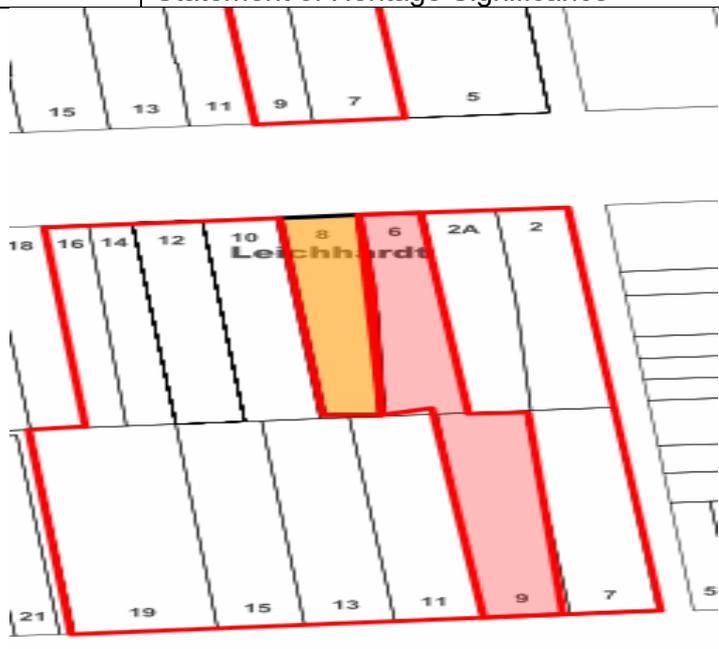


|  DEVELOPMENT ASSESSMENT REPORT | |
|---|--|
| Application No. | DA/2022/0382 |
| Address | 8 Carlisle Street LEICHHARDT |
| Proposal | Alterations and additions to existing dwelling and pool installation |
| Date of Lodgement | 24 May 2022 |
| Applicant | Mr Amer Younis |
| Owner | CYS NSW Investments Pty Ltd |
| Number of Submissions | 2 |
| Value of works | \$626,877.00 |
| Reason for determination at Planning Panel | Clause 4.6 variation exceeds 10% |
| Main Issues | Departure with Floor Space Ratio development standard |
| Recommendation | Approved with Conditions |
| Attachment A | Recommended conditions of consent |
| Attachment B | Plans of proposed development |
| Attachment C | Clause 4.6 Exception to Development Standards Floor Space Ratio |
| Attachment D | Statement of Heritage Significance |
|  | |
| LOCALITY MAP | |
| Subject Site  | Objectors  |
| Notified Area  | Supporters  |
|  N | |

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to an existing dwelling and pool installation at 8 Carlisle Street Leichhardt.

The application was notified to surrounding properties and 2 submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Departure with Floor Space Ratio development standard pursuant to the Leichhardt Local Environmental Plan 2013

The departure from the Floor Space Ratio (FSR) development standard has also been assessed to be acceptable as the proposal meets all heads of consideration under the provisions of Clause 4.6 of the Leichhardt Local Environmental Plan 2013 including the relevant zone and development standard objectives summarised as follows:

- The development will be compatible with the character, style, orientation and pattern of surrounding buildings and broader streetscape context where the alterations are oriented towards the rear courtyard and not visible from the public domain.
- The proposal will not adversely impact upon the amenity of neighbouring properties, with particular regard to bulk and scale, visual and acoustic privacy and solar access.
- The development provides sufficient landscaped areas that are balanced with the proposed built form.

The proposal is otherwise generally compliant with the suite of planning controls pertaining to the development.

Accordingly, the application is recommended for approval.

2. Proposal

The proposal seeks alterations and additions to an existing two storey terrace consisting of:

- Extension of the rear ground floor addition further to the rear and side (western) boundary,
- Internal renovations to the ground floor,
- New swimming pool to the rear,
- Removal of 1 tree to the rear of the site,
- Extending the existing rear first floor addition to the rear and side (western) boundary to provide an additional bedroom with ensuite and walk in robe; and
- New first floor bathroom.

3. Site Description

The subject site is located on the southern side of Carlisle Street. The site consists of one (1) allotment and is generally rectangular in shape with a total area of 342.3 sqm.

The site has a frontage to Carlisle Street of 8.305 metres. The site is affected by an easement including a 3.06 metre wide right of way.

The site supports a two-storey terrace building. The adjoining property to the east supports a similar two storey terrace building and a single storey dwelling to the west.

The property is located within a heritage conservation area.



Figure 1: Zone Map – R1 – General Residential Zone – Heritage Conservation Area

4. Background

4(a) Site history

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

Subject Site

| Application | Proposal | Decision & Date |
|---------------|--|---------------------------------|
| PDA/2022/0018 | Alterations and additions to an existing dwelling, new swimming pool, new garage with first floor studio | Advice Letter Issued – 3/5/2022 |
| D/2000/1025 | Single storey additions to rear of existing dwelling. | Approved – 19/6/2001 |

Surrounding properties10 Carlisle Street Leichhardt

| Application | Proposal | Decision & Date |
|---------------|---|----------------------------------|
| DA/2022/0321 | Demolition of existing structures for the construction of a two storey dwelling and associated structures | Under Assessment |
| PDA/2021/0261 | Heritage advice sought relating to proposed demolition of existing dwelling-house | Advice Letter Issued – 28/7/2021 |

4(b) Application history

Not applicable

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 (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

The following provides further discussion of the relevant issues:

5(a)(i) State Environmental Planning Policy (Resilience and Hazards) 2021**Chapter 4 Remediation of land**

Section 4.16 (1) of the SEPP requires the consent authority not consent to the carrying out of any development on land unless:

- “(a) it has considered whether the land is contaminated, and
 (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
 (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”

In considering the above, there is no evidence of contamination on the site.

There is also no indication of uses listed in Table 1 of the contaminated land planning guidelines within Council's records. The land will be suitable for the proposed use as there is no indication of contamination.

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) State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas

The protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council's LDCP 2013.

The application seeks the removal of vegetation from within the site. The application was referred to Council's Tree Management Officer whose comments are summarised as follows:

The application can be supported with conditions.

It is noted that Tree 1 (located at the rear of the adjacent site at 10 Carlisle Street) is supported for removal under DA/2022/0321 (not yet determined). Notwithstanding the support for removal, as the tree remains at this time conditions are provided in the circumstance that the DA is not approved or has not been acted upon when the works on the subject site are commenced.

The proposed works are within the theoretical structural root zone of Tree 1 on the adjacent site however it is highly likely that the existing concrete block boundary wall (and associated footing) have limited tree root growth into the subject site and this has been considered in the decision to provide conditions rather than to request root mapping along the boundary adjacent the tree. An additional consideration is that the theoretical Tree Protection Zone of Tree 1 within the subject site is currently paved and therefore the coverage with a structure will have a minor addition impact only.

The removal of the Eriobotrya japonica (Tree 3 - Loquat) is supported as this tree is subject of the Trees Minor Works list in the Tree Management DCP and can be removed subject to suitable replacement.

Tree 2 is not subject to the Tree Management Controls due to size.

Overall, the proposal is considered acceptable with regard to the SEPP and C1.14 Tree Management of the LDCP 2013 subject to the imposition of conditions, which have been included in the recommendation of this report.

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 4.4 – 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
- Clause 6.8 - Development in areas subject to aircraft noise

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

| Standard | Proposal | non compliance | Complies |
|---|---------------------|--------------------|----------|
| Floor Space Ratio Maximum permissible: 0.6:1 or 205.74sqm | 0.68:1 or 233.3 sqm | 27.56sqm or 13.40% | No |
| Landscape Area Minimum permissible: 20% | 42.36% | N/A | Yes |
| Site Coverage Maximum permissible: 60% | 53.96% | N/A | Yes |

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of the *Leichhardt Local Environment Plan 2013* by 13.40% or 27.56sqm.

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 Local Environment Plan 2013* justifying the proposed contravention of the development standard which is summarised as follows:

- *Development Application proposes building heights and built forms which is consistent with the remainder of Carlisle Street and moreover is consistent with the broader Leichhardt general residential precinct and the floor space development standard.*
- *The proposed development incorporates a built form which is consistent with developments throughout the Leichhardt general residential precinct. Of particular note, the development incorporates a consistent built form with adjoining developments and dwellings located along Carlisle Street. Consistency with amenity of the built environment is the overall compliance of the development with the prescribed building height, site coverage, landscape area and solar access controls outlined for the site.*
- *Compliance with key controls and general compliance with the Leichhardt Development Control plan highlights a design consistent with the existing built form and building typology within the precinct. The proposed alterations and additions do not result in any alteration to the existing built form or bulk and scale from the streetscape with the front of the dwelling retained with no works proposed.*
- *The alterations and additions to the rear of the dwelling are of a modern, high-quality design which maximises the use of quality internal and external living areas while maintaining the residential amenity of adjoining properties. As such, the design and amenity of the development reinforces and enhances the built form, existing character and streetscape of the general residential precinct.*
- *The non-compliance with floor space ratio does not result in any privacy, acoustic, overshadowing or overlooking impacts to the development site, opens spaces, public domain or adjoining properties. As discussed, the overall bulk and scale of the development is consistent with the bulk and scale of developments located on Carlisle Street, with the site providing for a larger area of serviceable floor space within the limits of the dwelling areas.*

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

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

The objectives of the FSR development standard are as follows:

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

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

It is considered the development is in the public interest because it is consistent with the objectives of the LR1 zone, in accordance with Clause 4.6(4)(a)(ii) of the *Leichhardt Local Environment Plan 2013* for the following reasons:

- The development will continue to provide for the housing needs of the community where the works will improve the amenity of the existing dwelling for occupants
- The proposal retains the existing terrace and low density development and thus will continue to provide a variety of housing types in the LGA
- Will improve opportunity to work from home
- Will be compatible with the character, style, orientation and pattern of surrounding buildings and broader streetscape context
- Will not adversely impact upon the amenity of neighbouring properties

It is considered the development is in the public interest because it is consistent with the objectives of the Floor Space Ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the *Leichhardt Local Environment Plan 2013* for the following reasons:

- The development will be compatible with the character, style, orientation and pattern of surrounding buildings and broader streetscape context where the alterations/additions are oriented towards the rear courtyard and not visible from the public domain
- The proposal will not adversely impact upon the amenity of neighbouring properties, with particular regard for bulk and scale, visual and acoustic privacy and solar access
- The development provides sufficient landscaped areas that are balanced with the proposed built form.

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 *Leichhardt Local Environment Plan 2013*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the floor space ratio development standard, and it is recommended that the Clause 4.6 exception be granted.

Clause 5.10 - Heritage Conservation

The subject property at 2 Carlisle Street, Leichhardt, is a contributory dwelling located within the Whaleyborough Estate Heritage Conservation Area (C13 in Schedule 5 of the Leichhardt LEP 2013). It is within the vicinity of the heritage listed Royal Hotel, including interiors, at 156 Norton Street, Leichhardt (1682).

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

Overall the proposed demolition of the non-original rear wing (2000) and landscape plan can be supported from a heritage perspective. The new rear wing is subordinate to the main building form and employs an appropriate bulk and scale and materials and colours.

It is disappointing that point 4 (a) and (b) of the pre-DA (PDA/2022/0018) heritage advice which is reproduced below have not been taken into consideration.

4. *The applicant is encouraged to:*
 - a. *retain the layout of the existing living room and relocate the proposed laundry and W.C. to the rear addition and to retain the internal wall between existing living room and entry hallway; and*
 - b. *reinstate a more sympathetic iron balustrade to the first floor front balcony, matching the design of the first floor balustrading to the attached dwelling at No. 6.*

The proposal is generally acceptable subject to a condition of consent to have new metal roof profile traditionally corrugated.

Conclusion - DA

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

1. *Acceptable with the following conditions of consent:*

Metal Sheet Finish and Colour

Prior to the issue of the Construction Certificate, the Certifying Authority must be provided with plans indicating that new roofing material must comprise of either heritage barrel rolled traditional corrugated galvanised steel or pre-coloured traditional corrugated steel similar to Custom Orb Accent 35 in a colour equivalent to Colorbond's "Windspray", "Shale Grey", "Jasper" or "Wallaby."

In summary, subject to the above materials, finishes and colours condition being imposed, the proposed development will be of a siting, size, form, scale, design, materials and finishes and detail, and general design and appearance, that will be compatible with, and that will not detract from the existing dwelling, adjoining buildings, the significance and setting of the heritage items in the vicinity, or the Heritage Conservation Area, and will satisfy the streetscape / heritage provisions and objectives of this part of the *Leichhardt LEP 2013* and those contained in the Leichhardt DCP 2013.

5(a)(iv) Inner West Local Environmental Plan 2022

The Inner West Local Environment Plan 2022 (IWLEP) was gazetted on 12 August 2022. As per Section 1.8A – Savings Provisions, of this plan, as the subject Development Application was made before the commencement of this Plan, the application is to be determined as if the IWLEP 2022 had not commenced.

Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 requires consideration of any Environmental Planning Instrument (EPI), and (1)(a)(ii) also requires consideration of any EPI that has been subject to public consultation. At the time the subject application was lodged on 15 May 2022 the IWLEP, known as Draft Inner West Local Environmental Plan 2020, was a draft EPI, which had been publicly exhibited and was considered imminent and certain.

The draft EPI contained the following amended provisions:

- Changes to the Zone Objectives which 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 provide residential development that maintains the character of built and natural features in the surrounding area.

The proposed development raises no issues that will be contrary to the above objectives.

The proposal is considered acceptable with regard to the Inner West Local Environmental Plan 2022 (previously known as the Draft Inner West Local Environmental Plan 2020).

5(b) Draft Environmental Planning Instruments

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

| Draft Environmental Planning Instruments | Compliance |
|--|-------------------|
| Draft State Environmental Planning Policy (Environment) 2018 | Yes |
| Draft State Environmental Planning Policy (Remediation of Land) 2018 | Yes |
| Draft State Environmental Planning Policy (Environment) 2017 | Yes |

5(d) Development Control Plans

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

| LDCP2013 | Compliance |
|---|--|
| Part A: Introductions | |
| Section 3 – Notification of Applications | Yes |
| | |
| Part B: Connections | |
| B1.1 Connections – Objectives | Yes |
| B2.1 Planning for Active Living | Yes |
| B3.1 Social Impact Assessment | N/A |
| B3.2 Events and Activities in the Public Domain (Special Events) | N/A |
| | |
| Part C | |
| C1.0 General Provisions | Yes |
| C1.1 Site and Context Analysis | Yes |
| C1.2 Demolition | Yes |
| C1.3 Alterations and additions | Yes |
| C1.4 Heritage Conservation Areas and Heritage Items | Yes – see discussion under Clause 5.10 of the IWLEP 2022 |
| C1.5 Corner Sites | N/A |
| 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 | Yes |
| C1.11 Parking | N/A |
| C1.12 Landscaping | Yes |
| C1.13 Open Space Design Within the Public Domain | N/A |
| C1.14 Tree Management | Yes – see discussion under 5(a)(ii) State Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 2 Vegetation in non-rural areas |
| 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 |
| | |
| Part C: Place – Section 2 Urban Character | |
| C2.2.3.2 West Leichhardt Distinctive Neighbourhood | Yes |
| | |
| Part C: Place – Section 3 – Residential Provisions | |
| C3.1 Residential General Provisions | Yes |
| C3.2 Site Layout and Building Design | Yes – see discussion |
| C3.3 Elevation and Materials | Yes |

