.	Approved 12/01/2012
OC/2012/109	Occupation Certificate – D/2011/626.	Approved 20/03/2012
D/2015/404	Alterations and additions to the existing dwelling including extensions at ground and first floor level and new roller door to Hanover Street, providing an on-site parking space. Variations to the Site Coverage, Landscaped Area and Floor Space Ratio development standards.	Withdrawn 27/11/2015
PDA/2021/0216	Alterations and additions to the property.	Issued 16/07/2021

#### Surrounding properties

Application	Proposal	Decision & Date
D/2008/351	Installation of new lift to existing residence at 90 Evans Street.	Approved 29/08/2008
D/2015/405	Alterations and additions to existing dwelling at 86 Evans Street.	Approved 22/03/2016
D/2016/45	Demolition of existing rear area and garage. Construction of a new three storey rear addition, landscaping, pool and car space at 84 Evans Street.	Approved 31/03/2016
M/2017/14	Modification of Development Consent D/2016/45 – Modifications include extension of the ground and first floor rear addition, new ground floor rear balcony, amendments to openings and increase in the maximum height of the addition at 84 Evans Street.	Approved 15/03/2017
M/2019/187	Modification of Development Consent D/2017/14 involving internal and external changes at 84 Evans Street.	Approved 28/11/2019

## 4(b) Application history

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

Date	Discussion / Letter / Additional Information
06/10/2021	Application lodged
12/01/2022	<p>Council wrote to the applicant, requesting amendments to the proposed development and additional information in relation to the following matters:</p> <ul style="list-style-type: none"> <li>• Removal of skylights from the rear roof plane, .</li> <li>• Amended BASIX Certificate.</li> <li>• Demonstration of greater compliance with the Floor Space Ratio, Site Coverage &amp; Landscaped Area development standard.</li> <li>• Inadequate shadow diagrams, with amended shadow diagrams to be provided in plan and elevation view.</li> <li>• Amendments to private open space that demonstrate consistency with the prevailing pattern of development.</li> <li>• Demonstration of acceptable neighboring visual and acoustic privacy impacts.</li> <li>• Longitudinal sections (drawn at 1:20 or 1:25 scale) to be provided for the proposed car parking space.</li> <li>• Non-compliance with side boundary setback, private open space and landscaped open space controls.</li> <li>• Clarification on the use of the proposed subfloor area.</li> <li>• Party wall consent or structural engineering certification.</li> </ul>
19/01/2022	<p>The applicant submitted amended plans and additional information via email, which were subsequently submitted via the NSW Planning Portal on 12/02/2022. These entailed the following:</p> <ul style="list-style-type: none"> <li>• Deletion of the skylights (previously W4 &amp; W5) from the rear roof plane;</li> <li>• Provision of an amended BASIX Certificate as a result of the deleted skylights; and</li> <li>• Amendments to the configuration of the lower ground floor that comprised of on-site car parking and bin storage.</li> </ul> <p>The amended proposal represents a similar/lesser development to address issues raised by Council, and as such, re-notification was not required by Council's Community Engagement Framework.</p>

## 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*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*

The following provides further discussion of the relevant issues:

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

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

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

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

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

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

The site is not located within the foreshores and waterways area, a Strategic Foreshore site or listed as an item of environmental heritage under the SREP (SHC) 2005. As such, only the aims of the plan are applicable, and the proposal is consistent with these aims.

#### 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 2.7 – Demolition
- 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 6.4 - Stormwater management

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

The site is zoned R1 – General Residential under the Leichhardt LEP 2013. The Leichhardt LEP 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. Subject to conditions of consent, the development is consistent with the objectives of the R1 zone.

(ii) Clause 2.7 – Demolition

Clause 2.7 of the *LLEP 2013* states that the demolition of a building or work may be carried out only with development consent. The application seeks consent for demolition works. Council’s standard conditions relating to demolition are included in Attachment A.

(iii) Clause 4.3A - Landscaped areas for residential accommodation in Zone R1 & Clause 4.4 – Floor Space Ratio

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

Standard	Proposal	Non-compliance	Complies
<b>Floor Space Ratio</b> Maximum permissible: 0.9:1 or 103.13sqm	1.28:1 or 146.55sqm	43.43sqm or 42.22%	No
<b>Landscape Area</b> Minimum permissible: 15% or 17.19sqm	Nil*	100%*	No*
<b>Site Coverage</b> Maximum permissible: 60% or 68.75sqm	80.15% or 91.84sqm	33.58% or 23.09sqm	No

\* **A total Landscaped Area of 20.56sqm (17.94%) at least 1m wide and less than 500mm above existing ground level is proposed; however, pursuant to Clause 4.3A(4)(b)(ii), none of the proposed landscaped area are included as the proposed landscaped area is proposed to be turfed paving.**

(iv) Clause 4.6 Exceptions to Development Standards

As outlined in table above, the proposal results in a breach of the following development standards of the *Leichhardt LEP 2013*:

- Clause 4.3A(3)(a) – Landscaped Area for Residential Accommodation in Zone R1
- Clause 4.3A(3)(b) - Site Coverage for Residential Accommodation in Zone R1
- Clause 4.4 – Floor Space Ratio

Clause 4.3A(3)(a) - Landscaped areas for residential accommodation in Zone R1

The applicant seeks variations to the Landscaped Area and Site Coverage development standards under Clause 4.3A of the *LLEP2013* by 100% (17.19sqm) and 33.58% (23.09sqm), respectively.

The same objectives are applicable to both development standards under Clause 4.3A of the *LLEP 2013*.

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

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standards has been assessed against the objectives and provisions of Clause 4.6 of the *LLEP 2013* below.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the *LLEP 2013* justifying the proposed contravention of the development standards, which is summarised as follows:

Landscaped Area

- The paved turfed landscaping provided cannot strictly be included; however, the perceived total landscaped area is 17.94% (20.56sqm);
- The contravention is a matter with no State or regional significance;
- The proposal poses no reduction to the public benefit;
- The proposed development is consistent with other developments that front onto Evans Street and adjoin Hanover Street to the rear;
- D/2015/405 at 86 Evans Street was approved by the Local Planning Panel, where a total landscaped area of 3sqm or 2.78% of the site area was provided. The site is similarly constrained to the adjoining site, given the similar lot sizes and the proposal providing a similar built form to the adjoining property;
- The proposal will make a positive contribution to the desired future character of the neighbourhood;
- The proposal provides a functional private open space with direct access from primary living areas at ground level, which is identical in its size and configuration to the development approved under D/2015/405 at 86 Evans Street;
- The proposal has no adverse impacts to adjoining sites not the public domain; and
- The proposal as conditioned will meet the objectives of the R1 zone and ensures that this site will continue to provide for the housing needs of the community.

Site Coverage

- The contravention is a matter of no State or regional significance;
- The proposed development is consistent with other developments that front onto Evans Street and adjoin Hanover Street to the rear;
- The proposal as conditioned will make a positive contribution to the desired future character of the neighbourhood;
- The appearance of the built form is improved as viewed from Hanover Street;
- The building bulk, form, and scale is consistent with the context;



- The increase in site coverage will improve on-site amenity for occupants of the dwelling without compromising the amenity of adjoining dwellings;
- The proposed new dwelling has been designed to improve upon the existing qualities identified in the streetscape and broader locale; and
- The proposal meets the objectives of the R1 zone and ensures that this site will continue to provide for the housing needs of the community.

The applicant's written rationale adequately demonstrates that compliance with the development standards is unreasonable / unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the Landscape Area and Site Coverage development standards.

The objectives of the Landscaped Area and Site Coverage development standards are as follows:

- *to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,*
- *to maintain and encourage a landscaped corridor between adjoining properties,*
- *to ensure that development promotes the desired future character of the neighbourhood,*
- *to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,*
- *to control site density,*
- *to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.*

It is considered the development is in the public interest because it is consistent with the objectives of the standards, in accordance with Clause 4.6(4)(a)(ii) of the *LLEP2013* for the following reasons:

- The site is constrained in its ability to provide an adequate landscaped area for the use and enjoyment of existing and future residents, primarily due to the site's topography. The only space on site that can provide landscaping which complies with Clause 4.3A is situated where the proposed car parking area is;
- Whilst the turf paving is not counted towards landscaped area, this area does not result in any undue adverse on-site amenity impacts or to adjoining properties;
- The proposal is of an acceptable density as the proposed Floor Space Ratio and Site Coverage is not out of character with the pattern of development in the street; and
- Given the site's constraints with respect to lot size, orientation and topography, the proposal provides a suitable balance between private open space and built form.

The objectives of the R1 zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To improve opportunities to work from home.*

- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To provide landscaped areas for the use and enjoyment of existing and future residents.*
- *To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

It is considered the development is in the public interest because it is consistent with the objectives of the R1 zone, in accordance with Clause 4.6(4)(a)(ii) of the *LLEP 2013* for the following reasons:

- The development provides for the housing needs of the community;
- The development, as proposed and conditioned, provides housing that is compatible with the character, style, orientation and pattern of (existing and approved) surrounding buildings, streetscapes, works, Site Coverage and Landscaped Areas; and
- The site is constrained in its ability to provide an adequate landscaped area for the use and enjoyment of existing and future residents, in which the only space that can be provided which complies with Clause 4.3A is situated where the proposed car parking area is. Whilst the turf paving is not counted towards landscaped area, this area does not result in any undue adverse amenity impacts.
- The proposal has provided a private open space area that is consistent with development that has dual frontage between Evans Street and Hanover Street.
- The proposed non-compliances will not result in any undue adverse amenity impacts on adjoining sites and improved on-site amenity outcomes.

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

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the *LLEP 2013*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the Landscaped Area and Site Coverage development standards and it is recommended the Clause 4.6 exception be granted.

#### 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 2013* by 19.1sqm or 18.89%.

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

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the *Leichhardt Local Environment Plan 2013* below.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the *Leichhardt LEP 2013* justifying the proposed contravention of the development standard which is summarised as follows:

- The proposal is compatible with the desired future character. The development as viewed from Evans Street is unaltered, and the additions visible from Hanover Street is consistent with the pattern of development.
- The proposed bulk is consistent with the neighbouring pair of terraces.
- The proposed development promotes view sharing.
- The proposed materials are consistent, and sympathetic, with other development within the HCA.
- The proposal complies with the prescribed Building Location Zone.
- The proposal is built to the side boundaries, akin to surrounding development.
- There are no adverse bulk and scale impacts upon adjoining properties.
- Amenity impacts, including visual privacy and solar access impacts, are minimised.
- Ultimately, the proposal as conditioned will be consistent with the zone objectives.

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

It is considered that the development is in the public interest as it will be consistent with the objectives of the R1 zone (as outlined above), in accordance with Clause 4.6(4)(a)(ii) of the *Leichhardt Local Environment Plan 2013* for the following reasons:

- The proposal provides housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- The significant increase in the provision of gross floor area does not impede the site's ability to provide a private open space area that is consistent with development that has dual frontage between Evans Street and Hanover Street.
- The proposal protects and enhances the amenity of the existing and future residents, along with the broader neighbourhood.

The relevant objectives of the Floor Space Ratio development standard are as follows:

- to ensure that residential accommodation:
  - is compatible with the desired future character of the area in relation to building bulk, form and scale, and
  - provides a suitable balance between landscaped areas and the built form, and
  - minimises the impact of the bulk and scale of buildings,

It is considered that 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 Local Environment Plan 2013* for the following reasons:

- The proposal is compatible with the desired future character of the area.
- With consideration of the site's constraints, the proposal provides a reasonable balance between Landscaped Areas and the built form since a miniscule portion of the site is capable of providing areas of landscaping that are considered under Clause 4.3A of the LLEP 2013.
- The visual bulk and scale of the building is consistent with the pattern of surrounding development, particularly as viewed from Hanover Street.

The proposal as conditioned, therefore, accords with the objective of Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the LLEP 2013 and for the reasons outlined above, the Clause 4.6 exception request is supported.

(v) Clause 5.10 Heritage Conservation

The subject site is located within The Valley Heritage Conservation Area (C7 in Schedule 5 of the Leichhardt LEP 2013).

The Statement of Significance for The Valley Heritage Conservation Area can be found in Attachment D.

An assessment of the proposal against the heritage provisions of the *Leichhardt LEP 2013*, and Leichhardt DCP 2013, has been carried out elsewhere in this report.

In summary, the subject dwelling is a contributory terrace, located within the 'The Valley Heritage Conservation Area' (C7 in Schedule 5 of the Leichhardt LEP 2013). The proposal, as amended, is generally acceptable from a heritage perspective as it will not detract from the significance of the 'The Valley Heritage Conservation Area'.

(vii) Clause 6.1 Acid Sulfate Soils

The site is identified as containing Class 5 Acid Sulfate Soils (ASS) and the site is within 500 metres of land containing class 2 ASS. The proposed works will not lower the watertable below 1 metre AHD and no works are proposed below 5 metres Australian Height Datum. As such, the proposed works are considered to not disturb, expose or drain acid sulfate soils.

(viii) Clause 6.2 Earthworks

Excavation up to a depth of approximately three (3) metres below the existing ground level is proposed to accommodate some of the proposed ground floor. Council's Heritage Advisor raised no objections regarding the proposed excavation. Council's Development Engineer raised no objections to the proposed excavation, subject to conditions, which have been included in Attachment A.

(ix) Clause 6.4 Stormwater management

The proposal generally complies with this clause. Council's Development Engineer has assessed the proposal and raised no concerns, subject to conditions, which are included in Attachment A.

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

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

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

## 5(d) Development Control Plans

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

<b>LDCP2013</b>	<b>Compliance</b>
<b>Part A: Introductions</b>	
Section 3 – Notification of Applications	Yes
<b>Part B: Connections</b>	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	N/A
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
<b>Part C</b>	
C1.0 General Provisions	Yes, subject to conditions
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	N/A
C1.4 Heritage Conservation Areas and Heritage Items	Yes
C1.5 Corner Sites	Yes
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	Yes, subject to conditions
C1.12 Landscaping	No – see discussion
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	N/A
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A

C1.17 Minor Architectural Details	N/A
C1.18 Laneways	N/A
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	N/A
<b>Part C: Place – Section 2 Urban Character</b>	
C.2.2.5.1: The Valley “Rozelle” Distinctive Neighbourhood and C2.2.5.1(a) Evans Street Sub Area	Yes, subject to conditions
<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	Yes, subject to conditions
C3.2 Site Layout and Building Design	Yes / No – see discussion below
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	Yes
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	No – see discussion below
C3.9 Solar Access	Yes
C3.10 Views	N/A
C3.11 Visual Privacy	Yes, subject to conditions
C3.12 Acoustic Privacy	Yes, subject to conditions
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	
<b>Part D: Energy</b>	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	N/A
D2.5 Mixed Use Development	N/A
<b>Part E: Water</b>	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	Yes
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	N/A

E1.2.4 Stormwater Treatment	Yes
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	N/A
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	N/A
<b>Part F: Food</b>	N/A
<b>Part G: Site Specific Controls</b>	N/A

The following provides discussion of the relevant issues:

C1.3: Alterations and additions, C1.4 Heritage Conservation Areas and Heritage Items, C.2.2.5.1: The Valley "Rozelle" Distinctive Neighbourhood and C2.2.5.1(a) Evans Street Sub Area

As previously noted, the subject property is located within the Valley Heritage Conservation Area (C7 in Schedule 5 of the *Leichhardt LEP 2013*) and is not listed as a heritage item.