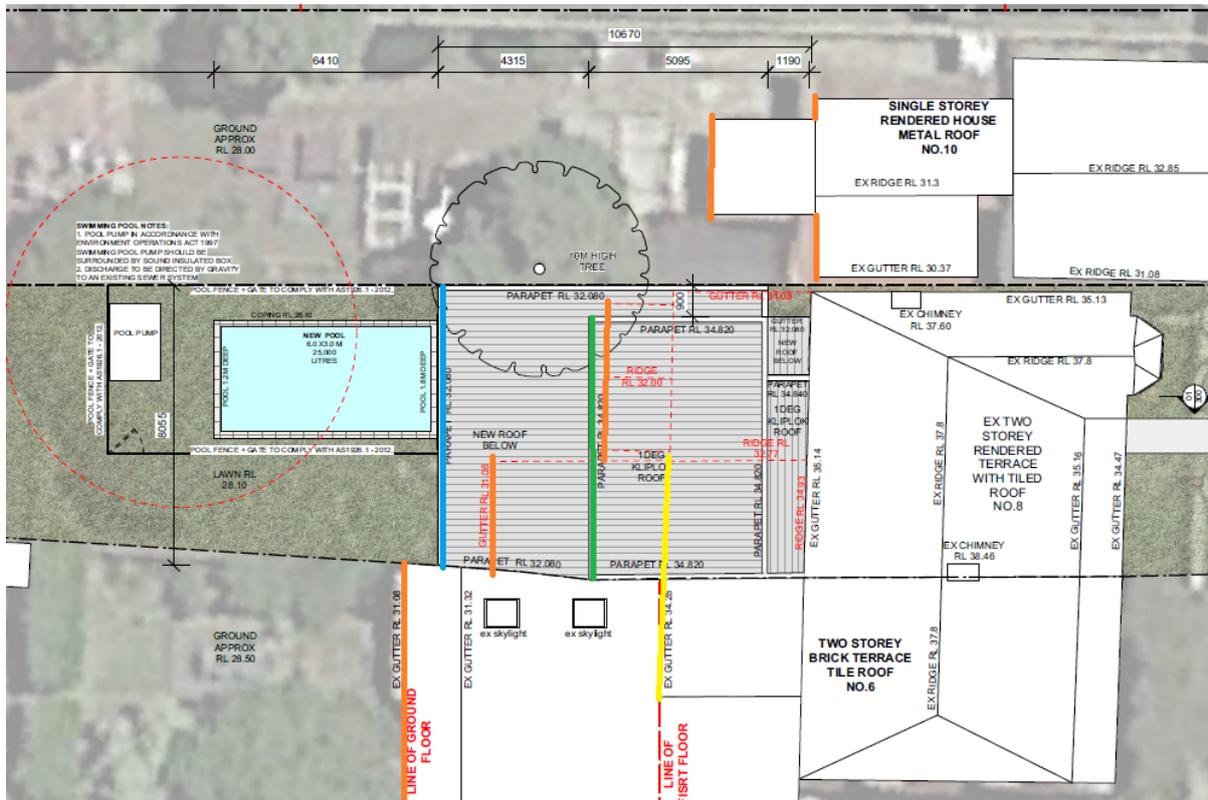
| | |
|---|----------------------|
| C3.4 Dormer Windows | N/A |
| C3.5 Front Gardens and Dwelling Entries | N/A |
| C3.6 Fences | N/A |
| C3.7 Environmental Performance | Yes |
| C3.8 Private Open Space | Yes |
| C3.9 Solar Access | Yes – see discussion |
| C3.10 Views | N/A |
| C3.11 Visual Privacy | Yes |
| C3.12 Acoustic Privacy | Yes |
| C3.13 Conversion of Existing Non-Residential Buildings | N/A |
| C3.14 Adaptable Housing | N/A |
| | |
| Part C: Place – Section 4 – Non-Residential Provisions | N/A |
| | |
| Part D: Energy | |
| Section 1 – Energy Management | Yes |
| Section 2 – Resource Recovery and Waste Management | |
| D2.1 General Requirements | Yes |
| D2.2 Demolition and Construction of All Development | Yes |
| D2.3 Residential Development | Yes |
| D2.4 Non-Residential Development | N/A |
| D2.5 Mixed Use Development | N/A |
| | |
| Part E: Water | |
| Section 1 – Sustainable Water and Risk Management | |
| E1.1 Approvals Process and Reports Required With Development Applications | Yes |
| E1.1.1 Water Management Statement | Yes |
| E1.1.2 Integrated Water Cycle Plan | N/A |
| E1.1.3 Stormwater Drainage Concept Plan | Yes |
| E1.1.4 Flood Risk Management Report | N/A |
| E1.1.5 Foreshore Risk Management Report | N/A |
| E1.2 Water Management | N/A |
| E1.2.1 Water Conservation | Yes |
| E1.2.2 Managing Stormwater within the Site | Yes |
| E1.2.3 On-Site Detention of Stormwater | Yes |
| E1.2.4 Stormwater Treatment | N/A |
| E1.2.5 Water Disposal | Yes |
| E1.2.6 Building in the vicinity of a Public Drainage System | Yes |
| 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 |
| | |
| Part F: Food | N/A |
| Part G: Site Specific Controls | N/A |

The following provides discussion of the relevant issues:

C3.2 Site Layout and Building Design

Building Location Zone

The proposal seeks to extend the existing rear ground floor BLZ (shown in orange) further to the rear (south) of the property (shown in blue) and will be located behind the rear ground floor BLZ of No. 6 Carlisle Street but further forward of the rear ground BLZ of No. 10 Carlisle Street. In addition, the proposal seeks to further extend the existing (shown in yellow) established rear first floor BLZ further towards the rear (south) boundary (shown in green) as shown in the image below.



Roof Plan



Aerial Image

Pursuant to Part C3.2 of the LDCP 2013, where a proposal seeks to vary, or establish a new BLZ, in order to determine acceptability, various tests need to be met - an assessment of the proposal against the relevant tests is discussed below.

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

Comment: As discussed in further detail below, the proposal will comply with applicable solar access controls. The proposal will have no privacy or view loss implications as further discussed later in this report.

- b) the proposed development will be compatible with the existing streetscape, desired future character and scale of surrounding development;*

Comment: The proposed rear ground and first floor additions as previously mentioned in this report will result in acceptable streetscape outcomes to the Heritage Conservation Area and is considered to be compatible with the existing pattern of development of the area. As a result, the proposal satisfies this test.

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

Comment: The proposal is considered compatible in terms of size from a planning perspective when compared with the existing pattern of development of the adjoining neighbouring properties. In addition, the proposal will not result in additional overlooking /

privacy impacts to the surrounding properties whilst providing sufficient POS and Landscaped Area.

d) retention of existing significant vegetation and opportunities for new significant vegetation is maximised; and

Comment: The proposal, although seeks to remove two trees to the rear of the subject site which are supported by Council’s Urban Forest team, the proposal will provide sufficient landscaped areas for new vegetation / replacement trees to be provided on site.

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

Comment: The proposed rear ground floor addition maintains the existing 3.53m floor to ceiling height from the main dwelling but provides a low 2.4m floor to ceiling height first floor addition located behind the main dwelling. Further, the proposed ground and first floor additions are sited immediately adjacent or predominantly adjacent to adjoining built structures and their roof forms.

Consequently, the BLZ breach to the first floor addition will not result in any undue adverse bulk and scale impacts when viewed from Nos. 6 and 10 Carlisle Street or any other surrounding properties.

It is considered that the proposed additions will meet the objectives of the above clause objectives and can be supported on merit.

Side Setbacks

The following is a compliance table assessed against the side setback control graph prescribed in Part C3.2 of the Leichhardt DCP 2013 relating to the proposed dwelling additions:

| Elevation | Wall height (m) | Required setback (m) | Proposed setback (m) | Complies |
|-----------|-----------------|----------------------|----------------------|-----------------------|
| East – GF | 3.6 – 3.9 | 0.4 – 0.6 | 0 | No |
| West – GF | 3.76 – 4.1 | 0.5 – 0.7 | 0 | No |
| East – FF | 6.5 – 6.7 | 2.1 - 2.2 | 0 | No |
| West – FF | 6.6 – 6.8 | 2.1 – 2.3 | 0.9 – 2.6 | Yes (study area) & No |

As noted in the table above, the proposed ground and first floor additions will not comply with the Side Boundary Setback Graph except for a small portion of the first floor addition on the western boundary.

Pursuant to Clause C3.2 of the Leichhardt DCP 2013, where a proposal seeks a variation to the Side Boundary Setbacks Graph, various tests need to be met. These tests are assessed below:

- The development is consistent with relevant Building Typology Statements as outlined within Appendix B – Building Typologies of the Leichhardt DCP 2013 and complies with streetscape and desired future character controls.

Comment: The proposed rear ground and first floor additions are considered to be a satisfactory response to the Building Typology Statements. The proposal will be compatible with the existing and adjoining terraces and the streetscape and will comply with desired future character controls of the Leichhardt DCP 2013.

- The pattern of development is not adversely compromised.

Comment: The proposed rear ground and first floor additions and works are sited to the rear of the contributory dwelling where additions are generally permitted to be carried out in accordance with relevant streetscape / heritage controls, and will have wall heights and setbacks that will be compatible with the existing dwelling. This test is therefore deemed to be met.

- The bulk and scale of the development has been minimised and is acceptable.

Comment: Proposed wall heights, setbacks and the siting of the ground and first floor additions will be compatible with the existing and adjoining dwellings. Further, the first floor addition will also be provided with floor to ceiling heights that are low or compatible with the existing dwelling, and the additions will be provided with flat roof forms at heights that are compatible or lower than adjoining buildings. Given the above, the proposal is considered to have been successfully designed to minimise the visual bulk and scale of the development when viewed from the public domain and adjoining properties.

- The proposal is acceptable with respect to applicable amenity controls e.g. solar access, privacy and access to views.

Comment: For the reasons discussed and mentioned in this report, including under Parts C3.9 and C3.11 of the DCP, the proposal is considered acceptable with regard to the solar access and visual privacy controls and will not result in any undue adverse view loss implications.

- The proposal does not unduly obstruct adjoining properties for maintenance purposes.

Comment: The rear additions will not result in any obstruction of any lightweight walls at adjoining properties, and hence, will not result in any maintenance issues for any neighbours.

In light of the above, and in consideration of the development's impact upon the streetscape and amenity impacts for adjoining properties, the proposal is considered to be satisfactory with respect to the provisions and objectives of Part C3.2 of the Leichhardt DCP 2013.

C3.9 Solar Access

The subject site and its adjoining properties are north to south site orientated with a south facing rear facing POS. The submitted shadow diagrams demonstrate that the adjoining neighbouring properties at 6 and 10 Carlisle Street will receive the minimum required 2 hours of sunlight at mid winter from 9am to 3pm to 50% of the rear private open space.

As a result, the proposal complies with Control 16 which states the following:

- *C16 - Where surrounding dwellings have south facing private open space ensure solar access is retained for two hours between 9am and 3pm to 50% of the total area during the winter solstice.*

It is noted that a submission of concern in relation to the loss of sunlight to the existing sky lights and clear roof sheeting near the mid section of the dwelling as shown in the image below at No. 6 Carlisle Street servicing a ground floor bathroom, kitchen and an area between the bathroom and kitchen has been submitted to Council.

However, as stipulated under Control 5 of this provision, as skylights are not required or considered acceptable to be the sole source of access to natural light, they are not protected under this provision and since the skylights and the clear roof sheeting do not service the main living area or is its only source of natural light, the proposal will comply with the relevant Controls under this provision and is considered acceptable.

- *C5 All habitable rooms shall have access to natural daylight regardless of provision of skylights or similar. Daylight shall be provided via:*
 - a. an outdoor facing window; or*
 - b. a window facing a light-well or courtyard that is open to the sky.*



Image A. Aerial photo of Nos 6 and 8 Carlisle Street depicting existing skylights and clear roof sheeting servicing the kitchen area



Image B. Photo supplied by objector depicting ambient light received by the clear roof sheeting.

C3.11 Visual Privacy

As the proposal seeks to add a new first floor bedroom window on the southern elevation and a study window on the western elevation on the first floor, the following controls are applicable:

C1 - Sight lines available within 9m and 45 degrees between the living room or private open space of a dwelling and the living room window or private open space of an adjoining dwelling are screened or obscured unless direct views are restricted or separated by a street or laneway. Measures for screening or obscuring will include one or more of the following:

- a. offsetting of opposing windows so that they do not directly face one another;*

- b. offset windows from directly facing adjoining balconies and private open space of adjoining dwellings;*
- c. screening of opposing windows, balconies and private open space with fixed louvered screens, window hoods, shutters;*
- d. reduced window areas, subject to compliance with the Building Code of Australia;*
- e. window sills at or above 1.6m above the finished floor level;*
- f. use of fixed, obscure glass, subject to adequate ventilation complying with the Building Code of Australia;*
- g. consistent orientation of buildings;*
- h. using floor level in design to minimise direct views; and*
- i. erection of screens and fencing to limit sightlines including dividing fences, privacy screens, projecting blade screens.*

As the windows in question are not servicing living rooms / areas and overlook roof areas and provide no view lines within 9m and a 45 degree angle of adjoining windows, the proposal will comply with Control C1 of this provision. As a result, the proposal is considered to result in minimal to no undue adverse privacy impacts to the surrounding neighbouring properties.

In addition to the above, concerns have been raised by a resident with regard to visual privacy impacts as a result of the proposed tree removal and associated impacts to their property. However, as the proposed first floor bedroom window on the southern elevation will be approximately 25m away from the rear property boundary, currently being shared with No. 9 Marlborough Street, the proposal complies with C1 as mentioned above, resulting in minimal potential for 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

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

5(g) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties.

2 submissions were received in response to the initial notification.

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

- Setbacks – see C3.2 Site Layout and Building Design – In summary, the proposed rear first floor addition extension further to the rear boundary is considered acceptable on merit.

- Overshadowing – see C3.9 Solar Access
- Tree removal/Privacy – see C3.11 Visual Privacy

5(h) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

Engineer

Acceptable subject to conditions

Urban Forest

Acceptable subject to conditions

Heritage

Acceptable subject to conditions

7. Section 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 \$6,268.77 would be required for the development under the Former Leichhardt Local Government Area Section 7.12 Development Contributions Plan 2020. A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

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

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

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

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the Floor Space Ratio development standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2022/0382 for alterations and additions to existing dwelling and new pool at 8 Carlisle Street, Leichhardt subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

| Plan, Revision and Issue No. | Plan Name | Date Issued | Prepared by |
|------------------------------|---|---------------|---------------------------------------|
| DA005 Rev A | Proposed Site Plan + Demolition Plan | 14/3/2022 | Dalgliesh Ward and Associates Pty Ltd |
| DA100 Rev A | Proposed Ground Floor + Demolition Plan | 14/3/2022 | Dalgliesh Ward and Associates Pty Ltd |
| DA101 Rev A | Proposed First Floor + Demolition Plan | 14/3/2022 | Dalgliesh Ward and Associates Pty Ltd |
| DA200 Rev A | Proposed Streetscape Elevation | 14/3/2022 | Dalgliesh Ward and Associates Pty Ltd |
| DA201 Rev A | West Elevation (Side) Rear Elevation | 14/3/2022 | Dalgliesh Ward and Associates Pty Ltd |
| DA202 Rev A | East Elevation (Side) | 14/3/2022 | Dalgliesh Ward and Associates Pty Ltd |
| DA300 Rev A | Proposed Section | 14/3/2022 | Dalgliesh Ward and Associates Pty Ltd |
| DA600 Rev A | Proposed Landscape Plan | 14/3/2022 | Dalgliesh Ward and Associates Pty Ltd |
| A452672 | BASIX Certificate | 12 April 2022 | EPS |
| 20220261.1 | Aircraft Noise Intrusion Assessment | 9/3/2022 | Acoustic Logic |
| | Arboricultural Impact Assessment and Tree Management Plan | 23 March 2022 | Horticultural Management Services |

As amended by the conditions of consent.

FEES

2. Security Deposit - Custom

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

| | |
|--------------------------|----------------|
| Security Deposit: | Min \$2,254.00 |
| Inspection Fee: | \$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*:

\$6,268.77

*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. Tree Protection

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

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

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

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

The trees identified below are to be retained and protected in accordance with the conditions of consent or approved Tree Protection Plan throughout the development (note: tree numbers must correspond with approved Tree Protection Plan if conditioned) :

| Tree No. | Botanical/Common Name | Location |
|----------|------------------------------------|---------------------------|
| 1 | <i>Cupressus species</i> (Cypress) | Rear - 10 Carlisle Street |

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

- a. Green for trees to be retained;
- b. Red for trees to be removed;

NOTE: Reference should be made to the Arboricultural Impact Assessment Report prepared by Horticultural Management Services dated 23 March 2022 for tree numbering and locations.

7. Project Arborist

Prior to the commencement of any demolition or construction works within close proximity to protected trees a Project Arborist must be engaged for the duration of the site preparation, demolition, construction and landscaping to supervise works. Details of the Project Arborist must be submitted to the Certifying Authority before work commences.

8. Works to Trees

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

| Tree/location | Approved works |
|---|----------------|
| Tree 3 - <i>Eriobotrya japonica</i> (Loquat)/ rear side | Removal |

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

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

Noise levels associated with the operation of the pool/spa pumping units must not exceed the background noise level (L90) by more than 5dBA above the ambient background within habitable rooms of adjoining properties. Pool plant and equipment must be enclosed in a sound absorbing enclosure or installed within a building so as not to create an offensive noise as defined under the *Protection of the Environment Operations Act 1997* and *Protection of the Environment Operations (Noise Control) Regulation 2008*.

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

10. 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.

11. 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.

12. Standard Street Tree Protection

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

13. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION

14. Hoardings

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

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

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

15. Dilapidation Report

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of the adjoining property at No. 6 Carlisle Street Leichhardt to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

16. Advising Neighbours Prior to Excavation

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

17. Construction Fencing

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

PRIOR TO CONSTRUCTION CERTIFICATE**18. Dilapidation Report – Pre-Development – Minor**

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

19. Stormwater Drainage System – Minor Developments (OSD is 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. The Stormwater Drainage Concept plan on Drawing No. D2 prepared by QUANTUM ENGINEERS and dated 19 April 2022, must be amended to comply with the following;
- b. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank(s), by gravity to the kerb and gutter of a public road; 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. As there is no overland flow/flood path available from the rear and central courtyards to the Carlisle Street frontage, the design of the sag pit and piped drainage system is to meet the following criteria:
 - 1. Capture and convey the 100 year Average Recurrence Interval flow from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe;
 - 2. The maximum water level over the sag pit shall not be less than 150 mm below the floor level or damp course of the building; and
 - 3. The design shall make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
- h. A minimum 150 mm step up shall be provided between all external finished surfaces and adjacent internal floor areas
- i. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands;
- j. No nuisance or concentration of flows to other properties;
- k. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- l. 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;
- m. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- n. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- o. 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;
- p. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
- q. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- r. No impact to street tree(s);

- s. Stormwater drainage must be located such that any waters leaving the pool must drain to pervious areas prior to potentially draining to the site stormwater drainage system.

20. Changes to Levels

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

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

21. Metal Sheet Finish and Colour

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans indicating that new roofing material must comprise of either heritage barrel rolled traditional corrugated galvanised steel or pre-coloured traditional corrugated steel similar to Custom Orb Accent 35 in a colour equivalent to Colorbond's "Windspray", "Shale Grey", "Jasper" or "Wallaby."

22. Construction Methods to Minimise Impact on Trees

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with details certified by a suitably qualified Arborist demonstrating that the footings of the approved structure will utilise tree sensitive construction techniques (such as isolated pier or pier and beam construction) within the specified radius of the trunk of the following tree if tree roots that are not approved for removal are encountered:

| Tree No. | Botanical/Common Name | Radius in metres |
|----------|---|------------------|
| 1 | <i>Cupressus species</i> (Cypress) / 10 Carlisle Street - rear side | 3 m |

Prior to the issue of a Construction Certificate, the Certifying Authority must verify that no proposed underground services are located beneath the canopy of any prescribed tree/s located on the subject site and adjoining sites (including trees located within the public domain).

23. Party Walls

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with Architectural Plans accompanied by a Structural Certificate which verifies that the architectural plans do not rely on the Party Wall for lateral or vertical support and that additions are independently supported. A copy of the Certificate & plans must be provided to all owners of the party wall/s.

24. 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.

25. 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

26. Acoustic Report – Aircraft Noise

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

DURING DEMOLITION AND CONSTRUCTION

27. Tree Protection

To protect the following tree, trunk protection must be installed prior to any works commencing within 3 metres of the trunk in accordance with the approved *Tree Protection Plan* and/or with Council’s *Development Fact Sheet—Trees on Development Sites*:

| Tree No. | Botanical/Common Name/Location |
|----------|---|
| 1 | <i>Cupressus species</i> (Cypress) / Rear side 10 Carlisle Street |

Note - Approval from the owners of 10 Carlisle Street will be required prior to entry into the site to install trunk protection.

28. Inspections by Project Arborist

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

| Tree No./ Botanical/ Common Name/ Location | Time of Inspection | Key stage/ Hold point |
|--|---------------------------------------|---|
| <p><i>Cupressus species</i> (Cypress) / 10 Carlisle Street / rear side - Inspections and supervision required within 3 metres of the trunk</p> | <p>Prior to commencement of works</p> | <ul style="list-style-type: none"> • Inspection and sign off installation of tree protection measures. |
| | <p>During Works</p> | <ul style="list-style-type: none"> • Supervise all site preparation and demolition works within 3 m; • Supervise all excavation, trenching works, landscaping works and tree/planting replenishment within the 3 m; • Supervise all tree work. |

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

29. Limited Root Pruning

No tree roots of 30mm or greater in diameter located within the specified radius of the trunk/s of the following trees may be severed or injured in the process of any works during the construction period:

| Tree No. | Botanical/Common Name | Radius in metres |
|----------|---|------------------|
| 1 | <i>Cupressus species</i> (Cypress) / 10 Carlisle Street | 3 m |

If tree roots less than 30mm diameter are required to be severed for the purposes of constructing the approved works, they must be cut cleanly using a sharp and *fit for purpose tool*. The pruning must be undertaken by, or directly supervised by, the Project Arborist.

30. Construction Hours – Class 1 and 10

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5.00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

31. Survey Prior to Footings

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

PRIOR TO OCCUPATION CERTIFICATE

32. No Encroachments

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

33. Protect Sandstone Kerb

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

34. Certification of Tree Planting

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with evidence certified by a person holding a minimum qualification of AQF5 Certificate of Horticulture or Arboriculture that:

A minimum of 1 x 100 litre size tree, which will attain a minimum mature height of eight (8) metres and a minimum mature canopy spread of five (5) metres has been planted in a suitable location within the property at a minimum of 1.5 metres from any boundary or structure and allowing for future tree growth. The tree is to conform to AS2303—*Tree stock for landscape use*. Trees listed as exempt species or on the Trees Minor Works list in Council's Tree Management Controls, palms, fruit trees and species recognised to have a short life span will not be accepted as suitable replacements.

If the trees is found dead or dying before it reaches dimensions where it is protected by Council's Tree Management Controls, it must be replaced in accordance with this condition.

35. Project Arborist Certification

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

36. Aircraft Noise –Alterations and Additions

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

ADVISORY NOTES

Permits

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

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

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

Insurances

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

Consent of Adjoining property owners

This consent does not authorise the applicant, or the contractor engaged to do the tree works to enter a neighbouring property. Where access to adjacent land is required to carry out approved tree works, Council advises that the owner's consent must be sought. Notification is the responsibility of the person acting on the consent. Should the tree owner/s refuse access to their land, the person acting on the consent must meet the requirements of the *Access To Neighbouring Lands Act 2000* to seek access.

Arborists standards

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

management of vegetation conflicting with such services. Contact the relevant Network Service Provider for further advice in this regard.

Tree Protection Works

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

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within clause 98-98E of the *Environmental Planning and Assessment Regulations 2021*.

Notification of commencement of works

At least 7 days before any demolition work commences:

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

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

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

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

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

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

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

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

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

Dividing Fences Act

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

Swimming Pools

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

- a. The owner of the premises is required to register the swimming pool on the NSW State Government's Swimming Pool Register. Evidence of registration should be provided to the Certifying Authority.
- b. Access to the pool/spa is restricted by a child resistant barrier in accordance with the regulations prescribed in the. The pool must not be filled with water or be allowed to collect stormwater until the child resistant barrier is installed. The barrier is to conform to the requirements of Australian Standard AS 1926:2012.
- c. A high level overflow pipe has been provided from the back of the skimmer box to the filter backwash line discharging to the sewer. This line must not directly vent the receiving Sydney Water sewer. Evidence from the installer, indicating compliance with

this condition must be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

- d. Permanently fixed water depth markers are to be clearly and prominently displayed on the internal surface above the water line at the deep and shallow ends on in-ground pools / spas and on the outside of aboveground pools / spas.
- e. A durable cardiopulmonary resuscitation information poster sign authorised by the Life Saving Association is to be displayed in the pool / spa area in accordance with Clause 10 of the *Swimming Pool Regulation 2008*.
- f. Access to the swimming pool/spa must be restricted by fencing or other measures as required by the *Swimming Pools Act 1992* at all times.

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

Permits from Council under Other Acts

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

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

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

Noise

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997*.

Amenity Impacts General

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

Lead-based Paint

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

Dial before you dig

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

Useful Contacts

| | |
|----------------------------|--|
| BASIX Information | 1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au |
| Department of Fair Trading | 13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance. |
| Dial Prior to You Dig | 1100 www.dialprior toyoudig.com.au |
| Landcom | 9841 8660 |

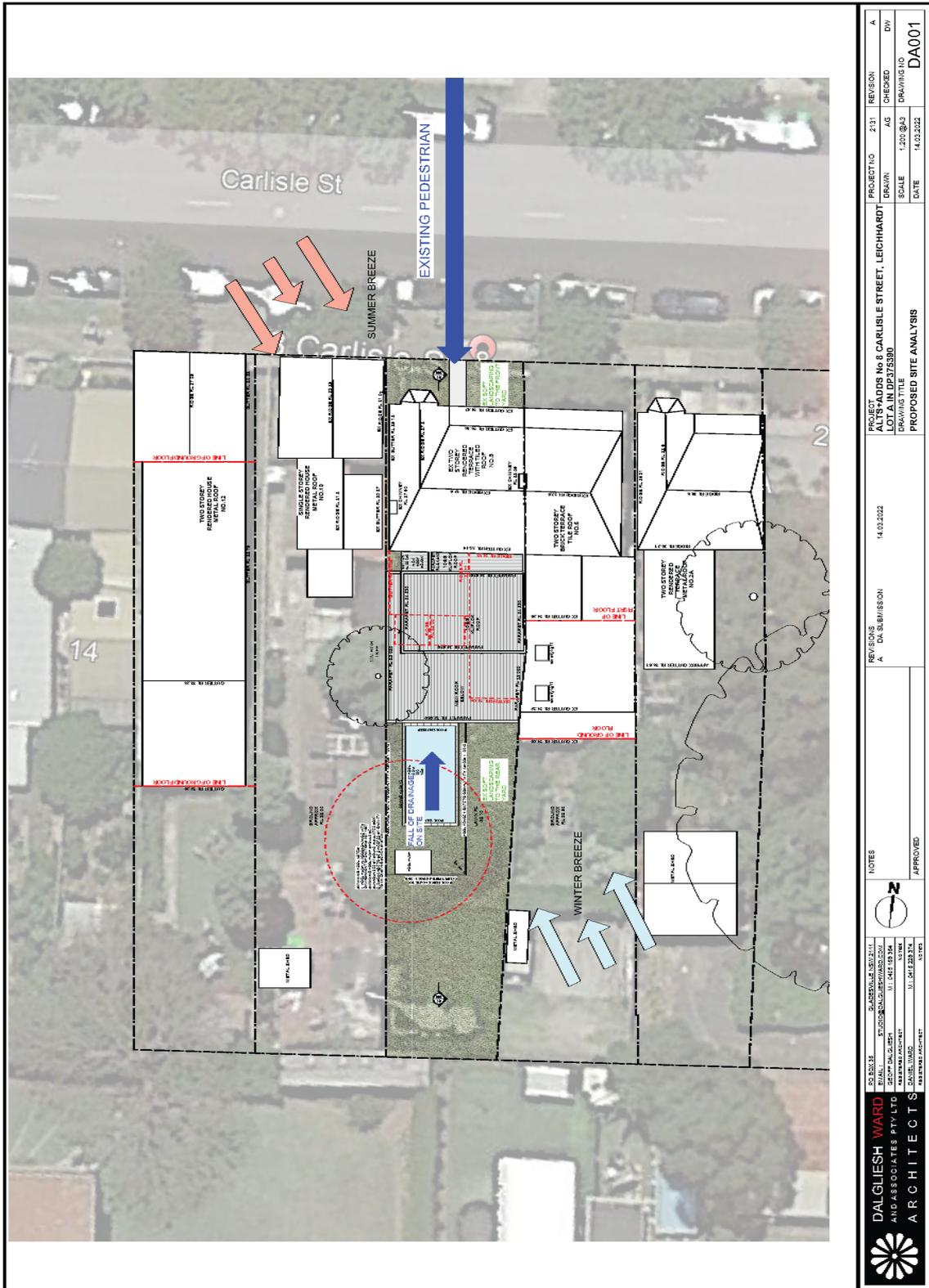
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|---|----------|--------------|--|
| | | | To purchase copies of Volume One of "Soils and Construction" |
| Long Service Corporation | Payments | 131441 | www.lspc.nsw.gov.au |
| NSW Food Authority | | 1300 552 406 | www.foodnotify.nsw.gov.au |
| NSW Government | | | www.nsw.gov.au/fibro www.diysafe.nsw.gov.au |
| | | | Information on asbestos and safe work practices. |
| NSW Office of Environment and Heritage | | 131 555 | www.environment.nsw.gov.au |
| Sydney Water | | 13 20 92 | www.sydneywater.com.au |
| Waste Service - Environmental Solutions | SITA | 1300 651 116 | www.wasteservice.nsw.gov.au |
| Water Efficiency Labelling and Standards (WELS) | | | www.waterrating.gov.au |
| WorkCover Authority of NSW | | 13 10 50 | www.workcover.nsw.gov.au |
| | | | Enquiries relating to work safety and asbestos removal and disposal. |