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

*Clause 5.10: Heritage Conservation from the Leichhardt LEP 2013 and Parts C1.3: Alterations and additions, C1.4: Heritage conservation areas and heritage items, C1.11: Parking, C.2.2.5.1: The Valley "Rozelle" Distinctive Neighbourhood and C2.2.5.1(a) Evans Street Sub Area from the Leichhardt DCP 2013 applies to the proposal.*

*The drawings, dated September 2021, and the Heritage Impact Statement, dated n.d., both prepared by Madden Associates, were reviewed as part of this assessment.*

*The subject 2 storey terrace is complemented by an adjoining 2 storey terrace adjoining at No. 86 Evans street. The gable roof form the cantilevered from balcony, the rear first floor with its balcony and the gable roof form contribute to the character of the HCA.*

*The proposal includes ground and first floor alterations and additions, including demolition of the existing rear addition and construction of a 2-storey rear addition to the existing terrace and associated works, including a parking space accessed from Hanover Street to the rear.*

*Pre-DA advice was sought for the proposed alterations and additions to the property at 88 Evans Street, Rozelle (PREDA/2021/0216). The application was referred to council's heritage specialist who supported the proposal, subject to the amendments below. Additional commentary is provided in respect to the drawings submitted with the DA.*

1. *It is recommended that the design be amended to incorporate the following design changes:*

- a. *The proposed demolition of the rear roof plane and the addition at attic level is not supported and are to be deleted from the proposal and the main gable roof form is to be retained in its entirety.*

**Comment:** *Demolition of the rear roof plane and the attic level addition have been removed. Two substantial skylights are now proposed in the rear roof plane (W4 and W5). C10 of Part C1.3 of the DCP requires that where rear additions are visible from the public domain the original roof form must be maintained and new additions are to be sympathetic to the original roof. C3 b. and C6 of Part C1.4 of the DCP requires that development within HCAs retain whole roof forms. The 2 proposed skylights (W4 and W5) in the rear roof plane (east elevation) are to be deleted as they will result in demolition of a significant portion of the rear roof plane and will be visible from the public domain.*

- b. *A skillion type dormer to the rear roof plane may be considered where it is designed in accordance with the following:*

- i. *set a minimum 300mm below the ridgeline;*
- ii. *set a minimum of 500mm from the side walls; and*
- iii. *set a minimum of 200mm up from the rear wall plate*

**Comment:** *Not proposed.*

- c. *Delete the proposed deck to the rear at attic level.*

**Comment:** *Deleted.*

- d. *The proposal is to include the restoration of the first-floor balcony to the front (west elevation) of the terrace.*

**Comment:** *No works are proposed to the first-floor balcony to the front (west) elevation. It is evident that the balcony requires restoration works. The applicant is encouraged to include restoration works to the first-floor balcony to the front (west elevation) of the terrace to ensure the proposal complies with C7 a. of Part C1.3 of the DCP.*

- e. *The existing rear wall should be retained and incorporated into the addition. Should partial demolition be required, 300mm wall nibs and bulkheads should be retained and incorporated into the proposal.*

**Comment:** *A wall nib has been shown as being retained between the existing dining and kitchen on the ground floor. It would be a better heritage outcome if 300mm wall nibs and bulkheads were retained at both ground and first floor levels. However, as the wall will not be visible from the public domain because of the proposed additions, it is generally acceptable in this instance as it will not impact on the significance of The Valley HCA.*



- f. *The eastern façades on the ground and first floor levels of the rear addition are to align, e.g. are to be the same setback from the rear boundary and are not to project any further forward than the established rear setbacks of the neighbouring properties.*

**Comment:** *The first floor eastern façade steps back in from the rear setback of the ground floor below. This is generally acceptable as it reduces the bulk of the addition, as viewed from Hanover Street to the south west. The rear setback is generally complementary to the established rear setbacks of the adjoining dwellings.*

- g. *The first floor deck must directly align with the ground floor deck below.*

**Comment:** *Refer to above comment.*

- h. *Large expanses of glass are not to be used in areas visible from the public domain, e.g. in the east (rear) elevation (Hanover Street). Openings must be vertically proportioned, employing traditional design (timber sash or French doors) and materials (timber frame).*

**Comment:** *Complies.*

2. *The applicant is encouraged to retain the existing layout in the terrace, including the original staircase. If it is proposed to insert the bathroom and ensuite in the existing bedroom 2, the wet areas should be inserted within the existing room configuration, not requiring demolition of the rear façade.*

**Comment:** *Only the front rooms on the ground and first floor have been retained. As the changes to the original layout will not be visible from the public domain they are generally acceptable in this instance as they will not impact on the significance of The Valley HCA.*

3. *A colours and materials schedule will need to be submitted for consideration and in accordance with the following:*
- a. *External walls are to be rendered and painted to complement the materials in the vicinity.*
  - b. *Glazed and metal balustrades proposed for the rear balconies and are to be replaced with vertical timber or metal pickets.*
  - c. *Dulux “Oolong Grey” proposed for the walls and detailing is to be replaced with a light, warm, earthy, tones similar to the existing colour scheme.*
  - d. *Colorbond Woodland Grey proposed for the roof sheeting and roof plumbing shall be replaced with Colorbond colours “Windspray” or “Wallaby”.*

**Comment:** *The Materials and Colour Schedule has been revised in accordance with the above. Glazed balustrades have been replaced with vertical timber pickets.*

*The proposal is acceptable from a heritage perspective as it will not detract from the heritage significance of The Valley Heritage Conservation Area providing the design change below is implemented as a condition to ensure the development is in accordance with Clause 5.10 Objectives 1(a) and (b) in the Leichhardt LEP 2013 and the relevant objectives and controls in the Leichhardt DCP 2013.*

An assessment of the application has been completed and the conclusion of the advice is:

X – Acceptable with the following conditions of consent:

1. Design change:

- a. Delete the 2 proposed skylights (W4 and W5) in the rear roof plane (east elevation).

As the amended plans have deleted the skylights from the rear roof plane that is visible from Hanover Street, the proposed development has complied with the advice provided by Council's Heritage Officer. Therefore, the proposal is in accordance with Clause 5.10 Objectives 1(a) and (b) in the Leichhardt LEP 2013.

### C1.11 Parking

Council's Development Engineer has assessed the proposal, and has raised concerns that amended plans for vehicular access to the site are yet to demonstrate that compliance with the requirements of AS/NZS2890.1 for "B85" ground clearance and headroom are achieved.

It is considered the proposal is capable of complying with the above-mentioned criteria, however; consent should not be operational unless this is suitably demonstrated. As such, a Deferred Commencement (DC) condition is included in the recommendation to ensure that vehicular access to the site demonstrates compliance with the requirements of AS/NZS2890.1 for "B85" ground clearance and headroom. Furthermore, access to the garage and associated pedestrian entry protrudes beyond the site's rear boundary onto Council land. A condition of consent will be imposed requiring no works to be undertaken outside the property boundary, however demonstration that all structures are contained within the property boundary will form part of a DC condition.

Subject to the suitable demonstration that the proposal adheres to the relevant criteria that is specified above, it is considered the relevant provisions under Part C1.11 of the Leichhardt DCP 2013 will be satisfied.

### C3.2 Site Layout and Building Design

#### Building Height and the Building Envelope

The following controls apply under Part C2.2.5.1 of the LDCP 2013:

*C10 – A maximum building wall height of 3.6m applies to the neighbourhood.*

*C11 – A maximum building wall height of 6m applies along Evans Street.*

The following controls apply under Part C2.2.5.1(a) to the Evans Street Sub Area of the LDCP 2013:

*C1 – Preserve view lines from the hill to the south, east and west.*

Given that the site has dual street frontage, the building envelope must be applied to both street frontages. The proposal, if the 6m wall height is applied to Evans Street, complies with the prescribed building envelope. The proposal, if the 3.6m wall height is applied to Hanover Street, breaches the prescribed building envelope. However, based on the pattern of

development of the surrounding properties, a breach of the prescribed building envelope along Hanover Street would be necessary in order to conform to the pattern of surrounding development. Furthermore, the proposed development is considered to preserve view lines to surrounding dwellings.

For the reasons outlined above, the breach of the building envelope along Hanover Street is acceptable on merit.

Building Location Zone

The proposal seeks to increase the rear setback of the ground floor, which is, as proposed, the rear building alignment adjoins the neighbouring site at 86 Evans Street. The rear building line at 90 Evans appears recessed behind the first-floor balcony and terrace area that elevates above the subject site. As such, the rear alignment appears to align with the subject site and 86 Evans Street. As the ground floor deck does not present adverse amenity impacts upon adjoining properties, the ground floor rear Building Location Zone (BLZ) is considered to be acceptable.

The proposal will comply with the first floor rear Building Location Zone (BLZ) applicable to the site that is established by adjoining properties, and therefore will have a rear alignment that is consistent with the surrounding pattern of development.

Side Boundary Setbacks

Elevation	Proposed Maximum Wall Height (m)	Required setback (m)	Proposed setback (m)	Compliance
Northern	6.13 – 6.95	1.92 – 2.40	0	No
Southern	6.15 – 7.06	1.93 – 2.46	0	No

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

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

The proposed variations to the required side setback is considered acceptable on merit for the following reasons:

- The proposal retains the original roof form of the existing main building and will not be visible from Evans Street, the primary street frontage;
- The proposal complies with the prescribed BLZ at the ground and first floors, as established by adjoining properties;
- The proposal provides acceptable site coverage and gross floor area that is consistent with the pattern of adjoining properties;
- The proposal maintains reasonable ceiling heights that results in the height of the development being consistent with the adjoining properties;

- The lower ground landscaped/car parking area and the ground floor private open space area are consistent with the pattern of surrounding development. The proposal as conditioned will have rear facing deck/balcony areas that are of a similar design, scale and dimensions as the development at No. 86 Evans Street;
- No undue adverse amenity impacts will result from the proposal, including solar access, unreasonable acoustic and privacy impacts, and will promote view sharing between properties that have dual frontage between Evans and Hanover Street; and
- The proposal ultimately achieves a compatible bulk, form and scale that is consistent with the existing and desired future character along the western side of Hanover Street.

In addition, access arrangements for maintenance of adjoining properties will not be compromised and, as such, the proposal is considered acceptable on merit.

### Landscaped Open Space

C9 outlines the following:

Development shall:

- Include soft landscape area in both the front and rear of the site where consistent with the BLZ controls;
- Ensure that the area of soft landscaping is consolidated to support significant landscaping and tree planting; and
- Include landscaped open space as part of private open space at the rear of the site. Landscaped areas are to be designed to incorporate privacy, solar access, protection from the wind and so that the amenity of adjoining properties as well as the streetscape is retained.

As outlined elsewhere in this report, the proposal does not comply with the Landscaped Area development standard and the proposed Landscaped Areas are incapable of supporting new tree planting or being used for private open space, as the area conflicts with on-site car parking. However, as previously noted, the site is constrained regarding its ability to appropriately site landscaped open space.

The site is currently provided only 8.5sqm of landscaped area on site that would counts towards the development standard; existing and proposed landscaped areas being less 1 m in width. The existing landscaping on the site consists of landscaping strips for the length of the rear yard to the southwest. The proposed development will have reduced landscaping area as per Clause 4.3A(3)(b) due to the nature of the development to the rear of the site, however the reduction in landscaping is a trade-off as a result of the improvements to the existing dwelling on the site.

Therefore, as there is an existing hardstand and minimal landscaping, it is not reasonable to refuse the application on this basis alone. The amendments to the existing landscape area are considered negligible in context of the improvements to the built form because of the development of the constrained site.

### C3.8 Private Open Space

C1 states that for dwelling houses, private open space (POS) should be:

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

The current ground floor deck is proposed as the principal POS area for the dwelling. The POS area is proposed to be accessed off a primary living room being the ground floor lounge room and has an area of 6.7sqm. It is noted that the adjoining property at 86 Evans Street was approved under D/2015/405 with a deck off the living area with an area of approximately 6.7sqm, which also does not comply with Council's requirement of 16sqm at ground level for dwelling houses.

However, the site currently supports a hardstand parking area at the lower ground level, which is consistent with the pattern of development on the western side of Hanover Street. Therefore, the only open space that is currently available is a small deck that is accessed off the ground floor lounge room. The proposed deck will open the living area to the deck, which will result in a POS area that maintains a high level of amenity for occupants of the site despite the numerical non-compliance.

However, the proposal is acceptable, given the proposed deck area and lower ground floor car parking are consistent with the pattern of surrounding development on the eastern side of Evans Street and western side of Hanover Street. In addition, suitable privacy screening is proposed along the northern boundary at the ground floor to ensure that no undue adverse amenity impacts in terms of visual and acoustic privacy arise between the principal POS areas of the adjoining properties.

### C3.9 Solar Access

The subject and surrounding sites have a south-eastern orientation. As such, the following solar access controls apply with regard to neighbouring properties:

- *C14 – Where the surrounding allotments side boundary is 45 degrees from true north and therefore the allotment is not orientated north/south or east/west, glazing serving main living room shall retain a minimum of two hours of solar access between 9am and 3pm at the winter solstice.*
- *C15 – Where surrounding dwellings currently receive less than the required amount of solar access to the main living room between 9.00am and 3.00pm during the winter solstice, no further reduction of solar access is permitted.*
- *C16 – Where surrounding dwellings have south facing private open space ensure solar access is retained for two hours between 9.00am and 3.00pm to 50% of the total area during the winter solstice.*
- *C19 – Where surrounding dwellings currently receive less than the required amount of solar access to their private open space between 9.00am and 3.00pm during the winter solstice, no further reduction of solar access is permitted.*

When assessing the impact of the proposed development on the solar access of neighbours, the following must be considered:

LDCP 2013

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

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

The shadow diagrams provided are generally accurate in the depiction of the additional shadows cast by the proposed development. The adjoining property at 90 Evans Street to the south of the site is significantly elevated in compared to the subject site, including the boundary wall, which alleviates the overshadowing impacts that it would usually experience by being situated south of the development site. The terrace area at 90 Evans Street, which function as the site's principal POS area, experiences some overshadowing at 3pm as a result of the first-floor additions.