Street Numbering

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

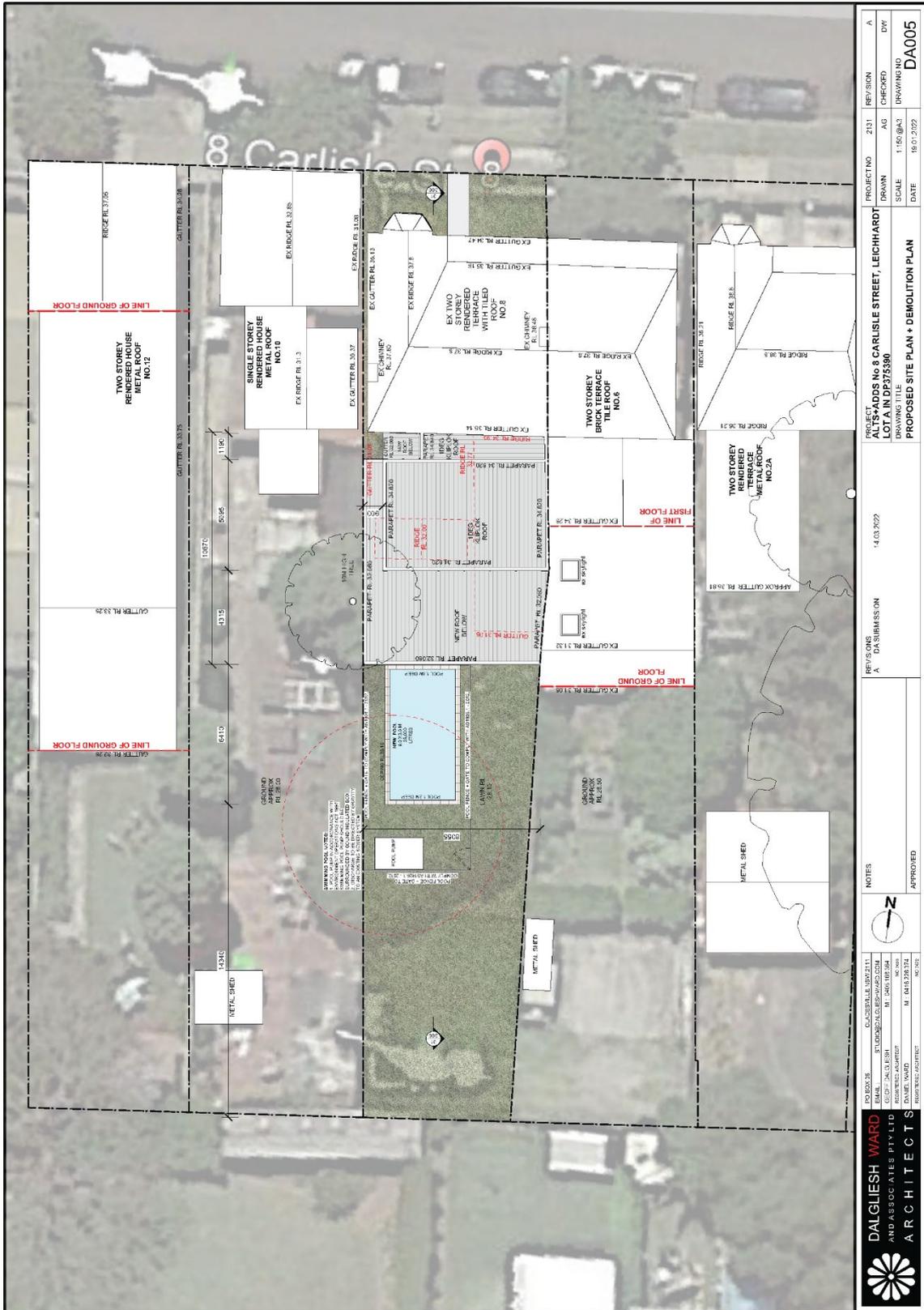
REASONS FOR REFUSAL

Attachment B – Plans of proposed development



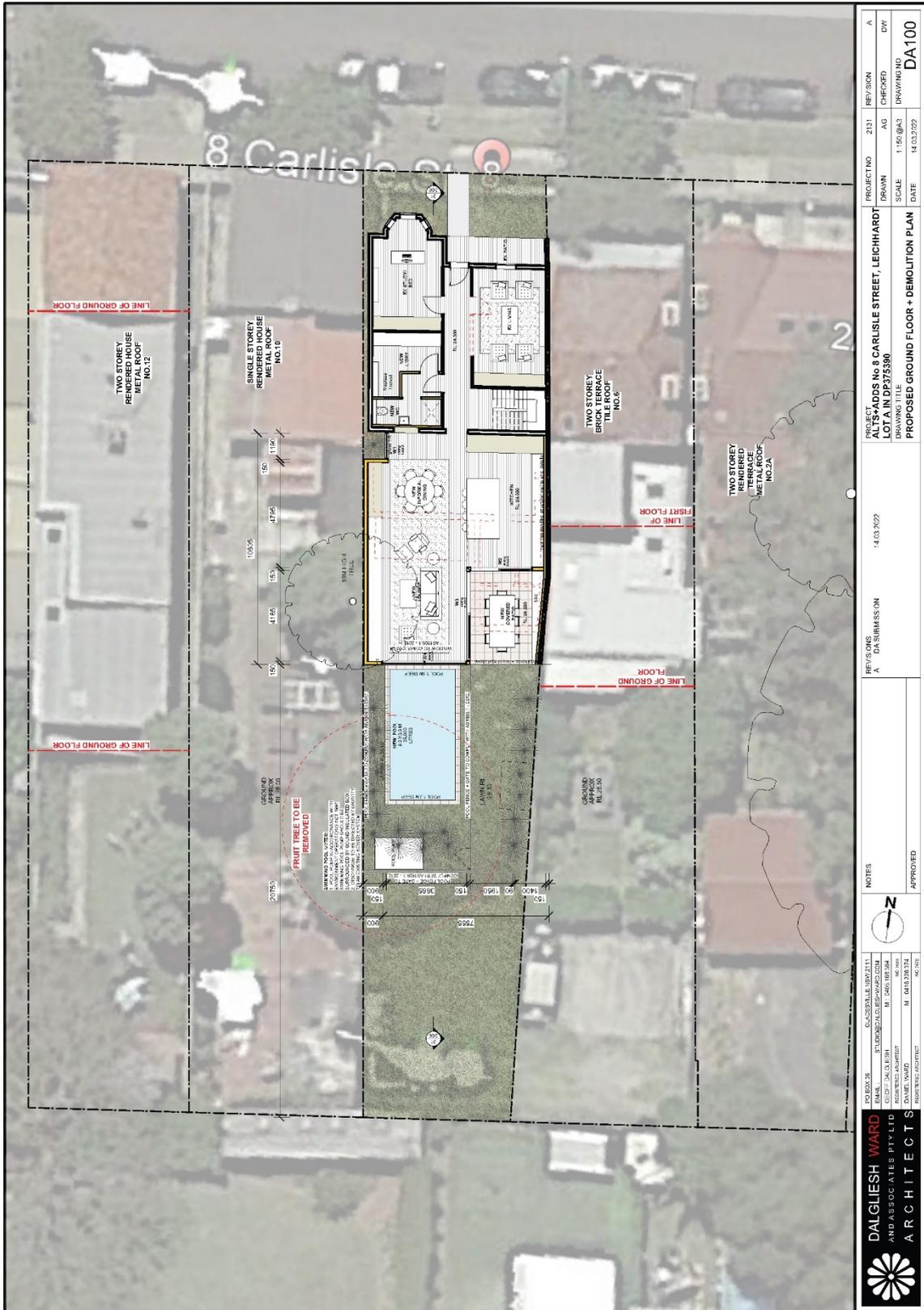
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| | <p>NOTES</p> <p>APPROVED</p> | <p>PROPOSED SITE ANALYSIS</p> | |

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Version: 1, Version Date: 08/09/2022



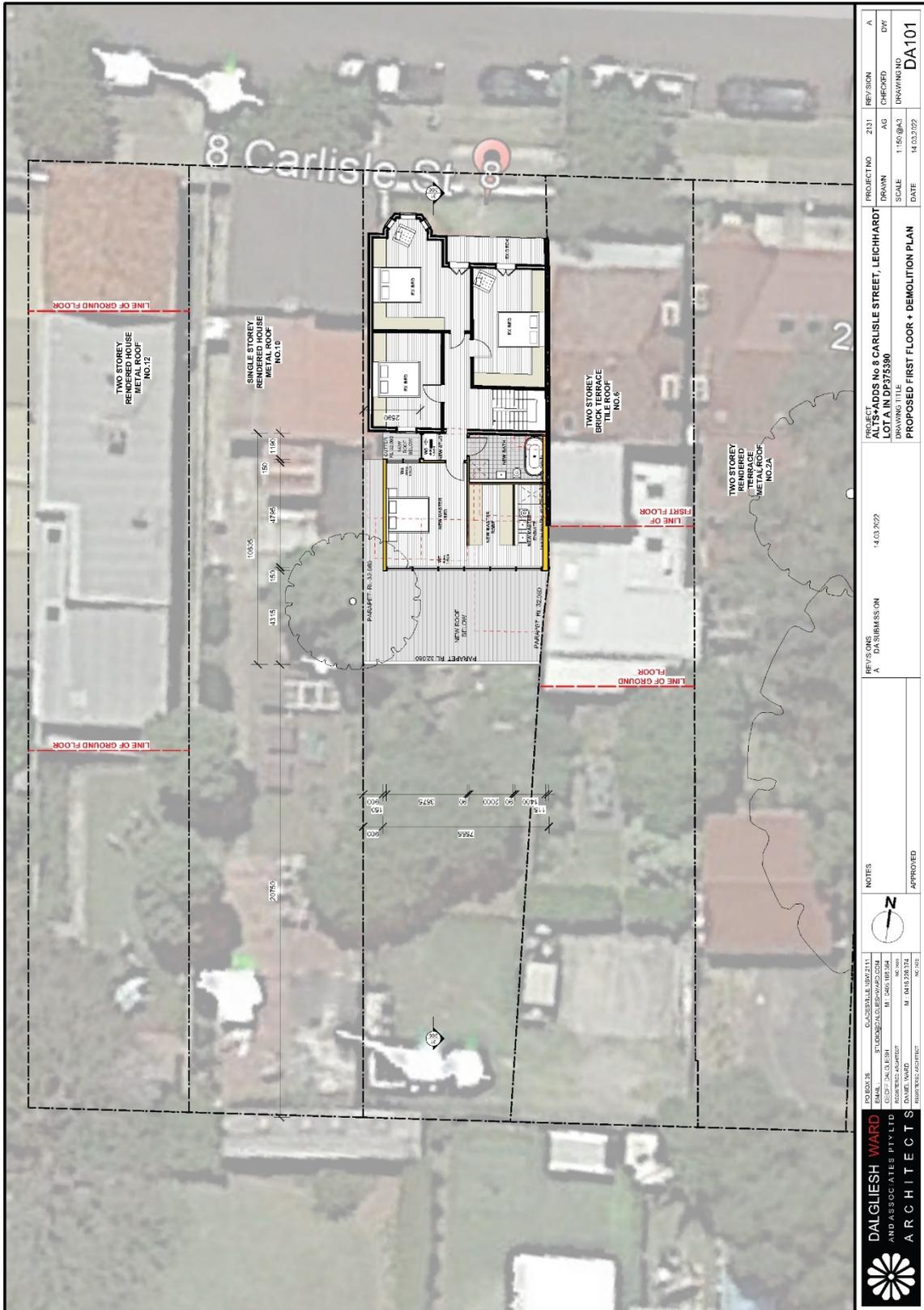
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| | NOTES: APPROVED | REVISIONS: A. DA SUBMISSION 14.03.2022 | PROJECTING: 2131 REVISED: AG CHECKED: DWF DRAWING NO: DA005 |

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 Version: 1, Version Date: 08/08/2022



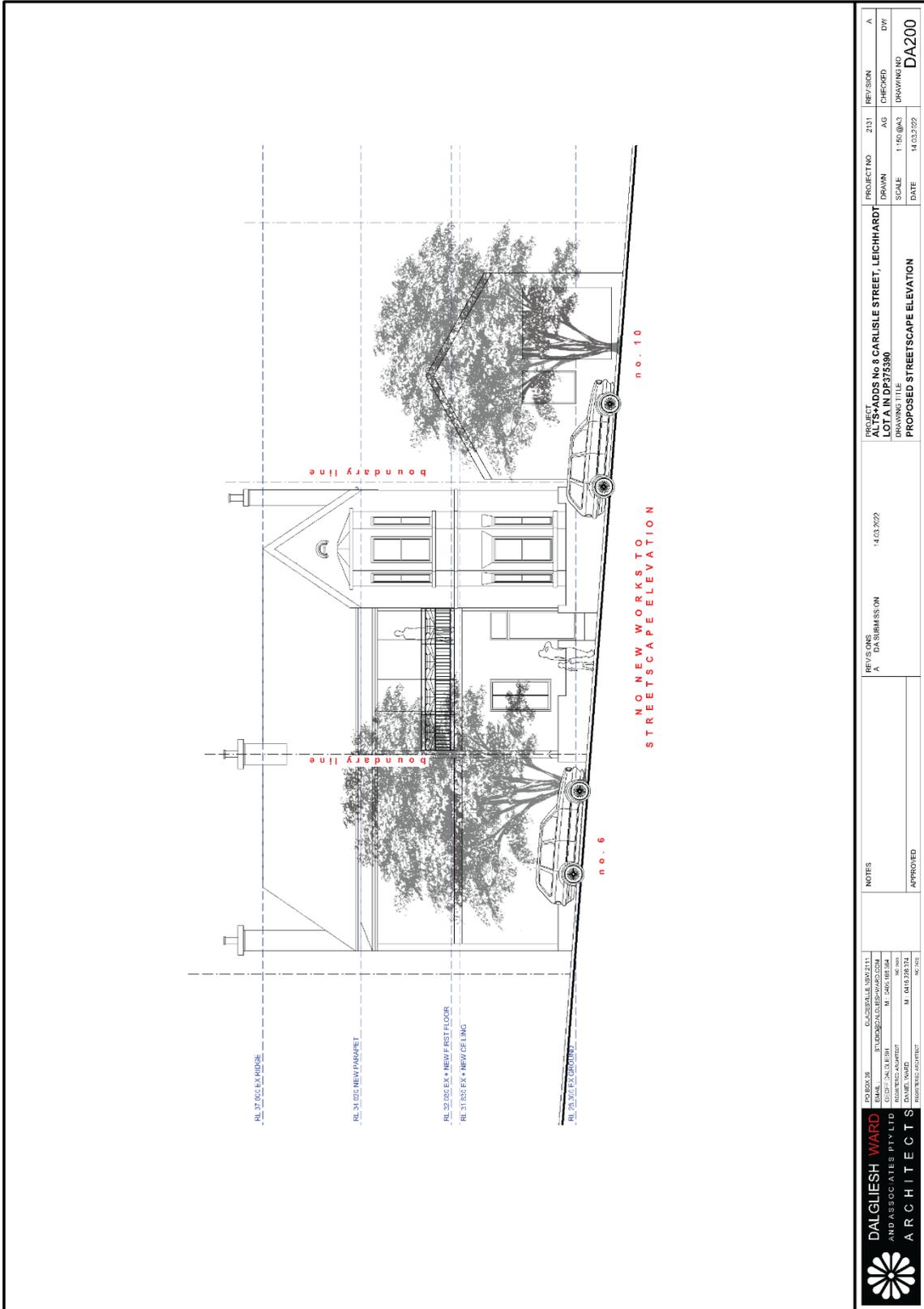
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| | REVISED: A | PROJECTING: 2131 DATE: 14.03.2022 | DATE: 14.03.2022 |
| NOTES: | REVISED: A DA SUBMISSION 14.03.2022 | DRAWING TITLE: PROPOSED GROUND FLOOR + DEMOLITION PLAN | |
| APPROVED: | APPROVED: | | |

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 Version: 1, Version Date: 08/08/2022



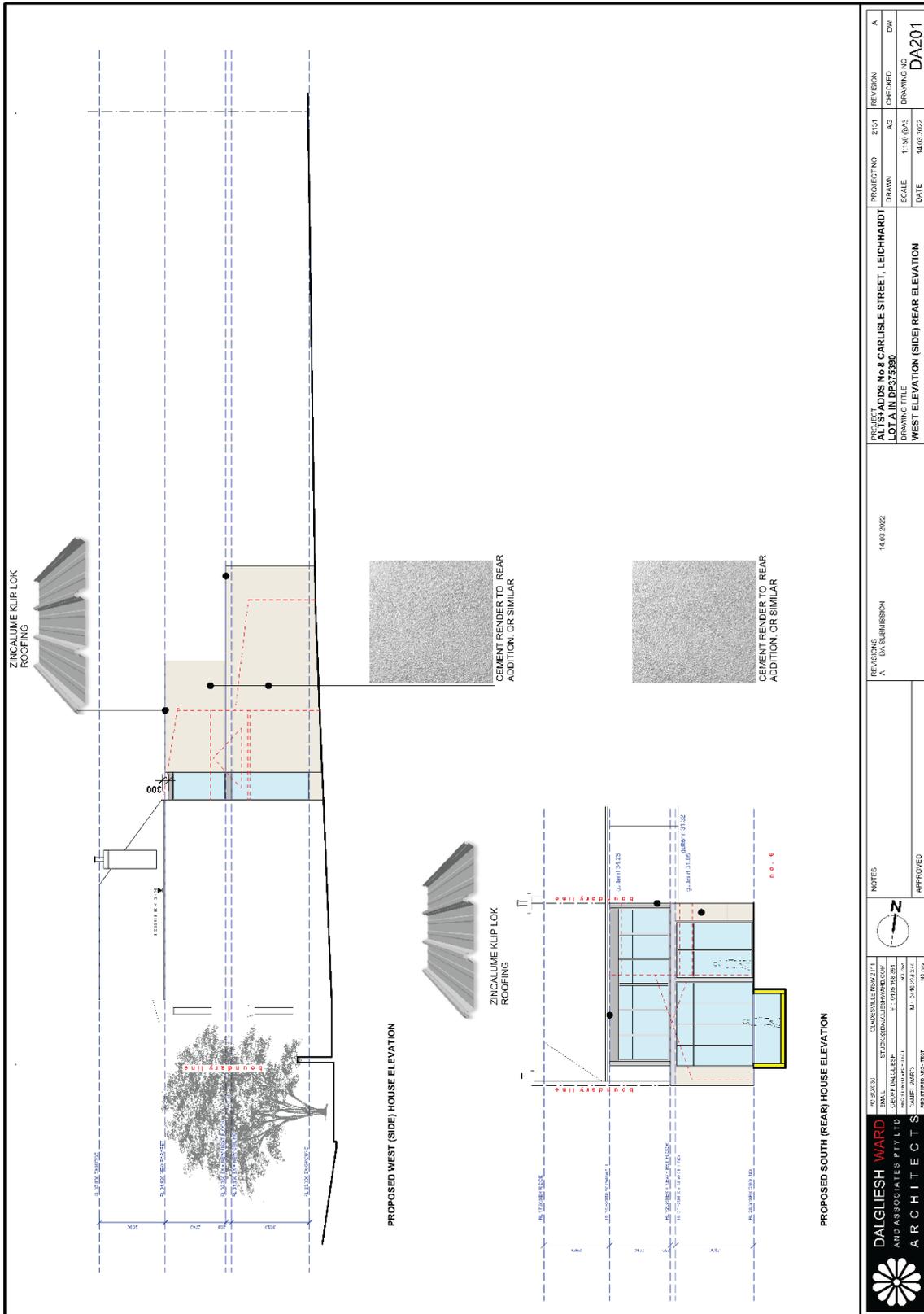
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| DALGIESH WARD AND ASSOCIATES PTY LTD ARCHITECTS | PROJECT NO. 2131 PROJECT: ALTS+ADDS No 8 CARLISLE STREET, LEICHHARDT LOT A IN DP735390 | DRAWN: AG SCALE: 1:150 (R/A) | CHECKED: [] DATE: 14.03.2022 | REVISED: [] DRAWING NO: DA101 |
| | TITLE: PROPOSED FIRST FLOOR + DEMOLITION PLAN | DATE: 14.03.2022 | DRAWN: DA SHIRBURN | CHECKED: [] |
| NOTES: | APPROVED: | APPROVED: | APPROVED: | APPROVED: |