Control C6 under Part C3.9 of the LDCP 2013 notes that lightwells and courtyards, particularly those facing north onto a common side boundary, are vulnerable to impacts from development on adjacent northern property. Whilst Council will attempt to ensure reasonable access to daylight and ventilation for light-wells and/or courtyards, protection of direct sunlight is not stipulated, as it may often impose an unreasonable constraint on the development rights of a neighbouring property. Due to the orientation of the block and the pattern of development being built to the side property boundaries, the northern facing lightwell at 90 Evans Street is not reasonable to protect when considering that the subject lightwell is inherently vulnerable to overshadowing impacts. Development would be sterilised to No. 88 in this instance to satisfy C19 of this clause. Whilst the proposed development breaches the Floor Space Ratio and Site Coverage development standards, the proposal is reasonable when considering that the first floor additions comply with the prescribed BLZ and utilises side setbacks that are typical of terrace housing and consistent with surrounding development.

Planning principle regarding sunlight established in **The Benevolent Society v Waverley Council** [2010] NSWLEC 1082.

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

**Comment:** The site is located within a medium density area where lot widths are narrow (generally less than 5m in width) and have a generally east-west orientation

where it is more difficult to protect any northern glazing. As such, the orientation of the block and lot widths make it difficult to retain sunlight to existing receptors.

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

**Comment:** Sunlight is retained to the POS area of the affected property at 90 Evans Street. As outlined above regarding the site constraints and vulnerability to the loss of solar access, it is considered that any loss of solar access is inevitable as a result of any first-floor development of the site. As the lightwell is not protected by solar access controls as noted in control C6 of Part C3.9 of the LDCP 2013, the proposal is satisfactory in this regard.

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

**Comment:** Whilst the proposal does not comply with the Floor Space Ratio and Site Coverage development standards, the proposal complies with the prescribed BLZ, and proposes a built form that is consistent with the surrounding pattern of development. As such, overshadowing is not as a result of poor design, but arises as a result of the subject site and surrounding properties being naturally vulnerable to overshadowing impacts.

- *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.*

**Comment:** As outlined above, the north-facing lightwell servicing No. 90 Evans Street, currently, receive solar access, which will be lost by the proposal. Whilst this, in principle, would not be supported as it does not comply with C15, these windows are in a vulnerable position, i.e., in the middle of the dwelling at No. 90 Evans Street. The proposal is not unreasonable as it will be consistent with the pattern of surrounding development.

- *For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.*

**Comment:** The POS at 90 Evans Street is elevated and will experience minor overshadowing at 3pm, however will not receive any additional overshadowing between 9am-12pm. The living area at this property will be overshadowed by any development involving first floor additions at the subject site. As such, it is considered

that retaining solar access towards the rear of the POS is important to maintain on-site amenity for these properties.

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

**Comment:** The overshadowing is caused by the additions extending towards the site's rear boundary, in which any first-floor additions would inherently result in the lightwell being obstructed of solar access. Given that the lightwell is situated in the middle of the lot and the northern boundary, it would be unreasonable to prevent any development to protect solar access to this location. Roof overhangs, fences and changes in levels do not result in unacceptable solar access impacts upon adjoining properties.

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

**Comment:** Given that the site is located within a HCA and adjoining sites contain contributory buildings, it is considered that the area will not undergo substantial change.

Given the above, any loss of solar access is not considered to be contrary to Part C3.9 of the LDCP 2013 and the proposal is therefore satisfactory with respect to solar access impacts upon adjoining properties.

### C3.10 Views

The following controls apply with regard to Part C3.10 of the LDCP 2013:

- *C1 – New development should be designed to promote view sharing (i.e. minimise view loss to adjoining and adjacent properties and/or the public domain while still providing opportunities for views from the development itself).*
- *C3 – Development shall be designed to promote view sharing via:*
  - a. appropriately addressing building height, bulk and massing;*
  - b. including building setbacks and gaps between buildings;*
  - c. minimise lengthy solid forms;*
  - d. minimise floor to ceiling heights and use raked ceilings in hipped / gabled roof forms where appropriate, especially in upper floors;*
  - e. splay corners; and*
  - f. use open materials for balustrades, balconies, decks, fences, car ports and the like.*

The first-floor balcony is designed upon the notion of 'view sharing', to enable views to the City Skyline from the subject site. A consistent approach for development along the south-eastern side of Evans Street that adjoin Hanover Street is that most of the allotments have elevated decks or terraces that are unscreened to enable the ability to view share to the oblique to city and district views. This was considered in the design of the first-floor balcony that was approved by the Inner West Local Planning Panel for development application D/2015/405 at 86 Evans Street. The proposed first-floor balcony facilitates the notion of view



sharing, since the built form does not obstruct any views from adjoining properties, whilst creating views to the City Skyline from the first floor of the subject site.

### C3.11 Visual Privacy

The proposed first floor balcony does not comply with C9, which outlines that:

*Balconies at first floor or above at the rear of residential dwellings will have a maximum depth of 1.2m and length of 2m unless it can be demonstrated that due to the location of the balcony there will be no adverse privacy impacts on surrounding residential properties with the provision of a larger balcony.*

The first-floor balcony current provides dimensions of 0.93m in depth and 2.51m in width.

The ground floor deck as proposed is elevated to allow for sufficient clearance for the off-street parking. A consistent approach for the development is most of the allotments have elevated decks or terraces that are unscreened to enable the ability to view share to the oblique to city and district views. This was considered in the design of the first-floor balcony that was approved by the Inner West Local Planning Panel for development application D/2015/405 at 86 Evans Street. In this instance, the first-floor balcony is smaller than the one it replaces is considered reasonable, given the character of mutual overlooking exists to enable views in the oblique and therefore screening on the first floor is not considered necessary.

As the subject site already experiences overlooking from the adjoining properties at No. 86 & 90 Evans Street, it is acknowledged that the proposed balcony will result in additional overlooking and minor visual privacy impacts. However, despite the additional overlooking, the proposed first floor balcony will promote view sharing opportunities of the City skyline that is consistent with Part C3.10 (Views) of the LDCP 2013. The construction of this balcony is consistent with the pattern of surrounding development that resides on the northern side of Hanover Street.

In light of the above, the proposal as conditioned is considered acceptable upon a merit assessment regarding the visual privacy impacts caused by the proposal.

### C3.12 Acoustic Privacy

The following controls are applicable:

- *C3 Noise generating areas that are not contained within buildings, such as private outdoor open space, parking and service equipment, are located and oriented away from bedroom windows on adjoining sites.*
- *C8 Private open space is encouraged to be located away from bedrooms on adjoining properties to ensure minimal acoustic impacts.*

The location of the proposed private open space is consistent with other development and where it can be reasonably expected, i.e., at the rear of the site. It is noted that No 90 Evans Street supports a boundary-to-boundary elevated terrace with garage underneath, however this was approved prior to current planning controls under the LDCP 2013 and is of a significantly greater scale than similar first floor balcony/terraces that are situated along the northern side of Hanover Street. A first-floor balcony similar to what was previously approved under D/2015/405 at 86 Evans Street would be considered to be more appropriate, given this will be more consistent with the surrounding pattern of development, would enable view sharing whilst simultaneously reducing acoustic privacy impacts upon adjoining properties.

As such, subject to recommended conditions, the proposal is considered acceptable regarding acoustic privacy impacts.

#### 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

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

#### 5(g) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties. One (1) submission was received in response to the initial notification.

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

- Obstruction of lightwell area by proposed roof line
- Large glass block panel aligns with neighbouring diffuse glass panel
- No further obstruction by structures on the roof

**Comment:** Refer to assessment under Part C3.9 above within Section 5(d) of this report. Ultimately, the proposal is considered reasonable when considering the orientation of the lightwell and glass panel, and the resultant pattern of development. There are no roof structures proposed that would cause obstructions to the adjoining property, or adverse amenity impacts associated with potential obstructions.

#### 5(h) The Public Interest

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

The proposal is contrary to the public interest.

## 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
- Development Engineer

## 6(b) External

- Nil

## 7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$4,000.00 would be required for the development under the 'Former Leichhardt Local Government Area 7.12 Developer Contributions Plan 2020'. A condition requiring that contribution to be paid is included in the recommendation.

## 8. Conclusion

The proposal as conditioned, will be generally consistent with the aims, objectives and design parameters contained in the *Leichhardt Local Environmental Plan 2013* and *Leichhardt Development Control Plan 2013*.

The proposal will deliver a development that is consistent with the secondary streetscape in Hanover Street, enhance the amenity of the site's existing and future occupants without compromising the amenity of surrounding developments, and therefore will ultimately be in the public interest.

The application is considered suitable for the issue of a Deferred Commencement consent subject to the imposition of appropriate terms and conditions.

## 9. Recommendation

That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, issue a Deferred Commencement consent for Development Application No. DA/2021/0915 at 88 Evans Street, Rozelle for Ground and first floor alterations and additions to dwelling-house and associated works, including a parking space and associated access off Hanover Street consent subject to the conditions listed in Attachment A.

## Attachment A – Recommended conditions of consent

### CONDITIONS OF CONSENT

The following is a Deferred Commencement condition imposed pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*. This Consent will not operate and may not be acted upon until the Council is satisfied as to the following matter(s):

#### A. 'Deferred Commencement' Conditions

- A. *Longitudinal sections drawn at 1:25 scale shall be provided along each edge of the vehicular access demonstrating compliance with the requirements of AS/NZS2890.1 for "B85" ground clearance and headroom. The longitudinal sections shall include existing and proposed levels. The existing footpath levels at the property boundary shall be maintained for the entire width of the vehicular crossing/driveway. The sections must extend to the centreline of the road carriageway and show the B85 ground clearance template superimposed at critical locations.*
- B. *All structures along the rear property boundary, being the roller door, pedestrian entrance and associated masonry walls, shall be amended to be contained wholly within the rear property boundary.*
- C. *The first-floor visual privacy screen along the common boundary with 86 Evans Street is to be deleted.*

Evidence of the above matter(s) must be submitted to Council within 2 years otherwise the Consent will not operate.

### 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:

Drawing No. and Issue No.	Plan Name	Date Issued	Prepared by
851 - DA - 140A	Site Analysis Diagram	September 2021	Madden Associates
851 - DA - 133B	Proposed Parking Plan	February 2022	Madden Associates
851 - DA - 134B	Proposed Ground Floor Plan	February 2022	Madden Associates

851 - DA - 135B	Proposed First Floor Plan	February 2022	Madden Associates
851 - DA - 137B	Proposed Roof Floor Plan	February 2022	Madden Associates
851 - DA - 251	Proposed Side Elevations	September 2021	Madden Associates
851 - DA - 201B	Proposed Sections and Elevation	February 2022	Madden Associates
851 - DA - 151A	Turning Circles and AS 2890.1 2004	February 2022	Madden Associates
-	Materials and Colour Schedule	September 2021	Madden Associates
A414328_02	BASIX	12 February 2022	-

As amended by the conditions of consent.

**FEES**

**2. Security Deposit - Custom**

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

<b>Security Deposit:</b>	\$2,254.00
<b>Inspection Fee:</b>	\$241.50

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

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

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

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

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

### **3. Section 7.12 (formerly section 94A) Development Contribution Payments**

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that a monetary contribution to the Inner West Council has been paid, towards the provision of infrastructure, required to address increased demand for local services generated by additional development within the Local Government Area (LGA). This condition is imposed in accordance with Section 7.12 of the *Environmental Planning and Assessment Act 1979* and in accordance with *Former Leichhardt Local Government Area Section 7.12 Development Contributions Plan 2020*.

Note:

Copies of these contribution plans can be inspected at any of the Inner West Council Service Centres or viewed online at <https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

Payment amount\*:

\$4,000.00

\*Indexing of the Section 7.12 contribution payment:

The contribution amount to be paid to the Council is to be adjusted at the time of the actual payment in accordance with the provisions of the relevant contributions plan. In this regard, you are recommended to make contact with Inner West Council *prior to arranging your payment method* to confirm the correct current payment amount (at the expected time of payment).

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.**

**4. Long Service Levy**

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more.

**GENERAL CONDITIONS**

**5. Boundary Alignment Levels**

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

**6. Works Outside the Property Boundary**

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

**7. 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.

**8. 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.

**PRIOR TO ANY DEMOLITION****9. 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.

**10. 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****11. 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.



**12. Stormwater Drainage System – Minor Developments (OSD is not required)**

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. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank(s), by gravity to the kerb and gutter of a public road;
- b. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- c. Pipe and channel drainage systems must be designed to cater for the twenty (20) year Average Recurrence Interval (ARI) storm in the case of low and medium residential developments, the twenty (20) year ARI Storm in the case of high-density residential development and commercial and/or industrial developments and the fifty (50) year ARI Storm in the case of heavy industry. In all cases, the major event surface flow paths must be designed to cater for the one hundred (100) year ARI Storm;
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage;
- e. To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, must be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Council's DCP. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled;
- f. The design plans must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;
- g. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas;
- h. No nuisance or concentration of flows to other properties;
- i. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- j. The design 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;
- k. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- l. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- m. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0

mm and a maximum section height and width of 100 mm or sewer grade uPVC pipe with a maximum diameter of 100 mm;

- n. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
- o. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- p. No impact to street tree(s);

### **13. 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.

### **14. Sydney Water – Tap In**

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

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

## **DURING DEMOLITION AND CONSTRUCTION**

### **15. 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.

### **16. 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****17. 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.

**18. Protect Sandstone Kerb**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any stone kerb, damaged as a consequence of the work that is the subject of this development consent, has been replaced.

**ADVISORY NOTES****Permits**

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

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

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

**Insurances**

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

**Prescribed Conditions**

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

**Notification of commencement of works**

At least 7 days before any demolition work commences:

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

**Storage of Materials on public property**

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

**Toilet Facilities**

The following facilities must be provided on the site:

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

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

**Infrastructure**

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

**Other Approvals may be needed**

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

**Failure to comply with conditions**

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

**Other works**

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

**Obtaining Relevant Certification**

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

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

- g. Development Application for subdivision if consent for subdivision is not granted by this consent.

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

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

#### **Notification of commencement of works**

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

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

#### **Construction of Vehicular Crossing**

The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for *Construction of a Vehicular Crossing & Civil Works* form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, prior to commencement of works.

#### **Lead-based Paint**

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

**Dial before you dig**

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

**Useful Contacts**

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm <a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>
Department of Fair Trading	13 32 20 <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 <a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441 <a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority	1300 552 406 <a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>
NSW Government	<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diySAFE.nsw.gov.au">www.diySAFE.nsw.gov.au</a> Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 <a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>
Sydney Water	13 20 92

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

Waste Service - SITA 1300 651 116  
Environmental Solutions

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

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

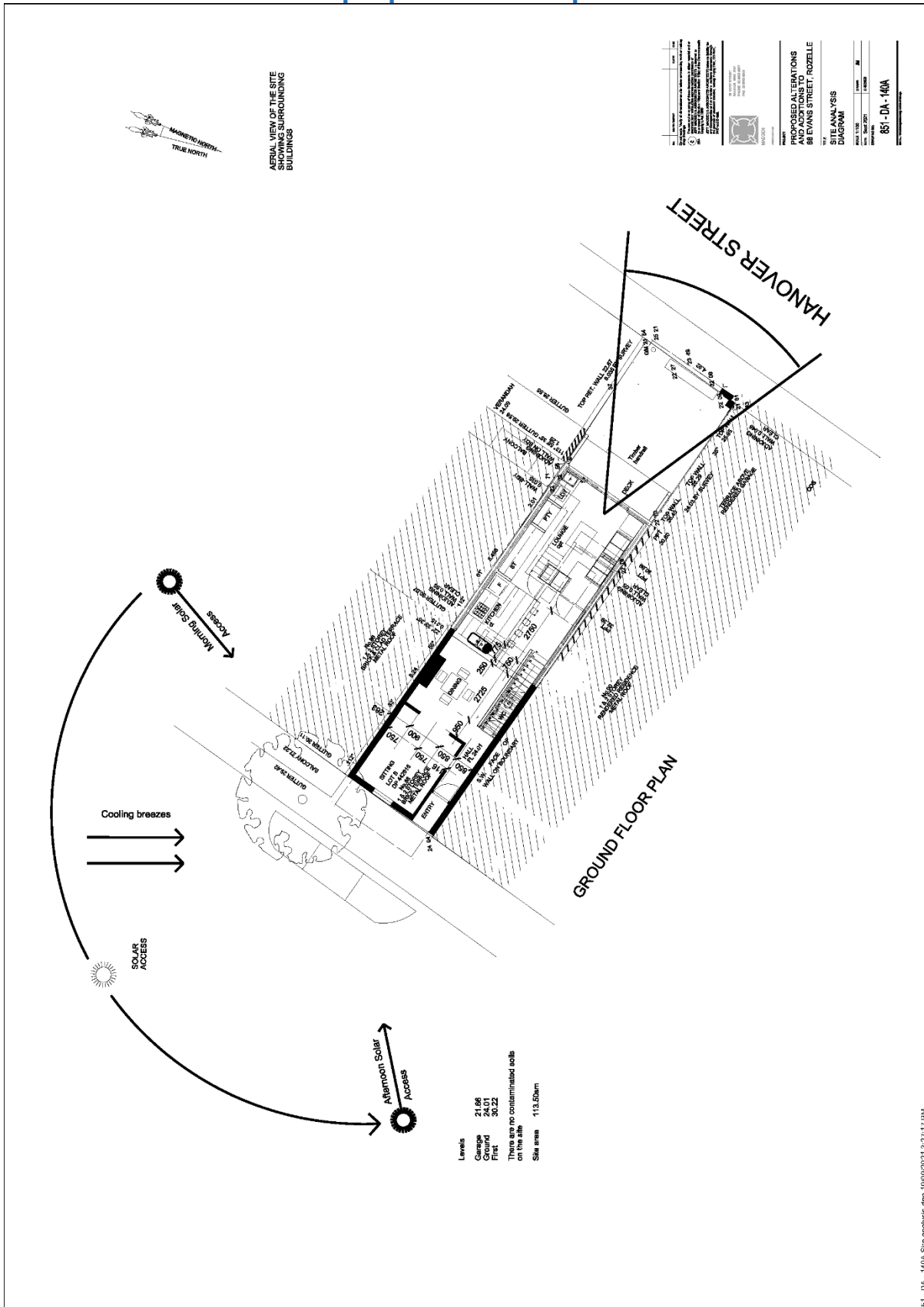
WorkCover Authority of NSW 13 10 50

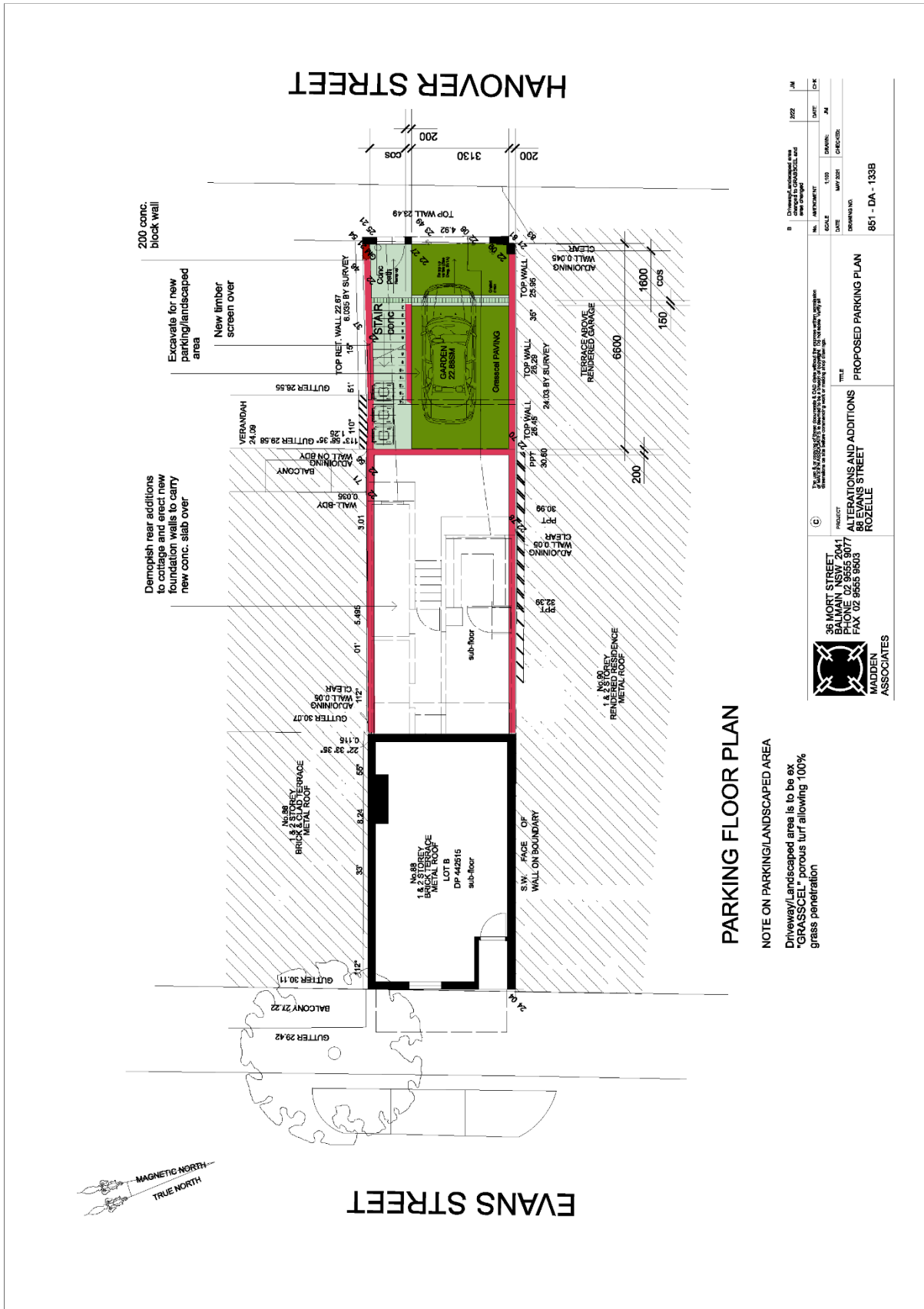
[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

Enquiries relating to work safety and asbestos removal and disposal.



Attachment B – Plans of proposed development





**PARKING FLOOR PLAN**

NOTE ON PARKING/LANDSCAPED AREA

Driveway/Landscaped area is to be ex "GRASSCEL" porous tuff allowing 100% grass penetration



36 MORT STREET  
BALMAIN NSW 2041  
PHONE 02 9655 9077  
FAX 02 9655 8603

PRODUCT  
ALTERATIONS AND ADDITIONS  
86 EVANS STREET  
ROZELLE

TITLE  
PROPOSED PARKING PLAN

DRAWN BY  
851-DA-1338

DATE  
MAY 2021

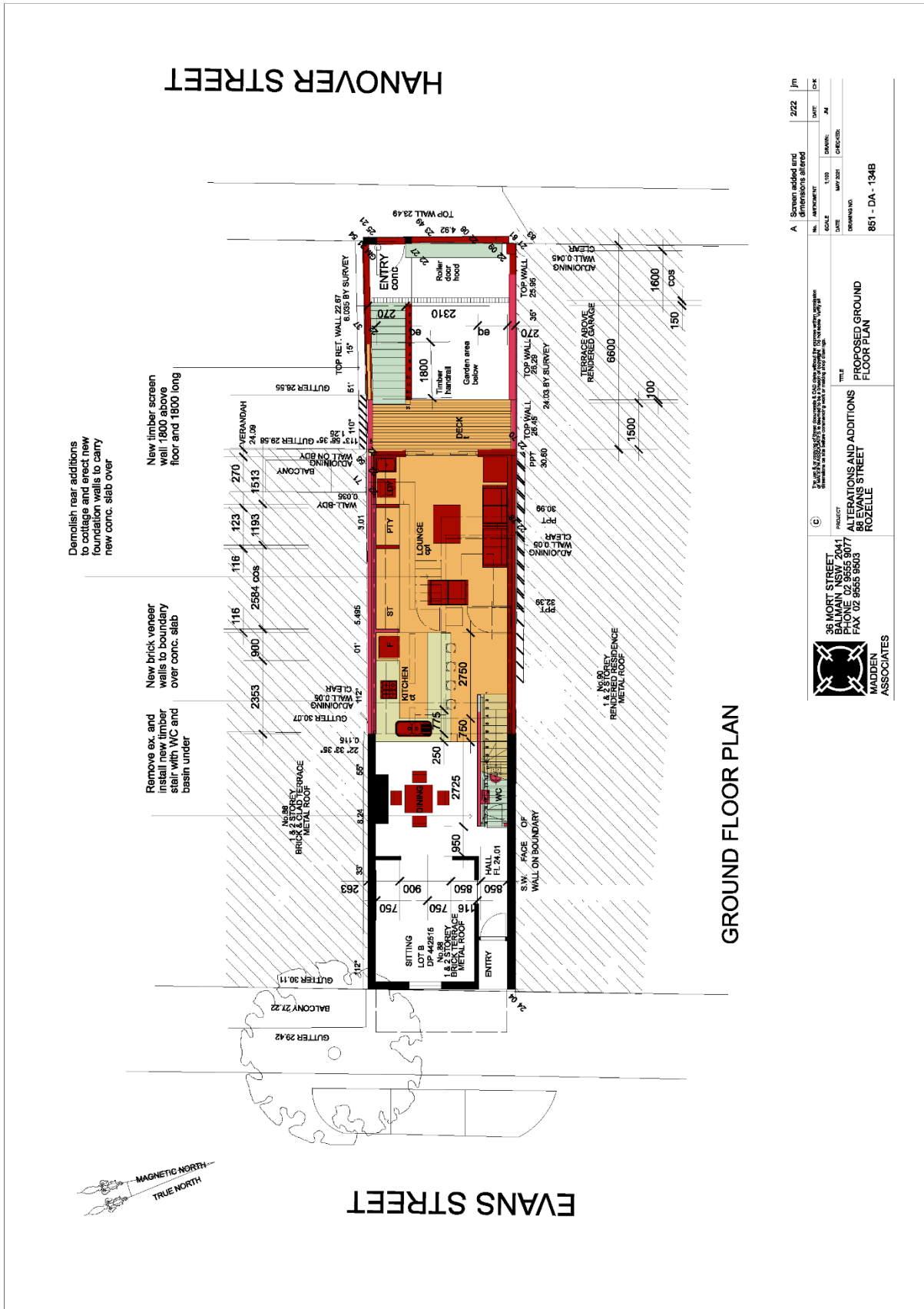
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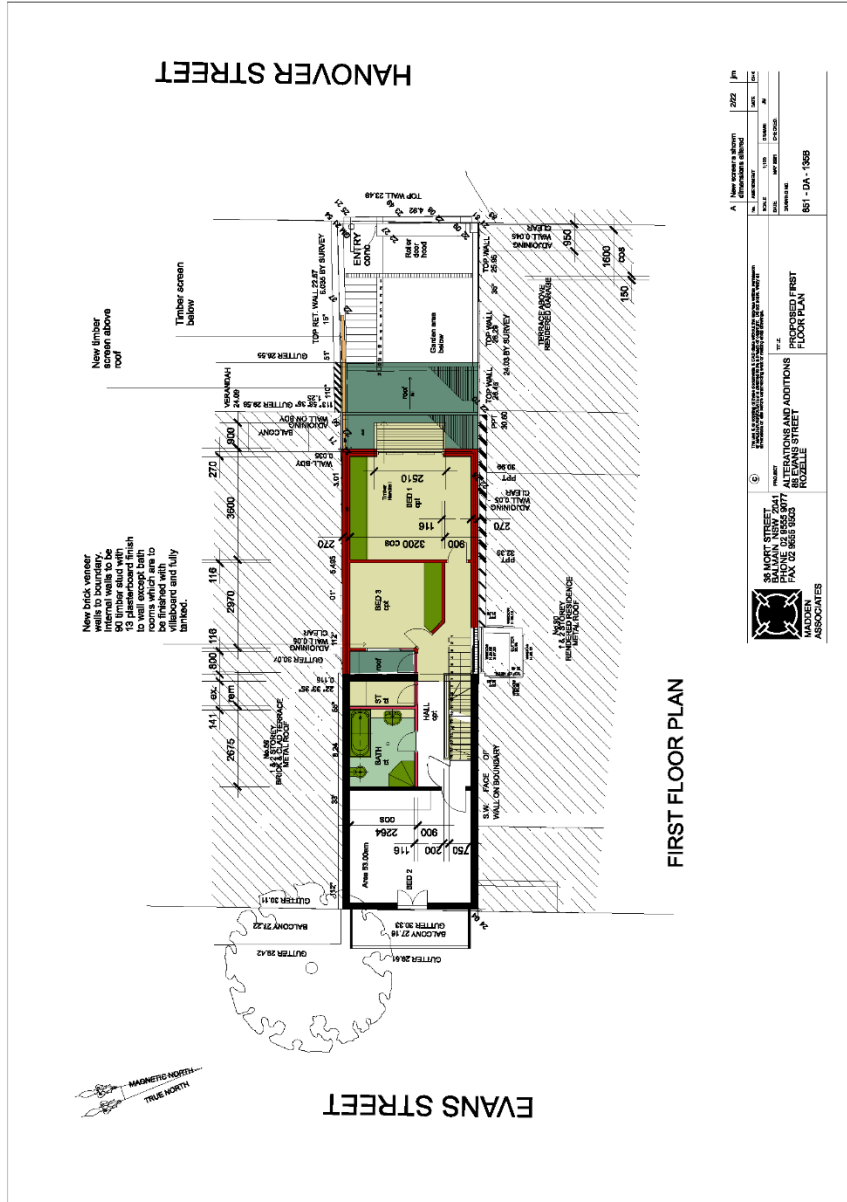
DATE  
MAY 2021