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 Version: 1, Version Date: 08/08/2022



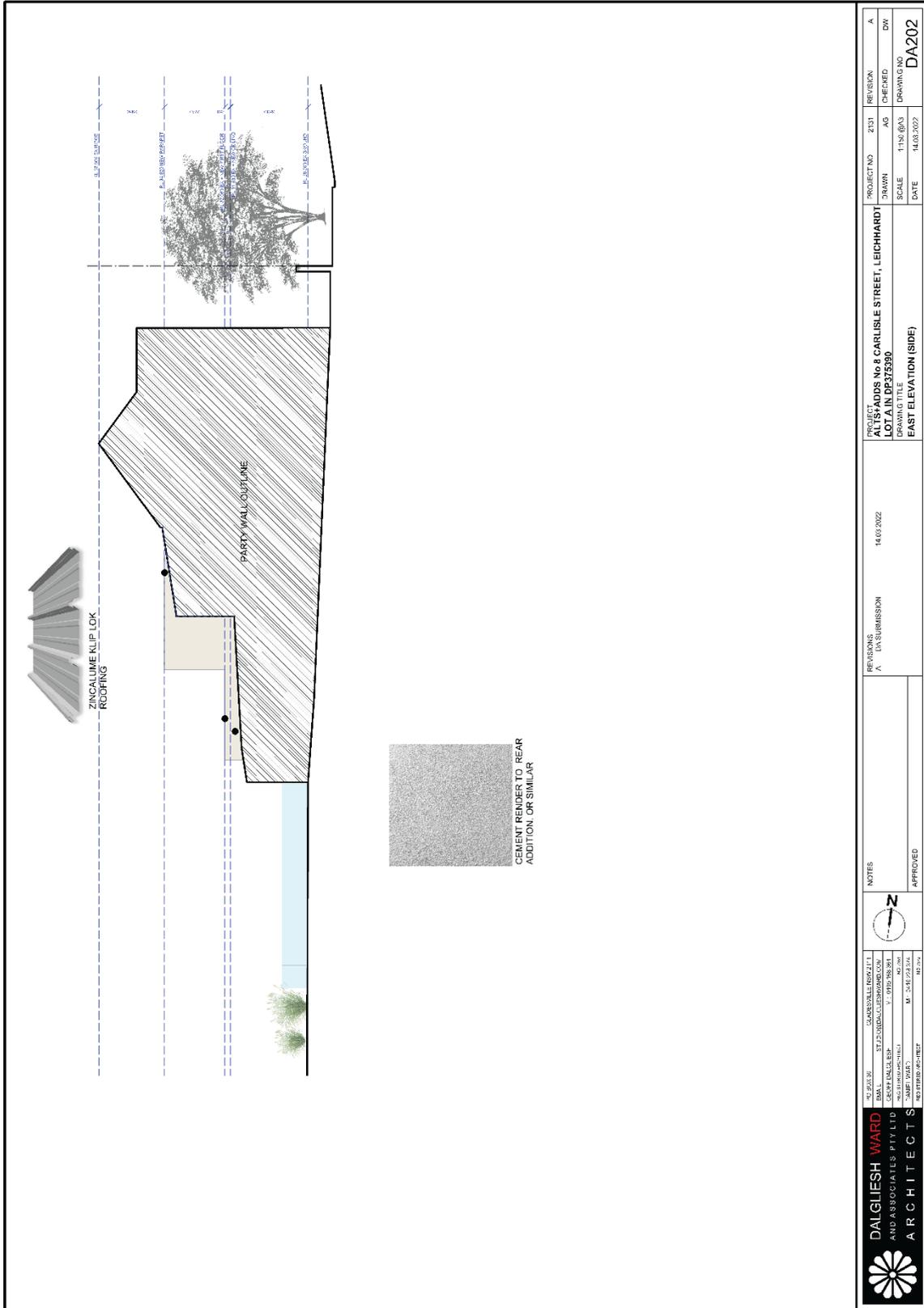
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| | REV: 015 A: DA SHIRBRISON DATE: 14.03.2022 | REV: 015 A: DA SHIRBRISON DATE: 14.03.2022 | REV: 015 A: DA SHIRBRISON DATE: 14.03.2022 |
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 Version: 1, Version Date: 08/08/2022



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| <p>DALGLIESH WARD AND ASSOCIATES PTY LTD ARCHITECTS</p> <p>15/203/20 CLARENCE STREET, SYDNEY NSW 1588 T: 02 955 396 364 F: 02 955 396 365 M: 04 343 4444 WWW.DALGLIESHARCHITECTS.COM</p> | <p>NOTES</p> <p>14.03.2022</p> | <p>PROJECT</p> <p>ALSTONVILLE No 8 CARLISLE STREET, LEICHHARDT LOT A IN DP375390</p> | <p>PROJECT NO</p> <p>2131</p> | <p>REVISION</p> <p>A</p> |
| | <p>APPROVED</p> | <p>REVISIONS</p> <p>A. FOR SUBMISSION</p> | <p>DRAWING TITLE</p> <p>WEST ELEVATION (SIDE) REAR ELEVATION</p> | <p>SCALE</p> <p>1:150 (R/3)</p> |
| | | <p>DATE</p> <p>14.03.2022</p> | <p>DATE</p> <p>14.03.2022</p> | <p>DRAWING NO</p> <p>DA201</p> |

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 Version: 1, Version Date: 08/09/2022



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|--|---|-------------------|--|--|--------------------|---------------|
|  DALGLIESH WARD AND ASSOCIATES PTY LTD ARCHITECTS | CLARENCE STREET SYDNEY NSW 2000 T: 02 9550 9636 F: 02 9550 9637 M: 04 343 4444 WWW.DALGLIESHARCHITECTS.COM | NOTES APPROVED | REVISIONS OR SUBMISSION 14.03.2022 | PROJECT ALSTONVILLE No 8 CARLISLE STREET, LEICHHARDT LOT A IN DP275390 DRAWING TITLE EAST ELEVATION (SIDE) | PROJECT NO 2131 | REVISION A |
| | DRAWN AG | CHECKED DW | SCALE 1:150 (S/A) | DRAWING NO DA202 | DATE 14.03.2022 | |

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 Version: 1, Version Date: 08/09/2022



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|---|--|--|---|--|---|--|
|  DALGLIESH WARD AND ASSOCIATES PTY LTD ARCHITECTS | NO. FAX TEL. 02 9527 1111 EMAIL: STUART@DALGLIESHARCHITECTS.COM WEBSITE: WWW.DALGLIESHARCHITECTS.COM 100 STERLING RD, "10" M. 644 4444 100 STERLING RD, "10" M. 644 4444 | CLAUSE 52(1)(b) SUB 2(1) STATEMENT OF ESTIMATES | NOTES APPROVED | REVISIONS A DA SUBMISSION 14.03.2022 | PROJECT NO. 2151 DRAWN AG SCALE 1:100 @A3 DATE 1-03-2022 | REVISION CHECKED DRAWING NO. DA350 |
| | PROJECT: ALTS-ADDS No 8 CARLISLE STREET, LEICHHARDT LOT A IN DP 775390 DRAWING TITLE: PHOTOMONTAGE STREETScape (CARLISLE ST) | | PROJECT NO. 2151 DRAWN AG SCALE 1:100 @A3 DATE 1-03-2022 | REVISION CHECKED DRAWING NO. DA350 | | |

Document Ref ID: 58741619
 Version: 1, Version Date: 08/09/2022



SITE COVERAGE AND LANDSCAPED AREA

SITE AREA# 342.3
 ZONING# R1
 4.3A LANDSCAPED AREAS FOR RESIDENTIAL ACCOMMODATION IN ZONE R1
 MIN. LANDSCAPE AREA= 20% OF SITE OR 89.46m²
 PRO. LANDSCAPE AREA= 149.69m² (COMPLIES)
 4.3A LANDSCAPED AREAS FOR RESIDENTIAL ACCOMMODATION IN ZONE R1
 MAX. SITE COVER= 80% OF SITE OR 265.38m²
 PRO. SITE COVER= 185.04m² (COMPLIES)

FSR

SITE AREA# 342.3
 FSR CONTROL# 0.66:1 OR 265.2M²
 PROPOSED FSR 1.51:100M²
 GFA OF PROPOSED FSR 233.53M²
 GFA TOTAL# 0.719:1
 (NON-COMPLIANT BY 28.33M² OR 13.85%)

| | | | |
|--|--|---|--|
| <p>DALGIESH WARD AND ASSOCIATES PTY LTD ARCHITECTS</p> | PROJECT NO. CAJEBALLE 1804/2111 EMAIL: STUDIO@DALGIESHWARD.COM PHONE: 08 9438 1634 MOBILE: 04 376 374 FAX: 04 376 374 WEBSITE: WWW.DALGIESHWARD.COM | PROJECTING 2131 DRAWN AG SCALE 1:100 (80%) DATE 14.03.2022 | REVISED A CHECKED DW DRAWING NO. DA400 |
| | PROJECT ALTS+ADDS No 8 CARLISLE STREET, LEICHHARDT LOT A IN DP75380 DRAWING TITLE CALCULATIONS | REVISED A DA SHIRBIRSON 14.03.2022 | APPROVED |

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 Version: 1, Version Date: 08/09/2022



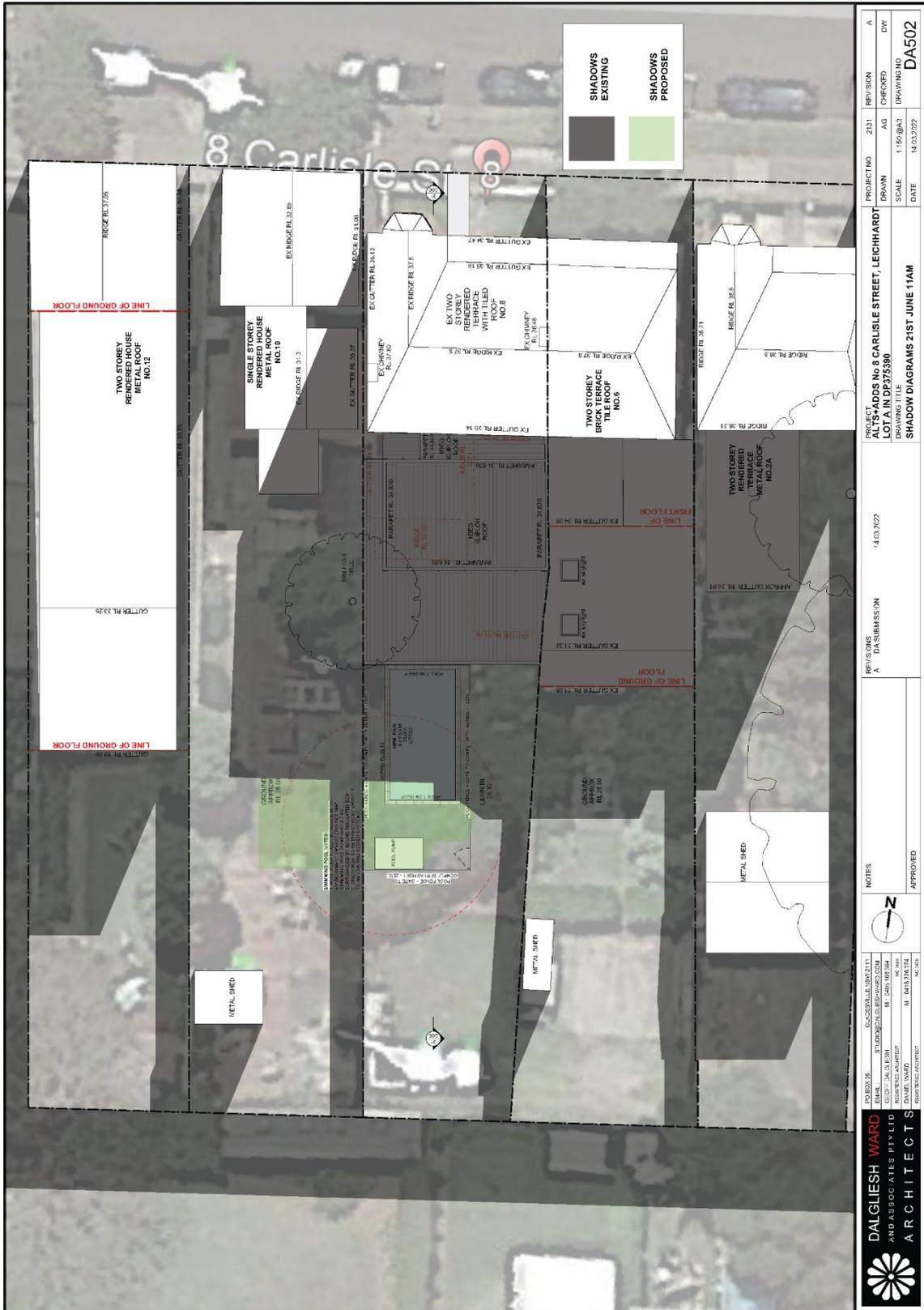
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| | DRAWN: AG CHECKED: DWF SCALE: 1:150 (M/A3) DATE: 14.03.2022 | DRAWING TITLE: SHADOW DIAGRAMS 21ST JUNE SAM DRAWING NO: DA500 |
| NOTES: APPROVED: | REVISIONS: A: DA SHIRBRISON 14.03.2022 | PROJECT NO: 2131 REVISION: A |

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 Version: 1, Version Date: 08/09/2022



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| DALGIESH WARD AND ASSOCIATES PTY LTD ARCHITECTS | | PROJECT NO: 2131 REVISION: A DRAWN: AG CHECKED: DW SCALE: 1:150 (8A/3) DATE: 14.03.2022 DRAWING NO: DA501 |
| PROJECT: ALTS+ADDS No 8 CARLISLE STREET, LEICHHARDT LOT A IN DP735390 DRAWING TITLE: SHADOW DIAGRAMS 21ST JUNE 10AM | | REVISONS: A DA SHIRBIRSON 14.03.2022 |
| NOTES: APPROVED: | | NOTES: APPROVED: |
| CONTACT: DALGIESH WARD ARCHITECTS 1/100 CARLISLE STREET, LEICHHARDT NSW 1585 TEL: 02 9550 6644 FAX: 02 9550 6645 EMAIL: INFO@DALGIESHWARD.COM WEBSITE: WWW.DALGIESHWARD.COM | | PROJECT NO: 2131 REVISION: A DRAWN: AG CHECKED: DW SCALE: 1:150 (8A/3) DATE: 14.03.2022 DRAWING NO: DA501 |

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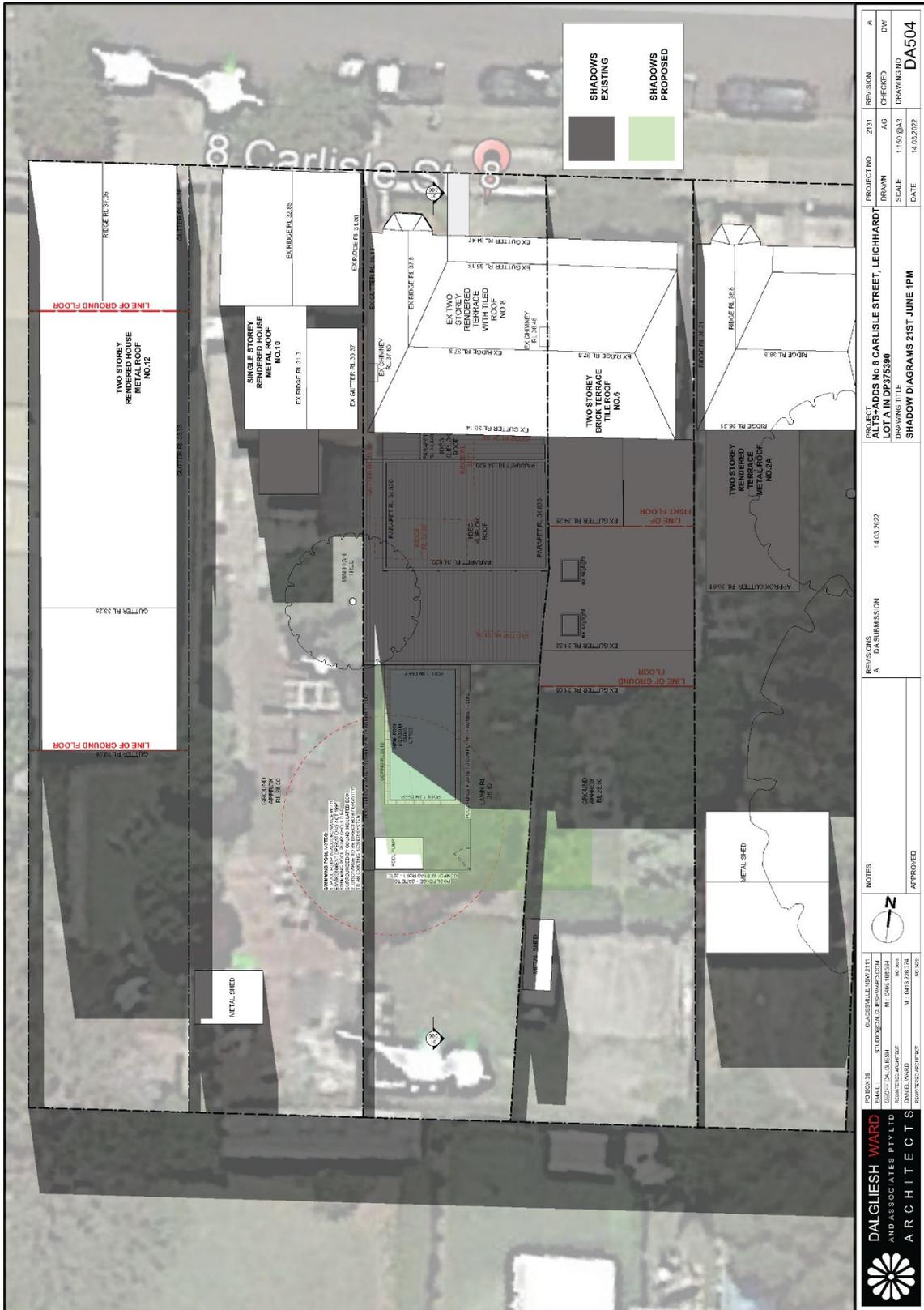
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| | DATE: 14.03.2022 DRAWING TITLE: SHADOW DIAGRAMS 21ST JUNE 11AM | DRAWN: AG CHECKED: DW | SCALE: 1:150 (8A3) DATE: 14.03.2022 |
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 Version: 1, Version Date: 08/09/2022



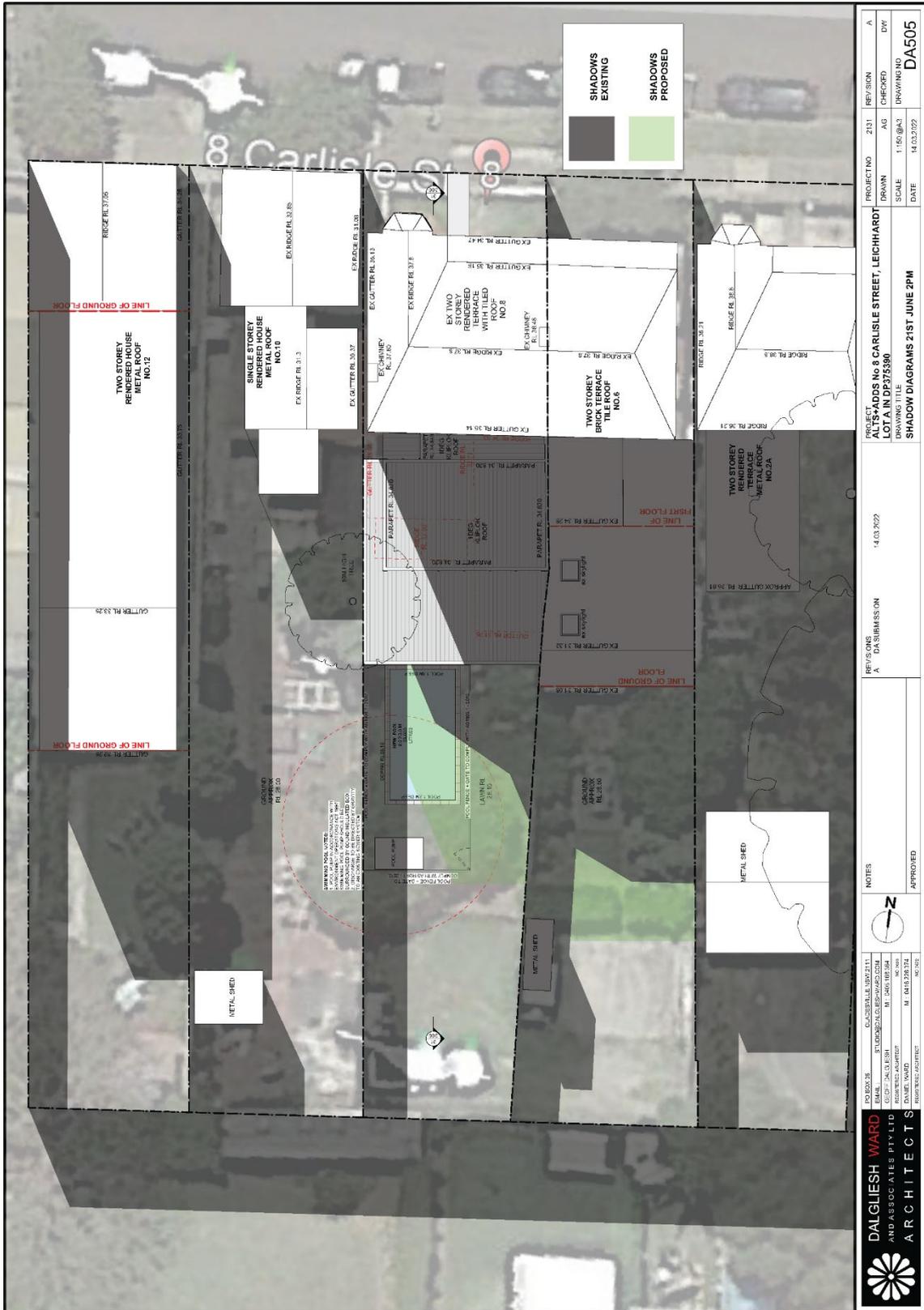
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| | NOTES APPROVED | APPROVED | APPROVED | APPROVED |

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 Version: 1, Version Date: 08/08/2022



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| DALGIESH WARD AND ASSOCIATES PTY LTD ARCHITECTS | PROJECT NO: 2131 DRAWN: AG SCALE: 1:150 (M/A3) DATE: 14.03.2022 | REVISIONS: A DA SUBMISSION 14.03.2022 | PROJECT: ALTS+ADDS No 8 CARLISLE STREET, LEICHHARDT LOT A IN DP735390 DRAWING TITLE: SHADOW DIAGRAMS 21ST JUNE 1PM | REVISION: A CHECKED: DWG DRAWING NO: DA504 DATE: 14.03.2022 |
| | NOTES: APPROVED: | APPROVED: | APPROVED: | APPROVED: |

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 Version: 1, Version Date: 08/09/2022



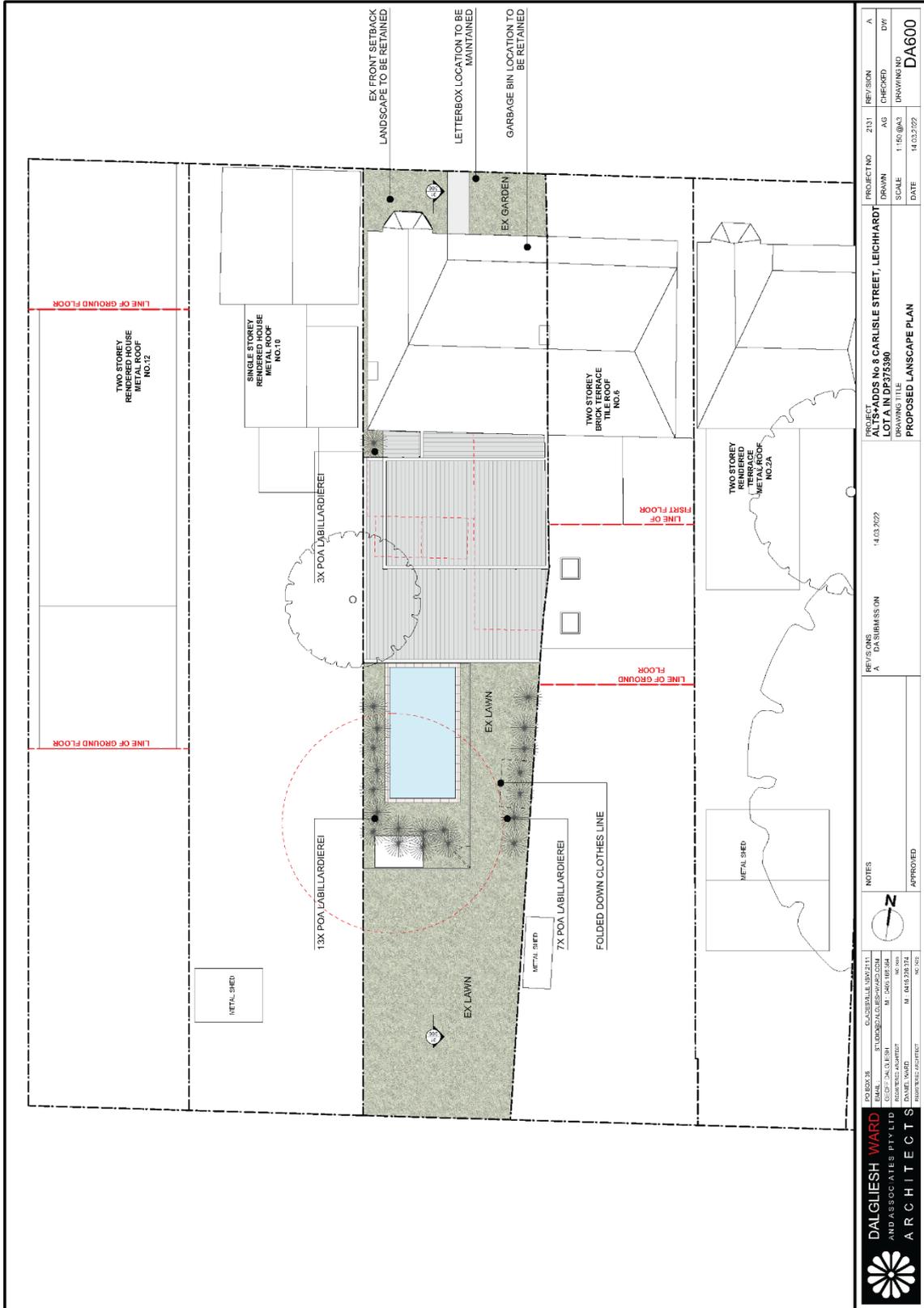
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| | PROJECT ALTS+ADDS No 8 CARLISLE STREET, LEICHHARDT LOT A IN DP735390 DRAWING TITLE SHADOW DIAGRAMS 21ST JUNE 2PM | REVISIONS A DA SHIRBIRSON 14.03.2022 |
| NOTES APPROVED | APPROVED | APPROVED |
| CONTACTS PHONE NO. 0438261211 EMAIL STUDIO@DALGIESHWARD.COM OFFICE 0438261211 M 0438261211 MOBILE 0438261211 M 0438261211 STUDIO 0438261211 M 0438261211 | NOTES APPROVED | APPROVED |

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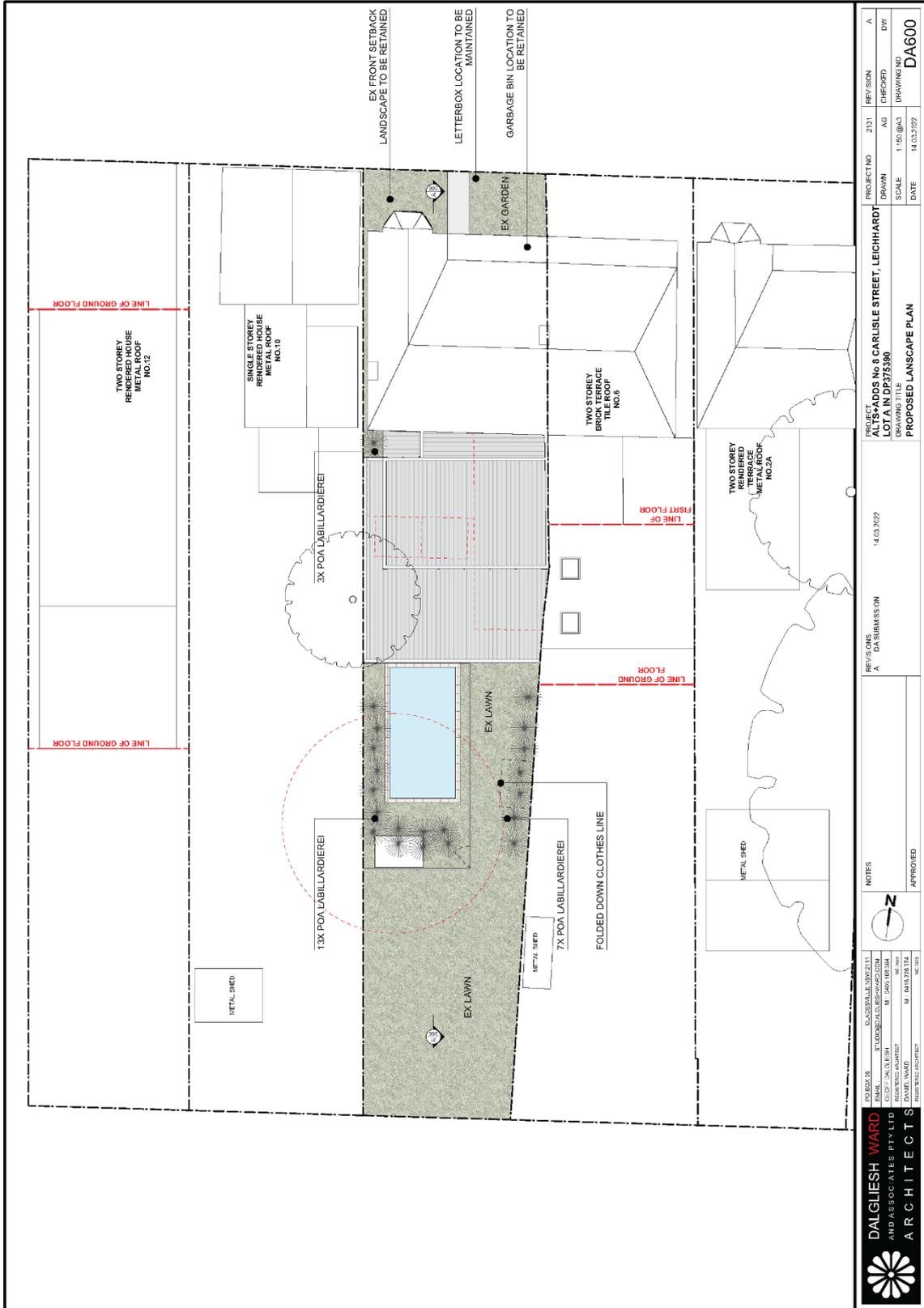
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| PROJECT: ALTS+ADDS No 6 CARLISLE STREET, LEICHHARDT LOT A IN DP735390 DRAWING TITLE: SHADOW DIAGRAMS 21ST JUNE 3PM | | REVISIONS: A DA SUBMISSION 14.03.2022 |
| NOTES: APPROVED: | | APPROVED: |
| CONTACT: DALGIESH WARD ARCHITECTS 1/100 CARLISLE STREET, LEICHHARDT NSW 1585 TEL: 02 9550 6949 FAX: 02 9550 6948 EMAIL: INFO@DALGIESHWARD.COM WEBSITE: WWW.DALGIESHWARD.COM | | PROJECT NO: 2131 REVISION: A DRAWN: AG CHECKED: DWF SCALE: 1:150 (M/A3) DATE: 14.03.2022 DRAWING NO: DA506 |