PROJECT  
ALTERATIONS AND ADDITIONS  
86 EVANS STREET  
ROZELLE

PROJECT  
ALTERATIONS AND ADDITIONS  
86 EVANS STREET  
ROZELLE

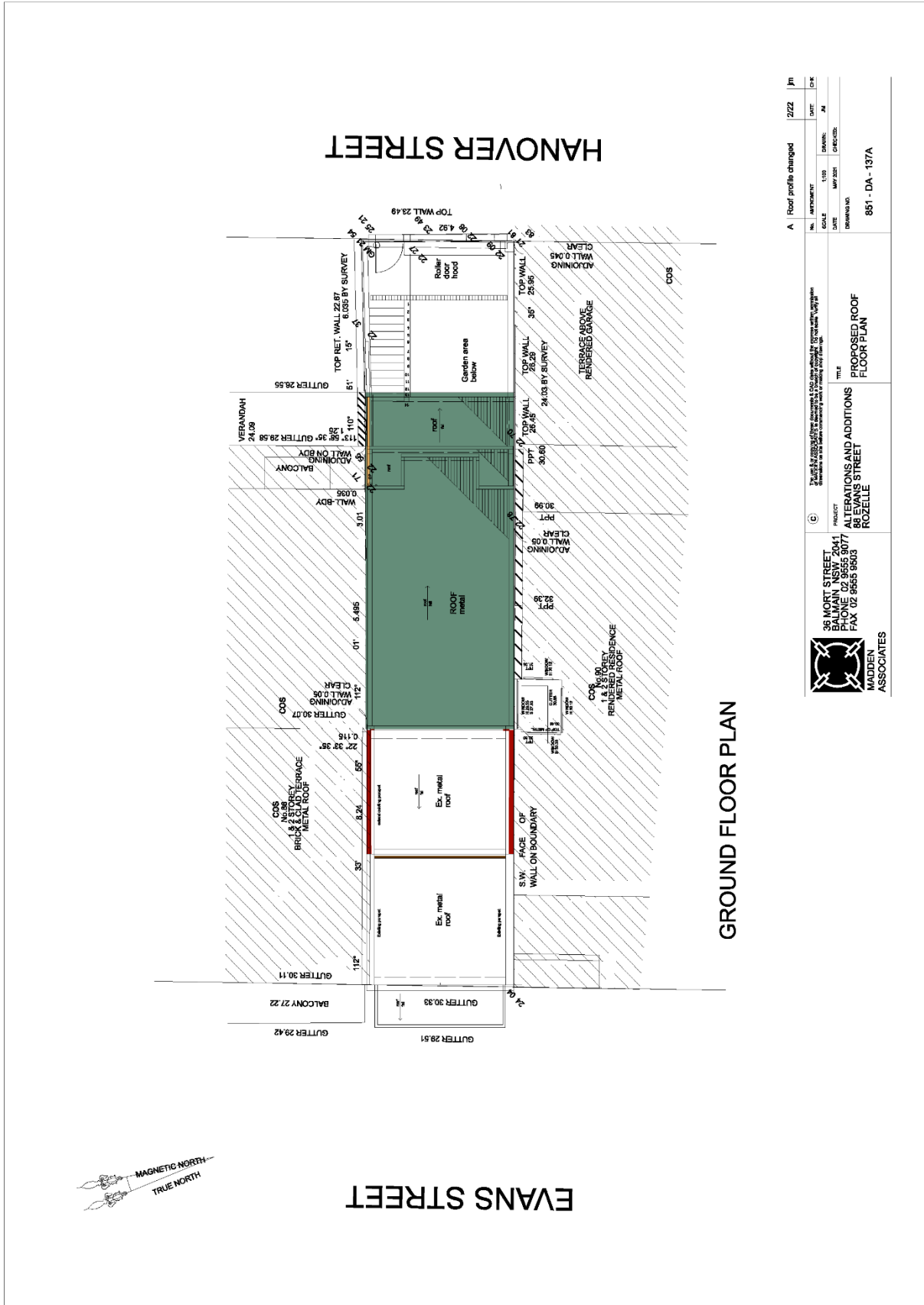


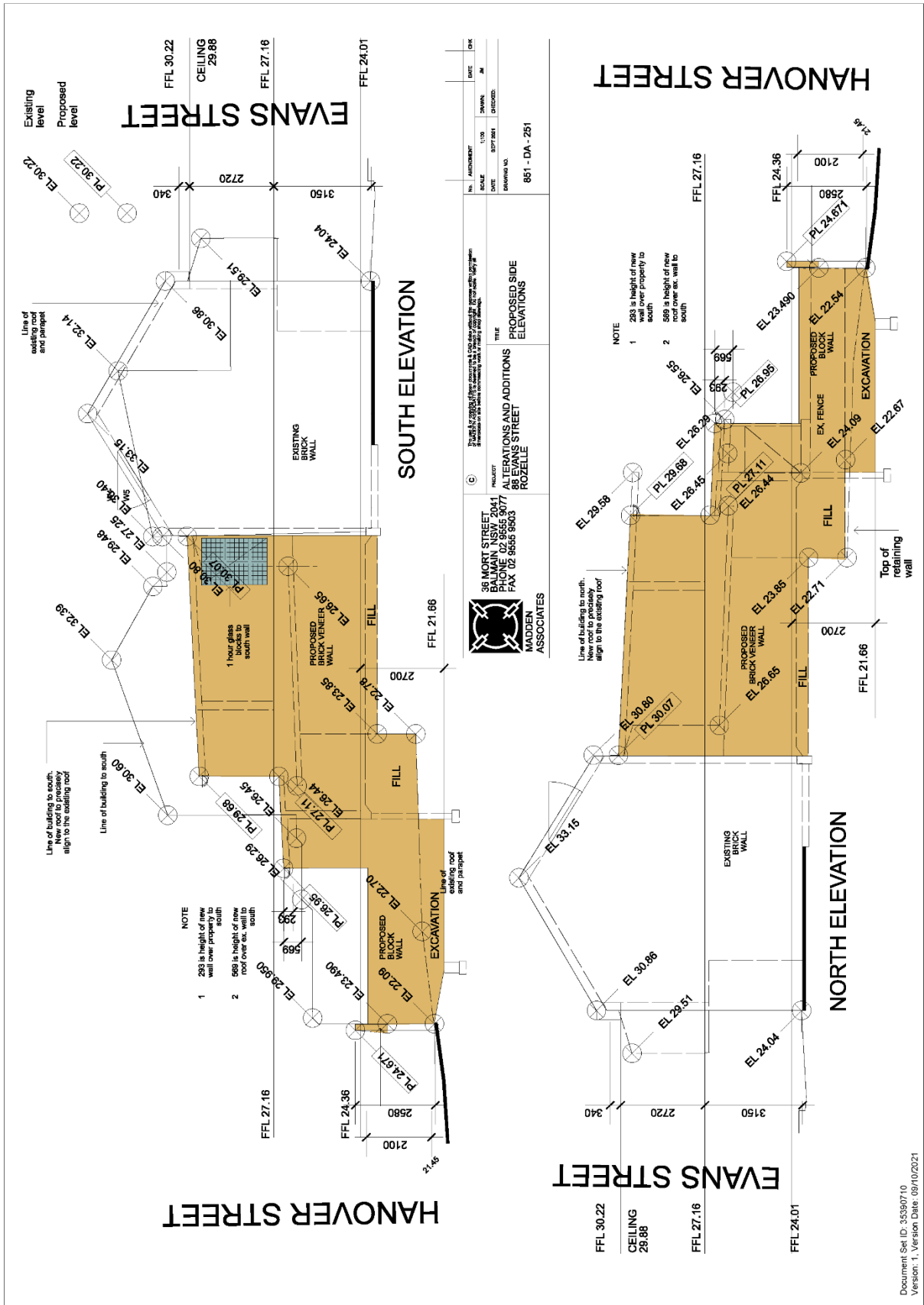
A. Screen added and dimensions altered		222	jm
N.	APPROXIMATE	DATE	C/E
SCALE	1:100	DRAWN	JM
DATE	MAY 2021	CHECKED	
DATE	MAY 2021	DRAWN BY	
DATE	MAY 2021	CHECKED BY	
C. PLANS TO BE SUBMITTED TO THE LOCAL GOVERNMENT FOR CONSIDERATION AND APPROVAL		PROJECT TITLE	
GENERATED BY THE DESIGN PROFESSIONAL IN ACCORDANCE WITH THE PROFESSIONAL STANDARDS FOR THE DESIGN OF BUILDINGS		ALTERATIONS AND ADDITIONS TO PROPOSED GROUND FLOOR PLAN	
36 MORT STREET BALMAIN NSW 2041 PHONE 02 9655 9077 FAX 02 9655 8603		MADSEN ASSOCIATES	
DRAWING NO. 851-DA-134B			