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 Version: 1, Version Date: 08/08/2022



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| DALGLIESH WARD AND ASSOCIATES PTY LTD ARCHITECTS | PROJECT NO. 2131 DRAWN AG SCALE 1:150 (M/A3) DATE 14.03.2022 | PROJECT ALTS+ADDS No 8 CARLISLE STREET, LEICHHARDT LOT A IN DP75390 DRAWING TITLE PROPOSED LANDSCAPE PLAN | REV/SIGN 2131 CHECKED DWG DRAWING NO DA600 |
| | NOTES APPROVED | REV/SIGNS A DA SHIRBRISON 14.03.2022 | PROJECTING 2131 CHECKED DWG DRAWING NO DA600 |

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| DALGLIESH WARD AND ASSOCIATES PTY LTD ARCHITECTS | PROJECT NO: 2131 DRAWN: AG SCALE: 1:150 (M/A3) DATE: 14.03.2022 | PROJECT: ALTS+ADDS No 8 CARLISLE STREET, LEICHHARDT LOT A IN DP75390 DRAWING TITLE: PROPOSED LANDSCAPE PLAN | REV/SIGN: A CHECKED: DW DRAWING NO: DA600 |
| | NOTES: APPROVED: | REVISIONS: A DA SHIRBRISON 14.03.2022 | PROJECTING: 2131 14.03.2022 |

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Attachment C- Clause 4.6 Exception to Development Standards



orionconsulting.com.au
info@orionconsulting.com.au
(02) 8660 0035

CLAUSE 4.6 VARIATION TO DEVELOPMENT
STANDARD – FLOOR SPACE RATIO
8 CARLISLE STREET, LEICHHARDT



April 2022

Prepared for CYS NSW Investments Pty Ltd

Clause 4.6 Variation
8 Carlisle Street, Leichhardt
Orion Consulting

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Document Control

| Revision | Prepared | Reviewed | Approved | Date | Description |
|------------|----------------|--------------|--------------|------------|----------------------|
| 21-0314 V1 | James Gibbeson | Nathan Croft | Nathan Croft | 14/04/2022 | Clause 4.6 Variation |

Clause 4.6 Variation
8 Carlisle Street, Leichhardt
Orion Consulting

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8 Carlisle Street, Leichhardt
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Executive Summary

This report has been prepared by Orion Consulting (Orion) to accompany a Development Application for 8 Carlisle Street, Leichhardt (Orion ref.: 21-0314).

The Development Application proposes a departure from the floor space ratio development standard under Clause 4.4 of Leichhardt Local Environmental Plan 2013.

This report constitutes a written request from the applicant to *contravene a development standard* within the meaning of Clause 4.6 (3) of the Leichhardt Local Environmental Plan 2013.

It describes the departure from the development standard, addresses the requirements of Clause 4.6 of Leichhardt Local Environmental Plan 2013 and provides justification for the departure from the development standard.

1 Introduction

This section of the report sets out the background to the development including related development applications and the purpose of this report.

1.1 Purpose of this Report

This Clause 4.6 Variation has been prepared to be submitted to Inner West Council as part of a Development Application and forms part of a Statement of Environmental Effects (SEE) in accordance with Clause 24(1)(b) of the Regulation.

It is a written request within the meaning of Clause 4.6(4)(a)(i) of Leichhardt Environmental Plan 2013 that provides justification under Clause 4.6(3) of the SEPP for the *contravention of a development standard* being the maximum Floor Space Ratio and comprises an assessment of the development including:

- the objectives of Clause 4.6 - *Clause 4.6(1)*;
- whether Clause 4.6 applies to the circumstances of the Development Application - *Clause 4.6(2)*;
- demonstration that the development standard is unnecessary and unreasonable - *Clause 4.6(3)(a)*;
- the sufficiency of the environmental planning grounds required to justify contravening the development standard - *Clause 4.6(3)(b)*;
- an assessment of the public interest in the context of the objectives of the development standard and the objectives of the zone - *Clause 4.6(4)(a)(i)*;
- matters relevant to obtaining the concurrence of the Secretary of the Department of Planning, Industry and Environment (formerly the Director General) - *Clause 4.6(4)(b) & 4.6(5)*;
- exclusions to the operation of Clause 4.6 - *Clause 4.6(6) & 4.6(8)*; and
- an assessment of the 'five part test' established by the Land & Environment Court.

This request addresses recent Land and Environment Court cases including, Micaul Holdings Pty Ltd v Randwick City Council, Moskovich v Waverley Council and Initial Action Pty Ltd v Woollahra Municipal Council.

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

- The consent authority be satisfied the proposed development will be in the public interest because it is "consistent with" the objectives of the development standard and zone is not a requirement to "achieve" those objectives. It is a requirement that the development be compatible with the objectives, rather than having to 'achieve' the objectives;
- Establishing that 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' does not always require the applicant to show that the relevant objectives of the standard are achieved by the proposal (Wehbe "test" 1). Other methods are available as per the previous 5 tests applying to SEPP 1, set out in Wehbe v Pittwater;
- When pursuing a clause 4.6 variation request it is appropriate to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, and
- The proposal is required to be in 'the public interest'.

The Chief Judge of the Land and Environment Court in Initial Action Pty Ltd v Woollahra Municipal Council (2018) has further clarified the correct approach to the consideration of clause 4.6 requests including that the clause does not require that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not.

2 Proposed Development

This section of the report describes the proposed development.

2.1 Alterations and Additions to an Existing Dwelling

The Development Application seeks approval for alterations and additions to an existing semi-detached dwelling:

- Partial demolition to the rear of the existing first floor and second floor of the dwelling;
- Removal of one (1) fruit tree;
- Ground and first floor addition to the rear of the existing dwelling;
- Minor alteration to the existing first floor ground plan;
- Construction of a swimming pool;
- Associated landscaping works.

The proposed site and demolition plan are illustrated in **Figure 3**.



Figure 3 – Proposed Site and Demolition Plan

Reference: Dalglish Ward

3 Legislative Framework

This section of the report assesses the variation to the development standard against the planning framework and planning controls. This report should be read in conjunction with the Statement of Environmental Effects.

3.1 Development Standard

A development standard is defined in Clause 1.4 of the *Environmental Planning and Assessment Act 1979* as a provision of an environmental planning instrument (or a regulation) which relates to the carrying out of development and which specifies requirements or standards in respect of any aspect of that development. Floor Space Ratio is expressly identified as a development standard at Clause 1.4.

The Development Application proposes a departure from the *floor space ratio* development standard under Clause 4.4 of Leichhardt Environmental Plan 2013 which provides:

4.4 Floor space ratio

- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The Residential Density Map provides the minimum density for the site as 0.5:1, and is illustrated in Figure 2.



Figure 2 – Floor Space Ratio Map

Reference: NSW Government

However, the site is located within area 5, with the FSR subject to clause 4.4 2B(c), as outlined below:

- (c) on land shown edged brown on the Floor Space Ratio Map is not to exceed—
 - (i) in the case of development on a lot with an area of less than 150 square metres—0.8:1, or
 - (ii) in the case of development on a lot with an area of 150 square metres or more but less than 300 square metres—0.7:1, or

(iii) in the case of development on a lot with an area of 300 square metres or more but less than 450 square metres—0.6:1, or

(iv) in the case of development on a lot with an area of 450 square metres or more—0.5:1, or

Given that the site area is 342.3m², the applicable FSR for the site is 0.6:1.

This report seeks to vary this development standard.

3.2 Development Application

3.2.1 Variation Proposed

The Development Application extent of works includes a site area of 342.3m² and the application proposes a total GFA of 233.53m². Clause 4.5 of the LEP provides the methodology for calculating floor space ratio:

(2) Definition of "floor space ratio" The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

(3) Site area In determining the site area of proposed development for the purpose of applying a floor space ratio, the site area is taken to be—

(a) if the proposed development is to be carried out on only one lot, the area of that lot, or

(b) if the proposed development is to be carried out on 2 or more lots, the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out.

In addition, subclauses (4)–(7) apply to the calculation of site area for the purposes of applying a floor space ratio to proposed development.

(4) Exclusions from site area The following land must be excluded from the site area—

(a) land on which the proposed development is prohibited, whether under this Plan or any other law,

(b) community land or a public place (except as provided by subclause (7)).

Using this methodology, the development application proposes a floor space ratio of 0.719:1, which exceeds the development standard and represents a departure of 13.8%. As discussed in this following sections of this report the numerical departure is a function of the structure of the floor space ratio control implemented across the Leichhardt LGA, with similar variations approved by Council and LEC for developments at 2 Carlisle Street, 36 Carlisle Street, 39 Carlisle Street, 54-56 Carlisle Street, 15 Macauley Street, 18 Macauley Street, 17 Short Street and 205 Norton Street. This departure is considered to provide a built form product which is consistent with the existing streetscape and character of the locality .

3.2.2 Reason for Variation

The Development Application incorporates the alterations and additions to an existing dwelling with the additional floor area primarily associated with the extension of the ground and first floor of the existing dwelling.

The development seeks to provide a similar built form and building typology with the adjoining properties, particularly with the attached dwelling located at number 6 Carlisle Street which incorporates a similar front, side and rear setback. The extension to the ground floor and first floor has been implemented to ensure consistency with the building lines established on these lots to maintain a consistent built form with dwellings located along Carlisle Street.

3.3 Exception to the Development Standard

Development standards are a means to achieving an environmental planning objective. Clause 4.6 recognises that some developments may achieve planning objectives despite not meeting a required development standard. The planning system provides flexibility to allow these objectives to still be met by varying development standards in exceptional cases.

3.3.1 Objectives of Clause 4.6

Clause 4.6(1) of the SEPP provides the objectives of Clause 4.6:

4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows—*
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6 of the SEPP aims to provide an appropriate degree of flexibility in applying development standards and to achieve better outcomes for and from development by allowing flexibility.

The subject site is located in a residential street located within close proximity to Norton Street, which is characterised by commercial and mixed used developments servicing the residents of Leichhardt. Carlisle street directly connects and accesses Norton Street. Development located within these connecting residential streets is characterised by a mix of dwelling types, particularly attached and semi-attached dwellings.

It is appropriate therefore, given the circumstances of this site and this Development Application, to apply a degree of flexibility to the development standard due to the consistency with the built form and building typologies located within the vicinity. The proposal seeks to establish a consistent building form and building line to the dwelling attached at the eastern boundary and maintains the existing appearance of the streetscape. Given that the dwelling forms one part of a semi-detached dwelling, the greater planning outcome would be to ensure that the development is consistent with the attached dwelling at no. 6 Carlisle Street to ensure a consistent built form and building typology.

Providing this flexibility allows for a better outcome in this instance, given that the alterations and additions will result in a built form, bulk and scale, building setbacks, site coverage and landscaped area more consistent with the attached dwelling located on the adjoining property (no.6 Carlisle Street). In addition, the development provides further opportunity for a greater allowance of internal floor area and living areas contained within in a dwelling which is consistent with building forms and typologies within the locality.

For these reason, the departure from the floor space ratio development standard achieves a better outcome than compliance.

3.3.2 Application of Clause 4.6

Clause 4.6(2) of the SEPP provides that development consent may be granted for development that contravenes a development standard and the circumstances under which Clause 4.6 may not be used:

4.6 Exceptions to development standards

- (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.*

This report seeks consent for a variation to the floor space ratio development standard pursuant to this Clause. This development standard is not excluded from the operation of Clause 4.6.

3.3.3 The Development Standard is Unnecessary and Unreasonable

Clause 4.6(3)(a) of the SEPP provides a prohibition on the consent authority granting consent to development that contravenes a development standard unless the departure is demonstrated to be unreasonable or unnecessary:

4.6 Exceptions to development standards

- (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*

In *Wehbe v Pittwater Council [2007] NSWLEC 827* the Land and Environment Court set out a five-part test to determine whether an objection to a development standard is well founded:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard

See Section 3.3.5.1 of this report. Compliance with the development standard is unreasonable and unnecessary.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

Justification on this basis is not asserted by the Applicant.

3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

The underlying object of purpose would not be defeated or thwarted if compliance was required

Within the scope of the current extent of works, the bulk and scale of the proposed development is considered to be appropriate for the intended character of the area given the planning controls in place. The proposed variation to the Floor Space Ratio standard when assessed in context with the site constraints, surrounding development, streetscape and character of the area provides a greater outcome than what would be achieved if compliance was required. It is considered that the scale of the building is consistent to that of similar developments in the locality and provides appropriate integration with the surrounding landscape.

The proposed variation provides a greater outcome for the site than that of which would result from strict compliance with the control particularly given the consistency with the build form approach established by the attached dwelling to the east and other developments located on Carlisle Street. Notwithstanding, the development achieves the objectives of the floor space ratio development standard notwithstanding the numerical non-compliance;

Strict compliance with the floor space ratio standard is unreasonable and unnecessary in the circumstances of the case given that compliance with the zone and development standard objectives is achieved. The proposal is consistent with the relevant objectives and will be a better planning outcome for the site.

For this reason, compliance with the development standard is unreasonable.

4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable

Justification on this basis is not asserted by the Applicant.

5. The zoning of particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case is also be unreasonable or unnecessary

Justification on this basis is not asserted by the Applicant.

In the context of *Wehbe v Pittwater Council [2007] NSWLEC 827* in the circumstances of this site and this Development Application the development standard is unreasonable and unnecessary, and the Clause 4.6 Variation is well-founded.

3.3.4 Environmental Planning Grounds

Clause 4.6(3)(b) of the SEPP provides a prohibition on the consent authority granting consent to development that contravenes a development standard unless there are enough environmental planning grounds to justify the departure:

4.6 Exceptions to development standards

- (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—*

...

- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposal is consistent with the following objects under Section 1.3 of the Environmental Planning & Assessment Act:

- (g) to promote good design and amenity of the built environment.

The Development Application proposes building heights and built forms which consistent with the remainder of Carlisle Street and moreover is consistent with the broader Leichhardt general residential precinct and the floor space development standard.

The proposed development incorporates a built form which is consistent with developments throughout the Leichhardt general residential precinct. Of particular note, the development incorporates a consistent built form with adjoining developments and dwellings located along Carlisle Street. Consistency with amenity of the built environment is the overall compliance of the development with the prescribed building height, site coverage, landscaped area and solar access controls outlined for the site.

Compliance with key controls and general compliance with the Leichhardt Development Control plan highlights a design consistent with the existing built form and building typology within the precinct. The proposed alterations and additions do not result in any alteration to the existing built form or bulk and scale from the streetscape with the front of the dwelling retained with no works proposed.

The alterations and additions to the rear of the dwelling are of a modern, high-quality design which maximises the use of quality internal and external living areas while maintaining the residential amenity of adjoining properties. As such, the design and amenity of the development reinforces and enhances the built form, existing character and streetscape of the general residential precinct.

3.3.5 Assessment of the Public Interest

3.3.5.1 The Objectives of the Development Standard

Clause 4.6(4)(a)(ii) of the SEPP provides a prohibition on the consent authority granting consent to development that contravenes a development standard unless the departure is demonstrated to be consistent with the objectives of the development standard:

4.6 Exceptions to development standards

(4) *Development consent must not be granted for development that contravenes a development standard unless—*

(a) *the consent authority is satisfied that—*

...