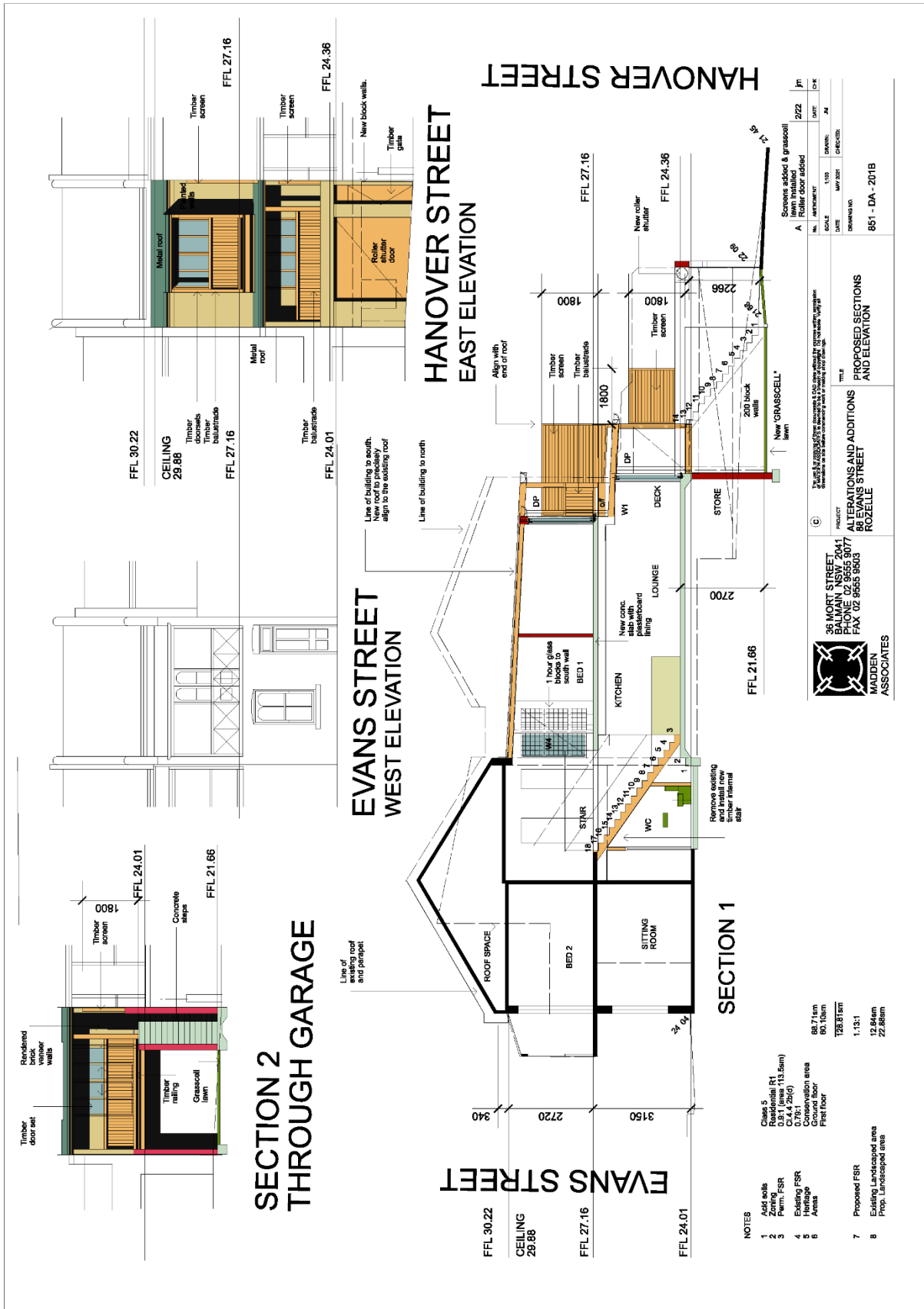


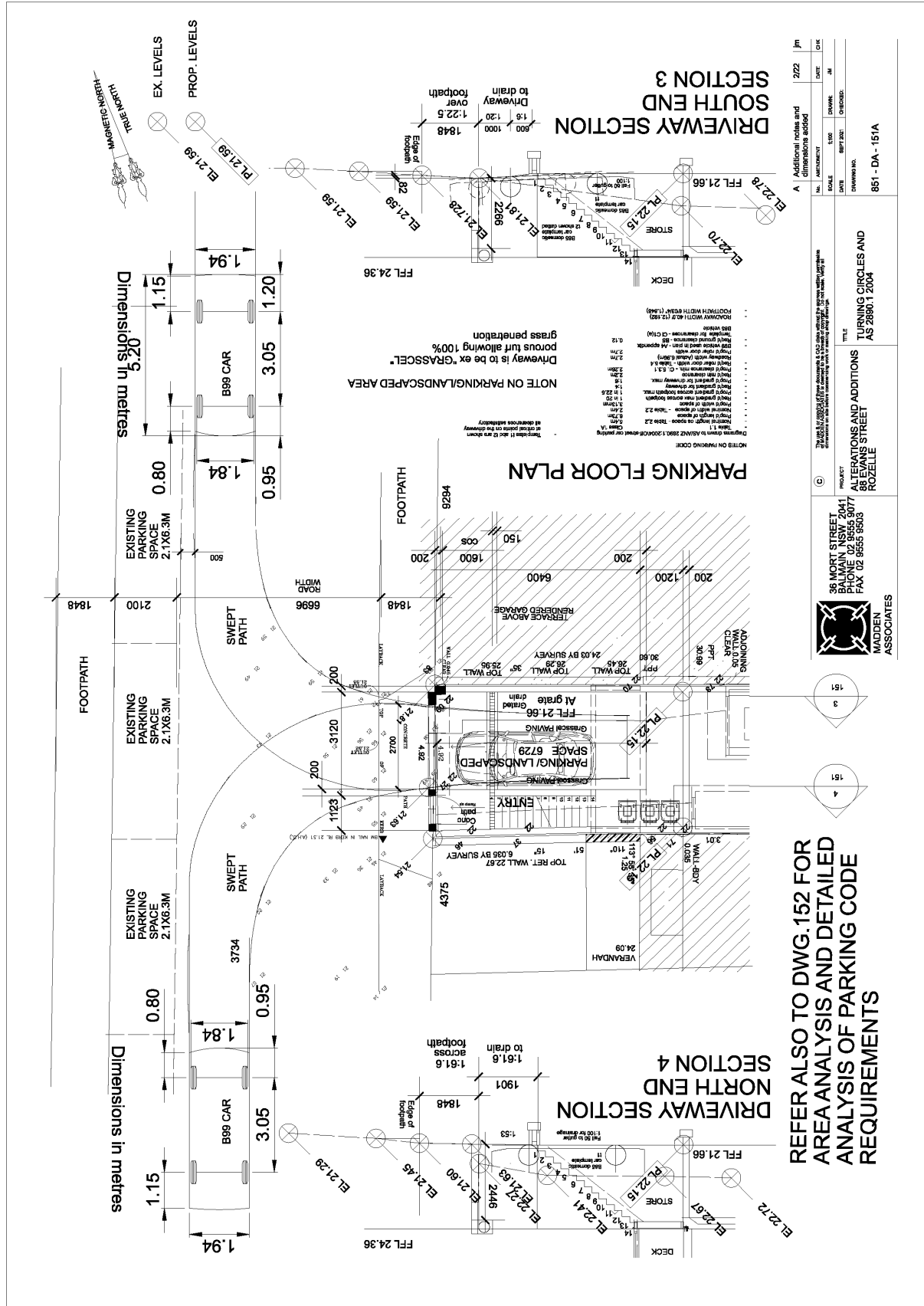
FIRST FLOOR PLAN

<p>38 MOON STREET BALMAIN, NSW 2041 PH: 02 9663 6977 FAX: 02 9663 6903 MADDEEN ASSOCIATES</p>	PROJECT 22 ALLEN'S STREET ROSSELLE	TITLE PROPOSED FIRST FLOOR PLAN
	PREPARED BY MADDEN ASSOCIATES	DATE 10/11/2020
	CHECKED BY MADDEN ASSOCIATES	SCALE 1:100
	DRAWN BY MADDEN ASSOCIATES	SHEET NO. B61-DA-1069
	APPROVED BY MADDEN ASSOCIATES	PROJECT NO. B61-DA-1069









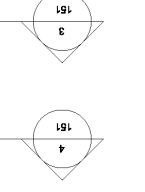
**REFER ALSO TO DWG. 152 FOR  
AREA ANALYSIS AND DETAILED  
ANALYSIS OF PARKING CODE  
REQUIREMENTS**

NO.	REVISION	DATE	DRAWN	CHECKED	DATE
1	AS PER DRAWING	15/11/2022	JM	JM	

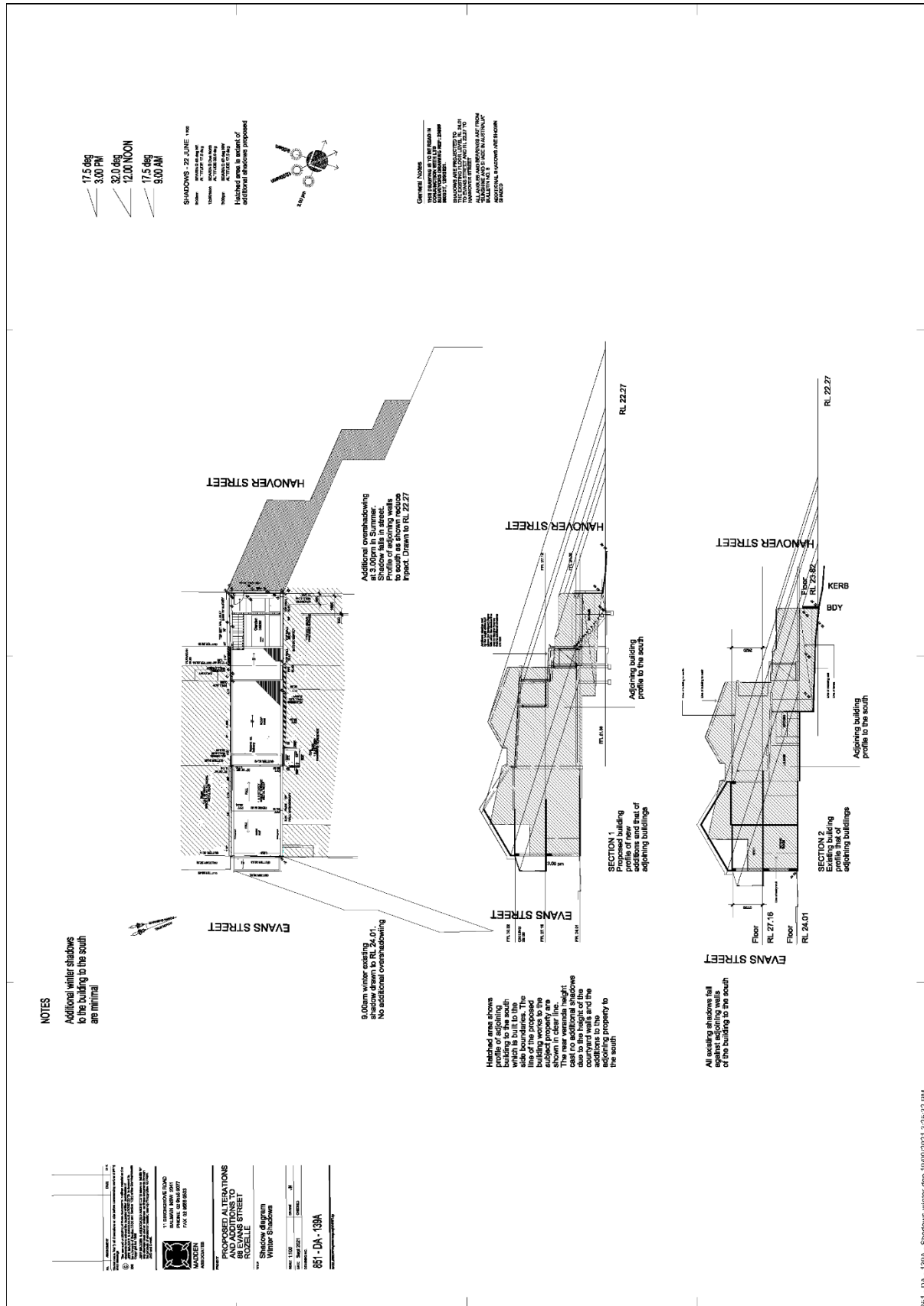
**PROJECT:**  
ALTERATIONS AND ADDITIONS  
TURNING CIRCLES AND  
88 EVANS STREET  
ROZELLE

**CLIENT:**  
851 - DA - 151A

**ARCHITECT:**  
MADSEN ASSOCIATES  
36 MORT STREET  
BALMAIN NSW 2041  
PHONE 02 9555 9077  
FAX 02 9555 9503









**M A D D E N**  
ASSOCIATES  
ABN 15 002  
742 476

11 Birchgrove Road,  
Balmain 2041

BALMAIN NSW 2041  
PO BOX 601  
Balmain 2041

PHONE 02 9555 9077  
0402 810 856

FAX 02 9555 9503

Web : [www.jma.net.au](http://www.jma.net.au)

PRINCIPALS AND  
DESIGNATED ARCHITECTS

**JEFF MADDEN**  
BArch (HONS)  
MSc (Arch)(Cons)  
Dip. Management  
FRAIA 4068

**MATERIALS AND COLOUR SCHEDULE**  
**88 EVANS STREET, ROZELLE**

Walls	Rendered brick Dulux – Portland stone
Roofs	Colourbond Steel – Windspray
Fascias	Dulux – White
Gutters and downpipes	Colourbond Steel – Windspray
Windows and doors	Timber – Dulux – White
Veranda columns	Dulux – White
Rear verandah paving	Ceramic tile – Colour TBA
Eaves soffits	Dulux – Eau de Nil
Balustrade	Timber - White

Jeff Madden

Ref: users/ 851/materials and colour schedule  
Revision No. 0/ Sept 2021

## Attachment C- Clause 4.6 Exception to Development Standards

**CLAUSE 4.6 OF LEICHHART LEP 2013****EXEMPTION TO DEVELOPMENT STANDARD****FOR DEVELOPMENT APPLICATION AT 88 EVANS STREET, ROZELLE, NSW**

**J E F F  
M A D D E N  
&  
A S S O C I A T E S**  
A B N  
1 5 0 0 2 7 4 2 4 7 6

11 Birchgrove Road

BALMAIN NSW 2041

PHONE 02 9555 9077

FAX 02 9555 9503

PRINCIPALS AND  
DESIGNATED  
ARCHITECTS

JEFF MADDEN  
BARCH (HONS)  
MSc (ARCH) (CONS)  
FRATA  
REG. No. 4068

**1 Standard for which exemption is sought :**

Leichhardt DCP – Part C : Place – Section 3 – Residential provisions – Clause 2.4  
– Site capacity – FSR 0.9:1

**2. What is the underlying object or purpose of the Standard? How does a variation not adversely affect this Standard?**

The objectives of this standard are as follows—

- “01 To ensure adequate separation between buildings for visual and acoustic privacy, solar access and air circulation.
- 02 To ensure the character of the existing dwelling and/or desired future character and established pattern of development is maintained.
- 03 To ensure that buildings are constructed within an appropriate Building Location Zone (BLZ) from the front and rear boundary to protect neighbourhood features such as streetscape, private open space, solar access and views.
- 04 To ensure that development:
- a. reinforces the desired future character and distinct sense of place of the streetscape, neighbourhood and Leichhardt;
  - b. emphasises the street and public domain as a vibrant, safe and attractive place for activity and community interaction;
  - c. complements the siting, scale and form of adjoining development; and
  - d. creates a high level of residential amenity for the site and protects existing or enhances residential amenity of adjoining sites in terms of visual and acoustic privacy, air circulation, solar access, daylight, outlook and views”

The site of the proposed development is only 113.5m, so great care has had to be exercised in the design of the additions to be sympathetic to the adjoining buildings to the north and south of the proposed development.

The building fits the BLZ and the living space at the rear of the property is to open directly onto a landscaped garden over the garage without any loss of amenity to the neighbouring properties.

The proposed FSR is intended to be 1.28:1 which we believe to be reasonable considering the limitations of the site.

With respect to the subject site, the following should also be noted :

- The site is very narrow being 4,67m at the rear, limiting design options.
- While the building will be built to the side boundaries, the proposal will have no adverse effects on the amenity of the adjoining properties, which are also built to the side boundaries.

Ref: H: 85/SEPP 2-2 /Floor space ratio  
Rev: 0 / May2021

PAGE 1 of 4

MADDEN ASSOCIATES



J E F F  
M A D D E N  
&  
A S S O C I A T E S  
A B N  
1 5 0 0 2 7 4 2 4 7 6

11 Birchgrove Road  
BALMAIN NSW 2041  
PHONE 02 9555 9077  
FAX 02 9555 9503

PRINCIPALS AND  
DESIGNATED  
ARCHITECTS  
  
JEFF MADDEN  
BARCH (HONS)  
MSc (ARCH) (CONS)  
FRAIA  
REG. No. 4068

- The proposed development is built to the BLZ as shown in the SEE and will cast no shadows on the property to the south which is the only property affected by the proposal.
- There will be no reduction of existing available views from adjoining properties.
- The impact on visual and acoustic privacy of neighbours is not to be altered;
- The Evans Street form remains unaltered, and the elevation to Hannover Street will be consistent with other development in the street and the street pattern in the locality will be maintained;
- There will be no adverse impact in terms of sunlight and privacy and bulk and scale in the locality.

For the reasons stated above we believe that the proposed variation to the standard would not adversely affect the intent of this Standard

**3. Is Compliance with the Standard consistent with the aims of the Policy? Does compliance hinder the objects of the EPA Act 1979?**

We understand that the aims of the plan are as follows :

- “(1) This Plan aims to make local environmental planning provisions for land in Leichhardt in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.
- (2) The particular aims of this Plan are as follows—
  - (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,
  - (a) to ensure that development applies the principles of ecologically sustainable development,
  - (b) to minimise land use conflict and the negative impact of urban development on the natural, social, economic, physical and historical environment,
  - (c) to identify, protect, conserve and enhance the environmental and cultural heritage of Leichhardt,
  - (d) to promote a high standard of urban design in the public and private domains,
  - (e) to protect and enhance the amenity, vitality and viability of Leichhardt for existing and future residents, and people who work in and visit Leichhardt,
  - (f) to maintain and enhance Leichhardt’s urban environment,
  - (g) to ensure that land use zones are appropriately located to maximise access to sustainable transport, community services, employment and economic opportunities, public open space, recreation facilities and the waterfront,
  - (h) to promote accessible and diverse housing types, including the provision and retention of—
    - (i) housing for seniors or people with a disability, and
    - (ii) affordable housing,
  - (i) to provide for development that promotes road safety for all users, walkable neighbourhoods and accessibility, reduces car dependency and increases the use of active transport through walking, cycling and the use of public transport,
  - (j) to ensure an adequate supply of land and housing to facilitate—
    - (i) employment and economic opportunities, and
    - (ii) the provision of goods and services that meet the needs of the local and subregional population”
  - (k) to protect and enhance—



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PHONE 02 9555 9077

FAX 02 9555 9503

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- (i) views and vistas of Sydney Harbour, Parramatta River, Callan Park and Leichhardt and Balmain civic precincts from roads and public vantage points, and
- (ii) views and view sharing from and between private dwellings,
- (l) to ensure that development is compatible with the character, style, orientation and pattern of surrounding buildings, streetscape, works and landscaping and the desired future character of the area,
- (m) to ensure that development provides high quality landscaped areas in residential developments,
- (n) to protect, conserve and enhance the character and identity of the suburbs, places and landscapes of Leichhardt, including the natural, scientific and cultural attributes of the Sydney Harbour foreshore and its creeks and waterways, and of surface rock, remnant bushland, ridgelines and skylines,
- (o) to prevent undesirable incremental change, including demolition, that reduces the heritage significance of places, conservation areas and heritage items,
- (p) to provide for effective community participation and consultation for planning and development,
- (q) to promote opportunities for equitable and inclusive social, cultural and community activities,
- (r) to promote the health and well being of residents, business operators, workers and visitors,
- (s) to ensure that development applies the principles of crime prevention through design to promote safer places and spaces,
- (t) to ensure that development responds to, conserves, protects and enhances the natural environment, including terrestrial, aquatic and riparian habitats, bushland, biodiversity, wildlife habitat corridors and ecologically sensitive land,
- (u) to promote energy conservation, water cycle management (incorporating water conservation, water reuse, catchment management, stormwater pollution control and flood risk management) and water sensitive urban design,
- (v) to ensure that existing landforms and natural drainage systems are protected,
- (w) to ensure that the risk to the community in areas subject to environmental hazards is minimised,
- (x) to ensure that the impacts of climate change are mitigated and adapted to."

We believe the proposal does not conflict with the aims of the Plan and that compliance with the Standard in this case will not be inconsistent with the aims of the Policy. We understand the aim of the Policy is to provide flexibility in how such Standards are applied which therefore does allow for non-compliance with the Standard.

**4. Why compliance with the Standard is unreasonable or unnecessary. What are the special circumstances in this case?**

Should the standard be strictly followed new additions would not be able to take advantage of the site opportunities, and result in a lesser quality of design for the site.

We submit that allowing the building to be built to the proposed FSR will not interfere with the existing character, form or scale of the area and is of reasonable form/size relative to the existing bulk and scale of adjacent properties in the locality.

We believe that the existing site and building holds potential for the proposed alterations and additions and that the proposal includes what is considered an acceptable utilization of available space and improves amenity to the existing building and with no loss of amenity to adjoining buildings.

Given the aforementioned lack of detrimental impact of this proposal, the fact that the proposal has no adverse effects on surrounding development, we consider it is

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unreasonable and unnecessary in this case to adhere to the base FSR as set in Council's DCP and ask for Council's support in this objection under Clause 4.6 of the LEP.

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PHONE 02 9555 9077

FAX 02 9555 9503

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JEFF MADDEN  
BARCH (HONS)  
MSc (ARCH) (CONS)  
FRAIA  
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**CLAUSE 4.6 OF LEICHHART LEP 2013**

**EXEMPTION TO DEVELOPMENT STANDARD**

**FOR DEVELOPMENT APPLICATION AT 88 EVANS STREET, ROZELLE, NSW**

**1 Standard for which exemption is sought :**



Leichhardt LEP 2013 – Amendment No.4 – Landscaped area - Clause 4.3A (3)(a)(i) as noted in Cl. 5 of the amendment - Landscaped area for a site with an area of less than 235sm shall be 15% of the site area.

The landscaped area required is 15% of the site or 17sm. The landscaped area proposed is 0sm as allowed with the amendment, although a shared landscaped space of 22.88sm of “grasscell” paving is shared with the proposed parking area.

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**2. What is the underlying object or purpose of the Standard? How does a variation not adversely affect this Standard?**

The aims of the plan are listed as follows under 1.1AA sub-clause 1.2 (1) —

- “(1) This Plan aims to make local environmental planning provisions for land in Leichhardt in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.
- (2) The particular aims of this Plan are as follows—
  - (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,
  - (a) to ensure that development applies the principles of ecologically sustainable development,
  - (b) to minimise land use conflict and the negative impact of urban development on the natural, social, economic, physical and historical environment,
  - (c) to identify, protect, conserve and enhance the environmental and cultural heritage of Leichhardt,
  - (d) to promote a high standard of urban design in the public and private domains,
  - (e) to protect and enhance the amenity, vitality and viability of Leichhardt for existing and future residents, and people who work in and visit Leichhardt,
  - (f) to maintain and enhance Leichhardt’s urban environment,
  - (g) to ensure that land use zones are appropriately located to maximise access to sustainable transport, community services, employment and economic opportunities, public open space, recreation facilities and the waterfront,
  - (h) to promote accessible and diverse housing types, including the provision and retention of—
    - (i) housing for seniors or people with a disability, and
    - (ii) affordable housing,

11 Birchgrove Road  
  
BALMAIN NSW 2041  
  
PHONE 02 9555 9077  
  
FAX 02 9555 9503

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- (i) to provide for development that promotes road safety for all users, walkable neighbourhoods and accessibility, reduces car dependency and increases the use of active transport through walking, cycling and the use of public transport,
- (j) to ensure an adequate supply of land and housing to facilitate—
  - (i) employment and economic opportunities, and
  - (ii) the provision of goods and services that meet the needs of the local and subregional population,
- (k) to protect and enhance—
  - (i) views and vistas of Sydney Harbour, Parramatta River, Callan Park and Leichhardt and Balmain civic precincts from roads and public vantage points, and
  - (ii) views and view sharing from and between private dwellings,
- (l) to ensure that development is compatible with the character, style, orientation and pattern of surrounding buildings, streetscape, works and landscaping and the desired future character of the area,
- (m) to ensure that development provides high quality landscaped areas in residential developments,
- (n) to protect, conserve and enhance the character and identity of the suburbs, places and landscapes of Leichhardt, including the natural, scientific and cultural attributes of the Sydney Harbour foreshore and its creeks and waterways, and of surface rock, remnant bushland, ridgelines and skylines,
- (o) to prevent undesirable incremental change, including demolition, that reduces the heritage significance of places, conservation areas and heritage items,
- (p) to provide for effective community participation and consultation for planning and development,
- (q) to promote opportunities for equitable and inclusive social, cultural and community activities,
- (r) to promote the health and well being of residents, business operators, workers and visitors,
- (s) to ensure that development applies the principles of crime prevention through design to promote safer places and spaces,
- (t) to ensure that development responds to, conserves, protects and enhances the natural environment, including terrestrial, aquatic and riparian habitats, bushland, biodiversity, wildlife habitat corridors and ecologically sensitive land,
- (u) to promote energy conservation, water cycle management (incorporating water conservation, water reuse, catchment management, stormwater pollution control and flood risk management) and water sensitive urban design,
- (v) to ensure that existing landforms and natural drainage systems are protected,



- (w) to ensure that the risk to the community in areas subject to environmental hazards is minimised,
- (x) to ensure that the impacts of climate change are mitigated and adapted to."

The amendment to Clause 4.3A of the LEP further notes with respect to landscaped areas for residential accommodation In Zone R1, the objectives of the Clause are :



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"[5] Clause 4.3A Landscaped areas for residential accommodation in Zone R1  
Omit clause 4.3A (3). Insert instead:

- (3) Development consent must not be granted to development to which this clause applies unless:
  - (a) the development includes landscaped area that comprises at least:
    - (i) where the lot size is equal to or less than 235 square metres—15% of the site area, or
    - (ii) where the lot size is greater than 235 square metres—20% of the site area, and
  - (b) the site coverage does not exceed 60% of the site area.
- (4) For the purposes of subclause (3):
  - (a) the site area is to be calculated under clause 4.5 (3), and
  - (b) any area that:
    - (i) has a length or a width of less than 1 metre, or
    - (ii) is greater than 500mm above ground level (existing), is not to be included in calculating the proportion of landscaped area, and
  - (c) any deck or balcony or the like (whether enclosed or unenclosed) is not to be included in calculating the site coverage if:
    - (i) it is 2.4 metres or more above ground level (existing), as measured from the underside of the structure and the area below the structure is able to be landscaped or used for recreational purposes, or
    - (ii) the finished floor level is 500mm or less above ground level (existing)"

With respect to the subject site, the following should also be noted :

- A landscaped area has been provided at RL21.66, paved with "Grasscell" paving, shared with a parking space to provide for recreational purposes.
- The proposed addition will be in alignment with the building to the north and be considerably less than the building to the south in accordance with Council's BLZ requirements
- There will be no reduction of existing available views from adjoining properties.
- The impact on visual and acoustic privacy of neighbours is not to be altered;
- The elevation to Hannover Street will be consistent with other development in the street and the street pattern in the locality will be maintained, especially that of the neighbor to the south who has also built over the parking area to the boundary;
- There will be no adverse impact in terms of sunlight and privacy and bulk and scale in the locality.

For the reasons stated above we believe that the proposed variation to the standard would not adversely affect the intent of this standard and would be in compliance with the provisions of the Clause as noted above.

**3. Is Compliance with the Standard consistent with the aims of the Policy? Does compliance hinder the objects of the EPA Act 1979?**

We understand that the aims of 4.6 of the plan are as follows :

- “(1) The objectives of this clause are as follows—
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless—
  - (a) the consent authority is satisfied that—
    - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—



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11 Birchgrove Road  
BALMAIN NSW 2041  
PHONE 02 9555 9077  
FAX 02 9555 9503

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JEFF MADDEN  
BARCH (HONS)  
MSc (ARCH) (CONS)  
FRAIA  
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- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—  
When this Plan was made it did not include any of these zones.



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

We believe the proposal does not conflict with the aims of the Plan and that non-compliance with the Standard in this case will not be inconsistent with the aims of the Policy. We understand the aim of the Policy is to provide flexibility in how such Standards are applied which therefore does allow for non-compliance with the Standard.

**4. Why compliance with the Standard is unreasonable or unnecessary. What are the special circumstances in this case?**

Should the standard be strictly followed the provided landscaped space would not be considered as landscaped space and the new additions would be limited to considerably less than those permitted for the adjoining buildings to the north and south and greatly disadvantage our Client's ability to redevelop his property taking advantage of the site and its opportunities, and would result in a lesser quality of design for the site.

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We submit that the proposed landscaped space will not interfere with the existing character, form or scale of the area and is of reasonable form/size relative to the existing bulk and scale of adjacent properties in the locality.

We believe that the existing site and building holds potential for the proposed alterations and additions and that the proposal includes what is considered an acceptable utilization of available space and improves amenity to the existing building and with no loss of amenity to adjoining buildings.

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Given the aforementioned lack of detrimental impact of this proposal, the fact that the proposal has no adverse effects on surrounding development, we consider it is unreasonable and unnecessary in this case to adhere to the landscape requirements of the LEP in this case and ask for Council's support in this objection under Clause 4.6 of the LEP.

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**CLAUSE 4.6 OF LEICHHART LEP 2013**

**EXEMPTION TO DEVELOPMENT STANDARD**

**FOR DEVELOPMENT APPLICATION AT 88 EVANS STREET, ROZELLE, NSW**

**1 Standard for which exemption is sought :**



Leichhardt LEP 2013 – Amendment No.4 – Site coverage Clause 4.3A (3)(b) as noted in Cl. 5 of the amendment -Site cover shall not exceed 60% of the site.

The site coverage proposed is 91.84sm or 80.15% of the site which exceeds the allowable 60% site coverage allowed with the amendment.

**2. What is the underlying object or purpose of the Standard? How does a variation not adversely affect this Standard?**

The aims of the plan are listed as follows under 1.1AA sub-clause 1.2 (1) —

- “(1) This Plan aims to make local environmental planning provisions for land in Leichhardt in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.
- (2) The particular aims of this Plan are as follows—
  - (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,
  - (a) to ensure that development applies the principles of ecologically sustainable development,
  - (b) to minimise land use conflict and the negative impact of urban development on the natural, social, economic, physical and historical environment,
  - (c) to identify, protect, conserve and enhance the environmental and cultural heritage of Leichhardt,
  - (d) to promote a high standard of urban design in the public and private domains,
  - (e) to protect and enhance the amenity, vitality and viability of Leichhardt for existing and future residents, and people who work in and visit Leichhardt,
  - (f) to maintain and enhance Leichhardt’s urban environment,
  - (g) to ensure that land use zones are appropriately located to maximise access to sustainable transport, community services, employment and economic opportunities, public open space, recreation facilities and the waterfront,
  - (h) to promote accessible and diverse housing types, including the provision and retention of—
    - (i) housing for seniors or people with a disability, and
    - (ii) affordable housing,
  - (i) to provide for development that promotes road safety for all users, walkable neighbourhoods and accessibility, reduces car dependency and

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11 Birchgrove Road

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PHONE 02 9555 9077

FAX 02 9555 9503

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DESIGNATED  
ARCHITECTS

JEFF MADDEN  
BARCH (HONS)  
MSc (ARCH) (CONS)  
FRAIA  
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BARCH (HONS)  
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- increases the use of active transport through walking, cycling and the use of public transport,
- (j) to ensure an adequate supply of land and housing to facilitate—
    - (i) employment and economic opportunities, and
    - (ii) the provision of goods and services that meet the needs of the local and subregional population,
  - (k) to protect and enhance—
    - (i) views and vistas of Sydney Harbour, Parramatta River, Callan Park and Leichhardt and Balmain civic precincts from roads and public vantage points, and
    - (ii) views and view sharing from and between private dwellings,
  - (l) to ensure that development is compatible with the character, style, orientation and pattern of surrounding buildings, streetscape, works and landscaping and the desired future character of the area,
  - (m) to ensure that development provides high quality landscaped areas in residential developments,
  - (n) to protect, conserve and enhance the character and identity of the suburbs, places and landscapes of Leichhardt, including the natural, scientific and cultural attributes of the Sydney Harbour foreshore and its creeks and waterways, and of surface rock, remnant bushland, ridgelines and skylines,
  - (o) to prevent undesirable incremental change, including demolition, that reduces the heritage significance of places, conservation areas and heritage items,
  - (p) to provide for effective community participation and consultation for planning and development,
  - (q) to promote opportunities for equitable and inclusive social, cultural and community activities,
  - (r) to promote the health and well being of residents, business operators, workers and visitors,
  - (s) to ensure that development applies the principles of crime prevention through design to promote safer places and spaces,
  - (t) to ensure that development responds to, conserves, protects and enhances the natural environment, including terrestrial, aquatic and riparian habitats, bushland, biodiversity, wildlife habitat corridors and ecologically sensitive land,
  - (u) to promote energy conservation, water cycle management (incorporating water conservation, water reuse, catchment management, stormwater pollution control and flood risk management) and water sensitive urban design,
  - (v) to ensure that existing landforms and natural drainage systems are protected,
  - (w) to ensure that the risk to the community in areas subject to environmental hazards is minimised,

- (x) to ensure that the impacts of climate change are mitigated and adapted to.”