(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*

Clause 4.4 of the LEP provides the objectives of the development standard:

4.4 Floor Space Ratio

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

(a) *to ensure that residential accommodation—*

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

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

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

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

Despite the departure from the development standard proposed by this Development Application the development meets the objectives of the development standard. In the case of the subject development, objective (b) is considered to be non-applicable given that the development is for residential development only.

As previously discussed, the proposal provides residential accommodation which is compatible with the desired further character of the area in relation to building bulk, form and scale, satisfying objective (a)(i). This is highlighted through the consistent building height, typology, setbacks and bulk and scale as the adjoining properties, particularly no. 6 Carlisle Street, which shares a common wall with the subject dwelling (figure 1).

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The proposal incorporates a sufficient balance of landscaped areas and built form, displaying full compliance with the relevant numerical controls outlined within the Leichhardt DCP 2013 (refer to figure 3 for site calculations). The balance of landscaped area and built form demonstrates compliance with objective (a)(ii).

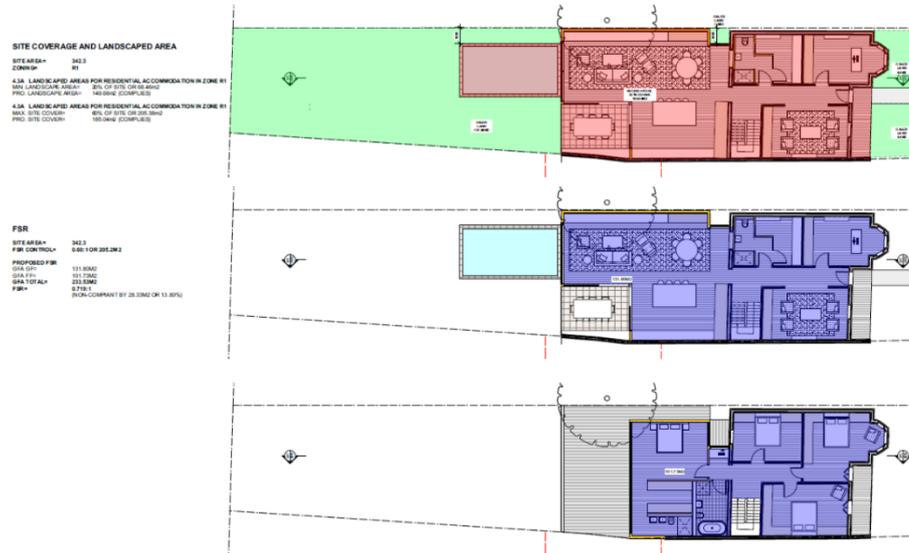


Figure 3 – Development Figures & Calculations

Reference: Dalgliesh Ward

The non-compliance with floor space ratio does not result in any privacy, acoustic, overshadowing or overlooking impacts to the development site, opens spaces, public domain or adjoining properties. As discussed, the overall bulk and scale of the development is consistent with the bulk and scale of developments located on Carlisle Street, with the site providing for a larger area of serviceable floor space within the limits of the dwelling areas. As such, the proposal is successful in providing additional floor space area while minimizes bulk and scale, satisfying objective (a)(iii).

In the case of the subject development, objective (b) is considered to be non-applicable given that the development is for residential development only.

Therefore, it is considered that the scale of residential development proposed therefore is both consistent and compatible with the character of both the adjoining land and the broader Leichhardt Residential Precinct and is therefore consistent with the objectives of clause 4.4.

3.3.5.2 The Objectives of the Zone

Clause 4.6(4)(a)(ii) of the SEPP provides a prohibition on the consent authority granting consent to development that contravenes a development standard unless the departure is demonstrated to be consistent with the objectives of the zone:

4.6 Exceptions to development standards

(4) Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

...

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

The site is zoned R1 General Residential (R1 zone). Clause 2.3 of the LEP provides the objectives of the R1 zone:

Zone R1 General Residential

1 Objectives of zone

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

The Development Application seeks to provide for the housing needs of the community through the provision of improvements to a dwelling house. Housing stock and product availability is a key issue in the local community and across the whole of Sydney, and the site seeks to provide a low density development type described as an attached dwelling further suited to the demands of the market.

Development of the site in the manner proposed does not restrict future development on the site or adjoining sites for potential land uses that provide facilities and services. No subdivision of the site is proposed with the existing and original subdivision pattern maintained.

Alterations and additions to the site and variance to the floor space ratio development standard allow for the opportunity to provide additional floor area for occupants to work from home and utilise large living areas and private open spaces. The proposal achieves a desired balance of external landscaped areas and internal living spaces for use and enjoyment of residents, highlighted through compliance with the relevant landscaped and site coverage controls outlined within Leichhardt DCP 2013.

The development proposes a final outcome on the site which is consistent with development outlined within the building typology statements, consistent with the existing streetscape and built form, landscape areas, provides an appropriate bulk and scale and does not impact views or the amenity of the adjoining properties. Therefore, it is considered that the scale of residential development proposed therefore is both consistent and compatible with the character of both the adjoining land and the broader Leichhardt Residential Precinct and is therefore consistent with the objectives of the General Residential Zone.

3.3.6 Exclusions to the Operation of Clause 4.6

3.3.6.1 Certain Land

Clause 4.6(6) of the SEPP provides a prohibition on the consent authority granting consent to development that contravenes a development standard on certain land:

4.6 Exceptions to development standards

- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone E2 Environmental Conservation 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.*

None of the land is within this zone therefore this Clause is irrelevant to the consideration of this Clause 4.6 variation.

3.3.6.2 Certain Development Standards

Clause 4.6(6) of the SEPP provides a prohibition on the consent authority granting consent to development that contravenes certain development standards:

4.6 Exceptions to development standards

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(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,*

The Development Application is not for complying development therefore this Clause is irrelevant to the consideration of this Clause 4.6 variation.

3.3.6.3 Compliance with BASIX

Clause 4.6(6) of the SEPP provides a prohibition on the consent authority granting consent to development that contravenes BASIX commitments:

4.6 Exceptions to development standards

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

...

(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,*

The Development Application does not propose built form thus no BASIX requirements are applicable therefore this Clause is irrelevant to the consideration of this Clause 4.6 variation.

3.3.6.4 Miscellaneous Permissible Uses

Clause 4.6(6) of the SEPP provides a prohibition on the consent authority granting consent to development that is for certain uses:

4.6 Exceptions to development standards

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

...

(c) *clause 5.4.*

The Development Application is not for bed and breakfast accommodation, home businesses, home industries, industrial retail outlets, farm stay accommodation, kiosks, neighbourhood shops, roadside stalls or secondary dwellings therefore this Clause is irrelevant to the consideration of this Clause 4.6 variation.

4 Consent Authority

4.1 Local Planning Panels

Inner West Council is a Schedule 2 Council under the Local Planning Panels Direction.

The Development Application proposes a departure from the Floor Space Ratio development standard of more than 10%. As such the application is referred to the Local Planning Panel for determination.

4.2 Concurrence of the Secretary

4.2.1 Is Concurrence Required?

Clause 4.6(4)(b) of the SEPP requires the concurrence of the Secretary of the Department of Planning, Industry and Environment (the Secretary, formerly the Director General) to be obtained prior to the granting of consent for development that contravenes a development standard:

4.6 Exceptions to development standards

(4) *Development consent must not be granted for development that contravenes a development standard unless—*

...

(b) *the concurrence of the Director-General has been obtained.*

Planning Circular PS 18-003 provides that all consent authorities may assume the Secretary's concurrence under Clause 4.6 however the assumed concurrence is subject to conditions.

Concurrence may not be assumed by a delegate of council when the development contravenes a numerical standard by greater than 10%.

This restriction does not apply to decisions made by the Local Planning Panel, who exercise consent authority functions on behalf of councils, but are not legally delegates of the council.

4.2.2 Concurrence Considerations

In assuming concurrence, the Council must consider the matters that would have been considered by the Secretary.

4.2.2.1 State or Regional Planning

Clause 4.6(5) of the SEPP provides for the consideration of any State or regional planning significance as a result of the departure from the development standard:

4.6 Exceptions to development standards

(5) *In deciding whether to grant concurrence, the Director-General must consider—*

(a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

Matters of significance for State and regional planning are most appropriately explored within the context of the planning strategies that guide the development of the State.

4.2.2.1.1 A Metropolis of Three Cities – the Greater Sydney Region Plan

A Metropolis of Three Cities – the Greater Sydney Region Plan (the Region Plan) sets out a vision to rebalance growth more equally and equitably to residents across Greater Sydney.

The Region Plan was prepared concurrently with Future Transport 2056 and the State Infrastructure Strategy, aligning land use, transport and infrastructure planning to reshape Greater Sydney as three unique but connected cities.

The site is within the Western Parkland City and identified as a Land Release Area. In the context of the city this departure from the development standard is insignificant.

4.2.2.1.2 Eastern City District Plan

The District Plans for the Sydney Metropolitan area were finalised on 21 November 2016. They guide the implementation of A Metropolis of Three Cities – The Greater Sydney Region Plan across the five Districts that form the metropolitan area.

These 20 year plans are a bridge between regional and local planning. They inform local environmental plans, community strategic plans and the assessment of planning proposals. The District Plans help councils to plan and deliver for growth and change, and to align their local planning strategies to place-based outcomes.

The Eastern City District Plan (the District Plan) sets out a vision, priorities and actions for the development of the Eastern City of Greater Sydney in which the site is located.

Planning Priority E5 of the District Plan seeks to provide housing supply, choice and affordability, with access to jobs, services and public transport.

The Development Application seeks to provide housing and in the context of the district this departure from the development standard is insignificant.

4.2.2.2 Public Benefit

Clause 4.6(5) of the SEPP provides for the consideration of the public benefit of maintaining the development standard:

4.6 Exceptions to development standards

(5) *In deciding whether to grant concurrence, the Director-General must consider—*

...

(b) *the public benefit of maintaining the development standard, and*

The departure from the development standard in this circumstance results in a better planning outcome for the site and adjoining properties than what would have been achieved through strict compliance with the development standard.

The proposed development provides a built form that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas. The development proposes a final outcome on the site which is consistent with development outlined within the building typology statements, consistent with the existing streetscape and built form, landscape areas, provides an appropriate bulk and scale and does not impact solar access, views or the amenity of the adjoining properties. The proposal demonstrates compliance with all other environmental planning instruments and development standards while also exhibiting general compliance with the provisions of Leichhardt Environmental Plan 2013.

As such the departure from the development standard should be viewed under the circumstance of the site rather than setting any precedent and does certainly not present a watering down of the development standard, with similar variations approved by Council and LEC for developments at 2 Carlisle Street, 36 Carlie Street, 39 Carlisle Street, 54-56 Carlisle Street, 15 Macauley Street, 18 Macauley Street, 17 Short Street and 205 Norton Street. As in these cases, strict compliance with the development standard was deemed to be appropriate given that non-compliance with the development standard resulted in a greater planning outcome for each site.

There is no public benefit in maintaining the development standard in this specific circumstance on this site as the floor space ratio for the site does not result in an unacceptable built form product and is consistent and compatible with development throughout the Leichhardt residential precinct.

4.2.2.3 Any Other Matters

Clause 4.6(5) of the SEPP provides for the consideration of any other matters:

4.6 Exceptions to development standards

(5) *In deciding whether to grant concurrence, the Director-General must consider—*

...

(b) *the public benefit of maintaining the development standard, and*

(c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

There are no further matters to be taken into consideration that have not already been identified in this report.

5 Conclusion

This report has provided a detailed assessment of the proposed variation against the SEPP and the relevant case law within the context of the development and the site.

The proposed variation to the development standard achieves the purpose of the standard without complying with the numerical development standard. As the development is consistent with the purpose of the standard, and with the broader planning objectives for the locality, strict compliance with the development standard has been demonstrated to be unreasonable and unnecessary.

The proposed variation will not preclude the achievement of the zone or development standard objectives. The proposed development will not give rise to any adverse impacts and is suitable for the site and is in the public interest.

5.1 Recommendation

The variation to the development standard should be supported and the proposal should be granted consent subject to the appropriate standard conditions of consent.

Clause 4.6 Variation
8 Carlisle Street, Leichhardt
Orion Consulting

APPENDIX A – Architectural Plans

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Leichhardt Masonic Lodge (1924) in Marlborough Street and the Congregational Church (1911) on Elswick Street.

The allotments with back lanes facing Norton Street were taken up for commercial premises with attached dwellings.

The PWD detail survey of inner Sydney of 1888 showed 216 brick, 24 weatherboard and a few stone buildings. Most of these remain today, and more were built during the following decade such as the single-storey single-fronted terraces in Carlisle Street. An examination of the remaining buildings suggest that the area was probably fully built upon by the end of the 1930s.

Sources

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

Cusick, A 1989, 'Leichhardt West, original land grants and subdivisions', *Leichhardt Historical Journal*, No. 16.

Significant Characteristics

- A spacious low-rise residential area with wide streets and nature strips and the sense of garden space at the back of each building.
- A mixture of free-standing houses and terraces.
- A mixture of single-storey and two-storey development.
- Parapeted two storey commercial buildings and pubs along Norton Street.
- A considerable collection of ecclesiastical buildings.
- A range in the age of the buildings dating from 1880s-1930s. Most buildings belong to the nineteenth century.
- Brick is by far the most dominant building material, and is used in a variety of surfaces – as plastered brick through the 1880s, as face brick with plaster decoration during the early 1900s and as dark blue face brick into the 1930s.
- Unglazed terracotta tiles form the predominant roof cladding. There are also some slate roofs and the occasional iron roof.
- Suspended awnings along Norton Street.
- Sandstone kerbs and gutters remain for considerable sections of all streets.
- There are some original iron palisade fences.
- Crepe myrtle plantings in Carlisle Street.

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 significant for its

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surviving development from the 1880s and 1890s, which gives it its particular identity. All allotments appear to have been taken up and built upon probably by the late 1930s.

- Through its wide roads, its important mixture of cottages, terraces and shops, mostly dating from the 1880s-1890s, and the form and materials of its construction this area provides an interesting built example of late nineteenth century economics where pressures for denser and cheaper accommodation have overlaid the original spacious suburban intentions.
- With the adjoining Excelsior Estate subdivision to the south, its roads, lanes and subdivision pattern defined the layout of central Leichhardt.
- It demonstrates through its range of external finishes (first plaster, then brown face brick and blue-face brick) the increasing sophistication in brick making from the 1880s.

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 of streets. Avoid chicanes that diagonally cut across these wide carriageways.
- Existing laneways.
- All remaining sandstone kerbs and gutters.
- All pre-1939 buildings especially those identified on the DPW detail survey of 1888 (see LHJ No. 16).
- All shops, commercial buildings and pubs along Norton Street with awnings and original shopfront where remaining.
- All plaster finishes to external walls where it was originally applied (as a rough rule of thumb this will mostly apply to pre-1890s buildings). Reconstruct where necessary.
- All original unplastered face brick external walls.
- All original external architectural detail, including verandahs, parapets and awnings, and encourage replacement of lost elements, but only where evidence is available.
- Any remaining original iron palisade fences.
- All street planting schemes including 1960s crepe myrtle. Reinstate individual trees as part of street planting schemes where they have been lost.

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- All existing ecclesiastic or civic buildings in the area. Find new sympathetic uses for them if the original use should be closed.

Avoid

- Amalgamation of any original 50ft-wide allotment which might lead to a change in the pattern of development in the streetscape.
- Demolition of any building shown on the 1888 map (see LHJ No. 16). Reinstatement of external form and materials of any of those buildings which have suffered unsympathetic change is encouraged where evidence of former form or materials can be verified.
- Removal of any plaster or decorative plaster to external walls.
- Plastering and/or painting of original face brick walls.
- Second-storey addition to an original single-storey building.
- Additional architectural detail for which there is no evidence in the photographic record or on the building itself.
- Post-supported verandahs over footpaths, except where evidence of such structure is available.
- Inappropriate fences such as high brick fences/walls, new iron palisades on high brick bases.

Further Work

- Need to identify which buildings in the area are not identified on the detail survey of 1888, and/or which do not contribute to the continuing story of this subdivision into the 1930s. Recommend ways in which their sites could be re-used.
- Compile photographic records of the buildings of the subdivision from late nineteenth century to the 1990s as a means of ensuring appropriate reconstruction/'restoration'.