The amendment to Clause 4.3A of the LEP further notes with respect to landscaped areas for residential accommodation In Zone R1, the objectives of the Clause are :

“[5] Clause 4.3A Landscaped areas for residential accommodation in Zone R1  
Omit clause 4.3A (3). Insert instead:



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- (3) Development consent must not be granted to development to which this clause applies unless:
  - (a) the development includes landscaped area that comprises at least:
    - (i) where the lot size is equal to or less than 235 square metres—15% of the site area, or
    - (ii) where the lot size is greater than 235 square metres—20% of the site area, and
  - (b) the site coverage does not exceed 60% of the site area.
- (4) For the purposes of subclause (3):
  - (a) the site area is to be calculated under clause 4.5 (3), and
  - (b) any area that:
    - (i) has a length or a width of less than 1 metre, or
    - (ii) is greater than 500mm above ground level (existing), is not to be included in calculating the proportion of landscaped area, and
  - (c) any deck or balcony or the like (whether enclosed or unenclosed) is not to be included in calculating the site coverage if:
    - (i) it is 2.4 metres or more above ground level (existing), as measured from the underside of the structure and the area below the structure is able to be landscaped or used for recreational purposes, or
    - (ii) the finished floor level is 500mm or less above ground level (existing)”

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PHONE 02 9555 9077

FAX 02 9555 9503

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With respect to the subject site, the following should also be noted :

- The proposed addition will be in alignment with the building to the north and be considerably less than the building to the south in accordance with Council’s BLZ requirements
- There will be no reduction of existing available views from adjoining properties.
- The impact on visual and acoustic privacy of neighbours is not to be altered;
- The elevation to Hannover Street will be consistent with other development in the street and the street pattern in the locality will be maintained, especially that of the neighbor to the south who has also built over the parking area to the boundary;
- There will be no adverse impact in terms of sunlight and privacy and bulk and scale in the locality.

For the reasons stated above we believe that the proposed variation to the standard would not adversely affect the intent of this standard and would be in compliance with the provisions of the Clause as noted above.

**3. Is Compliance with the Standard consistent with the aims of the Policy? Does compliance hinder the objects of the EPA Act 1979?**

We understand that the aims of 4.6 of the plan are as follows :

- “ (1) The objectives of this clause are as follows—

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- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless—
- (a) the consent authority is satisfied that—
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—  
When this Plan was made it did not include any of these zones.



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

We believe the proposal does not conflict with the aims of the Plan and that non-compliance with the Standard in this case will not be inconsistent with the aims of the Policy. We understand the aim of the Policy is to provide flexibility in how such Standards are applied which therefore does allow for non-compliance with the Standard.

**4. Why compliance with the Standard is unreasonable or unnecessary. What are the special circumstances in this case?**

Should the standard be strictly followed new additions would be limited to considerably less than those permitted for the adjoining buildings to the north and south and greatly disadvantage our Client's ability to redevelop his property taking advantage of the site and its opportunities, and would result in a lesser quality of design for the site.

We submit that the proposed site cover will not interfere with the existing character, form or scale of the area and is of reasonable form/size relative to the existing bulk and scale of adjacent properties in the locality.

We believe that the existing site and building holds potential for the proposed alterations and additions and that the proposal includes what is considered an acceptable utilization of available space and improves amenity to the existing building and with no loss of amenity to adjoining buildings.

Given the aforementioned lack of detrimental impact of this proposal, the fact that the proposal has no adverse effects on surrounding development, we consider it is unreasonable and unnecessary in this case to adhere to the site coverage requirements of the LEP in this case and ask for Council's support in this objection under Clause 4.6 of the LEP.

11 Birchgrove Road  
  
BALMAIN NSW 2041  
  
PHONE 02 9555 9077  
  
FAX 02 9555 9503

PRINCIPALS AND  
DESIGNATED  
ARCHITECTS

JEFF MADDEN  
BARCH (HONS)  
MSc (ARCH) (CONS)  
FRAIA  
REG. No. 4068

JEFF MADDEN AND ASSOCIATES

MARCH 2022

Ref: H: 851/Corres/SEPP 4-2 /Site cover  
Rev: 0 / May 2021

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MADDEN ASSOCIATES



## Attachment D – Statement of Heritage Significance

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### Area 12 The Valley (Rozelle and Balmain)

#### Landform

This conservation area comprises a large but tightly formed valley which falls south and east from the Darling Street ridge towards White Bay affording enclosed views to industrial workings of the port city in the bay.

It includes a number of subdivisions/part subdivisions around the highest land in the Leichhardt Municipality on either side of the Darling Street ridge and across Victoria Road. It includes land east of Wellington Street to White Bay. It also includes the civic buildings and the commercial zone of Rozelle on both sides of Victoria Road, the land east of the Darling Street ridge beyond the commercial zone, the civic and commercial buildings of Balmain retail centre, small groups of shops along Darling Street and the former retail area of Evans and Beattie Streets.

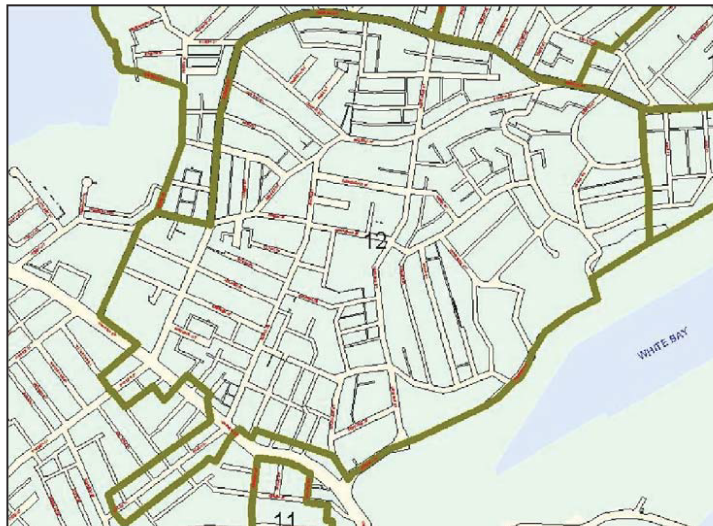


Figure 12.1 The Valley Conservation Area Map.

#### History

When sales of John Gilchrist's Balmain 550-acre grant were resumed in 1852, Surveyor Charles Langley subdivided the remaining acres into 46 (later 47) sections, using existing routes such as Darling Street, and other contour-hugging tracks, such as Beattie Street and Mullens Street to delineate the parcels. The sections were purchased over the next thirty years by wealthy investors, local speculators and builders.

The largest of the estates put together from Langley's subdivisions was the 19 acres of the Merton Estate purchased by piano importers Paling and Starling, druggists George and Frederick Elliott and estate agent Alfred Hancock. It occupied the land between Terry Street and Evans Street. It was subdivided by its owners into 197 allotments generally 30ft x 100ft with 50ft-wide grid

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pattern of roads, and was auctioned by local agent and developer, Alfred Hancock from 1874.

A miscellaneous collection of service and consumer trades servicing these new dwellings appeared along Evans Street in the 1870s making it the main commercial thoroughfare along the upper reaches of the Balmain peninsula.

By the 1880s the growth of industry, including noxious industry, in White Bay and along Whites Creek, made the south and east-facing slopes of the Darling Street ridge unattractive for a more affluent residential market. Those who could find employment in these industries would seek housing within walking distance, as public transport – then the horse drawn bus or later the steam tram – were too expensive. Canny speculators, such as Hancock (later Mayor of Balmain) sold to small builders who constructed very dense workers' housing for rentees or purchasers on small budgets. By 1891 a large part of this area had been built upon.

The arrival of the government-owned steam tram at the junction of Darling Street and Victoria Road in 1892, provided relatively more affluent residents along its route with transport to the city, and a greater choice of employment away from places within immediate walking distance from home. The advent of the tramway probably explains the major impetus to growth in the area particularly to the west of Evans Street, so that in the 1890s much of Terry, Wellington, Merton and Nelson Streets were built upon with one-storey brick semis, pairs or small groups of terraces (two to an allotment) and double-fronted single-storey houses (one to an allotment). Most of these buildings were constructed by local builders such as Robert Gordon, William Whitehorn and James Gibson, whose small-scale operations are indicated by the small groups of similar houses or terraces.

From the 1850s, Booth's Saw Mill on White Bay provided a cheap source of timber and weatherboards, promoting weatherboard houses as the norm for workers' housing throughout Balmain until brick terrace housing became prevalent in the late nineteenth century.

The extension of the steam tram service along Darling Street by 1900 encouraged shopkeepers to relocate there to catch the passing trade, and Evans Street was superseded as a commercial centre.

The Metropolitan Detail Survey Sydney Water Archive<sup>1</sup> suggests that almost all the land east of Wellington Street was built upon by 1905.

By 1907 the precinct was generally known as Rozelle.

#### Sources

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

Further information provided by Max Solling.

#### Significant Characteristics

- Contour hugging main roads – Evans, Beattie and Reynolds.

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- Outline of subdivisions, size and aspect of allotments, determined by route of main roads.
- Wider residential roads off Darling Street ridge, with grid subdivision pattern, but
- Generally narrow roads between main access roads.
- Narrow, often shallow allotments.
- Back lanes are rare.
- Dense urban environment.
- Continuous lines of buildings create sharply defined lineal spaces.
- Buildings stepped up and down hill, following the topography.
- Houses sited close to road near Darling Street ridge; and sited onto the road alignment nearer to White Bay.
- Small front gardens near Darling Street; there are fewer gardens towards White Bay.
- Tree planting is minimal except where wider main access roads provide enough room – Langley, Roseberry, Llewelyn and Reynolds Street.
- Large stands of trees in parks and open spaces.
- Small range of housing types: single-fronted, single-storey timber terraces, two-storey terraces, free-standing timber or stone single-storey cottages.
- Some larger villas on high land around Smith Street, and more generous terraces in similar locations.
- Scale predominantly limited to one or two storeys.
- Pubs with verandahs act as punctuation marks in the streetscape.
- Corner stores.
- Commercial premises (and former commercial premises) with attached dwellings along Evans and Darling Streets.
- Small industrial/warehouse buildings occur throughout the area.
- Variety of materials – large number of timber, plastered brick, some later (1890s+) face brick and a few stone buildings.
- Roof materials vary – iron is common, terracotta tiles, some slate.
- Stone retaining walls.
- Remnants of iron palisade fences define some street frontages.
- Suspended awnings to commercial facades along Darling and Evans Streets.
- Sandstone kerbs and gutters.

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

- One of a number of conservation areas which collectively illustrate the nature of Sydney's early suburbs and Leichhardt's suburban growth particularly between 1871 and 1891, with pockets of infill up to the end of the 1930s (ie prior to World War II). This area is important for illustrating development for workers' and artisan housing particularly from 1871-1891 which forms the major element of its identity. It is significant for its surviving development from that period and the later infill development up to World War II (ie pre-1939).
- Retains evidence of all its layers of growth within that period from the late-1870s.
- Through its important collection of weatherboard buildings, including the now rare timber terraces, it continues to demonstrate the nature of this important/major construction material in the fabric of early Sydney suburbs, and the proximity of Booth's saw mill and timber yards in White Bay.
- Through the mixture of shops, pubs and industrial buildings it demonstrates the nature of a Victorian suburb, and the close physical relationship between industry and housing in nineteenth century cities before the advent of the urban reform movement and the separation of land uses.
- Demonstrates through the irregular pattern of its subdivision the small-scale nature of the spec builders responsible for the construction of the suburb.
- Demonstrates the nature of some private subdivisions before the introduction of the Width of Streets and Lanes Act of 1881 required roads to be at least one chain wide.

#### Maintenance of Heritage Values

##### Generally

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

##### Retain

- Existing width and alignment of streets: avoid chicanes which cut diagonally across the carriageway.
- Existing back lanes.
- All buildings pre-1939 and particularly all timber buildings
- All original plaster finishes to external walls - reconstruct where necessary.
- All original unplastered face brick walls.
- All original external architectural detail, decorative tiles, plaster mouldings, chimneys, roof ridges and finials, commercial signs etc.

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Encourage replacement of lost elements, but only where evidence is available.

- All remaining sandstone kerbs and gutters.
- All corner stores, corner pubs and industrial buildings within the residential areas, and encourage their restoration. Consider small-scale commercial or professional uses for these buildings, if original uses no longer operate, as a reference to their original uses.
- Street and park planting; reinstate where necessary

Avoid

- Amalgamation that might lead to a change in the densely developed streetscape.
- Demolition of any pre-1939 building, particularly those pre-1910.
- Demolition of any remaining timber building.
- Additional storeys above the existing form of the building.
- Posted-verandahs over footpaths to commercial premises where no evidence can be provided to support their reconstruction. Encourage restoration of verandahs where evidence exists.
- Removal of plaster to external walls, where part of the original construction. Removal of original architectural details.
- Additional architectural detail for which there is no evidence.
- Inappropriate fences such as high brick walls, new iron palisades on high brick bases.
- Interruption to the almost continuous kerb and gutter line.

Endnotes

<sup>1</sup> Solling & Reynolds, p 81.

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